SYDNEY CENTRAL CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SWC056 DA
DA Number	DA/314/2017
LGA	City of Parramatta (formerly Hornsby Shire Council)
Proposed Development	Concept development application for mixed use tower building. Stage 1 forms part of the subject application and seeks approval for a 30 storey mixed use tower building envelope with 4 storey basement. Stage 2, demolition and detailed building design, would be subject to a future application. The application is to be determined by the Sydney Central City Planning Panel.
Street Address	37 – 41 Oxford Street, EPPING NSW 2121 (Lot 2 DP 1205413)
Applicant	Goodman Property Services (Aust) Pty Ltd c/o Urbis
Owner	The Trust Company Ltd
Date of DA lodgement	18 April 2017
Number of Submissions	1st Advertisement: 7 (1 resubmission) 2nd Advertisement: 14 (2 resubmissions) Total: 21 (representing 18 unique properties)
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	Pursuant to Clause 3 of Schedule 4A of the *Environmental Planning and Assessment Act 1979*, the development has a capital investment value of more than $20 million.
List of all relevant s79C(1)(a) matters	• Environmental Planning and Assessment (EP&A) Act 1979 • Environmental Planning and Assessment (EP&A) Regulation 2000 • SEPP (Building Sustainability Index: BASIX) 2004 • SEPP (Infrastructure) 2007 • SEPP (State and Regional Development) 2011 • SEPP (Sydney Harbour Catchment) 2005 • SEPP No. 55 (Remediation) • SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) & Apartment Design Guide (ADG) • Hornsby Local Environmental Plan (HLEP) 2013 • Hornsby Development Control Plan (PDCP) 2013
List all documents submitted with this report for the Panel's consideration	• 1 – Architectural Drawings – Building Envelope Plans • 2 – Architectural Drawings – Indicative Reference Design • 3 – Landscape Concept Plans • 4 – Stormwater Reference Design • 5 – CGI Renders • 6 – Urban Design Report • 7 – Department of Planning Clause 4.6 Circular
Report prepared by	Alex McDougall
Report date	23 February 2018

Summary of s79C matters	**Yes**
Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?	
Legislative clauses requiring consent authority satisfaction	
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	**Yes**
Clause 4.6 Exceptions to development standards	
If a written request for a contravention to a development standard (Clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	**Yes**
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	**No**
Conditions	
Have draft conditions been provided to the applicant for comment?	**Yes**

1. Executive Summary

The application seeks concept 'envelope only' approval for a 30 storey mixed use tower with 4 storey basement. While the applicant has submitted a detailed 'reference design' for the tower, this is for consideration only and a future detailed development application would be required for approval to demolish the existing building and build the tower.

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 Hornsby Shire Council Epping Town Centre Public Domain Guidelines. The Applicant has submitted a request to vary the maximum height of the building under Clause 4.6 of HLEP 2013. The request is considered to be well founded for reasons including avoiding building forms without street address, providing increased separation to adjoining buildings/sites, extraordinary sustainability, provision of public domain, good quality private open space, and a good level of commercial uses.

The development has been subject to review by Council's Design Excellence Advisory Panel (DEAP), City Architect, and is 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 anticipated by the zoning and would have a negligible impact on the function of the local road network.

While the proposal does not include a through site link as envisaged by the Hornsby DCP, it is considered that a through site link would have poor amenity/utility and result in unreasonable impacts on the development potential of the site.

The application has been assessed relative to section 79C of the *Environmental Planning and Assessment (EP&A) Act 1979*, taking into consideration all relevant State and local planning controls. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, approval is recommended subject to conditions.

2. Key Issues

Hornsby Local Environmental Plan 2013

- **Building Height** – Acceptability of Clause 4.6 Variation request to 72m height standard**.** Proposed Tower : 95.67m (32.9% breach)

Hornsby Development Control Plan 2013

- **Through Site Link** – Not provided (as recommended by Council officers)
- **Wind** – No wind tunnel testing undertaken at this stage.

3. Site Description, Location, and Context

The subject site is located on the western side of Oxford Street between its intersection with Pembroke Street and Chester Street and is legally described as Lot 2 DP1205413. The site is 4,969m^2 in size and of an irregular shape, with a frontage of 57.0m to Oxford Street. The site is occupied by a 3-4 storey commercial office building. The site slopes down approximately 4m from front (east) to the rear (west) and has a cross fall of 2m down from south to north.

The site is located to the north-east of Epping Railway Station (within 250m walking distance), and north of retail fronting Langston Place and Oxford Street. Three immediately adjoining sites to the north, west and south are currently undergoing redevelopment for mixed use development (see Figure 1 and Table 1 below for details).

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

Figure 1. Aerial view of locality (subject site in red, adjoining development sites in blue with numbers referenced in table below, 16-18 Cambridge Street in yellow).

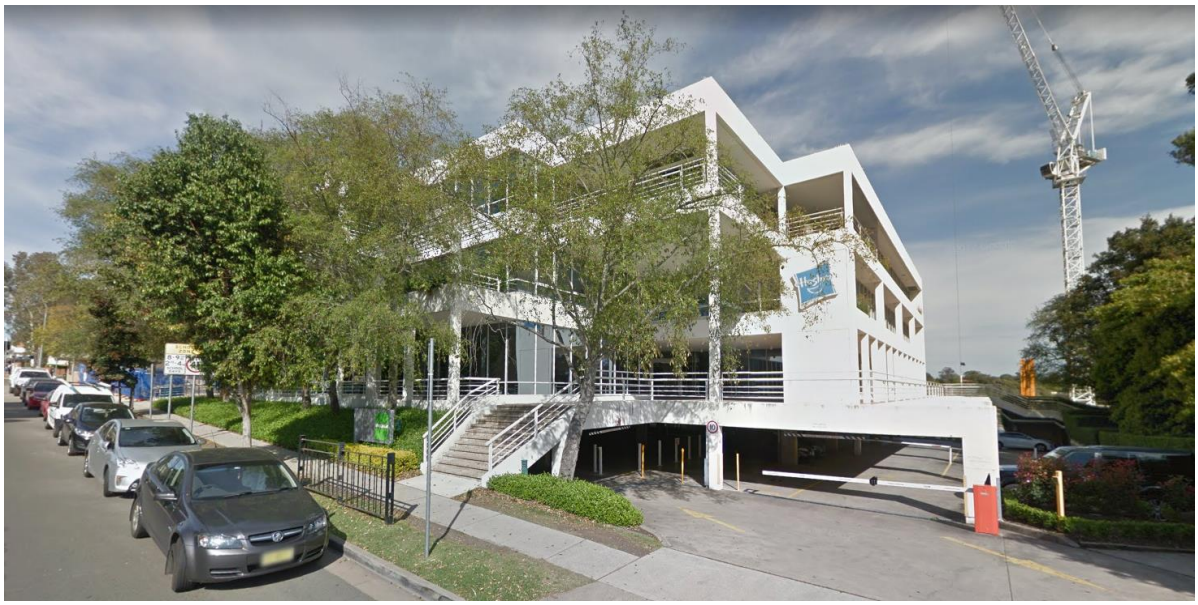

Figure 2. Front facade of existing building on the site as viewed from Oxford Street.

The following applications are relevant to the proposal:

Ref	Site	DA	Description/Details
1	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 966m², and the upper levels containing a total of 501 residential units, with combined basement car parking for 519 cars.
2	2-4 Chester Street	DA/136/2015 (Hornsby)	Approved 01/07/2015: Demolition of existing structures and construction of a fifteen storey residential flat building comprising 119 units with four levels of basement car park accommodating 124 car spaces and associated landscaping works

3	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.

Table 1: Applications relevant to the proposal.

4. The Proposal

4.1 Summary of Proposal

The application is a concept development application pursuant to clause 83B of the Environmental Planning and Assessment Act 1979 which seeks envelope approval for a 30 storey mixed use tower containing:

- 4 storey basement;
- 3 storey podium;
  - Ground: Retail (620m^2 GFA)
  - First: Commercial, home occupation (commercial part) (663m^2 GFA)
  - Second: home occupation (residential part), residential
- 27 storey residential tower above (21,078m^2 GFA)
- Vehicular access on south side of site

Consent for the envelopes would not authorise the carrying out of any works. A future 'Stage 2' detailed development application will be necessary to ascertain approval to build.

The applicant has also provided a draft 'reference' scheme to demonstrate that the envelopes can be developed in keeping with the relevant controls. The reference scheme has the following key characteristics:

- 3 x retail premises
- 3 x office premises
- 265 residential units (16 x studio, 73 x 1-bed, 159 x 2-bed and 17 x 3-bed), comprising:
  - 8 x 2- storey home occupation 'live/work' residential units (commercial on first floor, residential on second floor) (1 x studio, 6 x 1-bed, 1 x 2-bed)
  - 257 'regular' residential units (15 x studio, 67 x 1-bed, 158 x 2-bed and 17 x 3-bed)
- 299 car parking spaces
- 12 motorcycle spaces
- 296 bicycle parking spaces

Figure 3. CGI Render of Front Elevation of Reference Scheme as viewed from the east demonstrating potential outcome of Stage 2.

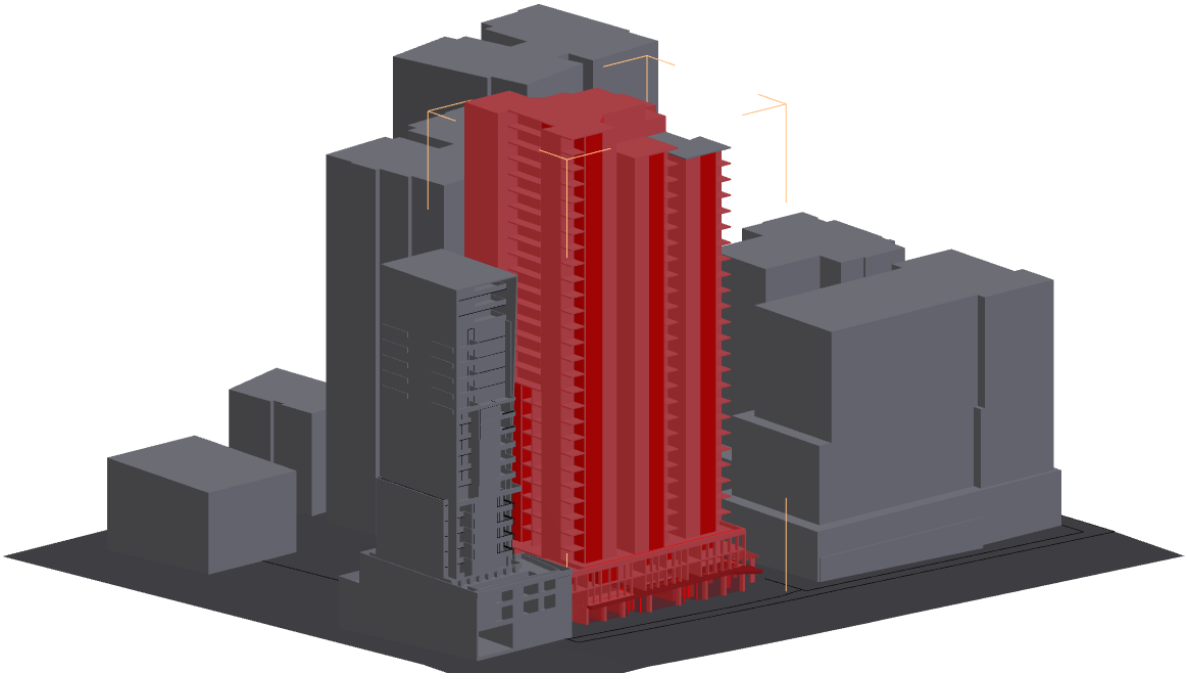

Figure 4. Perspective view of envelope as viewed from the east (does not include minor reduction in roof scale currently proposed).

4.2 Summary of Amendments Since Lodgement

The application originally proposed 2 towers with 'Tower A' to the front of the site and 'Tower B' to the rear of the site. The application also included a through site link along the south of the building connecting to Cambridge Street via 20-28 Cambridge Street. Vehicular access was to the northern side of the site. See perspective drawings of original approval below and ground floor plan overleaf:

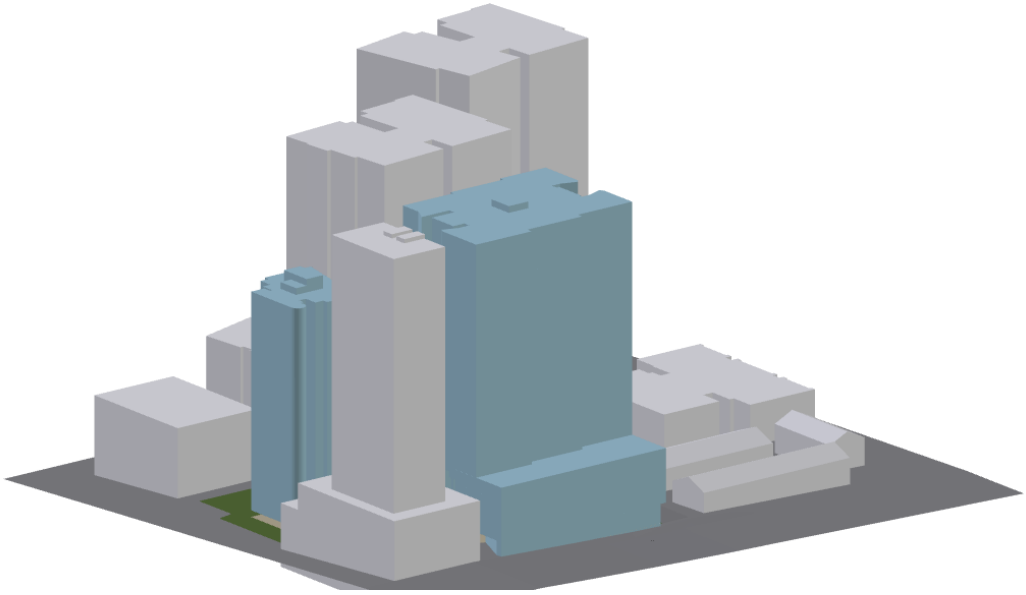

Figure 5. Perspective envelope model of original 2 tower proposal (proposed towers in blue, existing/approved/built towers in grey).

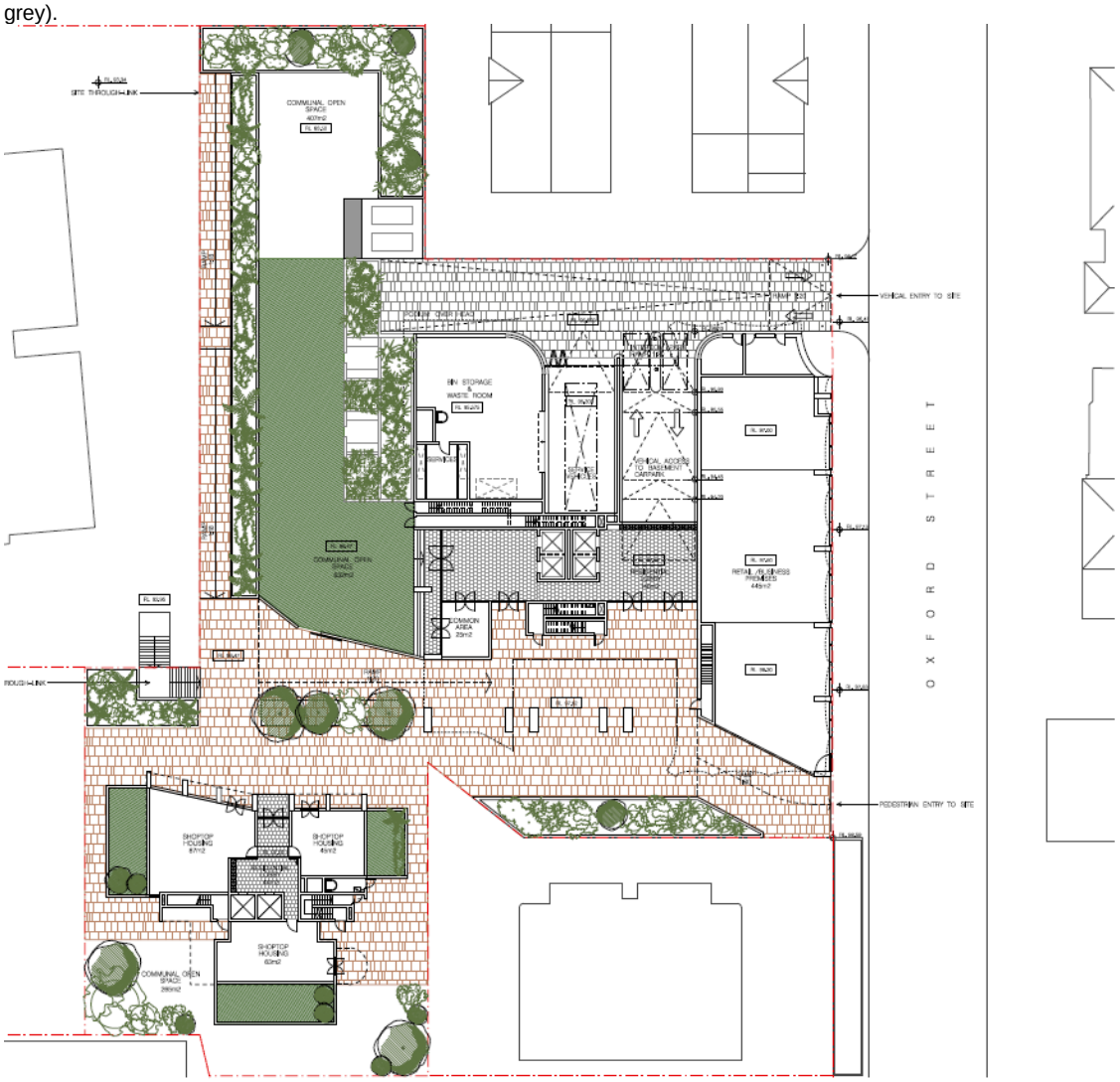

Figure 6. Originally proposed ground floor plan for '2-tower' design (Tower B on the left and Tower A on the right).

A preliminary assessment of the original application by Council's Design Excellence Advisory Panel (DEAP), City Architect, Council officers and external referral bodies raised a number of concerns with the two tower design including, but not limited to, the following:

- Tower B included shops without street address (including 1 without lane address) which would reduce the viability of such uses.
- Overshadowing and overlooking of adjoining school to the south
- Loss of outlook for west facing units at No. 35 Oxford Street
- Impact on development potential of No. 16-18 Cambridge Street (limited separation)
- Convoluted through-site link with poor passive surveillance.
- Non-complying setbacks/separation from Tower A and No. 35 Oxford Street

Revision 1

The applicant submitted revised drawings and documentation in December 2017 addressing the above concerns including, but not limited to, the following changes:

- Deletion of Tower B;
- Increase in height of Tower A from 22 to 30 storeys (to compensate for lost floor space);
- Tower A revised setbacks/separation;
- Provision of public forecourt;
- Additional commercial floor space;
- Additional communal open space and deep soil planting areas;
- Deletion of through-site link; and
- Relocation of vehicular access (from north side to south side of site).

Revision 2

The revised drawings were subsequently re-advertised and referred back to Council's DEAP, City Architect, Council officers and external referral bodies. Several issues were raised with the applicant and in February 2018 they submitted further revised drawings with the following changes:

- Reduced front setback to 4.5m (podium levels 1 & 2)
- Increased modulation in roof form
- Increased setback from 2 x significant trees to the north side of the site to ensure retention

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Sydney West Central Planning Panel (SWCPP) / Sydney Central City Planning Panel (SCCPP) Briefings

Issues Raised	Comment
Briefing 1 (5 July 2017)	
Seeking approval for envelopes only	Noted.
Panel notes transfer of height will result in 25% breach of height limit but avoids poor circulation, will only have marginal negative effect on solar access, and will result in many positive outcomes.	Subject to detailed design development the height breach is now 32.9% at its highest. Positive outcomes remain as discussed in report below.
The change by removal of retail space at the side is acceptable but with additional commercial space above on the next level.	The applicant has revised the proposal to include commercial floor space at first floor level in the form of live/work units and stand-alone office units.

Additional consideration to be given to additional height at the next Panel briefing.	See below.
Briefing 2 (7 February 2017)	
Building height variation – justification for clause 4.6 variation	The applicant has provided a detailed clause 4.6 variation request which is attached to this report at Appendix 1.
Removal of large number of trees along front setbacks and to the north of site	The applicant is replacing the trees that are to be lost to the front of the site and will retain the large trees on the north side of site.
Minimal separation/setbacks	The proposal generally complies with the required setbacks. The non-complying front tower setback was provided at the recommendation of Council to transition to the different zone to the north.
Communal open space - use of the roof top	The reference scheme includes a roof top communal area.
Insufficient consideration of the likely impacts of adjoining development - solar access – impact of overshadowing	The applicant has provided a response demonstrating that the impact of future development on adjoining sites would have only a marginal impact on the solar access of the proposed units.
Consideration should be given to retaining the architect through stage 2 detailed design	The applicant has agreed to a condition requiring the architect not be changed without prior approval of Council's city architect.

Table 2: SWCPP/SCCPP briefing notes and response.

N.B. The name of the applicable regional determination panel changed during the course of assessment from the Sydney West Central Planning Panel to the Sydney Central City Planning Panel.

5.2 Design Excellence Advisory Panel

Council's DEAP considered the application at a meeting on the 15 June 2017. The Panel made a number of recommendations but supported, in principle, the following:

- Deletion of Tower B
- A height breach to accommodate Tower B floor space in Tower A.
- Deletion of the through site link

The applicant submitted revised drawings responding the Panel's recommendations. The revised drawings were reviewed by DEAP and found to be an improvement on the initial scheme.

The DEAP panel members made several recommendations on the detailed design of the building. The detailed design is subject to a future 'Stage 2' application. As such a condition of consent is included requiring that the future design take into account these recommendations. The detailed design will be considered by DEAP at the Stage 2 stage.

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

5.3 External

Authority	Comment
Ausgrid	Acceptable subject to conditions
Sydney Water	Acceptable subject to conditions
Wind	More detail required at Stage 2, to be conditioned.

Table 3: External referrals

5.4 Internal

Authority	Comment
Development and Catchment Engineer	Acceptable subject to conditions.
Landscape & Tree Officer	Acceptable subject to conditions.
Traffic & Transport Officer	Acceptable subject to conditions.
Environmental Health (Acoustic)	Acceptable subject to conditions.
Environmental Health (Contamination)	Acceptable subject to conditions.
Environmental Health (Waste)	Acceptable subject to conditions.
Urban Design	Acceptable subject to conditions.
City Architect	Acceptable subject to conditions.
Public Domain	Acceptable subject to conditions.

Table 4: Internal referrals

N.B. Some of the conditions recommended relate to a future Stage 2 application and as such are not included in the attached draft conditions set.

6. Environmental Planning and Assessment Act 1979

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

6.1 Section 5AA: 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 79C: 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 79(1)(a)(i) - Environmental planning instruments	Refer to section 7
Section 79C(1)(a)(ii) - Draft environmental planning instruments	Refer to section 8
Section 79C(1)(a)(iii) – Development control plans	Refer to section 9
Other Planning Controls	Refer to section 10
Section 79C(1)(a)(iiia) - Planning Agreement	Refer to section 11
Section 79C(1)(a)(iv) - The Regulations	Refer to section 12
Section 79C(1)(a)(v) - Coastal zone management plan	Not applicable.
Section 79C(1)(b) - Likely impacts	Refer to section 13
Section 79C(1)(c) - Site suitability	Refer to section 14
Section 79C(1)(d) – Submissions	Refer to section 15
Section 79C(1)(e) - The public interest	Refer to section 16

Table 5: Section 79C(1)(a) considerations

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

As the proposal is a concept development application a detailed BASIX certificate is not required. However, the applicant submitted an ESD Report seeking to demonstrate a commitment to sustainability beyond the minimum requirements. Council's ESD consultant reviewed the report and recommended the following set of commitments to secure a meaningful exceedance of BASIX minimum requirements:

(a) improvement of Energy score in BASIX by at least 10 basis points over the minimum requirement at the time of detailed application lodgement (i.e. BASIX score of 35).
(b) improvement of Water score in BASIX by at least 10 basis points over the minimum requirement at the time of detailed application lodgement (i.e. BASIX score of 50).
(c) 20% improvement on BASIX thermal comfort heating and cooling caps
(d) 5.5 star NABERS rating for commercial/retail portion of building
(e) Solar PVs to offset at least 50% of the base building's energy demands (lights, lifts, carpark, etc)
(f) Rainwater harvesting from roof and its treatment to supplement non-potable water.

The applicant agreed to these commitments and they will be secured via condition.

7.3 State Environmental Planning Policy (Infrastructure) 2007

The proposal is not considered to constitute a 'traffic generating development' as it proposes less than 300 dwellings and is not within 90m of a classified road. The site is well separated from the Epping train line so as not to require referral to Sydney Trains.

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 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 at Stage 2 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 investigation also included boreholes and associated soil testing which found that the concentrations of chemical contaminants measured in the soils are well below levels that are harmful to human-health and the environment for both commercial/industrial and high-density residential land use settings. 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 storeys in height, and will have more than four units. SEPP 65 requires that residential flat buildings satisfactorily address nine design quality principles, and consider the recommendations in the (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:

Requirement	Council Officer Comments
Principle 1: Context and Neighbourhood Character	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. The site is in close proximity to Epping train station, which is being upgraded to accommodate a frequent metro service, and as such is well connected in terms of public transport.
Principle 2: Built Form and Scale	The original proposal included two tower elements of complying heights. One located to the front of the site along Oxford Street, the second smaller tower was located to the rear of the site. The tower to the rear would have resulted in a number of inappropriate commercial viability, separation/setback, community safety and amenity impacts. These issues are discussed in more detail below. The revised proposal includes a height breach which allows for a single larger tower on Oxford Street with complying side setbacks. The proposed height would result in the tallest building in the locality at 95.67m. The next tallest building is Tower 3 in the recently approved development at 12-22 Langston Place (DA/468/2016) which has a maximum height of 92.85m. Notwithstanding, it is considered that the larger built form and scale is appropriate as it would result in less unacceptable amenity impacts on adjoining/nearby properties than the complying height two tower arrangement.
Principle 3: Density	The proposal has a complying FSR and as such is considered to provide a density of housing in keeping with the desired future character of the area.

Requirement	Council Officer Comments
Principle 4: Sustainability	Detailed BASIX reports will be provided as part of the future Stage 2 development application. The applicant has agreed to the significant improvements on the minimum score as outlined in Section 7.2 above. The proposed envelope includes deep slots which will help achieve a good level of cross ventilation throughout the development with a majority of the proposed units having secondary aspects. The reference scheme demonstrates the provision of bicycle parking for both visitors (provided in accessible areas) and residents (provided in secure areas).
Principle 5: Landscape	The proposal would result in an exceptional landscape outcome with provision of deep soil and landscaped areas far in excess of the minimums required by the ADG. The proposal also includes a landscaped publicly accessible front setback area which provides additional amenity for the community.
Principle 6: Amenity	Generally, the proposed envelope as amended demonstrates that a future Stage 2 detailed design will be able to achieve satisfactory 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 134% more communal open space than required by the ADG. A satisfactory preliminary wind assessment report has been provided and the applicant has agreed to wind criteria for the site. Wind tunnel testing demonstrating a satisfactory wind environment will be required at Stage 2 by condition.
Principle 7: Safety	The proposal is considered to provide appropriate safety for occupants and the public for the following reasons: • A large number of units are orientated towards the public street creating passive surveillance. • Entry points into the building are clearly identifiable for ease of access with residents and visitors. • Retail components at ground level will activate the precinct to further enforce a sense of passive surveillance.
Principle 8: Housing Diversity and Social Interaction	Housing diversity will be assessed at the Stage 2 detailed design phase. The reference envelope demonstrates that the building can accommodate residences of a range of sizes, capacities and types to provide for the housing needs of the future Epping population.
Principle 9: Aesthetics	The envelope provides deep and wide vertical recesses to break up the apparent mass of the tower which is considered to satisfy this principle. The detailed aesthetic design of the building (materials, finishes, etc) will be confirmed as part of the future Stage 2 buildings. A condition is included requiring retention of the current architect.

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 more detail in Section 5.2 above .

Apartment Design Guide

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

Standard	Requirement	Proposal	Compliance
Part 3			
3B-1: Orientation	The proposed tower is considered to adequately respond to the site constraints, presenting a development which addresses Oxford Street with retail premises and residential lobby. 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. The original application included a second tower located at the rear of the site. Due to the zoning, which allows shop-top housing but not residential flat buildings, the ground floor of this building would be required to provide retail. This retail would not have been clearly visible or accessible from the street and providing such access would create safety issues contrary to established *Crime Prevention Through Environmental Design* (CPTED) standards. Further, locating a tower in this location would have significant impacts on the outlook of west facing units in No. 35 Oxford Street, the solar access of the adjoining school to the south, and the development potential of 16-18 Cambridge Street to the west. The siting of the building in its proposed location allows a significant area of open space to exist between towers on Cambridge and Oxford Streets providing a sense of openness between the towers.		
3B-2: Overshadowing	The proposal will result in significant overshadowing of the northern façade of the adjoining tower under construction at No. 35 Oxford Street. However, the northern windows of that development serve only non-habitable spaces due to their minimal boundary separation. The east and western facades of No. 35 Oxford Street, the primary outlooks for units in that development, will still receive up to 3 hours of uninterrupted sun in the morning (those facing east) or afternoon (those facing west). Due to the general north-south orientation of the proposal all other adjoining/nearby buildings will received the required solar access in either the morning or afternoon. As such, the proposal is considered to have a reasonable overshadowing impact on adjoining/nearby properties.		
3C: Public Domain Interface	The public domain interface is considered to positively contribute to the streetscape by providing distinct access to residential use foyers and retail premises. The proposal provides an additional 4.5m of publicly accessible footpath to the front of site, a new awning and additional planting. Further, the public domain materials will be updated in keeping with the requirements of Parramatta's Public Domain guidelines.		
3D: Communal & Public Open Space	Min. 25% of site area (1,242m^2) min dim. 3m.	2,787m^2 at ground level + 115m^2 roof top = 2,902m^2 (58%)	Yes
	Min. 50% direct sunlight to main communal open space for minimum two (2) hours 9:00am & 3:00pm, June 21st (621m^2)	At least 50% of the area will receive sunlight between 10:00 and 13:00 (3 hours).	Yes
	The concept landscape plan outlines a multi-use sports court, exercise equipment, seating areas, a covered bbq area, and a variety of soft and hard landscaping which is considered to provide exceptional amenity for future occupants. The detailed design will be secured at stage 2.		

Standard	Requirement	Proposal	Compliance
3E: Deep Soil	Min. 7% with min. dimensions of 6m (348m^2)	958m^2 (19%)	Yes
	The proposal far exceeds the required deep soil which is considered to be a significant positive outcome. In addition to the substantial deep soil planting area, the proposal also includes stepping in the basement at the first level to allow for significant tree planting along the front and rear boundaries. The details of this planting will be secured at Stage 2.		
3F: Visual Privacy	To 43 – 53 Oxford Street (north)		
	Floor G-3: 3m - 6m	9m	Yes
	Floor 4-7: 4.5m - 9m	9 – 12m	Yes
	Floor 8+: 6m - 12m	9 – 12m	Yes
	To 20 – 28 Cambridge Street (west)		
	Floor G-3: 3m - 6m	20.5m	Yes
	Floor 4-7: 4.5m - 9m	20.5m	Yes
	Floor 8+: 6m - 12m	20.5m	Yes
	To 16 Cambridge Street (west)		
	Floor G-3: 3m - 6m	32m	Yes
	Floor 4-7: 4.5m - 9m	32m	Yes
	Floor 8+: 6m - 12m	32m	Yes
	To 35 Oxford Street (south)		
	Floor G-2: 0m	0m	Yes
	Floor 3: 3m - 6m	9 – 12m	Yes
	Floor 4-7: 4.5m - 9m	9 – 12m	Yes
	Floor 8+: 6m - 12m	9 – 12m	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	The location of the vehicle access is considered to be appropriate as there is no secondary street access, and its location at the south of the site occupies an otherwise unusable space due to the odd shape of the adjoining podium (see Figure 7 below) and the lack of solar access from proposed tower. The loading dock will not be visible from the street.		

Standard	Requirement	Proposal	Compliance
	 **Figure 7.** Photo of No. 35 Oxford Street (left) and subject site (right) demonstrating podium return of No. 35 Oxford Street (green) which protrudes into sightline and location of proposed driveway (red).		
3J: Bicycle and car parking [The site is within 300m of Epping train station. RMS rates are less than local rates. As such, RMS rates apply.]	<u>Car Parking</u> Residential: • 0.6 per 1 bed (49.2) • 0.9 per 2 bed (142.2) • 1.4 per 3 bed (23.8) Total: 215 Visitor • 1 per 5 units (52) or less if near public transport Total: 267	299 total spaces (allocation not specified as part of concept, if minimum used leaves 32 for commercial uses)	Yes
	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 (180)	182 out of 257 apartments (71%) [162 (63%) if adjoining site to north development to full extent of envelope]	Yes
	Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<39)	38 out of 257 apartments (15%)	Yes
	The proposed development complies with the solar access requirements of the ADG.		
4B: Natural Ventilation	Min. 60% of apartments below 9 storeys naturally ventilated (>52)	52 out of 87 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	2.7m	Yes
	Min 2.4m non-habitable	2.4m	Yes
	Min 3.3m for mixed use	2.9m, 3.6m, 4.2m	Part

Standard	Requirement	Proposal	Compliance
	Only 1 retail unit would not meet the recommended minimum. Given the small size of this unit relative to the scale of development this is not considered to be reason to refuse the application.		
4D: Apartment size & layout	0B – Min 35m^2	0B – 36m^2 – 40m^2	Yes
	1B – Min 50m^2	1B – 41m^2 – 56.5m^2	Part (all but one 1-bed classified as studio)
	2B – Min 70m^2 (1 bath), 75m^2 (2 baths)	2B – 71m^2 – 81.2m^2	Yes
	3B – Min 95m^2 (2 baths)	3B – 90m^2	No
	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.	Complies	Yes
	Habitable room depths max. 2.5 x ceiling height (6.75m)	<6.75m	Yes
	Max. habitable room depth from window for open plan layouts: 8m.	<8.2m	Part (few non-compliances)
	Min. internal areas:		
	Master Bed - 10m^2	>9.5m^2	Part (few non-compliances)
	Other Bed - 9m^2	>9m^2	Yes
	Min. 3m dimension for bedrooms (excl. wardrobe space).	>3m	Yes
	Min. width living/dining:		
	• 0B – 3.6m	>3.4m	Part (few non-compliances)
	• 1B – 3.6m	>3.5m	Part
	• 2B – 4m	>3.8m	Part
	• 3B – 4m	>4m	Yes
	While the draft reference scheme includes some minor non-compliances with the recommended unit dimensions this is considered to be acceptable for the following reasons: • The proposed unit layouts are for reference only. The detailed design of the units will be secured as part of the Stage 2 detailed application. As such the project architect can fine tune the layout of the units. • While some units do not comply with one or more of the dimensional requirements in the ADG, the non-compliances are minor and the Department of Planning, in circular PS 17-001 (29 June 2017), stated that, "*the ADG is not intended to be and should not be applied as a set of strict development standards*".		

Standard	Requirement	Proposal	Compliance
4E: Private open space & balconies	Min. area/depth:		
	0B - 4m^2	>11m^2	Yes
	1B - 8m^2/2m	>8m^2/2.7m	Yes
	2B - 10m^2/2m	>9.5m^2/2.7m	Part
	3B - 12m^2/2.4m	>23m^2/2.4m	Yes
	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 overprovision of communal open space.		
4F: Common circulation & spaces	Max. apartments –off circulation core on single level: 8-12	3-13	Part (1 level non-compliant)
	10 storeys or over, max. apartments sharing single lift: 40	64/lift	No
	Corridors >12m length from lift core to be articulated.	14m (not articulated)	No
	Whilst the lift to unit is slightly oversubscribed, subject to a condition requiring, at detailed DA stage, that a lift report be provided demonstrating a good level of service, the proposal is considered to be acceptable. While corridors are not articulated they are provided with extra width and natural light and ventilation and as such are considered to be acceptable.		
4G: Storage	0B – Min 4m3 (x16 = 64) 1B – Min 6m^3 (x73 = 438) 2B – Min 8m^3 (x159 = 1,272) 3B – Min 10m^3 (x17 = 170) Total – 1,944m^3	~1,200sqm (basement) ~1,000sqm (units) ~2,200sqm (total)	Yes
	Min. 50% required in units (972m^3)		
	A detailed breakdown of the allocation of storage is not provided. Detail can be provided with the future Stage 2 detailed application.		
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 materials/treatments to be used to meet an appropriate internal noise given both internal and external noise sources and the proximity to Oxford Street. The report recommends a noise and vibration management plan be prepared. It is considered that this can be considered at the Stage 2 DA.		
4K: Apartment Mix	The development has the following bedroom mix: • 16 x studio (6%), • 73 x 1-bed (28%), • 159 x 2-bed (60%) and • 17 x 3-bed (6%) 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.		

Standard	Requirement	Proposal	Compliance
4M: Facades	The building envelope includes significant vertical articulation to break up the apparent mass of the tower form. The proposal has a distinctive base (podium), middle (tower) and top (stepped roof). The detailed façade will be designed and assessed as part of the Stage 2 application.		
4N: Roof design	The proposed building envelope steps down with the slope of the land, and character of the area, from south to north. This will help transition between the lower height zone located to the north of the site and provide visual interest to the building form. Rooftop plant and lift overrun can be suitably concealed ensuring they are not visible from the street.		
4O: Landscape Design	The application includes a concept landscape plan which demonstrates that the proposed development will be significantly landscaped, providing much needed separation between the building and the large towers nearby. The future stage 2 application can provide details outlining that a high quality communal open spaces for future residents will be achieved.		
4P: Planting on structures	The proposal includes sufficient planting depth for large trees along the front and rear boundaries. Details of planting depth for more minor landscape elements can be provided as part of the future Stage 2 development application.		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features (>53)	No detailed provided. Can be provided at Stage 2.	Yes
	The site is considered to be appropriately barrier free and wheelchair accessible. An Access Report can be provided as part of Stage 2.		
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	Sun and rain protection is provided by an awning along the active frontage of the podium. However, as the podium is setback from the street, there is no weather protection along the public footpath. Notwithstanding, this is considered to be acceptable as there is unlikely to be a continuous awning provided on any redevelopment to the north and the trees provided to the front of the site will provide some protection. No details of signage are provided. A condition is included requiring separate approval for any signage.		
4U: Energy Efficiency	Detailed BASIX reports will be provided as part of the future Stage 2 development application. A condition is included requiring significant improvements on the minimum ESD requirements.		
4V: Water management			
4W: Waste management	Waste areas 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 will be a requirement of the future Stage 2 application.		
4X: Building maintenance	Details of materials will be secured as part of the future Stage 2 application.		

Table 7: Assessment of the proposal against the ADG

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
2.3 Zoning		
B2 – Local Centre	The proposal is a mixed use development comprising shop top housing and commercial premises (retail, office, home occupation) which are permissible with development consent in the zone.	Yes
Zone Objectives		
	The proposal is considered to be in keeping with the objectives of the B2 Local Centre zone for the following reasons: • The proposed development provides an appropriate mix of opportunities for a range of retail/office tenancies and residential accommodation. • In the short term jobs will be created through the construction of the development and in the longer term through suitably located retail and office tenancies. • The addition of residential apartments close to Epping Railway Station, with links to major employment centres, will encourage the use of public transport.	Yes
4.3 Height of Buildings		
Control: 72m	Max Height 95.67m	**No** (23.67m, 32.9% breach)
4.4 Floor Space Ratio		
Control: 4.5:1 (22,361m²)	Residential GFA: 21,263m² (95%) Retail GFA: 435m² (2%) Office GFA: 663m² (3%) Total GFA: 22,361m²	Yes
4.6 Exceptions to Development Standards		
	Variation to Building Height Standard.	Yes (see below)
5.10 Heritage conservation		
	The nearest heritage items are located at least 50m from the proposed building. Given the separation between site and the heritage item, it is considered that the impact on significant views and on the significance of the items in general would be acceptable.	Yes

6.2 Earthworks		
	The subject application does not include a geotechnical report. While the proposal includes excavation in close proximity to the boundary, and the site does exhibit some slope, it is not considered necessary to undertake detailed geotechnical investigation work at this time. An engineering solution will be possible. Council's engineers have recommended a condition requiring a geotechnical report be submitted with the future detailed design application addressing issues such as impacts on drainage, subsurface water, stability of adjoining properties and the like.	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

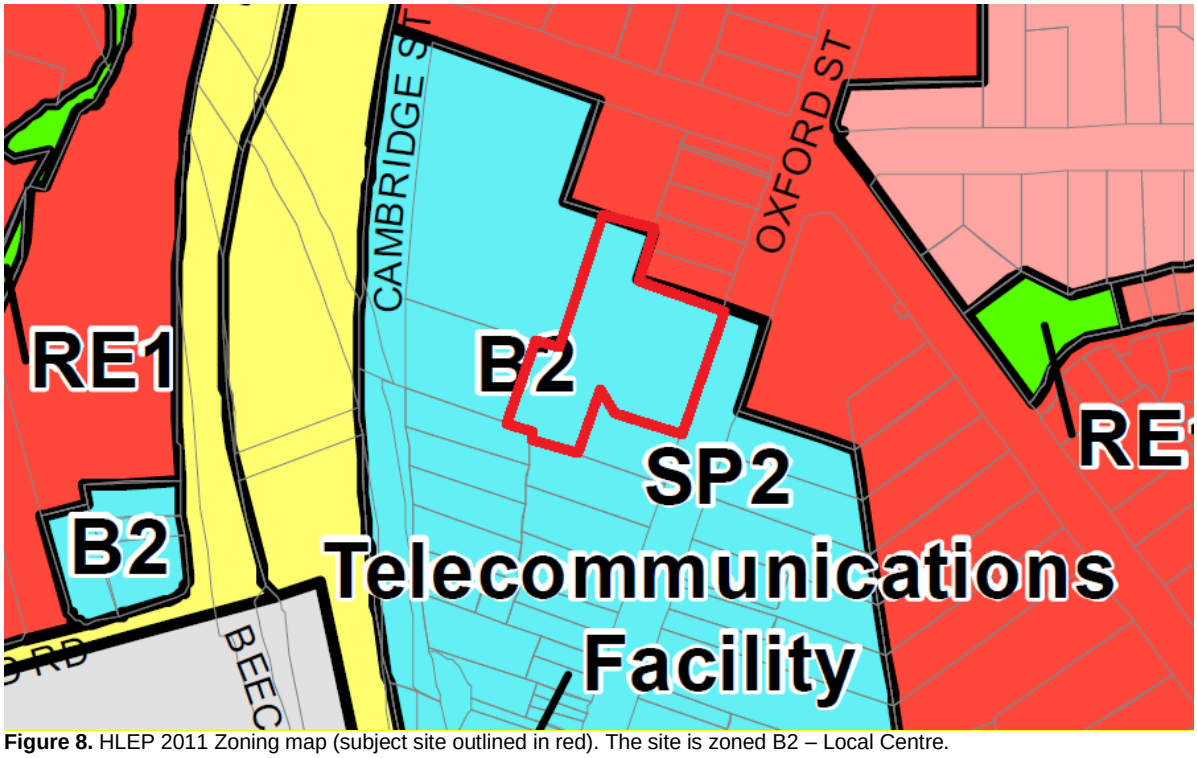

Figure 8. HLEP 2011 Zoning map (subject site outlined in red). The site is zoned B2 – Local Centre.

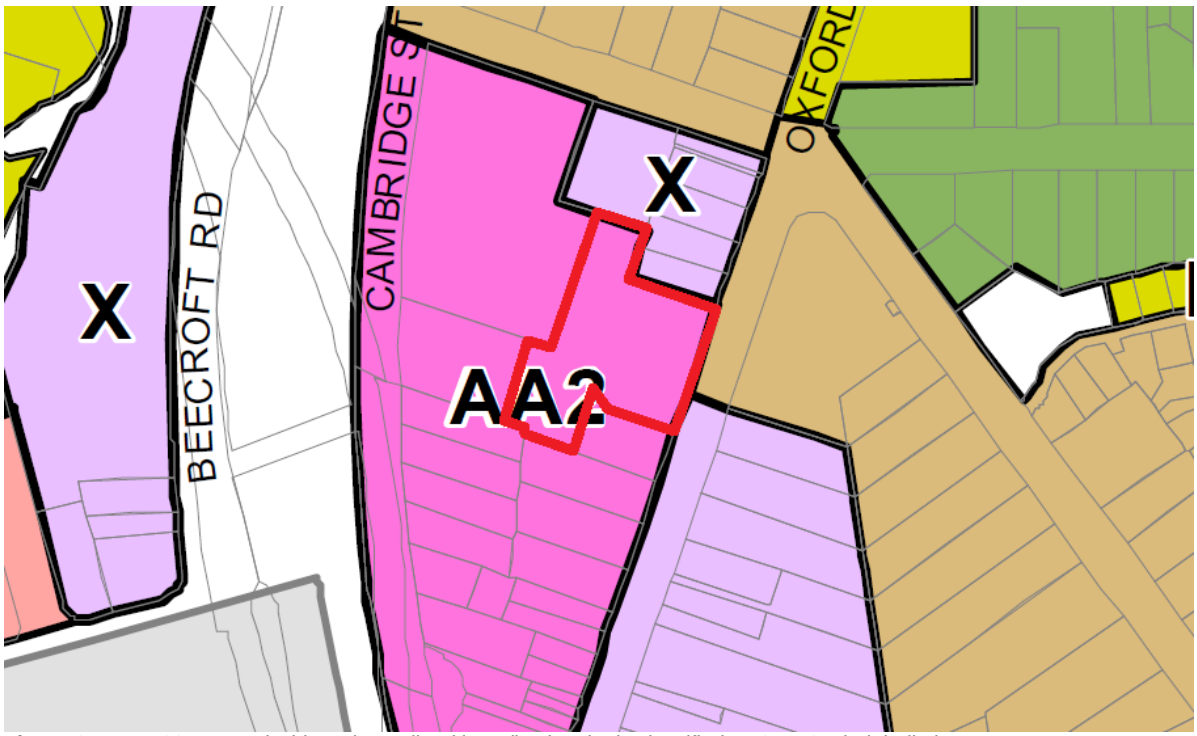

Figure 9. HLEP 2011 map (subject site outlined in red). The site is classified AA2 – 72m height limit.

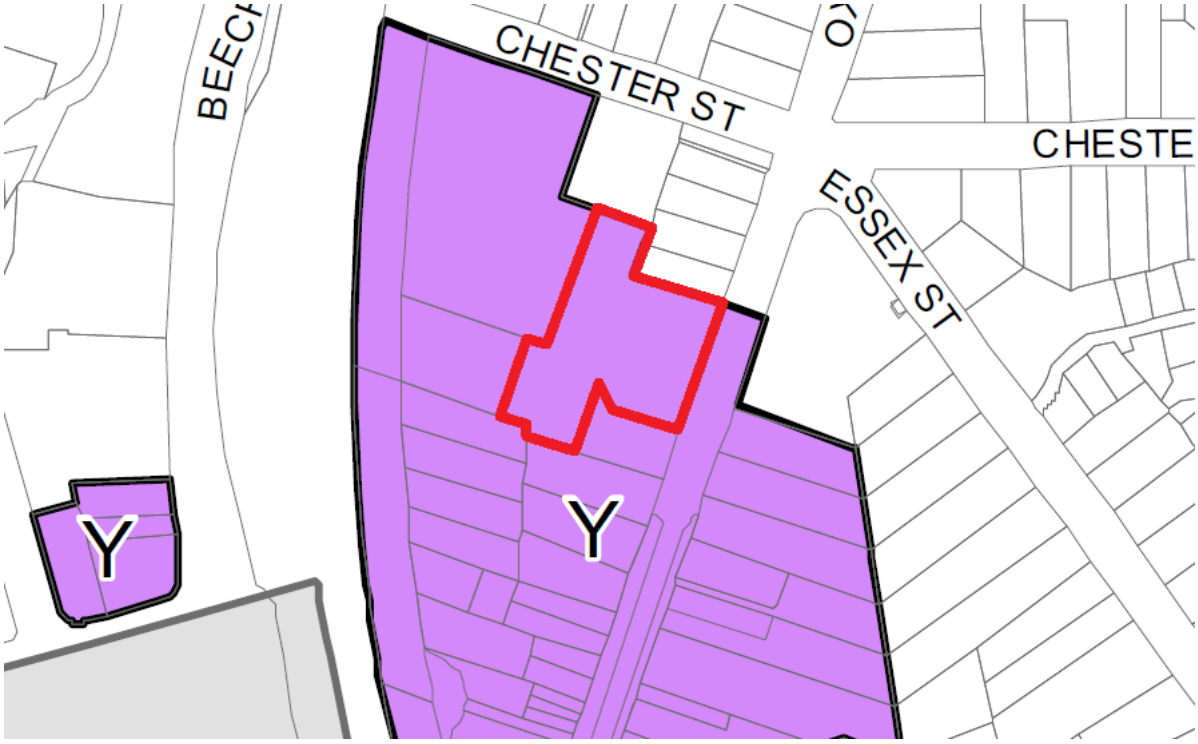

Figure 10. HLEP 2011 Floor Space Ratio map (subject site outlined in red). The site is classified Y – 4.5:1 FSR.

Clause 4.6 Variation Assessment

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

The proposal does not comply with the Clause 4.3 'Height of Buildings' development standard, as outlined in the table above and the figure below.

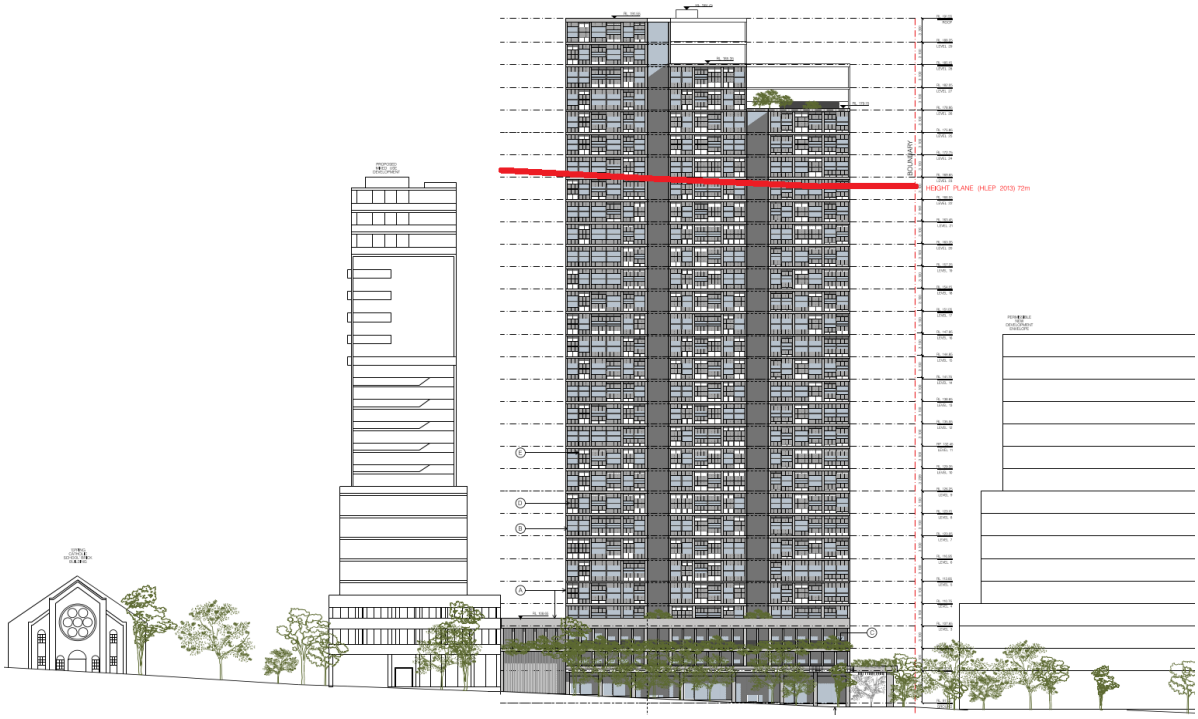

Figure 11. Proposed breach of height limit in context of approved development at 35 Oxford Street (left) and potential future development (right) (red line represents 72m height standard).

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.

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.

1) *The proposed development is consistent with the objectives of the height of buildings development standard in clause 4.3 of the HLEP 2013 and the B4 land use zoning objectives despite the numerical non-compliance.*

2) *It has been demonstrated within the Urban Design report accompanying this request that the proposed variation will not result in adverse environmental impacts on the neighbourhood, amenity and streetscape and will create a positive relationship with surrounding tall tower forms through increased building separation and setbacks. This includes:*

a) *Facilitating a built form that positively contributes to the surrounding Epping Town Centre and enables a positive design response to the constraints of the site presented by the multiple boundaries to adjoining sites and recently approved residential development;*
b) *A taller, more slender tower form that achieves greater design excellence and improves the relationship with other towers (existing and proposed) on neighbouring sites in terms of separation, setbacks, amenity and urban form;*
c) *Massing and building separation which allows for a significant portion of the site to be devoted to communal open space and deep soil landscaping and allows for approximately 95% of the communal open space to receive a minimum of 2 hours of sunlight in mid-winter (21 June); and*
d) *Acceptable environmental impacts on the adjoining and surrounding properties in the context of the emerging high density environment.*
e) *Shadow analysis which illustrates how the slender tower floorplate facilitated by the proposed height variation produces thinner, faster moving shadows over the ground plane and results in negligible additional impact to the solar access of surrounding development including 35 Oxford Street.*

3) *Having regard to the existing site constraints and consolidating the floor space into a single tower up to the height sought, enables the proposed stage 1 envelope to achieve the floor space ratio (FSR) that was determined for the site by the priority precinct program. The FSR for the site was identified having regard to the significant State Government investment in public transport infrastructure, including the North-West Metro.*

4) *The ability to achieve the FSR designated for the site maintains consistency with the future scale and character envisaged by the Epping priority precinct and as outlined in the Epping Urban Activation Precinct Planning Reports and clause 4.6.1 of the Hornsby DCP for the following reasons:*

a) *The proposed building height variation aids in the delivery of a compact, high density, town centre core by facilitating the allowable FSR on the site and as such achievement of the highest and best use for the site;*
b) *Achieving the maximum allowable FSR will ensure a wider range of housing options in close proximity to public transport and employment opportunities;*
c) *Achieving the allowable floor space is crucial delivering on the objectives for the priority precinct to provide increased residential density around Epping station and support the significant investment in infrastructure such as the Metro North West by the NSW State Government;*
d) *Increased housing density in close proximity to frequent transport services at Epping Station supports the Sydney Region Plan principle of a 30min city as re-emphasised by the revised Draft District Plans which also identify a potential future mass transit connection from Epping to Parramatta;*
e) *The proposed height variation specifically enables realisation of the allowable floor space on the site in a viable single-tower design that significantly enhances the overall built form;*
f) *The proposed height enables increased podium and tower setbacks that significantly improve the public domain in the Epping Town Centre to benefit existing and future residents; and*
g) *The proposed building height minimises impacts to the surrounding sites including acceptable levels of overshadowing to surrounding properties and increased sunlight to the street and communal open space areas.*

5) *The proposal results in significant quantifiable and discernible public benefits including:*

a) *An enhanced area of public domain along Oxford Street through the provision of a 4.5m setback to the podium.*
b) *301 sqm of public domain along the northern boundary of the site which includes approximately 146 sqm of unencumbered paved area for use by the adjacent commercial tenancy;*
c) *2,829 sqm of landscaped communal open space available for use by residents at the rear of the site and on the level 26 rooftop (57% of the site) exceeding ADG requirements (7%);*

d) *A large area of activated frontage along the Oxford Street wrapping around the site to the north. These frontages provide high visibility and good exposure for retail premises and can accommodate product displays and outdoor seating areas for cafes/restaurants*
e) *96 sqm of deep soil area for street tree planting along the Oxford Street frontage and the provision of significant areas for deep soil planting and mature tree growth within the rear communal open space areas which provide wind and shade protection reducing the urban heat island effect;*
f) *Acceptable shadow impacts to surrounding land and a high level of sunlight to the street and communal open space area at the rear;*
g) *Increased building separation over the minimum distances required by the ADG;*
h) *Enabling a detailed design that is capable of consistency with the ADG and Hornsby DCP 2013 as demonstrated in the accompanying reference design;*
i) *ESD commitments over and above standard BASIX commitments;*
j) *The proposal's contribution to supporting the commercial function of Epping Town Centre through the provision of 1,283 sqm of retail and commercial space that has the potential to accommodate approximately 81 jobs within a diverse mix of spaces including 8 SOHO apartments; and*
k) *The acceptable environmental impacts that will result from the reference scheme.*

The applicant also provided an Urban Design report which seeks to demonstrate that the built form is appropriate in the context of the evolving character of Epping Town Centre. Figure 12 below, an extract from the Urban Design report, demonstrates the proposal in the context of the burgeoning character of the area. The full Urban Design Report is attached at Attachment 6.

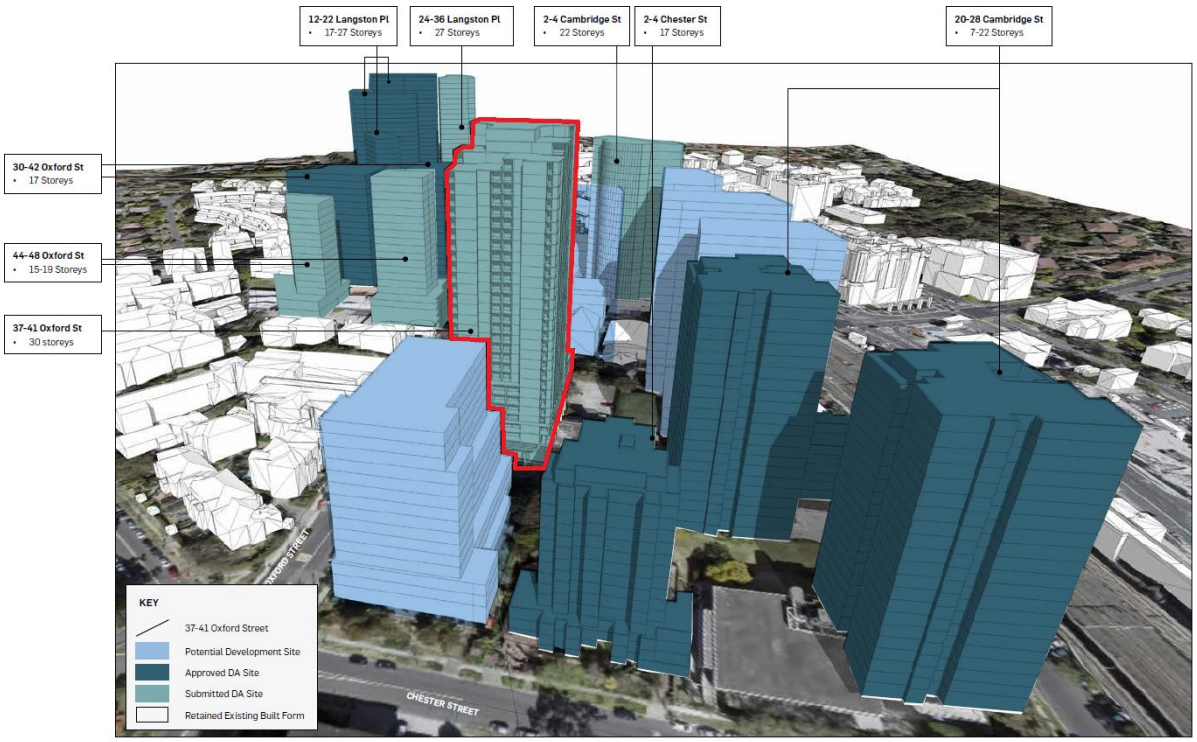

Figure 12. Reference building (outlined in red) in the context of the existing buildings (white), anticipated future applications (light blue) submitted applications (green) and approved/constructed building (dark blue).

The Consent Authority has undertaken an assessment to determine whether compliance with the standard is *'unreasonable and unnecessary'* and there are *'sufficient planning ground'* as follows:

Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken by the Consent Authority 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 its irregular shape and shared boundaries which generate significant development potential with minimal appropriate building footprint locations. The proposed height allows for realisation of the development potential (density) envisaged for the site.

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 the concentration of the development along the street frontage allows for significant public benefits and amenity improvements to the adjacent towers, 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*

   It is considered that the standard has not been abandoned. It is considered that compliance with the standard in this case is unreasonable and unnecessary as the proposed development:

   - Is consistent with the objectives of the development standard, Clause 4.3 of HLEP 2013;
   - The proposal is complies with the FSR development standard of 4.5:1 as set out by Clause 4.4 of HLEP 2013;
   - The proposed variation does not result in unreasonable amenity impacts on the adjoining and nearby properties.
   - The proposal results in a significant amount of open space which will not only provide amenity for the building's occupants but also provided much needed 'breathing room' between the towers on Cambridge Street and Oxford Street.
   - The proposal results in a large area of publicly accessible space to the front of the site.
   - Concentrating development along the street reduces the amenity and safety impacts associated with a second tower to the rear of the site which include:
     - Shops and a residential lobby without street address
     - Overshadowing and overlooking of school to south
     - Loss of outlook for No. 35 Oxford Street west facing units
     - Impact on development potential of No. 16-18 Cambridge Street
     - Convoluted through-site link with poor passive surveillance.
   - Allows complying building setbacks which have not been provided on the adjoining site (No. 35 Oxford Street).

- The proposal exceeds the minimum sustainability requirements.
- The design allows for planting of large trees along the front and rear boundaries which has not been achievable on other town centre site.
- The proposal provides a proportion of commercial space in excess of that provided by other recent developments in the town centre.

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' is more onerous then compliance with zone and standard objectives. The commissioner also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

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

- The unusual site shape results in significant development potential (floor space) with limited appropriate footprints. The original proposal included two height compliant towers which would have resulted in a number of negative impacts. Accommodating all of the allowable floor space in a single taller tower overcomes these issues and as such is considered to be a site specific constraint.
- 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:

B2 Zone Objective	Proposal
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.	The proposal provides a range of office and retail premises which will serve both the existing local community and the future residents proposed as part of the development.
To encourage employment opportunities in accessible locations.	The proposed development is easily accessible by public transport making the proposed commercial units highly accessible to future employees.
To maximise public transport patronage and encourage walking and cycling.	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 commercial 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
To permit a height of building that is appropriate for the site constrains, development potential and infrastructure capacity of the locality.	The height of the building is considered appropriate for the site constraints and infrastructure capacity and will not give rise to any unacceptable impacts on the surrounding residential dwellings and public open spaces.

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 (including the SCCPP) as per NSW Department of Planning Circular 'Variations to development standards' Ref: PS 18-003 dated 21/02/2018 (attached). 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 control would result in a better provision of the permitted floor space across the site. 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 and FSR standards are 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 these 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
1C – General Controls			
Biodiversity	Avoid impacts on biodiversity and environmental features.	The proposal requires the removal of 24 trees (15 of low significance, 9 of medium significance and none of high significance) from the subject site. The applicant has demonstrated that the two most significant trees on site (northern setback) will be retained. While the landscape plan is only a concept at this stage, and does not specify total number of replacement trees, the building envelope allows for significant deep soil planting areas along the front and rear boundaries. The future Stage 2 detailed application will require commensurate replanting. Overall there will be a net increase in vegetation on the site.	Yes (A condition is included to confirm retention of the significant trees)
Stormwater Management	Erosion and Sediment Control, OSD, WSUD (Rainwater Tanks)	Council's Stormwater Engineer is satisfied with the concept plan and considers the large landscaping area will provide ancillary WSUD benefits. Detailed erosion and sediment control plans, OSD, and rainwater tank detail can be provided at the future detailed design stage.	Yes
Earthworks and Slope	Protect the stability of land.	The site slope is not so significant as to require a geotechnical report at this stage. While the basement extends outside the footprint of the building the proposal still provides well in excess of the required deep soil area. The proposal does not require extensive filling.	Yes

Transport and Parking			
Car Share	1 space (as over 50 units)	1	Yes
Bicycle Parking	1/dwelling (265) 1/10 dwelling visitors (27) 1/600sqm commercial (2) [Total 294]	296	Yes
Loading	Room for delivery cars/motorcycles, removalists	The loading dock provides a large area for parking of such vehicles	Yes
Motorcycles	4	12	Yes
Retail Parking *Office Parking*	1 per 30 - 60m2 (7-14) 1 per 50 - 70m2 (9-13)	32 available for allocation after residential minimum achieved	Yes
Accessible Res *Accessible Comm*	27 1	32 (total)	Yes
Travel Plan	To promote sustainable travel.	Not provided. Can be provided as part of future detail DA.	Yes
Accessible Design	Unobstructed step-free access	All entrances step-free	Yes
Waste Management	Waste Management Plan On-Site Collection Garbage Chute System	Not provided. Can be provided as part of future detail DA.	Yes
Air Quality	Air Quality Report	Not provided. Can be provided as part of future detail DA.	Yes
Crime Prevention	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
Avoiding Isolated Site	Demonstrate adjoining sites can be developed.	See discussion below.	Yes
4.6 – Epping Town Centre			
Desired Future Character	In keeping with East Precinct	See discussion below.	Yes
Site Width	>30m	57.0m to Oxford Street	Yes
Floor Space Ratio	4.5:1	4.5:1	Yes
Floorplates	**<700m^2 GFA**	**~800m^2 GFA (as recommended by Council officers)**	**No (See discussion below)**

Height ***Storeys*** ***Transition Building Heights***	 **22 storeys** **Adjacent Residential Areas**	 **30 storeys** **No**	 **No (See discussion below)**
Podium Height	**2 storeys**	**3 storeys**	**No (See discussion below)**
Podium Use	Commercial	Ground: Retail/Business Premises Frist: Business Premises/Live-Work Units **Second: Residential**	**Part (See discussion below)**
Front Setbacks ***Podium*** ***Tower***	 **0m** **12m**	 **4.5m (first, second floors) – 7.5m (ground floor)** **9.0m – 10.3m (as recommended by Council officers)**	**No (See discussion below)**
Side Setbacks (Podium)	0m where commercial adjoining mixed use	0m	Yes
Tower Form	Distinctive base, middle and top Slim and slender proportions Delineated top / taper to sky	The proposal has a distinctive base (podium), middle (tower) and top (tiered upper levels) The implementation of deep, 3m wide indents in the towers helps reduce the appearance of bulk. Stepped roof form	Yes Yes Yes
Frontage Activation	**Active Frontage (90% shop and office windows and building entrances)**	**33.4m/57.0m (59%)**	**No (See discussion below)**
Wind Effects	**Wind Effects Report (inc. wind tunnel testing)**	**Wind Effects Report provided (no wind tunnel testing)**	**No, wind tunnel testing to be required at Stage 2 by Condition**
Solar Reflectivity and Glare	<20% reflection	The applicant has not addressed this control. Can be provided as part of future detail DA.	N/A

Housing Choice	1br – >10% 2br – >10% **3br – >10%**	0/1 bed – 89 (33%) 2 bed – 159 (60%) **3 bed – 17 (6%)**	Yes Yes **No (detailed housing mix to be determined at stage 2)**
Adaptable Units	10% (>26)	10% (26)	Yes
Public Art	Buildings should include … public art to enhance the public domain.	The applicant has not addressed this control. Can be provided as part of future detail DA.	N/A
Key Development Principles	**New street / lane / shareway and pedestrian connection through site to Cambridge Street.**	**Not provided.**	**No (See discussion below)**

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 tower element is well setback from the street and podium and, although large in scale, is broken up with wide and deep indents to provide slender proportions.
- As discussed below a safe and accessible through site link is not considered possible on the site.
- The proposal adequately activates the ground plane.
- The proposal provides large trees in the front setback area which will help to maintain a leafy feel to the suburb.
- 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. The height, though non-compliant, steps down to the adjoining residential zone to the north.

Podium Height

While the proposal provides a 3 storey podium, as opposed to the 2 storeys recommended by the DCP, this is considered to be acceptable in this instance for the following reasons:

- The adjoining building to the south (No. 35 Oxford Street) has a 3 storey podium, including a large blank 3 storey elevation on the shared boundary between the two sites.
- The 3 storey podium is considered to relate well to the height of the building.

Podium Use

The proposal provides 2 of 3 storeys of the podium with commercial uses. While the DCP requires the entire podium be commercial, it also only requires a 2 storey podium (minimum). Further, the proposal provides more commercial floor space, in more formats, than have been approved in nearby developments. 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 and home occupation floor space at first floor is considered to be commendable.

Front Setback

The non-compliant podium setback to Oxford Street is considered to be acceptable for the following reasons:

- The setback allows for replacement of the significant trees which will be removed from the front of the site.
- The setback will transition to the setback of the adjoining property to the north which is located in an R4 zoning with 6m front setback requirements.

Notwithstanding the above a condition is recommended clarifying that all floors in the podium envelope should be setback 4.5m from the street. This provides a level of flexibility for stage 2 which will ensure that the detailed design of the street elevation is appropriate. It may be that the under croft area shown on the current reference scheme is not appropriate.

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

- The adjoining tower at No. 35 Oxford Street has been approved with a 9m setback and as such the proposal will not appear out of place in the context of the street.
- The adjoining lots to the north are shallow in depth and as such it is unlikely that they will be able to accommodate a reasonable tower footprint unless they also implement a reduced front setback.

Floorplate

As outlined above there is a tension on the site between the allowable floor space and the unusual shape of the site. In order to ensure a viable development while protecting the amenity of adjoining sites it is considered appropriate to provide a single tower form on site. In order to achieve this, while minimising the height, it is necessary to allow a slight increase to the floorplate size. The proposed floorplate is supported by Council's City Architect and Manager of Urban Design.

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 northern setback area is likely to be used as an outdoor seating area for a restaurant and as such will provide additional activation.

Wind

The applicant has submitted a preliminary wind effects report. A condition is included setting wind acceptability criteria for the various publicly accessibly areas. The wind effects report has been reviewed by an independent reviewer and found to be acceptable subject to detailed wind tunnel testing at Stage 2 confirming the wind criteria will be met.

New street / lane / shareway and pedestrian connection

The Hornsby DCP 2013 and Epping Town Centre Public Domain Guidelines recommend through site links through the site as depicted in the figure below.

Figure 13. Through site link requirement as depicted by the Hornsby DCP 2013 (left) and Epping Town Centre Public Domain Guidelines 2015 (centre and right) [site in red left and orange centre/right].

The DCP states the following on the intention of the shareway (emphasis added):

> *Provide a new east-west shareway for access linking Oxford Street and Cambridge Street as part of any future redevelopment of 41 Oxford Street (existing Cambridge Business Park). The detailed design of the* ***street*** *including the width, direction + intersection treatments are to be determined in consultation with Council and supported by a Traffic Impact Assessment.*
>
> *Provide access to basements + service areas from the shareway or Chester Street. If access is not available from these streets, consolidate vehicle entrances from Oxford Street.*

The Epping Town Centre Public Domain Guidelines appear to abandon the requirement for a street and instead propose a pedestrian through site link. However, different diagrams in the Guidelines recommend contradictory alignments (see centre and right diagram in Figure 13 above).

The proposal does not include a through site link which is considered to be appropriate for the following reasons:

- Hornsby Ref: DA/681/2015 at 20-28 Cambridge Street (immediately to the west) did not provide the western portion of the shareway and as such it is not possible to provide a vehicular through site link.
- Council Urban Design officers consider that any pedestrian through site link in this location would need to be straight so as to provide visual connection, safety and clear path of travel. DA/681/2015 provided 2 possible connections for a through site link. The northern connection was offset from the northern boundary of the site and as such a straight connection was not possible in this location. A straight connection to the southern link would go straight through the ideal building footprint for the site and as such was inappropriate. The figure below demonstrates the convoluted nature of links into the site.
- Normally a through site link would be dedicated to Council so that it could be maintained in a safe and efficient manner. The presence of basements below both 20-28 Cambridge Street and the subject site would make dedication difficult.
- There is a significant grade change between Cambridge Street and Oxford Street and DA/681/2015 did not provide clear step-free access. As such the amenity of a through-site link for less abled bodied persons or people with prams/luggage would be compromised.
- The through site link is not that far from Chester Street and as such would not provide that much convenience or time saving.
- A northern path would likely require the removal of a significant tree on the northern side of the subject site which is not desirable.
- A southern path would be significantly overshadowed by the subject tower and as such would be dark for most of the day.
- A southern tower would pass the skewed rear podium of No. 35 Oxford Street (See Figure 7 above).

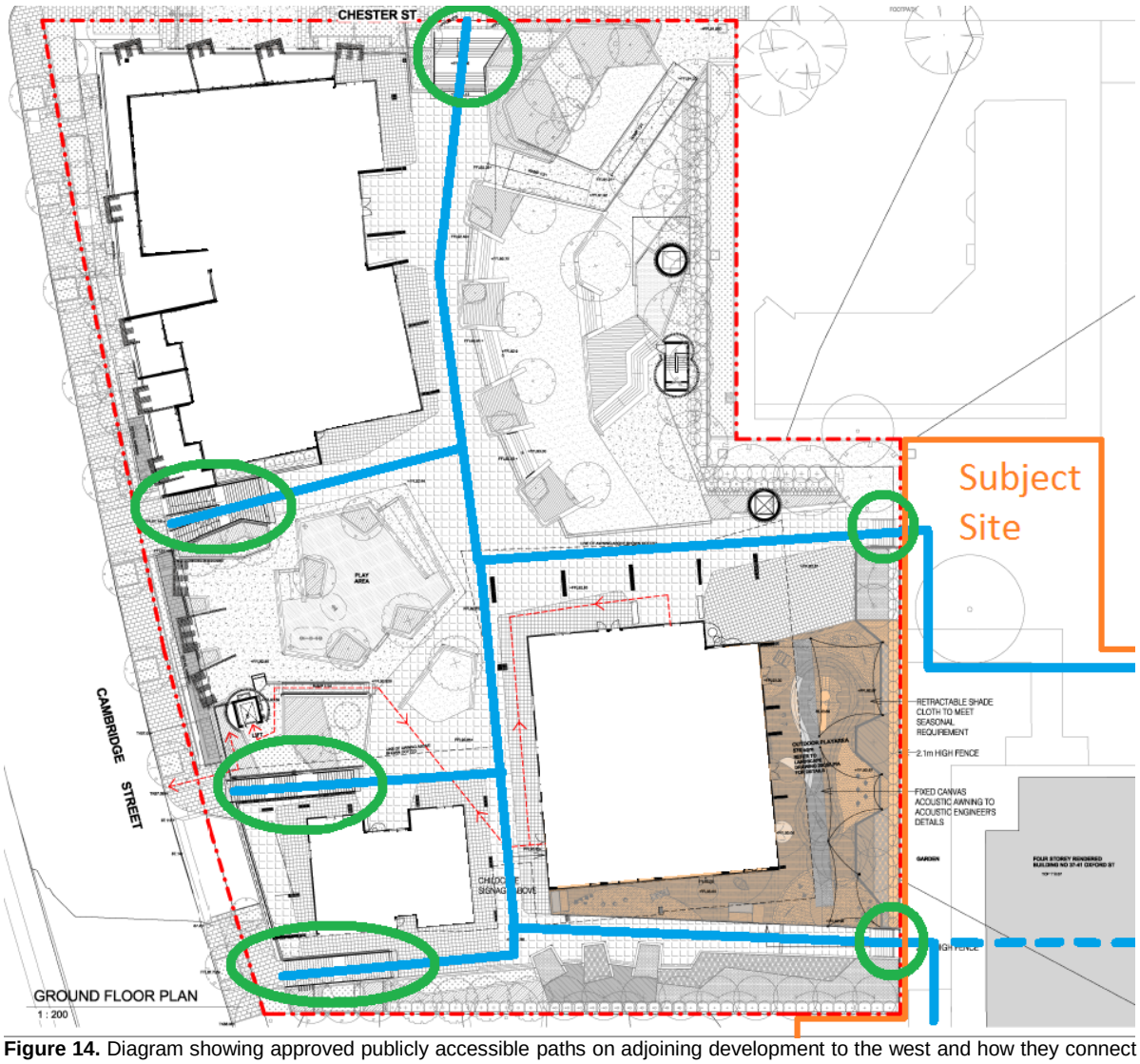

Figure 14. Diagram showing approved publicly accessible paths on adjoining development to the west and how they connect to the subject site (blue lines) with steps shown (circled green).

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.

10. Other Planning Controls

Epping Town Centre Public Domain Guidelines

Hornsby Shire Council adopted public domain guidelines for Epping Town Centre on the 9th December 2015 following the amendment of HLEP 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	3 storey	Yes
Village Street	Ground Floor Retail Awning	Ground Floor Retail Awning	Yes Yes

Widened Footpath	6m	Retain existing (~3.6m). Not possible to widen footpath as No. 35 Oxford Street built to boundary.	Yes (can be widened by reducing on-street parking if desired in future)
Through site link	Link to Cambridge Street through site	No through site link	No (see discussion in Section 9.1 above)

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

Parramatta Public Domain Guidelines

The latest Parramatta Public Domain Guidelines, released July 2017, include updated public domain plans for the East Epping precinct, specifying paving materials, tree planting and the like. The relevant requirements will be enforced at the time of the future detailed development application.

11. Planning Agreements

No planning agreements relate to the site.

12. The Regulations

Pursuant to Clause 100 of the Environmental Planning and Assessment Regulation 2000 a condition is included specifying that no works are approved as part of this 'Stage 1' application and that a future 'Stage 2' application must be submitted and approved prior to any works on site.

13. The Likely Impacts of the Development

The likely impacts of the development have been considered in this report and it is considered that they are consistent with the impacts anticipated by the planning framework. The impacts that arise are acceptable.

14. Site Suitability

The site is located within the Epping Town Centre regeneration 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 notification ran for a 30-day period between 4 May and 5 June 2017. Seven (7) submissions were recieved during this notification from six (6) unique properties.

Subsequent to receipt of revised drawings the application was re-notified for a 30-day period between 11 January and 13 February 2018. Fourteen (14) submissions were received during this notification from twelve (12) additional unique properties.

A total of 21 submissions have been received from 18 unique properties.

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.

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

Issues Raised	**Comment**
First Notification	
Minimal separation / setbacks	The revised drawings provide complying side setbacks. Where the proposal does not comply with building separation requirements it is due to non-complying setbacks on adjoining sites. The front tower setback is considered to be acceptable based on the precedent of the adjoining tower to the south.
Impact on development potential of adjoining sites (to north and south-west)	The removal of Tower B and setting back of the northern elevation in compliance with ADG standards ensures the proposal will not have an unacceptable impact on the development potential of adjoining sites.
Loss of office space / lack of commercial uses not in keeping with objectives of B2 zone	As discussed above, the proposal is considered to provide an appropriate amount of commercial floor space and a proportion in excess of that which has been approved on adjoining/nearby sites.
Lack of affordable housing	There is no legislative requirement at this time to provide affordable housing.
Unacceptable bulk / footprint / building length	While it is agreed that the building is slightly bulkier, longer and stouter than would normally be considered appropriate, the proposal is considered to be acceptable in this case as it allows for all of the site's capacity to be realised without the amenity impacts of a second tower. Further, the façade has been broken up with deep and wide recesses to minimise the appearance of bulk.
Podium too large	The podium was reduced from 4 storeys to 3 storeys and is considered to be appropriate given the scale of the building.
Overdevelopment / Out of context	The proposal has a compliant FSR. While the proposal is much larger than the buildings historically present in the area, the area is transitioning to a higher density area as envisaged by the LEP.

Over supply of parking in proximity to train station / traffic impact	The level of parking envisaged is in keeping with the requirements of the controls. The traffic impact of the minimum parking required is anticipated by the density of development allowable. The proximity to Epping station provides incentive to use public transport.
Lack of provision of and impact on public infrastructure (schools)	It is the responsibility of the state government to provide schools commensurate with population.
Lack of ESD	As outlined above, the proposal provides a meaningful improvement on minimum sustainability requirements.
Amenity impacts on adjoining units and school (inc. loss of outlook, privacy, glare and light).	The removal of Tower B significantly reduces amenity impacts on the school, west facing units of No. 35 Oxford Street, and existing/future towers on Cambridge Street. The amended proposal provides adequate solar access and privacy to No. 35 Oxford Street units. The amenity impacts on other adjoining/nearby properties is considered to be acceptable, as outlined above.
Potential impact of existing/future development on proposed buildings amenity not considered (acoustics from school, overshadowing from new buildings to north).	The removal of Tower B results in the nearest units being well separated from the school playground (~35m) and the lower units will be shielded by the tower at No. 35 Oxford Street. The adjoining site to the north has a 48m height development standard (12-15 storeys in DCP). Based on the likely separation and solar altitude in mid-winter, approximately 20 units (in the reference design configuration) are likely to be affected by development on the site to the north. However, some of these units may still receive the required solar access in a combination of morning and afternoon light. The impact is not considered to be such as to refuse the subject application or materially impact the development potential of the site to the north.
Impact on significant trees on/near boundaries	The applicant revised the proposal to ensure the significant trees on the northern side of the site are protected.
Through site link unsafe	The revised drawings remove the through site link, partially for this reason.
Not design excellent	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. The stage 2 application will also need to demonstrate design excellence.
Impact on nearby heritage items	As discussed above the proposal is considered to be adequately separated from the nearest heritage items to ensure it would not have a material impact on those items.
Second Notification	

Unacceptable height	As outlined in Section 7.8 of this report, the requested breach of the height standard is considered to be acceptable because it is accompanied with a Clause 4.6 request that demonstrates that the site has site-specific constraints which warrant a breach. The originally proposed height compliant '2-tower' scheme would result in inappropriate urban design outcomes which are avoided by allowing the breach.
Overshadowing of adjoining properties (i.e. residents and child care centre)	The shadow diagrams submitted with the application demonstrate that adjoining and nearby properties will receive the required solar access. Removal of 'Tower B' will reduce overshadowing on the adjoining school to the south.
Social problems associated with tower living	No evidence was provided to support this assertion. High density residential development is anticipated by the planning controls.
Inappropriate to remove through site link	As discussed above it is considered that a through-site link is not appropriate in this location as it would have poor sightlines (and thus safety), poor accessibility, poor amenity (solar access) and provide modest public amenity as it is close to a cross street.
Loss of outlook due to lack of setbacks/separation to adjoining buildings (i.e. No. 35 Oxford Street)	Where an adjoining site is built to the boundary in a B2 zone it is considered appropriate to match that setback as is proposed in this case. The upper level setbacks comply with the relevant ADG standards. As such the proposal is not considered to result in an unreasonable loss of outlook.
No supermarket provided.	The applicant is providing a level of commercial floor space commensurate with the controls. How that floor space is occupied will be dictated by the free market; Council cannot stipulate how commercial floor space is used.
Loss of privacy	As outlined above the habitable rooms in the reference scheme are sufficiently separated from the habitable windows of adjoining and nearby properties so as to ensure sufficient privacy.
Development should not be approved until there is a new Urban Design Framework for Epping	The application has been assessed against the current Urban Design Framework, which is comprised of the relevant SEPPs, LEPS, DCPs, and Guidelines and found to be acceptable. No new framework is '*imminent and certain*' and as such cannot be considered in assessment of this application.
Construction impacts and streets not wide enough for trucks.	A construction management plan will be required as part of the future Stage 2 consent.
Wind Study Insufficient	As outlined above a wind effects report considered to be sufficient for the purposes of a Stage 1 concept approval has been received. A condition is included requiring wind tunnel testing to demonstrate that appropriate criteria are met as part of Stage 2.

The application should not be determined until the Epping Traffic Study is complete. The Epping Traffic Study may demonstrate that there is no additional road network capacity for new development.	While only a reference design at this stage, the level of traffic to be generated by the proposal is in keeping with the density envisaged for the site. Regardless, the results of the Epping Traffic Study are not 'imminent or certain' and as such cannot be used as the basis for refusing to determinate an application. If Council were to refuse to determine the application the Applicant could appeal to the Land & Environment Court for determination and may seek Council pay their costs. If released at the time, the traffic study can be considered as part of the Stage 2 application.
A monetary contribution should be required towards public assets/infrastructure.	The applicant will be required to pay the applicable Section 94 contributions as part of the Stage 2 application. Council's Section 94 plan outlines how this money will be spent.
The applicant did not undertake a consultation exercise with the public.	This is not a statutory requirement. Council has undertaken the necessary advertisement/notification of the proposal.
Lack of public open space and no public access to open space at the rear of the site.	The open space to the rear is intended as private communal open space for the residents of the development. While this large space is not accessible to the public it has a number of ancillary public benefits including, but not limited to, increased stormwater infiltration, increased large tree planting, increased outlook for adjoining units. The applicant has provided a publicly accessible forecourt. While this is not considered to be a significant contribution to the public domain, it is not strictly necessary for the applicant to provide any public open space.
Loss of Vegetation	The proposal would maintain the two large trees to the north of the site. The trees to the front will be replaced by similar trees. Otherwise, a detailed landscape plan outlining an appropriate level of vegetation will be required at stage 2. All of these requirements are conditioned.
Open space of poor quality.	As outlined above, the detailed design of the open space will be required and assessed at Stage 2.
Overshadowing of heritage items (Rockleigh Park/Scout Hall)	Rockleigh Park and the Scout Hall are roughly due east of the proposed building, over 100m from the site, and as such will only be overshadowed by the development briefly in the early morning hours of the winter months. The park and hall will still receive the required solar access.
Inappropriate bulk / not slender as required	While the proposal includes a footprint 14% larger than recommended in the DCP, wide and deep indents and a stepping roof form have been provided to reduce the appearance of bulk.
Two towers preferable because Tower B could be all residential.	If Tower B were all residential it would be classified as a residential flat building and as such would not be permissible in the zone.

Should not be approved until there is another crossing of the train line.	The applicant is not required to provide wider off-site public infrastructure. The applicant's s94 contribution, which will be secured as part of Stage 2, will provide the public infrastructure outlined in Council's Section 94 plan.
Insufficient bicycle parking.	The reference scheme demonstrates that there is space for compliant bicycle parking.
No car wash space provided.	A car wash space would be a condition of the stage 2 application.
ADG non-compliance, including undersized apartments.	While the reference scheme demonstrates that the proposed envelopes are capable of accommodating generally ADG compliant units, the future detailed design will determine the actual level of ADG compliance.
The building will have fire safety issues.	Fire Safety is covered by the Building Code of Australia and will be a condition of any Stage 2 consent.

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. Hornsby Section 94 Development Contributions Plan

Developer contributions are required as per the Hornsby Section 94 Development Contributions Plan 2014-2024. The contributions will be calculated and applied as part of the future Stage 2 'detailed design' development application when the exact number and type of units/uses is confirmed.

19. Summary and Conclusion

The application has been assessed relative to section 79C 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, Hornsby LEP 2011 and Hornsby DCP 2011 are sought.

The variation requested to the height standard is supported for the following reasons:

- A single larger tower avoids a two-tower built form for the site which would have resulted in the following negative impacts:
    - Shops and a residential lobby without street address
    - Overshadowing and overlooking of school to south
    - Loss of outlook for No. 35 Oxford Street west facing units
    - Impact on development potential of No. 16-18 Cambridge Street
    - Convoluted through-site link with poor passive surveillance.
    - Non-complying setbacks/separation
- Significant open space to the rear of the site (~2,750sqm) providing visual separation between

the towers in the locality
- Publicly accessible open space to front
- Significant deep soil tree planting zones to front and rear
- More commercial floor space in podium than in adjoining properties.
- The applicant has agreed to exceeding the minimum environmentally sustainable design requirements

While the proposal does not include a through site link as envisaged by the Hornsby DCP, it is considered that a through site link would have poor amenity/utility and result in unreasonable impacts on the development potential of the site.

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the development has been responsibly designed and provides for 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.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979.

20. Recommendation

A. **That** the Sydney Central City Planning Panel approve variations to the building height standard in Clause 4.4 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 **Concept Development Consent** to Development Application No. DA/314/2017 for a 30 storey mixed use tower building envelope with 4 storey basement at 37 – 41 Oxford Street, EPPING NSW 2121 (Lot 2 DP 1205413) for a period of five (5) years from the date on the Notice of Determination, subject to the conditions in Appendix 3.

APPENDIX 1 – APPLICANT'S CLAUSE 4.6 REQUEST

CLAUSE 4.6 VARIATION REQUEST TO HEIGHT STANDARD

37-41 OXFORD STREET, EPPING

19 FEBRUARY 2018
FINAL
PREPARED FOR GOODMAN

URBIS

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

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EXECUTIVE SUMMARY

This variation request has been prepared under clause 4.6 of the Hornsby Local Environmental Plan 2013 (HLEP 2013) to provide justification to Parramatta City Council (Council) for the proposed variation of the maximum building height development standard prescribed for 37-41 Oxford Street Epping (the site) under clause 4.3 of the HLEP 2013.

The HLEP 2013 specifies a maximum building height of 72m for the site. The maximum height of the proposed building envelope is 95.67m measured to the top of the proposed lift overrun. The maximum height exceeds the 72m height limit by 23.67m (32.88%).

The proposed variation in height is proposed to facilitate one mixed-use tower envelope which steps down towards the north to provide a noticeable visual height transition to the adjacent 48m height zone. The stepping of the building means that at its lowest point at the north-east corner, the building height is exceeded by 16.59m (20.26%).

In summary, the proposed variation to the building height standard sought via clause 4.6 of the HLEP 2013 should be supported because:

- Flexibility in applying the development standard is acceptable as the resultant design will achieve a positive planning outcome for the site and the Epping Town Centre;
- As demonstrated within this variation request, strict compliance with the numerical standard is unreasonable and unnecessary in the circumstances of this case;
- Council and the Sydney West Central Planning Panel (SWCPP) have effectively abandoned strict compliance with the standard through the granting of development consents to similar height variations;
- As demonstrated in this variation request, there are sufficient environmental planning grounds to justify a variation to the development standard; and
- The proposed variation is in the public interest as it results in significant and quantifiable public benefits.

This clause 4.6 variation request demonstrates exceptional circumstances where flexibility in the application of a numerical development standard is warranted. Detailed design undertaken as part of the development application process and in response to Council's comments has resulted in a superior development which responds to site specific constraints and features, improves urban design and strategic outcomes for the site and provides a better outcome for the community and future residents of the site. More specifically the variation is warranted for the following reasons:

1. The proposed development is consistent with the objectives of the height of buildings development standard in clause 4.3 of the HLEP 2013 and the B4 land use zoning objectives despite the numerical non-compliance.
2. It has been demonstrated within the Urban Design report accompanying this request **(Appendix A)** that the proposed variation will not result in adverse environmental impacts on the neighbourhood, amenity and streetscape and will create a positive relationship with surrounding tall tower forms through increased building separation and setbacks. This includes:
    a. Facilitating a built form that positively contributes to the surrounding Epping Town Centre and enables a positive design response to the constraints of the site presented by the multiple boundaries to adjoining sites and recently approved residential development;
    b. A taller, more slender tower form that achieves greater design excellence and improves the relationship with other towers (existing and proposed) on neighbouring sites in terms of separation, setbacks, amenity and urban form;
    c. Massing and building separation which allows for a significant portion of the site to be devoted to communal open space and deep soil landscaping and allows for approximately 95% of the communal open space to receive a minimum of 2 hours of sunlight in mid-winter (21 June); and
    d. Acceptable environmental impacts on the adjoining and surrounding properties in the context of the emerging high density environment.

e. Shadow analysis which illustrates how the slender tower floorplate facilitated by the proposed height variation produces thinner, faster moving shadows over the ground plane and results in negligible additional impact to the solar access of surrounding development including 35 Oxford Street.

3. Having regard to the existing site constraints and consolidating the floor space into a single tower up to the height sought, enables the proposed stage 1 envelope to achieve the floor space ratio (FSR) that was determined for the site by the priority precinct program. The FSR for the site was identified having regard to the significant State Government investment in public transport infrastructure, including the North-West Metro.

4. The ability to achieve the FSR designated for the site maintains consistency with the future scale and character envisaged by the Epping priority precinct and as outlined in the Epping Urban Activation Precinct Planning Reports and clause 4.6.1 of the Hornsby DCP for the following reasons:

    a. The proposed building height variation aids in the delivery of a compact, high density, town centre core by facilitating the allowable FSR on the site and as such achievement of the highest and best use for the site;

    b. Achieving the maximum allowable FSR will ensure a wider range of housing options in close proximity to public transport and employment opportunities;

    c. Achieving the allowable floor space is crucial delivering on the objectives for the priority precinct to provide increased residential density around Epping station and support the significant investment in infrastructure such as the Metro North West by the NSW State Government;

    d. Increased housing density in close proximity to frequent transport services at Epping Station supports the Sydney Region Plan principle of a 30min city as re-emphasised by the revised Draft District Plans which also identify a potential future mass transit connection from Epping to Parramatta;

    e. The proposed height variation specifically enables realisation of the allowable floor space on the site in a viable single-tower design that significantly enhances the overall built form;

    f. The proposed height enables increased podium and tower setbacks that significantly improve the public domain in the Epping Town Centre to benefit existing and future residents; and

    g. The proposed building height minimises impacts to the surrounding sites including acceptable levels of overshadowing to surrounding properties and increased sunlight to the street and communal open space areas.

5. The proposal results in significant quantifiable and discernible public benefits including:

    a. An enhanced area of public domain along Oxford Street through the provision of a 4.5m setback to the podium.

    b. 301 sqm of public domain along the northern boundary of the site which includes approximately 146 sqm of unencumbered paved area for use by the adjacent commercial tenancy;

    c. 2,829 sqm of landscaped communal open space available for use by residents at the rear of the site and on the level 26 rooftop (57% of the site) exceeding ADG requirements (7%);

    d. A large area of activated frontage along the Oxford Street wrapping around the site to the north. These frontages provide high visibility and good exposure for retail premises and can accommodate product displays and outdoor seating areas for cafes/restaurants

    e. 96 sqm of deep soil area for street tree planting along the Oxford Street frontage and the provision of significant areas for deep soil planting and mature tree growth within the rear communal open space areas which provide wind and shade protection reducing the urban heat island effect;

    f. Acceptable shadow impacts to surrounding land and a high level of sunlight to the street and communal open space area at the rear;

g. Increased building separation over the minimum distances required by the ADG;

h. Enabling a detailed design that is capable of consistency with the ADG and Hornsby DCP 2013 as demonstrated in the accompanying reference design;

i. ESD commitments over and above standard BASIX commitments;

j. The proposal's contribution to supporting the commercial function of Epping Town Centre through the provision of 1,283 sqm of retail and commercial space that has the potential to accommodate approximately 81 jobs within a diverse mix of spaces including 8 SOHO apartments; and

k. The acceptable environmental impacts that will result from the reference scheme.

The development standard has also been abandoned as evidenced by recent development consents approved within the Epping Precinct and the wider Parramatta Local Government Area (LGA). A review of Council's register of variations to development standards has identified several instances in which significant variations to clause 4.3 Height of Buildings has been supported by Paramatta City Council within Epping and in other areas within the LGA. Most recently in Epping:

- Council and the SWCPP approved a 28.9% increase over the 72m height standard at 12-22 Langston Place Epping; and
- Council have also recommended an increase to the overall building height for a development application currently under assessment at 24 Langston Place. The proposed variation is 21.9% over the 72m building height standard.

The built form massing proposed at 37-41 Oxford Street makes a positive contribution to the desired future character of Epping Town Centre. Consideration of the proposal in its context demonstrates the proposed massing, including the additional height, is in keeping with the controls and objectives for the Epping Town Centre within the Hornsby LEP 2013 and Hornsby DCP 2013, meets the requirements of the ADG and, additionally, contributes to public benefit outcomes for the overall precinct.

Overall, the proposal maintains an exceptional level of amenity to residents and will not result in any unacceptable environmental impacts to adjoining land. Strict compliance with the development standard is unreasonable and unnecessary, as the proposed variation facilitates a development outcome that enables the highest and best use of the land as envisaged by the priority precinct objectives.

1 INTRODUCTION

This variation request has been prepared under clause 4.6 of the Hornsby Local Environmental Plan 2013 (HLEP 2013) by Urbis Pty Ltd (Urbis) on behalf of Goodman Property Services (Aust) Pty Ltd, the applicant for development application DA/314/2017 submitted to Parramatta City Council (the Council).

This request seeks to provide justification to vary the maximum building height development standard prescribed for 37-41 Oxford Street Epping (the site) under clause 4.3 of the Hornsby LEP 2013 (HLEP 2013).

A stage 1 development application (DA) was submitted to Council on 18 April 2017 (DA/314/2017). The application sought consent for two building envelopes which complied with the maximum height of 72m under clause 4.3 of the HLEP 2013 and sought to achieve the maximum allowable floor space ratio (FSR) on the site of 4.5:1. The stage 1 DA was accompanied by a reference building design that demonstrated how the buildings could be designed within the proposed building envelopes.

Since the lodgement of the stage 1 development application, the proponent has engaged in ongoing consultation with Council's planning and urban design staff to achieve alternate solutions that deliver a scheme that provides an enhanced outcome in the context of existing and proposed development and the surrounding public domain.

In a meeting with Council on 1 June 2017 the proponent agreed to submit revised plans on a without prejudice basis so that Council staff could brief and seek feedback from the DEAP and Sydney West Central Planning Panel (SWCPP) for a single podium and tower design on the site. This scheme proposed the same permissible FSR of 4.5:1 within one tower resulting in additional height above 72m.

Feedback from the DEAP and SWCPP was generally supportive of the single tower scheme with increased height. After receiving this feedback Council issued a formal request for information (RFI) letter to the applicant dated 29 June 2017.

The RFI provided alternate design solutions and direction that subject to a detailed review of environmental impacts, additional height may be supported to accommodate the floor space in one consolidated podium and tower built form fronting Oxford Street and stated:

> *"Any variation to the height standard must be supported by a Clause 4.6 Variation Request. It is considered that as part of the request the applicant should undertake an urban design study which includes:*
>
> - *Provision of 3D views from both Oxford Street and surrounding properties is required to fully appreciate the extent to which the built form can address issues raised above (massing, stepping of heights, vertical articulation tower footprint).*
> - *A more detailed context analysis including investigation of the existing and future adjacent built form in Oxford Street. Where possible analysis should include recent development proposals such as 43-53 Oxford Street to ensure the proposed development is suitably integrated, particularly at podium and street level*."

A Stage 1 DA Urban Design Report (Urban Design Report) has been prepared by Urbis to support the proposed variation to the building height standard. The Urban Design Report includes 3D views from Oxford Street and surrounding properties in addition to a detailed context and environmental impact analysis. The Urban Design Report is included as part of the amended development application package and has informed justification of the additional building height within this clause 4.6 variation request under HLEP 2013.

As demonstrated by Council's alternate solutions, specific flexibility required to some controls to ensure orderly and economic development can be achieved on the site whilst maintaining acceptable impacts and amenity to adjoining sites.

1.1 THE SITE

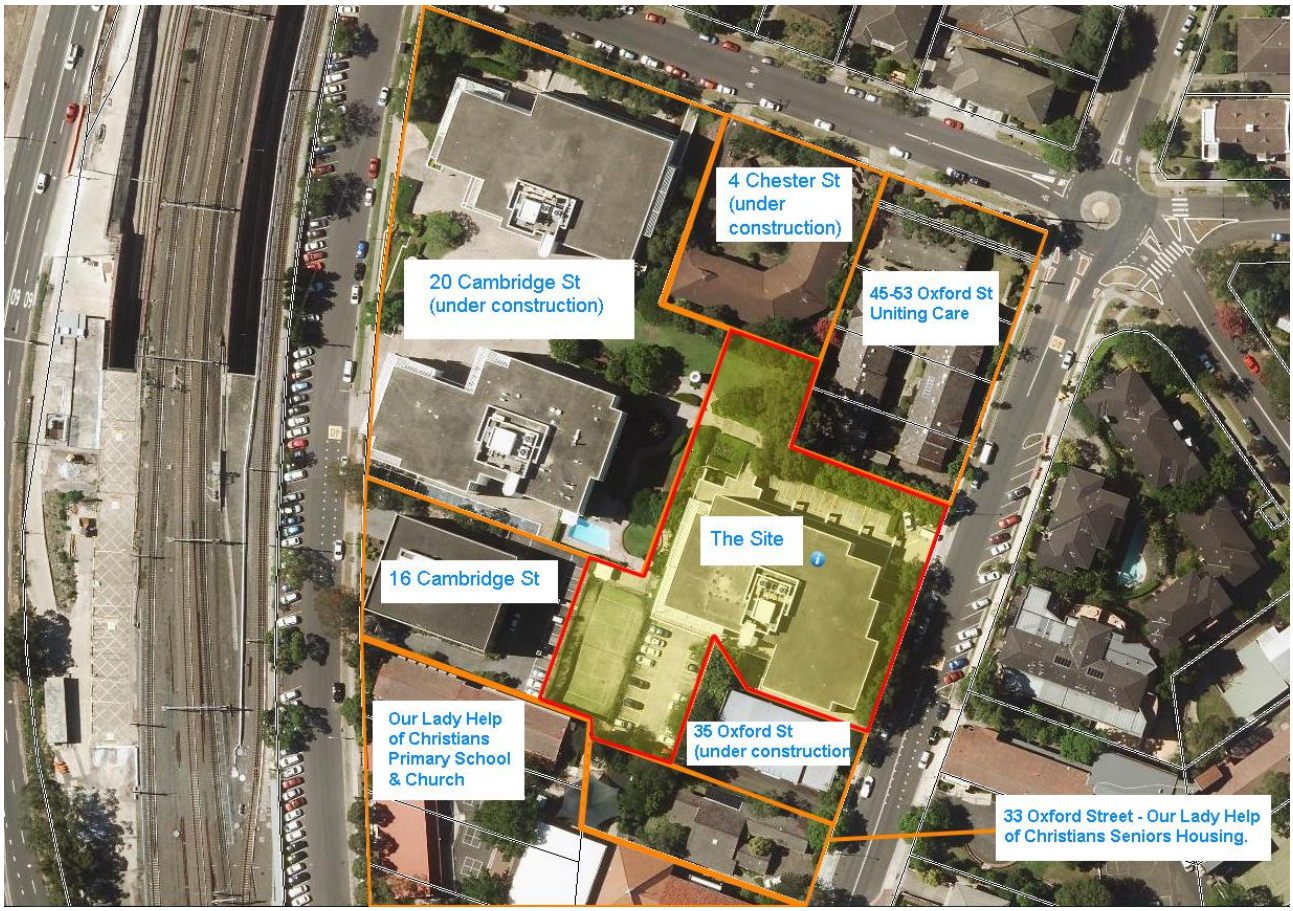
The site is located at 37 – 41 Oxford Street Epping. It is legally described as Lot 2 in DP1205413. The site is owned by Goodman Property Services (Aust) Pty Ltd. It is located within the Parramatta LGA. However, prior to boundary adjustments in May 2016 the site was located within the Hornsby LGA.

The site has an area of 4,970sqm and is an irregularly shaped allotment with complex boundary relationships to several adjacent properties which includes a splayed southern boundary to 35 Oxford Street.

The site is presently occupied by a four (4) storey commercial office building known as the 'Cambridge Office Park'. The building is leased by Arden Anglican School and Intuition Education Australia for additional class rooms. The site also accommodates an ancillary tennis court and landscaping.

An aerial photograph of the site and surrounding development is included below at Figure 1. A plan showing the future development context of the Epping Town Centre is shown at Figure 2.

Figure 1 –Aerial Photograph of the Site.



Source: maps.six.nsw.gov.au

Figure 2 – Epping Town Centre with Future Development Context

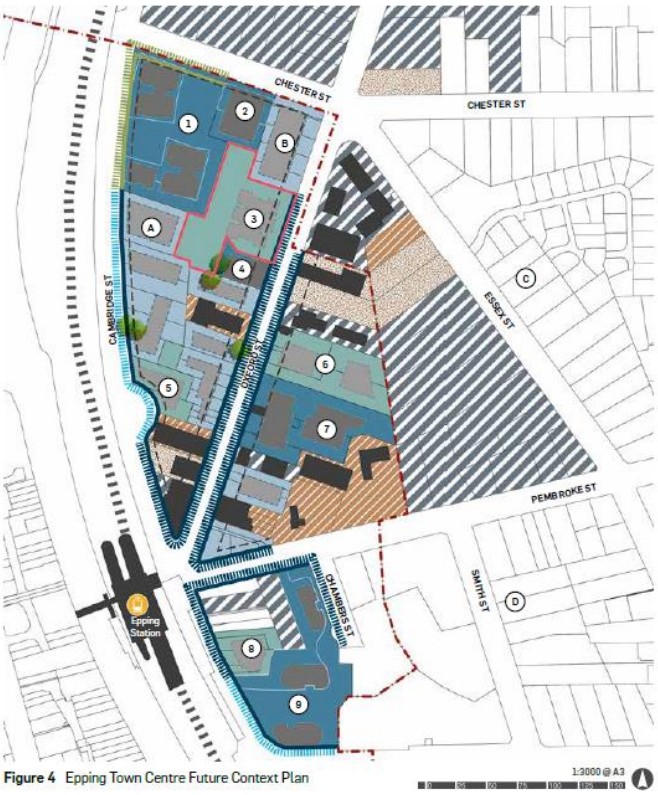


Figure 4 Epping Town Centre Future Context Plan

Table 2 Existing and future DA summary - Epping Town Centre

	DEVELOPMENT SITE	STATUS	FSR	HOB (STOREYS)
1	20-28 Cambridge St	Under Construction	4.5	7-22
2	2-4 Chester St	Under Construction	4.5	17
3	37-41 Oxford St	DA Submitted	4.5	30
4	35 Oxford St	Under Construction	6	26
5	2-4 Cambridge St	DA Submitted	4.5	22
6	44-48 Oxford St	DA Submitted	4.5	15-19
7	30-42 Oxford St	Under Construction	4.5	17
8	24-36 Langston Pl	DA Submitted	6	27
9	12-22 Langston Pl	Approved	6	17-27
A	16 Cambridge Street	DA being prepared		
B	53 Oxford Street	DA being prepared		
Adjacent to Town Centre				
C	11 Essex Street	DA Submitted		
D	5 Smith Street	DA Submitted	(70 units)	

Source: Urbis Urban Design

2 PROPOSED HEIGHT VARIATION

The development standard in clause 4.3 of HLEP 2013 specifies a maximum building height of 72m for the site. The maximum height of the proposed building envelope is 95.67m measured to the top of the proposed lift overrun. The maximum height exceeds the 72m height limit by 23.67m (32.88%).

The variation in height is proposed to facilitate one mixed-use tower envelope which steps down towards the north to provide a noticeable visual height transition to the adjacent 48m height zone (Zone X in Figure 3). The stepping in height is shown on the roof plan and section at Figure 4. The stepping of the building means that at its lowest point at the north-east corner, the building height is exceeded by 14.59m (20.26%).

Figure 3 – Building Height – Epping Town Centre

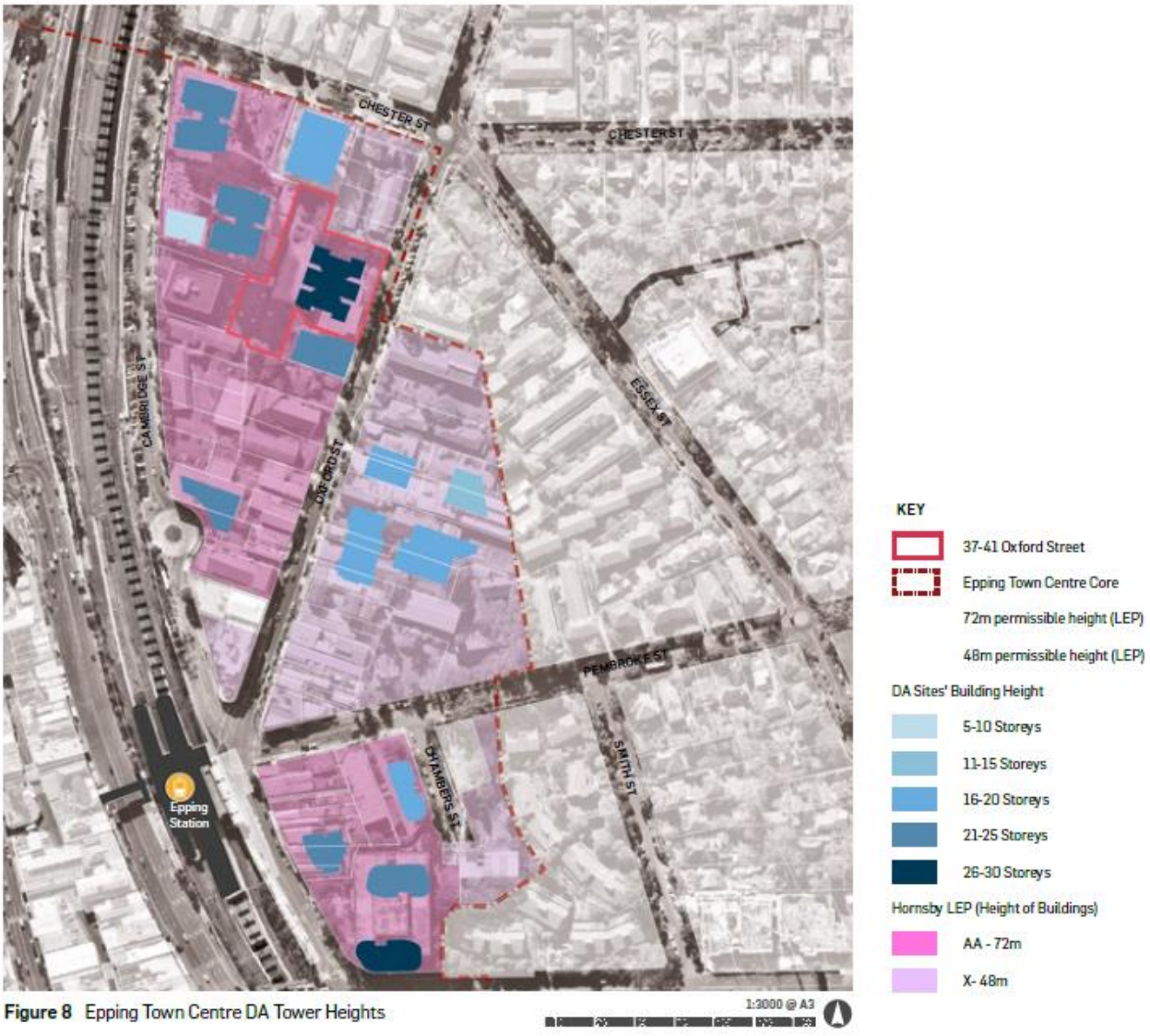
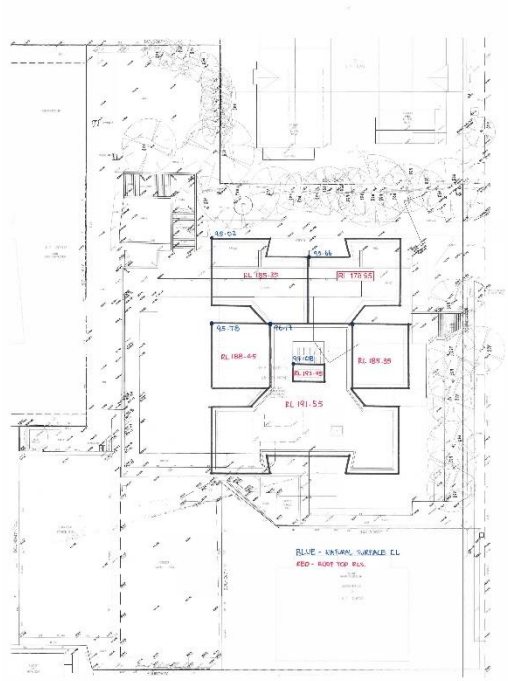


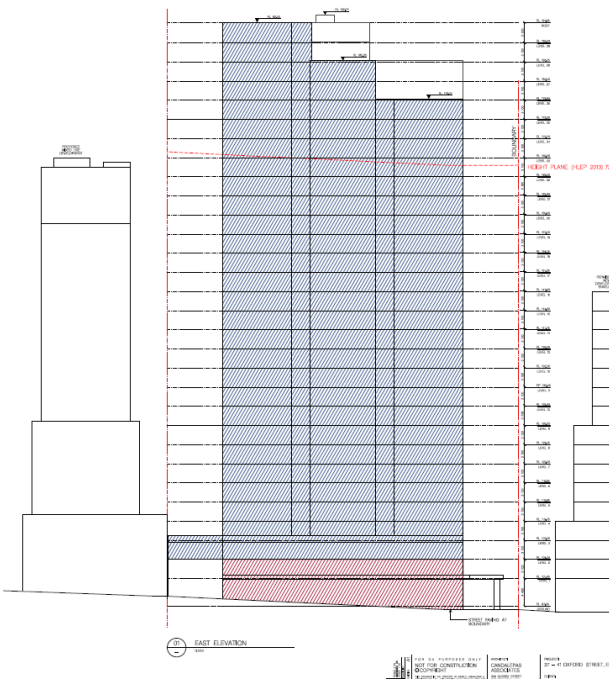
Figure 8 Epping Town Centre DA Tower Heights

Figure 4 Roof top Maximum RLs



Picture 1 – Roof top plan with RLs

Source: Candalepas Associates edited by Urbis



Picture 2 – Roof top RLs in section

Source: Candalepas Associates

The building height varies below the maximum height limit due to the prevailing topography which slopes down from the eastern and southern boundaries. The approximate maximum heights per level between the maximum and minimum building heights are detailed in Table 1.

Table 1 – Building height summary

Level	Height (RL)	Height (m)	Increase (m)	Increase (%)
Lift Overrun (max height)	192.75	95.67	23.67	32.88
Roof	191.55	95.38	23.38	32.47
L29	188.45	92.67	20.67	28.71
L28	185.35	90.33	18.33	25.46
L26 (lowest roof point)	178.95	83.29	11.29	15.6%

The accompanying reference design includes elevations and sections that show the extent of built form above the 72m LEP height plane. An extract of the eastern (Oxford Street) elevation is provided at Figure 5.

The maximum height of the building is centrally located and is confined to 32.5sqm of lift overrun. The height is stepped so that the height of the building reduces to the north and east to the Oxford Street frontage. The average maximum height of the development is 91.24m or 27.04% over the height of building development standard (refer Figure 5).

Figure 5 – Reference Scheme East (Oxford Street) Elevation with HLEP 2013 building height plane shown

Source: Candalepas Associates

3. RELEVANT ASSESSMENT FRAMEWORK

The environmental planning instruments relevant to the proposed development, including the aims and objectives, maximum building height control and the assessment framework for seeking a variation to a development standard are discussed below.

A summary of relevant planning principles and judgments issued by the Land and Environment Court (**LEC**) regarding the assessment of developments seeking exceptions to development standards is also provided.

3.1. HORNSBY LOCAL ENVIRONMENTAL PLAN 2013

Clause 4.6 of HLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are listed within HLEP 2012 as:

(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 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the consent authority must be satisfied that 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 the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

3.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

Several key LEC planning principles and judgments have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined in the following discussion.

Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46 (**Winten**)

The decision of Justice Lloyd in *Winten* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. Initially this applied to State Environmental Planning Policy – Development Standards (SEPP 1) and was subsequently updated to address clause 4.6 of the *Standard Instrument templates*.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?;
- What is the underlying object or purpose of the standard?;

- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act* 1979 (EP&A Act)?;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?; and
- Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827 (**Wehbe**)

The decision of Justice Preston in *Wehbe* expanded on the findings in *Winten* and established the five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the *"zoning of particular land"* unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently compliance with that development standard is unnecessary and unreasonable.

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 1009 (**Four2Five**)

More recently in the matter of *Four2Five*, initially heard by Commissioner Pearson and upheld on appeal by Justice Pain, it was found that an application under clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe* and demonstrate the following:

- Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7* Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- *"Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and*
- *Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii))".*

Preston CJ noted at paragraph 39 that "*the* [consent authority] *does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary"*. In this respect, he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

Moskovich v Waverley Council [2016] NSWLEC 1015

Commissioner Tour reflected on the recent decisions considering Four2Five and said:

- *"Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in Wehbe at 42-43.*
- *Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii)) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.*
- *Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on "tests" 2-5 in Wehbe either instead of achieving the objectives of the standard (Wehbe test 1) or in addition to that test. The list in Wehbe is not exhaustive but is a summary of the case law as to how "unreasonable or unnecessary" has been addressed to the meet the requirements of SEPP 1.*
- *It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5)".*

4. CLAUSE 4.3 HEIGHT OF BUILDINGS

The following sections provide a comprehensive assessment of the request to vary the height of buildings development standard.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgments issued by the Land and Environment Court.

The following sections provide detailed responses to the key questions required to be addressed within the above documents.

Is the Planning Control a Development Standard?

The maximum height of buildings development standard prescribed under clause 4.3 of the HLEP 2013 is a development standard capable of being varied under clause 4.6 of HLEP 2013.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of HLEP 2013.

What is the Underlying Object or Purpose of the Standard?

The underlying object or purpose of the development standard within Clause 4.3 of the HLEP 2013 is as follows:

> ***4.3 Height of buildings***
>
> *(1) The objectives of this clause are as follows:*
>
> *(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

An assessment of the proposed variation against the objects of the building height standard has been undertaken at Section 4.3.1 of this report.

4.1. CONSIDERATION

4.1.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Compliance with height of building development standard is considered unreasonable and unnecessary for the following reasons:

- The proposed height variation enables the development to achieve the maximum FSR designated for the site and as such maintains consistency with the future scale and character and strategic objectives envisaged by the Epping priority precinct including:
    - The delivery of a compact, high density, town centre core by facilitating the allowable FSR on the site and as such achievement of the highest and best use for the site;
    - Ensuring a wider range of housing options in close proximity to public transport and employment opportunities;
    - Providing increased residential density around Epping station and support the significant investment in infrastructure such as the Metro North West by the NSW State Government;
    - Supporting the Sydney Region Plan principle of a 30min city as re-emphasised by the Draft District Plans which also identify a potential future mass transit connection to Parramatta;
    - A significantly improved public domain in the Epping Town Centre that will benefit existing and future residents;

- The proposed building setbacks (greater than ADG minimums) facilitated by the increased height positively address the constraint presented by the size of the site and its multiple boundaries to adjacent developments;
- The tall and slender tower form achieves greater design excellence and improves the built form relationship with other towers (existing and proposed) on neighbouring sites;
- A single podium and tower built form allows for 57% (2,829 sqm) of the site to be devoted to communal open space and 25% (1,236 sqm) of deep soil landscaping;
- Shadow analysis within the Urban Design report has determined that the slender tower floorplate facilitated by the proposed height variation produces a thinner, faster moving shadows over the ground plane and results in acceptable impacts in the context of the emerging high density environment;
- As demonstrated in Section 4.2.11, there will be negligible additional impact to the solar access of surrounding development including 35 Oxford Street from the additional building height.
- The proposed height variation allows the built form to be appropriately sited to provide a well activated public domain along the Oxford Street frontage which includes:
    - Increased public domain along the Oxford Street frontage in line with the Epping Town Centre Review,
    - 96 sqm of deep soil areas of sufficient depth to support street trees planting to provide shade and wind protection; and
    - 301 sqm of public domain along the northern boundary of the site which includes approximately 146 sqm of unencumbered paved area for use by the adjacent commercial tenancy.
- 1,283 sqm of employment floor space within the podium to provide for a range of different uses and services consistent with the desired future role of Epping as identified in the Draft Central District Plan.

4.1.2. Wehbe – Five Part Test

As demonstrated by the assessment against Justice Preston's 5 part test, strict compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

- The objectives of the standard are achieved notwithstanding the technical non-compliance;
- The objective of the standard would be thwarted should compliance with the standard be required;
- Strict application of the Height of Building Standard within HLEP 2013 has been abandoned by Parramatta City Council in this part of Epping. A review of the development controls for this part of Epping is currently being undertaken, as Council is of the opinion that the current planning framework will deliver less than desirable outcomes for the Epping Town Centre;
- There is a disconnect between the applicable height and FSR controls for this site, having regard to the site constraints and context. The site is one of the largest sites in single ownership and should have significant development potential but the height limit provided in the LEP does not allow this development potential to be realised; and
- As demonstrated by Council's alternate solutions, specific flexibility required to the controls to ensure orderly and economic development can be achieved on the site whilst maintaining a high quality built form with acceptable impacts and amenity to adjoining sites. The proposed height variation allows for positive planning and amenity outcomes to be achieved which are in the public interest.

Each of the matters listed within the 'five part test' outlined in *Wehbe* and "*Varying development standards: A Guide"* are listed and responded to as follows:

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

   As discussed in section 4.3.1 the underlying objectives of the height of buildings development standard as listed within clause 4.3 of the HLEP 2013 have been achieved.

2. ***"The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;"***

   The underlying objective or purpose of the standard is considered relevant to the development. As such demonstrating consistency with this test is not applicable to the proposed variation.

3. ***"The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;"***

   Given the relevance of the building height objective to the proposal, the underlying objective of the building height standard would be defeated or thwarted if strict compliance with the height of buildings development standard was required in these circumstances.

   The objective of the standard is to facilitate building heights that are ***appropriate*** for the site constraints, development potential and infrastructure capacity of the locality. As demonstrated within this report, the proposed building height the building height positively responds to the key constraints relevant to the site including:

   - The provision of increased setbacks and building separation to addressing the complex nature of large sites within the Epping Town Centre which have irregular site boundaries and varying setbacks; and
   - Fulfilling the development potential and infrastructure capacity of the locality by achieving the FSR recommended for the site as part of the priority precinct controls. This FSR was specifically based on the future infrastructure capacity including the substantial investment in public transport infrastructure undertaken by the NSW State Government.

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";***

   The development standard is considered to have been abandoned within the Epping Precinct. Council recently recommended approval of a 28.9% increase over the 72m height standard at 12-22 Langston Place Epping. This variation was supported by the SWCPP and the application approved.

   In addition, substantial variations to the Parramatta LEP height standard as it applies in Granville have been supported by Council staff. Approval was subsequently granted by the SWCPP for:

   - 2-6 Cowper Street (& other sites) Granville, with a height variation in the order of 24% – approved 4 May 2017; and
   - 14-38 Cowper Street (& other sites) Granville, with a height variation in the order of 30.6% – approved 1 May 2017.

5. ***The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.***

   The zoning of the land as B2 Local Centre is appropriate for the site being within the Epping Town Centre. There is however a disconnect between the maximum building height and achievable FSR, particularly in respect to how the site's development potential can be delivered having regard to the irregular shape of the land and its multiple boundaries with adjoining sites. The proposed variation in height facilitates a suitable design response and a positive built form relationship between surrounding tall towers and facilitates substantial areas of both landscaped communal open space and public domain.

4.1.3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90

More recently, *Four2Five v Ashfield Council* was initially heard by Commissioner Pearson, and upheld on appeal by Justice Pain in the Court of Appeal. Commissioner Pearson's decision in this case (and Justice Pain's endorsement of the reasoning) requires an application to vary a development standard to go beyond the five (5) part test of *Wehbe v Pittwater Council* [2007] to demonstrate the following:

- *Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;*
- *The development standard is unreasonable or unnecessary on grounds other than the development achieved the objectives of the development standard and/or land use zone.*
- *There are sufficient environmental planning grounds particular to the circumstances of the proposed development that do not apply to any similar development on the site or in the vicinity.*

Having regard to the above, the following points are made in support of the proposed variation, specific to the proposed development of 37-41 Oxford Street that do not apply to similar developments in the vicinity.

- The planning framework nominates a non-compatible height and FSR control when applied the site configuration. Redevelopment of the site to its development potential is therefore significantly challenged and constrained by its irregular shape. Its configuration limits the available parts of the site capable of accommodating a building footprint which delivers a built form that provides a positive relationship with surrounding tall towers in terms of setbacks and separation.
- Site amalgamation with neighbouring properties to achieve an appropriate built form within the prescribed height limit is not possible. Recent attempts to negotiate site amalgamation with adjacent sites have been unsuccessful and specifically led to Hornsby Council and the Sydney West JRPP considering 35 Oxford Street an isolated site in its assessment and determination of DA/526/2015. The application was approved notwithstanding its non-compliance with the minimum ADG setbacks and minimum frontage within the DCP.
- The approval of 35 Oxford Street has placed significant constraints on the subject site in its ability to achieve useable building floorplate up to the full FSR envisaged for the site by the priority precinct controls in compliance with the ADG, LEP and DCP. This established northern building line for 35 Oxford Street requires the reference design for 37-41 Oxford Street to set back further than the minimum ADG guideline to ensure privacy and adequate building separation is achieved; and
- The decision to consider 35 Oxford Street an isolated site means that 37-41 is also an isolated site and as such a degree of flexibility should be shown against the controls within LEP and DCP to ensure orderly and economic development of the site can still be achieved whilst maintaining a high quality built form and acceptable levels of amenity.

The combination of the site's irregular shape and height/FSR relationship, ADG requirements for the amenity of this building and neighbouring buildings, and the context of neighbouring approved developments, creates the need for a unique design response specific to the site as follows:

- The single podium/tower design achieves building separation to the south that exceeds the ADG 50% sharing principle. A 9m setback is provided from non-habitable areas to the boundary instead of 6 (being 50% of 12m building separation). This provides a good relationship with the southern neighbour. provides separation for privacy, light and air, and results in an appropriate building relationship when viewed from the public domain;
- ADG compliant setbacks are provided to the north, allowing for the future redevelopment of 43-53 Oxford Street such that this development does not unreasonably constrain that site's development potential. The northern ground floor setback is generous with a wide landscape interface;
- A single tower design provides 35 Oxford Street, 16 Cambridge Street and 20 Cambridge Street with enhanced outlook and amenity over an expansive area of landscaped open space; and
- The substantial area of communal open space provides breathing space for all the buildings in this immediate locality, and affords a green outlook to residents of those buildings.

Nevertheless, in order that this site-specific response is viable and achieves the development potential of the land, being a 4.5:1 FSR, an increase in building height is required as requested by this variation.

4.2. CLAUSE 4.6(3) (B) - THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The environmental planning grounds that justify variation the Height of Buildings Development Standard are discussed in detail within the following section. A comparative summary of the proposed benefits of the proposal that is facilitated by the proposed height variation outlined within the following section are detailed in Table 2.

Table 2 – Summary table

Parameter	Requirement	Submitted Proposal	Council Alternate Solution (Post Lodgement)	Amended Proposal
Podium Setback (front) Public Domain	DCP – 0m setback ETCPDG – 6m from kerb (3m from boundary).	0m podium	Council alternate solution – 4.5m.	4.5m setback provides for additional public domain along the Oxford Street frontage.
Podium Setback (side)	DCP 6m	6m to northern boundary	Council alternate solution 9m	9m to north results in 301 sqm of additional public domain.
Side Setback (Tower)	ADG Setbacks (non-habitable/habitable) to boundary. Up to 4 storeys (3-6m) 5-8 Storeys (4.5-9m) 9+ Storeys (6-12m)	Generally consistent.	Council alternate Up to 8 storeys (6.75m) 9+ storeys (9m)	9m non-habitable setback - + 4.5m (5-8 storeys) - +3m (9+storeys) 12m habitable setback
Rear Separation Tower	ADG 24m Habitable to Habitable	Generally consistent	22m to boundary 30m separation	22m to boundary 30m separation
Tower A Floorplate	700 sqm (DCP)	894sqm	800sqm	Maximum of 807sqm between Levels 4-6, all other levels within the tower are below 800sqm and as such on balance generally consistent with Council alternate solution.
Commercial Floor Space	DCP – Podium to be retail/commercial	868sqm (3.8% of GFA)	At least the entire first floor to be commercial in addition to the ground floor	1,283 sqm (5.7% of GFA)

Parameter	Requirement	Submitted Proposal	Council Alternate Solution (Post Lodgement)	Amended Proposal
Communal Area	ADG – 25% of site area DCP – 50 sqm	1,656sqm (33.3%)	N/A	2,829 sqm (57%)
Deep Soil	ADG – 7% of site area	516sqm (10.3%)		1,283 sqm (25%)
Street Trees (Oxford Street frontage)	DCP – 0m setback street tree planting not possible.	0m setback	Consider deep soil area along frontage for tree retention/street tree planting	96 sqm of deep soil area with minimum 1.5m depth.
BASIX/Section J of the BCA	Minimum BASIX/Section J requirements for stage 2.	BASIX/Section J to be addressed at stage 2	Demonstrate additional ESD commitments over statutory requirements	Commitments over standard BASIX/Section including: NatHERS – 6 star Solar PV to offset 50% of base building energy consumption.

4.2.1. Strategic Planning – Epping Priority Precinct

The site is located within an area that has been subject to significant uplift in height and density as part of the NSW State Government's Priority Precinct program (formerly Urban Activation Precincts). The Planning Report undertaken to inform the rezoning process for Epping Urban Activation Precinct was supported by economic analysis which identified that a minimum amount of floor space (between 4.5:1 and 6:1) should be provided for key sites in the town centre core to provide for financially feasible development. The planning report was used to inform the controls that were incorporated into the structure plan for the Epping Town Centre. The objectives of the project were as follows:

- *develop a planning framework that can facilitate the delivery of a compact, high density, town centre core;*
- *provide for a wider range of housing options in close proximity to public transport and employment opportunities;*
- *provide for an improved public domain in the town centre for new and existing residents;*
- *improve pedestrian and cycle connections within and through the precinct; and*
- *recognise and protect the heritage conservation values of the precinct.*

The proposed variation is broadly consistent with the objectives of the Epping Urban Activation Precinct Planning Report and for the following reasons:

- The proposed building height variation aids in the delivery of a compact, high density, town centre core by facilitating the allowable FSR on the site and as such achievement of the highest and best use for the site;

- Achieving the maximum allowable FSR will ensure a wider range of housing options in close proximity to public transport and employment opportunities;
- Achieving the allowable floor space is crucial delivering on the objectives for the priority precinct to provide increased residential density around Epping station and support the significant investment in infrastructure such as the Metro North West by the NSW State Government;
- Increased housing density in close proximity to frequent transport services at Epping Station supports the Sydney Region Plan principle of a 30min city as re-emphasised by the Draft District Plans which also identify a potential future mass transit connection to Parramatta;
- The proposed height variation specifically enables realisation of the allowable floor space on the site in a viable single-tower design that significantly enhances the overall built form and relationship between surrounding tall towers;
- The proposed height enables a built form and setbacks that result in significantly improved public domain in the Epping Town Centre that will benefit existing and future residents; and
- The proposed building height minimises impacts to the surrounding sites including reduced levels of overshadowing and providing increased building separation that improves the overall built form, amenity and relationship with surrounding tall towers.

The Urban Design Report has undertaken a built form analysis of the emerging context which includes:

1. Recently approved development applications, and
2. Development applications currently under assessment and achievable building envelopes for sites not yet developed.

Significantly this analysis has revealed that since the implementation of the priority precinct controls, a range of building heights have been approved across the precinct. Figure 6 illustrates the relationship of the proposed built form with the future built form context of the Epping priority precinct

Figure 6 – Future built form Epping Town Centre

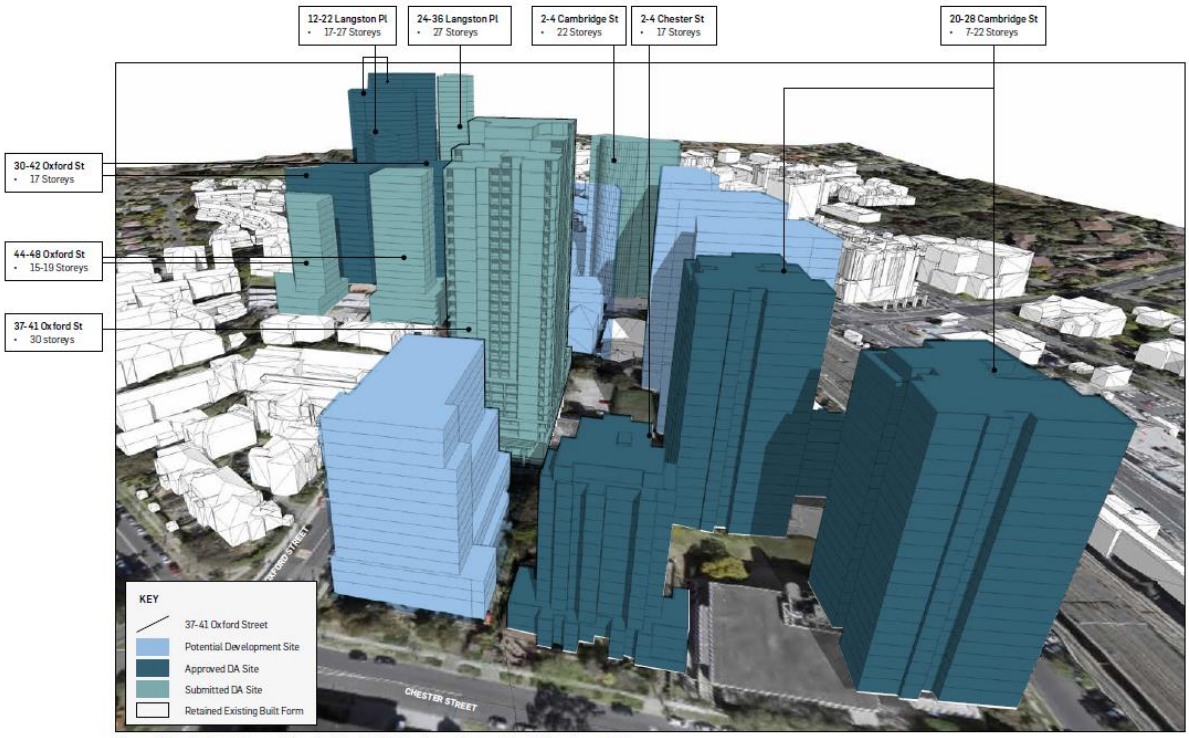


Figure 6 Epping Town Centre Indicative Massing Model - Future Context (Aerial view from north)

Source: Urbis Urban Design

4.2.2. Strategic Planning - Draft Sydney Region Plan and Draft District Plan

The Draft Sydney Region and Revised Draft Central District Plans were released for public comment in October 2017. The plans both identify Epping as a Strategic Centre and a key area for urban renewal, consistent with the Priority Precinct approach. Significant to both plans are the identification of a future mass transit connection to Parramatta which would connect through Epping to Macquarie Park significantly improving the connection between Greater Sydney's two largest suburban centres. The District Plan acknowledges the work being undertaken by Parramatta Council to review the planning controls for Epping to ensure it is able to grow into a centre with a more diverse range of activities, including commercial uses.

The proposed height variation enables the maximum FSR for the site to be achieved. Part of this FSR includes 1,283 sqm of employment floor space such as retail and commercial which will provide for the growth of business activity and jobs that will be driven by the increase in population and new infrastructure.

Urbis has previously identified typical employment densities of 15 sqm per worker for A-Grade office space and 16.5 sqm per worker for specialty retail. Based on an average of the two employment density figures, the proposed development has the potential to provide approximately 81 jobs in new office and retail spaces more suited to the support types of small to medium services identified in the Epping Town Centre Review.

The proposed variation, which facilitates the provision of a commercial office component within the podium in addition to ground floor retail is therefore consistent with the ongoing strategic planning objectives for the Epping Town Centre consistent with the Epping Town Centre Review.

4.2.3. Public Domain, Landscaping and Communal Open Space

The proposed height variation allows for significant and discernible public benefits through an enhanced, useable public domain and communal open space areas that are generated by:

- A 4.5m setback from the podium to the front boundary for additional public domain;
- Relocation of the driveway to the south of the site, enabling the activation of the northern setback. This setback area will be capable of being used for outdoor seating associated with an adjacent food premises in addition to providing a generous landscape buffer to the adjoining site to the north; and
- Significant areas for deep soil landscaping within the rear communal open space area.

In terms of area available for public domain and landscaping the proposed stage 1 envelope provides the following key quantifiable public benefits

- Increased public domain along Oxford Street between the existing kerb and the proposed podium.
- 301 sqm of public domain along the northern boundary of the site which includes approximately 146 sqm of unencumbered paved area for use by the adjacent commercial tenancy;
- 2,829 sqm of communal open space available for use by residents;
- 1,236 sqm of area available for deep soil planting and mature tree growth;

Podium Setback – Public Domain

The public domain enhancements facilitate the attainment of the Key Design Principles within Section 4 of the Epping Town Centre Public Domain Guidelines (ETCPDG) which seek to promote pedestrian amenity, accessible design, sustainability, walkability and active transport and promoting a sense of place and identity. The Epping Planning Review Discussion Paper which recommends 3m podium setbacks as illustrated in red in Figure 7.

The enhanced public domain and front setback of 4.5m (instead of 3m) at the ground level allows for the following positive urban design outcomes at the ground plane.

- Increased footpath widths which provide:
    - Clear and legible pathways for pedestrians;
    - Enhanced sunlight to the street;
    - An improved sense of space and relationship with surrounding tall buildings.
- Allows for increased mature tree planting and awnings;
- Enhances activation of the ground plane which allows for outdoor dining areas and other activities; and
- Retention and/or planting of mature street trees.

Figure 7 – Epping Planning Review – Recommended Podium Setbacks

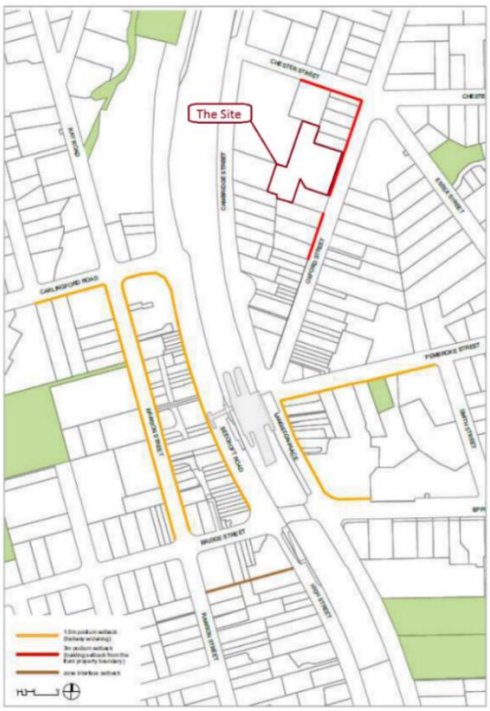


Figure 31 Proposed ground floor setbacks

Source: Parramatta City Council - Epping Planning Review Discussion Paper 2017

Through Site Link and Driveway Location

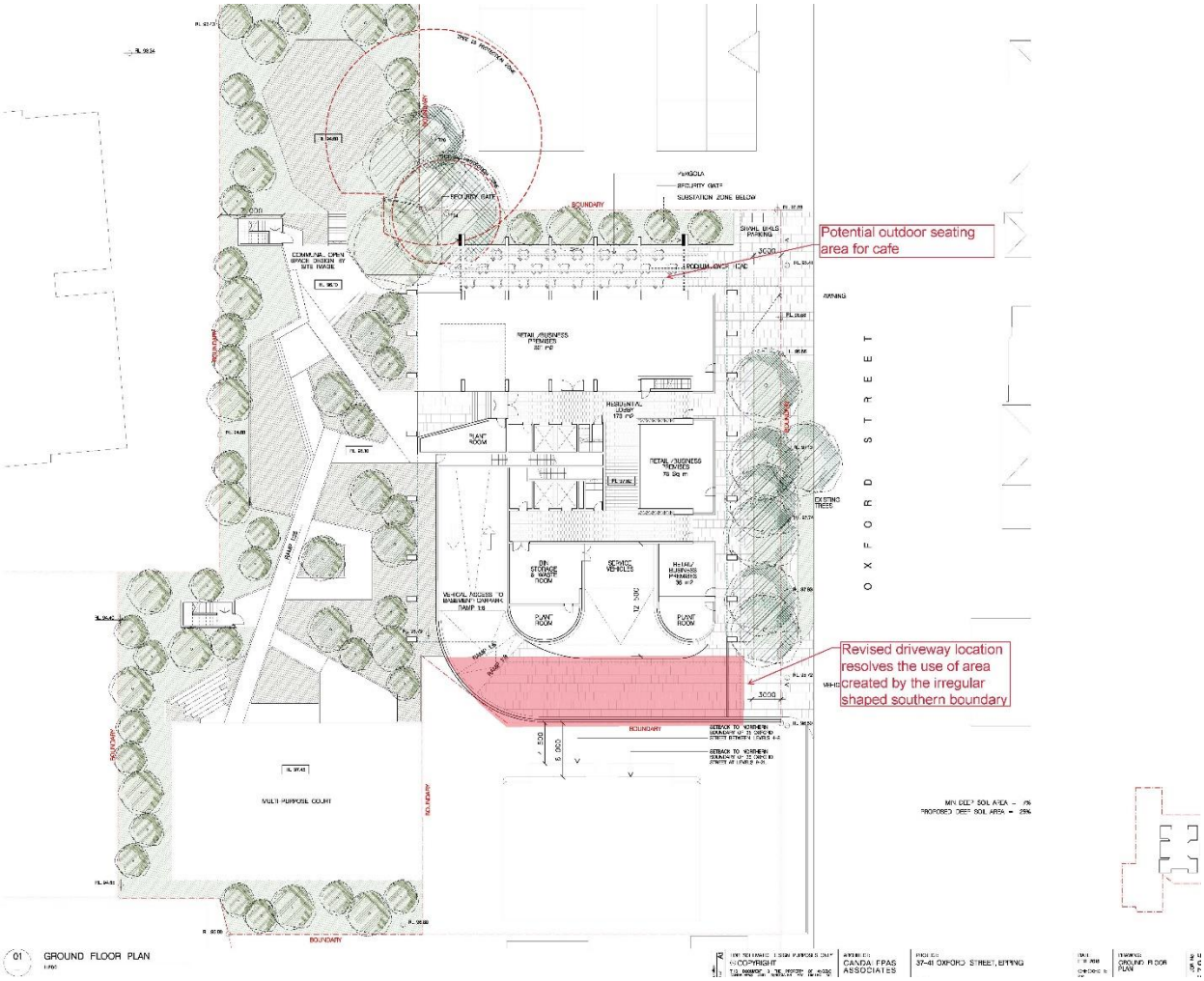
The existing topography and the arrangement of approved neighbouring buildings does not support the provision of a viable or safe through block connection within this site as envisaged by the HDCP 2013.

As illustrated in in Figure 8 the variation allows for the reconfiguration of pedestrian, cycle and vehicle access to the site so that the driveway and basement access is located along the southern boundary of the site. The driveway location provides appropriate use of the problematic space created by the irregular southern boundary to 35 Oxford Street.

Locating the driveway to south enables 301sqm of the northern setback area to be used for:

- Public activity, including approximately 146 sqm of unencumbered paved area that can be used as an outdoor dining area associated with an adjacent restaurant tenancy; and
- A generous landscape zone along the northern boundary interface with 43-53 Oxford Street.

Figure 8 – Ground Plane Comparison – Reference Design



Source: Candalepas Associates Candalepas Associates

Landscaping and Communal Open Space

The proposed variation allows for the provision of significant areas for both deep soil planting and communal open space. 2,714 sqm will be provided for communal open space at ground level with an additional 115sqm of rooftop communal space (total 2,829). The communal areas ensure that direct, equitable access can be provided from common circulation areas, entries and lobbies.

The significant areas available for deep soil planting created by the proposal will allow for additional greening of the site which will contribute to mitigation of urban heat island effects, providing shade within the public domain and green corridors. This is consistent with Section 4 of the ETCPDG.

The areas of communal open space at the rear of the site improves the outlook and amenity for the future residents and surrounding residential buildings. The Urban Design report identifies the potential opportunity for the provision of a contiguous area of communal spaces located through the centre of the development block bound by Oxford, Cambridge and Chester Streets. This 'green heart' could be achieved through the orientation of buildings towards the street frontages allowing for ground level communal open space at the rear of properties. The green heart concept would provide the following public benefits (refer Figure 9):

- increased residential amenity and 'breathing space' through generous separation distances between tall buildings;
- deep sunlight penetration through the 'green heart' in the middle of the day;
- the delivery of generous visual amenity through overlooking of green spaces; and
- generous physical provision of communal open space.

Figure 9 – Green Heart Concept

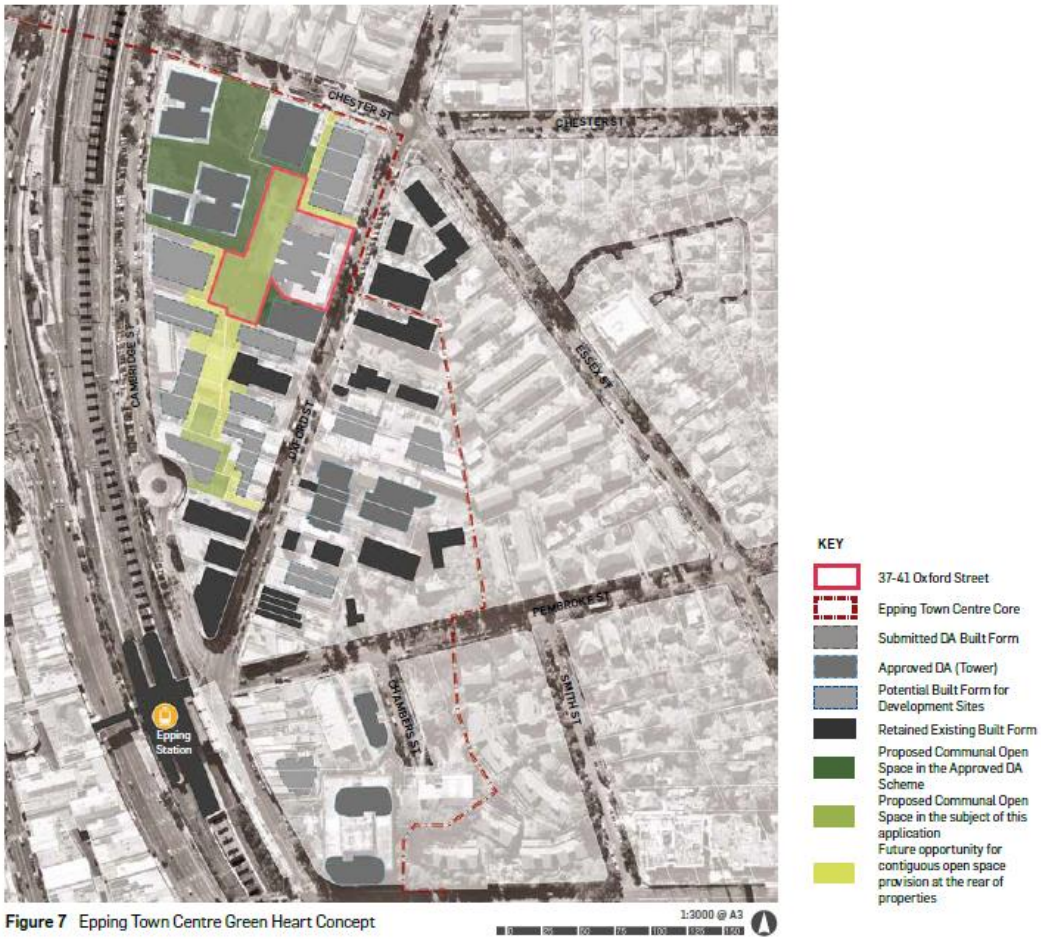


Figure 7 Epping Town Centre Green Heart Concept

Source: Urbis Urban Design Urbis Urban Design

4.2.4. Setbacks and Separation

The site is irregular in shape sandwiched between adjacent development sites. The southern boundary to 35 Oxford Street splays at 45 degrees, creating a highly unusual boundary alignment.

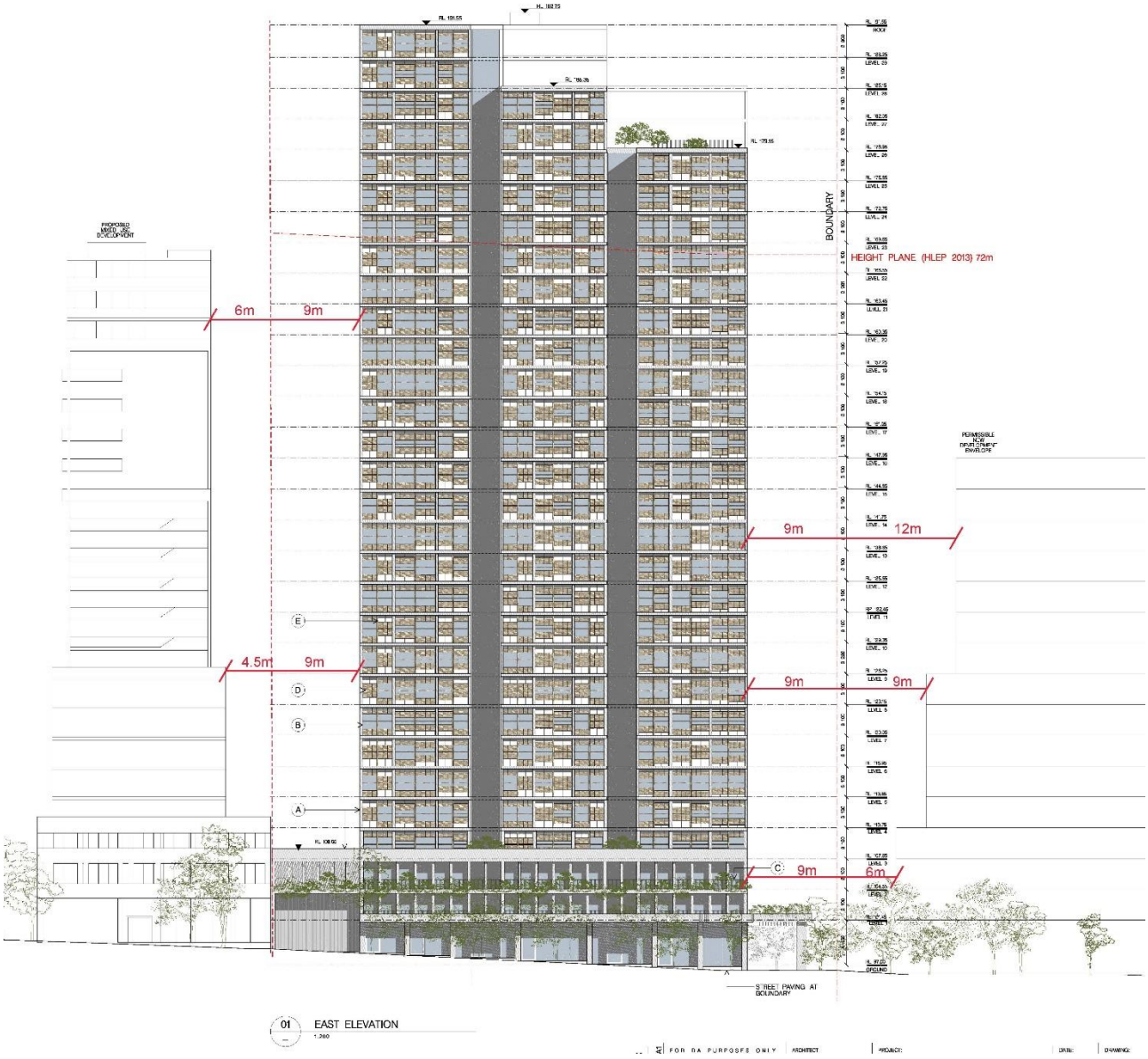
35 Oxford Street was approved as an isolated site with setbacks that did not meet ADG requirements, shifting building separation compliance on to 37-41 Oxford Street.

The proposal accommodates a building separation to 35 Oxford Street of 15m, accommodating a minimum 9m setback within the site (being greater than 50% of the ADG building separation guideline). However, this increased setback provision reduces the building floorplate to the Oxford Street frontage. However, in order to achieve the allowable site FSR, an increase in overall building height is required.

A single podium and tower envelope with a variation to overall height improves the built form relationship, setbacks, separation and amenity (increased light, air) with the other surrounding towers (existing and proposed).

Increased setbacks and stepped tower approach (Figure 10) l improves the built form relationship to the adjacent development to the south (35 Oxford St) and to the future development to the north (43-53 Oxford St). The increased separation will improve the overall urban form and outlook from adjacent developments.

Figure 10 – Proposed setbacks/separation



Source: Candalepas Associates edited by Urbis

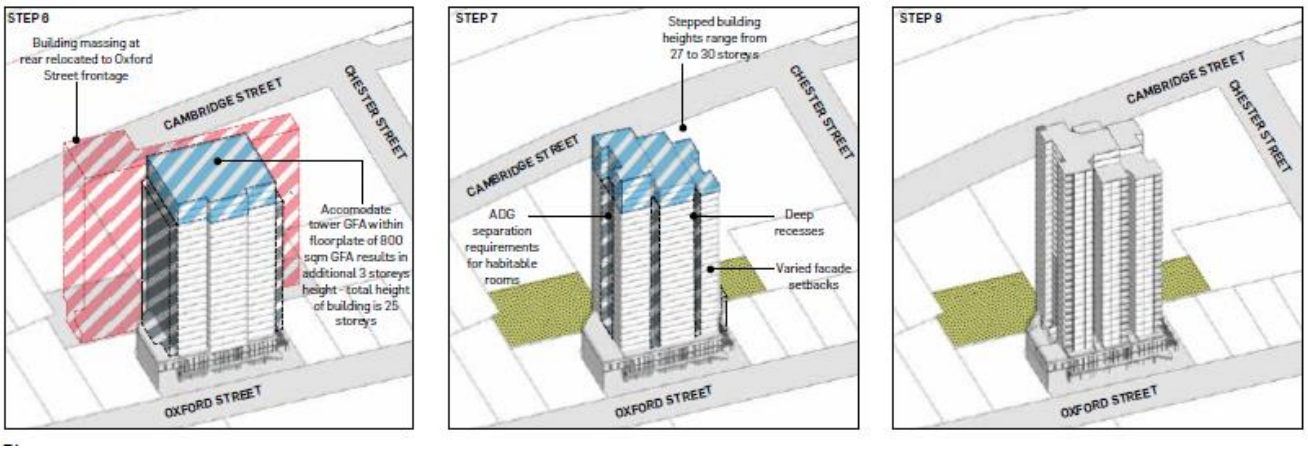
4.2.5. Overall Massing & Visual Context.

The built form massing proposed at 37-41 Oxford Street makes a positive contribution to the desired future character of Epping Town Centre as required by Clause 4.6.1 of the HDCP 2013. Consideration of the proposal in its context demonstrates the proposed massing, including the additional height, is in keeping with the overall built form principles for the location, meets the requirements of the ADG and, additionally, contributes to public benefit outcomes for the overall precinct.

As shown in Oxford Street elevation plan at Figure 10, the building height steps down to the site's northern boundary where the adjacent site is zoned R4 High Density Residential and subject to a 48m height limit. The maximum height, RL192.75 is limited to the 32.5 sqm lift overrun. The height reduces 1.2m from the lift overrun to the roof top of Level 29 which has a floor plate size of 311sq.m concentrated to the south of the proposed tower. Below level 29 the floor plate sizes increase relative to the reduction in height noting that the full tower floor plate of 762sq.m only commences below Level 26.

As illustrated in Figure 12, the permissible GFA could potentially be achieved with a lower overall building height (approximately 25 storeys). However, the stepped tower approach provides greater variation to the overall building height and demonstrates an obvious visual transition to the adjacent 48m height zone.

Figure 12 – Tower evolution diagram



The Urban Design Report has provided a detailed examination of the overall massing of the proposed reference design in the context of existing and future adjacent built form.

Rigid application of blanket heights may result in monotonous and repetitive building heights within the Town Centre as evidenced by:

1. Buildings in the 72m height limit precinct include the following 22 storey towers:

- Twin towers at 20-28 Cambridge St;
- Single tower at 2-4 Cambridge St; and
- Single tower at 24-36 Langston Place.

2. Buildings in the 48m height limit precinct include adjacent developments at 16-18 storeys:

- 30-42 Oxford St; and
- 44-48 Oxford St.

As illustrated in Figure 11 and Figure 12 the additional height results in greater variation in building massing within the Epping Town Centre. This creates visual interest in the overall skyline silhouette for the centre – an outcome that would not be achievable if all buildings within the centre were built to the maximum LEP height. This outcome is in keeping with the emerging character of the area as demonstrated through recently approved DAs that have approved stepped building heights across a number of adjacent buildings within a single development. There is no increase to density beyond the permissible FSR and as such the overall scale and massing of the reference design is considered appropriate in the context the overall built form of the Epping Town Centre.

Figure 11 – Proposed Building Heights - Epping Town Centre Arial Views with Building Height Plane

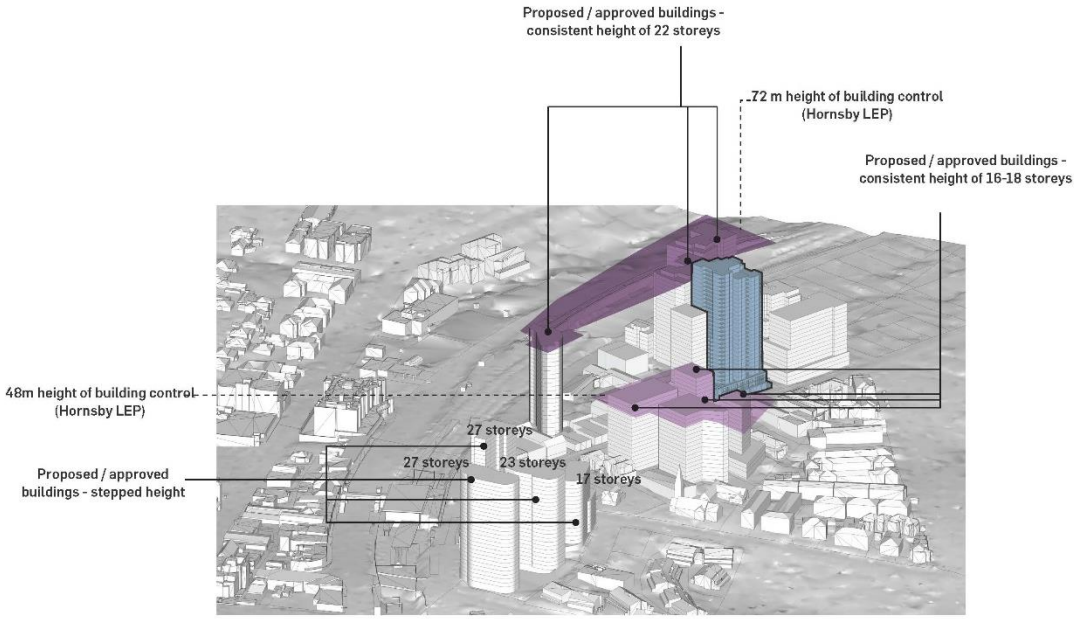


Figure 4 Current massing of Epping Town Centre including approved DAs: Aerial view from south-west

Picture 1 - Overall Massing - North

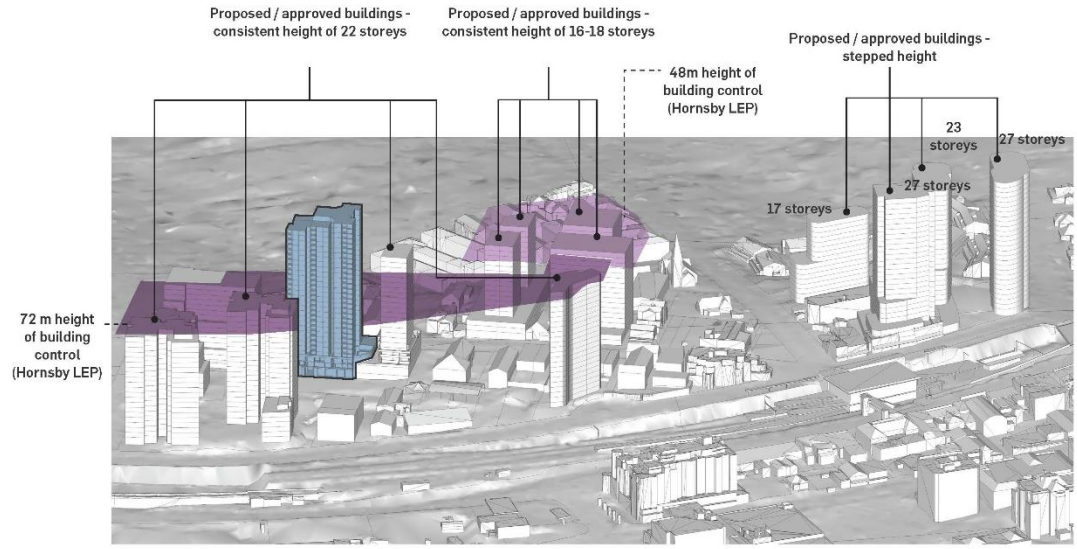


Figure 3 Current massing of Epping Town Centre including approved DAs: Aerial view from west

Picture 2 - Epping Town Centre Arial View from West

Source: Urbis Urban Design.

Figure 11 illustrates how the transition is reflected through the building height stepping down along the Oxford Street axis reflecting the topography of the Epping Town Centre.

Figure 12 – Indicative built form section

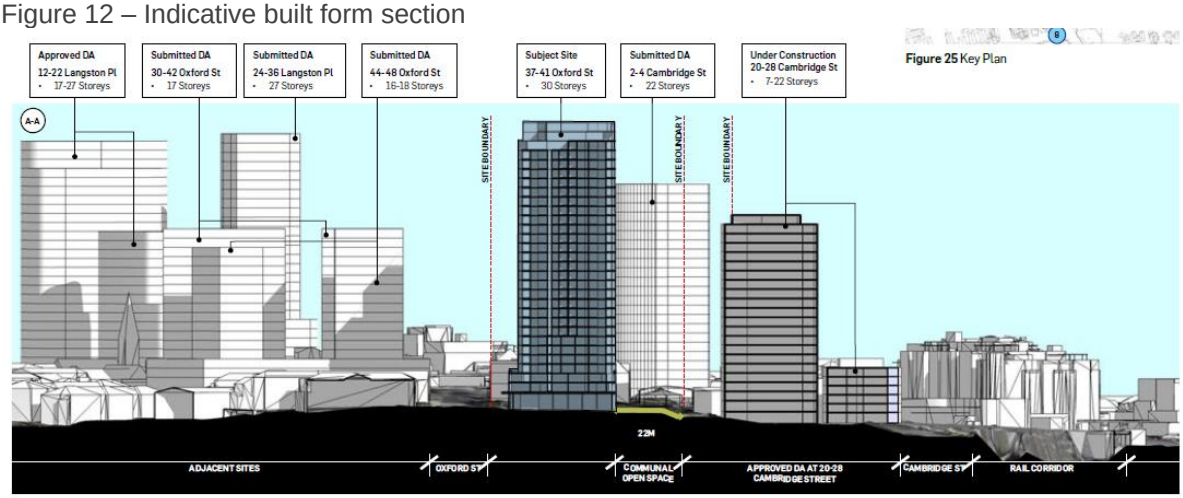


Figure 25 Key Plan

Figure 26 Indicative Built Form Section for Epping Town Centre

Source: Urbis Urban Design

4.2.6. Street Level – Podium

The Urban Design report has provided an analysis of the pedestrian level street views of the reference design to assess the relationship of the proposed built form to the surrounding context (refer Figure 13).

The site marks the transition between the Town Centre Core and the balance of the Town Centre area by way of development standards through:

- different zones from B2 Local Centre to R4 High Density; and
- different heights from 72m to 48m to both a change in uses and in heights within the Town Centre.

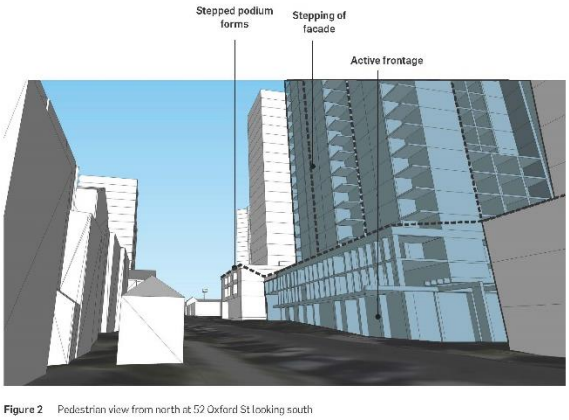
This transition is reflected at the street level through:

- a generous 9m side setback on the northern boundary;
- a front setback of 4.5m to the podium which responds to a site-specific opportunity to provide deep soil planting for street trees and creates additional public domain on the street frontage; and
- the stepping of the podium heights to the adjoining properties.

When viewed from the south the proposed building respects the future massing of the surrounding built form, appearing slightly taller and wider than the building at 35 Oxford Street. When viewed from the north the active frontages proposed on the ground level are visible providing a high quality public domain that is activated by adjoining retail and commercial uses.

The existing street character and public domain is respected by the continuation of a three-storey podium. The podium street wall provides an appropriate mix of solid and void elements to allow an active frontage whilst maintaining a strong definition of the urban domain. The stepped massing form of the tower along the street facade creates three vertical elements defined by deep recesses in the façade and combines with the setbacks to provide visual relief and a distinct human scale at street level.

Figure 13 – Street Level Analysis



Picture 3 – View up Oxford Street from south

Source: Urbis Urban Design Urbis Urban Design

Picture 4 – View from 45-53 Oxford Street from north

Source: Urbis Urban DesignUrbis Urban Design

4.2.7. SEPP 65 Apartment Design Guide

SEPP 65 compliance has been assessed by the design Architect, Candalepas Associates, and a design verification statement and assessment against the design quality principles is provided as part of the amended development application documents.

The Architect has confirmed that the proposal achieves the design principles set out in State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development and that the reference design demonstrates the increase in building height to be consistent with the Objectives, Design Criteria and Design Guidance within the SEPP 65 Apartment Design Guide including:

- **Side setbacks** of 9m to blank walls and 12m to habitable rooms and balconies on the northern and southern façades above 8 levels (exceeding minimum prescribed in the ADG). This has the effect of increasing visual privacy and amenity of the subject building and neighbouring dwellings;
- **Cross ventilation** – 60% of apartments are naturally cross ventilated between Levels 2-9.
- **Solar access** - the proposal exceeds the minimum requirements (70% of apartments achieve the 2hrs solar access at mid-winter);
- **Solar access** - the additional height proposed by the amended design does not further reduce solar access to the living areas and private open of neighbouring residential development, most notably 35 Oxford Street
- **Apartment design** – a variety of generously sized open plan layouts, with external balcony spaces provided for all apartments consistent with or exceeding the HDCP and SEPP 65 requirements; and
- **Communal Open Space** – the proposal exceeds the minimum area requirements (57%) and solar access (95% greater than 2 hours in mid-winter).
- **Deep Soil Landscaping** – the proposal exceeds the ADG minimum requirement for deep soil landscaping (25%).

The design statement has specifically addressed the, built form and scale of the proposed variation to building height as follows:

> *"The scale of the proposed development is desired for the future character of development in the vicinity. The height of the proposed development exceeds the permissible height limit of 72 m (22 storeys) as specified within the HLEP 2013. However, it is consistent with the desired character for the precinct. Furthermore, its proportion and bulk has been designed with consideration to minimise the loss of amenity (solar, views, privacy) to neighbouring dwellings and as such the proposed setbacks and building separation are consistent with the objectives of SEPP 65 and the site-specific controls.*

To maintain the existing street character and further define the public domain, a three - storeys podium is proposed, as per the HLEP 2013. The wall is designed along the principle of a 'brise-soleil' whereby the retail spaces behind the street frontage are afforded acoustic and solar protection by the thickening of the wall. The podium street wall will provide an appropriate mix of solid and void elements to allow an active frontage whilst maintaining a strong definition of the urban domain.

The proposed façade will be highly articulated through materiality, architectural elements and form serving to reduce the apparent bulk and provide an appropriate scale for a mixed-use development within the existing and future context. The major facades of the residential tower incorporate moving screens and deep recesses that create a play of light and shadow. Each level of the proposed development is clearly differentiated through the articulation of the horizontal floor slabs, visually reducing the perceived height."

4.2.8. Precinct Shadow Analysis

The Urban Design Report has provided a detailed analysis of the proposed stage 1 building envelope. The analysis has considered the indicative shadow cast by the proposed stage 1 building envelope on 21 June and is shown at Figure 14.

Figure 14 –Shadow impacts

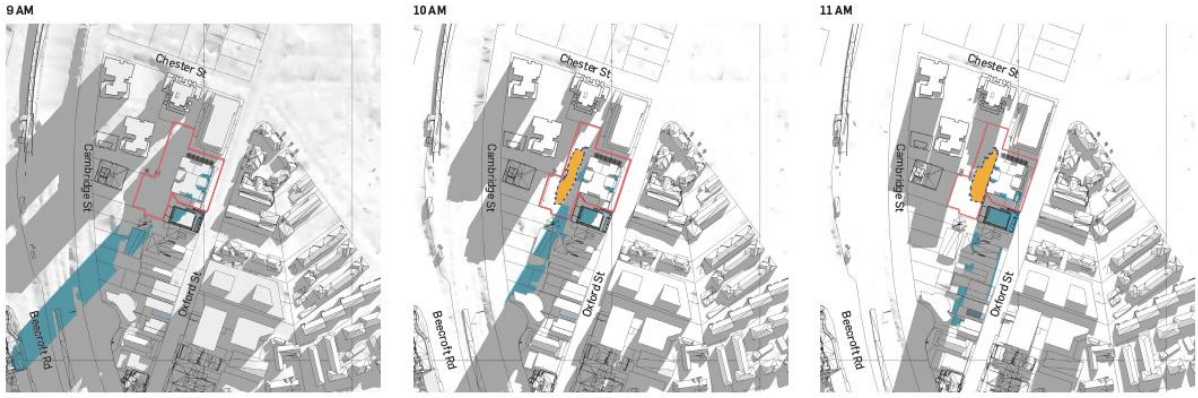


Figure 12 Shadow Analysis Winter Solstice - 9am -3pm

Source: Urbis Urban Design

Source: Urbis Urban Design

The height variation will facilitate a tower envelope that achieves a slender built form by virtue of the increased setback and its 800sqm floorplate. Whilst the shadows will be longer than a 72m building, slender tower forms produce faster moving shadows across the ground plane with the longest shadows cast early and later in the day. In relation to the proposed variation it is significant to note that:

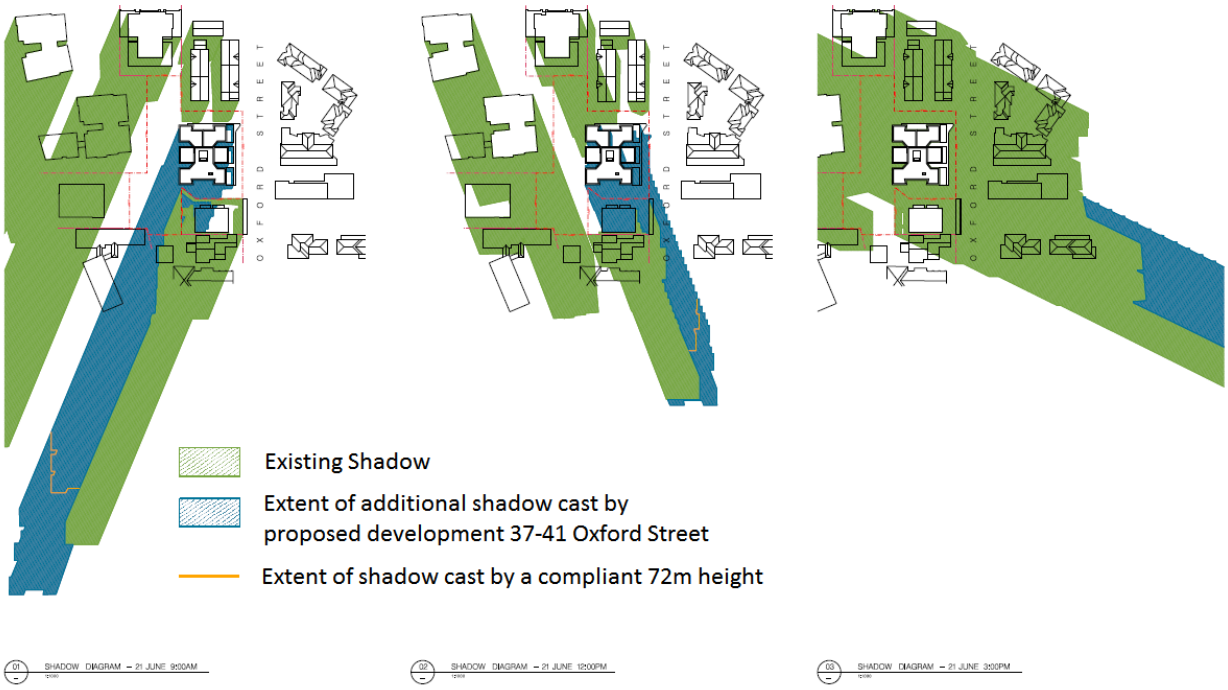
- **9am:** the impact from the shadow is minimal as it is predominantly over Cambridge Street, the railway and Beecroft Road with a portion of the shadow over site likely to be redeveloped to higher densities consistent with the controls along Cambridge Street. The shadow is likely to merge with the shadows cast from these Cambridge Street sites once developed;
- **10am**: shadows will fall on the facade of the proposed development at 2-4 Cambridge Street. Some new areas of shadow are cast on the rear of properties immediately to the south fronting Cambridge Street;
- **11am**: the shadow impacts are generally limited to the rear of properties fronting Oxford Street;
- **12pm**: the shadows are across Oxford Street with some shadow stretching across the podium form of the development at 48 Oxford Street;
- **1pm and 2pm**: the shadows impact 48 and 48A Oxford Street as well as the parking and driveway for Arden Anglican School at 50 Oxford Street. The proximity of these sites across Oxford Street mean a podium and tower developed to the DCP controls above would present a similar level of impacts irrespective of the additional building height; and
- **3pm**: the shadow combines with existing shadows to provide scattered impacts mainly across rooftops and sites likely to be redeveloped to higher densities consistent with the controls along Cambridge Street.

Overall the shadows cast by the proposed variation in height

- remain consistent with an area transitioning to a high density, tall tower environment;
- Do not result in any adjoining properties receiving less than 2 hours of sunlight to habitable rooms;
- Will result in some areas of new shadow cast by the proposed stage 1 Development Application however it is likely these will be absorbed within shadows cast by future development proposals and/or will fall on future proposed buildings;
- Will be faster moving when compared to shorter and wider building massing; and
- Will be reduced within the wide corridor of open space to the rear allowing direct sunlight deep into the site and adjacent sites to the south through the orientation of the built form to the Oxford Street frontage.

As shown in Figure 16 which illustrates the additional shadow cast between a 72m building envelope and the proposed 95.67m building height the proximity of 35 Oxford Street means that the northern façade (specifically assessed as non-habitable in DA/526/2015) of this building would be impacted by any adjacent building built to a maximum complying building height. Accordingly, it can be determined that there will be negligible additional impact to the solar access of 35 Oxford Street from the additional building height.

Figure 15 – Shadow comparison between a 72m and 95.67m building envelope.



4.2.9. Ecologically Sustainable Development

All detailed BASIX and Section J commitments will be resolved in the detailed stage 2 design. Nevertheless, the proposal is committed to implementing both design and management initiatives to achieve the following sustainability targets beyond the minimum requirements as detailed in the ESD report at **Appendix I** to the SEE.

- Achieving a normalised thermal energy consumption density of 51 MJ/m2 with minimum 6 Star NatHERS rating for all residential units,
- Utilise renewable energy (Solar PV) to offset over 50% of the base building's lighting energy consumption, carbon footprint and demands.

To achieve the above the following initiatives will be considered and further developed during the detailed design phase including.

- Management initiatives which promote the adoption of environmental princples from project inception, design and construction phases to the operation of the building systems
- Building will be designed to maximise occupant comfort addressing issues of thermal and visual comfort and indoor air quality.
- Encourage more energy efficient and less polluting forms of transport to and from the site.
- Energy consumption and greenhouse gas emissions will be minimised. The building envelope and services will be integrated to ensure the building is controlled to maintain the desired conditions whilst optimising the energy efficiency of the building.
- Potable water consumption will be minimised through water efficiency measures.
- Minimize waste, encourage reuse and recycling of materials and use low environmental impact materials.
- Land use and ecology.
- Emissions reduction.

4.2.10. Commercial Function of Epping Town Centre

The podium design contributes significantly to the provision of non-residential floorspace within the development. Council's recently exhibited Epping Town Centre Review identifies the need to accommodate more non-residential floor space to meet the commercial and service needs of the existing and future Epping community. This review has been identified in the recently exhibited Draft Sydney Region Plan and Draft Central District Plan.

Whilst it is noted that the proposal will result in the loss of a commercial office building. Given the occupancy level in the existing building it is evident that there is a lack of demand for large floorplate offices within Epping. Goodman has provided current rental information confirming that, of a Net Leasable Area (NLA) of 3,537sqm, only 64% of the building has been leased since 2012. This 36% vacancy rate demonstrates the lack of demand for traditional large floor plate office space in Epping.

The Commercial Floorspace Study which informed the Epping Planning Review recommended that commercial floor space comprise the following:

- *Small to medium enterprises across a range of industries located above the ground floor.*
- *Medical services for the local population (residents and workers) located on or above the ground floor.*
- *Other non-residential uses (such as Educational uses, child care centres and gyms) located on or above the ground floor.*

The variation to the building height facilitates the provision of a diversity of commercial floor space within the podium such as a mix of ground floor retail tenancies, and first floor business premises and home-office (SOHO) tenancies. This approach is consistent with the Hornsby DCP 2013 and recent Epping Town Centre discussion paper and will cater to the evolution in demand for varying non-residential tenancy typologies. These spaces will specifically cater to more flexible and remote working arrangements with spaces suitable to smaller businesses and start-up companies and allow residents who operate small businesses suited to these types of tenancies to live and work in close proximity, reducing pressure on surrounding infrastructure.

The reference design demonstrates that approximately 1,283 sqm of employment space can be provided within the development which has the potential to provide up to 81 jobs which will support the future commercial growth anticipated for the Epping Town Centre.

The mix will cater to the changing nature of business needs, especially small business and work-from-home arrangements.

4.2.11. Solar Access - Communal Open Space

It significant to note that the existing building on the site currently covers portions of the site that will become part of the communal open space for the proposal. Given that this area will be given over to communal open space there will be significant benefits gained by increasing solar access to this area which will enhance its overall amenity and useability.

The Urban Design Report provides an analysis of solar access to the communal open space area to the rear of the site (refer Figure 16). The analysis demonstrates approximately 95% of the communal open space will receive a minimum of 2 hrs sunlight in mid-winter. creating more attractive and useable area that will benefit the amenity of all residents.

Figure 16 – Shadow Analysis – Communal Open Space

Source: Urbis Urban Design

4.2.12. Wind Environment Statement

A Pedestrian Wind Environment Statement (wind report) has been undertaken to assess the impacts of the proposed reference design. The wind report notes that the pedestrian footpath along Oxford Street will be shielded from prevailing westerly winds and exposed to prevailing northerly and southerly winds. A single tower form with additional height and increased podium setback enables the retention/planting of densely foliating tress along the Oxford Street frontage and the communal open space therefore enhancing the local wind conditions around the site.

The inclusion of additional wind mitigation elements such as baffle screens, pergolas and densely foliating vegetation such as trees or shrubs/hedge planting within the various outdoor trafficable areas is expected to be effective in further enhancing the localised wind conditions.

The wind report recommends various mitigation measures to be included in the detailed stage 2 design including:

- densely foliating trees along perimeter edges;
- additional 1.5m balustrades or densely foliating shrubs along the perimeter edge of the rooftop communal space;
- balustrades, full height blade walls and louvres to private open space areas; and

- Wind tunnel testing of the detailed stage 2 design.

The wind report has determined that the wind conditions for outdoor trafficable areas at ground level are expected to be acceptable. Urbis concludes that subject to the inclusion of the recommended mitigation measures in the detailed stage 2 design, the proposed envelope will on balance result in acceptable wind conditions within the site and to the adjacent public domain.

4.3. CLAUSE 4.6 4(A)(II) - THE PROPOSAL IS CONSISTENT WITH THE UNDERLYING OBJECTIVES OF THE STANDARD AND THE ZONE OBJECTIVES

The proposal is consistent with the underlying objectives of the Height of Building development standard and the relevant objectives of the B2 – Local Centre zone in which it is located. This enables consent to be granted when considering the provisions under clause 4.6(4)(a).

4.3.1. Objectives of Clause 4.3 – Building Height

The objectives for Height of Buildings development standard provided at subclause 4.3(1) of HLEP 2013 state the following:

> *(1) The objectives of this clause are as follows:*
>
> *(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The proposed development is considered consistent with the relevant objectives of the control for the reasons outlined below.

- *To permit a height of buildings that is appropriate for the site constraints…*

The key constraints relevant to the site include its irregular shape, multiple boundaries, existing approved setbacks on adjoining sites (most notably 35 Oxford Street), and the potential future development of surrounding sites (most notably 45-53 Oxford Street).

In response to these site constraints, proposed stage 1 envelope provides:

- Increased setbacks and building separation over and above those required by the ADG and as recommended by Council;
- A slender floorplate of 807sqm –that achieves compliance with the ADG for solar access and cross ventilation;
- A building form which steps down in height from the south to the north;
- An increased front setback over DCP and ETCPD Guidelines which ensures a generous public domain along the Oxford Street frontage and retention of street trees; and
- A large area of communal open space and deep soil area at the rear of the site, which will enable retention and establishment of significant trees. Further, this area will benefit the outlook from neighbouring residential buildings.

Accommodating the allowable site floorspace within a single tower to the proposed height is a positive outcome for the site based on existing constraints. Consolidating the floor space into one tower results in acceptable impacts to adjoining development, such as overshadowing, privacy, building separation and residential amenity.

- *To permit a height of buildings that is appropriate for … its development potential*

The site is one of the largest sites in single ownership in Epping Town Centre and based on the FSR should have significant development potential. However, the height limit provided in the LEP does not allow this development potential to be realised. This is because the blanket height limit does not take into account the complex nature of existing sites within the Epping Town Centre with irregular site boundaries. It is considered the blanket height limit assumes large, regular shaped allotments.

As previously noted, the site is irregular in shape with portions of the site sandwiched between adjacent development sites and with irregular splayed boundaries.

The approval of 35 Oxford Street with reduced northern setbacks has further constrained the development potential of this site. Flexibility in the building height ensures that the development provides increased tower separation and a high-quality ground plane which contributes positively the Epping Town Centre public domain.

Realisation of the site's development potential in a manner consistent with the objective above, whilst having regard to the site's constraints ensures that an increased building height achieves a better planning outcome in this circumstance.

- *To permit a height of buildings that is appropriate for … infrastructure capacity of the locality.*

The variation in building height maintains the allowable FSR on the site of 4.5:1 as provided by clause 4.4 of HLEP 2013. As detailed within the Epping Urban Activation Precinct Planning Report, a key criterion used to determine the controls for this precinct was

> *Urban Activation Precinct criteria 2 - Does the precinct support or maximise the use of existing and planned infrastructure, especially transport?*

Given that density is not increased by the proposal it is unlikely the proposal will impact the infrastructure capacity within the locality beyond that envisaged in the Epping Urban Activation Precinct Planning Report.

The proposed height variation maintains 'highest and best' use afforded to the site by the priority precinct controls. The UAP Planning Report spoke to economic analysis which identified a minimum floor space (between 4.5:1 and 6:1) that will need to be provided for key sites in the town centre core to provide for financially feasible development.

The objectives of the Epping Urban Activation Precinct Planning Report include:

- enable the provision of a wider range of housing options in close proximity to public transport and employment opportunities; and
- to provide for development that significantly improves the public domain and minimises impacts to adjoining sites.

The proposed variation provides a high quality public domain, acceptable solar access and visual privacy through increased setbacks. The proposal is also ideally situated close to public transport, and to key roads in Epping.

The vehicle access point to the site has been considered to ensure a workable ground plane in particular between the podium and the irregular site boundary to the south. The design has been assessed in the Traffic Impact Assessment submitted as part of the DA package which indicates the proposed development will not have an unreasonable impact on the surrounding road network.

The potential for traffic generation is reduced due to the site's close proximity to train and bus services capable of accommodating the proposed density. Additionally, other key retail and community services are located within walking distance from the site along Oxford Street. The proposed variation will therefore not generate the need for additional infrastructure capacity in the locality.

Overall, the proposed increase in building height has been demonstrated to be consistent with the objectives of the Height of Buildings control in clause 4.3 of the HLEP 2013.

4.3.2. Objectives of the B2 Zone

The objectives of the B2 Zone and consistency of the proposal with these objectives is discussed below.

- *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.*

The proposal encourages the proper development of land, promoting the social and economic welfare of the community and a better environment by responding to the specific and contextual conditions of this site. The proposal will result in a building form and typology that is consistent with the scale of development envisaged for the site under the Epping Urban Activation Precinct, and meets the underlying objectives of HLEP 2013 and Hornsby DCP 2013.

The proposed development will contribute positively to the Epping Town Centre. The development will allow for the creation of additional housing whilst maintaining a vibrant mix of uses within the podium and an active ground plane. The proposed stage 1 envelope will enhance open space by including a large landscaped communal open space area at the rear of the site. This space provides a buffer between neighbouring developments while also providing enhanced amenity and outlook to the adjacent apartment buildings. The site is nearby to Epping Station and future residents will be easily able to take advantage of the high frequency rail and bus services.

The proposal will facilitate the development of a mixed-use podium which will provide a variety of opportunities for business and retail, catering to different tenant and business needs. The reference design shows how retail spaces can be located on the ground floor fronting Oxford Street. Standard office/business spaces and SOHO work spaces connected to residential apartments can be provided at Level 1. These spaces will specifically cater to more flexible and remote working arrangements with spaces suitable to smaller businesses and start-up companies and allow residents who operate small businesses suited to these types of tenancies to live and work in close proximity, reducing pressure on surrounding infrastructure.

- *To encourage employment opportunities in accessible locations.*

The proposed mixed use podium will encourage employment opportunities proximate to a large residential catchment and public transport hub and will provide up to 81 jobs. The flexible home office spaces at Level 1 will facilitate the operation of small businesses with specific smaller office/workspace needs in line with the types of spaces identified in the Epping Planning Review for small to medium enterprises across a range of industries above the ground floor.

- *To maximise public transport patronage and encourage walking and cycling*

The proposed residential development is located within 280m of Epping Train Station which provides connection to major strategic employment areas including Macquarie Park, Chatswood, North Sydney and Sydney CBD. The future Metro North West will provide connection to Norwest business park. The development is located proximate to essential services within Epping Town Centre such as schools, post office, banking, pharmacies, restaurant/cafes, medical services, newsagents and convenience retail and as such will encourage walking and cycling.

As discussed in Section 4.2.6, the existing topography and the arrangement of approved neighbouring buildings does not support the provision of a viable or safe through block connection within this site as envisaged by the HDCP 2013. Council have supported this in principle noting that new location for a through block connection will be investigated to the south of the site.

At street level the increased setbacks to Oxford Street afforded by the proposed variation allow for wider a footpath at the site frontage and retention of street trees. This will enhance the overall amenity to the ground plane making it an attractive place for pedestrians and for residents to interact socially.

The proposed height variation supports the maximum floor space on this site being achieved which contribute to ensuring return on the significant ongoing State Government investment in public transport infrastructure for Epping.

4.4. CLAUSE 4.6(5)(A) - WOULD NON-COMPLIANCE RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The non-compliance will not raise any matter of State or Regional Significance. However, it is emphasised that not achieving the FSR on this site will undermine the controls set for the site by the Priority Precinct which were specifically implemented to ensure viability of the significant investment in public transport infrastructure being undertaken by the NSW State Government.

4.5. CLAUSE 4.6(5)(B) - IS THERE A PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL STANDARD?

The proposed development achieves the objectives of the height of buildings development standard and the land use zoning objectives despite numerical non-compliance. It has been demonstrated within the Urban Design report that the proposed variation will not result in an adverse environmental impact on the neighbourhood amenity and streetscape and will create a positive relationship with surrounding tall tower forms through increased building separation and setbacks. The increased building height does not result in

any unreasonable or significant adverse environmental impacts nor does it diminish the redevelopment potential or amenity of any adjoining land

As has been demonstrated in this report, there is a disconnect between the applicable height and FSR controls for this site, having regard to the site constraints (irregular boundaries) and surrounding development context. The site is one of the largest sites in single ownership and should have significant development potential with an FSR of 4.5:1. However, the height limit provided in the LEP does not allow this development potential to be realised and therefore undermines the substantial investment in public transport infrastructure being undertaken by the NSW State Government and the objectives of the Epping Priority Precinct.

The reference design provided to support the stage 1 building envelope demonstrates how a balanced mix of 1, 2 and 3 bedroom units including adaptable units and units can be achieved all within a 2 minute walk of Epping Town Centre, train station and bus routes. By enabling the FSR to be achieved the proposed variation can therefore facilitate a range of housing types proximate to major transport routes. The identification of Epping as a Priority Precinct by the NSW State Government means that this location is ideal for residential development, and indeed seeks to promote residential accommodation in this locality. Variation to the height standard will enable the scheme to realise the site's full development potential and thus meet the objective of the Priority Precinct in this regard. Should the height variation not be supported, it is likely that optimisation of the site yield will not be achieved.

Given the complexities in resolving a number of critical environmental planning matters specific to the site, the strategic importance of the site and substantial public benefit which will be delivered as a result of the proposed variation there is little public benefit gained by maintaining the building height standard.

4.6. CLAUSE 4.6(5)(C) ARE THERE ANY OTHER MATTERS REQUIRED TO BE TAKEN INTO CONSIDERATION BY THE SECRETARY BEFORE GRANTING CONCURRENCE?

There are no additional matters to be considered.

APPENDIX 2 – DESIGN EXCELLENCE ADVISORY PANEL COMMENTS

First Review (15 June 2017)

The Design Excellence Advisory Panel make the following comments in relation to the project:

1. The application was presented by the Council officers to the panel for discussion including the DA drawings and the recent sketches showing the option to delete Building 'B' and to provide substantial open space the rear of the site.

2. The current proposal complies with the maximum height of 72m.

3. Notwithstanding the above the panel has a number of concerns with the development application as follows;
    - Building 'B' is not supported and should be deleted due to significant amenity impacts on surrounding properties. The floor area of building 'B' should be transferred to building A.
    - Setbacks and building separation do not comply with the ADG.
    - The footprint of tower 'A' is too big and should be reduced in size.
    - Building 'A' lacks articulation presenting as a solid mass to the street.

4. Further to the above, the applicant needs to demonstrate compliance with the ADG including parts 2E - Building depth, 2F – Building separation, 2G – Street setbacks and 2H - Side and rear setbacks, subject to #9 below.

5. The panel is of the view that a smaller footprint and if necessary taller structure would be more appropriate for building 'A'.

6. Extra height may be supported to accommodate some of the FSR from the removal of building 'B', but subject to review of the extent of environmental impacts.

7. The podium should be 3-4 storeys high and should include commercial or community uses instead of residential. This should include adaptable meeting and office facilities as potential 'Co-Working' office spaces for residents within the development and in the local area.

8. The setbacks for building 'A' should be in the order of;
    - Podium levels – 3m from front boundary to align with the podium at 35 Oxford Street. The applicant may consider zero setbacks for the podium to the northern and southern boundaries providing covered driveway entry to the basement.
    - The tower levels should be setback a minimum 9m from the front boundary to align with 35 Oxford Street. The façade should incorporate strong vertical articulation with recesses and/or staggered facades in plan view.
    - The tower should have a minimum setback of 6m from the southern boundary up to level 9 and then 9m above.
    - On the northern boundary, a minimum 6m setback is acceptable however the building must be staggered or articulated and must avoid any blank facades.
    - 30 metre separation at the rear to the approved building (address 20-28 Cambridge Street) is considered acceptable.

9. As mentioned above, additional height for building 'A' may be supported to accommodate the FSR from building 'B'. The height of building 'A' should be varied so as to break down its massing by either stepping down to the north towards 43 Oxford Street where a lower height limit applies, or to the to the south relative to 35 Oxford Street. The stepping to take into account opportunities to reduce overshadowing and to provide a more varied building composition.

10. The panel considers the southern through site link should be deleted as it would require a convoluted pathway with poor sightlines and significant level changes in order to connect with public access on the site to the west. Instead, the Panel recommends that Council should establish the basis for a more suitable link to the south of the site, closer to the centre of the shopping strip using site specific development controls with developer contributions.

11. The main pedestrian entrance and central lobby area on the ground floor should be more open providing clear views through the development to the open space at the rear of the site. Similarly, the lift lobbies on the upper levels above should be open to the east and west for natural light and views and to articulate the east and west facades.

12. A more detailed context analysis should be provided including analysis of the existing and future adjacent built form in Oxford Street. Where possible analysis should include recent development proposals such as 43 Oxford Street to ensure the proposed development is suitably integrated, particularly at podium and street level.

13. Provision of 3D views from both Oxford Street and surrounding properties is required to fully appreciate the extent to which the built form can address issues raised above.

14. Potential for use of the open space to the west needs consideration, and how this might best serve communal needs with associated landscape treatment that will also be seen from a large number of units.

15. Previous pre-DA material that was shown to the Panel indicated a greening strategy for the building facades with associated modelling, and this should be further explored in any future submission to help address concerns about the bulky envelope.

16. More detailed elevations reflecting the proposed floor plans need to be included in any future submission

Second Review (17 January 2018)

In general the Panel believes this is a significant improvement on the two building option, and although there is a major breach of the height limit, justification in this case should be made in consideration of the improved urban and building design outcomes. Otherwise the proposal appears to be largely ADG compliant, but the following comments cover further points or clarifications that must be considered by the Applicant in the subsequent Stage 2 submission.

1. The Panel supports the single tower with additional height in-lieu of building 'B'. A taller and more slender building is appropriate in this location, and can provide a suitable apex for the cluster of high rise buildings now evolving around the Epping urban centre.

2. The articulation and stepping down at the top of the building is commended, and a good response to Panel suggestion from the earlier Stage 1 review. However the Panel considers this approach needs to be strengthened with perhaps larger steps, and indication of how this modelling would assist in minimising overshadowing and solar access loss relative to 35 Oxford Street.

3. As the building will be viewed from many directions, and due to its height likely be a landmark for the Epping Town Centre, it is suggested that distant urban form views from various points be shown as part of further design development. Precedents should also be reviewed for stepped roofs viewed from different directions in the Sydney CBD, such as the Deutsche Bank in Hunter Street, Governor Macquarie Building in Farrer Place and No. 52 Martin Place.

4. Articulation of the tower with recessed slots has significantly improved the appearance of the building envelope, and the Panel feels that these slots should perhaps continue down through podium levels to better express the main entrances more clearly at street level. Detailed perspectives/montages at street level are necessary to ensure the best appreciation of potential outcomes.

5. At the earlier Stage 1 review, the Panel noted that the podium should be 3-4 storeys high and include community uses and commercial spaces suitable for potential 'co-working' office spaces for local residents. While the podium height at 3 storeys is acceptable, the commercial spaces are limited in both size and configuration. Office units that are not connected to residences should be more uniform and adaptable, allowing for them to be linked to provide larger commercial spaces if required, and less suitable to be converted back to residential units in future.

6. Given the relatively small size of the commercial spaces not linked to residential units, consideration should also be given to provision of communal toilet amenities and kitchen facilities at Level 1. These could also be for the benefit of visiting maintenance or service personnel.

7. For a building of this scale it would be expected that a community room should be provided for owner corporation meetings and occasional communal functions. While there may be scope for such a space to be located within the Level 1 podium, an alternative could be on Level 27 adjacent the roof terrace. That approach would see the replacement of a 1 bedroom unit with a flexible space opening onto the terrace, and with shared amenities available for various social activities as well.

8. There is concern from the Panel about the proposed resolution of the public domain and landscape treatment to the Oxford Street frontage. The indicated front setback for the podium is 6m where Council requested 7.5m, and the panel previously recommended 3m to align more closely with No. 35 Oxford Street or the building to the north. Furthermore, the footpath is highlighted in green suggesting soft landscaping when in fact it should be paved in accordance with the public domain controls to maintain a consistent streetscape.

9. Further investigation of landscape options is needed together with 3D images and material palette showing both the existing and proposed streetscape treatments. This should also consider how the main building entries can be better integrated to address Oxford Street, and provide cohesive activation along the retail frontage. The footpath awning is shown stopping short on the northeast corner, and it could extend further out and partially along the northern side for better protection to pedestrians and patrons using the outdoor space to the north.

10. As identified in the GAO Draft of Greener Places, a healthy and easily maintained tree canopy is increasingly critical in Western Sydney to deal with hotter summers, so there must be well considered strategies to support larger trees around site perimeters. The Basement Levels 2-3 cover a large part of the site, and although stepped in at Basement Level 1, there is diminished opportunity for real unrestricted deep soil planting. Given close proximity of the site to the Epping Station, scope should be investigated for potential car parking reduction to allow for perimeter pockets of more deep soil zones.

11. Previous pre-DA material shown to the Panel also indicated a greening strategy for the building facades with associated modelling, and this should be further explored in any future submission to help mitigate concerns about urban heat island effects. The Panel is encouraged to see the Level 27 roof terrace, but this and other upper setback levels could include more landscape treatment to help reduce heat load, and for further communal rooftop access.

12. The Panel noted access to the rear ground level communal open space via stairs from the central lobby, and to the multi-purpose court via ramp. It is unclear whether full equitable access would link these areas, or if this might be along the northern side of the building. Provision for communal amenities nearby should also be considered.

13. It is expected that more detailed elevations reflecting the proposed floor plans will be included in a Stage 2 submission, and there should also be detailed 1:20 sections to show use of materials and how the overall façade will work at the various levels.

14. While the unit layouts are quite tight, the Panel considered they are generally satisfactory but some refinements may be appropriate. Several units have limited kitchen bench space - eg. 2 bedroom units on level 2 on the south-west corner, and some living areas allow direct line of sight into adjacent bedrooms. Clarification of how various unit services will be provided is expected in any subsequent submission, along with detailed modelling for natural ventilation.

APPENDIX 3 – DRAFT CONDITIONS OF CONSENT

DRAFT CONDITIONS OF CONCEPT DEVELOPMENT CONSENT
DA/314/2017 – 37 - 41 Oxford Street, Epping, 2121

Pursuant to Section 83B of the Environmental Planning and Assessment Act 1979, consent be granted to Concept Development Application No. DA/314/2017 subject to the following conditions:

General Matters

1. Any future detailed development application related to this concept approval is to be generally in accordance with the following concept plans endorsed with Council's Stamp as well as the documentation listed below, except where amended by other conditions of this consent and/or any plan annotations and subsequent separate development applications as part of future detailed Development Applications:

Drawing No.	Description	Prepared by	Date
Architectural Drawings			
S1-DA-1101-C	Basement Level 4 Envelope	Candalepas Associates	19/02/18
S1-DA-1102-C	Basement Level 2 – 3 Envelope	Candalepas Associates	19/02/18
S1-DA-1103-C	Basement Level 1 Envelope	Candalepas Associates	19/02/18
S1-DA-1111-C	Ground Floor Plan	Candalepas Associates	19/02/18
S1-DA-1112-C	Level 1 Envelope	Candalepas Associates	19/02/18
S1-DA-1113-C	Level 2 Envelope	Candalepas Associates	19/02/18
S1-DA-1114-C	Level 3 Envelope	Candalepas Associates	19/02/18
S1-DA-1115-C	Level 4-6 Envelope	Candalepas Associates	19/02/18
S1-DA-1116-B	Typical Level 7-12 Envelope	Candalepas Associates	05/12/17 (As submitted to Council 19/02/18)
S1-DA-1117-C	Typical Level 13-25 Envelope	Candalepas Associates	19/02/18
S1-DA-1118-C	Level 26-27 Envelope	Candalepas Associates	19/02/18
S1-DA-1119-C	Level 28 Envelope	Candalepas Associates	19/02/18
S1-DA-1120-C	Level 29 Envelope	Candalepas Associates	19/02/18
S1-DA-1121-C	Roof Plan Envelope	Candalepas Associates	19/02/18
S1-DA-1201-C	Section 01	Candalepas Associates	19/02/18

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S1-DA-1202-C	Section 02	Candalepas Associates	19/02/18
S1-DA-1301-B	East Elevation	Candalepas Associates	05/12/17 (As submitted to Council 19/02/18)
S1-DA-1302-C	South Elevation	Candalepas Associates	19/02/18
S1-DA-1303-C	West Elevation	Candalepas Associates	19/02/18
S1-DA-1304-C	North Elevation	Candalepas Associates	19/02/18
Landscape Plans			
SS16-3442-101-C	Landscape Plan / Ground Floor Plan	Site Image Landscape Architects	01/12/17

Reference No	**Description**	**Prepared by**	**Date**
WD281-04F02(REV0)	Pedestrian Wind Environment Statement	Windtech	01/11/17
WD281-04F03(REV1)	Response to Peer Review of Pedestrian Wind Environment Statement	Windtech	16/02/18
N/A	Stage 1 DA Urban Design Report	Urbis	12/2017
0351r01v3	Traffic Impact Assessment Report	Ason Group	01/12/17
Issue C	Stormwater Management Plan	Building Services Engineers	11/2017
SA6311	Statement of Environmental Effects	Urbis	12/04/17
SA6311	Statement of Environmental Effects – Addendum Report	Urbis	19/02/18
5795-B	SEPP 65 Design Verification Statement	Candalepas Associates	01/12/17
20E-17-0155-TRP-633772-5-2	Ecologically Sustainable Design (ESD) Report	Vipac	23/11/17
N/A	Arboricultural Impact Appraisal and Method Statement	Naturally Trees	22/11/17
N/A	Tree 24 and Tree 28 Retention Letter	Naturally Trees	19/02/18
17077-C	Acoustic Feasibility Assessment	Wilkinson Murray	23/11/17
19615/4133C-14/0769	Preliminary Site Investigation	SMEC Testing Services Pty Ltd	04/2014

Reason: To ensure future detailed application are in keeping with the approved concept.

2. No approval is given for any work on the site. A future 'Stage 2' detailed development application must be submitted to and approved by Council prior to any works on the site.
   Reason: To satisfy requirements of Clause 100 of the Environmental Planning and Assessment Regulations 2000

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3. The Concept Plan approved envelopes do not guarantee that a future building form will be approved in that form. Future detailed Development Applications must provide for a building form that addresses building separation, articulation standards, public accessibility, amongst other matters, and if not provide reasonable alternative planning solutions to compliance.
   Reason: To ensure future detailed building forms achieve a suitable standard of design.

4. All subsequent development applications and the issue of any Construction Certificate must not be inconsistent with the conditions of the Concept Plan.
   Reason: To ensure that development on the site is consistent with the concept plan.

5. The recommendations outlined in the specialist reports listed in Condition 1 shall be incorporated into the plans and documentation accompanying the future detailed development application subject to the satisfaction of Council officers.
   Reason: To ensure a suitable level of residential amenity.

6. Prior to the issue of an Occupation Certificate for the future building the applicant shall establish a public right of way on the publicly accessible front setback area shown on the drawings hereby approved.
   Reason: To ensure that public benefits are provided in keeping with the applicant's offer.

7. The applicant is to liaise with NSW Office of Water to determine whether future development applications require a controlled activity approval under the Water Management Act 2000.
   Reason: To determine whether the future applications are Integrated Development under the provisions of the Environmental Planning & Assessment Act, 1979.

8. No advertisement/signage shall be erected on or in conjunction with the development without prior consent.
   Reason: To comply with legislative controls.

Design

9. The design architect of the project, Candalapes Associates, is not to be changed for future detailed development applications without prior notice and approval of the Council's City Architect.
   Reason: To ensure design excellence.

10. The detailed stage 2 application is to conform to the recommendations of Council's Design Excellence Advisory Panel in their comments dated 17/01/18. The acceptability of the applicant's response shall be determined by Council's Design Excellence Advisory Panel in a further review of the application at stage 2.
    Reason: To ensure the building represents architectural best practice.

11. Notwithstanding Condition 1, the public footway to the front of the site shall be upgraded in keeping with the requirements of the Parramatta Public Domain Guidelines as part of the Stage 2 application.
    Reason: To ensure an appropriate public domain.

12. Notwithstanding Condition 1, the podium envelope front setback (all 3 levels) shall be 4.5m from Oxford Street.
    Reason: To provide flexibility for future detailed design of street elevation.

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Utilities

13. All future development applications shall take into consideration the following requirements of Sydney Water:

    a) Building Plan Approval

    The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

    The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.

    The Tap in™ service provides 24/7 access to a range of services, including:
    - building plan approvals
    - connection and disconnection approvals
    - diagrams
    - trade waste approvals
    - pressure information
    - water meter installations
    - pressure boosting and pump approvals
    - changes to an existing service or asset, e.g. relocating or moving an asset.

    Sydney Water's Tap in™ online service is available at:
    https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm

    b) Section 73 Certificate

    A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

    Application must be made through an authorised Water Servicing Coordinator. For help either visit
    www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

    Reason: To satisfy water/wastewater provider requirements.

14. Electrical connection to the site will be in line with Ausgrid's Electrical Standard (ES)1 – 'Premises Connection Requirements'.
    Reason: To satisfy energy provider requirements.

15. It is recommended that the nominated electrical consultant/contractor provide a preliminary enquiry to Ausgrid to obtain advice for connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include whether or not:

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- The existing network can support the expected electrical load of development
- A substation may be required on-site, either a pad mount kiosk or chamber style and;
- Site conditions or other issues that may impact on the method of supply.

Please see Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network.
Reason: To satisfy energy provider requirements.

16. The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.
Reason: To satisfy energy provider requirements.

17. All proposed vegetation underneath overhead power lines and above underground cables must comply with the requirements of ISSC 3 Guideline For Managing Vegetation Near Power Lines.
Reason: To satisfy energy provider requirements.

18. There are existing underground electricity network assets in Oxford Street. Special care should also be taken to ensure that driveways and any other element of the development within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence, it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.
Reason: To satisfy energy provider requirements.

Environmentally Sustainable Design

19. Subsequent development applications must demonstrate that the following environmental performance requirements will be met: -

    (a) improvement of Energy score in BASIX by at least 10 basis points over the minimum requirement at the time of detailed application lodgement (i.e. BASIX score of 35).
    (b) improvement of Water score in BASIX by at least 10 basis points over the minimum requirement at the time of detailed application lodgement (i.e. BASIX score of 50).
    (c) 20% improvement on BASIX thermal comfort heating and cooling caps
    (d) 5.5 star NABERS rating for commercial/retail portion of building
    (e) Solar PVs to offset at least 50% of the base building's energy demands (lights, lifts, carpark, etc)
    (f) Rainwater harvesting from roof and its treatment to supplement non-potable water.

    A report demonstrating compliance is to be submitted to and approved by Council's Manager Development and Traffic Services prior to release of the final Occupation Certificate.

    Reason: To ensure the applicant's stated commitment to implement environmental performance beyond BASIX is provided for the development.

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Trees & Landscape Requirements

20. Architectural plans and documents for the future detailed development application must demonstrate that the following trees, as referenced in the Arborist Report prepared by Naturally Trees dated 22 November 2017, are to be retained and sufficiently protected during site works:

Tree No.	Name	Common Name	Radius from the trunk
24	*Syzygium paniculata*	Magenta Cherry	6 metres
28	*Eucalyptus saligna*	Sydney Blue Gum	12 metres
29-35	*Syzygium sp*	Lilly Pilly	2 metres
36	*Jacaranda mimosifolia*	Jacaranda	3.6 metres

The following requirements must be addressed:

(a) The Stormwater Drainage Plan prepared by Building Services Engineers dwg no. ACE170411.SW.DA 000-106 Issue D dated 15 February 2017 must be revised to remove the retaining wall structure and retain existing ground levels within the quoted radius of the nominated tree(s).
(b) The redirection of the sewer main must be demonstrated on plans and must not encroach the quoted radius of the nominated tree(s).
(c) Any excavation required for footings of the proposed building structure must be contained wholly outside the quoted radius of the nominated trees.

Reason: To ensure adequate protection of existing trees.

21. An Arboricultural Impact Assessment (AIA) and Tree Protection Plan (TPP) prepared by an AQF Level 5 arborist must be submitted with the future detailed development application which must be consistent with the Arborist Report prepared by Naturally Trees dated 22 November 2017 and the Arborist Letter from Naturally Trees dated 19 February 2018. Trees which must be retained are numbered 24, 28, 29-35 and 36.

(a) The arborist report must provide a tree removal/retention plan at 1:100 or 1:200 scale showing the location of all trees required to be retained and removed.
(b) The plan must include survey detail and show the existing ground levels at the base of each tree, the actual canopy spread to scale, the location of and diameter at breast height (DBH) of the trunk of the tree and a tree number (All trees shall be plotted by a registered surveyor).
(c) The report must include a tree protection plan for all trees which must be retained. The tree protection plan shall identify the tree protection area for each tree and clearly identify the percentage of development encroachment to the root system and canopy of the tree. The tree protection plan shall be site specific and show all proposed development works, including the location of the above and below ground structures and services.
(d) The report must list all documentation referenced during the assessment process and demonstrate due consideration to the development in its entirety. The report must address all likely impacts of the proposed development on all trees required to be

retained, and particularly any tree that may require site specific protection measures to minimise impact. Potential development impacts will include all above and below ground structures and services and any potential impacts to the tree canopy. Generic tree protection information that is not site specific should not be included.

(e) Where retained trees have a development setback and tree protection zone established, a recommended tree protection specification and diagram must be provided in accordance with AS4970-2009 Protection of Trees on Development Sites. All site plans are to be amended to indicate the tree protection zone requirements as set forth in the arborist's report along with any other noted requirements that the arborist deems necessary to ensure the long term health and sustainable retention of the subject trees.

Reason: To ensure adequate protection of existing trees.

22. A Landscape Plan must be submitted with the future detailed development application which is generally consistent with Landscape Plan prepared by Site Image Landscape Architects dwg no. SS16-3442 101 C dated 1 December 2017, together with any additional criteria required by the Consent Authority addressing the following requirements:

    (a) Notwithstanding Condition 1, the landscape plan must include at least 7 trees along the front setback of the site in the approximate location and of the approximate size of the existing trees in that location.
    (b) A detailed Planting Plan including a planting schedule with suitable species of trees, shrubs and ground covers indicating planting locations, species type (botanic/ common name) mature dimensions, plant numbers/planting density (annotated on the Planting Plan) and the size of the containers at planting. NOTE: Landscaped areas and proposed tree planting shall not be in conflict to the Stormwater drainage for the site.
    (c) Proposed tree species proposed for all landscape areas must be at a native/exotic ratio of 4:1.
    (d) Trees which are listed in City of Parramatta Council's Development Control Plan 2011 Section 5.4 'Exempt Species List' are not permitted.
    (e) Large sized trees are not recommended to be planted upon structure (not including the set down basement levels) and are required to be limited to a maximum mature height of 8-10 metres
    (f) Above structure raised planting boxes/beds must be designed to meet soil volumes and depths in accordance with NSW Planning and Environment Apartment Design Guide section 4P.
    (g) Construction details for all above structure raised planting boxes/beds showing substrate depth, drainage and waterproofing.
    (h) All landscape plans are to be prepared by a professionally qualified landscape architect or designer.

    Reason: To ensure that appropriate landscaping is implemented.

Future DA Submission Requirements

23. Any subsequent development application must be accompanied by a Wind Effects Report which includes the results of a wind tunnel test on the proposed building. The wind effect report must demonstrate that the proposal will not have an unacceptable impact on the wind environment of the public domain or adjoining properties.

    The report must demonstrate that the following wind criteria are achieved:

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- The primary trafficable area of open space adjacent to the northern retail unit shall achieve the wind comfort and safety criteria for 'Long Exposure Activities' as defined by A.G. Davenport (1972) and Melbourne (1978) respectively.
- The primary trafficable area of public open space to the front of the site (east) shall achieve the wind comfort and safety criteria for 'Short Exposure Activities' as defined by A.G. Davenport (1972) and Melbourne (1978) respectively.
- The public domain footway to the front of the site (east) shall achieve the wind comfort criteria for 'Pedestrian Walking' as defined by A.G. Davenport (1972) and wind safety criteria of 'Comfortable Walking' as defined by Melbourne (1978).

The report should outline what amelioration measures are necessary, if any, to achieve the wind criteria. Any amelioration should be clearly detailed on the submitted architectural drawings (i.e. awnings, trees, fins, etc).
Reason: To ensure the proposal has an acceptable impact on the amenity of the public and adjoining/nearby properties.

24. A waste management plan, covering demolition, construction and operational phases, is to submitted with any future development application for. The Plan should include details of waste generation, recycling, disposal and management at all stages of the development, the location and design of the waste storage areas including:

    (a) The size being large enough to accommodate all waste generated on the premises, with allowances for the separation of waste types;
    (b) The floor being graded and drained to an approved drainage outlet connected to the sewer and having a smooth, even surface, coved at all intersections with walls;
    (c) The walls being cement rendered to a smooth, even surface and caved at all Intersections;
    (d) Cold water being provided in the room with the outlet located in a position so that it cannot be damaged and a hose fitted with a nozzle being connected to the outlet;
    (e) The room shall be adequately ventilated (either natural or mechanical) in accordance with the Building Code of Australia.

    Reason: To ensure provision of adequate waste storage arrangements.

25. A geotechnical report should be submitted with the DA for detailed design. This report must be prepared by a qualified, experienced geotechnical engineer and must address, but is not limited to, the following:

    (a) The potential for groundwater drawdown due to the proposed development, and how this risk will be mitigated.
    (b) Soil strength and recommendations for appropriate excavation and construction methods.
    (c) Excavation vibration management recommendations considering nearby vulnerable structures and infrastructure.
    (d) Groundwater conditions.
    (e) Excavation support recommendations.
    (f) A construction phase soil and water management plan, considering potential groundwater ingress into the excavation cavity.

    Reason: Environmental protection.

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26. The future detailed development application must include the following architectural documentation:

    (a) 1:20 wall sample sections, through podium and tower;
    (b) Materiality, demonstrating high quality finishes to the satisfaction of Council's City Architect; and
    (c) 3D photo montages

    Reason: To ensure design excellence can be assessed.

27. The future detailed development application must include a lift services report, from an appropriately qualified professional, demonstrating that the lifts provided will achieve a good level of service for future occupants.
    Reason: To ensure design excellence can be assessed.

Engineering

28. The proposed Water Sensitive Urban Design (WSUD) treatment train consisting entirely of end-of-pipe filtration systems is not considered adequate. The purpose of WSUD measures is not just to improve water quality, but also to provide stormwater quantity and amenity benefits. To this end the WSUD strategy for this site must be augmented to include landscape–integrated measures and maximize rainwater harvesting. Details of this revised system must be clearly shown in the stormwater plan submitted with future detailed development applications.

    The configuration of the filtration cartridges within the OSD tank must be amended for submission with a DA for detailed design. Stormwater should enter into a flow separating device upstream of the WSUD and OSD devices, where only the 1 in 3 month (4EY) first flush flows should be directed to the filtration system and all higher flows directed straight to OSD storage. The outlet of the filtration system must also be directed to the OSD system. The final OSD configuration should be consistent with the filtration cartridge manufacturer's standard drawings.

    Reason: To mitigate negative impacts on the natural hydrological cycle of increased urbanization within the catchment.

29. On-site detention is required for this site, to be designed based on the Upper Parramatta River Catchment Trust Handbook 4th edition. The rain-shadow effect of wind driven rain on vertical building surfaces must be factored into the calculation of the OSD catchment.
    Reason: To minimise the rate of stormwater runoff from the site.

30. A study of the local drainage system must be undertaken to ascertain whether upgrades to Council's existing stormwater system are necessary in order to cater for any additional runoff from the proposed development. This study shall detail the pre-development Council stormwater drainage network using the DRAINS model or equivalent. This model must then be run for pre and post development run-off conditions, considering overland flow from the upstream catchment and wind driven rain on the proposed structures. Improvements to the existing Council downstream stormwater drainage pipe system may be required in order to achieve a 20 ARI design capacity post-development, if required by Council. This should be identified in the detailed DRAINS model. A hydraulic check of the site drainage system will

also need to be run at the point of connection to Council's drainage system to ensure that there are no issues of backwater flows resulting in flooding of sections of the site.

The results of this study must be submitted to Council's Team Leader Technical Specialists (DTSU) for approval prior to the release of any construction certificate.

Detailed plans for any civil works proposed within the public domain must be submitted with the DA for detailed design.

Reason: To ensure all works carried out on Council assets are consistent with Council standards.

31. The stormwater plans submitted with a detailed design DA should be generally in accordance with the stormwater concept package, drawing numbers 101-110 rev: D, dated 15/02/2018, prepared by BSE building services engineers. In addition, they should also address the following:

    (a) The location and volume of all proposed rainwater tanks must be clearly indicated on stormwater plans.
    (b) All RWO stormwater inlets should be replaced by appropriately sized grated surface collection pits, to allow adequate inlet capacity for stormwater collection.
    (c) The minor (pit and pipe) stormwater drainage system must be designed for 5% AEP inlet and conveyance capacity, considering an appropriate blockage factor.
    (d) Overland flow corridors must be provided for major flows up to 1% AEP. These flow paths must be clearly shown on the stormwater plans, and depth of waters, slope and capacity of the flow corridors must be considered.
    (e) Documentary evidence must be supplied to support the legal right of the subject site to drain through the existing 3m drainage easement to Chester Street. This should take the form of a Title document listing the subject site as a beneficiary of this easement.
    (f) Calculations should be supplied demonstrating that the pipelines within the existing 3m wide drainage easement have the capacity to take the runoff from the new development, considering any other properties also draining to this infrastructure.

    Reason: To ensure that information submitted with a future DA for detailed design is sufficient to allow a full engineering assessment.

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