

ITEM 5. DEVELOPMENT APPLICATION: 57 ASHMORE STREET  
ERSKINEVILLE - BLOCKS B AND C

FILE NO: D/2017/681

DEVELOPMENT APPLICATION NO: D/2017/681

## SUMMARY

**Date of Submission:** 25 May 2017

Amended drawings and additional information submitted 5 October 2017

Further amended drawings and additional information submitted 14 November 2017

**Applicant:** Greenland Australia

**Architect:** WMK

**Developer:** Greenland Golden Horse Investment Pty Ltd

**Owner:** Greenland Golden Horse Investment Pty Ltd

**Cost of Works:** \$150,876,153

**Proposal Summary:** The proposal is for the construction of a 4 to 8 storey residential flat building (Block B) providing 157 dwellings; construction of a 4 to 8 storey mixed-use development (Block C) providing 171 dwellings, ground floor retail, and centre-based child care facility; construction of one shared basement level; landscaping; and public domain works.

During assessment the scheme was amended, and additional information was submitted, to address the concerns of Council officers. These concerns principally related to:

- Flooding;
- Compliance with development standards and controls;
- Residential amenity;
- Building design;
- Public domain interface;
- Trees;
- Transport;
- Heritage; and
- Waste.

**Proposal Summary:  
(continued)**

These issues were addressed by the applicant in the amended plans. Subject to the adoption of the recommended conditions of consent, the proposal is now considered to achieve an acceptable degree of compliance with the relevant planning controls, and provides an acceptable level of residential amenity.

The proposal does not strictly comply with the Height of buildings development standards, due to slight adjustments to building alignments arising from the Competitive Design Alternatives Process. The development site is subject to maximum height controls of 15m, 18m, 22m, and 27m. Four non-compliances are proposed across the site, including:

**Block B**

- A maximum height of 21.44m is proposed within the 15m height plane, exceeding the permissible maximum height by 6.44m (42.9%).

**Block C**

- A maximum height of 29.4m is proposed within the 27m height plane, exceeding the permissible maximum height by 2.4m (8.9%).
- A maximum height of 18.7m is proposed within the 18m height plane, exceeding the permissible maximum height by 0.7m (3.9%).
- A maximum height of 24.31m is proposed within the 15m height plane, exceeding the permissible maximum height by 9.31m (62.1%).

The application includes a request to vary the Height of buildings development standard under the provisions of Clause 4.6 of the Sydney Local Environmental Plan 2012.

The request to vary the height development standard is supported in this instance. The proposed non-compliances are already approved by the Concept Approval (D/2015/966/A). Furthermore, the development meets the objectives of the zone and the height development standard, and will facilitate an improved outcome over that which would be achieved by a compliant scheme by facilitating:

**Proposal Summary:  
(continued)**

- An improved setback to Ashmore Street;
- The preservation of the Hill's Weeping Fig Tress located on the corner of Ashmore Street and Mitchell Road;
- Increased solar access to Building C01; and
- Equitable access to Building C02.

The proposal was notified for a period of 30 days between 7 June and 8 July 2017. As a result of the notification there were three (3) public submissions received. The key issues raised in the submissions relate to:

- Building height;
- Setbacks;
- Retail uses;
- Transport and traffic;
- Infrastructure capacity;
- Ecologically sustainable development; and
- Cumulative impacts of developments in the locality.

The amended proposal was re-notified for a period of 14 days between 11 October and 26 October 2017. As a result of the notification no additional submissions were received.

The amended drawings received on 14 November 2017 made minor changes to the proposal that did not warrant re-notification.

**Summary Recommendation:**

Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2017/681, subject to the recommended conditions of consent.

**Development Controls:**

- (i) State Environmental Planning Policy No.55 – Remediation of Land
- (ii) State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) Sydney Development Contributions Plan 2015

- Attachments:**
- A - Recommended Conditions of Consent
  - B - Selected Architectural Drawings

## **RECOMMENDATION**

It is resolved that:

- (A) the variation sought to the height of buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (B) pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2017/681, subject to the conditions 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 former light industrial estate known as the 'Ashmore Estate' in Erskineville. 57 Ashmore Street occupies the majority of the north-eastern portion of the Estate. The majority of sites within the Ashmore Estate are in the process of transitioning to a mixed use, predominantly residential area.
3. The site (otherwise known as 149-163 Mitchell Road) has an area of 54,240m<sup>2</sup>. It is bound by Ashmore Street to the north, and Mitchell Road to the east. To the west and south, the site directly abuts other sites within the Ashmore Estate. There is a small site on the northern frontage that accommodates a heritage listed electrical substation (1A Ashmore Street). That site does not form part of this application.
4. In the wider Sydney context, the site is located 2.25km south west of the Sydney Central Business District. The northern frontage of the site is located 590m walking distance from Erskineville 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.
5. In the immediate context, surrounding land uses are mixed. To the west, the site directly adjoins various sites that form part of the 'Ashmore Estate'. Some of the sites are still in light industrial use, some have been developed for predominantly residential use, and others are construction sites for future predominantly 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 Erskineville Oval. To the east, on the opposite side of Mitchell Road are terrace dwellings and residential flat buildings interspersed with commercial uses, particularly on Mitchell Road. Directly to the south, at 165-175 Mitchell Road, the site remains in use for light industrial and commercial uses.
6. The subject site and 165-175 Mitchell Road are the subject of a Concept Approval (D/2015/966/A), which, as modified, includes building envelopes for nine development blocks (A-I) ranging in height between two and eight storeys and concept design for public domain works including new streets, a 7,446m<sup>2</sup> park, and new trunk drainage. This DA is the Detailed Proposal DA for Blocks B and C.
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 (1503). 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. It should be noted that since the photographs were taken, demolition activities have now commenced:



Figure 1: The subject site outlined in red, the remainder of the Concept Approval site is outlined in orange, and the location of a heritage substation is shown in yellow. The extent of demolition works, as of 12 December 2017 can be seen. (source: Nearmap)



Figure 2: North-western corner of the site, viewed from Ashmore Street looking south-west



Figure 3: Northern portion of the site, viewed from Ashmore Street looking south-east



Figure 4: Northern portion of the site, viewed from Ashmore Street looking south-west (including heritage substation, which is not part of the site)



Figure 5: Existing stand of Hill's Weeping Figs viewed from the intersection of Ashmore Street and Mitchell Road, looking south-west



Figure 6: Existing stand of Hill's Weeping Figs, viewed from the northern site boundary, looking east



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



Figure 10: Alexandria Erskineville Bowling Club to the north of the site viewed from the intersection of Ashmore Street and Fox Avenue looking north-west



Figure 11: Erskineville Oval to the north of the site viewed from the intersection of Ashmore Street and Fox Avenue looking north east



Figure 12: Existing developments to the east on the opposite side of Mitchell Road



Figure 13: Existing developments to the east on the opposite side of Mitchell Road



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



Figure 15: Existing light industrial development to the south (partly in use as a sales and marketing suite for the proposed development)



Figure 16: Aerial photograph of the subject site, prior to the commencement of demolition works, with the approximate site boundary outlined in red

## HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

### Competitive Design Process

9. From 12 January to 24 February 2017, Greenland Golden Horse Investment Pty Limited conducted a competitive design alternatives process to ensure design excellence was achievable and subsequently integrated into the Detailed Proposal.
10. A competition brief was prepared that set out the requirements for the proposed competitive design alternatives processes for Blocks B and C, and five architectural firms participated. Of the five schemes presented, the scheme proposed by WMK was considered by the selection panel most capable of demonstrating design excellence, and was declared the winner.

### Design Amendments

11. On 5 June 2017 and 5 September 2017, Council officers requested design amendments and further information to address Council officer's concerns regarding non-compliance with the Apartment Design Guide (ADG) and the Sydney DCP 2012, residential amenity, and the public domain. Modifications included, but are not limited to:
  - (a) Removal of demolition works which is now the subject of a separate Complying Development Certificate;
  - (b) Removal of early works, including excavation, foundation works, and the construction of the basement slab and walls, which is now the subject of a separate early works DA (D/2017/1425);

- (c) Deletion of one basement level;
- (d) Addition of three apartments and minor changes to the unit mix;
- (e) Addition of an underground vehicular tunnel connecting the Building B basement to the future Building A basement under Foundry Street;
- (f) Reconfiguration of Block B in order to provide increased landscaping, a redesign of landscaped setbacks across the site;
- (g) Apartments B101, B102 and B104 reconfigured to reduce their intrusion onto areas of communal open space, and to provide an additional landscaped setback to the adjoining heritage item;
- (h) Additional communal open space on the rooftop of Building B.03;
- (i) Changes to the design and height of the proposed parapets;
- (j) Changes to materials; and
- (k) Reduced fence level to the Fig Tree Garden on the corner of Ashmore Street and Mitchell Road.

## PROPOSAL

12. The application is seeking development consent for a Detailed Proposal, involving the construction of a mixed use development on Blocks B and C in the north-eastern portion of the Ashmore Estate, Erskineville. This proposal is construction Phase 1, in accordance with the Concept Approval (refer to Figure 17 below).

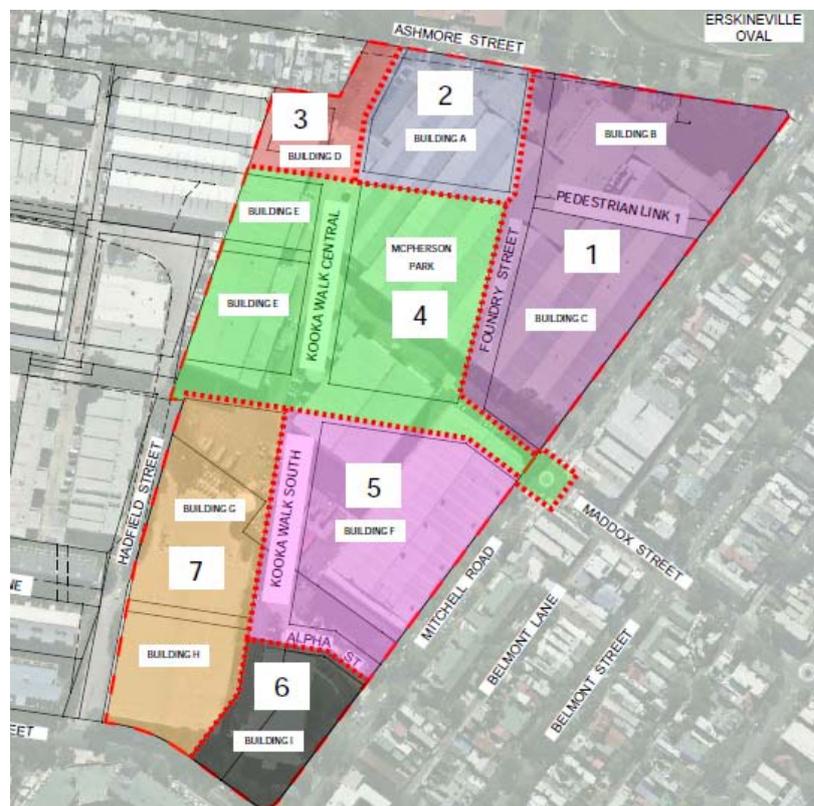


Figure 17: Approved Construction Phasing Plan

13. Block B is proposed to accommodate a residential flat building providing 157 dwellings. The proposed building is separated into three attached segments:
  - (a) Building B.01 in the northern portion of the block;
  - (b) Building B.02 in the western portion of the block; and
  - (c) Building B.03 in the southern and eastern portions of the block.
14. Block C is proposed to accommodate a mixed use building, comprising a retail/commercial podium, with four separate residential buildings above providing 171 dwellings. The above podium buildings are:
  - (a) Building C.01 in the western portion of the block;
  - (b) Building C.02 in the southern portion of the block;
  - (c) Building C.03 in the eastern portion of the block; and
  - (d) Building C.04 in the north-eastern portion of the block.
15. Both blocks are proposed to share a single storey basement, with a connection tunnel beneath the future Foundry Street to provide below ground access to Block A (yet to be the subject of a Detailed Proposal).

#### Detailed Proposal

16. The proposed works, as amended, comprise the following:
  - (a) **Basement Level 1 (under Blocks B and C and the privately owned Stovemaker Lane, accessed from a single bidirectional driveway on the Foundry Street frontage of Block B)**
    - (i) Building managers office;
    - (ii) Music practice room;
    - (iii) On-site stormwater detention;
    - (iv) 156 standard residential car parking spaces (including three stackers);
    - (v) 49 accessible residential car parking spaces;
    - (vi) 17 residential motorcycle parking spaces;
    - (vii) 61 standard retail car parking spaces;
    - (viii) 5 accessible retail car parking spaces;
    - (ix) 7 centre-based child care facility parking spaces (in retail car park)
    - (x) 3 residential service vehicle parking spaces;
    - (xi) 4 retail service vehicle parking spaces;
    - (xii) 1 car wash bay;

- (xiii) 306 residential storage cages;
- (xiv) Residential visitor bicycle storage area;
- (xv) Retail bicycle storage area for 33 bikes and end of trip facilities;
- (xvi) Waste rooms (including for future Block A); and
- (xvii) Plant and services.

(b) **Block B**

- (i) Three to eight storey building providing 157 residential apartments, including:
  - a. 15 studio apartments;
  - b. 47 x one bedroom, one bathroom apartments;
  - c. 12 x two bedroom, one bathroom apartments;
  - d. 62 x two bedroom, two bathroom apartments;
  - e. 18 x three bedroom, two bathroom apartments;
  - f. 2 x four bedroom, two bathroom apartments;
  - g. 1 x four bedroom, three bathroom apartment;
  - h. Communal open space at ground level
  - i. Communal open space on Level 4 of Building B.03; and
  - j. Landscaping works.

(c) **Block C**

- (i) Podium, providing:
  - a. 13 x enclosed retail tenancies;
  - b. 1 x open retail tenancy within interior mall area; and
  - c. 1 x centre-based child care facility.
- (ii) Building C.01, providing:
  - a. 36 x one bedroom, one bathroom apartments;
  - b. 54 x two bedroom, two bathroom apartments; and
  - c. 16 x three bedroom, two bathroom apartments.
- (iii) Building C.02, providing:
  - a. 1 studio apartment;

- b. 14 x one bedroom, one bathroom apartments; and
    - c. 6 x two bedroom, two bathroom apartments.
  - (iv) Building C.03, providing:
    - a. 14 x one bedroom, one bathroom apartments; and
    - b. 13 x two bedroom, two bathroom apartments.
  - (v) Building C.04, providing:
    - a. 9 x one bedroom, one bathroom apartments;
    - b. 6 x two bedroom, two bathroom apartments; and
    - c. 2 x three bedroom, two bathroom apartments.
  - (vi) Communal open space above podium level
  - (vii) Communal open space on Level 5 of Building C.02; and
  - (viii) Landscaping works.
- (d) **Voluntary Planning Agreement Works**
  - (i) Construction of Foundry Street Road reserve, including intersection with Ashmore Street (west of Blocks B and C);
  - (ii) Construction of a temporary turning head (to remain until MacDonald Street is constructed as part of Construction Phase 4);
  - (iii) Construction of Stovemaker Lane between Blocks B and C (to remain in private ownership with an easement for public right of way with no vehicular access); and
  - (iv) Construction of footpath for future MacDonald Street (south of Block C).
- 17. Approval is also sought for a signage strategy.
- 18. Approval is not sought for the following:
  - (a) Demolition;
  - (b) Early works (excavation, foundation works, basement slab and walls);
  - (c) Fit-out and use of centre-based child care facility; and
  - (d) Fit-out and use of retail premises.
- 19. Photomontages and perspectives of the revised proposal are provided in Figures 18 to 24 below. Selected Architectural Drawings are included as Attachment B.



Figure 18: Photomontage, as viewed from the future McPherson Park, looking east



Figure 19: Photomontage, as viewed from Mitchell Road, looking south-west



Figure 20: Perspective of Block B, as viewed from Ashmore Street, looking south-west



Figure 21: Perspective of Blocks B and C, as viewed from the corner of Ashmore Street and the future Foundry Street, looking south-east



Figure 22: Perspective of Block C, as viewed from the corner of Maddox Street and Mitchell Road, looking north-west



Figure 23: Perspective, as viewed from the intersection of the future Stovemaker Lane and Mitchell Road, looking west (Block C left of frame, Block B right of frame)



Figure 24: Perspective, as viewed from the intersection of the future Stovemaker Lane and Mitchell Road, looking south-west (Block C left of frame, Block B right of frame)

## RELEVANT DEVELOPMENT APPLICATIONS

### D/2015/966

20. On 17 November 2016, the Central Sydney Planning Committee (CSPC) considered 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.
21. 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 7,446m<sup>2</sup> park, and new trunk drainage. These works are subject to a Voluntary Planning Agreement (VPA).
22. 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.
23. The deferred commencement conditions were satisfied on 18 October 2017, and the development consent is now active.

### D/2015/966/A

24. On 17 November 2017, the Central Sydney Planning Committee (CSPC) approved a Section 96 application to the Concept Approval. The modifications amended the building envelopes for Blocks B and C to match the detailed design of the buildings proposed in this application. Various conditions of consent were also amended.

## D/2017/1026

25. On 20 October 2017, development consent was granted to subdivide 57 Ashmore Street into five separate lots, as illustrated in Figure 25 below. Blocks B and C are located within Lot 1. At the time of writing this report, the subdivision plan is not registered.

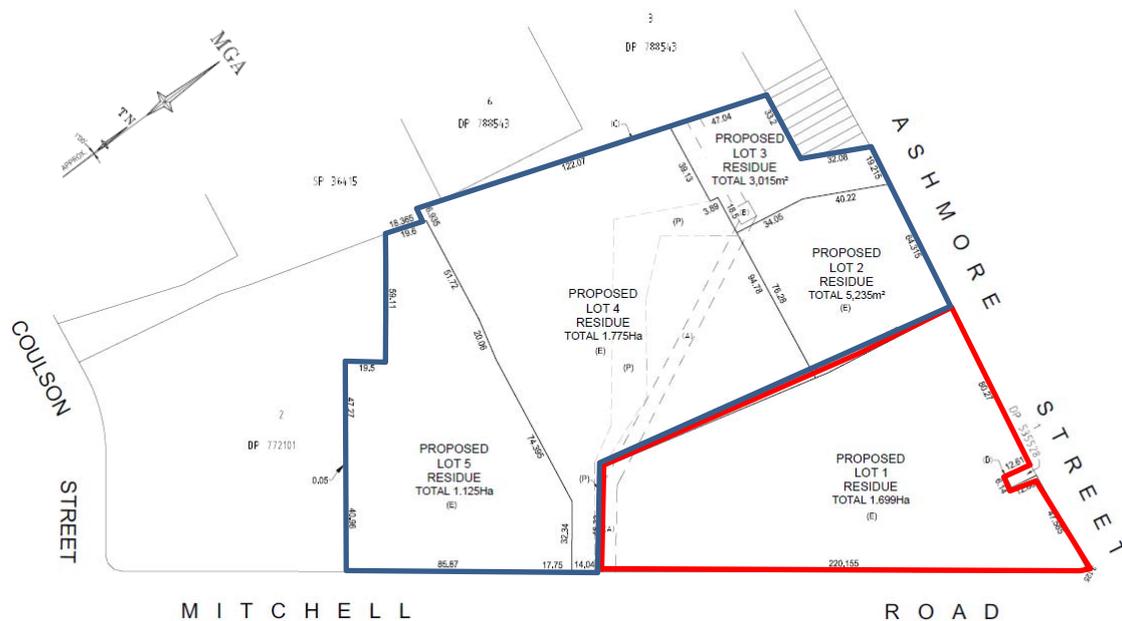


Figure 25: Approved subdivision plan, the boundary of Lot 1 (Blocks B and C) is shown in red, the boundary of the remainder of 57 Ashmore Street is shown in blue

## D/2017/1425

26. On 22 December 2017, development consent was granted for an early works DA. The consent allows for excavation (beneath Blocks B and C, the future Foundry Street and part of the future McPherson Park), remediation, foundation works, construction of lift and stair cores for Blocks B and C, under slab services, construction of basement slabs and shell, and construction of the tunnel connection to future Block A.

## OTHER APPROVALS

## Airports Act 1996

27. Section 182 of the Commonwealth *Airports Act 1996* specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
28. Schedules 2 and 5 of the *Civil Aviation (Building Control) Regulations 1988* identify that the subject site is subject to a prohibition of the construction of buildings more than 50 feet in height (15.24m) above existing ground height.

29. Section 183 of the Commonwealth *Airports Act 1996* specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
30. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 22 January 2018.

#### **Water Management Act 2000**

31. The original proposal constituted Integrated Development, requiring the approval of the Water NSW under the *Water Management Act 2000*. The application, was referred to Water NSW accordingly, and General Terms of Approval were provided for inclusion in the recommended conditions of consent.
32. The application was amended on 5 October 2017 to, amongst other things, extract the excavation works and construction of the basement slab and walls from the application. These elements were incorporated into Integrated Development Application D/2017/1425 for early works, as discussed earlier in this report.
33. Given the elements that were resulting in the application being Integrated Development no longer form part of this application, Water NSW advised on 23 January 2018 that the GTAs previously provided may be discarded.

#### **ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS**

34. The application has been assessed under Section 79C of the *Environmental Planning and Assessment Act 1979*, including consideration of the following matters:
  - (a) Environmental Planning Instruments and DCPs.

#### **State Environmental Planning Policy No 55—Remediation of Land**

35. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
36. A Remedial Works Plan and Interim Audit Advice was submitted with the DA. The City's Health Unit is satisfied that subject to conditions, the site can be made suitable for the proposed use.
37. Notwithstanding this, it should be noted that Section A of the Site Audit Statement, which certifies that the site is suitable for the intended use, is proposed to be submitted prior to the issue of any Occupation Certificate rather than a Construction Certificate. This is because the built form of the building, landscaping and road reserves are integral to the remediation and successful validation of the works. As a consequence, it is not technically feasible or practical for it to be issued prior to a Construction Certificate.
38. Accordingly, City Staff are supportive of the certification being provided prior to any Occupation Certificate given the particular circumstances of the case.

**State Environmental Planning Policy No 65—Design Quality of Residential Flat Development**

39. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:

(a) **Principle 1: Context and Neighbourhood Character**

The site is located within the Ashmore Estate, an identified urban renewal site. The site is within the catchment of Erskineville Train Station. The site is 2.7km to the south west of the Sydney CBD. The proposal contributes to the vitality of the redevelopment area, providing a mix of residential, retail, and centre-based child care facility uses.

The development is proposed within the B2 'Local Centre' zone and is broadly in accordance with the aims and objectives of the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012, and the Concept Approval (as amended).

(b) **Principle 2: Built Form and Scale**

The Ashmore Estate is currently in transition from former industrial and warehousing uses to a mixed use local centre. The built form and scale of this proposal is consistent with that envisaged in the Concept Approval (as amended).

The proposal generally complies with the maximum height controls prescribed by the Sydney LEP 2012, except in the following locations:

- (i) The southern face of B01;
- (ii) The eighth storey of C01;
- (iii) The eastern face of C01; and
- (iv) The lift overrun of C02.

These non-compliances form part of the Concept Approval (as amended), and are therefore already approved. Refer to height discussion under the heading Issues.

(c) **Principle 3: Density**

The proposal complies with the maximum quantum of GFA allocated to Blocks B and C by Condition 8 'Allocation of Floor Space' of D/2015/966/A (excluding up to 10% bonus for design excellence).

The proposal will provide 328 apartments. This is considered appropriate for the site given its proximity to established and proposed infrastructure, public transport, and community and recreation facilities. The proposed density responds to the future context and does not result in unacceptable levels of amenity impact for neighbouring properties or future residents.

(d) **Principle 4: Sustainability**

The proposal is compliant with the requirements of BASIX, and a condition is recommended to ensure that the development complies with the commitments contained on its BASIX certificate.

(e) **Principle 5: Landscape**

A mix of hard and soft landscaping is provided, providing opportunities for passive and active recreation

(f) **Principle 6: Amenity**

Compliance with amenity controls is detailed in the below ADG assessment table. In summary, the proposal presents an acceptable level of residential amenity for future occupants.

(g) **Principle 7: Safety**

The proposal is broadly in line with the principles of Crime Prevention through Environmental Design (CPTED).

The development provides new opportunities for passive surveillance of new and existing streets, and will increase on-street activity. Letterboxes are provided in secure areas in lobbies or designated mail rooms.

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

The proposed development has the following unit mix:

- (i) 16 x studio apartments (4.9%);
- (ii) 120 x 1 bedroom apartments (36.6%);
- (iii) 153 x 2 bedroom apartments (46.6%); and
- (iv) 39 x 3+ bedroom apartments (11.9%).

The proposed unit mix is broadly consistent with that envisaged under the Sydney Development Control Plan 2012 (SDCP 2012), however there is a minor non-compliance with the requirement to limit the overall quantum of studio and one-bedroom apartments to 40% or less, as 41.5% is proposed. This equates to five apartments, which is considered to be a very minor variance in a development of this size. The non-compliance is also offset somewhat by the development exceeding the minimum number of 3+ bedroom dwellings, thereby contributing to greater housing choice for larger households within the LGA.

Subject to the recommended conditions of consent the proposed communal open space, and the facilities provided therein, provide ample opportunities for social interaction between the future residents.

(i) **Principle 9: Aesthetics**

The proposed materials are acceptable, and it is anticipated that the overall design will positively contribute to the aesthetic qualities of the streetscape.

The amended design is considered to be generally consistent with the competition winning scheme, which was considered by the selection panel to be capable of exhibiting design excellence.

40. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

<b>Apartment Design Guide</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
<b>2E Building Depth</b>		
12-18m (glass to glass)	No, but acceptable	<p>The proposal is largely compliant, however there are minor non-compliances throughout the development as a result of the building's articulation.</p> <p>Where non-compliances occur, they are restricted to only part of the buildings length, and do not exceed 20.9m.</p> <p>The proposal complies with the building envelope widths set by the Concept Approval.</p>

Apartment Design Guide		
Control	Compliance	Comment
<b>2F Building Separation</b>		
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul>	Yes	The proposal complies.  For the purpose of an assessment against the provisions of the ADG, Blocks B and C comprise a united building, as they form part of the same development application and share a single basement.  The separation distance between the proposed development and the approved Block A building envelope is 19.8m.  The Mitchell Road reservation is approximately 19.5m wide, providing ample separation between the proposed development and existing developments on the opposing side of the street.
Five to eight storeys (approximately 25 metres): <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable Rooms</li> </ul>	Yes	As above.
At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m.	Yes	Lower density developments on the opposite side of Mitchell Road are separated from the subject site by the road reservation, which is 19.5m wide.  As the buildings fronting Mitchell Road do not exceed four storeys the proposal complies.

Apartment Design Guide														
Control	Compliance	Comment												
<b>3D Communal and Public Open Space</b>														
Communal open space has a minimum area equal to 25% of the site.	Yes	The proposal provides four areas of communal open space, with a total area equivalent to 25.6% of the site area.  The proposal therefore complies.												
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	At least 53% of the communal open space receives at least two hours of solar access at the winter solstice.  The principal usable areas of communal open space are considered to be the Fig Tree Garden of Block B, located at the corner of Ashmore Street and Mitchell Road, and the rooftop of Building C02 of Block C (despite this area being smaller than the Block C podium, it provides more opportunities for passive recreation). Both of these areas receive solar access for at least two hours at the winter solstice.												
<b>3E Deep Soil Zones</b>														
Deep soil zones are to meet the following minimum requirements:	Yes	The site's deep soil requirements have been satisfied. The Concept Approval site provides up 7,446m <sup>2</sup> of deep soil in the future McPherson Park (10.72% of the Concept Plan site area). This proposal provides a further 1,302m <sup>2</sup> of deep soil (9.1% of the Block B and C site area).												
<table border="1"> <thead> <tr> <th>Site area</th> <th>Minimum Dimensions</th> <th>% of site area</th> </tr> </thead> <tbody> <tr> <td>&lt;650m<sup>2</sup></td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> </tr> <tr> <td>&gt;1,500m<sup>2</sup></td> <td>6m</td> </tr> <tr> <td>&gt;1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> </tr> </tbody> </table>			Site area	Minimum Dimensions	% of site area	<650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	>1,500m <sup>2</sup>	6m	>1,500m <sup>2</sup> with significant existing tree cover	6m
Site area			Minimum Dimensions	% of site area										
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>1,500m <sup>2</sup> with significant existing tree cover	6m													

Apartment Design Guide		
Control	Compliance	Comment
<b>3F Visual Privacy</b>		
<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.</p> <p>Note: Gallery circulation is treated as habitable space.</p>		
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul>	No, but acceptable	<p>Blocks B and C do not share a side or rear boundary with any other site, however the intent of these guidelines is to achieve the building separation requirements contained within Section 2F in order to ensure visual privacy.</p> <p>The proposal results in some non-compliances within the site. This was anticipated and assessed at the Concept Application stage, where it was deemed that the building envelopes are acceptable, subject to the detailed designs providing screening to mitigate non-compliances wherever they arose.</p> <p>Refer to building separation discussion under the heading Issues.</p>
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> <li>• 9m between habitable rooms / balconies</li> <li>• 4.5m between non-habitable rooms</li> </ul>	No, but acceptable	<p>As above.</p> <p>Notwithstanding, the communal rooftop located on Building C.02 may result in privacy issues due to the proximity of apartments in Building C.01. A condition of consent is recommended, requiring screening to be provided to a height of 1.8m along the western part of the northern parapet wall of the communal rooftop.</p> <p>Refer to building separation discussion under the heading Issues.</p>
<p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.</p>	Yes	The proposal complies.

<b>Apartment Design Guide</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
<b>4A Solar and Daylight Access</b>		
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No, but acceptable	<p>The submitted solar study claims 230 apartments (70.1%) receive two hours of direct sunlight at the winter solstice.</p> <p>City staff have reviewed the submitted documentation, and are of the view that the correct figure is 229 apartments (69.82%).</p> <p>The non-compliance equates to one apartment, which in a development of this size is very minor. The proposed non-compliance is therefore acceptable.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	No, but acceptable	<p>50 apartments (15.2%) receive no direct sunlight at the winter solstice. The non-compliance equates to one apartment, which in a development of this size is very minor, and is therefore acceptable.</p>
<b>4B Natural Ventilation</b>		
All habitable rooms are naturally ventilated.	Yes	<p>The proposal complies. Conditions of consent are recommended to ensure natural ventilation is achievable while simultaneously achieving acceptable acoustic amenity.</p> <p>Refer to noise discussion under the heading Issues.</p>
<p>Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.</p> <p>Note: Apartments 10 storeys or greater are deemed to be naturally cross ventilated only if balconies allow for adequate ventilation and cannot be fully enclosed.</p>	No, but acceptable	<p>The submitted natural cross ventilation study claims 197 apartments (60%) are naturally cross ventilated.</p> <p>City staff have reviewed the submitted documentation and have determined that the correct figure is 187 apartments (57%).</p> <p>City staff are satisfied that there are no further reasonable amendments that could be made to improve natural cross ventilation, and as such the proposal is acceptable.</p>

<b>Apartment Design Guide</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
		Refer to natural cross ventilation discussion under the heading Issues.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Cross over apartments do not exceed 18m in depth.
<b>4C Ceiling Heights</b>		
Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows:		
Habitable rooms: 2.7m	Yes	<p>A minimum floor to floor height of 3.1m has been provided on all residential floors, indicating a floor to ceiling height of 2.7m will be provided.</p> <p>A condition of consent is recommended, requiring a registered surveyor to confirm a 2.7m floor to ceiling height is achieved in living areas and bedrooms, and 2.4 is achieved in kitchens, bathrooms, laundries and hallways.</p> <p>Notwithstanding this, it is recommended that the inclusion include a dispensation for apartments where a bulkhead is required to assist in achieving natural cross ventilation.</p> <p>Refer to ventilation discussion under the heading Issues.</p>
Non-habitable rooms: 2.4m	Yes	As above. The proposal complies.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	As above. The proposal complies.

Apartment Design Guide		
Control	Compliance	Comment
<p>If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.</p>	<p>No, but acceptable</p>	<p>Within Block B the proposed floor to floor heights will facilitate a floor to ceiling height of 3.4m on the ground floor and 2.7m on the first floor. Given the Concept Approval does not permit commercial uses in Block B, this is acceptable.</p> <p>Within Block C the proposed floor to floor heights will facilitate a floor to ceiling height of 4.3m on the ground floor and 2.7m on the first floor. Given the proposed quantum of retail and commercial floor space proposed on this site (4,254m<sup>2</sup>), it is not considered necessary to provide for potential future commercial uses above the podium level.</p> <p>The proposal is acceptable.</p>
<p><b>4D Apartment Size and Layout</b></p>		
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	<p>No, but acceptable</p>	<p>The proposed unit sizes are as follows:</p> <ul style="list-style-type: none"> <li>• 15 x studios each with areas between 37m<sup>2</sup> and 48m<sup>2</sup>;</li> <li>• 120 x 1 bedroom, 1 bathroom apartments with areas between 50m<sup>2</sup> and 70m<sup>2</sup>;</li> <li>• 141 x 2 bedroom, 2 bathroom apartments with areas between 74m<sup>2</sup> and 92m<sup>2</sup> (one apartment is non-compliant);</li> <li>• 36 x 3 bedroom, 2 bathroom apartments with areas between 98m<sup>2</sup> and 145m<sup>2</sup>; and</li> <li>• 2 x 4 bedroom, 2 bathroom apartments with areas between 132m<sup>2</sup> and 133m<sup>2</sup>; and</li> <li>• 1 x 4 bedroom 3 bathroom apartment with an area of 159m<sup>2</sup>.</li> </ul> <p>All apartments except one (B113) meet or exceed the minimum requirements. Apartment B113 is a 2 bedroom, 2 bathroom apartment with an internal area of 74m<sup>2</sup>, 1m<sup>2</sup> short of the minimum 75m<sup>2</sup> requirement. The apartment has a rational layout with very little circulation space and provides an acceptable level of amenity.</p>

Apartment Design Guide		
Control	Compliance	Comment
		Accordingly, the proposed minor non-compliance, which equates to 0.3% of the entire development, is considered to be acceptable.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	The proposal complies.
Habitable room depths are to be no more than 2.5 x the ceiling height, or 8m for open plan layouts.	No, but acceptable	<p>All apartments have open plan layouts. 28 apartments (8.5%) have depths in excess of 8m from a window.</p> <p>11 of these apartments (3.4%), have open plan habitable rooms that are 8.2m or 8.4m from the window. The non-compliance in these apartments is relatively minor, and the apartments are cross through apartments with a depth of less than 18m. These apartments are considered to provide an acceptable level of amenity, and are supported.</p> <p>The remaining 17 apartments (5.2%) are marginally non-compliant, with the back of habitable rooms being within 9.6m from the window. Very few apartments are affected overall, and the level of amenity provided in these apartments is acceptable.</p> <p>Overall the proposal is considered to provide an acceptable level of compliance with the ADG recommendation, and is supported.</p>
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> <li>• master bedroom: 10m<sup>2</sup></li> <li>• all other bedrooms: 9m<sup>2</sup></li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	No, but acceptable	<p>56 apartments (17.1%) do not meet the requirement to provide a master bedroom of 10m<sup>2</sup> or greater. These bedrooms range in size from 9.2m<sup>2</sup> to 9.6m<sup>2</sup>.</p> <p>All affected bedrooms are located within one-bedroom apartments. They have a regular shape, and are capable of comfortably accommodating a queen size bed, as illustrated on the architectural drawings.</p> <p>The proposal is acceptable.</p>

Apartment Design Guide																	
Control	Compliance	Comment															
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>	No, but acceptable	42 apartments (12.8%) do not meet the minimum width requirements. All affected apartments have two or more bedrooms. In 39 of these apartments a minimum width of 3.9m is provided, and in 3 apartments a minimum width of 3.7m is provided. These variances are less than 10% below the recommended widths, and are therefore considered minor. The proposal is acceptable.															
4m minimum width for cross over and cross through apartments.	Yes	The proposal complies.															
<b>4E Private Open Space and Balconies</b>																	
All apartments required to have primary balconies as follows: <table border="1"> <thead> <tr> <th>Dwelling Type:</th> <th>Min. Area</th> <th>Min. Depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>One bed</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>Two bed</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>Three+ bed</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum depth counting to balcony area is 1m.</p> <p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	Dwelling Type:	Min. Area	Min. Depth	Studio	4m <sup>2</sup>	-	One bed	8m <sup>2</sup>	2m	Two bed	10m <sup>2</sup>	2m	Three+ bed	12m <sup>2</sup>	2.4m	No, but acceptable	All apartments are provided with private open space, however 37 apartments (13.3%) do not meet the minimum requirements for private open space. Refer to private open space discussion under the heading Issues.
Dwelling Type:	Min. Area	Min. Depth															
Studio	4m <sup>2</sup>	-															
One bed	8m <sup>2</sup>	2m															
Two bed	10m <sup>2</sup>	2m															
Three+ bed	12m <sup>2</sup>	2.4m															

Apartment Design Guide		
Control	Compliance	Comment
<b>4F Common Circulation and Spaces</b>		
The maximum number of apartments off a circulation core on a single level is eight (8).	No, but acceptable	<p>The proposal generally complies, however there are four locations where non-compliances arise. These are:</p> <ul style="list-style-type: none"> <li>• 9 apartments accessed from a single core on level 3 of Block B;</li> <li>• 11 apartments accessed from a single core on level 2 of Building C03;</li> <li>• 15 apartments accessed from a single core on level 3 of Building C03; and</li> <li>• 10 apartments accessed from a single core on level 3 of Building C04.</li> </ul> <p>Buildings C03 and C04 contain a high proportion of two storey cross through apartments. This configuration allows for natural cross ventilation, but often results in a larger number of apartments being accessed from a single corridor than is envisaged by the ADG. This is because all entries for apartments over two floors are consolidated on to a single floor.</p> <p>Buildings C03 and C04 provide a relatively small number of apartments (37 total over three storeys, and 17 total over three storeys, respectively), and therefore an additional lift core in these buildings would be surplus to requirements. Moreover, the logical location for an additional lift core in both of these buildings is above the retail car park, and would therefore require the basement layout to be significantly reconfigured.</p> <p>Accordingly, the proposed non-compliances are acceptable in the particular circumstances of this case.</p>

<b>Apartment Design Guide</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comment</b>
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	The proposal complies.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	The proposal complies.
<b>4G Storage</b>		
Minimum storage provision facilities: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> (Minimum 50% storage area located within unit)	Able to comply	A storage schedule has been submitted with the application, which suggests all apartments are provided with the minimum storage requirements, and that no more than 50% of the minimum requirement is provided in the basement.  A condition of consent is recommended to ensure the minimum storage requirements will be met.
<b>4J Noise and Pollution</b>		
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Able to comply	Conditions of consent are recommended to ensure that all noise affected apartments can simultaneously satisfy the requirement to provide natural ventilation while complying the relevant acoustic performance criteria. Refer to ventilation discussion under the heading Issues.

### **State Environmental Planning Policy (Infrastructure) 2007**

41. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

**Clause 44**

42. The application is subject to Clause 44 (Division 5 Electricity transmission or distribution networks, Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the basement will require the penetration of the ground to a depth of at least 3m below ground level (existing) on land that is within 10m (measured radially) of the centreline of the Picnic Point to Haymarket electricity supply corridor.
43. In accordance with the Clause, the application was referred to Transgrid for comment. Transgrid advise they have no objections to the development, subject to their conditions of consent. These conditions have been incorporated into the recommended conditions of consent.

**Clause 45**

44. The application is subject to Clause 45 of the ISEPP (Division 5 Electricity transmission or distribution networks, Subdivision 2 Development likely to affect an electricity transmission or distribution network) as there is an existing substation adjacent to the site, existing cables within the site boundary and adjacent to the site, and an existing right of way within the subject site.
45. In accordance with the Clause, the application was referred to Ausgrid for a period of 21 days. The requirements of Ausgrid have been incorporated in the recommended conditions of consent.

**Clause 104**

46. The application is subject to Clause 104 of the ISEPP (Division 17 Roads and traffic, Subdivision 2 Development in or adjacent to road corridors and road reservations) as the proposal is traffic generating development, being residential development that will provide more than 300 dwellings, and shops and commercial premises exceeding 4,000m<sup>2</sup> of GFA.
47. In accordance with the Clause the application was referred to the RMS for a period of 21 days. RMS raised no objection to the proposal in principle. Where relevant and applicable, the recommendations of the RMS have been incorporated into the recommended conditions of consent.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

48. A BASIX Certificate has been submitted with the development application.
49. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

**State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

50. State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 was gazetted on 1 September 2017.

51. While this proposal does not seek consent for the fit-out and use of the future centre-based child care facility, the tenancy that will accommodate the centre-based child care facility has been identified, and a future DA for the fit-out and use of this space will be forthcoming. Accordingly, the consent authority should be satisfied that the future application will not be encumbered by any fundamental issue that would be an impediment likely to result in the refusal of an application.
52. A preliminary assessment against the regulatory requirements of the National Quality Framework Assessment Checklist, as set out in Part 4 of the Child Care Planning Guideline, has been undertaken. It is considered that there is nothing inherent in the proposed design that would preclude a future application from complying with the provisions of the SEPP.

### Sydney LEP 2012

53. The site is located within the B2 'Local Centre' zone. The proposed uses include residential flat buildings, centre-based child care facility, and retail premises, which are all permissible with consent.
54. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Table		
Development Control	Compliance	Comment
4.3 Height of Buildings	No, but acceptable	<p>The maximum permissible height varies within Blocks B and C.</p> <p>Block B is subject to maximum height controls of 15m, 22m, and 27m.</p> <p>Block C is subject to maximum height controls of 15m, 18m, and 27m.</p> <p>The proposal does not fully comply with the LEP height provisions, however these non-compliances are already approved by the Concept Approval. Refer to building height discussion under the heading Issues.</p>

Compliance Table		
Development Control	Compliance	Comment
4.4 Floor Space Ratio	Yes	<p>The Concept Approval distributed the maximum permissible base GFA permissible across each of the development Blocks.</p> <p>A maximum GFA of 12,490m<sup>2</sup> is permissible on Block B, and 17,370m<sup>2</sup> is permissible on Block C. 10% bonus floor space, which may be awarded for design excellence, increases the maximum GFA to 13,739m<sup>2</sup> and 19,107m<sup>2</sup> respectively.</p> <p>The application states that 13,359m<sup>2</sup> of GFA is proposed for Block B, and 18,683m<sup>2</sup> is proposed for Block C. However, it is noted that the calculation does not include GFA located within the basement, including the building manager's office (15m<sup>2</sup> in Block B) and the music practice room (22m<sup>2</sup> in Block C).</p> <p>Despite these additions the proposal complies, with Block B being 365m<sup>2</sup> under the maximum GFA, and Block C being 402m<sup>2</sup> under the maximum.</p> <p>Refer to GFA discussion under the heading Issues.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the height of buildings development standard prescribed under Clause 4.3.</p> <p>Despite the proposed height already being approved by the Concept Approval, a request to vary the height of buildings development standards under the provisions of Clause 4.6 is still required, and has been submitted with the application.</p> <p>The use of Clause 4.6 to vary the height of buildings development standard is in accordance with LEP requirements, and is supported.</p> <p>Refer to building height discussion under the heading Issues.</p>

<b>Compliance Table</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
5.10 Heritage conservation	Yes	<p>The site is not a heritage item nor is it located in a heritage conservation area.</p> <p>Notwithstanding this, the electrical substation on the northern frontage is a heritage item of local significance (I503).</p> <p>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.</p> <p>A Heritage Impact Statement has been submitted, satisfying the requirements of the clause.</p> <p>The proposal, as amended and subject to conditions, is considered to be acceptable in terms of heritage impacts to the adjoining heritage item and conservation areas.</p> <p>Refer to heritage discussion under the heading Issues.</p>
<b>Part 6 Local provisions - height and floor space</b>		
Division 2 Additional floor space outside Central Sydney	Yes	<p>The proposal has been the subject of a competitive design process, conducted in accordance with the City of Sydney Competitive Design Policy, and is eligible for additional floor space in accordance with Clause 6.21 'Design Excellence' (7) (b).</p> <p>Refer to GFA discussion under the heading Issues.</p>
Division 4 Design excellence	Yes	<p>A competitive design process for the site was conducted to select the project architect. The selection panel deemed the entry of WMK Architects as the design most capable of achieving design excellence.</p> <p>The Detailed Proposal (as amended) is considered to be generally consistent with the competition winning scheme.</p>

Compliance Table		
Development Control	Compliance	Comment
<b>Part 7 Local provisions—general</b>		
Division 1 Car parking ancillary to other development	Yes	<p>The Site is identified as Category F land on the Public Transport Access Level Map.</p> <p>The maximum number of car parking spaces permitted is as follows:</p> <ul style="list-style-type: none"> <li>• Residential spaces – 266</li> <li>• Residential visitor spaces – 33</li> <li>• Retail spaces – subject to study which concluded 78</li> <li>• Centre-based child care facility – 7</li> </ul> <p>The number of car parking spaces proposed is as follows:</p> <ul style="list-style-type: none"> <li>• Residential spaces – 205</li> <li>• Residential visitor spaces – 0</li> <li>• Retail spaces – 66</li> <li>• Centre-based child care facility – 6</li> </ul> <p>The proposal complies.</p>
7.14 Acid Sulphate Soils	N/A	<p>The site is identified as containing class 3 Acid Sulphate Soil.</p> <p>Excavation is subject to a separate application for early works. Conditions of consent relating to Acid Sulphate Soils have been applied to that consent.</p>
7.15 Flood planning	Yes	<p>The site is identified by Council as being flood prone.</p> <p>A Flood Assessment Report was submitted with the application which determined that all entry locations satisfy Council's Flood Planning Level (FPL) requirements.</p> <p>The application has been reviewed by Council's Flooding Engineers and has been found to be acceptable.</p>

Compliance Table		
Development Control	Compliance	Comment
7.20 Development requiring preparation of a development control plan	Yes	<p>In accordance with Section 83C of the EP&amp;A Act, a Concept Approval was granted in lieu of a Development Control Plan to satisfy the obligations of Clause 7.20.</p> <p>This is a Detailed Proposal for Blocks B and C, which is broadly in accordance with the Concept Approval (as amended).</p> <p>Refer to Concept Approval discussion under the heading Issues.</p>
7.23 Large retail development near Green Square Town Centre	Yes	57 Ashmore Street is not included in the Retail Premises Map, and is therefore not restricted in terms of the quantum of retail development that may be provided.

### Sydney DCP 2012

55. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Ashmore
<p>The subject site is located in the Ashmore locality. The proposed mixed use development is considered to be in keeping with the unique character of the area and the relevant design principles. Specifically, subject to the recommended conditions of consent, the proposal:</p> <ul style="list-style-type: none"> <li>• Ensures building heights in Ashmore transition to neighbouring conservation areas;</li> <li>• Introduces a permeable network of streets;</li> <li>• Facilitates the provision of attractive public domain works with pedestrian and cycle connections;</li> <li>• Facilitates the provision of high quality streetscapes capable of accommodating tree planting and water sensitive urban design measures;</li> <li>• Provides adequate setbacks from the public domain to provide for a strong landscape character;</li> <li>• Introduces an appropriate mix of commercial and residential uses; and</li> <li>• Protects key panoramic views from Sydney Park to the CBD skyline.</li> </ul>

3. General Provisions		
Development Control	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>The proposed development will make a positive contribution to the public domain. Public Domain elements are being delivered under the terms of the VPA. Public Domain works, including roads and footpaths, and the through site link, will be delivered in accordance with the Ashmore Public Domain Plan and to the City's specifications.</p> <p>The proposal is generally in accordance with the DCP's public domain requirements.</p>
3.2 Defining the Public Domain	Acceptable	<p>The proposal is consistent with the DCP provisions in that:</p> <ul style="list-style-type: none"> <li>• It reduces overshadowing impacts to the future McPherson Park when compared to the existing Stage 1 approval.</li> <li>• It does not propose additional height above the approved height of the Concept Approval, therefore public views would not be further affected by this proposal.</li> <li>• It positively addresses the street, providing numerous entries.</li> </ul> <p>The site is identified on the active frontages map, with the southern part of Block C requiring active frontages to the west, south, and east. The DCP requires active frontages to 80% of each of these frontages. The proposal provides 100% active frontage on the eastern side, 90% on the southern side, and 90% on the western frontage. For the remainder of the frontages to the Public Domain the proposal is required to provide an active frontage of 70%. The proposal complies.</p> <p>The proposal does not comply with the DCP requirement to provide a minimum height in the retail arcade of 1.5 x the width of the arcade. The arcade is 5m wide, which generates a requirement for a clear height of 7.5m.</p>

3. General Provisions		
Development Control	Compliance	Comment
		<p>7.5m is far greater than the minimum floor to ceiling heights required by the DCP and the ADG, and is also inconsistent with the Stage 1 consent, which assumed a floor to ceiling height of up to 4.9m.</p> <p>A floor to ceiling height in the arcade of 4.3m is proposed, which is considered acceptable.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>A competitive design process for the site was conducted to select the project architect. The selection panel deemed the entry of WMK Architects as the design most capable of achieving design excellence.</p> <p>The proposal seeks additional floor space for the achievement of design excellence, which is supported.</p>
3.4 Hierarchy of Centres, City South	Yes	<p>57 Ashmore Street is a planned 'local village centre'. The DCP envisages a range of future retail uses on the site, including one full-line supermarket, one discount supermarket, specialty stores, homewares, convenience retailers, fresh food, cafes, restaurants and bars.</p> <p>Block C will provide 13 retail tenancies, ranging in size from 78m<sup>2</sup> to 1,107m<sup>2</sup>. Although the fit-out and use of these tenancies will be the subject of future applications, the proposal facilitates the desired future retail mix.</p>
3.5 Urban Ecology	Acceptable	<p>40 trees on or around the site are affected by this proposal.</p> <p>Refer to Trees discussion under the heading Issues.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The proposal will not result in unacceptable impacts to the environment.</p> <p>Conditions of consent are recommended to ensure water efficiency measures are incorporated into the detailed design of the building.</p>

3. General Provisions		
Development Control	Compliance	Comment
3.7 Water and Flood Management	Able to Comply	<p>The site is identified as being on flood prone land. As identified earlier in this report, the proposal has been designed to the FPL and is acceptable in terms of flood planning.</p> <p>The Public Domain Design Report submitted with the application outlined the proposed Water Sensitive Urban Design measures. This was reviewed by the City's stormwater engineers, but was found to be deficient.</p> <p>A condition of consent is recommended, requiring a Stormwater Quality Assessment Report to be prepared prior to the issue of a construction certificate.</p> <p>The Report is to include the MUSIC model and must demonstrate that the development will comply with the pollutant load standards detailed in Section 3.7.3 of the DCP.</p> <p>A further condition is recommended, requiring a positive covenant for the future maintenance of the system to maintain its effectiveness in treating stormwater to the City's requirements.</p>
3.9 Heritage	Yes	<p>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.</p> <p>The proposal is considered to be acceptable in terms of the heritage impact to the substation.</p> <p>Moreover, the application has been supported by statements from a structural engineer and geotechnical engineer confirming that the proposal can be designed and constructed in such a manner that it will have no impact on the substation.</p>

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
		Refer to heritage discussion under the heading Issues.
3.10 Significant Architectural Building Types	Yes	The industrial buildings on the site date from the mid to late 20th century and therefore the provisions of the DCP apply. Council's heritage specialist has advised that industrial buildings on the site that are older than 50 years are not significant. The demolition of the buildings is to occur by way of a Complying Development Certificate.
3.11 Transport and Parking	Able to comply	The proposal generally complies with the DCP's Transport and Parking requirements. Where non-compliances arise, these are considered to be acceptable, or are remedied through the recommended conditions of consent. Refer to Transport, Parking and Vehicular Access discussion under the heading Issues.
3.12 Accessible Design	Able to comply	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA. The proposal includes 50 adaptable apartments (15.3%), consistent with the DCP requirements.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.

<b>3. General Provisions</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
3.16 Signage and Advertising	No	<p>The Signage Strategy submitted with the application contains inconsistent and inaccurate information and is therefore not recommended for approval at this time.</p> <p>A condition of consent is recommended, requiring the signage strategy to be the subject of a separate DA.</p> <p>Refer to Signage Strategy discussion under the heading Issues.</p>
3.17 Contamination	Yes	<p>The City's Environmental Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed uses.</p>

<b>4. Development Types</b>		
<b>4.2 Residential flat, commercial and mixed use developments</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.2.1 Building height	Acceptable	<p>The DCP building heights are superseded by the Concept Approval (as amended).</p> <p>The DCP requires ground and first floor residential units in a mixed use area to have a floor to ceiling height of 3.3m to enable both residential and commercial uses. Where retail is proposed, a floor to floor height of 4.5m is required.</p> <p>In Block B the proposed floor to floor heights will facilitate a floor to ceiling height of 3.4m on the ground floor and 2.7m on the first floor. Given Block B was not approved for commercial uses by the Concept Approval, this is considered acceptable.</p>

4. Development Types		
4.2 Residential flat, commercial and mixed use developments		
Development Control	Compliance	Comment
		<p>In Block C, which is proposed to accommodate retail and commercial uses, a minimum floor to floor height of 4.5m is provided on the ground floor consistent with DCP requirements. However, a floor to floor height of 3.1m is provided on the first floor, facilitating a floor to ceiling height of 2.7m. Given the proposed quantum of retail and commercial floor space proposed on this site (4,254m<sup>2</sup>), it is not considered necessary to provide for additional potential future commercial uses above the podium level.</p> <p>The proposal is acceptable.</p>
4.2.2 Building setbacks	N/A	The DCP setbacks are superseded by the Concept Approval (as amended).
4.2.3 Amenity	Able to comply	<p>The proposal provides a good level of residential amenity. The apartments are well laid out and meet the objectives of the DCP controls.</p> <p>Common corridors have access to light and air, and are generally in excess of 2m in front of lifts. A condition of consent is recommended to shorten a nib wall in Building C02 to facilitate the movement of bulky goods and furniture between the lifts and apartments.</p> <p>The proposed unit mix is broadly consistent with that envisaged under the Sydney DCP 2012, however there is a minor non-compliance with the requirement to limit the overall quantum of studio and one-bedroom apartments to 40% or less, as 41.5% is proposed.</p> <p>This equates to five apartments, which is considered to be a very minor variance in a development of this size. The non-compliance is also offset somewhat by the development exceeding the minimum number of 3+ bedroom dwellings, thereby contributing to greater housing choice for larger households within the LGA.</p>

4. Development Types		
4.2 Residential flat, commercial and mixed use developments		
Development Control	Compliance	Comment
		<p>Conditions of consent are recommended to ensure the apartments achieve an acceptable level of acoustic amenity.</p> <p>Refer to discussion of acoustic amenity under the heading Issues.</p>
4.2.4 Fine grain, architectural diversity and articulation	Acceptable	<p>The Concept Approval building envelopes provide for buildings that exceed the maximum street frontage lengths permitted by the DCP. The detailed proposal succeeds in breaking the form by providing additional full height breaks, and by providing articulation and surface modulation where necessary.</p> <p>If strict compliance with the provisions of the DCP was to be sought, this would result in a significant redesign of the winning scheme, which is not considered appropriate.</p> <p>The proposal is acceptable.</p> <p>A discussion of this Detailed Proposal's consistency with the Concept Approval is provided under the heading Issues.</p>
4.2.6 Waste minimisation	Able to comply	<p>A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.</p> <p>The proposal has been reviewed by the City's Waste Services Unit and was found to be acceptable, subject to conditions.</p>
4.2.7 Heating and Cooling Infrastructure	Acceptable	<p>Heating and cooling plant is located in consolidated locations on the rooftops. Conditions of consent are recommended to ensure plant is not visible from the public domain.</p>
4.2.8 Letterboxes	Yes	<p>Letterboxes are provided in secure areas in lobbies or designated mail rooms.</p>

4. Development Types		
4.4 Other development types and uses		
Development Control	Compliance	Comment
4.4.4 Childcare Centres	Acceptable	<p>The proposal includes a centre-based child care facility. The fit-out and use of the centre is not proposed at this stage. Since the application was lodged, the majority of the DCP provisions relating to childcare have been superseded by the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, gazetted 1 September 2017.</p> <p>A preliminary assessment against the regulatory requirements and the National Quality Framework Assessment Checklist set out in Part 4 of the Child Care Planning Guideline, has been undertaken in relation to the proposed development. There is nothing inherent in the proposed design that would preclude a future application from complying with the provisions of the SEPP.</p>

5. Specific Areas: Ashmore Neighbourhood		
Note: These provisions are largely superseded by the Concept Approval and are only addressed where relevant		
Development Control	Compliance	Comment
5.5.4 Accessibility and amenity in the public domain	Compliance Improved	<p>The Concept Approval achieved midwinter solar access to McPherson Park in accordance with the DCP requirements from 11am onward. A minor non-compliance occurred at 10am, when 55% solar access was achieved.</p> <p>The Detailed Proposal marginally reduces the overshadowing to McPherson park in the morning, thereby improving compliance.</p> <p>Refer to the built form discussion under the heading Issues.</p>

<b>5. Specific Areas: Ashmore Neighbourhood</b>		
<b>Note: These provisions are largely superseded by the Concept Approval and are only addressed where relevant</b>		
<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
5.5.8 Building layout, form and design	Yes	<p>The Heritage Interpretation Plan for the Concept Approval site recommends interpretative signage related to a Former Fire Station as well Substation No 101 be provided within the Fig Tree Garden adjacent to the substation. The Plan also identifies opportunities to provide interpretation within Stovemaker Lane and in the footpaths.</p> <p>A condition of consent is recommended requiring final details of heritage interpretation to be provided prior to the issue of a construction certificate for above ground building works. The interpretation is to be installed prior to the issue of any Occupation Certificate.</p> <p>The proposal does not fully comply with the DCP requirements relating to fence heights. The applicant is seeking a dispensation from the requirement for fences to be transparent and to be no higher than 1.4m in order to provide visual privacy and prevent an over-reliance on blinds and curtains in ground floor apartments.</p> <p>The proposal includes layers of transparent and solid fencing and planting, which will provide visual interest in the streetscape and soften the appearance of non-compliant fencing.</p> <p>City staff are satisfied that if the proposed landscaping is implemented as currently proposed, and subject to the recommended conditions of consent relating to the brickwork, the proposed fences will not preclude a satisfactory outcome despite the proposed non-compliances.</p>

## ISSUES

### Consistency with Concept Approval

56. The Concept Approval includes various conditions which are applicable to this application. A summary of the proposal's compliance with key relevant components and conditions is provided below.

#### Condition 6 'Stage 2 to be contained within approved envelope'

57. The detailed Proposal for Blocks B and C fits entirely within the building envelope of the Concept Approval (as amended). This is illustrated in Figures 26 and 27 below.

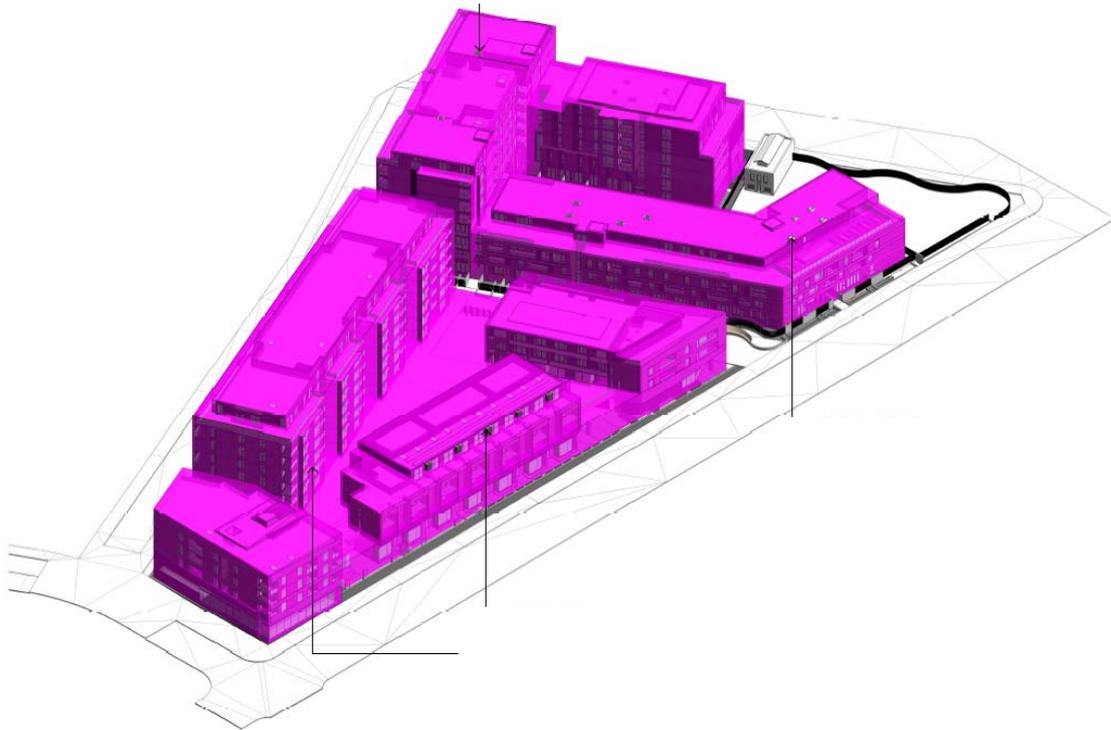


Figure 26: Axonometric drawing of the detailed design proposed for Blocks B and C within the Concept Approval building envelope, as viewed from an elevated position to the south-east

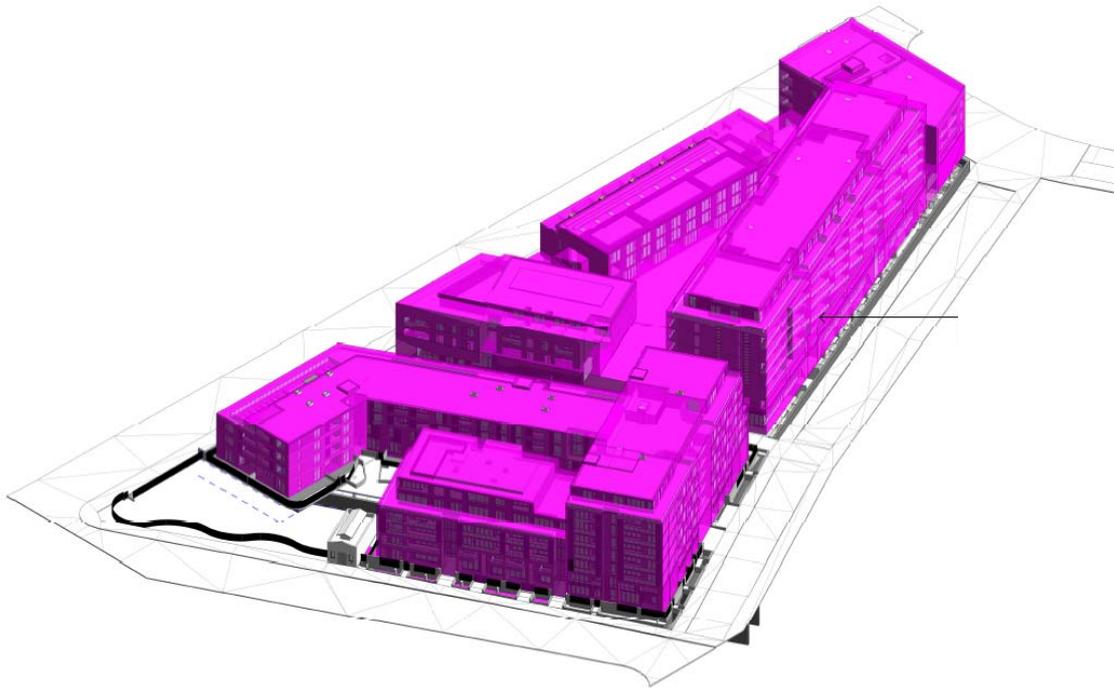


Figure 27: Axonometric drawing of the detailed design proposed for Blocks B and C within the Concept Approval building envelope, as viewed from an elevated position to the north-west

#### Condition 8 'Allocation of Floor Space'

58. The Concept Approval distributed the maximum permissible base FSR of 1.75:1 through allocations of GFA to each of the development Blocks.
59. A maximum GFA of 12,490m<sup>2</sup> is permissible on Block B, and 17,370m<sup>2</sup> is permissible on Block C. In accordance with Condition 7 'Floor Space Ratio', and the provisions of Clause 6.21 'design excellence of the Sydney LEP 2012, 10% bonus floor space may be awarded for design excellence, which increases the maximum GFA to 13,739m<sup>2</sup> and 19,107m<sup>2</sup> respectively.
60. The application states that 13,359m<sup>2</sup> of GFA is proposed for Block B, and 18,683m<sup>2</sup> is proposed for Block C. However, it is noted that the calculation does not include GFA located within the basement, including the building manager's office (15m<sup>2</sup> in Block B) and the music practice room (22m<sup>2</sup> in Block C).
61. Despite these additions the proposal complies, with Block B being 365m<sup>2</sup> under the maximum GFA, and Block C being 402m<sup>2</sup> under the maximum GFA.

#### Condition 11 'Detailed Design of Buildings'

62. The Concept Approval requires a number of design measures to be incorporated into the design of this Detailed Proposal. A summary of these design measures, and an assessment of compliance, is provide below:

- (a) The design of Block B IS to integrate with the retained area of open space on the corner of Ashmore Street and Mitchell Road.

**Assessment:** The proposal integrates the area as 'Fig Tree Garden', an area of communal open space provided for the benefit of the future residents of Block B. The Hill's Weeping Fig Trees are retained, and the site condition is improved upon with landscaping treatments.

- (b) The design of Block C is to incorporate articulation or other design measures to reduce the impact of the 140m block length fronting Mitchell Road.

**Assessment:** The original Concept Approval included a long three storey Building C03 fronting Mitchell Road. The Detailed Proposal splits the longest built form on this frontage into two sections, and re-orientates the northern section to Stovemaker Lane as new Building C04. Furthermore, the re-organised frontage is further broken down into three distinct buildings (C02, C03, and C04) which incorporate distinct materiality and building expression, and are separated through recessed entries with full height breaks. This is illustrated in Figure 28 below.

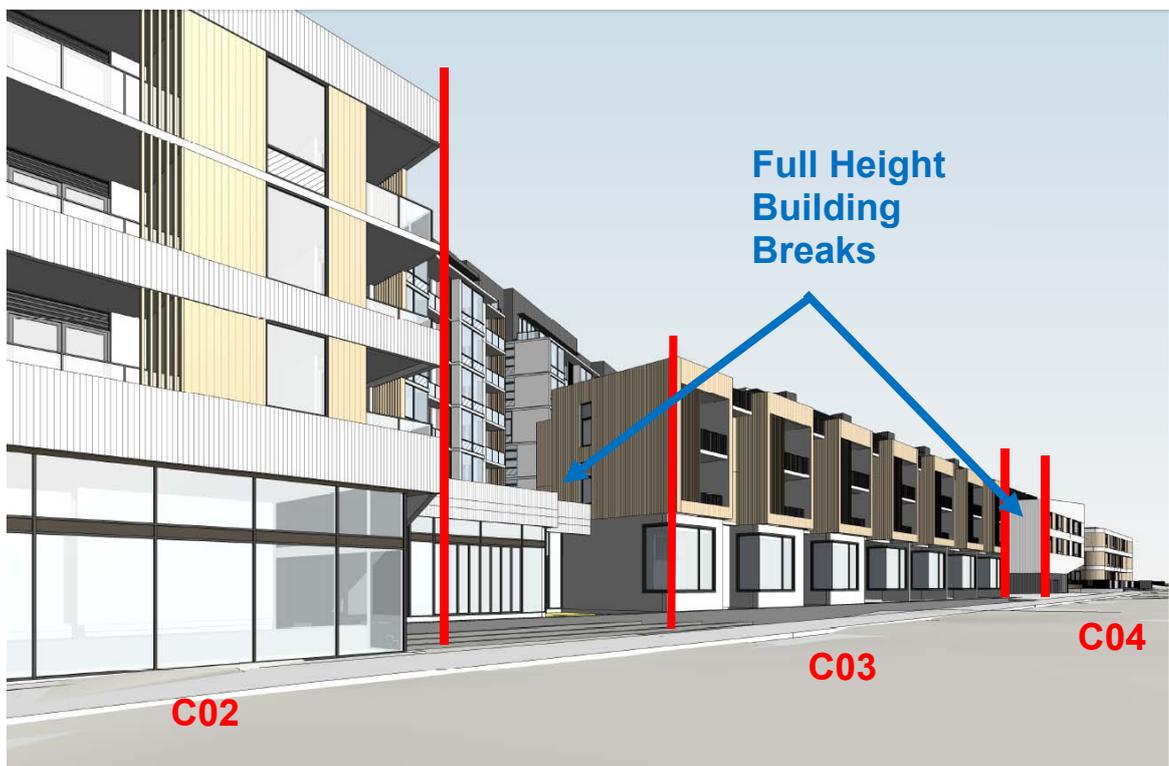


Figure 28: Perspective of Block C, as viewed from the corner of Maddox Street and Mitchell Road, looking north-west. The red lines demonstrate how the frontage is broken up into three distinct elements, the blue arrows indicate the location of the full height breaks.

- (c) The design of Block C is to consider activating the frontage of Mitchell Road at the corner of Macdonald Street.

**Assessment:** The proposal includes a retail tenancy on this corner, with full height glazing. Dependent on the final use of the tenancy, opportunities for outdoor dining may exist in the future.

- (d) The design of car park entries is to minimise the possibility of light beams from vehicle headlights shining into habitable rooms when exiting car parks.

**Assessment:** The 'up' ramp of the car park levels is setback 11.75m behind the boundary. In addition, a screen is proposed at the top of the car park entry. In conjunction, these measures minimise the possibility of light beams from vehicle headlights shining into habitable rooms of the future Block A located on the opposite side of Foundry Street.

It should also be noted that the provision of the tunnel connection to Block A eliminates the requirement for a driveway into that site.

- (e) Mailboxes to be located inside secure areas and mailboxes with non-master key locks are to be installed.

**Assessment:** Letterboxes are provided in secure areas in lobbies or designated mail rooms. A condition of consent is recommended to ensure mailboxes with non-master key locks are installed.

- (f) Ensure no openings to basement levels are located below the PMF level.

**Assessment:** The Flood Report submitted with the application indicates that all basement entry points are located at or above the PMF in both the interim scenario, and both possible future scenarios following installation of future trunk drainage being delivered under the VPA.

### Concept Approval Drawings

63. The Detailed Proposal is generally consistent with the Concept Approval drawings, with the exception of the Ground Level Setbacks. As illustrated in Figure 29 below, the Concept Approval requires a 3m setback on all frontages of Block B, and on the entire western frontage and the majority of the eastern frontage of Block C. A 1m setback is required on the northern frontage of Block C.



Figure 29: Extract from the Ground Level Setback Drawing from

64. The proposal does not provide the required setbacks to Stovemaker Lane. While this is non-compliant with the Concept Approval, it is noted that the SDCP 2012 does not require any form of setback in these locations. These setbacks were proposed by the developer, and they did not come about as a direction from Council officers. Accordingly, it is not considered necessary to require the setbacks to Stovemaker Lane, and the proposed non-compliance is acceptable.

#### Submission requirements

65. A review of the application has been undertaken to confirm that the Detailed Proposal is in accordance with the Concept Approval in terms of the supporting documentation required to be submitted with the application.
66. While the application is generally in accordance with the lodgement requirements pertaining to a DA, a mechanical parking report has not been submitted in accordance with Condition 31 'Mechanical Parking Facilities' despite stackers being proposed. However, this can be resolved by way of a condition of consent imposed on this Detailed Proposal, and therefore its omission is not a determinative factor that would warrant refusal of the application. A condition of consent is recommended accordingly.

#### **Height**

67. The SLEP 2012 height of buildings development standard varies across the Ashmore Estate, and within Blocks B and C, as illustrated in Figure 30 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 30: 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.

68. The Concept Approval provides for additional height above the maximum permitted by the SLEP 2012, and the building heights proposed in this Detailed Proposal are consistent with the Concept Approval.
69. Despite the Concept Approval, a variation to the Height of Buildings Development Standards relating to the Detailed Proposal is required. Accordingly, the applicant is relying on the provisions of Clause 4.6 to seek an exception to the height of buildings development standards. The Detailed Proposal for Blocks B and C results in four non-compliances with the SLEP 2012 height of buildings development standards, as illustrated in Figure 31 below.

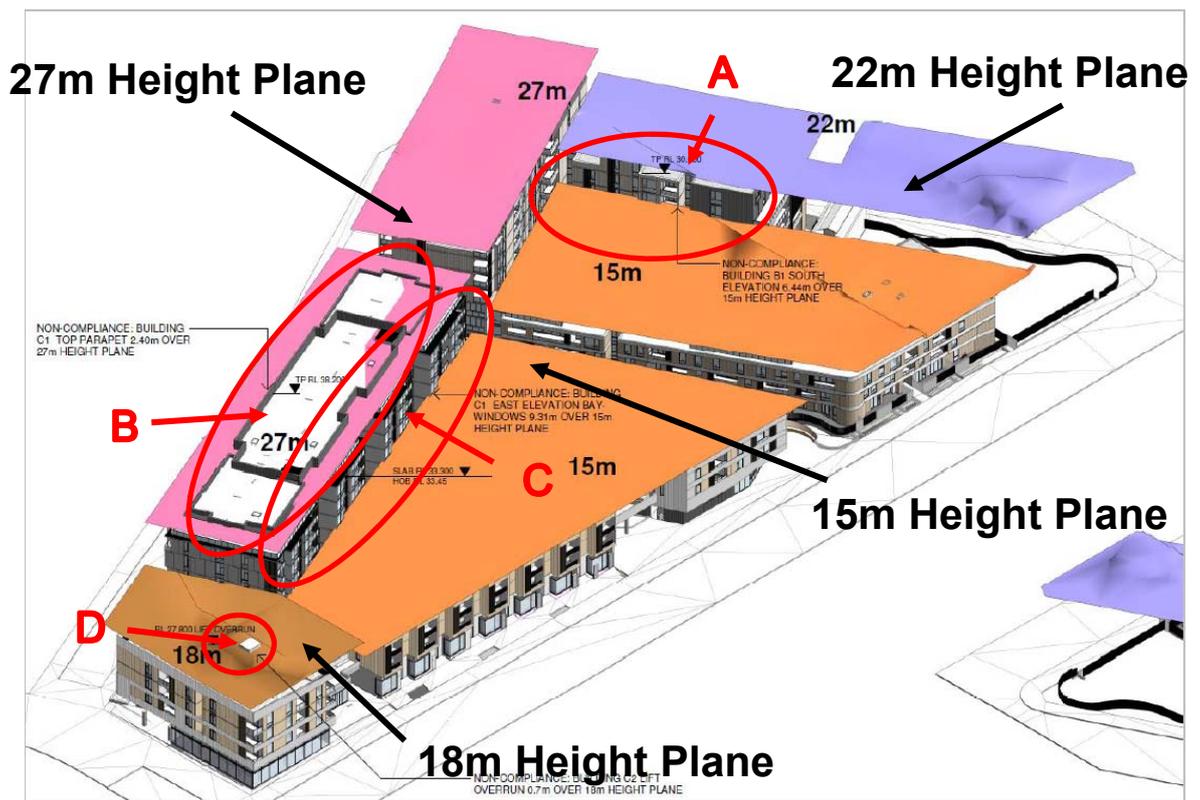


Figure 31: 3D drawings illustrating the Detailed Proposal within the SLEP 2012 maximum height planes.

70. 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 into the adjoining 15m 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%. 7.86m<sup>2</sup> of GFA is accommodated on each floor within the non-compliant part of the building.

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

The proposed height of this building is 29.4m. This results in a non-compliance of 2.4m above the 27m height plane and a variance to the development standard of 8.9%.

(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%. 16.26m<sup>2</sup> 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. 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.

71. Clause 4.6 allows the Consent Authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The Consent Authority may grant the exception as the Director-General's concurrence can be assumed where Clause 4.6 is adopted as per Department of Planning Circular PS 08–003 dated 9 May 2008.

Applicant Justification

72. The applicant submits that compliance with the height control is unreasonable or unnecessary in the circumstances of the case for the following reasons:
- (a) The built form has been developed in response to site constraints, surrounding context and the design development for the built form and massing across the site. The concept master plan envisaged a precinct which achieves design excellence through built form and place making. This has been achieved through use of building scale and arrangement of the public realm as a key feature of the site.
  - (b) The additional height will not result in any detrimental amenity impacts to surrounding development when compared to a complying design. Nor will the extent of the non-compliance result in any adverse visual impact on the locality.
  - (c) The proposal represents a superior urban design outcome, resulting in the retention of the fig trees at the corner of Mitchell Road and Ashmore Street in response to the community views on the redevelopment on the site.
  - (d) The variations are the result of retaining the fig trees on the corner of Mitchell Road and Ashmore Street, the provision of an increased setback to Ashmore Street, provision of improved solar amenity for apartments in Building C01, and the provision of lift access to the communal roof top area of Building C02 for people with accessibility requirements.
  - (e) The non-compliance will not hinder the development's ability to satisfy the objectives of the B2 Local Centre zone and the objects of the EP&A Act.

Response

73. In *Bates Smart Pty Ltd v Council of the City of Sydney [2014] NSWLEC 1001*, the Land and Environment Court of NSW established a four part assessment framework for a variation proposed under Clause 4.6. An assessment of the proposed variances within this framework is provided below.

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

- (i) The site is zoned B2 'Local Centre'. The proposed heights do not result in inconsistencies with the objectives of the zone, which are:
- a. To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
  - b. To encourage employment opportunities in accessible locations.
  - c. To maximise public transport patronage and encourage walking and cycling.
  - d. To allow appropriate residential uses so as to support the vitality of local centres.

(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). This Detailed Proposal is, for the most part, consistent with those standards. 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 Proposal's performance in terms of the solar access requirements of the ADG.

While Building C01 does not comply with the height standard at the top of the building, this non-compliance is the result of floor space being relocated away from the corner of Ashmore Street and Mitchell Road in order to retain the stand of Hill's Weeping Figs in this location. This formed part of the Concept Approval.

c. **Building C02:**

The proposed non-compliance on Building C02 is to accommodate equitable access to the communal rooftop. 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 readily 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 building heights 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. A suitable transition between the taller buildings of the Concept Approval site and the adjoining heritage conservation areas is maintained.

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

The non-compliances will result in no discernable additional impacts to key view corridors from the public domain.

Future Blocks F and I will provide buildings up to 25 and 27m, meaning the proposed non-compliances will not be visible from dwellings of a commensurate height outside the site area, which are located to the south at Sydney Park Village.

- (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 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 Detailed Proposal 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 30 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 lateral 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 31) 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 31) facilitates the retention of the stand of Hill's Weeping Figs located in the north eastern corner of the site. This is, on balance, considered to be a better outcome for the site. In the absence of any impacts arising from the non-compliance, as detailed elsewhere in this report, a request to delete the non-compliant part of the building would be unreasonable.
- (vi) The non-compliance on the eastern face of Building C01 (annotated C in Figure 31) facilitates improved solar access to apartments by providing a 'pop-out' windows with glazing orientated to the north, as illustrated in Figure 32 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 fall well short of 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.

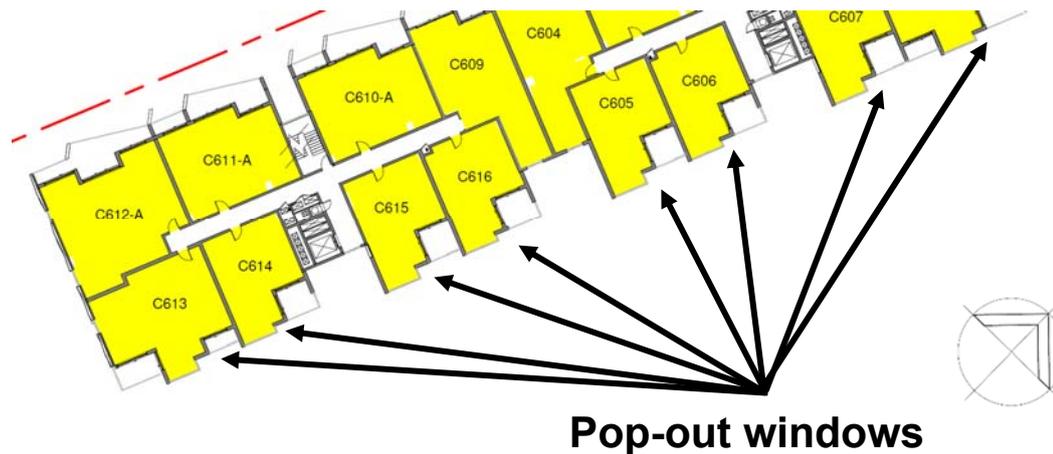


Figure 32: Extract from solar access study, annotated to highlight the 'pop-out' windows which assist in achieving solar access for a period of two hours at midwinter

- (vii) The non-compliance on the roof of Building C02 (annotated D in Figure 31) 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 Detailed Proposal has been the subject of a competitive design process, and is considered to exhibit design excellence.
- (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 facilitates the retention of the Hill's Weeping Figs located in the north eastern corner of the site.
- (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 there are sufficient grounds to vary the height of buildings development standards.

74. 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 standard has 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.

### **Privacy**

75. The proposal results in some non-compliances within the site. This was anticipated and assessed at the Concept Application stage, where it was deemed that the building envelopes are acceptable, subject to the detailed designs providing screening to mitigate non-compliances wherever they arose.
76. The proponent has undertaken a detailed study of every window and balcony that does not meet the minimum separation requirements, and has identified all apartments where screening is required to maintain visual privacy.
77. The proposed screening has been carefully positioned, to ensure all living rooms and terraces are provided with an acceptable outlook.
78. Notwithstanding this, there are some locations where additional mitigation is required in order to protect visual privacy. This includes:
  - (a) separation distances between 12.5m and 13.7m (18m required) between opposing apartments on either side of Stovemaker Lane in Buildings B02 and C01 on the fifth, sixth and seventh storeys;
  - (b) Separation distances between 12.2m and 14.8m (18m required) between balconies on either side of Stovemaker Lane in Buildings B02 and C01 on the eighth storey; and
  - (c) separation distances between 8m and 10m between apartments in Building C01 and the communal rooftop on Building C02 (18m required).
79. These non-compliances are illustrated in Figures 33 to 35 below.

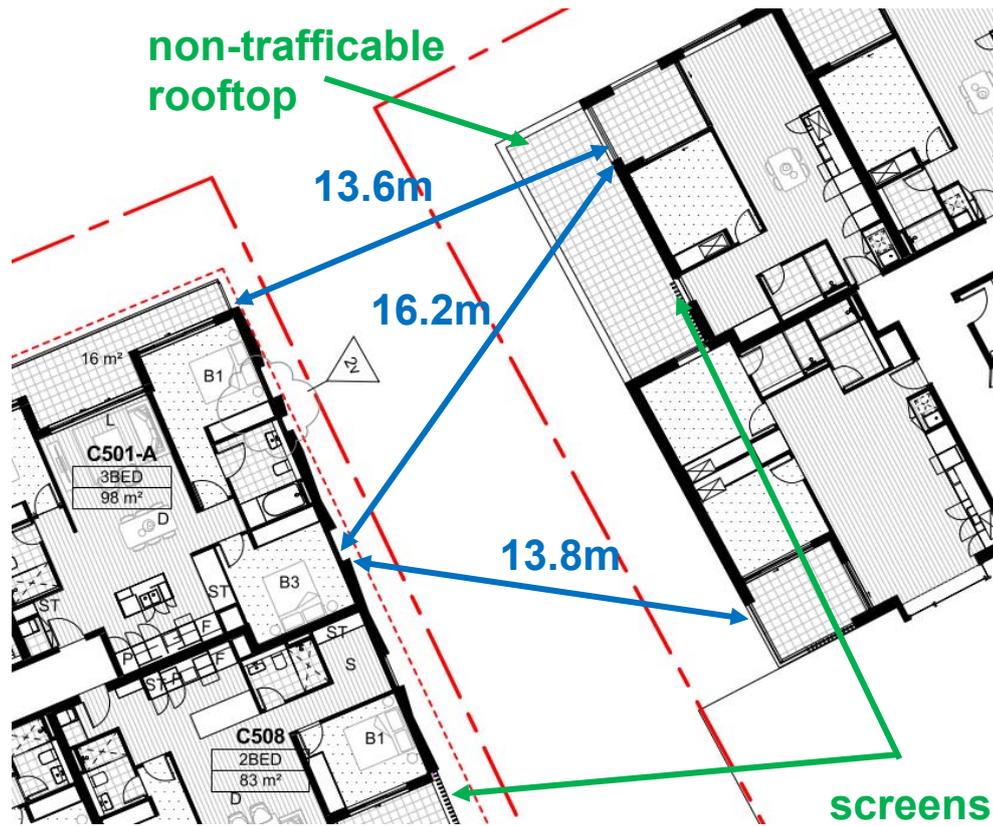


Figure 33: Unmitigated non-compliant separation distances between apartments in Buildings B02 and C01, on opposing sides of Stovemaker Lane on the fifth to seventh storeys

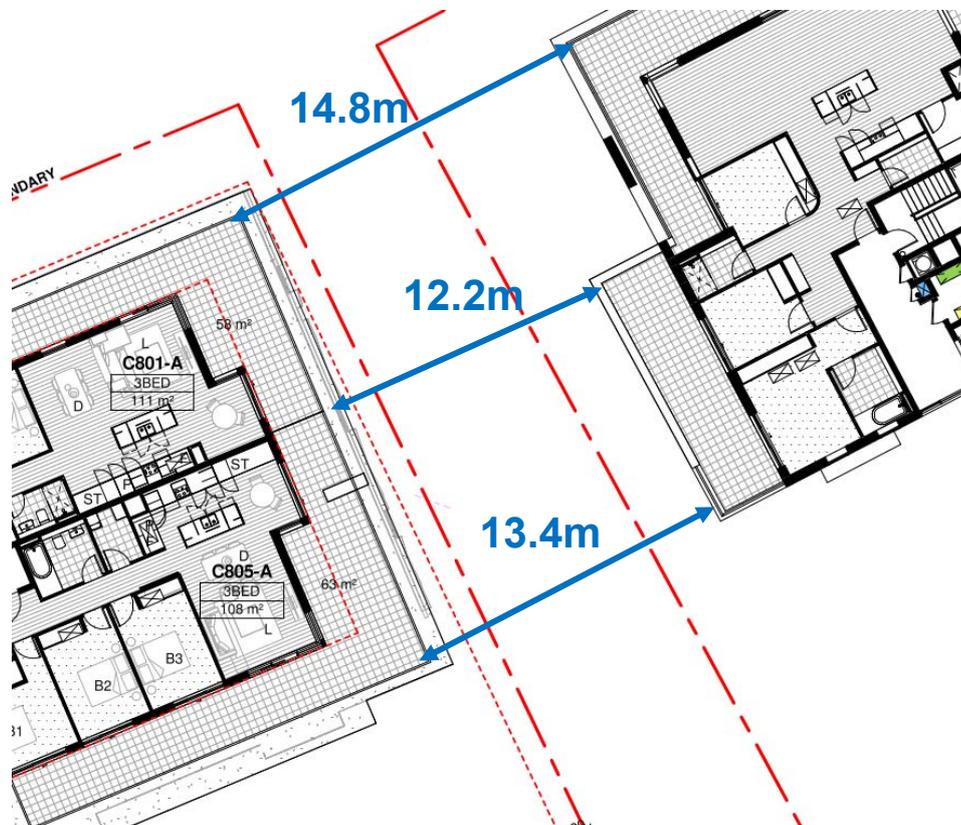


Figure 34: Unmitigated non-compliant separation distances between balconies in Buildings B02 and C01, on opposing sides of Stovemaker Lane on the eighth storey

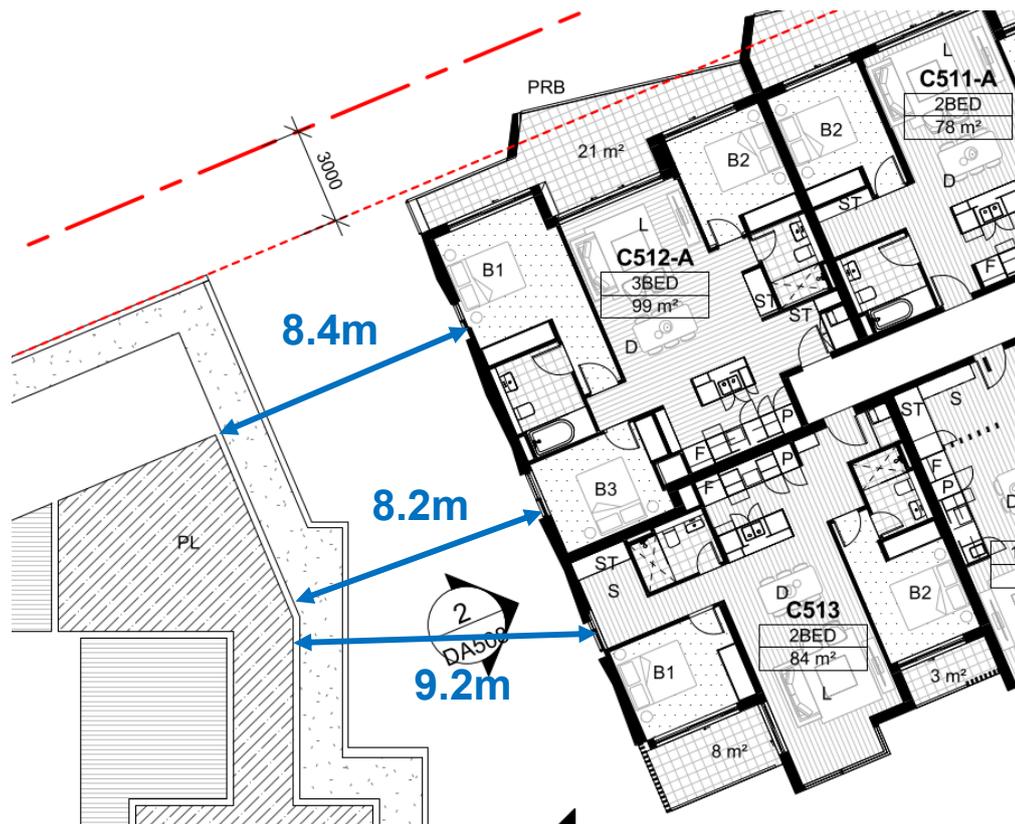


Figure 35: Unmitigated non-compliant separation distances between apartments in Building C01 and the communal rooftop of C02 on the fifth storey

80. In order to ameliorate any privacy impacts arising from the non-compliance conditions of consent are recommended requiring the following design modifications:
- Bedrooms 1 and 3 in apartments C501-A, C601-A, and C701-A, located on Levels 5, 6 and 7, in the north western corner of Building C01 are to be fitted with fixed privacy screens. The blades of the privacy screens are to be fixed at an angle that will obscure views to habitable rooms and balconies located on the opposite side of Stovemaker Lane.
  - The southern perimeter walls of both balconies of Apartment B803 are to be fitted with a fixed privacy screen to a height of 1.8m from the balcony floor. The blades of the privacy screens are to be fixed at an angle that will obscure views to balconies located on the opposite side of Stovemaker Lane.
  - The northern perimeter wall of the communal rooftop terrace located on Building C02 is to be fitted with a fixed privacy screen. The blades of the privacy screens are to be fixed at an angle that will obscure views to habitable rooms and balconies located in Building C01.
81. Subject to these conditions, and in conjunction with the privacy measures already proposed, it is considered that an appropriate level of visual privacy will be provided to the future occupants of any affected apartments.

### Private Open Space

82. The proposal generally complies with the private open space recommendations of the ADG; however, the following non-compliances are noted:

- (a) 2 x one bedroom apartments with a compliant area, but a minimum depth of 1.8m;
  - (b) 17 x two bedroom apartments with areas between 8m<sup>2</sup> and 9.3m<sup>2</sup>;
  - (c) 1 x three bedroom apartment with a 5.8m<sup>2</sup> balcony and a minimum dimension of 2.1m; and
  - (d) 9 x three bedroom apartments with compliant areas but minimum dimensions between 2.2m and 2.3m.
  - (e) 1 x ground level/podium studio apartment with private open space of 14m<sup>2</sup>;
  - (f) 1 x ground level/podium studio apartment with a compliant area, but a minimum depth of 2.1m;
  - (g) 2 x ground level/podium two bedroom apartment with an area of 12m<sup>2</sup> and a minimum depth of 2.8m<sup>2</sup>;
  - (h) 1 x ground level/podium two bedroom apartment with a compliant area but a minimum depth of 2.4m;
  - (i) 1 x ground level/podium three bedroom apartment with a compliant area but a minimum depth of 2.8m.
83. The abovementioned non-compliances result in 37 apartments (13.3%) not meeting the minimum requirements for private open space.
84. Prior to the Sydney DCP's private open space provisions being superseded by the ADG, only 75% of apartments in a development were required to provide private open space. This allows for some flexibility in applying the ADG's private open space requirements in the City of Sydney LGA.
85. This proposal provides 100% of apartments with private open space, with 88.7% being fully compliant with the ADG requirements. Accordingly, the abovementioned non-compliances are not considered to be a determinative factor that would warrant refusal of the application.

## **Design and Materials**

### Materials colours and finishes

86. While the design of the proposal is supported overall, further specification is required in terms of the proposed materials finishes to ensure the finish building continues to exhibit design excellence.
87. In light of this, a deferred commencement condition of consent is recommended requiring a comprehensive schedule of materials, finishes and colours, and an updated materials sample board to be submitted for Council approval.
88. In addition, a further deferred commencement condition of consent is recommended, requiring the architectural drawings to be updated to include 1:20 drawings illustrating typical details of the fencing, acoustic screens, and balcony partitions.

89. The amended drawings, schedule of materials and finishes, and materials sample board are to be submitted to and approved by Council's Director, City Planning, Development and Transport prior to the consent becoming operational.

#### Balustrades

90. The competition winning scheme and photomontages submitted with the application indicate frameless glass, which delivers a higher quality finish to the facades. The amended drawings submitted in response to the issues raised by Council officers has added frames to the balustrades, diminishing the visual aesthetics of the proposal.
91. The proposed framed glass balustrade is not supported, however there may be merit in amending the design of the balcony balustrades to include finer grain detailing, and to improve the privacy and usability of the balconies through additional layering, reduced transparency, and material selection.
92. A deferred commencement condition is therefore recommended, requiring the design of the balustrades to be further refined. The balustrade details are to integrate with the design of the facades, and variation between building facades is encouraged. The changes are to be incorporated in the plans, which are to be submitted to and approved by Council's Director City Planning, Development and Transport.

#### Stovemaker Lane apartment entries

93. The entry gates to the ground level apartments fronting Stovemaker Lane have been located having regard to the landscape design but not to the apartment front door locations. As a result of this, a number of entry gates do not align with the front doors, reducing usability of the courtyards and reducing the clarity of entry when viewed from the public domain.
94. A condition is recommended to relocate the entry gates off Stovemaker Lane to align with the front door to the apartment. This condition applies to apartments B213, B214, B216, B222, and B224.
95. The above mentioned condition will require subsequent changes to the Landscape Design of Stovemaker Lane. Accordingly, a deferred commencement condition of consent is recommended specifying that the Landscape Plan is not approved, and an amended plan is to be submitted to and approved by Council's Director City Planning, Development and Transport.

#### Utility of communal open spaces

96. The proposed communal open spaces do not provide facilities that promote social interaction between neighbours. A deferred commencement condition of consent is recommended requiring the design of the communal open space located on Level 4 of Block B, and the communal open space located on Level 5 of Block C to be amended to include a barbecue area, and adjacent storage space for temporary furniture.

## Ventilation

97. The ADG requires all habitable rooms to be naturally ventilated, achieving “*the movement of sufficient volumes of fresh air through an apartment to create a comfortable indoor environment*”.
98. The ADG also requires 60% of apartments in a development to be capable of natural cross ventilation, which “*is achieved by apartments having more than one aspect with direct exposure to the prevailing winds, or windows located in significantly different pressure regions, rather than relying on purely wind driven air*”.
99. An assessment of the proposal against these ventilation benchmarks is provided below.

## Natural Ventilation

100. The ADG requires all habitable rooms to be capable of natural ventilation. In conjunction with this, internal noise criteria within habitable rooms must be met simultaneously. This is particularly challenging in noise affected environments.
101. The Acoustic Report submitted with the application identifies that apartments with exposure to Mitchell Road will not achieve compliance with the internal noise level criteria with windows open. An extract from the Acoustic Report that illustrates the predicted noise levels is provided in Figure 36 below.

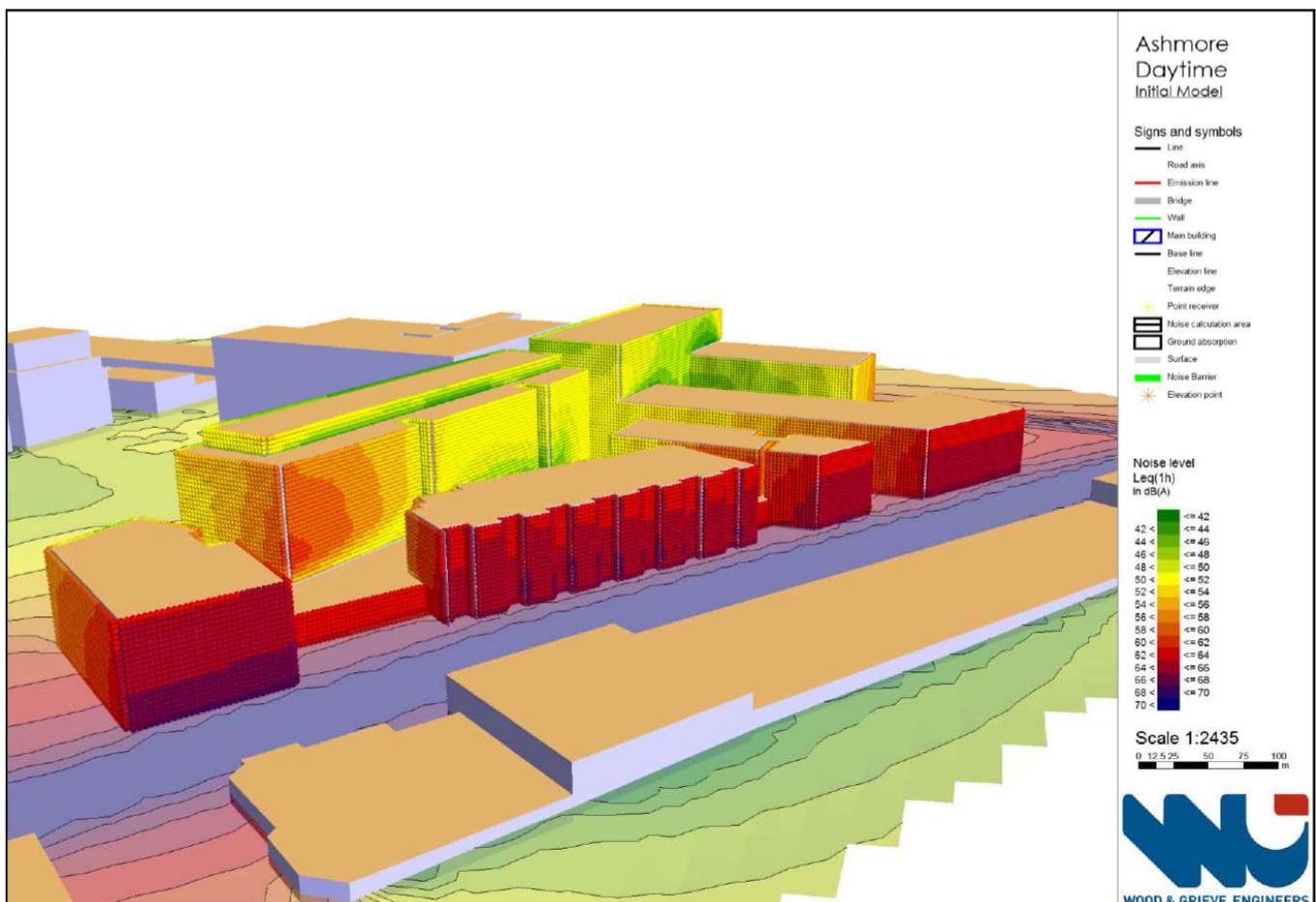


Figure 36: Predicted noise levels on the building frontages, viewed from an elevated position above Maddox Street looking north-west

102. In order to address this issue the applicant proposes that the affected apartments will rely on mechanical ventilation, however this is not supported because natural ventilation and compliance with the relevant acoustic criteria must be achieved simultaneously.
103. The applicant was asked to explore opportunities to install natural ventilators with acoustic baffles in order to achieve simultaneous compliance. However, the applicant concluded that in order to achieve compliance, the ventilators are required to be larger than the openable area of the windows currently proposed, making this an unviable solution on the grounds that the surface area required is not available.
104. City staff do not agree with this conclusion. The applicant has attempted to size the acoustically treated ventilation opening against the open area requirements of the ADG, which leads to very large ventilation areas compared to the verification requirements of the BCA. The BCA verification requirements have been shown to allow for acoustically treated natural ventilation with geometric sizes less than the openable area requirements of the ADG.
105. City staff are confident that internal noise criteria within habitable rooms can be met simultaneously while achieving natural ventilation and without resulting in impractical ventilation openings if designed to the BCA verification requirements. Accordingly, a deferred commencement condition of consent is recommended, requiring an acoustically treated natural ventilation plenum to be installed in noise affected apartments.

#### Natural Cross Ventilation

106. The submitted natural cross ventilation study claims 197 apartments (60%) are naturally cross ventilated.
107. City staff have reviewed the submitted documentation and have determined that the correct figure is 187 apartments (57%). This is because 10 apartments, identified in the submitted documentation as 'local corners', do not achieve natural cross ventilation. An example of one of these apartments is provided at Figure 37 below. The context of the wider building in which it is located is provided at Figure 38.

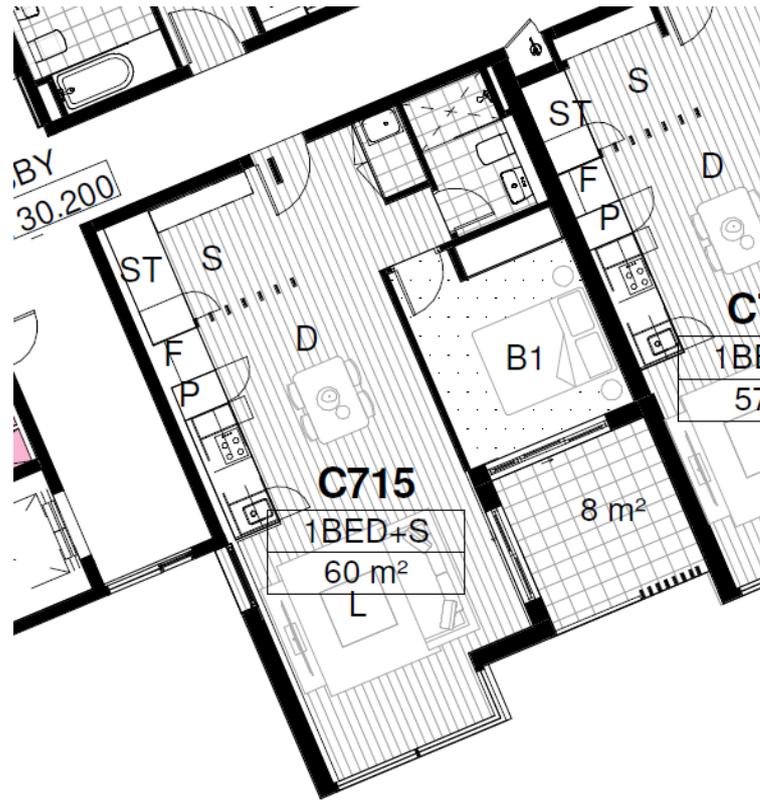


Figure 37: Apartment C715, located on Level 7 of Building C01, which is identified by the applicant as a 'local corner' apartment that is naturally cross ventilated



Figure 38: Apartment C715 shown in the context of the Level 7 floorplate of Building C01

108. Local corner is not a term found in the ADG. The ADG describes natural ventilation as follows:-

*“natural ventilation which allows air to flow between positive pressure on the windward side of the building to the negative pressure on the leeward side of the building providing a greater degree of comfort and amenity for occupants. The connection between these windows must provide a clear, unobstructed air flow path. For an apartment to be considered cross ventilated, the majority of the primary living space and n-1 bedrooms (where n is the number of bedrooms) should be on a ventilation path”.*

109. In accordance with the above definition, dual aspect apartments typically achieve natural cross ventilation. The definition of a dual aspect apartment is as follows:

*“cross ventilating apartments which have at least two major external walls facing in different directions, including corner, cross-over and cross-through apartments”.*

110. The application therefore seeks to expand the definition of dual aspect to include the ‘local corner’ apartment type. In order to test the efficacy of the ‘local corner’ in terms of achieving natural cross ventilation, the application was submitted for a third party peer review.

111. The review determined that the ‘local corner’ apartment type does not achieve natural cross ventilation. More specifically, Figure 39 below shows the likely pressures on the facade openings under various wind attack angles. The resulting range of attacked angles that is likely to produce the required pressure differentials between openings is shown on the simplified wind rose within each apartment, with wider coloured segments indicating broader ranges of cross ventilation.

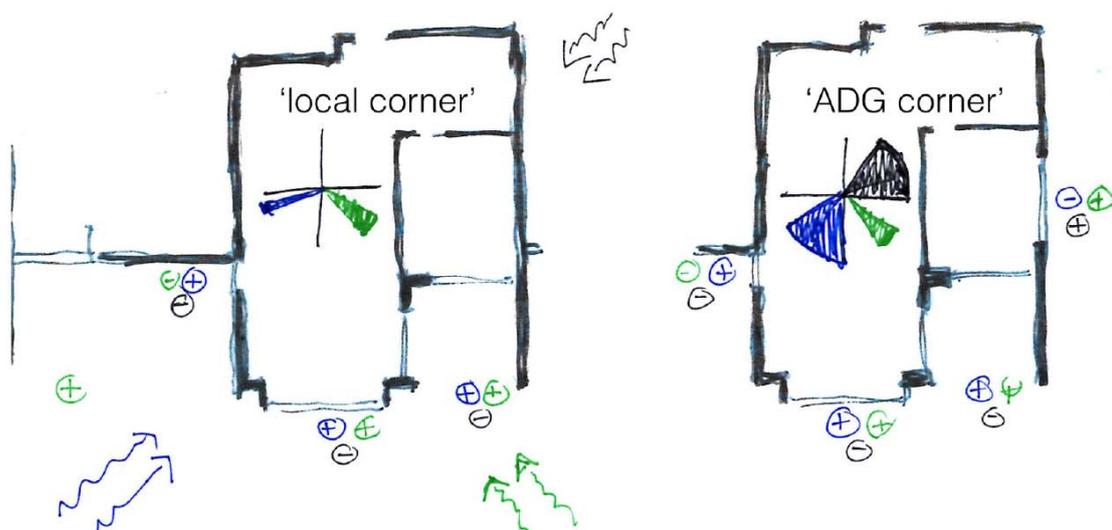


Figure 39: Comparative analysis of a ‘local corner’ apartment and a dual aspect apartment as defined by the ADG

112. The third party review determined that a corner apartment will have a range of attack angles where openings are likely to experience significantly different pressures in the order of about 135 degrees (the green wind direction would not benefit a normal ADG corner type apartment). By contrast the proposed 'local corner' typology is estimated to have a range of wind attack angles with differential pressures of 45 degrees or less even when some benefit from an oblique wind is considered to be captured, which is not certain. Accordingly, the proposed 'local corner' arrangement is not likely to be equivalent to a corner apartment and should not be considered to be naturally cross ventilated.
113. Notwithstanding the above, it is important to note that the Concept Approval building envelopes are largely consistent with building envelopes contained within the SDCP 2012. These building envelopes were devised when the Residential Flat Design Code (RFDC) was still in force. The RFDC has since been superseded by the ADG, which has more stringent requirements in terms of natural cross ventilation, and therefore the long rectilinear building envelopes that provide for an increased number of single aspect apartments present additional challenges in terms of meeting the minimum requirements.
114. City staff are satisfied that the only option available to achieve compliance would be to reduce the number of apartments, however this may result in other repercussions, such as reducing solar access given apartments on the upper levels of a building tend to perform well in this regard. In consideration of the fact that this issue is arising from the DCP building envelopes, and also that the proposed GFA is already 767m<sup>2</sup> below the maximum permissible, this would be unreasonable. 57% natural cross ventilation is therefore considered acceptable in the particular circumstances of this application.

### Chimney Ventilation

115. 25 units are proposed to be naturally cross ventilated by way of chimneys. The location of the chimney openings on the rooftops have been reviewed, and all are considered satisfactory in terms of their position. Notwithstanding this, six apartments relying on this method have ventilation shafts within the apartment too close to the external facade (refer to Figure 40 below). The affected apartments are C325, C326, C327, C328, C342 and C343.



Figure 40: Apartments C325 to C328, illustrating the ventilation shaft opening being too close to the external facade to achieve natural cross ventilation

116. To rectify this, a deferred commencement condition of consent is recommended requiring a ceiling plenum to be installed in these apartments to pass the air from deeper within the apartment into the stack. Subject to the imposition of the recommended condition, each of the 25 apartments relying on chimneys are considered to be naturally cross ventilated.

### **Vehicular access, parking and servicing**

117. The proposal complies with the maximum car parking provisions of the SLEP 2012, however there are non-compliances with the DCP provisions relating to bicycle parking, car share spaces, loading spaces, and motorcycle spaces. These non-compliances are proposed to be addressed through deferred commencement conditions of consent, and are discussed in further detail below.

#### Bicycle Parking

118. The drawings illustrate 306 storage cages in the basement that may be used for bicycle storage. A further 19 apartments are provided with bicycle parking within the ground floor private courtyards. This results in three apartments not being provided with bicycle storage. A condition of consent is recommended to provide additional Class A bike parking so that each apartment is provided with a bike parking space in accordance with the DCP requirements.
119. Visitor parking is provided at ground level, however the proposed location is not supported. A condition of consent is recommended to ensure 50 visitor bike parking spaces are provided in two clusters.

#### Car Share

120. The proposal generates a requirement for three car share spaces, however only two spaces are proposed in the basement. A third is proposed to be provided on the street, however this is not supported as it transfers the burden of this obligation onto the public domain and results in the loss of on-street parking. A condition of consent is recommended requiring an additional car share space to be provided in the basement.

#### Service bays

121. The proposed basement varies in terms of the floor to ceiling height across the development site. The main service parking area is located beneath Block B, and has a floor to ceiling height of 4.2m. According to Australian Standards, this clearance height is sufficient for a Small Rigid Vehicle (SRV), which typically requires a clearance height of 3.5m, but not a Medium Rigid Vehicle (MRV), which requires a clearance height of 4.5m. Notwithstanding this, there are vehicles with a load capacity equivalent to an MRV that will have sufficient room to utilise the loading bay.
122. Two MRV bays and two SRV bays are proposed to service the retail tenancies. All retail service bays are located in the part of the car park with a 4.2m floor to ceiling height, however given the clearance constraints a Loading Dock and Basement Management Plan (LDBMP) will be required to ensure that retail deliveries are made by vehicles able to access the loading bay. A deferred commencement condition of consent is recommended requiring the LDBMP to be prepared prior to the issue of any Construction Certificate. The recommended condition requires the LDBMP to be distributed to all retail tenants at least annually and with any change of tenancy. A further condition of consent is recommended requiring all unloading and loading of goods (including residential) to be carried out within the site at all times.

123. The proposal does not comply with the DCP requirements for residential service bays, which requires four service bays for a development of this size. Moreover, the three residential service bays proposed are standard sized. This means that furniture removal vans will be unable to access the site, requiring unloading and loading to occur on the street. Given the proposal is for 328 apartments, this would have a significant and unacceptable impact upon local amenity and is not supported.
124. In light of the above, a condition of consent is recommended requiring one of the existing residential service bays to be upgraded to an MRV loading bay, and for an additional residential MRV loading bay to be provided (two MRV bays and two standard bays in total). Given the height constraints within the basement, both residential MRV service bays must be provided in or in close proximity to the designated service parking area. In addition to the above, only one service bay is located beneath Block C. This must remain in this location, however given it is located in an area with a floor to ceiling height of approximately 2.85m, MRV furniture removal vans will be unable to utilise it. This means that furniture removal vans are unable to access buildings in Block C, which provides 171 dwellings.
125. In light of this it is recommended that the LDBMP include details of how bulky goods will be transported from the residential MRV service bay beneath Block B to the lifts of Block C. Typically this would require the use of a trolley or buggy provided and managed by the Strata Plan. The recommended deferred commencement conditions of consent require this to be resolved prior to the consent becoming operational.
126. A further deferred commencement condition is recommended, requiring the vehicular tunnel connection to Block A must be large enough to accommodate an MRV. It must be demonstrated through swept path analysis and section drawings that an MRV can traverse from the car park entry on Foundry Street to the future Block A car park unencumbered (including clearance heights). This will ensure that loading and unloading associated with that development will be able to occur on that site.

#### Motorcycle Parking

127. The proposal does not comply with the DCP requirements for motorcycle parking, which requires 22 spaces for a development of this size. 17 spaces are proposed, which satisfies the residential parking requirements, however a requirement for five retail spaces is generated by the quantum of proposed retail parking. A condition of consent is recommended, requiring five motorcycle spaces to be provided in the retail car park.

#### Vehicle Crossover

128. The proposal does not comply with the DCP requirement to limit vehicle crossover widths to 3.6m wherever possible. A width of 8.5m is proposed due to the narrow width of Foundry Street. The applicant states this is necessary to enable trucks and cars to be able to pass, without vehicles infringing the boundaries of the carriageway. The City's transport planners have reviewed the application and concur with the proposed vehicle crossover requirement. Given the proposal includes only one vehicle crossover, and also eliminates the requirement for a vehicle crossover for future development Block A, the proposal is acceptable.

### Conclusion

129. Given the nature of the required amendments to the basement plan, and the importance of the LDBMP in ensuring multiple uses utilise the basement in a cohesive manner, a deferred commencement consent is recommended.
130. The LDBMP is to address waste servicing, removalist vehicles, deliveries, and trades, and must outline who will be responsible for undertaking the transfers and how this will be undertaken in a safe manner. It must also refer to the conditions of consent, which prohibit the use of the use of public streets and roads for the unloading and loading of goods, including furniture.
131. The amended basement plan and the LDBMP must be submitted to and approved by Council's Director City Planning, Development and Transport.

### **Heritage**

132. 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.
133. Council's heritage specialist has reviewed the proposal and has advised that while 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.
134. 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 the adaptive reuse of the building, in an appropriate setting, in the event that it is no longer required for use as substation.
135. Accordingly, on balance, the Detailed Proposal is supported from a heritage perspective.

### **Trees**

136. There are 40 trees on or around the site that are affected by this proposal. The majority will be retained, and will be subject to protection measures to ensure their longevity throughout the construction and operational phases. An assessment of trees proposed for removal is provided below:
  - (a) Five trees are within the footprint of the proposed buildings and/or roadways and their removal is supported.
  - (b) Four trees not within the footprint of the proposed buildings and /or roadways have been recommended for removal due to poor health, and this is supported.
  - (c) The applicant advises that three street trees on Ashmore Street will be adversely impacted by the construction of the proposed buildings and consent is sought for the trees to be removed. The City's Tree Management Unit disagree with the findings of the applicant, and are confident that the trees can be retained subject to the recommended conditions of consent.

- (d) Two street trees on Mitchell Road are proposed to be removed due to poor health. The removal of only one tree is supported. The second tree has been assessed as having no issues, and therefore a condition of consent is recommended to ensure it is retained.
137. Further conditions of consent are recommended to ensure tree pruning is carried out in accordance with the City's requirements, and that other trees are adequately protected during the construction phase to ensure their long term viability.
138. A survey of the Hill's Weeping Fig Trees and an arborists report has been submitted with the application, which demonstrates that the proposal will not have an unacceptable impact upon the retained trees. An extract of the survey is provided at Figure 41 below.

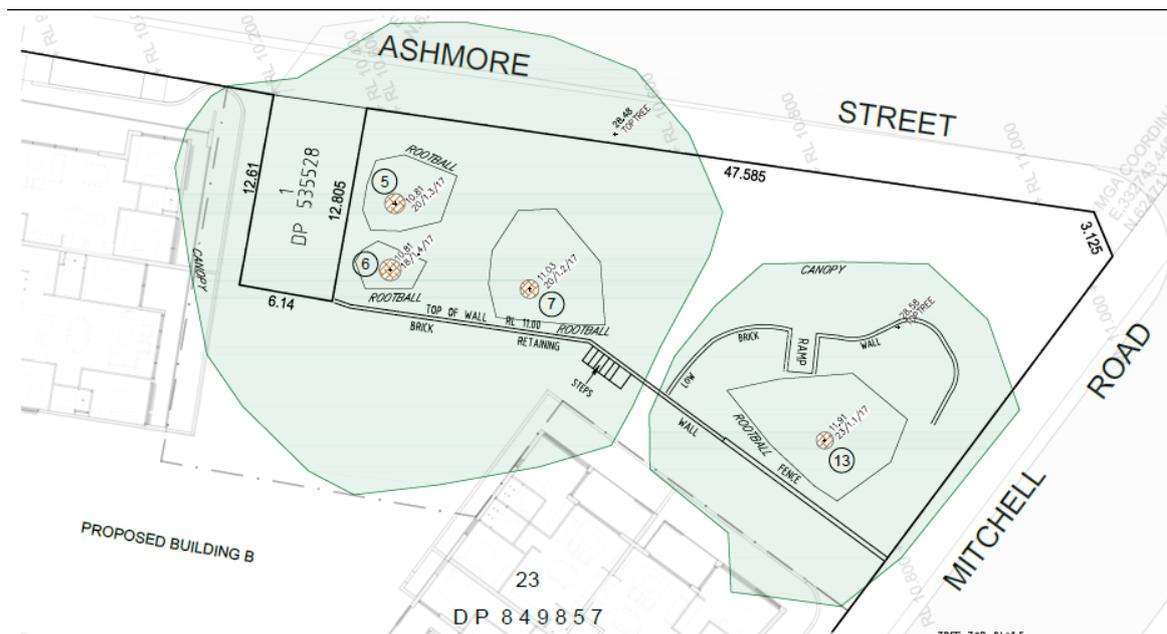


Figure 41: Extract from the tree survey, illustrating the location of the proposed buildings of Block B in relation to the retained trees

139. Conditions are recommended to ensure the Hill's Weeping Figs are not adversely impacted by the proposed landscaping works in this location.

### Signage Strategy

140. A signage strategy has been submitted with the application, however it contains incomplete or incorrect information. A condition of consent is recommended requiring a signage strategy to be submitted to and approved by Council's Director City Planning, Development and Transport.

### Staging of Construction Certificates and Occupation Certificates

141. The DA includes a request for the consent authority to word the conditions to account for the following staging plan:
- Stage 1: Building structure.
  - Stage 2: Services, and building finishes.

- (c) Stage 3: Public domain and landscape works.
142. City staff consider it appropriate to include an additional stage for below ground building works. Accordingly, the recommended staging plan is as follows:
- (a) Stage 1: Below ground building works.
  - (b) Stage 2: Building structure.
  - (c) Stage 3: Services, and building finishes.
  - (d) Stage 4: Public domain and landscape works.
143. The recommended conditions of consent are staged accordingly.

#### **Access**

144. It is recommended that disabled access be provided in accordance with the provisions of the DCP. An appropriate condition is recommended.

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

145. The proposed development is capable of complying with the BCA. It is Classes 2, 6, 7A, 9B and 10B.
146. It is considered that the proposal will have no significant detrimental effects relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

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

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

#### **INTERNAL REFERRALS**

148. Where relevant, the conditions of other sections of Council have been included in the proposed conditions.
149. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Safe City; Social Planning, Surveyors; Transport and Access; Tree Management; and Waste Management. All sections advise that the Detailed Proposal (as amended) is acceptable subject to the recommended conditions.

#### **Design Advisory Panel**

150. The amended scheme was presented to the City's Design Advisory Panel (DAP) on 14 September 2017. Key issues raised by the DAP, and the manner in which they have been addressed, are summarised below.

Recommendation

151. Non-compliance with the key provisions of SEPP 65 are not supported.

Response

152. The application has been amended to improve compliance in terms of the following:

- (a) Solar access;
- (b) Natural cross ventilation; and
- (c) Apartment sizes and layout.

153. The proposal, as amended, is considered to provide an acceptable level of compliance with the key provisions of the ADG.

Recommendation

154. 60% of units must achieve natural cross ventilation. Acoustic treatments must be applied to affected units.

Response

155. City staff are satisfied that the only option available to achieve compliance would be to reduce the number of apartments, however this may result in other repercussions, such as reducing solar access. In consideration of the fact that this issue is arising from the SDCP 2012 building envelopes, and also that the proposed GFA for Blocks B and C combined is already 767m<sup>2</sup> below the maximum permissible, this would be unreasonable. 57% natural cross ventilation is therefore considered acceptable in the particular circumstances of this application.

156. Conditions of consent are recommended to ensure natural ventilation will be achieved in noise affected apartments.

Recommendation

157. Block C is too long, requiring more variation in the articulation to reduce the impact of the length of the facade on the streetscape.

Response

158. The length of Block C is consistent with the building envelope contained within the SDCP 2012. The Mitchell Road frontage is considered to be well articulated, however the proposed materiality has been amended to provide additional variation within the facade.

Recommendation

159. Building C03 has a long internal corridor without access to natural light. Opportunities should be explored to provide additional light and air.

Response

160. The design has been amended to provide glazing at the ends of the corridor. A condition of consent is recommended, requiring these windows to be openable.

Recommendation

161. Only one lift core has been provided in Building C03, resulting in more than 8 apartments being accessed from a single corridor. This should be corrected.

Response

162. Building C03 contains a large number of two storey cross through apartments. This configuration allows for natural cross ventilation, but frequently results in a larger number of apartments being accessed from a single corridor than is envisaged by the ADG. The overall development is largely compliant with the requirement to limit the number of apartments accessed from a single core. Building C03 provides a relatively small number of apartments (37 total over three storeys), and therefore an additional lift core would be surplus to requirements. Moreover, the logical location for an additional lift core is above the retail car park, and would require the basement layout to be reconfigured.
163. In light of the above, City staff considered the recommendation for an additional lift core to be onerous, and the applicant was not requested to provide it.

Recommendation

164. The basement car park should provide gaps punching through the full depth of the basement to enable deep soil requirements to be met in the internal courtyard, and large trees to be planted, which would significantly improve the amenity of the communal landscape spaces.

Response

165. The site's deep soil requirements have been satisfied. The Concept Plan site provides up 7,446m<sup>2</sup> of deep soil in the future McPherson Park (10.72% of the Concept Plan site area), and this detailed design DA provides a further 1,302m<sup>2</sup> of deep soil (9.1% of the subject site area). The City's Landscape Officer has raised no concerns with the landscape qualities of the podium.
166. The recommendation of the DAP would require an 8.1m deep soil shaft punching through the podium retail spaces and the basement car park. It would require a significant reconfiguration of the basement, and would result in a reduced quantum of GFA.
167. Given the site is performing well in terms of deep soil provision, and the City's landscape officer has raised no concerns with the proposed planting on the communal rooftop, this recommendation is considered unreasonable and the applicant was not requested to provide it.

**EXTERNAL REFERRALS****Public Submissions**

168. The original application constituted Integrated Development and as such the application was notified and advertised for a period of 30 days between 7 June and 8 July 2017 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification there were three (3) public submissions received.

169. The amended proposal was re-notified for a period of 14 days between 11 October and 26 October 2017. As a result of the notification no additional submissions were received.
170. The amended drawings received on 14 November 2017 made minor changes that did not warrant re-notification.
171. The key issues raised in the submissions are summarised as follows:

(a) **Building Height**

- (i) The Clause 4.6 variation request should not be supported due to:
- a. Excessive bulk, scale, size and density of development;
  - b. Significant Overshadowing impacts on numerous residents; and
  - c. Invasion of privacy to surrounding residential properties.

**Response** – This report includes a detailed assessment of the proposed variations to the height of buildings development standards. Refer to height discussion under the heading Issues.

- (ii) The maximum height in Erskineville should be six storeys.

**Response** – The planning controls for the eastern portion of the Ashmore Estate allow for building heights of up to eight storeys, and therefore envisage taller buildings on this site.

(b) **Setbacks**

- (i) The City should compensate for the loss of amenity caused by increases in resident numbers and traffic to the local area by stipulating that the land use on the proposed 3-4 metre set-backs on the unit-blocks fronting Mitchell Road and Ashmore Street is open public space.

**Response:** The executed VPA identifies the land to be dedicated to the City following completion of the development, and the setbacks areas are not included.

(c) **Retail Uses**

- (i) The excessively large size and scale of the proposed supermarket will lead to negative impacts on the community. The proposal has failed to account for other supermarket and retail developments within close proximity.

**Response** - While most sites in the vicinity of the Green Square Town Centre are restricted in terms of the retail development that may be provided, 57 Ashmore is specifically excluded from those provisions. Furthermore, the Sydney DCP 2012 identifies the site as a future Local Village, and specifies appropriate retail uses, including one full-line supermarket and one discount supermarket.

A full line supermarket is not proposed as part of this development, and is proposed to be delivered as part of the future development of Block F. Although the final retail uses do not form part of this application, there are tenancies within this proposal capable of accommodating a discount supermarket. The proposal is therefore in accordance with the City's vision for the locality.

(d) **Transport and Traffic**

- (i) The City of Sydney should be effective in persuading the State Government to provide additional train services on the Bankstown Line servicing Erskineville Railway Station and improve bus services.

**Response:** It is acknowledged that existing bus services and CBD-bound trains stopping at Erskineville in the AM peak period are congested. However, public transport is the responsibility of the NSW State Government, and is therefore beyond the control of Council. The site is an identified urban renewal site, and the proposed land uses and density are in accordance with the statutory planning provisions. Notwithstanding this, the City is advocating for improved transport in this area.

- (ii) The City should install speed humps in Belmont Lane to reduce the speed of vehicles taking a 'rat-run' along Belmont Lane to avoid traffic lights and traffic congestion on Mitchell Road, especially in peak periods, that is likely to worsen as a result of the development.

**Response:** The City is exploring options to assist in preventing rat-running in the local area, including the possibility of speed bumps. It should be noted however that speed bumps may not be the most appropriate end solution in all cases, given their propensity to increase noise.

- (iii) The City should ensure an adequate and realistic number of car parking spaces are made available in the Ashmore Estate development.

**Response:** The SLEP 2012 provides maximum car parking rates, rather than minimums. The City's long standing policy is to reduce car dependency as much as possible, and to encourage more active forms of transport. This is to aid in relieving congestion and to promote active modes of transport. Therefore reduced car parking is supported where possible.

- (iv) The City should develop and implement more effective solutions than the introduction of parking permits to ensure residential parking along Mitchell Road and Ashmore Street (and other relevant streets) is not unsustainably reduced as a result of the Ashmore Estate development.

**Response:** City staff are cognisant of the pressures on on-street parking. Measures to reduce this pressure include ensuring new large scale developments provide car share facilities to reduce private car ownership and remove vehicles off the road altogether, and provide adequate bike parking facilities and end of trip facilities, to encourage residents and workers to consider active forms of transport. In addition, a condition of consent is recommended that will prohibit residents from participating in on-street resident parking schemes.

- (v) The proposal will result in significant increases in traffic and significant negative impacts to residential areas from increase traffic volumes, traffic noise, traffic congestion and road changes to accommodate the proposal.

**Response:** Traffic modelling indicates that surrounding roads will not be operating beyond capacity following completion of the proposal. The proposal is relatively constrained in terms of its parking provision, therefore the contribution of this development to traffic noise levels is expected to be relatively minor. Other than the construction of the new Foundry Street and its connection to Ashmore Street, no changes to the existing road network are proposed as part of this application.

- (vi) The proposal fails to appropriately assess the impact of Westconnex and the St Peters to Moore Park Connectivity upgrade, and subsequent traffic changes and negative impacts.

**Response -** The impact of Westconnex and the upgrades to Euston Road/McEvoy Street, Lachlan Street are considered in the Traffic Report submitted with the application. Council's Transport Planners have raised no issue with this aspect of the Traffic Report.

(e) **Infrastructure Capacity**

- (i) The proposal will cause significant population growth that cannot be supported by the area. The area lacks the required essential infrastructure and services to support such a significant population growth including, but not limited to, Primary Schools, High Schools, child care, community health services, public transport (trains and buses) recreational facilities, sporting grounds and open space areas. For these reasons the application is not in the public interest.

**Response –** The City has worked with the developer to provide an additional opportunity for a centre-based child care facility in Future Block F, which will potentially result in two facilities being located on the Concept Approval site, in addition to a third existing facility in the western portion of the Ashmore Estate. The full redevelopment of the Concept Approval site will provide additional public open space in the form of the future Kooka Walk and McPherson Park. McPherson Park will be delivered as part of Construction Phase 4. Kooka Walk will be delivered in stages as part of Construction Phases 2, 4, 5 and 6.

The City acknowledges the community's concerns regarding the capacity of local infrastructure, including schools and medical services, and is liaising with the relevant State authorities in this regard.

(f) **Ecologically Sustainable Development**

- (i) The proposal does not meet Ecological Sustainable Development requirements due to significant population growth that cannot be supported by the area.

**Response** – The principles of ecologically sustainable development are:

- a. The precautionary principle - namely that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

This assessment has established there is no threat or risk of serious or irreversible environmental damage arising from the proposal.

- b. Inter-generational equality - namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

The proposal provides additional housing, employment, and recreation opportunities for the benefit of future generations.

- c. Conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.

The Concept Approval was amended in order to retain significant trees on the corner of Ashmore Street and Mitchell Road, and as a result they are retained under this Detailed Proposal. The remainder of the development site was previously occupied by a light industrial/warehouse building and did not provide significant habitat opportunities to support biological diversity. In the longer term, the proposal will result in additional trees, thereby strengthening the ecological integrity of the locality.

- d. Improved valuation, pricing and incentive mechanisms – namely that environmental factors should be included in the valuation of assets and services.

The proposal will not result in economic burdens to the public. The proposal is subject to a Voluntary Planning Agreement that will deliver public infrastructure that will serve to improve the built and natural environmental qualities of the site.

**(g) Cumulative Impacts**

- (i) The proposal will cause significant cumulative impacts when considered together with other development occurring with the Alexandria, Erskineville and surrounding inner west community.

**Response** – The Ashmore Estate has been identified as an urban renewal precinct. This proposal seeks to develop the site for permissible uses, to a density permitted under the statutory planning controls. Conditions of consent are recommended to minimise impacts upon the local area.

**Agencies**

172. The application was referred to Water NSW as Integrated Development (however is no longer integrated given excavation works were extracted from the DA post lodgement), and referred to RMS, TransGrid and Ausgrid in accordance with the ISEPP. The application was also referred to Sydney Airport in accordance with the Airports Act. The response of those agencies has been discussed earlier in this report.
173. In addition, the application was referred to Sydney Water, Sydney Desalination Plant, and NSW Police (Redfern Local Area Command) for comment. Where relevant, their issues have been addressed through the recommended conditions of consent.

**Notification, Advertising and Delegation****PUBLIC INTEREST**

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

**FINANCIAL IMPLICATIONS****S94 CONTRIBUTION**

175. The development is subject of a S94 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
176. The following monetary contribution is required towards the cost of public amenities:
- |                           |                |
|---------------------------|----------------|
| (a) Open Space            | \$3,201,296.67 |
| (b) Community Facilities  | \$666,325.50   |
| (c) Traffic and Transport | \$138,283.5    |
| (d) Stormwater Drainage   | \$54,744.97    |
| Total                     | \$4,060,650.65 |

177. The calculation includes a credit for 528.9 workers, generated by the former warehouse / light industrial building, which was recently demolished under a separate Complying Development Certificate. The warehouse had an estimated GFA of 20,098m<sup>2</sup>.

178. As the final mix of retail uses is not yet known at this stage, the calculation assumes that tenancies with a frontage to McPherson Park and Stovemaker Lane are likely to be cafes and restaurants, and retail tenancies fronting MacDonald Street and Mitchell Road are more likely to be shops. The internal tenancy is assumed to be a discount supermarket, in accordance with the DCP's intention for the site.
179. Notwithstanding the above, the contribution is offset by the monetary value of the public benefits being provided by the developer, as required under the terms of the Voluntary Planning Agreement.
180. In accordance with the VPA, it is not necessary for Section 94 contributions to be paid at this time. Following the issue of an Occupation Certificate for Construction Phase 4, the sum of Section 94 Monetary Contributions payable under the terms of each development consent for Phases 1 to 4 inclusive will be calculated, and the attributed value of the Section 94 public benefits that have been delivered subtracted from this amount. Under the terms of the VPA, if the sum total is greater than zero, the developer shall pay the residual contribution amount to the City.

### RELEVANT LEGISLATION

181. *Environmental Planning and Assessment Act 1979, Airports Act 1996, Heritage Act 1977.*

### CONCLUSION

182. The proposed development is considered to be appropriate within its setting and is generally compliant with the relevant planning controls the SLEP 2012, the SDCP 2012 and SEPP 65.
183. Proposed variations to the controls are generally considered to be acceptable and have been discussed throughout the report. The proposal has been amended to address Council officers concerns regarding compliance with the ADG and to improve residential amenity. The amended proposal is considered to be satisfactory, subject to conditions.
184. The proposal will provide for residential and retail development within an identified local village, on a site with good access to existing and planned employment, services and community facilities.
185. Subject to the recommendations within this report, the proposal demonstrates a design that responds to the constraints of the site and contributes to the existing and desired future character of the site.

### GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Christopher Ashworth, Senior Planner)