



**SYDNEY CENTRAL CITY PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

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| Panel Reference | 2018SWC012 |
| DA Number | DA/61/2018 |
| LGA | City of Parramatta Council |
| Proposed Development | 21 storey mixed use building comprising 2 – 3 storey podium containing 5 retail tenancies and 18 storeys of shop-top housing above containing 130 apartments (46 x 1 bed, 70 x 2 bed and 14 x 3 bed) over 4 storeys of basement car parking; public through-site link; and demolition of existing buildings. |
| Street Address | 48-54 Beecroft Road and 52-54 Rawson Street, EPPING NSW 2121 (Lot 2 DP 592094, Lot 1 DP 541808, Lot 1 DP 592094, Lot 2 DP541808, Lot 4 DP 541960, Lot A DP 325036 and Lot 3 DP 541960) |
| Applicant | Mr. Sameh Ibrahim |
| Owner | DGS Epping Development Pty. Ltd. |
| Date of DA lodgement | 25 January 2018 |
| Submissions | 48 (42 unique submitters) |
| Recommendation | Refusal |
| Regional Development Criteria | The development has a capital investment value of more than \$20 million (at the time of lodgement). |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none">Environmental Planning and Assessment (EP&A) Act 1979EP&A Regulation 2000SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004SEPP (Infrastructure) (ISEPP) 2007SEPP (State and Regional Development) 2011SEPP (Sydney Harbour Catchment) (SEPP Sydney Harbour) 2005SEPP No. 55 (Remediation) (SEPP 55)SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) & Apartment Design Guide (ADG)Parramatta Local Environmental Plan (PLEP) 2011Parramatta Development Control Plan (PDCP) 2011 |
| List all documents submitted with this report for the Panel's consideration | <ul style="list-style-type: none">Attachment 1 – Architectural DrawingsAttachment 2 – Stormwater DrawingsAttachment 3 – Public Domain Alignment DrawingsAttachment 4 – Landscape DrawingsAttachment 5 – Department of Planning cl. 4.6 Circular |
| Report prepared by | Alex McDougall |
| Report date | 22 March 2019 |

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

Conditions

Have draft conditions been provided to the applicant for comment? **N/A**

1. Executive Summary

This development application seeks consent for construction of a 21-storey shop top housing development. The building would be comprised of a 2-3 storey podium, containing 5 commercial tenancies and communal open space, and an 18 storey tower above, containing 130 apartments including 46 x 1 bedroom apartments, 70 x 2 bedroom apartments and 14 x 3 bedroom apartments. The application also includes demolition of all buildings on the site, excavation of a 4-storey basement for 123 parking spaces, and provision of a public through-site pedestrian link between Beecroft Road and Rawson Street.

The proposed development generally follows the form for the site envisaged by the applicable planning controls. However, the application includes several unresolved issues which do not satisfy section 4.15 of the *Environmental Planning and Assessment (EP&A) Act 1979* and as such form reason to refuse the application, including:

- Non-complying building height
- Non-complying floor space ratio
- Lack of concurrence from Transport for NSW (Sydney Metro)
- Poor amenity of the public through-site link
- Lack of appropriate alignment drawings
- Lack of landowners consent for lane
- Impact on the local traffic network

The application has been assessed relative to section 4.15 of the *Environmental Planning and Assessment (EP&A) Act 1979*, taking into consideration all relevant state and local planning controls. On balance, the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework and as such refusal is recommended.

2. Key Issues

Parramatta Local Environmental Plan 2011

- **Height of Buildings (cl. 4.3)** – Acceptability of Clause 4.6 Variation request:
 - Control: 72m
 - Proposed: 76.33m (6.0% breach)
 - Breach may constitute ‘Architecutral Roof Feature’ as defined by cl. 5.6 of PLEP 2011.
- **Floor space ratio (cl. 4.4)** – Acceptability of Clause 4.6 Variation request:
 - Control: 6:1 or 12,368.4m²
 - Proposed: 6.002:1 or 12,451.4m² (0.7% breach)
 - Breaches result from areas not included by the applicant in GFA calculations.

SEPP (Infrastructure)

- **Transport for NSW (Sydney Metro) Concurrence (cl. 86)** – Concurrence not received.

SEPP 65 (ADG)

- **Parking (section 3J)** –
 - Control: 85 (RMS ‘CBD’ rates)
 - Proposed: 85
 - However, the proposal includes 34 ‘storage’ cages that could be removed to provide 17 additional parking spaces.
- **Mixed Use (section 4S)** – The proposed residential entrances are not directly accessible from the street frontages.

- **Public Domain (c. 2.4.8)** – Alignment plans do not demonstrate appropriate integration of development with footway.
- **Sustainable Transport (cl. 3.6.1)** – The Green Travel Plan does not contain substantive measures to discourage private vehicle use.
- **Epping Town Centre (c. 4.1.5)** –
 - Pedestrian Connections and Laneways – The pedestrian through-site link is not obstruction-free, as required. It includes stairs between Beecroft Road and Rawson Street and stairs/landscaping between the through-site link and Hunts Lane which reduces the accessibility and legibility of the link. While a lift is provided to compensate for the stairs, the lift is small, includes no redundancy and places the requirement to maintain public accessibility on a private landowner.
 - Environmental Management - The proposal would result in uncomfortable wind speeds, not suitable for the expected volume of foot traffic.

Other

- The applicant does not have landowner's consent to access the site over the Council owned, community use classified, land that forms part of the proposed vehicular access route.

3. Site Description, Location, and Context

3.1 Site and Location



Figure 1. Existing Development (Rawson Street).

The mid-block site is located within the Epping Town Centre to the west of the northern railway line and the Epping Railway Station. The site comprises seven allotments with a combined site area of 2,061.4m² and dual frontages to Beecroft Road (37.3m) and Rawson Street (34.1m). The site exhibits a cross-fall of approximately 3.45 metres from a high of RL 95.65m in the south-eastern corner on Beecroft Road to a low of RL 90.7m in the north-western corner on Rawson Street.

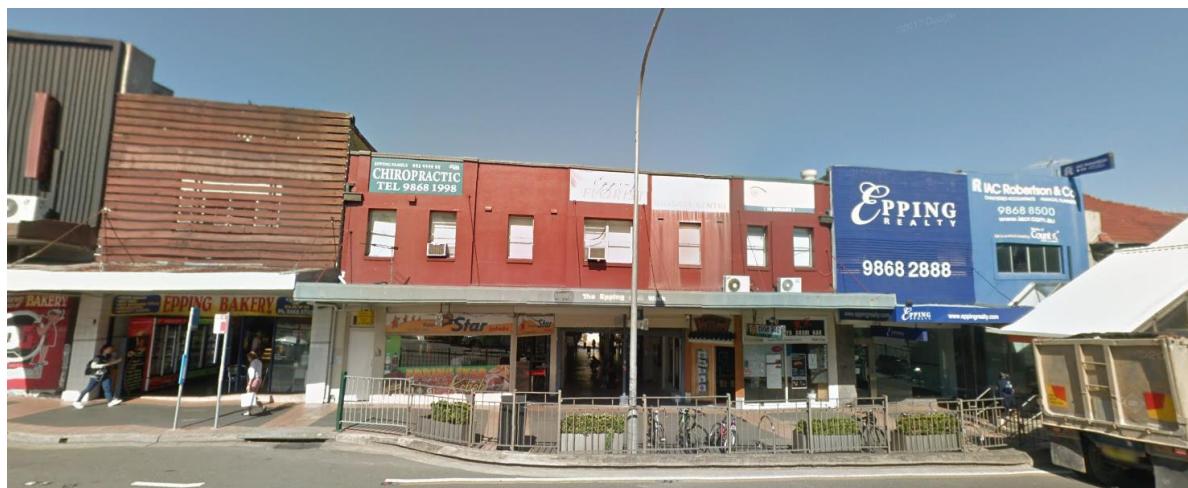


Figure 2. Existing Development (Beecroft Road).

The site is currently occupied by 6 commercial buildings, including the Epping Walk retail arcade which also serves as a defacto pedestrian through-site link between Beecroft Road and Rawson Street.

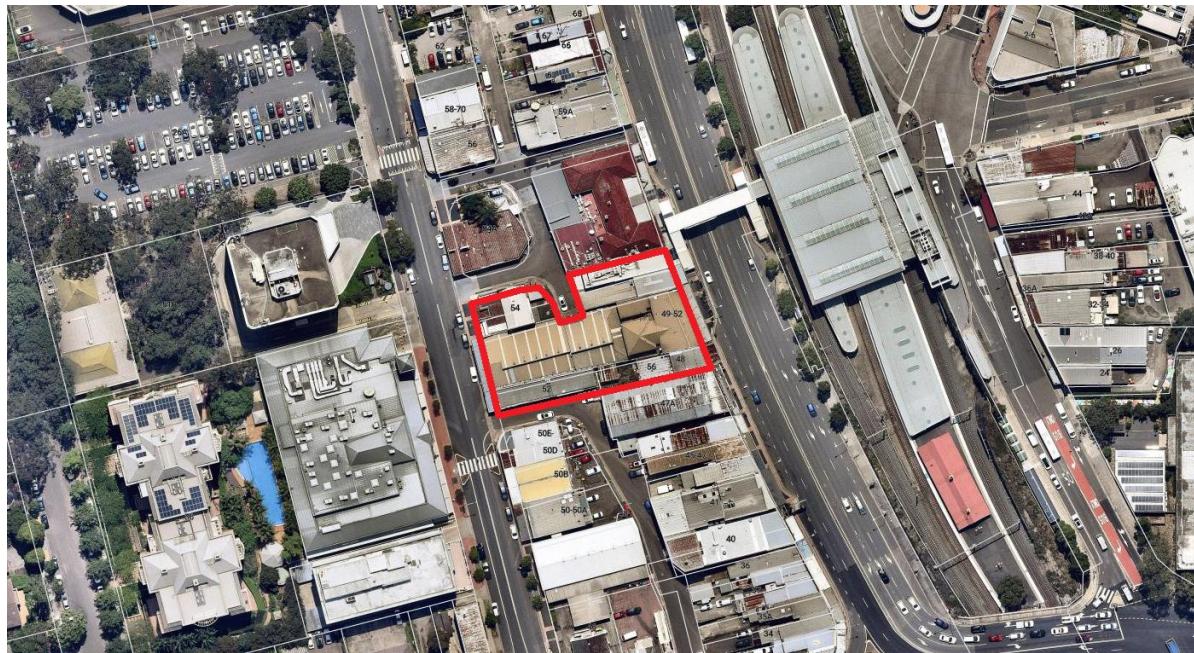


Figure 3. Aerial view of locality (subject site in red).

3.2 Context

The area has historically been a mixed-use commercial area with low-medium rise commercial buildings. As part of the existing controls, the proposal is beginning a transition to a high-density mixed-use environment.

4. The Proposal

4.1 Summary of Proposal

The proposal includes the following:

- Demolition of all existing buildings and structures on-site;
- Excavation of four (4) basement levels accommodating 123 car parking spaces, motorcycle parking, bicycle parking, loading facilities and storage;
- Construction of a 22 storey mixed use building comprising:
 - 2 - 3 storey podium containing
 - 5 retail tenancies (1,111sqm) and
 - Residential communal open space
 - 18 storey residential tower above containing 130 residential dwellings;
 - 46 x one bedroom apartments (35%);
 - 70 x two bedroom apartments (54%);
 - 14 x three bedroom apartments (11%)
 - Rooftop communal open space;
- Construction and embellishment of a through-site link and publicly accessible plaza; and
- Associated public domain and landscaping works.

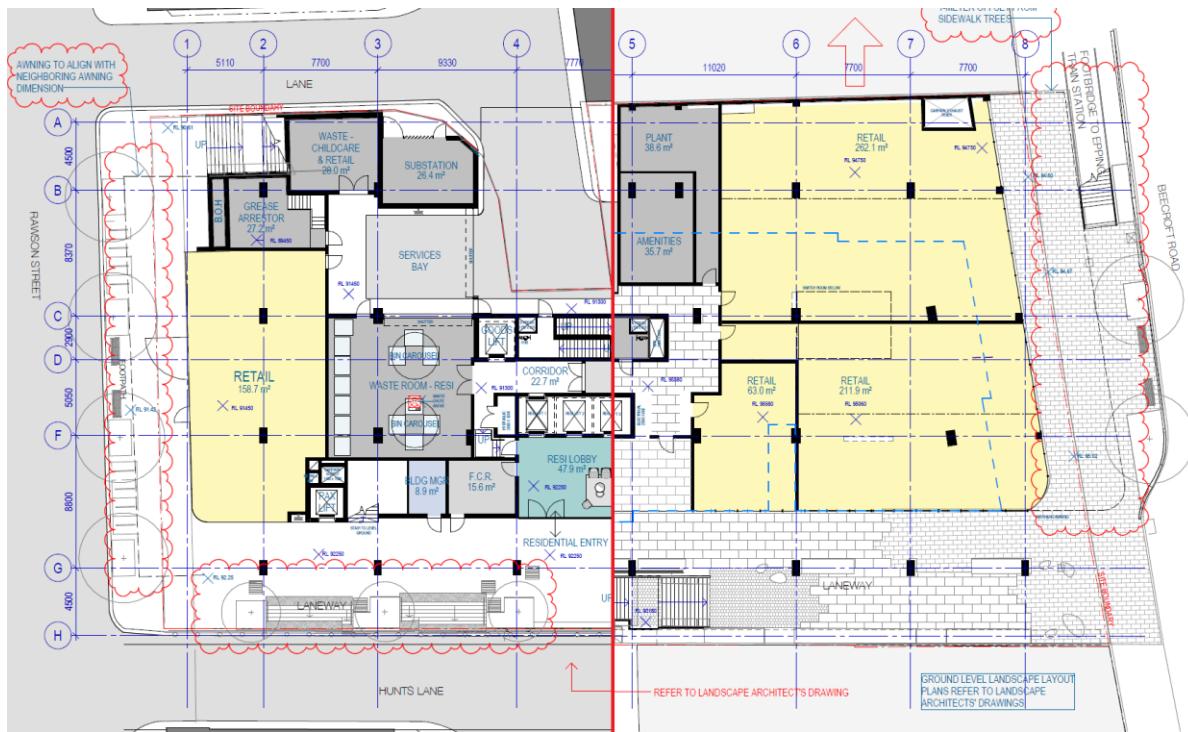


Figure 4. Proposed Lower Ground Floor - Rawson Street Frontage (left) and Proposed Upper Ground Floor – Beecroft Road Frontage (right). Red line represents split between levels.



Figure 5. Photomontage of proposal as viewed from Beecroft Road to the east of the site looking west.



Figure 6. Photomontage of proposal as viewed from Rawson Street to the west of the site looking east.

The application requires concurrence from Transport for NSW (Sydney Metro) under section 86 of SEPP (Infrastructure) 2007 due to the proximity of a subsurface stratum lot, owned by Transport for NSW (Sydney Metro), which directly abuts the eastern boundary of the site.

4.2 Summary of Amendments Since Lodgement

The applicant submitted revised drawings and documentation addressing concerns raised by Council's DEAP, City Architect, Council officers and external referral bodies including, but not limited to, the following changes:

- Removal of child care centre and replacement with residential communal open space resulting in commensurate reduction in GFA;
- Deletion of basement level 5;
- Reduction in car parking from 178 spaces to 123 spaces (-55 spaces);
- Increase in bicycle parking from 137 to 164 spaces (+27 spaces);
- Increased ground floor setback to Rawson Street from 1.5m to 2m (+500mm);
- Reduced ground floor setback to Beecroft Road from 3m to 2m (-1m);
- Removal of colonnades along Beecroft Road;
- Introduction of stairs from through-site link to Hunts Lane;
- Enclosure of east facing balconies to create wintergardens;
- Increased southern side setback of Rawson Street retail tenancy – 3.5m to 7.1m (+3.6m);
- Additional of awnings to Beecroft Road and Rawson Street frontages.

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Sydney Central City Planning Panel Briefing (12/02/2018)

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

| Issues Raised | Comment |
|---|---|
| Clause 4.6 FSR – not supported, compliance required | The applicant has revised the scheme by way of deleting the childcare centre in an attempt to comply with the FSR development standard. However, the applicant's GFA calculations do not include applicable floor space. As such, the proposal does not comply. The Clause 4.6 request is not supported and as such the application is recommended for refusal in part on this basis. |
| Lack of deep soil zones – accepted | Noted. |
| Height breach – acceptable | Noted. |
| ADG separation – acceptable | Noted. |
| South facing units solar impacts | While the proposal exceeds the recommended proportion of south facing units, this is considered to be acceptable in the context due to the desirable regional views to the south of the site. |
| Parking – Concern raised with excess parking | The applicant has revised the application to reduce car parking from 178 spaces to 123 spaces (a reduction of 55 spaces) which complies with the RMS Guide to Traffic Generating Developments CBD rates. However, the proposal includes 'storage cages' in what would otherwise be car parking spaces. Removing the cages would result in 17 additional car parking spaces. |
| Traffic impact | The applicant has reduced parking and provided a green travel plan. However, the ability to easily retrofit more parking and the lack of strong initiatives in the green travel plan are considered likely to result in unacceptable impacts on the local traffic network. Further discussion is provided below. |
| Epping transport study outcome and the latest report from Council should guide this development | The Epping Traffic Study is now available and has been considered in the assessment of this application. Further discussion is provided below. |
| Widening of the laneway width – Council's direction accepted | Noted. |

Table 1: SCCPP briefing notes and response.

5.2 Design Excellence Advisory Panel

Council's Design Excellence Advisory Panel (DEAP) considered the application at a meeting on 22 March 2018. Of note the panel concluded as follows,

The Parramatta Design Excellence Advisory Panel (The Panel) supports the proposal in its current form. The Panel advises that this is a well-considered and presented scheme and that the architectural, urban design and landscape quality is of a high standard.

The DEAP panel's full comments are included at Appendix 1.

5.3 External

| Authority | Comment |
|----------------------------------|---|
| Endeavour Energy | No objection subject to conditions of consent. |
| Roads and Maritime Services | No objection subject to conditions of consent. |
| Transport for NSW (Sydney Metro) | Transport for NSW (Sydney Metro) requested additional information. The applicant provided additional information. Transport for NSW (Sydney Metro) have not provided a response. As such, concurrence is outstanding. |

| | |
|--|---|
| Transport for NSW (Land Use) | No objection subject to conditions of consent. |
| Sydney Water | No objection subject to conditions of consent. |
| Wind Consultant | Raised concerns with the wind report. Discussed in detail in Section 9.1 below. The lack of resolution of wind issues forms part of a recommended reason for refusal. |
| Environmentally Sustainable Development | Raised concern regarding the quality of BASIX reporting. Discussed in detail in Section 7.2 below. It is considered that the issues can be resolved by way of condition |
| Quantity Surveyor | The independent quantity surveyor provided a similar estimated cost of works to that provided by the applicant. As such no further action is required. |
| Air Services Australia & Civil Aviation Safety Authority | The air authorities confirmed that the height of the building would not interfere with aircraft and does not require obstacle lighting. |

Table 2: External referrals

5.4 Internal

| Authority | Comment |
|--|--|
| Environmental Health – Acoustic, Food, Contamination & Waste | The proposal satisfies the requirements of Council's controls and can be supported, subject to conditions of consent. |
| Landscaping & Trees | The proposal satisfies the requirements of Council's controls and can be supported, subject to conditions of consent. |
| Public Domain | The placement of tree pots in the public domain along Rawson Street and Beecroft Road is not appropriate. |
| Civil Assets | The application does not include sufficient detail to allow Council to confirm that the proposal can appropriately link to the footpaths that adjoin the site. |
| Stormwater Engineer | The proposal satisfies the requirements of Council's controls and can be supported, subject to conditions of consent. |
| Social Outcomes | Raised concern relating to lack of evacuation plan for childcare centre. The childcare centre was subsequently been deleted from the proposal. |
| Traffic & Transport | Confirm lane is most appropriate vehicular access point for the development. Raised concern relating to some dimensions of car parking areas. |
| Legal | Advised that the proposal does not constitute site isolation of any adjoining or nearby sites. |
| Property | The proposal satisfies the requirements of Council's controls and can be supported, subject to conditions including a requirement that all doors at ground levels open inwards and a public right of way be registered for the street setbacks and through-site link. |
| Urban Design | <ul style="list-style-type: none"> Raised concern that the upper ground floor lift core and surround include concealment spaces and as such require secured access. This issue could be resolved by way of appropriate conditions. Recommended activation of northern laneway. It is not considered appropriate given high traffic use of this area as well as potential inclusion of this lane in redevelopment to the north. |
| Strategic Planning | It is considered that the vehicular access to the site can be accommodated in any redevelopment of the land to the north of the site. |

Table 3: Internal referrals

6. Environmental Planning and Assessment Act 1979

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

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

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

6.2 Section 4.15: Evaluation

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

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

Table 4: Section 4.15(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
- Parramatta Local Environmental Plan (PLEP) 2011.

Compliance with these instruments is addressed below.

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

A BASIX certificate and the associated NatHERS certificates were submitted with the application. While the certificates list the commitments by the applicant as to the manner in which the development would be carried out, they include the following issues:

- The NatHERS certificate number has not been inputted into the BASIX certificate.
- The assessor stamp date on the stamped drawings precedes that of the architectural drawing date.
- The stamped drawings do not include the required thermal performance schedule.

It is considered that these issues could be resolved by way of appropriate conditions.

7.3 State Environmental Planning Policy (Infrastructure) 2007

The proposal is not considered to constitute 'traffic generating development' as it proposes less than 200 car parking spaces, less than 300 residents units and does not have vehicular access to a classified road. Notwithstanding, the DA was referred to Road and Maritime Services (RMS), who raised no objection to the proposal subject to conditions.

The application requires the concurrence of Sydney Metro (c/o Transport for NSW), under clause 86 of the SEPP due to its proximity to the northern train line and underground north-west metro line. Sydney Metro requested additional information that was provided by the applicant. However, at the time of this recommendation, the additional information was not sufficient to satisfy Sydney Metro that concurrence should be provided. As such, the lack of concurrence is considered to be reason to refuse the application.

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. As such, Part 4 of this Policy, at the time of lodgement, provided that the application is 'regionally significant development' and thus 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, 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 can be achieved through the imposition of suitable conditions to address the collection and discharge of water during construction and operational phases of the development.

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

A preliminary site investigation report was submitted with the application. The report outlined the history of the site, noting it has been used for commercial and retail uses since the early 1900s and that there is no evidence to suggest that contaminating activities were undertaken on the site.

Three borehole samples were taken across the site, which were also used for groundwater monitoring. Concentrations of contaminants in soils and groundwater were mostly below acceptable limits. Notwithstanding, most soil would be excavated and removed from the site. The report made recommendations for testing and investigations to be undertaken during excavation to ensure no contamination pathways remained.

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 with regard to contamination.

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

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

Design Quality Principles

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

| Requirement | Council Officer Comments |
|--|---|
| <i>Principle 1: Context and Neighbourhood Character</i> | The proposed building is considered to make a positive contribution to the locality and improve the existing streetscape with a tall slim-line tower of high quality architectural detailing. The design includes a number of retail units at ground level that would maintain the retail character of the centre. The character of this locality is transitioning from low-medium scale commercial uses to high density mixed use developments. This proposal is consistent with that shift. |
| <i>Principle 2: Built Form and Scale</i> | The proposal includes a height breach to accommodate an architectural roof feature. Such a breach is anticipated by the controls. The applicant has demonstrated that the form as proposed is appropriate, and would not result in unacceptable amenity impacts on adjoining/nearby properties. However, as outlined below, the requisite Clause 4.6 variation request cannot be supported. |
| <i>Principle 3: Density</i> | The proposal exceeds the floor space ratio (FSR) development standard. Given the findings of the recent Epping Traffic Study, which outlines significant existing and anticipated pressure on the local road network, it is not considered appropriate to allow such a breach. |
| <i>Principle 4: Sustainability</i> | <p>A BASIX Certificate and relevant reports have been submitted with the development application outlining that the proposal would meet or exceed the relevant targets:</p> <ul style="list-style-type: none"> • Water, required score: 40, proposed: 40 • Energy, required score: 25, proposed: 28 (+12%) <p>The application provides suitable provision of bicycle parking for both visitors (provided in accessible areas) and residents (provided in secure areas).</p> |
| <i>Principle 5: Landscape</i> | The proposed landscape plan is considered to be high quality and, subject to conditions, would provide appropriate planting to communal open space and surrounding streets, creating an appropriate landscape setting. |
| <i>Principle 6: Amenity</i> | Subject to conditions, the proposal as amended is considered to be satisfactory in this regard, optimising internal amenity through appropriate room dimensions and shapes, access to sunlight, visual and acoustic privacy, storage, indoor and outdoor space, outlook, efficient layouts and service areas. |
| <i>Principle 7: Safety</i> | The proposal is generally considered to provide appropriate safety for occupants and the public. A significant number of units are orientated towards public streets creating passive surveillance. Retail components at ground level would activate the precinct to further enforce a sense of passive surveillance. Notwithstanding, a condition could eliminate areas with potential concealment opportunities. |
| <i>Principle 8: Housing Diversity and Social Interaction</i> | <p>The proposal achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>The proposal provides high quality communal open spaces which would foster social interaction.</p> |
| <i>Principle 9: Aesthetics</i> | The composition of building elements, textures, materials and colours reflect the use, internal design, and structure of the resultant building. The proposed tower is considered to aesthetically respond to the environment and context, contributing in an appropriate manner to the desired future character of the area. |

Table 5: Assessment of the proposal against the Design Quality Principles

Design Review Panels

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

Apartment Design Guide

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

| Standard | Requirement | Proposal | Compliance |
|-------------------|---|----------|------------|
| Part 3 | | | |
| 3B-1: Orientation | The proposed tower is oriented to respond to the site constraints, presenting a development which addresses Beecroft Road, Rawson Street and the proposed through-site link with retail premises. | | |

| Standard | Requirement | Proposal | Compliance |
|---|---|---|---|
| <i>3B-2: Overshadowing</i> | The neighbouring dwellings and private and public open spaces all receive adequate solar access in excess of two (2) hours on the winter solstice (21 st June). | | |
| <i>3C: Public Domain Interface</i> | The majority of services are oriented off the northern service lane or are within the basement, minimising their impact on the public domain. However, insufficient detail has been provided to ensure that the public domain can be integrated with the proposed floor levels without ramping. | | |
| <i>3D: Communal & Public Open Space</i> | Min. 25% of site area (515.5m ²) Min. 50% direct sunlight to main communal open space for minimum two (2) hours mid winter (257.75m ²) | 1,350m ² (podium top) + 500m ² (roof top) = 1,850 m ² . The communal open space is orientated east/west, thereby receiving direct sunlight throughout the day. | Yes Yes |
| | The proposal includes private communal open space for the residential apartments on the podium-top and rooftop. The landscape plan outlines a variety of seating, shading structures, soft and hard landscaping, and planting in these areas that would ensure they provide good amenity. | | |
| <i>3E: Deep Soil</i> | Min. 7% with min. dimensions of 6m for sites of 1500m ² or greater (309.3m ²) | 0m ² | No |
| | See discussion at end of table. | | |
| <i>3F: Visual Privacy</i> | <u>Boundary Setbacks</u> (all habitable) 0-4 Storeys: 6m 5-8 Storeys: 9m 9+ Storeys: 12m 0-4 Storeys: 6m 5-8 Storeys: 9m 9+ Storeys: 12m 0-4 Storeys: 6m 5-8 Storeys: 9m 9+ Storeys: 12m 0-4 Storeys: 6m 5-8 Storeys: 9m 9+ Storeys: 12m | <ul style="list-style-type: none"> North (to centre of unnamed lane on west half of site): <ul style="list-style-type: none"> Storey 3: 7.9m Storey 4: 10.3m Storey 5-8: 10.6m Storey 9+: 10.8m North (to boundary on east half of site): <ul style="list-style-type: none"> Storey 3: 5.4m–6.0m Storey 4: 8.6m–10.1m Storey 5-8: 8.6m–10.1m Storey 9+: 8.6m–10.1m South (to centre of Hunts Lane on west half of site): <ul style="list-style-type: none"> Storey 3: 7.1m Storey 4: 10.7m Storey 5-8: 10.7m Storey 9+: 10.7m South (to boundary on east half of site): <ul style="list-style-type: none"> Storey 3: 4.8m Storey 4: 9.2m Storey 5-8: 9.2m Storey 9+: 9.2m | Yes Yes Yes No No (minor) Yes Part (minor) No Yes Yes Yes No Yes Yes Yes No See discussion at end of table. |
| <i>3G: Pedestrian Access and Entries</i> | Retail units provide activation to the Beecroft Road, Rawson Street and through-site link frontages. Separate entries have been provided for pedestrians and vehicles. | | |
| <i>3H: Vehicle Access</i> | The proposal relies upon vehicular entry off the unnamed northern laneway, with vehicular access to the basement parking and ground floor servicing levels via a single, dedicated access. Council's traffic engineers are satisfied that there | | |

| Standard | Requirement | Proposal | Compliance |
|---|---|--|-------------------|
| | are suitable traffic control measures proposed to ensure pedestrian and vehicle conflicts are minimised. | | |
| 3J: <i>Bicycle and car parking</i> | Residential Car Parking: <ul style="list-style-type: none"> >0.4 per 1 bed (18.4) >0.7 per 2 bed (49) >1.2 per 3 bed (16.8) Total: >85 Visitor: >1 per 7 units (19) Total: >104 | Residential: 85 Visitor: 19 Total: 104 | Yes Yes Yes |
| The site is within 800m of Epping Station. As such the ADG sets the minimum parking rate as either the RMS Guide to Traffic Generating Development (RMS Guide) rate or the DCP rate, whichever is less. The High Density Residential section of the RMS Guide includes two rates, a ' <i>Metropolitan Regional (CBD) Centre</i> ' rate and a ' <i>Metropolitan Sub-Regional Centre</i> ' rate. A technical note from the Department of Planning states that the CBD rates should be used in centres listed as " <i>CBD, Regional City Centre or Strategic Centre</i> " in the Sydney Regional Plan. The current Sydney Regional Plan, <i>Greater Sydney Region Plan: A Metropolis of Three Cities (2018)</i> , lists Epping as a Strategic Centre. The CBD rates are lower than the DCP rates and as such the RMS CBD rates apply. The proposal nominally complies with the parking controls. See further discussion at end of table below. For bicycle parking assessment see Parramatta DCP assessment below. | | | |
| Part 4 | | | |
| 4A: <i>Daylight / Solar Access</i> | Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter; (92) | 77 out of 130 apartments (59%) | No |
| | Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<20) | 35 out of 130 apartments (27%) | No |
| See further discussion at end of table. | | | |
| 4B: <i>Natural Ventilation</i> | Min. 60% of apartments below 9 storeys naturally ventilated (>29) | 36 out of 48 apartments (75%) | Yes |
| 4C: <i>Ceiling heights</i> | Min. 2.7m habitable | 2.7m | Yes |
| | Min 2.4m non-habitable | 2.4m | Yes |
| | Min 3.3m for mixed use | 3.75m (min.) | Yes |
| 4D: <i>Apartment size & layout</i> | 1B – Min 50m ² | 1B – min. 51.5sqm & max. 58.9sqm (max.) | Yes |
| | 2B – Min 75m ² (2 baths) | 2B – min. 73sqm (2 baths) & max. 88.9sqm | No (minor) |
| | 3B – Min 95m ² (2 baths) | 3B – min. 110.2sqm & max. 159.5sqm | Yes |
| | 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 2.7m ceiling height (6.75m) | Up to 6.5m | Yes |
| | Max. habitable room depth from window for open plan layouts: 8m. | 5.3m to 9.2m | No (minor) |

| Standard | Requirement | Proposal | Compliance | |
|------------------------------------|---|--|--------------------------|--|
| | Min. internal areas: | | | |
| | Master Bed - 10m ² | >9.5m ² | No (minor) | |
| | Other Bed - 9m ² | >9m ² | Yes | |
| | Min. 3m dimension for bedrooms (excl. wardrobe space). | >2.9m | No (minor) | |
| | Min. width living/dining: | | | |
| | • 1B – 3.6m | >3.8m | Yes | |
| | • 2B – 4m | >4m | Yes | |
| | • 3B – 4m | >4.1m | Yes | |
| 4E: Private open space & balconies | Min. area/depth: 1B - 8m ² /2m 2B - 10m ² /2m 3B - 12m ² /2.4m | 9.2m ² /2m 9.4m ² /2m 13.4m ² /2.4m | Yes No (minor) Yes | |
| | 17 of the 70 x 2-bed units do not comply with the 10sqm requirement, which is considered minor. Further, the balconies proposed provided sufficient area to allow for outdoor furniture and clothes drying equipment. | | | |
| 4F: Common circulation & spaces | Max. apartments –off circulation core on single level: 8-12 | 8 | Yes | |
| | 10 storeys or over, max. apartments sharing single lift: 40 | 23 apartments per lift | Yes | |
| | Corridors >12m length from lift core to be articulated. | Articulated | Yes | |
| | The corridors are also provided with extra width and natural light and ventilation. | | | |
| 4G: Storage | 1B – Min 6m ³ x 46 | Not allocated | Yes | |
| | 2B – Min 8m ³ x 70 | Not allocated | | |
| | 3B – Min 10m ³ x 14 | Not allocated | | |
| | Total – 976m ³ | ~1,000m ³ (not inc. cages in parking spaces) | | |
| | Min. 50% required in Apartment | >50% | | |
| | A detailed breakdown of the allocation of basement storage is not provided. The applicant does, however, indicate that the required storage is provided. A condition could be included requiring that this be detailed prior to construction. | | | |
| 4H: Acoustic Privacy | The proposal has generally 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. However, a condition could be included flipping the layout of Unit 2 on Levels 2 – 19 to better group like-use areas. | | | |
| 4J: Noise and pollution | The application includes an acoustic report which recommends construction methods/materials/treatments to be used to meet the criteria for the site, given both internal and external noise sources, and the proximity to Epping Railway Station and Beecroft Road. A condition could be included requiring the implementation of the report's recommendations. Notwithstanding, insufficient detail of the proposed acoustic vents is provided and as such a further condition would be necessary to require further detail. | | | |
| 4K: Apartment Mix | The proposed 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 building. | | | |

| Standard | Requirement | Proposal | Compliance |
|-----------------------------------|---|----------|------------|
| <i>4M: Facades</i> | The building has been designed with a clear and legible distinction between the base, middle, and top, with a definitive distinction between the podium element and towers. The facades of the towers are considered to be sufficiently varied and articulated to provide visual interest. | | |
| <i>4N: Roof design</i> | The proposed roof is an open framed structure that extends some of the vertical elements of the tower. This architectural roof feature adds visual interest and as such is considered to be appropriate. Rooftop plant and lift overrun are suitably concealed within the roof ensuring they are not visible from the street. | | |
| <i>4O: Landscape Design</i> | The application includes a landscape plan, which outlines a variety of planting at ground, podium top and roof top levels. However, some of the proposed trees are in pots, which are easily removable. Subject to a condition requiring that the pots are replaced by permanent planters, the proposal is considered to provide an appropriate quantity and variety of landscaping which would contribute to the amenity of the area. | | |
| <i>4P: Planting on structures</i> | As outlined above, a condition is included requiring that pots be replaced with planters to ensure adequate soil depth and permanence. | | |
| <i>4Q: Universal Design</i> | 20% Liveable Housing Guidelines Silver Level design features (>26) | 29 | Yes |
| | The residential units are considered to be appropriately barrier free and wheelchair accessible. An Access Report has been included as part of the DA package confirming that the proposed development is capable of meeting the requirement of SEPP 65, and Part 4Q of the ADG. Further design detail of specific elements would be required as the development progresses through to the construction phase to ensure compliance. A condition has been included requiring confirmation prior to CC being issued. | | |
| <i>4S: Mixed Use</i> | No. See discussion at end of table. | | |
| <i>4T: Awnings and Signage</i> | Sun and rain protection is provided by awnings servicing both Beecroft and Rawson Streets throughout the public domain. No details of signage are provided as part of this DA and a condition of consent is recommended granting no permission for the erection of signage. | | |
| <i>4U: Energy Efficiency</i> | The BASIX Certificate demonstrates the development exceeds the pass mark for energy efficiency. | | |
| <i>4V: Water management</i> | The BASIX Certificate demonstrates that the development achieves the pass mark for water conservation. | | |
| <i>4W: Waste management</i> | Waste areas have been located in convenient locations in the lower ground basement level, easily accessible via lifts. Waste collection would occur within the lower ground floor loading dock. A construction and operational waste management plan has been prepared by a qualified waste consultant, adhering to Council's waste controls. All residential and commercial units are to be provided with sufficient areas to store waste/recyclables, and a condition to this effect would be included. | | |
| <i>4X: Building maintenance</i> | The proposed materials are considered to be sufficiently robust, minimising the use of render and other easily stained materials. | | |

Table 6: Assessment of the proposal against the ADG.

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

3E: Deep Soil

The proposal includes basement car parking to most of the site which negates the provision of deep soil. Notwithstanding, a landscaping scheme has been submitted which provides for planting, including trees within the communal open space, public domain, and road network. Most of the larger on-site

trees are in pots which is not considered to be appropriate as they are easily removed. A condition could be included requiring that these trees be incorporated into planters with appropriate drainage. Subject to this condition, the proposal would provide an acceptable alternative to deep soil planting.

3F: Visual Privacy

The width of the site is constrained by the presence of Council laneways to the north and south of the western half of the site. While these lanes increase the development potential of the western half of the site, by providing additional setback to any future development site, this benefit does not extend to the eastern half of the site, which is bound by other privately owned sites. The largest deviations from the ADG setback/separation guidance are on the eastern half of the site. Were the ADG guidelines applied strictly, the building would be restricted to 12m in width at this point, limiting the ability of the site to accommodate the allowable floor space. Amalgamating the adjoining sites to the north and/or south into the site would provide more separation to future development, but would result in an irregular subdivision pattern that would thwart other objectives of the DCP (such as through block amalgamation between Rawson Street and Beecroft Road). The building separation, were the proposed setbacks to be replicated on the adjoining sites, would be 17.2 – 18.4m, consistent with other developments recently approved in Epping. As such, while the proposal does not include fully compliant ADG setbacks/separation, the configuration is considered to be acceptable in this instance.

4A: Daylight / Solar Access

While the proposal does not meet the solar access guidelines in the ADG, the proposal is considered to be acceptable in this instance for the following reasons:

- Living rooms have been orientated to the south to benefit from district views that include the Sydney CBD skyline.
- Living rooms have been orientated away from the eastern elevation to reduce vehicular noise and emissions from Beecroft Road.

4S: Mixed Use

The proposal provides a variety of retail spaces in close proximity to the town centre and train station that generally reference the street frontages. However, insufficient detail has been provided to demonstrate that the alignment of the street level units would integrate appropriately with the footpath. Further discussion on this point is provided in section 10.1 below.

Residential and commercial parking areas are partly separated. It is considered that a revised basement layout, which included further roller shutters separating the uses, would provide added security for residential property. This issue could be resolved by way of appropriate conditions.

7.8 Parramatta Local Environmental Plan 2011

The relevant objectives and requirements of PLEP 2011 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 | <p>The proposal is a mixed use development comprising the following uses:</p> <ul style="list-style-type: none">• Commercial Premises (Retail)• Shop Top Housing | Yes |

| Zone Objectives | | No (Reason for Refusal) |
|--|--|-------------------------|
| | <p>The proposal is considered to be in keeping with some of the objectives of the B2 Local Centre zone for the following reasons:</p> <ul style="list-style-type: none"> • The proposed development provides a range of retail offerings for those who live in, work in and visit the area (see further assessment at end of table below). • In the short term, jobs would be created through the construction of the development and in the longer term in the form of retail work. • The proposal activates the ground level of both Beecroft Road and Rawson Street, respectively, through the provision of retail tenancies. <p>However, it is considered that the proposal fails to maximise public transport patronage and encourage walking and cycling due to the lack of a high quality green travel plan and the potential to retrofit additional car parking. This forms reason to refuse the application.</p> | |
| 4.3 Height of Buildings | | |
| Control: 72m | Max Height 76.33m (north-west corner of tower) (4.33m, 6.0% breach) | No (Reason for Refusal) |
| 4.4 Floor Space Ratio | | |
| Control: 6:1 (12,368.4m ²) | <p>Total GFA: 12,451.4m² (6.002:1)</p> <ul style="list-style-type: none"> • Retail: 1,051m² (9%) • Residential: 11,321m² (91%) <p>(83m², 0.7% breach)</p> <p>The above calculation includes the following areas not included in the applicant's assessment:</p> <ul style="list-style-type: none"> • Lower Ground: 28.0m² (retail waste) • Upper Ground: 35.7m² (amenities) and • Level 1: 15.7m² (storage) | No (Reason for Refusal) |
| 4.6 Exceptions to Development Standards | | |
| | Variation to Building Height and FSR standards. | See below. |
| 5.6 Architectural Roof Features | | |
| | <p>The height breach is primarily caused by the framing at roof level (see Figure 7 below).</p>  <p>Figure 7. Section plan extract showing architectural roof feature, lift core and WC (highlighted in red).</p> | No |

| | | |
|-----------------------------------|---|-----|
| | <p>The framing is lightweight and would read as a decorative element at the uppermost portion of the building. The feature is perforated with gaps, thereby reducing the potential for overshadowing. Further, the feature does not support building equipment or signage structures.</p> <p>However, it is also a requirement that the roof feature not include floor space and cannot easily be converted to include floor space. The roof level contains a WC (highlighted in red above). The top of the WC room breaches the height limit. It is not clear whether this constitutes 'the roof feature containing floor space'. As such, for abundant caution, the applicant has submitted a Clause 4.6 request and an assessment is provided below.</p> | |
| 5.10 Heritage conservation | | |
| | <p>The subject site is not listed as a heritage item, nor is it within the vicinity of a listed item. The subject site is not located within a heritage conservation area.</p> | N/A |
| 6.1 Acid Sulphate Soil | | |
| Class 5 | <p>This site is located above 5m AHD and as such this clause does not apply.</p> | N/A |
| 6.2 Earthworks | | |
| | <p>The application includes a geotechnical report which outlines measures to reduce the impacts of earthworks. Council's engineers have recommended a condition requiring a more detailed geotechnical report, including additional boreholes, after demolition of the existing building, which would be included in any consent.</p> | Yes |

Table 7: Assessment of the proposal against PLEP 2011.

Commercial Floor Space

The proposal provides a 2 storey podium of commercial uses. The proposal provides a higher proportion of commercial floor space than most recently approved applications in the area (see figure below) and as such is considered to be acceptable in this regard.

| Recent Development Applications in Area | | | Gross Floor Area (GFA) | | | |
|---|---------------------------|---------------|------------------------|-------------|--------|--------|
| Reference | Address | Approval Date | Commercial | Residential | Total | % Comm |
| DA/61/2018 | Beecroft & Rawson Streets | N/A | 1,051 | 11,321 | 13,095 | 8.5% |
| DA/237/2017 | 24-36 Langston Place | 03/10/2018 | 800 | 8,760 | 9,560 | 8.37% |
| DA/314/2017 | 37-41 Oxford Street | 07/03/2018 | 1,283 | 21,078 | 22,361 | 5.74% |
| DA/1063/2016 | 2-4 Cambridge Street | 06/12/2017 | 1,400 | 6,632 | 8,032 | 17.43% |
| DA/468/2016 | 12-22 Langston Place | 02/08/2017 | 1,681 | 41,394 | 43,075 | 3.90% |
| DA/585/2016 | 30-42 Oxford Street | 20/07/2016 | 750 | 22,515 | 23,265 | 3.22% |
| DA/365/2016 | 35 Oxford Street | 14/07/2016 | 58 | 4,316 | 4,374 | 1.33% |
| DA/681/2015 (Hornsby Ref) | 20-28 Cambridge Street | 24/02/2016 | 966 | 36,364 | 37,330 | 2.59% |

Table 8: Comparison of Commercial Floor Space provided in recently approved development in the Epping Town Centre (Red Highlighting: DAs originally submitted to former Hornsby Council prior to Council mergers, Green Highlighting: DAs originally submitted to City of Parramatta).



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

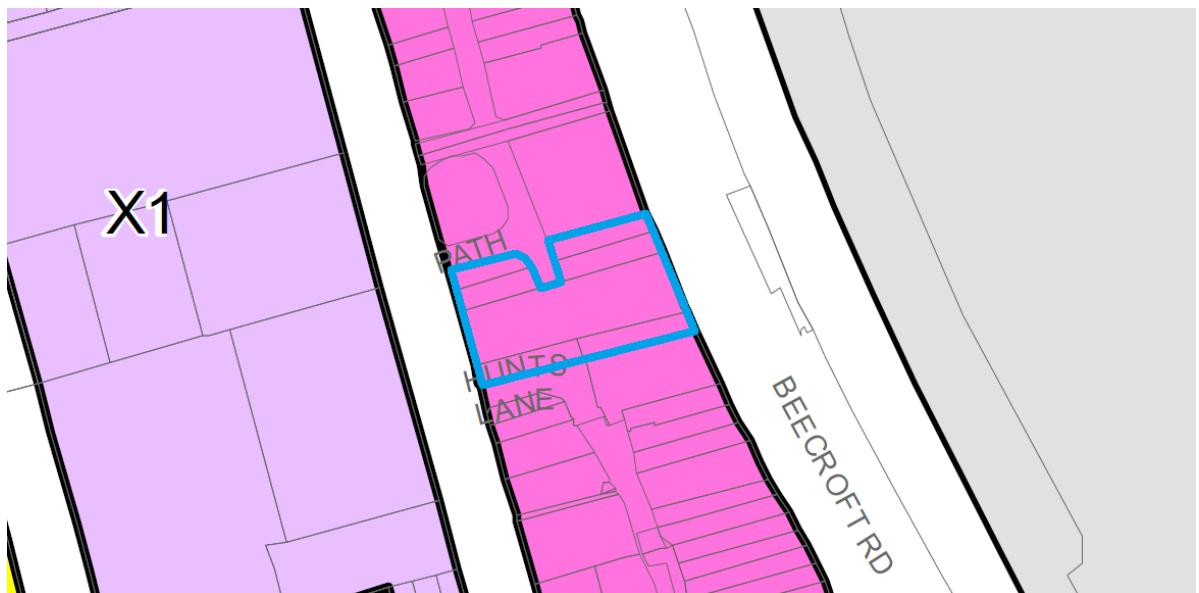


Figure 9. PLEP 2011 map (subject site outlined in blue). The site is classified AA3 – 72m height limit.

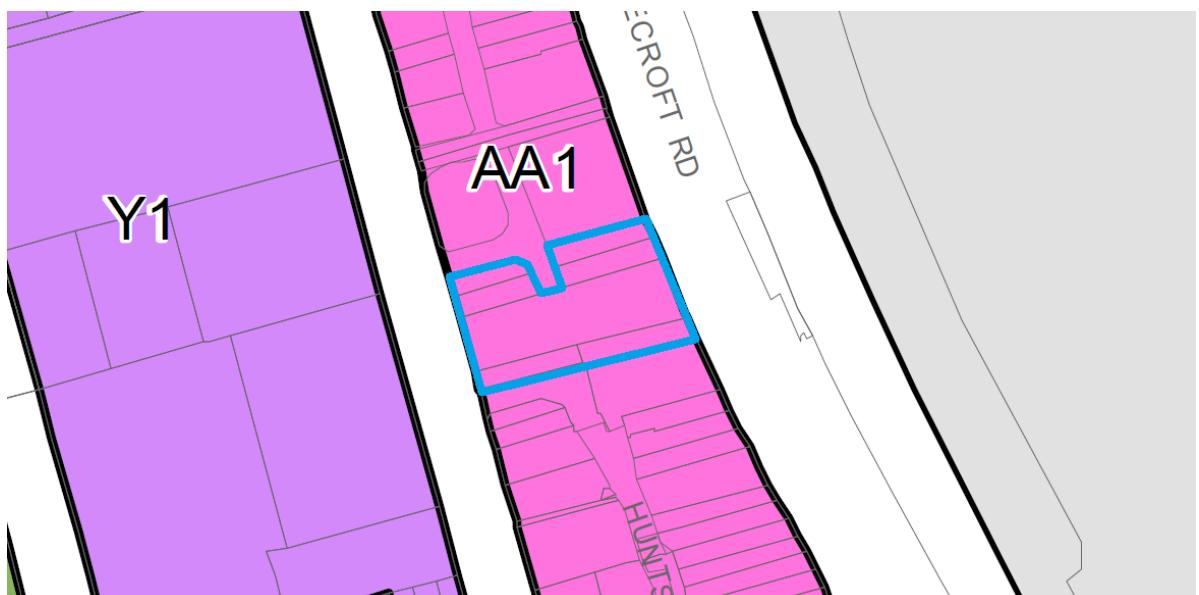


Figure 10. PLEP 2011 Floor Space Ratio map (subject site outlined in blue). The site is classified AA1 – 6:1 FSR.

Clause 4.6 Variation Assessment

Clause 4.6 of PLEP 2011 allows the consent authority 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' and Clause 4.4 'Floor Space Ratio' development standards, as outlined in the table above.

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 submitted a request to vary the height and FSR standards under Clause 4.6 of the PLEP 2011.

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."*

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

HEIGHT

The applicant has provided the following environmental planning grounds to justify the non-compliance with the height development standard (relevant extracts provided). The full request is included at Appendix 2.

In conclusion Council can be satisfied that this Clause 4.6 Variation Request satisfactorily demonstrates:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the objectives of the standard are otherwise achieved,*
- That there are sufficient environmental planning grounds to justify contravening the development standard as the proposal has been designed in accordance with the desired character of the Epping Town Centre; and*
- The extent of the variation is minor (2.72%) and will not result in visually noticeable exceedance of the building height or future built form character of the Epping Town Centre;*
- The variation is the primarily a result of the sloping topography of the site and to provide access to a high amenity landscaped roof terrace for residents and would*

- not give rise to adverse amenity impacts in terms or visual privacy, overshadowing and visual bulk and scale;
- The proposed height variation is attributable to lift and stair overruns and plant rooms and is not habitable floor space;
- The addition of the through-site link, which is provided as a public benefit, is considered to limit the developable area of the site and ultimately result in an increase to the height of the development;
- The proposed height variation is substantially hidden behind the architectural roof feature of the building when viewed from the public domain; and
- The proposed development is 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.

In light of the above, it is requested that Council grant development consent for the proposed development even though there is a minor variation to the proposed development standard imposed by Clause 4.3 of PLEP 2011.



Figure 11. Proposed breach of height standard overlaid on southern elevation (red line represents 72m height standard).

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests that determine whether application of a development standard is unreasonable or unnecessary and whether there are environmental planning grounds.

Requirement A) Unreasonable and Unnecessary

In the case of *Wehbe v Pittwater Council [2007] NSWLEC 827* the presiding Chief Judge outlined the following five (5) circumstances in which compliance with a development standard can be unreasonable or unnecessary:

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

As outlined in Table 10 below, the proposal is considered to satisfy the objectives of the development standard.

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

The applicant does not challenge that the underlying objective is not relevant.

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

The applicant contends that the underlying objectives would be thwarted if compliance was required. Specifically, that reducing the height may result in non-uniform outcomes when adjoining sites are developed and that the breach is required to access the rooftop open space. Neither of these arguments is considered to have weight as a varying skyline is not detrimental and the applicant is responsible for providing open space regardless.

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 applicant does not contend that the height standard has been abandoned.

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

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

The proposal satisfies the first circumstance and as such it is considered that compliance is unnecessary.

Requirement B) Sufficient Environmental Planning Grounds

The decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, suggests that 'sufficient environmental planning grounds' for a Clause 4.6 variation is more onerous than compliance with zone and standard objectives. The Commissioner in the case also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

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

- The proposal makes use of PLEP 2011 Clause 5.6 which allows for architectural roof features.
- The developable site area is partially constrained by the requirement to provide a through-site link on the site.

Chief Judge Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified, at paragraph 87, that, "*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*". While it is considered that the proposal has a neutral impact compared to a compliant scheme, the Panel does not have to be satisfied with regard to such a test.

It is considered that the proposal has sufficient environmental planning grounds to vary the height standard.

Requirement C) Public Interest

The proposal is considered to be consistent with the objectives of the height standard for the reasons set out in the table below:

| Clause 4.3 Objective | Proposal |
|--|--|
| <i>To nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,</i> | The adjoining land to the west has a lesser height limit of 48m. The adjoining land to the east, on the opposite side of the train line, has a height limit of 72m but is located on higher land. As such the proposal would still achieve a transition. |
| <i>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i> | The breaching element is a lightweight open frame and as such minimises visual impact, disruption of views and loss of solar access. The height breach does not change the impact on the privacy of any adjoining or nearby properties or the public domain. |
| <i>To require the height of future buildings to have regard to heritage sites and their settings,</i> | The site is not located within the vicinity of any heritage items. |
| <i>To ensure the preservation of historic views,</i> | The site is not located within the vicinity of any historic views. |
| <i>To reinforce and respect the existing character and scale of low density residential areas,</i> | The site is not located within the vicinity of any low density residential areas and as such the breach is not considered to affect the character of those areas. |
| <i>To maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</i> | The breaching element is a lightweight open frame and as such maintains satisfactory sky exposure and daylight to the area. |

Table 9: Assessment of the proposal against the Clause 4.3 – Height of Buildings objectives.

However, as outlined in Section 7.8 above, the proposal is not considered to satisfy the zone objectives. As such the variation request cannot be supported.

Conclusion

In summary, it is considered that breaching the building height standard is reasonable and achieves better outcomes for the following reasons:

- Clause 5.6 of the LEP outlines circumstances in which breaching the height limit would be acceptable. The proposal is generally consistent with the requirements of the clause.
- The site is constrained by the ability to develop within the height limit due to the requirement to provide a through-site link.
- The proposal achieves the height standard objectives notwithstanding the non-compliance.

However, as the proposal does not satisfy the zone objectives, the Clause 4.6 request cannot be supported.

FLOOR SPACE RATIO

The applicant has provided the following environmental planning grounds to justify the non-compliance with the floor space ratio development standard (relevant extracts provided). The full requests are provided at Appendix 2.

This request to vary the FSR development standard demonstrates Council can be satisfied that:

- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as:*
 - *the objectives of the standard are otherwise achieved;*
 - *the proposed development is within the building envelope set by PLEP 2011 and PDCP 2011 and does not provide for additional apartments than would otherwise be permitted;*

- the underlying object or purpose of the FSR standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; and
- density and traffic generation is therefore not increased as a consequence of the proposed development;
- That there are sufficient environmental planning grounds to justify contravening the development standard as the proposal has been designed in accordance with the permitted building envelope and does not result in increased adverse amenity impacts or additional residential density on the site;
- The inclusion of wintergardens is due to site specific consequences of the proximity to Beecroft Road;
- The proposal provides a substantial public benefit through the provision of a through site link and publicly accessible plaza;
- The proposal is considered to exhibit design excellence with a thorough planning and design process ensuring a modulated tower that is not overly bulky. This rationale has been supported by the DEAP; and
- The building satisfactorily transitions from the podium to the upper residential levels providing for a tall, slender tower form that is suitably setback from the future redeveloped sites.
- The proposed development is 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.

In light of the above, it is requested that Council grant development consent for the proposed development despite the minor numerical variation to the development standard imposed by Clause 4.4 of the PLEP 2011.

Requirement A) Unreasonable and Unnecessary

In the case of *Wehbe v Pittwater Council [2007] NSWLEC 827* the presiding Chief Judge outlined the following five (5) circumstances in which compliance with a development standard can be unreasonable or unnecessary:

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

As outlined in Table 11 below the proposal is not considered to achieve the objectives of the standard.

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

The applicant does not challenge that the underlying objective is not relevant.

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

The applicant contends that the underling objectives would be thwarted if compliance was required. Specifically, that being required to comply could result in more smaller units which would increase traffic generation. The applicant has not demonstrated how more units could be provided in a complying form. Regardless, this is not a site specific factor but rather an argument that could be applied to any development and as such fails the test outlined in the case of *Four2Five Pty Ltd v Ashfield Council* (see further discussion below).

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 applicant does not contend that the floor space ratio standard has been abandoned.

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

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

It is considered that the proposal does not satisfy any of the circumstances listed above and as such the standard cannot be said to be unreasonable or unnecessary.

Requirement B) Sufficient Environmental Planning Grounds

The decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, suggests that 'sufficient environmental planning grounds' for a Clause 4.6 variation is more onerous than compliance with zone and standard objectives. The Commissioner in the case also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

The applicant's justification is not considered to include any site-specific justification:

- **Winter Gardens** – The applicant contends that the requirement to enclose some of the balconies, to ensure acoustic comfort for occupants, puts pressure on floor space and that not providing the winter gardens would be a worse outcome for occupants.

As per the ADG, it would not be appropriate to provide units without open space, and the applicant cannot choose to 'not provide' winter gardens or the proposal would be unacceptable on acoustic comfort grounds.

The requirement to include winter gardens as part of GFA is anticipated by the definition of GFA. Development can provide enclosed winter gardens for a number of reasons, including wind protection, air quality, noise protection. As such this same argument could be applied to all developments, effectively voiding the definition of GFA.

- **Large Units** – The applicant contends that the units exceed the minimum ADG floor space to provide additional amenity to residents and that the same number of units, with smaller complying floor areas, could be provided instead. Further, that as the number of units does not increase as a result of the breach, that there is no added pressure on density, or the knock on effects, including traffic generation. Bigger units can comfortably accommodate more people and as such puts more pressure on density and traffic generation. This argument could apply to any development and would set a precedent. Further, several units do not comply with the minimum ADG requirements.
- **Through-site Link** – The applicant contends that provision of the through-site link and publicly accessible setbacks reduces the applicant's ability to locate floor space in these locations. However, this has not resulted in the applicant sacrificing any floor space.
- **Bulk** – The applicant contends that the additional floor space does not result in non-compliance with building envelope controls. The proposal exceeds the height limit, enclosing the balconies adds bulk and the proposal does include minor variations of the setback/separation controls and as such this is not considered to be sufficient justification.
- **Reduced Parking / Green Travel Plan** – The applicant has reduced the proposed parking rates in line with the RMS rates and has provided a draft Green Travel Plan. However, these initiatives would be required regardless of the FSR breach. Additional FSR would increase the number of residents, increasing the amount of private vehicles usage, and thus put added pressure on the road network.
- **Sloping Site** – The applicant contends that the site slope results in inefficient allocation of floor space in the lower levels of the building and adds construction costs. It is not clear how this affects the allocation of floor space, but regardless this has not resulted in the applicant sacrificing any floor space.
- **Proximity to Public Transport** – The applicant contends that the proximity of the site to public transport is reason to allow higher densities. The proximity to public transport was factored in to the site's 6:1 FSR allocation as part of the Epping Urban Activation precinct study.

It is considered that the proposal does not have sufficient environmental planning grounds to vary the floor space ratio standard.

Requirement C) Public Interest

The proposal is not considered to be consistent with the objectives of the floor space standard for the reasons set out in the table below:

| Clause 4.4 Objective | Proposal |
|--|---|
| To regulate density of development and generation of vehicular and pedestrian traffic, | Given the findings of the recent Epping Traffic Study, found that most of the existing road infrastructure in Epping Town Centre is operating at oversaturation and that the housing uplift anticipated by the Epping Urban Activation Precinct would result in significant future traffic growth that would have significant implications for the future levels of traffic congestion and delays on the major road network, it is not considered appropriate to allow such a breach. |
| To provide a transition in built form and land use intensity within the area covered by this Plan, | The adjoining land to the west has a lesser height limit of 48m. The adjoining land to the east, on the opposite side of the train line, has a height limit of 72m but is located on high land. As such the proposal would still achieve a transition. |
| To require the bulk and scale of future buildings to have regard to heritage sites and their settings, | The site is not located within the vicinity of any heritage items. |
| To reinforce and respect the existing character and scale of low density residential areas. | The site is not located within the vicinity of any low density residential areas and as such the breach is not considered to affect the character of those areas. |

Table 10: Assessment of the proposal against the Clause 4.4 – Floor Space Ratio objectives.

As outlined in Section 7.8 above, the proposal is not considered to satisfy the zone objectives. As such the variation request cannot be supported.

Conclusion

In summary, it is considered that breaching floor space ratio standard is not appropriate for the following reasons:

- No site-specific circumstances exist that constitute sufficient environmental planning grounds. The benefits elucidated by the application would apply to any similar development
- The proposal would not satisfy all of the zone and development standard objectives as the additional density would put undue pressure on the local traffic network.

8. Draft Environmental Planning Instruments

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

9. Development Control Plan

9.1 Parramatta Development Control Plan 2011

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Parramatta Development Control Plan 2011 (PDCP 2011). Where there is conflict between PDCP 2011 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:

| Development Control | Comment | Comply |
|--|--|-------------------------|
| <i>Part 2 Site Planning</i> | | |
| 2.3 Site Analysis | A satisfactory site analysis plan has been submitted. | Yes |
| 2.4.1 Views and Vistas | The site is not identified as containing significant views | N/A |
| 2.4.2 Water Management | The site is not identified in Council's database as being flood prone. The site does not adjoin a waterway. The application proposes the excavation of a basement for parking purposes. Appropriate conditions would be included to ensure the basement is not affected by groundwater. | Yes |
| 2.4.3 Soil Management | An erosion and sedimentation control plan and acid sulphate soil management plan have been submitted with the application. Notwithstanding, a condition would be included outlining the required soil management standards. | Yes |
| 2.4.4 Land Contamination | Refer to assessment under SEPP 55 above. | Yes |
| 2.4.5 Air Quality | The proposal is not likely to result in increased air pollution. | Yes |
| 2.4.6 Development on Sloping Land | The building is sited to take into account the natural topography, stepping down with the land and providing retail units to Rawson Street and Beecroft Road. | Yes |
| 2.4.7 Biodiversity | <p>The proposal does not require the removal of any trees.</p> <p>The proposal includes the provision of new trees in the public domain, in addition the provision of landscaping within the communal private open spaces, which results in an increase of biodiversity within the locality.</p> <p>The subject site is not located adjacent to E2 and W1 zones.</p> | Yes |
| 2.4.8 Public Domain | <p>The proposed building would provide passive surveillance of the public domain.</p> <p>The proposal includes upgrades to the public domain including new pavement, new street trees, and a publicly accessible through-site link. However, the through-site link is not considered to be acceptable. See DCP Section 4.1.5 'Epping Town Centre' below for further discussion.</p> <p>The proposal also includes trees in pots along Rawson Street and Beecroft Road to mitigate wind impacts. These trees would limit the trafficable area of the footpaths and as such are not considered to be appropriate. This issue could be resolved by way of appropriate conditions.</p> | No (Reason for Refusal) |
| <i>Part 3 Development Principles</i> | | |
| 3.1 Preliminary Building Envelope | Not applicable. See DCP Section 4.1.5 'Epping Town Centre' below. | N/A |
| 3.2.1 Building Form and Massing | The Design Excellence Panel (DEAP) has endorsed the proposal's form, massing, façade, articulation and roof design. | Yes |
| 3.2.2 Building Façade and Articulation | | |
| 3.2.3 Roof Design | | |
| 3.2.4 Energy Efficient Design | BASIX certification has been provided. As outlined above, additional detail would be required by condition. | Yes |
| 3.2.5 Streetscape | The proposal presents satisfactorily to the street, is in keeping with the desired future character of the area, and has been endorsed by DEAP. The proposal provides for attractive street frontages, which would be activated by the provision of retail tenancies servicing Beecroft Road and Rawson Street, respectively. | Yes |
| 3.2.6 Fences | No fences are proposed. Blank walls at ground level are minimised and generally restricted to the northern lane. | Yes |
| 3.3.1 Landscaping | Tree removal is not proposed, as the site is currently devoid of vegetation. The proposal includes the provision of trees in the public domain, in addition the provision of landscaping within the communal private open spaces, which results in an increase of biodiversity within the locality. | Yes |

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| 3.3.2 Private/Communal Open Space | Quality private and usable outdoor spaces are provided for future residents. The communal open space provided is designed to include areas for relaxation and recreation. | Yes |
| 3.3.3 Visual and Acoustic Privacy | The adjoining sites are primarily low-scale commercial buildings and as such the proposal is not likely to result in overlooking or noise impacts on adjoining properties in the interim. The proposed building setbacks are considered sufficient to ensure that future adjoining development can achieve visual and acoustic privacy. | Yes |
| 3.3.4 Acoustic Amenity | The submitted acoustic report makes recommendations for glazing and wintergardens to achieve compliant internal noise levels. Subject to a condition requiring compliance with the recommendations of these report, the proposal is considered to be acceptable in this regard. However, it is noted that acoustic vents would be necessary in order to achieve cross ventilation. As such a further condition is required to ensure that these vents would not compromise the acoustic amenity of units. | Yes, subject to conditions |
| 3.3.5 Solar Access and Ventilation | As outlined in the ADG assessment above, it is considered that the proposal provides satisfactory solar access and ventilation. | Yes |
| 3.3.6 Water Sensitive Urban Design | Council's Development Engineer has advised that the concept OSD plan is satisfactory and appropriate conditions are recommended to ensure it is designed appropriately at the construction certificate stage to achieve the objectives and design principles outlined in the DCP. | Yes , subject to conditions |
| 3.3.7 Waste Management | The commercial and residential waste rooms are proposed within the basement car park and can be serviced internally. A Waste Management Plan (WMP) was submitted with the application outlining the demolition, construction and operational stages of the development. The WMP was reviewed by Council's waste management team and is considered to adequately address the waste management requirements. | Yes |
| 3.4.1 Culture and Public Art | The design report includes preliminary consideration of public art and identifies the through-site link as a potential location. While details of public art have not been outlined it is considered that a collaborative process between the applicant and Council can progress during construction. This is an on-going process which would be coordinated post-approval with Council's City Animation team. A condition would be included to this effect. | Yes , subject to condition |
| 3.4.2 Access for People with Disabilities | <p>The proposed tower incorporates lift cores which provide access to all levels including the communal open space and the accessible car parking spaces within the basement.</p> <p>An Access Assessment Report has been provided which demonstrates the proposed units are capable of complying with all relevant accessibility requirements.</p> <p>The proposed through-site link includes a lift to provide universal accessibility. However, this is not considered an appropriate replacement for a step-free link. Further discussion is provided in Section 4.15 below.</p> <p>Notwithstanding, condition would be included in any consent requiring the through-site link be registered on title as a public right of way with 24/7 public accessibility.</p> | Yes, subject to conditions |
| 3.4.3 Amenities in Buildings Available to the Public | The ground floor plans include an 'amenities' space. However, there are no details of, or access provided to, this space. Presumably, the space is intended as shared bathroom facilities for the retail uses. A condition would be included in any consent requiring compliance with the BCA. | No, acceptable. |
| 3.4.4 Safety and Security | See DCP Section 4.1.5 'Epping Town Centre' below. | Yes |
| 3.4.5 Housing Diversity and Choice <i>Mix</i> 1 bed (10 – 20%) 2 bed (60 – 75%) 3 bed (10 – 20%) | 1 bed (46/130) = 35% 2 bed (70/130) = 54% 3 bed (14/130) = 11% | No No (minor) Yes |

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| Adaptable 10% (>13) | 17 While the proposal includes a slight over-provision of 1-bedroom units and under provision of 2-bedroom units, Council's Social Outcomes team did not raise concern with the housing mix and as such this is not considered to be reason to refuse the application. | Yes |
| 3.5 Heritage | Refer to PLEP Clause 5.10 'Heritage Conservation' above. | Yes |
| 3.6.1 Sustainable Transport Car Share: >1 | 1 While the applicant has not provided evidence that offers of a car share space have been offered to local carshare providers Council has anecdotal evidence from nearby applications that providers would populate car share spaces. A condition would be included in any consent requiring offers be made and accepted if agreed. The applicant has provided a Green Travel Plan which includes the following initiatives to promote sustainable travel: - Provision of 1 car share space; - Opal card for new residents (no credit); - Transport Access Guide for new residents; The Plan includes minimal initiatives to reduce reliance on private vehicle usage. Other application within Epping have included more substantive measures. As such, this forms reason to refuse the application. See further assessment in Section 13 below. | Yes No, acceptable No (Reason for Refusal) |
| 3.6.2 Parking and Vehicular Access | See DCP Section 4.1.5 'Epping Town Centre' below. | N/A |
| 3.6.3 Accessibility and Connectivity | See DCP Section 4.1.5 'Epping Town Centre' below. | Yes |
| 3.7 Subdivision | No subdivision is proposed. | N/A |
| <i>Part 4.1.5 Epping Town Centre</i> | | |
| Desired Future Character | The proposal achieves the following improvements to the area: <ul style="list-style-type: none">• The proposal would result in public domain improvements, including greater setbacks to Beecroft Road and Rawson Street, and maintain a through-site link between the two roads.• The proposal includes active ground floor uses to the two primary frontages.• The proposal does not introduce a new vehicle crossover to Rawson Street.• The tower elements are sufficiently setback from the street boundaries.• The proposal would not have an unacceptable impact on the amenity of adjoining/nearby properties.• The proposal has demonstrated an acceptable standard of accommodation for future occupants. However, for the reasons outlined in this part of the DCP the proposal is not considered to be in keeping with the desired future character of the area. | No (Reason for Refusal) |
| Objectives | The proposal is considered to be consistent with the following objectives of the area: <ul style="list-style-type: none">• The proposed tower compromises a high quality built form with satisfactory articulation, modulation and an attractive composition of building elements. The proposal was endorsed by DEAP.• Ground floor retail uses are proposed, thereby reinforcing the existing character and function of Beecroft Road and Rawson Street, respectively.• An acoustic report was supplied with the application, demonstrating that the proposal can be suitably treated to reduce noise and vibration impacts caused by Beecroft Road and the Northern Railway Line. | No (Reason for Refusal) |

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| | However, the proposed through-site link does not improve connections between the railway station and the west side of Epping town centre. | |
| Pedestrian Connections and Laneways Min width: 6m | <p>While the proposal would result in the loss of the existing Epping Walk through-site link, a new pedestrian connection is provided along the southern boundary in the location recommended by the DCP.</p> <p>The proposed pedestrian through-site link includes the following components:</p> <ul style="list-style-type: none"> • The through-site link is approximately 7.0 – 9.0m in width with a pinch point of 2.8m at the stairs; • The primary stairs are supplemented by a publicly accessible lift and secondary stair. • The link has active ground floor frontages in the form of a residential entry and retail units; • Provides public access 24 hours, 7 days a week. • The walkway is part under cover and part open to the sky. <p>While it is recommended that laneways and through-site links be dedicated to Council this is not considered to be appropriate in this instance due to the provision of a private basement below the link and the cantilever of building elements above. It is considered to be appropriate that a public right of way be registered on the title of the lot instead.</p> <p>However, the proposed public through-site link is not considered to be acceptable for the following reasons:</p> <ul style="list-style-type: none"> • The through-site link is not sufficiently clear of obstructions. In particular, the proposal includes stairs and landscaping which limit the accessibility of the link. While a lift is provided to compensate for the stairs, the lift is small, includes no redundancy and places the requirement to maintain access on a private landowner. It is possible for the link to be redesigned in such a way that it ramps up, with no stairs, from Rawson Street to Beecroft Road. The applicant declined to make this amendment. • The through-site link would have uncomfortable wind conditions (see further wind assessment below). <p>Regardless, a condition would be included in any consent requiring that wayfinding signage be provided for the laneway.</p> | No (Reason for Refusal) |
| Landscaping & Public Domain | <p>The podium edges include planter boxes to all 4 facades to the recommended standards (see Figures 5 & 6 above). Notwithstanding, a condition would be included in any consent requiring that the planters meet the required specifications.</p> <p>There are currently no street trees along the building frontages. The proposal includes the provision of street trees along both its frontages and as such would improve the public domain.</p> <p>The proposal includes upgrades to the public domain, including new paving. However, the applicant has not provided sufficient alignment drawings to demonstrate the ground floor uses would integrate with the public domain. This forms reason to refuse the application.</p> <p>The proposal includes trees within pot plants in the walkway that unacceptably affect pedestrian movement. A condition would be included in any consent requiring removal of these trees.</p> <p>The DCP envisages through-site links activated with outdoor dining activities. As outlined below, the wind conditions are likely to be such that these amenity activities are not possible.</p> | No (Reason for Refusal) |
| Building height Max 22 storeys | The proposed building is 22 storeys in height. | Yes |

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| Building setbacks | | |
| Front: | | |
| Rawson St.: | | |
| Basement: 2m | 2.0m | Yes |
| Podium: 2m | 2.1m | Yes |
| Tower: 8m | 8.0m | Yes |
| Beecroft Rd.: | | |
| Basement: 1.5m | 0m | No |
| Podium: 1.5m | 2.0m | Yes |
| Tower: 6m | 6.0m | Yes |
| Side: | | |
| North: | | |
| Basement: 0m | 0m | Yes |
| Podium: 0m | 0m | Yes |
| Tower: 6m | 6.7m – 10.0m | Yes |
| South: | | |
| Basement: 0m | 0m | Yes |
| Podium: 0m | 7.0m – 9.0m | Yes |
| Tower: 9m | 7.2m – 9.1m | Yes |
| | <p>The ground level setbacks would be treated as extensions of the footpath as required. A condition would be included in any consent requiring a right of way for public access over these areas. These areas provide opportunities for outdoor dining (separate approval is required).</p> <p>While the lack of a front setback for the basement levels along Beecroft Road would preclude any future dedication of the setback to Council, Council cannot impose dedication.</p> | |
| Building bulk and depth | | |
| Podium Height: 2-3 storey | Rawson Street: 3 storeys Beecroft Road: 2 storeys | Yes Yes |
| Commercial Floorplate GFA: 1,200m ² | <~900m ² | Yes |
| Residential Floorplate GFA: 700m ² | ~620m ² | Yes |
| Residential Floorplate Envelope: 900m ² | ~815m ² | Yes |
| Floorplate Dimension: <40m | <p>North-south: ~31m (podium), ~21m (tower) East-west: ~59m (podium), ~48m (tower)</p> <p>While the east-west dimension is up to 50% more than recommended by the controls, the design is considered to be acceptable for the following reasons:</p> <ul style="list-style-type: none"> • The design has been endorsed by Council's Design Excellence Advisory Panel. • The through-site amalgamation recommended by the DCP and the constraints imposed on the site by the presence of lanes to the north and south, limits the ability to provide a complying building length. | Yes No |
| Minimum site area, frontage and amalgamation | | |
| Site Area: >2,000m ² | 2,062m ² | Yes |
| Site Frontage: >40m | Beecroft Road (37.3m) and Rawson Street (34.1m) | |

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| | <p>While the proposal does not meet the minimum site frontage requirements, the proposal is considered to be acceptable for the following reasons:</p> <ul style="list-style-type: none"> • The Rawson Street frontage is isolated by the presence of laneways either side of the site. • The objective of providing a through-site link would be thwarted with amalgamation to the south. • The applicant has demonstrated that the site can be redeveloped with a reasonable dimensioned and positioned development. • The proposal achieves the objective of through block amalgamation. <p>Not isolate adjoining sites.</p>  <p>Figure 12. Locality Map outlining nearby allotments to the north of the site.</p> <p>The adjoining site to the north, 54A Rawson Street (highlighted red above), is already isolated by an existing public laneway which surrounds the site. In other words, it can't readily be joined with adjoining sites to meet the minimum site area and frontage requirements. The proposal would not further isolate this site.</p> <p>The other adjoining site to the north, 58 Beecroft Road (highlighted blue above), is not isolated as it can amalgamate with the adjoining sites to the north to meet the minimum site area and frontage requirements. While the proposal could theoretically be amalgamated into the subject site, it would result in an irregular site shape and would fail to achieve the objective of promoting the efficient use of land.</p> <p>The Epping Town Centre section of the DCP states the following further objectives for amalgamation:</p> <ul style="list-style-type: none"> • A 'kiss and ride' zone enabling commuters to be set down/picked up in Rawson Street near pedestrian lane link to railway station to be considered in future redevelopment of Council's car park site. Alternatively, this may be able to be achieved on the eastern side of Rawson Street, in consideration of the amalgamation of existing laneways between Beecroft Road and Rawson Street into redevelopment sites. • Site amalgamation patterns are to ensure through block amalgamation, particularly between Beecroft Road and Rawson Street. <p>The most efficient use of the two adjoining site to the north is for them to be consolidated together with some or all of the Council lane network. This would achieve through block amalgamation and allow for a kiss and drop with access to the train station. Before this could happen, Council would need to reclassify the lanes to allow for their sale.</p> <p>Any redevelopment of the sites to the north could maintain the proposed vehicular access to the site by providing a shared driveway immediately to the north of the subject site.</p> | <p>No, acceptable</p> <p>Yes</p> |
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| | <p>The sites to the south can all amalgamate to meet the site area requirements.</p> <p>As such the proposal is not considered to result in unacceptable site isolation.</p> | |
| Development along Beecroft Road | <p>The proposal provide a 2 storey commercial podium to Beecroft Road which would achieve the objective of providing employment within the town centre and act as a noise buffer to the residential units above and to the west.</p> <p>The proposed development is located adjacent to Beecroft Road overpass and not directly opposite and as such it is not considered to be feasible to include a direct overpass connection to Epping Railway Station. The proposal does not affect the existing pedestrian overpass bridge.</p> | Yes Yes |
| Building Height Transition | The development does not share a boundary with an R2 zone or lower height zone. | Yes |
| Building Design | <p>The proposal represents a new building typology in this part of the Epping Town Centre. As such there is little context on which to establish a relationship. Notwithstanding, the building design is considered to appropriately respond to the desired future character of the area for the following reasons:</p> <ul style="list-style-type: none"> • Facades are satisfactorily articulated; • Opaque and blank walls are limited, active frontages proposed with the provision of retail tenancies. • The external materials have been endorsed by DEAP. • Balconies are provided in accordance with the ADG; • Use of render and other easily staining materials has been limited. • The podium is visually interesting and of a human scale. • The building is slender in the profile most visible from the public domain (i.e. Rawson Street and Beecroft Road). | Yes |
| Design Quality | Proposed development has been endorsed by DEAP. A design competition has not been held as is encouraged by the DCP. However, this is not considered to be reason to refuse the application. | Yes |
| Active street frontages and address | The frontages to Rawson Street, Beecroft Road and the through-site link are activated with retail shopfronts and residential lobbies. Plant and services are consolidated primarily at the northern lane. | Yes |
| Vehicle access | <p>The proposal is considered to satisfy the vehicular access criteria for the following reasons:</p> <ul style="list-style-type: none"> • The driveway is provided from the rear lane (the existing vehicular access for 5 of the 7 lots, the other 2 lots do not have vehicular access); • The driveway is designed for vehicles to enter/exit in a forward direction; • The driveway is separated and clearly distinguished from the pedestrian access. • Roller shutters are included. <p>While the DCP recommends a shared access way at the Rawson Street frontage, this is not considered to be appropriate for the following reasons:</p> <ul style="list-style-type: none"> • This conflicts with the objective of providing access from rear lanes. • The opportunity exists, were the land and lane to the north of the site to be amalgamated as a development site, to provide a shared access directly to the north of the site off Rawson Street in the general location recommended in the DCP. • If the adjoining land to the north and south were not developed, providing a vehicular access off Rawson Street would result in 4 vehicular crossovers in the space of ~75m along Rawson Street, which is not desirable for a retail centre. <p>It is not considered appropriate for the vehicular access to be from Beecroft Road as it is a high traffic classified road.</p> <p>It is not considered appropriate for the vehicular access to be from Hunts Lane as it would conflict with the through-site link.</p> | Yes |

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| Mixed use developments Floor-ceiling: Ground: >3.6m Commercial: >3.3m Residential: >2.7m | 3.6m (Rawson), 6.0m (Beecroft) 3.6m (Rawson), 6.0m (Beecroft) 2.8m Commercial and residential service/waste areas are separated from pedestrian access areas, do not impede outlook and are not readily visible from the public domain. While the two uses share the loading dock, this area is able to accommodate two vehicles and as such is considered to be acceptable. | Yes Yes Yes |
| Deep soil zones | No deep soil is provided. As outlined under Section 7.7 above, the absence of deep soil is considered acceptable given the city centre context and subject to a condition requiring additional planters. | Yes |
| Environmental Management | <p>The applicant submitted a series of revised wind reports in response to concerns raised by Council's independent wind expert. The following issues have not yet been resolved to the satisfaction of Council officers:</p> <ul style="list-style-type: none"> • The proposal relies on the placement of trees pots on the Rawson Street footpath to achieve reduced wind speeds. These tree pots would impede pedestrian movement and would require the maintenance of Council to ameliorate amenity impacts imposed by a private development. • With all proposed landscaping treatments, including those referred to above, the proposal results in uncomfortable wind speeds (i.e. gust speeds of 17-23 metres per second) in several location in the public domain along Rawson Street, in the proposed through-site link and in the through-site link to the north of the site. The applicant's wind report states that the existing and proposed through-site links are, <i>"not suitable for the intended pedestrian use"</i>. • The outdoor areas adjacent to the retail uses do not achieve sitting comfort levels. The applicant's report states that these areas are, <i>"likely to be too windy for amenity activities"</i>. As such it is unlikely that outdoor dining activities would be achievable in these locations as encouraged by the DCP. • The changes made to the design to achieve the currently predicted wind speeds are not clearly articulated in the latest wind report. <p>As such, the wind impacts of the development are considered to be reason to refuse the application.</p> | No (Reason for Refusal) |
| Safety and Security | <p>The proposal is generally considered to be safe and secure for the following reasons:</p> <ul style="list-style-type: none"> • Active uses are proposed along Rawson Street, Beecroft Road, and the through-site link and would thus provide activation and surveillance to these areas. • The vehicular and pedestrian entries are appropriately separated. • Vehicular access to the various uses (i.e. residential, retail, loading) is secured by shutters. <p>However, there are several outstanding security issues:</p> <ul style="list-style-type: none"> • The access lane and lower ground floor vehicular circulation space combine to form a concealed trap point. • The ground floor lift core is open to the public and contains concealed trap points. • The private communal open space on level 1 appears to be accessible to the public via the south-western public staircase. <p>Notwithstanding, these issues could be resolved by way of appropriate conditions.</p> | Yes, subject to conditions |

| | | |
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| Car parking | The car parking is located in basement. | Yes |
| <u>Residential</u> | | |
| Vehicles | | |
| Resident: | Superseded by ADG (See assessment above). | N/A |
| Visitors: | Superseded by ADG (See assessment above). | N/A |
| Accessible: | | Yes |
| 1/adaptable unit (13) | 13 | |
| Car Share: 1 | 1 | Yes |
| Motorcycles: 1/25 car spaces (5) | 3 | No (minor) |
| Bicycles | | |
| Resident: 1/dwelling (130) | 140 | Yes |
| Visitor: 1/10 dwellings (13) | 18 | Yes |
| <u>Commercial</u> | | |
| Vehicles | | |
| Retail: 1/60m ² – 1/30m ² (19-37) | 17 | No (minor) |
| Retail Accessible: 1 | 1 | Yes |
| Motorcycles: 1/25 car spaces (1) | 2 | Yes |
| Bicycles | | |
| Retail: 1/200m ² – (6) | 6 | Yes |
| Storage | Various areas throughout basement car park proposed to be used for storage. Defer to ADG assessment above for storage requirement compliance. | N/A |

Table 11: Assessment of the proposal against the Parramatta Development Control Plan 2011.

10. Other Planning Controls

10.1 Parramatta Public Domain Guidelines

The public domain plans and alignment drawings submitted with the application are not in keeping with the requirements of the Parramatta Public Domain Guidelines (PDG). Specifically, the alignment drawings submitted do not contain sufficient detail to allow Council officers to verify that appropriate footpath gradients can be achieved in the public domain. It is not considered to be appropriate to rely on conditions to resolve this concern as there may be changes required to the floor levels of the building, which may have knock on impacts which require assessment (i.e. height of building).

11. Planning Agreements

No planning agreements relate to the site.

12. Environmental Planning Regulations

Clause 49(1) of the Environmental Planning and Assessment Regulation 2000 requires landowners consent for the lodgement of a development application. While the applicant has provided satisfactory owners consent for the land titles which form part of the development site proper, the proposal also seeks to rely on vehicular access from the unnamed Council lane to the north of the site. Part of this lane includes Council owned land not classified as a public road, even though it acts like a road (see section highlighted orange in Figure 14 above). As such, it is considered that the application requires

the consent of Council. Council has not yet resolved to grant such consent. As such, this forms reason to refuse the application.

Otherwise, the conditions would ensure the following provisions of the Regulation would be satisfied:

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

13. The Likely Impacts of the Development

The Epping Traffic Study was released in May 2018. The study found that most of the existing road infrastructure in Epping Town Centre is operating at oversaturation and that the housing uplift anticipated by the Epping Urban Activation Precinct would result in significant future traffic growth that would have significant implications for the future levels of traffic congestion and delays on the major road network.

In light of this study, the Sydney Central City Planning Panel, in determining similar residential development in the Epping Town Centre, capped residential parking at the applicable minimum parking rates to minimise the pressure new residential development would put on the traffic network. This public interest argument is considered to be appropriate for the following reasons:

- The Parramatta LEP 2011 includes the following relevant objectives:
 - a) Aim 1.2(2)(k) of the Parramatta LEP 2011 seeks to ensure that development does not detract from the operation of local or regional road systems;
 - b) Aim 1.2(2)(d) of the Parramatta LEP 2011 seeks to improve public access to the city and facilitate the maximum use of improved public transport, together with walking and cycling; and
 - c) The objectives of the B2 zone includes the requirements to, "*maximise public transport patronage*".

Limiting car parking would reduce the impact of the development on the efficiency of the traffic network and would increase public transport patronage and as such is considered to satisfy these objectives.

- In response to the Epping Traffic Study, Council has exhibited a draft DCP seeking to revise the parking controls in the Epping CBD. The controls would set rates equivalent to the RMS CBD rates as maximums.

The proposal nominally provides the minimum parking required by the SEPP. However, the applicant has provided storage cages within areas the dimension of car parking spaces (see Figure 13 below).

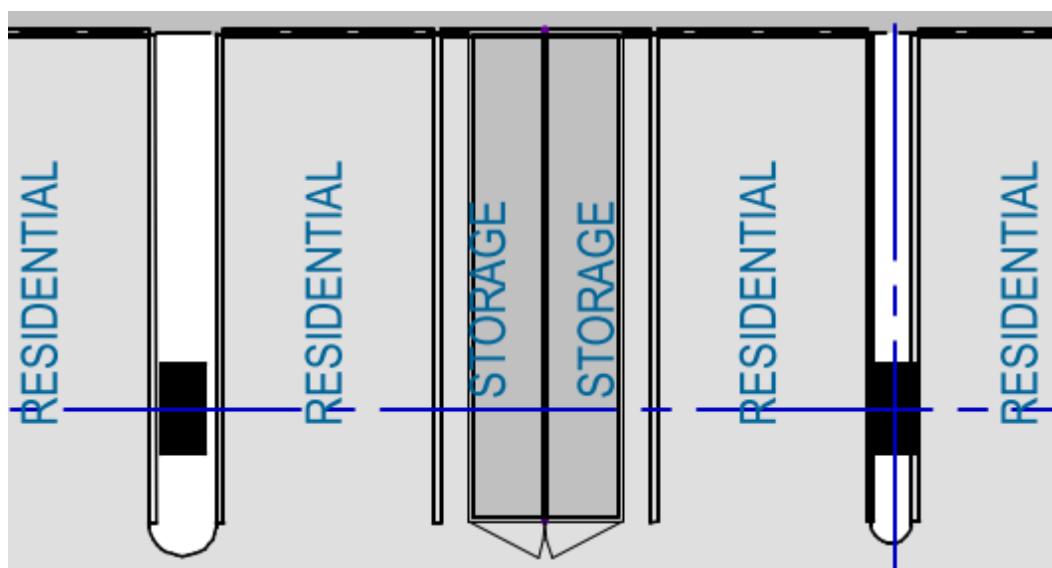


Figure 13. Example configuration of storage cages in parking area.

These cages would easily be removable to provide 17 additional parking spaces in the future. The level of storage, not including these cages, is already in excess of that which is required by the ADG. As no further parking is considered appropriate, these additional potential car parking spaces, along with the inadequate Green Travel Plan discussed above, are considered to be reason to refuse the application.

14. Site Suitability

As outlined in this report, there are several issues which have not been resolved to the satisfaction of Council officers. As such, the site is not considered to be suitable for the proposed development.

15. Submissions

The application was notified and advertised in accordance with Appendix 5 of DCP 2011.

The initial advertisement ran for a 21-day period between 7 and 28 February 2018. Sixteen (16) people submitted responses in this period.

Due to an administrative error the application was re-advertised for a further 21-day period between 28 February 2018 and 21 March 2018. Twenty-six (26) further people submitted objections during and subsequent to this notification.

In total, 48 submissions were received from 42 unique individuals/organisations.

As per Council resolution, as there were more than 7 objections a recommendation was made to the applicant to partake in an optional Council facilitated conciliation with the objectors. The applicant declined to participate in such a conciliation.

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

| Issues Raised | Comment |
|--|---|
| <i>Traffic Impacts / Unacceptable Traffic Report (inc. impact on Pedestrian Crossings)</i> | The inadequate Green Travel Plan and the potential for conversion of storage space into additional car parking is considered to put unacceptable pressure on the local traffic network. |
| <i>Prior to Epping Traffic Study Findings</i> | The Epping Traffic Study has now been released and the proposal has been assessed with regard to the findings of the study. |
| <i>Public Parking Impacts</i> | On-street parking in the area is time limited and the proposal provides the required visitor car parking. As such the proposal is not considered to result in unacceptable impact on the availability of on-street parking. |
| <i>Excessive Parking</i> | The application has been revised to reduce the parking rates to those outlined in the RMS Guide to Traffic Generation Development 'CBD'. However, as outlined above, the potential for conversion of storage space into additional car parking is considered to put unacceptable. |
| <i>Capacity of Infrastructure (schools, trains, parks, community facilities)</i> | Epping Station is being upgraded to accommodate a metro service. Schools are the responsibility of the state government. The proposal is subject to developer contributions which include contributions towards the provision/upgrade of parks and community facilities (See Section 18 below). |

| | |
|---|---|
| <i>Bulk/Scale</i> | As outlined above, the proposal is considered to be of an appropriate scale. |
| <i>Lack of Pick Up/Drop Off Spaces for Child Care</i> | The application was subsequently revised deleting the proposed childcare centre. |
| <i>Through-site Link Amenity (not step free)</i> | The obstacles within the proposed through-site link (stairs and landscaping) are considered to be reason to refuse the application. |
| <i>Does not consider potential Beecroft Road widening, rail expansion.</i> | The proposal assists in the ability to widen Beecroft Road (via removing the blister which accommodates the overpass) by providing a 2m setback to the street. Transport for NSW (Sydney Metro) have not raised any concern regarding impact on rail expansion. |
| <i>Lack of integration with pedestrian bridge / lack of direct connection to railway station concourse</i> | The pedestrian bridge does not align with the site and as such it cannot be appropriately integrated into the proposal. Any other direct connection to the station would be prohibitively costly. |
| <i>Setbacks/Separation</i> | As outlined above, the proposal generally complies with the setbacks and separation controls and as such is considered to be acceptable in this regard. |
| <i>Lack of Deep Soil</i> | As outlined above, the lack of deep soil is considered to be acceptable given the local centre context. |
| <i>Lack of Trees</i> | The existing site contains no trees. The proposal includes the planting of new trees commensurate with the scale of the building and its location in a town centre. |
| <i>Excessive footprint</i> | The building footprint is approximately 80% of the site area. The site coverage is considered to be reasonable given the town centre context. |
| <i>FSR Breach / Overdevelopment / Over provision of residential in area.</i> | The exceedance of the FSR standard is included in the reason to refuse the application. |
| <i>Exclusive use of Council laneway / privatisation of public land</i> | The proposal replaces 5 existing vehicular accesses to the laneway with 1 vehicular access. This access does not prejudice other sites from accessing the laneway. The lane would remain publicly accessible. |
| <i>Lack of Commercial / Loss of Employment</i> | The proposal includes 8.5% commercial floor space, which is in excess of the minimum required by the zoning, and most recently approved applications in the wider Epping town centre area. |
| <i>Public Art not appropriate</i> | The public art plan submitted is in a preliminary form. Conditions would be included requiring further refinement by the applicant, and approval from Council, prior to implementation. |
| <i>Overshadowing of Adjoining Properties and the Public Domain.</i> | The application includes shadow diagrams that demonstrate that the proposal would not have an unacceptable impact on the solar access of any adjoining or nearby properties or the public domain. |
| <i>Poor Standard of Accommodation (solar access, size, private open space, acoustics, insufficient lifts)</i> | As outlined in the SEPP 65 assessment above the proposal is considered to provide an acceptable standard of occupation for future occupants. |

| | |
|--|--|
| <i>Lack of Awnings</i> | The application has been revised to include awnings. The provision of the awnings would also be secured via condition. |
| <i>No Links to Boronia Park</i> | It is not considered to be necessary for the proposal to provide a link to Boronia Park. |
| <i>No provision of building setbacks for pedestrian mobility, street network cannot accommodate anymore pedestrians.</i> | The proposal includes 2m street setbacks to Rawson Street and Beecroft Road respectively and as such contributes to increased pedestrian mobility. |
| <i>More street planting required</i> | The proposal includes street trees in keeping with Council's Public Domain Plans and commensurate with the scale of works proposed. |
| <i>Existing sculpture should be relocated</i> | The existing sculpture within the Rawson Street footpath would be retained by condition of consent. |
| <i>Visual impact of laundry on balconies</i> | Each unit would be fitted with a clothes dryer. Hanging of laundry on balconies is considered to be a common feature of residential areas. |
| <i>Entry should be from Rawson Street or Hunts Lane (south side of site), not the northern lane.</i> | As outlined in this report, the proposed vehicular access from the existing lane is considered to be the most appropriate location. |
| <i>The proposal would result in isolation of the adjoining sites to the north.</i> | As outlined above, the proposal is not considered to result in unacceptable site isolation. |
| <i>Noise impacts</i> | The proposal is not in the vicinity of any residential occupiers. Notwithstanding, conditions would be included requiring noise impacts be within acceptable limits. |
| <i>Height breach</i> | The proposed height breach primarily constitutes an architectural roof feature, an element anticipated by the controls. However, as outlined in this report, the Clause 4.6 variation request to vary the height standard is not supported. |
| <i>No market demand for child care</i> | The application was subsequently revised deleting the proposed childcare centre. |
| <i>Lack of master planning</i> | The proposal has been assessed against the DCP which includes a detailed section regarding the Epping Town Centre. A review of these controls is currently being conducted by Council. However, it would not be reasonable to withhold determination until such time as this review was completed. |
| <i>Poor Design / Design Competition should be required.</i> | The proposed building has been reviewed by Council's Design Excellence Advisory Panel and found to be of good design. The LEP does not require a design competition for this site. |
| <i>Unacceptable disabled access</i> | An access report has been submitted with the application outlining that the proposed building can and would comply with the relevant legislation. The lack of accessibility of the through-site link is considered reason to refuse the application. |
| <i>Excessive tower floorplate</i> | The proposal complies with all tower floorplate controls. |

| | |
|--|---|
| <i>Loss of Arcade</i> | The existing arcade is private and is only accessible at the behest of the owner. There are no controls which protect or require reprocurement of such an arcade. |
| <i>No area for bus stops on Beecroft Road.</i> | Transport for NSW raised no concern with the lack of placement for bus stops on Beecroft Road. |
| <i>View loss</i> | The proposal would not result in any unacceptable loss of views. All adjoining and nearby properties would maintain general district views. |
| <i>Construction impacts</i> | A condition would be included requiring a comprehensive construction management plan. Part of the condition would include the ability of adjoining residents and commercial occupiers to seek resolution, from Council and the applicant, of any site specific impacts that arise during works. |
| <i>No landscape plan submitted</i> | A landscape plan was submitted with the application. |
| <i>Lack of 3-bed units</i> | The proposal includes >10% 3-bed units and as such satisfies the relevant control. |
| <i>Lack of outdoor dining</i> | The proposal includes several opportunities for outdoor dining, including at upper ground level overlooking Rawson Street. As outlined in this report, concern remains regarding the wind amenity of these spaces. |
| <i>Lack of wind tunnel testing</i> | The application includes a wind tunnel report. As outlined in the report, the likely wind impacts of the development have not been resolved to the satisfaction of Council and as such form reason to refuse the application. |
| <i>No shared basement access</i> | The opportunity remains for the basement access to be consolidated with any redevelopment of the land to the north. |

Table 12: Summary of public submissions to the proposal.

16. Public Interest

As outlined in this report, there are several issues which have not been resolved to the satisfaction of Council officers. As such the proposal is not considered to be in the public interest.

17. Disclosure of Political Donations and Gifts

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

18. Development Contributions

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

| Contribution Type | Amount |
|--------------------------|-----------------|
| Plan Administration | \$ 3,144.45 |
| Community Facilities | \$ 128,757.80 |
| Drainage & Water Quality | \$ 28,465.77 |
| Open Space & Recreation | \$ 1,125,720.48 |

| | |
|----------------------|------------------------|
| Public Domain | \$ 239,807.27 |
| Roads & Shared Paths | \$ 129,088.78 |
| Total | \$ 1,654,984.55 |

Table 13: Summary of development contributions applicable.

A condition would be included in any consent requiring payment of the contribution prior to issue of a construction certificate.

19. Summary and Conclusion

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. On balance, the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, refusal of the development application is recommended for the following reasons:

- The Applicant has submitted a request to exceed the building height development standard under Clause 4.6 of PLEP 2011. While the building height request is generally considered to be well founded for reasons including, but not limited to, its minor nature, lack of appreciable impacts and achievement of the objectives of the height control, due to the applications unrelated non-compliance with the zoning objectives, the variation cannot be supported.
- The Applicant has submitted a request to exceed the floor space ratio development standard under Clause 4.6 of PLEP 2011. The floor space ratio request is not supported as the applicant's written request does not demonstrate that compliance is unreasonable or unnecessary or that these are sufficient environmental planning grounds to justify the non-compliance.
- The application does not have concurrence from Transport for NSW (Sydney Metro).
- The proposed through-site link does not provide sufficient amenity for the public due to inappropriate obstructions and poor wind conditions.
- The applicant has not demonstrated that the proposal is adequately aligned with the public domain.
- The applicant does not have landowners consent for the proposed vehicular access.
- The inadequate Green Travel Plan and potential to retrofit additional car parking would have an unacceptable impact on the local traffic network.

20. Recommendation

- A. That, pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, the Sydney Central City Planning Panel, as the consent authority, refuse consent to DA/61/2018 for a 21 storey mixed use building comprising 2 – 3 storey podium containing 5 retail tenancies and 18 storeys of shop-top housing above containing 130 apartments (46 x 1 bed, 70 x 2 bed and 14 x 3 bed) over 4 storeys of basement car parking; public through-site link; and demolition of existing buildings at 48-54 Beecroft Road and 52-54 Rawson Street, EPPING NSW 2121 for the following reasons:
 1. The proposal is contrary to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy Clause 4.3 'Height of Buildings' of *Parramatta Local Environmental Plan 2011*. Specifically, the proposal would result in a breach of the height development standard and the applicant's written request pursuant to Clause 4.6 'Exceptions to development standards' of *Parramatta Local Environmental Plan 2011* cannot be supported as the zone objectives have not been met.
 2. The proposal is contrary to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy Clause 4.4 'Floor Space Ratio' of *Parramatta Local Environmental Plan 2011*. Specifically, the proposal would result in a breach of the floor space ratio development standard and the applicant's written request pursuant to Clause 4.6 'Exceptions to development standards' of *Parramatta Local Environmental Plan 2011* is not supported.

3. The proposal is contrary to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy Clause 86 'Excavation in, above, below or adjacent to rail corridors' of State Environmental Planning Policy (Infrastructure) 2007. Specifically, the rail authority, Transport for NSW (Sydney Metro), has not provided their concurrence.
4. The proposal is contrary to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposal is inconsistent with the guidance in Section 4.15 'Epping Town Centre' of the *Parramatta Development Control Plan 2011*. Specifically, the proposal would:
 - a. Not achieve the desired future character and objectives of the area;
 - b. Not provide a public pedestrian through-site link clear of obstructions (i.e. stairs, landscaping); and
 - c. Result in unacceptable wind impacts on the public domain.
5. The proposal is contrary to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposal is inconsistent with the guidance in Section 2.4 'Public Domain' of the *Parramatta Development Control Plan 2011*. Specifically, the submitted alignment plans do not contain sufficient information to demonstrate compliance with the Parramatta Public Domain Guidelines.
6. The proposal is contrary to the provisions of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* in that the proposal does not satisfy Clause 49 'Persons who can make development applications' of the Environmental Planning and Assessment Regulations 2000. Specifically, the application does not include landowners consent for Council owned lots that form part of the proposed vehicular access.
7. The proposal is contrary to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, in that the proposal does not satisfy Clause 2.3 'Zone objectives and Land Use Table' of *Parramatta Local Environmental Plan 2011*, Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979* in that the proposal is inconsistent with the guidance in 3.6.1 'Sustainable Transport' of the Parramatta Development Control Plan 2011 and Sections 4.15(1)(b), (c) and (e) of the *Environmental Planning and Assessment Act 1979*. Specifically, the proposed Green Travel Plan would not sufficiently incentivise public transport, cycling and walking and the potential to retrofit additional car parking would have an unacceptable impact on the local traffic network.
8. The proposal is contrary to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* in that the proposal's non-compliances and inconsistencies with the provisions of adopted environmental planning instruments and a development control plan are not in the public interest and would set an undesirable precedent.

B. That, all submitters be notified of the decision.

APPENDIX 1 – DESIGN EXCELLENCE ADVISORY PANEL COMMENTS

1. The Panel considers the proposal to generally respond well to its context, however, the surrounding context should be shown on all relevant architectural drawings (plans, elevations and sections).
2. The panel supports the landscape and public realm strategy presented by Urbis, all proposed street tree planting must be in accordance with Councils street tree master plan.
3. The current proposal's podium, along Beecroft road, is set back on the ground floor but projects to the boundary edge on the upper floors. With the railway station pedestrian access being so close to the elevation, and the need for wider foot paths, the Panel recommends setting the podium back 2 metres from the boundary to directly align with the Ground floor and the tower setback 6 metres from the boundary for a proportional design outcome.
4. For Rawson Street, the panel recommends that DCP compliance of a 2 metre setback for the podium and an 8 metre setback for the tower be complied with. Since this development is the first in a possible series of future developments along this street, the Panel recommends that this development set the standard for the area.
5. The current proposal has a staircase on the north-west corner leading from Rawson Street to the upper ground floor. The Panel recommends removing those steps and maximising the retail on Rawson street. This modification will require the adjustment and relocation of back of house functions.
6. The Panel recommends the staircase on the southern boundary be pushed to the east in order to align with the existing building façade to the south and provide a more generous pedestrian zone in this area.
7. The Panel have been made aware that the childcare facility will require a drop-off area for parents to safely take their children into the childcare. The Panel recommends that a functional area of the basement car parking be dedicated to the childcare.
8. In relation to detailed design and layout, the Panel recommends that:
 - a. HVAC equipment should preferably be grouped within designated screened plant areas or other concealed compartments.
 - b. Wall mounted equipment (e.g. instantaneous gas HW heaters) and associated pipework is concealed into wall cabinets and ducts
 - c. Rainwater downpipes are thoughtfully designed and integrated into the building fabric.
 - d. The above items should be positioned so that they are not visible from common areas or the public domain adjacent to the development.
9. Active ESD provisions such as rainwater re-cycling, solar power and solar hot water were not discussed at the meeting, however it is assumed that at a minimum these measures will be included in the development.
10. The Panel recommends that annotated 1:20 scale cross-sections and details of all proposed façade types and materials are included with the DA submission and form part of the consent documentation.

APPENDIX 2 – APPLICANT'S CLAUSE 4.6 REQUESTS (HEIGHT & FSR)

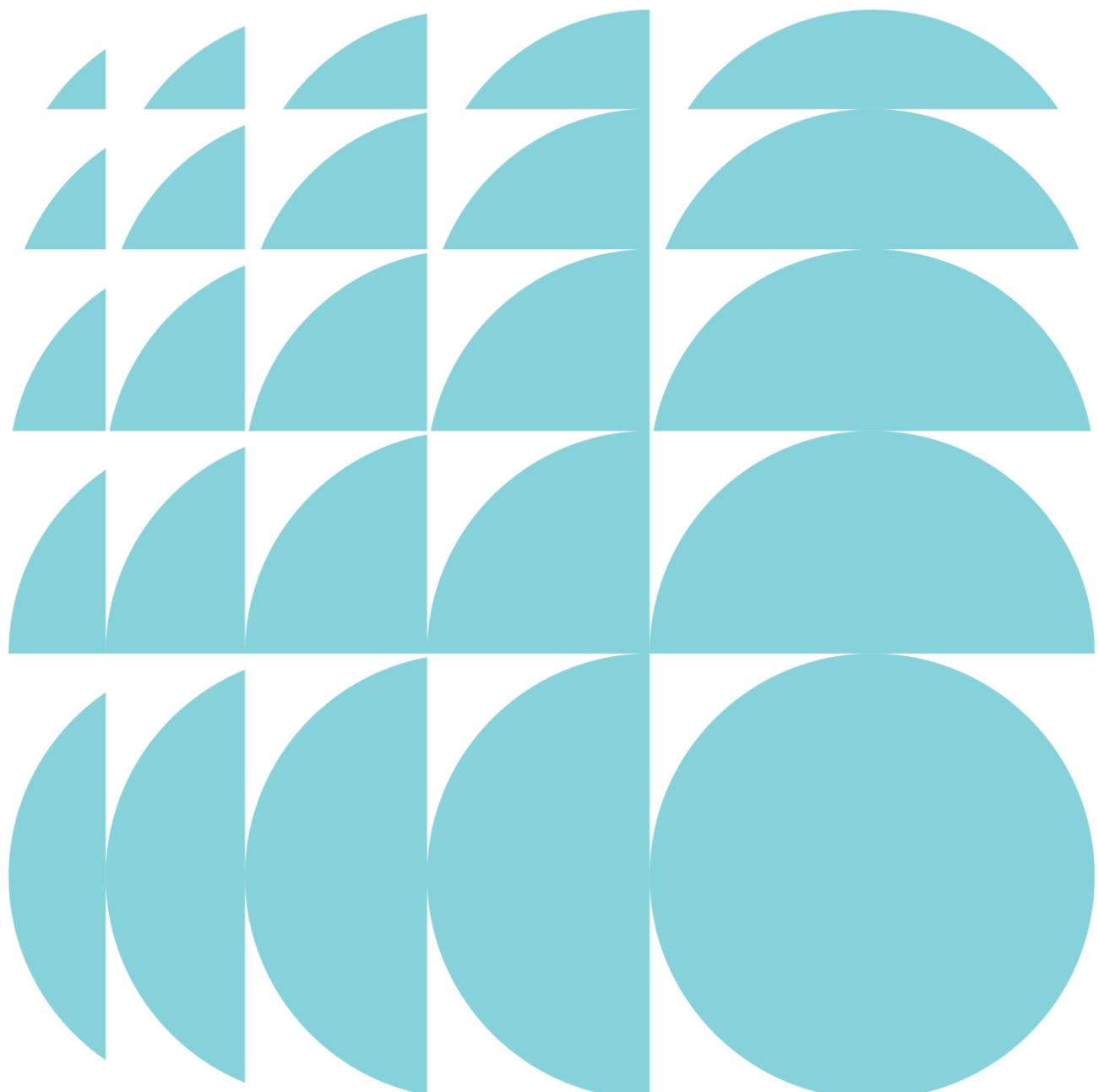
Clause 4.6 Variation

Height of Buildings

48 - 54 Beecroft Road & 52 - 54 Rawson Street,
Epping
Shop Top Housing Development

Submitted to City of Parramatta Council
On behalf of Double Gold Stone Pty Ltd

14 February 2019 | 15780



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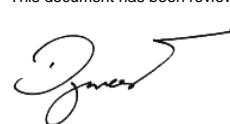
Rohan Graham

14.02.2019

Daniel West

14.02.2019

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1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of Double Gold Stone Pty Ltd (Double Gold Stone) in support of a Development Application (DA) for a shop-top housing development at 48-54 Beecroft Road and 52-54 Rawson Street, Epping.

Clause 4.6 of the *Parramatta Local Environmental Plan 2011* (PLEP 2011) enables a Consent Authority to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- 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 development is proposed to be carried out.

Assistance on the approach to justifying the contravention to a development standard is taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
5. *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118

In accordance with the above requirements, this Clause 4.6 request identifies the variation sought to the maximum building height development standard under Clause 4.3 of PLEP 2011 and establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances. It also demonstrates that there are sufficient environmental planning grounds to justify the contravention and provides an assessment of the matters the Secretary is required to consider before granting concurrence. In accordance with Clause 4.6 of PLEP 2011, this written clause 4.6 request;

- Outlines the Clause 4.6 framework (**Section 2.0**);
- identifies the development standard to be varied (**Section 3.0**);
- identifies the variation sought (**Section 3.2**);
- demonstrates such that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the applicable land use zone (**Section 5.3**);
- establishes and justifies that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 5.0**);
- demonstrates that there are sufficient environmental planning grounds to justify the contravention (**Section 5.2**); and
- provides an assessment of the matters the Secretary is required to consider before granting concurrence (**Section 5.3**).

Accordingly, development consent may lawfully be granted to the proposal despite the proposed contravention of the development standard because pursuant to clause 4.6(4)(a), the consent authority can be satisfied that:

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and

- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

It is appended to, and should be read in conjunction with, the updated Statement of Environmental Effects prepared by Ethos Urban dated 10 July 2018 and the follow up responses to Council's request for information letter package dated 10 July 2018 and 16 October 2018, and the amendment to the development application pursuant to clause 55 of the *Environmental Planning and Assessment Regulation 2000*.

2.0 Clause 4.6 Framework

Clause 4.6 (Exceptions to Development Standards) of PLEP 2011 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by PLEP 2011. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6(3) requires that the applicant's written request has adequately demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- That there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4) requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard;
- 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
- That the concurrence of the Secretary has been obtained.

The Land and Environment Court of NSW has established the process that the consent authority must undertake when assessing whether a written request adequately addresses the requirements of clause 4.6(3) and the state of satisfaction that they must form in relation to clause 4.6(4) in the recent decision of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 by Chief Justice Preston.

These tests and considerations can also be applied to the assessment of variations under clause 4.6 of PLEP 2011 and other standard LEP instruments.

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court.

3.0 Development Standard to be Varied

The development standard to be varied is provided at clause 4.3(2) of the PLEP 2011 which states:

The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'.

The maximum height of the buildings for the subject site is 72 metres (see **Figure 1**).

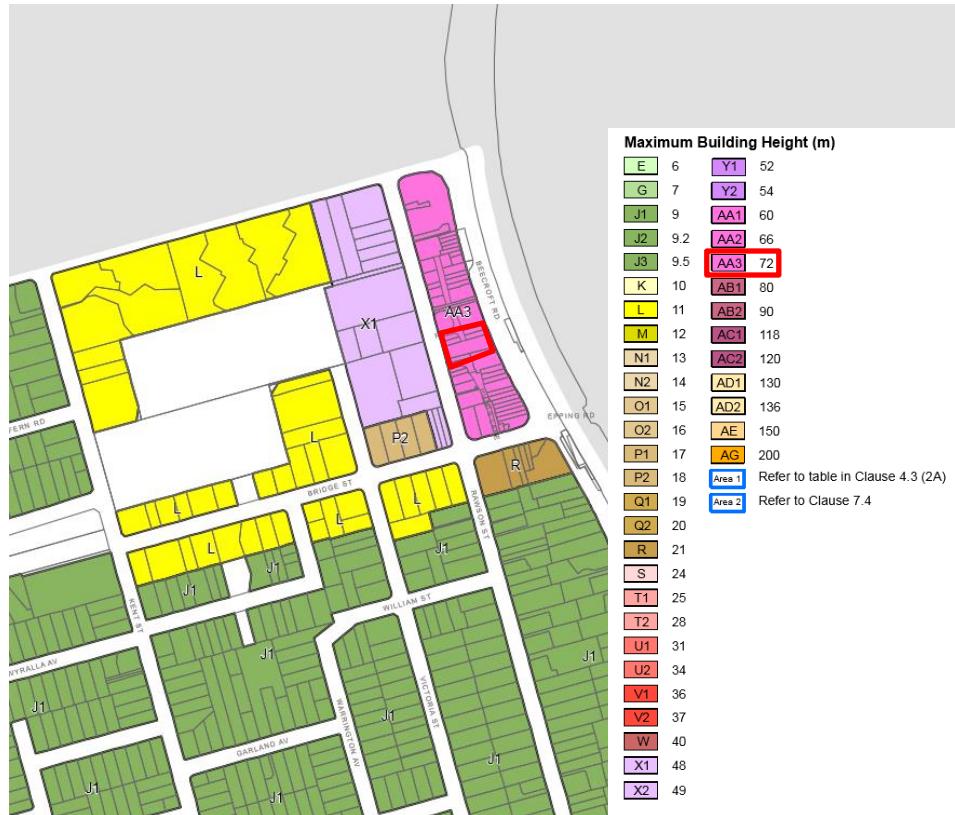


Figure 1 Height of building Map (extract)

Source: PLEP 2011

3.1 What is a Development Standard?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...

The height of buildings control under Clause 4.3 of PLEP 2011 is clearly and unambiguously a development standard.

3.2 Extent of Variation Sought

The development illustrated in the architectural plans prepared by Woods Bagot dated 15 October 2018 provides a maximum building height of 73.960 metres to the top of the hot water plant room. The table below provides the height of the proposed building at the highest point and at each corner of the tower:

Tower heights

| | Highest point (hot water plant room) | North West corner | South West corner | North East corner | South East corner |
|----------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|
| Height metres | 73.960m | 76.33m top of crown 71.9m to roof | 75.30 top of crown 70.90m to roof | 73.50m top of crown 69.1m to roof | 72.82m top of crown 68.42m to roof |

The exceedance of the building height is limited to the roof of the building including the lift overrun, building services and architectural roof feature. The variation is a consequence of the sloping site topography and the need for residents to access the roof for the landscaped communal open space area. The variation is minor in nature (2.72%) and does not include any habitable floor space above the building height development standard.

The extent of the height variation is illustrated in **Figure 2** and **Figure 3**.

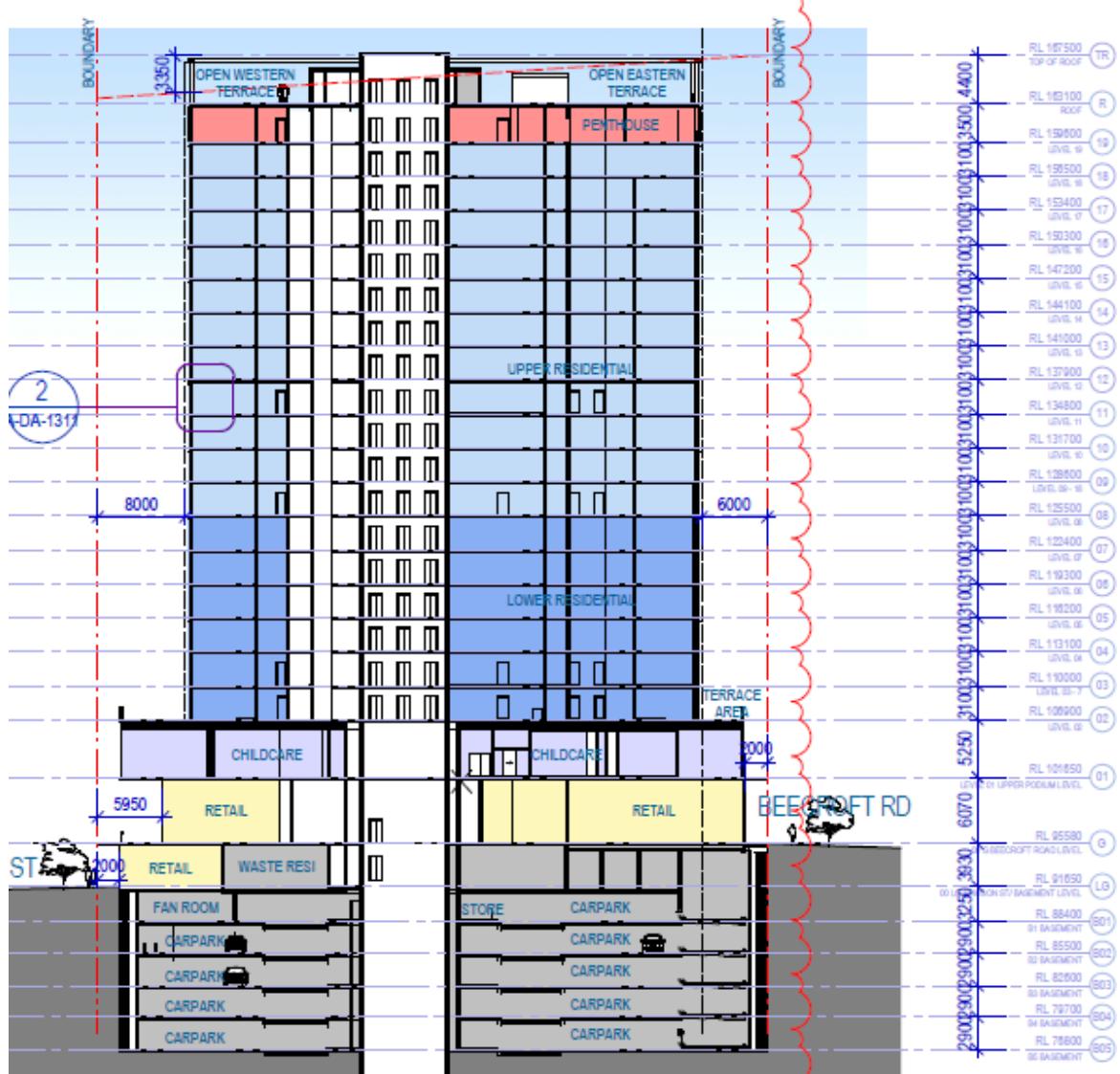


Figure 2 East-West Section illustrating extent of Variation

Source: Woods Bagot



Figure 3 Northern Elevation illustrating extent of Variation

Source: Woods Bagot

3.3 Context to the Proposed Variation

The variation to the development standard is contained behind or “within” the architectural roof feature. Clause 5.6 of PLEP 2011 states:

- (2) *Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*
- (3) *Development consent must not be granted to any such development unless the consent authority is satisfied that:*
 - (b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

Given that the height variation relates to the lift and stair roof overrun and is contained within the architectural roof feature (which is represented by a crown and screens the roof), it is questionable as to whether a Clause 4.6 variation is required in this instance to vary the applicable PLEP 2011 height development standard as it applies to the site. However, for abundant caution, the Clause 4.6 Variation Request has been prepared to vary the PLEP 2011 development standard for building height under Clause 4.3 for the roof and stair overruns and plant rooms.

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of PLEP 2011 provides that:

4.6 Exceptions to development standards

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

Further, clause 4.6(4)(a) of the PLEP 2011 provides that:

(4) *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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the Land and Environment Court of NSW and the NSW Court of Appeal in:

- Wehbe v Pittwater Council [2007] NSW LEC 827; and
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.

The relevant matters contained in Clause 4.6 of PLEP 2011, with respect to the height of building development standard, are each addressed below, including with regard to these decisions.

5.0 Matters to be addressed by Clause 4.6(3) of the Parramatta LEP 2011

5.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Clause 4.6(3)(a) of the LEP requires the departure from the development standard to be justified by demonstrating:

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In **Wehbe**, Preston CJ of the Land and Environment Court of NSW provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

In the decision of **Wehbe**, the Chief Justice expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. These five tests are as follows:

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

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**)*
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.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Of particular assistance in this matter, in establishing that compliance with the development standard is unreasonable or unnecessary is the **First Method** and the **Third Method**. These will be further addressed to demonstrate that compliance with the maximum building height is unnecessary in this circumstance.

5.1.1 The objectives are otherwise achieved – the First Method

Table 2 demonstrates that the proposed variation to the height of buildings development standard will still result in a development that achieves the objectives of this clause.

Table 1 Assessment against Objectives of the development standard at 4.3(1) of the PLEP 2011

| Objective | Proposal |
|---|---|
| (a) To nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan | The 1.96m non-compliance with the building height control relates to the lift and stair roof overrun which is located behind the architectural roof feature. In this regard it will not result in a noticeable variation in the height control for the site when viewing the development from the public domain, and other surrounding development as it is expected to largely not be visible. |
| (b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development | <p>The proposed development building envelope is consistent with the PLEP 2011 height limit for the site and includes only a minor exceedance of the nominated height limit restricted to the lift and stair roof overrun which is contained behind the architectural roof feature.</p> <p>There are no identified significant views or historic views in the proximity of the site and as such the proposed minor variation to the building height will not adversely impact on any sensitive views. The development has been designed to mitigate any potential privacy impacts. Furthermore, the finalisation report for Epping Town Centre prepared by the then Department of Planning and Infrastructure determined that testing of building heights found that buildings of up to 27 storeys could be located in the town centre core (proposal is 21 storeys) and meet solar access requirements under SEPP 65.</p> <p>The minor non-compliance in the centre of the roof is not expected to give rise to adverse impacts upon views, solar access and any loss of visual privacy.</p> |
| (c) To require the height of future buildings to have regard to heritage sites and their settings | There are no heritage listed sites or heritage conservation areas within close proximity to this site. |
| (d) To ensure the preservation of historic views, | There are no historic views that would be impacted upon as a consequence of the proposed development. |
| (e) To reinforce and respect the existing character and scale of low density residential areas | <p>The site does not adjoin and is not in close proximity to a low density residential area.</p> <p>In any event, the proposed variation is considered to have no impact upon the character and scale of low density residential areas.</p> |

| Objective | Proposal |
|--|---|
| (f) To maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes. | The proposed development is in accordance with the DCP controls that determine the building envelope of the site. The height exceedance is restricted to a roof lift and stair overrun that is partially attributable to the site topography. This height exceedance will not result in the loss of sky exposure and daylight or overshadowing given its minor nature and location centrally on the roof. |

5.1.2 The underlying purpose or objective would be thwarted or defeated – the Third Method

The third way relates to compliance with a development standard resulting in the underlying purpose being defeated or thwarted. The underlying purpose of the development standard is to ensure that built form is appropriate and consistent with the surrounding context of the site and desired future streetscape character.

Strict adherence to the development standard is considered to result in a poorer design outcome as the overall building would need to be reduced in height by a level resulting in the south eastern (Beecroft Road) corner being approximately 3.58m below the maximum height limit (exc. architectural roof feature) on account of the sloping topography. Furthermore, a maximum of 21 storeys are proposed which is less than the maximum of 22 storeys as identified for the site in PDCP 2011. As such removing another level to ensure strict height compliance on account of a minor height variation related to lift and stair overruns and plant rooms that are not visible as they are located behind the architectural roof feature, is considered unreasonable and could result in non-uniformed building heights in the Town Centre.

Strict adherence to the development standard would preclude the proposed development from delivering the building envisaged for the site. Such a building would not deliver the density envisaged by PLEP 2011 or the Epping Town Centre Urban Activation Precinct.

It is further noted that the lift and stair overruns which are the focus of this Clause 4.6 Variation Request service the roof space of the tower that provides high amenity landscaped communal open space areas for residents (refer to **Appendix D**). This provides a significant amenity benefit for the residents of the proposed development. The requirement to access this communal open space is partly responsible for the height non-compliance and therefore the minor height variation results in amenity and community benefits for residents.

The purpose of the standard is to allow for the development in the Town Centre of a particular scale. The proposed height variation is insignificant in the context of the building (2.72% variation) and will largely not be perceptible from the surrounding public domain or neighbouring properties resulting in no additional visual bulk and scale. It will simply allow for a development that is in accordance with the future character of the area intended by PLEP 2011.

5.2 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the LEP requires the departure from the development standard to be justified by demonstrating: *that there are sufficient environmental planning grounds to justify contravening the development standard.*

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

There are a number of particular constraints that affect the site which inhibit the development's ability to achieve strict compliance with the building height standard. These are detailed below.

5.2.1 Site Topography

The non-compliance with the building height control is largely a result of the sloping site topography. The development complies with the height control across the majority of the site with only a minor incursion occurring in the north-eastern portion of the site. This is the lowest point on the site and as such results in a lower vertical

building height control. Notwithstanding this numerical non-compliance, the development maintains compliance with the 22 storey building height control which establishes the height control for the Town Centre.

The sloping topography is an issue that is specific to the site and is the primary cause of the non-compliance with the height control. The 1.96m variation is minor in the context of the proposed building and is located behind the architectural roof feature and therefore is not visible from the public domain. Accordingly, it will not result in any adverse environmental impacts.

5.2.2 Through Site Link

Chapter 4.1.5 of the Parramatta DCP 2011 recommends the addition of a through site link between Rawson Street and Beecroft Road straddling the boundary of the site and the adjoining land to the south. This link is required to provide a 24 hour a day connection through the site. This requirement ultimately limits the developable site area that is available for the shop top housing development. This limited developable area is exacerbated by the topography of the land which requires a change in level of 3.35m in the link between Rawson Street and Beecroft Road.

The provision of this through site link is considered to be a public benefit that will improve the permeability of the street network and improve connections to and from Epping Railway Station. The result of the reduced developable area and change in topography through this link ultimately has an impact on the overall height of the built form. It is further noted that the development maintains a compliant FSR.

As such, the public benefit offered through the addition of the through site link is considered to be more desirable than an otherwise compliant development.

5.2.3 Architectural Roof Feature

The development provides an architectural roof feature in accordance with Clause 5.6 of the PLEP 2011. In accordance with Clause 5.6(2) the roof feature is a light weight element that acts as a “crown” and partly protrudes above the PLEP 2011 height of buildings development standard. The roof feature comprises the extension of building façade elements and as such appears as an extension of some of the building features above the roof and has been supported by the DEAP.

The portion of the building that exceeds the height of buildings development standard (the subject of this Clause 4.6 variation request) lies behind and approximately at or below the architectural roof feature. In this regard the height non-compliance is administrative and will not be visually noticeable when viewed from the public domain or adjoining development.

The provision of an architectural roof feature is a design component that is specific to the site. The height exceedance is entirely reasonable in this regard.

5.3 The proposed development will be in the public interest

Clause 4.6(4)(a)(ii) of PLEP 2011 requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is 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.

The proposal demonstrates that it meets the objectives of the development standard (**Section 5.1.1**). Additionally, the proposal can be shown to achieve the objectives of the B2 Local Centre zone (**Section 5.3.1**).

Therefore, despite the non-compliance with the height of buildings standard, the proposal is considered to be in the public interest as it nevertheless satisfies the zone objectives and objectives of the development standard.

5.3.1 Consistency with the objectives of the zone

The proposed variation to the height of buildings development standard will result in a development that is still consistent with the objectives of the development standard, as addressed in **Table 2**.

Table 2 Assessment against Zone Objectives for the B2 Local Centre 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 development provides a range of retail and commercial opportunities for employment. The development provides 881m ² of commercial floor space, divided into five tenancies to facilitate a range of business tenancies and sizes. The commercial floor space is flexible and the number and size of the tenancies may be altered at a future stage to facilitate tenant preferences. The commercial tenancies are provided adjacent to the through site link and have frontage to Rawson Street and Beecroft Road. These tenancies will provide convenience retail and commercial uses that are located proximate to a pedestrian link to the Epping station. These uses will be ideally located for pedestrians and the local community. |
| To encourage employment opportunities in accessible locations. | The commercial podium will provide substantial commercial floor space that provides employment opportunities within 30m of Epping Train station. The commercial floor space provided within the development will facilitate retail tenancies which generally provide higher employment densities than other commercial uses. Accordingly, the development will facilitate high density employment generating uses in a highly accessible location. |
| To maximise public transport patronage and encourage walking and cycling. | The development is located directly adjacent to Epping Station and provides a mix of uses that will encourage the use of public transport. Additionally, the development will provide a through site link from Rawson Street to Beecroft Road connecting to the pedestrian footbridge linking Epping Station. The through site link will facilitate access to the train station and hence facilitate the use of trains and public transport. It also provides a link to the northern side of the Epping Town Centre. The provision of secure bicycle parking for the new residential population and the commercial uses will facilitate the use of bikes for residents and workers. Direct and improved pedestrian access to Epping Station is provided by the development. Public transport patronage is expected to increase with the Sydney Metro Northwest proposed to open in 2019. This will provide Epping with direct connection to further commercial and employment areas in the north west such as Norwest Business Park, Castle Hill and Rouse Hill. This is in addition to Epping existing direct rail links to Macquarie Park, Chatswood, North Sydney and the Sydney CBD. |
| To encourage the construction of mixed use buildings that integrate suitable commercial, residential and other developments and that provide active ground level uses. | The development comprises a mix of land uses including commercial and retail tenancies as well as residential dwellings. The general design of the development is supported by the Parramatta DEAP and comprises a commercial podium with a residential tower above. The design of the commercial interface ensures that the dwellings are appropriately separated from the non-residential uses with no potential for privacy or noise impacts. The development provides a highly-activated ground floor with active commercial/retail uses provided to each street frontage and facing the through site link. The development provides canopy street tree planting to Rawson Street to encourage outdoor dining and active retail uses. |

6.0 Secretary's Concurrence

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice. The following section provides a response to those matters set out in clause 4.6(5) which must be considered by Council under its delegated authority:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

No matters of State or regional environmental planning significance are raised by the contravention of the development standard.

The public benefit of maintaining the development standard.

The justification in **Section 5.2** above demonstrates that a variation to the development standard is acceptable in terms of the public benefit. . The proposed development is considered to be consistent with the objectives of the zone and the development standard.

Any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposed variation is a minor non-compliance that will allow for the orderly redevelopment of the site. No other matters require consideration by the Secretary.

7.0 Summary

In conclusion Council can be satisfied that this Clause 4.6 Variation Request satisfactorily demonstrates:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the objectives of the standard are otherwise achieved;
- That there are sufficient environmental planning grounds to justify contravening the development standard as the proposal has been designed in accordance with the desired character of the Epping Town Centre; and
- The extent of the variation is minor (2.72%) and will not result in visually noticeable exceedance of the building height or future built form character of the Epping Town Centre;
- The variation is primarily a result of the sloping topography of the site and to provide access to a high amenity landscaped roof terrace for residents and would not give rise to adverse amenity impacts in terms of visual privacy, overshadowing and visual bulk and scale;
- The proposed height variation is attributable to lift and stair overruns and plant rooms and is not habitable floor space;
- The addition of the through site link, which is provided as a public benefit, is considered to limit the developable area of the site and ultimately result in an increase to the height of the development;
- The proposed height variation is substantially hidden behind the architectural roof feature of the building when viewed from the public domain; and
- The proposed development is 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.

In light of the above, it is requested that Council grant development consent for the proposed development even though there is a minor variation to the proposed development standard imposed by Clause 4.3 of PLEP 2011.

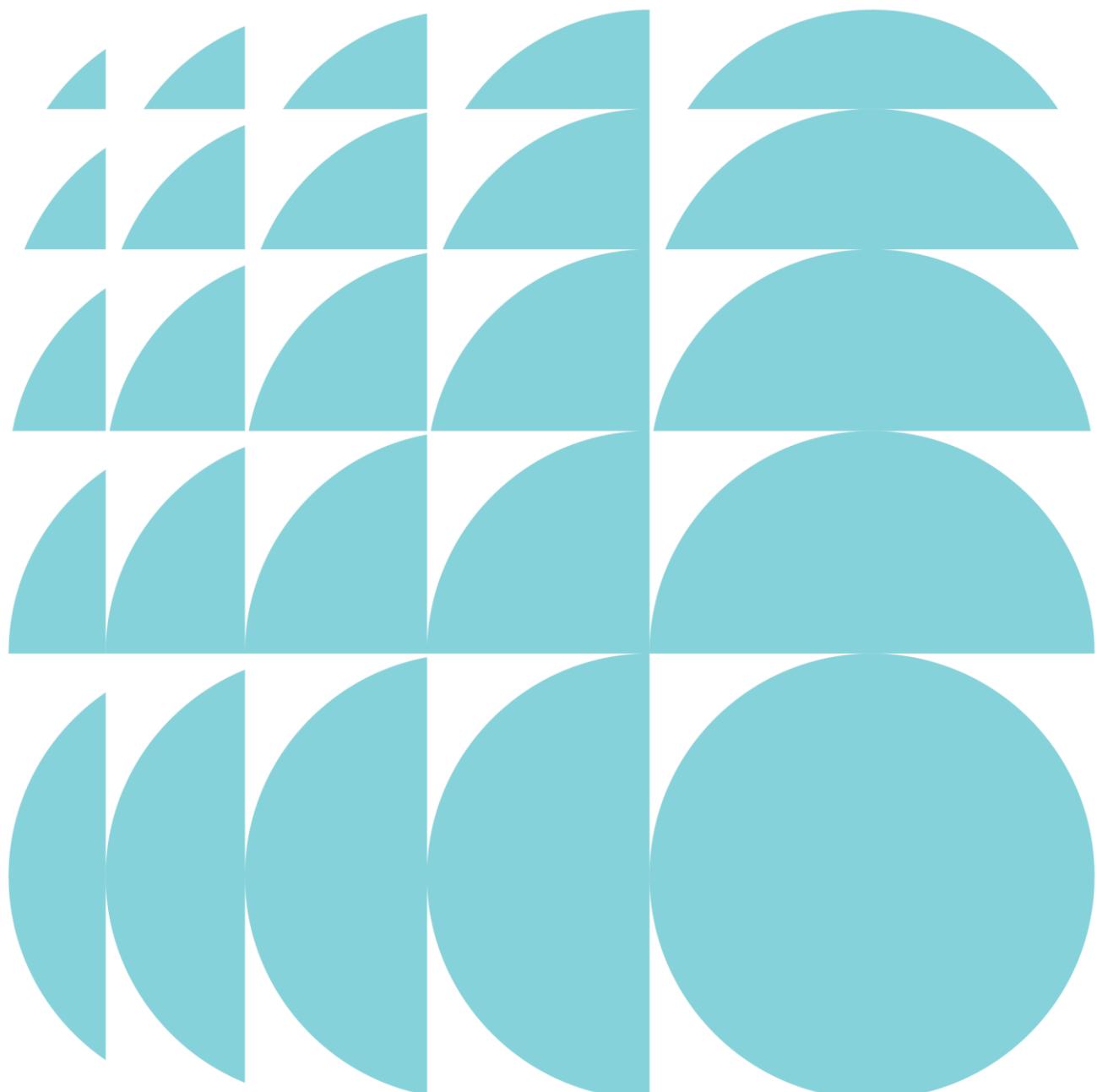
Clause 4.6 Request Variation

Floor Space Ratio

Shop top housing and child care centre development

Submitted to The City of Parramatta Council
On behalf of DGS Epping Development PTY LTD

17 October 2018 | 15780



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1.0 Introduction

This statement has been prepared on behalf of Double Gold Stone Pty Ltd (Double Gold Stone) in support of a request in accordance with Clause 4.6 of the Parramatta Local Environmental Plan 2011 (PLEP 2011) to vary the Floor Space Ratio development standard applicable to the site at 48-54 Beecroft Road and 52-54 Rawson Street, Epping.

It is appended to, and should be read in conjunction with, the updated Statement of Environmental Effects prepared by Ethos Urban dated 10 July 2018 and the follow up response to Council's request for information letter package dated 10 July 2018, and the amendment to the development application pursuant to clause 55 of the *Environmental Planning and Assessment Regulation 2000*.

2.0 Clause 4.6 Framework

Clause 4.6 (Exceptions to Development Standards) of PLEP 2011 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by PLEP 2011. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- 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.

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

The Land and Environment Court of NSW has established the process that the consent authority must undertake when assessing whether a written request adequately addresses the requirements of clause 4.6(3) and the state of satisfaction that they must form in relation to clause 4.6(4) in the recent decision of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 by Chief Justice Preston.

These tests and considerations can also be applied to the assessment of variations under clause 4.6 of PLEP 2011 and other standard LEP instruments.

Accordingly, this clause 4.6 variation request is set out using the relevant principles established by the Court.

3.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is clause 4.4 Floor Space Ratio of the PLEP 2011, which establishes the maximum floor space ratio (FSR) permitted for all development. Under PLEP 2011, the site is identified in the AA1 area that provides an FSR of 6:1 as shown in **Figure 1**.

An extract from the relevant Floor Space Ratio Map is provided at **Figure 1** below and applies a maximum FSR of 6:1 for the site.

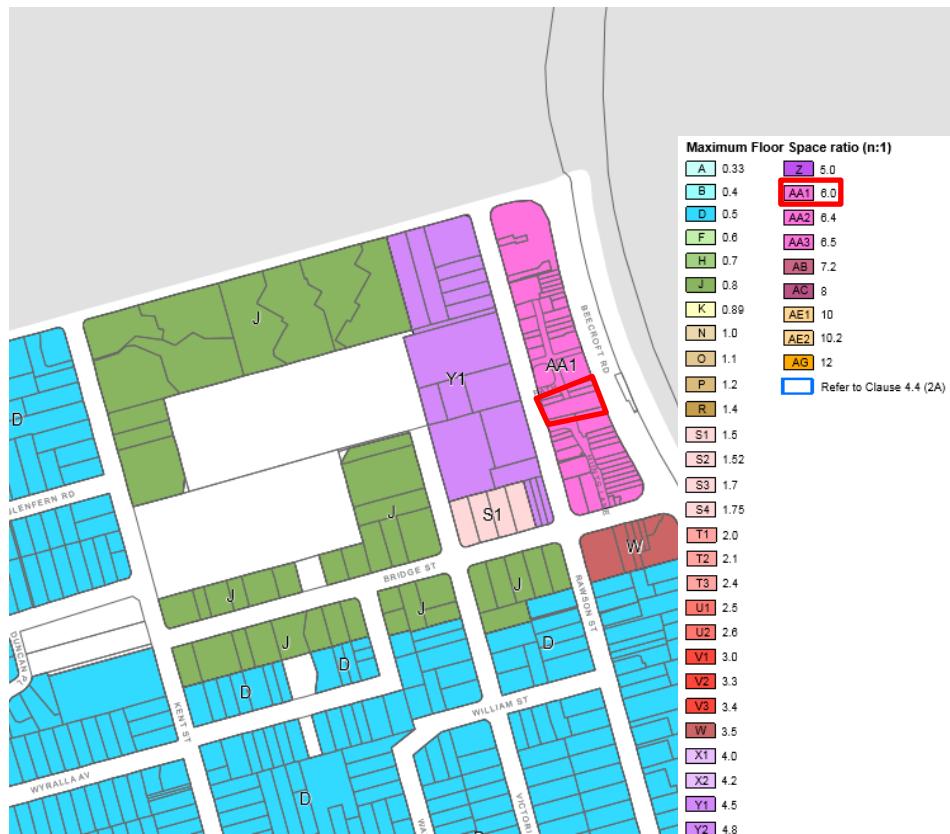


Figure 1 - Floor space ratio map

3.1 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...

The FSR control under Clause 4.4 of PLEP 2011 is clearly and unambiguously a development standard.

3.2 Extent of Variation Sought

As described in the Statement of Environmental Effects (SEE) and illustrated on the Architectural Drawings prepared by Woods Bagot provided at **Appendix A**, the FSR of the proposed development will exceed the maximum control of 6:1 by 723m² (6.35:1) which equates to a 5.8% variation. **Table 1** below provides a breakup of the GFA and FSR in the context of the proposed development:

Table 1 - GFA/FSR Summary

| Summary of GFA and FSR of Proposed Development | | | | | |
|--|--------------|----------------------|----------------------|--------------|---------------------------|
| Site Area | FSR Standard | GFA Maximum | GFA Proposed | FSR Proposed | Variation Sought |
| 2,062m ² | 6:1 | 12,372m ² | 13,095m ² | 6:35 | 723m ² or 5.8% |

Table 2 provides an analysis of the FSR variation relative to the inclusion of the wintergardens as GFA which form part of the amended Architectural Plans prepared by Woods Bagot dated 15 October 2018. The wintergardens have been provided on apartments on the south-eastern end (L3-1 up to L19-1) to ensure that these apartments achieve compliance with acoustic requirements outlined in AS/NZS 2107.

The wintergardens will not function as an indoor space and will continue to provide these apartments with an outdoor space that is partly exposed to the weather. Not providing wintergardens to these apartments would result in a significantly reduced level of amenity to the eastern balconies and is an undesirable planning outcome. The non-compliance resulting from the wintergardens does not represent a significant variation in the context of the overall built form and would not result in additional bulk or scale for the built form.

Table 2 Wintergardens Contribution to GFA / FSR

| GFA (Wintergardens) | GFA (Commercial) | GFA (Internal) | FSR (excluding wintergardens) | Variation (excluding wintergardens) |
|---------------------|---------------------|---------------------|-------------------------------|-------------------------------------|
| 192m ² | 1,773m ² | 11130m ² | 6.27:1 | 574m ² or 4.6% |

The additional 723m² (including wintergardens) or 574m² (excluding wintergardens) of GFA proposed above the 6:1 FSR maximum is located within the permitted building envelope taking into consideration the maximum height (no floor space above the height limit) and required front and rear setbacks. As requested by Council and the City of Parramatta Design Excellence Assessment Panel (DEAP) the podium is setback 2m from Beecroft Road, 500mm further than required in the Parramatta Development Control Plan 2011 (PDCP 2011). The proposed development also provides apartments that are significantly above the SEPP 65 Apartment Design Guide minimum in terms of size. The additional floorspace of the apartments above the ADG minimum is almost twice that of the overall GFA variation sought. There is no additional density and therefore additional traffic generation as a result of the FSR variation sought.

Furthermore, the proposed development also provides a through site link and publicly accessible plaza on the site. These areas comprise approximately 1,183m² or 57% of the site area and are embellished with high quality materials and planting. Providing significant public and community benefit to the proposed development. FSR has been moved out of these areas to provide high quality public spaces into other areas of the proposed development without causing the proposed development to intrude into the setbacks and beyond the building envelope (no FSR is above the building height limit).

3.3 Context to the Proposed Variation

The Epping Town Centre continues to develop as part of a Planned Precinct that was initiated by the NSW Government in October 2012. This announcement followed the announcement of the construction of the Sydney Metro Northwest. The Metro, which is expected to begin operation early next year, will improve Epping's already excellent access to many employment and education destinations across Sydney.

The Epping Town Centre is expected to undergo substantial transformation in the coming years with a number of future developments expected to utilise the built form controls set under PLEP 2011.

The development standards for The Epping Town Centre have been set by PLEP 2011 and PDCP 2011. In particular the maximum building height (72m) and the setbacks set an envelope for the subject site. The proposed development as amended complies with this envelope (architectural roof feature, roof overruns and plant excluded).

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of PLEP 2011 provides that:

4.6 Exceptions to development standards

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

Further, clause 4.6(4)(a) of PLEP 2011 provides that:

(4) *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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the Land and Environment Court of NSW and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827;*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009; and*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*

The relevant matters contained in Clause 4.6 of PLEP 2011, with respect to the FSR development standard, are each addressed below, including with regard to these decisions.

5.0 Matters to be addressed by Clause 4.6(3) of the Parramatta LEP 2011

5.1 Compliance with the development standard is unnecessary and unreasonable

Clause 4.6(3)(a) of PLEP 2011 requires the departure from the development standard to be justified by demonstrating:

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the decision of **Wehbe**, the Chief Justice expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. These five tests are as follows:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard (**First Method**).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**)*
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.*

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Of particular assistance in this matter, in establishing that compliance with the development standard is unreasonable or unnecessary is the **First Method** and the **Third Method**. These will be further addressed to demonstrate that compliance with the maximum building height is unnecessary in this circumstance.

5.1.1 The objectives are otherwise achieved – First Method

The objectives of the FSR standard predominantly set out to ensure that the proposed development has a density, bulk and scale that is compatible with the surrounding character. Furthermore, it seeks to regulate the generation of vehicular and pedestrian traffic. This is reflected in the objectives outlined below. These objectives are satisfied by the proposal despite the numerical variation from the FSR standard. The proposed development, including the additional GFA, will continue to achieve the objectives of the standard for the following reasons:

(a) *to regulate density of development and generation of vehicular and pedestrian traffic,*

As outlined in the SEE, despite the departure from the FSR control the development will not result in any additional density or generation of vehicular and pedestrian traffic beyond that which a strictly compliant development would have generated. The additional floor space has been provided within existing apartments for increased amenity reasons and to deliver a superior residential product to the market, rather than just providing additional apartments that meet the minimum apartment sizes stipulated in the SEPP 65 Apartment Design Guide (ADG). This has allowed for substantially larger than required 1, 2 and 3 bedroom apartments throughout the proposed development. **Table 3** below provides a break up of unit type, size and percentage over the minimum required in the ADG.

Table 3 - Summary of Residential Areas (internal GFA, excluding wintergardens) vs ADG Requirements

| Summary of Residential Apartment Areas + ADG Comparison | | | | | |
|---|---------------|-----------|---------------------|-------------------------|-----------------------------|
| Level 02 - 07 | Unit Type | Number Of | Unit Size | ADG Minimum Requirement | Percentage Over Requirement |
| | 1 Bed (Study) | 6 | 59m ² | 50m ² | 17% |
| | 1 Bed | 6 | 52m ² | 50m ² | 4% |
| | 1 Bed | 6 | 52m ² | 50m ² | 4% |
| | 1 Bed | 6 | 55m ² | 50m ² | 10% |
| | 2 Bed | 6 | 74m ² | 70m ² | 5% |
| | 2 Bed | 6 | 79m ² | 70m ² | 13% |
| | 2 Bed | 6 | 84m ² | 70m ² | 20% |
| | 2 Bed | 6 | 78m ² | 70m ² | 11% |
| | TOTAL | 48 | 3,191m ² | 2,880m ² | 11% |
| Level 08 | Unit Type | Number Of | Unit Size | ADG Requirement | Percentage Over Requirement |
| | 1 Bed | 1 | 52m ² | 50m ² | 3% |
| | 1 Bed | 1 | 55m ² | 50m ² | 10% |
| | 2 Bed | 1 | 74m ² | 70m ² | 6% |
| | 2 Bed | 1 | 79m ² | 70m ² | 13% |
| | 2 Bed | 1 | 77m ² | 70m ² | 10% |
| | 2 Bed | 1 | 79m ² | 70m ² | 12% |
| | 3 Bed | 1 | 115m ² | 90m ² | 28% |
| | TOTAL | 7 | 530m ² | 470m ² | 13% |
| Level 09 - 18 | Unit Type | Number Of | Unit Size | ADG Requirement | Percentage Over Requirement |

| Summary of Residential Apartment Areas + ADG Comparison | | | | | |
|---|-------|----|---------------------|---------------------|-----|
| Level 19 | 1 Bed | 10 | 52m ² | 50m ² | 3% |
| | 1 Bed | 10 | 55m ² | 50m ² | 10% |
| | 2 Bed | 10 | 79m ² | 70m ² | 13% |
| | 2 Bed | 10 | 77m ² | 70m ² | 10% |
| | 2 Bed | 10 | 78m ² | 70m ² | 12% |
| | 2 Bed | 10 | 73m ² | 70m ² | 4% |
| | 3 Bed | 10 | 116m ² | 90m ² | 29% |
| | TOTAL | 70 | 5,293m ² | 4,700m ² | 13% |
| | | | | | |
| Level 19 | | | | | |
| Unit Type | | | | | |
| Number Of | | | | | |
| Unit Size | | | | | |
| ADG Requirement | | | | | |
| Percentage Over Requirement | | | | | |
| | | | | | |
| 2 Bed | | | | | |
| 1 | | | | | |
| 79m ² | | | | | |
| 70m ² | | | | | |
| 13% | | | | | |
| | | | | | |
| 2 Bed | | | | | |
| 1 | | | | | |
| 74m ² | | | | | |
| 70m ² | | | | | |
| 5% | | | | | |
| | | | | | |
| 3 Bed | | | | | |
| 1 | | | | | |
| 116m ² | | | | | |
| 90m ² | | | | | |
| 28% | | | | | |
| | | | | | |
| 3 Bed | | | | | |
| 1 | | | | | |
| 110m ² | | | | | |
| 90m ² | | | | | |
| 23% | | | | | |
| | | | | | |
| 3 Bed | | | | | |
| 1 | | | | | |
| 160m ² | | | | | |
| 90m ² | | | | | |
| 77% | | | | | |
| | | | | | |
| TOTAL | | | | | |
| 5 | | | | | |
| 538m ² | | | | | |
| 410m ² | | | | | |
| 31% | | | | | |
| | | | | | |
| Totals | | | | | |
| Unit Type | | | | | |
| Number Of | | | | | |
| Unit Size | | | | | |
| ADG Requirement | | | | | |
| Percentage Over Requirement | | | | | |
| | | | | | |
| 1 Bed | | | | | |
| 46 | | | | | |
| 2,479m ² | | | | | |
| 2,300m ² | | | | | |
| 8% | | | | | |
| | | | | | |
| 2 Bed | | | | | |
| 70 | | | | | |
| 5,414m ² | | | | | |
| 4,900m ² | | | | | |
| 10% | | | | | |
| | | | | | |
| 3 Bed | | | | | |
| 14 | | | | | |
| 1,660m ² | | | | | |
| 1,260m ² | | | | | |
| 32% | | | | | |
| | | | | | |
| TOTAL | | | | | |
| 130 | | | | | |
| 9,524m ² | | | | | |
| 8,460m ² | | | | | |
| 13% | | | | | |

What this analysis demonstrates is that the proposed development is providing larger apartments within the permitted building envelope, rather than providing for additional apartments and therefore increased density. The total GFA of the apartments above the minimum ADG standards equates to 1,064m² across the development. The GFA variation sought above the 6:1 FSR of 723m² (including wintergardens) or 574m² (excluding wintergardens) accounts for far less than the additional apartment size beyond the minimum that is required for these apartments under the ADG. The numerical variation is attributable to *larger* apartments rather than *more* apartments.

The FSR exception in this case relates to additional floor space within existing apartments, within the permitted building envelope. This ensures that there are minimal amenity impacts and no additional traffic generation from the proposed development.

The site is located directly adjacent to Epping Station and facilitates improved access to the station through the provision of a pedestrian through site link. The development provides for a reduction in car parking spaces associated with the child care centre to encourage the use of public transport and walking. This does not count towards the FSR of the site, but demonstrates that the development provides better outcomes, while staying within the building envelope. It also demonstrates that the controls contemplated development that could have FSR above that proposed in this development application.

The updated Traffic Impact Assessment prepared by TTM and dated 16 October 2018 demonstrates that the additional traffic associated with the proposed development will not have a significant adverse impact on the surrounding road network. Notwithstanding this, a Green Travel Plan has been prepared and is provided as part of this TTM report. Furthermore, the development provides secure bicycle facilities for residents and staff to encourage other non- vehicular forms of transport.

The provision of additional GFA above the 6:1 FSR standard will not result in any additional density related impacts. An entirely FSR compliant scheme could be proposed that potentially could provide more apartments (at ADG minimum sizes) and result in greater density and traffic generation than currently proposed. Despite this, the site's

location adjacent to Epping Station, in a developing high density mixed use centre, would be an ideal location for increased density if this were a potential impact.

Car Parking

Car parking numbers have been reduced in light of the Epping Town Centre Traffic Study which was recently exhibited by the City of Parramatta Council. Specifically, the proposed car parking numbers have been reduced as follows as requested by Council:

- 1 bed – reduced from 0.5 spaces to 0.4 spaces
- 2 bed – reduced from 1.0 spaces to 0.7 spaces
- 3 bed – reduced from 1.5 spaces to 1.2 spaces

The reduction in overall car parking further demonstrates that the total FSR is capable of meeting the objectives of Clause 4.4 Floor Space Ratio in regulating the generation of vehicular traffic. The development will provide no more than the maximum number of parking allowed under the draft parking generation rates. It is noted that under current controls a compliant development could achieve a greater total number of apartments with a higher rate of parking provided.

The limited parking provided and the sites proximity to Epping Station will encourage the use of public transport by future residents of the development. A Green Travel Plan has been prepared to encourage alternative forms of travel especially by the future Northwest Metro which will provide excellent access to the majority of Sydney's commercial centres (i.e. Macquarie Park, Chatswood, North Sydney & Sydney CBD).

(b) to provide a transition in built form and land use intensity within the area covered by this Plan,

The proposed development, as amended, is designed to comply with the building envelope controls of PLEP 2011 and PDCP 2011 and therefore provides the intended built form transitions to the surrounding existing and future development. The minor amount of additional GFA is contained within the building height and setback controls, as requested by Council and the DEAP, the podium is setback 500mm more from Beecroft Road than required by PDCP 2011.

The proposed development is consistent with the building envelope and urban design outcome for the site and locality intended under PLEP 2011 and PDCP 2011. In this regard, the site forms part of the strip of land centrally located in the Epping Town Centre between Beecroft Road and Rawson Street that provides non-residential podium and active ground floor retail urban form, with the residential towers above. The proposed development represents the first site along this central strip to seek consent for the realisation of the intended urban form and character detailed in PLEP 2011 and PDCP 2011.

(c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,

The site is not located in close proximity to a heritage item or a heritage conservation area.

(d) to reinforce and respect the existing character and scale of low density residential areas.

The site is centrally located in the Epping Town Centre and is not immediately adjacent to low density residential areas. The closest low density residential area is located approximately 180m south of the site along Rawson Street south of Bridge Street. As such, there is no overshadowing impact to this low density residential area as a consequence of the proposed development, and the visual impact is acceptable within the context of an intended high density town centre as there is sufficient separation from the proposed development and the nearest low density residential area.

The Epping Town Centre is an emerging high density mixed use precinct, and is afforded controls in the PLEP 2011 that reflect this. The minor variation sought to the FSR development standard is on a site that is within the town centre, adjacent to Epping Station and will not undermine the built form character or role of the site in the

PLEP 2011. The proposed development will not increase traffic generation above a FSR compliant scheme given the additional GFA is attributable to *larger* apartments than the ADG minimum, not *more* apartments.

5.1.2 The underlying purpose or objective would be thwarted or defeated – the Third Method

The underlying purpose of the floor space ratio development standard is to ensure density, intensity and traffic generation of development is controlled and the built form outcome is consistent with the intended and emerging character of the Epping Town Centre under PLEP 2011 and PDCP 2011.

Strict compliance with the 6:1 FSR development standard for the proposed development would result in a building that is lower and smaller than the built form outcome intended for the site under PLEP 2011 and PDCP 2011, due to a loss of 724m² (including wintergardens) or 574m² (excluding wintergardens) of GFA.

Such an outcome is likely to result in a revisiting of apartment sizes and layouts, prioritising apartment yield and resulting in smaller, and possibly more apartments with less internal amenity than the proposed development. A potential consequence of providing more apartments of a smaller size could be an increase in the density, intensity and traffic generation of that development. Accordingly, strict compliance with the 6:1 FSR control in this instance is considered to thwart the underlying purpose of the development standard.

5.2 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of PLEP 2011 requires the departure from the development standard to be justified by demonstrating:

that there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

There are a number of site specific circumstances that explain why variation of the maximum 6:1 FSR development standard is justified on environmental planning grounds. These are detailed below.

5.2.1 Housing Diversity & Apartment Size

There has been a drive for larger apartments in order to attract and cater for families as well as providing large numbers of smaller apartments that are not suitable for family living. Given that the median house price for Epping in October 2018 was \$1,685,000, housing affordability for families with two or more children is at or near crisis levels. A more affordable alternative for families than dwelling houses are 2 and 3 bedroom apartments, however apartments that only meet ADG size minimums are not necessarily attractive to families that need additional living and storage space. Accordingly, the proposed development provides 3 bedroom apartments that are between 27% and 75% larger than the ADG minimum of 90m², providing families with housing choice and an affordable and attractive alternative to dwelling houses.

As identified within **Table 3**, the additional GFA is provided within the building envelope set by PLEP 2011 and PDCP 2011. The additional GFA has been provided within the existing number of apartments to increase amenity, attract families and deliver a superior product to the market. The total floor area of the apartments above the minimum ADG standards is 1,064m² across the development. This additional FSR variation of 723m² (including wintergardens) or 574m² (excluding wintergardens) of GFA represents far less than the minimum required by the ADG, and further emphasises that the variation sought is not a consequence of density but rather providing larger than minimum apartments.

In addition, further GFA has been included as a result of the need to provide acoustic treatment to a number of balconies that front Beecroft Road. This additional FSR does not result in any additional amenity impacts on the surrounding neighbourhood, and improves the internal amenity of these apartments.

5.2.2 Public Amenities

The development provides a large area of publicly accessible space (1,183m²) on the lower ground and ground levels, as illustrated in **Figure 2** and **3** below. The additional public space could be reduced to bring the development even further within the building envelope without affecting the FSR. However, this would result in an outcome that would not be consistent with the objectives of the development standard. The bulk at this level does not add to the overall FSR, but provides additional public amenity which is consistent with the objectives of the development standard and the objectives of the zone.



Figure 2 - Ground floor public domain plan

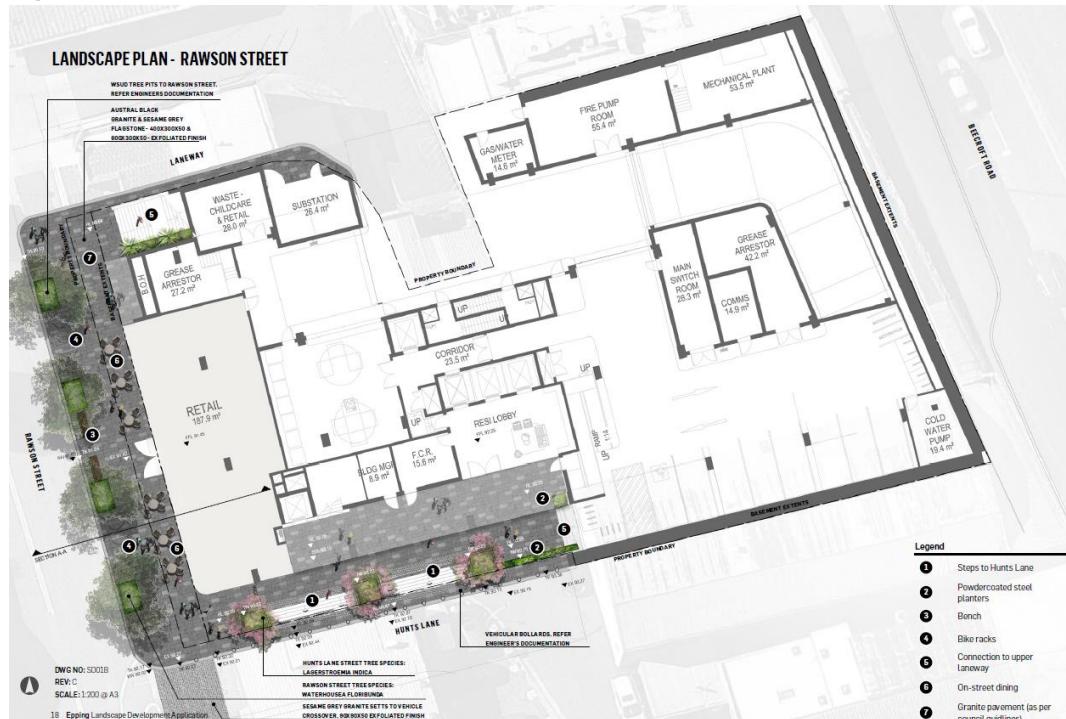


Figure 3 - Lower ground floor public domain plan

5.2.3 Site Topography and Commercial Podium

The sloping nature of the site and the provision of the through site link and public plaza results in large double height voids in the podium that achieve a high quality urban design outcome, however result in an inefficient allocation of floor space in the lower levels of the building. This also results in additional construction costs to the development (through the construction of cantilevered structures) without the benefit of revenue generating floor space.

The development provides a large commercial podium that spans across three levels (fronting Rawson Street). The podium has been designed in such a way as to best address development controls for activating two street frontages, internal public domain and accommodating a through site link. This has resulted in a podium that inefficiently distributes floor space (particularly the 158.7m² of retail fronting Rawson Street) in order to activate the streetfrontages. As such, the sloping site has further contributed to the need to redistribute floor space within the development, resulting in a numerical non-compliance with the PLEP 2011 FSR development standard, but remains compliant with the building envelope controls set by PLEP 2011 and PDCP 2011 in terms of podium and tower setbacks and building height (excluding roof overruns and plant).

It is further noted that the podium is setback from Beecroft Road 500mm more than required by PDCP 2011. This was required by Council of the DEAP and the proposed development has complied with this request.

5.2.4 Proximity to Public Transport

The subject site is located directly opposite the Epping Station and is therefore a logical location for high density development (despite additional density not being proposed). Currently Epping Station provides access to Macquarie University (5 min) Macquarie Park (7 min), Chatswood (16 min), North Sydney (28 min) and Wynyard (36 min). Also, once the Sydney Metro Northwest is completed in 2019, Epping will be connected by train to Castle Hill and Norwest Business Park.

The site's location encourages the use of rail/metro transport for residents, employees and visitors. As previously discussed, the additional GFA on the site above the 6:1 FSR development standard will not result in traffic generation above that anticipated with under PLEP 2011, given that the additional GFA above the 6:1 FSR standard is attributable to *larger* apartments and not *more* apartments.

5.2.5 Building Envelope

The Epping Town Centre chapter of PDCP 2011 provides setback controls to assist in achieving the desired future built form character of the centre. The proposed development is provided in accordance with the DCP setback controls and is also in accordance with the DCP building bulk and scale controls with respect to floor plate sizes.

The building is within the building height control (with the exception of roof overruns and plant rooms) and at 21 storeys in height is less than the number of storeys control in PDCP 2011 at 22 storeys. In this regard, the additional floor space does not result in an overdevelopment of the site. Indeed, the number of apartments proposed is less than could theoretically be achieved with an FSR compliant scheme should the ADG minimum apartment sizes be provided instead of the larger apartments proposed.

The residential tower also achieves building separation to future residential buildings generally in accordance with the relevant provisions of the ADG, as agreed to by Council and the DEAP and is consistent with Council's required side setbacks. As outlined in **Section 4.2** above, despite the provision of additional floor space, the floor space of the proposed development remains within the permitted building envelope.

5.2.6 Residential Amenity

The Clause 4.6 variation sought to the 6:1 FSR development standard is attributable to apartments significantly larger than ADG minimums and therefore typically results in enhanced amenity for apartments in terms of space, storage, solar access and cross ventilation.

In addition, further GFA has been included as a result of the acoustic requirements under AS/NZS 2017 for apartments fronting Beecroft Road. This additional FSR does not result in any additional amenity impacts on the surrounding neighbourhood, and improves the internal amenity of these apartments.

Furthermore, the proposed FSR variation will not give rise to amenity impacts upon adjoining properties in terms of overshadowing, visual privacy and visual bulk and scale beyond an entirely compliant scheme, as the additional GFA is contained within the building envelope set by PLEP 2011 and PDCP 2011.

5.3 The proposed development will be in the public interest

Clause 4.6(4)(a)(ii) of PLEP 2011 requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is 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.

The proposal is assessed against the objectives for the B2 Local Centre zone in **Section 4.1.1** below, and against the objectives for the FSR standard in **Section 4.1.2** below. Despite the non-compliance with the FSR standard, the proposal is considered to be in the public interest as it nevertheless satisfies the B2 zone objectives and objectives of the development standard and provides sufficient justification for the contravention of the development standard.

The through site link, connecting Beecroft Road to Rawson Street and the provision of a large public plaza is considered to provide a substantial public benefit to the local area. The through site link and public plaza are embellished with high quality materials and improve public access to the Epping Station from the west of Rawson Street. The public plaza will provide additional streetscape activation to Rawson Street, enhancing the character of the town centre.

The proposal will result in a number of substantial public benefits, including:

- The provision of a new through site link with high quality materials and landscape treatments. The link will be activated by retail tenancies and will provide access from Rawson Street to the Epping Station;
- The provision of 1,183m² of publicly accessible plaza. The plaza will be embellished to a high quality and maintained by the development. The area of the publicly accessible plaza is more than double the amount of additional GFA proposed by the development.
- The provision of a publicly accessible lift to facilitate disabled access across the site and improve accessible paths of travel from Rawson street to the Epping Station. Currently only ramped access is provided.

5.3.1 Consistency with the objectives of the zone

The proposed development is consistent with the objectives of the B2 Local Centre zone as outlined in **Table 2** below.

Table 4 - Assessment against zone objectives

| Objective | Comment |
|--|---|
| 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 | <p>The development provides a range of retail opportunities for employment in addition to the child care centre. The development provides 1,786m² of retail and child care centre floor space, divided into multiple tenancies to facilitate a range of business. The retail floor space is flexible and the number and size of the tenancies may be altered at a future stage to facilitate tenant preferences. The tenancies are provided adjacent to the through site link and have frontage to Rawson Street and Beecroft Road and as such will provide activation as well as a service to the residents of the centre. The retail tenancies will provide convenience retail and commercial uses that are located proximate to a pedestrian link to the Epping station. These uses will be ideally located for pedestrians and the local community.</p> <p>The development also provides a large child care centre to meet the current and future demands of the Epping Town Centre. The provision of a child care centre will provide an important community use that is not currently available within the town centre, hence directly serving the needs of the people who live in, work and visit the local area.</p> |
| To encourage employment opportunities in accessible locations. | <p>The commercial podium will provide a child care centre and substantial commercial floor space that provides employment opportunities within 30m of the Epping Station. The commercial floor space provided within the development will facilitate retail tenancies which generally provide higher employment densities than other commercial uses. Accordingly, the development will facilitate high density employment generating uses in a highly accessible location.</p> |
| To maximise public transport patronage and encourage walking and cycling. | <p>The development is located directly adjacent to the Epping Station and provides a mix of uses that will encourage the use of public transport. Additionally, the development will provide a through site link from Rawson Street and the Epping Town Centre to Beecroft Road and the pedestrian footbridge. The through site link will facilitate access to Epping Station and hence facilitate the use of trains and public transport.</p> <p>The provision of secure bicycle parking for the new residential population and the commercial uses will facilitate the use of bikes for residents and workers. In this regard, the development does not provide drop off parking for the child care centre and as such will encourage people to walk or catch public transport to the facility.</p> <p>Direct and improved pedestrian access to Epping Station is provided by the development. Public transport patronage is expected to increase with the North West Rail Link proposed to open in 2019. This will provide Epping with direct connection to the north west together with its existing connections to Macquarie Park, Chatswood, North Sydney and the Sydney CBD.</p> |
| To encourage the construction of mixed use buildings that integrate suitable commercial, residential and other developments and that provide active ground level uses. | <p>The development comprises a mix of land uses including commercial tenancies, a child care centre and residential dwellings. The general design of the development has been supported by the Parramatta DEAP and comprises a commercial podium with a residential tower above. The design of the commercial interface ensures that the dwellings are appropriately separated from the non-residential uses with no potential for privacy or noise impacts.</p> <p>The development provides a highly-activated ground floor with active commercial/retail uses provided to each street frontage and facing the through site link. The development provides canopy street tree planting to Rawson Street to encourage outdoor dining and active retail uses.</p> |

6.0 Secretary's Concurrence

The Secretary's concurrence under clause 4.6(5) of PLEP 2011 has been delegated to Council. Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice. The following section provides a response to those matters set out in clause 4.6(5) which must be considered by Council under its delegated authority:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

No matters of State or regional environmental planning significance are raised by the contravention of the development standard.

The public benefit of maintaining the development standard.

The justification in **Section 4.3** above demonstrates that a variation to the development standard is acceptable in terms of the public benefit. The proposed development is considered to be consistent with the objectives of the zone and the development standard.

Any other matters required to be taken into consideration by the Secretary before granting concurrence.

No other matters require consideration by the Secretary.

7.0 Summary

This request to vary the FSR development standard demonstrates Council can be satisfied that:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as:
 - the objectives of the standard are otherwise achieved;
 - the proposed development is within the building envelope set by PLEP 2011 and PDCP 2011 and does not provide for additional apartments than would otherwise be permitted;
 - the underlying object or purpose of the FSR standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; and
 - density and traffic generation is therefore not increased as a consequence of the proposed development;
- That there are sufficient environmental planning grounds to justify contravening the development standard as the proposal has been designed in accordance with the permitted building envelope and does not result in increased adverse amenity impacts or additional residential density on the site;
- The inclusion of wintergardens is due to site specific consequences of the proximity to Beecroft Road;
- The proposal provides a substantial public benefit through the provision of a through site link and publicly accessible plaza;
- The proposal is considered to exhibit design excellence with a thorough planning and design process ensuring a modulated tower that is not overly bulky. This rationale has been supported by the DEAP; and
- The building satisfactorily transitions from the podium to the upper residential levels providing for a tall, slender tower form that is suitably setback from the future redeveloped sites.
- The proposed development is 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.

In light of the above, it is requested that Council grant development consent for the proposed development despite the minor numerical variation to the development standard imposed by Clause 4.4 of the PLEP 2011.