



**SYDNEY CENTRAL CITY PLANNING PANEL
Addendum Assessment Report**

Panel Reference	2017SWC048 DA
DA Number	DA/237/2017
LGA	City of Parramatta Council (formerly Hornsby Shire Council)
Proposed Development	27 storey mixed use tower comprising ground floor retail unit, first floor commercial office unit and 101 shop top housing units above, including 91 parking spaces in 4 basement levels; following demolition of existing buildings. The application is Nominated Integrated development under the Water Management Act 2000.
Street Address	24 - 36 Langston Place, EPPING NSW 2121 (Lot 3 DP9836, Lot 1 DP707822, Lots A & B DP342194)
Applicant	Langston R & J Pty Ltd ABN: 98120139556
Owner	J.R. Hunt Real Estate Pty Ltd, James and Patricia Crether, Langston R & J Pty Ltd
Date of DA lodgement	22 March 2017
Number of Submissions	1 st Advertisement: 12 2 nd Advertisement: 5 (4 resubmissions) Total: 17 (13 unique individuals/organisations)
Recommendation	Deferred Commencement
Regional Development Criteria	The development has a capital investment value of more than \$20 million (criteria at the time of lodgement).
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment (EP&A) Act 1979 • EP&A Regulation 2000 • Water Management Act 2000 • SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004 • SEPP (Infrastructure) (ISEPP) 2007 • SEPP (State and Regional Development) 2011 • SEPP (Sydney Harbour Catchment) (SEPP Sydney Harbour) 2005 • SEPP No. 55 (Remediation) (SEPP 55) • SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) & Apartment Design Guide (ADG) • Hornsby Local Environmental Plan (HLEP) 2013 • Hornsby Development Control Plan (PDGP) 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Architectural Drawings (Revised) • Attachment 2 – Clause 4.6 Variation Request (Revised) • Attachment 3 – Overshadowing and Solar Impact Analysis • Attachment 4 – Independent Solar Access and Analysis • Attachment 5 – Green Travel Plan • Attachment 6 – Traffic Statement • Attachment 7 – Peer Review of Traffic Study • Attachment 8 – Independent Urban Design Report • Attachment 9 – Parking Rate Comparison • Attachment 10 – Original Assessment Report
Report prepared by	Alex McDougall
Report date	19 September 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

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

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? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (s7.24)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

1. Introduction

1.1 Background of Consideration of Application

This application was submitted to City of Parramatta Council on 22 March 2017. Over the course of the original assessment the applicant modified the proposal in response to the advice of Parramatta's Design Excellence Advisory Panel, the City Architect, Council officers and external referral bodies. Subsequently, Council officers were satisfied that the proposal satisfied the relevant requirements of the Environmental Planning and Assessment Act 1979 and the application was forwarded to the Sydney Central City Planning Panel (SCCPP) for determination with a recommendation for deferred commencement consent. Council officers' original assessment report is provided at Attachment 10. This assessment is still considered to be Council officers' position subject to the additional information and assessment in this addendum report.

1.2 Sydney Central City Planning Panel Decisions

The application was reported to the SCCPP with a recommendation of Deferred Commencement on 4 April 2018. After hearing submissions from the applicant, residents and adjoining property owners, the Panel resolved to defer a decision on the application for the following reasons as stated in the Record of Deferral:

The panel agreed to defer the determination of the matter until the following information is provided:

- 1. The Council to provide an updated traffic assessment based on the latest forecasts of the quantum and rate of development in the Epping Town Centre, given that the available 2011 reports may not reflect the current situation. This report should include commentary on the status and adequacy of related infrastructure upgrading work.*
- 2. The Council to advise of a completion date for the current strategic traffic study of Epping Town Centre.*

3. *A report from Council which compares the shadowing and privacy impacts of the current proposal with one that complies with the height in the Hornsby Local Environment Plan 2013 and the setbacks in the Apartment Design Guide.*

1.3 Epping Traffic Study

Subsequent to the original hearing of the subject application the new Epping Traffic Study, by EMM, referenced by the Panel, was made public in May 2018. The full study is available on Council's website. With respect to traffic in the Epping Town Centre, the findings of the latest traffic study are summarised as follows:

- *For March 2017, up to four of the six key intersections on the four major traffic routes (Beecroft, Blaxland, Carlingford and Epping Roads) are operating at oversaturated traffic levels (waiting time average 5 minutes);*
- *During the morning peak, combined east bound and south bound traffic queues on Beecroft and Carlingford Roads can reach a combined total length of approximately 1.5km;*
- *The traffic queuing effect occurs at approximately 8:30a.m and 5:40p.m in line with Sydney regional traffic conditions;*
- *The increasing road traffic congestion occurring in the Town Centre area is adversely affecting both regional through traffic movements and local traffic accessibility to the major road network.*
- *In the future, peak traffic conditions (in modelled scenarios of +5,000 and +10,000 dwellings growth) will worsen even with the identified RMS and Council road improvements;*
- *In the road networks, five of the six assessed intersections will have traffic conditions operating at oversaturated levels during the morning and afternoon traffic peak.*
- *In 2036, over 3,300 vehicles cannot enter the network.*
- *The average intersection delays are predicted to improve by 2036 from the 2026 base scenario as a result of Council proposed road improvements which are anticipated to be implemented during this period. However, the most crucial intersection, Beecroft Road, will actually worsen in terms of average delay by 2036.*
- *The report finds that the afternoon performance of the network for the base 2036 is such that it is unlikely that there will be any spare capacity for additional vehicles.*

The Panel deferral reasons 1 & 2 outlined above are similar to those used by the Panel in deferring a concurrent nearby application, DA/485/2016 at 44-48 Oxford Street, Epping. Subsequent consideration of DA/485/2016, after release of the Epping Traffic Study, yielded the following further comments on traffic related matters which are considered to be relevant to the subject application:

1. *The findings of the recent Epping Traffic Study support the submissions of the local residents and business people and suggest that clearly a conventional response will not be effective and stronger action is necessary from now to encourage a mode shift towards use of the Metro... In the light of the revealed serious traffic constraints the Panel needs to be convinced that practical and enforceable measures can be applied to discourage use of private motor vehicles and to encourage the mode shift to public transport.*
2. *The Panel will defer determination of the application for the provision of a satisfactory finalised travel plan that is detailed enough to be enforceable as a condition of consent, which should be draft in consultation with Council and refer to contemporary leading practices – which may include increased car sharing and reduction of onsite car parking.*

1.4 Relevant Applications

12-22 Langston Place, Epping (DA/468/2016)

Construction of 3 mixed use towers (19, 24 and 29 storeys) comprising 463 residential units, 1681sqm of retail floor space and 4 basement levels containing space for 529 cars, 388 bicycles, 35 motorcycles, storage, refuse and servicing; public domain upgrades including 2-way vehicular lane between towers 2 and 3, pedestrian through-site links, and public open spaces; following demolition of existing building and car park approved (by way of deferred commencement) by the Sydney West Central Planning Panel on 2 August 2017. Operational Consent was subsequently granted by Council on 21 August 2018. This development has not yet commenced.

44-48 Oxford Street, Epping (DA/485/2016)

Demolition of all existing structures including the Heritage listed dwelling on site, tree removal, construction of a mixed use development in the form of 2 towers (15 & 18 Storeys tall) over a podium and basement car parking was considered by the Sydney Central City Planning Panel on 19 September 2018.

A decision is still pending. A condition is included in the draft conditions of consent restricting the allowable parking on site to the RMS Guide to Traffic Generating Development CBD rate for High Density Residential development.

2. Council Advice to Applicant

In response to the Panel's decision to defer the application, and in light of the Epping Traffic Study findings and Panel's response to similar application in the area, the City of Parramatta communicated to the applicant the following recommendations:

- (a) That a significant reduction of car parking was considered key to addressing the Panel's traffic concerns.
- (b) That a green travel plan be developed to provide robust measures with respect to discouraging car use.
- (c) That the applicant undertakes their own assessment of the shadow and privacy impact on the adjoining approved development at 12-22 Langston Place and provide further amelioration measures, particularly with response to privacy.

3. Applicant Response

In response to the deferral, and Council officer advice, the applicant submitted revised drawings outlining the following changes:

- The provision of parking has been reduced from 120 to 91 spaces (-29 spaces) and the allocation has been revised as follows:
 - From: 96 resident, 11 visitor, 8 commercial, 5 retail, 0 car share in 5 levels;
 - To: 62 resident, 14 visitor, 8 commercial, 4 retail, 3 car share in 4 levels;
- The quantity of apartments has been decreased from 102 to 101 units and the unit mix has been slightly revised as follows:
 - From: 43 x 1-bed, 53 x 2-bed and 6 x 3-bed;
 - To: 40 x 1-bed, 55 x 2-bed and 6 x 3-bed;
- Introduction of privacy measures including privacy film, frosted glass and balustrade slots on the eastern façade.

The applicant also provided the following additional information supporting the application:

- Revised Clause 4.6 Variation Request by Ethos Urban;
- Traffic Statement by The Transport Planning Partnership (TTPP);
- Green Travel Plan by TTPP;
- Peer Review of TTPP Traffic Study and Epping Traffic Study by McLaren Traffic Engineering;
- Overshadowing and Solar Impact Analysis by PTW; and
- Independent Solar Access and Analysis Review by SLR.

All of these documents are attached to this report for the consideration of the Panel.

4. Response to SCCPP Deferral Reasons of 4 April 2018

4.1 Traffic & Parking Assessment (Deferral Reasons 1 & 2)

- 1. The Council to provide an updated traffic assessment based on the latest forecasts of the quantum and rate of development in the Epping Town Centre, given that the available 2011 reports may not reflect the current situation. This report should include commentary on the status and adequacy of related infrastructure upgrading work.*
- 2. The Council to advise of a completion date for the current strategic traffic study of Epping Town Centre.*

Commentary on Infrastructure Upgrading Work

The Epping Town Centre Urban Activation Precinct was enacted in 2013 resulting in rezoning and increased densities in the Epping Town Centre (former Hornsby side).

The 2011 Halcrow Traffic Study (Halcrow Study) was part of the suite of documents that supported the density approved in the 2013 rezoning of the Epping Town Centre. The Halcrow Study recommended the following infrastructure upgrades:

Upgrade	Status
North Epping traffic that currently turns right from Langston Place should be re-directed to Essex Street by banning the right turn for general traffic at Langston Place;	Completed
To facilitate increased traffic volumes due to the re-routeing from Langston Place, Essex Street/Epping Road intersection should have the pedestrian crossing facility moved to the Eastern side and Essex Street approaches should be widened to accommodate additional turning lanes;	Completed
Rail bridge carriageway widening is undertaken by removal of footpaths on North and South sides to accommodate additional Westbound lane;	Announced (no timeline for implementation)
New shared pedestrian/cycle bridges are constructed on the North and/or South sides of the existing rail bridge;	Announced (no timeline for implementation)
An additional lane is created on Southern side of Epping Road at approach to Blaxland Road;	Completed
The Beecroft Road Southbound approach to the Beecroft Road/Carlingford Road intersection is widened to accommodate an additional two lanes (one through lane over a distance of at least 150m and one turning lane over a distance of 50m).	Completed

It should be noted that all of the above upgrades are subject to state government planning, funding and implementation. As such they are not directly in Council's control.

As outlined in the table, all of the road infrastructure that was required to support the approved density has either already been delivered or should be delivered in the near future. The

subject application complies with the density standard that was based on these infrastructure improvements.

However, as noted above, the more recent Epping Traffic Study has found that:

- *In the future, peak traffic conditions (in modelled scenarios of +5,000 and +10,000 dwellings growth) will worsen even with the identified RMS and Council road improvements;*
- *The average intersection delays are predicted to improve by 2036 from the 2026 base scenario as a result of Council proposed road improvements which are anticipated to be implemented during this period. However, the most crucial intersection, Beecroft Road, will actually worsen in terms of average delay by 2036.*

As such it is considered that some further measures, beyond compliance with the density standard, are necessary to ensure the proposal does not contribute unreasonably to traffic congestion.

Car Parking Rates

The City of Parramatta's Traffic Engineer supports the following approach:

The Panel is already aware of the traffic planning challenges the Epping Town Centre is facing both in terms of existing traffic and future traffic generation from high density developments approved, proposed, or anticipated under the planning controls applying to the Town Centre.

In this context, notwithstanding the quantum of the impact any individual proposal may have in isolation from the broader situation, any measure in any planning decision that has potential to improve the existing situation is considered to be one worth exploring from a traffic perspective, provided that, moving forward, these are consistently applied so as to produce an incremental cumulative result that minimises any worsening of the existing traffic situation.

In the context of the current Development Application, the car parking controls under the Hornsby DCP 2013 were designed based on certain traffic assumptions. The most recent Epping Traffic Study reveals that these assumptions have not matched the observed outcome on the ground, with the traffic situation considerably more serious than predicted at that time. Application of the current controls without modification, therefore, may ultimately be expected to incrementally contribute to a cumulative worsening of the existing situation, notwithstanding that these are currently the adopted policy position of Council.

There is a clear link between the number of parking spaces provided and the level of traffic generated by a development. The Epping Town Centre has excellent transport links, is very walkable, and has access to a strong range of local services. It is also an area with limited unrestricted on-street parking availability.

To this end, it is probable that reducing car parking provision for new developments within this precinct will not simply result in the parking being displaced onto local streets, but rather will result in a reduction in vehicle ownership and therefore reduced traffic generation for those developments. If consistently applied going forward, this will have an important incremental impact on assisting the management of the traffic challenges Epping is facing. This will be particularly so if appropriate Green Travel Plans are also put into effect with robust measures to encourage transport mode shift.

It is also acknowledged that the development will generate some parking demand, and therefore, to strike a balance between this and the traffic impact, it is considered that the RMS Guide to Traffic Generating Development "CBD" rate for residential units should be

applied as a maximum. If applied across similar developments in Epping moving forward in a consistent fashion, this will have a significant incremental effect on limiting the worsening of the existing traffic situation for Epping from new developments.

The RMS rates are considered to be applicable as the Apartment Design Guide states that,

For development in the following locations:

- *on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or*
- *on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre*

the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less

The car parking needs for a development must be provided off street

The RMS Guide to Traffic Generating Development (Section 5.4.3) outlines the following controls for high density residential development:

Definition.

A high density residential flat building refers to a building containing 20 or more dwellings. This does not include aged or disabled persons' housing. High density residential flat buildings are usually more than five levels, have basement level car parking and are located in close proximity to public transport services. The building may contain a component of commercial use.

Parking.

The recommended minimum number of off-street resident parking spaces is as follows:

Metropolitan Regional (CBD) Centres:

- *0.4 spaces per 1 bedroom unit.*
- *0.7 spaces per 2 bedroom unit.*
- *1.20 spaces per 3 bedroom unit.*
- *1 space per 7 units (visitor parking).*

Metropolitan Sub-Regional Centres:

- *0.6 spaces per 1 bedroom unit.*
- *0.9 spaces per 2 bedroom unit.*
- *1.40 spaces per 3 bedroom unit.*
- *1 space per 5 units (visitor parking).*

Metropolitan Regional Centres (Central Business District) provide high levels of local employment as well as access to rail and bus services and therefore may have less parking requirements.

The recommended minimum number of off-street visitor parking spaces is one space for every 5 to 7 dwellings. Councils may wish to reduce this requirement for buildings located in close proximity to public transport, or where short term unit leasing is expected.

The proposal is for a high density development within 800m of Epping Station. The area is considered best defined as a *Metropolitan Regional Centre* as there are high levels of local

employment. The RMS CBD rates are less than the local DCP rates and can be applied in the event of inconsistency between the Policy and another EPI.

The applicant has significantly reduced the proposed parking provision of the development to the minimum level outlined under the RMS CBD rates which results in a reduction in parking provision of 29 off-street car parking spaces compared to the application as originally considered by the Panel.

A comparison of the proposal previously presented to Panel, the proposal now put forward by the applicant, the Hornsby DCP 2013 Epping Town Centre rates, and the combination of the RMS Guide to Traffic Generating Development CBD rate (for residential) and the DCP rates for commercial is provided in Attachment 9.

As such, it is considered that the proposed parking rates are appropriate and in the public interest.

Strategic Notes

It is noted that rates similar to the RMS CBD rate have been adopted by Council for the draft Parramatta CBD Planning Proposal and all new design competitions, with good access to transport, with similar policy intent to encourage non-car transport use.

As part of Council's response to the Epping Traffic Study, Council officers in the City Strategy unit have prepared a report which is to be presented to Council shortly recommending adoption of the RMS rates as *maximums* in the Epping Town Centre section of the Hornsby DCP.

Green Travel Plan

The applicant has also provided a Green Travel Plan with a list of methods to ensure modal shift away from private vehicle trips to more sustainable trips, primarily train trips. The Green Travel Plan states that the proponent 'will implement' these measures and is not merely suggesting possible options. Proposals in the green travel plan include, but are not limited to, the following:

- Use the RMS Guide to Traffic Generating Development CBD rate for high density residential development as a maximum;
- The apartments and car parking spaces be sold separately and car parking spaces are not to be sold or rented to non-occupants;
- The provision of 3 car share spaces on the site for operation by a private operator;
- Provide opal cards with \$100 credit to each initial adult residential occupier and full-time tenant staff member;
- Transport Access Guide for all occupants;
- Provide an access pack to all new residents and tenants including the transport access guide, the free opal cards, and information on sustainable travel facilities and initiatives;
- Provide high quality bicycle parking and end-of-trip facility including change room with shower;
- Provide public transport information displays, and a walking and cycling map including estimates of time taken to local destinations; and

- Car pooling forum/board to encourage residents with similar destinations to travel together.

It is considered that the measures proposed in the green travel plan are appropriate and will encourage a further modal shift away from private vehicle use.

On-street Parking

Reducing off-street car parking is only an effective deterrent to car ownership if it is accompanied by on-street restrictions to parking. The site is located in the Epping Town Centre. All streets in the immediate vicinity have parking restrictions which preclude long-term use by residents. Notwithstanding, there are more distant streets which do have some unrestricted parking and are not subject to an on-street parking permit scheme. It may eventually become necessary for the area to become controlled by a Council run on-street resident parking permit scheme, to ensure that existing residents in low-density accommodation maintain the ability to park on the street. As the on-street parking cannot accommodate high density development a condition is included restricting occupants from participation in any future Council run on-street resident parking permit scheme.

Traffic Study

The applicant also submitted a peer review (undertaken by McLaren Traffic Engineering) of the Epping Town Centre Traffic Study (prepared by EMM) and the Traffic and Parking Report (prepared by TTPP) for the current DA (see Attachment 7). The peer review report states that they agree with the traffic generation rates for the proposed development in the TTPP report and raise concerns with the traffic generation rates provided in the Epping Town Centre Traffic Study. In the peer review report's view, the traffic generation rates in the Epping Town Centre Traffic Study are over estimates of the likely impact from development within Epping. The peer review report indicates that there is a significant shortfall in the microscopic level of detail for the core area of the Epping Town Centre, which undermines the credibility of the assessment conducted for the Epping Town Centre Traffic Study. The peer review report, finally, notes that the weight given to the Epping Town Centre Traffic Study report findings must be questionable in light of the assessment outputs and the lack of RMS endorsement at the microscopic / Town Centre precinct level.

Conclusion

In keeping with the discussion above, the following conditions, additional to those originally proposed, are included in the revised draft conditions at Appendix 1:

- Condition specifying total number of car parking spaces to avoid any potential confusion with the approved drawings, including minimum visitor, retail and commercial spaces;
- Condition requiring easement securing, and providing public access to, 3 car share spaces;
- Condition disqualifying residents from participation in any future on-street parking permit scheme;
- Condition restricting car share spaces to common property; and
- Conditions requiring fulfilment and on-going adherence to Green Travel Plan.

Subject to the above conditions the proposal is considered to have an acceptable impact on the Epping traffic network, specifically, an impact less than that which would result solely from compliance with the density development standard.

4.2 Shadowing and Privacy (Deferral Reason 3)

1. *A report from Council which compares the shadowing and privacy impacts of the current proposal with one that complies with the height in the Hornsby Local Environment Plan 2013 and the setbacks in the Apartment Design Guide.*

Shadowing

The adjoining property, No. 12 – 22 Langston Place is subject to an active development consent for 463 residential units as well as other commercial uses contained within 3 mixed use towers. The owner of the adjoining site has made an objection to the proposed development which, in part, raises concern with the level of overshadowing that the proposed tower will result in, specifically, the level of impact resulting from non-compliances with the applicable building envelope and height controls. The owners of the adjoining site conducted solar analysis of this impact and determined that the proposed breaches of height and separation controls would result in 15 of the 463 units going from a compliant solar scenario¹ to a non-compliant scenario. The adjoining owner considers that this is not appropriate and should be reason to refuse the application.

Notwithstanding, it was the view of Council officers that this impact was acceptable on a merit basis. The justification for this conclusion is contained in pages 18 – 21 Council officers' original assessment report (see Attachment 10).

At the first determination meeting, the Panel raised concern with this solar impact and, in deferring the application, requested that Council provide a report which compares the proposed impacts with the impacts of a compliant building.

The applicant has undertaken their own Overshadowing and Solar Impact Analysis, conducted by the project architect PTW (Attachment 3) and also commissioned an independent Solar Access and Analysis Review by SLR (Attachment 4).

The results of the adjoining properties analysis, the applicant's analysis and the independent reviewer are contained in the table below.

¹ A residential unit is considered to have compliant solar access if the living rooms and private open spaces receive a minimum of 2 hours of direct sunlight between 9am and 3pm at mid-winter (June 22).

Architectus - Adjoining Owner Assessment

Total units at 12-22 Langston Place	463			
	Units with reduced solar access	Total number of units receiving 2 hours	% across development	Difference
Without proposed development		330	71.27%	N/A
With 'complying envelope'	57	273	58.96%	17.3%
With proposed envelope	72	258	55.72%	21.8%
Difference	15	15	3.24%	4.5%

PTW - Applicant Assessment

Total units at 12-22 Langston Place	463			
	Units with reduced solar access	Total number of units receiving 2 hours	% across development	Difference
Without proposed development		313	67.60%	N/A
With 'complying envelope'	41	272	58.75%	13.1%
With proposed envelope	54	259	55.94%	17.3%
Difference	13	13	2.81%	4.2%

SLR - Applicant Peer Review Assessment

Total units at 12-22 Langston Place	463			
	Units with reduced solar access	Total number of units receiving 2 hours	% across development	Difference
Without proposed development		314	67.82%	N/A
With 'complying envelope'	42	272	58.75%	13.4%
With proposed envelope	54	260	56.16%	17.2%
Difference	12	12	2.59%	3.8%

As can be seen from the table above, the 3 reviews yield a fairly consistent total of between 12 – 15 units (or 2.59 – 3.24% of the overall development) becoming non-compliant with solar access as a result of the proposal's non-compliances with the building envelope controls.

A notable difference is that the applicant and the applicant's peer review both consider that the adjoining development, without any development on the subject site, did not meet the 70% solar access compliance as required by the ADG. The ADG states that, "*Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%*". As a result, the applicant and the applicant's peer review both suggest that reduction that would result from this proposal would be less than this 20% requirement and thus comply with the control (see figures in bold within table above).

Overall the non-compliances result in the following negative outcomes:

- 12 - 15 unbuilt units on the adjoining site (or 2.59 – 3.24% of the overall development) will go from receiving >2 hours of sunlight to <2 hours sunlight. Based on the SLR study the 12 affected units would have the following resultant solar access:
 - 1 hour: 5 units
 - 1.25 hours: 5 units
 - 1.5 hours: 1 unit
 - 1.75 hours: 1 unit

This negative impact is considered to be sufficiently offset, on a merit basis, by the following positives resulting from the non-compliant envelope:

- a) The tower has a slenderer form;
- b) The applicant's provision of commercial floor space beyond the minimum required by the zoning.
- c) The applicant's substantial reduction in car parking beyond the RMS CBD rate and provision of a Green Travel Plan.
- d) The applicant's commitment to sustainability standards beyond the minimum required.
- e) The applicant's provision of a ground floor front setback greater than required by the applicable controls for creation of a wider pedestrian footpath.

It should also be noted that the proposed building separation is in keeping with or better than other buildings in Epping, including between Towers 2 and 3 of the adjoining development at 12-22 Langston Place (see below).

Further, the separation breaches must be considered in the context that this site meets the relevant minimum site frontage requirements, but is otherwise constrained in size by the inability to amalgamate with land to the north, despite efforts to do so.

Ultimately the Apartment Design Guide is, as the name suggests, a guide. 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"*.

As such it is considered that, on merit, the positive outcomes outweigh the negative and as such the non-compliant envelopes are considered to be acceptable. This conclusion relies on acceptance of the applicant's Clause 4.6 variation request to the height standard which is discussed in Section 5 below.

On the issue of separation, the following additional point is raised:

Separation

The Panel, upon reviewing the written submission and hearing the oral submission from the adjoining property, appeared concerned with the proposed separation between the proposed building and 'Tower 2' of the adjoining approved development at 12-22 Langston Place.

The ADG requires a separation, at 9 storeys and above of 24m between habitable rooms/balconies.

The proposed habitable rooms and balconies, at their closest, are separated from Tower 2 by 19.8m (See Figure 2 below).

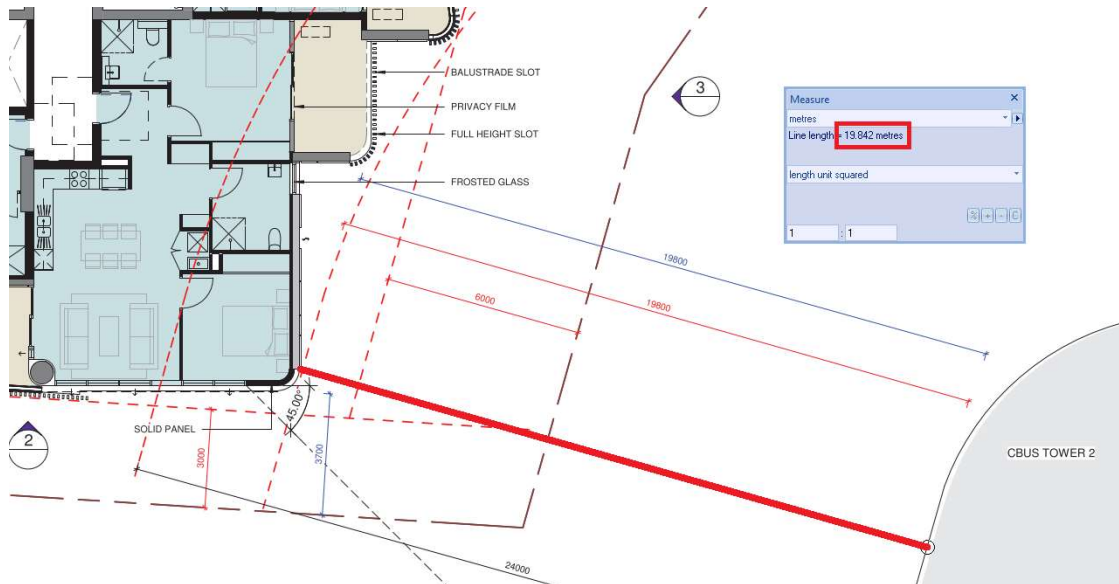


Figure 1. Minimum Separation between proposed tower and CBUS Tower 2.

A previous Regional Planning Panel approved a 19.6m separation between Towers 2 and 3 of the approved development at the adjoining site, 12-22 Langston Place (see Figure 2 below). This was in an instance where habitable room windows directly face each other, the two towers are almost parallel and Tower 2 is directly to the north of Tower 3.

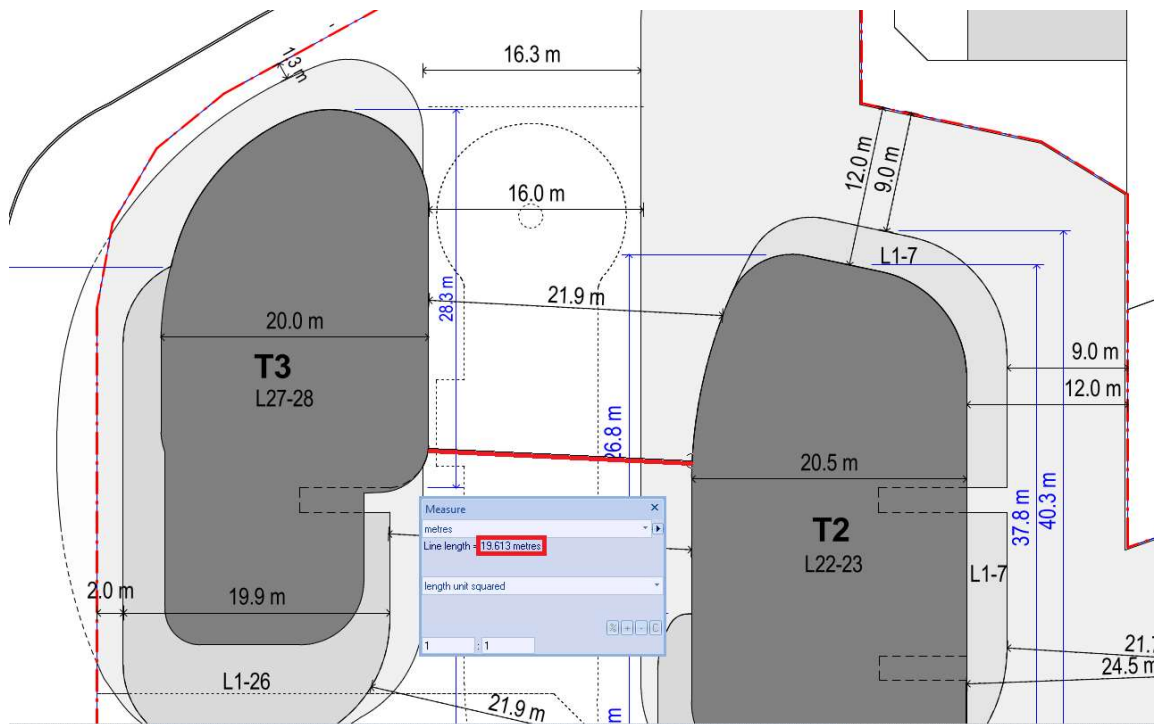


Figure 2. Minimum Separation between CBUS Towers 2 and 3 (19.6 metres).

As such, there is a precedent which suggests that this can be satisfactory in certain circumstances and is in keeping with the character of the area.

Privacy

The ADG requires the following with respect to privacy:

Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building Height	Habitable Rooms and Balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room.

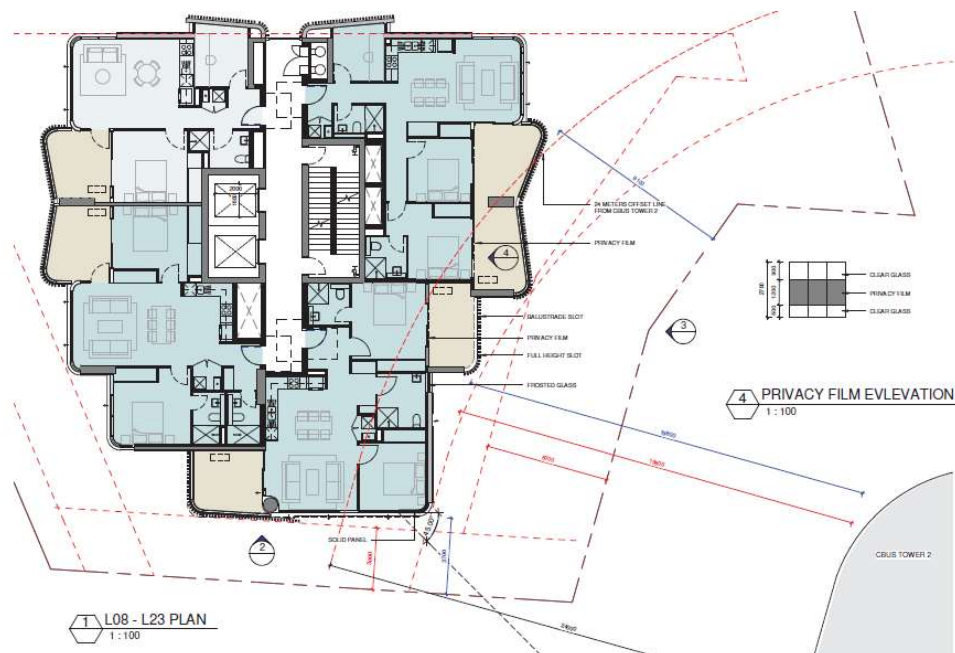
The proposal includes habitable rooms and balconies adjacent to the boundary with the adjoining approved tower and as such the proposal is required to provide a 12m setback to this shared boundary.

The proposed habitable rooms/balconies are located between 6.3m and 12.8m from the shared boundary.

Since the previous hearing, the applicant has added additional privacy measures to the windows and balconies which face, and are within 12m of the shared boundary with, Tower 2. The privacy measures consist of the following:

- Residential layout to provide the primary outlook away from the adjoining approved building.
- Use of opaque/frosted glass on non-habitable rooms windows which face the adjoining approved building.
- Privacy film to bedroom windows.
- Full height and partial height slot treatment to balcony edges to direct the primary outlook away from the adjoining approved building.

The privacy measures are outlined in the figure below:



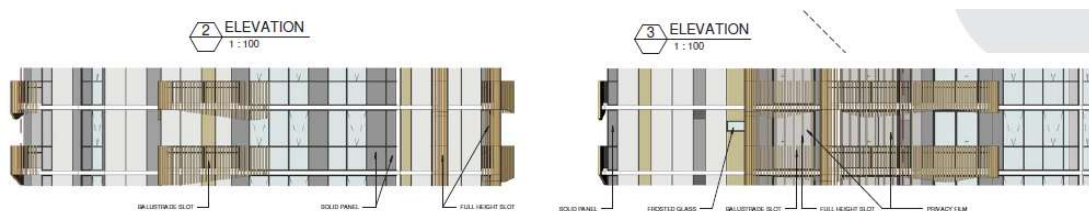


Figure 3. Proposed privacy treatments to protect amenity of adjoining approved tower (inc. previous page).

Subject to these privacy treatments the proposal is not considered likely to have an unacceptable impact on the privacy of any adjoining/nearby properties.

Conclusion

For the reasons outlined in the original assessment report (see Attachment 10) and subject to the above analysis, it is considered that the proposal will have an acceptable impact on the solar access and privacy of all adjoining and nearby properties.

5. Clause 4.6 Variation Request

The applicant has provided a revised Clause 4.6 variation request in relation to the height standard at clause 4.3 of Hornsby LEP 2013 (see Attachment 2).

The variation request is substantially the same as that assessed in the original Council officer assessment report (see Attachment 10). The following points are provided in response to the initial determination meeting and the revised document.

Parking and Green Travel Plan

The applicant has updated the Clause 4.6 variation request to include the significant reduction in parking and the provision of a green travel plan as further justification for the better outcome which results from the non-compliance.

Recent LEC Judgement

The applicant has updated the Clause 4.6 variation to reference a relevant recent Land and Environmental Court decision. Chief Judge Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified, at paragraph 87, that, “*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*”. While it is considered that the proposal does have several benefits over a compliant scheme, the Panel does not have to be satisfied with regard to such a test.

Conclusion

It is considered that the applicant’s written request has adequately addressed the matters required to be demonstrated and that the request to vary the height development standard within Hornsby LEP 2013 can be supported as the proposal continues to achieve the objectives of the height development standard and the zoning and is in the public interest.

6. Independent Urban Design Report

The Panel commissioned an independent urban design review of the proposed development by Richard Thorp, an eminent architect and former member of the Regional Planning Panel. The full review is available at Attachment 8. A summary of the review is provided below:

The design of the proposed 27 storey shop top Residential Tower with 5 storeys of basement car parking has been progressed with consideration for the neighbouring properties. Recent revisions have addressed a number of design issues that were highlighted in Urban Design and Architectural Assessments.

The increase in Building height and the reduction in the width of the tower have improved the design, and together with associated changes to setbacks and separation to neighbouring towers represent an improvement for the development.

Any resulting increase in overshadowing is mitigated as a result of the new shadow falling mostly on road and rail corridors. The additional shadow that does impact other properties is moving very fast and in consequence has minimal impact.

Privacy has also been improved to adjacent residential towers, and proper consideration given to the adjacent potential future development on the site immediately to the north.

The proposal demonstrates a high quality of Urban Design and proposes an elegant architectural solution for a challenging and constrained site.

The independent report is considered to support the conclusions reached by Council officers in the original assessment and this addendum assessment.

7. Notification, Submissions

The additional information submitted with this application was placed on Council's website. The changes were not considered to be significant as to warrant further formal notification.

A copy was forwarded to the adjoining property owner at 12-22 Langston Place.

Subsequently, Council is in receipt of a further submission from the adjoining property developer at 12-22 Langston Place. The submission reaffirms the adjoining owners original position that, even in light of the applicant's additional modifications/reports, the proposal is not acceptable on a number of grounds and as such should be refused. Council officers' response to the objector's original issues is contained in the original assessment report. The following additional commentary is provided in response to their additional letter:

- The objector suggests that Council has not responded to their submission of an Urban Design Review of the application by GMU. Council's city architect and urban design team support the application. The urban design review commissioned by the Panel, from Richard Thorp, comes to the conclusion that the proposed building is acceptable in urban design terms. As such it is considered that the application can be supported on urban design grounds.
- The objector continues to raise concern that the applicant's Clause 4.6 variation request (as revised) does not provide sufficient justification for the application to contravene the standard. As outlined above, Council officers consider the variation request to be well founded.
- The objector remains concerned with the buildings separation from Tower 2 of their development. As outlined above the proposal is considered to provide acceptable separation. Further, it is noted that the objector was satisfied that a similar separation between Tower 2 and Tower 3 was appropriate for their development.
- The objector remains concerned with the level of overshadowing resulting from non-compliances. As outlined above the level of overshadowing is considered to be minor (2.59 – 3.24% of their overall development) and is sufficiently offset by other

public benefits. The objector suggests that a non-compliance needs to demonstrate a better outcome than a complying one. As outlined in the recent decision of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, such a demonstration is not necessary.

- The objector remains concerned with the level of privacy impact, raising concern with acoustic privacy. As outlined above the applicant has taken measures to reduce the amount of privacy impact to, in Council officers' view, an acceptable level. With regard to acoustic privacy, the site is located in a high density town centre area and as such will be subject to heightened levels of background noise.

8. Conclusion

This report responds to the additional matters for which information and clarity was sought by the Panel.

The report also provides assessment of the revised Clause 4.6 variation request. The Clause 4.6 variation request outlined substantial site specific benefits of the proposal.

Subject to additional conditions, including compliance with the submitted Green Travel Plan, the proposal is considered to have an acceptable impact on the traffic network.

It is considered that the applicant has demonstrated that the impact on the solar access and privacy of the adjoining approved units is appropriate in the context of the site constraints.

As such deferred commencement approval is recommended.

9. Recommendation

- A. **That** the Sydney Central City Planning Panel approve the variation to the building height standard in Clause 4.3 of HLEP 2013, being satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development will be in the public interest as it is consistent with the objectives of the particular standards and the objectives for development within the zone and the site specific reasons discussed; and
- B. **That** the Sydney Central City Planning Panel, as the consent authority, grant **Deferred Commencement Consent** to Development Application No. DA/237/2017 for construction of a 27 storey mixed use tower comprising ground floor retail unit, first floor commercial office unit and 101 shop top housing units above, including 64 parking spaces in 3 basement levels; and demolition of existing buildings at 24 - 36 Langston Place, EPPING NSW 2121 (Lot 3 DP9836, Lot 1 DP707822, Lots A & B DP342194) for a period of five (5) years from the date on the Notice of Determination, subject to the conditions under Schedule 1 of Appendix 1.
- C. That all the objectors be advised of the Sydney Central City Planning Panel's decision.