



SYDNEY WEST CENTRAL PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SWC011
DA Number	DA/585/2016/A
LGA	City of Parramatta
Proposed Development	Section 96(2) modification to approved 17 storey mixed-use development including, but not limited to, increase in height of Tower A by 420mm, larger balconies at Level 8, reduction in floor area, modified unit mix, addition of essential services, inclusion of basement ventilation stacks and changes to the facade design.
Street Address	30 – 42 Oxford Street, Epping (Lot A DP 354692, Lots 1A and 1B DP 102387 and Lot C DP 389716)
Applicant	Cardno Pty Ltd
Owner	Greaton Epping Holdings Pty Ltd
Date of DA lodgement	22 December 2016
Number of Submissions	Seven (7)
Recommendation	Approval subject to revised conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	Pursuant to Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011, the proposal is a s96(2) modification to an application with 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 and Assessment Act 1979• Environmental Planning and Assessment Regulations 2000• State Environmental Planning Policy No. 55 (Remediation of Land)• State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)• State Environmental Planning Policy (Sydney Harbour Catchment) 2005• State Environmental Planning Policy (Building Sustainability Index: BASIX)• State Environmental Planning Policy (State and Regional Development) 2011• Hornsby Local Environmental Plan 2013• Hornsby Development Control Plan 2013• Epping Town Centre Public Domain Guidelines 2015
List all documents submitted with report	<ul style="list-style-type: none">• Attachment 1 - Conditions of Consent• Attachment 2 - Architectural Drawings• Attachment 3 - Landscape Drawings• Attachment 4 - Civil & Stormwater Drawings
Report prepared by	Alex McDougall Executive Planner, City Significant Development
Report date	18 October 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
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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 summarized, in the Executive Summary of the assessment report?	Yes
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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 received, has it been attached to the assessment report?	N/A
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?	No
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Conditions

Have draft conditions been provided to the applicant for comment?	Yes
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1. Executive summary

This proposal seeks various modifications to an approved 17-storey, 2-tower mixed use development. The modifications include, but are not limited to, the following:

- Increase in height of Tower A by 420mm;
- Retention of full balconies at level 8;
- Addition of essential services;
- Revised stormwater solution;
- Introduction of car park ventilation stack in open space; and
- Changes to the facade design.

Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments has not identified any fundamental issues or concerns. The application is therefore satisfactory when evaluated against section 79C and 96(2) of the Environmental Planning and Assessment Act 1979.

This report recommends that the Panel approve the modification application, subject to the recommended revised conditions.

2. Key Issues

Hornsby Local Environmental Plan 2013:

- **Building Height** – Control: 48m, Approved DA: 52.8m, Modified Proposed: 53.22m (additional 420mm over approved scheme, 10.9% breach of the control).

SEPP 65:

- **Principle 5: Landscape** – Acceptability of revised public open space forecourt in light of reduced size and presence of substations.

Apartment Design Guide:

- **Air Quality / Communal Open Space** – Car park exhaust located in middle of rear communal open space.
- **Separation / Privacy** – Impact on adjoining properties of not setting back Level 8 by 12m.

Hornsby Development Control Plan 2013:

- **Stormwater Design** – Acceptability of proposed hybrid bio-retention and storm filter solution.
- **Trees** – The proposal results in the requirement to remove a large tree on the adjoining site.

3. Site description, location and context

3.1 Background

DA/585/2016 (formerly Hornsby DA/1381/2015) was granted deferred commencement consent by the Sydney West Joint Regional Planning Panel on 20 July 2016 for demolition of existing structures, retention of a heritage item and construction of a 17 storey mixed-use development comprising ground floor retail over basement carpark and shop-top housing comprising 254 units in two residential towers.

A deferred commencement condition required registration and creation of a downstream easement to drain water within 24 months. The deferred commencement condition was satisfied and operational consent was issued on 5 July 2017.

The applicant sought pre-lodgement advice from Council in relation to the proposed changes (PL/183/2016). On 24 November 2016 Council officers provided a generally favourable response to the proposed changes but raised concern with the location of the car park exhaust vent, the amenity of units reduced in size, building separation and the revised basement layout.

3.2 Site Description

The irregular shaped site comprises four allotments known as No. 30, Nos. 32 – 36, No. 38 and No. 42 Oxford Street, Epping. The subject site has a frontage to Oxford Street of 60.32m, a consolidated area of 5,170m² and an average cross fall of 5% to the north-eastern corner (rear). No. 38 Oxford Street is listed as a heritage item (No. 804 - House/Shop) of local heritage significance under the provisions of Schedule 5 (Environmental Heritage) of the Hornsby Local Environmental Plan 2013 (HLEP).

This site is within the Epping Town Centre Urban Activation Precinct (ETCUAP), approximately 125 metres north-east of Epping Rail Station and in close proximity to a range of other retail, commercial, education, open space and recreational facilities in and around the Epping Town Centre. The Epping Town Centre is comprised of a range of multi-storey office buildings, retail shops, medium density residential development, schools, places of public worship and other ancillary uses.

Notwithstanding the existing character described above, the locality has been identified as having a future character of high density mixed use buildings. The site and surrounding properties to the west and south are zoned B2 Local Centre. The site adjoins R4 High Density Residential zone to the rear (east) and part of the southern boundary.

The site became part of the City of Parramatta following the proclamation on 12 May 2016 that created a number of new Council entities, formed through mergers and boundary changes.

The site was inspected on 13 January 2017. Demolition commencement in August 2017.

Area	<ul style="list-style-type: none">• 5,170m²
Zoning:	<ul style="list-style-type: none">• B2 Local Centre
Improvements:	<ul style="list-style-type: none">• Local heritage listed shop/house terrace (to be retained)• Church and 3 x single storey terrace shops (to be demolished)
Locality:	<ul style="list-style-type: none">• Town centre (commercial/retail) to the north, south and west.• Church and residential to the east.
Constraints:	<ul style="list-style-type: none">• Local heritage listed
Key Development Standards:	<ul style="list-style-type: none">• Height: 48m• FSR: 4.5:1

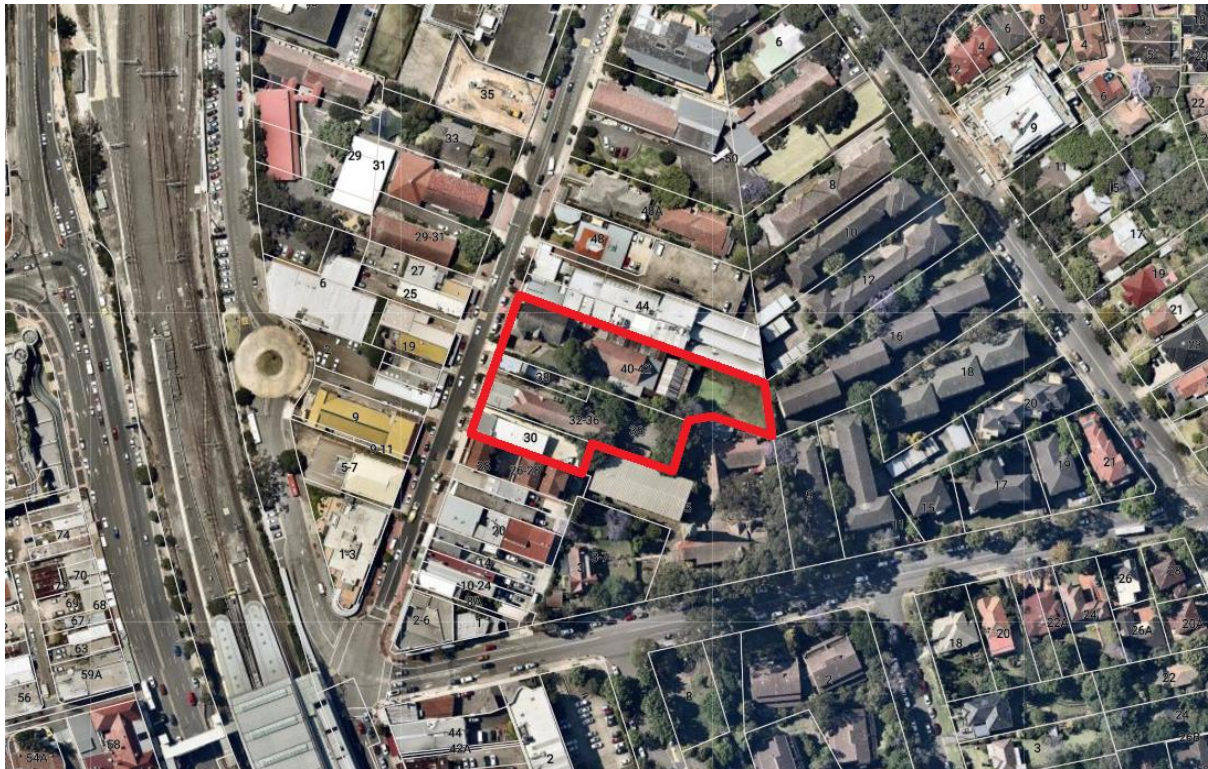


Figure 1. Aerial view of locality (subject site in red).

3.3 Related Applications

Application Ref	Description
TA/650/2017	Removal of one (1) x <i>Afrocarpus falcatus</i> (Yellowwood) at St. Alban's Anglican Church, 3 – 5 Pembroke Street, Epping. Approved 17/10/2017.

4. The Proposal

Consent is sought to modify the approved development as follows:

- Revise Condition 2 'Approved Plans' (and associated conditions where necessary) as follows:
 - Basement Levels – Extend basement to south-west to meet storage and bicycle requirements, reduce basement to north-east, redesign waste area,
 - Ground Level – Transfer of commercial floor space from Tower B to Tower A (1 sqm additional overall), additional communal facilities to rear communal open space, electrical substations relocated to front (and associated new screening), front water feature partially removed, modification to mailbox location, introduction of fire booster cabinet to retail façade, increase in finished floor levels of Block A by 420mm, introduction of basement ventilation stack in rear setback, revised stormwater treatment design;
 - Level 1 – Change to unit mix (1 x 2-bed to 1 x 1-bed);
 - Levels 2 & 3 – Change to unit mix (4 x 1-bed to 2 x 2-bed);
 - All Levels – Unit sizes, dimensions and layout revised; relocation of air conditioning units;
 - Retail Façade – Slightly revised detailing;
 - Tower Facades – Bronze detailing added (balustrades, privacy screens), slight changes to ornamental balustrading, alterations to glazing;
- Revise Condition 5 'Amendment of Plans' to not require additional setbacks of balconies at level 8;
- Delete Condition 68 'Unit Numbering';

Overall the unit mix would be revised as follows:

- Original: 254 residential units (46 x 1-bed, 182 x 2-bed and 26 x 3-bed)
- Proposed: 252 residential units (43 x 1-bed, 183 x 2-bed and 26 x 3-bed)

During the course of assessment, the applicant submitted the following additional information and revised drawings in response to concerns raised by Council officers:

- Revised basement layout to ensure compliance with Council controls and Australian standards;
- Maintained retail floor space at ground floor of Tower B to ensure revised proposal was not prohibited in zone;
- Revised retail façade to be more in keeping with original approval;
- Additional justification for basement ventilation in rear open space including air quality report;
- Additional justification for larger balconies at level 8;
- Modification to, and additional justification for, revised WSUD measures;
- Additional details of fire booster;
- Provided unit dimensions on drawings to demonstrate ADG compliance; and
- Provided clarification on change to total retail floor space.

5. Referrals

The following referrals were undertaken during the assessment process:

Sydney West Joint Regional Planning Panel

The matters raised by the Panel at its Briefing meeting are addressed below:

Issues Raised	Comment
Concern raised as to the permissibility of the rear tower as 'shop-top housing', applicant should provide legal advice. If rear building cannot be considered shop-top, consider introducing innovation space to rear.	The applicant submitted revised drawings reintroducing a commercial use to the ground floor of Tower B and as such the building is permissible in the zone.
Would prefer no loss of commercial floor space from original. If possible, move commercial to first floor.	The applicant has demonstrated that the proposal would not result in a decrease in commercial floor space.
Consider the original shopfront façade design should be maintained.	The applicant has revised the proposed shopfront design to ensure it is more in keeping with the original design.
Asked for section drawings with adjoining property to determine 8 th floor privacy issue.	The applicant has provided sections which demonstrate that the larger terraces would not result in unacceptable privacy impacts.
Try exhaust through building, otherwise landscape.	The applicant has demonstrated that there are no other viable options for venting the basement and that the exhaust vent will be adequately landscaped.
Dimensions on drawings for ADG compliance (i.e. living room and bedroom width)	The drawings have been revised to include the relevant dimensions.

Design Excellence Advisory Panel

The application was not referred to Council's Design Excellence Advisory Panel as the original application was assessed by Hornsby Council who did not conduct an independent design review of the original application.

Internal

Authority	Comment
Development & Catchment Engineer	The proposed changes to the stormwater system are considered to be acceptable as they achieve the same pollution reduction targets and still include landscape-integrated WSUD measures to provide ancillary environmental benefits. Acceptable subject to additional conditions.
Environmental Health (Air)	The proposal satisfies the requirements of Council's controls and can be supported, subject to standard conditions of consent.
Environmental Health (Waste)	The proposal satisfies the requirements of Council's controls and can be supported, subject to standard conditions of consent.
Traffic & Transport	Raised concern that revised basement layout was not in keeping with relevant controls and Australian Standards. Subsequently applicant submitted revised drawings resolving these concerns to the satisfaction of Council's traffic engineers.
Heritage	The proposal is substantially the same as the previously approved DA. Thus the heritage impact will be substantially the same as that of the previously approved application. As such there is no objection to this proposal from a heritage perspective.
Urban Design	Raised concerns relating to revised unit sizes and location of proposed car park exhaust. For the reasons listed below the proposal is considered to be acceptable.
City Architect	Reviewed changes to facades and found them to be acceptable.

External

None

Submissions

The application was notified in accordance with Hornsby DCP requirements for a 14-day period between 18 January – 2 February 2017.

A total of 7 submissions were received. The issues raised fell broadly into two categories – those relating to the original DA, and those relating to the proposed modifications.

Issues Raised	Comment
<i>Relating to modifications</i>	
Permissibility of Tower B given lack of ground floor commercial	The applicant submitted revised drawings reintroducing a commercial use to the ground floor of Tower B and as such the building is permissible in the zone.
Visual impact of substations on street frontage	Energy providers have strict requirements about the location and accessibility of substations. The substations have been slightly set off the street frontage and stacked so as to minimise the amount of the frontage they occupy. As such the substations are considered to be in an acceptable location.
Reduction in size and functionality of public plaza to front of building (which was used as justification for increased height)	The size of the open space is only reduced by the presence of the substations. As discussed below there is no other acceptable place for them and as such this is seen as unavoidable. The space cannot be widened due to the constraints imposed by the driveway and the existing heritage item. The proposal also includes removal of water features originally proposed in this space. These features provided a negligible contribution to the amenity of this space and their removal is considered to be acceptable.
Privacy impacts	The proposed modifications are considered to have an acceptable impact for the reasons outlined in this report.

<i>Relating to original development application</i>	
Impact on existing infrastructure (roads, schools, open space)	The modification results in a small reduction in the number of units, and thus future occupancy of the site, and as such would reduce the impact on existing infrastructure. Notwithstanding, the originally approved density was in keeping with the relevant density controls.
Number of units Epping wide approved in short timeframe	As outlined below, the proposal results in a small reduction in the overall number of units on the site.
Impact on heritage building on site and heritage character of area	The revised front façade is generally in keeping with the originally approved design and as such is considered to have an acceptable impact on the curtilage of the existing heritage building to remain on site.
Construction traffic and impact of construction on small business	A Construction Management Plan is required by the original conditions of consent. This plan will outline how construction impacts are to be minimised. There is also a condition requiring that truck movements are restricted to approved construction times.
Lack of car parking	The proposal provides the required level of car parking on site.
Loss of existing public access way	The proposed modifications do not result in loss of a public access way.
Operational traffic generation	The proposed modifications are not considered likely to change the traffic generation compared to the original approval.
Impact on retained trees and lack of additional planting	<p>The proposal does not result in a reduction in the total amount of planting to occur on site.</p> <p>The proposal would result in excavation closer to a large tree on the adjoining site, St. Alban's Anglican Church, Epping. A tree application to remove the tree, a non-native species, has been approved by Council. As such the impact is considered to be acceptable.</p>
Impact on on-street parking	The proposed modifications are not considered likely to change the impact on on-street parking compared to the original approval.

6. Environmental Planning and Assessment Act

The sections of this Act which require consideration are addressed below:

6.1 Section 79C: Evaluation of Proposed Modifications

This section assesses the proposed modifications in the context of the relevant planning instruments and plans, including but not limited to State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development), Hornsby Local Environmental Plan 2013, Hornsby Development Control Plan 2013 and the Epping Town Centre Public Domain Guidelines 2015.

6.1.1 Height Increase (Block A)

The proposed modifications would result in an increase in the height of Block A by 420mm from an originally approved height of 52.8m to 53.22m (0.8% increase).

Hornsby LEP 2013 Standard	Requirement	Original DA Approval	Proposed Modification	Compliance
Building Height	48m	52.8m (10% breach)	53.22m (10.9% breach)	No

The ground floor retail was originally approved a step down from street level. The height increase is proposed to allow a step-free transition from the public domain to the retail unit.

This modification is considered to be acceptable for the following reasons:

- The increase in height is numerically negligible and the associated impact on overshadowing will also be negligible and thus acceptable.
- A level retail level will improve the accessibility of the retail units for less able bodied persons.
- A level retail level will reduce the likelihood of overland flow waters entering the retail level and damaging property.

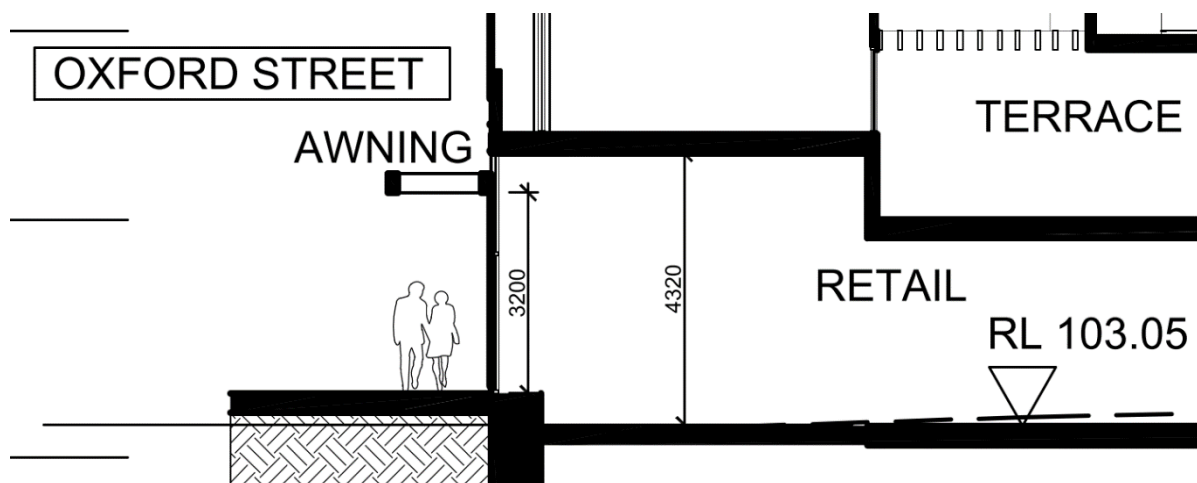


Figure 2. Section from original proposal showing step down into retail unit.

A Clause 4.6 variation request is not required because the proposal is a modification application that is considered to be substantially the same as the original application (see Section 6.2 below).

6.1.2 Basement Modification

The proposed modification includes extending the basement to the south-west of the site while reducing the basement to the north-east of the site.

The modification is proposed to increase the efficiency of the waste area and meet residential storage and bicycle storage requirements.

The modified basement would require the removal of a large tree from the adjoining property, St. Alban's Anglican Church, 3 – 5 Pembroke Street, Epping. The Church have agreed to removal of the tree. A tree application for removal of the tree, a non-native species, has been approved by Council.

This modification is considered to be acceptable for the following reasons:

- The proposal would maintain 8% of the site as deep soil area, in keeping with the requirements of the ADG (i.e. >7%).
- The proposal would improve the amenity for future occupants (i.e. increased storage, bicycling parking and waste handling)
- The proposal would result in no change to the visual or amenity impacts of the development.

ADG Control	Requirement	Original DA Approval	Proposed Modification	Comply?
3E Deep Soil Zone	7% of site area	9.5%	8%	Yes

6.1.3 Transfer Commercial Floor Space

The proposed modification includes transferring approximately 61sqm of commercial floor space from the ground floor of Tower B to the ground floor of Tower A. The Tower B ground floor retail unit would be reduced from 88sqm to 27sqm.

The modification is proposed to maximise the amount of floor space with a street frontage.

The modification is considered to be acceptable for the following reasons:

- The proposal would not result in a net decrease in the total amount of commercial floor space approved on site. As such the proposal is still considered to satisfy the B2 zone objective of providing a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- The proposal would minimise the amount of commercial floor space without a street frontage. The Tower B unit is still considered to be large enough to accommodate a small business.
- Maintaining a commercial unit to tower B is necessary to ensure that tower remains a permissible 'shop-top housing' development. The ground floor residential flat building component of Tower B is permissible by way of Clause 5.3 'Development Near Zone Boundaries' as proposed units are located within 20m of land zoned R4 'High Density Residential' (see Figure 3 below).

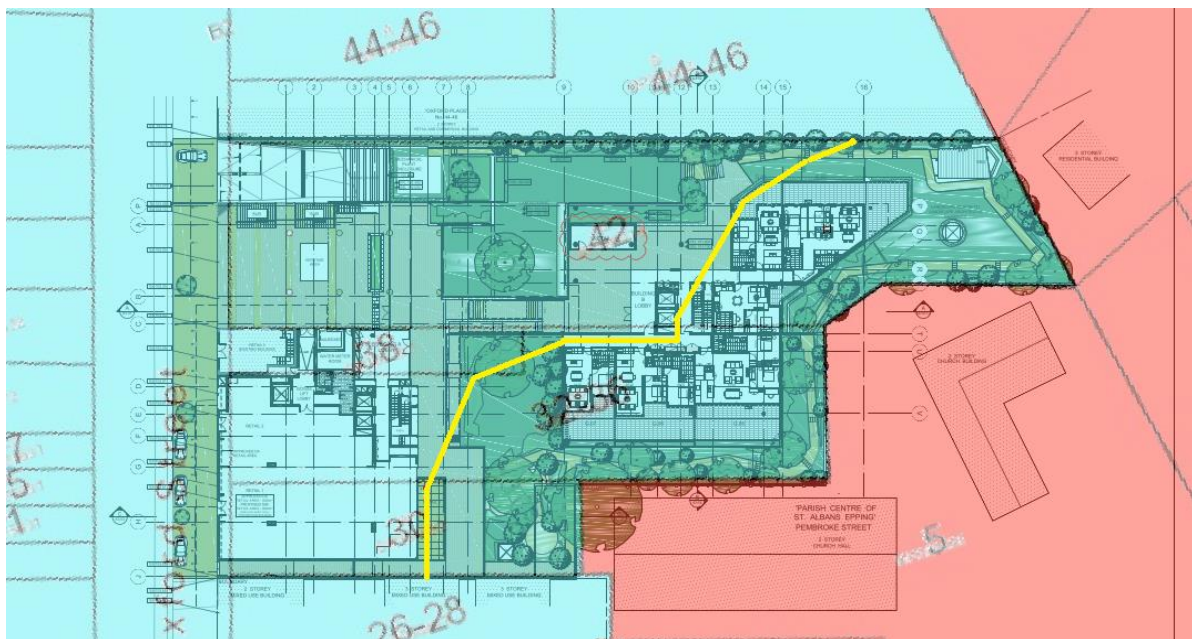


Figure 3. Ground Floor Plan with zoning map overlay and approximate 20m zone interface zone (blue: B2 zone, red: R4 zone, yellow: approximate 20m zone interface).

6.1.4 Communal Open Space –

The proposed modification includes the introduction of a basement car park ventilation stack in the rear communal open space.

The modification is necessary as there is no other feasible place to locate such ventilation.

The proposed modification is considered to be acceptable for the following reasons:

- The applicant has provided additional communal facilities (i.e. bbq area) in the rear open space to compensate for the lost amenity.
- The applicant has demonstrated that there is no other feasible location for such a stack and that they are common in such developments.
- The applicant has provided an air quality report which concludes that the exhaust gases would not have an unacceptable impact on the health of the nearby residential units.
- The applicant has provided a revised landscape plan outlining a series of climbing planters on the stack to reduce its visual impact.
- The proposal would still maintain the required communal open space (see table below).

ADG Control	Requirement	Original DA Approval	Proposed Modification	Comply?
3D: Communal Open Space	25% of site area min 3m dim. (1,293m ²)	30%	29%	Yes

6.1.5 Public Open Space

The proposal modification includes relocating the electrical substations from their originally proposed location mid-block to the front public open space area, adjacent to the driveway. The modification also includes removal of a small water feature from the front setback area.

The modifications are necessary to meet the accessibility requirements of the electricity provider.

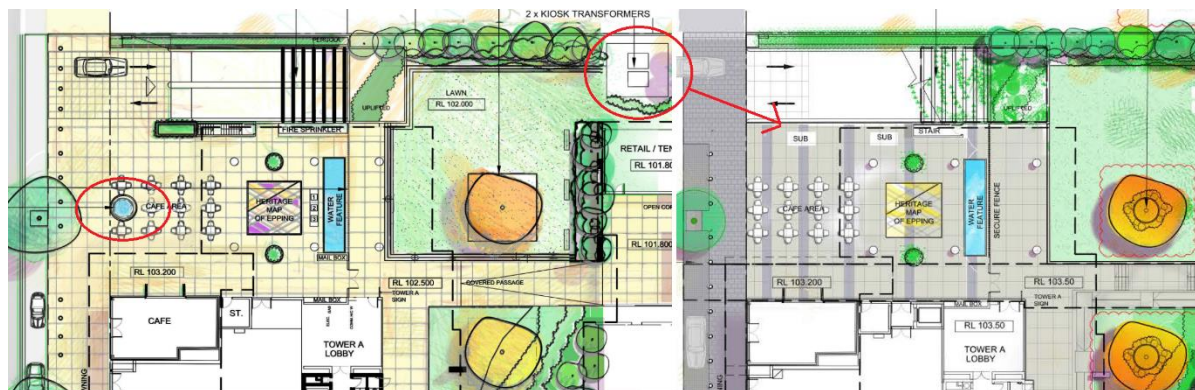


Figure 4. Originally Approved Front Public Open Space Area (left) vs. Modified (right)

The modifications are considered to be acceptable for the following reasons:

- The substations must be easily accessible by the energy provider in the event of an emergency; they were not accessible previously. The proposed location, in close proximity to the driveway, is considered to be ideal.
- The substations are not considered to unacceptably compromise the amenity of the public open space.
- It is not possible to widen the open space as it is constrained by the driveway to the north and heritage item to the south.
- The small water feature provided minimal amenity and would impede the ability of utility vehicles to access the transformers.

6.1.6 Change to Unit Mix/Layout

The proposed modifications include changes to the size and number of units.

The modifications are necessary as further detailed development of the construction drawings have required the use of more internal space for service ducting, structural columns and acoustic wall detailing.

Hornsby DCP 2013 Control	Requirement	Original DA Approval	Proposed Modification	Comply?
Housing Choice	1B – >10% 2B – >10% 3B – >10%	1B – 46 (18%) 2B – 182 (72%) 3B – 26 (10%)	1B – 43 (17%) 2B – 183 (73%) 3B – 26 (10%)	Yes

ADG Control	Requirement	Original DA Approval	Proposed Modification	Comply?
3J : Bicycle and Car Parking [The site is within 200m of Epping train station. As such RMS rates apply.]	<i>Original DA:</i> 0.6 per 1 bed (27.6) 0.9 per 2 bed (163.8) 1.4 per 3 bed (36.4) 1 per 5 visitors (50.8) Total: 279 <i>Modified DA:</i> 0.6 per 1 bed (25.8) 0.9 per 2 bed (164.7) 1.4 per 3 bed (36.4) 1 per 5 visitors (50.4) Total: 278	Residential: 228 Visitor: 51 Total: 279	Residential: 228 Visitor: 51 Total: 279	Yes
4D: Apartment size & layout	1B – Min 50m ² 2B – Min 75m ² (2 baths) 3B – Min 95m ² (2 baths) Min. internal areas: Master Bed - 10m ² Other Bed - 9m ² Min. 3m dimension for bedrooms (excl. wardrobe space). Min. width living/dining: 1B – 3.6m 2B – 4m 3B – 4m	1B – min. 50m ² 2B – min. 75m ² 3B – min. 95m ² >10m ² >9m ² >3m >3.6m >4.0m >4.0m	1B – min. 49.85m ² 2B – min. 72.76m ² 3B – min. 95.20m ² >9.5m ² >9m ² >2.9m Average – 3.45m Average – 3.89m Average – 4.32m	No No Yes No Yes No No No Yes

The modifications are considered to be acceptable for the following reasons:

- While many units do not comply with one or more of the dimensional requirements in the ADG, the non-compliances are minor and the Department of Planning, in circular PS 17-001 (29 June 2017), stated that, “the ADG is not intended to be and should not be applied as a set of strict development standards”.
- The proposal does not result in non-compliances with unit mix or parking controls.
- The applicant has demonstrated that the change is necessary to accommodate servicing.
- The applicant submitted an updated BASIX report which demonstrated that the revised proposal would satisfy the requirements of the SEPP.

- The proposal would have a negligible impact on compliance with the other relevant ADG standards (i.e. solar access, cross ventilation, etc).

Condition 7 'Section 94 Development Contributions' has been revised to update the required developer contributions in light of the changes to the number/type of units.

6.1.7 Stormwater Treatment

The proposed modification includes a change to the stormwater treatment system from a large bio-retention system to a 'hybrid' system combining a smaller bioretention basin and a stormfilter cartridge system.

This modification is proposed primarily due to the applicant's concerns with the ability to service a large system. The bio-retention system is located to the rear of the site which would pose challenges for servicing by earth moving equipment.

The modification is considered to be acceptable for the following reasons:

- Council's stormwater engineers are satisfied that the alternative 'hybrid' system proposed will provide the same pollution reduction targets as original approved while still containing a landscape integrated WSUD system which has ancillary environmental benefits. This smaller system would still be serviceable by smaller earthmoving equipment.
- The use of a stormfilter system would take up less of the primary rear communal open space, providing additional space for residential amenities, such as the BBQ area now proposed.

Additional conditions are required to ensure the stormfilter cartridge system is installed correctly. Condition 53 also needs to be revised to refer to the latest drawings.

6.1.8 Façade Changes

The proposed modifications include the following changes to the facades of the development:

- Street Façade – Reduction in glazing, introduction of fire booster cabinet to retail façade, removal of recessed junction; and
- Tower Facades – Bronze detailing added (balustrades, privacy screens), slight changes to ornamental balustrading, reduction in glazing.

These changes have arisen through post-consent design development and the need to accommodate critical services.

The proposed modifications are considered to be acceptable for the following reasons:

- The design ethos is generally in keeping with that of the original approved design.
- There is considered to be no other reasonable place to locate the services.
- The proposal introduces higher quality finishes to the façade (i.e. bronze detailing).
- Council's city architect was satisfied that the changes were acceptable.



Figure 5. Street facade comparison (top: approved, bottom: proposed).



Figure 6. Tower A facade upper levels comparison (left: approved, right: proposed)

6.1.9 Privacy

The proposal includes a request to delete condition 5b and 5c which required the following:

The approved plans are to be amended as per the following list marked in red on the approved plans: ...

- b) *All north-facing terraces on the Level 8 floor plan for Towers A and B in DA 1.09 Issue E dated 3/05/2016 are to have a minimum setback of 12m from the northern boundary. Any encroachment is to be in the form of non-trafficable roof space only.*
- c) *All south-facing terraces on the Level 8 floor plan for Tower B in DA 1.09 Issue E dated 3/05/2016 are to have a minimum setback of 12m from the northern boundary. Any encroachment is to be in the form of non-trafficable roof space only.*

The stamped plans also included the following mark up:

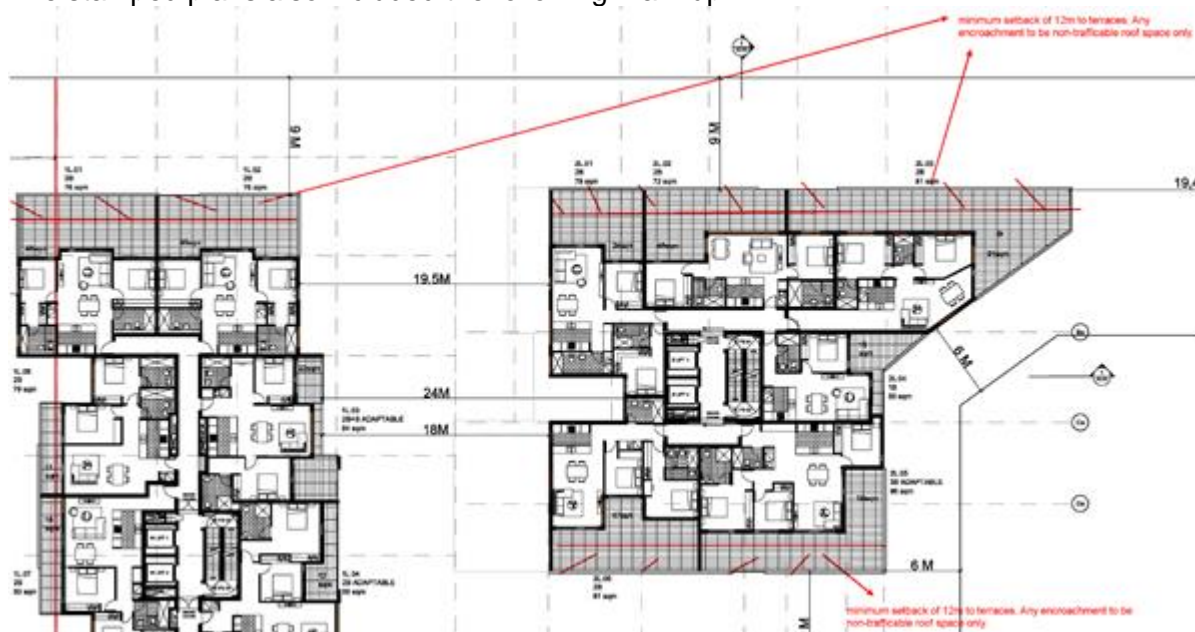


Figure 7. Approved Level 8 Floor Plan

Based on the original assessment report the condition was primarily imposed to protect the privacy of adjoining and nearby properties. The applicant considers this condition is not necessary to achieve this aim.

The proposed modification is considered to be acceptable for the following reasons:

- The applicant has provided a section (see Figure 8 below) demonstrating that the views from the balconies on level 8 would primarily be on to the roof of adjoining structures.
- The ADG requires a 9m setback for the first 25m height of a building and the proposal satisfies this control.
- The larger balconies would provide additional amenity to the residents of those units.



Figure 8. Section showing context of adjoining existing and potential future development.

6.1.10 Miscellaneous

The proposal includes the following modifications which are considered to have no material planning impact on the quality of the original proposal:

- Inclusion of a dedicated mail room in the ground floor or Tower A.
- Deletion of Condition 68 'Unit Numbering' which required all units to be numbered sequentially.
- Detailing location of air conditioners on balconies (enclosed in louvered screens and setback from balustrade).
- Increase in residential storage.

6.1.11 Redundancies

Conditions 5a, 5e, 5i have become redundant, and are thus deleted, as the drawings have been updated to include the required changes.

Conditions 32a, 41c and 41d have become redundant, and are thus deleted, as the tree on the adjoining property at St. Alban's Anglican Church, Epping is now approved for removal.

6.2 Section 96(2): Evaluation

The development consent has been taken up (demolition commenced) and as such can seek to benefit from Section 96(2) 'Other Modifications' of the EPAA Act 1979 subject to the following requirements:

Section 96(2)(a) - Substantially the same development

The proposal is considered to be substantially the same development in that the general function, location, scale and form of the building will not change.

Section 96(2)(b) - Consultation with public bodies

The original application was identified by the applicant as integrated development under the Water Management Act 2000. However, Water NSW stated that their approval for a dewatering license was not required. As the proposal does not increase the depth of the basement it is not considered necessary to consult with Water NSW.

Section 96(2)(c) - Notification

Notification is addressed in Section 5 above.

10. Planning Agreements

The subject application is not subject to a planning agreement.

11. The Regulations

The proposed modifications would not impact on the relevant regulations, compliance with which is conditioned in the original consent.

12. The likely impacts of the development

The likely impacts of the development have been considered in this report.

13. Site suitability

The site was determined to be suitable for the proposed use and buildings as part of the original consent. The proposed modifications are not considered to affect the original decision.

14. Public interest

Subject to implementation of conditions of consent outlined in the recommendation below, no circumstances have been identified to indicate this proposal would be contrary to the public interest.

15. Disclosure of Political Donations and Gifts

No disclosures of any political donations or gifts have been declared by the applicant or any organisation / persons that have made submissions in respect to the proposed development.

16. Development Contributions

Hornsby Shire Council Section 94 Development Contributions Plan 2014-2024 requires that development contributions be paid based on the number and type of additional residential units and commercial floor space. As the modification results in a reduction in the number of units the proposal would not result in an increase in the contributions payable. As such the relevant condition does not require modification.

17. Summary and conclusion

The application has been assessed relative to Sections 79C and 96(2) of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. On balance the modifications are considered to be satisfactory and approval is recommended.

18. Recommendation

That, pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, the Sydney West Central Planning Panel grant consent to modify Consent reference DA/585/2016 as shown on the plans submitted with the modification application, subject to modified conditions of consent as outlined in **Attachment 1**.