



City of Parramatta

File No:

**SECTION 4.15 ASSESSMENT REPORT**  
**Environmental Planning & Assessment Act 1979**

<b>DA No:</b>	DA/210/2023
<b>Subject Property:</b>	Lot 1 DP 1007573, 132 Victoria Road, North Parramatta
<b>Proposal:</b>	Demolition and construction of a 7-storey mixed use development to be comprised of 3 retail tenancies and 45 residential apartments, including affordable apartments, over 3 levels of basement parking. The application is made pursuant to the State Environmental Planning Policy (Housing) 2021. The development is Nominated Integrated pursuant to the Water Management Act 2000.
<b>Date of receipt:</b>	14 April 2023
<b>Applicant:</b>	JS Architects Pty Ltd.
<b>Owner:</b>	Mr M Mina
<b>Property owned by a Council employee or Councillor:</b>	The site is not known to be owned by a Council employee or Councillor
<b>Political donations/gifts disclosed:</b>	None disclosed on the application form
<b>Submissions received:</b>	None
<b>Recommendation:</b>	<b>Refusal</b>
<b>Assessment Officer:</b>	Eamon Murphy

**Legislative Requirements**

<b>Relevant provisions considered under section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979</b>	<ul style="list-style-type: none"><li>• State Environmental Planning Policy (Housing) 2021</li><li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li><li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li><li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li><li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li><li>• State Environmental Planning Policy (BASIX)</li><li>• Parramatta Local Environmental Plan 2023</li><li>• Parramatta Development Control Plan 2011 (PDCP 2011)</li></ul>
<b>Zoning</b>	E1 Local Centre
<b>Bushfire Prone Land</b>	No
<b>Heritage</b>	No
<b>Heritage Conservation Area</b>	No
<b>Designated Development</b>	No
<b>Integrated Development</b>	Yes
<b>Clause 4.6 variation</b>	Yes
<b>Delegation</b>	<b>Parramatta Local Planning Panel (PLPP) due to departure from development standards by more than 10% and development to which State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development applies and is 4 or more storeys in height.</b>

## 1. Executive Summary

### Section 4.15 Assessment Summary

The subject site is located on an irregular shaped corner allotment with two street frontages on Victoria Road and Gaggin Street, North Parramatta.

The application seeks approval for demolition of existing structures and construction of a 7-storey mixed use development comprising the following:

- 3 retail tenancies and loading dock on the ground floor;
- 45 residential apartments on levels 1 – 6 (27 units are proposed as affordable rental housing);
- 3 levels of basement with 125 vehicular parking spaces;

The residential unit mix is as follows:

- 3 x one-bedroom residential units (7%)
- 15 x two-bedroom residential units (33%)
- 27 x three-bedroom residential units (60%)

Council has received notice that the applicant has lodged a Deemed Refusal Appeal on 17 May 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 proposal includes significant variations to maximum height of building and maximum floor space ratio development standards resulting an excessive bulk and scale, and an overdevelopment of the site along with concerns over inconsistency with the E1 zone objectives and the development being out of character with the locality.

Additional issues include a lack of appropriate landscaping areas and deep soil zones (because of the extent of the footprint and the basement structure), non-compliant setbacks, location of common open space, insufficient contextual analysis of the immediate locality and public domain issues.

As noted, the proposal breaches the maximum height and floor space ratio for the site. The application was lodged with a Clause 4.6 Variation request for both development standard departures 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. Council has not received concurrence, with Water NSW citing a significant lack of detail submitted with the proposal to enable a full hydrogeological review and assessment of the proposal. Therefore, in its current form 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.

Council's Development Engineers are unable to complete their review of the proposal (particularly with respect to stormwater and earthworks) due to lack of appropriate information submitted with the application, including the details requested by WaterNSW and Transport for NSW.

It is noted the application was reviewed by the Design Excellence Advisory Panel (DEAP) at a meeting held on 11 May 2023. The panel raised significant concerns over the design of the development and advised that they do not support the proposal in its current built form. Further details of the panel's comments are documented elsewhere in this report.

The application was notified/advertised and did not receive any submissions within the notification period.

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

## 2. Site Description and Conditions

The subject site is known as 132 Victoria Road, North Parramatta (Lot 1 DP 1007573).

The allotment is 2,025m<sup>2</sup> in area and is an irregular shape corner lot. The site is bounded by Victoria Road to the south, Gaggin Street to the west, an unnamed laneway to the north, and shops at 134-138 Victoria Road to the east. The site is relatively flat.

Existing development at the site currently comprises a variety of land uses (car wash, automotive servicing and café) and is considered low in density. Development surrounding the site comprises a mixture of land uses, varying between low to medium density. To the north is a narrow unnamed laneway, that provides vehicular access and loading to the shops to the site's east. Opposite the laneway is a detached dwelling, light industrial building, and small 3 storey residential building. Generally, detached dwellings are located further beyond. To the south is Victoria Road, with a number of detached and attached 2-storey residential dwellings directly opposite. The Western Sydney University Parramatta campus is approximately 500 metres to the east.

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



**Figure 1:** Aerial view of the subject site and surrounds. Subject site outlined in red. Source: Nearmap: May 2023.



**Figure 2:** Subject site as viewed from Victoria Road, North Parramatta. Source: Google Streetview, March 2023.



**Figure 3:** Subject site as viewed from Victoria Road, North Parramatta (looking East). Source: Site Inspection.



**Figure 4:** Subject site as viewed from Victoria Road, North Parramatta (looking West). Source: Site Inspection.



**Figure 5:** Unnamed laneway to the rear of 132 Victoria Road, North Parramatta. Source: Site Inspection.



**Figure 6:** Single storey residential dwelling on Gaggin Street, North Parramatta, directly opposite subject site. Source: Site Inspection.



**Figure 7:** Victoria Road, North Parramatta, looking towards (south east) from subject site. Source: Site Inspection.



**Figure 8:** Gaggin Street, looking south, towards Victoria Road, North Parramatta. Subject site on left of image. Source: Site Inspection.



**Figure 9:** Gaggin Street, North Parramatta, looking towards north. Subject site is on immediate right of image. Source: Site Inspection.



**Figure 10:** 3D Perspective of proposal as viewed from corner of Victoria Road and Gaggin Street, North Parramatta.

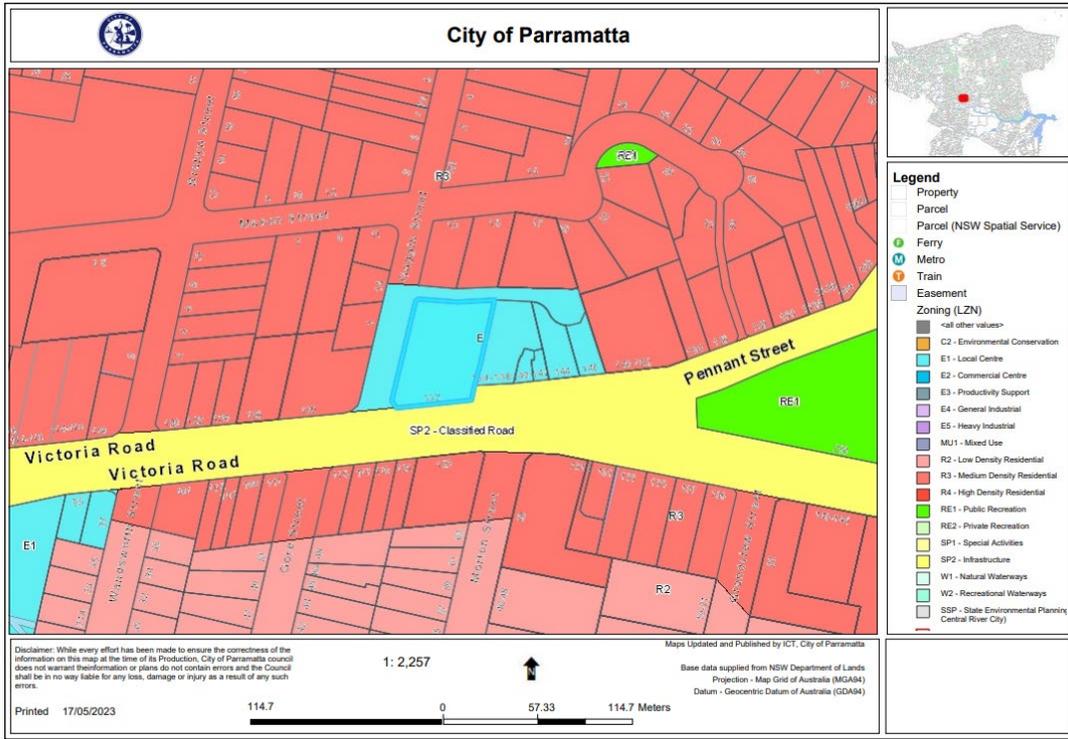


Figure 11: Zoning map per the Parramatta Local Environmental Plan 2023

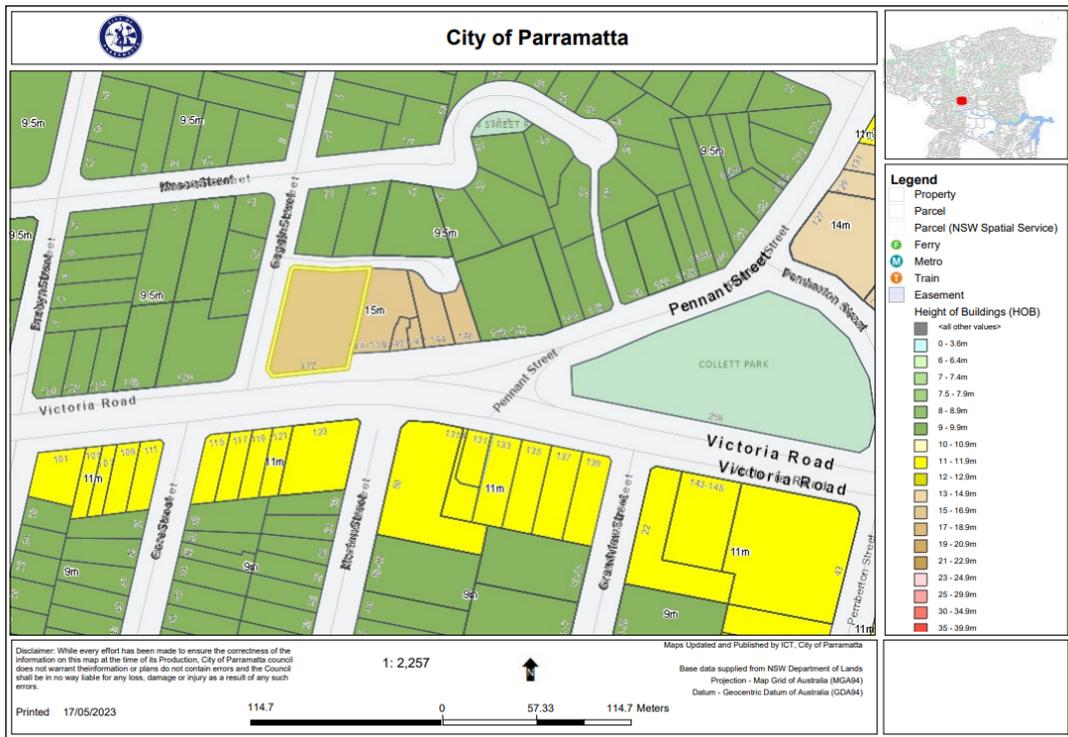
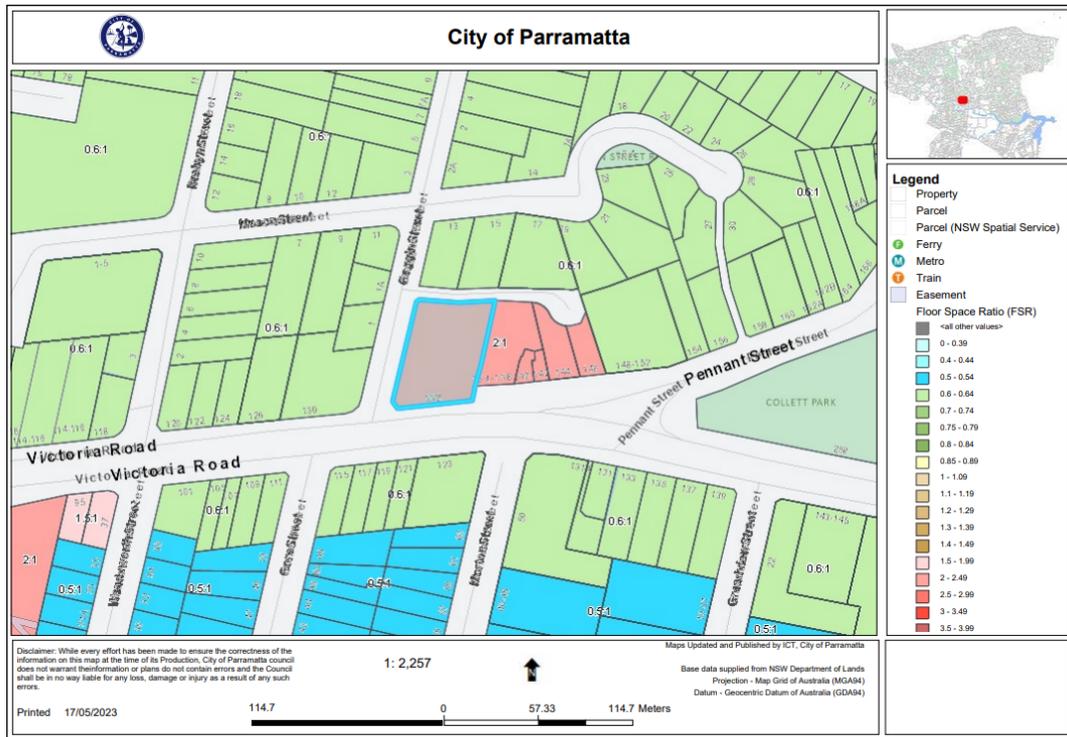


Figure 12: Height of Building map per the Parramatta Local Environmental Plan 2023



**Figure 13:** Floor Space Ratio (FSR) map per the Parramatta Local Environmental Plan 2023

### 3. Relevant Site History

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

Development Application	Description
DA/166/1996	Alterations and Additions to Existing Building
DA/1183/1998	Demolition of Existing Service Station
DA/123/2001	Fit out for Existing Building for Hand Car Wash facility
DA/2531/2002	Application for mixed use development withdrawn due to significant non-compliances and over-development of the site.

### 4. The Proposal

The proposed development comprises the following:

- Demolition of all existing buildings and structures on the site;
- Site preparation and excavation works;
- Construction of a 7-storey, mixed use development comprising:
  - 3 retail tenancies and loading dock on the ground floor;
  - 45 residential apartments on levels 1 – 6;
  - 3 levels of basement with 125 vehicular parking spaces;

The residential unit mix is as follows:

- 3 x one-bedroom residential units (7%)
- 15 x two-bedroom residential units (33%)
- 27 x three-bedroom residential units (60%)

It is intended to provide 27 out of the total 45 residential apartments (or 60%) as affordable rental housing, pursuant to State Environmental Planning Policy (Housing) 2021.

## 5. Relevant Application History

Date	Comment
14/04/2023	The subject Development application was lodged.
11/05/2023	The Design Excellence Advisory Panel (DEAP) was briefed on the application by Council officers. Following the Council briefing, DEAP subsequently held a meeting with the applicant.
17/05/2023	The applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against Council's deemed refusal of the Development Application.

## 6. Referrals

### Design Excellence Advisory Panel

The development application was considered by the Parramatta Design Excellence Advisory Panel (The Panel) on 11 May 2023.

The Panel provided advice that they did not support the proposal in its current form due to a number of significant issues with the proposal.

The Panel made the following comments in relation to the scheme:

#### 1.0 Generally

- 1.1 This proposal was not submitted to DEAP at Pre-Lodgement stage nor has a PL session been held with Council. This is considered unfortunate given the non-compliances contained in the submission. The Panel highly recommends submissions at PL stage to allow for site strategies to be considered and discussed and a series of design options to be tested and reviewed.
- 1.2 The Panel notes the DA submission does not include the required Design Practitioners Class 2 registration details on the drawings. This should be included in any resubmission.
- 1.3 The proposal has two non-compliances, the first is a permissible FSR exceedance. The permissible FSR is 2.5:1 which includes an Affordable Housing bonus increase of 0.5:1. The submission proposes 2.63:1 as calculated by Council however it is noted in the SEE prepared by Ethos Urban that the proponent has applied the 0.625:1 bonus outlined in the Draft Housing SEPP Nov 2022.
- 1.4 The second non-compliance is a major breach of the building height controls. The permissible height is 15m and the submission proposes 26.5m.

#### 2.0 Context and Neighbourhood

- 2.1 The package contains insufficient contextual analysis as all information, including the renders, present the proposal in isolation to the surrounding context. This hampers the Panel's ability to carry out a comprehensive review of amenity and public domain impacts of the proposal whether positive or otherwise.
- 2.2 It is the Panel's opinion that the submission does not adequately address context and thereby does not align with the current and desired neighbour character. Whilst a potential improvement to an existing site condition may have some merit, it is essential that a proposal of this scale improve and reinforce existing neighbourhood context.
- 2.3 The precinct containing this site reflects building heights that are predominantly low in scale. In general, buildings that adhere to set height limits, thereby assisting in the control of bulk and scale, and consider improved pedestrian connections will reinforce public domain outcomes as set out in the controls. In addition, any new development within such a changing urban context should consider the importance of landscape settings, street trees and open space to reinforce existing green networks and improve civic amenity. The current proposal does not respond to the predominant heights nor provide compliant deep soil zones sufficient for canopy planting.
- 2.4 The proposal pays little regard to the adjoining retail centre and misses an opportunity to contribute to and reinforce this retail strip. A well-considered development on this site will have the potential to lift the entire strip over time. A

more direct retail street activation and pedestrian access consistent with traditional shop top housing typology could be achieved by a zero ground floor setback. A zero ground floor setback would also allow the built form to better hold the corner. Potential strategic linkages to the adjoining retail strip are not expressed in the documentation given no contextual information is shown on the plans, elevations or sections. It is therefore recommended that the ground floor retail should form a continuous street edge in an uninterrupted line along Victoria Road and into Gaggin Street.

- 2.5 The landscape scheme should be amended to provide substantial street trees instead of the Banksias as documented.
- 2.6 The basement carpark entry on Gaggin Street was queried given the resultant interruption to this retail edge. The Panel considered that a better public domain outcome could be achieved by combining the loading dock entry with the carpark entry off the rear lane.
- 2.7 A strong response to the rear lane is also lacking as this could be a positive contribution to the public realm and an exemplar for future development. Its northerly aspect and the provision of an appropriate and generous setback could allow for the potential for ground level common open space and substantial deep soil canopy planting which would improve amenity by way of shading, screening and outlook for the north facing apartments
- 2.8 Given the above, the Panel would encourage that an urban design analysis be undertaken showing the relationship between the new development and the surrounding setbacks, built form (both existing and future) and uses. This should include the adjoining shops on Victoria Street and the low density residential R3 properties facing the development along the rear lane.

### **3.0 Built Form- Height, Bulk and Scale**

- 3.1 The proponent acknowledged the proposal exceeds the height limit and justified this breach by firstly noting this is a gateway site. The Panel does not concur with this conclusion. Secondly the built example of 83 Victoria Road North Parramatta, noted as being opposite the site by the proponent, was cited as a precedent for the height and resultant bulk and scale exceedance.
- 3.2 The Panel noted that 83 Victoria Street is not opposite the site but approximately 170m to the east and has little probative value to support the proposal's height exceedance despite sharing the same zoning. The precedent is located closer to Parramatta CBD and is surrounded by lots zoned as R4 (High Density Residential- 11m ht. ) as opposed to R3 zoning (Medium Density- 9.5m ht.) surrounding the site. 83 Victoria Road also occupies a more prominent intersection/street corner and provides a height transition from 6 storeys at the corner to 4 storeys.
- 3.3 The proposed height of seven storeys (26.5m) exceeds the maximum permissible height by approximately 76.7% and results in the entire fourth, fifth and sixth levels (21 out of 45 apartments) and the lift overruns siting above the permissible height plane. The proposed site is surrounded by lots zoned R3 except for the neighbouring eastern property resulting in the proposal being the tallest in close vicinity and in the Precinct. The Affordable Housing component is not considered to be justification for the excessive breach of height. The height exceedance is therefore not supported.
- 3.4 The substation presents as a single storey block attached to the main building and is located in the eastern setback zone and addressing the rear lane. This should be integrated into the building footprint as its current location appears to be an addition instead of reading as part of a formally resolved composition.
- 3.5 The resultant bulk and scale of the proposal is considered to be excessive for its context and is not supported.

### **4.0 Amenity**

- 4.1 An amenity assessment of the unit layouts cannot be comprehensively undertaken as only partial furniture layouts have been provided. This is contrary to the requirements of the DEAP submission requirements and should be provided in any resubmission to the Panel.
- 4.2 Questions were raised regarding the proposed double core and resultant potential amenity impacts. A single double lift core would improve streetscape, reduce bulk and scale and potentially allow an improved lobby space that includes for casual social interactions and parcel storage facilities.

- 4.3 Accessible units will also be serviced by a single lift and this could cause considerable amenity issues if the lift is under repair or commandeered by removalists. The Panel suggests that a single core be considered in any resubmission.
- 4.4 The proximity of the western residential entry to the car park entry of Gaggin Street is not considered to be an optimum solution given the potential impact on amenity. This should be resolved in any resubmission.
- 4.5 The proposed roof terrace provides insufficient shading and lift entry points are unprotected from weather. The provision of a universal access toilet should also be provided on this level. The Panel questions the location of a children play area at this level due to safety concerns. A play space at ground level in an increased setback area adjacent to the rear lane may be more appropriate and also potentially service the needs of the neighbourhood given the lack of playgrounds in the vicinity.
- 4.6 External screening to ameliorate solar gain particularly on the western elevation is not evident on the drawings and will impact on amenity. This should be addressed in any resubmission.
- 4.7 The retail units do not appear to be serviced by WC facilities and this should be included in any resubmission.
- 4.8 Storage provisions are not in line with ADG requirements as they need to be separate to the living rooms.

## **5.0 Landscape + Deep Soil**

- 5.1 The Housing SEPP requires a deep soil zone on at least 15% of the site area ( where each deep soil zone has a minimum dimension of 3m). The Parramatta DCP specifies a minimum dimension of 4m x 4m and the ADG specifies 3m x 3m. Currently, none of the deep soil zones meet the minimum dimensions in any of the controls.
- 5.2 As the proposed basement virtually covers the entire site, the deep soil requirements for substantial landscaping and canopy trees cannot be met. There are no substantial canopy trees to partially screen and ameliorate the scale of the building except in the landscape setback to the east, this is contrary to the future desired character objectives. Increasing the setback to the rear lane as noted previously would provide opportunity for additional canopy planting.
- 5.3 The landscaping on the ground floor is essentially 'left over' space and provides very little amenity for the residents. The Panel notes that Housing SEPP requires at least 30% of the site area to be landscaped.
- 5.4 It is understood that Council has aspirations to facilitate development that provides for mature tree vegetation and natural shade in the LGA. It is assumed details of the number and size of required trees can be determined by the applicant and provision to meet these requirements should be addressed in any resubmission.

## **6.0 Aesthetics**

- 6.1 A detailed review has not been undertaken given the extent of the non-compliances adversely impacting on bulk and scale.

## **7.0 Sustainability**

- 7.1 Solar control strategies are required to be integrated into the architectural resolution particularly on the western façade.
- 7.2 Current energy efficiency strategies are leading a push for the full electrification of projects and this should be considered for this project along with the provision of roof top solar panels. Ceiling fans to all bedrooms and living spaces should also be included to minimise the use of AC where possible.

## **8.0 Public Domain**

- 8.1 The current proposal shows a landscape strip between the retail shopfront and the footpath and this is considered to adversely impact on an activated retail edge.
- 8.2 All footpaths are to be in accordance with PPDG 2017 so as to provide better pedestrian connections.

## **Panel Recommendation**

The Panel does not support the proposal, significant re-design is recommended to respond to the issues noted above.

## Referral Comments

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
Landscaping	<p>Not supported.</p> <ul style="list-style-type: none"> <li>• Plans are unclear and inconsistent with architectural and engineering plans.</li> <li>• There is insufficient deep soil proposed around the periphery of the site.</li> <li>• There is insufficient room to plant the trees adjacent to the basement and building alignment.</li> <li>• No hard landscape plan, showing paving for example, has been provided.</li> <li>• The OSD tank is located halfway under the building footprint and basement and its construction would appear to be unfeasible.</li> <li>• The stormwater pipes will clash with the proposed tree locations.</li> <li>• An amended ground level stormwater concept plan is required as it is unclear how the OSD tank will be installed under the building façade and over the basement. A section at ground level is required to show the site boundary, planting, OSD tank, basement below and building above. OSD to be set-down to enable minimum 400mm soil depth to be located over the top to support the mature growth of groundcover plants.</li> </ul> <p>An amended landscape plan is required. The landscape plan submitted by the Architect fails to address the Landscaping objectives and principles of the Development Control Plan. The landscape plan provided shall relate to building scale and assist in integrations into the streetscape character. The following information should be addressed and indicated in the Landscape Plan to ensure that the development makes a contribution to the landscape setting of the local area.</p> <ul style="list-style-type: none"> <li>• Trees to the front, side and rear setback must be able to reach a minimum mature height of five (5) metres, and be planted within the required deepsoil zone and at a minimum distance of two (2) metres from any boundary and drainage line and must be setback a minimum 3.5m to the outside enclosing wall or edge of a legally constructed building, structure or proposed development.</li> <li>• Identify all surface treatments such as paving and turf. Delineation between turf, paving areas and garden areas to be clear with garden areas of appropriate widths (minimum 1m width) to sustain plantings proposed;</li> <li>• Planting structures to be clearly defined providing indicative soil depths (wall heights) to meet the requirements of plants proposed.</li> <li>• Increase the soil depth over structure at ground level to a minimum 600mm depth.</li> <li>• Change the proposed street tree species to the following:-             <ul style="list-style-type: none"> <li>➢ 3no. <i>Callistemon viminalis</i> (Victoria Rd) change to 4no. <i>Photinia robusta</i></li> <li>➢ 3no. <i>Callistemon viminalis</i> (Gaggin St) change to 3no. <i>Tristaniopsis laurina</i></li> </ul> </li> <li>• Change the proposed <i>Lagerstroemia archeriana</i> tree species to a species suited to Parramatta's climate zone.</li> <li>• Ensure the majority of the proposed plantings within the site consist mainly of native plant species, preferably plant species indigenous to the locality to recognise and enhance biodiversity conservation within the Parramatta LGA.</li> <li>• Delete the 'tree stake' detail from the typical tree planting detail as the tree should be self-supporting from the nursely (unless the tree is located within a wind-prone location).</li> <li>• Screening between properties and along rear boundaries to provide privacy and amenity and tree replenishment to front and rear landscape areas.</li> <li>• The planting schedule lists turf. Delete any planting not used within the proposed design, or clearly identify and update the quantity on the planting plans.</li> <li>• All landscape plans are to be prepared by a professionally qualified landscape architect or landscape designer only.</li> </ul>

<b>Traffic</b>	Supported subject to conditions of consent in the event approval was recommended.
<b>Engineering</b>	Not supported in its current form due to lack of appropriate engineering information submitted with the application. Details requested by WaterNSW and Transport for NSW (see below) are also required to enable a thorough assessment.
<b>City Design</b>	<p>Not supported.</p> <p>The site falls within Collett Park Precinct (North Parramatta) (<b>Section 4.1.2 of the Parramatta DCP 2011</b>), which allows for some higher buildings to be located along Victoria Road and Pennant Street. Overall, building heights are to be predominantly low in scale, responding to existing development. Better pedestrian connections will be created by requiring new links, and pedestrian safety will be enhanced by designing buildings with natural surveillance of pathways, laneways, parks, open space corridors or other public domain elements. Street trees and the surrounding open space network contribute significantly to the character of the neighbourhood, including the row of large trees on the western side of Webb Street opposite the school. This character will be reinforced and enhanced in new developments with landscaped settings.</p> <p><b>Height</b></p> <p>As a 7-storey building, the proposed development will be the tallest in the close vicinity and the Collett Park Precinct. The proposed building is inconsistent with the existing and desired neighbourhood character. City Design therefore recommends that the height of the building be reduced to achieve compliance with the maximum permissible Height of the Building (15m).</p> <p>Note - City Design determines that 83 Victoria Road, North Parramatta has little probative value to support the proposal's height exceedance, despite sharing the same zoning (E1), Building Height (15m), and maximum FSR (2:1). 83 Victoria Road is located closer to the Parramatta CBD and is surrounded by the lots zoned as R4 (High Density Residential)/11m maximum height. 83 Victoria Road occupies a more prominent intersection/street corner. It also provides a height transition from 6 storeys at the corner to 4 storeys).</p> <p><b>Built Form – Setbacks</b></p> <p>The proposed ground-floor setbacks along Victoria Road and Gaggin Street, i.e., 3.5m and 2.5m, respectively, are inconsistent with the recommendations in <i>Table 3.1.3.8/3.1.3.13 of the Parramatta DCP</i>. On this issue, City Design recommends zero ground-floor setbacks along Victoria Road and Gaggin Street due to the following reasons:</p> <ul style="list-style-type: none"> <li>(a) zero ground-floor setback provides a more direct retail street activation and pedestrian access consistent with traditional shop-top housing typology in a Local Centre, including that located in the existing context to the East of the subject site;</li> <li>(b) zero ground-floor setback can enable built form to “hold the corner” promoting a better street corner spatial definition.</li> </ul> <p>The proposed setback (3m) to the common eastern boundary is inconsistent with the shop-top housing typology and fragments the retail interface along Victoria Road. On this issue, City Design recommends zero ground-floor setback along the common eastern boundary, so that the subject site can act in concert with the adjacent sites (138 Victoria Road) to provide a continuously activated retail interface. Commercial activation should occur to the East-facing portion of the ground floor which sits proud of the alignment of shops to the East.</p> <p>The proposed setback (2m) to the northern boundary is insufficient. Given that zero ground-floor setbacks are recommended for the other three boundaries, the setback to the northern boundary is the only opportunity to provide the required deep soil and planting. (Refer below for the deep soil comments.) An adequate setback can also assist the height transition from the local centre to medium-density residential to the North.</p>

	<p><b>Basement</b></p> <p>Basement car parking is to be fully contained within the building footprint and the recommended setbacks, to provide the required deep soil.</p> <p><b>Deep Soil</b></p> <p>The Housing SEPP requires a deep soil zone on at least 15% of the site area (where each deep soil zone has minimum dimensions of 3m). The Parramatta DCP specifies a minimum dimension of 4x4m and the ADG specifies 3x3m. Currently, none of the deep soil zones meet the minimum dimensions in any of the controls.</p> <p><b>Private Landscape</b></p> <p>The Housing SEPP requires at least 30% of the site area to be landscaped area.</p> <p>Landscaped area (has the same meaning as in the Parramatta LEP 2023) is part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area. To measure landscaped open space: impervious surfaces such as driveways, paved areas, roofed areas, carparking and stormwater structures, decks and the like, and any area with a width or length of less than 2m excluding the water surface of swimming pools is included in landscaped area calculation. The area is to be at ground level. The minimum soil depth of land that can be included as landscaped open space is 1m.</p> <p>In accordance with council's aspiration to facilitate development in a way that provides for mature tree vegetation and natural shade in the LGA, the applicant is required to provide trees at a rate of 1/80m<sup>2</sup> of landscape area (additional to any existing trees to be retained). The trees must be species capable of reaching a mature height of more than 13m (min dimension 4x4m). The applicant needs to demonstrate that the trees can be planted more than 3m away from any proposed built structure.</p>
<p><b>Universal Access</b></p>	<p>Supported subject to conditions of consent (to ensure the below matters are satisfied) in the event approval was recommended.</p> <ul style="list-style-type: none"> <li>• Ensure compliance with the Vista Access Architects Pty Ltd access report.</li> <li>• Ensure sanitary facilities are provided following <b>BCA F2</b>.</li> <li>• Ensure low level thresholds at doors providing access to the outdoor areas.</li> <li>• The abutments of varying surfaces are to provide level transitions.</li> <li>• Ensure equipment and furniture provide suitable features for a person with a mobility impairment.</li> </ul>
<p><b>Public Domain</b></p>	<p>Not supported in its current form and requires additional information to demonstrate compliance with the following matters:</p> <ul style="list-style-type: none"> <li>• Public footpaths are to be in accordance with the PPDG 2017</li> <li>• A 2.5 m wide footway with a verge and 1.5m wide footpath is required for the lane to the North. There is to be no basement car parking underneath in this 2.5m section. This is required to fulfill the objectives of the precinct to have better pedestrian connections considering the pedestrian link to the east of the B1 zone is to be enhanced as part of the precinct objectives</li> <li>• Street trees: Required – 8-10m centres along rear lane. Awnings are to provide minimum clearance of 1.9m from the edge of awning to kerb face</li> <li>• Driveways: maximum preferred width 6m.</li> <li>• Electrical and telecommunications connections to the development from the street are to be undergrounded as recommended in the PPDG.</li> </ul>

<b>Environmental Health</b>	Supported subject to the imposition of conditions in the event approval was recommended.
<b>Acoustic</b>	Supported subject to the imposition of conditions in the event approval was recommended.
<b>Waste Management</b>	Supported subject to the imposition of conditions in the event approval was recommended.
<b>External Referrals</b>	
<b>Transport for NSW</b>	Not supported in its current form and requires additional information.
<b>Water NSW</b>	Not supported in its current form and requires additional information.
<b>Sydney Water</b>	Supported subject to the imposition of conditions (including the requirement for a Section 73 Certificate) in the event approval was recommended.
<b>Endeavor Energy</b>	Supported subject to the imposition of conditions in the event approval was recommended.

## 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 (BASIX) – Satisfactory
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
- Parramatta Local Environmental Plan 2023
- Parramatta Development Control Plan 2011 (PDCP 2011)

Compliance with these instruments is addressed below.

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

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

Council's Landscape assessment officer carried out an inspection of the site and confirmed that there was no existing vegetation or trees present on the site (despite the application seeking approval for tree removal).

#### 7.3 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 – CHAPTER 10 SYDNEY HARBOUR CATCHMENT

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.

#### 7.4 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.

A search of Council records included a reference to a previous service station on the site which may indicate contamination on site and a use on the site that may have caused contamination

The Statement of Environmental Effects states that the property is not contaminated. A preliminary site investigation report was submitted with the application and contended that the site is suitable for the proposed development. The report was reviewed by Council’s Environmental Health section and no concerns raised, subject to the imposition of relevant conditions in the event that approval was recommended.

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

**7.5 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**

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

**7.6 STATE ENVIRONMENTAL PLANNING POLICY BASIX 2004**

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.

**7.7 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021**

<b>SEPP (Housing) 2021</b>			
<b>Standard</b>	<b>Control</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Division 1 In-fill affordable housing</b>			
<b>16 Development to which Division applies</b>			

<p>(1) This Division applies to residential development if—</p>	<p>(a) the development is <b>permitted with consent</b> under another environmental planning instrument, and</p> <p>(b) At least <b>20% of the gross floor area</b> of the building resulting from the development will be used for the purposes of <b>affordable housing</b></p> <p>(c) for development on land <b>in the Greater Sydney region</b>, Newcastle region or Wollongong region—all or part of the development is within an <b>accessible area</b>, and</p> <p>(d) for development on other land—all or part of the development is within 400m walking distance of land within 1 or more of the following zones or an equivalent land use zone—</p> <p>(i) Zone B1 Neighbourhood Centre,</p> <p>(ii) Zone B2 Local Centre,</p> <p>(iii) Zone B4 Mixed Use.</p>	<p>The proposed shop top housing component is permissible in the E1 Local Centre zone under PLEP 2023.</p> <p>In this instance 27 units (or 60%) out of a total of 45 units are proposed to be used as affordable rental housing representing more than 50% of GFA.</p> <p>The site is within, meeting the definition of “accessible area”.</p> <p>N/A</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p> <p>N/A</p>
<p><b>17 Floor space ratio</b></p> <p>(1) The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an <b>additional floor space ratio</b> of—</p>	<p>(i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1, or</p> <p>(ii) if less than 50% of the gross floor area of the building will be used for affordable housing—Y:1, where—</p> <p>(2) The additional floor space ratio must be used for the purposes of affordable housing.</p>	<p>A maximum floor space ratio of <b>2:1</b> has been identified for the site under PLEP 2023 Floor Space Ratio Map.</p> <p>In this instance 27 units (or 60%) out of a total of 45 units are proposed to be used as affordable rental housing representing more than 50% of GFA therefore the proposal is eligible for an additional 0.5:1.</p> <p>Therefore, the maximum permitted FSR for the proposed development is 2.5:1</p> <p>Yes</p>	<p>The proposed FSR is <b>2.625:1</b></p> <p><b>Does not comply</b></p> <p>Complies</p>

<p><b>18 Non-discretionary development standards—the Act, s 4.15</b></p>			
<p>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p>	<p>Noted</p>	<p>-</p>	<p>-</p>
<p>(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—</p>	<p>(a) a minimum <b>site area</b> of <b>450m<sup>2</sup></b>,</p> <p>(b) for a development application made by a social housing provider—at least 35m<sup>2</sup> of landscaped area per dwelling,</p> <p>(c) if paragraph (b) does not apply—at least <b>30% of the site area is landscaped</b> area,</p> <p>(d) a deep soil zone on at least 15% of the site area, where—</p> <p>(i) each deep soil zone has minimum dimensions of 3m, and</p> <p>(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,</p> <p>(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,</p> <p>(f) for a development application made by a social housing provider for development on</p>	<p>The site has an area of 2,025m<sup>2</sup>.</p> <p>N/A – The application is not made by a social housing provider.</p> <p>The proposal does not provide 30% landscaped areas.</p> <p>No deep soil provided for the development</p> <p>The shadow diagrams and elevational shadow diagrams indicate living rooms receive sunlight between 9am and 11am for 70% of dwellings.</p> <p>N/A – The application is not made by a social housing provider.</p>	<p>Complies</p> <p><b>No</b></p> <p><b>No</b></p> <p>Complies</p>

	<p>land in an accessible area—</p> <p>(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, or</p> <p>(ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, or</p> <p>(iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,</p> <p>(g) if paragraph (f) does not apply—</p> <p>(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or</p> <p>(ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or</p> <p>(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,</p> <p>(h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,</p> <p>(i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,</p>	<p>3 x 1 bedroom: 1.5 spaces</p> <p>15x 2 bedroom: 15 spaces</p> <p>27x 3 bedroom: 40.5 spaces</p> <p>Required: 57 spaces</p> <p>Proposed: 125 spaces</p> <p>Complies – See ADG assessment below</p> <p>N/A</p>	<p>Complies</p> <p>Yes</p> <p>N/A</p>
<p><b>19 (3) Local Character Compatibility</b></p>	<p>Development consent must not be granted to development to which this Division applies unless the consent authority has considered whether the design of the residential</p>	<p>See discussion below.</p>	<p><b>Does not comply</b></p>

	<p>development is compatible with—</p> <p>(a) the desirable elements of the character of the local area, or</p> <p>(b) for                   precincts undergoing transition</p> <p>—the   desired   future character of the precinct.</p>		
<b>21 Must be used for affordable housing for 15 years</b>	Should the application have been recommended for approval, a condition would have been imposed to ensure compliance with this clause.	-	-

**Determining the character (present and future) of the local area**

This assessment identifies the local area as primarily the visual catchment of the site (as viewed from within the site and directly adjacent to the site on the street) which is shown in the figure below:



**Figure 14: Local Area**

**Present Character of the area**

Development surrounding the site comprises a mixture of land uses, varying between low to medium density. To the north is a narrow unnamed dead end laneway, that provides vehicular access and loading to the shops to the site’s east. Opposite the laneway is a detached dwelling, light industrial building, and residential apartment building. Generally, detached dwellings are located further beyond. To the south is Victoria Road, with a number of detached and attached 2-storey residential dwellings directly opposite.

## **Future Character of the area**

The future character of an area is best determined by consideration of the planning framework applying to the site under the relevant Environmental Planning Instruments and Development Control Plans that are presently in force. In this area, the relevant controls are PLEP 2023 and PDCP 2011. In terms of building envelope, PLEP 2023 defines the permitted building types, permitted uses, gross floor area and building heights, while PDCP 2011 defines building setbacks, landscaping and desired site design. In this instance SEPP 65 and SEPP (Housing) 2021 also provide design guidance. In terms of assessing the desired future character of an area, zoning, gross floor area, maximum height, setbacks and landscaping are the most deterministic controls with respect to likely planning outcomes. Zoning defines the likely building typology, whereas height, density, and setbacks define the size and setting of buildings.

The proposal in its current form, with several additional floor levels, 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. Given the significant departures from the development standards in relation to FSR and height, and a number of non-compliances with respect to PDCP 2011, SEPP 65 and SEPP (Housing) 2021 it is considered that the proposal does not pass the test with regards to the *Local Character Compatibility* as per Clause 19(3) of SEPP (Housing 2021).

## **7.8 STATE ENVIRONMENTAL PLANNING POLICY NO. 65 (DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT)**

The required Design Verification Statement was prepared by Architect Szymon Ochudzawa, Registered No. 6865 of JS Architects.

As the proposal involves the construction of a new residential flat building, Council is to consider the proposal against the provisions of SEPP 65. The proposed development has been assessed against the relevant design quality principles of Apartment Design Guide as follows:

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

<b>Requirement</b>	<b>Comment</b>
<b>Principle 1: Context and Neighbourhood Character</b>	The application did not include a contextual analysis of the site, which presented the proposal in isolation to the surrounding context. A detailed review of the proposal in terms of its context could not be conducted however it is noted that the built form does not comply with the maximum height or floor space ratio 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 footprint is of a scale that is contributing to the building mass and is visually dominant from Victoria Road and Gaggin Street.
<b>Principle 2: Built Form and Scale</b>	The proposal has not been designed in accordance with the maximum height for the site which results in an inappropriate scale for its location. As such, the proposal cannot be supported.
<b>Principle 3: Density</b>	The proposal would result in a density that is not appropriate for the site, in terms of floor space yield and number of rooms. The design of the development presents as a bulky built form when viewed from the street frontages. The proposed building is considered to have an inappropriate density for the site and the locality.
<b>Principle 4: Sustainability</b>	A BASIX Certificate has been submitted with the application and the required design measures are incorporated into the design of the building.
<b>Principle 5: Landscape</b>	Due to the design and scale of the basement and building footprint, it has limited the opportunities for landscaping and deep soil areas to allow for meaningful landscaping and to balance the hard and soft surfaces.
<b>Principle 6: Amenity</b>	An internal amenity assessment of the unit layouts could not be comprehensively undertaken as only partial layouts have been provided. The proposal was reviewed by DEAP, who also raised the lack of layout detail. Concern is raised with the proposed double core and resultant potential amenity impacts. A single double lift core would improve streetscape, reduce bulk and scale and potentially allow an improved lobby space that includes for casual social interactions and parcel storage facilities. The proximity of the western residential entry to the car park entry of Gaggin Street is not considered to be an optimum solution given the potential impact on amenity. The proposed roof terrace provides insufficient shading and lift entry points are

Requirement	Comment
	unprotected from weather. There are concerns with the location of a children play area at the roof level due to safety concerns. For such reasons, the proposal cannot be supported.
<b>Principle 7: Safety</b>	The roof top communal open space and children's play area 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.
<b>Principle 8: Housing Diversity and Social Interaction</b>	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.
<b>Principle 9: Aesthetics</b>	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. As such, the proposal does not appropriately contribute to the desired future character of the area.

### Apartment Design Guide Assessment

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 ADG and the relevant provisions of note are as follows:

Clause	Design Criteria	Comments	Comply
<b>Part 3 – Siting the Development</b>			
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 the street.	Yes
	Where the street frontage is to the east or west, the rear buildings should be orientated to the north.	The building has three frontages on a corner allotment, with the 'rear' orientated 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. There will be overshadowing to some extent on the properties to the south.	Yes
3C Public Domain interface	Transition between private and public domain is achieved without compromising safety and security.	The proposal 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. The rooftop COS raises concerns about safety.	<b>No</b>
	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.	<b>No</b>

<p>3D Communal and public open space</p>	<p>Communal open space (COS) has a minimum area equal to 25% of the site, with minimum 3m dimensions.</p> <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. seating for individuals or groups</li> <li>2. barbecue areas</li> <li>3. play equipment or play areas</li> <li>4. swimming pools, gyms, tennis courts or common rooms</li> </ol>	<p>According to the Architectural Plans, communal open space is proposed to be 638m<sup>2</sup> (equivalent to 31.5% of the site areas). The total space provided meets the SEPP 65 ADG minimum of 25% of the total site to be used as communal open space (506.4m<sup>2</sup> total site area). However, the SEE identifies a total area of 572m<sup>2</sup> (or 28% of the total site area), which is inconsistent with the figure provided in the Architectural Plans. Council would have requested clarification on the communal open space area, should we have had an opportunity.</p> <p>The location of the COS on the rooftop is not considered a good outcome in terms of levels of amenity for occupants. The lack of soft landscaping and deep soil in the COS is not supported.</p> <p>Given that it is unclear on the extent of common open space, the proposal cannot be considered for approval.</p> <p>The rooftop COS will receive more than 2 hours of solar access in mid-winter.</p> <p>Outdoor seating areas and communal areas are provided for the COS located on the roof top level.</p>	<p><b>No</b></p> <p>Yes</p> <p>Yes</p>						
<p>3E Deep soil zones</p>	<p>15% deep soil encouraged given the size of the site and context with 6m dimensions.</p>	<p>The lot size is 2,025m<sup>2</sup> which would require a deep soil area of at least 303M<sup>2</sup>.</p> <p>Insufficient deep soil has been provided and the areas do not meet the 6m minimum dimension requirements.</p>	<p><b>No</b></p>						
<p>3F Visual Privacy</p>	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="277 1809 724 2047"> <tr> <td data-bbox="277 1809 464 1966">Building Height</td> <td data-bbox="464 1809 587 1966">Habitable rooms and balconies</td> <td data-bbox="587 1809 724 1966">Non-habitable rooms</td> </tr> <tr> <td data-bbox="277 1966 464 2047">up to 12m (4 storeys)</td> <td data-bbox="464 1966 587 2047">6m</td> <td data-bbox="587 1966 724 2047">3m</td> </tr> </table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	<p>The design complies with the requirements for building separation for habitable to habitable, habitable to non-habitable and non-habitable to habitable façade conditions. The design has taken care to place windows and balconies in locations that minimise privacy concerns for residents.</p>	<p>Yes</p>
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	Building entries and pedestrian access connects to and addressed the public domain.  Access, entries and pathways are accessible and easy to identify.	See comments from Council's UD (Public Domain) and Universal Access Officer. Additional information requested.		No	No																		
3H Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	Separate vehicular and 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></p> <p><b>Residential Flat Buildings, Multi Dwelling Housing or Mixed Use Developments</b></p> <p>1 car space per 1 bedroom unit  1.25 car spaces per 2 bedroom unit  1.5 car spaces per 3 bedroom unit</p> <p>0.25 car space per dwelling for visitor parking'</p> <p>Retail/Commercial  1 space per 30m<sup>2</sup> GFA</p> <p><b>Minimum bicycle spaces</b></p> <p><u>Parramatta DCP</u>  Residential Flat Buildings:</p> <ul style="list-style-type: none"> <li>1 bicycle space per 2 dwellings = 1 x (45 units / 2) = 22.5 (23)</li> </ul> <p><b>Total required = 23 bicycle spaces</b></p>	<p>Residential Component</p> <table border="1"> <tr> <td>3 x 1 bedroom</td> <td>3 spaces</td> </tr> <tr> <td>24 x 2 bedroom</td> <td>30 spaces</td> </tr> <tr> <td>18 x 3 bedroom</td> <td>27 spaces</td> </tr> <tr> <td>Total Required</td> <td>60 spaces</td> </tr> </table> <p>Visitor</p> <table border="1"> <tr> <td>45 units</td> <td>11.3 spaces</td> </tr> <tr> <td>Total</td> <td>12 spaces</td> </tr> </table> <p>Retail/Commercial</p> <table border="1"> <tr> <td>745m<sup>2</sup> Space</td> <td>Retail</td> <td>24.8 spaces</td> </tr> <tr> <td>Total</td> <td></td> <td>25 spaces</td> </tr> </table> <p>Total required: 97 spaces</p> <p>Total provided: 125 spaces including 89 resident spaces, 11 visitor spaces and 25 retail spaces.</p> <p>Complies</p> <p>51 bicycle spaces are provided.</p>		3 x 1 bedroom	3 spaces	24 x 2 bedroom	30 spaces	18 x 3 bedroom	27 spaces	Total Required	60 spaces	45 units	11.3 spaces	Total	12 spaces	745m <sup>2</sup> Space	Retail	24.8 spaces	Total		25 spaces	Yes	Yes
3 x 1 bedroom	3 spaces																						
24 x 2 bedroom	30 spaces																						
18 x 3 bedroom	27 spaces																						
Total Required	60 spaces																						
45 units	11.3 spaces																						
Total	12 spaces																						
745m <sup>2</sup> Space	Retail	24.8 spaces																					
Total		25 spaces																					

Part 4 - Amenity				
4A Solar and daylight access	<p>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> <p>A max. of 15% of apartments in the building receive no sunlight between 9am and 3pm at mid-winter</p>	<p>33 out of 45 (73%) of all apartments in the proposed development receive more than 2 hours direct sunlight between 9am – 3pm midwinter.</p> <p>6 out of 45 (13%) apartments do not receive direct sunlight due to their orientation</p>		Yes
4B Natural ventilation	Min 60% of apartments is naturally cross ventilated in the first nine storeys of the building.	36 out of 45 (80%) of all apartments are naturally cross-ventilated. The proposed development is less than 9 storeys in height.		Yes

4C Ceiling heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="296 203 735 495"> <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 &amp; 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	All units appear to be compliant	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:  Studio – 35m<sup>2</sup>  1 bed – 50m<sup>2</sup>  2 bed – 70m<sup>2</sup>  3 bed – 90m<sup>2</sup>  Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> 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 <sup>2</sup> and other bedrooms 9m <sup>2</sup> (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"> <li>- 3.6m for studio and 1 bedroom apartments.</li> <li>- 4m for 2 and 3 bedroom apartments.</li> </ul>	Complies.	Yes															
4E – Private open space and balconies	<p>All apartments are to have primary balconies as follows:</p> <table border="1" data-bbox="296 1659 735 1895"> <thead> <tr> <th>Dwelling type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4 m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 Bedroom</td> <td>8 m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 Bedroom</td> <td>10 m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3 Bedroom</td> <td>12 m<sup>2</sup></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 <sup>2</sup>	-	1 Bedroom	8 m <sup>2</sup>	2m	2 Bedroom	10 m <sup>2</sup>	2m	3 Bedroom	12 m <sup>2</sup>	2.4m	All units comply with the minimum sizes required.	Yes
Dwelling type	Minimum Area	Minimum Depth																
Studio	4 m <sup>2</sup>	-																
1 Bedroom	8 m <sup>2</sup>	2m																
2 Bedroom	10 m <sup>2</sup>	2m																
3 Bedroom	12 m <sup>2</sup>	2.4m																
	Ground floor units are to have private open space as follows: 15m <sup>2</sup> , min 3m depth	No apartments are located at ground floor.	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	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is required: <table border="1" data-bbox="363 304 722 544"> <thead> <tr> <th>Apartment type</th> <th>Storage volume</th> <th>size</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4 m<sup>3</sup></td> <td></td> </tr> <tr> <td>1 bedroom</td> <td>6 m<sup>3</sup></td> <td></td> </tr> <tr> <td>2 bedroom</td> <td>8 m<sup>3</sup></td> <td></td> </tr> <tr> <td>3 bedroom</td> <td>10 m<sup>3</sup></td> <td></td> </tr> </tbody> </table>	Apartment type	Storage volume	size	Studio	4 m <sup>3</sup>		1 bedroom	6 m <sup>3</sup>		2 bedroom	8 m <sup>3</sup>		3 bedroom	10 m <sup>3</sup>		Appears to be compliant.	Yes
Apartment type	Storage volume	size																
Studio	4 m <sup>3</sup>																	
1 bedroom	6 m <sup>3</sup>																	
2 bedroom	8 m <sup>3</sup>																	
3 bedroom	10 m <sup>3</sup>																	
	At least 50% of the required storage is to be located within the apartment.	See above.	Yes															
4H Acoustic Privacy	Various objectives.	Complies	Yes															
4J Noise and Pollution	Various objectives.	The site adjoins both Victoria Road and Gaggin Street. 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	<ul style="list-style-type: none"> <li>• 3 x one-bedroom residential units (7%)</li> <li>• 15 x two-bedroom residential units (33%)</li> <li>• 27 x three-bedroom residential units (60%)</li> </ul>	Yes															
4L Ground floor apartments	Various objectives.	No apartments are located at ground floor.	N/A															
4M Facades	Various objectives.	The bulk and scale of the building results in a façade that is considered excessive and dominates the streetscape.	<b>No</b>															
4N Roof design	Various objectives.	See PLEP 2023 'Height' assessment.	<b>No</b>															
4O Landscape design	Various objectives.	This is discussed throughout the report. See Principle 5 of SEPP 65 for discussion.	<b>No</b>															
4P Planting on structures	Various objectives.	See above.	<b>No</b>															
4Q Universal design	Various objectives.	Appears to comply.	Yes															
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.	<b>No</b>															

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.

## 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

The relevant matters considered under the PLEP 2023 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 protect and enhance the identity, diversity and viability of Parramatta City Centre and recognise its role in the Central River City of the Six Cities Region,
- (b) to create an integrated, balanced and sustainable environment that contributes to environmental, economic, social and physical wellbeing,
- (c) to identify, conserve and promote the City of Parramatta's natural and cultural heritage,
- (d) to protect and enhance the natural environment, including urban tree canopy cover and areas of remnant bushland,
- (e) to ensure development occurs in a way that protects, conserves and enhances natural resources, including waterways, riparian land, surface and groundwater quality and flows and dependent ecosystems,
- (f) to encourage ecologically sustainable development,
- (g) to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by restricting development in sensitive areas,
- (h) to improve public access along waterways if the access does not adversely impact the natural value of the waterways,
- (i) to improve public access to, and within, the City of Parramatta and facilitate the use of public transport, walking and cycling,
- (j) to encourage a range of development to meet the needs of existing and future residents, workers and visitors,
- (k) to enhance the amenity and characteristics of established residential areas,
- (l) to retain the predominant role of industrial areas,
- (m) to ensure development does not detract from the economic viability of commercial centres,
- (n) to ensure development does not detract from the operation of local or regional road systems.

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 create an integrated, balanced and sustainable environment that contributes to environmental, economic, social and physical wellbeing and it does not enhance the amenity and characteristics of established residential areas. As such, the proposal will be recommended for refusal.

### Clause 2.1 Land Use Permissibility

The site is zoned E1 Local Centre under the PLEP 2023.

\*Formerly B1 Neighbourhood Centre and B2 Local Centre under the PLEP 2011

The proposed land uses comprise shop top housing (for the residential flat building component) and commercial premises (retail component).

Definitions:

**shop top housing** means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

**commercial premises** means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

Both proposed uses are permissible with consent within the E1 Local Centre zone.

Clause 2.3 Zone objectives and Land Use Table

The site is zoned E1 Local Centre. The aims and objectives for the E1 Local Centre zone in Clause 2.3 – Zone Objectives are as follows:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure the scale and type of development does not adversely affect the amenity of the surrounding 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
<b>Part 4 Principal development standards</b>	
<b>Cl. 4.3 Height of buildings</b> Allowable: 15m	<b>No</b> Proposed: 26.5m
<b>Cl. 4.4 Floor space ratio</b> Allowable: 2:1	<b>No</b> Proposed: 2.625:1 (5,315.2m <sup>2</sup> )
<b>Cl. 4.6 Exceptions to Development Standards</b>	Variation to Clause 4.3 'Height of Buildings' standard and Clause 4.4 'Floor Space ratio' standard. See Below.
<b>Part 5 Miscellaneous provisions</b>	
<b>Cl. 5.1A Development on land intended to be acquired for public purposes</b>	The subject site is not subject to land reservation acquisition.
<b>Cl. 5.4 Controls relating to miscellaneous permissible uses</b>	These provisions do not apply to the development proposal.
<b>Cl. 5.6 Architectural roof features</b>	An architectural roof feature is not proposed.
<b>Cl. 5.7 Development below mean high water mark</b>	The proposal is not for the development of land that is covered by tidal waters.
<b>Cl. 5.10 Heritage conservation</b>	The site is not identified as a heritage item and it is not located within a heritage conservation area.
<b>Cl. 5.21 Flood Planning</b>	N/A. The site is not flood prone.
<b>Part 6 Additional local provisions</b>	
<b>Cl. 6.1 Acid sulfate soils</b>	Yes, the site is identified as containing Class 5 Acid Sulfate Soil.
<b>Cl. 6.2 Earthworks</b>	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.
<b>Cl. 6.3 Biodiversity protection</b>	The site is not identified on this map.
<b>Cl. 6.5 Stormwater Management</b>	Due to insufficient information, Council's Development Engineer is unable to complete the assessment of the stormwater arrangements.
<b>Cl. 6.8 Development on landslide risk land</b>	The site is not identified on this map.
<b>Cl.6.12 Ground floor development in Zone E1</b>	Retail and active uses are proposed at ground floor level.
<b>Cl.6.13 Design Excellence</b>	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 15m building height development standard detailed in Clause 4.3 of the PLEP. The proposed maximum building height is **26.5m**.

The development proposal exceeds the maximum permissible building height by 11.5m which is a **76.6% variation** to the development standard.



**Figure 15. Height plane diagram**

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

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

The objectives of clause 4.6 of the PLEP 2023 are considered as follows:

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

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

The operation of clause 4.6 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 (See Appendix A) justifying the variation to the height of building development standard. In the justification the applicant states:

*“Clause 4.6 of the Parramatta Local Environmental Plan 2023 (PLEP 2023) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.*

*This clause 4.6 variation request relates to the development standard for building height under clause 4.3 of the PLEP 2023.*

*This clause 4.6 variation request demonstrates that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.*

*This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the building height development standard, the proposed development:*

- *Achieves the objectives of the building height standard notwithstanding the variation to the standard, in that:*
  - *The height variation arises from the bonus FSR permitted under the Housing SEPP as well as with the draft amendments to the Housing SEPP, as published in November 2022 by the NSW Department of Planning and Environment. The proposed built form and height is favourable to a scheme with a compliant height that visually bulky resulting from non-compliant setbacks;*
  - *Given the above, the proposal, in varying the height standard as a result of providing affordable housing, seeks to minimise visual and view impacts, loss of privacy and solar access when compared to a compliant scheme;*
  - *The site is well separated from nearby heritage items and preserves historic views; and*
  - *The proposal reinforces and respects the existing character and scale of low density residential areas by virtue of its separation from these areas by roads resulting in acceptable shadowing, privacy and visual impacts to surrounding properties;*
- *Has sufficient environmental planning grounds in achieving the provision of affordable housing in a manner consistent with the Housing SEPP in an accessible location close to the Parramatta CBD and its consistency with the objects of the EP&A Act;*
- *Is in the public interest as it achieves the objectives of the B1 Neighbourhood Centre zone and the building height development standard; and*
- *There are no other matters which may prevent the Secretary from granting concurrence.*

*Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2023.”*

**Comment:** 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

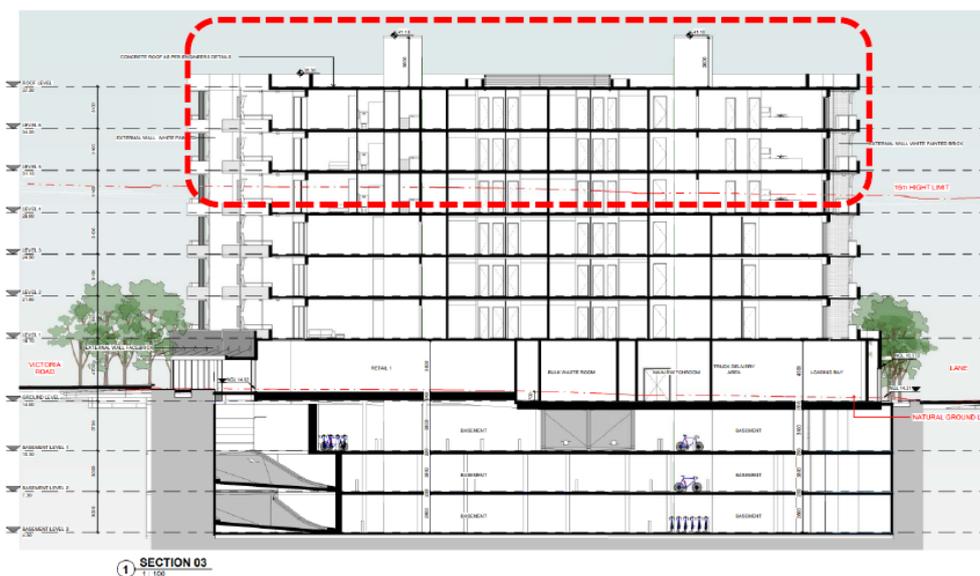
- (a) to provide appropriate height transitions between buildings,

**Comment:** The subject site is located at the corner of Victoria Road and Gaggin Street, and development surrounding the site comprises a mixture of land uses, varying between low to medium density. With respect to bulk and scale, the building is uncharacteristic of the locality. The variation to the height along with the excessive footprint of the development dominates the streetscape.

Overall, the building is inconsistent with the bulk and scale presentation of existing developments within the vicinity of the area 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 ensure the height of buildings is compatible with the height of existing and desired future development in the surrounding area,

**Comment:** As shown in **Figure 15**, the elements of the proposed building which exceed the control, beyond the height plane, has not been integrated into the design of the development which currently presents as ‘bulky’ due to the excessive footprint. Additional information, in terms of the context, with regard to surrounding built form, has also not been submitted demonstrating the impacts of the proposal on adjoining properties.



**Figure 16.** Building section with height variance outlined in red area.

(c) to require the height of future buildings to be appropriate in relation to heritage sites and their settings,

**Comment:** It is noted that the site is not within the vicinity of any heritage items. Despite this, for reasons stated throughout this report, Council cannot support the application.

(d) to reinforce and respect the existing character and scale of low density residential area,

**Comment:** The variation to the height in this instance cannot be supported as the built form has not considered the impacts of the bulk and scale along this section of Victoria Road. 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 E1 Local Centre zone.

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

**Comment:** *The proposal will result in significant visual impacts to the streetscape, and potential loss of existing vistas.* Additional information has also not been submitted in terms of contextual analysis demonstrating the impacts of the proposal on adjoining properties.

(f) to preserve historic views,

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

- (g) to maintain satisfactory sky exposure and daylight to—
  - (i) existing buildings in commercial centres, and
  - (ii) the sides and rear of tower forms, and
  - (iii) key areas of the public domain, including parks, streets and lanes.

**Comment:** The site is located within an E1 Local centre zone in a small-scale commercial ‘town centre’. The proposal has not adequately demonstrated that the breach in height does not result in adverse impacts to adjoining properties.

- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore 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 building footprint 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 underlying objectives would not be defeated if compliance was required in this instance.

- 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 also 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 in relation to a ‘Sufficient Environmental Planning Grounds & Design Response’

*The proposed variation is consistent with the bonus FSR permitted under the Housing SEPP as well as draft amendments to the Housing SEPP (November 2022) which seek to facilitate affordable housing in the state of NSW. As planning controls for building height are aligned with FSR, it is not possible to deliver a built form at the site that both utilises the affordable housing bonus FSR to maximise the provision of affordable housing, and also comply with the mapped 15 metre height limit.*

*The Housing SEPP is a State Planning Policy which broadly seeks to advance the strategic objectives of residential development at a State level. These objectives have been developed in the strategic planning process at both State and local level, which has identified the need for affordable housing in the Greater Sydney region. Specifically, Objective 11 of the Greater Sydney Region Plan seeks a more diverse and affordable range of housing and seeks to develop affordable rental housing targets and Objective C5 of the Central City District Plan seeks to provide housing supply, choice and affordability, with access to jobs, services and public transport. These State level directives on affordable housing have been supplemented by the local strategic planning framework in the Parramatta Local Strategic Planning Statement (LSPS) and Local Housing Strategy.*

The LSPS and Housing Strategy identifies that affordable housing is a significant issue within the LGA and specifically seeks to collaborate with the State Government to “make the provision of affordable housing more feasible” through the creation of an affordable housing target scheme. Therefore, the SEPP has been developed to include controls relating to the provision of affordable housing which is identified as an issue within Greater Sydney and the Parramatta LGA.

The proposal provides a built form which is consistent with the broad intent of the strategic planning framework at both State and local level to provide affordable housing. A scheme compliant with the height standard whilst maintaining FSR bonus permitted under the Housing SEPP would result in adverse impacts in relation to visual impact, bulk and scale, privacy and building separation. It is favourable to have a variation in the height standard and a narrower building, with reduced visual impacts and shadows that ‘move’ quickly throughout the day, when compared to a fully compliant scheme.

As such, the proposed variation is entirely consistent with the statutory planning framework which seeks to incentivise the provision of affordable housing under Clause 17 of the Housing SEPP. In turn, the proposal is consistent with the strategic planning framework at both State and local level which also identifies the provision of affordable housing as in the Parramatta LGA and Greater Sydney as a key planning outcome.

The proposal and its associated variation in the height standard is fundamentally founded on the reliance on the FSR bonuses in the Housing SEPP through the provision of affordable housing. The State and local strategic planning framework support this and this is reflected in the State planning instrument, the Housing SEPP, providing floorspace bonuses incentivising the provision of affordable housing. Further, the proposal is consistent with the objects of the EP&A Act. As such, there are sufficient environmental planning grounds to justify the variation to the FSR standard.

**Comment:** The contention that the height breach was necessary in order to achieve the FSR bonus is of limited value. The proposal should be viewed at an overall level and gaining additional floor area should not be at the expense of other unacceptable outcomes, i.e., in this instance height and a visually unappealing development. The applicant’s assessment above has not taken into consideration the impacts of the excessive building footprint 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 2023 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) have been dealt with in the preceding section.

#### Public Interest

Clause 4.6(4)(a)(ii) of PLEP 2023 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 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 2023 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 applicant’s written request has not adequately addressed the matters required to be demonstrated and that the request to vary the height development standard within Parramatta LEP 2023 cannot be supported as the proposal does not achieve the objectives of the height development standard and zone, and the proposal is not in the public interest. Furthermore, the additional increase to density and scale brought by the non-compliant building height would serve to only weaken the low to medium density setting of the locality. The development has not been designed to provide a built form outcome that responds to the sites opportunities and constraints.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report and the Applicant’s Clause 4.6 Variation Request, it is considered that the variation cannot be supported as:

- The Applicant’s request is not well founded;
- The proposed variation results in a development that is inconsistent with the objectives of Clause 4.3 Height of Building and the E1 Local zone objectives;
- Compliance with the standard is not unnecessary or unreasonable in this instance; and
- The proposal does not result in a better planning outcome.

With regard to the above, it is therefore recommended the Clause 4.6 variation to building height is not supported.

## **Clause 4.6 Exceptions to Development Standards Floor Space Ratio**

The proposal does not comply with the maximum 2:1 floor space ratio (FSR) development standard detailed in Clause 4.4 of the PLEP 2023. The proposed maximum FSR is **2.625:1**.

The development proposal exceeds the maximum permissible FSR by 0.625:1 which is a **31.25% variation** to the development standard.

However, it is noted that 0.5:1 of additional FSR is allowable under Clause 17 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

Clause 17 states:

*“The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of—*

*(a) if the maximum permissible floor space ratio is 2.5:1 or less—*

*(i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1”.*

Under the proposed development, more than 50% of the GFA proposed is to be for the purposes of affordable housing, thereby meeting the criteria to qualify for the FSR bonus. Therefore, the maximum permitted FSR for the proposed development is 2.5:1. In this regard, the development proposal exceeds the maximum permissible FSR by 0.125:1 or 5%.

\* Clause 17 is proposed to be amended under changes to the Housing SEPP currently being prepared by DPE. Among the changes sought, the FSR bonus is set to be raised from 0.5:1 to 0.625:1 for development with over 50% GFA constituting affordable housing. It is noted that this change has yet to take effect.



**Figure 17: Streetscape perspective of proposal**

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

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

The objectives of clause 4.6 of the PLEP 2023 are considered as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (c) 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 (See Appendix B) justifying the variation to the maximum floor space ratio development standard. In the justification the applicant states:

*“Clause 4.6 of the Parramatta Local Environmental Plan 2023 (PLEP 2023) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide a appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.*

*This clause 4.6 variation request relates to the development standard for Floor Space Ratio (FSR) under clause 4.4 of the PLEP 2023 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban to which it is attached.*

*This clause 4.6 variation request demonstrates that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.*

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standard, the proposed development:

- Achieves the objectives of the FSR standard notwithstanding the variation to the standard, in that:
  - The proposal recognises the role of the FSR standard in regulating development density and does not seek a variation beyond what is permissible in the draft Housing SEPP and it does not present adverse traffic impacts to its surrounds;
  - The proposal is consistent with the building separation requirements of the ADG and the setback requirements of the PDCP 2011 which seek to ensure that the proposal provides an appropriate transition in built form. The façade elements further seek to reduce the appearance of bulk and scale;
  - The site is well separated from nearby heritage items; and
  - The site is separated from low density residential areas by roads and laneways to the north, west and south and is respectful of the character and scale of these areas;
- Has sufficient environmental planning grounds in achieving the provision of affordable housing in a manner consistent with the draft Housing SEPP in an accessible location close to the Parramatta CBD;
- Is in the public interest as it achieves the objectives of the B1 Neighbourhood Centre zone and the FSR development standard; and
- There are no other matters which may prevent the Director-General from granting concurrence.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2023.”

**Comment:** 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.*

Floor Space Ratio Objectives

- (a) *to ensure buildings are compatible with the bulk, scale and character of existing and desired future development in the surrounding area,*

**Comment:** The subject site is located at the corner of Victoria Road and Gaggin Street, and development surrounding the site comprises a mixture of land uses, varying between low to medium density. With respect to bulk and scale, the building is uncharacteristic of the locality. The variation to the floor space ratio results in an overdevelopment of the site which in turn dominates the streetscape.

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

- (b) *to regulate density of development and generation of vehicular and pedestrian traffic,*

**Comment:** The proposal would result in a density that is not appropriate for the site, in terms of floor space yield and number of rooms. The design of the development presents as a bulky built form when viewed from the street frontages. The proposed building is considered to have an inappropriate density for the site and the locality. The increased density may also have an impact on traffic congestion in the area.

- (c) *to provide a transition in built form and land use intensity,*

**Comment:** The design lacks any thoughtful transition between the existing built form in the surrounding area and

proposed development. It is noted that the subject site (E1 local centre zone) is bounded by R3 medium density zoned land, with some R2 low density zoned land to the south, with the predominant built form made up of low to medium density housing and includes several single storey residential dwellings directly across from the subject site. Despite this, for reasons stated throughout this report, Council cannot support the application.

- (d) to require the bulk and scale of future buildings to be appropriate in relation to heritage sites and their settings,

**Comment:** N/A

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

**Comment:** The site is located within an E1 Local centre zone, adjacent to a number of neighbourhood shops. Notwithstanding, the proposal has not demonstrated that the breach in height does not result in adverse impacts to adjoining properties. As noted above the subject site is also surrounded by several single storey residential dwellings (to the west, south and north); the proposed 7 storey building does not respect the low and medium density character of the existing area.

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

**Comment:** Compliance with the development standard is reasonable in the circumstances of the case. The proposal in its current form with several additional floor levels 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 underlying objectives would not be defeated if compliance was required in this instance.

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 also 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 in relation to a 'Sufficient Environmental Planning Grounds & Design Response':

*The proposed variation is consistent with the outcomes of the Housing SEPP which seeks to facilitate affordable housing in the state of NSW. The additional floor space proposed is for the purposes of affordable housing, which is provided in a manner consistent with the provisions of Clause 17 of the draft Housing SEPP.*

*The Housing SEPP is a State Planning Policy which broadly seeks to advance the strategic objectives of residential development at a State level. These objectives have been developed in the strategic planning process at both State and local level, which has identified the need for affordable housing in the Greater Sydney region. Specifically, Objective 11 of the Greater Sydney Region Plan seeks a more diverse and affordable range of housing and seeks to develop affordable rental housing targets and Objective C5 of the Central City District Plan seeks to provide housing supply, choice and affordability, with access to jobs, services and public transport. These State level*

directives on affordable housing have been supplemented by the local strategic planning framework in the Parramatta Local Strategic Planning Statement (LSPS) and Local Housing Strategy.

The LSPS and Housing Strategy identifies that affordable housing is a significant issue within the LGA and specifically seeks to collaborate with the State Government to “make the provision of affordable housing more feasible” through the creation of an affordable housing target scheme.

Therefore, the SEPP has been developed to include controls relating to the provision of affordable housing which is identified as an issue within Greater Sydney and the Parramatta LGA.

The proposal provides a built form and FSR which is consistent with the broad intent of the strategic planning framework at both State and local level to provide affordable housing. This is incentivised through the mechanism of FSR bonuses which are contained in Clause 17 of the Housing SEPP. An additional 0.625:1 of FSR is provided, which is entirely consistent with the additional FSR provisions of the draft Housing SEPP. The draft Housing SEPP has increased the affordable housing FSR bonus in Clause 17 to further incentivise the provision of affordable housing in the State. Housing affordability is a considerable issue within New South Wales, and providing additional incentive through State level planning controls is consistent with the outcomes of the Sydney Region Plan and the Central City District Plan.

As such, the proposed variation is entirely consistent with the statutory planning framework which seeks to incentivise the provision of affordable housing. This is managed through the provisions of Clause 17 of the Housing SEPP, which controls the maximum permissible FSR for affordable housing and associated bonuses. In turn, the proposal is consistent with the strategic planning framework at both State and local level which also identifies the provision of affordable housing as in the Parramatta LGA and Greater Sydney as a key planning outcome.

The proposal and its associated variation in the FSR standard is fundamentally founded on the provision of affordable housing. The State and local strategic planning framework support this and this is reflected in the State planning instrument, the Housing SEPP, providing floorspace bonuses incentivising the provision of affordable housing. As such, there are sufficient environmental planning grounds to justify the variation to the FSR standard.

**Comment:** The applicant’s assessment above has not taken into consideration the impacts of the excessive building footprint, and several additional floor areas beyond what is permitted and the lack of integration of the various built elements 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 2023 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) have been dealt with in the preceding section.

#### Public Interest

Clause 4.6(4)(a)(ii) of PLEP 2023 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 bulky design of the development, and which is exacerbated by the breach in the maximum permitted floor space ratio, 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 2023 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 applicant’s written request has not adequately addressed the matters required to be demonstrated and that the request to vary the floor space ratio development standard within Parramatta LEP 2023 cannot be supported as the proposal does not achieve the objectives of the floor space ratio development standard and zone, and the proposal is not in the public interest. Furthermore, the additional increase to density and scale brought by the non-compliant floor space ratio would serve to only weaken the low to medium density setting of the locality. The development has not been designed to provide a built form outcome that responds to the site’s opportunities and constraints.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report and the Applicant’s Clause 4.6 Variation Request, it is considered that the variation cannot be supported as:

- The Applicant’s request is not well founded;
- The proposed variation results in a development that is inconsistent with the objectives of Clause 4.4 floor space ratio and the E1 Local zone objectives;
- Compliance with the standard is not unnecessary or unreasonable in this instance; and
- The proposal does not result in a better planning outcome.

With regard to the above, it is therefore recommended the Clause 4.6 variation to floor space ratio is not supported.

## 9. The Parramatta Development Control Plan 2011

The Parramatta DCP 2011 (PDCP 2011) does not contain specific controls relating to seniors housing developments. A consideration of the relevant sections of the PDCP 2011, which includes the controls for general residential development and residential flat buildings is provided below.

Development Control	Comment	Comply
<b>Part 2 Site Planning</b>		
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 2023.	Yes
2.4.3 Soil Management	Adequate sediment and erosion control measures are proposed as part of this development as are supporting conditions.	Yes
2.4.4 Land Contamination	Refer to assessment under SEPP (RESILIENCE AND HAZARDS) 2021.	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 has been minimised during construction.	Yes
2.4.6 Development on Sloping Land	The development responds to the topography of the site, which is relatively flat.	Yes
2.4.7 Biodiversity	Council’s Landscape assessment officer carried out an inspection of the site and confirmed that there was no existing vegetation or trees (or other areas of concern) present on the site.	Yes

2.4.8 Public Domain	Not supported in its current form and requires additional information.	<b>No</b>
<b>Part 3 Development Principles</b>		
3.2.1 Building Form and Massing	The bulk and scale and dominant building form and mass is not considered compatible with the character and spatial characteristics of the locality.	<b>No</b>
3.2.2 Building Façade and Articulation	Despite the articulation incorporated in the design of the development the building footprint is excessive and dominates the streetscape.	<b>No</b>
3.2.3 Roof Design	See PLEP 2023 'Height' assessment.	<b>No</b>
3.2.5 Streetscape	The proposed development is compatible with the existing and future character of the locality. When viewed from the street, the development dominates over all surrounding development with no gradual transition between neighbouring buildings. As stated throughout this report, the development is excessive and incompatible with the streetscape. Insufficient landscaping is provided to enhance the amenity of future occupants. The lack of landscaping and appropriate planting, at street level, does not provide a visual buffer to adjoining neighbours and hinders any potential softening of the building appearance from the street.	<b>No</b>
3.2.6 Fences	No fences are proposed.	N/A
3.1.3: Building Height Required: 15m	Proposed: 26.5m Refer to assessment under PLEP 2023 above.	<b>No</b>
3.1.3 Floor Space Ratio Required: 2:1	Proposed 2.625:1 Refer to assessment under PLEP 2023 above.	<b>No</b>
3.1.3: Minimum Site Frontage Required: 24m	37.18m	Yes
3.13: Front Setback To align and be consistent with predominant street setbacks	Provided: 3.5m Not consistent with adjoining properties.	<b>No</b>
3.13: Side Setback Required: 4.5m	Provided: 2.5m & 3m	<b>No</b>
3.13: Rear Setback Control = 15% of length of the site	Does not comply	<b>No</b>
3.1.3: Landscaped Area 40% of the site (1,394.28m <sup>2</sup> )	Does not comply. Refer to SEPP (Housing) 2021 assessment	<b>No</b>
3.1.3: Deep Soil 30% of the site (1,045.50m <sup>2</sup> )	Does not comply. Refer to SEPP (Housing) 2021 assessment	<b>No</b>
3.3.3 Visual and Acoustic Privacy	See SEPP 65 and ADG Assessment	Yes

3.3.4 Acoustic Amenity	No major roads or railway lines adjoin the site.	Yes
3.3.5 Solar Access and Cross Ventilation	See SEPP 65 and ADG Assessment.	Yes
3.3.6 Water Sensitive Urban Design	Insufficient information has been received with regards to Water Sensitive Urban Design requirements. Accordingly, the proposal cannot be considered as compliant with this provision.	<b>No</b>
3.3.7 Waste Management	Satisfactory	Yes
3.4.1 Culture and Public Art	An arts plan is required as the application has a CIV of more than \$5,000,000.00 and is located within: - A local town centre - <b>Land zoned B2 Local Centre (now E1 Local Centre)</b> - Land with a site area greater than 5000m <sup>2</sup>	<b>No</b>
3.4.2 Access for People with Disabilities	Council's Urban Designer (Accessibility) reviewed the proposal and raised no objections subject to compliance with the recommended conditions.  Appropriate conditions of consent would be imposed if approved, to ensure compliance with the Disability Discrimination Act, 1992 (DDA), the relevant Australian Standards and the Building Code of Australia (BCA).	Yes, subject to conditions
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.	Yes
3.4.5 Housing Diversity and Choice	See ADG Assessment.	Yes
3.5 Heritage	Refer to PLEP 2023 section of this report above.	Yes
3.6.1 Sustainable Transport	The development contains more than 50 dwellings. As the development provides sufficient parking, car share spaces are not necessary.	N/A
3.6.2 Parking and Vehicular Access	Refer to SEPP (Housing) 2021 assessment	Yes
3.6.3 Accessibility and Connectivity	Council's Urban Designer (Accessibility) reviewed the proposal and raised no objections subject to compliance with the recommended conditions.  Appropriate conditions of consent would be imposed, if approved, to ensure compliance with the Disability Discrimination Act, 1992 (DDA), the relevant Australian Standards and the Building Code of Australia (BCA).	Yes
3.7.1 Residential Subdivision - general	N/A	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

## 10. Parramatta Development Contributions Plan

A Section 7.11 Development Contribution is required to be paid in accordance with the *City of Parramatta (Outside CBD) Development Contributions Plan 2021*. A condition of consent relating to the payment of the contribution would have been imposed, if the application was recommended for approval.

## 11. Bonds

In accordance with 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 of consent has been imposed requiring the Security Bond to be paid prior to the issue of a Construction Certificate.

## 12. 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 have been addressed by appropriate consent conditions, refer to Appendix 1.

## 13. 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.

## 14. 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.

## 15. Public Consultation

In accordance with the Parramatta Notification Plan the Development Application was notified and advertised. No submission were received during the notification/advertising period

## 16. Public interest

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

## 17. 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.

## 18. 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/210/2023 for the demolition and construction of a 7-storey mixed use development to be comprised of 3 retail tenancies and 45 residential apartments, including affordable apartments, over 3 levels of basement parking 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 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 therefore does not have concurrence from Transport for NSW (TfNSW) in accordance with Section 138 of the Roads Act 1993.
  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 3 Density
    - d) Design Quality Principles: Principle 5 Landscape
    - e) Design Quality Principles: Principle 6 Amenity
    - f) Design Quality Principles: Principle 7 Safety
    - g) Design Quality Principles: Principle 9 Aesthetics
    - 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: 3G: Pedestrian Access
    - l) Apartment Design Guide: 4M Facades
    - m) Apartment Design Guide: 4N Roof Design
    - n) Apartment Design Guide: 4O Landscape design
    - o) Apartment Design Guide: 4P Planting on Structures
    - p) 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 2023:
    - a) Clause 2.1 – The development is inconsistent with the aims of Parramatta Local Environmental Plan 2023
    - b) Clause 2.3 - The development is inconsistent with the zone objectives of the E1 Local Centre zone
    - c) Clause 4.3 – Height of Buildings
    - d) Clause 4.4 – Floor Space Ratio
    - e) Clause 4.6 – Exceptions to Development Standards
    - f) Clause 6.2 – Earthworks
    - g) Clause 6.5 – Stormwater Management
  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 2.4.8 Public Domain
    - b) Section 3.2.1 Building Form and Massing
    - c) Section 3.2.2 Building Façade and Articulation
    - d) Section 3.2.3 Roof Design
    - e) Section 3.2.5 Streetscape
    - f) Section 3.1.3 Building Height
    - g) Section 3.1.3 Front Setback
    - h) Section 3.1.3: Side Setback
    - i) Section 3.1.3 Rear Setback
    - j) Section 3.1.3: Landscaped Area
    - k) Section 3.1.3: Deep Soil

- l) Section 3.3.6 Water Sensitive Urban Design
- m) Section 3.4.1 Culture and Public Art

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.