

GYDE

Clause 4.6 Request - Height of Building

Parramatta Local Environmental Plan 2023

85-91 Thomas Street Parramatta

submitted to the City of Parramatta Council

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Report Version: Final

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TABLE OF CONTENTS

1. Executive Summary	4
2. Standard to be Varied	6
3. Extent of Variation.....	7
4. Unreasonable or unnecessary	9
4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard .	9
4.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.....	17
4.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable	17
4.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary	17
4.5. The zoning of the land is unreasonable or inappropriate.....	17
5. Sufficient Environmental Planning Grounds	18
6. Public Interest.....	20
7. State or Regional Environmental Planning	22
8. Conclusion	23

1. EXECUTIVE SUMMARY

This is a request prepared in accordance with Clause 4.6 of the Parramatta Local Environmental Plan 2023 (PLEP) to justify a variation to the height of building development standard (clause 4.3 of PLEP). This clause 4.6 request accompanies a Development Application (DA) submitted to the City of Parramatta Council for a residential flat development at 85-91 Thomas Street Parramatta (the Site).

The proposal involves the demolition of existing structures, construction of 2 residential flat buildings containing 56 apartments, and a centralised communal open space area. The buildings include a shared single level basement servicing 80 vehicles and 61 bicycles. The proposal also includes the offer to dedicate the rear of the site to Council for public open space.

The proposed eastern building has a maximum height of 13.85m, and the western building has a maximum height of 14.45m. This equates to a 2.85m (25.9%) variation to the numerical height standard of 11m for the eastern building, and a 3.45m (31.36%) variation to the western building. The variation to the standard relates to portions of the 4th storey element, roof parapet, and lift overruns. No parts of the street interface facades exceed the height limit, and the height variation does not encompass the entire site. The overwhelming majority of areas above the height standard are directed towards the rear of the site facing the waterway; an aspect that can be observed along several multi storey buildings located upstream of the site. Despite the variation, the buildings remain considerably below the 22m height limit which was part of a previously discontinued proponent-initiated planning proposal (PP) for the site, which benefited from gateway determination and initial Council endorsement. Whilst accepting that this now discontinued PP has no statutory status in the assessment of the current DA, it provides some context as to the suitability of the site for additional height.

Council initiated its own amendments to the then PLEP 2011 ('Amendment 20') at around about the same time the proponent initiated the abovementioned PP. Amendment 20 sought to review public open space and land acquisition provisions throughout the local government area (LGA). Proposed Amendment 20 sought to rezone approximately 1,200sqm of land at 85 Thomas Street from R4 – High Density Residential to RE1 – Public Recreation and nominated the same area for acquisition purposes also. There was an agreement between the landowner at Council that any development potential lost as a result of the Amendment 20 rezoning, would be recouped as part of the proponent-initiated PP referenced earlier.

Amendment 20 proceeded and approximately 1,200sqm of land at 85 Thomas Street was rezoned, as described above. However, the proponent initiated PP was ultimately refused despite receiving gateway approval. Arguably, therefore, the proponent has lost all or some of the yield associated with that 1,200sqm portion of land pertaining to 85 Thomas Street. The height variation sought by this request goes somewhat towards offsetting this lost development potential yield.

Despite the abovementioned circumstances, the proponent offers to dedicate the 1,200sqm of land in question at 85 Thomas Street to Council as part of this DA. The dedication can occur as part of a Planning Agreement. In addition, the proponent also offers to dedicate a further 1,334sqm of land at the rear of 89-91 Thomas Street to Council as part of any Planning Agreement. The land at 85-91 Thomas Street is adjacent the foreshore and, therefore, has some natural environmental sensitivities. It is also adjacent other RE1 zoned land to the west. It is logical, therefore, that the 1,334sqm of land also be dedicated to Council and that Council rezone it to RE1 in due course, in order to create an amalgamated open space area. In this case, the total land area to be dedicated to Council is 2,496sqm. This is a sizeable area and will make a notable contribution to Council's open space facilities. As indicated earlier, this sizeable contribution is one of several environmental planning grounds in support of the height of building variation request.

The buildings partially exceed the maximum building height due to several factors, however predominately due to the topography of the land sloping towards the rear, in addition to a western crossfall. However, as a result of the buildings not exceeding the height limit along the street interface, and due to the presence of several buildings exceeding 40m in height located approximately 150m upstream of the site facing the waterway, the variation in this instance is considered acceptable. No adverse environmental impacts result from the height variation.

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development, by allowing flexibility in particular circumstances.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130) and *Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 233 LGERA 170*; [2018] NSWCA 245:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

This request considers that compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the proposed development because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

There are sufficient environmental planning grounds to justify the variation. These include that the height of the building exceedance is partially as a result of the land slope in addition to the lack of environmental impacts including overshadowing, view loss and privacy impacts. Additional grounds include that the buildings are well articulated which minimises perception of bulk and scale, that the development satisfies the objectives of the height standard, that the objectives of the R4 Height Density Residential zone are satisfied, and the proposal seeks to dedicate at total of 2,496sqm of land to Council which could make for a high quality public open space area.

This request also addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b).

It is therefore considered appropriate in these circumstances to grant the Clause 4.6 variation request.

2. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Building development standard which is set out in clause 4.3 of the PLEP as follows:

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

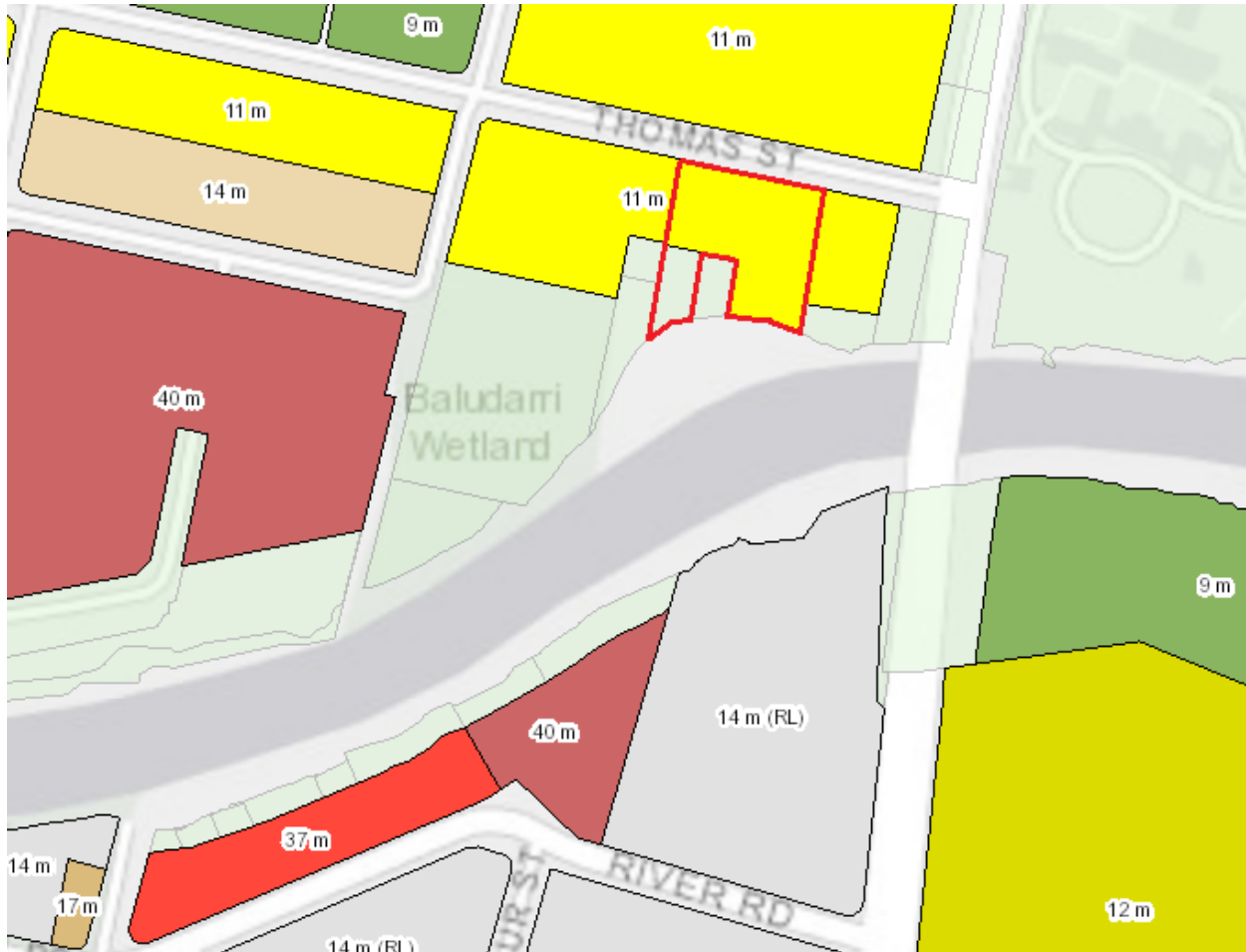


Figure 1: Extract of Height of Building Map, subject site outlined in red (Source: PLEP)

The numerical value of the development standard applicable in this instance is 11 metres.

The development standard to be varied is not excluded from the operation of clause 4.6 of the PLEP.

3. EXTENT OF VARIATION

The proposed eastern building has a maximum height of 13.85m, and the western building has a maximum height of 14.45m. This equates to a 2.85m (25.9%) variation to the numerical height standard of 11m for the eastern building, and a 3.45m (31.36%) variation to the western building. The variation to the standard relates to portions of the 4th storey element, roof parapet, and lift overruns. No parts of the street interface facades exceed the height limit, and the height variation does not encompass the entire site.

The existing ground level has been interpreted by the extrapolation method, as the submitted survey prepared by C&A Surveyors, provides spot levels around the building, on the portion of the site that is not developed and on the surrounding land beyond the site boundaries. The survey provides a clear understanding of the natural topography of the site and beyond the site boundaries, so provides a clear context of the site and its surrounds.

The extent of height variation is mainly summarised as follows:

Eastern building (Building 1 in figure 2):

- Top of rear parapet (south-western corner): 13.85m (RL 26.75m, existing RL 12.9m).
- Top of southern lift overrun: 13.3m (RL 27.8m, existing RL 14.5m).
- Top of northern lift overrun: 11.7m (RL 27.2m, existing RL 15.5m).

Western building (Building 2 in figure 2):

- Top of rear parapet (south-western corner): 14.45 (RL 25.25m, existing RL 10.8m).
- Top of southern lift overrun: 14.3m (RL 26.3m, existing RL 12m).
- Top of northern lift overrun: 12.2m (RL 25.7m, existing RL 13.5m).

The parts of the buildings above the 11m maximum building height are illustrated in the building height plane diagram in Figure 2.

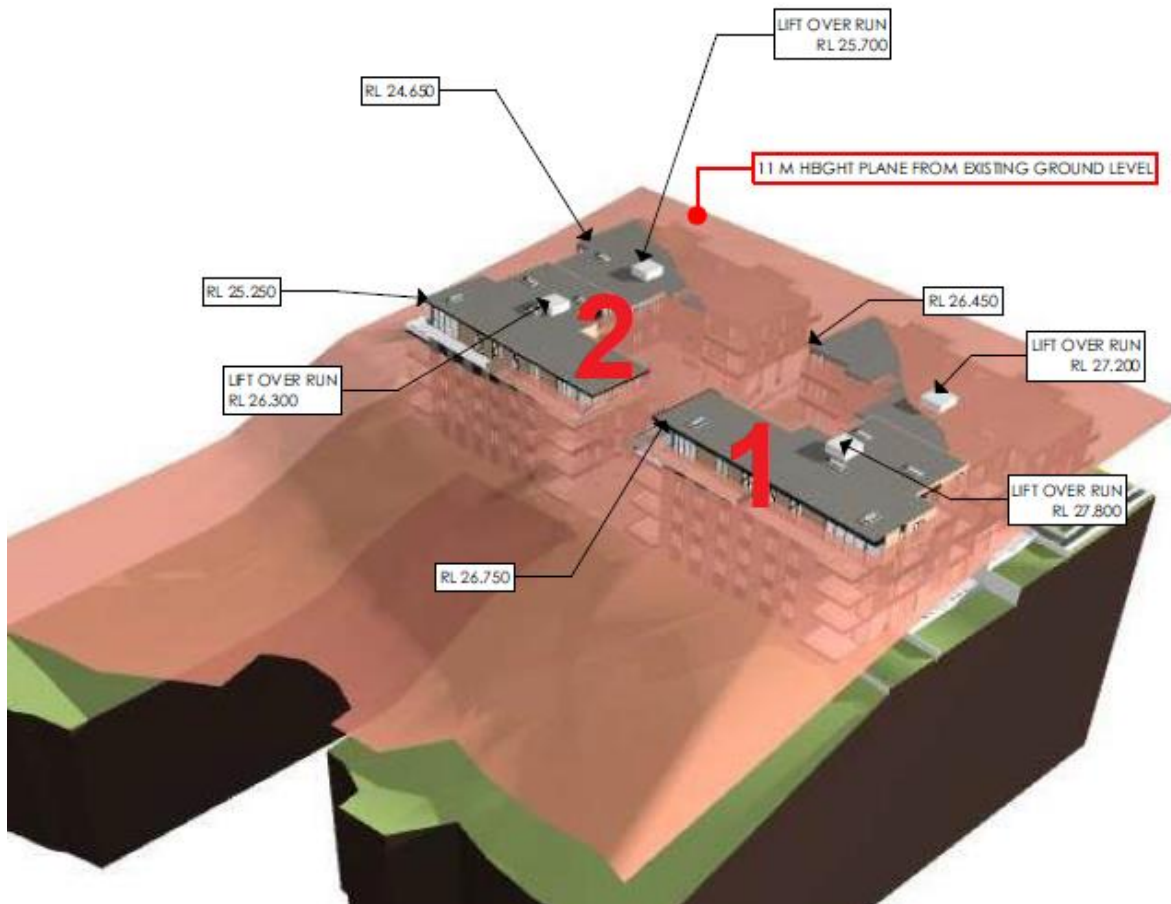


Figure 2: Height plane diagram with 11m height blanket – rear view (Source: PTI Architects)

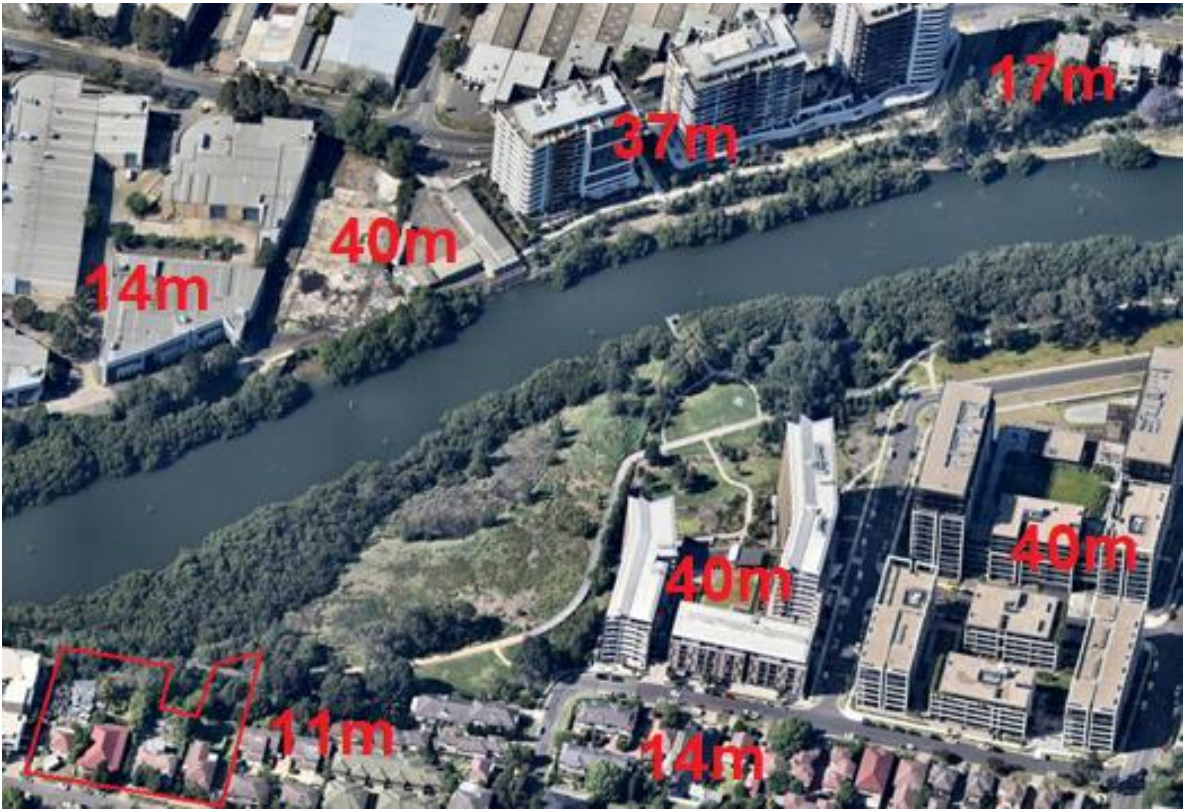


Figure 4: Aerial view of site (in red) with LEP height of building standards shown within upstream localities (Source: Nearmap)

4. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
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 the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First test under Wehbe).

Table 1 Consistency with Objectives of Clause 4.3 of PLEP.

OBJECTIVE	DISCUSSION
4.3 Height of buildings	
<i>(1) The objectives of this clause are as follows—</i>	
<i>(a) to provide appropriate height transitions between buildings,</i>	<p>The site is located along the Parramatta River foreshore in close proximity to the Parramatta CBD (approximately 1 km west) and only 150m east of the Morton Street precinct west of Pemberton Street.</p> <p>As a result of the slope of the developable portion of the land (approximately 2.5m for the eastern building, and 4.5m for the western building), a height variation is proposed to allow for the building mass to be fully contained within the developable portion of the site. While the overall site area is 6321.7sqm, the developable portion of the site is 3,825.7sqm or 60% of the overall site area. In this instance natural environmental constraints limit the portion on which development can be located, hence requiring the building mass to be centered upon the upper portion of the site.</p> <p>The proposed heights ranging from 13.85m to 14.45m are not considered jarring in this instance notwithstanding the 11m height limit. Firstly, from a streetscape perspective, the buildings will comply with the 11m height limit along the Thomas Street interface. The transition and separation between the residential flat building at 93-95 Thomas Street is well ordered and will not result in an inconsistent appearance. All three buildings read as 3 storeys from Thomas Street which ensures a compatible outcome.</p> <p>With regard to the height as observed from the waterway and the public reserve along the Parramatta River foreshore, reference is drawn to figures 1 and 4 provided above, whereby it can be observed that the height of building standard along the foreshore west of the James Ruse Drive generally staggers incrementally,</p>

OBJECTIVE	DISCUSSION
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beginning with a 11m and 14m height standard and reaching a height of 40m within the Morton Street precinct. In this instance the proposed 13.85m-14.45m height is consistent with the 14m height standard opposite to the site across the Parramatta River. In addition, the close proximity (150m) to 40m buildings located west of Pemberton Street allows for a good and harmonious building transition whereby a clear gradual increase is observed.

It is important to make reference to a Planning Proposal (PP-2020-2819) which received gateway determination in August 2020 from the Department of Planning, Industry and Environment (DPIE). The proposal intended to allow for a 22m building; a matter which was supported by Council whereby the exhibited Planning Proposal prepared by Council stated on page 30: *“Council’s Planning and Design units have maintained their recommendation that there is strategic merit in increasing the height to a maximum of 6 storeys to accommodate a similar amount of high-density residential floor-space permissible on the site at lodgement of the Planning Proposal”*. Whilst acknowledging that this PP has no application to the subject DA, these comments remain relevant in terms of their description of appropriate height transitions associated with the subject site.

The current scheme proposes far smaller 4/5 storey buildings with a shared basement which aligns with Council’s previous recommendations, in addition to still being accompanied by a planning agreement to dedicate land to Council.




Figure 5 Previously proposed southern façade of development endorsed by Council as part of Planning Proposal (PP-2020-2819)



Figure 6 Currently proposed southern façade of development (Source: PTI Architecture)

<i>(b) to ensure the height of buildings is</i>	The proposal’s height, in addition to its built form and massing, is compatible with surrounding developments and consistent with the scale and materials and colours of other developments in the area. The proposed materials palette utilises neutral and recessive contemporary materials in sympathetic colours, including
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OBJECTIVE	DISCUSSION
<p><i>compatible with the height of existing and desired future development in the surrounding area,</i></p>	<p>clear glazing, cladding elements, rendered cement, and timber elements.</p> <p>While the Thomas Street locality and particularly the local visual catchment has consistent elements that can be used to define the predominant character elements, it is considered that the locality is undergoing change given the area currently exhibits a range of development types ranging from traditional pitched roof dwelling houses to contemporary designed buildings.</p> <p>The site is located within area 3 (Morton Street – East) and the desired future character as expressed by the Parramatta Development Control Plan 2011 (PDCP) is as follows:</p> <p><i>“The Morton Street Precinct is located adjacent to the Parramatta CBD with the capacity to accommodate more residential growth and supporting infrastructure. It will undergo managed growth and change in its urban form with anticipation of a mix of housing types with mixed use community activity centred on Morton Street.</i></p> <p><i>The built form will include some taller building elements along north / south orientated sites to reduce visual bulk, encourage more modulation, reduce overshadowing and encourage dual aspect apartments for enhanced access to sunlight and breezes. The building form for east / west sites will be lower in height to optimise solar access to private and public open space and allow view corridors from the south. Taller, slender “statement” buildings will be located along the foreshore to enable a strong visual relationship between the precinct and the CBD, mark the entry to Parramatta and provide a punctuated built edge to the river.</i></p> <p><i>The development of the precinct will allow for a greater emphasis and recognition of the riverside location and the opportunity for enhancing the foreshore and public domain with development that is both well-designed and strongly related to the river. The connection of the north and south banks of the river with a pedestrian bridge will be explored to provide better linked communities across the river.”</i></p> <p>Case law has held that compatibility means ‘capable of existing together in harmony’ (Project Venture Development v Pittwater Council NSWLEC 191), and the test of compatibility is not a test of ‘sameness’ (Gow v Warringah Council NSWLEC 1093). The test of compatibility can be assessed with regard to the Planning Principle set by Project Venture Development v Pittwater Council NSWLEC 191.</p> <p>The first test is whether the building’s physical impacts are acceptable. The elements of the buildings that exceed the height limit are minor and have no detrimental impact in terms of view loss, privacy or overshadowing (This is explained in more detail below). The proposed height departure would also not prevent any future redevelopment of the adjoining sites. The buildings have parapet roofs with a clad finish on its outer perimeter. The buildings achieve the required Apartment Design Guide (ADG) internal solar access and ventilation controls and cast the majority of their shadow towards the public domain and not towards residential dwellings. Overshadowing upon the rear bushland has been concluded to be acceptable with reference to the submitted Ecology Report (Appendix R). Privacy impacts have been mitigated by offsetting windows and incorporating window treatments. The development’s use as residential is not a known noise generating use, hence the acoustic impacts are likely to be acceptable. Finally, the development will not constrain or isolate adjoining allotments. For the above reasons, it is considered the physical impacts of the proposal are acceptable.</p> <p>The second test is that of the proposal’s appearance being in harmony with the surrounding buildings. It is considered that the buildings are of a size and scale that is commensurate to the building at 93-95 Thomas Street, and adopt a comparable colour palette which allows the buildings to sit in harmony with the surrounding developments. The buildings’ height and overall massing are acceptable having regard to the stepped design which visually recesses the buildings. The front setback adopted is consistent with the street average and the overall envelope is not significantly different to that of the existing building. The separation between the eastern and western building is 9m consistent with the ADG, to ensure a consistent streetscape</p>

OBJECTIVE	DISCUSSION
	<p>appearance. Finally, the proposal provides 18% deep soil landscaping upon the developable portion of the site, which far exceeds the 7% ADG guideline, noting that the development is accompanied by a planning agreement to dedicate 2,496sqm of land to Council for the purposes of expanding the RE1 zoned areas along the banks of the Parramatta River.</p> <p>With reference to the PDCP Morton Street desired future character statement, the land is located upon a north-south oriented site and given its location, an increased height will contribute to <i>“marking an entry to Parramatta and provide a punctuated built edge to the river.”</i></p> <p>In consideration of the above, the proposal is considered to be compatible with the character of the local area and will make a positive contribution to the future desired character as expressed in the planning controls.</p>
<p><i>(c) to require the height of future buildings to be appropriate in relation to heritage sites and their settings,</i></p>	<p>The subject site is located in close proximity to (I011), a locally listed heritage item encompassing the Wetland areas. An archaeological and heritage impact statement (Appendix H) accompanies the proposal and concludes that there is a very low to low chance that archaeological deposits relating to significant historical activities from the 18th and 19th Century will be found.</p> <p>In addition, views to and from the Parramatta Wetlands heritage item are unlikely to be impacted by the proposed works due to the presence of adequate screening vegetation at the southern border of the subject area. In addition, the proposed works are unlikely to modify the visual catchment of this item substantially from the existing urban landscape of its setting.</p> <p>The departure to the height in this instance does not result in any adverse impacts to the heritage item given the development is fully contained within the developable portion of the site and due to the physical separation from the wetlands area.</p> <p>With reference to figure 7 below, due to the thick vegetation cover along the Parramatta River cycleway which itself traverses over the wetlands area, the development will not be readily visible from the curtilage of the heritage item and in this regard, the impact of the height variation upon the heritage item is acceptable.</p>  <p><i>Figure 7 Approximate location of site (beneath red marker) with higher density development observed upstream (left), with dense mangrove and vegetation cover along foreshore - as viewed from James Ruse Drive (Source: GYDE Consulting)</i></p>
<p><i>(d) to reinforce and respect the existing character and</i></p>	<p>The site and its surrounds are located within an R4 high density residential zoned area. However, it is noted that sites north of Thomas Street have yet to be developed to their potential and still contain typologies commensurate to that of a low-density residential area, being mainly single storey dwelling houses.</p> <p>The design of the proposal adopts a compliant 11m height along the Thomas Street interface in order to</p>

OBJECTIVE	DISCUSSION
<p>scale of low density residential areas,</p>	<p>provide for an appearance that aligns with the planning controls. Although the development does extend to approximately 14.45m along the rear, the southern façade is not visible from Thomas Street and hence will respect the existing character north of Thomas Street. It is noted that the redevelopment of sites north of Thomas Street could occur at any time given the planning controls allow for such an uplift.</p>  <p>Figure 8 Previously proposed northern façade of development endorsed by Council as part of Planning Proposal (PP-2020-2819)</p>  <p>Figure 9 Currently proposed northern façade of development (Source: PTI Architecture)</p> <p>It is important to note that the site does not adjoin an R2 zoned low density residential area. The site is 130m east of the closest R2 zoned land. Although portions of the development may be visible from certain viewing angles from the R2 zoned land, existing street trees and the compatible built form will allow the proposed buildings to sit comfortably without appearing out of place. In this case, the existing character and scale of low-density residential areas in the vicinity will be maintained.</p>
<p>(e) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</p>	<p>The development has been designed in a manner that reduces environmental impacts upon existing adjoining developments.</p> <p><u>Loss of solar access:</u> As a result of the north-south orientation of the site, overshadowing from the buildings will be primarily cast upon the public domain. The proposed development is unlikely to result in adverse overshadowing impacts to adjoining and neighbouring properties. The proposed development has been accompanied by Shadow Diagrams prepared by PTI Architecture which demonstrate that adjoining apartments will continue to receive a minimum of 3 hrs. of direct sunlight during midwinter. The shadow diagrams demonstrate that the proposed variations to the height of building development standard, do not cause any unacceptable solar access impacts to adjoining dwellings, adjoining private open space areas or public reserves.</p>

OBJECTIVE	DISCUSSION
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Figure 10: Shadow diagrams showing majority of overshadowing

Loss of visual privacy: The proposal has been designed to limit privacy and overlooking impacts to neighbours. All windows have been offset and privacy measures have been incorporated into the design to limited overlooking. Main living areas are generally located centrally or face the street/waterway in order to reduce privacy impacts. The rooftop is limited to services and will not be a trafficable area. Furthermore, the external finished ground levels are largely identical to the existing ground levels in order to minimize privacy impacts.

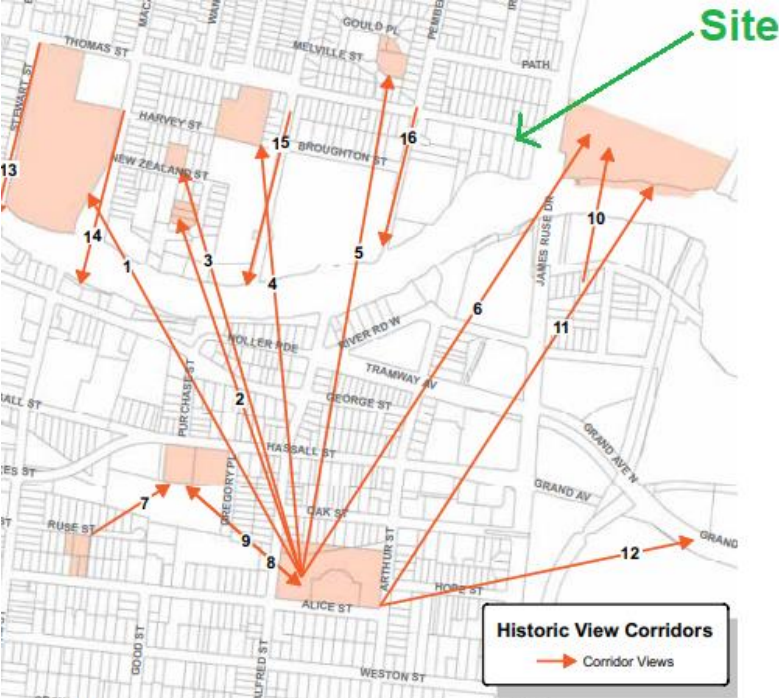
With regard to building separation, the buildings have adopted the 9m building separation criterion of the ADG, thus satisfy the objectives of Part 3F- Visual Privacy of the ADG.

Loss of acoustic privacy: The internal arrangement of the dwellings has been designed to protect the privacy of neighbouring residential developments. The living areas are centrally located or are oriented towards the street and located away from side boundaries to enhance aural privacy for residents. All car parking is within the basement to reduce acoustic impacts.

The building's use is limited to residential which is not a known noise generating use. The buildings do not contain commercial uses which are likely to result in adverse acoustic impacts. The communal open space area is located within the site's rear yard, which adjoins the communal open space areas of surrounding buildings. Hence, there is a considerable separation between the communal area and residential apartments on adjoining lands. The existing boundary fence, in addition to the proposed boundary plantings, will assist providing an acoustic screen between the buildings, which will help in dispersing and diminishing any potential acoustic impacts arising from the use of the communal area.

The proposal is accompanied by an acoustic report (Appendix M) which demonstrates no adverse acoustic impacts will be generated by the proposal subject to the achieving the recommendations of acoustic report.

View loss: The development is unlikely to block any major view corridors or important vistas. The site is located within an already established urban setting and there are no major landmarks or iconic views that are visible from locality. Views to and from the Parramatta River and its foreshore are unlikely to be impacted. The buildings' siting within the urban form of Parramatta is unlikely to significantly impact upon view corridors given the site slopes down in a southerly direction and buildings located to the north of the site will sit higher than the proposed buildings, notwithstanding the height of building breach. Buildings to the north of Thomas

OBJECTIVE	DISCUSSION
	<p>Street currently do not benefit from views to the water due to the steep slope of land and separation from the waterway. Any avenues of viewing the water would require to be substantially elevated and likely interspersed.</p> <p>The design of the proposal has considered in detail the key matters surrounding protection of existing vistas and view corridors of surrounding sites. In order to demonstrate that the proposal's envelope is acceptable in that regard, the design has considered the planning principle set by <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140 in the Land and Environment Court of NSW. Details with regard to consistency with the <i>Tenacity Consulting v Warringah Council</i> planning principle have been included within section 6.2.3 of the accompanying Statement of Environment Effects.</p> <p>The proposed buildings have been skillfully designed with specific consideration given to ensuring that minimal impact will be caused in relation to views.</p>
<p>(f) to preserve historic views,</p>	<p>The site is not located within an avenue containing historic or district views with reference to figures 11 and 12 below. In that regard, and with reference to the submitted heritage impact statement, the proposed works are unlikely to modify the visual catchment of any item substantially from the existing urban landscape of its setting.</p> <p>The proposed development will not have any identifiable impact on historic views.</p>  <p>Figure 11: Historic View Corridor map with Site under green arrow (Source: PDCP)</p>

OBJECTIVE	DISCUSSION
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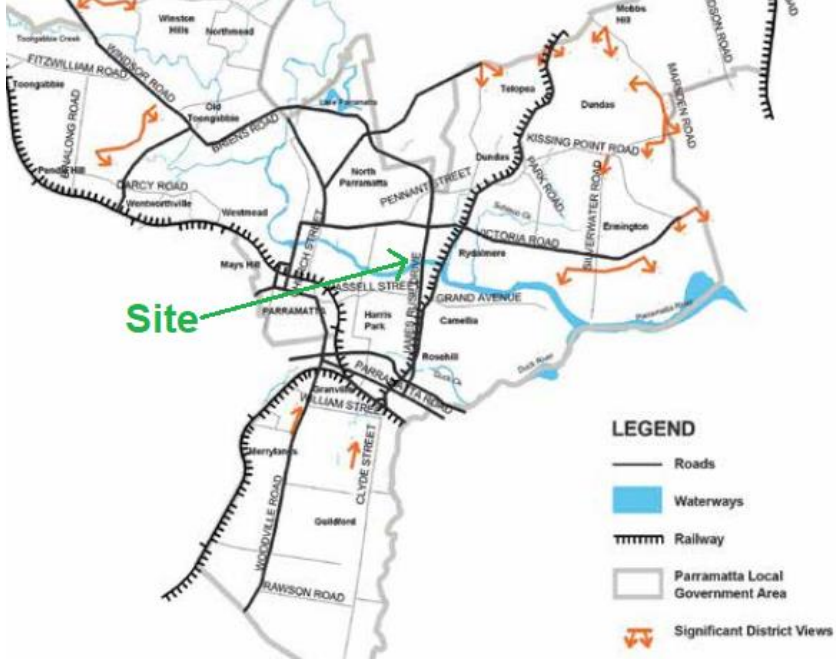


Figure 12: Significant district views map with Site under green arrow (Source: PDCP)

(g) to maintain satisfactory sky exposure and daylight to—

(i) existing buildings in commercial centres, and

(ii) the sides and rear of tower forms, and

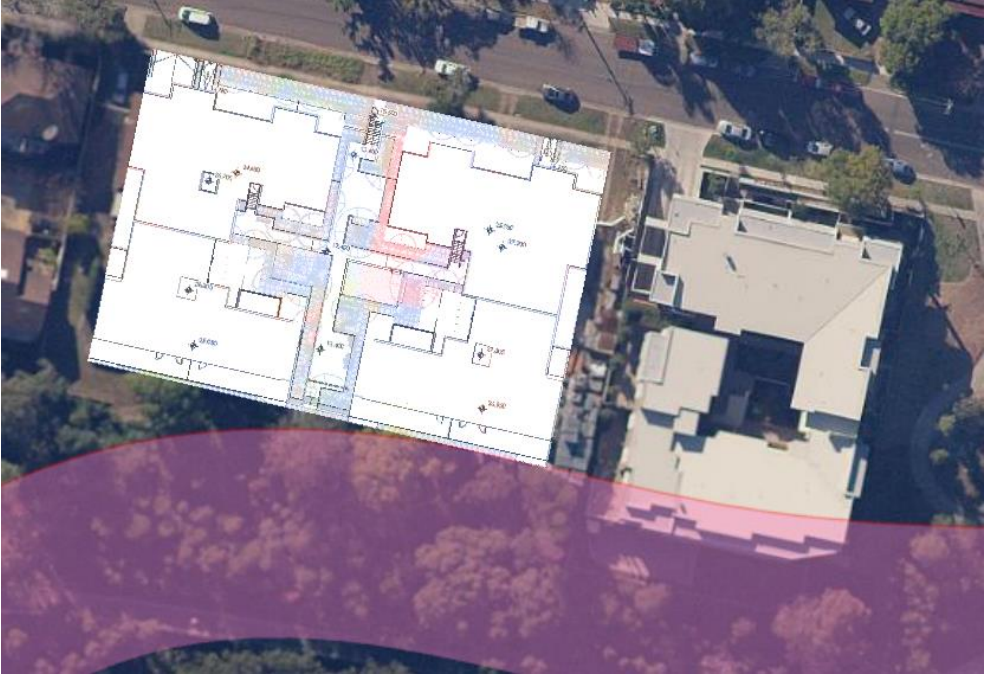
(iii) key areas of the public domain, including parks, streets and lanes.

The location and siting of the development will not result in loss of sky exposure and daylight to buildings in commercial centres due to the site not being within or adjoining any identified commercial centres.

The development does not have a tower form and rather adopts a built form consistent with that existing along 93-95 Thomas Street.

As a result of the north-south orientation of the site, overshadowing along the rear reserve is unavoidable. In order to provide for a successful development, the built form is concentrated upon the developable portion of the land. The mid-winter overshadowing cast along the rear reserve and public areas is not considered adverse given the extent of overshadowing is not dissimilar to the shadows create by 93-95 Thomas Street, which is located closer to the public reserve areas and within the mapped foreshore area (refer to figure 13). As a result of the proposal sitting higher than the development at 93-95 Thomas Street, overshadowing impacts are considered acceptable.

It is noted that based on the findings of the ecology report (Appendix R), overshadowing created by the proposal is not adverse and will not cause harm to the environment.

OBJECTIVE	DISCUSSION
	 <p data-bbox="359 878 1514 943"><i>Figure 13: Foreshore building line map with site plan of proposal (approx.) shown overlaid over satellite image. Viewed on right is 93-95 Thomas Street extending beyond foreshore building line.</i></p>

As demonstrated in Table 1 above, the objectives of the height of building development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the height of building development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

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

The underlying objective or purpose is relevant to the development. This reason is not relied upon.

4.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

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

The standard has not been abandoned by Council actions. This reason is not relied upon.

4.5. The zoning of the land is unreasonable or inappropriate

The zoning of the land is reasonable and appropriate. This reason is not relied upon.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the height of building standard are as follows:

- The buildings' height is partially attributed to the site's sloping topography, whereby the developable portion of the site has a 2.5m drop with regard to the footprint of the eastern building, and 4.5m with regard to the footprint of the western building. In order to achieve a successful development while minimising the extent of cut and earthworks, and taking into consideration the required gradients for the basement ramp and an accessible pedestrian entrance, a 2.85m-3.45m variation to the 11m height limit in this instance is considered acceptable in order to minimise unwarranted earthworks, an enlarged footprint and extending the built form further south.
- The buildings fully comply with the 11m height limit along the Thomas Street interface, which ensures a compatible built form. The lift overruns are centralised in this case and will not be readily visible from Thomas Street.
- The increase height is not considered dissimilar to developments within the visual catchment, given 40m+ buildings are observed 150m west of the Site, in addition to multi-storey buildings located on the southern side of the Parramatta River opposite to the site (refer to figure 4).
- The site is located approximately 1km from Parramatta CBD, 300m walking distance to Western Sydney University and within 800m walking distance to future light rail stops. Clearly, from a strategic planning perspective, the additional height and associated additional housing on the subject site is in complete alignment with the strategic planning direction for this precinct.
- Habitable portions of the development which exceed the 11m height limit are generally located along the rear part of the site overlooking the public domain. This is consistent with the future desired character statement for the Morton Street Precinct, given it places greater emphasis and recognition of the riverside location and the opportunity for enhancing the foreshore and public domain with a development that is both well-designed and strongly related to the river.
- Although the western façade of the development will be visible from Thomas Street, particularly if traveling east toward James Ruse Drive, 10 trees exceeding a height of 12m at maturity have been proposed in order to soften the built form and provide visual relief. It is noted that along the rear most portion of the western façade, a *Corymbia Maculata* (Spotted Gum) tree is proposed, capable of reaching a height of 30m at maturity.
- Whilst not a statutory consideration for the current DA, it is noted that Planning Proposal (PP-2020-2819), which received gateway determination in August 2020 from the (then) DPIE, allowed for a 22m building; a matter which was supported by Council whereby the exhibited Planning Proposal prepared by Council stated on page 30: "*Council's Planning and Design units have maintained their recommendation that there is strategic merit in increasing the height to a maximum of 6 storeys to accommodate a similar amount of high-density residential floor-space permissible on the site at lodgement of the Planning Proposal*".

The rationale with regard to the 22m height limit was to allow for additional floor area along the developable portion of the site, to offset previously permissible floor area within 85 Thomas Street prior to its rezoning from R4 High Density Residential to RE1 Public Recreation under PLEP 2011 amendment no. 20. PP-2020-2819 intended to allow an FSR of 1.3:1 within the developable portion of the site.

In these circumstances, the additional height of up to 3.75m is acceptable as it effectively to offset the historical loss in FSR with regard to 85 Thomas Street, and enables viable development, noting the planning agreement which intends on dedicating 2,496sqm of land to Council for the purposes of protecting natural assets as expressed under planning priority 3.4 'sustainability' within the Parramatta Local Strategic Planning Statement 2036.

- Whilst no longer directly relevant to the current proposal, Planning Proposal P-2020-2819, in receiving gateway determination, demonstrated that substantially greater height and FSR on the site than currently proposed was seen as having some strategic and site specific merit. The current proposal seeks to take advantage of this strategic merit through a smaller scaled proposal that does not necessitate a Planning Proposal to enable approval to be granted.
- There are sufficient environmental planning grounds to warrant the proposed variation to the current building height as the proposal will achieve a high-quality urban design outcome which remains consistent with the key principle of enabling a strong visual relationship between the Morton Street precinct and the Parramatta CBD, in addition to marking the entry to Parramatta and provide a punctuated built edge to the river.
- The solar diagrams submitted demonstrate that the shadows cast by the development will not adversely impact adjoining developments and will not result in adverse environmental impacts as determined by the ecology report (Appendix R).
- The height and scale of the buildings are appropriate, and the proposed development is capable of existing in harmony with the surrounding buildings. Moreover, the buildings have been sympathetically designed to allow consistency with the future desired character of the area as expressed by part 4.1.9 Morton Street Precinct of the PDCP.
- The buildings are consistent with surrounding development forms and present a high-quality addition to the street. The proposed typology is commensurate with newly developed buildings in the area and the scale and bulk of the proposal is acceptable given the lack of adverse privacy, acoustic, overshadowing and view loss impacts.
- The proposed increased scale of buildings will not be perceived as jarring or antipathetic in the urban design context of the site and is in fact entirely compatible with the emerging and anticipated context around the site.
- The proposed height and density will not result in any increase in traffic as demonstrated by the accompanying traffic report, which concludes that the proposed development is not envisaged to have adverse impacts on the surrounding traffic or parking conditions.
- The proposed height and density will not result in any adverse impact to the nearby heritage items.
- The proposed variation and the development as a whole satisfy the objectives of the current standard notwithstanding the variation, with no detrimental impact.
- The proposal is an orderly and economic use of the site, and provides a contemporary built form that is compatible with the desired future character of the locality.
- The proposal will deliver a high-quality development that will increase the vibrancy of the precinct whilst providing a greater diversity of housing to meet the demand generated by changing demographics and housing needs in an existing urban area with excellent access to public transport, health services, educational establishments, recreational opportunities and services and facilities.
- The proposed development meets the relevant objectives of the *Environmental Planning and Assessment Act 1979* as follows:
 - 1.3(c) - the proposal is an orderly and economic use of the site, and the development is consistent with the objectives of the standard.
 - 1.3(g) - the proposed development presents a built form outcome for the site that is of high-quality design and will establish the standard for the quality of built form along Thomas Street. The development maximises residential amenity available to the site through a well-designed development with sufficient open space. The proposal provides a contemporary built form that is compatible with the desired future character of the locality.

6. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the PLEP.

In section 4 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard.

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with R4 High Density Residential Zone Objectives

OBJECTIVES OF R4 ZONE	DISCUSSION
<i>To provide for the housing needs of the community within a high-density residential environment.</i>	The proposed development will replace the existing dwellings with new modern and better designed buildings that meet the community's needs and expectations.
<i>To provide a variety of housing types within a high-density residential environment.</i>	The buildings provide a highly diverse development containing 56 apartments ranging from dual key typologies to 3-bedroom apartments to respond to the growing demand for high amenity apartments in a highly strategic location.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposal does not prevent or constrain other land uses that may provide facilities and services to residents.
<i>To provide for high density residential development close to open space, major transport nodes, services and employment opportunities.</i>	The proposed development will provide for an additional 56 apartments within a highly centralized and strategic location in close proximity to the Parramatta CBD. The site is located approximately 1km from Parramatta CBD, 300m walking distance to Western Sydney University and within 800m walking distance to future light rail stops. The site location is well serviced by existing pedestrian facilities with footpaths on both sides of the site. The site is in very close proximity to high quality open space which maximizes the amenity of residents.
<i>To provide opportunities for people to carry out a reasonable range of activities from their homes if the activities will not adversely affect the amenity of the neighbourhood.</i>	All apartments have been designed to maximise internal and external amenity, in addition to incorporating a large centralised communal area for the use of residents. As a result of the compliant building separation metrics, household activities, in addition to any future home occupation/business are unlikely to adversely affect the amenity of the neighborhood.

Table 3: Consistency with RE1 Public Recreation Zone Objectives

OBJECTIVES OF RE1 ZONE	DISCUSSION
<i>To enable land to be used for public open space or recreational purposes.</i>	No development works are proposed along the RE1 zoned portion of the site. The proposal is accompanied by a planning agreement seeking to dedicate this portion of land to Council.
<i>To enable land to be used for public open space or recreational purposes.</i>	The proposal will not adversely impact the use and enjoyment of the RE1 zoned portion of the site or public areas beyond.
<i>To provide a range of recreational settings and activities and compatible land uses.</i>	The proposal is accompanied by a planning agreement offering land to Council, which will in turn increase the amount of publicly available space along the Parramatta River foreshore.
<i>To protect and enhance the natural environment for recreational purposes.</i>	No development is proposed along the RE1 zoned portion of the site. No vegetation or trees are proposed to be removed within the RE1 zoned portion of the site.

<i>To conserve, enhance and promote the natural and cultural heritage value of parks and open space in the zone.</i>	The RE1 portion of the site is not a heritage item. No development is proposed along the RE1 zoned portion of the site hence its natural and cultural significance will not be adversely impacted.
<i>To create opportunities to use riverfront land for public recreation.</i>	The proposal is accompanied by a planning agreement offering this portion of land to Council, which will in turn increase the amount of publicly available space along the foreshore.

As demonstrated in Table 2 and 3, the proposal is consistent with the objectives of the zone, and in Section 4 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that resulting from varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

8. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Parramatta Local Environmental Plan 2023*, to the height of building development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- The development achieves the objectives of the development standard notwithstanding the variation.
- There are sufficient environmental planning grounds to justify the contravention;

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the zone and is therefore in the public interest.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.