

**Item 7.****Development Application: 11-17 Eve Street, Erskineville****File No.:** D/2017/1393**Summary**

<b>Date of Submission:</b>	11 October 2017  Amended plans submitted on 12 December 2017, 3 May 2018 and 13 June 2018
<b>Applicant:</b>	Frontier Property Development Group Pty Ltd
<b>Architect:</b>	Smith & Tzannes
<b>Developer:</b>	Frontier Property Development Group Pty Ltd
<b>Owner:</b>	Frontier Property Development Group Pty Ltd
<b>Cost of Works:</b>	\$5,559,336
<b>Land Use:</b>	Permissible in B4 Mixed Use zone.
<b>Proposal Summary:</b>	<p>Development application for the demolition of existing buildings, tree removal, and construction of a three and five storey residential flat building. The development includes 19 dwellings and one basement level with parking for 20 vehicles.</p> <p>The application is referred to the Local Planning Panel for determination as the State Environmental Planning Policy No.65 applies.</p> <p>The preliminary assessment of the application, including consideration of the proposal by the City's Design Advisory Panel, identified landscaping and amenity issues associated with solar access. The proposal has been amended during the assessment to address these concerns including enlarging windows to Eve Street to improve solar access and amending the landscape design within the front setback and communal courtyard. The amended scheme was submitted to Council on 13 June 2018.</p>

**Proposal Summary:** The application was advertised and notified for a period of 21 days from 17 October 2017 and 8 November 2017. In response to advertising and notification there were nine submissions received. Issues raised in submissions include the demolition of the existing terraces, the scale of the proposal, overshadowing impacts, traffic impacts, loss of trees/wildlife, and construction impacts.

**(continued)**

The proposal complies with the primary built form controls with the exception of the height control. The site is subject to height controls of 12m, 15m and 22m and the proposal exceeds the 12m and 15m height limit under the LEP by 5.46m (45.5%) and 2.46m (16.4%) respectively. A written request has been provided seeking a variation to the 12m and 15m height control in accordance with Clause 4.6 of the LEP. The variation is supported as the height is consistent with neighbouring buildings, provides a step down in height from the taller buildings to the north, and does not result in unreasonable amenity impacts to neighbouring properties.

The proposal is consistent with the design quality principles of SEPP 65.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**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 (including amendments)
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B. Proposed Drawings
- C. Clause 4.6 Variation Request

**Recommendation**

It is resolved that:

- (A) the variation sought to Clause 4.3 Height of Buildings in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (B) consent be granted to Development Application No. D/2017/1393, subject to the conditions set out in Attachment A to the subject report:

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development is consistent with the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) The variation to Clause 4.3 (Height of Buildings) of the Sydney Local Environmental Plan 2012 is supported by the provisions of Clause 4.6 (Exceptions to development standards) as it is consistent with adjoining buildings, provides a set down in height from the taller buildings to the north and does not result in unreasonable amenity impacts to neighbouring properties and is in the public interest.
- (C) The proposed development is generally consistent with the provisions of the Apartment Design Guide (ADG) and will achieve a high level of amenity for the future residents of the buildings.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by Council staff on 6 March 2018 and 22 May 2018.
2. The site has a legal description of Lots A-B, DP 447590, and Lots 1-2 DP 508411 and is commonly known as 11-17 Eve Street, Erskineville. The site is generally rectangular with a total area of approximately 1170sqm.
3. The site is part of the Ashmore Precinct urban renewal area located in Erskineville. The precinct is bounded by Ashmore Street to the north, Mitchell Road to the east, Coulson Street to the south and the Illawarra rail line to the west.
4. The Ashmore Precinct is a large, formerly light industrial precinct that is presently undergoing re-development into a mixed use, commercial and residential precinct. Figure 1 delineates the Ashmore Precinct. Figure 2 provides an aerial photo of the subject site and the immediately surrounding properties.



Figure 1: Ashmore Precinct urban renewal area.



**Figure 2:** Aerial view of the site (outlined) and surrounding area.

5. The site is currently occupied by four single storey semi-detached dwellings.
6. The site does not include any heritage items and is not located within a heritage conservation area.
7. To the north of the site is the 'Luxe' apartments which contains two buildings up to 8 storeys in height.
8. To the east is the established 'Motto' apartments at 2-8 Eve Street comprising 162 apartments between 3 and 8 storeys in height, and the 'Glo' apartments between 4 and 5 storeys at 20 Eve Street.
9. To the south is a five storey and three storey residential flat building containing 18 apartments which is currently under construction.
10. To the west of the site are storage yards and offices for trucking company H. Brightwell & Sons.
11. The Ashmore Precinct is bounded to the north, west and east by heritage conservation areas that house the established communities of Erskineville and Alexandria.

12. To the south of the Ashmore Precinct lie a number of established residential flat developments between Coulson Street and Sydney Park Road of predominantly six storeys in height, as well as the “Zenix” development with a 15 storey residential tower. Further to the south is the expansive parklands of Sydney Park.
13. The Illawarra railway line is adjacent to the eastern boundary of the Ashmore Precinct. Erskineville Station is approximately 680m walking distance to the north-west of the site. St Peters station is located approximately 600m walking distance to the south-west of the site.
14. Photos of the site and surrounds are provided below:



**Figure 3:** The site viewed from Eve Street.



Figure 4: The site viewed from Eve Street.



Figure 5: The rear of the site viewed from 11 Eve Street.



**Figure 6:** The site to the south at 19-21 Eve Street under construction.



**Figure 7:** The 'Luxe' apartments to the north of the site.



**Figure 8:** The 'Luxe' apartments as viewed from the rear of 11 Eve Street.



**Figure 9:** The 'Motto' apartments located on the opposite side of Eve Street.

## Proposal

15. The application seeks consent for the following:
  - (a) Demolition of the four existing single storey semi-detached dwellings.
  - (b) Removal of 38 trees.
  - (c) Construction of a residential flat building comprising a five storey building to Eve Street separated by a communal open space area to a three storey rear building.
  - (d) A total GFA of 1718.19sqm.
  - (e) 19 residential apartments comprising:
    - (i) 6 x 1 bedroom apartments;
    - (ii) 9 x 2 bedroom apartments; and
    - (iii) 4 x 3 bedroom apartments.
  - (f) Basement car park for 20 car spaces accessed via the adjoining basement of the neighbouring development at 19-21 Eve Street.
  - (g) Landscaping of the site, including a communal courtyard located centrally between the two buildings as well as the north-eastern corner.
16. The proposed design generally emulates the approved development (D/2014/1805/A) at 19-21 Eve Street to the immediate south. This development is under construction. The development will share a driveway and basement and a platform lift for access purposes that is accessed from the adjoining site.
17. The proposed materials include a facebrick facade with metal framed windows for the first three storeys, with steel and metal cladding to the upper two levels.
18. Extracts of the plans of the proposed development are provided below. A full set of plans is provided at Attachment B to this report.



Figure 10: Photomontage of the site viewed from Eve Street.

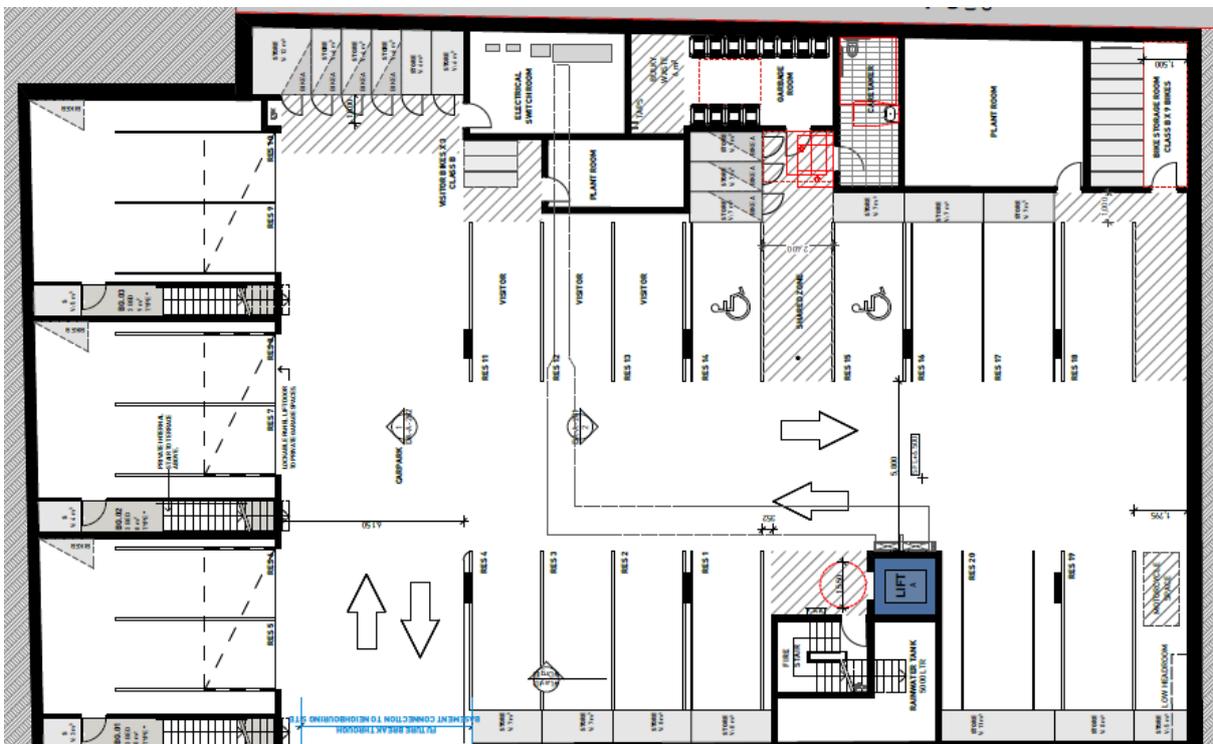


Figure 11: Basement plan.



Figure 12: Ground floor plan.



Figure 13: Level 1 plan.



Figure 14: Level 2 plan.

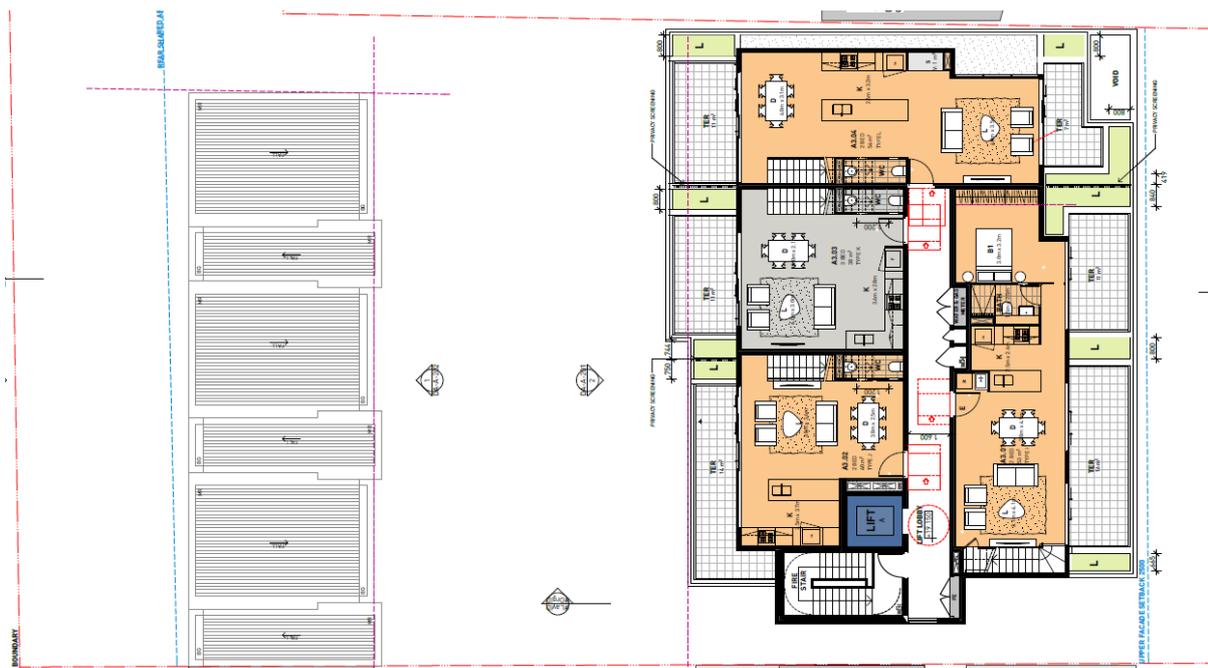


Figure 15: Level 3 plan.

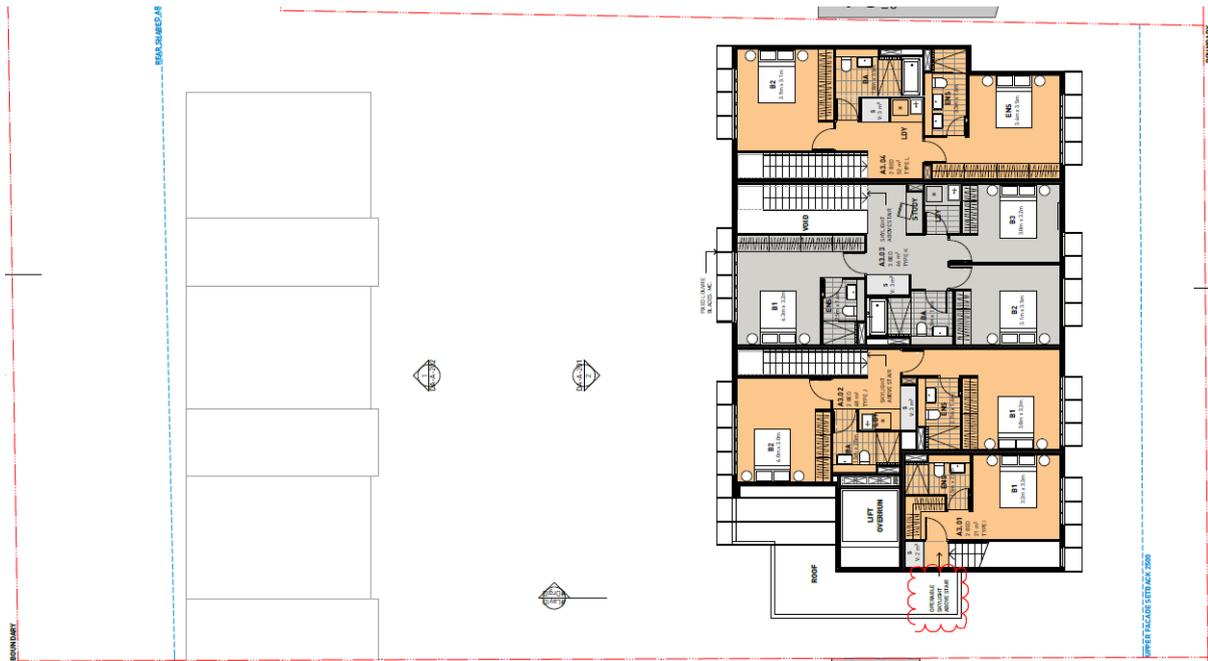


Figure 16: Level 4 plan.



Figure 17: Eve Street elevation. It is noted that the upper red line does not correctly indicate the height controls for the site.



Figure 18: Rear elevation of the front building.



Figure 19: Courtyard elevation of the rear building.



Figure 20: Rear elevation of the rear building.

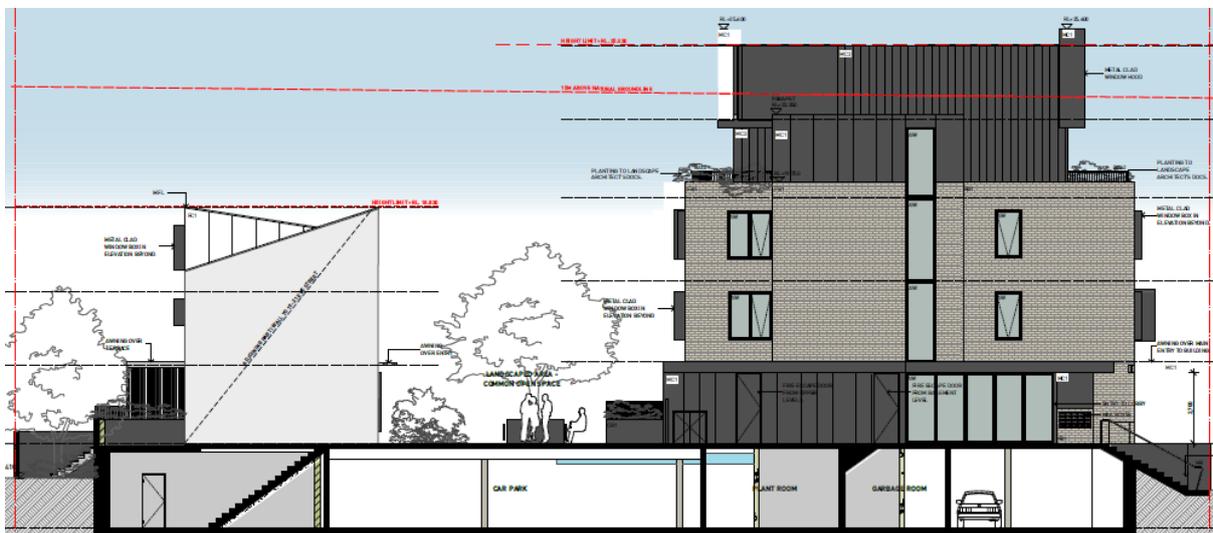


Figure 21: The southern elevation.

## History Relevant to the Development Application

### Current Development Application

19. The development application was lodged on 11 October 2017.
20. The development application was presented to the Design Advisory Panel (DAP) on 15 March 2018. DAP recommended:
  - (a) The non-compliance with height could be supported, subject to acceptable amenity impacts on adjoining properties and surrounding streets.
  - (b) Windows facing the northern and southern boundaries need to be designed to ensure adequate privacy is achieved.
  - (c) Adequate soil depths are to be provided to the communal open space above the car park.

21. Amended plans have been submitted which have addressed issues raised during the course of the assessment, including:
  - (a) Additional landscaping within the front setback;
  - (b) The provision of fixed seating and shade structure within the communal courtyard;
  - (c) Reconfigure basement layout including the removal of tandem parking spaces;
  - (d) Increased window sizes to Eve Street to improve solar access; and
  - (e) Setback the location of the waste holding area and provision of landscape planter above.
22. The amended plans submitted on 13 June 2018 are the subject of the assessment within this report.

### **Previous Development Applications**

23. There is no relevant development history directly relating to the subject site.

#### **D/2014/1805/A: 19-21 Eve Street**

24. To the south of the site at 19-21 Eve Street, development consent (D/2014/1805/A) was issued for demolition of the existing industrial buildings, excavation of basement for 15 car spaces, construction of five storey and three storey residential flat building comprising 18 residential units with internal communal open space. This development is currently under construction.
25. The approved development incorporates a shared pedestrian entry, and shared driveway with basement connection through a breakthrough panel into the subject site.
26. The proposed development generally replicates the architectural style and layout of this approval.

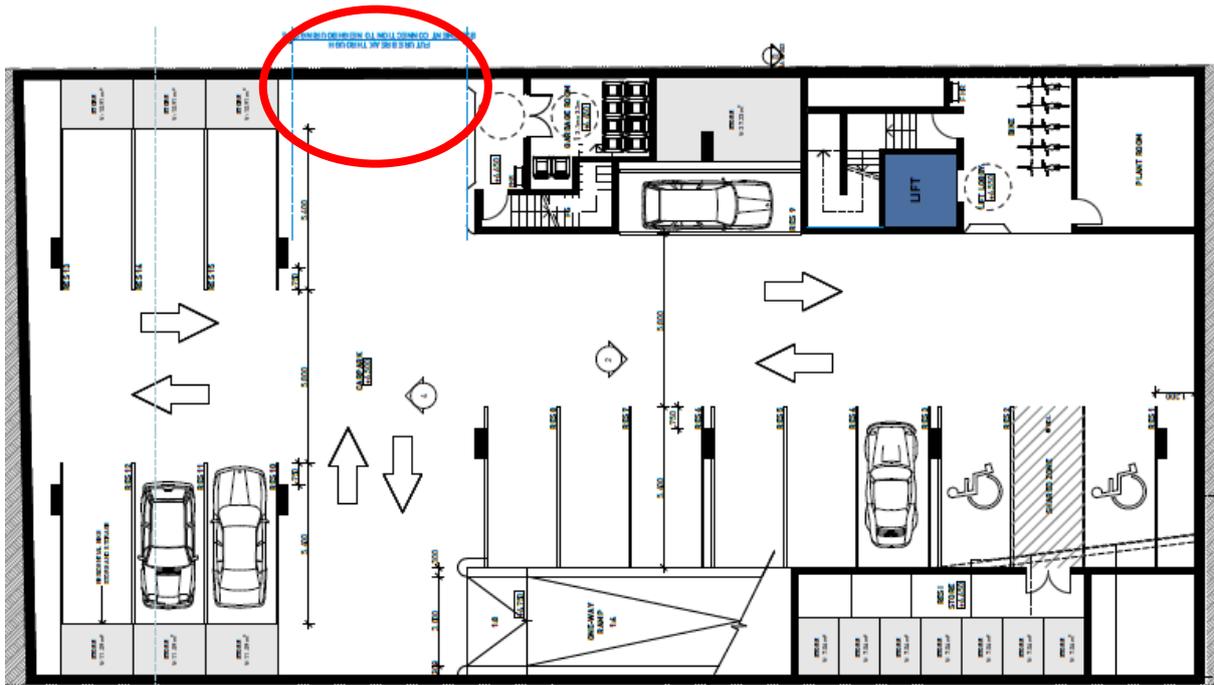


Figure 22: Basement plan of 19-21 Eve Street with breakthrough panel circled.

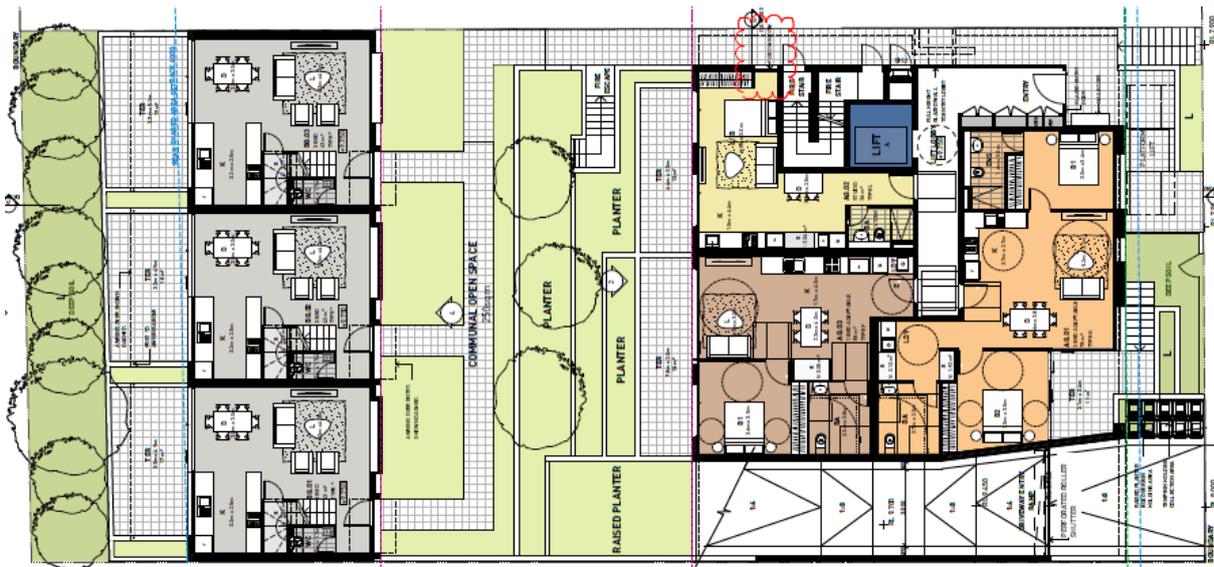


Figure 23: Ground floor plan of 19-21 Eve Street.



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

28. 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.
29. The site has a history of residential use and is currently occupied by four single dwellings. The Council/City's Health Unit is satisfied that the site is suitable for the proposed use.

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

30. 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 nine design quality principles, being:

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

Complies: The locality has an emerging character as an urban renewal area that is moving from industrial to residential and mixed use. The application for the redevelopment of the site is considered to be appropriate within the context of the site and the desired future character of the area.

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

Complies: The built form and scale of the proposed development is considered appropriate for the site. The site includes an undulating height control. It is noted that the site complies with floor space requirements as discussed below. The site is sandwiched between 'Lux' development to the north and 3-5 storey development to the south. Despite the departures to the building height control the proposed form is considered to be consistent with surrounding development. Refer to further discussion in the issues section of this report.

- (c) **Principle 3: Density**

Complies: The proposal complies with the maximum permitted gross floor area (GFA) applicable to the site. The proposed density responds well to the existing and future context of the area, and does not have an unreasonable impact on adjoining development.

- (d) **Principle 4: Sustainability**

Complies: The proposal is compliant with the requirements of BASIX and appropriate conditions are recommended to ensure the development complies with those requirements.

The design provides for sustainable development, utilising passive solar design principles, thermal massing, and achieves natural cross ventilation to an acceptable number of dwellings within the development.

(e) **Principle 5: Landscape**

Landscaped areas are provided within the central courtyard / communal area and within the front and rear setbacks. All include sections of dense planting. The communal area includes fixed seating and barbecue area. The site benefits from a landscaped courtyard as well as landscaping adjacent to the street frontage and rear boundary that provide areas of dense planting. A communal open space area of 300sqm is provided at ground floor level, with a total of 230sqm of deep soil planting zone within the site.

(f) **Principle 6: Amenity**

Complies: An acceptable level of amenity is provided for the occupants of the development, which provides a suitable range of dwelling sizes and practical room dimensions and configurations, storage space, and indoor and outdoor space. Compliance with the amenity controls of the Apartment Design Guide (ADG) are detailed in the table below.

(g) **Principle 7: Safety**

Complies: The safety and security of the public domain is enhanced by increased activity on the site and casual surveillance provided from the windows and balconies located along Eve Street. Proposed residential apartments at ground level to Eve Street include individual entrances providing for an active frontage which assists in deterring opportunities for crime.

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

The development provides an appropriate mix of 1 bedroom (31.5%), 2 bedroom (47.3%) and 3+ bedroom (21%) dwellings which complies with the dwelling mix provisions within Part 4.2 of the Sydney DCP 2012. For this reason it is considered that the development responds positively to the housing needs of the local community.

(i) **Principle 9: Aesthetics**

The proposed development provides for a contemporary range of building form that is compatible with the emerging character of the area. The proposal provides a modern, high quality and visually dynamic building which is well articulated and uses a variety of building materials, while respecting the rhythm of the existing buildings along the Eve Street frontage.

31. 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.

## Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	A maximum depth of 18m is proposed.

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <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>	<p>Partial compliance</p>	<p>12m building separation is proposed between the front and rear buildings.</p> <p>The southern elevation is separated by 3m-3.3m to the southern boundary, and this elevation includes study and secondary living room windows. This is acceptable as there are no window openings in the neighbouring building to the south.</p> <p>The northern elevation is built adjacent to the boundary. Part of the neighbouring building is setback by 3.3m from the boundary with a bedroom window facing the proposed development. As the proposal provides no openings to this facade it will not result in adverse impacts to the neighbouring site and is acceptable.</p> <p>Refer to the discussion under the Issues heading below.</p>

3D Communal and Public Open Space	Compliance	Comment
<p>Communal open space has a minimum area equal to 25% of the site.</p>	<p>Yes</p>	<p>25% of the site area (300sqm) is allocated to communal open space at ground floor level.</p>
<p>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).</p>	<p>No</p>	<p>Solar access to the communal open space is achieved for one hour between 12pm and 1pm.</p> <p>Refer to the discussion under the Issues heading below.</p>

<b>3E Deep Soil Zones</b>	<b>Compliance</b>	<b>Comment</b>
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	Yes	13.5% of the site is deep soil zone.

Separation between windows and balconies is required to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
Up to four storeys (12 metres): <ul style="list-style-type: none"> <li>6m between habitable rooms / balconies</li> <li>3m between non-habitable rooms</li> </ul>	Yes	12m building separation is proposed between the front and rear buildings.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The apartments have been designed to separate bedrooms and living rooms from circulation space.

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No	57.9% (11/19) of apartments receive 2 hours of direct sunlight at midwinter.  Refer to the discussion under the Issues heading below.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	5.26% of apartments receive no direct sunlight at midwinter.

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are naturally ventilated.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	73.6% of apartments are naturally cross ventilated.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The maximum depth of the building is 18m.

Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows in the table below.

<b>4C Ceiling Heights</b>	<b>Compliance</b>	<b>Comment</b>
Habitable rooms: 2.7m	Acceptable	Level 3 provides a floor to floor height of 3.0m, which is generally insufficient to provide a 2.7m floor to ceiling height. The floor of level 4 will be framed rather than concrete slab and less width is required. Additionally, this dimension is the same as the approved development located at 19-21 Eve Street and the design context aligns with the development next door. As a result the proposed floor to floor height is acceptable, as this is the lower level of the two storey apartments and the apartments will provide sufficient amenity.
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.	Acceptable	The application proposes four two-storey apartments over the upper two levels. Two of these apartments have more than 50% of their apartment on the upper level which has a floor to ceiling height of 2.4m. This is considered to be acceptable, as the upper floor is limited to bedrooms and bathrooms.

4C Ceiling Heights	Compliance	Comment
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Acceptable	The site is located in a B4 Mixed Use zone however Eve Street is characterised as a residential area and ground floor retail is not considered to be necessary for this site. Therefore the provision of 2.7m floor to ceiling heights at ground floor level is considered to be acceptable.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p>	Yes	All apartments achieve the minimum apartment sizes.
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	Every habitable room has a window in an external wall of appropriate size.
8m maximum depth for open plan layouts.	Partial compliance	The majority of apartments have a maximum depth of 8m for open plan areas. Three apartments (15%) have a 10m depth, however these apartments have side windows to their living rooms which ensures that sufficient light and air is achieved to the apartments.

4D Apartment Size and Layout	Compliance	Comment
<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>	Yes	All bedrooms achieve appropriate dimensions.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>	Yes	All rooms achieve a suitable width.

4E Private Open Space and Balconies	Compliance	Comment
<p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m<sup>2</sup> with a minimum depth of 2.4m.</p>	Yes	All apartments achieve the minimum balcony size.
<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>	Yes	All ground level apartments achieve a private open space of 15sqm or greater.

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	There is a maximum of 4 apartments on every level.
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	Living room and bedroom windows do not open onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Daylight and natural ventilation is provided to all common circulation spaces.

<b>4G Storage</b>	<b>Compliance</b>	<b>Comment</b>
<p>Minimum storage provision facilities:</p> <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> <p>(Minimum 50% storage area located within unit)</p>	Yes	The minimum storage is provided to all apartments.

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

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

### **Clause 45**

33. The application is subject to Clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
34. In accordance with the Clause, the application was referred to Energy Australia for a period of 21 days and no objection was raised.

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

35. The BASIX Certificate has been submitted with the development application.
36. 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.

**Sydney LEP 2012**

37. The site is located within the B4 Mixed Use zone under Sydney LEP 2012. The proposed use is defined as residential and is permissible.
38. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	<p>The site is subject to height controls of 12m, 15m and 22m.</p> <p>A height of 17.46m is proposed, which exceeds the height limit across the parts of the site with 12m and 15m controls by 45.5% and 16.4% respectively.</p> <p>See discussion under the heading Issues.</p>
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 1.5:1 is permitted (or a GFA of 1755sqm).</p> <p>A total GFA of 1718.19sqm is proposed, which equates to a FSR of 1.47:1.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the development standard prescribed under Clause 4.3 (Height of Buildings).</p> <p>See discussion under the heading Issues.</p>
5.6 Architectural roof features	Yes	<p>Part of the building that exceeds the height limit is a shading hood detail around the windows above the roof line.</p> <p>This is considered to be acceptable as it is decorative, does not include floor space, will cause no overshadowing and is fully integrated with the design of the building.</p>

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
5.10 Heritage conservation	Yes	The site is not a heritage item and not located within a heritage conservation area.

<b>Part 6 Local Provisions - Height and Floor Space</b>	<b>Compliance</b>	<b>Comment</b>
Division 4 Design excellence	Yes	The proposed development is considered to achieve a high standard of architectural design, materials and detailing and satisfies the requirements of this provision.

<b>Part 7 Local Provisions - General</b>	<b>Compliance</b>	<b>Comment</b>
Division 1 Car parking ancillary to other development  7.5 Residential flat buildings, dual occupancies and multi dwelling housing	No	<p>The site is located on land in category B which permits the following:</p> <p>1 bedroom: 0.4 spaces</p> <p>2 bedroom: 0.8 spaces</p> <p>3 bedroom: 1.1 spaces</p> <p>Each dwelling: 0.167 spaces.</p> <p>This equates to a maximum of 17 car parking spaces.</p> <p>20 car parking spaces are proposed which exceeds the number of parking spaces permitted.</p> <p>A condition is recommended that the number of parking spaces is reduced to 17. A condition is recommended that the basement design be modified to ensure a maximum of 17 car parking spaces are provided.</p>
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 3 Acid Sulphate Soil. A condition has been recommended to address acid sulphate soils on site.

Part 7 Local Provisions - General	Compliance	Comment
7.15 Flood planning	Yes	The site is identified by Council as being flood prone. The City's flooding engineers are satisfied that the proposed development complies with the relevant flood planning levels.
7.16 Airspace operations	Yes	The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport.

### Sydney DCP 2012

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

#### 2. Locality Statements – Ashmore

The subject site is located in the Ashmore locality (2.7.8). The proposed residential flat building, subject to conditions, is considered to be in keeping with the desired future character of the area by introducing a high quality streetscape, and a mix of dwelling types and sizes.

The proposal balances the public and private domain through provision of a landscaped setback to the built form and active individual street frontages for ground floor apartments.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	The proposed development will enhance the public domain, over that of the existing warehouse, by providing for landscaped, ground floor entries to individual dwellings. This will activate the street and provide opportunities for passive surveillance, while maintaining visual privacy for residents.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	<p>The application proposes the removal of 38 trees that are located within the site.</p> <p>The proposal has been reviewed by Council's Tree Management team who advise that none of the trees within the site are considered worthy of retention or of high enough significance to warrant changes to the design. Therefore the removal of all trees within the site is supported.</p> <p>New tree planting of 14 trees is proposed as part of the submitted landscape plan, in addition to 13.5% of the site being proposed as deep soil zone.</p> <p>All street trees directly outside the site must be retained and protected throughout the works. Conditions are recommended that street tree protection measures are provided.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal will not have unacceptable impacts on the environment and satisfies BASIX requirements.
3.7 Water and Flood Management	Yes	<p>The site is identified as being on flood prone land.</p> <p>The applicant has provided a flood hazard assessment. The City's flooding engineers are satisfied that the proposed development complies with the relevant flood planning levels.</p>

3. General Provisions	Compliance	Comment
3.11 Transport and Parking	Yes	<p>The maximum allowable car parking spaces is 17. A total of 20 spaces are proposed.</p> <p>Proposed car parking numbers exceed the maximum allowed under the LEP for the building. A condition is recommended that the number of parking spaces is reduced to 17. A condition is recommended that the basement design be modified to ensure a maximum of 17 car parking spaces are provided.</p> <p>The DCP includes additional provisions requiring 1 accessible space per accessible apartment. The proposal makes provision for 2 accessible spaces, consistent with the requirement for 2 units to be accessible.</p> <p>A total of 21 bicycle spaces are required (19 residential and 2 visitor), to meet the DCP requirement. The residential requirements are addressed through the provision of individual storage lockers in the basement. Three spaces are currently depicted in the basement level for visitor bicycle parking.</p>
3.12 Accessible Design	Yes	<p>SDCP 2012 specifies that when new developments propose between 15 and 21 apartments, 2 dwellings are to be adaptable dwellings. The proposal includes 2 adaptable apartments located at ground level meeting this requirement.</p> <p>Recommended conditions will address appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>



4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.2 Building setbacks	Yes	<p>A deep soil landscaped setback is provided to the Eve Street boundary within a front setback that is consistent with existing and proposed residential development along Eve Street.</p> <p>A 6m setback is provided to the rear of the site consistent with required building separation distances.</p> <p>Nil setbacks are provided to the northern side boundary, which is consistent with existing development on the site.</p>
4.2.3 Amenity	Yes	<p>The proposal's amenity with regard to landscaping and open space, ventilation, outlook and noise was addressed in the SEPP 65 and ADG section of this report, and considered to be acceptable.</p> <p>Due to the separation distances and the apartment layouts and design, potential impacts on acoustic and visual privacy are considered acceptable.</p> <p>The apartment mix proposed complies with the desired mix.</p> <p>Consideration of solar access is discussed in the Issues section.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The proposal achieves fine grain diversity through modulation of the facade both in terms of materials and setbacks, and provision of balconies.</p>
4.2.5 Types of development: Residential uses on ground and first floor	Yes	<p>The proposal is designed to address the Eve Street frontage.</p> <p>The development includes residential uses on the ground floor. Ground floor apartments incorporate individual entries and private open space in the form of decks that allow for passive surveillance of the public domain and the integration/softening with landscaping.</p>

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.2 Residential flat, commercial and mixed use developments</b>		
4.2.6 Waste minimisation	Yes	<p>Each dwelling has adequate space to manage waste.</p> <p>Waste collection is proposed from Eve Street via Council's waste collection vehicles. A temporary bin holding area is provided adjacent to the street. A condition of consent is recommended to ensure a gate with a high quality design is provided to this area.</p>
4.2.7 Heating and Cooling Infrastructure	Yes	<p>The applicant has not provided any details of air conditioning for the apartments. Conditions of consent are recommended to require further approval for any plant extending above the approved rooftop envelope and to restrict the location of air conditioning units and ensure they are appropriately screened from the public domain.</p>
4.2.8 Letterboxes	Yes	<p>Provision is made near the main entrance from Eve Street for letterboxes.</p>

<b>5. Specific Areas</b>	<b>Compliance</b>	<b>Comment</b>
<b>5.5 Ashmore Neighbourhood</b>		
5.5.3.1 Street network	Yes	<p>The proposal makes provision for the western 6m of the site to be dedicated for the provision of a new laneway depicted within Figure 5.107.</p> <p>Review of the laneway depicted within the Site Specific controls by Council staff has confirmed that the requirement for the land to be dedicated for the provision of a laneway is no longer supported. This was also not required for the adjoining development site at 19-21 Eve Street.</p> <p>See discussion under the heading Issues.</p>

5. Specific Areas 5.5 Ashmore Neighbourhood	Compliance	Comment
5.5.3.2 Movement and connectivity	Yes	The proposal utilises the vehicle entry of the adjoining site at 19-21 Eve Street.
5.5.4.2 Quality of landscaping and landscaped setbacks	Yes	<p>The site provides a 3m landscape setback adjacent to the Eve Street frontage consistent with the controls.</p> <p>A mix of native and exotic species is proposed within the landscaped setback and internal common area. Plant selection will attract and support native wildlife, complement street trees and will not significantly restrict light into apartments.</p> <p>A condition of consent is recommended for final landscape plans and maintenance details to be submitted.</p>
5.5.8.1 Height of Buildings	<p>No, but acceptable</p> <p>Yes</p>	<p>The controls allow a building envelope of 4 storeys to the east (Eve Street) and 2 storeys to the west.</p> <p>The application proposes 5 storeys to Eve Street and 3 storeys to the rear. This matches the built form of the approved development of 19-21 Eve Street to the south and is an appropriate streetscape and amenity outcome for the site.</p> <p>See discussion under the heading Issues.</p> <p>The site is subject to a 3 storey street wall height control along Eve Street. The proposal provides a 3 storey street wall height, with the upper two levels setback by 2.5m which complies.</p>
5.5.8.2 Views	Yes	The proposal retains important district views to the CBD and Newtown from Sydney Park.

5. Specific Areas 5.5 Ashmore Neighbourhood	Compliance	Comment
5.5.8.3 Dwelling type and location	Acceptable	<p>The preferred terrace/townhouse typology depicted in Figure 5.134 for the site is inconsistent with the general 4 storey height of buildings prescribed for the eastern (Eve Street) portion of the site.</p> <p>The proposed residential flat building to Eve Street with townhouse typology to the rear is considered to be acceptable given the height controls for the site and are consistent with the site to the south at 19-21 Eve Street.</p>
5.5.8.4 Building form and design	Yes	The proposal provides articulation and a range of materials, and includes individual front entries for ground floor apartments, a landscape setback from Eve Street.
5.5.8.5 Typical ground floor condition for residential flat buildings	Yes	<p>The proposal incorporates deep soil planting areas within a landscaped setback and private open space to the ground floor apartments.</p> <p>Due to the required flood levels the ground floor balconies are 1.7m above the street, however the impacts of this are minimised through the use of landscaping planter boxes of various heights.</p>
5.5.8.8 Building materials	Yes	The facades of the buildings are considered to include appropriate building materials with high quality finishes that will result in a positive streetscape outcome.

## Issues

### Height of Buildings

40. The site is subject to three height controls under the Sydney LEP 2012, with a 22m height control to the north of the site, a 12m height control in the middle of the site and 15m height control to the south of the site. Consequently the height control undulates across the site. This is shown in Figure 26 below.



**Figure 26:** The Sydney LEP 2012 height of buildings control.

41. The 12m height control is an anomaly within the LEP height controls map. This has been reviewed by Council's strategic planning unit who have confirmed that the 12m height control over 13 Eve Street is an error. It is inconsistent with the Ashmore Neighbourhood controls within the Sydney DCP 2012 which permit 4 storey development across the site, as shown in Figure 27 below.

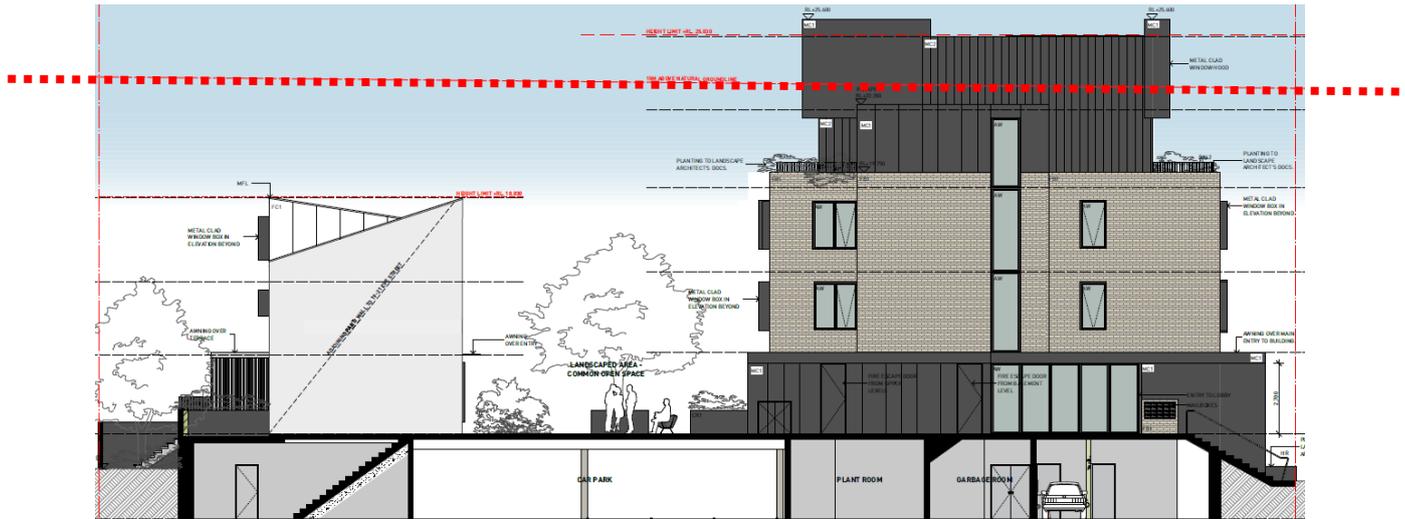


Figure 27: The Ashmore height in storeys map from Sydney DCP 2012.

- 42. The proposal results in a maximum building height of 17.46m. This represents a 2.46m or 16.4% variation to the 15m building height development standard and a 5.46m or 45.5% variation to the 12m building height development standard.
- 43. The proposed height in storeys of five storeys at the front and three storeys at the rear is inconsistent with the DCP provisions.
- 44. Figures 28 and 29, below, illustrate the height control on the elevations of both street frontages and shows those elements of the scheme above the building height development standard.



Figure 28: The Eve Street elevation showing the 15m, 12m and 22m height control.



**Figure 29:** The southern elevation showing the 15m height limit.

45. The applicant has lodged a written request for an exception to the development standard has been submitted in accordance with Clause 4.6(3) of the LEP. Clause 4.6 allows the consent authority to vary the development standard in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. In order to demonstrate whether strict numerical compliance is unreasonable and unnecessary in this instance, the proposed exception to the height standard has been considered against the objectives and provisions of Clause 4.6.
46. The applicant contends the following when stating their case that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard:
  - (a) The proposal provides a height exactly the same as the approved development immediately to the south.
  - (b) The proposal steps down in height from the building to the north which is subject to a 22m height control and achieves the transition in heights envisaged by the controls.
  - (c) The height controls within Figure 5.129 of Section 5.5.8.1 of the Sydney DCP 2012 envisage a 4 storey height control across the full site.
  - (d) The building sits 1.75m above natural ground level to comply with the floor levels.
  - (e) The height is contained in the 'architectural expression' that relates closely to the buildings on either side of the development.
47. As per clause 4.6(4)(a)(i), it is considered that the applicant has suitably addressed that compliance with the development standard is not reasonable or necessary in the circumstance. It is also considered that the applicant has suitably addressed that there are environmental planning grounds to justify the contravention of the development standard.

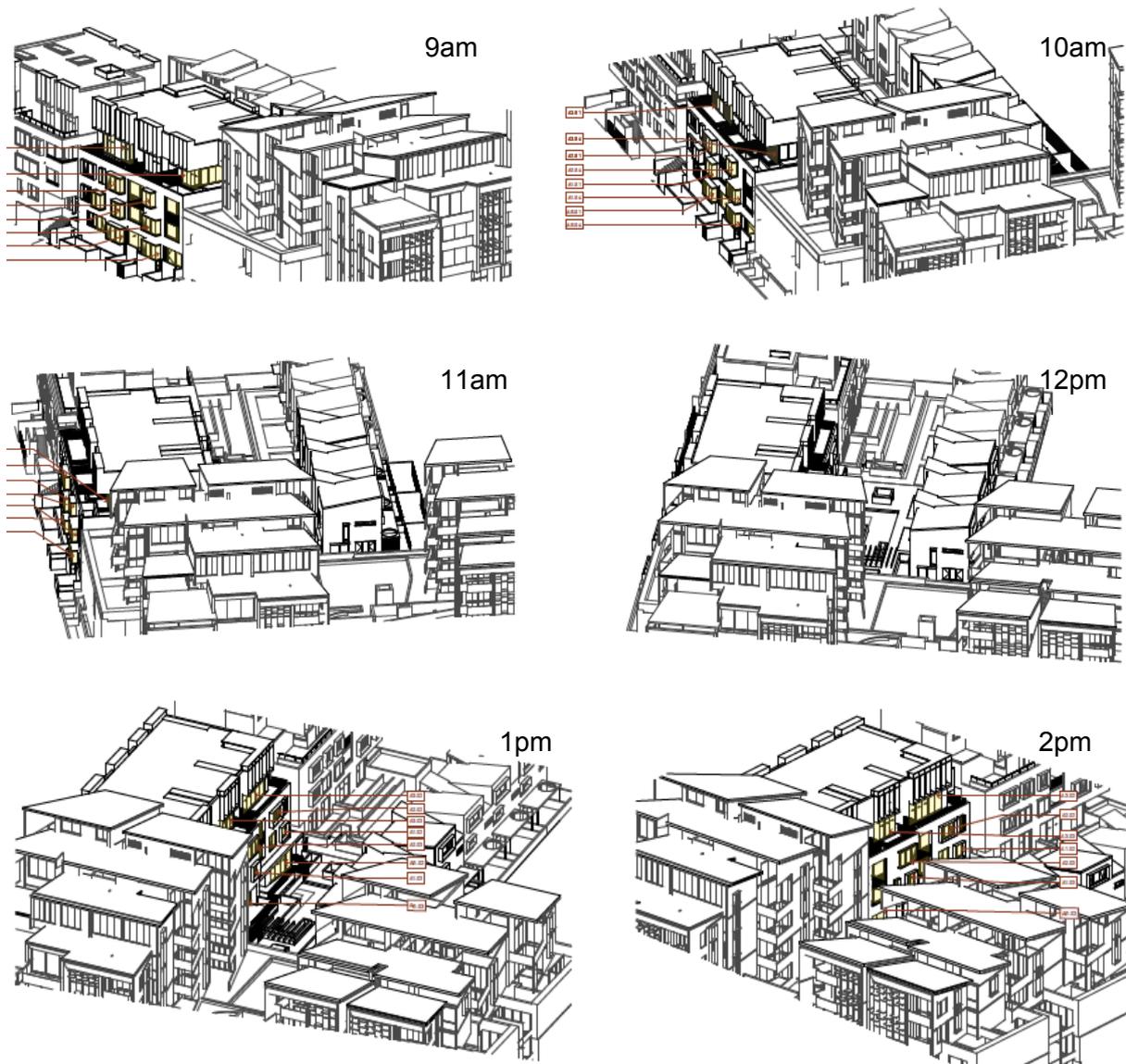
48. Clause 4.6(4)(ii) requires the consent authority be satisfied that the proposed development is consistent with the objectives of Clause 4.3 (Height of Buildings) and the objectives of the B4 Mixed Use zone.
49. The proposed development is consistent with the objectives of Clause 4.3 (Height of Buildings) for the following reasons:
  - (a) The 5 storey development is consistent with the developments of neighbouring sites. As such, the height of the development is considered to be appropriate to the context of the site.
  - (b) The site provides a height transition to the taller building directly to the north.
  - (c) The additional height does not interrupt views of vistas. Additionally, it does not result in an unreasonable level of overshadowing and will not result in any adverse privacy or amenity impacts.
50. The proposed development is consistent with the objectives of the B4 Mixed Use zone, as it provides a compatible land use and integrates suitable residential development in an accessible location.
51. The proposed development represents a better planning outcome for this site. This is because the development provides good amenity, does not adversely impact on the amenity of surrounding residents and presents a good design outcome.
52. For the reasons outlined above all the requirements of Clause 4.6 of the Sydney LEP 2012 are satisfied and the Clause 4.6 exception to the development standard is supported. For the same reasons, the non-compliance with the 'height in storeys' DCP control is acceptable.

### **Solar Access**

53. The Apartment Design Guide (ADG) requires that 70% of units receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces.
54. The Eve Street facade faces east allowing units facing east to receive direct sunlight from 9am. The application has been amended to ensure that all living rooms fronting Eve Street achieve two hours of direct sunlight at midwinter through the provision of projecting bay windows which enable the sunlight to be captured at an oblique angle at 11am. These amendments have increased the number of units achieving two hours direct sunlight from 26.3 per cent (5/9) to 57.9 per cent (11/19) of units.
55. It is noted that 17/19 (89.5 per cent) of apartments receive one hour of direct sunlight, whilst only 1/19 (5.2 per cent) of apartments received no direct sunlight which complies with the ADG requirement for a maximum of 15 per cent to receive no sunlight.
56. The design of the Luxe development to the north of the site extends past the rear building line of the proposed development which restricts many of the units facing west from achieving two hours of direct sunlight. There are no reasonable amendments possible that could assist with additional units achieving direct sunlight at midwinter. The proposal is considered to be acceptable as the units achieve an overall high level of amenity. Additionally the built form as proposed is consistent with the typology outlined by the DCP of providing a higher building form to Eve Street and lower building form to the rear of the site which is separated by a central courtyard, as shown in Figure 27 above.

57. The ADG also requires that developments achieve a minimum of 50 per cent 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). The proposed communal open space achieves direct sunlight for one hour between 12pm and 1pm as it is overshadowed by the 'Luxe' development to the north of the site at other times of the day. The communal open space is provided at ground level in a location identified by the DCP and is considered to be a useable open space area. The provision of communal open space at rooftop level is not appropriate in this instance as it would result in further breaches to the height control and would not be consistent with the continuous built form of surrounding developments including 19-21 Eve Street to the south of the site.

58. Views from the sun diagrams are shown below.





**Figure 30:** Views from the sun diagrams at midwinter.

### **Building Separation**

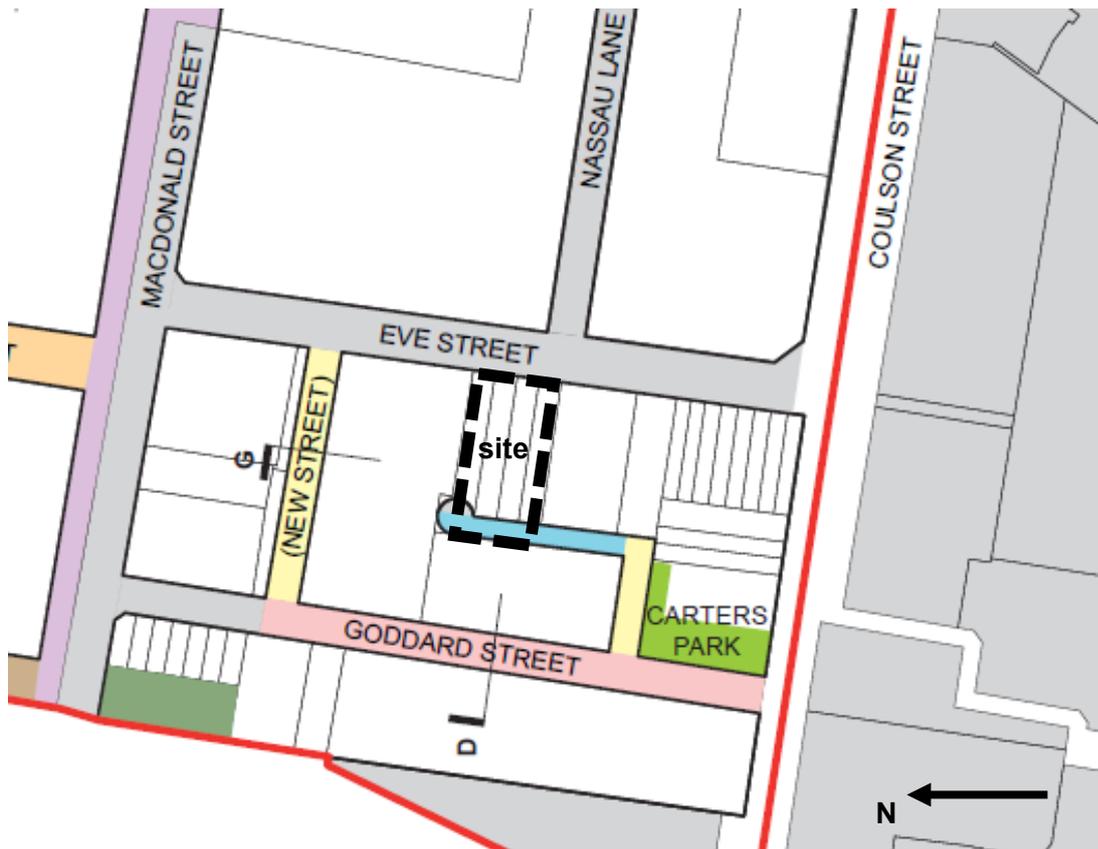
59. The Apartment Design Guide requires 12m building separation between habitable rooms and 6m separation between non-habitable rooms. The application provides 12m separation between the front and rear buildings.
60. The southern elevation is separated by 3m-3.3m to the southern boundary, and this elevation includes study and secondary living room windows. This is acceptable as there are no window opening in the neighbouring building to the south that is currently under construction.
61. The northern elevation is built adjacent to the boundary. Part of the neighbouring building is setback by 3.3m from the boundary with a bedroom window facing the proposed development. As the proposal provides no openings to this facade it will not result in adverse impacts to the neighbouring site and is acceptable.



Figure 31: Building separation as shown on the Level 1-2 floor plan.

**Rear Laneway**

- 62. The Sydney Development Control Plan 2012 identifies a new 6m wide lane, known as Goddard Lane, to be located at the rear (west) of the subject site. This lane is a "no through road".
- 63. The proposed lane, shown in blue in Figure 32 below, is created by the dedication of a 6m strip of land from the rear of the subject site (outlined in dashed line) and neighbouring properties in accordance with the Ashmore Precinct Site Specific Controls of the SDCP.



**Figure 32:** Extract from Figure 5.105 of the Ashmore Street Hierarchy.

64. The provision of Goddard Lane was considered during the assessment of the neighbouring development at 19-21 Eve Street (D/2014/1805). It was determined by the City's Strategic Planning team that Goddard Lane was no longer required for the overall redevelopment of Ashmore. In particular it is noted that the lane is not strategically required for access/circulation purposes within the Ashmore road network, and is not required to "break up" the future street block, which is of a similar size to other blocks within the precinct. Subsequently, land was not dedicated for the purpose of a laneway as part of the development for 19-21 Eve Street, and the dedication of land is therefore not required for the subject site.
65. An amendment to the Sydney Development Control Plan 2012, removing Goddard Lane is planned to be undertaken in due course.

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

66. The proposed development is capable of complying with the BCA.
67. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

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

68. 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

69. The conditions of other sections of Council have been included in the proposed conditions.
70. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Surveyors; Transport and Access; Tree Management; and Waste Management who advised that the proposal is acceptable subject to the recommended conditions.

## External Referrals

### Notification, Advertising and Delegation (Submissions Received)

71. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 17 October 2017 and 8 November 2017. As a result of this notification there were nine submissions received.
72. The issues raised in the submissions are as follows:
  - (a) The proposal does not retain the heritage and streetscape of the area, due to the demolition of the existing terrace housing.

**Response** - The existing terrace houses are not heritage items and not located in a heritage conservation area. They do not have heritage significance and their demolition is supported.
  - (b) The City of Sydney's Ashmore Precinct Infrastructure Plan identifies that terraces or low scale buildings are to be retained in this part of Eve Street.

**Response** - The proposed residential flat building to Eve Street with townhouse typology to the rear is considered to be acceptable given the height controls for the site and are consistent with the site to the south at 19-21 Eve Street.
  - (c) Overshadowing impacts onto the northern elevation of the neighbouring building at 19-21 Eve Street.

**Response** - The development at 19-21 Eve Street does not include any apartment windows that face the northern boundary except for one ground floor bedroom window, and it is noted that this bedroom also has windows to the western elevation. As the proposal maintains the same front and rear setbacks as 19-21 Eve Street there is no additional overshadowing impacts to the eastern or western elevations.
  - (d) Concerns that the cladding and glazing will cause reflectivity into the apartments of the 'Motto' development, which has also occurred from the 'Luxe' development.

**Response** - A condition is recommended requiring that reflectivity does not exceed 20 per cent which is consistent with Council requirements.

- (e) The increased density of the area.

**Response** - The proposed density is consistent with the Floor Space Ratio control for the site.

- (f) Impacts on the surrounding road network due to the new residential development in the area.

**Response** - The proposed development, subject to the imposition of the recommended conditions, will provide 17 additional car spaces which is consistent with the maximum parking controls for the site. It is considered that the proposal will not result in an unreasonable impact upon the surrounding road network.

- (g) The removal of the bottle brush tree on 13 Eve Street and yellow deciduous tree from 17 Eve Street should not be removed.

**Response** - The removal of all trees within the site is considered to be acceptable as none of the existing trees are considered to be of high enough landscape significance to warrant retention, however the three street trees are required to be retained.

- (h) There are possums that are living within the property, and they need to be safely removed prior to demolition and tree removal.

**Response** - A condition is recommended to ensure that if any wildlife is identified within the site that all tree removal or demolition works must stop until a trained wildlife handler attends the site or the animal relocates itself.

- (i) Construction noise.

**Response** - Conditions are recommended relating to the construction hours and noise to ensure that the impacts on the surrounding community are minimised.

### Sydney Airport Referral Act 1996

73. 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.
74. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify 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.
75. 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).
76. A condition is recommended that requires the approval for the proposed height of the development to be obtained from Sydney Airport Corporation Limited in accordance with the Civil Aviation (Building Control) Regulations 1988.

**Public Interest**

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

**S7.11 Contribution**

78. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

79. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$177,957.87
(b) Community Facilities	\$35,429.58
(c) Traffic and Transport	\$45,187.17
(d) Stormwater Drainage	\$17,871.47
Total	\$276,446.09

**Relevant Legislation**

80. The Environmental Planning and Assessment Act 1979.

## Conclusion

81. The proposed development is generally consistent with the development standards and zone objectives of the Sydney LEP 2012 with the exception of the height of buildings control.
82. The amended proposal performs well against the built form controls of the Sydney DCP 2012 and the design principles in SEPP 65. The proposal has been amended to address concerns raised by Council officers.
83. The proposal provides 19 residential units and the new units have acceptable levels of amenity for future occupiers and the development does not unreasonably affect the amenity of the surrounding area.
84. The site is subject to height controls of 12m, 15m, and 22m, and whilst the proposal will result in the building exceeding the 12m and 15m height controls, the breach does not result in any unacceptable amenity impacts and the proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls. The applicant has submitted written justification seeking to vary the building height development standard pursuant to clause 4.6 variation of SLEP 2012.
85. Accordingly, the proposal is recommended for approval subject to the imposition of the recommended conditions.

## **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Matthew Girvan, Specialist Planner