



SYDNEY CENTRAL CITY PLANNING PANEL
COUNCIL ASSESSMENT REPORT

Panel Reference	2018SWC097 DA
DA Number	DA/586/2018
LGA	City of Parramatta (formerly Hornsby Shire Council)
Proposed Development	29 storey mixed use tower comprising 132 bed residential care facility, 172 independent seniors living units, 3 church presbytery units and ancillary offices/shops (northwest corner of site); 2-3 storey church hall and administration building (northeast corner of site); 2-3 storey primary school building (southern side of site); 1 retail unit (southwest corner of site); 316 basement car parking spaces including school drop-off/pickup (western side of site); alterations and additions to existing heritage church building; use of part heritage church building for school-based child care; landscaping; tree removal; site amalgamation and stratum subdivision; public domain works; following demolition of existing school buildings, church presbytery and church administration buildings. The residential care facility and independent seniors living units are proposed pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
Street Address	29-33 Oxford Street & 6-14 Cambridge Street Epping NSW 2121 (Lots 1-4 DP973521, Lot A DP375632, Lots 23-25 DP 758390)
Applicant	Stockland Development
Owner	Trustees Catholic Church
Date of DA lodgement	20 August 2018
Number of Submissions	15
Recommendation	Deferred Commencement Consent
Regional Development Criteria	The development has a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none">• Environmental Planning and Assessment (EP&A) Act 1979• EP&A Regulation 2000• SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004• SEPP (Infrastructure) (ISEPP) 2007• SEPP (State and Regional Development) 2011• SEPP (Sydney Harbour Catchment) (SEPP Sydney Harbour) 2005• SEPP No. 55 (Remediation) (SEPP 55)• SEPP (Educational Establishments and Child Care Facilities) 2017• SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors)• SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) & Apartment Design Guide (ADG)• Hornsby Local Environmental Plan (HLEP) 2013• Hornsby Development Control Plan (PDCP) 2013

List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Architectural Drawings • Attachment 2 – Urban Design Report • Attachment 3 – Department of Planning cl. 4.6 Circular • Attachment 4 – Department of Planning ADG Circular
Clause 4.6 requests	<ul style="list-style-type: none"> • Hornsby Local Environmental Plan 2013 • Clause 4.3 – Height of Buildings • B2 Local Centre Zone
Summary of key submissions	<ul style="list-style-type: none"> • Height breach • Traffic impact • Wind impact • Overshadowing impact • Lack of deep soil/trees • Fire safety/evacuation for seniors • Height of podium • Size of floorplate • Lack of solar access for units • Lack of play space for children/overshadowed • Construction amenity impacts • Uncertainty regarding temporary school relocation
Report prepared by	Alex McDougall
Report date	24 April 2020

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

Conditions

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

1. Executive Summary

The proposal provides for demolition of all buildings on the site except the heritage church, excavation of a 2 - 4 storey basement with 316 parking spaces, construction of a 29 storey mixed use building comprising 132 bed residential care facility, 172 independent seniors living units, 3 church presbytery units and ancillary offices/shops, construction of a 2 - 3 storey church hall and administration building, construction of a 2 - 3 storey primary school building, 1 retail unit, alterations and additions to the existing heritage church building and use of the church for school-based child care.

The residential care facility and independent seniors living units are proposed pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The applicant seeks to concentrate development in the north-west corner of the site to minimise impact on the curtilage of the heritage church building (east side of site), the desire to maintain a primary school on the site (south side of site) and to minimise overshadowing of sites to the south. This concentration results in several significant departures from the relevant planning controls including height, tower floor plate, podium scale and setbacks. The majority of objections received relate to these non-compliances. Notwithstanding, the request to vary these controls is considered to be well founded as they concentrate development away from the heritage church and more sensitive Oxford Street streetscape, they allow a school to be retained on the site, and they will not have unacceptable impacts on the amenity of adjoining/nearby properties.

The other elements of the proposal, namely the proposed school, church hall, retail unit, alterations to the church building, or use of part of the church building for the purpose of a child care centre are less objectionable and are considered to be acceptable.

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

The amenity impacts on adjoining and nearby properties are considered to be reasonable based on the high density character of the area, and the built forms envisaged by the controls.

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 demonstrates a satisfactory response to the objectives and controls of the applicable planning framework and as such approval is recommended, subject to a deferred commencement consent.

2. Key Issues

Hornsby Local Environmental Plan 2013

- **Height of Buildings (cl. 4.3)** – Acceptability of Clause 4.6 Variation request:
 - Control: 72m
 - Proposed: 96.5m (34% breach)
 - Prior Approvals: Non-compliant heights have been approved in Epping East Town Centre up to 33% breach. However, these towers had smaller floorplates.
- **Heritage (cl. 5.10)** – Impact on church (local heritage item). Tower separation of ~17m from heritage item.

SEPP 65 (ADG)

- **Overshadowing (cl. 3B-2)** –
 - Impact on school play space. Approximately 500sqm/1,500sqm (33%) of school play space receives at least 2 hours at mid-winter.

- **Deep Soil (cl. 3E) –**
 - Control: 7% (177sqm based on ‘Seniors Housing site’ area)
 - Proposed: 0% within Seniors Housing site (0sqm). However, 194sqm to Oxford Street setback, 48sqm non-dimensionally compliant, plus 657sqm permeable paving. Numerous other planters on slab.
- **Daylight/Solar Access (cl. 4A) –**
 - Control: >70% 2-hours solar access midwinter
 - Proposed: 75% with existing development to north, 60% with approved development to north.
 - Prior Approval: 12-22 Langston Place reduced from near compliance to 56% compliant solar access by development to north at 24-36 Langston Place.

Hornsby Development Control Plan 2013

- **Residential Floorplates (cl 4.6.4) –**
 - Control: <700sqm maximum GFA (not incl. POS and circulation core)
 - Proposed: 830sqm-865sqm GFA (19-24% exceedance)
 - Prior Approvals: 800sqm GFA (14% exceedance) at 37-41 Oxford Street, Epping.
- **Podium Height (cl 4.6.4) –**
 - Control: 2 storey (Cambridge Street)
 - Proposed: 5 storey (150% breach)
 - Prior Approvals: 2 storeys (Cambridge Street), including adjoining sites to north and south
- **Side Setback (cl. 4.6.5) –**
 - Control: 0m podium
 - Proposed: 0m podium (but podium 3 storeys higher than adjoining approved podium)
 - Prior Approvals: No precedent in locality.
- **Front Setback (cl. 4.6.5) –**
 - Control: 6m tower setback (Cambridge Street)
 - Proposed: 3m – 6.9m (stepped setback, not parallel to boundary)
 - Prior Approvals: Stepped setback not consistent with chamfered frontages (parallel to road reserve) typical of adjoining approved tower buildings along Cambridge Street. Namely:
 - 2-4 Cambridge St, Epping
 - 16-18 Cambridge St, Epping
 - 20-28 Cambridge St, Epping

3. Site Description, Location, and Context

3.1 Site and Location

The mid-block site is located within the Epping Town Centre to the east of the northern railway line and north of the Epping Railway Station. The site comprises eight allotments with a combined site area of 7,291m² and dual frontages to Oxford Street (61m) and Cambridge Street (92m). The site exhibits a significant fall of approximately 11 metres from RL 102m in the south-eastern corner on Oxford Street to RL 91m in the north-western corner on Cambridge Street.

The site is currently occupied by the Our Lady Help of Christians Catholic Primary School, Our Lady Help of Christians Catholic Church (a local Heritage item), Presbytery, parish hall/offices and commercial tenancies. As a result of the Epping Town Centre Urban Activation Precinct Strategy 2014, the town centre is undergoing a transition from low-density residential, retail and commercial development to high-rise commercial and mixed use developments.



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



Figure 2. Front facade of church as viewed from Oxford Street.

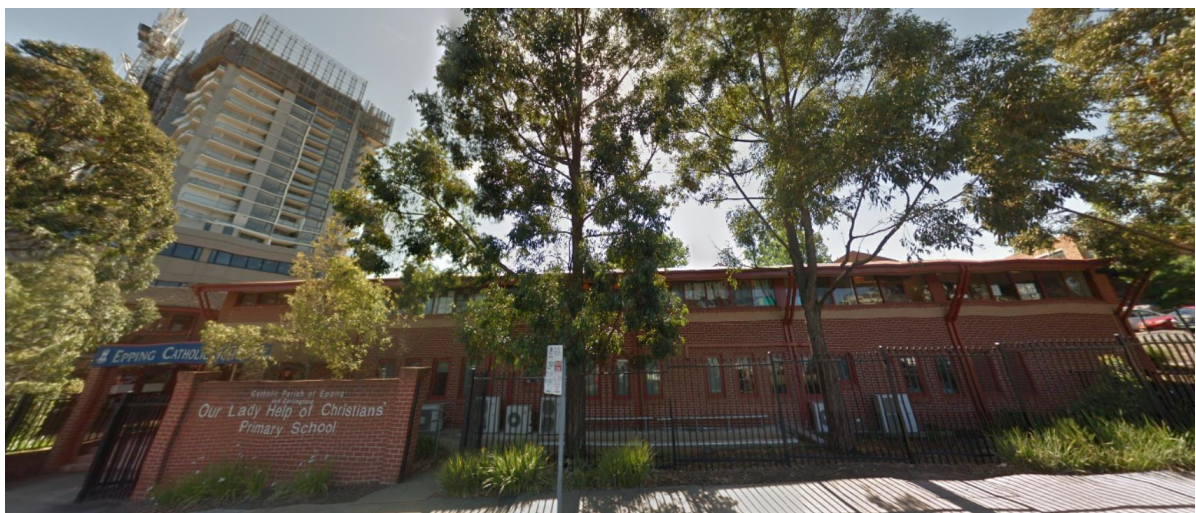


Figure 3. Front façade of existing school as viewed from Cambridge Street.

3.2 Context

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

Site	DA	Description/Details
16-18 Cambridge Street	DA/560/2018	Demolition of existing structures, tree removal and the construction of a 22 storey shop top housing development containing a retail shop, commercial office space and 84 residential apartments. The development provides 104 parking spaces. The proposal is Integrated Development under the Water Management Act 2000. Approved 09/10/19. Note. Height Breach (3%)
44-48 Oxford Street	DA/485/2016	Demolition of all existing structures including the Heritage listed dwelling on site, tree removal, construction of a mixed use development in the form of 2 towers (15 & 18 Storeys tall) over a podium and basement car parking. Approved (Deferred Commencement) 10/10/18 Note. Height Breach (19.8%)
24-36 Langston Place	DA/237/2017	27 storey mixed use tower comprising ground floor retail unit, first floor commercial office unit and 101 shop top housing units above, including 91 parking spaces in 4 basement levels; following demolition of existing buildings. Approved 03/10/18. Note. Height Breach (21.9%)
37-41 Oxford Street	DA/314/2017	30 Storey Mixed Use Tower Building with 4 Storey Basement (Concept Approval Only). Approved 07/03/18. Note. Height Breach (32.9%)
2-4 Cambridge Street	DA/1063/2016	Amalgamation of 3 lots into 1, tree removal, demolition of existing structures and construction of a 23 storey shop top housing development containing a retail shop, commercial office space and 83 residential apartments over basement parking for 128 vehicles. Approved (Deferred Commencement) 06/12/17.
12-22 Langston Place	DA/468/2016	Construction of 3 mixed use towers (19, 24 and 29 storeys) comprising 463 residential units, 1681sqm of retail floor space and 4 basement levels containing space for 529 cars, 388 bicycles, 35 motorcycles, storage, refuse and servicing; public domain upgrades including 2-way vehicular lane between towers 2 and 3, pedestrian through-site links, and public open spaces; following demolition of existing building and car park. Approved (Deferred Commencement) 02/08/17. Note. Tower 3 Height Breach (28.9%)
30-42 Oxford Street	DA/585/2016	Demolition of existing structures, retention of a heritage item and construction of a 17 storey mixed use development comprising ground floor retail over basement carpark and shop-top housing comprising 254 units in two (2) residential towers. Approved 20/07/16. Note. Height Breach (10%)
35 Oxford Street	DA/365/2016	Demolition and construction of a 22 storey shop-top housing development comprising 54 residential units, one (1) retail unit and basement car parking. Approved 14/07/16.
20-28 Cambridge Street	DA/681/2015 (Hornsby)	Demolition of existing structures and construction of two (2) x 22 storey buildings and one (1) x seven (7) storey building, each comprising ground floor retail/business tenancies totalling 966m ² , and the upper levels containing a total of 501 residential units, with combined basement car parking for 519 cars. Approved 24/02/16.

Table 1: Applications relevant to the proposal.

4. The Proposal

4.1 Summary of Proposal

The proposal involves the following:

- Demolition of the existing Our Lady Help of Christians Catholic Primary School and School Offices, Presbytery and Administration Buildings;
- Tree Removal – 23 trees;
- Retention and part adaptive reuse of the existing Our Lady Help of Christians Catholic Parish Church (local heritage item), comprising:
 - Minor alterations and additions to rear and north side of building; and
 - Use of basement as school-based childcare facility (40 students).
- Excavation of 2 - 4 basements levels, comprising:
 - Car parking spaces;
 - 177 Independent Living Units – Residents (36 accessible);
 - 4 Independent Living Units – Visitors/Staff (1 accessible);
 - 15 Residential aged care facility - Visitor (1 accessible);
 - 21 Residential aged care facility - Staff;
 - 96 School, church and parish hall spaces (3 accessible);
 - 3 Residential Flat Building Unit (Presbytery) - Residents
 - 317 Total (41 accessible) + 1 car share;
 - School pick up / drop off; and
 - Ambulance and Servicing bays
- Construction of part 2-3 storey school building, south of church, fronting Oxford Street, comprising:
 - 1 - stream school (210 students, 15 staff);
 - Outdoor play spaces;
 - Rooftop play space;
 - Adaptability for additional stream in future (separate consent required);
- Construction of part 2-3 storey church administration building (Parish Hall), north of church, fronting Oxford Street;
- Construction of a retail tenancy fronting Cambridge Street (201m²);
- Construction of 29 storey mixed use Seniors Housing development with a 5 storey podium and 24 storey tower above fronting Cambridge Street, comprising:
 - Ground Floor – Lobbies, ancillary retail/commercial uses;
 - Podium – 132 Bed Residential Aged Care facility (RAC); and
 - Tower –
 - 3 Presbytery Apartments –
 - 3 x 1-bed
 - 1 x common room
 - 172 Independent Living Units (ILU) –
 - 14 x 1-bed
 - 135 x 2-bed
 - 23 x 3-bed
- Landscaping including 66 on-site trees
- Public Domain improvements including 7 street trees
- Site Amalgamation and Stratum Subdivision

The residential care facility and independent seniors living units are proposed pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The application requires concurrence from Sydney Trains under Clauses 86 of ISEPP 2007 due to the proximity of the proposed excavation to the at-grade rail corridor and the underground metro corridor.

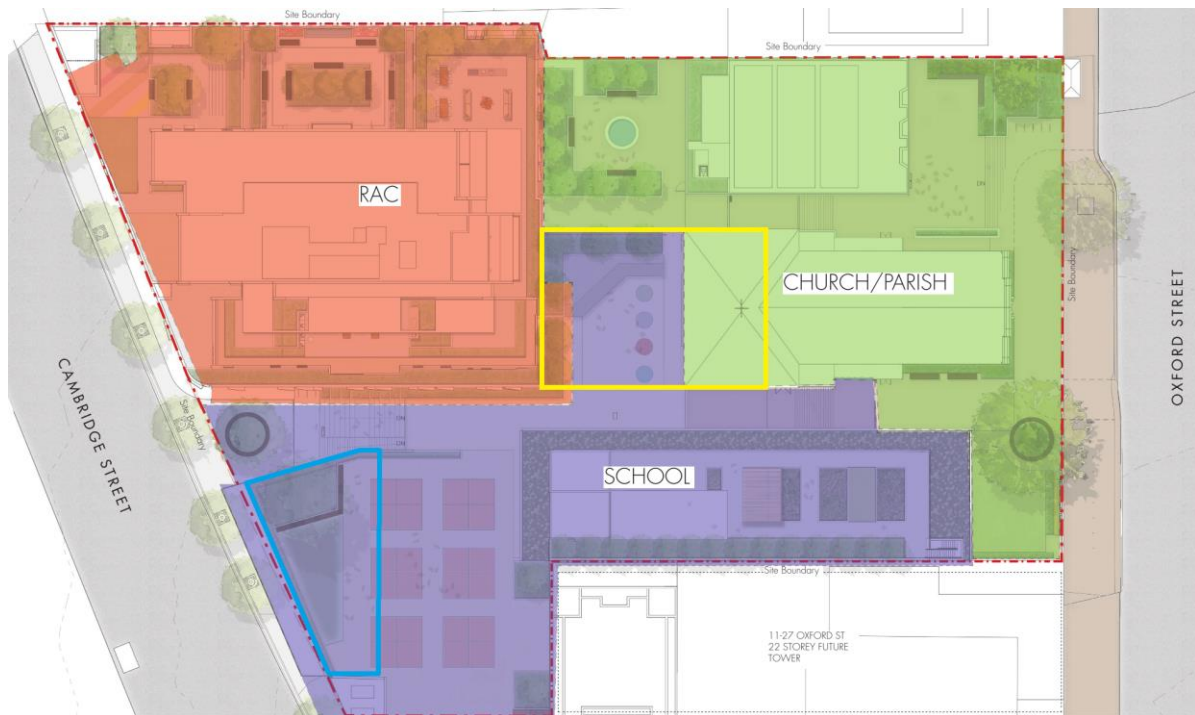


Figure 4. Uses of the site (Orange - Seniors Living, Purple - School, Green - Place of Public Worship, Blue – Retail Unit, Yellow – Child Care)

The proposed uses are spread across the site in plan and elevation (otherwise known as stratum), generally in keeping with the overlays on Level 2 provided at Figure 4 above. The retail unit is at Upper Ground level and the child care centre shares space with the school and church at Level 1. Some controls are based on site area. It is considered that these controls should be applied based on the site area of the relevant part. The site area of the relevant uses are as follows:

- Seniors Living – 2,350m²
- School – 2,500m²
- Place of Public Worship – 2,441m²
- **Total – 7,291m²**



Figure 5. Photomontage of proposal as viewed from Oxford Street to the east of the site looking west (school to the left, church in the centre, seniors living in the background, church hall to the right).



Figure 6. Photomontage of proposal as viewed from opposite side of adjacent train line to the west of the site looking east (seniors living to the left, school to the right).

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:

- Independent living units reduced from 205 to 172 (-33 units);
 - GFA reduced from 31,456m² to 28,504m² (-2,952m²);
 - FSR reduced from 4.316:1 to 3.911:1 (-0.405:1)
 - Max tower floorplate GFA reduced from 990m² to 865m² (-125m²);
- Retail units GFA reduced from 231sqm to 201sqm (-30sqm);
- Car parking reduced from 371 to 316 (-55 spaces, not including car share);
 - Reduction in basement volume by 2,715m³;
- Tower form modified to tripartite design;
- Podium western façade revised;
- Podium north-eastern fire stair reduced in size and set off boundary;
- Green roof added to rear of church hall;
- The northern courtyard brick wall has been replaced with open palisade style fence;
- Substation relocated from north-east frontage (Oxford Street) to south-west frontage (Cambridge Street);
- Revised BASIX, NatHERS and Section J certification, including solar panels; and
- Provision of 10x share e-bikes.

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Sydney Central City Planning Panel Briefings

The matters raised by the Panel at its briefing meetings are addressed below:

Issues Raised	Comment
Briefing 1 (07/11/18)	
Wind effects of setback	The applicant has demonstrated that the proposal would meet safety and comfort criteria subject to amelioration measures which have been tested.
Uses on site	The uses on site are considered to be appropriately separated by landscaping and/or fencing.
School drop-off arrangements	The school drop-off would occur within the basement. The applicant has satisfied Council's traffic engineers that the drop-off system would not result in unacceptable impacts on the traffic network and would be safe for children and other site users.
Concern with height, unlikely to support any additional height	The applicant has not increased the tower height as a result of their amendments.
Concern raised with the bulk of the tower, consider reduction in floorplate	The applicant has reduced the tower floorplate from 990m ² to 865m ² (-125m ²).
Concern with incursion of built form into mid-block open space, consider that the rear elevation of proposed hall could be aligned with the adjoining podium to the north, and the eastern extent of the tower could be setback behind the podium	The applicant has not moved the hall building forward citing a desire to maintain a larger forecourt on Oxford Street. The applicant has revised the eastern extent of the tower to set it behind the eastern wall of the podium, removing the overhang shown in the original submission.
Concern with the scale of the podium, consider setting back upper 3 levels from the street	The applicant has not setback the upper 3 levels of the podium citing the need for Residential Aged Care floorplates to be optimised based on the number of nurses per floor.
Briefing 2 (13/02/20)	
Height of building - clause 4.6 needs to be justified and the panel satisfied that increased height is warranted	The Clause 4.6 request is considered to have merit. See assessment in Section 7.10.1 below.
Heritage – impact on Church and adjacent heritage buildings needs to be thoroughly assessed to ensure the interface between the heritage and new buildings is sympathetic, both at ground level and in relation to the streetscape impacts	The proposal is considered to have an acceptable heritage impact subject to conditions. See assessment in Section 7.10 below.
Overshadowing – impact on school play space to be reviewed as well as impact on seniors living spaces and internal amenity	The proposal is considered to provide acceptable solar access to the school play space and seniors' living units / communal spaces. See assessment in Sections 7.7, 7.8 and 7.9 below.
Deep soil requirements to be checked for the site itself	The Hornsby DCP does not specify a quantitative deep soil control for the Epping Town Centre. Notwithstanding, for the reasons outlined in Section 7.9.3.1 below, the quantum of deep soil, along with supplemental permeable paving, is considered to be acceptable.
Quantum of car parking requested to be reviewed in relation to traffic pressures in the location	For the reasons outlined in Section 7.8.3 below, the Seniors Living SEPP does not allow Council to restrict the amount of Seniors Living parking. Notwithstanding, the applicant has submitted a Green Travel Plan which seeks to minimise private vehicle trips and thus minimise the impact on traffic in the locality.
Bicycle parking – provision for storage of bikes for residents to be considered	10 electric bikes are to be provided for seniors living residents on a shared basis. A condition is included requiring the individual basement storage cages be of size and dimensions capable of accommodating a bicycle.

Table 2: SCCPP briefing notes and response.

5.2 Design Excellence Advisory Panel

Council's DEAP first considered the application at a meeting on 11 October 2018. While the Panel were supportive of elements of the proposal they raised concern with the following:

- Lack of public access to through site link outside of school hours;
- Excessive tower floorplate. The Panel were supportive of additional height to reduce the bulk of the tower. However, Council officers did not consider this appropriate.
- Tower cantilever over central open space;
- Lack of solar access and cross ventilation compliance;
- Tower setback to Cambridge Street. Recommended the tower front façade be more parallel to the street; and
- Lack of deep soil landscaping.

The applicant subsequently submitted draft revised drawings responding to these concerns. However, the draft revised plans did not include a reduction in tower floorplate GFA. Council's DEAP further considered the application at a meeting 11 July 2019. The Panel considered that the refinements improved the design, but remained concerned with the following elements:

- Façade detail required some refinement;
- Lack of solar access and cross ventilation compliance; and
- Excessive tower floorplate.

The applicant subsequently submitted detailed revised drawings responding to these concerns. Council's DEAP further considered the application at a meeting 21 November 2019. The Panel concluded as follows:

The Panel is satisfied that matters of concern raised at previous panel meetings have been addressed in the current proposal. The Panel commends the proponent on the presentation and the final outcome for what is a complex brief.

The full comments from the DEAP panel's 21 November 2019 meeting are included at Appendix 2.

5.3 External

Authority	Comment
Ausgrid	No objection subject to conditions.
Roads and Maritime Services	No objection.
Transport for NSW (Sydney Trains)	Concurrence provided subject to deferred commencement consent and conditions of consent.
Transport for NSW (Sydney Metro)	Concurrence provided subject to conditions of consent.
Sydney Water	No objection subject to conditions.
Wind Consultant	Acceptable subject to compliance with recommendations of wind report.
Quantity Surveyor	The quantity surveyor review indicated that the applicant's cost estimate was appropriate.
Heritage Consultant	Acceptable subject to applicant's recommended conditions.
NSW Education	Confirmed that their concurrence is not required.

Table 3: External referrals

5.4 Internal

Authority	Comment
Accessibility	Raised some concern with detailed design. Conditions included requiring compliance with relevant accessibility standards.
Environmental Health - Acoustic	The proposal satisfies the requirements of Council's controls and can be supported, subject to conditions of consent.
Environmental Health - Contamination	The proposal satisfies the requirements of Council's controls and can be supported, subject to conditions of consent.
Environmental Health - Waste	The applicant has provided waste management information for all stages of development. Council's waste and sustainability team have recommended conditions in regards to the operational management plan. Further information is required as part of standard conditions to address missing erosion and sediment control and waste station missing details.
Environmentally Sustainable Development	Acceptable subject to condition requiring resolution of minor issues with BASIX certification.
Landscaping & Trees	Acceptable subject to conditions.
Public Domain	Acceptable subject to conditions.
Stormwater Engineer	Acceptable subject to conditions. Insufficient information provided to justify a drained basement and as such a condition is included requiring the basement be waterproofed.
Social Outcomes	No objection subject to conditions.
Traffic & Transport	Acceptable subject to conditions. The Traffic & Transport team recommended 2.5m wide parking bays for the church. However, as these spaces are shared with the other commercial uses, and the basement columns restrict some of the commercial spaces to 2.4m in width, a condition is included requiring that commercial spaces be 2.5m where columns allow.
Civil Assets	Acceptable subject to conditions.

Table 4: Internal referrals

6. Environmental Planning and Assessment Act 1979

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

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

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

6.2 Section 4.15: Evaluation

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

Provision	Comment
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 7
Section 4.15(1)(a)(ii) - Draft environmental planning instruments	Refer to section 8
Section 4.15(1)(a)(iii) – Development control plans	Refer to section 9
Other Planning Controls	Refer to section 10

Section 4.15(1)(a)(iiia) - Planning Agreement	Refer to section 11
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 12
Section 4.15(1)(a)(v) - Coastal zone management plan	Not applicable.
Section 4.15(1)(b) - Likely impacts	Refer to section 13
Section 4.15(1)(c) - Site suitability	Refer to section 14
Section 4.15(1)(d) – Submissions	Refer to section 15
Section 4.15(1)(e) - The public interest	Refer to section 16

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

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 (Educational Establishments and Child Care Facilities) 2017
- SEPP (Housing for Seniors or People with a Disability) 2004;
- SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65); and
- Hornsby Local Environmental Plan (HLEP) 2013.

Compliance with these instruments is addressed below.

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

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

7.3 State Environmental Planning Policy (Infrastructure) 2007

The proposal is considered to constitute a 'traffic generating development' as it proposes more than 200 car parking spaces. The DA has been referred to Road and Maritime Services (RMS), who had no objection to the proposal.

The application requires the concurrence of Sydney Trains and Sydney Metro (c/o Transport for NSW), under clause 86 of this SEPP due to its proximity to the northern train line and underground north-west metro line. TfNSW have provided their concurrence subject to conditions which are included in the draft consent. Sydney Trains also included a deferred commencement condition.

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

The proposed development has a Capital Investment Value (CIV) of more than \$30 million. As such, Part 4 of this Policy provides 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 (LGA), aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment, and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole. The nature

of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome will be achieved through the imposition of suitable conditions to address the collection and discharge of water during construction and operational phases of the development.

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

A preliminary site investigation report was submitted with the application. The report outlined the history of the site, noting it has been used for church/school uses since the early 1900s and that there is nothing to suggest that contaminating activities were undertaken on the site. However, the report concluded that there was a moderate potential for site contamination from previous filling of the site, potential use of pesticides and hazardous building materials and recommended further testing.

Twelve borehole samples were taken across the site, with 3 also used for groundwater monitoring. The areas tested met the requirements for virgin excavated natural material and as such do not pose a threat to the future occupants.

The phase 2 investigation uncovered the former presence of an underground storage tank (UST) that was removed during the construction of the school in 1982. Sampling could not be undertaken in this location due to the presence of the school. As such the report recommends further testing subject to demolition of the school.

Council's Environmental Health team have reviewed the proposal and consider there to be no unacceptable contamination risk subject to conditions, including further testing in the location of the UST prior to construction and any necessary remediation. As such the site is considered to be suitable for the proposed use.

7.7 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

7.7.1 Child Care Centre Assessment

The proposal includes 'school-based child care' and as such is subject to the requirements of Part 3 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017. The childcare centre would have capacity for 40 children.

As per the definition of 'school-based child care', a condition is included that the child care centre cannot accommodate children who are not school students.

7.7.2 School Assessment

Clause 35 Schools – Development Permitted with Consent

Clause 35 requires an assessment of the proposed school against a set of Design Quality Principles and consideration of whether the school facilities will be shared with the community.

An assessment of the proposal against the Design Quality Principles outlined under Schedule 4 of the SEPP is provided in the table below:

Requirement	Council Officer Comments
<i>Principle 1 – Context, Built Form and Landscape</i>	The proposed school is considered to respond appropriately to the context by providing appropriate setbacks from, and relative scale to, the heritage church building on the site. The retention of a large tree to the front of the school will minimise the visual impact of the school on the church building.
<i>Principle 2 – Sustainable, efficient and durable</i>	The proposal incorporates appropriate ESD measures which have been reviewed and agreed by Council's independent expert. The proposal allows for a second stream to be added in the future if required and as such is considered to be adaptable.
<i>Principle 3 – Accessible and Inclusive</i>	The proposed school has direct step-free access from Oxford Street and step-free access from the car park via Cambridge Street.

Requirement	Council Officer Comments
	<p>The low brick wall and lack of fencing to Oxford Street would ensure the school is inviting.</p> <p>A wayfinding strategy will likely be necessary for car park users to identify the school entrance. A condition will be included requiring such a strategy.</p>
<i>Principle 4 – Health and Safety</i>	The forecourt of the school, which also benefits from the ancillary forecourts of the church and proposed hall, are publicly accessible. Behind this gates are used to provide safety to students and separate the school from the other uses on the site.
<i>Principle 5 – Amenity</i>	The proposal includes a variety of indoor and outdoor spaces for recreation. The applicant has provided evidence that outdoor spaces will receive a mixture of sun and shade (see Figure 7 below). A noise report is included which demonstrates that the proximity to rail will not result in unacceptable acoustic amenity.
<i>Principle 6 – Whole of life, flexible and adaptive</i>	The proposal includes the allowance for the addition of a second stream in the future. The proposal includes a variety of indoor and outdoor multi-use spaces.
<i>Principle 7 – Aesthetics</i>	The proposal is considered to be of a high design quality, using a material palette that complements the adjoining heritage item.



Figure 7. Solar access 'heat map' for school outdoor play spaces. The colour corresponds to the hours of solar access an area receives on the shortest day of the year (mid-winter).

The internal school spaces and recreational areas will generally be restricted to school uses unless otherwise agreed with the school on a case by case basis. However, the open space to the front of the school along Oxford Street will be accessible at all times to the community.

Cause 57 'Traffic' Generating Development

The proposal is considered to constitute a 'traffic generating development' as it proposes more than 50 students and involves new premises. The DA has been referred to Road and Maritime Services (RMS), who had no objection to the proposal.

7.8 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The application seeks to rely on State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 for permissibility and as such is subject to the policy's requirements. An assessment of the proposal against the SEPP is provided below.

This SEPP applies only to the independent seniors living units and residential aged care facility. It does not apply to the other built form elements of the application.

7.8.1 Preliminary, Key Concepts, Development for Seniors Housing

Requirement	Proposal
Clause 4 – Land to which Policy applies	Hospital are permitted on the site and as such the policy applies.
Clause 11 – Residential care facilities	The 'RAC' constitutes a residential care facility as defined by the SEPP.
Clause 13 – Self-contained	The 'ILU' units constitute in-fill self-care housing and self-contained dwellings as defined by the SEPP.
Clause 18 – Restrictions on occupation of seniors housing allowed under this Chapter.	Conditions are included in the draft consent restricting occupancy of the seniors living component to those outlined in this clause.
<p>Clause 26 – Location and access to facilities</p> <p>Residents to have access to identified services (banks, shops, service providers, etc) within 400 metres of the site or be within 400 metres from a public transport service.</p> <p>The average gradient pathway is no more than 1:14, although the following gradients are also acceptable:</p> <ul style="list-style-type: none"> (i) A gradient no more than 1:12 (8.3%) for slopes for a max. of 15m at a time; (ii) A gradient no more than 1:10 (10%) for a max. of 5m at a time; (iii) A gradient no more than 1:8 (12.5%) for distances no more than 1.5m at a time. 	<p>The site is within 400m of bus stops, Epping Railway Station and services on Oxford Street.</p> <p>The applicant has also demonstrated that access to those services complies with the relevant gradient requirements along Oxford Street. The stratum subdivision shows that accessible access to Oxford Street will be available at all times. Cambridge Street is also mostly compliant, with only 1 small section slightly above the max gradient requirements (i.e. 1:13 instead of 1:14).</p> <p>As such, residents will have easy access to public transport and services.</p> <p>A condition is included requiring that the seniors living uses have 24/7 step free access to services on Oxford Street.</p>
Clause 27- Bush fire prone land	The site is not bush fire prone land.
Clause 28 – Water and sewer	The application was referred to Sydney Water who advised that existing sewer services were adequate to service the site but that the proposal would require upgrades to the water mains servicing the site. Relevant conditions are included.
<p>Clause 29 – Compatibility criteria</p> <p>The following must be considered:</p> <ul style="list-style-type: none"> • The natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development. • The services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport 	<p>There are no known significant environmental values, resources or hazards on the site. The existing and approved uses in the vicinity are primarily shop top housing developments. The proposed Seniors Living is considered to be compatible with these uses.</p> <p>The area is zoned B2 – Local Centre with the primary uses in the area likely to be shop-top housing in the future and the site itself provides additional ancillary retail services and a separate retail unit. As such there will be significant retail</p>

<p>services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</p> <ul style="list-style-type: none"> The impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development. 	<p>opportunities for residents. The proposal itself provides community uses in the school, day care, and church hall. The proposal is in close proximity to a number of medical centres. The proposal is in close proximity to Epping Train Station and as such has good access to public transport. Additional infrastructure is to be provided in the area in keeping with the established Developer Contributions schemes and state-government funding.</p> <p>The proposal, while exceeding the height limit, will generally be in keeping with the scale of development existing and approved in the area. See further discussion under ADG and LEP assessments below.</p>
<p>Clause 30 – Site Analysis Consent not to be <u>granted</u> unless site analysis prepared by the applicant has been submitted and has formed part of the assessment.</p>	<p>The site analysis submitted contains all of the details required by Clause 30 and has been considered as part of this assessment.</p>
<p>Clause 31 – Design of in-fill self-care housing Consideration of the provisions of the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> (in addition to any other matters that are required to be, or may be, taken into consideration).</p>	<p>The development includes in-fill self-care housing. As such the applicant must demonstrate compliance with the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> guidelines. An assessment is provided at the end of this table.</p>
<p>Clause 32 – Design of Residential Development.</p>	<p>See below.</p>
<p>Clause 33 – Neighbourhood amenity and streetscape</p> <p><i>(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan,</i></p> <p><i>(c)(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development and (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours</i></p>	<p>While the tower is significantly larger than the heritage church building its setback to the church has been maximised (~17m), the design of the tower (tripartite façade) has been designed to respond to the design of the church, and the floor space on the site has been concentrated away from the Oxford Street frontage to provide breathing spaces to the church on its primary façade. Intervening landscaping will also provide a curtilage for the church building.</p> <p>While the 5 storey podium on the Cambridge Street frontage is larger than on adjoining sites (2 storey) it has been setback from the front boundary at its northern extent, and a lighter brick is used to reduce its apparent bulk. The large podium is necessary to provide a residential aged care facility and concentrate floor space away from the heritage frontage on Oxford Street.</p>
<p>Clause 34 – Visual and acoustic privacy</p>	<p>The proposal includes a comprehensive acoustic and vibration report which considers the impact of external noise/vibrations sources on occupants and internal noise sources on adjoining/nearby properties. The report includes testing of the background noise levels and makes recommendations for treatments to ensure occupants and neighbours will not be unduly affected. A condition is included requiring compliance with the recommendations in this report.</p>
<p>Clause 35 – Solar access and design for climate</p>	<p>The proposal has demonstrated an acceptable impact on the solar access of adjoining and nearby properties, including the approved development at 2-4 Cambridge Street.</p>

	<p>The proposal has demonstrated acceptable solar access and natural ventilation for the proposed units (see ADG assessment in Section 7.9 below).</p> <p>The proposal has also demonstrated acceptable solar access to the school and inter-building space.</p>
Clause 36 - Stormwater	The stormwater management system has been reviewed by Council's Engineer and is considered to be acceptable subject to conditions.
Clause 37 – Crime prevention	A CPTED report is included as part of Statement of Environmental Effects. The proposal is considered to adequately provide sightlines, casual surveillance and secure access.
Clause 38 – Accessibility	Level, step-free access is provided to all entries and units. All seniors uses have step-free access to Cambridge Street via main lobbies and to Oxford Street via the Church Hall (a condition is included requiring an easement to provide this access 24/7)
Clause 39 – Waste management	The proposal includes separate waste and recycling chutes for both seniors living uses and corresponding sorting and storage facilities at lower ground level and as such is considered to be acceptable in this regard.

7.8.2 Development standards to be complied with

Requirement	Proposal	Compliance
40 Development standards—minimum sizes and building height		
(2) Site size The size of the site must be at least 1,000 square metres.	7,291m ²	Yes
(3) Site frontage The site frontage must be at least 20 metres wide measured at the building line.	~92m to Cambridge St. ~61m to Oxford St.	Yes
(4) Height in residential zones where residential flat buildings are not permitted	The site is not in a residential zone.	N/A
(5) Development applications to which clause does not apply	Not a registered housing provider.	N/A
Division 2 Residential care facilities – standards concerning accessibility and useability		
<p>There are no standards in this division. Rather, a note requires compliance with the Commonwealth Aged Care Accreditation Standards and the BCA.</p> <p>On 1 July 2019, the Commonwealth Aged Care Accreditation Standards were replaced with the Aged Care Quality Standards which are contained within the Quality of Care Principles 2014 [Commonwealth]. The standards relate mainly to the operation of the building. The standards continue to apply under the relevant federal legislation regardless of any conditions of consent. As such a note is included at the end of the consent reminding the applicant of the requirement to comply with these standards.</p> <p>An assessment of the proposed residential care facility against the Building Code of Australia has been provided by the applicant. It identifies Fire Engineering Performance Solutions. Further, a draft emergency evacuation plan has been provided. Conditions will be included requiring compliance with the BCA and implementation of an Emergency Evacuation Plan.</p>		
41 Standards for hostels and self-contained dwelling		
An assessment of the proposed self-contained dwellings against Schedule 3 of the SEPP is provided at Section 7.8.5 below.		

7.8.3 Development Standards that cannot be used as grounds to refuse consent

Part 7 of the Seniors SEPP contains development standards which cannot be used as grounds to refuse consent (or impose more onerous conditions). It should be noted that compliance with these standards is not compulsory. Rather, compliance with the standards restricts Council from seeking more onerous standards that may be contained within any applicable LEP or DCP. For ease of reference these development standards as compared to the proposal are tabulated below:

Standard	Proposal
48 Standards that cannot be used to refuse development consent for residential care facilities	
building height: < 8m / 2 storeys	The proposed RAC does not satisfy this criterion and thus cannot benefit from this clause.
density and scale: < 1:1	The proposed RAC satisfies this criterion and as such the density of the RAC cannot be used to refuse consent.
landscaped area: > 25sqm/bed (3,300sqm)	The proposed RAC does not satisfy this criterion and thus cannot benefit from this clause.
parking: 1/10 beds + 1/2 employees + 1 ambulance [14 + 21 + ambulance]	15 (visitor) + 21 (staff) + ambulance The proposed RAC satisfies this criterion and as such the quantity of parking for the RAC cannot be used to refuse consent.
50 Standards that cannot be used to refuse development consent for self-contained dwellings	
building height: < 8m / 2 storeys	The proposal does not satisfy this criterion and thus cannot benefit from this clause.
density and scale: < 0.5:1	The proposal does not satisfy this criterion and thus cannot benefit from this clause.
landscaped area: > 30% site area (705m ²)	The proposal does not satisfy this criterion and thus cannot benefit from this clause.
deep soil zones: >15% site area (353m ²)	The proposal does not satisfy this criterion and thus cannot benefit from this clause.
solar access: living rooms and private open spaces, min 70% of dwellings, > 3 hours direct sunlight, 9am-3pm, mid-winter,	75% receive 2 hours. 3 hours not provided. As such, the proposal does not satisfy this criterion and thus cannot benefit from this clause.
private open space for in-fill self-care housing: >6sqm (1 bed) >10sqm (2+ bed) min dims. 2m, access from living area.	1-bed: >10m ² , >2m 2-bed: >10m ² , 2m 3-bed: >15m ² , 2m The proposal satisfy these criteria and as such cannot be refused on this ground.
parking: > 0.5 car spaces/bedroom [ILU (353 bedrooms) = >176.5 cars]	177 (residents) + 4 (visitors/staff) = 181 The proposal satisfies this criterion and as such the quantity of parking for the ILUs cannot be used to refuse consent. The applicant and Council attained independent legal advice which both found that this clause prevented Council from seeking to apply its DCP maximum parking control to the seniors housing.

7.8.4 Seniors Living Policy: Urban Design Guideline for Infill Development

Note. This document primarily provides guidance for low-scale development and provides more qualitative controls than quantitative controls. As such it is considered appropriate to defer to the ADG for certain numerical controls.

Standard	Proposal
1. Responding to Context	The proposal is considered to respond to the desired future character, namely towers above podiums. While the podium is larger than the adjoining podiums, its visual impact has been minimised by providing side setbacks at the street frontage and lighter bricks at the upper levels to reduce apparent scale. The large floorplate of the podium is necessary to provide the economy of scale for a residential aged care facility.

	The proposal will continue the street tree pattern to Cambridge Street
	The applicant has undertaken a detailed site analysis and documented how it has informed the design approach in an urban design report (see Attachment 2).
2. Site Planning and Design	The applicant has undertaken a thorough site analysis process to locate buildings in such a way as to reduce impacts on adjoining properties and on the heritage item on site.
	The proposed buildings are in keeping with the high density character of the area.
	<p>The most significant natural feature of the site is the trees to the street frontages. While all of the trees on Cambridge Street are to be removed, they will be replaced by street trees. The significant tree to the Oxford Street frontage is to be retained. Significant new planting is proposed. As such the proposal is considered to be acceptable in this regard.</p> <p>The block widens to the north as Cambridge Street and Oxford Street diverge. Nearby development to the north has been kept towards the respective street frontages, leaving an intervening connected green space. The proposal adequately continues this space with a 17m setback between the seniors living tower and the existing church.</p>
	The proposal would provide an acceptable level of amenity to the future seniors living residents.
	The proposal provides deep soil to the Oxford Street frontage. While it is minimal this is supplemented by permeable paving and is considered to be acceptable given the inner-city context of the site.
	The proposal adequately minimises the visual impacts of car parking and vehicular circulation by providing two modestly sized vehicular entries on a long site frontage.
	The proposal provides a range of dwellings sizes. The Green Travel Plan indicates that some units will be offered without car parking. As this is not specific, a condition is included requiring that all leases have the option of not including car parking.
3. Impacts on Streetscape	The proposal consolidates bulk away from the primary Oxford Street frontage allowing for an appropriate curtilage around the heritage church building and a gap in the scale of development along that street.
	The proposal includes two vehicular entry ways on Cambridge Street to separate the Seniors Living uses from the other uses on site. The number of entries is considered to be acceptable given the length of the street frontage and that it is the secondary frontage. While the size of the northern entrance is large - to accommodate servicing vehicles, the village bus and ambulances - the façade materials have been returned inside the opening to reduce its visual impact. A condition is included to this effect.
	The proposal increases activation of the site to both streets and provides additional public open space to the front of the church hall.
	The proposed tower has deep vertical slots on the most prominent eastern and western elevations, and is articulated on its southern elevation, to reduce its apparent bulk.
4. Impacts on neighbors	The proposed Seniors Living element is concentrated in the north-west corner of the site, providing added separation, and thus ensuring minimal overshadowing and privacy impacts on adjoining sites to the south. The tower is setback an appropriate distance from the northern boundary so as not to impact the privacy of the adjacent properties.
	While the proposal includes north facing communal open space areas this is considered to be acceptable as the adjoining development proposed to the north generally has its outlook and windows facing away from the subject site.
5. Internal site amenity	The proposal includes high quality and distinct entries, ancillary services and communal open spaces for the two seniors living typologies.
	The stratum subdivision plans shows appropriate easements, including right of way for all seniors living residents over the mid-block landscaped area to access Oxford Street.

7.8.5 Standards for hostels and self-contained dwelling

Standard	Proposal
2 'Siting standards'	All dwellings are wheelchair accessible to a public road (Cambridge Street).
3 'Security'	A condition will be included to this effect.
4 'Letterboxes'	The proposal includes letterboxes which satisfy these requirements.
5 'Private car accommodation'	The proposal provides 36 accessible parking spaces for the ILUs (20%) and thus satisfies the criterion.
6 'Accessible entry'	A condition will be included to this effect.
7 'Interior: general'	The proposal satisfies the dimensional criteria.
8 'Bedroom'	The proposal satisfies the dimensional criteria. The other criteria will be secured via condition.
9 'Bathroom'	A condition will be included to this effect.
10 'Toilet'	The proposal satisfies this criterion.
11 'Surface finishes'	A condition will be included to this effect.
12 'Door hardware'	A condition will be included to this effect.
13 'Ancillary items'	A condition will be included to this effect.
15 'Living room and dining room'	The proposal satisfies the dimensional criteria. The other criteria will be secured via condition.
16 'Kitchen'	A condition will be included to this effect.
17 'Access to kitchen, main bedroom, bathroom and toilet'	The proposal complies with this criterion as all units are single level units.
18 'Lifts in multi-storey buildings'	The proposal includes 3 lifts for the ILUs and as such complies with this criterion.
19 'Laundry'	The proposal satisfies the dimensional criteria. The other criteria will be secured via condition.
20 'Storage for linen'	A condition will be included to this effect.
21 'Garbage'	A condition will be included to this effect.

For the reasons outlined above the proposal is considered to satisfy the requirements of the SEPP.

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

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

This SEPP applies only to the independent seniors living units and the presbytery units. It does not apply to the other built form elements of the application. For the purposes of standards based on site area it is considered appropriate to separate the site area out into its component uses (approximately 2,530m² of the site is used for housing to which this clause applies).

7.9.1 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>	<p>The proposed development is considered to make a positive contribution to the locality and improve the existing streetscape. The character of this locality is undergoing transition from low-medium scale commercial uses to high density mixed use developments. This proposal is consistent with that shift.</p> <p>The site is in close proximity to Epping train station, which has recently been upgraded to accommodate a frequent metro line, and as such is well connected in terms of public transport.</p>

Requirement	Council Officer Comments
<i>Principle 2: Built Form and Scale</i>	The proposal includes a height breach which allows for concentration of development away from the heritage item and the more sensitive Oxford Street frontage, and provision of a school on the southern side of the site. The proposed height is generally in keeping with that of the approved adjoining development at 37-41 Oxford Street. The applicant has demonstrated that the form as proposed is appropriate, and would not result in unacceptable amenity impacts on adjoining/nearby properties.
<i>Principle 3: Density</i>	The proposal has a complying floor space ratio (FSR) and as such is considered to provide a density of housing in keeping with the desired future character of the area. The proposal is not able to achieve its full FSR as the tower exceeds the relevant height and floorplate controls to the maximum considered acceptable.
<i>Principle 4: Sustainability</i>	<p>A BASIX Certificate and relevant reports have been submitted with the development application outlining Environmentally Sustainable Design (ESD) scores equal to or in excess of that required by the controls:</p> <ul style="list-style-type: none"> • Water, required score: 40, proposed: 46 (+15%) • Energy, required score: 25, proposed: 25 <p>The development achieves a good level of cross ventilation.</p> <p>10 electric-assist share bikes are provided for residents in lieu of formal bicycle parking. Notwithstanding, a condition will be included requiring that residents have storage cages capable of accommodating personal bicycles.</p> <p>The application drawings do not appear to provide any bicycle parking for visitors. As such a condition is included requiring they be provided.</p>
<i>Principle 5: Landscape</i>	The proposal is consistent with the objectives of HDCP 2013, and provides appropriate planting to communal open space and surrounding streets, creating an appropriate landscape setting.
<i>Principle 6: Amenity</i>	<p>Generally, the proposal as amended is considered to be satisfactory in this regard, optimising internal amenity through appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, outlook, efficient layouts and service areas.</p> <p>A satisfactory wind tunnel assessment report has been provided, which concludes that wind conditions around the site are expected to be suitable for pedestrian walking activities, and pass the safety and comfort criterion subject to wind treatment. The wind treatment measures have been verified by testing.</p>
<i>Principle 7: Safety</i>	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p> <ul style="list-style-type: none"> • A significant number of units are orientated towards public streets creating passive surveillance. • Entry points into the building are clearly identifiable allowing ease of access for residents and visitors. • Retail components at ground level will activate the precinct to further enforce a sense of passive surveillance. • The school can be isolated with gates and fences to provide security for students.
<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 will foster social interaction.</p>
<i>Principle 9: Aesthetics</i>	The composition of building elements, textures, materials and colours reflect the use, internal design, and structure of the resultant building. The proposed tower is considered to aesthetically respond to the environment and context, contributing in an appropriate manner to the desired future character of the area.

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

7.9.2 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.

7.9.3 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 tower's orientation is considered to be optimised given the site constraints, presenting a development which addresses Cambridge Street with active uses and lobbies while maximising separation from the heritage item. The applicant has undertaken significant consultation and discussion with Council officers to position the tower so as to maximise setbacks to the street and adjoining properties / future approved buildings while providing solar access to the proposed units, school and adjoining sites.		
3B-2: Overshadowing	<p>The tower would be located in the north-west corner of the site and be well separated from the adjoining property to the south (2-4 Cambridge Street).</p> <p>The applicant has provided shadow analysis which demonstrates that, despite the proposal, the approved tower at 2-4 Cambridge Street would continue to achieve greater than required solar access. No other residential properties are in the vicinity to the south. As such, the proposal is considered to have a reasonable overshadowing impact on adjoining/nearby properties.</p> <p>There are no standards for school solar access. Notwithstanding, a 'heat map' has been provided of the school outdoor spaces. While the primary outdoor play space would receive minimal solar access in mid-winter, the secondary play space and rooftop learning space would receive at least 2 hours solar access to more than 50% of their area. Given the inner city nature of the school this amount of solar access is considered to be acceptable.</p>		
3C: Public Domain Interface	The building would contribute positively to the Cambridge Street interface by maximising activation and providing high quality materials (including within the vehicular entrance). The proposal provides a new awning to Cambridge Street and street trees which are currently not provided in the street. Further, the public domain materials will be updated in keeping with the requirements of Parramatta's Public Domain Guidelines.		
3D: Communal & Public Open Space	Min. 25% of site area (588m ²)	38% (898m ²) of residential communal open space is provided at podium and roof level.	Yes
	Min. 50% direct sunlight to main communal open space for minimum two (2) hours 9:00am & 3:00pm, June 21 st	>50% will receive 2 hours of sunlight in midwinter.	Yes
	The landscape plan outlines undercover areas, bbqs, open air seating areas, and a variety of soft and hard landscaping which is considered to provide good amenity for future occupants.		
3E: Deep Soil	Min. 7% with min. dimensions of 3m (165m²)	0m² (in Seniors Housing 'site')	No discussion (see below)
3F: Visual Privacy	<p>To 16-18 Cambridge Street and 37-41 Oxford Street boundaries (north)</p> <p>Floors 4-7: 9m (non-habitable) 12 – 12.5m</p> <p>Floors 8+: 12m (habitable)</p> <p>To 2-4 Cambridge Street boundary (south)</p>		

Standard	Requirement	Proposal	Compliance
	Floors 4-7: 9m (non-habitable) Floors 8+: 12m (habitable)	>20m	Yes
	The proposal is considered to provide acceptable separation to adjoining and approved buildings and not result in an unacceptable privacy impact on those buildings.		
3G: Pedestrian Access and Entries	The proposal includes clearly demarcated, easily identifiable, at-grade pedestrian entrances, well separated from vehicular accesses.		
3H: Vehicle Access	Given the importance of Oxford Street as a primary active frontage and the presence of the heritage church, it is considered appropriate for the primary vehicular access to be off the secondary road, Cambridge Street. Two entrances are considered to be acceptable on Cambridge Street as it minimises conflict between sensitive uses and the Cambridge Street frontage is long. The loading and garbage areas will not be visible from the street. Given the large size of the northern entrance (which allows for service vehicles) the façade materials have been returned inside the entrance to reduce the visual impact on the street. A condition is included to this effect.		
3J: Bicycle and car parking	Seniors: Presbytery Residents: Assumed 0 minimum Presbytery Visitors: >1/7 units if more than 5 units (>0)	See Seniors SEPP Residents: 3 Visitors: 0	N/A Yes Yes
	The site is <800m from Epping train station, as such the applicable minimum rate is the rate specified in the RMS Guide to Traffic Generating Development or the DCP, whichever is less. The rates in the DCP are less than those in the RMS guide and as such the DCP rates apply. While the proposal achieves the de facto minimum for presbytery residential residents, it exceeds the DCP maximum. Further discussion under Hornsby DCP assessment below. For bicycle parking assessment see Hornsby DCP assessment below.		
Part 4			
4A: Daylight / Solar Access	Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (>123)	132 out of 175 apartments (75%) assuming no additional development to north 105 out of 175 apartments (60%) taking into account the approved concept envelope at 37-41 Oxford Street and the approved development at 16-18 Cambridge Street.	Yes No (see discussion below)
	Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<26)	21 out of 175 apartments (12%)	Yes
4B: Natural Ventilation	Min. 60% of apartments below 9 storeys naturally ventilated (>8)	8 out of 13 apartments (62%)	Yes
4C: Ceiling heights	Min. 2.7m habitable	2.8m	Yes
	Min 2.4m non-habitable	2.8m	Yes
	Min 3.3m for mixed use	3.6m-5.8m	Yes

Standard	Requirement	Proposal	Compliance
4D: Apartment size & layout	0B – Min 35m ²	0B–35m ²	Yes
	1B – Min 50m ²	1B–min 54m ² – max 64m ²	Yes
	2B – Min 75m ² (2 baths)	2B–min 85m ² – max 100m ²	Yes
	3B – Min 95m ² (2 baths)	3B–min 115m ² – max 134m ²	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 ceiling height (7m)	<8.2m	Yes
	Max. habitable room depth from window for open plan layouts: 8m.	<9.1m	No (minor)
	Min. internal areas:		
	Master Bed - 10m ²	>10m ²	Yes
	Other Bed - 9m ²	>9m ²	Yes
	Min. 3m dimension for bedrooms	>3m	Yes
	Min. width living/dining:		
	• 0B – 3.6m	>3.6m	Yes
	• 1B – 3.6m	>3.6m	Yes
	• 2B – 4m	>4m	Yes
	• 3B – 4m	>4m	Yes
4E: Private open space & balconies	Min. area/depth:		
	0B – 4m ²	>5m ² /2m	Yes
	1B - 8m ² /2m	>10m ² /2m	Yes
	2B - 10m ² /2m	>10m ² /2m	Yes
	3B - 12m ² /2.4m	>15m ² /2.4m	Yes
	Principle private open spaces are provided off living rooms with secondary access from bedrooms where possible		
4F: Common circulation & spaces	Max. apartments –off circulation core on single level: 8-12	8	Yes
	The applicant has submitted a lift report outlining that the proposed lifts would provide an excellent level of service to future occupants.		
	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	Total – 1,412m ³	1,345m ³ (in unit) + basement storage	Yes
	Min. 50% required in units (706m ³)	1,345m ³	
	Minimum storage requirements will be required by condition.		
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.		

Standard	Requirement	Proposal	Compliance
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 the railway and Oxford/Cambridge Streets. A condition is included requiring the implementation of the report's recommendations.		
4K: Apartment Mix	The proposed units vary in size, amenity, orientation and outlook to provide a mix of options for future residents. A variety of apartments sizes are provided across all levels of the apartment building.		
4M: Facades	The façade materials include brick, metal cladding, precast concrete, and perforated metal panels in various colours to add visual interest. The proposal has a distinctive base (podium), middle (tower) and top (upper levels reduced footprint and two upper levels clad in differing material).		
4N: Roof design	The proposed building has stepped flat roof elements which are considered to be appropriate given the character of the area. Rooftop plant and lift overrun are suitably concealed ensuring they are not visible from the street.		
4O: Landscape Design	The application includes a landscape plan, which demonstrates that the proposed development will be adequately landscaped. The proposal includes green roofs and extensive podium landscaping providing high quality communal open spaces for future residents.		
4P: Planting on structures	The landscape drawings outline that planting on structures would have adequate soil depth to accommodate good quality planting.		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features (>20)	All Seniors Living units are fully adaptable.	Yes
	The Seniors Living units are appropriately barrier free and have wheelchair access to both Cambridge Street and Oxford Street. An Access Report has been included as part of the application confirming that the proposed development is capable of meeting the requirement of SEPP 65, and Part 4Q of the ADG. Further design detail of specific elements will be required as the development progresses through to the construction phase to ensure compliance. A condition has been included requiring confirmation prior to CC being issued.		
4S: Mixed Use	The proposal is considered to provide an appropriate mix of uses given the character of the area. All uses have distinct entries, including the two Seniors Living uses which are provided with separate entrances on Cambridge Street.		
4T: Awnings and Signage	Sun and rain protection is provided to the front of the Seniors Living component along Cambridge Street. No details, other than a few dotted lines, indicate the provision of any signage. A condition is included requiring separate approval for any signage.		
4U: Energy Efficiency	The BASIX Certificate demonstrates the development meets the pass mark for energy efficiency (Score: 25, Target: 25).		
4V: Water management	The BASIX Certificate demonstrates that the development exceeds the pass mark for water conservation (Score: 46, Target: 40).		
4W: Waste management	The proposal includes separate waste and recycling chutes for both seniors living uses and corresponding sorting and storage facilities at lower ground level and as such is considered to be acceptable in this regard. A waste management plan has been prepared by a qualified consultant, demonstrating compliance with Council's waste controls. All residential and commercial units are to be provided with sufficient areas to store waste/recyclables.		
4X: Building maintenance	The proposed materials are considered to be sufficiently robust, minimising the use of render and other easily stained materials.		

Table 7: Assessment of the proposal against the ADG

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

7.9.3.1 Deep Soil

While the proposal provides no deep soil planting within the Seniors Housing portion of the site, this is considered to be acceptable for the following reasons:

- There is a high level of planting (planters, green walls, small trees) proposed on the building.
- Deep soil and permeable paving are provided elsewhere in the site (899m², 12.3% of site) Figure 8 below outlines the extent of on-site permeable/planting areas.
- The high density and local centre character of the area. The ADG notes that, “Achieving the design criteria may not be possible on some sites including where: the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in **centres**) or there is 100% site coverage or **non-residential uses at ground floor level**” (emphasis added).
- The proposal provides additional planting in the public domain.
- The proposal would result in a net increase to the planting in the area.

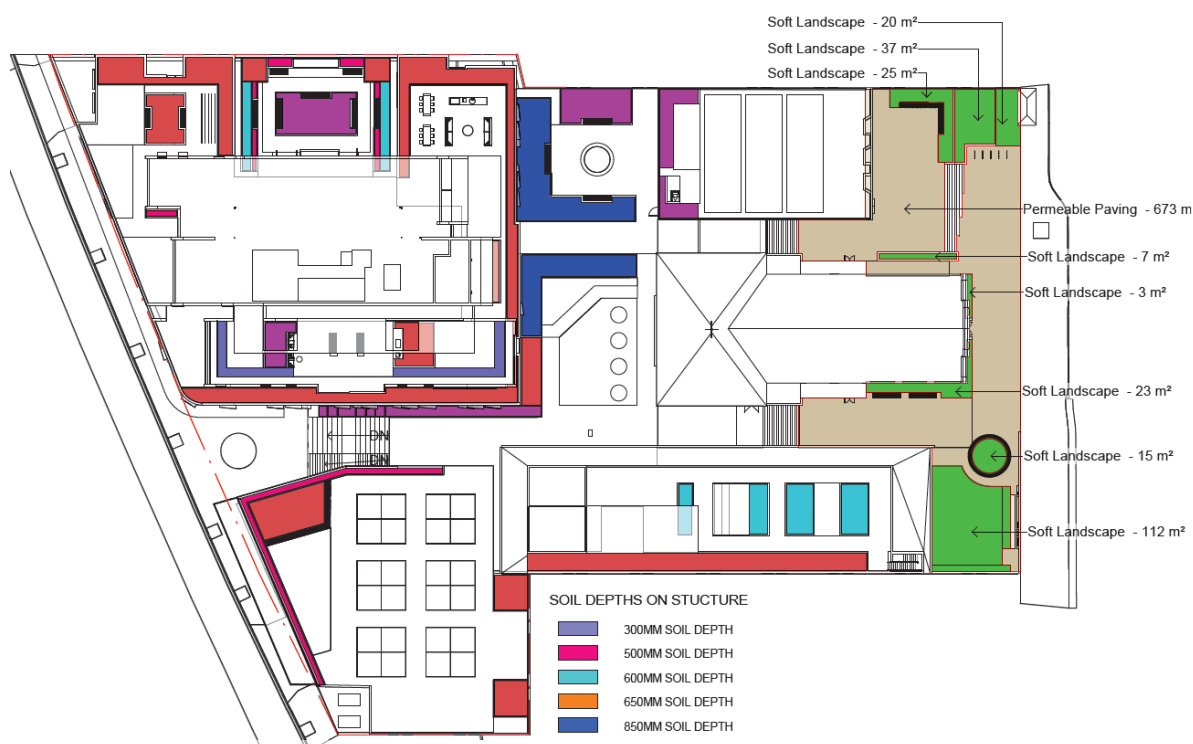


Figure 8. Site plan indicating extent of deep soil (green), permeable pavers (brown) and planters (see legend in figure).

7.9.3.2 Daylight / Solar Access

While the proposal would be slightly deficient in solar access if the two adjoining towers approved to the north are built, this is considered to be acceptable for the following reasons:

- The site is located in a dense urban environment. The Land and Environment Court planning principles acknowledge that sunlight is harder to protect at higher densities¹. As a nearby example, the towers under construction at 12-22 Langston Place, Epping reduced from near compliance to 56% compliant solar access by approved development to the north at 24-36 Langston Place.
- The building has been positioned in the north-west corner of the site, and is thus more overshadowed itself, to avoid impacts on the solar access of the adjoining properties to the south.
- The ADG is not intended to be applied as a set of strict development standards (See Attachment 4).

The outdoor communal areas will receive sufficient solar access at mid-winter (see Figure 9 below).

¹ The Benevolent Society v Waverley Council [2010] NSWLEC 1082 at paragraph 137

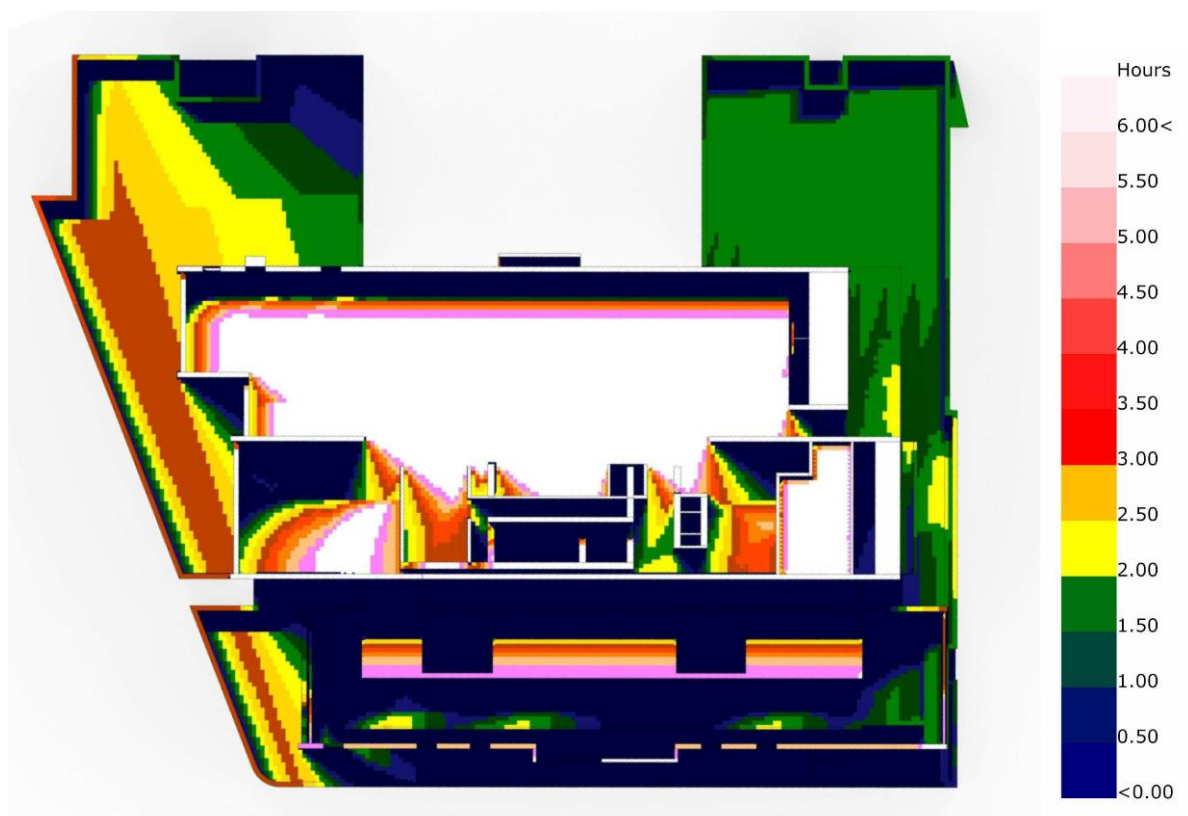


Figure 9. Solar access 'heat map' for seniors' living open space areas. The colour corresponds to the hours of solar access an area receives at mid-winter.

7.10 Hornsby Local Environmental Plan 2013

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

Development Standard	Proposal	Compliance
2.3 Zoning		
B2 – Local Centre	<p>The proposal is a mixed use development comprising the following uses:</p> <ul style="list-style-type: none"> Seniors Living <ul style="list-style-type: none"> In-fill self-care housing Residential aged care facility School-based child care facility Educational Establishment (Existing Use) Place of Public Worship (Existing Use) Commercial Premises (Retail Premises) Shop Top Housing (Presbytery Units) <p>The Seniors Living uses are permissible pursuant to SEPP Seniors Living (see further justification under Section 7.8.1 above) while the other uses are permissible with development consent in the zone pursuant to the LEP.</p>	Yes
Zone Objectives		
	The proposal is considered to be in keeping with the objectives of the B2 Local Centre zone for the following reasons:	Yes

	<ul style="list-style-type: none"> The proposed development provides an appropriate mix of opportunities for a range of commercial (retail unit) and community facilities (church hall, child care) for those who live in, work in and visit the area. In the short term, jobs will be created through the construction of the development and in the longer term in the form of teachers, care workers and retail workers. The proposal is in close proximity to public transport. 	
4.3 Height of Buildings		
Control: 72m	Max Height 96.5m	No (24.5m, 32.6% breach)
4.4 Floor Space Ratio		
Control: 4.5:1 (32,809m ²).	<p>Total GFA: 28,794m² (3.95:1)</p> <ul style="list-style-type: none"> ILU + Presbytery: 19,432m² (67%) RAC: 6,105m² (21%) School: 1,175m² (4%) Church + Hall: 1,882m² (7%) Retail: 200m² (<1%) <p>Note. Wintergardens are considered to constitute GFA.</p> <p>The proposal allows for future provision of a second school stream (up to 4,015m²). Even with the future second stream, the site is unlikely able to accommodate the maximum allowable FSR.</p>	Yes
4.6 Exceptions to Development Standards		
	Variation to Building Height Standard.	Yes (see below)
5.10 Heritage conservation		
	<p>The existing church building on the site is a locally listed heritage item. While the building is to be substantially retained, the following elements of the proposal impact the item:</p> <ul style="list-style-type: none"> Alterations and additions to the rear and side of the building to accommodate connection to new hall and provision of a child care centre at the lower ground floor level. New buildings in the curtilage of the building, namely the school, senior living tower, and church hall. <p>The proposal is considered to have an acceptable impact on the heritage item for the following reasons:</p> <ul style="list-style-type: none"> The school and hall buildings which directly adjoin the item are of a sympathetic scale and are setback behind the significant front façade of the church. Primary views of the item are from Oxford Street. The tower, while significantly larger than the item is well setback from the item (~17m from the back of the item), and has been designed to be of a form (tri-partite bays, stepped roof) to be sympathetic to the front facade of the item. The adjoining building at 35 Oxford Street will appear closer and more imposing on the item than the proposed tower when viewed from Oxford Street. 	Yes

	<ul style="list-style-type: none"> • The immediate curtilage of the item is well landscaped, providing a buffer to the new buildings. The significant tree in the Oxford Street setback is retained, maintaining the landscaped setting. • The intrusions into the fabric of the heritage item are minor, sensitive and are located either in non-original fabric or are to the rear of the building. • The area is undergoing a transition to high density mixed use development. Accommodating the ideal setting for heritage items is difficult in such settings. Other recent approvals in the vicinity have included demolition of a heritage item and construction of a new tower in close proximity to a heritage item (see Figure 10 below). As such the proposal is considered to be commendable for the curtilage it maintains. <p>This position is supported by an independent heritage consultant who found the proposal to be acceptable subject to the following conditions which are included in the draft consent:</p> <ul style="list-style-type: none"> • Details drawings of interventions in heritage fabric. • Excavation methodology to ensure works do not undermine structural integrity of heritage item. • Archival recording. • Specialist site induction. <p>The proposal is also in the vicinity of several other heritage items.</p> <p>The closest, across Oxford Street, is a house at 48 Oxford Street. A current consent (DA/485/2016) allows for demolition of this heritage item. Notwithstanding, the proposal is considered to be adequately separated from this item so as to ensure its curtilage is retained.</p> <p>The next closest item, also across Oxford Street, is a Victorian shop at 38 Oxford Street. The site containing this item has been redeveloped (DA/585/2016) around the heritage fabric (see figure 10 below). The proposal is considered to be adequately separated from this item so as to ensure its curtilage is retained.</p>	
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 has been included.</p> <p>A condition is included requiring a geotechnical engineer provide a methodology to ensure that the basement excavation will not impact the structural integrity of the heritage item.</p> <p>Based on the hydrogeology assessment report, groundwater inflow into the excavation is estimated to be about 1.7 ML/year. The estimated inflow is considered significant and discharging 4,700 L/day groundwater to the stormwater system is not supported by the Council. In this regards, the proposal of a drained basement is not supported.</p>	Yes

	<p>Apart from the significant estimated groundwater inflow, there are other major potential impacts of drained basement constructions that have not been addressed in the submitted report. These uncertainties are:</p> <ul style="list-style-type: none"> • Seasonal variations in groundwater inflow, • Groundwater quality and uncertainty with regards to the treatment system and risk of treatment system failure, • Impact of groundwater pumping on groundwater drawdown and risk of buildings settlement and potential impacts on regional groundwater flow, • Shortage in the physical capacity of the stormwater system including any natural watercourses and channels, • Impact of discharges from the site in immediate vicinity and downstream and cumulative effects for the catchment, • Using groundwater as a source that will require a detailed water balance model and management plan, • Uncertainty with regards to groundwater licenses <p>As such a condition will be included in the draft consent requiring a tanked basement.</p>	
6.8 Design Excellence		
	<p>Council's Design Excellence Advisory Panel have reviewed the proposal and consider that it achieves the design excellence criteria outlined by the clause.</p>	Yes

Table 8: Assessment of the proposal against HLEP 2013



Figure 10. Nearby heritage item at 38 Oxford Street (highlighted in red).

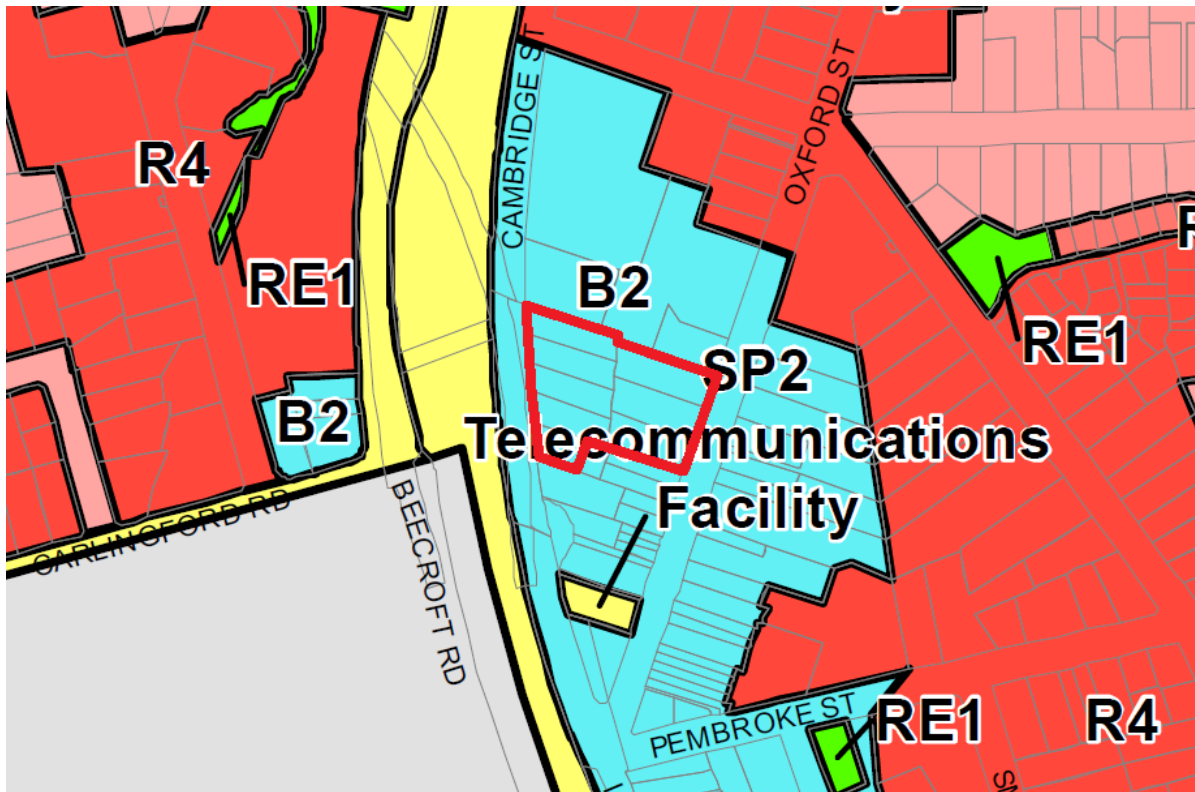


Figure 11. HLEP 2013 Zoning map (subject site outlined in red). The site is zoned B2 – Local Centre.

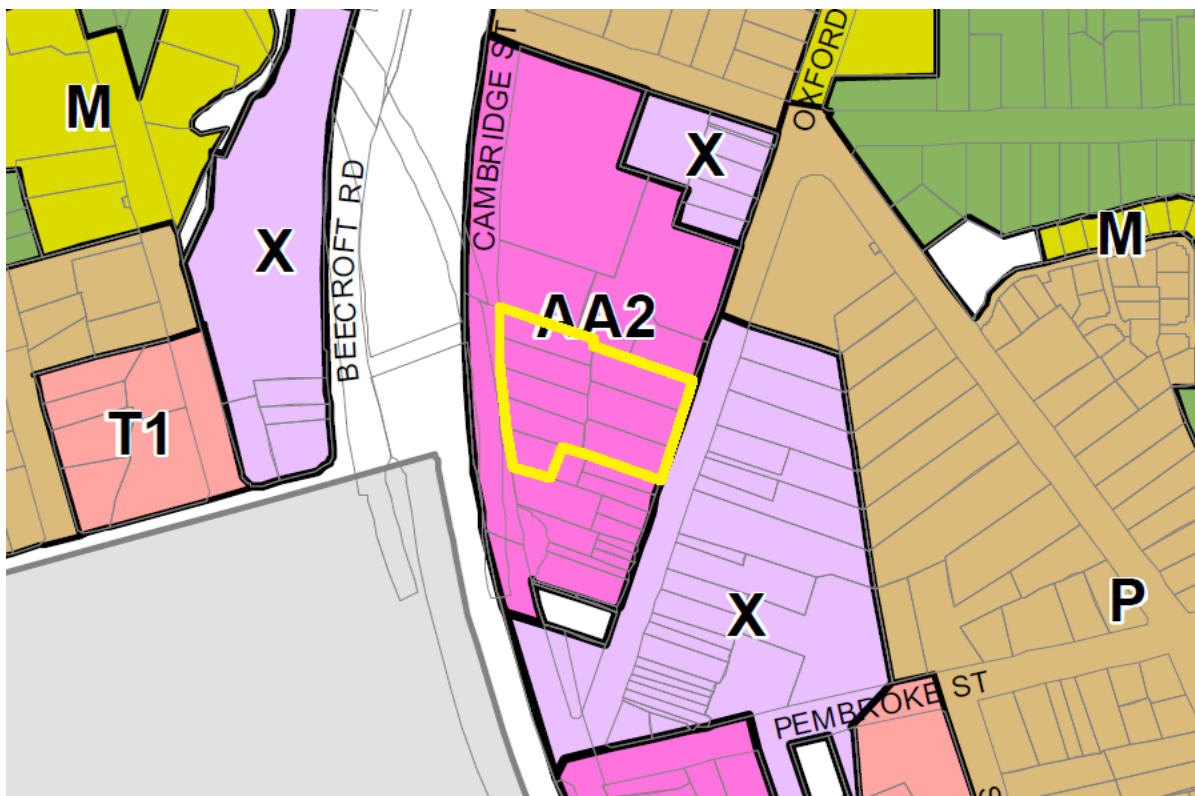


Figure 12. HLEP 2013 map (subject site outlined in yellow). The site is classified AA2 – 72m height limit.

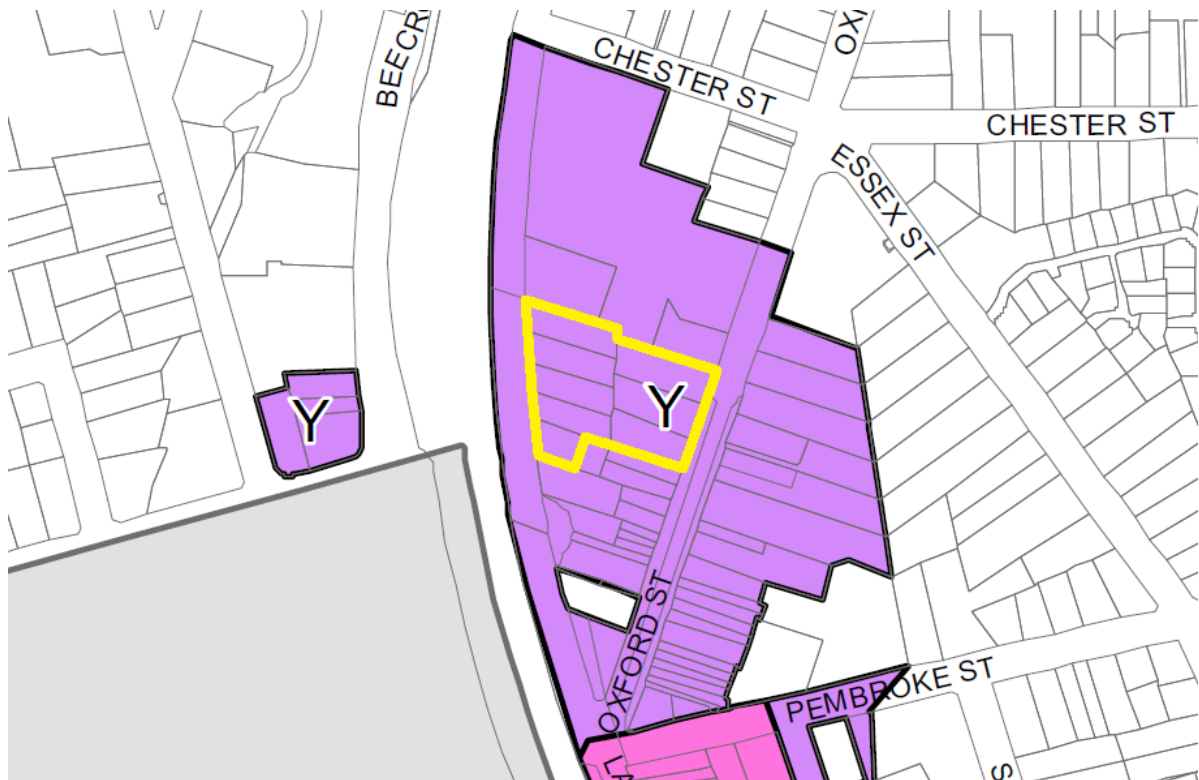


Figure 13. HLEP 2013 Floor Space Ratio map (subject site outlined in yellow). The site is classified AA – 6:1 FSR.

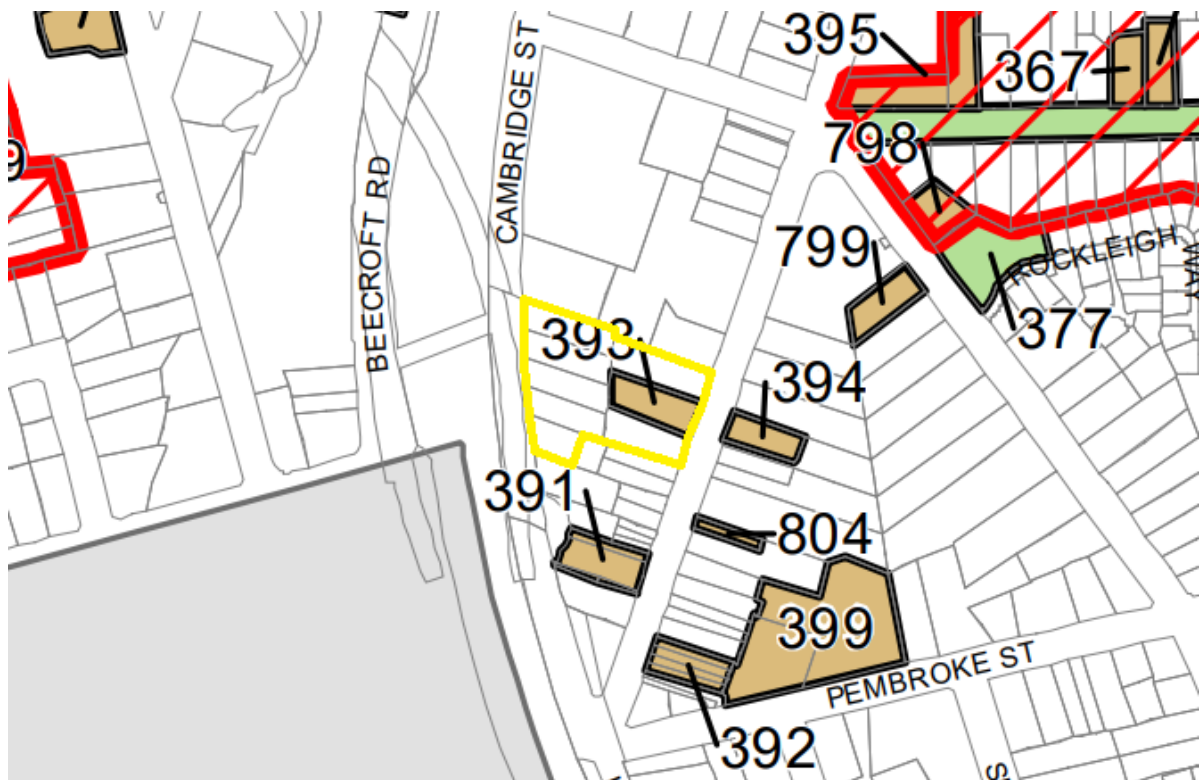


Figure 14. HLEP 2013 Heritage map (subject site outlined in yellow).

7.10.1 Clause 4.6 Variation Assessment

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

Clause 4.6(1) – Objectives of clause 4.6

The objectives of this clause are:

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

Clause 4.6(2) – Operation of clause 4.6

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

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

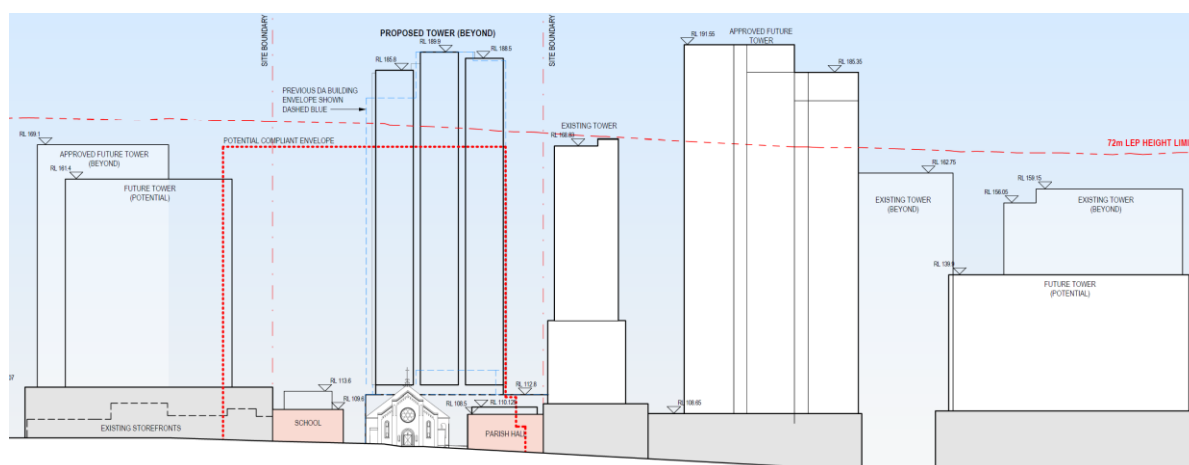


Figure 15. Proposed breach of height limit in context of approved development in the vicinity (red line represents 72m height standard).

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

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

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

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

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the Height of Buildings development standard, the proposed development is consistent with the objective of the development standard pursuant to cl4.3(1)(a) of LEP 2013, is consistent with the relevant objectives of the B2 Zone and therefore, is in the public interest;*
- Notwithstanding the contravention of the Height of Buildings development standard, the proposed height will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties and the locality will be minimised to a reasonable level and the development is suitable given the site constraints, development potential and infrastructure capacity of the locality; and*

- *The Height of Buildings development standard has been virtually abandoned by consent authorities in this locality as evidenced by numerous significant cl4.6 variations supported for approved developments.*

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the Height of Buildings development standard including:

- *A lack of significant adverse environmental amenity impacts;*
- *Conservation of the heritage item within the Site and provision of an expansive landscaped curtilage to promote its primacy in the Oxford Street streetscape;*
- *Retention of a school use on the Site and reconstruction to provide a 21st Century and best practice learning environment to cater for the demands of the increasing residential population;*
- *Allowing the future expansion of the school into the south-western corner of the Site to cater for demand arising from the growing residential population in the locality;*
- *Improvements to Parish facilities to be used in conjunction with the school and provide opportunities for other community uses to the wider benefit of the locality;*
- *Provision of a built form which, notwithstanding the building height proposed, will contribute positively to the urban landscape whilst minimising potential adverse impacts on surrounding properties and the public domain in terms of views, solar access, visual privacy and acoustic privacy;*
- *Significant traffic network and public domain improvements associated with relocating school drop-off/pickup from the street frontage to within the Site, provision of church car parking on-site where there is currently none and generation of a very minor increase in traffic which will not be discernible in the surrounding road network; and*
- *Provision of a Green Travel Plan which includes measures to promote the use of public transport patronage and encourage walking and cycling.*

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

Unreasonable and Unnecessary

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

Wehbe v Pittwater Council

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

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

Height of Buildings

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

The site is constrained in that it is occupied by a local heritage item. Further, retaining the item in an appropriate manner requires reduced height of buildings within the curtilage around the item. Further, the site is constrained by the desire to maintain a school on the site. As such there is a large site area to which a high density of FSR 4.5:1 applies, and a limited area in which to accommodate a tower.

The site is well located in terms of infrastructure as it is in close proximity to Epping Train Station, a number of bus routes, as well as shops and services in the Epping Town Centre.

Despite the height breach, the proposed development does not achieve the full FSR density allowable on site.

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 underlying objective of the height standard is to permit a height of building that is appropriate for the site constraints, development potential and infrastructure capacity of the locality. Given the site constraints, and the high public transport infrastructure capacity of the area, it is considered appropriate to allow a height breach to achieve as much of the development potential as is reasonably possible. The height breach, although large in quantum, is considered to have an acceptable impacts for the reasons outlined in this report. It should be noted that the development is not achieving its full development potential (FSR of 3.9:1 proposed, 4.5:1 allowable).

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 contends that the number of height breaches allowed by Council is tantamount to abandoning the control. While it is noted that several height standard variations have been allowed in the locality recently, they have all been based on site-specific constraints. Other development in the area has been consistent with the height standard [see table in Section 3.2 above]. As such, it is considered that the standard has not been abandoned.

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

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

Four2Five Pty Ltd v Ashfield Council

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

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

- The developable area is constrained by the presence of a heritage item and the desirable urban design outcome to retain the item and restrain development either side of the church to provide a curtilage for the item and a visual break from building bulk in the middle of the Oxford Street streetscape.
- The proposal retains a school use on the site and provide a church hall which will serve the existing and future residents of the area. Provision of the school and its outdoor play space further restricts the developable footprint of the site.
- It is considered that compliance with the standard in this case is unreasonable and unnecessary as:

- i. The proposed building, relative to a complying scheme closer to the southern boundary, reduces amenity impacts, in particular overshadowing, on the adjoining and nearby properties.
 - ii. The proposal exceeds the minimum sustainability requirements:
 - 1. Water BASIX Score – Minimum 40 – Provided 46
 - 2. NatHERS Rating – Minimum 6 – Provided 7.7 (average)
 - iii. The proposal retains and enlarges the publicly accessible area to the front of the site and makes it more welcoming to the public by removing walls.
 - iv. The applicant has submitted a Visual Impact Assessment which demonstrates that the tower will not be overtly imposing from many key vantage points.
 - v. Traffic impacts associated with providing off-street school pick-up/drop-off and church parking.
- The proposed development will result in a density that is compliant with the FSR standard for the site, and as such the variation will not place additional pressure on the infrastructure capacity of the locality; and
 - The proposed development is consistent with the strategic significance of development envisaged for the site under the Epping Activation Precinct and subsequent HLEP 2013 and HDCP 2013 updates relating to the site.
 - The applicant has demonstrated that a more compliant envelope is less desirable than the proposal. The figure below outlines the evolution of the design from a more compliant height form to the proposed form. The complying form results in a monolithic street wall, would likely result in more overshadowing on adjoining properties, would provide a less sensitive backdrop to the heritage church and would likely preclude the ability to accommodate a school on the site. For further detail please see pages 35-38 of the applicant's Urban Design Report at Attachment 2.

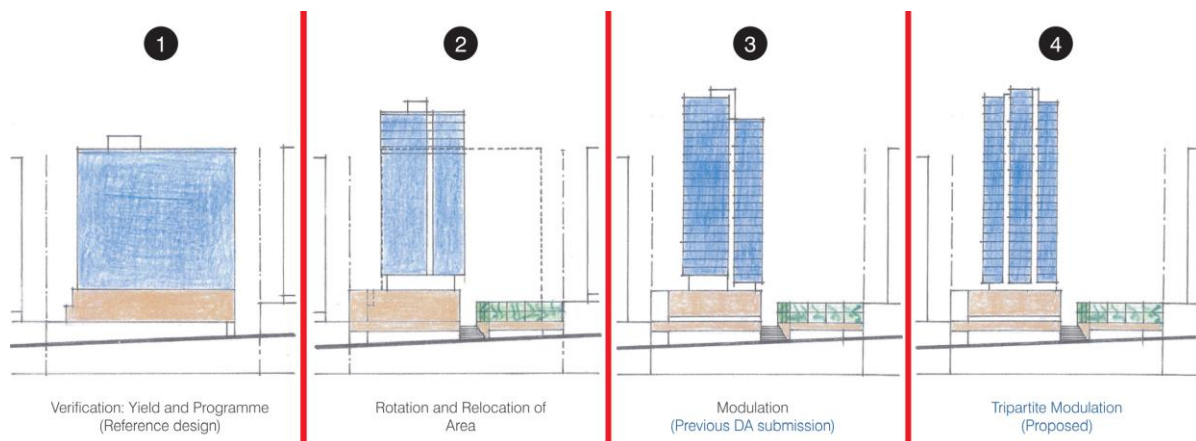


Figure 16. Progression of tower design from more compliant to proposed.

Initial Action Pty Ltd v Woollahra Municipal Council

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

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

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

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

- ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b) *the concurrence of the Secretary has been obtained.*"

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

Public Interest

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

B2 Zone Objective	Proposal
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The proposal provides a range of retail and community uses that would serve both the existing local community and the future residential occupants of the development.
<i>To encourage employment opportunities in accessible locations.</i>	The proposed development is in close proximity to Epping Train Station and bus routes making the proposed employment generating uses highly accessible to future employees.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	<p>The proposal includes a Green Travel Plan which outlines a range of strategies to promote use of public transport, cycling and walking.</p> <p>The site is located in an area with a range of retail facilities which will reduce the need for residents to use private vehicles trips to access these services.</p> <p>The proposal also provides additional retail uses, child care facilities and community uses which will reduce the need of residents in the area to use private vehicles to access these services elsewhere.</p>

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

Clause 4.3 Objective	Proposal
<i>To permit a height of building that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.</i>	As outlined above, the proposal is considered to satisfy the objectives of the height standard.

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

Concurrence

'The concurrence of the Secretary has been obtained'

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular '*Variations to development standards*' Ref: PS 18-003 dated 21/02/2018 (See Attachment 3). There is no limit to the level of non-compliance for which concurrence can be assumed.

Conclusion

In summary, it is considered that breaching the building height standard is appropriate and achieves a preferable outcome for the following reasons:

- The developable area is constrained by the presence of a heritage item and the desirable urban design outcome to restrain development either side of the church to provide a curtilage for the item and a visual break from building bulk in the middle of the Oxford Street streetscape.
- The developable area is constrained by re-provision of a school.
- Concentrating the development in the north-west corner minimises overshadowing on the adjoining properties to the south.

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the height development standard within Hornsby LEP 2013 can be supported as the proposal continues to achieve the objectives of the height development standard and the zoning and is in the public interest. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

8. Draft Environmental Planning Instruments

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

9. Development Control Plans

9.1 Hornsby Development Control Plan 2013

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

Control	Requirement	Proposal	Compliance
<i>1C – General Controls</i>			
<i>Biodiversity</i>	Avoid impacts on biodiversity and environmental features	<p>The proposal requires the removal of 23 trees (8 low, 13 moderate, 2 high significance).</p> <p>The proposal retains the significant tree to the front of the existing school on the Oxford Street frontage.</p> <p>The landscape plan outlines the planting of 66 new trees on site.</p> <p>Conditions are included to ensure sufficient soil depth for trees. The proposal would result in a net increase in planting on the site.</p>	Yes
<i>Stormwater Management</i>	Erosion and Sediment Control, OSD, WSUD	Erosion and Sediment Control Plan, OSD, and WSUD measures have been reviewed by Council's Engineers and are considered to be acceptable subject to conditions.	Yes
<i>Earthworks and Slope</i>	Protect the stability of land.	The applicant has submitted a geotechnical report which identifies a number of potential vibration and ground movement	Yes

		impacts. However, the report outlines ways to minimise such impacts. A condition is included requiring a more detailed geotechnical report and that all recommendations in the report be implemented.	
<i>Transport and Parking</i>			
<u>Car Parking</u>			
<i>Car Share</i>	1 space (as over 50 units)	1	Yes
<i>School</i>	>1/teacher x 15 (15)	Shared	School, child care and church peak use times offset and as such the spaces can be shared by all uses.
<i>Place of Public Worship</i>	>1/5 seats x 430 seats (86)	Shared	
<i>Child Care Centre</i>	>1/4 children x 40 (10) Total - 111	Shared 96 (school, place of public worship and child care centre)	
<i>Residential (Presbytery only)</i>	<0.4/1-bed (<1)	3	
<i>Retail</i>	Max 1 per 30m ² (<8)	0	Yes
<i>Travel Plan</i>	To promote sustainable travel.	Green Travel Plan provided (See discussion below)	Yes
<i>End-of trip facility</i>	Required if commercial floor space >300sqm.	Commercial floor space <300sqm	N/A
<u>Bicycle Parking</u>			
<i>Residential</i>	1/dwelling (175)	10 share e-bikes + personal storage cages	No (See discussion below)
	1/10 dwelling visitors (18)	0	No (compliance conditioned)
<i>Commercial</i>	1/600sqm commercial (1)	0	No (minor)
<i>School</i>	1 rack / 20 staff (1 rack) 5 racks / class grade 5+ (10 racks) Total: 11 racks	0	No (compliance conditioned)
<i>Loading</i>	Room for delivery cars/motorcycles, removalists	1 x ambulance, 1 x village bus, 3 x space for up to HRV	Yes
<i>Motorcycles</i>	4 (residents) Not specified (school)	7 (residents) 3 (school/place of public worship)	Yes
<i>Accessible Design</i>	Unobstructed step-free access	Level, step-free access is provided to all entries. Seniors Living have step-free access to Cambridge Street via main lobbies and to Oxford Street via	Yes

		Church Hall (a condition is included requiring restriction on title to provide this access 24/7)	
<i>Waste Management</i>	Waste Management Plan On-Site Collection Garbage Chute System	Provided, reviewed as acceptable by Council waste officer On-site collection provided Garbage chute provided	Yes
<i>Air Quality</i>	Air Quality Report	Air Quality Report provided which concludes that no special measures are required to ensure air quality criteria are met.	Yes
<i>Crime Prevention</i>	Crime Prevention Through Environmental Design (CPTED) Report	CPTED report included as part of Statement of Environmental Effects. The proposal is considered to adequately provide sightlines, casual surveillance and secure access.	Yes
<i>Avoiding Isolated Site</i>	Demonstrate adjoining sites can be developed.	All adjoining sites either meet the minimum site frontage requirements, are able to amalgamate with other properties or are already developed to their full potential.	Yes
4.6 – Epping Town Centre			
<i>Desired Future Character</i>	In keeping with East Precinct	See discussion below.	Yes
<i>Site Width</i>	>30m	~ 92m Cambridge Street ~ 61m Oxford Street	Yes
<i>Tower Floorplates</i>	<700m² GFA	~830-865m² GFA (19-24% breach)	No (See discussion below)
<i>Height</i>	22 storeys	School: 2-3 storeys Church Hall: 2-3 storeys Seniors Living: 29 storeys	Yes Yes No (See discussion below)
<i>Podium Height</i>	2-3 storeys	5 storeys	No (See discussion below)
<i>Podium Use</i>	Commercial	Residential Aged Care	No (See discussion below)
<u><i>Front Setbacks</i></u>			
<i>School Hall</i>	0m 0m	11m 19m	Yes (respects curtilage of heritage church)

<i>RAC Podium</i> ILU Tower	0m 6m (Cambridge Street)	0m - 1.4m 3m – 6.9m	Yes Part (See discussion below)
<i>Side Setbacks</i> <i>School, Hall, RAC Podium</i>	0m	0m	Yes
<i>Tower Form</i>	Distinctive base, middle and top (delineated top / taper to sky) Slim and slender proportions	The proposal has a distinctive base (podium), middle (tower) and top (upper levels reduced footprint and stepped heights) The tower has tripartite primary facades to achieve slim proportions.	Yes Yes
Frontage Activation	90% Oxford Street (Active Frontage) 30% Cambridge Street (Semi-active frontage)	45m/61m (74%) 56m/90m (62%)	No (See discussion below) Yes
<i>Wind Effects</i>	Wind Effects Report (inc. wind tunnel testing)	Wind Effects Report with wind tunnel testing. Measures proposed and tested to ensure acceptable wind climate.	Yes
<i>Solar Reflectivity and Glare</i>	<20% reflection	<20% reflection	Yes
<i>Housing Choice</i>	1br – >10% 2br – >10% 3br – >10%	0-1 bed – 17 (9.7%) 2 bed – 135 (77.1%) 3 bed – 23 (13.1%)	No (minor) Yes Yes
<i>Adaptable Units</i>	10%	98% (All ILUs are adaptable)	Yes
<i>Public Art</i>	Buildings should include ... public art to enhance the public domain.	The applicant has submitted a draft public art strategy.	Yes (A condition is included requiring refinement and implementation)

Table 11: Assessment of the proposal against HDCP 2013.

9.1.1 Transport and Parking

Residential Parking (Presbytery only)

Note. This discussion relates only to the Presbytery dwelling units and does not relate to the seniors living parking, which is covered under the Seniors SEPP (see Section 7.8.3 above).

Objectives

The DCP car parking controls relevant to the application are contained within Table 1C.2.1(e) 'On Site Car Parking Rates (Epping Town Centre Core)' in Part 1 – General of the HDCP 2013. As outlined in

the table above, the proposal does not comply with these controls. Section 4.15(3A)(b) of the EP&A Act relevantly states the following (emphasis added):

*If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:... if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the **objects of those standards** for dealing with that aspect of the development, and*

The desired outcomes (i.e. objects, or objectives) of Section 1C.2.1 'Transport and Parking' of the HDCP 2013 that are relevant to parking read as follows:

- a. *Development that manages transport demand around transit nodes to encourage public transport usage.*
- b. *Car parking and bicycle facilities that meet the requirements of future occupants and their visitors.*

The relevant objectives of the parking control seek both to (a) encourage transport use and (b) provide car parking that meets the requirements of future occupants and their visitors.

Regarding objective (a), residential occupants without the convenience of a dedicated off-street car parking spaces would have added incentive to use public transport thus assisting in achieving the objective of encouraging public transport use. The new metro makes Epping a highly accessible location.

Regarding objective (b), the applicant may suggest that “*meeting the requirements of future occupants*” includes additional parking spaces for residents who travel for work. This is not considered to be sufficient justification as the proposal includes a car share space and e-bike share scheme which provides residents with other options for accessing areas not served by public transport.

Traffic Congestion

The Epping Traffic Study was released in May 2018. The study found that the existing road infrastructure in Epping Town Centre is operating at oversaturation and that the additional housing anticipated by the current planning controls would result in significant future traffic growth that will have significant implications for the future levels of traffic congestion and delays on the major road network, particularly during peak hours. The maximum parking controls in the DCP were implemented in response to this study.

Non-Discretionary Development Standards

Clause 30(1)(a) of SEPP 65 states, “*if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide [the consent authority must not refuse the application because of that matter]*”. The proposed parking complies with the minimum.

The purpose of this clause is to limit Council’s ability to require too *much* parking, while still requiring a smaller minimum amount. This is evidenced by the following:

- Some Councils require, for example, 2 parking spaces per dwelling which may be prohibitively expensive for developers.
- NSW Department of Planning & Environment Planning Circular PS 15-002 “*Design Quality of Residential Apartment Development – SEPP 65*” provides the following relevant commentary on the application of Clause 30 of SEPP 65:

If council only has a maximum parking requirement in their LEP or DCP (with no minimum) then the minimum car parking requirement continues to be taken as zero. In this case the maximum requirement continues to apply to the development application.

The recent Land & Environment Court judgement of *Pirasta Pty Ltd v Parramatta City Council* [2019] NSWLEC 1627 further clarified the matter when the presiding commissioner stated at paragraph 33,

The tenor (and words at cl 30(1)(a) of SEPP 65) are concerned with “minimum amount of car parking supplied”. The intent of the policy change contained in the [Hornsby] DCP in May 2019 is in an entirely different direction. It is concerned with limiting parking in areas like the site which are close to the public transport hub at Epping to encourage its use over private cars. There is no inconsistency of concern here, and the “cannot be used as grounds to refuse” test of cl 30 of SEPP 65 does not apply.

Consistency

The inconsistent application of a DCP reduces its weight in consideration of future applications. In other words, varying a DCP control sets a precedent for assessment of future applications. The Planning Principle “DCPs and Council policies” in the NSW Land and Environment Court case of *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 at paragraph 87 relevantly states, “A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied”. The DCP parking controls have been consistently applied to date. Allowing an exemption would hinder the cumulative positive impact of the control.

As such, a condition is included limiting the Presbytery units to 1 car parking space.

Bicycle Parking – Seniors Living

The DCP cycle parking rates for regular residential development apply to the seniors living element as there are no specific seniors controls. The applicant contends that bicycle ownership is unlikely to be as high for seniors living, in particular given the hilliness of the area. Instead, they propose to provide 10 share electric bicycles (e-bikes) that will be available to occupants at all times. Electric and electric pedal assist bikes would make cycling in hilly terrain more appealing and as such are considered to be a positive response. However, it is considered that residents with bicycles should at least have the option of storing them in their basement storage cages. Conditions are included requiring a) that the e-bikes be provided prior to occupation and b) that all units have a basement storage cage with dimensions capable of accommodating a bicycle.

Green Travel Plan

The applicant submitted a Green Travel Plan which outlines the following strategies to reduce reliance on private vehicle trips:

- One car share space
- Car Pooling Forum
- Village Bus
- \$100 Pre-paid Opal Card for residents on move in day.
- 10 x electric bike share scheme for residents.
- Transport Access Guide

The measures are considered to be best practice and appropriate for the primary seniors living use. Conditions are included requiring the refinement, ongoing implementation and review of the Green Travel Plan.

9.1.2 Desired Future Character

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

- The proposal provides a mix of residential typologies in close proximity to Epping station.
- The proposed buildings are of high architectural quality.
- The proposal provides a variety of active retail and civic/community uses on the lower levels to serve the needs of the local population.
- The front setback to Oxford Street will continue to be publicly accessible, adding to the public domain.

9.1.3 Tower Floorplates

The tower floorplate control is based on Gross Floor Area (GFA). Gross Floor Area does not include balconies or the tower circulation core which also contributes to the external bulk of a building. Two buildings with the same floorplate GFA could have different external footprints, and as such one building would be bulkier in appearance than the other. In this case, the proposed tower would have an external footprint of approximately 1,110m². A comparison of other towers in the vicinity is provided in the table below:

DA Ref	DA Address	Tower	GFA	External
DA/681/2015	20-28 Cambridge Street	South	815	1080
		North	843	1125
DA/314/2017	37-41 Oxford Street (concept envelope only)	N/A	800	1052
DA/585/2016	30-42 Oxford Street	East	488	681
		West	713	955
DA/468/2016	12-22 Langston Place	1	364	540
		2	661	874
		3	663	890
DA/365/2016	35 Oxford Street	N/A	204	281
DA/1063/2016	2-4 Cambridge Street	N/A	330	562
DA/237/2017	24-36 Langston Place	N/A	329	473
DA/485/2016	44-48 Oxford Street	East	490	655
		West	473	668
DA/586/2018	29-33 Oxford St & 6-14 Cambridge St	N/A	865	1110
	Compared to Biggest to date (biggest to date complied with height)		8%	-1%
	Control		700	None
	Compared to Control		24%	N/A

DA/314/2017 was allowed a floorplate of up to 800m² in circumstances in which it was desirable to concentrate development in one part of the site. As the subject application has a similar requirement, such a floorplate is considered to be acceptable. Further, the external footprint is similar to the towers at 20-28 Cambridge Street (although they comply with the height limit).

9.1.4 Height

The number of storeys non-compliance relates directly to the height of the building. Discussion on the height non-compliance is provided in Section 7.10.1 above.

9.1.5 Podium Height

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

- The first two storeys of the podium are of a darker brick which provides a visual relationship with the two storey podiums adjoining and the upper levels are a lighter colour brick which gives a less bulky appearance.
- Increasing the podium height allows for a residential aged care facility to be provided on site. Aged care facilities have certain operational requirements, such as number of beds per floor and number of beds per facility, to be economically viable.
- A large podium accommodates more of the allowable FSR, allowing it to be concentrated away from the heritage building and allowing space for a school to be retained on site.
- Due to the slope of the site, and its setback from the eastern boundary, the podium will not be prevalent when viewed from Oxford Street, the primary frontage.

9.1.6 Podium Use (Commercial Floor Space)

The DCP recommends that podiums be commercial floor space. The proposal includes one tower the podium of which is occupied by a Residential Aged Care facility.

While the Residential Aged Care facility, school, church, church hall are not classified as commercial floor space they do constitute 'employment generating uses' on the site. When adding in the retail unit and after school care, which can be considered commercial services, the percentage of floor space which generates employment represents 33% of the proposed floor space. This is far in excess of the average 4.7% of commercial floor space that recent developments in the Epping Town Centre have provided². As such, on a merit basis, the proposal is considered to be commendable in this regard.

9.1.7 Tower Setback (to Cambridge Street)

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

- The average setback from the street is approximately 6m.
- Moving the tower closer to Cambridge Street reduces overshadowing impacts on the school and the adjoining residential tower approved to the south.
- The proposal is generally consistent with the prevailing setback along Cambridge Street (see Figure 17 below).

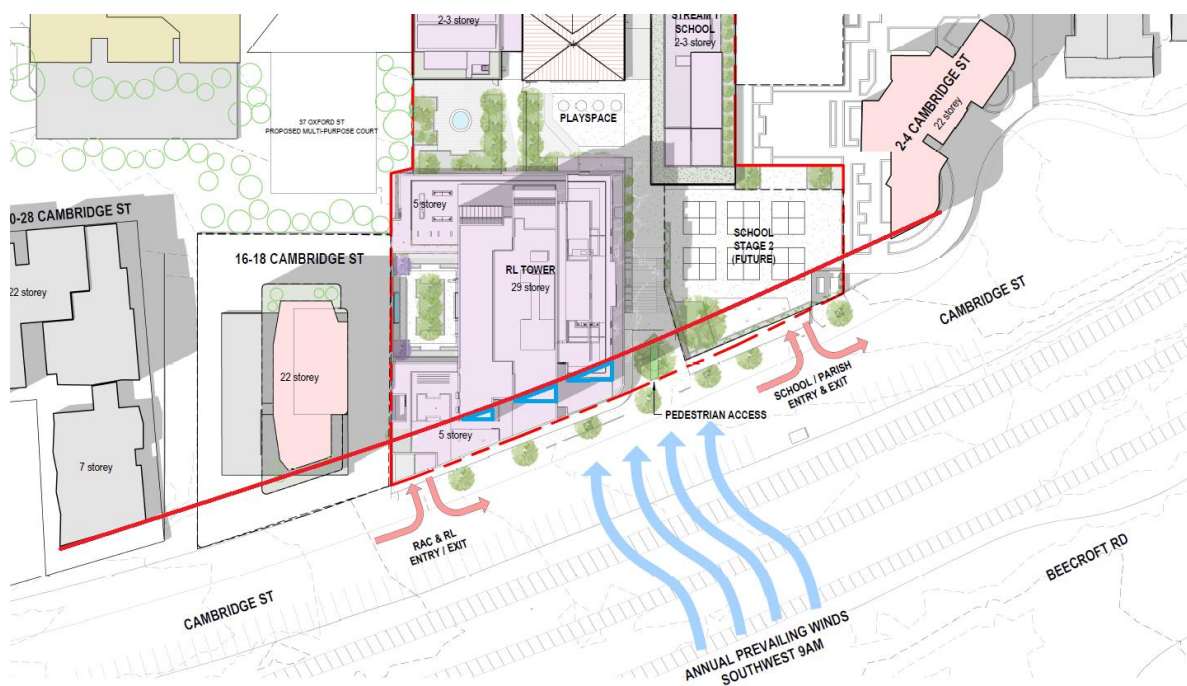


Figure 17. Prevailing tower setback along Cambridge Street (red line). Breaching elements of the proposed tower are shown in blue.

9.1.8 Frontage Activation

The non-compliant street activation of Oxford Street is considered to be acceptable for the following reasons:

- It is appropriate, from a heritage perspective, to provide voids beside the heritage church to protect its curtilage.
- The proposal represents an increase in activation relative to the existing situation.

² Percentage commercial GFA provided by 7 most recent major developments approved in the Epping Town Centre (former Hornsby side) since 2016. Specifically, DA/237/2017, DA/314/2017, DA/1063/2016, DA/468/2016, DA/585/2016, DA/365/2016, DA/681/2015 (Hornsby Ref).

10. Other Planning Controls

10.1 Epping Town Centre Public Domain Guidelines

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

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

Control	Requirement	Proposal	Compliance
Frontage	2-3 storey frontage with upper levels set back at least 12m (Oxford Street only)	2 storey	Yes
Village Street	Ground Floor Retail Awning	Oxford Street – No retail or awning. Cambridge Street - Ground Floor Retail Awning provided	No (acceptable in heritage context) Yes
Widened Footpath	6m (5m kerb to podium recommended by Council's Urban Design team, can be extended in future by moving kerb out)	4.5m – 4.7m	No (Minor)
Pedestrian Links/Laneways	As shown in figure below.	See discussion below.	Yes

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

Pedestrian Links/Laneways

The DCP and the Guidelines do not require the provision of a through site link on this site.

The DCP recommended provision of a through site link between Oxford Street and Cambridge Street on sites to the north (see Figure 18 below). During the course of the assessment of DA/314/2017 relating to these sites to the north it was considered that such a link would not be appropriate on the site and the link was not provided.

It was suggested at the time that a link may be more appropriate on the subject site.

The proposal includes a through site link. However, for security reasons, the link will primarily only be open to occupants of the site. The owner may choose to open the link for community events. As the link is not a requirement of the controls, the lack of a public link is not considered to be reason to refuse the application.

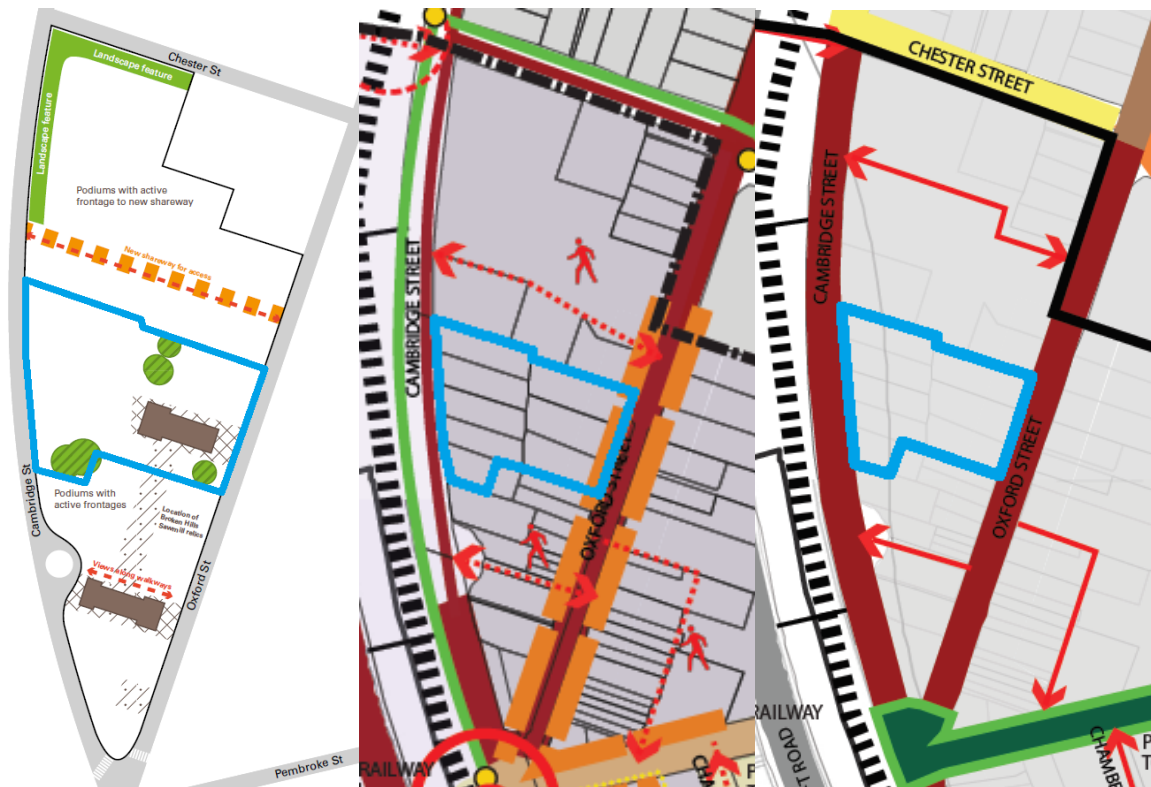


Figure 18. Extract from Epping Town Centre Guidelines (subject site in blue, dashed red lines indicate desired pedestrian links/laneways).

10.2 Parramatta Public Domain Guidelines

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

11. Planning Agreements

No planning agreements relate to the site.

12. The Regulations

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

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

13. The Likely Impacts of the Development

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

14. Site Suitability

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

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

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

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

15. Submissions

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

The advertisement ran for a 21-day period between 5 September and 26 September 2018. Fifteen (15) submissions were received during this notification.

As per Council resolution, as there were more than 7 objections a recommendation was made to the applicant to partake in a Council facilitated conciliation with the objectors. A conciliation meeting was held 15/11/18, attended by the applicant and 3 objectors. During the course of the conciliation the applicant answered questions and provided their justification for the development.

The revisions made to the application post-advertisement resulted in reductions to the scale of the built form and intensity of use of the proposal. As such, further advertisement was not considered to be necessary.

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

Issues (Number of submissions which raise issue)	Comment
Height breach (11)	The height breach is considered to be acceptable as it allows for development to be concentrated away from the heritage building and the primary Oxford Street façade, allows for a school to be retained on site, and minimises overshadowing on adjoining properties to the south. For further justification see section 7.10.1.
Traffic impact (8)	The Seniors Living SEPP does not allow Council to restrict seniors parking. The Presbytery parking is restricted in keeping with the maximum controls in the Hornsby DCP. The school replaces an existing school and as such is considered likely to result in a negligible impact on traffic. The proposed off-street pick-up/drop-off facilities will result in an improvement to the current 'school run' disruption.
Wind impact (8)	The applicant has submitted a wind tunnel test report which demonstrates that the proposal, subject to tested amelioration measures, would not result in unacceptable wind impacts on the site, the public domain, or adjoining properties.
Overshadowing impact (5)	The proposed tower is well separated from adjoining/nearby residential properties to the south. The applicant has demonstrated these properties would not suffer unacceptable impacts. See section 7.9.3 for further justification.
Lack of deep soil/trees (5)	The amount of deep soil and permeable ground is considered to be appropriate given the site constraints. See section 7.9.3.1 for further justification. The proposal results in a net increase in tree planting on site.

Fire safety/evacuation for seniors (4)	The applicant provided a draft Emergency Management Plan detailing the evacuation procedures for the Residential Aged Care facility. Two tower lifts will be fitted as 'firefighting lifts' so that they can operate during a fire. Fire Safety of the Independent Living Units is covered by the Building Code of Australia. A condition requires additional emergency measures and refinement of the Emergency Management Plan.
Height of podium (4)	While the proposal breaches the recommended podium height control it is considered to be acceptable for the reasons outlined in section 9.1.5 above.
Size of floorplate (4)	The proposed floorplate has been significantly reduced since exhibition. While still not compliant, the floorplate is considered to be acceptable for the reasons outlined in section 9.1.3.
Lack of solar access for units (4)	The applicant has demonstrated sufficient solar access for the proposed units. See section 7.9.3.2 for further justification.
Lack of play space for children/overshadowed (4)	There are no play space area or solar access planning standards for schools. Centre based child-care centres require 7sqm of outdoor space per child. Using this as a guide, the proposal includes 1497sqm of outdoor space for 210 students (7.1sqm/child). As such, the amount of play space is considered to be acceptable. Residential uses required solar access to 50% of their open space area for more than 2 hours mid-winter. The applicant has demonstrated that 35% of the play space will receive solar access for at least 2 hours during midwinter school hours. While less than recommended for residential uses, the lack of solar access is not considered to be reason to refuse the application given the local centre nature of the school.
Construction amenity impacts (3)	Conditions are included requiring construction traffic and noise management plans, restricting construction times and restricting noise levels, to ensure amenity impacts on adjoining and nearby properties are minimised.
Uncertainty regarding temporary school relocation (2)	This is not a planning consideration.
On-street parking pressure (1)	The consent includes a condition restricting future occupants from participation in any future Council resident parking permit scheme. As such Council retains the ability to restrict on-street parking in such a way as to optimise availability.
Over provision of car parking (1)	As outlined above, the Seniors SEPP does not allow Council to limit parking. Parking for commercial uses is shared to reduce its total quantum and the Presbytery parking is limited as per the DCP.
Not in keeping with character of area (1)	The area is transitioning to a high density mixed use local centre. The tower floorplate is not considered to be in keeping with the character of the area and forms reason to refuse the application.
Rezoning inappropriate (1)	The proposal does not include any rezoning.
State government should have no power over local government (1)	State Environmental Planning Policies are higher order planning instruments than Local Environmental Plans.
Energy consumption (1)	The application complies with the relevant energy requirements under SEPP BASIX and includes the provision of photovoltaics.
Climate change (1)	The application complies with the relevant sustainability targets under SEPP BASIX.

Lack of infrastructure (1)	The applicant would be required to pay contributions towards the provision of infrastructure. See Section 18 below for more information.
No controls for high rise seniors living, applicant picking and choosing controls that suit (1)	Regardless of the applicant's justification, the application has been assessed against the relevant seniors living controls and is considered to be acceptable. See Section 7.8 above for more information.
Seniors housing not permissible in zone (1)	Seniors housing uses are permissible subject to the Senior Living SEPP.
Lack of communal open space (1)	The proposal complies with the communal open space requirements under the ADG.
Removal of trees inappropriate (1)	The landscape plan outlines that the proposal would result in a net increase in tree planting on site.
Setbacks / separation (1)	The proposed separation from adjoining properties complies with the requirements of the ADG (see section 7.9.3 above). While the proposal breaches the recommended tower front setback control it is considered to be acceptable for the reasons outlined in section 9.1.7 above.
Loss of privacy (1)	The proposed units are considered to be sufficiently separated/screened from existing/proposed adjoining/nearby residential units and communal open spaces.
Proximity to Metro tunnel (1)	Sydney Metro have reviewed the proposal and endorsed the proposed subject to concurrence conditions which will protect the Metro tunnel.

Table 13: Summary of public submissions to the proposal.

16. Public Interest

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

17. Disclosure of Political Donations and Gifts

No disclosures of 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	\$ 3,940.69
Community Facilities	\$ 161,295.40
Drainage & Water Quality	\$ 35,660.45
Open Space & Recreation	\$ 1,410,181.29
Public Domain	\$ 300,406.02
Roads & Shared Paths	\$ 161,710.00
Total	\$ 2,073,193.85

Table 14: EPAA 1979 Section 7.11 Calculation

19. Summary and Conclusion

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

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

The request to vary the height standard is supported as the proposal complies with the objectives of the zone/standard, does not have an unacceptable impact on the amenity of any adjoining/nearby properties, and retention of the heritage church and school uses on the site constrain the developable area.

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

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

20. Recommendation

- A. **That** the Sydney Central City Planning Panel approve the variation to the building height standard in Clause 4.3 of HLEP 2013, being satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development will be in the public interest as it is consistent with the objectives of the particular standards and the objectives for development within the zone and the site specific reasons discussed;
- B. **That** the Sydney Central City Planning Panel, as the consent authority, grant **Deferred Commencement Consent** to Development Application No. DA/586/2018 for construction of a 29 storey mixed use tower comprising 132 bed residential care facility, 172 independent seniors living units, 3 church presbytery units and ancillary offices/shops (northwest corner of site); 2-3 storey church hall and administration building (northeast corner of site); 2-3 storey primary school building (southern side of site); 1 retail unit (southwest corner of site); 316 basement car parking spaces including school drop-off/pickup (western side of site); alterations and additions to existing heritage church building; use of part heritage church building for school-based child care; landscaping; tree removal; site amalgamation and stratum subdivision; public domain works; following demolition of existing school buildings, church presbytery and church administration buildings at 29-33 Oxford Street & 6-14 Cambridge Street Epping NSW 2121 (Lots 1-4 DP973521, Lot A DP375632, Lots 23-25 DP 758390), subject to the deferred commencement condition under Schedule 1 of Appendix 3; and
- C. **That** submitters be notified of the decision.



planning consultants

Clause 4.6 Variation Request to the Height of Buildings Development Standard under Clause 4.3 of Hornsby LEP 2013

Proposed Educational Establishment, School-based Child Care, Place
of Public Worship, Presbytery, Seniors Housing, Retail and Subdivision

29-33 Oxford Street and 6-14 Cambridge Street, Epping



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1 Introduction

1.1 Commission

DFP has been commissioned by Stockland Development (“Stockland” or “the Applicant”) to prepare a request pursuant to Clause 4.6 of *Hornsby Local Environmental Plan 2013* (the LEP) for the proposed development for Seniors Housing, an educational establishment, school-based child care, place of public worship, retail and stratum subdivision (the Proposal) at 29-33 Oxford Street and 6-14 Cambridge Street, Epping (the Site).

The Proposal is described in detail in Section 4 of the Statement of Environmental Effects (SEE) report prepared DFP dated June 2018 as amended by the Response to Requests for Information (the RFI Response) prepared by DFP dated December 2019 and includes construction of a 29-storey building over the north-western portion of the Site with a 5-storey podium and tower setback above. This building will contain a residential care facility (RCF) within the podium levels and independent living apartments (ILAs) for Seniors within the tower above.

The proposed tower exceeds the 72m Height of Buildings limit under Clause 4.3 of the LEP having a maximum building height of 96.5m measured to the top of the lift overrun/plant room and 95.45m to the roof of the topmost habitable floor level. Notwithstanding:

- the proposed development is consistent with the objective of the development standard pursuant to cl4.3(1)(a) of LEP 2013, is consistent with the relevant objectives of the B2 Zone and therefore, is in the public interest;
- the proposed height will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties and the locality will be minimised to a reasonable level and the development is suitable given the site constraints, development potential and infrastructure capacity of the locality; and
- the Height of Buildings development standard has been virtually abandoned by consent authorities in this locality as evidenced by numerous significant cl4.6 variations supported for approved developments including the recently approved 95.67m high (30-storey) building on the land to the north of the Site.

In addition, there are sufficient environmental planning grounds to justify the contravention in this instance including:

- the Proposal complies with the 4.5:1 floor space ratio (FSR) development standard applicable to the land, having a FSR of 4.108:1 and therefore, the additional building height is not premised upon achieving additional density. Indeed, the proposal has been amended in consultation with Council Officers to refine the slender nature of the tower and this has reduced the FSR from that originally proposed;
- a lack of significant adverse environmental amenity impacts;
- conservation of the heritage item within the Site and provision of an expansive landscaped curtilage to promote its primacy in the Oxford Street streetscape and visual connection from farther afield;
- retention of a school use on the Site and reconstruction to provide a 21st Century and best practice learning environment to cater for the demands of the increasing residential population;
- allowing the future expansion of the school into the south-western corner of the Site without significant disruption to existing students with the school catering for demands arising from the growing residential population in the locality;
- improvements to Parish facilities to be used in conjunction with the school and provide opportunities for other community uses to the wider benefit of the locality;
- provision of a built form which, notwithstanding the building height proposed, will contribute positively to the urban landscape whilst minimising potential adverse impacts

1 Introduction

on surrounding properties and the public domain in terms of views, solar access, visual privacy and acoustic privacy;

- significant traffic network and public domain improvements associated with relocating school drop-off/pickup from the street frontage to within the Site, provision of church car parking on-site and generation of a very minor increase in traffic which will not be discernible in the surrounding road network and is less than a traditional residential scheme and far less than an alternate, FSR-compliant commercial scheme; and
- provision of a Green Travel Plan which includes measures to promote the use of public transport patronage and encourage walking and cycling.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the Height of Buildings development standard.

1.2 Material Relied Upon

This cl4.6 Variation Request has been prepared by DFP based on the Architectural Drawings prepared by Architectus and other supporting drawings and reports which are appended to the SEE and the RFI Response including the revised Urban Design Approach Report of March 2020.

This cl4.6 Variation Request should be read in conjunction with the detailed environmental planning assessment contained in those documents.

2 The Nature of the Variation

Clause 4.3 and the Height of Buildings Map of the LEP designate a maximum Height of Buildings of 72 metres for the Site Map (see **Figure 1**).

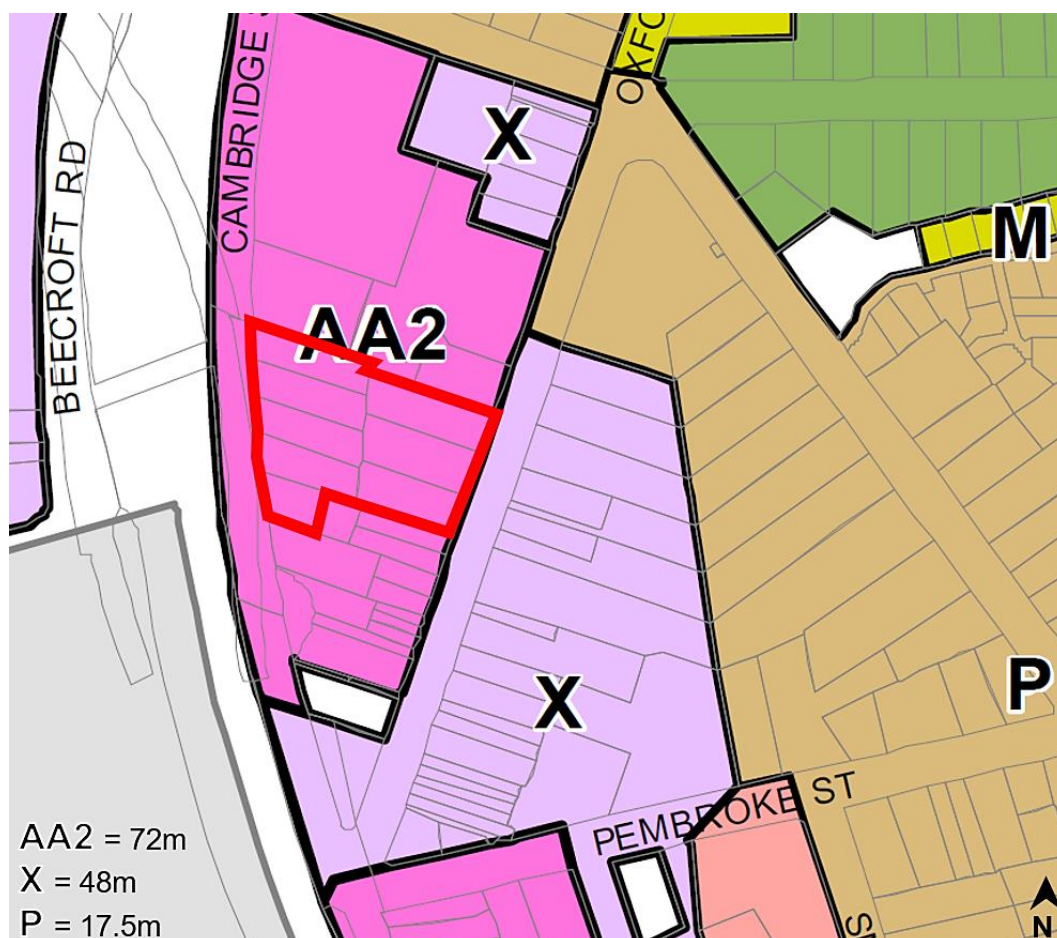


Figure 1 Extract of Building Height Map (Hornsby LEP 2013)

The LEP defines **building height** (or **height of building**) as:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposed Seniors Living tower does not comply with the 72m Height of Buildings development standard under cl4.3 of the LEP 2013 as follows:

- The maximum building height is 96.5m measured from the existing ground level at RL 93.4m to the western edge of the lift overrun/plant room at RL 189.9m. This represents a variation of 24.5m or 34%. The lift overrun/plant structure is limited to an area of approximately 195m² (within a Site of 7,288m²) set back approximately:
 - 24m from the northern boundary;
 - 81m from the Oxford Street frontage;
 - 34-53m from the southern boundary; and
 - 13.5-16m from the Cambridge Street frontage.

2 The Nature of the Variation

- The height of the parapet to the roof over the topmost habitable floor level (Level 28) is 96m measured from the existing ground level at RL 92.8m to the north-western corner of this level at RL 188.5m. This represents a variation of 23.15m or 32.2%. Levels 27-28 are set back approximately:
 - 12.59m from the northern boundary;
 - 65-68m from the Oxford Street frontage;
 - 33-53m from the southern boundary; and
 - 3.3-6.9m from the Cambridge Street frontage.

The extent of the non-compliance is shown in extracts of the contextual elevations at **Figure 2** and **Figure 3** and an extract of the north-south Section of the tower at **Figure 4**.

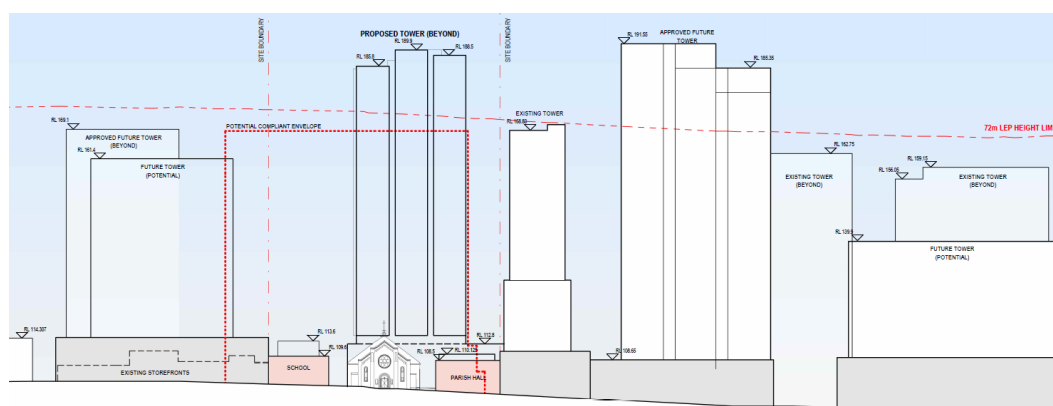


Figure 2 Contextual elevation from Oxford Street showing the proposed building height in comparison to the building height limit, built form controls and surrounding built context.

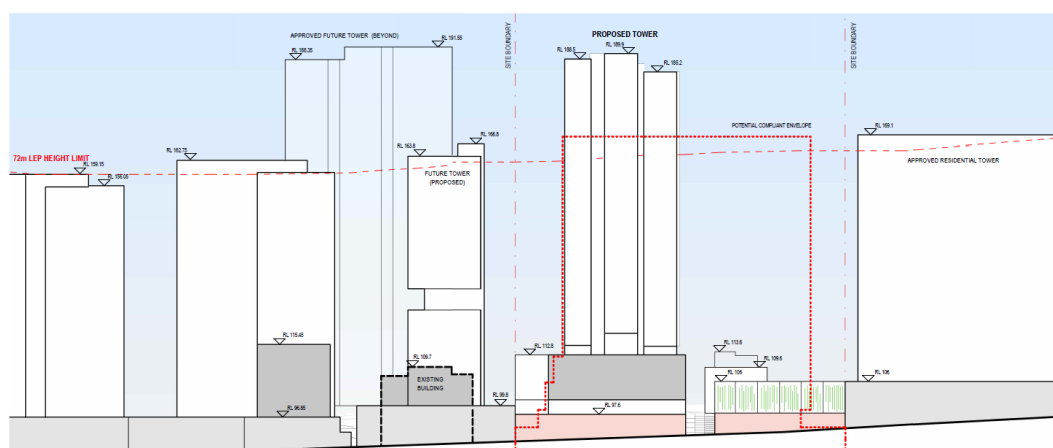


Figure 3 Contextual elevation from Cambridge Street showing the proposed building height in comparison to the building height limit, built form controls and surrounding built context.

2 The Nature of the Variation

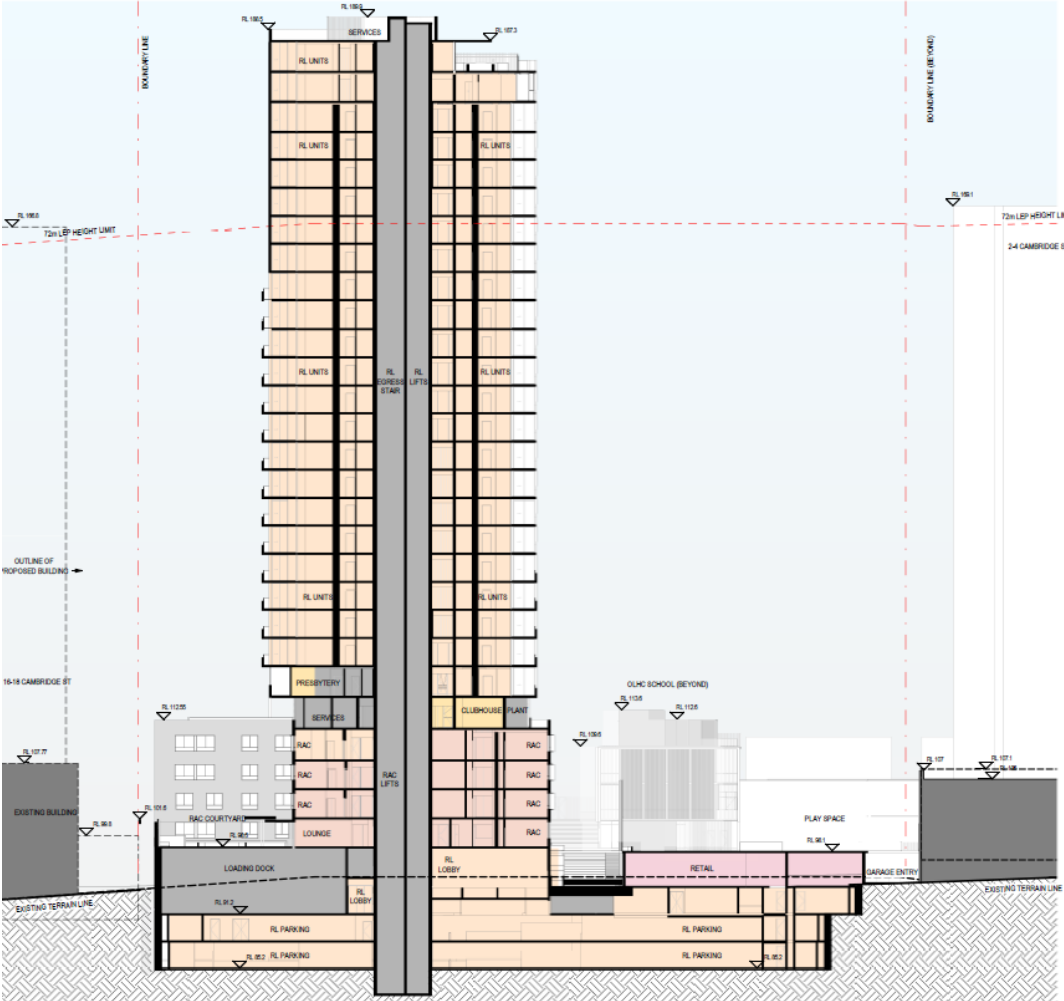


Figure 4 Extract of North-South Section through the proposed tower.

3 Clause 4.6 Assessment

3.1 Clause 4.6(1) - Objectives

Clause 4.6(1) of the LEP states the objectives of the clause as follows:

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

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives or that the consent authority be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Accordingly, the remaining subclauses of cl4.6 provide the preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument. These preconditions are discussed hereunder.

3.2 Clause 4.6(2) – Consent May be Granted

Clause 4.6(2) provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The Height of Buildings control in cl4.3 of the LEP is a development standard, defined in Section 1.4 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 development standard is not expressly excluded from the operation of cl4.6 (see **Section 3.7** and **Section 3.9**).

3.3 Clause 4.6(3) – Consent Authority to Consider Written Justification

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (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.*

This report and information referred to herein, constitute a written request for the purposes of cl4.6(3) and the following subsections address the justifications required under that subclause.

3 Clause 4.6 Assessment

It will be a matter for the consent authority to consider this written request prior to granting development consent to the DA and as discussed in the Judgment of *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* ('Al Maha') the consent authority or the Court must, in determining the DA, clearly enunciate that it has satisfied itself of the matters in cl4.6(4). In the case of a consent authority, this might be by way of a statement in the reasons for approval authored by the consent authority.

3.4 Clause 4.6(4)(a) – Consent Authority to be Satisfied

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

- (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.*

The following subsections of this written request address these matters.

3.4.1 Clause 4.6(4)(a)(i) - Written request to adequately address the matters in cl4.6(3)

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that this written request adequately address the matters in cl4.6(3) as follows:

- (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.

Compliance is Unreasonable or Unnecessary

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ('Micaul') Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

It is considered that the impacts of the proposed development can be appropriately minimised and mitigated as described within this Section under the heading - **Sufficient Environmental Planning Grounds**.

Furthermore, the proposed development is considered to be consistent with the objective of the Height of Buildings development standard which is stated at cl4.3(1) of the LEP as follows:

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

In accordance with cl4.6(3)(a) of LEP 2013, notwithstanding the non-compliance with the maximum building height development standard, the Proposal is considered to achieve this objective for the following reasons:

- the Proposal complies with the 4.5:1 maximum FSR applicable to the Site having an FSR of 4.108:1 and allows for expansion of the school in the future subject to demand whereby the FSR would be 4.291:1 which still complies with the FSR limit. Accordingly, the proposed development and this cl4.6 variation request are not premised on achieving the maximum or additional density (i.e. FSR above the 4.5:1 limit) on the Site;

3 Clause 4.6 Assessment

- the Site has an area of 7,288m² and has the potential - via ability to provide substantial setbacks to surrounding sites, particularly those to the south - to accommodate a building of the height proposed that would not be possible on much of the land in this part of the Epping town centre as such sites are much smaller and development similar to that proposed would require a variation to the FSR development standard and potentially have considerable adverse environmental impacts;
- the Site contains a local heritage item (the Our Lady Help of Christians Catholic Church) which, notwithstanding the underlying 72m height standard, constrains the height of buildings on the Oxford Street side of the Site in order to respect the visual heritage curtilage of the church. Accordingly, floor space would have to be transferred to the Cambridge Street side of the Site which would result in a large floorplate commercial building or a small and inefficient southern residential tower floorplate due to the geometry of the south-western corner of the Site and prevailing setback and building separation controls (see further discussion below). Accordingly, these constraints provide an opportunity for a taller tower form positioned in the north-western corner of the Site, set well back from the primary views of the church from Oxford Street and set well back from the southern boundary to minimise potential overshadowing impacts on land in that direction. A singular taller tower in the north-west corner of the Site also enable a visual connection to the church building when viewed from the west along Carlingford Road;
- the condensing of the allowable FSR into the taller tower form enables the remainder of the Site to be redeveloped in a low density form that will create a vast quantum of unimpeded airspace in the heart of the town centre that would not be achieved by a large floorplate commercial building or multiple height-compliant towers;
- the Site has ready access to existing essential services and infrastructure such as water, sewer, electricity, gas and telecommunications and whilst some augmentation of these services may be required, this is not considered to be an impediment to development of the Site in the form proposed or indeed a height compliant development with the same or greater FSR;
- the Traffic Impact Assessment undertaken for the Proposal indicates that:
 - The proposed school merely replaces existing facilities on the Site and together with retention of the church, these uses do not give rise to any additional traffic;
 - The on-site school drop-off/pickup facility will relocate the existing operations from Cambridge Street to within the Site which will be a positive outcome for users of Cambridge Street and the wider road network;
 - The traffic generation characteristics of Seniors Housing are different to typical residential and commercial development with residential aged care facilities and retirement living apartments generating minimal traffic in the typical AM and PM commuter peak periods as a result of residents not being able to drive at all or not needing to drive in the peak periods.

The additional traffic generation of the proposed RCF and ILAs equates to 19 vehicle trips per hour in the AM peak (29 vehicle trips less than standard high density residential units at the same FSR) and 29 vehicle trips per hour in the PM peak (9 vehicle trips less than standard high density residential units). Accordingly, this small amount of additional traffic would not have a discernible impact on the operation of the surrounding road network when combined with the benefits provided by relocating the school drop-off/pickup activities within the Site and the provision of on-site parking for the church uses.

Indeed, the proposal will result in a significantly better outcome from the Site in terms of a traffic, compared to a height and FSR compliant commercial development, which might generate in the order of 525 vehicle trips in the AM peak and 394 vehicle trips in the PM peak.

3 Clause 4.6 Assessment

In *Wehbe v Pittwater Council* [2007] LEC 827 (“Wehbe”), Preston CJ expressed that one way in which a request to vary a development standard might demonstrate that compliance with the development standard is unnecessary and unreasonable is if it can be demonstrated that the development standard has been virtually abandoned or destroyed by the consent authority’s own actions in granting consents departing from the standard.

It is considered that the Height of Buildings development standard has been virtually abandoned in this part of the Epping town centre as consent authorities, on the recommendations of Council Officers, have supported numerous cl4.6 variations relating to building height as described in **Table 1**.

Table 1 Summary of Approved cl4.6 Variations in the Epping Town Centre

Address	DA Ref #	Description
30-42 Oxford Street	585/2016	Approved by the Panel on 20 July 2016 (DA) and 5 October 2017 (s4.55) for retention of a heritage item and construction of 2 x 17-storey residential tower including a cl4.6 request for a 5.22m variation to the 48m building height limit.
35 Oxford Street	365/2016	Approved by the Panel for 1 x 22-storey tower including a cl4.6 variation request for a 2m variation to the 72m building height limit and a cl4.6 request to FSR to exceed the 4.5:1 by 0.24:1.
37-41 Oxford Street	314/2017	Approved by the Panel on 7 March 2018 for a Stage 1 Concept DA comprising a 30 storey shop-top housing development including a cl4.6 request for a 23.67m variation to the 72m building height limit.
44-48 Oxford Street	485/2016	Approved by the Panel on 10 October 2018 for 1 x 15 and 1 x 18 storey towers including a cl4.6 request for a 14.2m variation to the 48m building height limit.
50 Oxford Street	89/2017	Approved by the Panel on 6 September 2017 for a multi-storey educational establishment located between Oxford Street and Essex Street including a cl4.6 request for a 4.5m variation to the 17.5m building height limit.
2-4 Chester Street	136/2015	Approved by the Panel on 1 July 2015 for a 1 x 15-storey tower including a cl4.6 request for a 0.6m variation to the 48m height limit
12-22 Langston Place	234/2016	Approved by the Panel on 2 August 2017 for 1 x 19, 1 x 24 and 1 x 29 storey towers including a cl4.6 request to exceed the 72m building height limit by 20.85m and 5.3m for 2 of the 3 towers.
24-36 Langston Place	237/2017	Approved by the Panel on 3 October 2018 for a 22 storey shop-top housing development including a cl4.6 request to exceed the 72m building height limit by 15.8m.

In particular, the following DAs included cl4.6 variations to the building height development standard of a magnitude similar to the Proposal:

- DA/314/2017 - 37-41 Oxford Street – Control 72m; Approved 95.67m (RL 192.75) – 33% variation;
- DA/485/2016 – 44-48 Oxford Street – Control 48m; Approved 62.2m (Tower A) – 29.6% variation; 51.12m (Tower B) – 6.5% variation;
- DA/468/2016 - 12-22 Langston Place – Control 72m; Approved 92.85m (RL 195.10) (Tower 1) - 28.9% variation; 77.3m (Tower 2) - 5.7% variation; 62.4m (Tower 3) - 13.3% below;
- DA/237/2017 – 24-36 Langston Place – Control 72m; Approved 87.8m (RL 189.80) – 21.9% variation; and
- DA/585/2017 - 30-42 Oxford Street – Control 48m; Approved 53.22 (RL 156.72) – 10.9% variation.

3 Clause 4.6 Assessment

Whilst the cl4.6 variations for each of these developments involved some site specific circumstances which supported the height variations (as does this Variation Request), it demonstrates that the building height development standard, when considered in isolation of FSR, setbacks and environmental impacts, is considered to be a blunt tool in achieving the strategic aims for redevelopment in the Epping town centre and has been varied with sufficient regularity such that it can be considered to be abandoned.

Of particular relevance in this instance is the recently approved Concept DA for the northern adjoining 37-41 Oxford Street, where the Panel approved a 33% variation to the same height development standard to achieve a greater area of “green space” to the rear of the building. The proposed development comprises a similar objective to provide an open area to the rear of the church whilst minimising the scale of buildings toward the Oxford Street frontage, keeping the scale of buildings along the southern boundary low and consolidating the built form in the optimum location to achieve a vast quantum of clear airspace and maximise solar access to the town centre and approved / future developments to the south.

Sufficient Environmental Planning Grounds

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (“Four2Five”) Pearson C indicated there is an onus on the applicant to demonstrate, through the written request, that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

In Initial Action, Preston CJ indicated that it is reasonable to infer that “*environmental planning grounds*” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act. In addition to the above grounds, in Micaul and Initial Action, Preston CJ clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

The environmental planning grounds that support the proposed variation to the Height of Buildings development standard in this circumstance are detailed in the SEE, supported by the Design Statement and Urban Design Approach Report and summarised hereunder.

The Site is very large, having an area of 7,288m². Whilst this in theory provides a substantial area within which to construct multiple tall buildings within the building height limit, the Site is constrained by the heritage listed church fronting Oxford Street. In the context of another heritage item in Oxford Street being approved for demolition (44-48 Oxford Street), the retention and celebration of the primacy of the church in the Oxford Street streetscape is considered to be a significant positive outcome for this Site and town centre. In addition, the retention of a primary school on the Site in the heart of a rapidly increasing population is considered to be a positive outcome that should be encouraged as should the forecourts fronting Oxford Street, that will be accessible by the public.

However, the costs of conserving the church and improving its primacy in the Oxford Street streetscape, providing new Parish facilities and providing a 21st Century best practice primary school to ensure the longevity of the Parish, have necessitated the landowners to partner with a development company to realise the orderly and economic development of the Site. Stockland Retirement Living was selected as the partner in this project and Stockland’s vision to deliver Seniors Housing on the Site provided the potential for a land use that was complementary to the school and that Parish activities.

The heritage conservation advice received during the formulation of the Proposal identified the need to constrain the height of buildings on the Site to the north and south of the church fronting Oxford Street to celebrate the primacy of the church. In this regard, it is noted that in approving the shop top housing development at 35 Oxford Street immediately to the north of the Site, the Joint Regional Planning Panel were satisfied that a future building of four storeys built substantially to the Oxford Street boundary in the north-eastern corner of the Site would

3 Clause 4.6 Assessment

be acceptable. The proposed development eschews such an idea and proposes a maximum height of 2-storeys for buildings to the north and south of the church, to be used for the new school and Parish buildings.

The initial schematics for the Site placed the school to the north although limitations to solar access to the school building and play spaces dictated that these be sited to the south of the church and the new Parish Hall to the north. Both of these structures have been designed to present as 2-storeys to Oxford Street and have been set back to enable view angles to the heritage item on approach along Oxford Street from the north and south. To the rear, as the topography slopes away down to Cambridge Street, these buildings include partial 3rd levels at the lower ground.

This layout necessitates that the school play spaces be located to the rear of the church and in the south-western portion of the Site where a degree of direct solar access can be achieved at various times throughout the day at mid-winter. This also provides a visual extension to the north-south green space achieved on the northern adjoining land.

Allowing for land in the south-western corner of the Site for a future school expansion means that the remaining land available to drive the economics of the revitalisation of the Site is located in the north-western corner. The siting of a tall building over a podium in this location is a better outcome than locating a structure in the south-western corner as it would preclude a future school expansion which is a key tenet of the Parish's objectives for the Site. In addition, the geometry of the Site in that location is such that a tower form that complied with the prevailing height standard, setbacks and building separation controls would have a very small and inefficient footprint. Furthermore, the north-western corner provides for substantial setbacks to maximise solar access to the approved development to the south, greater possibilities for separation from the church building and opportunities for modulation of the tower form to reduce the perceived scale (see **Figure 5**).



Figure 5 Montage of the site layout in the context of existing, approved and potential future development on surrounding sites (Architectus, 2019)

However, in order to achieve an FSR approaching the maximum for this Site of 4.5:1 (NB: the Proposal has an FSR of 4.108:1 and a future school expansion will increase this to 4.291:1), GFA has been located within the tower form over the north-western portion of the Site, causing a contravention of the building height development standard as described in Section 2.

3 Clause 4.6 Assessment

Strict compliance of this tower with the building height standard would require removal of Levels 21-28 which would result in a reduction in FSR of approximately 0.87:1 (i.e. approximately 6,350m²). This would reduce the overall FSR achieved for the Site to 3.22:1 which is vastly less than the maximum of 4.5:1 and would not economically support the delivery of Seniors Housing on the Site and the revitalisation of the church and school.

For a height-compliant residential-based scheme, the only realistic location to provide for additional FSR would be the south-western corner of the Site, although this would preclude a future second stream in that location and require that second stream to be built as an additional 2 storeys over the currently proposed 2-storey school building in the south-eastern corner of the Site. In order to achieve the requisite quantum of GFA for a two stream school, that building would also need to shift eastward, resulting in the loss of a mature tree and the currently proposed forecourt area (see **Figure 6**).

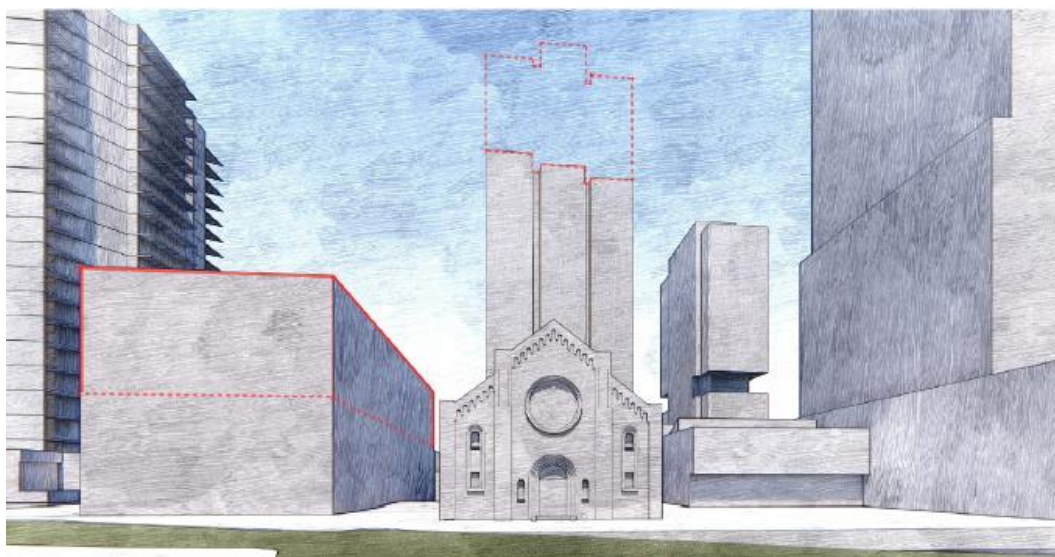


Figure 6 Oxford Street perspective of alternate residential/school scheme (Architectus, 2020)

Even then, the floorplate (GFA) of a southern residential tower would be no more 100m², allowing for only one apartment per level and the building would be limited to 8 storeys in height to comply with DCP setback controls and ADG building separation requirements (see **Figure 7**). The estimated FSR of such an option would be around 3.39:1, significantly less than the underlying standard of 4.5:1. The inefficiency of the southern tower would make it unfeasible to pursue, thereby reducing this FSR even further, to around 3.32:1.

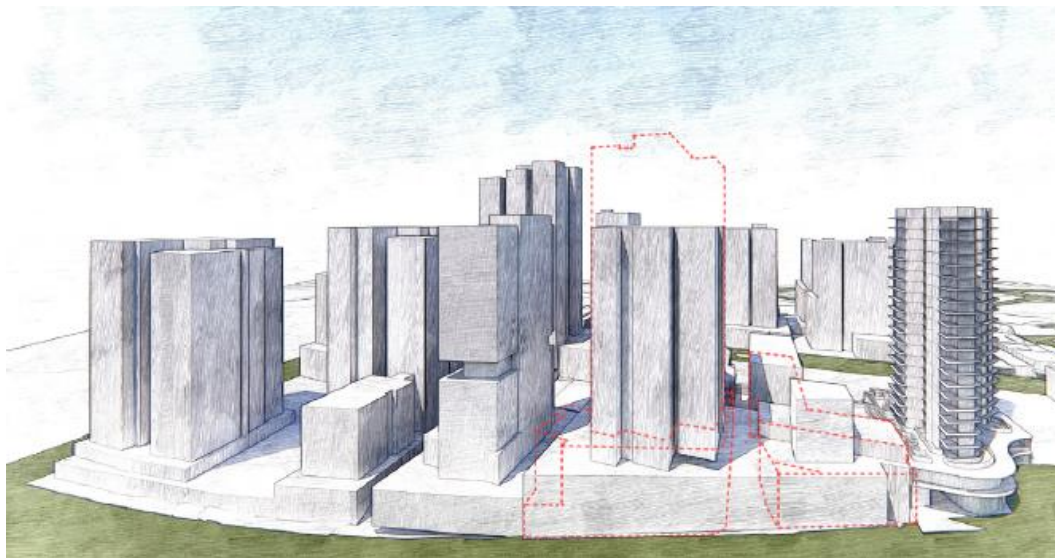


Figure 7 Cambridge Street aerial perspective of alternate residential/school scheme (Architectus, 2020)

3 Clause 4.6 Assessment

From a built form and visual impact perspective, it is also relevant to consider an alternate, height and FSR compliant commercial building over the western side of the Site. A commercial building would be permitted to have a floorplate of up to 1,200m², far greater than the proposed residential tower floorplate of 830m² and would not be limited by the building depth requirements of the ADG (see **Figure 8** and **Figure 9**).

Such a building would have a greater visual impact than the proposed taller single tower, would reduce solar access to the Site itself and surrounding land and preclude the visual permeability through the Site that the proposed design provides for. Such an alternate commercial scheme might result in a FSR of approximately 3.54:1, still considerably less than the underlying standard of 4.5:1 - an underutilisation and inefficient use of the land.

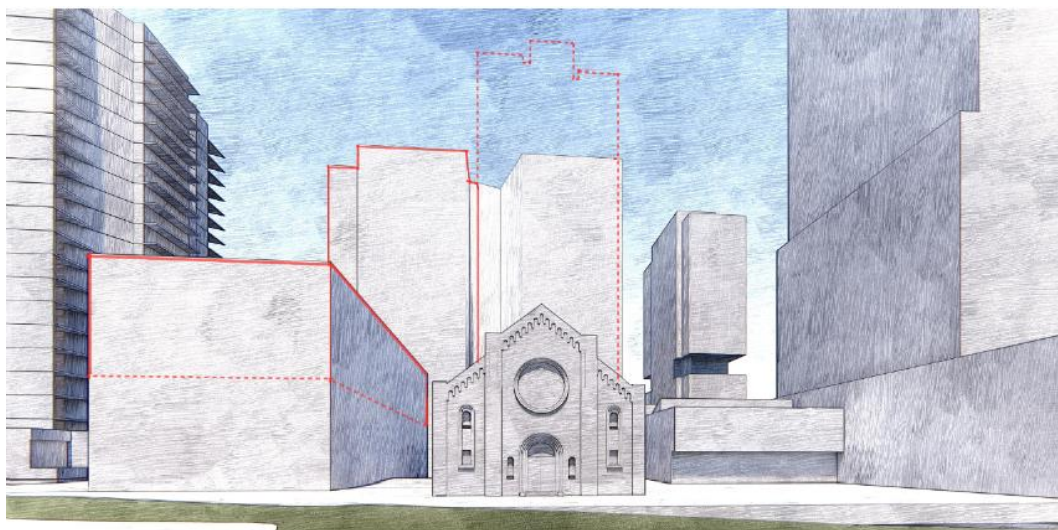


Figure 8 Oxford Street perspective of alternate commercial/school scheme (Architectus, 2020)

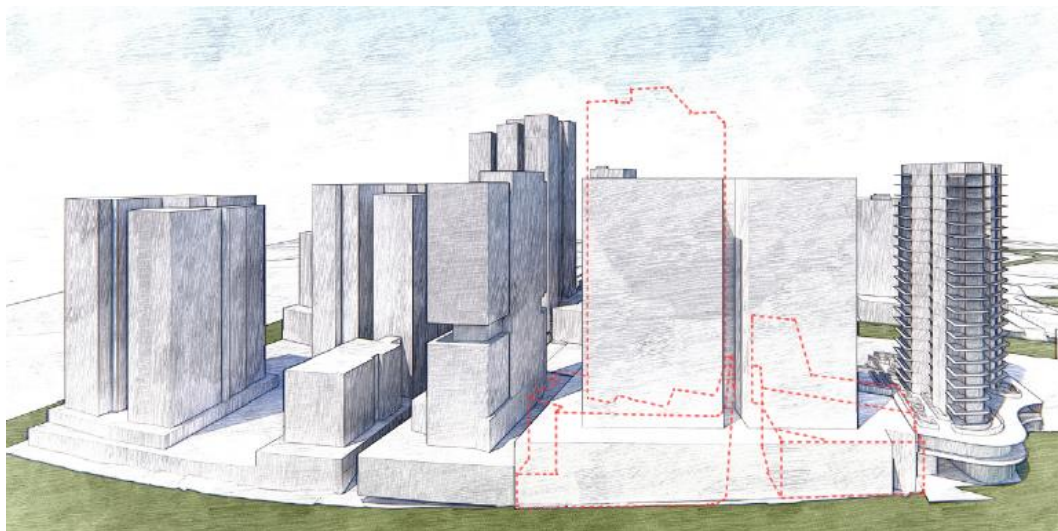


Figure 9 Cambridge Street aerial perspective of alternate commercial/school scheme (Architectus, 2020)

Notwithstanding the contravention of the height development standard, the Visual Impact Assessment undertaken for the Proposal demonstrates that from key vantage points in and around the town centre, the tower form will be mostly obscured by buildings that are existing, under construction or that are approved for construction as follows:

1. View Point 1 – When viewed from the corner of Oxford and Chester Streets, the Proposal will be completely obscured by the approved 30-storey tower at 37-41 Oxford Street and the envelope of a potential future building at 43-53 Oxford Street built to the 48m building height limit applicable to that site;

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2. View Point 2 – When viewed from Cambridge Street, just south of the corner of Chester Street, the Proposal will be almost fully obscured by the envelope of a potential future building at 16-18 Cambridge Street built to the 72m building height limit applicable to that site with only a narrow sliver of the proposed tower's western façade and a small portion of the podium visible;
3. View Point 3 – When viewed from Carlingford Road (near Kent Street) on approach to the Epping town centre, the tower will be visible and will obscure the recently completed building at 35 Oxford Street and a void to its north although that void will be completely filled by the approved 30-storey tower at 37-41 Oxford Street. The Proposal maintains clear airspace across the centre of the Site and the top of the rear of the church continues to be visible, albeit that this is difficult to perceive with the unaided eye in both the existing and proposed scenarios;
4. View Point 4 – When viewed from the roundabout in Cambridge Street, the proposed tower, podium and two storey structure comprising the retail space and upper level school play space will be visible at an oblique angle. From this angle, the proposed podium will not be perceived as an excessively high structure in the context of the podium on the southern adjoining site in the foreground, the topography sloping downward away from the viewing position and the curvature in the road along the Site's frontage. From this angle, the tower will not be perceived in the context of other tall buildings such that the proposed height would look incongruous;
5. View Point 5 – When viewed from the railway station exit at the corner of Cambridge Street / Oxford Street / Langston Place, the Proposal will be completely obscured by the approved 23-storey tower at 2-4 Cambridge Street;
6. View Point 6 – When viewed from the corner of Oxford Street / Pembroke Street / Langston Place, the Proposal will be almost fully obscured by the envelope of the approved 23-storey tower at 2-4 Cambridge Street with only a narrow sliver of the proposed tower's eastern façade visible; and
7. View Point 7 – When viewed from the corner of Beecroft Road and Bridge Street to the west of the railway line, the Proposal will be almost fully obscured by the envelope of the approved 23-storey tower at 2-4 Cambridge Street with only a narrow sliver of the proposed tower's western façade and a small portion of the uppermost level visible.

The form of the development as proposed also enables significant clear airspace over the Site which will be perceived from within the town centre and when viewed from further afield which would not be possible if multiple buildings were erected on the Site or a singular commercial building up to the 72m height limit.

With regard to the potential overshadowing impact arising from the contravention of the building height development standard, the detailed solar analysis prepared by Architectus demonstrates that:

- At 9am midwinter, the additional height will result in overshadowing of land to the west of Beecroft Road although the shadow cast by the Proposal would be within the shadow profile of future development on that land where the height limit is 72m;
- At 10am midwinter, the additional height will result in overshadowing of a small area of land on the western side of Beecroft Road although this would only last for a short period of time of approximately 15-30 minutes;
- At 11am midwinter, the additional height reduces solar access to the railway corridor;
- At 12pm midwinter, the additional height will reduce solar access to the north facing dwellings in the lower and mid-levels of the approved development at 2-4 Cambridge Street although this development achieved 100% compliance with the ADG solar access requirements and the reduction would be only 6% (5 units) and therefore, not exceed the limit of 20% specified as the design guidance in the ADG;

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- At 1pm midwinter, the shadow cast by the additional height will be located in the shadow of a potential future tower on 11-27 Oxford Street;
- At 2pm midwinter, the shadow cast by the additional height will be located in the shadow of a potential future tower on 11-27 Oxford Street; and
- At 3pm midwinter, the shadow cast by the additional height will be located in the shadow of potential future development on the eastern side of Oxford Street where the building height limit is 48m.

Accordingly, the shadow cast by the additional building height in excess of 72m is not considered to result in a significant adverse impact on the public domain or approved or potential future surrounding development sites. Indeed a fully compliant commercial building over the western side of the Site would likely result in an inferior solar access outcome for the approved residential development to the south.

With regard to traffic generation, a reduction in the height of the proposed tower to comply with the building height development standard would have a negligible impact on the traffic generation of the Site with only 3-5 less peak vehicle trips (PVTs) in the AM and PM peaks for a Seniors Housing development. Alternatively, a fully compliant commercial building might generate over 500 additional AM PVTs.

In summary, the contravention of the building height development standard is considered to have significant positive social, economic and built environmental outcomes for the Site, the town centre and the wider locality that would not be capable of being achieved with a fully compliant development, and the proposal minimises adverse amenity impacts to an acceptable level.

3.4.2 Clause 4.6(4)(a)(ii) – Public Interest

Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

An assessment of the proposal against the objective of the Height of Buildings development standard is provided at **Section 3.4.1** and **Table 2** provides an assessment of the proposed development against the objectives expressed in the Land Use Table to cl2.3 of the LEP for Zone B2 Local Centre (the B2 Zone) within which the Site is located.

Table 2 Assessment against the objectives of Zone B2 Local Centre	
Objective	Assessment
To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.	The Proposal is consistent with this objective because it includes retail floor space, business (Parish administration) floor space, educational, before and after school hours care and place of public worship facilities with spaces that can be made available for community uses to serve the needs of people who live in, work in and visit the local area.
To encourage employment opportunities in accessible locations.	<p>The Proposal is consistent with this objective because it:</p> <ul style="list-style-type: none"> • will create short term employment opportunities during the construction phase; • will create long term opportunities for full-time, part-time and casual employment associated with the school (teachers, administration staff, cleaners and maintenance/gardeners), Parish (clergymen, administration, cleaners and maintenance/gardeners), RCF (staff, medical professional, cleaners and maintenance/gardeners), ILAs (staff, cleaners and maintenance/gardeners) and retail; and • is located in a highly accessible location, being within 200m of the Epping railway and bus interchange and with excellent access to the regional road network.

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Table 2 Assessment against the objectives of Zone B2 Local Centre

<p>To maximise public transport patronage and encourage walking and cycling.</p>	<p>The Proposal is consistent with this objective because:</p> <ul style="list-style-type: none"> • it will locate education, housing, retail and commercial land uses within 200m of the Epping transport interchange comprising high frequency bus and rail services; • it will maximise public transport usage and walking and cycling given the proximity to the rail station and bus interchange and improvements to the public domain; • the Traffic Impact Assessment demonstrates that the proposed development will not have a discernible impact on the operation of the surrounding road network when combined with the benefits provided by the relocation of school drop-off/pickup activities within the Site and the provision of on-site parking for the church uses; • the proposed quantum of car parking for the Seniors Housing component of the proposal complies with the requirements of <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i> (SEPP Seniors) and therefore, pursuant to cll48 and 50 of SEPP Seniors, car parking cannot be used as a reason for refusal of the proposed development; • the proposed quantum for the school / church components complies with the relevant requirements of Hornsby Development Control Plan 2013 (the DCP); • the DA is supported by a Green Travel Plan which includes measures to promote the use of public transport patronage and encourage walking and cycling including: <ul style="list-style-type: none"> - improving the pedestrian environment within and adjacent to the Site to encourage walking to nearby services and facilities; - providing information to residents pertaining to the location of services and facilities and the safest and most convenient pathways for accessing those services and facilities; - encouraging the establishment of walking clubs or joining of existing walking clubs; - provision of secure bicycle facilities within the basement; - encouraging residents, staff and visitors to travel to the Site via bicycle; - providing information to residents, visitors and staff about public transport facilities and services - providing for a communal “village” minibus for residents of the Senior Housing component of the development to access medical facilities, retail and business services as well as providing for recreational outings; - provision of a car share parking spaces within the basement; - provision of electric bicycles with charging points for ILA residents; and - encouraging residents and staff to car pool where possible.
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Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objective of the Height of Buildings development standard and the objectives of the B2 Zone under the LEP.

Notwithstanding, it is also considered that the public interest is served because the Proposal will:

- Retain the heritage listed church, provide a substantial curtilage with landscaping and other improvements that will enhance the primacy of this building in this part of Oxford Street and ensure it continues to contribute to the local community in a positive way;
- Retain the school use of the Site and enable the school facilities to be redeveloped in a manner that provides 21st Century and best practice learning opportunities for the primary school aged children of the locality;
- Improve existing Parish facilities to be used in conjunction with the school and provide opportunities for other community uses to the wider benefit of the locality;

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- Relocate existing school drop-off/pickup operation to within the Site and provide church car parking off-street where there previously was none which will provide public domain and road network benefits;
- Provide Seniors Housing in the form of ILAs and RCF aged care beds to cater for the growing older population and promote ageing in place in a location with excellent access to services, facilities and transport;
- Provide a built form which, notwithstanding the building height proposed, will contribute positively to the urban landscape whilst minimising potential adverse impacts on surrounding properties and the public domain in terms of views, solar access, visual privacy and acoustic privacy;
- Result in only a very minor increase in traffic generation in the peak hours which will not be discernible in the surrounding road network;
- Provide a quantum of parking that is balanced between meeting the statutory requirements and limiting excessive car parking that may contribute to road traffic;
- Provide employment opportunities during the construction and operational phases; and
- Add to the social capital of Epping and the wider locality.

3.5 Clause 4.6(4)(b) –Concurrence of the Secretary

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the *Standard Instrument – Principal Local Environmental Plan* or SEPP 1 subject to certain conditions.

The LEP adopts cl4.6 of the SILEP and therefore, that prerequisite of the Notice is met.

Condition 1 of the Notice is not relevant in this instance as the request does not seek to vary a development standard relating to minimum lot size.

Condition 2 of the Notice is not relevant in this instance as the Sydney North Regional Planning Panel is not a delegate of the Council.

Accordingly, the Sydney North Regional Planning Panel can assume concurrence pursuant to the Notice.

3.6 Clause 4.6(5) - Concurrence Considerations

Clause 4.6(5) is not relevant in this instance as concurrence can be assumed pursuant to the Notice.

3.7 Clause 4.6(6) – Subdivision on Certain Land

Clause 4.6(6) is not relevant to the proposed development as it does not involve subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

3.8 Clause 4.6(7) – Keeping of Records

Clause 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

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3.9 Clause 4.6(8) – Restrictions on use of cl4.6

Clause 4.6(8) of the LEP states as follows:

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4.*

Clause 4.6(8) is not relevant to the proposed development as it is subject to a DA and does not constitute Complying Development, does not seek to vary any requirements of SEPP BASIX and does not relate to a standard under cl5.4.

4 Conclusion

The proposed development contravenes the Height of Buildings development standard under cl4.3 of LEP 2013.

The Height of Buildings control under cl4.3 of LEP 2013 is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the Height of Buildings development standard, the proposed development is consistent with the objective of the development standard pursuant to cl4.3(1)(a) of LEP 2013, is consistent with the relevant objectives of the B2 Zone and therefore, is in the public interest;
- Notwithstanding the contravention of the Height of Buildings development standard, the proposed height will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties and the locality will be minimised to a reasonable level and the development is suitable given the site constraints, development potential and infrastructure capacity of the locality; and
- The Height of Buildings development standard has been virtually abandoned by consent authorities in this locality as evidenced by numerous significant cl4.6 variations supported for approved developments.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the Height of Buildings development standard including:

- a lack of significant adverse environmental amenity impacts;
- conservation of the heritage item within the Site and provision of an expansive landscaped curtilage to promote its primacy in the Oxford Street streetscape;
- retention of a school use on the Site and reconstruction to provide a 21st Century and best practice learning environment to cater for the demands of the increasing residential population;
- allowing the future expansion of the school into the south-western corner of the Site to cater for demand arising from the growing residential population in the locality;
- improvements to Parish facilities to be used in conjunction with the school and provide opportunities for other community uses to the wider benefit of the locality;
- provision of a built form which, notwithstanding the building height proposed, will contribute positively to the urban landscape whilst minimising potential adverse impacts on surrounding properties and the public domain in terms of views, solar access, visual privacy and acoustic privacy;
- significant traffic network and public domain improvements associated with relocating school drop-off/pickup from the street frontage to within the Site, provision of church car parking on-site where there is currently none and generation of a very minor increase in traffic which will not be discernible in the surrounding road network; and
- provision of a Green Travel Plan which includes measures to promote the use of public transport patronage and encourage walking and cycling.

Accordingly, the consent authority can rely upon this written request when documenting that it has formed the necessary opinions of satisfaction in accordance with cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018 and can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

DESIGN EXCELLENCE ADVISORY PANEL RECOMMENDATIONS

City of Parramatta



Address 29-33 Oxford St & 6-14 Cambridge St EPPING
Date 21st November 2019

Application Summary

Application Number	DA/586/2018
Assessing Officer	Alex McDougall
Applicant/Proponent	Stockland Developments Pty Ltd
Architect and Registration Number	Brendan Randles – Reg No. 8824
Urban Designer	-
Landscape Architect	-
Planner	-
Others in attendance	Farhad Haidari Alison McDonagh Scott Forbes Emma McDonald

DEAP Members	Andrew Stanic, David Epstein, Oi Choong
Chair	Andrew Stanic
Other Persons in attendance	Jay Ahmed – Urban Design Alex McDougall – Executive Planner
Apologies	
Item No	2 of 2
DEAP Meeting Number	3 rd Referral

General Information

The Parramatta Design Excellence Advisory Panel's (DEAP or The Panel) comments are provided to assist both the applicant in improving the design quality of the proposal, and the City of Parramatta Council in its consideration of the application.

The Design Excellence Advisory Panel is an independent Panel that provides expert advice on applications relating to a diverse range of developments within the Parramatta Local Government Area.

The absence of a comment related directly to any of the principles does not necessarily imply that the Panel considers the particular matter has been satisfactorily resolved.

Proposal

Development application for the construction of a 29 storey mixed use tower comprising 132 bed residential care facility, 205 independent seniors living units, 4 church presbytery units and ancillary offices/shops (northwest corner of site); 2-3 storey church hall and administration building (northeast corner of site); 2-3 storey primary school building (southern side of site); 1 retail unit (southwest corner of site); 372 basement car parking spaces including school drop-off/pickup (western side of site); alterations and additions to existing heritage church building; use of part heritage church building for school-based child care; landscaping; tree removal; site amalgamation and stratum subdivision; public domain works; following demolition of existing school buildings, church presbytery and church administration buildings. The residential care facility and independent seniors living units are proposed pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The application is to be determined by the Sydney Central City Planning Panel. Previously considered at the meetings held 11.7.19 & 11.10.18.

Panel Comments



The nine SEPP65 design principles were considered by the Panel in discussion of the development application. These are: **Context and Neighbourhood Character, Scale and Built Form, Density, Sustainability, Landscape, Amenity, Safety, Housing Diversity and Social Interaction, and Aesthetics.**


The Design Excellence Advisory Panel makes the following comments in relation to the scheme:

1. The Panel is satisfied that matters of concern raised at previous panel meetings have been addressed in the current proposal. The Panel commends the proponent on the presentation and the final outcome for what is a complex brief.
2. One of the main concerns was the size of the floorplate of the tower building. This has been reduced from the previously proposed 990sqm to 830sqm in the current proposal. Although it still exceeds the preferred floorplate size, the Panel is satisfied the floorplate is now acceptable, taking into consideration the nature of the development, the number and type of uses; heritage issues; dual street frontage, public domain, and potential pedestrian links.

3. The Panel is of the opinion that development has improved in a number of areas since the initial proposal including the following:
 - a. Cantilever over podium deleted, increasing the separation between the church and tower.
 - b. Design improvements to the podium, floor plans and vertical expression of the tower.
 - c. Increased amenity and improved solar access to the units resulting from the above.
 - d. Reduction of the basement footprint.
 - e. Deep soil increased with permeable pavers.
 - f. Increased open space and landscaping.
4. The Landscape and public domain proposals prepared by Turf are robust and complement the development.
5. Further items for consideration include the following:
 - ESD principles need to be pursued
 - Shading of west facing balconies and wintergardens is required
 - 1:20 details of the elevational treatment to be provided (since provided)

Panel Recommendation

Selected Recommendation	Description	Action
<p>Green</p> 	<p>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.</p>	<p>Only minor changes are required as noted and provided these changes are incorporated, and presented to the City Architect, the Panel Does not need to review this application again</p>
<p>Amber</p> 	<p>The Parramatta Design Excellence Advisory Panel (The Panel) generally supports the proposal in its current form with caveats that require further consideration.</p> <p>The Panel advises that this is a reasonably well considered and presented scheme and that the architectural, urban design and landscape quality are of a reasonable standard.</p>	<p>Once the applicant and design team have addressed the issues outlined, the panel looks forward to reviewing the next iteration</p>

<p>Red</p> 	<p>The Parramatta Design Excellence Advisory Panel (The Panel) does not support the proposal in its current form. The Panel advises that there are a number of significant issues with the proposal.</p>	<p>The Panel recommends that the applicant/proponent contact the Council to discuss.</p>
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