

**ITEM 6. SECTION 96(2) APPLICATION: 67-77 EPSOM ROAD AND 95 DALMENY AVENUE ROSEBERY****FILE NO: D/2008/102/C****SECTION 96 APPLICATION NO: D/2008/102/C****SUMMARY****Date of Submission:** 4 March 2015**Applicant:** Toplace Pty Ltd**Architect:** PTW Architects**Developer:** Toplace Pty Ltd**Owner:** Jolyn Place Pty Ltd**Cost of Works:** \$232,900,000

**Proposal Summary:** The subject Section 96(2) application seeks to amend the Stage 1 DA approval for five residential flat buildings and one mixed use building, all with associated basement levels.

This application seeks to amend the original Stage 1 DA approval in the following manner:

- Increased height of Building B (by 4.3m), C (by 1.7m), Building E-F (by 4.03m);
- Shift in footprint of Building E to the north.
- Allow protrusions outside of the approved building envelopes on the eastern side of Building B and the western side of Building C.
- Reduction in building envelope and the junction of Building B and C.
- Amend Condition 17 (Upgrade to Epsom Road / Link Road Intersection) to amend the timing to complete the upgrade to prior to the Final Occupation Certificate for Building A.

The necessity to modify the approved building envelope has come from the need to ensure consistency between the staged development applications on the site as required under Section 83D of the Environmental Planning and Assessment Act, 1979.

**Proposal Summary  
(continued):**

The Stage 2 DA (D/2014/1977) is consistent with modifications proposed as part of this Section 96 application. The Stage 2 DA is subject to a concurrent assessment report for the Central Sydney Planning Committee (CSPC).

One submission was received during the exhibition period raising concerns relating to the increase in height and the impact on the Floor Space Ratio (FSR) of the proposal. The condition restricting the FSR is not proposed to change as part of this application.

As modified, the proposed envelope achieves the same design intent as the originally approved building envelope; however, allows the envelope (and detailed design application) to better align with the competitive design alternative winning scheme.

**Summary Recommendation:**

The Section 96(2) application is recommended for approval, subject to modification of conditions.

**Development Controls:**

- (i) State Environmental Planning Policy No.55 – Remediation of Land
- (ii) State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development (including Draft SEPP amendments)
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) City of Sydney Development Contributions Plan 2006

**Attachments:**

- A - Amended Drawings - D/2008/102/C
- B - Stage 1 Drawings - D/2008/102/C
- C - Notice of Determination D/2008/102/B

**RECOMMENDATION**

It is resolved that consent be granted to Section 96(2) Application No. D/2008/102/C, subject to the amendment of the following conditions, with modifications shown in **bold italics** (additions) and ~~**bold italics**~~ (deletions), as follows:

**(1) APPROVED DEVELOPMENT**

- (a) Development must be in accordance with Development Application No. D/2008/102 dated 24 January 2008 and the Statement of Environmental Effects – Revised Scheme prepared by Urbis dated October 2008, and the following drawings:

Drawing Number	Architect	Date
DA-A07 Rev H	Joshua Farkash and Associates	27 July 2009
DA-A08 Rev H	Joshua Farkash and Associates	27 July 2009
DA-A08A Rev H	Joshua Farkash and Associates	27 July 2009
DA-A08B Rev H	Joshua Farkash and Associates	27 July 2009
DA-A08C Rev H	Joshua Farkash and Associates	14 April 2009
DA-A08D Rev H	Joshua Farkash and Associates	27 August 2009
DA-A08E Rev H	Joshua Farkash and Associates	27 July 2009
DA-A09 Rev H	Joshua Farkash and Associates	27 July 2009
DA-A10 Rev H	Joshua Farkash and Associates	18 May 2010
DA-A11 Rev H	Joshua Farkash and Associates	18 May 2010
DA-A12 Rev G	Joshua Farkash and Associates	14 April 2009
01 Rev A: Basement and Deep Soil Plan and Principles	McGregor Coxall	Submitted 25 January 2012

**and as amended by the following drawing:**

<b>Drawing Number</b>	<b>Architect</b>	<b>Date</b>
<b>DA-1100</b>	<b>PTW Architects</b>	<b>23/02/2015</b>

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.
- (c) Notwithstanding (a) above, the front setback along the Dalmeny Avenue frontage of the site may be reduced to 4 metres in accordance with the South Sydney DCP 1997.
- (d) The existing commercial building referred to as Building A6 is to be demolished.

**(As modified by D/2008/102/C, dated 6 August 2015)**

**(8) HEIGHT OF BUILDINGS**

- (a) The maximum building envelope shall not exceed:

Building	RL
Building A1	RL 50.87
Building A2	RL 53.87
Building A3	RL 65.87
Building A4	RL 50.87
Building A5	RL 44.87
Building A6	RL 35.87
Building A7	RL 27.87
Building A8	RL 42.87
Building B	<b><i>RL 47.75 RL 51.85 to RL 52.05</i></b>
Building C	<b><i>RL 37.95 RL 39.65</i></b> (4 storey section) <b><i>RL 34.95 RL 36.65</i></b> (3 storey section)
Building D	RL 48.64 RL 48.70 (8 storey section) RL 42.64 RL 42.70 (6 storey section) RL 39.64 RL 39.70 (5 storey section)
Building E/F	<b><i>RL 48.8</i></b> (7 storey section) <b><i>RL 42.87 RL 43.2</i></b> (6 storey section) <b><i>RL 39.66 RL 41.1</i></b> (5 storey section)
Building G	RL 43 (6 storey section) RL 40 (5 storey section)
Building H	RL 43 (6 storey section) RL 40 (5 storey section)

- (b) The building envelopes are approved on the basis that the ultimate building design, including excluding services and lift over-runs, parapets or articulation elements or courtyards elevated above ground, will be entirely within the approved envelopes and provide an appropriate relationship with neighbouring and approved buildings.

***(As modified by D/2008/102/C, dated 6 August 2015)***

**(17) UPGRADE TO EPSOM ROAD / LINK ROAD INTERSECTION**

- (a) Any Stage 2 Development Application for the site shall be accompanied by a plan showing works to upgrade the intersection of Epsom Road / Link Road. The intersection shall be designed as follows:
- (i) Link Road approach – left turn lane (30-40m) + shared through / right turn lane + right turn only lane;
  - (ii) Epsom Road (East) approach – shared left/through lane + 60m through lane + 60m right turn only lane; and
  - (iii) Epsom Road (West) approach – free flow left turn slip lane + 20m long bus only lane + right turn only lane.

- (b) Detailed signal and road design plans of the proposed new traffic signals and interchange at Epsom Road/Link Road will need to be forwarded to the RTA for approval prior to the commencement of any roadworks. The plans must show all dimensions (e.g. lane width, kerb return radius), pavement marking, bike lane and logo, parking controls, bus zones, pedestrian crossing, median islands, signs and driveways. The RTA fees for administration, plan checking, signal works inspections and project management shall be paid for by the developer prior to the commencement of the works.
- (c) Works to upgrade the intersection shall be completed prior to the issue of any Occupation Certificate **for Building A which permits more than 320 apartments to be occupied across the entire site** prior to the issue of a Construction Certificate for any part of the development.

***(As modified by D/2008/102/C, dated 6 August 2015)***

## BACKGROUND

### The Site and Surrounding Development

1. The site is located in the north eastern sector of Rosebery, an established suburb comprising a mix of commercial, industrial and residential uses. The area is currently undergoing a period of transition with a number of industrial sites recently being redeveloped as residential developments.
2. The application site forms part of a larger development site consisting of two parcels of land which are collectively known as 'Overland Gardens' and are identified as Lots 1 and 2 in DP858174. Together the sites form an irregularly shaped parcel and have a combined area of approximately 3.34ha. The site is relatively flat and has a 103 metre frontage to Epsom Road and a 257 metre frontage to Dalmeny Avenue.
3. Photos of the site and surrounds are provided below:

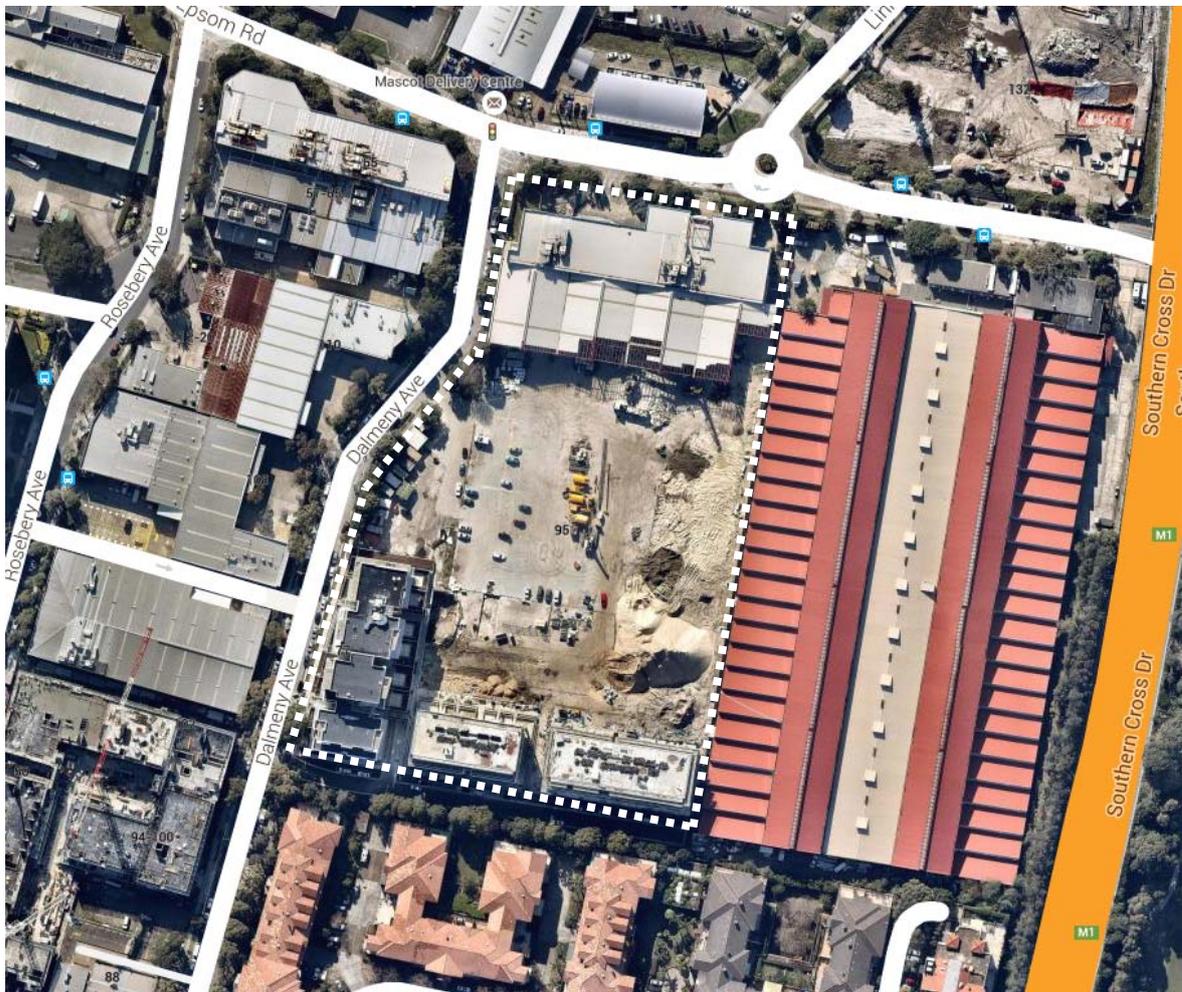


Figure 1: Aerial image of subject site and surrounding area



**Figure 2:** Aerial image of subject site and surrounding area.

4. The construction of the first stage of development is currently taking place at the southern end of the site, with Building D, G and H nearing completion. The majority of buildings have been demolished except for at the northern end of the site which are currently vacant.
5. There are a number of trees along the western and southern boundaries and the site is also bounded partly by an open metal mesh fence, and partly by the masonry wall of the northern warehouse building. Existing vehicular access points are located on both Epsom Road and Dalmeny Avenue.
6. To the south of the site is a relatively high density residential development known as 'Kimberley Grove', comprising a series of residential flat buildings ranging from 4 to 8 storeys in height set around a series of private roads and areas of open space.
7. Development to the north of the site includes a number of single storey car showrooms and commercial buildings. To the west is a mix of small to medium scale industrial and commercial buildings. There are also residential properties approximately 350m to the west.
8. The 'Dolina' site is located immediately to the east of the site and comprises a number of warehouse storage units. This site is the subject of a Stage 1 development consent for a mixed use development which interacts with that of the subject site. The details of this consent are discussed below.

9. The site is located within close proximity of transport links and local amenities. The eastern distributor road is located approximately 150 metres to the east of the site and Green Square train station is approximately 1.4km to the north west, both providing direct access to Sydney CBD and Sydney airport. The site is also in close proximity to the future Green Square Town Centre, is served by a bus stop located directly adjacent to the site on Epsom Road as well as existing and a proposed cycleway along Epsom Road.
10. Photographs of the site are provided below:



**Figure 3:** The site viewed from Dalmeny Avenue.



**Figure 4:** Looking east across the site.



**Figure 5:** Looking south across the site showing Building H, G and D nearing completion.



**Figure 6:** The northern end of the site viewed from the corner of Epsom Road and Dalmeny Avenue



**Figure 7:** Building D viewed from Dalmeny Avenue



**Figure 8:** The southern edge of the site showing Building D, G and H nearing completion.



**Figure 9:** Kimberley Grove residential apartments to the south of the site, from Dalmeny Avenue



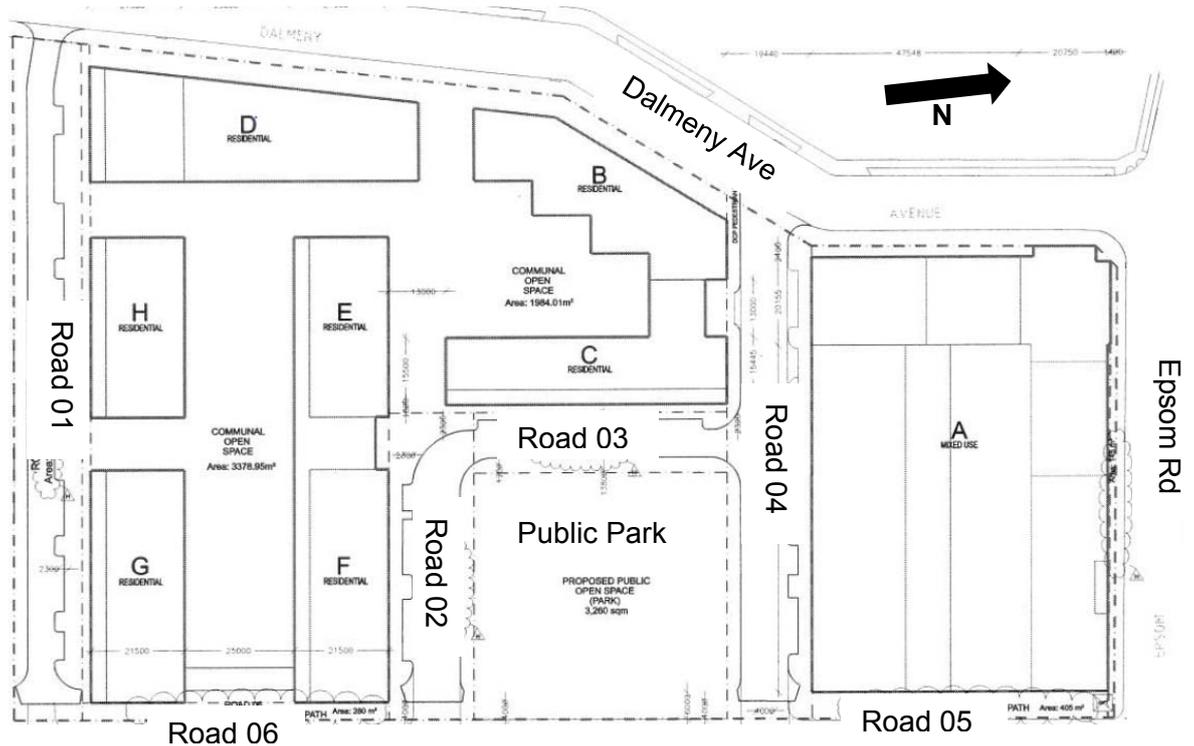
**Figure 10:** Opposite side of Dalmeny Avenue

## HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

11. The following Stage 1 development application is relevant to the site:

### Stage 1 - D/2008/102

- (a) On 30 July 2010 the Central Sydney Planning Committee granted a Stage 1 development consent for the following development:
- (i) 5 residential flat buildings ranging in height from 4 to 8 storeys with associated basement levels (Building B-H);
  - (ii) 1 mixed use building ranging in height from 1 and 13 storeys with associated basement levels (Building A); and
  - (iii) Public domain works including:
    - a. A 3,260sqm public park;
    - b. 4 new internal roads;
    - c. the dedication and setback of a 1.4m strip of land along the Epsom Road boundary; and
    - d. the dedication and setback of two strips of land along the eastern boundary of the site for future footpaths or landscaping.



**Figure 11:** The Stage 1 DA location plan

- (b) This application was modified as follows:
- (i) D/2008/102/A - to include a basement plan, amend the height, and alter the timing of delivery of the Epsom Road/ Link Road upgrade; and
  - (ii) D/2008/102/B – to reference the current planning controls of the Sydney LEP 2012 and Sydney DCP 2012.

12. The following voluntary planning agreement is relevant to the proposal:

Voluntary Planning Agreement

- (a) A Voluntary Planning Agreement (VPA) associated with a public benefit was executed on 28 September 2010. The agreement included the following public benefits:
- (i) construction of Roads 01 (2,421sqm), 02 (1,362sqm), 03 (798sqm), 04 (2,215sqm), 05 (405sqm) and 06 (280sqm) and dedication to Council;
  - (ii) construction of public park (3,260sqm) and dedication to Council;
  - (iii) footpath widening along Epsom Road (145sqm);
  - (iv) a contribution of \$1,670,000 for the purpose of infrastructure in or about the area known as “Green Square Town Centre”; and
  - (v) a contribution of \$174,400 for the purpose of cycleway infrastructure in or about the area surrounding the site.

13. The following approved Stage 2 development applications are relevant to the site:

Stage 2 applications

- (a) D/2011/1202: On 2 April 2012, approval was granted for the Stage 2 DA for the construction of 'Building D', a 5 to 8 storey residential flat building with 2 basement levels comprising 105 apartments and 105 car spaces. A photomontage is shown in Figure 12 below.
- (b) D/2011/1203: On 5 March 2012, approval was granted for the Stage 2 DA for the construction of 'Road 01' along the southern boundary of the site, plus infrastructure and service works.
- (c) D/2011/1789: On 7 February 2012, approval was granted for use of part of the existing warehouse building fronting Dalmeny Avenue as a temporary display apartment and showroom, utilising the site's existing car parking, hard stand and landscaping.
- (d) D/2012/1422: On 26 February 2013, approval was granted for the Stage 2 DA for the construction of 'Buildings G and H' for 5 to 6 storey residential flat building with 2 basement levels comprising 118 apartments and 105 car spaces. A photomontage is shown in Figure 13 below.
- (e) D/2013/284: On 29 May 2013, approval was granted for the demolition of southern warehouse, northern warehouse and gatehouse building plus the temporary infilling of walls to ensure weatherproofing of the approved display suite adjacent to Dalmeny Avenue.
- (f) D/2015/287: On 4 May 2015, approval was granted for subdivision of the site, being Lots 1 and 2 in DP858174, into 3 new lots and dedication of Road 01 (Galara Street) and part of Road 06 (Gilbanung Street) as Public Road.



**Figure 12:** Building D photomontage viewed from Dalmeny Avenue.



**Figure 13:** Building G and H photomontage viewed from Road 01.

14. The following competitive design process is relevant to the proposal:

Competitive Design Process – CMP/2014/6

- (a) In June 2014, a Competitive Design Alternative Process commenced where three invited architects designed schemes for the redevelopment of Building B, C, E and F. The selected winner of the process was PTW Architects. Figures 14 and 15 illustrate the winning scheme.



**Figure 14:** Building B viewed from Dalmeny Avenue.



**Figure 15:** Building E, F and C viewed from the future public park.

15. The following Stage 2 development applications are relevant to the site:

Stage 2 applications currently being assessed

- (a) D/2014/1977: On 19 December 2014, a Stage 2 development application was lodged for the construction of Building B, C, E and F. This is subject to a separate report for the consideration of the CSPC.
- (b) D/2015/624: On 11 May 2015, a Stage 2 development application was lodged for the construction of a part 6 and part 13 storey mixed use buildings known as Building A, containing 267 residential units, 49 serviced apartments, 17 ground floor retail premises and two levels of basement parking for 283 vehicles. Building A had been subject to a design competition (CMP/2014/20). The selected winner of the process was BVN Architects. Photomontages of the proposed Building A design are shown in Figures 16 and 17.
- (c) D/2015/886: On 26 June 2015, a Stage 2 development application was lodged for the construction of Roads 02, 03 and 04.



**Figure 16:** Proposed Building A photomontage viewed from the corner of Epsom Road and Dalmeny Avenue.



**Figure 17:** Proposed Building A photomontage viewed from future public park.

## PROPOSAL

16. This application seeks to amend the original Stage 1 DA approval in the following manner:
  - (a) Condition 1 – Approved development
    - (i) Amendments in relation to the building envelopes as follows:

- a. increased height of Building B (by 4.3m), C (by 1.7m), Building E-F (by 4.03m);
  - b. shift in footprint of Building E to the north.
  - c. allow protrusions outside of the approved building envelopes on the eastern side of Building B and the western side of Building C; and
  - d. reduction in building envelope and the junction of Building B and C.
- (b) Condition 8 – Height of Buildings
- (i) Amendments to the RL’s of Building B, C, and E/F as follows:

	Approved	Proposed
Building B	RL 47.75	RL 51.85 to RL 52.05
Building C	RL 37.95 (4 storey section) RL 34.95 (3 storey section)	RL 39.65 (4 storey section) RL 36.65 (3 storey section)
Building E/F	RL 42.87 (6 storey section) RL 39.66 (5 storey section)	RL 48.8 (7 storey section) RL 43.2 (6 storey section) RL 41.1 (5 storey section)

- (c) Condition 17 – Upgrade to Epsom Road / Link Road Intersection
- (i) to amend the timing to complete the upgrade to prior to the Final Occupation Certificate for Building A.

**THRESHOLD TEST**

17. The development as proposed to be modified is considered to be substantially the same as that originally approved.

**ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS**

18. Besides the matters discussed in this report, the assessment against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 (EP&A Act) contained in the report to the Central Sydney Planning Committee at its meeting on 6 May 2010 are still relevant.
19. The provisions of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) and Sydney Development Control Plan 2012 (Sydney DCP 2012) have been taken into consideration in the assessment of the proposal.
20. A copy of the Notice of Determination D/2008/102/B is provided in Attachment C.

**Assessment**

21. Each condition requested to be modified is considered below:

Condition 1 – Approved development

22. The application proposes to modify the Stage 1 building envelopes and have submitted an amended plan of Building Heights and Envelopes.
23. Amendments in relation to the building envelopes are as follows:
- (a) increased height of Building B (by 4.3m), C (by 1.7m), Building E-F (by 4.03m);
  - (b) shift in footprint of Building E to the north;
  - (c) protrusions outside of the building envelopes on the eastern side of Building B and the western side of Building C; and
  - (d) reduction in building envelope and the junction of Building B and C.
24. The amendments are a result of detailed design as part of the design competition entry and the submission of the Stage 2 development application (D/2014/1977) for Building B, C, E and F. The proposal has been assessed and is considered to be satisfactory.
25. On the basis of the above the proposed amendments to the building envelope are acceptable and the condition can be amended accordingly.

Condition 8 – Height of Buildings

26. The application proposes to modify the RL's of Building B, C, and E/F as follows:

	<b>Approved</b>	<b>Proposed</b>
Building B	RL 47.75	RL 51.85 to RL 52.05
Building C	RL 37.95 (4 storey section) RL 34.95 (3 storey section)	RL 39.65 (4 storey section) RL 36.65 (3 storey section)
Building E/F	RL 42.87 (6 storey section) RL 39.66 (5 storey section)	RL 48.8 (7 storey section) RL 43.2 (6 storey section) RL 41.1 (5 storey section)

27. The amendments are a result of detailed design as part of the design competition entry and the submission of the Stage 2 development application (D/2014/1977) for Building B, C, E and F. The proposal has been assessed and is considered to be satisfactory.
28. On the basis of the above the proposed amendments to the RL's are acceptable and the condition can be amended accordingly.

Condition 17 – Upgrade to Epsom Road / Link Road Intersection

29. The applicant seeks to amend the timing to complete the upgrade of the Epsom Road/ Link Road intersection prior to the Final Occupation Certificate for Building A. The location of the Epsom Road, and Link Road intersection is shown in Figure 18 below.



**Figure 18:** The Epsom Road and Link Road intersection.

30. Condition 17 currently states:
- (a) *Any Stage 2 Development Application for the site shall be accompanied by a plan showing works to upgrade the intersection of Epsom Road / Link Road. The intersection shall be designed as follows:*
    - (i) *Link Road approach – left turn lane (30-40m) + shared through / right turn lane + right turn only lane;*
    - (ii) *Epsom Road (East) approach – shared left/through lane + 60m through lane + 60m right turn only lane; and*
    - (iii) *Epsom Road (West) approach – free flow left turn slip lane + 20m long bus only lane + right turn only lane.*

- (b) *Detailed signal and road design plans of the proposed new traffic signals and interchange at Epsom Road/Link Road will need to be forwarded to the RTA for approval prior to the commencement of any roadworks. The plans must show all dimensions (e.g. lane width, kerb return radius), pavement marking, bike lane and logo, parking controls, bus zones, pedestrian crossing, median islands, signs and driveways. The RTA fees for administration, plan checking, signal works inspections and project management shall be paid for by the developer prior to the commencement of the works.*
- (c) *Works to upgrade the intersection shall be completed prior to the issue of any Occupation Certificate which permits more than 320 apartments to be occupied across the entire site.*
31. Part (c) of the condition currently requires works to upgrade the intersection of Link Road and Epsom Road to be completed prior to the issue of any Occupation which permits more than 320 apartments to be occupied across the entire site. The trigger of 320 apartments was established based on the traffic assessment which was submitted during the Stage 1 DA process.
32. To date, buildings D, G and H have been approved by Council and provide for 224 units. Given this is below 320 apartments, the intersection upgrade has not been triggered.
33. Application D/2014/1977 for Buildings B, C, E and F, includes an additional 247 units and would provide a combined total of 471 units on site when combined with Building D, G and H. This triggers the requirement for the intersection upgrade.
34. A traffic report has been submitted which justifies that the traffic generation rates used to establish the trigger (320 apartments) were too high at between 0.44 and 0.50 vehicle trips per unit.
35. Council's Traffic and Access Unit have reviewed the applicant's submission and agree that a traffic generation rate of 0.44 (or higher) is excessive in the current transport environment for the following reasons:
- (a) Council's strategic planning unit recently undertook the North Rosebery Traffic Study. As part of this study, surveys were taken at existing sites in this area and traffic generation rates between 0.15 and 0.24 were established.
- (b) RMS has recently released updated traffic generation rates for high density residential developments and typically 0.19 vehicle trips per apartment is now adopted for determining the potential traffic generation impacts of new development.
36. Applying a traffic generation rate of 0.19 would mean that approximately 830 apartments would need to be built before triggering an intersection upgrade. If a conservative approach was to be adopted using surrounding survey data and applying a traffic generation rate of 0.24, 658 apartments would trigger the requirement to upgrade the intersection.
37. As such, it is agreed that the trigger (in terms of vehicle trips generated rather than apartment numbers) would not be reached until the occupation of the final stage of the development (Building A) and accordingly, the proposed amendment is supported. Part (c) of the condition is recommended to be amended as follows:

- (c) *Works to upgrade the intersection shall be completed prior to the issue of any Occupation Certificate ~~which permits more than 320 apartments to be occupied across the site for Building A.~~*

38. This will ensure that the intersection upgrade has been completed prior to the occupation of Building A.

#### **Other Impacts of the Development**

39. The proposed development is capable of complying with the BCA without significant modification.
40. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### **Suitability of the site for the Development**

41. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

#### **INTERNAL REFERRALS**

42. The application was discussed with Council's Transport and Access Unit.

#### **EXTERNAL REFERRALS**

##### **Notification, Advertising and Delegation (Submissions Received)**

43. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days between 30 March and 14 April 2015. As a result of this notification there was one submission received.
44. The issues raised in the submission are as follows:
- (a) Concern about the increasing height of the development to allow for additional floor space ratio.

**Response** - The proposal does not result in an increase to the floor space ratio that was approved as part of the Stage 1 development and permitted under the Sydney LEP 2012. As discussed above the proposed height is considered to be acceptable.

#### **PUBLIC INTEREST**

45. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

#### **FINANCIAL IMPLICATIONS/S94 CONTRIBUTION**

##### **Voluntary Planning Agreement**

46. The amended development has no implications on the Voluntary Planning Agreement as executed.

**Section 94 Contributions**

47. There are no financial implications as a result of the amended development. Section 94 and Affordable Housing contributions will be calculated as part of the Stage 2 development applications.

**RELEVANT LEGISLATION**

48. The Environmental Planning and Assessment Act 1979.

**CONCLUSION**

49. The necessity to modify the approved building envelopes has come from the need to ensure consistency between the staged development applications on the site, as required under Section 83D of the EP&A Act.
50. As modified, the proposed envelope achieves the same design intent as the original Stage 1 DA building envelope; however allows the envelope to better reflect the alternative design competition winning scheme.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

(Matthew Girvan, Specialist Planner)