

COUNCIL SUPPLEMENTARY REPORT

Panel Reference	2017SNH012
Application Number	LDA2016/0395
LGA	City of Ryde
Proposed Development	Construction of a mixed use development
Street Address	25 - 27 Epping Road, Macquarie Park (Lachlan's Line)
Applicant/Owner	Greenland (Sydney) Lachlan's Line Macquarie Park Development Pty Ltd
Date of Lodgement	1 July 2016
Recommendation	Rejection of the amended proposal and the approval of the proposal originally presented to the Panel on 9 August 2017
List of all documents submitted with this report for the Panel's consideration	<p><u>Appendix A</u> Assessment Report</p> <p><u>Appendix B</u> Supplementary Report (27 September 2017)</p> <p><u>Appendix C</u> Draft Conditions</p> <p><u>Appendix D</u> Addendum to the Statement of Environmental Effects from Urbis and attachments:</p> <ul style="list-style-type: none"> • Attachment A: SNPP Record of Deferral; • Attachment B: Clause 4.6 Request – Height of Buildings; • Attachment C: Clause 4.6 Request – Floor Space Ratio; • Attachment D: Solar Access Options Study; • Attachment E: Lot 104 Amended Architectural Drawings; • Attachment F: Lot 105 Amended Architectural Drawings; • Attachment G: Design Verification Statements; • Attachment H: Ecological Advice; and • Attachment I: Shadow Diagrams. <p><u>Appendix E</u> Legal advice (Planning Agreement) from Hall & Wilcox</p>
Report prepared by	Tony Collier – A/Snr Coordinator Major Development
Report date	17 November 2017

1. PURPOSE OF THIS SUPPLEMENTARY REPORT

The purpose of this supplementary report is to provide the Sydney North Planning Panel (SNPP) with an assessment of further information pertaining to a redesign of the development to improve solar access in accordance with the decision at the SNPP meeting of 27 September 2017.

1. RELEVANT BACKGROUND

Referral to the Sydney North Planning Panel (9 August 2017)

The Development Application was referred to the Sydney North Planning Panel for determination on 9 August 2017.

In the Assessment Report forwarded to the Panel, Council made a recommendation to approve the proposal subject to Deferred Commencement conditions.

At the meeting on 9 August 2017, the Panel made the decision to defer the determination of the application for the following reasons:

“The Panel is not satisfied that the documentation submitted to Council clearly demonstrates the impact of overshadowing of communal open space and solar access to units/balconies. It therefore defers its decision requesting further information.

The applicant is to appoint an independent consultant to review solar access to communal open space, balconies and apartments, consistent with ADG principles, for the combined sites. The Panel seeks this information not only for mid-winter but also for the equinox. The selection of the independent consultant is to be agreed by the Council.

The Panel is aware that full compliance may not be achievable at the proposed density. However, the application needs to demonstrate more accurately the degree of compliance, identify the areas of non-compliance and whether any amendments can improve compliance.

Further, the Panel requests plans showing both sites, which demonstrate the areas included as floor space for FSR calculation.

The Panel requests the Council provide a supplementary report assessing the additional information.”

On 21 August 2017, the applicant submitted information to Council which was referred back to the Panel together with a Supplementary Report prepared by Council.

Referral to the Sydney North Planning Panel (27 September 2017)

At its meeting on 27 September 2017, the Panel reviewed the information provided by the applicant and made the decision to defer the determination of the application for the following reasons:

“The Panel agreed to defer determination of the Development Application because the applicant has not addressed the reasons for the previous deferral (9 August 2017). Amendments to the scheme have not been provided, which were to address the poor solar performance and the poor future amenity for residents in a dense development fenced by major roads.

Solar Access

Evidence provided to the Panel by Steve King who independently assessed the scheme indicated that ‘at best’ 47% of the units within the development received two hours solar access mid-winter and that minimal sunlight was available to the communal open space. This sunlight access was not significantly improved for equinoxes.

Accordingly, amended plans are required which optimise solar access both mid-winter and equinox to both units and the major communal open spaces.

The Panel accepts that this may require reduction in heights of certain buildings and perhaps an increase in others. The Panel noted that building ‘M’ which has the best solar performance may be able to be increased in height by several storeys subject to no significant adverse impact on the adjacent reserve. This would need to be demonstrated in solar diagrams, as well as consideration of the impact of the threatened species in the reserve. Any increase in height which exceeds the development standard must be accompanied by a Clause 4.6 variation request.

Amended plans addressing the above should be submitted by the Applicant to Council, by no later than Friday, 13 October 2017.

Should the matter need to be advertised, Council should undertake this expeditiously such that any advertising is completed by no later than Friday, 3 November 2017.

Council should have a supplementary assessment report to the Panel by no later than Friday, 17 November 2017.

Voluntary Planning Agreement (VPA)

In relation to the issue of the VPA, which was a request from the Council for a deferral or deferred commencement condition, the Panel is minded to accept the advice of the applicant’s legal representation that the matter can be dealt with by an operational condition and a bond as offered.

However, it is hoped that in the intervening period above both the applicant and Council will resolve the VPA such that such conditioning is not required.”

2. SUBMISSION OF AMENDED PLANS AND DOCUMENTATION

The applicant submitted the following information on the following dates:

Date	Information Received
13 October 2017	<ul style="list-style-type: none"> Amended Plans (Lot 104) as prepared by BatesSmart (these plans also included significant changes to the ground floor retail and car parking areas); Amended Plans (Lot 105) as prepared by Turner; and Shadow Analysis (Sheets 1 & 2).
16 October 2017	<ul style="list-style-type: none"> <i>Addendum Statement of Environmental Effects</i> dated 13 October 2017 as prepared by Urbis, including; <ul style="list-style-type: none"> Clause 4.6 request (Height of Buildings); and Clause 4.6 request (Floor Space Ratio). <i>Solar Access Options Study</i> dated 10 October 2017 as prepared by Steve King; <i>Ecological advice addendum for overshadowing of Bundara Reserve, North Ryde</i> dated 13 October 2017 as prepared by Ecological Australia; and <i>Response to Sydney North Planning Panel Records of Deferral</i> dated 13 October 2017 as prepared by Turner. <p>The above information was uploaded onto Council's website from Monday, 16 October 2017.</p>
17 October 2017	The applicant advised Council on 17 October 2017 that the additional amendments to the retail and car parking components of the building on Lot 104 are withdrawn and are not to be considered as part of this amended proposal.
18 October 2017	<ul style="list-style-type: none"> <i>Final Solar Access Options Study</i> dated 17 October 2017 as prepared by Steve King (the Study submitted on 16 October 2017 was expanded at the request of Council to include quantifiable calculations for solar access to communal open space areas in mid-winter and the equinox).
7 November 2017	<ul style="list-style-type: none"> BASIX Certificates prepared by Wood & Grieve Engineers; Updated <i>Pedestrian Wind Environment Study</i> dated 6 November 2017 as prepared by Windtech Consultants Pty Ltd; <i>Pedestrian Wind Environment Statement</i> (Lot 104) dated 6 November 2017 as prepared by Windtech Consultants Pty Ltd; and <i>Pedestrian Wind Environment Statement</i> (Lot 105) dated 6 November 2017 as prepared by Windtech Consultants Pty Ltd.
10 November 2017	<ul style="list-style-type: none"> <i>Design Verification Statement</i> (Lot 104); and <i>Design Verification Statement</i> (Lot 105) – both dated 10 November 2017 and prepared by Turner.
14 November 2017	<ul style="list-style-type: none"> Amended Clause 4.6 request to vary Clause 4.4 Floor Space Ratio development standard.

3. ASSESSMENT OF THE AMENDED PLANS AND DOCUMENTATION

4.1 Key plan of the site

To inform the following discussion, Figure 1 below illustrates the location of buildings within the development:

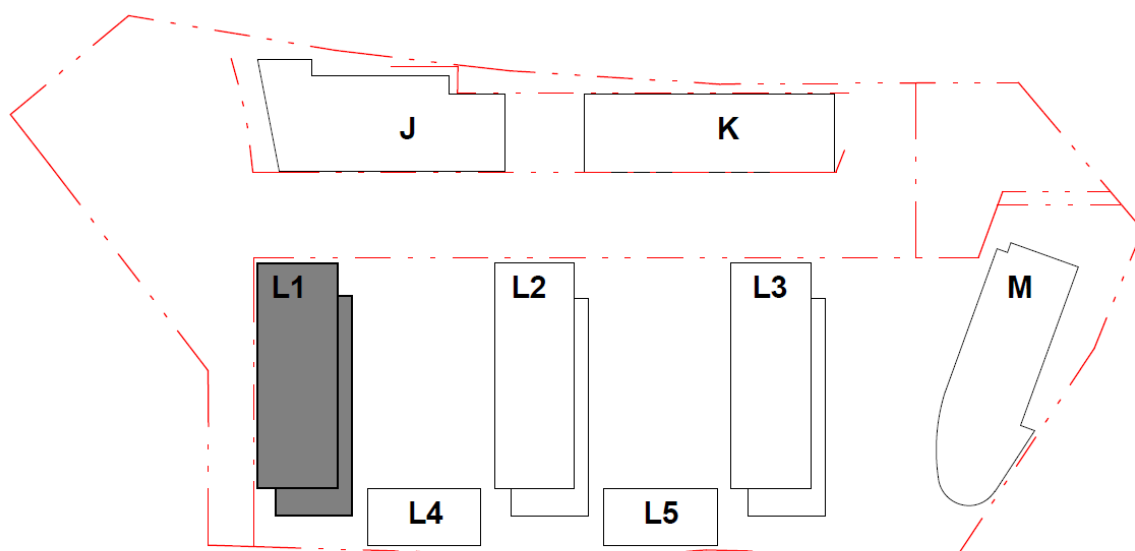


Figure 1: Key Plan of buildings within the development.

4.2 Options considered to the amending of building heights

In order to address the Panel's request to optimise solar access, the following five (5) options detailed in Table 1 below were explored:

	Block M	Block L3	Block J	Block K
Option A	Add 2 storeys	N/A	Delete 1 storey	Delete 2 storeys
Option B	Add 3 storeys	N/A	Delete 2 storeys	Delete 2 storeys
Option C	Add 4 storeys	N/A	Delete 2 storeys	Delete 3 storeys
Option D	Add 6 storeys	N/A	Delete 2 storeys	Delete 5 storeys
Option F	Add 2 storeys	Add 2 storeys	Delete 2 storeys	Delete 2 storeys

Table 1: Options considered.

Note: Option E was not provided.

In justifying the preferred Option F, Steve King states:

“Option F is the outcome of further constraining the previous four options, primarily with the objective to minimize off-site overshadowing impacts from the additional height of Building M. To preserve the redistributed FSR, and accommodate a variety of architectural considerations (e.g. lift access to appropriate areas of parking), the optimum outcome appears to be when two floors are added to Building L.3, rather than an additional two floors to Building M.

Based on the previously demonstrated marginal sensitivity, perhaps it's not surprising that Option F returns an overall solar access compliance for the apartments that falls within the range indicated by Options A to D.”

The applicant advises that the amended proposal is generally based on Option F.

The amended proposal contains the following unit mix and includes an additional three (3) units above that proposed in the application referred to the Panel on 9 August 2017:

Apartment Type	DA	Mix	Amendment	Mix
Studio	59	6.7%	59	7%
1 Bedroom	389	44.3%	401	45%
2 Bedroom	419	47.7%	406	46%
3 Bedroom	12	1.3%	8	1%
4 Bedroom	Nil	Nil	8	1%
Total	879	100%	882	100%

Table 2: Proposed unit mix.

Figures 2 and 3 below show the amendments proposed to the development when viewed from Jarvis Circuit:

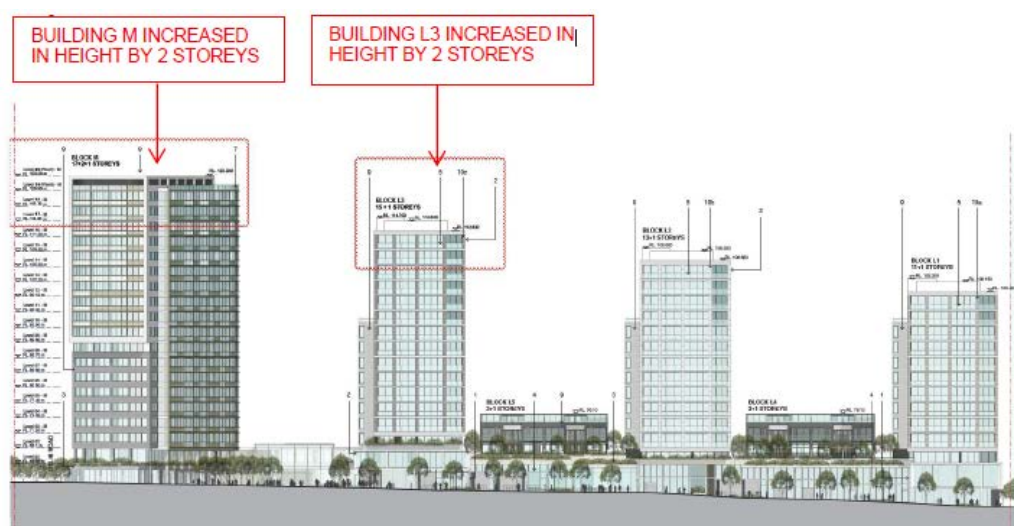


Figure 2: View of amendments to Buildings L3 and M on Lot 104.

Source: Clause 4.6 – Floor Space Ratio prepared by Urbis.

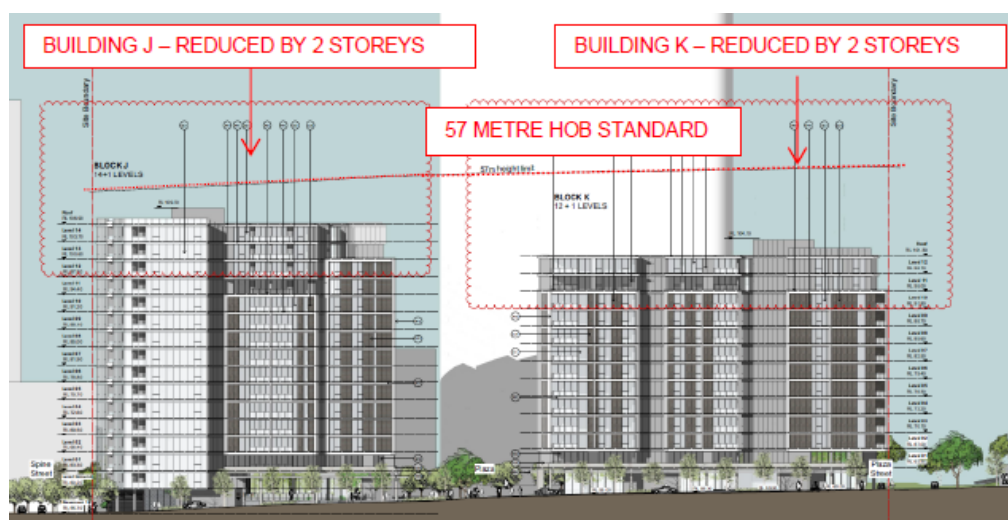


Figure 3: View of amendments to Buildings J and K on Lot 105.

Source: Clause 4.6 – Floor Space Ratio prepared by Urbis.

4.3 Analysis of the amended proposal

4.3.1 Effect of the amended proposal on gross floor area

Tables 3 and 4 below detail the gross floor area (GFA) of the development throughout the various versions (i.e. (A) from the approved SSD 5093; (B) the proposal as reported to the Panel on 9 August 2017 & 27 September 2017; and (C) the amended proposal being the subject of this report):

	(A) SSD-5093	(B) DA	(C) Amendment	Diff (A-C)	Diff (B-C)
Lot 104					
Retail & Residential	49,384m ²	51,328m ²	54,490m ²	+5,106m ²	+3,162m ²
Community	2,500m ²	2,500m ²	2,500m ²	Nil	Nil
Sub Total	51,884m²	53,828m²	56,990m²	+5,106m²	+3,162m²
Lot 105					
Retail & Residential	24,136m ²	24,134m ²	21,195m ²	-2,941m ²	-2,939m ²
Sub Total	24,136m²	24,134m²	21,195m²	-2,941m²	-2,939m²
Total	76,020m²	77,962m²	78,185m²	+2,165m²	+223m²

Table 3: Comparison of component GFA between versions.

Source: Data provided by the applicant via email dated 31 October 2017.

Note: The proposed GFA includes 1,944m² considered under the DA assessment for 101 excess parking spaces. The additional FSR proposed by the amended proposal is 223m² (although the CI 4.6 variation states that the additional GFA is 233m²).

	(A) SSD 5093	(B) DA	(C) Amendment	Diff (A-C)	Diff (B-C)
Lot 104	51,884m ²	53,828m ²	56,990m ²	+5,106m ²	+3,162m ²
Lot 105	24,136m	24,134m ²	21,195m ²	-2,941m ²	-2,939m ²
Total	76,020m²	77,962m²	78,185m²	+2,165m²	+223m²

Table 4: Comparison of total GFA between versions.

The additional non-compliance of 223m² (i.e. above the 1,944m² already considered in the original assessment of the application as presented to the Panel on 9 August 2017) to the GFA/FSR is addressed later in this report (see *Ryde Local Environmental Plan 2014*).

4.3.2 Effect of the amended proposal on solar access

The following provides a quantitative analysis of the above options upon solar access to both units and open space areas at mid-winter and the equinox.

Solar access to apartments

Objective 4A-1(1) of the Apartment Design Guide (ADG) requires:

“Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area.”

Table 5 below details solar access to the development as a result of the considered options. All options are included to illustrate the range of sunlight access provided.

Options (Units)	>2hrs 9.00am to 3.00pm (Winter)	>2hrs 9.00am to 3.00pm (Equinox)
DA	46.7%	15.4%
Option A	48.0%	Not Provided
Option B	48.2%	Not Provided
Option C	48.2%	Not Provided
Option D	49.2%	Not Provided
Option F	47.4%	11.9%
Difference	+0.7%	-3.5%

Table 5: Comparison of solar access between options during mid-winter and the equinox.

Note: Bracketed figures indicate numbers of apartments based upon the proposed total of 882 units.

Solar access to open space

To inform the following discussion, Figure 4 below illustrates the location of open space areas within the development:



Figure 4: Key Plan of open space areas A, B & C as referenced in the Solar Access Options Study.

Notes:

- A. Conventional Communal Open Space (Being courtyards between Buildings L1, L2 and L3);
- B. Publicly Accessible Communal Open Space (Being the plaza between Buildings L3 and M and the space between Buildings J and K); and
- C. Public Open Space (Being the public park to the north-east of Lot 105).

Objective 3D-1(2) of the ADG requires:

“Developments achieve a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June.”

Tables 6 and 7 below detail the percentile solar access per half hour during the mid-winter and equinox periods. The base data is taken from the *Solar Access Options Study* dated 17 October 2017 as prepared by Steve King.

The tables provide a comparison between the version presented to the Panel at its meetings on 9 August 2017 & 27 September 2017 and Option F.

	Mid Winter					
	DA		Option F		Diff (DA & Option F)	
	A	B	A	B	A	B
9.00	10%	65%	10%	65%	No change	No change
9.30	<10%	75%	<10%	75%	No change	No change
10.00	<10%	75%	<10%	75%	No change	No change
10.30	15%	60%	20%	60%	+5%	No change
11.00	25%	30%	30%	30%	+5%	No change
11.30	>35%	25%	>35%	25%	No change	No change
12.00	20%	15%	20%	15%	No change	No change
12.30	15%	<15%	15%	<15%	No change	No change
1.00	15%	<10%	15%	<10%	No change	No change
1.30	<10%	<5%	<10%	<5%	No change	No change
2.00		<5%		<10%		+5%
2.30		<5%		10%		+5%
3.00		<5%		<5%		No change

Table 6: Half hourly comparison of solar access during mid-winter.

The amended proposal maintains non-compliance with Clause 3D-1(2) throughout the day in the “Conventional Communal Open Space” areas ‘A’. Improvements resulting from the amendments are +5% at 10.30am, 11.00am, 2.00pm and 2.30pm.

The “Publicly Accessible Communal Open Space” areas ‘B’ retain compliance between 9.00am and 10.30am then become non-compliant for the remainder of the day.

	Equinox					
	DA		Option F		Diff (DA & Option F)	
	A	B	A	B	A	B
9.00	60%	65%	70%	65%	+5%	No change
9.30	70%	65%	75%	65%	+5%	No change
10.00	75%	80%	80%	80%	+5%	No change
10.30	85%	90%	90%	90%	+5%	No change
11.00	85%	85%	90%	85%	+5%	No change
11.30	75%	75%	75%	70%	No change	-5%
12.00	60%	55%	60%	50%	No change	-5%
12.30	35%	30%	35%	25%	No change	-5%
1.00	<10%	<10%	<10%	<10%	No change	No change
1.30	<5%	<5%	<5%	<5%	No change	No change
2.00						

	Equinox					
	DA		Option F		Diff (DA & Option F)	
	A	B	A	B	A	B
2.30						
3.00						

Table 7: Half hourly comparison of solar access during the equinox.

Although there is no requirement in the ADG to comply with solar access during the equinox, Table 7 above indicates that the development (original and amended) achieves a significantly higher level of solar access when compared to the requirements of Clause 3D-1(2) and Table 6.

However, the increases resulting from the amendment are relatively small at +5% between 9.00am and 11.00am with decreases of -5% noted between 11.30am to 12.30pm.

4.4 Assessment of the amended proposal against applicable instruments and controls

Given the changes to the built form as a result of the amendment, it is necessary to consider the amended proposal against the relevant provisions of the following planning instruments and controls to which the proposal is subject.

4.4.1 State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development

Clause 50 and Clause 2(5) under Schedule 1 of the Regulation requires (in part):

- a) *an explanation of how:*
 - i. *the design quality principles are addressed in the development, and*
 - ii. *in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development.*

The applicant has submitted Design Verification Statements for Lots 104 and 105 respectively (both are attached to this report under Appendix D (Attachments G)).

The Statements confirm that the architect:

“Has directed the amendments to the DA design and documentation of the residential flat development at Lot 104 Lachlan’s Line, North Ryde in response to Sydney North Planning Panel comments.

The amendments have been prepared in accordance with the design quality principles set out in Part 2 of State Environment Planning Policy No. 65 – Design Quality of Residential Flat Development.”

Beyond the above, it is noted that the Statement for Lot 104 does not provide any further commentary of the Design Quality Principles under Schedule 1 of the SEPP.

The Statement for Lot 105 does provide further commentary but only in respect to Lot 105 (i.e. Buildings J and K).

The Statements also include individual compliance tables of the development against the Objectives and Design Guidance of the Apartment Design Guide (ADG).

Notwithstanding, the following provides an assessment of the amendments against the affected Design Quality Principles and the affected Design Criteria of the Apartment Design Guide.

Table 8 below provides a discussion of the amended proposal against the provisions of the affected Design Quality Principles only. The remaining Principles are considered to be unchanged as considered in the Assessment Report presented to the Panel at its meeting on 9 August 2017.

Design Quality Principle	Comment
<p>2. Built form and scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The built form (of both the DA version and the amended version) is considered to achieve a scale appropriate to the desired future character of the street and surrounding buildings.</p> <p>The building alignments, proportions, building type, articulation and the manipulation of building elements are considered to be an appropriate built form for the site and for the building's purpose.</p> <p>The built form effectively defines the public domain and contributes to the evolving character of the North Ryde streetscape. The internal amenity is noted to be deficient in its solar accessibility but this is acknowledged as a product of the combined height/scale of the development and the lot shape/configuration which influences the layout of the buildings.</p> <p>The development, as amended, satisfies this Principle.</p>
<p>6. Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>It is noted that the introduction of the additional height to Buildings L3 and M increases the overshadowing of residential properties (and the Tennis Centre) to the south-west (i.e. on Morshead Street) which didn't occur in the scheme presented to the Panel.</p> <p>It is further noted that the increased height to Building M increases overshadowing of the neighbouring Bundara Reserve to the south-east.</p> <p>The additional height, bulk and scale of the development, which collectively contributes to the increase in overshadowing, is considered to be unacceptable given the comparatively small improvements gained to solar access (see Tables 5, 6 and 7).</p>

Design Quality Principle	Comment
	In respect only, the development, as amended, does not satisfy this Principle.
<p>8. Housing diversity and social interaction Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The amended development provides the following unit mix:</p> <ul style="list-style-type: none"> • 460 x Studio / 1 bed units (52.2%); • 406 x 2 bed units (46%); and • 16 x 3 / 4 bed units (1.8%). <p>This is considered to continue providing a suitable mix of housing as discussed in the Assessment Report presented to the Panel on 9 August 2017.</p> <p>The development, as amended, satisfies this Principle.</p>
<p>6. Aesthetics Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>Aesthetically, the built form of the amended proposal achieves good proportions due to the gradual increased height of Buildings L3 and M. This provides a transition across the frontage of the site (facing Epping Road) from Building L1 to M.</p> <p>The schedule of materials has not changed from the original DA and are considered to provide a high quality finish to the development.</p> <p>The visual appearance of the development is considered to be well-designed and responsive to the future local context of the area.</p> <p>The development, as amended, satisfies this Principle.</p>

Table 8: Design Quality Principles.

4.4.1.1 Apartment Design Guide

Table 9 below only considers the design criteria which have been affected by the amended proposal:

Design Criteria	Comment	Compliance
<p>CI. 4A Solar and Daylight Access To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</p> <p>Design criteria</p> <ul style="list-style-type: none"> • Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct 	<p><u>Design Verification Statement (Lot 104)</u></p> <ul style="list-style-type: none"> • Minimum of 2 hours solar to 49.1% (299 out of 609 units); and • 27.1% apartments have no solar (165 out of 609). <p><u>Design Verification Statement (Lot 105)</u></p> <ul style="list-style-type: none"> • Minimum of 2 hours solar to 42.1% (115 out of 273 units); and • 24.9% apartments have no solar (68 out of 	No

Design Criteria	Comment	Compliance
<p>sunlight between 9 am and 3 pm at mid winter;</p> <ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter 	<p>273).</p> <p><u>Assessment Comment</u> The <i>Solar Access Options Study</i> reveals that a total of 47.4% of apartments receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>The <i>Addendum SEE</i> (page 23) reveals that a total of 25.5% of apartments would receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	
<p>CI. 4B Natural Ventilation The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents</p> <p>Design criteria</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. 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. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. 	<p><u>Design Verification Statement (Lot 104)</u> Indicates compliance.</p> <p><u>Design Verification Statement (Lot 105)</u> Achieves a natural cross ventilation to 60% of apartments in the first nine (9) levels (107 out of 178 units). No crossover or cross-through apartments are provided.</p> <p><u>Assessment Comment</u> The amendment includes apartments which are 10 storeys and above and which do not include enclosures which restrict adequate cross flow. Therefore, the amendment achieves 100% compliance.</p> <p>All apartments subject to the amendment do not exceed a depth of 18m.</p>	Yes
<p>CI. 4C Ceiling Heights ventilation and daylight access</p> <p>Design criteria</p> <ul style="list-style-type: none"> Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> Habitable rooms: 2.7m Non-habitable: 2.4m If located in mixed use area: 3.3m for ground and first floor to promote flexibility 	<p><u>Design Verification Statement (Lot 104)</u> Indicates compliance.</p> <p><u>Design Verification Statement (Lot 105)</u> Indicates compliance.</p> <p><u>Assessment Comment</u> The floor-to-ceiling heights of apartments subject to the amendment satisfy the minimum ceiling heights.</p>	Yes
<p>CI. 4D Apartment Size and Layout The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</p> <p>Design criteria</p>	<p><u>Design Verification Statement (Lot 104)</u> Indicates compliance.</p> <p><u>Design Verification Statement (Lot 105)</u></p> <ul style="list-style-type: none"> The apartments sizes are greater than the minimums in this Objective. Habitable rooms are provided with glazing in accordance with the Objective. 	Yes

Design Criteria	Comment	Compliance
<ul style="list-style-type: none"> • Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none"> ○ Studio: 35m² ○ 1 bedroom: 50m² ○ 2 bedroom: 70m² ○ 3 bedroom: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <ul style="list-style-type: none"> • Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms <p>Design Guidance</p> <ul style="list-style-type: none"> • A window should be visible from any point in a habitable room 	<p><u>Assessment Comment</u></p> <p>The internal areas of the apartments subject to the amendment satisfy the minimum internal dimensions and areas.</p>	
<p>CI. 4E Private Open Space and Balconies</p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents.</p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building</p>	<p><u>Design Verification Statement (Lot 104)</u></p> <ul style="list-style-type: none"> • Indicates compliance. <p><u>Design Verification Statement (Lot 105)</u></p> <ul style="list-style-type: none"> • All balconies are equal or greater than the numerics provided in this Objective. • The plans reflect the intent of this Objective. • The architectural language incorporates the balcony design into the composition and massing of the buildings. <p><u>Assessment Comment</u></p> <p>The balconies of the apartments subject to the amendment satisfy the minimum areas.</p>	Yes
<p>CI. 4F Common Circulation and Spaces</p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments</p> <p>Design criteria</p> <ul style="list-style-type: none"> • The maximum number of 	<p><u>Design Verification Statement (Lot 104)</u></p> <p>Indicates non-compliance (although no numerical information is provided).</p> <p><u>Design Verification Statement (Lot 105)</u></p> <p>The maximum number of apartments off of a core on any given floor in each building is 11, in accordance with the Objective.</p> <p><u>Assessment Comment</u></p>	No Supported

Design Criteria	Comment	Compliance
apartments off a circulation core on a single level is eight (8); <ul style="list-style-type: none"> For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40 Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level. 	<p>The amendment continues the layout proposed throughout the lower levels of Buildings L3 and M which contained the following:</p> <p><u>Building</u> L3 Max. 11 M Max. 12</p> <p>In considering (and supporting) the layout, the Assessment Report referred to the Panel on 9 August 2017 noted:</p> <p><i>"All circulation areas meet alternate criteria (i.e. max 12) and the development is supported by a 'Lift Traffic Analysis Report' which confirms each building will meet the transportation needs of passengers and goods."</i></p>	
CI 4U Energy Efficiency	<p>Updated BASIX Certificates have been submitted which confirm that the amended development will continue to comply with the required water usage, thermal comfort and energy efficiency targets.</p> <p>See separate commentary below under 4.4.2 <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>.</p>	Yes

Table 9: ADG Summary.

4.4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Updated BASIX Certificates were submitted to Council on 7 November 2017.

The Certificates indicate that the amended development will achieve the following:

Commitment	Required Target	Proposed
Certificate 717601M-02 (Lot 105): 273 Units		
Water	40	40
Thermal Comfort	Pass	Pass
Energy Efficiency	20	22
Certificate 738993M-04 (Lot 104): 563 Units		
Water	40	40
Thermal Comfort	Pass	Pass
Energy Efficiency	20	25
Certificate 876536M (Lot 104): 38 Units		
Water	40	40
Thermal Comfort	Pass	Pass
Energy Efficiency	20	30
Certificate 720454M-03 (Lot 104): 8 Units		

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy Efficiency	40	44

Table 10: BASIX compliance.

4.4.3 Ryde Local Environmental Plan 2014

The amended proposal includes the following:

Standard	Permitted	DA	Amendment	Compliance
Clause 4.3: Height of Buildings	57m	<u>Lot 104</u> Building L1: 46.2m Building L2: 50.8m Building L3: 49.5m Building L4: 18.8m Building L5: 17.2m Building M: 56.0m <u>Lot 105</u> Building J: 60.0m Building K: 52.2m	<u>Lot 104</u> Building L1: 46.2m Building L2: 50.8m Building L3: 55.4m Building L4: 18.8m Building L5: 17.2m <i>Building M: 63.2m</i> <u>Lot 105</u> Building J: 53.0m Building K: 43.6m	Yes Yes Yes Yes Yes No Yes Yes
Clause 4.4: Floor Space Ratio (see Notes below)	<u>Lot 104</u> 4.14:1 (51,884m ²) <u>Lot 105</u> 8.55:1 (24,136m ²) <u>Total</u> ¹ 4.95:1 (76,020m ²)	<u>Lot 104</u> 4.29:1 (53,828m ²) <u>Lot 105</u> 8.55:1 (24,134m ²) <u>Total</u> 5.07:1 (77,962m ²)	<u>Lot 104</u> 4.54:1 (56,990m ²) <u>Lot 105</u> 7.5:1 (21,195m ²) <u>Total</u> ² 5.09:1 (78,185m ²)	No +5,106m ² Yes -2,941m ² No* +2,165m ^{2*}

Table 11: Development Standard compliance.

Notes:

1. The permitted GFA/FSR is as approved under SSD-5093.
2. The proposed GFA includes 1,944m² considered under the DA for excess parking as referred to the Panel on 9 August 2017. The additional GFA proposed in this amended proposal is 223m² which equates to an additional FSR of 0.02:1.

4.4.3.1 Clause 4.6 – Variations to Development Standards

The following provides a combined assessment of the variations proposed to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) as a result of the amended proposal, taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46*; *Wehbe V Pittwater [2007] NSW LEC 827*; and *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*.

Clause 4.3 - Height of Buildings Development Standard

The amended proposal seeks approval of a variation of 10.8% (i.e. 6.2m) to the Height of Buildings Development Standard. The non-compliance is located on Building M and comprises one (1) storey and the lift overrun.

Figure 5 below details the location of the non-compliance.



Figure 5: Location of building height non-compliance (shaded in yellow) on Building M.

Source: Plan DA08.001 (Revision K) dated 12 October 2017 as prepared by Turner.

Clause 4.4 – Floor Space Ratio Development Standard

As noted in Table 11 above, the proposed FSR includes 1,944m² which has already been considered and supported via a Clause 4.6 variation under the DA as presented to the Panel on 9 August 2017. The following discussion therefore only considers the additional GFA of 223m² (above the 1,944m²) proposed in this amendment which equates to an additional FSR of 0.02:1.

The applicant has submitted detailed Clause 4.6 requests to vary the Height of Buildings Development Standard (Clause 4.3) and the Floor Space Ratio Development Standard (Clause 4.4). Both requests are attached to this report under Appendix D (Attachments B & C) and have been considered when responding to the questions below.

The assessment is detailed as follows:

1. “Is the planning control in question a development standard?”

The prescribed Height of Buildings and Floor Space Ratio limitations are development standards pursuant to Clause 4.3 and Clause 4.4 of the RLEP 2014 respectively.

2. “What is the underlying objective or purpose of the development standard?”

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the RLEP 2014 are:

- a) *To ensure that street frontages of development are in proportion with and in keeping with the character of nearby development.*
- b) *To minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area.*
- c) *To encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure.*
- d) *To minimise the impact of development on the amenity of surrounding properties.*
- e) *To emphasise road frontages along road corridors.*

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor Space Ratio’ of the RLEP 2014 are:

- a) *to provide effective control over the bulk of future development,*
- b) *to allow appropriate levels of development for specific areas,*
- c) *in relation to land identified as a Centre on the Centres Map—to consolidate development and encourage sustainable development patterns around key public transport infrastructure.*

The shadow diagrams provided with the amended proposal indicates that additional overshadowing will occur over residential properties along Morshead Street to the south and over Bundara Reserve to the south-east.

The overshadowing is additional to that proposed in the application presented to the Panel on 9 August 2017 and has attracted 26 submissions which object to the additional impact upon residential properties as a result of the increased building height.

Notwithstanding the overshadowing provision of Clause 5.6(5) of the *North Ryde Station Precinct Development Control Plan 2013* which requires that “no overshadowing of residential lots outside of the Precinct is to occur after 11 am on June 21”, the amended proposal is not considered to *minimise* overshadowing or minimise the impact of development on the amenity of surrounding properties as required by Objectives (b) and (d) of Clause 4.3 nor minimise the bulk of the development as required by Objective (a) of Clause 4.4.

In this regard, the variation to the Development Standards cannot be supported for reasons that the impact resulting from the proposed height of the development and its commensurate building bulk is considered to be inconsistent with the objectives of the Standard.

3. *"Is compliance with the development standard consistent with the aims of the Policy and in particular does compliance with the development standard tend to hinder the obtainment of the objects specified in Section 5(a)(i)(ii) of the Environmental Planning and Assessment Act?"*

Clause 9 of the Department of Planning's Circular “*Varying Development Standards*” dated August 2011 states:

"It is necessary to assess the likelihood of similar applications being made to vary the standard in the locality. Councils should consider whether the cumulative effect of similar approvals will undermine the objective of the standard or the planning objectives for the locality. If the council considers that it will do so, the application should be refused or a decision should be made not to approve others like it."

It is considered that the approval of the amended proposal will result in a cumulative impact by creating a precedent to vary building heights and floor space ratio. In this respect, it is considered likely that the approval of the amended proposal will create pressure to approve other development with increased height and scale, or more intensive developments, beyond that already anticipated.

Accordingly, approval of the proposal is likely to hinder the attainment of Section 5(a) (i) and (ii) of the EP&A Act.

4. *"Is compliance unreasonable and unnecessary in the circumstances?"*

Given the minor numerical benefit in optimising internal solar access (see Tables 5, 6 & 7 in this report), it is considered that, on balance, the breach to the building height and, consequently, the increase to the Floor Space Ratio are unreasonable when considered against the resulting external impacts.

Therefore, compliance with the development standards are considered to be reasonable and necessary in this instance having regard to the characteristics of the site and the impacts of the amended proposal upon surrounding land.

5. *"Are there sufficient environmental planning grounds to justify contravening the Development Standard?"*

The variations proposed by the amended proposal are a result of attempts to optimise solar access units and the major communal open spaces within the development only.

As noted in Tables 5, 6 & 7 in this report, the degree of optimisation to internal solar access is minimal and, when weighed against the additional external amenity impacts and the creation of an undesirable precedent as a result, it is considered that there are insufficient environmental planning grounds to justify contravening the Development Standards.

6. *"Is the objection well founded?"*

The objections to Clause 4.3 and Clause 4.4 are not considered to be well founded for the following reasons:

- The amended proposal will undermine the objectives of the standard; and
- The cumulative non-compliances will result in adverse environmental impacts on the amenity of surrounding residential developments.

7. “Would non-compliance raise any matter of significance for State or Regional planning?”

The non-compliances will not raise any matter of State or Regional Significance.

8. “Is there a public benefit of maintaining the Development Standard?”

Given that the amendment would compromise the objectives of the Development Standards and result in unacceptable additional impacts upon surrounding land, the amended proposal is considered to be contrary to the public interest.

Accordingly there is considered to be a quantifiable and perceived public benefit in maintaining the standard.

Concluding Comment to Cl. 4.6 Assessment

Given the circumstances of the case, and that the external impacts of the amended proposal outweigh the minor numerical benefits to internal solar access, it is considered that the Clause 4.6 requests to vary the Height of Buildings Development Standard and the Floor Space Ratio Development Standard are not well founded and that strict compliance with Clause 4.3 and Clause 4.4 of the RLEP 2014 is considered to be reasonable and necessary.

4. PUBLIC EXHIBITION

Council undertook to renotify the amended proposal by mail for a period of not less than 14 days between 16 October 2017 and 30 October 2017.

As a result of the re-notification a total of 26 submissions were received the following:

Name	Address
G & S Akbar	45 Morshead Street, North Ryde
K & S Kennedy	Morshead Street, North Ryde
F Liao	Address not provided
J Molter	North Ryde
N Lam	67 Morshead Street, North Ryde
H Danelian	3/53 Morshead Street, North Ryde
S Merrington	Address not provided
N Bejjani	20 Morshead Street, North Ryde
E Ooi	Donald Street, North Ryde
J & D O'Reilly	Morshead Street, North Ryde
I Nago	41 Morshead Street, North Ryde
T Pondekas	19 Donald Street, North Ryde
K Gregory	61 Morshead Street, North Ryde
L Nakambra	57 Morshead Street, North Ryde
L Sutton	32 Morshead Street, North Ryde
T & C Christian	28 Morshead Street, North Ryde
S & T Budd	29 Morshead Street, North Ryde
T Stapleton	1 Morshead Street, North Ryde

Name	Address
D Blurek	23 Morshead Street, North Ryde
G Smith	Neil Street, North Ryde
R Carritt	Morshead Street, North Ryde
C Zanelli	Address not provided
N Tran-Dinh	Donald Street, North Ryde
S Pondekas	Donald Street, North Ryde
M & E Lee	35 Morshead Street, North Ryde
W & J Lowe	63 Morshead Street, North Ryde

Note: The public exhibition of the original scheme attracted five (5) submissions.

The submissions raise the following issues:

- **Breach of the permitted building height;**
- **Overshadowing;**
- **Privacy;**
- **Additional wind tunnel between Buildings L3 and M; and**
- **The development is oppressive and not in the community/public interest.**

The issues raised are addressed as follows:

- **Breach of the permitted building height**

All submissions objected to the proposed building height mainly because of the reasons discussed below (i.e. overshadowing, privacy and the wind tunnel) but also in that it would undermine the planning process.

Comment

This issue has been discussed elsewhere in this report (see commentary under *Section 4.4.3.1 Clause 4.6 – Variations to Development Standards*).

The proposed breach of the permitted building height has been appropriately considered against the questions established in *Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46*; *Wehbe V Pittwater [2007] NSW LEC 827*; and *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC* where it was considered that the request to vary the Height of Buildings Development Standard was not well founded for the following reasons:

- The amended proposal will undermine the objectives of the standard; and
- The non-compliance would result in adverse environmental impacts on the amenity of surrounding residential developments.

It is considered that the issue raised by the community with respect to the breach of the Height of Buildings Development Standard is valid and a justifiable reason to not approve of the amended proposal.

- **Overshadowing**

All submissions objected to the amended proposal because of the additional overshadowing cast over residential properties on Morshead Street to the south-west, Tennis World to the south and to Bundara Reserve to the south-east.

Comment

This issue has been discussed elsewhere in this report (see commentary under *Section 4.4.3.1 Clause 4.6 – Variations to Development Standards*).

The shadow diagrams provided with the amended proposal (see Figure 4 below) indicate that additional overshadowing will occur over residential properties along Morshead Street to the south-west and over Bundara Reserve to the south-east.

Notwithstanding the overshadowing provision of Clause 5.6(5) of the *North Ryde Station Precinct Development Control Plan 2013* which requires that “no overshadowing of residential lots outside of the Precinct is to occur after 11 am on June 21”, the amended proposal is not considered to minimise overshadowing or minimise the impact of development on the amenity of surrounding properties as required by the Objectives of the Height of Buildings Development Standard pursuant to Clause 4.3 of the RLEP 2014.

Therefore, the requested variation to the Development Standard is not supported because of the additional impact resulting from the proposed height of the development and its commensurate building bulk.

Figure 6 below shows the extent of additional shadow cast as a result of the amended proposal (the darker blue strip of land indicated in the 9.00am image is the residential area aligning Morshead Street).

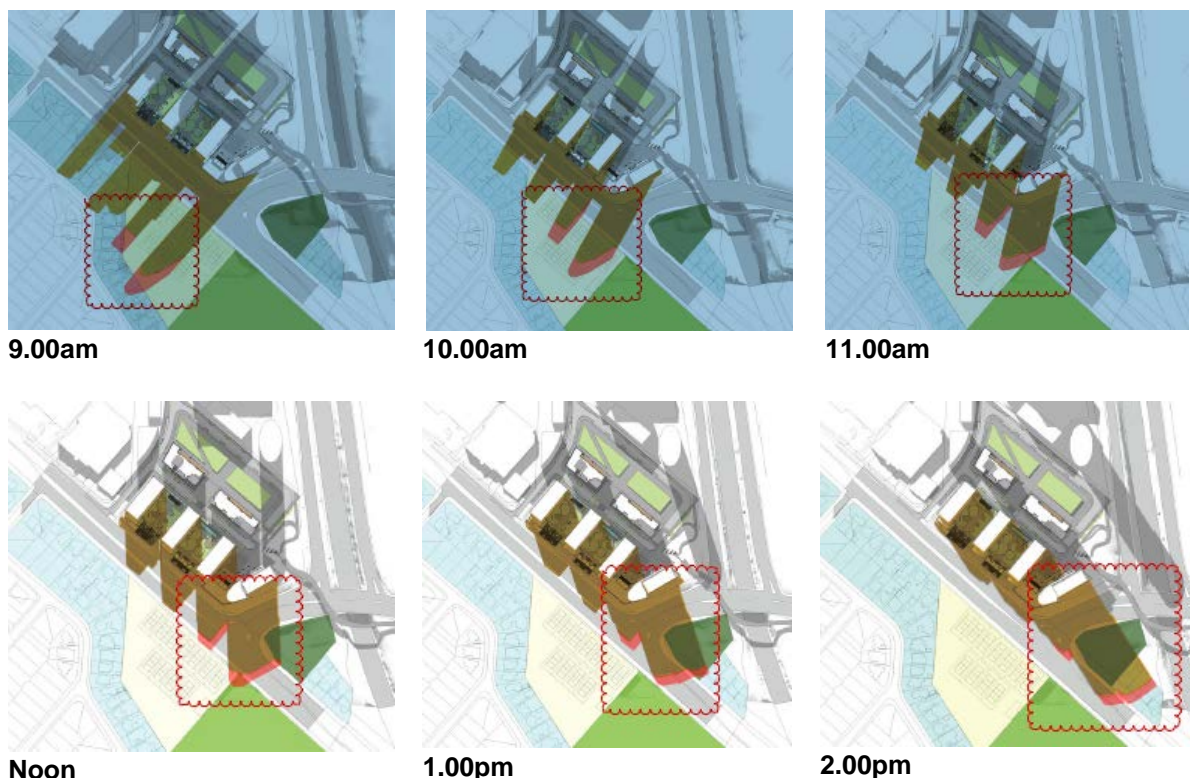


Figure 6: Overshadowing (additional shadow is indicated in red) on 21 June (mid-winter).

Source: Shadow Analysis (Sheets 1 & 2).

With respect to the additional overshadowing of Bundara Reserve, Council's Consultant Landscape Architect (CPS Planning Solutions) has reviewed the supporting document, *Ecological advice addendum for overshadowing of Bundara Reserve, North Ryde* submitted by the applicant.

In their review, CPS advise that:

"Based on a review of the new shadow analysis plans submitted, the modifications to the built form are to result in minor additional shading to the southern corner of Bundara Reserve at approximately 1pm on the 21st June. This area is equal to approximately an additional 5% of Bundara Reserve. Given the minor nature of the additional overshadowing when comparing to that of the original proposal, it is generally considered that the above findings of the original ecological advice remain current which is reiterated in an Ecological Advice Addendum which has been submitted and prepared by Eco Logical Australia.

Accordingly, as per the recommendations of the original Ecological Advice and the updated Ecological Advice Addendum, weed control and management of Bundara Reserve are considered to be important to ensure any potential impacts from additional shading are managed appropriately. In this regard, it is recommended that if possible a Vegetation Management Plan for Bundara Reserve should be prepared which is based on the best practice guidelines for Sydney Turpentine Ironbark Forest (DECC 2008)."

Clause 5.6(6) of the *North Ryde Station Precinct Development Control Plan 2013* requires that "no overshadowing of Blenheim Park or Bundara Reserve is to occur after 9.00am on June 21". This matter was addressed in the Assessment Report to the Panel on 9 August 2017 where it was noted that Bundara Reserve would be overshadowed by the compliant development. The Report stated:

"As noted by Roseth SC in 'Parsonage v Ku-ring-gai [2004] NSWLEC 347' in an urban context, the ease with which sunlight access can be protected is inversely proportional to the density of development. At higher densities sunlight is harder to protect and the claim to retain it is not as strong. The impact on sunlight must be assessed in the context of the reasonable development expectations of the proposal and the constraints imposed by the topography and the subdivision pattern.

The proposed development is a well resolved scheme that maximises amenity potential for residential units through building orientation and form. At this scale, it is very difficult to avoid solar impacts should it be sought to maximise height and floor space potential and the vision of the DCP.

As such the above stated solar impacts are considered to be an acceptable trade-off for the high density development which other than the lift overrun at the centre of Building J, complies with height and the approved GFA allocation (above ground level)."

Notwithstanding the minor additional impact upon Bundara Reserve resulting from the amended proposal, it is considered that the issue raised by the community with respect to the additional overshadowing of residential land and Bundara Reserve is valid and a justifiable reason to reject the amended proposal.

- **Privacy**

The submissions raise concern that the amended proposal will exacerbate overlooking of the residential properties along Morshead Street.

Comment

The amendments are located approximately 115m to the north-east of the closest property on Morshead Street (i.e. No. 53) and 108m from the closest property on Epping Road (i.e. No. 20).

Despite the proposed increase in height, the separations proposed exceed the separations of 24m as prescribed under Cl. 3F the ADG.

- **Additional wind tunnel between Buildings L3 and M;**

The submissions raise concern that the amended proposal will exacerbate a wind tunnel effect between Buildings L3 and M resulting in impact on residential properties along Morshead Street and the residents within the development.

Comment

The applicant has submitted a *Pedestrian Wind Environment Study* and separate *Pedestrian Wind Environment Statements* for Lots 104 and 105 respectively which address the development as originally proposed (i.e. prior to the amendment).

Notwithstanding, the study indicates that, for the three (3) off-site locations (Points 101, 103 and 104), the desired wind criterion is equivalent to or better than existing site wind conditions and no alleviating or ameliorating treatments were required.

Given that the amended proposal includes two (2) levels above the original design, it is considered unlikely that the findings of the *Study* and *Statements* would change with respect to off-site impact as the wind velocity between buildings at the higher level would be lessened.

- **The development is oppressive and not in the community/public interest.**

The submissions claim that the scale of the amended development is oppressive and that it is not in the public interest due to the additional impacts and the creation of an undesirable precedent.

Comment

These issues have been discussed above and elsewhere in this report where it was considered that the requested variation to the building height is not supported because of the additional impact resulting from the additional height and its commensurate bulk.

Furthermore, it was also considered that the approval of the amended proposal would result in a cumulative impact by creating a precedent to vary building heights and floor space ratio. In this respect, it is considered likely that the approval of the amended proposal will create pressure to approve other development with increased height and scale, or more intensive developments, beyond that already anticipated by the RLEP 2014 and the RDCP 2014.

5. VOLUNTARY PLANNING AGREEMENT

The Voluntary Planning Agreement is currently subject to public exhibition which commenced on 25 October 2017 and ends on 22 November 2017.

Given the delay between the completion of the public exhibition period and the submission date of this report, and in accordance with legal advice received from Hall & Wilcox dated 27 October 2017 (see Appendix E), it is recommended that the Deferred Commencement condition remain as imposed in the conditions of consent in Appendix C of this report.

6. CONCLUSION

The information provided by the applicant to address the decision of the SNPP has been provided and assessed in this report for the consideration of the Panel.

Summary of the amendment

The applicant undertook a series of alternative design options to address the Panels concerns raised at their meeting on 27 September 2017. Option F was considered to be the preferred option and the amended proposal is based upon that preferred option.

Primarily, the amended proposal reduces the heights of Buildings J and K on Lot 105 by two (2) storeys each and increases the heights of Buildings L3 and M on Lot 104 by two (2) storeys each.

Increased unit numbers

The amended proposal increases the total number of units by a further three (3) apartments.

Increased building height

The amended proposal increases the building height to 63.2m such that Building M now breaches the permitted building height of 57m by 6.2m.

Increased gross floor area/floor space ratio

The amended proposal increases the gross floor area by a further 223m² (above the 1,944m² already considered under the original proposal referred to the Panel). This results in an increase of the total floor space ratio to 5.09:1 which further increases the originally considered non-compliance of 5.07:1 by 223m².

Consideration under Cl. 4.6 of the RLEP 2014

The increased building height and floor space ratio were considered under Clause 4.6 of the RLEP 2014 where it was found that, given the circumstances of the case, and that the external impacts of the amended proposal outweighed the minor numerical benefits to internal solar access, the requests to vary the Height of Buildings Development Standard and the Floor Space Ratio Development Standard were not well founded and that strict compliance with Clause 4.3 and Clause 4.4 of the RLEP 2014 was considered to be reasonable and necessary.

Solar Access

The *Solar Access Options Study* prepared by Steve King reveals that the amended proposal would achieve the following:

Solar access to apartments (refer to Table 5 in this report)

- 47.4% of apartments would receive a minimum of 2 hours direct sunlight between 9.00am and 3pm at mid-winter; and
- 11.9% of apartments would receive a minimum of 2 hours direct sunlight at the equinox.

When compared to the application presented to the Panel at the meeting of 9 August 2017 (and 27 September 2017), this represents an increase of 0.7% at mid-winter but a decrease of 3.5% at the equinox.

The *Addendum Statement of Environmental Effects* notes that a total of 25.5% of apartments in the amended proposal would have no solar access between 9am and 3pm at mid-winter.

Solar access to Communal Open Space (refer to Tables 6 and 7 in this report)

- A total of <10% to 75% of communal open space will receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm at mid-winter.

This represents an additional 5% of communal open space receiving a minimum of 2 hours direct sunlight at 10.30am & 11.00am and at 2.00pm & 2.30pm respectively.

The remainder of the day will remain unchanged from the application originally presented to the Panel.

- A total of <5% to 90% of communal open space will receive a minimum of 2 hours direct sunlight from 9.00am to 3.00pm at the equinox.

This represents an additional 5% of communal open space receiving a minimum of 2 hours direct sunlight between 9.00am and 11.00am.

It is noted that solar access to communal open space then decreases to -5% between 11.30am and 12.30pm.

The remainder of the day will remain unchanged from the application originally presented to the Panel.

Public Exhibition

The amended proposal was publicly exhibited between 16 October 2017 and 30 October 2017 and attracted 26 submissions objecting to the proposal.

The submissions raise issues which Council considers to be warranted, particularly those issues related to the additional overshadowing cast over private property as a direct result of the amendment.

Voluntary Planning Agreement

The Voluntary Planning Agreement is currently subject to public exhibition which commenced on 25 October 2017 and ends on 22 November 2017.

Given the delay between the completion of the public exhibition period and the submission date of this report, and in accordance with legal advice received from Hall & Wilcox dated 27 October 2017 (see Appendix E), it is recommended that the Deferred Commencement condition remain as imposed in the conditions of consent in Appendix C of this report.

On balance the amended proposal is considered by Council to be an unreasonable outcome and is not supported for the following reasons:

- The amended proposal would deliver a minor positive solar access outcome to apartments (+0.7%) and communal open space (+5%) within the development during mid-winter;
- The amended proposal would deliver a negative solar access outcome to apartments (-3.5%) and communal open space areas (-5%) within the development during the equinox;
- The amended proposal involves a new breach to Clause 4.3 Height of Buildings and a further breach to Clause 4.4 Floor Space Ratio, both of which are considered to be unacceptable given the circumstances; and
- The amended proposal will unreasonably increase the overshadowing of residential properties to the south-west and Bundara Reserve to the south-east.

Therefore, it is recommended that the amended proposal be rejected and that the proposal presented to the Panel on 9 August 2017 be approved.

7. RECOMMENDATION

That the Sydney North Planning Panel consider the amended information provided by the applicant and:

- A. Reject the amended proposal.

and

- B. Approve LDA2016/0395 for the construction of a mixed use development at 25-27 Epping Road, Macquarie Park subject to the conditions of consent in Appendix C of this report.