

26 May 2016

Hornsby Shire Council
PO Box 37
HORNSBY NSW 1630

Attention: Caroline Maeshian

**NOS. 94 – 98 GEORGE STREET, HORNSBY
DEVELOPMENT APPLICATION NO. 213/2015**

Dear Caroline,

In response to your email correspondence, various discussions and our most recent meeting with both Council and SJB Planning representatives on 17 May 2016, please see below an address to your concerns as an accompaniment to modified architectural plans submitted under separate cover.

The amended development comprises 76 residential units over 10 levels, and 2,130m² of gross floor area for commercial purposes in a 3 storey podium. Provision is made for parking 119 cars, 3 motorcycles and 25 bicycles within the basement parking levels, and an offer made for the payment of contributions according with the provisions of Council's Section 94 Development Contributions Plan, for the shortfall of 7 car parking spaces (for commercial use) not able to be accommodated upon the site.

1. Private Open Space

A number of the proposed residential units do not comply with the [Hornsby Development Control Plan 2013] HDCP requirements relating to the minimum private open space area. A total of 21 units do not achieve minimum private open space area requirements under the HDCP.

Comment: It has been agreed in discussions between Council and the applicant that the Apartment Design Guide (ADG) would be applied in the assessment of modified plans. Development control plans cannot be inconsistent with the ADG in respect of objectives, design criteria and design guidance set out in Parts 3 and 4 in relation to the following matters:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

If a DCP contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

The amended architectural plans respect the design criteria specified under Objective 4E-1 of the ADG relating to 'Private open space and balconies', ensuring that all balconies exceed minimum area and depth requirements. Additionally, it is proposed to provide a communal open space area upon the rooftop level, in addition to that provided at ground level which satisfies Council's minimum requirements, to supplement the amenity provided by private open space areas.

2. Openings on Northern Facade

The openings on northern façade provide solar access to units 0206, 0306, 0406, 0506, 0606, 0706, 0806, 0906, 1004 and 1104. However, these openings would impinge upon the capacity of the site to the north to redevelop and is essentially repeating the issue which has been established on the northern elevation of the adjoining building at No. 90 George Street.

Comment: The openings referenced by correspondence have since been deleted in modified plans submitted to Council. It is noted that none of the apartments referenced now receive the minimum requisite 2 hours of solar access at mid winter, however, through minor modifications to the fenestration of balustrades and articulation of living room windows, the solar access requirements of the ADG are none the less satisfied.

Drawing Nos. A605 – A607 prepared by Tony Owen Partners demonstrate that 44 of the proposed 76 units will receive 2 hours of solar access at mid winter (71% of the development), exceeding the minimum 70% specified by design criteria under Objective 4A-1 of the ADG relating to ‘Solar and daylight access’.

3. Floor to Floor Heights

The proposed development does not comply with the floor to floor heights for the commercial levels. A 3.0m height is proposed whereas 4m height is required.

Comment: The HDCP does not contain any standards prescribing minimum floor to ceiling heights for mixed use developments. The ADG design criteria specified under Objective 4C-1 relating to ‘Ceiling heights’ recommends as a minimum, buildings located in mixed use areas should provide a 3.3 metres floor to ceiling height to ground and first floor levels to promote future flexibility of use.

This minimum standard has been satisfied by the modified design, with the proposed Ground, Level 1 and Level 2 each having a minimum 3.3 metre floor to ceiling height.

Whilst noted by the ADG that greater than minimum floor to ceiling heights for retail and commercial floors of mixed use developments are *encouraged* upon the ground floor to promote flexibility of use, as cafe and restaurant uses may require greater ceiling heights to allow for additional servicing needs (up to 4 metres is suggested), this is not contained in the design criteria. A condition of development consent could be imposed by Council if considered desirable.

4. Building Separation

The proposed development does not comply with building separation requirements along the northern boundary. Adequate justification has not been provided detailing how visual and acoustic privacy is to be maintained between the proposed building and a future building at Nos. 100-106 George Street.

Adequate building separation has not been provided from neighbouring building to the south and for a future building to the north.

Comment: Building separation controls are designed to ensure that new developments are scaled to support the desired future character of a locality, with appropriate massing and spaces between buildings; to assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight access and outlook; and to provide suitable areas for communal open spaces, deep soil zones and landscaping.

The HDCP describes the Hornsby Town Centre as a vibrant and attractive place to live, shop, work and visit, providing a diversity of goods, services and employment opportunities. The North Precinct of the Hornsby Town Centre is described as an extension of the existing commercial core, and is to accommodate a wide range of living, employment and recreational activities.

Side boundary setbacks within the Hornsby Town Centre are prescribed by Section 4.5.5(f) of the HDCP, which references Table 4.5.4(a), and illustrates that zero side boundary setbacks are required for both commercial and residential levels of the development within the North Precinct. This is consistent with the approach adopted by the adjoining Avanti development at No. 90 George Street, which has been constructed with a zero setback to its northern boundary adjoining the subject site, demonstrating Council’s desire for a continuous street wall to reinforce its town centre building typology.

The ADG further reinforces the HDCP controls stating that 'No building separation is necessary where building types incorporate blank party walls. Typically this occurs along a main street or at podium levels within centres'.

As a consequence, the subject development also adopts a zero setback to its northern and southern property boundaries, with residential units oriented to the east and west.



Figure 1: The Avanti development to the immediate south, with balcony openings positioned upon the common boundary, 'borrowing amenity' from the subject site.

The interface between the existing development at No. 90 George Street and the proposed development has been carefully considered in design modifications to ensure fenestration does not preclude light, ventilation or outlook to either of the buildings.

Whilst acknowledged that the adjoining development at No. 90 George Street 'borrows amenity' via a north facing balcony openings located upon the common boundary that permit light and ventilation to bedroom windows, the proposed development continues to permit light and ventilation to these openings, and the typical bedroom window beyond (see **Figure 1** above and **Figure 2** over page).

The proposed development limits the depth of the floorplate, 'glass line to glass line', to approximately 12.5 metres adjacent the common boundary; provides a separation of 6 metres to the adjacent boundary beyond this footprint; and ensures that windows are oriented to the east and also provided with privacy louvres to avoid direct conflict to the south across the common boundary.

Solar access diagrams provided by Tony Owen Partners further demonstrate the modified design is able to accommodate a minimum 2 hours of sunlight to the living room windows and private open space of the adjoining units at No. 90 George Street at mid winter (see extract diagram at **Figure 2** over page).

A similar building articulation and fenestration has been applied to the proposed development's northern elevation, enabling the remnant site at Nos. 100 – 106 George Street, which may be redeveloped for residential purposes, to be accommodated without compromise.

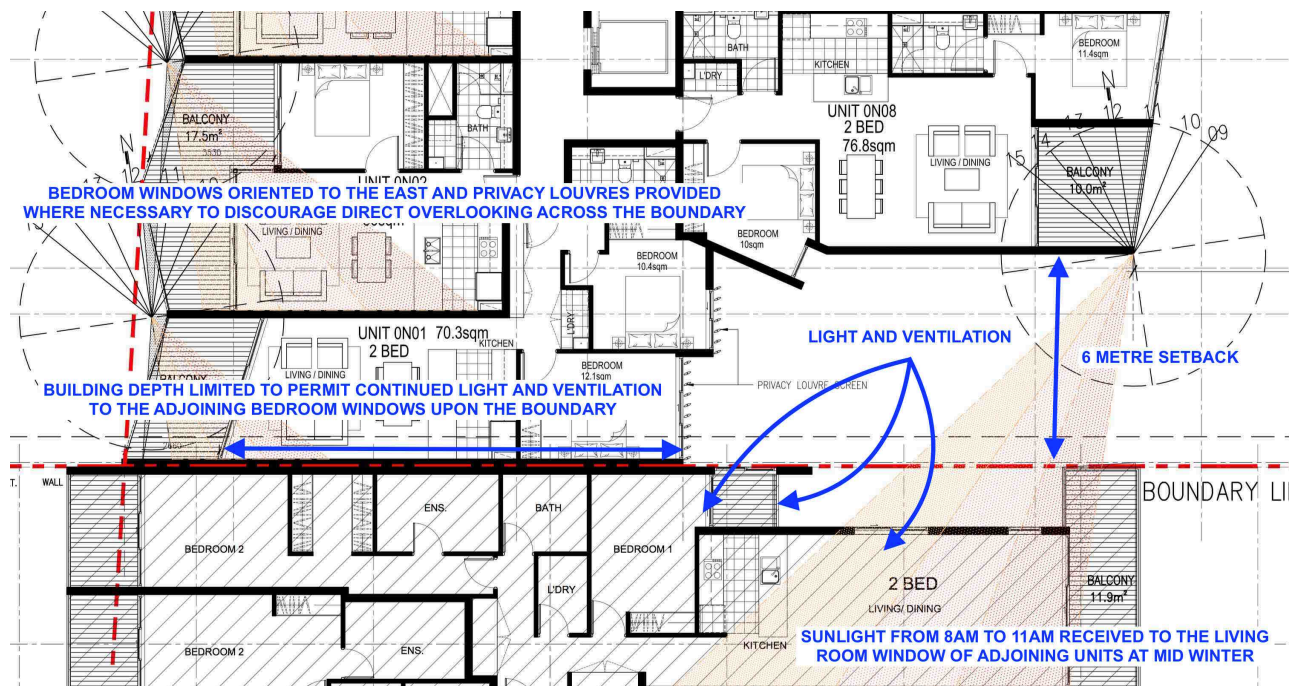


Figure 2: Design resolution at the boundary interface.

The HDCP envisages a continuous street wall built form for the North Precinct. The proposed development reinforces this building typology, and is demonstrated to have carefully considered the impacts of the proposed development upon the existing residential building at No. 90 George Street, and the potential future development of Nos. 100 – 106 George Street.

Alternate building typologies were considered and discounted, including a nominal 18 metre building depth which would have enveloped the north facing typical balcony opening and bedroom window, with the proffered design considered most appropriate in promoting amenity sharing across the common boundaries of the site.

5. Privacy

The separation between the terrace of Unit 0201 and No. 90 George Street cannot be supported. There is potential for significant overlooking between the terrace and adjoining residential unit.

Comment: The building design has been substantially modified, promoting much improved aural and visual privacy with the occupants of No. 90 George Street. Privacy louvre screens have been introduced for bedroom windows where considered necessary, and terraces on the podium level limited.

The former terrace area will be incorporated as part of the landscape plan, treated with decorative pebbles and will be non-trafficable.

6. Adaptable Housing

The HDCP requires the provision of a minimum of 30% adaptable housing. The proposed development provides 22% adaptable housing.

Comment: Consistent with the requirement of Section 4.2.7 of the HDCP, a minimum of 24 apartments, 32% of apartments within the development, are able to be provided as adaptable housing, consistent with minimum requirements of the HDCP – see Drawing No. A350 prepared by Tony Owen Partners.

7. **Maximum Building Height**

The revised plans indicate that the lift overrun and a rear section of the top floor of the building would exceed the maximum height limit.

Comment: See attached amended Clause 4.6 variation addressing this issue.

The modified plans seek the introduction of an additional commercial floor level following discussions with Council officers, consistent with the objectives of the HDCCP to promote the Hornsby Town Centre as a major centre serving the North Subregion.

The Hornsby town centre is designated to provide much of the civic, cultural, retail and economic requirements for the Subregion. The additional commercial level will provide additional opportunity for employment generating activities including offices and services, consistent with the promotion of orderly and economic use and development of land within the centre, as the gross floor area of the proposed development otherwise fell well short of the capacity of the site, owing to constraints imposed by the adjoining established mixed use development.

8. **Front Setback**

The proposed amendment of the front balconies has resulted in major encroachment and non-compliance with the front setback requirement of the Hornsby Development Control Plan (HDCCP).

Comment: The residential balconies have been modified to ensure a minimum 6 metre setback to the George Street boundary, with the podium level oriented at a perpendicular to the southern property boundary, consistent with the approach adopted by the established Avanti development at No. 90 George Street.

10. **Solar Access**

The amended shadow diagrams demonstrates that a number of units do not receive 2 hours solar access. The development is likely to be well short of the prescribed 70% of units achieving adequate direct sunlight access to principal living room windows and principal private open space area.

Comment: The building façade and living room windows have been further articulated, and amended shadow diagrams submitted to demonstrate compliance with design criteria specified under Objective 4A-1 of the ADG:

Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas

A total 54 of 76 apartments are now demonstrated to achieve the requisite minimum 2 hours of sunlight at mid winter, equivalent to 71% of apartments within the proposed development.

11. **Apartment Design and Layout**

A significant number of 2 and 3 bedroom units do not comply with the minimum size and room width requirements in the ADG.

Comment: All apartment designs have been modified to ensure compliance with Part 4D of the ADG which relates requirements for 'Apartment size and layout'. The modified plans demonstrate compliance with minimum internal apartment areas (Objective 4D-1), habitable room depths being generally no greater than 8 metres from a window (Objective 4D-2), and living room widths, bedroom areas and dimensions (Objective 4D-3) all demonstrated to meet or exceed minimum design criteria.

12. Privacy

The privacy and amenity of a number of units would be compromised due to the layout and location of windows/louvered screens.

Comment: Modified plans and the discussion preceding have illustrated how Council's previous concerns raised for privacy across property boundaries has been addressed. A number of changes have also been made to the internal configuration of units and their fenestration to ensure no privacy conflict between apartments within the development.

Modifications undertaken to increase setbacks from the side boundaries and improve access to light and ventilation of the adjoining property, beyond the 0 metre setback required by the HDCP, have however impacted upon opportunities for the proposed development to provide natural cross ventilation at the lower levels of the development.

Wherever possible, openings have been provided in apartments with multiple aspects, however, only 50% of units are naturally cross ventilated in the first nine levels of the building. All apartments above ten storeys or greater are deemed to be cross ventilated, meaning that a total of 68% of units within the building are cross ventilated.

Please do not hesitate to contact me if any further information is required to support the amended architectural plans submitted pursuant to Clause 55 of the Environmental Planning and Assessment Regulation 2000 in response to concerns variously raised by Council and their consultant town planner.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daniel', with a long horizontal line extending to the right.

Daniel McNamara
Director

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

1. INTRODUCTION

This Clause 4.6 submission has been modified to supplement amended architectural plans Prepared by Tony Owen Partners, dated 24 May 2016 (Revision Z), submitted to Hornsby Shire Council for demolition of existing improvements on site and construction of a mixed use development at No. 94 – 98 George Street, Hornsby.

The objectives of Clause 4.6 of Hornsby Local Environmental Plan 2013 (the LEP) are 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.

According with the provisions of Clause 4.6(2) of the LEP, development consent may be granted even though the development would contravene a development standard. The proposal seeks variation to the development standard identified by Clause 4.3 of the LEP, which prescribes maximum building heights. The maximum building height applicable to the site, as per the relevant Height of Buildings Map is 40 metres.

2. THE PROPOSAL

The proposal is for a thirteen (13) storey mixed use development with basement car parking. The development comprises 76 residential units over 10 levels and 2,130m² of gross floor area for commercial purposes in a 3 storey podium. Provision is made for access by service vehicles to the site and for parking 119 cars, 3 motorcycles and 25 bicycles within the basement levels.

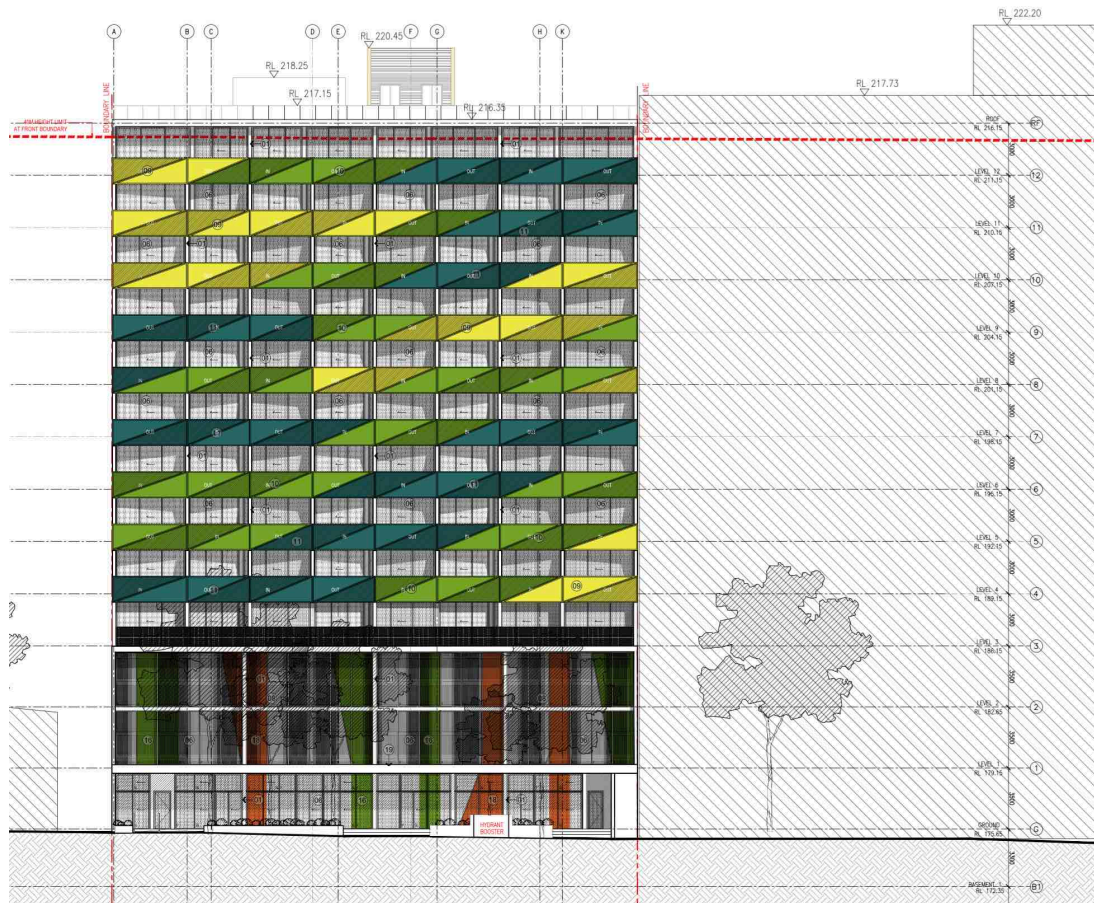
The site has a significant fall from its George Street frontage to Hunter Lane of approximately 4 metres. An existing building (PCYC) covers most of the site at present and makes determination of 'existing' ground levels difficult to ascertain. Narrow pathways along the northern and southern boundaries define small areas of natural ground. For clarity, the existing ground level has been extrapolated from these levels, plotted on the plans, and height referenced from this 'existing' ground level.

The highest point of the building is the lift overrun servicing the rooftop communal open space. At RL 220.45, the maximum height of the building is determined to be 48.855 metres, a point variation of approximately 22%.

It is noted the proposed development is marginally smaller than its southern neighbour, the Avanti development at No. 90 George Street, which is also thirteen (13) storeys in height. The lift overrun of the Avanti development is 1.75 metres higher than the lift overrun proposed, and the upper level of their balustrade 0.58 metres higher than the topmost balustrade of the communal open space area proposed (see **Figures 1 & 2** over page).

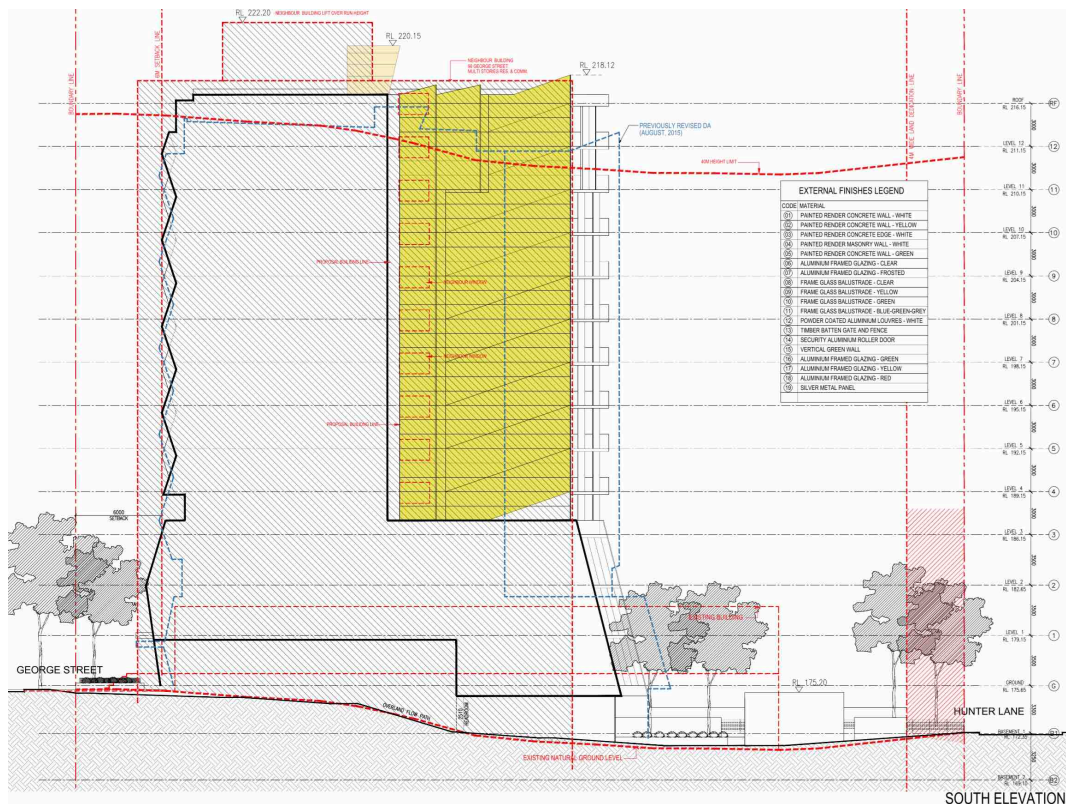
The lift overrun and upper level balustrade height breach is the result of the applicant wishing to provide an alternative rooftop communal open space and wheelchair access thereto, affording greater amenity than that provided at the ground floor level adjacent the Hunter Lane frontage.

The ground floor communal open space would otherwise satisfy the minimum requirements of Section 4.2.3 of HDCP, which requires only 50m² of communal open space be provided with a minimum dimension of 6 metres. An area of approximately 320m² is provided at ground floor level, however, it is significantly compromised by the location of the loading dock, basement entry and Hunter Lane traffic. An additional communal open space area is therefore proposed upon the rooftop, approximately 469m² in area, that would have considerably better amenity, with day long and year round access to sunlight and district views.



GEORGE STREET ELEVATION

Figures 1 & 2: The dotted red line illustrates the maximum permitted 40 metre building height, with these figures also demonstrating the development's consistency with the bulk and scale of the existing development at No. 90 George Street to the immediate south. The southern elevation (below), and sections in the architectural plans, illustrate non-compliance of the lift overrun and upper floor of the building with the maximum permitted building height.



SOUTH ELEVATION

3. CONSISTENCY WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD

Consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; that there are sufficient environmental planning grounds to justify contravening the development standard; and that 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.

The objective of the maximum building height clause is related at Clause 4.4(1)(a) of the LEP, which is to permit a height of building that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The topographical constraints of the site are in part responsible for the breach of building height. However, it is the applicant's desire to provide increased amenity for the intended occupants of the building, taking advantage of the high density built form and solar access and district views available from the rooftop, and to maximise the site's development potential by providing a third level of commercial premises within the permitted density, that are the principle determinants of the building height breach.

The development seeks to provide 3 commercial floor levels, consistent with the objectives of the HDGP to promote the Hornsby Town Centre as a major centre serving the North Subregion. The Hornsby town centre is designated to provide much of the civic, cultural, retail and economic requirements for the Subregion. Three commercial levels will provide opportunity for employment generating activities including offices and services. The gross floor area of the proposed development otherwise falls well short of the capacity of the site, owing to constraints imposed by the established mixed use development adjoining.

The maximum FSR permitted upon the site is 5:1, with residential floor space capped at a maximum yield of 3:1 (as per Clause 4.4(2A) of the LEP).

The subject application proposes a residential yield of 2.982:1 and a commercial yield of 1.16:1.

Maximising both the commercial yield for the site and resident population within the centre is consistent with the promotion of orderly and economic use and development of land. The bulk and scale of the building is also entirely compatible with existing developed sites in the vicinity, and with the desired future character of the locality. The proposed building is uphill and yet lower in height than its neighbour at No. 90 George Street to the south, and thereby consistent with the building height standard's objective of attaining a height appropriate for the site's constraints and development potential.

A reduction in building height would have the effect of diminishing the unit yield or commercial floorspace available within the town centre, where the development is already below the permitted maximum density achievable for the site (when determined by FSR), and would thereby unnecessarily limit the site's development potential. The site is located within the Hornsby Town Centre, in close proximity to a major rail station, and the proposed development considered to be well within the infrastructure capacity of the locality.

The reduction in height might also eliminate a highly desirable element of the proposal, being the secondary communal open space area.

Owing to the height and scale of the adjoining Avanti building, the fact that minor breaches of the building height will have no adverse impact upon adjoining properties, nor will the breach in height result in any loss of development potential or amenity to an adjoining property, the proposed building is considered an appropriate response to the site constraints, and protested that no significant public benefit would be attained by strict adherence to the height control.

The objective of the standard is therefore considered to be achieved.

4. CONSISTENCY WITH THE OBJECTIVES OF THE ZONE

The objectives of the B4 Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed development is consistent with the zone objectives.

Strict adherence to the height control may result in a reduction in the number of units yielded from the site or commercial floorspace available within the town centre. This would result in less people using public transport and less expenditure on local goods and services, or the loss of potential employment opportunities.

The deletion of the secondary communal open space area upon the rooftop would have no impact upon the development's consistency with the zone objectives, but would diminish the amenity of the building's intended occupants.

5. ADDITIONAL CONSIDERATIONS

5.1 Compliance is unreasonable or unnecessary in the circumstances of the case

Clause 4.6(3)(a) of the LEP states that the consent authority may consider a request justifying the contravention of the development standard if the applicant can demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In this case the objectives of the zone and the building height control aim to provide for an appropriately sized building having regard to the capabilities of the site. Overarching this, the Sydney Metropolitan Plan (A Plan for Growing Sydney) identifies Hornsby as a major centre. With Hornsby also having access to a heavy rail transport node, it is identified as worthy of higher density development to assist with meeting necessary housing targets. The subject site is located directly opposite the railway station.

The building is marginally lower than its southern neighbour, No. 90 George Street, which is also 13 storeys in height. Furthermore, it is well established that the 'character' of an area is not transformed by minor variations in building height. For instance, buildings of twelve to fourteen levels result in the same overall character. In this case, the character of the area is not compromised by the breach in building height.

This proposal could be brought into compliance by removing a residential or commercial level and by deleting the secondary communal open space at rooftop level. The only outcome this would achieve would be to reduce the number of dwellings below the maximum residential density permitted, or to reduce the commercial floorspace yielded on a highly capable development site, immediately adjacent a significant railway station, and/or to reduce available amenity to the intended occupants of the building. This response would be contrary to the objectives of the metropolitan strategy and illustrates that strict adherence to this control would be unreasonable and unnecessary in the circumstances, where the development is otherwise compliant with the maximum density permitted upon the site.

5.2 There are sufficient environmental planning grounds to permit the variation

The development demonstrates sufficient planning and environmental grounds to permit the variation, as summarised below:

- The development is consistent in height with the adjoining Avanti building at No. 90 George Street, and with the desired future character of the streetscape.
- There will be detrimental impact upon No. 90 George Street due to the adjoining site similarly having a zero setback to the common boundary with units oriented to the east and west.
- Additional residents within an emerging centre will provide an economic multiplier effect and stimulate existing and new business.
- Additional commercial floorspace within an emerging centre will provide opportunities for employment and will stimulate existing and new business.

5.3 The variation is in the public interest

As outlined in the SEE, the proposed development supports the desired future character of this transitioning locality and provides a mix of land uses which support the development of this precinct.

The proposed development is consistent with the objectives of the height control and the objectives for development within the B4 zone.

This variation to the height control does not promote any significant public benefit, however, it will result in minor benefits as set out below:

- Provide additional housing near rail transport;
- Result in additional expenditure on local goods and services;
- Improve housing affordability through increased supply and choice in the locality;
- Stimulate new business in the local economy;
- Enable project viability that will provide an economic multiplier effect through construction jobs and post construction employment in mooted retail and commercial premises; and
- Enable road widening at the rear of the site.

6. CONCLUSION

The proposed development will be consistent with the surrounding land uses and the desired future character of development within the Hornsby Town Centre North Precinct, and will not have adverse amenity impacts on surrounding properties as a result of the building height breach.

The main reasons offered in support of this variation are:

- The building remains lower than its southern neighbour and is therefore not inconsistent with the desired future character of the Precinct;
- No significant adverse impacts will result from the breach;
- The breach facilitates provision of a secondary communal open space area, accessible to wheelchair users, with day long and year round access to sunlight and district views;
- The breach promotes increased availability of housing and employment opportunity within the maximum FSR constraints of the site, promoting the economic use and development of the land resource;
- The variation supports the intent of the metropolitan strategy to provide high density development proximate to railway stations.

The only result of strict compliance would be to reduce the number of units provided on a key site, to limit the amenity afforded to residents by deleting the communal open space, or to reduce ongoing opportunities for employment, when the development is otherwise compliant with the maximum permitted density available upon the site. The proposed building will enhance the public domain and uphold the objectives of the LEP. It will result in a better planning outcome which reinforces the desire to reinvigorate the North Precinct of the Hornsby Town Centre.

Strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 to enable an exception to this development control considered appropriate in this instance. Consistent with the objectives of Clause 4.6 of the LEP, support of the proposed minor breach to the building height development standard will provide an appropriate degree of flexibility in application of certain development standards to particular development, and as demonstrated above, will achieve better outcomes for and from development by allowing flexibility in this particular circumstance.