



SYDNEY CENTRAL CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-93
DA Number	DA/242/2020
LGA	City of Parramatta
Proposed Development	Consolidation of the 2 existing lots, re-subdivision to create 4 lots with associated road and pathway infrastructure, civil works and construction of an affordable housing development comprising 162 apartments with basement parking on Lot A. The proposal is to be determined by the Sydney Central City Planning Panel.
Street Address	264 – 268 Pennant Hills Road, Carlingford (Lot 1 DP1033201 and part Lt 2 DP 364225)
Applicant	BaptistCare NSW & ACT
Owner	BaptistCare
Date of DA lodgement	4 May 2020
Number of Submissions	Nine
Recommendation	Approval
Regional Development Criteria	The development has a capital investment value of more than \$30 million. The application also triggers determination by the SCCPP as it is for affordable housing with a capital investment value of more than \$5 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none">• Environmental Planning and Assessment (EP&A) Act 1979• EP&A Regulation 2000• SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004• SEPP (Infrastructure) (ISEPP) 2007• SEPP (State and Regional Development) 2011• SEPP (Sydney Harbour Catchment) (SEPP Sydney Harbour) 2005• SEPP No. 55 (Remediation) (SEPP 55)• SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) & Apartment Design Guide (ADG)• Parramatta Local Environmental Plan (PLEP) 2011• Parramatta Development Control Plan (PDCP) 2011
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none">• Attachment 1 – Architectural Drawings• Attachment 2 – Landscape Drawings
Clause 4.6 requests	<ul style="list-style-type: none">• Parramatta Local Environmental Plan 2011• Clause 4.3 – Height of Buildings• R4 High Density Residential zone

Summary of key submissions	<ul style="list-style-type: none"> • Traffic • Privacy impacts on adjoining properties to the west • No vehicle access from Pennant Hills Road • Development of southern portion of the site • Noise impact from loading dock entry • Inadequate infrastructure (education facilities, public transport, road, recreation facilities, local services) • Parking • Pedestrian safety • Overshadowing • Light spill from basement car park entry • Inadequate community consultation • Unclear description of proposed development • Car park entry relocated to western side • Permissibility • Demand for proposed development • Not affordable housing
Report prepared by	Frances Mehrstens
Report date	4 December 2020

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

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

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

Special Infrastructure Contributions - Does the DA require Special Infrastructure Contributions conditions (s7.24)? **No**

Conditions - Have draft conditions been provided to the applicant for comment? **Yes**

1. Executive Summary

The proposal provides for construction of three, four storey buildings comprising 162 affordable housing apartments; 82 car parking spaces in a single-level basement, landscaping, site amalgamation and re-subdivision and civil and public domain works. The affordable housing apartments are designed to meet identified needs for housing for seniors and families on BaptistCare's tenancy register.

The proposed development generally follows the form for the site envisaged by the *Parramatta Local Environmental Plan (PLEP) 2011*, Parramatta Development Control Plan (PDCP) 2011, and the Parramatta Public Domain Guidelines.

The Applicant has submitted a request to exceed the building height standard under Clause 4.6 of PLEP 2011. The request is considered to be well founded for reasons including, but not limited to, the constraints imposed by the site and the desirability of providing varying forms of seniors housing in the area.

The development has been subject to review by Council's Design Excellence Advisory Panel (DEAP) and is considered to be consistent with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG), providing a high quality of life for future occupants.

The amenity impacts on adjoining and nearby properties and the public domain are considered to be reasonable. It is considered that the proposed increase in traffic is commensurate with the level anticipated by the planning controls.

The application has been assessed relative to section 4.15 of the *Environmental Planning and Assessment (EP&A) Act 1979*, taking into consideration all relevant state and local planning controls. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. As such approval is recommended.

2. Key Issues

Affordable Rental Housing SEPP

- **Landscaped area (cl. 14(1)(c))**
 - Control: 35m² per dwelling (5,670m² total)
 - Proposed: 2,568m² (30% of site area)
 - Assessment: Acceptable on the basis that the development complies with the communal open space requirements of the ADG and that numeric compliance with the clause would require 71% of the site to be provided as landscaping.
- **Solar access (cl. 14(1)(e))**
 - Control: 70% of dwellings receive direct sunlight for three hours from 9am to 3pm at midwinter.
 - Proposed: 74% of dwellings receive solar access for a minimum of two hours.
 - Assessment: Acceptable on the basis that the development will achieve compliance with the solar access requirements of the ADG.

Parramatta Local Environmental Plan 2011

- **Height of Buildings (cl. 4.3)**
 - Control: 14 metres
 - Proposed: 14.84 metres (5.8% variation)
 - Assessment: Supported in the circumstances of the case as the built form responds to the topography of the site and the development is consistent with the objectives of the zone and the height of buildings of development standard.

- **Stormwater drainage** – Deferred commencement conditions are recommended for the following reasons:
 - Public Domain Civil Works design: stormwater drainage is to be re-routed to be entirely on public land, rather than passing through private property (as is currently proposed). Additional catchment modelling is required to be undertaken to demonstrate that the stormwater infrastructure has the capacity to drain the expected flows.
 - On-site detention: Minor design amendments are required to the OSD tank in accordance with the *Upper Parramatta River Catchment Trust On-Site Detention Handbook (Edition 4)*.

3. Site Description, Location, and Context

3.1 Site and Location

The site is located in an established residential area on the southern side of Pennant Hills Road and is approximately 500 metres south-west of the former Carlingford train station and 1.2 kilometres from Carlingford Village. The rectangular shaped site comprises two allotments with a combined site area of 27,493m² and dual frontages to Pennant Hills Road (114 metres) and Martins Lane (245m). The site slopes steeply away from Pennant Hills Road from RL 98.5 to RL 78 at the southern boundary.

The site subject to this Development Application is the northern portion of the site and a portion of land including and adjacent to Martins Lane and comprises a total of 8,000sqm.



Figure 1 Development site outlined in red – subdivision site outlined in yellow

The site is currently vacant, with the previous seniors living development that occupied the site demolished in accordance with DA/689/2017. The surrounding lots are occupied by primarily single and double storey detached dwellings and zoned R4 High Density Residential around Pennant Hills Road and R2 Low Density Residential and R3 Medium Density Residential further to the south.

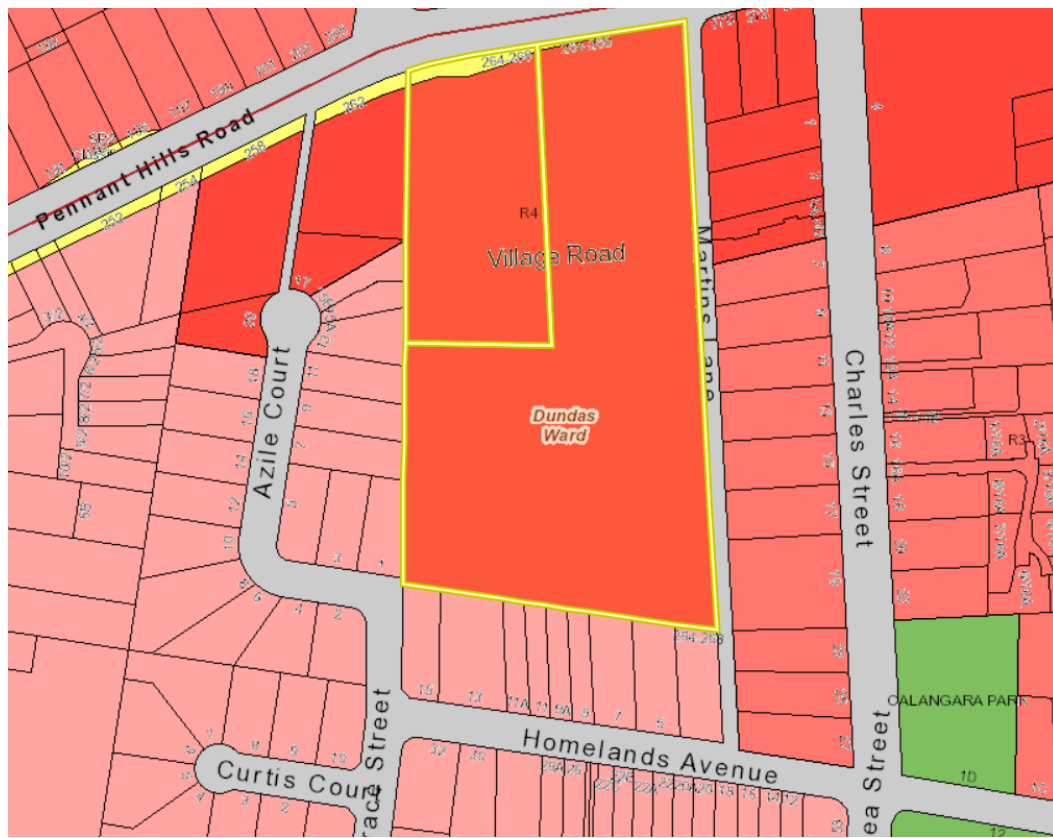


Figure 2. PLEP 2011 Zoning map (subject site outlined in yellow). The site is zoned R4 – High Density Residential.



Figure 3. Site as viewed from Pennant Hills Road looking south.



Figure 4. Site as viewed from Martins Lane looking north

3.2 History

The subject site is part of a larger site that was rezoned in October 2019 under RZ/2/2015. The rezoning allowed for increased density on the site and the development of residential apartment buildings, as described below.

Control	Previous Controls	Current Controls
Zoning	Part R2 Low Density Residential Part SP2 Infrastructure	Part R4 High Density Residential Part SP2 Infrastructure (Classified Road)
Height	9 metres	14m metres
FSR	0.5:1	Part 1:1
Natural Resources Biodiversity	N/A	To map part of site as Natural Resources-Biodiversity to reflect existing Endangered Ecological Community (EEC) on the site.

Table 1 Summary of Planning Proposal

The Planning Proposal has been reviewed for final endorsement at a number of Council and Local Planning Panel meetings, as follows:

- 26 August 2016 – Council meeting.
- 20 June 2017 – IHAP meeting.
- 12 June 2018 – Council meeting.
- 15 January 2019 – LPP meeting.
- 25 February 2019 – Council meeting for endorsement of the Planning Proposal subject to amendments.

A site-specific Development Control Plan has been prepared for the site, and an assessment against these provisions is included at **Section 5.5** below.

The applicant has also been entered into a Voluntary Planning Agreement with Council for the following works:

- Provision of a new north-south road to link with the new east-west road.
- Provision of a new east-west road linking to Pennant Hills Road and Martins Lane.
- Public domain improvement works along the western side of Martins Lane.
- Martins Lane upgrade including – full width road surface upgrade, new street lighting, new fencing along the eastern side of Martins Lane to replace existing dilapidated fencing to properties, subject to agreement by owners.
- Signalisation of the intersection of Pennant Hills Road and Baker Street, including two signalised pedestrian crossings.
- Public access and maintenance of the high ecological constraint area and associated Blue Gum High Forest vegetation at the southern portion of the site.

4. The Proposal

4.1 Summary of Proposal

The proposal seeks approval for the following development:

Consolidation of the existing 2 lots, re-subdivision to create 4 lots with associated road and pathway infrastructure, civil works and construction of an affordable housing development comprising 162 apartments with basement parking on Lot A. The proposal is to be determined by the Sydney Central City Planning Panel.

- Removal of four trees.
- Excavation of a single-level basement for the provision of:
 - 82 resident car parking spaces (including 17 accessible);
 - 40 bicycle parking spaces.
 - 8 scooter parking spaces.
 - Plant rooms and waste storage.
- Construction of 3 x 4 storey residential apartment buildings for affordable housing comprising:
 - 82 x 1 bedroom, 63 x 2 bedroom and 17 x 3 bedroom apartments.
 - Community room.
- Landscaping.
- Civil works, including construction of two new roads and regrading and widening of Martins Lane.
- Consolidation of existing lots and re-subdivision into four lots (two for development, one for new roads and one for future acquisition by TfNSW).
- Public domain works.

Note: BaptistCare is a registered Community Housing Provider and intends to maintain ownership of the property until at least 1 January 2045.



Figure 5 Proposed site plan



Figure 6 Photomontage of Building B (left) and Building A (right) from Pennant Hills Road

4.2 Summary of Amendments Since Lodgement

The applicant submitted revised drawings and documentation addressing concerns raised by Council's DEAP, Council officers and external referral bodies including, but not limited to, the following changes:

- Modified building massing to increase the length of Building B along Martins Lane and decrease the length of Building C along the proposed East West Road.
- Provision of communal open space on the rooftop of Building B.
- Modified articulation and materiality of the façade.
- Modified internal apartment layouts to achieve ADG compliance.
- Provision of building entry lobbies from public streets for all buildings.
- Incorporation of an additional lift core in Building B.

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Sydney Central City Planning Panel Briefing (13/11/2020)

The matters raised by the Panel at its Briefing meeting are addressed below:

Issues Raised	Comment
The proposal is non-compliant in term of communal open space, particularly as the proposed communal open space at ground level may be largely overshadowed. Additional rooftop communal open space is now under consideration.	The total amount of communal open space complies with the requirements of the ADG, accounting for both the ground floor communal courtyard and the rooftop terrace. Whilst the ground communal courtyard does not comply with the solar access requirements of the ADG, the rooftop terrace will receive an acceptable level of solar access and is considered a suitable alternative solution.
The proposal is non-compliant in relation to solar access, however the non-compliance is considered acceptable from a planning point of view.	The solar access non-compliance is when the development is assessed against the requirements of the Affordable Rental Housing SEPP, which requires 3 hours of solar access to 70% of apartments between 9am and 3pm at midwinter. The proposal is compliant with the solar access requirements of the ADG, which only requires 2 hours to 70% of apartments between 9am and 3pm at midwinter.
The Panel queried certain detailed design issues, such as the length of buildings and related building facades, height differentiation between buildings, and building relationships, including interfaces between apartments and driveways/utility areas and interface between apartments in internal corner positions. However, it is noted that the development is generally consistent with the site specific DCP and has been referred to Council's Design Excellence Panel on three occasions.	<p>The built form has been reviewed by Council's Design Excellence Advisory Panel on three occasions and is assessed to be appropriate for the site, as well as consistent with the relevant planning controls.</p> <p>The interface issues raised by the Panel will be addressed through conditions of consent that limit the hours of operation of the loading dock, and require the operation of both vehicle entries to minimise amenity impacts in relation to noise, light and visual impacts.</p> <p>All internal corner apartments achieve building separation in accordance with the ADG, and also incorporate further visual privacy measures such as privacy screens and offset windows.</p>
This DA is the first of possibly 2 DAs for the overall site and it is noted that substantial elements of the associated Planning Agreement will be delivered as part of the current DA.	Noted.

Table 2 SCCPP briefing notes and response

5.2 Design Excellence Advisory Panel

Council's DEAP considered the application on three occasions and provided advice which informed the subject application.

The Panel first considered the subject application at a meeting on 11 June 2020. The Panel gave the application a 'red light' and provided the following feedback:

- Alternative built form configurations should be explored that respond to the context of the site.
- The scale and built form of the proposal results in poor amenity.
- Solar access and cross ventilation in accordance with the ADG are not met.
- Internal amenity requires improvement.
- Building lobbies should face the street.
- Communal open space should be provided on a rooftop to mitigate adverse overshadowing and acoustic impacts in the central courtyard.
- Explore opportunities to articulate and express the façade through changes in parapet height, roof forms and façade materiality.

The applicant subsequently submitted revised concept drawings responding to these concerns. The Panel further considered the application at a meeting on 27 August 2020. The Panel gave the application an 'orange light' and stated the following:

- Alternative built form configurations should be explored that respond to the context of the site.
- There are significant urban design and amenity issues as a result of the built form configurations and relate to loss of visual corridors and breeze, poor open space amenity, non-compliant ventilation and non-compliant mid winter solar access.
- Building B should be extended to run the full length of Martins Lane.
- Building C should be shortened to reinstate a north south visual link.
- Skylights must be better designed to ensure compliance with solar access and natural ventilation requirements.
- Alternative options to the fold back accessibility ramps should be considered.
- All balconies deeper than they are wide should be modified so that the longer dimension of each balcony is parallel to the building façade.
- A roof terrace should be incorporated.
- Consider amending the design of the central communal open space to define entries from all four sides, locate seating to encourage social interaction, locate footpaths to reflect pedestrian desire lines and contains the playground.
- Further design refinement is required to ensure safety in the landscaped front setback.

Following this, the applicant submitted revised drawings which were considered by the chair of the DEAP panel, Brendan Randles. The panel chair gave the application a 'green light' and stated the following:

- The proposed built form configuration is supported.
- The built form modification improves open space amenity, streetscape potential and amenity issues.
- Building B fails to achieve 60% natural ventilation and the number of apartments will need to be reduced or skylights included.
- Privacy impacts between Building B and C will need to be addressed.
- All balconies deeper than they are wide should be modified.
- Alternative options for fold back accessibility ramps should be considered.
- Previous recommendations about landscaping must be incorporated into the final design.
- The boundary condition of the site needs to be resolved and represented on the DA drawings to address security measures.

The DEAP panel's full comments are included at Appendix 2.

5.3 External

Authority	Comment
Endeavour Energy	Supported.
Transport for NSW (TfNSW) -	Supported, subject to conditions of consent.

RMS	
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Table 3 External referrals

5.4 Internal

Authority	Comment
Development Engineer	Supported, subject to conditions of consent.
Catchment Engineer	Supported, subject to conditions of consent.
Landscape Officer	Supported, subject to conditions of consent.
Traffic Engineer	Supported, subject to conditions of consent.
Urban Design - Building	Supported.
Urban Design – Public Domain	Supported, subject to conditions of consent.
Internal Assets - Roads	Supported, subject to conditions of consent.
Infrastructure – Align Plans/Public Domain	Supported, subject to conditions of consent.
Accessibility	Supported, subject to conditions of consent.
Environmental Health – Acoustic	Supported, subject to conditions of consent.
Environmental Health – Contamination	Supported, subject to conditions of consent.
Open Space & Natural Areas	Supported.
Social Outcomes	Supported, subject to conditions of consent.

Table 4 Internal referrals

6. Environmental Planning and Assessment Act 1979

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

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

The site is in an established urban area with low ecological significance and has been predominantly cleared of vegetation, however approximately 0.06 hectares of remnant Blue Gum High Forest that conforms to the Endangered Ecological Community Blue Gum High Forest listed under the *Biodiversity Conservation Act 2016* is located in the southern portion of the site (refer to Figure 7).

Blue Gum High Forest is also listed as a Critically Endangered Ecological Community under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act), however the remnant trees on the site are not consistent with the EPBC Act listing criteria.

No threatened fauna species have been recorded on the site and there is limited fauna habitat on the site due to previous clearing and demolition. Accordingly, the proposed development is not expected to remove any fauna habitat.

The proposed development will retain and protect the *eucalyptus saligna* trees that are descriptive of the Threatened Ecological Community, and no threatened fauna or fauna habitat will be impacted. Mitigation measures are recommended to protect vegetation and to reduce impacts from sedimentation, erosion and pollution. Accordingly, no threatened species, populations or ecological communities, or their habitats will be adversely impacted by the proposal.



Figure 7 Natural Resources - Biodiversity PLEP 2011 map

6.2 Section 4.15: Evaluation

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

Provision	Comment
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 7
Section 4.15(1)(a)(ii) - Draft environmental planning instruments	Refer to section 8
Section 4.15(1)(a)(iii) – Development control plans	Refer to section 9
Other Planning Controls	Refer to section 10
Section 4.15(1)(a)(iiia) - Planning Agreement	Refer to section 11
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 12
Section 4.15(1)(a)(v) - Coastal zone management plan	Not applicable.
Section 4.15(1)(b) - Likely impacts	Refer to section 13
Section 4.15(1)(c) - Site suitability	Refer to section 14
Section 4.15(1)(d) – Submissions	Refer to section 15
Section 4.15(1)(e) - The public interest	Refer to section 16

Table 5 Section 4.15(1)(a) considerations

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application comprise:

- SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004;
- SEPP (Infrastructure) (ISEPP) 2007;
- SEPP (State and Regional Development) (SEPP SRD) 2011;
- SREP (Sydney Harbour Catchment) (SREP (Sydney Harbour)) 2005;
- SEPP No. 55 (Remediation) (SEPP 55);
- SEPP (Affordable Rental Housing) 2009;
- SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65); and
- Parramatta Local Environmental Plan (PLEP) 2011.

Compliance with these instruments is addressed below.

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

The application is accompanied by a BASIX certificate that lists sustainability commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposal. Nonetheless, a condition will be imposed to ensure such commitments are fulfilled during the construction of the development.

7.3 State Environmental Planning Policy (Infrastructure) 2007

Clause 45 - Development likely to affect an electricity transmission or distribution network

The proposed development involves works within 5 metres of an exposed overhead electricity power line and within 2m of an underground electricity power line. The proposed development was referred to the electricity supply authority for the area, being Endeavour Energy, and the authority confirmed there is no objection to the proposed development.

Clause 101 – development with frontage to a classified road

The proposed development has a frontage to Pennant Hills Road, which is a classified road. The proposal satisfies the requirements of clause 101 as:

- Vehicle access is provided from Martins Lane, with a left turn-out only provided from Martins Lane to Pennant Hills Road.
- The operation of Pennant Hills Road will not be adversely affected by the development.
- The proposed development is appropriately located and designed to ameliorate traffic noise and vehicle emissions within the site. This includes a 6m setback from Pennant Hills Road and the provision of a landscape buffer.

Clause 102 – impact of road noise or vibration on non-road development

Pennant Hills Road has a daily traffic volume of more than 20,000 vehicles and the noise criteria set by clause 102(3) apply. The Acoustic Assessment submitted with the application confirms that the development is capable of complying with the noise criteria subject to incorporation of appropriate construction materials and glazing.

Clause 104 - Traffic generating development

The proposed development is classified as traffic generating development as it is for more than 75 dwellings adjacent to a classified road. The development application was referred to TfNSW - RMS and the general terms of approval were received from the concurrence authority.

The proposed development will facilitate appropriate accessibility, allowing for efficient movement of people and freight and from the site utilising Martins Lane and the two new public roads. Traffic safety and potential congestion impacts are acceptable and parking is provided in accordance with the rate prescribed by the ARH SEPP.

7.4 State Environmental Planning Policy (State and Regional Development) 2011

The application is regional development, as it has a capital investment of more than \$30 million. The application is also regional development as it is for affordable housing with a capital investment value of more than \$5 million.

7.5 Sydney Regional Environmental Policy (Sydney Harbour Catchment) 2005 (Deemed SEPP)

This Policy, which applies to the whole of the Parramatta Local Government Area (LGA), aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment, and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole. The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome will be achieved through the imposition of suitable conditions to address the collection and discharge of water during construction and operational phases of the development.

7.6 State Environmental Planning Policy No. 55 – Remediation of land

The site was subject to a Preliminary Site Investigation and Remediation Action Plan as part of DA/689/2017 for demolition of the existing structures and site remediation. These works were carried out between September and October 2019.

A subsequent Geotechnical Assessment prepared for the site in February 2020 and outlines that 16 boreholes were drilled within the site and soil samples were taken and analysed. This field investigation was undertaken concurrently with the contamination validation assessment, and found a brick lined pit was in the approximate north-western corner of the site. A borehole was drilled into this pit and soil samples indicate that asbestos containing material was observed in the fill.

The Interim Site Audit Statement submitted outlines that:

- Asbestos containing material from a depth of 4m to 7.5m below ground level requires remediation, which is most logical to complete during excavation of the basement.
- Further investigation and potential remediation of fill material is required following removal of the asphalt car park in the south east corner of the site, which is retained for site access during construction.
- The balance of fill is considered to have the potential to contain asbestos and an unexpected finds protocol should be implemented during construction, and all fill material should be covered by clean material or hardstand.

Subject to conditions, the site can be made suitable for the proposed residential use and the development satisfies the requirements of clause 7(1) of SEPP 55.

7.7 State Environmental Planning Policy (Vegetation in Non-Rural Areas)

The application has been assessed against the requirements of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. 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.

The application proposes the removal of three native trees from the site identified as *eucalyptus microcorys* (one tree) and *melaleuca quinquenervia* (two trees). The *eucalyptus microcorys* is a failed tree and recommended for removal due to safety reasons, whilst the *melaleuca quinquenervia* are within the footprint of the reconstruction of Martins Lane and would be subject to unsustainable construction impacts.

The application also proposes the removal of one non-native tree from the site and the replacement of native vegetation as part of the landscape plan.

Council's Tree and Landscape Officer has reviewed the application and raise no objections to the removal of the vegetation from the subject site subject to conditions.

7.8 Affordable Rental Housing SEPP

The application is for new affordable housing in the form of residential flat buildings and is made pursuant to *Part 2 New affordable rental housing - Division 1 In-fill affordable housing* of SEPP (Affordable Rental Housing) 2009. The following is an assessment against the relevant clauses of Division 1 for development applications *made by a social housing provider*.

Section	Proposal	Compliance
Part 2 New affordable rental housing		
Division 1 In-fill affordable housing		
10(1a) Development to which Division applies <i>the development concerned is permitted with consent under another environmental planning instrument, and</i>	Residential flat buildings are permissible with consent in the R4 zone under the PLEP 2011.	Yes.
10(1b) Development to which Division applies	The site does not contain a heritage item, is not subject to an interim heritage order and	Yes.

14 (1) (e) Solar Access 70% of the development's dwellings are to receive direct sunlight for a minimum of three hours from 9am to 3pm	74% of apartments receive 2+ hours of solar access. When including apartments that utilise a skylight, 76% of apartments receive 2+ hours of solar access.	No. The variation is acceptable on the basis that the development will achieve compliance with the solar access requirements of the ADG. Pursuant to clause 14(3), development consent may be granted whether or not the development complies with this standard.
14 (2) (a) (i) Parking 0.4 x 82 (1 bedroom) = 32.8 0.5 x 63 (2 bedrooms) = 31.5 1 x 17 (3 bedrooms) = 17 Total minimum parking spaces required = 81.3	82 car parking spaces are provided.	Yes.
14 (2) (b) Dwelling Size Minimum – Bedsitter/Studio: 35m ² 1 Bedroom: 50m ² 2 Bedrooms: 70m ² 3 Bedrooms and more: 95m ²	All 1 and 2 bedroom dwellings of the development complies with the minimum dwelling size. 3 bedroom dwellings are a minimum 90sqm, compliant with the ADG.	Yes - 1 and 2 bedrooms comply. No – 3 bedrooms are minimum 90msqm This variation is acceptable on the basis that 90sqm is the minimum size for a 3 bedroom apartment under the ADG. Pursuant to clause 14(3), development consent may be granted whether or not the development complies with this standard.
15 Design requirements This clause does not apply to development to which clause 4 of <i>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</i>	-	-
16 Continued application of SEPP 65	The development has been designed in accordance with SEPP 65 (refer to assessment below).	Yes
16A Character of local area	The proposed development is compatible with the character of the local area. The design of the development is compatible with the character of the local area, providing four-storey residential flat buildings in a R4 High Density Residential zone. The site adjoins a R4 High Density Residential zone to the east, and provides a suitable transition to the adjoining low-density residential areas to the west and south. Adopting the planning principle established by <i>Project Venture Developments v Pittwater Council (2005) NSW LEC 191</i> , physical and visual impacts on surrounding development are considered. The proposed development is not expected to have any adverse physical impacts on surrounding development, as the development will not constrain the development potential of surrounding sites and does not result in unacceptable shadow, privacy or noise impacts. In relation to visual impact, the proposed built form and façade articulation are in harmony with the surrounding buildings and	

	<p>character of the street, utilising a range of materials and modulating the façade to reduce any perception of building bulk.</p> <p>The proposed height of four storeys is compatible with the desired future character of the area and has been determined following a site-specific rezoning and development of a development control plan. Whilst a minor height breach is proposed, this is primarily to accommodate lift overruns and roof of Building A.</p> <p>Setbacks are provided in accordance with the site-specific DCP and also comply with the required building separation under the ADG.</p> <p>Significant landscaping is provided in the Pennant Hills Road setback, and along the side and rear of boundaries of the site to complement the character of the local area.</p>	
17 (1) (a) Must be used for affordable housing for 10 years	<p>Information provided by the applicant indicates that BaptistCare intend to operate the site as affordable housing for 10 years or more.</p> <p>The Voluntary Planning Agreement registered on title requires that 162 dwellings are maintained as affordable housing on the site until 1 January 2045.</p>	Yes
18 Subdivision Subdivision is permissible with consent	Subdivision is proposed.	Yes

Table 6 Assessment against ARH SEPP

7.9 State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)

SEPP 65 applies to the development as it is for new buildings, is more than three (3) storeys in height, and will have more than four (4) residential units. SEPP 65 requires that residential apartment development satisfactorily address nine (9) design quality principles, and consider the recommendations in the Apartment Design Guide (ADG).

Design Quality Principles

A design statement addressing the quality principles prescribed by SEPP 65 was prepared by the project architect, and submitted with the application. The proposal is considered to be consistent with the design principles for the reasons outlined below:

Requirement	Council Officer Comments
<i>Principle 1: Context and Neighbourhood Character</i>	The proposed development is considered to make a positive contribution to the locality and improve the existing streetscape. The character of this locality is undergoing transition from low-medium scale residential uses to high density residential development along Pennant Hills Road. The proposal provides compliant setbacks to all street frontages and boundaries, with landscaping provided in all setbacks to complement the existing character of the area. The articulation of the building facades seeks to break down the perception of building bulk and create distinctive building forms.
<i>Principle 2: Built Form and Scale</i>	The built form and scale is appropriate for the site, accounting for the existing and desired future character of the area. The proposed building alignment, proportions and articulation achieve a complementary relationship to the surrounding area, and will appropriately define the public domain with landscaping and residential courtyards adjoining the street frontages.

Requirement	Council Officer Comments
<i>Principle 3: Density</i>	The development is compliant with the FSR control (including ARH bonus) and achieves an appropriate density for the site, being a total of 162 dwellings. The design will achieve residential amenity in accordance with the design criteria of the ADG, and is supported by surrounding infrastructure including public transport and access to nearby centres and recreation facilities.
<i>Principle 4: Sustainability</i>	A BASIX Certificate and relevant reports have been submitted with the development application outlining Environmentally Sustainable Design (ESD) initiatives which meet the required targets. The development achieves a good level of cross ventilation throughout the development. The application provides suitable provision of bicycle parking for residents (provided in accessible areas).
<i>Principle 5: Landscape</i>	The proposal is consistent with the objectives of PDGP 2011, and provides appropriate planting to communal open space and surrounding streets, creating an appropriate landscape setting.
<i>Principle 6: Amenity</i>	The proposal is considered to be satisfactory in this regard, optimising internal amenity through appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, outlook, efficient layouts and service areas.
<i>Principle 7: Safety</i>	The proposal is considered to provide appropriate safety for occupants and the public for the following reasons: <ul style="list-style-type: none"> • A significant number of units are orientated towards public streets or the central communal open space, creating passive surveillance. • Entry points into the building are clearly identifiable allowing ease of access for residents and visitors. • Access to the communal open space is protected by a gate.
<i>Principle 8: Housing Diversity and Social Interaction</i>	The proposal achieves a mix of apartment sizes and layouts, providing diversity. The proposal provides a variety of communal open spaces which will foster social interaction, including the central courtyard, rooftop communal open space and ground floor community room in Building A.
<i>Principle 9: Aesthetics</i>	The composition of building elements, textures, materials and colours reflect the use, internal design, and structure of the resultant building. The proposed buildings are considered to aesthetically respond to the environment and context, contributing in an appropriate manner to the desired future character of the area.

Table 7 ADG Design Quality Principles assessment

Design Review Panels

The application was referred to the City of Parramatta's Design Excellence Advisory Panel, in keeping with the requirements of Clause 28 of SEPP 65.

Apartment Design Guide

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

Standard	Requirement	Proposal	Compliance
Part 3			
<i>3B-1: Orientation</i>	The orientation of the buildings are acceptable as they run parallel to the site boundaries, align to the topography of the site and are generally consistent with the building envelopes set out in the site-specific DCP.		

Standard	Requirement	Proposal	Compliance
3B-2: Overshadowing	<p>The shadow cast by the proposed development falls predominantly within the site, with the exception of overshadowing of properties to the west between 9 – 10am and properties to the west from 3pm.</p> <p>For the properties to the west, shadows will fall predominantly on private open space areas, with the exception of a small portion of shadow impacting the dwellings at 13 and 15 Azile Court between 9am and 10am.</p> <p>For the properties to the east, shadows will fall predominantly on private open space areas at 3pm.</p> <p>All adjoining private open spaces will receive solar access to at least 50% of their principal useable area for 2 hours at mid-winter between 9am and 3pm.</p> <p>For the reasons outlined above, the proposal is considered to have a reasonable overshadowing impact on adjoining/nearby properties.</p>		
3C: Public Domain Interface	The public domain interface is considered to positively contribute to the streetscape by providing distinct building entries, high quality materials and significant landscaping around the perimeter.		
3D: Communal & Public Open Space	<p>Min. 25% of site area (2,000m²)</p> <p>Min. 50% direct sunlight to main communal open space for minimum two (2) hours 9:00am & 3:00pm, June 21st (734.5m²)</p>	<p>2,264m² (ground) 110m² (roof) 2,374m² (total)</p> <p>The principal useable area of the ground floor communal open space is 1,469sqm (being the central courtyard).</p> <p>The principal useable area of communal open space receives 1 hour of solar access to a minimum of 50% of the area.</p> <p>In addition, the rooftop communal open space will receive a minimum of 40% direct sunlight for 5 hours.</p>	<p>Yes</p> <p>Yes – alternative solution proposed.</p>
	The landscape plan outlines undercover areas, BBQ's, open air seating areas, and a variety of soft and hard landscaping which is considered to provide good amenity for future occupants. The rooftop communal open space is proposed to be synthetic turf only with no other amenities provided for future occupants – a condition of consent is recommended to amend this design to provide seating and additional planting suitable to the rooftop environment.		
3E: Deep Soil	<p>Min. 7% with min. dimensions of 6m (560m²)</p> <p>15% on sites greater than 1,500m² (1,200m²)</p>	<p>~846m² (10.5%)</p> <p>1,273m² (minimum dimension 3m)</p>	<p>Yes</p> <p>Yes</p>
3F: Visual Privacy	Building A – Building B		
	<4 storeys, H/NH, 3m	5.6 metres (minimum)	Yes

Standard	Requirement	Proposal	Compliance
	<4 storeys, H/H, 6m	6 metres (minimum)	Yes
	Building A – Building C		
	<4 storeys, H/NH, 3m	9 metres (minimum)	Yes
	<4 storeys, H/H, 6m	9 metres (minimum)	Yes
	Building B – Building C		
	<4 storeys, H/NH, 3m	9 metres (minimum)	Yes
	<4 storeys, H/H, 6m	7 metres (minimum)	Yes
	Separation distance to site boundaries		
	<4 storeys, H/NH, 3m	Eastern boundary - 8 metres (minimum) Western boundary - 14 metres (minimum)	Yes
3G: Pedestrian Access and Entries	<4 storeys, H/H, 6m	Eastern boundary - 8 metres (minimum) Western boundary - 14 metres (minimum)	Yes
	The proposal includes clearly demarcated, easily identifiable, at-grade pedestrian entrances, well separated from vehicular accesses.		
3H: Vehicle Access	<p>Vehicle access is provided from Martins Lane, with the new North South and East West roads providing accessibility within the site. Vehicle access to the basement is provided from the North South Road.</p> <p>A condition of consent is recommended that mitigation measures are implemented so that basement ramp does not result in any adverse visual or noise impacts on residential amenity.</p>		
3J: Bicycle and car parking	Car Parking Minimums		
	>82	Residential: 82 Visitor: 0 Total: 82	Yes Yes Yes
Car parking is provided in accordance with the ARH SEPP.			
For bicycle parking assessment see Parramatta DCP assessment below.			
Part 4			
4A: Daylight / Solar Access	Min. 2hr for 70% of apartments living & POS 9am - 3pm mid-winter (>113)	120 out of 162 apartments (74%) receive 2 hours 9am - 3pm mid-winter	Yes
	Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<24)	12 out of 162 apartments (7%)	Yes
4B: Natural Ventilation	Min. 60% of apartments up to 9 storeys naturally ventilated (>97)	103 out of 162 apartments (63.5%)	Yes
4C: Ceiling heights	Min. 2.7m habitable	2.7m	Yes
	Min 2.4m non-habitable	2.4m	Yes
4D: Apartment size & layout	1B – Min 50m ²	Yes (50sq.m min)	Yes
	2B – Min 70m ²	Yes (70sq.m min)	Yes
	3B – Min 90m ²	Yes (90sq.m min)	Yes

Standard	Requirement	Proposal	Compliance
	All rooms to have a window with total minimum glass area not less than 10% of the floor area of the room.	Complies	Yes
	Habitable room depths max. 2.5 x ceiling height (6.75m)	<8.4m (Apartment 1J)	No (minor)
	Max. habitable room depth from window for open plan layouts: 8m.	<8.4m (Apartment 1J, 2S and 2D)	No (minor)
	Min. internal areas:		
	Master Bed - 10m ²	>9.5m ² (Apartment 1J)	No (minor)
	Other Bed - 9m ²	>9m ²	Yes
	Min. 3m dimension for bedrooms (excl. wardrobe space).	>3m	Yes
	Min. width living/dining:		
	• 1B – 3.6m	>3.6m	Yes
	• 2B – 4m	>4m	Yes
	• 3B – 4m	>4m	Yes
4E: Private open space & balconies	Min. area/depth:		
	1B - 8m ² /2m	>8m ² /2m	Yes
	2B - 10m ² /2m	>10m ² /2m	Yes
	3B - 12m ² /2.4m	>15m ² /2.2m	Yes
	Principle private open spaces are provided off living rooms with secondary access from bedrooms where possible.		
4F: Common circulation & spaces	Max. apartments – off circulation core on single level: 8	9 (Building B)	No (minor)
	The corridors are provided with natural light.		
4G: Storage	1B – 6m ³ (x82) = 492 m ³ 2B – 8m ³ (x63) = 504 m ³ 3B – 10m ³ (x17) = 170 m ³ Total – 1,166m ³ Min. 50% required in units (583m ³)	93% of apartments provide all storage area within the apartment. 8% of apartments provide a minimum of 50% within the apartment, and the remainder in the basement.	Yes
	A condition is recommended requiring that sufficient total volumes of storage space be allocated as required.		
4H: Acoustic Privacy	The proposal has generally been designed so that like-use areas of the apartments are grouped to avoid acoustic disturbance where possible. Noisier areas such as kitchens and laundries are designed to be located away from bedrooms where possible.		
4J: Noise and pollution	The application includes an acoustic report which recommends construction methods/materials/treatments to be used to meet the criteria for the site, given both internal and external noise sources. A condition is included requiring the implementation of the report's recommendations.		

Standard	Requirement	Proposal	Compliance
4K: Apartment Mix	The proposed units vary in size, amenity, orientation and outlook to provide a mix of options for future residents. A variety of apartment sizes are provided across each level of the apartment building.		
4M: Facades	The façade materials include brick in a variety of colours and textures, clear glazing and black metal screens to add visual interest. The proposal has distinctive vertical elements to articulate the façade, and uses colour to distinguish between building elements.		
4N: Roof design	The proposed building has flat roof elements which are considered to be appropriate given the building typology. Rooftop plant and lift overrun are suitably concealed and positioned, ensuring they are not visible from the street.		
4O: Landscape Design	The application includes a landscape plan which demonstrates that the proposed development will be adequately landscaped. The proposal includes extensive landscaping providing high quality communal open spaces for future residents.		
4P: Planting on structures	The landscape drawings outline that planting on structures would have adequate soil depth to accommodate good quality planting. Notwithstanding, a condition is included to this effect.		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features (>32)	All units are designed to achieve the Silver Level design features.	Subject to conditions – kitchen layouts and bedrooms will be required to illustrate post-adaptable requirements can be achieved.
	An Access Report has been included as part of the application confirming that the proposed development is capable of meeting the requirement of SEPP 65, and Part 4Q of the ADG. Further design detail of specific elements will be required as the development progresses through to the construction phase to ensure compliance. A condition has been included requiring confirmation prior to CC being issued.		
4S: Mixed Use	The proposal is not for a mixed use development.		
4T: Awnings and Signage	Awnings and signage are not proposed.		
4U: Energy Efficiency	The BASIX Certificate demonstrates the development achieves the pass mark for energy efficiency (Score: 35, Target: 35).		
4V: Water management	The BASIX Certificate demonstrates that the development achieves the pass mark for water conservation (Score: 40, Target: 40).		
4W: Waste management	Waste management plans for demolition, construction and operational stages have been provided. Waste and bulky goods storage rooms have been provided in the basement.		
4X: Building maintenance	The proposed materials are considered to be sufficiently robust, minimising the use of render and other easily stained materials.		

Table 8 Assessment against ADG Design Criteria

7.10 Parramatta Local Environmental Plan 2011

The relevant objectives and requirements of PLEP 2011 have been considered in the assessment of the development application, and are contained within the following table.

Development standard	Proposal	Compliance
2.3 Zoning		
R4 – High Density Residential	<p>The proposed use is defined as 'residential flat building' which is permissible with development consent in the R4 zone.</p> <p>The portion of the site zoned SP2 adjoining Pennant Hills Road accommodates landscaping only. This portion of the site is reserved to be acquired for the classified road.</p>	Yes
Zone Objectives		
	<p>The proposed development is consistent with the R4 High Density Residential zone objectives as it will:</p> <ul style="list-style-type: none"> • Provide for the housing needs of the community within a high density residential environment. • Provide a variety of housing types within a high density residential environment. • Provide opportunities for high density residential development close to major transport nodes, services and employment opportunities. 	Yes
2.6 Subdivision		
	The development proposes consolidation of the two existing lots and subdivision to create four lots.	
2.7 Demolition		
	Demolition of Martins Lane is proposed to enable upgrade and widening of the road.	
4.1 Minimum Lot Size		
Required = 550sqm min	The proposed subdivision will create four lots, two of which are for development and are in excess of the 550sqm minimum requirement. The remaining two lots are to accommodate infrastructure – one lot for the purpose of new roads and public domain within the development, and the other for future road widening of Pennant Hills Road.	Yes
4.3 Height of Buildings		
Control: 14 metres	<p>A total height of 14.84m is proposed, or a maximum exceedance of 840mm.</p> <p>The majority of the built form is contained within the height limit, with exceedances varying between 110mm and 840mm.</p>	No – refer to Clause 4.6

4.4 Floor Space Ratio		
Control: 1:1 (8,000m ²)	Total GFA: 11,906 ² (1.49:1) In accordance with the bonus FSR provided under the ARH SEPP, the proposed FSR is permissible.	Yes
4.6 Exceptions to Development Standards		
	Variation to Building Height to a maximum of 840mm – refer to detailed assessment below.	Yes
5.1A Development on land intended to be acquired for public purposes		
	The SP2 zoned portion of the site is reserved for acquisition for a classified road. The proposed development intends to landscape this area. The proposed development does not prevent this land from being acquired for public purposes.	Yes
5.6 Architectural Roof Features		
	An architectural roof feature is not proposed.	
5.10 Heritage conservation		
	The subject site is not listed as a heritage item, nor is it within the vicinity of a listed item. The subject site is not located within a heritage conservation area.	Yes
6.1 Acid Sulfate Soil		
Class 5	The site is classified as Class 5 acid sulfate soils and an acid sulfate soils management plan is not required.	Yes
6.2 Earthworks		
	<p>The Geotechnical Report submitted with the application demonstrates the following:</p> <ul style="list-style-type: none"> • The earthworks are not likely to result in a detrimental impact on drainage patterns or soil stability. • The earthworks will facilitate the redevelopment of the land. • The fill and soil to be excavated is predominantly silty clay fill and shale and would be disposed of in accordance with current EPA guidelines. • Appropriate measures will be implemented to minimise impacts to adjoining properties. • There is low likelihood of disturbing relics, based on borehole drilling and historic use of the site. • The earthworks are unlikely to result in adverse impacts on a watercourse, drinking water catchment or environmentally sensitive area. 	Yes
6.3 Flood planning		
	The site is not identified as flood prone land.	Yes
6.4 Biodiversity protection		

	<p>The site is identified as containing biodiversity in the southern portion of the site, part of which is effected by the Martins Lane upgrade.</p> <p>The proposed development has demonstrated that it will not have any adverse impact on native ecological communities, the habitat of any threatened species, populations or ecological community, regionally significant species of fauna and flora or habitat, or habitat elements providing connectivity.</p> <p>The development has been designed and sited to avoid any adverse environmental impact.</p>	Yes
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Table 9 Assessment of the proposal against PLEP 2011

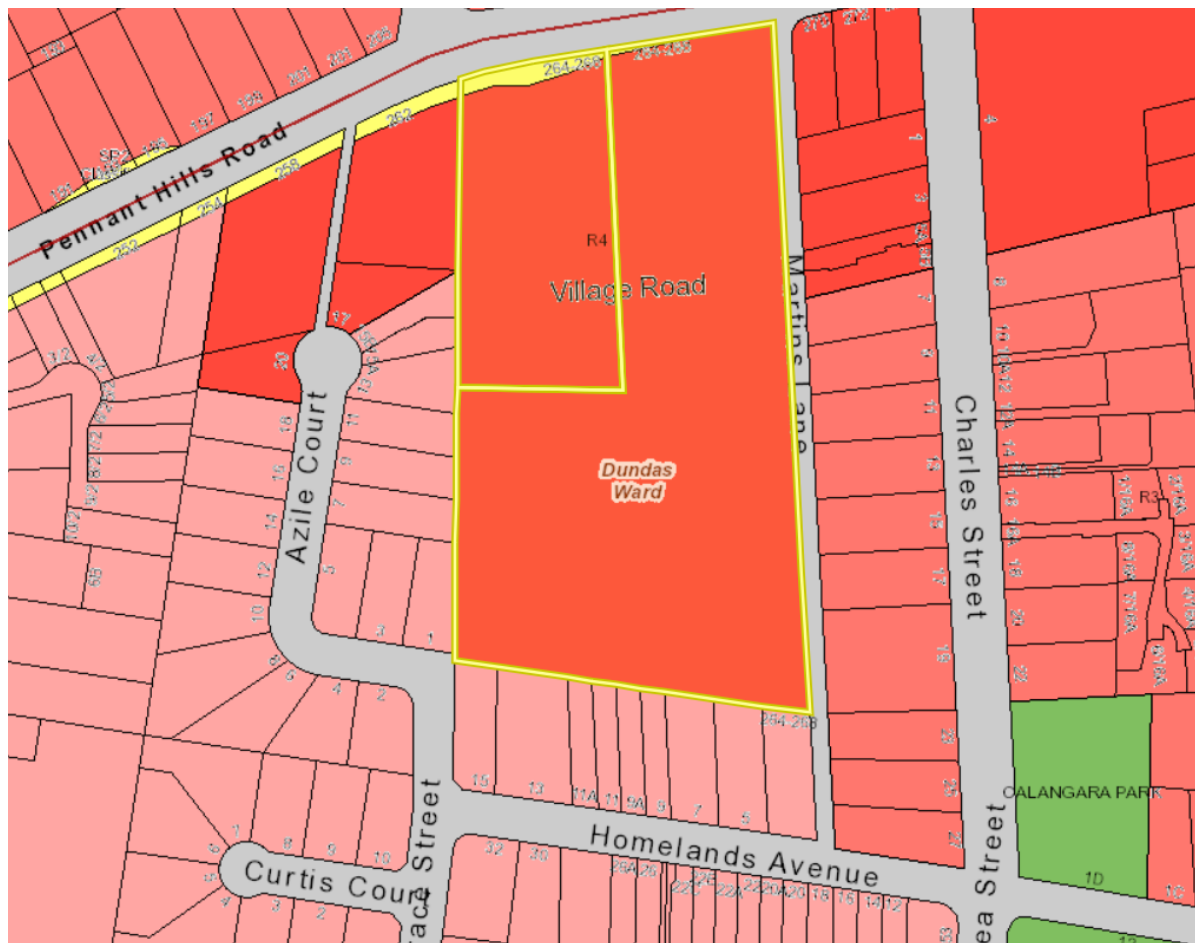


Figure 8. PLEP 2011 Zoning map (subject site outlined in yellow). The site is zoned R4 – High Density Residential.

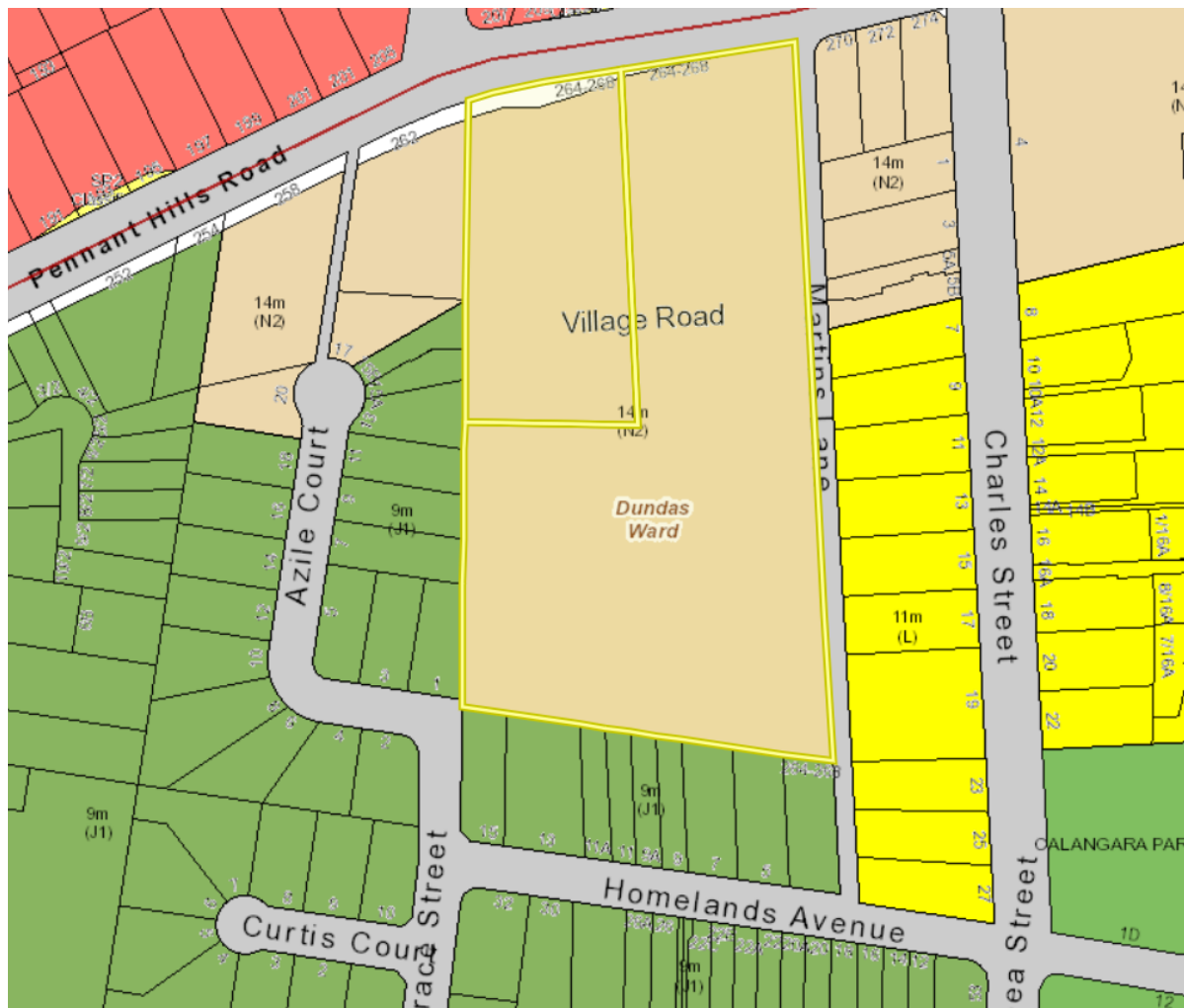


Figure 9. PLEP 2011 map (subject site outlined in yellow). The site is classified N2 – 14m height limit.

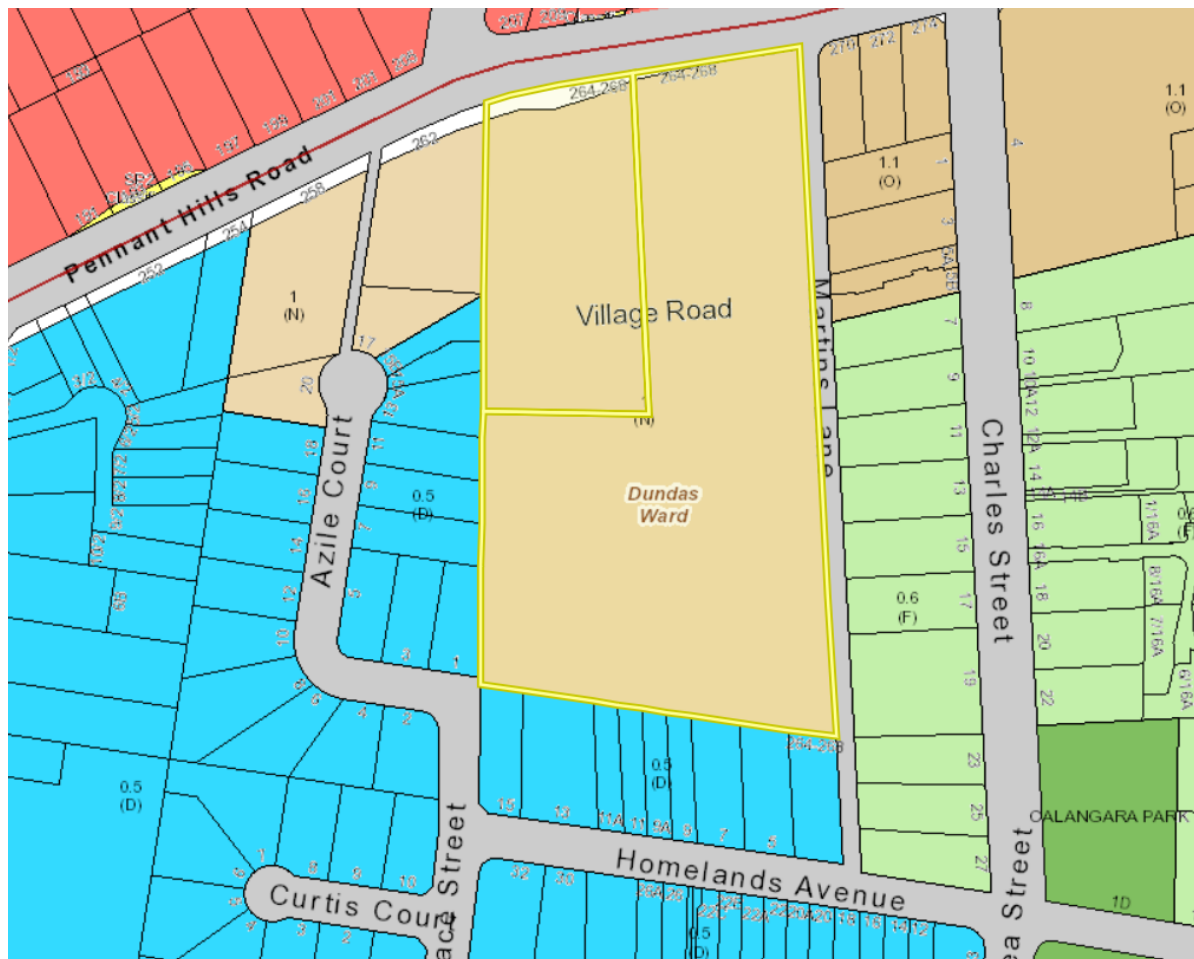


Figure 10. PLEP 2011 Floor Space Ratio map (subject site outlined in yellow). The site is classified N – 1:1.

Clause 4.6 Variation Assessment

Clause 4.6 of PLEP 2011 allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

Clause 4.6(1) – Objectives of clause 4.6

The objectives of this clause are:

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

Clause 4.6(2) – Operation of clause 4.6

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

The proposal does not comply with the Clause 4.3 ‘Height of Buildings’ development standard, as outlined in the table above and figure below, and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the PLEP 2011.



Figure 11 Proposed height breach

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

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

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

The applicant has provided the following environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Appendix 1.

- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of height development standard and the objectives of the zone are achieved despite the non-compliance to the numerical development standard as the development remains predominantly within the height limit.*
- *That there are sufficient environmental planning grounds to justify contravening the development standard as the proposed height variation is limited to three points of encroachment that are unlikely to be visible from the public domain and does not generate any unacceptable solar access or overshadowing impacts, will not lead to view loss or interrupt views from the site and will not result in any privacy impacts.*
- *The proposed development will allow the site to be developed in accordance with the zoning and, whilst benefitting from additional FSR under the ARH SEPP, does not seek to provide additional floor space above the maximum height.*
- *The proposed development is consistent with the Central City District Plan, as it provides affordable housing in an accessible location.*
- *The proposed additional height is as a result of responding to the topography of the site and the need to maximise opportunities to provide level access into the site.*

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

Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests 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

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances:

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

Height of Buildings Objectives

Clause 4.3 Objective	Assessment
<i>(a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,</i>	The proposed development is generally consistent with the nominated maximum height limit and the variation will continue to achieve a suitable transition in built form and land use intensity.
<i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i>	<p>The proposed height variations are set back within the site and are unlikely to be visible from the public domain or surrounding properties.</p> <p>There are no defined significant views from the site and built form will not disrupt any views.</p> <p>The proposed development minimises loss of privacy and loss of solar access to existing development, and the height variation will not result in any additional privacy or solar access impacts.</p>
<i>(c) to require the height of future buildings to have regard to heritage sites and their settings,</i>	There are no heritage sites or settings in proximity of the proposed development.
<i>(d) to ensure the preservation of historic views,</i>	There are no historic views from the site, or within proximity of the site.
<i>(e) to reinforce and respect the existing character and scale of low density residential areas,</i>	<p>The proposed development is predominantly within the maximum height limit and maintains a maximum scale of four storeys to respect the existing character and scale of low density residential areas south of Pennant Hills Road.</p> <p>The proposed height variations are minor and do not result in any additional impacts on the character and scale of adjoining low density residential areas.</p>
<i>(f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</i>	<p>The proposed development is not located in a commercial centre.</p> <p>The proposed development will maintain sky exposure and daylight to adjoining streets and lanes, including Martins Lane and the proposed new public roads.</p> <p>The proposed height variation does not result in any adverse impacts in relation to sky exposure or access to daylight.</p>

Table 10 Assessment against development standard objectives

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

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

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

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

The applicant does not contend that the underlying objectives would be defeated or thwarted if compliance was required.

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

The applicant does not contend that the development standard has been virtually abandoned or destroyed.

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

The applicant does not contend that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

Four2Five Pty Ltd v Ashfield Council

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

The applicant put forth the following site specific grounds:

- Natural slope of the land - The site slopes down from Pennant Hills Road to the south. Ground floor levels have been set to maximise at-grade access to the ground floor communal courtyard. This design is intended to minimise further cutting of the site, as well as minimise the amount of steps, ramps or platform lifts required to access the ground floor.

Initial Action Pty Ltd v Woollahra Municipal Council

Chief Judge Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified, at paragraph 87, that, "Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development".

Clause 4.6(4) - Consent Authority Assessment of Proposed Variation

Clause 4.6(4) outlines that development consent must not be granted for development that contravenes a development standard unless:

- "a) *the consent authority is satisfied that:*
 - i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b) *the concurrence of the Secretary has been obtained.*

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

Public Interest

"The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out".

The proposal is consistent with the objectives of the zone and height standard as set out in Table 11 below and Table 10 above.

R4 Zone Objective	Proposal
<i>To provide for the housing needs of the community within a high density residential environment.</i>	<p>The proposal is for 100% affordable housing that will be owned and managed by a registered community housing provider. Tenant allocation will be determined by the community housing provider, but is expected to be comprised of families and seniors who are currently seeking affordable rental accommodation.</p> <p>Otherwise, the form of the development is a series of residential flat buildings which is the expected form of development with the R4 zone.</p> <p>Accordingly, the proposed development is consistent with this objective.</p>
<i>To provide a variety of housing types within a high density residential environment.</i>	<p>A mix of 1, 2 and 3 bedroom apartments are provided and will contribute to housing diversity in the Carlingford area, which currently comprises a mix of housing types.</p> <p>Accordingly, the proposed development is consistent with this objective.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	N/A – the proposed development is for residential use only.
<i>To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.</i>	The proposed development is located in proximity to public transport that connects to the centres of Carlingford Village and Parramatta. The proposed development would also benefit from proximity to the future Parramatta Light Rail.
<i>To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.</i>	N/A – no home businesses or other non-residential uses are proposed.

Table 11 Assessment of the proposal against the R4 - High Density Residential zone objectives

Concurrence

'The concurrence of the Secretary has been obtained'

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular 'Variations to development standards' Ref: PS 18-003 dated 21/02/2018 (See Attachment 6). There is no limit to the level of non-compliance for which concurrence

can be assumed for regional planning panels.

Conclusion

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the height development standard prescribed by the Parramatta LEP 2011s can be supported as the proposal achieves the objectives of the height development standard and zone, there are sufficient site specific reasons for the breach, and the proposal is in the public interest. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

8. Draft Environmental Planning Instruments

a. Draft Parramatta LEP 2020

Draft Parramatta LEP 2020 was placed on public exhibition on the 31 August 2020, with exhibition closing on the 12 October 2020. The draft LEP will replace the five existing LEPs that apply within the Local Government Area and will be the primary legal planning document for guiding development and land use decisions made by Council.

Whilst the draft LEP must be considered when assessing this application, under cl4.15(1)(a)(ii) of the Environmental Planning & Assessment Act, the LEP is neither imminent or certain and therefore limited weight has been placed on it.

Notwithstanding, the proposed development is consistent with the objectives of the Draft LEP.

9. Development Control Plan

a. Parramatta Development Control Plan 2011

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within PDCP 2011.


Where there is conflict between PDCP 2011 and the SEPPs listed above the SEPP controls prevail to the extent of the inconsistency and as such are not included below.

The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Development Control	Comment	Comply
<i>Part 2 Site Planning</i>		
2.3 Site Analysis	A satisfactory site analysis plan has been submitted.	Yes
2.4.1 Views and Vistas	The site is not identified as containing significant views	N/A
2.4.2 Water Management	The site is not identified in Council's database as being flood prone. The site does not adjoin a waterway. The application proposes the excavation of a basement for parking purposes. Appropriate conditions would be included to ensure the basement is not affected by groundwater.	Yes
2.4.3 Soil Management	An erosion and sedimentation control plan have been submitted with the application. Notwithstanding, a condition would be included outlining the required soil management standards.	Yes
2.4.4 Land Contamination	Refer to assessment under SEPP 55 above.	Yes
2.4.5 Air Quality	The proposal is not likely to result in increased air pollution.	Yes
2.4.6 Development on Sloping Land	The building is sited to take into account the natural topography, stepping down with the land.	Yes
2.4.7 Biodiversity	The proposal retains 34 trees, including remnant trees that form part of the critically endangered ecological community Sydney Blue Gum High Forest.	Yes

	The proposed planting includes indigenous species that reflect the regions character of the Cumberland Plain Woodland, Turpentine Ironbark Forest and Blue Gum High Forest. Some exotic species are proposed for their characteristics and suitability to site conditions.	
2.4.8 Public Domain	<p>The proposed building would provide passive surveillance of the public domain.</p> <p>The proposal includes upgrades to the public domain including new roads and pavement, street lighting, street trees, and a through-site link for residents.</p>	Yes
<i>Part 3 Development Principles</i>		
3.1 Preliminary Building Envelope	Not applicable. See DCP Section 4.3.8 'Carlingford Precinct' below.	N/A
3.2.1 Building Form and Massing	The Design Excellence Panel (DEAP) has endorsed the proposal's form, massing, façade, articulation and roof design.	Yes
3.2.2 Building Façade and Articulation		
3.2.3 Roof Design		
3.2.4 Energy Efficient Design	BASIX certification has been provided. As outlined above, additional detail would be required by condition.	Yes
3.2.5 Streetscape	The proposal presents satisfactorily to the street, is in keeping with the desired future character of the area, and has been endorsed by DEAP. The proposal provides for attractive street frontages, which would be activated by the provision of residential units with private open space at ground level.	Yes
3.2.6 Fences	Black metal fences are proposed to enclose private open space at ground level, with a landscaped buffer delineating between the public domain and private residential areas. Security fences and gates are also proposed at each end of the through-site link.	Yes
3.3.1 Landscaping	The proposal includes the provision of trees in the public domain, in addition the provision of locally native and exotic landscaping within the communal private open spaces, which results in an increase of biodiversity within the locality.	Yes
3.3.2 Private/ Communal Open Space	Quality private and usable outdoor spaces are provided for future residents. The communal open space provided is designed to include areas for relaxation and recreation.	Yes
3.3.3 Visual and Acoustic Privacy	The adjoining sites are residential dwellings. The development provides compliant building separation in accordance with the ADG and is unlikely to result in adverse overlooking or noise impacts.	Yes
3.3.4 Acoustic Amenity	The submitted acoustic report makes recommendations for glazing to achieve compliant internal noise levels. Subject to a condition requiring compliance with the recommendations of these report, the proposal is considered to be acceptable.	Yes, subject to conditions
3.3.5 Solar Access and Ventilation	As outlined in the ADG assessment above, it is considered that the proposal provides satisfactory solar access and ventilation.	Yes
3.3.6 Water Sensitive Urban Design	Council's Development Engineer has advised that the proposed OSD plan is satisfactory, subject to amendments required as a deferred commencement condition. Additional conditions are recommended to ensure it is designed appropriately at the construction certificate stage to achieve the objectives and design principles outlined in the DCP.	Yes , subject to deferred commencement conditions
3.3.7 Waste Management	The waste rooms are proposed within the basement car park and can be serviced internally. A Waste Management Plan (WMP) was submitted with the application outlining the demolition, construction and operational stages of the development.	Yes

3.4.1 Culture and Public Art	As the development site is over 5,000sqm, an Arts Plan is required as part of the overall development. A condition of consent is recommended that the Arts Plan is submitted to and approved by Council prior to the first construction certificate for works above ground, and that the artwork is installed prior to the final OC for the site.	Yes , subject to conditions
3.4.2 Access for People with Disabilities	An Access Assessment Report has been provided which demonstrates the proposed units are capable of complying with all relevant accessibility requirements. A condition of consent is recommended to ensure these requirements are met.	Yes, subject to conditions
3.4.3 Amenities in Buildings Available to the Public	The buildings are not available to the public.	N/A
3.4.4 Safety and Security	The development incorporates opportunities for natural surveillance and to minimise opportunities for crime through access control. The development appropriate defines boundaries between public and private spaces.	Yes
3.4.5 Housing Diversity and Choice <i>Mix</i> 1 bed (10 – 20%) 2 bed (60 – 75%) 3 bed (10 – 20%) <i>Adaptable</i> 10% (>16)	1 bed (82/162) = 50.6% 2 bed (63/162) = 38.8% 3 bed (17/162) = 10.6% 17 The proposed dwelling mix has been set based on housing needs identified by BaptistCare in partnership with the NSW Departments of Communities and Justice. BaptistCare is a registered community housing provider and has identified the dwelling mix based on known tenants and local housing needs. Accordingly, the dwelling mix is supported.	No No Yes Yes
3.5 Heritage	Refer to PLEP Clause 5.10 'Heritage Conservation' above.	Yes
3.6.1 Sustainable Transport Car Share: >1	A car share space is not proposed. Given the proposed ownership of the site by a community housing provider, the requirement to provide a car share space or enter a contract with a car share provider is not required. A Travel Plan will be required to be submitted prior to the release of the Occupation Certificate.	No, acceptable. Yes, subject to condition.
3.6.2 Parking and Vehicular Access	40 bicycle parking spaces are provided in the basement. This is less than half of the 81 bicycle parking spaces required, however is considered appropriate in the context of likely future tenants being predominantly seniors. Car parking spaces are provided in accordance with the required dimensions. 82 car parking spaces are provided, in accordance with the rates set by the ARH SEPP. 17 accessible car parking spaces are provided, which equates to 1 car parking space for each adaptable dwelling.	No, acceptable. Yes. Yes. Yes.
3.6.3 Accessibility and Connectivity	The proposed through-site link is not publicly accessible and is suitable for the site.	Yes
3.7 Subdivision and Lot Consolidation	The proposed lot consolidation and subdivision is appropriately designed as it: <ul style="list-style-type: none"> • Corresponds to existing and planned road connections • Allows for a range of housing types and sizes. • Allows for a suitable building platform to be established. • Allows for infrastructure services. • Does not result in an isolated site. 	Yes
Part 4.3.8 Carlingford Precinct		

Public Domain		
There shall be no direct vehicular connection into the site from Pennant Hills Road.	There is no direct vehicular connection into the site from Pennant Hills Road. A left-turn out only is proposed from Martins Lane.	Yes
Vehicular movements at the Pennant Hills Road/Martins Lane intersection will be left out (of Martins Lane) only.	A left-turn out only is proposed from Martins Lane.	Yes
Martins Lane public domain widened area must be dedicated to Council.	This requirement forms part of the VPA registered on title and will be required as a condition of consent.	Yes
Street typologies must be provided as detailed in Figure 4.3.8.1.2. 	Street typologies in accordance with the DCP diagram are provided.	Yes
Public access (24 hours a day, 7 days a week) is to be provided to the high value ecological zone to the southern boundary as identified in Figure 4.3.8.1.2.	This area does not form part of the current development application.	N/A
A new public pedestrian connection is to be provided between Grace Street / Azile Court and Pennant Hills Road to the publicly accessible open space area on the southern boundary of the site as shown in Figure 4.3.8.1.2.	This area does not form part of the current development application.	N/A
All new streets / access ways as shown in Figure 4.3.8.1.2. are to be publicly accessible 24 hours a day, 7 days a week.	All new streets and access ways proposed will be publicly accessible 24 hours a day, 7 days a week. A condition of consent is recommended to ensure this.	Yes
No basement or sub-floor structures are to be located under new streets, access ways or publicly accessible open space.	The basement is contained wholly within the development site and is not located under new streets, access way or publicly accessible open space.	Yes
Height of Buildings		
Building heights must be in accordance with the Parramatta LEP 2011 Height of Buildings map to respond to the context, to provide visual interest and to minimise and mitigate adverse overshadowing and privacy impact to adjoining properties and adjoining public domain and land uses.	The proposed building height is predominantly in accordance with the 14m height limit set by the Parramatta LEP, with the exception of three height breaches. A clause 4.6 variation request has been submitted with the application and is supported.	Yes – subject to clause 4.6 variation request.
When viewed from adjoining streets and adjacent	The proposed development is a maximum of four storeys.	Yes

properties the buildings on the site are to appear no higher than four storeys.		
Setbacks		
Setbacks must be provided in accordance with Figure 4.3.8.1.5	Setbacks are provided in accordance with the DCP, being: <ul style="list-style-type: none"> • 6 metres from SP2 zone. • 4 metres from Martins lane. • 3 metres from proposed new roads. 	Yes
A minimum setback of 6m must be provided from the SP2 zoned land along Pennant Hills Road.	A 6 metre setback is provided from the SP2 zoned land on Pennant Hills Road.	Yes
Development must not occur within the setback areas except for soft landscaping, footpaths, fencing, driveways, retaining walls and essential infrastructure.	No development occurs within the setback areas, with the exception of soft landscaping, footpaths, driveways, retaining walls, essential infrastructure and portions of ground floor apartment courtyards.	Yes
Ground floor apartments may have courtyards that extend up to 3m into the setback where they front a street or public pedestrian access way.	Some ground floor apartments proposed courtyards that extend up to 3m into the setback where adjoining a street or public pedestrian access way.	Yes
An ecological assessment is to be submitted with development applications on land proximate to areas identified on the LEP Natural Resources – Biodiversity map as areas of high and medium ecological constraint to determine the appropriate setbacks between the built form and existing trees within these areas to ensure their protection and ongoing health.	An ecological assessment was submitted with the development application and has determined that the proposed setbacks are acceptable. No buildings are proposed adjacent to the areas mapped as Biodiversity, however public domain works are proposed adjacent to some areas of the Sydney Blue Gum High Forest. Appropriate setbacks and tree protection measures are proposed.	Yes
FSR		
The following areas may be included as part of the site area for the purpose of calculating FSR: <ul style="list-style-type: none"> • The widening of Martins Lane. • The north-south road. • The east-west roads. • The provision of any public pedestrian pathway. • The areas of high and moderate ecological value as mapped on the LEP Natural Resources – Biodiversity map. 	The development application site area of 8,000sqm does not include any portions of this land.	Yes
Landscaped Spaces and Areas of Ecological Value		
Existing high ecological significance trees must be retained where possible.	Existing high ecological significance trees are retained and protected.	Yes.
The setback to Pennant Hills Road must be densely landscaped with species endemic to the area. This setback shall be provided as a deep soil zone with no basement or sub-floor structures.	The setback to Pennant Hills Road is densely landscaped with species that form part of the Sydney Blue Gum High Forest and Turpentine-ironbark Forest, both of which are native to the area. The setback is provided as a deep soil zone, with no basement or sub-floor structures beneath.	Yes

Landscaping must use predominantly indigenous species that reflect the region's character of the Sydney Blue Gum High Forest and Sydney Turpentine-Ironbark Forest vegetation communities. Opportunities to plant species representative of the communities and the existing areas of moderate and high ecological significance located on the site are to be explored provided planting of these species does not present a danger to residents and the public.	The proposed landscaping includes species that form part of the locally indigenous Sydney Blue Gum High Forest and Turpentine-Ironbark Forest, in combination with exotic species that have been selected for their characteristics and suitability to site functions and conditions.	Yes
Selected plant species must provide form, enclosure, texture and colour. The planting should also take on a further role in providing biodiversity, shade and protection.	The selected plant species provide an appropriate level of form, enclosure, texture and colour and will contribute to biodiversity, shade and protection.	Yes
A mix of local trees, shrubs and grasses must be used to create attractive, colourful and low maintenance landscaped areas.	The proposed mix is appropriate and can be appropriately maintained, as outlined in the Maintenance Plan submitted with the application.	Yes
All building setbacks are to be landscaped.	All setback areas are landscaped	Yes
Any development application must include a detailed landscape plan and landscape design report prepared by a qualified landscape architect. The landscape plans are to include details of plant species, pot sizes, mature height, tree protection measures and a detailed maintenance program.	A detailed landscape plan and landscape design report has been submitted with the application.	Yes
Deep soil zones must be provided for the first 3m of all property boundaries other than Pennant Hills Road which requires a 6m deep soil zone (Refer Control C2).	Deep soil zones are provided for the first 3 metres of all property boundaries, and 6 metre deep soil zone from Pennant Hills Road.	Yes
Communal Open Space Areas		

<p>All communal open space areas must include the following:</p> <ul style="list-style-type: none"> - sub-surface drip irrigation systems controlled by timers using soil moisture or rainfall sensors; - drought tolerant plants and grasses; - water retaining media mixed into soil; and - tree planting and landscaping using elements such as indigenous plant species, interesting sculptural elements and pavement design. <p>Details of these elements are to be shown on landscape plans submitted with development applications.</p>	<p>A condition of consent is recommended that these details are shown on the relevant plans prior to the issue of a Construction Certificate.</p>	<p>Yes, subject to conditions.</p>
<p>Communal Open Space on both Site A and Site B is to reflect the rectangular shape and approximate area size illustrated in the Public Domain Plan figure at 4.3.8.2</p>	<p>The communal open space area is generally consistent with the size and shape outlined in the DCP.</p>	<p>Yes</p>
<p>Water Sensitive Urban Design</p>		
<p>Post-development peak flows from the development site must not exceed pre-development peak flows.</p>	<p>Flow modelling is required to be submitted in accordance with the deferred commencement conditions and is required to ensure that stormwater flows from the site can be appropriately drained.</p>	<p>Yes, subject to deferred commencement conditions.</p>
<p>All development must incorporate WSUD measures including rain gardens, bioswales, biosinks, and water polishing ponds, wetlands and other constructed ecologies which can detain, retain and reuse water.</p>	<p>Appropriate WSUD measures are incorporated, including a rain garden in the communal courtyard.</p>	<p>Yes</p>
<p>Landscape works must be undertaken in collaboration with the hydraulic and civil works to develop an integrated stormwater design.</p>	<p>The landscape plans are coordinated with the stormwater plans.</p>	<p>Yes</p>
<p>Areas of High and Moderate Ecological Significance</p>		
<p>Areas identified as being of high or moderate ecological significance are shown on Figure 4.3.8.7.</p>	<p>Noted.</p>	<p>N/A</p>
<p>Any development on land containing or immediately adjoining areas of high or moderate ecological significance must confirm the boundaries of the area of ecological significance with detailed analysis to ensure no adverse impacts to those areas occurs as a result of the development.</p>	<p>The ecological assessment submitted with the application confirms there will be no adverse impacts on areas of ecological significance.</p>	<p>Yes</p>

A flora and fauna assessment must be submitted with any development application on land identified as containing areas of high or moderate ecological significance.	An ecological assessment was submitted with the development application and has determined that the proposed setbacks are acceptable. No buildings are proposed adjacent to the areas mapped as Biodiversity, however public domain works are proposed adjacent to some areas of the Sydney Blue Gum High Forest. Appropriate setbacks and tree protection measures are proposed.	Yes
Built Form and Site Requirements		
Setbacks and siting of buildings must provide areas for deep soil/permeable surfaces, communal open space areas and private open spaces.	The proposed built form allows for adequate deep soil, permeable surfaces, communal open space areas and private open space.	Yes
The massing and siting of the buildings must: a) Enable buildings to address and align with streets and public spaces b) Define positive spaces c) Minimise stepping d) Use the sloping topography to locate apartments at ground level e) Provide setbacks as per Figure 4.3.8.5. f) Provide building separations consistent with the provisions of Part 2F of the Apartment Design Guide	a) The three buildings each address and align with the existing and proposed streets. b) The siting of the buildings frames positive spaces, including the central courtyard and the public domain around the site. c) The proposed built form generally minimises stepping, with levels set to avoid excessive level changes within each building and the communal courtyard. d) Apartments provided at ground level step with the site, allowing for an active street frontage to be provided on all boundaries. e) Setbacks are provided in accordance with the site-specific DCP. f) Building separation is generally consistent with the provisions of the ADG, with the exception of minor variations discussed under the ADG above. Where a variation is proposed, appropriate privacy mitigation measures are incorporated.	Yes
Sites must be a minimum of 1,500m ² for development of apartment buildings of 3 or more storeys.	The development site is a total of 8,000sqm.	Yes
Sites must have a minimum frontage of 24m for development of apartment buildings of 3 or more storeys.	The site frontage to Pennant Hills Road is approximately 97 metres.	Yes
Building Design Excellence, Finishes and Materials		
A detailed site analysis plan must be submitted with a development application proposing residential apartment building(s) and/or multi-unit residential development	An appropriate site analysis plan has been submitted.	Yes

Buildings must be designed to: a) Provide entrances, outlook and address to the street and/or public/pedestrian thoroughfare and communal open space(s) to maximise passive surveillance opportunities. b) Create positive spaces between buildings. c) Be scaled and well-proportioned through appropriate modulation, articulation, materials and detailing. d) Use robust minimum maintenance materials of the typology and context. e) Use brick and/or other hardy materials that require minimal maintenance.	a) A high level of passive surveillance is achieved and each building has been amended to have an entrance from a public street. b) Positive space is achieved through landscaping, articulation of the faced and appropriate visual privacy measures. c) The proposal is generally well-proportioned. d) Materials are a mixture of brick, glazing and metal screens and considered appropriate. e) The predominant material used is brick, which is a hardy material that will require minimal maintenance.	Yes
Attached housing must demonstrate that the design principles of the draft Medium Density Design Guide and draft Medium Density Housing Code have been considered.	Attached housing is not proposed	N/A

Table 12 Assessment of the proposal against PDCP 2011

10. Other Planning Controls

a. Parramatta Public Domain Guidelines

The latest Parramatta Public Domain Guidelines (PDG), was released in July 2017, specifying paving materials, tree planting and the like. The alignment drawings and landscape plans submitted with the application are generally in keeping with the requirements of the PDG. Conditions are included requiring detailed public domain plans be prepared prior to construction, and signed off by Council's public domain team, with Council inspections undertaken throughout construction.

11. Planning Agreements

A Voluntary Planning Agreement (VPA) applies to the site and is registered on title as a result of the Planning Proposal. The VPA requires the following works to be undertaken:

Scope of Works	Timing	Assessment
Public domain improvement works along the western side of Martins Lane <ul style="list-style-type: none"> Demolition of existing paths and road pavement as required to complete public domain upgrades Tree protection works Public domain upgrades including infrastructure, street lighting, landscaped verges, and footpaths. 	To be completed: - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building on the area marked 'Site A' on the Plan, whichever occurs first.	The required public domain works are proposed as part of this application.

	Upon completion of the works in Column 3 to the Council's satisfaction, the land indicatively shaded in beige on the Plan will be dedicated to Council within 28 days, the estimated land value of which is \$2,037,000.	
Martins Lane upgrade (northern section) <ul style="list-style-type: none"> • Demolition of existing road pavement. • Full width road surface upgrade along the frontage of the land. • New street lighting, subject to agreement by the relevant energy utility provider. • New Colorbond fencing along the eastern side of Martins Lane to replace existing dilapidated fencing to properties, subject to agreement by owners. 	To be completed prior to the issue of an Occupation Certificate for any building on the Land to be used for the purposes of residential accommodation.	The required upgrade of Martins Lane is proposed as part of this application, with the exception of the fence replacement. It is expected that the fence replacement will be undertaken subject to a separate approval.
Martins Lane upgrade (southern section) <ul style="list-style-type: none"> • Demolition of existing road pavement. • Full width road surface upgrade along the frontage of the land. • New street lighting, subject to agreement by the relevant energy utility provider. • New Colorbond fencing along the eastern side of Martins Lane to replace existing dilapidated fencing to properties, subject to agreement by owners. 	<p>To be completed.</p> <ul style="list-style-type: none"> - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building on the area marked 'Site A' on the Plan, whichever occurs first. 	The required upgrade of Martins Lane is proposed as part of this application, with the exception of the fence replacement. It is expected that the fence replacement will be undertaken subject to a separate approval.
Signalisation of the intersection of Pennant Hills Road and Baker Street Works include: <ul style="list-style-type: none"> • Installation of new traffic signals including milling and re-sheeting existing road surfaces in the vicinity of the intersection. • New line-marking. • New signage. • New pedestrian crossings. 	<p>The Developer's design of the signalisation works is to be completed to the satisfaction of RMS, and the Works Authorisation Deed executed prior to the issue of a Construction Certificate for any building on the Land to be used for the purposes of residential accommodation.</p> <p>Works to be completed and signals operational prior to the issue of an Occupation Certificate for any building on the Land to be used for the purposes of residential accommodation.</p>	These works are subject to a separate approval, however a condition of consent will be imposed to ensure these requirements are met in accordance with the terms of the VPA. The applicant is seeking for this requirement to be completed in its entirety prior to OC, which requires amendment to the VPA. This process is currently underway.
Left turn lane Provision of a left turn lane from the northern end of Martins Lane into Pennant Hills Road, in the location indicatively identified on the Plan in teal.	<ul style="list-style-type: none"> • The Developer's design of the left turn lane is to be completed, to the satisfaction of RMS prior to the issue of a Construction Certificate for any building on the Land to be used for the purposes of residential accommodation. • Works to be completed prior to the issue of an Occupation Certificate 	The left turn lane is proposed as part of this application.

	<p>for any building on the Land to be used for the purposes of residential accommodation.</p> <ul style="list-style-type: none"> Upon completion of the works in Column 3, the land indicatively shaded in teal on the Plan will be dedicated to Council within 28 days. 	
<p>Provision of a new north-south road to link with the new east-west road</p> <p>Provision of new road pavement, including infrastructure, street lighting, line marking, landscaped verges, and combined footpath/cyclepath.</p>	<p>To be completed:</p> <ul style="list-style-type: none"> - no more than 18 months after the issue of an Occupation Certificate for the last building on the area marked 'Site A' on the Plan; or - prior to the issue of the first Construction Certificate for a building on the area marked 'Site B' on the Plan; or - the date that is 36 months after the issue of the first Occupation Certificate for any building the area marked 'Site A' on the Plan, whichever occurs first. <p>Upon completion of the works in Column 3 to the Council's satisfaction, the land indicatively shaded in blue on the Plan will be dedicated to Council within 28 days, the estimated land value of which is \$1,464,300.</p> <p>The easement for public access required by clause 6.3(d), and indicatively shaded in pink hatching on the Plan, shall be registered at the time that the land shaded in blue is dedicated to Council.</p>	<p>The north-south road is proposed as part of this application, including infrastructure, street lighting, line marking, landscaped verges and a shared path for pedestrians and cyclists.</p>
<p>Provision of a new east-west road to link with the new north-south road</p> <p>Provision of new road pavement, including infrastructure, street lighting, line marking, landscaped verges, and footpaths.</p>	<p>To be completed prior to the issue of an Occupation Certificate for any building on the Land to be used for the purposes of residential accommodation.</p> <p>Upon completion of the works in Column 3 to the Council's satisfaction, the land indicatively shaded in green on the Plan will be dedicated to Council within 28 days, the estimated land value of which is \$2,126,100.</p>	<p>The east-west road is proposed as part of this application.</p>
<p>Public access and maintenance of the high ecological constraint area and associated Blue Gum High Forest vegetation at the southern portion of the site</p> <ul style="list-style-type: none"> Maintenance of the area identified as High Ecological Impact Zone (20m wide) to a standard to be agreed between Council and BaptistCare. Registration of an 	<p>An easement for public access with a width of 20m must be registered prior to the issue of an Occupation Certificate for the Development on the area marked 'Site B' on the Plan.</p>	<p>Development of Site B does not form part of this development application.</p>

<p>easement in accordance with the Easement Terms.</p> <ul style="list-style-type: none"> The easement may exclude some areas within the High Ecological Impact Zone which are designated to be sensitive or areas where public access may result in adverse environmental impacts. 		
<p>Affordable housing Provision of 162 affordable housing dwellings to be managed by BaptistCare NSW & ACT at least until 1 January 2045, in accordance with the agreement between BaptistCare NSW & ACT and NSW Department of Family and Community Services</p>	<p>To be completed prior to the issue of the last Occupation Certificate for the Development of the area marked 'Site A' on the Plan.</p>	<p>162 affordable housing dwellings are proposed as part of this development application.</p>

Table 13 Assessment against VPA requirements

To allow for the applicant to modify or amend the VPA, the recommended conditions of consent do not make specific reference to the works to be undertaken, instead will only broadly reference complying with the terms of the VPA.

12. The Regulations

The recommendation of this report includes conditions to ensure the following provisions of the Regulation will be satisfied:

- Clause 92 - Demolition works are to satisfy AS 2601 - 1991; and
- Clause 98 - Building works are to satisfy the Building Code of Australia.

13. The Likely Impacts of the Development

The likely impacts of the development have been considered in this report and it is considered that the impacts are consistent with those that are to be expected given the applicable planning framework. The impacts that arise are acceptable.

14. Site Suitability

The site has been subject to a Planning Proposal and site-specific DCP that demonstrates the suitability of the site for the proposed development. It is located in an established residential area that is transitioning to high density development and benefits from proximity to public transport links, open space, educational establishments and services and facilities at Carlingford Village.

Suitable investigations and documentation has been provided to demonstrate that the site can be made suitable for the proposed development and the development is consistent with the land use planning framework for the locality.

No natural hazards or site constraints exist that are likely to have an unacceptably adverse impact on the proposed development.

Subject to the conditions provided within the recommendation to this report, the site is considered to be suitable for the proposed development.

15. Submissions

The application was notified and advertised in accordance with Appendix A5 of Parramatta DCP 2011. The advertisement ran for a 43-day period between 13 May to 3 June, and a second period from 3 June to 25 June 2020 in response to Covid-19. Six (6) unique submissions were received during this notification.

Amended plans were submitted in response to submissions and Council's Request for Information. The amended application was re-notified in accordance with Appendix A5 of Parramatta DCP 2011. The notification ran for 21 days from 21 October to 11 November 2020. Three (3) unique submissions were received during this notification.

Council's Crisis Management Team suspended all Conciliation Meetings from 25 March 2020, for the foreseeable future, due to COVID19 and maintaining social distancing requirements. Therefore, a conciliation meeting in accordance with Council's resolution was not required to held for this application.

The public submission issues are summarised and commented on as follows:

Issues Raised (Number of submissions which raise issue)	Comment
Traffic (4)	The proposed development has been reviewed by Council's Traffic Engineer and is assessed to result in appropriate traffic impacts.
Privacy impacts on adjoining properties to the west (3)	The proposal provides the required separation and/or screening, subject to conditions, to adequately protect the privacy of adjoining and nearby properties.
No vehicle access from Pennant Hills Road (2)	New vehicle access into and out of the site from Pennant Hills Road is not permitted as it is a classified road under the jurisdiction of RMS. This requirement formed part of the Planning Proposal and site-specific DCP.
Development of southern portion of the site (2)	The southern portion of the site will be subject to a separate development application. Built form parameters for this site have been defined in the Part 4.3.8 of the Parramatta DCP.
Noise impact from loading dock entry (2)	The Acoustic Assessment submitted with the application outlines that the noise impact to residential receivers would be 40dB(A). Accordingly, a condition of consent is recommended restricting operation of the loading dock to between 8am – 6pm.
Inadequate infrastructure (education facilities, public transport, road, recreation facilities, local services) (2)	The development is proposed subject to a recent Planning Proposal, which determined that the site is adequate for the scale of density. The applicant has entered into a Voluntary Planning Agreement for the upgrade of local roads and traffic infrastructure, and will also provide dedicated communal open space for use by residents within the site. Accordingly, existing local infrastructure is adequate to support the proposed development.
Parking (2)	Car parking is provided in accordance with the rates set by the Affordable Rental Housing SEPP.
Pedestrian safety (1)	The proposed local road network will achieve an acceptable level of pedestrian safety, whilst the signalisation of the intersection of Barker Street and Pennant Hills Road will provide a dedicated pedestrian crossing to access public transport on the opposite side of the road.
Overshadowing (1)	Overshadowing impacts of adjoining properties have been assessed to be acceptable, ensuring that dwellings and private open space continue to receive a minimum of 3 hours of solar access.
Light spill from basement car park entry (1)	A condition of consent is recommended to limit the operation of the loading dock between 8am – 6pm, which will limit light spill impacts. A condition of consent is also recommended for a roller gate to be installed on both the entry and exit to the basement to limit light spill when not in use.

Inadequate community consultation (1)	The application was publicly notified for an initial period of 21 days, and then a subsequent period of 22 days to account for potential disruption caused by Covid-19. The amended application was subsequently re-notified for 21 days. This process is in accordance with the notification procedures set out in Appendix A5 of the Parramatta DCP 2011.
Unclear description of proposed development	A description of the proposed land use and building works was provided in the notification package sent to residents, along with all development application documents made available on Council's website.
Car park entry relocated to western side (1)	The car park entry was subsequently relocated to the East West Road, from Martins Lane.
Permissibility (1)	The proposed residential flat building use is permissible with consent in the R4 High Density Residential zone.
Demand for proposed development (1)	The development is proposed to meet known tenancy needs for affordable housing identified by BaptistCare, which is a registered community housing provider.
Not affordable housing (1)	The proposed development is wholly affordable housing and required to be maintained as affordable housing until 2045.
Loss of community connection (1)	The development was the subject of a Voluntary Planning Agreement which lead to the rezoning of the site. Prior to this, the site was a senior housing development. The redevelopment of the site would provide modern facilities as affordable housing in a high density environment. Ultimately, the site will also provide for a public park adjacent to the southern boundary and dedicated to Council.
Character of the local area (1)	The area south of Pennant Hills Road is undergoing a transition from low density developments to higher density living given its proximity to transport and local services.

Table 14 Summary of public submissions

16. Public Interest

Subject to implementation of conditions of consent outlined in the recommendation below, no circumstances have been identified to indicate this proposal would be contrary to the public interest.

17. 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.

18. Development Contributions

The proposal is exempt from the payment of developer contributions as the applicant is a registered community housing provider and units will not be sold on the private market.

19. 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 demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, approval of the development application is recommended.

The proposed development is appropriately located within a locality identified for high density residential redevelopment, however some variations (as detailed above) in relation to SEPP 65, SEPP ARH and Parramatta LEP 2011 are sought.

The request to vary the height standard is considered to be well founded for reasons including, but not limited to, the constraints imposed by the topography of the site.

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the development has been appropriately designed and will provide acceptable levels of amenity for future residents. It is considered that the proposal sufficiently minimises adverse impacts on the amenity of neighbouring properties. Hence the development, irrespective of the departures noted above, is consistent with the intentions of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is recommended for approval subject to conditions.

20. Recommendation

- A. **That** the Sydney Central City Planning Panel approve the variation to the building height standard in Clause 4.3 of PLEP 2011, as they should be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development will be in the public interest as it is consistent with the objectives of the particular standards and the objectives for development within the zone and the site specific reasons discussed; and
- B. **That** the Sydney Central City Planning Panel, as the consent authority, approve Development Application No. DA/242/2020 for consolidation of the existing lots, re-subdivision to create 2 lots with associated road and pathway infrastructure, civil works and construction of an affordable housing development comprising 162 apartments with basement parking at 264 – 268 Pennant Hills Road, Carlingford 2118 (Lot 1 DP1033201 and part Lt 2 DP 364225) for the following reasons:
- C. **That** all objectors be advised of the Sydney Central City Planning panel's decision.

APPENDIX 3 – RECOMMENDED CONDITIONS OF CONSENT