



City of Parramatta	
File No:	DA/14/2023

SECTION 4.15 ASSESSMENT REPORT
Environmental Planning & Assessment Act 1979

DA No:	DA/14/2023
Subject Property:	Lots 7 & 8 in DP 219954 & Lots 1 & 2 in DP 869976, 7-7B St Andrews Street & 79-79A Kissing Point Road, DUNDAS
Proposal:	Demolition, tree removal, site consolidation and construction of two part 5 and part 6 storey residential flat buildings with 3 levels of basement carparking. The application is Nominated Integrated development pursuant to the Water Management Act 2000.
Date of receipt:	13/01/2023
Applicant:	HVH Investment Pty Ltd
Owner:	HVH Investment Pty Ltd
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	6 submissions received within the notification period
Recommendation:	Refusal
Assessment Officer:	Denise Fernandez

Legislative Requirements

Relevant provisions considered under section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979	<ul style="list-style-type: none">• State Environmental Planning Policy (Resilience and Hazards) 2021• State Environmental Planning Policy (Biodiversity and Conservation) 2021• State Environmental Planning Policy (Transport and Infrastructure) 2021• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development• State Environmental Planning Policy (BASIX)• Parramatta Local Environmental Plan 2011 (LEP 2011)• Parramatta Local Environmental Plan 2023 (LEP 2023)• Parramatta Development Control Plan 2011 (DCP 2011)
Zoning	R4 High Density Residential
Bushfire Prone Land	No
Heritage	No
Heritage Conservation Area	No
Designated Development	No
Integrated Development	No
Clause 4.6 variation	No
Delegation	PLPP – Residential Flat Building with 4 storeys or more storeys

1. Executive Summary

Section 4.15 Assessment Summary

The subject site is located on an irregular shaped allotment with two street frontages on St. Andrews Street and Kissing Point Road. The application seeks approval for the demolition and construction of two part 5 and part 6 storey residential flat buildings with 3 levels of basement carparking. The site is the last remaining undeveloped site on St Andrews Street. It is noted that the site is within proximity to two heritage listed items pursuant to Schedule 5 of Parramatta Local Environmental Plan 2011, although No. 25 Station Street was approved for demolition in 2017 and the building has since been demolished.

Council has received notice that the applicant has lodged a Deemed Refusal Appeal on 1 March 2023. As such, an assessment of the application in its current form is required.

The issues with the proposal arise from the design of the development, primarily that the building that presents to the St Andrews Street frontage is designed with an excessive floor plate width and with the breach in height results in a bulky built form, particularly when viewed from the street.

Additional design issues such as insufficient landscaping areas and deep soil zones (because of the extent of the floor plate and the basement structure) reduce landscaping opportunities which assist in balancing the hard and soft surfaces of the development.

As noted, the proposal breaches the maximum height for the site. The application was lodged with a 4.6 Variation and is assessed elsewhere in this report.

As the proposal requires extensive excavation works below natural ground level, the application was referred to Water NSW as nominated integrated development pursuant to Section 90(2) of the Water Management Act 2000. At the time of writing this report, Council has not received concurrence from Water NSW and therefore Council cannot recommend the application for approval. Similarly, the application was referred to Transport for NSW in accordance with Clause 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure. Upon review, Transport for NSW required additional information to complete its assessment. To date, this information has not been received to allow Transport for NSW to complete assessment of the application.

The application also failed to submit information required to satisfactorily assess the development with regards to stormwater, public domain, universal access and waste.

It is noted that as the application required determination due to the lodgement of the appeal, the application could not be reviewed by the Design Excellence Advisory Panel (DEAP) as the proposal was scheduled for review on 13 April 2023.

The application was notified/advertised and received 6 unique submissions within the notification period. The issues raised related to traffic movement and congestion, access to the site, acoustic impacts, insufficient infrastructure and services, development scale, insufficient landscaping, lack of maintenance on adjoining park and limited space for pedestrian traffic.

For the above reasons and others throughout the report, Council cannot support the application and is recommending refusal.

2. Site Description and Conditions

The subject site is known as 79-79A & 7-7B St Andrews Place, Dundas (Lots 7 & 8 in DP 219954 & Lots 1 & 2 in DP 869976). The site is an irregular shaped allotment with a north-south orientation. It is a midblock allotment on a cul-de-sac with dual frontage to St Andrews Street and Kissing Point Road. The site comprises of 4 land parcels and once consolidated will result in a large irregular shaped arrow-head shaped land parcel with a total site area of 3,318.1m².

The existing development on the site contains a church and associated car parking and residential dwellings.

The site runs downhill from the south to the lowest point in the north at about 8-10 degrees. Surveyed RL at the southern boundary at about RL 32.23m AHD dipping north to about RL 24.62m AHD.

Within proximity to the site are Dundas Train Station and Dundas Commercial Precinct. The site is also situated within close proximity to a local primary school, child care facilities and recreational opportunities. The locality is well serviced by public transportation station, with Dundas Light Rail Station situated 300m west from the development site.

To clarify the location of the application site and specifically that of the subject site, refer to the aerial image and photographs in **Figure 1** below.



Figure 1: Aerial photograph of subject site and surrounds (Nearmap, 23 November 2022)



Figure 1: Subject site as viewed from St Andrews Street. Source: Site Inspection.



Figure 2: Subject site as viewed from Kissing Point Road. Source: GoogleMaps.

3. Relevant Site History

Table 1 below provides details of existing applications relating to the site.

Development Application	Description
PL/18/2022	<p>Pre-Lodgement PL/18/2022 considered an application for the consolidation of lots, removal of trees, demolition of all existing structures, and the construction of 2 x 4-6 storey residential flat buildings containing a total of 53 units. At this meeting, Council raised the following concerns:</p> <ul style="list-style-type: none"> • Building height. Council noted that the variations to the building height will not be supported. Further, the proposed roof top communal open space and lift overrun exacerbates the proposed visual bulk, which is not appropriate for its immediate context. • Non-compliant setbacks and building separations in accordance with the ADG and PDCP 2011 will not be supported. • Insufficient deep soil zones / landscape areas. • Existing Trees T1, T3, T8 and T9 are to be retained.

4. The Proposal

Development Application 14/2023 was lodged on 13 January 2023 for the construction of a residential flat building. Specifically, the application seeks approval for:

1. Demolition of existing structures and tree removals.
2. Site consolidation
3. Construction of 2 x 5 to 6 storey residential flat building comprising 53 units with basement car parking for 82 vehicles.

Building A Basement 01

- 45 parking spaces, storage, lifts and staircases

Ground Floor

- 28 parking spaces, storage, lifts and staircases

- Garbage room and bulky waste room
- 27 bicycle spaces

Level 1

- 8 visitor spaces
- Bin collection room, services, loading bay
- 1 x 1 bedroom unit
- 1 x 2 bedroom unit
- 1 x 3 bedroom unit (adaptable)

Level 2

- 1 x 1 bedroom unit
- 5 x 2 bedroom units
- 3 x 3 bedroom units (1 adaptable unit)

Level 3

- 6 x 2 bedroom units (1 adaptable unit)
- 2 x 3 bedroom units (1 adaptable unit)

Level 4

- 8 x 2 bedroom units (1 adaptable unit)
- 1 x 3 bedroom unit (adaptable)

Level 5

- 6 x 2 bedroom units
- 2 x 3 bedroom units

Level 6

- 3 x 2 bedroom units
- 1 x 3 bedroom unit

Building B

Ground Floor

- 1 x 1 bedroom unit
- 1 x 2 bedroom unit

Level 1

- 1 x 1 bedroom unit
- 1 x 2 bedroom unit
- 1 x 3 bedroom unit (adaptable)
- Communal Open space

Level 2 and 3

- 1 x 1 bedroom unit
- 1 x 2 bedroom unit
- 1 x 3 bedroom unit (adaptable)

Level 4

- 1 x 2 bedroom unit
- 1 x 3 bedroom unit (adaptable)

Level 5

- Communal Open space

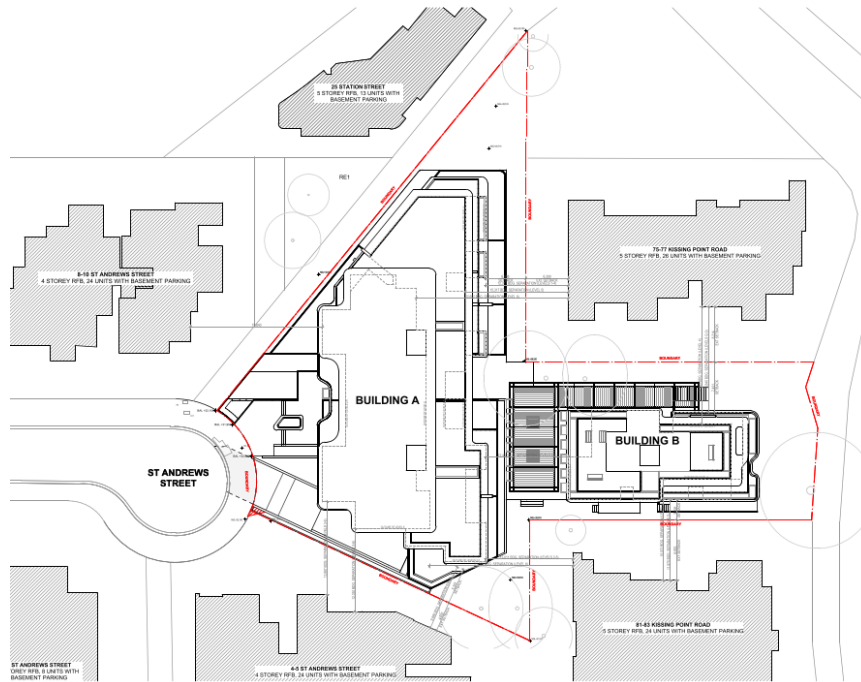


Figure 2: Site Plan. Source: Texco Design

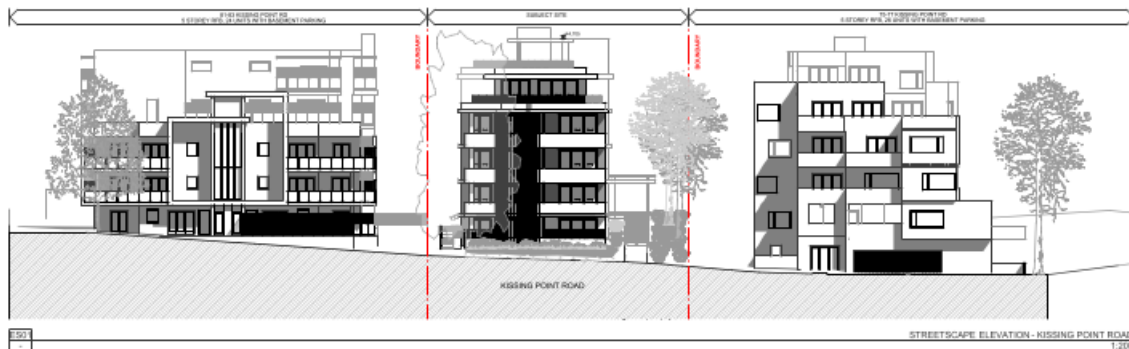


Figure 3: Elevation from Kissing Point Road. Source: Texco Design



Figure 3: Elevation from St Andrews Street. Source: Texco Design

5. Relevant Application History

Date	Comment
13 January 2023	Subject application lodged
24 January to 22 February 2023	Advertising of the application
22 February 2022	Request for Information sent to applicant regarding the proposal as it is non-compliant with the maximum FSR for the site, lack of common open space areas, insufficient landscape areas and solar access. Council's correspondence also included comments from Council's technical specialists regarding Urban design, universal access, and engineering. The correspondence from Transport for NSW was also incorporated in the letter.
1 March 2023	Council was notified of the Deemed Refusal Appeal on 1 March 2023

Note 1: The application was scheduled for review by DEAP on 13 April 2023.

Note 2: The plans used for assessment are the plans submitted upon lodgement.

6. Referrals

Design Excellence Advisory Panel (DEAP)

The application was scheduled to be reviewed by DEAP on 13 April 2023. However, as Council was notified of the Deemed Refusal Appeal of the application on the 1 March 2023, the application was withdrawn from DEAP review.

Planning Comment

As the application has not been reviewed by DEAP and that design excellence could not be achieved by the proposal, the application cannot be considered for approval.

The following section outlines the response and conditions recommended from each of the internal and external referrals in relation to the subject application.

Referral	Comment
Heritage	No objections
Traffic	No objections, subject to conditions of consent.
Landscaping	No objections, subject to conditions of consent.
Health	No objections, subject to conditions of consent.
Acoustic	No objections, subject to conditions of consent.
Endeavour Energy	No objections, subject to conditions of consent.
Sydney Water	No objections, subject to conditions of consent.
Urban Design (Public Domain)	<p>Not supported, additional information required.</p> <ul style="list-style-type: none"> A clear pedestrian for residents that provides a connection between the main entry on St Andrews Street and Kissing Point Road has not been provided. Clarity is required to ascertain the path of travel from Lift 3 to Kissing Point Road. Green canopy cover over 13m for passive surveillance is to be provided within the street setback of Kissing Point Road. The current drawings do not clearly illustrate the front, rear and side setbacks. Basement car parking has not been designed to be contained within the building footprint and is unacceptable. The minimum deep soil zone area has not been provided for the site. Deep soil areas have not been identified on the plans. The proposed floor plate of Building A is too wide and is contributing to a building mass that is excessive which visually dominates along the St Andrews streetscape. It is recommended that 'Building A' either be split into two separate built forms or reduced significantly in frontage width to St Andrews Street to minimise the impact of the perceived density on the public realm and contribute a more human-scaled building mass to the residential context. The building street address, edges and frontages need to be resolved for Kissing point road. There is an opportunity to provide street frontages with individual entries to apartments adjacent to the public domain and through-site link. A lack of individual entries and high fences can create an unsafe environment and impact the safety of the public domain. On-grade units facing Kissing Point Road and the pedestrian footpath along the South-West boundary should provide direct individual entries via separate pedestrian paths leading from the public domain into each dwelling. This provides improved amenity, activation, passive surveillance, and safety of the public realm. A residential lobby should be provided within the Kissing Point Road street interface, with the proposed side access being supplementary. Currently this building appears to turn its back to Kissing Point road and must be provided with a street address. Current entry to building from Kissing Point Road is unclear. Clarification is required as to how a person gets from Kissing Point Road to the building Lobby and into an apartment. The entrances into the buildings from both streets, Kissing Point Road and St Andrews Street, should be clearly marked as entrances with letterbox locations clearly shown on the drawings. Public domain documentation is missing from the set and must be incorporated.

<p>Universal Access</p>	<p>Universal Access provides the following comments. Upon review of the plans and documentation submitted upon lodgement, it was not considered satisfactory for support for the following reasons.</p> <ul style="list-style-type: none"> • The number of rooms has not changed therefor the required number of accessible rooms still remains the same. • The relocation of two accessible rooms to the cottage requires the use of a platform lift thus reducing the accessibility options as access is reliant on a mechanic means. The reliance on a mechanic means is not within the intent of the DDA and BCA that requires rooms to be representative of those on offer. • Creating a “disability cottage” is not dignified, equitable and can be seen as discriminatory. • The addition of a stairway platform lift to provide access from Kissing Point Road is not satisfactory and will not be supported. <p>Note: <i>Stairway platform lift must not be used where it is can only be installed if where it is not possible to install another type of lift</i> BCA Table E3.6a</p> <ul style="list-style-type: none"> • The accessible path of travel from the St Andrews Street apartments to the central communal open space appears to be convoluted and the appropriate signage will be required. • Ensure accessible wayfinding and shoreline identification is provided connecting the two separate unit blocks and the pedestrian access from both St Andrew Street and Kissing Point Road including directions to the central communal outdoor spaces. • The accessible bathroom within units 104, 209, 309 and 410 still requires some minor layout works to ensure the integrity of the existing waterproofing is not compromised during the adaptation works.
<p>Waste</p>	<p>Not supported, additional information required.</p> <p>Council requires swept path for HRV truck to service. Waste plan states truck leaves in forward direction. Confirmation is required that a HRV truck can enter and exit in a forward direction.</p> <p>As such, the proposal does not satisfy the requirements of Council's controls and cannot be supported.</p>
<p>Development Engineer</p>	<p>Upon review of the plans and relevant documentation, Council's Development Engineer cannot support the application given the following concerns remain unresolved.</p> <ol style="list-style-type: none"> 1. The flood model shall be revised to consider 100% pipe blockages as per Councils Engineering Design Guideline 2018. 2. Afflux map shall be provided for the 100% blockage scenario and with upstream and downstream building modelled as blockages. 3. Generally, development should be designed around existing overland flow paths rather than modifying them to suit a development. It is not appropriate to be routing such a flow path past building entries, basement ramps and incorporating impractical bends. This aspect of the proposal requires serious rethought to ensure that any surcharge from St Andrews Street is safely and efficiently routed through the site. 4. The proposed cut, fill and retaining walls shall be appropriately modelled in the flood model. 5. No Habitable floors shall be proposed below the Flood planning level. (E.g. Units G01&G02) 6. Cross-section and long sections of the proposed overland flow path is required (between building A). The flow path must be kept clear of obstructions such as fencing and gates. 7. Details and design regarding the proposed retaining walls shall be submitted to Council. The levels at top of the wall and bottom of the wall shall be provided along with the cut and fill proposed on the development site. Please note that retaining walls will not be supported if it obstructs or diverts flow paths away from the site. 8. The impacts of climate change should also be considered in the proposed design. According to ARR2019 guidelines, RCP (8.5) scenario, which is 20% increased rainfall, should be sensitivity tested. The flood levels (1%AEP climate change scenario) should be compared with the adopted flood planning levels, and a discussion on this matter should be included in the submitted report. 9. The flood study should also include the PMF (Probable Maximum Flood) event to implement in the flood evacuation strategy. The first-floor level should be above the

- PMF level. The local catchment flooding, which is generally flash flooding, and the timing of the flood should be considered; it may be unsafe to evacuate the site due to little or no warnings in a flash flood.
10. The location and dimensions of the proposed building may need to be changed depending on the revised flood model to allow adequate increased width of overland flow paths and to reduce hazard conditions and afflux.
 11. The flood study shall also address the evacuation procedures and routes in the report.
 12. An electronic copy of the model shall be submitted to Council for assessment.
 13. The basement walls, floor slab and joins must be fully tanked (waterproofed) and designed to withstand hydrostatic loading from adjacent groundwater. Council does not permit a 'drained' basement nor pumping out of such groundwater into the Council stormwater system.
 14. Development applications must provide a detailed hydraulic flood study and design demonstrating that the proposed basement car park has been protected from all flooding up to and including the PMF event.
 15. The applicant is to obtain a geotechnical engineer's report with respect to the feasibility of the proposed basement construction and measures to mitigate potential impacts on adjoining properties given the proximity to the site boundaries and public roads. All elements of the basement construction including any subsoil drains, anchors, etc. are to be wholly located within site or within appropriate easements in private land or with license arrangements in public roads and the basement is not to rely on a pump out system for permanent dewatering. A copy of the report is to be supplied with the DA submission.
 16. Given the depth and extent of excavation proposed, the geotechnical engineer's report shall also provide details of existing soil conditions, shoring of excavation, and any potential impact on the ground water table. Depending on the impact of the development on groundwater, the development may be integrated development and require an Aquifer Interference approval under the Water Management Act 2000.

Stormwater Requirements recommendation

The flood model also needs to be adjusted to better depict flow paths through the site particularly from St Andrews Street. The preliminary model results indicate only a small affectation from the east which would be expected given that existing developments would intercept the majority of these flows.

17. OSD tanks shall not be located under habitable floor areas or within the basement driveway ramp where surcharges could flood the basement. Overflow pits and pipes will not be considered as satisfactory protection against this.
18. A surface flow path shall be provided for emergency overflows of the OSD tank to be directed to the point of discharge.
19. Tank openings are to be grated. No solid covers are to be used.
20. The proposed FFLs are to incorporate a suitable freeboard above the external finished levels.
21. The piped drainage system shall be sized to cater for all storms up to and including the 100 year ARI storm event.
22. Bypass areas are defined as areas bypassing the OSD system only and still need to be drained to the point of discharge. OSD bypass areas are not to exceed the allowable limits within the UPRCT OSD Handbook.
23. All proposed finished surface levels are to be shown with sufficient fall provided to the proposed surface inlet pits.
24. Water sensitive urban design (WSUD) measures shall be included in the stormwater drainage system consistent with the requirements of Section 3.3.6 of the Parramatta DCP. A MUSIC model (including model files and output) shall also be submitted which demonstrates compliance with the prescribed pollution reduction targets.

Water-Sensitive Urban Design Recommendations

25. A WSUD strategy report, describing the treatment train including all measures used, justification for this selection and a summary of design ancillary benefits.
26. MUSIC software modelling (or equivalent) to demonstrate that the proposed WSUD strategy achieves the required pollution reduction targets. Both a written summary of

	<p>the assumptions, configuration and results of the model, and a digital copy of the model file must be submitted.</p> <p>27. The above documentation must be prepared by a qualified hydraulic or environmental engineer/environmental scientist in consultation with the project landscape and architectural professionals.</p> <p>28. Council requires simple WSUD landscape designs that achieve water management objectives without unusual or complicated maintenance demands. DA must be accompanied with a Management and Maintenance Plan for the WSUD proprietary treatment devices (such as GPT's, filters etc).</p> <p><i>Retaining Walls</i></p> <p>29. A separate cut and fill plan shall be included in the DA submission showing existing & proposed finished surface levels, cut/fill depths and volumes.</p> <p>30. All retaining walls that form part of this development shall be shown across all plans and shall be designed to ensure that any natural surface flows from adjoining properties are not impeded or diverted. Details of all proposed retaining walls including top & bottom of wall levels and typical cross-sections shall be provided and shown consistently across all plans in the DA submission.</p> <p><i>Traffic / Driveway recommendations</i></p> <p>31. Detail long sections are required for the basement ramp and vehicular crossover.</p>
Transport for NSW	<p>Not supported, additional information required.</p> <ol style="list-style-type: none"> 1. Tentative works program for construction works of the proposed works, having regard to close proximity of the subject site to the Parramatta Light Rail (PLR) through the Carlingford Heavy Rail Corridor. 2. Noting demolition works are proposed including deep excavation works for basement car parking, monitoring surveys will need to be carried out to demonstrate PLR assets are not adversely impacted during demolition or construction works. 3. A Construction Pedestrian Traffic Management Plan (CPTMP) should be submitted to TfNSW for review noting close proximity to the PLR. 4. Consideration should be given to reducing car parking rates given additional public transport services that are likely to meet the future demand for the proposed development noting the site's proximity to the Dundas Light Rail stop of Stage 1 PLR. Any revised car parking provisions should be detailed in an updated Traffic Impact Assessment report.
Water NSW	<p>The proposal requires concurrence from WaterNSW pursuant to Section 90(2) of the Water Management Act 2000. However, at the time of writing, Council has not received WaterNSW concurrence or General Terms of Approval (GTA) and therefore Council cannot consider the application for approval.</p>

PLANNING ASSESSMENT

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application are:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
- State Environmental Planning Policy (BASIX)
- Parramatta Local Environmental Plan 2023 (PLEP 2011)
- Parramatta Local Environmental Plan 2023 (PLEP 2023)
- Parramatta Development Control Plan 2011 (PDCP 2011)

Compliance with these instruments is addressed below.

7.2 STATE ENVIRONMENTAL PLANNING POLICY NO 65 – DESIGN QUALITY OF RESIDENTIAL QUALITY APARTMENT DEVELOPMENT

SEPP 65 applies to the development as the proposal is for a new building, is more than 3 storeys in height and will have more than 4 units. SEPP 65 requires that residential flat buildings satisfactorily address 9 design quality principles, be reviewed by a Design Review Panel, and consider the recommendations in the Apartment Design Guide.

Design Quality Principles

The proposal is inconsistent with the design principles for the reasons outlined below:

Requirement	Comment
Principle 1: Context and Neighbourhood Character	Whilst the proposal provides a high-density development within proximity to public transport and services, the built form does not comply with the maximum height for the site which exacerbates bulk and scale that is not in keeping with the context and character of the local area. Further, the building floor plate of Building A (when viewed from St Andrews Street) is of a depth that is contributing to the building mass and is visually dominant on the St Andrews Street.
Principle 2: Built Form and Scale	The proposal has not been designed in accordance with the maximum height for the site which results in an inappropriate scale for its location. Additionally, the proposal has been designed with a wide floor plate along the St Andrews Street frontage which increases the perception of bulk and scale of the street. The applicant has been requested to review its design but to date has not provided any amendments. As such, the proposal cannot be supported.
Principle 3: Density	The proposal would result in a density appropriate for a site, in terms of floor space yield and number of rooms. Notwithstanding, the design of the development presents as a bulky built form when viewed from the street frontage of St Andrews Street.
Principle 4: Sustainability	A BASIX Certificate has been submitted with the application and the required design measures are incorporated into the design of the building.
Principle 5: Landscape	Due to the design and scale of the basement and building floor plate, it has limited the opportunities for landscaping and deep soil areas to allow for meaningful landscaping and to balance the hard and soft surfaces.
Principle 6: Amenity	Internal amenity within the units cannot be ascertained as the proposal was not reviewed by DEAP. Notwithstanding, concern is raised that due to the design of the proposal that the amenity within the triangular COS located to the north-east corner of the site is compromised. Further, the lack of individual entries for ground floor units along the Kissing Point Road frontage results in reduced amenity within the public domain. For such reasons, the proposal cannot be supported.
Principle 7: Safety	The triangular shaped communal open space located to the north-east of the site does not benefit from any passive surveillance from within the units of the development. It is also located away from thoroughfares and corridors that is frequently accessed by the users of the premises and therefore surveillance of this area is unlikely.
Principle 8: Housing Diversity and Social Interaction	The proposal comprises a mix of apartments ranging in type, size and affordability in order to provide housing choice for different demographics, living needs and budgets in close proximity to public transport. Notwithstanding, the proposal is to be refused for reasons stated throughout this report.
Principle 9: Aesthetics	The proposal does not comply with the height for the site and as a result the bulk and scale are inconsistent with the existing development, particularly along the St Andrews Street frontage. Additionally, the width of the building addressing the St Andrews Street frontage visually dominates the streetscape. As such, the proposal does not appropriately contribute to the desired future character of the area.

Apartment Design Guide

The ADG is a publication by the State Government which further expands on the design quality principles by providing some detailed practical guidance for the design of residential flat buildings.

The proposal has been assessed against the 32 topic area provisions within Parts 3 & 4 of the ADG and the relevant provisions of note are as follows:

Clause	Design Criteria	Comments	Comply
Part 3 – Siting the Development			
3A Site Analysis	Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	A site analysis has been submitted.	Yes.
3B Orientation	Buildings along the street frontage define the street, by facing it and incorporating direct access from the street.	Pedestrian entry is provided off St Andrews Street and Kissing Point Road.	Yes.
	Where the street frontage is to the east or west, the rear buildings should be orientated to the north.	The building is designed with an orientation to the north.	Yes.
	Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be orientated to the east and west.	The site has street frontage to the north and south. Whilst the plans provide information of overshadowing within the development, the proposal does not provide any solar access information that relates to adjoining properties. This information was requested from the applicant but to date, has not been responded to. Accordingly, the proposal cannot be supported.	No
3C Public Domain interface	Transition between private and public domain is achieved without compromising safety and security.	The proposal provides COS within the front setback of St Andrews Street which does not allow for an appropriate transition between private and public open space. This also compromises safety and security of the public domain and the users of the COS.	No
	Amenity of the public domain is retained and enhanced.	Details of public domain works have not been submitted. Therefore, the amenity of the public domain cannot be ascertained.	No
3D Communal and public open space	Communal open space (COS) has a minimum area equal to 25% of the site, with minimum 3m dimensions.	Required: 829.525m ² Proposed: 538m ²	No
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm mid-winter.	It is noted that the area located within the front setback on Kissing Point Road was not included in the calculation of COS as this area is unlikely to be utilised for the purposes of COS and that it also does not allow an acceptable streetscape presentation along Kissing Point Road. Further, the triangular shaped COS located to the eastern point of the site on Level 1 is 'dead/left over space' and will be underutilised.	No
	Facilities are provided within communal open spaces and common spaces for a range of age groups (see also 4F Common circulation and spaces), incorporating some of the following elements: 4. seating for individuals or groups 5. barbecue areas	Given that there is insufficient common open space, the proposal cannot be considered for approval. The Level 5 COS will receive more than 2 hours of solar access in mid winter. However, the COS located on Level 1 is unlikely to receive solar access during mid-winter. Outdoor seating areas and communal areas are provided for the COS located on Level 1 (between buildings) and the roof top level.	Yes

	6. play equipment or play areas 7. swimming pools, gyms, tennis courts or common rooms														
3E Deep soil zones	15% (497.715m ²) deep soil encouraged given the size of the site and context with 6m dimensions.	Proposed - 370m ² (11%) with minimum 6m dimensions.	No												
3F Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building Height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>North-West (25 Station St) – Min. 8m North (75 – 77 KPR) – Min. 9m East (81 – 83 KPR) – Min. 7.8m South-East (4 – 5 St Andrews St) – Min. 4.5m South – West (8 – 10 St Andrews St) – Min. 14m. Between Building A and Building B – 9.3m</p>	No
Building Height	Habitable rooms and balconies	Non-habitable rooms													
up to 12m (4 storeys)	6m	3m													
up to 25m (5-8 storeys)	9m	4.5m													
over 25m (9+ storeys)	12m	6m													
3G Pedestrian access and entries	<p>Building entries and pedestrian access connects to and addressed the public domain.</p> <p>Access, entries and pathways are accessible and easy to identify.</p>	<p>See comments from UD (Public Domain) regarding pedestrian entries.</p> <p>Council's Universal Access Officer has reviewed the proposal and raised some concerns with regards to the development accessibility which have not been addressed. Accordingly, the proposal cannot be considered acceptable in this regard.</p>	<p>No</p> <p>No</p>												
3H Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	Vehicular access from St Andrews Street is provided. Separate pedestrian access is provided.	Yes.												
3J Bicycle and car parking	<p>Minimum car parking spaces: <u>Parramatta Development Control Plan 2011/ Guide to Traffic Generation Developments</u> Residential Flat Buildings:</p> <ul style="list-style-type: none"> 1 space x 6 (one-bedroom unit) = 6 1.25 space x 34 (two-bedroom unit) = 42.5 1.5 x 13 (three-bedroom unit) = 19.5 <p>Total Residential: 68</p> <ul style="list-style-type: none"> Visitor: 0.25 x 53 dwellings = 13.25 (14) <p>Total required = 82 spaces</p> <p>Minimum bicycle spaces:</p> <p><u>Parramatta DCP</u> Residential Flat Buildings:</p> <ul style="list-style-type: none"> 1 bicycle space per 2 dwellings = 1 x (53 units / 2) = 26.5 (27) <p>Total required = 27 bicycle spaces</p>	<p>83 parking spaces are provided, including 69 residential spaces and 14 visitor spaces.</p> <p>27 bicycle spaces are provided.</p>	<p>Yes.</p> <p>Yes.</p>												
Part 4 - Amenity															
4A Solar and daylight access	Living rooms and private open space of at least 70% of apartments in a building receive a min. 2 hours of direct sunlight between 9am and 3pm on 21 June	<p>47 (88%) of apartments will receive 2 hours of direct sunlight</p> <p>12 (22%) apartment will not receive any direct sunlight on 21 June</p>	<p>Yes</p> <p>No</p>												

	A max. of 15% of apartments in the building receive no sunlight between 9am and 3pm at mid-winter																	
4B Natural ventilation	Min 60% of apartments is naturally cross ventilated in the first nine storeys of the building.	40 (70%) of apartments are naturally cross ventilated.	Yes.															
4C Ceiling heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2">Minimum Ceiling Height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed use areas</td> <td>3.3m ground & first floor</td> </tr> </tbody> </table> <p>These minimums do not preclude higher ceilings if desired</p>	Minimum Ceiling Height		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed use areas	3.3m ground & first floor	2.7m habitable floor to ceiling heights for habitable rooms	Yes.							
Minimum Ceiling Height																		
Habitable rooms	2.7m																	
Non-habitable	2.4m																	
If located in mixed use areas	3.3m ground & first floor																	
4D Apartment Size and Layout	<p>Minimum unit sizes:</p> <p>Studio – 35m² 1 bed – 50m² 2 bed – 70m² 3 bed – 90m²</p> <p>Additional bathrooms increase the minimum internal area by 5m² each</p>	All units comply with the minimum sizes required.	Yes.															
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.	Complies.	Yes.															
	Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry)	Complies	Yes.															
	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Complies	Yes.															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies.	Yes.															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Complies.	Yes.															
	Bedrooms have a minimum dimension of 3m.	Complies.	Yes.															
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> - 3.6m for studio and 1 bedroom apartments. - 4m for 2 and 3 bedroom apartments. 	Complies.	Yes.															
4E – Private open space and balconies	<p>All apartments are to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4 m²</td> <td>-</td> </tr> <tr> <td>1 Bedroom</td> <td>8 m²</td> <td>2m</td> </tr> <tr> <td>2 Bedroom</td> <td>10 m²</td> <td>2m</td> </tr> <tr> <td>3 Bedroom</td> <td>12 m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum Area	Minimum Depth	Studio	4 m ²	-	1 Bedroom	8 m ²	2m	2 Bedroom	10 m ²	2m	3 Bedroom	12 m ²	2.4m	All units comply with the minimum sizes required.	Yes.
Dwelling type	Minimum Area	Minimum Depth																
Studio	4 m ²	-																
1 Bedroom	8 m ²	2m																
2 Bedroom	10 m ²	2m																
3 Bedroom	12 m ²	2.4m																
	Ground floor units are to have private open space as follows: 15m ² , min 3m depth	All ground floor units comply.	Yes															
4F Common circulation and spaces	Max. number of apartments off a circulation core on a single level is 8.	Maximum 4 units	Yes															
4G Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is required:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Storage volume size</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4 m³</td> </tr> </tbody> </table>	Apartment type	Storage volume size	Studio	4 m ³	Not all units are provided with storage areas that are not within the bedroom or kitchen areas. For example, Units 207 and 209.	No											
Apartment type	Storage volume size																	
Studio	4 m ³																	

	<table border="1"> <tr> <td>1 bedroom</td> <td>6 m³</td> </tr> <tr> <td>2 bedroom</td> <td>8 m³</td> </tr> <tr> <td>3 bedroom</td> <td>10 m³</td> </tr> </table>	1 bedroom	6 m ³	2 bedroom	8 m ³	3 bedroom	10 m ³		
1 bedroom	6 m ³								
2 bedroom	8 m ³								
3 bedroom	10 m ³								
	At least 50% of the required storage is to be located within the apartment.	See above.	No						
4H Acoustic Privacy	Various objectives.	The balcony for Unit 207 is within 1m of the south-east boundary. Despite the landscape screening/buffer, this does not appropriately protect amenity to and from the development site. Accordingly, the proposal cannot be considered for support.	No						
4J Noise and Pollution	Various objectives.	The site adjoins Kissing Point Road. It is noted that living areas such as bedrooms and living rooms have an address to Kissing Point Road. Notwithstanding, the submitted Acoustic Report as well as the review from Council's Health (Acoustic) Officer raised no objections subject to conditions of consent.	Yes						
4K Apartment Mix	Various objectives	6 x 1 bedroom (11%) 34 x 2 bedroom (64%) 13 x 1 bedroom (24%)	Yes						
4L Ground floor apartments	Various objectives.	No ground floor units are provided with an individual access from the street.	No						
4M Facades	Various objectives.	As noted by Council's Urban Designer, due to the width of the building floor plate, the length of the elevations is considered excessive and dominates the streetscape.	No						
4N Roof design	Various objectives.	See PLEP 2011 'Height' assessment.	No						
4O Landscape design	Various objectives.	This is discussed throughout the report. See Principle 5 of SEPP 65 for discussion.	No						
4P Planting on structures	Various objectives.	See above.	No						
4Q Universal design	Various objectives.	Required – Min. 20% of the apartments (10.6/11 apartments) Proposed – The plans indicate that only 9 units will incorporate universal design features. It is also noted that Council's Universal Access Officer stated that locating the adaptable units primarily in Building B creates a 'disability cottage' and is not dignified and/or equitable and can be seen as discriminatory.	No						
4R Adaptive reuse	Various objectives.	The proposal does not require the adapt reuse of an existing building.	N/A						
4S Mixed Use	Various objectives.	The proposal is not for a mixed-use development.	N/A						
4T Awnings and signage	Various controls under SEPP 64 apply.	Awnings/Signage are not required/proposed for this development.	N/A						
4U Energy efficiency	Various objectives.	Complies.	Yes.						
4V Water management and conservation	Various objectives.	Insufficient information has been received with regards to Water Sensitive Urban Design requirements per PDCP 2011 controls. Accordingly, the proposal cannot be considered as compliant with this provision.	No						
4W Waste Management	Various objectives.	Refer to DCP compliance table further in this report.	No design criteria under this SEPP.						
4X Building Maintenance	Various objectives.	The proposal complies with the various objectives.	Yes.						

7.3 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 – CHAPTER 2 VEGETATION IN NON-RURAL AREAS

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

Council's Consultant Landscape Architect/Arborist raised no objections to the removal of 13 trees subject to appropriate conditions of consent.

It is considered that the removal of 13 trees on site will not have an adverse impact of the ecological, heritage, aesthetic and cultural significance of the area. Notwithstanding, the proposal is recommended for refusal for reasons stated throughout this report.

7.4 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 – CHAPTER 6 WATER CATCHMENTS

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The aims of the Plan are 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.

Given the nature of the project and the location of the site, there are no specific controls that directly apply to this proposal, and any matters of general relevance (erosion control, etc) are able to be managed by conditions of consent.

7.5 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 – CHAPTER 4 REMEDIATION OF LAND

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

The site is not identified in Council's records as being contaminated. A site inspection reveals the site does not have an obvious history of a previous non-residential land use that may have caused contamination and there is no specific evidence that indicates the site is contaminated.

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

Standard and special conditions relating asbestos, site audit statement, site investigation and contamination would have been recommended if the application had been considered for approval.

7.6 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021 – CHAPTER 2 INFRASTRUCTURE

The relevant matters to be considered under Chapter 2 of the SEPP for the proposed development are outlined below.

Chapter 2	Comment
Clause 2.45 – electricity infrastructure	The proposal does require the provision of a new substation.
Clause 2.48 - Development likely to affect an electricity transmission or distribution network	N/A. The subject site is not within proximity to electricity infrastructure or substation.
Clause 2.100 – Development in or adjacent to rail corridors	N/A. The subject site does not adjoin a rail corridor.
Clause 2.119 – frontage to a classified road	No. The proposal is subject to this clause as the site has frontage to a classified road (Kissing Point Road). Accordingly, the application was referred to Transport for NSW (TfNSW). Upon review of the proposal, TfNSW required additional information which to date has not been submitted by the applicant. Accordingly, the proposal cannot be considered for approval as concurrence from TfNSW has not been issued.
Clause 2.122 – Traffic Generating Development	N/A. The development does not meet the criteria for referral to TfNSW under Schedule 3 of the SEPP.

7.7 STATE ENVIRONMENTAL PLANNING POLICY BASIX

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

8. Parramatta Local Environmental Plan 2023

Parramatta LEP 2023 was gazetted on 2 March 2023. Clause 1.8 of the LEP now repeals the following planning instrument which applies to the land:

- Auburn Local Environmental Plan 2010
- Holroyd Local Environmental Plan 2013
- Parramatta (former The Hills) Local Environmental Plan 2012
- Parramatta Local Environmental Plan 2011

Clause 1.8A Savings provision relating to development applications states:

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

The current DA was lodged on 13 January 2023 and therefore shall be assessed under Parramatta Local Environmental Plan 2011.

9. Parramatta Local Environmental Plan 2011

The relevant matters considered under the PLEP 2011 for the proposed development are outlined below:

Clause 1.2 Aims of Plan

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to encourage a range of development, including housing, employment and recreation, that accommodates the needs of the existing and future residents, workers and visitors of Parramatta,
- (b) to foster environmental, economic, social and physical wellbeing so that Parramatta develops as an integrated, balanced and sustainable city,
- (c) to identify, conserve and promote Parramatta's natural and cultural heritage as the framework for its identity, prosperity, liveability and social development,
- (d) to improve public access to the city and facilitate the maximum use of improved public transport, together with walking and cycling,

- (e) to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by restricting development in sensitive areas,
- (f) to protect and enhance the natural environment, including areas of remnant bushland in Parramatta, by incorporating principles of ecologically sustainable development into land use controls,
- (g) to improve public access along waterways where natural values will not be diminished,
- (h) to enhance the amenity and characteristics of established residential areas,
- (i) to retain the predominant role of Parramatta's industrial areas,
- (j) to ensure that development does not detract from the economic viability of Parramatta's commercial centres,
- (k) to ensure that development does not detract from the operation of local or regional road systems,
- (l) to ensure development occurs in a manner that protects, conserves and enhances natural resources, including waterways, riparian land, surface and groundwater quality and flows and dependant ecosystems,
- (m) to protect and enhance the viability, identity and diversity of the Parramatta City Centre and recognise it as the pre-eminent centre in the Greater Metropolitan Region,
- (n) to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles.

For reasons stated throughout this report, it is considered that the development does not satisfactorily meet the aims of the plan. In particular, the proposal does not encourage a range of development that accommodates the needs of the existing and future residents, workers and visitors of Parramatta. As such, the proposal will be recommended for refusal.

Clause 2.3 Zone objectives and Land Use Table

The aims and objectives for the R4 zone in Clause 2.3 – Zone Objectives are as follows:

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

Due to reasons stated throughout this report, the proposal is not consistent with these objectives and therefore cannot be considered for approval.

Standards and Provisions	Compliance
Part 4 Principal development standards	
Cl. 4.3 Height of buildings Allowable: 17m	No Proposed: 18.95m
Cl. 4.4 Floor space ratio Allowable: 1.4:1	Yes Proposed: 1.308:1 (4342m ²)
Cl. 4.6 Exceptions to Development Standards	Variation to Clause 4.3 'Height of Buildings' standard. See Below.
Part 5 Miscellaneous provisions	
Cl. 5.1A Development on land intended to be acquired for public purposes	The subject site is not subject to land reservation acquisition.
Cl. 5.4 Controls relating to miscellaneous permissible uses	These provisions do not apply to the development proposal.
Cl. 5.6 Architectural roof features	An architectural roof feature is not proposed.
Cl. 5.7 Development below mean high water mark	The proposal is not for the development of land that is covered by tidal waters.
Cl. 5.10 Heritage conservation	The site is not identified as a heritage item and it is not located within a heritage conservation area. However, heritage item (I43) bounds the site's northern boundary, and a Council footpath separates the site from a second local heritage item (I42) to the southwest. It is noted that the demolition of Heritage Item I42 at 25 Station Street, Dundas was approved under Consent No. 899/2016.

Cl. 5.21 Flood Planning	N/A. The site is not flood prone.
Part 6 Additional local provisions	
Cl. 6.1 Acid sulfate soils	Yes, the site is identified as containing Class 5 Acid Sulfate Soil. An Acid Sulphate Soils Management Plan is not required to be prepared in this instance.
Cl. 6.2 Earthworks	Due to insufficient information, Council's Development Engineer is unable to complete the assessment of the earthworks proposed. Accordingly, the proposal is not considered to comply with this clause and cannot be considered for approval.
Cl. 6.4 Biodiversity protection	The site is not identified on this map.
Cl. 6.5 Water protection	The site is not identified on this map.
Cl. 6.6 Development on landslide risk land	The site is not identified on this map.
Cl.6.12 and Cl.6.13 Design Excellence	The site is not identified on these maps.

Clause 4.6 Exceptions to Development Standards Building Height

The proposal does not comply with the maximum 17m building height development standard detailed in Clause 4.3 of the PLEP. The proposed maximum building height is **18.95m**.

The development proposal exceeds the maximum permissible building height by 1.95m which is a **11.4% variation** to the development standard.

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

Clause 4.6(1) – Objectives of Clause 4.6

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

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

Clause 4.6(2) – Operation of Clause 4.6

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

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

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

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

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

Comment: An assessment has been undertaken to determine whether compliance with the standard is *'unreasonable and unnecessary'* and there are *'sufficient planning ground'* as follows:

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

- (a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*

Comment: The subject site is the last parcel to be developed along Kissing Point Road and on St Andrews Street as a high-density residential development. With respect to scale, the bulk of the building (particularly when viewed from the St Andrews Street frontage) is uncharacteristic of the locality. The variation to the height along with the excessive floor plate width of the development on St Andrews Street dominates the streetscape.

Overall, the building is inconsistent with the bulk and scale presentation of existing developments on St Andrews Street and does not in this instance respect the existing and desired future character of the area. A variation to the height therefore results in contributing to adverse impacts on the surrounding environment.

- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

Comment: As shown in **Figure 4**, the elements of the proposed building which exceed the control relate to the lift overrun and the roof of the rooftop terrace area. The elements that protrude beyond the height plane has not been integrated into the design of the development which currently presents as 'bulky' due to the excessive floor plate width when viewed from St Andrews Street. The overall height of the development in this instance appears to create overshadowing impacts within the development (particularly to the COS area between the buildings). Additional information has also not been submitted demonstrating the impacts of the proposal on adjoining properties.

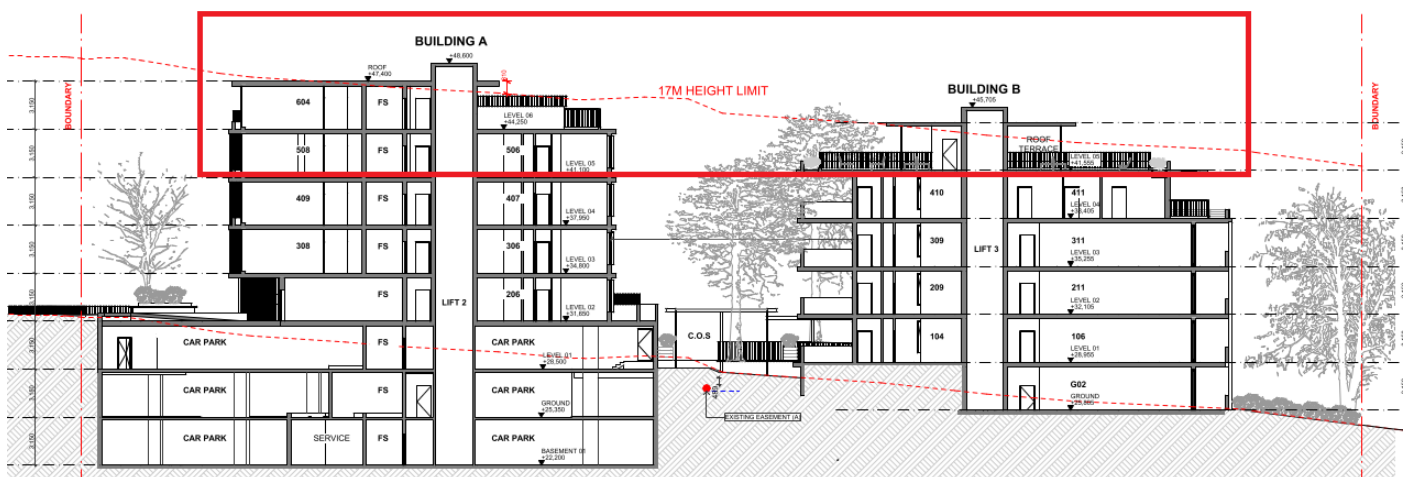


Figure 3: Proposed Height breach outlined in red. Source: Texco Design.

- (c) *to require the height of future buildings to have regard to heritage sites and their settings,*

Comment: It is noted that the site is within proximity to Heritage Item I42 at 25 Station Street and Heritage Item I43 located to the southwest of the site. A Council footpath separates Heritage Item I43 from the subject site and Heritage Item 42 was approved for demolition under Consent No. 899/2016. Council's Heritage Adviser has raised no objections to the proposal. Despite this, for reasons stated throughout this report, Council cannot support the application.

- (d) *to ensure the preservation of historic views,*

Comment: Any development on the site will not impact on historic views identified by the relevant plans and policies.

(e) to reinforce and respect the existing character and scale of low density residential areas,

Comment: As stated the proposal relates to the last undeveloped parcel on St Andrews Street where the existing / surrounding development are high density residential flat buildings. These forms of development are acceptable in this location given its proximity to public transport and services.

However, the variation to the height in this instance cannot be supported as the built form has not considered the impacts of the excessive floor plate width and that its bulk and scale is exacerbated particularly along St Andrews Street. Accordingly, it is not considered that the proposal will contribute positively to the future character of the area.

The proposal is inconsistent with the objectives of the High Density Residential zone.

(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.

Comment: The site is located within an R4 High Density Residential zone outside of a town centre of CBD where commercial centres are located. Notwithstanding, the proposal has not demonstrated that the breach in height does not result in adverse impacts to adjoining properties.

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

Comment: Compliance with the development standard is reasonable in the circumstances of the case. The elements that protrude beyond the maximum height plane has not been satisfactorily integrated / designed into the development to ensure that a breach to the height standard does not occur. The proposal in its current form with the addition of an excessive floor plate width results in a bulk and scale in this location which was not envisaged by the controls. Further, it does not contribute positively to the streetscape presentation nor to the character of the area.

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

Comment: The applicant does not challenge that the development standard is abandoned.

- 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.*

Comment: The applicant does not challenge that the development standard is abandoned.

- 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.*

Comment: The applicant does not challenge that the zoning is inappropriate so that a development standard appropriate for the zoning was also unreasonable or unnecessary.

Four2Five Pty Ltd v Ashfield Council

The proposal has been assessed on merit and having regard to the principles in *Four2Five v Ashfield Council [2015] NSWLEC 90*. The judgement suggests that 'sufficient environmental planning grounds' is more onerous than compliance with zone and standard objectives. The commissioner 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 notes the following:

Sufficient Environmental Planning Grounds & Design Response

The below points demonstrate suitable environmental planning grounds exist to justify contravening the height development standard and further demonstrates that the height departure does not give rise to any environmental impacts- and in fact limits environmental impacts on the adjoining trees through avoiding unnecessary change to existing ground levels in the vicinity of trees.

- At the outset the variation is minor, to the extent that the non-compliance will be largely imperceptible as viewed from the public domain or surrounding properties noting the breach is limited to a small part of the upper level roof form;
- In this case the additional height is resulting from the topography of the site and the design response to limit changes to natural ground levels in the vicinity of trees. The height breach is at the rear of the building where the topography is lower and a small portion of the lift over-run which is recessed and will not be highly visible from the public domain or adjoining properties. Strict compliance could be achieved through further 'cut' into the site to achieve a compliant height however this would lead to:
 - a. Poorer amenity to the ground floor units by pushing the finished floor level below the ground level which is not desirable from an amenity perspective;
 - b. Further impacts on the trees on the site that are designed to be retained;
- The adoption of a series of terraced levels in response to topography provides a suitable amenity outcome as compared to a lowering of the building to achieve strict compliance as some units would become 'sunken' and result in poor amenity.
- Accordingly the minor departure enables a better design outcome, consistent with the following Objects of the Environmental Planning and Assessment Act 1979: (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources, (g) to promote good design and amenity of the built environment,
- This demonstrates sufficient environmental planning grounds.
- Further it is noted that the relationship to adjoining properties is such that the additional height is not to be viewed in a way that presents excessive bulk and scale because of the location of the breach at the rear of the site and to the parapet area on the south eastern portion of the building.
- The additional height also does not generate any unacceptable adverse amenity impacts to adjoining properties with regard to visual privacy or overshadowing given the lot orientation and careful design of the development. Therefore, the current proposal demonstrates suitable environmental planning grounds and demonstrates that there is merit in varying the height control to achieve a better design response on the site which demonstrates sufficient environmental planning grounds to support the departure.

Comment: The Applicant's assessment above has not taken into consideration the impacts of the excessive floor plate width and the lack of integration of the elements that breach the height plane to avoid a bulky development. Given this, it is not considered it has been demonstrated that there are sufficient environmental planning grounds exist to justify departing from the development standard.

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

Clause 4.6(4) of PLEP 2011 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."

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

Public Interest

Clause 4.6(4)(a)(ii) of PLEP 2011 states:

"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".

Comment:

The proposal in this instance has not considered the impacts of the excessive floor plate width that has contributed to the bulky design of the development, and which is exacerbated by the breach in height, resulting in an unacceptable built form on the streetscape and the locality. Accordingly, the development is inconsistent with the objectives of this standard and is not in the public interest.

Concurrence

Clause 4.6(4)(b) of PLEP 2011 states:

“The concurrence of the Secretary has been obtained”.

Comment: Such concurrence is assumed (refer to the Planning Circular PS 20-002, 5 May 2020).

Conclusion: It is considered that the elements that breach the height plane has contributed to the bulky built form of the proposal which has not been adequately addressed in the applicants written request. As such, the submitted request has not demonstrated that the variation to the height development standard within PLEP 2011 should be supported. It has therefore not achieved the objectives of the height development standard and zone and that it is not in the public interest. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

10. The Parramatta Development Control Plan 2011

A consideration of the relevant sections of the PDCP 2011 is provided below.

Development Control	Comment	Comply
Part 2 Site Planning		
2.4.1 Views and Vistas	The site is not identified as containing significant views.	Yes
2.4.2 Water Management	Refer to assessment under PLEP 2011.	Yes
2.4.3 Soil Management	Insufficient information has been received that allows Council’s Development Engineer to satisfactorily address this control. As such, the proposal cannot be considered for approval.	No
2.4.4 Land Contamination	Refer to assessment under SEPP 55.	Yes
2.4.5 Air Quality	Were this application recommended for approval, standard conditions would have been imposed to ensure that the potential for increased air pollution is minimised during construction.	Yes
2.4.6 Development on Sloping Land	The development responds to the topography of the site. The building is stepped, and appropriate excavation and fill is proposed enabling an adequate building platform.	Yes
2.4.7 Biodiversity	Council’s Consultant Landscape Architect/Arborist raised no objections to the removal of thirteen (13) trees subject to appropriate conditions of consent. It is considered that the removal of the 13 trees on site will not have an adverse impact of the ecological, heritage, aesthetic and cultural significance of the area. The proposed replacement planting will ensure that the development will not result in an unacceptable loss of amenity values or finite natural resources. Notwithstanding, the proposal cannot be supported for reasons stated throughout this report.	Yes
2.4.8 Public Domain	The proposal has not provided individual address to units located on the ground level and adjacent to the public domain. A lack of individual entries can result in an unsafe environment on the public domain. The application has not submitted Public Domain plans in accordance with PDCP 2011.	No
Part 3 Development Principles		
3.2.1 Building Form and Massing	The subject site is the last parcel to be developed for high density residential flat buildings in this location. It is noted throughout this report that the excessive floor plate width and the overall height of development has resulted	No

	in a 'bulky' built form and a development mass that is inconsistent with the streetscape view, particularly when viewed from St Andrews Street.	
3.2.2 Building Façade and Articulation	Despite the articulation incorporated in the design of the development the width of the floor plate is excessive and dominates the streetscape.	No
3.2.3 Roof Design	See PLEP 2011 'Height' assessment.	No
3.2.5 Streetscape	As stated throughout this report, the development has been designed with a wide floor plate and that as a result, the mass and development scale of the proposal on St Andrews Street is excessive and incompatible with the streetscape.	No
3.2.6 Fences	No fences are proposed.	N/A
3.1.3: Building Height Required: 17m	Proposed: 18.95m Refer to assessment under PLEP 2011.	No.
3.1.3 Floor Space Ratio	Refer to assessment under PLEP 2011.	Yes
3.1.3: Minimum Site Frontage 2 Street Frontage – min. 18m.	Kissing Point Road – 18.19m St Andrews Street – 17.02m Given the cul-de-sac nature of St Andrews Street, the 1m variation to the street frontage is acceptable.	No, but acceptable.
3.13: Front Setback Primary – 5m – 9m Secondary – Min. 3m – 5m.	Kissing Point Road – 8.9m St Andrews Street – 9m	Yes
3.13: Side Setback Required: 4.5m	As noted elsewhere in this report, clarification was sought with regards to the side setbacks of the proposal and that this needs to be illustrated on plans. This request has not been addressed. In the absence of these plans, Council has measured the minimum side setback as 800mm (ie. From the balcony of Unit 207 to the south-east boundary). This is unsatisfactory in ameliorating amenity impacts to and from the development site. Accordingly, the proposal cannot be supported.	No
3.1.3: Landscaped Area 40% of the site (1327.24m ²)	Provided: (18.2%) 604m ²	No.
3.1.3: Deep Soil 30% of the site (995m ²)	Provided: 9.6% (319m ²)	No.
3.3.3 Visual and Acoustic Privacy	See SEPP 65 and ADG Assessment	No
3.3.4 Acoustic Amenity	The site has frontage to Kissing Point Road. See ADG Assessment for discussion.	Yes
3.3.5 Solar Access and Cross Ventilation	Refer to SEPP 65 and ADG Assessment. However, Council has received insufficient information with regards to the solar access impacts of the development on adjoining properties. As the application fails to demonstrate such impacts in accordance with this control, Council cannot consider this application for approval.	No
3.3.6 Water Sensitive Urban Design	Insufficient information has been received with regards to Water Sensitive Urban Design requirements per PDCP 2011 controls. Accordingly, the proposal cannot be considered as compliant with this provision.	No
3.3.7 Waste Management	Council's Waste Officer has requested additional information. To date, this information has not been received. As such, an assessment against this control could not be completed. Accordingly, the application cannot be considered for approval.	No

3.4.1 Culture and Public Art	An arts plan is not required as the application does not have a CIV of more than \$5,000,000.00 and is not located within: - A local town centre - Land zoned B2 Local Centre or B4 Mixed Use - Land with a site area greater than 5000m ²	N/A
3.4.2 Access for People with Disabilities	Council's Universal Access and Design Officer raised concerns with regards to accessibility throughout the development. These issues have not been satisfactorily addressed. Accordingly, Council cannot consider the proposal for approval.	No
3.4.3 Amenities in Buildings Available to the Public	The proposal is not a public building.	N/A
3.4.4 Safety and Security	Refer to SEPP 65 Assessment	No
3.4.5 Housing Diversity and Choice	See ADG Assessment	Yes
3.5 Heritage	Refer to PLEP 2011 section of this report above.	Yes
3.6.1 Sustainable Transport	The development contains more than 50 dwellings. Whilst the proposal does not provide a car share option despite providing 53 units, it is considered that the amount of units proposed does not in this instance warrant a car share space.	No, but acceptable
3.6.2 Parking and Vehicular Access	Refer to SEPP 65 and ADG Assessment	Yes
3.6.3 Accessibility and Connectivity	Council's Universal Access and Design Officer reviewed the proposal and raised concerns with regards to accessibility throughout the development. Council requested amended plans addressing these issues but to date, have not received a response. Accordingly, the proposal cannot be considered for approval.	No
3.7.1 Residential Subdivision - general	No subdivision is proposed	N/A
3.7.2 Site Consolidation and Development on Isolated Sites	The proposal does not result in the isolation of any adjoining properties.	Yes

11. Development Contributions

As this Development Application was lodged on 20 October 2022, the City of Parramatta (Outside of Parramatta) CBD Contributions Plan 2021 applies to the land. If the application had been recommended for approval, a standard condition of consent would have been imposed requiring the contribution to be paid prior to the issue of a Construction Certificate.

12. Bonds

If the application had been recommended for approval, pursuant to Council's Schedule of Fees and Charges, the developer will be obliged to pay Security Bonds to ensure the protection of civil infrastructure located in the public domain adjacent to the site. A standard condition would have been imposed on the consent requiring the Security Bond to be paid prior to the issue of a Construction Certificate.

13. EP&A Regulation 2021

Applicable Regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection would have been addressed by appropriate consent conditions if the application had been recommended for approval.

14. The likely impacts of the development

The assessment demonstrates that the proposal will have significant adverse impacts upon any adjoining properties and the environment through non-compliance with the applicable planning instruments and controls. All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report, including natural impacts such as tree removal and excavation, and built environment impacts such as traffic and build form. In the context of the site and the assessments provided by Council's experts, the development is considered unsatisfactory in terms of environmental impacts and cannot be considered for support.

15. Suitability of the Site

As stated throughout this report, the proposed design of the residential flat development is unsuitable for the site. The development is of a bulk and scale that is incompatible with the streetscape.

Investigations and documentations have been provided which have not adequately demonstrated that the site can be made suitable for the proposed development and is therefore inconsistent with the land use planning framework for the locality.

The accessibility of the site, the ability of the site to drain stormwater and its impacts on the PLR have not been adequately addressed to ensure that it does result in adverse impact on the proposed development.

For the above reasons and those stated throughout this report, the site is not considered to be suitable for the proposed development.

16. Public Consultation

In accordance with the Parramatta Notification Plan the Development Application was notified and advertised on one (1) occasion between 24 January 2023 and 22 February 2023. As a result of the notification period, six (6) unique submissions were received during the notification period. The issues raised in these submissions and Council's response are provided below.

Issue	Response
Traffic Movements and Congestion/Parking Unacceptable increase in traffic movements and congestion and parking.	Council's Traffic Engineer has reviewed the proposal and raised no objections to the development based on an increase in traffic movements and parking. Notwithstanding, the proposal cannot be supported for reasons stated throughout this report.
Access to the Site	As Kissing Point Road is a classified road, vehicle access to the site is to be on St Andrews Street. It is noted however that TfNSW does not currently support the proposal as it requires additional information.
Acoustic impacts	The acoustic impacts of the proposal on adjoining properties and within the development are discussed in detail throughout the report. Council has reviewed the proposal and it does not consider adequate acoustic measures have been provided to protect sensitive users within the development and external the site.
Insufficient Infrastructure and services	This matter is not considered determinative to the assessment of this Application. As previously stated, the application in its current form cannot be considered for support due to a lack of information, the departures to the development standards are not satisfactory and it also does not have concurrence from WaterNSW and TfNSW.
Development scale	The excessive floor plate width and the overall height of the development results in a bulk and scale that is incompatible with the streetscape and the local area. Given this, the proposal cannot be supported.
Insufficient landscaping	This is discussed elsewhere in the report. The proposal does not comply with the relevant controls for both landscaping areas and deep soil zones which further exacerbates the developments perception of bulk and scale.
Lack of maintenance on adjoining park	This matter is not considered determinative to the assessment of this Application.

<p>Limited space for pedestrian traffic.</p>	<p>Council's Urban Designer does not currently support the proposal as the development fails to satisfactorily address the public domain which includes opportunities for pedestrian traffic. Accordingly, the proposal cannot be considered for approval.</p>
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17. Public interest

For reasons discussed throughout this report, the proposal would be contrary to the public interest.

18. 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.

Having regard to the assessment of the proposal from a merit perspective, Council officers are not satisfied that the development has been appropriately designed and will provide acceptable levels of amenity for future users. It is considered that the proposal insufficiently minimises adverse impacts on the amenity of neighbouring properties. Hence the development, is inconsistent with the intentions of the relevant planning controls and does not represent a form of development contemplated by the relevant statutory and non-statutory controls applying to the land. The proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework.

For these reasons, it is considered that the proposal is **not** satisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is recommended for refusal.

21. Recommendation

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979:

- A. **That** the Parramatta Local Planning Panel, exercising the function of the consent authority, **refuse** development consent to DA/14/2023 for the demolition, tree removal, site consolidation and construction of two part 5 and part 6 storey residential flat buildings with 3 levels of basement carparking for the following reasons:
1. The proposal does not have concurrence from WaterNSW in accordance with Section 90 (2) of the Water Management Act – Water Management Work Approval.
 2. The proposal does not exhibit a satisfactory proposal in that it fails to provide information required to assess Clause 2.119 – Frontage to a Classified Road of State Environmental Planning Policy (Transport and Infrastructure) – Chapter 2 Infrastructure and as required by Transport for NSW.
 3. The proposal does not exhibit a satisfactory proposal, in that it is inconsistent with the following provisions prescribed within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development:
 - a) Design Quality Principles: Principle 1 Context and Neighbourhood Character
 - b) Design Quality Principles: Principle 2 Built Form and Scale
 - c) Design Quality Principles: Principle 5 Landscape
 - d) Design Quality Principles: Principle 6 Amenity
 - e) Design Quality Principles: Principle 7 Safety
 - f) Design Quality Principles: Principle 9 Aesthetics
 - g) Apartment Design Guide: 3B Orientation
 - h) Apartment Design Guide: 3C Public Domain
 - i) Apartment Design Guide: 3D Communal and public open space
 - j) Apartment Design Guide: 3E Deep soil zones
 - k) Apartment Design Guide: 3F Visual Privacy
 - l) Apartment Design Guide: 3G Pedestrian Access and Entries
 - m) Apartment Design Guide: 4A Solar and Daylight Access
 - n) Apartment Design Guide: 4G Storage
 - o) Apartment Design Guide: 4H Acoustic Privacy
 - p) Apartment Design Guide: 4L Ground Floor Apartments
 - q) Apartment Design Guide: 4M Facades
 - r) Apartment Design Guide: 4N Roof Design
 - s) Apartment Design Guide: 4O Landscape design

- t) Apartment Design Guide: 4P Planting on Structures
 - u) Apartment Design Guide: 4Q Universal design
 - v) Apartment Design Guide: 4V Water management and conservation
4. The proposal does not exhibit a satisfactory proposal, in that it is inconsistent with the following provisions prescribed within the Parramatta Local Environmental Plan 2011:
 - a) Clause 2.1 – the development is inconsistent with the aims of Parramatta Local Environmental Plan 2011
 - b) Clause 2.3 - the development is inconsistent with the zone objectives of the R4 High Density Residential zone
 - c) Clause 4.3 – Height of Buildings
 - d) Clause 4.6 – Exceptions to Development Standards
 - e) Clause 6.2 - Earthworks
 5. The proposal does not exhibit a satisfactory proposal, in that it is inconsistent with the following provisions prescribed within the Parramatta Development Control Plan 2011:
 - a) Section 2.4.3 Soil Management
 - b) Section 2.4.8 Public Domain
 - c) Section 3.2.1 Building Form and Massing
 - d) Section 3.2.2 Building Façade and Articulation
 - e) Section 3.2.3 Roof Design
 - f) Section 3.2.5 Streetscape
 - g) Section 3.1.3 Building Height
 - h) Section 3.13: Side Setback
 - i) Section 3.1.3: Landscaped Area
 - j) Section 3.1.3: Deep Soil
 - k) Section 3.3.3 Visual and Acoustic Privacy
 - l) Section 3.3.5 Solar Access and Cross Ventilation
 - m) Section 3.3.6 Water Sensitive Urban Design
 - n) Section 3.3.7 Waste Management
 - o) Section 3.4.2 Access for People with Disabilities
 - p) Section 3.4.4 Safety and Security
 - q) Section 3.6.1 Sustainable Transport
 - r) Section 3.6.3 Accessibility and Connectivity
 6. The proposal fails to satisfy the relevant considerations under Section 4.15(1)(c) Environmental Planning and Assessment Act 1979 for built environment and suitability of the site.
 7. The proposal fails to satisfy the relevant considerations under Section 4.15(1)(e) Environmental Planning and Assessment Act 1979 in that the adverse impacts generated by the development due to non-compliance with the applicable planning controls is not beneficial for the local community and as such, is not in the wider public interest.

B. **That** Council advise those who made a submission of the determination.