

### Item 3.

**Development Application: 216-220 Wyndham Street, Alexandria - D/2023/884**

**File No.: D/2023/884**

#### Summary

**Date of Submission:** 28 September 2023. Amended plans and additional information were submitted on 17 November 2023, 5 March and 18 March 2024.

**Applicant/Owner/Developer:** City West Housing Pty Ltd

**Architect/Designer:** Bates Smart

**Planning Consultant:** Ethos Urban

**DAP:** 31 August 2023

**Cost of Works:** \$44,501,537

**Zoning:** The site is located within the MU1 - Mixed Use zone under the Sydney Local Environmental Plan 2012. The proposed development comprises indicative uses being commercial premises and affordable housing which are permissible with consent in the zone.

**Proposal Summary:** Approval is sought for a concept proposal for a mixed use development comprising the following:

- a concept building envelope with a maximum height of 35m;
- a new east-west through site link; and
- indicative uses including:
  - ground floor commercial uses and car parking;
  - first floor commercial uses and communal open space; and
  - residential apartments for the purpose of affordable rental housing on the levels above.

The application is referred to the Local Planning Panel for determination as:

- it is development to which Chapter 4 of the State Environmental Planning Policy (Housing) 2021 applies and is 4 or more storeys in height;
- the application includes an offer to enter into a Voluntary Planning Agreement (VPA) with the City; and
- the application is subject of more than 25 unique submissions by way of objection.

The public benefits in the VPA include embellishment and dedication of 3m wide footpath widening on McEvoy Street, transfer of land for a 6m wide shared zone laneway off Wyndham Street and a monetary contribution towards other community infrastructure in Green Square. The draft VPA is to be publicly exhibited in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

The application was notified for a period of 21 days between 20 November and 12 December 2023. A total of 52 submissions were received, including 29 in objection and 23 in support. The objections raised issues relating to the provision of affordable housing, traffic and parking, bulk and scale, overshadowing and the character of the area. The applicant submitted a Response to Submissions (RtS) report which provided additional information and justification for the proposed development.

The proposal includes a design excellence strategy that establishes a design excellence process for future development and sets benchmarks for ESD targets.

The proposed concept envelope establishes an appropriate built form and parameters for a future competitive design process and detailed design development application. The proposed envelope is capable of accommodating a building with a bulk and scale consistent with the desired future character of the Botany Road Precinct.

**Summary Recommendation:** It is recommended that authority be delegated to the Chief Executive Officer to determine the application following the conclusion of the public exhibition of the Voluntary Planning Agreement and considering any public submissions received in response.

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Housing) 2021
- (iv) SEPP (Resilience and Hazards) 2021
- (v) SEPP (Transport and Infrastructure) 2021
- (vi) SEPP (Biodiversity and Conservation) 2021
- (vii) SEPP (Sustainable Buildings) 2022

**Attachments:**

- A. Recommended Conditions of Consent
- B. Envelope Drawings
- C. Reference Scheme Drawings
- D. Design Excellence Strategy
- E. Public Benefit Offer
- F. Submissions

## Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine Development Application D/2023/884, following the conclusion of the public exhibition of the draft Voluntary Planning Agreement and considering any public submissions received in response; and
- (B) the Local Planning Panel receive and note the recommendation in the subject report that:
  - (i) the Design Excellence Strategy for 216-220 Wyndham Street, Alexandria prepared by Ethos Urban on behalf of City West Housing, dated 16 April 2024, as shown at Attachment D of the subject report, be endorsed pursuant to Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the Competitive Design Policy; and
  - (ii) pursuant to section 4.13(3) of the Environmental Planning and Assessment Act 1979, the application is recommended for deferred commencement approval subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The proposal is for a concept building envelope for a mixed use development including indicative commercial uses and residential apartments for the purpose of affordable rental housing. The proposal secures public benefits comprising land dedication for footpath widening and a new east-west through site link and payment of a monetary contribution towards community infrastructure in Green Square. The development is permissible with consent in the MU1 - Mixed Use zone and is consistent with the objectives of the zone.
- (B) The concept envelope complies with the 35m height of buildings development standard pursuant to clauses 4.3 and 6.60B of the Sydney Local Environmental Plan 2012.
- (C) The concept envelope is capable of accommodating development that complies with the floor space ratio controls pursuant to clauses 4.4, 6.14, 6.60B and 6.21D of the Sydney Local Environmental Plan 2012.
- (D) The concept proposal is capable of satisfying the relevant objectives of the Sydney Development Control Plan 2012.
- (E) The concept proposal and Design Excellence Strategy establish suitable parameters for a competitive design process and detailed design of the building. Subject to the recommended conditions, the proposed envelope can accommodate a detailed building design of an appropriate bulk and scale that is in keeping with the desired future character of the area and capable of achieving design excellence.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 1 in Deposited Plan 126288 and is known as 216-220 Wyndham Street, Alexandria. It is generally rectangular in shape with an area of 2,735sqm. The site is located on the north-eastern corner of McEvoy Street and Wyndham Street, with frontages of 37.5m to McEvoy Street and 42.6m to Wyndham Street.
2. The site contains a two storey warehouse comprising a pet store and an indoor recreation facility. An at-grade car park is located on the western side of the site with vehicular access provided via Wyndham Street. There is a landscaped area along the McEvoy Street frontage and there are a number of large mature trees along the McEvoy and Wyndham Street frontages.
3. The surrounding area is undergoing significant change within the Green Square urban renewal area and contains a mix of residential, industrial, retail and commercial uses. Surrounding development includes:
  - North: The site adjoins a local heritage item known as the 'Former Electric Light Substation No. 89' (I2240) located at 212-214 Wyndham Street. Further north along Wyndham Street is a 2 storey brick warehouse building and car parking associated with a storage hire facility at 186-202 Botany Road. A 4 storey residential flat building is located further north at 196-202 Wyndham Street.
  - East: Directly east of the site is a two storey warehouse building containing retail and commercial uses. Further east across Botany Road are predominantly warehouse/ commercial uses.
  - South: Across McEvoy Street is a 9 storey residential flat building with ground floor commercial uses at 222 Wyndham Street. The Iron Duke Hotel is located to the south-east.
  - West: To the west of the site is a concrete facility at 131 Wyndham Street. Further west along McEvoy Street is a 6 storey residential flat building with ground floor commercial tenancies. Alexandria Park is located to the north-west of the site.
4. The site is located within the Botany Road Precinct, which is subject to new planning controls that encourage commercial development and affordable housing due to public and private investment in the area including the Waterloo Metro.
5. A site visit was carried out on 21 December 2023. Photos of the site and surrounds are provided below.



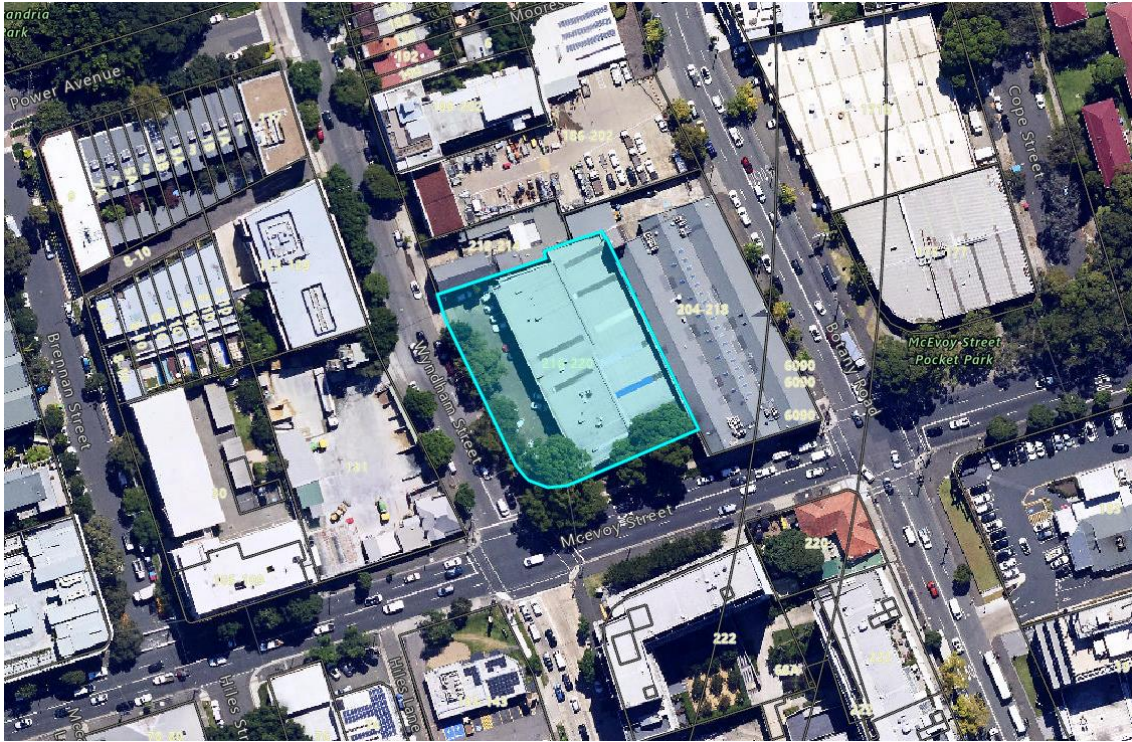


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Wyndham Street looking north-east





Figure 3: Site viewed from Wyndham Street looking north



Figure 4: Looking east along McEvoy Street





**Figure 5:** Residential flat building to the south of the subject site at 222 Wyndham Street, across McEvoy Street



**Figure 6:** Site viewed from the northern side of McEvoy Street, looking west





Figure 7: Looking north along Wyndham Street, with the adjoining heritage item on the right



Figure 8: Development west of the site at 131 Wyndham Street

## History Relevant to the Development Application

### History of the site

6. D/2021/313 - Development consent was granted on 4 August 2021 for alterations and additions to convert an indoor recreation facility to include a basketball training facility, gym and physiotherapy.
7. D/2012/715 – Development consent was granted on 20 August 2012 for the use and fitout of Unit 2 as a retail shop/showroom with warehouse area and mezzanine to be used as an ancillary office.
8. D/1996/1024 – Development consent granted on 28 February 1997 for use of the building for the manufacturing and warehousing of clothing, with offices and a ‘factory outlet’ component.

### History of the relevant planning controls

9. In 2017, the NSW Department of Planning and Environment began investigations into new planning controls for the Botany Road Precinct (the Precinct) due to public and private investment in the area including the Waterloo Metro station. The City's Local Strategic Planning Statement adopted by Council in 2020 identified the Precinct as an area for investigation where new planning controls could contribute to business and employment growth.
10. In July 2021 the proposed planning controls for the Precinct were endorsed by Council and the Central Sydney Planning Committee (CSPC), to be sent to the Department of Planning and Environment (the Department) for a Gateway Determination and to be publicly exhibited.
11. The planning proposal was granted Gateway Determination on 24 September 2021 with Council being delegated the plan-making authority. The planning proposal and draft DCP were publicly exhibited for 28 days from 15 November to 13 December 2021.
12. On 27 June 2022, Council approved the planning proposal. The amendments to the Sydney LEP 2012 and the Sydney DCP 2012 came into effect on 11 November 2022.
13. The purpose of the new planning controls is to facilitate the renewal of the Precinct by encouraging commercial, enterprise and affordable housing floor space while recognising the strong connection of the Precinct to the Aboriginal and Torres Islander community.
14. The new planning controls identify 'Opportunity Land' and allows development to achieve incentive building heights and floor space ratio subject to the satisfaction of prerequisite criteria as outlined in clause 6.60B of the SLEP 2012. An assessment of the proposed development against the requirements of the SLEP 2012 is outlined in the Discussion section.
15. The Planning Proposal also amended the SDCP 2012 to introduce a new Part 5.10 relating to development in the Precinct. An assessment of the proposed development against these provisions is provided in the DCP compliance table below.

**Pre-DA consultation**

16. The applicant sought pre-lodgement advice from Council in June 2023 prior to submission of the development application. The applicant sought feedback on a range of issues to inform the massing strategy for the concept proposal. Various options for envelope massing were presented by the applicant, including an option to retain the trees on McEvoy Street and relocate that floor space to an additional 10th storey within the LEP height envelope.
17. The City's Pre-DA advice (including input from the Design Advisory Panel discussed below) recommended the following:
  - (a) Retention of groups of trees identified as Stands 1 and 3 was specifically recommended. The removal of Stand 2 may be necessary to reasonably achieve the development potential of the site, subject to provision of adequate deep soil, additional street tree plantings and activation of the Wyndham Street frontage.
  - (b) The L-shape scheme can be supported in principle. An appropriate setback to the McEvoy Street trees must be provided. Appropriate frontage height and upper level setbacks should be investigated.
  - (c) An additional storey above the DCP recommended height can be considered if it can be wholly accommodated within the LEP height control and solar access is maintained to neighbouring buildings.
  - (d) Development must maximise opportunities to activate both street frontages.
  - (e) Car parking should be minimised on site, given it is well serviced by public transport.
  - (f) The through-site link is to be designed as a vehicular shared zone to facilitate loading and servicing.
  - (g) Development must address Connecting to Country principles in the DCP.

**Design Advisory Panel**

18. As part of the Pre-DA process, the massing options were presented to the Design Advisory Panel (DAP) on 31 August 2023.
19. The Panel noted and recommended the following:
  - (a) There are three groups of significant trees on the site, all with high retention value. The Panel recognised that to retain the significant trees, apartment yield would need to be reduced by 10 if the building controls for the number of storeys were to be strictly observed.
  - (b) If allowed to exceed the number of storeys control by one floor, the applicant would be able to achieve the full yield of apartments, while retaining the significant trees.
  - (c) This approach was supported by the Panel in principle, including the additional storey, subject to the following:
    - (i) all ADG issues being resolved;



- (ii) the 8-storey blank wall being treated so that it does not present as a blank sheer wall; and
  - (iii) all apartment privacy issues being addressed.
- (d) The Panel also recommended the activation of both street frontages.
20. The proposed concept envelope has incorporated the recommendations of the DAP as follows:
- (a) As outlined in this report, the reference scheme indicates that compliance with the ADG design criteria can be achieved within the envelope. This will be assessed in further detail in the detailed design DA.
  - (b) As this is a Concept DA only, the treatment of the 8 storey blank wall has not yet been specified. A condition of consent is recommended that requires this to be addressed in the detailed design DA.
  - (c) The reference scheme shows that an acceptable level of privacy can be achieved within and beyond the site. This will be assessed in further detail in the detailed design DA.

### **Amendments**

21. Following lodgement of the application on 28 September 2023, a request for additional information was sent to the applicant on 3 October 2023.
22. The following information was requested:
- (a) Aboriginal Due Diligence Assessment Report
  - (b) Aboriginal Consultation Report
  - (c) Acoustic Assessment
  - (d) Heritage Impact Statement
  - (e) Landscape Strategy
  - (f) 3D Digital and Physical model
  - (g) Natural Ventilation Report
  - (h) Preliminary Public Art Strategy
  - (i) Draft Public Benefit Offer
  - (j) Waste Management Plan
23. The applicant provided the requested documents on 17 November 2023.
24. Following receipt of the above information and detailed assessment, a further request for information was sent to the applicant on 11 January 2024 requesting the following information/ amendments:

- (a) **Concept envelope drawings** - Show all required details including RLs, trees to be removed, deep soil, setbacks and vehicle access.
  - (b) **Reference scheme drawings** - Show all required details including dimensions, deep soil, land to be dedicated and RLs.
  - (c) **Height** - Demonstrate that all lift overruns, parapets and roof structures can sit within maximum 35m envelope.
  - (d) **Street wall heights and building separation:**
    - (i) Southern frontage should provide an upper level setback for storeys above the 8 storey DCP height on McEvoy Street.
    - (ii) Western frontage to Wyndham Street should provide an upper level setback for storeys above the 9 storey DCP height. An additional setback may also be required to satisfy ADG building separation design criteria.
    - (iii) Northern frontage should address ADG minimum separation distances to the boundary.
  - (e) **Natural cross ventilation** - Reference scheme must achieve natural cross ventilation for 60% of apartments in the first nine storeys of the building.
  - (f) **Solar access** - Additional information required to demonstrate solar access received to subject site when considering future development of surrounding sites.
  - (g) **Through site link and access** - Justification requested for proposed at grade off-street car parking, which Provision 5.10.3.2(5) of the SDCP 2012 specifies is not permitted within the precinct.
  - (h) **Deep soil** - At least 10% deep soil to be achieved.
  - (i) **Tree management** - Tree canopy plan requested.
  - (j) **Contamination** - Site Audit Statement requested.
  - (k) **Waste management** - Reference scheme to show required number of bins drawn to scale.
  - (l) **Sustainability** - ESD report should be updated to reflect the requirements of the State Environmental Planning Policy (Sustainable Buildings) 2022 including the adoption of revised BASIX targets, NatHERS targets and response to Section 3.2 of the SEPP.
  - (m) **Design Excellence** - Comments on the draft brief to be addressed.
  - (n) **Potential land-use conflict** - Provide further information to demonstrate that the Noise Impact Assessment has taken potential land use conflicts into account.
25. A Response to Submissions was submitted by the applicant on 5 March and 18 March 2024. This included amended concept plans, reference scheme drawings, ESD report, Acoustic Report, Design Excellence Strategy and Landscape Concept Plan.

## Proposed Development

26. The application (as amended) seeks consent for the following:
  - (a) a concept building envelope for a mixed use development, with a maximum height of up to 35m;
  - (b) a new east-west through site link accessed from Wyndham Street, with an indicative vehicular access location off the new laneway; and
  - (c) indicative land uses including:
    - (i) Ground floor: At-grade car parking, bicycle parking and commercial uses.
    - (ii) First floor: Commercial uses and communal open space associated with the residential use.
    - (iii) Upper levels: Residential apartments for the purpose of affordable housing.
27. The application also seeks endorsement of the submitted Design Excellence Strategy which establishes a framework for a future competitive design process for the site. The strategy specifies that up to 10% additional floor space is sought in accordance with the design excellence provisions contained in Clause 6.21D of the SLEP 2012.
28. The application includes a written offer to enter into a Voluntary Planning Agreement (VPA) with the City. The public benefits in the VPA include:
  - (a) embellishment and dedication of 3m wide footpath widening along McEvoy Street;
  - (b) transfer of land for a 6m wide shared zone laneway off Wyndham Street; and
  - (c) a monetary contribution of approximately \$233,000 towards community infrastructure in Green Square. This is linked to bonus floor space made available under Clause 6.14 of the SLEP 2012 when providing community infrastructure.
29. A Reference Scheme prepared by Bates Smart has been submitted with the application to demonstrate how a detailed building design may be achieved within the proposed concept envelope. The reference scheme includes an indicative design for a development comprising ground and first floor commercial uses and 104 residential apartments for affordable housing above. The reference scheme drawings are not approved as part of any consent granted and are for assessment purposes only.
30. Drawings of the proposed concept envelopes and associated reference scheme are provided below.



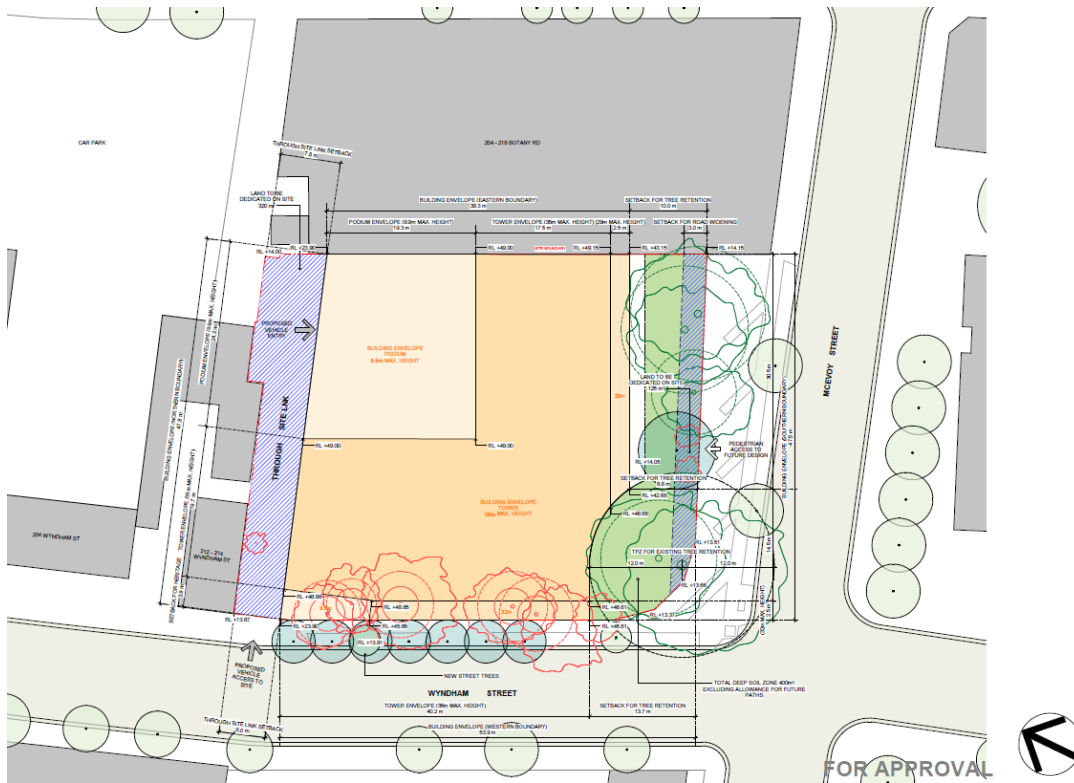


Figure 9: Proposed envelope plan

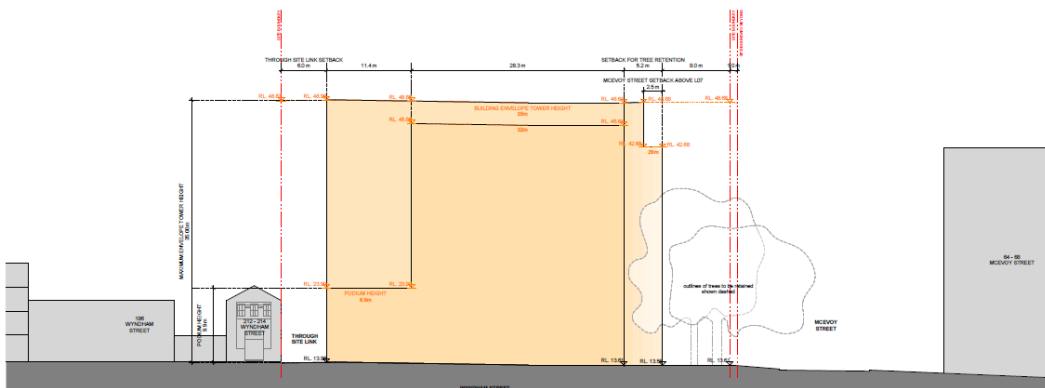


Figure 10: Proposed envelope - western elevation (Wyndham Street)

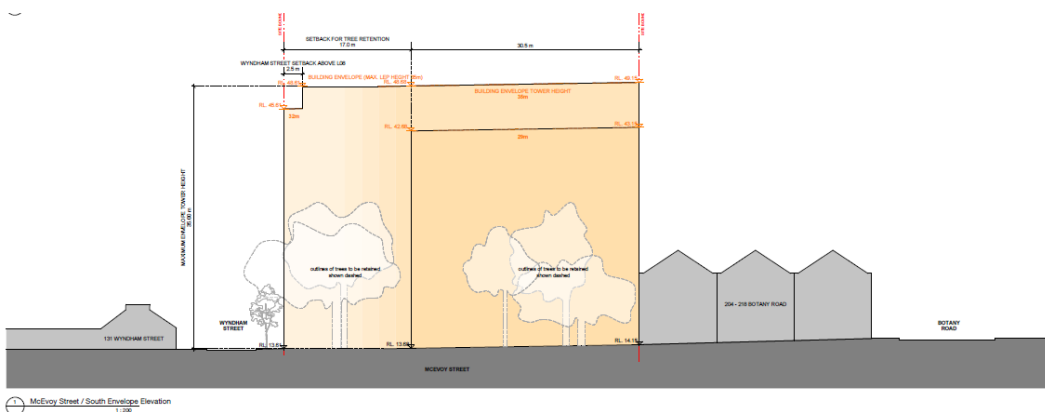


Figure 11: Proposed envelope - southern elevation (McEvoy Street)

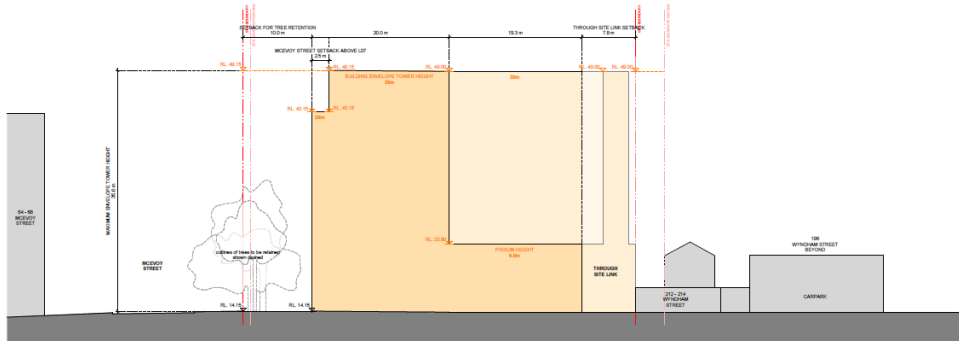


Figure 12: Proposed envelope - eastern elevation

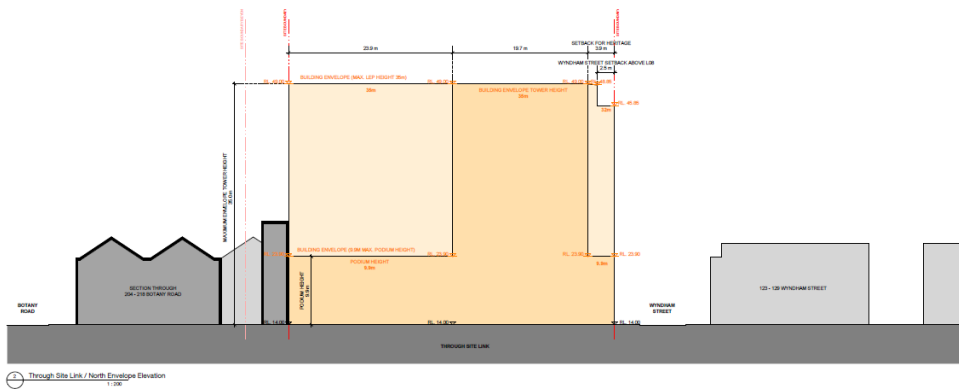


Figure 13: Proposed envelope - northern elevation (through-site link)



Figure 14: Reference scheme - ground floor plan

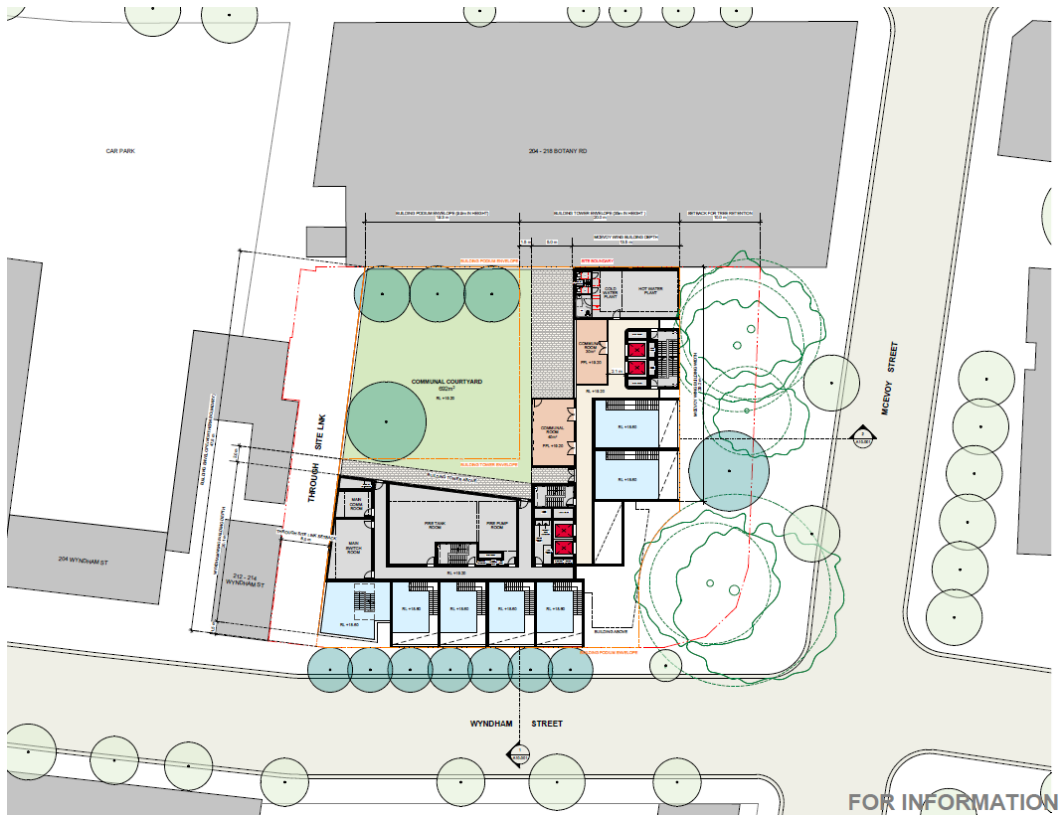


Figure 15: Reference scheme - level 1 plan

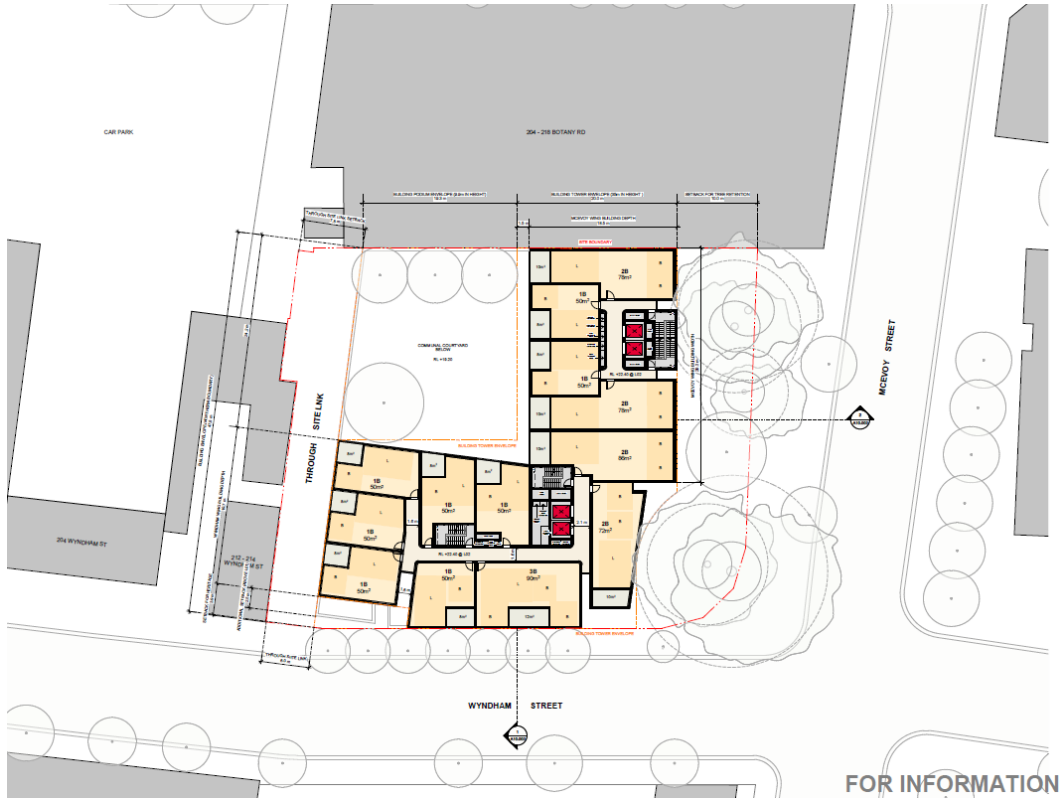


Figure 16: Reference scheme - level 2-7 plan



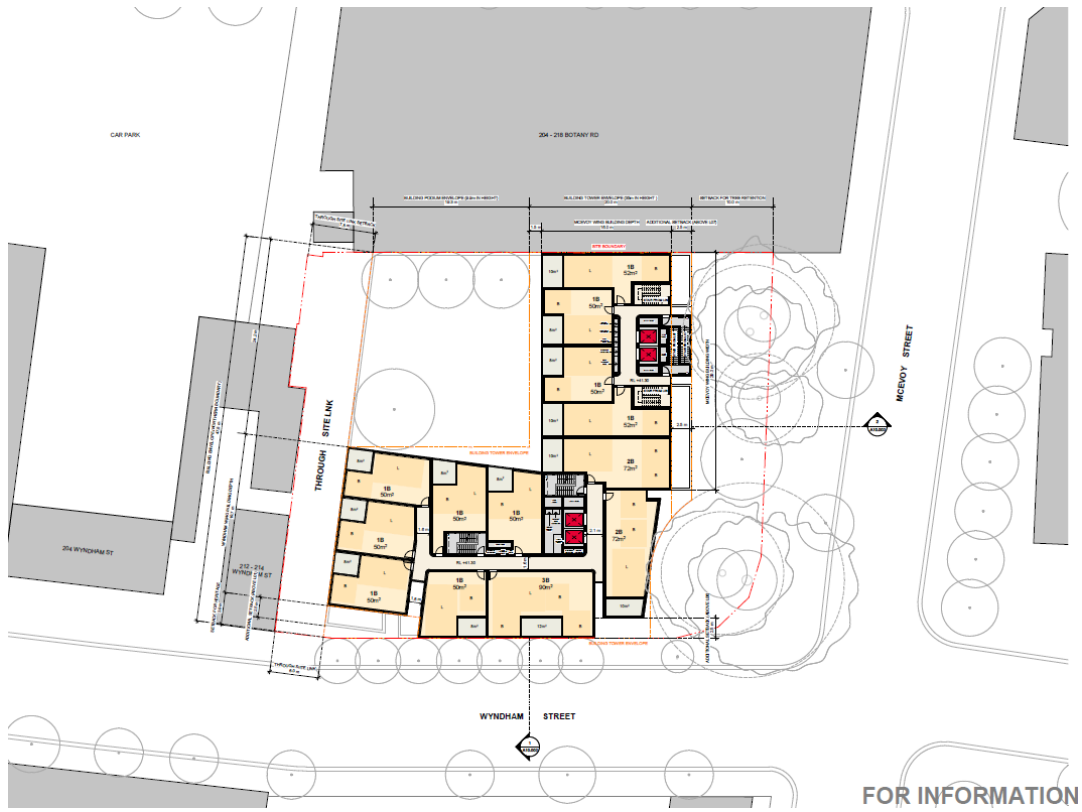


Figure 17: Reference scheme - level 8 plan



Figure 18: Reference scheme - level 9 plan

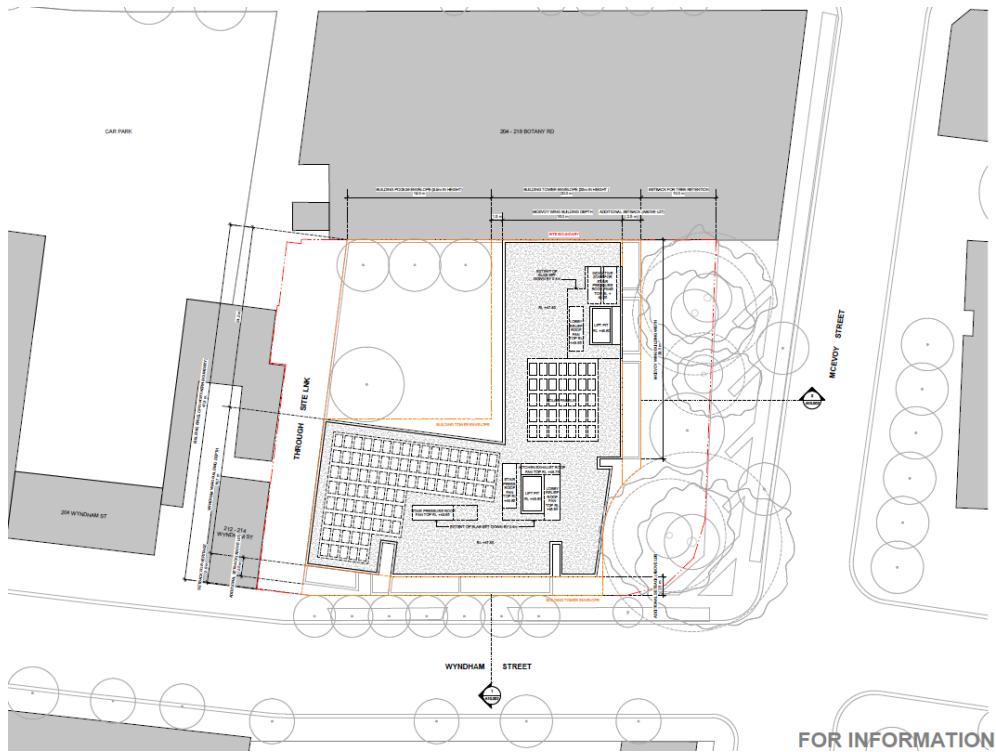


Figure 19: Reference scheme - roof plan

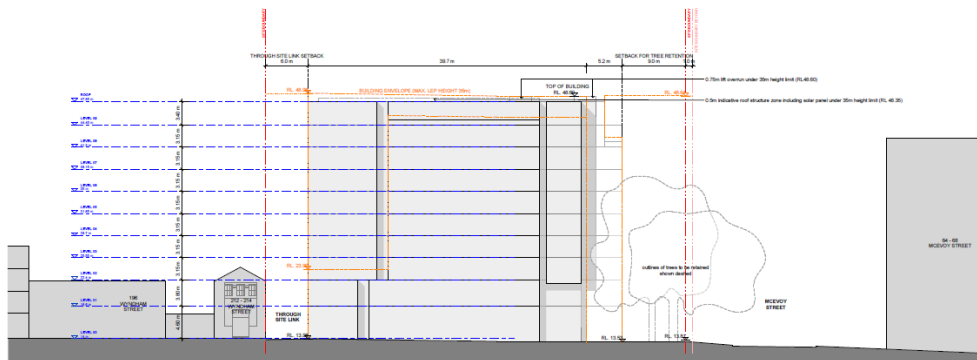


Figure 20: Reference scheme - western elevation (Wyndham Street)

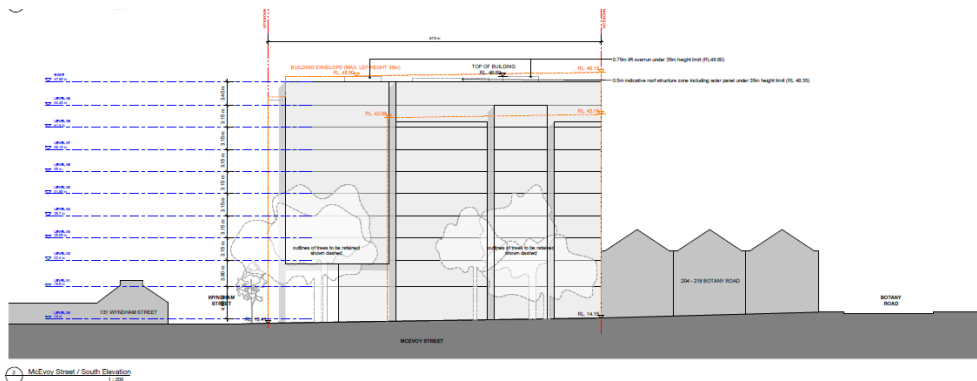


Figure 21: Reference scheme - southern elevation (McEvoy Street)

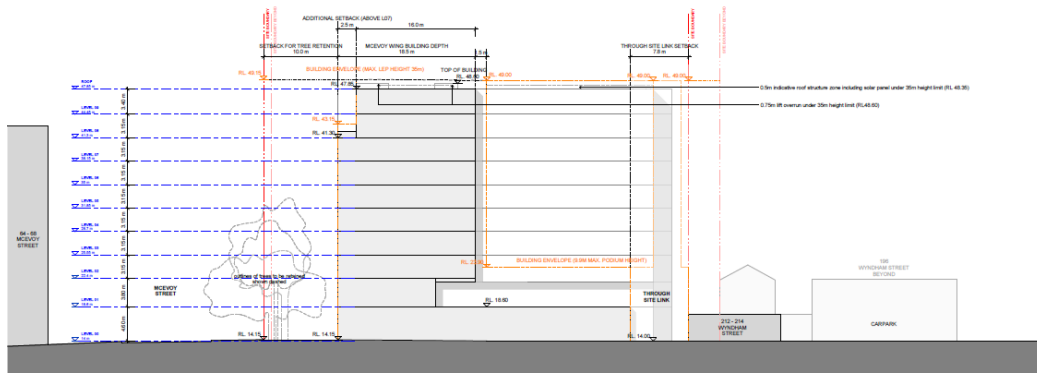
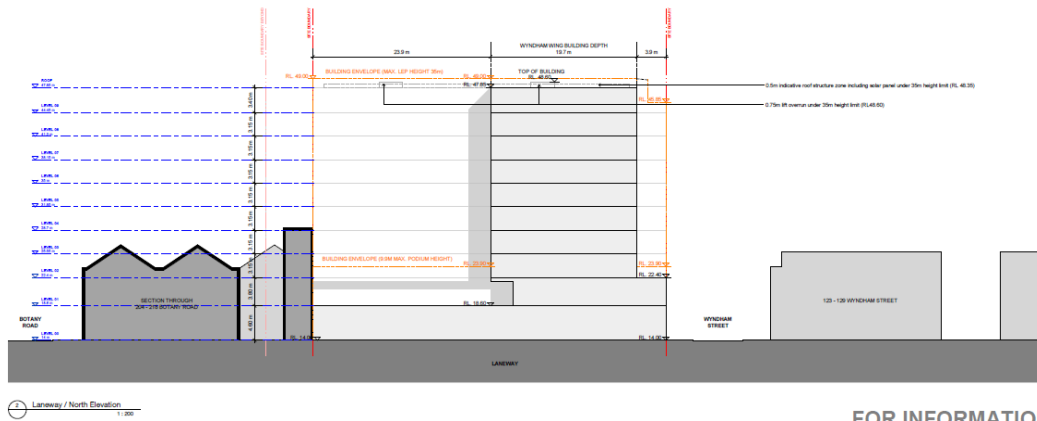


Figure 22: Reference scheme - eastern elevation



FOR INFORMATION

Figure 23: Reference scheme - northern elevation (through-site link)

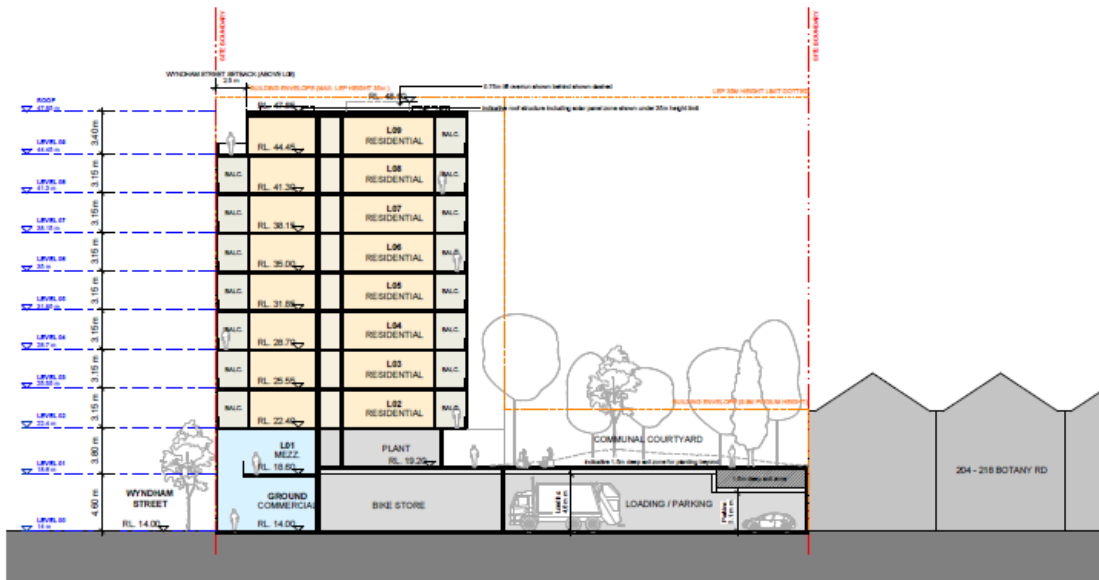


Figure 24: Reference scheme - east/west section

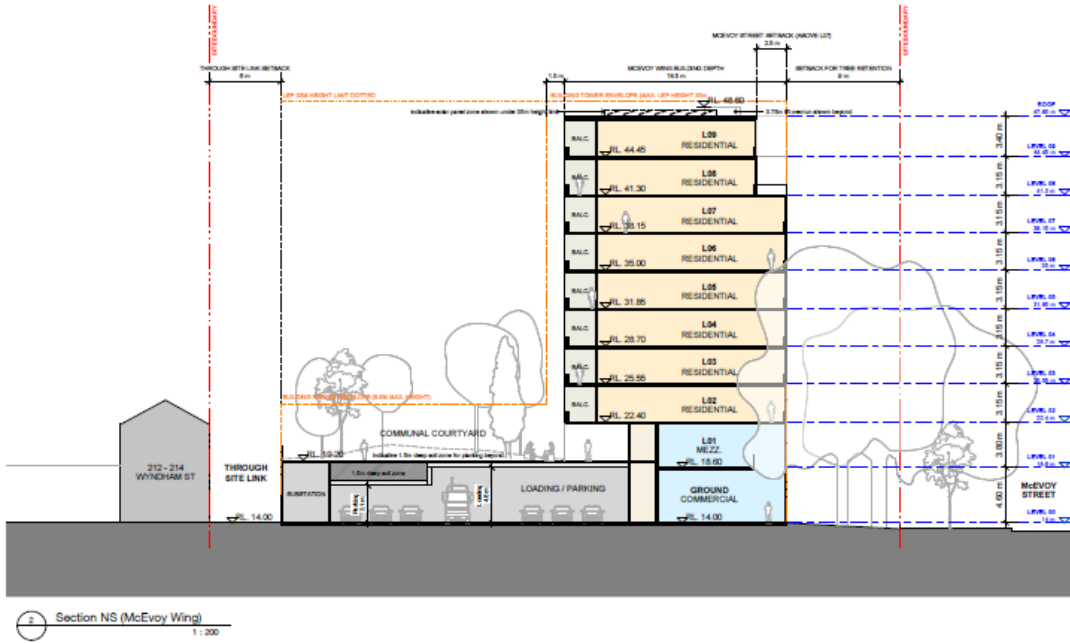


Figure 25: Reference scheme - north/south section

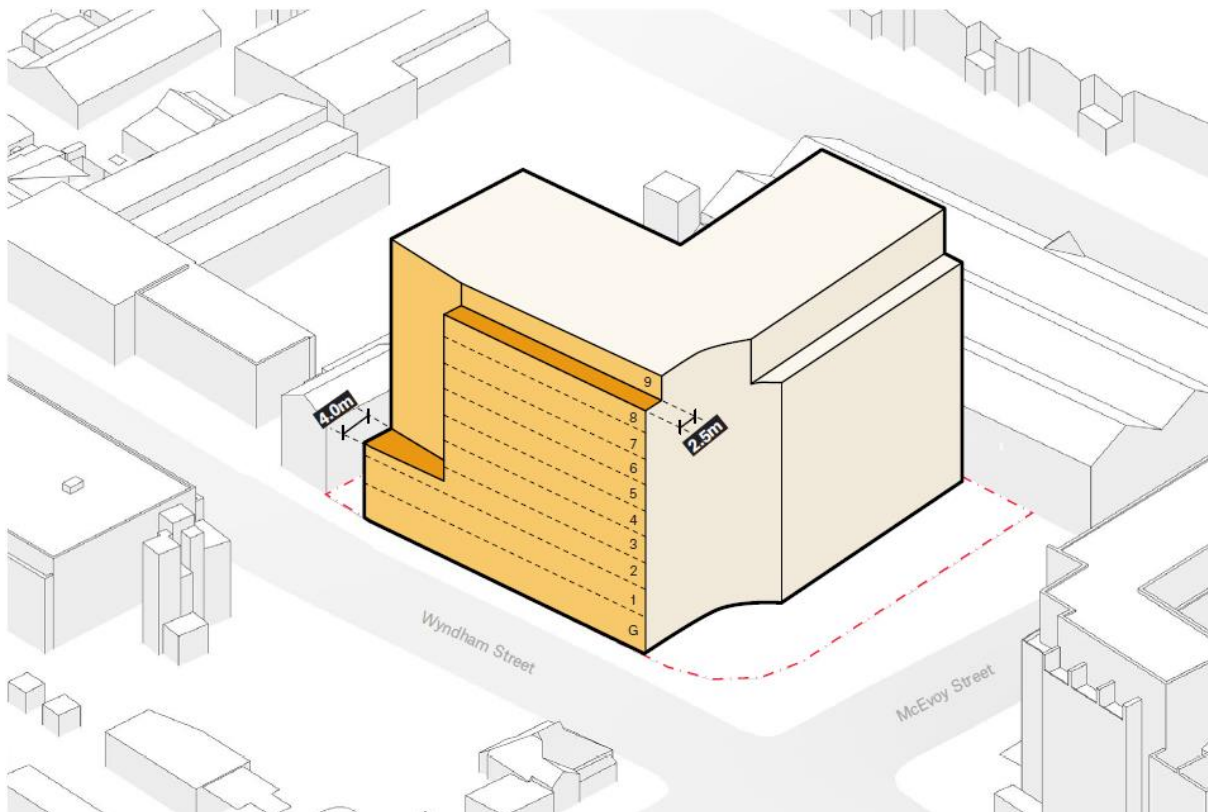


Figure 26: 3D view of the proposed envelope viewed from the south-west looking north-east



## Assessment

31. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## State Environmental Planning Policies

### State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4

#### Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. A combined Preliminary and Detailed Site Investigation has been submitted with the application. A range of potential contamination sources were identified relating to the historical fill materials on the site and range of historical industrial uses. Site investigations found that site contamination is restricted to fill materials present across the site. The fill materials contain contaminants including heavy metals, polychlorinated hydrocarbons (PAHs) and asbestos.
34. The Detailed Site Investigation recommends imported topsoil should be used where planting is proposed as in-situ soils are likely to be unsuitable growing media. . Asbestos and PAH impacted soils within the site will require management, which is to be documented in a Remediation Action Plan (RAP)
35. A RAP and Interim Audit Advice were subsequently submitted. The RAP outlines a remedial approach that will control potential exposures to asbestos and PAHs as present within impacted fill based soils located within the site. This will consist of the long term consolidation of the impacted soils within a purpose designed containment cell established at the current location of these soils. The Auditor agrees that the site can be made suitable for the proposed use subject to implementation of the RAP.
36. The Council's Health Unit has reviewed the information provided and is satisfied that the site can be made suitable for the proposed use. The remediation of the site will be assessed further as part of the detailed development application. A condition of consent is recommended in Attachment A that requires the detailed design DA to address the requirements of the SEPP.

### State Environmental Planning Policy (Housing) 2021

37. The aim of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) is to improve the design quality of residential apartment development in New South Wales.
38. When determining an application for a residential flat development of three or more floors and containing four or more apartments, the Housing SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.
39. The applicant has submitted a design verification statement and design report prepared by Bates Smart, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide.

40. An assessment of the proposal against the design quality is provided as follows:

(a) Principle 1: Context and Neighbourhood Character

The site is located on the corner of McEvoy Street and Wyndham Street and falls within the Botany Road corridor. The site has a significant landscape character with nearby parks and consistent street trees along Wyndham Street and McEvoy Street.

The proposed concept envelope seeks to retain the existing tree corridor on McEvoy Street and the building form has been shaped accordingly. The envelope is consistent with the desired future character for the precinct as it is generally in accordance with the height and setback controls that apply to the site and sets suitable parameters for future development.

(b) Principle 2: Built Form and Scale

The built form envisaged in the DCP is a U shape form above a two storey podium, setback 3m from the southern boundary and adjoining the eastern boundary.

The concept envelopes incorporate an alternative massing strategy, which includes an increased southern setback on McEvoy Street for tree retention and relocates the eastern volume to the west, with an additional tenth storey across the remaining envelope.

The alternative massing strategy is supported as it achieves an appropriate built form, defines the public domain, retains significant tree canopy, achieves good residential amenity and is of a scale that is in keeping with the desired future character of the Precinct.

(c) Principle 3: Density

The reference scheme demonstrates that the proposed concept envelope is capable of providing an appropriate level of density that is permissible under the planning controls.

(d) Principle 4: Sustainability

Overall sustainability and energy efficiency will be assessed further in the future detailed design DA. ESD benchmarks have been incorporated into the Design Excellence Strategy which will inform the competitive design process.

(e) Principle 5: Landscape

A Landscape Strategy has been submitted which demonstrates the required deep soil, communal open space and tree canopy can be accommodated on the site. A condition of consent is recommended requiring deep soil to be provided in accordance with the Landscape Strategy and concept envelope drawings.

(f) Principle 6: Amenity

The reference scheme demonstrates an appropriate level of residential amenity is achievable. The amenity for future occupants will be assessed in more detail as part of the detailed design DA.

## (g) Principle 7: Safety

The ground level of the reference scheme has been designed to optimise activation, pedestrian safety, safe vehicle access and tree retention. The detailed design DA will identify further opportunities to maximise passive surveillance of public and communal areas to promote safety.

## (h) Principle 8: Housing Diversity and Social Interaction

The concept envelopes can accommodate communal open space and common areas to provide opportunities for social interaction among residents. The number and mix of apartments are not approved as part of the concept DA and will be considered further in the detailed design DA.

## (i) Principle 9: Aesthetics

The design of the building including building details and materials will be subject to the detailed design DA, following the completion of a competitive design process.

41. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.

| 2E Building Depth       | Compliance     | Comment   |
|-------------------------|----------------|---|
| 12-18m (glass to glass) | Able to comply | The deepest apartments in the reference scheme have a depth of approximately 15 metres, which complies.<br><br>Building depths will be assessed further as part of any detailed DA. |

| 2F Building Separation  | Compliance     | Comment   |
|---|----------------|---|
| Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> <li>12m between habitable rooms / balconies</li> <li>9m between habitable and non-habitable rooms</li> <li>6m between non-habitable rooms</li> </ul> | Able to comply | The proposed envelope drawings and reference scheme have accounted for the minimum building separation requirements. Compliance with building separation requirements will be assessed further as part of any future detailed DA.<br><br>Building separation and setbacks are discussed in more detail in the Discussion section below. |
| Five to eight storeys (approximately 25 metres):  | Able to comply |   |

| 2F Building Separation  | Compliance     | Comment |
|---|----------------|---------|
| <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable rooms</li> </ul>  |                |         |
| <p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> <li>• 24m between habitable rooms / balconies</li> <li>• 18m between habitable and non-habitable rooms</li> <li>• 12m between non-habitable rooms</li> </ul> | Able to comply |         |

| 3B Overshadowing   | Compliance     | Comment  |
|--|----------------|--|
| <p>Living areas, private open space and communal open space should receive solar access in accordance with objectives 3D Communal and public open space and 4A Solar and daylight access.</p> <p>Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.</p> | Able to comply | <p>An overshadowing analysis, including shadow diagrams and View from the Sun diagrams, was submitted with the application and demonstrates that a minimum of 2 hours of solar access in midwinter is maintained to adjoining properties. Therefore the proposed concept envelope will not cause unacceptable overshadowing impacts.</p> <p>Refer to Discussion section below for further details.</p> |



| <b>3D Communal and Public Open Space</b>   | <b>Compliance</b> | <b>Comment</b>   |
|--|-------------------|--|
| Communal open space has a minimum area equal to 25% of the site.   | Able to comply    | The concept envelope is capable of providing the required amount of communal open space.<br><br>The reference scheme provides 692sqm of communal open space which equates to 25.3% of the site area.   |
| Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter). | Able to comply    | The location of communal open space on the north-eastern corner of the site ensures that adequate solar access is achieved.<br><br>The View from the Sun diagrams show indicative future building envelopes to the north of the site and demonstrate that solar access to the communal open space is maintained between 12pm-3pm when considering likely future development of surrounding sites.<br><br>Compliance with these requirements will be assessed further as part of any future detailed design DA. |

| <b>3E Deep Soil Zones</b>  | <b>Compliance</b> | <b>Comment</b>  |
|--|-------------------|---|
| Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m | Yes               | 400sqm of deep soil is provided, which equates to 14.7% of the site area. |

| <b>3F Visual Privacy</b>   | <b>Compliance</b> | <b>Comment</b>  |
|--|-------------------|---|
| Up to four storeys (12 metres): <ul style="list-style-type: none"> <li>6m between habitable rooms / balconies</li> <li>3m between non-habitable rooms</li> </ul> | Able to comply    | The proposed envelopes and reference scheme have accounted for the visual privacy design criteria. Compliance with building separation requirements will be assessed further as part of any future detailed DA.<br><br>Building separation and setbacks are discussed in more detail in the Discussion section below. |
| Five to eight storeys (25 metres): <ul style="list-style-type: none"> <li>9m between habitable rooms / balconies</li> </ul>                                      | Able to comply    |   |

| <b>3F Visual Privacy</b>   | <b>Compliance</b> | <b>Comment</b> |
|--|-------------------|----------------|
| <ul style="list-style-type: none"> <li>4.5m between non-habitable rooms</li> </ul>   |                   |                |
| Nine storeys and above (over 25m): <ul style="list-style-type: none"> <li>12m between habitable rooms / balconies</li> <li>6m between non-habitable rooms</li> </ul> | Able to comply    |                |

| <b>4A Solar and Daylight Access</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| 70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces. | Yes               | The reference scheme demonstrates that 74% (77 out of 104) apartments receive a minimum of 2 hours of direct sun between 9am and 3pm at midwinter to living rooms and private open space.<br><br>This will be assessed further in the future detailed DA. |
| Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.               | Yes               | The reference scheme indicates that 8% apartments receive no direct sun, which complies.  |

| <b>4B Natural Ventilation</b>  | <b>Compliance</b> | <b>Comment</b>  |
|--|-------------------|---|
| All habitable rooms are naturally ventilated.  | Able to comply    | The reference scheme complies.  |
| Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.          | Able to comply    | The reference scheme indicates that 61% of apartments within the first nine storeys of the building are naturally cross ventilated. |
| Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. | Able to comply    | The reference scheme complies.  |

| 4C Ceiling Heights  | Compliance     | Comment   |
|---|----------------|---|
| Habitable rooms: 2.7m   | Able to comply | <p>The reference scheme sections indicate 3.15m floor to floor heights, which provides sufficient tolerance for 2.7m floor to ceiling heights.</p> <p>Consistency with this objective will be assessed further as part of a future detailed design DA.</p>  |
| If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use. | Able to comply | <p>The reference scheme sections indicate floor to floor heights of 4.6m on the ground floor and 3.8m on the first floor, which provides sufficient tolerance for appropriate ceiling heights on these levels.</p> <p>Consistency with this objective will be assessed further as part of the detailed design DA.</p> |

| 4D Apartment Size and Layout  | Compliance     | Comment  |
|---|----------------|--|
| <p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p> | Able to comply | <p>The reference scheme indicates minimum apartment sizes are achieved.</p> <p>Consistency with this objective will be assessed further as part of the detailed design DA.</p> |

| <b>4E Private Open Space and Balconies</b>   | <b>Compliance</b> | <b>Comment</b>   |
|--|-------------------|--|
| <p>Studio apartments are to have a minimum balcony area of 4m<sup>2</sup> with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m<sup>2</sup> with a minimum depth of 2.4m.</p> | Able to comply    | <p>The reference scheme indicates that the minimum balcony sizes are achieved for all apartments.</p> <p>Consistency with this objective will be assessed further as part of the detailed design DA.</p> |

| <b>4F Common Circulation and Spaces</b>   | <b>Compliance</b>     | <b>Comment</b>   |
|---|-----------------------|--|
| The maximum number of apartments off a circulation core on a single level is eight (8).   | No but able to comply | <p>The reference scheme indicates that nine apartments rely on a single circulation core on each level, which is contrary to the design criteria.</p> <p>Consistency with this objective will be assessed further as part of the detailed design DA.</p> |
| For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.   | Able to comply        | The reference scheme demonstrates compliance with this requirement.  |
| Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled. | Able to comply        | The reference scheme demonstrates compliance with this requirement.  |

| <b>4F Common Circulation and Spaces</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| Daylight and natural ventilation are provided to all common circulation spaces. | Able to comply    | The reference scheme demonstrates compliance with this requirement. |

| <b>4G Storage</b>   | <b>Compliance</b> | <b>Comment</b>   |
|---|-------------------|--|
| Minimum storage provision facilities: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> (Minimum 50% storage area located within unit) | Able to comply    | The total number of apartments and storage provision will be assessed further as part of the detailed design DA. |

| <b>4J Noise and Pollution</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings? | Able to comply    | The site is located on McEvoy Street which is identified as a busy road.<br><br>Design solutions will be considered in the competitive design process and detailed design DA to protect the quality and amenity of affected apartments by minimising potential noise and pollution impacts. |

### **State Environmental Planning Policy (Sustainable Buildings) 2022**

42. Any future detailed development application will be required to satisfy the requirements of the State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP).
43. It is noted that while this Concept DA was lodged prior to the commencement of the Sustainable Buildings SEPP, the nature of this application being for building envelopes only, means that no BASIX Certificate has been generated or submitted. Therefore, any future BASIX Certificate generated for the detailed design of the building will be subject to the requirements of the Sustainable Buildings SEPP.
44. The issue of sustainability and the applicability of the Sustainable Buildings SEPP is outlined in the Discussion section below.



**State Environmental Planning Policy (Transport and Infrastructure) 2021**

45. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

*Clause 2.48 Determination of development applications – other development*

46. The application is subject to Clause 2.48 of the SEPP and was referred to Ausgrid for comment.
47. Ausgrid raised no objection to the development application, subject to the development complying with relevant Ausgrid Network Standards and Safework NSW Codes of Practice for construction works near existing electrical assets. These comments are included as conditions of consent in Attachment A.

*Clause 2.98 – Excavation in, above, below or adjacent to rail corridors*

48. The application is located within the buffer adjacent to the Metro Tunnel corridor and was subsequently referred to Sydney Metro for comment. Sydney Metro have recommended conditions which are included in the Notice of Determination.

*Clause 2.119 – Development with frontage to classified road*

49. The application is subject to Clause 2.119 of the SEPP as the site has frontage to Wyndham Street which is a series regional classified road under the care and control of Council, however requires concurrence from Transport for NSW under section 138 of the Roads Act 1993.
50. Transport for NSW advised that concurrence would be provided to the proposed mixed-use development and vehicular crossover on Wyndham Street under section 138 of the Roads Act 1993, subject to conditions.

*Clause 2.120 – Impact of road noise or vibration on non-road development*

51. The application is subject to Clause 2.120 of the SEPP as the site is adjacent to McEvoy Street which has an annual average daily traffic volume of more than 20,000 vehicles and the development is likely to be adversely affected by road noise or vibration.
52. Council's Environmental Health unit reviewed the submitted acoustic report and advised that subject to the noise attenuation strategies recommended in the acoustic report the proposed development can achieve the relevant internal noise criteria specified at clause 2.120 of the SEPP.

**Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017**

53. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
54. The SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
55. Refer to the Discussion section for an assessment of impacts to trees.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

56. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

### Planning Proposal - Botany Road Precinct - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendments

57. The Planning Proposal - Botany Road Precinct - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendments was publicly exhibited for 28 days from 25 November to 13 December 2021.
58. Council approved the planning proposal on 27 June 2022. The amendments to the Sydney LEP 2012 and the Sydney DCP 2012 came into effect on 11 November 2022.
59. The Planning Proposal introduced new height and floor space ratio controls in the Botany Road Precinct. These are contained in clause 6.60B of the SLEP 2012 and Section 5.10 of the SDCP 2012. An assessment of the proposed development against these provisions is provided in the compliance tables below.

#### Part 1 Preliminary

| Provision                | Compliance | Comment   |
|--------------------------|------------|---|
| 1.9 Application of SEPPs | Yes        | SEPP (Housing) 2021, Chapter 2, Part 2, Divisions 1, 2, 3 and 5, relating to affordable housing, do not apply to sites within Green Square and within Botany Road Precinct Opportunity Land. Chapter 3, Part 3 and Part 4, relating to diverse housing, also do not apply to sites within Green Square.<br><br>Therefore these provisions do not apply. |

#### Part 2 Permitted or prohibited development

| Provision                              | Compliance | Comment  |
|--|------------|--|
| 2.3 Zone objectives and Land Use Table | Yes        | The site is located in the MU1 - Mixed Use zone.<br><br>The concept proposal is for a mixed use development containing indicative commercial and residential uses for the purpose of affordable housing.<br><br>These uses are permissible with consent in the zone. The proposal is consistent with the objectives of the zone. |

## Part 4 Principal development standards

| Provision               | Compliance     | Comment  |
|-------------------------|----------------|--|
| 4.3 Height of buildings | Yes            | <p>A maximum building height of 15m is permitted under the Height of Buildings map under clause 4.3 of the SLEP 2012.</p> <p>Clause 6.60B(3) - Botany Road Precinct Opportunity Land of the SLEP 2012 permits an Alternative Height of Buildings control of 35m if the building is for the purpose of non-residential uses and affordable housing.</p> <p>The prerequisites for utilising the alternative height control outlined in clause 6.60B have been met and are outlined in the Discussion section.</p> <p>The proposed building envelope has a maximum height of 35m and therefore complies with the alternative height control.</p>  |
| 4.4 Floor space ratio   | Able to comply | <p>A maximum floor space ratio of 1:1 is permitted under the Floor Space Ratio map.</p> <p>Clause 6.60B(4) of the SLEP 2012 permits an Alternative Floor Space Ratio of 2.75:1 if the building is for the purpose of non-residential uses and affordable housing.</p> <p>Clause 6.14 - Community Infrastructure Floor Space at Green Square of the SLEP 2012 permits an additional floor space of 0.5:1 if the development includes Green Square community infrastructure.</p> <p>The VPA involves land dedication and monetary contributions for community infrastructure and therefore the additional 0.5:1 floor space applies.</p> <p>The development will also seek up to 10% additional floor space for design excellence in accordance with Clause 6.21D of the SLEP 2012.</p> <p>Considering the above, the maximum permissible FSR, if design excellence is achieved, is 3.575:1 or 9,777.6sqm.</p> <p>The reference scheme has an FSR of 3.20:1, which equates to a GFA of</p> |

| Provision | Compliance | Comment  |
|-----------|------------|--|
|           |            | <p>8,743sqm and complies with the maximum.</p> <p>FSR and GFA are not approved as part of this concept DA. A condition of consent is recommended that requires the FSR of the detailed design DA to not exceed the permissible FSR for the site.</p> |

#### Part 5 Miscellaneous provisions

| Provision                  | Compliance     | Comment   |
|----------------------------|----------------|---|
| 5.10 Heritage conservation | Able to comply | <p>The site is not located within a heritage conservation area and does not contain a heritage item.</p> <p>A local heritage item is located directly north of the site at 212-213 Wyndham Street, known as 'Former Electric Light Substation No. 89' (I2240). The building is a highly intact two storey substation built in 1979.</p> <p>The concept plan proposes a 6m wide setback to the northern boundary, where the heritage item is located, which is required by the DCP for the purpose of a laneway. The envelope also proposes a 2 storey street wall on the north-western corner, adjoining the heritage item, to provide a transition in scale.</p> <p>The building separation on the northern frontage is discussed in more detail in the Discussion section below.</p> <p>A Heritage Impact Statement (HIS) was submitted with the application. The HIS advises that the 6m setback creates an appropriate physical and visual separation between the site and the heritage item. The two storey street wall on this corner also assists in providing a sympathetic transition and enhances views towards the heritage item. The HIS concludes that the proposed envelope will not affect the heritage significance of the heritage item.</p> <p>The proposed concept envelope is generally in accordance with the height and building separation controls that</p> |

| Provision           | Compliance     | Comment  |
|---------------------|----------------|--|
|                     |                | <p>apply to the site. The concept envelope sets the maximum parameters for the future building and further assessment as part of the detailed design DA will be required to ensure the development does not adversely impact the heritage significance of the heritage item.</p> <p>A recommended condition requires the detailed design of the building to minimise impacts to the heritage item. Compliance with this clause will be further assessed as part of the competitive design process and detailed design DA.</p>  |
| 5.21 Flood Planning | Able to comply | <p>The site is affected by flooding and has been accompanied by a site specific flood risk assessment that provides appropriate flood planning levels for the proposed development.</p> <p>Council's Public Domain unit have advised that the proposed concept envelope is acceptable and that any future DA for design of the building needs to comply with the recommended flood planning levels. No concerns were raised in relation to the flood levels achieved in the reference scheme. A recommended condition will ensure the flood planning levels are complied with in the detailed design DA.</p> |

#### Part 6 Local provisions – height and floor space

| Provision   | Compliance     | Comment  |
|---|----------------|--|
| 6.14 Community infrastructure floor space at Green Square | Able to comply | <p>This clause permits an additional floor space of 0.5:1 if the development includes Green Square community infrastructure.</p> <p>The landowner has made an offer to enter into a Planning Agreement with the City. This involves the dedication of land to the City and a monetary contribution for community infrastructure provision. Therefore the development is eligible for the additional floor space.</p> |

| Provision                                   | Compliance     | Comment  |
|---|----------------|--|
|   |                | See 'Floor Space Ratio' assessment above under clause 4.4.   |
| 6.21 Design excellence                      | Able to comply | <p>This clause allows up to 10% additional floor space subject to a competitive design process being carried out, a winning scheme being selected and that scheme exhibiting design excellence at the detailed design DA stage.</p> <p>The concept envelope has been assessed against the relevant requirements of this clause including site suitability, proposed uses, bulk and massing, street frontage heights and other environmental impacts. The concept envelope demonstrates that a suitable detailed design can be accommodated on the site.</p> <p>Satisfaction of the design excellence requirements, including eligibility for the up to 10% additional floor space, will be considered in the assessment of the future detailed DA.</p> |
| 6.60B Botany Road Precinct Opportunity Land | Able to comply | <p>Alternative height and FSR controls are permitted where the proposal provides affordable housing in the Botany Road precinct, as discussed under clauses 4.3 and 4.4 above.</p> <p>The prerequisites for utilising the alternative height and FSR controls outlined in clause 6.60B of the SLEP 2012 have been met and are outlined in the Discussion section.</p>  |

### Part 7 Local provisions – general

| Provision   | Compliance     | Comment  |
|---|----------------|--|
| Division 1 Car parking ancillary to other development                       |                |  |
| 7.5 Residential flat buildings, dual occupancies and multi dwelling housing | Able to comply | The reference scheme indicates car parking can be provided at-grade on the ground floor.                 |
| 7.7 Retail premises   |                | Based on the reference scheme, the maximum number of car parking spaces on the site is 89 (comprising 72 |



| Provision   | Compliance     | Comment  |
|---|----------------|--|
|   |                | <p>residential and visitor spaces and 17 retail spaces).</p> <p>The reference scheme proposes 13 residential car parking spaces and no retail car parking, which complies with the maximum. This is also consistent with Council's Pre-DA advice which recommended that car parking be minimised on the site given it is well serviced by public transport.</p> <p>The City's Transport and Access unit raised no objection to the number of car parking spaces indicated on the reference scheme as it complies with the LEP.</p> <p>The maximum number of car parking spaces is established by the amount of commercial floor space provided and the residential dwelling mix. As these are not approved as part of the Concept DA, the total car parking provision will be assessed as part of a future detailed development application.</p> <p>Refer to the Discussion section for further details in relation to transport and access.</p> |
| 7.13 Contribution for purpose of affordable housing | Able to comply | Any future Detailed DA will be subject to the provisions of this clause and will be considered against the requirements of the City's Affordable Housing Program. The Program specifies development that provides affordable housing may be exempted from paying an Affordable Housing contribution.   |
| 7.14 Acid Sulfate Soils                             | Able to comply | The site is located on land with class 5 Acid Sulfate Soils. The Detailed Site Investigation concludes that it is unlikely that acid sulfate soils would be present on site and does not recommend further requirements for the management of acid sulfate soils.  |
| 7.15 Flood planning                                 | Able to comply | The site is affected by flooding and has been accompanied by a site specific flood risk assessment that provides   |

| Provision   | Compliance     | Comment   |
|---|----------------|---|
|   |                | <p>appropriate flood planning levels for the proposed development.</p> <p>Council's Public Domain unit have advised that the proposed concept envelope is acceptable and that any future DA for design of the building needs to comply with the recommended flood planning levels. A condition of consent is recommended to address this.</p>   |
| 7.16 Airspace operations  | Able to comply | <p>This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.</p> <p>A referral was sent to Sydney Airport, which raised no objection to the development with a maximum height of 49.15m AHD.</p>   |
| 7.19 Demolition must not result in long term adverse visual impact                  | N/A            | Demolition is not sought under this application and will be subject to future approval.   |
| 7.20 Development requiring or authorising preparation of a development control plan | Yes            | <p>As the proposed envelope is above 25m in height, preparation of a site specific DCP is required.</p> <p>Pursuant to Section 4.23(2) of the Environmental Planning and Assessment Act 1979, the lodgement of a concept proposal DA may be considered by the consent authority as satisfying this obligation.</p> <p>The concept proposal adequately addresses the matters for consideration specified under this clause including the suitability of the land for development, land use mix, bulk and massing, streetscape and environmental impacts.</p> |
| 7.23 Large retail development outside of Green Square Town                          | Able to comply | The subject site is on land identified as restricted retail development on the Retail Premises Map. As such, development consent cannot be granted  |

| Provision                        | Compliance | Comment  |
|----------------------------------|------------|--|
| Centre and other planned centres |            | <p>for the purposes of individual shops or markets with a gross floor area of greater than 1,000sqm.</p> <p>The indicative ground floor commercial uses are less than 1,000sqm in area. Notwithstanding, the quantum of gross floor area is not approved as part of this concept DA. As such, compliance with this clause will be assessed under the future detailed DA.</p> |

## Development Control Plans

### Sydney Development Control Plan 2012

60. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

#### Section 2 – Locality Statements

61. The site is located within the Botany Road Precinct locality under section 2.13.13 of the SDCP 2012. The proposed concept envelope is in keeping with the unique character and design principles of the locality as it:
- (a) seeks to utilise the additional development potential made available under the Botany Road Precinct controls for non-residential uses and affordable housing to take advantage of the increased accessibility of the area afforded by the Metro station and other nearby infrastructure;
  - (b) will facilitate the delivery of affordable housing where it does not conflict or restrict delivery of commercial and non-residential development;
  - (c) contributes to the needs of the growing Redfern and Waterloo area by providing commercial floor space for jobs and services;
  - (d) delivers active frontages;
  - (e) improves pedestrian connections through the dedication of land for a future laneway and prioritises pedestrian movement by locating the driveway and servicing to the new rear lane network; and
  - (f) explores opportunities to showcase 'Connecting with Country' approaches and identifies opportunities for public art.

## Section 3 – General Provisions

| Provision  | Compliance     | Comment   |
|--|----------------|---|
| 3.1 Public Domain Elements                             | Yes            | <p>A new 6m wide shared zone laneway is required by Council on the northern side of the site. The concept plan accounts for this laneway.</p> <p>The DCP also requires a 3m setback on McEvoy Street for footpath widening, which is shown on the concept plan.</p>   |
| 3.1.4 Public open space                                | Yes            | The proposed concept envelope does not have any overshadowing impacts to public open space in the vicinity of the site.   |
| 3.1.5 Public Art                                       | Able to comply | <p>A Preliminary Public Art Plan was submitted with the application. The City's Public Art unit recommended amendments to the Plan to ensure it complies with City's Interim Guidelines for Public Art in Private Development.</p> <p>A condition of consent is recommended that requires an updated Preliminary Public Art Plan to be submitted prior to the commencement of a design competition.</p>   |
| 3.2. Defining the Public Domain                        | Yes            | The proposed envelope does not cause overshadowing to public open space.  |
| 3.3 Design Excellence and Competitive Design Processes | Yes            | <p>A Design Excellence Strategy has been submitted with the application and establishes a design excellence process for future development.</p> <p>The Design Excellence Strategy is recommended for approval and is provided at Attachment D.</p> <p>A competitive design process will be undertaken prior to lodgement of any detailed development application, in accordance with the Strategy. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional FSR.</p> |
| 3.4 Hierarchy of Centres, City South                   | Able to comply | The site is located within the Green Square Town Centre Primary Trade Area. Refer to the assessment against   |

| Provision                                | Compliance     | Comment   |
|--|----------------|---|
|  |                | LEP clause 7.23 in the LEP compliance table above.  |
| 3.5 Urban Ecology                        | Able to comply | <p>There are a number of existing trees on the site that will be affected by the proposed development.</p> <p>The proposed building envelope has been altered from the DCP massing to protect and retain existing trees on the McEvoy Street frontage, which is a positive urban ecology outcome.</p> <p>Refer to the Discussion section for further information on tree management.</p>  |
| 3.6 Ecologically Sustainable Development | Able to comply | <p>The detailed design DA and any supporting BASIX Certificate will be subject to the requirements of the Sustainable Buildings SEPP.</p> <p>ESD target benchmarks have been incorporated into the Design Excellence Strategy that is recommended for approval. This includes:</p> <ul style="list-style-type: none"> <li>• BASIX Energy score of 60%;</li> <li>• BASIX Water score of 40%;</li> <li>• Commitment to surpass the regulated minimum score under the Sustainable Buildings SEPP for water by 5%;</li> <li>• High level of NatHERS thermal performance;</li> <li>• Fossil fuel free design to allow for carbon neutrality by 2035;</li> <li>• Biophilic excellence; and</li> <li>• Heat Island Mitigation measures.</li> </ul> |
| 3.7 Water and Flood Management           | Able to comply | The site is identified as being on flood prone land. The development is capable of achieving the required flood planning levels. See discussion under section 7.15 above.   |

| Provision   | Compliance     | Comment  |
|---|----------------|--|
| 3.8 Subdivision, Strata Subdivision and Consolidation | Able to comply | <p>The application was referred to Council's Specialist Surveyor, who raised no objection to the proposal and recommends the following:</p> <ul style="list-style-type: none"> <li>• The subject DP is a compiled plan with no survey information. As the building envelopes have no setback to boundaries in some locations, it is recommended that a registered surveyor prepare a Redefinition Plan to be submitted for registration prior to detailed design of the building. The boundaries of the registered Redefinition Plan should be used for detailed architectural design. A condition of consent requiring this is included in Attachment A.</li> <li>• walls are shown a minimum of 20mm clear of boundaries to allow for construction tolerances and minimise the risk of encroachment and subsequent costs and delays.</li> <li>• A Plan of Proposed Subdivision prepared by a registered surveyor should be lodged with the detailed design DA.</li> </ul> <p>The above will be considered in the assessment of the detailed design DA.</p> |
| 3.9 Heritage  | Able to comply | Refer to assessment against clause 5.10 in the LEP compliance table above.   |
| 3.11 Transport and Parking                            | Able to comply | Refer to the assessment against transport and car parking provisions above.  |
| 3.12 Accessible Design                                | Able to comply | The detailed design DA will need to demonstrate that the building can provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.  |
| 3.13 Social and Environmental Responsibilities        | Able to comply | The proposed development is capable of providing adequate passive surveillance and is generally designed in accordance with the CPTED principles.  |



| Provision                    | Compliance     | Comment  |
|------------------------------|----------------|--|
| 3.14 Waste                   | Able to comply | <p>A Waste Management Plan has been submitted with the application. An appropriately sized residential waste storage area has been provided on the reference scheme drawings.</p> <p>The City's Waste Management unit noted that the path of travel for commercial tenancies on Wyndham Street to the commercial waste room would not be supportable as there is no direct back of house access.</p> <p>Conditions of consent are recommended requiring:</p> <ul style="list-style-type: none"> <li>• A waste management strategy that sets out minimum spatial requirements for waste to be approved by Council prior to the commencement of the competitive design process; and</li> <li>• A waste management plan in accordance with the City's Guidelines is to be submitted as part of the detailed design DA.</li> </ul> |
| 3.16 Signage and Advertising | Able to comply | A condition is recommended requiring a signage strategy to be submitted as part of any subsequent DA for the detailed design of the building.  |

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

| Provision   | Compliance         | Comment   |
|---|--------------------|---|
| 4.2.1 Building height   |                    |   |
| 4.2.1.1 Height in storeys and street frontage height in storeys | Partially complies | <p>The base control in the DCP allows a maximum height of 4 storeys.</p> <p>The Botany Road Precinct Planning Proposal introduced new height in storeys controls across the Precinct.</p> <p>As a result, alternative height in storeys controls apply to the precinct pursuant to Section 5.10 of the DCP. The site is</p> |

| Provision                 | Compliance         | Comment  |
|---------------------------|--------------------|--|
|                           |                    | <p>subject to a maximum height ranging between 2-9 storeys.</p> <p>The number of storeys is not approved as part of this concept DA.</p> <p>Notwithstanding, the reference scheme has a maximum height of 10 storeys, which exceeds the DCP but fits within the permitted 35m LEP height. The proposed massing strategy including the height in storeys is assessed further in the Discussion section below.</p> |
| 4.2.2 Building setbacks   | Partially complies | Refer to the assessment against Provision 5.10.4.2 - Building alignment and setbacks of the SDCP 2012 below.   |
| 4.2.3.1 Solar access      | Able to comply     | The proposal achieves the required solar access. Refer to solar access discussion under Part 4A of the ADG above.  |
| 4.2.3.5 Landscaping       | Able to comply     | <p>A Concept Landscape Plan has been submitted as part of this concept DA and will be attached to the future Design Excellence Brief.</p> <p>A condition is recommended requiring a landscape plan to be submitted with any subsequent detailed design DA.</p>   |
| 4.2.3.6 Deep Soil         | Able to comply     | <p>The minimum amount of deep soil is to be 10% of the site area with a minimum dimension of 10m.</p> <p>400sqm of deep soil is provided, which equates to 14.7% of the site area and is therefore supported.</p> <p>Refer to the Discussion section of this report for further details.</p>   |
| 4.2.3.8 Common open space | Able to comply     | <p>The DCP requires common open space to be provided with an area equal to 25% of the site area, with a minimum dimension of 6m.</p> <p>The reference scheme provides communal open space on the north-</p>  |

| Provision  | Compliance     | Comment  |
|--|----------------|--|
|  |                | <p>eastern corner of the site with an area of approximately 692sqm which equates to 25.3% of the site area.</p> <p>The detailed design DA must demonstrate that adequate communal open space is provided.</p>  |
| 4.2.3.11 Acoustic privacy                                  | Able to comply | <p>An Acoustic Report was submitted with the application.</p> <p>Council's Environmental Health unit raised no objection to the Acoustic Report at this stage and recommended that the detailed design DA include an Acoustic Report prepared in accordance with NSW EPA Guidelines and addressing the requirements of the Transport and Infrastructure SEPP 2021, including the impact of any rail and road infrastructure on the development.</p> <p>Refer to the Discussion section of this report for further details.</p>       |
| 4.2.3.12 Flexible housing and dwelling mix                 | Able to comply | <p>The reference scheme comprises the following dwelling mix:</p> <p>1 bed: 65%</p> <p>2 bed: 24%</p> <p>3 bed: 1%</p> <p>The dwelling mix does not strictly comply with the DCP and provides a higher proportion of 1 bedroom apartments.</p> <p>The number and mix of apartments is not approved as part of this concept DA. Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control whilst also considering the specific needs of affordable housing development.</p> |
| 4.2.4 Fine grain, architectural diversity and articulation | Able to comply | Wyndham Street and McEvoy Street both have a width greater than 18m.   |

| Provision  | Compliance     | Comment  |
|--|----------------|--|
|  |                | <p>Therefore the maximum street frontage length of an individual building is 65m.</p> <p>The street frontage lengths in the proposed envelope do not exceed 65m.</p>   |
| 4.2.5.3 Development on busy roads and active frontages | Able to comply | <p>The development proposes active uses on both street frontages. It also has a frontage to McEvoy Street, which is identified as a busy road that carries more than 20,000 vehicles a day. Therefore, noise and air quality mitigation measures may be required.</p> <p>An Acoustic Report was submitted with the application which references the NSW Government's Development near Rail Corridors and Busy Roads - Interim Guidelines.</p> <p>Further details are outlined in the Discussion section below.</p> |
| 4.2.6 Waste and recycling Management                   | Able to comply | Refer to the assessment against Provision 3.14 of the DCP.   |

## Section 5 – Specific Areas

### 5.10 - Botany Road Precinct

| Provision                   | Compliance     | Comment  |
|-----------------------------|----------------|--|
| 5.10.2.1 Land use diversity | Able to comply | <p>This clause seeks to ensure that the Botany Road precinct supports a diverse range of business and employment generating uses, whilst also providing affordable housing where it can provide amenity for residents and does not undermine the employment generating function of the precinct.</p> <p>The reference scheme shows indicative commercial uses on the ground and first floor in accordance with the DCP.</p> <p>The proposal for affordable housing on Level 2 and above is not considered to undermine the employment generating function of the Precinct, as the massing of the envelope has considered future envelopes for commercial development</p> |

| Provision                      | Compliance     | Comment  |
|--------------------------------|----------------|--|
|                                |                | <p>on neighbouring sites and subsequent impacts on visual privacy and solar access. Acoustic privacy has also been considered and is outlined further in the Discussion section below.</p> <p>The detailed design DA will further consider the proposed residential use and ensure this does not undermine the primacy of commercial uses in the Precinct.</p>   |
| 5.10.2.2 Mixed use development | Able to comply | <p>The concept proposal is consistent with the objectives and provisions for mixed use development as follows:</p> <ul style="list-style-type: none"> <li>• The concept envelopes can deliver residential uses that mitigate noise and pollution impacts of major roads. This will be assessed further in the detailed DA stage. Refer to the Discussion section below.</li> <li>• Habitable rooms are capable of being naturally ventilated.</li> <li>• Residential development on Wyndham Street is to receive solar and daylight access from the primary street frontage and not from a laneway, side, rear of interior facing facade. In this instance, the L-shape form allows solar access to be received from the north. The View from the Sun diagrams shows the future massing of adjoining properties and demonstrates that adequate solar access is achieved when considering likely future envelopes within the Precinct.</li> </ul> |
| 5.10.2.2.2 Affordable housing  | Able to comply | <p>The detailed design DA will address how the development satisfies the requirements of this clause, including providing Aboriginal and Torres Strait Islander housing and ensuring this housing is culturally appropriate. The affordable housing will be delivered in accordance with the City of Sydney Affordable Housing Program.</p>  |

| Provision  | Compliance     | Comment  |
|--|----------------|--|
| 5.10.2.3 Ground and first floor uses, active frontages and awnings | Able to comply | <p>The development is to provide non-residential uses on the ground and first floor. This is shown on the reference scheme.</p> <p>An active frontage is required to McEvoy Street. This is provided on the reference scheme drawings, noting an additional setback to McEvoy Street is proposed to allow retention of mature trees. This is not considered to inhibit the activation of this frontage.</p> <p>An active frontage is also provided on Wyndham Street, which is not specifically required by the DCP but was recommended by the Design Advisory Panel and Council's Pre-DA advice.</p> <p>A continuous footpath awning is required on the Wyndham Street and McEvoy Street frontages. This will be addressed in the detailed DA.</p>                |
| 5.10.2.4 Managing change   | Able to comply | <p>This clause requires development comprising residential uses to not impact the potential of adjoining sites to be developed for a non-residential purpose.</p> <p>Amenity requirements must be satisfied within the development site, without requiring building separation or design restrictions on future development on adjoining sites.</p> <p>The reference scheme demonstrates that requirements for visual privacy, solar access and natural ventilation can be satisfied within the proposed envelope without requiring additional building separation or design restriction on future development on adjoining sites. This is discussed further in the Discussion section below and will be a matter for consideration in the detailed design DA.</p> |
| 5.10.3.1 Laneway network   | Able to comply | <p>The DCP requires a laneway to be provided along the northern boundary of the site. It will be 6m wide with a vehicle crossover from Wyndham Street, widening at the northern end to 7.8m adjacent to the indicative private car park entry. The laneway is intended to join a future land dedication at 204-218</p>   |

| Provision                               | Compliance         | Comment  |
|---|--------------------|--|
|   |                    | <p>Botany Road to create a through-site link once that site is redeveloped. The laneway is intended to be designed as a shared zone.</p> <p>The required laneway is provided on the concept plans. The concept proposal demonstrates that the design of the building is capable of addressing the requirements of this section.</p>  |
| 5.10.3.2 Vehicle access and car parking | Partially complies | <p>Indicative vehicle access is proposed from Wyndham Street via the new laneway. Driveways, vehicle access and loading/ servicing is proposed from the laneway in accordance with the DCP.</p> <p>The reference scheme proposes an at grade car park on the north-eastern corner of the site. This is contrary to provision (5), which states that at grade off-street car parking is not permitted within the Precinct.</p> <p>The applicant submits the following justification for the indicative at grade car parking:</p> <ul style="list-style-type: none"> <li>• City West Housing seeks to minimise parking and avoid basements so capital can be focused on delivering affordable housing units.</li> <li>• The indicative number of car parking spaces (13) is significantly fewer than the maximum permitted. These are required for tenants who require a vehicle, such as those with mobility needs.</li> <li>• The provision of car parking at grade will have a negligible impact on the surrounding context and public domain. It has been co-located with the loading dock to ensure only one crossover is provided. The car park access is located on the laneway to maximise activation to Wyndham Street and McEvoy Street.</li> </ul> <p>The above justification for the at grade car parking is acknowledged, noting that</p> |



| Provision                               | Compliance         | Comment  |
|---|--------------------|--|
|   |                    | <p>the final car parking location and numbers will be subject to the future detailed DA. The indicative vehicle access location via the new laneway is supported by Council's Transport and Access unit.</p>   |
| 5.10.4.1 Building heights               | Partially complies | <p>The development seeks to utilise the incentive building heights available under clause 6.60B of the SLEP 2012. Therefore, an alternate maximum height in storeys is made available under the DCP, which permits heights ranging from 2-9 storeys on this site.</p> <p>The number of storeys is not approved as part of this concept DA. Notwithstanding, an indicative built form with a maximum height of 10 storeys is accommodated within the envelope on the reference scheme drawings, which exceeds the control.</p> <p>Building height is discussed in further detail in the Discussion section below.</p>   |
| 5.10.4.2 Building alignment and setback | Able to comply     | <p>The DCP specifies a variable setback on the north-western corner of the site oriented for solar access to the building facade. This is shown in the concept envelope.</p> <p>Upper level setbacks are not specified for this site. Therefore, the DCP requires buildings to present a consistent street wall, with no upper level setback to the street frontage.</p> <p>The reference scheme includes an indicative additional 10th storey within the LEP height envelope. As this exceeds the maximum height in storeys in the DCP, Council officers recommended that this upper level be setback to minimise visual bulk, and to allow the street wall height to be consistent with the DCP. This results in an 8 storey street wall to McEvoy Street and a 9 storey street wall to Wyndham Street, in accordance with the DCP.</p> <p>This is outlined further in the Discussion section below.</p> |

| Provision  | Compliance     | Comment   |
|--|----------------|---|
| 5.10.4.3 Materiality and design                    | Able to comply | <p>This clause seeks to ensure the materiality and design of new development contributes to the Precinct being an attractive employment area. Heritage items must be respected and protected and the use of ecologically sustainable building material should be maximised.</p> <p>A condition is recommended that requires the competitive design process and detailed design DA to specifically address the criteria in this clause.</p>  |
| 5.10.4.4 On-structure plantings                    | Able to comply | <p>The delivery of green coverage in excess of that achievable with trees and ground level landscaping will be considered as part of the detailed design DA.</p>  |
| 5.10.4.5 Public art                                | Able to comply | <p>A Preliminary Public Art Plan was submitted with the application. Further information is required in order for the Preliminary Plan to meet the requirements of the City of Sydney Guidelines for Public Art in Private Development.</p> <p>A condition of consent is recommended that requires an updated Preliminary Public Art Plan to be submitted prior to the commencement of the competitive design process.</p> <p>A Detailed Public Art Plan is then to be submitted as part of the detailed design DA.</p> |
| 5.10.4.6 Visual and acoustic privacy               | Able to comply | <p>The proposed concept envelope seeks to maximise visual and acoustic privacy through building orientation and layout.</p> <p>This will be considered further as part of the detailed design DA.</p>   |
| 5.10.4.7 Energy and water efficiency               | Able to comply | <p>The Design Excellence Strategy contains appropriate ESD targets for future development. Refer to the Discussion section for further details.</p>   |
| 5.10.5.1 Connecting with Country - All development | Able to comply | <p>All development in the Botany Road Precinct must consider Indigenous inclusion, comfort and access and consider opportunities for</p>  |

| Provision                       | Compliance     | Comment   |
|---------------------------------|----------------|---|
|                                 |                | <p>acknowledging and celebrating Aboriginal and Torres Strait Islander cultures involving the engagement of suitably qualified Indigenous practitioners.</p> <p>An Aboriginal Consultation Report prepared by City West Housing was submitted with the application. The report outlines opportunities to incorporate a Connecting with Country approach to the proposed development under four key themes, being Acknowledgement, Inclusion, Consultation and Places to Connect. The report provides a framework to demonstrate compliance with the objectives of Section 5.10.5 of the SDCP 2012.</p> <p>The Aboriginal Consultation Report is considered to address the objectives of Section 5.10.5 of the SDCP 2012 for the purposes of establishing an appropriate building envelope under this Concept DA. The report will be further developed as part of the competitive design process and detailed design DA.</p> |
| 5.10.5.3 Aboriginal archaeology | Able to comply | <p>The site is identified as having moderate potential for Aboriginal Archaeology.</p> <p>An Aboriginal Objects Due Diligence Assessment was submitted with the application. The assessment concludes that:</p> <ul style="list-style-type: none"> <li>• The study area has no registered AHIMS sites and no Aboriginal objects were identified on site.</li> <li>• The study area has undergone various surface level disturbances and may not have impacted archaeological resources.</li> <li>• Overall, the study area has moderate potential to contain subsurface Aboriginal objects based on the analysis of the landscape and understanding of the historical disturbances to the site over time.</li> </ul>  |

| Provision | Compliance | Comment   |
|-----------|------------|---|
|           |            | The Assessment recommends that a comprehensive assessment of Aboriginal archaeological potential be required for any ground disturbing works. This will be in the form of an Aboriginal Cultural Heritage Assessment Report to be submitted with the detailed design DA. A condition requiring this is recommended. |

## Discussion

### Botany Road Precinct Opportunity Land

62. On 27 June 2022, Council approved a planning proposal and an amendment to the SDCP 2012 to facilitate new planning controls within the Botany Road Precinct. The new controls under the SLEP 2012 and the SDCP 2012 came into effect on 11 November 2022.
63. The new planning controls as set out in clause 6.60B of the SLEP 2012 seek to create incentives for carrying out development:
- (a) for employment generating uses;
  - (b) if compatible with existing non-residential uses - to provide affordable housing;
  - (c) to provide community infrastructure; and
  - (d) resulting in buildings with high environmental performance.
64. Clauses 6.60B(3) and (4) of the SLEP 2012 allow development to achieve incentive building heights and floor space ratio if the building is only used for non-residential purposes or non-residential purposes and affordable housing.
65. Clause 6.60B(6) goes on to specify that these incentive controls can only be achieved if the consent authority is satisfied:
- (a) the development provides land for future laneways; and
  - (b) the development exceeds the BASIX commitments for water and energy by at least 10 points for energy and 5 points for water (refer to 'Sustainability' discussion below for further information on these stretch targets).
66. For development involving affordable housing, Clause 6.60(7) also states that the affordable housing must:
- (a) be owned and managed by a registered community housing provider;
  - (b) be provided in accordance with the City of Sydney Affordable Housing Program;

- (c) not reduce the capacity of adjoining sites used or intended to be used for non-residential purposes;
  - (d) be compatible with existing and approved uses of land near the development, having regard to:
    - (i) the impact the bulk, scale and traffic generation of the development is likely to have on the existing and approved uses;
    - (ii) the services and infrastructure that are or will be available to meet the demands of the development; and
    - (iii) the impact on the health, well-being and amenity of residents of the development; and
  - (e) the ground floor and first floor will be used only for non-residential purposes.
67. The proposed development has been considered against the criteria of clause 6.60B and is considered to satisfy the requirements of this clause as follows:
- (a) 6.60B(3) and (4) - The development is eligible for the alternative height of buildings control, being 35m, and the alternative floor space ratio control, being 2.75:1, as the building is used only for non-residential and affordable housing purposes and the concept envelope does not exceed these controls.
  - (b) 6.60B(6)(a) - The development provides the required land dedication for a future laneway on the northern frontage of the site.
  - (c) 6.60B(6)(b) - The development is capable of meeting the required BASIX targets, as outlined in the Design Excellence Strategy.
  - (d) 6.60B(7) - The development for affordable housing satisfies the criteria as follows:
    - (i) The development will be owned and managed by a community housing provider, being City West Housing, and will be provided in accordance with the City of Sydney Affordable housing Program.
    - (ii) The bulk and scale of the development is in keeping with the desired future character of the locality, as discussed under 'Building envelope and height in storeys' below.
    - (iii) The anticipated traffic generation is considered acceptable, as discussed under the 'Transport and access' section below.
    - (iv) The development is capable of providing good health, wellbeing and amenity outcomes for future residents of the building. The reference scheme indicates that the envelope is capable of achieving the objectives of the ADG and amenity provisions in the DCP.
    - (v) Indicative uses in the reference scheme show that the ground floor and first floor are capable for being used for non-residential purposes. However the reference scheme shows residential communal open space on Level 1 in addition to non-residential uses. This is acceptable subject to a high level of amenity being achieved.

68. Having regard to the above, the concept proposal is considered to satisfy the criteria for utilising the incentive controls under clause 6.60B of the SLEP 2012 for the purpose of establishing a building envelope. This will be assessed in further detail under the detailed design DA.

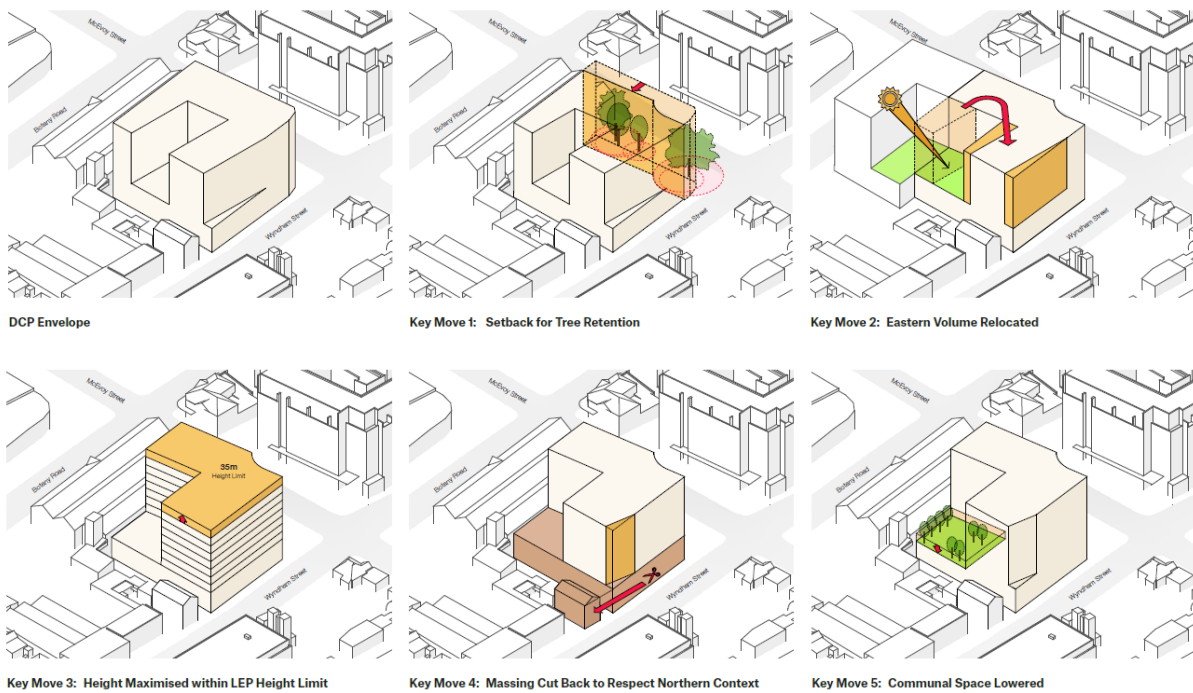
#### Building envelope and height in storeys

69. Provision 5.10.4.1(2) of the SDCP 2012 specifies that on Botany Road Precinct Opportunity Lands, where development utilises incentive building heights available under clause 6.60B of the SLEP 2012, maximum height in storeys for residential development are to be in accordance with Figure 27 below.



**Figure 27:** Height in storeys for residential development permitted under the SDCP 2012, with the site outlined in blue

70. The above DCP height in storeys map envisages a U-shape tower form above a two storey podium, setback 3m from the southern McEvoy Street boundary and an 8 storey form along the eastern boundary. The part 8, part 9 storey form on the western side is partly setback above the podium to improve solar orientation for upper levels.
71. The application seeks consent for an alternative massing strategy, which was developed with the objective of retaining existing high retention value trees on the McEvoy Street frontage. Diagrams showing the applicant's overarching massing strategy (as lodged) is provided in Figure 28 below.



**Figure 28:** Proposed massing strategy for the concept envelope prepared by Bates Smart (as lodged)

72. The following key moves form part of the applicant's massing strategy:
- (a) Setback for tree retention - The southern setback is increased from 3m to 10m to retain existing trees on McEvoy Street and consolidate deep soil.
  - (b) Eastern volume relocated - The eastern wing is consolidated with the west, defining a larger courtyard block adjoining future development to the east, removing the blank wall on the eastern boundary, increasing building separation and improving solar access to a larger combined courtyard space.
  - (c) Height maximised within LEP height - A 10th level for affordable housing can be accommodated within the height limit without overshadowing buildings to the south.
  - (d) Massing cut back to respect northern context - The upper volume is cut back in the northwest corner to acknowledge the height of the heritage substation and the prevailing character to the north.
  - (e) Communal open space lowered - At the centre of the site, the podium is lowered from 2 storeys to a single level, providing communal open space on Level 1.
73. The alternative L-shape building form is supported by Council officers for the following reasons:
- (a) The retention of significant high value trees on McEvoy Street is a positive outcome for the site and locality. It allows for the continuation of the existing tree corridor along McEvoy Street to the east towards Waterloo Park and significantly increases the canopy cover of the site. A built form and massing consistent with the DCP would require the removal of these significant trees.



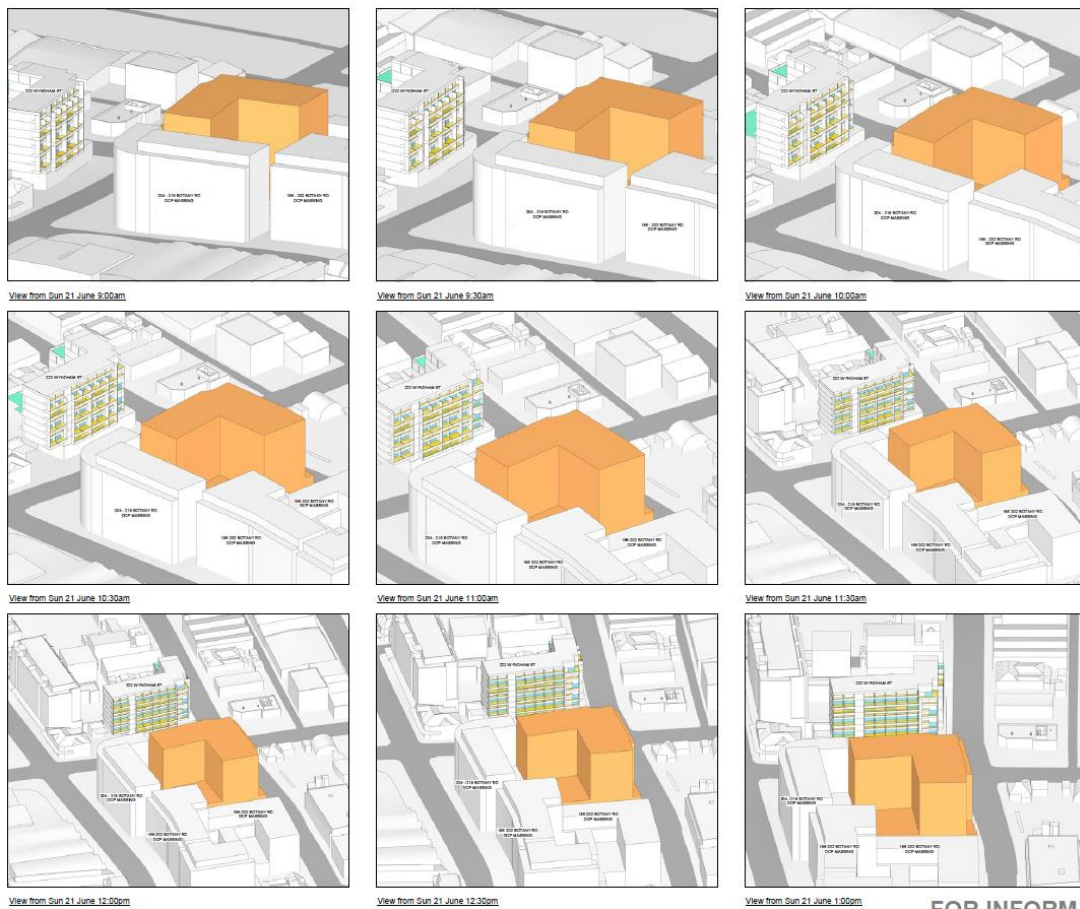
- (b) The 10m setback for tree retention and curved corner addressing the street corner on McEvoy Street has positive built form and amenity outcomes, as it:
    - (i) allows for a consolidated area of deep soil;
    - (ii) increases building separation to the neighbouring apartment building to the south, resulting in improved visual privacy;
    - (iii) creates an increased buffer to traffic noise on McEvoy Street;
    - (iv) reduces the visual impact of the building when viewed from McEvoy Street; and
    - (v) reduces overshadowing to the neighbouring building to the south at 222 Wyndham Street.
  - (c) The L-shaped building form has significant benefits from an urban design perspective compared to the U-shaped building form in the DCP as it:
    - (i) allows for more north-east aspect apartments for better solar access;
    - (ii) creates the opportunity for a large communal open space on the north-eastern corner;
    - (iii) creates better efficiency in apartment planning;
    - (iv) removes the long, blank 8 storey wall along the eastern boundary;
    - (v) improves building separation and visual privacy within the site and adjoining buildings; and
    - (vi) simultaneously achieves the above improvements whilst maintaining the desired street wall expression along Wyndham Street and McEvoy Street.
74. The applicant submits that maintaining the maximum part 8, part 9 storey building height within the L-shaped form would create insufficient yield for the project to be viable and would be well under the permitted FSR for the site. Therefore, the massing strategy seeks to maximise the height of building by adding a 10th storey, which can be wholly accommodated within the maximum 35m LEP height.
75. While the number of storeys is not approved under this concept DA, the indicative 10 storey built form shown on the reference drawings is not objected to at this stage for the following reasons:
- (a) The proposed concept envelope complies with the 35m LEP height limit;
  - (b) The additional 10th storey offsets the floor space lost by the increased setback to McEvoy Street for tree retention and ensures that additional affordable housing is provided;
  - (c) The overshadowing analysis demonstrates that the 10 storey envelope results in acceptable overshadowing impacts to surrounding buildings including 222 Wyndham Street and complies with the solar access controls in the ADG and DCP (see 'Overshadowing' discussion below).

- (d) The indicative floor space shown in the reference scheme complies with the FSR control.
- (e) The concept envelope has been amended to provide a 2.5m setback for the upper two levels on McEvoy Street (to create an 8 storey street wall) and the upper level on Wyndham Street to minimise visual bulk.

76. Overall, the massing depicted in the proposed concept envelope is supported for the reasons outlined above. Conditions are recommended to ensure key design considerations are addressed in the competitive design process and detailed design DA.

### Overshadowing

77. An overshadowing analysis, including shadow diagrams and View from the Sun diagrams, was submitted with the application. The analysis indicates the most affected building is located to the south at 222 Wyndham Street, which is a 9 storey residential flat building.
78. The overshadowing analysis demonstrates the proposed building envelope causes overshadowing to lower level apartments at 222 Wyndham Street from approximately 12.30pm and into the afternoon. However, these apartments all receive direct solar access between 9am-12.30pm in midwinter (refer to Figure 29 below). The proposed building envelope therefore maintains the required 2 hours' solar access to neighbouring apartments in accordance with the ADG.



**Figure 29:** View from the Sun diagrams from 9am-1pm showing solar access maintained to 222 Wyndham Street in the morning during midwinter

79. Importantly, the overshadowing analysis demonstrates the increased southern setback to McEvoy Street considerably improves the amount of solar access to 222 Wyndham Street. The overshadowing analysis also demonstrates that the additional 10th storey above the DCP height in storeys control does not cause unacceptable solar access impacts and the proposal remains compliant with the solar access criteria in the ADG and DCP.

### Tree management

80. The existing site contains a mix of high, moderate and low retention value trees. The existing trees have been grouped as Stands 1, 2 and 3, as shown in Figure 30 and described as follows:
- Stand 1 trees are the most prominent and significant group of trees, providing expansive canopy cover and softening the built form when viewed from the street.
  - Stand 2 trees line the Wyndham Street frontage and are deemed as high retention value trees.
  - Stand 3 trees are located on the south-eastern corner of the site and provide good amenity and screening from McEvoy Street. These are identified as having moderate retention value.

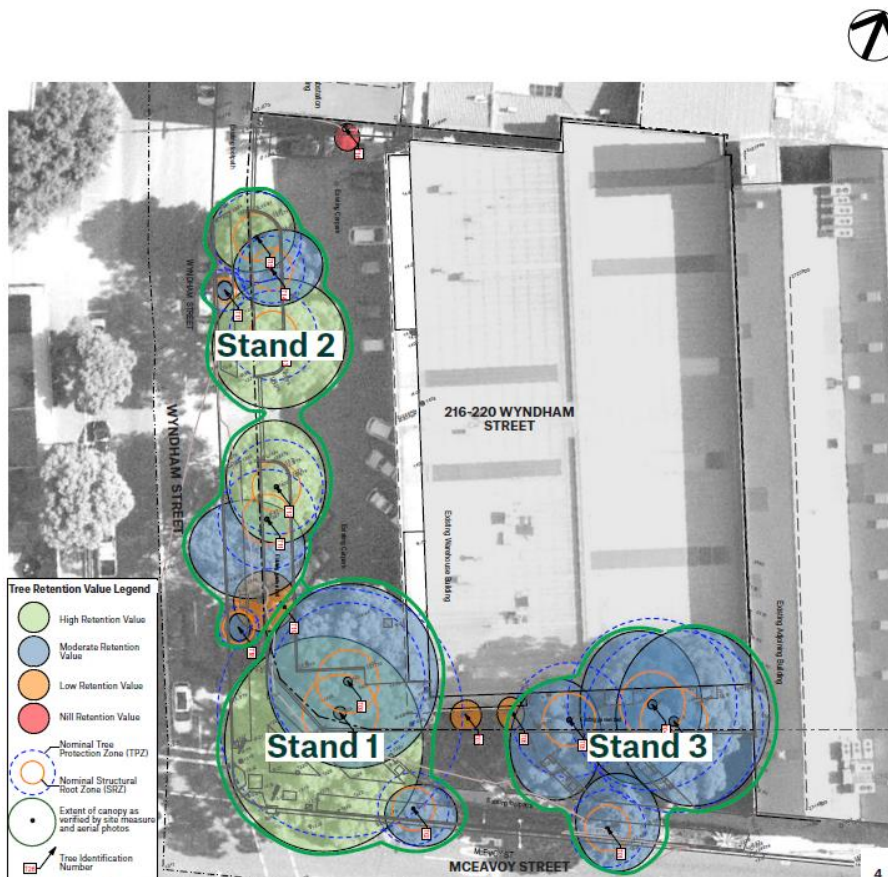


Figure 30: Location of existing trees on the site

81. An alternative massing strategy is proposed, as discussed under 'Built form and scale', with a greater setback to McEvoy Street to allow for the retention of significant trees within Stands 1 and 3.
82. The proposed Concept Plan shows the indicative removal of trees on the Wyndham Street frontage (Trees 10-16, also described as Stand 2) as well as two small low-significance trees on the McEvoy Street frontage (Trees 6 and 7).
83. This strategy is consistent with the City's Pre-lodgement advice which involved consultation with the Design Advisory Panel. This advice noted that while the retention of Stand 2 is desirable, it is acknowledged that its removal is necessary to reasonably achieve the site's development potential. Its removal, however, would be contingent on the provision of deep soil, additional street tree plantings and activation of the Wyndham Street frontage.
84. The City's Tree Management unit indicated preference for the retention of the existing trees on Wyndham Street as these trees have high retention value and provide significant benefits to the local environment. Notwithstanding, it was noted that if the removal of the Stand 2 trees is supportable, the following is required:
  - (a) The removal of trees is offset by the planting of new canopy trees.
  - (b) The significant trees on McEvoy Street must be retained and protected. These trees hold substantial canopy and greatly contribute to the site's canopy cover requirements. An adequate building setback must be provided adjacent to Trees 1-9 and the design of the building must consider the Tree Protection Zone and canopy width. Construction scaffolding and hoarding must also be considered.
  - (c) Any future detailed DA must submit an Arboricultural Impact Assessment to assess impacts on all trees, including TPZ distances and canopy spread.
  - (d) There is a potential contamination may be encountered in the tree protection zones. Advice should be sought from the Project Arborist regarding the extent of excavation that may be undertaken while ensuring the health of the trees.
  - (e) Canopy coverage provided on site is to be a minimum of 15% of the site area.
85. Conditions of consent addressing the above are included in Attachment A.

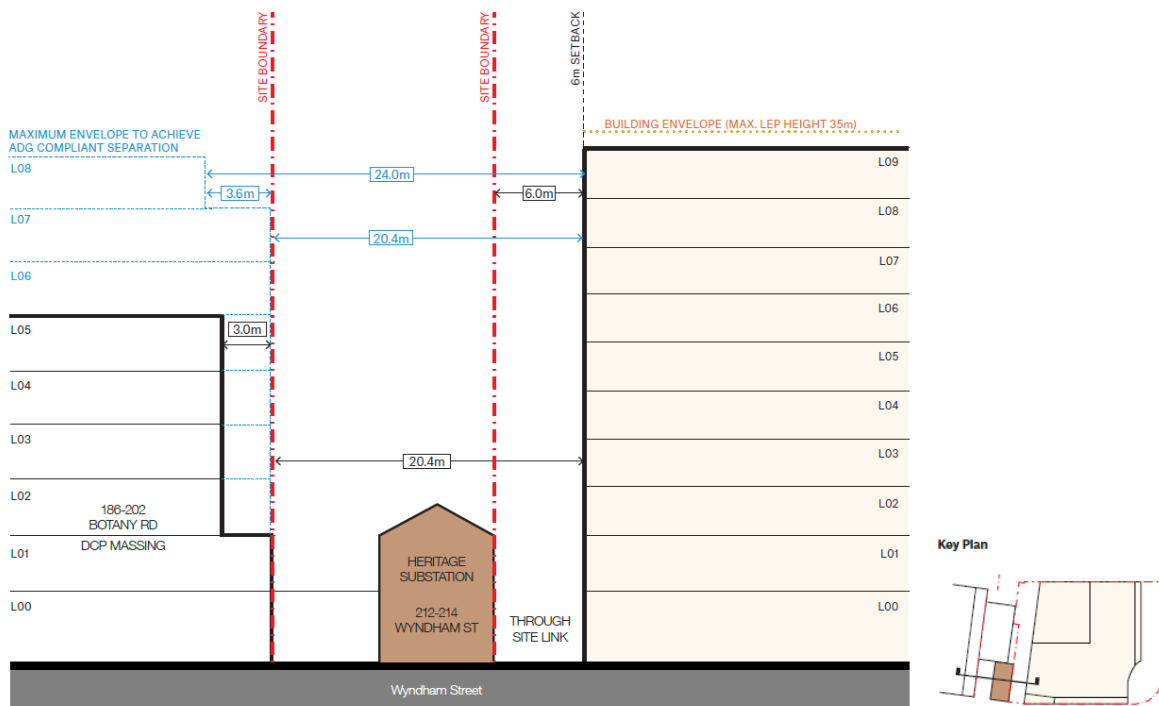
### **Street wall heights, building separation and setbacks**

86. Section 2F - Building Separation of the ADG provides minimum building separation requirements to be shared equally between sites. Section 3F specifies minimum building separation design criteria to be achieved between the proposed building and the site boundaries to achieve visual privacy as follows:
  - Up to 4 storeys: 6m for habitable rooms and balconies and 3m for non-habitable rooms.
  - 5-8 storeys: 9m for habitable rooms and balconies and 4.5m for non-habitable rooms.
  - 9+ storeys: 12m for habitable rooms and balconies and 6m for non-habitable rooms.

- 87. An assessment of the building separation and setbacks measured from each frontage of the building envelope is provided below.

**Northern frontage**

- 88. The northern frontage adjoins a two storey heritage building at 212-214 Wyndham Street.
- 89. The concept plans provide a 6m building separation from the northern boundary, which is the result of the required 6m laneway. The proposed 10 storey northern wall adjoins the laneway.
- 90. Council's Request for Information advised that the 6m setback for the first four storeys is in keeping with the ADG, however, the development would need to provide a 9m setback on floors 5-8 and a 12m setback on floors 9+ to achieve compliance with the ADG.
- 91. Notwithstanding the above, it was acknowledged that the adjoining site to the north is a heritage item and has limited development potential. Therefore further information was requested that investigates the full development potential of the adjoining heritage site at 212-214 Wyndham Street (across the entire site, not only where the substation is located) and at 186-202 Botany Road further north.
- 92. The applicant submitted the following diagram to represent the development potential of the adjoining sites.



**Figure 31:** North-south section through the laneway, showing the development potential of neighbouring sites to the north (note that the heritage substation has a 4 storey height control)

93. The entire heritage substation site (including the area to the east of the heritage building) is subject to a maximum FSR of 1:1 and maximum height of buildings control of 15m under the LEP and a 4 storey building height under the DCP. This site does not benefit from uplift controls within the Botany Road Precinct as it is a heritage item. Therefore the 6m setback to any likely future development on this site is considered adequate.
94. The site at 186-202 Botany Road, north of the substation, is subject to the following controls:
- 'Base' height control of 15m and 4 storeys; or
  - Alternative height of 35m for affordable housing or non-residential uses, with a DCP height 6 storeys, with 2 storeys along the southern boundary, for Botany Road Opportunity Land.
95. The southern boundary of 186-202 Botany Road is located 20m from the northern facade of the proposed envelope. This allows an 8 storey form on that site's southern frontage with no setback. As this site is subject to a part-2, part-6 form on that part of the site, this is considered reasonable.
96. It is recognised that the 10 storey form on the northern frontage does not wholly comply with the ADG building separation design criteria or the DCP height in storeys control. However, for the purposes of this concept proposal, the envelope is considered reasonable having regard to the future development potential of adjoining sites to the north. This concept DA does not approve the height in storeys. It is therefore considered the issue of building separation to the northern boundary and the height in storeys in this location can be assessed further through the design competition and in the detailed design DA.

#### ***Southern frontage (McEvoy Street)***

97. The DCP envisages a consistent 8 storey built form along McEvoy Street on this site and the adjoining site to the east.

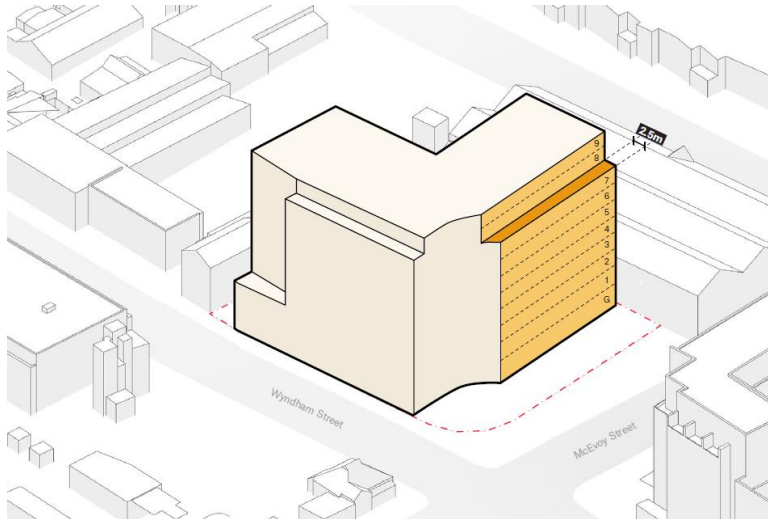


**Figure 32:** DCP map with the site outlined in blue and 8 storey southern street wall outlined in pink

98. The concept plans as submitted proposed a 10 storey form across McEvoy Street, which would exceed the DCP control by two storeys on this part of the site.



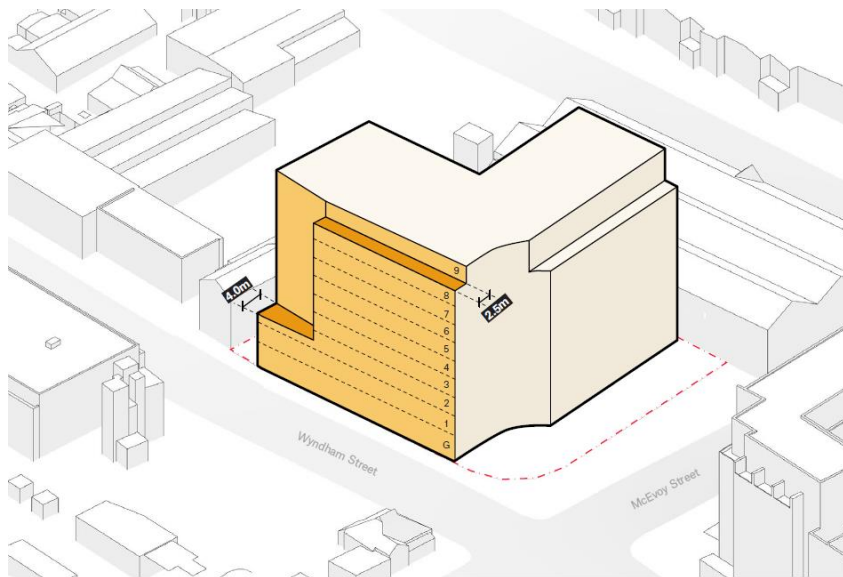
99. Council's Request for Information recommended that an upper level setback be provided for any storeys above the 8 storey DCP height on the McEvoy Street frontage, in order to minimise the perceived bulk of the building and to provide a continuous 8 storey street wall with likely future development at 204-218 Botany Road.
100. The amended plans incorporate an 8 storey street wall on the southern facade, with the upper two levels setback 2.5m. This is considered acceptable for the purpose of the concept envelope.



**Figure 33:** Amended southern facade to McEvoy Street

### ***Western frontage (Wyndham Street)***

101. The maximum height in the DCP on Wyndham Street is 9 storeys, with a variable setback for solar access (refer Figure 27 above). The DCP does not specify an upper level setback on this elevation.
102. Provision 5.10.4.2(4) states that where upper level setbacks are not specified in the DCP, buildings are to present a consistent street wall with no upper level setback to the street frontage.
103. The DA as submitted proposed a 10 storey wall fronting Wyndham Street, with a partial 2 storey street wall on the north-western corner.
104. Council's Request for Information recommended that in this instance, an upper level setback should be provided for any storeys above the 9 storey DCP control on Wyndham Street to minimise visual impact and to maintain the 9 storey street wall in the DCP.
105. In response, amended plans were submitted that introduced a 9 storey street wall to the western facade, with the 10th storey setback 2.5m. The depth of the two storey 'shoulder' was also increased to 4m to provide greater transition to the heritage item.



**Figure 34:** Amended setbacks proposed to Wyndham Street

106. The introduced setbacks to the western frontage are generally acceptable as the 9 storey street wall to Wyndham Street is consistent with the DCP height in storeys, with the upper level now being setback.
107. Compliance with ADG separation and consideration of potential future development on the adjoining site to the west will be undertaken as part of the detailed design DA.

#### ***Eastern frontage***

108. A blank wall with nil setback is provided for part of the eastern boundary which is in accordance with the DCP and is acceptable. A condition is recommended that requires consideration to be given to the treatment of this wall in the design competition and detailed design DA.

#### **Deep soil**

109. The minimum amount of deep soil is to be 10% of the site area, as per Provision 4.2.3.6(1) of the SDCP 2012.
110. The development proposes 400sqm of deep soil, which equates to a total area of 14.7% of the site. Deep soil has been calculated to include the footpath widening area on McEvoy Street in both the site area and deep soil calculations. This has been reviewed by Council's Landscape Officer who supports this approach in this instance, as there is no immediate likelihood of the footpath widening allocation being utilised for these purposes as the City has requested a generous setback in this area for tree protection within this zone.
111. Overall, the amount of deep soil provided on the site is acceptable. Accordingly, the Landscape Concept Plan is recommended for approval and is to be attached to the Design Excellence Brief.

#### **Sustainability**

112. The detailed design DA and any supporting BASIX Certificate will be subject to the requirements of the Sustainable Buildings SEPP.



113. An ESD Report was submitted with the concept proposal, outlining ESD benchmarks for the proposal in accordance with the Sustainable Buildings SEPP and the SLEP 2012. These are incorporated into the Design Excellence Strategy recommended for approval.
114. It is noted that clause 6.60B(6) of the SLEP 2012 specifies that the incentive height and FSR controls are contingent on affordable housing development achieving stretch BASIX targets of +10 points for energy and +5 points for water. These targets were imposed at a time where BASIX targets were lower and higher performance was technically achievable.
115. Following this, the Sustainable Buildings SEPP came into effect on 1 October 2023 and introduced higher BASIX standards for residential development.
116. The City is in the process of removing the stretch BASIX target of +10 points for energy for the Botany Road Precinct, so that this is not required on top of the Sustainable Buildings SEPP. A Planning Proposal facilitating this was approved by Council in December 2023 for submission to the Department with a request for a Gateway Determination and public exhibition.
117. As such, the ESD report and Design Excellence Strategy propose benchmark targets that satisfy the requirements of the Sustainable Buildings SEPP but not the SLEP 2012, which is acceptable.
118. The City's Environmental Sustainability Advisor is satisfied that the ESD report and Design Excellence Strategy adequately capture the required sustainability targets to be addressed in the detailed design DA.

### **Noise and pollution**

119. The site has a frontage to McEvoy Street, which is identified as a classified road that carries more than 20,000 average daily traffic movements. As such, the proposed development is subject to the noise criteria specified in clause 2.120 of the SEPP (Transport and Infrastructure) 2021.
120. A Noise and Vibration Impact Assessment was submitted with the application which considers noise impacts to the development's habitable areas from traffic movement on surrounding roads. The assessment contains 3D acoustic modelling for noise emissions from surrounding roads and recommends the following:
  - (a) The detailed design stage should consider acoustic design requirements for the facade to achieve the "windows closed" acoustic criteria when the apartment layouts, facade types and design details are developed.
  - (b) Where there is an exceedance in the "windows open" criteria, facade design guidance is provided. Where there is a 0-7dB(A) exceedance, recommendations include acoustic window shrouds, protected window openings, solid upstands/ balustrades, acoustically lined soffits and deep-set balconies.
121. Council's Environmental Health unit have reviewed the Noise and Vibration Impact Assessment and recommend that any future detailed design DA contains an acoustic report addressing the requirements of the Transport and Infrastructure SEPP. A condition has been added for this purpose.

### Voluntary Planning Agreement

122. The applicant has made a written offer to Council to enter into a Voluntary Planning Agreement (VPA). The public benefits in the draft VPA include:
- (a) Embellishment and dedication of 3m wide footpath widening along McEvoy Street;
  - (b) Transfer of land for a 6m wide shared zone laneway off Wyndham Street; and
  - (c) A monetary contribution of approximately \$233,000 towards community infrastructure in Green Square. This is linked to bonus floor space made available under Clause 6.14 of the SLEP 2012 when providing community infrastructure.
123. The draft VPA makes provision for the following interim arrangements:
- (a) The 3m footpath land will be embellished with soft landscaping only and the existing trees in this frontage will be retained and protected. The land will be subdivided and dedicated to become part of the adjacent road reserve prior to the Occupation Certificate for the development.
  - (b) The 6m wide laneway land is for a future new road that the City will deliver in the future when adjoining properties are redeveloped and the full laneway/ through site link is made available. The VPA requires the developer to remediate and subdivide the land to create a separate lot, but to retain ownership of that lot and maintain it until the City issues a notice for the land to be transferred.
124. The Public Benefit Offer is set out in Attachment E to this report.
125. The application is recommended for deferred commencement approval to require the draft VPA to be publicly exhibited, for submissions to be considered and for the owner of the site to execute the planning agreement and register it on title before the consent becomes operative. This will ensure that the consent cannot be acted upon without assurance that the public benefits will be delivered in accordance with the provisions of this agreement.

### Consultation

#### Internal Referrals

126. The application was discussed with Council's internal units including:
- Public Domain
  - Urban Design
  - Tree Management
  - Landscape Design
  - Environmental Health
  - Public Art

- Environmental Sustainability
- Waste Management
- Transport and Access
- Design Excellence
- Specialist Surveyor
- VPA coordinator.

127. The recommendations of these internal units have been addressed in this report and have been included in the recommended conditions in Attachment A where relevant.

## External Referrals

### Ausgrid

128. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
129. A response was received raising no objections to the proposed development. Conditions of consent are included in Attachment A.

### Sydney Airport

130. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
131. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify that the site is subject to a prohibition of the construction of buildings more than 15.24m above existing ground level.
132. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
133. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 13 December 2023.

### Transport for NSW

134. The application is subject to clause 2.119 of the SEPP as the site has frontage to Wyndham Street which is a classified road under the care and control of Council, however, it requires concurrence from Transport for NSW under section 138 of the Roads Act 1993.
135. Transport for NSW advised that concurrence would be provided to the proposed mixed-use development and vehicular crossover on Wyndham Street under section 138 of the Roads Act 1993, subject to conditions which are included in Attachment A.

**Sydney Water**

136. Pursuant to Section 78 of the Sydney Water Act 1994, the application was referred to Sydney Water for comment.
137. Sydney Water responded on 16 January 2024 and raised no objection to the proposed development, subject to conditions.

**Advertising and Notification**

138. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 20 November and 12 December 2023. A total of 254 properties were notified and 52 submissions were received, of which 29 were in objection and 23 were in support.
139. The objections raised the following issues:

| Issue   | Response  |
|---|---|
| <b>Land use mix and affordable housing</b>  |   |
| <p>A number of submissions object to the development on the basis of it being social housing and concerns relating to the perception of higher rates of crime and antisocial behaviour.</p> | <p>In the context of the city, the term 'affordable housing' is taken to mean 'affordable rental housing' that is managed by a registered Community Housing Provider and rented specifically to target low to medium income households and key city workers.</p> <p>In this instance, the development would be managed by City West Housing, which is an affordable housing provider that provides rental housing for a range of households who work or have a connection in the City of Sydney.</p> <p>The application does not propose social housing, which is government subsidised, long term, rental housing for people on very low incomes, generally managed by the NSW Government.</p> <p>The City of Sydney Affordable Housing Program recognises affordable rental housing as critical infrastructure necessary to support sustainable and diverse communities and long term economic growth in the City of Sydney.</p> <p>The delivery of affordable housing is desirable within the Botany Road Precinct, including on the subject site, and is incentivised by the planning controls.</p> |

| Issue   | Response  |
|---|---|
| <p>The building should contain a mix of private and affordable housing.</p>   | <p>The planning controls allow residential uses in the Botany Road Precinct if it is used for affordable housing in perpetuity. The controls do not require a mix of private and affordable housing within a single development.</p> <p>City West Housing notes that their previous projects are indistinguishable from private rental apartments in the area. The same design standards will apply to this building as if it were not affordable housing, including the requirement for design excellence.</p>   |
| <p>The development will reduce available commercial floor area compared to existing and will only provide smaller commercial tenancies.</p> <p>The commercial uses will create excessive competition in an already struggling retail environment.</p> | <p>The DCP controls for the Botany Road Precinct identify the Precinct being an area of transition that will evolve into a vibrant commercial precinct, supporting a diverse range of business and employment generating land uses.</p> <p>The controls require the ground and first floor to contain commercial uses and active frontages at the street level. There is no specific minimum size for commercial tenancies.</p> <p>The development provides ground and first floor indicative commercial uses in accordance with the DCP. The size of the tenancies are not approved under this concept DA and will be subject to the detailed design DA.</p> |
| <p>Potential conflict between proposed residential use and surrounding commercial operations, including the Kennards site to the north at 186-202 Botany Road.</p>  | <p>Council's Request for Information recommended the Noise Impact Assessment be updated to capture the noise generated by current operations at the Kennards site to the north.</p> <p>An amended Noise and Vibration Impact Assessment was submitted with the application, which includes further assessment of the operations of the Kennards site. To account for noise emissions from the Kennards site, the report recommends design considerations to increase the acoustic amenity of the proposed apartments. This includes positioning less sensitive areas along the northern facade such as non-habitable spaces where possible and upgrading</p>  |

| Issue   | Response   |
|---|--|
|   | <p>acoustic performance to the northern facade to account for increased noise emissions to bedrooms or living rooms during Kennard's operating hours.</p> <p>This will be a matter for further consideration in the detailed DA assessment.</p>  |
| <p>The removal of the existing pet store and gym will negatively impact the neighbourhood.</p>  | <p>The proposed indicative uses of affordable housing and commercial on ground and level 1 are consistent with the desired future character and land use mix for the Botany Road precinct.</p>   |
| <p><b>Height</b></p>  |  |
| <p>35m height and 10 storeys is too high for the area. There are no other 10 storey buildings nearby.</p> <p>The maximum height control is 15m and 4 storeys, not 35m</p> | <p><b><i>Building height in metres</i></b></p> <p>The site is subject to a 'base' maximum building height of 15m under clause 4.3 of the SLEP 2012.</p> <p>A Planning Proposal was approved in 2022 which created new planning controls for the Botany Road Precinct to encourage commercial, enterprise and affordable housing floor space. Refer to the 'History of the relevant planning controls' section of this report for further background.</p> <p>Following approval of the Planning Proposal, clause 6.60B - Botany Road Precinct Opportunity Land of the SLEP 2012 was introduced, which permits an Alternative Height of Buildings control of 35m if the building is for the purpose of non-residential uses and affordable housing.</p> <p>The prerequisites for utilising the alternative height control outlined in clause 6.60B of the SLEP 2012 have been met and are outlined in the Discussion section of this report.</p> <p>The proposed building envelope has a maximum height of 35m, which complies with the alternative height of buildings control.</p> |

| Issue   | Response   |
|---|--|
|   | <p><b><i>Building height in storeys</i></b></p> <p>The site is subject to a 'base' height in storeys control of 4 storeys under Section 4.2.1 of the SDCP 2012.</p> <p>The Planning Proposal for the Botany Road Precinct introduced new height in storeys controls in Section 5.10 of the SDCP 2012, where the incentive building heights under Clause 6.60B of the SLEP 2012 are utilised.</p> <p>The DCP identifies an alternative height in storeys ranging from two to nine storeys for this site. The reference scheme proposes a 10 storey building within the permissible 35m LEP height. This has been assessed as being acceptable for the purposes of the concept DA, noting that height in storeys is not approved at this stage. Refer to the Discussion section for further details.</p> |
| <p>The immediate surrounding area is low rise residential which will not be further developed. 10 storeys is out of character.</p> <p>The development will set a precedent in the area for similar heights.</p> | <p>The alternative controls under clause 6.60B and Section 5.10 of the SDCP 2012 apply to this site and the broader Botany Road Precinct, including adjoining sites to the east and north.</p> <p>The proposed concept envelope has a maximum height of 35m which complies with the maximum height permitted.</p> <p>The development is consistent with the desired future character of the locality, which is outlined in Section 2.13.13 of the SDCP 2012. It is therefore not considered to be an undesirable precedent within the Botany Road Precinct.</p>  |
| <p>The height of the building will obstruct views to the sky at 117 Wyndham Street</p>  | <p>117 Wyndham Street is located to the north-west, approximately 50m from the north-western corner of the subject site. The apartments at 117 Wyndham Street are generally orientated towards the east and the north of that site. The proposed concept envelope is not considered to cause significant visual impact or obstruct views in accordance with the principles of view sharing established under Tenacity Consulting v Warringah Council [2004] NSW LEC 140.</p>   |

| Issue  | Response   |
|--|--|
| <b>Overshadowing</b>   |  |
| <p>The building will cause overshadowing to the following buildings:</p> <ul style="list-style-type: none"> <li>• 68 McEvoy Street (also known as 222 Wyndham Street)</li> <li>• 123-129 Wyndham Street</li> <li>• 196 Wyndham Street</li> <li>• 117 Wyndham Street</li> </ul> | <p><b>222 Wyndham Street</b></p> <p>The overshadowing analysis demonstrates that the proposed building envelope causes overshadowing to lower level apartments at 222 Wyndham Street from approximately 12.30pm and into the afternoon. However, the north-facing apartments all receive direct solar access between 9am-12.30pm in midwinter. The proposed building envelope therefore maintains the required 2 hours' solar access to neighbouring apartments in accordance with the requirements of Part 3B ADG.</p> <p>It is noted that the increased southern setback to McEvoy Street significantly increases the amount of solar access to 222 Wyndham Street.</p> <p><b>123-129 Wyndham Street</b></p> <p>123-129 Wyndham Street is located to the north-west of the subject site.</p> <p>The View from the Sun diagrams demonstrate that the proposed concept envelope does not cast any shadows towards the location of 123-129 Wyndham Street.</p> <p>Any shadows cast by the proposed development will fall to the south-west, south and south-east of the site.</p> <p><b>196 Wyndham Street</b></p> <p>196 Wyndham Street is located to the north of the subject site.</p> <p>Similarly to the above, the View from the Sun diagrams demonstrate that the development will not cast any additional shadows to 196 Wyndham Street.</p> <p><b>117 Wyndham Street</b></p> <p>117 Wyndham Street is located to the north-west of the subject site.</p> |



| Issue   | Response  |
|---|---|
|   | <p>Similarly to the above, the View from the Sun diagrams demonstrate that the development will not cast any additional shadows to 117 Wyndham Street.</p> <p>Refer to the Discussion section for further assessment of overshadowing impacts.</p>  |
| <b>Heritage impacts</b>   |   |
| <p>The building is too tall compared to the heritage item to the north.</p>   | <p>The proposed building envelope provides a 6m setback to the heritage item to the north of the site. A 2 storey street wall is also provided to the north-western corner of the site, adjoining the heritage item.</p> <p>The Heritage Impact Statement (HIS) submitted with the application advises that the 6m setback will help create a physical and visual separation between the site and the heritage item and the two storey form on the north-western corner allows for a sympathetic design approach that will enhance views towards the heritage item when travelling north along Wyndham Street. The HIS concludes that the proposal will not affect the heritage significance of the heritage item.</p> <p>The proposed envelope is generally in accordance with the height and building separation controls that apply to the site. Minimising impacts to the heritage item through the design of the building will be considered further as part of the competitive design process and detailed design DA and a condition requiring this is recommended.</p> |
| <b>Visual privacy</b>   |   |
| <p>Visual privacy impacts to surrounding apartment buildings including 123-129 Wyndham Street, 196-202 Wyndham Street and 222 Wyndham Street.</p> | <p>The development provides acceptable building separation to achieve visual privacy in accordance with the ADG. Refer to the 'Building separation and setbacks' assessment in the Discussion section above.</p> <p>In particular:</p> <ul style="list-style-type: none"> <li>123-129 Wyndham Street is located to the north-west of the site. A separation</li> </ul>  |

| Issue   | Response  |
|---|---|
|   | <p>of approximately 24m between habitable spaces is proposed, which complies with Part 2F of the ADG relating to building separation.</p> <ul style="list-style-type: none"> <li>• 196-202 Wyndham Street is located north of the site. A separation of approximately 40m is proposed, which is acceptable.</li> <li>• 222 Wyndham Street is located south of the site across McEvoy Street. A separation of approximately 40m is proposed, which is acceptable.</li> </ul> <p>The detailed design DA will further consider the issue of visual privacy and whether further setbacks or visual privacy screening is required.</p> |
| <b>Traffic impacts</b>  |   |
| The proposal provides insufficient car parking.   | <p>The City's car parking rates in the SLEP 2012 are maximums. The indicative provision of 13 car spaces is below the maximum and therefore complies.</p> <p>The site is well serviced by public transport, including Green Square Station, the future Waterloo Metro Station and bus stops.</p> <p>Bicycle parking will also be provided in accordance with the City's controls.</p>   |
| The development will cause traffic congestion.  | The Traffic and Parking Assessment indicates that the proposal is likely to result in a net reduction in traffic movements compared to the current use of the site as a commercial/ industrial warehouse.   |
| <b>Construction and building impacts</b>  |   |
| <p>The development may cause structural damage to neighbouring buildings.</p> <p>The development will cause construction noise.</p> | <p>The Concept DA does not propose any physical building works and is for the building envelope only.</p> <p>Issues relating to construction impacts will be assessed as part of the detailed design DA.</p>  |

| Issue  | Response  |
|--|---|
| <b>Impact to local infrastructure</b>  |   |
| <p>The development will put pressure on existing bus routes, train services and the capacity of the future Waterloo Metro station. There is a lack of supermarkets, schools and parks in the area.</p> | <p>The development capacity of the Botany Road Precinct and the availability of local infrastructure was assessed Council at the Planning Proposal stage.</p> <p>The development uplift was largely driven by new infrastructure in and around the precinct, including:</p> <ul style="list-style-type: none"> <li>• New transport infrastructure, such as the Waterloo Metro and the Redfern Station upgrade;</li> <li>• The new park being provided on Cope Street as part of the Waterloo Estate (South) Planning Proposal;</li> <li>• New parks, health care facility and community facilities such as Gunyama Park and Aquatic Centre, Green Square Library and Green Square School; and</li> <li>• Planned public domain improvements throughout the Precinct.</li> </ul> <p>The proposed envelope is consistent with the controls for the site, which have already taken into account infrastructure capacity.</p> <p>The new buildings throughout the precinct, including on the subject site, will be supported by commercial uses on the ground floor to support the new workers and residents in the area.</p> |
| <b>Landscaping and tree removal</b>  |   |
| <p>Impacts to trees on the site.</p>   | <p>The proposed concept envelope has been deliberately designed to preserve the existing trees on McEvoy Street, including a voluntary 10m setback which exceeds the 3m requirement. This is considered a positive outcome for the site.</p>  |

| Issue   | Response  |
|---|---|
|   | <p>The Landscape Concept Plan confirms that 15% canopy coverage will be provided in accordance with the City's controls.</p> <p>See the Discussion for further details on tree management.</p>  |
| <p>The communal open space should be made available to the public.</p>  | <p>The communal open space is for the use of residents in accordance with the ADG and will not be publicly available. The planning controls do not require this site to provide public open space.</p>  |
| <p>The building should be further setback from Wyndham Street to protect the trees and allow for footpath widening.</p> | <p>The DCP does not require a setback on Wyndham Street for footpath widening and envisages built form up to the Wyndham Street boundary.</p> <p>The removal of trees on Wyndham Street is required to facilitate the new building envisaged by the DCP. The issue of tree removal is assessed under the Discussion section above.</p>                            |
| <p><b>Other issues</b></p>  |   |
| <p>There has been a lack of consultation with the local community.</p>  | <p>The concept DA was placed on public exhibition for 21 days in accordance with the City's Community Participation Plan. The future detailed design DA will similarly be placed on public exhibition.</p>  |
| <p>Removal of public art on the McEvoy Street frontage.</p>   | <p>New public art will be installed as part of this development. The Preliminary Public Art Plan establishes a framework for future public art. The strategy acknowledges the existing public art and recommends that the new artwork acknowledges the importance of the previous artwork and replaces it with something equally meaningful to the community.</p> |
| <p>The development will reduce property values to neighbouring development.</p>   | <p>Property value for individual landowners is not a matter for consideration under the Environmental Planning and Assessment Act 1979. The proposal has been assessed on its own merits in accordance with the planning controls that apply to the site.</p>   |

| Issue  | Response   |
|--|--|
| There is a lack of detail in the proposed building envelopes.                        | The application is for a concept DA and does not include the detailed design of the building. The development will undertake a competitive design process followed by the lodgement of a detailed design DA.   |
| The building should consider sustainability targets.                                 | Sustainability targets have been considered as part of the concept DA and captured in the design excellence strategy. Refer to Discussion section for details.   |
| The 6m wide through-site link is not wide enough and will be unsafe for pedestrians. | Council requires the northern laneway to be provided in accordance with Section 5.10.3.1 of the SDCP 2012. It has been designed as being 6m wide and is intended to be a shared zone. The final design of the laneway will be determined by Council, ensuring the safety of pedestrians as a priority. |

## Financial Contributions

### Contribution under Section 7.11 of the EP&A Act 1979

140. The assessment of the future detailed design DA will consider whether a Section 7.11 contribution is required for the proposed development.

### Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

141. The assessment of the future detailed design DA will consider whether a Section 7.13 contribution is required for the proposed development.

### Housing and Productivity Contribution

142. The assessment of the future detailed design DA will consider whether a Housing and Productivity contribution is required for the proposed development.

## Relevant Legislation

143. Environmental Planning and Assessment Act 1979.

## Conclusion

144. The proposed development seeks consent for a concept building envelope for a mixed-use development with a maximum height of 35m, a new east-west through site link and indicative land uses including:
  - (a) ground floor commercial uses and car parking;
  - (b) first floor commercial uses and communal open space; and
  - (c) residential apartments for the purpose of affordable rental housing on the levels above.
145. The Public Benefit Offer has informed a draft VPA associated with the application which will undergo public exhibition in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. A deferred commencement condition is recommended to enable the draft VPA to be executed and registered on title.
146. The concept envelope and supporting Design Excellence Strategy establish suitable parameters for a future competitive design process. The concept envelope can accommodate a detailed building design of an appropriate bulk and scale that is in keeping with the desired future character of the area and capable of achieving design excellence, subject to the recommended conditions of consent.
147. As a result of public notification, 52 submissions were received, including 29 in objection and 23 in support. The issues raised in the objections have been adequately addressed as discussed within this report.
148. All matters raised by internal and external referrals have been adequately addressed as discussed within this report.
149. It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the concept application, following the conclusion of the public exhibition of the draft VPA and considering any public submissions received in response.

## ANDREW THOMAS

Executive Manager Planning and Development

Samantha Kruize, Senior Planner