

SYDNEY CENTRAL CITY PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-467
DA Number	DA/344/2023
LGA	City of Parramatta
Proposed Development	Demolition, tree removal and construction of 2 residential flat buildings over basement car parking with associated site and landscaping works. The application is Integrated Development pursuant to the Fisheries Management Act 1994 and Nominated Integrated Development pursuant to the Water Management Act 2000.
Street Address	85-91 Thomas Street, Parramatta, NSW 2150
Applicant	Century 888 Pty Ltd
Owner	Century 888 Pty Ltd
Date of DA lodgement	15 June 2023
Number of Submissions	A total of three (3) submissions during two (2) separate notification periods.
Recommendation	Refusal
Regional Development Criteria	Development with a capital investment value of more than \$30 million. (\$30,455,751.00)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2021 • State Environmental Planning Policy (Housing) 2021. • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Sustainable Building) 2022 • State Environmental Planning Policy (Planning Systems) 2021 • Parramatta Local Environmental Plan 2023 (PLEP 2023) • Parramatta Development Control Plan 2023 (PDCP 2023) • Apartment Design Guide
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Architectural Plans • Attachment 2 – DEAP comments • Attachment 3 – Clause 4.6 variation request – Height • Attachment 4 – Clause 4.6 variation request – Floor space ratio
Clause 4.6 requests	<p>Clause 4.3 – Height</p> <p>Clause 4.4 – Floor space ratio</p>
Summary of key submissions	<ul style="list-style-type: none"> • Traffic impacts/congestion • Overshadowing • Visual privacy impacts • Overdevelopment of area
Report prepared by	Eamon Murphy - Senior Development Assessment Officer

Report date	7 November 2024
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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
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?	N/A
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	N/A
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	N/A

1. Executive Summary

The proposal seeks consent for the demolition of existing structures, construction of 2 residential flat buildings with a shared basement with associated site and landscaping works. The buildings will include a single basement level and 71 apartments.

The site is zoned R4 High Density Residential and RE1 Public Recreation pursuant to the Parramatta Local Environmental Plan 2023 (PLEP), with the proposed residential flat buildings located within the R4 zoned portion of the site where it is permissible with consent.

The proposal includes PLEP 2023 variations to both Clause 4.3 - Height and Clause 4.4 - Floor Space Ratio. The maximum permitted height under PLEP 2023 is 11m. 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. The maximum permitted floor space ratio under PLEP 2023 is 0.8:1. The proposed floor space ratio is 0.98:1. The applicant has submitted Clause 4.6 variation requests for both variations in this regard.

Other issues with the proposal arise including concerns in relation to the site's affectation with areas of biodiversity, riparian land and waterways and the foreshore area, the design of the development, primarily that the proposal comprises several variations and issues with respect to setbacks, landscaping, deep soil, communal open space, public domain, accessibility, dwelling mix, building depth, tree removal/impacts. The proposal is considered an overdevelopment of the site, resulting in an excessive bulk and scale exacerbated by the excessive floor space ratio, along with concerns over inconsistency with the future character envisioned for the Morton Street Precinct.

The development has been subject to review by Council's Design Excellence Advisory Panel (DEAP). The panel identified several design issues with the proposal and concluded that it was inconsistent with State Environmental Planning Policy (Housing) 2021 and the Apartment Design Guide (ADG).

The site comprises several constraints including being mapped within a foreshore area and riparian and waterways pursuant to PLEP 2023, and also that the site, being located on the northern bank of the Parramatta River, is classified as being partly within the High Flood Risk Precinct (the southern section near the riverbank), partly within the Low Flood Risk Precinct, with the remainder of the site not being flood-affected. The applicant has not satisfactorily demonstrated that the proposal adequately accounts for and addresses these risks.

The Development Application initially included a proposal for land dedication to Council as part of a Voluntary Planning Agreement (VPA) (see blue outlined area in figure 1. below). The land that is proposed to be dedicated is the southern portion of land at 89-91 Thomas Street, with an area of 1,334m², and is zoned R4 – High Density Residential. The

2. Key Issues

The key issues that need to be considered by the Panel in respect of the development application are:

Parramatta Local Environmental Plan 2023 (PLEP 2023)

- The proposal does not comply with the following development standards in PLEP 2023.
 - Height,
 - Floor space ratio,
 - Biodiversity,
 - Riparian land and waterways,
 - Foreshore area.

Parramatta Development Control Plan 2023 (PDCP 2023)

- The proposal does not comply with the following controls in Part 2 (Design in Context) of PDCP 2023:
 - Public domain,
 - Accessibility and connectivity.
- The proposal does not comply with the following controls in Part 3 (Residential Development) of PDCP 2023:
 - Dwelling mix,
 - Accessible and adaptable housing,
 - Visual and acoustic privacy,
 - Preliminary building envelope – setbacks,
 - Open space and landscape,
- The proposal does not comply with the following controls in Part 8 (Morton Street Precinct) of PDCP 2023:
 - Setbacks.

State Environmental Planning Policy (Housing) 2021

- The proposal does not comply with all the Apartment Design Guide controls as required by Chapter 4 Design of Residential Apartment Development as follows:
 - 2G Street setback,
 - 2H Side and rear setbacks,
 - 3C Public domain interface,
 - 3D communal & public open space,
 - 3E Deep soil zone,
 - 3F Visual privacy,
 - 4E Private Open Space and balconies,
 - 4O Landscape design,
 - 4P Planting on structures.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- The proposal is not satisfactory with regard to the following
 - Chapter 2 - Vegetation in Non-Rural areas,
 - Chapter 6 – Water Catchments

State Environmental Planning Policy (Resilience and Hazards) 2021

- The proposal is not satisfactory with regard to the following
 - Chapter 2 – Coastal Management.

3. Site Description Location and Context

The subject site is zoned as R4 High Density and RE1 Recreation under The Parramatta Local Environmental Plan 2023.

The subject site comprises the following lots:

- 85 Thomas Street, Parramatta – Lot 13 DP 1239
- 87 Thomas Street, Parramatta – Lot 142 DP 537053
- 89 Thomas Street, Parramatta – Lot 15 DP 1239
- 91 Thomas Street, Parramatta – Lot 16 DP 1239

The subject site is primarily zoned as R4 High Density Residential, with the southern portion of 85 Thomas Street zoned RE1 Recreation, under The Parramatta Local Environmental Plan 2023. See zoning map below (figure 3.)

The irregularly shaped site has an approximately 80.46m primary northern frontage to Thomas Street, an average depth of 94m, and a combined site area of 6,321.7m², however the R4 developable portion of the site is 5,610.7m². The site falls from the street frontage towards the waterway by an average of 15m.

Existing on the site are two weatherboard single storey dwelling houses and a brick two storey dwelling.

The site includes several scattered trees of varying significance, with the most mature trees located within the rear portion of the site.

The site is located within a well-established residential area of Parramatta and is approximately 1.5km north-east of Parramatta CBD. The allotments throughout the locality vary in size and orientation, responding to the topography of the land, however, a grid pattern is prevalent.

Immediately to the east of the site is a three-storey contemporary designed residential flat building containing 33 units. Further east is James Ruse Drive (Classified Road), the Western Sydney University Parramatta Campus, and the Rydalmere industrial precinct.

To the north of the site, opposite to Thomas Street, are R4 zoned allotments primarily containing dwelling houses and outbuildings.

Immediately to the south of the site is the Parramatta River Cycleway which connects the Parramatta CBD to the Sydney CBD, and the Parramatta River which flows into Sydney Harbour. The Parramatta River Cycleway is partially within the rear portion of the site. A partial rear portion of 85 Thomas Street is zoned RE1 Public Recreation and is mapped for acquisition pursuant to the Parramatta LEP 2023. Further south is an industrial area (E4) with a MU1 mixed use zone with multi storey buildings along the foreshore. To the west of the site are R4 zoned allotments containing traditionally designed multi-dwelling housing developments and dwelling houses.



Figure 2: Aerial View of subject site and surrounds



Figure 3: Zoning map

4. The Proposal

The proposal seeks consent for the demolition of existing structures, tree removal, construction of two residential flat buildings, with maximum heights of 13.85m (eastern building) and 14.45m (western building), over basement car parking and ancillary site, landscaping works and tree removal.

The proposal comprises a total of 71 units, with the following breakdown:

- 19 x studio units (27%)
- 30 x 1 bedroom units (42%)
- 9 x 2 bedroom units (13%)
- 13 x 3 bedroom units (18%)

In detail the proposal seeks to:

Demolition and Earthworks

- Demolition of three existing dwelling houses and ancillary features.
- Removal of on-site trees.
- Demolition of existing vehicular crossings.
- Earthwork and excavation to facilitate the proposed development.

Construction

- Construction of a 6m wide dual lane vehicular crossing leading to basement.
- Construction of a shared basement with mezzanine component containing 77 car parking space (8 of which being accessible spaces), 40 bicycle spaces, plant room x2, storage space;
- Construction of 2 residential flat buildings (part 3 and part 4/5 storeys at the rear) with a shared basement.
- Waste area with bulky waste storage space.
- Landscaping works throughout site including planting of 64 trees.
- Ancillary stormwater and driveway works.
- 1.2m front masonry and metal front fence.

The proposed materials palette utilises neutral and recessive contemporary materials in sympathetic colours, including clear glazing, cladding elements, rendered cement, painted aluminium and steel fencing.

The Development Application initially included a proposal for land dedication to Council as part of a Voluntary Planning Agreement (VPA). The land, with a total size of 1,334m², that was proposed to be dedicated is the southern portion of

land at 89-91 Thomas Street is zoned R4 – High Density Residential, and the applicant suggested that it could be rezoned as RE1 Recreation as part of a planning agreement as this area has natural environmental sensitivities due to its proximity to the Parramatta River. The applicant argued that it would be logical that such land would be dedicated to Council and amalgamated into other adjoining RE1 zoned land.

However, the applicant rescinded the proposed land dedication as part of the amended proposal, with the required communal space now located within this area. These amended plans dated 16/05/2024 (Revision D) form the basis of assessment in this report. There are significant concerns surrounding the use of this portion of the site as communal open space, which will be discussed later in this report.

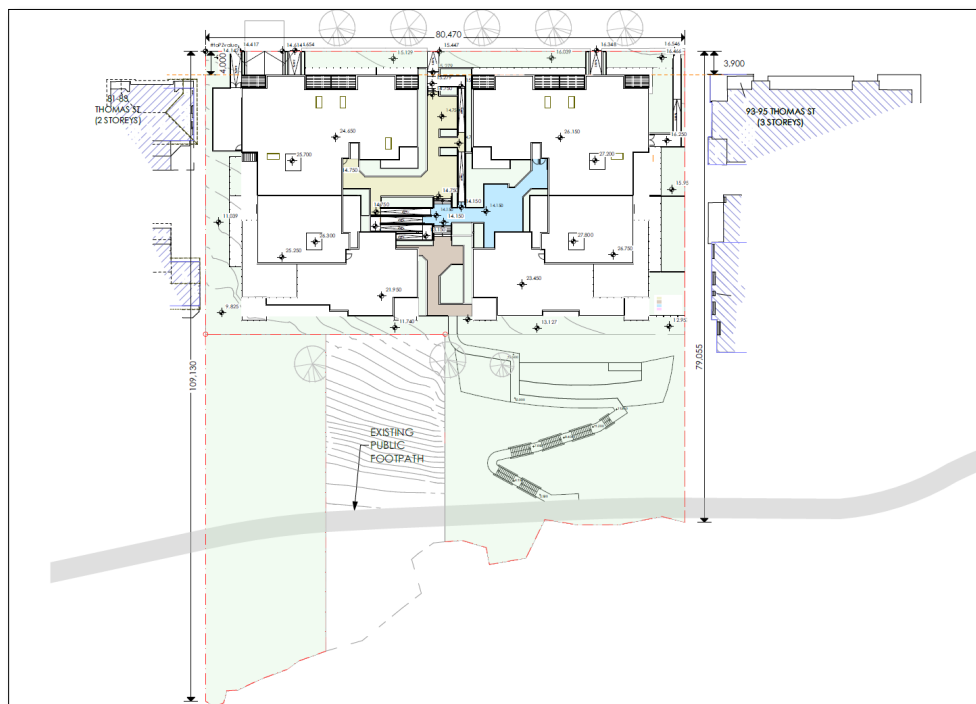


Figure 4: Site Plan

5. Site and Application History

On 6 June 2016, Council received a Planning Proposal application (PP-2020-2819) which sought to amend the planning controls applicable to the site at 85-91 Thomas Street, Parramatta under Parramatta Local Environmental Plan 2011 (PLEP 2011).

The planning proposal intended to:

- Increase the RE1-Public Recreation Zone to encompass the land affected by the Natural Resources located at the rear of 89-91 Thomas Street.
- Reduce the R4 - High Density Residential Zone to the developable area of the site;
- Increase the building height from 11 metres to 22 metres;
- Increase the Floor Space Ratio from 0.8:1 to 1.3:1;
- Remove the rear portion of No.85 Thomas Street from the Land Reservation Acquisition Map, subject to a planning agreement.

The planning proposal was accompanied by a planning agreement seeking to dedicate 2,496sqm of privately owned land to Council. The land to be dedicated included the rear portion of 85 Thomas Street, and the land affected by the Natural Resources located at the rear of 89-91 Thomas Street.

On 28 July 2017, the rear portion of 85 Thomas Street was rezoned from R4 High Density Residential to RE1 Public Recreation. The land was also identified for acquisition for the purposes of local open space (RE1). This took place as part of a Council initiated PLEP amendment process (i.e. Amendment 20). There was an agreement between the landowner and Council that any development potential lost as part of Amendment 20 would be recouped elsewhere on the site as part of the proponent-initiated PP.

In May 2020, the Parramatta Local Planning Panel (PLPP) supported a recommendation for gateway determination of PP 2020-2819.

In June 2020, the recommendation for gateway determination was endorsed by Council.

On August 2020, the gateway determination was issued by the Department of Planning, Industry and Environment (DPIE) with a requirement to update the Planning Proposal to address implications for minimum lot size and land dedication.

Between October 2020 and May 2021, the gateway conditions were addressed, and a Draft Development Control Plan was prepared.

In November 2021, public exhibition concluded in relation to the Planning Proposal, Draft DCP & Draft Planning Agreement.

On 15 February 2022, the Local Planning Panel's advice was sought in relation to the outcome of the public exhibition of a Planning Proposal, draft site-specific Development Control Plan and draft Planning Agreement for land at 85-91 Thomas Street, Parramatta. Council's recommendations included support of the finalisation of the planning proposal. The PLPP unanimously did not support Council's recommendation for the following reasons:

- *The proposed Planning Proposal lacks strategic and local planning merit as it relates to one site in an otherwise consistent urban environment with development generally in accordance with the existing and future 11 metre height limit and the existing and future density controls (noting that Council is not planning to change these controls), which would result in an incongruous and undesirable future built-form.*
- *The visual impact of a future 22-metre building from both Thomas Street and the public domain and public walkway to the south would be unacceptable.*
- *Should Council consider upzoning Thomas Street from James Ruse Drive to at least Pemberton Street then rezoning of the subject site could be considered in that context.*
- *The submissions received to the Planning Proposal during public exhibition raised relevant concerns relating to increased density, visual impact, overshadowing the existing development and the Public Reserve. Public submissions noted that the proposed dedication of the land at NIL cost to Council does not outweigh the adverse impacts of the isolated rezoning of this site.*

On 14 March 2022, Parramatta Council resolved not to finalise the Planning Proposal for land at 85-91 Thomas Street, Parramatta which seeks to amend Parramatta Local Environmental Plan 2011 for the following reasons:

- *The Planning Proposal lacks strategic planning merit as it seeks to increase height above the surrounding area's maximum height of 11 metres which would result in an incongruous and undesirable future-built form;*
- *The visual impact of a future 22-metres high building from Thomas Street, the public domain and public walkway along the Parramatta River foreshore would be unacceptable; and*
- *The Planning Proposal will negatively impact on the privacy and amenity of surrounding development and impact on local character.*

A Development Application was refused by PLPP on 15 February 2022 which proposed "*Demolition of existing structures, tree removal and construction of two x 7 storey boarding house buildings consisting of 237 boarding rooms over 2 levels of basement parking and land dedication as part of a VPA for the site.*" That application was made pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 and was Nominated Integrated development pursuant to the *Water Management Act 2000* and the *Fisheries Management Act 1994*."

The DA was made to be consistent with the PP-2020-2819 and was refused simultaneously with PP-2020-2819 given PP-2020-2819 was not supported by the LPP. The decision to refuse consent was appealed to the Land and Environment Court of New South Wales however the process did not proceed, and the appeal was withdrawn.

A Pre-DA Lodgement Meeting (PL/93/2022) was held with Council on 5 September 2022 to discuss a residential flat building development with two buildings. The scheme which was the subject of the Pre-DA meeting now forms part of the subject Development Application.

On 16 June 2023 the subject Development Application was lodged for the demolition, tree removal and construction of 2 residential flat buildings over basement car parking with associated site and landscaping works. The Development Application also included a proposal for land dedication to Council as part of a Voluntary Planning Agreement (VPA)

The application was notified from 30 June 2023 to 28 July 2023. During the notification period, one (1) submission was received.

A meeting with the City of Parramatta Council's Design Excellence Advisory Panel (DEAP) was scheduled to be held 27 July 2023, to provide the applicant with an opportunity to present the proposal to the panel, and for the panel to provide guidance and feedback. However, on 20 July 2023 a letter was sent to the applicant advising that, due to significant issues with the proposal, particularly in relation to the proposed VPA (and assessing it at the same time as the Development Application), Council did not support the DA in its current form and the applicant was requested to withdraw the application. Due to the formal request to withdraw the application, on 21 July 2023 the application was removed from the 27 July 2023 DEAP meeting agenda.

On 24 July 2023 the applicant responded to Council's letter stating they were of the opinion that they could resolve the issues, including the VPA matter, which they argued could be assessed concurrently with the DA.

On 3 August 2023 the Sydney City Central Planning Panel (SCCPP) was briefed on the proposal.

On 22 November 2023 the applicant submitted a draft VPA letter. On 24/11/2023, the VPA letter was referred to Council's Property Team for review.

On 21 December 2023 a further letter was sent to the applicant advising that Council still did not support the DA in its current form, due to issues including the proposed VPA, site area vs developable area, height variation, floor space ratio variation, ecology issues, engineering issues, landscaping issues (including deep soil and common open space) and Apartment Design Guideline (ADG) compliance and the applicant was again requested to withdraw the application.

On 07 February 2024 the applicant provided a response to the issues raised in the previous letters (with amended architectural plans, landscape plans and stormwater plans) however requested further time in which to provide a full response in relation to the ecological report. Referrals were sent to engineers, urban design, public domain, traffic and accessibility officer to review the amended plans.

A Design Excellence Advisory Panel (DEAP) meeting, which was previously cancelled, was now rescheduled and held on 22 February 2024. The DEAP panel was not supportive of the proposal and requested a significant redesign if the applicant sought to proceed with the DA.

A further letter was sent to the applicant via email on 26 March 2024 with outstanding issues still not resolved. It was advised to the applicant that should they wish to continue with the application, then all outstanding matters should be addressed and submitted by 16 April 2024.

On 4 April 2024, the applicant advised Council that the proposed VPA was being withdrawn from the proposal.

Further correspondence was sent to the applicant on 29 April 2024 requesting an update on the submission of the outstanding matters which were due to have been submitted by 16 April 2024.

The applicant contacted Council on 3 May 2024 and requested an extension of a week to submit the outstanding information.

Council sent an email to the applicant on 16 May 2024 stating that the additional week had passed, and no new plans and information had been submitted. The applicant responded later that day by uploading part of the outstanding additional information to the NSW Planning Portal.

Further additional information was submitted on 22 May 2024 and 28 May 2024. Referrals were sent to the relevant internal sections and external agencies.

Given the proposal now included significant changes (particularly with the common open space now located within the vicinity of the foreshore area originally proposed to have been dedicated to Council and the rescission of the VPA), the applicant applied to amend the Development Application in accordance with Section 37 of the Environmental Planning and Assessment Regulation 2021. The clock was subsequently re-started with a new lodgement date of 28/05/2024.

The application was re-notified on 20/08/2024 until 17/09/2024. Two (2) submissions were received during this 2nd notification period.

6. Referrals

The following section outlines the responses and any recommendations from each of the internal and external referrals in relation to the subject application.

6.1 Design Excellence Advisory Panel

The City of Parramatta Design Excellence Advisory Panel (DEAP) provides independent expert advice on applications relating to a diverse range of developments within the City of Parramatta Local Government Area. The DEAP comments are provided to assist the applicant in improving the design quality of the proposal.

Parramatta's Design Excellence Advisory Panel reviewed the original proposal on 22 February 2024. The Panel were not supportive of that proposal.

It is noted that while amended plans were submitted on 28 May 2025, and a number of issues raised by the panel were addressed, significant issues remained with the proposal.

Given the extent of issues, and the length of time since the original lodgement on 16 June 2023, it was not considered useful to present the amended proposal to Council's Design Excellence Advisory Panel and it was therefore decided to proceed with preparing a report recommending refusal.

Comments considered of remaining relevance are provided below (and also provided in full in Attachment 2):

- 1) *The site is significant in that it backs onto Baludarri Wetlands on the northern bank of Parramatta River, west of James Ruse Drive. The wetlands are part of a natural watercourse and public open space.*
- 2) *A publicly accessible pathway runs through the site near the southern boundary.*
- 3) *Ecological and biodiversity studies undertaken by the applicant conclude that the proposal is acceptable. It is unclear whether or not the studies considered the potential impact of overshadowing of the wetlands. The Panel is of the view that given the size and sensitivity of the site that any additional overshadowing of the wetlands should not be supported.*
- 4) *The applicant has submitted cl4.6 requests to vary both the height and FSR for the development. The height variation partly sought is towards the rear of the development partly due to the topography of the site.*
- 5) *In consideration of the above, the Panel queried the height and overall form of the development with regard to potential impacts on the open space and ecologically sensitive zone to the south side of the development.*
- 6) *Given the sensitivity of the site, the Panel does not support the extra height and FSR.*
- 7) *The Panel queried the lack of architectural and landscape response to the use and treatment of the open space on the south side of the development. The opportunity to connect the development at the lower level to the open space should be explored.*
- 8) *The landscape plans should include the open space at the rear of the site with a path leading from the rear entrance to the boardwalk. The boardwalk is to be included in the landscape plans.*
- 9) *The proportions and design of the rear elevation could also be improved to give it a more hospitable feel with less verticality in response to it facing the natural open space and the view of the development from the south.*
- 10) *The Panel queried the different architectural expression for the northern and southern buildings. It was suggested that reducing the number of materials and colours on the elevations would help to achieve a 'calmer' architectural resolution.*
- 11) *The Panel raised the following concerns with regard to the layout of the development:*
 - a) *The proposed 9m separation between the buildings with balconies directly opposite one another is not supported. Example units A.205 and B.205.*
 - b) *The balconies for the 1 bed units for example A.204A and B.204A are only 1m deep in an attempt to comply with the 12m separation requirement. The balconies do not comply with the ADG 4E regarding private open space and balconies.*
 - c) *The courtyard needs to be widened or the positioning of balconies and windows changed to comply with 2F building separation and 3F visual privacy in the ADG.*
 - d) *Consideration also needs to be given to design of the interface between the units and the access pathways within the courtyard area with regard to privacy. Consider using appropriate landscaping and positioning of openings to ensure privacy.*
 - e) *The Panel queried the location of the bins on the northwest corner of the site with occupants at the eastern end having to negotiate a long and convoluted pathway to get to the bins. The applicant advised that there are bins on each level adjacent to the lifts where they are stored temporarily before being taken to the main storage area.*

6.2 External

Authority	Comment
Endeavour Energy	Acceptable subject to conditions, in the event of an approval.
Quantity Surveyor	<p>The QS Report submitted estimated the capital investment value (CIV) at \$30,455,751.00.</p> <p>An independent review carried out by an external Quantity Surveyor generally considered the level of pricing of the construction costs within the CIV Estimate as adequate for the intended works. The application was originally lodged prior to 4 March 2024, and at the time, the term “<i>capital investment value</i>” used. It is noted that the term is now referred to as “<i>estimated development cost (EDC)</i>”. The EDC of the development is also \$30,455,751.00.</p>
Sydney Water	Acceptable subject to conditions, in the event of an approval.
Department of Primary Industries (Fisheries)	<p>Initially not supportive of the original proposal due to overshadowing to wetlands/mangroves area.</p> <p>The amended proposal submitted on 28 May 2024 was subsequently re-referred to Department of Primary Industries (Fisheries) who advised that they were generally supportive of the reduction to the building bulk and scale, which will minimise shading impacts to the adjacent wetlands.</p> <p>The Department of Primary Industries (Fisheries) also advised that a permit under Part 7 of the FM Act is not required as there will be no dredging, reclamation, direct harm to marine vegetation or blockage of fish passage. General terms of approval are therefore not applicable in this instance.</p>
Department of Planning and Environment - Water	<p>The amended proposal submitted on 28 May 2024 was re-referred to the Department of Planning and Environment – Water and significant concerns were raised about the common open space now being located close to the foreshore area.</p> <p>The following comments were provided:</p> <ul style="list-style-type: none"> • The proposed outdoor communal space area and path/stairs to the existing shared river path encroach into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland. • This is considered to be a contravention of the Department’s Controlled Activity Guidelines for Riparian Corridors that require no encroachments into the inner VRZ (in this case 20m from the coastal wetland boundary) and that any encroachments into the outer VRZ (a further 20m from the inner VRZ boundary) are offset with appropriate riparian offsets. <p>As a result of the above concerns, General Terms of Approval (GTA) have yet to be provided.</p>

6.3 Internal

Referral	Comment
Landscaping	<p>Not supported. The following comments were provided:</p> <ul style="list-style-type: none"> • The design still reveals significant impacts to trees located within the subject site and to the southern portion of the site which have not been addressed within the application. • The AIA report is insufficient. Not all trees are numbered / recorded, and the numbering is unclear making it difficult to tell which tree is which. • The AIA has not considered the proposed services / construction impacts / temporary site access / impacts to neighbouring trees.

	<ul style="list-style-type: none"> • Updated AIA report and site survey required. • An amended demolition plan is required to indicate the extent of vegetation and trees to be removed. Trees are to be numbered as per the Arborist Report. • A Tree Protection Management Plan is required to show how these trees will be protected and the location of the tree protection measures identified on a plan. • Incomplete landscaping plan provided. No details provided on the submitted plans. • Deep soil - 30% deep soil with 50% located at the rear. Not provided or addressed. • Total area of Communal Open Space (cos) now meets the requirement of ADG 3D-1 (min. 25% of the site) however issues with COS location. • Plans still state "VMP to Council's approval" at location of COS. • Area to south was to have been dedicated to Council, but now is proposed as a COS area. The COS on the rooftop has been deleted. No landscaping details of this new COS area to the south have been provided. The plans just indicate COS. • Details are required to the southern ground level communal open space, including the proposed materials and finishes, levels, existing ground levels, any walls, balustrades and handrails etc. • Soil volume within planters over the basement and podium structure proposing trees inadequate and does not meet the ADG requirements. • There are significant level changes around the site and very little details provided to show how landscaping will address the 2.5m level differences shown in some parts. • Overland and subsurface drainage, to be shown and coordinated with the Civil Engineering plans. • Ensure there is a continuous screening to all side and rear boundaries.
Traffic	Supported subject to conditions of consent in the event approval was recommended.
Senior Catchment and Development Engineer	Supported subject to conditions of consent in the event approval was recommended.
Biodiversity	<p>The amended plans and updated ecological report were reviewed by Council's senior biodiversity officer, who concluded that the proposal cannot be supported in its current form and a Vegetation Management Plan (VMP) remains outstanding, despite several requests.</p> <p>The following comments were provided:</p> <p>The adjoining Parramatta River is a tidal 4th order watercourse and requires a minimum 40m vegetated riparian zone (VRZ) as per Department of Planning & Environment 'Controlled Activities – Guidelines for Riparian Corridors on Waterfront Land (2022) and the Parramatta DCP 2023 section 5.3.2 (Waterways and Riparian Zone).</p> <p>This VRZ is an important buffer / transition zone between the land and the watercourse, providing the important functions, such as:</p> <ul style="list-style-type: none"> • Providing bed and bank stability and reducing bank and channel erosion. • Protecting water quality by trapping sediment, nutrients and other contaminants. • Provides diversity of habitat for terrestrial, riparian and aquatic plants (flora) and animals (fauna). • Providing connectivity between wildlife habitats. <ul style="list-style-type: none"> ○ e) conveys flood flows and controlling the direction of flood flows.

	<ul style="list-style-type: none"> o f) provides an interface or buffer between developments and waterways. <p>The applicant is requested to prepare a vegetation management plan (VMP) for the VRZ within their land. The VMP is to be prepared by a suitably qualified ecologist. The VMP is to provide for a complete native vegetation stratum (trees / shrubs / groundcovers) and detail existing vegetation, planting densities / schedule, weed removal, mulching and maintenance, and be in line with the Department of Planning & Environment 'Controlled activities – Guidelines for vegetation management plans on waterfront land' (2022).</p> <p>The landscape plans should also be updated to align with the VMP requirements.</p>
Universal Access	Supported subject to conditions of consent in the event approval was recommended.
Public Domain & Urban Design	<p>Not supported in its current form, due to inadequate public domain details, despite several requests.</p> <p>The following comments were provided:</p> <p>The applicant is requested to amend the design and resubmit to achieve the following compliance:</p> <ol style="list-style-type: none"> 1. Setback the basement at least 4m in the front setback to ensure trees can be planted 2. Setback the building to the rear by at least 4m to allow for buffer and tree planting to the south to mitigate impacts on the RE1 land 3. Submit tree species to be planted in the Public Domain. The landscape plan has a list of tree species however it does not indicate which trees are proposed in the public domain.
Environmental (Contamination)	Health
	Supported subject to the imposition of conditions in the event approval was recommended.
Acoustic	Supported subject to conditions of consent in the event approval was recommended.
Waste Management	Supported subject to the imposition of conditions in the event approval was recommended.

7. Environmental Planning and Assessment Act 1979

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

7.1 Section 2.15: Function of Sydney District and Regional Planning Panels

The Sydney Central City Planning Panel is the consent authority for this application as the proposed development has a capital investment value of more than \$30 million.

7.2 Section 4.15: 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:

Provision	Comment
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to Section 8
Section 4.15 (1)(a)(iii) – Development control plans	Refer to Section 9
Section 4.15 (1)(a)(iv) - The Regulations	Refer to Section 10
Section 4.15 (1)(d) – Any submissions	Refer to Section 11
Section 4.15 (1)(b) – The likely impacts of the development	Refer to Section 12

Section 4.15 (1)(c) – The suitability of the site for development	Refer to Section 13
Section 4.15 (1)(e) – The public interest	Refer to Section 16

8. Environmental Planning Instruments

8.1 Overview

The instruments applicable to this application comprise of the following:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Sustainable Building) 2022
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Housing) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Parramatta Local Environmental Plan 2023 (PLEP 2023)
- Parramatta Development Control Plan 2023 (PDCP 2023)
- Apartment Design Guide

Compliance with these instruments is addressed below:

8.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in Non-Rural areas.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the site. The aims of the plan are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of the non-rural areas of the State through the preservation of trees and other vegetation.

Council's Senior Landscape and Tree Management Officer carried out an inspection of the site and review of the proposal and has raised significant concerns over the extent of tree and vegetation removal, and of concerns over the protection of trees to be retained and does not recommend approval of the application with the current suite of information.

In addition, Council's Senior Biodiversity Assessment Officer reviewed the proposal and does not support the proposal in its current form and has on several occasions requested a Vegetation Management Plan (VMP), and which to date has not been submitted.

The following comments were provided:

The adjoining Parramatta River is a tidal 4th order watercourse and requires a minimum 40m vegetated riparian zone (VRZ) as per Department of Planning & Environment '*Controlled Activities – Guidelines for Riparian Corridors on Waterfront Land*' (2022) and the Parramatta DCP 2023 section 5.3.2 (Waterways and Riparian Zone).

This VRZ is an important buffer / transition zone between the land and the watercourse, providing the important functions, such as:

- Providing bed and bank stability and reducing bank and channel erosion.
- Protecting water quality by trapping sediment, nutrients and other contaminants.
- Provides diversity of habitat for terrestrial, riparian and aquatic plants (flora) and animals (fauna).
- Providing connectivity between wildlife habitats.
- Conveys flood flows and controlling the direction of flood flows.
- Provides an interface or buffer between developments and waterways.

The applicant is requested to prepare a vegetation management plan (VMP) for the VRZ within their land. The VMP is to be prepared by a suitably qualified ecologist. The VMP is to provide for a complete native vegetation stratum (trees / shrubs / groundcovers) and detail existing vegetation, planting densities / schedule, weed removal, mulching and maintenance, and be in line with the Department of Planning & Environment '*Controlled activities – Guidelines for vegetation management plans on waterfront land*' (2022).

Chapter 6 – Water Catchments

This Chapter applies to the entirety of the Parramatta Local Government Area as identified on the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Catchment Map. The subject site is located

within the 'Foreshores and Waterways Map', and partially within the 'Rocky Foreshores and Significant Seagrasses Map' and in this regard is considered Integrated Development pursuant to the Fisheries Management Act 1994 and Nominated Integrated Development pursuant to the Water Management Act 2000.

The amended Development Application was referred to both the Department of Primary Industries (Fisheries) and the Department of Planning and Environment – Water.

In these circumstances, prior to granting consent Council must obtain from each relevant approval body their General Terms of Approval (GTA) in relation to the development.

The Department of Primary Industries (Fisheries) were initially unsupportive of the proposal due to significant overshadowing to wetlands/mangroves area however were supportive of the amended proposal which comprised a reduction to the building bulk and scale, which will minimise shading impacts to the adjacent wetlands. The Department of Primary Industries (Fisheries) also advised that a permit under Part 7 of the FM Act is not required as there will be no dredging, reclamation, direct harm to marine vegetation or blockage of fish passage. In this regard general terms of approval (GTA) are therefore not applicable in this instance.

The Department of Planning and Environment – Water are not supportive of the proposal in its current form and raised significant concerns with the proposed outdoor communal space area and path/stairs to the existing shared river path encroaching into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland. This is considered to be a contravention of the Department's Controlled Activity Guidelines for Riparian Corridors that require no encroachments into the inner VRZ (in this case 20m from the coastal wetland boundary) and that any encroachments into the outer VRZ (a further 20m from the inner VRZ boundary) are offset with appropriate riparian offsets.

Considering the above matters, the proposal is not considered to comply with Chapters 2 and 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

8.3 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

The requirements of Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021 apply to the subject site.

The object of Chapter 2 is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area. The site has been identified as being located in a coastal vulnerability area and a coastal environmental area as per the Chapter 2 maps. It is noted that the site is within the proximity area to Coastal Wetlands, however only at the lower part of the site. 85 Thomas Street is mapped as being within the Coastal Wetlands area, and while no works are proposed within the mapped wetland area, the relocated Communal Open Space encroaches into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland.

As noted above The Department of Planning and Environment – Water is not supportive of the proposal in its current form and raised significant concerns with the proposed outdoor communal space area next to the adjacent mapped coastal wetland.

In light of the above matters, the proposal is not considered to comply with Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 Remediation of Land

The requirements of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 apply to the subject site. In accordance with Chapter 4 of the SEPP, Council must consider if the land is contaminated, if it is contaminated, is it suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed use.

- A Site inspection reveals the site does not have an obvious history of a previous land use that may have caused contamination.
- Historic aerial photographs were used to investigate the history of uses on the site.
- A search of Council records did not include any reference to contamination on site or uses on the site that may have caused contamination.
- A search of public authority databases did not include the property as contaminated.

In addition, the Statement of Environmental Effects states that the property is not contaminated. A preliminary site investigation report was submitted with the application and contended that the site is suitable for the proposed development.

The report was also reviewed by Council's Environmental Health section and no concerns raised, subject to the imposition of relevant conditions in the event that approval was recommended.

Therefore, in accordance with Clause 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the land is suitable for the development.

8.4 State Environmental Planning Policy (Sustainability Building) 2022

The application is accompanied by a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. A BASIX certificate was submitted with this application. If the application had been recommended for approval, conditions would have been imposed to ensure BASIX commitments were fulfilled during the construction of the development.

8.5 State Environmental Planning Policy (Planning Systems) 2021

The proposed development has a Capital Investment Value (CIV) of more than \$30 million. As such, Schedule 6 of this Policy states that the application is 'regionally significant development' and thus the Sydney Central City Planning Panel (SCCPP) is the consent authority for the application.

As noted above, the application was originally lodged prior to the 4 March 2024, when changes were made the Environmental Planning and Assessment Regulations 2021 regarding Section 6 and the new definition of Estimated Development Cost (EDC). Notwithstanding this change in definition, the EDC of the development maintains the trigger of the \$30 million threshold for regionally significant development.

8.6 State Environmental Planning Policy (Housing) 2021

Chapter 4

The provisions of Chapter 4 Design of Residential Apartment Development under *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) are relevant to the proposed development.

Clause 147 *Determination of development applications and modification applications for residential apartment development* in Chapter 4 of SEPP (Housing) 2021 is also relevant and stipulates that:

(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following –

(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,

(b) the Apartment Design Guide,

(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.

(2) The 14-day period referred to in subsection (1)(c) does not increase or otherwise affect the period in which a development application or modification application must be determined by the consent authority.

(3) To avoid doubt, subsection (1)(b) does not require a consent authority to require compliance with design criteria specified in the Apartment Design Guide.

(4) Subsection (1)(c) does not apply to State significant development.

Schedule 9 - Design principles for residential apartment development

As the proposal involves the construction of a new residential flat building, the proposal is to consider the design principles for residential apartment development set out in Schedule 9 of SEPP (Housing) 2021. 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.

The Environmental Planning and Assessment Regulation 2021 (Division 1, Section 29) requires the applicant to submit a statement from a qualified designer stating how the development addresses each of the design principles for residential apartment development.

In this regard the **applicant** provided the following responses to those design principles:

Requirement	Comment
Principle 1: Context and Neighbourhood Character	The proposed development has been designed in accordance with the planning objectives and building envelope controls under the PLEP and PDCP. It provides a built form compatible with other more recent developments in the locality, is softened with landscaping treatments and provides opportunity in the front setback area for canopy trees to screen the development when mature
Principle 2: Built Form and Scale	The buildings have been designed to be consistent with the scale of development within the Parramatta locality and the desired future character of the R4 High Density Residential zone as envisioned by the controls. The buildings are designed to observe the required setbacks and to present as well-designed contemporary buildings that will sit well with their surroundings
Principle 3: Density	The building density is compatible with other developments within the locality including those along Broughton Street locality. The built form is not dissimilar in scale or bulk to the existing building occupying 93-95 Thomas Street. With the site in close proximity to the Western Sydney University and to the Parramatta CBD, it is an ideal location for a quality apartment development with ample communal open space and views of the Parramatta River.
Principle 4: Sustainability	The proposal fosters good sustainable design through natural ventilation and sunlight access for the amenity and liveability of residents. The proposal is accompanied by a BASIX certificate. The proposal aims to protect and retain the existing foreshore vegetation which allows for greater vegetation cover within an urban environment.
Principle 5: Landscape	The proposal is supported by a detailed landscape plan. Plantings have been selected based on local landscape character and with consideration of the climate, topography, and natural features, in accordance with the PDCP.
Principle 6: Amenity	A high standard of amenity is achieved with regard to the apartments size, access to sunlight and ventilation, outlook and facilities.
Principle 7: Safety	The design provides a high level of safety and security, with clearly defined entries and exits, high levels of surveillance of public areas, and limited opportunities for concealment and surprise.
Principle 8: Housing Diversity and Social Interaction	The proposed development achieves a mix of apartment sizes to provide for additional housing choices for different demographics. A mix of one, two and three-bedroom apartments which vary in size and placement, offer different amenity and value. The communal areas allow for active interaction and engagement by residents in outdoor and indoor spaces.
Principle 9: Aesthetics	The proposal contributes to the desired future character of the R4 High Density Residential zone. The buildings are well articulated and include a high-quality selection of materials and finishes. The design has been supported by a design verification statement prepared by the architect, ensuring that the buildings have been designed with consideration to the design quality principles and the ADG.

Comment

The proposed built form results in excessive bulk and scale that is not in keeping with the context and character of the local area. Further, the building footprint is of a scale that is contributing to the building mass and is visually dominant from Thomas Street. The proposal would also result in a density that is not appropriate for the site, in terms of floor space yield. The design of the development presents as a bulky built form due to the departure from the floor space

ratio development standard. Due to the excessive building footprint and variations to the required setbacks, it has limited the opportunities for landscaping and deep soil areas, particularly within the front and side setback areas to allow for meaningful landscaping and to balance the hard and soft surfaces. The necessity to relocate the communal open space (COS) to the southern part of the site is further evidence of the excessive building footprint, which results in limited opportunities to provide an adequate COS within the vicinity of the building itself. Given the above commentary, and as can be seen with several issues outlined in this report, it is considered that the proposal does not adequately and satisfactorily respond to the design principles in Schedule 9 of SEPP (Housing) 2021.

APARTMENT DESIGN GUIDE

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

Clause	Comment	Compliance																
Part 2 – Developing the controls																		
Note: This part explains the application of building envelopes and primary controls including building height, floor space ratio, building depth, separation and setbacks. It provides tools to support the strategic planning process when preparing planning controls. It is used here only to ascertain degrees of compliance with the most applied controls under Parts 3 and 4 later in this table.																		
2E Building Depth																		
Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line.	The proposed building comprises a depth of approx. 40 metres from north to south.	No – However considered acceptable on merit.																
2F Building Separation																		
<table><tr><th>Building Height</th><th>Habitable to Habitable</th><th>Non-habitable to Habitable</th><th>Non-habitable to Non-habitable</th></tr><tr><td>up to 12m (4 storeys)</td><td>12m</td><td>9m</td><td>6m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>18m</td><td>9m</td><td>13.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>24m</td><td>12m</td><td>18m</td></tr></table>	Building Height	Habitable to Habitable	Non-habitable to Habitable	Non-habitable to Non-habitable	up to 12m (4 storeys)	12m	9m	6m	Up to 25m (5-8 storeys)	18m	9m	13.5m	Over 25m (9+ storeys)	24m	12m	18m	The two buildings are only separated by a distance of 9.07m at areas of habitable to habitable.	No – However considered acceptable on merit.
Building Height	Habitable to Habitable	Non-habitable to Habitable	Non-habitable to Non-habitable															
up to 12m (4 storeys)	12m	9m	6m															
Up to 25m (5-8 storeys)	18m	9m	13.5m															
Over 25m (9+ storeys)	24m	12m	18m															
2G Street Setbacks																		
Determine street setback controls relative to the desired streetscape and building forms, for example: <ul style="list-style-type: none">Define a future streetscape with the front building lineMatch existing developmentStep back from special buildingsRetain significant treesIn centres the street setback may need to be consistent to reinforce the street edgeConsider articulation zones accommodating balconies, landscaping etc. within the street setback	<p>The proposal achieves a front setback of 4 metres albeit with some ground floor terraces (POS) encroaching into the setback area, giving them a front setback of 2.750m.</p> <p>It is also noted that the basement encroaches 1 metre into the 4-metre setback, resulting in a 3-metre setback, which has implications for adequate provision of landscaping and deep soil.</p>	No																

Clause	Comment	Compliance
<ul style="list-style-type: none"> Use a setback range where the desired character is for variation within overall consistency, or where subdivision is at an angle to the street Manage corner sites and secondary road frontages 		
2H Side and rear setbacks		
<p>Test side and rear setbacks with height controls for overshadowing of the site, adjoining properties and open spaces:</p> <ul style="list-style-type: none"> building separation and visual privacy, communal and private open space, deep soil zone requirements. <p>Side and rear setbacks can also be used to create useable land for common open space, tree planting and landscaping.</p>	<p>The proposal achieves fully compliant side building setbacks, however, only provides a 3m rear setback where it should be a minimum of 4m. This limits the opportunity to provide additional useable space and meaningful landscaping. While the rear setback area for the western building is proposed to be part of the nominated communal open space, given the non-compliant setbacks and narrowness of this area, it is unlikely to be utilised as a communal and usable area.</p>	No
Part 3 - Siting the Development This part provides guidance on the design and configuration of apartment development at a site scale. Objectives, design criteria and design guidance outline how to relate to the immediate context, consider the interface to neighbours and the public domain, achieve quality open spaces and maximise residential amenity. It is to be used during the design process and in the preparation and assessment of development applications		
3B Orientation		
<p>Buildings along the street frontage define the street, by facing it and incorporating direct access from the street.</p> <p>Where the street frontage is to the east or west, the rear buildings should be orientated to the north.</p> <p>Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west.</p>	<p>The 2 x buildings have been orientated to predominantly face Thomas Street. Pedestrian entry is provided off the street.</p> <p>The site has street frontage to the north. There will be overshadowing to some extent on the properties to the south, east and west.</p>	Yes
3C Public domain interface		
<p>Transition between private & public domain is achieved without compromising safety and security and amenity of the public domain is retained and enhanced.</p>	<p>The proposal does not allow for an appropriate transition between private and public space.</p> <p>Adequate details of public domain works have not been submitted. Therefore, the amenity of the public domain cannot be ascertained.</p>	No
3D Communal & public open space		
<p>Provide communal open space with an area equal to 25% of site</p>	<p>Council has concerns regarding the usability of the proposed communal open space (COS). The proposed communal open space is to cater for a range of age groups and is to provide sufficient area for recreation. As proposed, the usable area of the communal open space is unclear, with what appears to be several walls and ramps shown on the plan.</p>	No

Clause	Comment	Compliance									
	<p>Due to the lack of appropriate details, an accurate calculation was not possible.</p> <p>Details of landscaping for the COS have not been provided. In addition, there will likely be conflict with the COS and the public walkway on the southern portion of the COS.</p> <p>It is also noted that the Department of Planning and Environment – Water are not supportive of the proposal in its current form and raised significant concerns with the proposed outdoor communal space area and path/stairs to the existing shared river path encroaching into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland. This is considered to be a contravention of the Department's Controlled Activity Guidelines for Riparian Corridors that require no encroachments into the inner VRZ (in this case 20m from the coastal wetland boundary).</p>										
Minimum 50% of usable area of communal open space to receive direct sunlight for a minimum of 2 hours between 9 am and 3 pm on 21 June.	It appears that 50% of the usable area of communal open space does not achieve direct sunlight for a minimum of 2 hours between 9am and 3pm on 21 June.	No									
3E Deep Soil Zone											
<p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>Deep soil zones are to be provided equal to 7% of the site area and with min dimension of 6m for sites areas greater than 1500m².</p>	The areas nominated as deep soil on the plans do not appear to comply and are located within areas that steeply fall to the foreshore area, with no details of landscaping or planting species. The deep soil areas also include impervious areas; ramps, steps, retaining walls etc.	No									
3F Visual Privacy											
<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="113 1608 627 1928"> <thead> <tr> <th>Building Height</th><th>Habitable rooms & balconies</th><th>Non habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> </tbody> </table>	Building Height	Habitable rooms & balconies	Non habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<p>While amendments have been provided which now comprise extensive screening on the balconies situated on the eastern and western elevations, the proposed development does not comply with the minimum separation distances between buildings and side and rear boundaries. For example, several habitable rooms facing the rear of the site only provide a 3m setback to the boundary, and in some case only provide a 2.2m setback. On the side elevations, a number of units only achieve a 4m setback to the boundary. They should all be set back at least 6m from boundaries. This will result in unacceptable amenity and privacy impacts to future occupants and adjoining residents.</p> <p>In addition, it will also restrict opportunities to provide adequate deep soil, landscaping and planting of substantial trees/plants.</p>	No
Building Height	Habitable rooms & balconies	Non habitable rooms									
Up to 12m (4 storeys)	6m	3m									
Up to 25m (5-8 storeys)	9m	4.5m									

Clause			Comment	Compliance
Over 25m (9+ storeys)	12	6		
3G Pedestrian Access & entries				
Pedestrian access, entries and pathways are accessible and easy to identify.			The development proposes a pedestrian entry to the building from Thomas Street	Yes
3H Vehicle Access				
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.			<p>Vehicle access and egress is proposed to be provided from Thomas Street.</p> <p>Council's Traffic and Transport Officer has reviewed the proposed vehicular access and raises no objections subject to conditions of consent in the event an approval was recommended.</p>	Yes
3J Bicycle and car parking				
<u>Car parking</u> For development on sites that are within 800m of a railway station, the minimum parking for residents and visitors to be as per RMS Guide to Traffic Generating Developments, or Council's car parking requirement, whichever is less.			<p>77 car spaces are proposed at basement level including 8 accessible spaces, and 2 motorcycle spaces.</p> <p>Council's Traffic and Transport Officer has reviewed the proposed car parking and raises no objections subject to conditions of consent.</p>	Yes
<u>Bicycle Parking</u> Provide adequate motorbike, scooter and bicycle parking space (undercover).			<p>The proposal provides 40 bicycle spaces.</p> <p>Council's Traffic and Transport Officer has reviewed the proposed bicycle parking and raises no objections subject to conditions of consent.</p>	Yes
Part 4 - Designing the Building This part addresses the design of apartment buildings in more detail. It focuses on building form, layout, functionality, landscape design, environmental performance and residential amenity. It is to be used during the design process and in the preparation and assessment of development applications				
4A Solar & daylight access				
Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.			Fifty-seven (57) of the seventy-one (71) proposed units (80%) achieve the minimum 2 hours of solar access during winter solstice. Therefore, the proposed solar and daylight access is considered to be supportable.	Yes
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter			One (1) unit (1.4%) does not achieve the minimum 2 hours direct sunlight. Therefore, the proposed solar and daylight access is considered to be supportable.	Yes
4B Natural Ventilation				
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.			Forty-nine (49) of the seventy-one (71) proposed units (69%) are naturally cross ventilated.	Yes

Clause	Comment	Compliance
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	The proposed units do not exceed a depth of 18m.	Yes
4C Ceiling Heights		
Ceiling height achieves sufficient natural ventilation and daylight access. The development is required to provide 2.7m minimum ceiling heights.	All floors achieve sufficient height.	Yes
4D Apartment size and layout		
<p>Apartments are required to have the following minimum internal areas with one bathroom:</p> <ul style="list-style-type: none"> • Studio = 35m² • 1 bedroom = 50m² • 2 bedrooms = 70m² • 3 bedrooms = 90m² <p>Additional internal space required for each additional bedroom or bathroom.</p>	<p>The proposed apartments have the following minimum internal areas:</p> <p>19 x Studio: 35m² 30 x 1 Bed units: 50m² 9 x 2 bed units: 81m² 13 x 3 bed units: 95m²</p>	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. Daylight and air may not be borrowed from other rooms	All of the apartments exceed the minimum requirements.	Yes
Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space).	The kitchens in the proposed units are not located as part of the main circulation space.	Yes
Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan where the living, dining and kitchen are combined, there is to be a maximum depth of 8m from a window.	All habitable rooms depths are compliant with the required rates.	Yes
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	The bedrooms appear to comply with the minimum area requirements.	Yes
Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	The proposed bedrooms have a minimum dimension of 3m.	Yes
<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments • 4m for 2 and 3-bedroom apartments 	Living rooms/combined living/dining area have a minimum 3.6m width for 1-bedroom units and 4m width for 2-bedroom units, respectively.	Yes
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	All units exceed a minimum width of 4m internally.	Yes

Clause	Comment	Compliance												
4E Private Open Space and balconies														
<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Min area</th><th>Min depth</th></tr><tr><td>1 bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 bedroom</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling type	Min area	Min depth	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3 bedroom	12m ²	2.4m	<p>The proposed apartments all comply with the required minimum areas for balconies.</p>	<p>Yes</p>
Dwelling type	Min area	Min depth												
1 bedroom	8m ²	2m												
2 bedroom	10m ²	2m												
3 bedroom	12m ²	2.4m												
<p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p>	<p>Not all ground level courtyards meet the minimum depth dimensions of 3m.</p>	<p>No</p>												
4F Common circulation and spaces.														
<p>The maximum number of apartments off a circulation core on a single level is 8.</p>	<p>The development does not exceed a maximum of eight (8) units accessed from the circulation space on a single level.</p>	<p>Yes</p>												
4G Storage														
<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>1 bedroom apt</td><td>6m³</td></tr><tr><td>2 bedroom apt</td><td>8m³</td></tr><tr><td>3+ bedroom apt</td><td>10m³</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom apt	6m ³	2 bedroom apt	8m ³	3+ bedroom apt	10m ³	<p>The storage provided consists of both storage space within the units and storage areas located within the mezzanine accessed from the basement and all units comply with the total storage requirements prescribed in the ADG.</p>	<p>Yes</p>				
Dwelling type	Storage size volume													
1 bedroom apt	6m ³													
2 bedroom apt	8m ³													
3+ bedroom apt	10m ³													
4H Acoustic privacy														
<p>Noise transfer is minimised through the siting of buildings, building layout, and acoustic treatments.</p> <p>Plant rooms, services and communal open space and the like to be located at least 3m away from the bedrooms.</p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>Appropriate acoustic privacy will be provided for each apartment. Living rooms and balconies have generally been orientated away from services and plant rooms.</p>	<p>Yes</p>												
4K Apartment mix														
<p>A range of apartment types with different number of bedrooms (1bed, 2 bed, 3 bed etc) should be provided.</p>	<p>The development has incorporated the following apartment mix:</p> <ul style="list-style-type: none">19 x studio units (27%)	<p>Yes</p>												

Clause	Comment	Compliance
	<ul style="list-style-type: none"> 30 x 1 bedroom units (42%) 9 x 2 bedroom units (13%) 13 x 3 bedroom units (18%) 	
4N Roof design		
Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use the roof space for residential accommodation and open space are maximised. Roof design incorporates sustainability features.	The development has proposed a relatively flat roof design which is integrated with the overall development.	Yes
4O Landscape design		
<p>Landscape design contributes to the streetscape and amenity. Landscape design is viable and sustainable.</p> <p>Sites greater than 1,500m²: 1 large tree or 2 medium trees per 80m² of deep soil zone</p>	Council's Landscape and Tree Management Officer has reviewed the application and does not support the proposal in its current form.	No
4P Planting on structures		
Appropriate soil profiles are provided.	Council's Landscape and Tree Management Officer has reviewed the application and notes that the soil depth and soil volume within planters and over the basement appear to be inadequate and do not meet the requirements of the ADG. Subsequently, Council's Landscape and Tree Management Officer does not support the proposal in its current form.	No
4Q Universal design		
Universal design features are included in apartment design to promote flexible housing for all community members. A variety of apartments with adaptable designs are to be provided.	A total of eight (8) adaptable units have been proposed. Council's Universal Design (Accessibility) Officer has reviewed the application and has provided conditions to be imposed in the event of an approval.	Yes
4U Energy efficiency		
Development incorporates passive environmental design measures – solar design, natural ventilation etc.	The development complies with solar access and natural ventilation requirements. A BASIX certificate is submitted with the application which indicates that the building will meet the energy and water use targets set by the BASIX SEPP.	Yes
4W Waste Management		
<p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	Council's Environmental Health Officer, with responsibility for waste management has reviewed and supports the proposal subject to the imposition of conditions in the event approval was recommended.	Yes

Due to the issues noted in the above table, it is considered that the proposal does not satisfy the provisions and requirements of Chapter 4 Design of Residential Apartment Development under *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

8.6 State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

The following relevant provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Clause	Comment
Clause 2.48 – electricity infrastructure	The subject site is not in the vicinity of electricity infrastructure that would trigger the concurrence of the electricity supply authority.
Clause 2.97 – Development adjacent to rail corridors	The subject site is not directly adjacent to a rail corridor.
Clause 2.118 – frontage to a classified road	The subject site does not have frontage to a classified road.
Clause 2.122 - average daily traffic volume of more than 20,000 vehicles.	<p>Thomas Street has an average daily traffic volume of less than 20,000 vehicles per day.</p> <p>In addition, the size of the development is not listed in Column 2 of Schedule 3 of the SEPP to be considered traffic generating development requiring concurrence.</p> <p>As such, clause 2.122 is not applicable to the development application.</p> <p>Therefore, the application is not required to be referred to Transport for NSW for concurrence.</p>

In addition, the applicant has submitted a Traffic Impact Assessment Report for the development proposal. Council's Traffic and Transport Engineer reviewed the subject application and considers the proposal to be acceptable, subject to the imposition of conditions in the event approval was recommended.

8.7 LEP PERMISSIBILITY

The site is zoned R4 High Density Residential and RE1 Public Recreation under Parramatta Local Environmental Plan 2023.

The proposed land use is a *residential flat building* and is defined as follows:

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

The proposed residential flat building is permissible pursuant to Part 2 of the Parramatta LEP 2023 as it is only proposed on the R4 portion of the site (including the location of the COS).

8.8 LEP ZONE OBJECTIVES

Clause 2.3 (2) requires the consent authority to take into consideration the zone objectives when determining a development application. The objectives for R4 High Density Residential are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for high density residential development close to open space, major transport nodes, services and employment opportunities.*
- *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.*

While there are significant departures and deficiencies with the overall design of the proposal, the development is considered to be consistent with the objectives of the zone given that it will:

- Provide for the housing needs of the community by delivering a variety of apartments at varying price points,
- Deliver housing in proximity to transport, services and jobs,
- Diversify the housing stock in the locality to provide a variety of apartments sizes and types.

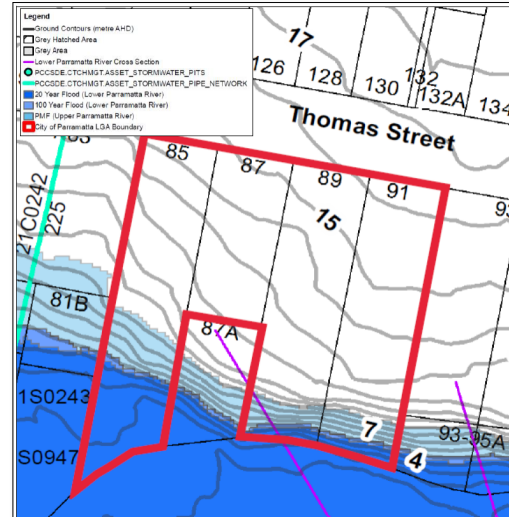
8.9 PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2023

The relevant matters to be considered under Parramatta Local Environmental Plan 2023 for the proposed development are outlined below.

Standards and Provisions	Compliance
Part 4 Principal development standards	
Section 4.3 Height of buildings Allowable: 11m	<p>Proposed: 13.85m (eastern building) & 14.45m (western building)</p> <p>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. As part of the amended plans the height has not been reduced from its originally proposed maximum height, however it has reduced the footprint of the roof area and thus the extent of the overall height variation area.</p> <p>Discussed further at the end of this table.</p>
Section 4.4 Floor space ratio Allowable: 0.8:1 or 4,128.56m ²	<p>Proposed FSR: 0:98:1 or 5,037m²</p> <p>Proposed developable site area is 5,160.7m² (R4 zone) – Shown as Site 1 on the plans. As per cl4.5 of LEP 2023, subclause (4):</p> <p><i>Exclusions from site area</i> <i>The following land must be excluded from the site area—</i> <i>(a) land on which the proposed development is prohibited, whether under this Plan or any other law,</i></p> <p>It is noted that on the plans the applicant has incorrectly included the southern portion of No. 85, which is zoned RE1 Recreation, shown as Site 2 (1,161m²) on the plans, in the total site area for the purposes of calculating the floor space ratio to achieve a FSR of 0.796:1 which would be compliant.</p> <p>5,160.7m² and 1,161m² = 0.796:1 or 6,321.7m²</p> <p>Discussed further at the end of this table.</p>
Section 4.6 Exceptions to Development Standards	Variations to the above development standards are proposed and is discussed below.
Part 5 Miscellaneous provisions	
Section 5.1A Development on land intended to be acquired for public purposes	The subject site is not identified on the map.
Section 5.7 Development below mean high water mark	The subject site is not identified on the map.
Section 5.21 Flood Planning	The site is located on the northern bank of the Parramatta River. It is classified as being partly within the High Flood Risk Precinct (the southern section near the riverbank), partly within the Low Flood Risk Precinct, with the remainder of the site not being flood-affected.

Council's Senior Catchment and Development Engineer has reviewed the proposal and concluded that the proposed buildings are located outside the flood extent of any storm events up to the PMF. Occupants can seek refuge on-site at the ground floor or higher, as the development is situated well above the nearby flood levels.

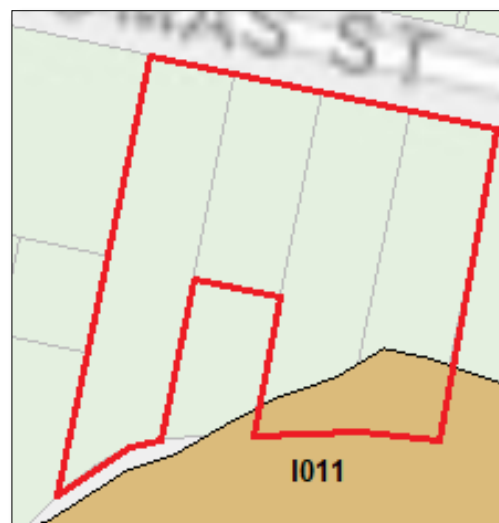
The proposal is satisfactory with respect to flood planning.

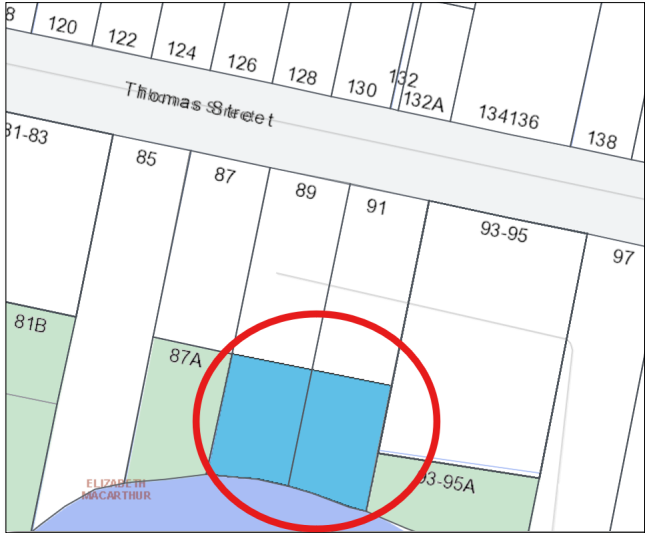


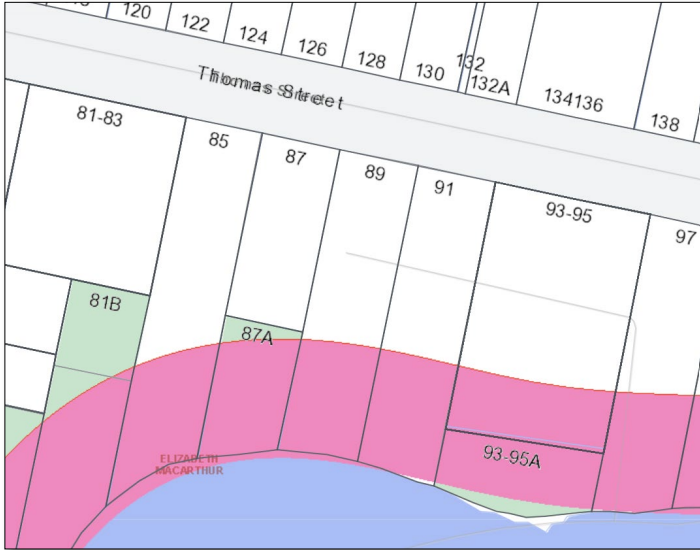
Section 5.10 Protection of heritage items, adjoining heritage items and/or buildings within heritage conservation areas.

The rear portion of 89-91 Thomas Street include parts of local heritage item (I011) 'Wetlands'. See image below.

An archaeological and heritage impact statement (Appendix H) accompanies the proposal and concludes that it is very low to low chance that archaeological deposits relating to significant historical activities from the 18th and 19th Century will be found. 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.



Part 6 Additional local provisions	
Section 6. 1 Acid sulfate soils	The site is identified as being Class 5 on the acid sulfate soils map.
Section 6. 2 Earthworks	Council's Senior Catchment and Development Engineer has reviewed the application and raises no objections with respect to earthworks, subject to conditions of consent to be imposed in the event of an approval.
Section 6. 3 Biodiversity	The southern portion of the site where the proposed Communal Open Space is located, is mapped as an area of biodiversity. The applicant has not satisfactorily addressed s6.3 or demonstrated that the works will not impact this area.
Section 6. 4 Riparian land and waterways (1) The objective of this clause is to protect and maintain the following— (a) water quality and natural water flows in waterways, (b) the stability of the bed and banks of waterways, (c) aquatic and riparian habitats and ecological communities, (d) ecological processes in waterways and riparian areas, (e) groundwater systems.	<p>The subject site is identified on the Natural Resources map as being Riparian Land and Waterways.</p> <p>The area of land affected was originally proposed to have been dedicated to Council as noted earlier in this report however now comprises the relocated common open space (COS).</p>  <p>The Department of Planning and Environment – Water are not supportive of the proposal in its current form and raised significant concerns with the proposed outdoor communal space area and path/stairs to the existing shared river path encroaching into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland.</p> <p>This is considered to be a contravention of the Department's Controlled Activity Guidelines for Riparian Corridors that require no encroachments into the inner VRZ (in this case 20m from the coastal wetland boundary) and that any encroachments into the outer VRZ (a further 20m from the inner VRZ boundary) are offset with appropriate riparian offsets.</p> <p>In this regard, the amended proposal has failed to satisfy the relevant objectives of s6.4 of PLEP 2023 and is not supported.</p>
Section 6. 5 Stormwater management	Council's Senior Catchment and Development Engineer reviewed the proposal and is satisfied that the proposed stormwater drainage design would minimise the impacts of urban stormwater on adjoining properties, native vegetation and receiving waters. Conditions of

	consent have been provided to be imposed in the event of an approval.
<p>Section 6. 6 Foreshore area</p> <p>The objective of this clause is to protect the Parramatta River and its tributaries by ensuring development in the foreshore area—</p> <p>(a) will not impact natural foreshore processes, and</p> <p>(b) will not affect the significance and amenity of the area, and</p> <p>(c) will be compatible with the riverine environment.</p>	<p>The subject site is identified on the map as including a Foreshore Area.</p> <p>The area of land affected was originally proposed to have been dedicated to Council as noted earlier in this report however now comprises the relocated common open space (COS).</p>  <p>The Department of Planning and Environment – Water are not supportive of the proposal in its current form and raised significant concerns with the proposed outdoor communal space area and path/stairs to the existing shared river path encroaching into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland.</p> <p>This is considered to be a contravention of the Department's Controlled Activity Guidelines for Riparian Corridors that require no encroachments into the inner VRZ (in this case 20m from the coastal wetland boundary) and that any encroachments into the outer VRZ (a further 20m from the inner VRZ boundary) are offset with appropriate riparian offsets.</p> <p>In this regard, the amended proposal has failed to satisfy the relevant objectives of s6.6 of PLEP 2023 and is not supported.</p>
Section 6.8 Landslide Risk	The subject site is not identified on the map as affected by landslide risk.

SECTION 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 of PLEP 2023 allows Council to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

Clause 4.6(1) – Objectives of clause 4.6

The objectives of this clause are:

- a) *“to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances”

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.

Height Variation Request

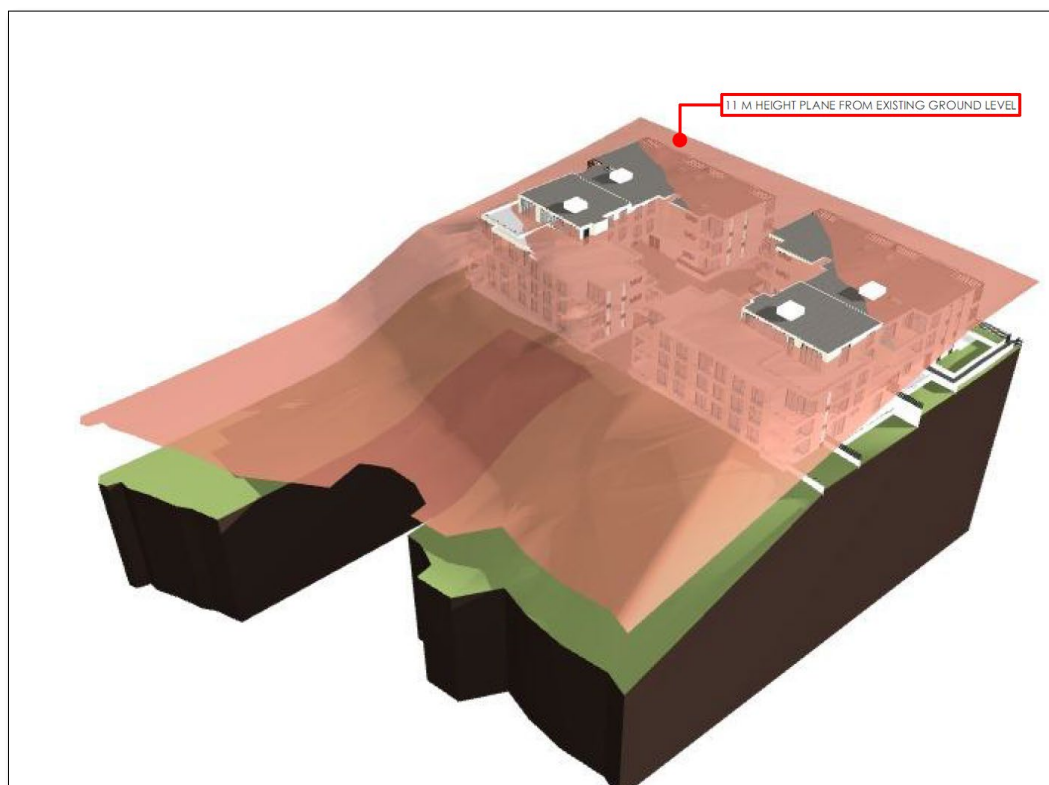


Figure 5: Height Plane Analysis

The proposal does not comply with the maximum 11m building height development standard detailed in Clause 4.3 of the PLEP. 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.

Given the departure to this development standard, the applicant has submitted a request to vary the height standard under Clause 4.6 of the PLEP 2023.

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

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

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

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

The applicant has provided the following commentary and environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Attachment 3.

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.

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.

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.

Council Comments

An assessment to determine whether compliance with the standard is 'unreasonable and unnecessary' has been undertaken. It is considered that there are 'sufficient planning grounds' to support the variation and recommend the variation be supported for the following reasons:

Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests to assist in determining whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

Wehbe v Pittwater Council

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:

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

Height Objectives	Proposal
a) to provide appropriate height transitions between buildings,	The proposal provides acceptable transition between buildings.

Height Objectives	Proposal
b) to ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area,	Despite the variation, it is considered that the height would be reflective of existing and future development within the locality. It is noted that the breach occurs at a section of the roof that would result in a negligible visual impact, particularly when viewed from Thomas Street. It is acknowledged that the amended proposal, while still comprising a variation, reduces the overall extent of the breach.
c) to require the height of future buildings to be appropriate in relation to heritage sites and their settings,	The works would not be expected to modify the visual catchment of the heritage item at the lower portion of 89-91 Thomas Street substantially from the existing urban landscape of its setting.
d) to reinforce and respect the existing character and scale of low density residential areas,	The proposed height does not result in a development that would detrimentally impact on the existing character of the area.
e) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,	While there will be some overshadowing to the adjoining properties, it is considered negligible, and it is considered that the extent would not be significantly reduced with a compliant height.
f) to preserve historic views,	N/A
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.	Considered satisfactory

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

The applicant does not challenge that the underlying objectives are not relevant and demonstrates that the objectives of the height of building development standard are achieved notwithstanding the proposed variation.

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

If compliance was required, the built form and density anticipated by the DCP could not be achieved. The DCP outcomes are the 'underlying objectives' and as such strict compliance with Clause 4.3 of the LEP would thwart them.

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 contend that the height standard has been abandoned.

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

The applicant holds that the zoning is reasonable and appropriate in this instance and does not rely on this test.

Four2Five Pty Ltd v Ashfield Council

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.

In this case, the DCP controls are considered to be site specific justification.

Initial Action Pty Ltd v Woollahra Municipal Council

Chief Judge Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified, at paragraph 87, that, "*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*". While it is considered that the proposal does have several benefits over a compliant scheme, the Panel does not have to be satisfied with regard to such a test.

Clause 4.6(4) - Consent Authority Assessment 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."*

The matters of clause 4.6(4)(a)(i) have been dealt with in the preceding section. Clause 4.6(4)(a)(ii) and Clause 4.6(4)b) have been assessed as follows:

Public Interest

As outlined above, the proposal is considered to be consistent with the objectives of the height standard. The proposal is consistent with the objectives of the zone as set out in the table above.

Concurrence

'The concurrence of the Secretary has been obtained'

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular '*Variations to development standards*' Ref: PS 18-003 dated 21/02/2018. There is no limit to the level of non-compliance for which concurrence can be assumed.

Conclusion

In summary, it is considered that breaching the height standard is appropriate as it is consistent with envisioned built form expected for the Morton Street Precinct.

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the height development standard within Parramatta LEP 2023 can be supported as the proposal continues to achieve the objectives of the height development standard and the zoning and is in the public interest. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

Floor Space Ratio Variation Request

The proposal does not comply with the maximum 0.8:1 floor space ratio development standard detailed in Clause 4.4 of the PLEP. The maximum permitted floor space ratio under PLEP 2023 is 0.8:1. The proposed floor space ratio is 0.98:1.

In this regard, the applicant has submitted a request to vary the floor space ratio standard under Clause 4.6 of the PLEP 2023.

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

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

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

The applicant has provided the following commentary and environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Attachment 4.

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 FSR 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 proposed building density is consistent in terms of scale and form to other developments within the visual catchment, and the buildings are well articulated, which minimises perception of bulk. The development satisfies the objectives of the FSR development standard, as well as the objectives of the R4 High Density Residential zone. The proposal also includes dedicating 2,496sqm of land to Council. Some of this land is zoned RE1 and nominated for acquisition, whilst some is zoned R4 – High Density Residential. As indicated earlier, that 1,200sqm portion zoned RE1 formed part of an agreement between Council and the proponent. That agreement included adopting the RE1 zone, but any loss of GFA would be recouped elsewhere on the site as part of an owner-initiated PP. Council achieved the RE1 rezoning, but the proponent's PP was not realised. In effect, this variation request simply regains some of the GFA lost as part of previous rezonings. This, in itself, is considered to be a sufficient environmental planning ground. In addition, the proponent offers to dedicate a further 1,334sqm of land to Council, which will allow for a substantially sized open space area. This is also considered to be a sufficient environmental planning ground, particularly considering the total area planned to be dedicated to Council is 2,496sqm.

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.

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 FSR development standard are as follows:

- The proposed FSR is not dissimilar to developments within the visual catchment, given several buildings with a far greater density are observed 150m west of the Site, in addition to multi-storey building located on the southern side of the Parramatta River opposite to the site (refer to figure 3).
- 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 an FSR of 1.3:1; 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 1.3:1 FSR 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.

In these circumstances, the additional 1,322.44sqm is acceptable as it effectively offsets 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.

If the FSR is calculated on the basis of the rear portion of 85 Thomas Street being zoned R4 High Density Residential (refer to figure 2), the numerical variation will be 1,322.44 which represents an FSR of 1.06:1. The outcome is not considered inappropriate for the locality given the visual catchment includes several examples of buildings exceeding an FSR of 0.8:1.

- Prior to the rezoning on 28 July 2017 the rear portion of 85 Thomas Street to RE1, it was zoned R4 High Density Residential and hence would have contributed towards site area calculations. For reference, if this area was still able to be included in the site area calculation, the proposed FSR would be 0.86:1, which would have represented a relatively modest variation. This administrative and technical approach to the calculation of FSR does not change the built form outcome of the development on the land and is further evidence of the reasonableness of the proposed variation.
- 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 floor area and associated additional housing on the subject site is in complete alignment with the strategic planning direction for this precinct.
- The built form 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 travelling east toward James Ruse Drive, 10 trees exceeding a height of 12m at maturity have been proposed 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 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.
- 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 density 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 to newly developed buildings in the area and the scale and bulk of the proposal is considered 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 FSR 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 FSR and built form 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 largely 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 design in the centre. The development maximises residential amenity available to the site through an overall 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.*

This submission requests a variation, under clause 4.6 of the Parramatta Local Environmental Plan 2023, to the FSR 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.

Council Comments

An assessment to determine whether compliance with the standard is 'unreasonable and unnecessary' has been undertaken. It is considered that there are 'insufficient planning grounds' to support the variation and recommend the variation not be supported for the following reasons:

Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests to assist in determining whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

Wehbe v Pittwater Council

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:

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

Floor Space Ratio Objectives	Proposal
h) To ensure buildings are compatible with the bulk, scale and character of existing and desired future development in the surrounding area	<p>The built form is exacerbated by the excessive floor space ratio, as evidenced in the departures to the required rear setbacks, and separation from habitable rooms to side and rear boundaries. It is also noted that while the front setback achieves the required minimum 4m setback, the ground floor terraces encroach into the front setback areas, in some cases by up to 1.25m, adding to the overall visual portrayal of an excessive building platform, and a development with considerable bulk and scale.</p> <p>The need to locate the communal open space (COS) within the southern foreshore area of the site is also evidence that the built form is excessive and limits opportunities to provide a compliant COS within the immediate vicinity of the buildings.</p>
i) to regulate density of development and generation of vehicular and pedestrian traffic,	The density of development is inconsistent with the strategic planning intent of the Morton Street precinct, as evidenced by the non-compliance with the relevant DCP standards.
j) to provide a transition in built form and land use intensity within the area covered by this Plan,	The built form is inconsistent with the strategic planning intent of the precinct, as evidenced by the non-compliance with the DCP standards.
k) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,	The site is located in the vicinity of a heritage items along the southern portion of 89-91 Thomas Street. The bulk and scale of the building doesn't impact on the heritage items as they are the mangrove areas on the river foreshore within the site but sited ~22m from where the buildings are proposed to finish.
l) to reinforce and respect the existing character and scale of low-density residential areas.	The separation between the proposal and the public domain and adjoining residential areas is insufficient, as evidenced by the non-compliant setbacks. A reduced and fully compliant FSR would assist in addressing and resolving this concern.

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

The applicant does not challenge that the underlying objectives are not relevant.

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

If compliance was required, the built form and density anticipated by the DCP could still be achieved.

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 contend that the floor space ratio standard has been abandoned.

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

The applicant holds that the zoning is reasonable and appropriate in this instance and does not rely on this test.

Four2Five Pty Ltd v Ashfield Council

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.

In this case, the DCP controls are considered to be site specific justification.

Initial Action Pty Ltd v Woollahra Municipal Council

Chief Judge Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified, at paragraph 87, that, "Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development". While it is considered that the proposal does have several benefits over a compliant scheme, the Panel does not have to be satisfied with regard to such a test.

Clause 4.6(4) - Consent Authority Assessment 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."*

The matters of clause 4.6(4)(a)(i) have been dealt with in the preceding section. Clause 4.6(4)(a)(ii) and Clause 4.6(4)b) have been assessed as follows:

Public Interest

As outlined above, the proposal is considered to be inconsistent with the objectives of the floor space ratio standard.

Concurrence

'The concurrence of the Secretary has been obtained'

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular 'Variations to development standards' Ref: PS 18-003 dated 21/02/2018. There is no limit to the level of non-compliance for which concurrence can be assumed.

Conclusion

In summary, the breaching of the floor space ratio standard is not considered appropriate as it is inconsistent with the strategic planning intent of the Morton Street precinct, as evidenced by the non-compliance with the relevant DCP standards. The need to locate the communal open space (COS) within the southern foreshore area of the site is also

evidence that the built form is excessive and the FSR variation results in a situation which limits opportunities to provide a compliant COS within the immediate vicinity of the buildings. It also results in a situation where the COS is considered to be detached from main area of the site.

It is considered that the applicant's written request has not adequately addressed the matters required to be demonstrated and that the request to vary the floor space ratio development standard within Parramatta LEP 2023 cannot be supported as the proposal fails to achieve the objectives of the FSR development standard. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

9 DEVELOPMENT CONTROL PLAN

PARRAMATTA DEVELOPMENT CONTROL PLAN 2023

The Draft Parramatta Development Control Plan 2023 (draft PDCP) was placed on public exhibition from 13 March 2023 to 1 May 2023. The draft PDCP replaced the five existing DCPs that apply within the Local Government Area and will serve as a primary supportive planning document to the Parramatta Local Environmental Plan 2023 for guiding development and land use decisions made by Council.

On Monday 28 August 2023 Council adopted the PDCP, formal commencement of the PDCP occurred on Monday 18 September 2023 when it was published on Council's website.

Section 1.4 of the adopted PDCP which concerns the relationship to other plans and policies is outlined below:

If a Development Application has been lodged before the commencement of the draft DCP in relation to land to which the draft DCP applies, and the Development Application has not been finally determined before the commencement of the draft DCP, the Development Application must be determined as if the draft DCP had not commenced.

In this instance the original application was originally lodged on 15 June 2023 and therefore was initially assessed under the Parramatta Development Control Plan 2011. Whilst the original application had been assessed under the Parramatta Development Control Plan 2011, it is noted that the applicant applied to amend the Development Application in accordance with Section 37 of the Environmental Planning and Assessment Regulation 2021 via the NSW Planning Portal on 28 May 2024.

Clause 38 of the Environmental Planning and Assessment Regulation 2021 stipulates that if the amending application is accepted, then the Development Application is taken to be lodged on the day on which the applicant applied for the amendment. In this regard the amending Development Application was assessed under current Parramatta Development Control Plan 2023.

Therefore, the relevant matters to be considered under Parramatta Development Control Plan 2023 for the proposed development are outlined below.

Development Control	Comment	Compliance
Part 2 – Design in Context		
2.6 Fences	Adequate details of proposed front fencing have been provided.	Yes
2.8 Views and Vistas	There are no significant views and vistas from the subject site identified in Appendix 1 of PDCP 2023.	N/A
2.9 Public Domain	Council's Public Domain team have reviewed the application and request additional information regarding the proposed front setbacks, street tree planting and landscaping.	No
2.10 Accessibility and Connectivity	The proposed front setback includes a number of pathways for pedestrian access and one point of vehicular access. The proposed design scheme is not considered to dominate the front setback with stairs, ramps, level changes, handrails and other servicing structures.	No

	However, given the common open space is proposed to be located within the foreshore area and adjacent to the existing public walkway, it is unclear how access and connectivity will be managed between the private and public spaces.	
2.11 Access for People with Disabilities	Council's Universal Design (Accessibility) Officer has reviewed the application, is satisfied and has provided conditions to be imposed in the event of an approval.	Yes
2.14 Safety and Security	Opportunities for casual surveillance of public domain are possible from the proposed balconies and terraces that face the street and the public foreshore area.	Yes
Part 3 – Residential Development		
3.1 Housing Diversity and Choice		
3.1.2 Dwelling Mix <i>The following dwelling mix is required for RFBs, containing 10 or more dwellings:</i> <ul style="list-style-type: none"> (a) 10-20% of dwellings to have 3 or more bedrooms. (b) 60-75% of dwellings to have 2 bedrooms. (c) 10-20% of dwellings to have 1 bedroom/studio. 	The development has incorporated the following apartment mix: <ul style="list-style-type: none"> • 19 x studio units (27%) • 30 x 1-bedroom units (42%) • 9 x 2-bedroom units (13%) (this is due to a large number of the two-bedroom units being designed as dual key apartments) • 13 x 3-bedroom units (18%) 	No – the development does not provide the required number of 2-bedroom units.
3.1.3 Accessible and Adaptable Housing <i>Residential flat buildings are to provide adaptable housing in accordance with the below:</i> <ul style="list-style-type: none"> • 10 or more apartments = 15% total dwellings 	Council's Universal Design (Accessibility) Officer has reviewed the application, is satisfied and has provided conditions to be imposed in the event of an approval. However, while 11 adaptable units are required, it is noted that only eight (8) adaptable units have been proposed, which is only 11.3%.	No
3.2 General Residential Controls		
3.2.1 Solar Access and Ventilation	The development also complies with the applicable solar access (Section 4A) and natural ventilation (Section 4B) provisions of the ADG. Therefore, the proposed solar access and natural ventilation is supportable.	Yes
3.2.2 Visual and Acoustic Privacy	The proposed development does not comply with the minimum separation distances between buildings and side and rear boundaries as specified in Section 3F of the ADG.	No
3.5 Apartment Buildings		
3.5.1 Key Development Standards for Apartment Buildings		
3.5.1.1 Minimum Site Frontage		
<i>Min. 24m site frontage at building line</i>	The proposal complies with the minimum site frontage.	Yes
3.5.1.2 Preliminary Building Envelope		
Building Height		
<i>11m (Three storeys)</i>	Eastern building: part 3 part 4 storeys.	No – However supportable on merit. See

	<p>Western building: part 3; part 4/5 storeys due to western portion of the basement being above ground by more than 1m</p> <p>Note: Refer to comment above regarding the proposed variation to Clause 4.3 Height of Buildings.</p>	discussion on height variation.
<i>Any part of a basement or subfloor area that projects greater than 1m above NGL comprises a storey.</i>	A part of the proposed basement protrudes more than 1m above NGL at the western building and is therefore considered a storey.	Noted
Street Setback		
<i>6m front setback (including 3m setback for landscape)</i>	<p>The subject site is within the Morton Street Precinct which requires a 4-metre front setback. The proposal achieves a front setback of 4 metres albeit with some ground floor terraces (POS) encroaching into the setback area, giving them a front setback of 2.750m.</p> <p>It is also noted that the basement encroaches 1 metre into the 4-metre setback, resulting in a 3-metre setback, which has implications for adequate provision of landscaping and deep soil.</p> <p>The 1m reduction to the front setback could also compromise the streetscape's quality or pedestrian experience.</p>	No
Side and Rear Setbacks		
<i>Side and rear setback are to be provided to ensure compliance with the residential privacy and separation requirements of the ADG.</i>	See ADG discussion.	Noted.
3.5.1.4 Open Space and Landscape		
<p><u>Deep Soil Zone</u> Required: Min. 30% of the site (50% to be located at the rear)</p> <p>On sites over 1,500m², a min. dimension of 6m will be required for at least 7% of the total site area in accordance with the ADG.</p> <p>The remaining 23% of the deep soil zone may be provided with a minimum dimension of 4m x 4m.</p>	<p>Site Area: 5,160.7m²</p> <p>Required: 1,548.2m² or 30%</p> <p>Proposed (as stated on the plans): 1,571m² or 30.4%. (with 3m dimensions)</p> <p>However, the area nominated as deep soil on the plans do not appear to comply and are located within areas that steeply fall to the foreshore area, with no details of landscaping or planting species. These deep soil areas also include impervious areas; ramps, steps, retaining walls etc.</p>	No
<p><u>Basements</u> Where basements are provided and extend beyond the building envelope, a min. soil depth of 1.2m is to be provided, measured from the top of the slab, and will not</p>	Council's Landscape and Tree Management Officer has reviewed the application and notes that the soil depth and soil volume within planters and over the basement appear to be inadequate and do not meet the requirements of the ADG. Subsequently, Council's Landscape and Tree Management Officer does not support the proposal in its current form.	No

<i>be calculated as part of the deep soil zone.</i>		
<u>Communal Open Space</u> <i>Residential flat buildings must provide communal open space to meet the requirements of Section 3D of the Apartment Design Guide.</i>	<p>Proposed: 1,306m² or 25%</p> <p>However, Council has concerns regarding the usability of the proposed communal open space (COS). The proposed communal open space is to cater for a range of age groups and is to provide sufficient area for recreation. As proposed, the usable area of the communal open space is unclear, with what appears to be several walls and ramps shown on the plan. It is also located in a steep portion of the site, with a sharp fall towards the foreshore area.</p> <p>No details of landscaping for the COS have been provided. In addition, there will likely be conflict with the COS and the public walkway on the southern portion of the COS.</p> <p>It is noted that the communal open space was initially proposed on the roof top of the buildings but has been amended to be located within the foreshore area.</p> <p>The application has not demonstrated that the proposed communal open space is usable and practical for residents.</p> <p>It is also noted that the Department of Planning and Environment – Water are not supportive of the proposal in its current form and raised significant concerns with the proposed outdoor communal space area and path/stairs to the existing shared river path encroaching into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland. This is considered to be a contravention of the Department's Controlled Activity Guidelines for Riparian Corridors that require no encroachments into the inner VRZ (in this case 20m from the coastal wetland boundary).</p> <p>Note: Refer also to Assessment under Section 3D of the Apartment Design Guide.</p>	No
<u>Private Open Space</u> <i>Private open space with a min. dimension of 2 metres must be provided for each dwelling as follows:</i> <ul style="list-style-type: none"> a) 1-bedroom/studio units must provide a minimum of 8m² per dwelling. b) 2-bedroom units must provide a minimum of 12m² per dwellings. 	The proposal provides sufficient private open space as per Section 3D of the ADG.	Yes
3.5.1.5 Parking Design and Vehicular Access	<p>Basement carparking is proposed.</p> <p>Council's Traffic and Transport section have reviewed the proposed parking design and vehicular access and raise no objections subject to conditions of consent to be imposed in the event of an approval.</p>	Yes
3.5.1.6 Internal Amenity	The development proposes 3.1m ceiling heights and several units have dual aspects to increase cross ventilation.	Yes

3.6 Residential Subdivision		
3.6.1 Site Consolidation and Development on Isolated Sites	The proposed development will not result in the creation of an isolated lot that could not be developed in compliance with the relevant planning controls, including the PLEP 2023 or PDCP 2023.	N/A
Part 5 – Environmental Management		
5.1 Water Management	Council's Senior Catchment and Development Engineer has reviewed the application and raises no objections subject to conditions of consent to be imposed in the event of an approval.	Yes
5.2 Hazard and Pollution management		
5.2.1 Control of Soil Erosion and Sedimentation	Council's Environmental Health officer has reviewed the application and raises no objections subject to conditions of consent to be imposed in the event of an approval.	Yes
5.2.2 Acid Sulfate Soils	The site is identified as containing Class 5 Acid Sulphate Soil however an Acid Sulphate Soils Management Plan is not required to be prepared.	Yes
5.2.3 Salinity	The proposal is not identified on the map.	N/A
5.2.4 Earthworks and Development of Sloping Land	Council's Senior Catchment and Development Engineer has reviewed the application and raises no objections with respect to earthworks, subject to conditions of consent to be imposed in the event of an approval.	Yes
5.2.5 Land Contamination	A search of Council records did not include any reference to contamination on site or uses on the site that may have caused contamination.	N/A
5.4.8 Waste Management	Council's Environmental Health officer, with responsibility for waste management, has reviewed the application and raises no objections subject to conditions of consent to be imposed in the event of an approval.	Yes
Part 6 – Traffic and Transport		
6.1 Sustainable Transport		
6.2 Parking and Vehicular Access	Council's Traffic and Transport Engineer has reviewed the application and raises no objections subject to conditions of consent to be imposed in the event of an approval.	Yes
6.3 Bicycle Parking	Council's Traffic and Transport Engineer has reviewed the application and raises no objections subject to conditions of consent to be imposed in the event of an approval.	Yes

PDCP 2023 Part 8 - Morton Street Precinct

Desired Future Character

The Morton Street Precinct is located adjacent to the Parramatta City Centre 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.

New pedestrian and vehicular links create better connections within the precinct and access to the Parramatta River. The river foreshore provides a strong recreational and communal focus for the precinct and beyond. It includes an important riverside pedestrian and bike link between the Parramatta City Centre and the University of Western Sydney. In the short term, the precinct's larger sites are prioritised for renewal. This renewal sets the design and quality benchmark for other development within the precinct.

The built form includes 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. New pedestrian and vehicular links create better connections between the site and the Parramatta River foreshore. The river foreshore provides a strong recreational and communal focus. It includes an important riverside pedestrian and cycleway to facilitate the link between the Parramatta City Centre and the University of Western Sydney.

The development of the precinct allows 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.

Objectives

O.01 Ensure that new development:

- a) Provides buildings with articulation and an attractive composition of building elements.*
- b) Results in minimal overshadowing of adjoining development, particularly windows of living areas, solar collectors and outdoor recreation areas.*
- c) Provides building separation that supports private amenity.*
- d) Provides active ground floor uses along Morton Street to increase the safety, use and interest of the street.*
- e) Provides open space areas by way of an internal common area courtyard and/or private open space being an extension of the main living areas of individual apartments.*

O.02 Encourage perimeter block development with a strong relationship between buildings and the streetscape and providing a central common open space for the benefit of residents.

O.03 Ensure development fronting the public domain and foreshore provides a visual and physical connection to this area to improve surveillance and safety.

The Morton Street Precinct is split into four areas, as follows:

- Area 1 - Riverfront
- Area 2 - Morton Street – West
- Area 3 - Morton Street – East
- Area 4 - No. 2 Morton Street

The subject site is located within Area 3 – Morton Street East.

Area 3 should adopt a perimeter style of development but building typologies are likely to be more diverse with land along Thomas Street responding more closely to the suburban environment to the north and north-west towards Victoria Road.

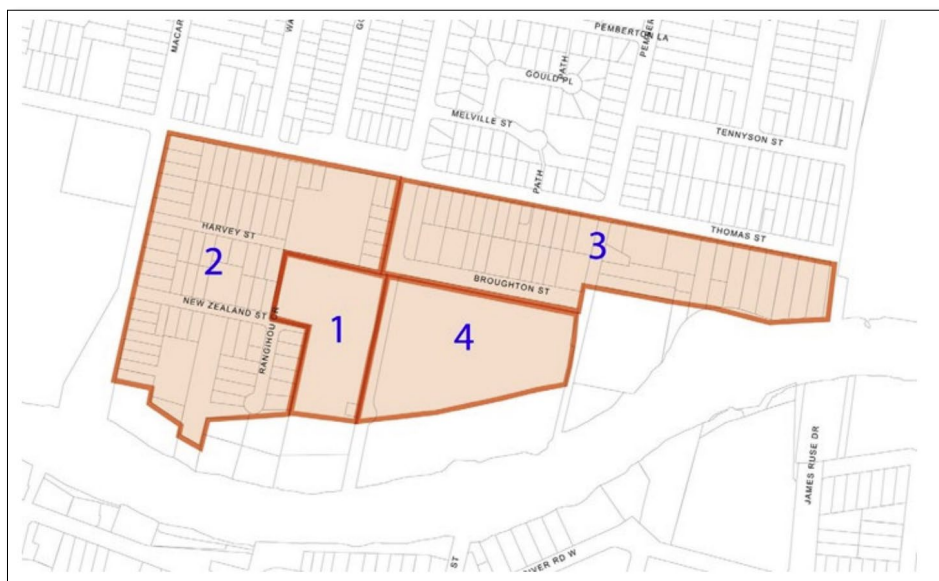


Figure 6. Morton Street Areas – PDCP 2023

Building Form

The built form controls correlate with the indicative building envelopes shown in Figure 8.3.4.1.2. The design of buildings must comply with the relevant standards for each building type.



Figure 7. Indicative Building Envelope

Part 8 Local Centre - Morton Street – Controls for Building Form Type B		
<p>Street Setbacks</p> <p>Minimum 4 metres and maximum of 6 metres from property boundary.</p>	<p>The proposal achieves a front setback of 4 metres albeit with some ground floor terraces (POS) encroaching into the setback area, giving them a front setback of 2.750m.</p> <p>It is also noted that the basement encroaches 1 metre into the 4-metre setback, resulting in a 3-metre setback, which has implications for adequate provision of landscaping and deep soil.</p>	No
<p>Street Frontage Heights</p> <p>Frontage height is to be 11 metres for a 3-storey building and 14 metres for a 4-storey building.</p>	<p>Eastern building: part 3 part 4 storeys with a maximum height of 13.85m however the portion of the building at the Thomas Street frontage is not greater than 11 metres.</p> <p>Western building: part 3; part 4/5 storeys due to western portion of the basement being above ground by more than 1m, with a maximum height of 14.45m however the portion of the building at the Thomas Street frontage is not greater than 11 metres.</p>	Yes
<p>Depth of Building</p> <p>Minimum of 16 metres and maximum 18 metres.</p>	<p>The depth of the building is 40.5 metres.</p>	No – However acceptable on merit.
<p>Site Frontage</p> <p>Minimum 24 metres in Areas 2 and 3.</p>	<p>The proposal has a site frontage of approx. 80 metres.</p>	Yes

Integrated Development

Pursuant to Section 4.46 of the Environmental Planning and Assessment Act 1979, the application was identified as both Nominated Integrated Development and Integrated Development.

Given works are in proximity to a foreshore area containing mangroves, the application was referred to the Department of Primary Industries (Fisheries) pursuant to section 205 of the *Fisheries Management Act 1994* as integrated development. While the Department of Primary Industries (Fisheries) initially raised concerns over potential overshadowing to the highly sensitive key fish habitat (within the mangroves and coastal saltmarsh areas) located on the foreshore area, they advised that a permit under Part 7 of the FM Act is not required as there will be no dredging, reclamation, direct harm to marine vegetation or blockage of fish passage. General terms of approval are therefore not applicable in this instance.

The land is located upon the banks of the Parramatta River and is not within an area exempted from the requirement of controlled activity approvals pursuant to section 91 of the *Water Management Act 2000*. In this case given works are proposed on waterfront land (land within 40m of riverbed), it is considered that a controlled activity approval is required. To this extent, nominated integrated development approval is sought from Department of Planning and Environment – Water pursuant to section 91 of the *Water Management Act 2000*.

In these circumstances, prior to granting consent Council must obtain from the approval body, the Department of Planning and Environment – Water, their General Terms of Approval (GTA) in relation to the development.

The Department of Planning and Environment – Water are not supportive of the proposal in its current form and raised significant concerns with the proposed outdoor communal space area and path/stairs to the existing shared river path encroaching into the required inner and outer Vegetated Riparian Zone (VRZ) from the boundary of the adjacent mapped coastal wetland. This is considered to be a contravention of the Department's Controlled Activity Guidelines for Riparian Corridors that require no encroachments into the inner VRZ (in this case 20m from the coastal wetland boundary) and that any encroachments into the outer VRZ (a further 20m from the inner VRZ boundary) are offset with appropriate riparian offsets.

The Department of Planning and Environment – Water has not provided General Terms of Approval (GTA) in relation to the development.

Given the failure of the relevant approval body to issue a GTA, and in accordance with Section 4.47(4) of the EP&A Act 1979, the application is recommended to be refused on the basis of the aforementioned provision, reproduced below –

“(4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.”

Therefore, it is recommended that the application be refused.

10 EP&A REGULATION 2021

If the application were recommended for approval, conditions of consent would have been recommended for compliance with the relevant sections of the EP&A Regulations 2021.

11 PUBLIC CONSULTATION

11.1 NOTIFICATION AND ADVERTISING

The application was notified, on two separate occasions, in accordance with Council's Consolidated Notification Procedures. In response three (3) unique submissions were received.

The issues raised within those submissions are addressed below. Issues have been grouped to avoid repetition.

Issue	Response
Concerns are raised with respect to increased traffic congestion arising from the development.	Council's Traffic Engineer has reviewed the application and the submitted traffic and parking assessment, and analysed expected traffic generation, and determined that the development would not be expected to cause significant impact on the surrounding road network.

Concerns are raised with the side setbacks which will result in unacceptable overshadowing to 81-83 and 93-95 Thomas Street.	While there will be some overshadowing to the adjoining properties, it is considered negligible and not overly impactful.
Concerns that the proposal would contribute to overdevelopment of the area.	The proposed development is permissible with consent in the R4 High Density Residential zone. It is noted that the surrounding area is currently undergoing development. The remainder of the R4 zoned area is envisioned to be redeveloped in some form in the future
Concerns are raised with potential privacy impacts to the adjoining townhouses at 81-83 Thomas Street, particularly from the balconies on the western elevations.	It is noted the amended proposal included privacy screening on the balconies on the western elevations.

11.2 CONCILIATION CONFERENCE

On 11 December 2017, Council resolved that:

“If more than 7 unique submissions are received over the whole LGA in the form of an objection relating to a development application during a formal notification period, Council will host a conciliation conference at Council offices.”

Conciliation Conference – Not Required

The application received three (3) unique submissions during the formal notification periods and as a result a Conciliation Conference was not required to be held.

12 LIKELY IMPACTS OF THE DEVELOPMENT

The likely impacts of the development have been considered in this report.

13 SUITABILITY OF THE SITE

The site comprises several constraints including being mapped as being within a foreshore area and riparian and waterways pursuant to PLEP 2023, and also that the site, being located on the northern bank of the Parramatta River, is classified as being partly within the High Flood Risk Precinct (the southern section near the riverbank), partly within the Low Flood Risk Precinct, with the remainder of the site not being flood-affected.

Council is not satisfied that the site is suitable for the development as proposed as the application has not satisfactorily demonstrated that the proposal adequately accounts for and addresses these risks.

14 DEVELOPMENT CONTRIBUTIONS

14.1 SECTION 7.12 CONTRIBUTIONS

If the application were recommended for approval, a condition of consent would have been recommended for the payment of the Section 7.11 contributions in accordance with the City of Parramatta (Outside CBD) Development Contributions Plan 2021.

14.2 HOUSING PRODUCTIVITY CONTRIBUTION

If the application were recommended for approval, a condition of consent would have been recommended for the payment of the Housing Productivity Contribution in accordance with the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024*.

15 BONDS

A condition of consent relating to the payment of a Security Bond would have been imposed, if the application was recommended for approval.

16 PUBLIC INTEREST

Due to the matters outlined in the report, a number of circumstances have been identified to indicate this proposal would be contrary to the public interest.

17 CONCLUSION

Refusal

The Development Application has been assessed under the relevant head of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Housing) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Sustainable Building) 2022, State Environmental Planning Policy (Planning Systems) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, Parramatta Local Environmental Plan 2023 (PLEP 2023) and Parramatta Development Control Plan 2023 (PDCP 2023) and is considered to be unsatisfactory.

Given the significant issues, as outlined in this report, it is considered necessary to recommend the application for refusal.

Therefore, the Development Application is recommended for refusal.

18 RECOMMENDATION

REFUSAL

That the Sydney Central City Planning Panel, exercising the functions of Council, pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979, refuse DA/344/2023 for the following reasons.

The Development Application be refused for the following reasons:

- The proposed development does not contain the approval required under Section 4.46 of the Environmental Planning and Assessment Act 1979, with regard to Integrated Development.
 - Water Management Act 2000
- The proposed development proposes unacceptable variations and departures to the relevant development standards of Parramatta Local Environmental Plan 2023 in relation to the following:
 - Floor space ratio
 - Biodiversity,
 - Riparian land and waterways,
 - Foreshore area.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The proposed development proposes unacceptable variations and departures to the relevant design principles (for residential apartment development in Chapter 4 Design of Residential Apartment Development) under the provisions of State Environmental Planning Policy (Housing) 2021 in relation to the following:
 - 2G Street setback,
 - 2H Side and rear setbacks,
 - 3C Public domain interface,
 - 3D communal & public open space,
 - 3E Deep soil zone,
 - 4E Private Open Space and balconies,
 - 4O Landscape design,
 - 4P Planting on structures.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The proposed development does not satisfy the relevant requirements under the provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021 in relation to the following:

- Chapter 2 - Vegetation in Non-Rural areas,
- Chapter 6 – Water Catchments.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The proposed development does not satisfy the relevant requirements under the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 in relation to the following:
 - Chapter 2 – Coastal Management.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- The proposed development does not satisfy the requirements of Parramatta Development Control Plan (PDCP) 2023 in relation to the following:
 - Public domain,
 - Accessibility and connectivity.
 - Dwelling mix,
 - Accessible and adaptable housing,
 - Visual and acoustic privacy,
 - Preliminary building envelope – setbacks,
 - Open space and landscape,
 - Setbacks.

(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).

- The proposal has not satisfactorily demonstrated that the site is suitable for the proposed development, or that the proposal would not have an environmental impact on the natural environment, particularly in relation to the communal open space situated next to the adjacent mapped coastal wetland and foreshore area.

(Section 4.15(1)(b)(c) of the Environmental Planning and Assessment Act, 1979).

- The submitted plans are inadequate and lack detail which has prevented a complete assessment of the application.

(Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979).

- The proposal is not in the public interest given the submissions received.

(Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979).