

ITEM 9. SECTION 96 MODIFICATION APPLICATION: 57 ASHMORE STREET AND 165-175 MITCHELL ROAD ERSKINEVILLE**FILE NO:** D/2015/966/A**DEVELOPMENT APPLICATION NO:** D/2015/966/A**SUMMARY****Date of Submission:** 25 May 2016

Amended drawings and additional information submitted 10 October 2017

Further amended drawings and additional information submitted 13 November 2017

Applicant: Greenland Australia**Architect:** Architectus**Developer:** Greenland Golden Horse Investment Pty Ltd**Owner:** Greenland Golden Horse Investment Pty Ltd**Cost of Works:** \$636,739,189

Proposal Summary: This Section 96(2) application seeks consent to modify the Concept Approval for a mixed use precinct including residential, commercial and recreation uses, including building envelopes for nine (9) development blocks ranging in height between two (2) and eight (8) storeys and concept design for public domain works including new streets, a 7,446m² park, and new trunk drainage.

The proposed amendments principally involve altering the approved building envelopes to accommodate the detailed design DA for Blocks B and C (D/2017/681) resulting from a design excellence competition. Amendments to specific conditions are also proposed.

The scope of the proposed modifications include:

**Proposal Summary:
(continued)**

Block B

- Amended naming convention meaning Building B01 is now Building B02 and vice versa;
- **B01:** Partial widening of the building envelope from 20.5m to 21.5m, new partial sixth storey, and increased street wall height from three to four storeys;
- **B02:** New partial eighth storey; and
- **B03:** New setback level and extension of the building towards the north-east, increasing the Mitchell Road frontage from 30m to 35.3m.

Block C

- **C01:** Widening of the building envelope from approximately 20m to 22m on Levels 2 to 7, and from approximately 14.5m to 15.55m on Level 8;
- **C02:** Deletion of four storey segment connecting Building C01 and C02 above podium level, widening from 19.5m to 21.5m, and increased height on small part of roof level to allow for a lift overrun;
- **C03/C04:** Separation of approved three storey Building C03 fronting Mitchell Road into two sections, and re-orientation of the northern section to Stovemaker Lane as new Building C04. Building C04 is four storeys with a three storey street wall height; and
- **C03:** Remaining section of Building C03 increased to four storeys with a three storey street wall height, and the building envelope extended 13m further to the south.

Block I

- Inclusion of a podium level in the north western corner

Proposed Amended Conditions

- Condition 6 '*Stage 2 to be contained within approved envelope*' to reflect amended building envelopes;
- Condition 26 'Design and Construction of Roads' to better reflect the Voluntary Planning Agreement;
- Condition 32 'Car Share' to permit the use of on street parking spaces to satisfy car share requirements (not supported);
- Condition 34 'Intersection Upgrade Works – Mitchell Road/Maddox Street/Macdonald Street to better reflect the Voluntary Planning Agreement;

**Proposal Summary:
(continued)**

- Condition 35 'Intersection Upgrade Works – Ashmore Street / Mitchell Road' to permit the design work for this intersection to be submitted at a later date;
- Condition 42 'Public Art' to allow for the provision of a single holistic public art strategy for the Concept Approval site;
- Condition 50 'Road Network and Geometric Road Design' to better reflect the Voluntary Planning Agreement; and
- Condition 54 'RMS Requirements' to allow the condition to be satisfied at a later date, specifically prior to the issue of any development consent or approval being granted for Construction Phase 4.

The proposed modifications to the approved building envelopes will ensure consistency between staged development applications for the site, as required under Section 83D(2) of the *Environmental Planning and Assessment Act, 1979*.

As the cost of development is more than \$50 million, this Section 96 modification is therefore lodged for assessment and determination by the Central Sydney Planning Committee (CSPC).

The application was notified for a period of 14 days between 7 June and 22 June 2017. As a result of this notification there were three (3) submissions received. The submissions raised concern with the following:

- Massing;
- Traffic; and
- View loss

Design development of the detailed design DA for Blocks B and C necessitated further modifications to the building envelopes. Amended plans were submitted to Council on 10 October 2017. The amended application was re-notified for a period of 14 days between 11 October and 26 October 2017. No additional submissions were received.

As modified, the proposed building envelopes are considered to be contextually appropriate, responding to the site and surrounding development. The revised massing accommodates the design excellence floor space bonus, and provides improved outcomes for internal amenity, and reduces impacts to neighbouring properties, particularly in terms of overshadowing and overlooking.

**Proposal Summary:
(continued)**

In particular, the amended Block C building envelopes re-orientate a significant quantum of floor space to the north, break down the approved massing on Mitchell Road, and facilitate improved compliance with the natural cross ventilation and solar access requirements of the Apartment Design Guide.

The proposed modifications to the conditions will, for the most part, assist in ensuring the orderly economic development of the land.

Summary Recommendation:

The Section 96(2) modification application is recommended for partial approval.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy (Infrastructure) 2007

Attachments:

- A - Recommended Modified Conditions of Consent
- B - Planning Assessment Report for Original Concept Approval (D/2015/966)
- C - Selected Architectural Drawings

RECOMMENDATION

It is resolved that consent be granted to Section 96 Modification Application No. D/2015/966/A, subject to the amendment of the conditions (with modifications shown in ***bold italics*** (additions) and **~~strikethrough~~** (deletions), as detailed in Attachment A to the subject report:

BACKGROUND

The Site and Surrounding Development

1. A site visit was carried out on 24 October 2017.
2. The site is located within a light industrial estate known as the 'Ashmore Estate' in Erskineville, and occupies the majority of the eastern portion of the estate. The site is predominantly in use for light industry, however the western portion of the Ashmore Estate, which does not form part of this application, is transitioning to a residential area.
3. The site has an area of approximately 69,470m² and incorporates two parcels of land. The northern parcel of land is commonly known as 57 Ashmore Street, Erskineville, (otherwise known as 149-163 Mitchell Road) and has an area of 54,240m². The southern parcel of land commonly known as 165-175 Mitchell Road, Erskineville, has an area of 15,230m². The term 'the Site' refers to the overall site as outlined above.
4. The site is bound by Ashmore Street to the north, Mitchell Road to the east, and Coulson Street to the south. To the west, the site directly abuts other sites that form the western portion of the Ashmore Estate. There is a small site on the northern frontage that accommodates an electrical substation (1A Ashmore Street). That site does not form part of this application.
5. In the wider Sydney context, the site is located 2.25km south west of the CBD. The northern frontage of the site is located 590m walking distance from Erskineville Railway Station, and the southern frontage is 720m walking distance from St Peter's Railway Station. The site is approximately 1km north-east of the proposed Westconnex interchange at St. Peters. Sydney Park is in close proximity to the south.
6. In the immediate context, surrounding land uses are mixed. To the west, some sites are still in light industrial use, some have been developed for residential use, and others are construction sites for future residential uses. Directly adjacent to the north western corner of the site on Ashmore Street is a row of houses, which are predominantly of a workers cottage typology. Directly to the north of the site is the Erskineville Public Housing Estate, the Alexandria Erskineville Bowling Club and the Erskineville Oval. To the east, on the opposite side of Mitchell Road, the area is predominantly residential with some commercial, accommodating terrace dwellings and residential flat buildings interspersed with commercial uses, particularly on Mitchell Road. Directly to the south, on the western side of Mitchell Road, is the Sydney Park Village apartment complex. Sydney Park Village accommodates 810 apartments and some commercial uses over 17 buildings. To the south east of the site, on the eastern side of Mitchell Road, is the Huntley Green apartment complex, which accommodates 162 apartments and some commercial uses over three buildings.
7. The site is not a heritage item nor is it located in a heritage conservation area. Notwithstanding this, the electrical substation on the northern frontage is a heritage item of local significance (I503). The site also directly adjoins the Malcolm Estate Conservation Area (C24) to the north-west, the Erskineville Estate Conservation Area (C22) to the north, and the Cooper Estate Conservation Area (C2) to the east.

8. Photos of the site and surrounds are provided below:

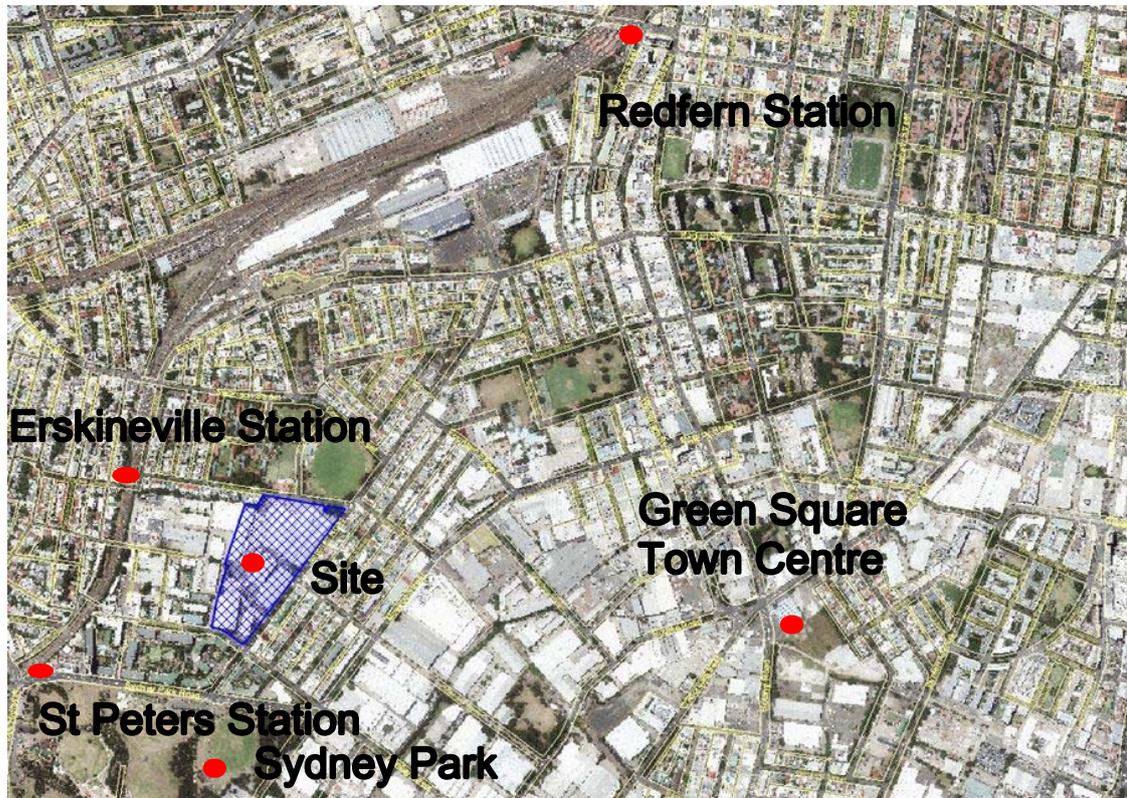


Figure 1: Aerial image of the site within the wider Sydney context



Figure 2: The subject site (hatched blue) within the Ashmore Estate (outlined in red), the location of a heritage substation that does not form part of the site is shown in yellow



Figure 3: North-western corner of the site, viewed from Ashmore Street looking south-west



Figure 4: Northern portion of the site, viewed from Ashmore Street looking south-east



Figure 5: Northern portion of the site, viewed from Ashmore Street looking south-west (including the heritage substation, which does not form part of the site)



Figure 6: Existing stand of Weeping Hills Figs viewed from the intersection of Ashmore Street and Mitchell Road, looking south-west



Figure 7: North western portion of the site, as viewed from Mitchell Road looking south-west



Figure 8: Eastern portion of the site, as viewed from the intersection of Maddox Street and Mitchell Road, looking north west



Figure 9: South eastern portion of the site, as viewed from the intersection of Maddox Street and Mitchell Road, looking south-west



Figure 10: South western corner of the site, as viewed from Coulson Street, looking north-east



Figure 11: Existing residential development directly adjoining the north-western corner of the site on Ashmore Street



Figure 12: Alexandria Erskineville Bowling Club to the north of the site viewed from the intersection of Ashmore Street and Fox Avenue looking north-west



Figure 13: Erskineville Oval to the north of the site viewed from the intersection of Ashmore Street and Fox Avenue looking north-east



Figure 14: Existing developments to the east on the opposite side of Mitchell Road



Figure 15: Existing developments to the east on the opposite side of Mitchell Road



Figure 16: Existing developments to the east on the opposite side of Mitchell Road



Figure 17: Existing residential flat development at 362 Mitchell Road, Alexandria, diagonally opposite the south eastern corner of the site



Figure 18: Existing residential flat development at 177-219 Mitchell Road, Erskineville, directly opposite the southern boundary of the site



Figure 19: Aerial photograph of the subject site, with the approximate site boundary outlined in red

HISTORY RELEVANT TO THE SECTION 96 APPLICATION

D/2015/966

9. On 17 November 2016, the Central Sydney Planning Committee (CSPC) endorsed a Concept Plan for the redevelopment of the eastern portion of the Ashmore Estate, Erskineville as a mixed use precinct including residential, commercial and recreation uses.
10. The proposal included building envelopes for nine (9) development blocks ranging in height between two (2) and eight (8) storeys and concept design for public domain works including new streets, a 7,446m² park, and new trunk drainage. These works are subject to a Voluntary Planning Agreement (VPA).
11. The CSPC delegated authority to the Chief Executive Officer (CEO) of the City of Sydney Council to determine the application following the completion of the public exhibition of the VPA. The CEO determined the application on 3 March 2017, subject to deferred commencement conditions requiring the VPA to be registered on title and for the building envelopes to be modified.
12. The deferred commencement conditions were satisfied on 18 October 2017, and the development consent is now active.

D/2017/681

13. A detailed design Development Application (DA) for Blocks B and C is being assessed currently. The proposal is for the construction of a four to eight storey residential flat building (Block B) providing 157 dwellings; and construction of a part four to eight storey mixed-use development (Block C) providing 171 dwellings, ground floor retail, and childcare centre; construction of a basement; landscaping; and public domain works.
14. Amongst other things, the purpose of this Section 96 application is to modify the approved building envelopes to accommodate the buildings proposed in the detailed design DA resulting from a design excellence competition.

PROPOSAL

15. This Section 96 (2) application seeks to modify the Concept Approval to amend the building envelopes to accommodate the detailed design DA for Blocks B and C.
16. Amendments to the conditions of consent are also proposed as follows:
 - (a) Condition 6 '*Stage 2 to be contained within approved envelope*' to reflect the amended building envelopes;
 - (b) Condition 26 '*Design and Construction of Roads*' to better reflect the VPA;
 - (c) Condition 32 '*Car Share*' to permit the use of on street parking spaces to satisfy car share requirements;
 - (d) Condition 34 '*Intersection Upgrade Works – Mitchell Road/Maddox Street/Macdonald Street* to better reflect the VPA';
 - (e) Condition 35 '*Intersection Upgrade Works – Ashmore Street / Mitchell Road*' to permit the design work for this intersection to be submitted at a later date';
 - (f) Condition 42 '*Public Art*' to facilitate the provision of a single holistic public art strategy for the Concept Approval site;
 - (g) Condition 50 '*Road Network and Geometric Road Design*' to better reflect the Voluntary Planning Agreement and the proposed staging requested in proposed new condition 4A (see above); and
 - (h) Condition 54 '*RMS Requirements*' to allow the condition to be satisfied at a later date, specifically prior to the issue of any development consent or approval being granted for Construction Phase 4.
17. The application was amended on 10 October, to reflect changes proposed in the concurrent detailed design DA for Blocks B and C, and further amended on 13 November 2014 to respond to Council officer's concerns regarding the accuracy of the previously submitted documentation.
18. The amended plans also include an undisclosed change to the approved Block I building envelope, which is now proposed to include a podium level in the north western corner. This change is not supported, as discussed in further detail in the Issues section below.

THRESHOLD TEST

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

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

20. Besides the matters discussed in this report, the assessment against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, contained in the report to the CSPC as its meeting on 17 November 2016 are still relevant.
21. A copy of the original planning assessment report for DA D/2015/966 is provided at Attachment B.

ISSUES**Modifications to the approved building envelopes**

22. The building envelopes approved in the original Concept Approval are only capable of achieving the base Floor Space Ratio (FSR) of 1.75:1. It was therefore anticipated from the outset that amendments to the building envelopes would be required in order to accommodate additional floor space awarded for the attainment of design excellence. The detailed design proposed for Blocks B and C (the subject of separate DA D/2017/681) results in a number of variations to the Concept Approval building envelopes.
23. 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 seeks to modify the Concept Approval building envelopes.
24. Figures 20 and 21 below demonstrate that the detailed design for Blocks B and C results in vertical and lateral protrusions outside the approved building envelopes (shown in blue).

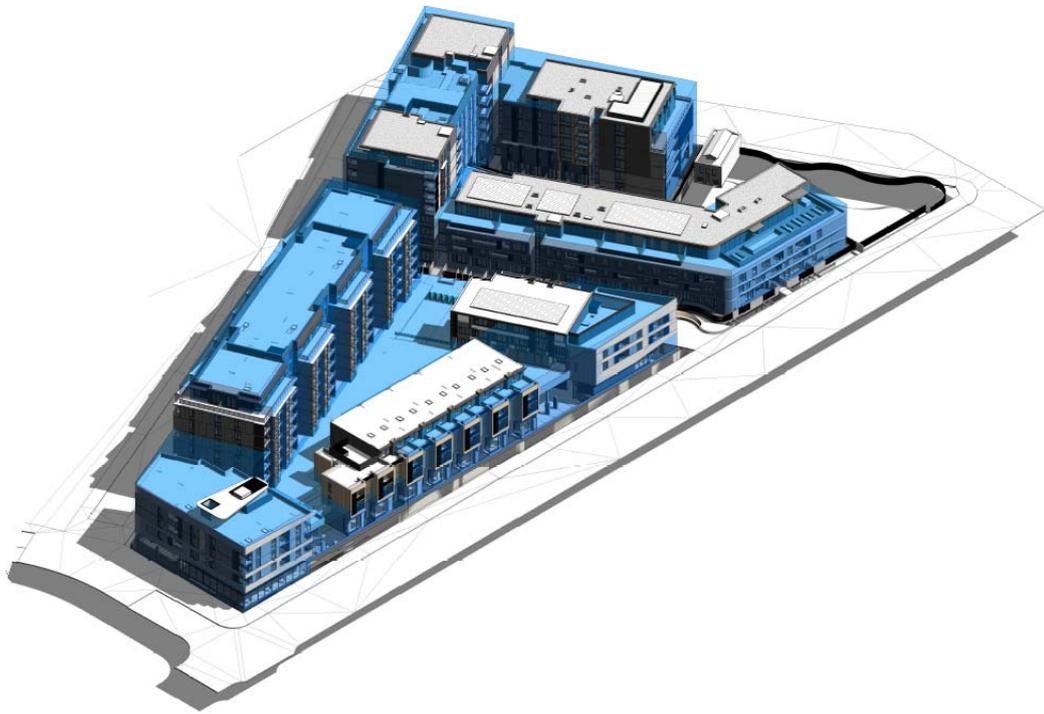


Figure 20: Axonometric drawing of the detailed design proposed for Blocks B and C within the existing Concept Approval building envelopes, as viewed from an elevated position to the south-east



Figure 21: Axonometric drawing of the detailed design proposed for Blocks B and C within the existing Concept Approval building envelopes, as viewed from an elevated position to the north-west

25. In order to remedy these inconsistencies, the scope of the proposed modifications to the building envelopes is as follows:

(a) **Block B**

Building B01 (fronting Ashmore Street)

- (i) partial widening of the building envelope from 20.5m to 21.5m;
- (ii) new partial sixth storey; and
- (iii) increased street wall height from three to four storeys.

Building B02 (fronting Foundry Street)

- (i) new partial eighth storey.

Building B03 (fronting Stovemaker Lane and Mitchell Road)

- (i) new setback level fronting the future Stovemaker Lane and Mitchell Road; and
- (ii) extension of the building envelope towards the north-east, increasing the extent of the Mitchell Road frontage from 30m to 35.3m.

(b) **Block C**

Building C01 (fronting Foundry Street)

- (i) widening of the building envelope from approximately 20m to 22m on Levels 2 to 7, and from approximately 14.5m to 15.55m on Level 8.

Building C02 (fronting Macdonald Street)

- (i) deletion of four storey segment connecting Building C01 and C02 above podium level;
- (ii) minor height increase on small part of roof level to allow for a lift overrun; and
- (iii) widening of the building envelope from 19.5m to 21.5m.

Building C03 (fronting Mitchell Road)

- (i) Separation of the approved three storey building into two sections, and re-orientation of the northern section to Stovemaker Lane as new Building C04. Building C04 is four storeys with a three storey street wall height;
- (ii) The remaining section fronting Mitchell Road is increased to four storeys with a three storey street wall height, and the building envelope extended 13m further to the south.

26. Separate to the modifications to Blocks B and C, the amended drawings submitted in October 2017 include an undisclosed change to the Block I building envelope. Specifically, the amended envelope provides a podium level with an area of approximately 276m² in the north western corner of the Block. Refer to the discussion of Block I under the heading issues.
27. The amended building envelopes for Blocks B and C accommodate the detailed design in its entirety (refer to Figures 22 and 23 below).

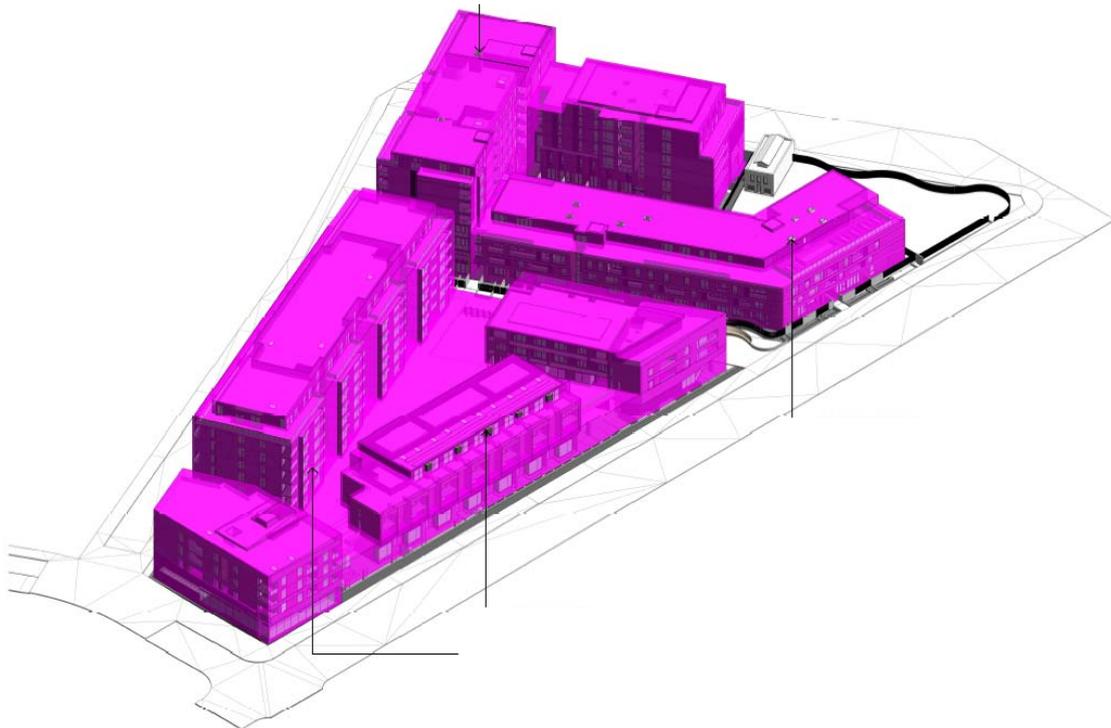


Figure 22: Axonometric drawing of the detailed design proposed for Blocks B and C within the amended building envelope, as viewed from an elevated position to the south-east

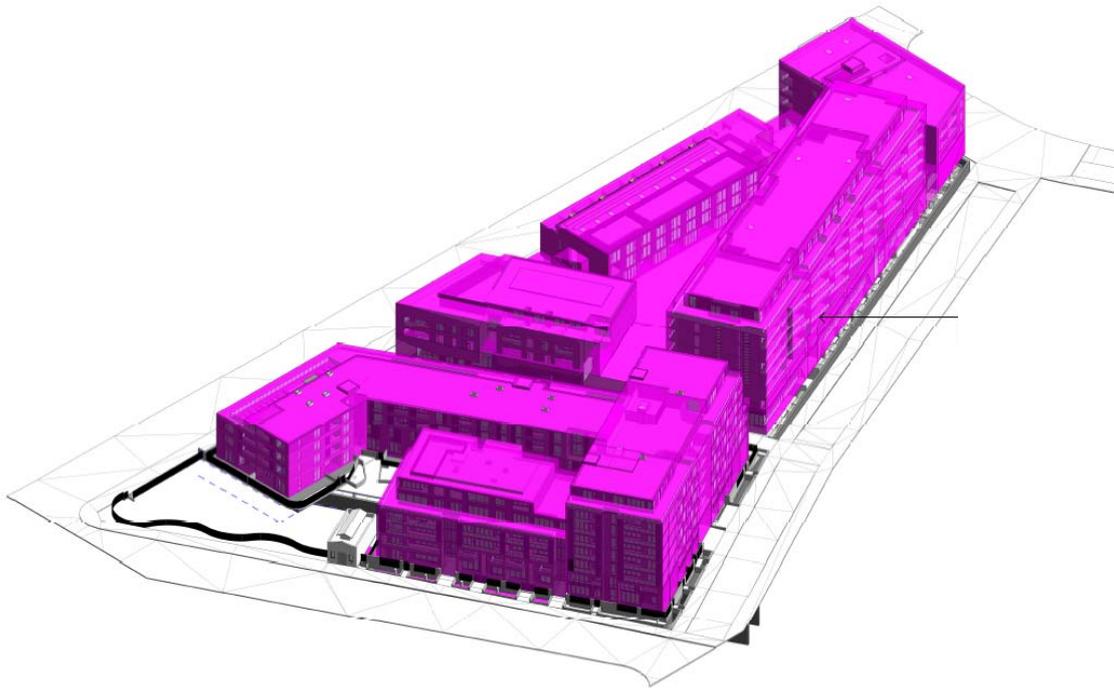


Figure 23: Axonometric drawing of the detailed design proposed for Blocks B and C within the amended building envelope, as viewed from an elevated position to the south-east

28. Figure 24 illustrates the currently approved building envelopes for Blocks B and C, and Figure 25 illustrates them as proposed to be amended, with key changes to the height in storeys and street wall heights highlighted in blue.

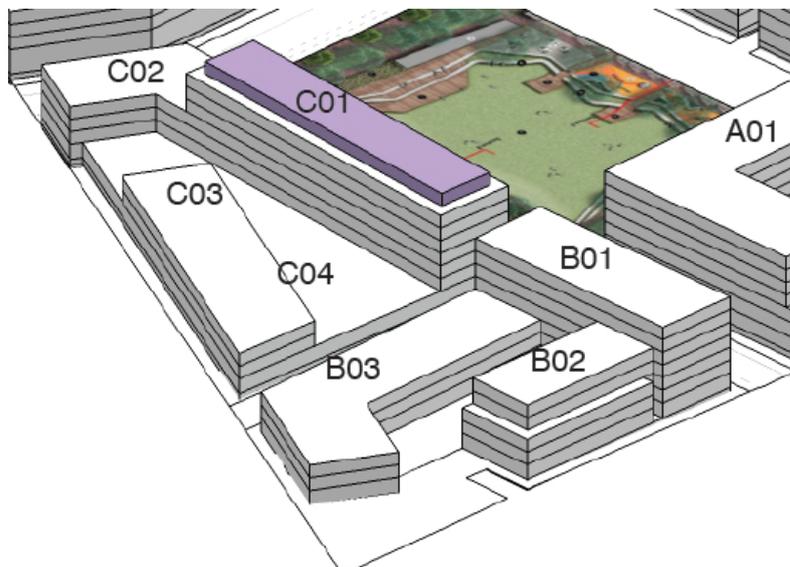


Figure 24: Axonometric drawing illustrating the existing Concept Approval building envelopes for Blocks B and C.

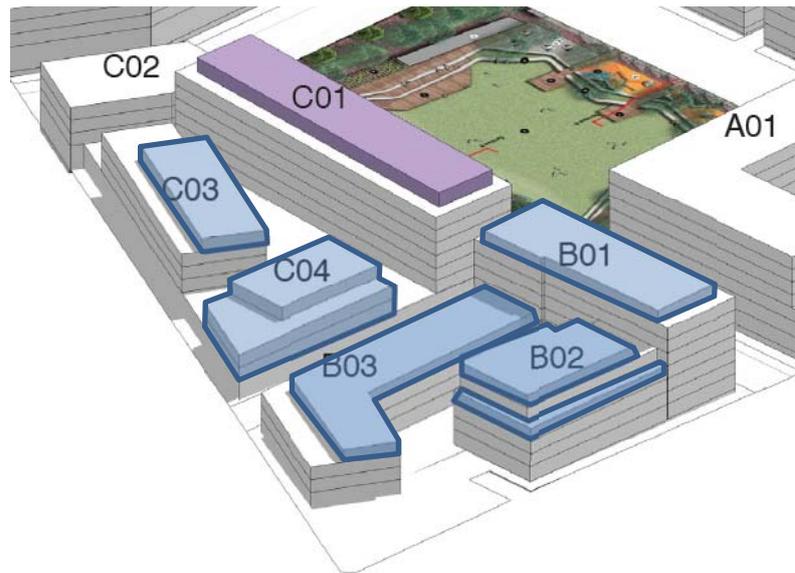


Figure 25: Axonometric drawing illustrating the proposed building envelopes for Blocks B and C, with key changes to storeys and street wall heights highlighted in blue.

Overshadowing

29. Updated shadow analysis has been submitted, which demonstrates that the amended building envelopes do not result in unacceptable overshadowing to the surrounding locality. More specifically, and as illustrated in Figures 26 to 28 below, the amendments result in no additional overshadowing to the future McPherson Park, a similar level of overshadowing to future Block F on the opposite side of Macdonald Street, and no increase in overshadowing to properties on the opposite side of Mitchell Road due to the separation of Building B03 into two sections.

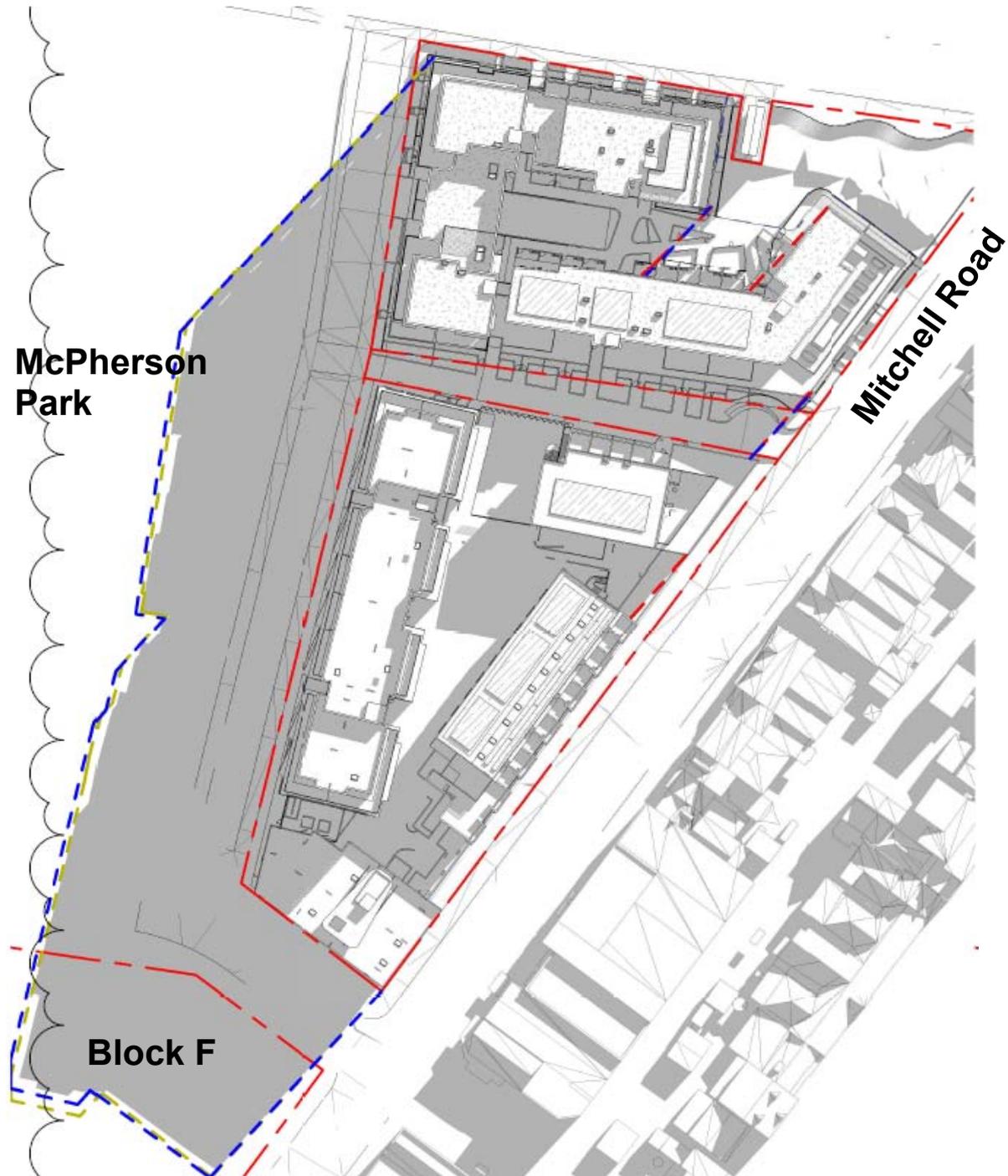


Figure 26: 9am mid-winter shadow analysis. The blue line is the existing Concept Approval shadow, the yellow line is the proposed amended building envelope shadow, and the actual shadows are those cast by the detailed design DA as currently proposed.

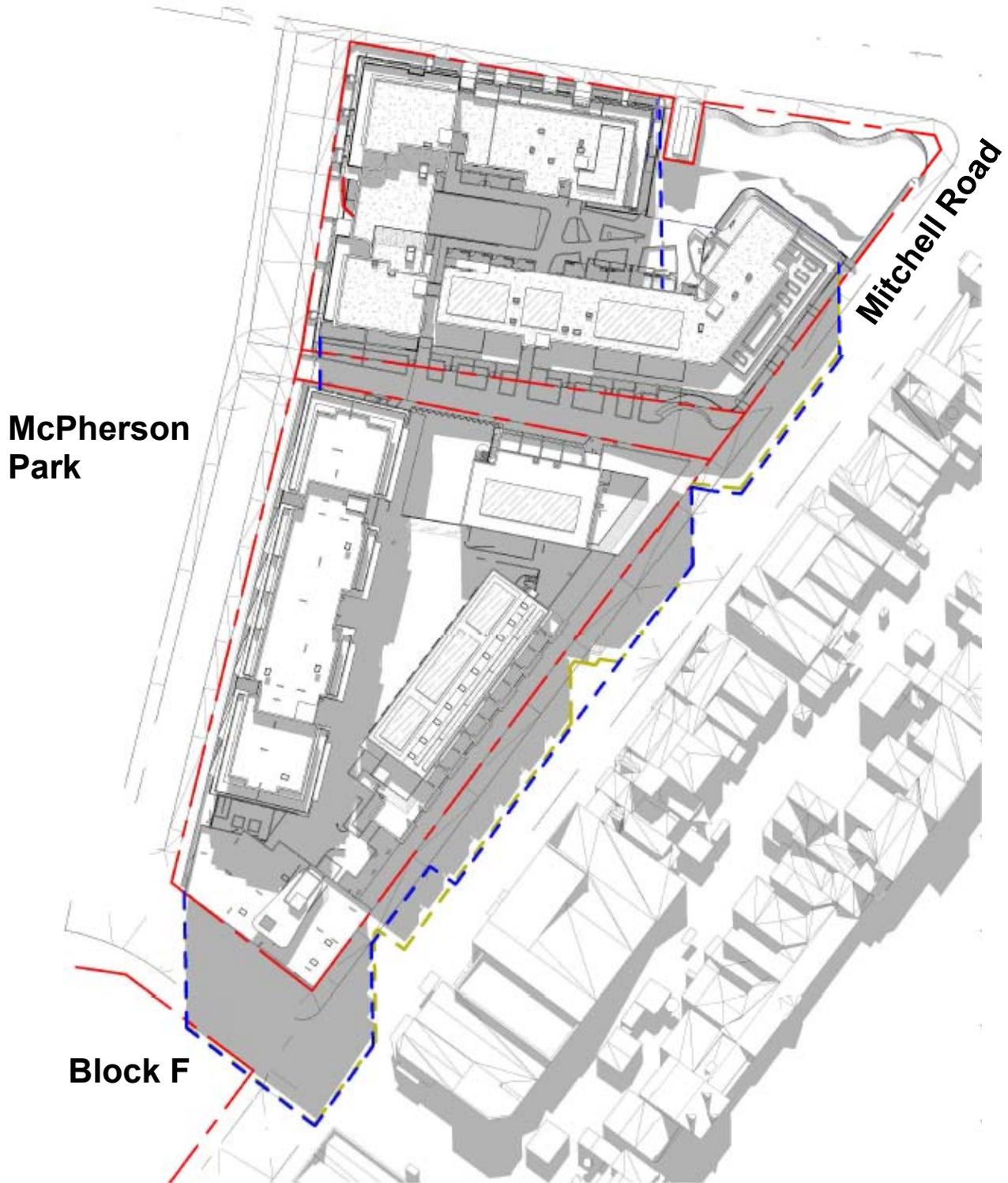


Figure 27: 12 noon mid-winter shadow analysis. The blue line is the existing Concept Approval shadow, the yellow line is the proposed amended building envelope shadow, and the actual shadows are those cast by the detailed design DA as currently proposed.

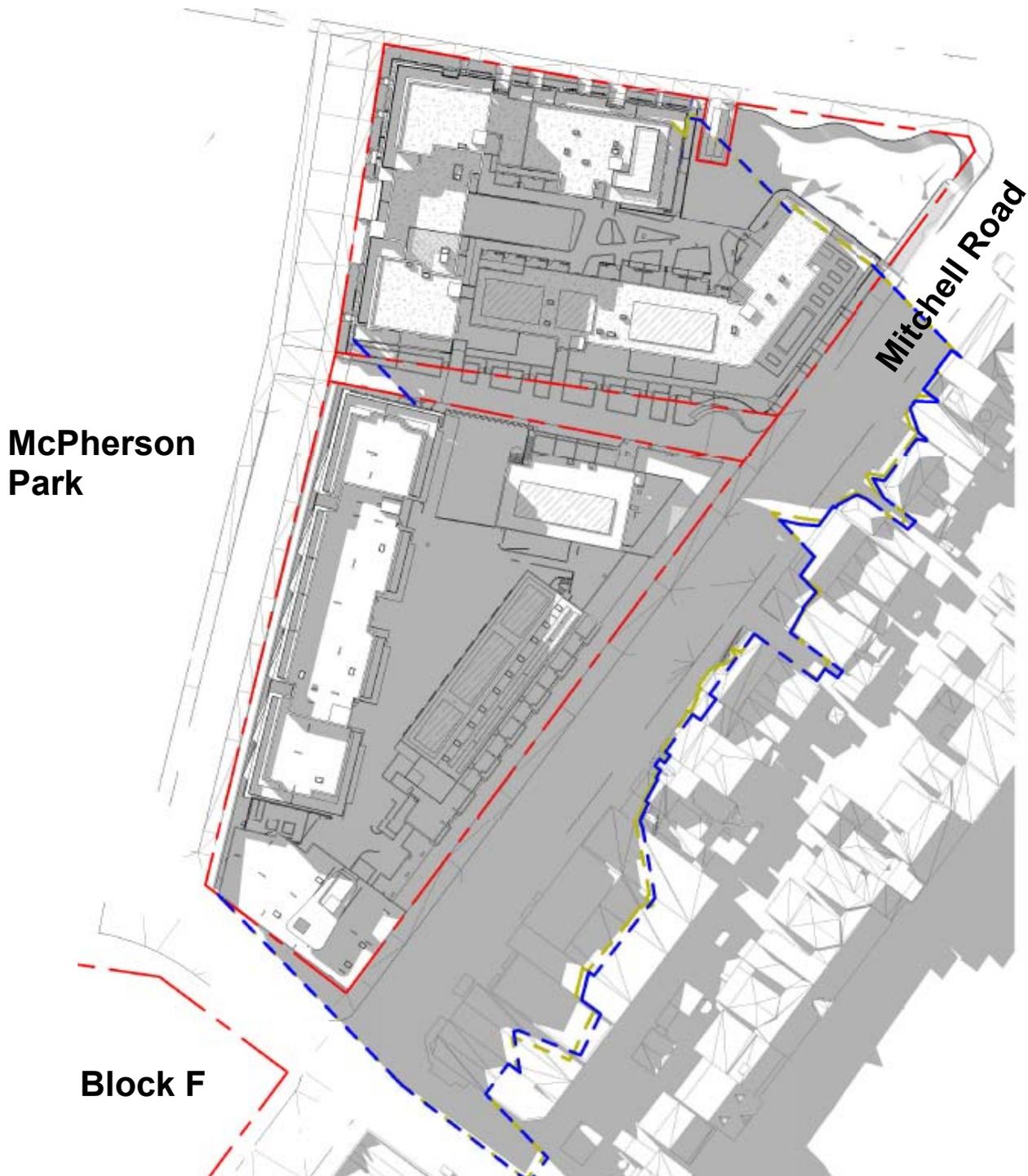


Figure 28: 3pm mid-winter shadow analysis. The blue line is the existing Concept Approval shadow, the yellow line is the proposed amended building envelope shadow, and the actual shadows are those cast by the detailed design DA as currently proposed.

30. Accordingly, the amended envelopes result in no net increase in overshadowing when compared to the approved envelopes.

Building Height

31. The SLEP 2012 height of buildings development standard varies across the site, and within Blocks B and C, as illustrated in Figure 29 below. Block B is subject to maximum height controls of 15m, 22m, and 27m, and Block C is subject to maximum height controls of 15m, 18m, and 27m.



Figure 29: Maximum heights permitted by the SLEP 2012, the Concept Approval site is shown outlined in blue, the approximate location of Blocks B and C are shown in red.

32. The approved building envelopes for Blocks B and C comply with the SLEP 2012 height of Buildings development standard, with the exception of Building C01. Level 8 of Building C01 was approved to a maximum height of 29.84m within the 27m height plane. This resulted in a 2.84m non-compliance, and a variance to the 27 height of buildings development standard of 10.5%. The approved building envelopes, and where they sit within the SLEP 2012 height planes, are illustrated in Figures 30 and 31 below.

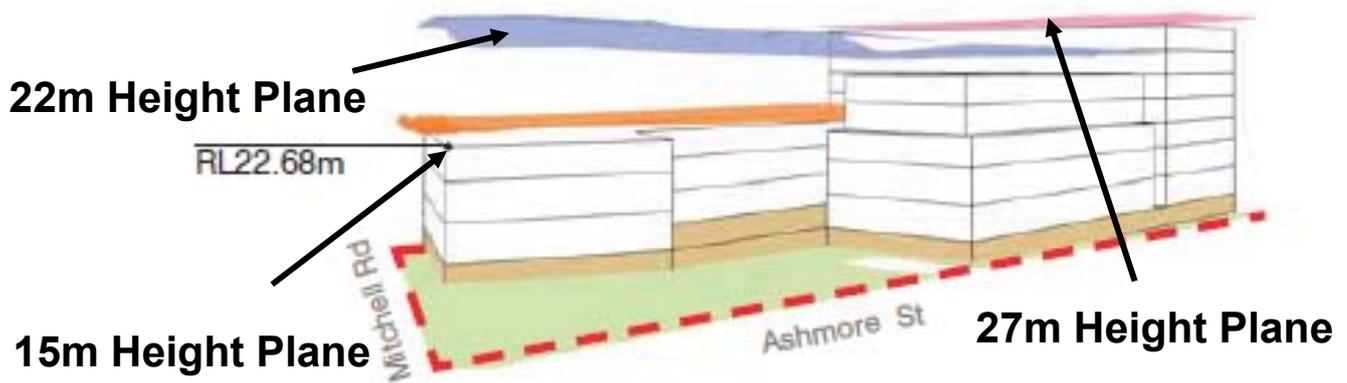


Figure 30: Approved Block B building envelope shown in relation to the SLEP 2012 height planes

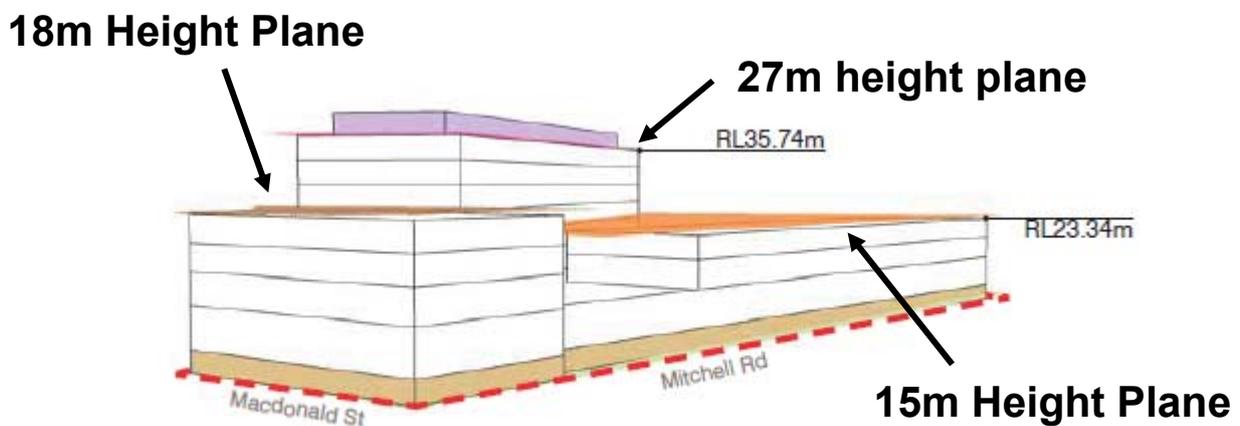


Figure 31: Approved Block C building envelope shown in relation to the SLEP 2012 height planes (existing non-compliant component shown in purple)

33. The amended building envelopes for Blocks B and C result in additional non-compliances with the SLEP 2012 height of buildings development standards, as illustrated in Figure 32 below.

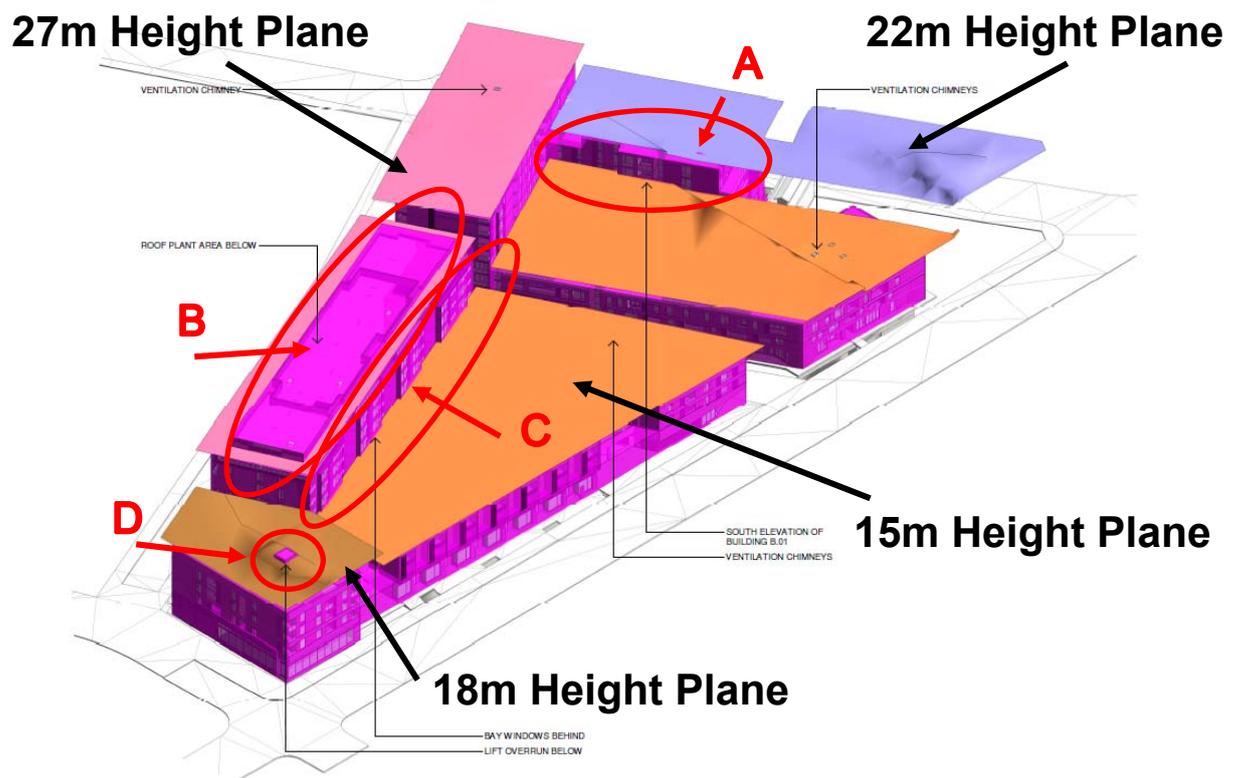


Figure 32: 3D drawings illustrating the building envelopes, as proposed to be amended, within the SLEP 2012 maximum height planes.

34. The proposed variations to the height of buildings development standard, as illustrated above, are as follows:

(a) **Southern face of Building B01 (annotated A above):**

The proposed height of this building is 21.44m. This complies with the 22m maximum height plane within which it is principally located, however a small part of the southern face of the building protrudes in to the adjoining 15 height plane. This results in a non-compliance of 6.44m above the 15m height plane, and a variance to the development standard of 42.9%. 7.86m² of GFA is accommodated on each floor within the non-compliant part of the building.

(b) **Level 8 of Building C01 (annotated B above):**

Building C01 was approved to a maximum height of 29.84m within the 27m height plane (10.5%). The non-complaint floorplate was capable of accommodating 825m² of Gross Floor Area (GFA). Under this proposal, the proposed height is reduced to 29.4m, reducing the non-compliance to 2.4m (8.9%), however the floor plate is widened by approximately 1.05m from 14.5m to 15.55m, resulting in 1,033m² of GFA being accommodated above the 27m height plane.

(c) **Eastern face of Building C01 (annotated C above):**

The articulated facade of this building results in minor lateral protrusions into the 15m height plane on the eastern face of the building. This results in a non-compliance of 9.31m above the 15m height plane, and a variance to the development standard of 62.1%. 16.26m² of GFA is accommodated on each floor within the non-compliant part of the building.

(d) **Lift overrun of Building C02 (annotated D above):**

A communal rooftop is proposed to be provided on this building as part of the separate detailed design DA for Blocks B and C. In order to provide equitable access, the lift overrun protrudes above the 18m height plane to a maximum height of 18.7m. This results in a non-compliance of 0.7m and a variance to the development standard of 3.9%. No GFA is contained within the non-compliant part of the building.

35. Notwithstanding that Clause 4.6 does not apply to Section 96 applications, it is considered prudent to carry out an assessment of the proposed variances within the Clause 4.6 assessment framework to determine the suitability of the proposal. The assessment is as follows:

(a) **Is the proposed development consistent with the objectives of the zone?**

(i) The part of the site upon which the proposed non-compliances occur is zoned B2 'Local Centre'. The proposed heights do not result in inconsistencies with the objectives of the zone.

(b) **Is the proposed development consistent with the objectives of the height standard? Which are, as relevant:**

(i) *to ensure the height of development is appropriate to the condition of the site and its context:*

The Ashmore Estate is an identified urban renewal precinct that is transitioning from a low rise light industrial precinct to a mid-rise mixed use village centre. It is therefore the City's vision for the site expressed through the planning controls, rather than the existing site conditions, that set the context for the proposed development.

The SLEP 2012 height of buildings development standards envisage varied building heights across the development site between 15m and 27m (increased to 29.84m by the Concept Approval). The amended building envelopes are, for the most part, consistent with those standards.

The building envelopes approved by the original Concept Approval are only capable of achieving the base FSR of 1.75:1. It was therefore anticipated that amendments to the building envelopes would be required in order to accommodate additional floor space awarded for the attainment of design excellence. Notwithstanding this, and as alluded to in the Concept Approval assessment report, Council officers are not supportive of entire additional floors above the SLEP 2012 height plane to accommodate design excellence floor space. The proposed amendments are consistent with that approach. More specifically:

a. **Building B01:**

The proposed non-compliances on the southern face of Building B01 are minor lateral protrusions into the adjoining height plane to accommodate an increased setback to Ashmore Street. Building B01 is otherwise compliant with the height development standard, and is therefore consistent with Council's vision for that part of the site.

b. **Building C01:**

The proposed non-compliance on the eastern face of Building C01 are minor lateral protrusions to accommodate articulation of the facade. This articulation assists the detailed design in meeting the minimum solar access requirements of the Apartment Design Guide (ADG).

While Building C01 does not comply with the height standard at the top of the building, this non-compliance formed part of the Concept Approval, and is actually reduced by 0.44m under this proposal. Widening the floorplate of Level 8 does not result in adverse impacts in terms of view loss (discussed below) and overshadowing (discussed earlier in this report), and therefore Building C01 is also considered to be consistent with Council's vision for that part of the site.

c. **Building C02:**

The proposed non-compliance on Building C02 is to accommodate equitable access to the communal rooftop proposed in the separate DA for the detailed design for Blocks B and C. The building envelope is otherwise compliant with the SLEP 2012 height of building development standard of 18m. The non-compliance is contained to a discreet part of the site that will not be visible from the public domain, will not interrupt view corridors, and will not result in additional overshadowing (as discussed elsewhere in this report).

In light of the above, the amended building envelopes are considered to be consistent with Council's vision for the site, and therefore appropriate to the condition of the site and its context.

- (ii) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas:*

The proposed non-compliances are generally located in areas that are somewhat removed from the adjoining heritage conservation areas to the north and east. Other building envelopes located between the non-compliant envelopes and the conservation areas are of a lower, medium density scale, and therefore a suitable transition is achieved.

(iii) *to promote the sharing of views:*

Photomontages illustrating the impact of the approved envelopes upon views from Sydney Park to the CBD were provided with the original Concept DA (Refer to Figure 33 below). Council officers are satisfied that the minor scale of the additional non-compliances now proposed will result in no discernable additional impacts to the view corridor.



Figure 33: Photomontage demonstrating the approved building envelopes within the Sydney Park to CBD View corridor

By their nature, the additional non-compliances on the southern face of Building B01, and the eastern face of Building C01, will not cause these building envelopes to impact on private views from existing dwellings located outside of the Concept Approval site area in a greater manner than the approved envelopes. Similarly, future Blocks F and I will provide buildings up to 25 and 27m, meaning the proposed non-complaint lift overrun at 18.7m will not be visible from dwellings of a commensurate height outside the site area, which are located to the south at Sydney Park Village.

In order to determine if the increased width of Level 8 of Building C01 would have an impact, the modelled views generated by Council officers when assessing the original Concept Development Application have been re-examined. Selected modelled views are reproduced in Figure 34 below, annotated with the location where the Level 8 floor plate, widened by 1.05m may be visible. The images demonstrate that there will be no discernable impact upon private views arising from the proposed widening of this floor plate.

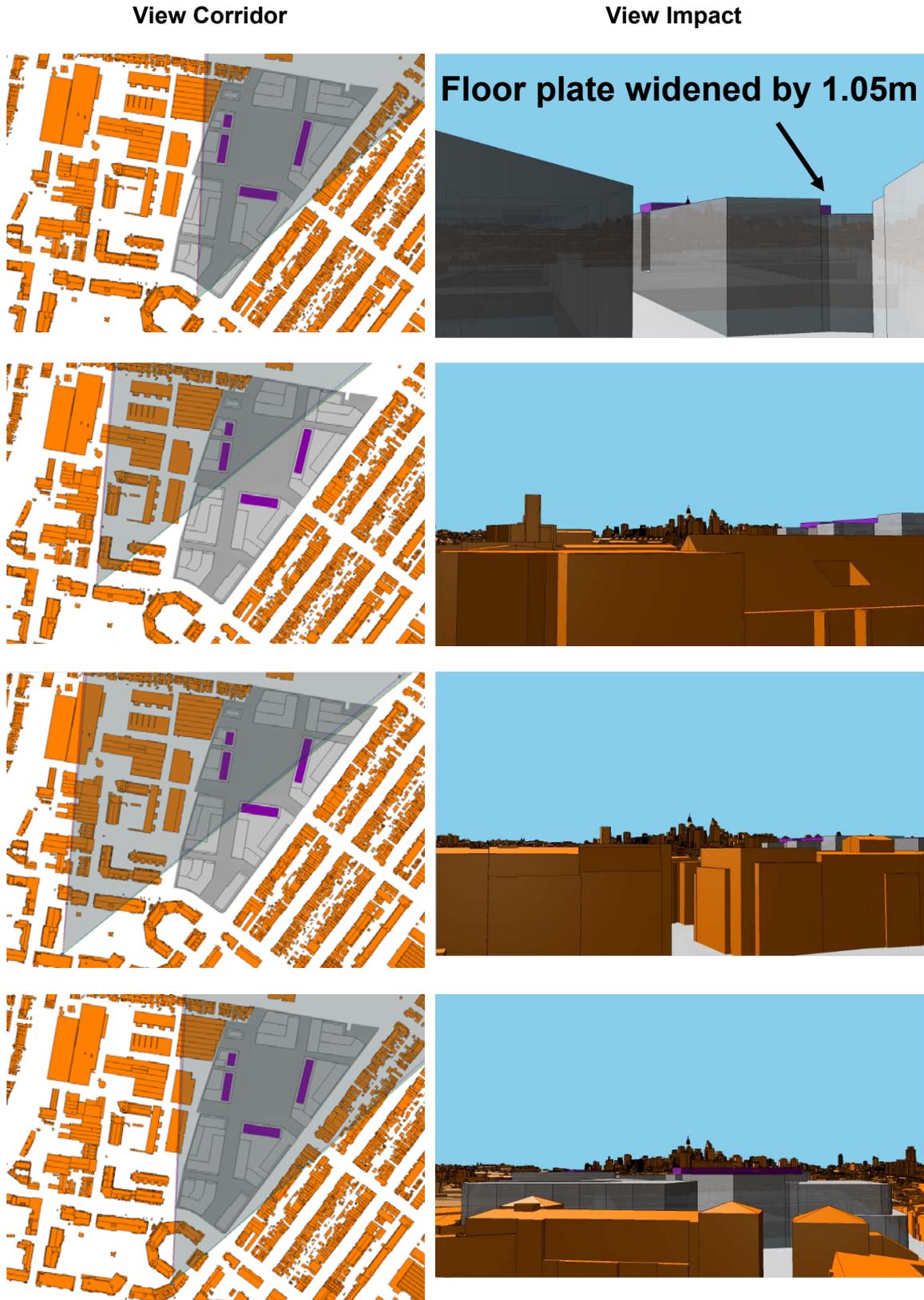


Figure 34: Selected Concept Approval modelled views

- (iv) *to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas:*

The Ashmore Estate is removed from the CBD and Green Square Town Centre and is subject to greater maximum height controls than sites in the surrounding areas. Accordingly this objective, which seeks to establish suitable height transitions to low-density areas, is not applicable to the Ashmore Estate.

In light of the above, the amended proposal is considered to be consistent with the objectives of the height of buildings development standard.

(c) **Is compliance unreasonable or unnecessary in the circumstances of the case?**

- (i) To demonstrate that compliance with the control is unnecessary or unreasonable, the objectives of the relevant standard must be met (rendering compliance unnecessary); and the Consent Authority must be satisfied compliance with the relevant standard would result in an inferior outcome to the proposal (rendering compliance unreasonable).
- (ii) When considering if compliance is unreasonable or unnecessary, it is important to note that the development application currently under assessment for the detailed design of Blocks B and C (D/2017/681) has been the subject of a design competition, which found the proposal to be the scheme most capable of achieving design excellence.
- (iii) As illustrated in Figure 29 earlier in this report, the SLEP 2012 height controls in the Ashmore Estate vary across the site; however the transition between the height planes is abrupt, and the difference between the height planes is significant (up to 12m). This means that any articulation of buildings in the region of the transition zones is likely to result in small parts of the buildings protruding into the adjoining height plane. Moreover, because the differences between the height planes can be significant, minor protrusions at the top of the building result in non-compliances that are technically significant but in reality are very minor in terms of both scale and impact.
- (iv) The non-compliance arising on Building B01 (annotated A in Figure 32) facilitates an improved landscaped setback to Ashmore Street. This is achieved by pushing the building further south, into the site, resulting in the non-compliance. While the proposed variance is technically large (42.9%), in reality it is only a very small part of the building that is protruding into the adjoining height plane. While consideration could be given to deleting the non-compliant part of the building, this would have significant repercussions in terms of the internal layout of the floorplate. In the absence of any impacts arising from the non-compliance, such a request would be unreasonable. Accordingly, on balance, the proposal is considered superior to a compliant scheme, which would be less capable of simultaneously providing an acceptable setback and a rational floorplate.

- (v) The non-compliance on Level 8 of Building C01 (annotated B in Figure 32) was approved at Stage 1, albeit in a slightly different form. The proposed modification reduces the overall height of the non-compliance above the 27m height plane from 29.84m (10.5%) to 29.4m (8.9%), however the width of the floor plate is widened by 1.05m. The overall impact of this modification is minor, as evidenced by the view loss and the overshadowing analysis provided earlier in this report. While consideration could be given to requiring the width of the floorplate to be maintained at 14.5m, rather than 15.55m, this would have significant repercussions in terms of the internal floor plate layout. In the absence of any impacts arising from the non-compliance, and given the overall height of the building is decreasing, such a request would be unreasonable.
- (vi) The non-compliance on the eastern face of Building C01 (annotated C in Figure 32) facilitates improved solar access to apartments by providing a 'pop-out' window with glazing orientated to the north, as illustrated in Figure 35 below. If the facade was flattened in order to contain the building entirely within the 27m height plane, the affected apartments would no longer achieve two hours solar access at mid-winter, and overall solar access would be non-compliant with the minimum requirements of the ADG. While the proposed variance is technically large (62.1%), in reality it is only a very small part of the building that is protruding into the adjoining height plane. The proposed non-compliance is considered to result in an improved outcome for the site, and therefore a request to flatten the facade to contain it within the 27m height plane would be unreasonable.

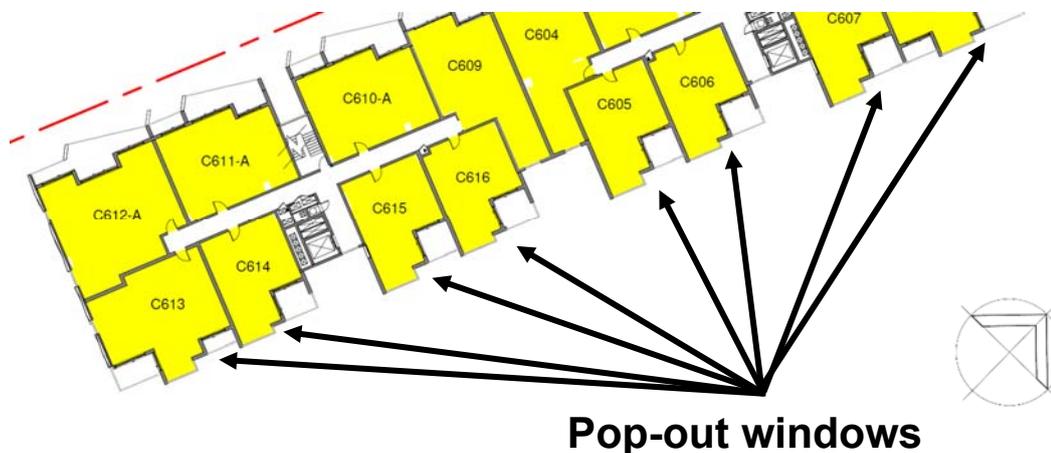


Figure 35: Extract from solar access study, annotated to highlight the 'pop-out' windows which assist in achieving solar access for a period of two hours at midwinter

- (vii) The non-compliance on the roof of Building C02 (annotated D in Figure 32) is to accommodate equitable access to the communal rooftop. The proposal results in no impacts to view corridors, does not contribute to overshadowing, and will not be visible from the public domain. If the proposal was amended to comply, equitable access to the communal rooftop may not be achieved. Accordingly, the proposed non-compliance is considered to result in an improved outcome for the site over a compliant scheme and therefore a request for strict compliance with the height standard would prevent the provision of equitable access to the rooftop and would be unreasonable.

In light of the above, it is considered that compliance would be unreasonable and unnecessary in the circumstances of the case, and the proposed variations are supported.

(d) **Are there are sufficient environmental planning grounds to justify contravening the development standard?**

- (i) The above assessment has demonstrated that the proposed development is generally consistent with the objectives of the zone and the development standard.
- (ii) The purpose of the non-compliances is to facilitate the detailed design of Blocks B and C, which has been the subject of a competitive design process.
- (iii) Although the proposed non-compliances arising on Buildings B01 and C01 are technically large at 42.9% and 62.1% respectively, the proposed variances are actually minor lateral protrusions into the adjoining height plane which are minor in terms of both scale and impact.
- (iv) The proposed non-compliance on the rooftop of Building C01, which was already approved in the existing Concept Approval, is actually reduced by this proposal, and the proposed widening of the floor plate results in no additional impacts.
- (v) The proposed non-compliance on the rooftop of Building C02 is minor at 3.9% and results in no adverse impacts.

In summary, the proposed non-compliances are considered to be relatively minor, and it is considered that there are sufficient grounds to vary the height of buildings development standards.

36. In light of the above, despite the proposed variations to the height of buildings development standards, the proposal is consistent with the zone objectives and the objectives of the development standards have been achieved. Insisting on strict compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to vary the standard. Accordingly, the proposed variations are supported and are recommended for approval.

Heritage

37. While the site is not a heritage item, and is not located in a heritage conservation area, the electrical substation on the northern frontage is a heritage item of local significance (I503). The site also directly adjoins the Malcolm Estate Conservation Area (C24) to the north-west, the Erskineville Estate Conservation Area (C22) to the north, and the Cooper Estate Conservation Area (C2) to the east.
38. The proposal involves modifications to the building envelope of Building B01, which is situated immediately adjacent to the electrical substation.
39. Council's heritage specialist has reviewed the proposal and has advised that whilst it would be preferable that the height of Building B01 was lower next to the substation, this has to be balanced with the benefits gained from not redeveloping the part of the site situated to the east of the substation, and retaining it as open space.
40. This open space was not envisaged to be retained in Council's planning controls, but the decision to do so significantly improves the visual curtilage of the heritage substation. This also has the potential to allow for adaptive reuse of the building, in an appropriate setting, in the event that it is no longer required for use as substation.
41. Accordingly, on balance, the proposed increased height of Building B01 is supported from a heritage perspective.

Trees

42. The proposed modifications to the building envelopes include extending building B03 towards the north-east, increasing the extent of the Mitchell Road frontage from 30m to 35.3m, and bringing the building closer to the retained Hills Weeping Fig Trees.
43. A survey of the Hills Weeping Fig Trees and an arborists report has been submitted with the concurrent detailed design DA for Blocks B and C (D/2017/681), which demonstrates that moving the building envelope in this manner will not have an unacceptable impact upon the trees. An extract of the survey is provided at Figure 36 below.

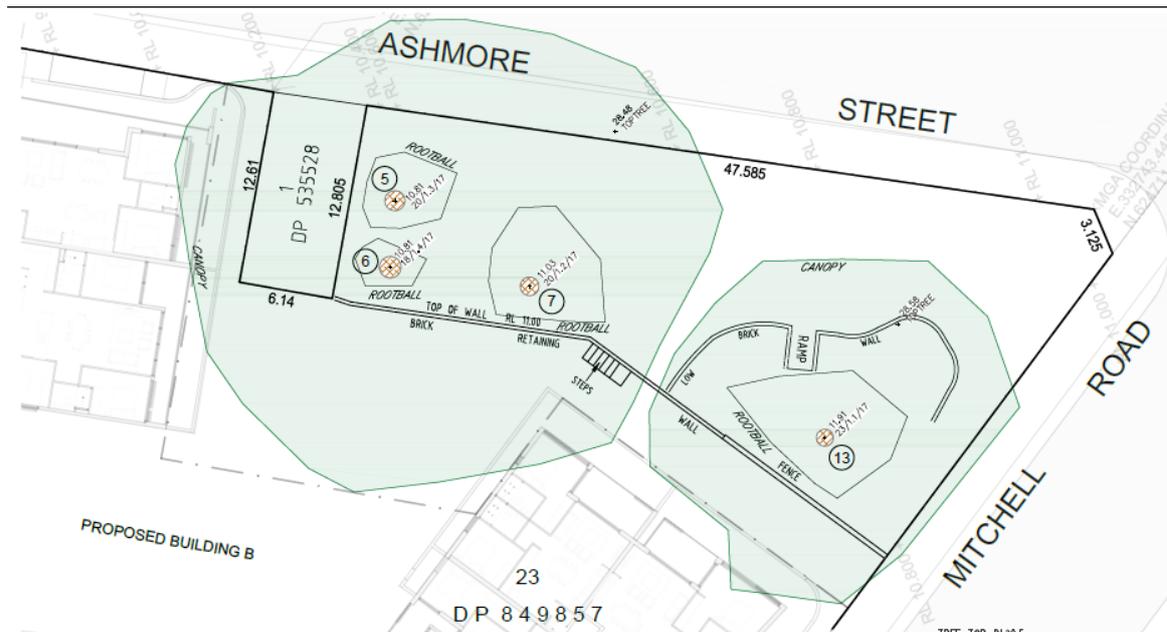


Figure 36: Extract from the tree survey, demonstrating that the building envelope is able to move closer to the trees without undue impacts

44. In light of the above, the proposed modification is acceptable in terms of its impact upon the retained trees.

Conclusion

45. In light of all of the above, the proposed modifications to the Block B and Block C building envelopes are acceptable, and are recommended for approval, subject to the recommended conditions of consent (as amended by this proposal). It is recommended that Condition 1 'Approved Stage 1 Development' be updated to reflect the amended plans.
46. Notwithstanding this, the proposed modification to Block I is not supported, and this is discussed in further detail below.
47. It should also be noted that the drawings include a typographical error, whereby the podium of Block C is not annotated '1' to indicate the single podium level. It is proposed to address this through an annotation on the stamped plans.

Block I

48. The amended drawings submitted in October 2017 include an undisclosed change to the Block I building envelope. Specifically, the inclusion of a podium level with an area of approximately 276m² in the north western corner of the block. The podium is situated at the corner of the future Kooka Walk and Alpha Street. Figures 37 and 38 below provide a comparison of the Block I building envelope, as approved, and as proposed to be modified.

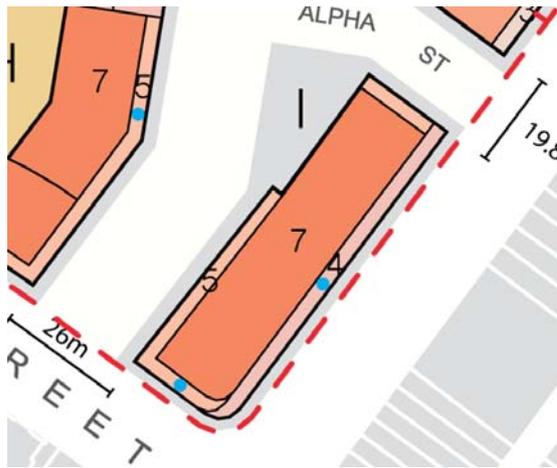


Figure 37: Block I as approved



Figure 38: Block I as proposed to be modified

49. The documentation submitted with the application has not provided any details with regard to the proposed change, nor has any justification for the change been provided.
50. It is noted that the maximum FSR development standard for the overall site is 1.75:1. Assuming a residential floor plate efficiency of 80%, the newly proposed podium level is capable of accommodating up to 220.8m² of additional GFA. This would increase the approved FSR from 1.75:1 (compliant), to 1.753:1 (non-compliant).
51. In light of the above, the proposed amendment to Block I is not supported. An additional condition 1A 'Design Modifications' is recommended, requiring the Block I podium to be deleted from the plans prior to the preparation of any brief involving a competitive design process for Block E.

Amendments to Conditions

Condition 6 'Stage 2 to be contained within Approved Envelope'

52. It is proposed to amend Condition 6 as follows:

(6) STAGE 2 TO BE CONTAINED WITHIN APPROVED ENVELOPE

- (a) The detailed design, including services, developed under any future Stage 2 Development Application shall be contained within the building footprint and envelope approved as part of this consent, **as modified**.
- (b) Plant and equipment is to be provided in the basement where it cannot be contained within the approved (**as modified**) building envelope.
53. The proposed amendment is administrative only and is supported. The proposed wording of the modified condition is acceptable and is recommended for inclusion in the modified conditions of consent.

Condition 26 'Design and Construction of Roads'

54. It is proposed to amend part (a) of Condition 26 as follows:

(26) DESIGN AND CONSTRUCTION OF ROADS

In relation to any future Stage 2 development application:

- (a) Detailed engineering, road, drainage and infrastructure works, design and construction plans for the construction of the proposed roads are to be submitted to Council and approval gained prior to the issue of any Construction Certificate for the proposed ~~Subdivision Works~~ **public domain works set out in the Voluntary Planning Agreement for that particular Phase**. The design and documentation is to include any requirements and approvals from external parties such as public utility service authorities and is to be in accordance with Council's "Development Specifications for Civil Works Design and Construction" and is to be in accordance with any approved flood analysis and assessment report for the site and is to be consistent with Water Sensitive Urban Design principles.
55. The proposed amendment is reflective of the VPA. The proposed wording of the modified condition is acceptable and is recommended for inclusion in the modified conditions of consent.

Condition 32 'Car Share'

56. It is proposed to amend part (c) of Condition 32 as follows:

(32) CAR SHARE

- (c) Car share space ***locations are to be approved in the Stage 2 DA and will be supported by advice from a recognised car share operator. ~~are to be located together in the most convenient locations within the basements and are to be used exclusively for car share.~~***
57. The proposal is not supported and it is recommended that the condition remain unchanged. The proposed modification is contrary to the City's policy on the provision of car share in private developments. It is common practice for car share schemes operating across the LGA to provide share cars in basements. The proposal seeks to transfer the burden of this obligation onto the public domain, which will result in the loss of on-street parking, and is unacceptable.

Condition 34 'Intersection Upgrade Works – Mitchell Road/Maddox Street/Macdonald Street'

58. It is proposed to amend part (a) of Condition 34 as follows:

(34) INTERSECTION UPGRADE WORKS – MITCHELL ROAD/MADDOX STREET /MACDONALD STREET

- (a) The intersection of Mitchell Road, Maddox Street and future MacDonald Street is to be upgraded with the installation of traffic signals. The following is to be submitted to and approved by the NSW Roads and Maritime Services and the Director City Planning, Development and Transport, prior to the issue of a Construction Certificate **for Phase 4 (Block E)**:

59. The proposed amendment is supported. The intersection upgrade works are not required to be operational until Macdonald Street opens to traffic, which will be delivered with construction phase 4. The proposed wording of the modified condition is acceptable and is recommended for inclusion in the modified conditions of consent.

Condition 35 'Intersection Upgrade Works – Ashmore Street / Mitchell Road'

60. It is proposed to amend part (a) of Condition 35 as follows:

(35) INTERSECTION UPGRADE WORKS – ASHMORE STREET / MITCHELL ROAD

- (a) Upgrade of the Ashmore Street and Mitchell Road intersection is to be investigated to minimise delays to through traffic, including buses, on Mitchell Road. Concept designs including dedicated right or left turn lanes in both directions on Mitchell Road are to be submitted to and approved by the Director City Planning, Development and Transport prior to the issue of a Construction Certificate for **above ground works for** Blocks B and/or C.
61. The condition is proposed to be amended to allow below ground works for the currently proposed Detailed Design DA for Blocks B and C to commence prior to the satisfaction of the condition.
62. A traffic report has been submitted which advises that RMS will not support the signalisation of the intersection, and that it will not be possible to provide further upgrades to the existing roundabout.
63. The City's transport planners have reviewed the report, and concur with its findings in relation to this matter. They also advise that a number of changes to local traffic movements are proposed to mitigate the impact of Westconnex, and as a result upgrades to the intersection are unlikely to be warranted.
64. In light of the above, it is recommended not to amend the condition, but to delete it in its entirety.

Condition 42 'Public Art'

65. It is proposed to amend Condition 42 as follows:

(42) PUBLIC ART

~~**The requirement to prepare a Public Art Strategy that nominates artists and potential locations must be included in the competition brief for each of the competitive design processes. The Public Art Strategy associated with the winning scheme must be lodged with the relevant future Stage 2 development applications.**~~

~~**Each Public Art Strategy is to make reference to the industrial history and development of the site, and of Erskineville.**~~

A single Public Art Strategy that addresses the whole site for the benefit of the community is required to be developed, and submitted to and approved by Council's Director, City Planning, Development and Transport prior to the Construction Certificate for Phase 1 (Blocks B and C). The Strategy should contain an analysis of the precinct including the contemporary social context; pre and post-colonial history; and the development of the site and Erskineville more broadly. It should nominate a methodology for the selection of artists, potential locations and opportunities and an indicative budget for public art.

The Strategy must be included in the competition briefs for each of the competitive design processes.

66. Following determination of the application, City staff met with the applicant to discuss the future delivery of public art on the site. It was agreed that a more appropriate approach would be to require a single strategy to ensure the future artworks across the site were cohesive, and the applicant was recommended to amend the condition accordingly.
67. In light of the above, the proposed amendment to the condition is supported. The proposed wording of the modified condition is acceptable and is recommended for inclusion in the modified conditions of consent, subject to minor rewording as follows:

A single Public Art Strategy that addresses the whole site for the benefit of the community is required to be developed, and submitted to and approved by Council's Director, City Planning, Development and Transport prior to the issue of any Construction Certificate Phase 1 (Blocks B and C). The Strategy should contain an analysis of the precinct including the contemporary social context; pre and post-colonial history; and the development of the site and Erskineville more broadly. It should nominate a methodology for the selection of artists, potential locations and opportunities for artworks delivered under the Voluntary Planning Agreement and as required by Public Art Conditions of Consent applied to Detailed Design Development Consents, and an indicative budget for public art.

The Strategy must be included in the competition briefs for each of the competitive design processes.

Condition 50 'Road Network and Geometric Road Design'

68. It is proposed to amend part (b) of Condition 50 as follows:

(50) 'ROAD NETWORK AND GEOMETRIC ROAD DESIGN'

- (b) The design and construction of all road works ***associated with each Phase as per the Voluntary Planning Agreement*** shall be undertaken in accordance with City of Sydney's Sydney Streets Technical Specification and the Public Domain Manual. Detailed plans, construction details and specifications for the works shall be prepared and submitted to Council for approval prior to issue of a Construction Certificate ***for public domain works***, excluding for approved preparatory or demolition work, or before issue of an approval under Section 138 of the Roads Act 1993 for the road and drainage, infrastructure work. The detailed plans and supporting documentation shall include as a minimum the following information;

69. The purpose of the proposed modification is to reflect the VPA and the potential staging of construction certificates for future detailed design DAs.
70. The City's Public Domain Unit have reviewed the proposed modification and raise no objection, subject to an advisory note being added to encourage the developer to submit plans as early as possible to avoid delays.
71. In light of the above, the proposed amendment to the condition is supported. The proposed wording of the modified condition is acceptable and is recommended for inclusion in the modified conditions of consent.

Condition 54 'RMS Requirements'

72. It is proposed to amend Condition 54 as follows:

(54) RMS REQUIREMENTS

In accordance with Section 87 of the Roads Act, 1993 approval for a traffic control light requires the consent of Roads and Maritime Services (RMS). Therefore, RMS will require concept plans of the proposed traffic signals at Mitchell Road/Maddox Street intersection for review prior to any development consent or approval being granted **for Phase 4 (Block E)**.

73. The Section 96 application was referred to RMS on 7 June 2017. RMS responded on 7 September 2017 to advise that they had reviewed the documentation and raised no objection to the proposed modifications.
74. In light of the above, the proposed amendment to the condition is supported. The proposed wording of the modified condition is acceptable and is recommended for inclusion in the modified conditions of consent.

INTERNAL REFERRALS

75. The conditions of other sections of Council have been included in the proposed conditions.
76. The application was discussed with the Heritage and Urban Design Specialists; Public Domain; Transport and Access; and Tree Management. With the exception of Transport and Access, all units advised that the proposed modifications are acceptable subject to the recommended conditions.
77. As outlined earlier in this report, the City's Transport planners did not agree to the proposed amendments to Condition 32 'Car Share'. The request to amend this condition is refused.

EXTERNAL REFERRALS

78. The application was re-referred to the following public authorities:
 - (a) Ausgrid;
 - (b) Water NSW; and
 - (c) Roads and Maritime services.

79. No objection was raised to the proposed modifications.
80. It is noted that Ausgrid recommended additional conditions of consent over and above those already applied to the original Concept Approval. Given there is no nexus between the proposed modifications and matters of electricity supply, the additional conditions are not recommended for inclusion in the modified consent.

Notification, Advertising and Delegation

81. In accordance with Schedule 1 the Sydney DCP 2012, as a Section 96 (2) application the proposed modifications are required to be notified. As such the application was notified for a period of 14 days between 7 and 22 June 2017. As a result of this notification there were three (3) submissions received.
82. Following concerns raised regarding the design of the concurrent detailed design DA for Blocks B and C, further modifications were sought to the Concept Approval building envelopes, with amended plans being submitted to Council on 10 October 2017. The amended application was re-notified for a period of 14 days between 11 and 26 October 2017. No additional submissions were received.
83. The key issues raised in the submissions are summarised as follows:

- (a) The development is already of a large scale, it is inappropriate to make it larger.

Response – The SLEP 2012 permits a base FSR of 1.75:1 across the site. In addition, Clause 6.21 ‘Design Excellence’, facilitate an uplift of up to 10% additional FSR for the attainment of Design Excellence.

The building envelopes approved in the original Concept Approval are only capable of achieving the base FSR of 1.75:1, therefore it was anticipated that amendments to the building envelopes would be required in order to accommodate additional floor space awarded for the attainment of design excellence.

The assessment provided in this report demonstrates that the amended envelopes do not result in unacceptable impacts to the surrounding locality.

- (b) The development will result in increased traffic.

Response – While the proposal will result in increased traffic, traffic modelling indicates that surrounding roads will not be operating beyond capacity.

- (c) Objection is raised to the height of Blocks C, E, and F.

Response – Blocks E and F are not proposed to be amended as part of this proposal.

While the objection to the overall height of Building C01 is noted, this application reduces the overall height of the non-compliance above the 27m height plane from 29.84m (10.5%) as approved, to 29.4m (8.9%). While the form of the building is modified, the modification result in no impacts in terms of view loss or overshadowing.

- (d) The development will result in view loss from Sydney Park Village.

Response – The submitter was contacted to establish the location of the apartment that would be affected. The apartment is situated within the Sydney Park Village development, on a low floor fronting Coulson Street.

The Concept Approval assessment report clearly set out that existing views from this location to the City could not be preserved if buildings were constructed to the maximum height permitted under the SLEP 2012. Figure 39 below is an extract from the modelled views contained within the Concept Approval report. As illustrated redevelopment of the site will result in view loss from apartments in this location.

Importantly, the modelled views demonstrate that impact to apartments on low floors within Sydney Park Village are impacted by Blocks H and I fronting Coulson Street, and not Blocks B and C, which contain the building envelopes proposed to be amended under this Section 96 application. Accordingly, the building envelopes for Blocks B and C, as proposed to be modified, will have no impact upon private views from the submitter's apartment.

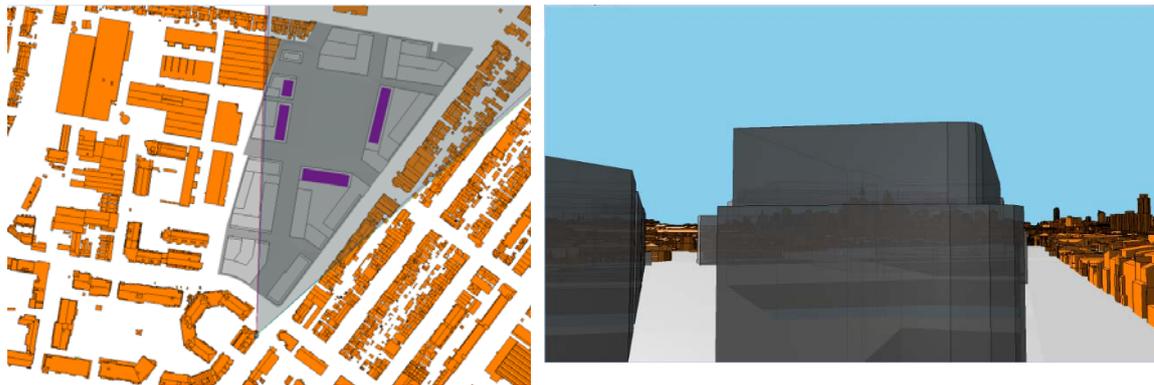


Figure 39: Extract from the Concept Approval modelled views, illustrating the impact of the Stage 1 Concept approval from apartments in Sydney Park Village fronting Coulson Street

PUBLIC INTEREST

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

RELEVANT LEGISLATION

85. The Environmental Planning and Assessment Act 1979.

CONCLUSION

86. The subject Section 96(2) modification application seeks consent to modify the approved building envelopes for Blocks B and C within the eastern portion of the Ashmore Estate. The proposed modifications support the detailed design application for Blocks B and C (D/2017/681) currently under assessments. Amendments were also sought to Conditions (6), (26), (32), (34), (35), (42), (50), and (54).

87. As modified, the proposed building envelopes are considered to be contextually appropriate, responding to the site and surrounding development. The revised massing accommodates the design excellence floor space bonus, and provides improved outcomes for internal amenity, and reduces impacts to neighbouring properties, particularly in terms of overshadowing and overlooking.
88. In particular, the amended Block C building envelopes re-orientate a significant quantum of floor space to the north, break down the approved massing on Mitchell Road, and facilitate improved compliance with the natural cross ventilation and solar access requirements of the Apartment Design Guide.
89. The proposed modifications to the conditions will, for the most part, assist in ensuring the orderly economic development of the land. The modification of the condition relating to car share requirements is contrary to the City's policy on the provision of car share in private developments and is not supported.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Christopher Ashworth, Senior Planner)