

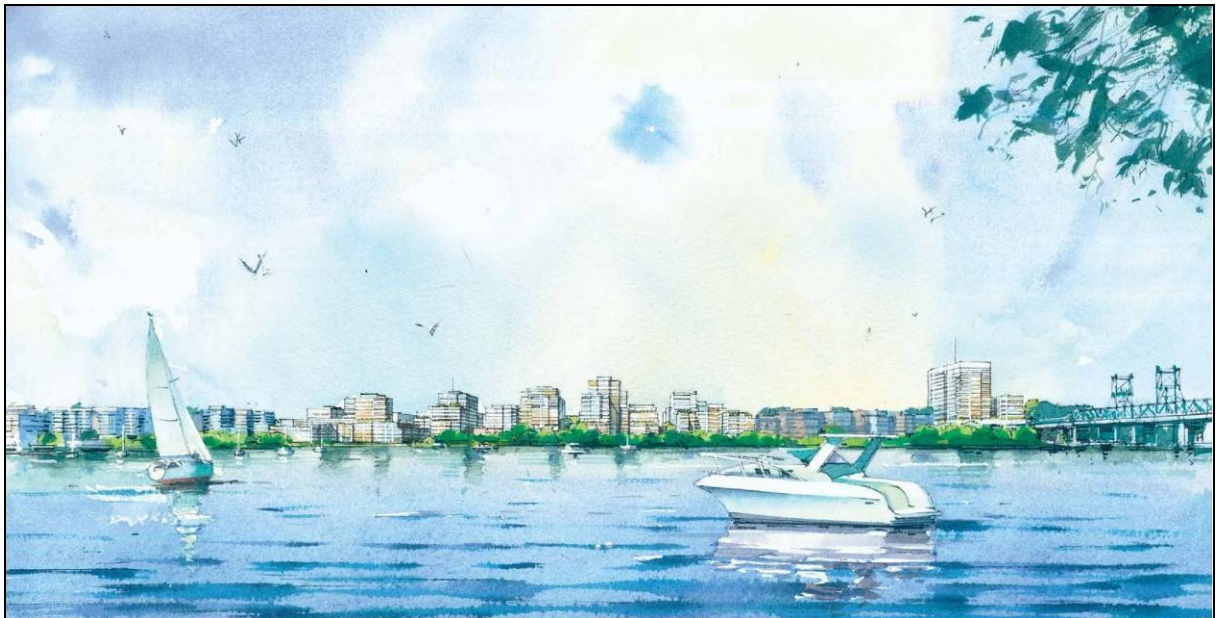


## Planning & Environment

### ***MODIFICATION REQUEST:***

**Concept Plan at Shepherds Bay Foreshore,  
Meadowbank and Ryde**

***MP09\_0216 MOD2***



Environmental Assessment Report  
Section 75W of the *Environmental Planning and  
Assessment Act 1979*

November 2016

Cover Photograph: Artist impression of the Concept Approval looking north across Paramatta River  
(Source: Concept Approval)

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## EXECUTIVE SUMMARY

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Holdmark NSW Pty Ltd (the proponent) seeks approval to modify the Concept Plan (MP09\_0216) for a mixed use development at Shepherds Bay, Meadowbank pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979*.

On 6 March 2013, the Planning Assessment Commission (the Commission) approved a Concept Plan for 12 building envelopes up to 10 storeys in height providing for mixed use residential, retail and commercial purposes.

This modification application seeks approval for an increase in building envelope height, provision of additional storeys, relaxation of dwelling and car parking caps, provision of a financial contribution in lieu of providing an on-site community facility, provision of affordable housing and a Voluntary Planning Agreement (VPA).

The Department of Planning and Environment (the Department) publicly exhibited the application from 11 February 2016 until 11 March 2016 and received five submissions from public authorities and 320 public submissions, comprising 319 objections and one comment. City of Ryde Council (Council) considered the application contained insufficient information and was unable to provide detailed comments. It raised initial concerns about traffic and building envelope height.

The proponent submitted a Preferred Project Report (PPR) to address the issues raised during the exhibition period and to clarify key issues. A further 68 submissions of objection were received from the public. Council objected to the increase in building envelope height and raised concerns about traffic, density and amenity impacts and the content of the VPA.

The key issues in the Department's assessment are amendments to building envelopes, density / dwelling numbers, traffic and car parking and relocation / removal of the community facility.

The Department does not support the proposed increase in building envelope height by 14 storeys (from 10 to 24 storeys). The Department considers the increase results in a scale and height of development that is incongruous, isolated and would visually dominate the skyline and local, distant and river views. As concluded in its assessment of the original Concept Plan, the Department recommends a 15-storey height should reasonably apply to the Stage A site as a maximum.

The Department's assessment concludes the additional storeys contained within Stages 2 and 3 will be controlled by the building envelope and Concept Approval parameters and will have acceptable amenity and impacts. The increase in building height of part of Stage 2 by 300 mm is considered minor in nature and acceptable.

The Department also considers that a dwelling cap needs to reasonably fit with the building envelopes that can be developed under the Concept Approval. On this basis, the Department accepts that Council's suggested figure of 2,140 dwellings is appropriate as a revised site-wide dwelling cap. The Department supports the retention of Stage A within the site-wide car parking and dwelling caps noting that the integrity of the Concept Approval also relies upon the inclusion of a cohesive set of site-wide parameters and controls, rather than carving out stand-alone aspects of the development.

The Department supports the relocation of the community facility to Stage A, or alternatively the payment of \$3.5 million to Council in lieu of providing an on-site community facility in Stage A, should on-site provision be found to be an unviable option.

The Department therefore considers the modification application can be approved, subject to conditions.

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# 1. BACKGROUND

## 1.1 Introduction

The purpose of this report is to provide an assessment of a section 75W modification application to a Concept Plan (MP09\_0216 MOD2) for a mixed use development at Shepherds Bay, Meadowbank.

Holdmark NSW Pty Ltd (the proponent) seeks approval for modifications including increase in building envelope height, provision of additional storeys, relaxation of dwelling and car parking caps, provision of a financial contribution in lieu of providing an on-site community facility, provision of affordable housing and a Voluntary Planning Agreement (VPA).

## 1.2 The site and surroundings

The site is located on the Shepherds Bay foreshore in the suburbs of Meadowbank and Ryde. It is located approximately 10 kilometres east of the Parramatta CBD and 14 kilometres north-west of the Sydney CBD within the Ryde Local Government Area. The site comprises two separate parcels of land which historically accommodated industrial and warehouse buildings.

The main portion of the site (referred to as the 'main site') has frontages to Bowden Street, Belmore Street, Nancarrow Avenue, Rothesay Avenue, Constitution Road and Hamilton Crescent. The smaller part of the site (referred to as the 'Church Street site') has frontages to Church Street, Wells Street, Waterview Street and The Loop Road. The total area of the combined sites is approximately 6.7 hectares. The project location is shown in **Figures 1 and 2**.

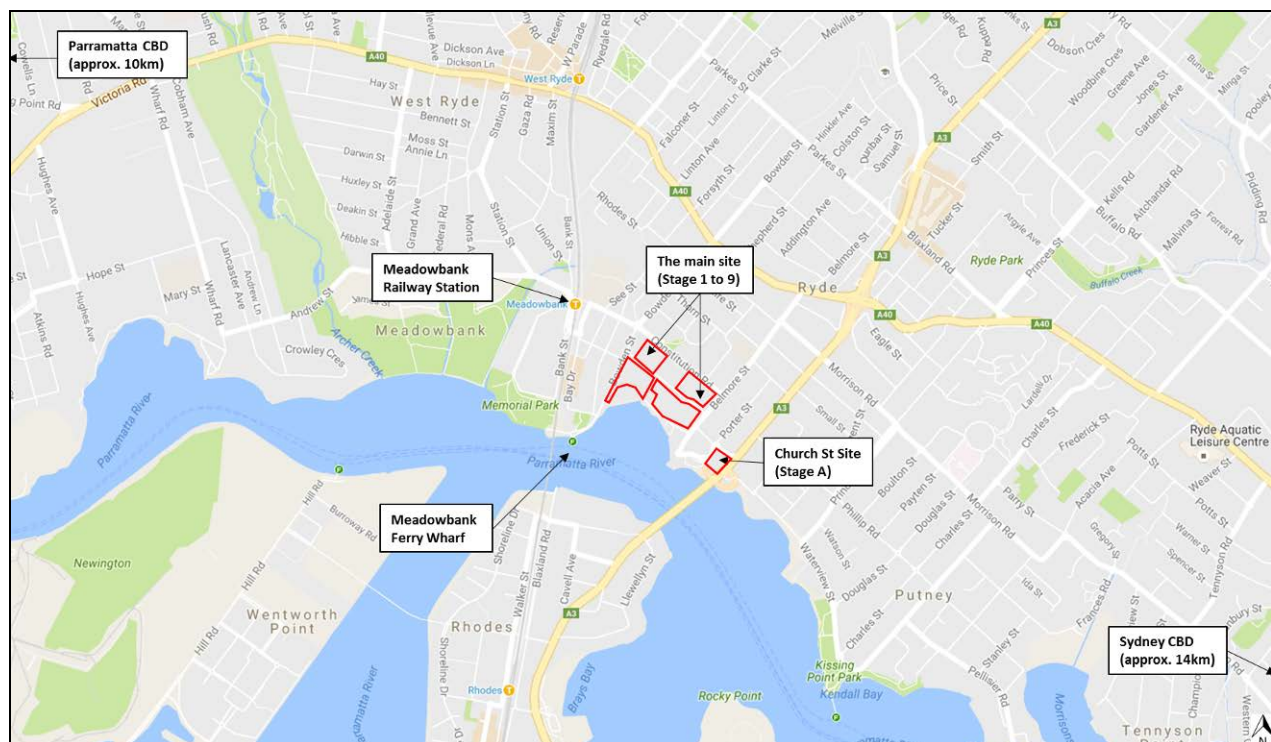


Figure 1: Local Context Plan (Base source: Nearmap)

Various parts of the main site are situated between 350 metres to 1 kilometre walking distance from the Meadowbank Railway Station and the Village Plaza Shopping Centre and 250 metres to 1 kilometre from the Meadowbank Ferry Wharf. The Church Street site is also within 200 metres of bus services on Church Street, and approximately 1 kilometre from the railway station and ferry wharf.



The main site has an uneven topography with a significant fall of up to 18 metres from north to south towards the Shepherds Bay foreshore. There is also a fall of approximately 10 metres from the east to west along Constitution Road. The Church Street site is relatively level.

The site is located within the Shepherds Bay area (also known as the Meadowbank Employment Area), which has been identified by City of Ryde Council (the Council) as an area for transition from traditional manufacturing and industrial uses to a higher density mixed use neighbourhood. The surrounding area features a mixed character of industrial/warehouse buildings, high density residential flat buildings and low density residential housing.

Site preparation works and building construction is underway for a number of stages on the site (refer to **Table 2**), which are at varying stages of completion as shown at **Figure 2**.



**Figure 2: Aerial view of the site indicating current stage of construction works (Base Source: Nearmap)**

## 1.2 Previous relevant approvals

### 1.2.1 Original approvals

On 6 March 2013, the Planning Assessment Commission (the Commission) approved a Concept Plan (MP09\_0216), which comprises:

- the redevelopment of the site for mixed use residential, retail and commercial purposes;
- 12 building envelopes incorporating basement car parking;
- infrastructure works to support the development;
- publically accessible open space and through site links; and
- pedestrian and cycle pathways.

The Commission also approved a Project Application for Stage 1, which included the erection of a 10-storey building in the south-east corner of the main site.

In approving the Concept Plan, the Commission considered that a 10-storey maximum height limit should apply across the entire Concept Plan. The Commission imposed Modification B1

requiring a number of stages be reduced in height to 10 storeys. This included Stage A (refer to **Figure 3**) to be reduced from 15 to 10 storeys. In addition, the Commission imposed a Future Environmental Assessment Requirement (FEAR) requiring any future building within Stage A to achieve design excellence.

### 1.2.2 Modifications

The Concept Approval and Stage 1 Project Approval have been modified on one previous occasion as summarised in **Table 1**.

**Table 1** – Modifications to the Concept Approval and Stage 1 Project Approval

Mod No.	Summary of Key Modifications	Approved
Concept Plan MP09_0216 MOD 1	Amendment to Building Storeys Plan to allow additional storeys (being accommodated in void spaces at lower levels) in Stages 1 to 3 and 6, expansion of basement building envelopes, revision to the construction staging and timing of the delivery of the open space, flexible application of the solar access requirement of the Residential Flat Design Code (RFDC) and amendments to conditions and Statement of Commitments.	16/10/2014
Stage 1 MP09_0219 MOD 1	Increase the number of apartments and car parking, regrading of the foreshore link, internal and external amendments to the building and amendments to conditions and Statement of Commitments.	16/10/2014

In approving modification 1 of the Concept Plan, the Commission:

- disagreed with the Department's recommendation that a dwelling cap should not be applied to the site. The Commission imposed FEAR 1A requiring the total dwelling numbers be capped at 2,005 dwellings (being the total number of indicative dwellings originally assessed for the Concept Plan site); and
- agreed with the Department's recommendation that car parking numbers should be capped. The Commission imposed FEAR 23 requiring the total number of car parking spaces be capped at 2,976 spaces (being the total number of indicative car parking spaces originally assessed for the Concept Plan site).

The Concept Approval staging, layout and maximum storey height is shown at **Figures 3 to 5**.



**Figure 3:** Building envelope layout and Stage numbering (Source: proponent's application)





Figure 4: Maximum building storey height plan (Source: proponent's application)



Figure 5: Maximum building height plan (Source: proponent's application)

### 1.2.3 Detailed development applications

Since the determination of the Concept Approval a total of 1,943 dwellings and 2,648 car parking spaces have been approved within Stages 1 to 9 as part of detailed development applications (refer to **Table 2**).

The Department of Planning and Environment (the Department) notes that development applications have now been determined for all stages except for Stage A. Further, a calculation of the residual dwelling and parking yield within the approved dwelling and car parking caps indicates there is:

- 62 of 2,005 dwellings remaining of allowable dwellings under the Concept Approval; and
- 361 of 2,648 car parking spaces remaining of allowable car parking spaces under the Concept Approval.



**Table 2: Summary of approved of detailed applications**

Stage	Consent Authority	Date of Approval	Number of Apartments	Number of Car Parking Spaces
1	Department	16 October 2014	246	342
2 and 3	Council	20 October 2015	453	607
4 and 5	Council	18 September 2015	511	647
6 and 7	Council	15 December 2015	311	433
8 and 9	Council	15 December 2015	422	586
<b>TOTAL</b>			<b>1,943</b>	<b>2,615</b>

## 2. PROPOSED MODIFICATION

### 2.1 Proposal (as exhibited)

On 17 December 2015, the proponent lodged a modification request application under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify the concept plan (MP09\_0216) for the mixed use development at Shepherds Bay. The modification, as exhibited, proposed to:

- increase building envelope height of Stage A by 14 storeys (from 10 to 24 storeys) and associated contributions via a VPA;
- increase the building envelope height of Stage 9 by one storey (from one to two storeys) and enlargement of the footprint with associated reduction of public open space by 396 m<sup>2</sup> (from 15,300 m<sup>2</sup> to 14,904 m<sup>2</sup>);
- increase storey heights contained within the approved building envelopes for Stages 2 and 3;
- exclude Stage A from the maximum dwelling and car parking yield development caps;
- relocate the community centre from Stage 3 to Stage 9 and reduce its size by 500 m<sup>2</sup> (from 1000 m<sup>2</sup> to 500 m<sup>2</sup>); and
- provision of 8% affordable housing based on uplift in dwellings (over 17 dwellings already forming part of a Deed of Agreement) within Stages 2 and 3.

### 2.2 Preferred Project Report

The proponent submitted a Preferred Project Report (PPR) providing a response to the issues raised in submissions and making the following changes to the application:

- amendment of the building storey height plan to reflect the storey height of buildings fronting steeply sloping land and internal courtyard heights (and deletion of FEAR 3A allowing an additional storey on steeply sloping land);
- increase the number of storeys contained within Stage 9 building envelope by one (from two to three storeys);
- amendments to indicative vehicular access arrangements to Stage A and associated road improvements and pedestrian access arrangements;
- agreement to dwelling and parking caps, provided they reflect the application as currently submitted; and
- provision of a contribution via VPA, dependant on final approved GFA for Stage A.

Following the community consultation of the PPR, the proponent submitted a further response to submissions document, which included the following additional changes to the modification application:

- payment of \$3.5 million to Council in lieu of providing the community facility in Stage 9 and
- removal of the changes to the Stage 9 building envelope (i.e. Stage 9 building envelope is retained as approved);

### 2.3 Modification Description

The modification application, as currently proposed, includes:

- increase in the maximum height of the Stage A building envelope by 14 storeys (from 10 to 24 storeys), reconfiguration of the envelope layout and associated VPA;

- exclusion of Stage A from the maximum dwelling and car parking yield development caps;
- varying increases of the number of storeys contained within Stages 2 and 3 building envelopes and increase in the height of Stage 2 building envelope by 300mm;
- provision of a financial contribution to council (\$3.5 million) in lieu of providing an on-site community facility;
- deletion of FEAR 3A which includes an exception to the building height plan and allows the inclusion of an additional storey on steeply sloping land;
- provision of 8% affordable housing based on uplift in dwellings (over 17 dwellings already forming part of a Deed of Agreement) within Stages 2 and 3; and
- reduction of public open space by 396 m<sup>2</sup> (from 15,300 m<sup>2</sup> to 14,904 m<sup>2</sup>).

Comparison images of the approved and proposed modified concept plan are shown at **Figures 6 and 7**. Further details of the proposed modifications are provided at **Appendix A**.



**Figure 6: Modified maximum building storey height plan (Source: proponent's application)**



Figure 7: Modified maximum building height plan (Source: proponent's application)

### 3. STATUTORY CONTEXT

#### 3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove of the carrying out of the project under section 75W of the EP&A Act.

#### 3.2 Modification of a Minister's Approval

The modification application has been lodged with the Secretary pursuant to section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including revoking or varying a condition of the approval or imposing an additional condition on the approval.

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, this proposal seeks to make substantial changes to the approved building envelopes and modify specific conditions of approval, which require further assessment and approval.

#### 3.3 Secretary's Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the Secretary may notify the proponent of Secretary's Environmental Assessment Requirements (SEARs) with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to notify the proponent of SEARs as suitable information was provided to the Department to consider the application.



### 3.4 Environmental Planning Instruments

The following EPIs are relevant to the application:

- *State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP);*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy 55 – Remediation of Land;*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;*
- *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development & accompanying Residential Flat Design Code / Apartment Design Guide; and*
- *Ryde Local Environmental Plan, 2014.*

The Department undertook a comprehensive assessment of the redevelopment against the above mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied the proposal remains consistent with the EPIs.

### 3.5 Delegated Authority

Under delegation of 14 February 2015, the Commission may determine applications made by persons other than a public authority under delegated authority where:

- the relevant local council has made an objection; and/or
- a political disclosure statement has been made; and/or
- there are more than 25 public submissions in the nature of objection.

No political donations have been disclosed in this modification request. However, Council has objected and more than 25 public submissions in the nature of objection have been received in response to the proposal.

The Commission can determine the modification request under delegated authority.

## 4. CONSULTATION AND SUBMISSIONS

### 4.1. Exhibition

In accordance with section 75X(2)(f) of the EP&A Act, the Department publicly exhibited the applications for 30 days from 11 February 2016 until 11 March 2016 on the Department's website, at the Department's Information Centre and at Council's office.

The Department placed a public exhibition notice in the Sydney Morning Herald, Daily Telegraph, Northern District Times and Ryde Gladesville Times on 10 February 2016 and notified landowners and relevant state and local public authorities in writing. The Department received a total of 325 submissions, comprising five submissions from public authorities and 320 submissions from the general public (including 30 proforma letters).

Copies of the submissions may be viewed at **Appendix A**. A summary of the issues raised in the submissions is provided below.

**Table 3: Summary of public authority submissions to the modification request**

City of Ryde (Council)
Council considered the application contained insufficient information, and consequently, it was unable to provide a detailed review of the proposal. Council raised initial concerns in relation to the: <ul style="list-style-type: none"><li>• the traffic impacts resulting from the modification of Stage A; and</li><li>• height and impact of the proposed Stage A building envelope.</li></ul>
Transport for NSW (TfNSW)
TfNSW does not object to the modification. However, it raised concerns in relation to the: <ul style="list-style-type: none"><li>• accuracy of the traffic modelling and traffic reports;</li><li>• provision of vehicular access off Church Street;</li></ul>

<ul style="list-style-type: none"> <li>• impact of the loading dock on general traffic and bus movements; and</li> <li>• pedestrian and cyclist access to Stage A.</li> </ul>
<b>Roads and Maritime Services (RMS)</b>
<p>RMS does not object to the modification. However, it raised concerns in relation to the:</p> <ul style="list-style-type: none"> <li>• accuracy of the traffic modelling and traffic reports;</li> <li>• provision of vehicular access off Church Street and Well Street;</li> <li>• overall number of car parking spaces;</li> </ul>
<b>Sydney Water</b>
<p>Sydney Water does not object to the modification and provided the following comments:</p> <ul style="list-style-type: none"> <li>• existing water and waste water system will need amplification; and</li> <li>• a Section 73 Compliance Certificate from Sydney Water is required.</li> </ul>
<b>Heritage Council</b>
<p>The Heritage Council does not object to the modification and stated the proposal is unlikely to have an unacceptable visual impact on the Meadowbank Bridge.</p>

**Table 4: Summary of issues raised in public submissions to the modification request**

Issue	Proportion of submissions
Traffic and car parking impacts	70%
Inappropriate height of Stage A and sets precedent	69%
Adverse increase in density	38%
The Commission's original decision should be final	27%
Unacceptable exclusion of Stage A from housing and car parking caps	26%
Unjustified reduction in community centre size and delay in delivery	24%
Adverse increase in building heights	19%
Adverse impact on social infrastructure/services	16%
Lack of open space	13%
Noise/nuisance during construction	13%
Adverse environmental impacts	13%
The development should exceed ESD targets	10%
Overshadowing	10%
Inadequate public transport	8%
Obscure private views	7%

The Department's assessment of the key issues raised in public submissions is presented in **Sections 5.1 to 5.4** and a summary of the key issues considered by the Department is presented in **Table 7** in **Section 5.5**.

Other issues raised in resident submissions (less than 5%) to the exhibition included:

- devaluation of surrounding properties;
- inappropriate inclusion of additional storeys on sloping land;
- increase in crime;
- overlooking;
- fails to accord with Council's strategy for the area;
- landowners consent is invalid; and
- non-compliance with Council's Development Control Plan (DCP) for Meadowbank.

## 4.2. Preferred Project Exhibition

The community was re-notified of the revised application for 30 days from 8 July 2016 until 8 August 2016 following the submission of the proponent's PPR. The application was made publicly available on the Department's website and the Department notified neighbouring landowners, previous submitters and relevant state and local public authorities in writing. An additional 68 submissions were received from the public and three from public authorities, including Council, RMS and TfNSW. The issues raised by public authorities are summarised in **Table 5** below.

**Table 5: Summary of public authority submissions in response to the notification of the PPR**

<b>City of Ryde (Council)</b>
<p>Council has objected to the proposed increase in height of Stage A and raised concerns relating to other aspects of the proposal. Council's objection and comments are summarised below:</p> <p><b>Stage A</b></p> <ul style="list-style-type: none"> <li>• The height of Stage A is unacceptable and would: <ul style="list-style-type: none"> <li>◦ be visually bulky and out of context with neighbouring development;</li> <li>◦ increase the view catchment of the Stage A tower;</li> <li>◦ dominate the skyline and adjacent heritage listed Ryde Bridge; and</li> <li>◦ overshadow properties at Waterview Street.</li> </ul> </li> <li>• a dwelling cap of 90 additional dwellings should be applied to Stage A;</li> <li>• Stage A should not be excluded from the existing car parking cap;</li> <li>• Design Integrity Panel certification should be required at key project milestones; and</li> <li>• a Stage 1 road safety audit of the access intersection configuration and roundabouts should be undertaken.</li> </ul> <p><b>Community facility</b></p> <ul style="list-style-type: none"> <li>• The amendments to the building envelope at Stage 9 have unacceptable amenity impacts and it should be restricted to a maximum of one storey. Consequently, an alternative location should be found for the community facility; and</li> <li>• the community facility should be relocated to Stage A or alternatively a contribution of \$3.5 million should be provided in lieu of providing the community centre on-site.</li> </ul> <p><b>Stages 2 and 3</b></p> <ul style="list-style-type: none"> <li>• poor amenity for dwellings located below finished ground level on areas of steeply sloping land.</li> </ul> <p><b>Voluntary Planning Agreement (VPA) and community benefits</b></p> <ul style="list-style-type: none"> <li>• Council stated that it is still negotiating the content of the VPA with the proponent;</li> <li>• Council recommended the VPA include: <ul style="list-style-type: none"> <li>◦ payment in lieu of providing the community facility;</li> <li>◦ public domain and infrastructure upgrades (Stage A); and</li> <li>◦ traffic mitigation measures (Stage A).</li> </ul> </li> <li>• the development should provide for the following amount of affordable housing: <ul style="list-style-type: none"> <li>• 8% of dwelling uplift within Stage 2 and 3; and</li> <li>• 2% of dwellings within Stage A as affordable housing.</li> </ul> </li> </ul>
<b>Transport for NSW (TfNSW)</b>
<p>TfNSW has confirmed it no longer raises concerns in relation to the accuracy of the traffic modelling and has recommended conditions requiring:</p> <ul style="list-style-type: none"> <li>• a road safety audit, road occupancy licence;</li> <li>• compliance with Development Near Rail Corridors and Busy Roads; and</li> <li>• preparation of a Construction Traffic Management Plan and Loading Dock Access Management Plan.</li> </ul>
<b>Roads and Maritime Services (RMS)</b>
<p>RMS has confirmed it no longer raises concerns in relation to the accuracy of the traffic modelling and provided the following comments on the PPR:</p> <ul style="list-style-type: none"> <li>• the access to Stage A from Church Street should be restricted to service vehicles only;</li> <li>• a Works Authorisation Deed (WAD) may be required and should be executed prior to RMS' assessment of detailed civil designs; and</li> <li>• the intersection of Bowden Street/Constitution Road should be signalised prior to the occupancy of Stage 3 and the Railway Road pedestrian crossing at Meadowbank Station should be signalised prior to the occupation of Stage 6/7.</li> </ul>

A further 68 public submissions objecting to the proposal were received in response to the proponent's PPR. The majority of these submissions raised concerns already mentioned and in particular regarding traffic, height, overdevelopment and exclusion of the development from dwelling/car parking caps. However, additional concerns were also raised regarding the:

- relocation of the community centre to Stage 9;
- content of the visual impact analysis and lack of justification for the height of Stage A;
- safety concerns about the Stage A deceleration lane and loading dock;



- lack of consideration of an ‘intermediate’ design for Stage A within the Design Excellence considerations;
- an independent traffic study should be undertaken; and
- adverse impact on heritage listed Ryde Bridge.

Copies of the submissions may be viewed at **Appendix A**. The Department has considered the comments raised in the authority and public submissions during the assessment of the application and has given specific consideration to the key issues raised in **Section 5** of this report and/or by way of recommended conditions in the instrument of consent at **Appendix B**.

## 5. ASSESSMENT

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The Department considers the key assessment issues are:

- amendments to building envelopes (including building height);
- density / dwelling numbers;
- traffic and car parking; and
- relocation / removal of the community facility.

Each of these issues is discussed in the following sections of this report. Other matters that were taken into consideration during the assessment of the application are discussed at **Section 5.6**.

### 5.1 Amendments to Building Envelopes

The key assessment issues associated with the proposed amendments to building envelopes include:

- increase in the maximum height of Stage A from 10 to 24 storeys; and
- additional storeys within Stages 2 and 3.

#### 5.1.1 Increase in the maximum height of Stage A from 10 to 24 storeys

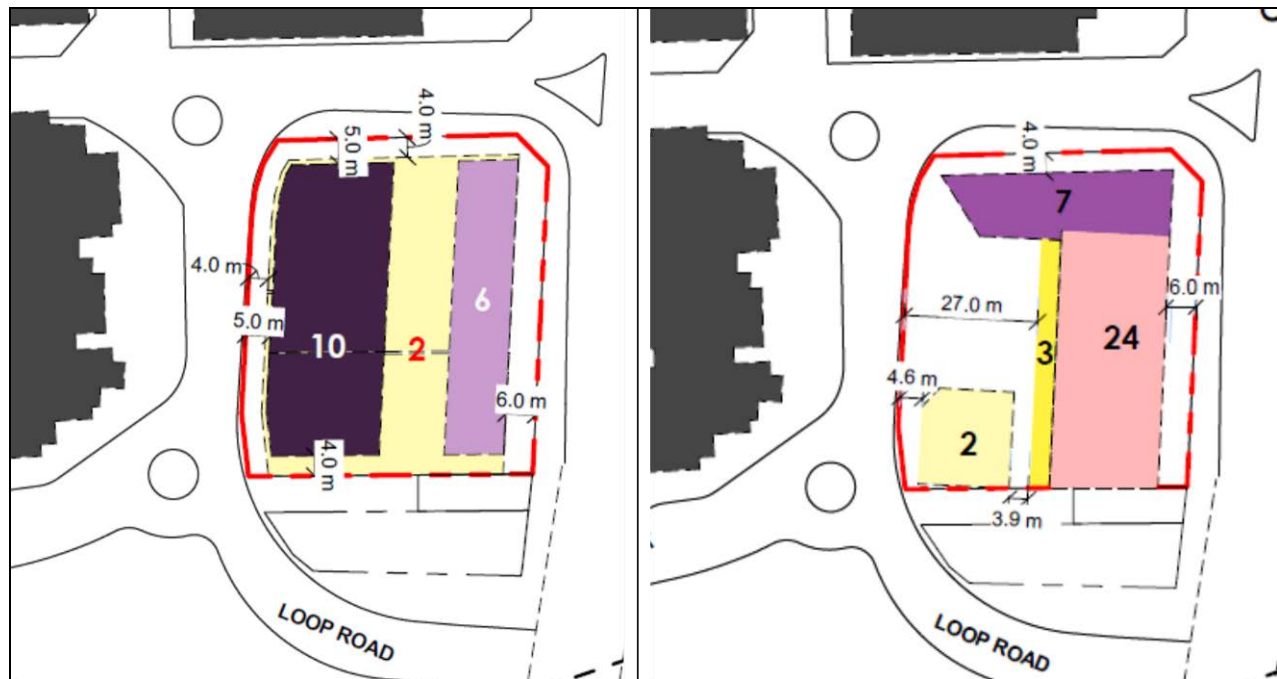
The height of Stage A was a key assessment issue in the Department’s consideration of the original Concept Approval. The original Concept Plan proposal sought a height of RL 63.7 (15 storeys) for Stage A. The Department supported the then proposed 15 storeys and recommended the Commission also support this height on the basis of the site’s location on a major arterial roadway and on the foreshore, making it a suitable location for the provision of a “gateway” development and:

- greater building heights fronting a higher order street is a good urban design outcome;
- it results in minimal overshadowing of adjoining development; and
- once adjacent sites on Church Street are developed (up to 7 storeys) the height of the building will be compatible with the surrounding area.

The Commission considered that higher density is possible across the entire Concept Plan site, but only to a maximum of 10 storeys. With reference to Stage A, the Commission concluded the 15-storey height of the development was inconsistent with the existing and emerging character of the Shepherds Bay area and where the site interfaces with existing development or the river foreshore, lesser heights are required to ensure an appropriate transition, and to prevent overshadowing. In addition to reducing the height of Stage A, the Commission also required future development of the Stage A building should achieve design excellence given its gateway location.

The current proposal seeks to amend Stage A building envelopes as follows (**Figure 8**):

- increase the height of the tower component of Stage A from a maximum of 10 storeys (RL 57.70) to 24 storeys (RL 95.80);
- modify the layout of the building envelope locating the tower component on Church Street and including an open space to the rear; and
- increase the height of lower-scale building envelope from six to seven storeys.



**Figure 8: Comparison of the approved (left) and proposed modified (right) Stage A building envelope (Source: proponent's application)**

In support of the Stage A component of the modification, the proponent has offered to enter into a VPA with Council, which provides a monetary contribution toward public benefits (facilities/services and affordable housing). The proponent has confirmed the contribution is offered based on the gross floor area (GFA) (predicted 2,672 m<sup>2</sup>) within the top four storeys of the tower.

There has been significant public objection to the proposed development, and almost 70% of all submissions received during exhibition raised objection about the height of Stage A building envelope. Council has also objected to the increase in height of Stage A, above 10 storeys, as the tower would:

- be visually bulky and out of context with neighbouring development;
- be highly visible and visually dominates the surrounding area and adjacent heritage listed bridge; and
- result in additional overshadowing of dwellings on Waterview Street to the south east.

Council provided the following comparative images of isolated and visually dominant tower developments within Sydney (**Figure 9**):



**Figure 9: Council's comparative images of isolated and dominant tower developments in Sydney, Blues Point Tower (left) and Horizon Tower (right) (Source: Council's submission)**

### Design Excellence

The proponent has sought to fulfil the design excellence requirements of the Concept Plan Approval by undertaking a design competition for the development of Stage A.

Unusually, the design excellence brief sought that the competition entrants provide two schemes, being alternative conforming and non-conforming schemes when considered against the Concept Plan.

The winning entry was for a non-conforming scheme, which reconfigured the site, provided for a maximum tower height of 19 storeys and included a public plaza (refer to **Figure 10**).

In relation to the additional height, the jury noted the increased height was appropriate when accompanied by the provision of the proposed public square and the proposed height offsets the otherwise horizontal surrounding built form. In addition, the jury noted the vertical building also related to the linear form of the bridge and provided a marker that may add visual interest to travellers on ferries and tourist boats as they move along the Parramatta River.

Whilst the Department notes the design competition provides some analysis of the 19-storey height of the competition winning scheme, this should not be taken to qualify as a form of planning assessment that is required to support such a height. Further, such a process is distinct from a planning assessment as it is carried out in the absence of any community consultation. This distinction becomes particularly stark when an appropriate site specific height has already been considered through the approval of the Concept Plan. Moreover, the jury did not turn its mind to the currently proposed 24-storey height, although the Department notes the proponent has since presented the scheme to two of the three jury panel members (referred to as a 'design integrity panel' (DIP)) and minutes indicate they had no specific objection to the height.

A comparison of the 19-storey Design Excellence and 24 storey indicative Stage A building is provided at **Figure 10**.



**Figure 10: The 19-storey Design Excellence scheme (left) and indicative 24-storey Stage A building (right) (Source: proponent's application)**



The proponent has justified the proposed 24-storey height on the basis that:

- the proposal is generally consistent with the design excellence scheme;
- tall towers at Rhodes set a precedent for this scale of development;
- the increase in height results in a slimmer architectural form;
- there are negligible overshadowing and other environmental impacts; and
- a development of a lesser height would not be financially viable.

The Department partially accepts the jury's rationale for a taller building in this specific location. Although, the Department also notes the jury's rationale for this increased height does not restrict alternative built forms in this location, such as a lower building, from achieving design excellence. The Department has also considered the Commission's view in relation to the height across the entire precinct not exceeding 10 storeys. Whilst the Department accepts the Commission's rationale for the remainder of the site, it maintains that Stage A is capable of accommodating a greater height than 10 storeys as it sits separately to the remainder of the Concept Plan site and maintains its view that Stage A has some gateway location properties.

The gateway proposition, however, does not excuse a careful consideration of the building's relationship with the adjoining developments, the urban context, general character of the area and the visual impacts associated with such a markedly tall building.

The Department does not consider financial viability to be a key consideration in the assessment of the merits of the proposal. Nor is it a material consideration that would outweigh or have a bearing on the assessment of the key considerations, as outlined in this report.

*Planning Principle: assessment of height and bulk*

The Department is cognisant of the differing views expressed by the Commission, Council, the proponent, the Design Excellence jury and the public relating to what should be considered an acceptable height of development for Stage A. In this context the Department considers it important that clear guidelines are established to assist the assessment and consideration of the impacts of height.

The Land and Environment Court case *Veloshin v Randwick Council [2007] NSWLEC 428* (the LEC Case) helpfully sets out Planning Principles for the consideration of the assessment of height and bulk, the relevant Principles to this modification are quoted below (numbering added for ease of reference).

1. The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:
  - a) *Are the impacts consistent with impacts that may be reasonably expected under the controls? (... For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)*
  - b) *How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?*
2. Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:
  - a) *Does the area have a predominant existing character and are the planning controls likely to maintain it?*
  - b) *Does the proposal fit into the existing character of the area?*
3. Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:
  - a) *Is the proposal consistent with the bulk and character intended by the planning controls?*
4. Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this

question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

a) *Does the proposal look appropriate in its context?*

As the proposal seeks to amend the clear 10 storey height parameter in the Concept Approval, and the Planning Principles do not envisage a situation where height controls are sought to be changed, the Department considers Planning Principle no.1 is the most relevant principle to be applied to the assessment of this case.

The Department has incorporated this Planning Principle into its assessment of an appropriate height for Stage A.

#### *Department's Assessment*

The Department notes that Stage A is isolated from the remainder of the Concept Plan site (approximately 200 metres away) and is therefore detached from the approved, up to 10-storey maximum, building envelope heights associated with the Shepherds Bay redevelopment.

The area immediately surrounding Stage A is currently of a low-scale, ranging in height from single and two-storey detached dwelling houses to the east and a mixture of low and medium scale residential developments (up to six/seven storeys) to the north and west.

Stage A, due to its location on the Parramatta River foreshore and bend in the river path is visible from a number of key locations, the proponent has provided Visual Impact Assessment images (VIA), which compares the visual impact of the massing of the approved 10-storey and the modified proposed 24 storey building envelope and are provided in **Figures 11 to 15**.



**Figure 11: Approved (left) and proposed (right) view south along Church Street, above Morrison Street (Source: proponent's application)**



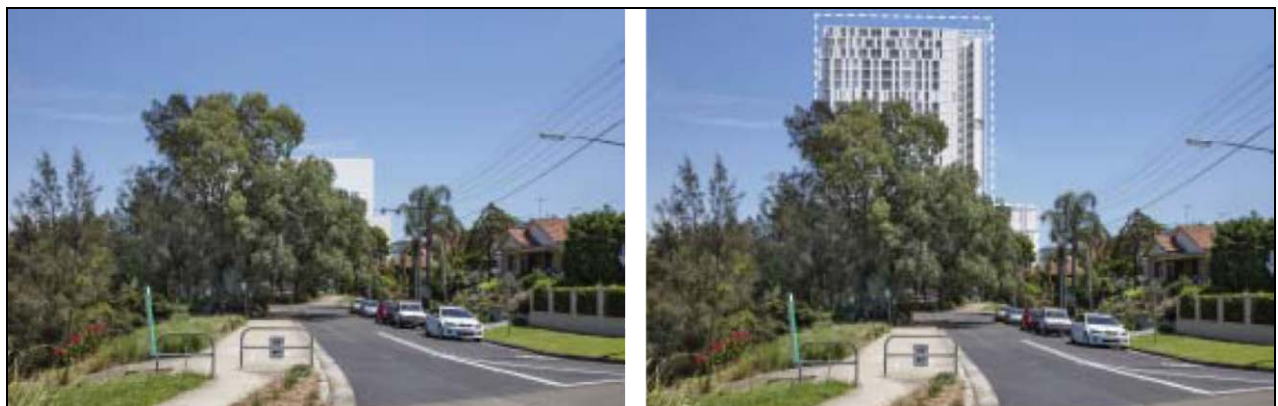
**Figure 12: Approved (left) and proposed (right) view north east from Ryde Wharf (Source: proponent's application)**



**Figure 13: Approved (left) and proposed (right) view north-east from along Ryde Bridge (Source: proponent's application)**



**Figure 14: Approved (left) and proposed (right) view north-west from Kissing Point Park (Source: proponent's application)**



**Figure 15: Approved (left) and proposed (right) view north-west from Waterview Street (Source: proponent's application)**

The above visual analysis indicates, regardless from what direction the proposed 24-storey building envelope is viewed from, it would appear significantly taller, bulkier and more visually dominant when compared to the approved 10-storey building envelope. In addition, there are substantially less views in which the tower would be seen solely in its comparatively slimmer side-profile.

The Department notes that Rhodes is located approximately 800 metres from Stage A (at its closest point) and on the opposite side of Parramatta River. The Department acknowledges a larger scale of development, including numerous towers, exists at Rhodes. However, the Department notes these tower buildings form part of a cohesive cluster of high density buildings, which are associated with a higher order shopping and employment district and heavy rail line. In addition, the Rhodes cluster is generally graduated, rising to its tallest point centrally within the peninsula and fronting the core rail/road corridor.

The Department, therefore, does not accept the proponent's assertions that Rhodes sets a precedent in urban design / visual terms to the Stage A site. In particular, the Department notes:

- the Rhodes cluster is not comparable to the single/isolate tower on the Stage A site as its overall urban form is comprised of a cohesive collection numerous contributory towers;
- the Rhodes cluster is located a significant distance (800 metres) from the Stage A site and is therefore visually divorced from the site;
- the significant intervention of Parramatta River further physically and visually separates the Stage A site from the Rhodes cluster; and
- Rhodes comprises a Strategic Centre (under *A Plan for Growing Sydney*) and warrants the presence of tall buildings.

The Department does not accept the proposed 24-storey height is appropriate given this height will result in a completely estranged scale and height relationship with nearby and adjoining development. In particular, the Department notes the proposed height would be approximately six times the height of any development allowed (under the Ryde LEP 2014) along Church Street, over three times the height of the up to seven storey buildings to the north and west, and over two times the height of the highest components of the remainder of the Concept Plan site. In this context the proposed development is fundamentally contrary to Planning Principle no.1 as it would appear particularly incongruous, isolated, and would visually dominate the skyline at local, distant and river views.

The Department agrees with the concerns raised in public submissions that the proposed height of Stage A is unacceptable. Further, the Department also agrees with Council that the proposed height of Stage A would be visually bulky, particularly when viewed from the east and west. However, with reference to Council's specific concerns relating to heritage impacts, the Department notes OEH has not raised any objection to the height of the tower on heritage grounds.

The Department considers the proposed increase in height fails to address Planning Principle no.1 as set out in the LEC Case. The Department notes in particular (refer to **Figure 16**):

- the impacts are not consistent with the impacts that may be reasonably expected under the Concept Approval height controls; and
- the proposed height and bulk significantly exceeds the height and bulk of existing buildings surrounding the site and the desired height of the Concept Approval.

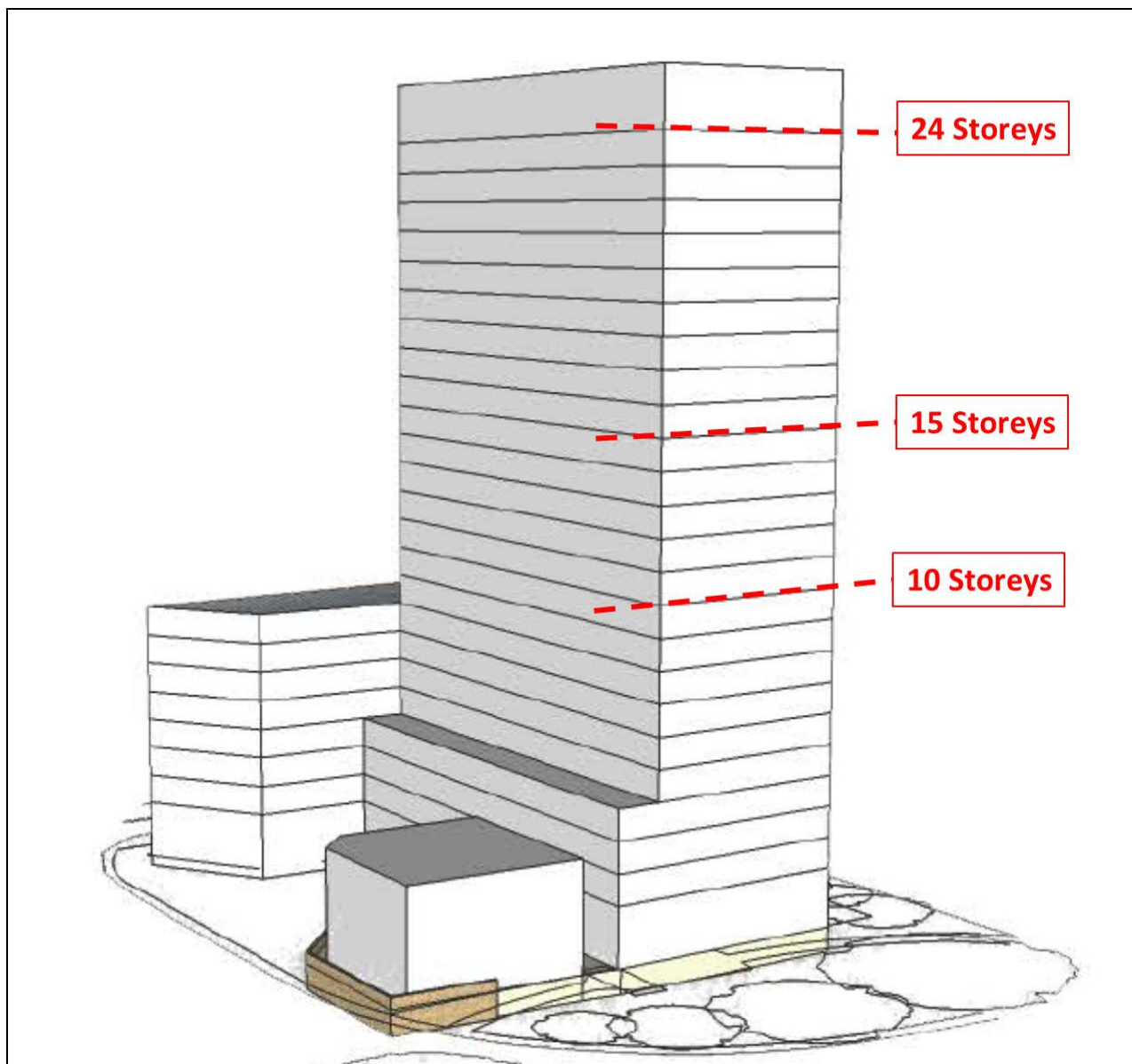
Further, the Department considers, should the proposal be measured against the remaining Planning Principles (2-4), that it would still fail to meet the tests as the proposal:

- is at odds with the predominant low-to-medium rise built form character of the surrounding area;
- represents a significant breach to the controls established by the Concept Approval and has a significant and detrimental impact as a result; and
- is overtly dominant and does not look appropriate in its context.

Having regard to the above, the Department maintains its original view that a 15-storey height should reasonably apply to the site, as a maximum. Whilst this height remains significantly taller than the nearby up to seven storey buildings, it retains a scale relationship with the wider Shepherds Bay Concept Plan and will allow the site to substantially fulfil its gateway properties without resulting in the significant adverse impacts as discussed above.

The Department considers a 15-storey height addresses Planning Principle no.1 as it would facilitate the provision of a building that provides a marker for the site while having an appropriate relationship to the immediate surrounding area. Such a height is also considered consistent with what may be reasonably expected under the Concept Approval height controls.



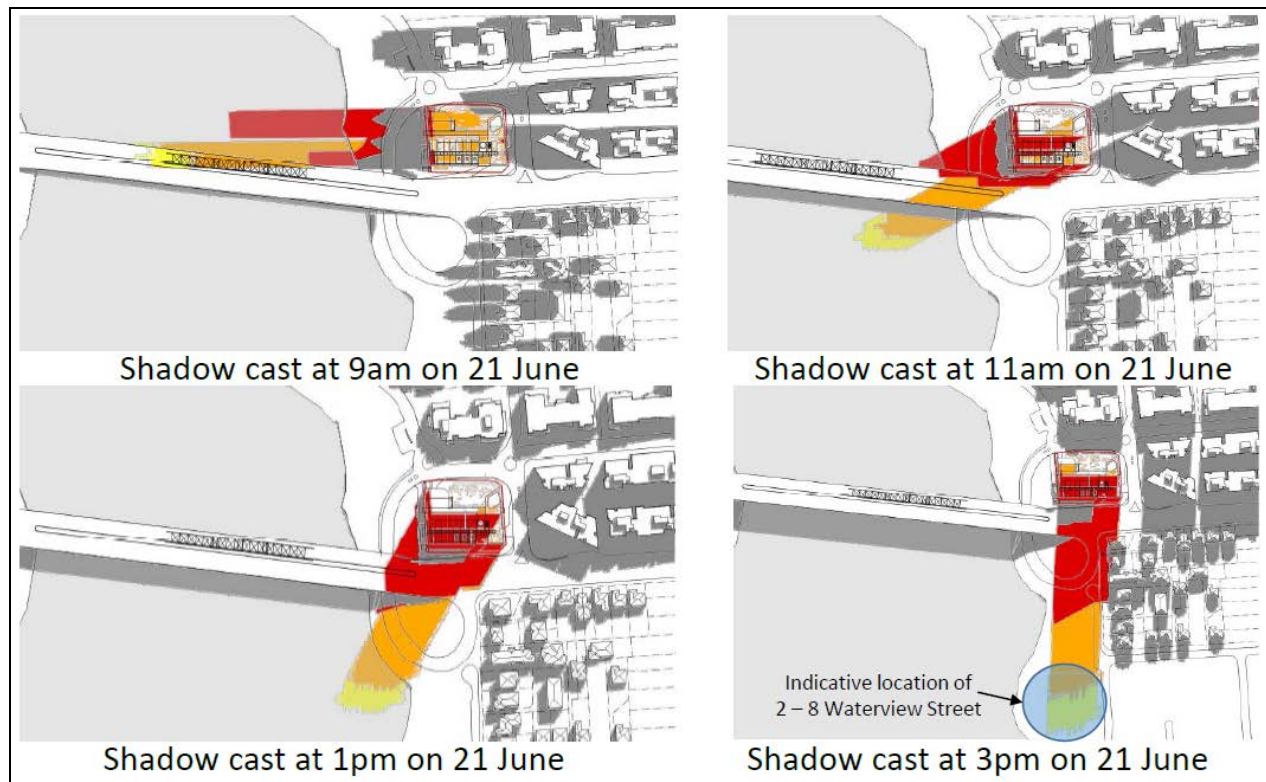


**Figure 16: Building envelope massing, indicating 10-, 15- and 24-storey heights (Base source: proponent's application)**

The Department therefore recommends a modification requiring the Stage A building envelope be reduced by nine storeys in height (from 24 to 15 storeys). The Department notes the competition winning scheme included beneficial urban design outcomes, including a public plaza and reconfigured building envelope layouts when compared to the original Concept Plan. Therefore, to ensure these benefits are not discouraged, design excellence is not stifled and the best overall outcome can be achieved, the Department recommends a maximum 15-storey height limit and provide the proponent with the opportunity to recast the scheme to achieve this height.

The Department notes that Council and public submissions have raised concerns about potential overshadowing impacts of the Stage A building envelope on properties on Waterview Street.

The proponent has provided an analysis of potential overshadowing impacts of the proposed Stage A building envelope on the surrounding area in mid-winter, being the worst case scenario. This compares the indicative overshadowing impacts of the approved 10 storey building (shown in red), the 19 storey design excellence building (shown in orange) and the proposed 24 storey building (shown in red) (**Figure 17**).



**Figure 17: Indicative overshadowing impacts of the Stage A building, with overshadowing from the approved building in red, design excellence building in orange and proposed building in yellow (Source: proponents response to exhibition of the PPR)**

The Department has carefully considered concerns raised in submissions and the proponent's shadow analysis, and is satisfied that any overshadowing impacts as a result of the proposal on surrounding properties are reasonable for the following reasons:

- the shadow cast between 9am and about 2pm in midwinter will fall to the south of the Stage A site, onto the river, bridge, foreshore and road network and not residential properties;
- the proponent contends that any shadowing impacts on the fauna and flora of the river and river bank will be minimal;
- small portions of two properties to the north of Waterview Street will be overshadowed by the approved building envelope from about 2pm onwards, so the proposal will not result in additional overshadowing impacts to these properties; and
- properties at 2 – 8 Waterview Street will be overshadowed by the upper levels of the proposal (including the upper levels of the design excellence scheme and proposed additional five storeys) from about 2pm onwards, however these properties will continue to receive direct solar access between 9am and about 2pm in mid-winter.

Noting the above, the Department considers that the predicted overshadowing impacts would be lessened by the reduction in the height of the building envelope to 15 storeys, and likely overshadowing impacts on 2 – 8 Waterview Street would be removed entirely.

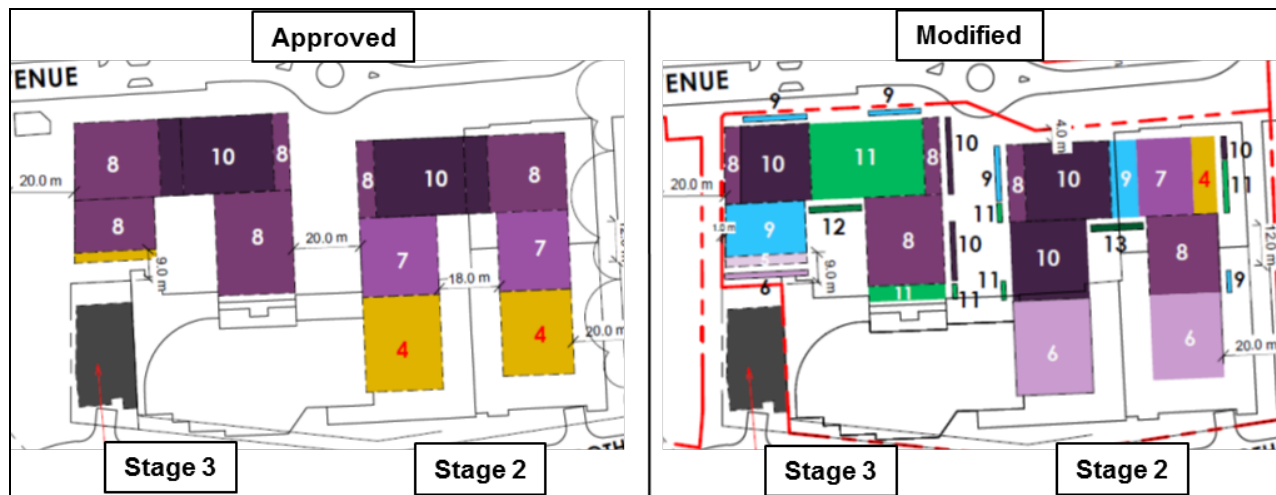
The Department notes the recommended significant reduction in height, and accordingly GFA, makes the proponents offer to make contributions via a VPA redundant. The Department's assessment of the original Concept Plan did not recommend the 15-storey Stage A building be required to make additional contributions above what would be expected under Council's Section 94 requirements. The Department maintains this view.

### 5.1.2 Additional storeys within Stages 2 and 3

The Concept Approval requires future development applications to comply with the approved building storey height plan. To ensure appropriate activation and avoid large expanses of blank

walls on steeply sloping parts of the site, FEAR 3A includes an exception allowing an increase of one storey for buildings within Stages 2 and 3 in steep locations and only at ground level (i.e. no increase in overall building RL height).

The modification seeks approval for varied increases in the number of storeys contained within the approved building envelopes of Stages 2 and 3 (i.e. no increase in overall building envelope height) and deletion of FEAR 3A. A comparison between the approved and proposed storey height plan is provided at **Figure 18**.



**Figure 18: Approved (left) and proposed (right) Stage 2 and 3 building envelope storey height plan (Base source: proponent's application)**

The proponent states that storey heights have been amended in response to the confirmation of precise storey heights in relation to steeply sloping land, rationalisation of void spaces, re-grading of internal courtyard levels and the removal of the community centre from Stage 3 and asserts the additional storeys are acceptable and FEAR 3A can be deleted, as:

- the additional storeys are contained within the approved maximum building envelope height (**Figure 19**);
- the additional storeys would not have any additional environmental or amenity impacts; and
- a revised building heights plan has been provided that stipulates the exact storey heights of the buildings at steeply sloping parts of the site.

The proponent has predicted that an additional 45 dwellings could be accommodated within Stage 2 and 3 (when compared to the approved development applications).

Council raised concern that dwellings located below ground level may be afforded a poor standard of residential amenity.

The Department notes the additional storeys are contained wholly within the overall building envelope height and will be subject to careful consideration against the Concept Approval, including SEPP 65, in order to achieve an appropriate standard of residential amenity. Therefore the Department considers Council's consideration of the requirements of the Concept Approval, as part of any future development or Section 96 application, will ensure the resulting development has acceptable amenity and impacts.

The Department agrees, as the revised storey height plan takes account of elevations at steeply sloping locations, the exception within FEAR 3A allowing for an additional storey is no longer necessary and can be deleted. However, the Department considers it important that future developments continue to be required to comply with the approved storey height plan and therefore this part of the FEAR is retained.

The potential density and traffic impacts of the 45 additional predicted dwellings is discussed within **Sections 5.2 and 5.3**.

### 5.1.3 Increase in the height of Stage 2 by 300mm

The modification proposes a localised increase the height of part of the western arm of Stage 2 by 300mm (from RL 41.90 to RL 42.20) as shown at **Figure 19**.

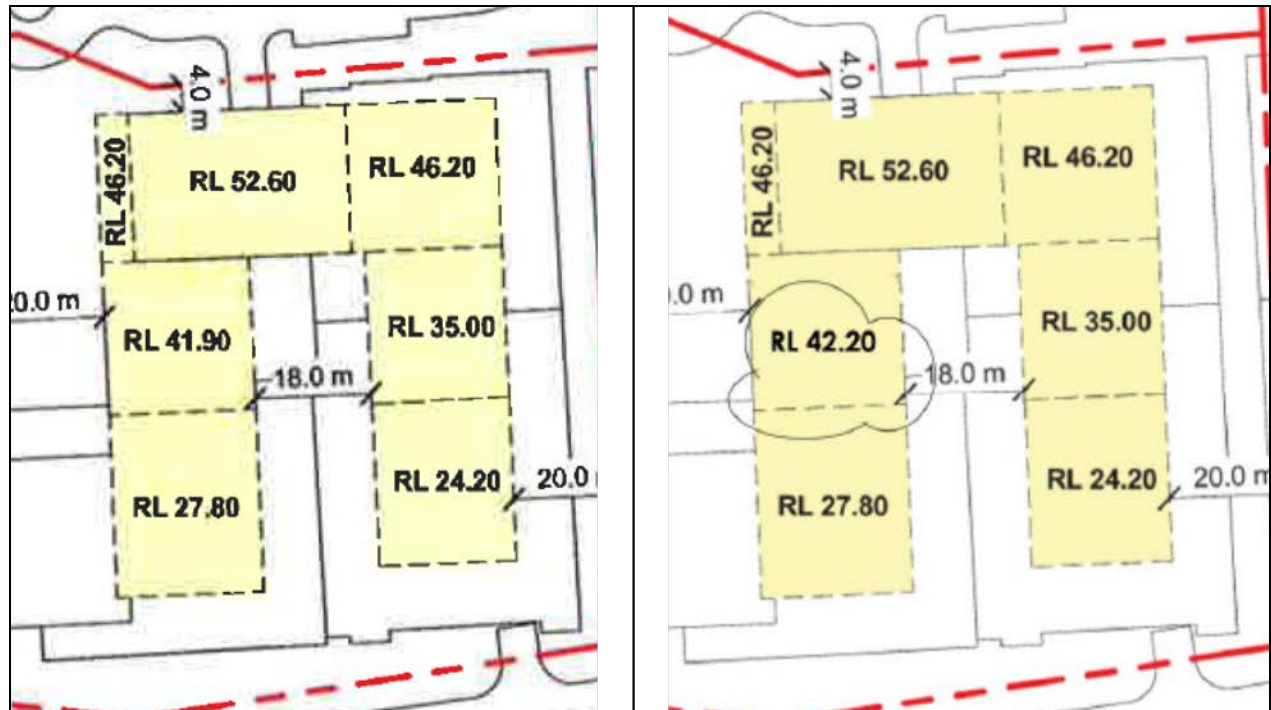


Figure 19: Approved (left) and proposed (right) Stage 2 building envelope height (Source: proponent's application)

The proponent has stated this increase is to facilitate the provision of appropriate floor to ceiling heights in this part of the building.

The Department considers the proposed increase is minor in nature, unlikely to have adverse amenity or environmental impacts and is therefore acceptable.

## 5.2 Density / Dwelling Numbers

Density was a key issue in the Department's assessment of the original Concept Approval. The concept plan (indicatively) anticipated that up to 2,005 dwellings and a GFA of 203,500 m<sup>2</sup> could be accommodated within the proposed building envelopes. The Department's assessment considered the appropriateness of the density taking into account:

- built form and amenity impacts;
- traffic impacts; and
- provision of open space, public domain works and community facilities.

As part of its consideration of Modification 1, the Commission sought to ensure future developments did not result in unacceptable impacts and imposed a site-wide dwelling cap (maximum 2,005 dwellings, to reflect the original assessment).

As discussed at **Section 1.2.3** and shown at **Table 2**, since the determination of the Concept Approval a total of 1,943 dwellings have been approved as part of detailed planning applications and therefore 62 dwellings remaining before the dwelling cap of 2,005 is reached.



The proponent is now seeking a relaxation of the existing dwelling cap by excluding the dwelling yield in Stage A from the site-wide dwelling cap and retaining the cap for the remainder of Stages 1 – 9. This aspect of the proposal and the potential to accommodate additional dwellings in Stages 2 and 3 will have a bearing on the overall dwelling yield and are discussed in turn below.

The Department notes the indicative development for Stage A comprises 189 dwellings, and the amendment to building envelopes (as discussed in **Section 5.2.1**) may result in an increase of 45 dwellings within Stages 2 and 3. This being the case, the modified proposal would provide a total of 2,177 dwellings, which exceeds the number of dwellings under the site-wide dwelling cap by 172 dwellings.

### 5.2.1 Stages 2 and 3

The amendment to building envelopes in Stage 2 and 3 are predicted to provide an additional 45 dwellings, these dwellings would be provided entirely within the existing building envelopes.

The proponent has confirmed these additional dwellings are provided through improved building and layout efficiencies including:

- 17 dwellings provided in the location vacated by the relocation/removal of the Community Centre in Stage 3; and
- 28 dwellings within void spaces at ground floor levels, stepping and reconfiguration of courtyards.

Concern was raised in public submissions about the increase in dwelling densities within the site. Conversely, Council raised no objection to the additional 45 dwellings within Stages 2 and 3.

The Department considers the potential increase of 45 dwellings is acceptable as:

- they will be wholly contained within the approved building envelope and therefore would not have any additional amenity impacts in terms of overlooking, overshadowing or loss of views;
- the modification does not propose to delete or amend FEAR 21, which requires future developments to demonstrate compliance with the provisions of SEPP 65 and achieve residential amenity;
- the additional dwellings will not have unacceptable traffic impacts, as discussed at **Section 5.3**;
- the acceptability of these additional dwellings will be assessed by Council in detail as part of future development application(s); and
- additional contributions will be made in accordance with Council's Section 94 requirements.

### 5.2.2 Exclusion of Stage A from the dwelling cap

The modification seeks to amend FEAR 1A to exclude Stage A from the site-wide dwelling cap and retain the cap for the remainder of Stages 1 – 9.

Council opposes the removal of Stage A from the dwelling cap and has stated:

- the removal will result in an increase in density;
- no more than 90 dwellings should be permitted within Stage A (total site-wide cap of 2,140); and
- any increase should be subject to proportional increase in contributions.

Concerns were also raised in public submissions regarding the density of the proposal and the subsequent traffic and amenity impacts.

The proponent argues a dwelling cap is an inappropriate tool for controlling the density of development. In addition, Council approved developments within Stages 1 – 9 knowing that only a small number of dwellings remained (62 dwellings) for the Stage A building. The proponent contends that in these circumstances exceeding the dwelling cap was inevitable.

The Department acknowledges the concerns raised in public submissions in relation to increased density and that this has been managed by a pre-existing imposition of a specific dwelling cap in the Concept Approval. The Department agrees with Council that the integrity of the Concept Approval also relies upon the inclusion of a cohesive set of site-wide parameters and controls, rather than carving out stand-alone aspects of the development. Therefore it recommends that Stage A should not be excluded from the site-wide dwelling cap

### 5.2.3 Conclusion

The Department notes the concerns raised in public submissions in relation to increased density and agrees that Stage A should be retained within the site-wide dwelling cap. However it also considers that a dwelling cap needs to reasonably fit with the building envelopes that can be developed under the Concept Approval.

As discussed at **Section 5.1**, the Department recommends Stage A should be reduced in height to be no taller than 15 storeys and accordingly accepts Council's view that Stage A should accommodate no more than 90 dwellings. The Department's assessment has also established that an additional 45 dwellings can be provided within Stages 2 and 3. On this basis, the Department accepts that Council's revised figure of 2,140 dwellings is appropriate as a site-wide dwelling cap.

Consistent with Council's view, the Department recommends that FEAR 1A and Term of Approval A5 be amended to provide a site-wide cap of 2,140 dwellings.

## 5.3 Traffic and Car Parking

### 5.3.1 Car parking

Car parking provision was a key consideration in the Department's assessment of the Concept Approval. The Department acknowledges on-site car parking supply is fundamental to traffic generation within the site and surrounding local roads.

The Department engaged ARUP to undertake an independent assessment of traffic impacts to inform its assessment of the original application. The Department considered the impact of 2,976 (indicative) car parking spaces and concluded the proposal would have acceptable traffic impacts. The Commission agreed with the Department and required car parking rates should be in accordance with Council's DCP.

The Concept Approval requires the following road network improvements be undertaken to mitigate the impacts on the local road network:

- Nancarrow Avenue extension;
- Nancarrow Avenue Area Local Area Traffic Management (LATM) measures and all road reserve upgrades including associated pedestrian footpaths and cycleways;
- signalisation of Belmore/Constitution Street intersection and Railway Road pedestrian crossing (when studies indicate this is necessary);
- implementation of left-in/left-out arrangement at Belmore Street/Hamilton Crescent intersection;
- installation of a temporary east/west pedestrian link between the foreshore link and Nancarrow Avenue;
- Underdale Lane LATM measures;
- installation of a pedestrian crossing facility at Bowden Street / Nancarrow Avenue;
- installation of roundabout at Belmore Street / Rothesay Avenue; and
- left-in/left-out arrangement at Belmore Street/Yerong Street intersection.

As part of its assessment of Modification 1 (MP09\_0216 MOD1), and to ensure road upgrade works and traffic management measures remain effective, the Department concluded it was

appropriate to cap the total number of site-wide car parking spaces to 2,976 spaces (the total number originally assessed for the Concept Approval site). The Commission agreed with the Department and the Concept Approval was updated accordingly.

As discussed at **Section 1.2.3** and shown at **Table 2**, since the determination of the Concept Approval a total of 2,615 car parking spaces have been approved in Stages 1 - 9 and therefore there are 361 spaces remaining for all stages (including Stage A) before the car parking cap (2,976) is reached.

#### *Exclusion of Stage A from the car parking cap*

The modification seeks to amend FEAR 23 to exclude Stage A from the site-wide car parking cap and retain the cap for the remainder of Stages 1 – 9.

The proponent asserts the car parking cap should not apply to Stage A as it is an isolated site and traffic impacts are removed from the core development area.

Concerns were raised in public submissions that the removal of Stage A from the car parking cap would result in adverse traffic impacts. Council opposes the removal of Stage A from the site-wide car parking cap stating the commercial floorspace is less than the Concept Approval maximum 10,000 m<sup>2</sup>, the area is well served by public transport and the proposal is likely to exceed Council's development controls for parking.

The Department notes the indicative development for Stage A includes 416 car parking spaces. The Department also notes, after incorporating the additional car parking spaces for Stages 2 and 3 (33) into the remaining spaces allowed under the cap (361), there are 328 car parking spaces remaining for Stage A. Therefore, the indicative proposal for Stage A would exceed the site-wide car parking cap by 88 spaces.

As discussed at **Section 5.1**, the Department recommends Stage A should be reduced in height to be no taller than 15 storeys. Applying this reduction to the indicative Stage A scheme results in a reduction of approximately 76 car parking spaces (resulting in 340 spaces being available for Stage A). In this scenario, stage A would exceed the car parking cap by only 12 spaces, which represents a negligible exceedance of the total number of car parking spaces (2,976) originally assessed by the Department for the Concept Approval.

Noting concerns raised in public submissions, the Department considers it appropriate to retain Stage A within the site-wide car parking cap for the reasons that:

- the required reduction in height of Stage A will result in the number of car parking spaces being consistent with the site-wide parking cap; and
- the Department considers that the site-wide parking cap is a key determinant of traffic generation and provides more certainty for the analysis of impacts in this regard.

#### *Stages 2 and 3*

As discussed in **Section 5.2.2**, the modification predicts the inclusion of an additional 45 dwellings within Stages 2 and 3, which are considered acceptable. Based on the size of the indicative apartments and applying the approved car parking rates, these additional apartments will increase the total number of car parking spaces in Stage 2 and 3 by 33 spaces (from 607 to 640), to a total of 2,648.

The Transport Impact Assessment (TIA) submitted with the application has predicted the additional dwellings would result in the generation of an additional 13 vehicles per hour (vph) when compared to the Concept Approval and surrounding intersections continue to operate satisfactorily.

The Department considers the predicted additional traffic generation resulting from the 45 apartments (13 vph) is minor in nature and is unlikely to have a noticeable impact on surrounding streets.

### Conclusion

The Department has considered the concerns raised in public submissions regarding traffic impacts and in this regard recommends that the site-wide car parking cap of 2,976 spaces should be retained.

### 5.3.2 Traffic generation

The *RMS Guide to Traffic Generating Development 2001* provides guidance on traffic generation and parking impacts of new developments. In August 2013, the RMS published updated traffic generation rates for high density residential developments. The revised rates are based on surveys undertaken in 2010 across the Sydney Metropolitan area (and regional NSW) and indicate a reduction in traffic generation over the past 10 years.

The Department notes the Concept Approval was assessed against the 2001 guide, whereas the modification applies the 2013 guide. A summary of the approved and proposed traffic generation for the site is provided at **Table 6**.

**Table 6: Comparison between the Concept Approval and modified traffic generation**

Concept Approval Predicted Traffic Generation	Modification Predicted Traffic Generation	Comparison between approved and proposed traffic generation
1,277 vph (2,976 car parking spaces)	1,157 vph (3,064 car parking spaces)	- 120 vph (- 9%)

Council updated its own traffic modelling for the site, which indicates there would be an increase in traffic movements as a result of Stage A (approximately 200 vph). However, the Department notes Council did not apply the RMS' 2013 updated traffic generation rates. In addition, Council, TfNSW and RMS provided a range of recommendations based on a detailed design of the indicative Stage A building to address traffic impacts on immediate surrounding streets. The Department considers these particular points would be more appropriately addressed as part of future development application once the Stage A building envelope has been resolved as part of the Concept Approval.

RMS recommended the signalisation of the Bowden Street / Constitution Road intersection prior to occupation of Stage 3 and the Railway Road pedestrian crossing prior to the occupation of Stage 6/7.

The Department notes that the Concept Approval requires the applicant to undertake a study (subject to the satisfaction of RMS and Council), at each future development application stage, to analyse whether signalisation of the Bowden/Constitution Road intersection and the Railway Road pedestrian crossing is required, and requires implementation if found to be necessary. The Department considers that the two stage approach of this FEAR, which requires a study prior to implementation, remains appropriate as:

- ARUP's independent assessment of this matter, as part of the original application, concluded that signalisation need only occur when it is proven necessary by future studies;
- RMS has not provided evidence/justification which confirms that there has been a material change in circumstances that triggers the need for the signalisation of the intersection / pedestrian crossing and supersedes the requirement to test this by future study(s); and
- as future development applications are required to include detailed traffic studies confirming whether signalisation is warranted, Council will be able to secure signalisation by condition if signalisation is found to be necessary.

The Department recommends the FEAR be amended to also require a study be undertaken (to analyse whether signalisation of the Bowden/Constitution Road intersection and the Railway



Road pedestrian crossing is required) as part of any future section 96 application that may be submitted to Council relating to the inclusion of additional dwellings within Stage 2 and 3, arising from this modification application.

The Department notes the overall predicted traffic generated by the Concept Plan will be less than that originally predicted (noting RMS' more recently revised traffic generation rates). Additionally, traffic generation will be further reduced as a result of the reduction of the height of Stage A, as discussed at **Section 5.1**, and the corresponding expected reduction in car parking provision, discussed at **Section 5.3**.

The Department therefore considers, subject to the reduction in the height of Stage A, the proposed traffic generation impacts are acceptable.

#### **5.4 Relocation / Removal of the Community Facility**

The Concept Approval requires the provision of a 1,000 m<sup>2</sup> community centre, at no cost to Council, within Stage 2 or 3 of the development.

On 20 October 2015, Council approved a development application DA2015/0018 for Stages 2 and 3, which includes the provision of a 1,000 m<sup>2</sup> community centre within Stage 3. This community centre would be provided as a shell, to be fitted out by Council at a later date.

As exhibited, the modification application sought to reduce the size of the community centre from 1,000 m<sup>2</sup> to 500 m<sup>2</sup>, relocate the community centre from Stage 3 to Stage 9 and enlarge the dimensions of Stage 9 building envelope to accommodate the relocated community centre.

The Department notes the reduction in the size of the community centre is the result of negotiations between Council and the proponent. In addition, the reduced (500 m<sup>2</sup>) community centre would be provided to Council already fitted out, at no cost to Council.

Concerns were raised by the Department, Council and in public submissions about the enlargement of the width and height of the Stage 9 building envelope and the resulting visual impacts, amenity impacts and impact on the existing subterranean oil pipeline. Concerns were also raised in public submissions about the reduction in the size of the community centre by 500 m<sup>2</sup>.

In response to concerns raised, the proponent amended the proposal and no longer seeks to relocate the community centre nor amend the Stage 9 building envelope. The proponent now proposes to provide \$3.5 million in lieu of the provision of a community centre on the site, to be paid prior to the occupation of Stage A.

Council has confirmed its preference is for the community centre to be either relocated to Stage A or alternatively the payment of \$3.5 million be made to Council in lieu of providing a community centre within the development. Council raised no objection to the reduction in the size of the community centre from 1,000 m<sup>2</sup> to 500 m<sup>2</sup>.

The Department considers the reduction in size and relocation of the community centre to Stage A, or provision of payment in lieu of provision of the community centre, are both acceptable options, as:

- the reduction of the size of the community centre is supported by Council as a result of negotiations between Council and the proponent and reflects Council's wishes for the provision of a smaller centre that would be ready to occupy (i.e. includes the fit out of the space);
- FEAR 18 of the original Concept Plan (i.e. prior to the approval of MP09\_0216 MOD1) required the provision of a community centre within Stage A. The Department maintains its view that the provision of a community centre within Stage A is an acceptable location; and

- Council is satisfied that \$3.5 million is a sufficient contribution in lieu of providing a community centre within the development.

Consistent with Council's aspirations, the Department recommends that FEAR 18 be updated to allow for two options:

- the provision of a community centre within Stage A; or
- the payment of \$3.5 million in lieu of the provision of the community centre within the development.

The Department notes the proponent has offered to enter into a VPA with Council to provide the \$3.5 million in lieu of the provision of the community centre. The Department recommends FEAR 18 also be updated requiring the proponent to enter into the VPA, should the payment in lieu option be pursued.

## 5.5 Consideration of key issues raised in public submissions

**Table 7** presents the key issues raised in the public submissions (as summarised in **Table 4**), and how the Department has considered each issue.

**Table 7: Consideration of key issues raised in public submissions**

Concerns raised	Department comments
Traffic and car parking impacts	<ul style="list-style-type: none"> <li>• The modification predicts the overall site-wide traffic generation will be less than originally predicted by the approved Concept Plan. This is supported by updated traffic surveys that indicate a reduction in traffic generation over the past 10 years.</li> <li>• Traffic generation will be further reduced as a result of the Department's recommendation to reduce the height (and number of apartments) of Stage A.</li> <li>• The Department has recommended a slight increase (33 spaces) in the site wide parking cap (from 2,615 spaces to 2,648 spaces) to take into account additional dwellings following a re-configuration of apartments proposed in Stage 1 – 9 (<b>Section 5.3.1</b>).</li> </ul>
Height of Stage A	<ul style="list-style-type: none"> <li>• The Department agrees with submissions that the proposed 24 storey height would be inappropriate as it: <ul style="list-style-type: none"> <li>○ is visually bulky, particularly when viewed from the east and west; and</li> <li>○ will result in an estranged scale and height relationship with nearby and adjoining developments.</li> </ul> </li> <li>• The Department has recommended a reduction in height of Stage A from 24 to 15 storeys (<b>Section 5.1.1</b>).</li> </ul>
Increase in density	<ul style="list-style-type: none"> <li>• The Department notes the concerns in relation to increased density and recommends a reduction in height of Stage A to be no taller than 15 storeys (<b>Section 5.1.1</b>).</li> <li>• This smaller building envelope provides lower densities on this site and also provides a framework for Council to consider apartment numbers in future detailed applications for the development of Stage A.</li> <li>• The Department considers a revised site-wide dwelling cap consistent with Council's recommendations is appropriate (<b>Section 5.2</b>).</li> </ul>
The Commission's original decision should be final	<ul style="list-style-type: none"> <li>• The Department has assessed the proposed modification on its merits, having regard to the impacts of the proposal and issues raised in submissions.</li> <li>• The assessment supports a reduction in height of Stage A from 24 to 15 storeys.</li> </ul>

Exclusion of Stage A from housing and car parking caps	<ul style="list-style-type: none"> <li>The Department accepts concerns about exclusions from dwelling and parking caps for Stage A, and it considers that: <ul style="list-style-type: none"> <li>the reduction in height of Stage A will result in the number of car parking spaces being consistent with the site-wide parking cap. Therefore, Stage A should not be removed from the site-wide parking cap; and</li> <li>Stage A should not be removed from the site-wide dwelling cap.</li> </ul> </li> <li>Accordingly, the Department has recommended that Stage A remain as part of both the site-wide parking cap (<b>Section 5.3.1</b>) and the site-wide dwelling cap that has been revised consistent with Council's recommendations.</li> </ul>
Reduction in community centre size and delay in delivery	<ul style="list-style-type: none"> <li>A reduction in size of the community centre is supported by Council as a result of negotiations between Council and the proponent.</li> <li>Council supports the smaller centre as it will now be provided with additional fit-out works, however Council has requested that the Community Centre be provided in Stage A or requires a financial contribution of \$3.5m in lieu of the centre.</li> <li>The Department recommends a condition that is consistent with Council's expectations that the smaller centre be: <ul style="list-style-type: none"> <li>relocated to Stage A; or</li> <li>a financial contribution of \$3.5m be paid to Council in lieu of the centre (<b>Section 5.4</b>).</li> </ul> </li> </ul>

## 5.6 Other Matters

### 5.6.1 Affordable housing

The proponent and Council have agreed on the extent of affordable housing provision for Stages 2 and 3 (letter titled 'Section 96 Application for Stage 2/3, signed by Gavin Carrier and dated 9 December 2015).

In summary, the proponent will dedicate to Council (as key worker housing) 8% of any increase in apartment numbers resulting from this modification application, for which consent is eventually granted. The affordable housing calculation excludes 17 dwellings that will be located in place of the relocated community centre as these dwellings are the subject of a separate Deed of Agreement between the proponent and the Council.

The Department recommends a new FEAR (FEAR 18A) to secure the affordable housing provision for Stages 2 and 3 as agreed.

### 5.6.2 Reduction in public open space

The originally proposed enlargement of the Stage 9 building envelope resulted in a reduction of 396 m<sup>2</sup> public open space (from 15,300 m<sup>2</sup> to 14,904 m<sup>2</sup>).

The Department notes as the modification no longer proposes to enlarge the Stage 9 building envelope there should no longer be a reduction of public open space. The Department therefore recommends the proponent's modified Open Space Area Plan, which indicates a reduction in open space, should not form part of the modified Concept Plans for approval and the approved Open Space Area Plan be retained.

## 6. CONCLUSION

The Department has assessed the merits of the proposal taking into consideration the issues raised in all submissions and is satisfied the impacts have been satisfactorily addressed within the proposal and the recommended conditions.

The Department does not support the proposed increase in building envelope height by 14 storeys (from 10 to 24 storeys). The Department considers the increase will result in a scale and

height of development that is incongruous, isolated and would visually dominate the skyline. The Department recommends that a maximum 15-storey height should apply to the Stage A site.

The additional storeys contained within the overall building envelope height of Stages 2 and 3 will be controlled by the building envelope and Concept Approval parameters and will have acceptable amenity and impacts. The increase in building height of part of Stage 2 by 300 mm is considered minor in nature and acceptable.

Noting the above points, the Department also considers that a dwelling cap needs to reasonably fit with the building envelopes that can be reasonably developed under the Concept Approval. On this basis, the Department accepts that Council's revised figure of 2,140 dwellings is appropriate as a revised site-wide dwelling cap.

The Department supports the retention of Stage A within the site-wide car parking and dwelling caps noting that the integrity of the Concept Approval also relies upon the inclusion of a cohesive set of site-wide parameters and controls, rather than carving out stand-alone aspects of the development.

The Department supports the relocation of the community facility to Stage A, or alternatively the payment of \$3.5 million to Council (through a VPA) in lieu of providing an on-site community facility in Stage A, should on-site provision be found to be an unviable option.

Overall, and subject to the amendments recommended by conditions, the Department is satisfied the modification to the Concept Approval is acceptable and will maintain a satisfactory level of amenity to neighbouring properties and will not have a negative visual impact. The Department therefore recommends the application for approval.

## 7. RECOMMENDATION

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It is recommended that the Commission, as delegate of the Minister for Planning:

- a) **consider** the recommendations of this report;
- b) **approve** the modification application (MP09\_0216 MOD2) under section 75W of the EP&A Act, having considered all relevant matters in accordance with (a) above; and
- c) **sign** the attached Instrument of Modification at **Appendix B**

Ben Lusher  
**Director**  
**Key Sites Assessments**

Prepared by Matthew Rosel  
Consultant Planner  
Key Sites Assessments

Endorsed by

Anthea Sargeant 11/11/16  
**Executive Director**  
**Key Sites and Industry Assessments**



## **APPENDIX A      RELEVANT SUPPORTING INFORMATION**

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Infrastructure's website as follows:

1. Modification Application

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7454](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7454)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7454](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7454)

3. Proponent's Preferred Project Report and Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7454](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7454)

## **APPENDIX B    RECOMMENDED MODIFYING INSTRUMENT**

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