



MODIFICATION REQUEST:

**Mixed Use Development at 23-37 Lindfield Ave
and 11 Havilah Lane, Lindfield**

**MP 08_0244 MOD 1 – Modifications to
Development and Conditions**



Director-General's
Environmental Assessment Report
Section 75W of the *Environmental Planning and
Assessment Act 1979*

October 2013

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EXECUTIVE SUMMARY

This is an assessment report of an application which seeks to modify a Project Approval issued by the Planning Assessment Commission in respect of a mixed use retail and residential development at 23-37 Lindfield Avenue and 11 Havilah Lane at Lindfield. The site is located in the Ku-ring-gai Local Government Area.

The modification as exhibited sought approval for a number of changes to the Project Approval including increasing the height and FSR, a 23% increase in dwelling yield, a 43% reduction in retail floor space, reduction in on-site parking provision, together with the amendment of various conditions of approval and Statement of Commitments.

The Environmental Assessment was exhibited for 37 days from 23 January to 1 March 2013 and the Department received 95 public submissions, all of which objected to the proposal on the grounds of reduced parking provision, increased height, reduction in retail floor space and overshadowing impacts.

A total of 4 submissions were received from public authorities, including Ku-ring-gai Council. Council acknowledged that the modified proposal represents an improved architectural solution for the locality (compared to the approved scheme) but raised a number of issues of concern including increases in height and the inconsistencies with Ku-ring-gai Local Environmental Plan (Local Centres) 2012, loss of retail floor space and the impact of the proposal on the development potential of adjoining sites.

Ku-ring-gai Council's Local Centres LEP came into effect in February 2013. Under the provisions of the LEP, the subject site and those properties immediately to the north, as well as 2 Kochia Lane to the south are zoned B2 Local Centre and the applicable height (26.5 metres) and FSR (3:1) controls permit development of a scale and nature comparable to the approved development. It is noted that the Western Tower (Lindfield Avenue frontage) as approved already exceeds the maximum building height set out in KLEP (Local Centres) 2012.

The Department has undertaken a merit-based assessment of the proposed modifications having regard to the:

- height of the Project as approved and the relatively minor increase proposed;
- Town Centre context; and
- additional impacts on the amenity (overshadowing) of public spaces.

The Department has considered the merits of the proposal in accordance with the objects of the EP&A Act and has taken into consideration the issues raised in all submissions. The Department has determined that the proposed bulk and height of the modified proposal is compatible with the character of the surrounding locality and will not result in any unreasonable environmental or amenity impacts.

Overall the Department is satisfied the impacts have been addressed in the PPR, the Revised Statement of Commitments and recommended conditions and the impacts can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance. In this regard the Department has determined that subject to conditions, the Project Application is recommended for approval.

The application is referred to the Planning Assessment Commission under delegated authority from the Minister, as Council has objected to the proposal and more than 25 submissions have been received objecting to the proposal.

1. BACKGROUND

The purpose of this report is to assess a request to modify a Project Approval (MP 08_0244) for a mixed use development at 23-37 Lindfield Avenue and 11 Havilah Lane, Lindfield pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Proponent seeks approval for a number of changes to the Project Approval including increasing the height and FSR, a 23% increase in the dwelling yield, together with a 43% reduction in retail floor space, a reduction in the on-site parking provision and the amendment of various conditions of the approval and Statement of Commitments.

1.1 Site Description

The site is located on the eastern side of Lindfield Avenue which runs parallel to the North Shore rail corridor in the Lindfield Town Centre and is known as 23-27 Lindfield Ave and 11 Havilah Lane.

The site is situated directly opposite Lindfield Station and is within the Ku-ring-gai Local Government Area. The location of the site is illustrated in **Figures 1 and 2**.

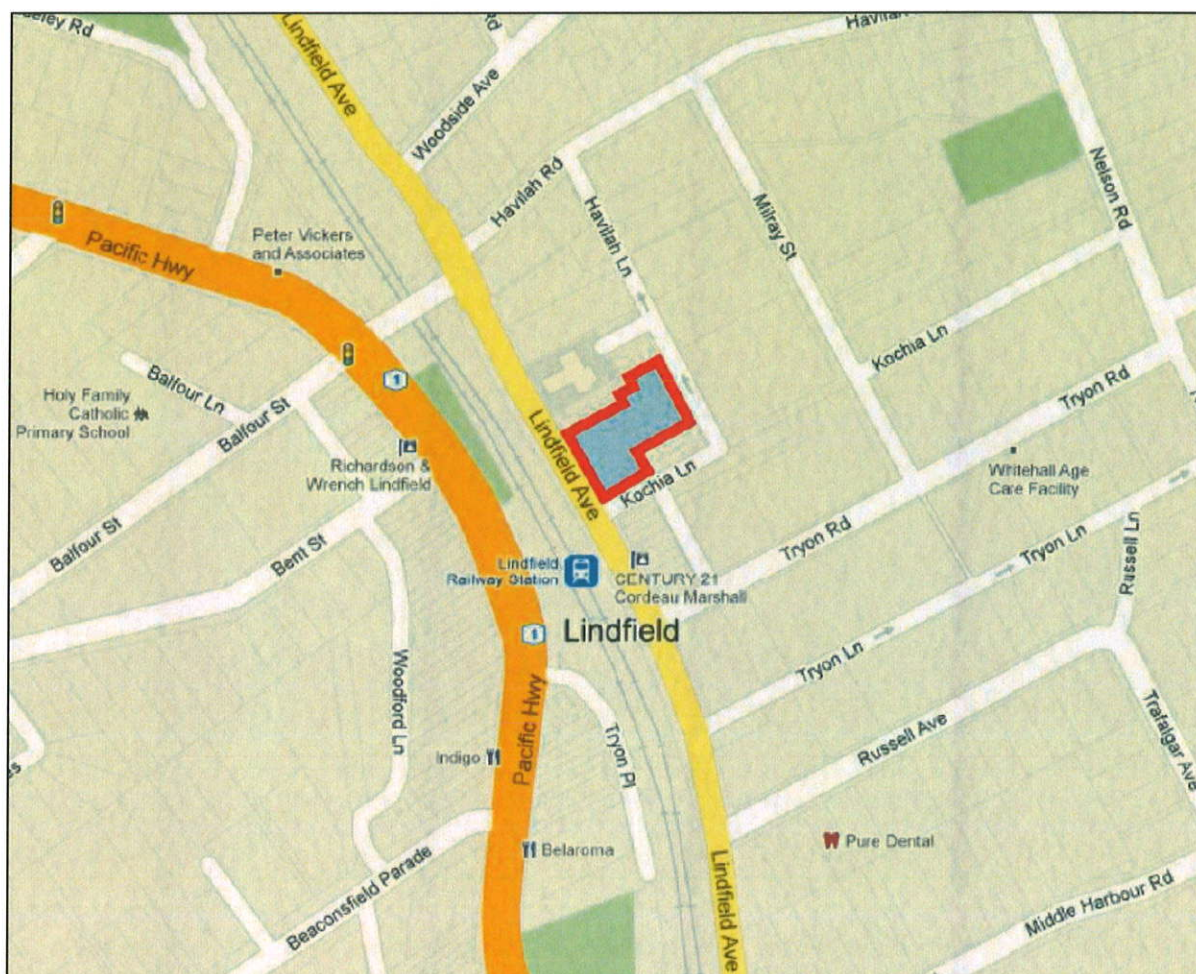


Figure 1: Location Plan (Base Image Source: Google Maps)



Figure 2: Local context (Source: Proponent's EA)

1.2 Previous Approvals

On 27 January 2012, the Planning Assessment Commission (PAC) approved Project Application (MP08_244) which allowed for the construction of a mixed use retail and residential development (GFA 11,899m²) comprising a 2 level podium with 4,231m² of retail GFA including 293m² of GFA for a medical centre; 91 apartments contained in two residential towers above the retail podium; and 3 levels of basement car parking for 196 vehicles.

The Department recommended a number of modifications to the original Project Application in order to achieve a better relationship with the streetscape character at Lindfield Avenue and an adjoining heritage item at Nos. 1-21 Lindfield Avenue. The modifications included:

- a requirement for the Western Tower to incorporate a setback of 2 metres at Levels 5 and 6, stepping back to 4 metres at Levels 7 and 8 from the Lindfield Avenue frontage;
- a revised façade treatment for the Eastern Tower, providing greater articulation to Havilah Lane; and
- the inclusion of privacy screens to the windows and balconies at Levels 2, 3 and 4 in the Western Tower on the Kochia Lane frontage.

The PAC supported the Department's recommendation and the project as approved is illustrated in **Figure 3**, although it should be noted that the modifications described above are not shown.

1.3 Local Planning Controls

At the time the Project Application was assessed, the relevant local planning instrument was Ku-ring-gai Planning Scheme Ordinance (KPSO).

On 25 January 2013, Ku-ring-gai Local Environmental Plan (Local Centres) 2012 was gazetted. The LEP sets out future development of land within the local centres in the Ku-ring-gai LGA, including Lindfield.

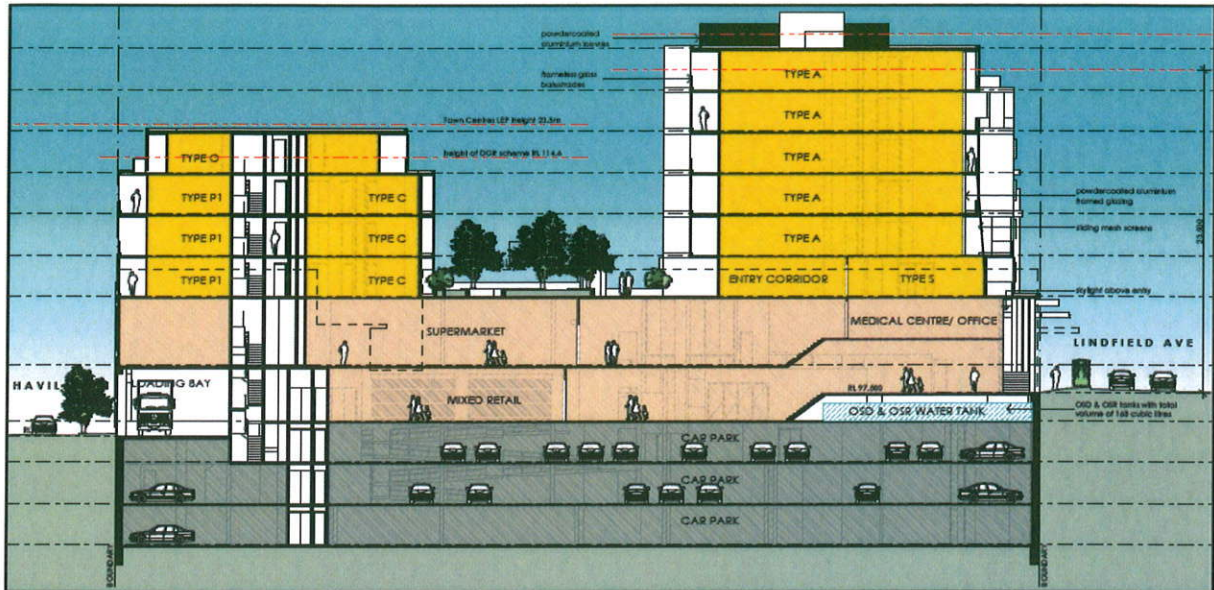


Figure 3: Section through approved development (Source: Proponent's RtS)
Note: setbacks to the upper levels on the Lindfield Avenue frontage not shown.

The Local Centres Development Control Plan (DCP) came into effect on 7 June 2013 and provides detailed guidelines for future development on land in and around the local centres within the Ku-ring-gai LGA which are covered by Ku-ring-gai Local Environmental Plan (Local Centres) 2012.

The development standards and controls set out in the LEP and DCP make provision for future development within the Lindfield Town Centre (significantly beyond that considered by the KPSO) commensurate with its role as a local centre in the LGA.

Under the provisions of the LEP, the subject site and those properties immediately to the north (Nos. 39 and 41 Lindfield Avenue and 9 Havilah Lane), as well as 2 Kochia Lane to the south are zoned B2 Local Centre and the applicable height (26.5 metres) and FSR (3:1) controls permit development of a scale and nature comparable to the existing Project Approval.

It is noted that Council is in receipt of a development application for a mixed use development on a large consolidated site to the north, known as Nos. 43-55A Lindfield Avenue, comprising 65 residential apartments and some 1,400m² retail / commercial floor space. Building heights across the site range between 5 storeys (on land zoned R4) and 8 storeys on that part of the site zoned B2.

2. PROPOSED MODIFICATION

The application as submitted proposed substantial modifications to a number of aspects of the Project Approval, including an increase in height and floor space to provide 21 additional units and changes to the apartment mix; reconfiguration of the lower ground and ground floors including a reduction in the amount of retail floor space; the deletion of one basement parking level; reconfiguration of the car park layout; and deletion of 34 parking spaces.

In response to submissions from the Council and concerns raised by the Department, the Proponent amended the proposal. The key aspects of the modification as now proposed are set out in **Table 1**.

Table 1: Key Proposed Modifications

Aspect	Approval	Modification
Height	Building A: 26.36m (7 storeys) Building B: 23.34m (6 storeys)	Building A: 30.64m (8 storeys) Building B: 27.86m (7 storeys)
GFA	Residential: 7,688m ² Commercial / Retail: 4,231m ² (incl. 239m ² medical centre) Total: 11,899m²	Residential: 9,686.5m ² Commercial / Retail: 2,379m ² Total: 12,028.7m² (+ approx. 130m² GFA)
FSR Site area 3,099m ²	Residential: 2.47:1 Commercial / Retail: 1.36:1 Overall: 3.84:1	Residential: 3.12:1 Commercial / Retail: 0.77:1 Overall: 3.88:1
Residential	91 Apartments including: 1 x studio (1%) 45 x 1 bedroom (49%) 38 x 2 bedroom (41%) 7 x 3 bedroom (8%)	112 apartments including: 4 x studios (4%) 53 x 1 bedroom (47%) 53 x 2 bedroom (47%) 2 x 3 bedroom (2%)
Car Parking	196 spaces including: • 91 resident spaces • 15 residential visitor spaces • 74 retail public spaces • 16 retail employee spaces	184 spaces including: • 118 resident spaces • 12 residential visitor spaces • 44 retail public spaces • 10 retail employee spaces
Communal Open space	620m ² (20% site area)	699.5m ² (22.5% site area)

The proposal also entails:

- reconfiguration of basement car park and car park layout;
- reduction in the footprint of the excavated area;
- reconfiguration of the lower ground floor (previously referred to as ground floor level);
- reconfiguration of the ground floor level (previously referred to as Level 1);
- retention of the existing Rights of Way accessed from Havilah Lane, benefitting Nos. 39 and 41 Lindfield Avenue;
- changes to the size and shape of the residential towers addressing both Lindfield Avenue and Havilah Lane;
- revised external materials and finishes; and
- generic signage structures and locations as follows:
 - Lindfield Avenue frontage – building identification sign located on the awning fascia above the residential lobby; retail mall sign and street numbers located on the wall of the access ramp; and retail tenant signage boxes located on the northern wall of retail tenancy No. 3, adjacent to the entry to the resident lobby;
 - Kochia Lane frontage – building identification blade sign (2000mm x 2950mm) located above the awning adjacent to the existing building at 2 Kochia Lane; retail tenant signage boxes located on the eastern side of the entry to the retail mall; street numbers located immediately above the tenant signage boxes; and retail mall sign at top hamper above building entry;
 - Havilah Lane – building identification sign located on the awning fascia above the entry to the residential lobby; a wall mounted, internally illuminated parking signage box located adjacent to the car park entry; and
 - a series (1 per retail tenant) of under awning signage boxes across the site, designed to satisfy the requirements of Ku-ring-gai Council's Advertising Signs DCP 28.

Images of the proposed modification in comparison to the approved project are provided in **Figures 4, 5 and 6.**



Figure 4 View of S75W proposal from Lindfield Avenue (top) compared with approved scheme (bottom) (Source: Proponent's EA and S75W application)
Note: the Project Approval imposed conditions requiring the upper levels on the Lindfield Avenue frontage to be set back between 2 and 4 metres.



Figure 5 View of the S75W proposal (top) from the Kochia Lane car park compared to the same view of the approved scheme (bottom) (Source: Proponent's original EA and S75W application)



Figure 6 View of S75W proposal from Havilah Lane (left) compared to a similar view of the approved scheme (right) (Source: Proponent's original EA and S75W application)

3. STATUTORY CONTEXT

3.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with Clause 3 of Schedule 6A of the *Environmental Planning and Assessment Act 1979*, 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 the modification of the project under section 75W of the EP&A Act.

3.2 Modification of the Minister's Approval

The modification application has been lodged with the Director-General 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 of the approval.*"

The Minister's approval of a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to substantially amend the building form as originally approved and therefore, approval to modify the application is required.

3.3 Environmental Assessment Requirements

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

No additional environmental assessment requirements were issued with respect to the proposed modifications, as sufficient information has been provided to the department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original DGRs.

3.4 Delegated Authority

The Minister has delegated his functions to determine Part 3A applications to the Planning Assessment Commission (PAC) where an application has been made by persons other than by or on behalf of a public authority.

The application is being referred to the PAC for determination as:

- Ku-ring-gai Council has made a submission in the nature of an objection to the proposal; and
- there are more than 25 public submissions objecting to the proposal.

4. CONSULTATION AND SUBMISSIONS

Under section 75W of the Act, a request to modify an approval does not require public exhibition. However under 75X(2)(f) of the Act, the Director-General is required to make the request for modification of the approval publicly available.

The Department publicly exhibited the request for modification from 23 January until 1 March 2013 (37 days) on the Department's website. The public exhibition was advertised in the Sydney Morning Herald, Daily Telegraph and the North Shore Times on 23 January

2013 and nearby land owners and the relevant State and local government authorities were notified in writing.

The Department received 99 submissions during the exhibition. This includes 4 submissions from public authorities and 95 submissions from the general public, all in the nature of an objection.

The Proponent's Response to Submissions made a number of amendments to the modification request in response to the issues raised in the submissions.

Having regard to the changes to the proposal the Department advised Ku-ring-gai Council of the Proponent's amendments. Council provided further comments in relation to the amended proposal.

A summary of the issues raised in submissions is provided below.

4.1 Public Authority Submissions

Four submissions were received from public authorities, including Ku-ring-gai Council, Roads and Maritime Services, RailCorp and Sydney Water.

Ku-ring-gai Council has acknowledged that the modified proposal presents an improved architectural solution for the locality (than that originally approved), but has raised a number of issues of concern including:

- the increases in bulk, height and scale without adequate justification;
- the loss of key retail and medical facilities and the associated long term impact of reduced retail / commercial provision in accommodating a growing town centre;
- the impact on the development potential of adjoining sites; and
- inconsistencies with KLEP (Local Centres) 2012 and (the then) Draft Local Centres DCP 2013.

Roads and Maritime Services did not raise any concerns in relation to the proposed modification.

Sydney Water advised that it had no further comments in relation to the proposed modification as the proposal is of similar scale and design to the original development.

RailCorp advised that the conditions stated in RailCorp's submission in relation to the original development (dated 23 December 2010) still apply.

4.2 Public Submissions

A total of 95 submissions were received from the public, including 70 pro-forma letters and 1 petition objecting to the proposal with 88 signatures.

All the submissions objected to the proposed modifications. The key issues raised in public submissions are listed below.

Table 2: Summary of Issues Raised in Public Submissions

Issue	Times mentioned	Proportion of submissions (%)
Reduced on-site parking provision	87	91
Increased height	85	89
Objection to reduction in retail / commercial floor space	82	86
Overshadowing	79	83
Privacy (assoc. with reduced setback to Havilah Lane)	77	81

Issue	Times mentioned	Proportion of submissions (%)
Out of character with the area	76	80
Non-compliance with planning controls	9	9
Traffic impact on local roads	7	7
Increased yield / density	7	7
Impact on development potential of adjoining sites	7	7

Other issues raised in the public submissions include:

- apartment mix does not fit with the demographics of the area;
- heritage impacts;
- dilapidation reporting requirements should be preserved;
- potential for pedestrian / vehicle conflict in the shared zone;
- extent of proposed changes requires new DA;
- impacts on the operation of the right-of-way; and
- need for Phase 2 contamination assessment.

The Department considered the issues raised in submissions and requested that the Proponent provide a response to the issues.

4.3 Proponent's Response to Submissions (RtS)

On 3 June 2013, the Proponent amended the modification request in response to issues raised in the submissions. These included:

- improving the relationship of the ground floor retail tenancies which address Lindfield Avenue, ensuring that these spaces have a direct interface with the Lindfield Avenue footpath;
- provision of additional on-site parking for residents, visitors and retail tenants from 162 spaces to 184 spaces now proposed;
- design changes to provide setbacks of between 2 and 3 metres for certain elements of the towers from the northern boundary; and
- revision of the signage to comply with Council's (then) Draft Local Centres DCP 2012.

Additional information was also provided by the Proponent in relation to the following:

- a response to the concerns raised in relation to the reduction in retail floor space – the Proponent has provided a retail floor space analysis which seeks to justify the lesser retail floor space and to address Council's Retail Centres Strategy; and
- a Vehicle Management Plan to address vehicle and pedestrian safety and circulation in and around the shared loading dock / rights of way / access to retail parking.

4.4 Further Submissions

On 21 June 2013, Ku-ring-gai Council provided further comments in response to the Proponent's RtS which acknowledged that some of its previous concerns had been addressed. However, the following matters have not been resolved to Council's satisfaction:

- impact on development potential of adjacent properties;
- setbacks to Lindfield Avenue and Kochia Lane;
- loss of retail floor space;
- allocation of parking spaces;
- vehicular access – potential for conflict;
- car park layout and design; and
- concern about lack of detail regarding allocation of bicycle parking to residents/visitors/shoppers.

Two additional submissions were received from the public following receipt of the Proponent's RtS which reiterated concerns about the relationship of the proposed development to adjoining properties and specifically the potential impact on the development potential of these properties, inadequate parking and unresolved issues around the Rights-of-Way associated with Nos. 39 and 41 Lindfield Avenue, the Proponent's request to remove the need for dilapidation reports for certain properties and poor amenity of the proposed units.

On 13 August 2013, the Proponent again provided further information which specifically addresses the relationship of the proposed development to adjoining sites.

The Department has considered the issues raised in submissions in its assessment of the proposed modifications.

5. ASSESSMENT

The Department considers the key assessment issues for the proposed modification to be:

- building form and design;
- parking and access;
- reduction in retail floor space;
- residential amenity; and
- streetscape presentation to Lindfield Avenue and Havilah Lane.

5.1 Building Form and Design

The proposal seeks changes to the size and shape of the residential towers. The Department considers that the key issues relating to the proposed building form include:

- increased height; and
- the relationship of the buildings to adjoining sites and any impacts on the development potential of those sites.

These issues are discussed below.

5.1.1. Height

The height of the development varies across the site due to a cross fall of approximately 5.5 metres from the south west corner to the north eastern corner. **Table 3** sets out the extent of the proposed changes to the height of the approved development on each elevation.

Table 3: Building Heights

Façade Height	Approved	Proposed	Difference
Lindfield Ave (SW elevation)	25.4m	29.3m	+3.9m
Kochia Lane (SE elevation)	25.2m	28.3m	+3.1m
Havilah Lane (NE elevation)	23.2m	26.5m (to pop-up roof) 25.6m (to general roof line)	+3.3m +2.4m
NW elevation	27.0m (Building A) 23.2m (Building B)	29.3m (Building A to central roof) 25.7m (Building B to central roof)	+2.3m +2.5m

At the time of the original assessment, the KPSO stipulated a height control of 8 metres. The Department took the view that the KPSO failed to recognise the opportunity for the site in the context of the Lindfield Town Centre to contribute to wider strategic planning objectives. On this basis, the Department undertook a merit-based assessment of the

building form against the existing character of the locality and the impacts on the amenity of surrounding properties.

The assessment concluded that the general height was appropriate and was consistent with the mixed character of the surrounding developments. It is also noted that the PAC, in its determination of the project application, indicated that a height in the range of 7-9 storeys is appropriate in the Town Centre context.

The current height controls set out in KLEP (Local Centres) 2012 allows for a maximum building height of 26.5 metres, defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposed maximum height of Building A (Western Tower on the Lindfield Ave frontage) is 29.3 metres (8 storeys) above existing ground level (30.6 metres including plant room and lift overrun). This exceeds the 26.5 metre height by 2.8 metres measured to the top of the parapet and a total exceedance of 4.1 metres, measured to the top of the plant.

The proposed height of Building B (Eastern Tower) is 25.6 metres (7 storeys) above existing ground level in Havilah Lane. With the lift overrun, the height will be 27.6 metres, which exceeds the maximum height permissible by 1.1 metres. However the Department notes that the majority of the Eastern Tower is compliant with the height control.

It is noted that the lift overruns are located towards the centre of the roofs of the respective towers and therefore will not be visible from street level and will not significantly contribute to the perceived height of the development.

Figures 7a and 7b illustrate the comparative height of the approved and proposed development, together with the relationship to the height control stipulated in Ku-ring-gai LEP (Local Centres) 2012.

The Proponent has indicated that only a relatively small portion of the uppermost level of the Western Tower exceeds the height limit set out in Ku-ring-gai LEP (Local Centres) 2012 and asserts that the development is in keeping with the scale and built form of the Town Centre.

Council is of the view that the increase in height cannot be substantiated and has expressed concern that the additional height allows one extra level of residential apartments. At the same time there is a compounding loss of public benefit, namely the reduction in the quantum of commercial / retail floor space.

Council recommends that the overall building height be reduced to a maximum of 26.5 metres to be consistent with Ku-ring-gai LEP (Local Centres) 2012 and the Project Approval.

The Department has undertaken a merit based assessment of the building form, having regard to its context (the existing and desired future character of the locality) and the potential impacts on the amenity of surrounding properties, including the future Lindfield Town Square.

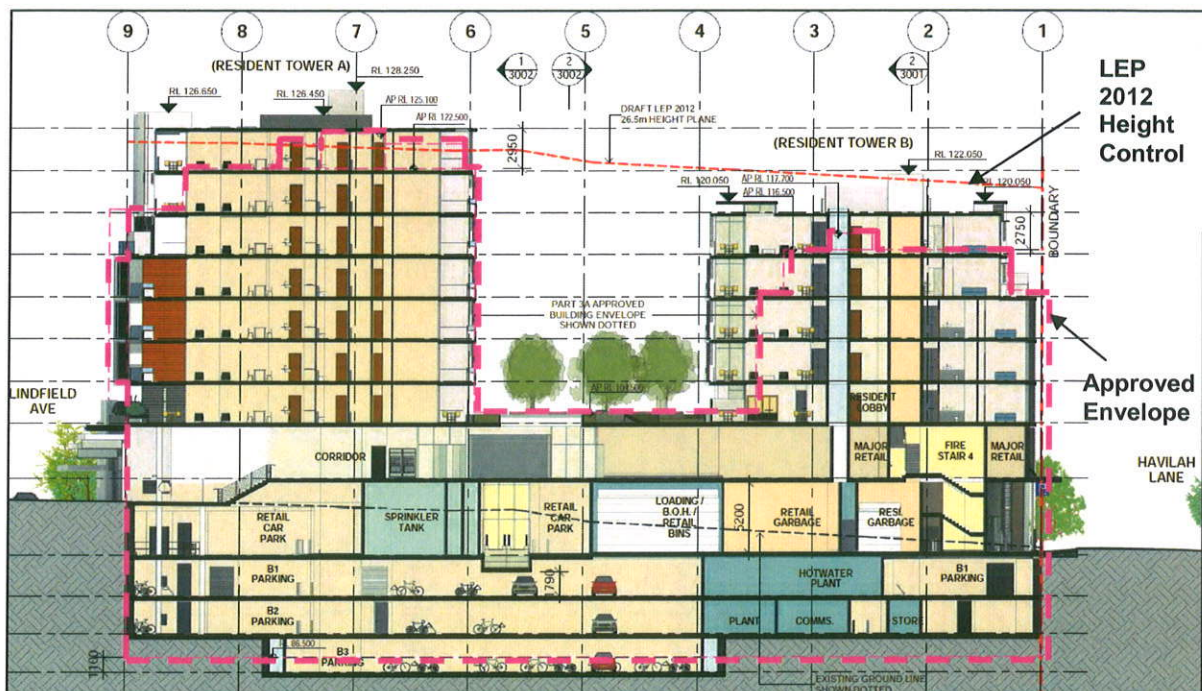


Figure 7a East-West section through the proposal showing comparison to approved height and the height control in Ku-ring-gai LEP 2012

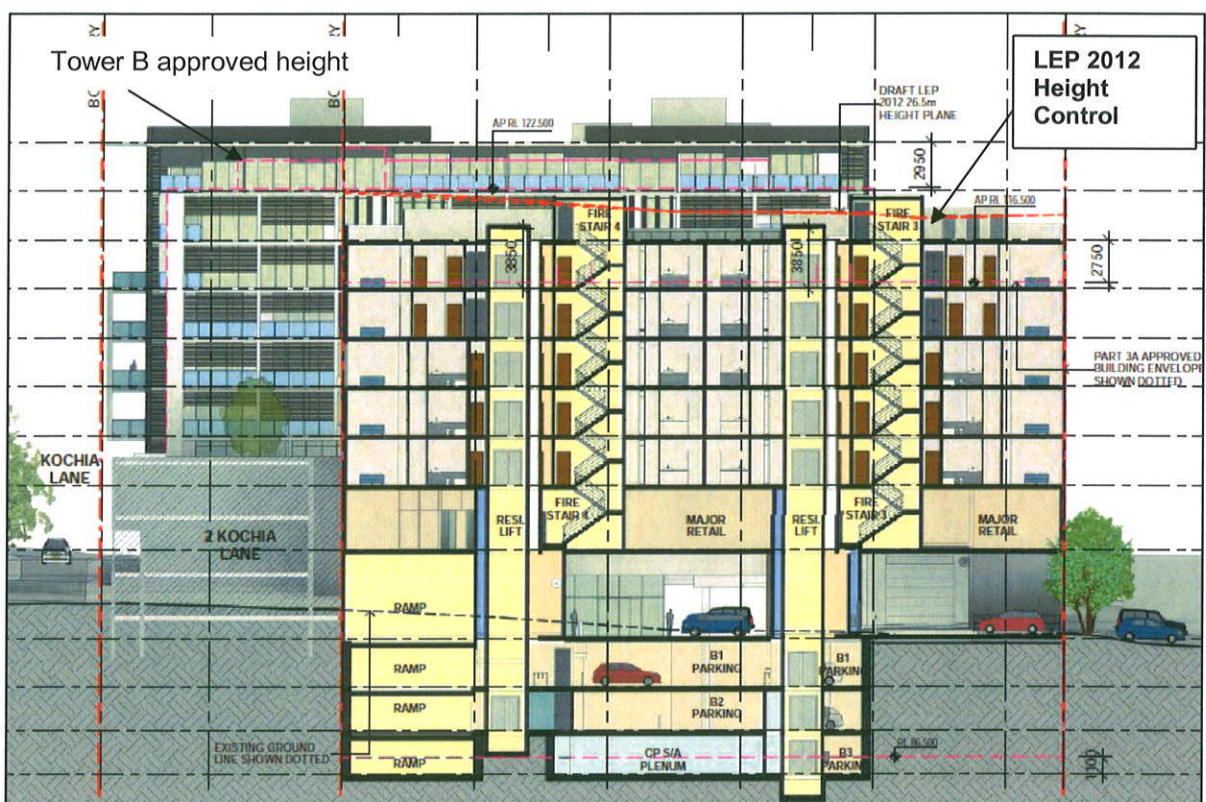


Figure 7b North-South section through Tower A (Havilah Lane) showing comparison to approved height and the height control in Ku-ring-gai LEP 2012 (Source: Proponent's RtS)

In terms of context, the Department notes that:

- the general height of existing development in and around the Lindfield Town Centre is undergoing change, with the traditional single dwellings on large parcels being replaced with 5 and 6 storey residential flat buildings; and
- Ku-ring-gai Council's Local Centres LEP came into effect in February 2013. Under the provisions of the LEP, the subject site and those properties immediately to the north, as

well as 2 Kochia Lane to the south are zoned B2 Local Centre and the applicable height (26.5 metres) and FSR (3:1) controls permit development of a scale and nature comparable to the approved development. It is noted that the development application for a mixed use development on a large consolidated site to the north (Nos. 43-55A Lindfield Avenue) seeks approval for building heights up to 8 storeys.

In relation to the latter point, the Department notes that Building A (Western Tower) as approved, already exceeds the maximum building height set out in KLEP (Local Centres) 2012.

Having regard to the above, the Department considers that the proposed height is reasonable having regard to the existing and emerging town centre built form context.

In terms of amenity impacts to nearby areas, particular concern has been raised by Council and in the public submissions in relation to the overshadowing impacts on the future Lindfield Town Square (which is currently an at-grade car park) to the south of the site.

Council's intentions for the car park site are the creation of a new civic space which may include a new library as a community focus for the eastern side of Lindfield. To facilitate these outcomes the existing at-grade car park will be relocated to a basement level on the site, below a new civic space.

Figure 8 demonstrates that the majority of the future Town Square is unaffected by shadow cast by the proposed development in the middle of the day in mid-winter, when it is reasonable to expect that it would receive the most use by visitors and workers in the Town Centre.

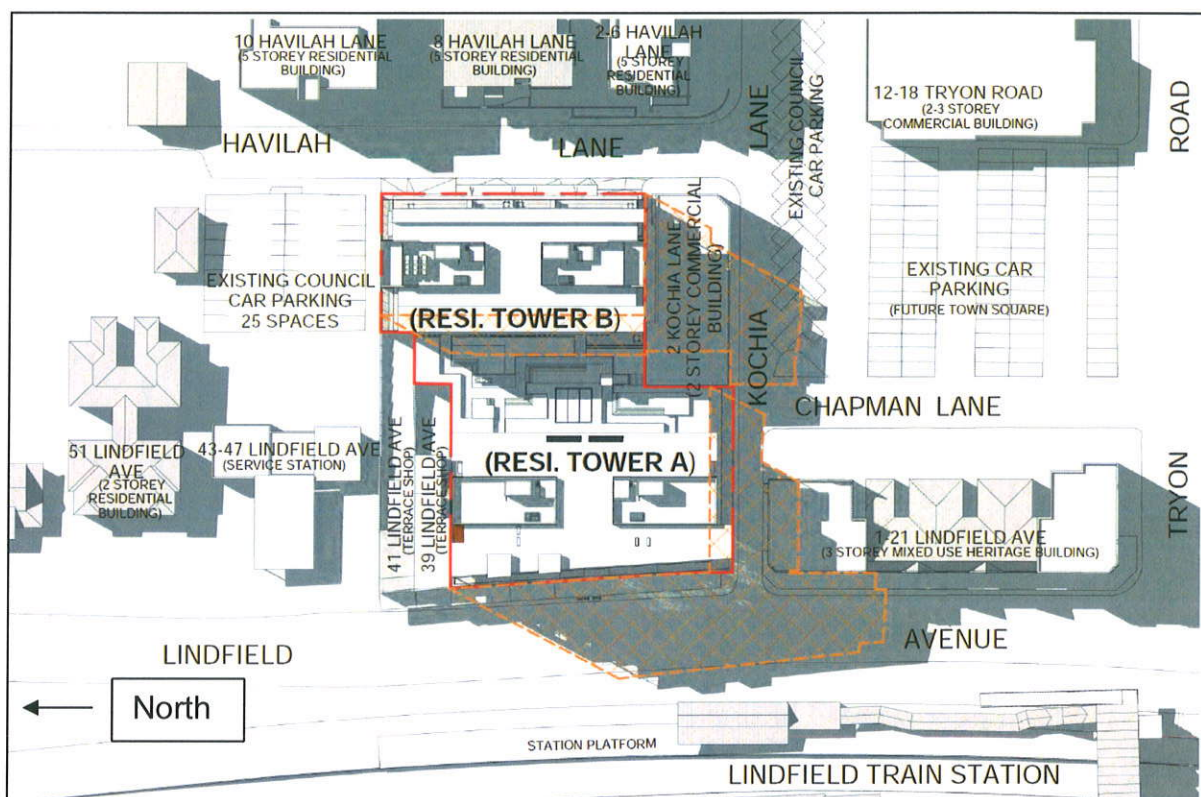


Figure 8 Shadow diagram illustrating extent of shadows cast by the proposal at 12:00 noon in mid-winter compared to shadow cast by approved development (shown orange dashed) (Source: Proponent's RtS)

Having regard to the height of the Project as approved, the Town Centre context and the limited impacts on the amenity (overshadowing) of public spaces, the Department considers

that the modified height and form of the development is generally acceptable in the context of the Lindfield Town Centre.

5.1.2 Relationship to Adjoining Sites

The proposal includes substantial architectural changes to the approved building form and the buildings have now been designed to be viewed "in the round", which departs from the Project Approval which presented predominantly blank walls to the adjoining sites to the north and south (**Figures 5 and 6**).

At the time the original Project Application was assessed, the environmental planning instrument applicable to the Lindfield Town Centre, including the subject site and those immediately adjacent, was the KPSO which allowed for a maximum FSR of 1:1 and height of 8.0 metres (2 storeys). However, the development had been designed having regard to the increased densities able to be achieved under Schedule 4 of State Environmental Planning Policy No. 53 – Major Residential Development (which allowed heights of up to 7 storeys) and Ku-ring-gai LEP (Town Centres) 2010 (which provided for a maximum height of 20.5 metres (6 storeys) and an FSR of 2.5:1). The Town Centres LEP was declared to be an invalid instrument by the Land and Environment Court on 28 July 2011.

Ku-ring-gai LEP (Local Centres) 2012 and the Local Centres DCP have increased the scale of development now potentially able to be achieved on the adjoining sites, both in terms of height (26.5 metres) and FSR (3.0:1).

The Department and Council raised concern that the inclusion of windows and balconies constructed to the common boundaries with 2 Kochia Lane, 9 Havilah Lane and 39 Lindfield Avenue could limit the ability of those properties to maximise their development potential by building to the party wall as is expected where a zero setback is permitted.

Having regard to the above, the Proponent has submitted further analysis regarding the development potential of the adjoining properties to the north, together with amended plans which illustrate further modifications to the elevational treatments of the buildings where they interface with the abovementioned properties.

The relationship of the amended proposal to each of the adjoining properties and the impact on the development potential of those properties is discussed in the following sections.

2 Kochia Lane

The subject site shares a common boundary with 2 Kochia Lane to the south (**Figure 8** illustrates the relationship of the site to this property).

The issues of site isolation and the future development potential of the property at 2 Kochia Lane were carefully considered as part of the Department's original assessment. The Department considered a scenario where future controls may have allowed for development of this site to occur to a similar scale as the subject site, in particular a 5 storey mixed use building comprising 1 or 2 storeys of retail / commercial floor space and 3 – 4 storeys of residential above.

It is noted that the provisions of the now current Ku-ring-gai LEP (Local Centres) 2012 allow for an FSR of 3:1 and maximum permissible height of 26.5 metres. Council, in its submission, acknowledges that its real development potential, given the lot size (approximately 512m²) is likely not to exceed 20.5 metres.

The Department considers that the small site area and the likelihood that Council will also require the dedication of a 4 metre wide strip of land along the Kochia Lane frontage to implement its plans for the future widening of Kochia Lane, it is anticipated that future development is only likely to achieve a height in the order of 4-5 storeys.

The Eastern Tower as approved observed a zero setback to the common boundary with 2 Kochia Lane and included 3 large fixed windows in its southern elevation to apartments in the uppermost 2 levels – two windows on Level 3 and a single window on Level 4. The Department noted at the time that these windows may potentially be blocked out by a future building at 2 Kochia Lane. However as the windows were on the upper levels of the building, were south facing and not essential to either cross-ventilation or solar access a condition was included in the Project Approval requiring that a restrictive covenant be placed on the affected apartments removing any rights to solar access to these windows (Condition F17).

The request for modification as exhibited, significantly altered the relationship of the Eastern Tower to the building at 2 Kochia Lane, through the inclusion of 10 large windows (2 per floor) in a section of wall constructed on the common boundary and balconies on Levels 1 – 5 inclusive which wrapped around the corners of the building, also on a zero setback.

Council's submission contends that it would be inequitable for the proposed modification to compromise the potential of adjacent sites and that window openings and balconies on the common boundary would prevent 2 Kochia Lane from realising any potential in its height and floor plate. Council requests that the southern party wall to the Eastern Tower be provided as a blank facade to a height of 20.5 metres from the highest point of ground level on 2 Kochia Lane.

The Proponent's amended plans include a number of changes, most significantly the deletion of the large windows on the lower levels of the building together with the corner balcony elements.

The revised façade treatment is described as follows and is illustrated in **Figures 9 and 10**:

- the central portion of the southern elevation of the Eastern Tower is constructed to the common boundary. This part of the building accommodates bedrooms and proposes a blank wall at Levels 1-3 inclusive, while fixed highlight windows (2 per floor) are proposed to the bedrooms on the two uppermost levels (Levels 4 and 5);
- to the east of this central element the building observes a 1.29 metre setback from the southern boundary. Fixed highlight windows serve the living areas in the apartments on Levels 1-3 and at Levels 4 and 5 full height windows are proposed. It is noted that each of these apartments on this corner of the building have full height glazing to the east and open out onto balconies on the Havilah Lane frontage; and
- on the western side of the central element the building observes a 1.45 metre setback. Fixed highlight windows to the bedrooms at the westernmost end of this section of the building are included on Levels 1-5. It is noted that these bedrooms have alternate sources of light and ventilation via operable windows in the western façade and access to a balcony.

The Proponent has submitted confirmation from an accredited Building Certifier that the windows on both the northern and southern elevations of the Towers with minimal setback to the properties will comply with the Building Code of Australia.

The Department notes Council's suggestion to provide a blank party wall up to a height of 20.5 metres. This treatment however is not supported as articulation provided by the proposed windows improves the appearance of the façade, at least until such time as the adjoining site is redeveloped. It is noted that the 4 fixed highlight windows in Levels 4 and 5 which abut the boundary with 2 Kochia Lane may potentially be blocked out by a future building on that site, should it be of a similar height and bulk. However these windows are not essential to cross ventilation or solar access requirements for the apartments they serve. In addition, the windows are south-facing and are therefore unlikely to receive any direct sunlight throughout the day.

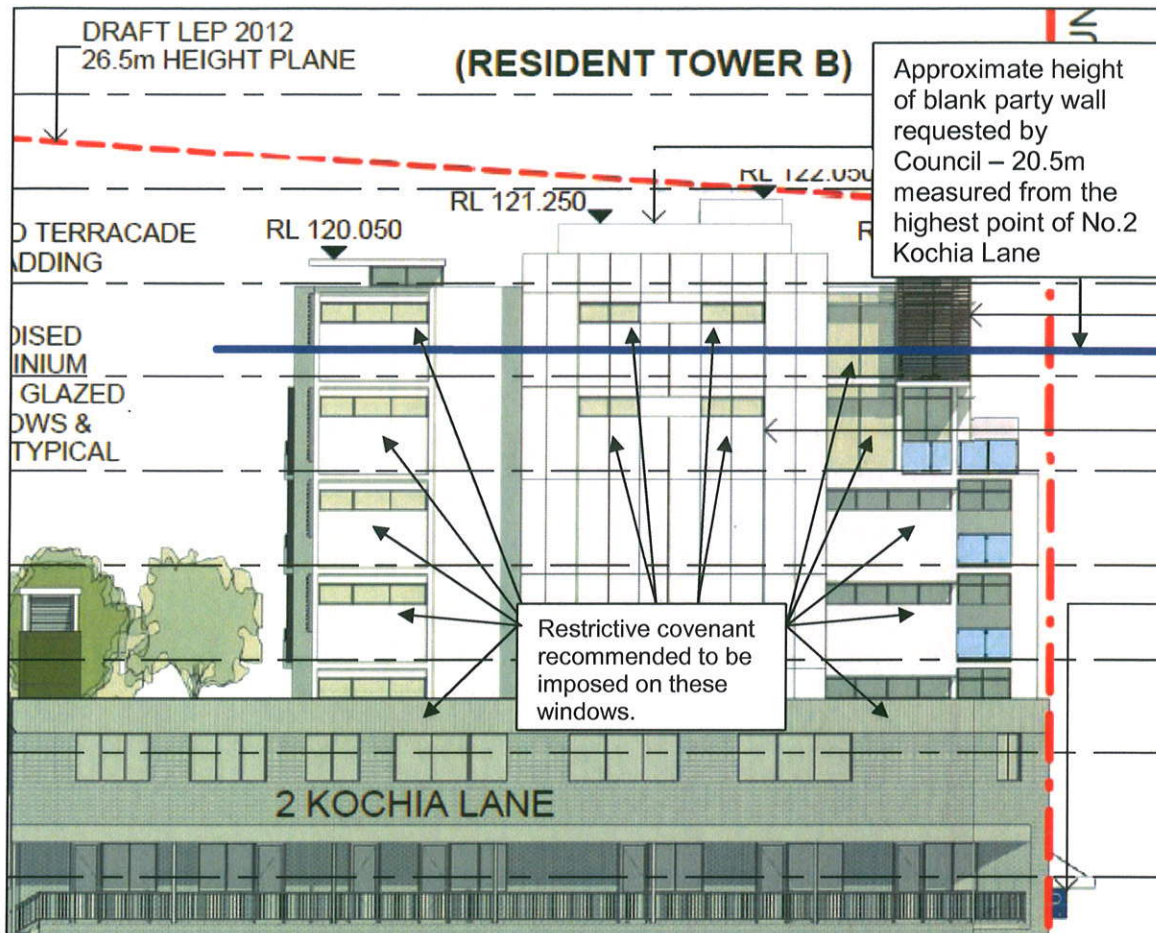


Figure 9 Southern elevation of Eastern Tower relative to 2 Kochia Lane

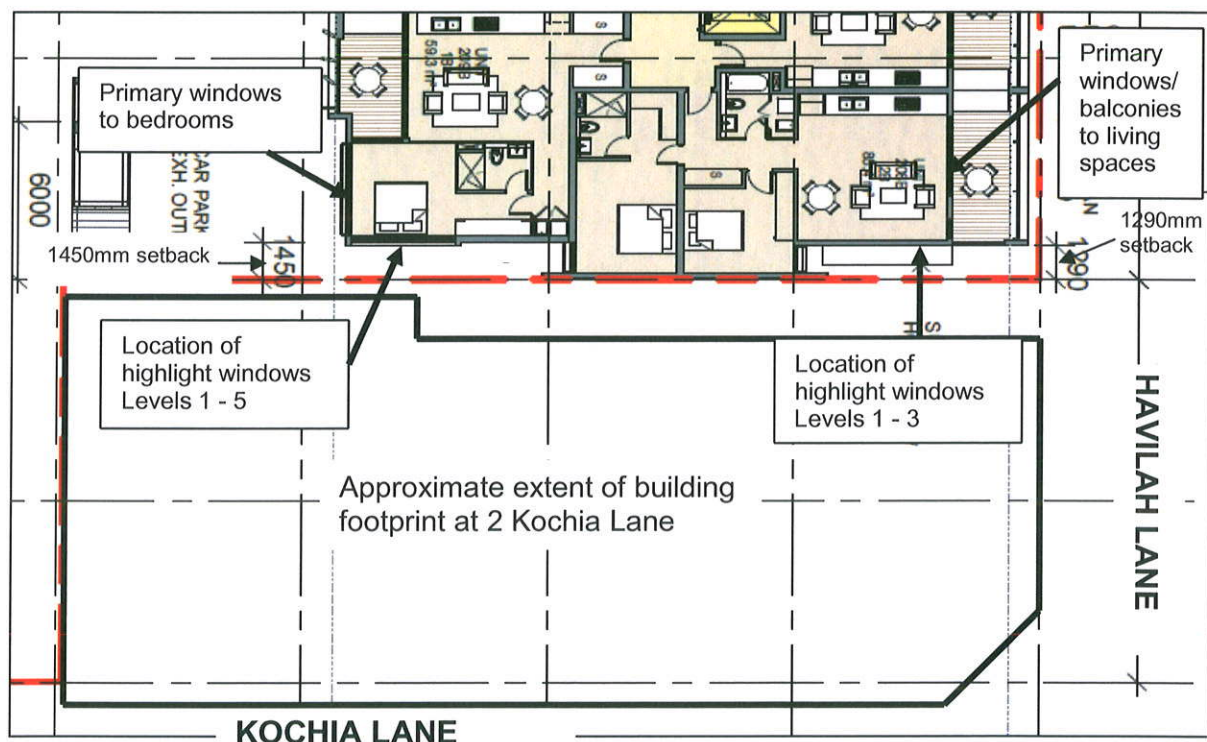


Figure 10 Typical floor plan detail of southern end of Eastern Tower relative to 2 Kochia Lane (Source: Proponent's amended plans)

In order to prevent these windows from restricting any potential future development at 2 Kochia Lane, the Department recommends that Condition No. F17 of the Project Approval

be retained in its current wording to require a restrictive covenant to be placed on the windows of these apartments removing any solar access rights, noting that the windows are not essential for light and ventilation and can be removed, should development occur on the adjoining site.

Whilst the remaining windows in the southern elevation (ie. those that observe setbacks of 1.29 metres and 1.45 metres) could also potentially be impacted by future development at 2 Kochia Lane, the setbacks will facilitate some daylight access via a lightwell. Having regard to this possible future outcome, the Department recommends an amendment to Condition F17 which requires the inclusion of a covenant to advise future purchasers that the aforementioned windows may ultimately impacted by the development of 2 Kochia Lane.

Sites to the North

The properties to the north which share a common boundary with the site include 39 Lindfield Avenue and 9 Havilah Lane (**Figure 8**).

The development potential of these properties (and the potential impact of the proposed development on that potential) was not considered at the time of the original assessment because:

- the property at 39 Linfield Avenue was zoned Retail Services 3(a) under the KPSO, which permitted a maximum FSR of 1:1 and building height of 8 metres, comparable to the extent of the existing development on that site (2 storey building with retail at ground floor and residential above); and
- Council's car park at 9 Havilah Lane was also zoned Retail Services 3(a) under the KPSO and was classified as "community" land under the provisions of the *Local Government Act 1993*. As such there was no indication at that time that it would be redeveloped.

Notwithstanding the approved development presents blank walls to the northern boundaries in both the Eastern and Western Towers where they are constructed to the common boundary.

As described previously in this report, the proposal includes changes to the elevational treatment of the buildings and should now be considered in light of the increased development potential which may now be realised on the adjoining sites as a result of recent changes to the planning controls under the Local Centres.

Eastern Tower – Relationship to 9 Havilah Lane

The Council car park site at 9 Havilah Lane has a site area of 781m² and has recently been reclassified from "community" land to "operational" under the provisions of the *Local Government Act 1993*. The Department understands that Council intends to offer the property for sale by tender and therefore it is reasonable to expect that it will be redeveloped in accordance with the provisions of the Local Centres LEP some time in the foreseeable future.

The request for modification as exhibited introduced 2 large windows on each level in the northern elevation of the Eastern Tower, observing a zero setback to the common boundary. The rooms associated with these windows had alternate sources of natural light and ventilation.

Two balconies at Level 1 (north eastern and north western corner) of the Eastern Tower were also proposed to be constructed to the northern boundary (**Figures 11 and 13**).

Council objected to the proposed treatment of the northern elevation of the Eastern Tower on the basis that it would inhibit the realisation of the future development potential of the adjoining property and recommended that all northern party walls not include windows and

balconies to a height of 26.5 metres measured from the highest point of ground level on 9 Havilah Lane.

In response to a request from the Department, the Proponent has now provided an analysis of the likely form and scale of development on the adjoining car park site and specifically, to test whether it could reasonably achieve the same building heights as the project site. In this regard it is noted that the 3:1 FSR generates a potential gross floor area of 2,343m². Assuming a floor to floor height of 3 metres, the height control allows for up to 8 storeys (plus plant).

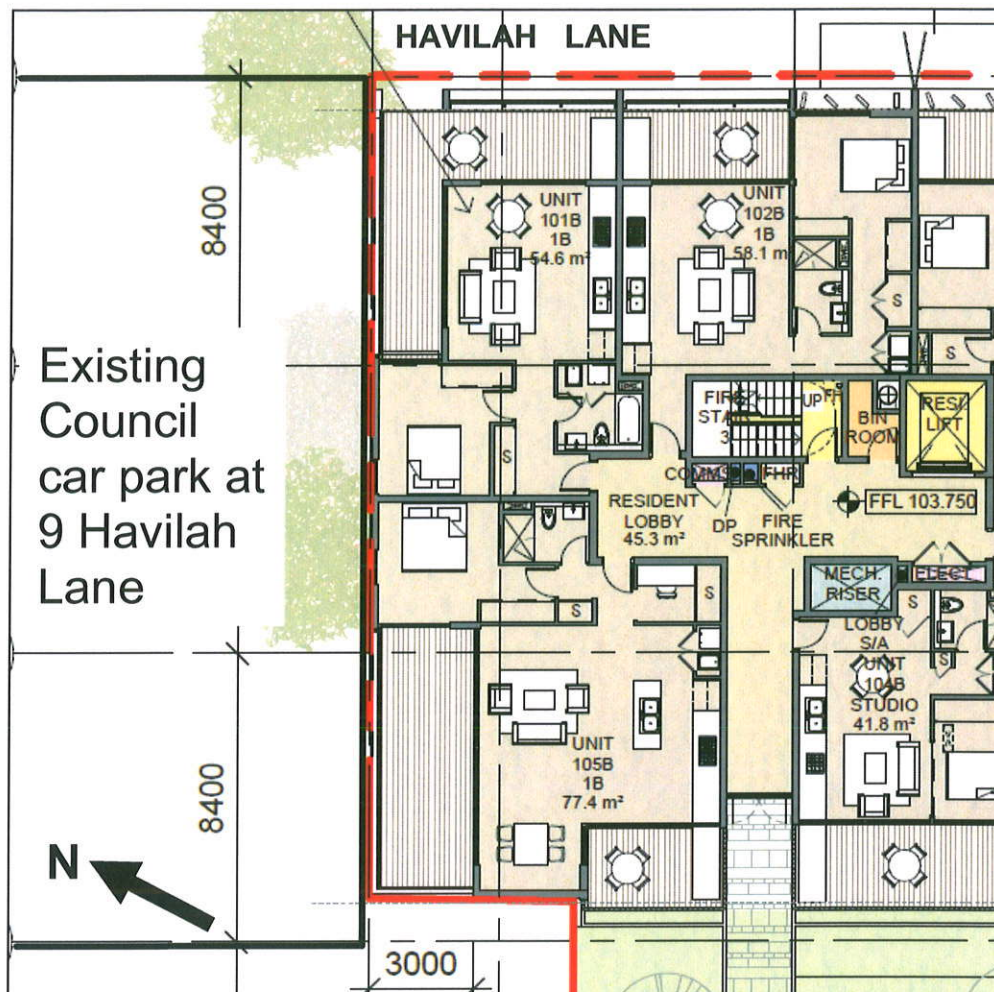
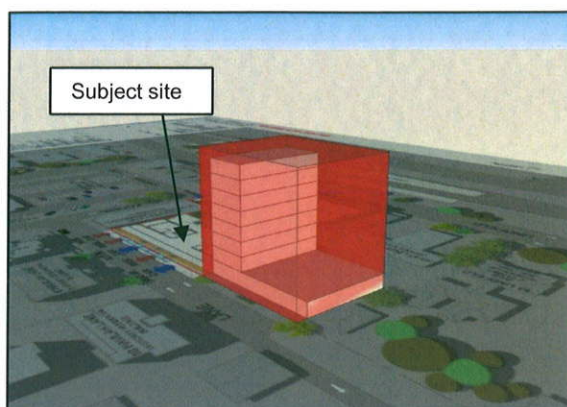


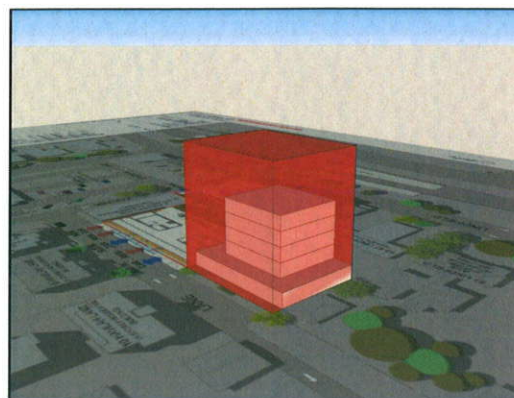
Figure 11 Level 1 plan of northern end of Eastern Tower illustrating location of balconies relative to adjoining car park site (Source: Proponent's RtS)

The Proponent contends that:

- it is reasonable to assume that the ground floor of any future development would be for non-residential use (retail and/or commercial) and could occupy 90% of the site (702m²). The remaining 1,640m² could be distributed over the remaining 7 storeys which would result in floor plates of approximately 234m² and a width of only 10 metres (**Figure 12a**);
- a more realistic option for this site would be larger floor plates of up to 410m² which would potentially accommodate 4-6 apartments and would improve the building efficiencies (**Figure 12b**).



**Figure 12a Option 1 for 9 Havilah Lane
(Source: Proponent)**



**Figure 12b Option 2 for 9 Havilah Lane
(Source: Proponent)**

The Proponent's analysis demonstrates that application of the FSR and height controls to the adjoining site, having regard to its physical configuration, means that it is unlikely that future development will realise a height of 8 storeys.

The Proponent has submitted amended plans for the northern elevation of the Eastern Tower which acknowledge the likely development potential described above. The proposed treatment is as follows and is illustrated in **Figure 13**:

- the central portion of the northern elevation of the Eastern Tower is constructed to the common boundary. This part of the building accommodates bedrooms and proposes a blank wall at Levels 1-3 inclusive, while fixed highlight windows (2 per floor) are proposed to the bedrooms on the two uppermost levels (Levels 4 and 5). It is noted that these rooms have alternate sources of natural light and ventilation and the wall on the boundary will be extended to the west to provide a privacy screen to a small balcony associated with the main bedroom in the apartments on the north western corner of the building;
- to the east of this central element the building observes a 2 metre setback from the boundary. Fixed highlight windows serve the living areas in the apartments on Levels 1-3 and at Levels 4 and 5 full height windows are proposed. It is noted that each of these apartments on this corner of the building have full height glazing to the east and open out onto balconies on the Havilah Lane frontage; and
- on the western side of the central element the building observes a 3 metre setback. Fixed highlight windows to the living areas at the westernmost end of this section of the building are included on Levels 1-5. It is noted that these areas have alternate sources of light and ventilation via operable windows in the western façade and access to a balcony.

The Department notes that the 4 fixed highlight windows in Levels 4 and 5 in the northern façade of the Eastern Tower which abuts the boundary with 9 Havilah Lane could potentially be impacted by a future building on that site should it be of a similar height and bulk. However, in the event that a height of 8 storeys is achieved it is considered unlikely and unreasonable that the future building would be constructed on a nil setback at the common boundary.

It is noted that these windows are not essential to cross ventilation or solar access requirements for the apartments they serve. In order to prevent these windows from restricting any potential future development on the car park site, the Department recommends that Condition No. F17 of the Project Approval be amended to require a restrictive covenant to be placed on the windows of these apartments removing any solar access rights.

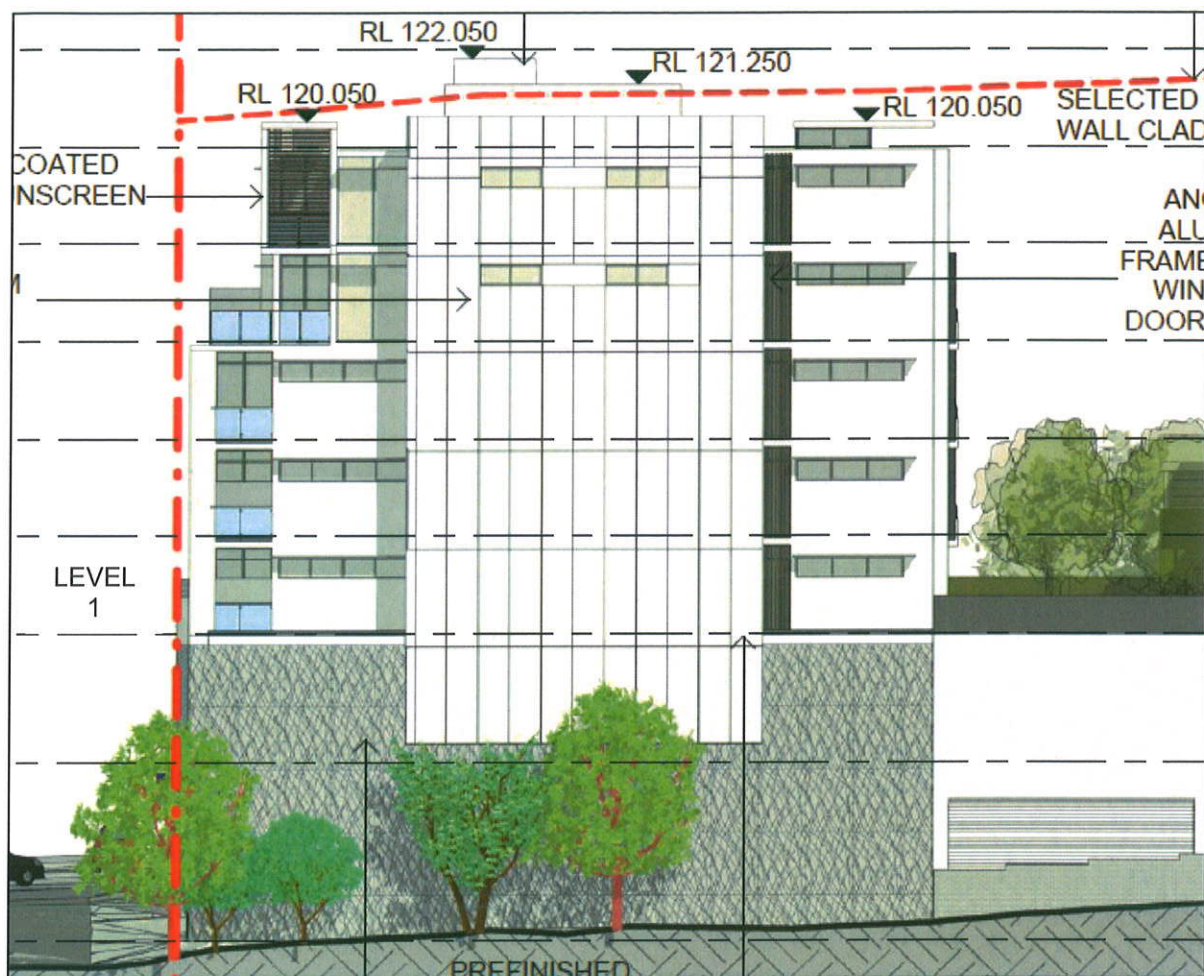


Figure 13 Eastern Tower, northern elevation (Source: Proponent)

The remaining windows in the northern elevation of the Eastern Tower are set back between 2 and 3 metres from the common boundary. Whilst they could also potentially be impacted by future development on the adjoining site, the setbacks will facilitate some daylight access through these windows via a lightwell. Having regard to this possible future outcome, the Department recommends an amendment to Condition F17 which requires the inclusion of a covenant to advise future purchasers that the aforementioned windows may ultimately be subjected to a lightwell arrangement.

Western Tower – Relationship to 39 Lindfield Avenue

The site at 39 Lindfield Avenue has a street frontage in the order of 6 metres and an area of approximately 215m². Existing development comprises a two storey building comprising ground floor retail and residential at first floor.

The request for modification as exhibited included a series of highlight windows on Levels 1-7 inclusive in the section of the Western Tower that observed a nil setback from the northern property boundary. It is noted that the bedrooms associated with these windows had alternate means of light and ventilation.

A balcony was included at the north eastern corner on Level 1 which observed a 100mm setback to the common boundary with 39 Lindfield Avenue. Corner balconies were also proposed on each residential level at the north western corner of the Western Tower however the northern edge was set back approximately 300mm from the common boundary.

Council's submission confirmed the height allowance of 26.5 metres (8 storeys) which it advised, may be realised through amalgamation with adjacent properties. On this basis

Council indicated that the party wall must be clear of windows and balconies to a height of 26.5 metres measured from the highest point of ground level on 39 and 41 Lindfield Avenue to allow that site to realise its future potential.

As described previously in this report Council is currently considering a development application for a mixed use development of up to 8 storeys at 43 – 55A Lindfield Avenue (ie. excluding the properties at 39 and 41 Lindfield Avenue).

The Proponent has undertaken further analysis of the development potential of the properties at 39 and 41 Lindfield Avenue, which have a combined site area of approximately 491m² and a street frontage of 12.12 metres.

Application of the 3:1 FSR yields a GFA of 1,473m². The Proponent contends that:

- it is reasonable to assume that the ground floor of any future development would be for non-residential use (retail and / or commercial) and could occupy 80% of the combined site area (393m²). The remaining 1,080m² could be distributed over the remaining 7 storeys which would result in floor plates of approximately 154m² and a width of only 6 metres (**Figure 14a**). It is unlikely that this would accommodate 2 units per floor, once vertical access requirements are factored in; and
- a more realistic option for this site (**Figure 14b**) would be a 4 storey building with larger floor plates of up to 360m² which would improve the building efficiencies and could provide for 3-4 units on the residential levels.

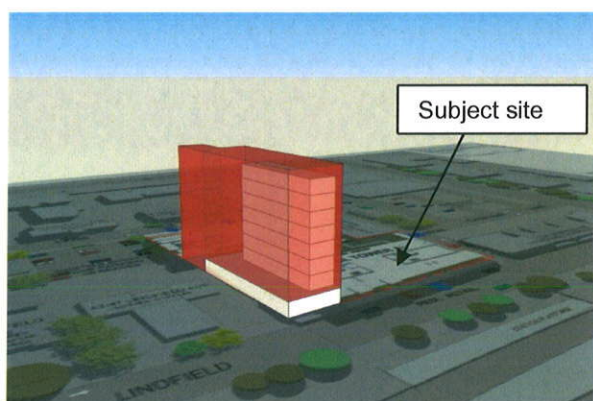


Figure 14a Option 1 for 39/41 Lindfield Ave
(Source: Proponent)



Figure 14b Option 2 for 39/41 Lindfield Ave
(Source: Proponent)

Having regard to this analysis, the Proponent has submitted amended plans for the northern elevation of the Western Tower which acknowledge the likely development potential described above. The proposed treatment is as follows and is illustrated in **Figure 15**:

- the central portion of the northern elevation of the Eastern Tower is constructed approximately 300mm from the common boundary. This part of the building accommodates bedrooms and proposes a blank wall at Levels 1-4 inclusive, while fixed highlight windows (2 per floor) are proposed to the bedrooms on the three uppermost levels (Levels 5-7 inclusive). It is noted that these rooms have alternate sources of natural light and ventilation and the wall on the boundary will be extended to the east (to provide a privacy screen to the bedroom window in the apartments on the north eastern corner of the building) and west to provide a privacy screen to a small balcony associated with the main bedroom in the apartments on the north western corner of the building;
- to the east of this central element the building observes a 2 metre setback from the boundary. Fixed highlight windows serve the living areas in the apartments on Levels 1-7. It is noted that each of these apartments on this corner of the building have full height glazing to the east and open out onto balconies which overlook the central communal courtyard; and

- on the western side of the central element the building observes a 3 metre setback. Fixed highlight windows to the living areas at the westernmost end of this section of the building are included on Levels 1-4. It is noted that these areas have alternate sources of light and ventilation via operable windows in the western façade and access to a balcony. Full height windows are proposed at Levels 5-7.

The Department notes that the fixed highlight windows in Levels 5 - 7 could potentially be impacted by a future building on the adjoining site in the unlikely event that it would achieve the maximum height permissible under the Local Centres LEP.

It is noted that these windows are not essential to cross ventilation or solar access requirements for the apartments they serve. In order to prevent these windows from restricting any potential future development on the car park site, the Department recommends that Condition No. F17 of the Project Approval be amended to require a restrictive covenant to be placed on the windows of these apartments removing any solar access rights.

The remaining windows in the northern elevation of the Eastern Tower are set back between 2 and 3 metres from the common boundary. Whilst they could also potentially be impacted by future development on the adjoining site, the setbacks will facilitate some daylight access through these windows via a lightwell. Having regard to this possible future outcome, the Department recommends an amendment to Condition F17 which requires the inclusion of a covenant to advise future purchasers that the aforementioned windows may ultimately be subjected to a lightwell arrangement.

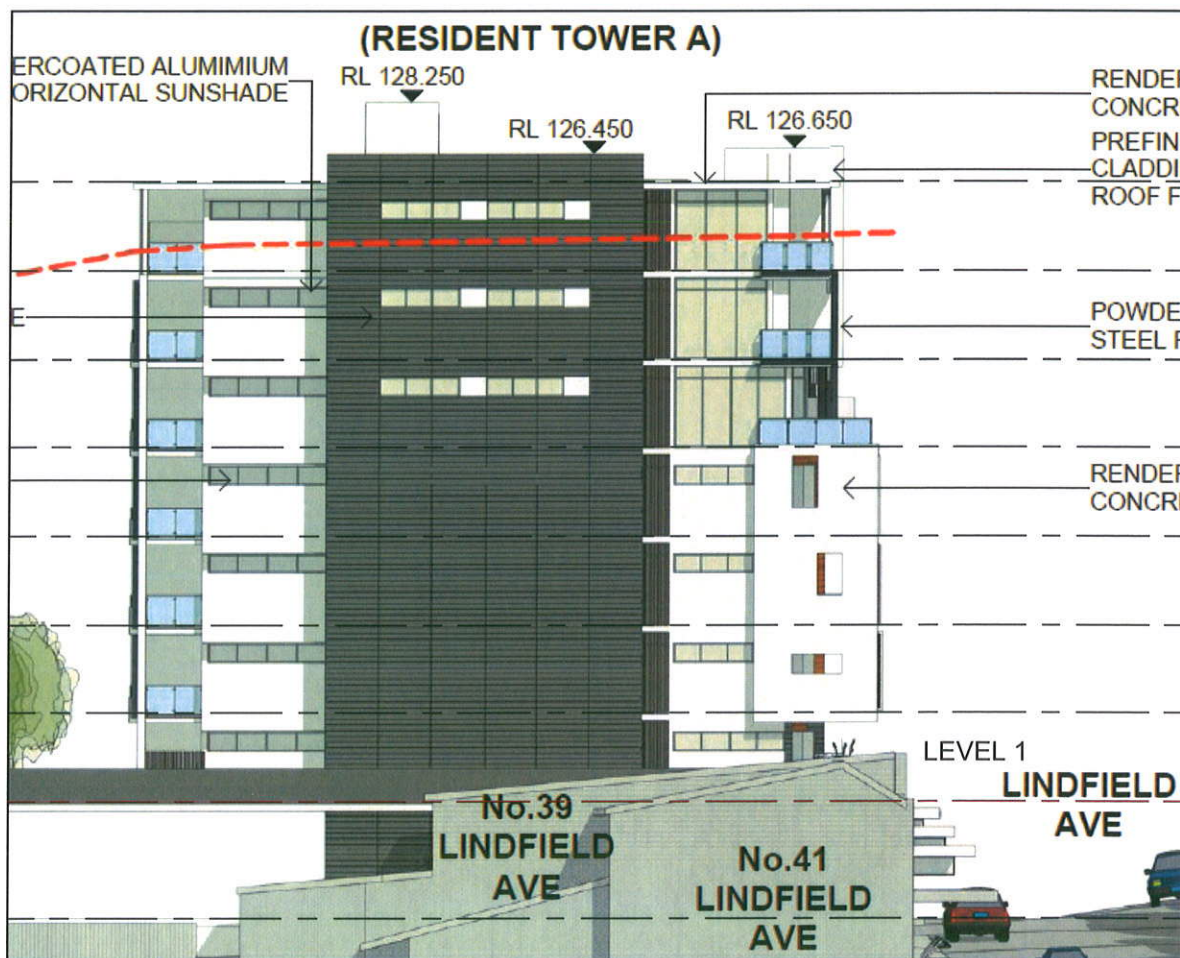


Figure 15 Northern elevation of the Western Tower (Source: Proponent)
Summary

Subject to the inclusion of the conditions requiring the restrictive covenant discussed above, the Department is satisfied that the buildings are designed so that the amenity of this development may reasonably be retained in the event that surrounding sites are developed and development of adjoining properties will not be prejudiced by this development.

5.2 Parking and Access

5.2.1. Parking

The project approval required the provision of 196 parking spaces which were provided in three basement levels.

The request for modification proposes the provision of 184 parking spaces provided in three basement levels. This comprises an allocation of 54 spaces for retail use (including 10 for tenants), 118 spaces for residents and 12 for visitors.

While Council acknowledges that the total parking provision for the proposal achieves numerical compliance with Council's requirements under Local Centres DCP 2013 (which would require a total of between 182 – 238 spaces), it fails to meet minimum requirements for the retail and residential visitor parking components of the DCP. Council has therefore requested a redistribution of the on-site parking allocation.

The Department's original assessment in relation to the on-site parking provision took into account the central location of the site within an existing town centre and its accessibility to public transport including rail and bus services, which provide for suitable alternatives to car use for future residents. In determining the original on-site parking requirement for the approved development the Department adopted the following rationale:

- residential and residential visitors – average of RMS and Council's DCP 43 requirements (which was the applicable DCP at the time of the original assessment); and
- retail - 1 space per 45.5m² of retail floor space.

The Department considers it appropriate and reasonable to assess the parking for the current proposal by using the same rate applied to the original project application.

Table 4: Comparative Parking Requirements

	Proposed Floor Space / Unit Nos	DCP 43 Requirement (minimum)	RMS Requirement	Proposed Parking	Department's recommendation
Retail	2,379.5m ²	79	109	54*	54
Residential	112 units	115	88	118	105
Residential Visitor		28	22	12	25
Total		222	219	184	184

* Note: 10 of the retail spaces are to be allocated for retail employees

Adoption of this parking allocation will necessitate the reallocation of some residential spaces to visitor parking.

The Department notes that the application of the same rate provides a quantum of parking consistent with the current Council DCP 2013 requirements that have been implemented since the original project was approved.

Condition C1 of the project approval is recommended to be amended to reflect the parking allocation detailed in the table above

5.2.2. Access Arrangements

The Project Approval provides vehicular access to / from Havilah Lane. Resident and visitor parking, together with general retail parking was achieved via a driveway located at the northern end of the Havilah Lane frontage, which also accommodates the rights-of-way to the rear of Nos. 39 and 41 Lindfield Avenue.

The approval provided access to the loading dock by way of a one-way "porte cochere" arrangement, where trucks and service vehicles entered the site from the southern side of the site and exited via a separate driveway adjacent to the residential / retail car park access.

The proposal seeks to modify this arrangement, with:

- an 8 metre wide driveway from Havilah Lane, located adjacent to the common boundary with 2 Kochia Lane at Lower Ground Floor Level which provides vehicular access to basement parking (Basement Levels 1-3) for residents, their visitors and retail tenants; and
- a separate vehicle access to the retail car parking area to be provided via an at-grade shared zone to / from Havilah Lane at Lower Ground Floor level.

The loading dock associated with the retail component is located at Lower Ground Floor level and is accessed via the shared zone. The dock has been designed to accommodate large rigid trucks up to 11 metres in length, consistent with the largest truck used by the prospective operator of the supermarket.

The shared zone at lower ground floor level has also been designed to accommodate the dimensions of the existing Rights-of-Way which benefit Nos. 39 and 41 Lindfield Avenue (refer to discussion at Section 5.2.3).

In response to concerns raised by both the Department and Council, the Proponent has provided a Vehicle Management Plan which sets out the mechanisms for maintaining appropriate levels of safety for pedestrians and vehicles, particularly (but not limited to) the area in and around the loading dock. In this regard it is noted that:

- the loading dock will be managed by an accredited Traffic Controller who will supervise the arrival and departure of all delivery and service vehicles;
- entry to the retail parking and loading dock area will be controlled by boom gates, which will ensure that all vehicles come to a complete stop prior to entering and exiting the shared zone, thereby managing pedestrian safety;
- the dock has been designed to accommodate up to 3 delivery vehicles simultaneously; and
- the largest vehicle permitted to enter the shared zone is an 11 metre large rigid truck.

Council remains concerned the width of the entry driveway into the Right of Way and service access is too narrow to accommodate the swept path of an 11 metre long rigid truck.

The swept path analysis submitted with the Proponent's Response to Submissions indicates that the service vehicle entry may encroach slightly on the pedestrian area on the southern side of the driveway (**Figure 16**). The Department considers that this can be addressed by the inclusion of an appropriate condition which requires the construction of a vehicle crossing / driveway of sufficient width (to Council's satisfaction) to accommodate the swept path of an 11 metre long rigid truck and that the line of bollards shown along the edge of the driveway / pedestrian path interface be extended to the property boundary to provide adequate protection.

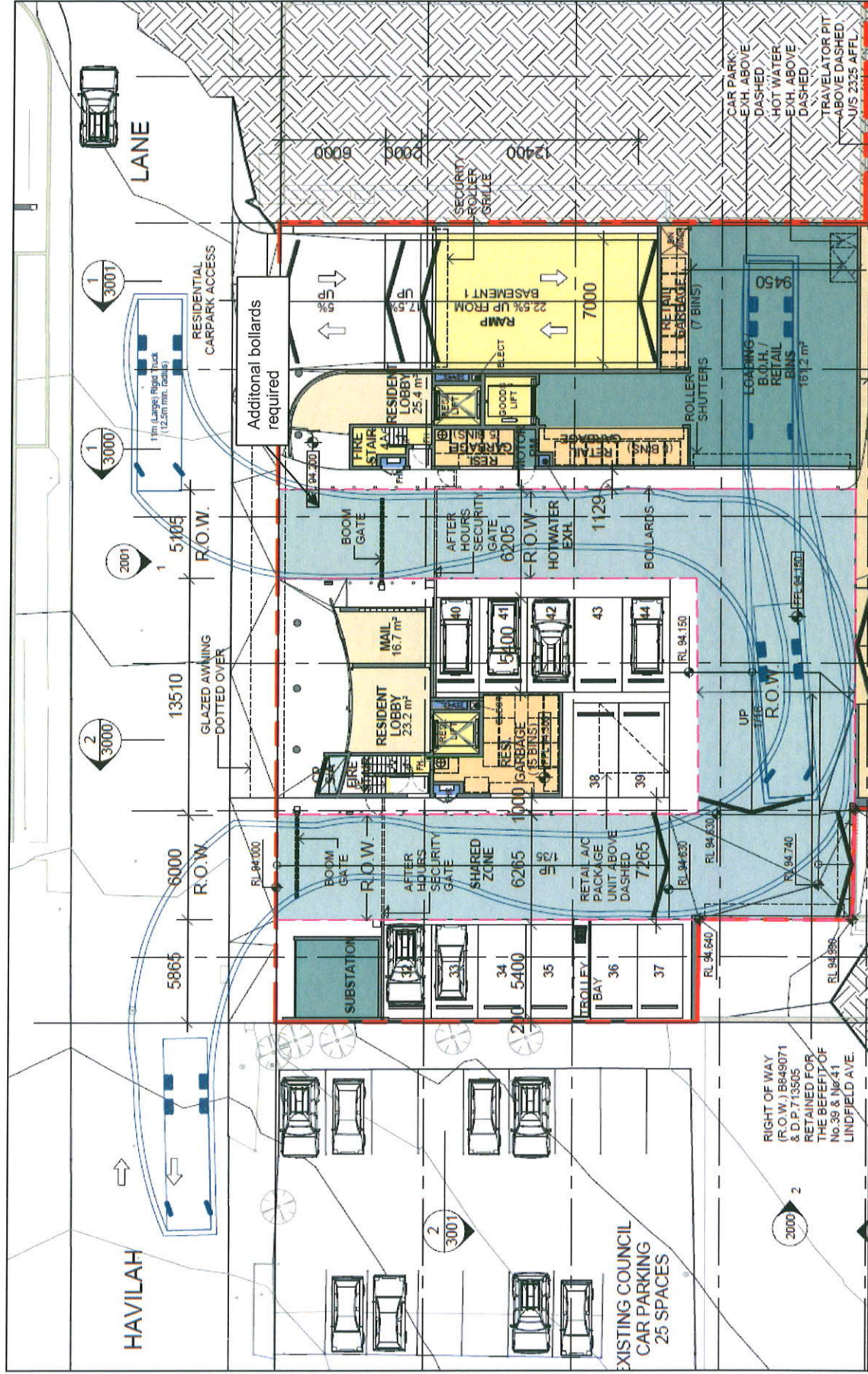


Figure 16 Swept path upper basement level access. ROW shown shaded green. (Source: Proponent's RtS)

Council has also indicated that its Local Centres DCP 2013 requires that all developments provide a shared vehicle entry / exit point for different uses and that service vehicle access is to be combined with parking access. Any proposal seeking to provide separate vehicle entry / exit points must justify this variation by demonstrating the combined effect does not dominate the building façade or streetscape.

The project approval created clearly separate vehicular accesses to the car park and the loading dock which resulted in 3 openings in the Havilah Lane frontage. The Department notes that the proposed access is consistent with this arrangement.

Having regard to the above, and the predominantly service function of Havilah Lane, it is considered that the proposed access arrangements are satisfactory in the streetscape.

5.2.3 Rights of Way

The site is burdened by right of way easements that provide access for Nos. 39 and 41 Lindfield Avenue across the site to Havilah Lane. **Figure 16** shows the extent and configuration of the ROW.

In its determination of the Project Application, the PAC agreed with the Department's assessment that any issue arising from relocation of the right of way and services should be resolved between the Proponent and the owners of Nos. 39 and 41 Lindfield Avenue. In order to ensure that the Project would not interfere with those rights of way, a condition was included in the Project Approval as follows:

C3 Variation of Right of Way Benefitting 39 and 41 Lindfield Avenue

Prior to the issue of any Construction Certificate, the Principal Certifying Authority shall be satisfied that the right of way which benefits 39 and 41 Lindfield Avenue has been varied in a manner that allows the construction of the project to proceed and maintains access from those properties to Havilah Lane. The Principal Certifying Authority shall be satisfied as to the variation by the provision of documents in registrable form including a written agreement between the Proponent and the owners of 39 and 41 Lindfield Avenue.

The Proponent requests the deletion of this condition on the basis that the modified proposal maintains the physical extent and configuration of RoW's and that access to both properties is therefore maintained.

The property owners of Nos. 39 and 41 Lindfield Avenue have raised concern that the modified development fails to consider their legal rights under the rights of way, including:

- (i) how the excavation / construction associated with the proposed development will occur without interfering with the use / operation of the Rights of Way; and
- (ii) the intensification of use of the land is contrary to the intent of the rights of way and will present significant / dangerous conflict between its users, particularly having regard to the fact that one of the existing rights of way allows vehicle movement contrary to the clockwise flow of vehicles proposed through the shared zone.

These matters are addressed below.

(i) Access during Construction

The Proponent has confirmed that uninterrupted access and the right to pass and re-pass in accordance with the right of way easement to both 39 and 41 Lindfield Avenue can be maintained.

The Department notes that the proposed modification includes a reduction in the extent of the basement, whereby the area between the rear of Nos. 39 and 41 Lindfield Avenue and

Havilah Lane is not affected by excavation (**Figure 17**). The Proponent has indicated that uninterrupted access (both pedestrian and vehicular) across this part of the site, for the combined width of both properties (approx. 12 metres) will be available during the construction phase.

Whilst the Department notes that this area does not align precisely with the extent and configuration of the documented easements, it will maintain the rights to access to both properties and is considered to be an appropriate temporary solution during the construction phase of the project.

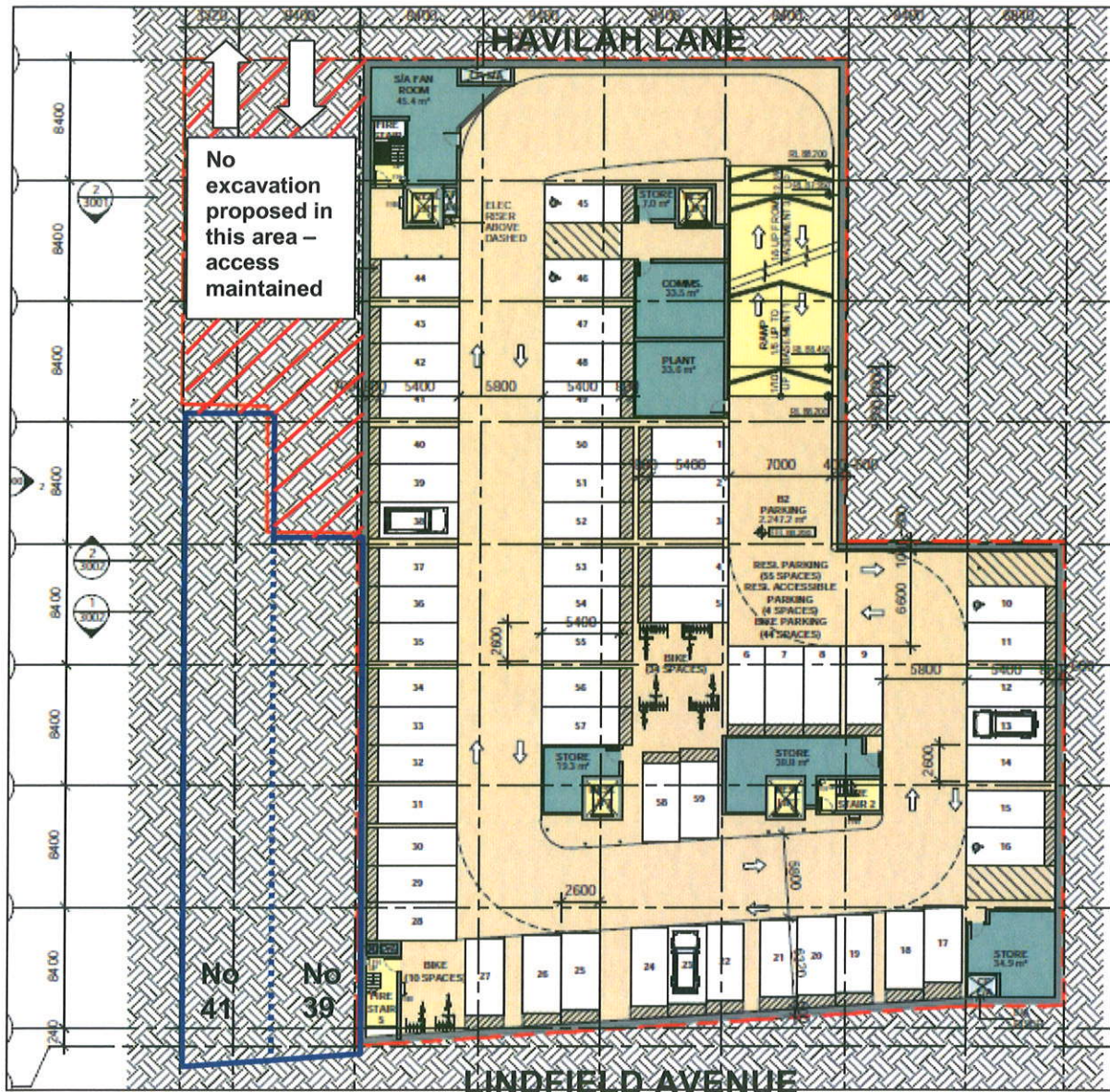


Figure 17 Extent of excavation relative to Nos. 39 and 41 Lindfield Avenue
(Base Image Source: Proponent's RtS)

Having regard to the above, the Department considers that reasonable access can be maintained to Nos. 39 and 41 during the construction phase of the Project. However it is considered appropriate to amend Condition D3 of the Project Approval in the following manner to ensure that the Construction Management Plan reflects these arrangements.

D3 Construction Management Plan (CMP)

The Proponent shall submit, for approval by the Principal Certifying Authority, a detailed Construction Management Plan (CMP) prior to the commencement of works

issue of the Construction Certificate for each stage of works (each Construction Certificate). The CMP shall address:

- Construction vehicles access to and egress from the site ~~in~~ and route plan in accordance with the CMP during construction.
- Parking for construction vehicles.
- Locations of site office, accommodation and the storage of major materials related to the project.
- Protection of adjoining properties, pedestrians, vehicles and public assets.
- **Details of the alternate means of pedestrian and vehicular access to the properties known as Nos. 39 and 41 Lindfield Avenue to be maintained throughout the construction phase.**
- Location and extent of proposed builder's hoarding and Work Zones.
- Tree protection management measures for all protected and retained trees.
- Noise management requirements for plant and equipment.
- Any request for adjustment to the approved construction working hours and its justification, duration and purpose.

A Copy of the CMP shall be submitted to the Department and Council.

(ii) *Conflict between Users / Safety*

The owners of No. 41 Lindfield Avenue have advised that the terms of their ROW allows for two-way movement, which may be contrary to vehicle circulation within the shared zone.

The request for modification does not seek to change the terms of the ROW to enforce a one way flow. This is a private property issue that will be dealt with under real property law.

However the continued operation of the ROWs and their potential impact on the safety of vehicles and pedestrians through the proposed development are a matter for consideration for this assessment.

The Proponent has submitted a Vehicle Management Plan, the key points of which include:

- vehicular access and circulation throughout the lower ground parking level will follow a one-way (clockwise) circulation with forward entry and forward exit to and from Havilah Lane;
- the lower ground parking level shall operate as a shared zone with an 8km/hr speed limit where vehicles and pedestrians have equal right of way;
- entry to and exit from the parking level and service vehicle area is to be controlled by boom gates which will ensure all vehicles come to a complete stop prior to entering or leaving the site; and
- loading dock operations will be supervised by a dock manager who will also be an accredited traffic controller. The dock manager will supervise the arrival and departure of all delivery and service vehicles.

The Department notes that the access will be maintained to the rear of Nos. 39 and 41 Lindfield. Having regard to the above, the Department considers that it would be both unreasonable and impractical for the users of the ROW to seek to access their properties contrary to the general flow of traffic proposed by the Vehicle Management Plan. However, as indicated above, the terms regarding the details of the ongoing access arrangements may have to be amended under real property law.

Summary

The Department considers that the physical extent and configuration of the rights of way have been preserved in the proposal and therefore the rights of way to the benefitted properties at Nos. 39 and 41 Lindfield Avenue will be retained. Furthermore, the Department

is satisfied that reasonable access can be maintained throughout the construction phase of the project, subject to the amendment of Condition D3 as described above.

As to the potential conflict arising from the rights conferred under the ROW and the proposal to manage the shared zone as a one-way traffic movement, it is recommended that Condition C3 be amended in the following manner:

C3 Variation of Right of Way Benefitting 39 and 41 Lindfield Avenue

*Prior to the issue of any Construction Certificate, the Principal Certifying Authority shall be satisfied that **the continued operation of the right of way which benefits 39 and 41 Lindfield Avenue has been varied in a manner that allows the construction of the project to proceed and maintains access from those properties to Havilah Lane can be managed to ensure that it does not conflict with the one-way movement of vehicles through the upper basement level.** The Principal Certifying Authority shall be satisfied as to the variation by the provision of documents in registrable form including a written agreement between the Proponent and the owners of 39 and 41 Lindfield Avenue.*

5.3 Reduction in Retail Floor Space

The approved project provided 4,231m² of retail floor space including a potential 239m² medical centre, located within a two level podium. It is noted that two of the fundamental public benefits of the approved scheme (as noted by the PAC) were "renewing and consolidating the Lindfield Town Centre as well as improving retail servicing via an increase in retail floor space and the provision of a medical centre to meet the population growth in the locality" and "increasing employment opportunities".

The proposal seeks to reconfigure the lower ground and ground floors of the development and reduce the retail / commercial floor space to 2,379m² (FSR 0.77:1). This represents a 44% reduction in the quantum of non-residential floor space.

A large proportion of the public submissions raised concern with the reduction of retail floor space. Council has raised similar concern and has recommended that the project approval be amended to require the provision of commercial floor space at an FSR of 1.2:1. It is noted that KLEP (Local Centres) 2012 allows a maximum of 1.2:1 FSR as commercial floor space.

The Proponent has provided a retail analysis in support of the proposed reduction in retail floor space. The report examines the modified proposal in the context of:

- the project approval;
- existing retail floor space on the site compared to the overall retail floor space existing and proposed for the Lindfield Town Centre; and
- Council's Retail Strategy.

The following table presents a comparison of the existing retail offering on the site, the project approval and that proposed as part of the current application.

Table 5: Retail Floor Space

Tenant	Total Floor Space – Net Lettable Area (m ²)		
	Existing	Approved	Proposed
Supermarket	846	1,371	1,278
Specialty	1,107	1,634	775
Medical	0	239	0
Total	1,953	3,298	2,053

The retail analysis report examined the functionality of the approved scheme, which included two levels of retail development and car parking provided 2 levels below the major tenant (supermarket). The analysis asserts that convenience is key to the success of any retail development, with accessibility between car parking and retail levels usually provided directly at grade or within one level of basement below. Accordingly the retail analysis suggest that the approved arrangement would prove difficult to attract a major tenant (supermarket) to locate above ground and two levels away from car parking.

On this basis, the retail analysis indicates that a single level of retail for a centre of this size would be more viable, as well as providing a more consumer-friendly environment.

The retail analysis also notes that since the original project approval, there has been a number of changes to the competitive environment which impact on the provision of retail floor space at the subject site, these include:

- acquisition by Coles of a site adjoining its existing supermarket on the western side of the Pacific Highway at Lindfield which is expected to result in an expansion of that facility; and
- with the up-zoning of adjoining sites it is reasonable to expect that additional retail floor space will be provided as part of future development in the Lindfield Town Centre.

The retail analysis examines the proposal in the context of Council's Retail Centre Strategy which was prepared in 2005. The targeted expansion in floor space for Lindfield was in the order of 6,000m². It then notes that the additional floor space contemplated by Council's Retail Centre Strategy for Lindfield can be achieved, having regard to:

- the quantum proposed as part of this development (+100m² above existing);
- the likely Coles expansion (estimated to be 2,000 – 2,500m² based on land area); and
- land to the north of the subject site now zoned B4 (estimated to be at least 2,000m²).

The Department notes that in the period since the Proponent's RtS was submitted (3 June 2013) Council released an Expression of Interest for potential development of the Lindfield Town Square, located on the existing Council car park to the south of the site (**Figure 2**). The description of the scope of the project acknowledges that there is potential for some form of commercial use on the site ranging from a building up to 3 storeys that could incorporate commercial uses. It also suggests that basement level retail uses such as a supermarket and other specialty retail.

In addition, the development application for the site at Nos. 43-55A Lindfield Avenue seeks approval for some 1400m² of retail floor space, including a 1,000m² fresh food market. Neither of these retail offers were known or realistic at the time of the Department's assessment of the Project Application.

The Department has also considered the loss of the medical centre which was included in the original retail / commercial offering and was noted by the PAC as contributing to the public benefits of the approved scheme. Whilst the current proposal makes no specific provision for a medical centre, such uses are not precluded and could potentially occupy one or more of the tenancies within the development. Furthermore, it is also considered that the sites to the north or south provide opportunities for medical uses or health care practitioners.

The Department is of the opinion that notwithstanding the reduction in the quantum of retail floor space, the modified development still represents a public benefit and makes a positive contribution to the Lindfield Town Centre, having regard to the following:

- the supermarket component is retained which is larger than the existing tenancy;
- the development will provide contemporary retail floor space with through-site, all-weather pedestrian access between Lindfield Avenue and Havilah Lane;

- the arrangement of retail tenancies within the development reinforces the role of Lindfield Avenue as a main street retail area by providing retail tenancies at ground level which activate the streetscape and provide a primary entrance to the retail concourse; and
- active uses, including building entries are located on the Kochia Lane frontage, thereby improving the general streetscape.

On this basis, the proposed quantum of retail floor space within the development is considered to be acceptable.

5.4 Streetscape Presentation

5.4.1. Lindfield Avenue

The Department recommended the inclusion of Condition B1 in the project approval which requires the provision of a street wall to Lindfield Avenue of a height generally consistent with the height of the adjoining heritage building at 21 Lindfield Avenue (RL 112.7m AHD). In addition, a stepped building form is required where Levels 5 and 6 are to be set back by 2 metres, increasing to 4 metres at Level 7.

The intent of these setbacks is to reduce the height and visual bulk at Lindfield Avenue and provide an appropriate contextual relationship with Lindfield Avenue and Kochia Lane.

The request for modification seeks to alter the approved setbacks to Lindfield Avenue, where the balconies at Levels 6 and 7 are proposed to be set back a minimum of 2 metres from the boundary.

In addition, the building façade has been redesigned to provide a distinct base, podium and top to the building. The Proponent contends that this arrangement:

- creates a clear transition from the low-rise, linear streetscape (21 Lindfield Avenue) to a contemporary town centre architectural expression; and
- the podium form, articulated with a series of "solid" façade elements, including the "floating portal frame" will define a more dynamic streetscape, as opposed to multiple setbacks in the Lindfield Avenue façade that would generate a "wedding cake" approach.

The white portal element sits above the building base and provides a clear distinction between the residential and retail components at ground level. It also references the white outline elements of the adjacent heritage building.

Council's submission acknowledges the overall architectural design of the building façade has improved, particularly on the Lindfield Avenue frontage and has indicated that it is willing to accept this aspect of the proposed modification. However, it maintains its view that the building party wall should be extended to the boundary line on the northern side (adjacent to 39 Lindfield Avenue). This is discussed separately in Section 5.1.2.

The Department notes the significant re-design of the Lindfield Avenue elevation and the overall improvement in its relationship to the streetscape and to the adjoining heritage building. On this basis, the setbacks required in the project approval (which relate to the original design) are no longer relevant.

5.4.2. Kochia Lane

The Western Tower in the approved project observes a setback of 4 metres from Kochia Lane to accommodate future road widening required by Council.

The proposed modification retains the 4 metre setback at Ground Floor level. However at Levels 1 – 7 a projecting element, centrally located in the Kochia Lane elevation is now

proposed which encroaches 1.3 metres into the required setback and sits above the street awning. The projecting area accommodates bedrooms and includes a series of fixed highlight windows.

In addition, the "floating portal frame" in the Lindfield Avenue façade which accommodates balconies at Levels 2 – 5, projects into the air space above the setback to Kochia Lane and proposes a setback of 300mm from the boundary.

Council has advised that it generally accepts the proposed encroachments into the setback, subject to the balcony overhangs (within the "floating portal frame") being reduced to achieve a minimum setback of 1.0 metre from the Kochia Lane boundary. Council has requested the setback on the basis that it will ensure some leeway for the proposed road widening of Kochia Lane without overhang above the carriageway.

Council has further advised that it is willing to accept dedication of part or all of the setback area, subject to legal advice, further negotiations and resolution by full Council.

It is noted that with the exception of the elements described above, the remainder of the building observes the 4 metre setback.

The Department concurs with Council's position and notes that this arrangement will not compromise the integrity of the design, which includes improved articulation of the Kochia Lane façade and visual interest.

Having regard to the above, Condition B1 of the Project Approval has been amended to require the submission of amended plans which demonstrates a 1 metre setback from the Kochia Lane boundary of the portal frame element which accommodates the balcony overhang.

5.5 Residential Amenity

The modified proposal includes changes to the internal planning of the residential levels and the design of the northern and southern elevations of the towers.

Whilst the overall development remains generally consistent with the aims and objectives of State Environmental Planning Policy No. 65 (SEPP65) and the Residential Flat Design Code (the Code), the changes to the design require further assessment in terms of solar access and building separation.

Solar Access

The Project Approval adopted a solar access standard for this development of 2 hours in mid-winter to living rooms and private open space areas in at least 70% of apartments, having regard to the location of the site in an area identified for high density development.

The request for modification is accompanied by a solar access report prepared by Cundall which demonstrates that a minimum of 70% of the living rooms and private open spaces within the proposed development achieve a minimum of 2 hours direct sunlight between 9.00am and 3.00pm in mid-winter.

The Department has considered the potential impacts of the design changes recommended in relation to the treatment of the northern elevations of the Eastern and Western Towers. In this regard it is noted that the windows to be deleted in both Towers were to bedrooms and therefore do not impact the solar access requirements.

The balconies to the corner apartments on Level 1 of the Eastern Tower will retain an area of private open space (balconies) on the eastern and western elevations of the building which will have access to direct sunlight in the morning or afternoon respectively.

The eastern section of the balcony on Level 1 at the north eastern corner of the Western Tower will be retained and is capable of achieving direct solar access in the mornings.

The requirement to delete the northern sections of the balconies on the north western corner of the Western Tower on Levels 1 – 7 inclusive will still enable the remaining (western) section of those balconies to achieve solar access in the afternoons.

Building Separation

The Code provides building separation requirements in order to maximise visual privacy between residential flat buildings and adjoining residences. The separation achieved in the project approval between the Western Tower and the adjoining mixed use heritage building at 21 Lindfield Avenue was 10 metres, which is 2 metres less than the Code requirement.

The Department and the PAC have previously accepted the lesser distance on the basis that the building provided a 4 metre setback from Kochia Lane and any additional setback would potentially inhibit development yield. A condition was imposed which required the installation of privacy screens to the windows and balconies facing Kochia Lane to mitigate privacy impacts on the adjoining property.

The request for modification includes changes to the Kochia Lane elevation which will reduce the separation distance to the adjoining site at 21 Lindfield Avenue. These changes include a “floating portal frame” element which has been introduced to the Lindfield Avenue façade and which accommodates balconies at Levels 2 – 5. The frame / balconies will encroach into the Kochia Lane setback and will reduce the physical separation between these elements and the adjoining building to 7 metres.

The relationship between the proposed development and the adjoining heritage building is illustrated in **Figures 18 and 19**.

The Department considers that the modified design, including the portal frame element creates a more visually dynamic and articulated facade to both Lindfield Avenue and Kochia Lane. The reduced separation distance to the adjoining property is not expected to compromise the privacy of the existing windows in the northern elevation of the building at 1-21 Lindfield Avenue as Condition B1 will be modified to require privacy screens to be provided to the windows and balconies at Levels 1 - 4 inclusive facing Kochia Lane



Figure 18 Lindfield Avenue frontage showing floating portal frame element

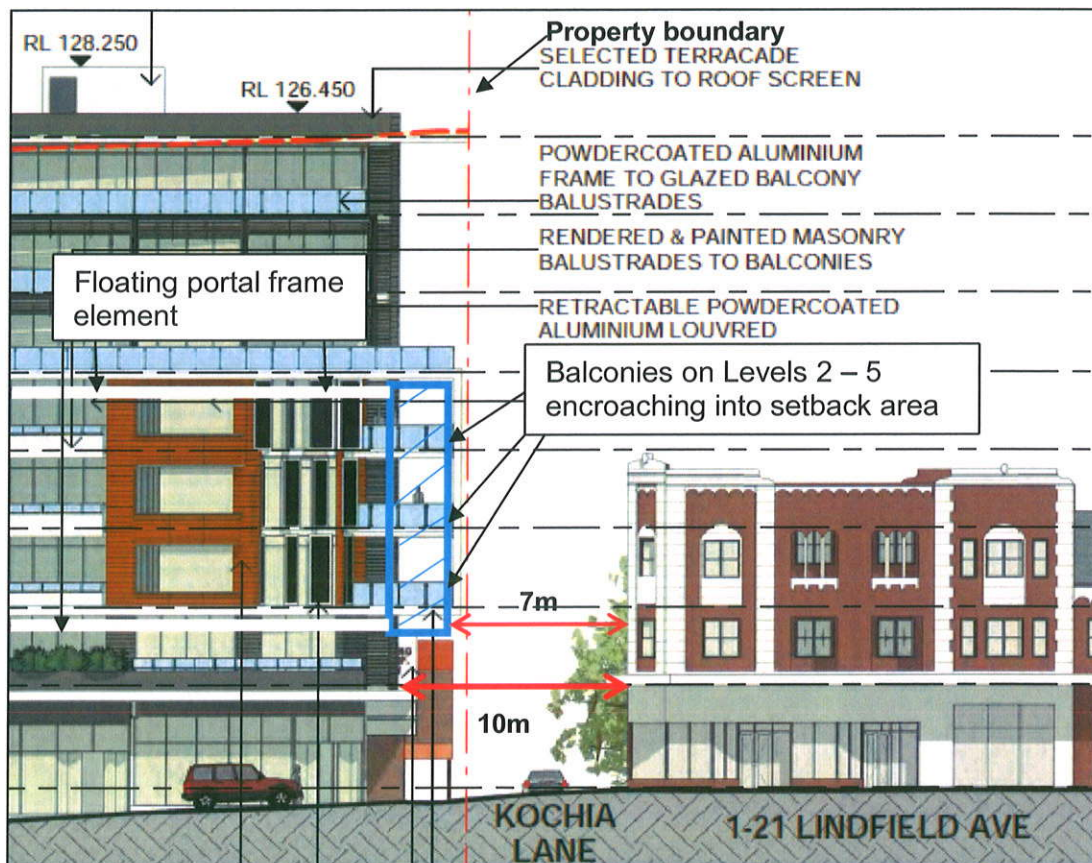


Figure 19 Physical separation between proposed development and adjoining development at 21 Lindfield Avenue

5.6 Other Issues

A number of other issues were raised during the exhibition period and are discussed below.

5.6.1 Signage

The Proponent has identified numerous signage typologies and locations on the buildings and seeks approval for these as part of the request for modification.

The Department considers that it is more appropriate for Council to assess the details of each of the proposed signage locations and configurations on their merits. The appropriateness of the details of the signs including signage type, dimensions and any illumination will form part of Council's assessment of these future applications which will address compliance with Council's requirements and ensure consistency throughout the Lindfield Town Centre.

5.6.2 Drainage Easement

A drainage easement is located between the rear boundaries of Nos. 39 and 41 Lindfield Avenue and Havilah Lane, within the physical extent of the ROW described in **Section 5.2.3**.

The Project Approval includes conditions (C4 and F15) which ensure that the Project would not interfere with that easement.

The Proponent requests the deletion of these conditions on the basis that the modified proposal does not seek to alter the location or function of the drainage easement and that as a consequence, the conditions are no longer required.

The Department notes that the area in which the drainage easement is located (between the rear of Nos. 39 and 41 Lindfield Avenue and Havilah Lane) is not affected by excavation (**Figure 17**). The easement is located within the ROW / car park access aisle on the Lower Ground Floor and so will remain accessible after completion of the Project.

Having regard to the above, the Department considers it reasonable to delete Condition Nos. C4 and F15.

5.6.3 Dilapidation Reports

The Project Approval includes conditions (D4 and D5) which require the preparation of dilapidation surveys / reporting to be undertaken in respect of various public infrastructure (roads and driveway crossings) and specific private properties prior to the commencement of any demolition or excavation works.

The Proponent seeks to amend the condition pertaining to public infrastructure (Condition D4). The current wording of the condition requires a report to be prepared on the "structural" condition of the property. The Proponent seeks that this term be deleted on the basis that standard practice for a dilapidation report is to take photographic evidence of a building / structure prior to commencement of construction. A comparison of the photographic evidence would then be made at the completion of the project if necessary, to identify any damage which requires rectification.

The Proponent also seeks an amendment of Condition D4 to include a timeframe (21 days) within which Council should provide written acknowledgement of receipt of the dilapidation survey to enable it to be submitted to the Principal Certifying Authority prior to commencement of any development or excavation works.

The Department raises no objection to these amendments as the technical requirements of the condition are unchanged.

Condition D5 currently requires the preparation of dilapidation reports for the following privately owned properties:

- 2 Kochia Lane
- 39-41 Lindfield Avenue
- 43 Lindfield Avenue
- 2-6 Milray Street (buildings fronting Havilah Lane)

As described elsewhere in this assessment, the extent of excavation associated with the proposal as modified is less than that associated with the Project Approval. Having regard to the geotechnical conditions on the site and in the immediate vicinity (clay and sandstone), the Proponent has prepared a "Zone of Influence" plan (**Figure 20**). The Proponent has advised that this reflects the slumping ratio for loose sand (45° measured from the base of the excavation).

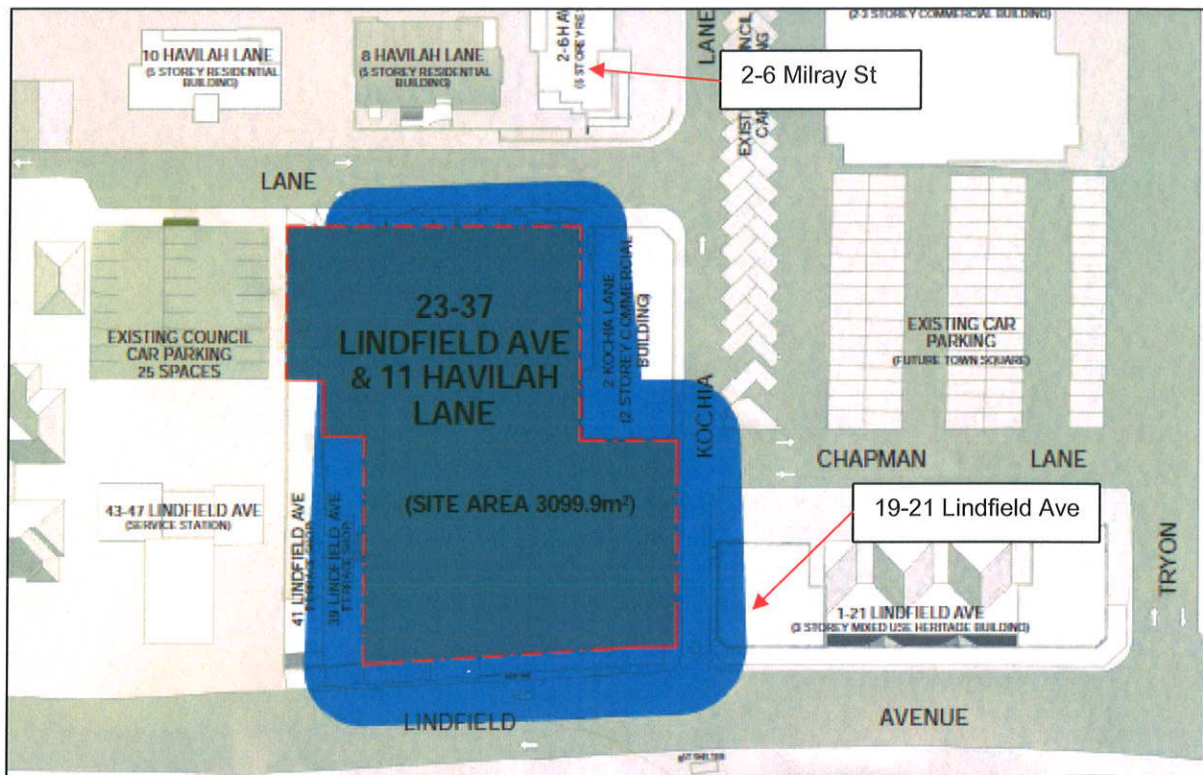


Figure 20 Construction Zone of Influence (Source: Proponent's RtS)

On the basis of this analysis, the Proponent has identified an additional property for which a dilapidation survey is required, namely 19-21 Lindfield Avenue (which is the northern end of the heritage building which occupies 1-21 Lindfield Avenue). Conversely, the Proponent has requested that the properties at 43 Lindfield Avenue and 2-6 Milray Street be deleted from Condition D5 on the basis of the physical separation from the Project Approval site.

The Department agrees that a dilapidation report should be prepared for the property known as 19-21 Lindfield Avenue, given that it is less than 10 metres from the southern property boundary and is clearly within the Zone of Influence. It is recommended that Condition D5 be amended accordingly.

In relation to the property at 43 Lindfield Avenue it is noted that the physical separation is in the order of 15 metres along the Lindfield Avenue frontage. Whilst the north western corner of the subject site meets the south eastern corner of 43 Lindfield Avenue it is noted that there is no excavation in this area. Based on the analysis, there is no excavation proposed within 12 metres of this point. It is also noted that this property is the subject of a

development application for mixed use development that is currently being considered by Ku-ring-gai Council.

Similarly, the residential flat building on the opposite side of Havilah Lane at the corner of Kochia Lane (property known as 2-6 Milray Street) are separated by the Havilah Lane carriageway and a total distance of approximately 17 metres.

The Department agrees that the physical separation between the properties at 43 Lindfield Avenue and 2-6 Milray Street and any excavation on the subject site is substantial and based on the analysis provided by the Proponent, it is considered reasonable to amend Condition D5 to remove the requirement to prepare dilapidation reports for these properties.

5.6.4 Loss of Privacy

A number of the public submissions raised concern about a loss of privacy associated with the reduced setbacks to Havilah Lane. In this regard it is noted that the setback of the residential levels of the Eastern Tower to Havilah Lane remains unchanged from the Project Approval.

5.6.5 Contamination

The issue of site contamination was raised in a small number of public submissions.

In this regard it is noted that the potential contamination of the site was considered as part of the original assessment. The Phase 1 Environmental Site Assessment which accompanied the original project application concluded that the risk of contamination at the site is moderate having regard to the site's land use history and on-site observations.

Conditions are included in the Project Approval which require further intrusive investigations (Phase 2 Site Investigation) into the potential contamination of the site. All works associated with the development are required to be undertaken in accordance with SEPP 55, relevant guidelines, and the recommendations of any Phase 2 Contamination Investigation report.

No change to the contamination requirements is sought as part of the request for modification. On this basis, the Department considers that this matter has been satisfactorily addressed.

6. CONCLUSION

The Department has assessed the application and has considered the submissions and the Proponent's response to submissions. The key issues relate to:

- building form and design;
- parking and access;
- reduction in retail floor space;
- residential amenity; and
- streetscape presentation to Lindfield Avenue and Havilah Lane.

The Department is satisfied that the proposed modification is acceptable, subject to the conditions recommended in the instrument of approval.

It is noted that the issues raised by Council regarding the relationship of the project to adjoining properties and potential impact on the development potential of those properties have been satisfactorily resolved either by a requirement for amended plans or through conditions recommended in the instrument of approval.

In relation to the additional height of the development, the Department is satisfied that the proposed modifications are reasonable having regard to the urban context of the site and the fact that it does not result in any significant additional overshadowing impact on the future Lindfield Town Square.

The proposed reduction in retail floor space from the approved scheme is considered to be reasonable having regard to the potential for redevelopment of other sites in the Lindfield Town Centre under the provisions of Council's Local Centres LEP 2012.

The Department supports the proposed modifications as outlined in this report and it is therefore recommended that the application be approved subject to the modified conditions.

7. RECOMMENDATION

It is recommended that the Planning Assessment Commission:

- (a) **Consider** the findings and recommendations of this report;
- (b) **Approve** the modification request under delegated authority, subject to conditions; and
- (c) **Sign** the attached Instrument of Modification for MP08_0244 MOD 1 (**Appendix D**).

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3.10.13

Chris Wilson
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APPENDIX A MODIFICATION REQUEST

See the department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5743

APPENDIX B SUBMISSIONS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5743

APPENDIX C PROPONENT'S RESPONSE TO SUBMISSIONS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5743

APPENDIX D RECOMMENDED MODIFYING INSTRUMENT
