

**City of Parramatta Council**

File No: DA/89/2017

**SECTION 79C ASSESSMENT REPORT – HORNSBY LEP 2013**  
**Environmental Planning & Assessment Act 1979****SUMMARY**

DA No:	DA/89/2017
Property:	Lots 2, 3, 13 & 14 in DP 758390, 50 Oxford Street, Epping, NSW 2121
Proposal:	Alterations and additions to an educational establishment (Arden Anglican School) including part demolition, tree removal, earthworks and construction of a five (5) storey school building with roof terrace, basement car parking for 31 vehicles and associated infrastructure works and upgrades.
Date of receipt with City of Parramatta:	6 February 2017
Applicant:	DFP Planning
Owner:	Arden Anglican School Council
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	Six (6) submissions received from six (6) properties
Recommendation:	Approval, subject to conditions
Assessment Officer:	Shaylin Moodliar

**Legislative requirements**

Zoning:	B2 Local Centre & R4 High Density Residential Zones under the Hornsby Local Environmental Plan 2013 (HLEP 2013)
Other relevant legislation and Environmental Planning Instruments (EPIs)	SEPP 55 – Remediation of Land, SEPP 64 – Advertising and Signage, SEPP (Infrastructure) 2007, SEPP (State and Regional Development) 2011 and SREP (Sydney Harbour Catchment) 2005.
Planning Controls & Policy	Draft SEPP (Educational Establishments and Child Care Facilities) 2017, Hornsby Section 94 Contributions Plan 2012-2021 and Hornsby Development Control Plan 2013
Heritage item?	No

Heritage Conservation Area?	No
Nearby item or Cons. area?	Yes
Archaeological heritage?	No
Integrated development	No
Designated development	No
Crown development	No
Delegation	Sydney West Central Planning Panel (SWCPP)

## SUMMARY

The application is required to be referred to the Sydney West Central Planning Panel (SWCPP) pursuant to Clause 6(b) of Schedule 4A of the Environmental Planning and Assessment Act 1979 as the Capital Investment Value of private infrastructure and community facilities over \$5 million requires assessment by a regional panel exercising the consent authority functions of councils. The proposed development has a Capital Investment Value of \$21,838,300.

The proposal provides for alterations and additions to to an educational establishment (Arden Anglican School) including part demolition, tree removal, earthworks and construction of a five (5) storey school building with roof terrace, basement car parking for 31 vehicles, 4 motorcycle spaces, 3 staff bicycle spaces and associated infrastructure works and upgrades.

The proposed development generally follows the form for the site envisaged by Hornsby Shire Council Local Environmental Plan (HLEP) 2013, Hornsby Development Control Plan (HDCP) 2013, and Hornsby's Epping Town Centre Public Domain Guidelines. Part of the site is within the Epping Town Centre and is currently zoned B2 Local Centre and R4 High Density Residential under the Hornsby LEP 2013. The maximum permitted building height on the Essex Street allotments is 17.5m and the proposal seeks a building height of 21.7m (to the top of the lift core no.2 overrun at the rooftop level) and 20.2m (to the top of the fire stairs and roof to the seated area at the rooftop level), which exceeds the maximum 17.5 metre building height by up to 4.2 metres. The Applicant submitted a request to vary the maximum height of the buildings under Clause 4.6 of HLEP 2013. The request is well founded for reasons including the location of the breach to the building height towards the centre of site further away from the side boundaries, urban design improvements, site and existing building constraints.

The development has been subject to review by Council's Design Excellence Advisory Panel (DEAP), and is consistent with State Environmental Planning Policy (Infrastructure) 2007 and the relevant provisions contained in the Draft SEPP (Educational Establishments and Child Care Facilities) 2017.

The amenity impacts on surrounding properties are reasonable based on the high density character of the area and the built forms envisaged by the controls. This assessment shows the proposed increase in traffic would not compromise the efficient function of the local road network.

The proposal generally complies with the requirement in the HDCP 2013 in respect to site planning, facilities and building design. Six (6) submissions have been received from six (6) residential/place of public worship properties during the notification period. The issues raised have been addressed elsewhere in this report.

The application has been assessed under section 79C of the *Environmental Planning and Assessment (EP&A) Act 1979*, taking into consideration all relevant State and local planning controls. On balance, the proposal demonstrates a satisfactory response to the objectives

and controls of the applicable planning framework. Accordingly, approval is recommended subject to conditions.

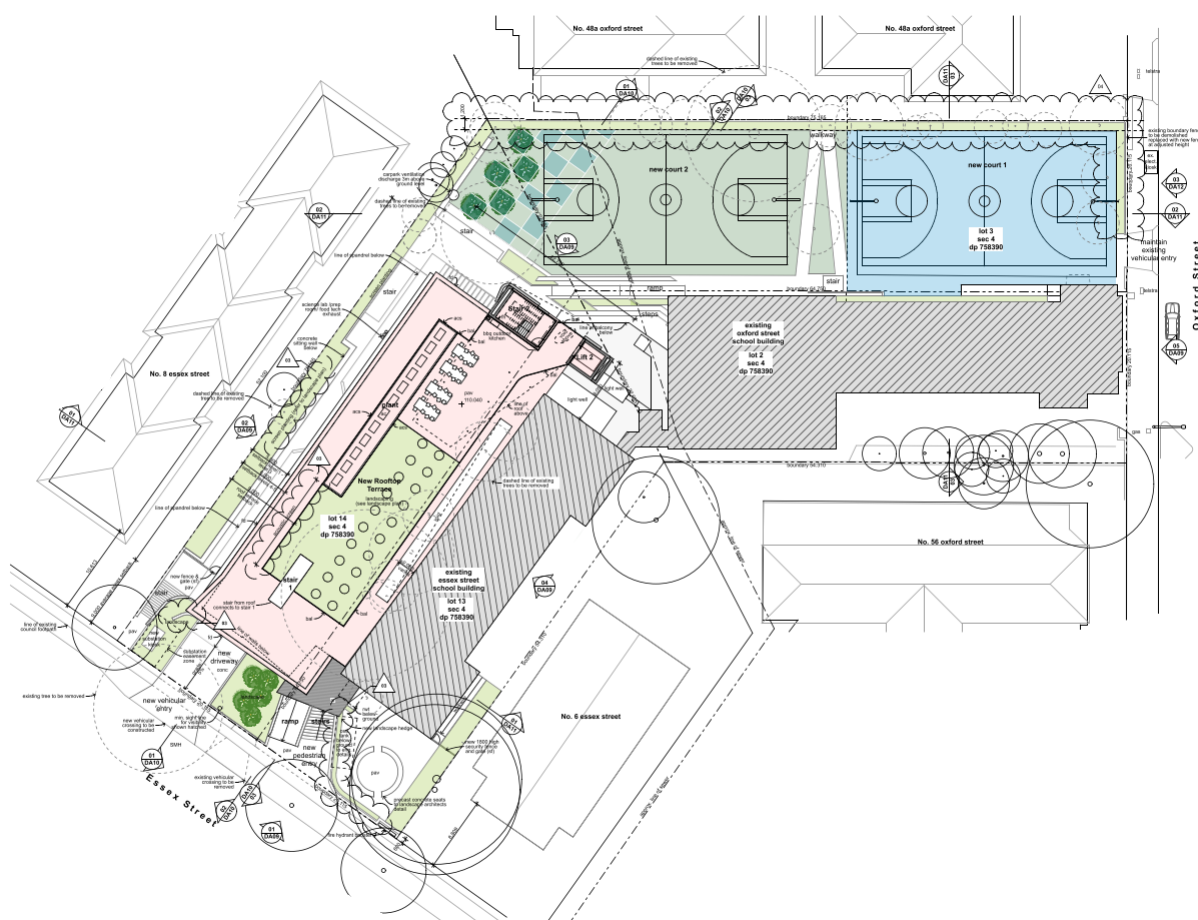
## RELEVANT BACKGROUND

- The existing buildings facing Oxford and Essex Streets respectively were constructed in the early 1950's, with two (2) newer buildings constructed during the early 1970's. The buildings have been continually used for educational establishment purposes for approximately 50 years.
- On 2 February 1983, Hornsby Shire Council approved Development Application No.1/83 for the 'use of the existing convent for school purposes'.
- In January, 2002 the school purchased the adjoining site at No.50 Oxford Street, Epping with significant existing facilities. The Arden Anglican School occupies this site at present.
- On 5 December 2002, Hornsby Shire Council approved Development Application No.2065/02 for the 'Refurbishment of (an) existing school including new amenities, provision of disabled access and stair enclosures'. The proposal specifically involved:
  - the installation of an internal lift-well and ancillary access landing on three (3) levels between the two (2) buildings;
  - alterations to fire-isolate existing internal stairwells;
  - refurbishment and alterations to internal male, female and staff toilet facilities on three (3) levels;
  - refurbishment and alterations to the general office and sick bay on the first floor of the Oxford Street building;
  - refurbishment and alterations to the music rooms and store on the first floor of the Oxford Street building;
  - retro-fit and refurbishment of several classrooms;
  - new store-room on the first floor of the Essex Street building;
  - addition of an external fire access/egress stairwell from the Essex Street building;
  - re-grading of an external access ramp;
  - addition of external seating areas and balustrades immediately southeast of the Essex Street building; and
  - erection of a 3.6m high chain-mesh fence along the common south-eastern boundary line.
- On 1 September 2005, Hornsby Shire Council granted approval to Section 96(1A) Modification to amend Development Consent No.2065/02A for the 'Refurbishment of (an) existing school including new amenities, provision of disabled access and stair enclosures' through the relocation of (an) external stairwell, and modifications to an internal lift-well and disabled access'.
- On 14 May 2007, Hornsby Shire Council granted approval to Section 96(1A) Modification to amend Development Consent No.2065/02B for the 'Refurbishment of (an) existing school including new amenities, provision of disabled access and stair enclosures' through the relocation of (an) external stairwell, and modifications to an internal lift-well and disabled access' by construction of a new internal ramp and in-fill slab adjacent to the central lift-well for an existing educational establishment (Arden Anglican School).
- On 12 May 2016 Local Government (City of Parramatta and Cumberland) Proclamation 2016, property now part of the City of Parramatta Council.

- On 13 July 2016, Council held a pre-lodgement application (PL/102/2016) with the applicant and their representatives for additions and alterations to the existing educational establishment. On 21 September 2016, the minutes of the meeting were sent to the applicant.
- On 6 February 2017, Council received Development Application DA/89/2017, which is the subject of this report.

## PROPOSED DEVELOPMENT

Approval is sought for alterations and additions to an educational establishment (Arden Anglican School) including part demolition, tree removal, earthworks and construction of a five (5) storey school building with roof terrace, basement level car parking and associated infrastructure works and upgrades.



**Figure 1** – Site plan showing the location of the proposed new works (highlighted in colour) within the Arden Anglican School including the existing school buildings (cross-hatched). *Source: Stanton Dahl Architects*



**Figure 2** – Photomontage of proposal as viewed from Essex Street looking north-west. *Source: Stanton Dahl Architects*

A more detailed summary of the proposed works is provided as follows:

#### Retention of school buildings

- Retention of the existing three-storey brick Oxford Street school/administration building;
- Retention of the existing three-storey brick Essex Street school building. After completion of this application, the school will be moving to the subject site from their existing temporary education facility at 37-41 Oxford Street, Epping.

#### Demolition Works

- Demolition works of the existing multi-purpose synthetic grass courts fronting Essex Street; and
- Demolition of existing improvements, Essex Street driveway and 5 car spaces and remedial works on Lots 3 and 14 including sports courts, retaining walls and garden beds.

#### Earthworks

- Excavation to allow for the construction of a basement car park for thirty-one (31) car parking spaces including one accessible space.

#### Basement car parking level (RL 89.98)

- New basement car park with vehicular access driveway from Essex Street for 31 vehicles including 1 accessible car space, 4 motorcycle spaces, 3 staff bicycle spaces, 2 lift cores, main switch room, pump room, 2 fire hose reels and storeroom.

#### School/administration building construction

- Construction of a new five (5) storey school building comprising 3,569 sqm of gross floor area including:

##### *Level 1 (RL 93.24)*

- Construction of level 1 school building including 2 science laboratory rooms, science prep room, server room, store/plant room, amenities rooms, student services (SS) area with SS pastoral care room, SS admin compact room, sick bay room with bathroom, interview room, learning support room, 2 counsellor rooms, reception and kitchenette, Administration area with principal's office and personal assistant office area, middle and senior head offices with personal assistant area, reception, interview room, 3 stairs, and entry foyer and lift lobby from Essex Street.

##### *Level 2 (RL 96.44 – RL 97.65)*

- Construction of level 2 school building including timber floor multi-use space (RL 96.44), GLA 2.1 & 2.2 rooms with carpet and bi-folds, food technology/prep room with staff and pantry, storeroom, amenities room, 2 lift cores and 2 stairs;
- Asphalt colonnade between the new Essex Street school building and existing Oxford Street school building including undercroft canteen area (RL 97.48 – RL 97.65), gym room and staff room; and
- New multi-purpose all weather sport court 2 (RL 97.45) with accessible ramp and stairs between new outdoor sport court 1 and outdoor sport court 2.

##### *Level 3 (RL 99.64)*

- Construction including resource centre carpeted room (RL 99.64), lift core 2 lobby/balcony area (RL 99.64) and stairs;
- New multi-purpose all weather sport court 1 (RL 99.08) with accessible ramp and stairs between new outdoor sport court 1 and outdoor sport court 2; and
- Fourteen (14) student bicycle space parking area adjoining the existing Oxford Street administration area with access from the existing Oxford Street pedestrian gate.

##### *Level 4 (RL 102.84)*

- Construction including carpeted GLA 4.1-4.8 rooms, two (2) staff rooms, storeroom, amenities area, lift core 2 foyer and stairs.

##### *Level 5 (RL 106.04)*

- Construction including carpeted GLA 5.1/5.2 room, TAS low/high rooms, engineering bay, computer room, textiles, bulk store room, machine bay room, one (1) staff room, storeroom, lift core 2 foyer and stairs.

##### *Roof Plan (RL 110.04)*

- Construction of a rooftop terrace including 4 table and chairs under a part roof, BBQ outdoor kitchen area, mechanical/air-conditioner plant equipment,



stairs from open rooftop terrace area to stairs from lift core 1 on level 3 towards Essex Street, lift core 2 and stairs 2.



**Figure 3** – Photomontage view of the rooftop terrace looking north. *Source: Stanton Dahl Architects*



**Figure 4**– Photomontage view of the rooftop terrace looking west. *Source: Stanton Dahl Architects*

### Outdoor sport courts/area

- Two (2) new multi-purpose all weather sports courts provided adjacent to the southern property boundary on that part of the site with frontage to Oxford Street; and
- New accessible ramp and stairs between new court 1 and court 2.

### Tree Removal

- Removal of twenty-eight (28) trees and shrubs from the site and on the boundary; and
- Removal of one (1) 'Chinese Tallow' Essex Street Council tree to make way for new basement entry driveway.

### Signage

- Building identification sign and school logo with single sided non-illuminated powder coated aluminium lettering, measuring 2850mm high x 3400mm long to read 'Arden' with a white emblem behind the logo. The sign will be affixed to the new Essex Street building approximately 7-10 metres above the existing Essex Street footpath.

### Front fence

- New 3m high front fence to part of the Essex Street elevation.

### Site facilities & improvements

- Associated services including an electrical substation on Essex Street and hydrant booster;
- Integration of the new building with existing school buildings on the site;
- Provision of new pedestrian and vehicular access points to Essex Street;
- Increase in student numbers from 455 to 600 students within the site; and
- Increase in staff numbers from 53 to 60 full-time staff.

### **Amended Proposal**

The DA has been amended on several occasions in response to concerns raised by Council's DEAP and Council officers.

The applicant submitted revised drawings and documentation at various stages of the assessment addressing concerns including, but not limited to, the following changes:

- Increased landscaping setback from the two (2) residential flat buildings at 48A Oxford Street, Epping;
- Increased landscaped setback behind the new Oxford Street front fence and additional elevations and plans;
- Revised sections and elevation showing the breach to the height of building control;
- Revised written Clause 4.6 variation request;
- Revised landscape plans omitting bio-swale references within Essex Street and reference to bamboo screen has been removed in southern setback;

Note: The construction of the proposed development is to be undertaken in various stages under the single consent, the applicant has indicated that development would start in 2018, before the expiration of the school's commercial lease space within Cambridge Office Park, at 37-41 Oxford Street, Epping.

## **EXISTING SITE AND CONDITIONS**

The subject site is legally known as Lots 2, 3, 13 & 14 in DP 758390, and is known as 50 Oxford Street, Epping. The site has double street frontages to Essex Street and Oxford Street.

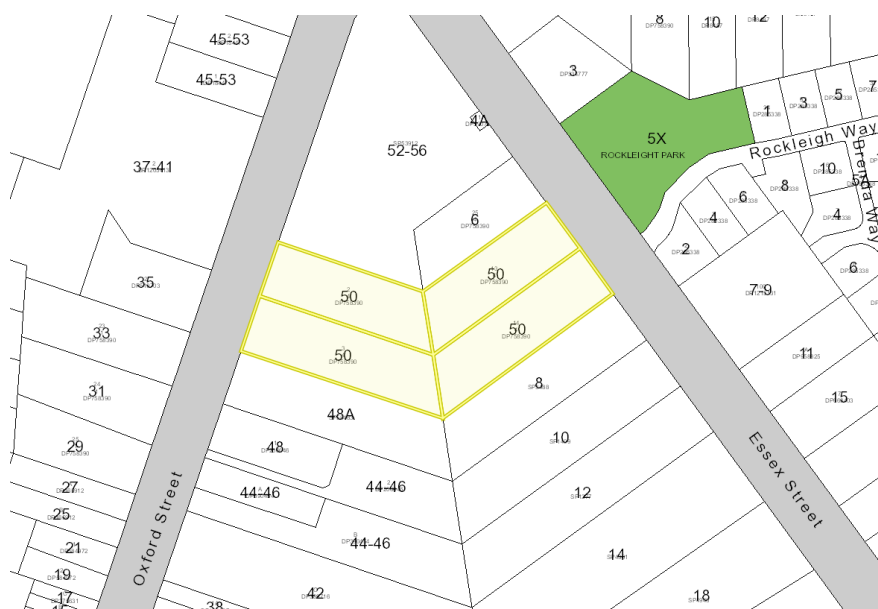




**Figure 5 – Aerial allotment map of the site and locale. Note: the double frontage (Oxford and Essex Streets).**

The Arden Anglican School Epping campus site is legally formed by the following four allotments:

Lot	DP	Address	Size
2	758390	50 Oxford Street, Epping	1,310 m <sup>2</sup>
3	758390	50 Oxford Street, Epping	1,310 m <sup>2</sup>
13	758390	50 Oxford Street, Epping	1,310 m <sup>2</sup>
14	758390	50 Oxford Street, Epping	1,310 m <sup>2</sup>
<b>Total subject site area</b>			<b>5,240 m<sup>2</sup></b>



**Figure 6 – Aerial of allotments map**

The site has a combined frontage to Oxford and Essex Street of approximately 40.2 metres. The depth of the site between both street frontages is approximately 108.6 metres (along the combined northern boundary) and is approximately 129.5 metres (along the combined southern boundary).

The site is irregular in shape with a slope from Oxford Street to Essex Street and existing retaining walls create level synthetic grass recreation sport courts.

Existing on-site structures include two (2) individual brick school buildings of two-and-three storeys with associated at-grade car parking and two (2) outdoor fenced sporting courts. An existing drop off zone is located on Oxford Street which is connected to a parking and utility area. Existing landscaping includes a range of native and exotic species which are spread across the site but concentrated predominantly along the boundaries of the site.



**Figure 7** – Current Arden Anglican School facilities located within Epping. *Source: Stanton Dahl Architects*

It must be noted that Arden Anglican School currently has 455 students and 53 staff (full time equivalent (FTE)). Not all students are accommodated on the Oxford Street site. The school leases space within Cambridge Office Park, at 37-41 Oxford Street, Epping. The site is located approximately 280m north east of the Epping railway station.



**Figure 8** – Existing Oxford Street front (fence) elevation. *Source: DFP Planning Pty Ltd*



## SECTION 79C(1) MATTERS OF CONSIDERATION - GENERAL

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

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

#### State Environmental Planning Policy No.55 – Remediation of Land

The site is not identified in Council's records as being contaminated. A site inspection reveals the site does not have an obvious history of previous non-residential other than educational facility land uses. There is no specific evidence that indicates the site is contaminated. The proposal is acceptable in respect to the requirements of SEPP 55.

#### State Environmental Planning Policy No.64 – Advertising and Signage

The application proposes the construction and display of the following signage:

- Building identification sign and school logo with single sided non-illuminated powder coated aluminium lettering, measuring 2850mm high x 3400mm long to read 'Arden' with a white emblem behind the logo. The sign will be affixed to the new Essex Street building approximately 7-10 metres above the existing Essex Street footpath.

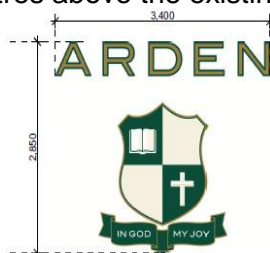


Figure 9 – Building Identification signage along the Essex Street building façade. Source: Stanton Dahl Architects

SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

Clause 8 of SEPP64 states the following:

*A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:*

- (a) *that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and*
- (b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

### Aims and Objectives

The proposed signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations is of high quality design and finish, and is therefore consistent with the aims and objectives of Clause 3 of SEPP 64.

### Assessment Criteria

The following table outlines the manner in which the proposed signage satisfies the assessment criteria of SEPP 64.

Consideration	Comment
<b>1 Character of the area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes. The proposed non-illuminated building identification signage and logo is compatible with the existing building identification signage in the locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Yes. The content of the proposed signage is consistent with the character of the existing building identification signage along Oxford and Essex Streets and the Epping locality.
<b>2 Special areas</b>	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	No. The proposal does not detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas.
<b>3 Views and vistas</b>	
Does the proposal obscure or compromise important views?	No. The proposal does not obscure any views.
Does the proposal dominate the skyline and reduce the quality of vistas?	No. The proposal does not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	Yes. The proposed sign respects the viewing rights of other advertisers.
<b>4 Streetscape, setting or landscape</b>	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The scale, proportion and form of the proposed signage is appropriate for the streetscape and setting and are consistent with that of similar building identification signage along Oxford and Essex Streets.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes. The proposed signage serves to identify the existing retail premise and contributes to the visual interest of the streetscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	N/A.
Does the proposal screen unsightliness?	N/A. The proposed signage will be attached to the new school building fronting Essex Street.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. The proposed sign does not protrude above buildings, structures or tree canopies.
Does the proposal require ongoing vegetation management?	N/A. The proposed signage will not require ongoing vegetation management.
<b>5 Site and building</b>	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Yes. The proposed signage is of an acceptable sizing and scale.
Does the proposal respect important features of the site or building, or both?	Yes. The signs do not significantly protrude from the existing building, are of an appropriate size and scale and adopts an acceptable colour scheme, thereby respecting the important features of the site and surrounding buildings.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes. The signage demonstrates innovation and imagination.
<b>6 Associated devices and logos with advertisements and advertising structures</b>	

Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Yes. Arden Anglican School logo has been included on the proposed building identification signage.  No safety devices or platforms are proposed.
<b>7 Illumination</b>	
Would illumination result in unacceptable glare?	No illumination is proposed.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No illumination is proposed.
Would illumination detract from the amenity of any residence or other form of accommodation?	No illumination is proposed.
Can the intensity of the illumination be adjusted, if necessary?	N/A. No illumination is proposed.
Is the illumination subject to a curfew?	N/A. No illumination is proposed.
<b>8 Safety</b>	
Would the proposal reduce the safety for any public road?	No. The proposed signage would not reduce the safety for any public road, as it is of an acceptable size, design and scale.
Would the proposal reduce the safety for pedestrians or bicyclists?	No. The proposed signage would not reduce the safety for pedestrians or cyclists, as it is of an acceptable size, design and scale.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No. The proposed signage will not reduce the safety for pedestrians, particularly children, as it is of an acceptable size, design and scale.

## State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The provisions of ISEPP have been considered in the assessment of the development application.

### *Clause 27 Definitions*

Pursuant to Clause 27 of the ISEPP, the R4 High Density Residential zone and B2 Local Centre zone are identified as *prescribed zones*.

### *Clause 28 Development permitted with consent*

The proposed alterations and additions to an existing *educational establishment* is permissible on the subject site pursuant to Clause 28 of the ISEPP.

### *Clause 32 Determination of development applications*

The three (3) relevant standards stated under clause 32 required for consideration has been superseded by the current NSW Educational Facilities Standards and Guidelines (EFSG). As such the current EFSG has been considered in the assessment of the application as discussed below:

The EFSG aims to set out the minimum standards and design criteria for all new schools. The submitted statement from the applicant has indicated that the proposed new school is purpose-built and the design of the school building will meet the EFSG criteria taking into account of the following factors such as:

- Scale/size;
- Bulk;
- Setback;



- Visual;
- Design principles;
- Physical character;
- External appearance;
- Operation noise impacts; and
- Landscape.

In this regard, Council is satisfied that the proposed design of the new school building and facilities have been considered and incorporates the above educational principles.

*Clause 45 Determination of development applications – other development*

The application is not subject to clause 45 of the SEPP as the development does not propose works within the vicinity of electricity infrastructure that trigger a written referral to the energy authority. Nonetheless, a condition of consent is imposed for the approval of any provision of electricity services from an approved electrical energy provider (i.e. Ausgrid).

*Clause 101 Development with frontage to classified road*

The application is not subject to clause 101 of the ISEPP as the site does not have frontage to a classified road.

*Clause 102 Impact of road noise or vibration on non-road development*

The application is not subject to clause 102 of the ISEPP as the average daily traffic volume of Oxford and Essex Streets are less than 40,000 vehicles.

*Clause 104 Traffic-generating development*

The proposed development includes an increase in student numbers at the school from the current enrolment of 455 students to a maximum of 600 students. As the proposed increase in student numbers exceeds 50 students (as noted in Schedule 3 of the ISEPP and pursuant to Clause 104 of the ISEPP), the proposed development was referred to Roads and Maritime Service (RMS) for their consideration and comment.

RMS raised “no objection to the proposed development as there will be minimal traffic impact on the classified road network”. The school zone condition recommended by the RMS is included in the Notice of Determination.

The proposal is satisfactory in respect to the requirements of the ISEPP.

**State Environmental Planning Policy (State and Regional Development) 2011**

This application is captured by Part 4 of this SEPP which provides that the SWCPP is the consent authority for this application.

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

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

## Hornsby Local Environmental Plan 2013 (HLEP 2013)

### Clause 2.3 Zone objectives and Land Use Table

The site is zoned B2 Local Centre and R4 High Density Residential under the provisions of Hornsby Local Environmental Plan 2013. Under the Hornsby Local Environmental Plan 2013, an *educational establishment* is permissible in a B2 Zone, however, it is prohibited in the R4 Zone. Notwithstanding, the proposed development is permissible on the subject site pursuant to Clause 28 of the State Environmental Planning Policy (Infrastructure) 2007.



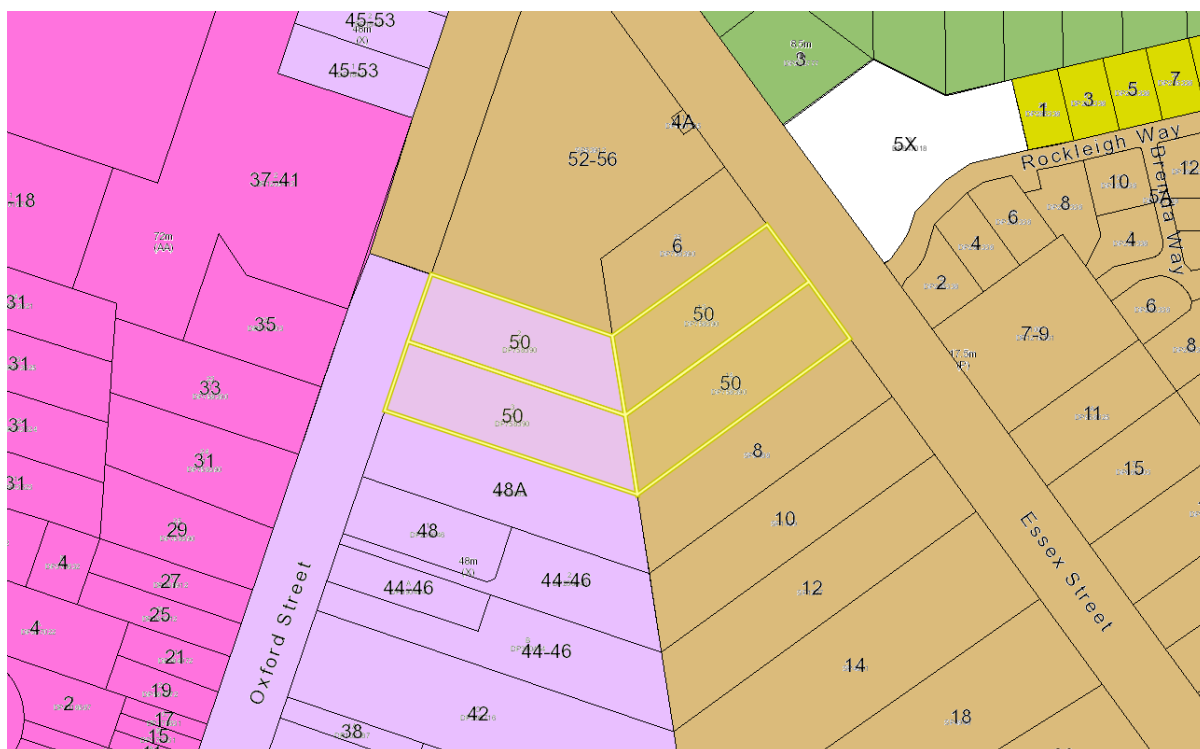
Figure 10 – Dual R4 Zone (Red) and B2 Zone (blue) map of the subject site (highlighted) and locale.

### Clause 2.7 Demolition requires development consent

Clause 2.7 of HLEP 2013 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works. Council's standard conditions relating to demolition works are included in the recommendation.

### Clause 4.3 Height of Buildings

The maximum building height limit of 17.5 metres applies to the R4 Zoned portion of the site (2 lots fronting Essex Street), with the exception of the B2 Zoned portion of the site (2 lots fronting Oxford Street) which has a height limit of 48 metres (see **Figure 11**).



**Figure 11 – Dual maximum Height of Building map of the subject site (highlighted) and locale.**

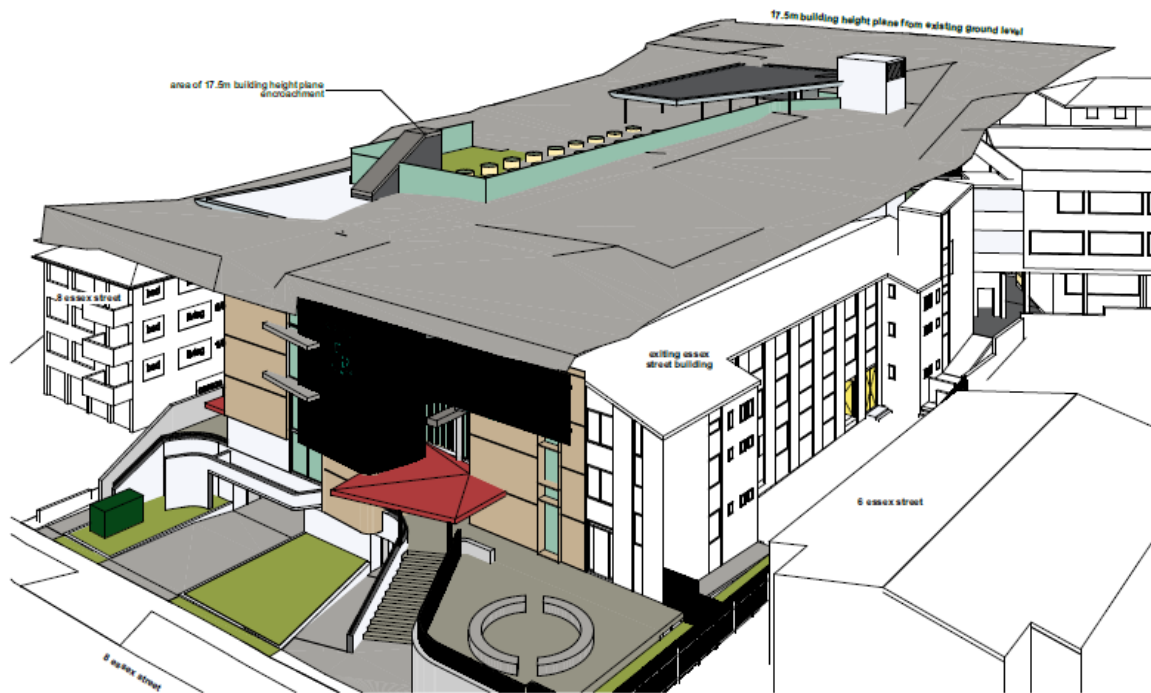
The proposed breach to the new school building height is as follows (see **Figure 12**):

- 21.7m (4.2m breach) to the top of the lift core no.2 overrun structure (RL 114.84 – existing ground level 93.08) - 24% over the maximum height control;
- 20.2m (2.7m breach) to the top of the fire stairs at the rooftop level (RL 112.97 – existing ground level 92.71) - 15.4% over the maximum height control;
- 20.2m (2.7m breach) to the top of the roof area (covering approximately 140 m<sup>2</sup>) to the seated area at the rooftop level (RL 112.94 – existing ground level 92.74) - 15.4% over the maximum height control; and
- 19.1m (1.6m breach) to the acoustic fencing/balustrade around the perimeter of accessible area within the rooftop level (RL 111.86 – existing ground level 92.74) - 9.1% over the maximum height control.

Parts of the lift core 2 overrun straddles allotments where a 17.5 metre and 48 metre building height apply.

Note: Under the HLEP 2013 the chimney exhaust to the science lab, prep room, food tech area is excluded in calculating the height of a building.

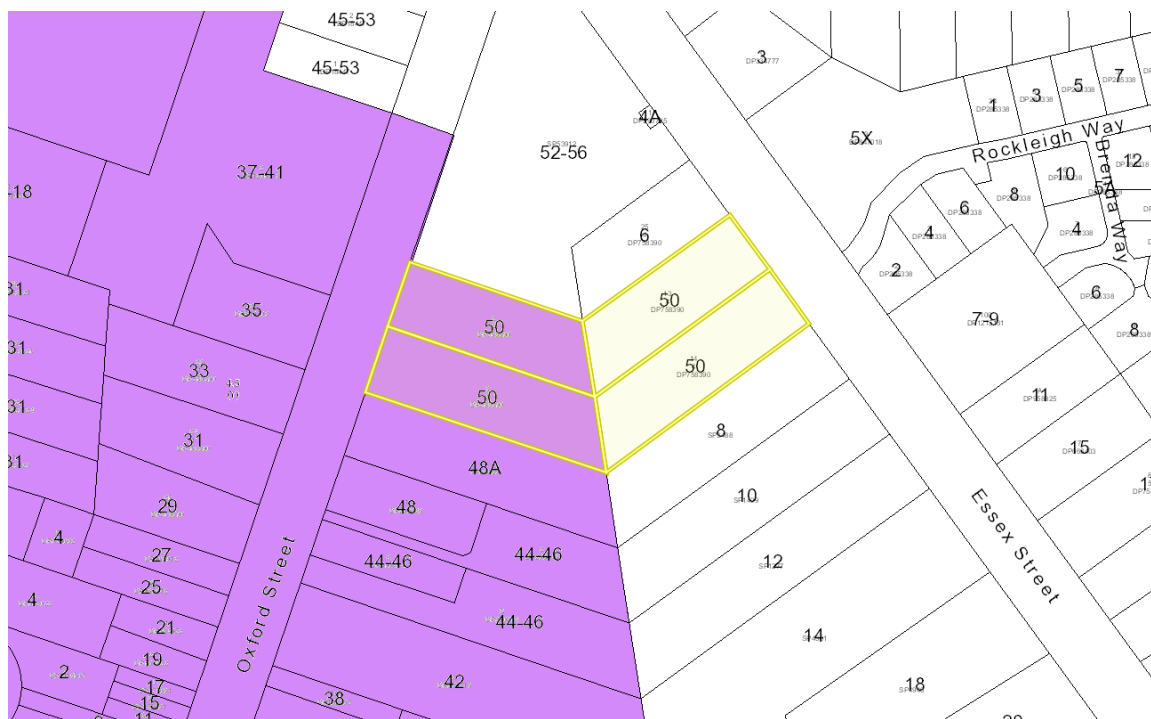
The applicant's Clause 4.6 justification is generally agreed with, and the variation to the height is supported for the reasons outlined in this report. Refer to Clause 4.6 below.



**Figure 12** – Building height breaches (structures above the grey height plane) of the new school building. *Source: Stanton Dahl Architects*

#### Clause 4.4 Floor Space Ratio

The maximum FSR control applies only to the two (2) lots fronting Oxford Street (Lots 2 & 3 in DP 758390). As shown in **Figure 13** below, the proposed new five-storey school building is, across the two (2) lots which front Essex Street (Lots 14 & 15 in DP 758390), on land where the maximum FSR control does not apply.



The permissible gross floor area on the two (2) lots fronting Oxford Street (Lots 2 & 3 in DP 758390) is 11,790 m<sup>2</sup> (FSR of 4.5:1). The existing gross floor area of the Oxford Street allotments is 2,594.2 m<sup>2</sup>. Note the proposal does not increase GFA within the Oxford Street allotments.

The maximum FSR control does not apply to the R4 Zone lots of the site, nonetheless, the proposed new school building along Essex Street will result in approximately 3,569.3 m<sup>2</sup> of gross floor area. The proposal complies with Clause 4.4 of HLEP 2013.

#### *Clause 4.6 Exceptions to Development Standards*

Clause 4.6 of HLEP 2013 allows Council to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

The proposal does not comply with the Clause 4.3 'Height of Buildings' development standard.

The objectives of this clause are:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances”*

The operation of clause 4.6 is not limited by the terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

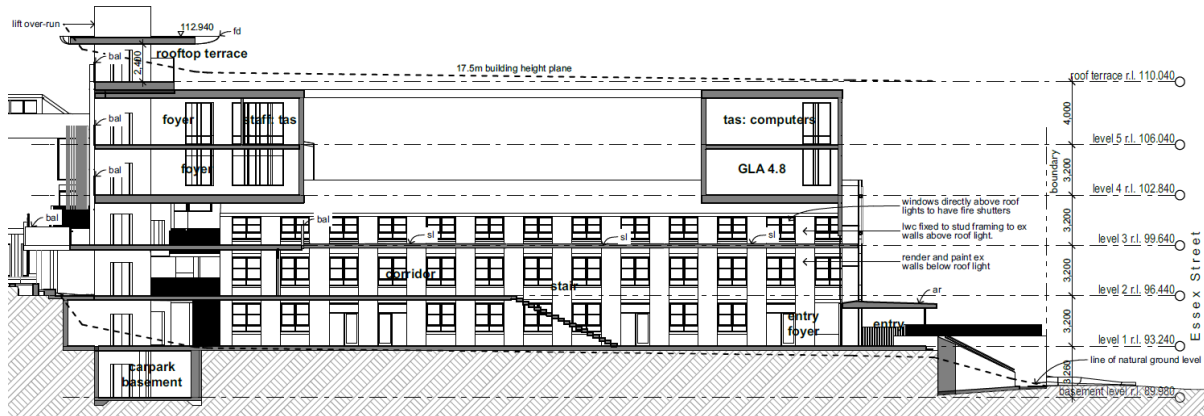
Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

- “(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.”*

The applicant has submitted a written request justifying the variation to the height of building development standard. In the justification the applicant states:

- “The Oxford Street part of the site is within the Epping Town Centre Urban Activation Precinct. The planning controls for this part of the site and other land within the Epping Town Centre allow for development up to 46m and 72m in height. Therefore, the character of development to the west of the Essex Street part of the site and other land fronting Essex Street, is currently changing from one of low scale commercial development to multi storey mixed use development. For example, a height limit of 48m will allow for a mixed use development comprising a 3 storey commercial podium with a 11 storey residential tower above.*
- As demonstrated in the section drawings on (DA10, Revision 03, date 30 June 2017), the topography of the site has been modified significantly from what might have been considered natural ground level. The building height (and encroachments) is measured from the current ground level. (Figure 14) below is an extract from (DA10, Revision 03, date 30 June 2017) which demonstrates the modification to the existing ground level.*





**Figure 14** – Part cross-section (DA10, Revision 03, date 30 June 2017) through existing Essex Street building, lift core 2 overrun and the new Essex Street stairs and ramp. Source: Stanton Dahl Architects

- The encroachments noted above, are all minor and chiefly a result of the topography of the site. For example, the roof slab itself projects only to a minor extent and the variation will be barely perceptible in comparison to a compliant building.
- The stairwell and balustrade to the roof top outdoor space and roof over the seating area are all deeply recessed behind the perimeter of the building and will not be readily (if at all) visible from the street. Similarly, the lift is located at the rear of the site and behind the existing Essex Street building, and will not be visible from Essex Street and only apparent from within the school site itself. These elements are important to achieve access to the roof space. These minor encroachments will enable a better planning outcome by facilitating the use of the roof space as part of the outdoor recreation area for school students and staff and makes best use of the building instead of consuming valuable land at ground level.
- The shadow diagrams submitted with the DA demonstrate that the minor encroachments above the 17.5m height plane will not result in adverse impacts in terms of overshadowing on the subject or adjoining sites, or loss of privacy/overlooking. In this regard, 82% of living rooms in No. 8 Essex Street will receive at least 2 hours of sunlight between 9am and 3pm in mid-winter and 70% of private open spaces will receive a minimum of 2 hours of sunlight between 9am and 3pm in mid-winter.
- As discussed in the SEE submitted with the DA, the proposal is capable of meeting the objectives of the R4 zone, in particular “enabling other land uses that provide facilities or services to meet the day to day needs of residents.” The minor encroachments will provide recreation space which is an important and necessary component of a school.
- There is only one objective of the height of buildings clause which is to “permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.” The proposed encroachments are appropriate having regard to the adjoining development as the encroachments are well removed from perimeter of the building minimising visual impacts and shadow impacts. The encroachments do not result in a development that is beyond the environmental capacity of the site or infrastructure (as noted elsewhere in the SEE submitted with the DA).
- It has been demonstrated that the encroachment of the building height control will not result in any adverse environmental impacts and is contextually appropriate given the development occurring in the immediate vicinity of the site. Therefore, strict adherence to the development standard relating to the building height is unnecessary and unwarranted in these circumstances.”

**Comment:** An assessment has been undertaken to determine whether compliance with the standard is *'unreasonable and unnecessary'* and there are *'sufficient planning ground'* as follows:

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests that determine whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

#### Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council [2007] NSWLEC 827* the presiding Chief Judge outlined the following five (5) circumstances:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

#### Height of Buildings

*"(a) To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality."*

**Comment:** The key constraints of the site are its irregular shape, topography, double street frontages, existing built form and shared boundaries. The location of the building height along the south Essex Street allotment is a positive response which allows the site to realise its development potential and provide suitable amenity to the existing adjacent buildings and the potential future development along Essex Street. The proposed development is consistent with the FSR density standard ensuring no additional density is developed on the site as a result of the height variation.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

**Comment:** The underlying objective is relevant, however in this case the location of the breach to the building height across the centre of the site and front of the new school building allows for community benefit (i.e. alterations and additions to an educational facility) and amenity improvements to the adjacent public domain (i.e. within Essex Street), which on merit outweigh strict compliance with the height of building development standard.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

**Comment:** The applicant does not suggest that the objective would be thwarted if compliance was required; rather that the objective is achieved despite the breach of the height of buildings development standard.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

**Comment:** It is considered that the standard has not been abandoned within the site itself or within the Epping Town Centre area. It is considered that compliance with the

standard in this case is unreasonable and unnecessary as the proposed development:

- Is consistent with the objective of the development standard, Clause 4.3 of HLEP 2013;
- The proposal is consistent with the FSR development standard of 4.5:1 as set out by Clause 4.4 of HLEP 2013;
- The height across the subject site, taking into consideration the transitioning of building height is generally consistent with 17.5m and 48m;
- The proposed variation does not result in unreasonable amenity impacts on the adjacent public domain or adjoin and surrounding dwellings;
- The proposal is considered appropriate without setting an undesirable precedent in the high-density character of re-development within the Epping Town Centre;
- The configuration, layout and design of the school building, including the overall size and spaces are practical and will allow future users to utilise the new school building in a variety of ways;
- The non-compliant height relates primarily to the lift overrun, fire stairs and acoustic screening which is centrally located within the rooftop level and will not adversely impact the public domain;
- In accessing the reasonableness of the proposal it is appropriate to consider the breach of the height of the building to the overall scale of the buildings. The additional floor space is located where there is no maximum FSR;
- The additional building height will not result in unreasonable overshadowing impacts to surrounding properties; and
- The proposal complies with the objectives of the R4 (and B2 Zone) zone objectives.

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

5. *The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.*

**Comment:** The applicant does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

#### Four2Five Pty Ltd v Ashfield Council

The proposal has been assessed on merit and having regard to the principles in *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement suggests that 'sufficient environmental planning grounds' is more onerous than compliance with zone and standard objectives. The commissioner also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

In this instance, it is deemed unreasonable and unnecessary to restrict all building structures to a height of 17.5 metres. The applicant's justification above is generally supported in this instance.

In this LEC case, the following planning grounds are considered to be sufficient to justify contravening the standards.

- The proposal will respond to the site constraints, the design of the new school building varies in the massing, location and height to provide a positive response and

relationship with the adjoining properties and the public domain. Further, the proposed building heights results in the best location of the lift overrun structure to minimise any potentially unreasonable impacts, such as overshadowing;

- The proposed location of the new school building fronting Essex Street is not subject to a density control, and as such the building height variation will not place additional pressure on the infrastructure capacity of the locality; and
- The subject site is partly within the Epping Town Centre Urban Activation Precinct (see **Figure 15**). The proposed development is consistent with the strategic significance of development envisaged for the subject site under the Epping Activation Precinct and subsequent HLEP 2013 and HDCP 2013 updates relating to the site.



**Figure 15** – Epping Town Centre Linkage Diagrams for the Housing Strategy precincts adopted in September 2011 and the Epping Town Centre Urban Activation Precinct finalised by the State Government in March 2014. *Source: HDCP 2013*

Clause 4.6(4) of HLEP 2013 outlines that development consent must not be granted for development that contravenes a development standard unless:

- “a) the consent authority is satisfied that:*
- the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b) the concurrence of the Secretary has been obtained.”*

**Comment:** The matters of clause 4.6(4)a)i) have been dealt with in the preceding section.

### Public Interest

Clause 4.6(4)(a)(ii) of HLEP 2013 states:

*“The proposed development will be in the public interest because it is consistent with*

*the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out”.*

**Comment:** The site is zoned B2 Local Centre and R4 High Density Residential under the provisions of Hornsby Local Environmental Plan 2013. Under the Hornsby Local Environmental Plan 2013, an *educational establishment* is permissible in a B2 Zone, however, it is prohibited in the R4 Zone. Notwithstanding, the proposed development is permissible on the subject site pursuant to Clause 28 of the State Environmental Planning Policy (Infrastructure) 2007.

#### Concurrence

Clause 4.6(4)(b) of HLEP 2013 states:

*“The concurrence of the Secretary has been obtained”.*

**Comment:** Such concurrence is assumed (refer to the Planning Circular).

**Conclusion:** In summary, it is considered that breaching the building height control would result in a better provision of the built form across the subject site. The applicant has provided a satisfactory written request demonstrating site-specific reasons that the proposal would be a better environmental outcome than a complying scheme. As such, the request to vary the height standard is supported.

#### *Clause 5.9 Preservation of trees or vegetation*

Council’s Tree Management and Landscape Officer is generally satisfied with the proposed tree removal and new landscape treatment, and has provided standard conditions of consent for inclusion in any approval.

#### *Clause 5.10 Heritage Conservation*

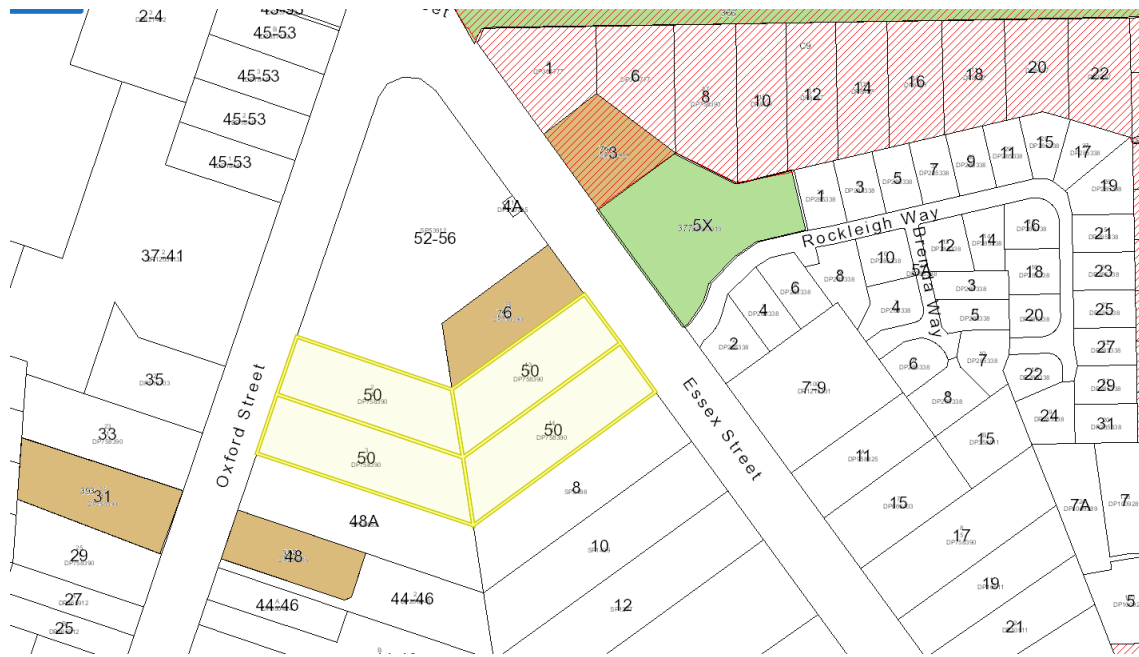
The site is opposite the ‘East Epping Conservation Area’ which contain local heritage item no.798 prescribed under the HLEP 2013. There are five (5) adjoining and surrounding local heritage items:

- Item No.393 ‘Our Lady Help of Christians Church’ at Lot 24 in DP 758390, 31 Oxford Street, Epping;
- Item No.394 ‘House’ at Lot 1 in DP 206646, 48 Oxford Street, Epping;
- Item No.377 ‘Rockleigh Park—public reserve’ at Lot 3 in DP 847018, 5X Essex Street, Epping;
- Item No.798 ‘House’ at Lot C in DP 334777, 3 Essex Street, Epping; and
- Item No.799 ‘House’ at Lot 25 in DP 758390, 6 Essex Street, Epping.

Council’s Heritage Advisor has reviewed the proposal and noted that despite “...*the site of proposed development is not of heritage interest in its own right, however, it is in the relative vicinity of several listed items in the Hornsby LEP...*” an assessment of heritage impact report is required to accompany this DA.

A heritage impact assessment report was provided by the applicant. This report concludes that “...*no physical impacts and that visual impacts would for the most part be negligible to low*” to and from the adjoining and surrounding local heritage items. The external treatment fronting Essex Street is appropriate in this instance. The proposal is not considered to adversely impact upon these local heritage items.





Other development standards relating to waste, earthworks, tree removal, drainage and development on bush fire prone land and flood prone land are also included in Schedule 2 of the draft SEPP.

It must be noted that a complete assessment of the proposed development against the complying development provisions of the draft SEPP has not been undertaken, however, there is the potential that, if the draft SEPP was a relevant environmental planning instrument (as opposed to an exhibited draft EPI), the development might have been able to be approved as complying development or, if required, amended to satisfy the development standards for complying development. The proposal is satisfactory in relation to the relevant provisions contained in the Draft SEPP (Educational Establishments and Child Care Facilities) 2017.

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

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

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

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

#### *Section 1C General Controls*

##### *1C.1.2 Stormwater Management*

Council's Development Engineer is generally satisfied with the proposed stormwater treatment, and has provided standard conditions of consent for inclusion in any approval.

##### *1C.2.1 Transport and Parking*

Under this control educational establishments must provide 1 space per full time teacher and 1 space per 2 students of driving age. Further the DCP requires a minimum 2-3% of the total spaces set aside for accessible car parking provision. Council's Traffic Engineer is generally satisfied with the parking and traffic concerns given that *"...31 spaces (are) proposed there is a shortfall of 20 spaces. This is considered to be reasonable since the school is also providing bicycle parking and motorcycle parking which is not currently available."*

Further, Council's Traffic Engineer deems the design of the service areas is satisfactory for the type and size of vehicles required to attend the site and has provided standard and non-standard conditions of consent, including restricting students driving to school and parking for inclusion in any approval.

##### *1C.2.5 Noise and Vibration*

An acoustic report has been provided given that an educational establishment is a noise sensitive and generating development under the DCP. The submitted acoustic report demonstrates that the development is sited and designed to minimise the effect of noise and vibration on surrounding sensitive landuses, and comply with relevant State Government and Council guidelines.

Council's Environmental Health Officer is generally satisfied with the acoustic treatment within the site and has provided standard and non-standard conditions pertaining to the use of the rooftop terrace area for inclusion in any approval.

### 1C.2.7 Crime Prevention

The design properly responds to Crime Prevention Through Environmental Design (CPTED) considerations.

### 1C.2.8 Building Sustainability

The submitted BCA Assessment Report, Revision 2, dated 23 January 2017 and prepared by Concise Certification Pty Ltd has satisfactory arrangements for energy efficiency provisions.

### 1C.2.10 Services and Lighting

A substation and easement area has been dedicated adjacent to the basement driveway access along Essex Street. Air conditioning units are located on the roof. A condition will be imposed to ensure there are no artificial illuminated lighting structures within the sports courts.

### 1C.3.2 Flooding

The land is not flood affected. Arrangements for managing overland flow of stormwater are satisfactory.

## 4.6 Epping Town Centre

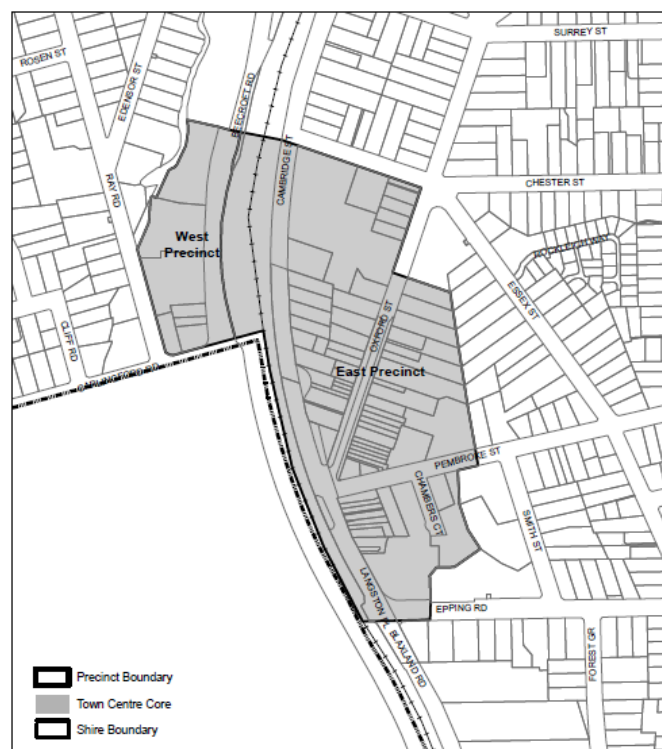


Figure 17 - Epping Town Centre Core Planning precinct boundaries. Source: HDGP 2013

### 4.6.1 Desired Future Character

The proposed sports courts and the new Oxford Street front fence are within the Epping Town Centre Core (East) Planning precinct (see **Figure 17**). The proposal will ensure the desired future character of the emerging Epping Town Centre is maintained.

#### *4.6.5 Setbacks*

There is no change to the existing Arden Anglican School building form along Oxford Street.

#### *4.6.8 Landscaping*

Front fence and landscaping are proposed in the building setback areas to complement the appearance of the sports courts fence.

#### *4.6.12 Vehicle Access and Parking*

The proposed basement level car park is not within the Epping Town Centre Core (East) Planning precinct, nonetheless, the proposed basement will provide vehicular access from Essex Street with separate substation and easement facilities provided adjacent to the basement entry.

#### *4.6.13 Public Domain and Traffic Management Works*

There is no proposed public domain/traffic management works within the Epping Town Centre Core (East) Planning precinct.

#### *4.6.14 Key Development Principles – Pembroke Street*

The proposal does not change the existing mix of uses within the Epping Town Centre Core (East) Planning precinct and is, therefore, in accordance with the key development principle diagram for the Pembroke Street, Epping precinct.

### *7.1 Community Uses*

#### *7.1.1 Site Requirements*

The DCP states that preferred locations for community uses (i.e. schools) include:

- corner sites, sites adjacent to non-residential uses, sites with frontage to a park, and
- walking distance (i.e. 400m) to public transport facilities, local shopping facilities, schools, or other community facilities, and
- co-located with other community uses.

The subject site is approximately 280m walking distance to the Epping Railway Station, partly within the Epping Town Centre core and has double street frontage. The existing frontage of Essex and Oxford Streets is approximately 40.2 metres, which is below the prescriptive 60 metre street frontage, however, is an existing site constraint. The proposal is satisfactory with this control.

#### *7.1.3 Setbacks*

Part 7.1.3 and subsequently Part 3.3.5 of the HDCP 2013 stipulates a 1 metre setback is required for buildings up to 8.5 metre and a 3 metre setback is required for buildings above 8.5 metres. The proposed new school building, fronting Essex Street falls within an R4 zone adjoining residential development, generally has a building setback of 5 metres to the southern boundary. The proposal is satisfactory with this control.

## **Section 94A Contributions**

Section 94A of the Act authorises the consent authority to grant development consent, with a condition requiring the payment of a section 94A levy which is payment of a percentage of the cost of development. Such levies may be applicable regardless of whether there is any increase in the extent of development and regardless of whether there is any demand change. The applicant has advised that the Arden Anglican School is not subject to any development contributions exemption/deductions under the HDCP 2013, as the school is fully private.

It is therefore recommended that the proposal require payment of a S94A development contribution of \$218,383.00. A condition requiring that contribution to be paid is included in the recommendation.

### **Parramatta Design Excellence Advisory Panel (DEAP)**

The proposal was considered by DEAP at the formal DA stage at its meeting of 16 March 2017. In summary, DEAP noted the following matters:

- 1. In consideration of this application the Panel noted that, while this was a well prepared and presented scheme, there was concern about how the proposed new school facilities would sit within its urban context and long term plans for future Arden Anglican School (AAS) development. On such a tight urban site, the height and scale of the development proposed appeared excessive with resulting impacts both within and around the neighbouring properties.*
- 2. Further to the above, the Panel recommended that the Applicant undertake a masterplan for the whole of the site, and show how the proposal would relate to the future changes for both the school and its surrounding neighbours. While it was explained by the Applicant that AAS had done a lot of work to determine the brief for this project, the Panel expressed the need for this background material to be included in any future submission.*
- 3. It was noted that the feasibility of the project was an issue for AAS and this had resulted in the current form of the proposal and its interface with the existing Essex Street building to be retained. The Panel questioned whether redevelopment of this building might be able to take some of the facilities from L4 and L5 to reduce the visual and amenity impacts to the south-east.*
- 4. A particular issue for the Panel was the impact that the proposal would have on the block of units at No. 8 Essex Street, where loss of solar access, overshadowing and privacy issues would be significant. It was recommended that the Applicant arrange for a survey of all affected units to determine their internal layouts and likely extent of impacts on their amenity beyond impacts shown in the shadow diagrams as submitted. Further detail for the shadow diagrams should be provided with at least 1 hour intervals for clearer determination of the extent of overshadowing impacts.*
- 5. The Applicant explained that the adjacent properties were in R4 and B2 zones, and likely to be redeveloped to ADG guidelines in the future. As such impacts outlined above could vary in the case of new multi-unit developments, there should be some indication of likely built form that would result should property amalgamations occur.*
- 6. With the extent of new development in this precinct traffic management and parking would continue to grow as planning issues, and with this prospect the Panel expressed concern about how expanded demand might impact on both streetscape amenity and appearance in future.*
- 7. The Panel felt that while the proposed building appeared well resolved, its scale and presence in the streetscape were matters that needed more consideration. As presented, the elevations and CGI impression from the street show trees removed and limited context. It would be advisable that a more extensive study was undertaken of the broader street context to show relative massing and form, with some 3D views from different viewpoints in the public domain.*



8. *It was understood from the Applicant that much work had been done on resolution of the access to and circulation within the building, but several issues were raised that should be further investigated:*
- the front wall appears quite high in relation to its immediate neighbours, and a lower stepped wall with landscaping might enable a more agreeable outcome,*
  - with possible outside use of the multi-use space, provision for out of hours access and security would be advisable,*
  - the potential for more activation at street level could include display space that could benefit AAS,*
  - internal circulation around the lift appeared tight and with limited transparency to the street that would assist visual surveillance.*
9. *Given the loss of a street tree, a significant healthy Eucalypt and limited deep soil available, there should be more allowance for improved landscape treatment and large trees around the site.*

**Comment:** The applicant has responded by stating that the proposed development is their final plan on the subject site and that a master plan for the site is not required. This is acceptable subject to recommended condition imposing a maximum of 600 students within the school site. The site has been used as an educational facility for approximately 50 years and, as the proposal does not introduce a new land use, the functionality of the site is unchanged and acceptable. The proposed scale and presence in the Essex Street streetscape is compatible with the existing multi-storey residential buildings and is consistent with the emerging high-density Epping Town Centre.

The architectural and landscape plans were subsequently amended by the applicant to respond to the DEAP's advice. Additional solar diagrams including 3D elevations and perspectives were provided depicting the impact of the development to the 8 Essex Street building. There are overshadowing and privacy impacts to the 8 Essex Street building and an assessment of the affected units facing the new school building has determined that the impacts are not unreasonable in the emerging high density Epping Town Centre Urban Activation Precinct redevelopment area.

## **BONDS**

In accordance with Council's 2017/2018 Schedule of Fees and Charges, the developer will be obliged to pay Security Bonds to ensure the protection of civil infrastructure located in the public domain adjacent to the site.

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

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

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

Council's Building Surveyor is satisfied with the proposal, and has provided standard BCA conditions of consent for inclusion in any approval. Further, all relevant provisions of the Regulations have been considered in the assessment of this proposal.

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

Coastal Zone Management Plan is not applicable to the proposal.

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

### View loss

The proposed development will not impact on any significant view from the public domain.

Units 1, 3 & 17 of No.8 Essex Street, Epping objected to the proposed development on the basis of view loss. Access was obtained from units 1 & 17 of No.8 Essex Street, Epping to assess view loss. Access to unit 3, 8 Essex Street, Epping was not granted during the assessment process. Nonetheless, a view loss assessment was conducted from the residential flat building at 8 Essex Street, Epping (see **Figure 18**).



**Figure 18** – Existing front view of 8 Essex Street, Epping with the school to the right (out of view).

In assessing the reasonableness or otherwise of the degree of view loss, case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* has established a four-step assessment of view sharing. The steps are as follows:

1. The assessment of the views affected.

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

**Comment:** The views to be affected from 8 Essex Street, Epping are land views over the existing Arden School's sports courts which are also partly through tree canopy from the bedroom windows and living room (and the balconies off the living rooms) towards the north (see **Figure 19**).



**Figure 19** - Existing view from 8 Essex driveway looking over the Arden School

**2. Consideration from what part of the property the views are obtained.**

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

**Comment:** The views are obtained from the bedroom windows and living room (and the balconies off the living rooms) towards the north across the side boundary from a standing (to a lesser extent sitting) position. The views are obtained across the side boundary and are from the recessed balconies of the north-facing units at 8 Essex Street (see **Figures 20 and 21**).





**Figure 20** – Ground level garages and upper level balconies off the living and dining rooms to the north-facing units at 8 Essex Street, Epping



**Figure 21** – Standing view from the dining/living room of Unit 1/8 Essex Street, Epping looking north across the side boundary

### 3. The extent of the impact

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless.*

*For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

**Comment:** The extent of view loss from the units 1 & 17 of 8 Essex Street has been demonstrated in the photomontage images above. As a result of the proposed development, the outlook across the side boundary of Arden School is obtained from the living/dining room window (units 1 & 17) and the balcony off a bedroom (unit 17) will be replaced with the proposed new building. The proposed new school building follows a similar building footprint to that of 8 Essex Street. In addition, view of part of the sky over the new school building will be lost. It is noted that the existing views across the school are obtained over the side boundary which is difficult to retain in a high-density area. The view loss attributed to the new building is minor and acceptable.



**Figure 22** - Standing view from dining/living room window of Unit 17/8 Essex Street, Epping looking north across the side boundary (**left**) and the standing view from the balcony off a bedroom from the top-floor unit 17/8 Essex Street, Epping looking north-west across the side boundary (**right**).

#### 4. The reasonableness of the proposal that is causing the impact

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

**Comment:** The Court poses two questions in *Tenacity Consulting vs Warringah (2004) NSWLEC 140*. The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.



It should be noted that the proposed new building will extend the footprint so that the existing gap between buildings and a small part of the sky above the existing sports courts will be obscured. The non-compliant height is considered to have little and negligible impacts to the view and outlook from the north-facing units of 8 Essex Street, Epping. The proposed development has demonstrated a skilful design which will not impact on any existing significant public or private views.

### Conclusion

The proposal will result in minor impacts upon existing views from the adjoining north-facing units of No.8 Essex Street, Epping. No significant or iconic views from the objector's property will be lost. The proposed development demonstrates an overall skilful design in achieving view sharing with the surrounding properties. As such, the proposal is considered to be satisfactory with regard to the Planning Principle established by *Tenacity Consulting v Warringah (2004) NSWLEC 140*.

### *Character / streetscape*

The proposed development has a built form, height scale and context consistent with the nature of the existing buildings and the future desired character of the area anticipated within the Epping Town Centre and the East Epping redevelopment area. DEAP's comments are noted as the proposal provides sufficient modulation and articulation so that it provides a suitable series of elevations that have a positive relationship with the streets.

### *Safety and Security*

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

### *Overshadowing/solar access*

There are no unacceptable overshadowing impacts anticipated from the proposal to the units of the 'Oxford Green' building at 48A Oxford Street, Epping as this property retains direct or diffused sunlight from 11.00am until 3.00pm mid-winter.

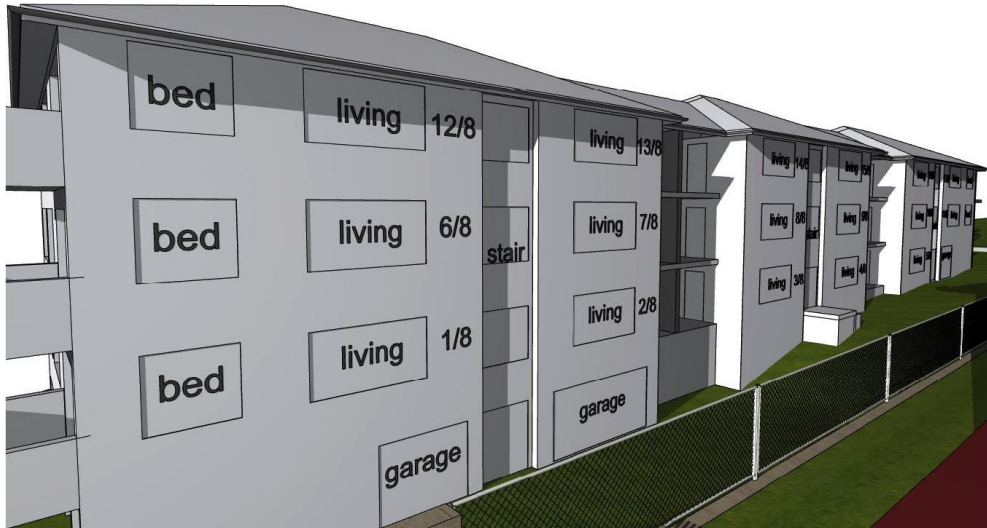
It is noted that all 17 units at 8 Essex Street, Epping currently receive at least 2 hours of either direct or diffused sunlight through tree canopy between 9.00am and 3.00pm mid-winter to living/dining rooms and balconies. An inspection of the revised shadow diagrams and 3D perspective elevations indicates that the proposal is likely to result in a minor to moderate loss of direct or diffused sunlight through tree canopy to the 17 units at 8 Essex Street, Epping. Detailed assessment of the overshadowing impact (see **Figures 23-25**) has been undertaken.

The proposal will ensure 14 out of 17 units (82%) of all living rooms will receive at least 2 hours of direct or diffused sunlight through tree canopy between 9.00am and 3.00pm mid-winter. The ground floor units 3, 4 & 5 of 8 Essex Street will not receive at least 2 hours of direct or diffused sunlight through tree canopy between 9.00am and 3.00pm mid-winter.

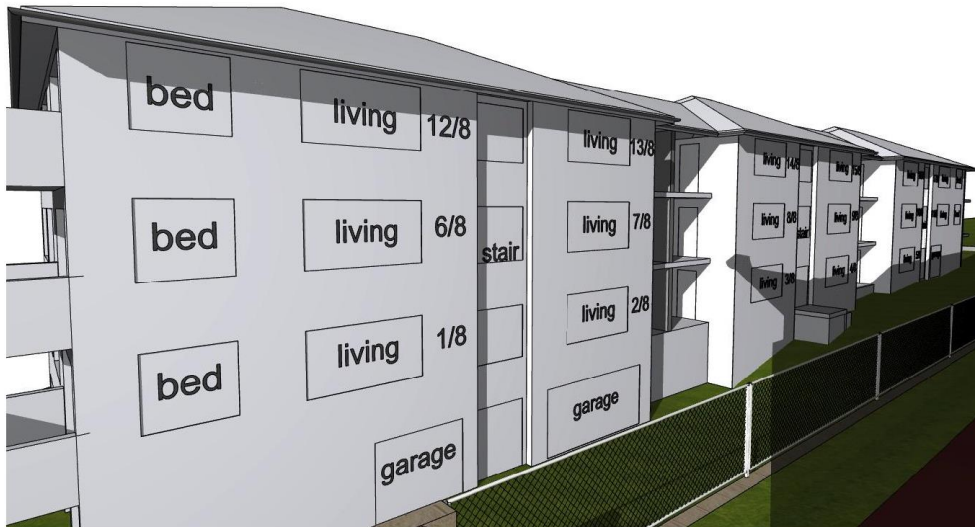
The proposal will ensure 12 out of 17 units (70%) of the private open spaces (i.e. balconies) will receive at least 2 hours of direct or diffused sunlight through tree canopy between 9.00am and 3.00pm mid-winter. The ground floor units 2, 3, 4 & 5 and the mid-level unit 7 of

8 Essex Street will not receive at least 2 hours of direct or diffused sunlight through tree canopy to the private open spaces (balconies) between 9.00am and 3.00pm mid-winter.

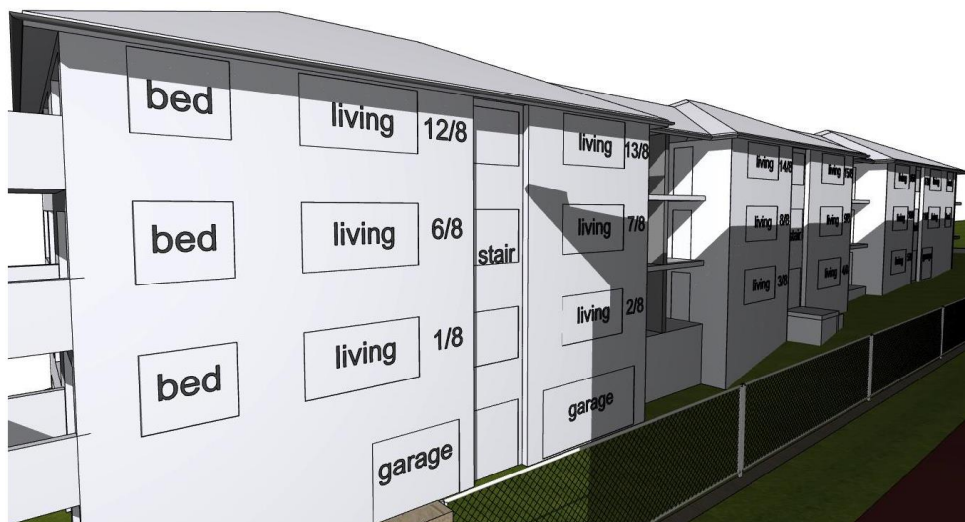
Although the reduction direct or diffused sunlight to 5 units at 8 Essex Street could be improved, the layout of the new school building is in response to the established school buildings and the existing east-west orientation of the buildings within the Essex Street block.



**Figure 23** – 3D Elevational (9.00am, mid-winter) shadow diagram of the adjoining 8 Essex Street building.  
Source: Stanton Dahl Architects



**Figure 24** – 3D Elevational (10.00am, mid-winter) shadow diagram of the adjoining 8 Essex Street building.  
Source: Stanton Dahl Architects



**Figure 25** – 3D Elevational (11.00am, mid-winter) shadow diagram of the adjoining 8 Essex Street building.  
Source: Stanton Dahl Architects

The shadows to be cast by the proposal are not considered to be excessive and will be over north-facing elements of the ground floor units 2, 3, 4, 5 & 7 at 8 Essex Street, Epping. Notwithstanding, reasonable and varying levels of direct and diffused solar access are provided throughout day to the proposed site and to adjoining and surrounding properties to the south.

The proposal meets the general overshadowing controls under Part 4.6.10 of the HDCP 2013, however, it must be expected that properties to the south of a development site within an emerging high density Epping Town Centre Urban Activation Precinct redevelopment area will experience overshadowing. As such, the proposal provides adequate solar access to at least 70% of the units at 8 Essex Street, Epping and does not unreasonably impact upon the surrounding southern properties.

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

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

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

In accordance with the HDCP 2013 notification procedures, owners and occupiers of adjoining and surrounding properties were given notice of the application for a 14-day period between 22 February 2017 and 8 March 2017. In response, six (6) submissions were received.

The issues raised within those submissions are addressed below:

#### ***Issue: Loss of trees***

Concern has been raised regarding “...the loss of so many trees, including a street tree, will take away the birdsong enjoyed by the residents of 8 Essex Street...”

**Comment:** Council's Tree Management and Landscape Officer is generally satisfied with the proposed tree removal and new landscape treatment, and has provided standard conditions of consent for inclusion in any approval.

**Issue:** *View loss*

Concern was raised regarding the loss of views in that *"...distant view from a number of properties will no longer exist as the proposed development will block the view..."*

**Comment:** Refer to 'Impacts of the Development' section of this report.

**Issue:** *Prohibited development under the HLEP 2013*

Concerns have been raised regarding *"...educational establishments are not identified as a permissible use in the R4 Zone under HLEP 2013, which is...prohibited development..."*.

**Comment:** Refer to comments regarding 'Clause 2.6 – Land Use Table' under the 'Hornsby Local Environmental Plan 2013' section in this report. Further, Division 3 of SEPP (Infrastructure) 2007 prevails over any local environmental plan.

**Issue:** *Height of Building*

Concerns have been raised regarding *"...the development, as proposed, breaches height restrictions significantly..."*.

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

**Issue:** *Floor Space Ratio*

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

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

**Issue:** *Heritage*

Concerns have been raised regarding *"...the proposed development impact and detraction from the heritage significance of the heritage items in the immediate vicinity."*

**Comment:** Refer to comments regarding 'Clause 5.10 Heritage Conservation' under the 'Hornsby Local Environmental Plan 2013' section in this report.

**Issue:** *Earthworks*

Concerns have been raised regarding *"...excavation will mean drilling through medium and high strength sandstone..."* and *"the earthworks proposed will greatly breach this clause"*.

**Comment:** Refer to comments regarding 'Clause 6.2 – Earthworks' under the 'Hornsby Local Environmental Plan 2013' section in this report.

**Issue:** *Increase of traffic*

Concerns have been raised that the proposal will *"...accommodate much more students (and) affect the surrounding areas which will include much more traffic. Traffic congestion cannot be avoided and surely will create safety issues to the local residents..."* and *"...not take into account the increased traffic when all the commercial, retail and residential buildings, currently just finished, under construction, or recently approved, are occupied..."*

**Comment:** The Arden Anglican School cannot be held solely responsible for the existing and future traffic congestion in Epping. The proposal provides the vehicular access from Essex Street. Council's Traffic Engineer state that the proposal is not expected to have a significant impact on the surrounding road network.

**Issue:** *Inappropriate desired character for Epping*

Concerns have been raised regarding "...the proposed development is an (in)appropriate design outcome for the site in Essex Street..." and "the streetscape outcome is an onerous institutionalised mega structure and is not appropriate for (the) existing and proposed uses in Essex Street."

**Comment:** The proposal is permissible under SEPP (Infrastructure) 2007 and is within an emerging high density Epping Town Centre Urban Activation Precinct redevelopment area. This issue does not warrant amendment or reason for refusal.

**Issue:** *Access to Sunlight*

Concerns have been raised regarding solar access "...as all the units at 8 Essex Street have their main living/dining room, master bedroom and verandah (balconies) on their northern side, the shadowing of our homes in winter will have a dramatic and significant impact on our lives..." and "...the proposed buildings will directly block the sun light coming from our north and north-west facing windows..."

**Comment:** The solar access and overshadowing impacts are detailed on the architectural plans drawn by Stanton Dahl Architects. The expectation to retain mid-winter solar access to living rooms across a side boundary in a high density residential zone is not reasonably attainable. The proposal provides adequate solar access to at least 70% of the units at 8 Essex Street, Epping and does not unreasonably impact upon the surrounding southern properties. Refer to comments regarding overshadowing/solar access under the 'Impacts of the Development' section in this report.

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

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

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

**Issue:** *Parking impact*

Concern that the proposal will "...increase the significant traffic congestion which already exists in this area" and "...there is not enough car spaces to accommodate each staff member and all the parents who attend..."

**Comment:** The proposal provides additional on-site car parking than what currently exists with the Arden Anglican School. Council's Traffic Engineer is generally satisfied with the parking and traffic concerns given that "...31 spaces (are) proposed there is a shortfall of 20 spaces. This is considered to be reasonable since the school is also providing bicycle parking and motorcycle parking which is not currently available." Car parking for each staff and student is not required under the DCP. The majority of students will utilise public transport and the Epping railway station is approximately 280m walking distance from the site. This issue does not warrant amendment or reason for refusal.

**Issue:** *Noise*



Concern that the proposal will “...surely increase (noise level) and will affect the surrounding properties...”

**Comment:** Council's Environmental Health Officer is generally satisfied with the acoustic treatment within the site and has provided standard and non-standard conditions pertaining to the use of the rooftop terrace area for inclusion in any approval. Part of this issue has been upheld and a condition has been imposed to ensure the rooftop area is not used between 6.00pm and 7.00am seven (7) days a week.

**Issue:** *Signage*

Concern has been raised “that the proposed signage on Essex Street does not comply with control detailed in Table 1C.2.11.C of the DCP...”.

**Comment:** Refer to comments regarding ‘State Environmental Planning Policy No.64 – Advertising and Signage’ under the ‘Provisions of Environmental Planning Instruments (Section 79C(1)(a) (i))’ section in this report.

**Issue:** *Alternate proposal for building along Oxford Street*

Concern that the proposal should “...be relocated to the Oxford Street lot, being a more appropriate lot with nothing preventing Arden from developing that site as they (wish)...” and “...the building must be moved to the Oxford Street lot...”.

**Comment:** The applicant has investigated options for a new school building along Oxford and Essex Streets. The proposal is contextually suitable for the Essex Street streetscape.

**Issue:** *Devaluation of property*

Concern was raised regarding the loss of property values in that “...the value of my unit (as well as the other 16 units at 8 Essex Street, Epping) will all be significantly and detrimentally reduced by the development as proposed.”

**Comment:** This claim has not been substantiated. There are many socio-economic factors that determine the value of real estate and the proposal cannot be held solely responsible for changes to the value of adjacent and surrounding properties. Further, property devaluation is not identified as a ‘head of consideration’ and therefore is not a consideration under Section 79C ‘Evaluation’ of *Environmental Planning and Assessment Act 1979* and does not warrant refusal or further amendment of the application.

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

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the proposal, the proposal will allow further development of the Arden Anglican School site in accordance with its environmental capacity and future vision for Epping. The building form is generally supported by DEAP and the proposal will add a visual interest to the existing Oxford and Essex Streets façade and within the Epping Town Centre.

**CONCLUSION**

The proposal has been assessed in accordance with Section 79C(1) of the *Environmental Planning and Assessment Act 1979*. The proposed alterations and additions to the Arden Anglican School is consistent with the requirements of the SEPP 55 – Remediation of Land, SEPP 64 – Advertising and Signage, SEPP (Infrastructure) 2007, SEPP (State and Regional

Development) 2011, SREP (Sydney Harbour Catchment) 2005, the Draft SEPP (Educational Establishments and Child Care Facilities) 2017, Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.

The proposal is permissible under Division 3 of SEPP (Infrastructure) 2007, and is considered to result in a development, which is suitable in the context of the emerging character within the Epping Town Centre and the high density built form along Essex Street. Non-compliances are acknowledged within the proposal; these have been discussed within this report. A merit assessment of the application has determined that the proposal will be satisfactory and does not result in unreasonable impacts to adjoining and surrounding properties, subject to the satisfaction of recommended conditions of consent.

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

## **OFFICER RECOMMENDATION**

That Development Application DA/89/2017 for the alterations and additions to an educational establishment (Arden Anglican School) including part demolition, tree removal, earthworks and construction of a five (5) storey school building with roof terrace, basement car parking for 31 vehicles and associated infrastructure works and upgrades be granted approval by the NSW Sydney West Central Planning Panel (SWCPP) subject to the attached conditions.

- i. That the SWCPP support the Clause 4.6 variation to the height of building.
- ii. That the objectors be advised of the SWCPP's decision.
- iii. That the NSW Department of Planning be advised of the SWCPP's decision.