

SYDNEY WEST CENTRAL PLANNING PANEL

Panel Reference	2016SYW187
DA Number	DA/365/2016/A (City of Parramatta reference) Note: previous Hornsby Council application reference DA/526/2015
LGA	City of Parramatta
Proposed Development	Section 96(2) Modification to development consent No.DA/365/2016 to increase the floor-to-floor levels from 3 metres to 3.1 metres across all floor levels, modify the unit mix, increase of 2 residential units resulting in a total of 56 units, changes to the basement levels, increase the size of the retail tenancy from 57.75sqm to 95sqm and increase the number of on-site car parking from 67 to 69
Street Address	Lot 2 in DP 519703, 35 Oxford Street, Epping
Applicant/Owner	Luxcon Developments No.5 Pty Ltd
Date of DA lodgement	19 September 2016
Number of Submissions	Four (4) submissions from four (4) property addresses
Recommendation	Approval, subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	The proposal is a Section 96(2) Modification to a development application that has a capital investment value of more than \$20 million.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979, Part 4 – Development Assessment & Schedule 4A – Development for which regional panels may be authorised to exercise consent authority functions of councils • Environmental Planning & Assessment Regulation 2000, Part 6 – Procedures relating to Development Applications • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No.55 – Remediation of Land • State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development • State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004 • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 • Hornsby Local Environmental Plan 2013 (HLEP 2013) • Hornsby Development Control Plan 2013 (HDCP 2013)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Section 96 Assessment report • Notice of Determination for DA/365/2016 • Plans • List of submissions
Report prepared by	Shaylin Moodliar – Senior Development Assessment Planner
Report date	8 February 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been

Not Applicable

received, has it been attached to the assessment report?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

On 14 July 2016, the NSW Sydney West Joint Regional Planning Panel (JRPP) granted approval for demolition of existing structures, construction of a 22-storey mixed-use development comprising of 54 residential units, ground floor retail space (occupying 57.75m²) and three levels of basement car parking for 67 cars.

The proposed modification seeks to increase the floor-to-floor levels from 3 metres to 3.1 metres across all floor levels, modify the unit mix, increase of 2 residential units resulting in a total of 56 units, changes to the basement levels, increase the size of the retail tenancy from 57.75sqm to 95sqm and increase the number of on-site car parking from 67 to 69.

The proposed modification maintains the approved streetscape scheme along Oxford Street and associated landscaping and communal open space at the podium level along Oxford Street.

The site is within the Epping Town Centre and is currently zoned B2 Local Centre under the Hornsby LEP 2013. The maximum permitted building height on the site is 72m and the proposal, as modified, seeks a building height 73.7m. The maximum permitted FSR on the site is 4.5:1 and the proposal, as modified, seeks a FSR of 4.74:1.

The proposal generally complies with the requirement in the Hornsby Development Control Plan 2013 (HDCP 2013) in respect to site planning and facilities and building design.

Four (4) submissions have been received from four (4) residential properties during the notification period. The issues raised have been addressed elsewhere in this report.

The application is required to be referred to the Sydney West Central Planning Panel (SWCPP) pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 as the Capital Investment Value of the original application exceeds \$20 million.

RELEVANT BACKGROUND

On 13 May 2015, the original application DA/526/2015 was lodged with Hornsby 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 amended DA for a 22-storey mixed use development scheme on land at 35 Oxford Street, Epping 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."

On 3 March 2016, the Applicant submitted amended plans which abandoned the previous southern party wall scheme and moved the tower towards the northern boundary by 1.5m to 3m at the upper levels.

On 12 May 2016, Local Government (City of Parramatta and Cumberland) proclamation 2016. The subject site lies within the City of Parramatta.

On 26 May 2016, the JRPP considered the amended DA in a meeting held at Hornsby Shire Council. At the JRPP Meeting, the Church's representative verbally confirmed that the Church did not intend to develop their land beyond a maximum height of 4 storeys. In addition, the representative for the owner of the northern adjoining property at 37-41 Oxford Street (Goodman) indicated that they were unwilling to sell that land to the Applicant due to an inadequate offer and furthermore, that they were not prepared to purchase the Site as it may prejudice an existing option over the Goodman land.

The JRPP therefore resolved as follows:

"The Panel concludes that this is an isolated site."

The Panel unanimously determined to defer the development application for amendments to be undertaken to the plans and in particular to the southern façade based on the suggestions articulated on pages 9 and 10 of the Council Assessment Report noting the agreement of the adjoining southern owner to a zero boundary setback for the first four floors and then amendment to the higher southern façade based on the principle of:

- 1. The façade treatment respecting the heritage item,*
- 2. Avoidance of unreasonable overlooking of the school, and the building which attractively integrates into the planned future character of the Epping Urban Activation Area."*

On 7 June 2016, the Applicant submitted amended plans. The amended application proposes demolition of existing structures and the construction of a 22-storey mixed-use development comprising of 54 residential units, 57.27sqm of retail space and three levels of

basement car parking for 67 vehicles. The amendments primarily related to urban design resolution and some minor operational matters. Between 9 June 2016 and 23 June 2016 the DA was renotified. Three (3) submissions were received.

On 14 July 2016, Sydney West Joint Regional Planning Panel (JRPP) granted approval for demolition of existing structures, construction of a 22-storey mixed-use development comprising of 54 residential units, ground floor retail space (occupying 57.75m²) and three levels of basement car parking for 67 vehicles.

On 19 September 2016, City of Parramatta received Section 96(2) modification, which is the subject of this report.

It must be noted that on 5 October 2016, City of Parramatta Council held a pre-lodgement meeting (PL/163/2016) for the northern adjoining site (37-41 Oxford Street, Epping) which sought formal advice for a scheme for a proposed mixed-use development with two towers and ground floor commercial, 295 dwellings (comprising of 129 x 1-bedroom studios + 166 x 2-bedroom units) and with provision for basement car parking for 310 car parking spaces, 13 motorcycle parking spaces, 295 resident and 30 visitor bicycle parking spaces. The proposal envisaged 2 separate towers (22 storeys each) with ground floor retail premises on the ground floor for both the towers.

On 13 October 2016, the subject application (DA/365/2016/A) was referred to the Parramatta Design Excellence Advisory Panel (DEAP) who raised no objections to the scheme.

PROPOSED MODIFICATION

The proposed modification seeks to incorporate the following changes:

- Change level numbering for all levels both above ground and below ground wherein level 1 is the lowest basement level;
- Increase the floor-to-ceiling heights from 3m floor-to-floor levels to 3.1m floor-to-floor level across the site;
- Internal reconfiguration of basement levels and service areas throughout the development;
- Amend plan and unit numbers;
- Increase the size of the ground floor retail space, from 54.75sqm to 95sqm;
- Increase the GFA by 251sqm to 4.74:1;
- Increase in the building height by 2m to from 71.7m to 73.7m;
- Increase the number of on-site car parking spaces from 67 to 69;
- Minor reduction in mechanical stair risers;
- Addition of 2 units on the site, from 54 units to 56 units, with an apartment mix modified as follows:

Bedroom	Approved under DA/365/2016	Proposed under DA/365/2016/A	Unit changes under DA/365/2016/A
1 bedroom	14	16	Additional 2 units
2 bedroom	36	34	Reduction 2 units
3 bedroom	4	6	Additional 2 units
Total	54	56	Additional 2 units

Note: The works have not been completed, however, the site is under construction.

A more detailed summary of the changes is provided as follows:

- Levels 1-3 (formerly basement levels 1-3)
 - Addition of two (2) car parking spaces.

- Reconfiguration across the basement levels including relocation of fire stairs to the northeastern corner of the site.
 - Retention of the number of storage units, motorcycle and bicycle rates as previously approved.
- Level 4 (formerly ground floor level)
- Relocation of fire stairs to northeastern corner of site.
 - Reduction to commercial garbage room to allow access to bin area from residential lobby.
 - Increased the size of retail area from 57.75 sqm to 95 sqm which includes incorporating snorkel areas of egress into the total retail floor area.
 - Minor changes to basement ramp grading.
 - Relocation of service rooms to the new mezzanine level
- New Mezzanine Level
- New service room area along the western rear boundary wall.
- Level 5 (formerly Level 1 Floor Plan)
- Remove plant room.
 - Enlarge northern-most unit 5.01 (previous unit L1.03) by approximately 6.7sqm of floor space with an extension of the western wall into the internal courtyard area – no change to unit type.
 - Enlarge unit 5.02 (previous unit L1.02) by approximately 2sqm by extending the eastern bedroom wall out to the balcony line along Oxford Street – no change to unit type.
 - Convert the 2-bedroom unit 5.03 (previous unit L1.01) into a 3-bedroom unit by removing the plant room and increasing the size of the floor area by approximately 18.3sqm
 - Enlarge Unit 5.04 (previous unit L1.05) as a result of the removal of the plant room and extension of the western wall approximately 13.3sqm of floor area – no change to unit type.
 - No physical change to unit 5.05 (previous unit L1.04).
 - U-shape lift lobby remains with a reduction in the size of the planter bed at the centre of the building.
- Level 6 (formerly Level 2 Floor Plan)
- Lift, stair and services area modified.
 - Planter bed at the centre of the building reduced in size.
 - Enlarge Unit 6.01 (previous unit L2.03) by approximately 19.6sqm due to decreased planter width, no change to unit type.
 - Enlarge to Unit 6.02 (previous unit L2.02) by approximately 9.2sqm by extending the eastern bedroom wall out to the balcony line along Oxford Street – no change to unit type.
 - Convert the 2-bedroom unit 6.03 (previous unit L2.01) into a 3-bedroom unit by removing the plant room and increasing the size of the floor area by approximately 23.5sqm.
 - Enlarge to Unit 6.04 (previous unit L2.05) as a result of the removal of the plant room and extension of the western wall approximately 17.6sqm of floor area – no change to unit type.
 - No physical change to unit 6.05 (previous unit L2.04).
 - U-shape lift lobby remains with a reduction in the size of the planter bed at the centre of the building.

- Levels 7-11 (formerly Levels 3-7 Floor Plans)
 - Additional floor area to Units 7.02 (previous unit L3.01), 8.02 (previous unit L4.01), 9.02 (previous unit L5.01), 10.02 (previous unit L6.01) and 11.02 (previous unit L7.01), changes are due to servicing reconfiguration and reduction in the size of the south-eastern balcony for the 3-bedroom unit L7.02, no change to unit types proposed.
- Levels 12-17 (formerly Levels 8-13 Floor Plans)
 - Additional floor area to Units 12.01 (previous unit L8.01), 13.01 (previous unit L9.01), 14.01 (previous unit L10.01), 15.01 (previous unit L11.01), 16.01 (previous unit L12.01) and 17.01 (previous unit L13.01), due to extension of the eastern wall and changes to services
 - Convert the previous 3-bedroom unit L13.02 into 2 x 1-bedroom units (units 17.02 & 17.03).
- Level 18 (formerly Level 14 Floor Plan)
 - Additional balcony area to Unit 18.01 – no change to unit type.
 - Additional floor area to Unit 18.02 – no change to unit type.
- Levels 19-22 (formerly Levels 15-18 Floor Plans)
 - Additional floor area to Units 19.02, 20.02, 21.02 and 22.02 due to decrease in balcony size and reconfiguration of central stairs and lift area – no change to unit type.
- Level 23 (formerly Level 19 Floor Plan)
 - Additional unit and balcony area to Unit 23.01 (previously known as L19.01).
- Level 24 (formerly Level 20 Floor Plan)
 - Additional floor area to Unit 24.01 (previously known as L20.01)
- Level 25 (formerly Level 21 Floor Plan)
 - Additional floor area to Units 25.01 (previously known as L21.01)

Note: The majority of the unit changes result in the use of service rooms on Levels 5 and 6 which are no longer required following design development as part of the CC and extension of some units to align with the side blade walls of the approved envelope. Other unit changes relate to the alignment of the external walls for construction purposes.

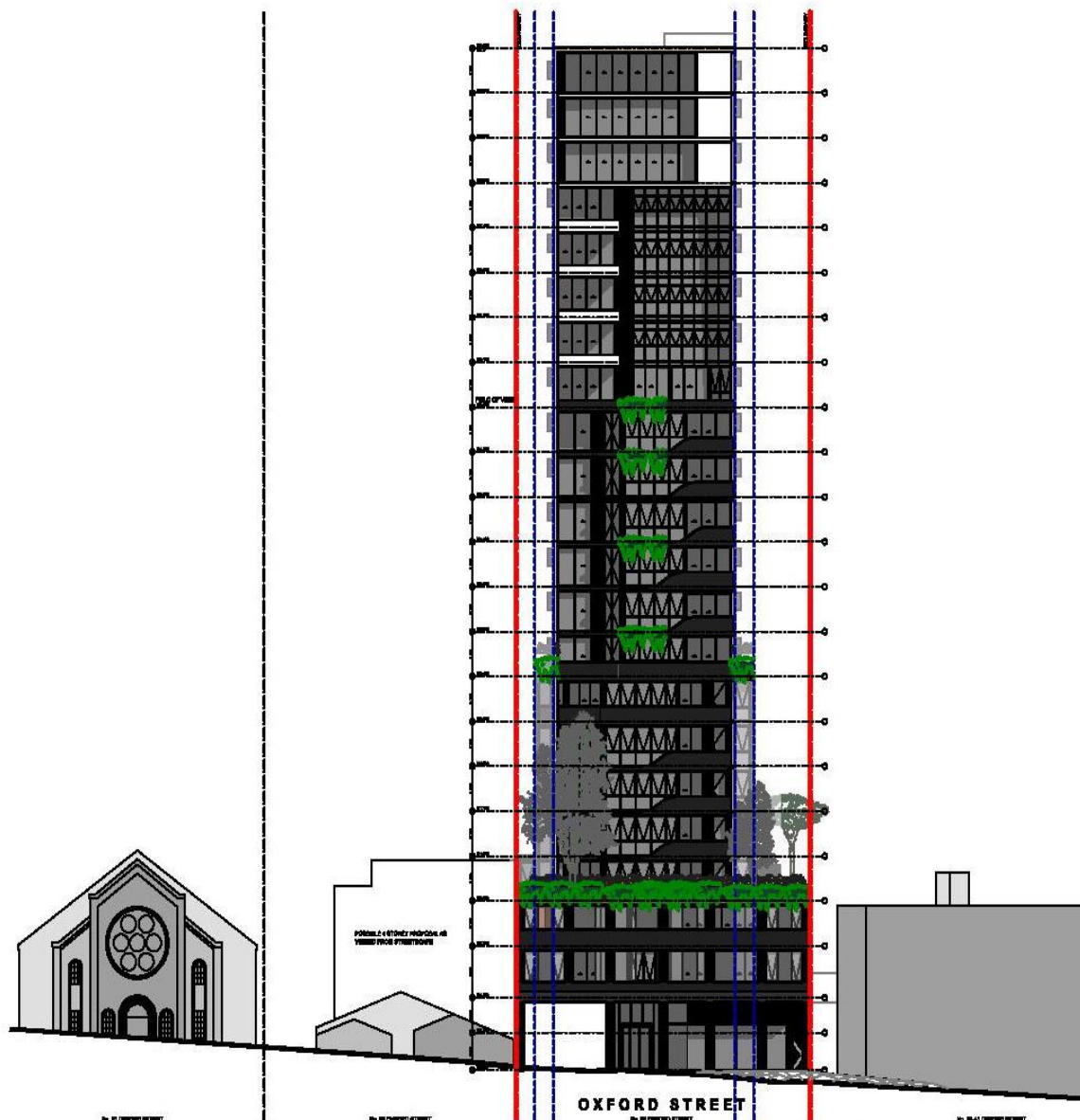


Figure 1 - Oxford Street elevation

EXISTING SITE AND CONDITIONS

The subject site is located within the Epping Town Centre. The subject site is legally known as Lot 2 in DP 519703, and is known as 35 Oxford Street, Epping. The site is located on the western side of Oxford Street, between Pembroke/Cambridge Streets to the south and Essex/Chester Streets to the north.

The site has a surveyed frontage measuring 23.47 metres to Oxford Street, a northern boundary measuring 30.48 metres, a north-eastern splay boundary measuring 12.02 metres, a western rear boundary measuring 30.885 metres and a southern boundary measuring 39.93 metres. The site has a total surveyed area of 972m². It is noted the site is currently under construction from DA/526/2015 (Hornsby Council reference), which was granted approval by the Sydney West JRPP on 14 July 2016.

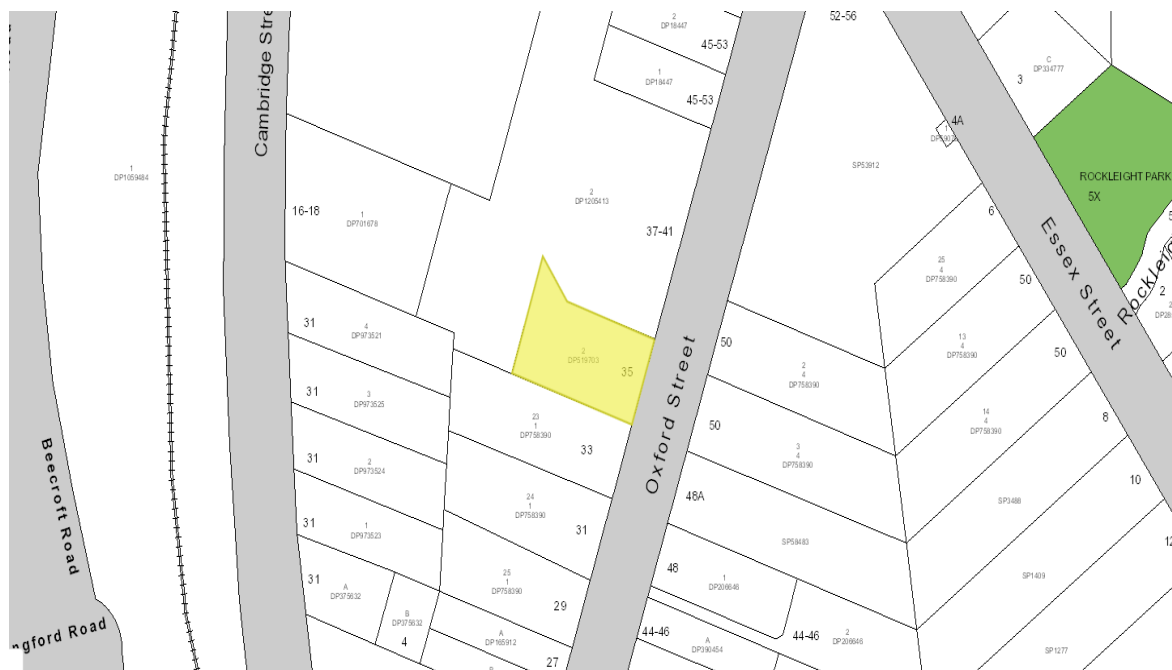


Figure 2 – Aerial allotment map of site and locale (highlighted in yellow)

The site is situated at the northern extremity of the Epping Town Centre along Oxford Street, and is situated opposite Arden Anglican School. Adjoining to the south is a single storey building containing the presbytery associated with Our Lady Help of Christians' Catholic Church. Adjoining to the north, at No.37-41 Oxford Street, is a 3-4 storey rendered office building with a metal roof. The northern adjoining site, No.37-41 Oxford Street, Epping is subject to a pre-DA assessment with City of Parramatta seeking approval for shop-top housing, two (2) residential towers above a lower level retail/commercial podium including a maximum building height of 72m with basement car parking (PL/163/2016).

The site is surrounded by mix of residential, institutional and commercial properties. The site is approximately 390 metres walking distance to Epping Train Station.



Figure 3 – Aerial view of site and locale (highlighted in yellow)

PLANNING CONSIDERATION

The proposal, as amended, has been assessed under the provisions of the Environmental Planning and Assessment Act 1979. The matters below are those requiring the consideration of the NSW SWCPP.

Section 96 Modification of consents—generally

Has the consent lapsed? No, the site is under construction from DA/365/2016 (Hornsby Ref: DA/526/2015).

Section 96(2) of the Environmental Planning and Assessment Act 1979 states:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: The proposal seeks modifications including the increase of 2 residential units, additional 2m building height along Oxford Street, increase of 251sqm to the approved gross floor area and changes to the approved conditions.

The proposal, as modified, is substantially the same development for which consent was originally granted under DA/365/2016 (Hornsby Ref: DA/526/2015).

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Comment: It is noted that the original approved DA/365/2016 (Hornsby Ref: DA/526/2015) was not required to be referred to any public agencies for comment. Sydney Trains (and Sydney Metro Transport for NSW) were notified of the revised plans and Sydney Trains responded that conditions regarding noise, vibration and cranes are imposed on draft conditions of consent. Sydney Metro Transport for NSW did not object to the modified proposal. The proposed modifications are substantially the same development for which consent was originally granted.

(c) it has notified the application in accordance with:
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: The modification to the approved DA/365/2016 (Hornsby Ref: DA/526/2015) was required to be notified in accordance with the provisions of HDCP 2013. Four (4) submissions were received.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: Four (4) submissions were received and the issues raised are addressed in this report.

Section 96(3) of the Environmental Planning and Assessment Act 1979 states:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Comment: A Section 96 modification is accepted as a “freestanding provision” that allows consideration of what would otherwise be a breach of a development standard (see *Gann V*

Sutherland Shire Council [2008] NSWLEC 157). The proposed modification seeks increases to the approved building height and floor space ratios which do not comply with the maximum height of building and FSR development controls under the HLEP 2013. Nonetheless, given the proposed modification is substantially the same as the development as which has been granted and it is noted that Clause 4.6 variations are not applicable to section 96 applications, these variations are discussed under 'Hornsby Local Environmental Plan 2013 (HLEP 2013)' heading of this report.

SECTION 79C (1) MATTERS OF CONSIDERATION - GENERAL

Provisions of Environmental Planning Instruments (Section 79C(1)(a) (i))

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

The applicant has submitted an amended BASIX Certificate for the 56 residential units. The Certificate number is 628546M_09, date of issue 6 September 2016, prepared by Efficient Living.

The commitments made in the scheme would result in the reduction in energy and water consumption as shown below:

- | | |
|-----------------------------------|---------------------|
| ➤ Reduction in Water consumption | 40 (target: 40) |
| ➤ Thermal Comfort | Pass (target: pass) |
| ➤ Reduction in Energy consumption | 21 (target: 20) |

The proposal therefore complies with the requirements under the SEPP.

State Environmental Planning Policy No.55 – Remediation of Land

The site is not identified in Council's records as being contaminated. A site inspection reveals the site does not have an obvious history of previous non-residential land uses that may have caused contamination and there is no specific evidence that indicates the site is contaminated. The proposal, as amended, is acceptable in respect to the requirements of SEPP 55 which were considered as part of the original DA.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

The site is not located on the foreshore or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposal. The proposal, as amended, is consistent with the controls contained within the deemed SEPP.

State Environmental Planning Policy (Infrastructure) 2007

The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application. The application is not subject to clause 45 of the SEPP as the development does not propose works within the vicinity of electricity infrastructure that trigger a written referral to the energy authority. The application is not subject to clause 101 of the SEPP as the site does not have frontage to a classified road. The application is not subject to clause 102 of the SEPP as the average daily traffic volume of Oxford Street is less than 40,000 vehicles.

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

In accordance with Clause 29(2) of SEPP 65, the consent authority must take into consideration the following:

- a. *The advice of the Design Review Panel*

The proposed modification was referred to the Parramatta Design Excellence Advisory Panel (DEAP) on 13 October 2016 where the Panel advised that the proposed changes are of a relatively minor nature, are well designed and do not alter the external appearance of the building, except for the slightly increased height. The Panel notes that many of the changes are minor internal modifications that will generally improve the residential amenity and that there is no opportunity to recommend any further design improvements.

Based on the advice of DEAP and the response of the independent urban designer who reviewed the original scheme (as approved by the Sydney West JRPP), Council has imposed conditions of consent to ensure the building façade treatment along the northern and western elevations satisfy the intent of the DEAP and protect the future development potential of 37-41 Oxford Street, Epping. The building height and scale is considered to be contextually satisfactory and in keeping with the desired future character of the Epping Town Centre.

b. The design quality of the development (as modified) when evaluated in accordance with the design quality principles

The 9 design quality principles have been considered in the assessment of the amended proposal and are found to be satisfactory as indicated below.

Principle 1: Context and neighbourhood character

The site has been identified for high-density re-development in accordance with the provisions for the HLEP 2013 and the HDCP 2013. The proposed modification retains the simplified form and rationalised the treatments to the northern and southern facades in accordance with the design suggestions from Sydney West JRPP and will continue to appropriately respond to the setting within the Epping Town Centre and proximity to local heritage items 393 & 394 under the HLEP 2013.

Principle 2: Built Form and Scale

The site has been zoned to permit 72 metres and the general form of the proposed modification does not further encroach upon the established side setbacks and building separation that was previously approved. The approved development comprises of an architecturally-distinctive street wall which faces Oxford Street. Architectural composition of the Oxford Street elevation does not demonstrate an entirely-coherent integration of “top” and “middle” storeys. In this regard, it is unreasonable to suggest that lower levels (and its setbacks), not specifically sought to be modified under this application to be responsive to controls that pertain to the site. Non-compliances continue to exist with regard to the setback and building separation, however, this is considered acceptable on the basis of the previous approval that the site is isolated as it cannot be reasonably amalgamated with either the northern/western or southern adjoining allotments.

Principle 3: Density

Despite the proposed modification breaching the maximum FSR for the site, the proposed amendments to the approved building are essentially internal and are considered to be contextually satisfactory to any likely environmental impacts.

Principle 4: Sustainability

The location, orientation and design of the development provides direct or diffused solar access and cross ventilation to all 56 residential units. The Apartment Design Guide (ADG) recommends that at least 60% of the proposed units shall receive natural flow through ventilation. The additional 2 units and their habitable spaces are able to achieve adequate cross flow ventilation by maintaining the approved unit orientation.

The ADG recommends that in high-density areas at least 70% of all proposed units living areas and balconies shall achieve 2 hours of direct sunlight during the period 9.00am and 3.00pm at mid-winter. The additional 2 units will receive a minimum 2 hours direct sunlight during mid-winter to living areas and balconies.

It is noted that all units within the site are designed with open layouts and private balconies and/or courtyards. A BASIX Certificate has been submitted with the application demonstrating the modified development is capable of meeting thermal, energy and water efficiency targets.

Principle 5: Landscape

The approved DA/365/2016 (Hornsby Ref: DA/526/2015) contained nil soft/deep soil landscaping as the building is entirely built over the site, however, the amended proposal provides an appropriate level of podium landscaping for a site in a dense urban environment as is envisaged for the Epping Town Centre.

Principle 6: Amenity

All units benefit from an improved residential amenity by providing 3.1m floor-to-floor levels. Private recreational areas are provided in the form of balconies/courtyards off living areas and are further complemented by communal landscaped podium areas to ensure an overall quality of living for future occupants.

The proposed modification complies with disability access requirement and maintains sufficient service areas as required. It is considered that the development satisfies the provisions with respect to layout and amenity, and therefore the modified development is consistent with this principle.

Principle 7: Safety

The development, as modified, continues to provide for secure access arrangements to the pedestrian lobby from Oxford Street and the basement car parking levels and subject to conditions regarding lighting and security systems, is considered acceptable in this regard.

Principle 8: Housing Diversity and Social Interaction

The amended proposal provides for a range of different apartment sizes and typologies and continues to comply with the unit mix provisions within the HDCP 2013.

Principle 9: Aesthetics

Particular emphasis has been placed on the external appearance to enhance the streetscape, and to create a visual interest in the architecture of the building along all elevations, with a selection of appropriate finishes. The contemporary design of the building is compatible with the design and scale of the emerging future character of the Epping Town Centre.

c. Apartment Design Guide (ADG)

It is noted that the original development application was lodged prior to the amendments to SEPP 65 and commencement of the Apartment Design Guide (ADG). Therefore, the original proposal was assessed in accordance with the Residential Flat Design Guide (RFDC). Notwithstanding, the ADG has also been considered in this assessment of the additional 2 units. Refer to table below:

Clause	Design Criteria	Comments	Comply
3F Visual Privacy	Separation between windows and balconies is provided to ensure visual	Building separation is as approved. No change to the setbacks from approved	No , does not comply with the

	<p>privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building Height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>however this may not comply with separation distances to the northern boundary</p>	<p>separation to the northern boundary, however, this is an established setback and is acceptable in this instance.</p>
Building Height	Habitable rooms and balconies	Non-habitable rooms													
up to 12m (4 storeys)	6m	3m													
up to 25m (5-8 storeys)	9m	4.5m													
over 25m (9+ storeys)	12m	6m													
3J Bicycle and car parking	<p>For development in the following locations:</p> <ul style="list-style-type: none">- on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area: or- on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p>	<p>69 spaces including 17 adaptable spaces, 5 visitor spaces and 1 car share are provided.</p> <p>In addition, 2 retail car spaces shown on ground floor.</p> <p>10 motorcycle spaces are provided, which complies with the motorcycle parking requirements for development within the Epping Town Centre.</p> <p>A total of 20 bicycle spaces have been provided in the basement levels and 11 spaces have been provided at ground level, which complies with the provisions within the Epping Town Centre.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>												
4A – Solar and daylight access	<p>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</p>	<p>86% comply – see Principle 4 – sustainability above</p>	<p>Yes</p>												
4B – Natural ventilation	<p>Min 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>60% are cross ventilated</p> <p>see Principle 4 – sustainability above</p> <p>There are no south-facing units</p> <p>Complies</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>												
4C – Ceiling heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th>Minimum Ceiling Height</th></tr><tr><td>Habitable rooms 2.7m</td></tr></table>	Minimum Ceiling Height	Habitable rooms 2.7m	<p>3.1m floor-to-floor levels are provided</p>	<p>Yes</p>										
Minimum Ceiling Height															
Habitable rooms 2.7m															

	<table><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td rowspan="2">For 2 storey apartments</td><td>2.7m main living area</td></tr><tr><td>2.4m second floor where it does not exceed 50% of the apartment area.</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope.</td></tr><tr><td>Located in mixed use areas</td><td>3.3m for ground and first floor to promote future flexibility of use.</td></tr></table>	Non-habitable	2.4m	For 2 storey apartments	2.7m main living area	2.4m second floor where it does not exceed 50% of the apartment area.	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope.	Located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use.											
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Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope.																				
Located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use.																				
4D – Apartment size and layout	Various	Apartment sizes, rooms and bathrooms comply with the minimum requirements. All additional units demonstrate have adequate cross-ventilation and provide windows to all habitable rooms.	Yes																		
4E – Private open space and balconies	<table><tr><td colspan="3">Primary balconies as follows</td></tr><tr><th>Dwelling type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio</td><td>4m2</td><td>-</td></tr><tr><td>1 Bedroom</td><td>8m2</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m2</td><td>2m</td></tr><tr><td>3 Bedroom</td><td>12m2</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Primary balconies as follows			Dwelling type	Minimum Area	Minimum Depth	Studio	4m2	-	1 Bedroom	8m2	2m	2 Bedroom	10m2	2m	3 Bedroom	12m2	2.4m	Generally satisfactory. The private open spaces of the additional 2 units are appropriate	Yes
Primary balconies as follows																					
Dwelling type	Minimum Area	Minimum Depth																			
Studio	4m2	-																			
1 Bedroom	8m2	2m																			
2 Bedroom	10m2	2m																			
3 Bedroom	12m2	2.4m																			
4F – Common circulation and spaces	Max. apartments off a circulation core on a single level is eight 10 storeys and over, max apartments sharing a single lift is 40.	Five (5) units on podium No change to the approved double lift core	Yes Yes																		
4G - Storage	<table><tr><td rowspan="5">In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided</td><td>Apartment type</td><td>Storage size volume</td></tr><tr><td>Studio</td><td>4m2</td></tr><tr><td>1 bedroom</td><td>6m2</td></tr><tr><td>2 bedroom</td><td>8m2</td></tr><tr><td>3 bedroom</td><td>10m2</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided	Apartment type	Storage size volume	Studio	4m2	1 bedroom	6m2	2 bedroom	8m2	3 bedroom	10m2	All additional units have at least 50% of their storage within their unit, with the remainder within the basement storage provided.	Yes							
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided	Apartment type		Storage size volume																		
	Studio		4m2																		
	1 bedroom		6m2																		
	2 bedroom		8m2																		
	3 bedroom	10m2																			

Hornsby Local Environmental Plan 2013 (HLEP 2013)

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

Clause 2.6 Subdivision – consent requirements

The original DA sought approval 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 cannot be granted to this aspect of the application. Thus, no proposed change to condition 2 of the conditions of consent which states that no approval is granted for stratum or strata subdivision.

Clause 4.3 Height of Buildings

The permissible height for buildings on the subject site is 72 metres. The approved building height is 71.7 metres, which complied with clause 4.3 of HLEP 2013.

The proposed modification will result in an increase of approximately 2m to the overall building height, and result in a building height of 73.7 metres. The proposal, as modified, will exceed the maximum building height by 1.7m (or 2.3%) to the top of the lift overrun.

The proposed modification is minor involving an additional 2 metre building height pertaining to the upper-most level along the Oxford Street and to the lift core structure. Whilst clause 4.6 does not apply to a modification application, the applicant has submitted a written request justifying the variation to the development standard. In the justification the applicant states:

- *The minor increase in height from Level 5 and above will improve the internal amenity for the proposed units by enabling clear floor to ceiling heights of 2.7 metres. Overall, the additional height will have a negligible affect in terms of additional shadow for adjoining properties, as illustrated in the accompanying shadow diagrams.*
- *Notwithstanding the minor height increase above, the development will still achieve compliance with the objective of the height control.*
- *The increased height will not unreasonably affect adjoining properties by way of overshadowing and privacy as demonstrated on the accompanying shadow diagrams and architectural plans. The non-compliant height relates primarily to the lift overrun which is centrally located within the roof and will not be discernible from the public domain. The modifications to the north and south elevations are contained behind approved blade walls.*
- *The design of the apartments, window location combined with approved screening ensures the privacy of surrounding residents is maintained and the privacy for the proposed residents achieves high residential amenity.*
- *The scale and density of the development as amended will fit with the desired future character of the area which Parramatta Council is seeking higher residential densities within close proximity to a railway station and in this instance Epping Station.*
- *The fall of the land results in a minor portion of the development being non-compliant with the height control at the north-western corner of the building. The variation to height at this point (800mm) will not make a tangible impact on adjoining properties in terms of overshadowing or view loss.*
- *The increased height combined with the modifications proposed across each level will still ensure the building design is appropriate for the locality while achieving a high level of amenity for future residents.*
- *The variation to the height control will have no impact on the development potential of adjoining land.*

The proposed modification has been assessed on merit and having regard to the principles in *Four2Five v Ashfield Council* [2015] NSWLEC 90. In this instance, it is deemed unreasonable and unnecessary to restrict the proposed increase in the building height by 2 metres. The applicant's justification is generally supported in this instance. As such, a

variation to the height of building development standard is worthy of support in the context of clause 4.6 for the following reasons:

- The proposal, as modified, is considered appropriate without setting an undesirable precedent in the high-density character of re-development within the Epping Town Centre.
- The configuration, layout and design of units, their overall size and spaces are practical and will allow future users to furnish their units in a variety of ways.
- The non-compliant height relates primarily to the lift overrun which is centrally located within the roof and will not be discernible from the public domain.
- The modifications to the north and south elevations are contained behind the approved blade walls.
- In assessing the reasonableness of the proposal, as amended, it is appropriate to consider breach of the building height to the overall scale of the building. The additional height will not result in a radical transformation to the original proposal.
- The additional building height will not result in unreasonable overshadowing impacts to surrounding properties.
- The proposal complies with the objective of the height of building control and the B2 zone objectives.

Compliance with the development standard in this instance is unreasonable and unnecessary given the above.

Clause 4.4 Floor Space Ratio

The permissible gross floor area of the subject site is 4,374 m² (FSR of 4.5:1). The approved gross floor area is 4,364 m², resulted in a FSR of 4.49:1, which complied with clause 4.4 of HLEP 2013.

The proposed modification will result in a maximum gross floor area of approximately 4,615 m², and result in a FSR of 4.74:1. The proposal, as modified, will exceed the maximum gross floor by approximately 241 m² (or 5.5%) over the maximum GFA and does not comply with the maximum FSR of 4.5:1.

The proposed modification is minor involving an additional 251 square metres of floor space within the approved footprint. Whilst clause 4.6 does not apply to a modification application, the applicant has submitted a written request justifying the variation to the development standard. In the justification the applicant states:

- *The increased GFA primarily relates to the use of redundant service space that following design development at the CC stage is no longer required.*
- *The proposed development will still satisfy the objective of Clause 4.4 of the HELP 2013.*
- *The north-west railway link and proximity to Epping railway station make the site ideal for a mixed-use development of this nature.*
- *The architectural design of the building combined with the setbacks minimises adverse impacts on adjoining properties, in particular overshadowing and privacy.*
- *The increased size of the units will not be highly visible from the street and the minor increases will not be easily discernible.*
- *The modulation and articulation of the building will be maintained for all elevations and the architectural intent will remain even with the proposed modifications.*
- *The increased floor space will not detrimentally affect adjoining properties by way of overshadowing or loss of privacy.*
- *The development will not result in a significant increase in residential units and adequate car parking will be provided.*

The proposed modification has been assessed on merit and having regard to the principles in *Four2Five v Ashfield Council [2015] NSWLEC 90*. In this instance, it is deemed unreasonable and unnecessary to restrict the proposed increase in the floor area by 251 square metres. The applicant's justification is generally supported in this instance. As such, a

variation to the floor space ratio development standard is worthy of support in the context of clause 4.6 for the following reasons:

- The proposal, as modified, is considered appropriate without setting an undesirable precedent in the high-density character of re-development within the Epping Town Centre.
- The configuration, layout and design of units, their overall size and spaces are practical and will allow future users to furnish their units in a variety of ways.
- In accessing the reasonableness of the proposal, as amended, it is appropriate to consider breach of the gross floor area to the overall scale of the building. The additional floor space is located within the approved footplate and not readily discernible given the upper level setbacks are retained and the proposed modification will not result in a radical transformation to the original proposal.
- The modification section above the increased floor space will occur in areas that will not adversely change the approved envelope form or be visually apparent. The 251 m² increase in GFA will not be noticeable when viewed from the street or adjoining properties.
- The additional floor space will not result in unreasonable overshadowing impacts to surrounding properties.
- The proposal complies with the objective of the floor space ratio control and the B2 zone objectives.

Compliance with the development standard in this instance is unreasonable and unnecessary given the above. The proposed additional 251 m² of gross floor area across the site can be supported in this instance as it will not establish an undesirable precedent.

Clause 5.10 Heritage Conservation

As originally approved, the impact of the development to local heritage item no.393 'Our Lady Help of Christians Church' at Lot 24 in DP 758390, 31 Oxford Street, Epping & local heritage item no.394 'house' at Lot 1 in DP 206646, 48 Oxford Street, Epping under the HLEP 2013 were considered. The use of face brick to the podium and street frontage, colour scheme and the inclusion of a non-transparent awning with a dark recessive colour scheme were considered appropriate in this instance.

Clause 6.8 Design Excellence

In respect of clause 6.8 of the HLEP 2013 which relates to Design Excellence for buildings over 29.5 metres in height, Hornsby Shire Council's independent urban design advisor Johannsen and Associates Architects previously advised that the original proposal did not constitute design excellence, primarily due to the overly complicated and unresolved aesthetics, particularly the southern façade.

It must be noted that the 26 May 2016 Assessment Report to the JRPP included 12 dot points, which detailed the design amendments that would be required to achieve design excellence. In summary, it must be noted that the proposed modification does not undermine the key design amendments that was integral to the original JRPP determination. The site was considered as an isolated site, and the proposal, as amended, will continue to achieve the expected level of design excellence, with minor adjustments via the amended consent of conditions.

Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (Section 79C(1) (a)(ii))

There are no draft Environmental Planning Instruments applying to this proposal.

Provisions of Development Control Plans (Section 79C(1) (a)(iii))

Hornsby Development Control Plan 2013 (HDCP 2013)

The proposal has been assessed against the objectives and controls under HDCP 2013 and associated documents.

The following issues are relevant to determine compliance of the proposal with the objectives of the HDCP 2013:

4.6 Epping Town Centre

4.6.1 Desired Future Character

The proposed modification will ensure the desired future character of the emerging Epping Town Centre is maintained. The ground floor retail tenancy has been increased in size, without altering the approved ground floor footprint, which will contribute to encouraging an active street frontage.

4.6.5 Setbacks

There is no change to the approved 3 storey podium built to Oxford street edge. The tower will be setback between 9 and 12m above the podium height as approved. There is a protrusion into the 12m setback across Levels 7 to 17, however, the articulated façade will remain as originally approved and the two additional units will still be setback sufficiently from the approved building wall cross these levels. The awning will still be provided over the Oxford Street footpath. The proposed modification will not introduce a reduced side and/or rear setback as originally approved. The front setback will still maintain a highly articulated form with a varied setback of between 9 and 12m, as approved.

4.6.6 Design Details

The approved design of the building provides a clear podium base, middle and top. The proposed modifications will not affect approved design intent. The floor plates will remain generally as approved with only protrusions outside that external envelope, which remains behind the established building setbacks. The proposed modifications will still ensure that the tower will contain horizontal protruding balconies combined with vertical windows and vertical concrete banding to achieve an appropriate mix of vertical and horizontal elements. The 2 metre height increase does not warrant the need for an amended wind report as the recommendations by Cermak Peterka Peterson are not compromised by the design. The modifications will not affect the approved material and finishes.

4.6.9 Landscaping

There are no major changes to the approved landscape scheme. The central planter bed on levels 5 & 6 will be reduced in width to facilitate the additional floor space to the units, however, this minor departure to the approved landscape scheme will not affect the intent of the landscaped area, as the smaller planter will still achieve the desired effect to screen the corridor.

4.6.11 Housing Choice

The following unit mix is provided:

- 16 x 1 bed units = 28%
 - 34 x 2 bed units = 60%
 - 6 x 3 bed units = 10%
- Total = 56

The unit mix is acceptable and the retention of 17 units as adaptable also satisfactory.

4.6.12 Vehicle Access and Parking

The approved basement levels will continue to be accessed from Oxford Street with separate storage facilities provided within the basement.

4.6.14 Key Development Principles - Cambridge Street

The proposal will continue to provide a mix of uses including retail and residential. Retail tenancy will be retained and increased in size, however, will retain its 2 car parking spaces within the basement level. The podium height will remain 3 storeys street wall along Oxford Street and is in accordance with the key development principle diagram for the Cambridge Street, Epping precinct.

Part 9.4.1 Development in the vicinity of Heritage Items and Heritage Conservation Areas

The approved side setbacks are retained and the staggered front setback of the tower from the Oxford Street frontage ensures the curtilage of the nearby heritage items will not be adversely affected by the proposed modifications.

Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F (Section 79C(1) (a)(iia))

The proposal does not include any Voluntary Planning Agreements (VPAs) and section 93F does not apply to the application.

Provisions of Regulations (Section 79C(1) (a)(iv))

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of AS 2601:1991 – Demolition of Structures when demolition of a building is involved. In this regard, a condition of consent is proposed to ensure compliance with the standard.

The Regulations requires notification to relevant authorities that may have an interest in the application. The recommendations provided are included in the draft Notice of Determination.

All relevant provisions of the Regulations have been considered in the assessment of this proposal.

Any Coastal Zone Management Plan (Section 79C(1) (a)(v))

Coastal Zone Management Plan is not applicable to the proposal.

Impacts of the Development (Section 79C(1) (b))

Character / streetscape

The proposed development, as amended, has a built form, height scale and context consistent with the nature of the existing development and the future desired character of the area anticipated within the Epping Town Centre.

The proposal, as amended, maintains sufficient modulation and articulation so that it provides a suitable series of elevations that have a positive relationship with the streets.

Safety and Security

Council and the DEAP have considered the safety and security of the proposal. In this regard, conditions of consent have been imposed in the draft Notice of Determination that addresses the safer by design principles. These conditions relate to a range of security matters and subject to compliance with these conditions, the proposal is considered satisfactory having regard to safety and security.

Overshadowing/solar access

Although the original approved DA/365/2016 (Hornsby ref: DA/526/2015) contains a significant number of single aspect apartments the proposed new units maintain the

approved east-west orientation for the site. The proposal, as amended, generally complies with the minimum solar access requirements for each unit. Although this attribute of the development could be improved, the layout of the units is in response to the established building forms within the street block.

An inspection of the revised shadow diagrams submitted with the modification indicates that the proposal is likely to result in a minor increase in overshadowing when compared with the approved shadows cast by the building on the southern properties and the public domain. The shadows to be cast by the modification are not considered to be excessive and will be over southwestern properties in the morning and properties to the south-east and the public domain later in the day during mid-winter. Notwithstanding, reasonable and varying levels of direct and diffused solar access are provided throughout day to the proposed site and to adjoining and surrounding properties to the south.

The proposal meets the general overshadowing controls under Part 4.6.10 of the HDCP 2013, however, it must be expected that properties to the south of a development site within an emerging high density Town Centre will experience overshadowing. As such, it is considered that the proposed modification does not unreasonably impact upon the surrounding southern properties having regard to overshadowing to that of the approved building.

Traffic/Parking

Parking has been addressed previously in this report and is considered to be acceptable in respect to the requirements of the ADG and the HDCP 2013. A revised traffic and parking statement, dated 22 August 2016 was prepared by Parking & Traffic Consultants and submitted with the proposed modification. The report was considered by Council's Traffic and Transport team and concluded that the proposal is unlikely to have a significant traffic impact on Oxford Street. In this regard, the proposal is considered to be acceptable and not likely to result in any significant adverse impacts in respect to traffic or any significant reduction in road safety within the surrounding road network. Accordingly, the proposal is considered acceptable in respect to traffic and parking matters.

Suitability of the Site (Section 79C(1) (c))

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the original proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

Public submissions (Section 79C(1) (d))

In accordance with Council's notification procedures that are contained in Appendix 5 of DCP 2011, owners and occupiers of adjoining and surrounding properties were given notice of the application for a 21 day period between 5 October and 26 October 2016. In response, four (4) submissions were received.

The issues raised within those submissions are addressed below:

Issue: Height of Building

Concerns have been raised regarding "...the height in the new application appears to exceed the allowed height for the location...".

Comment: Refer to comments regarding 'Clause 4.3 - Height of Building' under the 'Hornsby Local Environmental Plan 2013' section in this report.

Issue: Floor Space Ratio

Concerns have been raised regarding "...the (non-compliance) with the FSR while the request for additional height and 2 extra units seems to be pure developer's profit ...".

Comment: Refer to comments regarding 'Clause 4.4 - Floor Space Ratio' under the 'Hornsby Local Environmental Plan 2013' section in this report.

Issue: *Absence of a Statement of Environmental Effects (SEE)*

Concern has been raised regarding the absence of a SEE "...there appear(s) to be no Environmental Statement associated with the new application, for example, so it's not possible to properly understand its significance ..."

Comment: The applicant has provided a SEE for the proposed modification, namely a 'Section 96 Application Planning Report', dated 9 September 2016 and prepared by LJB Planning has been submitted.

Issue: *Previous approval should be withdrawn*

Concerns have been raised regarding the practice of lodging modifications to applications which would be assessed differently and that the "...previous application should be withdrawn and a totally new application submitted."

Comment: The applicant does not seek to withdraw the previous Hornsby Council approved DA/526/2015, but has rather subsequently lodged a modification to the previously Hornsby Council approved DA/526/2015 which is acceptable under Section 96 of the Environmental Planning and Assessment Act 1979. The proposal has been assessed in accordance with Sections 79C(1) & 96 of the Environmental Planning and Assessment Act 1979.

Issue: *Access to Sunlight*

Concerns have been raised that the amendments "...will worsen further shadows casting over additional unnecessary areas of the neighbourhood."

Comment: The solar access and overshadowing impacts are detailed on the architectural plans drawn by MKD Architects. The plans are generally in accordance with the solar access requirements under the HDCP 2013 and SEPP 65 for 21 June between 9am and 3pm. The proposal, as amended, will not adversely affect the previously approved overshadowing to the south-western and south-eastern properties. Refer to comments regarding overshadowing/solar access under the 'Impacts of the Development' section in this report.

Issue: *Haulage routes, noise and vibration of construction vehicles*

Concerns have been raised "...that heavy vehicle haulage routes are not being coordinated on a holistic level in the area...and...(heavy vehicle) noise is a concern".

Comment: Council's Traffic & Transport team have reviewed the proposed modification and raised no objection to the modification subject to the recommended conditions of consent which have been incorporated into the draft Notice of Determination.

Issue: *Increase of traffic*

Concern that the proposal will "...increase traffic within the Epping Town Centre".

Comment: The proposed modification maintains the approved vehicular access from Oxford Street. Council's Traffic & Transport team state that the proposed modification is not expected to have a significant impact on the surrounding road network.

Issue: *Lack of visual screening to habitable windows along the north and west elevations*

Concern has been raised regarding the "...lack of visual screening to habitable windows overlooking (No.37-41 Oxford Street) property, contrary to the design criteria of the ADG and Hornsby Development Control Plan 2013 (HDCP)."

Comment: The approved development provided a 4.5 metre northern setback at Levels 4-8 and a 6 metre northern setback at Levels 9-21. The proposed modification does not seek to reduce the approved setbacks to the north or west. There are habitable windows along the western and northern elevation and an additional condition of consent is recommended to ensure there are fixed/movable privacy screens to all habitable room windows along the western and northern elevation from levels 5-25 (refer to condition 3(l)).

Public Interest (Section 79C(1) (e))

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the proposed modification, the proposal will allow the development of the site in accordance with its environmental capacity and future vision for the Epping Town Centre.

The amended building form is supported by SEPP 65 and an independent urban design review of the previous approval has concluded that, subject to conditions, the proposal will add a visual interest to the existing Oxford Street façade and within the Epping Town Centre.

CONCLUSION

The proposal has been assessed in accordance with Section 79(1) & 96 of the Environmental Planning and Assessment Act 1979. The proposed modification to increase the floor-to-floor levels from 3 metres to 3.1 metres across all floor levels, modify the unit mix, increase of 2 residential units resulting in a total of 56 units, changes to the basement levels, increase the size of the retail tenancy from 57.75sqm to 95sqm and increase the number of on-site car parking from 67 to 69 is consistent with the requirements of the State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (SEPP 65), the Apartment Design Guide and the Hornsby Local Environmental Plan 2013.

The proposal is permissible in the B2 Local Centre Zone, and is considered to result in a development, which is suitable in the context of the emerging character within the Epping Town Centre. Non-compliances are acknowledged within the current proposal; these have been discussed within this report. A merit assessment of the application has determined that the proposed modification will be satisfactory and does not result in unreasonable impacts to adjoining and surrounding properties, subject to the satisfaction of recommended conditions of consent.

As such, it is recommended that the Sydney West Central Planning Panel (SWCPP) approve the application for the reasons stated in this report.

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.

OFFICER RECOMMENDATION

That Section 96(2) Modification DA/365/2016/A for the increase the floor-to-floor levels from 3 metres to 3.1 metres across all floor levels, modify the unit mix, increase of 2 residential units resulting in a total of 56 units, changes to the basement levels, increase the size of the retail tenancy from 57.75sqm to 95sqm and increase the number of on-site car parking from 67 to 69 be granted approval by the NSW Sydney West Central Planning Panel (SWCPP) subject to the attached conditions.

- i. That the NSW Department of Planning be advised of the SWCPP's decision.
- ii. That the objectors be advised of the SWCPP's decision.
- iii. That the original consent DA-365/2016 (Hornsby Ref: DA/526/2015) be modified as follows:

➤ Modify proposal description to read:

Demolition of existing structures, construction of a 22-storey mixed use building comprising 56 residential units, a 95m² ground floor retail tenancy and 3 levels of basement car parking for 69 cars.

➤ Modify Part B – General Conditions - Condition 1 to read:

1. **Approved Plans and Supporting Documentation**

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Plan No.	Drawn by	Dated
A-2.01 Project No.15534, Revision E, Basement Plans 1	MKD Architects	June 2016
A-2.02 Project No.15534, Revision E, Basement Plans 2	MKD Architects	June 2016
A-2.03 Project No.15534, Revision E, Level 4 Floor Plan	MKD Architects	June 2016
A-2.03.1 Project No.15534, Revision E, Mezzanine Floor Plan	MKD Architects	June 2016
A-2.04 Project No.15534, Revision E, Level 5 Floor Plan	MKD Architects	June 2016
A-2.05 Project No.15534, Revision E, Level 6 Floor Plan	MKD Architects	June 2016
A-2.06 Project No.15534, Revision E, Level 7 Floor Plan	MKD Architects	June 2016
A-2.07 Project No.15534, Revision E, Levels 8-11 Floor Plan	MKD Architects	June 2016
A-2.08 Project No.15534, Revision E, Level 12 Floor Plan	MKD Architects	June 2016
A-2.09 Project No.15534, Revision E, Levels 13-16 Floor Plan	MKD Architects	June 2016
A-2.10 Project No.15534, Revision E, Level 17 Floor Plan	MKD Architects	June 2016
A-2.11 Project No.15534, Revision E, Level 18 Floor Plan	MKD Architects	June 2016
A-2.12 Project No.15534, Revision E, Levels 19-22 Floor Plan	MKD Architects	June 2016
A-2.13 Project No.15534, Revision E, Level 23 Floor Plans	MKD Architects	June 2016
A-2.14 Project No.15534, Revision E, Level 24 Floor Plan	MKD Architects	June 2016
A-2.15 Project No.15534, Revision E, Level 25 Floor Plans	MKD Architects	June 2016
A-2.16 Project No.15534, Revision E, Adaptation Plans 1	MKD Architects	June 2016
A-2.17 Project No.15534, Revision E, Adaptation Plans 2	MKD Architects	June 2016
A-2.18 Project No.15534,	MKD Architects	June 2016

Plan No.	Drawn by	Dated
<i>Revision E, Adaptation Plans 3</i>		
<i>A-2.19 Project No.15534, Revision E, Adaptation Plans 4</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-3.01 Project No.15534, Revision E, Oxford Street Elevation</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-3.02 Project No.15534, Revision E, North Elevation</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-3.03 Project No.15534, Revision E, West Elevation</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-3.04 Project No.15534, Revision E, South Elevation</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-3.05 Project No.15534, Revision E, Streetscape Elevation</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-4.01 Project No.15534, Revision E, Sections</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-6.01 Project No.15534, Revision E, Façade Section 1 – Podium</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-6.02 Project No.15534, Revision E, Façade Section 2 – Concrete Balustrades</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>A-6.03 Project No.15534, Revision E, Façade Section 3 – Bay Window</i>	<i>MKD Architects</i>	<i>June 2016</i>
<i>SS15-3020 000 Rev D Cover Sheet</i>	<i>Site Image</i>	<i>14/06/2016</i>
<i>SS15-3020 101 Rev D Landscape Plan Level 1</i>	<i>Site Image</i>	<i>14/06/2016</i>
<i>SS15-3020 102 Rev D Landscape Plan Level 3</i>	<i>Site Image</i>	<i>14/06/2016</i>
<i>SS15-3020 103 Rev D Landscape Plan Level 8</i>	<i>Site Image</i>	<i>14/06/2016</i>
<i>SS15-3020 501 Rev D Landscape Details</i>	<i>Site Image</i>	<i>14/06/2016</i>
<i>SS15-3020 502 Rev D Indicative Plant Schedule & Specification Notes</i>	<i>Site Image</i>	<i>14/06/2016</i>
<i>150113 D00 Rev B Stormwater Drawing Cover Sheet</i>	<i>Australian Consulting Engineers</i>	<i>07/03/2016</i>
<i>150113 D01 Rev C Stormwater Basement Level 3</i>	<i>Australian Consulting Engineers</i>	<i>01/12/2015</i>
<i>150113 D02 Rev C Stormwater Basement Level 2</i>	<i>Australian Consulting Engineers</i>	<i>01/12/2015</i>
<i>150113 D03 Rev C Stormwater</i>	<i>Australian Consulting</i>	<i>01/12/2015</i>

Plan No.	Drawn by	Dated
<i>Basement Level 1</i>	<i>Engineers</i>	
<i>150113 D04 Rev B Basement Stormwater Drainage Details</i>	<i>Australian Consulting Engineers</i>	<i>21/09/2015</i>
<i>150113 D05 Rev E Ground Level Stormwater Drainage Plan</i>	<i>Australian Consulting Engineers</i>	<i>04/03/2016</i>
<i>150113 D06 Rev D Level One Stormwater Drainage Plan</i>	<i>Australian Consulting Engineers</i>	<i>07/03/2016</i>
<i>150113 D07 Rev E OSD Section and Site Stormwater Drainage Details</i>	<i>Australian Consulting Engineers</i>	<i>07/03/2016</i>
<i>150113 D08 Rev B Erosion and Sediment Control Plan</i>	<i>Australian Consulting Engineers</i>	<i>07/03/2016</i>
<i>150113 D10 Rev B OSD to Existing Pit Longitudinal Section</i>	<i>Australian Consulting Engineers</i>	<i>07/03/2016</i>

Document No.	Prepared by	Dated
<i>Design Verification Statement</i>	<i>MKD Architects</i>	<i>13/11/2015</i>
<i>BASIX Certificate No. 628546M_9</i>	<i>Efficient Living</i>	<i>06/09/2016</i>
<i>BASIX Stamped Plans – Certificate No. 14733464</i>	<i>Tracey Cools</i>	<i>15/06/2016</i>
<i>Arboricultural Impact Assessment</i>	<i>Urban Forestry Australia</i>	<i>April 2015</i>
<i>DA Noise Impact Assessment Rev 2</i>	<i>Acoustic Logic</i>	<i>15/04/2015</i>
<i>Wind Assessment Ref. 8457</i>	<i>Cermak Peterka Petersen</i>	<i>23/09/2015</i>
<i>Landscape Report</i>	<i>Site Image</i>	<i>25/09/2015</i>
<i>Construction Impact Report Ref. 150113.CIR1</i>	<i>Australian Consulting Engineers</i>	<i>28/09/2015</i>
<i>Access Assessment Report</i>	<i>Building Code Assistance</i>	<i>23/09/2015</i>
<i>Compliance Assessment Report</i>	<i>Building Code Assistance</i>	<i>23/09/2015</i>
<i>Geotechnical Study Ref. 3098-P1</i>	<i>Asset Geotechnical</i>	<i>11/05/2015</i>
<i>Catchment Analysis Report</i>	<i>Australian Consulting Engineers</i>	<i>07/03/2016</i>
<i>Parking and Traffic Statement</i>	<i>Parking & Traffic Consultants Pty Ltd</i>	<i>22 August 2016</i>

In the event of any inconsistency, the abovementioned architectural plans will prevail over other plans or documentation.

- Deletion of condition 3(b) and insert conditions 3(j), 3(k) & 3(l) to read:

3. "Amendment of Plans

The approved plans are to be amended as follows:

- a) Sight lines for pedestrians are to be provided in accordance with the Australian Standard AS2890.1 - a 2.5m x 2.0m splay shall be provided on the exit side of the driveway to satisfy this requirement;
- ~~b) Motorcycle Spaces No. MS-03 at Basement Levels 1, 2 and 3 are to be deleted (i.e. 3 spaces total) and one (1) car space is to be converted into four (4) motorcycle parking spaces which must be accessible directly from a parking aisle;~~
- c) Moveable privacy screens with horizontal louvres are to be erected along the western edge of the balconies to units 12.03 (previously known as unit 8.02), 13.03 (previously known as unit 9.02), 14.03 (previously known as unit 10.02), 15.03 (previously known as unit 11.02), 16.03 (previously known as unit 12.02), 17.02 (previously known as unit 13.02) and 17.03 (previously known as unit 13.02) to minimise a direct line of sight to units within a future western adjoining building. The screens must be affixed between the top of the balustrade wall to the underside of the slab above and have no individual openings more than 30mm wide and have a total of all openings less than 30% of the surface area of the screen;
- d) Moveable privacy screens with horizontal louvres are to be erected along the northern and eastern edges of the balconies to unit 7.01 (previously known as unit 3.03) to minimise a direct line of sight into the private open space of that unit and the communal open space adjacent. The screens must be affixed between the top of the balustrade wall to the underside of the slab above and have no individual openings more than 30mm wide and have a total of all openings less than 30% of the surface area of the screen;
- e) The proposed Blackbutt screens to the balconies at Levels 5 and 6 fronting Oxford Street (annotated as 'PS' on the approved plans) are to be replaced with white louvre panels (annotated as 'PS2' on the approved plans);
- f) The highlight windows in the southern elevation at Levels 7-11 are to be non-operable, tinted black and are to be acoustically treated as required by Condition 13.
- g) The highlight windows in the southern elevation at Levels 12-15 are to be tinted black and are to be acoustically treated as required by Condition 13.
- h) The residential chute service room (in which the garbage chute terminates) must have:
 - i. sufficient space for a 3 x 660L bin linear (or carousel) and to load/unload the bins;
 - ii. a door wide enough to fit the 660L bins through; and
 - iii. the chute offset (being the distance between the garbage chute and the bin into which the garbage drops) minimised. The chute offset must be no more than 45 degrees from vertical;

Note: Consultation with the chute system supplier is required to ensure the chute service room dimensions are adequate and an acceptable offset is achieved.
- i) The commercial bin room is to be reduced in size to provide for a pedestrian access from the lift lobby to the service walkway along the northern edge of the ground floor level for carting recycling bins to the bin storage room/waste collection area and to provide more direct access for residents to the bicycle parking spaces at the ground floor level or alternatively, at least one of the residential lifts must have a rear opening to the loading dock area.
- j) The minimum length of the 2m long, 12.5% grade curved transitions at the base of each internal ramp is to be extended by 0.45m to a length of 2.45m. The 25% section of ramp may be shortened by a corresponding 0.225m to preserve the total fall of the ramps.

- k) A 2.2m minimum headroom clearance is to be shown on plans over ramps within the site and over spaces CS-01 & CS-02 on level B3, which are located beneath the B2 – B3 ramp. If this cannot be achieved over spaces CS-01 and CS-02 on level B3 they are to be deleted.
- l) Fitted fixed privacy screens with vertical louvres are to be erected along the western and northern elevations to all habitable room windows, from levels 5-25 to minimise a direct line of sight to units within a future western and northern adjoining building. The screens must be affixed to the external wall and not protrude greater than 500mm from the external wall and have no individual openings more than 30mm wide and have a total of all openings less than 30% of the surface area of the screen;

➤ Amend condition 6 to read:

6. Section 94 Development Contributions

In accordance with Section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Hornsby Shire Council Section 94 Development Contributions Plan 2014-2024, the following monetary contributions shall be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (4)
Roads	\$28,028.79
Open Space and Recreation	\$578,762.60
Community Facilities	\$222,494.38
Plan Preparation and Administration	\$1,679.03
TOTAL	\$830,964.80

being for 16 x 1 bed, 34 x 2 bed, 6 x 3 bed units and 95m² of retail floor space and credit for 435m² of existing commercial floor space.

- a) The value of this contribution is current as at June 2016. If the contributions are not paid within the financial quarter that this condition was generated, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\text{\$C}_{PY} = \frac{\text{\$C}_{DC} \times \text{CPI}_{PY}}{\text{CPI}_{DC}}$$

Where:

$\text{\$C}_{PY}$ is the amount of the contribution at the date of Payment

$\text{\$C}_{DC}$ is the amount of the contribution as set out in this Development Consent

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- b) The monetary contributions shall be paid to Council:
- prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - prior to the issue of the first Construction Certificate where the development is for building work; or
 - prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or

- iv) *prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.*

It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Council's Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

- Amend condition 33 to read:

"33. Construction Work Hours

- a) *All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Friday and between 8am and 4pm on Saturdays only (unless otherwise approved in writing by Council due to extenuating circumstances).*
- b) *No Excavation or rock sawing/breaking is to occur on Saturdays or between the hours of 12 pm and 1 pm weekdays.*
- c) *No work is to be undertaken on Sundays or public holidays.*
- d) *Wherever practicable and in order to prevent conflicts with local school drop-off and pickup periods, no heavy vehicle movements servicing the site are to be made between 8:00am and 9:30am or between 2:30pm and 4:00pm weekdays."*

- Insert conditions 66(g), 66(h), 66(i) 66(j) & 66(k) to read:

"66. Car parking

All car parking must be constructed and operated in accordance with Australian Standard AS/NZS 2890.1:2004 – off street car parking and Australian Standard AS/NZS 2890.2:2002 – off street commercial vehicle facilities.

- a) *All parking areas and driveways are to be sealed to an all-weather standard, line-marked and signposted;*
- b) *Car parking, loading and manoeuvring areas to be used solely for nominated purposes;*
- c) *Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads;*
- d) *Residential parking spaces are to be secure spaces with access controlled by card or numeric pad;*
- e) *Visitors are to have access to the parking area at all times. Visitors are to be able to access the basement car park by an audio/visual intercom system located at the top of the ramped driveway.*
- f) *All vehicular entry on to the site and egress from the site shall be made in a forward direction.*
- g) *Where access to storage cages would be impeded by a parked car, such storage cages are to be allocated to the same unit that the parking space is allocated to."*
- h) *Appendix C ground clearance tests indicate that the B99 vehicle may scrape at the base of ramps. A curved transition with minimum 2m length is insufficient in this case and a minimum length of 2.45m is recommended to prevent vehicle scraping.*
- i) *A 2.2m minimum headroom clearance is to be shown on plans over ramps within the site and over spaces CS-01 & CS-02 on level B3, which are located beneath the B2 – B3 ramp.*

- j) *The vehicular crossing to Oxford Street is widened to allow the HRV to enter/exit site entirely within kerbside lane, without rolling over the kerb as indicated in swept path plans submitted by the applicant.*
- k) *The traffic lights on levels B1 and B2 are affixed to the column rather than to a new post, in order to minimise the impingement upon the design parking envelope of space 6 (B1) and space 22 (B2) outlined in Figure 5.2 of AS2890.1-2004.*

➤ Amend condition 67 to read:

“67. Allocation of car parking

A minimum of six visitor (including one (1) space signed as “Visitor of Car Share” space), two (2) retail and sixty-one (61) resident car parking spaces are to be provided in the basement. Tandem car spaces CS-26 and CS-25 are to be allocated to an individual unit as are tandem car spaces CS-01 and CS-03 and tandem car spaces CS-02 and CS-04.”

➤ Amend condition 70 to read:

“70. Motorcycle parking spaces

Ten (10) motorcycle parking spaces are to be provided in the basement in accordance with AS2890.5-1993.”

➤ Insert condition 76 to read:

“76. Sydney Trains

The following operational conditions must be adhered to:

- i) The proposed development is to comply with the deemed-to-satisfy provisions in the Department of Planning’s document titled “Development Near Rail Corridors and Busy Roads-Interim Guidelines”.*
- ii) Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. The Principal Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.”*