



New South Wales Government
Independent Planning Commission

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242-244 Beecroft Road, Epping

SSD 8784 MOD 1 and SSD 31576972

Statement of Reasons for Decision

Chris Wilson (Chair)
Wendy Lewin
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19 September 2023

Executive Summary

Beecroft Property Developments Pty Ltd (the Applicant) has sought consent for a mixed-use development at 242-244 Beecroft Road, Epping, comprising 374 apartments with 5% affordable housing and 923 square metres of commercial floor space. The Project includes a modification to the existing Concept Approval, and a State significant development application for the design and construction of the development. The project represents an investment of over \$143 million and would generate approximately 265 construction jobs and support 15 operational jobs.

The NSW Independent Planning Commission is the consent authority for the Project because an objection was received from the City of Parramatta Council.

Commissioners Chris Wilson (Chair), Wendy Lewin and Elizabeth Taylor AO were appointed to constitute the Commission Panel in making the final decision. The Commission undertook a site inspection and met with the Department of Planning and Environment and the Applicant. The City of Parramatta Council was offered the opportunity to meet with the Commission to discuss the Council's views on the Project. The Council instead provided the Commission with a written submission.

Key issues which are the subject of findings in this Statement of Reasons for Decision relate to land use, built form, residential amenity, the public domain and landscaping, traffic and transport, design excellence and affordable housing. After careful consideration, the Commission has determined that consent should be granted to both the modification of the Concept Approval, and the State significant development application, subject to conditions.

The Commission requested that the Applicant consider increasing the period that the affordable housing must be provided, from 10 years to 15 years, in line with current statutory requirements. The Applicant advised that they had no objection to the 19 affordable housing apartments being managed by a Community Housing Provider for 15 years. The Commission finds that the provision of affordable housing for a period of 15 years is in the public interest and has therefore imposed conditions to give effect to this commitment.

The Commission finds that the Project is consistent with the existing strategic planning framework as it will deliver additional housing with excellent access to public transport connections, employment centres, services, and amenity. The Commission finds that the Project is in accordance with the Objects of the EP&A Act and is in the public interest.

The Commission's reasons for approval of the Project are set out in this Statement of Reasons for Decision.

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Defined Terms

ABBREVIATION	DEFINITION
ADG	Apartment Design Guide
Applicant	Beecroft Property Developments Pty Ltd
Application	SSD Application for mixed-use development at 242-244 Beecroft Road, Epping (SSD-31576972)
AR para	Paragraph of the Department's Assessment Report
Commission	NSW Independent Planning Commission
Concept Approval	Concept Approval SSD-8784 for 242-244 Beecroft Road, Epping
Council	City of Parramatta Council
Department	Department of Planning and Environment
Department's AR	Department's Assessment Report, dated August 2023
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FSR	Floor space ratio
GANSW	Government Architect NSW
GFA	Gross Floor Area
GTP	Green Travel Plan
HLEP 2013	<i>Hornsby Local Environmental Plan 2013</i>
LGA	Local Government Area
m²	Square metres
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in section 3.1
Modification	Modification of Concept Approval SSD-8784 for 242-244 Beecroft Road, Epping (SSD-8784-MOD-1)
Planning Systems SEPP	<i>State Environmental Planning Policy (Planning Systems) 2021</i>
Project	Mixed-use development at 242-244 Beecroft Road, Epping, comprising of SSD-8784-MOD-1 (Modification) and SSD-31576972 (Application)
RtS	Response to Submissions
SDRP	State Design Review Panel
Site	242-244 Beecroft Road, Epping
SSD	State significant development
TfNSW	Transport for NSW

1. Introduction

1. On 18 August 2023, the NSW Department of Planning and Environment (**Department**) referred both the State significant concept modification SSD-8784-MOD-1 and detailed design State significant development (**SSD**) application SSD-31576972 made by Beecroft Property Developments Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Applicant seeks approval under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) for a mixed-use development at 242-244 Beecroft Road, Epping (**Project**), comprising 374 apartments with 5% affordable housing and 923 square metres (**m²**) of commercial floor space. The site is within the Parramatta Local Government Area (**LGA**).
3. The Modification and Application constitute SSD under section 4.36 of the EP&A Act and under clause 19(2) in Schedule 1 of *State Environmental Planning Policy (Planning Systems) 2021* (**Planning Systems SEPP**) because it is development with a capital investment value in excess of \$30 million (\$143 million) for the purpose of commercial premises and residential accommodation associated with railway infrastructure.
4. The Commission is the consent authority in respect of the Application under section 4.5(a) of the EP&A Act and clause 2.7(1) of the Planning Systems SEPP because the Department received an objection from the City of Parramatta Council (**Council**). The Commission is the delegate of the Minister for Planning and Public Spaces in respect of the determination of the Modification as set out in paragraph 31 of the Department's Assessment Report (**AR**) dated August 2023.
5. Professor Mary O'Kane AC, Chair of the Commission, nominated Commissioners Chris Wilson (Chair), Wendy Lewin and Elizabeth Taylor AO to constitute the Commission Panel determining this Application.

2. The Application

2.1 Site and locality

6. The site is located at 242-244 Beecroft Road, Epping (Lots 220 and 222, DP 1251471) (**Site**). According to paragraph 8 of the Department's Assessment Report (**AR para**), the Site is approximately 300 metres north of Epping railway station and has an area of 10,120m². The Site is currently vacant with all previous structures having been demolished. The Site's topography falls 8.2 metres from east to west, with a slope of approximately 7%.
7. The Site was formerly used as a tunnelling site for Sydney Metro North West and the construction of a rail operations facility known as the Epping Services Facility. The Epping Services Facility now adjoins the northern boundary of the Site. The facility provides fresh air and power supply to the rail line and is used by rail maintenance staff with access from Beecroft Road. The Sydney Metro North West tunnel runs below the facility and the north-east corner of the site (**AR para 9**).
8. The surrounding development predominantly comprises residential flat buildings of varying building density and scale, with building heights between four and 22 storeys (**AR para 10**). The Site's location and local context is illustrated in **Figure 1** below.

Figure 1 – Local Context Map (Source: Department's AR Figure 2)



2.2 Background

9. On 20 July 2020, the then Minister for Planning approved a Concept development application (SSD-8784) for the Site (**Concept Approval**). This approval granted in-principle consent for a mixed-use development including:
- Five separate building envelopes ranging from five to 15 storeys;
 - maximum gross floor area of 38,700m², comprising maximum residential gross floor area of 37,700m² and non-residential gross floor area between 750m² and 1,000m²;

- the use of the land for non-residential and residential floor space, which may include office premises, business premises, food and drink premises, shops, and medical centres;
- a minimum of 5% residential gross floor area as affordable housing dwellings; and
- basement car parking, motorcycle parking, bicycle parking and service vehicle spaces (AR para 16).

2.3 The Project

10. The Applicant is seeking approval to modify the State significant Concept Approval (**Modification**) for the redevelopment of the Site. The Applicant is also seeking consent for the design and construction of the development (**Application**). The key components of the Project are set out in **Table 1** below, as identified in AR paras 18 and 19.
11. The detailed components and features of the Modification and Application (as amended by the Applicant's Response to Submissions (**RtS**) dated May 2023) are summarised in Table 1 of the Department's AR.

Table 1 – Key components of the Project

Concept Modification	SSD
<ul style="list-style-type: none"> • adjust the approved building envelopes, including changing building alignments by 10-15 degrees • increase maximum building heights between 0.63m and 3.83m above the Concept Approval maximum building height due to higher localised ground levels and higher floor-to-ceiling heights per level • relocate the basement car park access further south along Ray Road • rearrange private open space on site 	<ul style="list-style-type: none"> • 374 apartments, including 19 affordable apartments, in five buildings with a scale between seven and 15 storeys • commercial spaces for retail and business premises • three levels of basement parking • communal open space at ground level, on podium rooftops and tower rooftops, including grassed areas, BBQs, a pool, and outdoor gym • the delivery of a public pedestrian/bicycle through site link between Beecroft Road and Ray Road • stratum subdivision of the development

3. The Commission's consideration

3.1 Material considered by the Commission

12. In this determination, the Commission has considered the following material (**Material**):
- the Concept Approval, dated 20 July 2020;
 - the Department's Concept Assessment Report (**Concept Assessment**), dated 20 July 2020.
 - the Applicant's Environmental Impact Statement (**EIS**), dated 15 August 2022 and its accompanying appendices;
 - all public submissions on the EIS (and RtS) made to the Department during public exhibition;
 - the Applicant's RtS, dated May 2023 and its accompanying appendices;

- all Government Agency advice to the Department;
- the Department's AR and recommended conditions of consent, dated August 2023
- the Department AR Addendum, dated 24 August 2023;
- the transcripts and presentation material at meetings with the Department and Applicant, as referenced in Table 3 below;
- the Applicant's response/submission to the Commission dated 8 September 2023;
- Council's submission to the Commission, dated 8 September 2023;
- all written comments received by the Commission up until 5pm, 8 September 2023; and
- the Department's comment on the feasibility and workability of proposed conditions, dated 15 September 2023.

3.2 Strategic context

13. The Department, at section 3 of its AR, states that the Project is consistent with the priorities of relevant strategic plans, including the Central City District Plan, Future Transport Strategy 2056, and Sydney Metro North West Corridor Strategy.
14. The Commission has considered the strategic planning policies and guidelines relevant to the Site and the Project. The Commission agrees with the Department's view that the Project is consistent with the strategic planning framework as it will deliver additional housing with excellent access to public transport connections, employment centres, services and amenity.
15. The Commission notes that the Project represents an investment of over \$143 million, and would include 374 apartments with 5% affordable housing, and generate approximately 265 construction jobs and support 15 operational jobs.

3.3 Statutory context

3.3.1 Permissibility

16. It is noted that the Site was formerly located within the Hornsby LGA, but the Site and its locality has since been subsumed into the Parramatta LGA. The *Hornsby Local Environmental Plan 2013 (HLEP 2013)* applies to the Site.
17. The Site is located within the R4 High Density Residential Zone under the HLEP 2013 and residential development and neighbourhood shops are permissible with consent.
18. According to the Department, commercial floorspace greater than 100m² is prohibited development in the R4 Zone. The Department acknowledged that there was likely to be increased demand for commercial floor space for the day-to-day needs of residents and opportunities for local employment (AR para 33) above and beyond the provision of neighbourhood shops. The Department was of the view that the delivery of substantial commercial floorspace was constrained given its location. On this basis and noting that SSD may include partly prohibited uses, the Concept approval included the ability to deliver between 750m² and 1000m² of commercial and retail floor space.
19. The Commission agrees with the Department and finds that the Project meets the objectives of the R4 High Density Residential Zone which is to provide for housing, and other land uses that meet the day-to-day needs of residents (AR para 34).

20. The Commission acknowledges that Parramatta Council undertook a harmonisation of its planning controls following boundary adjustments, which led to the making of the *Parramatta Local Environmental Plan 2023 (PLEP 2023)*. However, as stated by the Department (AR para 37), the savings and transitional provisions in clause 1.8A of the PLEP 2023 require the consent authority to determine the Application as if the PLEP 2023 had not commenced. Hence the HLEP 2013 remains the relevant Environmental Planning Instrument (**EPI**) for the Application. Other approvals
21. The Commission acknowledges that the proposed provision of 923m² of commercial floor space is consistent with the Concept Approval. It is noted that the creation of tenancies, fit out and operation of the proposed commercial floor space would be subject to further separate approvals (AR para 34).

3.3.2 Scope of modification

22. The Department states that it, “has reviewed the scope of the modification application and considers that the application can be characterised as development which would remain substantially the same development as originally approved” (AR para 45).
23. The Commission agrees with the Department and is satisfied that the Modification falls within the scope of section 4.55(2) of the EP&A Act and does not constitute a new development application (AR para 46).

3.4 Mandatory considerations

24. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the mandatory considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 2 – Mandatory Considerations

Mandatory Considerations	Commission’s Comments
Relevant EPIs	<p>Appendix E of the Department’s AR identifies relevant EPIs for consideration. The key EPIs (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Planning Systems) 2021;</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021;</i> • <i>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021;</i> and • <i>Hornsby Local Environmental Plan 2013.</i>

	The Commission agrees with the Department's assessment of EPIs set out in Appendix E of the AR. The Commission therefore adopts the Department's assessment in this regard.
Draft EPIs	<i>Draft State Environmental Planning Policy (Remediation of Land)</i> (considered by the Department at Appendix E of the AR)
Relevant Development Control Plans	Section 2.10 of the Planning Systems SEPP states that development control plans do not apply to SSD. The Commission does not consider any development control plans to be relevant to the determination of the Application.
Likely Impacts of the Development	The likely impacts of the development have been considered in section 5 of this Statement of Reasons.
Suitability of the Site for Development	<p>The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> • the proposed land uses are permissible; • the Project will provide for housing with excellent access to mass transit transport; • the Project meets the objectives of the R4 High Density Residential Zone; • the existing Site is disturbed and currently vacant and the Project is an orderly and economic use of the land ; and • impacts on surrounding land uses have been minimised where possible and are capable of being further mitigated through conditions of consent.
Objects of the EP&A Act	<p>In this determination, the Commission has carefully considered the Objects of the EP&A Act. The Commission is satisfied with the Department's assessment of the Application against the Objects of the EP&A Act provided at Appendix E of the AR, which finds that the Application is consistent with those objects.</p> <p>The Commission finds the Application has been assessed against relevant EPIs and, subject to the conditions imposed, is consistent with the objects of the EP&A Act.</p>
Ecologically Sustainable Development (ESD)	<p>The Applicant, in its response to the Commission, provided a summary of the Project's sustainability initiatives. The Commission notes that the Project exceeds the minimum requirements of both the National Construction Code and BASIX. The Commission has imposed condition B25 which requires the Application to achieve a minimum 5 Star Green Rating and target a 6 Star Green rating where reasonable and feasible. The Commission is of the view that targeting a 6 Star Green rating will encourage sustainability initiatives and would further improve the sustainability of the development. The Commission has also imposed condition F14 which requires the Applicant, within twelve months of commencement of operation, to provide evidence that Green Star certification has been obtained demonstrating the development, achieves a minimum 5 Star Green Star As-Built rating (and is targeting a 6 Star Green rating where reasonable and feasible).</p> <p>The Commission finds that the Project is consistent with ESD principles and would achieve an acceptable balance between environmental, economic, and social considerations.</p>

The Public Interest The Commission has considered whether the grant of consent to the Application is in the public interest. In doing so, the Commission has weighed the predicted benefits of the Application against its predicted negative impacts.

The Commission's consideration of the public interest has also been informed by consideration of the principles of ESD.

The Commission has given consideration to the principles of ESD in its assessment of each of the key issues, as set out in section 5 below. The Commission finds that, on balance, the Application is not inconsistent with ESD principles, and that the Project would achieve an appropriate balance between relevant environmental, economic and social considerations. The likely benefits of the Project warrant the conclusion that an appropriately conditioned approval is in the public interest.

3.5 Additional considerations

25. In determining the Application, the Commission has also considered the:
- Greater Sydney Regional Plan – A Metropolis of Three Cities, 2018;
 - Central City District Plan, 2018;
 - Future Transport Strategy 2056;
 - Sydney Metro North West Corridor Strategy;

3.6 The Commission's meetings

26. As part of its determination process, the Commission met with representatives of various parties as set out in Table 3. All meeting transcripts and site inspection notes have been made available on the Commission's website.

Table 3 – Commission's Meetings

Meeting	Date	Transcript/notes available on
Site Inspection	1 September 2023	6 September 2023
Department	4 September 2023	6 September 2023
Applicant	4 September 2023	6 September 2023

3.6.1 Council's comments

27. As described in paragraph 4 above, Council made an objection to the Department during exhibition and, for this reason, the Application was referred to the Commission for determination. Council was offered the opportunity to meet with the Commission to discuss its objection and its views of the Department's assessment of the Project. Council instead provided the Commission with a written submission dated 8 September 2023.
28. Council's written submission stated that it did not support the built form of the Project and maintained its concerns with the following:
- building height;
 - setbacks and building separation; and
 - solar access to communal open space.

3.6.2 Applicant's comments

29. On 8 September 2023, the Applicant provided a response to a number of issues that were discussed in its meeting with the Commission including:
- the location of three electrical substations proposed along the Beecroft Road frontage;
 - consideration of the provision of affordable housing to be managed for 15 years by a Community Housing Provider instead of 10 years;
 - a summary of the environmental sustainability measures proposed to be incorporated in the development; and
 - proposed condition B1 which requires design amendments to widen the foyer entrance addressing Ray Road by changing proposed apartment AB101 from a 3-bedroom apartment to a 2 bedroom apartment.

4. Community participation & public submissions

4.1 Public submissions

30. Section 4 of this report sets out the matters raised in the public submissions made to, and considered by the Commission. Consideration has been given to these submissions in the Commission's assessment of the Project as set out in the Key Issues section of this report (see section 5 below).
31. As part of the Commission's consideration of the Project, all persons were offered the opportunity to make written submissions to the Commission until 5pm AEST, Friday 8 September 2023.
32. The Commission received a total of three written public submissions on the Application, comprising one submission in support and two objections.
33. For the reasons set out in this Statement of Reasons for Decision, the Commission considers that the matters raised in submissions do not preclude the grant of development consent and that the relevant matters have either been addressed during the assessment process or can be satisfactorily addressed by the conditions of consent imposed by the Commission.

4.1.1 Key issues raised

34. Issues raised in public submissions provided to the Commission are identified below:
- Traffic and transport*
35. A submission raised concern that the Project would generate significant extra vehicle movements and would exacerbate existing traffic congestion in the surrounding area. Concerns were raised that the Project would also impact the availability of parking near Epping railway station.
36. A submission stated that the land intended for the development should be used for recreation and parking.
- Built form and residential amenity*
37. A submission was received in support of the design and appearance of the Project.

5. Key issues

5.1 Land use

38. The Project includes 923m² of commercial floor space, which is in keeping with the Concept Approval's requirement of between 750m² to 1,000m² of commercial floorspace. Council raised issue with and requested a significant increase to the amount of commercial floor space provided. Council originally objected to the Applicant's Concept Application and sought a minimum 1:1 floor space ratio, or 10,120m², of office and other commercial premises (AR para 67). Council has maintained its objection.
39. Council considered that additional commercial floor space is necessary to ensure consistency with Epping's role as a Strategic Centre in the Metropolitan Region Plan, and that the Site provides an opportunity to deliver employment opportunities to support the existing and future population of the Epping Town Centre and to ensure daytime activity, retail trade and other businesses (AR para 68).
40. As the Department identifies, the objectives of the R4 High Density Residential zone are primarily housing focused, with a small amount of other land uses enabled within the zone to provide facilities and services for the day-to-day needs of residents. Commercial premises, other than neighbourhood shops, are prohibited in the zone (AR para 69).
41. The Department considers that the proposed 923m² of commercial floor space is appropriate for the Site, in view of the Concept Approval, given the (AR paras 72 and 73):
- objectives of the R4 High Density Residential zone;
 - Site's poor pedestrian connection to the Epping Town Centre due to its separation by Carlingford Road from the railway station and the town centre;
 - lack of feasibility for an increased amount of commercial floor space as Epping Town Centre's office floor space has a high vacancy rate of 24%, or 7,200m² of approximately 30,000m² total; and
 - the reasons provided in the Concept Approval in support of the 750m² to 1,000m² commercial floorspace remain valid and relevant to the assessment of the current SSD Application.

Commission's findings

42. The Commission agrees with the Department that the proposed 923m² of commercial floor space is consistent with the Concept Approval and the R4 zoning of the Site (AR para 75), and that significantly increasing commercial floor space would be inconsistent with current government priorities to deliver more housing at locations close to public transport (AR para 74). The Commission further concluded that the provision of such a significant amount of commercial floorspace on the periphery of the town centre would act as an impediment to the future revitalisation of the town centre. For these reasons, the Commission finds that the proposed land use mix for the Site is appropriate.

5.2 Built form

5.2.1 Building orientation

43. The Applicant's Concept Modification seeks approval to amend the approved building envelopes, orientation, and heights. The Applicant is of the view that the proposed changes to building orientation will allow for increased solar access to apartments, ensure greater compliance with building separation requirements within the Apartment Design Guide (**ADG**), and make the buildings easier to construct compared to the approved Concept (AR para 78).
44. Council raised concern that the modified building envelopes would be larger than the approved Concept, resulting in buildings with less modulation and a reduced setback to the north-west corner of the site towards Devlin's Creek (AR para 79).
45. The Applicant responded to Council's concern in its RtS, including making further amendments to address residential amenity and providing additional justification for the proposed changes.
46. The Department is of the view that the proposed changes to building orientation are acceptable, although it acknowledges Council's concerns. The Department considers that the modifications are minor, do not result in an increase in floor area, do not change building setbacks from street boundaries, would not result in visual or amenity impacts beyond those already assessed, and would improve or maintain building separation compared to the Concept Approval. The Department therefore supports the proposed modifications to the building envelopes (AR para 82).

Commission's findings

47. The Commission agrees with the Department and finds that the proposed changes to the approved building envelopes are acceptable because (AR para 81):
 - they do not result in an increase in floor area nor changes to the building setbacks from respective street boundaries;
 - the separation between the buildings has been increased or maintained;
 - they would not result in any significant visual or amenity impacts beyond those assessed as part of the Concept Approval; and
 - the changes to building envelopes would support the proposal's compliance with the ADG.
48. For the reasons set out above, the Commission approves the proposed modifications to the building envelopes.

5.2.2 Building heights

49. The Applicant proposes the following building height variations to address uneven topography across the Site and an increase in floor-to-ceiling height (AR para 18):
 - 0.63m and up to 3.83m above the Concept Approval (AR Table 4); and
 - 0.2m and up to 2.9m above the 48m HLEP 2013 height of building standard (AR para 84).
50. The Applicant submitted a clause 4.6 variation request with its Application in relation to the building height departure from the HLEP 2013 height of building standard.

51. Council raised concern in its submission to the Commission that the proposed building height exceedances are not minimal, that no additional public benefit is proposed to justify the impact of the height non-compliance, and that Buildings C and E have some habitable spaces above the height standard (Council submission page 3).

Commission's findings

52. The Commission supports the Department's view that the proposed departures from the height of building standard are acceptable given (AR para 91):
- the proposed variations in building heights are minor (up to 6%) and are largely attributed to the undulating ground levels across the Site from previous development and the former construction works for Sydney Metro Northwest;
 - the Applicant has consolidated the proposed roof top plant, which has reduced the maximum variation to the height standard from 3.8m to 2.9m;
 - the proposed variation to the building height standard does not materially change the scale of the buildings;
 - the proposed 15 storey development provides appropriate transition in building heights from the Epping Town Centre to properties to the west of the Site;
 - higher floor-to-ceiling heights of 3.15m compared to 3.1m previously contemplated in Concept Approval have been incorporated due to recent updates to the National Construction Code; and
 - the proposed variations to building height do not cause additional amenity impacts to surrounding properties, such as additional overshadowing.
53. For the reasons set out above, the Commission approves the proposed modifications to the building heights.

5.3 Residential amenity

5.3.1 Building A entrance and ground floor apartment on Ray Road frontage

54. Following concerns raised by Council regarding what it considered to be a lack of street activation along the Project's Ray Road frontage (AR para 105), the Applicant amended the proposed entrance to Building A and, amongst other changes, included a three-bedroom apartment on the ground floor (AR para 106). The Applicant's amendment to the Building A entrance reduced the size and frontage of the lobby to Ray Road (AR Figures 37 and 38).
55. Council objected to the reduced size and frontage of the lobby (AR para 107 and Council submission, page 5) because:
- the lobby provided little to no visual interest or activation of the frontage; and
 - the proposed apartment would have poor acoustic and visual privacy due to its location and is not supported.
56. At AR para 109, the Department states that:

While the Department accepts the addition of an apartment along the Ray Road frontage improves activation and passive surveillance, concern is raised about the reduced entrance lobby to Building A as it would result in a compromised street address to Ray Road and poor amenity within the lobby area.

57. The Department recommends deleting the third bedroom of the proposed ground floor apartment and incorporating this area into a larger lobby to “balance the need to provide additional passive surveillance to Ray Road while at the same time providing an appropriate building address and active frontage to Ray Road” (AR para 112). A condition has been recommended by the Department to this effect.
58. The Department is satisfied that the design changes would provide for a 2-bedroom unit with good amenity whilst at the same time providing additional passive surveillance to Ray Road and an appropriate building address and active frontage to Ray Road (AR paras 111 and 112). The Department also noted that it is not uncommon for residential apartments to be located next to or above building entrances and driveways.
59. In its response to the Commission dated 8 September 2023, the Applicant submitted that the reduced lobby area was appropriate and requested that the recommended condition be deleted and the third bedroom of the proposed ground floor apartment be reinstated (Applicant’s response, page 4):

The proposed building entrance and lobby to Building A are considered to exhibit an appropriate visual interest given the provision of wider pathways, the use of a protruding awning structure, the double height void space provided, wide stairs, angled pathway, and planter beds. The space also provides weather protection whilst waiting for the lift and opportunities for casual social interaction. Given the above the panel is requested to give consideration to deleting the current wording within condition B1....

Commission’s findings

60. Whilst the Commission agrees with the Department that further design amendments can enhance the Project’s interface with Ray Road, the Commission does not agree that the deletion of the proposed ground floor apartment’s third bedroom (Apartment AB101) is necessary to achieve this outcome. The Commission is of the view that appropriate amenity and privacy outcomes for the future occupants of Apartment AB101 with the third bedroom can be achieved subject to the implementation of appropriate mitigation measures (including but not limited to privacy screens). The Commission also concludes that adequate legibility to the entrance can be achieved through improvements to the public domain including appropriately located landscaping.
61. For these reasons, the Commission has imposed condition B1 which requires the Applicant to undertake architectural and landscape treatments to create a clearer, more legible and active entrance to Residential Lobby A from Ray Road. This condition also requires the Applicant to undertake additional architectural and landscape treatments to ensure the privacy and amenity for the future occupants of Apartment AB101 is maximised.

5.3.2 Apartment Design Guide

62. In its submission to the Commission, Council reinforced its concerns raised in its submission to the Department regarding the Project’s non-compliances with the ADG relating to solar access and building separation.

Solar access

63. The Department’s AR identifies that 17.6% of the Project’s apartments receive no direct sunlight between 9am and 3pm at mid-winter, while the ADG sets a performance criteria of a maximum of 15% of apartments (AR Table 5).

64. The Department is satisfied the Project overall provides a reasonable level of solar access to the proposed apartments, stating at AR Appendix E (page 80) that:

This minor departure is acceptable as the building envelopes are orientated generally east-west, producing a higher proportion of south facing apartments, and the non-compliance relates to eight apartments of the 374 proposed. It is however noted that the proposal would have more than 70% of apartments with living rooms and open space in sunlight for more than 2 hours in midwinter.

65. In its meeting with the Commission, the Department identified the location of the apartments that do not receive direct sunlight between 9 am and 3 pm at mid-winter (Department meeting transcript page 9):

Those are generally the apartments that are in the mid-block, they are on the low rise and they are getting no solar access but on the balance we think that the proposal achieve[s] a reasonable level of solar access having considered the ADG requirement.

66. The Commission agrees with the Department that the non-compliance is minor and acceptable, noting that more than 70% of the apartments receive at least 3 hours of direct sunlight between 9 am and 3 pm at mid-winter.

Visual privacy

67. The Department notes instances where overlooking between apartments may occur due to reduced separation between Buildings B and D, and Buildings A and C (AR para 102). It also notes that in some instances the building separation is non-compliant with the guidance provided by the ADG. The Department considers the minor non-compliances to be acceptable given the habitable rooms of the affected apartments generally do not directly face each other and, where they do, screening and solid walls have been incorporated.

68. The Department considers that the proposed building separation is acceptable and notes that separation distances have been increased compared to the Concept Approval (AR Appendix B page 61). The Commission agrees with the Department's views and finds that given the good compliance of the development with the ADG, the minor nature of the separation distances, and the ability to mitigate the residual impacts, that the separation distances are acceptable.

Communal open space

69. Council raised concerns relating to communal open space noting that (AR paras 117 and 118):

- the ground level communal open space between Buildings C and E does not receive 2 hours of sunlight in midwinter; and
- communal open space previously indicated on the rooftops of Buildings C and E in the indicative scheme accompanying the Concept Approval should be included to increase communal open space with good solar access.

70. The Applicant considers that, "the reduced solar access for the ground floor communal open space would be compensated by the rooftop spaces which would have very good solar access" (AR para 122).

71. The Commission agrees with the Department and considers the size, design and amenity of the proposed communal open spaces are acceptable because:

- the communal open space proposed on the Site equates to 41% of the Site area, which exceeds the ADG minimum of 25%;

- 51.2% of the communal open space would receive 2 hours of solar access during midwinter, which meets the ADG minimum of 50%;
- all residents are able to access rooftop open spaces; and
- communal open spaces would provide a variety of passive and active uses that will support the recreation needs and amenity of future residents.

5.4 Public domain and landscaping

5.4.1 Public through-site link

72. The Project includes a publicly accessible through-site link between Ray Road and Beecroft Road. In response to Council's concerns and the State Design Review Panel (SDRP) recommendations, the Applicant amended the design of the through-site link to (AR para 130 to 131):

- improve the interface between apartments and the through site link;
- include the provision of a new passive recreation area at Ray Road;
- create three separate ground levels along the through-site link;
- include a lift in the centre of the through-site link to provide a more accessible path;
- break up the pedestrian ramp into four sections; and
- relocate a staircase and planter beds to provide greater visibility into the through-site link from the public domain.

Commission's findings

73. The Commission agrees with the Department's assessment (AR para 132) and is of the view that the amended design of the through-site link is satisfactory because it is consistent with the Concept Approval and ADG, improves overall accessibility and contributes to the amenity of the Site. The Commission has therefore imposed conditions E35 and E36 which require the registration of the easement on title. The Commission has also imposed condition E41 which requires the preparation of a Management Plan for the through-site link and publicly accessible spaces in consultation with Council.

5.4.2 Landscaping

74. According to the Department, the Project provides both a 6 to 9 metre setback from Beecroft Road, a 5 to 7 metre setback from Ray Road, and a 6 metre setback from Devlins Creek (or the northern and north-western boundaries of the site (AR para 135)). The Project also provides around 6,000m² of landscaping, including 4,154m² of communal open space, a through-site link of approximately 1,400m², and residual deep soil and landscaped areas in the boundary setbacks (AR para 136).

75. The Applicant's RtS included a revised landscaping report and plans to include additional tree and shrub planting and occupant facilities along the Devlins Creek frontage (AR para 139). According to the Applicant's RtS, the revised landscaping plans increase tree canopy cover from 22% to 29.54%. The Department notes the proposal will achieve 21% deep soil provision across the Site which is compliant with the ADG minimum design criteria of 7% (and design guidance of 15% for sites greater than 1,500m²).

76. Council, in its submission to the Commission, maintained its concerns relating to landscaping and deep soil noting that:

- no evidence had been provided to ensure the naturalisation of Devlins Creek is possible within the proposed setbacks;

- the basement should be consolidated beneath the building footprints and consistent with all building setbacks to provide opportunities for large trees and deep soil planting; and
- setback and building separation non-compliances impact the provision of landscaped and deep soil areas.

Commission's findings

77. The Commission agrees with the Department's views (AR para 141) and finds that the proposed landscaping for the Site is satisfactory for the following reasons:
- the Application achieves an overall 29% canopy cover, and 21% deep soil planting;
 - the overall quantum of landscaping is high (59%) compared to the ADG minimum landscaping area of 25%;
 - a landscaped setback is provided along the Devlins Creek frontage, and the development would not preclude Devlins Creek from being re-naturalised in future; and
 - the selection of species and soil is appropriate and would provide for a variety of tree planting.
78. The Commission has imposed condition B35 which requires the Applicant to prepare and submit detailed Landscape Plans to the satisfaction of the Planning Secretary. The Commission has also imposed condition E32 which requires the Applicant to submit a Landscape Practical Completion Report to the satisfaction of the certifier. The report is required to verify that all landscape works have been carried out generally in accordance with the Landscape Plans and to verify that an effective maintenance program had commenced. The Commission notes that the Applicant has a 12-month maintenance plan which would commence after an occupation certificate is issued. The Commission notes after this period maintenance of the landscaping would then be the responsibility of the strata manager.

5.4.3 Beecroft Road tree planting

79. Condition B2(b) of the Concept Approval requires the Applicant to consult with Transport for NSW (**TfNSW**) to explore opportunities to plant street trees along the Beecroft Road frontage, including tree setbacks from the kerb, appropriate species, and mature canopy height. TfNSW in its email to the Applicant dated 10 May 2023 stated that it had no objection to the proposed planting along Beecroft Road, provided that the proposed landscaping is designed in accordance with the TfNSW Landscape Guidelines.

Commission's findings

80. The Commission agrees with the Department and finds that the Applicant has satisfied the requirement of condition B2 of the Concept Approval (AR para 149). The Commission notes that six trees fronting the slip lane are no longer proposed. The Commission agrees with the Department and is of the view that this would not materially affect the landscape presentation along Beecroft Road noting that a second row of trees is proposed within the Site's setback (AR para 148). For the reasons set out above, the Commission finds that the proposed Beecroft Road tree planting is acceptable.

5.4.4 Substation relocation

81. During its meeting with the Applicant on 4 September 2023, the Commission asked whether there was an opportunity to shift or relocate the 3 proposed substations in the south-east corner of the Site to improve the Project's visual and physical connectivity to and from the town centre along Beecroft Road. The Applicant, in its response to the Commission, proposed to:
- relocate one substation to the south-western corner of the Site fronting Ray Road;
 - increase the setback of the two remaining substations on Beecroft Road;
 - provide an additional pedestrian path from the south-east corner of the Site to the paving in front of Block B; and
 - reduce planting proposed to be located in the garden bed to the north of the substation along Beecroft Road by planting species with a maximum mature height of 1.2 metres.

Commission's findings

82. The Commission has imposed condition B2 consistent with the Applicant's proposal to ensure the commitment is implemented. The Commission finds that this would assist in improving site access and visual connectivity, and would also reduce the overall visual impact of the substations when viewed from the public domain, especially along Beecroft Road.

5.5 Traffic and transport

5.5.1 Traffic impacts

83. According to the Department, the proposed reduction in the number of apartments from 442 in the Concept Approval to 374 in the Project would result in an 11% reduction in traffic generation (AR para 151). The Project would have a two-way vehicular access off Ray Road and a left in/left out vehicular access off Beecroft Road, including a slip lane for vehicles entering the Site (AR para 152).
84. Council, in its submission to the Department dated 14 November 2022, stated that Council's Epping Town Centre Traffic Study identified the provision of a link road through the Site (between Ray Road and Beecroft Road) that could potentially take pressure off key intersections in the peak periods in the long term, coupled with a suite of traffic improvements.
85. The Commission notes that the Concept Approval considered a proposed east-west link road through the Site. The Department concluded in its Concept Assessment (page 31) that an east-west link road would not secure improvements to traffic congestion in Epping Town Centre and that the benefits of a proposed public pedestrian and cycle link outweighed any benefits from an east-west link road.

Commission's findings

86. The Commission notes that public submissions raised concern regarding the potential for the Project to generate significant extra vehicle movements and exacerbate existing traffic congestion in the area. However, the Commission agrees with the Department that the traffic and development context has not significantly changed since the Concept Approval and the findings of the Concept Assessment remain valid. The Commission accepts that the reduction in the number of apartments under the Concept Approval is capable of reducing traffic generation.

87. The Commission accepts that the Concept Assessment concluded that the development would generate less than a 1% increase in traffic volume within the local road system and would not change the level of service of major intersections (AR para 160).
88. The Commission agrees with the Department that the findings of the Concept Assessment in respect to the relative merits of a potential link road remain valid.
89. For the reasons set out above, the Commission finds that the Project has acceptable traffic impacts. To ensure traffic impacts are appropriately managed during construction, the Commission has imposed condition C23 which requires the Applicant to prepare a Construction Pedestrian and Traffic Management Sub-Plan in consultation with TfNSW. The Commission has also imposed condition E28 which requires the Applicant to prepare a Green Travel Plan (**GTP**), as recommended by TfNSW.

5.5.2 Car parking and bicycle parking

90. The Department states that the Concept Approval set maximum car parking rates and minimum bicycle parking rates for the proposed development. The proposed modifications do not change these approved rates (AR para 162). Table 6 of the Department's AR sets out the car parking and bicycle parking comparison between the Concept Approval and the Application.

Commission's findings

91. The Commission agrees with the Department and accepts that the proposed car parking and bicycle rates are consistent with the Concept Approval (AR para 165).
92. The Commission has imposed condition B31 which sets out the requirements for car and motorcycle parking. Condition B33 and B34 imposed by the Commission set out bicycle parking requirements. As described above, the Commission has also imposed a requirement for the Applicant to prepare a GTP. The GTP would assist occupants of the development with alternative travel choices (as opposed to cars) to and from the Site (AR para 167).

5.6 Design excellence

93. The Applicant provided a response to the comments made by the SDRP, dated 15 May 2023 (**Response to SDRP**). The Applicant provided further information on how the landscape design enabled a meaningful connection to Country.
94. The Department stated that the Government Architects Office (on behalf of the SDRP) advised that it was satisfied that the Applicant has appropriately considered and responded to the comments made by the SDRP.

Commission's findings

95. The Commission agrees with the Department that the Applicant has satisfactorily responded to the SDRP advice and considers the Project meets the design excellence requirements of the HLEP 2013 as it (AR para 174):
- *presents a high-quality architectural design with clear and strong character of materials and finishes that responds to the site and local area*
 - *supports a high level of residential amenity*
 - *delivers a well-designed public through-site link with good amenity that allows for easy and direct movement of people and is interweaved with the proposed non-residential spaces to support mixed use and employment*
 - *incorporates appropriate landscaping of the site including green roofs and communal open spaces with 29% site coverage for tree planting.*

5.7 Affordable housing

96. The Concept Approval required 5% of all dwellings to be provided as affordable housing. The Department noted that there was no statutory obligation for the Concept Approval to provide affordable housing at the time of its determination. However, the 5% affordable housing commitment was in line with Landcom's Affordable Housing Strategy at the time. The Project proposed to secure the use of affordable housing for 10 years (AR Table 7).

Commission's findings

97. The Commission asked the Applicant to consider an increase in the time the affordable housing would be provided from the original 10 year period to 15 years in line with the current statutory requirements of the Housing SEPP. The Applicant responded to the Commission that it had no objection to the 19 affordable housing apartments being managed by a Community Housing Provider for 15 years.
98. The Commission finds that the provision of affordable housing for a period of 15 years is in the public interest and has therefore imposed condition E38 to implement this commitment.

5.8 Other issues

99. Apart from the Commission's position on affordable housing, the Commission agrees with the Department's assessment of other issues set out in Section 6 of the Assessment Report which have not been discussed above (including AR Table 7). The Commission adopts the Department's Assessment in this regard.

6. The Commission's findings and determination

100. The views of the community were expressed through public submissions and comments received (as part of the Department's public exhibition process and as part of the Commission's determination process), as well as presentations to the Commission at stakeholder meetings. The Commission has carefully considered all views in making its decision.
101. The Commission also has carefully considered the Material before it as set out in section 3.1 of this report. Based on its consideration of the Material, the Commission finds that both the Modification and SSD Applications should be approved subject to conditions of consent for the following reasons:
- the Project is consistent with the existing strategic planning framework as it will deliver additional housing with excellent access to public transport connections, employment centres, services and amenity;
 - the proposed 923m² of commercial floor space is consistent with the Concept Approval and the R4 zoning of the Site;
 - the proposed variation to the height of building standard and approved building envelopes are acceptable;
 - additional architectural and landscape treatments at Residential Lobby A would enhance the interface of the Project with Ray Road and would also ensure the privacy and amenity for the occupants of Apartment AB101;
 - the Project is able to achieve acceptable levels of residential amenity in accordance with the objectives of the ADG and SEPP 65;

- the design of the through-site link is satisfactory given it is consistent with the Concept Approval and ADG, improves overall accessibility, and contributes to the amenity of the Site;
 - the landscaping proposed for the Site and the proposed tree planting along Beecroft Road are acceptable;
 - the Applicant’s commitment to relocate one substation and increase the setback of the two-remaining substations would improve Site access and reduce visual impacts from the public domain;
 - the Project has acceptable traffic impacts;
 - the proposed car parking and bicycle rates are consistent with the Concept Approval;
 - the Project meets the design excellence requirements of the HLEP 2013;
 - the Project would provide 19 well located affordable dwellings for a period of 15 years;
 - the Project is in accordance with the Objects of the EP&A Act; and
 - the Project is in the public interest.
102. For the reasons set out in paragraph 101 above, the Commission has determined that the consent should be approved subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.
103. The reasons for the decision are given in the Statement of Reasons for Decision dated 19 September 2023.



Chris Wilson (Chair)
Member of the Commission



Wendy Lewin
Member of the Commission



Elizabeth Taylor AO
Member of the Commission



New South Wales Government
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