

**ITEM 7. SECTION 96 APPLICATION: 485-521 HARRIS STREET ULTIMO****FILE NO: D/2014/1147/A****SECTION 96 APPLICATION NO: D/2014/1147/A****SUMMARY****Date of Submission:** 24 March 2016, amended 31 October 2016**Applicant:** Mr Giovanni Cirillo**Architect:** Architectus**Developer:** TWT Property Group**Owner:** Timkit Pty Ltd**Cost of Works:** \$98,739,301**Proposal Summary:** Section 96(AA) modification application to amend Stage 1 building envelopes for a mixed use development. Proposed changes include modifications to the configuration of the approved building envelope.

This Section 96 application is the result of a Stage 2 detailed design proposing to vary the building envelopes approved under a Stage 1 development consent (D/2014/1147) granted by the NSW Land and Environment Court and a subsequent design competition. Consequently, the Section 96 modification and Stage 2 development application are being assessed concurrently. Both reports are before the CSPC for review and determination.

The Section 96 application seeks to amend the original Stage 1 approval in the following manner:

- Volumetric re-configuration of the approved height and massing of the building envelopes across the site, including:
  - relocation of deep soil zones;
  - reconfiguration of basement levels;
  - rotation of the central building 90 degrees to create a central courtyard and northern through-site link; and modifications to subtract building volume from the northern, western and southern sides of the site and to add volume to the eastern side to Harris Street.

**Proposal Summary:  
(continued)**

The relevant condition imposed on the Stage 1 consent by the NSW Land and Environment Court on 23 July 2015, which is proposed to be modified as a result of these changes, is Condition (2) 'Approved Stage 1 Development'.

The modification of the approved building envelope will ensure consistency between staged development applications on the site, as required under Section 83D of the *Environmental Planning and Assessment Act, 1979*.

The subject application was notified for a period of 14 days, between 11 April 2016 and 26 April 2016. Eleven (11) submissions were received, raising concerns summarised as follows:

- Inconsistencies between the Stage 1 consent and Stage 2 application;
- Lack of due process and transparency;
- Overbearing height, mass and bulk impacts;
- Insufficient building separation and visual privacy impacts;
- Overshadowing impacts;
- Lack of safety and crime prevention measures; and
- Excavation and construction impacts.

Since the approval of the Stage 1 building envelope, the project has evolved as a result of the competitive design process, the detailed design of building services, and refinement of the architectural expression of the building. As such, the proposed modifications to the Stage 1 building envelope are considered to be acceptable and are generally supported.

**Summary Recommendation:**

The Section 96 application is recommended for approval, subject to the modification of Condition (2) 'Approved Stage 1 Development'.

- Development Controls:**
- (i) Sydney Local Environmental Plan 2012
  - (ii) Sydney Development Control Plan 2012
  - (iii) State Environment Planning Policy No. 55—  
Remediation of Land
  - (iv) State Environmental Planning Policy No. 65—  
Design Quality of Residential Apartment  
Development
  - (v) State Environmental Planning Policy No 70—  
Affordable Housing (Revised Schemes)
  - (vi) State Environmental Planning Policy (Building  
Sustainability Index: BASIX) 2004
  - (vii) State Environmental Planning Policy  
(Infrastructure) 2007
  - (viii) Sydney Regional Environmental Plan (Sydney  
Harbour Catchment) 2005
  - (ix) Ultimo Pymont Contributions Plan 1994

- Attachments:**
- A - Envelope Plans and Elevations
  - B - Shadow Diagrams

**RECOMMENDATION**

It is resolved that consent be granted to Section 96 Application No. D/2014/1147/A, subject to Condition (2) Approved Stage 1 Development being modified, (with modifications shown in ***bold italics*** (additions) and **~~*bold italics strike-through*~~** (deletions)), as follows:

**(2) APPROVED STAGE 1 DEVELOPMENT**

- (a) Development consent is given for and limited to a Stage 1 Concept Plan building envelope and indicative land uses within this envelope, in accordance with Development Application No. D/2014/1147 dated 1 August 2014 (as amended) and the following drawings and documents, ***with the exception of the lack of a 4 metre setback from Bulwara Road at Levels 5 and 6, as per Condition (2)(c) below:***

Drawing or Document	Architect or author	Date
<del><b><i>DA0111 Rev. E – Plan DA1100 Issue 3</i></b></del>	<del><b><i>Woods Bagot Architectus</i></b></del>	<del><b><i>12 June 2015 31 October 2016</i></b></del>
<b><i>DA1101 Issue 3</i></b>	<b><i>Architectus</i></b>	<b><i>31 October 2016</i></b>
<b><i>DA1102 Issue 3</i></b>	<b><i>Architectus</i></b>	<b><i>31 October 2016</i></b>
<b><i>DA1103 Issue 3</i></b>	<b><i>Architectus</i></b>	<b><i>31 October 2016</i></b>
<b><i>DA1104 Issue 3</i></b>	<b><i>Architectus</i></b>	<b><i>31 October 2016</i></b>
<b><i>DA1105 Issue 3</i></b>	<b><i>Architectus</i></b>	<b><i>31 October 2016</i></b>
<del><b><i>DA0112 Rev. D – Sections</i></b></del>	<del><b><i>Woods Bagot</i></b></del>	<del><b><i>10 June 2015</i></b></del>
<del><b><i>DA0113 Rev. D – Elevations DA1106 Issue 3</i></b></del>	<del><b><i>Woods Bagot Architectus</i></b></del>	<del><b><i>10 June 2015 31 October 2016</i></b></del>
<b><i>DA1107 Issue 3</i></b>	<b><i>Architectus</i></b>	<b><i>31 October 2016</i></b>
Design Excellence Strategy , pages 6-7 of the <i>Addendum to the Statement of Environmental Effects</i>	Giovanni Cirillo Planning Lab	1 April 2015
Public Art Strategy	Andrew Darroch, Mersonn Pty Ltd	March 2015

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.
- (c) ***No approval is granted for a nil setback to Bulwara Road at levels 5 and 6. A four metre setback must be provided for the full length of Bulwara Road at levels 5 and 6.***

***As amended by D/2014/1147/A – 8 December 2016***

## BACKGROUND

### The Site

1. The site has a legal description of Lot 1 DP 617952, and is commonly known as 485-521 Harris Street, Ultimo. The site has three street frontages, Harris Street to the east, Kirk Street to the north and Bulwara Road to the west.
2. The site is irregular in shape, with a primary eastern frontage of approximately 70 metres to Harris Street, a secondary 65.34 metre western frontage to Bulwara Road and a 14.97 metre northern laneway frontage to Kirk Street. The site has an area of 5322 square metres. The site is located midway between the intersection of Harris Street with Quarry Street to the north and William Henry Street to the south.
3. A site location plan is provided at **Figure 1** below:



**Figure 1:** Aerial image of 485-521 Harris Street, Ultimo and its surrounds.

4. The site contains a 2-4 storey commercial office building, which was formerly occupied by Tabcorp. The Bulwara Road elevation presents as a single storey building with a 2-3 storey building behind. The buildings range in height from 10.32-21.93 metres to Harris Street and 5.32-9.31 metres to Bulwara Road. The site currently has vehicular access via driveways from Harris Street, Kirk Street and Bulwara Road.
5. Photographs of the site are provided at **Figures 2 to 6** below, which illustrate the context of the site and the existing built form.



Figure 2: The site viewed from Harris Street looking north-west.

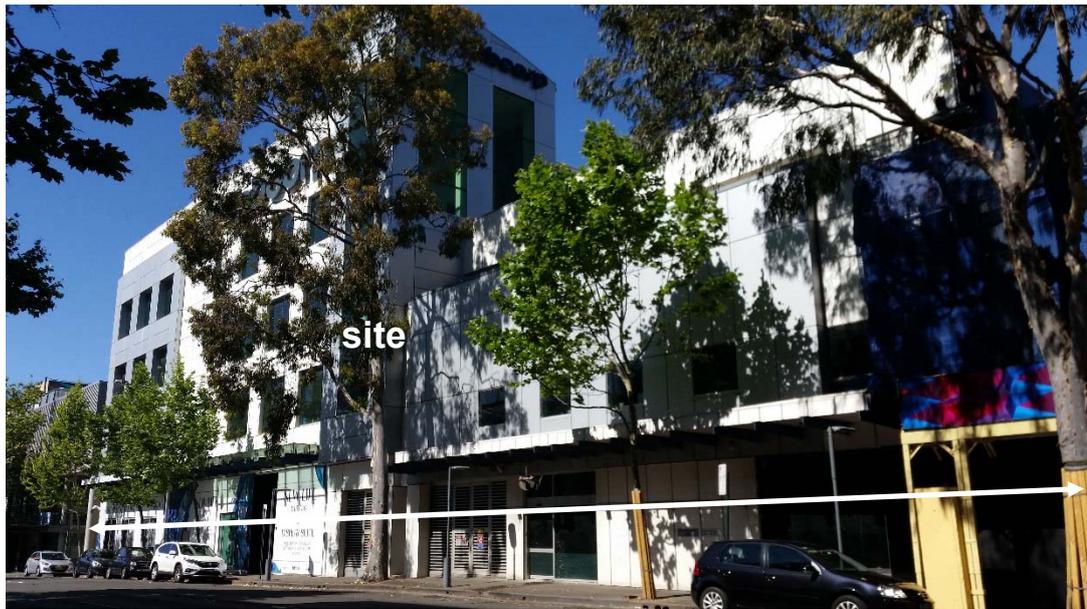


Figure 3: The site viewed from Harris Street, looking south-west.



**Figure 4:** The site viewed from the junction of Quarry Street and Kirk Street, looking south.



**Figure 5:** The site viewed from Bulwara Road looking south-east



**Figure 6:** The site viewed from Bulwara Road looking north-east.

### The Locality and Surrounding Development

6. Development in the vicinity of the site is generally mixed and is characterised by a range of commercial, retail and residential land uses.
7. Adjoining the site to the south is 40 William Henry Street, which is bounded by Harris Street, William Henry Street and Bulwara Road and is occupied by a 2-4 storey building containing the Ultimo Community Centre and the Jessie Street National Women's Library (refer to **Figure 7**, below).
8. Directly opposite the site to the east is the Ian Thorpe Aquatic Centre at 458 Harris Street (refer to **Figure 8**, below). To the north-east is 'Bullecourt' at 444-456 Harris Street, a residential apartment building with a 4 storey street frontage height and an overall height of 6 storeys setback above (refer to **Figure 9**, below).
9. To the north of the site along Harris Street are a row of 2 and 3 storey commercial and mixed use terraces and buildings (refer to **Figure 10**, below).
10. Also to the north of the site is Kirk Street, accessed from Quarry Street and located midway between Bulwara Road and Harris Street. Kirk Street terminates at the northern 3-4 storey boundary wall of the site and is characterised by residential and mixed use development. There is a 3 storey contemporary building on the corner of Quarry and Kirk Streets, in addition to the rear of buildings fronting Harris Street and a row of 2 storey residential terraces that span the street (refer to **Figures 11** and **12**, below).
11. To the north-west and west of the site is Bulwara Road, a narrow one-way street running south to north, predominantly characterised by residential development. The Ultimo Community Centre (adjoining the site to the south) fronts Bulwara Road as a 2 storey building with a rooftop basketball court (refer to **Figure 13**, below). Adjoining the site to the north is a row of five 2 storey residential terraces, and the Mustard Seed Uniting Church located on the corner of Bulwara Road and Quarry Street (refer to **Figure 14**, below).

12. Directly opposite the site on the western side of Bulwara Road is the 'Burlinson Gardens' building. This development comprises four storeys of residential apartments setback from the street with landscaping and spanning almost the entire block between Quarry Street and William Henry Street (refer to **Figures 15** and **16**, below).
13. The site is not identified as a heritage item or located in a heritage conservation area listed in Schedule 5 of the Sydney LEP 2012. The site is located in proximity to a conservation area and heritage items, as detailed below:
  - (a) the Ultimo heritage conservation area along its north-western boundary with 19 Kirk Street and 272 and 272A Bulwara Road; and
  - (b) heritage items including:
    - (i) the Ultimo Uniting Church group buildings and grounds, including interiors (I2057) at 97 Quarry Street (refer to **Figure 17**, below); and
    - (ii) the terrace group including interiors (I2066) at 20-36 William Henry Street (refer to **Figure 18**, below).



**Figure 7:** The Harris Street elevation of the Ultimo Community Centre, looking west.



**Figure 8:** The Harris Street elevation of the Ian Thorpe Aquatic Centre, looking south-east.



**Figure 9:** The Harris Street elevation of the 'Bullecourt' development, looking north-east.



**Figure 10:** Harris Street terraces, looking north-west.



**Figure 11:** Rear of Harris Street terraces, looking south-east.



**Figure 12:** Kirk Street terraces, looking south-west.



**Figure 13:** Ultimo Community Centre, looking south-east.



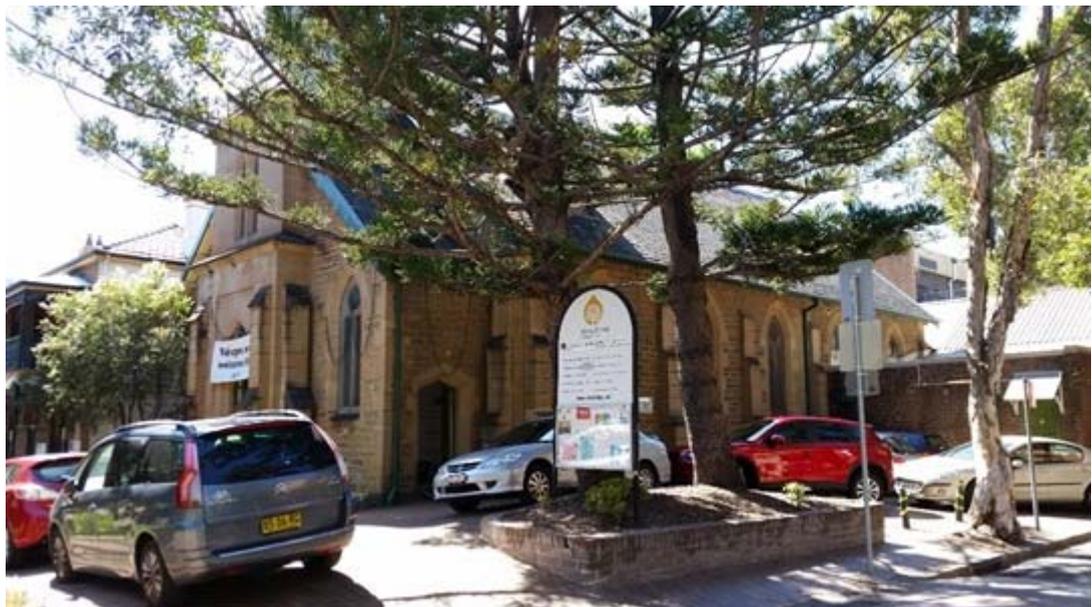
**Figure 14:** Bulwara Road terraces and Mustard Seed Uniting Church, looking north-east.



**Figure 15:** 'Burlinson Gardens', looking south-west.



**Figure 16:** 'Burlinson Gardens', looking north-west.



**Figure 17:** Mustard Seed Uniting Church, looking south-east.



**Figure 18:** William Henry Street terraces, looking north-west.

## HISTORY

14. A Stage 1 development application (D/2014/1167) for the subject site was granted consent by the Land and Environment Court of New South Wales on 23 July 2015.
15. The Stage 1 development consent was for building envelopes for a multi-storey mixed use development. The envelopes range from between 4 to 9 storeys in height, with two basement car parking levels with vehicle access from Harris Street, ground floor retail fronting to Harris Street and residential apartments throughout the remainder of the development.
16. The specific details of the approval are described below as follows:
  - (a) in principle approval for demolition of the existing building on the site;
  - (b) an indicative nine storey building envelope fronting Harris Street, with:
    - (i) the upper four storeys setback 2.5 metres from the street boundary;
    - (ii) the upper three storeys stepping at the southern end down to six storeys; and
    - (iii) retail uses on the portion of the ground floor fronting Harris Street;
  - (c) an indicative six storey building envelope fronting Bulwara Road, with:
    - (i) the upper three storeys setback 4 metres from the street boundary and 9 metres from the northern boundary; and
    - (ii) a basement level below the street level of Bulwara Road with storage on the Bulwara Road side and apartments facing onto the internal courtyard;



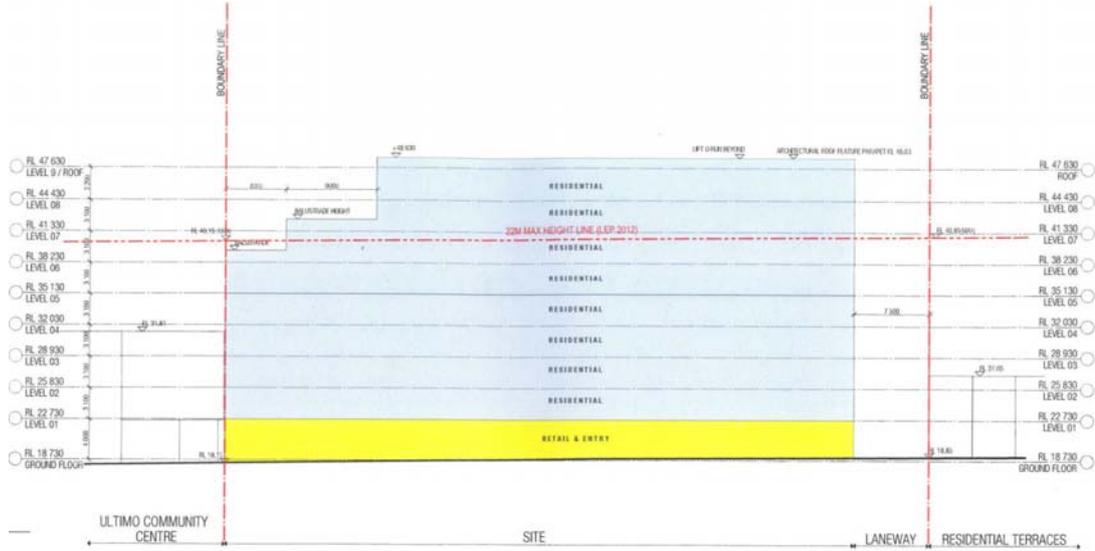


Figure 20: Eastern (Harris Street) Elevation of Stage 1 concept approval

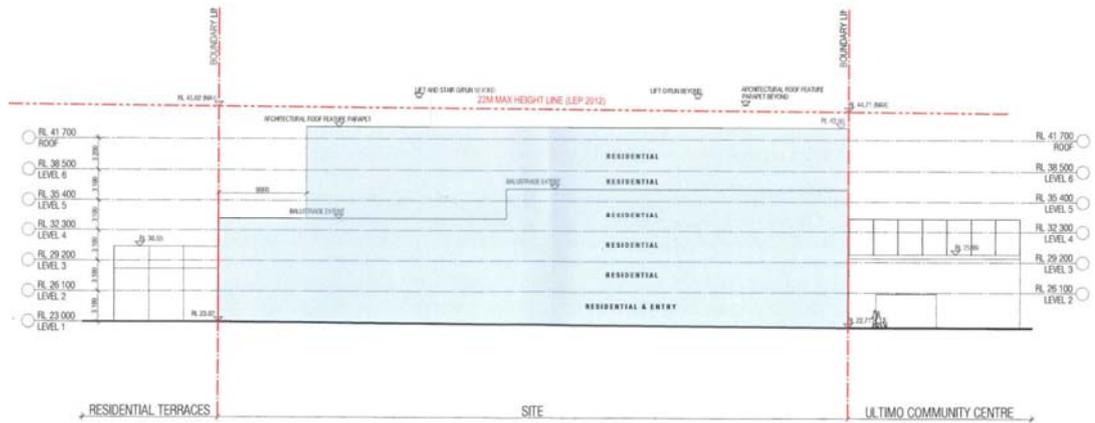


Figure 21: Western (Bulwara Road) Elevation of Stage 1 concept approval

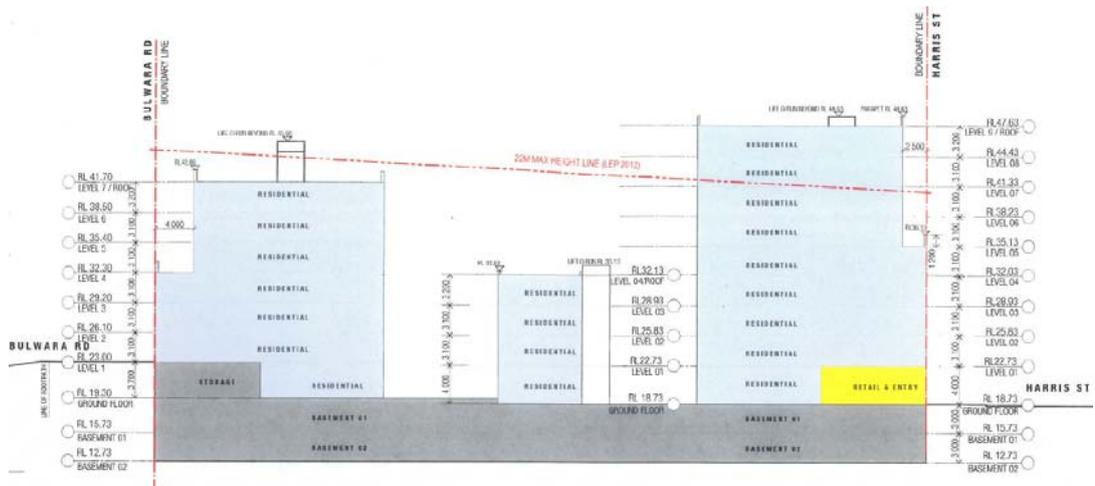
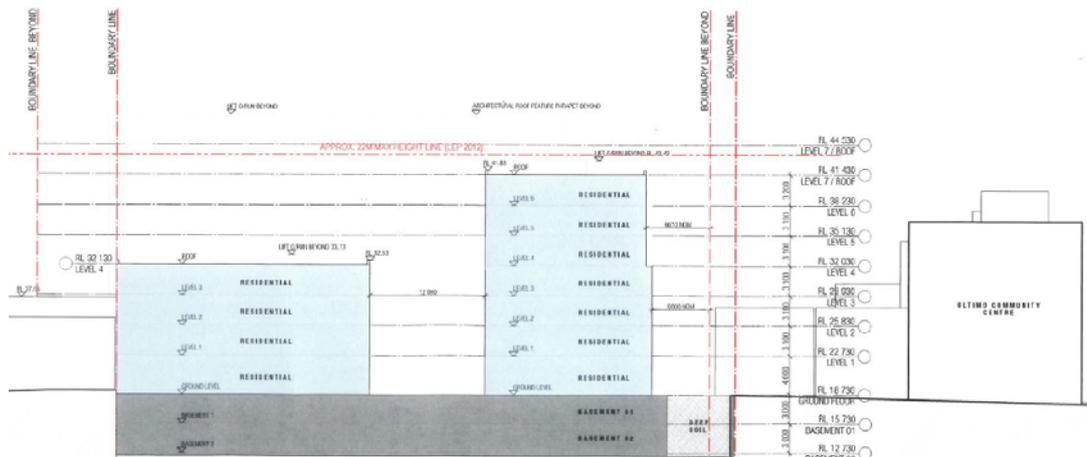


Figure 22: Cross section of Stage 1 concept approval



**Figure 23:** Longitudinal section of Stage 1 concept approval

19. Conditions were imposed by the Court to define the limits of the Stage 1 envelope as follows:

**(4) BUILDING ENVELOPES**

*Subject to the other conditions of this consent, the building envelope is only approved on the basis that the ultimate building design, including services, balconies, shading devices and the like will be entirely within the approved envelopes and provide an appropriate relationship with neighbouring buildings.*

**(5) BUILDING HEIGHT**

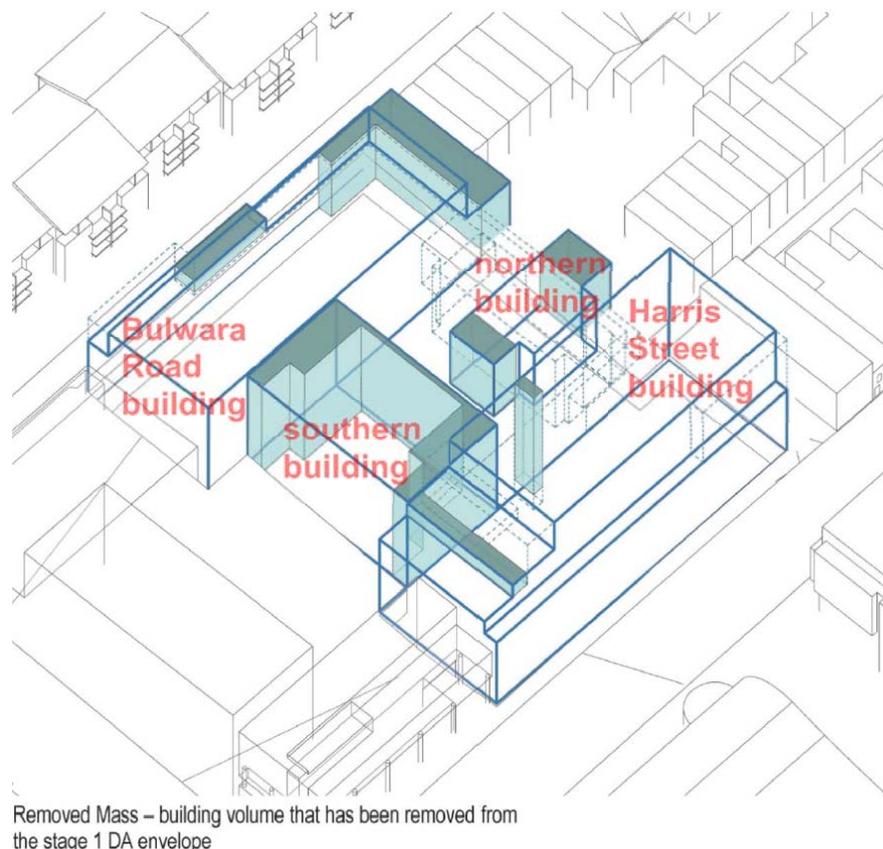
*The height of any future building must not exceed the maximum levels set out in the approved building envelopes.*

20. Following the Stage 1 development consent, the applicant commissioned a competitive design alternatives process for the site. Five architectural firms were invited to submit and present a design proposal with the design jury selecting the Architectus scheme as the winning design in May 2016.
21. The design was selected by the Jury as it was considered to achieve a superior outcome for the site, despite not conforming to the approved Stage 1 building envelope. The key changes in the winning scheme included:
- rotation of the central building to link the Harris Street and Bulwara Road buildings; and
  - creation of a 6 metre wide pedestrian lane to form a pedestrian thoroughfare between Harris Street and Bulwara Road.
22. The winning design scheme has been refined through several iterations of design amendments. These amendments were made by the applicant in response to issues raised by Council officers, both prior to lodgement, and during the assessment of the Section 96 application and the Stage 2 Development Application (D/2016/367) being considered concurrently with the subject proposal.

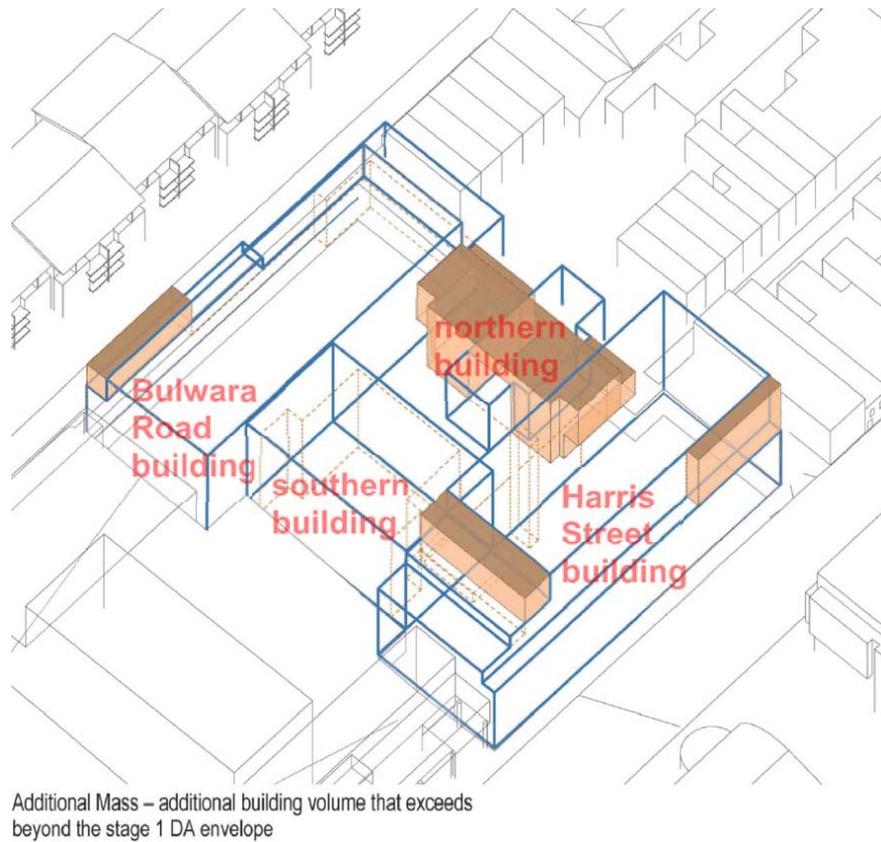
23. A development application (D/2015/1310) for the erection of 3 temporary advertising signs to the Harris Street elevation of the building was approved on 5 May 2016.
24. A further development application (D/2016/243) for the partial demolition of the building between Harris and Kirk Streets and the installation of a temporary electrical substation and associated fencing and structures was approved on 9 May 2016.

## PROPOSAL

25. The subject Section 96AA application seeks to modify the approved Stage 1 building envelope to achieve consistency with the winning design scheme by Architectus.
26. In summary, the application seeks the volumetric re-configuration of the approved massing of the building envelopes across the site (as indicated in **Figures 24 and 25** below), including:
  - (a) relocation of deep soil zones;
  - (b) reconfiguration of basement levels;
  - (c) rotation of the central building 90 degrees to create a central courtyard and northern through-site link from Harris Street and Kirk Street to Bulwara Road; and
  - (d) modifications to the building envelopes to subtract building volume from the northern, western and southern sides of the site add volume to the eastern side to Harris Street.



**Figure 24:** Diagrams indicating building mass and volume to be removed (blue).

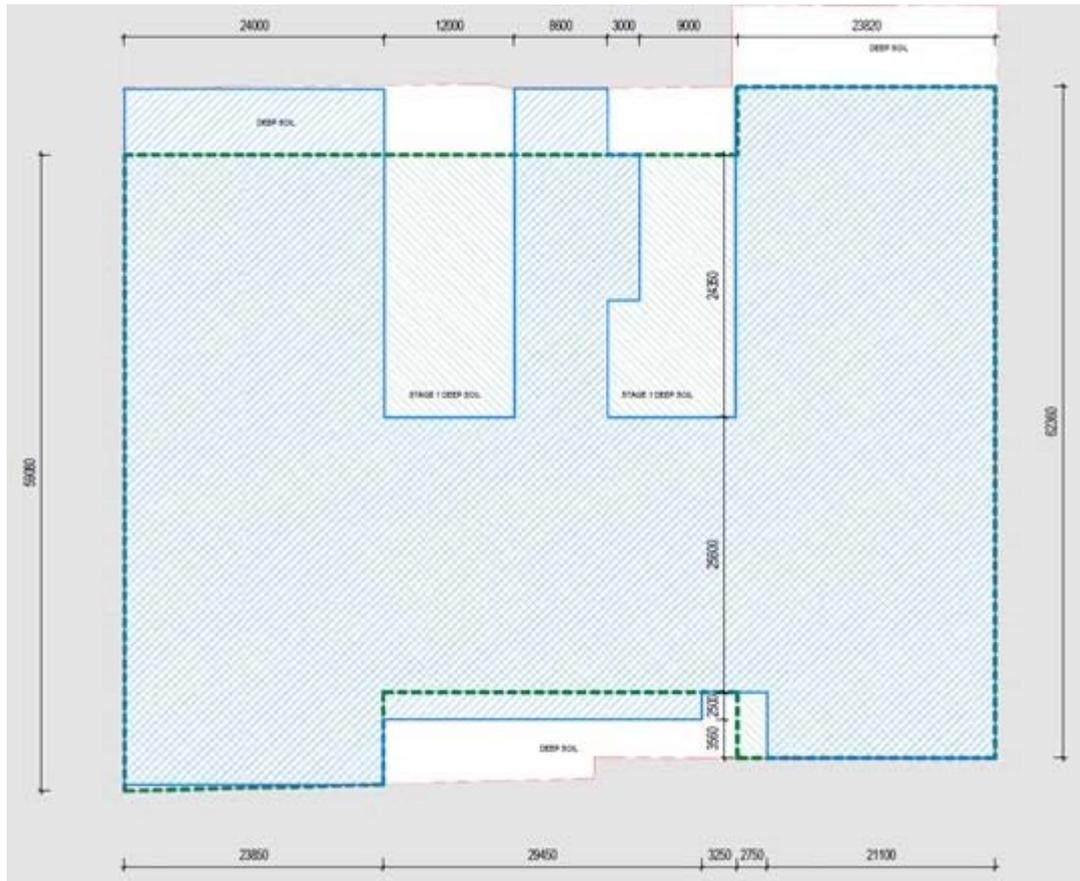


**Figure 25:** Diagrams indicating building mass and volume proposed to be added (tan).

27. The specific details of the modifications sought by the application are described below as follows:

(a) **Basement Levels** (as indicated in **Figure 26**)

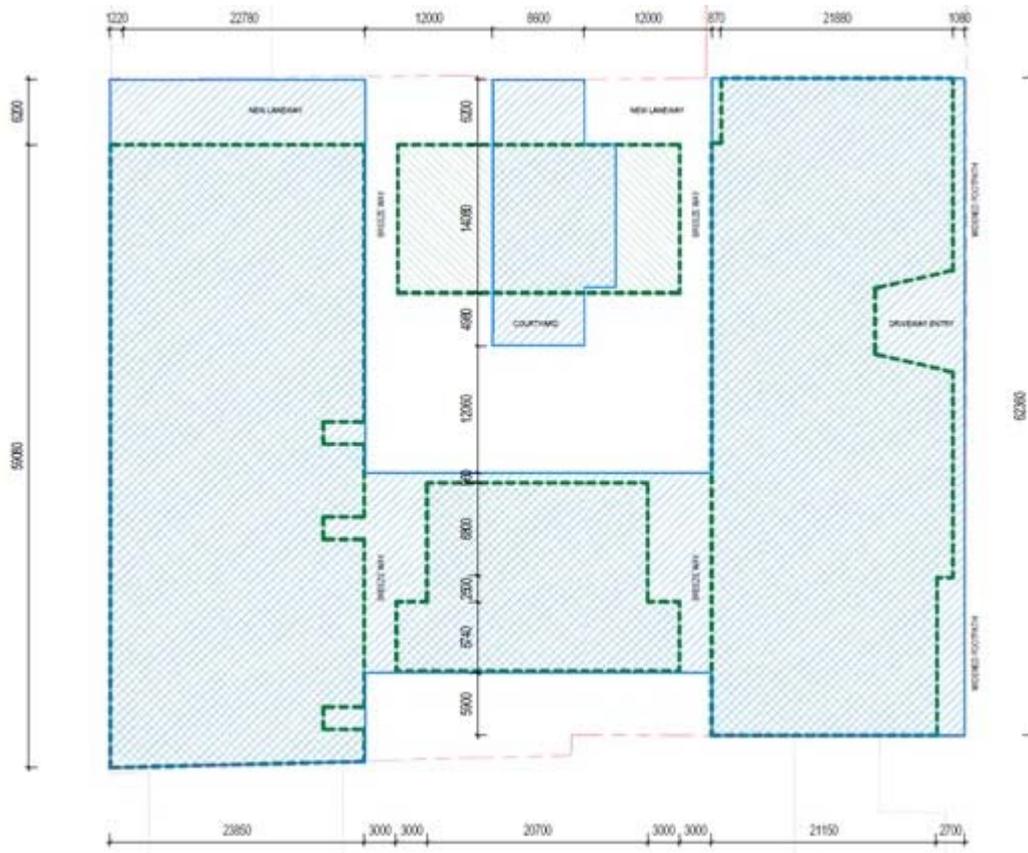
- (i) relocation of deep soil zones from the centre of the site to the northern and southern portions of the site;
- (ii) extension of the northern portion of the basement to Bulwara Road; and
- (iii) reconfiguration of the southern portion of the basement along the southern side boundary.



**Figure 26:** Comparison basement plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

- (b) **Ground Floor Level** (as indicated in **Figure 27**)
- (i) Reconfiguration of the dimensions and rotation of the central building by 90 degrees with a setback of 6.2 metres from the northern side boundary and 3 metres from the Harris Street and Bulwara Road buildings;
  - (ii) Separation of the southern building from the Harris Street and Bulwara Road buildings by 3 metres and 2.9 metres respectively;
  - (iii) Provision of a setback to the Bulwara Road building of 6.2 metres from the northern side boundary;
  - (iv) Provision of indentations to the eastern side of the Bulwara Road building to accommodate pedestrian entrances;
  - (v) Provision of setbacks and indentations on the eastern side of the Harris Street building to accommodate a driveway entry, an awning and future footpath widening,
  - (vi) Provision of an 870mm setback on the north western part of the Harris Street building.

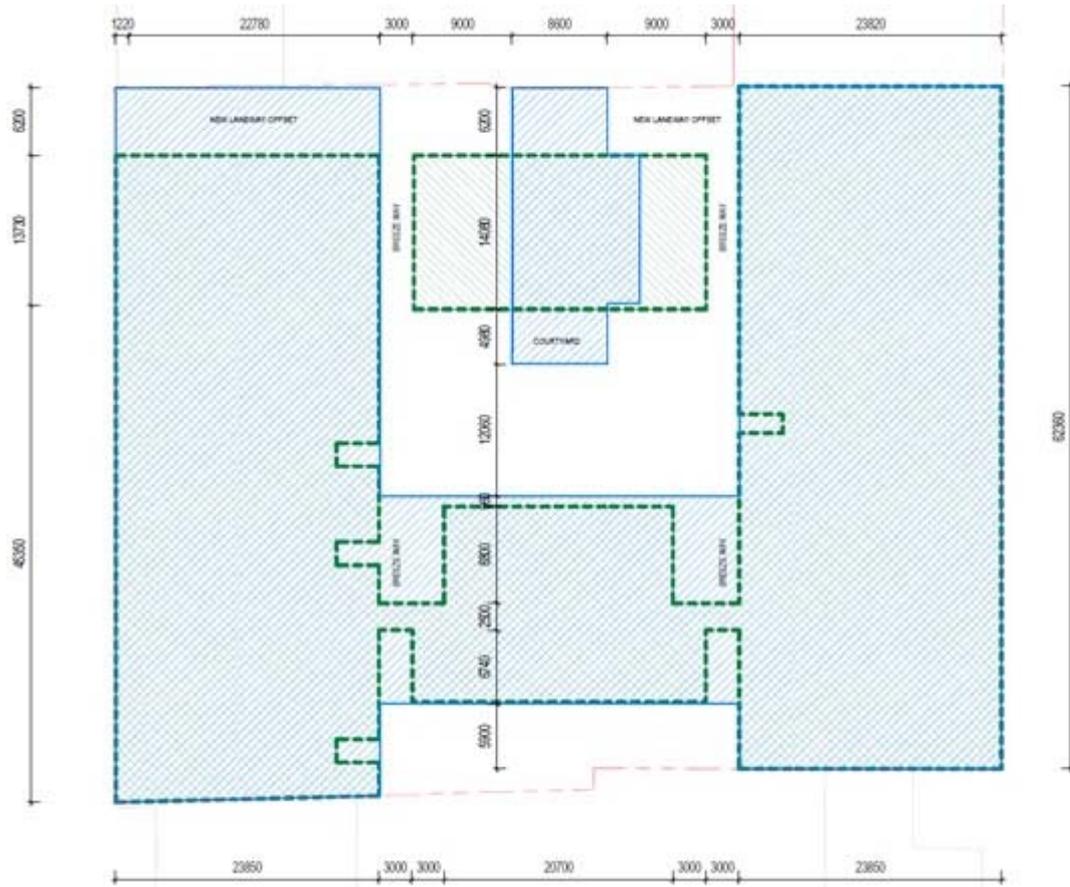
The amended plans submitted on 31 October 2016 provided a further 1.2 metre setback to the Harris Street building from the northern side boundary, in order to accommodate a new walkway to the northern side of the building in the Stage 2 development application.



**Figure 27:** Comparison ground floor plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

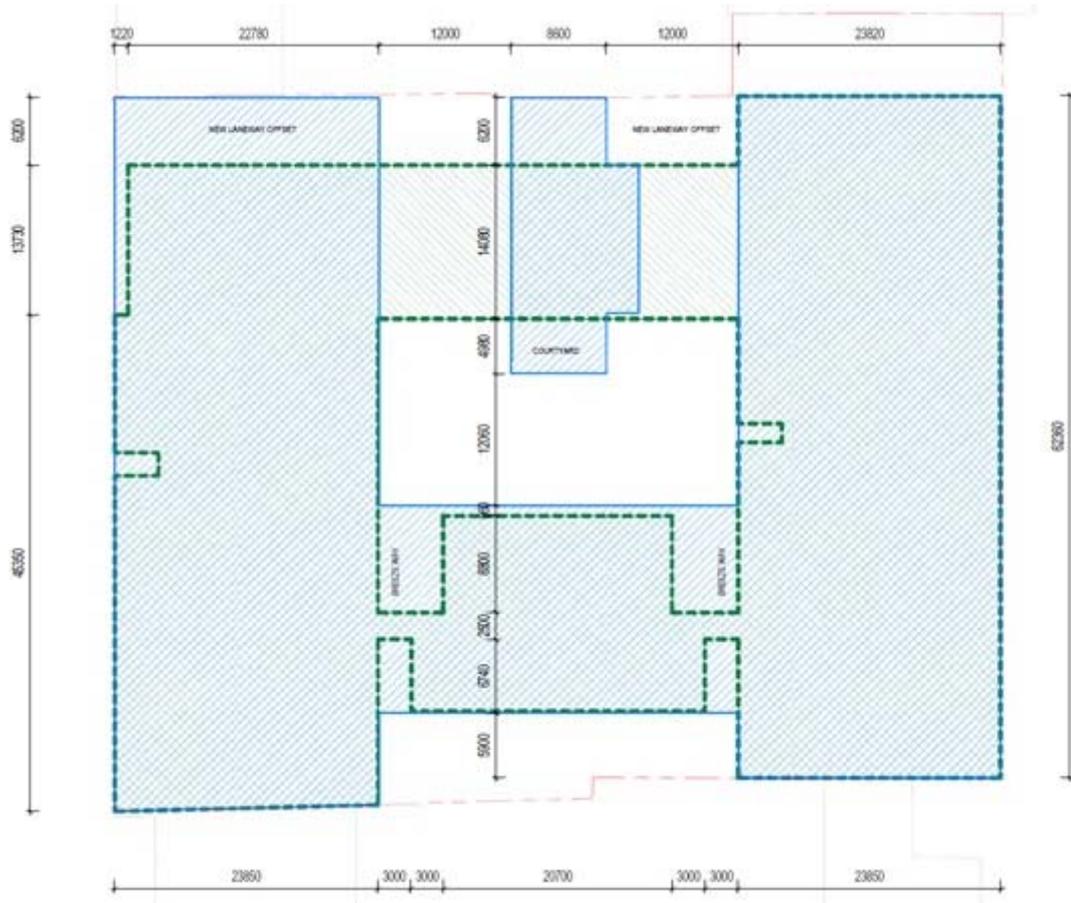
(c) **Level 1** (as indicated in **Figure 28**)

- (i) Reconfiguration of the dimensions and rotation of the central building by 90 degrees with a setback of 6.2 metres from the northern side boundary and 3 metres from the Harris Street and Bulwara Road buildings;
- (ii) Provision of indentations to the western side of the Harris Street building and eastern side of the Bulwara Road building;
- (iii) Provision of breezeway indentations to the eastern and western sides of the southern building; and
- (iv) Provision of a 1.22 metre setback from the street frontage to the Bulwara Road building for a length of 13.73 metres; and
- (v) Provision of a setback to the Bulwara Road building of 6.2 metres from the northern side boundary.



**Figure 28:** Comparison level 1 plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

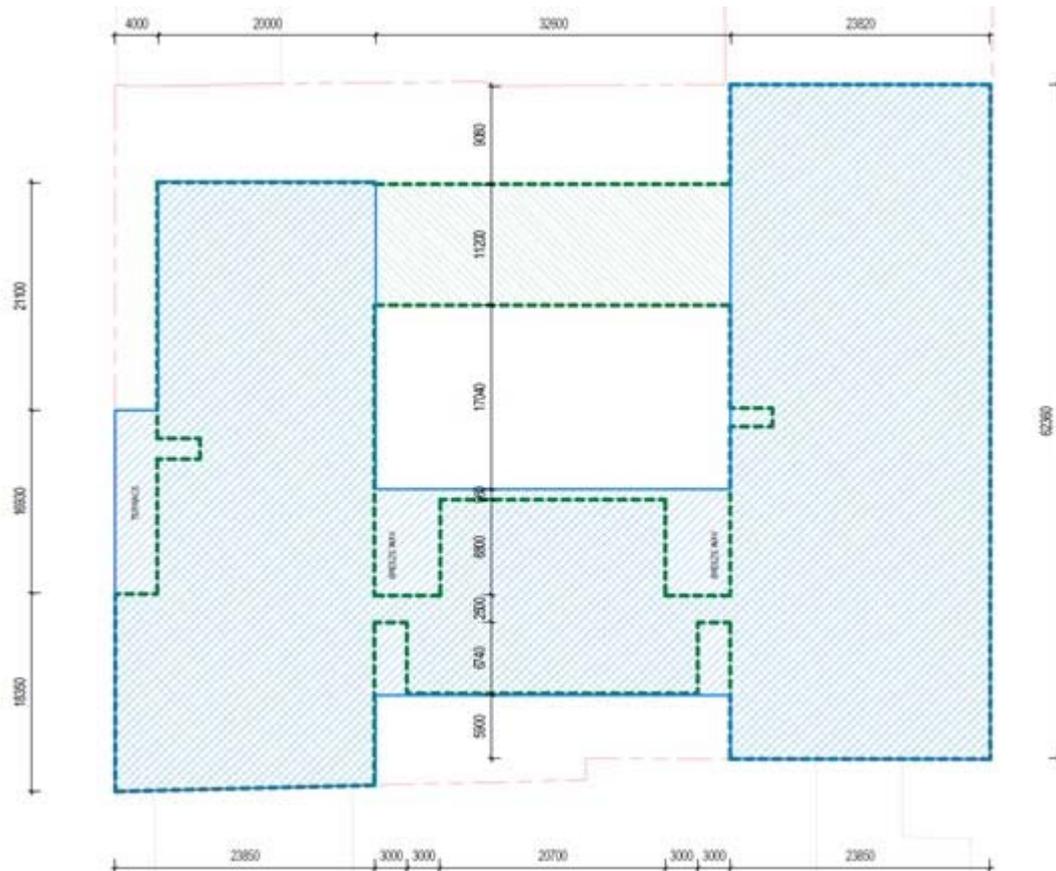
- (d) **Levels 2 and 3** (as indicated in **Figure 29**)
- (i) Reconfiguration of the dimensions and rotation of the central building by 90 degrees with a setback of 6.2 metres from the northern side boundary and no separation from the Harris Street and Bulwara Road buildings;
  - (ii) Provision of indentations to the western sides of the Harris Street and Bulwara Road buildings;
  - (iii) Provision of breezeway indentations to the eastern and western sides of the southern building; and
  - (iv) Provision of a 1.22 metre setback from the street frontage to the Bulwara Road building for a length of 13.73 metres; and
  - (v) Provision of a setback to the Bulwara Road building of 6.2 metres from the northern side boundary.



**Figure 29:** Comparison level 2 and 3 plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

(e) **Level 4** (as indicated in **Figure 30**)

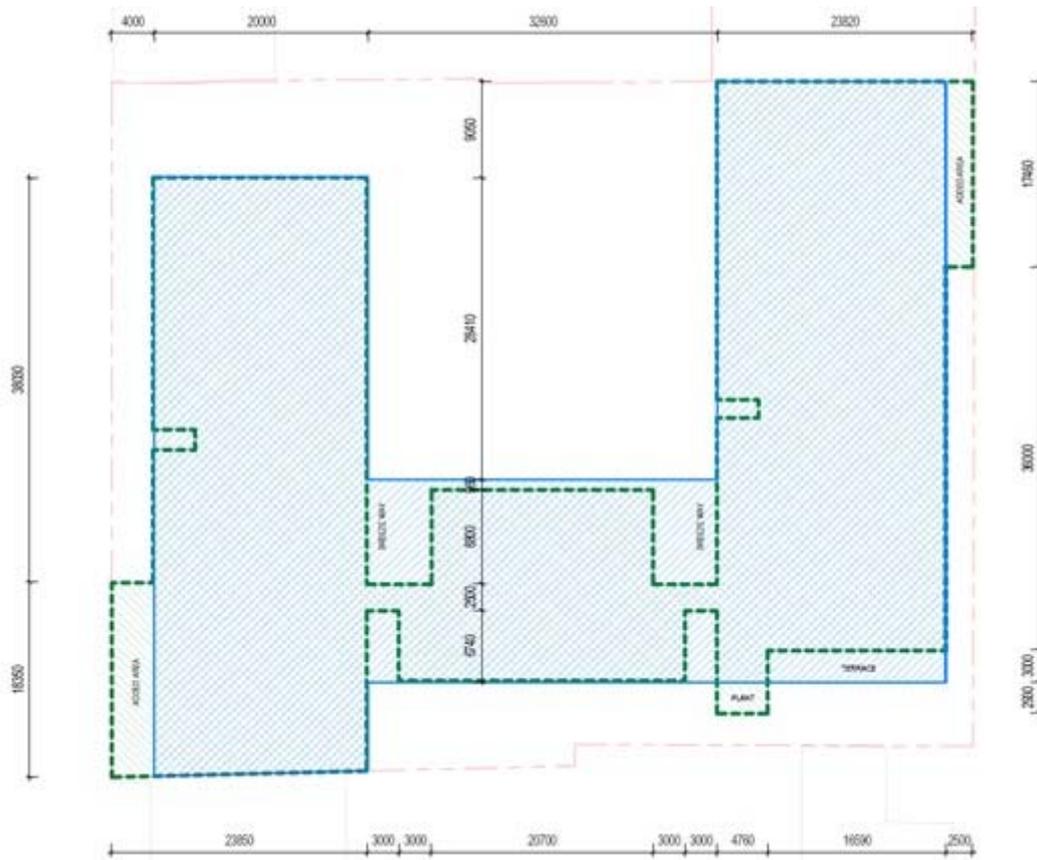
- (i) Reconfiguration of the dimensions and rotation of the central building by 90 degrees with a setback of 6.2 metres from the northern side boundary and no separation from the Harris Street and Bulwara Road buildings;
- (ii) Provision of indentations to the western sides of the Harris Street and Bulwara Road buildings;
- (iii) Provision of breezeway indentations to the eastern and western sides of the southern building;
- (iv) Provision of an additional 4 metre setback from the street frontage to the Bulwara Road building for a length of 16.93 metres; and
- (v) Provision of a setback to the Bulwara Road building of 6.2 metres from the northern side boundary.



**Figure 30:** Comparison level 4 plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

- (f) **Level 5** (as indicated in **Figure 31** below)
- (i) Additional massing measuring 2.5 metres width by 17.46 metres length to the Harris Street building envelope at its north-eastern corner;
  - (ii) Provision of indentations to the western sides of the Harris Street and Bulwara Road buildings;
  - (iii) Provision of breezeway indentations to the eastern and western sides of the southern building;
  - (iv) Additional massing measuring 4 metres width by 18.350 metres length to the Bulwara Road building envelope at its south-western corner; and
  - (v) Provision of a setback to the Bulwara Road building of 6.2 metres from the northern side boundary.

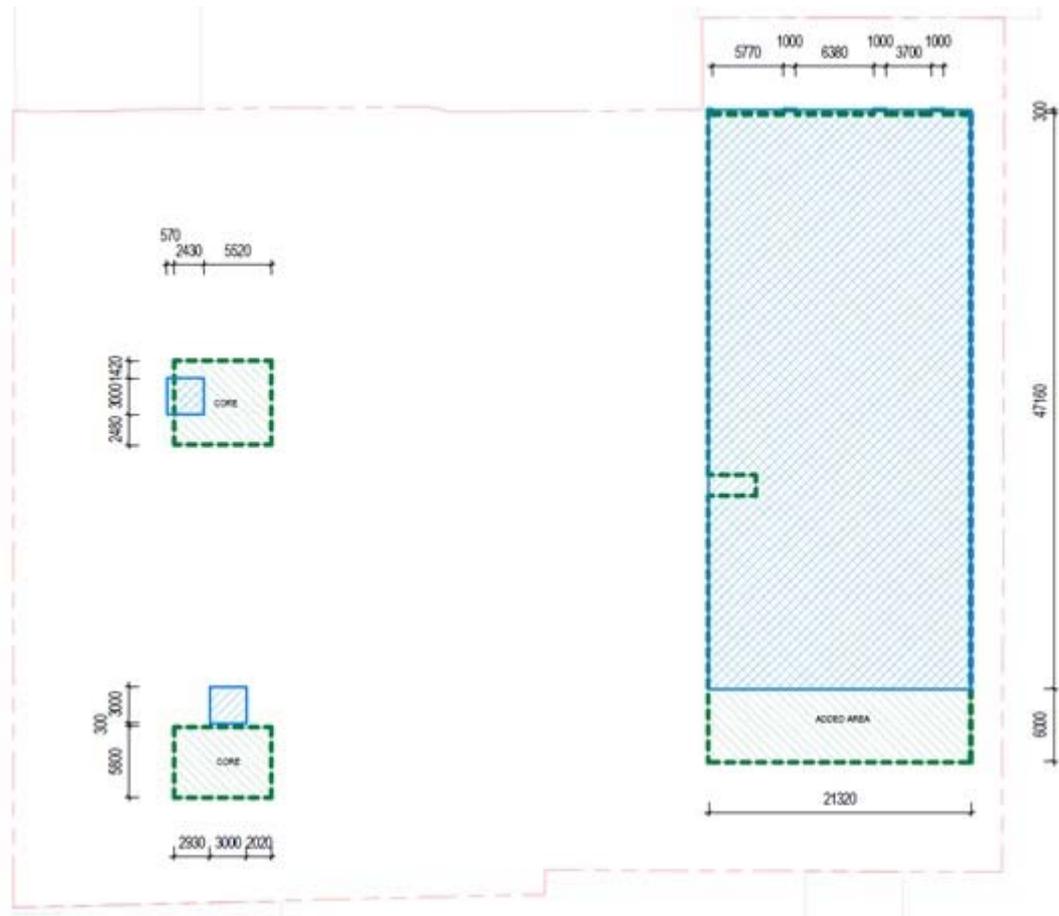




**Figure 32:** Comparison level 6 plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

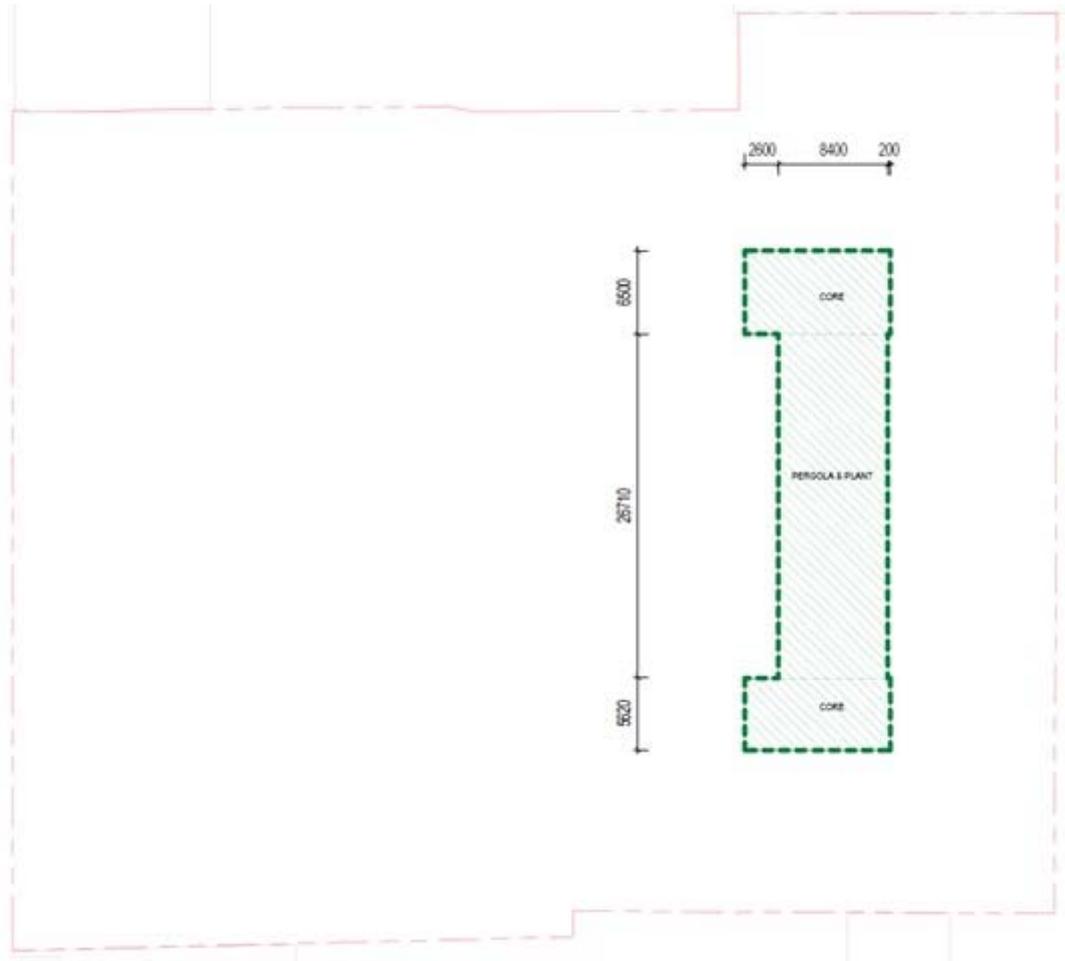
- (h) **Level 7** (as indicated in **Figure 33** below)
- (i) Additional massing measuring 2.5 metres width by 17.46 metres length to the Harris Street building envelope at its north-eastern corner;
  - (ii) Additional massing measuring 21.35 metres width by 6 metres length to the Harris Street building envelope on its southern side;
  - (iii) Provision of an indentation to the western side of the Harris Street building; and
  - (iv) Additional massing measuring 8.77 metres width by 39 metres length to the Bulwara Road building to accommodate building cores, plant and equipment within an architectural roof feature in the Stage 2 development application.





**Figure 34:** Comparison level 8 plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

- (j) **Level 9** (as indicated in **Figure 35** below)
  - (i) Additional massing measuring 11.2 metres width by 38.83 metres length to the Harris Street building to accommodate building cores, plant and equipment within an architectural roof feature in the Stage 2 development application.



**Figure 35:** Comparison level 9 plan showing proposed changes from the Stage 1 concept approval (blue) to those sought by the subject application (green)

### THRESHOLD TEST

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

### ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

29. Besides the matters discussed in this report, the assessment against the provisions of Section 79C of the *Environmental Planning and Assessment Act, 1979* are still relevant.
30. These include consideration of the State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development (SEPP 65) and the Sydney Local Environmental Plan 2012 (Sydney LEP 2012), which are discussed below in further detail.

### State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development (SEPP 65)

31. SEPP 65 applies to the proposal as it involves modification of the building envelopes for a residential apartment development of three or more floors and containing four or more apartments.

32. SEPP 65 provides that, in determining an application for a residential apartment development, the consent authority take into consideration a number of matters relating to design quality. These include relevant principles relating to context and scale, which are discussed below.

(a) **Principles 1 and 2:** Context and Neighbourhood Character, Built Form and Scale

The site is located within the B4 mixed use zone which permits mixed retail and residential developments. The subject locality of Harris Street, Kirk Street and Bulwara Road is diverse in terms of built form and scale, architectural building styles and land uses. The redevelopment of the site is considered appropriate in the context of the ongoing transition of Ultimo from a previously industrial area to a medium to high density mixed commercial and residential neighbourhood.

The modified proposal for mixed use building envelopes is permissible in the zone and is deemed to be contextually appropriate within the locality, subject to the retention of the approved 4 metre setback to the Bulwara Road building at levels 5 and 6. The original intent of the Stage 1 development consent was to minimise the bulk and scale of the development in this location and respond to the existing context of the street.

Subject to this setback being retained, the form and scale of the proposed modifications to the approved building envelopes is generally in accordance with the Stage 1 consent granted by the NSW Land and Environment Court. Despite proposed building height and setback departures, the form and scale is considered generally acceptable for the site and the surrounding area. Having regard to the existing, approved and future development within the Ultimo locality, the proposed built form and scale is supported.

The modified proposal is consistent with these design quality principles.

**Sydney Local Environmental Plan 2012 (Sydney LEP 2012)**

33. The relevant matters to be considered under the Sydney LEP 2012 for the proposed development are outlined below.

Compliance Table		
Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 22 metres is permitted.  A height of 32 metres is proposed.  Refer to the discussion provided below under the heading <b>Issues</b> .
4.4 Floor Space Ratio (FSR)	Yes	A maximum FSR of 4:1 is permitted.  The FSR capacity of the modified building envelopes has been tested in the assessment of the application and is achieved by the proposal.

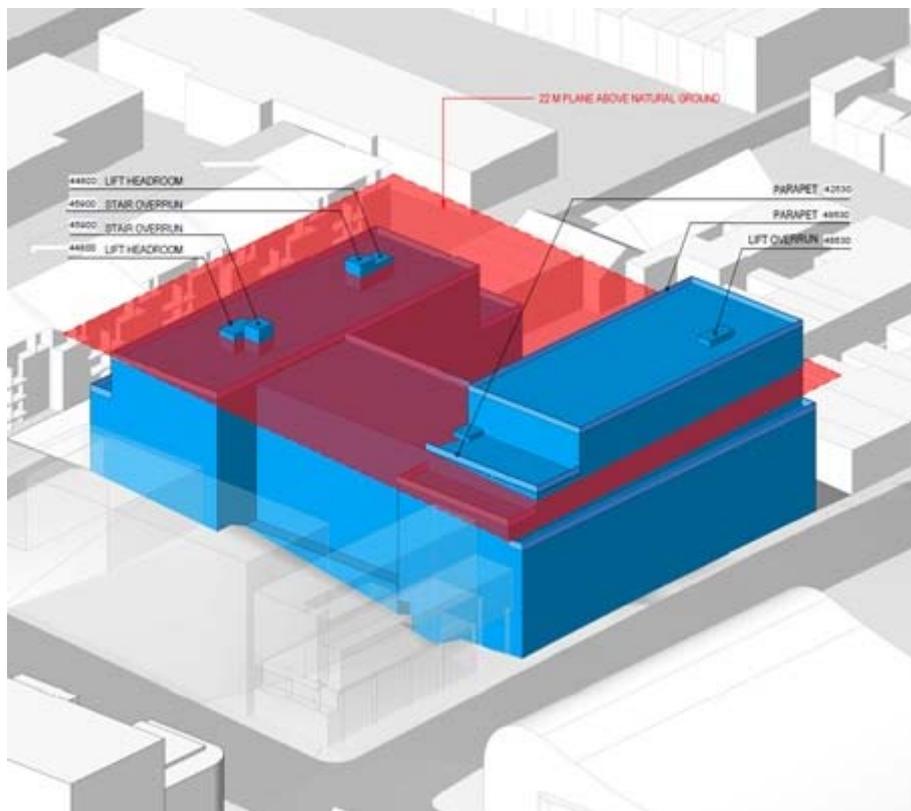
## ISSUES

### Variations to Building Envelope and Massing

34. As the extent of the proposed variations are not considered to be minor in nature, and in order to ensure consistency between staged applications as required pursuant to Section 83D of the *Environmental Planning and Assessment Act, 1979*, the subject application has been lodged to modify the Stage 1 building envelope.

### **Building Height**

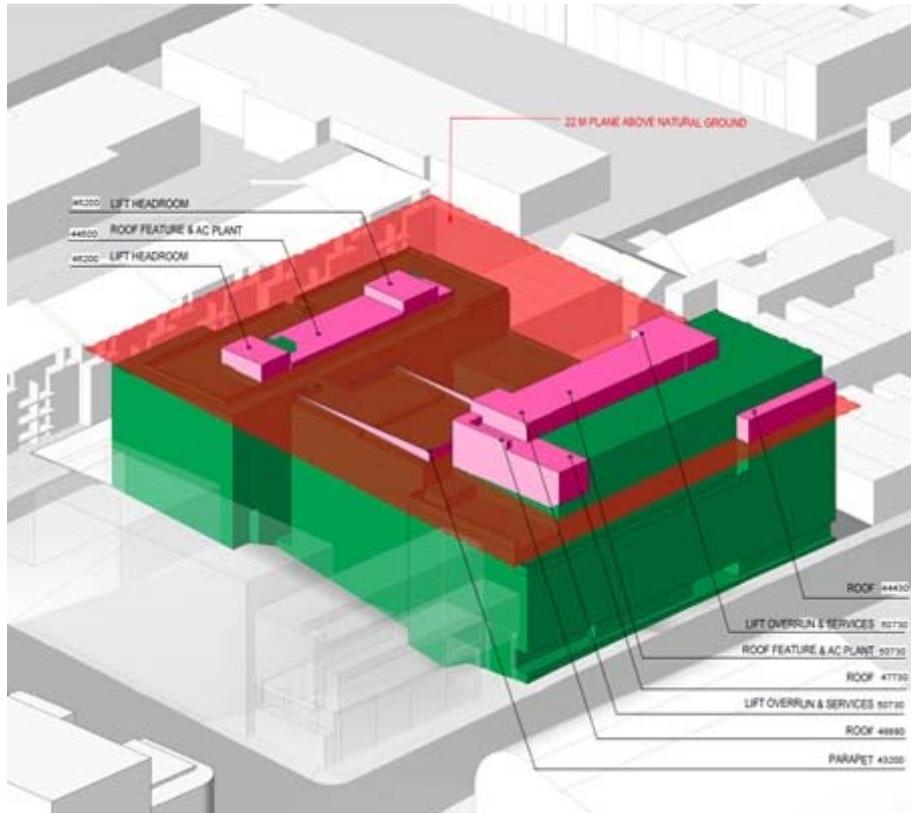
35. The Stage 1 building envelope was approved by the NSW Land and Environment Court on 23 July 2015 with a maximum height of 29.9 metres, as indicated in **Figure 36** below. This height is calculated from the lift overrun (RL 48.63 AHD) to the ground floor (RL 18.73 AHD) of the Harris Street building.



**Figure 36:** Approved Stage 1 building envelope (blue) with the 22 metre height plane (red)

36. Since the approval of the Stage 1 building envelope, the project has evolved as a result of:
- a competitive design process held in early 2016, with the Architectus scheme being nominated as the winning design;
  - detailed information prepared with respect to the design of lift overruns, and spatial requirements for plant and equipment to adequately service the building; and

- (c) refinement of the architectural expression of the building, to redistribute bulk and massing across the site to provide the northern laneway, breezeways between the buildings and architectural roof features to screen rooftop services.
37. Proposed modifications to the overall height and massing of the approved Stage 1 building envelope are shown in the diagram in **Figure 37** below.

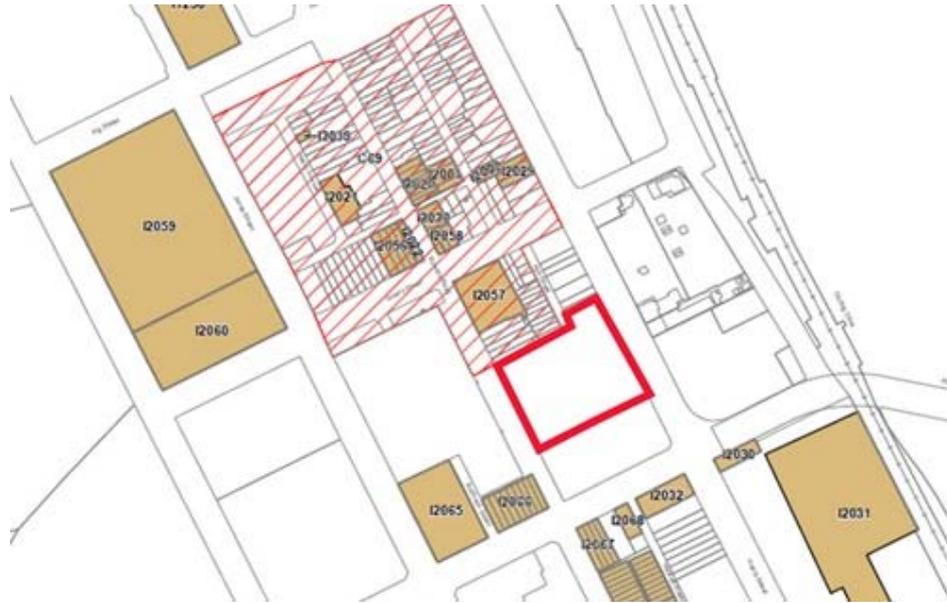


**Figure 37:** Proposed building envelope (green) with additional height and massing (pink)

38. Pursuant to Clause 4.3 of the Sydney LEP 2012, the site is subject to a maximum permitted building height of 22 metres.
39. The proposal seeks to modify the approved height by redistributing massing within the development, increasing the overall height from 29.9 metres to a maximum height of approximately 32 metres. This is measured from the top of the lift overrun, plant and services (RL 50.73 AHD), to the ground floor (RL 18.73 AHD) of the building.
40. The proposed modification represents a variation from the Stage 1 approval of 7% (2.1 metres) and a maximum variation of 45.5% (10 metres) to the building height development standard.
41. Additional height and massing is also sought to the north-western and southern sides of the Harris Street building, the parapet height of the southern building and the rooftop level of the Bulwara Road building.
42. The variations sought in respect of these building envelope modifications are summarised as follows:

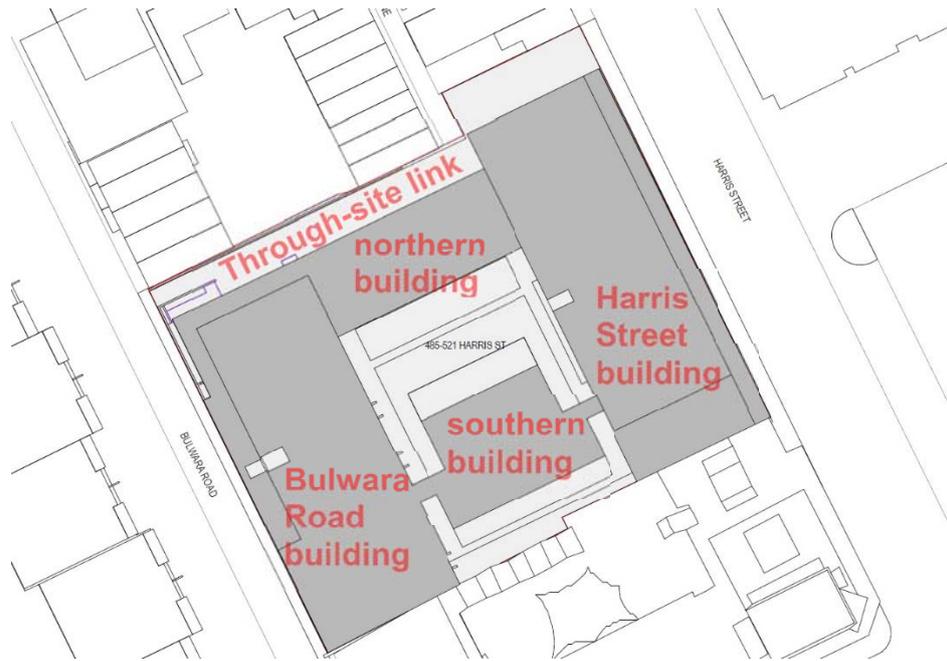
- (a) the maximum height of the envelope to the north-western side of the Harris Street building is proposed to be increased from 16.23 metres (RL 35.13 AHD) to 25.7 metres (RL 44.43 AHD), which represents a variation of 16.8% (3.7 metres) to the building height development standard;
  - (b) the maximum height of the envelope to the southern side of the Harris Street building is proposed to be increased from 23.43 metres (RL 42.33 AHD) to between 29 (RL 47.73 AHD) and 30.15 metres (48.88 AHD). This represents a variation from the Stage 1 approval of between 23.8% (5.57 metres) to 28.7% (6.72 metres) and a variation of between 31.8% (7 metres) and 37% (8.15 metres) to the building height development standard;
  - (c) the maximum height of the envelope to the southern building (the parapet) is proposed to be increased from approximately 22.53 metres (RL 41.43 AHD) to 24.47 metres (RL 43.2 AHD). This represents a variation from the Stage 1 approval of 7.8% (1.77 metres) and a variation of approximately 11.2% (2.47 metres) to the building height development standard; and
  - (d) the maximum height of the envelope to the Bulwara Road building is proposed to be increased from approximately 26.37 metres (RL 45.90 AHD) to 26.67 metres (RL 46.2 AHD) to the lift overruns. This represents a variation from the Stage 1 approval of 1% (0.3 metres) and variation of approximately 21.2% (4.67 metres) to the building height development standard.
43. As the subject application is a Section 96 modification, Clause 4.6 of the Sydney LEP 2012 relating to exceptions to development standards is not applicable. Nonetheless, consideration has been given to the objectives of the B4 Mixed Use zone, the objectives of the building height development standard pursuant to Clause 4.3 of the Sydney LEP 2012 and the tests in Clause 4.6 of the Sydney LEP 2012. This has been carried out to establish whether it is demonstrated that strict numeric compliance with the development standard is unreasonable or unnecessary in this instance.
44. It is considered that the additional height and massing can be supported on this site, and as proposed in the particular configuration designed by Architectus in the Stage 2 detailed design application (D/2016/367) being concurrently assessed.
45. The proposal is considered to be consistent with the objectives for building height under Clause 4.3 of the Sydney LEP 2012 for the following reasons:
- (a) The height of the development is appropriate to its site and context because:
    - (i) the site's sloping topography, which falls approximately 4-5 metres from west to east, establishes a similarly sloping maximum height plane of 22 metres across the site pursuant to Clause 4.3 of the Sydney LEP 2012;
    - (ii) the additional height and massing to the north-western and southern sides of the Harris Street building:
      - a. assists in addressing the Design Jury's concerns relating to the original scheme presenting a 'weak north-eastern corner' to Harris Street;

- b. permits the introduction of a vertical form and refined articulation to the north-eastern corner of the Harris Street facade in the Stage 2 detailed design to break down the dominant horizontal proportions of the building envelope in this location;
  - c. provides a sufficient break between the development (approximately 7.5 metres) and the two storey terrace forms to the north of the site;
  - d. permits the incorporation of a fourth circulation core at the southern end of the building in the Stage 2 detailed design to extend to the full height of the building, permitting the detailed design to better achieve the objectives of the ADG in relation to access, circulation, solar access and cross ventilation; and
  - e. does not pose significant environmental impacts, including those relating to overshadowing, views, privacy, visual bulk and scale and streetscape.
- (iii) the Stage 2 detailed design of the building and of building services to the Harris Street and Bulwara Road buildings has located the necessary plant and lift overrun centrally. This minimises any visual or other impacts protruding above the maximum 22 metre height plane and outside the previously approved Stage 1 envelope;
- (iv) the detailed design in the Stage 2 development application incorporates pergolas and landscaping to screen the rooftop overruns, plant and equipment described above; and
- (v) as discussed elsewhere in this report the negligible net overshadowing impacts of these elements are considered to be minimal in the dense urban context of Ultimo and are acceptable;
- (b) The development ensures an appropriate height transition to the adjacent Ultimo heritage conservation area (C69) and nearby heritage items at 97 Quarry Street and 20-36 William Henry Street (indicated in **Figure 38** below) in the following manner:



**Figure 38:** Extract from the Sydney LEP 2012 Heritage Map 8 with the site in red, adjacent heritage conservation area hatched in red and nearby heritage items in tan.

- (i) the Stage 2 detailed design results in a considerable improvement than the concept plan indicated in D/2014/1147, by creating open spaces along the site's northern boundary which separate the building envelopes from the conservation area;
- (ii) the proposed through-site link results in a physical separation between the building envelopes from the adjoining low-scale terrace houses to the north (as indicated in the site plan in **Figure 39** below). The gap significantly mitigates the visual impact of the development on the properties within the adjacent conservation area;
- (iii) the physical break and separation along the northern boundary facilitates the proposed variation to scale and form for the new buildings. Notably the Bulwara Road building has a 3 storey street wall and building recess at its north-west corner, which extends to its northern elevation
- (iv) this simplified building form and reduced scale results in a better relationship with the row of existing terrace houses between 264 and 272 Bulwara Road;
- (v) the proposal will also have positive heritage impact on Kirk Street, as the existing high wall is removed and open spaces are created at its southern end;
- (vi) the northern building is 5 storeys in height but has its top storey recessed and is set back from the boundary by 6.2 metres which becomes a virtual extension of Kirk Street; and
- (vii) the modifications to the building envelopes have no significant visual impact on nearby heritage items, including the Uniting Church and terrace houses to William Henry Street, due to the separation distance from the site.



**Figure 39:** Site plan indicating through-site link location and separation from the Ultimo heritage conservation area to the north of the site.

- (c) There are no significant impacts on existing view corridors or views from the public domain, thereby achieving equitable view sharing within the locality; and
  - (d) It presents an appropriate height transition from the tower development within the Central Sydney and Darling Harbour areas (which are currently undergoing transformation) to the lower scale heights within the locality of Ultimo.
46. The proposed modifications to the building envelopes are also considered consistent with the objectives for the B4 Mixed Use zone as:
- (a) they will continue to provide an acceptable mixture of compatible residential and retail land uses to meet the anticipated demand for additional accommodation and commercial services in Ultimo;
  - (b) they will continue to integrates residential and retail development in an accessible location close to public transport, pedestrian and bicycle path infrastructure; and
  - (c) the modified mixture of uses supports the viability of Ultimo as the ground floor retail uses to Harris Street continue provide activation to the public domain, while the residential uses proposed elsewhere throughout the site complement the existing residential character of the surrounding neighbourhood.
47. With consideration of the above matters, the proposed variation to the height of the building envelopes is deemed to be acceptable.

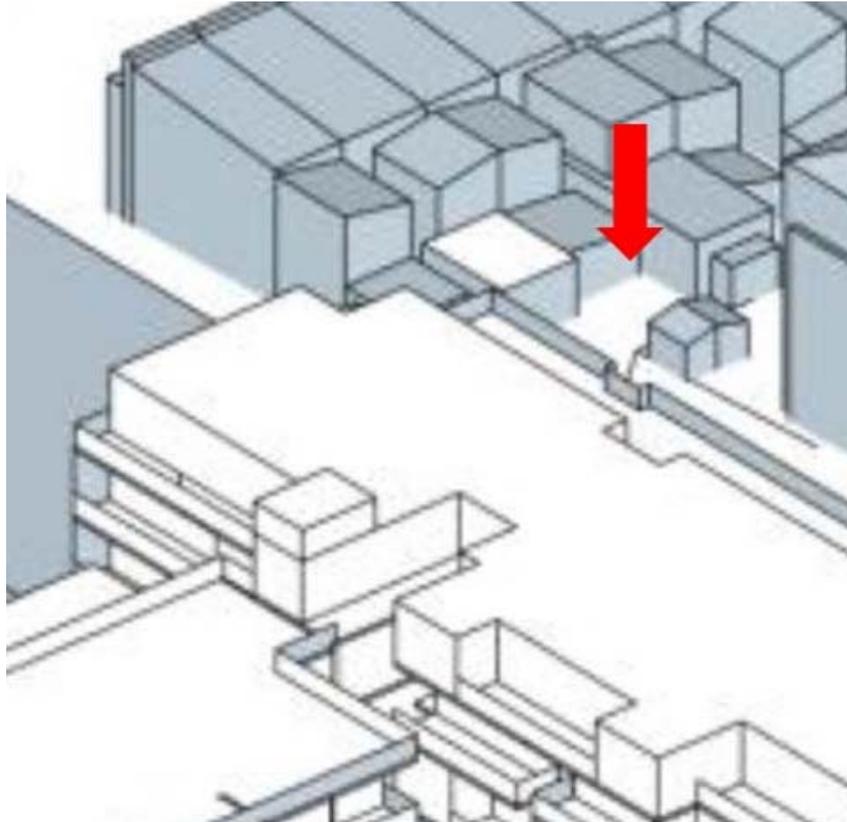
***Floor Plates, Massing, Setbacks***

48. The subject application also proposes modifications to:
- (a) re-orient the northern building envelope between the Harris Street and Bulwara Road buildings and increase its height to five storeys;
  - (b) provide indentations and breezeways to the four building envelopes; and
  - (c) redistribute building mass and volume to the south-eastern corner of the Bulwara Road building at levels 5 and 6 to comprise a 6 storey street wall.
49. The re-orientation and additional height and massing proposed to the northern building are considered to be acceptable and are supported on balance, as it:
- (a) provides a through-site link and physical separation to the lower scale development within the heritage conservation area to the north of the site;
  - (b) achieves compliance with both the 22 metre height standard and 5 storey height control applicable to the site; and
  - (c) achieves 9 metre setback from the northern boundary, which is consistent with the building separation provisions of the ADG which require a 9 metre setback from side boundaries for building heights between 5 and 9 storeys.
50. The proposed indentations and breezeways to the four building envelopes are also considered acceptable as they:
- (a) enable the Stage 2 detailed design to achieve the objectives of the ADG in relation to solar access, cross ventilation and circulation; and
  - (b) facilitate the provision of site access, including pedestrian access, vehicle access and access to the through-site link.
51. The redistribution of building mass and volume to the Bulwara Road building at levels 5 and 6 to comprise a 6 storey street wall is not supported as it
- (a) is inconsistent with the intent of the Stage 1 development consent granted by the NSW Land and Environment Court;
  - (b) results in overbearing visual bulk and scale impacts; and
  - (c) is inconsistent with the existing low to medium scale streetscape character of Bulwara Road.
52. Condition (2) of the Stage 1 development consent has therefore been recommended to be modified so as to not grant consent to the additional massing in this location.

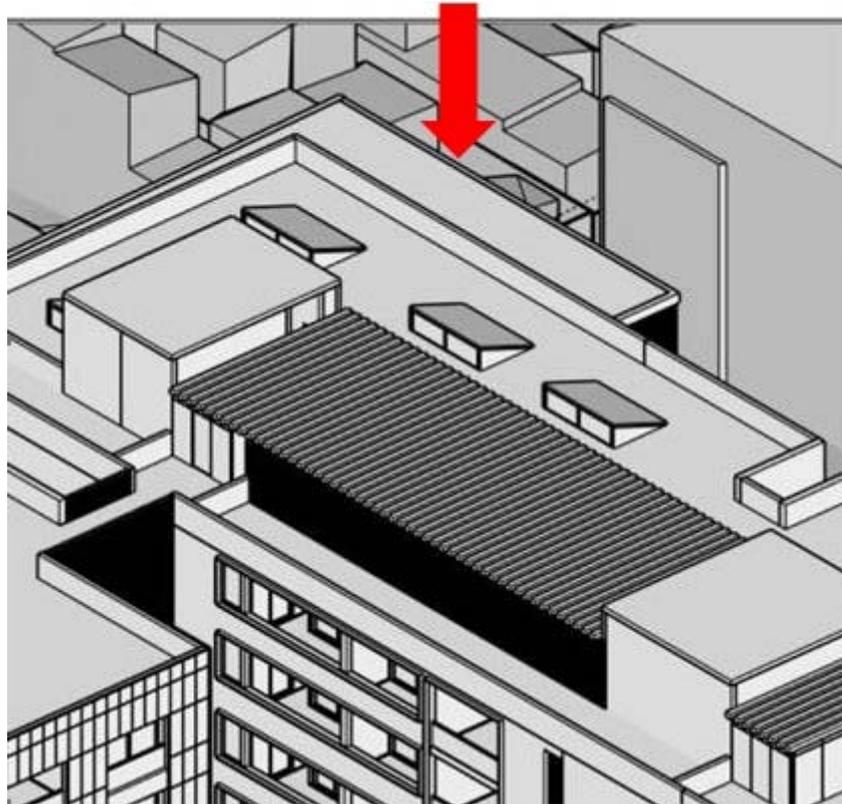
***Overshadowing***

53. The Stage 1 envelope approved by development consent D/2014/1137 resulted in new overshadowing to the rear private open space of the heritage terraces between 20-36 William Henry Street, Ultimo.

54. The additional massing proposed to Levels 5 and 6 to the Bulwara Road frontage of the site at its south-western corner creates overshadowing to the rear private open space of the terrace house at 32 William Henry Street, Ultimo (as depicted in the views from the sun in **Figure 40 and 41** below). This additional overshadowing reduces solar access to this private open space to less than 2 hours at the midwinter solstice.
55. The overshadowing from the additional massing does not comply with the relevant solar access provisions of the ADG or the Sydney DCP 2012. The proposed amendment to the building envelope is not supported as a result.



**Figure 40:** View from the sun at midwinter, with the Stage 1 envelope depicting the rear open space at 32 William Henry Street (red arrow) receiving solar access at 11.00am.



**Figure 41:** View from the sun at midwinter, with the Stage 2 envelope depicting the rear open space at 32 William Henry Street (red arrow) in shadow at 11.00am.

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

56. It is considered that the proposed modifications will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

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

57. The proposal is of a nature in keeping with the overall function of the site.

### **INTERNAL REFERRALS**

#### **Referral Details**

58. The assessment process and conditions of consent have been informed by advice from Council's:
- (a) Heritage Specialist; and
  - (b) Urban Design Specialist.
59. Where appropriate, the recommendations of this advice have been included as conditions for imposition on the modification of the Stage 1 development consent.

### **Design Advisory Panel**

60. The application was reviewed by the Design Advisory Panel on 7 June 2016.

61. The panel supported the introduction of the through-site link but raised concerns with application in relation to the extent of the proposed variations exceeding the Stage 1 building envelope.
62. The proposed modifications, with the exception of the additional building massing and volume to Bulwara Road, are considered to be consistent with the winning design of the architectural competition and have been assessed as having an acceptable outcome.
63. The Stage 2 detailed design proposal has been amended and refined to maximise its compliance with the ADG as detailed in the assessment report for the Stage 2 development application. The modified building envelopes are considered to be capable of achieving acceptable amenity, given the site constraints.

## EXTERNAL REFERRALS

### Notification, Advertising and Delegation

64. In accordance with Schedule 1 of the Sydney DCP 2012, the subject application was notified for a period of 14 days between 11 April 2016 and 26 April 2016. Eleven (11) submissions in objection to the proposal were received, with the issues raised in these submissions summarised and addressed as follows:

- (a) Is Council the consent authority for the determination of the application?

**Response** – The application is being reported for determination to the Central Sydney Planning Committee (CSPC) as the consent authority concurrently with the Stage 2 development application, due to the estimated cost of works exceeding \$50 million.

- (b) How does Council or the CSPC have the authority to overturn a decision of the Land and Environment Court in relation to the Stage 1 development application and development consent?

**Response** – Section 96AA of the *Environmental Planning and Assessment Act, 1979*, permits an applicant to propose modifications by consent authorities of consents granted by the Court. Unless the applicant exercises their right of appeal under Section 97AA of the Act, the CSPC is the consent authority for the determination of the application.

- (c) How can the Stage 2 development application be determined when the proposed modifications to the Stage 1 building envelope have not been determined?

**Response** – The two applications can be considered and determined concurrently by the CSPC.

- (d) The Stage 2 development application is based on the assumption that the Stage 1 modifications will be approved.

**Response** – The Stage 2 development application must be consistent with the Stage 1 development application and consent as required under Section 83D of the *Environmental Planning and Assessment Act, 1979*. A Section 96 modification to a Stage 1 development consent can be considered and determined concurrently with a Stage 2 development application to ensure that this occurs.

- (e) There is a lack of due process and transparency relating to the notification, assessment and determination of the applications.

**Response** – The applications have been notified in accordance with the requirements of the Sydney DCP 2012. The assessment of the proposed modifications has been carried out in accordance with the provisions of the Environmental Planning and Assessment Act, 1979 and the application has been referred to the CSPC for determination in accordance with its delegations.

- (f) The proposed modifications to the building envelope should not be approved as they exceed the Court-approved building envelope, which exceeded the City's planning controls.

**Response** – The assessment of the proposed modifications to the approved building envelope provided in this report has concluded that, on a merit basis, the modifications are acceptable and are recommended for approval.

- (g) The lift over-runs, plant and roof features on the Harris Street and Bulwara Road buildings exceed the maximum building height standard in the Sydney LEP 2012 and the approved building envelope heights should be maintained.

**Response** – These elements of the proposal have been incorporated into architectural roof features in the Stage 2 detailed design and, in accordance with Clause 5.6(2) of the Sydney LEP 2012, are permitted to exceed the maximum height of buildings development standard. Further, the recessed locations of these features does not pose significant environmental impacts, including overshadowing, views, privacy, streetscape and visual bulk and scale.

- (h) The reorientation of the central building, with its northern facade facing towards the rear private open space of terraces to Kirk Street and Bulwara Road, will facilitate overlooking from the apartment balconies and result in unacceptable privacy impacts.

**Response** – The detailed design in the Stage 2 development application has demonstrated that the potential for overlooking into the adjoining residential properties to the north has been mitigated through the provision of a wide range of privacy screening measures.

- (i) The additional fifth storey proposed to the re-oriented four storey building should not be approved.

**Response** – The proposed modifications to the height of the re-oriented northern building envelope between the Harris Street and Bulwara Road buildings are considered to be acceptable and are supported on balance, as they:

- (i) Achieve compliance with both the 22 metre height standard and 5 storey height control applicable to the site; and
- (ii) Achieve a 8.9 metre setback from the northern boundary, which is generally consistent with the building separation provisions of the ADG which require a 9 metre setback from side boundaries for building heights between 5 and 9 storeys.

- (j) The modifications to the re-oriented four storey building may not achieve compliance with the solar access requirements of the ADG.

**Response** – The reorientation of the central building from north-to-south to an east-to-west link between the Harris Street and Bulwara Road buildings is preferable, as it permits greater passive solar design to be incorporated into the Stage 2 detailed design and provides the potential to allow a greater number of apartments with a northern orientation than the originally approved building.

- (k) The modifications to provide additional height and massing to the Harris Street and Bulwara Road buildings should not be approved and the development should be contained to the approved Stage 1 building envelopes.

**Response** – The additional height and massing to the Harris Street building is supported as it:

- (i) Assists in addressing the Design Jury's concerns relating to the original scheme presenting a 'weak north-eastern corner' to Harris Street;
- (ii) Permits the introduction of a vertical form and refined articulation to the north-eastern corner of the Harris Street facade in the Stage 2 detailed design to break down the dominant horizontal proportions of the building envelope in this location;
- (iii) Provides a sufficient break between the development (approximately 7.5 metres) and the two storey terrace forms to the north of the site; and
- (iv) Does not pose significant environmental impacts, including those relating to overshadowing, views, privacy, visual bulk and scale and streetscape.

The additional height and massing to the Bulwara Road building is not supported as it:

- (v) is inconsistent with the intent of the Stage 1 development consent granted by the NSW Land and Environment Court;
  - (vi) Results in overbearing visual bulk and scale impacts;
  - (vii) Is inconsistent with the existing low to medium scale streetscape character of Bulwara Road; and
  - (viii) Creates unacceptable overshadowing impacts to the rear private open space of the heritage terrace house at 32 William Henry Street, Ultimo.
- (l) The proposed laneway to the northern side of the site should be widened to 9 metres width as it could potentially be an unsafe area at night.

**Response** – The 6.2 metre wide setback from the northern boundary achieves a width which is consistent with laneway typologies in the Ultimo locality.

Further, the Stage 2 development application has proposed adequate measures to address safety and Crime Prevention Through Environmental Design (CPTED) principles.

- (m) The existing common wall to 272 Bulwara Road, Ultimo must be retained as per the conditions of the NSW Land and Environment Court judgement for the Stage 1 building envelopes.

**Response** – The recommendation of the Stage 2 development application assessment report includes a condition requiring the retention of the brick party wall along the boundary between 485-521 Harris Street and 272 Bulwara Road, as its demolition would be likely to adversely affect the structural integrity of the terrace house.

- (n) The demolition of the existing wall and excavation proposed along the northern boundary of the site will be likely to have significant adverse structural, landscaping, privacy, security and health impacts on the residents of terraces to the north of the site along Kirk Street and Bulwara Road and is inconstant with the conditions of the Stage 1 development consent.

**Response** – It would be unreasonable to construe the northern wall of the existing building within the boundary of the subject site as a 'common wall' or require its retention.

The conditions in the Court judgement require the boundary wall between the site and the properties to the north to be 3 metres high, of solid construction, with a further 2 metre high screen of 50% transparency. The Stage 2 detailed design achieves this outcome and is considered acceptable in this regard.

## **PUBLIC INTEREST**

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

## **FINANCIAL IMPLICATIONS**

### **Section 94 Contribution**

66. A Section 94 contribution pursuant to the Ultimo Pyrmont Contributions Plan 1994 will be addressed by way of a condition of the Stage 2 development application.

### **Affordable Housing Contribution**

67. An affordable housing contribution pursuant to the State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes) and Clause 7.13 of the Sydney LEP 2012 will be addressed by way of a condition of the Stage 2 development application.

## **RELEVANT LEGISLATION**

68. The *Environmental Planning and Assessment Act 1979*.

## **CONCLUSION**

69. The proposed modifications of the approved building envelope, with the exception of the additional building massing to Bulwara Road at levels 4 and 5, will ensure consistency between staged development applications on the site as is required under Section 83D of the *Environmental Planning and Assessment Act, 1979*.

70. Since the approval of the Stage 1 building envelope, the project has evolved as a result of the competitive design process, provision of the through-site link along the northern boundary of the site, the detailed design of building services, and refinement of the architectural expression of the building. The proposed modifications to the Stage 1 building envelope, subject to the deletion of the additional building volume to Bulwara Road, do not result in significant additional impacts and are considered acceptable.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

(David Reynolds, Senior Planner)