

Item 6.**Development Application: 888 Bourke Street, Zetland**

File No.: D/2017/1723

Summary

Date of Submission:	12 December 2017
Applicant:	Toplace Pty Ltd
Architect:	Krikis Tayler Architects
Developer:	888 Place Pty Limited
Owner:	The Owners - Strata Plan No 52152
Cost of Works:	\$56,230,573
Zoning:	B4 Mixed Use zone. The proposed development is permissible with consent.
Proposal Summary:	<p>The subject application is a concept development proposal for the following:</p> <ul style="list-style-type: none">• Two building envelopes (Buildings A and B) both with a maximum height of 22m;• Indicative future retail and residential uses;• Indicative basement levels (two);• 12.8 metre wide road reserve to extend the future Kingsborough Way to O'Dea Avenue; and• Indicative locations for footpath widening along Bourke Street and O'Dea Avenue

The applicant has submitted a public benefit offer and a draft Voluntary Planning Agreement (VPA) has been prepared. The draft VPA includes a monetary contribution towards essential infrastructure, the construction and dedication of part of the future Kingsborough Way and land for footpath widening along Bourke Street and O'Dea Avenue. The draft VPA is currently on public exhibition from 28 November 2018 to 16 January 2019.

The proposal is Integrated Development and requires approval under the Water Management Act 2000. General Terms of Approval have been provided by Water NSW.

The proposal was amended to address concerns raised City staff and by the City's Design Advisory Panel. These concerns related to height, envelope depth, building separation, street setbacks, overshadowing, daylight and solar access, natural cross ventilation, deep soil, vehicle entry point, flood planning, the design excellence strategy, public art provision and land contamination.

The original proposal was notified and advertised for a period of 28 days between 12 February 2018 and 15 March 2018. The amended proposal (submitted 31 July 2018) was re-notified between 1 August 2018 and 16 August 2018.

As a result of the notification of the original proposal, there were 10 submissions received from 9 objectors and in response to the re-notification, a total of 5 submissions were received from 4 objectors.

The submissions raised issues in relation to the height of the development, view loss, solar access and other aspects which directly related to the detailed design of the development. The issues raised have been addressed within this report.

The proposal conforms to the maximum height of buildings development standard and is capable of conforming to the maximum floor space ratio development standard prescribed by the Sydney Local Environmental Plan 2012 for the site. The proposal is acceptable in terms of compliance with requirements of SEPP 65 and the ADG subject to conditions requiring greater setbacks from the side and rear boundaries of the site on the upper levels to mitigate building separation and overshadowing to neighbouring residential buildings. The concept proposal presents a generally acceptable outcome in terms of compliance with requirements of SEPP 65 and the ADG.

The amended proposal is generally compliant with the relevant planning controls, and results in a form and scale that achieves the desired future character of the area.

It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application once the VPA is exhibited, subject to deferred commencement conditions if appropriate requiring the execution and registration of a VPA on the title of the land and payment of the applicable monetary contribution.

Following the completion of these matters, consideration should be given to granting development consent subject to the recommended conditions.

Summary Recommendation: Authority be delegated to the CEO to determine the application after completion of the VPA public exhibition process, with consideration being given to the conditions in Attachment A to the subject report.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Environmental Planning and Assessment Regulation 2000
- (iii) City of Sydney Act 1988
- (iv) Water Management Act 2000
- (v) State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55) and Managing Land Contamination Planning Guidelines (SEPP 55 Guidelines)
- (vi) State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guide (ADG)
- (vii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- (viii) State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- (ix) Sydney Local Environmental Plan 2012 (SLEP 2012)
- (x) Sydney Development Control Plan 2012 (SDCP 2012)
- (xi) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings
- (xii) City of Sydney Interim Floodplain Management Policy
- (xiii) City of Sydney Policy for Waste Minimisation in New Developments 2005
- (xiv) City of Sydney Public Art Policy and Interim Guidelines for Public Art in Private Developments
- (xv) City of Sydney Competitive Design Policy
- (xvi) City of Sydney Contributions Plan 2015
- (xvii) Green Square Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Proposed Envelopes
- C. Selected Drawings - Indicative Scheme
- D. Design Excellence Strategy

Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer (CEO) to determine Development Application No. D/2017/1723, after the completion of the public exhibition period of the draft Voluntary Planning Agreement between 888 Place Pty Limited and the City of Sydney and consideration of any submissions;
- (B) the Design Excellence Strategy for 888 Bourke Street, Zetland, dated 6 September 2018, prepared by LJB Urban Planning Pty Ltd on behalf of Toplace Pty Ltd, be approved pursuant to Section 3.3 of the Sydney Development Control Plan 2012 and Section 1.2 of the City of Sydney Competitive Design Policy; and
- (C) if the Chief Executive Officer determines to approve Development Application No. D/2017/1723, then consideration be given to granting deferred consent, pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, 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 proposed development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979, in that, subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.
- (B) The proposed development complies with the permitted height for the site under the Sydney Local Environmental Plan 2012 and has a height and form which is considered to be generally suitable for the condition of the site and its context.
- (C) The proposed building envelopes are capable of accommodating future buildings which can exhibit design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (D) The proposed envelopes are capable of being consistent with the provisions of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the Apartment Design Guide in that, subject to the recommended conditions it will provide building envelopes which are capable of accommodating future buildings which can achieve high amenity for future residents with regard to communal open space, solar access, natural ventilation, private open space, building separation and privacy.
- (E) The public interest is served by the approval of the proposal, as amendments to the development application have addressed the matters raised by the community, subject to recommended conditions imposed.

Background

The Site

1. The site is located at 888 Bourke Street, Zetland, and is legally described as Lot 1 in DP 851451. The site is subject to a strata plan with 18 lots, identified as SP 52152.
2. The site has an irregular shape, with a total area of 7,069 square metres and boundary dimensions of approximately 26m along Bourke Street and 113m to O'Dea Avenue.
3. The site has frontages and is at the junction of two streets, being located on the south-eastern side of Bourke Street and the southern side of O'Dea Avenue. It occupies the western half of the entire street frontage along O'Dea Avenue between Bourke Street to the west and Joynton Avenue to the east.
4. The topography of the site has a fall of approximately 2 metres across the site from the western frontage of the site (Bourke Street) towards the eastern boundary, shared with the adjoining properties at 5 O'Dea Avenue and 17 Joynton Avenue
5. The site is identified on the plan in Figure 1 and aerial photographs in Figure 2 and Figure 3 below.



Figure 1: Plan image of subject site and surrounding area (site shown in blue).



Figure 2: Aerial photograph of the subject site and surrounding area (site shown in blue).



Figure 3: Aerial photograph of the subject site and surrounding area (site outlined in blue), generally looking east.

6. There are no significant trees or vegetation on the site, There are 6 mature street trees located along the O'Dea Avenue frontage of the site.
7. The site currently accommodates a two storey industrial development containing 18 units. The site has 2 vehicle access points to O'Dea Avenue with a central driveway providing access to car parking spaces associated with each tenancy.

8. The site is not identified as being a heritage item or located in a heritage conservation area in any environmental planning instruments.

The Surrounding Area

9. The site is located within the Green Square Urban Renewal Area in the suburb of Zetland, and is approximately 300 metres to the north-east of the Green Square Town Centre.
10. The surrounding area contains a diverse mixture of land uses and built forms.
11. The adjoining site to the south west at 890-898 Bourke Street is occupied by industrial buildings similar to the subject site. Development application D/2015/98 approved a Stage 1 (concept) building envelope for a mixed use development on this site. A design competition has been undertaken and development application D/2017/1762 is currently being assessed by the City which proposes the construction of a new 6 storey mixed used development comprising 145 apartments and 1 ground floor retail tenancy.
12. Adjoining the sites to the south and east at 15 and 17 Joynton Avenue and 5 O'Dea Avenue contain 6 multi storey residential buildings, with the development being known as Emerald Park.
13. To the south-west of the site is a new multi storey residential development containing 343 dwellings and a new public park at 906 Bourke Street and 6 Kingsborough Way. Construction is nearing completion on this development.
14. Directly across O'Dea Avenue to the north is a locally listed heritage item at 866-882 Bourke Street, which contains a Kennards self-storage facility.
15. Photos of the site and the surrounding sites are provided below at Figures 4 to 8, inclusive.



Figure 4: Site viewed from Bourke Street, looking north-east



Figure 5: Site viewed from the corner of Bourke Street and O'Dea Avenue



Figure 6: Looking south-west along Bourke Street, toward the Green Square Town Centre.

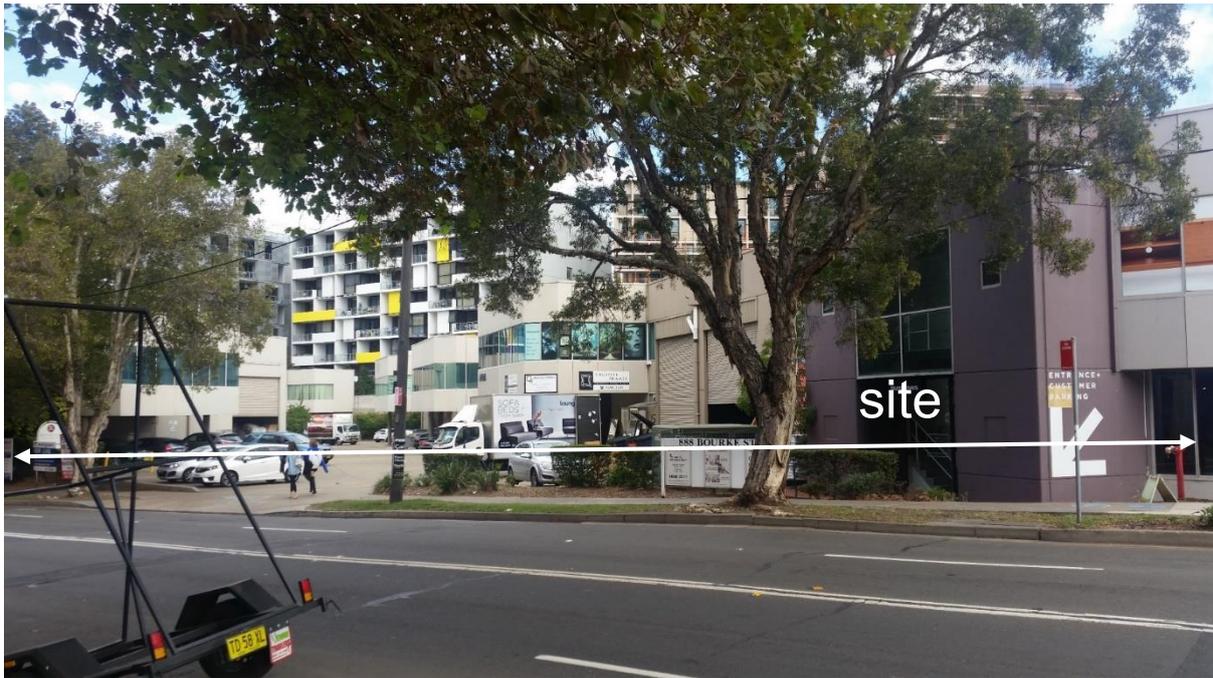


Figure 7: Site viewed from the northern side of O'Dea Avenue, including the existing driveway.



Figure 8: Site viewed from O'Dea Avenue, with apartment building at 15 Joynton Avenue in the background



Figure 9: View within the site facing east, with the residential apartment building at 17 Joynton Avenue in the background



Figure 10: View of the adjoining site to the south at 890-898 Bourke Street



Figure 11: Adjoining site to the east 5 O'Dea Avenue

Proposal

16. The proposal seeks development consent for a concept proposal for the following:
 - (a) Building envelope A with a maximum height of 22 metres and a total area of 10,158sqm;
 - (b) Building envelope B with a maximum height of 22 metres and a total area of 11,952sqm;
 - (c) Basement building envelope to allow up to 2 levels of basement car parking;
 - (d) Indicative future retail and residential uses;
 - (e) 12.8 metre wide road reserve to extend the future Kingsborough Way to O'Dea Avenue; and
 - (f) Indicative locations for footpath widening along Bourke Street and O'Dea Avenue and
17. A draft Voluntary Planning Agreement (VPA) has been submitted as part of the application which includes:
 - (a) construction of the new internal road (Kingsborough Way);
 - (b) construction of new footpaths on Bourke Street and O'Dea Avenue;

- (c) dedication of 1,257m² of land associated with the new road and footpath widening; and
- (d) a monetary contribution of \$837,541.50 towards community infrastructure in Green Square.

18. Plans of the proposed envelopes are provided in Figures 13 to 16 below.

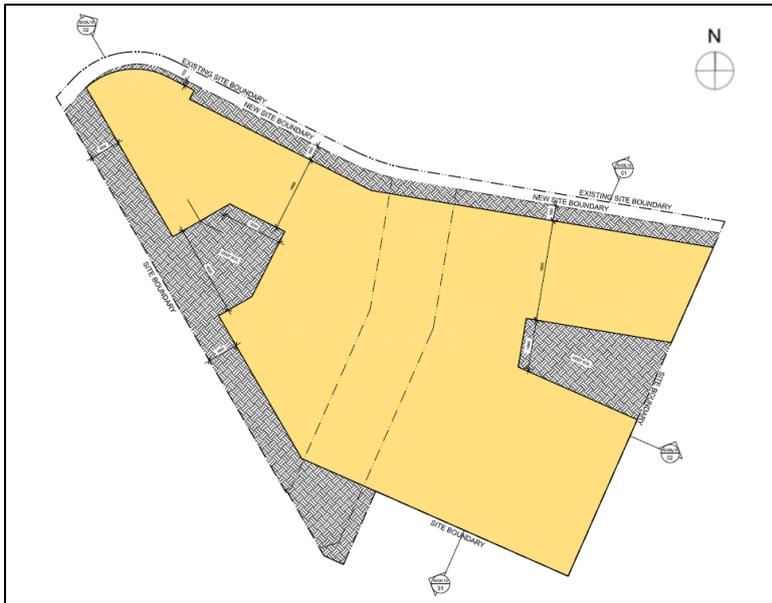


Figure 12: Building envelope basement levels

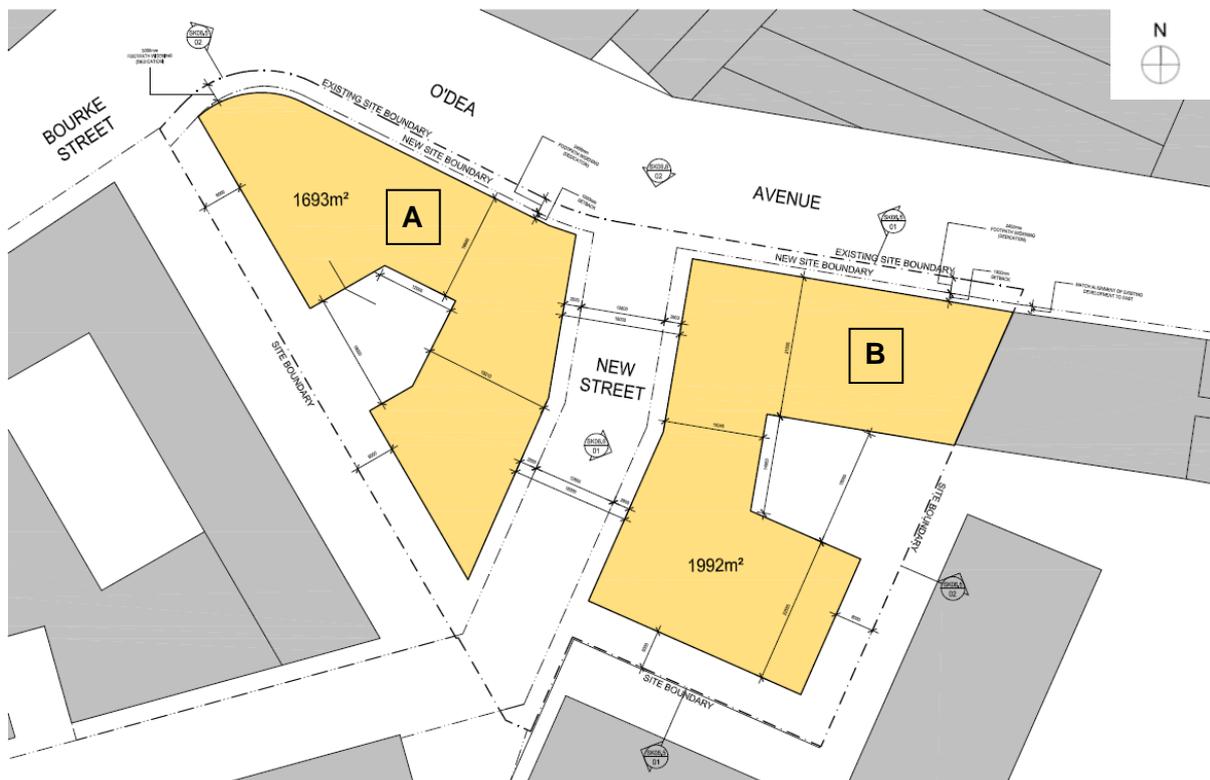


Figure 13: Building envelopes A and B ground floor to level 5

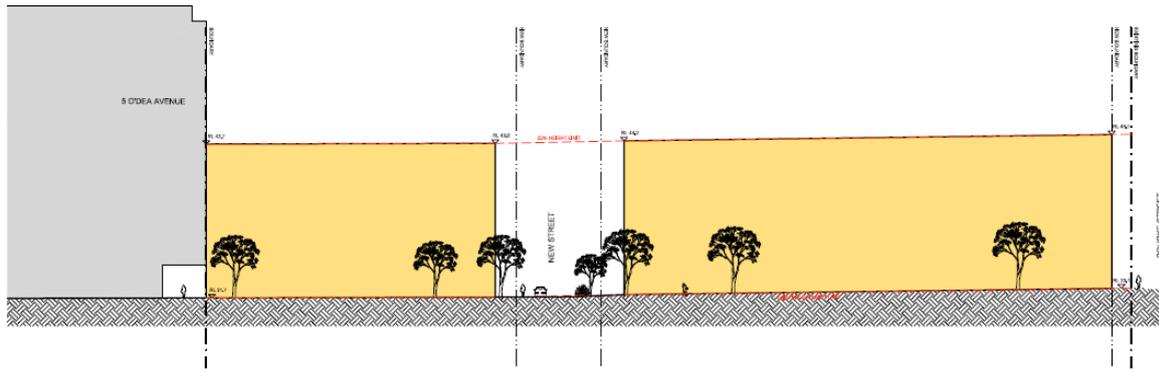


Figure 14: Elevation of the proposed envelopes from O'Dea Avenue

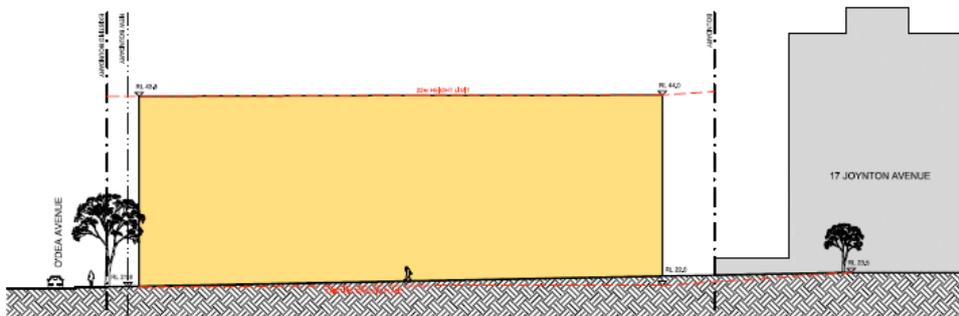


Figure 15: Elevation of the proposed envelopes to east viewed from the new street

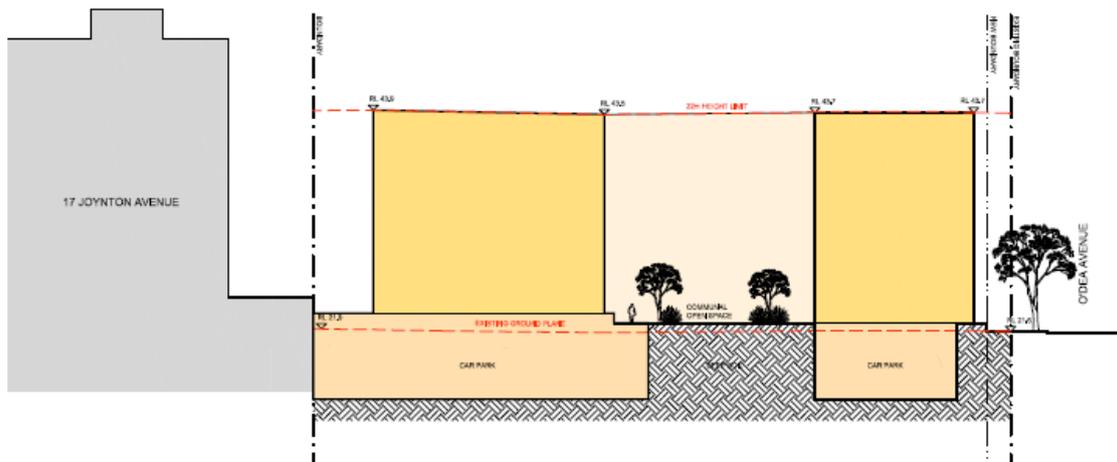


Figure 16: Section of the proposed envelopes (north - south)

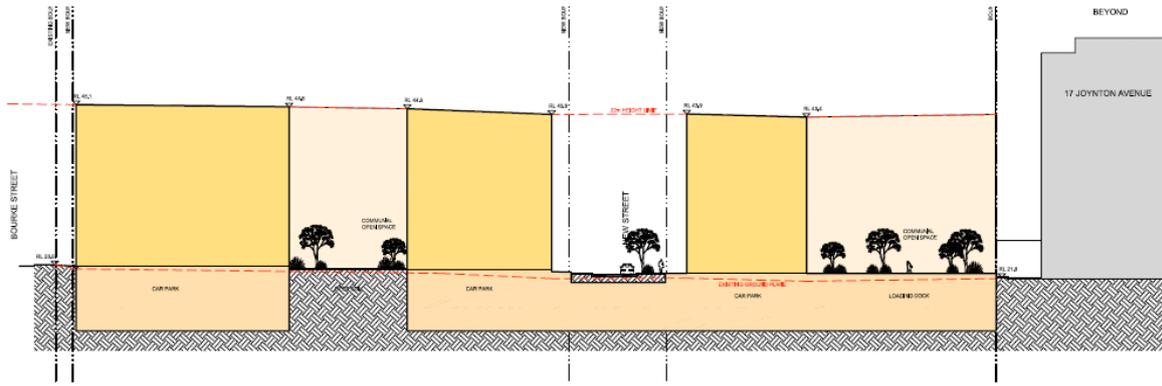


Figure 17: Section of the proposed envelopes (east - west)



Figure 18: Location of future street and locations for future footpath widening

19. A number envelope perspective views of the proposed development are provided below at Figures 19 to 21.

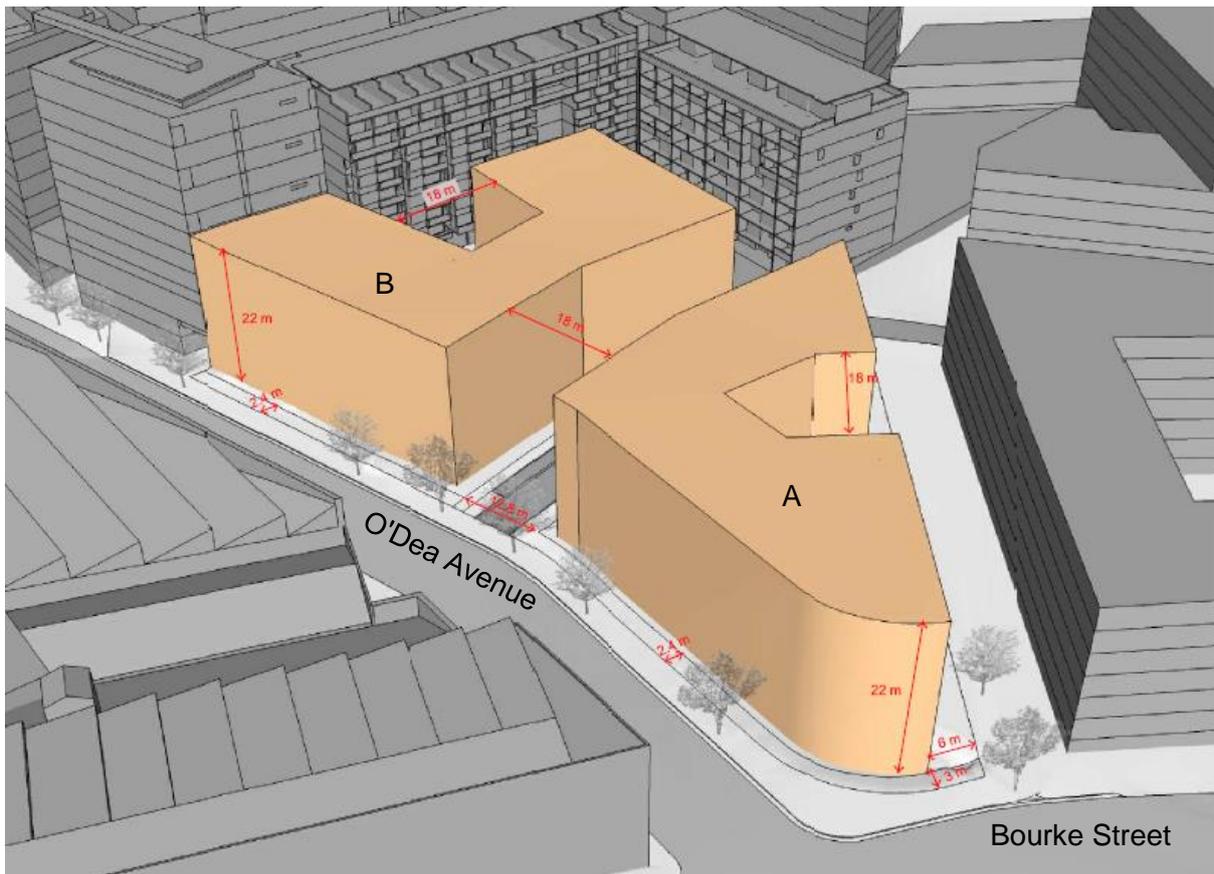


Figure 19: Indicative massing looking south east



Figure 20: Envelope 3D aerial view of the envelopes looking east



Figure 21: Envelope 3D aerial view of the envelopes looking south.



Figure 22: Envelope 3D views of the envelopes from O'Dea Avenue looking west.

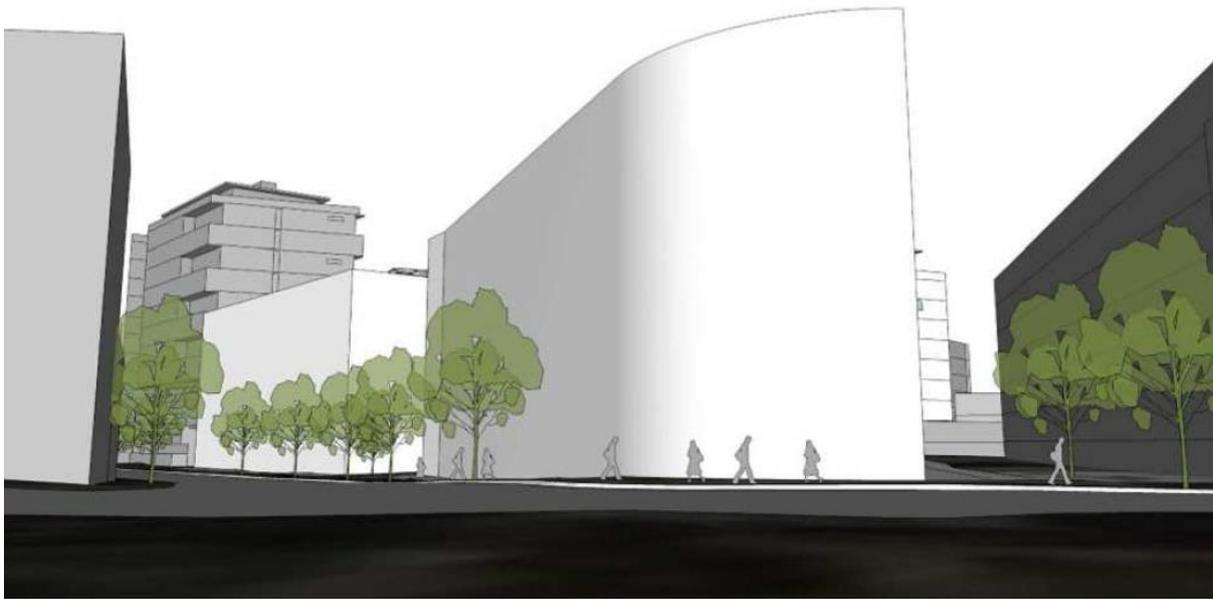


Figure 23: Envelope 3D view of the envelopes looking east at corner of Bourke Street and O'Dea Avenue

20. No physical demolition or other development works are proposed as part of the concept plan. The future detailed DAs will include the demolition of all structures, excavation, site remediation, land subdivision and public domain improvement works on the site.
21. The application has been accompanied by indicative reference design drawings and documentation, demonstrating that buildings can be provided within the proposed building envelopes.
22. The indicative reference design provides for:
 - (a) A mixed use development comprising 2 residential flat buildings (Buildings A and B) with 198 residential apartments and a ground floor retail tenancy to Bourke Street.
 - (b) An FSR of up to 2.2:1 (inclusive of up to an additional 10% FSR where the future detailed design development exhibits design excellence).
 - (c) Centrally located ground floor landscaped communal open space and deep soil areas, accessed from the future Kingsborough Way.
 - (d) Rooftop communal open space above the 6 storey portions for Building A and Building B.
 - (e) Parking and loading facilities across 2 basement levels, accessed by a ramp adjacent to the south-western side of Building B from the future Kingsborough Way.
 - (f) Subdivision of the site into two lots for the proposed future Buildings A and B.

History Relevant to the Development Application

23. The original application was lodged with the City on 12 December 2017.
24. The concept proposal was presented to the City's Design Advisory Panel ('DAP') on 10 May 2018.
25. The Panel agreed with concerns raised in relation to the envelopes and indicative reference design and recommended that proposal be amended to address height, building separation and depth, street setbacks, cross ventilation and overshadowing issues.
26. Council staff requested additional and amended documentation a number of times throughout the assessment on 19 December 2017, 1 March and 21 May 2018. to address concerns raised during the assessment and concerns raised by the City's Design Advisory Panel.
27. The concerns raised mainly related to setbacks, separation, solar access, deep soil, communal open space and landscaping. The issues are considered to have been addressed through the amended proposal submitted, recommended conditions, through the future competitive design process and future detailed design development application as outlined below.
28. The assessment provided below is based on the most recent set of amended drawings and documents submitted to the City on 31 July 2018 with the amended proposal.

Economic/Social/Environmental Impacts

29. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and Development Control Plans.

Water Management Act 2000

30. The application was referred to the Water NSW on 9 January 2018 as the proposal involves a concept proposal for the redevelopment of the site that would comprise Integrated Development under Section 4.46 of the Environmental Planning and Assessment Act, 1979.
31. Water NSW provided General Terms of Approval (GTA) for the proposed aquifer interference activity which have been included in Schedule 3 of the recommended conditions in **Attachment A** to this report as General Terms of Approval.

Sydney Water Act 1994 No 88

32. In accordance with clause 78 of the Sydney Water Act 1994 No 88, the application was referred to Sydney Water as the development may increase the demand for water supplied by the Corporation and there is a critical water main traversing the site.
33. No objections has been raised and relevant conditions relating to the concept proposal are recommended to be included in the consent.

State Environmental Planning Policy No 55—Remediation of Land (SEPP 55)

34. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to human health, particularly in circumstances where a more sensitive land use is proposed. The site has previously been zoned for industrial uses, and approved and used for purposes involving potentially contaminating activities.
35. A 'Detailed Site Investigation' report was submitted with the development application and has identified is site contaminated but is capable of being made suitable for the future high density residential use.
36. The City's Health and Building Unit is satisfied that the land is capable of being made suitable for the proposed residential use. The method of remediation will be assessed in further detail through the submission of a remediation action plan at the detailed design development application stage. A condition is recommended requiring a Remediation Action Plan to be submitted and approved as part of the detailed development application.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (SEPP 65)

37. The proposed development is for conceptual building envelope only and no physical building works are sought as part of this application. In the event that the subject proposal is approved, the design of the development will be the subject of both a competitive design process and detailed DA.
38. As the proposal seeks consent for indicative land use on the site, consideration has been given to State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development (SEPP 65).
39. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing one or more apartments, that the consent authority take into consideration advice from a Design Review Panel, the design quality of the development and the Apartment Design Guide (ADG).
40. Consideration has been given to whether the proposed building envelopes and indicative land uses have the ability to achieve the 9 design quality principles set out in Schedule 1 of SEPP 65. A further more detailed assessment of SEPP 65 will be undertaken in relation to any subsequent development application for the detailed design of the proposal.
41. The principles are summarised and addressed with regard to the concept building envelopes as follows:
 - (a) **Principle 1: Context and Neighbourhood Character**
 - (i) The site is located within the Green Square Urban Renewal Area, within proximity to the Green Square Town Centre (GSTC), the Green Square railway station and bus routes along Bourke Street, O'Dea Avenue and Joynton Avenue. The proposal will contribute to the vitality of the nearby centre, the Mary O'Brien Park locality and the broader Green Square redevelopment area.

It is within the B4 Mixed Use zone and is generally in accordance with the objectives of the SLEP 2012 and the SDCP 2012. Subject to the recommended conditions, the proposal is considered to be consistent with the existing and desired future character of the locality.

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

- (i) The immediate locality along Bourke Street and O'Dea Avenue is diverse in terms of built form and scale, architectural building styles and land uses. The scale of the area is in transition from industrial, warehousing and commercial uses to a mixed use locality. The form and scale of development anticipated within the area is consistent with the height and typology of this proposal.

The proposed building envelopes adhere to the provisions of the SLEP 2012, with the proposal responding satisfactorily to the surrounding urban renewal context, while achieving a suitable form and scale subject to the recommended conditions.

(c) **Principle 3: Density**

- (i) The proposed density of development in the indicative reference design complies with the maximum Floor Space Ratio development standard in Clauses 4.4 and 6.14 of the SLEP 2012 and is consistent with the desired future character envisaged within the Mary O'Brien Park locality and the broader redevelopment area.

(d) **Principle 4: Sustainability**

- (i) The competitive design process phase for the detailed design of the development will be required to achieve sustainable development targets and to optimise opportunities for ecologically sustainable development (ESD) and best practice environmental performance.

(e) **Principle 5: Landscape**

- (i) The proposed development is capable of providing areas of landscaped deep soil zones that comprise 7% of the total site area with minimum dimensions of 6 metres.
- (ii) Any future detailed design development application involving the development of a residential flat or mixed use building will have to provide areas of deep soil and communal open space in accordance with the ADG requirements.

(f) **Principle 6: Amenity**

- (i) The proposal has been accompanied by an indicative reference design which indicates that the minimum requirements of SEPP 65 and the Apartment Design Guide in terms of solar access and natural cross ventilation could be achieved.
- (ii) Refer to the Issues section below for further discussion and assessment relating to solar access and natural cross ventilation.

(g) **Principle 7: Safety**

- (i) The proposal is for a conceptual building envelope only, with the detailed design to be the subject of a competitive design process prior to the lodgement of a detailed DA. Subject to appropriate design, it is considered that the building is able to be designed to maximise opportunities for passive surveillance of the through site link, public domain and communal areas.

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

- (i) The site benefits from its proximity to existing and future retail premises and commercial, recreational and entertainment facilities in the wider locality. The site is therefore considered to be suitable for the proposed indicative residential uses.
- (ii) The indicative reference design demonstrates that there will be a suitable mix of dwellings provided within the proposed building envelopes on the site and that future buildings can be provided with adequate areas of communal open space. This will be required to be demonstrated within any future detailed design development application.

(i) **Principle 9: Aesthetics**

- (i) The proposal is for a conceptual building envelope only, with the detailed design and aesthetics of the building to be the subject of a competitive design process prior to the lodgement of a detailed DA.

42. The proposed envelopes are considered to be generally acceptable when assessed against the above stated principles and the provisions of SEPP 65 generally.

Apartment Design Guide (ADG)

43. Clause 28 of SEPP 65 requires consideration of the ADG, which provides additional detail and guidance for applying the design quality principles outlined in SEPP 65 to residential apartment developments.
44. Compliance with the guidelines within the ADG, wherever relevant to a concept development application, is addressed in the table below.
45. Further discussion and assessment is provided in the **Issues** section of this assessment report in relation to specific areas of non-compliance, where necessary.

2E Building Depth	Compliance	Comment
12-18 metres (glass to glass)	Able to comply	The proposed building envelope A has a maximum depth of 33 metres at north western side. While this envelope exceeds the maximum 18 metre requirement, it allows for flexibility in terms of building position and articulation when designing the future buildings. The indicative scheme submitted to support the application shows a building depth of 23m in this location that can accommodate a lift core with access to natural light and units with an acceptable depth.

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> • 12 metres between habitable rooms / balconies • 9 metres between habitable and non-habitable rooms • 6 metres between non-habitable rooms 	Able to comply	The building envelopes fully comply with the building separation requirements for the first 4 storeys within site and to adjoining developments.
Five to eight storeys (approximately 25 metres): <ul style="list-style-type: none"> • 18 metres between habitable rooms / balconies • 12 metres between habitable and non-habitable rooms • 9 metres between non-habitable rooms 	Able to comply	Refer to the Issues section below for further discussion

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during midwinter.	Able to comply	Refer to the Issues section below for further discussion

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Able to comply	The indicative reference design submitted with the application demonstrates that a minimum 27% communal open space can be provided on site. This includes communal open space on the rooftops of the future buildings. This is discussed in detail in the Issues section.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Able to comply	The submitted sun's eye view diagrams demonstrate that compliance can be achieved to the indicative areas of rooftop communal open space. Any future detailed design development application will be required to demonstrate compliance.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6 metres	Able to comply	The indicative reference design nominates 16% of the site as deep soil zones which achieve a minimum dimension of 6 metres. The site area includes the area to be dedicated as future road reserve. Any future detailed design development application will be required to demonstrate compliance.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Able to comply	<p>The indicative reference design submitted with the application includes 198 units and 63% of the units receive 2 hours of direct sunlight to apartment living rooms and private open spaces. It is considered with internal configuration of the buildings and the additional setbacks as recommended, the development could achieve 70% compliance as required.</p> <p>Refer to the Issues section below for further discussion and assessment relating to solar access to adjoining developments.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Able to comply	The indicative reference design provides for 10% of apartments receiving no direct sunlight at midwinter.

4B Natural Ventilation	Compliance	Comment
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Able to comply	<p>The indicative reference design submitted with the application achieves 56% of apartments (111 out of 198) within the first 9 storeys of the buildings as being naturally cross ventilated in accordance with the ADG.. Similarly with the additional setbacks as recommended that 60% compliance can be achieved.</p> <p>Any future detailed design development application will be required to demonstrate compliance.</p>

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7 metres	Able to comply	<p>The proposed building envelopes assume a minimum 3.1 metre floor to floor height for indicative residential floors.</p> <p>This is sufficient to provide a floor to ceiling height of 2.7 metres.</p> <p>Refer to the Issues section below for further discussion and assessment relating to solar access to adjoining developments.</p>

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

46. Any subsequent detailed design development application will be required to satisfy the SEPP BASIX requirements.

State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)

47. The provisions of the SEPP Infrastructure have been considered in the assessment of the development application.

Clause 45

48. The application is subject to Clause 45 of the SEPP Infrastructure, the application was referred to Ausgrid who provided a written response raising no objections to the proposal, subject to a number of conditions.

Clauses 101

49. The application is subject to Clauses 101, 103 and 104 of the SEPP Infrastructure of the SEPP given that:
- (a) The site has frontage to Bourke Street which is an RMS regional classified road.
 - (b) The proposal involves indicative excavation adjacent to the road reserve to the classified road.
 - (c) The proposal involves an indicative traffic generating development with a vehicle access point to a future local street connection within proximity to the classified road.
50. In accordance with the requirements of the Clauses, the application was referred to the Roads and Maritime Services (RMS) for comment. The RMS raised no objection to the concept proposal and provided concurrence conditions, which have been included in Schedule 4 of the recommended conditions in Attachment A to this report.

Sydney Local Environmental Plan 2012 (SLEP 2012)

51. The site is located within the B4 Mixed Use zone. The proposal is for concept building envelopes. Indicative land uses include residential flat buildings and retail premises, which in combination, is defined as a mixed use development and is permissible with development consent in the zone.
52. The relevant matters to be considered under the SLEP 2012 for the proposed development are outlined below.

Development Control	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum height of 22 metres is permitted.</p> <p>A maximum height of 22 metres is proposed to the concept building envelopes.</p>
<p>4.4 Floor space ratio (FSR)</p> <p>6.14 Community infrastructure floor space at Green Square</p>	Able to comply	<p>Clause 4.4 stipulates a base maximum FSR of 1.5:1 is permitted for the site.</p> <p>Clause 6.14 allows an additional 0.5:1 FSR for this site as community infrastructure floor space.</p> <p>The proposal includes a draft Voluntary Planning Agreement for the provision of a new street, footpath widening and a monetary contribution towards community infrastructure in the Green Square area in accordance with Clause 6.14.</p> <p>The indicative reference design accompanying the application demonstrates that the proposed building envelopes are capable of accommodating this 0.5:1 additional community infrastructure floor space.</p> <p>The proposed envelopes can accommodate 2:1 FSR (which equates to a GFA of 14,138m²) permitted under these Clauses of the LEP.</p> <p>Refer to the issues section for further discussion on the VPA and design excellence floor space provisions.</p>

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not a heritage item or within a heritage conservation area.</p> <p>The building envelopes are acceptable in the context of the adjacent heritage item directly across the road at 866-882 Bourke Street or will not have any impact on the low scale (single-storey) dwellings located in the Zetland Estate heritage conservation area.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
<p>Division 4</p> <p>6.21 Design excellence</p>	Able to comply	<p>The concept application, indicative development scheme and the design excellence strategy has demonstrated design excellence can be achieved in accordance with Clause 6.21(4).</p> <p>The envelope as located can accommodate a future building with a high standard of architectural design, a form and appearance that will improve the amenity of the public domain and will not unreasonable impact view corridors.</p> <p>The concept application and indicative scheme submitted has demonstrated that the land is suitable for residential development subject to conditions recommended.</p> <p>The building envelopes will ensure that any future buildings will have an appropriate bulk and mass as the envelopes for the following reasons:</p> <ul style="list-style-type: none"> • The envelopes comply with the relevant height control, setbacks from surrounding streets. • The envelopes have compliant ADG separation distances within the site and subject to the recommended conditions will have compliant separation distances from adjoining buildings.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<ul style="list-style-type: none"> • The envelopes with the exception of one portion comply with the ADG building depths. <p>Detailed modulation of future buildings will be explored through the design competition process and assessed as part of the detailed development application.</p> <p>Subject to recommended conditions for upper floor setbacks on levels 5 and 6. The envelopes will allow future buildings that do not cause unreasonable overshadowing or visual impact on adjoining buildings.</p> <p>The application provides for a future new road in accordance with the DCP and through the VPA the future detailed DAs will deliver new and upgraded public domain works.</p> <p>Recommended conditions will ensure aspects including ecologically sustainable design and interface of the buildings and public domain will be investigated through the competitive design process and assessed in detail as part of the detailed DA.</p> <p>In accordance with Clause 6.21(7) of SLEP 2012, up to an additional 10% FSR or height may be awarded if a competitive design process has been undertaken, and the detailed design is considered by the consent authority to exhibit design excellence.</p> <p>A design excellence strategy has been submitted as part of this development application and is recommended to be endorsed as part this consent, in accordance with clause 6.21(5) of the Sydney LEP 2012 and the City of Sydney Design Competitive Design Policy.</p> <p>This is discussed further in the Issues section.</p>

Part 7 Local Provisions - General	Compliance	Comment
<p>Division 1 Car parking ancillary to other development</p> <p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p> <p>7.7 Retail premises</p>	Able to comply	<p>The proposal illustrates two (2) levels of basement as part of the concept proposal.</p> <p>The maximum number of car parking spaces permissible will be dependent on the number of apartments proposed in any future detailed design development application and the quantum of retail and commercial floor space provided.</p> <p>Accordingly, it is not considered necessary to impose conditions regarding the quantum of car parking until a future detailed design development application is determined.</p>
7.13 Affordable housing	Able to comply	<p>The site is located in Green Square and affordable housing contributions will be imposed upon any subsequent development consent for the detail design of the development, in accordance with Clause 7.13 of the SLEP 2012, SEPP 70 and the Green Square Affordable Housing Program.</p>
7.14 Acid Sulphate Soils	Able to comply	<p>The site is located on land identified as Class 5 Acid Sulfate Soils (ASS) that is within 500 metres of land identified as Class 3 ASS.</p> <p>It will be determined at the detailed design development application stage if the ASS provisions of the SLEP 2012 are triggered by any proposed excavation works.</p>
7.15 Flood planning	Able to comply	<p>The concept plans submitted indicate that the flood planning levels are achievable.</p> <p>A condition is recommended requiring any future detailed design development application to demonstrate that the ground floor levels and planning levels comply with Council's flood planning requirements. Council's Interim Floodplain Management Policy (May 2014).</p>

Part 7 Local Provisions - General	Compliance	Comment
7.16 Airspace operations	Not applicable	<p>At a maximum height of 22m, the proposed development does not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport.</p> <p>Furthermore, the building envelopes also sit within the maximum 22 metre height limit for the site and, as such, Sydney Airport Civil Aviation Safety Authority (CASA) approval is not required.</p>
7.20 Development requiring preparation of a development control plan	Yes	<p>In accordance with Clause 7.20(2)(b), as the site is over 5000 square metres in area, the proposed redevelopment triggers the requirement for a development control plan to be prepared in relation to the land. Pursuant to the provisions of Section 4.23 of the Environmental Planning and Assessment Act, 1979, the lodgement of a concept development application may be considered by the consent authority as satisfying this obligation.</p> <p>The concept application has demonstrated compliance with the requirements of Clause 7.20(4) of which a DCP would need to satisfy.</p> <p>The envelope as located can accommodate a future building with a high standard of architectural design, a form and appearance that will improve the amenity of the public domain and will not unreasonable impact view corridors.</p> <p>The concept application and indicative scheme submitted has demonstrated that the land is suitable for residential development subject to conditions recommended.</p>

Part 7 Local Provisions - General	Compliance	Comment
<p>7.20 Development requiring preparation of a development control plan</p> <p>(continued)</p>	Yes	<p>The building envelopes will ensure that any future buildings will have an appropriate bulk and mass as the envelopes for the following reasons:</p> <ul style="list-style-type: none"> • The envelopes comply with the relevant height control, setbacks from surrounding streets. • The envelopes have compliant ADG separation distances within the site and subject to the recommended conditions will have compliant separation distances from adjoining buildings. • The envelopes with the exception of one portion comply with the ADG building depths. <p>Detailed modulation of future buildings will be explored through the design competition process and assessed as part of the detailed development application.</p> <p>Subject to recommended conditions for upper floor setbacks on levels above 4 storeys. The envelopes will allow future buildings that do not cause unreasonable overshadowing or visual impact on adjoining buildings.</p> <p>The application provides for a future new road in accordance with the DCP and through the VPA the future detailed DAs will deliver new and upgraded public domain works.</p> <p>Recommended conditions will ensure aspects including ecologically sustainable design and interface of the buildings and public domain will be investigated through the competitive design process and assessed in detail as part of the detailed DA.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.23 Large retail development near Green Square Town Centre	Able to comply	The precise floor space of the indicative retail premises component of the development is not the subject of the concept development application.

Sydney Development Control Plan 2012 (SDCP 2012)

53. The relevant matters to be considered under the SDCP 2012 for the proposed development are outlined below.

2 Locality Statements
2.5 Green Square - 2.5.8 Mary O'Brien Park
<p>The subject site is located in Green Square within the Mary O'Brien Park locality. The immediate area has a diversity of built forms and scale, architectural building styles and land uses. The proposed development is considered to be generally in keeping with the character of the area and design principles in that it:</p> <ul style="list-style-type: none"> • Provides building envelopes which respond to the applicable planning controls for the site. • Is capable of providing an active frontage and well-designed entry to Bourke Street. • Provides public domain improvements along O'Dea Avenue and Bourke Street including widened footpaths and setback areas to enhance the public domain and generate pedestrian activity. <p>Subject to appropriate detailed design, the site is capable of redevelopment to encourage the further development of the area as an attractive residential destination and promote activation of street frontages.</p>

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Able to comply	The indicative location and configuration for the new street (Kingsborough Way) and footpath widening along Bourke Street and O'Dea Avenue is in accordance with the DCP.
3.1.5 Public Art	Able to comply	A concept Public Art Strategy has been submitted with the DA. A recommended condition will require a detail public art strategy to be submitted any approved as part of the future detailed DA.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Able to comply	<p>The proposed building envelopes do not impact solar access on public open spaces.</p> <p>The relationship between the public domain and the subject site will need to be further developed as part of the competitive design process and the detailed DA.</p> <p>This is discussed further in the Issues section below.</p>
3.3 Design Excellence and Competitive Design Processes	Able to comply	<p>The requirement for a competitive design process is triggered in accordance with the requirements of Clause 7.20 of the SLEP 2012 as the site exceeds 5000m².</p> <p>Refer to the Issues section below for further discussion and assessment relating to this process.</p>
3.4 Hierarchy of Centres, City South	Able to comply	<p>The site is located within the Green Square Primary Trade Area but not within the Green Square Town Centre or other identified villages and neighbourhood centres.</p> <p>It is not considered that any future commercial use would result in negative impacts on the viability or economic role of the planned centres within the southern areas of the City.</p>
3.5 Urban Ecology	Able to comply	<p>There is no tree removal proposed as part of the concept proposal..</p> <p>Advice received from the City's Tree Management Officer is that the street trees along the O'Dea Avenue frontage of the site can be protected throughout the course of development works, subject to appropriate conditions.</p> <p>A condition has been recommended to require street trees along the street frontage of the site to be retained and protected in any subsequent detailed design development application.</p>

3. General Provisions	Compliance	Comment
3.6 Ecologically Sustainable Development	Able to comply	<p>Compliance with the requirements of the SEPP BASIX will be assessed as part of a future detailed design development application.</p> <p>Conditions have been recommended to ensure that the relevant ESD commitments included in the Design Excellence Strategy will be carried through the competitive design process to the detailed design development application.</p>
3.7 Water and Flood Management	Able to comply	<p>The site is not identified as being flood affected.</p> <p>A site based stormwater management plan and flood level assessment report have been submitted which set out concept stormwater management measures and flood planning levels that accord with the City's Interim Floodplain Management Policy.</p> <p>Given that the proposal is for concept building envelopes only and no consent will be granted for specific floor levels, these will be confirmed in any future detailed design development application in accordance with the City's Interim Floodplain Management Policy.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Able to comply	There is no subdivision proposed as part of the concept DA.

3. General Provisions	Compliance	Comment
<p>3.11 Transport and Parking</p> <p><i>3.11.1 Managing transport demand</i></p> <p><i>3.11.2 Car share scheme parking spaces</i></p> <p><i>3.11.3 Bike parking and associated facilities</i></p> <p><i>3.11.4 Vehicle parking</i></p> <p><i>3.11.5 Car parks under the public domain</i></p> <p><i>3.11.6 Service vehicle parking</i></p>	<p>Able to comply</p>	<p>The traffic report submitted to support the indicative application is considered acceptable in principle.</p> <p>No issues have been raised regarding the indicative access point to the site off the new street.</p> <p>Compliance with parking numbers and service requirements will be a matter to be assessed as part of the detailed DA.</p> <p><i>Green Travel Plan</i></p> <p>A Green Travel Plan is recommended to be required as part of any subsequent detailed design development application, once the precise nature and density of development on the site has been determined.</p> <p><i>Car share scheme parking spaces</i></p> <p>A condition has been recommended for the provision of details relating to the provision of car share spaces with a future detailed design development application for the site.</p> <p><i>Bicycle parking</i></p> <p>The indicative reference design has not included any provision for bicycle parking, which is considered unacceptable.</p> <p>Despite this, the proposal is considered to have the capacity to provide quality bicycle parking facilities and an appropriate condition has been recommended to ensure that these are provided in any future detailed design development application.</p>

3. General Provisions	Compliance	Comment
		<p><i>Vehicle parking</i></p> <p>A condition has been recommended to ensure that the detailed design of the proposed vehicle parking areas is in accordance with the relevant Australian Standards.</p> <p><i>Car parks under the public domain</i></p> <p>The indicative reference design includes basement parking under land to be dedicated for the future Kingsborough Way, including circulation space and visitor parking spaces, which is generally consistent with the provisions of the DCP for such areas.</p> <p>A condition has been recommended to ensure that the detailed design of any such facilities complies with the requirements of the DCP in this regard.</p> <p><i>Service vehicle parking</i></p> <p>A Loading Dock Management Plan will need to be provided with any subsequent detailed design development application.</p>
3.14 Waste	Able to comply	<p>The indicative floor plans show that waste collection will take place within the building via a dedicated loading dock.</p> <p>A Waste Management Plan will need to be submitted with any subsequent detailed design development application in accordance with the controls in Section 3.14 of the SDCP 2012</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
<p>4.2.1 Building height</p> <p>4.2.1.1 <i>Height in storeys</i></p> <p>4.2.1.2 <i>Floor to ceiling heights and floor to floor heights</i></p>	Able to comply	<p><i>Height in storeys</i></p> <p>A 6 storey height control applies to the site. No street frontage height in storeys is applicable to the site.</p> <p>There is sufficient space within the proposed building envelopes to accommodate buildings which can achieve the requisite floor to floor and floor to ceiling heights specified in the ADG and SDCP 2012, as relevant.</p> <p>The concept proposal does not approve the number of storeys. Appropriate conditions have been recommended to ensure that details are provided with a future detailed design development application to demonstrate compliance with these provisions.</p>
4.2.2 Building setbacks	Able to comply	Refer to Issues section for discussion.
4.2.3 Amenity	Able to comply	<p>The proposed envelope and indicative floor plans show that a reasonable level of amenity for the subject site is able to be achieved and that the proposed building envelope should not unreasonably impact on surrounding development, subject to the recommended conditions.</p> <p>Notwithstanding this, a number of recommendations are required to be included in the design competition brief and must be addressed as part of the detailed design DA. This is discussed further in the Issue section.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.4 Fine grain, architectural diversity and articulation	Able to comply	<p>The fine grain built form, architectural diversity and articulation of development within the building envelope are matters for consideration as part of the design competition process and any subsequent detailed design development application.</p> <p>Appropriate recommendations for the design brief and future detailed DA have been suggested regarding articulation and building facades in accordance with the provisions of Section 4.2.4 of the SDCP 2012.</p>
4.2.5.3 Development on busy roads and active frontages	Able to comply	<p>A requirement to address noise and air quality mitigation measures will be included in the design competition brief.</p> <p>Compliance with the DCP provisions will be further assessed as part of any detailed design DA.</p>
4.2.5.4 Residential uses on the ground and first floor	Able to comply	<p>The indicative floor plans show ground floor apartments fronting O'Dea Avenue and the future Kingsborough Way.</p> <p>A requirement to ensure visual and acoustic privacy is addressed will be included in the design competition brief.</p> <p>Compliance with the objectives of this section will be further assessed as part of any detailed design DA.</p>

5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.3 Community infrastructure 5.2.10 Setbacks	Able to comply	<p>The applicant has submitted a public benefit offer, and a draft Voluntary Planning Agreement (VPA) has been prepared on this basis. The draft VPA is for the construction and dedication of a new street and footpath widening and the provision of a monetary contribution for community infrastructure to be delivered in Green Square in accordance with Clause 6.14 of the SLEP 2012.</p> <p>In this instance, the proposed public domain works and monetary contribution are considered acceptable with regard to the provisions of Section 5.2.3 of the SDCP 2012..</p> <p>In accordance with section 5.2.3 of the DCP, a 3m wide public domain setback for footpath widening is along the Bourke Street frontage and a 2.4m wide public domain setback is required along the O'Dea Avenue frontage.</p> <p>The applicant will undertake footpath widening and dedicate this land to Council through a Voluntary Planning Agreement in accordance with Clause 6.14 of the LEP.</p> <p>Refer to the Issues section below for further discussion and assessment relating to the VPA.</p>

5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.4 Local infrastructure 5.2.4.1 Street network	Able to comply	<p>The location proposed for a future local street (Kingsborough Way) is in accordance with Figure 5.35 and Figure 5.37 of the DCP for the Green Square street hierarchy and layout.</p> <p>The proposed 12.8m wide road reserve complies with the minimum requirement of 12m for local access streets.</p> <p>The 12.8m road reserve to be dedicated is in line with, and will link with, the existing road reserve for Kingsborough Way that traverses the adjoining sites at 906 and 890 Bourke Street.</p> <p>Detailed design of the traffic lane, verges and footpaths will be a matter for the detailed design DA.</p>
5.2.5 Pedestrian and bike networks	Able to comply	The site is not nominated as a bike network or a through site link in the DCP.
5.2.7 Stormwater management and waterways	Able to comply	<p>As discussed above, site is not identified as being flood affected.</p> <p>The proposal is for concept building envelopes only and no consent will be granted in relation to stormwater management and water sensitive urban design.</p>
5.2.8 Highly visible sites	Able to comply	<p>The site is identified in Figure 5.34 of the SDCP 2012 as being a highly visible site, being located at the prominent intersection of Bourke Street and O'Dea Avenue.</p> <p>The provision of a landmark building or high quality landscape treatment to this corner of the site is a matter for the detailed design of the development.</p> <p>An appropriate condition is recommended to ensure that this requirement is considered in the brief for the competitive design process.</p>

5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.9 Building design	Able to comply	The proposal is for concept building envelopes only. Detailed design of the buildings will be investigated during the competitive design process and the assessed through at the detailed DA stage.
5.2.10 Setbacks	Yes	Refer to Issues section for further detail.
5.2.11 Carparks under the public domain	Able to comply	The indicative scheme shows circulation space and visitors car parking spaces under the public domain which is acceptable and will be assessed further as part of the detailed DA.

Issues

Setbacks

Street Setbacks

54. Section 5.2.10 of the DCP requires that buildings are to be setback a minimum of 1m from the new street frontage property boundary to provide a landscaped setback. A setback varying from 1m to 1.3m wide is proposed along the O'Dea Avenue frontage. The 1.3m setback as proposed for envelope B exceeds the minimum setback required and is proposed to align with the setback of the adjoining building to east at 5 O'Dea Avenue which is the preferred outcome.
55. The proposed building envelope A does not provide a 1m setback to the boundary for a portion of the Bourke Street frontage. Section 5.2.10(7) of the DCP refers to where a building is located on a corner, an acceptable street front setback is to be determined separately for each street.
56. The indicative reference scheme submitted indicates that the ground floor will be a retail use. Therefore there would be no visual or acoustic privacy issues as a result of not providing the setback. This corner at Bourke Street and O'Dea Avenue is a prominent corner and is earmarked as a highly visible site in the DCP, it is considered that building to the boundary as proposed is appropriate in this case. Commentary on design and articulation of this corner will be included in the design competition brief to ensure the building appropriately addresses the corner.
57. Section 5.2.10(4) of the DCP specifies where no setback is nominated on the public domain setbacks map, the building setback is to be provided in accordance with the provisions for residential uses on the ground and first floor within Section 4.2.5.4 of the DCP which requires a 3m setback.

58. A 2.6 m setback is proposed for the building envelopes on either side the new street (Kingsborough Way), this consistent with the setbacks currently proposed for the development on 890 - 898 Bourke Street which directly adjoins the site to the south. A requirement to ensure ground floor residential units are appropriately designed as regards visual and acoustic privacy will be included in the design competition brief.

Setback from 5 O'Dea Avenue

59. Building envelope B proposes a nil setback to the eastern boundary of the site where it adjoins 5 O'Dea Avenue. The existing residential flat building at 5 O'Dea Avenue is built right to the boundary and contains a number of windows located on the boundary. These windows provide light to habitable rooms for residential units. There is also a number of balconies with openings on the boundary (refer to Figure 24, 25 and 26 below).

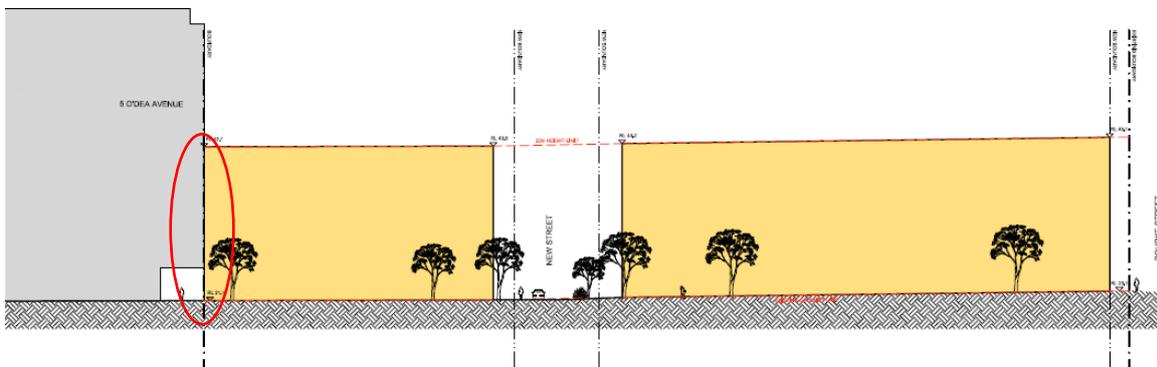


Figure 24: Location of the subject boundary between the subject site and 5 O'Dea Avenue

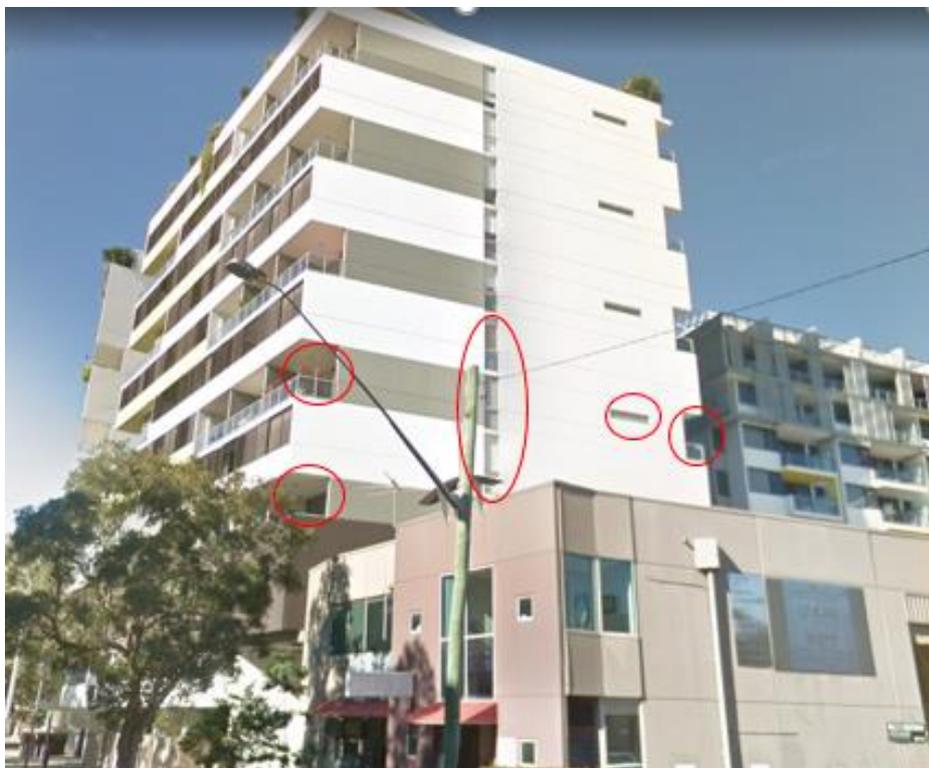


Figure 25: Location of the impacted windows and balconies built on the shared side boundary between the subject site and 5 O'Dea Avenue

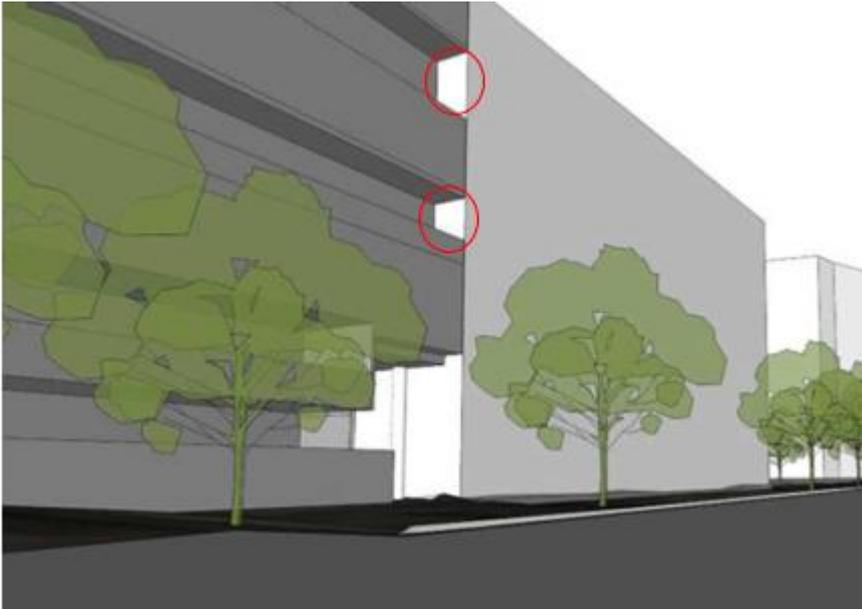


Figure 26: Building envelope as proposed to the boundary and impacted balconies at 5 O'Dea Avenue

60. There is no easement or covenant registered on title of the subject site or the adjoining site to protect the subject windows or balconies. The subject windows are not discussed in the assessment report or conditions of consent for this completed development.
61. Notwithstanding this, it is not considered an acceptable outcome to allow the proposed building envelope to extend to the boundary, where a possible outcome could be that a future building could be built and totally obstruct these windows. This issue has been discussed with the applicant who has informally suggested that the building envelope should be permitted to the boundary for the lower levels where it will not impact these windows and could be setback from the boundary on the upper levels as not to impact the windows.

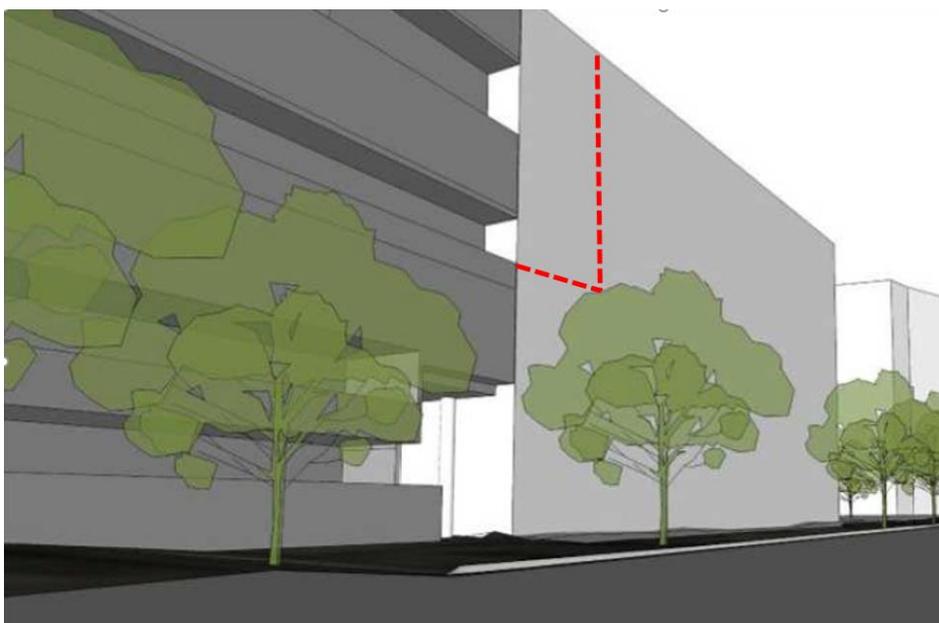


Figure 27: Indicative line to show building envelope setback 3m to avoid windows and balconies

62. Staff have investigated this option and recommend the maximum envelope to be approved abutting the boundary up to RL 32.00 which is approximately 10.3m in height and must be setback 3m from the boundary for the levels above.
63. This is considered an acceptable outcome for the following reasons:
- (a) The existing industrial building in that location is built to the boundary up to a height of approximately 9.3m.
 - (b) The envelope to this height on the boundary will not have an impact on any of windows or balconies in the adjoining development as the top of the envelope will be to the sill of the lowest window. A 3m setback at the upper levels is an adequate separation distance to allow light to these windows
 - (c) The 3m setback on the upper levels will not have an adverse impact on the streetscape and will provide a break in the built form between the existing 13 storey building and the new development.
 - (d) Any future development will need to comply with the Building Code of Australia with regards to fire rating of the building.
 - (e) The setback and façade treatment of the future development on site will be included as an issue in the design competition brief.
64. A deferred commencement condition is recommended to require amended building envelope plans be submitted and approved by the Director of City Planning, Development and Transport showing the amended setbacks.

Building Separation

65. The separation distances between the building envelopes within the site comply with the ADG.
66. The building envelopes as proposed are setback a minimum of 6m from all adjoining boundaries for all 6 storeys. The 6m setback is compliant with the ADG for the first 4 storeys of the development.
67. The building envelopes as proposed provide a 6 metre setback for the upper floors for levels 4 and 5. This is not considered acceptable by staff or the City's Design Advisory Panel and has been raised as an issue with the applicant.
68. In accordance with part 2F of the ADG, a separation distance of 18m is required between habitable rooms and balconies, a 12m separation distance is acceptable between habitable rooms and non-habitable rooms and a 9m separation between non habitable rooms.
69. The existing adjoining residential developments at 15 Joynton Avenue and 17 Joynton Avenue both have balconies and living areas facing the subject site within 6m and 8.5m of the boundaries. The proposed residential development at 890 - 898 Bourke Street also has balconies and living areas setback 10m of the boundary.
70. The applicant submits that the 6m setback on the upper floors as proposed can comply with the ADG requirements and that the building envelope as proposed will provide flexibility for the detailed design stage of the development.

73. It is not considered that requiring the 9m setback would constrain the design process or remove flexibility from the envelope. During the competitive design process and subsequent detailed design DA.
74. Subject to the recommended conditions to setback the upper floors on levels 4 and 5 to 9m, the proposed building envelopes will allow the future development to comply with the ADG separation setbacks and is necessary to achieve acceptable outcomes for visual privacy and solar access on neighbouring sites.

Solar Access and Overshadowing

75. The submitted solar diagrams show that approximately 63% of the indicative apartments will receive 2 hours of sun at midwinter to both living areas and balconies. This is less than the 70% required by the design criteria in section 4A of the ADG. However it is considered that compliance with the control could be achieved through the additional recommended setbacks discussed below and through further redesign, unit reconfiguration and the competitive design. Full compliance can be achieved through the detailed DA process.
76. The submitted sun's eye diagram show the building envelopes as proposed have overshadowing impact on neighbouring properties at 15 and 17 Joynton Avenue and 890 - 898 Bourke Street.
77. When comparing the sun's eye diagram for the indicative scheme (which has the 9m upper floor setback), the adjoining development at 890 - 898 Bourke Street can receive 2 hours solar access for the entire northern eastern façade between 11.30am and 1.30pm mid-winter, in accordance with the ADG. Figure 29 below illustrates where additional solar access is received at 11.30am (circled in red) when compared to the proposed building envelope with a 6m side setback illustrated at Figure 30.

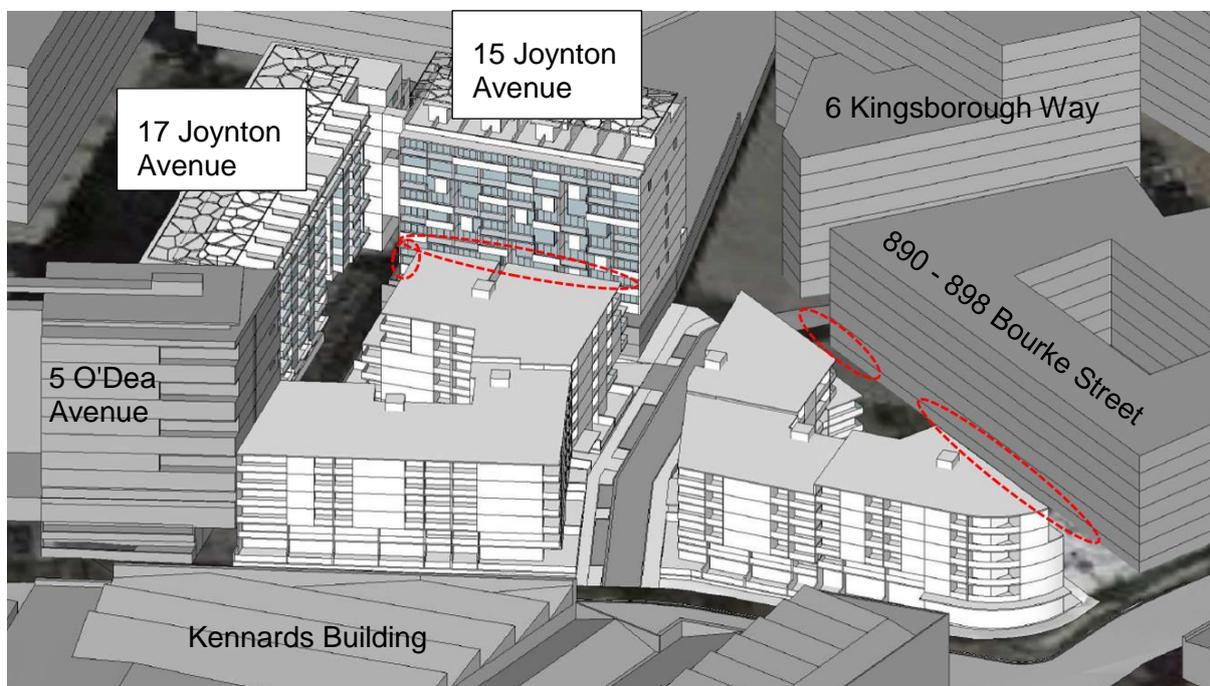


Figure 29: Sun's eye diagram of the indicative scheme with 9m upper floor setbacks at levels 4 and 5 at 11.30 am mid winter

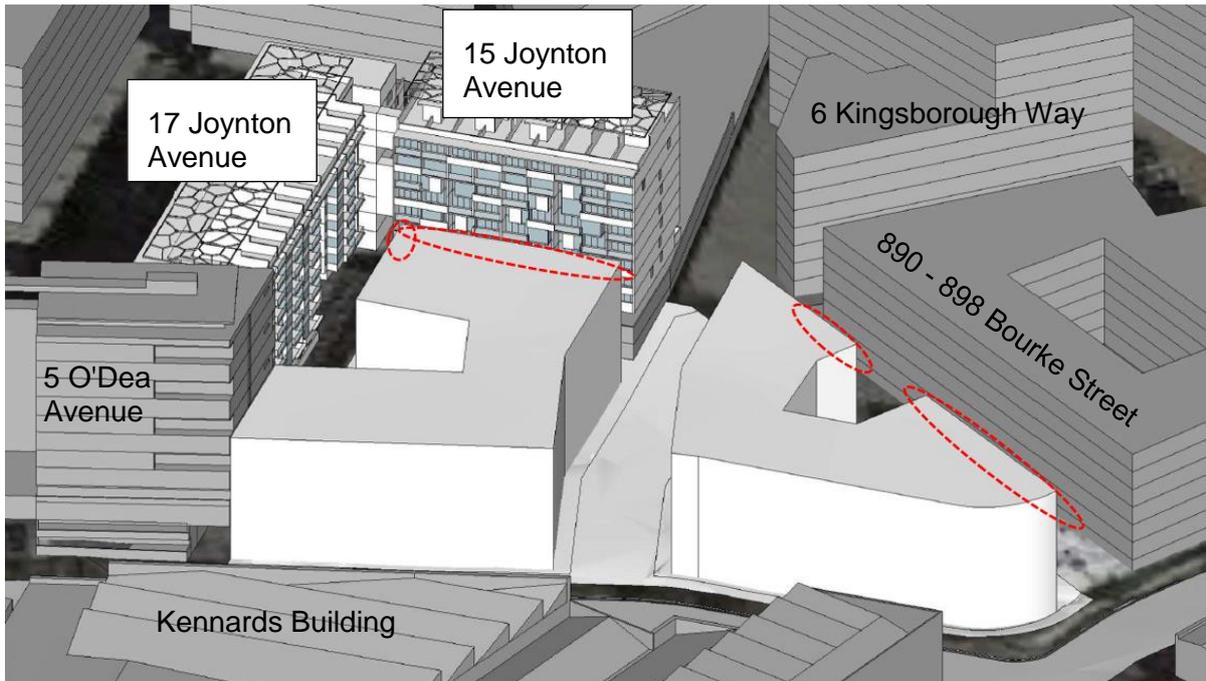


Figure 30: Sun's eye diagram of the proposed building envelopes with 6m upper floor setback at 11.30 am mid-winter

78. If the upper floors on levels 4 and 5 are setback 9 metres from the boundaries as recommended, the proposed envelope will have no impact on solar access to 890 Bourke Street after 11.30am, mid-winter.
79. Part 3B of the ADG specifies that overshadowing should be minimised to the south by increasing upper level setbacks.
80. The adjoining residential development to the south at 17 Joynton Avenue currently receives 2 hours of solar access during the mid-winter to 78% of units. This development is able to maintain the minimum requirement of 2 hours between 1.00pm and 3.00pm, mid-winter, for 73% of the units subject to providing a 9m upper floor setback as shown in the indicative scheme.
81. Part 3B of the ADG specifies where an adjoining building does not currently receive the required hours of solar access, the proposed development must ensure solar access to neighbouring properties is not reduced by 20%.
82. The adjoining site at 15 Joynton Avenue does currently receive 2 hours of solar access to 70% of units, mid-winter. 43% of the units within 15 Joynton Ave receive 2 hours of solar access, mid-winter. It is considered that subject to providing the upper floor setback on levels 4 and 5, the existing development at 15 Joynton Avenue as a whole will lose 5% total hours of solar access, which is significantly less than the 20% reduction permitted by the ADG.

83. In total 12 units in the development at 15 Joynton Avenue will see a decrease in solar access. These units are located on the ground floor and levels 1, 2, and 3 and currently receive between 3 hours 11 minutes and 47 minutes solar access mid winter. The majority of the 12 units impacted will be reduced by 20% or less in terms of minutes of solar lost. Three units on the ground and first floor that currently receive over 2 hours solar will be reduced to have less than 2 hours as a result of the proposal. However four units on the ground floor that currently do not receive 2 hours solar access will now receive 2 hours as a result of demolishing the existing building. This is considered an acceptable outcome.
84. The recommended requirement for the 3m upper floor setback at the boundary of 5 O'Dea Avenue will also improve solar access to units within 15 Joynton Avenue.
85. Subject to providing the upper floor setbacks, the building envelopes demonstrate that any future development is capable of complying with the ADG requirements for solar access to the adjoining properties at 15 and 17 Joynton Avenue and 890- 898 Bourke Street.
86. Overshadowing will be assessed in further detail as part of the future detailed development application.

Height

87. The proposed envelopes comply with the permitted 22m height limit specified in the LEP.
88. The indicative scheme as shown accommodates 6 storeys within the envelope. This is on the assumption of floor to floor heights of 3.1 metres for residential levels. These are the minimum floor to floor height allowable under the Sydney DCP 2012 and the ADG in order to deliver the required floor to ceiling heights of 2.7 metres.
89. The indicative scheme includes rooftop communal open space for both buildings however, has not demonstrated how the provision for lift access or overruns, roof top plant and associated structures can all be accommodated within the 22m LEP height limit. A condition is recommended that an ADG compliant amount of communal open space that receives compliant solar access must be provided for future detailed developments and that all structures including lift overruns must be contained within the 22m height limit. This requirement will also be included in the design competition brief.
90. In addition, the recommended requirement to limit the building envelope to RL 32.00 where it adjoins 5 O'Dea Avenue as discussed above may impact the floor to ceiling heights of the future scheme.
91. For the reasons above, it is not recommended to approve the number of storeys within the envelope at this stage. The floor to ceiling heights and number of storeys will need to be resolved through the design competition stage and the detailed DA stage to provide a scheme that complies with the maximum height limits approved.
92. As such, it is recommended that the concept approval be limited to envelopes only, each with a maximum height of 22 metres.

View Loss

93. It has been raised as an issue in submissions that the residents at 5 O'Dea Avenue and 15 Joynton Avenue will lose existing views to the city.

94. There will be no loss of views from the existing development at 5 O'Dea Avenue as a result of the proposed development. The subject site adjoins 5 O'Dea Avenue to the west. The view to the city from units in 5 O'Dea Avenue is directly north. See Figure 31 below taken from the roof of 5 O'Dea Avenue facing north west.



Figure 31: Photograph taken from the roof level of 5 O'Dea Avenue facing North West towards the city.

95. The roof in the foreground of the photograph is that of Kennard's self-storage across O'Dea Avenue. The subject site does not come into view when facing the city from 5 O'Dea Avenue, hence there will be no view loss.
96. In accordance with the planning principles for view loss set out by the NSW Land and Environment Court in *Tenacity Consulting Pty Ltd v Warringah Council*, the following has been considered in the assessment of view loss for 15 Joynton Avenue:
- (a) The view currently enjoyed to the north towards the city from 15 Joynton Avenue is not considered an iconic or important public view corridor and there are no provisions in the DCP specific to protecting this view.
 - (b) The position of the development at 15 Joynton Avenue is directly behind and facing into the rear of the subject site and currently borrows amenity from the existing low scale buildings on the subject site.
 - (c) The site is located within the Green Square urban renewal area, an area earmarked higher density development which is undergoing significant change. The redevelopment of this infill site to the permitted height limit is in accordance with the desired future character of the area.
 - (d) As regards reasonableness, the proposed envelopes comply with the permitted height under the provisions of the Sydney LEP 2012 and subject to conditions the envelopes will comply with the separation distances required by the Apartment Design Guidelines.

- (e) At a minimum, the views to the city on upper three levels of 15 Joynton Avenue will be retained.
 - (f) There is no requirement under the provisions of Sydney LEP or DCP to provide a view analysis to support the proposed concept building envelopes in this case.
97. The view impact on the neighbouring properties is considered reasonable and acceptable in this case.

Design Excellence

98. Under the provisions of Clause 6.21(7) of the Sydney Local Environmental Plan 2012, a future detailed design development application is eligible to exceed the maximum floor space ratio development standards applicable to the site by up to 10%, if the design of the new buildings result from a competitive design process and the consent authority determines that the buildings exhibit design excellence.
99. The applicant has chosen to undertake a competitive design alternatives process and will seek up to 10% additional floor space as part of the detailed design development application for future buildings proposed on the site. The applicant has submitted a design excellence strategy and plans indicating where the 2.2:1 FSR (includes up to an additional 10% FSR) could be accommodated within the proposed building envelopes.
100. Given the requirements recommended to provide increased setbacks from the boundary of 5 O'Dea Avenue and the upper floors as discussed above, the size of the building envelopes will be decreased and may not be adequate to accommodate an FSR of 2.2:1. The amount of design excellence bonus FSR, if any, and where it can be accommodated will need to be considered in further detail during the competitive design process and at the detailed design stage.
101. Based on the indicative scheme submitted to support the concept DA, staff have identified a number of areas that need to be addressed and considered during the competitive design process. These include:
- (a) Minimising overshadowing on adjoining properties.
 - (b) Provision of compliant communal open space and equitable access to roof top communal open space without breaching the 22m height limit.
 - (c) Public domain interface and privacy for future ground floor units along the O'Dea Avenue and new street frontage.
 - (d) Interface of the development with the future through site link at 890 - 898 Bourke Street.
 - (e) Design of the development at the highly visible corner at Bourke Street and O'Dea Avenue.
 - (f) Treatment of setback and façade adjoining 5 O'Dea Avenue.
 - (g) Provision of individual residential entries at ground floor level and a clear street address for both buildings.
 - (h) Acoustic and ventilation treatments to Bourke Street and O'Dea Avenue frontages and the ground floor apartments that front the basement access way.

- (i) Overlooking and noise from the rooftop terraces.
 - (j) Waste management facilities.
 - (k) Public art strategy.
102. A condition is recommended to incorporate these issues in the competition design brief and the detailed design development application

Voluntary Planning Agreement

103. Clause 6.14 of Sydney LEP 2012 allows an additional 0.5:1 FSR where the provision of a monetary contribution and/or community infrastructure is to be delivered in the Green Square urban renewal area.
104. The application seeks consent for building envelopes that will accommodate future buildings reliant on an additional 0.5:1 of community infrastructure FSR. The indicative reference design drawings submitted with the application demonstrates that the proposed building envelopes have been designed to accommodate an FSR of 2:1, which includes the additional 0.5:1 FSR.
105. A public benefit offer was submitted with the application, and a draft Voluntary Planning Agreement (VPA) has been prepared. The draft VPA includes the following public benefits:
- (a) A monetary contribution of \$837,541.50.
 - (b) Dedication of 917 square metres of land, 12.8 metres wide, for the future Kingsborough Way through to its junction with O'Dea Avenue.
 - (c) Dedication of 340 square metres of land, ranging from between 2.4 metres width along the O'Dea Avenue frontage of the site to 3 metres width along the Bourke Street frontage of the site for footpath widening.
 - (d) Developer's works to construct the aforementioned new street (Kingsborough Way) and footpath widening.
106. The Voluntary Planning Agreement (VPA) is to be exhibited of a 28-day period, and is currently on public exhibition from 28 November 2018 until 16 January 2018.
107. The VPA will not offset the Section 7.11 contributions applicable under the City of Sydney Development Contributions Plan 2015 or contributions for affordable housing required under the SEPP 70, the Clause 7.13 of the SLEP 2012 and the Green Square Affordable Housing Program.
108. In light of the above circumstances, it is recommended that authority be delegated to the CEO to determine the application after the draft VPA has been publicly exhibited and that deferred commencement conditions be attached requiring the execution and registration of the final VPA on the title of the land prior to the consent becoming operational.

Other Impacts of the Development

109. The proposed development provides building envelopes capable of accommodating future buildings which can achieve compliance with the Building Code of Australia.

110. 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 on any development consent granted to the proposal.

Suitability of the site for the Development

111. The proposal is of a nature in keeping with the desired future character for the site and locality.
112. The site is situated within the Green Square Urban Renewal Area and is located within proximity to the Green Square Town Centre, amongst similar uses to that proposed and is considered to be suitable for the proposed development.

Internal Referrals

113. The assessment process and conditions of consent have been informed by referral advice from the City's:
- (a) Design Advisory Panel.
 - (b) Design Excellence Team.
 - (c) Planning Agreements Unit.
 - (d) City Model Team.
 - (e) Environmental Projects Team.
 - (f) Heritage and Urban Design Specialists.
 - (g) Transport Planning Unit.
 - (h) Building Approvals Unit.
 - (i) Environmental Health Unit.
 - (j) Public Domain Team.
 - (k) Safe City Team.
 - (l) Specialist Surveyor.
 - (m) Cleansing and Waste Unit.
 - (n) Public Art Team.
 - (o) Landscape Assessment Officer.
 - (p) Tree Management Officer.
114. The revised concept proposal has addressed the issues raised initially and is considered acceptable, subject to the recommended conditions.
115. Where considered appropriate, conditions recommended in the referral advice received have been included in Attachment A of this report.

External Referrals

116. The application was referred to Water NSW, Transport for New South Wales (TfNSW), Roads and Maritime Services (RMS), Sydney Water, the NSW Police Force, Ausgrid and a qualified consultant Quantity Surveyor, who raised no objections to the proposed development, subject to the imposition of conditions.

Sydney Airport Referral Act 1996

117. 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.
118. 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 150 feet in height (RL 45.62 AHD) above existing ground height.
119. The proposal does not exceed this height, with the maximum height of the building envelopes proposed to be RL 45.1 AHD.

Notification, Advertising and Delegation

120. The application comprises integrated development and, as such, the application, as originally proposed, was notified and advertised for 30 days between 12 February 2018 and 15 March 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification, 10 submissions were received by the City.
121. The amended application was re-notified for 14 days between 1 August 2018 and 16 August 2018, in accordance with Schedule 1.3 of the SDCP 2012. As a result of this notification, five submissions were received by the City.
122. The content of the submissions is summarised and addressed below.
- (a) The application demonstrates the maximum FSR bonus cannot be accommodated without compromising design quality or amenity.

Response - The proposal is for concept building envelopes only. Whether the site can accommodate the additional FSR will be assessed as part of the future detailed DA. This is discussed in detail in the issues section above.

- (b) Unacceptable overshadowing to adjoining properties– particularly on the lower levels

Response - The indicative reference design drawings accompanying the application have demonstrated that a future development will not cause unacceptable loss of solar to adjoining land owners and that the existing developments can achieve adequate solar access in accordance with the ADG and DCP.

A condition is recommended requiring the building envelope to be setback on levels 5 and 6 to ensure this is achieved.

Overshadowing to adjoining properties has been discussed in detail in the Issues section above.

- (c) Building envelope to the boundary at 5 O'Dea Avenue, blocking windows to habitable rooms and balconies

Response - A condition is recommended requiring the building envelope to be setback 3m from the windows and balconies of this development. This is discussed in detail in the Issues section above.

- (d) Not compliant 9m setback on levels 4 & 5 results in overshadowing

Response - A condition is recommended requiring the upper levels (5&6) are setback 9m from the boundaries for buildings A and B which will address overshadowing. This is discussed in detail in the Issues section above.

- (e) No articulation in the envelope – too bulky

Response - The height, depth and separation distances of the proposed building envelopes generally comply with the ADG and are acceptable. Conditions have been recommended requiring additional 3m setbacks for the upper floors along some boundaries and on the O'Dea Avenue frontage. These increased setback will articulate and reduce the bulk of the envelopes.

The proposal is for concept building envelopes. A recommendation for the design competition brief includes that the buildings needs to be appropriately articulated in particular where they front the existing and new streets, the future through site link to be located at 890 Bourke Street and the corner of Bourke Street and O'Dea Avenue.

- (f) Unacceptable view loss at 5 O'Dea Avenue and 15 Joynton Avenue - application does not address view loss and requirement for a view analysis

Response - View loss to both properties is discussed in detail in the Issues section above.

- (g) Height exceedance for lift overruns to roof terrace and practicality of no lift to communal open space.

Response - The proposal is for concept building envelopes only. A recommendation for the design competition brief includes that the buildings need to provide equitable access to the communal roof terrace without breaching the 22m height limit. This will be assessed as part of the future detailed DA.

- (h) Street setback to Bourke Street

Response - The nil setback of the building envelope to Bourke Street is considered acceptable as discussed in detail in the Issues section of this report.

- (i) Non integration of the development to the future through site link at 890 Bourke Street.

Response - This will be assessed at the detailed DA stage. The building envelopes recommended to be approved allow for the future building to address the future through site link. This is also included in the requirements to be included in the design competition brief.

- (j) Roof top communal open space, overlooking and noise impacts

Response - The indicative plans show rooftop communal open space. Any issues regarding the size, access, overlooking or noise from the rooftop terrace will be assessed as part of the future detailed DA and will be included as requirements to be included in the design competition brief.

- (k) Traffic impacts and inadequate parking

Response - The proposal is for concept building envelopes and no consent is sought for the detailed design of the development, including car parking facilities.

The traffic report and the indicative reference design drawings accompanying the application have however generally demonstrate that the proposal can achieve the City's car parking rates, as set out in the SLEP 2012 and SDCP 2012.

The application was referred to RMS and Transport for NSW who raised no objections to the proposal, subject to the conditions.

- (l) Lack of open space

Response - The indicative reference design has demonstrated that a future development can comply with the requirements of the ADG and the DCP as regards communal open space, deep soil provision and landscaped areas.

There is no requirement for public open space to be provided on this site.

- (m) Devaluing adjoining properties

Response - This is not a matter for consideration under the provisions of the Environmental Planning and Assessment Act 1979.

Public Interest

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

Section 7.11 Contributions

124. Section 7.11 contributions will be levied by conditions of consent to be imposed upon any subsequent development consent for the detailed design of the development.

Affordable Housing Contributions

125. The site is located in the Green Square Urban Renewal Area and affordable housing contributions will be levied by conditions of consent to be imposed upon any subsequent development consent for the detail design of the development.

Relevant Legislation

126. Environmental Planning and Assessment Act 1979.
127. Environmental Planning and Assessment Regulations 2000.
128. City of Sydney Act 1988.
129. Roads Act 1993.
130. Airports Act 1996.
131. Water Management Act 2000.

Conclusion

132. The concept proposal will provide for a future mixed use residential and retail development in proximity to an identified centre, on a site with good access to existing and planned employment, public transport infrastructure, services and community facilities.
133. The proposal seeks consent for a concept plan for two (2) building envelopes, with a maximum overall height of 22 metres on the site.
134. The proposal seeks consent for the location of a future new street which will extend Kingsborough Way to O'Dea Avenue in accordance with the Sydney DCP 2012.
135. The proposal is reliant on the provisions of the community infrastructure floor space of the Sydney LEP 2012. The applicant has made an offer to enter into a voluntary planning agreement for the delivery of a new street, footpath widening and a monetary contribution for public infrastructure in Green Square. The draft planning agreement has been prepared and is on public exhibition for a 28-day period from 28 November 2018 to 16 January 2019.
136. It is recommended the upper levels of both building envelopes are setback 9m in accordance with the recommended conditions, to ensure the future buildings within the envelopes can comply with the ADG in terms of building separation distances and solar access to adjoining sites.
137. It is recommended the upper levels of the building envelopes adjoining 5 O'Dea Avenue are setback 3m in accordance with the recommended conditions, to ensure the existing windows to the units on the boundary are not adversely impacted.
138. It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine Development Application No. D/2017/1723, after the completion of the public exhibition period for the draft Voluntary Planning Agreement between 888 Place Pty Limited and the City of Sydney and consideration of any submissions.

139. Subject to the recommendations within this report, the proposal provides for building envelopes that respond to the constraints of the site and contribute to the existing and desired future character of the locality.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Aisling McGrath, Area Coordinator