

### Report to Sydney Central City Planning Panel

<b>Panel Reference</b>	PPSSCC- 521
<b>DA Number</b>	<b>DA/72/2024</b> PAN-401664
<b>LGA</b>	City of Parramatta Council
<b>Proposed Development</b>	Demolition, earthworks, site remediation, tree removal and construction of a warehouse and distribution centre. The development is proposed in two phases, the existing hardstand surfaces to be utilised as storage premises in Phase 1 and warehousing and distribution premises will be constructed and operated under Phase 2. The application is Nominated Integrated Development pursuant to Water Management Act 2000 and Integrated Development pursuant to Roads Act 1993. The application will be determined by Sydney Central City Planning Panel.
<b>Street Address</b>	181 James Ruse Drive, Camellia
<b>Property Description</b>	Lots 1- 6 DP 2737, Lots 2 0 17 and 25 DP 6856 and Lots 1 – 4 DP 128720
<b>Applicant</b>	Abacus Camellia Investments Pty Limited
<b>Owner</b>	Abacus Camellia Investments Pty Limited
<b>Date of Lodgement</b>	7 February 2024
<b>Number of Submissions</b>	No submissions.
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria</b>	General Development >\$30 million
<b>List of All Relevant s4.15 Matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment (EP&amp;A) Act 1979</li> <li>• EP&amp;A Regulations 2021</li> <li>• Water Management Act 2000</li> <li>• Fisheries Management Act 1994</li> <li>• Protection of the Environment Operations Act 1997</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Industry and Employment) 2021</li> <li>• SEPP (Industry and Employment) 2021</li> <li>• Parramatta Local Environmental Plan 2023</li> <li>• Parramatta Development Control Plan 2023</li> </ul>
<b>Attachments</b>	<ul style="list-style-type: none"> <li>• Attachment A – Assessment Report</li> <li>• Attachment B – Clause 4.6 Variation (Height)</li> </ul>
<b>Clause 4.6 Requests</b>	<ul style="list-style-type: none"> <li>• Yes - Clause 4.4 – Height of PLEP 2023</li> </ul>

<b>Report Prepared By</b>	Denise Fernandez, Senior Development Assessment Officer
<b>Report Date</b>	8 January 2025

#### **Summary of S4.15 matters**

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

#### **Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

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

#### **Clause 4.6 Exceptions to development standards**

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

#### **Special Infrastructure Contributions**

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

#### **Conditions**

Have draft conditions been provided to the applicant for comment? **N/A (Refusal)**  
*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## 1. Executive Summary

Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments reveals that most matters for consideration have not been satisfactorily addressed.

The subject site is located at 181 James Ruse Drive, Camellia and is currently vacant with concrete capping covering most of the site. The site is bounded by the Parramatta River to the north, the Parramatta Light Rail to the east, industrial development to the south and James Ruse Drive to the west.

The site has a long history of industrial development and had previously been the location for James Hardie asbestos. Due to the history of industrial use, the site is heavily contaminated and is subject to a Public Positive Covenant to ensure that current and future site owners are aware of the presence of the contamination. The covenant also ensures that existing concrete cap over the site is maintained. The site is also regulated by an Environmental Protection Licence (EPL) which authorises the treatment of the contaminated soil as a scheduled activity under Schedule 1 of the *Protection of Environment Operations Act 1997* (PoEO Act). It is noted that as part of the conditions of the EPL, prior approval from the NSW Environment Protection Authority (NSW EPA) is required for any works that result in the disturbance to the existing concrete cap.

The proposed development seeks approval for works to be carried out over 2 Phases. The works within each phase are:

Phase 1 – Use of the existing hardstand surfaces across the site for the purposes of materials handling and storage. The works also require the provision of 2 x demountable units.

Phase 2 – Construction and use of the premises for the purposes of warehousing. The works under Phase 2 also include demolition, earthworks and site remediation (which include, hardstand capping, isolation of contaminated material in engineered cells, bio pile treatment and entombment and landfarming).

Upon review of the proposal, concerns are raised with regards to the legal pathway for approval of the proposed works, specifically the treatment of contaminated soil. NSW EPA asserts that the proposed works triggers Section 15 of Schedule 1 of the PoEO Act and therefore requires an EPL. It is noted that the thresholds under the PoEO Act for a EPL is also the same as Clause 20 of Schedule 3 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) which relate to designated development. Council concurs with the EPA that the proposal is designated development. Council therefore cannot recommend approval of the subject application as it was not lodged and prepared as designated development.

The application also has not demonstrated that it is a suitable location or proposal having regard to flooding, accessibility, public domain, tree removal and vegetation management.

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

## 2. Key Issues

- Clause 20, Schedule 3 of the EP&A Regulation – Designated Development.

NSW EPA has reviewed the proposed contamination works which require the treatment of the contaminated soil. Upon review, NSW EPA advises that it requires an EPL due to the volume of soil to be treated pursuant to Section 15, Schedule 1 of the PoEO Act. It is noted that EPL thresholds is the same as Clause 20, Schedule 3 of the EP&A Regulation which relate to designated development. Accordingly, Council has also advised the proponent that the proposal is considered designated development. The application was not lodged and / or prepared as designated development.

- Flooding

The application is flood prone due to its proximity to Parramatta River. Concern is raised that evacuation of the site during a PMF flood event is unlikely and that reliance on shelter in place is not recommended for sites that are identified as high-hazard (i.e. H5 or H6) zones.

It is also noted that a 6m solid attenuation fence is proposed across the width of the site addressing the foreshore. Concern is raised that the construction of this acoustic measure will adversely impact the flood behaviour.

- Earthworks

The application proposes significant earthworks to excavate and fill the site to accommodate the proposed warehouse building under Phase 2 of the works. Excavation works are proposed below the Flood Planning Level (FPL) and is generally not permitted in accordance with Table 5.1.1.2 of Parramatta Development Control Plan 2023. The application has not demonstrated via detailed hydraulic modelling that the earthworks above the FPL and up to the Probable Maximum Flood will not adversely impact on flood behaviour.

- Insufficient information

The application has not provided information with regards to public domain, accessibility, tree removal and landscaping, vegetation management and public art.

## 3. Background and Site Context

### 3.1 Site History

The site is known as 181 James Ruse Drive, Camellia with a total area of approximately 6 hectares.

The site has a long history of industrial use with the primary historical use being for the manufacture of asbestos-containing materials by the former James Hardie Company Ply Ltd (formerly the Asbestos Slate and Sheet Manufacturing Co. Ltd 1962-1993) between 1957 and 1983. This previous use of the site has resulted in soil contamination, with the main contaminant being asbestos wastes.

The Remediation Action Plan submitted with the application contains a summary of previous ownership / land uses / activities at the site.

1816 to 1897	The site was used for mixed residential and rural land use. After which time, the site was divided into private lots for various uses.
1917 until 1990s:	The use of the land was predominantly industrial and included use by Camellia Chemical Company, the James Hardie Decorated Boards Warehouse, Stewart Bros and Rheem Australia Pty. James Hardie manufactured asbestos based products on the property east of the site (over the rail corridor).
1925 onwards:	The Camellia Chemical Company factory produced the arsenic-based Camellia Weed Killer on the site.
Late 1950s onwards:	James Hardie progressively acquired and filled areas of the site with waste and set up operational facilities including a factory, asbestos product stores and a trade facility.
1983:	All James Hardie activities were decommissioned on the site.
Between 1995 and 2001:	Aboveground structures were demolished to slab level. Approximately 95% of the site was left as sealed with either concrete or bituminous concrete pavements, with the remaining unsealed areas comprising landscaped areas and embankments.
Between 2000 and 2003:	Sydney Water Corporation took ownership of the land and undertook works with NSW EPA to clean up surface asbestos contamination at the site and improve surface seals (concrete and bituminous concrete pavements) to ensure that buried asbestos waste was isolated.
July 2004:	The site became subject to a Positive Covenant (Notice. AA746178PC).
2007:	Summer Hill Business Estate acquired the site.
2022:	Summer Hill Business Estate divested the site to Abacus.

### 3.2 Previous Applications on the Site

Date	Comments
<b>10 August 2015 (consent granted)</b>	DA/750/2013 approved the site remediation works (predominantly involving the excavation of asbestos and transfer into containment cells on the site). The development was approved as designated development as defined by Schedule 3 of the Environmental Planning and Assessment Regulation 2000. A review of Council's records does not indicate confirmation of the physical commencement for the approved works pursuant to DA/750/2013 and that the consent has been activated.
<b>12 December 2024 (refusal notice)</b>	DA/465/2024 which sought approval for foreshore capping, validations work, and implementation of a Vegetation Management Plan was refused under delegation. The application was refused for the following reasons: <ol style="list-style-type: none"> <li>1. The application has not been lodged as Designated Development in accordance with Clause 2.7, subclause (2) of the SEPP (Resilience and Hazards) 2021.</li> <li>2. The proposal fails to consider and address the requirements pursuant of the Fisheries Management Act</li> </ol>

	<p>1994 and has also failed to obtain concurrence from the relevant authority (NSW Department of Primary Industries and Regional Development – Fisheries).</p> <ol style="list-style-type: none"> <li>3. The application does not have concurrence from Department of Planning and Environment – Water in accordance with Section 91 of the Water Management Act 2000 – Activity Approvals.</li> <li>4. The proposal fails to consider and address the requirements and provisions pursuant of the Protection of the Environment Operations Act 1997.</li> <li>5. The proposal fails to consider and address the requirements and provisions pursuant of the Biodiversity Conservation Act 2016.</li> <li>6. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements of the <i>State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2 – Coastal Management and Chapter 4 – Remediation of Land</i>.</li> <li>7. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements to the following clauses of the <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 2 – Vegetation in Non-Rural Areas and Chapter 6 – Water Catchments</i>.</li> <li>8. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements to the following clauses of the <i>Parramatta Local Environment Plan 2023</i>: <ol style="list-style-type: none"> <li>a. <i>Clause 2.3 Zone objectives and Land Use Table</i></li> <li>b. <i>Clause 5.7 Heritage Conservation</i></li> <li>c. <i>Clause 5.21 Flood Planning</i></li> <li>d. <i>Clause 6.2 Earthworks</i></li> <li>e. <i>Clause 6.3 Biodiversity</i></li> <li>f. <i>Clause 6.4 Riparian Land and Waterways</i></li> <li>g. <i>Clause 6.5 Stormwater Management</i></li> <li>h. <i>Clause 6.6 Foreshore Area</i></li> </ol> </li> <li>9. In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply the following parts of the Parramatta Development Control Plan 2023: <ol style="list-style-type: none"> <li>a. <i>Part 5 Section 5.1 Water Management</i></li> <li>b. <i>Part 5 Section 5.2.1 Control of Soil Erosion and Sediment</i></li> <li>c. <i>Part 5 Section 5.2.3 Salinity</i></li> <li>d. <i>Part 5 Section 5.2.4 Earthworks and Development of Sloping Land</i></li> <li>e. <i>Part 5 Section 5.2.5 Land Contamination</i></li> </ol> </li> </ol>
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	<p>f. Part 5, Section 5.3 Protection and Natural Environment</p> <p>g. Part 5, Section 5.3.1 Biodiversity</p> <p>h. Part 5, Section 5.3.2 Waterways and Riparian Zones</p> <p>i. Part 5, Section 5.3.3 Development on Land Adjoining Land zoned C2 or W1</p> <p>j. Part 5, Section 5.3.4 Tree and Vegetation Preservation</p> <p>k. Part 7.5 Development in Vicinity of Heritage</p> <p>l. Part 8, Section 8.2.4.3 Landscaping</p> <p>10. In accordance with Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposal is not suitable for the site.</p> <p>11. In accordance with Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest.</p>
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#### 4. Application History

Date	Comments
4 October 2023	<p>PL/82/2023 - A pre-lodgement meeting was undertaken for the construction of a storage and warehousing premises to be implemented in two phases. Phase 1 is the use of existing hardstand surfaces across the site as a storage premises. Phase 2 consists of the construction and operation of the warehouse and distribution premises. The advice given at the time outlined the following areas of concern.</p> <ul style="list-style-type: none"> <li>• Submission of a survey plan</li> <li>• Clause 4.6 variation for any departures to the maximum height for the site.</li> <li>• Front setback</li> <li>• Landscaping</li> <li>• Flooding</li> <li>• Contamination</li> <li>• Waterfront land</li> <li>• Biodiversity Protection and Conservation.</li> <li>• Coastal Management</li> <li>• Fisheries Management Act</li> <li>• Parking and Transport</li> <li>• Tree Removal</li> <li>• Acid Sulfate Soils</li> <li>• Earthworks</li> <li>• Built form, mass and streetscape</li> <li>• Heritage Conservation</li> <li>• Camellia and Rydalmere Strategic Precinct</li> </ul>
7 February 2024	DA/72/2024 was lodged.
16 February 2024 to 15 March 2024	Application was advertised.

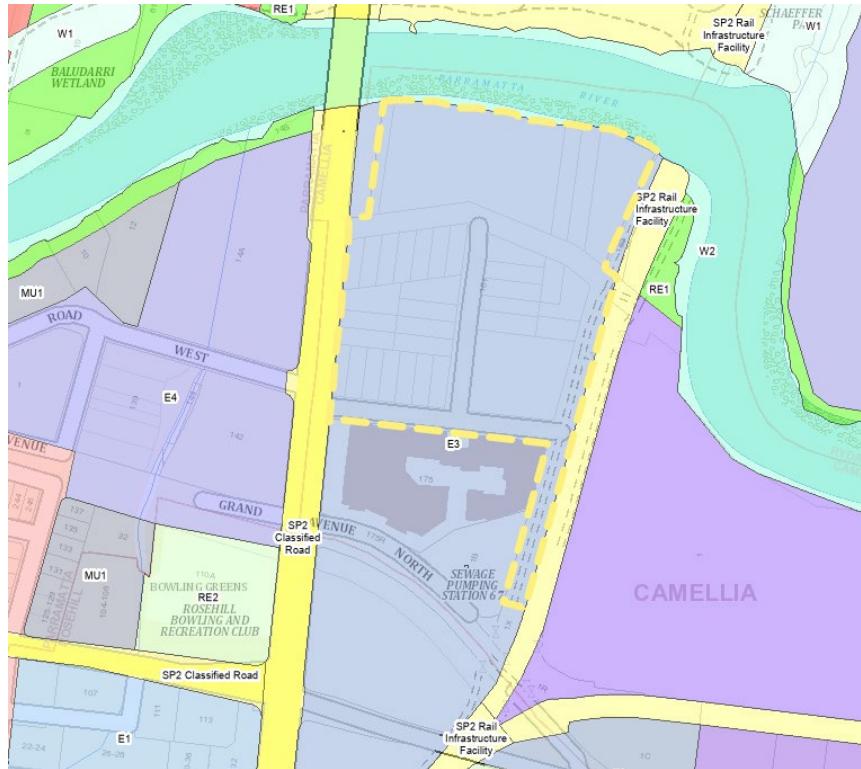
19 February 2024	Sent correspondence to applicant requesting amended plans in response to comments from Council's Biodiversity and Strategic Land Use specialists.
10 April 2024	Sent correspondence to applicant requesting the application be withdrawn mainly as the application was not lodged as Designated Development in accordance with Schedule 3 of the EP&A Regulations 2021.
6 May 2024	Applicant requested an extension of time to submit a response to Council's correspondence.
20 May 2024	Applicant requested an extension of time to submit a response to Council's correspondence until 20 June 2024.
20 June 2024	Applicant provided additional / amended information in response to Council's concerns in its previous correspondence.
18 September 2024	The NSW Environment Protection Authority (EPA) responded to the submission from the applicant reiterating its position that the proposed works triggers Schedule 3 of the EP&A Regulations and that it is therefore designated development.
11 October 2024	Applicant provides additional information to the EPA's previous correspondence which included independent legal advice.
7 November 2024	Sent correspondence to the applicant raising continuing concerns in the areas of flooding, biodiversity, landscaping, public domain and the proposed two-phase use. Transport for NSW has also noted that insufficient information has been received. Accordingly, the Council correspondence requests that the application be withdrawn.
16 December 2024	Applicant submits a response to Council's concerns and provides additional information.
20 December 2024	EPA provides Council with confirmation that it has reviewed the legal advice submitted by the applicant and that the EPA continue to reiterate that the proposed works triggers Schedule 3 of the EP&A Regulations.

## 5. Site Description and Context

The site is known as 181 James Ruse Drive, Camellia. The site is a collection of five (5) separate allotments legally described as Lots 1- 6 DP 2737, Lots 16650 71580 - 17 and 25 DP 6856 and Lots 1 – 4 DP 128720 with a total site area of approximately 6ha.

Most of the site is currently vacant and is predominantly covered by a concrete hardstand area. Vehicular access to the site is currently via James Ruse Drive through an access handle to the south-east of the site.





**Figure 1:** Zoning Map (Yellow dotted line denotes subject site. Parramatta LEP 2023)



**Figure 2:** Aerial Photo (NearMaps)



**Figure 3:** View of Foreshore from James Ruse Drive (Googlemaps)

The land uses of the areas surrounding the site are as follows:

- |        |  |
|--------|--|
| North: | The site is bound by the Parramatta River. The University of Western Sydney Campus is located on the opposite side of the river. |
| South: | The site is bound by industrial and commercial properties.   |
| East:  | The site is bound by the Light Rail corridor.  |
| West:  | The site is bound by James Ruse Drive. Industrial properties are located opposite along James Ruse Drive.                        |

It is noted that eastern boundary of the site adjoins several easements for the purposes of water supply, services pipeline and sewage.

### **5.1 Current Restrictions on the Land**

Due to the presence of the contamination across the site, the site is subject to a Public Positive Covenant under Section 88E of the Conveyancing Act 1919 and Section 27 of the Contaminated Land Management Act 1987. The purpose of the covenant is to ensure that current and future site owners are aware of the presence of the contamination. The covenant also includes wording to ensure that the cap that exists over the site, the concrete and asphalt paving, is maintained. Under the terms of the covenant, any proposed works involving the disturbance of the surface / cap is not to be undertaken without the prior written approval of the EPA.

Attached to the Public Positive Covenant is a Site Management Plan (SMP) prepared by Sydney Water Corporation in March 2004. The SMP identifies the health hazards associated with the site and details management strategies to mitigate these hazards. Primarily this is achieved by ensuring the existing surface capping remains intact to prevent the release of airborne asbestos materials.

## 5.2 Current Regulation of the Premises

The Applicant is the holder of Environment Protection Licence No. 20687 (Licence) which authorises the undertaking of contaminated soil treatment as a scheduled activity under Schedule 1 of the *Protection of Environment Operations Act 1997* (PoEO Act).

Of note, conditions of the licence relevant to the proposed works by the Applicant include but are not limited to:

- restrictions on permitted activities,
- restrictions on affixing items onto the site surface,
- works or activities that damage or break the surface are not permitted and
- The scheduled activity of contaminated soil treatment is not permitted to be undertaken until the EPA provides written approval.

## 5.3 Relevant Background

The SMP requires regular inspections for any deterioration and record any rectification works necessary. Sullivans has been responsible for carrying out these inspections on behalf of Abacus as the responsible landowner. An inspection in July 2022 observed potential historical erosion on the face of the Foreshore Embankment, however it could not be determined when it may have occurred.

Following a meeting with the EPA, the EPL was amended to insert the following clause as follows:

Section 8	<i>Pollution Studies and Reduction Programs</i>
U1	<i>Foreshore capping and validation works.</i>
U1.2	<i>By no later than 30 June 2023, the licensee must engage a suitably qualified and experienced person to prepare a “Site Maintenance Activity – Foreshore Embankment Capping Strategy” (Strategy) for the capping of asbestos contamination to the northern foreshore at the premises, for review and endorsement by the NSW EPA, inclusive of the following:</i> <ul style="list-style-type: none"><li>• <i>An assessment of options, including specifying the lifespan of each option.</i></li><li>• <i>Selection of the preferred option, and methodology to undertake this option.</i></li><li>• <i>Identification of approvals, including but not limited to planning, environmental and health and safety approvals, that would be required to facilitate the Strategy</i></li></ul>

Whilst a Site Maintenance Activity – Foreshore Embankment Capping Strategy was prepared and submitted to the EPA per the reporting requirements of the EPL, Council approval is required for the foreshore capping works. A subsequent development application (DA/465/2024) was lodged with Council for the foreshore works. However, this application was refused on the 12 December 2024 under delegation for the reasons set out in section 3.2 of this report

## 5.4 Camellia – Rosehill Place Strategy

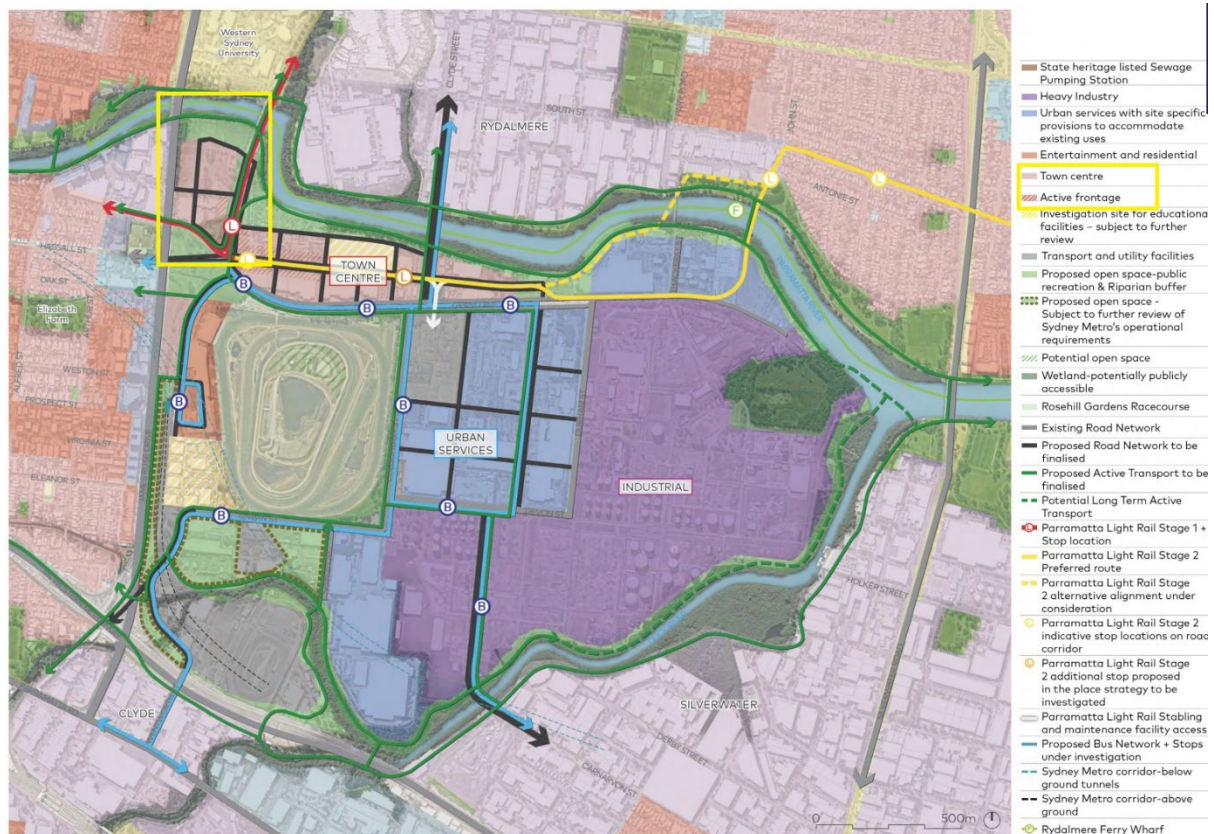
The aim of the place strategy is to build on current economic and employment opportunities, supported by new residential development, improved connectivity and an integrated and holistic



approach to environmental management and sustainability. This in turn will create a place where people love to live, work and enjoy.

The precinct covers approximately 320 hectares of land across the suburbs of Camellia, Rosehill and a portion of Clyde within the Central River City. The precinct is defined by Parramatta River to the north, Duck River to the east, the M4 Motorway to the south and James Ruse Drive to the west, all of which form physical boundaries.

The Place Strategy has earmarked the subject site as the location for a town centre and open space. See image below.



**Figure 4: Camellia-Rosehill Place Strategy (The Camellia-Rosehill Place Strategy).**

The Department of Planning and Environment was invited to provide comment on the application. The Department has advised that it is currently working on rezoning the subject site to allow development on the subject site that aligns with the strategy.

Whilst the proposed application seeks approval for an industrial use which is currently permissible under PLEP 2023, it is noted that it would be inconsistent with the strategic vision of the Place Strategy.

## 6. The Proposal

The application seeks approval to implement the proposed development in two phases:

### **Phase 1**

Existing hardstand surfaces across the site will initially be utilised as storage premises.

Approval is sought for the initial use of existing hardstand surfaces on the site for storage premises. Phase 1 of the proposal involves minimal site works with storage and associated activities utilising existing hardstand on the site. The scope of Phase 1 includes:

- 3 storage zones over existing hardstand, which will be enclosed by a flood barrier.
- 3 material handling zones over existing hardstand.
- Vehicle access to each storage zone will be provided via existing driveways that are internal to the site, which will connect to the primary point of vehicle access from James Ruse Drive at the south-west corner of the site.
- 2 demountable units that will accommodate administrative functions and staff toilets.
- 13 car parking spaces over existing hardstand.

## **Phase 2**

Warehousing and distribution premises will then be constructed and operated.

Upon securing a suitable tenant, the storage premises use will be replaced by warehousing and distribution premises. The initial use hardstand storage premises (Phase 1) will conclude prior to the commencement of construction works for the warehousing and distribution premises. The scope of Phase 2 includes:

- Demolition works and earthworks
- Site remediation which includes:
  - Hardstand capping to seal the site
  - Internment / Isolation of contaminated material within a purpose-built engineered cell / fill zone
  - Bio pile treatment for contaminated material (where both hydrocarbon and asbestos waste co-exist) and entombed in an engineered cell
  - Landfarming treatment for soil materials confirmed free of asbestos and entombed in the engineered cell.
- Construction of 1 x warehouse building with 2 tenancies which consist of:  
Warehouse A1: 13,866m<sup>2</sup> of storage premises floorspace and 670m<sup>2</sup> of ancillary office floorspace. An internal space for loading and material handling is proposed over a floorspace area of 1656m<sup>2</sup>.  
Warehouse A2: 13,024m<sup>2</sup> of storage premises floorspace and 670m<sup>2</sup> of ancillary office floorspace. An internal space for loading and material handling is proposed over a floorspace area of 1749m<sup>2</sup>.
- 2 waste storage rooms with a combined floorspace area of 102m<sup>2</sup>.
- 122 car parking spaces for staff and visitors.
- Loading zone with capacity for 16 heavy vehicles towards the rear portion of the site.
- Landscaping and vegetation management.
- Flood mitigation works.
- Boundary adjustment to accommodate deceleration lane James Ruse Drive
- Removal of 175 trees
- Signage zones

## **7. Public Notification**

Notification Period: 16 February 2024 to 15 March 2024

Submissions received: No submissions received.

## 8. Referrals

Any matters arising from internal/external referrals not dealt with by conditions. A detailed assessment is provided at <b>Attachment A</b> .	Yes
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## 9. Environmental Planning and Assessment Act 1979

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

## 10. Consideration of SEPPs

Key issues arising from evaluation against SEPPs	Yes - A detailed assessment is provided at <b>Attachment A</b> .
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## 11. Parramatta Local Environmental Plan 2023

LEP Section	Comment or Non-Compliances
Part 1 – Preliminary	<ul style="list-style-type: none"><li>• Inconsistent</li></ul>
Part 2 – Permitted or Prohibited Development	<ul style="list-style-type: none"><li>• Permissible in the zone</li><li>• Inconsistent with zone objectives</li></ul>
Part 3 – Exempt & Complying Development	<ul style="list-style-type: none"><li>• Not Applicable</li></ul>
Part 4 – Principal Development Standards	<ul style="list-style-type: none"><li>• Non-Compliant</li></ul>
Part 5 – Miscellaneous Provisions	<ul style="list-style-type: none"><li>• Provisions not satisfied</li></ul>
Part 6 – Additional Local Provisions	<ul style="list-style-type: none"><li>• Non-Compliant</li></ul>

## 12. Parramatta Development Control Plan 2023

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

DCP Section	Comment or Non-Compliances
Part 2 – Design in Context	<ul style="list-style-type: none"><li>• Inconsistent</li></ul>
Part 4 – Non – Residential Development	<ul style="list-style-type: none"><li>• Inconsistent</li></ul>
Part 5 – Environmental Management	<ul style="list-style-type: none"><li>• Inconsistent</li></ul>
Part 7 – Heritage and Archaeology	<ul style="list-style-type: none"><li>• Consistent</li></ul>
Part 8 – Centres, Precincts, Special Character Areas and Site Specific Sites	<ul style="list-style-type: none"><li>• Inconsistent</li></ul>

## 13. Conclusion

For reasons stated throughout this report, the development has not demonstrated that it is a satisfactory response to the objectives and controls of the applicable planning framework.

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

#### 14. Recommendation

**That** the Sydney Central City Planning Panel **refuse** DA/72/2024 for reasons contained within the Assessment Report.

## ATTACHMENT A - PLANNING ASSESSMENT

<b>SCCPP Reference:</b>	PPSSCC- 521
<b>DA No:</b>	DA/72/2024 PAN-401664
<b>Address:</b>	181 James Ruse Drive, Camellia

### 1. Overview

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

#### 1.1 Matters for consideration

Provision	Comment
Section 4.15 (1)(a)(i) - Environmental planning instruments	Refer to Section 3 below
Section 4.15 (1)(a)(ii) - Draft planning instruments	Not applicable
Section 4.15 (1)(a)(iii) - Development control plans	Refer to Section 4 below
Section 4.15 (1)(a)(iia) - Planning agreements	Refer to Section 5 below
Section 4.15 (1)(a)(iv) - The regulations	Refer to Section 6 below
Section 4.15 (1)(a)(v) - <i>Repealed</i>	Not applicable
Section 4.15 (1)(b) - Likely impacts	Refer to Sections 3, 4 and 7 below
Section 4.15 (1)(c) - Site suitability	Refer to Section 8 below
Section 4.15 (1)(d) - Submissions	Refer to Section 9 below
Section 4.15 (1)(e) - The public interest	Refer to Section 10 below

#### 1.2 Referrals

The following external and internal referrals were undertaken:

External Referrals	
Department of Planning and Environment - Water	<p><b>Concurrence obtained under the Water Management Act 2000.</b></p> <p>The proposal was referred to the Department of Planning and Environment - Water pursuant to the provisions of the Water Management Act 2000. In response, DPE - Water raised no objections to the proposal, and issued their General Terms of Approval (IDAS – 2024 – 10136).</p>
TfNSW - Parramatta Light Rail	<p><b>Concurrence obtained under Cl. 2.98 and 2.99 of the SEPP (Transport and Infrastructure) 2021.</b></p> <p>The proposed development is located within 25m of the Parramatta Light Rail corridor and includes ground penetration deeper than 2m. Upon review of the proposal, TfNSW – Parramatta Light Rail raised no objections subject to conditions of consent.</p>
TfNSW – Roads	<p><b>Concurrence under Section 138 of the Roads Act not obtained.</b></p> <p>The application was referred to Transport for NSW – Roads for comment. TfNSW provided the following:</p>



	<p><i>TfNSW has reviewed the submitted application and requests the following matter should be addressed before TfNSW can provide support to the proposal:</i></p> <p><i>It is noted that the proposed left turning deceleration lane on James Ruse Drive is 80 metres long and it has been checked against the posted speed. The length of the deceleration lane must be checked against the design speed.</i></p>
Department of Primary Industries and Regional Development - Fisheries	The proposal was referred to the Department of Primary Industries and Regional Development - Fisheries (DPIRD Fisheries) as part of the subject site along the northern boundary is identified on the Key Fish Habitat Map. Upon review of the proposal, DPIRD Fisheries raised no objections subject to conditions of consent.
Endeavour Energy	The application was referred to Endeavour Energy. Upon review of the proposal, Endeavour Energy raised no objections subject to conditions of consent.
Sydney Water	The application was referred to Sydney Water. Upon review of the proposal, Sydney Water raised no objections to the development subject to conditions of consent
NSW Environment Protection Authority	<p>The application was referred to the EPA due to the contaminated nature of the site. The EPA also regulate the site per the restrictions on the site as well as the EPA license.</p> <p>Upon review of the application, the EPA noted the following:</p> <p><i>Schedule 1 of the Protection of the Environment Operations Act 1997 outlines scheduled activities for which an Environment Protection Licence is required inclusive of thresholds for select activities. Contaminated soil treatment under Section 15 of Schedule 1 is defined as:</i></p> <p><i>(1) This clause applies to contaminated soil treatment, meaning the on-site or off-site treatment of contaminated soil (including, in either case, incineration or storage of contaminated soil but excluding excavation for treatment at another site).</i></p> <p><i>(2) The activity to which this clause applies is declared to be a scheduled activity if—</i></p> <p><i>(a) in any case, it has the capacity to treat more than 1,000 cubic metres per year of contaminated soil received from off site, or</i></p> <p><i>(b) where it treats contaminated soil originating exclusively on site, it has a capacity—</i></p> <p><i>(i) to incinerate more than 1,000 cubic metres per year of contaminated soil, or</i></p> <p><i>(ii) to treat (otherwise than by incineration) and store more than 30,000 cubic metres of contaminated soil, or</i></p> <p><i>(iii) to disturb more than an aggregate area of 3 hectares of contaminated soil.</i></p> <p><i>It is noted, the thresholds outlined in 2(b) above are shared with Clause 20 of Schedule 3 of the Environmental Planning and</i></p>

	<p><i>Assessment Regulation 2021 (EP&amp;A Regulation) which relate to designated development.</i></p> <p><i>The EPA considers Section 15(2)(b)(ii) and (iii) of the PoEO Act are likely to be triggered by the remediation works proposed in the documents provided for DA/72/2024.</i></p> <p><b>Regulation of Significantly Contaminated Land</b></p> <p><i>The EPA is currently determining whether an assessment of contamination at the Premises is required. This assessment would result in a determination of whether regulation is required under the Contaminated Land Management Act 1997 (CLM Act), including whether a declaration of significantly contaminated land is appropriate. The EPA will advise Council and the Applicant whether regulation under the CLM Act is proposed.</i></p> <p><b>Covenant and Licence restrictions and approval requirements</b></p> <p><i>Under the Licence and Covenant, breaking ground (or ground disturbance) at the Premises is not permitted without prior approval from the EPA. The information provided in the Application in its current form is not sufficient for the EPA to conduct an adequate assessment, and as such, further information from the applicant would be required prior to approval to break ground being given.</i></p> <p><i>If development works are approved and completed on the Premises, the SMP under the Covenant will require updating to reflect the current site conditions. Future occupants and owners of the Premises would be required to adhere to the requirements of the revised SMP.</i></p> <p><b><u>Planning Comment:</u></b></p> <p>The applicant provided a response to the matters raised by the EPA, which included their own legal advice asserting that the works do not constitute as designated development. This information was forwarded to the EPA and upon review of the applicant's submitted legal advice, the EPA remains of the opinion that as the works require a license (due to the amount of soil to be moved), it also triggers designated development per Schedule 3 of the EP&amp;A Regulation.</p> <p>Council concurs with the view that the works constitute designated development under Schedule 3 due to the amount of soil to be moved. The application was not lodged as nor supported by the relevant documentation for designated development. Accordingly, the application cannot be considered for approval.</p>
Department of Planning and	Council notified the Department of the application and extended an invitation to provide comment as the site is within the scope of the

Environment (the Department)	<p>Camellia – Rosehill Place Strategy. Upon review of the proposal the Department provided the following:</p> <p><i>The Department appreciates the opportunity to comment on the development application.</i></p> <p><i>I note the Place Strategy was finalised in 2022 and is publicly available on the Department's planning portal. The Place Strategy sets a vision for future land use change including a new town centre in the northwest of the precinct. The Department is preparing a rezoning to facilitate the Place Strategy.</i></p> <p><b>Planning Comment:</b></p> <p>Whilst the Department did not raise any objections with the proposal, it is noted that the Place Strategy has earmarked the subject site for a future town centre. The application for an industrial use is contrary to the strategic outcomes as outlined by the Place Strategy.</p>
<b>Internal Referrals</b>	
Environmental Health Officer – Acoustic	No objections subject to conditions of consent.
Environmental Health Officer – Contamination	No objections subject to conditions of consent.
Environmental Health Officer – Waste	No objections subject to conditions of consent.
Strategic Land Use Planning	No objections, subject to conditions of consent.
Traffic Engineer	No objections, subject to conditions of consent.
City Assets and Operations	No objections
Heritage Adviser	No objections
Ampol	No objections
Universal Access	<p>Not supported</p> <p>Amendments are required demonstrating the following:</p> <ul style="list-style-type: none"> <li>• The applicant is requested to seek expert access advice.</li> <li>• Ensure compliant accessible paths of travel are provided throughout the facility.</li> <li>• Ensure the active leaf of double doors provide a clear opening no less than 850mm.</li> <li>• Ensure low level door thresholds are provided.</li> <li>• The abutments of varying surfaces are to provide level transitions.</li> <li>• Ensure equipment and furniture within common, communal, lunch and office areas provide suitable features for a person with a mobility impairment.</li> </ul>
Urban Design - Public Domain	Not supported

	<p>Insufficient information has been received to allow a full assessment of the application with regards to Council's public domain requirements. The outstanding information pertains to:</p> <ul style="list-style-type: none"> <li>Submitted plans does not provide adequate spot level and gradient details of the footpath verge which is required to demonstrate proper alignment for pathway drainage.</li> <li>Insufficient landscape / planting area along the southern boundary to allow for building separation.</li> <li>Lack of details regarding treatment for the batters behind the kerb along the southern boundary.</li> </ul>
Landscape Officer	<p>No supported.</p> <p>Insufficient information has been received which demonstrates to Council's satisfaction that the development meets landscaping requirements pursuant to Council's controls. The outstanding information relates to:</p> <ul style="list-style-type: none"> <li>The lack of landscape buffer along the eastern and southern boundaries. These should be a minimum 2.5m but the development proposes 0.7m wide and 1.5m wide respectively.</li> <li>The lack of replacement trees (138) despite the removal of 175 trees.</li> <li>There is a new ballast detail shown under the existing trees. If installed using traditional method, the existing trees to the western side will be significantly impacted. A non-destructive detail is required to show how these trees will be protected.</li> </ul>
Catchment Engineer	<p>Not supported</p> <p>Council's Catchment Engineer raises concern that despite the development being designed to the 1% AEP flood level (with 500mm freeboard), evacuation from the premises must assess flooding up to the Probable Maximum Flood (<b>PMF</b>). During the <b>PMF</b>, the entire site will be inaccessible due to extremely hazardous (H5 to H6) floodwaters (Figure 5 below). The route along James Ruse Drive (north) towards the Western Sydney university (WSU) campus will also be inaccessible, and therefore horizontal evacuation impossible.</p> <p>A Flood Emergency Response Plan was submitted with the application. Council's Catchment Engineer has not endorsed this plan. Reliance on shelter-in-place in such an extreme-risk environment is not supported. The NSW Shelter-in-Place (<b>SIP</b>) Guidelines 2025 preclude <b>SIP</b> provisions in high-hazard flood areas (e.g., floodways and H5 or H6 hazard zones). Additionally, the amended climate change recommendations (August 2024) in ARR 2019 are expected to further worsen flooding conditions at this site.</p> <p>Significant filling or excavation of land below the Flood Planning Level (<b>FPL</b>) is generally not permitted as this would affect the floodway conveyance and / or flood storage. While a merit-based assessment has been requested on the application, the proposal does not meet the necessary criteria. Development proposals must demonstrate—</p>

	<p>through detailed hydraulic modelling—that any proposed filling or excavation of land above the <b>FPL</b>, up to the <b>PMF</b>, will not adversely impact flood behaviour. However, in this case, most of the site is below the <b>FPL</b>, and the proposed excavation and filling would not be considered acceptable under a merit-based assessment.</p> <p>Additionally, excavation within contaminated land or allowing water to flow under a suspended slab poses further concerns. The DCP also designates filling as an unsuitable land use in high- and medium-risk flood areas (PDCP Table 5.1.1.2). This site falls within a medium flood risk zone at the 1% AEP flood level. Given these factors, the proposed works are not supported.</p>
Natural and Open Space Officer	<p>Not supported.</p> <p>Insufficient information has been received with regards to the submission of an adequate Vegetation Management Plan for the site. The documentation received pertains to a previous development application which has since been refused by Council (i.e. DA/465/2024).</p>

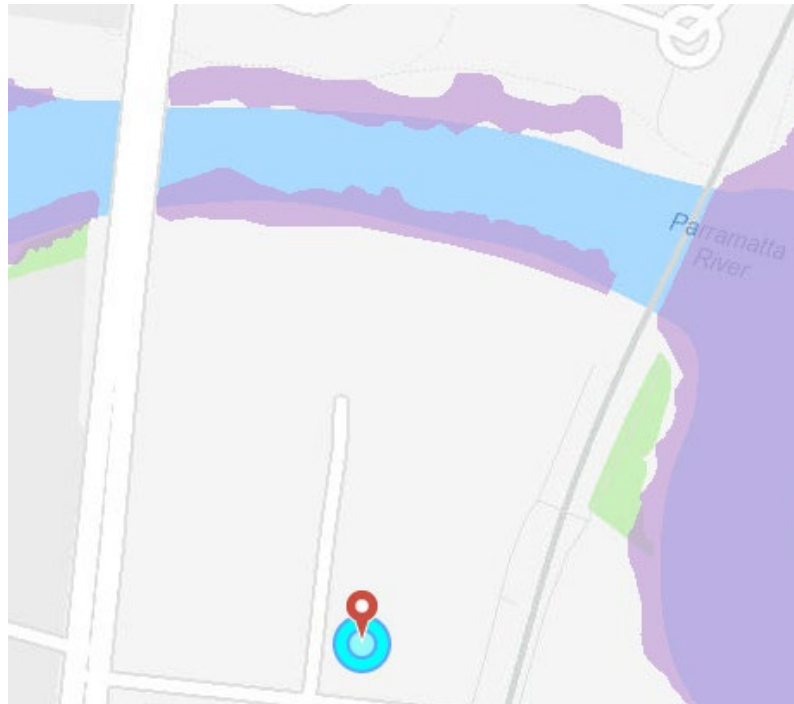


**Figure 5:** The Probably Maximum Flood Extent.

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

### 2.1 BIODIVERSITY CONSERVATION ACT 2016

The northern boundary of the subject site is mapped on the Biodiversity Values Map. See below.



**Figure 6:** Biodiversity Values Map showing area (purple) mapped on the subject land ([www.lmbc.nsw.gov.au](http://www.lmbc.nsw.gov.au)).

Part 7 of Biodiversity Conservation Act 2016 (BC Act) applies to the development which requires the mandatory application of the Biodiversity Assessment Methodology 2020 where the proposed development exceeds a Biodiversity Offset Scheme (BOS) threshold and/ or is “likely to significantly affect threatened species” upon application of the Assessment of Significance.

The Biodiversity Development Assessment Report (BDAR) was submitted as the proposed works triggered the Biodiversity Offset Scheme as it exceeded the Area Clearing Threshold. Using the Planted Native Vegetation Decision-making Key, the native vegetation within the site was determined to fit into the D.1 Decision making key and therefore the Streamlined Assessment Module – Planted Native Vegetation of the *Biodiversity Assessment Method 2020* has been utilised.

Upon review of the BDAR, Council’s Biodiversity Officer raised no objections with the information and assessment method provided.

## **2.2 PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997**

The application was referred to the NSW Environment Protection Authority (EPA) as the site is regulated by an EPL and is subject to a positive covenant regarding the maintenance of the hardstand capping of the site.

The EPA’s comments are contained in Section 1.7 of this report.

As previously noted, the volume of contaminated soil to be treated triggers an EPL under the PoEO Act also shares the same threshold requirements under Clause 20 of Schedule 3 of the Environmental Planning and Assessment Regulation 2021 which relate to works that are designated development.

As noted, the application was not lodged or prepared as designated development. Accordingly, the application cannot be considered for approval.

### **2.3 FISHERIES MANAGEMENT ACT 1994**

The site is identified as being located on the Key Fish Habitat Map. Accordingly, the application was submitted with Biodiversity Report addressing potential impacts on mangroves identified as protected Fish Habitat. The application along with the Biodiversity Report was referred to the NSW Department of Primary Industries and Regional Development – Fisheries (DPIRD Fisheries).

DPIRD Fisheries reviewed the proposal and upon review, raised no objections to the development subject to conditions of consent.

### **2.4 WATER MANAGEMENT ACT 2000**

The application has been lodged as Integrated Development under the provisions of the Water Management Act 2000. Upon review of the application, DPE - Water raised no objections to the proposal and issued their General Terms of Approval (IDAS – 2024 – 10136).

### **2.5 ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021**

As stated throughout this report, the site treatment works proposed under Phase 2 of the development application triggers Schedule 3, Part 2 of the Regulation which relates to works that are designated development. This clause states:

#### **20 Contaminated soil treatment works**

- (1) *Development for the purposes of contaminated soil treatment works is designated development if—*
  - (a) *the contaminated soil does not originate from the site on which the development is located, and*
  - (b) *the works are located—*
    - (i) *within 100 metres of a natural waterbody or wetland, or*
    - (ii) *in an area of high watertable or highly permeable soils, or*
    - (iii) *in a drinking water catchment, or*
    - (iv) *on land that slopes at more than 6 degrees to the horizontal, or*
    - (v) *on a floodplain, or*
    - (vi) *within 100 metres of a dwelling not associated with the development.*
- (2) *Development for the purposes of contaminated soil treatment works is designated development if the works treat more than 1,000 cubic metres per year of contaminated soil that does not originate from the site on which the development is located.*
- (3) *Development for the purposes of contaminated soil treatment works is designated development if—*
  - (a) *the contaminated soil originates exclusively from the site on which the development is located, and*
  - (b) *the works—*
    - (i) *incinerate more than 1,000 cubic metres per year of contaminated soil, or*

- (ii) treat, otherwise than by incineration, and store more than 30,000 cubic metres of contaminated soil, or
- (iii) disturb more than an aggregate area of 3 hectares of contaminated soil.

(4) In this section—

**contaminated soil treatment works** means works for on-site or off-site treatment of contaminated soil and includes works that incinerate or store contaminated soil but does not include works that excavate contaminated soil for treatment at another site.

Per the EPA's comments, Council agrees with the EPA advice that the works proposed under the subject application involve the disturbance of more than 30,000m<sup>2</sup> of contaminated soil as well as the treatment of more than 30,000 cubic metres contaminated soil which originate exclusively from the site.

The application has not been lodged or prepared as designated development and therefore Council cannot consider approval of the application.

### 3. Environmental Planning Instruments

#### 3.1 SEPP (PLANNING SYSTEMS) 2021

##### Clause 2.19 Declaration of regionally significant development

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

#### 3.2 SEPP (RESILIENCE AND HAZARDS) 2021

The requirements of State Environmental Planning Policy (Resilience and Hazards) 2021 apply to the subject site. The provisions of the SEPP are addressed as follows.

##### 3.2.1 CHAPTER 2 – COASTAL MANAGEMENT

Areas of 'Coastal Wetland' extend slightly over the northern boundary into the site. A review of the proposed works subject of this application does not indicate that any works are to be located within the areas identified as 'Coastal Wetlands'.

However, the works proposed under Phase 2 encroaches within the areas identified as 'Proximity area for coastal wetlands'. It is noted that Council's Catchment Engineer has raised concerns with regards to the flooding impacts of the development. In this regard, it cannot be ascertained that the development will not significantly impact on the quantity and quality of surface and ground water flows to and from the adjacent coast wetland.

##### 3.2.2 CHAPTER 4 - REMEDIATION OF LAND

As noted earlier in the report, the site has a long history of industrial use which have contaminated the site. The site is subject to a positive covenant and is regulated by an EPL.



The works proposed under Phase 1 does not propose any soil disturbance.

The proposed works require treatment of the contamination soil and disturbance of the existing concrete capping to facilitate the warehouse building under Phase 2.

A Remedial Action Plan (RAP) was submitted with the application which notes that the preferred remedial strategy to manage health risks posed by the asbestos contamination issues is through physical isolation by capping. If available space for asbestos and other wastes within the filing zones is exhausted, the contingency remedial approach is to transport and dispose of the soil to a lawfully licensed landfill that can accept the contaminated waste.

Council's Environmental Health Officer – Contamination reviewed the proposal along with the RAP and raised no objections with the proposed remedial strategies outlined in the Report to make the site suitable for the proposed use under Phase 2.

However, as mentioned throughout this report, the volume of contaminated soil to be treated triggers designated development, which is supported by the comments from NSW EPA who asserts that the soil treatment works require an EPL. The application has not been lodged as designed development and therefore the application cannot be supported.

It is noted that the NSW EPA have also not confirmed their support for disturbing the concrete capping on the site.

### **3.3 SEPP (BIODIVERSITY AND CONSERVATION) 2021**

#### **3.3.1 CHAPTER 2 – VEGETATION IN NON-RURAL AREAS**

The application has been assessed against the requirements of Chapter 2 of SEPP (Biodiversity and Conservation) 2022. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

According to the Arborist Report submitted with the application, Phase 2 works include the removal of 175 trees across the site area with 138 replacement trees proposed. Council's Landscape Officer has noted that insufficient information has been provided. The information required is listed in Section 1.7 – Referrals of this report.

Accordingly, the proposal cannot be considered for approval as the application has not demonstrated that the biodiversity values of the vegetation on the subject site has been protected.

No trees are proposed for removal under the Phase 1 works.

#### **3.3.2 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. Council's assessment of the application against the provisions of Chapter 6 is located below.

<b>Part 6.2 Development in Regulated Catchments</b>
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Clause 6.6 – Development in Regulated Catchments	<p><u>Phase 1 Works</u> No impacts are envisaged.</p> <p><u>Phase 2 Works</u> Due to concerns around flooding, vegetation and contamination management, the application has not considered the environmental impact on the regulated catchment.</p>
Clause 6.7 - Aquatic Ecology	<p><u>Phase 1 and Phase 2 Works</u> Both DPE Water and DPIRD Fisheries raised no objections to the proposal. It is also noted that works are not proposed on the areas identified as ‘coastal wetlands’.</p>
Clause 6.8 – Flooding	<p><u>Phase 1 Works</u> No impacts are envisaged.</p> <p><u>Phase 2 Works</u> The proposed works is not supported due to concerns around the flood affectation of the site and that the proposal has not demonstrated that it does not result in adverse impacts on the water quality of the natural waterbody.</p>
Clause 6.9 – Recreation and Public Access	<p><u>Phase 1 Works</u> No impacts are envisaged.</p> <p><u>Phase 2 Works</u> The application was amended to relocate the dry basin away from the riparian zone. This allows Council to provide foreshore connections as land and funding become available. Had the application been approved, an easement for a 6m wide foreshore path would have been negotiated with the consent holder.</p>
Clause 6.11 – Land Within 100m of natural waterbody	The proposed development within Phase 1 and Phase 2 are industrial in nature. The wider locality is similarly zoned for industrial use.
<b>Part 6.3 Foreshores and Waterways Area</b>	
Clause 6.24 – Application of Part	Neither of the Phase 1 and Phase 2 works will be undertaken below the mean high-water mark.
<b>Part 6.4 Heritage Conservation in Sydney Harbour</b>	
Clause 6.52 Heritage Development	<p><u>Phase 1 Works</u> No impacts are envisaged.</p> <p><u>Phase 2 Works</u> Along the foreshore of the site are mangroves which are heritage listed under Schedule 5 of PLEP 2023 (I011). The proposed development does not extend to the foreshore. Further, Council’s Heritage Adviser raised no objections to the development having regard its impacts on the heritage listed mangroves.</p>

### 3.4 SEPP (TRANSPORT AND INFRASTRUCTURE) 2021

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

Clause	Comment
<b>Clause 2.48 – electricity infrastructure</b>	<u>Phase 1 and Phase 2 Works</u> The development application was referred to Endeavour Energy. Upon review of the application, Endeavour Energy raised no objections.
<b>Section 2.77 – Development adjacent to a pipeline corridor</b>	<u>Phase 1 and Phase 2 Works</u> The subject site is within the vicinity of a pipeline corridor. A referral was sent to Ampol. To date, the comments from Ampol have not been received.
<b>Clause 2.98 – Development adjacent to rail corridors</b>	It is noted that the site at 181 James Ruse Drive is located adjacent to the Parramatta Light Rail. The application was referred to TfNSW – PLR for review and concurrence. In response, TfNSW issued their concurrence and conditions of consent.
<b>Clause 2.99 Excavation in, above or adjacent to rail corridors.</b>	TfNSW – PLR was sent a referral for concurrence as the application proposes excavation adjacent to a rail corridor. Upon review of the proposal, TfNSW – PLR issued their concurrence, subject to conditions of consent.
<b>Clause 2.119 – Development with frontage to classified road.</b>	The subject site has a frontage to James Ruse Drive.  Vehicle access to the site is proposed via a driveway off the Unnamed Road to the south of the site. To assist with vehicles entering the site not impacting on traffic within James Ruse Road, a deceleration/slip lane is proposed.  Only emergency vehicle access to the site is proposed via James Ruse Drive.  TfNSW provided comment that there is insufficient information to assess the proposal. Given this, the safety and efficiency of the vehicle access design cannot be confirmed. As concurrence under S138 of the Roads Act has not been obtained, the application cannot be considered for approval.
<b>Clause 2.120 – Impact of road noise or vibration on non-road development</b>	James Ruse Drive have an average daily traffic volume of more than 20,00 vehicles per day. However, the works under Phase 1 and Phase 2 are not sensitive land uses and therefore this clause is not applicable.

<b>Clause 2.122 – Traffic-generating development</b>	<p>The proposal is a traffic generating development pursuant to this Clause and Schedule 3 of the SEPP.</p> <p>As TfNSW requires additional information, a full assessment of the application could not be undertaken and compliance with this clause cannot be confirmed.</p>
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### 3.5 SEPP (INDUSTRY AND EMPLOYMENT) 2021

Under Phase 2 of the works, 6 signage zones are proposed along the north, south and west elevations. It is noted that the application does not seek approval for signage at this stage.

The following table outlines the manner in which the proposed signage satisfies the assessment criteria of SEPP (Industry and Employment) 2021.

<b>Consideration</b>	<b>Compliance</b>
<b>1 Character of the area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage zones are compatible with the existing and desired character of the wider locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	No details are provided. Only signage zones are proposed under this application.
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed signage zones do not detract from the visual quality of the local area and is particularly sympathetic in size and location.
<b>3 Views and vistas</b>	
Does the proposal obscure or compromise important views?	Important views will not be compromised or obscured because of placing signage on the signage zones.
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage zones will not dominate the skyline.
Does the proposal respect the viewing rights of other advertisers?	The signage zones respect the viewing rights of other advertisers.
<b>4 Streetscape, setting or landscape</b>	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The signage zones are of an appropriate scale and proportion for the streetscape.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signage zones do not detract from the setting, streetscape or landscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The signage zones will not contribute to clutter of existing advertising.

Does the proposal screen unsightliness?	The signage zones are appropriate in size and will not screen unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage zones do not protrude over any object or structure.
Does the proposal require ongoing vegetation management?	No details are provided. Only signage zones are proposed under this application.
<b>5 Site and building</b>	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The signage zones are compatible with the scale, proportion and other characteristics of the site and building.
Does the proposal respect important features of the site or building, or both?	No details are provided. Only signage zones are proposed under this application.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	No details are provided. Only signage zones are proposed under this application.
<b>6 Associated devices and logos with advertisements and advertising structures</b>	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No details are provided. Only signage zones are proposed under this application.
<b>8 Safety</b>	
Would the proposal reduce the safety for any public road?	The signage zones will not reduce the safety for any public road.
Would the proposal reduce the safety for pedestrians or bicyclists?	The signage zones will not reduce safety for pedestrians or bicyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The signage zones will not reduce safety for pedestrians, particularly children by obscuring sightlines from public areas.


### 3.6 SEPP (SUSTAINABLE BUILDINGS) 2022

The subject development, particularly the works proposed under Phase 2 for 2 x warehouses is subject to Chapter 3.3 of the SEPP as there is to be a cumulative nettable office area of 1340m<sup>2</sup>. Documentation has been submitted that demonstrates that the works under Phase 2 can achieve a standard specified in Schedule 3 per the submitted NABERS commitment agreement.

### 3.7 PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2023

The relevant requirements and objectives of this LEP as it relates to the subject modification application have been considered in the following assessment table.

<b>Standards and Compliance Provisions</b>
<b>Part 1 Preliminary</b>

<b>1.2 Aims of Plan</b>	<p>For reasons stated throughout this report, the development application cannot be supported. Accordingly, the application does not in this instance:</p> <ul style="list-style-type: none"> <li>• Create an integrated, balanced and sustainable environment that contributes to environmental, economic, social and physical wellbeing.</li> <li>• Protect and enhance the natural environment including urban tree canopy cover</li> <li>• Minimise risk to the community in areas subject to environmental hazards, particularly flooding, by restricting development in sensitive areas.</li> </ul>
<b>Land Use Table</b>	
<b>E3 Productivity Support</b>	The works proposed (both within Phase 1 and 2) is permissible in the zone.
<b>Objectives of the zone</b>	Notwithstanding, the permissibility of the uses proposed, the proposed works (particularly within Phase 2), for reasons stated throughout this report do not meet the objectives of the E3 zone. They do not minimise adverse effects on the natural environment. As such, the proposal cannot be considered for approval.
<b>Part 4 Principal development standards</b>	
<b>Section 4.3 of</b> <b>Height buildings</b>	<p>No.</p> <p>The site is subject to two (2) maximum height provisions. The northern portion of the site is a maximum of 9m and the southern portion of the site is a maximum of 12m.</p>  <p><b>Figure 7: Max. Height Map (PLEP 2023).</b></p> <p>Proposed Phase 1 – 2.7m (Demountable and toilet facilities)</p> <p>The warehouse building under Phase 2 extends over both maximum height provisions.</p>

	<p>The maximum height of the proposed development on land that is subject to the 9m height control is 13.9m.</p> <p>The maximum height of the proposed development on land that is subject to the 12m height control is 16.3m.</p> <p>A Clause 4.6 submitted. Assessment below.</p>
<b>Section 4.4 Floor space ratio</b>	<p>Yes</p> <p>Maximum FSR – 1.5:1 (or 90,000m<sup>2</sup>).</p> <p>Proposed Phase 1 – 0.0004:1 (2 x 18m<sup>2</sup>)</p> <p>Proposed Phase 2 – 0.5:1 (31, 455m<sup>2</sup>)</p>
<b>4.6 – Exceptions to development standards</b>	The height breach is addressed further in section 3.6.1 of this report
<b>Part 5 Miscellaneous provisions</b>	
<b>Section 5.1A Development on land intended to be acquired for public purposes</b>	The subject site is not identified on the map.
<b>Section 5.6 Architectural roof features</b>	An architectural roof feature is not proposed on the buildings to be constructed within Phase 1 or Phase 2.
<b>Section 5.7 Development below mean high water mark</b>	No works within Phase 1 or Phase 2 are proposed below the MHWM.
<b>Section 5.10 Heritage conservation</b>	The area subject of the works is identified as a heritage item listed under Schedule 5 of PLEP 2023 (I011). However, no works are proposed in either Phase 1 or Phase 2 that would otherwise adversely impact on the heritage listed mangroves.
<b>Section 5.11 Bush fire hazard reduction</b>	The subject site is not identified on the map.
<b>Section 5.21 Flood Planning</b>	<ul style="list-style-type: none"> <li>• Clause 5.21(1) – the proposal does not meet the objectives of the clause</li> <li>• Clause 5.21(2) – Council has assessed the proposal against the requirements within the clause and is not satisfied that the proposal can meet the requirements.</li> <li>• Clause 5.21(3) - Council has considered the matters for consideration within clause and determined that the proposal cannot be supported.</li> </ul> <p>See discussion under SEPP (B&amp;C) - Clause 6.8 – Flooding and Section 1.2 Referrals for specific details.</p>
<b>Section 5.23 Public Bushland</b>	The development application does not propose any disturbance to the mangroves along the northern boundary.
<b>Part 6 Additional local provisions</b>	

<p><b>Section 6. 1 Acid sulfate soils</b></p>	<p>Note: Phase 1 of the development application does not result in soil disturbance.</p> <p>The site is identified as being Class 4 on the acid sulfate soils map. The application was submitted with an Acid Sulphate Management Plan (ASMP).</p> <p>The Report notes that groundwater at the site is approximately 2.4-4.5m below ground level with a northerly to north-easterly expected flow direction towards the river. The bulk earthworks planned for the Phase 2 works indicate that excavation works of up to 3m is proposed towards the northern portion of the site. Given this, it is likely that the groundwater will be encountered during excavation works.</p> <p>The Report concedes:  <i>The proposed development and associated earthworks show that disturbance of ASS is unavoidable and will be encountered during remediation works at the site. As such, mitigation of the following risk elements is required:</i></p> <p>☐</p> <ul style="list-style-type: none"> <li>• <i>oxidation of ASS during onsite activities (e.g. earthworks and dewatering)</i></li> <li>• <i>generation of acid from the oxidation of ASS</i></li> <li>• <i>leaching of acid into onsite and offsite environments</i></li> </ul> <p>The ASMP recommends management and treatment of ASS in the following ways:</p> <ul style="list-style-type: none"> <li>• Physically separating ASS from any underlying material and stockpiled in a designated area under specific asbestos management controls.</li> <li>• ASS material is to be excavated in a staged manner to minimise exposure time and control the potential oxidation. Water is to be used to keep ASS material wet.</li> <li>• Establishing a separate designated area for managing excavated ASS material.</li> <li>• Material onsite tracking procedures must be included in the daily records of works.</li> <li>• Neutralising (Liming) treatment is recommended based on the samples collected. It is noted that once the ASS has been treated, then the material is no longer considered to be acid sulfate soil.</li> </ul> <p>Had the application been considered for approval, the ASMP would have been incorporated in the consent to manage disturbance to the acid sulphate soils.</p>
<p><b>Section 6. 2 Earthworks</b></p>	<p>Note: Phase 1 of the development application does not result in soil disturbance/earthworks.</p>



	<p>Earthworks are required to facilitate the Phase 2 works for the warehouse buildings. The development requires significant excavation works up to 3.5m and filling of the site up to 2.5m.</p> <p>Council's Catchment Engineer, as noted previously, raised concerns with regards to the detrimental impacts of the excavation and fill proposed as this would likely disrupt flood behaviour. Accordingly, the proposal cannot be supported in this regard.</p>
<b>Section 6.3 Biodiversity</b>	See discussion under Section 3.3 of this report for details.
<b>Section 6.4 Riparian land and waterways</b>	<p>The subject site is identified on the map.</p> <p>Phase 1 works do not encroach on riparian land.</p> <p>Phase 2 Works are proposed within the 40m riparian zone which include a portion of the dry basin and the acoustic wall. Concerns are raised that the proposed development has not demonstrated that it will not have an adverse impact on the water flows into the adjoining water body and that the lack of sufficient VMP does not ensure that the area within the riparian zone is rehabilitated.</p>
<b>Section 6.5 Stormwater management</b>	Council's Catchment Engineer has reviewed the proposal. Concern is raised that the proposed works under Phase 2 has not satisfactorily demonstrated that it does not result in adverse impacts from stormwater runoff on receiving waters and adjoining properties.
<b>Section 6.6 Foreshore area</b>	The proposed works under Phase 1 and Phase 2 does not encroach on the foreshore area.
<b>Section 6.7 Essential Services</b>	Given the concerns raised by Council's Catchment Engineer regarding the flooding impacts of the development, essential services such as suitable on-site stormwater management has not been provided.
<b>Section 6.8 Landslide Risk</b>	The subject site is not identified on the map

### 3.6.1 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The proposal does not comply with the part 9m and part 12m building height development standard detailed in Clause 4.3 of the PLEP. The proposed building height is a maximum of 16.3m.

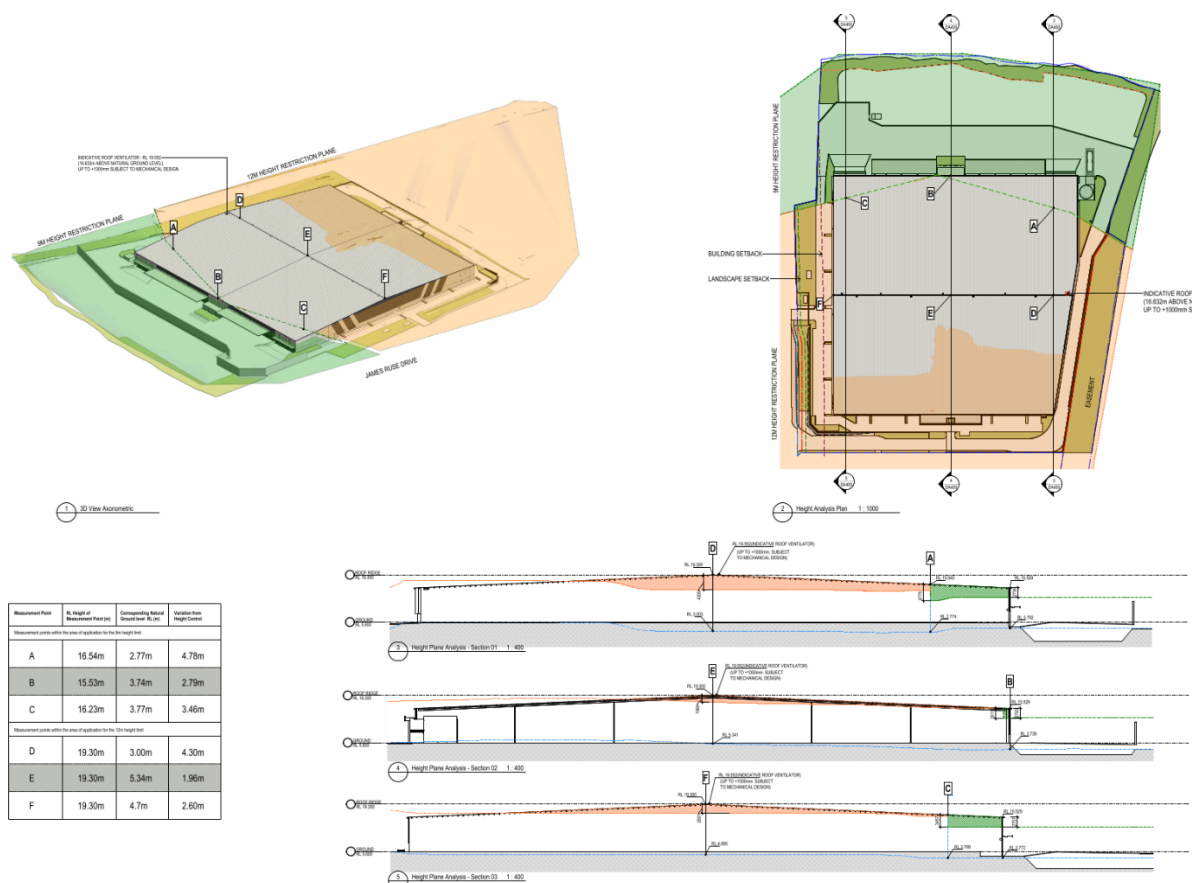
The site is subject to two (2) maximum height provisions. The northern portion of the site is a maximum of 9m and the southern portion of the site is a maximum of 12m.

- The maximum height of the proposed development on land that is subject to the 9m height control is 13.9m.
- The maximum height of the proposed development on land that is subject to the 12m height control is 16.3m.

Standard	Proposed	Variation
9 metres	13.9m	4.9m or 54.4%
12 metres	16.3 metres	4.3m or 35.8%

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

See below site roof plan with height plane.



**Figure 8: Height Plane analysis.**

### Clause 4.6(1) – Objectives of Clause 4.6

The objectives of clause 4.6 are considered as follows:

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

### Clause 4.6(2) – Operation of Clause 4.6

The operation of clause 4.6 does not apply to a variation for any of the items itemised in Clause 4.6(8) of LEP 2023, or otherwise by any other instrument.

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

Clause 4.6(3) requires that the applicant provide a written request seeking to justify

contravention of the development standard. The request must demonstrate that:

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

The applicant has submitted a written request justifying the variation to the height of building development standard. In summary, the justification the applicant states:

- **The objectives of Clause 4.3 of the PLEP 2023 have been achieved.**  
The underlying objectives and purpose of Clause 4.3 have been achieved, notwithstanding the proposed height variation. This Clause 4.6 Variation Request has referenced the ‘First Method’ that was established through *Wehbe v Pittwater Council [2007]* NSWLEC 827 to demonstrate that compliance with Clause 4.3 of the PLEP 2023 is not reasonable or necessary in this case.
- **The objectives of the E3 Productivity Support Zone have been achieved.**  
The E3 Productivity Support Zone provides for a range of facilities and services, light industries, warehouses and offices. The proposed height variation will not result in overshadowing to public open space or any residential dwelling. There will be no unacceptable reduction to the level of amenity afforded to surrounding industrial uses. The objectives of the E3 Productivity Support Zone have been achieved, notwithstanding the proposed height variation.
- **The proposed height variation is necessary to support essential flood mitigation works.**  
The proposed height variation is attributed to filling that is essential to the achievement of a development outcome that does not expose people or property to unacceptable levels of flood hazard. While filling of land below the Flood Planning Level is generally not anticipated under the PDOP 2023, a variation to this requirement is justifiable in the context of this DA, facilitating the orderly development of the site, and is directly relevant to this clause 4.6 request. Extended discussion around this has been provided within the Statement of Environmental Effects.
- **The proposed height variation will not result in any adverse environmental impact.**  
The proposed height variation will not result in any unacceptable adverse environmental impact. A height-compliant scheme would restrict the viable operation of warehousing and distribution premises at the site, which would not be in the public interest.

**Council Comment:** An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below by the applicant. These cases establish tests that determine 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

This case expands on the findings of *Winten Property Group Limited v North Sydney Council* (2001) case and establishes a five-part test ‘Wehbe tests’ to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

**1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;**

**Applicant comment:** *The proposed [objectives] to the height of buildings development standard will be achieved notwithstanding the non-compliance with the standard.*

**2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**

**Applicant comment:** *The underlying objectives and purpose of Clause 4.3 have been achieved, notwithstanding the proposed height variation. The Clause 4.6 Variation Request has referenced the 'First Method' outlined in Wehbe v Pittwater Council [2007] NSWLEC 827 to establish that compliance with Clause 4.3 of the PLEP 2023 is not reasonable or necessary in this case.*

Consistency with the Objectives of Clause 4.3 – Height

Objective	Assessment	Consistency
To provide appropriate height transitions between buildings.	<p>The proposed development provides for an appropriate height transition between buildings.</p> <ul style="list-style-type: none"> <li>○ The southern site boundary adjoins the property at 175 James Ruse Drive, which accommodates business premises and other complementary uses in a large format 'business park' arrangement. The east and west site boundaries are not adjoined by buildings.</li> <li>○ Due to the gradient of the roof form, there is an appropriate height transition between the southern interface of the proposed built form and the maximum building height of 16.30m above natural (unfilled) ground level, excluding ventilator units. It is further noted that the height of the proposed built form is variable. Specifically, it deviates significantly from the maximum height of development (and the formal extent of the proposed height variation).</li> </ul>	Consistent
To ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area.	<p>The site is located within the Camellia-Rosehill Precinct, which has an important strategic role as an industry and employment hub within the Greater Parramatta and Olympic Peninsula (<b>GPOP</b>) Economic Corridor.</p> <p>The proposed development complies with the applicable Floor Space Ratio (<b>FSR</b>) control under the PLEP 2023 and presents a built form outcome that is in keeping with the industrial character of the Camellia-Rosehill Precinct.</p> <p>The proposed built form alignment has achieved a general setback of 10m from James Ruse Drive, which is consistent with the built form provisions of Section 4.3 within the Parramatta Development Control Plan 2023 (<b>PDCP 2023</b>). Existing and proposed tree plantings will screen development to minimise the observable scale of development from this arterial thoroughfare.</p>	Consistent

	<i>It has been established that due to the gradient of the roof form, there is an appropriate height transition between the southern interface of the proposed built form and the maximum building height of 16.30m above natural (unfilled) ground level, excluding ventilator units.</i>	
<i>To require the height of future buildings to be appropriate in relation to heritage sites and their settings.</i>	<i>The northern site boundary is breached slightly by a heritage listing for wetlands under Item 111 in Schedule 5 of the PLEP 2023. Works are not proposed within the extent of this heritage listing. The proposed built form is set back over 60m from the extent of the heritage listing. This separation distance is more than sufficient with respect to the intended effect of this objective.</i>	<i>Consistent</i>
<i>To reinforce and respect the existing character and scale of low-density residential areas.</i>	<i>The proposed development does not adjoin any low-density residential area. This objective of Clause 4.3 is not relevant to the proposed height variation.</i>	<i>Not applicable</i>
<i>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>	<i>The proposed height and scale of development will not result in any overshadowing to the development at 175 James Ruse Drive</i>	<i>Consistent.</i>
<i>To preserve historic views.</i>	<i>The development will not result in any unacceptable impact on the integrity of any historic view corridor. In this regard, the proposed development is considered to be consistent with this objective.</i>	<i>Consistent.</i>
<i>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.</i>	<i>The proposed development is consistent with this objective for Clause 4.3. The following is noted in this regard: ▪ The site does not adjoin any commercial centre. The proposed height variation will not impact exposure to open sky vistas or sunlight for buildings in commercial centres. ▪ There is no tower form within the vicinity of the site. ▪ The proposed height variation will not result in any meaningful reduction to open sky vistas or daylight exposure to the public domain.</i>	<i>Consistent.</i>

**3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

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

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

The applicant does not challenge that the height standard has been abandoned. However,

Council has supported variations to the maximum height standard on several occasions. Examples of these departures include:

- An approved DA (DA/751/2019) for warehousing and distribution premises at 8 Grand Avenue, Rosehill varied the applicable height limit (12m) by 115%.
- A recent State Significant Development Application (SSD-55522478) for warehousing and distribution premises at 6 Grand Avenue, Rosehill was approved (25 July 2024) with a variation to the maximum height limit (12m) by 91%.
- A recently approved DA (DA/573/2023) for warehousing and distribution premises at 1 Grand Avenue, Camellia varied the applicable height limits (9m and 12m) with a built form to be constructed to a height of 13.7m.

**5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

The written requests do not challenge that the E3 zoning is unreasonable or inappropriate or that the standards for that E3 zoning is also unreasonable or unnecessary.

*Sufficient Environmental Planning Grounds*

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

**Council Comment:** As previously demonstrated, some sites within proximity of the subject land have exceeded the applicable height control/s. With respect to scale, the building has been designed sympathetically to the surrounding area accounting for the environmental constraints of the site by providing suitable setbacks to the river and light rail corridors.

It is considered that the proposed bulk and scale of the buildings are generally mitigated by appropriate facade modulation and materials. The bulk and scale of the proposal is commensurate and compatible with that of the nearby development along James Ruse Drive and Grand Ave.

The built form as proposed will not be out of character in the streetscape along the river and light rail corridors. The development, with respect to the height, is not out of character with the existing built form within the area. Council raises no objections with regards to the proposed variations to the height controls for the site.

**Clause 4.6(4) – Record of Assessment**

The assessment of Clause 4.6(3) is recorded in the Section 4.15 Assessment report, which is contained within Council’s records post determination.

#### Clause 4.6(6) – Subdivision in certain zones

The proposal does not seek approval for subdivision and is not located in any of the zones listed in Clause 4.6(6).

#### Clause 4.6(8) – Exclusions of the application of Clause 4.6

The development and the application of Clause 4.6 does not relate to any of the circumstances listed in this clause.

#### Conclusion

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated. And had this application been supported, the request to vary the height development standard within the Parramatta LEP 2023 would also be supported. However, for reasons stated throughout this report, the application cannot be considered for approval.

### 4. Development Control Plans

#### 4.1.1 PARRAMATTA DEVELOPMENT CONTROL PLAN 2023

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

Development Control	Comment	Compliance
<b>Part 2 – Design in Context</b>		
<b>2.4 Building Form and Massing</b>	The proposed massing of the built form contained under Phase 1 and Phase 2 is consistent with the existing developments within the area and of other recently approved developments. The built form is acceptable in this regard.	Yes
<b>2.5 Streetscape and Building Address</b>	The demountable provided under Phase 1 will not be viewable from the James Ruse Drive frontage.  Notwithstanding the variation to the height for the warehouse building under Phase 2 which was considered acceptable, the development proposes an acceptable streetscape and building address.	Yes
<b>2.6 Fences</b>	Phase 1 works will retain existing fencing on the site.  Phase 2 works propose chain wire and palisade boundary fencing providing adequate security to the site.  A noise attenuation wall is to be located along the width of the site facing the foreshore. The noise attenuation wall is to be a height of 6m. However, concern is raised with regards to the visual impact of the 6m wall and that this may also impact on the flooding behaviour.	No

	The application has not provided any views / perspectives of the noise attenuation wall and its visual impacts across the foreshore and on James Ruse Drive.	
<b>2.7 Open Space and Landscaping</b>	See comments from Council's Landscape Officer under Section 1.2 of this report.	<b>No</b>
<b>2.8 Views and Vistas</b>	<p>The site is affected by view corridor 10 and 11. These views relate to the Female Orphan School / WSU and broader panorama views of Parramatta.</p> <p>Phase 1 works will not disrupt any views and corridors given that the proposed structures are less than the maximum height controls for the site. It is considered that despite the height variation to the building under Phase 2, the development will not impact these view corridors which has evolved since the DCP view corridors were photographed.</p>	<b>Yes</b>
<b>2.9 Public Domain</b>	<p>Phase 1 works do not require any changes to the existing public domain.</p> <p>However, the proposed public domain works which would have delivered new public domain infrastructure (ie a deceleration lane on James Ruse Drive) and the treatment of the access driveway under Phase 2 cannot be supported as insufficient information has been received that adequately satisfies the requirements of this control as noted by Council's Urban Designer – Public Domain.</p>	<b>No</b>
<b>2.10 Accessibility and Connectivity</b>	The plans were amended to reduce the encroachment within the riparian zone to allow future connectivity improvements planned by Council.	<b>Yes</b>
<b>2.11 Access for People with Disabilities</b>	Insufficient information has been submitted that satisfactorily meets the objectives of these controls as a comprehensive assessment by Council's Accessibility Officer cannot be undertaken.	<b>No</b>
<b>2.13 Culture and Public Art</b>	The site is over 5000m <sup>2</sup> and therefore requires an Arts Plan to be prepared in accordance with the relevant Council policies. However, an Arts Plan was not submitted with the application. Had the application been recommended for approval, the preparation and delivery of an Arts Plan could have formed as a condition of consent.	<b>No</b>
<b>2.14 Safety and Security</b>	<p>The existing safety and security measures are to be retained for the phase 1 works.</p> <p>Under Phase 2 of the works, the application proposes new perimeter fencing as well as entry gates to the development and is considered adequate in providing security for the development.</p>	<b>Yes</b>
<b>2.15 Signage</b>	No signage / signage zones are proposed under Phase 1.	<b>Yes</b>



	Indicative signage zones are shown on the architectural plans under the Phase 2 works. See Section 3.5 - SEPP (Industry and Employment) 2021 for assessment.	
<b>Part 4 – Non - Residential Development</b>		
<b>4.1 General Non- Residential Controls</b>		
<b>4.1.1 Consideration of adjoining land uses</b>	Land uses within proximity to the site is predominantly industrial in nature. The proposed uses under Phase 1 and Phase 2 are unlikely to impact on these uses in relation to privacy and solar access.	Yes
<b>4.1.2 Noise Amenity</b>	<p>A Noise and Vibration Report was submitted with the application.</p> <p>It is noted that whilst the site does not adjoin sensitive land uses, the site is within 100m of land zoned residential to the north-west (opposite side of the river).</p> <p>To mitigate noise and vibration to the residential zoned land, a 6m solid noise attenuation wall is to be constructed across the width of the site addressing the northern boundary. Concern is raised that the noise attenuation wall will interfere with the flooding behaviour of the site. Further, that the application has not considered the visual impacts of the 6m solid wall when viewed from the foreshore.</p>	<b>No</b>
<b>4.3 Industrial Development</b>		
<b>Building Height</b>	<p>Phase 1 – Complies with Building height under PLEP 2023.</p> <p>Phase 2 - Does not comply with the building height map in the Parramatta LEP 2023. This has been addressed via 4.6 of the LEP, see above.</p>	Acceptable
<b>Floor Space Ratio</b>	Phase 1 and 2 – Complies with Max. FSR under PLEP 2023.	Yes
<b>Front Setback</b>	<p>Phase 1 – Complies with the setback requirements.</p> <p>Phase 2 – The warehouse building in Phase 2 provides a 10m front setback to James Ruse Drive. The front setback is also consistent with the existing setback of the adjoining development at 175 James Ruse Drive.</p>	Yes
<b>Side and Rear Setback</b>	<p>Phase 1 – Complies with the setback requirements.</p> <p>Phase 2 - The proposed warehouse achieves appropriate side and rear setbacks as envisaged by the controls.</p>	Yes
<b>Parking</b>	Refer to DCP part 6 traffic and parking assessment below	Yes
<b>Landscaping</b>	<p>Phase 1 – No change to existing landscaping.</p> <p>Phase 2 - 15% of the site is being maintained as landscaped area with the minimum dimension of 2.5m</p>	<b>No</b>

<b>Communal Open Space</b>	x 2.5m. However, Council's Landscape Officer requires additional information that has not been submitted to adequately assess the Landscaping design and management of the site as it relates to Phase 2 of the application. Accordingly, the proposal cannot be supported in this regard,	<b>Yes</b>
	Phase 1 – Due to the non-permanent nature of the use, a communal open space is not required. Phase 2 – ample shaded communal balconies are provided which is appropriate for a warehouse and distribution premises with an ancillary office component. A communal seating area is also proposed to the immediate east of the rainwater tank.  Acoustic impacts are discussed in Section 4.1.2 of this table.	
<b>Building Design</b>	Had the application been recommended for approval, the development may have complied with the relevant light requirements under the Australian Standard which would have been enforced by conditions of consent.	<b>No</b>
<b>Part 5 – Environmental Management</b>		
<b>5.1 Water Management</b>	See comments under:  - Section 1.2 – Referrals – Catchment Engineer comments - SEPP (B&C) - Clause 6.8 – Flooding PLEP 2023 (Section 6.5 Stormwater Management)	<b>No</b>
<b>5.2 Hazard and Pollution management</b>		
<b>5.2.1 Control of Soil Erosion and Sedimentation</b>	Council's Catchment Engineer is not satisfied that the development has demonstrated that flooding impacts can be mitigated or that a satisfactory stormwater management system has been provided. Accordingly, an assessment on the proposed erosion and sedimentation controls cannot be undertaken considering the abovementioned outstanding issues.	<b>No</b>
<b>5.2.2 Acid Sulfate Soils</b>	See comments under PLEP 2023 (Section 6.1 Acid Sulfate Soils)	<b>Yes</b>
<b>5.2.3 Salinity</b>	The site is identified as containing moderate salinity potential by the Map of Salinity Potential in Western Sydney 2022. Documentation submitted with the application has not addressed the impacts of salinity on the proposed works.	<b>No</b>
<b>5.2.4 Earthworks and Development of Sloping Land</b>	See comments under PLEP 2023 (Section 6.2 Earthworks).	<b>No</b>
<b>5.2.5 Land Contamination</b>	See comments under Sections 1.2 – Referrals, 2.2 and 3.2.2 of this report.	<b>No</b>

<b>5.2.6 Air Quality</b>	Had the application been recommended for approval, standard conditions would have imposed on the consent to ensure that the potential for increased air pollution is minimised during construction.	Yes
<b>5.2.7 Bush Fire Prone Land</b>	The site is not identified as bushfire prone.	N/A.

<b>5.3 Protection of Natural Environment</b>		
<b>5.3.1 Biodiversity</b>	<p>This is discussed throughout this report.</p> <p>Council's Landscape Officer has reviewed the proposal and has requested additional information to allow a full assessment of the proposed works. However, to date, this information has not been submitted to Council's satisfaction.</p>	<b>No</b>
<b>5.3.2 Waterways and Riparian Zones</b>	This is discussed throughout this report. See PLEP 2023 (Section 6.4 Riparian Land and Waterways)	<b>No</b>
<b>5.3.3 Development on Land Adjoining Land zoned C2 or W1</b>	The foreshore area that adjoins the site to the north is zoned W1. Insufficient information (i.e., a VMP that relates to the development) has been received that allows Council to assess and ascertain the protection of the bushland.	<b>No</b>
<b>5.3.4 Tree and Vegetation preservation.</b>	See comments under SEPP (B&C) - Clause 6.8 of this report.	<b>No</b>
<b>5.4 Environmental Performance</b>		
<b>5.4.1 Energy Efficiency</b>	See Section 3.6 of this report.	Yes
<b>5.4.2 Water Efficiency</b>	See Section 3.6 of this report.	Yes
<b>5.4.3 Urban Cooling</b>	The application has not addressed the urban cooling objectives contained under this control.	<b>No</b>
<b>5.4.5 Natural Refrigerant</b>	Had the application been recommended for approval a condition would have been imposed requiring the use of natural refrigerants with a GWM of 10 or less.	Yes
<b>5.4.8 Waste Management</b>	Had the application been recommended for approval, the submitted WMP would be incorporated in the consent.	Yes
<b>Part 6 – Traffic and Transport</b>		
<b>6.1 Sustainable Transport</b>		
<b>6.1.2 Travel Plans</b>	<p><u>Phase 1 and 2</u></p> <p>A Green Travel Plan is to be provided as the development has a GFA over 5000sq.m and more than 50 employees. Had the application been recommended for approval, the preparation of a Green Travel Plan could have been incorporated as a condition of consent.</p>	Yes
<b>6.2 Parking and Vehicular Access</b>		

<b>Industrial Requirements</b>	A Traffic Assessment for the uses under Phase 1 and 2 was submitted with the application and reviewed by Council's Traffic Engineer. Upon review of the proposal, Council's Traffic Engineers raised no objections to the on-site parking spaces and vehicle manoeuvring.	Yes
	<p>Minimum Car Parking Rates – Industrial Warehouses 1 space per 300m2 GFA Ancillary Office 1 space per 40m2 GFA</p> <p>Phase 1 Provided – 13 car parking spaces. Notwithstanding, the ample site area can accommodate any overflow in car parking demand.</p> <p>Phase 2 Required – Warehouse (85 spaces) and Office (34 spaces). Minimum of 119 spaces. Provided - 122 parking spaces including 2 Accessible spaces are provided.</p>	Yes
<b>6.3 Bicycle / motorcycle Parking</b>		
<b>1 bicycle space per 1000m2 of GFA for employees</b>	<p>Bicycle Parking Required - Minimum 26 bicycle spaces Provided - 28 bicycle parking spaces</p>	Yes
<b>1 motorcycle space per 50 parking space</b>	<p>Motorcycle Parking Required – Minimum 3 spaces Provided – 6 spaces.</p>	Yes
<b>6.4 Loading and Servicing</b>	<p>Phase 1 and Phase 2 Council's Traffic Engineer reviewed the loading areas provided pursuant to this control. Upon review of the proposed loading areas, Council's Traffic Engineer raised no objections to the proposal.</p>	Yes
<b>Part 7 – Heritage and Archaeology</b>		
<b>7.4 General Provisions</b>	<p>Phase 1 and Phase 2 This application does not propose any works on or near the heritage items (Mangroves). These items are proposed to be retained and preserved. The proposal complies with section 5.10 of the PLEP 2023 regarding Heritage Preservation.</p>	Yes
<b>7.5 Development in the Vicinity of Heritage</b>	<p>The works within Phase 1 and Phase 2 is not considered to detract from the heritage significance of the nearby heritage items,</p>	Yes
<b>Part 8 – Centres, Precincts, Special Character Areas and Specific Sites</b>		
<b>8.2 Local Centres</b>	<p>The subject site is located within the Camellia and Rydalmere Local Centre.</p>	Yes
<b>8.2.4.2 Height of Buildings</b>	<p>The site is bisected by historic sight lines that are identified at Appendix 1 of the PDCP 2023. The proposed development will not result in any unacceptable impact on these sight lines</p> <p>When assessed against the relevant view corridors from the Elizabeth Farm Precinct the works within</p>	Yes

	Phase 2 would not be visible as previously envisioned by the DCP due to the changing nature of the view corridor since the DCP view corridor was photographed.	
<b>8.2.4.3 Landscaping</b>	See Section 1.7 – Referrals for comments from Council’s Landscape Officer and Section 3.3.1 of this report.	<b>No</b>
<b>8.2.4.7.1 James Ruse Drive Corridor Special Area</b>	<p>The proposed development within Phase 2:</p> <ul style="list-style-type: none"> <li>- Is of a built form that is consistent with the industrial nature of the locality.</li> <li>- Had the application been recommended for approval, a condition of consent would have been imposed requiring that external finishes do not adversely impact on the rail corridor.</li> <li>- Entry to the site is via a secondary road.</li> </ul> <p>Notwithstanding the above, concern is raised regarding the visual impact and flooding impact of the 6m solid noise attenuation wall that addresses the foreshore when viewed from James Ruse Drive.</p>	<b>No</b>

## 5. Planning Agreements

The proposed development is not subject to a planning agreement entered into under section 7.4.

## 6. Environmental Planning and Assessment Regulation 2021

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection would have been conditioned had the application been recommended for approval.

## 7. Likely Impacts

As outlined in this report, this application has not demonstrated that the proposal would have acceptable social and environmental impacts to the surrounding sites and natural environments.

## 8. Site Suitability

As outlined in this report, the applicant has not demonstrated that the site is suitable for the proposed industrial use.

## 9. Submissions

The application was notified and advertised in accordance with the City of Parramatta Consolidated Notification Procedures and legislative requirements for a 28-day period from 16

February 2024 to the 15 March 2024. In response no submissions were received.

## 10. Public interest

The application demonstrates that the proposal is not in the public interest.

## 11. Disclosure of Political Donations and Gifts

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

## 12. Development Contributions and Bonds

As per the City of Parramatta Outside CBD Development Contribution Plan (Amendment 1) the development would need to pay development contributions due to its increase in the number of workers from the current development on the site. Had the application been recommended for approval, the relevant condition requiring the payment of contributions would have been imposed in the consent.

## 13. Summary and Conclusion

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. On balance the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework and is recommended for refusal.

## 14. Recommendation

- A. **That** the Sydney Central City Planning Panel, as the consent authority, **Refuse Consent** to Development Application No. DA/72/2024 for demolition, earthworks, site remediation, tree removal and construction of a warehouse and distribution centre for the following reasons:
1. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application has not been lodged and prepared in accordance with *Clause 20 of Schedule 3 of the Environmental Planning and Assessment Regulation 2021* which relates to designed development.
  2. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application has not obtained concurrence from TfNSW pursuant to Section 138 of the Roads Act 1993.
  3. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal does not comply with the requirements of the *Protection of the Environment Operations Act 1997*.
  4. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements of the *State*

*Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 2 (Coastal Management) and Chapter 4 (Remediation of Land).*

5. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non-Rural Areas) and Chapter 6 (Water Catchments)*
6. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 (Infrastructure).*
7. In accordance with Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the requirements to the following clauses of the *Parramatta Local Environment Plan 2023*:
  - a. *Clause 1.2 Aims of Plan*
  - b. *Clause 2.3 Zone objectives and Land Use Table*
  - c. *Clause 4.3 Height of buildings*
  - d. *Clause 4.6 Exceptions to Development Standards*
  - e. *Clause 5.21 Flood Planning*
  - f. *Clause 6.2 Earthworks*
  - g. *Clause 6.5 Stormwater Management*
  - h. *Clause 6.7 Essential Services*
8. In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply the following parts of the *Parramatta Development Control Plan 2023*:
  - a. Part 2, Section 2.6 Fences
  - b. Part 2, Section 2.7 Open Space and Landscape,
  - c. Part 2, Section 2.9 Public Domain,
  - d. Part 2, Section 2.11 Access for People with a Disability,
  - e. Part 2, Section 2.13 Culture and Public Art,
  - f. Part 4, Section 4.1.2 Noise Amenity,
  - g. Part 4, Section 4.1.3 Industrial Development (Landscaping and Building Design),
  - h. Part 5 Section 5.1 Water Management
  - i. Part 5 Section 5.2.1 Control of Soil Erosion and Sediment
  - j. Part 5 Section 5.2.3 Salinity
  - k. Part 5 Section 5.2.4 Earthworks and Development of Sloping Land
  - l. Part 5 Section 5.2.5 Land Contamination
  - m. Part 5 Section 5.3.1 Biodiversity
  - n. Part 5 Section 5.3.2 Waterways and Riparian Zones
  - o. Part 5 Section 5.3.3 Development on Land Adjoining Land zoned C2 and W1
  - p. Part 5 Section 5.3.4 Tree and Vegetation preservation
  - q. Part 5 Section 5.4.3 Urban Cooling
  - r. Part 8 Section 8.2.4.3 Landscaping
  - s. Part 8 Section 8.2.4.7.1 James Ruse Drive Corridor Special Area

9. In accordance with Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposal is not suitable for the site.
10. In accordance with Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest.

**ATTACHMENT B – APPLICANT’S CLAUSE 4.6 VARIATION REQUEST**





URBIS

# Clause 4.6 Variation Request

Request to vary Clause 4.3 of the *Parramatta Local Environmental Plan 2023*.

Prepared for

**Abacus Camellia Investments Pty Ltd**

21 December 2023

**ABACUS**

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	John Wynne
Consultant	Oscar Davie
Project Code	P0036527
Report Number	Final

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**For over 60,000 years, the area comprising present day Parramatta has been occupied by the Burramattagal people, a clan of the Dharug people, who settled along the upper reaches of the Parramatta River.**

**Urbis acknowledge the Burramattagal clan of the Dharug people as the traditional owners of this land. We pay our respects to their Elders past, present and emerging.**

All information supplied to Urbis in order to conduct this research has been treated in the strictest confidence. It shall only be used in this context and shall not be made available to third parties without client authorisation. Confidential information has been stored securely and data provided by respondents, as well as their identity, has been treated in the strictest confidence and all assurance given to respondents have been and shall be fulfilled.

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# 1. Introduction

This Clause 4.6 Variation Request has been prepared on behalf of Abacus Camellia Investments Pty Ltd (**Abacus**) to support a Development Application (**DA**) for warehousing and distribution premises and the initial use of existing hardstand surfaces for outdoor storage at 181 James Ruse Drive, Camellia (**the site**). The proposed development will be delivered in two distinct phases:

## 1. Existing hardstand surfaces at site will initially be utilised as storage premises.

Approval is sought for the initial use of existing hardstand surfaces on the site for storage premises. Phase 1 of the proposal involves minimal site works to establish suitable conditions for outdoor storage that will utilise existing hardstand on the site. Phase 1 of the proposed development is not relevant to this Clause 4.6 Variation Request.

## 2. Warehousing and distribution premises will then be constructed and operated.

Upon securing a suitable tenant, the hardstand storage premises use will be discontinued and replaced with warehousing and distribution premises. The initial use hardstand storage premises (Phase 1) will conclude prior to the commencement of construction works for the warehousing and distribution premises (Phase 2). This Clause 4.6 Variation Request relates to Phase 2 of the proposed development.

It is proposed to vary the following maximum permitted building height controls that apply to the northern and southern parts of the site under Clause 4.3 of the PLEP 2023.

### ▪ Maximum permitted building height of 9m that applies to the northern part of the site.

The maximum height of the proposed development on land that is subject to the 9m height control is 13.9m. This is the maximum extent of the height breach at the highest point of the roof form within the area of application for the 9m height control. The resulting height breach (4.9m) at this specific point of the roof form equates to 54.4% of the standard to be varied.

### ▪ Maximum permitted building height of 12m that applies to the southern part of the site.

The maximum height of the proposed development on land that is subject to the 12m height control is 16.3m. This is the observable extent of the height breach at the highest point of the roof form within the area of application for the 12m height control. The resulting height breach at this specific point of the roof form (4.3m) equates to 35.8% of the standard to be varied.

Spatial allowance has been made for ventilator plants that will extend to a height of 1m above the roof form. The ventilator units will be recessed back from the edge of the building façade and will not be readily visible when observed from ground level. In this regard, it is acknowledged that the provisional height of the proposed ventilator units (up to 1m, subject to confirmation of the detailed mechanical design) will not have any perceptible impact on the height of the proposed development.

Notwithstanding the above, the maximum height of the development, inclusive of the proposed ventilator units, will be 17.63m above natural (unfilled) ground level. The formal extent of the height variation is therefore 46.9% of the standard to be varied. It further is noted that significant variance in the elevation of existing natural ground level has been caused by former land uses at the site.

This Clause 4.6 Variation Request demonstrates that compliance with Clause 4.3 of the PLEP 2023 is not reasonable or necessary in this case. There are sufficient environmental planning grounds for the proposed height variation. The following is noted in summary:

### ▪ The objectives of Clause 4.3 of the PLEP 2023 have been achieved.

The underlying objectives and purpose of Clause 4.3 have been achieved, notwithstanding the proposed height variation. This Clause 4.6 Variation Request has referenced the 'First Method' that was established through *Wehbe v Pittwater Council [2007]* NSWLEC 827 to demonstrate that compliance with Clause 4.3 of the PLEP 2023 is not reasonable or necessary in this case.

### ▪ The objectives of the E3 Productivity Support Zone have been achieved.

The E3 Productivity Support Zone provides for a range of facilities and services, light industries, warehouses and offices. The proposed height variation will not result in overshadowing to public open space or any residential dwelling. There will be no unacceptable reduction to the level of amenity

afforded to surrounding industrial uses. The objectives of the E3 Productivity Support Zone have been achieved, notwithstanding the proposed height variation.

- **The proposed height variation is necessary to support essential flood mitigation works.**

The proposed height variation is attributed to filling that is essential to the achievement of a development outcome that does not expose people or property to unacceptable levels of flood hazard. While filling of land below the Flood Planning Level is generally not anticipated under the PDCP 2023, a variation to this requirement is justifiable in the context of this DA, facilitating the orderly development of the site, and is directly relevant to this clause 4.6 request. Extended discussion around this has been provided within the Statement of Environmental Effects.

- **The proposed height variation will not result in any adverse environmental impact.**

The proposed height variation will not result in any unacceptable adverse environmental impact. A height-compliant scheme would restrict the viable operation of warehousing and distribution premises at the site, which would not be in the public interest.

Figure 1 – Photomontages of the Proposed Development (Phase 2)



Source: SBA Architects



## 2. Site Description

The site for this DA is located within Abacus's landholding at 181 James Ruse Drive Camellia. Encumbered areas of this landholding include corridor of easements that is east-adjacent to the DA site. An aerial of the site is provided at **Figure 2**. The site benefits from one street frontage to James Ruse Drive (west). The northern site boundary is bounded by the Parramatta River. The Stage 1 Parramatta Light Rail Line adjoins the eastern boundary. The southern site boundary is adjoined by the property at 175 James Ruse Drive.

Figure 2 – Site Aerial



Source: Urbis (excl. Nearmap aerial underlay)



## 2.1. Legal Site Description

The site consists of thirty-six (36) legal allotments. The legal description of each allotment within the site is provided at **Figure 3**.

Figure 3 – Legal Site Description



Source: Urbis (excl. Nearmap aerial underlay)

### 3. Proposed Development

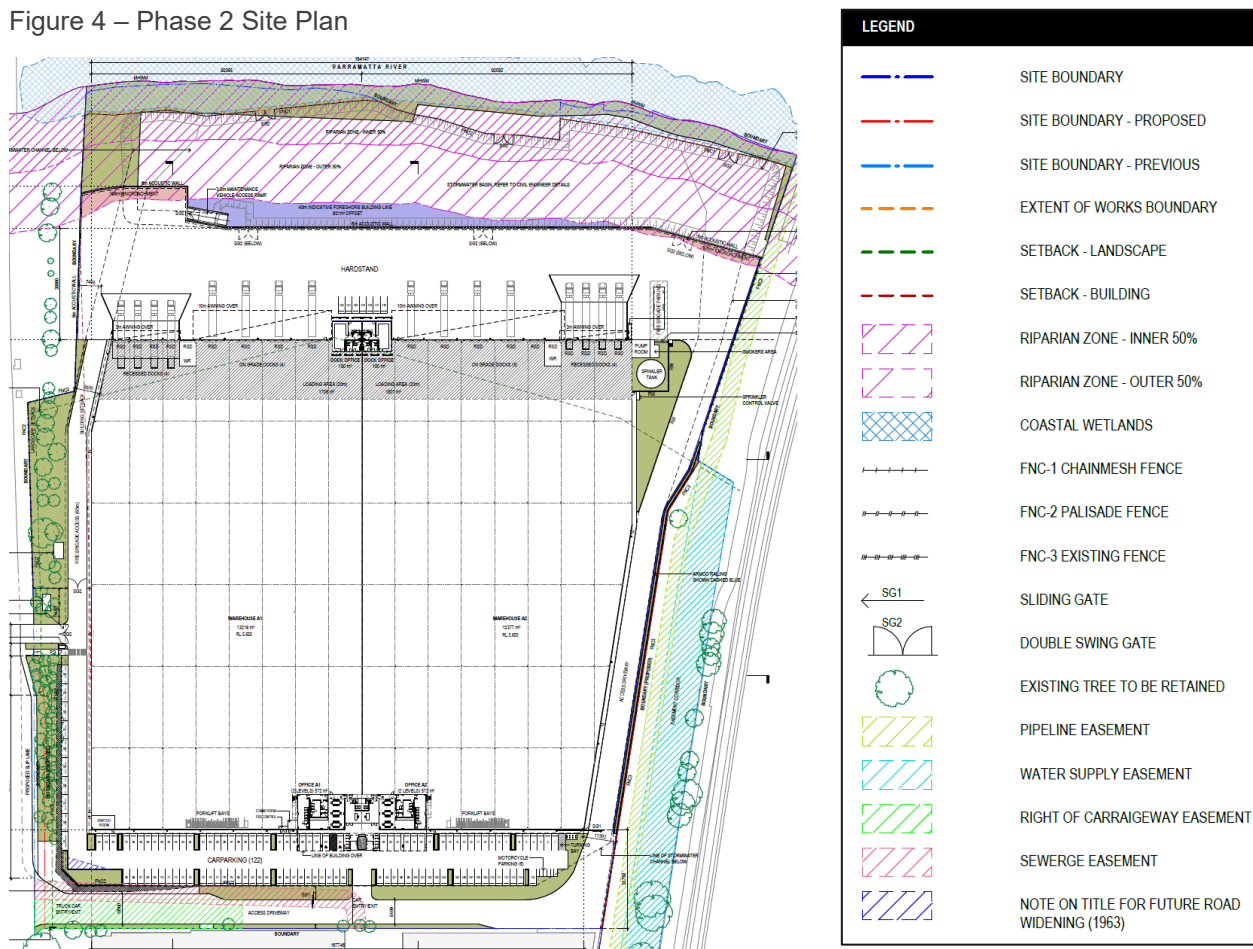
As outlined by **Section 4** of the Statement of Environmental Effects (**SEE**), the proposed development will be delivered in two phases, which are referenced as 'Phase 1' and 'Phase 2'.

This Clause 4.6 Variation Request relates to Phase 2 only. Phase 2 of the proposed development will deliver warehousing and distribution premises at the site, which will be supported by ancillary office floorspace. Phase 2 of the proposed development is summarised below:

- Demolition works, earthworks and site remediation.
- Warehouse A1: 13,866m<sup>2</sup> of storage premises floorspace and 670m<sup>2</sup> of ancillary office floorspace. An internal space for loading and material handling is proposed over a floorspace area of 1656m<sup>2</sup>.
- Warehouse A2: 13,024m<sup>2</sup> of storage premises floorspace and 670m<sup>2</sup> of ancillary office floorspace. An internal space for loading and material handling is proposed over a floorspace area of 1749m<sup>2</sup>.
- 2 waste storage rooms with a combined floorspace area of 102m<sup>2</sup>.
- 122 car parking spaces for staff and visitors.
- Loading zone with capacity for 16 heavy vehicles towards the rear portion of the site.
- Landscaping and vegetation management.
- Flood mitigation works.

An extract of the Site Plan for Phase 2 is provided at **Figure 4**. Further reference should be made to the extended description of the proposed development that has been provided at **Section 4** of the SEE.

Figure 4 – Phase 2 Site Plan



Source: SBA Architects



## 4. Proposed Height Variation

This section of the report identifies the development standard proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

### 4.1. Development Standard to be Varied

The development standard to be varied is imposed by Clause 4.3(2) of the PLEP 2023. This development standard specifies that the *"height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map"*. The site is subject to a split maximum permitted building height under Clause 4.3 of the PLEP 2023:

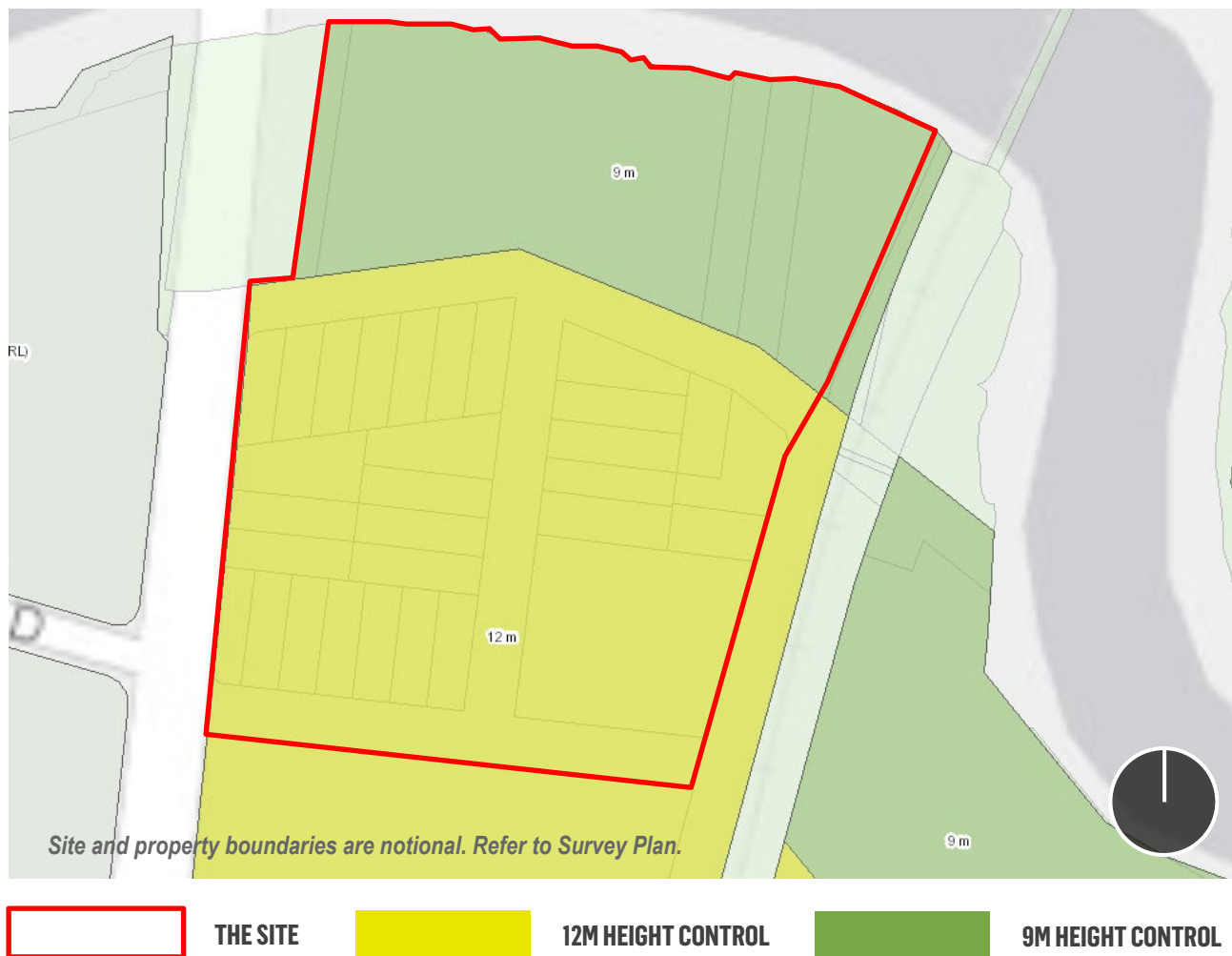
- **Maximum permitted building height of 9m that applies to the northern part of the site.**

The maximum height of the proposed development on land that is subject to the 9m height control is 13.9m. The resulting height breach (4.9m) equates to 54.4% of the standard to be varied, but only at its maximum point.

- **Maximum permitted building height of 12m that applies to the southern part of the site.**

The maximum height of the proposed development on land that is subject to the 12m height control is 16.3m. The resulting height breach (4.3m) equates to 35.8% of the standard to be varied, but only at its maximum point (excl. building ventilation units that will not be readily visible, refer to discussion overleaf). The split height limit that applies to the site under Clause 4.3 of the PLEP 2023 is shown at **Figure 5**.

Figure 5 – Split Height Limit (9m and 12m)



Source: PLEP 2023 Digital EPI Viewer (excl. site boundary overlayed by Urbis)

## 4.2. Breakdown of Proposed Height Variation

**Table 1** provides a variable breakdown of the proposed height variation. This breakdown considers aspects of the proposed built form that project above the maximum permitted building height limits of 9m and 12m, which should be considered on balance with the maximum extent of the proposed height variation. The breakdown below is based on the measurement points shown at **Figure 6** (overleaf).

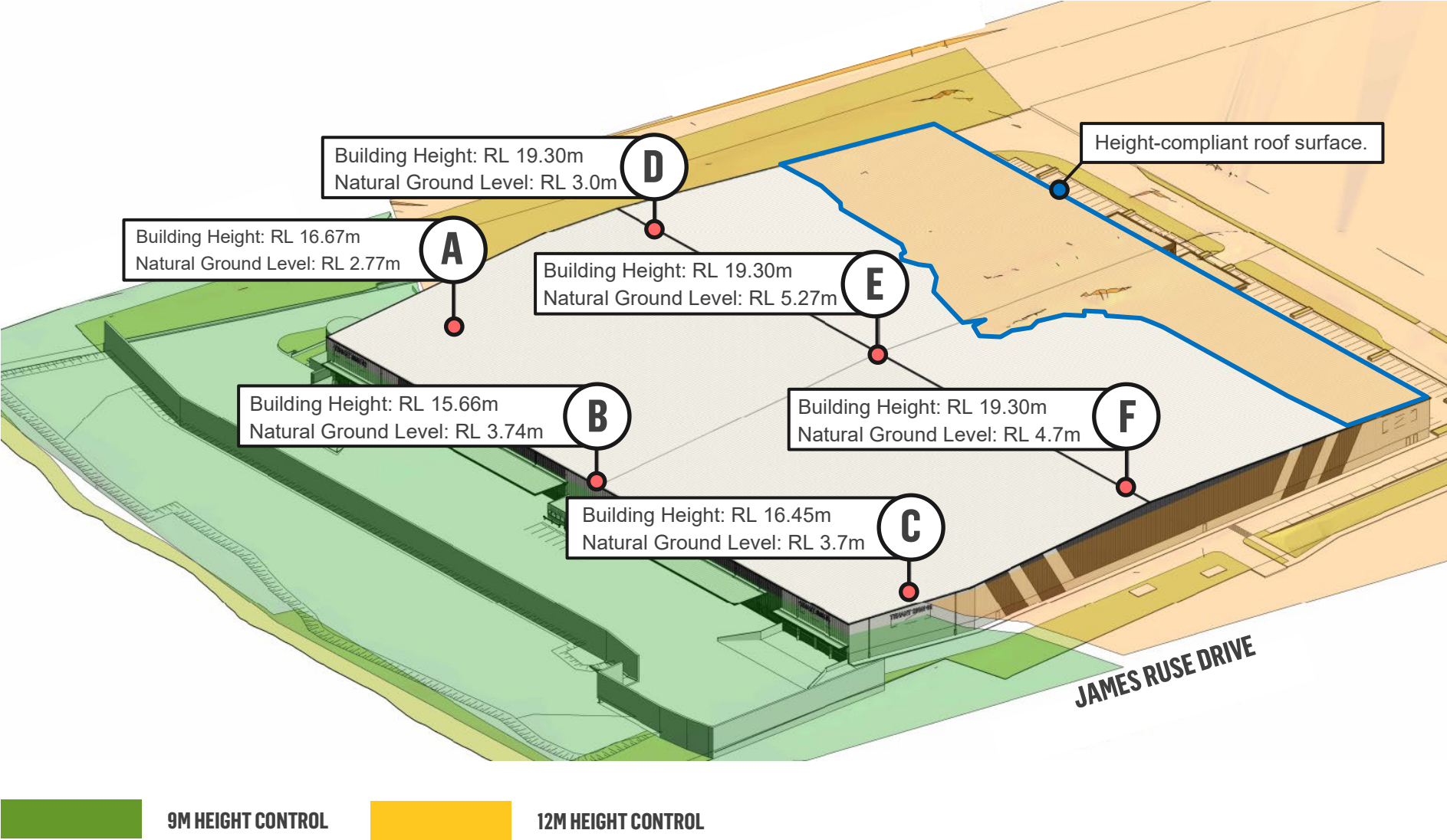
Table 1 Breakdown of Proposed Height Variation

Measurement Point <i>Ref. Figure 5 (overleaf)</i>	Permitted Height	Height Above Natural Ground Level	Variation (m)	Extent of Variation (%)
<b>Measurement points within the area of application for the 9m height limit.</b>				
<b>A</b> RL 16.67m	9.0m	13.9m	4.90m	54.4% <i>Maximum extent.</i>
<b>B</b> RL 15.66m	9.0m	11.92m	2.92m	32.4%
<b>C</b> RL 16.45m	9.0m	12.75m	3.75m	41.8%
<b>Measurement points within the area of application for the 12m height limit.</b>				
<b>D</b> RL 19.30m	12.0m	16.30m	4.30m	35.8% <i>Maximum extent, excluding ventilator units.</i>
<b>E</b> RL 19.30m	12.0m	14.03m	2.03m	16.9%
<b>F</b> RL 19.30m	12.0m	14.6m	2.60m	21.7%
Max. extent of height breach (incl. ventilator units)		17.63m above natural ground level (RL 2.92m), which equates to 46.9% of the standard to be varied.		

As notated on the Height Plane Analysis diagram within the Architectural Plans for Phase 2, spatial allowance has been made for ventilator plants that will extend to a height of 1m above the roof form. The ventilator units will be recessed back from the edge of the building façade and will not be readily visible when observed from ground level. In this regard, it is acknowledged that the provisional height of the proposed ventilator units (up to 1m, subject to confirmation of the detailed mechanical design) will not have any perceptible impact on the height of the proposed development.

Notwithstanding the above, the maximum height of the development, inclusive of the proposed ventilator units, will be 17.63m above natural (unfilled) ground level. The formal extent of the height variation is therefore 46.9% of the standard to be varied. This is notated on the height plane section drawings within the Architectural Plans for Phase 2. It further is noted that significant variance in the elevation of existing natural ground level has been caused by former land uses at the site.

Figure 6 – Isometric Massing Diagram: Building Height Measurement Points – Extract from Phase 2 Architectural Plans (excl. ventilator units)



Source: SBA Architects (annotated by Urbis)

## 5. Relevant Assessment Framework

Clause 4.6(1) of the PLEP 2023 includes provisions that permit exceptions to development standards in certain circumstances. The objectives of Clause 4.6 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 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6(3) requires that the consent authority consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

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

It is noted that clause 4.6 has been simplified as at 1 November 2023 by the removal of the requirements to address “the public interest” in a clause 4.6 written request, and also by removing any requirements for concurrence.

The deletion of the former “public interest” requirement from clause 4.6 means that it is no longer a requirement to demonstrate that a proposed development will be consistent with each of the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Nevertheless, this clause 4.6 will demonstrate that each of those objectives are in fact met by the proposed development, such that a requirement to strictly comply with the height of buildings development standards applicable to the site would be unreasonable and unnecessary in the circumstances.

It is also important to note at the outset that the Land and Environment Court has recently emphasised that clause 4.6 of the LEP “is as much a part of [the LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.” (*SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [73]).

This Clause 4.6 Variation Request demonstrates that compliance with the maximum permitted building height is not reasonable or necessary. It has also been demonstrated that the proposed development will complement the objectives of the E3 Productivity Support Zone, in addition to the intended effect of Clause 4.3. In accordance with Clause 4.6(3) of the PLEP 2023, a variation to the split maximum permitted building height control that applies to the site is requested.

## 6. Assessment of Clause 4.6 Variation

The following sections of this report provide a comprehensive assessment to establish environmental planning grounds for the proposed height variation.

### 6.1. Is the control a development standard that can be varied?

The split maximum permitted building height that applies to the site under Clause 4.3 of the PLEP 2023 is a numerical development standard that is capable of being varied under Clause 4.6(2).

The matters listed within Clause 4.6(6) and (8) are not relevant to the proposed height variation. Accordingly, the proposed height variation is not excluded from the operation of Clause 4.6.

### 6.2. Is compliance with the control unreasonable or unnecessary in the circumstances of the case?

Historically, the most common way to establish that a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires that the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Clause 4.6 Variation Request references the ‘First Method’ outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

It has also been demonstrated that the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the height variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- **The objectives of the standard are achieved notwithstanding non-compliance with the standard** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The proposed development demonstrates consistency with the objectives of Clause 4.3 of the PLEP 2023, which have been addressed at **Table 2**.

Table 2 Consistency with the Objectives of Clause 4.3

Objective	Assessment	Consistency
<i>To provide appropriate height transitions between buildings.</i>	<p>The proposed development provides for an appropriate height transition between buildings. The following is noted in this regard:</p> <ul style="list-style-type: none"><li>▪ The southern site boundary adjoins the property at 175 James Ruse Drive, which accommodates business premises and other complementary uses in a large-format ‘business park’ arrangement. The east and west site boundaries are not adjoined by buildings.</li><li>▪ As shown at <b>Figure 5</b>, the southern part of the roof form complies with the applicable height limit of 12m. The height of the proposed development complies with</li></ul>	Consistent.

Objective	Assessment	Consistency
	<p>Clause 4.3 of the PLEP 2023 towards the southern site boundary to 175 James Ruse Drive.</p> <ul style="list-style-type: none"> <li>Due to the gradient of the roof form, there is an appropriate height transition between the southern interface of the proposed built form and the maximum building height of 16.30m above natural (unfilled) ground level, excluding ventilator units. It is further noted that the height of the proposed built form is variable. Specifically, it deviates significantly from the maximum height of development (and the formal extent of the proposed height variation). This is shown at <b>Figure 6</b>.</li> <li>As outlined at <b>Section 6.4.1.2</b> of this Clause 4.6 Variation Request, the proposed height and scale of development will not result in any overshadowing to the development at 175 James Ruse Drive.</li> </ul>	
<i>To ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area.</i>	<p>The site is located within the Camellia-Rosehill Precinct, which has an important strategic role as an industry and employment hub within the Greater Parramatta and Olympic Peninsula (<b>GPOP</b>) Economic Corridor.</p> <p>The proposed development complies with the applicable Floor Space Ratio (<b>FSR</b>) control under the PLEP 2023 and presents a built form outcome that is in keeping with the industrial character of the Camellia-Rosehill Precinct.</p> <p>The proposed built form alignment has achieved a general setback of 10m from James Ruse Drive, which is consistent with the built form provisions of Section 4.3 within the <i>Parramatta Development Control Plan 2023 (PDCP 2023)</i>. Existing and proposed tree plantings will screen development to minimise the observable scale of development from this arterial thoroughfare.</p> <p>It has been established that due to the gradient of the roof form, there is an appropriate height transition between the southern interface of the proposed built form and the maximum building height of 16.30m above natural (unfilled) ground level, excluding ventilator units.</p>	Consistent.
<i>To require the height of future buildings to be appropriate in relation to heritage sites and their settings.</i>	<p>The northern site boundary is breached slightly by a heritage listing for wetlands under Item I11 in Schedule 5 of the PLEP 2023. Works are not proposed within the extent of this heritage listing. The proposed built form is set back over 60m from the extent of the heritage listing. This separation distance is more than sufficient with respect to the intended effect of this objective.</p>	Consistent.

Objective	Assessment	Consistency
	<p>It is further noted that Phase 2 of the proposed development will establish riparian vegetation within a dry detention basin over an area of the site that is currently unutilised hardstand. This will transform an area of the site that has no ecological value into an asset that will contribute positively towards the natural profile of the site.</p> <p>It is further noted that future development in the Camellia-Rosehill Precinct, inclusive of the site, will exceed the height of development under new height controls that are expected to shape development in the local area in the long-term. The proposed height variation is reasonable and anticipated with respect to the strategic vision for the precinct.</p>	
<i>To reinforce and respect the existing character and scale of low-density residential areas.</i>	The proposed development does not adjoin any low-density residential area. This objective of Clause 4.3 is not relevant to the proposed height variation.	Not applicable.
<i>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</i>	Matters that are relevant to visual impact and solar access have been considered from <b>Section 6.3.1</b> to <b>Section 6.4.1.2</b> of this Clause 4.6 Variation Request. These sections have provided a thorough assessment which demonstrates that the proposed development is consistent with the intended effect of this objective.	Consistent.
<i>To preserve historic views.</i>	Historic view corridors are considered at <b>Section 6.3.1</b> and <b>Section 6.4</b> of this Clause 4.6 Variation Request. These sections have demonstrated that the proposed development will not result in any unacceptable impact on the integrity of any historic view corridor. In this regard, the proposed development is considered to be consistent with this objective.	Consistent.
<p><i>To maintain satisfactory sky exposure and daylight to –</i></p> <ul style="list-style-type: none"> <li><i>i. existing buildings in commercial centres, and</i></li> <li><i>ii. the sides and rear of tower forms, and</i></li> <li><i>iii. key areas of the public domain, including parks, streets and lanes.</i></li> </ul>	<p>The proposed development is consistent with this objective for Clause 4.3. The following is noted in this regard:</p> <ul style="list-style-type: none"> <li>▪ The site does not adjoin any commercial centre. The proposed height variation will not impact exposure to open sky vistas or sunlight for buildings in commercial centres.</li> <li>▪ There is no tower form within the vicinity of the site.</li> <li>▪ The proposed height variation will not result in any meaningful reduction to open sky vistas or daylight exposure to the public domain.</li> </ul>	Consistent.

The objectives for Clause 4.3 of the PLEP 2023 have been achieved, notwithstanding the proposed height variation. There are sufficient grounds for the 'First Method' to facilitate the justification for the proposed height variation. The 'Second Method' and 'Third Method' and 'Fourth Method' and 'Fifth Method' from *Wehbe v Pittwater Council [2007]* NSWLEC 827 are not relied upon for the purpose of outlining the environmental planning grounds for the proposed height variation.

### 6.3. Are there sufficient environmental planning grounds to justify contravening the development standard?

Clause 4.6(3)(b) of the LEOP requires a clause 4.6 written request to demonstrate *that there are sufficient environmental planning grounds to justify the contravention of the development standard*.

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council [2018]* NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston CJ observed:

*"...in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*

*...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development"*

The proposed height variation will not result in any unacceptable environmental impact. It is **not** necessary to achieve an outcome that is superior to what would otherwise be delivered under a height-compliant development scenario, as noted by Preston CJ in *Initial Action* (above) This Clause 4.6 Variation Request has presented sufficient environmental planning grounds for the proposed height variation.

Notwithstanding this, it is acknowledged that targeted discussion is warranted with respect to specific matters that are relevant to the assessment of the proposed height variation. These matters have been addressed from **Section 6.3.1** to **Section 6.4.1.2**.

#### 6.3.1. View Corridors

Section 8.2.4.2 of the PDCP 2023 provides specific development controls that regulate the height of buildings within the 'Area of Height Sensitivity' of the Camellia and Rydalmere Local Centre (refer to **Figure 7** overleaf). The following controls from Section 8.2.4.2 of the PDCP 2023 are relevant to the assessment of this Clause 4.6 Variation Request:

- C.01 *Development must not have an adverse impact on significant or historic views from or of heritage sites along the Parramatta River when seen from river and nearby historic sites.*
- C.02 *Any development within the Rydalmere Precinct and on land shown on the Camellia Design Control Map as "Area of Height Sensitivity" must demonstrate through survey and photo montages, that the height of the proposed development does not have a significant adverse impact on identified views to the Female Orphan School (University of Western Sydney Rydalmere Campus) and its emergent trees, the Parramatta River Corridor and Pennant Hills open space ridge line. The relevant identified views for the Camellia and Rydalmere precincts are provided in Appendix 1.*

Control C.02 references the Historic View Corridors that are established by Figure A1.1.1 of Appendix 1 to the PDCP 2023. The view corridors that are relevant to the assessment of this Clause 4.6 Variation Request are 6, 10 and 11 (refer to **Figure 7** overleaf). The proposed height variation has been assessed with regard for potential impacts to these view corridors at **Table 3**.

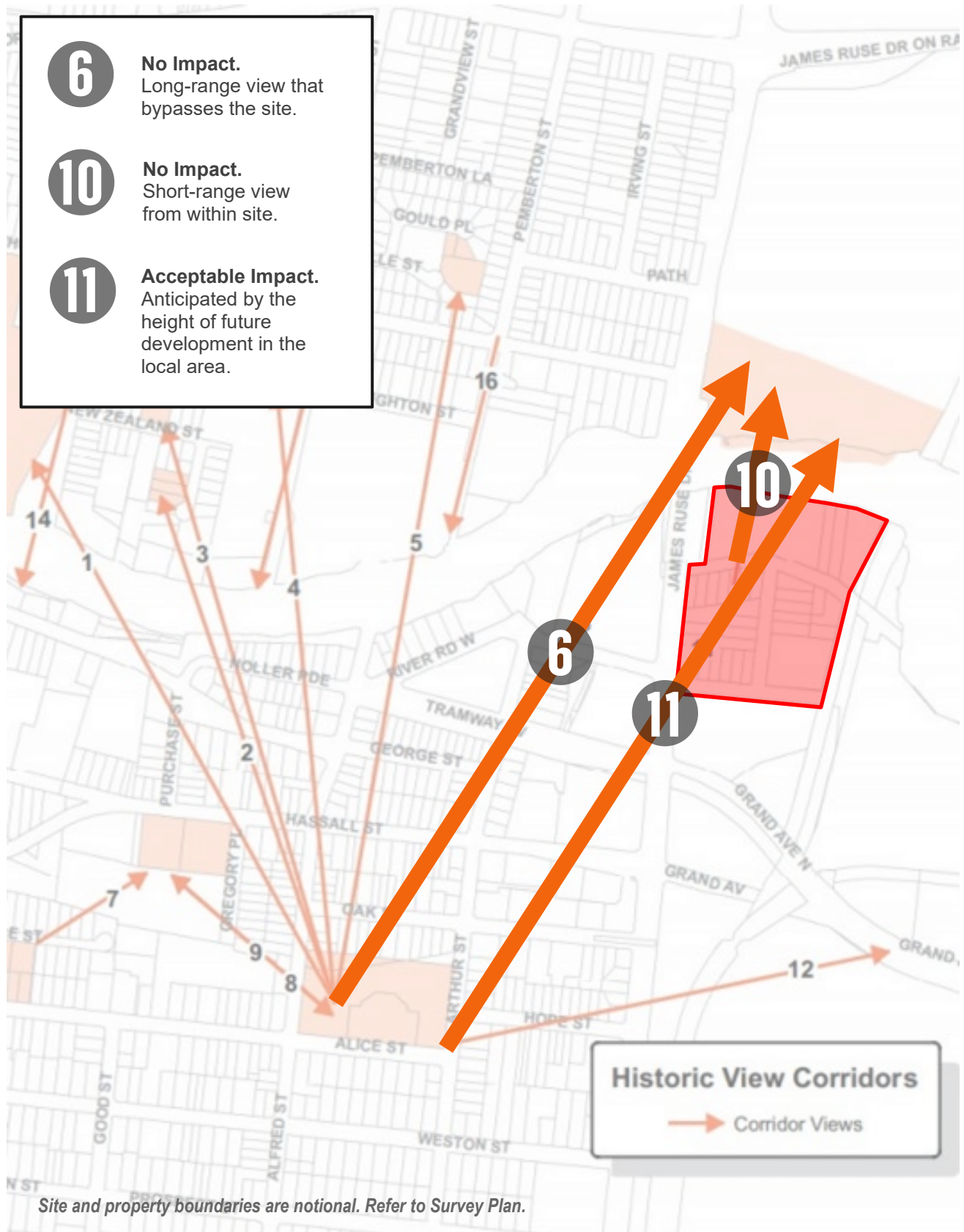


Table 3 Consideration of View Corridors

No.	Range	Description	Assessment	Impact
6	Long-range. ~1km	Western side of Elizabeth Farm Reserve towards Female Orphan School.	View Corridor 6 bypasses the site and will not be impacted by the proposed development.	No impact.
10	Short-range. ~300m	From within site towards Female Orphan School	The proposed development does not impact sight lines towards the Female Orphan School from within the site, which are already obstructed by dense mangrove plantings along the southern bank of the Parramatta River.	No impact.
11	Long-range. ~1km	Eastern side of Elizabeth Farm Reserve towards Female Orphan School.	<p>While the proposed development may be visible in View Corridor 11, this is acceptable because:</p> <ul style="list-style-type: none"> <li>There is another long-range view corridor from Elizabeth Farm Reserve that will not be compromised, either in the short term or ultimate term when the Camellia-Rosehill Precinct is redeveloped.</li> <li>In the ultimate term, future development at the site will likely be constructed to a height that is far greater than the existing maximum permitted building height (9-12m), perhaps in the order of 80m – 120m -. refer to discussion at <b>Section 6.4</b>. Development of the scale and nature that has been proposed is anticipated within the visual setting of the Camellia-Rosehill Precinct.</li> <li>The proposed development presents an interim outcome for the site that will be in keeping with the profile of development in the local area.</li> <li>Elizabeth Farm Reserve is located at a higher elevation than the site.</li> </ul>	Acceptable.

The assessment provided within **Table 3** has demonstrated that the proposed development will achieve an acceptable design outcome that has sufficient regard for sensitive view corridors, notwithstanding the proposed height variation. In response to Control C.02 (quoted on the previous page), it is concluded that the submission of photo-real montages, view loss diagrams and other specialist visual impact material is not warranted in this instance. Further reference should be made to discussion at **Section 6.4** (overleaf), which considers the envisaged height and scale of development at the site in the ultimate term.

Figure 7 – Relevant View Corridors



Source: PDCP 2023 (adapted by Urbis)

## 6.4. Anticipated Height of Future Development

### 6.4.1.1. Camellia-Rosehill Place Strategy

The relevant strategic planning directions within the Camellia-Rosehill Place Strategy (**Place Strategy**) have been addressed at **Section 6.1** of the SEE. The Place Strategy presents a long-term vision for the precinct to 2041 which includes a long rezoning process that is yet to commence.

There is an interim need for an appropriate large-format land use outcome at the site. If an appropriate interim land use outcome for the site is not achieved, the site will remain unutilised until a development outcome that responds to the strategic vision for the Camellia-Rosehill Precinct is viable. The following is noted with respect to the proposed height variation and the Place Strategy:

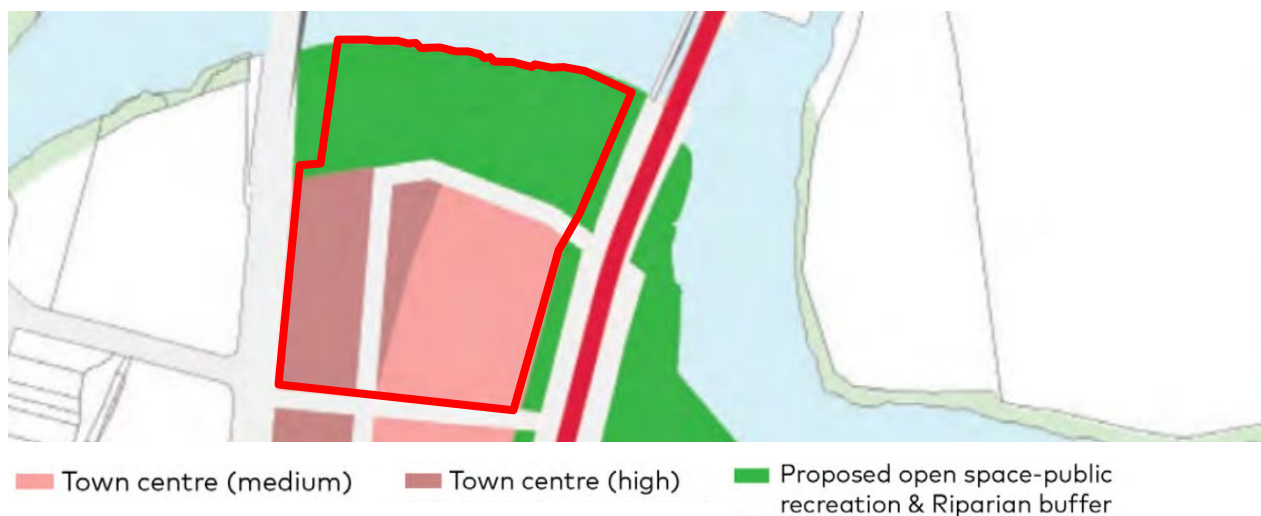
- The majority of the site area is identified within either the future 'Town Centre' ('Medium') or the future 'Town Centre (high)' where the Place Strategy has proposed potential maximum permitted building heights between 80m and 130m respectively. The Place Strategy has proposed these potential height controls with regard for the following objectives that have been stated under Strategic Direction 1:

*"Ensure the river frontage of Parramatta River is designed appropriately and addresses views to the state heritage listed Female Orphan School"*

*"Provide sensitive transitions to heritage items, spaces and values through height, density, setback, built form, landscape treatment and open space"*

- In the ultimate term, future development at the site will likely be constructed to a height that is far greater than the existing maximum permitted building height (9-12m). The Place Strategy has indicated a potential baseline for assessment with respect to the height of future development and longer-range views towards the Female Orphan School from areas to the south of the site. This matter is only noted in passing, as the proposed development presents an interim outcome for the site and the lengthy process of rezoning the Camellia-Rosehill Precinct is yet to commence.

Figure 8 – Place Strategy Extracts – Long Term Land Uses and Potential Height Controls



Land use	Zoning	Maximum building height (metres)
Town centre (medium)	MU1 Mixed Use (B4 Mixed Use under PLEP 2011)	80
Town centre (high)	MU1 Mixed Use (B4 Mixed Use under PLEP 2011)	130

Source: Camellia-Rosehill Place Strategy (adapted by Urbis)

#### 6.4.1.2. Relocation and Development of Rosehill Racecourse

On 7 December 2023, it was announced by the State Government that discussions have commenced with the Australian Turf Club (**ATC**) on a proposal to relocate Rosehill Race Course to provide for the delivery of over 25,000 new homes. The redevelopment of the Rosehill Race Course would be catalysed by a new Sydney Metro West station that has recently been announced for Rosehill.

In any instance, the redevelopment of the Rosehill Race Course is expected to accommodate high-density residential and mixed-use development. This will reinforce the emergence of a new high-rise height datum for development in the local area, which has already been anticipated by the Camellia-Rosehill Place Strategy, albeit in a different area of the precinct.

At the time of writing this Clause 4.6 Variation Request, it is understood that the NSW Government and the ATC have signed an MOU on the potentially historic plan, which would be subject to the NSW Government's unsolicited proposals process. To date, no Planning Proposal has been formally commenced.

Figure 9 – Future Sydney Metro West Stations and Rosehill Racecourse



Source: Sydney Morning Herald; New South Wales Government

#### 6.4.2. Overshadowing

Overshadowing is a regular consideration for any height variation. The Architectural Plans (**Appendix B**) include Shadow Diagrams that have been prepared to convey the extend of shadowing that will be cast from the proposed development during Winter Solstice (21 June).

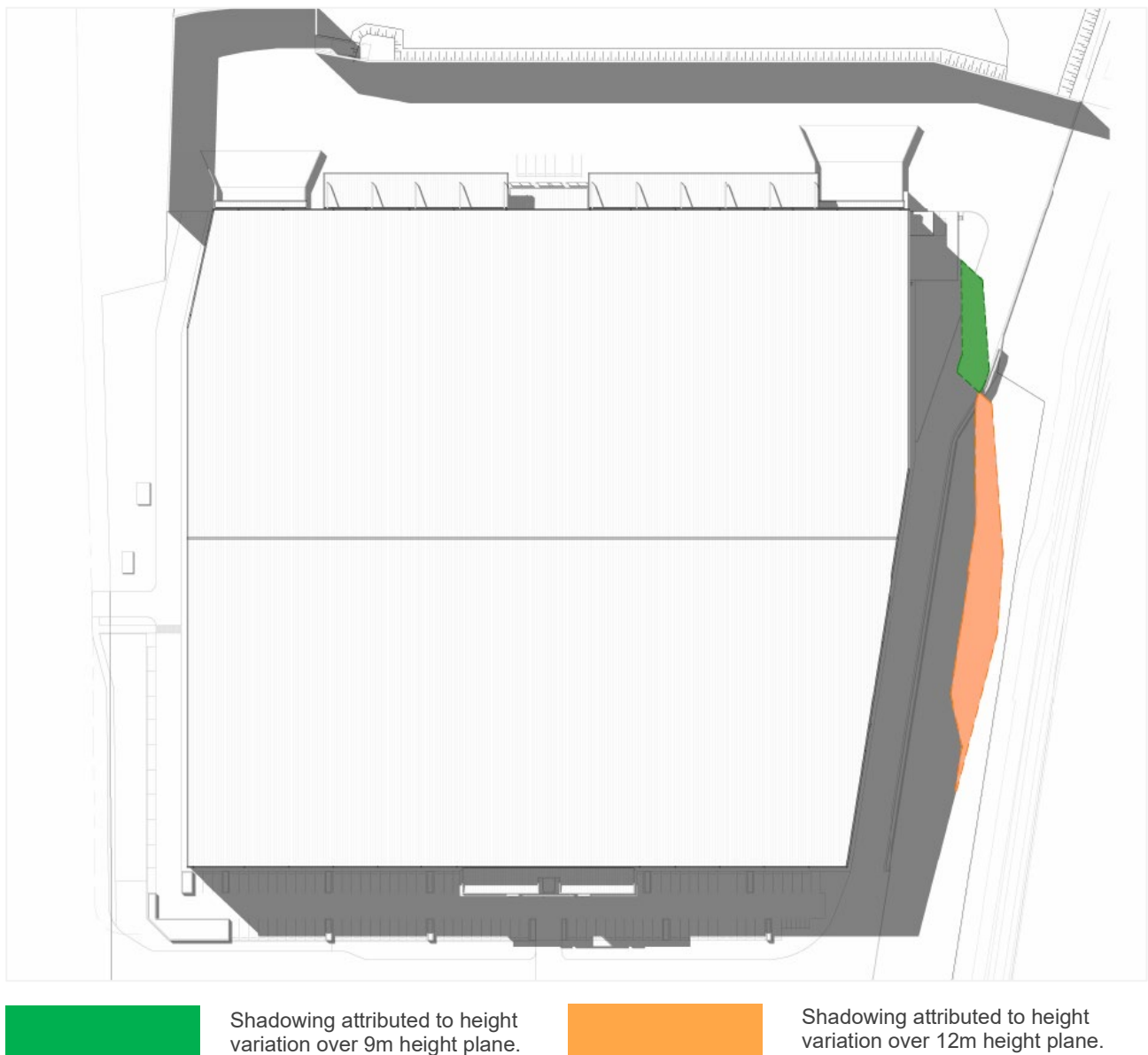


The Shadow Diagrams have notated parts of the proposed shadow footprint that are attributed to the proposed height variation. The following is noted in this regard:

- The proposed height variation will not result in any additional overshadowing to surrounding buildings.
- The proposed height variation will not result in any additional overshadowing to land that does not fall within Abacus's landholdings.
- The Shadow Diagrams that have been submitted with the proposed height variation have demonstrated that the proposed development will not result in any unacceptable reduction to solar amenity.

An extract from the appended Shadow Diagrams where the extent of shadowing caused by the proposed height variation is the greatest (at 3:00 PM on 21 June) is provided at **Figure 10**.

Figure 10 – Overshadowing due to Proposed Height Variation at 3:00 PM on 21 June (worst case)



Source: SBA Architects

## 6.5. Has the written request adequately addressed the matters in Subclause (3) of Clause 4.6?

Clause 4.6(3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant has demonstrated the matters required to be demonstrated by Subclauses (3)(a) and (b).

Each of the Subclause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. This Clause 4.6 Variation Request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to Clause 4.3 of the PLEP 2023.

The consistency of the development with the objectives of the development standard is demonstrated at **Table 4**. The proposal is also consistent with the objectives for the E3 Productivity Support Zone. This is demonstrated at **Table 4**.

Table 4 Consistency with E3 Productivity Support Zone Objectives

Objective	Assessment	Consistency
<i>To provide a range of facilities and services, light industries, warehouses and offices.</i>	The proposed development will accommodate land uses that are permitted with consent in the E3 Productivity Support Zone.	Consistent.
<i>To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.</i>	<p>The Department of Planning and Environment (DPE) published the <i>Industrial Report 2022 (Industrial Report)</i> in mid-2022.</p> <p>It is well-established that the supply side of Greater Sydney's industrial property market is catching up to buoyant demand for manufacturing, logistic and warehouse floorspace across the region.</p> <p>The proposed development will support the economy of Greater Sydney and will not compete with land uses in surrounding local and commercial centres.</p>	Consistent.
<i>To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.</i>	<p>No retail uses are proposed. The proposed development will incorporate ancillary office floorspace that is essential to support the function of warehousing and distribution premises as the primary land use for Phase 2.</p> <p>The proposed development will not compromise the viability of local and commercial centres and is therefore consistent with this objective.</p>	Consistent.
<i>To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations</i>	The Industrial Report confirmed that “ <i>warehousing building activity remained the most dominant type of building approval in 2021</i> ” with “ <i>activity [in the industrial property market] predominately located in the Western and Central City Districts [of Greater Sydney]</i> ”. This trend has emerged due to supply-side constraints in the industrial property market.	Consistent.

Objective	Assessment	Consistency
<i>in other employment zones.</i>	The proposed development will deliver employment-generating land uses that are in demand and permitted with consent in the E3 Productivity Support Zone. This will benefit the local economy and meet the needs of the community.	
<i>To provide opportunities for new and emerging light industries.</i>	The site is one of the largest vacant landholdings in the Camellia-Rosehill Precinct, which is suited to a large-format outcome. The proposed development will not compete with or compromise the potential for emerging light industries.	Consistent.
<i>To create an accessible and safe public domain.</i>	The proposed development will not change the level of public access that is currently afforded to the foreshore of the Parramatta River. There will be no impact to the level of safety afforded to the public domain.	Consistent.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	<p>As outlined by Section 5.3 of the SEE, the proposed development is consistent with the provisions of the PDCP 2023 that regulate the provision of car parking and bicycle storage facilities at the site.</p> <p>The proposed development will deliver an employment-generating land use at a vacant site that is within the vicinity of the Camellia Light Rail Station.</p> <p>The proposed development is consistent with this objective as it relates to the site and scope of this DA.</p>	Consistent.
<i>To ensure development is carried out in a way that does not adversely affect the amenity of adjoining residential areas.</i>	<p>The proposed development does not adjoin any residential area. This objective of Clause 4.3 is not relevant to the proposed height variation. It is further noted that there is no overshadowing to the south-adjoining industrial property at 175 James Ruse Drive. Refer to <b>Section 6.4.1.2</b>.</p> <p>The Camellia-Rosehill Precinct is isolated from land uses that are sensitive to overshadowing and other impacts that are commonly associated with a height variation. These impacts are not relevant to the proposed height variation (refer to <b>Section 6.3</b>). However, there is an established trend where development across the Camellia-Rosehill Precinct has leveraged this isolated setting to maximise opportunities for industrial uplift. In relation to the height of development, the following is noted in passing:</p> <ul style="list-style-type: none"> <li>▪ An approved DA (DA/751/2019) for warehousing and distribution premises at 8 Grand Avenue, Rosehill varied the applicable height limit (12m) by 115%.</li> <li>▪ A recent State Significant Development Application (SSD-55522478) for warehousing and distribution premises at 6 Grand Avenue, Rosehill has proposed to vary the applicable height limit (12m) by 117.5%. SSD-55522478 is</li> </ul>	Not applicable.

Objective	Assessment	Consistency
	<p>currently in the post-exhibition (response to submissions) phase of assessment.</p> <ul style="list-style-type: none"> <li>A recent DA (DA/573/2023) for warehousing and distribution premises at 1 Grand Avenue, Camellia has proposed to vary the applicable height limits (9m and 12m) with a built form that would be constructed to a height of 13.7m.</li> </ul>	
<i>To encourage a range of office uses.</i>	<p>No retail uses are proposed. The proposed development will incorporate ancillary office floorspace that is essential to support the function of warehousing and distribution premises as the primary land use for Phase 2.</p> <p>The proposed development is consistent with this objective as it relates to the site and scope of this DA.</p>	Consistent.
<i>To minimise adverse effects on the natural environment.</i>	<p>This Clause 4.6 Variation Request has established that the proposed height variation will not result in any unacceptable adverse environmental impact. A height-compliant scheme would restrict the viable operation of warehousing and distribution premises at the site, which would not be in the public interest in the absence of sufficient environmental planning grounds.</p>	Consistent.

Figure 11 – Photomontage of Proposed Development



Source: SBA Architects



## 7. Conclusion

For reasons outlined by this Clause 4.6 Variation Request, strict compliance with the standard to be varied is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable to vary the split maximum permitted building height control (9-12m) that applies to the site under Clause 4.3 of the PLEP 2023. The following is noted in summary of this Clause 4.6 Variation Request:

- **The objectives of Clause 4.3 of the PLEP 2023 have been achieved.**

The underlying objectives and purpose of Clause 4.3 have been achieved, notwithstanding the proposed height variation. This Clause 4.6 Variation Request has referenced the 'First Method' outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827* to establish that compliance with Clause 4.3 of the PLEP 2023 is not reasonable or necessary in this case.

- **The objectives of the E3 Productivity Support Zone have been achieved.**

The E3 Productivity Support Zone provides for a range of facilities and services, light industries, warehouses and offices. The proposed height variation will not result in overshadowing to public open space or to any residential dwelling. There will be no unacceptable reduction to the level of amenity afforded to surrounding industrial uses. The objectives of the E3 Productivity Support Zone have been achieved, notwithstanding the proposed height variation.

- **The proposed height variation is necessary to support essential flood mitigation works.**

The proposed height variation is attributed to filling that is essential to the achievement of a development outcome that does not expose people or property to unacceptable levels of flood hazard. While filling of land below the Flood Planning Level is generally not permitted under the PDGP 2023, a variation to this requirement is justifiable in the context of this DA. Extended discussion around this has been provided within the Statement of Environmental Effects.

- **The proposed height variation will not result in any adverse environmental impact.**

The proposed height variation will not result in any unacceptable adverse environmental impact. A height-compliant scheme would restrict the viable operation of warehousing at the site, which would not be in the public interest. It is further noted that:

- **The proposed height variation will not result in any unacceptable reduction to solar amenity.**

The proposed height variation will not result in any additional overshadowing to surrounding buildings, including the south-adjointing building at 175 James Ruse Drive. There are no residential dwellings within the immediate vicinity of the site.

- **The proposed height variation does not result in any meaningful or unacceptable view loss.**

It has been established that the proposed height variation will not result in any unacceptable view loss or obstructions to historic view corridors. It is further noted that in the ultimate term, future development at the site will be constructed to a height that is far greater than the existing maximum permitted building height (9-12m).

- **The proposed height variation is reasonable and anticipated with respect to the envisaged height of future development across the Camellia-Rosehill Precinct in the long-term.**

This is noted with regard for the view corridors that are identified within Appendix 1 of the PDGP 2023, as shown at Figure 6 of this Clause 4.6 Variation Request.

For the reasons above, this Clause 4.6 Variation Request is well-founded. Compliance with Clause 4.3 of the PLEP 2023 is not reasonable or necessary in this instance. This Clause 4.6 Variation Request has therefore established sufficient environmental planning grounds for the proposed height variation. In the circumstances of this case, the flexible application of the split maximum permitted building height that applies to the site (9-12m) is warranted.

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