

## AUBURN CITY COUNCIL

**93-105 Auburn Road & 18 Harrow Road, AUBURN**

### **ADDENDUM TO REPORT CONSIDERED AT MEETING OF 11 DECEMBER 2014**

<b>Applicant</b>	Broadview Group P/L C/- Sjb Planning
<b>Owner</b>	E K Nominees Pty Limited
<b>Application No.</b>	DA-368/2013
<b>Description of Land</b>	Lot 1001 DP 1166744, Lot 1002 DP 1166744, 93-105 Auburn Road & 18 Harrow Road, AUBURN
<b>Proposed Development</b>	Construction of a mixed use development comprising 2 x 14 storey buildings containing a total of 220 residential units & 10 retail tenancies, 'Village Square' and through site link over part 3/part 4 levels of basement car parking with associated provision of landscaping & site services
<b>Site Area</b>	4,849sqm
<b>Zoning</b>	Zone B4 - Mixed Use
<b>Disclosure of political donations and gifts</b>	Nil disclosure
<b>Issues</b>	Reduction in width of Harrow Road tower Exceedance of height limit

### **Recommendation**

***That Development Application No. DA-368/2013 for Construction of a mixed use development comprising 2 x 14 storey buildings containing a total of 220 residential units & 10 retail tenancies, 'Village Square' and through site link over part 3/part 4 levels of basement car parking with associated provision of landscaping & site services on land at 93-105 Auburn Road and 18 Harrow Road, AUBURN be approved subject to conditions attached.***

### **History/Consultations**

At its meeting held on 11 December 2014 the Joint Regional Planning Panel – Sydney West considered a report regarding the proposal for construction of a mixed use development comprising 2 x 14 storey buildings containing a total of 229 residential units & 10 retail tenancies, 'Village Square' and through site link over part 3/part 4 levels of basement car parking with associated provision of landscaping & site services. The application was recommended for refusal primarily due to the bulk of the tower element of the Harrow Road building which was exacerbated by the exceedance of the maximum height limit under ALEP 2010.

At the meeting the applicant proposed a reduction in the width of the Harrow Road tower, by deleting a unit from each floor of the tower element, and submitted a concept plan for the Panel's consideration.

The Panel made the following decision:

*Having considered the amended application, the points raised in the address to the Panel by the Applicant's professional advisers and the further modified development concept plan presented in conjunction with that address, the Panel unanimously determined to defer determination of the application to allow:*

- *Submission of a further amendment to the application based on the design set out in the modified concept plan presented on behalf of the applicant, but modified to achieve the narrowed tower addressing Harrow Road by deleting a 1 bedroom apartment from each floor of the central vertical element of that tower in order to preserve more 2 bedroom units and maintain the architectural treatment of the northern facade;*
- *Submission of an adjusted Clause 4.6 development standard variation request reflecting this further design amendment.*

*Further the Panel has determined that the Council assessment report is to include the following:*

- *A copy of the Applicants development standard variation request;*
- *Details of the position relating to the Voluntary Planning Agreement referred to by the Applicant's representative in addressing the Panel, including a summary of the VPA content and the current status of the VPA including Council's formal resolved position in response to the VPA;*
- *Given delays in determining this application, without prejudice suggested conditions of consent in the event the assessment results in a recommendation of refusal.*

*In taking its decision the Panel observed that the design concept now developed for the site (incorporating the modification narrowing the Harrow Road tower) is significantly more suits to the subject site that are the currently approved application and the proposal considered by the Panel at its meeting of the 17<sup>th</sup> July 2014.*

Amended plans were submitted on 18 December 2013 and form the basis of this report.

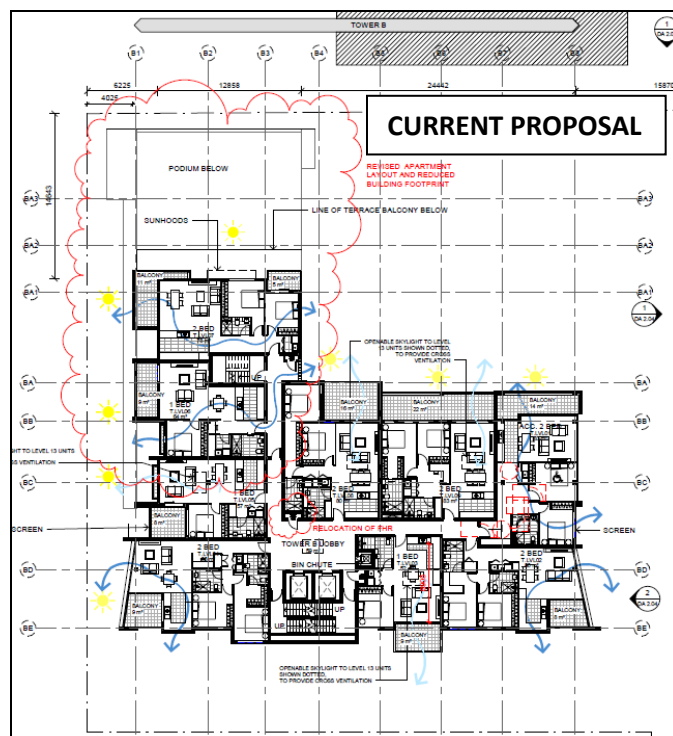
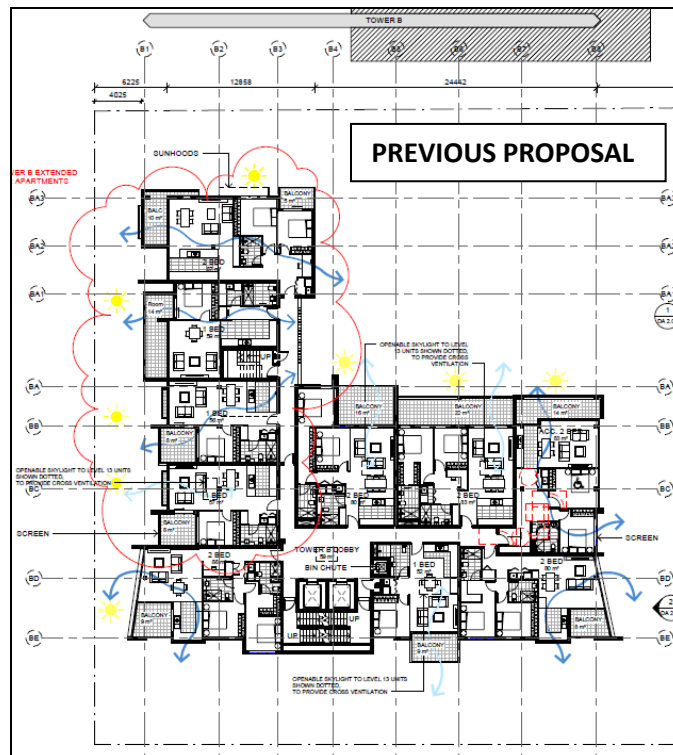
### **Description of Proposed Modifications**

The proposal has been amended to delete a 1 bedroom dwelling from each floor of the tower element of the Harrow Road building, reducing the width of the tower from approximately 44.8m to 31.5m and increasing the northern (side) boundary setback of the building from 7.4m to 14.643m. The treatment of the northern elevation has been retained.

The number of dwellings has been reduced from 229 to 220. All other aspects of the development remain unchanged from that previously proposed.

The relevant previous and current floor plans and elevations appear below.

# **HARROW ROAD TOWER FLOOR PLAN**



# **HARROW ROAD TOWER ELEVATION**



**The provisions of any Environmental Planning Instruments (EP& A Act s79C(1)(a)(i))**
State Environmental Planning Policies
**State Environmental Planning Policy No. 65—Design Quality of Residential Flat Development**

The proposed development, incorporating a reduction in the width of the Harrow Road tower element, is consistent with the provisions and design quality principles of SEPP 65 insofar as the development appropriately responds to the context of the locality, being compatible with the desired future character of the town centre; the bulk and height of the development achieves the scale identified for the desired future character of the area; and the design of the development achieves an appropriate built form for the site, the building's purposes and the character of the streetscape.

**Residential Flat Design Code (SEPP 65)**

The relevant development controls and site and building design requirements within the Residential Flat Design Code, as relevant to the amended plans, have been considered as follows:

Requirement	Yes	No	N/A	Comment
<b>Part 01 Local Context</b>				
<i>Building Height</i>				
Objectives				
<ul style="list-style-type: none"> <li>To ensure future development responds to the desired scale and character of the street and local area.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The proposal exceeds the 36.0m maximum height limit under ALEP 2010 by 8.55m (Auburn Rd building) and 7.7m (Harrow Rd building). However, the reduction in the width of the tower element of the Harrow Road building at its northern end reduces the scale of this aspect of the development. The resulting building is a more slender design which is well balanced with the height.</p> <p>The character of the town centre is undergoing transition from older style, low-scale retail/business buildings to high density mixed use developments. The proposed development is considered to be consistent with the desired scale and character of the street and local area.</p>

Requirement	Yes	No	N/A	Comment
<b>Building Separation</b>				
<u>Objectives</u>				
<ul style="list-style-type: none"><li>To ensure that new development is scaled to support the desired area character with appropriate massing and spaces between buildings.</li></ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The amended proposal reducing the width of the Harrow Road tower element provides appropriate massing and spaces between buildings and is in scale with the desired future character of the area.
<u>Controls</u>				
<ul style="list-style-type: none"><li>For buildings over three storeys, building separation should increase in proportion to building height:<ul style="list-style-type: none"><li>5-8 storeys/up to 25 metres:<ul style="list-style-type: none"><li>18m between habitable rooms/balconies</li><li>13m between habitable rooms/balconies and non-habitable rooms</li><li>9m between non-habitable rooms</li></ul></li><li>9 storeys and above/over 25 metres:<ul style="list-style-type: none"><li>24m between habitable rooms/balconies</li><li>18m between habitable rooms/balconies and non-habitable rooms</li><li>12m between non-habitable rooms</li></ul></li></ul></li></ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The tower element of the Harrow Road building comprises storey no.s 6-14. It is now proposed to be setback 14.643m from the northern side boundary in excess of the greatest building separation requirements.</p> <p>(NB: The setback controls apply between buildings and, therefore, it can be taken that half of the setback is to be provided on each site.)</p>
<b>Part 02 Site Design</b>				
<u>Orientation</u>				
<u>Objectives</u>				
<ul style="list-style-type: none"><li>To contribute positively to desired streetscape character.</li></ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The proposed reduction in the bulk of the Harrow Rd tower is considered to contribute positively to the desired streetscape character.
<b>Part 03 Building Design</b>				
<u>Apartment Mix</u>				
<u>Design Practice</u>				
<ul style="list-style-type: none"><li>Provide a variety of apartment types particularly in large apartment buildings. Variety may not be possible in smaller buildings (up to 6 units)</li></ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The dwelling mix of the development has been amended as follows due to the deletion of 9 one bedroom units:
<ul style="list-style-type: none"><li>Refine the appropriate mix for a location by: considering population trends in the future as well as present market demands; noting the apartment's location in relation to public transport, public facilities, employment areas, schools, universities and retail centres.</li></ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>1 bedroom – 81 units (36.8%) 2 bedroom – 126 units (57.3%) 3 bedroom – 13 units (5.9%)</p> <p>The proposed dwelling mix is acceptable.</p>

Requirement	Yes	No	N/A	Comment
<ul style="list-style-type: none"> <li>Optimise the number of accessible and adaptable units to cater for a wider range of occupants.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The number of adaptable units (27) is unchanged by the deletion of the one bedroom units. The reduction in the overall number of units within the development from 229 to 220 does, however, increase the percentage of adaptable dwellings to be provided from 11.8% to 12.3%.
<i>Flexibility</i>				
<u>Design Practice:</u> <ul style="list-style-type: none"> <li>Promote accessibility and adaptability by ensuring: the number of accessible and visitable apartments is optimised; and adequate pedestrian mobility and access is provided.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Discussed previously.
<i>Internal Circulation</i>				
<u>Design Practice</u> <ul style="list-style-type: none"> <li><b>Where units are arranged off a double loaded corridor, the number of units accessible from a single core/corridor should be limited to 8 – exceptions for: adaptive reuse buildings; where developments can demonstrate the achievement of the desired streetscape character and entry response; where developments can demonstrate a high level of amenity for common lobbies, corridors and units.</b></li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>The number of units accessed by the single core and “L” shaped corridor in the tower element of the Harrow Road Building has decreased from 10 to 9 units. The development is acceptable in this regard as a satisfactory streetscape and building entries have been achieved, and a high level of amenity is provided to the corridor and units.</b>
<i>Daylight Access</i>				
<ul style="list-style-type: none"> <li>Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of 3 hours direct sunlight between 9am and 3pm in midwinter. In dense urban areas, a minimum of 2 hours may be acceptable.</li> <li><b>Limit the number of single aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed.</b></li> <li>Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed.</li> </ul>	<input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<p>The applicant has provided plans which show that 70% of the units achieve a minimum 2 hours solar access to living areas and private open space areas. This is considered acceptable given that the site is located within an urban area.</p> <p><b>The number of south-facing units with a single aspect has not changed as a result of the proposed amendments. The reduction in the overall number of units within the development from 229 to 220 does, however, increase the percentage of these types of units from 10.9% to 11.4%. The applicant previously argued that these units are spread over both buildings and the development complies with cross ventilation and solar access requirements. The orientation of the buildings has also been maximised to take advantage of the northerly</b></p>

Requirement	Yes	No	N/A	Comment
				aspect and south-facing, single aspect units are limited to one per floor of each building. The non-compliance in this instance is, therefore, considered to be acceptable.
<i>Natural Ventilation</i>				
<b>Design Practice</b> <ul style="list-style-type: none"> <li>60% of residential units should be naturally cross ventilated.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The proposed development achieves natural cross-ventilation for 60.5% of the total number of units (133 out of 220) and, therefore, complies with the minimum requirement.

### Local Environmental Plans

#### **Auburn Local Environmental Plan 2010**

##### ***Part 4 Principal Development standards***

- Clause 4.4 Floor space ratio*

The site is subject to maximum FSR of 5.0:1. The proposed amendments to the development reduce the FSR from 4.16:1 (as previously proposed) to 4.03:1. The overall intensity of the development is also reduced given the deletion of 9 one bedroom units. The development, therefore, complies with the provisions of the LEP pertaining to FSR.

- Clause 4.3 Height of buildings and Clause 4.6 Exceptions to development standards*

The site is subject to a maximum building height of 36m. The proposed amendments do not alter the height of the development (as previously proposed) which exceeded the maximum height limit. It is proposed that the building with frontage to Auburn Road have a height of 44.55m and the building to Harrow Road a height of 43.7m.

In accordance with Clause 4.6(3):

- (1) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has submitted a revised justification in support of the variation sought to the development standard pertaining to maximum building height, extracts of which are provided below to respond to the LEP provisions. A full copy of the applicant's submission is provided as an attachment to this report:



*"In the circumstances of the case, the provision of strict numerical compliance would be unreasonable due to the following:*

1. *An urban design study was undertaken on behalf of Council in September 2012. The urban design study investigated a number of local centres, including the Auburn Town Centre. The investigation was undertaken to consider the impact of the proposed increase in FSR controls on the town centres and to recommend appropriate controls and strategies. This has led to the amendment of the height controls on surrounding land being 38.0m, but did not lead to the implementation of heights recommended in the study.*

*The urban design study did not recommend varied height controls for the land in the vicinity of the site. The difference in height controls between the subject site and adjoining sites is that the amendments to Auburn LEP increased height and FSR on these sites but only FSR on the subject site. A more appropriate benchmark for the emerging character for the locality is the LEP height limit of 38.0m for the adjoining B4 Mixed Use zoned land. It is again noted that the AECM report recently resolved to prepare a Planning Proposal to review the height controls in the LEP to more satisfactorily relate to the FSR controls and permit taller more slender building forms.*

*The detailed design consideration of the subject application has pursued a design approach of taller more slender building forms.*

*The alternate approach is to avoid a visually bulky development within the height limit, or to reduce the height of the towers and provide a larger east-west profile of the towers. This has been determined to lead to a poorer urban outcome as:*

- *The separation between the towers is reduced;*
  - *The amenity of the through site link and village square is reduced due the greater sense of enclosure;*
  - *The number of south-facing apartments would increase; and*
  - *The profile of the towers to Harrow Road and Auburn Road would increase, losing the more slender silhouette proposed.*
2. *The site is subject to a FSR of 5.0:1. The proposal achieves an FSR of 4.16:1, well below the permitted building density [NB: the FSR of the current proposal is 4.03:1 as detailed on the Drawing No. DA0.00 prepared by Marchese Partners and dated 17/12/14].*
  3. *The site having a dual frontage and large site area of 4,849sqm has been able to position the towers on the site in a manner that presents low-rise podiums to the street frontages, with narrow towers above.*
  4. *The design approach delivers public benefits of a through-site link and public plaza area.*
  5. *The variation of the height control allows for the provision of FSR in a manner consistent with the emerging character of the area to:*
    - *Enable high density residential and mixed use development that contribute to housing targets;*
    - *Maximise the use of public transport, walking and cycling in areas of high accessibility; and*

- *Ensure development in Auburn supports the centre's hierarchy of the Metropolitan Plan for Sydney 2036.*
6. *The proposed building height, even though numerically non-compliant, does not result in adverse solar access impacts upon residential properties to the west and south-west of the site.*

*The preceding discussion clearly confirms that despite the numerical non-compliance with the height development standard the application still achieves consistency with the objectives of the standard. Specifically:*

- *The development density proposed is appropriate given the application is substantially under the FSR development standard, being the control which most directly influences development density; and*
- *The height of the development proposed is consistent with the future character of the locality as demonstrated by the strategies exhibited by Council reviewing the height controls for the locality and the existing height control applying to surrounding land at 38.0m.*

*Given the circumstance of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard, and is compatible with adjoining development."*

*"...in the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:*

- *The proposal satisfies the objectives of the B4 mixed use zone and the objectives of the building height standards as described .... above.*
- *Non-compliance with the standards does not contribute to adverse environmental impacts in terms of overshadowing, visual impacts or view loss.*
- *The scale of the proposed development is consistent with the scale of the surrounding development and streetscape along Auburn Road, with the towers setback and presenting a slender profile.*
- *The proposal has a maximum FSR of 4.16:1 which readily complies with the proposed maximum FSR development standard of 5.0:1 proposed for the locality [NB: the FSR of the current proposal is 4.03:1 as detailed on the Drawing No. DA0.00 prepared by Marchese Partners and dated 17/12/14].*
- *The proposed development is generally consistent with controls and the intent of the controls, contained in the Auburn Development Control Plan 2010."*

In terms of matters to be taken into consideration when granting consent to a variation of a development standard, Clause 4.6(4) states:

- (4) *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,"*

The applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3) insofar as, compliance with the development standard pertaining to the maximum building height control is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant is seeking to vary the height limit as a means of addressing what they say is a disparity between the recently increased maximum FSR of 5.0:1 and the retention of the existing maximum height limit of 36m. The exceedance of the height limit allows for a reduced building footprint and bulk, greater building setbacks, and enables improved compliance with residential amenity standards in state and local plans and policies. The proposed development, therefore, satisfies the objectives of the 'Height of buildings' development standard insofar as the proposed building height enables an appropriate development density of 4.03:1 to be achieved. Although the building heights may be 5.7m – 6.5m above future development in close proximity of the site (NB: surrounding sites have a 38m maximum height limit), the development will however, be compatible in scale and character presenting as two well defined and slender buildings of contemporary design and appearance.

The consent authority must also be satisfied that the proposed development complies with the objectives of the B4 mixed use zone. To this end, the development provides for integrated and compatible land uses in a highly accessible location so as to encourage public transport patronage, walking and cycling; it provides for high density residential buildings; opportunities for retail/business uses which will contribute to economic growth; and an accessible, attractive and safe public domain through the provision of a publicly accessible through site link/Village Square, and an appropriate interface with Auburn and Harrow Roads.

#### **The provisions of any Draft Environmental Planning Instruments (EP& A Act s79C(1)(a)(ii))**

The proposed development is not affected by any relevant Draft Environmental Planning Instruments.

#### **The provisions of any Development Control Plans (EP& A Act s79C(1)(a)(iii))**

##### **Auburn Development Control Plan 2010**

##### **(a) Local Centres**

The objectives and requirements of the DCP 2010 Local Centres, as relevant to the amended proposal, have been considered in the following assessment table:

Requirement	Yes	No	N/A	Comments
<b>2.0 Built Form</b>				
<b>Objectives</b>				
b. To establish the scale, dimensions, form and separation of buildings appropriate for local centre locations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The reduction in the width and depth of the tower element of the Harrow Road building results in a development which is

f. To ensure building depth and bulk appropriate to the environmental setting and landform.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	consistent with the objectives pertaining to Built Form insofar as the scale, form, dimensions, building separation and density are appropriate for the town centre location, the streetscape, and desired future character of the area.
h. To ensure that the form, scale, design and nature of development enhances the streetscape and visual quality of commercial areas.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
i. To ensure that the built form and density of a new development respects the scale, density and desired future character of the area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>2.1 Articulation and proportion</b> <b>Performance criteria</b> <b>PI</b> The bulk, scale and intensity of development is consistent with the scale of surrounding existing and planned developments.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	As discussed previously the character of the town centre is undergoing transition from older style, low-scale retail/business buildings to high density mixed use developments. The proposed development is considered to be consistent with the desired scale of future development in the town centre and will not adversely impact on existing lower scale development surrounding the town centre.
<b>3.0 Streetscape and Urban form</b>				
<b>Objectives</b> a. To ensure development integrates well with the locality and respects the streetscape, built form and character of the area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Discussed previously.
<b>3.1 Streetscape</b> <b>Performance criteria</b> <b>PI</b> New and infill development respects the integrity of the existing streetscape and is sympathetic in terms of scale, form, height, shopfront character, parapet, verandah design, and colours and materials, in a manner which interprets the traditional architecture, albeit in modern forms and materials.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Discussed previously.
<b>Development controls</b> <b>DI</b> Applicants shall demonstrate how new development addresses the streetscape and surrounding built environment.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>4.0 Mixed Use Developments</b>				
<b>Objectives</b> e. To manage the bulk, scale and traffic generation of mixed use developments.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Discussed previously.
<b>8.0 Energy Efficiency and Water Conservation</b>				
<b>8.1 Solar amenity</b> <b>Performance criteria</b> <b>PI</b> New buildings are designed to protect solar amenity for the public domain and residents.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Development controls</b> <b>D1</b> Shadow diagrams shall accompany development applications for buildings which demonstrate that the proposal will not reduce sunlight to less than 3 hours between 9.00 am and 3.00 pm on 21 June for: <ul style="list-style-type: none"> <li>• public places or open space;</li> <li>• 50% of private open space areas;</li> <li>• 40% of school playground areas; or</li> <li>• windows of adjoining residences.</li> </ul>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>The previous proposal complied with the minimum solar access requirements for development surrounding the site. The reduction in the width of the tower element of the Harrow Road building will marginally increase the solar access to properties to the south-west during the morning and to the Village Square within the subject site during the afternoon.</p>
<b>14.0 Auburn Town Centre</b>				
The amended proposal raises no issues as to consistency with the controls pertaining to the Auburn Town Centre.				

### (b) Residential Flat Buildings

The relevant objectives and requirements of the DCP 2010 Residential Flat Buildings have been considered in the following assessment table:

Requirement	Yes	No	N/A	Comments
<b>2.0 Built Form</b>				
<b>Objectives</b>  a. To ensure that all development contributes to the improvement of the character of the locality and streetscape in which it is located.  e. To ensure that the form, scale and height of the proposed development responds appropriately to site characteristics and the local character.	<input checked="" type="checkbox"/>  <input checked="" type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>	<p>The reduced width of the Harrow Road tower element results in a reduction of the scale of the development which responds more appropriately to the site and character of the streetscape and locality.</p>
<b>2.3 Building envelope</b>				
<b>Performance criteria</b>  <b>P1</b> The height, bulk and scale of a residential flat building development is compatible with neighbouring development and the locality.  <b>Development controls</b>  <b>D1</b> The tower component of any building above the podium or street wall height is to have a maximum floor plate of 850m <sup>2</sup> .	<input checked="" type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input checked="" type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>	<p>As discussed previously, the height, bulk, and scale of the development is compatible with neighbouring development and the locality.</p> <p>The floor plate of the tower element of the Harrow Road building has been reduced from approximately 928sqm to 840sqm and now complies with the DCP.</p>
<b>2.4 Setbacks</b>				
<b>Performance criteria</b>  <b>P3</b> Ensure adequate separation between buildings, consistent with the established character and	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The amended proposal has increased the setback of the Harrow Road tower element from the northern side boundary. This setback now complies with the minimum building separation</p>

rhythm of built elements in the street.				guidelines of the SEPP 65 Residential Flat Design Code. There is no consistent character and rhythm of built elements in Harrow Road and the centre is undergoing transition. The proposal does, however respond appropriately to the desired future character of the area.				
<b>2.11 Apartment mix and flexibility</b>  <b>Development controls</b>  <b>D1</b> A variety of apartment types between studio, one, two, three and three plus-bedroom apartments shall be provided, particularly in large apartment buildings. Variety may not be possible in smaller buildings, for example, up to six units.  <b>D2</b> The appropriate apartment mix for a location shall be refined by: <ul style="list-style-type: none"><li>■ considering population trends in the future as well as present market demands; and</li><li>■ noting the apartment's location in relation to public transport, public facilities, employment areas, schools and universities and retail centres</li></ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Discussed previously under the SEPP 65 Residential Flat Design Code compliance table.				
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
<b>3.1 Landscape setting</b>  <b>Performance criteria</b>  <b>P2</b> Residential flat buildings are adequately designed to reduce the bulk and scale of the development.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The reduced width of the Harrow Road tower adequately reduces the bulk and scale of the development.				
<b>9.0 Adaptable housing</b>								
<b>Development Controls</b> <b>D2</b> All development proposals with five or more housing units shall be capable of being adapted (Class C) under AS 4299. The minimum number of adaptable housing units is set out below.  <b>Number of dwellings Number of adaptable units</b> <table border="1"><thead><tr><th>Number of dwellings</th><th>Number of units</th></tr></thead><tbody><tr><td>Over 50</td><td>6</td></tr></tbody></table>  (Plus 10% of additional dwellings beyond 60, rounded up to the nearest whole number)	Number of dwellings	Number of units	Over 50	6	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The amendments to the proposal do not reduce the number of adaptable dwellings as previously proposed. The overall reduction in the number of dwellings, however, reduces the minimum number of adaptable dwellings to be provided within the development from 23 to 22. The proposal provides 27 adaptable dwellings and, therefore, complies with the DCP in this regard.
Number of dwellings	Number of units							
Over 50	6							
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					

### (c) Parking and Loading

The relevant requirements and objectives of ADCP 2010 - Parking and Loading have been considered in the assessment of the development application. Council's Development Engineer

has raised no objection subject to the imposition of conditions. In terms of car parking provision, the reduction in the number of dwellings results in a decrease in the number of required car parking spaces. The relevant amendments to the number of required car parking spaces are highlighted in the table below:

Use	GFA / No. of units	Car parking / Loading rate	Required no. of spaces (NB: part spaces to be rounded up)	Proposed no. of spaces
Retail/business tenancies	1,126sqm	1 space/40sqm GFA	28.15 (29)	27
Residential	90	1 space/1 bedroom unit	90	250
	<b>117</b>	<b>1 space/1 bedroom unit</b>	<b>117</b>	
	13	2 space/2 bedroom unit	26	
			<b>Total - 233</b>	
Visitor	<b>220 units</b>	<b>0.2 space/unit</b>	<b>44</b>	54
Loading	1,126sqm	Retail premises – 1 space per 400sqm GFA up to 2,000sqm plus 1 space per 1,000sqm thereafter	3	3
<b>TOTAL</b>			<b>309</b>	<b>331</b>

A total of 331 spaces are proposed, including accessible spaces. This is in excess of the DCP requirement for 309 car parking spaces. The excess has been included in the gross floor area/floor space ratio calculation as per the definition under ALEP 2010. The allocation of car parking spaces requires the provision of two (2) additional spaces to the retail/business tenancies. A condition of consent is recommended to be imposed in this regard.

The proposal also provides 64 bicycle parking spaces. The proposed development is satisfactory having regard to the requirements of the DCP.

### **Section 94 Contributions Plan**

The development would require the payment of contributions in accordance with Council Section 94 Contributions Plans. The development will not involve an offset of S.94 contributions in lieu of the provision of the publicly accessible Village Square and through site link. Conditions would be imposed on any consent with respect to the payment of S.94 contributions prior to the issue of any occupation certificate for the development.

### **Disclosure of Political Donations and Gifts**

The NSW Government introduced The Local Government and Planning Legislation Amendment (Political Donations) Act 2008 (NSW). This disclosure requirement is for all members of the public relating to political donations and gifts. The law introduces disclosure requirements for individuals or entities with a relevant financial interest as part of the lodgement of various types of development proposals and requests to initiate environmental planning instruments or development control plans.

The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

**Any planning agreement or any draft planning agreement (EP& A Act s79C(1)(a)(iia))**

The application originally included the offer of a Voluntary Planning Agreement (VPA). The proposed scope of works is generally as follows:

- Paving on the eastern side of Auburn Road between Mary and Beatrice Street;
- Paving and kerb and gutter works along Auburn Road between Beatrice Street and to approximately 50 meters south of Mary Street; and
- Provision of a publicly accessible “Village Square” and through site link within the subject site.

At its meeting held on 16 April 2016 Council considered a report regarding the offer of the VPA and resolved:

*“1. That Council receive and note the offer of a Voluntary Planning Agreement (VPA) and*

- a) Accept (in principle) the offer of a Voluntary Planning Agreement (VPA) as submitted with Development Application DA368/2013 for the proposed construction of publicly accessible Village Square, through site link and town centre upgrade works; and*
- b) Authorise the General Manager to continue negotiations with the applicant in relation to the detailed terms of the Voluntary Planning Agreement noting that Council endorses the exemption from tendering the VPA works pursuant to Section 55(3)(i) of the Local Government Act 1993 for the proposed works, and*
- c) Instruct the General Manager to advise the Joint Regional Planning Panel that Council has endorsed the Voluntary Planning Agreement submitted to Council in conjunction with DA-368/2013 and that they are to consider this in their assessment and determination of the development application DA-368/2013.”*

The previously amended proposal submitted on 11 September 2014 withdrew the offer of a VPA. Public domain works were proposed to be undertaken adjacent only to the site, and the Village Square and through site link would remain publicly accessible spaces.

On 27 November 2014 the applicant requested the reinstatement of the VPA offer in the form originally lodged, exhibited and reported to Council. It was Council’s opinion that as the amended proposal submitted on 11 September 2014 was exhibited, which included withdrawal of the offer of a VPA, that the re-instatement of the offer would require the VPA to be re-exhibited.

The applicant’s legal adviser made representation to the JRPP meeting of 11 December 2014 stating that, in their considered opinion, the VPA did not require re-exhibition as no changes were proposed to the VPA as originally submitted, exhibited and reported to Council. A detailed legal opinion was subsequently submitted by the applicant to Council on 15 December 2014. An extract of the advice is provided below:

***“Summary of advice***

*The applicant has formally offered to enter into a VPA. That offer has been made on a number of occasions, most relevantly on 27 November 2014, as acknowledged in the recent Councils staff report to the Panel (at page 6).*



*The VPA has already been publicly exhibited for the mandatory 28 days as required by s. 93G of the Environmental Planning and Assessment (Act). It is now lawful for the developer and Council to enter into that VPA. There is no requirement in the Act for a VPA to be exhibited again (more than once) each and every time a DA is amended and/or re-exhibited. The repeated exhibition of a VPA is neither required nor contemplated by the statutory scheme governing VPAs.*

*Moreover, a draft VPA that is “offered: by an applicant is a mandatory matter for consideration by the consent authority under S.79C of the Act. The consent authority may then impose a condition requiring that VPA to be entered into, consistent with the applicant’s offer (s.93I(3)). Where that occurs, the Act requires the VPA to be publicly exhibited before it is “entered into” (executed). **This means that a VPA can be exhibited after the grant of development consent.** As such, if the Council wishes to re-exhibit the VPA (even though that it is not required) Council can do so **after** the grant of development consent.*

*As such, we confirm that it is perfectly lawful for the Panel to grant development consent, subject to a condition under s.93I(3) of the Act, requiring the applicant to enter into the VPA as offered. Were that to occur, it would be lawful for the Council to immediately “enter into” that VPA, because the public exhibition required by s.93G of the Act has already occurred. However, should the Council wish to re-exhibit the VPA for a second time (which is not required) that exhibition can occur after the grant of development consent. It is only required to be undertaken before the VPA is “entered into”. This has been confirmed by the Land and Environment Court on a number of occasions, as discussed in this advice.”*

Council sought its own legal advice in respect of whether the VPA required re-exhibition. It was concluded the VPA should be re-exhibited given that the original offer of a VPA was formally withdrawn, and this withdrawal was publicly notified. Further, it is considered that the most recent offer by the applicant to enter into a VPA is different from the offer made upon submission of the original application regardless of whether the terms of the VPA are the same. Re-exhibition of the VPA is also consistent with Council’s Voluntary Planning Agreement Policy. Confirmation was also provided that the re-exhibition could take place after development consent is granted. It is therefore considered appropriate to include a condition of consent to make the applicant enter into a VPA substantially in accordance with the original VPA made to Council. The VPA is to be executed prior to issue of any Construction Certificate. The VPA would also be required to be re-exhibited post development consent.

#### **Any coastal zone management plan (EP& A Act s79C(1)(a)(v))**

The site is not affected by a coastal zone management plan.

#### **The provisions of the Regulations (EP& A Act s79C(1)(a)(iv))**

The proposed development raises no concerns as to the relevant matters arising from the EP&A Regulations 2000.

#### **The Likely Environmental, Social or Economic Impacts (EP& A Act s79C(1)(b))**

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

### **The suitability of the site for the development (EP&A Act s79C(1)(c))**

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Accordingly, the site can be said to be suitable to accommodate development. However, the proposed development has been assessed in regard to its environmental consequences, and having regard to this assessment, it is considered that the development is not suitable in the context of the site and surrounding locality.

### **Submissions made in accordance with the Act or Regulation (EP&A Act s79C(1)(d))**

Advertised (newspaper) ☐      Mail ☐      Sign ☐      Not Required ☒

In accordance with Section 3.4.1 *Amended applications* the amended proposal was not required to be re-exhibited as the likely environmental impacts of the reduced tower element of the Harrow Road building will be less than the previously proposed development which was publicly exhibited for a period of 14 days between 1 October and 15 October 2014.

### **The public interest (EP&A Act s79C(1)(e))**

The public interest is served by permitting the orderly and economic development of land, in a manner that is sensitive to the surrounding environment and has regard to the reasonable amenity expectations of surrounding land users. In view of the foregoing analysis it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

### **Conclusion**

The development application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979.

The proposed development is appropriate for a locality zoned for mixed use development and undergoing transition, however, some variations (as detailed above) in relation to Auburn Local Environmental Plan 2010, State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development; and Auburn Development Control Plan 2010 - Local Centres and Residential Flat Buildings are sought.

Having regard to the assessment of the proposal from a merit perspective, it is considered that the development has been responsibly designed and provides an acceptable amenity for the future occupants of the building.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, and the development may be recommended for approval to the Joint Regional Planning Panel subject to conditions.

**ATTACHMENTS**

**Clause 4.6 *Variation to development standards* submission**  
**Architectural plans**