

COUNCIL ASSESSMENT REPORT

Panel Reference No.	PPSSNH-84
DA Number	MOD2020/0004
LGA	City of Ryde
Approved Development	Deferred development consent for construction of 2 x 15 storey residential apartment buildings comprising 317 dwellings (2 x studio, 104 x 1 bedroom, 179 x 2 bedrooms & 32 x 3 bedrooms apartments) over 3 basement levels of car parking for 308 car spaces together with landscaping works and associated site works
Proposed Modification	Section 4.55(2) modification of approved development (PPS-2018SNH021) to modify the following: • Reconfigure apartment layouts and unit mix while keeping the same total number of units at 317; • Reconfigure Ground Level of North Tower from 9 apartments to 4 apartments including increase in finished floor level of apartments by 2.05m to RL75.00; • Reduce floor to floor heights; • Delete six (6) ground level apartments in the South Tower for extension of the car park and provision of OSD and rainwater tanks, and services; • Modify pedestrian access to the North Tower and South Tower including new stairs and ramps fronting Epping Road and Eucalyptus Street; • Reconfigure communal open space and communal facility between North Tower and South Tower; • Reconfigure North Tower and South Tower building envelopes comprising changes to setbacks to Epping Road, Eucalyptus Street and between the towers.; • Delete Basement 2 car park and reconfigure Basement 1 and Ground Level car park to accommodate 306 car spaces and 33 bicycle spaces and loading dock; • Combine private vehicle and service vehicle access into one shared driveway from Epping Road; • New stormwater management plan including additional OSD tanks and a channel along the south-eastern boundary to drain towards Epping Road; and

	• Staging of Section 7.11 Contributions in accordance with the approved staging of construction works in 2 stages.
Street Address	159-161 Epping Road, Macquarie Park
Applicant/Owner	Applicant: 159 Epping Road Pty Ltd C/- Mecone Owner: The Owners Strata Plan 9264
Date of DA Lodgement	10 January 2020
Number of Submissions	One (1) submission received objecting to the development
Recommendation	Approval subject to conditions
Regional Development Criteria - Schedule 7 of SEPP(State & Regional Development 2011)	General Development over \$30 Million
List of All Relevant s4.15(1)(a) Matters	Environmental Planning Instruments • Environmental Planning and Assessment Act 1979; • Biodiversity Conservation Act 2016; • Environmental Protection and Biodiversity Conservation Act 1999; • Sydney Environmental Planning Policy (State and Regional Development) 2011; • State Environmental Planning Policy No. 55 – Remediation of Land; • State Environmental Planning Policy (Infrastructure) 2007; • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; • State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development); • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; and • Ryde Local Environmental Plan 2014. Development Control Plans • City of Ryde Development Control Plan 2014 Other • Section 7.11 Development Contributions Plan 2020
List all documents submitted with this	• Attachment 1 – Conditions of Consent • Attachment 2 – Architectural Plans

report for the Panel's consideration	• Attachment 3 – Landscape Plans
Report prepared by	Hussein Bazzi – Assessment Officer Peggy Wong – Senior Town Planner
Report Date	30 June 2020

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **N/A**

Conditions

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

1. EXECUTIVE SUMMARY

This report is an assessment of a Section 4.55(2) modification application to amend the deferred commencement consent at 159-161 Epping Road, Macquarie Park.

On 22 May 2019, deferred commencement consent was granted by the Sydney North Planning Panel (SNPP) for construction of 2 x 15 storey residential apartment buildings (consisting of 317 apartments) over 3 levels of car parking and associated landscape and site works. The approved apartment mix consists of 2 x studio, 104 x 1 bedroom, 179 x 2 bedroom and 32 x 3 bedroom apartments) and 308 car parking spaces.

The proposed modification to the approved development includes reconfiguration of the basement car parking levels and vehicular access to the site, alterations to the building envelope and reconfiguration of apartment layouts to provide the following:

- An alternative stormwater drainage system to drain stormwater towards Epping Road and delete the deferred commencement condition requiring the creation of a drainage easement across the downstream property;
- Enlargement of On Site Detention (OSD) tank adjacent to the south-western (Epping Road) setback;
- Deletion of the service vehicle driveway and provide a combined driveway for private and service vehicles from Epping Road;
- Deletion of Basement Level 2 and reconfiguration of car parking layout on Basement Level 1 and Ground Level to accommodate 306 car spaces, 33 bicycle spaces, waste storage areas and loading dock;
- Amend apartment mix to consist of 94 x 1 bedroom (30%), 186 x 2 bedroom (59%), 31 x 3 bedroom (10%) and 6 x 4 bedroom (2%) apartments. No change is proposed to the total number of apartments (317);
- New window hoods on the eastern elevation on Levels 2 – 11 (inclusive);
- Reduce floor to floor heights on all levels, from 3.10m to 3.05m (Ground Level to Level 14) and from 3.23m to 3.20m on Level 15;
- Reconfiguration of courtyards and increase finished floor levels of apartments on the Ground Floor in response to the stormwater management plan;
- Reconfiguration of Level 1 communal open space between North Tower and South Tower including relocation of a communal facility identified as “gym/yoga room” adjacent to the western portion of the communal open space;
- Reconfiguration of pedestrian entries to the North Tower and South Tower from Epping Road and Eucalyptus Street including new stairs and pedestrian ramps;
- Amended landscape plan associated with the enlarged OSD tank within the Epping Road setback, reconfigured pedestrian access fronting Epping Road and Eucalyptus Street and the communal open space. The proposal includes removal of 5 x *Melaleuca bracteata* (Black Tea Tree) trees fronting Epping Road and replacement tree planting comprising of 9 additional trees comprising 3 x Sydney Red Gums, 7 x Grey Gums, 5 x Water Gums and 3 Chinese Elms.
- Shift in building footprint of the North and South Towers resulting in setbacks as follows:
 - Setback from Epping Road reduced from 11.73m to 10.585m;

- Setback from Eucalyptus Street increased from 10m to between 10.1m 10.2m on Levels 1 to 3, from between 10m and 12.3m to 10.2 to 13.1m on Levels 5 – 13 and from 10m to 10.2m on Level 14;
 - Setback from north-western boundary reduced from 10.52m to 7.1m setback on Level 13;
 - Setback from north-western boundary reduced from 10.52m to 9.33m on Level 14;
 - No change to setback to eastern boundary.
- Building separation between North Tower and South Tower amended as follows:
 - Level 1 – increase from between 23.29m – 29.43m to between 28.13 - 30.48m;
 - Level 2 – increase from 29.43m to 30.48m;
 - Level 3 – increase from 29.43m to 30.78m;
 - Level 4 – 13 – reduce from 34.85m to 33.87m.
 - The proposal includes modification to two apartments adjacent to the north-western boundary on Level 13 to provide addition terrace areas measuring 44m² each in the North and South Tower. The western terraces are setback 7.1m from the western side boundary; and
 - Staging of Section 7.11 contributions to reflect the works associated with the 2 construction stages approved under MOD2020/0024.

The deferred commencement condition requires the creation of a drainage easement across the adjacent property at No. 157 Balaclava Road (also known as BaptistCare Aged Care Facility). The deferred commencement condition was required to be satisfied within 12 months of the issue of the consent, by 22 May 2020.

On 23 April 2020, pursuant to Section 4.54 of the *Environmental Planning and Assessment Act 1979* and *Section 114 of the Environmental Planning and Assessment Regulation 2000*, the applicant submitted a written request to Council seeking a six (6) month extension to satisfy the deferred commencement condition. On 27 April 2020, Council granted a 6 month extension to the deferred commencement condition which will expire on 22 November 2020.

Notwithstanding Council approval for a 6 month extension to the deferred commencement condition, the *COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020*, which commenced on 14 May 2020, amended Section 4.53 of the *Environmental Planning and Assessment Act 1979*, granting a 2 year extension to development consents that have not lapsed between 25 March 2020 and 26 September 2020. In this regard, the deferred commencement condition will expire on 22 November 2022.

The original development consent has been subject to one previous modification Section 4.55(1A) application, approved under delegated authority by Council on 25 March 2020(MOD2020/0024). This modification permitted the staging of the construction of the development in 2 stages. Stage 1 comprises of demolition of existing structures, excavation and construction of basement and ground floor levels, construction of North Tower and communal open space between North Tower and South Tower.

Stage 2 comprises of construction of the remainder of South Tower. This subject application under MOD2020/0004 as lodged proposed for the staging to be a modification to be considered under this application. However, during the assessment of this application, MOD2020/0024 was lodged and approved by Council, rendering the inclusion of staging in this application redundant.

The proposal satisfies the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979 as the amendments sought result in a development that is substantially the same as the approved development.

The application was notified and advertised in accordance with Part 2.1 of *Ryde Development Control Plan 2014* (RDCP 2014) and one (1) submission was received. Issues raised in the submission include apartment designs not satisfying Apartment Design Guide (ADG) in relation to solar access, building separation and amenity impacts on existing BaptistCare occupants.

The submission also raised concerns regarding street activation on Eucalyptus Street, impacts on future development of the BaptistCare site and additional traffic impacts in Balaclava Road generated by vehicles approaching the site from the east. Amendments to the plans during the assessment period are minor and did not necessitate the re-notification of the application.

The proposed development is consistent with the original development consent in regards to floor space ratio (FSR), building height, building separation between the North Tower and South Tower, communal open space and facilities, deep soil and landscaping, solar access, built form and scale, and building articulation. The proposed building setbacks are generally consistent with the original development and will provide adequate separation between existing and future developments on adjoining properties.

The proposed landscaping and pedestrian access from the North Tower and South Tower to Epping Road and Eucalyptus Street provides good amenity for pedestrians, however it is noted that currently, Eucalyptus Street is a private road and the site has not legal rights of access and pedestrians cannot access Eucalyptus Street. As such, it is considered appropriate to impose a condition requiring existing fencing along the northern boundary to be maintained or a new fence erected to restrict pedestrian access from the development to Eucalyptus Street. The applicant has agreed to this condition.

The proposed amendments to the approved development have been assessed in respect of the relevant planning instruments and the development (as modified) is non-compliant with the ADG Part 2, Objective 2E – Building Depth which recommends building depths between 12m-18m. The South and North Towers were approved with maximum building depths of 22m to 24.7m, which are increased to between 25m and 27m, respectively as a result of the modification.

The proposed modification will therefore exceed the maximum building depth provision of the ADG by 7m to 9m, however it is generally consistent with the building depths of the approved development and provides acceptable amenity for apartments. The existing approved development was non-compliant with the ADG in a number of areas which were supported. The proposed modification will not increase any of the noncompliance's and are still considered acceptable as outlined in this report.

The proposed stormwater management plan is proposed to drain towards Epping Road, and will not result in potential overland flows towards the adjacent downstream property. The proposal satisfies stormwater drainage in accordance with Council's DCP requirements and is acceptable, subject to recommended conditions. As such, the originally imposed deferred commencement condition requiring the registration of a drainage easement across the adjacent downstream property is no longer necessary and deletion of the condition is acceptable.

Assessment of the proposal against the relevant planning controls has not identified any fundamental issues of concern as the proposal is substantially the same development as originally approved. Consideration has also been given to various design matters by Council's technical departments who have no objections to the proposed development, subject to conditions.

The proposed modifications are considered acceptable and will not give rise to significant additional impacts to the amenity of adjoining properties or the local area and can be supported, subject to conditions provided in Attachment 1. These conditions have been reviewed by the applicant who has agreed with all of the conditions.

2. APPLICATION DETAILS

Applicant: 159 Epping Road Pty Ltd C/- Mecone

Owner: The Owners Strata Plan 9264

Capital Investment Value: Original approved development: \$146,333,000 (including GST)

Disclosures: No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

3. SITE DESCRIPTION AND CONTEXT

The site is located at the northern side of Epping Road, is legally described as Strata Plan 9264 and known as No. 159 to 161 Epping Road, Macquarie Park. The site has an area of approximately 8,074m² and a frontage to Epping Road of approximately 76 metres to the south west. The site has a fall of 5.31m from the northern corner (RL78.08) to the southern corner (RL72.77) towards Epping Road.

The site is located within the Herring Road Priority Precinct and includes Macquarie University and Macquarie Shopping Centre, and is within the Macquarie Park Corridor. The Precinct is well serviced by public transport including bus services, the Epping to Chatswood Rail Line, and the Sydney Metro.

The site currently contains a group of two storey residential apartment buildings with a central courtyard and primary vehicular and pedestrian access via Epping Road. The site

contains 48 trees and there are 23 trees located on adjoining properties. Located to the south west of the site is an electrical substation which sits on a separate parcel of land.

The site is bounded by the Baptist Care Aged Care Facility to the north, east and west. The northern boundary of the site adjoins Eucalyptus Street, a private road within the Baptist Care site. Currently, no rights of access have been granted for the site to use Eucalyptus Street for access. Existing development to the south of the site, on the opposite side of Epping Road, comprises of predominantly single and two storey residential dwellings. Macquarie University is located to the north-west of the site on the opposite side northern side of Balaclava Road.

The site is zoned B4 – Mixed Use and is surrounded by properties also zoned B4 Mixed Use to the north, east and west. To the south of Epping Road, directly adjacent to the development site, properties are located in the R2 Low Density Residential (see Figure 2). The site is not a heritage item or located within a Heritage Conservation Area but is in the vicinity of Macquarie University which is listed as an item of local heritage significance (Item No. 10) under the Ryde LEP 2014.



Figure 1: Aerial Photograph of subject site

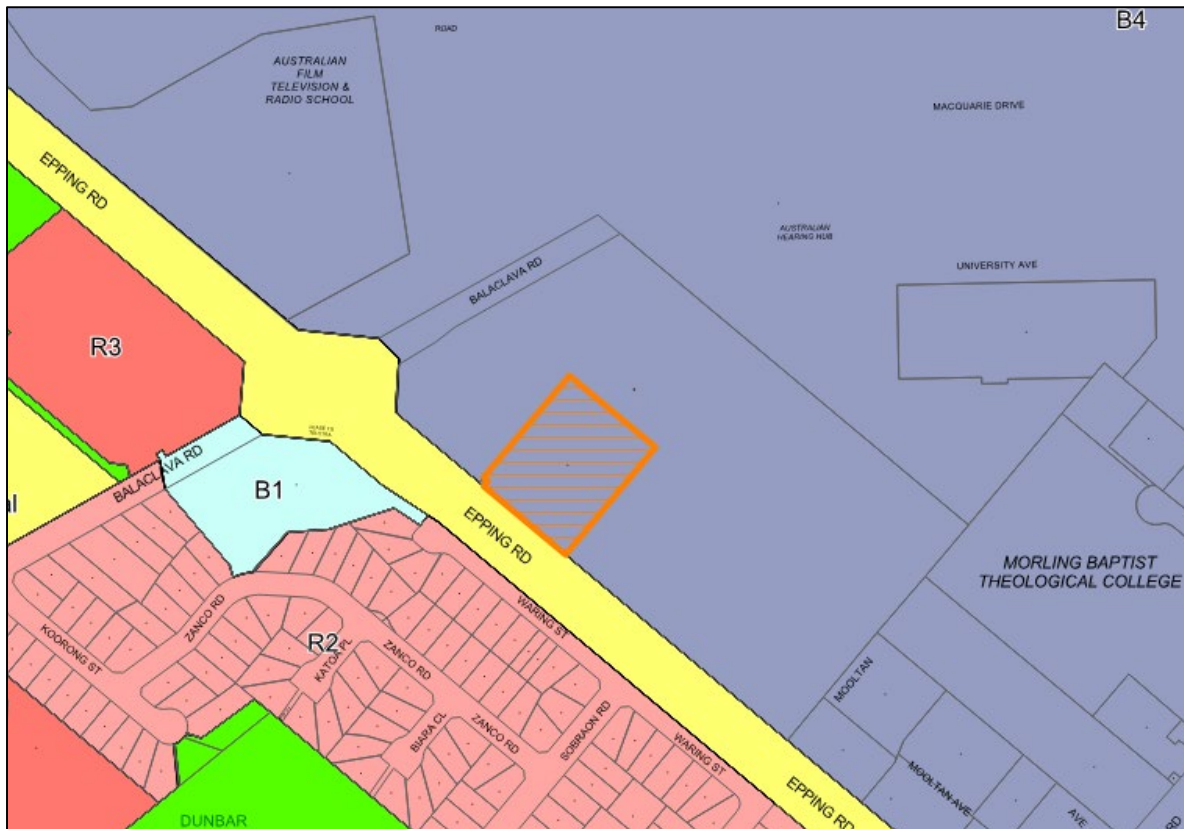


Figure 2: RLEP 2014 Land Use Zoning Map



Figure 3: View of subject site from Epping Road



Figure 4: View of site looking east from Eucalyptus Street



Figure 5: Existing BaptistCare development to the north (viewed from Eucalyptus Street)



Figure 6: BaptistCare buildings to the west



Figure 7: BaptistCare buildings to the east



Figure 8: View of existing residential developments to the south on Epping Road

4. BACKGROUND

The table below captures a summary on the background for the development history since the determination of LDA2018/0171.

Date	Comments
22 May 2019	The original development application (LDA2018/0171) for the demolition of existing structures and construction of two (2) x 15 storey residential apartment buildings comprising 317 dwellings (2 x studio, 104 x 1 bedroom, 179 x 2 bedrooms & 32 x 3 bedrooms apartments) over three (3) basement levels of car parking for 308 car spaces together with landscaping works and associated site works was granted a Deferred Commencement Consent by the SNPP. The Deferred Commencement Consent required the registration of a Drainage Easement or Restrictive Covenant across the adjacent downstream property within 12 months of the issue of the consent by 22 May 2020.

Date	Comments
6 January 2020	The subject modification was lodged to Council.
15 January 2020 - 5 February 2020	The modification was advertised in the Weekly Times on 22 January 2020 and to adjoining property owners. In response one (1) submission objecting to the proposal was received from the adjoining property at 151 Balaclava Road (BaptistCare).
14 February 2020 & 25 March 2020	A Section 4.55 modification application (MOD2020/0024) was lodged to Council on 14 February 2020 for staged construction of the development into two (2) stages. Stage 1 comprises of the demolition of existing structures, excavation and construction of basement and ground floor levels, construction of North Tower and communal open space between North Tower and South Tower. Stage 2 comprises of construction of the remainder of South Tower. The application was approved on 25 March 2020. <i>Note: The staging of construction as part of the subject application is consistent with the staging approved under MOD2020/0024.</i>
14 February 2020	Council issued a letter to the applicant raising concerns with stormwater management and vehicular access of the subject Section 4.55(2) application.
6 March 2020	The applicant submitted amended plans to address stormwater and vehicular access in response to Council's letter dated 14 February 2020 for the subject modification.
16 March 2020	TfNSW advised that the proposed combined driveway is not supported as simultaneous entry/exit for the largest service vehicles has not been demonstrated. TfNSW requested amended plans to be resubmitted for consideration.
3 April 2020	A letter requesting further information relating to stormwater management, vehicular access and car parking was sent to the applicant. The letter also identified design amendments are required to address ADG compliance, ensure that no structures are within the 3.5m road dedication along Epping Road and compliance with Council's waste storage and management requirements. In addition, Council requested the preparation of a Construction Management Plan to demonstrate how disruptions from the proposed stages of construction will be mitigated and managed.
23 April 2020	The applicant submitted a written request to Council seeking a six (6) month extension to satisfy the deferred commencement condition under LDA2018/0171. On 27 April 2020 pursuant to Section 4.54 of the <i>Environmental Planning and Assessment Act 1979</i> and Section 114 of the Environmental Planning and Assessment Regulation 2000, Council granted the request for a six (6) month extension for the deferred commencement condition until 22 November 2020. It is further noted that in response to COVID-19 recent amendments have been made under Section 4.53(6) and the deferred commencement expiration has been extended by an additional two (2) years from the original expiration. The date of expiration is now 22 May 2022.
28 April 2020	The applicant requested an extension of time to submit the additional information requested by Council on 3 April 2020. Council agreed to the applicant requested an extension of time, until 1 May 2020.
1 May 2020	A further extension was requested by the applicant until 5 May 2020. The extension was granted by Council.
5 May 2020	The applicant submitted the additional information in response to Council's letter dated 3 April 2020.
12 May 2020	The amended plans were referred to TfNSW.
20 May 2020	An e-mail was forwarded to the applicant requesting plans showing the internal dimensions for living and bedrooms of units.
4 June 2020	The applicant submitted amended plans with internal dimensions.
10 June 2020	The application was presented to the SNPP at a briefing meeting. The SNPP raised concerns regarding the loss of trees along Epping Road and acoustic impacts between

Date	Comments
	apartments located at the north-eastern side of the Northern Tower where the living rooms are located next to bedrooms of the adjacent apartment. The SNPP requested clarification that the proposal is capable of satisfying relevant requirements of the National Building Code and ADG.
11 June 2020	An e-mail was sent to the applicant requesting additional information to provide clarification for the issues raised by the SNPP.
12 June 2020	The applicant submitted to additional information providing clarification on tree removal and planting fronting Epping Road, and acoustic treatment between apartments.
27 June 2020	TfNSW for the amended plans received. TfNSW raise no objection to the proposal.

5. THE PROPOSAL

The proposal is an application for modification under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act), 1979 of Local Development Application No. LDA2017/0171 for the construction of two (2) x 15 storey residential apartment buildings comprising 317 dwellings (two (2) x studio, 104 x one (1) bedroom, 179 x two (2) bedrooms & 32 x three (3) bedrooms apartments) over three (3) basement levels of car parking for 308 car spaces together with landscaping works and associated site works was determined by the Sydney North Planning Panel on 22 May 2019.

The modification is an integrated application pursuant to Section 4.46 of the EP&A Act with concurrence sought from Transport for New South Wales (TfNSW). The modification proposes the following changes:

- The modification seeks to retain the approved number of apartments (317), however apartment layouts and mix is amended to provide 94 x 1 bedroom (30%), 186 x 2 bedroom (59%), 31 x 3 bedroom (10%) and 6 x 4 bedroom (2%) apartments;
- Reconfigure Ground Level of North Tower from 9 apartments to 4 apartments including increase in finished floor level of apartments by 2.05m to RL75.00;
- Delete six (6) ground level apartments in the South Tower for extension of the car park and provision of OSD and rainwater tanks, and services;
- Reduction to the floor to floor heights on all levels, providing floor to floor heights of 3.05 metres (Ground Level to Level 14) and 3.2m on Level 15;
- Reduction to the side setbacks for both towers along the south eastern boundary with the incorporation of new window hoods on Levels 2 – 11 (inclusive);
- Reconfiguration of courtyards and increase floor levels of apartments located on the Ground Floor in response to the proposed stormwater management plan;
- Reconfiguration of communal open space located between North Tower and South Tower on Level 1. The reconfiguration also includes the relocation of a communal facility identified as “gym/yoga room” adjacent to the western portion of the communal open space and deletion of the 31m² communal facility on Level 1 of the North Tower;
- Removal of the Basement Level 2 and reconfiguration of Basement Level 1 and the Ground Floor, reducing car parking spaces from 308 spaces to 306 spaces including the relocation of loading dock from Basement Level 1 to Ground Floor;

- Deletion of the service vehicle driveway adjacent to the south-eastern boundary and providing a combined driveway for private and service vehicles to access car parking;
- An alternative stormwater drainage system to drain stormwater towards Epping Road. The changes in the stormwater management system requires enlargement of the On-site Detention (OSD) tank adjacent to the south-western (Epping Road) setback. The proposal seeks to delete the deferred commencement condition requiring the creation of a drainage easement across the downstream property;
- Reconfiguration of pedestrian entries to the North and South Towers from Epping Road and Eucalyptus Street including new stairs and pedestrian ramps;
- Reconfigure North Tower and South Tower building envelopes comprising changes to setbacks to Epping Road, Eucalyptus Street and between the towers as follows:
 - The street setback from Epping Road is reduced from 11.73 metres to 10.58 metres;
 - The street setback from Eucalyptus Street increased from 10 metres to between 10.1 metres - 10.2 metres on Levels 1 to 3, from 10 metres and 12.3 metres to 10.2 metres to 13.1 metres on Levels 5 – 13 and from 10 metres to 10.2 metres on Level 14;
 - The side setbacks for both the north and south towers have been slightly modified and range between 6.17m and 15.87m to the south-eastern boundary, and 6.18m to 15.88m to the north-western boundary; and
 - Building separation between North and South Towers amended as follows:
 - Level 1 – Increase from between 23.29 metres – 29.43 metres to between 28.13 metres - 30.48 metres;
 - Level 2 – increase from 29.43 metres to 30.48 metres;
 - Level 3 – increase from 29.43 metres to 30.78 metres;
 - Level's 4 - 13 – reduced from 34.85 metres to 33.87 metres;
- Additional west facing terraces measuring 44m² on Level 13 of the North and South Towers. The terraces are setback 7.1 metres from the north-western boundary; and
- As a result of the enlarged OSD tank, five (5) *Melaleuca bracteata* trees (commonly known as black tea-tree) fronting Epping Road will be removed and an additional 9 trees will be planted within the front setback (in addition to 9 originally approved trees). The proposed tree species to be planted fronting Epping Road consist of 3 x Sydney Red Gums, 7 x Grey Gums, 5 x Water Gums and 3 x Chinese Elms.

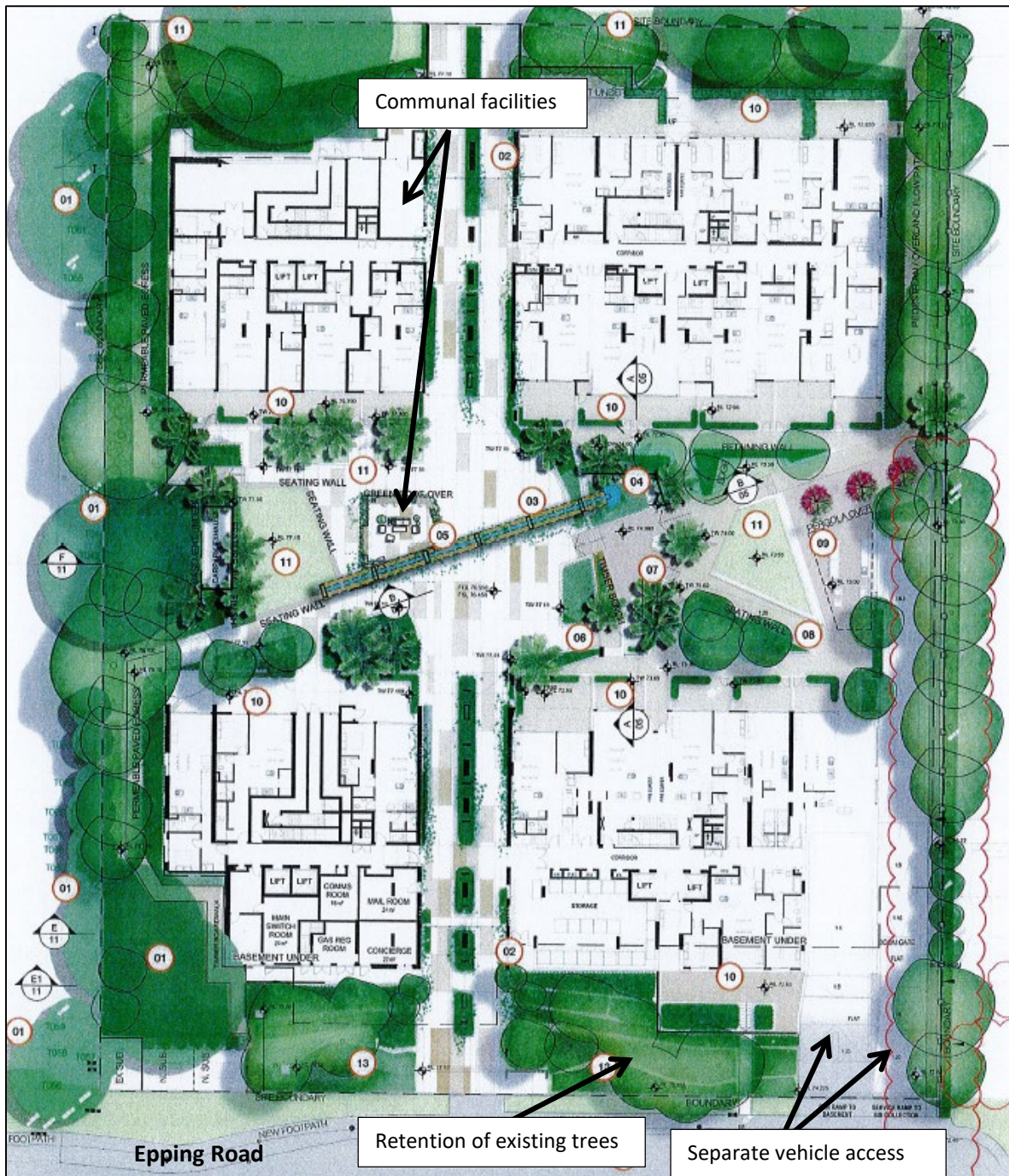


Figure 9: Originally approved Level 1 and Landscape Plan

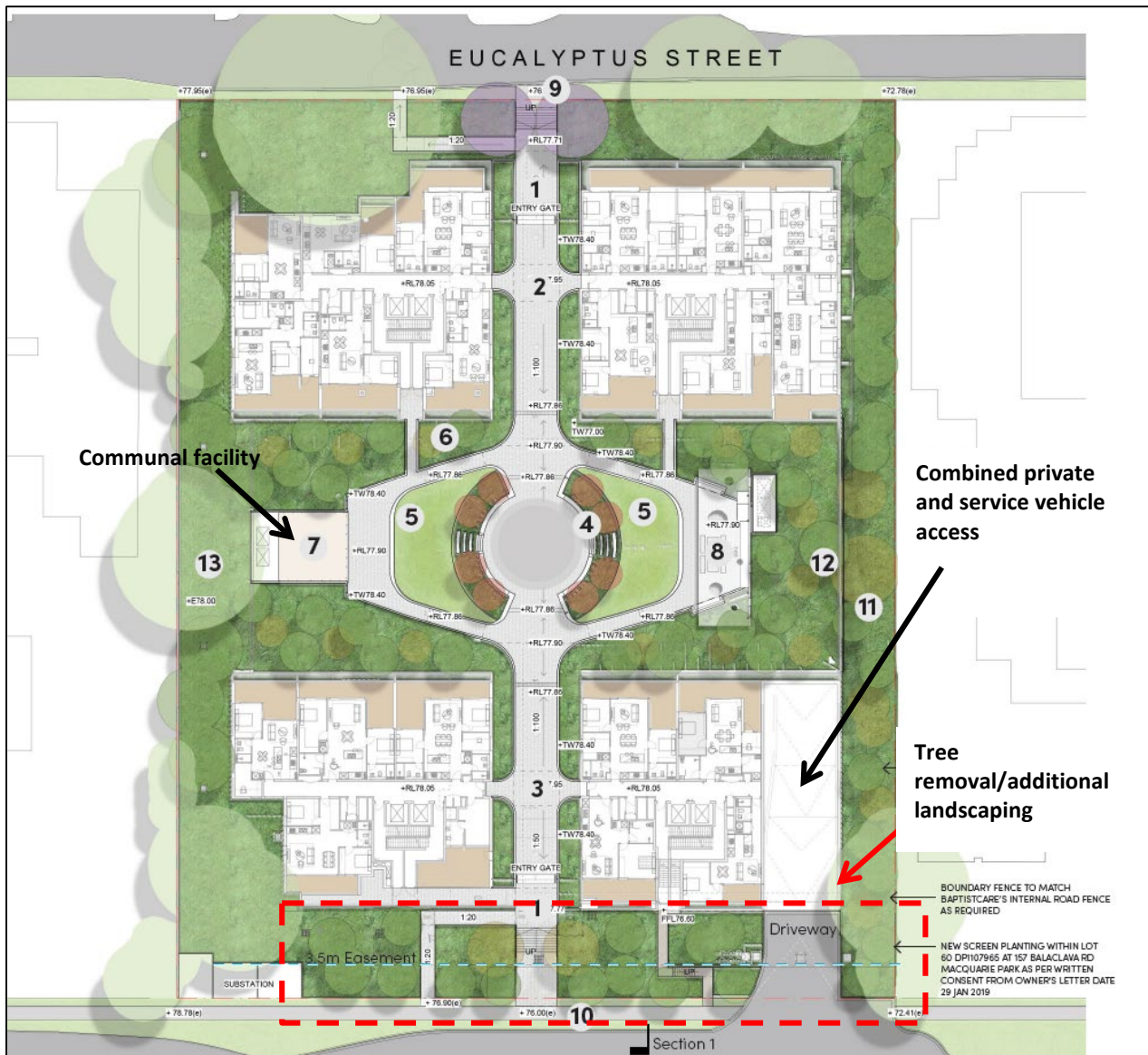


Figure 10: Proposed Level 1 Plan showing amended vehicular access, building entries, communal open space, and communal facilities and landscaping.



Figure 11: Photomontage of the amended development as viewed from Epping Road

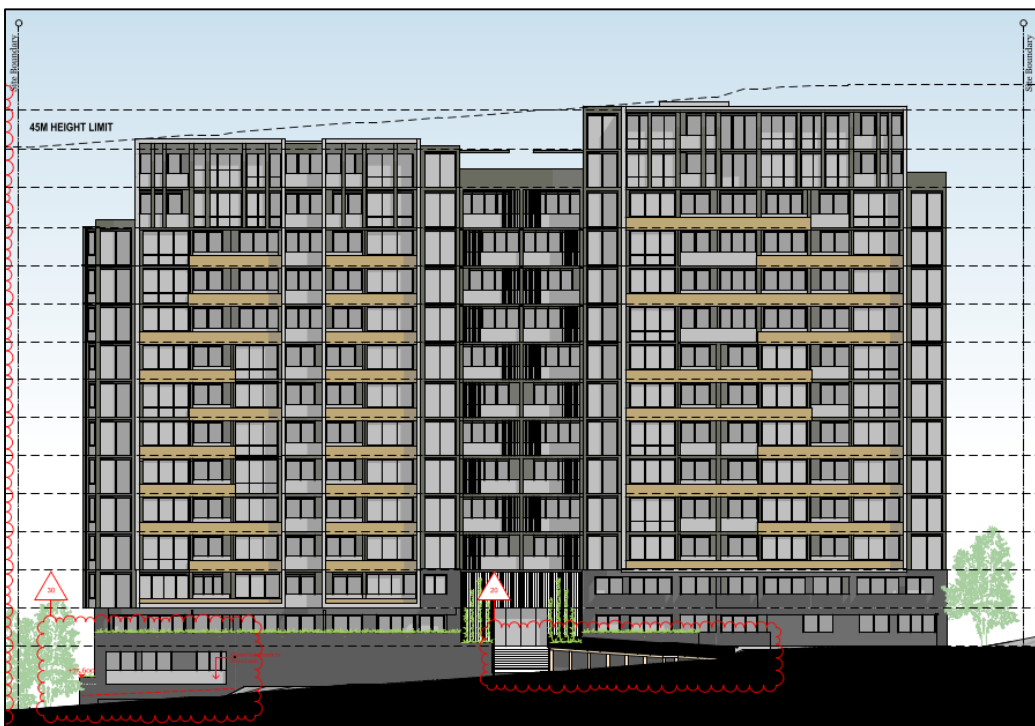


Figure 12: Amended north-eastern elevation (North Tower) from Eucalyptus Street

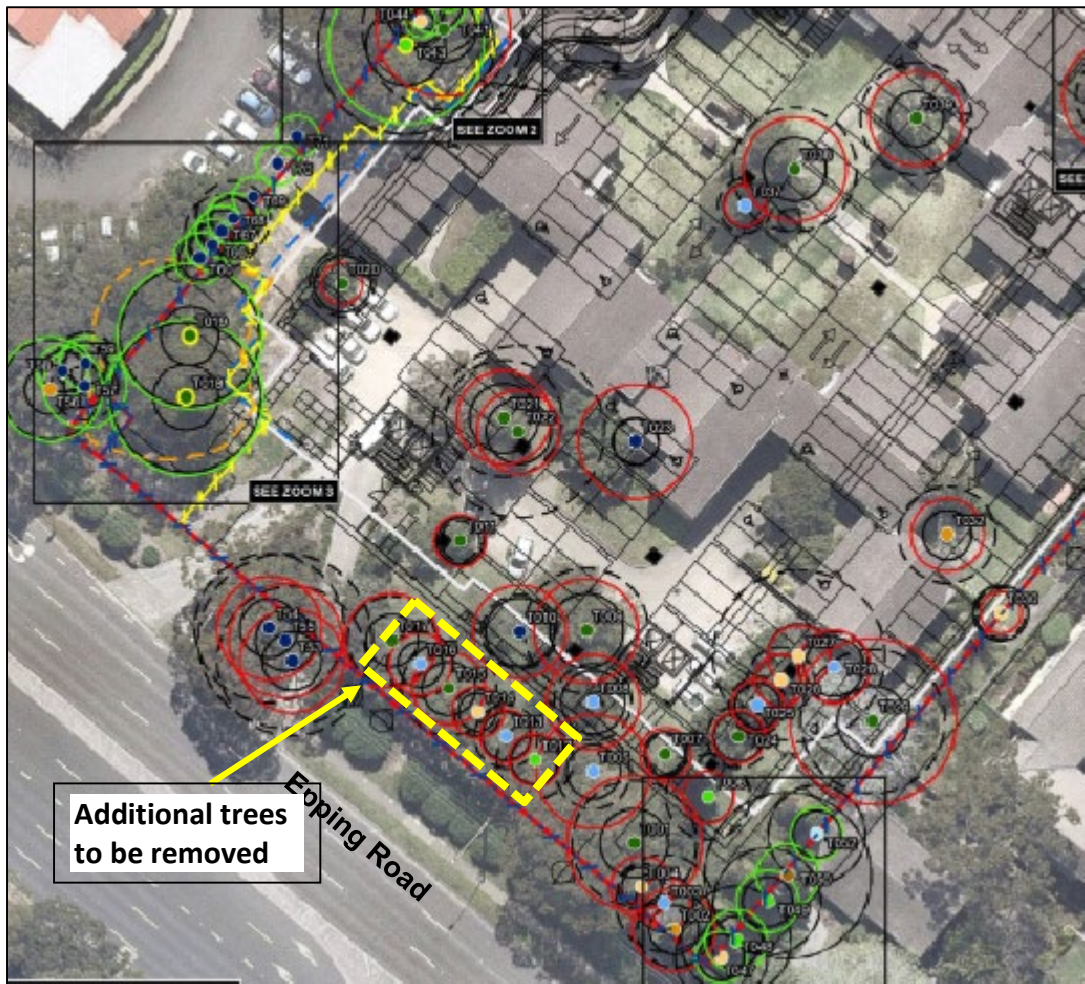


Figure 13: Proposed removal of 5 trees fronting Epping Road (outlined in yellow)

The proposal as lodged also included the staging of construction into 2 stages. As this has already been approved under MOD2020/0085 on 25 March 2020 the application is not required to be further amended to include staging and does not form part of this application.

Amended Consent:

- Amend the description of the development to be consistent with the subject modification;
- Deletion of Part 1 regarding the Deferred Commencement Conditions;
- Amend Condition 1 to reflect the modified approved plans;
- Amend Condition 2 regarding amendments to be submitted to Council prior to the issue of the Construction Certificate;
- Amend Condition's 4 and 144 updating the BASIX Certificate;
- Amend Condition 37, updating and staging the Section 7.11 Contribution;
- Amend Condition 50 regarding compliance with the Acoustic Report;
- Amend Condition 52 for compliance with the updated Wind Report;
- Amend Condition 53 for compliance with the updated Access Report;
- Amend Condition 78 to reflect the amended stormwater drainage design;
- Amend Condition 82 to requiring the submission of detailed drainage designs prior to the commencement of works;

- Amend Condition 168 requiring a Positive Covenant to be created for the onsite detention and include 168(a) for a restriction to user on the overland flow path;
- Amend Condition 171 regarding Engineering Compliance Certificates;
- Amend Condition 195 to reflect the update car parking arrangements;
- Amend Condition 174 for a Loading Dock Management Plan;
- Inclusion of Condition 60A for boundary fencing along the northern boundary; and,
- Inclusion of Condition 103A and 103B in regards to landscape planting and landscape seating.

6. APPLICABLE PLANNING CONTROLS

The following planning instruments, policies and controls are relevant to the development:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Biodiversity Conservation Act 2016;
- Environmental Protection and Biodiversity Conservation Act 1999;
- State Environmental Planning Policy (State and Regional Development) 2011;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Infrastructure) 2007;
- Deemed SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 200
- Ryde Local Environmental Plan 2014; and,
- Ryde Development Control Plan 2014; and
- Section 7.11 Development Contributions Plan 2020

7. PLANNING ASSESSMENT

7.1 Environmental Planning and Assessment Act, 1979

Section 4.55 – Modification of Consents

Section 4.55(2) - Other modifications

Pursuant to Section 4.55(2) *a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).*

To determine that the proposal is substantially the same as approved development, the two (2) elements to be considered is whether the proposal is qualitatively and quantitatively the same as originally approval.

The modification proposes external adjustments to the siting of the towers, amending the vehicular access arrangements and the landscaping design. The amended proposal seeks minor alterations to the approved building envelope and results in a decrease in gross floor area and minor changes to the approved setbacks; however the building footprint does not notably change as demonstrated in **Figure 14**. The external appearance of the building also remains essentially the same in terms of textures, aesthetics and form and does not result in additional quantifiable or material impact.

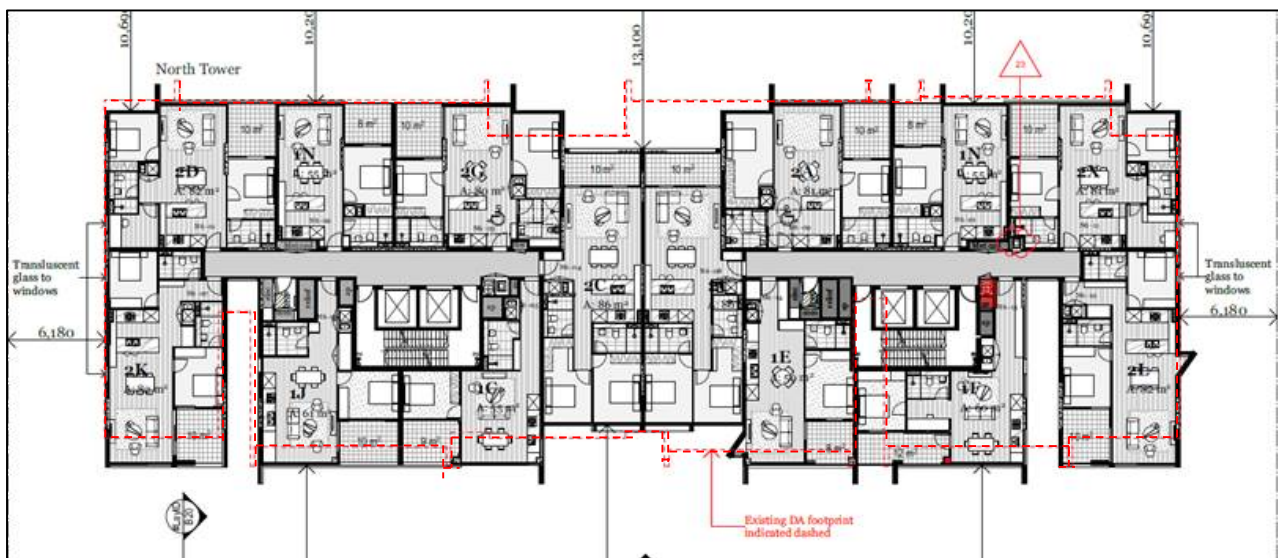


Figure 14: Modified building footprint. Approved footprint dashed in red.

The internal changes to the overall apartment mix and layouts and removal of Basement Level 2 also results in a further internal reconfiguration to the car parking and service arrangements. The internal proposed modifications are consistent with the original approved development. The proposed modification remains quantitatively the same as the original approval through maintaining the number of approved apartments whilst retaining the same number of car parking and bicycle spaces. The amended proposal also allows for waste storage areas and a loading dock as required to service the future development.

The modified development remains in essence the same development as approved and maintains use of a residential flat building. In principal when considering these factors, the essential features of the original approved development are maintained. For these reason's the proposal is considered to be qualitative and quantitatively the same development as approved.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent,

The original application was an Integrated Development application requiring concurrence from Transport for NSW (TfNSW), formerly known as NSW Roads and Maritime Service (RMS) under section 4.46 of the EP&A Act 1979 as the development involved vehicular access to be constructed to Epping Road (a classified road) under Section 138 of the Roads Act 1993. The original application was supported by TfNSW subject to conditions.

This application was referred to TfNSW for concurrence on 15 January 2020. TfNSW did not support the proposed combined vehicular access in its letter dated 16 March 2020 and requested amended plans to demonstrate that simultaneous entry/exit for large service vehicles could be accommodated.

On 12 May 2020, swept path analysis plans were referred to TfNSW for concurrence in accordance with Section 139 of the Roads Act 1993 and the State Environmental Planning Policy (Infrastructure) 2007.

On 27 June 2020, TfNSW advised that no objection was raised with the amended proposal and no additional conditions were provided.

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent,

In accordance with the City of Ryde's Community Participation Plan which came into effect in November 2019, the modification was advertised in the Weekly Times on 22 January 2020 and adjoining property owners were given notice of the application between 15 January and 5 February 2020. In response to the public notification period one (1) submission was received objecting to the proposal.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

The issues raised in the submission received have been addressed in Section 13 of this report.

Section 4.55(3): Planning Assessment in accordance with Section 4.15(1) Heads of consideration

Pursuant to Section 4.55(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The reasons the Panel granted consent to original application is as follows:

- “1. The Development complies with the planning controls including with the FSR and building height.*
- 2. The development fits into the desired future character of the area.*
- 3. While the proposal does not achieve the high level of amenity recommended by the Apartment Design Guide, the majority accepts the conclusion of the assessment report, that the amenity could not be improved without reducing the density significantly below that permitted by the controls.”*

It is considered that the proposed modification is does not alter the reasons why the approval was originally granted. These matters are discussed under Section 4.15 which addresses all matters for consideration.

7.2 Environmental Planning and Assessment Regulation 2000

This application satisfies Clause 50(1)(a) of the Regulation as it is accompanied by the necessary documentation for development seeking consent for a residential flat building development. The information includes:

- A Design Statement addressing the Design Quality Principles set out in Part 2 of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65);
- Confirmation from a registered Architect confirming that the design achieves the design quality principles of SEPP 65.
- An amended BASIX Certificate; and
- Revised Architectural Plans including montages, amended Landscape Plan, and amended Stormwater Drainage plans.

7.3 Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The site contains remnant Sydney Turpentine-Ironbark Forest (STIF) community which is listed as an endangered ecological community under EPBC Act. However, the STIF does not meet the threshold criteria for a threatened ecological community under this Act due to its patch size being less than 1 hectare and lack of understorey and groundcover layers. With respect to the EPBC Act 1999, the Biodiversity Development Assessment Report (BDAR) concludes:

“In respect of matters required to be considered under the Environment Protection and Biodiversity Conservation Act 1999, no threatened fauna species, no protected migratory species, no threatened flora species, and no TECs listed under this Act were recorded within the study area.”

The proposal does not seek any changes to the landscaped areas of the site containing STIF, with the 5 *Melaleuca bracteata* (Black tea tree) trees to be removed located along the Epping Road frontage of the site, and as such, will not have any additional ecological impacts on the STIF community and is consistent with the original approval.

7.4 Biodiversity Conservation Act 2016 (BC Act)

The proposed development does not result in any changes to the retention of remnant trees which form part of an Critically Endangered Ecological Community under Part 1 in Schedule 2 of the BC Act as per the original approval. The proposal seeks to remove 5 trees adjacent to the south-eastern boundary to accommodate the OSD tank which do not form part of the remnant tree species.

Given no change is proposed to the retention of significant tree species within the development, the proposal will not have any adverse biodiversity impacts on the environment and is acceptable.

The application was referred to Council's Consultant Landscape Architect who raised no objection to the proposal, subject to conditions.

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

The original development had a Capital Investment Value (CIV) of more than \$30 million, and consequently the Sydney North Planning Panel was the consent authority. As this application is a Section 4.55(2) modification of the originally approved development and has a CIV of more than \$30 million, the Sydney North Planning Panel is the consent authority for the determination of this proposed development.

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

The requirements of State Planning Policy No. 55 – Remediation of Land apply to the subject site. In accordance with Clause 7 of SEPP 55, Council must consider if the land is contaminated. If it is contaminated, is it suitable for the proposed use and if it is not suitable, can it be remediated to a standard such that it will be made suitable for the proposed use.

The originally approved development provided a Preliminary Environmental Site Assessment prepared by Butler Partners and dated 12 April 2018. The Preliminary Environmental Site Assessment was reviewed by Council's Environmental Health Officer at the time of the original application and it was determined that the site was suitable for the proposed development and satisfied the provisions of the SEPP.

As stated above, the proposal is substantially the same development as the original development and there is no contamination issues required to be considered under the provisions of the SEPP.

7.7 State Environmental Planning Policy (Infrastructure) 2007

The subject site has a frontage to Epping Road which is a classified road and is subject to consideration pursuant to Clause 101 and 102 of the SEPP:

Clause 101 Development with frontage to classified road

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The subject modification was referred to TfNSW as the proposal seeks to modify the approved vehicular access by consolidating the two separate private and service vehicle driveways to one shared driveway.

Initially, TfNSW raised concerns relating to simultaneous vehicular movements for large service vehicles in and out of the site and did not support the combined driveway access. In response, the applicant provided additional information to demonstrate the proposed driveway can accommodate simultaneous movement of large vehicles and will not result in queuing on Epping Road. The additional information was referred to TfNSW for consideration and on 27 June 2020, TfNSW advised that no objection is raised to the amended proposal. In this regard, the modification satisfies the provisions of Clause 101(a) and (b).

Pursuant to Clause 101(c) the development is located along Epping Road and is sensitive to noise or vehicle emissions. The original application was supported on the basis that the proposal was sufficiently setback and will not be directly affected by vehicle emissions and traffic noise, subject to attenuation measures such as particular glazing systems recommended in the Acoustic Report prepared by Wood & Grieve Engineers dated 11 April 2018.

The modification seeks to reduce the setback of the development to the Epping Road boundary from 11.73 metres to 10.58 metres, however following the dedication of the slip lane, the setback to the southern tower will be further reduced to be setback 7.085 metres from Epping Road. A revised Acoustic Assessment prepared by Northrop dated 6 December 2019, provides additional recommendations for glazing systems to mitigate further acoustic impacts for apartments fronting to Epping Road. The modification remains consistent with the provisions of Clause 101(c) and is supported accordingly.

Clause 102 - Impact of road noise or vibration on on-road development

Clause 102(1)(a) applies to residential developments which are likely to be affected by noise and/or vibration from roads with an annual average daily traffic volume of more than 20,000 vehicles. Epping Road has a traffic volume of more than 40,000 vehicles per day therefore this clause is applicable. The proposal is required to be considered under the provisions of Clause 102(3) which states:

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,

(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Clause 102(2) also requires the consent authority to consider any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette. The supporting guidelines (as published by the Department of Planning in 2008) guide development adjacent to railway lines and along motorways, tollways, freeways, transit ways and other 'busy' roads. Mandatory noise assessment is required for the development as Epping Road has a traffic volume of more than 40,000 vehicles per day.

For new residential developments, internal noise levels of 35 dB (A) have been set for bedrooms during the night-time period and 40 dB (A) for other habitable rooms. Pursuant to Clause 102(3) a consent authority is prohibited from granting consent to residential development adjacent to a road corridor or freeway unless it is satisfied that appropriate measures will be taken to ensure that the above-mentioned LAeq levels are not exceeded.

As stated above a revised Acoustic Assessment has been provided by Northrop dated 6 December 2019, recommending glazing systems to mitigate further acoustic impacts for apartments located presenting to Epping Road. The outer envelope of the building including the glazing systems will ensure that apartments facing Epping Road will be designed to reduce noise impacts on occupants to achieve the above-mentioned benchmark noise levels.

Therefore, the subject modification is considered to satisfy the provisions of Clause 102 subject to amendment to Condition 50 to include the updated recommendations of the acoustic report.

7.8 Deemed State Environmental Planning Policy Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

This Plan applies to the whole of the Ryde Local Government Area. The aims of the Plan are 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. Given the nature of the development and the location of the site, there are no specific controls that directly apply to this proposal.

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

SEPP 65 requires that prior to determination of application for apartment development, the consent authority must take into consideration the following:

A. The advice (if any) of the design review panel;

- B. The design quality of the development evaluated against the design quality principles provided under Schedule 1 of the SEPP; and
- C. The Apartment Design Guide.

7.9.1 Evaluation against the design quality principles

The Urban Design Review Panel (UDRP) reviewed the original development at development application stage of LDA2018/171. At the time of the review, the panel was generally supportive of the development. The proposal subject modification is substantially the same as determined with no major changes to the building footprint, envelope and architectural character.

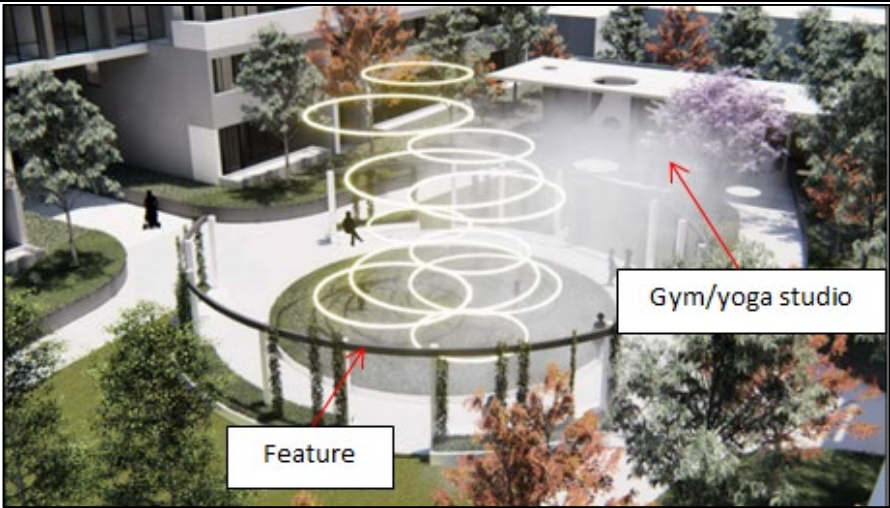
As such, the proposal was not required to be reviewed by the Panel. The following table below is an assessment of the proposed modification under SEPP 65 – Schedule 1, Design Quality Principles.

SEPP 65 – Schedule 1 Design Quality Principles	Comments
Context and Neighbourhood Character Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.	The desired future character along Epping Road is generally characterized by quality designed buildings with 10 metre street setbacks and a green corridor with sufficient tree planting. The development responds to the key built elements with the built form integrating a well-articulated façade treatment of materials, finishes and textures that is consistent with other development within the locality. The proposal will maintain a consistent street setback with a green corridor that is in line with existing and future development along Epping Road. The amended proposal has been supported with a landscape design which responds to the natural key elements along Epping Road. This landscape design is considered to provide for sufficient natural features that contribute to an open and natural setting that reflects an attractive development when viewed from the public domain. The combination of these factors will contribute to a unified streetscape which is consistent with the desired future street character along Epping Road.
Built Form and Scale Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves	Front Setback (Epping Road): The approved development has a front setback of 11.73 metres. The modification reduces the street setback to 10.585 metres and remains consistent with existing and future development along Epping Road. Rear setback (Eucalyptus Street): The modification maintains the 10 metre setback from Eucalyptus Street.

SEPP 65 – Schedule 1 Design Quality Principles	Comments
an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	Side setbacks: The proposal modifies the side setbacks for both towers to the north-western and south-eastern boundaries. The side setbacks remain substantially the same as approved and will not result in any significant built form or amenity impacts. Building separation: The proposal includes narrow vertical windows to kitchens and studies and secondary windows to dining rooms facing side boundaries. To overcome the building separation constraints, the development will use translucent glazing on these windows to maintain access to sunlight whilst providing visual privacy. This remains consistent with the approved development. Building articulation and height The proposal maintains the approved building height with similar treatment and articulation to the façade as originally approved. The design incorporates strong vertical articulation and variations to the building height, this enables the towers to break down the form and massing.
Density Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.	Both the original approved development and the development as proposed to be modified comply with the maximum FSR development standard in the RLEP 2014.
Sustainability Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and	The ADG requires a minimum of 70% of apartments to achieve solar access. The development as approved achieved only 64% solar access, which is not affected by the modifications under this application. The ADG which requires at least 60% of the apartments to be naturally cross ventilated in the first nine (9) storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. The modification proposes 209 apartments between the ground and eight floors, with 135 of these apartments (64.5%) considered to be naturally cross ventilated. For levels 9 to 14 under the provisions of the ADG ten storeys or greater are deemed to be cross ventilated as the enclosures of the balconies at these levels allows adequate natural ventilation and are not enclosed.

SEPP 65 – Schedule 1 Design Quality Principles	Comments
waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	
Landscape Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.	The subject modification proposes an amended landscape design which proposes to modify the overall landscaped setting and communal open space. The amended landscape design retains existing significant tree species located on the site. However, seeks the removal of five (5) trees within the front setback which are identified as Melaluca trees with low retention value. The amended landscape design will also maintain the green corridor along the street front of Epping Road through providing 18 new tree plantings. The planting species includes Sydney Red Gums, Water Gum, Grey Gum and Chinese Elm, with mature heights ranging between 12 metres - 40 metres. The amended design is consistent with the desired future character of the area and provides of satisfactory amenity to future occupants.
Amenity Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and	While the amended building depth remains noncompliant, the proposal still achieves compliance with minimum apartment sizes and dimensions for bedroom and living spaces, and provides satisfactory solar access and natural ventilation. The amended development will provide satisfactory amenity for the future residents and neighbours.

SEPP 65 – Schedule 1 Design Quality Principles	Comments
service areas and ease of access for all age groups and degrees of mobility.	
Safety Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.	The modification maintains to provide adequate passive surveillance to the street and communal open space.
Housing Diversity and Social Interaction Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.	The proposal seeks to amend the unit mix and is consistent with the objectives for providing housing choices for different demographics, living needs and household budgets. The amended communal open space arrangement remains compliant with the ADG requirements for area size and access to sunlight. The amendments to the communal open space incorporate a centralised feature which is considered to enhance the overall amenity of the space through providing an attractive space for future occupants. The amended proposals seeks the deletion of the 31m² community facility originally approved on Level 1 of the North Tower and proposes to enlarge the communal gym/yoga studio, within the communal open space between the North Tower and South Tower. This is considered to provide acceptable amenity for future occupants and allows for social interaction among residents.

SEPP 65 – Schedule 1 Design Quality Principles	Comments
	 Figure 15: Photomontage of centralized feature and gym/yoga studio.
Aesthetics Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	The modification seeks minimal changes to the architectural design of the towers. The proposed amendments to landscaping is considered acceptable as it enhances functionality of the communal open space and contributes to the quality of Epping Road through providing a green corridor that defines the transition between public and private spaces.

7.9.2 Apartment Design Guide (ADG)

SEPP65 requires consideration of the ADG which supports the nine (9) Design Quality Principles through providing greater detail as to how those principles can be achieved. The below provides an assessment of the proposal against the applicable controls relevant to the subject modification.

Apartment Design Guides	Considerations	Consistent
2D Floor space ratio	In accordance with RLEP 2014, the maximum floor space ratio (FSR) allowable for the subject site is 3.5:1. The approved development consisted of an overall gross floor area (GFA) of 28,257m² and a FSR of 3.49:1. The GFA calculations submitted by the applicant for the modification shows a reduction in GFA to 27,965m² with a total FSR of 3.46:1. The GFA calculation provided by the applicant did not include the fire egress corridors in each tower which is not exempt from GFA calculations under	Yes

Apartment Design Guides	Considerations	Consistent								
	RLEP 2014. The fire egress has been included in the calculation and the proposal has a total GFA of 28,083m ² and FSR of 3.48:1, which complies with the RLEP 2014.									
2E Building depth <i>Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line when precinct planning and testing development controls. This will ensure that apartments receive adequate daylight and natural ventilation and optimise natural cross ventilation</i>	Both towers were approved with non-compliant building depths under the original proposal with depths between 22m to 24.7m. The amendments under this proposal will increase this noncompliance with the northern tower to a building depth ranging between 9 metres - 27 metres and the southern building has a building depth ranging between 13 metres – 25 metres. This has been considered acceptable on merit for the following reasons: • Habitable rooms achieve a minimum floor to ceiling height of 2.7 metres; • The proposal provides good amenity for occupants through high quality outlooks from units to landscaped settings; • Natural ventilation and natural cross ventilation is achieved in accordance with the ADG; • The apartments exceed the minimum apartment sizes required by the ADG; and, • The development has been designed to optimise prevailing access to cross ventilation and breezes.	No – considered acceptable								
2F Building separation One (1) – four (4) storeys - 12 metre separation between habitable rooms /balconies. - 9.0 metres between habitable and non-habitable rooms - 6.0 metres between non-habitable rooms. Five (5) – eight (8) storeys - 18 metre separation between habitable rooms /balconies. - 12 metres between habitable and non-habitable rooms - 9.0 metres between non-habitable rooms. Nine (9) storeys or above - 24 metre separation between habitable rooms /balconies. - 18 metres between habitable and non-habitable rooms - 12 metres between non-habitable rooms.	The site contains 2 towers and the separation distances between the North and South Towers are provided below. <table><tr><th>Level's</th><th>Separation between Buildings</th></tr><tr><td>1 - 4</td><td>28.13 metres – 39.28 metres</td></tr><tr><td>5 - 8</td><td>33.87 metres – 39.28 metres</td></tr><tr><td>9+</td><td>33.87 metres – 39.28 metres</td></tr></table>	Level's	Separation between Buildings	1 - 4	28.13 metres – 39.28 metres	5 - 8	33.87 metres – 39.28 metres	9+	33.87 metres – 39.28 metres	Yes
Level's	Separation between Buildings									
1 - 4	28.13 metres – 39.28 metres									
5 - 8	33.87 metres – 39.28 metres									
9+	33.87 metres – 39.28 metres									

Apartment Design Guides	Considerations	Consistent
2G Street setbacks 	Setback to Epping Road: The original development was approved with a front setback of 11.73 metres to Epping Road. The modification will reduce the overall street setback to 10.585 metres, which will be reduced to 7.085 metres as a result of the dedication of the slip lane. This setback is considered acceptable as the redevelopment of the Baptist care site will also incorporate a setback of 10 metres resulting in the buildings to generally align. The amended landscape design also makes provision for sufficient mature tree planting within the Epping Road setback that will contribute to the landscaped character of Epping Road and maintain the envisaged green corridor.	Yes
2H Side and rear setbacks 	The proposed modification of side and rear setbacks are generally consistent with the originally approved development and will not result in any significant alteration to the built form when viewed from the public domain or adjoining properties. The setbacks will not have any adverse impacts on the amenity of adjoining properties.	Yes
3C Public domain interface Transition between private & public domain is achieved without compromising safety and security and amenity of the public domain is retained and enhanced.	The development consists of an appropriate architectural and landscape design that provides for an attractive development. The buildings have been designed with minimal blank walls and well-articulated façades clearly defining building entries and incorporating architectural features such as balconies to improve site legibility and safety. The development reduces the visual prominence of vehicular access and servicing with a combined driveway from Epping Road. The development also provides for an attractive landscape design that defines the transition between public and private spaces and contributes to the quality of Epping Road. The development will maintain the key aspects of the public domain interface.	Yes
3D Communal & public open space 1. Provide communal open space with an area equal to 25% of site; 2. Minimum 50% of usable area of communal open space to receive direct sunlight for a minimum of 2 hours between 9am and 3pm on 21 June.	As per the original development, communal open space is provided at ground level between the 2 towers. The communal open space has a total area of 2,207m² metres (27% of the site area). The communal open space achieves a total of 2 hours sunlight to 50% of its usable area between 1pm and 3pm on 21 June.	Yes Yes
3E Deep soil zones Deep soil zones are to meet the following minimum requirements:	The proposal provides a deep soil area of 1,603m² (19.8% of the site). The deep soil zones have a minimum dimension of 6 metres and the nominated deep soil areas, allows supporting a healthy plant and tree growth.	Yes

Apartment Design Guides	Considerations	Consistent												
15% of the site as deep soil on sites greater than 1,500m ²														
3F Visual Privacy Design Criteria Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1" data-bbox="137 741 472 1043"> <thead> <tr> <th>Building Height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12 metres (4 storeys)</td><td>6.0 metres</td><td>3.0 metres</td></tr> <tr> <td>Up to 25 metres (5 – 8 storeys)</td><td>9.0 metres</td><td>4.5 metres</td></tr> <tr> <td>Over 25 metres</td><td>12 metres</td><td>6.0 metres</td></tr> </tbody> </table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	Up to 12 metres (4 storeys)	6.0 metres	3.0 metres	Up to 25 metres (5 – 8 storeys)	9.0 metres	4.5 metres	Over 25 metres	12 metres	6.0 metres	The original development was approved with non-compliant building separation distances for the side boundaries from level 4 and above. The proposed modification includes minimal changes to the visual separation distances from level 5 and above, however it is not made worse as a result of the proposed modification. The North Tower is setback 6.1m to 6.18 metres to the north-western boundary on levels 1 to 8 and between 6.18 metres - 15.88 metres on Levels 9 to 14. The South Tower is setback between 6.185 metres to 12 metres along levels 5 – 14 from the north-western boundary and 6.17 metres 15.70 metres from the south eastern boundary. The originally approved development included windows servicing habitable rooms along north western and south eastern elevations these windows include translucent glazing. The modification does not propose to change either the window locations or the use of translucent glass, and remains the visual privacy requirements. At level 13, the western setback of Apartment Nos. N13-01 and S13-01 is reduced from 10.58m to 7.1m to accommodate new terraces on the western elevation. The reduced setback does not provide adequate building separation between the site and adjoining properties and will result in adverse visual and acoustic privacy impacts on future occupants and adjacent properties. The original approval consisted of north facing private open space for Apartment N3-01 and S13-01 that satisfied ADG requirements. As such, the proposed new terraces are not required. Figure 16: Proposed terraces for apartments N13-01 and S13-01 as outlined in red. A discussion of these issues is discussed at the end of this report.	Yes – Consistent with original approval.
Building Height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12 metres (4 storeys)	6.0 metres	3.0 metres												
Up to 25 metres (5 – 8 storeys)	9.0 metres	4.5 metres												
Over 25 metres	12 metres	6.0 metres												
3H Vehicular access Vehicle access points are designed and located to	The original development included separate vehicular access points for the car parking and the loading dock. The access points were located adjacent to each other with a combined driveway width of 10.875 metres. The													

Apartment Design Guides	Considerations	Consistent
achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	modification proposes to consolidate the driveways (with no change to overall driveway width) and relocate the loading dock within the ground floor car park. The amended vehicular access point has been designed in accordance with the ADG guidelines. This includes locating the entry to the car parking behind the building line, positioning the access point to avoid the glare of headlights into habitable rooms, minimising visual impact through landscape design, and allowing for clear sightlines between pedestrians and the road.	Yes
4A Solar and daylight access Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	202 apartments (64%) will achieve a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter. The proposal is consistent with the number of apartments receiving solar access in the originally approved development.	Same as original proposal. No change.
No more than 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid- winter.	38 apartments (12%) will not achieve direct sunlight between 9am and 3pm at midwinter.	Yes
4B Natural ventilation All habitable rooms are naturally ventilated.	All habitable rooms (Living areas, dining, bedrooms, studies or the like) are naturally ventilated.	Yes
Design layout of single aspect apartments to maximise natural ventilation <u>Design criteria</u> 1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	The approved development has a total of 206 apartments located between the ground and eighth floor. A total of 126 apartments achieved cross ventilation which was 61%. The modification will amend the overall unit mix of the development. The modification proposes a total of 209 apartments between the ground and eighth floors. A total of 135 apartments are naturally cross ventilated which accounts for a total of 64.5%. Apartments at levels 9 and above are deemed to be cross ventilated as the balconies are not enclosed allowing for natural ventilation, thus meeting the requirements of the ADG. The overall depth of the crossovers through each apartment will not exceed 18 metres when measured from glass line to glass line.	Yes
4C Ceiling heights Ceiling Height Measured from finished	The finished floor to ceiling heights for both towers (habitable and non-habitable rooms) have a finished floor to finished ceiling height equal to 3.05 metres. The results in the floor to ceiling heights from the finished floor level to the ceiling above being 2.7 metres.	Yes

Apartment Design Guides	Considerations	Consistent
floor level to finished ceiling level, minimum ceiling heights are: • Habitable Rooms – 2.7m • Non-habitable rooms – 2.4m		
4D Apartment size and layout Apartments are required to have the following minimum internal areas with one bathroom: • Studio = 35m²; • 1 bedroom = 50m² • 2 bedroom = 70m² • 3 bedroom = 90m² • 4 bedroom = 102m² Note: Additional bathrooms increase the minimum internal area by 5m²	The proposal seeks to delete approved studio apartments and amend the unit mix to comprise of 94 x 1 bedroom, 186 x 2 bedroom, 31 x 3 bedroom and 6 x 4 bedroom apartments. Each apartment has a compliant apartment size and layout in line with the ADG requirements.	Yes
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. Daylight and air may not be borrowed from other rooms.	No daylight is borrowed from other areas within the apartment. All habitable rooms contain a window with a glass area not less than 10% of the external wall.	Yes
Master bedrooms - minimum area of 10m² & other bedrooms 9m² (excluding wardrobe space).	Apartments comply with the minimum area for bedrooms.	Yes
Bedroom - minimum dimension of 3m (excluding wardrobe space)	All bedrooms comply with the minimum dimensions of 3 metres x 3 metres.	Yes
Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments; • 4m for 2 and 3 bedroom apartments.	All apartments comply with the minimum dimension requirements.	Yes
4E Private Open Space and balconies Apartments must provide appropriately sized private open space and balconies to enhance residential amenity. Design criteria 1.All apartments are required to have primary		

Apartment Design Guides	Considerations	Consistent															
balconies as follows: <table border="1" data-bbox="145 282 467 562"> <thead> <tr> <th>Dwelling type</th><th>Min area</th><th>Min depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>N/A</td></tr> <tr> <td>1 bedroom</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> The minimum balcony depth to be counted as contributing to the balcony area in 1.0m.	Dwelling type	Min area	Min depth	Studio apartments	4m ²	N/A	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	All apartments comply with the minimum required areas and minimum dimensions for the balconies.	Yes
Dwelling type	Min area	Min depth															
Studio apartments	4m ²	N/A															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															
4F Common circulation and spaces. <u>Design criteria</u> 1. The maximum number of apartments off a circulation core on a single level is 8. 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40. <u>Note:</u> Where design criteria above are not achieved, no more than 12 apartments should be provided off a circulation core on a single level.	A maximum of eight (8) apartments per circulation core on a single level.	Yes															
4G Storage In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • Studio - 4m² • 1 Bedroom - 6m² • 2 Bedroom - 8m² • 3 Bedroom - 10m² At least 50% of the required storage is to be located within the apartment.	Storage is provided within each unit and within the basement and ground levels. Storage areas are compliant with ADG requirements.	Yes															
4H – Acoustic Privacy Internal apartment layout separates noisy spaces from quiet spaces, using a number of the following design solutions: • Rooms with similar noise	It is noted that apartments in the north-eastern portion of the North and South Towers (on Levels 1 to 8 (North Tower) and Levels 1 to 11 (South Tower)) consists of apartment layouts where bedrooms are adjacent to the living rooms of adjoining apartments. These apartment configurations are consistent with the originally approved development and are supported by the																

Apartment Design Guides	Considerations	Consistent
requirements are grouped together - Doors separate different use zones - Wardrobes in bedrooms are co-located to act as sound buffers Where physical separation cannot be achieved noise conflicts are resolved using the following design solutions: - Double or acoustic glazing acoustic seals - Use of materials with low noise penetration properties - Continuous walls to ground level courtyards where they do not conflict with streetscape or other amenity requirements	recommendations in the Acoustic Report and subsequent Addendum prepared by Northrop dated 6 December 2019 and 12 June 2020, respectively. The acoustic documentation provided recommends that the development achieve the acoustic performance requirements of the NCC Part F5 for acoustic treatment and insulation. Subject to conditions requiring compliance with the recommendations provided in the Acoustic Report and addendum the proposed apartment layouts are considered to provide adequate acoustic privacy between apartments and are acceptable.	Same as original proposal. No change.
4K Apartment mix The apartment mix is appropriate, taking into consideration: - The distance to public transport, employment and education centres - The current market demands and projected future demographic trends - The demand for social and affordable housing - Different cultural and socioeconomic groups Larger apartment types are located on the ground or roof level where there is potential for more open space and on corners where more building frontage is available	The proposal provides for the housing needs of different socio economic groups. The development also provides provisions for adaptable units for those with disabilities. The development is located within close proximity to Macquarie Park and North Ryde Train Stations other public transport links such as bus services, providing access to Macquarie University, Macquarie Shopping Centre, business parks and the wider district. The development provides for a unit mix that has located the larger apartments on the higher levels and corners of the building which sites the appropriate open spaces for each unit.	Yes Yes
4O Landscape design Landscape design contributes to the streetscape and amenity. Landscape design is viable and sustainable	A landscape plan has been prepared providing sufficient dense and mature planting setback to Epping Road. The proposed landscaped design will contribute to the streetscape and landscaped character along Epping Road. The landscaping achieves a sustainable outcome and achieves a balance between the built form and natural environment.	Yes

3F - Visual Privacy

In accordance with the ADG, separation between windows and balconies is required to provide visual privacy between apartments and adjoining properties. The minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building Height	Habitable rooms and balconies	Non-habitable rooms
Up to 12 metres (4 storeys)	6.0 metres	3.0 metres
Up to 25 metres (5-8 storeys)	9.0 metres	4.5 metres
Over 25 metres (9+ storeys)	12.0 metres	6.0 metres

The following tables below provide a detailed comparison to the approved and proposed side setbacks against compliance with the requirements of the ADG Design Criteria with respect to building separation to the side boundaries. All elevations of the development provide habitable rooms and balconies facing the side setbacks.

North Tower					
Level	Approved South Eastern side setback	Proposed South Eastern side setback	Approved North Western side setback	Proposed North Western side setback	Compliance
Ground	6.005 metres	6.098 metres	6m	8.2 metres – 11.85 metres	Yes
Level 1	6.005 metres	6.105 metres	6.0 metres	6.10 metres	Yes
Level 2	6.155 metres	6.18 metres – 9.346 metres	6.0 metres	6.10 metres	Yes
Level 3	6.149 metres – 10.58 metres	6.18 metres – 9.346 metres	6.15 metres	6.18 metres	Yes
Levels 4-11	6.155 metres – 10.58 metres	6.18 metres – 9.346 metres	6.15 metres – 10.575 metres	6.18 metres	Level 4 – Yes Levels 5 to 11 - No
Level 12	10.574 metres - 12.82 metres	9.33 metres – 15.88 metres	6.15 metres – 10.575 metres	6.18 metres	No
Level 13	10.58 metres – 12.98 metres	9.33 metres – 15.88 metres	10.575 metres – 15.35 metres	7.1 metres – 15.88 metres	No
Level 14	49.98 metres – 52.38 metres	-	10.52 metres – 15.35 metres	9.33 metres – 15.88 metres	No

Note: These setback measurements have not included the window hoods on the south eastern elevations given these windows do not overlook adjoining properties.

South Tower					
Level	Approved South Eastern side setback	Proposed South Eastern side setback	Approved North Western side setback	Proposed North Western side setback	Compliance
Ground	9.505 metres	6.092 metres	6 metres	8.2 metres – 11.85 metres	Yes

Level 1	6.005 metres	6.080 metres	6 metres – 11.85 metres	6.105 metres – 11.94 metres	Yes
Level 2	6.155 metres	6.17 metres	6.15 metres - 12 metres	6.105 metres – 12 metres	Yes
Level 3	6.137 metres – 10.58 metres	6.17 metres	6.15 metres – 10.575 metres	6.185 metres – 12 metres	Yes
Level 4	6.137 metres	6.17 metres	6.15 metres - 12 metres	6.185 metres – 12 metres	Yes
Levels 5-11	6.155 metres – 10.58 metres	6.17 metres	6.15 metres - 12 metres	6.185 metres – 12 metres	No
Level 12	10.58 metres – 12.98 metres	9.33 metres – 15.80 metres	10.57 metres – 12 metres	6.185 metres – 12 metres	No
Level 13	12 metres – 13 metres	9.33 metres – 15.87 metres	10.57 metres – 12 metres	9.33 metres – 12 metres	No
Level 14	12 metres – 13 metres	-	6 metres	9.33 metres – 12 metres	No

Note: These setback measurements have not included the window hoods on the south eastern elevations given these windows do not overlook adjoining properties.

The setbacks are considered to be generally the same as the approved development under LDA2018/0171. To address visual privacy impacts along the south eastern and north western elevations, translucent glazing was required to windows facing the side boundaries. The proposal maintains the use of translucent glass on windows along both elevations, is consistent with the original approval and will not result in any additional privacy impacts on adjoining properties.

The modification also incorporates new terraces to Apartment Nos. N13-01 and S13-01 in the North Tower and South Tower, respectively. The terraces are setback 7.1 metres from the north-western boundary and do not comply with setback and building separation controls which requires 12 metres. These new terraces are not required as the approved private open spaces which present to the street remain unaltered and comply with AG requirements. The proposed terraces will result in visual and acoustic privacy impacts on adjoining properties and is not supported.

To resolve this issue, Condition 2(a) is recommended on the draft consent requiring the deletion of the terraces and relocation of window openings from the western elevation to the southern elevation.

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

A revised BASIX Certificate (Certificate No. 894075M_03 dated 6 December 2019) has been submitted with the application. The revised Certificate confirms that the development will meet the NSW government's requirements for sustainability. The proposed certificate targets are set out below:

Commitment	Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	25	28

7.11 Ryde Local Environmental Plan 2014 (RLEP 2014)

RLEP 2014 commenced on 12 September 2014 as the environmental planning instrument applicable to the City of Ryde. Outlined below are the relevant Clauses applicable to the subject modification.

Clause 2.2 - Zoning

The site is zoned B4 Mixed Use under the provisions of the RLEP 2014. The modification will maintain the approved use of a residential flat building development and is permissible within the zone.

Clause 2.3 – Zone Objectives

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives for the B4 Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximize public transport patronage and encourage walking and cycling.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

The development satisfies the above objectives in that it will provide a compatible land use within an accessible location that is within walking distance of public transport, retail and commercial services.

Clause 4.3 (2) - Height of Buildings

The site is subject to a maximum building height limit of 45 metres. The development consists of two (2) towers each with different existing ground levels as a result of sloping nature of the subject site. The proposal does not seek to alter the approved building height under the original development.

Clause 4.4 - Floor Space Ratio

The maximum allowable floor space ratio (FSR) for the site is 3.5:1. The original development had a gross floor area (GFA) of 28,257m² and a FSR of 3.5:1 complying with the FSR development standard. The modification results in a net reduction of GFA from the originally approved development. The GFA calculations submitted by the applicant for the modification shows a reduction in GFA to 27,965m² with a total FSR of 3.46:1.

However, the GFA calculation provided by the applicant did not include the fire egress on Level 1 for each tower which is not excluded from the definition of GFA under RLEP 2014. The fire egress has been included into the overall GFA and equates to 28,083m² with an FSR of 3.48:1. The proposed development maintains compliance with the FSR control and is an acceptable density for the site.

Clause 6.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The site is not identified as containing acid sulfate soils under Clause 6.1 of the RLEP 2014 and will not have any adverse environmental impacts on the local area.

Clause 6.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land.

The original development consisted of a significant amount of excavation to accommodate Basement Levels 1 and 2. The proposed modification seeks to delete Basement Level 2 resulting in a reduction of excavation required for the development, which reduces the environmental impact of the proposal on surrounding properties. The proposal is consistent with the provisions of Clause 6.2 and is acceptable.

Clause 6.4 Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and the water system. The proposal is consistent with the provisions of Clause 6.4(3) in that the proposal has been designed to maximum the use of permeable surfaces allowing for water filtration and avoids adverse impacts of stormwater runoff on adjoining properties. In particular, the proposed stormwater management system drains towards Epping Road and mitigates any potential adverse impacts of stormwater runoff on the adjoining downstream property.

Clause 6.6 - Environmental Sustainability

The objective of this clause is to ensure that development on land in a business or industrial zone exceeding 1,500m² in GFA embraces principles of quality urban design and is consistent with principles of best practice environmentally sensitive design.

The original approval contained a condition (Condition 49) requiring compliance with an Energy Efficiency Report prepared by Wood & Grieve Engineers dated 16 April 2018. The proposal does not seek to amend the recommendations outlined in the report or as required in Condition 49 and is committed to achieving ecological sustainability.

8. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

8.1 Draft Remediation of Land State Environmental Planning Policy

The draft SEPP is a relevant matter for consideration as it is an environmental planning instrument that has been placed on exhibition. The explanation of Intended Effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with Councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of development applications. Refer to conclusions made in relation to SEPP 55.

8.2 Draft Environment State Environmental Planning Policy

The draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. The consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Changes proposed include consolidating SEPPs, which include the following:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is identified to contain remnant species which form a part of the Sydney Turpentine-Ironbark Forest (STIF) community. The proposal seeks to remove 5 *Melaleuca bracteata* trees, measuring between 6m to 11m in height, located along the Epping Road frontage of the site. The trees to be removed are species which do not form a part or impact on the STIF community. Therefore, the removal of these species does not result in any additional ecological impacts and the proposal is consistent with the provisions of the Draft DEPP.

9. DEVELOPMENT CONTROL PLANS

9.1 City of Ryde Development Control Plan 2014 (RDCP 2014)

The following sections of the Ryde Development Control Plan 2014 (RDCP 2014) are of relevance to the proposal:

- Part 4.5 - Macquarie Park Corridor.
- Part 7.1 - Energy Smart, Water Wise.
- Part 7.2 - Waste Minimisation and Management.
- Part 8.1 - Construction Activities.
- Part 8.2 - Stormwater Management.
- Part 8.3 - Driveways.
- Part 9.2 - Access for People with Disabilities.
- Part 9.3 – Parking Controls
- Part 9.5 – Tree Preservation

With regard to Parts 7.1 to 9.2, noting the advice received from the various technical departments within Council and the consideration of issues previously in this report, the proposal is satisfactory in relation to the above matters.

A discussion of the proposal against remaining relevant Parts of RDCP 2014 is detailed below.

Part 4.5 - Macquarie Park Corridor

This Part of RDCP 2014 specifies built form controls for all development within the Corridor, and sets in place urban design guidelines to achieve the vision for Macquarie Park as a vibrant community and as a place to live, work, and visit. The proposed modifications to the built form of the development are of minimal impact and will not affect the assessment of the proposal against the provisions of this Part, except as assessed in detail below.

• Section 7.4 - Setbacks and Build-to-Lines

In accordance with Section 7.4(a)(iv) a minimum 10 metre green setback is required to Epping Road. The South Tower fronting Epping Road was approved with a building setback of 11.73 metres. At the time of assessment of the original development it was also noted that once the 3.5 metres of land along the Epping Road boundary was dedicated to TfNSW for road widening, the building will have a front setback of 8.23 metres. The numerical non-compliance was considered acceptable as the proposal demonstrated sufficient landscaping to maintain the existing and desired future character along Epping Road and would be consistent with future developments.

The proposed modification will reduce the front setback from 11.73 metres to 10.58 metres, with a setback of 7.085 metre after dedication of the 3.5 metre wide strip of land for road widening. Although the setback results in a further non-compliance with the DCP controls, the landscape design within the front setback provides sufficient areas to accommodate mature tree planting that will contribute to the landscaped character of Epping Road and will not impact on the amenity of pedestrians or occupants of the site. In the circumstances, the proposed front setback is considered acceptable and as it will not have any detrimental built form, environmental or amenity impacts.

- *Section 7.6 - Rear and side setbacks*

As outlined in Section 7.6(a), buildings are to be setback 10 metres from the rear boundary and 5 metres from the side boundary unless a proposed new road is shown on the site. The original development had a 10 metre rear setback to Eucalyptus Street and a minimum 6 metre setback from side boundaries complying with the DCP controls. The amended proposal maintains compliance with rear setback requirement through retaining the 10 metre setback to the rear boundary. The modification seeks to reduce the south eastern side setback to 5 metres with the incorporation of window hoods on levels 2 – 11 for both towers. The amended setback remains compliant with side setback control.

- *Section 8.6 - Vehicular Access*

The original development was approved with two (2) separate vehicular access points adjacent to each other from Epping Road. The total width of the two driveways measured 10.875m. One driveway provided private car access to the car park and the other driveway provided service vehicle access to the waste storage area and loading dock.

The proposal seeks to amend the vehicular access arrangement by consolidating the private car and service vehicle driveways to one driveway. As a result of the deletion of Basement Level 2, the loading dock and car parking layout has been modified with the loading dock relocated to the Ground Level. The proposal was reviewed by Council's Senior Development Engineer, Traffic Engineer and Waste Department who raised no objection to the combined driveway and car parking arrangement.

The proposal was also referred to TfNSW who initially raised concern that the combined driveway does not facilitate simultaneous vehicle movements in and out of the car park and will impact traffic on Epping Road. The applicant submitted additional information showing swept path analyses to demonstrate that simultaneous vehicle movements can be accommodated. TfNSW reviewed the additional information submitted by the applicant and has raised no objection to the proposal.

- *Section 9.1 – Wind Impact*

Section 9.1 stipulates that buildings over five (5) storeys should not create uncomfortable or unsafe wind conditions in the public domain, which exceeds the acceptable criteria for environmental wind conditions. Developments are required to locate and design outdoor areas to ensure places with high wind levels are avoided.

The approved development was accompanied with an acceptable Pedestrian Wind Environment Statement prepared by Windtech Consultants Pty Ltd dated 16 April 2018. The modification has been supported with a revised Pedestrian Wind Environment Statement prepared by Windtech Consultants Pty Ltd dated 6 December 2019. The recommendations of the revised report are considered to be satisfactory and will not result in any adverse impacts on pedestrians. As such, it is recommended that Condition 52 is amended to include the revised Pedestrian Wind Environment Statement prepared by Windtech Consultants Pty Ltd dated 6 December 2019.

- *Section 9.2 – Noise and Vibration*

An Acoustic Impact Assessment report is required to be prepared by a suitably qualified acoustic consultant for all developments within the Macquarie Park Corridor. The modification has been supported with a revised Acoustic Assessment prepared by Northrop dated 6 December 2019 and an addendum dated 12 June 2020. The recommendations of the report provide treatment and design requirements to demonstrate compliance with acoustic criteria and mitigate acoustic impacts within apartments and for adjoining properties.

Part 9.3 – Parking Controls.

The modification seeks to delete Basement Level 2 and reconfigure the car park at the Ground Level and Basement Level 1. The proposal seeks to reduce car parking from 308 spaces to 306 spaces and retain the originally approved 36 bicycle spaces. The subject site is located within the Macquarie Park Corridor and Council's DCP provides the required car parking rates as follows:

Space Type	Permitted	Proposed
Residential	276 (Maximum)	269
Visitor	32 (Minimum)	31
Car Share	6 (Minimum)	6
Residential – Disabled	32 (Minimum)	32
Visitor – Disabled	1 (Minimum)	1

The development remains non-compliant with the parking rate for the required visitor space with a short fall of one (1) space. This non-compliance was considered acceptable with original approved development and the modification does not seek to change this arrangement. All other provisions for car parking are consistent with the provisions of RDCP 2014.

Part 9.2 – Access for People with Disabilities

The original application was supported with an Access Report prepared by Morris-Goding Accessibility Consulting dated 16 April 2018. The modification has provided a revised Access review prepared by Morris-Goding Accessibility Consulting dated 6 December 2019 concluding that the development demonstrates an appropriate degree of accessibility and that compliance with statutory requirements, pertaining external site linkages, building access, common area access, sanitary facilities and parking can be readily achieved. In this regard Condition 53 is proposed to be updated accordingly.

Part 9.5 Tree Preservation

The modification will enlarge the OSD within the front setback and results the removal of five (5) trees within the front setback which were identified for retention in the original application. The applicant has submitted an amended Arboricultural Impact Assessment prepared by Travers Bushfire & Ecology dated 20 December 2019 which identifies that these trees do not contain any significant biodiversity or retention value.

The applicant has also modified the Landscape Plan to provide for alternative landscaping which includes a total of 18 new tree species to be planted within the Epping Road setback (an additional 9 trees in comparison to the original approved landscape plan). The tree species are capable of mature heights between 12 and 40 metres and include species such as Sydney Red Gums, Water Gum, Grey Gum and Chinese Elm. Despite the proposed removal of existing trees within the front setback, the replacement planting will have mature heights greater than the existing trees and contribute to the green corridor along Epping Road and is acceptable.

10. SECTION 7.11 CONTRIBUTIONS

Section 7.11 Development Contributions Plan 2007 (Interim Update (2014))

Council's current Section 94 Development Contributions Plan 2007 (Interim Update (2014)) requires a contribution for the provision of various additional services required as a result of increased development density.

Whilst the proposed development does not seek to change the total number of apartments, the apartment mix has been amended and therefore, contributions that are payable for the proposed density (inside the Macquarie Park Area) is required to be amended. The applicant is also seeking to amend Condition 37 to distribute the required contributions across the 2 stages of construction as approved under MOD2020/0024 to be made prior to the issue of the Construction Certificate relating to each stage of works.

Given that each of the approved stages of construction contains apartments with Stage 1 comprising 163 apartments and Stage 2 comprising 154 apartments, the proposal to stage the Section 7.11 contributions is acceptable.

The Section 7.11 Contributions applicable to the amended proposal (as staged) and apartment mix is as follows:

Stage 1

A Contribution Type	B Contribution Amount
Community & Cultural Facilities	\$630,602.01
Open Space & Recreation Facilities	\$1,215,767.33
Transport Facilities	\$86,177.67
Plan Administration	\$28,988.21
Total Contribution	\$1,961,535.22

Stage 2

A Contribution Type	B Contribution Amount
Community & Cultural Facilities	\$915,116.05
Open Space & Recreation Facilities	\$1,764,295.11
Transport Facilities	\$125,059.34
Plan Administration	\$42,066.96
Total Contribution	\$2,846,537.46

The payment of Section 7.11 Contribution of \$1,961,535.22 for Stage 1 works and \$2,846,537.46 for Stage 2 works replaces the originally approved Section 7.11 Contributions of \$4,530,983.46 in Condition 37 and has been included in the draft notice of determination attached to this report. (See **Condition numbers 37A and 37B**).

11. REFERRAL RESPONSES

EXTERNAL REFERRALS

Transport for NSW (TfNSW)

The application was referred to TfNSW in accordance with the State Environmental Planning Policy (Infrastructure) 2007 and Section 138 of the Roads Act, 1993 as the proposal seeks to delete the service vehicle driveway for the loading dock and provide a combined vehicular crossing and driveway for private cars and service vehicles from Epping Road.

On 16 March 2020, TfNSW advised that the proposal to combine the vehicular access for cars and service vehicles is not supported and concerns were raised that simultaneous entry/exit for the largest vehicle cannot be accommodated. TfNSW requested the proposal be amended to address the concern raised and resubmitted to TfNSW for concurrence.

Amended plans were submitted by the applicant on 5 May 2020, including swept path analysis and a traffic statement prepared by Traffix to address the matters raised by Council and TfNSW in Council's letter dated 3 April 2020.

On 27 June 2020, TfNSW advised that no objection was raised to the amended proposal.

Consultant Landscape Architect

The proposal was referred to Council's Consultant Landscape Architect who advised that the modifications were supported for the reasons as follows:

Impact to Existing Trees:

A review of the amended Arboricultural Impact Assessment (AIA) prepared by Travers Bushfire and Ecology dated 20th December 2019 has revealed that only minor changes have occurred to previously defined Tree Protection Zone (TPZ) incursions and that all impacts have remained under 10% (defined as 'Minor' under AS4970-2009 – Protection of trees on development sites). As such, no changes have been made to recommendations for tree retention and removal as indicated within the previously approved AIA. In this regard, level of impact to existing trees is supported.

Overview:

The proposed changes have resulted in a scheme that remains generally compliant with the provisions outlined within the NSW Apartment Design Guide 2015 (ADG). Overall, it is considered that the updated proposal is capable of providing a high level of amenity to future users of the proposed development. Accordingly, the landscape proposal is generally supported provided the following conditions are imposed to address a lack of detail provided in relation to proposed planting arrangements and minimal seating across the site as part of the Construction Certificate.

Council's Consultant Landscape Architect has recommended the following conditions:

Planting Plans. Detailed Planting Plans for Stages 1 and 2 of the proposed development are to be prepared and submitted to Council for approval prior to the issuance of a Construction Certificate.

Seating. Landscape documentation is to be updated to include varied seating types throughout the through-site link and central Communal Open Space Area. Updated documentation is to be prepared and submitted to Council for approval prior to the issuance of a Construction Certificate.

The conditions above have been included in the recommendation in Attachment 1.

Internal Referrals

Senior Development Engineer

The originally submitted proposal was referred to the Council's Senior Development Engineer for review and insufficient stormwater management and vehicular access and parking information was submitted to enable a proper assessment of the proposed modifications. In particular, Council's Senior Development Engineer requested additional information as follows:

- Vehicular access
 - The intercom access panel is to be relocated 14.5m from the Epping Road boundary to accommodate for the largest vehicle accessing the site.
 - Relocation and redesign of accessible spaces to comply with relevant standards and improve access to lifts.
 - Grouping of visitor spaces within the car park.
 - Ramp design must accommodate two B99 vehicles passing each other simultaneously
- A structural certificate is required to be submitted to certify adequate structural provisions have been provided to accommodate the load imposed on the slab above the vehicular access. This is to ensure the 4.5m headroom clearance is maintained during the construction phase.
- Stormwater Management
 - The OSD tank and management of stormwater does not satisfy the requirements of Part 8.2 of the RDCP 2014, and does not demonstrate stormwater flow towards Epping Road.
 - The proposal relies on mechanical means such as the basement pump system to drain and is not acceptable.
 - The calculations for storm events have not taken into consideration worst case scenarios and requirements of the RDCP 2014 and are not acceptable.
 - The proposed overland flow path appears to be located above the rear courtyard levels in the North Tower and will result in potential flooding. If an easement as per the Deferred Commencement condition cannot be obtained, all apartments located below the natural surface level is not supported.
 - A minimum 300mm freeboard is required above the TWL.
 - Retaining walls within the road dedication area is not supported.
 - A cut and fill plan is required to appropriately review the overland flow path within the site.
 - The design of the channel along the south-eastern boundary must include appropriate pool fencing if a water depth of 300mm can be accommodated.
 - The proposed stormwater management plan is not supported and the deferred commencement condition requiring a drainage easement across the downstream property is to be retained.

In response to the issues raised by Council's Senior Development Engineer, the applicant amended the proposal and stormwater management plan. The amended proposal was referred to Council's Senior Development Engineer for review and it was concluded that the alternative stormwater management plan and car park layout and access satisfactorily addresses the issues raised. In particular, the proposal has satisfactorily demonstrated the configuration of car parking spaces and access complies with relevant requirements and simultaneous vehicular access can be accommodated for vehicles entering and exiting the site.

In regard to stormwater management, the proposal including design changes to the ground floor apartments and revision of stormwater runoff calculations and drainage

towards Epping Road will not result in any adverse impacts future occupants or adjoining properties and is acceptable, subject to conditions included in the recommendation.

The amended stormwater management plan satisfactorily addresses stormwater management for the site, as such the deferred commencement condition requiring the creation of a drainage easement across the downstream property is no longer required.

City Works – Traffic

The proposal was referred to Council's Traffic Engineer for review and the proposal was supported in principle, subject to additional information including the following:

- The combined private vehicle and service vehicle access must demonstrate simultaneous entry and exit of the largest vehicles and private vehicles to ensure no queueing impacts on Epping Road.
- A Loading Dock Management Plan is required to be submitted to Council to demonstrate appropriate traffic management measures to manage the arrival and departure of service vehicles, and ensure the development does not result in any traffic impacts on Epping Road.

The applicant submitted a swept path analysis to demonstrate that the combined vehicular access can sufficiently accommodate simultaneous entry and exit of large vehicles. The applicant sought to prepare and submit a Loading Dock Management Plan as a condition of consent which was agreed by Council officers. Having regard to the additional information submitted by the applicant, Council's Traffic Engineer raises no objection to the proposal, subject to conditions (refer to Condition 174).

Assessing Officer comment: The issues raised by Council's Traffic Engineer have been satisfactorily addressed by amended plans and additional information. The proposal will not result in any adverse impacts on traffic within the local network and is acceptable

City Works – Waste

The proposal was referred to Council's Waste Team who requested amended plans to address the following:

- Waste collection vehicles must not wait in the deceleration lane for entry to the loading dock. A Loading Dock Management Plan and swept path analysis is required to demonstrate that service vehicles can enter and exit the site without queueing on Epping Road.
- Recycling facilities are to be located next to garbage waste chutes on each floor level to discourage disposal of recyclable materials in the waste chute.
- Ensure that the width of the driveway, at the point of the intercom, is a minimum 3m to accommodate an 11m truck.

The amended proposal was referred to Council's Waste Team for review and the proposal has satisfactorily addressed waste and recycling storage facilities, and adequate vehicular access and egress for service vehicles. Council's Waste Team raises no

objection to the condition requiring the preparation of a Loading Dock Management Plan (refer to Condition 174).

Assessing Officer Comment:

The issues raised by Council's Waste team have been satisfactorily addressed by amended plans and additional information. The proposal is considered acceptable, subject to conditions.

Council's Landscape Architect

Council's Landscape Architect has reviewed the removal of the five (5) trees within the front setback. The species to be removed are identified as 'Melaleuca Bracteata' common name Black Tea Tree and labelled T12, T13, T14, T15 and T16. The species not locally native and have a retention value of low or very low with a Diameter Breast Height (DBH) of 2 metre to 6 metre dimensions. The trees have been found to be suppressed and cannot grow into their natural form into a wide shrub forcing them to be small with multiple trunks. Given the low retention value state and retention value of the species, Council's Landscape Architect has advised that the five (5) trees within the front setback can be removed.

12. LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

13. SUITABILITY OF THE SITE

The proposed modification substantially relates to the internal changes of the apartment layout and mix, car parking and servicing arrangements including external modifications to building setbacks, building separation, articulation, stormwater management and landscaping. The modification does not increase the overall scale of the development to what was originally approved. As such, the site is considered to be suitable for the development as amended.

14. PUBLIC NOTIFICATION & SUBMISSIONS

The application was publicly exhibited from 15 January 2020 to 5 February 2020 and an advertisement was placed in the *Northern District Times* on 22 January 2020 in accordance with the relevant provisions of the RDCP 2014.

One (1) submission was received during this time, raising the following concerns:

(a) Deferred commencement condition requiring a drainage easement has not been satisfied and is due to expire.

Assessing officer comment: As discussed in the report above, Council approved an extension to the deferred commencement condition until 22 November 2020. The COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020 granted a further 2 year extension to 22 November 2022. Notwithstanding this, the amended stormwater management plan satisfies stormwater provisions under the RCP 2014 and the deferred commencement condition requiring the creation of a drainage easement across the downstream property is no longer necessary and deletion of the condition is supported.

- (b) Deletion of a basement level will result in amenity and environmental impacts on adjoining properties, particularly with the loading dock and waste storage/collecton at ground level.**

Assessing officer comment: The loading dock and waste storage room are located within the ground floor of the building and approximately 33.5m from the vehicular access point fronting Epping Road. The loading dock and waste storage area does not contain any openings (see Figure 17 below) and will be required to operate in accordance with a Loading Dock Management Plan.

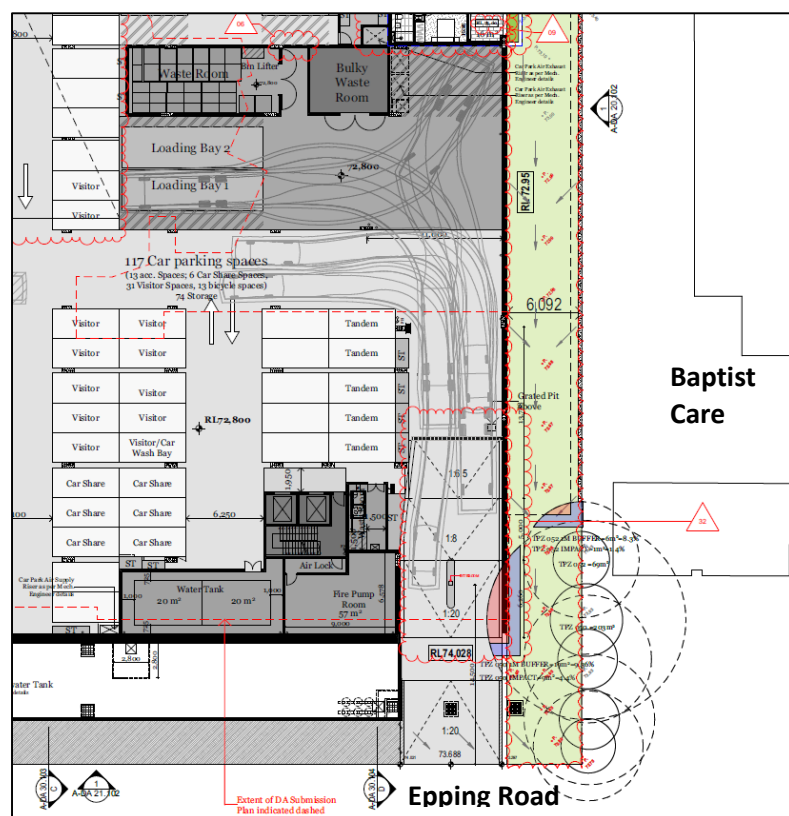


Figure 17: Location and design of loading bay on the ground floor

As such, the servicing of the site is not considered to have any unacceptable impacts on the amenity of adjoining properties, subject to conditions.

- (c) The location of the vehicular access ramp will result additional noise and air pollution for adjoining properties.**

Assessing officer comment: The proposal seeks to delete the service vehicle access ramp originally approved adjacent to the south-eastern boundary. The

proposal provides a setback of 6.08 metres between the combined vehicle access ramp and the south-eastern boundary which satisfies setback controls and will not have any unreasonable impacts on the adjacent property.

(d) The proposal has overshadowing impacts on the adjoining property along the south-eastern boundary.

Assessing officer comment: The proposal does not result in any additional overshadowing impacts on adjoining properties and is consistent with the originally approved development.

(e) The proposal should ensure that future development along Eucalyptus Street is not sterilised.

Assessing officer comment: The proposed setback to Eucalyptus Street is consistent with setback controls under the DCP and is similar to the setbacks of the original development. The articulation of the façade fronting Eucalyptus Street provides street activation, appropriate landscaping and passive surveillance, and will not have any unreasonable impacts on future development of the adjacent property also fronting Eucalyptus Street.

(f) The left in/left out vehicular access to Epping Road will result in additional traffic u-turning on Balaclava Road and the Baptist Care site.

Assessing officer comment: The left in/left out vehicular access arrangement from Epping Road remains the same as originally approved. The proposal does not result in any net increase of apartments and is not considered to have any additional impacts on traffic generation or the local network and is considered acceptable.

15. CONCLUSION

This report considers a Section 4.55(2) modification application to amend the approved development for construction of 2 x 15 storey residential apartment buildings comprising 317 apartments and 3 levels of car parking for 308 car spaces to modify the apartment mix, reconfigure apartment layouts, delete Basement Level 2, reconfigure car parking and vehicular access, and alterations to building setbacks. The proposal also includes alterations to landscaping and pedestrian access along the Epping Road and Eucalyptus Street frontages, and seeks to distribute payment of Section 7.11 contributions across the 2 stages of construction for the North Tower and South Tower.

It is noted that the site does not have legal rights of access to Eucalyptus Street, a privately owned road. Whilst the design of the North Tower and the landscaped setback provides appropriate passive surveillance and future pedestrian access when the adjacent site is redeveloped including a new public road, pedestrian access to Eucalyptus Street shall be restricted until either legal access is granted by the adjoining property owner or a public road is constructed in accordance with the RDCP 2014. Until such time, it is considered appropriate to impose a condition requiring the existing fence to be retained or a new fence be erected to restrict pedestrian access from the site to Eucalyptus Street. The applicant has agreed to this condition.

The proposal retains substantially the same built form, scale, density and architectural design as the original development and is considered to be substantially the same development as originally approved. As such, the proposal satisfies the provisions under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

The proposed development achieves satisfactory amenity for future occupants and will not result in any additional overshadowing or loss of privacy impacts on adjoining properties, subject to recommended conditions to delete the proposed new western terraces on Level 13.

The proposed development seeks to alter building setbacks and results in a further non-compliance with the 10 metre front setback controls in Part 4.5 of the RDCP 2014–Macquarie Park Corridor. It is noted that the original development was approved with a front setback of 11.73 metres inclusive of a 3.5 metres wide road dedication along Epping Road which results in a setback of 8.23 metres. The proposal has a front setback of 10.585 metres including the 3.5 metre road dedication which results in the South Tower setback 7.085m from Epping Road. In this instance, the non-compliance with the front setback is considered acceptable as sufficient landscaping is proposed within the front setback which will contribute to the landscaped character of Epping Road and is consistent with the form of large scale developments within the precinct.

Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, the application is considered to be reasonable in the context of the site, and is recommended for approval subject to appropriate conditions of consent provided in Attachment 1 of this report.

16. RECOMMENDATION

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979 the following is recommended:

- A. That the Sydney North Planning Panel grant consent to the Section 4.55 application No. MOD2020/0004 to modify Local Development Application No. LDA2018/171 at 159 to 161 Epping Road, Macquarie Park subject to the conditions of consent in Attachment 1 of this report.
- B. That a copy of the development consent be forwarded to TfNSW.
- C. That the objector be advised of the decision.

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