



## SYDNEY CENTRAL CITY PLANNING PANEL COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSCC-324
<b>DA Number</b>	DA/1/2022
<b>LGA</b>	City of Parramatta (formerly Hornsby Shire Council)
<b>Proposed Development</b>	30 storey mixed use building comprising 2 storey commercial podium (retail unit, 60 children centre-based child care facility and commercial office space) and a shop-top housing tower above comprising 211 apartments, 6 basement levels providing 317 car parking spaces, landscaping and public domain works. The proposal constitutes stage 2 detailed design of concept plan approval DA/314/2017.
<b>Street Address</b>	37 – 41 Oxford Street, EPPING NSW 2121 (Lot 2 DP 1205413)
<b>Applicant</b>	Meriton
<b>Owner</b>	Karimbla Properties (No. 59) Pty Ltd
<b>Date of DA lodgement</b>	24 December 2021
<b>Number of Submissions</b>	14
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria</b>	The development has a capital investment value of more than \$30 million.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"><li>• Environmental Planning and Assessment (EP&amp;A) Act 1979</li><li>• EP&amp;A Regulations 2021</li><li>• SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004</li><li>• SEPP (Transport &amp; Infrastructure) 2021</li><li>• SEPP (Planning Systems) 2021</li><li>• SEPP (Biodiversity &amp; Conservation) 2021</li><li>• SEPP (Resilience &amp; Hazards) 2021</li><li>• SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) &amp; Apartment Design Guide (ADG)</li><li>• Hornsby Local Environmental Plan (HLEP) 2013</li><li>• Hornsby Development Control Plan (HDCP) 2013</li></ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"><li>• Attachment 1 – Architectural Drawings</li><li>• Attachment 2 – Landscape Drawings</li><li>• Attachment 3 – Approved Concept Drawings</li><li>• Attachment 4 – Approved Concept Notice</li><li>• Attachment 5 – Concept DEAP Requirements</li></ul>
<b>Clause 4.6 requests</b>	<ul style="list-style-type: none"><li>• Hornsby Local Environmental Plan 2013</li><li>• Clause 4.3 – Height of Buildings</li><li>• Clause 4.4 – Floor Space Ratio</li><li>• B2 Local Centre Zone</li></ul>
<b>Summary of key submissions</b>	<ul style="list-style-type: none"><li>• Traffic Impact (and excess parking, impact on street parking)</li><li>• Height Breach (and associated overshadowing, views loss)</li></ul>
<b>Report prepared by</b>	Alex McDougall
<b>Report date</b>	28 June 2022

### Summary of s4.15 matters

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

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### Legislative clauses requiring consent authority satisfaction

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

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### Clause 4.6 Exceptions to development standards

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

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### Special Infrastructure Contributions

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

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### Conditions

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

## 1. Executive Summary

The site is subject to a concept 'envelope' approval for a 30-storey mixed use tower (retail/business premises and shop-top housing) with 4 storey basement. The subject proposal is the detailed 'stage 2' development application outlining full details of the proposal.

The detailed development application has been assessed relative to the requirements of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. On balance, the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, refusal is recommended. A summary of the issues with the application is outlined below.

The request to vary the height standard is not supported as the proposal is not consistent with the justification for the associated concept height variation and does not achieve the zone objectives.

The request to vary the floor space ratio standard is not supported as the clause does not allow the standard to be varied in the circumstances.

The proposal includes excessive car parking, insufficient bicycle parking and no end-of-trip facilities and as such will not achieve the zone and control objectives of maximising use of public transport, cycling and walking. Further, the proposal has not demonstrated an acceptable impact on the local traffic network.

The podium design is not considered to be appropriate as it will be out of scale and alignment with adjoining podiums and the proposed tower.

The proposal is not consistent with the concept approval relating to the site, specifically with regard to basement size, ESD requirements, tree planting, and building design.

The applicant has not demonstrated that the site is suitable for the proposed uses with regard to contamination.

The applicant has not adequately demonstrated that the proposal will have acceptable wind, reflectivity and acoustic impacts on occupants, adjoining/nearby properties and the public domain.

The applicant has not demonstrated that the proposal meets the relevant BASIX requirements.

The proposal is not sufficiently accessible regarding open space access and adaptable dwelling options.

The applicant has not demonstrated appropriate stormwater management facilities will be provided.

The proposed ground and first floor ceiling heights are not considered to be sufficient to ensure amenity and adaptability of these spaces.

At the time of writing this report, the application is the subject of a Class 1 appeal before the Land & Environment Court.

## 2. Key Issues

*Environmental Planning and Assessment Act 1979*

- **4.24 Consistency with Concept:**
  - Inconsistency with concept drawings –
    - Basement volume
    - Podium connection to southern boundary
  - Inconsistency with conditions –
    - Trees to front setback
    - DEAP advice
    - Sustainability requirements

*SEPP65/Apartment Design Guide*

- **4C Ceiling Heights** – Ground (retail) and first floor offices low ceiling heights

*SEPP BASIX 2004*

- **ESD** – Modelling not based on development. No stamped drawings confirming commitments.

*SEPP (Transport & Infrastructure) 2021*

- **RMS** – Concerns with traffic modelling (trip generation and vehicle queuing), and service vehicle manoeuvrability
- **Child Care** – No acoustic consideration

*SEPP (Resilience and Hazards) 2021*

- **Contamination** – No detailed site investigation despite such a recommendation in preliminary site investigation

*Hornsby Local Environmental Plan 2013*

- **2.3 Zone Objectives** – The proposal does not achieve zone objective of maximising public transport patronage, walking and cycling.
- **4.3 Building Height** – Acceptability of Clause 4.6 variation given elements of concept justification no longer included (i.e. ESD improvements, trees in front setback) and non-compliance with zone objectives (i.e. parking).
- **4.4 Floor Space Ratio** – The car parking spaces in excess of that allowable are to be counted as gross floor area, resulting in a non-compliance with the standard. The LEP does not allow variation of this standard for the proposed use.

*Hornsby Development Control Plan 2013*

- **Podium** –
  - **Height** – 2 storey podium inconsistent with concept, DEAP advice and two adjoining buildings (3 storeys)
  - **Front Setback** – 7.3m setback not consistent with concept (4.5m), previous DEAP advice (3m) and two adjoining buildings (0m south, 3m north)
  - **Side Setback** – 9m south side setback not consistent with control/concept (0m)
- **Parking** –
  - Excessive car parking (97 excess)
  - Insufficient bicycle parking (169 deficient)
  - No end-of trip facility proposed
- **Landscaping** – No tree planting in front setback (7 required by concept)
- **Accessibility** – Parts of communal open space not step-free, lack of diversity in size of adaptable units
- **Wind** – Concerns with modelling
- **Reflectivity** – Concerns with modelling
- **Stormwater** – OSD design not appropriate. No WSUD features.

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

#### **3.1 Site and Location**

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

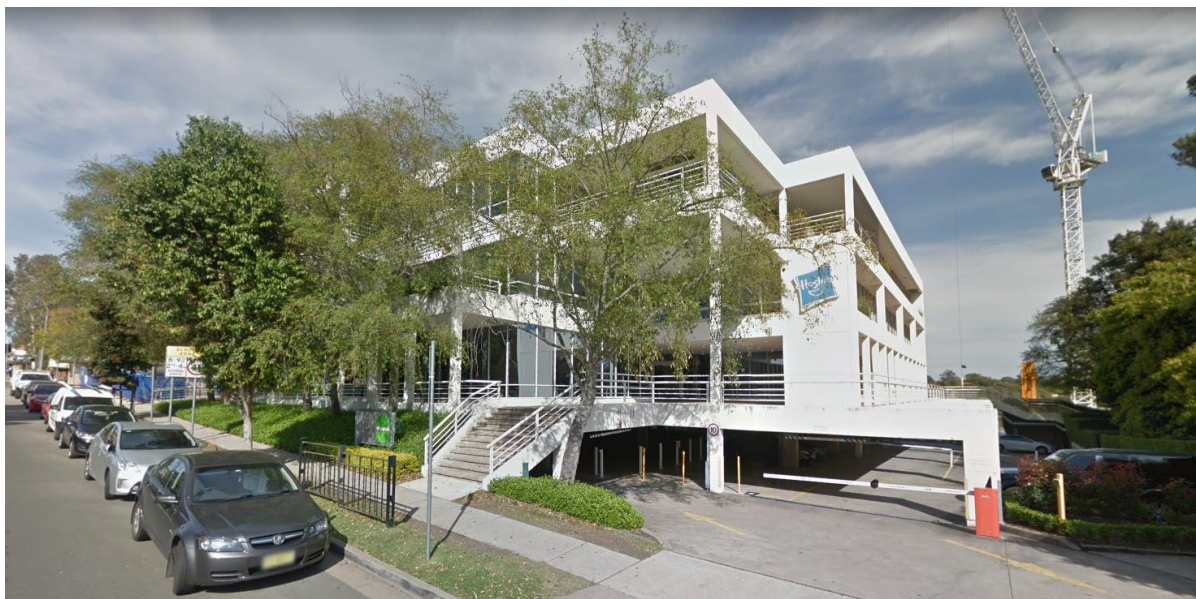
The site is located to the north-east of Epping Railway Station (within 250m walking distance), and north of retail fronting Langston Place and Oxford Street. The area is undergoing redevelopment for high density mixed use development (see Figure 1 and Table 2 below for details).

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





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



**Figure 2.** Front facade of previous building and front setback trees on the site as viewed from Oxford Street (since removed).

### 3.2 Background

Concept approval DA/314/2017, approved by the Sydney Central City Planning Panel on 7 March 2018, sets out envelopes, uses and design requirements for a 30 storey mixed use tower building with 4 storey basement on the site.

Associated applications:

DA	Description/Details
DA/319/2021	Demolition of the four-storey office building and ancillary buildings to ground floor slab. <b><i>Approved 04/06/2021 - Works Complete</i></b>

DA/1128/2021	Early site works (earthworks, excavation, tree removal, shoring, retaining walls and drainage works) associated with construction of a mixed-use tower (which requires separate consent). <b>Refused 15/06/2022</b>
DA/314/2017/A	Section 4.55(2) modification to approved mixed use tower concept, specifically changes to building envelope, landscaping and conditions of consent. The application is to be determined by the Sydney Central City Planning Panel. <b>Under Assessment.</b>
DA/1105/2021	Alterations to concept approval DA/314/2017 to allow a child care centre use at ground floor level. <b>Refused 28/06/2022</b>

**Table 1:** Applications associated with the proposal.

### 3.3 Context

The following applications on adjoining/nearby sites are relevant to the proposal:

Site	DA	Description/Details
20-28 Cambridge Street	DA/681/2015 (Hornsby)	Approved 24/02/2016: Demolition of existing structures and construction of two (2) x 22 storey buildings and one (1) x seven (7) storey building, each comprising ground floor retail/business tenancies totalling 966m <sup>2</sup> , and the upper levels containing a total of 501 residential units, with combined basement car parking for 519 cars. <b>Complete and Occupied</b>
2-4 Chester Street	DA/136/2015 (Hornsby)	Approved 01/07/2015: Demolition of existing structures and construction of a fifteen storey residential flat building comprising 119 units with four levels of basement car park accommodating 124 car spaces and associated landscaping works <b>Complete and Occupied</b>
35 Oxford Street	DA/365/2016	Approved 14/07/2016: Demolition and construction of a 22 storey shop-top housing development comprising 54 residential units, one (1) retail unit and basement car parking. <b>Complete and Occupied</b>
43-53 Oxford Street	DA/646/2019	Approved 08/09/2020: 16 storey mixed use seniors living tower comprising 14 assisted living apartments, 20 care apartments, 60-bed residential aged care facility, 96 independent seniors living units and ancillary offices/retail; 155 car parking spaces in 4 basement levels; signage zones; landscaping; site amalgamation; public domain works; demolition of existing buildings and tree removal. <b>Construction Not Yet Commenced</b>
29-33 Oxford St & 6-14 Cambridge St	DA/586/2018	Approved 11/05/2020: 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. <b>Construction Not Yet Commenced</b>
16-18 Cambridge Street	DA/560/2018	Approved 9/10/2019: 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. <b>Construction Not Yet Commenced</b>

**Table 2:** Nearby development approvals.

## 4. The Proposal

### 4.1 Summary of Proposal

Construction of a mixed-use tower comprising:

- 6 storey basement;
  - 316 car parking spaces
    - 252 residential occupants
    - 31 residential visitors
    - 15 commercial offices
    - 15 child care centre
    - 3 retail
  - 65 bicycle parking spaces
  - 4 motorcycle spaces
  - 1 car share space
  - 1 washing bay
- 2 storey podium;
  - Ground floor:
    - Retail unit;
    - Centre-based child care centre (60 children):
      - 0-2 years: 15
      - 2-4 years: 15
      - 4-5 years: 30
  - First floor: 8 x first floor office tenancies (750sqm NLA); and
- 28 storey shop top housing tower above:
  - 211 x shop top housing units
    - 1-bed: 43 (20.4%)
    - 2-bed: 124 (58.8%)
    - 3-bed: 42 (19.9%)
    - 4-bed: 2 (0.9%)

#### Notes:

- The application does not seek approval for 'early works' including demolition of the existing building (DA/319/2021) or excavation, basement shoring and tree removal (DA/1128/2021). See more details under Section 3.3 above.
- The retail, office and child care uses would be subject to separate detailed fit out applications. The proposal does however seek in-principle approval for child care hours of operation of 7:00am to 7:00pm.



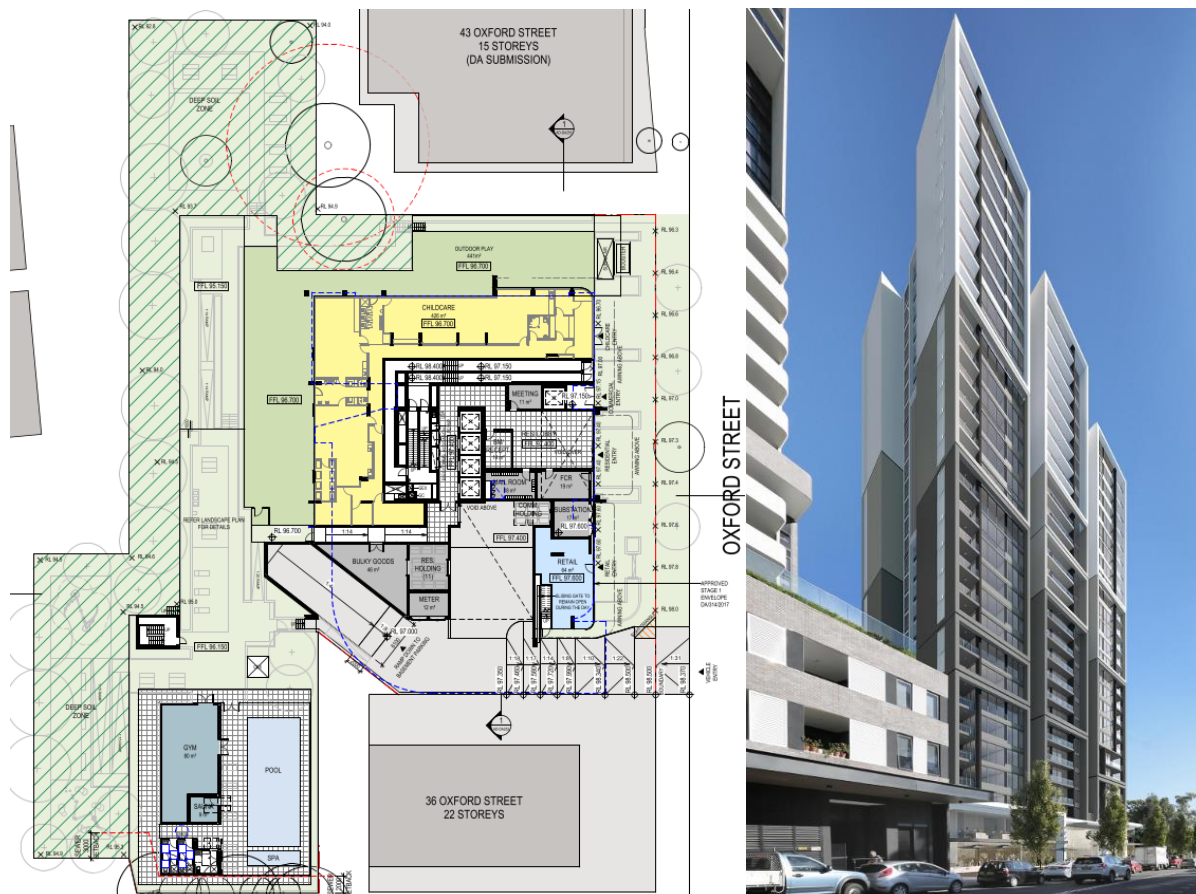


Figure 3. Proposed Ground Level Plan and 3D Render.

## 4.2 Application Assessment History

During the course of assessment, Council officers requested the applicant address the issues outlined in this report. The applicant did not respond. Subsequently, the applicant lodged a Class 1 appeal in the Land and Environment Court against the consent authority's 'deemed refusal' of the subject application.

## 5. Referrals

The following referrals were undertaken during the assessment process:

### 5.1 Design Excellence Advisory Panel

Council's Design Excellence Advisory Panel (DEAP) considered the application at a meeting on 24 March 2022. While the Panel were supportive of elements of the proposal, they made the following points:

- Façade detailing requires further articulation.
- Street wall presentation impacted by not connecting podium to 35 Oxford Street.
- Podium should be 3 storeys.
- Vertical slots in tower should be extended down through podium.
- Podium ceiling heights need to be increased.
- Podium and basement front setback should be 4.5m.
- Further resolution required of booster, ventilation shaft and childcare centre interface.
- A direct visual connection should be provided from street to rear open space.
- Further consideration of the location and functionality of the childcare open space.
- A larger more amenable community room should be included.
- Further consideration of the rear open space design.
- Further consideration of apartment layouts.

The full comments from the DEAP panel are included at Appendix 3.

## 5.2 External

Authority	Comment
Ausgrid	Acceptable subject to conditions.
Roads and Maritime Services	Requested additional information including a more detailed traffic assessment (trip generation, queue analysis) and more room for service vehicle manoeuvrability.
Sydney Water	Acceptable subject to conditions.
Wind Consultant	Raised concern with the adopted comfort criteria for the child care centre outdoor space, recommended testing of wind mitigation strategies proposed by applicant's consultant and noted that the comfort was partially based on the presence of trees the applicant proposes to remove as part of associated application.
ESD Consultant	Notes that the applicant had not satisfied the concept plan sustainability requirements. BASIX stamped drawings not provided. No detail of sustainability approach for commercial areas.
Reflectivity Consultant	Raised concern with extent of tested area, methods, assumptions, use of landscaping to mitigate glare, and qualification of overshadowing caused by surrounding buildings.

**Table 3:** External referrals

## 5.3 Internal

Authority	Comment
Accessibility	No step-free access to northern BBQ area in rear communal open space. Adaptable units all 2-bedroom units with right hand transfers. Greater variety in accessible units required.
Environmental Health - Acoustic	Child care impact not considered in acoustic report.
Environmental Health - Contamination	Stage 2 investigation not provided.
Environmental Health - Waste	Acceptable subject to conditions.
Heritage	Acceptable heritage impact.
Landscaping & Trees	Acceptable subject to conditions.
Public Domain	Acceptable subject to conditions.
Stormwater Engineer	Raised concern with OSD configuration.
Traffic & Transport	Raised concern with excess car parking, insufficient bicycle parking, basement layout, driveway sightlines and lack of end-of-trip facilities. The basement layout and driveway sightline issues could be addressed by way of consent condition. The other matters form reason to refuse the application.
Civil Assets – Waste	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

## 6.3 Section 4.24(2): Compliance with Concept Approval

Section 4.24(2) of the Act requires that,

*While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.*

The proposal constitutes detailed design of the concept approval DA/314/2017. As such, the proposal must not be inconsistent with the requirements of this consent.

An assessment of the proposal against the concept plan conditions of the consent is provided below:

Concept Plan Condition <sup>1</sup>	Assessment of Compliance
<b>1. Compliance with Approved Drawings</b>  Building Form: See Attachment 3.  Uses: <ul style="list-style-type: none"> <li>• Ground/First: Business/Retail</li> <li>• Second &amp; Up: Shop Top Housing</li> </ul>	<u>Form</u>  The proposal is generally consistent with the approved envelope. However, the approved concept drawings show the podium connecting to the adjoining podium to the south. DEAP raised concern with this deviation. As such, this forms reason to refuse the application.  <u>Uses</u> <ul style="list-style-type: none"> <li>• Ground: Retail and Child Care Centre (considered to be consistent with business premises as it provides a service to the community)</li> <li>• First: Office</li> <li>• Second &amp; Up: Shop Top Housing</li> </ul>

<sup>1</sup> For full wording of conditions see Attachment 4.

<b>2. Stage 2 DA Required</b>	Subject of this application.
<b>3. Concept Built Form Not Guaranteed</b>	Assessed as part of this application.
<b>4. Must Not Be Inconsistent</b>	Subject of this table.
<b>5. Compliance with Approved Reports</b>	Updated reports provided.
<b>6. Public Right of Way to front setback</b>	Condition of consent would be included.
<b>7. Water NSW Controlled Activity Approval</b>	No information provided. Subject of associated preliminary works application (DA/1128/2021).
<b>8. No advertising/signage</b>	None proposed.
<b>9. Design Architect</b>  Candalapes Architects unless otherwise agreed by Council.	On 5 July 2021 Council agreed Scott Carver was an acceptable replacement, who is the subject architect.
<b>10. Conform to DEAP Requirements</b>	See separate table below.
<b>11. Public Footway</b>	Proposed public footway complies with Public Domain Guidelines subject to conditions of consent.
<b>12. Podium Front Setback</b>  4.5m*  * The 4.5m setback was conditioned in order to allow for the row of tree planting along the front boundary, which is no longer proposed. It is likely that a 3m setback would be more appropriate contextually if the consent authority were of the view that trees are not required along the front setback.	The proposed front setback is 7.3m. DEAP raised concern with this deviation. As such, this forms reason to refuse the application.
<b>13. Sydney Water Requirements</b>	Sydney Water support the proposal subject to conditions.
<b>14. Endeavour Energy Requirement 1</b>	Endeavour Energy support the proposal subject to conditions.
<b>15. Endeavour Energy Requirement 2</b>	
<b>16. Endeavour Energy Requirement 3</b>	
<b>17. Endeavour Energy Requirement 4</b>	
<b>18. Endeavour Energy Requirement 5</b>	
<b>19. ESD Requirements</b>  BASIX Energy min + 10% BASIX Water min + 10% BASIX Thermal min + 20% 5.5 star NABERS rating Solar PVs for 50% of energy demands Rainwater harvesting from roof to supplement non-potable water	The proposal does not comply with any of these requirements. This forms reasons to refuse the application.
<b>20. Trees To Be Retained</b>  #24, 28, 29-35 and 36 to be retained.	Subject to associated 'early works' application.
<b>21. Arborist Report Required</b>	Subject to associated 'early works' application.
<b>22. Landscape Plan Requirements</b>  7 trees in front setback Planting Plan Native:Exotic 4:1 No exempt to remove species Max 8-10m height for trees on structure Planter bed volumes Planter drawing detail	Trees not provided in front setback. This forms reason to refuse the application.  Other requirements could be conditioned.

<b>23. Wind Requirements</b>  Tunnel Tested Long Exposure Comfort in Northern Setback Short Exposure Comfort in Front Setback Walking Comfort in Public Footway	Wind Tunnel Test Report provided. Uses different definitions for comfort levels but are comparable to the condition requirements.  Public footway achieved at least leisure walking comfort with mitigation. However, front setback and public footway not differentiated, not clear appropriate comfort would be achieved in front setback (i.e. café outdoor dining).  Inappropriate comfort criteria selected for child care outdoor space.  Proposed mitigation measures not tested for efficacy.  This forms reason to refuse the application.
<b>24. Waste Management Plan Requirement</b>	Provided. Reviewed by Council's Environmental Health team and found to be acceptable subject to conditions.
<b>25. Geotechnical Report Requirement</b>	Excavation and shoring is subject of an associated 'early works' application (DA/1128/2021). A Geotechnical Report was submitted as part of that application.
<b>26. Detailed Drawings in Future DA</b>	The proposal does not provide drawings of a level of detail required by the condition.  The materials are acceptable to DEAP.  The proposal includes a 3D perspective. DEAP requested additional perspectives of the podium at pedestrian eye level, which were not provided.
<b>27. Lift Services Report Requirement</b>	The proposal includes a Lift Services Report which demonstrates an acceptable level of service.
<b>28. Water Sensitive Urban Design (WSUD) Treatment Requirements</b>  Landscape integrated features required  Rainwater harvesting  OSD	Landscaped integrated features not proposed.  Rainwater tank proposed.  OSD not satisfactory.  This forms reason to refuse the application.
<b>29. On-Site Detention Calculation Requirements</b>  Consideration of wind driven rain	As outlined above, Council's engineers are not satisfied that the OSD system has been appropriately designed. This forms reason to refuse the application.
<b>30. Local Drainage System Study</b>	A local drainage system study has not been provided. Council's engineers are of the view that it may still be necessary subject to the additional information required to inform the OSD system.
<b>31. Stormwater Design Requirements</b>  Rainwater tanks shown on drawings Pit lid specifications Capacity requirements Overland flow requirements Access to existing easement Easement pipe capacity	Stormwater drainage system not satisfactory. This forms reason to refuse the application.

**Table 6:** Concept DA Condition Compliance Assessment



<b>DEAP Comments 17/01/2018</b>	<b>Consistency</b>
The Panel supports the single tower with additional height in-lieu of building 'B'. A taller and more slender building is appropriate in this location, and can provide a suitable apex for the cluster of high rise buildings now evolving around the Epping urban centre.	Complies.
The articulation and stepping down at the top of the building is commended, and a good response to Panel suggestion from the earlier Stage 1 review. However the Panel considers this approach needs to be strengthened with perhaps larger steps, and indication of how this modelling would assist in minimising overshadowing and solar access loss relative to 35 Oxford Street.	The Panel was commenting on concept drawings at the time which included a 2 storey step from south to middle element and 1 storey from middle to north element.  The concept drawings were subsequently revised to a 2 & 2 step, which is provided in the proposal.
As the building will be viewed from many directions, and due to its height likely be a landmark for the Epping Town Centre, it is suggested that distant urban form views from various points be shown as part of further design development. Precedents should also be reviewed for stepped roofs viewed from different directions in the Sydney CBD, such as the Deutsche Bank in Hunter Street, Governor Macquarie Building in Farrer Place and No. 52 Martin Place.	
Articulation of the tower with recessed slots has significantly improved the appearance of the building envelope, and the Panel feels that these slots should perhaps continue down through podium levels to better express the main entrances more clearly at street level. Detailed perspectives/montages at street level are necessary to ensure the best appreciation of potential outcomes.	Slots not provided down to street level. The podium framing does however break up podium into 3 elements. As such, this is not considered to be reason to refuse the application.
At the earlier Stage 1 review, the Panel noted that the podium should be 3-4 storeys high and include community uses and commercial spaces suitable for potential 'co-working' office spaces for local residents. While the podium height at 3 storeys is acceptable, the commercial spaces are limited in both size and configuration. Office units that are not connected to residences should be more uniform and adaptable, allowing for them to be linked to provide larger commercial spaces if required, and less suitable to be converted back to residential units in future.	Proposed podium reduced to 2 storeys in height (3 in concept). This forms reason to refuse the application.  Live/work offices replaced with office only suites.  3 of the office spaces could be linked to make larger spaces.
Given the relatively small size of the commercial spaces not linked to residential units, consideration should also be given to provision of communal toilet amenities and kitchen facilities at Level 1. These could also be for the benefit of visiting maintenance or service personnel.	Amenities provided.
For a building of this scale it would be expected that a community room should be provided for owner corporation meetings and occasional communal functions. While there may be scope for such a space to be located within the Level 1 podium, an alternative could be on Level 27 adjacent the roof terrace. That approach would see the replacement of a 1 bedroom unit with a flexible space opening onto the terrace, and with shared amenities available for various social activities as well.	11sqm 'meeting room', with no windows, provided. This room would not be suitable for social gatherings. However, not considered to be reason alone to refuse the application.
There is concern from the Panel about the proposed resolution of the public domain and landscape treatment to the Oxford Street frontage. The indicated front setback for the podium is 6m where Council requested 7.5m, and the panel previously recommended 3m to align more closely with No. 35 Oxford Street or the building to the north.	Notwithstanding this comment, Council's Urban Design team ultimately were of the view that a 4.5m front podium setback was appropriate and imposed a condition to that effect on the concept approval. The current

<p>Furthermore, the footpath is highlighted in green suggesting soft landscaping when in fact it should be paved in accordance with the public domain controls to maintain a consistent streetscape.</p>	<p>proposal is a 7.3m setback and as such is not consistent. The DCP control is 0m, the adjoining built front podium setback to the south is 0m, the adjoining approved front setback to the north is 3m. This forms reason to refuse the application.</p> <p>The proposal includes a standard footway with street trees.</p>
<p>Further investigation of landscape options is needed together with 3D images and material palette showing both the existing and proposed streetscape treatments. This should also consider how the main building entries can be better integrated to address Oxford Street, and provide cohesive activation along the retail frontage. The footpath awning is shown stopping short on the northeast corner, and it could extend further out and partially along the northern side for better protection to pedestrians and patrons using the outdoor space to the north.</p>	<p>An awning is provided, but due to the large front setback will not provide public amenity. The awning wraps around to the north, but the child care use will require its own separate shading.</p>
<p>As identified in the GAO Draft of Greener Places, a healthy and easily maintained tree canopy is increasingly critical in Western Sydney to deal with hotter summers, so there must be well considered strategies to support larger trees around site perimeters. The Basement Levels 2-3 cover a large part of the site, and although stepped in at Basement Level 1, there is diminished opportunity for real unrestricted deep soil planting. Given close proximity of the site to the Epping Station, scope should be investigated for potential car parking reduction to allow for perimeter pockets of more deep soil zones.</p>	<p>The concept included 6m front and rear setback at basement level 1 to allow for large planting, with these setbacks reducing to ~2.5m at lower levels.</p> <p>The proposal includes a 6m clear to ground rear setback and 3m clear to ground front setback and overall results in a large increase in deep soil planting. However, no tree planting is proposed in the front setback. This forms reason to refuse the application.</p> <p>The proposal seeks to include additional parking in a deeper basement which is not supported.</p>
<p>Previous pre-DA material shown to the Panel also indicated a greening strategy for the building facades with associated modelling, and this should be further explored in any future submission to help mitigate concerns about urban heat island effects. The Panel is encouraged to see the Level 27 roof terrace, but this and other upper setback levels could include more landscape treatment to help reduce heat load, and for further communal rooftop access.</p>	<p>The proposal does not include any green walls or green roofs. A condition would be included on any consent requiring the rear amenities block to have a green roof.</p>
<p>The Panel noted access to the rear ground level communal open space via stairs from the central lobby, and to the multi-purpose court via ramp. It is unclear whether full equitable access would link these areas, or if this might be along the northern side of the building. Provision for communal amenities nearby should also be considered.</p>	<p>Access to the northern open space is not step-free. This forms reason to refuse the application.</p> <p>Amenities are provided in the gym block to the south of the open space.</p>
<p>It is expected that more detailed elevations reflecting the proposed floor plans will be included in a Stage 2 submission, and there should also be detailed 1:20 sections to show use of materials and how the overall façade will work at the various levels.</p>	<p>The proposal includes only 1:50 sections, and they do not include much detail of the façade. There do not appear to be window reveals which may help break up the façade. A condition would be included in any consent requiring such reveals.</p>

While the unit layouts are quite tight, the Panel considered they are generally satisfactory but some refinements may be appropriate. Several units have limited kitchen bench space - eg. 2 bedroom units on level 2 on the south-west corner, and some living areas allow direct line of sight into adjacent bedrooms. Clarification of how various unit services will be provided is expected in any subsequent submission, along with detailed modelling for natural ventilation.	<p>Bench space appears to be ok.</p> <p>Bedrooms still directly off living areas.</p> <p>Detailed natural ventilation modelling not provided.</p> <p>Not considered to be reason to refuse the application.</p>
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**Table 7:** Concept Consent Condition 10 Compliance Assessment

## 7. Environmental Planning Instruments

### 7.1 Overview

The instruments applicable to this application comprise:

- SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004;
- SEPP (Transport and Infrastructure) 2021;
- SEPP (Planning Systems) 2021;
- SEPP (Biodiversity and Conservation) 2021;
- SEPP (Resilience and Hazards) 2021;
- 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.

However, the proposal does not include BASIX stamped drawings and as such the relevant requirements cannot be verified. Further, there are errors in the BASIX submission, including 3 levels of car parking not included and car park incorrectly allocated to non-residential uses.

As such it is not possible to verify that the proposal satisfied the requirements of the SEPP, and refusal is warranted on this basis.

### 7.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

#### 7.3.1 Infrastructure

The proposal is considered to constitute a 'traffic generating development' per Schedule 3 of the SEPP (as it proposes more than 200 car parking spaces) and Section 3.58 of the SEPP as it includes a child care centre with a capacity of greater than 50 children. The DA has been referred to Road and Maritime Services (RMS), who requested additional traffic modelling and raised concern with the ability of the driveway to accommodate simultaneous entry/exit of a service vehicle and passenger vehicle. These issues form reason to refuse the application.

#### 7.3.2 Child Care Centre

The proposal includes a 'centre-based child care facility' and as such is subject to the requirements of Part 3.3 of the SEPP. The childcare centre would have capacity for ~60 children. The proposal only seeks approval for the use of the site. Detailed fit out would be subject to a future detailed DA. A condition would be included to this effect in any consent.

The SEPP seeks to facilitate delivery of educational and child care facilities by establishing a clear regulatory framework. An assessment of the proposed child care centre against the relevant provisions of the SEPP is outlined below:

Control	Proposal
<b>Part 3.3 Early Education and Care Facilities – Specific Development Controls</b>	
<b>3.22 Centre-based child care facility – concurrence of Regulatory Authority required for certain development</b>  Concurrence required if less than mandated indoor or outdoor space provided per child (3.25sqm and 7sqm respectively).	The proposal includes: <ul style="list-style-type: none"> <li>• 441sqm outdoor play (7.35sqm/child)</li> <li>• 196sqm internal play (3.27sqm/ child)</li> </ul>
<b>3.23 Centre-based child care facility—matters for consideration by consent authorities</b>  Consideration any applicable provisions of the Child Care Planning Guideline.	See table below.
<b>3.26 Centre-based child care facility—non-discretionary development standards</b>  Cannot be refused for the following reasons: <ul style="list-style-type: none"> <li>• Non-compliance with local controls requiring minimum separation distances to other such centres.</li> <li>• Indoor/outdoor play space provided as per Regulations</li> <li>• Non-compliance with local site area and site dimension requirements</li> <li>• Non-compliance with local building material controls</li> </ul>	Noted, not a contention.  Appears capable of compliance. Will be confirmed at detailed DA stage.  Noted, not a contention.  Noted, not a contention.
<b>3.27 Centre-based child care facility—development control plans</b>  The following local DCPs controls do not apply: <ul style="list-style-type: none"> <li>• Operational/Management Plans</li> <li>• Demand or need for child care centres</li> <li>• Proximity to other child care centre</li> <li>• Any matters set out in Child Care Planning Guidelines except height, setbacks and car parking</li> </ul>	Noted Noted Noted Noted (see assessment in table below)

**Table 8:** SEPP (Transport and Infrastructure) 2021 – Part 3.3 'Child Care' Assessment

### **Child Care Planning Guideline August 2017**

The SEPP requires consideration of the provisions contained within the Child Care Planning Guideline. An assessment is provided below.

<b>Part 2 – Design Quality Principles</b>	
<b>Context</b>	The centre would form part of a larger mixed-use building consistent with the desired future character of the area. The building form is assessed elsewhere in this report. Detailed design will be subject to a future application.
<b>Built Form</b>	
<b>Adaptive Learning Spaces</b>	The proposal provides indoor and outdoor spaces to allow for a variety of settings. Building design and learning space fit out will be subject to a future application.
<b>Sustainability</b>	The open space will receive intermittent sunlight throughout the day. The centre will enjoy the benefits of cross ventilation owing to openings on adjacent elevations. Sustainability objectives would be considered at future detailed DA stage.
<b>Landscape</b>	The proposal provides deep soil zones and planting to the perimeter of the site.

<b>Amenity</b>	The child care centre entrance, indoor areas and outdoor play spaces would all be accessible step-free and as such would be efficient and accessible. The draft floor plan demonstrates that sufficient space can be provided for storage and service areas subject to the capacity of the centre.
<b>Safety</b>	The reference scheme demonstrates that the child care use can be safely accommodated with off-street drop-off, a private and well separated outdoor play space. Detailed material and plant selection will be subject to the future detailed application.
<b>Part 3 – Matters for Consideration</b>	
<b>3.1 Site Selection and Location</b>	
C1 Objective: To ensure that appropriate zone considerations are assessed when selecting a site.	The proposed use is within a commercial zone, but is adjacent to a residential zone. The location on the boundary between such zones is considered to be appropriate.
C2 Objective: To ensure that the site selected for a proposed child care facility is suitable for the use.	The site is not in close proximity to any restricted premises, injecting rooms, drug clinics or the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises or sex services premises.
C3 Objective: To ensure that sites for child care facilities are appropriately located.	The site is in close proximity to compatible uses including schools, places of public worship and community centers.
C4 Objective: To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.	<p>The site is not located near industry, waste transfer depots, landfill sites, service stations, water cooling or warming systems, air pollutant generating uses or any other land use that would create environmental hazards.</p> <p>However, the applicant has not demonstrated that the site itself is suitably free of contamination for a child care use. See Section 7.6 below.</p>
<b>3.2 Local Character, Streetscape and Public Domain Interface</b>	
C5 Objective: To ensure that the child care facility is compatible with the local character and surrounding streetscape.	The child care use is consistent with the desired future character of the area. Car parking is integrated into the building. Detailed design will be subject to a future application.
C6-8 Objective: To ensure clear delineation between the child care facility and public spaces.	The reference scheme demonstrates that an appropriate delineation and relationship with the public domain can be achieved. The child care center has a dedicated access.
C9-10 Objective: To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	Fencing will be subject to assessment at future detailed DA stage.

<b>3.3 Building Orientation, Envelope and Design</b>	
<p><b>C11</b> Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> <li>• Ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> <li>○ Facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties;</li> <li>○ Placing play equipment away from common boundaries with residential properties;</li> <li>○ Locating outdoor play areas away from residential dwellings and other sensitive uses;</li> </ul> </li> <li>• Optimise solar access to internal and external play areas;</li> <li>• Avoid overshadowing of adjoining residential properties;</li> <li>• Minimise cut and fill;</li> <li>• Ensure buildings along the street frontage define the street by facing it; and</li> <li>• Ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.</li> </ul>	<p>The proposal includes openings to, and outdoor play space, in the north side and rear setbacks.</p> <p>No acoustic assessment has been provided for the child care centre.</p> <p>The child care use is limited to ground level and as such will minimise overlooking.</p> <p>Location of play equipment would be subject to future fitout DA.</p> <p>The outdoor play space would be located in the north and rear setback areas and as such would maximise solar access.</p> <p>The child care use does not overshadow adjoining properties.</p> <p>Cut and fill is minimised, including around existing tree to be retained.</p> <p>The building faces the street.</p> <p>The child care centre is not above ground level.</p>
<p><b>C12</b> The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> <li>• Building height should be consistent with other buildings in the locality;</li> <li>• Building height should respond to the scale and character of the street;</li> <li>• Setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility;</li> <li>• Setbacks should provide adequate access for building maintenance; and</li> <li>• Setbacks to the street should be consistent with the existing character.</li> </ul>	<p>The child care centre component is limited to ground level. The height of the building relative to the locality is discussed elsewhere in this report.</p> <p>The ground level side setbacks are sufficient to allow for privacy. The setbacks are sufficient to allow for screen planting to protect the privacy of children.</p> <p>The setbacks allow access for maintenance.</p>
<p><b>C13</b> Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p>	<p>The site does not adjoin a classified road.</p>
<p><b>C14</b> On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>N/A (not residential zone)</p>

<p><b>C15</b> The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> <li>• Respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage;</li> <li>• Retains and reinforces existing built form and vegetation where significant;</li> <li>• Considers heritage within the local neighbourhood including identified heritage items and conservation areas;</li> <li>• Responds to its natural environment including local landscape setting and climate; and</li> <li>• Contributes to the identity of place.</li> </ul>	<p>Built form is assessed elsewhere in this report.</p>
<p><b>C16</b> Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> <li>• Located to allow ease of access, particularly for pedestrians;</li> <li>• Directly accessible from the street where possible;</li> <li>• Directly visible from the street frontage;</li> <li>• Easily monitored through natural or camera surveillance;</li> <li>• Not accessed through an outdoor play area; and</li> <li>• In a mixed-use development, clearly defined and separate from entrances to other uses in the building.</li> </ul>	<p>The entry is considered to be consistent with the Guidelines for the following reasons:</p> <ul style="list-style-type: none"> <li>• There is a single entry point.</li> <li>• It provides level access from the street.</li> <li>• Can be monitored through camera surveillance.</li> <li>• Not accessed through a play area.</li> <li>• Directly visible from the street.</li> <li>• The pedestrian entrance is separated from vehicular entrance.</li> </ul>
<p><b>C17</b> Accessible design can be achieved by:</p> <ul style="list-style-type: none"> <li>• Providing accessibility to and within the building in accordance with all relevant legislation;</li> <li>• Linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry;</li> <li>• Providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible; and</li> <li>• Minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath.</li> </ul> <p>NOTE: The <i>National Construction Code</i>, the <i>Discrimination Disability Act 1992</i> and the <i>Disability (Access to Premises – Buildings) Standards 2010</i> set out the requirements for access to buildings for people with disabilities.</p>	<p>The proposal provides step-free access from the street to all internal areas and a dedicated lift from basement level.</p>
<p><b>3.4 Landscaping</b></p>	
<p><b>C18</b> Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> <li>• Reflecting and reinforcing the local context; and</li> <li>• Incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping.</li> </ul>	<p>The proposal includes a row of screen planting along the northern and western boundaries of the outdoor space.</p>

<p><b>C19</b> Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"><li>• Planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings;</li><li>• Taking into account streetscape, local character and context when siting car parking areas within the front setback; and</li><li>• Using low level landscaping to soften and screen parking areas.</li></ul>	Car parking is provided underground.
<b>3.5 Visual and Acoustic Privacy</b>	
<p><b>C20</b> Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.</p>	The upper levels of the building overhang the outdoor play space by 1m, which is considered to be acceptable. The upper levels do overlook the open space. However, it is considered that the future fit out application can address privacy with shade structures and the like.
<p><b>C21</b> Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"><li>• Appropriate site and building layout;</li><li>• Suitably locating pathways, windows and doors; and</li><li>• Permanent screening and landscape design.</li></ul>	The proposal has minimal frontage to the public street. The booster cabinet would provide some privacy. This interface can be addressed at detailed DA stage.
<p><b>C22</b> Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"><li>• Appropriate site and building layout;</li><li>• Suitable location of pathways, windows and doors; and</li><li>• Landscape design and screening.</li></ul>	The child care centre is at ground level only and is surrounded by screen planting and as such will not unacceptably overlook adjoining properties.
<p><b>C23</b> A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"><li>• Provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence); and</li><li>• Ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.</li></ul>	No acoustic assessment has been provided for the child care centre. This forms reason to refuse the application.
<p><b>C24</b> A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"><li>• Identify an appropriate noise level for a child care facility located in residential and other zones;</li><li>• Determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use; and</li><li>• Determine the appropriate height of any acoustic fence to enable the noise criteria to be met.</li></ul>	
<b>3.6 Noise and Air Pollution</b>	
<p><b>C25</b> Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"><li>• Creating physical separation between buildings and the noise source;</li><li>• Orienting the facility perpendicular to the noise source and where possible buffered by other uses;</li><li>• Using landscaping to reduce the perception of noise;</li></ul>	No acoustic assessment has been provided for the child care centre. This forms reason to refuse the application.



<ul style="list-style-type: none"><li>• Limiting the number and size of openings facing noise sources;</li><li>• Using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens);</li><li>• Using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits; and</li><li>• Locating cot rooms, sleeping areas and play areas away from external noise sources.</li></ul>	
<p><b>C26</b> An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"><li>• On industrial zoned land;</li><li>• Where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000;</li><li>• Along a railway or mass transit corridor, as defined by <i>State Environmental Planning Policy (Infrastructure) 2007</i>;</li><li>• On a major or busy road; and</li><li>• Other land that is impacted by substantial external noise.</li></ul>	No acoustic assessment has been provided for the child care centre. However, the site is not exposed to any such external noise sources.
<p><b>C27</b> Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p> <p><b>C28</b> A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"><li>• Creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution;</li><li>• Using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway; and</li><li>• Incorporating ventilation design into the design of the facility.</li></ul>	The site is not located on a major road or in proximity to an industrial area.
<p><b>3.7 Hours of Operation</b></p> <p><b>C29</b> Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.</p> <p><b>C30</b> Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.</p>	
<p><b>3.8 Traffic, Parking and Pedestrian Circulation</b></p> <p><b>C31</b> Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p> <p><b>C32</b> In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high</p>	
	Complies (see DCP assessment at Section 9.1 below)
	The proposal does not rely on on-street parking.

levels of vehicle movement or potential conflicts with trucks and large vehicles.	
<p><b>C33</b> A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> <li>• The amenity of the surrounding area will not be affected; and</li> <li>• There will be no impacts on the safe operation of the surrounding road network.</li> </ul>	<p>A Traffic and Parking report has been provided which concludes that the proposal will have an acceptable impact on traffic and provides sufficient parking. TfNSW consider that a queuing analysis should be undertaken.</p>
<p><b>C34</b> Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> <li>• A classified road; and</li> <li>• Roads which carry freight traffic or transport dangerous goods or hazardous materials.</li> </ul> <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> <li>• The prevailing traffic conditions;</li> <li>• Pedestrian and vehicle safety including bicycle movements; and</li> <li>• The likely impact of the development on traffic.</li> </ul>	<p>The site is not on a classified road or a road carrying freight.</p>
<p><b>C35</b> Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p>The site is not within a cul-de-sac.</p>
<p><b>C36</b> The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> <li>• Separate pedestrian access from the car park to the facility;</li> <li>• Defined pedestrian crossings included within large car parking areas;</li> <li>• Separate pedestrian and vehicle entries from the street for parents, children and visitors;</li> <li>• Pedestrian paths that enable two prams to pass each other;</li> <li>• Delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities;</li> <li>• In commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas; and</li> <li>• Vehicles can enter and leave the site in a forward direction.</li> </ul>	<p>The proposal is considered capable of accommodating a safe pedestrian environment for the following reasons:</p> <ul style="list-style-type: none"> <li>• Access is provided from the car park to the child care centre.</li> <li>• There will be sufficient access to the entry to allow prams to pass.</li> <li>• Delivery and loading is separate to the primary pedestrian entrance.</li> <li>• The path of travel from parking spaces to the basement entrance is separate from truck circulation areas.</li> <li>• Vehicles can enter and exit the site in a forward direction.</li> </ul>
<p><b>C37</b> Mixed use developments should include:</p> <ul style="list-style-type: none"> <li>• Driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks;</li> <li>• Drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site; and</li> </ul>	<p>The basement will not be capable of accommodating large trucks.</p> <p>The drop off requires crossing the path of travel for resident vehicles. Line marking and signage will be necessary at future fit out DA stage to address this issue.</p>

<ul style="list-style-type: none"> <li>• Parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.</li> </ul>	<p>The child care centre car parking is located in close proximity to the child care centre lift lobby.</p>
<p><b>C38</b> Car parking design should:</p> <ul style="list-style-type: none"> <li>• Include a child safe fence to separate car parking areas from the building entrance and play areas;</li> <li>• Provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards; and</li> <li>• Include wheelchair and pram accessible parking.</li> </ul>	<p>The car parking area is in the basement.</p> <p>Accessible parking is in close proximity to the child care centre lift lobby.</p>
<p><b>Part 4 – Applying the National Regulations to Development Proposals</b></p>	
<p><b>4.1 Indoor Space Requirements</b></p>	
<p><b>Regulation 107 Education and Care Services National Regulations</b></p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m<sup>2</sup> of unencumbered indoor space.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> <li>• Passageway or thoroughfare (including door swings) used for circulation;</li> <li>• Toilet and hygiene facilities;</li> <li>• Nappy changing area or area for preparing bottles;</li> <li>• Area permanently set aside for the use or storage of cots;</li> <li>• Area permanently set aside for storage;</li> <li>• Area or room for staff or administration;</li> <li>• Kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen;</li> <li>• On-site laundry; and</li> <li>• Other space that is not suitable for children.</li> </ul>	<p>Required: 60 children x 3.25m<sup>2</sup>/child = &gt;195m<sup>2</sup> Provided: 196m<sup>2</sup></p> <p>Confirmation subject to future fit out DA. May require reduction in total occupancy. Condition would be included confirming that capacity is not approved.</p>
<p><b>Verandahs as indoor space</b></p> <p>For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p><b>Storage</b></p> <p>Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> <li>• A minimum of 0.3m<sup>3</sup> per child of external storage space; and</li> <li>• A minimum of 0.2m<sup>3</sup> per child of internal storage space.</li> </ul>	<p>Verandahs not relied upon to achieve compliance.</p> <p>The reference drawings demonstrate there is likely to be sufficient space for storage. Confirmation subject to future fit out DA.</p>
<p><b>4.2 Laundry and Hygiene Facilities</b></p>	
<p><b>Regulation 106 Education and Care Services National Regulations</b></p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p>	<p>The reference drawings demonstrate there is sufficient space to provide laundry facilities. Confirmation subject to future fit out DA.</p>

<b>4.3 Toilet and Hygiene Facilities</b>	
<b>Regulation 109 <i>Education and Care Services National Regulations</i></b>  A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. Child care facilities must comply with the requirements for sanitary facilities that are contained in the <i>National Construction Code</i> .	The reference drawings demonstrate there is sufficient space to provide sanitary facilities. Confirmation subject to future fit out DA.
<b>4.4 Ventilation and Natural Light</b>	
<b>Regulation 110 <i>Education and Care Services National Regulations</i></b>  Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i> . Ceiling height requirements may be affected by the capacity of the facility.	The reference drawings demonstrate there is sufficient ceiling height for the use, and that there can be sufficient cross ventilation and light. Confirmation subject to future fit out DA.
<b>4.5 Administrative Space</b>	
<b>Regulation 111 <i>Education and Care Services National Regulations</i></b>  A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	The reference drawings demonstrate there is sufficient space to provide administrative facilities. Confirmation subject to future fit out DA.
<b>4.6 Nappy Change Facilities</b>	
<b>Regulation 112 <i>Education and Care Services National Regulations</i></b>  Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the <i>National Construction Code</i> .	The reference drawings demonstrate there is sufficient space to provide nappy changing facilities. Confirmation subject to future fit out DA.
<b>4.7 Premises designed to facilitate supervision</b>	
<b>Regulation 115 <i>Education and Care Services National Regulations</i></b>  A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity. Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the <i>National Construction Code</i> .	The reference drawings demonstrate there is sufficient space to provide supervision. Confirmation subject to future fit out DA.
<b>4.8 Emergency and Evacuation Procedures</b>	
<b>Regulations 97 and 168 <i>Education and Care Services National Regulations</i></b>  Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including:	Emergency planning would be subject to assessment at future fit out DA stage.

<ul style="list-style-type: none"> <li>• Instructions for what must be done in the event of an emergency;</li> <li>• An emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit; and</li> <li>• A risk assessment to identify potential emergencies that are relevant to the service.</li> </ul>	
<b>4.9 Outdoor Space Requirements</b>	
<p><b>Regulation 108 <i>Education and Care Services National Regulations</i></b></p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m<sup>2</sup> of unencumbered outdoor space.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ul style="list-style-type: none"> <li>• Pathway or thoroughfare, except where used by children as part of the education and care program;</li> <li>• Car parking area;</li> <li>• Storage shed or other storage area;</li> <li>• Laundry; and</li> <li>• Other space that is not suitable for children.</li> </ul> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play (refer to Figures 9 and 10).</p>	<p>Required: 60 children x 7m<sup>2</sup>/child = &gt;420m<sup>2</sup> Provided: ~441m<sup>2</sup></p> <p>Confirmation subject to future fit out DA. May require reduction in total occupancy. Condition would be included confirming that capacity is not approved.</p>
<b>4.10 Natural Environment</b>	
<p><b>Regulation 113 <i>Education and Care Services National Regulations</i></b></p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	Subject to future fit out DA.
<b>4.11 Shade</b>	
<p><b>Regulation 114 <i>Education and Care Services National Regulations</i></b></p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	Subject to future fit out DA.
<b>4.12 Fencing</b>	
<p><b>Regulation 104 <i>Education and Care Services National Regulations</i></b></p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the <i>National Construction Code</i>.</p>	Subject to future fit out DA.

<b>4.13 Soil Assessment</b>	
<p><b>Regulation 25 Education and Care Services National Regulations</b></p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required:</p> <ul style="list-style-type: none"> <li>• A soil assessment for the site of the proposed education and care service premises;</li> <li>• If a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken; and</li> <li>• A statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children.</li> </ul>	<p>As previously outlined, the proposal does not include a Stage 2 contamination investigation and as such the applicant has not demonstrated the site is suitable for the child care use.</p>

**Table 9:** Child Care Planning Guidelines Assessment

#### **7.4 State Environmental Planning Policy (Planning Systems) 2021**

As this proposal has a Capital Investment Value of more than \$30 million, Part 2.4 of this Policy provides that the Sydney Central City Planning Panel is the consent authority for this application.

#### **7.5 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 10 of this Policy, which applies to the whole of the Parramatta local government area, aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole. The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality, which would be achieved through appropriate conditions of consent.

#### **7.6 State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4.6 of this Policy requires that the consent authority must consider if land is contaminated and, if so, whether it is suitable, or can be made suitable, for a proposed use.

Council records show that the site has been used as an office building since the 1980's and a paved carpark previously since the 1960's. As such there is not any obvious evidence of potentially contaminating previous uses. Further, the site is not identified in Council's records as being contaminated.

The preliminary site investigation report concluded that the site does not have an obvious history of a previous land use that may have caused contamination and there is no specific evidence that indicates the site is contaminated. However, the report recommended that further soil testing be completed as part of a Phase 2 investigation, presumably upon demolition of the building. Since the report was written, the building was demolished.

As the proposal includes sensitive uses (including a child care centre) it is considered that the further testing should be completed now, to determine if and what remediation is necessary.

As such the proposal is not considered to satisfy the requirements of the SEPP and this forms reason to refuse the application.

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

SEPP 65 applies to the shop top housing element 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).

### 7.7.1 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. An assessment of the proposal against the design quality principles is provided below.

Requirement	Council Officer Comments
<i>Principle 1: Context and Neighbourhood Character</i>	<p>The site is located in the east side of the Epping Town Centre, which is transitioning from low-medium rise commercial development to high rise mixed use development, with podiums on the street alignment and towers setback above. The proposed building is generally consistent with this shift.</p> <p>However, the proposed envelope is not considered to be appropriately scaled or sited. The building to the south has a 3-storey podium on the street alignment, and the approved building to the north has a 3-storey podium setback 3m (building to north in R4 zone). The proposed 2-storey podium, setback 7.3m, does not provide an appropriate consistency with, of transition between, the two.</p> <p>Further, the applicant has not provided sufficient contextual analysis to justify the podium southern setback, which is inconsistent with the concept and control.</p>
<i>Principle 2: Built Form and Scale</i>	<p>The concept application justified a significant height breach on the basis of avoiding the need to provide a second tower to the rear of the site, and a series of other measures, including high sustainability. The proposal includes a further breach, to accommodate the lift overrun, which would have negligible additional amenity impacts due to its location central to the tower footprint.</p> <p>However, the height of the tower is considered to be excessive relative to the 2-storey podium proposed. A 3-storey podium would provide a more appropriate relationship.</p>
<i>Principle 3: Density</i>	<p>The above-ground gross floor area would result in a complying floor space ratio (FSR), which would provide a density of housing in keeping with the desired future character of the area. However, the inclusion of excessive parking results in a technical exceedance of the FSR, which is not allowable in the area. See further discussion below.</p>
<i>Principle 4: Sustainability</i>	<p>The proposal does not comply with the concept approval sustainability requirements.</p> <p>The proposal does not adequately incentive public transport, cycling and walking due to an overprovision of car parking, under provision of bicycle parking and lack of end-of-trip facilities.</p>
<i>Principle 5: Landscape</i>	<p>The proposal provides a good quantum of landscaped open space. However, as outlined by DEAP, it is considered that the rear open space amenity could be improved with a revised layout and a direct lobby connection. The proposal does not include the tree planting to the front of the site required by the concept.</p>
<i>Principle 6: Amenity</i>	<p>As outlined by DEAP, it is considered that a community room would improve resident amenity and be well used owing to the density of the development.</p> <p>DEAP also raised concern with some apartment layouts including bedrooms off living areas (see Appendix 3 for detail). However, this alone is not considered to be reason to refuse the application.</p>

Requirement	Council Officer Comments
<i>Principle 7: Safety</i>	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p> <ul style="list-style-type: none"> <li>• A significant number of units are orientated towards public streets creating passive surveillance.</li> <li>• Entry points into the building are clearly identifiable allowing ease of access for residents and visitors.</li> <li>• Retail and child care components at ground level will activate the precinct to further enforce a sense of passive surveillance.</li> <li>• The driveway and rear open space access will be gated at night.</li> </ul>
<i>Principle 8: Housing Diversity and Social Interaction</i>	<p>While the proposal provides a mix of apartment sizes overall, it does not do so for the adaptable units proposed and as such would not provide for the varied needs of those requiring such accommodation.</p> <p>The proposal provides varied communal open spaces which will foster social interaction.</p>
<i>Principle 9: Aesthetics</i>	<p>As outlined by DEAP, there are façade detailing options which would improve the building's aesthetics. While the Panel also recommended extending the tower slots down into the podium, this is not considered to be reason to refuse the application.</p>


**Table 10:** Assessment of the proposal against the Design Quality Principles

### 7.7.2 Apartment Design Guide

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

Standard	Requirement	Proposal	Compliance
<b>Part 3</b>			
<i>3B-1: Orientation</i>	<p>The significant height breach avoids the option of providing a second tower in the south-western corner of the site.</p> <p>However, as outlined above, the front setback of the building is not considered to be ideal.</p>		
<i>3B-2: Overshadowing</i>	<p>The proposal will result in significant overshadowing of the northern façade of the adjoining tower at No. 35 Oxford Street. However, the northern windows of that development serve only non-habitable spaces due to their minimal boundary separation. The east and western facades of No. 35 Oxford Street, the primary outlooks for units in that development, will still receive up to 3 hours of uninterrupted sun in the morning (those facing east) or afternoon (those facing west).</p> <p>Due to the general north-south orientation of the proposal all other adjoining/nearby buildings will receive the required solar access in either the morning or afternoon.</p> <p>As such, the proposal is considered to have a reasonable overshadowing impact on adjoining/nearby properties.</p>		
<i>3C: Public Domain Interface</i>	<p>The building would provide good activation to the Oxford Street frontage.</p> <p>Providing the fire booster in the front setback is not ideal. However, as it will be located to the front of the child care centre, which will require a fence of its own, it will not reduce activation.</p> <p>The proposal provides an awning and street trees which are currently not provided in the street. Further, the public domain materials will be updated in keeping with the requirements of Parramatta's Public Domain Guidelines.</p>		
<i>3D: Communal &amp; Public Open Space</i>	Min. 25% of site area (1,242m <sup>2</sup> )	52% (2,580m <sup>2</sup> ) - 2,475m <sup>2</sup> ground, 105m <sup>2</sup> roof top	Yes
	Min. 50% direct sunlight to main COS > two (2) hours 9:00am & 3:00pm, June 21 <sup>st</sup>	>50% will receive 2 hours of sunlight in midwinter.	Yes



Standard	Requirement	Proposal	Compliance
	<p>The landscape plan outlines a pool, gym, play equipment, sauna, open and undercover seating areas, bbqs, and a variety of soft and hard landscaping which is considered to provide good amenity for future occupants.</p> <p>While it is considered that a communal room could be provided for a development of this size, it does not warrant reason to refuse the application.</p>		
3E: Deep Soil	<p>Min. 7% with min. dimensions of 6m (348m<sup>2</sup>)</p> <p>Basement below building footprint</p>	<p>1,315m<sup>2</sup> (26%)</p> <p>Basement extends beyond footprint</p>	<p>Yes</p> <p>No, but approved at concept</p>
3F: Visual Privacy	<p>9 storeys and above (over 25m):</p> <ul style="list-style-type: none"> <li>24m between habitable rooms/balconies</li> <li>18m between habitable and non-habitable rooms</li> <li>12m between non-habitable rooms</li> </ul>	<p>North: 9.5m (privacy screens), 12m units with primary outlook to north</p> <p>West: &gt;12m</p> <p>South: 9.5m (privacy screens), 12m units with primary outlook to south</p>	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. Separate entries provided for residential, retail, child care and commercial uses.		
3H: Vehicle Access	<p>The location of the vehicle access is considered to be appropriate as there is no secondary street access, and its location at the south of the site occupies an otherwise unusable space due to the irregular shape of the adjoining podium (see Figure 4 below) and the lack of solar access from proposed tower. The loading dock will not be visible from the street.</p> 		
	<p><b>Figure 4.</b> Photo of No. 35 Oxford Street (left) and subject site (right) demonstrating podium return of No. 35 Oxford Street (green) and location of proposed driveway (red).</p>		
3J: Bicycle and car parking	<p>The site is &lt;800m from Epping train station, as such the applicable <i>minimum</i> car parking rate is the rate specified in the RMS Guide to Traffic Generating Development or the DCP, whichever is less. The minimum rate in the DCP is zero and thus applies. While the proposal achieves the de facto minimum residential occupant parking, it exceeds the DCP maximum. Further discussion under Hornsby DCP assessment below.</p> <p>For bicycle parking assessment see Hornsby DCP assessment below.</p>		

Standard	Requirement	Proposal	Compliance
<b>Part 4</b>			
4A: Daylight / Solar Access	Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (>147)	<b>143 out of 211 apartments (68%) assuming no additional development to north</b>	<b>No (see discussion below)</b>
		<b>133 out of 211 apartments (63%) taking into account the approved development to north</b>	<b>No (see discussion below)</b>
	Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<32)	28 out of 211 apartments (13%)	Yes
<b>4B: Natural Ventilation</b>	<b>Min. 60% of apartments below 9 storeys naturally ventilated (&gt;34)</b>	<b>28 out of 56 apartments (50%)</b>	<b>No (see discussion below)</b>
4C: Ceiling heights	<b>Ground: 4m Mixed use: 3.3m</b>	<b>Ground: 2.9m – 3.8m Mixed Use: 2.9m</b>	<b>No (see discussion below)</b>
	Habitable rooms 2.7m Non-habitable 2.4m	Residential: 2.8m Non-Habitable: 2.4m	Yes Yes
4D: Apartment size & layout	1 bedroom 50m <sup>2</sup>	>53m <sup>2</sup>	Yes
	2 bedroom (1 bath) 70m <sup>2</sup>	>74m <sup>2</sup>	
	2 bedroom (2 bath) 75m <sup>2</sup>	>80m <sup>2</sup>	
	3 bedroom 95m <sup>2</sup>	>105m <sup>2</sup>	
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.	Provided	Yes
	Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry)	Some 2 bed units do not comply.	No (minor)
	Habitable room depths are limited to a maximum of 2.5 x ceiling height (7.25m).	<5.5m	Yes
	Open plan max habitable room depth is 8m from a window.	<8.5m	No (minor)
	Master bedrooms 10m <sup>2</sup> Other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	>10m <sup>2</sup> >9m <sup>2</sup>	Yes Yes
4E: Private open space & balconies	Bedrooms have a minimum dimension of 3m.	>3m	Yes
	Living rooms or combined living/dining rooms have a minimum width of: - 3.6m (1 bed apartments) - 4m (2+ bed apartments)	>3.6m >3.9m	Yes No (minor)
	1 Bedroom = 8m <sup>2</sup> X 2m 2 Bedroom = 10m <sup>2</sup> X 2m 3 Bedroom = 12m <sup>2</sup> x 2.4m	1 Bed = >8m <sup>2</sup> x >2m 2 Bed = >10m <sup>2</sup> x >2m 3 Bed = >12m <sup>2</sup> x >2.4m	Yes Yes Yes

Standard	Requirement	Proposal	Compliance
	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 acceptable level of service.		
	Corridors >12m length from lift core to be articulated.	Articulated	Yes
	The corridors are also provided with extra width and natural light. It is not clear if the corridors will benefit from natural ventilation. A condition would included in any consent requiring the corridor windows be operable.		
4G: Storage	1 bedroom 6m <sup>2</sup>	199 storage cages in basement, no size notations, no indication of in-unit storage	No (see below)
	2 bedroom 8m <sup>2</sup>		
	3 bedroom 10m <sup>2</sup>		
	Min. 50% required in units		
	While the proposal does not demonstrate compliance, it is considered that there would be sufficient room in the basement and units to provide the required storage. Minimum storage requirements would be required by condition.		
4H: Acoustic Privacy	The proposal has generally not been designed so that like-use areas of the apartments are grouped to avoid acoustic disturbance. Noisier areas such as kitchens and laundries are not designed to be located away from bedrooms. The acoustic report does not address inter-unit acoustic treatment. As such a condition would be included requiring an updated acoustic report to address this issue prior to any construction.		
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 external noise sources. A condition would be 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. However, concern is raised with regard to a lack of diversity with adaptable units.		
4M: Facades	<p>The primary façade material is painted concrete, clear and coloured glass, with aluminium louvres.</p> <p>Painted concrete is susceptible to staining. A condition would be included in any consent requiring details be submitted, prior to construction, outlining how this would be minimised (i.e. drip edges, stain-resistant paint).</p> <p>The glazed facades have limited depth articulation. It is considered that introduction of a window reveal would help to break up the perceived bulk of the façade. A condition to this effect would be included in any consent.</p>		
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 readily visible from the street.		
4O: Landscape Design	<p>The connection between lift core and open space is poor (long winding corridor). Ideally it would open directly, providing a visual connection. However, this would require significant redesign of the child care centre. This is not considered to be reason alone to refuse the application.</p> <p>While the proposal provides a large landscaped area, there are concerns that it is not laid out efficiently. Lots of space is taken up by ramps. A condition could be included seeking to increase efficiency of the open space.</p> <p>The landscape plan outlines a significant amount of planting which is supported.</p>		
4P: Planting on structures	The landscape drawings outline that planting on structures would have adequate soil depth to accommodate good quality planting.		

Standard	Requirement	Proposal	Compliance
4Q: <i>Universal Design</i>	20% Liveable Housing Guidelines Silver Level design features (>43)	43	Yes
	<p>The units are appropriately barrier free and have wheelchair access to 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.</p> <p>Further design detail of specific elements will be required as the development progresses through to the construction phase to ensure compliance. A condition would be included requiring confirmation prior to construction.</p>		
4S: <i>Mixed Use</i>	The proposal is considered to provide an appropriate mix of uses given the character of the area. All uses have separate entries to Oxford Street.		
4T: <i>Awnings and Signage</i>	<p>Awnings are proposed to the front entrances. It is not considered to be necessary to provide an awning to the public footway.</p> <p>No signage is proposed.</p>		
4U: <i>Energy Efficiency</i>	The concept includes a condition requiring that the minimum BASIX energy target be exceeded by 10% points (i.e. 35 points). The BASIX Certificate demonstrates the development has an energy score of 27 points and as such does not comply.		
4V: <i>Water management</i>	The concept includes a condition requiring that the minimum BASIX water target be exceeded by 10% points (i.e. 50 points). The BASIX Certificate demonstrates the development has a water score of 40 points and as such does not comply.		
4W: <i>Waste management</i>	<p>All residential and commercial units are to be provided with sufficient areas to store waste/recyclables.</p> <p>The proposal includes a waste room on each level to access a waste chute with space for recycling bins. Waste storage facilities are provided in the basement and adjacent the loading bay.</p> <p>Separate waste storage for commercial uses is provided.</p> <p>A waste management plan has been prepared by a qualified consultant, demonstrating compliance with Council's waste controls.</p>		
4X: <i>Building maintenance</i>	Painted concrete will need to incorporate features to reduce dripping and stained facades. Conditions would be included to this effect.		

**Table 11:** 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:

#### 7.7.2.1 Daylight / Solar Access

While the proposal would be slightly deficient in solar access if the adjoining tower approved to the north is 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 densities<sup>2</sup>. As a nearby example, the towers 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 ADG is not intended to be applied as a set of strict development standards.
- The outdoor communal areas are generous and will receive sufficient solar access at mid-winter, providing alternatives for residents.

#### 7.7.2.2 Cross Ventilation

While the proposal would be slightly deficient in cross ventilation, this is considered to be acceptable for the following reasons:

<sup>2</sup> The Benevolent Society v Waverley Council [2010] NSWLEC 1082 at paragraph 137

- The east and west facing units, while not technically compliant, have access to ventilation on their side elevations.
- The concept floorplate limits the ability of the proposal to comply.
- The ADG is not intended to be applied as a set of strict development standards.

### 7.7.2.3 Ceiling Heights

The proposed ceiling heights for the ground (retail) and first floor are not considered to be acceptable as they will limit the amenity, functionality and adaptability of these spaces. This forms reason to refuse the application.

## 7.8 Hornsby Local Environmental Plan 2013

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

Development Standard	Proposal	Compliance
<b>2.3 Zoning</b>		
Permissible Uses	<p>The proposal is a mixed-use development comprising the following uses:</p> <ul style="list-style-type: none"> <li>• Centre-based child care facility</li> <li>• Commercial Premises <ul style="list-style-type: none"> <li>○ Retail Premises</li> <li>○ Office Premises</li> </ul> </li> <li>• Shop Top Housing</li> </ul> <p>Note: <b>shop top housing</b> means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities. As such the proposal is consistent with the definition.</p>	Yes
<b>Zone Objectives</b>		
B2 – Local Centre	<p>The proposal is considered to be in keeping with the following objectives of the B2 Local Centre zone:</p> <ul style="list-style-type: none"> <li>• The proposed development provides a range of retail and business uses that would serve the needs of people who live, work or visit the area.</li> <li>• The proposed development would provide employment opportunities in an accessible location.</li> </ul> <p><b>However, the proposal provides excessive residential parking, insufficient bicycle parking, and no end-of-trip facilities and as such would not maximise public transport patronage, walking and cycling.</b></p>	No
<b>4.3 Height of Buildings</b>		
Control: 72m Concept: 95.35m	<b>Max Height: 96.95m</b>	<b>No (24.95m, 35% breach)</b>
<b>4.4 Floor Space Ratio</b>		
Control: 4.5:1 (22,360m <sup>2</sup> ).	<p><b>21,945m<sup>2</sup> (4.4:1) [habitable floor space] + 1,261m<sup>2</sup> (car parking in excess of allowable*) + Access to that excess car parking* (not calculated for the purposes of this report) = Total: &gt;23,206m<sup>2</sup> (4.7:1)</b></p>	<b>No (&gt;833sqm, &gt;3.7% breach)</b>

	* Only car parking to meet any requirements of the consent authority (including access to that car parking) can be excluded from gross floor area. As the excess parking is not a requirement of Council, the area of such parking and access to it must be included in the gross floor area.	
<b>4.6 Exceptions to Development Standards</b>		
	<b>Variation to Building Height Standard.</b>  <b>Clause 4.6(8A) restricts variation of the FSR standard for the purpose of shop-top housing. The basement car parking, which counts as GFA, is ancillary to the shop-top housing use. As such there is no power to vary the standard.</b>	<b>No</b> (see below)  <b>No</b>
<b>5.10 Heritage conservation</b>		
	The nearest heritage items are located at least 50m from the proposed building. Given the separation between the site and the heritage items, it is considered that the impact on significant views and on the significance of the items in general would be acceptable.	Yes
<b>6.2 Earthworks</b>		
	The primary earthworks required to enable the proposal, including excavation and shoring, are assessed in the concurrent 'early works' application (see Section 3.2 above).	N/A
<b>6.8 Design Excellence</b>		
	<b>Council's Design Excellence Advisory Panel have reviewed the proposal and do not consider that it achieves design excellence.</b>	<b>No</b>

**Table 12:** Assessment of the proposal against HLEP 2013.

#### **7.8.1 Clause 4.6 Variation Assessment - Height**

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.

This flexibility was exercised by the Panel in approving the concept envelope application at a height of up to 95.35m. The justification outlined in the concept clause 4.6 variation is provided in the left-hand column of the table below. Adjacent is a check for consistency with the clause 4.6 variation request for the subject application.

The subject application seeks to further increase the height by 1.6m to 96.95m to accommodate the lift overrun. The applicant has submitted a clause 4.6 request seeking to justify the non-compliance.

<b>Original Justification</b>	<b>Detailed DA Consistency with Original Reasons</b>
Is consistent with the objectives of the B2 Local Centre zone, Clause 2.3 of HLEP 2013;	<b>No. The proposal is not consistent with the zone objectives, as outlined above.</b>
Is consistent with the objectives of the development standard, Clause 4.3 of HLEP 2013;	Yes. As outlined below, the proposal is still considered to be consistent with the objectives of the height standard.
The proposal complies with the FSR development standard of 4.5:1 as set out by Clause 4.4 of HLEP 2013;	<b>No. The proposal does not comply with the FSR standard, as outlined above.</b>
The proposed variation does not result in unreasonable amenity impacts on the adjoining and nearby properties.	Yes. The height variation does not result in unacceptable amenity impacts.
The proposal results in a significant amount of open space which will not only provide amenity for the	Yes. The proposal includes significant open space to the rear of the site.



building's occupants but also provided much needed 'breathing room' between the towers on Cambridge Street and Oxford Street.	
The proposal results in a large area of publicly accessible space to the front of the site.	Yes. The proposal includes a large front setback area that will be publicly accessible.
Concentrating development along the street reduces the amenity and safety impacts associated with a second tower to the rear of the site which include: <ul style="list-style-type: none"> <li>• Shops and a residential lobby without street address</li> <li>• Overshadowing and overlooking of school to south</li> <li>• Loss of outlook for No. 35 Oxford Street west facing units</li> <li>• Impact on development potential of No. 16-18 Cambridge Street</li> <li>• Convoluted through-site link with poor passive surveillance.</li> </ul>	Yes. The benefits of not having two towers on site remain.
Allows complying tower setbacks which have not been provided on the adjoining site (No. 35 Oxford Street).	Yes. The tower complies with the site setback controls.
The proposal exceeds the minimum sustainability requirements.	No. The proposal does not achieve the ESD benefits required by the concept.
The design allows for planting of large trees along the front and rear boundaries which has not been achievable on other town centre site.	Part. While the proposal includes trees along the rear boundary, it does not include any trees in the front setback.
The proposal provides a proportion of commercial space in excess of that provided by other recent developments in the town centre.	Yes. The proposed quantum of commercial floor space is consistent with the concept.

**Table 13:** Comparison of concept and subject DA clause 4.6 height variation justification.

*a) 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”*

*b) Clause 4.6(2) – Operation of clause 4.6*

The operation of clause 4.6 with respect of height standards 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 Section 7.8 above and figure 5 below, and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the HLEP 2013.

*c) 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.”*

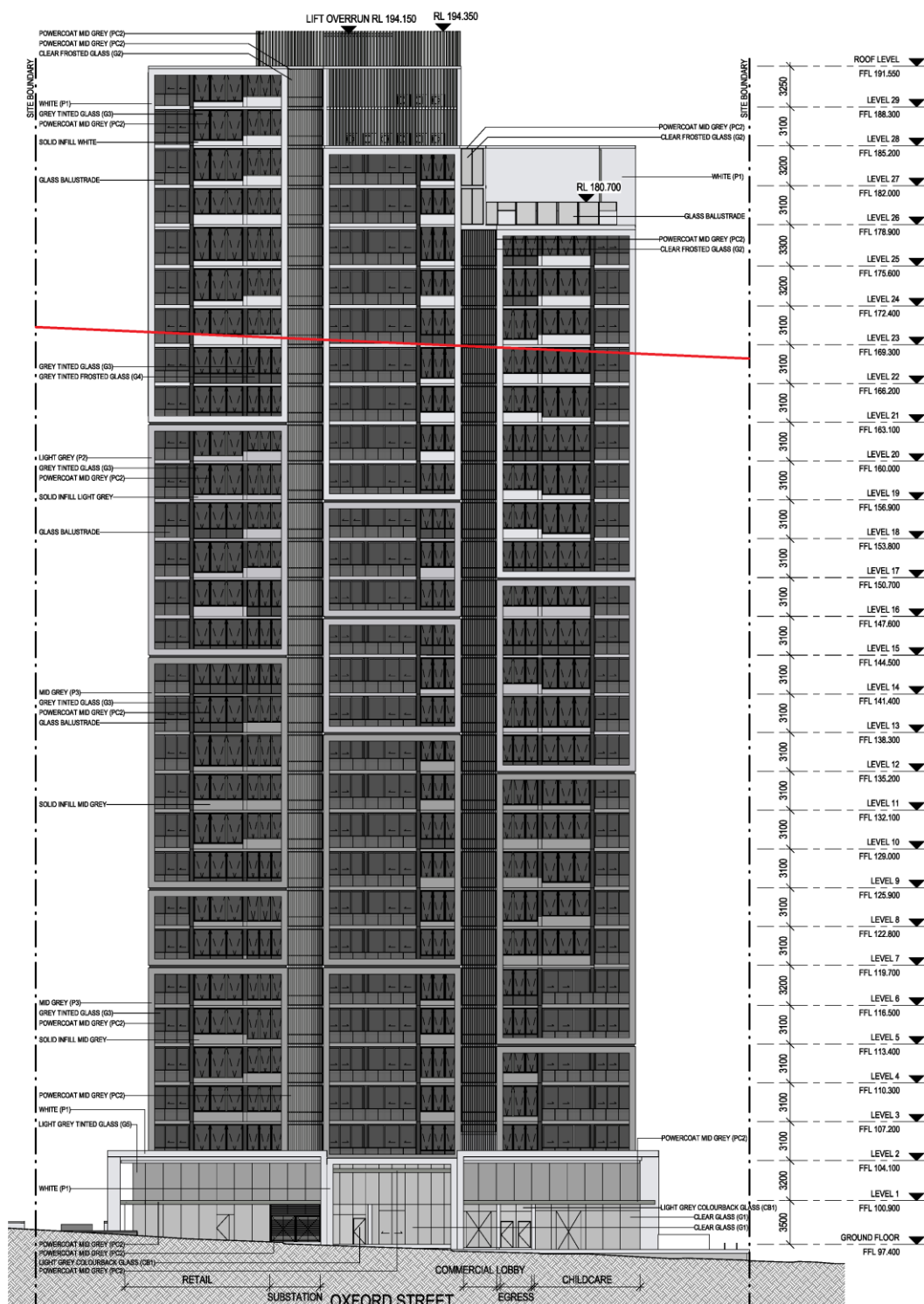


Figure 5. Proposed breach of height limit (red line represents approximate 72m height standard).

The applicant has provided the following justifications for the non-compliance with the development standard (relevant extracts provided). The full request is included at Appendix 1.

- *The proposal is compliant with clause 4.6(3)(a) because strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the case. This is because the Concept DA has already approved a substantial variation to the height standard (32.9%) and the general objectives of clause 4.3 of the HLEP 2013 and the B2 Local Centre Zone have been achieved.*
- *The lift overrun (and associated louvre screening) of 1.6 metres represents a variation of 1.7% to the building height approved under the Concept DA which is considered minor. Further, this minor variation is restricted to a small portion of the building envelope.*



- *There are sufficient environmental planning grounds to justify contravening the development standard for maximum height of building; there will be minimal environmental impacts stemming from the contravention of the development standard, especially in regard to additional bulk, overshadowing or loss of views.*
- *The proposal complies with all other elements of the height plane approved under the Concept DA apart the lift overrun (and associated louvre screening). The majority of the building form sits within the approved Concept DA height limits.*
- *The additional height as a result of the lift overrun (and associated louvre screening) does not result in any additional floor space to the development. The proposal remains a 30-storey mixed use tower. The additional height is a result of detailed design of the lift structure which results in a slightly taller lift overrun.*
- *The central location of the proposed lift overrun (and associated louvre screening) within the building footprint will ensure it is not visible from the public domain and will not result in any additional amenity impacts to adjoining development. The variation does not result in unreasonable adverse amenity impacts on adjacent land beyond a compliant Concept DA built form.*
- *The additional height is as a result of the lift overrun and associated louvre screening. These structures will be well setback on the rooftop and therefore will not be visible from the approaching streetscape. The lift overrun is required to provide equitable access to the building.*
- *The proposed development has been designed to maximise its resultant social benefits by maximising its GFA within in a town centre setting whilst minimising visual bulk and respecting the amenity of adjoining properties.*
- *There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed building as outlined in detail throughout this report.*
- *The proposal is consistent with the objects of the Environmental Planning and Assessment Act 1979 by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity of the built environment.*
- *The variation of the development standard will not raise any matter of significance for State or Regional environmental planning.*

*d) Clause 4.6(4) - Consent Authority Consideration 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.”*

*Unreasonable and Unnecessary*

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.”*

As assessed at concept stage, the key constraint of the site are its irregular shape, large size and limited street frontage, which generate significant development potential with minimal appropriate building footprint locations. While a complying 2 tower development could be provided on the site, it would have significant impacts on adjoining properties and would not allow for the significant landscape/deep soil space provided on site. Further, the site has a high public transport accessibility, and as such it is appropriate to realise the full allowable FSR on this site. As such the objectives of the standard are considered to be achieved.

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

The applicant does not suggest that objective is not relevant to the development.

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

The applicant does not suggest that the objectives would be thwarted if compliance was required; rather that the objectives are achieved despite the breach of the height of buildings development standard.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*

The applicant does not challenge that the standard has been abandoned.

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

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

#### Sufficient Environmental Planning Grounds

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

It is considered that the applicant's written request does not demonstrate sufficient environment planning grounds as it does not include the site-specific benefits outlined in the concept request. In particular, it does not include the ESD improvements and front setback tree planting that in part justified the original breach.

#### Public Interest

The proposal is consistent with the height standard objectives as outlined above.

As outlined in the previous section, the proposal is not consistent with the zone objectives.

#### Concurrence

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. There is no limit to the level of non-compliance for which concurrence can be assumed.

e) *Conclusion*

In summary, it is considered that the applicant's request to vary the height standard should be not supported for the following reasons:

- There are not sufficient environmental planning grounds to justify the departure, in particular the lack of ESD improvements and front setback tree planting that justified the concept breach.
- The proposal will not be in the public interest due to the proposal's inconsistency with the B2 zone objectives. In particular, the proposal does not adequately maximise public transport patronage, walking and cycling.

## 8. Draft Environmental Planning Instruments

The following draft environmental planning instrument is relevant to the subject application:

### 8.1 DRAFT CONSOLIDATED CITY OF PARRAMATTA LEP 2020

The site is subject to a Planning Proposal to create a consolidated City of Parramatta Local Environmental Plan. It is noted that the Planning Proposal has received a Gateway determination and has been publicly exhibited, and therefore is a formal matter for consideration for the purposes of section 4.15 of the Act. The primary focus of the Planning Proposal is harmonisation (or consolidation) of the existing planning controls that apply across the City of Parramatta. It does not propose major changes to zoning or increases to density controls. However, in order to create a single LEP, some changes are proposed to the planning controls applying to certain parts of the LGA. This draft LEP does not propose any changes to the controls for this site and as such, further consideration of this document is not necessary.

## 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
<b>1B – Administration</b>			
Tree Removal	Minimise Tree Removal	The proposal does not include removal of any trees (tree removal on site subject to concurrent application DA/1128/2021).	N/A
<b>1C – General Controls</b>			
<i>Natural Environment</i>			
<b>Stormwater Management</b>	<b>Erosion and Sediment Control, OSD, WSUD</b>	<b>Council's stormwater engineer is not satisfied with the design of the OSD system and the applicant has not provided the WSUD features required of the concept approval.</b>	<b>No reason to refuse) (forms to</b>

<i>Earthworks and Slope</i>	Protect the stability of land.	The proposal does not include earthworks (earthworks subject to concurrent application DA/1128/2021).	N/A
<b>Built Environment</b>			
<u>Car Parking</u>			
<i>Residential Occupant</i>	<0.4/1-bed <0.7/2-bed <1.2/3-bed Total (<156)	<b>252</b>	<b>No</b>
<i>Residential Visitor</i>	>1/7 dwellings (>31)	31	Yes
<i>Car Share</i>	1	1	Yes
<i>Child Care Centre</i>	1/4 children (15)	15	Yes
<i>Retail</i>	<1/30sqm (<2.1)	<b>3</b>	<b>No</b>
<i>Office</i>	<1/50sqm (<18.6)	15	Yes
<i>Motorcycles</i>	>4	4	Yes
<i>Travel Plan</i>	Required	Provided	Yes
<b>End-of trip facility</b>	<b>Required</b>	<b>Not Provided</b>	<b>No</b> <b>See discussion below.</b>
<u>Bicycle Parking</u>			
<i>Residential</i>			
<b>Occupants</b>	<b>1/dwelling (211)</b>	<b>43</b>	<b>No</b>
<i>Visitors</i>	1/10 dwellings (22)	22	Yes
<b>Commercial</b>	<b>1/600sqm commercial (1)</b>	<b>0</b>	<b>No</b>
<b>Child Care</b>	<b>Suitable for needs</b>	<b>0</b>	<b>No</b>
<i>Loading</i>	Room for delivery cars/motorcycles, removalists	Loading dock can accommodate an HRV, or 2 smaller vehicles.	Yes <b>See discussion below.</b>
<b>Accessible Design</b>	<b>Unobstructed step-free access</b>	<b>Rear open space includes inaccessible areas.</b>	<b>No (forms reason to refuse)</b>
<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>Noise and Vibration</i>	Draft Construction Noise Management Plan  <b>Acoustic Report</b>	Draft Plan Provided.  <b>Acoustic Report provided (does not address child care noise)</b>	Yes  <b>Part (forms reason to refuse)</b>
<i>Air Quality</i>	Air quality assessment within 100m of major road.	Site separated from major roads	N/A
<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
<b>Landscaping</b>	<b>Contribute to attractive streetscapes and provide screen along planting boundaries.</b>	<b>The landscape plan outlines the planting of 23 new trees on site, primarily in the rear open space. However, there are no trees proposed in the front setback as required by the controls and concept (to replace trees which previously existed in this location).</b>	<b>No (forms reason to refuse)</b>
<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
<b>4.6 – Epping Town Centre</b>			
<b>Desired Future Character</b>	<b>In keeping with East Precinct</b>	<b>See discussion below.</b>	<b>No</b>
<i>Site Width</i>	>30m	~57m m Oxford Street	Yes
<i>Tower Floorplates</i>	<700m <sup>2</sup> GFA (<800m <sup>2</sup> concept)	~761m <sup>2</sup> GFA	Yes (as agreed in concept)
<i>Height</i>	22 storeys (30 storeys concept)	30 storeys	Yes (as agreed in concept)
<b>Podium Height</b>	<b>2-3 storeys/consistent (3 storeys concept)</b>	<b>2 storeys / not consistent</b>	<b>No (see discussion below)</b>
<i>Podium Use</i>	Commercial	Ground Floor: Retail/Child Care Level 1: Office	Yes

<u>Front Setbacks</u>			
<b>Podium</b>	<b>0m (4.5m concept)</b>	<b>7.3m</b>	<b>No (see discussion below)</b>
<i>Tower</i>	9-12m (9-10m concept)	9.65m	Yes
<u>Side Setbacks</u>			
<i>Podium</i>	0m (9m concept, except for 0m at second floor level to south)	North: 8.75m – 9.75m  <b>South: 7.75m – 8.8m (Upper level does not go to side boundary).</b>	Yes (minor non-compliances)  <b>Insufficient information to assess acceptability.</b>
<i>Tower Form</i>	Distinctive base, middle and top (delineated top / taper to sky)  Slim and slender proportions	Base: Podium (though not of sufficient size) Middle: Tower Top: Stepped Roof  Deep vertical slots provided to break up massing.	Part  Yes
<i>Frontage Activation</i>	Semi Active Frontage (30% shop and office windows and building entrances)	24.2m/40.5m (~60%)	Yes
<b>Wind Effects</b>	<b>Wind Effects Report (inc. wind tunnel testing)</b>	<b>Wind Effects Report with wind tunnel testing provided. As outlined in Section 5.2, Council's wind consultant is not satisfied the proposal demonstrates appropriate wind effects.</b>  <b>Tree planting in front setback may improve wind conditions in that location.</b>	<b>No</b>
<b>Solar Reflectivity and Glare</b>	<b>&lt;20% reflection</b>	<b>Reflectivity report included. As outlined in Section 5.2, Council's reflectivity consultant raised concerns with the modelling.</b>	<b>No</b>
<i>Housing Choice</i>	1br – >10% 2br – >10% 3br – >10%	1 bed – 43 (20.4%) 2 bed – 124 (58.8%) 3 bed – 44 (20.8%)	Yes Yes Yes
<i>Adaptable Units</i>	>10% (22)  <b>Equitably distributed through dwellings</b>	22  <b>All 2 bed units</b>	Yes  <b>No</b>

<i>Public Art</i>	Buildings should include ... public art to enhance the public domain.	No plan submitted	No, condition would be included.
<i>Key Development Principles</i>	New street / lane / shareway and pedestrian connection through site to Cambridge Street.	Not provided. Justified as acceptable as per concept approval.	Yes

**Table 14:** Assessment of the proposal against HDCP 2013.

### 9.1.1 Transport and Parking

#### Residential Parking

##### *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, ...*

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 parking that meets the requirements of future occupants and their visitors.

Regarding objective (a), residential occupants without the convenience of 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. This is not considered to be sufficient justification as the proposal includes a car share space which provides residents with other options for accessing areas not served by public transport. Further, the proposal does not provide sufficient bicycle facilities.

##### *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. As such there is further imperative to enforce the controls.

### *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 in Other Applications*

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.

### *Consistency with Concept*

The applicant contends that the concept approved 317 parking spaces in principle and that this is thus the benchmark against which to assess the subject application (i.e. a smaller increase relative to the approved versus a significant breach of the DCP). The approved concept includes no reference to car parking and includes no drawings outlining car parking spaces. The note within Section 4.22 of the Act relevantly states that, “The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged...”. As such it is considered that a full assessment of car parking must occur as part of the subject detailed application.

### *Bicycle Parking*

The proposal is significantly deficient in bicycle parking for residents, commercial occupants and the child care centre. Further, no end of trip facilities are proposed, which will disincentivise workers from cycling/walking to the site. This will limit the ability of the proposal to achieve the control objectives.

As such, the proposed car and bicycle parking is not acceptable and forms reason to refuse the application.



### 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
- Transport Access Guide
- Public Transport Noticeboards

While the travel plan does not include the wider range of initiatives provided in similar development nearby, it is considered that conditions could be included in any consent requiring the refinement, ongoing implementation and review of the Green Travel Plan.

#### **9.1.2 Desired Future Character**

The proposal is not considered to be in keeping with the desired future character of the Epping Town Centre – East Precinct for the following reasons:

- The podium form is not well scaled to the tower and is not consistent with adjoining development (see Section 9.1.4 below).
- The podium front setback is not consistent with adjacent development and does not sufficiently define the street edge.

#### **9.1.3 Podium Height**

The non-compliant podium height is not considered to be acceptable for the following reasons:

- As outlined in assessment against the design quality principles, the proposal is not consistent with the streetscape. In particular, the adjoining buildings will have 3 storey podiums.
- Given the height of the tower, a two-storey podium is not considered to form an appropriately scaled base for the building.

#### **9.1.4 Podium Front Setback**

The non-compliant podium front setback is not considered to be acceptable. As outlined in assessment against the design quality principles, the proposal is not consistent with the streetscape. In particular, the adjoining buildings will have 0m (south) and 3m (north) setbacks. The concept allowed a 4.5m setback at the subject site to provide space to replace the significant trees that previously existed in this location, which the subject proposal also does not propose.

#### **9.1.5 Podium Side Setback (South)**

The applicant has not adequately justified the proposed departure from the southern podium setback control. The intent of the DCP is to include a street wall in the town centre which the proposal does not achieve. While DEAP did not definitively say such a setback was not acceptable, they requested further contextual analysis and renders to assess the impact.

#### **9.1.6 Podium Use (Commercial Floor Space)**

The DCP recommends that podiums be comprised wholly of commercial floor space (not including lift lobbies). The proposed podium, of two storeys, contains retail and child care centre uses at the ground floor level, and commercial offices at level 1. While it is considered elsewhere that the proposal should include a 3 storey podium, it is not considered necessary that the third podium level be commercial as it is not required in the concept approval.

## 10. Other Planning Controls

### 10.1 Epping Town Centre Public Domain Guidelines

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

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

Control	Requirement	Proposal	Compliance
Village Street	Ground Floor Retail Awning	Ground Floor Retail Awning (within setback, but not to public street)	Yes No (acceptable given setback)
Widened Footpath	6m (5m kerb to podium recommended by Council's Urban Design team, can be extended in future by moving kerb out)	4.1m	No (widening not pursued by Council at this time)
Pedestrian Links/Laneways	Required by DCP.	Discounted as per concept approval	Yes

**Table 15:** Assessment of the proposal against Epping Town Centre Public Domain Guidelines.

### 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 public domain drawings submitted with the application is generally in keeping with the requirements of the PDG. Conditions would be 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, where relevant, to address the requirements of The Regulations.

## 13. The Likely Impacts of the Development

As outlined in this report, the applicant has not demonstrated that the traffic, wind, reflectivity, acoustic and stormwater impacts of the proposal will be 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. The site is not considered to be appropriate for a development with the quantum of proposed car parking, which would be more appropriate for a site with less public transport accessibility.

Insufficient investigations and documentation have been provided to demonstrate that the site can be made suitable for the proposed uses from a land contamination perspective.

As such the applicant has not demonstrated that the site is suitable for the proposal.

## 15. Submissions

The application was notified and advertised in accordance with the Parramatta Notification DCP.

The advertisement ran for a 21-day period between 11 January and 2 February 2022. Fourteen (14) submissions were received during this notification.

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

Issues (Number of submissions which raise issue)	Comment
Impact on Traffic (11)	The applicant has not demonstrated that the proposal will have an acceptable traffic impact. This forms reason to refuse the application.
Height Breach / Scale (8)	The applicant's height standard variation request is not considered to be well founded, as it is not consistent with the justification for the concept height breach.
Overshadowing (8)	The overshadowing impact of the proposal is considered to be acceptable as the additional height to accommodate the lift overrun results in negligible additional overshadowing to that which was considered acceptable in granting approval for the concept envelope.
View Loss (4)	The view loss impact of the proposal is considered to be acceptable as it is consistent with the view loss resulting from the approved concept envelope.
Impact on On-Street Parking (3)	On-street parking in the vicinity of the site is time limited, which ensures turnover of parking and thus parking availability.
Privacy impact on adjoining properties and school (3)	The proposed units are considered to be adequately separated / screened from adjoining units and adjoining properties.
Lack of retail/commercial (3)	The proposal provides a quantum of commercial floorspace commensurate with the concept approval and nearby development.
Excess parking / not encouraging transport (3)	Excessive parking and its impact on encouraging public transport use is a reason for refusal.
Lack of Infrastructure such as schools, child care (2)	The proposal includes a child care centre, which will provide for the needs of future occupants and the wider community. Provision of schooling capacity is a requirement of the state government.
Lack of walkway connecting Cambridge/Oxford (2)	Such a through site link, though encouraged by the DCP, was deemed to be inappropriate on balance during the concept assessment.
Childcare inappropriate due to traffic / poor amenity (2)	Transport for NSW requested additional consideration of any potential queuing impact arising from operation of the child care centre. This forms reason to refuse the application. The applicant has not demonstrated that acceptable wind conditions would be achieved in the child care open space. This forms reason to refuse the application.
FSR Breach (1)	The proposed FSR breach is not allowable per HLEP 2013 and forms reason to refuse the application.

Lack of public parks (1)	The planning controls do not require the applicant provide a public park. The proposal would provide developer contributions towards the provision of and upgrade to public parks. The proposal includes a publicly accessible front setback area which will increase the size of the public domain.
Impact on Streetscape (1)	The proposal is considered to have an unacceptable impact on the streetscape due to the podium design and lack of front setback planting. This forms reason to refuse the application.
Decrease in Property Value (1)	Decrease in property value is not a relevant planning consideration.
Excessive basement levels (1)	Excessive parking and the associated additional 2 basement levels are a reason for refusal.
Poor architectural design / competition should be undertaken (1)	The planning controls do not require a design competition to be undertaken. The proposal is not considered to be of an acceptable design, which forms reason to refuse the application.
Pollution - Noise/Traffic (1)	A condition requiring a construction noise management plan would be a requirement of any consent. The applicant has not adequately considered the acoustic impacts of the child care centre which forms a reason for refusal. Traffic pollution is not considered to be reason to refuse the application.
Dark paint causes heat island effect (1)	While dark paint does contribute to the urban heat island effect. The darker paints are to the base of the tower, which are more likely to be shaded by adjoining properties and vegetation. This is not considered to be a sufficient reason in its own right to refuse the application.
Concept architect should not be changed (1)	The concept approval allowed Council the discretion of agreeing to an alternate architect. Council exercised that power in supporting use of the subject architects, who are considered to have sufficient experience and expertise.
5 year limit (1)	The concept approval does not expire until 12 March 2023.
Lack of developer contributions (1)	The proposal would be required to provide developer contributions in accordance with the relevant Council policy.
Poor quality traffic assessment (1)	Transport for NSW have requested additional traffic assessment, which has not been provided. This forms reason to refuse the application.
Wind impacts (1)	The applicant has not demonstrated that the proposal would have acceptable wind impacts. This forms reason to refuse the application.
Poor quality of open space (1)	The arrangement of the open space is not considered to be ideal. However, it is considered that it could be resolved by way of condition.
Changes to concept should not be allowed (1)	Section 4.24(3) of the Environmental Planning and Assessment Act 1979 allows for modification of concept applications. Notwithstanding, the proposal is not considered to be consistent with the approved concept. This forms reason to refuse the application.
Unclear interface to adjoining school property (1)	The rear open space is several metres below the approved courtyard on the school site to the south. As such, the single storey amenities block adjacent the school boundary is unlikely to overshadow or overlook the school site.
Lack of green roof to amenity block (1)	A condition would be included in any consent requiring the roof of the amenity block to be a green roof.
Car park exhaust impact, appearance (1)	The car park exhaust is located in the rear open space, well separated from adjoining properties.

Acoustic impact of open space on adjoining properties (1)	The location of the open space, to the rear of the site, and its standard residential use, is considered to make its acoustic impacts acceptable by default.
Loss of public parking from site (1)	The previous building did not include any public parking.

**Table 16:** Summary of public submissions to the proposal.

## 16. Public Interest

As outlined in this report, there are several aspects of the proposal which are not considered to be acceptable and as such are not in 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 (Outside CBD) Development Contributions Plan*. The contribution has been calculated in accordance with the plan (March 2022 index) and are summarised as follows:

Contribution Type	Amount
Open space and outdoor recreation	\$ 2,237,988
Indoor sports courts	\$ 224,611
Community facilities	\$ 294,448
Aquatic facilities	\$ 68,327
Traffic and transport	\$ 382,405
Plan administration	\$ 20,084
<b>Total</b>	<b>\$ 3,227,863</b>

**Table 17:** EPAA 1979 Section 7.11 Calculation

## 19. Summary and Conclusion

For the reasons outlined in this report, the proposal is not considered to be consistent with the concept approval or satisfy the relevant considerations under s4.15 of the Environmental Planning and Assessment Act 1979. As such, refusal is recommended for the reasons outlined in the section below.

While there are other issues of concern, it is considered that they could be resolved by way of conditions were the consent authority to be of a mind to approve the application.

The application is subject to a Class 1 appeal before the Land and Environment Court.

## 20. Recommendation

- A. **That** the Sydney Central City Planning Panel, as the consent authority, **Refuse Consent** to Development Application No. DA/1/2022 for construction of a 30 storey mixed use building comprising 2 storey commercial podium (retail unit, 60 children centre-based child care facility and commercial office space) and a shop-top housing tower above comprising 211 apartments, 6 basement levels providing 317 car parking spaces, landscaping and public domain works at 37 – 41 Oxford Street, EPPING NSW 2121 (Lot 2 DP 1205413) for the following reasons:

1. **Height** – The applicant's clause 4.6 variation request to the height standard in clause 4.3 of the Hornsby Local Environmental Plan 2013 is not considered to be well founded because the applicant has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
2. **FSR** - The proposed variation of the floor space ratio standard in clause 4.4 of the Hornsby Local Environmental Plan 2013 is not considered to be allowable per the limitations outlined in sub-section 8A of the clause. Specifically, the clause does not allow a floor space variation to be approved for shop-top housing.
3. **Parking** – The proposal is contrary to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is inconsistent with the zone objective of the Hornsby Local Environmental Plan 2013, and the parking controls in section 1C.2.1 of the Hornsby Development Control Plan 2013. Specifically, the quantum of car parking proposed is excessive, the quantum of bicycle parking is insufficient and there are no end-of-trip facilities proposed which would not sufficiently encourage public transport usage, cycling and walking.
4. **Traffic/Access** – The proposal is contrary to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, Clauses 4.4(1)(a) of Hornsby Local Environmental Plan 2013 and Section 2.121 of State Environmental Planning Policy (Transport and Infrastructure) 2021 in that the proposal has not demonstrated that the proposal would have an acceptable impact on local traffic conditions. Specifically, the modelling within the submitted traffic report is not considered to be satisfactory, no queue analysis has been provided, and vehicle manoeuvrability has not been justified as adequate.
5. **Podium** – The proposal is inconsistent with design quality principles 1 'Context and Neighbourhood Character' and 2 'Built Form and Scale' in Schedule 1 of SEPP 65, clause 6.8 of Hornsby Local Environmental Plan 2013 and the desired future character of the area and built form controls in Section 4.6 of the Hornsby Development Control Plan 2013. Specifically, the proposed podium height and alignment are not consistent with the streetscape, are not commensurate with the scale of the tower and are not consistent with the desired future character of the area.
6. **Concept Consistency** – The proposal does not satisfy the requirement in section 4.24(2) of the Environmental Planning and Assessment Act 1979 that the proposal not be inconsistent with the concept approval which applies to the site (i.e. DA/314/2017). Specifically, excessive basement volume, insufficient environmental sustainability, insufficient front setback tree planting and urban design requirements are not consistent with the concept approval.
7. **Contamination** – The proposal is contrary to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 and is inconsistent with clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021. Specifically, the applicant has not undertaken sufficient site investigation to demonstrate that the site is, or can be made, suitable for the proposed uses of the site.
8. **Landscaping** – The proposal is contrary to the provisions of clause 4.6.8(a) of the Hornsby Development Control Plan 2013. Specifically, the proposal does not include sufficient tree planting in the front setback.
9. **Wind** – The proposal is inconsistent with clause 4.6.6(v-y) of the Hornsby Development Control Plan 2013. Specifically, the applicant has not demonstrated that the building can maintain appropriate wind comfort for future occupants (child care, retail visitors, residents).
10. **Reflectivity** – The proposal is inconsistent with clause 4.6.6(z-aa) of the Hornsby Development Control Plan 2013. Specifically, the applicant has not demonstrated that the building will not result in unacceptable glare.

11. **Child Care Acoustic** – The proposal is contrary to the provisions of Clause 3.23 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Child Care Planning Guidelines. Specifically, the proposal does not include an acoustic assessment of the proposed child care centre.
  12. **ESD** – The proposal is contrary to the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Specifically, the submitted BASIX certificate does not accurately describe the development and stamped drawings have not been provided to clarify sustainability commitments are to be implemented.
  13. **Accessibility** – The proposal is inconsistent with clauses 1C.2.2 and 4.6.11(b) of the Hornsby Development Control Plan 2013. Specifically, large areas of the communal open space do not have step-free access and there is a lack of size diversity in the adaptable dwelling offering.
  14. **Stormwater/WSUD** – The proposal is inconsistent with clause 1C.1.2 of the Hornsby Development Control Plan 2013. Specifically, the on-site detention system has not been designed appropriately to manage stormwater and the proposal does not provide appropriate water sensitive urban design measures.
  15. **Ceiling Heights** – The proposal is inconsistent with objective 4C-1 of the Apartment Design Guide. Specifically, the ceiling height of the ground floor retail unit and first floor office units are insufficient to provide appropriate amenity and flexibility of use.
- B. **That** the Sydney Central City Planning Panel as the consent authority directs Council in the conduct of the appeal in accordance with cl. 8.15(4) of the Act.
- C. **That** submitters be notified of the decision.







# 37 - 41 OXFORD STREET, EPPING

Clause 4.6 Variation Request  
to the Hornsby LEP 2013  
Height of Building  
Development Standard

Prepared for  
**MERITON**  
22 November 2021



**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

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Report Number	Final

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**We acknowledge, in each of our offices, the Traditional Owners on whose land we stand.**

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# 1. INTRODUCTION

This Clause 4.6 Variation Request ('the **Request**') has been prepared on behalf of Meriton ('the **applicant**') and accompanies a Stage 2 Detailed Development Application ('**DA**') for a 30-storey mixed use development at 37 - 41 Oxford Street in Epping (**subject site**).

The request seeks an exception from the 72-metre maximum height of building development standard prescribed for the site under clause 4.3 of *Hornsby Local Environmental Plan 2013 (HLEP 2013)*. The variation request is made pursuant to clause 4.6 of HLEP 2013.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis.

The following sections of the report include:

- **Section 2:** provides a summary of the project background.
- **Section 3:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 4:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 5:** identification of the development standard, which is proposed to be varied, including the extent of the contravention.
- **Section 6:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 7:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 8:** summary and conclusion.

## 2. PROJECT BACKGROUND

### 2.1. CONCEPT APPROVAL

The site is subject to a Stage 1 Concept DA (DA/314/2017) which approved a '30-storey mixed use tower with 4-storey basement'. The Concept DA approved the building envelope and land uses for the site.

The indicative reference design submitted with the Stage 1 Concept DA included the following:

- 4 -storey basement;
- 30-storey building envelope comprising:
  - 3-storey podium comprising:
    - Ground: retail (620sqm)
    - Level 1: commercial, home occupation (commercial part) (663sqm)
    - Level 2: home occupation (residential part)
  - 27-storey residential tower above (21,078sqm) comprising 257 residential apartments; and
- Vehicle access on the northern boundary of the site.

A 3D render of the approved Stage 1 concept plan is provided at **Figure 1**.

An 'orderly' built form outcome was the central theme of Council's feedback during the assessment of the application, including the deletion of Tower B and 'decanting' its floor space to Tower A resulting in an increased building height.

The proposed built form was prepared in the context of the future massing of the Epping Town Centre and considered both recent Development Application approvals and Development Applications currently under assessment at the time. The outcome was a building envelope in which the overall massing of the building is located towards the Oxford Street frontage and along the southern boundary. This approach results in the rear area of the block unencumbered as private open space and ensuring abundant amenity for both the proposed and adjoining residential buildings and extensive open space amenity to the north.

As shown in **Figure 2**, to achieve the reference scheme, Parramatta Council and the Design Excellence Advisory Panel supported a maximum variation of 32.9% (95.35 metres) which was determined to have positive urban design outcomes including a slender residential tower and greater building separation to adjoining buildings.

Meriton have since acquired the site and now intend to submit a new detailed Development Application, which relies on the above-mentioned approved Concept DA. The proposed tower design seeks to stay within the approved Stage 1 DA building envelope with only minor departures and adheres to the aspirations of the original endorsed vision for the site and broader precinct.

### 2.2. CONCURRENT PLANNING APPLICATIONS

In addition to the Stage 2 Detailed DA which relies on the Concept Approval DA/314/2017, several related planning applications have been prepared for this project including:

- An 'Amending' DA to DA/314/2017 to allow part of the ground floor of the development to be used as a 'centre-based child care facility' in place of some of the retail floor space originally approved by the consent;
- A Section 4.55(2) modification application to DA/314/2017 to amend several aspects of the building envelope approved under the Concept Approval as well as several conditions of the consent;
- An Early Works DA which seeks consent for excavation and tree removal; and
- A separate DA (DA/319/2021) which was approved on 7 June 2021 for demolition of the existing structures at the site;

Specifically, the Section 4.55(2) modification application will seek development consent for the following:

- Addition of 2 basement levels to accommodate additional 18 car parking spaces and reconfiguration to the basement layout;
- Minor changes to the building envelope on the ground level to accommodate the introduction of a centre-based child care facility;
- A reduction in podium height from 3 to 2 levels;
- Minor changes to the building envelope on the upper levels to accommodate constructability, façade articulation, and the detailed design of the lift overrun (and associated louvre screening); and
- Minor changes to landscaping arrangements as a result of amendments to the building envelope.

These applications will be submitted to Council concurrently and should be read in conjunction with the Stage 2 DA and accompanying documents.

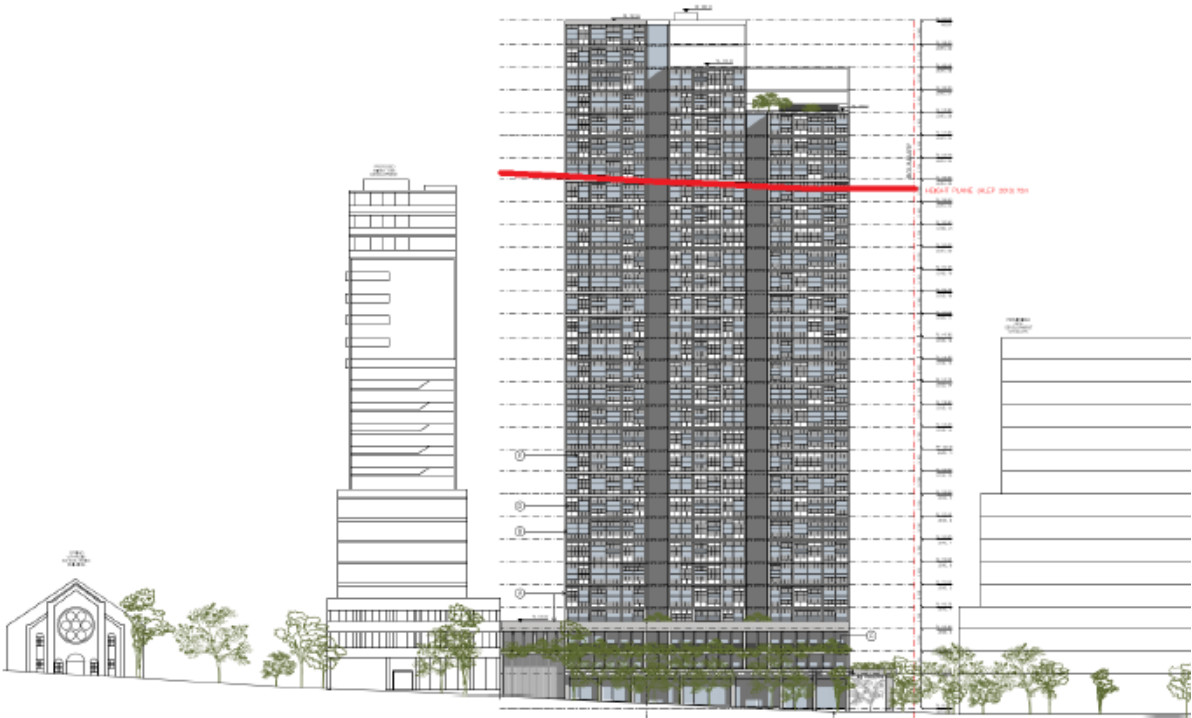
Figure 1 3D Render – Concept Approval



Source: Candalepas Associates



Figure 2 Eastern Elevation – Concept Approval



Source: Candalepas Associates



## 3. SITE CONTEXT

### 3.1. SITE DESCRIPTION

The site is located at 37 – 41 Oxford Street in Epping and is legally referred to as Lot 2 in Deposited Plan (DP) 1205413. The site is owned by Meriton. The site is located within the Parramatta City Local Government Area (LGA), however prior to boundary adjustments in May 2016, it was located within the Hornsby LGA.

The site is in a highly prominent and strategic location and the proposal will complement the existing new high-rise developments recently constructed within the Epping Town Centre. The site has a total area of 4,969sqm and is an irregularly shaped allotment with complex boundary relationships to several adjacent properties. The site has a 57-metre frontage to Oxford Street.

The site is currently occupied a 4-storey commercial building which also accommodates an ancillary tennis court and landscaping. The building is set back from the street to allow a landscaped buffer that includes medium sized trees and ground cover over a low earth bank.

The site slopes down approximately 4 metres from the front (east) to the rear (west) and has a cross fall of 2 metres from south to north. There are no heritage items in the immediate vicinity of the site.

An aerial photograph of the site is included at **Figure 3**. Photographs of existing development within the site is provided at **Figure 4**.

Figure 3 Aerial Photograph of Subject Site



Source: Urbis GIS



Figure 4 Photographs of Existing Development



Picture 1 Looking south west to subject site

Source: Google Earth



Picture 2 Looking north east to subject site

Source: Google Earth

## 3.2. LOCALITY CONTEXT

The site is located within the Epping Town Centre which is approximately 18 kilometres north west of Sydney CBD. Epping Town Centre is currently undergoing a process of significant urban renewal characterised by a transition from low scale to medium and high-density development as a result of significant infrastructure investment associated with the Sydney Metro Northwest.

The site has excellent access to public transport being located less than 300 metres north of Epping Train Station. Oxford Street is also the main pedestrian and shopping spine in the town centre connecting directly to the train station. The site is also extremely well serviced by community services and facilities within the Epping Town Centre. Key community facilities within the surrounding locality are the Epping Aquatic and Leisure Centre, Epping Library, local community centres, and early childhood and healthcare clinics. Nearby schools include Arden Anglican School, Epping Catholic Primary School and Epping Public School.

## 3.3. SURROUNDING DEVELOPMENT

Immediate developments surrounding the site consist of podium forms with towers with active frontages and built forms ranging in height from 15 storeys to a maximum of 22 storeys. Generally, the existing built form context (including approved developments but not yet constructed) in the surrounds comprises medium to high density developments.

The surrounding development includes:

- To the north of the site is 45-53 Oxford Street, Epping which is a site owned by Uniting Care which is currently occupied by three residential flat buildings known as 'Commbah'. Also north of the site is a recently constructed 15 storey residential flat building comprising 199 units at 43 Oxford Street.
- To the east of the site, on the opposite side of Oxford Street, is the Arden Anglican School, a co-educational school catering for pupils from K-6. Further east of the site is characterised by medium density walk up apartments.
- To the south of the site is 35 Oxford Street which is modern shop top housing development comprising 22 storeys with 54 residential apartments. Further south the site is seniors housing associated with Our Lady Help of Christians Parish Church and a Primary School. Further south of the site is a new 17 storey mixed use development at 20-42 Oxford Street.
- To the north west of the site is 20-28 Cambridge Street which is a recently construed 2 x 22 storeys residential tower development and an additional 7 storey tower comprising 501 residential apartments and retail businesses. A through site connection point to 37-41 Oxford Street has been provided in the north west corner of the site.
- To the south west of the site is an older style four storey commercial office building known as 16 Cambridge Street, Epping.

**Figure 5** provides a photograph review of surrounding development.

Figure 5 Photographic Review of Surrounding Development



Picture 3 View of Arden Anglican School, east of the site.



Picture 4 View of existing development fronting Oxford Street directly east of the site.



Picture 5 View of Our Lady Help of Christians Catholic Parish Church, south of the site.



Picture 6 View of new high-rise development 'Oxford Central', south east of the site.



Picture 7 43 Oxford Street (foreground) and new high-rise developments at 22 Cambridge Street in the background.



Picture 8 New high-rise development along Chester Street, north of the site.

## 4. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a Stage 2 Detailed DA for a 30-storey mixed-use development as outlined below:

- Site preparation works including civil and stormwater infrastructure;
- Construction of a 6-storey basement car park providing 317 parking spaces, 65 bicycle parking spaces and 4 motorcycle parking bays;
- Erection of a 30-storey mixed-use building including:
  - Ground floor level comprising a retail tenancy (64sqm), a centre-based child care facility accommodating 60 children and 11 staff (426sqm), residential lobby, waste rooms and building services;
  - Level 1 podium comprising flexible commercial office floor space (750sqm);
  - 28 levels of residential floor space above with a total of 211 apartments comprising the following unit mix:
    - 43 one-bedroom units
    - 124 two-bedroom units
    - 42 three-bedroom units
    - 2 four-bedroom units
- Landscaped outdoor spaces including generous deep soil zones, residential amenities including landscaped gardens, BBQ areas, swimming pool, gym and sauna, and a clearly defined outdoor play space for the centre-based child care facility;
- Consolidated vehicular access on the south eastern boundary via single entry / exit off Oxford Street; and
- Public domain works.

Overall, the proposed development provides a total gross floor area (**GFA**) of 23,176qm. This includes 20,173sqm of residential floor space, 750sqm of commercial office floor space, 426sqm of childcare centre floor space and 64sqm of retail floor space.

A 3D render of the proposed development is provided at **Figure 6**. A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.



Figure 6 3D Render of Proposal



Source: Scott Carver

## 5. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard, which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 7** of the report.

### 5.1. DEVELOPMENT STANDARD

This request seeks to vary the maximum 72 metre building height standard prescribed within clause 4.3 of the HLEP 2013 and the associated Height of Building Map (refer **Figure 7**).

The objective of clause 4.3(1) of the HLEP 2013 is:

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

The HLEP 2013 Dictionary defines building height as follows:

**building height** (or height of building) means—

*(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.*

### 5.2. PROPOSED VARIATION TO MAXIMUM HEIGHT OF BUILDING STANDARD

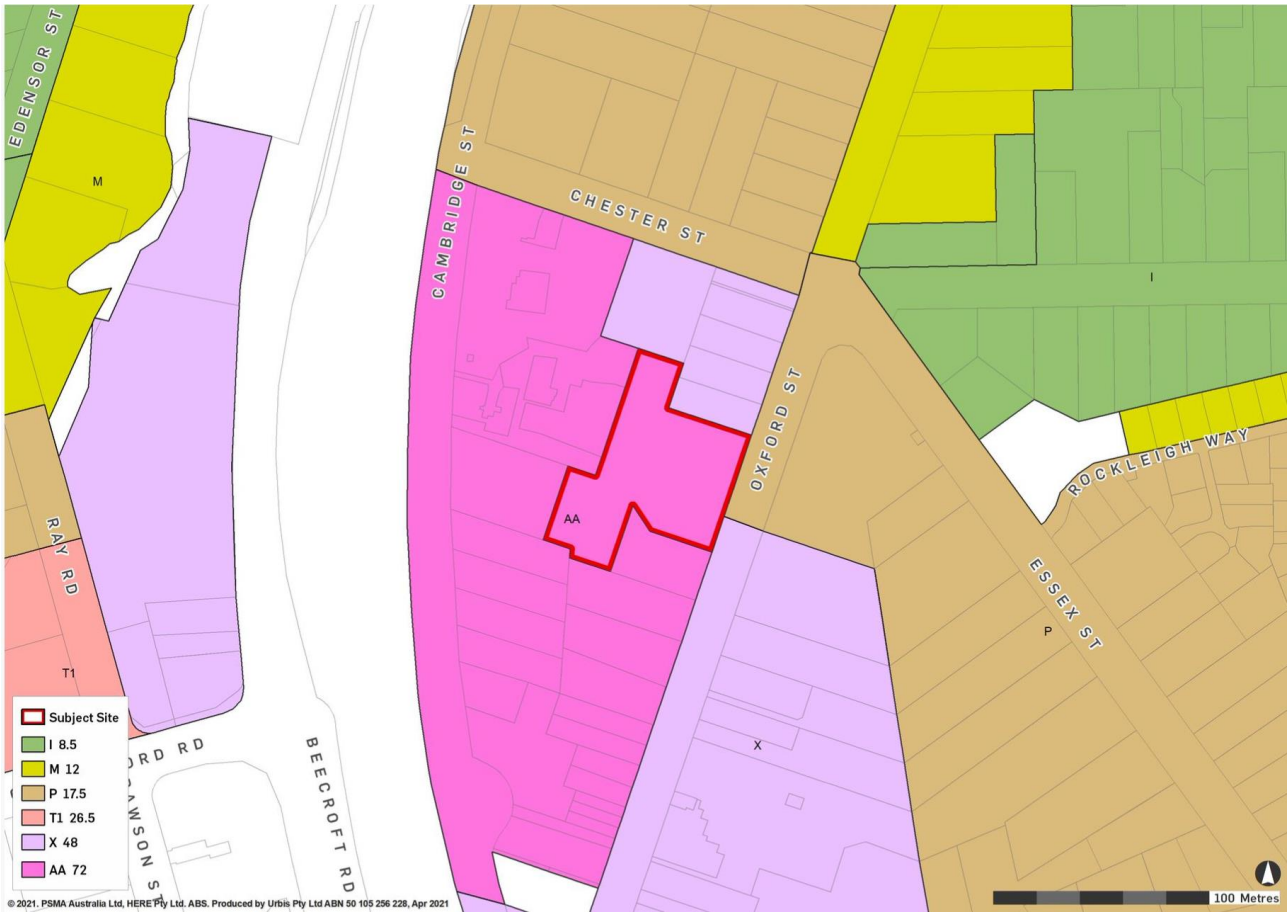
This Clause 4.6 variation request seeks to gain approval for a variation to the maximum building height development standard as outlined in the below table.

Table 1 Proposed Building Height Variation

Permitted Maximum Height	Stage 1 Concept Approval	Stage 2 DA Proposed	Variation
72 metres	95.35 metres (with lift overrun) (which represents a 32.9% variation to the height control.)	96.95 metres (with lift overrun and associated louvre screening)	+ 24.95 metres (34.6%) variation to the LEP standard.  +1.6 metres (1.7%) to approved Concept DA

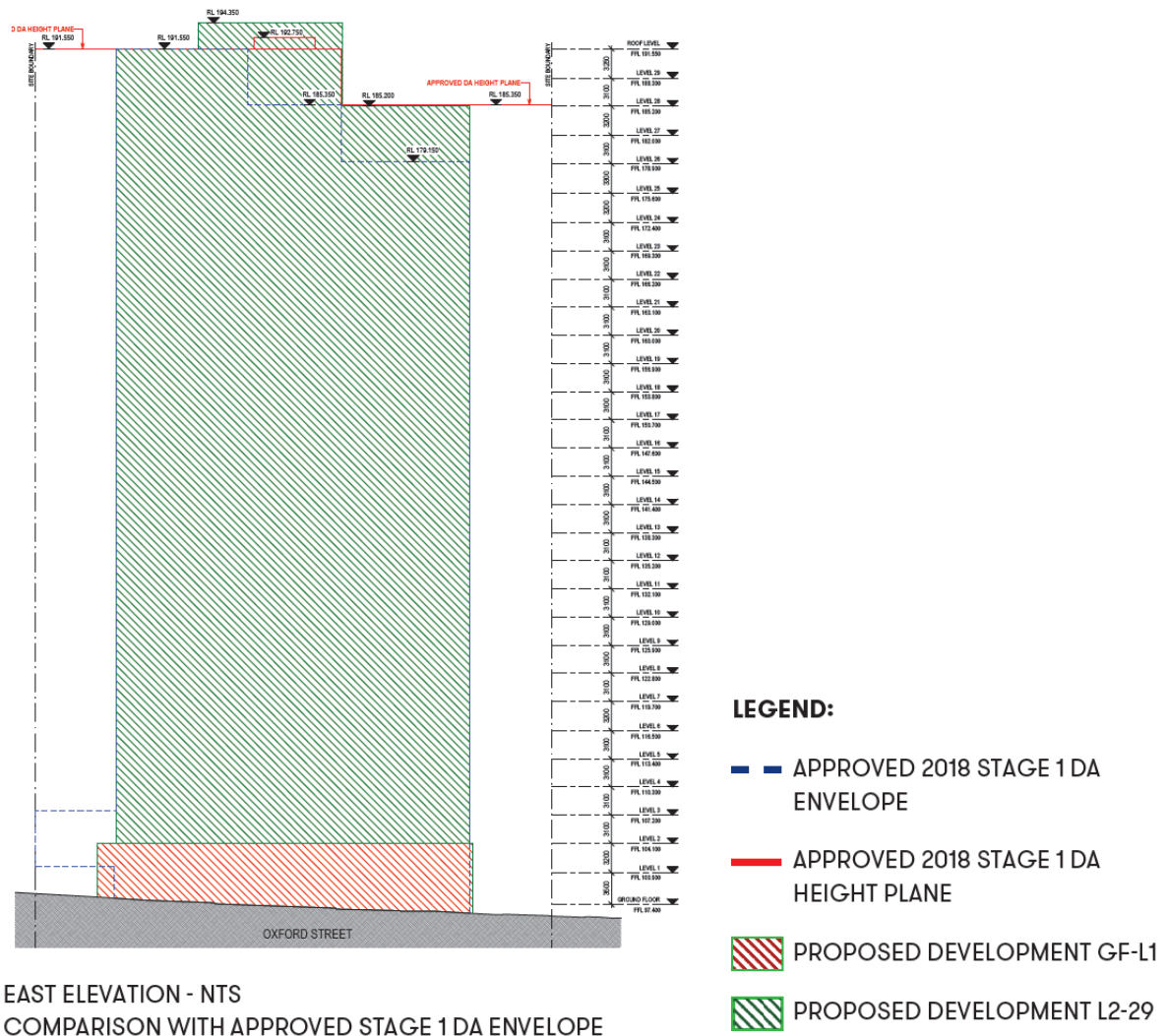
A comparison of the proposed Stage 2 envelope and the approved concept building envelope is illustrated in **Figure 8**. A comparative height plane is provided in **Figure 9**.

Figure 7 Maximum Height of Building Map



Source: Urbis GIS

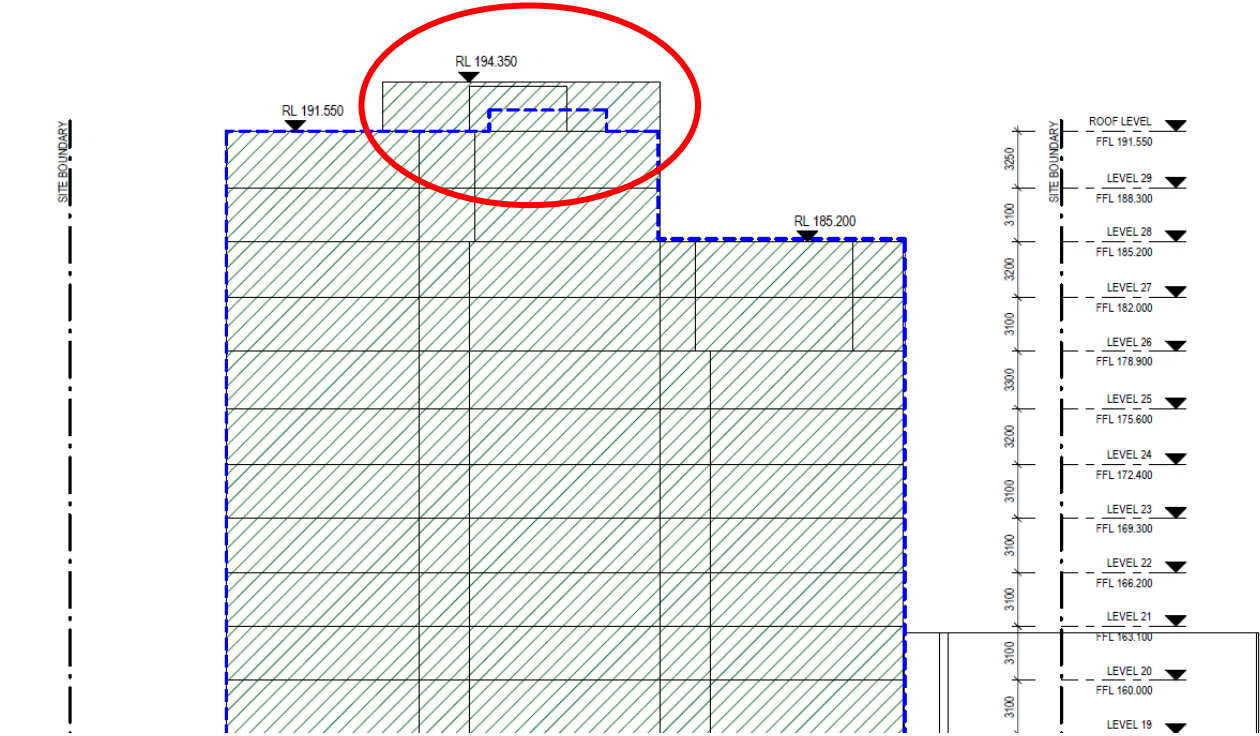
Figure 8 Comparison of Building Envelope - Concept Approval vs Proposed Development



Source: Scott Carver



Figure 9 Height Plane - Concept Approval vs Proposed Development



Source: Scott Carver

## 6. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of *Hornsby Local Environmental Plan 2013 (HLEP 2013)* includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of HLEP 2013 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 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of building development standard prescribed for the site in clause 4.3 of HLEP 2013 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of building development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

## 7. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the maximum building height in accordance with clause 4.3 of HLEP 2013.

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

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

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

### 7.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of building development standard prescribed by clause 4.3 of HLEP 2013 is a development standard capable of being varied under clause 4.6(2) of HLEP 2013.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of HLEP 2013.

### 7.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of building development standard as specified in clause 4.3 of HLEP 2013 are detailed in **Table 2**. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
(a) to permit a height of buildings that is appropriate for the site	The Concept DA approved a building height of 95.35 metres which represented a 32.9% variation to the LEP height control.

Objectives	Assessment
<i>constraints, development potential and infrastructure capacity of the locality.</i>	<p>The Stage 2 Detailed DA proposes a building height of 96.95 metres as a result of a lift overrun (and associated louvre screening) which represents a 34.6% variation to the LEP height control.</p> <p>The additional non-compliance equates to an additional 1.6 metres to the approved building height which is a variation of 1.7% to the Concept Approval. This is considered minor in the context of the overall built form approved under the Concept DA.</p> <p>The variation is restricted to a small portion of the building envelope and the proposal complies with all other elements of the height plane approved under the Concept DA.</p> <p>The additional height as a result of the lift overrun (and associated louvre screening) does not result in any additional floor space to the development and the proposal remains a 30-storey mixed use tower. The additional height is a result of detailed design of the lift core structure which results in a slightly taller lift overrun compared to that approved under the Concept DA.</p> <p>The central location of the proposed lift overrun (and associated louvre screening) within the building footprint will ensure it is not visible from the public domain and will not result in any additional amenity impacts to adjoining development.</p> <p>The variation does not significantly intensify the built form and scale of the proposed development. The variation will not adversely impact on surrounding residential properties and the wider public domain by way of overshadowing, visual privacy or views.</p> <p>The variation results in a development that remains compatible with the desired character of the Epping Town Centre, with the area currently undergoing a process of significant urban renewal characterised by a transition to medium to high density development.</p> <p>Given the above, the proposal is considered suitable for the site and zoning.</p>

The objective of the development standard is achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

- **The burden placed on the community (by requiring strict compliance with the height of building standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Strict compliance with the building height development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community.

The proposed variation will enable:

- The provision of the lift overrun (and associated louvre screening) which will provide equitable access to all levels of the mixed-use tower already approved under the Concept DA which is consistent with the principles of the ADG and vision of the DCP.
- The provision of a building that is compatible with the existing and desirable future scale and character of surrounding area.
- The provision of additional housing at varying price points in a well serviced location close to public transport connections which will contribute to meeting the housing targets for the area. The increase in housing diversity and supply will also assist in the availability (and affordability) of housing stock in the broader area, thereby providing a broader social and economic benefit.
- A proposal that positively contributes to the site and its surrounds, achieving its vision to transform Epping Town Centre by creating a striking landmark. The proposal reflects an appropriate built form and scale that is commensurate with the vision for Epping Town Centre as expressed by the emerging scale of development on adjacent and surrounding lands. The concept will also leverage off significant investment in the current and future transport infrastructure accessible to the site.
- Consistency with Council's vision, as the proposal will play a transformative role in facilitating the revitalisation and renewal of the Epping Town Centre. It will provide a continuous activated frontage along Oxford Street along with extensive public domain upgrades and landscaping that will support the transition of the road corridor to a green pedestrian friendly streetscape.
- Extensive economic benefits for existing business and new business that service the new mixed-use development. Direct economic benefits will be experienced through both the construction and the operations phases and local supply-chain impacts on the Epping Town Centre will be significant.
- Mitigation of potential detrimental impacts on the amenity of the adjoining properties.

A visual impact analysis demonstrates that the building will be consistent and compatible with the locality. Its architectural design addresses a number of other design considerations, including:

- Appropriate floor plate sizes to accommodate a residential apartment development and all its various functions, and providing for appropriate solar access to the accommodation;
- Provision of high levels of accessibility and internal amenity to future residents;
- Maintenance of high level of solar access to adjoining properties and public open space;
- Provision of a high standard of architectural quality, which will be an exemplar for future projects within the Epping Town Centre and will make a positive contribution to the urban fabric.

Overall, it is considered that strict compliance with the development standards is unreasonable as an alternate scheme which strictly complied with the height plane approved under the Concept DA would result in an inferior outcome for the site and/or result in the loss of residential accommodation floor space within the highly accessible locality.

### **7.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)**

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

*“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*

*...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”*

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- Most of the building form sits within the applicable height limits approved under the Concept DA. The additional height does not contribute to any additional floor space to the building. The additional height is only because of the lift overrun and the provision of associated louvre screening to the roof.
- The proposed variation does not intensify the use and does not significantly alter the built form and scale of the development. The elements above the approved Concept DA height plane will be well setback on the rooftop and therefore will not be visible from the approaching streetscape.
- In the context of the anticipated controls likely to be available to the locality under the future Epping Town Centre Planning Proposal, the variation is reasonable.
- Elements of the building above the approved Concept DA height plane are behind the main parapet and are unlikely to be visible from the surrounding public domain. Longer distance views, and views from above, will read these additions in the context of the larger building mass.
- The subject height variation will not result in any discernible additional shadowing impacts to surrounding neighbours. Scott Carver has provided an analysis of the proposed overshadowing of the development which demonstrates that the proposal will not result in unreasonable overshadowing to the residential properties to the south of the site or to the public domain.
- The variation will not cause privacy issues because it relates to the lift core, not habitable rooms. The proposal has been assessed by an Acoustic Engineer and it will comply with the relevant noise criteria.
- The variation will result not result in the provision of any additional GFA above approved Concept DA height plane.
- The proposal complies with all key design principles under the ADG and the development supports high quality design and amenity within the Epping Town Centre.
- The proposed building achieves the objectives of the development standard prescribed in clause 4.3 of the HLEP 2013 as demonstrated in **Table 2** and achieves the objectives of the B2 Local Centre zone as outlined in **Table 3**.
- The proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity of the built environment.
- Overall, the delivery of a mixed-use tower development within an established urban environment, located near public transport options, without significant or unreasonable environmental impact is considered to be both orderly and economic use of urban land.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of building development standard non-compliance in this instance.

## **7.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

## 7.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in Table 2. The proposal is also consistent with the land use objectives that apply to the site under HLEP 2013. The site is located within the B2 zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 3** below.

Table 3 Assessment of compliance with land use zone objectives

Objective	Assessment
<ul style="list-style-type: none"> <li><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></li> </ul>	<p>The proposed variation does not prevent the proposed development from achieving this objective of the B2 Local Centre zone. The proposal will increase the provision and diversity of housing in a manner that contributes to the housing needs of the local community. The proposal will also allow for the provision of a mixed-use podium to activate the Oxford Street frontage which is consistent with the DCP.</p>
<ul style="list-style-type: none"> <li><i>To encourage employment opportunities in accessible locations.</i></li> </ul>	<p>The proposed variation in building height will not result in a development that is inconsistent with this objective. The proposal will provide temporary construction jobs during the construction phase as well as ongoing employment opportunities in relation to the childcare centre, commercial offices and retail tenancy, thereby providing a broader social and economic benefit.</p>
<ul style="list-style-type: none"> <li><i>To maximise public transport patronage and encourage walking and cycling.</i></li> </ul>	<p>The proposed variation in building height will not result in a development that is inconsistent with this objective. The site has excellent public transport connections being situated 300 metres to the Epping Train Station, which provides rail and Metro services. The provision of housing in close proximity to public transport, recreation, and local shopping and services is therefore likely to encourage use of public transport and active transport modes.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height of building standard as 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.

## 7.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of building standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of building development standard and the land use zone objectives despite the non-compliance.

It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case including:

- The Concept DA approved a building height of 95.35 metres which represented a 32.9% variation to the height control. The Stage 2 Detailed DA proposes a building height of 96.95 metres as a result of a lift overrun (and associated louvre screening) which represents a 34.6% variation to the LEP height control.
- The additional non-compliance as a result of the lift overrun (and associated louvre screening) equates to 1.6 metres which represents a minor variation of 1.7% to the approved building height which is considered negligible in the context of the overall built form approved under the Concept DA.
- The proposed variation to the approved Concept DA height plane will not adversely impact on surrounding residential properties and the wider public domain by way of overshadowing, visual privacy, noise, traffic and parking. The amenity of the surrounding environment will be maintained, if not enhanced, by landscaping and integrated public domain, the protection of sun access and management of wind.
- The proposed height is required to accommodate large circulation areas for occupants who will move constantly through the building, and additional vertical transport, stairs and building services infrastructure necessary to support a vertical mixed-use tower development.
- The significant public benefit of providing a diversity of housing options for the community in close proximity to public transport connections. This increase in housing supply will also assist in the availability (and affordability) of housing stock in the broader area, thereby providing a broader social and economic benefit.
- Direct and indirect economic and financial benefits to existing and new commercial and retail businesses within the Epping Town Centre.
- The elements of the buildings which exceed the approved Concept DA height plane are limited to the lift overrun and associated louvre screening and will not result in an increased scale of development that might otherwise result in adverse outcomes for the capacity of infrastructure and services.
- The proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity of the built environment.
- The proposed building achieves the objectives of the development standard prescribed in clause 4.3 of the HLEP 2013 as described and achieves the objectives of the B2 (Local Centre) Zone.



- There will be minimal environmental impacts stemming from the contravention of development standards, especially in regard to additional bulk, overshadowing or loss of views.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

## 8. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of building development standard contained within clause 4.3 of HLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of building development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal is compliant with clause 4.6(3)(a) because strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the case. This is because the Concept DA has already approved a substantial variation to the height standard (32.9%) and the general objectives of clause 4.3 of the HLEP 2013 and the B2 Local Centre Zone have been achieved.
- The lift overrun (and associated louvre screening) of 1.6 metres represents a variation of 1.7% to the building height approved under the Concept DA which is considered minor. Further, this minor variation is restricted to a small portion of the building envelope.
- There are sufficient environmental planning grounds to justify contravening the development standard for maximum height of building; there will be minimal environmental impacts stemming from the contravention of the development standard, especially in regard to additional bulk, overshadowing or loss of views.
- The proposal complies with all other elements of the height plane approved under the Concept DA apart the lift overrun (and associated louvre screening). The majority of the building form sits within the approved Concept DA height limits.
- The additional height as a result of the lift overrun (and associated louvre screening) does not result in any additional floor space to the development. The proposal remains a 30-storey mixed use tower. The additional height is a result of detailed design of the lift structure which results in a slightly taller lift overrun.
- The central location of the proposed lift overrun (and associated louvre screening) within the building footprint will ensure it is not visible from the public domain and will not result in any additional amenity impacts to adjoining development. The variation does not result in unreasonable adverse amenity impacts on adjacent land beyond a compliant Concept DA built form.
- The additional height is as a result of the lift overrun and associated louvre screening. These structures will be well setback on the rooftop and therefore will not be visible from the approaching streetscape. The lift overrun is required to provide equitable access to the building.
- The proposed development has been designed to maximise its resultant social benefits by maximising its GFA within in a town centre setting whilst minimising visual bulk and respecting the amenity of adjoining properties.
- There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed building as outlined in detail throughout this report.
- The proposal is consistent with the objects of the *Environmental Planning and Assessment Act 1979* by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity of the built environment.
- The variation of the development standard will not raise any matter of significance for State or Regional environmental planning.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of building development standard should be applied.

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This report is dated 22 November 2021 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Meriton (**Instructing Party**) for the purpose of Stage 2 Detailed DA (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.





# **37-41 OXFORD STREET, EPPING**

## **CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO**

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# 1. INTRODUCTION

This Clause 4.6 Variation Request ('the **Request**') accompanies a Stage 2 Detailed Development Application ('**DA**') for a 30-storey mixed use development at 37 - 41 Oxford Street in Epping (**subject site**).

The request seeks to vary the maximum floor space ratio development standard of 4.5:1 prescribed for the site under clause 4.4 of *Hornsby Local Environmental Plan 2013 (HLEP 2013)*. The variation is request is made pursuant to clause 4.6 of HLEP 2013.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis.

The following sections of the report include:

- **Section 2:** provides a summary of the project background.
- **Section 3:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 4:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 5:** identification of the development standard, which is proposed to be varied, including the extent of the contravention.
- **Section 6:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 7:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 8:** summary and conclusion.

The reason for the additional floor space purely relates to providing an additional 18 car spaces above the maximum requirement. There is not additional floor space to the building above ground. Demand for parking has now changed because of the pandemic. People are using their cars or working from home rather than using public transport. Even if a unit is sold without a car space, people owning a car will then seek kerb side parking in local streets, which is not in the public interest.



## 2. PROJECT BACKGROUND

### 2.1. Concept Approval

The site is subject to a Stage 1 Concept DA (DA/314/2017) which approved a '30-storey mixed use tower with 4-storey basement'. The Concept DA approved the building envelope and land uses for the site.

The indicative reference design submitted with the Stage 1 Concept DA included the following:

- 4 -storey basement;
- 30-storey building envelope comprising:
  - 3-storey podium comprising:
    - Ground: retail (620sqm)
    - Level 1: commercial, home occupation (commercial part) (663sqm)
    - Level 2: home occupation (residential part)
  - 27-storey residential tower above (21,078sqm) comprising 257 residential apartments; and
- Vehicle access on the northern boundary of the site.

A 3D render of the previously approved proposed concept plan is also provided at **Figure 1**.

An 'orderly' built form outcome was the central theme of Council's feedback during the assessment of the application, including the deletion of Tower B and 'decanting' its floor space to Tower A resulting in an increased building height.

The proposed built form was prepared in the context of the future massing of the Epping Town Centre and considered both recent Development Application approvals and Development Applications currently under assessment at the time. The outcome was a building envelope in which the overall massing of the building is located towards the Oxford Street frontage and along the southern boundary. This approach results in the rear area of the block unencumbered as private open space and ensuring abundant amenity for both the proposed and adjoining residential buildings and extensive open space amenity to the north.

To achieve the reference scheme, Parramatta Council and the Design Excellence Advisory Panel supported a maximum variation of 32.9% (95.35 metres) which was determined to have positive urban design outcomes including a slender residential tower and greater building separation to adjoining buildings.

Meriton have since acquired the site and now intend to submit a new detailed Development Application, which relies on the above-mentioned approved Concept DA. The proposed tower design seeks to stay within the approved Stage 1 DA building envelope with only minor departures and adheres to the aspirations of the original endorsed vision for the site and broader precinct.

### 2.2. Concurrent Planning Applications

In addition to the Stage 2 Detailed DA which relies on the Concept Approval DA/314/2017, several related planning applications have been prepared for this project including:

- An 'Amending' DA to DA/314/2017 to allow part of the ground floor of the development to be used as a 'centre-based child care facility' in place of some of the retail floor space originally approved by the consent;
- A Section 4.55(2) modification application to DA/314/2017 to amend several aspects of the building envelope approved under the Concept Approval as well as several conditions of the consent;
- An Early Works DA which seeks consent for excavation and tree removal; and
- A separate DA (DA/319/2021) which was approved on 7 June 2021 for demolition of the existing structures at the site.

Specifically, the Section 4.55(2) modification application will seek development consent for the following:

- Addition of 2 basement levels to accommodate additional 18 car parking spaces and reconfiguration to the basement layout;

- Minor changes to the building envelope on the ground level to accommodate the introduction of a centre-based child care facility and the relocation of the vehicle entrance point.
- A reduction in podium height from 3 to 2 levels;
- Minor changes to the building envelope on the upper levels to accommodate constructability, façade articulation, and the detailed design of the lift overrun (and associated louvre screening); and
- Minor changes to landscaping arrangements as a result of amendments to the building envelope.

These applications will be submitted to Council concurrently and should be read in conjunction with the Stage 2 DA and accompanying documents.

Figure 1 3D Render – Concept Approval



Source: Candalepas Associates



### 3. SITE CONTEXT

#### 3.1. Site Description

The site is located at 37 – 41 Oxford Street in Epping and is legally referred to as Lot 2 in Deposited Plan (DP) 1205413. The site is owned by Meriton. The site is located within the Parramatta City Local Government Area (LGA), however prior to boundary adjustments in May 2016, it was located within the Hornsby LGA.

The site is in a highly prominent and strategic location and the proposal will complement the existing new high-rise developments recently constructed within the Epping Town Centre. The site has a total area of 4,969sqm and is an irregularly shaped allotment with complex boundary relationships to several adjacent properties. The site has a 57-metre frontage to Oxford Street.

The site is currently occupied a 4-storey commercial building which also accommodates an ancillary tennis court and landscaping. The building is set back from the street to allow a landscaped buffer that includes medium sized trees and ground cover over a low earth bank.

The site slopes down approximately 4 metres from the front (east) to the rear (west) and has a cross fall of 2 metres from south to north. There are no heritage items in the immediate vicinity of the site.

An aerial photograph of the site is included at **Figure 2**. Photographs of existing development within the site is provided at **Figure 3**.

Figure 2 Aerial Photograph of Subject Site





Figure 3 Photographs of Existing Development



Picture 1 Looking south west to subject site

Source: Google Earth



Picture 2 Looking north east to subject site

Source: Google Earth

### 3.2. Locality Context

The site is located within the Epping Town Centre which is approximately 18 kilometres north west of Sydney CBD. Epping Town Centre is currently undergoing a process of significant urban renewal characterised by a transition from low scale to medium and high-density development as a result of significant infrastructure investment associated with the Sydney Metro Northwest.

The site has excellent access to public transport being located less than 300 metres north of Epping Train Station. Oxford Street is also the main pedestrian and shopping spine in the town centre connecting directly to the train station. The site is also extremely well serviced by community services and facilities within the Epping Town Centre. Key community facilities within the surrounding locality are the Epping Aquatic and Leisure Centre, Epping Library, local community centres, and early childhood and healthcare clinics. Nearby schools include Arden Anglican School, Epping Catholic Primary School and Epping Public School.

### 3.3. Surrounding Development

Immediate developments surrounding the site consist of podium forms with towers with active frontages and built forms ranging in height from 15 storeys to a maximum of 22 storeys. Generally, the existing built form context (including approved developments but not yet constructed) in the surrounds comprises medium to high density developments.

The surrounding development includes:

- To the north of the site is 45-53 Oxford Street, Epping which is a site owned by Uniting Care which is currently occupied by three residential flat buildings known as 'Commbah'. Also north of the site is a recently constructed 15 storey residential flat building comprising 199 units at 43 Oxford Street.
- To the east of the site, on the opposite side of Oxford Street, is the Arden Anglican School, a co-educational school catering for pupils from K-6. Further east of the site is characterised by medium density walk up apartments.
- To the south of the site is 35 Oxford Street which is modern shop top housing development comprising 22 storeys with 54 residential apartments. Further south the site is seniors housing associated with Our Lady Help of Christians Parish Church and a Primary School. Further south of the site is a new 17 storey mixed use development at 20-42 Oxford Street.
- To the north west of the site is 20-28 Cambridge Street which is a recently construed 2 x 22 storeys residential tower development and an additional 7 storey tower comprising 501 residential apartments and retail businesses. A through site connection point to 37-41 Oxford Street has been provided in the north west corner of the site.
- To the south west of the site is an older style four storey commercial office building known as 16 Cambridge Street, Epping.

**Figure 4** provides a photograph review of surrounding development.

Figure 4 Photographic Review of Surrounding Development



Picture 3 View of Arden Anglican School, east of the site.



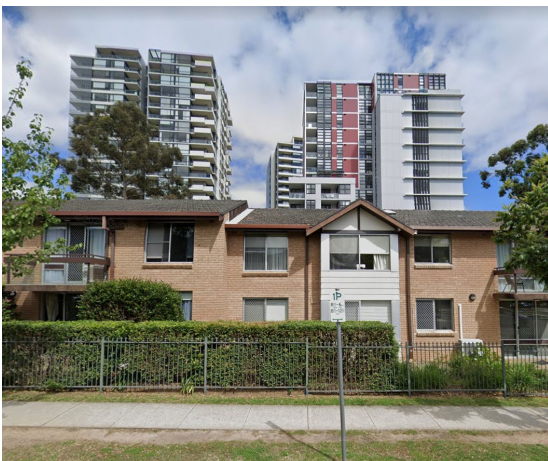
Picture 4 View of existing development fronting Oxford Street directly east of the site.



Picture 5 View of Our Lady Help of Christians Catholic Parish Church, south of the site.



Picture 6 View of new high-rise development 'Oxford Central', south east of the site.



Picture 7 43 Oxford Street (foreground) and new high-rise developments at 22 Cambridge Street in the background.



Picture 8 New high-rise development along Chester Street, north of the site.

## 4. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a Stage 2 Detailed DA for a 30-storey mixed-use development as outlined below:

- Site preparation works including civil and stormwater infrastructure;
- Construction of a 6-storey basement car park providing 317 parking spaces, 65 bicycle parking spaces and 4 motorcycle parking bays;
- Erection of a 30-storey mixed-use building including:
  - Ground floor level comprising a retail tenancy (64sqm), a centre-based child care facility accommodating 60 children and 11 staff (426sqm), residential lobby, waste rooms and building services;
  - Level 1 podium comprising flexible commercial office floor space (750sqm);
  - 28 levels of residential floor space above with a total of 211 apartments comprising the following unit mix:
    - 43 one-bedroom units
    - 124 two-bedroom units
    - 42 three-bedroom units
    - 2 four-bedroom units
- Landscaped outdoor spaces including generous deep soil zones, residential amenities including landscaped gardens, BBQ areas, swimming pool, gym and sauna, and a clearly defined outdoor play space for the centre-based child care facility;
- Consolidated vehicular access on the south eastern boundary via single entry / exit off Oxford Street; and
- Public domain works.

Overall, the proposed development provides a total gross floor area (**GFA**) of 23,176qm. This includes 20,173sqm of residential floor space, 750sqm of commercial office floor space, 426sqm of childcare centre floor space and 64sqm of retail floor space.

A 3D render of the proposed development is provided at **Figure 5**.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.



Figure 5 3D Render of Proposal



Source: Scott Carver

## 5. VARIATION OF FLOOR SPACE RATIO STANDARD

This section of the report identifies the development standard, which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 7** of the report.

### 5.1. Development Standard

This request seeks to vary the maximum 4.5:1 metre floor space ratio standard prescribed within clause 4.4 of the HLEP 2013 and the associated Floor Space Ratio Map (refer **Figure 6**).

The objective of clause 4.4(1) of the HLEP 2013 is:

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

The proposal will result in a minor non-compliance with the applicable FSR standard for the site as a result of accommodating additional car parking above the maximum parking rates permitted in the Hornsby DCP.

As per the definition of gross floor area (**GFA**) provided in the HLEP 2013 provided below, any additional car parking beyond the maximum parking rates outlined in the DCP contributes to GFA.

***gross floor area*** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

**but excludes—**

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
  - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*

**(g) car parking to meet any requirements of the consent authority (including access to that car parking), and**

- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

### 5.2. Proposed Variation to Maximum Floor Space Ratio Standard

This clause 4.6 variation request seeks to gain approval for a variation to the maximum floor space ratio development standard of 4.5:1.

The Concept DA (DA/314/2017) approved a total gross floor area of 22,361sqm which equated to a floor space ratio of 4.5:1 (i.e. the maximum GFA permitted to the site). The Stage 2 DA proposes a maximum floor space ratio of 4.66:1 which equates to a total GFA of 23,176sqm.

The additional GFA proposed is a result of the change to the basement to accommodate additional car parking spaces above the maximum parking rates permitted in the Hornsby DCP.

The non-compliance represents a 3.6% variation to the LEP FSR standard which equates to an additional 815sqm of GFA which is considered minor in the context of the overall development.



The total floor space of the proposal when excluding the additional basement car parking is 21,945sqm. As such the proposal results in a reduction of 416sqm of habitable GFA when compared to the Concept Approval. Under this scenario, the proposal would result in an FSR of 4.4:1 which would comply with the standard. The variation to the FSR standard is therefore not a result of providing any additional 'habitable floor space'.

The following table summarises the changes to GFA.

Table 1 Gross Floor Area Calculations

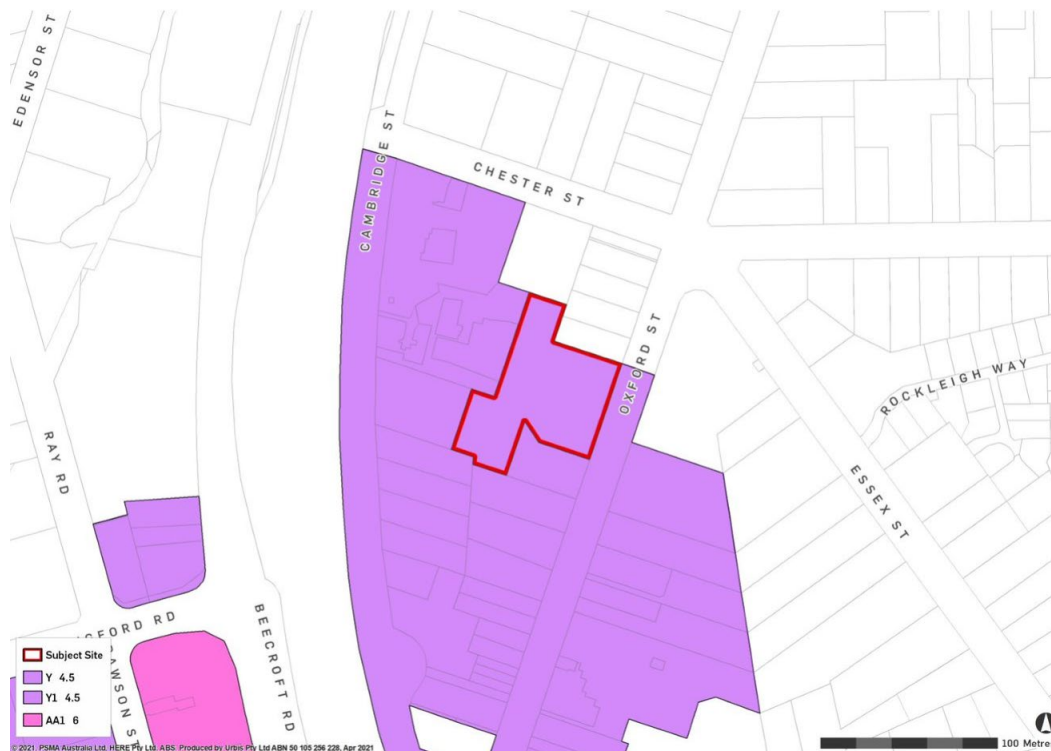
	<b>GFA</b>	<b>FSR</b>
Concept DA Approved GFA	22,361sqm	4.5:1
Stage 2 DA Proposed GFA (excluding basement car parking)	21,945sqm	4.4:1
Stage 2 DA Proposed GFA (including basement car parking)	23,176sqm	4.66:1

Based on the GFA calculations, a summary of the proposed FSR variation is provided below:

Table 2 Proposed Floor Space Ratio Variation

<b>Permitted FSR</b>	<b>Concept DA Approval</b>	<b>Stage 2 DA Proposed</b>	<b>Variation to FSR standard (%)</b>
4.5:1 (22,361sqm GFA)	4.5:1 (22,361sqm GFA)	4.66:1 (23,176sqm GFA)	+0.16:1 or 815sqm GFA (3.6%)

Figure 6 Maximum Floor Space Ratio Map



## 6. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of *Hornsby Local Environmental Plan 2013 (HLEP 2013)* includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of HLEP 2013 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 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the maximum floor space ratio development standard prescribed for the site in clause 4.4 of HLEP 2013 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the maximum floor space ratio development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

## 7. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the maximum floor space ratio in accordance with clause 4.4 of HLEP 2013.

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

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

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

### 7.1. Is the planning control a development standard that can be varied? – Clause 4.6(2)

The floor space ratio development standard prescribed by clause 4.4 of HLEP 2013 is a development standard capable of being varied under clause 4.6(2) of HLEP 2013.

### 7.2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? – Clause 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

The development is justified against **two** of the *Wehbe* methods as set out below.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the floor space ratio development standard as specified in clause 4.4 of HLEP 2013 are detailed in **Table 3**. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 3 Assessment of consistency with clause 4.4 objectives

Objectives	Assessment
<i>(a) to permit development of a bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.</i>	The minor variation to the FSR standard does not result in any additional bulk or scale as the additional GFA is below ground and will not be visible from adjoining property or the public domain. It will not add any additional bulk or scale to the development and there will be no impacts on the built environment. The non-compliance therefore does not alter the above ground building envelope and streetscape character, and this will ensure that no adverse amenity impacts will occur.

Objectives	Assessment
	<p>The additional 18 car parking spaces (compared to the Concept approval) accommodated in two additional basement levels of the development will not result in any adverse traffic impacts to the surrounding locality. As outlined in the Transport Impact Assessment provided with the DA documentation, in comparison with the approved Concept DA, the net increase in traffic is expected to be 42 additional trips in the AM peak, and 22 additional trips in the PM peak hour.</p> <p>This equates to one additional vehicle movement every one to three minutes, which is considered negligible. Hence, in comparison to the approved DA, the proposed development traffic is considered minimal and could not be expected to result in any noticeable traffic impacts on the surrounding road network.</p> <p>The extra 18 car spaces will improve the local infrastructure capacity by ensuring cars park in the basement and not surrounding local street.</p>

The objective of the development standard is achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

- **The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Strict compliance with the floor space ratio development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community.

The proposed variation will enable the following:

- The additional car parking, which contributes to the increase in GFA, will have no negative social or economic impacts. Traffic and noise impacts are minimal and manageable.

Surplus provisions to the DCP permitted parking rates are sought. However, it is noted that the desired outcomes of the DCP include “*car parking and bicycle facilities that meet the requirements of future occupants and their visitors*”. The extra basement car spaces will ensure that local streets are not used by future residents of the proposed development and therefore be a positive attribute for the community.

- Furthermore, it is noted that the following nearby streets currently have unrestricted on-street parking available:
  - Northern side of Chester Street, west of Oxford Street
  - Both side of Chester Street, east of Oxford Street
  - Both sides of Essex Street, east of Oxford Street
  - Both sides of Oxford Street, north of Chester Street.
- Hence, it would be a better outcome to accommodate car parking demand generated by the proposed development on-site rather than potentially occupying the nearby public roads.

- The proposal does not result in any additional bulk or scale as the additional GFA to accommodate the car parking is below ground and will not be visible from adjoining properties or the public domain. It will not add any additional bulk or scale to the development and there will be no impacts to adjoining developments.

### **7.3. Are there sufficient environmental planning grounds to justify contravening the development standard? – Clause 4.6(3)(B)**

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

*“...in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*

*...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”*

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The minor variation to the FSR standard does not result in any additional bulk or scale as the additional GFA is below ground and will not be visible from adjoining property or the public domain. It will not add any additional bulk or scale to the development and there will be no impacts on the built environment.
- The additional 18 car parking spaces accommodated in the two additional basement levels of the development will not result in any adverse traffic impacts to the surrounding locality. Overall, the additional parking equates to one additional vehicle movement every one to three minutes, which is considered negligible.
- Local streets will not be placed under pressure with demand for kerbside parking by the proposed development. People will still buy units with unallocated car spaces and park in the local area.
- The non-compliance represents a 3.6% variation to the LEP FSR standard which equates to an additional 815sqm of GFA which is considered minor in the context of the overall development.
- The total floor space of the proposal when excluding the additional basement car parking is 21,945sqm. As such there is actually a reduction of 416sqm of habitable GFA compared to the Concept Approval. This would result in an FSR of 4.4:1 which would comply with the standard. The variation is therefore not a result of providing any additional ‘habitable floor space’.
- The proposal will not alter the above ground building envelope such that there are no associated density related impacts. Rather, the proposal will facilitate the provision of an additional 18 car parking spaces to the basement which will result in a better outcome as it would ensure that car parking demand generated by the proposed development is accommodated on-site rather than potentially occupying the nearby public roads.
- The proposed building achieves the objectives of the development standard prescribed in clause 4.4 of the HLEP 2013 as described through **Table 3** and achieves the objectives of the B2 Local Centre zone as outlined in **Table 4**.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio development standard non-compliance in this instance.

### **7.4. Has the written request adequately addressed the matters in sub-clause (3)? – Clause 4.6(4)(A)(I)**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds,

including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

## 7.5. Is the proposed development in the public interest? – Clause 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 3**. The proposal is also consistent with the land use objectives that apply to the site under HLEP 2013. The site is located within the B2 zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 4** below.

Table 4 Assessment of compliance with land use zone objectives

Objective	Assessment
<ul style="list-style-type: none"> <li><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></li> </ul>	<p>The proposed variation does not prevent the proposed development from achieving this objective of the B2 Local Centre zone. The additional floor space will allow additional car parking to the site which would ensure that residents and other users of the site have readily available parking at all times.</p>
<ul style="list-style-type: none"> <li><i>To encourage employment opportunities in accessible locations.</i></li> </ul>	<p>The proposal will support the functioning of the mixed-use development without any anticipated impacts to the surrounding natural and built environment. The proposal is permitted within the B2 zone.</p> <p>The proposed variation to the floor space ratio standard will not result in a development that is inconsistent with this objective. The variation enables additional car parking spaces to be provided within the basement levels of the development. This will improve the viability of businesses operating at the site as it will improve availability and access to parking spaces for the childcare centre, commercial offices and retail tenancy.</p>
<ul style="list-style-type: none"> <li><i>To maximise public transport patronage and encourage walking and cycling.</i></li> </ul>	<p>The proposed variation to the floor space ratio standard will not result in a development that is inconsistent with this objective. The site has excellent public transport connections being situated 300 metres to the Epping Train Station, which provides rail and Metro services.</p> <p>The proposal will facilitate the provision of an additional 18 car parking spaces to the basement which will result in a better outcome as it would ensure that car parking demand generated by the proposed development is accommodated on-site</p>

Objective	Assessment
	rather than potentially occupying the nearby public roads.

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the floor space ratio standard as 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.

## **7.6. Has the concurrence of the planning secretary been obtained? – Clause 4.6(4)(B) and Clause 4.6(5)**

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

### **▪ Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the floor space ratio standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

### **▪ Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the floor space ratio development standard and the land use zone objectives despite the non-compliance.

No adverse environmental, social or economic impacts will result from the proposal.

The proposal is consistent with relevant State and local strategic plans and complies with the relevant State and local planning controls apart from the maximum car parking rates provided in the DCP. Notwithstanding, the additional 95 parking spaces (above the maximum DCP rates) and 18 spaces (above the Concept DA) do not result in any associated traffic impacts to the locality.

Rather, the additional basement parking spaces will result in a better outcome as it would ensure that car parking demand generated by the proposed development is accommodated on-site rather than potentially occupying the nearby public roads.

The minor variation to the FSR standard does not result in any additional bulk or scale as the additional GFA is below ground and will not be visible from adjoining property or the public domain.

As such, there is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

### **▪ Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

## 8. CONCLUSION

For the reasons set out in this written request, strict compliance with the floor space ratio development standard contained within clause 4.4 of HLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the floor space ratio development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal is compliant with clause 4.6(3)(a) because strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case. This is because the minor variation to the FSR standard does not result in any additional bulk or scale as the additional GFA is below ground and will not be visible from adjoining property or the public domain.
- The additional 18 car parking spaces accommodated in the two additional basement levels of the development will not result in any adverse traffic impacts to the surrounding locality. As outlined in the Transport Impact Assessment provided with the DA documentation, in comparison with the approved Concept DA, the net increase in traffic is expected to be 42 additional trips in the AM peak, and 22 additional trips in the PM peak hour.
- This equates to one additional vehicle movement every one to three minutes, which is considered negligible. Hence, in comparison to the approved DA, the proposed development traffic is considered minimal and could not be expected to result in any noticeable traffic impacts on the surrounding road network.
- There are sufficient environmental planning grounds to justify contravening the development standard for maximum floor space ratio. There will be minimal environmental impacts stemming from the contravention of the development standard as the proposal will not alter the above ground building envelope such that there are no associated density related impacts.
- Rather, the proposal will facilitate the provision of an additional 18 car parking spaces to the basement which will result in a better outcome as it would ensure that car parking demand generated by the proposed development is accommodated on-site rather than potentially occupying the nearby public roads.
- The non-compliance represents a 3.6% variation to the LEP FSR standard which equates to an additional 815sqm of GFA which is considered minor in the context of the overall development. The total floor space of the proposal when excluding the additional basement car parking is 21,945sqm.
- As such there is actually a reduction of 416sqm of habitable GFA compared to the Concept Approval. This would result in an FSR of 4.4:1 which would comply with the standard. The variation is therefore not a result of providing any additional 'habitable floor space'.
- Since the pandemic and into the unforeseeable future, the working environment has changed. People are now working from home, seeking larger unit sizes with a study or additional bedroom. If these units are not sold with a car space, people will still buy with their 1 or 2 cars and look for kerbside parking in local streets. From a local community perspective, the variation is therefore supportable.
- There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed building as outlined in detail throughout this report.
- The variation of the development standard will not raise any matter of significance for State or Regional environmental planning.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the floor space ratio development standard should be applied.





# DESIGN EXCELLENCE ADVISORY PANEL RECOMMENDATIONS

City of Parramatta



**Address** 37 - 41 Oxford St EPPING

**Date** 24<sup>th</sup> March 2022

## Application Summary

Application Number	DA/1/2022 & DA/314/2017/A
Assessing Officer	Alex McDougall
Applicant/Proponent	Meriton
Architect and Registration Number	Nicholas Bandounas - 8499 (Scott Carver)
Landscape Architect	Meriton
Planner	Urbis
Others	Walter Gordon et al. (Meriton)

DEAP Members	Andrew Stanic, David Logan, Oi Choong
Chair	Andrew Stanic
Other Persons in attendance	Jay Ahmed – Project Officer, Urban Design
Apologies	
Item No.	1 & 2 of 3
DEAP Meeting Number	2nd referral (see PL/21/2021)

## 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 under SEPP 65 does not necessarily imply that the Panel considers the particular matter has been satisfactorily resolved.

## Proposal

30 storey mixed use building comprising 2 storey commercial podium (retail unit, 60 children centre-based childcare facility and commercial office space) and a shop-top housing tower above comprising 211 apartments, 6 basement levels providing 317 car parking spaces, landscaping and public domain works. The proposal constitutes stage 2 detailed design of concept plan approval DA/314/2017. The application is to be determined by the Sydney Central City Planning Panel.

## 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 has the following comments in relation to the project:

1. This proposal was reviewed by DEAP in April 2021 where a series of departures from the previously approved concept plan (DA314/2017) were raised as a concern and not supported. In particular, issues relating to the lack of a street wall approach, the general contextual response and the erosion of the rear setback that negatively impacted on the originally proposed green spine were raised.
2. While the current proposal seeks to address several of the previously identified issues, the panel notes that the proponents have not clearly responded to each of the previously raised issues, and this makes a detailed review difficult. For example, the previous Panel raised issues regarding the importance of the concept-approved rear green space but this was not specifically mentioned in the resubmission.
3. Notwithstanding the above the applicant is proposing a submission that is more closely aligned to the original concept approval. The street-facing tower expression proposes three distinct vertical bays, which in part addresses the desired character for Oxford Street and improves the architectural expression. The façade detailing however requires further consideration and articulation and this could be achieved by way of increasing the depth of window reveals / mullions. The current expression presents as quite flat and is in need of further modulation. The podium

is not proposed to connect to No. 35 as per the previous concept approval thereby impacting on the street wall expression at pedestrian level.

4. The Podium has been reduced in height from three storeys to two and the vertical tower recesses between bays do not continue into the podium zone. The Panel recommends that a detailed streetscape analysis be undertaken with the aim of providing a defined contextual approach and an improved public domain that aligns with desired character for this part of Epping. The Panel recommends increasing the podium height to three storeys and extending the vertical slots from the tower above for an improved and linked compositional expression that breaks the podium form into three bays.
5. The two levels of commercial ceiling heights do not currently meet compliance and the panel recommends that this be addressed in any redesign of the podium. The provision of two commercial levels with a residential component on level 3 is seen as positive as it potentially allows for units that connect to generous terraces and potential for improvement in streetscape activation and surveillance.
6. The street level set back for the podium is proposed at 7.3 metres whereas the original Concept Design approval set this at 4.5m. It is noted that the 4.5m setback was conditioned and not shown on the original drawings and this is understood to have led to some confusion. It is recommended that the setback be revised to align with the 4.5m setback previously approved and to also consider applying this to the basement under for both buildability and to allow a deep soil zone for suitable street trees to be provided.
7. The interface between fire services / childcare play area to the north between the proposal and no. 43 requires further resolution and explanation. The location of the booster and the ventilation shaft will potentially negatively impact on the public domain and is not supported. The interface between the outdoor play area and the street is also not clear. How any barrier here relates to the podium is an important consideration and should be resolved and clarified via larger scale drawings but also by way of a series of 3D pedestrian eye level views that clearly articulate this zone and the overall podium expression and entry sequence.
8. Detailed consideration of the points raised above will assist in the establishment of a desired street character relative to future context.
9. The previous Panel also raised the potential for making a direct visual connection to the rear green space from the lobby, as this is currently not possible due to the proposed location of the childcare component of the scheme. It would certainly improve the entry sequence into the building and allow a more considered connection to the rear green space. Refer also to the landscape comments Item 12.
10. Layout improvement may be possible at ground level if the childcare function is relocated between the proposal and No. 43 with the outdoor play relocated into the northern-most section of the rear green space. This could also assist in addressing the streetscape childcare interface noted above.
11. The inclusion of a community room was recommended in the previous Panel report and it is not included in this submission. The Panel believes that this should be provided and should be generous in size given the scale of the development. The currently allocated small space in the lobby is considered unacceptable. An

alternative location linked to the gym facility was raised and should be explored. The currently proposed meeting room in the lobby could be given over to parcel deliveries given that the lack of this type of provision is now a common problem in residential developments.

12. The Panel also notes that many of the landscape issues raised in the previous Panel report have not been addressed and resolved. The current landscape design reflects a lost opportunity to enhance the indoor/ outdoor relationship and to imaginatively utilise the site contours to create an outstanding terraced garden for the residents and their visitors.
13. The Panel recommends a re-thinking of the garden layout and offers the following recommendations in relation to improvements to the landscape:
  - i) Liaise with the architectural team to create a direct visual relationship between the lobby and the garden. As highlighted in Item 10, re-configure the western childcare open space to create improved access and connectivity from the lobby to the garden and grounds.
  - ii) The current route from the lobby to the garden is poorly resolved. It is via a long corridor past the bulky goods room and gives no hint of a garden and facilities beyond. A more attractive and welcoming entry sequence and experience into the garden is required for a development of this scale and significance.
  - iii) Explore greater use of terracing and decking to reduce the extensive use of ramped paths and circulation, which impacts on usable open space and amenity.
  - iv) The Panel is concerned that the children's play area is currently located at the extremity of the grounds, 2m below the level of the gym and pool facilities. Apart from access, safety and drainage issues, it also has a poor relationship with the rest of the garden and should be repositioned to a more suitable spot.
  - v) The design of the privacy fences between the childcare play areas and communal open spaces/garden requires further resolution to reduce their impact.
  - vi) The ground level precedent images do not always accord with the plan reality and do not reflect the current level changes. These should be amended and updated.
  - vii) The Panel requests more full site sections illustrating how level changes and cut -fill zones (if any) are addressed across the whole site, The Panel is also interested in seeing the impacts at the site perimeter and impacts on the adjacent gardens and site levels.
  - viii) A revised landscape plan is to be prepared incorporating the above recommendations including a rationale for the location of the communal facilities (pool and gym)

14. A review of the general apartment layouts notes the following:




- i) Layouts should be revised to avoid a direct visual link between bedrooms, bathrooms and living spaces. Currently, too many of the bedrooms open directly off the living rooms.
- ii) The current unit layouts in some instances result in the primary views / first entry experiences focusing on the working side of the kitchen, this is not considered to be an ideal planning outcome.
- iii) Dining provision for two bedroom units and above should allow seating for six and it is recommended that table dimensions be 1800mm x 900mm.
- iv) Many of the units have kitchens adjoining bedroom walls and this could result in amenity impacts due to noise conflicts.

15. A series of 1:20 sections is required for both the front and rear facades to allow further review of the façade expression and the detailing of services etc. This is to also include the podium.

16. A series of eye level views of the proposal from the front and the rear are required to better understand the quality of spaces and the design intent proposed.

17. The proposed substantial increase in the number of car spaces, well beyond that approved at concept stage, is not supported particularly given the location relatively is close to Epping Station, a major transport hub.

## 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 Council, 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>