



**SYDNEY CENTRAL CITY PLANNING PANEL
MODIFICATION OF CONSENT**

Panel Reference	2019CCI011
DA Number	DA/485/2016/A
LGA	City of Parramatta Council
Proposed Development	Section 4.55(2) modification to approved mixed use development, specifically modification of Conditions 1 and 15 of Schedule 2 to allow for provision of an increased number of car parking spaces on site. The application will be determined by the Sydney Central City Planning Panel.
Street Address	44-48 Oxford Street, EPPING NSW 2121 (Lots A & B DP 390454, Lots 1 & 2 DP 206646)
Applicant	Pirasta Pty Ltd
Owner	Pirasta Pty Ltd
Date of DA lodgement	12 December 2018
Number of Submissions	3
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	Pursuant to Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011, the proposal is a Section 4.55(2) modification to an application with a capital investment value of more than \$20 million (criteria at time of lodgement).
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none">• Environmental Planning and Assessment Act 1979 and Regulations 2000• Greater Sydney Regional Plan 2018;• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development & Apartment Design Guide• Hornsby Local Environmental Plan 2013• Hornsby Development Control Plan 2013 (including draft amendments)
List all documents submitted with report	<ul style="list-style-type: none">• Attachment 1 – Parking Rate Summary• Attachment 2 – Original Assessment Reports• Attachment 3 – Proposed Basement Level 4 Plan• Attachment 4 – Original Basement Level 4 Plan• Attachment 5 – SEPP 65 Parking Technical Note• Attachment 6 – Commercial Floor Space Study
Report prepared by	Alex McDougall
Report date	2 April 2019

1. Executive Summary

This proposal seeks to modify conditions 1 and 15 of schedule 2 of an approved mixed use tower development to allow 30 additional car parking spaces. Condition 1 of the consent relates to the approved drawings. Condition 15 limits the proposal to 173 off-street car parking spaces.

The imposition of condition 15 was contentious during the determination of the original development application. The applicant argued that their proposed parking quantum, 203 spaces, was appropriate in the circumstances. The Sydney Central City Planning Panel, seeking to reduce the traffic impact of the development, imposed the condition to achieve the LEP/zone objectives and on public interest grounds.

Along with the original documentation, the applicant has provided additional justification for removal of the condition. After review by Council's traffic & transport team, it is considered that the original condition is appropriate and as such should remain as originally implemented.

As such, the application is not considered to satisfy the requirements of section 4.55 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal.

2. Site Description, Location and Context

2.1 Background

The Sydney Central City Planning Panel granted deferred commencement consent to DA/485/2016, for demolition of all existing structures including the heritage listed dwelling on site, tree removal, and construction of a mixed use development in the form of 2 towers (15 & 18 Storeys tall) over a podium and basement car parking on 10 October 2018.

During assessment of DA/485/2016 the Epping Traffic Study was released which confirmed the anecdotal view that there is significant traffic congestion in the Epping area and that it is likely to get worse. The study put added focus on the public interest of ensuring that new development minimised increased traffic congestion. New development can contribute to this objective by limiting off-street parking and promoting more sustainable forms of transport through such initiatives as green travel plans.

In response, the applicant reduced their originally proposed number of car parking spaces from 223 to 203 and submitted a Green Travel Plan which outlined a number of initiatives to reduce dependency on private vehicles.

Subsequent to review, Council officers recommended a further reduction to 173 spaces. The applicant refused to revise the drawings accordingly and as such Council officers recommended a condition enforcing this further reduction. The Sydney Central City Planning Panel, in approving the application, imposed the condition as recommended.

2.2 Site

The subject site is located on the eastern side of Oxford Street in the Epping CBD, between Essex Street and Pembroke Street. The site comprises 4 separate allotments and has an area of 3,877.1m² and a frontage of 40.235m to Oxford Street.

2.3 Site Improvements & Constraints

The site contains a mix of 1-2 storey buildings in use as commercial offices. The original consent includes demolition of all of these buildings.



Figure 1. Locality Map (subject site in red).



Figure 2. Subject site as viewed from Oxford Street.

The subject site contains a former dwelling house of local heritage significance (Item #394). The original consent includes demolition of this heritage item. The subject site is not within a heritage conservation area.

2.4 Surroundings Development

- North/East – Medium Density Residential
- South – High Density Mixed Use Under Construction
- West – Education Establishment (School) and Place of Public Worship

2.5 Statutory Context

The Epping CBD is undergoing significant redevelopment, transitioning from its historic low-medium rise commercial development to high rise mixed use development.

3. The Proposal

Consent is sought to modify the approved development by way of modifying conditions 1 and 15 within Schedule 2 of DA/485/2016 as follows:

Condition 1 'Approved Drawings'

Revise the approved drawing list to refer to an updated drawing for basement level 4 which provides end-of-trip facilities and a total of 203 spaces (taking into account the parking on the other basement levels).

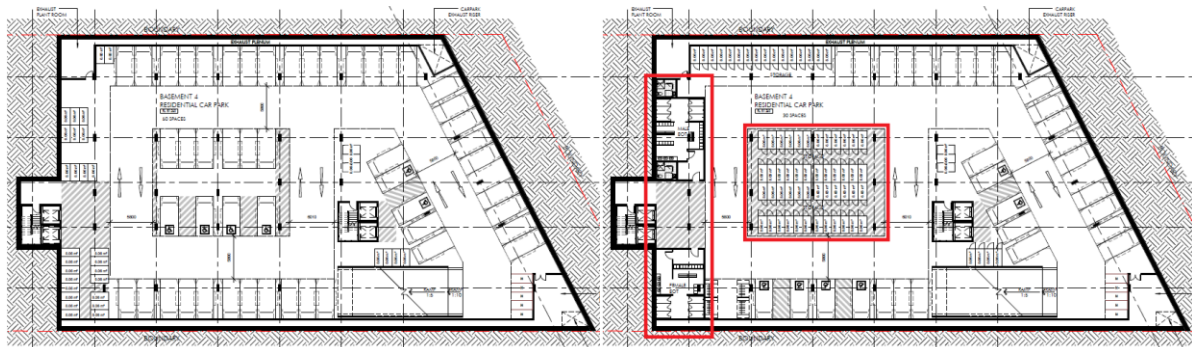


Figure 3. Applicant Basement Level 4 Plan as submitted prior to determination of original application (left) and Revised Basement Level 4 Plan (right). Changes are highlighted in red. The full sized drawings are included at Attachments 3 and 4 respectively.

The original drawings included 223 spaces. The proposal would not result in any change to the envelope of the basement, but rather would replace 20 of the originally proposed car parking spaces with end-of-trip facilities and storage.

Condition 15 'Maximum Car Parking'

Revised the condition as shown below:

The number of car parking spaces and bicycle spaces provided on site are to be modified to the following:

- (i) **A maximum of 203 173 car parking spaces** (comprising a maximum of **160 108** resident owned car parking spaces, **10 spaces for retail and 15 spaces for commercial** a minimum of 25 and maximum of 40 commercial/retail car parking spaces, and a maximum of **18 25** visitor car parking spaces) **Note:** no more than 108 residential car parking spaces and 25 visitor car parking spaces may be provided even where commercial parking is provided at a reduced level.
- (ii) **5 car share spaces** (additional to the above car parking spaces); and
- (iii) **Bicycle Parking: 200 secure bicycle parking spaces.**

~~End of Trip facilities are to be incorporated into the basement of the development as referred to in the approved Green Travel Plan.~~

~~Details demonstrating compliance (i.e. revised architectural drawings) are to be submitted to and approved by Council's Manager Development and Traffic Services prior to issue of any Construction Certificate. Any surplus space is to be removed by a reduction in the footprint of the affected basement level. Once found satisfactory, the revised architectural drawings will be endorsed with Council's stamp.~~

Reason: To ensure traffic impacts from the development are minimised.

To summarise, the applicant proposes the following changes to the approved parking mix:

	Approved	Proposed	Change
Residential Occupant	<108	160	+52 (+48%)
Residential Visitor	<25	18	-7 (-28%)
<i>Residential Sub-total</i>	<i><133</i>	<i>178</i>	<i>+45 (+33%)</i>
Commercial/Retail	25-40	25	N/A
TOTAL	173	203	+30 (+17%)

Table 1. Proposed Amendments to Parking Use Mix

4. Referrals

The following referrals were undertaken during the assessment process:

4.1 Internal

Authority	Comment
Traffic & Transport Engineer	Not supported for the reasons outlined in this report.

Table 2. Internal Referral Responses.

4.2 External

None

5. Environmental Planning and Assessment Act 1979

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

5.1 Section 4.55(2): Evaluation

The development consent has not expired and as such can seek to benefit from Section 4.55(2) 'Other Modifications' of the EPAA Act 1979 subject to the following requirements:

Section 4.55(2)(a) - Substantially the same development

The proposal is considered to be substantially the same development in that the general function, location, scale and form of the building would not change.

Section 4.55(2)(b) – Consultation with Authorities

The original application was not Integrated Development and did not require the concurrence of any authorities. As such no further consultation was required.

Section 4.55(2)(c) and (d) – Notification/Submissions

See Section 10 below.

Section 4.55(3) – Relevant Considerations

Under Section 4.55(3) of the EP&A Act 1979 in determining an application for modification, in addition to relevant matters under section 4.15 (see Section 5.2 below), the consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The reasons for granting approval to the original development application as stated by the Sydney Central City Planning Panel are assessed below:

Reason for Approval	Consistency
<p>1. The Panel has considered the Applicant's request to vary the development standard contained in Clause 4.3 Height of Buildings of Hornsby LEP 2013 and considers that:</p> <ul style="list-style-type: none"> i. the applicant's submissions adequately address the matters required under cl.4.6; ii. the development remains consistent with the objectives of the standard and the objectives of the zone; iii. there are sufficient environmental planning grounds to justify the variation; and iv. compliance with the standard is unreasonable and unnecessary in the circumstances of this case as the proposed variations are acceptable from a streetscape perspective, will not generate unacceptable impacts on adjoining or nearby properties and will not result in development inconsistent in form and scale with that planned for the locality and provide for a better planning outcome through the provision of additional communal open space for residents. For the above reasons, the Panel is satisfied that the variation from the LEP development standard is in the public interest. 	<p>The modification does not relate to or affect the height of the building as approved.</p>
<p>2. The proposed development will add to the supply and choice of housing within the Sydney Central City Planning District and the Parramatta local government area in a location with excellent access to services and amenities.</p>	<p>The modification does not directly relate to or affect the supply or choice of housing as approved.</p>
<p>3. The proposed development adequately satisfies the relevant State and Regional Environmental Planning Policies including SEPP SS - Remediation of Land, SEPP (Infrastructure) 2007, SEPP (BASIX) 2004, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and SEPP 65 - Design Quality Residential Apartment Development and its associated Apartment Design Guide.</p>	<p>The modifications relate only to SEPP 65 (the modification would satisfy the <i>minimum</i> parking requirements outlined in the SEPP) and SEPP Infrastructure (RMS had no objection to the original level of parking which exceeds the current proposal).</p>
<p>4. The proposal adequately satisfies the applicable provisions and objectives of Hornsby LEP 2013 and Epping Town Centre - Urban Activation Precinct Plan.</p>	<p>As outlined below, the proposal would fail to achieve the objectives of the LEP generally and the B2 zoning specifically.</p>
<p>5. The design of the proposed development responds appropriately to the recently introduced planning controls for the Epping Town Centre and the Panel notes that the design has been found acceptable to the City Architect and the design excellence personnel of the City council.</p>	<p>The modification does not have any impact on the external appearance of the building.</p>
<p>6. The Panel notes the concerns raised regarding the proposed removal of the heritage item located on the site but is satisfied that retention of that item is not practicable given the desired future character of this B2 Local Centre zone and in this regard accepts the advice and opinions of the Applicant's heritage advisors and the independent report of Stephen Davies, currently Chair of the NSW Heritage Council, that retention of the item on this site in its present and future context would be inappropriate for the item and it is not necessary to retain this item to understand the significance of the Epping area.</p>	<p>The modification does not relate to the heritage item.</p>
<p>7. The proposed development is considered to be of appropriate scale and form, adequately consistent with the planned character of the locality in which it is placed.</p>	<p>The modification does not have any impact on the external appearance of the building.</p>

Reason for Approval	Consistency
8. The proposed development, subject to the conditions imposed, will have no unacceptable adverse impacts on the natural or built environments including the local ecology, the amenity of adjacent and nearby premises and the operation of the local road system.	As outlined below, the proposal is considered to have an adverse impact on the local road system and as such cannot be supported.
9. In consideration of conclusions 1-8 above the Panel considers the proposed development is a suitable use of the site.	As the proposal fails to have an acceptable impact on the local road system it is not considered to be suitable for the site.

Table 3. Assessment of modification application's consistency with SCCPP Reasons for Approval of DA/485/2016.

5.2 Section 4.15: Evaluation of Proposed Modifications

Legislative Framework

Relevant Legislation/Plans/Guidelines

- Environmental Planning and Assessment Act 1979
- Greater Sydney Regional Plan 2018
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- Department of Planning & Environment Apartment Design Guidelines
- Hornsby Local Environmental Plan 2013
- Hornsby Development Control Plan 2013
- RMS Guide to Traffic Generating Developments
- Department of Planning & Environment SEPP 65 Technical Note – Parking
- Department of Planning & Environment Circular PS 17-001

Parking Rates

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEP 65) applies to the development. Clause 28 'Determination of development applications' of SEPP 65 requires the following:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

...

(c) the Apartment Design Guide.

Objective 3J-1 of the Apartment Design Guidelines includes the following guidance:

1. For development in the following locations:

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

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

Section 5.4.3 'High Density Residential Flat Buildings' (i.e. buildings with more than 20 units such as the proposal) of the RMS Guide to Traffic Generating Development outlines the following parking rates:

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

Metropolitan Regional (CBD) Centres:

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

Metropolitan Sub-Regional Centres:

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

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

Table 1C.2.1(e) of the Hornsby Development Control Plan 2013 outlines the following parking rates:

Minimum in Epping Town Centre Core

*0.5 spaces per studio unit
0.75 spaces per 1 bedroom unit
1 spaces per 2 bedroom unit
1.5 spaces per 3 bedroom unit
1 space per 10 units (visitor parking)*

Applicable Parking Rates

The site is within 800m of Epping Station. As such the ADG sets the minimum parking rate as either the RMS Guide to Traffic Generating Development (RMS Guide) rate or the DCP rate, whichever is less. The High Density Residential section of the RMS Guide includes two rates, a 'Metropolitan Regional (CBD) Centre' rate (RMS CBD rate) and a 'Metropolitan Sub-Regional Centre' rate (RMS sub-regional rate). There are two documents which distinguish between the two rates.

Technical Note

The Department of Planning released a technical note (see Attachment 5) which states that the RMS CBD rates should be used in centres listed as "CBD, Regional City Centre or Strategic Centre" in the Sydney Regional Plan. The current Sydney Regional Plan, *Greater Sydney Region Plan: A Metropolis of Three Cities (2018)*, lists Epping as a Strategic Centre (see table 4 page 122 of the Plan). As such, the CBD rates should be applied.

RMS Guide Definition

Section 5.4.3 of the RMS Guide to Traffic Generating Development states,

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

While there appears to be no contention that the site has high levels of access to rail and bus services, the applicant disputes whether the area provides 'high levels' of local employment.

Some of the large floorplate commercial office buildings in the area are being replaced by mixed use, primarily residential, development. However, it is considered that the area still provides high levels of local employment, and is likely to in the future, for the following reasons:

- The Epping town centre includes the following existing employment generating uses:
 - Offices
 - Major Retail (i.e. Coles)
 - Major Clubs (i.e. Epping Club)
 - Restaurants
 - Convenience Retail
 - Schools

At the 2011 Census, there were 4,512 jobs in the Epping town centre accommodated in approximately 55,000 square metres of office floor space and 12,900 square metres of retail floor space¹.

The Epping Town Centre population as of 2016 was 3,082 with a resident workforce of ~1,700 people. As such there are more jobs than residents in the Epping Town Centre. The Epping Town Centre population is forecast to grow to ~7,500 residents, ~4,200 in the workforce, by 2036. While it is acknowledged that the number of residents will increase significantly, there will still be high levels of local employment² relative to the local population.

- The site is zoned B2 – Local Centre. The zoning requires that commercial uses be provided on at least the ground floor of every building. The objectives of the zone are as follows:
 - *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.*
 - *To encourage employment opportunities in accessible locations.*
 - *To maximise public transport patronage and encourage walking and cycling.*
 - *To encourage the construction of mixed use buildings that integrate suitable commercial, residential and other developments and that provide active ground level uses.*
- Recent approvals in the vicinity of the site (i.e. since the Epping Urban Activation Precinct was introduced) include significant quantum of commercial floor space:
 - DA/237/2017, 24-36 Langston Place: 800sqm
 - DA/314/2017, 37-41 Oxford Street: 1,283sqm
 - DA/1063/2016, 2-4 Cambridge Street: 1,400sqm
 - DA/468/2016, 12-22 Langston Place: 1,681sqm
 - DA/585/2016, 30-42 Oxford Street: 750sqm.

¹ Epping Town Centre Commercial Floorspace Study by SGS Economics & Planning dated June 2017:
<https://www.cityofparramatta.nsw.gov.au/sites/council/files/inline-files/2%20-%20Epping%20Town%20Centre%20Commercial%20Floorspace%20Study.pdf>

- DA/681/2015 (Hornsby Ref), 20-28 Cambridge Street: 966sqm.
- **Total: 6,880sqm**
- Other development applications currently under assessment and anticipated development applications include commercial floor space.
- Council has conducted a strategic commercial study which has estimated that demand for commercial floor space will grow steadily into the future (see Attachment 6).
- In early 2018 the government released the Central City District Plan which states that jobs are, “concentrated in the strategic centres of Mount Druitt, Marsden Park, Rouse Hill, Castle Hill and Epping” (see page 57, https://gsc-public-1.s3-ap-southeast-2.amazonaws.com/central-district-plan-0318_0.pdf).

As such it is considered that the CBD rates should be relied upon. The CBD rates are lower than the DCP rates². As such it is considered that the RMS Metropolitan Regional (CBD) Centres rates are the applicable *minimum* parking rates for the development. Based on the approved unit mix and retail floorspace, the minimum parking requirement is 173 spaces. The development as approved, and as proposed to be revised, complies with this *minimum* parking rate.

Non-Discretionary Development Standard

The applicant is of the view that the SEPP 65 non-discretionary development standard relating to parking (cl. 30(1)(a)) precludes Council from refusing or conditioning development on the basis of traffic generation.

30 Standards that cannot be used as grounds to refuse development consent or modification of development consent

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

(a) 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, ...

(3) To remove doubt:

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and

(b) the design criteria specified in subclause (1) are standards to which section 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

² A comparison of the outcomes that would result from the application of the various parking rates to the subject application is included at Attachment 1.

The SEPP references Section 79C(2), now Section 4.15(2), of the Environmental Planning and Assessment Act 1979 which reads as follows:

(2) Compliance with non-discretionary development standards—development other than complying development

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and*
- (b) must not refuse the application on the ground that the development does not comply with those standards, and*
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.*

The applicant contends that imposition of condition 15 is in violation of the non-discretionary development standard requirements outlined above. It is Council officer's view that limiting car parking is not in violation of the non-discretionary development standard for the following reasons:

- per sub-section (a), the consent authority is not taking minimum parking requirements into further consideration, the minimum is achieved and the application is thus satisfactory in this regard,
- per sub-section (b), the application was not refused, and
- per sub-section (c), the condition does not increase the amount of parking required and so is not more onerous.

It is theorised that the intention of this non-discretionary development standard was to restrict a consent authority's ability to require more off-street parking if concern was raised in relation to a development's impact on on-street parking. However, the impact identified in this case is not related to on-street parking. Condition 15 was imposed, "*to ensure traffic impacts from the development are minimised*". The condition was not imposed on the basis of parking concerns (i.e. the impact on on-street parking) but rather on traffic related concerns.

Further, the Department of Planning, in Circular PS 17-001, which was released subsequent to the legislation referred to above (29 June 2017), clarified that, "*the ADG is not intended to be and should not be applied as a set of strict development standards*".

As such it is considered that the consent authority can consider the issue of parking as it relates to traffic generation and impose conditions accordingly.

Reason for Condition

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 Epping Urban Activation Precinct planning proposal 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. More commentary on the Epping Traffic Study can be found in the original Assessment Reports (see Attachment 2).

The Hornsby LEP 2013 includes the following relevant objectives:

- a) Aim 1.2(2)(a)(i) of the Hornsby LEP 2013 seeks to facilitate “efficient infrastructure” and
- b) The objectives of the B2 zone includes, “*maximise public transport patronage*”.

It is considered that the condition, as imposed, would minimise the development’s impact on the traffic network and would increase public transport patronage. In this case, the ADG has been used as a guide for an appropriate level of parking. The reasoning is appropriate as it seeks to achieve the aims and objectives of the LEP and is in the public interest.

The Greater Sydney Regional Plan is also considered to be of relevance. The Land and Environment Court planning principle, established in *Direct Factory Outlets Homebush v Strathfield Municipal Council* [2006], sets out the following (emphasis added):

*25 The role of regional planning policies is to guide the development of a region, such as the Sydney metropolitan area. One of their functions is to inform and influence statutory plans for the local areas of a region. Regional planning policies provide a sense of purpose and direction to local plans; they are, as it were, the glue that binds local plans together. **The fact that they are non-statutory is not an indication of their subservience to statutory plans.** Planning policies usually do not lend themselves to statutory expression because they do not relate to specific parcels of land and do not contain numerical development standards. **This fact, however, does not mean that they have no relevance to individual development applications, particularly those that have impacts extending beyond the local area.***

*26 Where the provisions of an environmental planning instrument are clear, unequivocal and do not require value judgment (for example numerical development standards or zonings where the character of a use is not in dispute), they take precedence over non-statutory regional planning policies. **However, where those provisions can be applied only on the basis of value judgments (for example, where the character of a use is in dispute, a development standard is to be varied, or where imprecise terms like “appropriate”, “significant”, “detrimentally affect” or “ecological sustainability” need to be given meaning in the context of a development application, non-statutory regional planning policies provide the background against which those value judgments should be made.***

The objectives in the LEP and zone use imprecise terms and as such it is considered to be appropriate to rely on the regional plan. The Greater Sydney Regional Plan includes the following strategy (emphasis added):

Strategy 12.2

*In Collaboration Areas, Planned Precincts and planning for **centres**:*

- ***investigate opportunities for precinct-based provision of adaptable car parking and infrastructure in lieu of private provision of car parking***
- ***ensure parking availability takes into account the level of access by public transport***
- *consider the capacity for places to change and evolve, and accommodate diverse activities over time*
- ***incorporate facilities to encourage the use of car sharing, electric and hybrid vehicles including charging stations.***

The regional plan anticipates less private parking in centres with good public transport accessibility.

Draft Controls

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

Conclusion

As such it is considered that the conditions should remain as originally approved and thus the modification application is recommended for refusal.

Parking Mix

The applicant also seeks modification to the 'mix' of uses for the parking spaces (see Table 1 above). The applicant's proposed mix is based on the DCP recommended rates (See Attachment 1). The proposal would result in a total of 52 more spaces for residential occupants, the type of spaces most likely to generate trips during peak traffic times. As the RMS CBD rates are considered to be applicable, and thus supersede the DCP rates, it is not considered appropriate for the mix to be changed as proposed.

End of Trip Facilities

The application also seeks to modify condition 15 by way of deleting the requirement for end-of-trip facilities. However, the revised drawings proposed as part of condition 1 include the end-of-trip facilities. As such this element of the modification would be considered acceptable.

6. Planning Agreements

The subject application is not subject to a planning agreement.

7. The Regulations

The proposed modifications would not impact on the relevant regulations, compliance with which is conditioned in the original consent.

8. The Likely Impacts of the Development

As outlined in this report, the impacts of the development are not considered to be acceptable.

9. Site Suitability

As outlined in this report, the site is not considered to be suitable for the proposed modified development.

10. Submissions

The application was advertised and notified in accordance with Section 1B.5 of Hornsby DCP 2013 for a 21-day period between 16 January and 7 February 2019. A total of three (3) submissions were received. The submissions raised the following issues:

Issues Raised	Comment
Inappropriate demolition of Heritage Item.	The original consent included removal of the heritage item. This modification does not relate to that aspect of the development.

Inappropriate bulk and scale.	The original assessment found the bulk and scale appropriate. This modification does not modify the bulk or scale of the approved building.
Commend increase in occupant car parking.	As outlined in this report, additional parking is not considered to appropriate.
Excessive occupant car parking.	Agreed. The application is recommended for refusal on this basis.
Under provision of visitor car parking.	As outlined in this report, the modification to the parking mix is not considered to be appropriate.
Reduction in number of commercial parking spaces.	
All conditions should be subject to review.	The consent authority can only assess the proposed revisions.
Applicant should have to demonstrate compliance with condition prior to Construction Certificate as originally conditioned.	The condition included this requirement as the applicant had not provided revised drawings demonstrating the conditioned parking numbers. The current proposal seeks to substitute revised drawings outlining specific parking numbers and as such further assessment prior to construction certificate is not required.
Proposal should include solar panels on roof.	The original application was found to satisfy the relevant Environmental Sustainable Design (ESD) requirements without the need for solar panels. This modification does not modify the proposed ESD measures.

11. Public Interest

As outlined in this report, the proposal is considered to be contrary to the public interest as it would result in excessive pressure on the local traffic network and would not sufficiently incentivise public transport usage.

12. Disclosure of Political Donations and Gifts

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

13. Development Contributions

Developer contributions are based on the number of units. As the modification includes no change to the number of units, there is no commensurate need to modify the level of developer contributions.

14. Summary and Conclusion

The application has been assessed relative to Sections 4.15 and 4.55(2) of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. The proposed increase in parking is considered to be contrary to the public interest of minimising traffic congestion and maximising public transport usage and as such refusal is recommended.

15. Recommendation

1. That, pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979, the Sydney Central City Planning Panel, as the consent authority, refuse consent to modify conditions 1 and 15 of Schedule 2 of Consent Reference DA/485/2016 at 44-48 Oxford Street, Epping for the following reason:
 - a. The proposal is contrary to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposal does not satisfy Clause 1.2 'Aims of Plan' and Clause 2.3 'Zone objectives and Land Use Table' of Hornsby Local Environmental Plan 2013, and Sections 4.15(1)(b), (c) and (e) of the Environmental Planning and Assessment Act 1979. Specifically, the proposed additional, and revised use of, parking spaces would fail to adequately incentivise public transport, cycling and walking and would fail to minimise impact on local traffic infrastructure.
2. That the Panel delegate to Council officers or a representative of the Panel, or provide instruction on, the authority to undertake without prejudice negotiations with the Land & Environment Court relating to the current appeal against non-determination of this application.