

**JOINT REGIONAL PLANNING PANEL  
(Sydney West Region)**

<b>JRPP No</b>	2015SYW162
<b>DA Number</b>	DA/526/2015 (Lodged 13 May 2015)
<b>Local Government Area</b>	City of Parramatta Council
<b>Proposed Development</b>	Amended proposal for demolition of existing structures, construction of a 22 storey mixed use building comprising 54 residential units, 57.75m <sup>2</sup> of retail space and basement car parking for 67 cars, stratum and strata subdivision.
<b>Street Address</b>	Lot 2 in DP 519703, No. 35 Oxford Street, Epping
<b>Applicant/Owner</b>	Applicant: MKD Architects Pty Ltd Owners: Mrs B Quinn, Ms R McLean and Mr R Lincoln
<b>Number of Submissions</b>	Six (6) – Original Proposal  Three (3) - Amended Proposal
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	General Development Over \$20 Million  Cost of Construction proposed = \$20,362,457
<b>List of All Relevant s79C(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• <i>Hornsby Local Environmental Plan 2013</i></li> <li>• <i>State Environmental Planning Policy No. 32 – Urban Consolidation</i></li> <li>• <i>State Environmental Planning Policy No. 55 – Remediation of Land</i></li> <li>• <i>State Environmental Planning Policy No. 65 – Design Quality Residential Flat Development</i></li> <li>• <i>Draft State Environmental Planning Policy No. 65 – Design Quality Residential Flat Development (Amendment No 3)</i></li> <li>• <i>State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004</i></li> <li>• <i>State Environmental Planning Policy - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i></li> <li>• <i>Hornsby Development Control Plan 2013</i></li> <li>• <i>Hornsby Section 94 Contributions Plan 2012-2021</i></li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	Basement Levels 1-3, Ground Floor Plan, Levels 1–21, Elevations, Sections, Photomontages
<b>Recommendation</b>	Refusal
<b>Report by</b>	Kendal Mackay - Consultant Planner (DFP Planning Pty Ltd)

## ADDENDUM ASSESSMENT REPORT AND RECOMMENDATION

### EXECUTIVE SUMMARY

1. The application to develop a 22 storey mixed-use building was previously reported to the JRPP on 2 December 2015. This scheme involved a party wall along the southern boundary. The panel determined to defer the development application to enable negotiation between the applicant Luxcon and the Catholic Church Parish in relation to pursuing a potential joint development with the adjacent site 33 Oxford Street. The applicant subsequently indicated that the Church was unwilling to sell 33 Oxford Street to the applicant or undertake a joint venture but generally agreed to a minimal southern boundary setback. The Church suggested that they did not intend to develop their land beyond a maximum height of 4 storeys.
2. Amended plans were received in March 2016. The amended application proposes demolition of existing structures and the erection of a 22 storey mixed use building comprising 54 residential units, 57.75m<sup>2</sup> of retail space and basement car parking for 67 cars. This scheme abandoned the previous southern party wall scheme and moved the tower towards the northern boundary by 1.5m to 3m at the upper levels.
3. The amended proposal generally complies with the *Hornsby Local Environmental Plan 2013* however, it is considered to be inconsistent with clause 6.8 of the LEP as it does not provide for design excellence in the Epping Town Centre and is inconsistent with clause 5.10 as it is likely to have a detrimental impact on the significance of the nearby heritage item at No. 31 Oxford Street.
4. The amended proposal is generally consistent with *State Environmental Planning Policy No. 65 – Design Quality Residential Flat Development* however, the non-compliances with building separation requirements of the Residential Flat Design Code are not supportable in this instance.
5. The amended proposal is generally consistent with the relevant requirements of the Hornsby Development Control Plan 2013 however, the non-compliances with side setbacks, are not supportable in this instance.
6. Three (3) submissions have been received in respect of the amended application.
7. It is recommended that the application be refused.

### RECOMMENDATION

THAT the Joint Regional Planning Panel (Sydney West) refuse Development Application No. 526/2015 for demolition of existing structures, erection of a 22-storey shop top housing development containing 54 units, ground floor retail space, basement parking, stratum and strata subdivision at No. 35 Oxford Street, Epping being Lot 2 DP 519703 pursuant to Section 80(1) of the *Environmental Planning and Assessment Act, 1979* for the reasons stated in Schedule 1 of this report.

## 1.0 HISTORY OF THE SITE & SUBJECT DA

On 13 May 2015, the subject application was lodged with Council. The development application entailed a 24 storey building with 58 apartments and ground floor retail, with a tower element centrally located over a 2 storey podium. This proposal did not comply with numerous provisions of SEPP 65/ RFDC and Council's LEP and DCP including site isolation, building height, building setbacks, building separation, minimum lot width, private open space and natural light. The proposal was considered to be an unacceptable design outcome.

In July 2015, the applicant was advised to undertake further discussions with the land owners of the southern adjoining site at No.33 Oxford Street with a view to purchasing land and developing the two parcels in conjunction with one another. In addition, the application should demonstrate why the site is unable to be consolidated with the adjoining property to the north.

On 21 September 2015, the Applicant lodged amended plans for a 22 storey mixed use building comprising a 3 storey podium and a zero side setback for the tower element to No.33 Oxford Street, the Church Presbytery site. This envisaged that future development on the adjoining land to the south could be developed separately in the future with a zero northern side setback.

On 9 November 2015 the Church made a submission on the application advising that:

*"I am now able to advise Council that the Parish is open to considering and pursuing a potential joint development of 33 and 35 Oxford Street, including the potential sale of 33 Oxford Street to the owners of 35 Oxford Street... The parish wishes to explore the creation of community, commercial and retail spaces at the lower levels of the amalgamated development."*

On 2 December 2015, the JRPP considered the subject DA and resolved as follows:

*"The panel unanimously determined to defer the development application as described in Schedule 1 pursuant to section 80 of the Environmental Planning and Assessment Act 1979 and considers that a better urban design outcome would be achieved if the site was developed in conjunction with the adjacent property 33 Oxford Street, Epping. The application is deferred until the meeting to be scheduled in March 2016 to enable negotiation between the applicant Luxcon and the Catholic Church Parish in relation to pursuing a potential joint development with 33 Oxford Street as suggested by the Catholic Parish of Epping of Carlingford in their letter dated 9 November 2015."*

Refer to the attached JRPP Assessment Report dated 2 December 2015 for the site and detailed DA history prior to December 2015.

On 25 January 2016, Council wrote to the Applicant requesting their written response to the matters raised by the JRPP by Monday 22 February 2016.

On 3 February 2016, the Applicant provided additional information relating to the proposed Deferred Commencement conditions in the 2 December 2015 Assessment Report – namely a modification to the unit mix to comply with HDCP, additional stormwater details and a Draft s88B instrument for use of the proposed driveway and basement by the southern adjoining land.

On 16 February 2016, the Applicant met with Council Officers to discuss a concept for an amended proposal entailing:

- a 1.5 metre setback from the southern boundary and 4 metre setback from the northern boundary at Levels 3-7; and
- a 3 metre setback from the southern boundary and 6 metre setback from the northern boundary at Levels 8-21.

The Applicant indicated that the Church had indicated an unwillingness to sell their land to the Applicant or undertake a joint venture but had generally agreed to the minimal southern setback, suggesting that they did not intend to develop their land beyond a maximum height of 4 storeys.

Council indicated to the Applicant that despite the Church's verbal advice, the proposed setbacks were significantly non-compliant with the building separation requirements of SEPP 65 and RFDC/ADG as well as Council boundary setback requirements under HDCP and without the southern adjoining land being subject to the proposed development application, there was no surety that the Church or a future landowner of the southern adjoining land may not seek to develop a tall thin tower on that land in the future. In that event, a severely compromised urban design outcome would result with minimal building separation and stark blank facades. This was not consistent with the desired future character of the Epping Town Centre.

On 22 February 2016, the Church wrote to Council indicating that on the basis that the Applicant redesigned the proposal to be set back from the boundary above the podium level, the Parish had resolved that any future development of 33 Oxford Street would be to a height no greater than 4 storeys with zero setback to the northern boundary. Furthermore, the Church indicated a willingness to work toward a mechanism to restrict the height of future development on their land such as a restrictive covenant or an LEP height amendment. The Church also reiterated its preference for the shared carpark entry easement to remain as a feature of the proposal.

On 24 February 2016, Council Officers briefed the JRPP on the responses received from the Applicant and the Church and amended concept plans provided by the Applicant.

In response to this briefing, the JRPP noted that variations to the planning controls are ordinarily entertained for sites that are isolated and that taking into account the recent advice from the Church, may not be possible for 35 Oxford Street to amalgamate with 33 Oxford Street at this time. However, to consider the Site as 'isolated', the Applicant should provide

further justification that the Site could not and should not be amalgamated with the adjacent property to the north and west, being 37-41 Oxford Street, including evidence of discussions with the adjacent land owner regarding the future of the property and why the larger site cannot incorporate 35 Oxford Street in its redevelopment scheme.

Secondly, the JRPP noted that if the Site is determined to be isolated, then the treatment of the side elevations should incorporate articulation including openings such as windows and balconies, particularly at the higher levels.

On 26 February 2016, Council advised the Applicant of the above comments from the JRPP.

On 3 March 2016, the Applicant submitted amended plans.

On 9 March 2016, the Applicant advised Council that it was not reasonable for the Applicant to purchase the larger adjoining land as it was much larger (approximately five times as large) than the Site. According to the Applicant, due to the commercial arrangements associated with the northern adjoining land, its owner was not in a position to consider purchasing No. 35 and incorporating it into a much larger future development. Furthermore, existing long term leases on the northern adjoining land indicate it may not be developed until the year 2030. On this basis, the Applicant considers the Site to be isolated.

Between 16 March 2016 and 30 March 2016 the DA was renotified. Three (3) submissions were received.

On 18 March 2016, the owner (Goodman) of the northern adjoining land at 37-41 Oxford Street wrote to Council indicating as follows:

- The Applicant did contact Goodman to attempt to purchase 37-41 Oxford Street although the offer price was significantly below market value and was not considered a genuine offer;
- Goodman had considered purchasing 35 Oxford Street prior to it being sold to the Applicant but it was decided not to proceed with such a purchase;
- Goodman is under contract to sell their land to Poly Group, who intend to develop the site in a manner consistent with their recently approved development at 20-28 Cambridge Street; and
- The existing lease on the Goodman site expires in 2020 and negotiations are underway with the tenants to arrange early vacation.

## **2.0 THE AMENDED PROPOSAL**

The following summarises key aspects of the amended proposal compared with the proposal previously considered by the JRPP:

- The nil southern, northern, eastern and western setbacks at the Ground Level and Levels 1-2 (i.e. the podium) have been retained;
- The southern side setback above the podium has been increased from 0 metres to 1.5 metres from Levels 3-7 and to 3 metres from Levels 8-21;

- The northern side setback above the podium has been decreased from 6 metres to 4.5 metres at Levels 3-7 and decreased from 9 metres to 6 metres from Levels 8-21;
- The southern façade treatments have been modified as follows:
  - Mesh screening with growing vines;
  - Combination of flush and recessed concrete panels in variable colours;
  - Tinted windows at Levels 3-7 through the centre of the tower;
  - Balcony returns from the eastern and western elevations at Levels 12-21;
- The northern façade treatments have been modified as follows:
  - Mesh screening with growing vines and flush and recessed concrete panels in variable colours consistent with the treatment to the southern elevation;
  - Highlight windows to bathrooms/laundries;
  - Fixed external curtain to screen northern balconies.
- Reduction in the number of apartments from 56 to 54, being 12 x one bed apartments (22%), 37 x two bed apartments (68%) and 5 x three bed apartments (10%) to achieve compliance with Council's unit mix control under HDCCP;
- Retention of 57.75m<sup>2</sup> of retail floor space at the Ground Level;
- Retention of 67 basement car parking spaces including 4 visitor spaces, 1 car share space, 60 residential spaces (including 17 disabled spaces) and 2 retail spaces; and
- Retention of the proposed right of carriageway in the basement to provide for future access to the southern adjoining 33 Oxford Street.

No amended draft stratum/strata subdivision plans, landscape plans or BASIX Certificates reflecting the amended design were submitted to Council.

### **3.0 ASSESSMENT**

The amended development application has been assessed having regard to the relevant matters for consideration prescribed under section 79C of the *Environmental Planning and Assessment Act 1979* (the Act).

The following sections only relate to matters that are relevant to the amended proposal and should be read in conjunction with the original assessment report dated 2 December 2015.

#### **3.1 Hornsby Local Environmental Plan 2013**

##### **3.1.1 Permissibility**

The amended proposal continues to constitute 'shop-top housing' which is permissible with development consent in the B2 Local Centre Zone (the B2 Zone) under the *Hornsby Local Environmental Plan 2013 (HLEP)*.

##### **3.1.2 Subdivision**

The original DA sought approval to for a stratum and strata subdivision of the proposed building and draft plans of subdivision were lodged with the original DA. However, no amended plans have been lodged to reflect the amended building layout and accordingly, development consent pursuant to clause cannot be granted to this aspect of the DA.

### 3.1.3 Building Height

The amended proposal has a maximum height of 71.7 metres which complies with clause 4.3 of *HLEP* which provides for a maximum permissible height on the Site of 72 metres.

### 3.1.4 Floor Space Ratio

The amended proposal has a maximum FSR of 4.48:1 which complies with clause 4.4 of *HLEP* which provides for a maximum FSR on the Site of 4.5:1.

### 3.1.5 Heritage

In respect of clause 5.10 of the *HLEP* which sets out heritage conservation provisions, Council's Heritage Officer has provided the following comments regarding the amended proposal:

- The property is located in the vicinity of heritage listed items 31 Oxford Street, Epping (Item No. 393 – Our Lady of Help Christians Church) and 48 Oxford Street, Epping (Item No 394 – House);
- The proposed building would not complement the form, scale and style of the heritage items although this impact could be reduced by setting the tower back further to the north;
- The siting of the proposed building does not complement the Church although this could be improved if the building was setback further from the street and the southern boundary to provide landscaping within the Oxford Street and southern setbacks which would soften the impact of the development on the heritage items in the vicinity and maintain views to and from the church from the public domain;
- The podium level of the building on the southern side is bland and unarticulated. This would be improved by introducing different materials and adding a balcony opening on the south eastern side of the Oxford street balconies (2 levels). The podium level elevations should be face brick (dark toned) material to complement the character and setting of the circa 1930s Church building. Brick banding and/or patterns could also be included;
- The southern elevation of the tower should have greater articulation, including levels above the podium. The blandness of Levels 3-7 could be reduced by incorporating balconies, windows, plus stone and timber materials. Levels 8 - 21, should also provide greater articulation and modulation similar to that proposed from levels 15-18. Levels 19 - 22 should have articulation, setbacks and darker toned material/colour scheme, to reduce the visual bulk and scale of the development on the heritage item; and
- Revised materials and finishes are recommended to include, face brick, stone, and timber to provide a sympathetic and visually recessive backdrop to the adjacent heritage items.

Accordingly, further design changes are warranted on heritage grounds and given that this was one of the issues raised by objectors, any amended plans would require public exhibition

and further assessment before development consent could be granted to the proposed development.

### **3.1.6 Design Excellence**

In respect of clause 6.8 of the *HLEP* which relates to Design Excellence for buildings over 29.5 metres in height, Council's independent urban design advisor Johannsen and Associates Architects has assessed the amended proposal and the following summarises that assessment:

- The architectural expression of the amended proposal does not realise a more harmonious facade composition as requested by Council. There are many different elements on the elevations that create an unnecessarily busy character and in particular the north and south elevations have graphic intensity which would visually dominate the surrounding area;
- The north and south elevations have not been well resolved and the complex tapered elements from Level 8-18 require simplification to be more complementary with the rest of the envelope. Proposed vertical greenery to these elevations is questionable, and may prove difficult to maintain. As both these facades will be highly visible, it is important for them to have a more considerate and cohesive architectural aesthetic;
- As proposed this development would create a precedent for narrow canyons between buildings with significant impacts on streetscape and views from the surrounding district;
- The 3 storeys podium scale is acceptable and the façade modelling to Oxford Street now has a better fit with the 'monumental' character of the heritage listed church and its immediate surrounds, as well as the overall Oxford Street streetscape frontage. Nevertheless some continuation of the structural frame down to footpath level would be an improvement (see also heritage comments at Section 3.1.5);
- The bulk and massing of the proposal is assessed as unsuitable for the immediate streetscape and the wider urban context and more suitable and consistent façade details are required;
- No amenities have been provided around the pool terrace on the podium roof, and at least one shared universal toilet and shower should be included;
- The proposal has numerous non-compliances, is not able to reach the expected level of design excellence and should therefore be recommended for refusal.

### Discussion

Whilst the previous proposal responded to the built environment and desired future character of the locality by providing for a zero southern side boundary setback, thereby optimising the potential for a complementary building on the southern adjoining land, the amended proposal provides for a minimal 1.5-3 metre southern setback on the basis that the southern adjoining landowner has now indicated that it does not wish to build above 4 storeys.

The written advice of the southern landowner is acknowledged although it does not constitute a statutory limitation on that land and no such restriction can be imposed on that land through



this DA. Accordingly, there remains potential for the current or a future landowner of 33 Oxford Street to attempt to realise the full statutory height limit of 72 metres on that land or a development with a height greater than 4 storeys. If the current DA is approved without a statutory limitation of 4 storeys, such a development would adjoin a 22 storey tower set back only 1.5-3 metres from the boundary which is not a desirable urban design outcome.

The Applicant has provided a draft restrictive covenant between Council and the adjoining land owner to prevent the height of any future structures on 33 Oxford Street to be no more than 4 storeys. The Church and the Council have not signed this draft covenant. If the application is approved, the Council could pursue a reduced statutory height limit on 33 Oxford Street via a modification to the Local Environmental Plan. Neither of these options can be the subject of a Deferred Commencement condition as the outcome is not certain.

With regard to the northern elevation, the proposal seeks to rely upon a reduced side setback by including a substantially blank wall (albeit articulated with a landscape element and recessed concrete panels) with only highlight windows to bathrooms and laundries and screening to balconies. This is considered to be an inferior design outcome to a more traditional elevation with north-facing habitable room windows and outdoor living spaces. The potential for openings on the northern elevation was reduced when the amended plans relocated the tower towards the northern boundary in order to develop this narrow site in isolation.

In addition, the reduced setbacks compromise the potential for a suitable building separation to a future development on the northern adjoining property. A habitable to habitable building separation would minimise overshadowing on the proposed development from a future building on the northern adjoining site and minimise the visual bulk and scale between two 22-storey high-rise towers when viewed from the public domain and surrounding sites.

As indicated in Section 1.0, the Applicant had indicated to Council that they had attempted to purchase the northern adjoining land, that existing long term leases on that land may run to the year 2030 and hence there was no short term opportunity to develop the Site in conjunction with this parcel. However, information received by Council from the adjoining landowner is to the contrary and it appears that development of that site could proceed much sooner subject to reaching an agreement with the current tenant to vacate prior to 2020. Accordingly, whilst there would appear to be limited opportunity for amalgamation with the northern adjoining land, it is considered that the proposition of joint development of these two sites has not been completely exhausted.

Notwithstanding the failures to amalgamate with the northern or southern adjoining land parcels and whilst the proposal may never achieve the level of design excellence that a fully compliant building would, it is considered that the proposal has potential to be of much greater design quality subject to further amendments which can be broadly described as follows:

- The overall design aesthetic should be simplified by removal of the diagonal grids on the northern and southern facades to provide a more relaxed expression;

- There should be a gradual transition of built form from solid with punched openings to lighter expressions with more open and recessive appearance further up the tower;
- A 4<sup>th</sup> level podium along the southern side of the tower at Level 3 should be included to match the potential form of a 4 storey development on the southern adjoining land. This podium level should be set back 9 metres from the Oxford Street and 12 metres from the rear boundary;
- The podium levels should be face brick (dark toned) material to complement the character and setting of the circa 1930s Church building and brick banding and/or patterns could also be included;
- Revised materials and finishes are recommended to include face brick, stone, and timber to provide a sympathetic and visually recessive backdrop to the nearby heritage item;
- The facades of Level 3-7 should incorporate darker, brick or stone coloured materials or finishes;
- Highlight windows should be introduced at Levels 8-18 in the southern elevation to the kitchen/main bathroom of units on the southern side of the building to provide greater horizontal articulation in this façade. These windows should be fixed, obscure glazed and acoustically treated to minimise potential acoustic and visual privacy impacts for any future development on the southern adjoining land;
- Horizontal brick or stone banding should be incorporated extending from the outer edges of the additional highlight windows to the eastern and western edges of the southern façade;
- At Levels 8-13, the solid blade walls on the southern edge of the balconies to units in the southern side of the building could be replaced with appropriately designed horizontally louvred screens to provide visual relief to the edges of this façade whilst preventing adverse overlooking down to the southern adjoining site;
- The diagonal cut-outs to balconies at the upper levels on the southern façade should be removed and replaced with orthogonal balcony elements and horizontal screens;
- Levels 19-21 of the southern elevation should be set back further from the southern boundary, have horizontal articulation and have a darker toned material/colour scheme to reduce the visual bulk and scale of the development when viewed from the south in the context of the heritage item; and
- The trapezoidal form of the northern façade should be removed and screens to balcony edges extended to the upper levels where setbacks do not meet the minimum ADG/HDCP requirements, similar those used on lower levels.

The extent of these design changes warrants amended plans. Given that the setback non-compliances and the aesthetics of the building were issues raised by objectors, any such amended plans should be publicly notified and subject to further assessment by Council's planning, heritage and urban design officers/consultants.

Subject to that public exhibition and further assessment, and if it is assumed that the Site is isolated by virtue of the limited possibility of amalgamating with the northern or southern adjoining land, it is considered that a building demonstrating the above design amendments could be supportable.

### 3.2 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

The design principles of SEPP 65 are stated in the following table together with an assessment of the amended proposal.

SEPP 65 – Design Principles	
Design Principle	Assessment
<p><i>Principle 1: Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.</i></p> <p><i>Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.</i></p>	<p>The proposed development responds to the topography of the Site by stepping down toward the rear at the upper levels to comply with the statutory height limit.</p> <p>The amended design incorporates significant additional façade treatments on the northern and southern elevations to minimise the appearance of sheer vertical walls. Whilst the proposed facades are considered an improvement to the previous design, it would be preferable to simplify the shape of the northern wall and to have greater window and balcony articulation across the majority of both elevations. The lack of articulation is as a consequence of the non-compliant side setbacks which do not provide for equitable development opportunities on adjoining land.</p>
<p><i>Principle 2: Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.</i></p> <p><i>Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.</i></p>	<p>The Site has been zoned to permit the height and general form of development as proposed although the current proposal is considered to be an inferior compromise to a fully compliant development on a larger and wider site which includes adjoining land.</p>
<p><i>Design Principle 3: Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.</i></p> <p><i>Appropriate built form defines the public domain, contributes to the character of streetscape and parks, including their views and vistas, and provides internal amenity and outlook.</i></p>	<p>Whilst Council supported the previous design on the basis that it could form half of a larger development including the southern adjoining land, the amended design now relies on northern and southern side boundary setback non-compliances which result in adverse impacts on the development potential of the northern adjoining land and introduces two elevations which are not articulated by active spaces such as balconies and operable windows such as would be the case for a fully compliant building.</p>

SEPP 65 – Design Principles	
Design Principle	Assessment
<p><i>Design Principle 4: Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).</i></p> <p><i>Appropriate densities are sustainable and consistent with the existing density in an area or in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.</i></p>	<p>The amended proposal complies with the 4.5:1 FSR limit for the Site although given the non-compliances with the side boundary setbacks the primary concern remains that the proposal would be more appropriate on a larger and wider Site.</p>
<p><i>Design Principle 5: Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.</i></p> <p><i>Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.</i></p>	<p>The proposal complies or is capable of complying with all statutory and Council requirements in respect of resources, energy and water efficiency and provides for a high degree of solar access for future residents.</p>
<p><i>Design Principle 6: Good design recognises that together landscape and buildings operate as an integral and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.</i></p> <p><i>Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by coordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.</i></p> <p><i>Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbour's amenity, and provide for practical establishment and long term management.</i></p>	<p>The amended proposal continues to provide an appropriate level of podium landscaping for a Site in a dense urban environment as is envisaged for the Epping Town Centre and this landscaping will be visible from both within the Site and from the public domain in Oxford Street.</p>
<p><i>Design Principle 7: Good design provides amenity through the physical, spatial and environmental quality of a development.</i></p>	<p>The slightly amended apartment layouts continue to provide for a high degree of solar penetration and cross ventilation and the variety of apartment</p>

SEPP 65 – Design Principles	
Design Principle	Assessment
<i>Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.</i>	sizes and orientations provides for a diversity of dwelling opportunities to suit an array of future prospective residents, including those with mobility impairments.
<p><i>Design Principle 8: Good design optimises safety and security, both internal to the development and for the public domain.</i></p> <p><i>This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.</i></p>	The amended proposal continues to provide for secure access arrangements to the pedestrian lobby and the basement car parking and subject to recommended conditions regarding lighting and security systems, is considered acceptable in this regard.
<p><i>Design Principle 9: Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.</i></p> <p><i>New development should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.</i></p> <p><i>New development should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.</i></p>	The amended proposal provides for a range of different apartment sizes and typologies and now complies with the unit mix provisions within HDCP.
<p><i>Design Principle 10: Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.</i></p>	The amended proposal incorporates additional façade treatments to the northern and southern façades however, Council's Heritage Officer and consultant urban designer have assessed the amended proposal and determined that it does not demonstrate design excellence and is likely to result in an adverse streetscape impact, particularly when viewed in the context of the nearby heritage item.

### 3.3 SEPP 65 – Residential Flat Design Code

The proposed development was lodged prior to the amendments to SEPP 65 and commencement of the Apartment Design Guide (ADG). Accordingly, this assessment must be in accordance with those provisions that existed at the date of lodgement of the DA, including the RFDC. Notwithstanding, the ADG has been considered in this assessment.

The table below sets out the amended proposal's compliance with the RFDC and a discussion in regard to non-compliances follows the table.

Residential Flat Design Code							
Control	Requirement			Proposal			Compliance
<b>Building Separation</b>	4 st	5-8 st	9+ st	4 st	5-8 st	9+ st	No (see Section 3.3.1)
Habitable to habitable	12m	18m	24m	12m Rear	18m Rear	21-24m Rear	
Habitable to non-habitable	9m	12m	18m	9m North	10.5m North	15m North	
Habitable to non-habitable	9m	12m	18m	5m South	7.5m South	10.5m South	
<b>Deep Soil Zone</b>	25% min of open space			0%			No (see Section 3.3.2)
<b>Communal Open Space</b>	25-30% min. (243-292m <sup>2</sup> )			26% (255m <sup>2</sup> )			Yes
<b>Ground Level / Podium Private Open Space</b>	25m <sup>2</sup> min.			18-41m <sup>2</sup>			No (see Section 3.3.3)
<b>Adaptable Housing</b>	20% min. (11)			30% (17)			Yes
<b>Kitchen Distance</b>	8m max.			8m			Yes
<b>Dwelling Size</b>	- 1 br – 50m <sup>2</sup> min. - 2 br – 70m <sup>2</sup> min. - 3 br – 95m <sup>2</sup> min.			- 50-65m <sup>2</sup> - 72-90m <sup>2</sup> - 100-130m <sup>2</sup>			Yes Yes Yes
<b>Balcony Depth</b>	2m min.			2m+			Yes
<b>Ceiling Height</b>	- 3.3m min. ground and first floor - 2.7m min. all other residential floors			- 4.4m ground floor 3.3m first floor - 2.7m			Yes Yes Yes
<b>Storage</b>	- 1 br – 6m <sup>3</sup> min. - 2 br – 8m <sup>3</sup> min. - 3 br – 10m <sup>3</sup> min. - 50% internal			- 6-10m <sup>3</sup> - 8-18.5m <sup>3</sup> - 6-20m <sup>3</sup> - 50% or more			Yes Yes No (see Section 3.3.4) Yes
<b>Natural Light</b>	70% min. (38)			87% (47)			Yes
<b>Single Aspect</b>	10% max. (6)			0% (0)			Yes
<b>Building Depth</b>	10-18m			16m			Yes
<b>Cross Ventilation</b>	60% min. (33)			71% (38)			Yes

As detailed in this table, the amended proposal does not comply with several prescriptive measures of the RFDC and a brief discussion of the relevant development controls and best practice guidelines is provided below.

### 3.3.1 Building Separation / Setbacks

The proposal does not fully comply with the building separation requirements of the RFDC, specifically in regard to the practice of providing 50% of the building separation within the Site to permit the remaining 50% to be provided on adjoining development sites. The non-compliances are as follows:

- **Northern side setback** – the proposal includes habitable rooms along the northern side of the building at all levels as well as balcony edges. However, only bathrooms and laundries are provided with windows in this northern elevation and those windows are highlight windows and the balconies would be screened. Accordingly, the northern elevation of the proposal has been assessed as if it was non-habitable, and the southern façade of the future building on the Goodman site to be habitable.

For the proposal to be compliant with the RFDC, the proposal would need to provide 50% of the non-habitable to habitable separation requirement. This would require a setback for the proposed development of 6.5 metres at 5-8 storeys (for a 13m separation) and 9 metres above 8 storeys (for an 18m separation). In comparison the proposal has a 4.5 metres setback at 5-8 storeys and 6 metres setback above 8 storeys.

However, the ADG has adopted modified setback controls under the visual privacy element that permits a non-habitable room to be setback from a boundary by 4.5 metres at 5-8 storeys and 6 metres above 8 storeys. The proposal complies with the prescriptive ADG controls for visual privacy.

While the development complies with the design criteria for privacy at Objective 3F-1 of the ADG, the proposed northern setback is considered to compromise the ability to have a suitable building separation from a future development on the northern adjoining property to minimise overshadowing on the proposed development, to provide for a more articulated elevation with north-facing indoor and outdoor living spaces and to minimise the visual bulk and scale between two 22-storey high-rise towers when viewed from the public domain and surrounding sites.

If the JRPP is of the opinion that it is appropriate to develop this site in isolation, then the proposed northern setbacks could be supported subject to further design amendments as described in Section 3.1.6.

- **Southern side setback** – the amended proposal introduces a 1.5 metre side setback at 5-8 storeys and a 3 metre setback above 8 storeys. This does not comply with the ADG setback controls under the visual privacy element that permits a non-habitable room to be setback from a boundary by 4.5 metres at 5-8 storeys and a 6 metre setback above 8 storeys. The Applicant has been unable to acquire the southern adjoining parcel or agree to undertake a development in conjunction with that landowner. The southern adjoining landowner has indicated that it does not wish to develop their land for more than a 4 storey building. However, as previously

discussed at Section 3.1.6 of this report, there is no statutory control limiting the height of the adjacent site to 4 storeys and that land is not part of this current DA.

- **Western rear setback** – As discussed in the original assessment report, a small part of the north-western corner of the proposed building at Levels 8-13 was a minimum of 21 metres from a compliant theoretical building envelope on the western adjoining land at Nos. 37-41. The amended proposal moves the building slightly but no greater affectation results. Accordingly, for the reasons stated in the original assessment report, namely that this is small part of the entire development with an offset view angle and can be subject to incorporation of privacy screening, the proposed minor non-compliance is acceptable.

### **3.3.2 Deep Soil Zone**

The amended proposal continues to provide no deep soil zone and this is as a consequence of the Site being within an area where dense urban development is envisaged by Council's controls and where a boundary to boundary podium is encouraged. Notwithstanding, landscaping continues to be provided at the podium level.

### **3.3.3 Ground / Podium Level Private Open Space**

Only Unit 303 at the podium level does not comply with the 25m<sup>2</sup> minimum private open space required by the RFDC, having only 18m<sup>2</sup> of balcony space. This minor non-compliance for one apartment at a podium level in a dense urban area is considered acceptable in this instance.

### **3.3.4 Storage**

Only Units 1102 and 1202 do not comply with the 10m<sup>3</sup> minimum storage requirement (for three bedroom apartments) of the RFDC, having 6m<sup>3</sup> of storage each. It is considered that this minor non-compliance could reasonably be rectified by a condition of consent if the JRPP were of a mind to approve the DA.

## **3.4 State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004**

The amended proposal was not accompanied by an amended BASIX Certificate and in accordance with the requirements of the EP&A Regulation, consent cannot be granted in the absence of any amended BASIX Certificate.

## **3.5 Hornsby Development Control Plan 2013 (HDCP)**

### **3.5.1 Stormwater Management**

The proposed stormwater drainage system involves an on-site detention tank discharging to Council's existing drainage infrastructure in Oxford Street. However, due to insufficient information and certainty as to the extent of works involved to drain to Oxford Street (e.g. pipe upgrades), Council's Development Engineers previously recommended a Deferred Commencement condition of consent.



On 3 February 2016, the Applicant provided additional details to address this matter although Council's Development Engineer has advised the following in this regard:

1. Insufficient information has been submitted detailing the stormwater connection from the on-site detention tank to the Council street drainage system in Oxford Street. In this regard a long section and plan of the proposed pipeline detailing the proposed works are required. The location of all services are to be shown on the plans and the actual invert and obvert depths of all utility services are to be plotted on the plans so as to ascertain if the proposed pipeline can be constructed as proposed. The long section is to show all proposed grades, HGL, invert levels, surface levels and is to be in accordance with Councils Civil Works Specification. The design is to provide for an overflow from the on-site detention tank to the stormwater drainage system in Oxford Street.
2. The submitted calculations are not in accordance with Councils Civil Works Specification. In this regard all calculation including the internal and external pipelines are to be designed for the 1 in 20 year ARI storm event. The design engineer has only provided for the 1 in 10 year ARI storm event. However it is noted that the designer has provided a 1 in 100 year ARI analysis and at this intensity the Council drainage system will surcharge. In this regard the DRAINS modelling is to be recalculated utilising the correct rainfall intensities and various sections and outputs recalculated.
3. The drains model is inconsistent with the previously submitted stormwater drainage plan. The plans submitted with the original application show the stormwater discharging from the site to the Council system on the opposite side of Oxford St adjacent to pit No.7 however the drains modelling shows the development site discharging to pit No.2. The plans and modelling are to be consistent with each other.

Therefore, the submitted engineering plans and drainage assessment do not comply with Councils Civil Works Specification and as such do not satisfy the proposed Deferred Commencement condition. Accordingly, should the JRPP be of a mind to approve the proposal, a Deferred Commencement condition should be included in the development consent.

### **3.5.2 Waste Management**

The assessment of Council's Waste Management Services Team in the original assessment report concluded that the proposal was generally acceptable although the conditions of consent included in that assessment report included enlargement of the residential chute service room at the ground level by extending it into the residential lobby and providing for more direct pedestrian access for residents from the lifts (via a double-sided lift) to the residential bin room and also to bicycle parking spaces at this level (i.e. rather than having to exit through the lobby and walk down the car park ramp).

The amended proposal has realigned the bin within the chute room which negates the need to enlarge the chute room. However, the amended design now precludes a double-sided lift as it would conflict with the structure of the waste storage room and/or a car parking space.

However, a more direct pedestrian access to the residential bin room can be provided by reducing the size of the commercial bin room, which is oversized, and providing for a connection from the lift lobby to the service path along the northern side of the ground floor level. Alternatively, the structure of the waste room could be revised to provide for a double-sided lift. If the JRPP is of a mind to approve the DA, one of these design amendments can readily be required as a condition of consent.

The original assessment report recommended a deferred commencement condition requiring further details of the easement benefitting No. 33 Oxford Street to provide for vehicular access and waste servicing. The Applicant has submitted a written draft Section 88B Instrument in this respect however, a plan clearly showing the extent of the area subject to the easement has not been submitted and thus Council's Engineers have not been able to be satisfied that the adequate room is to be provided for Council's garbage truck to manoeuvre to access the adjacent site. Accordingly, a modified deferred commencement condition in this regard should be imposed if the JRPP are of a mind to approve the DA. In addition, if the JRPP were to approve the DA, a condition of consent should be imposed requiring a non-loading bearing wall in the southern side of the loading bay at the ground floor level.

### 3.5.3 Part 4.6 Epping Town Centre

The amended proposal has been assessed having regard to the relevant desired outcomes and prescriptive measures within *Part 4.6 – Epping Town Centre* of HDCP as set out in the following table:

<b>Hornsby Development Control Plan</b> <b>Part 4.6 – Epping Town Centre (East Precinct)</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Site Frontage</b>	30m min.	23.47m	No (see Sections 3.1 and 3.3.1)
<b>Site Amalgamation and Isolation</b>	<ul style="list-style-type: none"> <li>- Amalgamation encouraged</li> <li>- Where development results in adjoining land with a street frontage less than the minimum, orderly and economic development of that land pursuant to the DCP to be demonstrated.</li> <li>- Where land is isolated and not developable to its full potential, evidence to be provided of genuine and reasonable attempts to purchase the land.</li> </ul>	<p>The proposal will isolate No. 33 Oxford Street such that it will not be capable of achieving compliance with the DCP.</p> <p>The Applicant has made unsuccessful attempts to purchase No.33 Oxford St although it is considered that insufficient evidence has been provided of attempts to amalgamate with No 37-41 Oxford St.</p>	No (see Sections 3.1 and 3.3.1)
<b>Floorplates</b>	18m max. residential  35m max. commercial	19m  8m	No (see Section 3.5.3.1) Yes
<b>Height</b>	22 storeys	22 storeys	Yes

<b>Hornsby Development Control Plan</b> <b>Part 4.6 – Epping Town Centre (East Precinct)</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Podium Height</b>	2-3 storeys (8-12m)	3 storeys (12m)	Yes
<b>Footpath Awning</b>	To be provided	Provided	Yes
<b>Front Setback</b>	Podium = 0m Tower = 12m min. Balconies = 11.4m min. for up to 50% of building façade	0m 9-12.5m 9m for 26%	Yes No (see Section 3.5.3.2)
<b>Side Setback – North</b>	Podium = 0m Tower = 6m min. then RFDC	0m 4.5-6m	Yes No (see Sections 3.1 and 3.3.1)
<b>Side Setback – South</b>	Podium = 0m Tower = 6m min. then RFDC	0m 1.5-3m	Yes No (see Sections 3.1 and 3.3.1)
<b>Rear Setback – West</b>	Podium = 0m Tower = 6m min. then RFDC	0m 6-12m	Yes Yes
<b>Building separation</b>	<ul style="list-style-type: none"> <li>- Up to 3 storeys = 12m</li> <li>- 4-8 storeys = 18m</li> <li>- 9+ storeys = 24m</li> </ul>	See Sections 3.1 and 3.3.1	No (see Sections 3.1 and 3.3.1)
<b>Active Site Frontage</b>	<ul style="list-style-type: none"> <li>- 90% of frontage to be shop/office windows and entrances at street level</li> <li>- Maximise activities for pedestrian interest/interaction</li> <li>- Minimise fire escapes, service doors, plant and basement entries</li> <li>- Driveway entrances and service entries are not permitted on active frontages, unless it is demonstrated that there is no alternative</li> </ul>	<ul style="list-style-type: none"> <li>- 70% shop window and residential entry</li> </ul>	No (see Section 3.5.3.3)
<b>Wind Effects</b>	<ul style="list-style-type: none"> <li>- Analysis required for buildings greater than 40m</li> <li>- Wind effects not to exceed 10m/sec for active frontages</li> </ul>	- Analysis submitted	Yes
		* Generally <10m/sec	Yes
<b>Reflectivity</b>	<ul style="list-style-type: none"> <li>- Analysis required for taller buildings</li> <li>- Light reflectivity from building materials not to exceed 20%</li> </ul>	- Analysis submitted	Yes
		- 20% max.	Yes
<b>Private Open Space</b>	<ul style="list-style-type: none"> <li>- 1 br = 10m<sup>2</sup> min.</li> <li>- 2 br = 12m<sup>2</sup> min.</li> <li>- 3 br = 16m<sup>2</sup> min.</li> <li>- Min. width 2.5m</li> </ul>	11-21m <sup>2</sup> 12-41m <sup>2</sup> 24-46m <sup>2</sup> 2m+	Yes Yes Yes Yes
<b>Communal Open Space</b>	<ul style="list-style-type: none"> <li>- Located on podium</li> <li>- 50m<sup>2</sup> min.</li> <li>- 6m min. dimension</li> <li>- 2 hours sunlight</li> </ul>	<ul style="list-style-type: none"> <li>- On podium</li> <li>- 255m<sup>2</sup></li> <li>- 6m</li> <li>- 3-4hours</li> </ul>	Yes Yes Yes Yes

<b>Hornsby Development Control Plan</b> <b>Part 4.6 – Epping Town Centre (East Precinct)</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliance</b>
	between 9am and 3pm (22 June) - Landscaped - Protect amenity of surrounding dwellings	- Landscaped - Some landscaping	Yes No (see Section 3.5.3.4)
<b>Sunlight and Ventilation</b>	- Public open space areas and plaza areas = 2 hours sunlight between 9am and 3pm (22 June) to at least 50% of area - Dwellings = 70% to receive 2+ hours of unobstructed sunlight to at least half of principal living room windows and private open space area between 9am and 3pm (22 June) - 60% dwelling to have dual aspect and cross ventilation	- >2 hours   - 87%   - 71%	Yes   Yes   Yes
<b>Housing Choice</b>	- 1 br – 10% (5.4) - 2 br – 10% (5.4) - 3 br – 10% (5.4) - 30%min. adaptable units (17)	- 22% (12) - 68% (37) - 10% (5) - 30% (17)	Yes Yes Yes Yes
<b>Car Parking</b>	- Resident (total) = 60 0.75/1 bed (12) = 9 1/2 bed (37) = 37 1.5/3+ bed (5) = 7.5 1/10 visitor = 6 - Retail 1/60m <sup>2</sup> (58) = 1 - 1 accessible space per accessible/adaptable unit = 17 - Motorcycle 4/25 cars = 10 - Bicycle(total) = 17 1/5 units (resident) = 11 1/10 units (visitor) = 6	- 65     - 2 - 17   - 10 but only 7 compliant - 62	Yes     Yes Yes   No (see Section 3.5.3.5) Yes

<b>Hornsby Development Control Plan</b> <b>Part 4.6 – Epping Town Centre (East Precinct)</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Vehicle Access</b>	<ul style="list-style-type: none"> <li>- Access confined to side and rear facades.</li> <li>- Access to be consistent with the servicing strategy depicted in the Key Development Principles diagram.</li> </ul>	<p>Site access is via Oxford Street as this is the only currently available access point.</p> <p>The proposal includes a proposed right of carriageway to the benefit of the southern adjoining land such that any future development of that land can utilise this singular vehicle access point and maximise active street frontage.</p>	Yes

As detailed in the above table, the proposed development does not comply with several prescriptive measures within HDCP and these matters of non-compliance are addressed below, as well as a brief discussion on compliance with relevant performance requirements.

#### **3.5.3.1 Floorplates**

The residential floorplates slightly exceed the maximum required by the HDCP by 1 metre although this is not considered to compromise the utility of the unit layouts or the amenity of future residents.

#### **3.5.3.2 Front Setbacks**

The proposal encroaches upon the 12 metre front boundary setback above the podium although this encroachment is for only one third of the building width, is in accordance with guidance provided by Council Officers and is not considered to be detrimental to the future streetscape character as envisaged by Council's HDCP controls.

#### **3.5.3.3 Active Street Frontage**

Council's DCP requires that 90% of the site frontage be active frontage involving retail/commercial shopfronts and/or residential entries. Given the limited site width and the lack of any other vehicular access except from Oxford Street, this control cannot be met. Notwithstanding, the amended proposal has increased the active frontage to 50% by relocating services within the building and the proposed right-of-carriageway to the benefit of No. 33 Oxford Street will maximise the active frontage for that site, thereby reducing the need for two separate vehicular access points.

#### **3.5.3.4 Communal Open Space**

The proposal provides for a communal open space area at the podium level which complies with the HDCP numerical requirements, although the location of the balcony to Unit 3.03 adjacent to this communal open space may give rise to adverse privacy impacts. Accordingly, if the JRPP were of a mind to approve the DA a condition of consent requiring moveable privacy screens to be provided to the northern and eastern edges of this balcony should be imposed as recommended in the original assessment report.

#### **3.5.3.5 Parking**

The amended proposal provides for a total of 67 car parking spaces which complies with the total requirement under HDCP of 61 car parking spaces. However, three of the proposed motorcycle parking spaces are not compliant with regard to access arrangements as they are not directly accessible from an aisle. Accordingly, if the JRPP were of a mind to approve the DA a condition of consent requiring deletion of the non-compliant motorcycle parking spaces and conversion of one (1) car parking space into four motorcycle parking spaces should be imposed.

The amended proposal also incorporates two pairs of tandem car parking spaces at Basement 3. No objection is raised to these spaces however, if the JRPP were of a mind to approve the DA a condition of consent requiring that each pair of tandem spaces is allocated to the same residential unit should be imposed as recommended in the original assessment report.

### **3.6 Section 94 Contributions**

Hornsby Shire Council Section 94 Contributions Plan 2012-2021 applies to the development as it would result in the addition of 56 residential units and 57.75m<sup>2</sup> of retail floor space in lieu of the 435m<sup>2</sup> of existing commercial floor space. Accordingly, if the JRPP were of a mind to approve the DA a condition of consent requiring a monetary contribution pursuant to the Section 94 Plan should be imposed reflecting the amended unit mix.

## **4.0 ENVIRONMENTAL IMPACTS**

Section 79C(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

### **4.1 Natural Environment**

The amended proposal has been assessed by Council's Landscape Officers and the following summarises their assessment:

- The proposal does not meet the DCP deep soil landscaping requirements due to the boundary to boundary podium and only one large tree is proposed in the north-western corner of the Site. Notwithstanding, the proposed podium landscape design represents

an acceptable outcome with the planting scheme in respect of groundcovers, shrubs and small trees;

- There is a deficit of specified plants for the proposed green walls / trellis and whilst green walls are generally supported, it is questionable whether the proposed species (Chinese Star Jasmin) will scale the several storeys of the facades as proposed. If green wall elements are to be included, consideration should be given to additional planters to support growth to the higher levels and multiple species to guard against failure. An amended Landscape Plan and further details in regard to the green wall are required in this regard; and
- A Landscape Maintenance Agreement should be submitted with specific regard to the green wall planting as well as access to common landscaping at the podium level.

As discussed at Section 3.1.6, the urban design comments suggest a move away from the use of green walls on the northern and southern facades and greater articulation by use of windows, balconies and other non-structural elements. This is not to say that green wall concepts may not continue to be used in an amended design and if they are, then the above landscape comments should be incorporated into that design and additional details provided.

As discussed within this report, the amended proposal has not satisfactorily responded to the previously proposed Deferred Commencement condition relating to stormwater and the original deferred commencement condition in this regard would still be valid if the JRPP were of a mind to approve the DA.

## **4.2 Built Environment**

The Site is within an area earmarked and zoned for high density residential development of design excellence. Whilst the amended proposal complies with some of the built form provisions of the RFDC and Council's HDCP, the minimal southern side boundary setback is not acceptable in this instance as the setback does not comply with the ADG, there is no statutory limitation on the height of development on the southern adjoining land and the design of the southern elevation is not considered design excellence and will have a detrimental visual impact on the nearby heritage item.

Furthermore, the amended proposal compromises the ability to have a suitable building separation from a future development on the northern adjoining property to minimise overshadowing on the proposed development from a future development on that site, to provide for a more articulated elevation with north-facing indoor and outdoor living spaces and to minimise the visual bulk and scale between two 22-storey high-rise towers when viewed from the public domain and surrounding sites.

## **4.3 Social Impacts**

The proposal will replace an existing single storey commercial building with a mixed use development comprising 54 dwellings and a retail tenancy at the ground level. Accordingly, the proposal will result in a decrease in retail/commercial floor space but an increase in residential accommodation. Whilst the reduction in retail/commercial floor space is not ideal, the proposal complies with the definition of shop top housing and is permissible with

development consent. In addition, the amended proposal continues to comply with the requirement for an adaptable floor-to-ceiling height at the first floor level of the podium should this floor level ever warrant conversion to commercial floor space. Furthermore, the proposal will provide additional housing supply in the locality in accordance with the housing mix requirements of HDCP which will have positive social impacts.

Subject to conditions recommended herein, the proposal is also considered to be satisfactory with regard to security and safety.

#### **4.4 Economic Impacts**

The proposal will not give rise to any adverse economic impacts and will create employment opportunities during the construction of the development.

### **5.0 SITE SUITABILITY**

Section 79C(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

The Site has not been identified as bushfire prone or flood prone land and in these regards is considered to be capable of accommodating the proposed development.

### **6.0 PUBLIC PARTICIPATION**

Section 79C(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.



#### **6.1 Community Consultation**

The amended proposal was placed on public exhibition between 16 and 30 March 2016 and during this period, Council received 3 submissions. The map below illustrates the location of nearby landowners who made a submission that are in close proximity to the development site.





#### NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
One (1) SUBMISSION RECEIVED OUT OF MAP RANGE			

Three (3) submissions objected to the development, generally on the following grounds (NB: these submissions are in addition to those reported in the original assessment report:

#### 6.1.1 Setback Non-Compliances

The proposed setbacks and separation distances of the amended proposal have been discussed in Section 3.3.1 of this report where it has been concluded that the reduced northern and southern side boundary setbacks with substantially blank wall facades is not consistent with the intent of the side setback and building separation controls under the ADG and HDCP and result in a proposal that is not of design excellence as required by the LEP and therefore cannot be supported in this instance.

### **6.1.2 Permissibility**

This matter was address in the original assessment report and again in Section 3.1.1 of this addendum report where it is concluded that the proposal meets the definition of shop-top housing and is permissible with development consent.

### **6.1.3 Desired Future Character, Streetscape and Heritage**

These matters have been addressed in Sections 3.1.5, 3.1.6, 3.3.1 and 4.2 of this report where it is concluded that on balance, the proposal is likely to have adverse streetscape and heritage impacts as a consequence of the non-compliant side setbacks, extensive blank walls and lack of building articulation, materials and finishes that complement the nearby heritage item at No. 31 Oxford Street.

### **6.1.4 Privacy and Overlooking**

The submission by The Catholic Parish of Epping and Carlingford Diocese of Broken Bay offered general support for the proposal subject to ensuring that various balconies in the southern elevation are limited in size and therefore useability and that the windows in the southern elevation at Levels 4-7 be non-operable, above eye level and/or be tinted black to prevent overlooking of a potential future rooftop children's play area on the southern adjoining land. The submission also noted a commitment "*to reaching an outcome regarding an acceptable mechanism to restrict height*" on No. 33 Oxford Street provided the proposed building is setback back and an optimal urban design outcome is achieved.

However, as indicated within this report, no firm commitment to accepting a restrictive covenant over No. 33 Oxford Street has been lodged with Council and the DA does not include No. 33 as part of the development parcel. Accordingly, Council is not in a position to impose any such restriction through a development consent for this development proposal.

Furthermore, the proposed development is considered to be deficient with regard to the articulation and overall architectural resolution of the southern façade and further design amendments would be required to assess whether such amendments can adequately meet the design excellence requirement of the HLEP.

## **6.2 Public Agencies**

The amended proposal was not required to be referred to any Agencies for comment.

## **7.0 THE PUBLIC INTEREST**

Section 79C(1)(e) of the Act requires Council to consider "*the public interest*".

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The amended proposal does not satisfactorily address the key setback requirements of the RFDC and Council's HDCP and the Applicant has not adequately demonstrated that the Site cannot be developed in conjunction with adjoining land to provide for a compliant development. Even if the Site was assumed to be isolated, the proposed design is not of design excellence as required under HLEP.

Accordingly, the proposal would provide a development outcome that, on balance, would result in negative streetscape and visual impacts for the local community. Accordingly, it is considered that the approval of the proposed development is not in the public interest.

## **8.0 CONCLUSION**

The amended application seeks approval for the demolition of existing structures and construction of a 22 storey building comprising 54 units, a small ground floor retail tenancy and basement car parking.

The amended proposal is permissible pursuant to the *Hornsby Local Environmental Plan 2013* and complies with the Height of Buildings and Floor Space Ratio development standards under the LEP. However, the amended proposal it is considered to be inconsistent with clause 6.8 of the LEP as it does not provide for design excellence in the Epping Town Centre due to the minimal side setbacks and lack of a cohesive façade aesthetic incorporating appropriate articulation, particularly to the northern and southern facades. In addition, the proposal is inconsistent with clause 5.10 of the LEP as the design of the proposed building is likely to detract from the heritage significance of the nearby heritage item at No. 31 Oxford Street due to the incongruous building articulation, materials and finishes.

The amended proposal is inconsistent with the design principles of SEPP 65 and the non-compliances with the building separation requirements of the *Residential Flat Design Code* are not supportable in this instance as they are likely to result in significant adverse streetscape and amenity impacts, particularly in the absence of a statutory height limitation on the southern adjoining land at No. 33 Oxford Street.

Whilst the amended proposal predominantly complies with the relevant provisions of the *Hornsby DCP*, the non-compliances with the side setback controls are not supportable as they will result in significant adverse streetscape and amenity impacts and result in an inferior development that is inconsistent with the desired future character of the locality.

Accordingly, the proposed development is recommended for refusal for the reasons stated at Schedule 1.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 147 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

**Attachments:**

1. Locality Plan
2. Site Plan
3. Amended Floor Plans
4. Amended Elevations Sections and Photomontages
5. Report to JRPP of 2 December 2015
6. Plans considered by JRPP on 2 December 2015

## SCHEDULE 1 - REASONS FOR REFUSAL

1. The proposed development is inconsistent with subclause 5.10(1)(b) of *Hornsby Local Environmental Plan 2013* as it will result in adverse impacts on the setting and views of Heritage Item No. 393 at No. 31 Oxford Street.
2. The proposed development is inconsistent with clause 6.8 of *Hornsby Local Environmental Plan 2013* as follows:
  - a) The proposed development is not considered to meet the objective of subclause 6.8(1) to deliver the highest standard of architectural and urban design;
  - b) The proposed development is not considered to exhibit design excellence and therefore development consent may not be granted pursuant to subclause 6.8(3);
  - c) The proposed development is not considered to exhibit a high standard of architectural design, materials and detailing appropriate to the building type and location pursuant to subclause 6.8(4)(a);
  - d) The form and external appearance of the development will not improve the quality and amenity of the public domain pursuant to subclause 6.8(4)(a);
  - e) The proposed development does not satisfactorily respond to the requirements of the Hornsby Development Control Plan in respect of site frontage, site amalgamation/isolation, side setbacks, communal open space, motorcycle parking, landscaping and stormwater as required by subclause 6.8(4)(e);
  - f) The proposed development does not satisfactorily address heritage issues and streetscape pursuant to subclause 6.8(4)(f)(iii);
  - g) The proposed development will result in an unsatisfactory relationship with other development (existing or proposed) on neighbouring sites in terms of separation, setbacks, amenity and urban form pursuant to subclause 6.8(4)(f)(iv); and
  - h) The proposed bulk, massing and modulation of the proposed building are considered unacceptable pursuant to subclause 6.8(4)(f)(v) and will result in adverse streetscape and heritage impacts.
3. Insufficient information has been lodged to properly assess the proposed development in respect of clause 2.6 Subdivision - Consent Requirements of *Hornsby Local Environmental Plan 2013*.
4. Pursuant to subclause 30(2)(b) of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*, the proposed development does not satisfactorily respond to the Design Quality Principles under Part 2 of that policy as follows:
  - a) The proposed development is inconsistent with Design Principle 1 as it will not positively contribute to the quality and identity of the area as a consequence of the non-compliant side setbacks which do not provide for

equitable development opportunities on adjoining land and due to the inappropriate building form, articulation, materials and finishes;

- b) The proposed development is inconsistent with Design Principle 2 as it does not constitute Good design providing an appropriate scale in terms of building bulk and setbacks that suit the scale of the street and existing or future surrounding buildings;
- c) The proposed development is inconsistent with Design Principle 3 as the proposed built form is inappropriate for the site in terms of its setbacks, proportions and manipulation of building elements and will not therefore contribute to the character of streetscape;
- d) The proposed development is inconsistent with Design Principle 4 as the non-compliant setbacks will have adverse impacts in terms of streetscape, heritage and relationship to future neighbouring buildings and results in a density of development that is not sustainable on the site;
- e) The proposed development is inconsistent with Design Principle 10 as it does not exhibit quality aesthetics and the composition of building elements, textures, materials and colours and overall structure of the development do not satisfactorily respond to the existing or future streetscape context.

5. Pursuant to subclause 30(2)(c) of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*, the proposed development does not satisfactorily respond to the provisions of the *Residential Flat Design Code* as follows:
  - a) The proposal is inconsistent with the objectives and controls relating to Building Separation as follows:
    - i) The proposed building is not scaled to support the desired area character and does not provide for appropriate massing and spaces between buildings; and
    - ii) The proposed building separation to the north and south does not comply with the building separation controls and will result in adverse streetscape impacts and adversely impact the capability of adjoining land to sustain fully compliant developments.
  - b) The proposal is inconsistent with the objectives relating to Side and Rear Setbacks as follows:
    - i) The proposed building will result in an unsatisfactory outcome with regard to outlook for future buildings on neighbouring properties as a consequence of the non-compliant side setbacks; and
    - ii) The proposed non-compliant setbacks will have an adverse impact on the ability to create a rhythm or pattern of development that positively defines the streetscape.
6. The proposed development is unsatisfactory in respect to the provisions of Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979* as the proposal

does not meet the requirements of the *Hornsby Development Control Plan 2013 (HDCP)* as follows:

- a) The proposal is contrary to Section 1C.1.2 Stormwater Management as insufficient information provided to properly assess the impact of the proposal on local stormwater infrastructure;
  - b) The proposal is contrary to Section 1C.2.1 Transport and Parking as only seven (7) compliant motorcycle parking spaces have been provided which does not meet the requirement of 10 spaces;
  - c) The proposal is contrary to Section 1C.2.9 Landscaping as insufficient information has been provided to properly assess the viability of the proposed green walls;
  - d) The proposal is contrary to Section 1C.2.12 Avoiding Isolated Sites as it will result in the isolation of land at No. 33 Oxford Street and adversely impact on the ability of a future development on that land and on land at 37-41 Oxford Street to be undertaken in a compliant fashion;
  - e) The proposal is contrary to Section 4.6.1 Desired Future Character as the proposed building will have a bulk and scale that will adversely impact on the streetscape;
  - f) The proposal is contrary to Section 4.6.3 Site Requirements as the site has a frontage of 23.47 metres which does not comply with the requirement of 30 metres;
  - g) The proposal is contrary to Section 4.6.5 Setbacks and 4.6.9 Privacy and Security as the proposed tower does not comply with the 6 metre minimum side boundary setback requirement on the northern and southern elevations and the proposed tower does not comply with the minimum building separation to neighbouring sites and these non-compliances will result in adverse streetscape, heritage and visual outlook impacts; and
  - h) The proposal is contrary to Section 4.6.7 Open Spaces as the proposed communal open space on the roof of the podium at Level 3 will have unacceptable acoustic and visual privacy impacts on adjoining apartments within the proposed development.
7. Insufficient information has been submitted to assess the proposal's compliance with *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.
8. The proposed development is unsatisfactory in respect to the provisions of Section 79C(1)(e) of the *Environmental Planning and Assessment Act, 1979* and is not in the public interest for the reasons specified at Items 1 through 7 above.