



## **SYDNEY CENTRAL CITY PLANNING PANEL**

### **COUNCIL ASSESSMENT REPORT**

<b>Panel Reference</b>	2017SWC048 DA
<b>DA Number</b>	DA/237/2017
<b>LGA</b>	City of Parramatta (formerly Hornsby Shire Council)
<b>Proposed Development</b>	27 storey shop top housing development comprised of ground floor retail unit, first floor commercial office unit and 102 residential units above, including 5 storeys of basement car parking, following demolition of existing buildings. The application is Nominated Integrated development under the Water Management Act 2000.
<b>Street Address</b>	24 - 36 Langston Place, EPPING NSW 2121 (Lot 3 DP9836, Lot 1 DP707822, Lots A & B DP342194)
<b>Applicant</b>	Langston R & J Pty Ltd ABN: 98120139556
<b>Owner</b>	J.R. Hunt Real Estate Pty Ltd, James and Patricia Crether, Langston R & J Pty Ltd
<b>Date of DA lodgement</b>	22 March 2017
<b>Number of Submissions</b>	1 <sup>st</sup> Advertisement: 12 2 <sup>nd</sup> Advertisement: 5 (4 resubmissions) Total: 17 (13 unique individuals/organisations)
<b>Recommendation</b>	Deferred Commencement Approval subject to conditions
<b>Regional Development Criteria</b>	The development has a capital investment value of more than \$20 million.
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"><li>• Environmental Planning and Assessment (EP&amp;A) Act 1979</li><li>• EP&amp;A Regulation 2000</li><li>• Water Management Act 2000</li><li>• SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004</li><li>• SEPP (Infrastructure) (ISEPP) 2007</li><li>• SEPP (State and Regional Development) 2011</li><li>• SEPP (Sydney Harbour Catchment) (SEPP Sydney Harbour) 2005</li><li>• SEPP No. 55 (Remediation) (SEPP 55)</li><li>• SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) &amp; Apartment Design Guide (ADG)</li><li>• Hornsby Local Environmental Plan (HLEP) 2013</li><li>• Hornsby Development Control Plan (PDCP) 2013</li></ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"><li>• Attachment 1 – Architectural Drawings</li><li>• Attachment 2 – Civil &amp; Stormwater Drawings</li><li>• Attachment 3 – Landscape Drawings</li><li>• Attachment 4 – Urban Design Report</li><li>• Attachment 5 – RailCorp Concurrence Letter</li><li>• Attachment 6 – Department of Planning cl. 4.6 Circular</li><li>• Attachment 7 – NSW Water Integrated Response</li></ul>
<b>Report prepared by</b>	Alex McDougall
<b>Report date</b>	21 March 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**

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### Legislative clauses requiring consent authority satisfaction

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

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### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (Clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

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### Special Infrastructure Contributions

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

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### Conditions

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

## 1. Executive Summary

The proposal provides for demolition of the existing buildings, excavation of a 5 storey basement car park and construction of a 27 storey mixed use building comprising a ground floor retail unit, first floor commercial office unit and 102 residential units above. The application is nominated integrated development under the Water Management Act 2000.

The proposed development generally follows the form for the site envisaged by Hornsby Shire Council Local Environmental Plan (HLEP) 2013, Hornsby Shire Council Development Control Plan (HDCP) 2013, and the Hornsby Shire Council Epping Town Centre Public Domain Guidelines.

The Applicant has submitted a request to exceed the building height standard under Clause 4.6 of HLEP 2013. The request is considered to be well founded for reasons including constrained site area due to inability/impracticality of amalgamating with adjoining sites, providing increased separation to adjoining buildings/sites, exceedance of sustainability standards, provision of commercial floor space and provision of wider footpath.

The development has been subject to review by Council's Design Excellence Advisory Panel (DEAP) and the City Architect and is generally consistent with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG), providing future occupants with a high standard of amenity and accommodation.

The amenity impacts on adjoining and nearby properties are considered to be reasonable based on the high density character of the area, and the built forms envisaged by the controls. It is considered that the proposed increase in traffic is commensurate with the level anticipated by the planning controls.

The application has been assessed relative to section 4.15 of the *Environmental Planning and Assessment (EP&A) Act 1979*, taking into consideration all relevant State and local planning controls. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework.

A deferred commencement condition has been required by Sydney Trains to enable them to further assess the impact of the proposed development on the adjacent rail infrastructure. A deferred commencement condition is also required to resolve an outstanding tree removal matter on the adjoining site. As such deferred commencement approval is recommended.

## 2. Key Issues

### *Hornsby Local Environmental Plan 2013*

- **Building Height** – Acceptability of Clause 4.6 Variation request to 72m height standard. Proposed Tower : 87.8m (21.9% breach)

### *Apartment Design Guide*

- **Building Separation / Privacy** – Non-compliant separation between proposed tower and adjoining/nearby existing/approved development:
  - **North (38 Langston Place):** 8.1m to boundary (9m required) [only levels 5-8 non-compliant]
  - **South-east (12-22 Langston Place):** 3m -13m to boundary (12m required) / 19.8m to adjoining approved tower (24m required)
- **Overshadowing** – Overshadowing of approved development to south-east.
- **Deep Soil Zones** – Nil incorporated within site

### *Hornsby Development Control Plan 2013*

- **Housing Choice** – 6% 3-bed units (10% required)
- **Frontage Activation** – 61% retail/office/residential (90% required)

### 3. Site Description, Location, and Context

#### 3.1 Site and Location

The subject site is located on the eastern side of Langston Place between its intersection with Pembroke Street and Epping Road and is legally described as Lot 3 DP9836, Lot 1 DP707822, and Lots A & B DP342194. The site is 1,460m<sup>2</sup> in size and of an irregular shape, with a frontage of 37.4m to Langston Place. The site is occupied by 4 x 2 storey commercial buildings.

The site is located east of Epping Railway Station (within 50m walking distance), and south of shopping facilities and services fronting Langston Place and Oxford Street. To the west, beyond Epping Railway Station, are further local facilities and shops, which are accessible via footbridge from the station precinct. To the south and east are existing commercial office buildings. The adjoining site to the south-east is subject to an approved DA for redevelopment as 3 x shop top housing towers (DA/468/2016).

There are no heritage items in the immediate vicinity or visual catchment of the site.



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

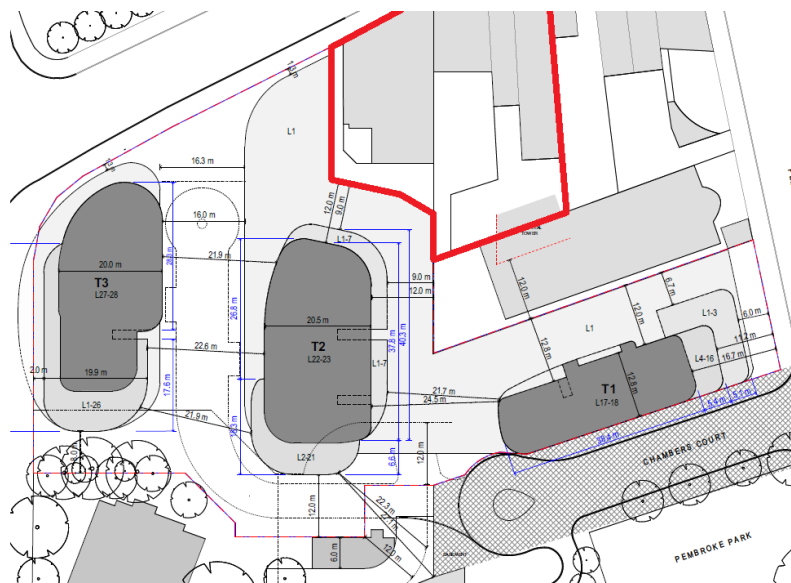


Figure 2. Front facade of existing buildings on the site.



### 3.2 Context

The following applications in the vicinity of the site are relevant to the proposal:

Site	DA	Description/Details
37-41 Oxford Street	DA/314/2017	Approved 07/03/18: 30 Storey Mixed Use Tower Building with 4 Storey Basement (Concept Approval Only). Note. Height Breach (32.9%)
12-22 Langston Place	DA/468/2016	<p>Approved (Deferred Commencement) 02/08/17: 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.</p>  <p><b>Figure 3.</b> Arrangement of tower form (T1 - Tower 1, T2 - Tower 2, T3 - Tower 3) in adjoining approved development (Subject site in red).</p> <p>Note. Tower 3 Height Breach (28.9%)</p>
30-42 Oxford Street	DA/585/2016	Approved 20/07/2016: Demolition of existing structures, retention of a heritage item and construction of a 17 storey mixed use development comprising ground floor retail over basement carpark and shop-top housing comprising 254 units in two (2) residential towers. Note. Height Breach (10%)
35 Oxford Street	DA/365/2016	Approved 14/07/2016: Demolition and construction of a 22 storey shop-top housing development comprising 54 residential units, one (1) retail unit and basement car parking.
20-28 Cambridge Street	DA/681/2015 (Hornsby)	Approved 24/02/2016: Demolition of existing structures and construction of two (2) x 22 storey buildings and one (1) x seven (7) storey building, each comprising ground floor retail/business tenancies totalling 966m <sup>2</sup> , and the upper levels containing a total of 501 residential units, with combined basement car parking for 519 cars.

**Table 1:** Applications relevant to the proposal.

## 4. The Proposal

### 4.1 Summary of Proposal

The proposal involves the following:

- Demolition of existing structures and hard stand areas;
- Construction of a 27 storey mixed use tower including a 2 storey podium containing:
  - 102 residential apartments;
  - 250m<sup>2</sup> of retail space (ground level);
  - 550m<sup>2</sup> of commercial office space (first floor);
  - 542m<sup>2</sup> communal open space (first floor).
- Five (5) level basement containing:
  - 120 car parking spaces (14 accessible);
  - 9 motorcycle spaces;
  - 114 bicycle spaces;
  - Refuse storage;
  - Residential storage cages; and
  - Servicing and facilities.
- Public domain improvements including 1.5m of additional publicly accessible footpath, new paving and street trees.
- Note. The application is Nominated Integrated development under the Water Management Act 2000.



Figure 4. Photomontage of proposal as viewed from Langston Place to the north of the site looking south.



Needs DEAP input	Subsequent to SWCPP briefing the proposal was considered by DEAP. Their comments are outlined in Section 5.2 below.
Communal open space – explore additional area	Subsequent to SWCPP briefing the quality of communal open space was increased as follows: <ul style="list-style-type: none"> <li>• Size increased from approximately 250sqm to 500sqm.</li> <li>• Average dimension increased from approximately 3m to 6m.</li> <li>• Under-croft BBQ and terrace area added.</li> <li>• Residential removed from terrace level reducing potential acoustic conflict.</li> </ul>
Office space – needs greater space, perhaps 2 storeys	Subsequent to SWCPP briefing the quantum of office space was increased from 445sqm to 550sqm.
Agree that podium needs to be setback by 1.5m from footpath	Subsequent to SWCPP briefing the podium was setback 1.5m from the boundary as requested.
Street activation poor – needs re-arrangement	Subsequent to SWCPP briefing the amount of active frontage remained unchanged. More discussion on activation is provided under Section 9.1 below.

**Table 2:** SWCPP briefing notes and response.

## 5.2 Design Excellence Advisory Panel

Council's DEAP considered the application at a meeting on 29 June 2017. Of note the panel suggested the following,

*If the allowable development densities are to be realised, some significant variance to the key controls (DCP and SEPP65/ADG) will be necessary to achieve an acceptable urban outcome. Alternatively, these densities would need to be significantly reduced.*

*Key areas that could be considered for relatively small, land-locked sites such as the subject proposal are:*

- *some relaxation of DCP street setbacks*
- *considered reduction of ADG boundary setbacks and building separation through careful design and on a site-by-site basis*
- *increase in building height beyond current limits*

Further, the Panel considered that the proposed tower separation of approximately 20m from the approved development to the south-east (DA/468/2016) was acceptable.

The panel also raised concern including, but not limited to, the podium design, lack of landscaping, small amount of communal open space and the aesthetic proportions of the tower.

The applicant subsequently submitted revised drawings responding to these concerns. Council's City Architect reviewed the proposal and was satisfied that the applicant had adequately responded to DEAP's concerns and as such that it was not necessary for the panel to reconvene on the matter.

The DEAP panel's full comments are included at Appendix 2.

## 5.3 External

Authority	Comment
Ausgrid	Acceptable subject to conditions.
Roads and Maritime Services	Raise no objection. However, recommended access to the site be restricted to 'left-in/left-out' using a concrete median in the driveway. Council's Traffic officers consider an internal median will be ineffectual and as such have recommended that a condition be included requiring a median be constructed in Langston Place which will have the same effect. A condition is included accordingly.



Sydney Trains	Acceptable subject to deferred commencement and operational conditions requiring additional information and procedures to ensure no unacceptable impact on the adjoining rail line.
Sydney Water	Acceptable subject to standard conditions of consent
Transport for NSW	Recommended conditions to ensure that the construction and operational phase do not unacceptably impact on the temporary bus services that are to replace trains during major conversion works on the Epping to Chatswood rail link.
Water NSW (Integrated)	General Terms of Approval have been provided and are included in the draft consent. See Attachment 7 for full response.
Wind Consultant	Raised concern relating to applicant's modelling and mitigation. The applicant submitted a revised wind report which satisfied the concerns of Council's wind consultant. A condition is included requiring compliance with recommendations in wind report.

**Table 3:** External referrals

#### 5.4 Internal

Authority	Comment
Environmental Health (Noise, Contamination, Waste)	Acceptable subject to standard conditions of consent.
Environmentally Sustainable Development	Acceptable subject to conditions.
Landscaping & Trees	Acceptable subject to deferred commencement condition requiring approval be granted for removal of trees on adjoining site that would be affected by proposal.
Public Domain	Acceptable subject to conditions of consent including requiring submission of detailed public domain plans prior to construction.
Stormwater Engineer	Satisfies the requirements of the applicable controls subject to conditions of consent.
Social Outcomes	Recommend the number of 3-bed units be increased to meet minimum 10% requirement. Discussed in Section 9.1 below.
Traffic & Transport	Acceptable subject to standard conditions and condition requiring median in Langston Place to restrict vehicular access to 'left-in/left-out'.
Urban Design	Acceptable design response to site constraints.

**Table 4:** Internal referrals

## 6. Environmental Planning and Assessment Act 1979

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

### 6.1 Section 1.7: Significant effect on threatened species, populations or ecological communities, or their habitats

The site is in an established urban area with low ecological significance. No threatened species, populations or ecological communities, or their habitats are impacted by the proposal.

### 6.2 Section 4.15: Evaluation

This section specifies the matters which a consent authority must consider when determining a development application, and these are addressed in the Table below:

Provision	Comment
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 7
Section 4.15(1)(a)(ii) - Draft environmental planning instruments	Refer to section 8
Section 4.15(1)(a)(iii) – Development control plans	Refer to section 9
Other Planning Controls	Refer to section 10
Section 4.15(1)(a)(iiia) - Planning Agreement	Refer to section 11
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 12
Section 4.15(1)(a)(v) - Coastal zone management plan	Not applicable.
Section 4.15(1)(b) - Likely impacts	Refer to section 13
Section 4.15(1)(c) - Site suitability	Refer to section 14
Section 4.15(1)(d) – Submissions	Refer to section 15
Section 4.15(1)(e) - The public interest	Refer to section 16

**Table 5:** Section 4.15(1)(a) considerations

### 6.3 Section 4.46: Integrated Development

The application is Nominated Integrated development under the Water Management Act 2000. NSW Water have provided General Terms of Approval which are included in the draft consent. See Attachment 7 for full response.

## 7. Environmental Planning Instruments

### 7.1 Overview

The instruments applicable to this application comprise:

- SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004;
- SEPP (Infrastructure) (ISEPP) 2007;
- SEPP (State and Regional Development) (SEPP SRD)2011;
- SREP (Sydney Harbour Catchment) (SREP (Sydney Harbour)) 2005;
- SEPP No. 55 (Remediation) (SEPP 55);
- SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65); and
- Hornsby Local Environmental Plan (HLEP) 2013.

Compliance with these instruments is addressed below.

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

The application is accompanied by a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposal. Nonetheless, a condition will be imposed to ensure such commitments are fulfilled during the construction of the development.

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

The proposal is considered to constitute a 'traffic generating development' as it proposes more than 75 dwellings within 90m of connection to a classified road (Epping Road). The DA has been referred to Road and Maritime Services (RMS), who had no objection to the proposal subject to several 'advisory notes', namely that vehicular access to the site be restricted to left-in/left-out, all garbage collection be conducted off-street and the proposal comply with the relevant planning controls. Left-in/left-out will be controlled by a median in Langston Place and garbage collection is to occur on site. The proposal does not comply with all planning controls but is considered to be acceptable for the reasons listed in this report.

The application has been referred to Sydney Trains due to the proximity to the train line. Sydney Trains have requested that a deferred commencement condition be added requiring the applicant to submit various details for approval. The details requested relate to:

- Geotechnical drawings and report
- Survey drawing showing relationship to rail tunnel
- Construction methodology
- Cross section drawings showing relationship to rail corridor
- Finite Element Analysis to assess effects of loading mass on the rail corridor

The purpose of the deferred commencement condition is to enable Sydney Train to ensure the development will have no impact on the adjacent rail infrastructure.

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

The proposed development has a Capital Investment Value (CIV) of more than \$20 million, therefore, Part 4 of this Policy (at the time of lodgement) provides that the Sydney Central City Planning Panel (SCCPP) is the consent authority for this application.

#### **7.5 Sydney Regional Environmental Policy (Sydney Harbour Catchment) 2005 (Deemed SEPP)**

This Policy, which applies to the whole of the Parramatta Local Government Area (LGA), aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment, and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole. The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome will be achieved through the imposition of suitable conditions to address the collection and discharge of water during construction and operational phases of the development.

#### **7.6 State Environmental Planning Policy No. 55 – Remediation of land**

A preliminary site investigation report was submitted with the application. The report outlined the history of the site, noting it has been used for retail/office/residential use since the early 1900s and that there is nothing to suggest that contaminating activities were undertaken on the site. The report concluded that as the proposal includes a deep basement which will extend to all site boundaries, that any contamination, if currently present, will be removed from the site and thus not impact on the proposed use. Council's Environmental Health team have reviewed the proposal and consider there to be no unacceptable contamination risk subject to conditions. As such the site is considered to be suitable for the proposed use.

#### **7.7 State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)**

SEPP 65 applies to the development as the proposal is for a new building, is more than three (3) storeys in height, and will have more than four (4) residential units. SEPP 65 requires that residential apartment development satisfactorily address nine (9) design quality principles, and consider the recommendations in the Apartment Design Guide (ADG).

##### ***Design Quality Principles***

A design statement addressing the quality principles prescribed by SEPP 65 was prepared by the project architect, and submitted with the application. The proposal is considered to be consistent with the design principles for the reasons outlined below:

<b>Requirement</b>	<b>Council Officer Comments</b>
<i>Principle 1: Context and Neighbourhood Character</i>	The proposed development is considered to make a positive contribution to the locality and improve the existing streetscape. The character of this locality is undergoing transition from low-medium scale commercial uses to high density mixed use developments. This proposal is consistent with that shift.

Requirement	Council Officer Comments
	The site is in close proximity to Epping train station, which is being upgraded to accommodate a frequent metro line, and as such is well connected in terms of public transport.
<i>Principle 2: Built Form and Scale</i>	The proposal includes a height breach which allows for a taller, more slender, tower with greater separation from the approved adjoining towers. The proposed height is in keeping with that of the approved adjoining development at 12-22 Langston Place. The applicant has demonstrated that the form as proposed is appropriate, and would not result in unacceptable amenity impacts on adjoining/nearby properties.
<i>Principle 3: Density</i>	The proposal has a complying floor space ratio (FSR) and as such is considered to provide a density of housing in keeping with the desired future character of the area. Based on the highly accessible location of the site it is considered appropriate to provide the maximum allowable floor space on this site.
<i>Principle 4: Sustainability</i>	<p>A BASIX Certificate and relevant reports have been submitted with the development application outlining Environmentally Sustainable Design (ESD) scores in excess of that required by the controls:</p> <ul style="list-style-type: none"> <li>• Water, required score: 40, proposed: 44 (+10%)</li> <li>• Energy, required score: 20, proposed: 28 (+40%)</li> </ul> <p>The development achieves a good level of cross ventilation throughout the development with a majority of the proposed units having dual aspects.</p> <p>The application provides suitable provision of bicycle parking for both visitors (provided in accessible areas) and residents (provided in secure areas).</p>
<i>Principle 5: Landscape</i>	The proposal is consistent with the objectives of HDCP 2013, and provides appropriate planting to communal open space and surrounding streets, creating an appropriate landscape setting.
<i>Principle 6: Amenity</i>	<p>Generally, the proposal as amended is considered to be satisfactory in this regard, optimising internal amenity through appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, outlook, efficient layouts and service areas. The proposal provides 37% more communal open space than required by the ADG.</p> <p>A satisfactory wind assessment report has been provided, which concludes that wind conditions around the site are expected to be suitable for pedestrian walking activities, and pass the safety criterion subject to wind treatment. The wind treatment measures, which include windbreaks, vertical screening and an awning, are required via condition of consent.</p>
<i>Principle 7: Safety</i>	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p> <ul style="list-style-type: none"> <li>• A significant number of units are orientated towards public streets creating passive surveillance.</li> <li>• Entry points into the building are clearly identifiable allowing ease of access for residents and visitors.</li> <li>• Retail components at ground level will activate the precinct to further enforce a sense of passive surveillance.</li> </ul>
<i>Principle 8: Housing Diversity and Social Interaction</i>	<p>The proposal achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>The proposal provides a high quality open space which will foster social interaction.</p>
<i>Principle 9: Aesthetics</i>	The composition of building elements, textures, materials and colours reflect the use, internal design, and structure of the resultant building. The proposed tower is considered to aesthetically respond to the environment and context, contributing in an appropriate manner to the desired future character of the area.

**Table 6:** Assessment of the proposal against the Design Quality Principles



## Design Review Panels

The application was referred to the City of Parramatta's Design Excellence Review Panel, in keeping with the requirements of Clause 28 of SEPP 65. See Section 5.2 above.

## Apartment Design Guide

The relevant provisions of the ADG are considered within the following assessment table:

Standard	Requirement	Proposal	Compliance
<b>Part 3</b>			
<b>3B-1: Orientation</b>	The proposed tower is considered to adequately respond to the site constraints, presenting a development which addresses Langston Place with a retail unit and residential/commercial lobbies. The applicant has undertaken significant consultation and discussion with Council officers to position the tower so as to maximise setbacks to the street and adjoining properties / future planned buildings while providing solar access to the proposed units and adjoining sites. More discussion is provided below.		
<b>3B-2: Overshadowing</b>	The proposal is considered to have a reasonable overshadowing impact on adjoining/nearby properties. See further discussion at end of table below.		
<b>3C: Public Domain Interface</b>	<p>The public domain interface is considered to positively contribute to the streetscape by providing high quality materials, distinct access to residential use foyers and commercial premises.</p> <p>The proposal provides an additional 1.5m of publicly accessible footpath to the front of site, a new awning which will connect into the existing and proposed awnings adjacent to the site, and street trees which are currently not provided in the street. Further, the public domain materials will be updated in keeping with the requirements of Parramatta's Public Domain Guidelines.</p>		
<b>3D: Communal &amp; Public Open Space</b>	Min. 25% of site area (365m <sup>2</sup> )	500m <sup>2</sup> (34%) of residential communal open space is provided at podium roof level	Yes
	Min. 50% direct sunlight to main communal open space for minimum two (2) hours 9:00am & 3:00pm, June 21 <sup>st</sup> (182.5m <sup>2</sup> )	The majority of the communal open space will receive sunlight between 10:00 and 15:00 (5 hours).	Yes
	The landscape plan outlines an undercover seating and bbq area, open air seating areas, and a variety of soft and hard landscaping which is considered to provide good amenity for future occupants.		
<b>3E: Deep Soil</b>	Min. 7% with min. dimensions of 3m (102.2m <sup>2</sup> )	0m <sup>2</sup>	No
	While the proposal provides no deep soil planting this is considered to be acceptable due to a high level of planting (planters, green walls, small trees) on the building, the constraints posed by a small site, and the local centre character of the area. The proposal provides additional planting in the public domain which will result in a net increase to the planting in the area.		
<b>3F: Visual Privacy</b>	To 38 Langston Place boundary (north)		
	Floor 2-3: 3m - 6m	8.1m - 9m	Yes
	Floor 4-7: 4.5m - 9m	8.1m - 9m	No
	Floor 8+: 6m (no habitable rooms)	8.1m - 9m	Yes
	To 12-22 Langston Place boundary (south/east)		
	Floor 2-3: 3m - 6m	3m - 13m	No
	Floor 4-7: 4.5m - 9m	3m - 13m	No
	Floor 8+: 6m - 12m	3m - 13m	No

Standard	Requirement	Proposal	Compliance
	To 2 Pembroke Street boundary (east) Floor 2-3: 3m - 6m Floor 4-7: 4.5m - 9m Floor 8+: 6m - 12m	13.6m 15.8m 15.8m	Yes Yes Yes
	The proposal is considered to provide acceptable separation to adjoining and proposed buildings and not result in an unacceptable privacy impact on those buildings. See further discussion at end of table below.		
3G: Pedestrian Access and Entries	The proposal includes a clearly demarcated, easily identifiable, at-grade pedestrian entrance, well separated from the vehicular access.		
3H: Vehicle Access	Given the lack of secondary road access to the site, vehicular access to Langston Place is considered to be appropriate. The access is slightly offset relative to the street and as such will not appear as a large void in the façade. The loading and garbage areas will not be visible from the street.		
3J: Bicycle and car parking  [The site is within 100m of Epping train station. As such, RMS rates apply.]	<u>Car Parking Minimums</u> Residential: <ul style="list-style-type: none"><li>0.6 per 1 bed (25.8)</li><li>0.9 per 2 bed (47.7)</li><li>1.4 per 3 bed (8.4)</li></ul> Total: 82 Visitor <ul style="list-style-type: none"><li>1 per 5 units (21) or less if near public transport</li></ul> Total: 103	Residential: 96  Visitor: 11 Total: 107	Yes  Yes (near public transport) Yes
	It is considered the proposed parking rates are acceptable, and the lack of residential visitor parking spaces will be mitigated by the proximity to Epping train station and the over provision of residential spaces.  Bicycle parking is provided in secure locations in keeping with the requirements of the Hornsby DCP.		
Part 4			
4A: Daylight / Solar Access	Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (72*) Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<16)	72 out of 102 apartments (71%)  11 out of 102 apartments (11%)	Yes  Yes
	* The applicant has provided detailed daylight modelling for the proposed tower taking into account a potential future tower to the north and the approved tower to the north east.  The proposed development complies with the solar access requirements of the ADG.		
4B: Natural Ventilation	Min. 60% of apartments below 9 storeys naturally ventilated (>21)	21 out of 35 apartments (60%)	Yes
	The proposed development complies with the ADG natural ventilation requirement for the first nine (9) levels.		
4C: Ceiling heights	Min. 2.7m habitable Min 2.4m non-habitable Min 3.3m for mixed use	2.7m 2.4m 3.5m - 5.2m	Yes Yes Yes
4D: Apartment size & layout	1B – Min 50m <sup>2</sup> 2B – Min 75m <sup>2</sup> (2 baths) 3B – Min 95m <sup>2</sup> (2 baths)	1B – min 50m <sup>2</sup> – max 59m <sup>2</sup> 2B – min 76m <sup>2</sup> – max 83m <sup>2</sup> 3B – min 98m <sup>2</sup> – max 116m <sup>2</sup>	Yes* Yes* Yes

Standard	Requirement	Proposal	Compliance
	<p>* Several of the units include large study rooms which could easily be retrofitted for use as bedrooms, therefore resulting in cramped units and avoiding appropriate infrastructure contributions. As such a condition is included requiring that the study rooms be reduced in size to a maximum of 2m x 2m and fitted with desk joinery.</p> <p>All rooms to have a window in an external wall with a total minimum glass area not less than 10% of the floor area of the room.</p> <p>Habitable room depths max. 2.5 x ceiling height (6.75m)</p> <p>Max. habitable room depth from window for open plan layouts: 8m.</p> <p>Min. internal areas:</p> <p>Master Bed - 10m<sup>2</sup></p> <p>Other Bed - 9m<sup>2</sup></p> <p>Min. 3m dimension for bedrooms (excl. wardrobe space).</p> <p>Min. width living/dining:</p>	<p>Complies</p> <p>&lt;6.75m</p> <p>&lt;8m</p> <p>&gt;10m<sup>2</sup></p> <p>&gt;9m<sup>2</sup></p> <p>&gt;3m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
	<ul style="list-style-type: none"> <li>• 1B – 3.6m</li> <li>• 2B – 4m</li> <li>• 3B – 4m</li> </ul>	<p>&gt;4m</p> <p>&gt;4m</p> <p>&gt;4m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4E: Private open space & balconies	<p>Min. area/depth:</p> <p>1B - 8m<sup>2</sup>/2m</p> <p>2B - 10m<sup>2</sup>/2m</p> <p>3B - 12m<sup>2</sup>/2.4m</p>	<p>&gt;9m<sup>2</sup>/2m</p> <p>&gt;10m<sup>2</sup>/2m</p> <p>&gt;12m<sup>2</sup>/2.4m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
	<p>Principle private open spaces are provided primarily from bedrooms with secondary direct access from living rooms. While this is not ideal it is considered to be acceptable given the significant site constraints and the overprovision of communal open space.</p>		
4F: Common circulation & spaces	<p>Max. apartments –off circulation core on single level: 8-12</p> <p>10 storeys or over, max. apartments sharing single lift: 40</p> <p>Corridors &gt;12m length from lift core to be articulated.</p>	<p>5</p> <p>51/lift</p> <p>16m (not articulated)</p>	<p>Yes</p> <p>No</p> <p>No</p>
	<p>Whilst the lift to unit ratio is slightly oversubscribed, the applicant has submitted a lift report outlining that the proposed lifts would provide a good level of service to future occupants.</p> <p>While corridors are not articulated they are provided with extra width and natural light and ventilation. Combined with the limited number of units off each corridor this is considered to be acceptable.</p>		
4G: Storage	<p>1B – Min 6m<sup>3</sup> (x43 = 258)</p> <p>2B – Min 8m<sup>3</sup> (x53 = 424)</p> <p>3B – Min 10m<sup>3</sup> (x6 = 60)</p> <p>Total – 742m<sup>3</sup></p> <p>Min. 50% required in units (371m<sup>3</sup>)</p>	<p>~1,500sqm</p>	<p>Yes</p>

Standard	Requirement	Proposal	Compliance
	A detailed breakdown of the allocation of storage is not provided. The applicant does, however, indicate that the required storage is provided. As such, a condition is included requiring that this be detailed prior to CC.		
4H: Acoustic Privacy	The proposal has been designed so that like-use areas of the apartments are grouped to avoid acoustic disturbance where possible. Noisier areas such as kitchens and laundries are designed to be located away from bedrooms where possible.		
4J: Noise and pollution	The application includes an acoustic report which recommends construction methods/materials/treatments to be used to meet the criteria for the site, given both internal and external noise sources, and the proximity to Epping Railway Station, Epping Road, and Langston Place. A condition is included requiring the implementation of the report's recommendations.		
4K: Apartment Mix	<p>The development has the following bedroom mix:</p> <ul style="list-style-type: none"> <li>• 43 x 1 bedroom apartments (42%)</li> <li>• 53 x 2 bedroom apartments (52%)</li> <li>• 6 x 3 bedroom apartments (6%)</li> </ul> <p>These units vary in size, amenity, orientation, and outlook to provide a mix for future residents. A variety of apartments are provided across all levels of the apartment building.</p>		
4M: Facades	The façade including horizontal banding, ornamental vertical timber slats and painted render of various colours to add visual interest. Depth is achieved with varying setbacks and balconies. The proposal has a distinctive base (podium), middle (tower) and top (setback penthouse level ringed with ornamental balustrading and landscaping).		
4N: Roof design	The proposed building has a flat roof which is considered to be appropriate given the proposed tower design. Rooftop plant and lift overrun are suitably concealed ensuring they are not visible from the street.		
4O: Landscape Design	The application includes a landscape plan, which demonstrates that the proposed development will be adequately landscaped. The proposal includes green roofs, green wall elements, and extensive podium landscaping providing high quality communal open spaces for future residents.		
4P: Planting on structures	The landscape drawings outline that planting on structures would have adequate soil depth to accommodate good quality planting.		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features (>20)	22	Yes
	<p>The site is considered to be appropriately barrier free and wheelchair accessible. An Access Report has been included as part of the application confirming that the proposed development is capable of meeting the requirement of SEPP 65, and Part 4Q of the ADG.</p> <p>Further design detail of specific elements will be required as the development progresses through to the construction phase to ensure compliance. A condition has been included requiring confirmation prior to CC being issued.</p>		
4S: Mixed Use	The proposal is considered to provide an appropriate mix of uses given the character of the area. The commercial lobby is separated from the residential lobby.		
4T: Awnings and Signage	<p>Sun and rain protection is provided by a continuous awning throughout the public domain which will connect to the adjoining awnings. Regardless, a condition is included to this effect.</p> <p>No details of signage are provided. A condition is included requiring separate approval for any signage.</p>		
4U: Energy Efficiency	The BASIX Certificate demonstrates the development exceeds the pass mark for energy efficiency (Score: 28, Target: 20).		
4V: Water management	The BASIX Certificate demonstrates that the development exceeds the pass mark for water conservation (Score: 44, Target: 40).		



Standard	Requirement	Proposal	Compliance
4W: Waste management	The building includes a dual waste/recycling chute system. Waste storage rooms have been located in convenient locations in the ground floor loading area. Waste collection will occur within the ground floor loading dock.  A waste management plan has been prepared by a qualified consultant, demonstrating compliance with council's waste controls. All residential and commercial units are to be provided with sufficient areas to store waste/recyclables.		
4X: Building maintenance	The proposed materials are considered to be sufficiently robust, minimising the use of render and other easily stained materials.		

**Table 7:** Assessment of the proposal against the ADG

As detailed in the above table, the proposed development does not comply with a number of requirements within the Apartment Design Guide. Specific responses to the non-compliances are provided below:

### Separation / Privacy



**Figure 6.** Site plan showing location of building and separation from adjoining approved and potential development (as originally proposed left, as revised right).

A table outlining the ADG recommended, originally proposed and currently proposed separation is provided below:

Upper Level Tower separation to:	ADG	Original DA	Revised DA
North (boundary)	12m	6m (50%)	9m (75%)
Approved Tower 2 @ 12-22 Langston Place	24m	18m (75%)	19.8m (83%)
South (boundary)	12m	3m (25%)	3m (25%)

While the proposal includes some non-compliances with the building separation requirements outlined in the ADG the proposal is considered to be acceptable for the following reasons:

- The non-compliance with the approved tower to the south-east (Tower 2, 12-22 Langston Place) is a 'corner-to-corner' separation. In other words, there will not be two parallel walls close together. The majority of the two buildings are separated as required.
- Blank walls and obscure glazing are provided to ensure there are no close and direct views between living areas and communal/private open space on adjoining properties. The east facing units proposed primarily have an outlook between Towers 1 and 2 on the adjoining site. The north facing glazing off living rooms above level 8 is obscure glazed (these living rooms have primary outlooks to the east and west). A condition is included to enforce this requirement.
- Council's Urban Design team, City Architect and DEAP panel undertook a review of the site constraints and came to the view that the separation provided to existing, approved and future development has been optimised in the specific context of the site.
- The applicant demonstrated, in an Urban Design report, that the adjoining sites to the north could be developed with a tower that would result in an acceptable built form.
- DA/365/2016 at No. 35 Oxford Street, a similar site in that it was narrow and shallow, approved a tower with a boundary setback of 6m.
- 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*".

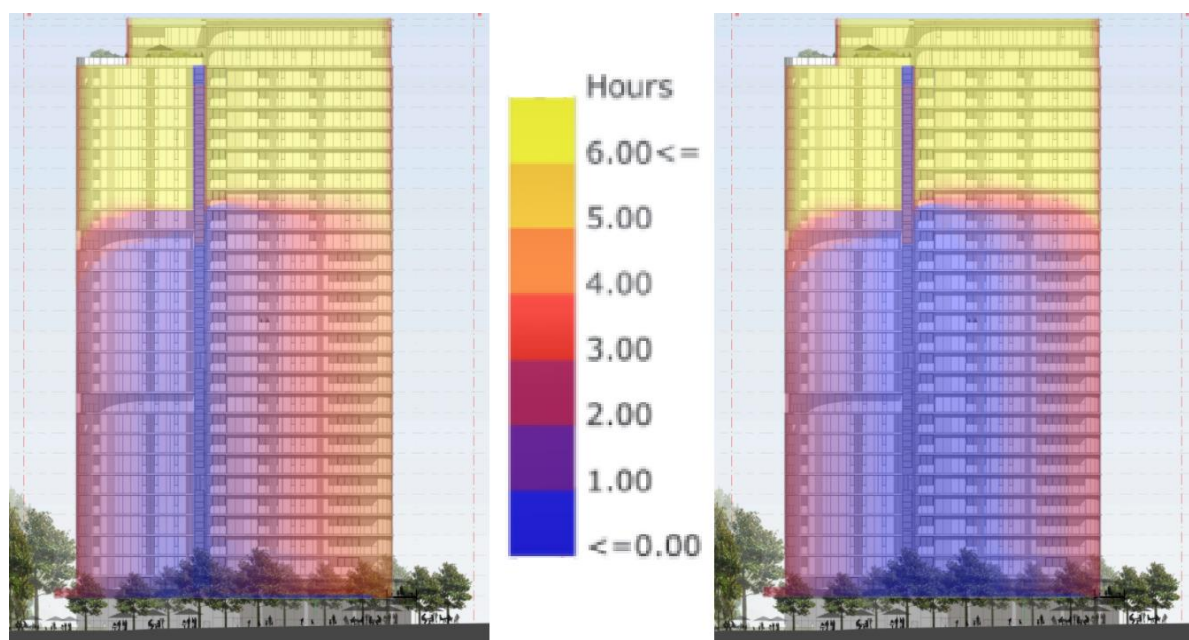
## Overshadowing

Objective 3B-2 of the Apartment Design Guide recommends that ‘overshadowing of neighbouring properties is minimised during mid-winter’. Further, the associated design guidance states, “living areas, private open space and communal open space [of adjoining properties] should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access”.

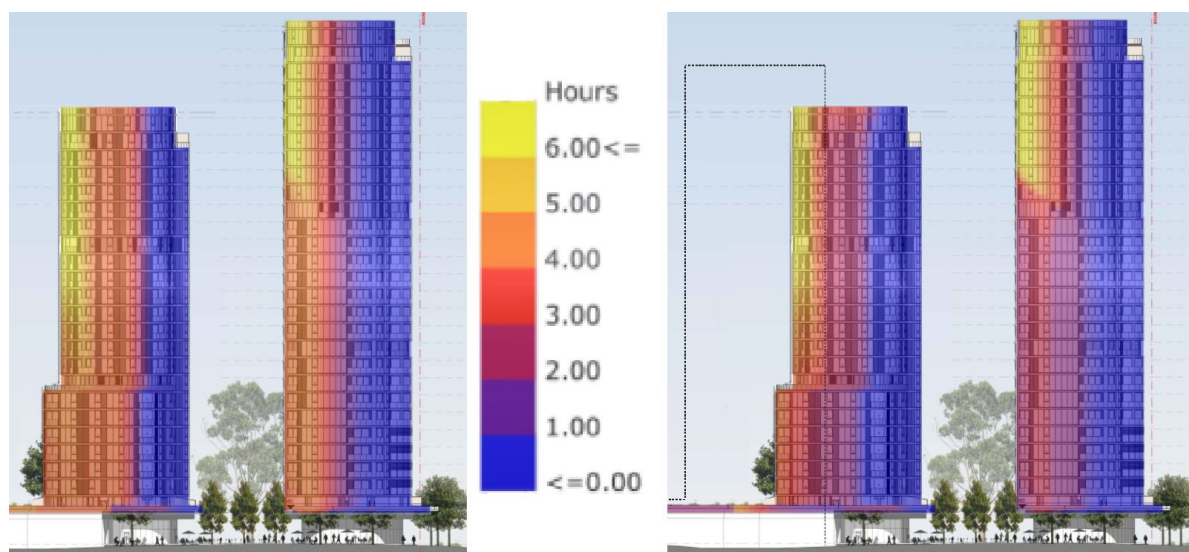
### *Living Rooms and Private Open Space*

The relevant design criteria in Section 4A states that, “living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area...” and “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%”.

The applicant for the approved development at the adjoining site, No. 12-22 Langston Place, provided modelling of the current solar access versus a) the impact of a complying envelope scheme and b) versus the proposed scheme with non-complying height/setbacks. The figures below show the existing condition versus the current proposal.



**Figure 7.** Solar Access 'Heat' Map outlining the number of hours of solar access received by the northern elevation of Tower 3 in the approved development to the south at No. 12-22 Langston Place (left: existing, right: with proposed tower).



**Figure 8.** Solar Access 'Heat' Map outlining the number of hours of solar access received by the wester elevation of Towers 2 (left) & 3 (right) in the approved development to the south at No. 12-22 Langston Place (left: existing, right: with proposed tower).

A summary of that modelling is provided in the table below:

Based on following development at 24-36 Langston Place	Approved development DA/468/2016 @ 12-22 Langston Place			
	Units with <2 hours solar access	Units with >2 hours solar access	% development	% reduction
Without any development	133	330	71.3	N/A
With complying development	190 (+57)	273 (-57)	59.0	17.3%
With proposal	205 (+72)	258 (-72)	55.7	21.8%

Figure 9. Impact of solar access on adjoining approved development as undertaken by adjoining applicant.

Based on the *adjoining applicant's* analysis, the proposal results in a reduction of solar compliant units by approximately 21.8%, slightly in excess of the maximum reduction recommended in the ADG.

The NSW Land & Environment Court established a solar access 'planning principle' in the case of *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082. The planning principle set out a series of tests to determine whether proposed overshadowing was acceptable. An assessment of the proposal against the planning principle is provided below:

- The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The site and immediately adjoining buildings are located in an area designated for high density development. As such sunlight access is harder to protect.

- Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

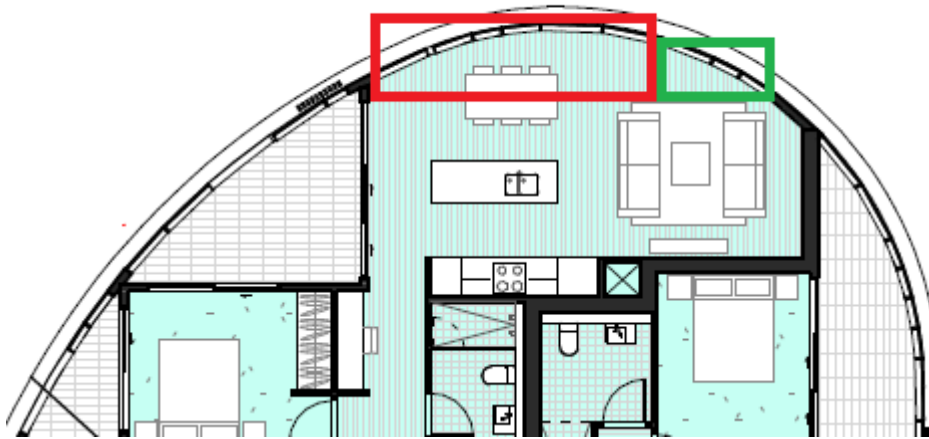
The table above outlines that the non-compliances with height and separation result in 15 additional units, out of the approved 463 units (3%), not receiving the required solar access. It is not considered possible for the applicant to reduce the impact on the adjoining property without severely compromising the development potential of the site. As outlined above, and as discussed in the site amalgamation part of Section 9.1 below, Council's Urban Design team and City Architect undertook a review of the site constraints and came to the view that the separation provided to existing, approved and future development has been optimised in the specific context of the site.

- For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*

The adjoining towers approved at 12-22 Langston Place will have large, floor to ceiling, curtain wall glazing systems. The living room windows of the affected units on Tower 2 (Levels 2-7) and Tower 3 (Levels 2-17) would still retain solar access to enough of these large living room windows to retain 2 hours of solar access (see figures below). As such these 24 units are not considered to be unacceptably impacted by the proposal (the open space of these units already did not achieve the required solar access).



**Figure 10.** Tower 2 typical floor plan (levels 2 - 7). Overlay in green showing where more than 2 hours of solar access will be provided to the affected unit, red shows section no longer receiving 2 hours.



**Figure 11.** Western End of Tower 3 typical floor plan (levels 2 – 17). Overlay in green showing where more than 2 hours of solar access will be provided to the affected unit, red shows section no longer receiving 2 hours. Levels 18 and 19 have a slightly different layout but would still have sections receiving more than 2 hours.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Based on the assessment above, the total number of units on the adjoining property considered to lose the required 2 full hours of solar access as a result of the proposal is considered to be closer to 48 (14.5% less than as approved). As such 282 units out of 463 units approved on the adjoining site (61%) would retain the required solar access.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

The applicant has considered what is likely to be built on adjoining sites. See Urban Design study attached at Appendix 4.

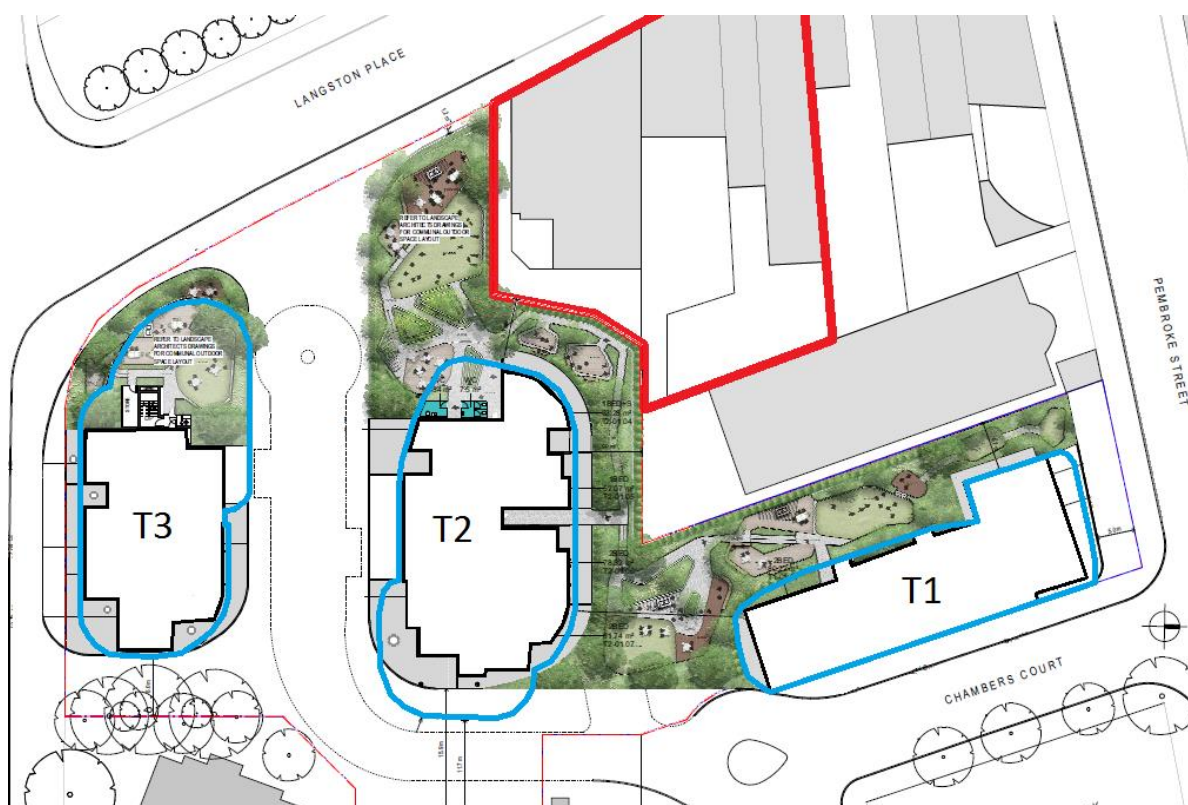
Given the high density character of the area, the amount of solar access retained (61% of units) and the relatively low percentage of units affected by height and setback non-compliances (3%), the overshadowing impact on adjoining units is considered to be acceptable in this instance.

#### *Communal Open Space*

The relevant design criteria in Section 3D states that, “developments achieve a minimum of 50% direct sunlight to the **principal usable part of the communal open space** for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter)” (emphasis added).

The communal open space of the approved development at 12-22 Langston Place will be located at first floor podium level (see diagram below). The principal usable part of the communal open space areas for each tower are generally immediately to the west of the associated tower.





**Figure 12.** First floor communal open space areas (green) on approved development at 12-22 Langston Place (subject site in red, tower footprints above open space in blue).

The proposal would result in additional overshadowing of the communal open space of the adjoining site. The open space of Tower 3 is already substantially overshadowed by the tower immediately above it. The most affected area would be the principle usable part of the communal open space of Tower 2.

The shadow diagrams submitted with the application demonstrate that the space would receive approximately:

- With no development on subject site: 10:30am – 3:00pm [4.5 hours] (~100% of area)
- With proposed tower: 10:30am - 11:45pm [1.25 hours] (~50% of area) & 2:15pm – 3:00pm [0.75 hours] (~50%) Total: 2 hours (~50%)

As such the proposal is considered to satisfy the numerical requirement. Further, the primary communal open space areas for Towers 1 & Towers 2 are connected and as such a resident from one can move to the other if solar access is desired. As the adjoining open space is not yet built it would also be possible for the adjoining owner to slightly revise the location of the principle usable open space eastwards to maximise solar access should they so desire.

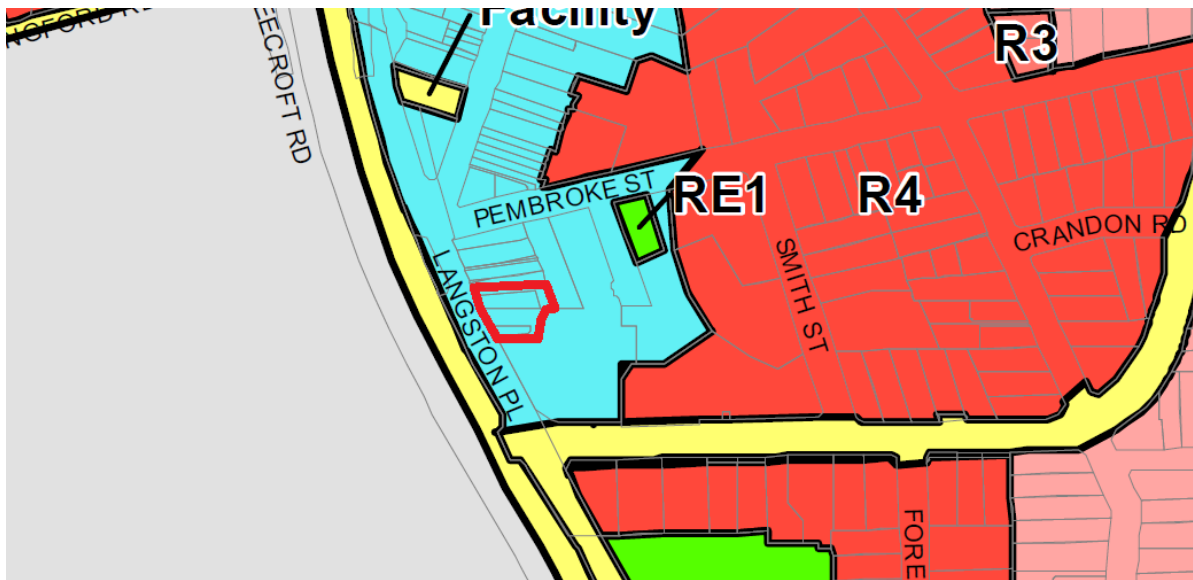
## 7.8 Hornsby Local Environmental Plan 2013

The relevant objectives and requirements of HLEP 2013 have been considered in the assessment of the development application, and are contained within the following table.

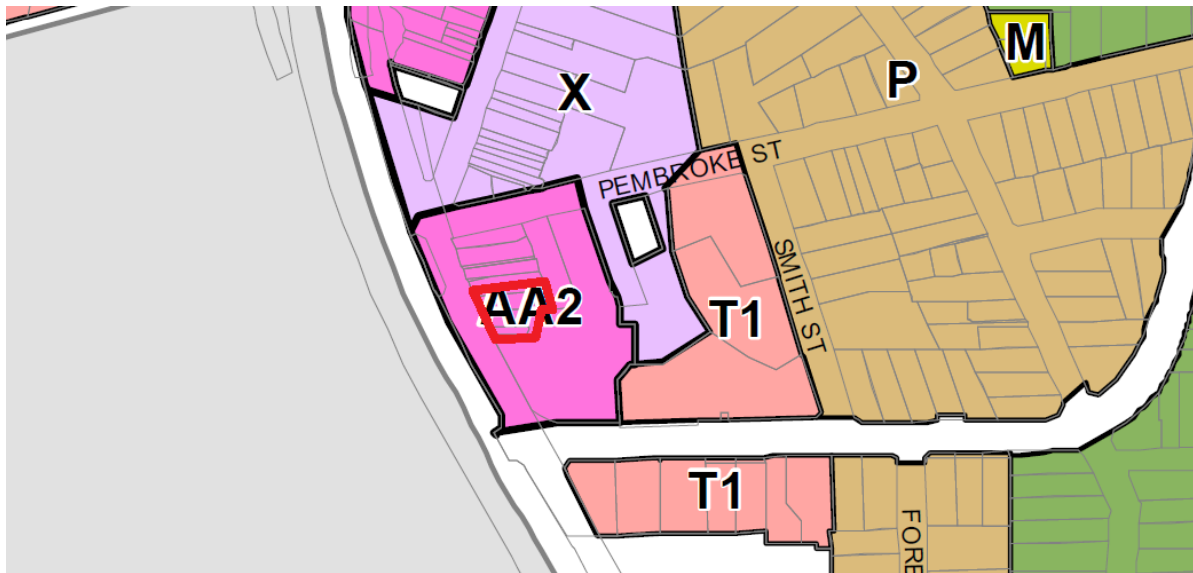
Development standard	Proposal	Compliance
<b>2.3 Zoning</b>		
B2 – Local Centre	The proposal is a mixed use development comprising shop top housing and commercial premises (retail unit and office unit) which are permissible with development consent in the zone.	Yes

Zone Objectives		
	<p>The proposal is considered to be in keeping with the objectives of the B2 Local Centre zone for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed development provides an appropriate mix of opportunities for a range of commercial tenancies and residential accommodation.</li> <li>• In the short term jobs will be created through the construction of the development and in the longer term suitably located retail and office tenancies.</li> <li>• The addition of residential apartments close to Epping Railway Station, with links to major employment centres, will encourage the use of public transport.</li> </ul>	Yes
4.3 Height of Buildings		
Control: 72m	Max Height 87.8m	<b>No</b> (15.8m, 21.9% breach)
4.4 Floor Space Ratio		
Control: 6:1 (8,760m <sup>2</sup> ).	Residential GFA: 7,960m <sup>2</sup> (91%) Retail GFA: 250m <sup>2</sup> (3%) Office GFA: 550m <sup>2</sup> (6%) Total GFA: 8,760m <sup>2</sup>	Yes
4.6 Exceptions to Development Standards		
	Variation to Building Height Standard.	Yes (see below)
5.10 Heritage conservation		
	The separation between the site and the nearest heritage items is approximately 60m. Given the separation between the site and the heritage item, it is considered that the impact on significant views, and on the significance of the item in general, would be acceptable.	Yes
6.2 Earthworks		
	The application includes a geotechnical report which outlines measures to reduce the impacts of earthworks. Council's engineers have recommended a condition requiring a more detailed geotechnical report, including additional boreholes, after demolition of the existing building, which has been included.	Yes
6.8 Design Excellence		
	Council's Urban Design team and City Architect have reviewed the proposal and consider that it achieves the design excellence criteria outlined by the clause.	Yes

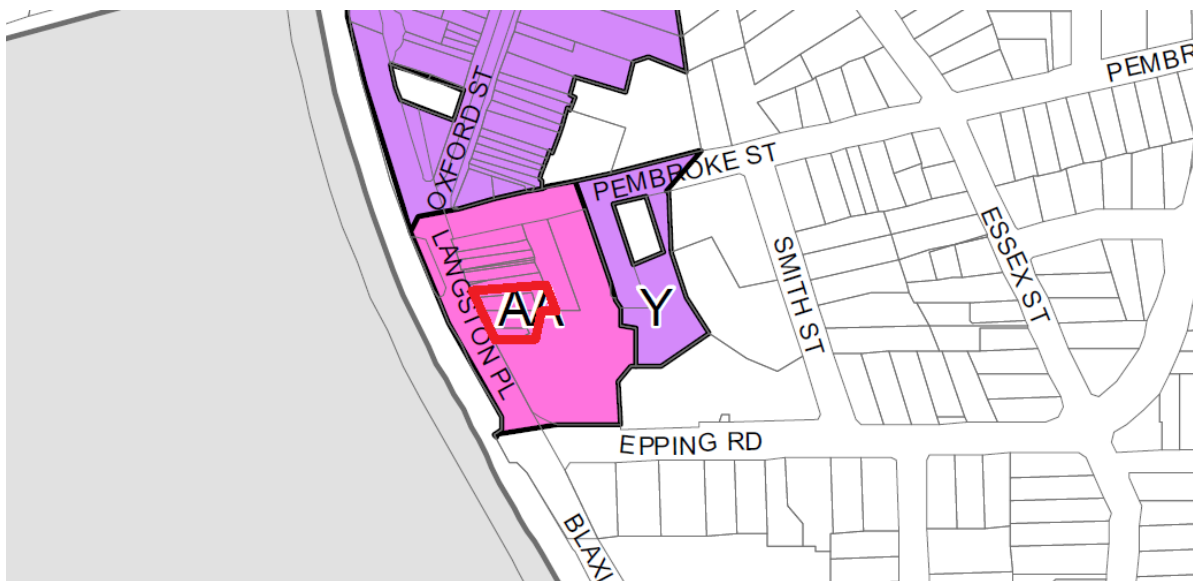
**Table 8:** Assessment of the proposal against HLEP 2013



**Figure 13.** HLEP 2013 Zoning map (subject site outlined in red). The site is zoned B2 – Local Centre.



**Figure 14.** HLEP 2013 map (subject site outlined in red). The site is classified AA2 – 72m height limit.



**Figure 15.** HLEP 2013 Floor Space Ratio map (subject site outlined in red). The site is classified AA – 6:1 FSR.

## Clause 4.6 Variation Assessment

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

### Clause 4.6(1) – Objectives of clause 4.6

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”*

### Clause 4.6(2) – Operation of clause 4.6

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.

The proposal does not comply with the Clause 4.3 ‘Height of Buildings’ development standard, as outlined in the table above and figure below, and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the HLEP 2013.



Figure 16. Proposed breach of height limit in context of approved development at 12 – 22 Langston Place (red line represents 72m height standard, approved buildings shown in grey).

### Clause 4.6(3) - The Applicant's written request

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 provided the following environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Appendix 1.

*This Clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the Height of Buildings development standard, the proposed development:*



- continues to satisfy the objectives of the development standard, as well as those of the B2 Local Centre zone;
- achieves a bulk and scale suitable for the site given its constraints, development potential, and the infrastructure capacity of the locality;
- will not prevent existing and future adjoining developments from achieving a high standard of amenity;
- continues to provide a high quality architectural design with a high standard of residential amenity and functional commercial floorplates; and
- will not result in unacceptable environmental impacts.

The variation from the height control is also largely the result of the need to respond to site-specific constraints. Specifically, the design has responded to the following:

- a limited site area of 1,460m<sup>2</sup>, which restricts the amount of developable area; the inability to amalgamate with the site to the north notwithstanding genuine efforts and reasonable offers to acquire the site from the owners of the property;
- the site's locational context and the need to provide appropriate building separation to adjoining properties to ensure existing and future developments can achieve a satisfactory standard of amenity;
- the need to provide an appropriate street setback to Langston Place large enough to accommodate a 1.5m footpath upgrade and tree planting buffer; and
- a crossfall from north to south of about 2.5m over 49m; and
- a crossfall from west to east of 3m over 50m.

Despite the numerical non-compliance with the height limit, the proposal is considered to satisfy the objectives of the development standard, as well as those of the B2 Local Centre zone, the Hornsby DCP and EPDG Guidelines. The proposal will provide environmental benefits particular to the site including:

- a mixed use residential development that exceeds the BASIX energy targets;
- a high standard of residential amenity for future occupants;
- a widened footpath with landscape embellishments that will contribute to the upgrade of Langston Place and provide an improved standard of amenity for pedestrians; and
- a two storey commercial podium with adequately sized floorplates that will encourage street activation and support the economic viability of the Epping Town Centre.

An assessment to determine whether compliance with the standard is 'unreasonable and unnecessary' has been undertaken. It is considered that there are 'sufficient planning grounds' to support the variation and recommend the variation be approved for the following reasons:

### ***Unreasonable and Unnecessary***

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."*

The key constraints of the site are the proximity of adjoining approved/potential towers, the lack of ability and appropriateness to consolidate with adjoining sites and Council's

desire to widen the footway to the front of the site. The increase in height sought is to make up for the reduced footprint provided to maximising separation from these adjoining land holdings.

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.*

The underlying objective is relevant, however in this case reducing the tower floorplate to provide additional setback to adjoining sites / approved buildings allows for significant public benefits and amenity improvements to the adjacent properties and public open space, 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*

The applicant does not suggest that the objectives would be thwarted if compliance was required; rather that the objectives are 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*

While it is noted that several height standard variations have been allowed in the locality recently, they have all been based on site-specific constraints. Other development in the area have been consistent with the height standard (see Section 3.2 above). As such, it is considered that the standard has not been abandoned.

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.*

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 decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, suggests that 'sufficient environmental planning grounds' for a Clause 4.6 variation is more onerous than compliance with zone and standard objectives. The Commissioner in the case 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 case, the following site specific planning grounds are considered to be sufficient to justify contravening the standards:

- The proposal will respond to the site constraints, namely lack of separation from proposed/future towers by providing a taller, more slender tower. The additional separation ensures the proposal does not compromise the development potential of adjoining sites while reducing impacts on the outlook and privacy of approved adjoining units. While the number of units on adjoining properties which will be overshadowed will increase, this will be offset by less overshadowing and increased separation for some units.
- It is considered that compliance with the standard in this case is unreasonable and unnecessary as the proposed development:
  - i. Is consistent with the objectives of the development standard, Clause 4.3 of HLEP 2013;

- ii. The proposed variation does not result in unreasonable amenity impacts on the adjoining and nearby properties.
  - iii. Allows sufficient building setbacks to future/approved adjoining sites.
  - iv. The proposal exceeds the minimum sustainability requirements.
  - v. The proposal provides a proportion of commercial space in excess of that provided by other recent developments in the town centre.
  - vi. The proposal provides an additional 1.5m of public footway to the front of the site.
- The proposed development will result in a density that is compliant with the FSR standard for the site, and as such the variation will not place additional pressure on the infrastructure capacity of the locality; and
  - The proposed development is consistent with the strategic significance of development envisaged for the site under the Epping Activation Precinct and subsequent HLEP 2013 and HDCP 2013 updates relating to the site.

#### **Clause 4.6(4) - Consent Authority Assessment of Proposed Variation**

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

- “a) the consent authority is satisfied that:*
- i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - ii) 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.”*

The matters of clause 4.6(4)a)i) have been dealt with in the preceding section. Clause 4.6(4)a)ii) and Clause 4.6(4)b) have been assessed as follows:

#### Public Interest

*“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”.*

The proposal is consistent with the objectives of the zone and height standard as set out in the tables below:

<b>B2 Zone Objective</b>	<b>Proposal</b>
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The proposal provides a retail premises and an office premises which will serve both the existing local community and the future residents proposed as part of the development.
<i>To encourage employment opportunities in accessible locations.</i>	The proposed development is easily accessible by public transport making the proposed retail and commercial units highly accessible to future employees.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The location of residential apartments close to public transport links which give direct access to Sydney CBD, Macquarie Park and other key employment areas will encourage public transport patronage. The location of a range of retail facilities close to existing and future high density residential areas and public transport hubs will encourage the use of walking and cycling to these facilities.

**Table 9:** Assessment of the proposal against the B2 – Local Centre zone objectives

Clause 4.3 Objective	Proposal
<i>To permit a height of building that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.</i>	The height of the building is considered appropriate for the site constraints and infrastructure capacity and will not give rise to any adverse impacts on the surrounding existing/proposed residential dwellings and public places.

**Table 10:** Assessment of the proposal against the Clause 4.3 – Height of Buildings objectives

### Concurrence

*'The concurrence of the Secretary has been obtained'*

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular '*Variations to development standards*' Ref: PS 18-003 dated 21/02/2018 (See Attachment 6). There is no limit to the level of non-compliance for which concurrence can be assumed.

### **Conclusion**

In summary, it is considered that breaching the building height standard would result in a more appropriate impact on approved and future development in the vicinity of the site and the character of the area. The applicant has provided an adequate 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.

In reaching this conclusion, regard has been given to the relevant Judgements of the LEC, including, *Zhang v City of Ryde Council (2016)*.

## **8. Draft Environmental Planning Instruments**

There are no draft environmental planning instruments relevant to the subject application.

## **9. Development Control Plan**

### **9.1 Hornsby Development Control Plan 2013**

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within HDCP 2013. Where there is conflict between HDCP 2013 and the SEPPs listed above the SEPP controls prevail to the extent of the inconsistency and as such are not included below. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Control	Requirement	Proposal	Compliance
<i>1C – General Controls</i>			
<i>Biodiversity</i>	Avoid impacts on biodiversity and environmental features	The site is devoid of flora or natural features. The landscape plan includes 3 street trees and 6 on-structure trees as well as other shrubs and plants. Conditions are included to ensure sufficient soil depth for trees. The proposal would result in a significant increase in planting on the site.	Yes, subject to deferred commencement condition

		However, the proposal does necessitate the removal of 2 trees from the adjoining site, No. 12-22 Langston Place. While these trees have deferred commencement consent approved for removal as part of DA/468/2016, this consent is not yet operational. No separate tree application has been received for their removal. As such a deferred commencement consent condition is included requiring approval for removal of these trees prior to operational consent.	
<i>Stormwater Management</i>	Erosion and Sediment Control, OSD, WSUD (Rainwater Tanks)	Erosion and Sediment Control Plan, OSD, and Rainwater Tanks are provided.	Yes
<i>Earthworks and Slope</i>	Protect the stability of land.	The applicant has submitted a geotechnical report which identifies a number of potential vibration and ground movement impacts. However, the report outlines ways to minimise such impacts. A condition is included requiring a more detailed geotechnical report and that all recommendations in the report be implemented.	Yes
<i>Transport and Parking</i>			
<i>Car Share</i>	1 space (as over 50 units)	The applicant has not addressed car share.	1 car share space required by condition.
<i>Bicycle Parking</i>	1/dwelling (102) 1/10 dwelling visitors (10) 1/600sqm commercial (1) [Total 113]	114	Yes
<i>Loading</i>	Room for delivery cars/motorcycles, removalists	The loading dock provides a large area for parking of such vehicles	Yes
<i>Motorcycles</i>	4	9	Yes
<i>Retail Parking</i>	1 per 30 - 60m2 (5-8)	5	Yes
<i>Office Parking</i>	1 per 50 - 70m2 (8-11)	8	Yes
<i>Accessible Res</i>	11	12	Yes
<i>Accessible Comm</i>	1	2	Yes
<i>Travel Plan</i>	To promote sustainable travel.	Not provided.	To be conditioned.
<i>Accessible Design</i>	Unobstructed step-free access	All entrances step-free	Yes

<i>Waste Management</i>	Waste Management Plan On-Site Collection Garbage Chute System	Provided, reviewed by Council waste officer On-site collection provided Garbage chute provided	Yes
<i>Air Quality</i>	Air Quality Report	Air Quality Report provided including recommendations on minimising air quality impacts.	Yes
<i>Crime Prevention</i>	Crime Prevention Through Environmental Design (CPTED) Report	CPTED Report not provided. However, the proposal is considered to adequately provide sightlines, casual surveillance, and secure access	Yes
<i>Avoiding Isolated Site</i>	Demonstrate adjoining sites can be developed.	See discussion below.	Yes
<b>4.6 – Epping Town Centre</b>			
<i>Desired Future Character</i>	In keeping with East Precinct	See discussion below.	Yes
<i>Site Width</i>	>30m	34.6m to Langston Place	Yes
<i>Floor Space Ratio</i>	6:1	6:1	Yes
<i>Floorplates</i>	<700m <sup>2</sup> GFA	~329m <sup>2</sup> GFA (47% of max)	Yes
<b>Height</b>	<b>22 storeys</b>	<b>27 storeys</b>	<b>No discussion (See below)</b>
<i>Podium Height</i>	2-3 storeys	2 storeys	Yes
<i>Podium Use</i>	Commercial	Commercial	Yes
<i>Front Setbacks Podium</i>  <b>Tower</b>	0m  <b>6m (Langston Place)</b>	1.5m (as recommended by Council, matches adjoining) <b>4.5m – 10.6m</b>	Yes  <b>Part (See discussion below)</b>
<i>Side Setbacks (Podium)</i>	0m	0m	Yes
<i>Tower Form</i>	Distinctive base, middle and top (delineated top / taper to sky)  Slim and slender proportions	The proposal has a distinctive base (podium), middle (tower) and top (setback penthouse level ringed with ornamental balustrading and landscaping)  The floorplate, at less than half the maximum (see above) is considered to be slender and slim.	Yes  Yes

<b>Frontage Activation</b>	<b>Active Frontage (90% shop and office windows and building entrances)</b>	<b>23m/37.4m (61%)</b>	<b>No (See discussion below)</b>
<i>Wind Effects</i>	Wind Effects Report (inc. wind tunnel testing)	Wind Effects Report with wind tunnel testing.	Yes
<i>Solar Reflectivity and Glare</i>	<20% reflection	<20% reflection	Yes
<b>Housing Choice</b>	1br – >10% 2br – >10% <b>3br – &gt;10%</b>	1 bed – 43 (42%) 2 bed – 53 (52%) <b>3 bed – 6 (6%)</b>	Yes Yes <b>No (See discussion below)</b>
<i>Adaptable Units</i>	10% (>11)	11% (11)	Yes
<i>Public Art</i>	Buildings should include ... public art to enhance the public domain.	The applicant has not addressed public art.	A condition is included requiring a Public Art Plan.

**Table 11:** Assessment of the proposal against HDCP 2013.

### **Desired Future Character**

The proposal is considered to be in keeping with the desired future character of the Epping Town Centre – East Precinct for the following reasons:

- The proposal provides residential units in close proximity to Epping station.
- The proposal provides a variety of retail and commercial activities on the lower levels to serve the needs of the local population.
- The proposal adequately activates the ground plane with a retail use.
- The front setback will be publicly accessible, adding to the public domain.

### **Height**

The number of storeys non-compliance relates directly to the height of the building. Discussion on the height non-compliance is provided in Section 7.8 above.

### **Tower Setback**

The non-compliant tower setback to Langston Place is considered to be acceptable for the following reasons:

- Allows for greater separation with adjoining approved and potential future towers as required by the ADG.
- There will be a large gap between the proposal and the approved tower on the corner of Langston Place and Epping Road to the south of the site and as such the proposal will not result in an imposing street wall of towers along Langston Place.

### **Frontage Activation**

The non-compliant street activation is considered to be acceptable in this instance for the following reasons:

- There is no alternative access for the car park. A two-way vehicle access is required based on the scale of development.
- The provision of substations, fire boosters and fire stairs at the street frontage are required by the utility company and for BCA compliance respectively.



- The non-active areas will be finished with timber slates, brick and vertical planting to add visual interest (see figure below).



Figure 17. Street level facade detail.

## Housing Choice

While the proposal is slightly deficient in 3-bed units, given the proximity to the train station and the lack of open space in the area, the site is considered to be slightly less attractive to families and thus the proposed mix is acceptable.

Therefore, despite the non-compliances, it is considered that the proposed development is consistent with the objectives of the DCP and delivers a high quality urban environment which is consistent with the desired future character of the area.

While there are no non-compliances with the following controls, objection has been raised on these grounds and as such further discussion is provided below:

## Commercial Floor Space

The proposal provides a 2 storey podium of commercial uses as required by the DCP. Other developments recently approved within the Epping Town Centre have provided only a single storey of retail uses, at ground floor, and as such the provision of office floor space at first floor is considered to be commendable. The proposal provides a higher proportion of floor space as commercial than most recently approved applications in the area (see figure below).

Recent Development Applications in Area			Floorspace (GFA)			
Reference	Address	Approval Date	Commercial	Residential	Total	% Comm
DA/237/2017 (subject DA)	24-36 Langston Place	N/A	800	8,760	9,560	8.37%
DA/314/2017	37-41 Oxford Street	7/03/2018	1,283	21,078	22,361	5.74%
DA/1063/2016	2-4 Cambridge Street	6/12/2017	1,400	6,632	8,032	17.43%
DA/468/2016	12-22 Langston Place	2/08/2017	1,681	41,394	43,075	3.90%
DA/585/2016	30-42 Oxford Street	20/07/2016	750	22,515	23,265	3.22%
DA/365/2016	35 Oxford Street	14/07/2016	58	4,316	4,374	1.33%
DA/681/2015 (Hornsby Ref)	20-28 Cambridge Street	24/02/2016	966	36,364	37,330	2.59%

Figure 18. Comparison of Commercial Floor Space provided in recently approved development in the East Epping precinct (Red Highlighting: DAs originally submitted to former Hornsby Council prior to Council mergers, Green Highlighting: DAs originally submitted to City of Parramatta).

## Site Width / Site Isolation

The proposal is not considered to result in site isolation for the following reasons:

- There are no minimum site area controls.
- The proposal complies with the 30m site frontage requirement. The remaining sites in the block, once amalgamated, would also have 30m frontages to both Langston Place and Pembroke Street.
- Were the proposal to amalgamate with only one or two of the adjoining properties to the north it would result in a cramped 'L-shaped' potential future development site which would then struggle to provide a tower with compliant separation. The applicant provided evidence that

they attempted to purchase the adjoining sites to the north (Nos. 38-40 Langston Place & No. 2 Pembroke Street) to no avail. The subdivision pattern proposed is considered to provide the most orderly development of the remainder of the block subsequent to the 3 towers approved at 12-22 Langston Place.

- The applicant has provided an urban design study (see Attachment 4) demonstrating that a compliant tower form can be accommodated on the adjoining sites to the north (see figure below).

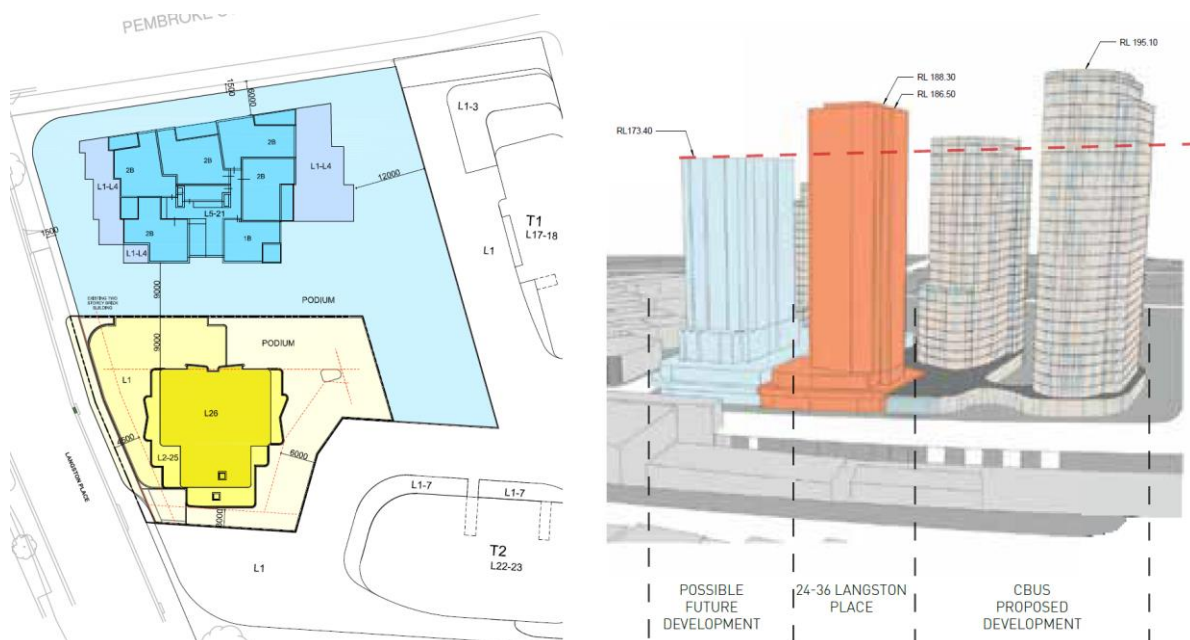


Figure 19. Figures demonstrating potential redevelopment of remaining B2 zoned lots within the block.

## 10. Other Planning Controls

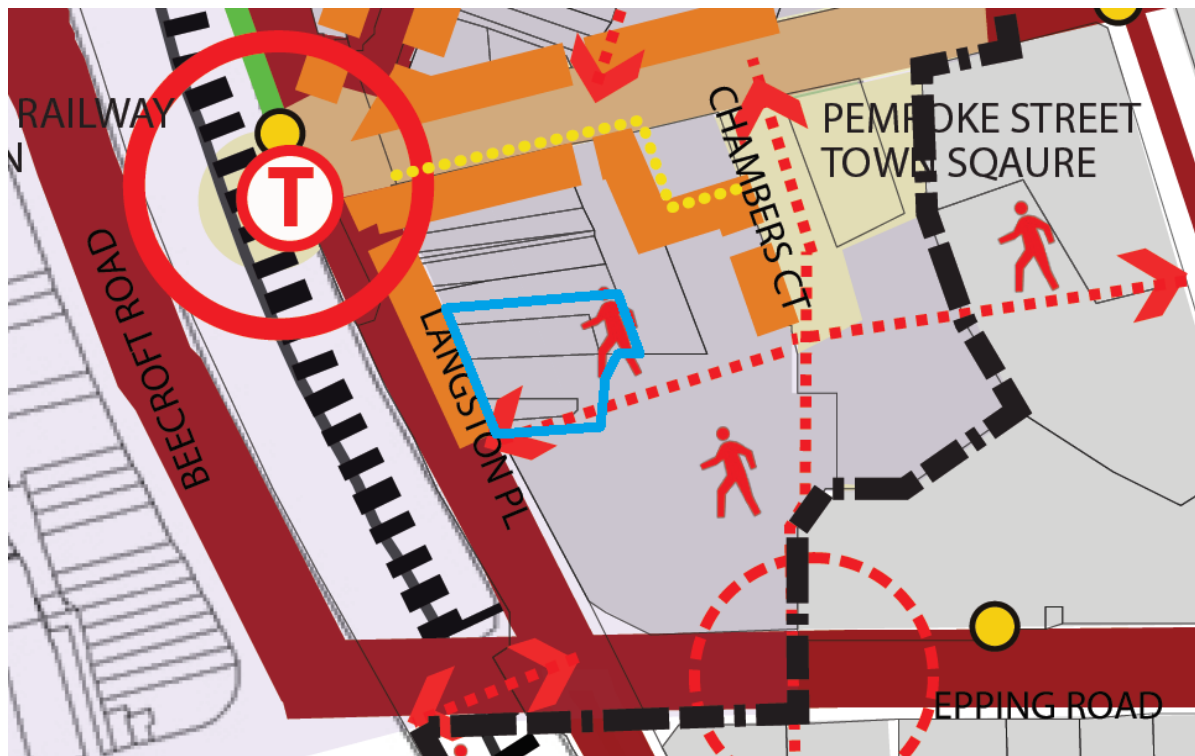
### 10.1 Epping Town Centre Public Domain Guidelines

Hornsby Shire Council adopted public domain guidelines for Epping Town Centre on the 9<sup>th</sup> December 2015 following the amendment of HLEP 2013 by the NSW State Government in 2014 to facilitate the Epping Urban Activation Precinct.

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Epping Town Centre Public Domain Guidelines. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Control	Requirement	Proposal	Compliance
Frontage	2-3 storey frontage	2 storey	Yes
Village Street	Ground Floor Retail Awning	Ground Floor Retail Awning	Yes Yes
Widened Footpath	6m (5m kerb to podium recommended by Council's Urban Design team, can be extended in future by moving kerb out)	5m kerb to podium (inc. additional 1.5m on site)	Yes
Pedestrian Links/Laneways	As shown in figure below.	This connection is to be provided on the adjoining site at No. 12-22 Langston Place (DA/468/2016)	N/A

Table 12: Assessment of the proposal against Epping Town Centre Public Domain Guidelines.



**Figure 20.** Extract from Epping Town Centre Guidelines (subject site in blue, dashed red lines indicate desired pedestrian links/laneways).

## 10.2 Parramatta Public Domain Guidelines

The latest Parramatta Public Domain Guidelines (PDG), released July 2017, include updated public domain requirements for the East Epping precinct, specifying paving materials, tree planting and the like. The landscape plan submitted with the application is generally in keeping with the requirements of the PDG. Conditions are included requiring detailed public domain plans be prepared prior to construction, and signed off by Council's public domain team, with Council inspections undertaken throughout construction.

## 11. Planning Agreements

No planning agreements relate to the site.

## 12. The Regulations

The recommendation of this report includes conditions to ensure the following provisions of the Regulation will be satisfied:

- Clause 92 - Demolition works are to satisfy AS 2601 - 1991; and
- Clause 98 - Building works are to satisfy the Building Code of Australia.

## 13. The Likely Impacts of the Development

The likely impacts of the development have been considered in this report and it is considered that the impacts are consistent with those that are to be expected given the applicable planning framework. The impacts that arise are acceptable.

## 14. Site Suitability

The site is ideally located within the Epping Town Centre urban activation precinct, close to public transport links, services and facilities.

Suitable investigations and documentation has been provided to demonstrate that the site is suitable for the proposed development and the development is consistent with the spatial planning undertaken for the locality.

No natural hazards or site constraints exist that are likely to have a significant adverse impact on the proposed development. Accordingly, the site is considered to be suitable for the proposed development. The proposed development has been assessed in regard to its environmental consequences and having regard to this assessment, it is considered that the development is suitable in the context of the site and surrounding locality.

Subject to the conditions provided within the recommendation to this report, the site is suitable for this development.

## 15. Submissions

The application was notified and advertised in accordance with Part 1B of Hornsby DCP 2013.

The initial advertisement ran for a 30-day period between 6 April and 8 May 2017. Twelve (12) submissions were received during this notification.

Subsequent to receipt of revised drawings the application was re-advertised for a 30-day period between 12 October and 11 November 2017. Five (5) submissions were received during this notification from one (1) additional unique property.

A total of 17 submissions have been received from a total of 13 unique individuals/organisations.

As per Council resolution, as there are more than 7 objections a recommendation was made to the applicant to partake in a Council facilitated conciliation with the objectors. The applicant declined this non-statutory process citing the implementation of this policy late in the assessment of the application.

The public submission issues are summarised and commented on as follows:

Issues Raised	Comment
<i>Height breach unacceptable, clause 4.6 variation not well founded, height out of keeping with character of area.</i>	For the reasons listed in Section 7.8 above the proposed height variation request is considered to be well founded.
<i>Not in keeping with desired future character of area, piecemeal development / no integration with adjoining, should not be determined until Parramatta's Planning Review of Epping is completed</i>	<p>The zoning and planning controls identify the site as appropriate for high density mixed use development.</p> <p>Parramatta's Planning Review of Epping, while currently on-going, has not yet progressed to any draft planning instruments and as such is not imminent and certain and cannot be used as a consideration in assessment of the report.</p> <p>Council cannot reasonable refuse to determine a DA until such time as strategic planning work is undertaken.</p>
<i>Overdevelopment / Density Too High</i>	The proposal complies with the site's Floor Space Ratio standard.
<i>Lack of amenity for future occupants by way of undersized apartments, poor mix of sizes and unit types, lack of lifts, poor access to sunlight, poor cross ventilation, minimal communal open space, minimal adaptable units, long corridors</i>	For the reasons outlined in Section 7.7 above the proposal is considered to provide a good standard of accommodation for future occupants.

<i>Acoustic Report requires windows to be closed to achieve acoustic amenity which detracts from cross ventilation</i>	The report does not require windows be fixed shut. The ADG does not require windows to be open at all times to achieve cross ventilation. Cross ventilation is required most during the day when acoustic amenity is less critical. As such this is not considered to be reason to refuse the application.
<i>Unacceptable traffic impact, residents won't use public transport, including on emergency vehicles, should wait until study, does not consider metro</i>	<p>Council's Traffic &amp; Transport team have reviewed the application, including the Traffic Report, and do not consider the proposal will have an unacceptable impact on traffic in the vicinity of the site.</p> <p>The density and level of parking proposed complies with the relevant controls and as such any traffic impact resulting from those figures were already considered at the time of rezoning.</p> <p>The application was referred to Transport for NSW who had no objection to the proposal's impact on the temporary metro measures subject to conditions of consent which are included.</p> <p>A traffic study of Epping is currently ongoing. However, as outlined above for the more general Epping planning review, it is not considered appropriate to withhold determination of an application until such time as a study is complete.</p>
<i>Too many cars provided</i>	The proposal provides the minimum amount of commercial car parking required by the controls and approximately the minimum residential parking required by the controls.
<i>Impact on on-street parking</i>	Sufficient parking is provided for residents and visitors. The on-street parking in the vicinity of the site is time-limited. As such the proposal is not considered likely to have an unacceptable impact on on-street parking.
<i>Vehicle crossing and substations hazard to pedestrians, vehicle crossing should be moved to north and shared with adjoining future development.</i>	A condition is included requiring sightline splays to the driveway. The substation will be wholly contained within the site and locked and as such will not pose undue risk to pedestrians. The proposal makes use of an existing vehicle crossing. Combining with the site to the north is not considered to be practically achievable as the adjoining site is not being redeveloped at this time.
<i>Unacceptable impact on public domain and train station including overshadowing, lack of awning, air quality, wind impact.</i>	<p>The proposal is considered to have an acceptable impact on the public domain for the following reasons:</p> <ul style="list-style-type: none"> <li>• The tall slender form of the tower will result in a fast moving shadow that does not leave any one part of the public domain in shadow for a significant period;</li> <li>• The podium and awning will adequately protect pedestrians from wind impacts;</li> <li>• The proposal includes an air quality report which outlines ways to minimise dust during construction. The operation of the building is considered to have a negligible impact on air quality.</li> </ul>

<i>Setbacks/separation non-complying, rely on adjoining sites for separation, causes privacy and overshadowing impacts</i>	For the reasons outlined in Section 7.7 above, the proposal is considered to adequately respond to the ADG guidelines.
<i>DCP non-compliances, including no taper in tower, non-active shopfront</i>	For the reasons outlined in Section 9.1 above, the proposal is considered to adequately respond to the DCP guidelines.
<i>Not in keeping with draft Central City District Plan</i>	The primary function of the District Plans is to inform the drafting of local strategic, policies and plans. Notwithstanding, the proposal is not considered to be inconsistent with the objectives of the draft plan.
<i>BCA fire breaches</i>	The draft consent includes a condition requiring compliance with the BCA.
<i>Site completely private</i>	The applicant has provided a 1.5m front setback which will serve to extend the public domain, increasing space for pedestrians.
<i>Unacceptable commercial space</i>	As outlined in Section 9.1 above, the proposal is considered to provide an appropriate quantum of commercial floor space in keeping with the requirements of the control.
<i>No community facilities provided, pressure on existing facilities</i>	The applicant will be required to provide developer contributions as outlined in Section 18 below. These contributions will be spent on the provision of community facilities. Public services such as schools, hospitals and the like are the responsibility of the state government.
<i>Langston Place should be redesigned to prioritise pedestrians</i>	This is a consideration for the City of Parramatta, not for the applicant.
<i>No pre-consultation or public meeting</i>	This is not a statutory requirement.
<i>Collection of waste from Langston Place not acceptable</i>	There is no other frontage from which to collect waste.
<i>Unacceptable geotechnical impact during construction</i>	As outlined in Section 9.1 above the applicant has provided a geotechnical report which outlines measures to minimise excavation impacts on adjoining/nearby properties. Notwithstanding, a more detailed geotechnical assessment is required after demolition of existing buildings.
<i>Submitted reports (wind, solar, air quality) raise concerns</i>	A condition is included requiring the recommendations made in these reports be implemented to overcome the concerns raised.
<i>Not in public interest</i>	For the reasons listed in Section 16 below the proposal is considered to be in the public interest.
<i>The proposal results in site isolation of the remaining sites along the corner of Langston Place and Pembroke Street. The proposal should amalgamate with adjoining lot(s) to the north.</i>	As outlined in Section 9.1 above the proposal is not considered to result in site isolation and allows for the reasonable redevelopment of the adjoining lots.

<i>Unacceptable impact on views from adjoining/nearby existing/proposed residential units</i>	<p>As per the NSW Land and Environment Court Planning Principle established in <i>Tenacity Consulting v Waringah [2004] NSWLEC 140</i>, the proposal is considered to acceptably share views for the following reasons:</p> <ul style="list-style-type: none"> <li>• The views to be lost are not water views, are not iconic view, but rather are general district views. Regardless, adjoining/units will still maintain general district views either side of the proposal. As such the view loss is considered to be negligible.</li> <li>• The views are across the side boundaries of the adjoining sites.</li> <li>• While the proposal includes non-compliances the impact on views is negligible and as such is not considered to be reason to refuse the application.</li> </ul>
<i>The proposal is not in keeping with the Greater Sydney Commission's draft Central City District Plan in that it does not contribute to liveability or sustainability.</i>	<p>The proposal achieves BASIX scores in excess of the minimum requirements:</p> <ul style="list-style-type: none"> <li>• Water, required 40, proposed 44 (+10%)</li> <li>• Energy, required 20, proposed 28 (+40%)</li> </ul> <p>For the reasons outlined in this report the proposal is considered to provide an appropriate level of liveability for future residents, adjoining/nearby properties, and those in the public domain.</p>
<i>Impact on function of Langston Place, restrict right turns onto Beecroft Road.</i>	The proposal would not restrict right turns onto Beecroft Road.
<i>The driveway should be directed to Pembroke Street.</i>	Regardless of the ownership issues associated with such a requirement, there is no evidence to suggest that this would have less impact on pedestrians and/or traffic operation.
<i>No affordable housing.</i>	There is no legislative requirement for the applicant to provide affordable housing.
<i>Proposal does not allow remaining block to be redeveloped as focal point, will be too crowded, imbalanced skyline, undesirable precedent</i>	The applicant has demonstrated that the remaining block can be developed with a building of complying setbacks. The architectural expression of the adjoining building to achieve a 'focal point' and design excellence will be assessed as part of any future application for that site. Council's City Architect, DEAP and Urban Design Manager are satisfied that the remainder of the block can be developed appropriately.
<i>Site not of sufficient size to be developed to maximum density.</i>	The proposal is considered to adequately respond to the site constraints and have an acceptable impact on adjoining properties while also achieving the level of density considered appropriate for the site in the context of its high public transport accessibility.

**Table 13:** Summary of public submissions to the proposal.

## 16. Public Interest

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



## 17. Disclosure of Political Donations and Gifts

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

## 18. Development Contributions

Developer contributions are required as per the *City of Parramatta Council Section 94 Development Contributions Plan (Former Hornsby LGA Land and Epping Town Centre)*. The contribution has been calculated in accordance with the plan and are summarised as follows:

Contribution Type	Amount
Plan Administration	\$ 2,460.20
Community Facilities	\$ 100,738.40
Drainage & Water Quality	\$ 22,271.20
Open Space & Recreation	\$ 880,748.80
Public Domain	\$ 187,622.05
Roads & Shared Paths	\$ 100,997.35
<b>Total</b>	<b>\$ 1,294,838.00</b>

Table 14: EPAA 1979 Section 7.11 Calculation

## 19. Summary and Conclusion

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, approval of the development application is recommended.

The proposed development is appropriately located within a locality earmarked for high-rise mixed use redevelopment, however some variations (as detailed above) in relation to SEPP 65 and Hornsby LEP 2013 are sought.

The request to vary the height standard is supported as the site is constrained due to the inability/impracticality of amalgamating with adjoining sites, the variation allows for a smaller floorplate resulting in increased separation to adjoining buildings/sites, the proposal exceeds sustainability requirements, the proposal includes a proportion of commercial floor space beyond that which has been achieved on other recent developments in the area and the proposal provides for a wider public footpath.

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the development has been appropriately designed and will provide acceptable levels of amenity for future residents and commercial occupants. It is considered that the proposal successfully minimises adverse impacts on the amenity of neighbouring properties. Hence the development, irrespective of the departures noted above, is consistent with the intentions of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

Deferred commencement conditions are included requiring additional safeguards for the adjoining train line and requiring permission to remove trees on adjoining sites.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is recommended for approval subject to deferred commencement conditions.

## 20. 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 shop top housing development comprised of ground floor retail unit, first floor commercial office unit and 102 residential units above, including 5 storeys of basement car parking, following 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 2.



## APPENDIX 2 – DESIGN EXCELLENCE ADVISORY PANEL COMMENTS

1. This proposal was the subject of a pre-lodgement meeting with DEAP on 15 December 2016, with a Report subsequently prepared and issued to the proponent. The proponent has addressed a number of the matters raised, including:
  - evidence provided to Council that amalgamation with the site to the north has not been successful.
  - the street setback for the tower has been increased. The Panel has assumed the proposed tower setback to the Langston Place boundary is now a minimum of 6m (Dwg.Nos.1002/3 and 1003/3).
  - ADG compliance for solar access to units is claimed by the proponent, it is recommended this be verified by Council.
  - the location of the tower relative to the central C-Bus tower to the south-east is now considered acceptable (approx. 20m on diagonal).
  - the length of the tower northern facade has been reduced to improve solar access and to reduce the bulk of the building.
2. The previous Report also made the following comments:
  - The eastern side of Epping town centre is going through a major and rapid transformation from a leafy, low-scale local centre of small, strip development to a high-density precinct of larger consolidated sites dominated by densely packed tall residential towers.
  - This site is quite small and 'land-locked' for a development of this height and density. Whilst Council DCP setbacks of 6 metres may be possible, ADG building separation objectives and visual privacy requirements are unlikely to be achieved with the proposed floor plate size and location.
  - The architects have presented a 'best-case' envelope proposition, however the Panel cannot support the proposal in its current form as there are significant shortcomings in its relationships with the public domain and adjacent development either underway or future.
3. The Panel has formed a view that whilst the design of the scheme is moving in the right direction, further amendment is necessary to arrive at an acceptable proposal. To achieve this may require significant design changes to the tower.

The Panel notes that Parramatta Council "inherited" this part of Epping at an exceedingly difficult time, given the 2016 change in LGA boundaries coinciding with the major impacts of the imminent Metro Station and associated development density uplift. The town centre is characterised by a typically irregular late-C19th street layout and a pattern of small sites that have and continue to prove difficult to amalgamate into an orderly plan for density such as is now possible.

Consequently, the Panel suggests that if the allowable development densities are to be realised, some significant variance to the key controls (DCP and SEPP65/ADG) will be necessary to achieve an acceptable urban outcome. Alternatively, these densities would need to be significantly reduced.

Key areas that could be considered for relatively small, land-locked sites such as the subject proposal are:

- some relaxation of DCP street setbacks
  - considered reduction of ADG boundary setbacks and building separation through careful design and on a site-by-site basis
  - increase in building height beyond current limits
4. On this basis, the Panel considers that the following measures could be considered in relation to the proposed tower footprint and height for this development:
    - possible reduction in the Langston Place street setback to a 4.5m minimum (currently 6m). A similar reduction for the site to north along its Pembroke St frontage could also be considered.

- setback to northern side boundary to be minimum 9m (currently 6m is proposed). Concurrent with this would be a similar side setback for the site to the north, creating a minimum building separation of 18m shared equally.
  - reduction in the tower plan footprint (from 5 units to 4 units on the typical floors).
  - an increase in height from the proposed 22 levels (+roof plant) to compensate for the reduced typical floor yield, up to a maximum of 27 levels (+roof plant)
5. There are significant problems in achieving ADG compliance for building separation within existing precincts of this density and height, and that this is a major challenge for all such town centres across the Sydney Metropolitan area.

The Panel acknowledges that the portion of the tower above 8 storeys would provide less than the ADG minimum building separation of 24m to the north. However, this is necessary if this site is to be developed effectively and to the required density. In suggesting this the Panel also recommends that the detailed design of the northern façade of the tower (and the southern façade of any future tower to the north) be very carefully devised to minimise adjacency amenity impacts between units, and to mitigate the visual impact of a potential “canyon” of blank walls between the two buildings.

The Panel also considers in this instance that a taller tower with a smaller footprint has the potential to offer improved formal, amenity and urban design outcomes than a lower, more squat building form.

The proposed 3m tower setback to the southern boundary is acceptable as the C-Bus central and southern towers are sufficiently offset and distant.

6. The Panel is yet to be convinced by the proposed podium design along the Langston Place frontage for the following reasons:
- the lack of articulation between the tower and the podium, as the tower currently appears to gradually blend with the podium at lower level. Detailed form studies at a suitably larger scale are required to provide a convincing argument for any proposed form strategies.
  - there is insufficient detail or drawings at a large scale to sufficiently explain how the scheme may integrate with the development to the south, and there is a need for a meeting with Council’s urban design team to set some design objectives for this important street frontage to ensure an active, lively and well scaled character.
  - the podium would be improved with a richer palette of materials and a more articulated human scale, including at ground level which appears to be comprised of large areas of glazed commercial shopfront.
  - the detailed design of the car ramp entry including lighting and materials is to be of a quality that is commensurate with the urban setting.
7. The lack of any deep soil and a robust alternative planting strategy to balance this is of concern. The Panel considers that the scheme should work harder to reinforce and complement the existing leafy character of Epping and the eastern town centre. This could include plantings on the podium façade and roof, as well as some consideration of green elements on the tower facades. A detailed ground level landscape plan of the street, building interface including footpath canopy, furnishings, landscaping and materials should be provided.
8. The proposed communal open space is unconvincing for a development of this size: it has little sense of place, being a band of open space wrapped around the base of the tower. There are insufficient amenities and access to sun should be checked for ADG compliance.
9. The Panel is yet to be convinced by the aesthetic proposition for the tower. The curvilinear forms applied in both plan in elevation seem superficial and arbitrary, and as noted above a more distinct relationship between the tower and the podium should be considered. Earlier indications provided at pre-DA appeared to offer a more lively dynamic form for the tower.
10. In relation to the design and layout of private balconies, the Panel recommends that:

- HVAC equipment should be grouped within designated screened plant areas either on typical floors or on roof-tops.
- Wall mounted equipment (eg. instantaneous gas HW heaters) and associated pipework is concealed into wall cabinets and ducts
- If equipment is located on private balconies, additional area above ADG minimums should be considered.
- Rainwater downpipes are thoughtfully designed and integrated into the building fabric.
- The above items should be positioned so that they are not visible from common areas or the public domain adjacent to the development.
- Balustrade design must address visual screening of large items typically stored on balconies, for example BBQ's, clothes drying devices and bicycles.