

**Item 4.****Development Application: 290-294 Botany Road, Alexandria****File No.:** D/2018/1500**Summary****Date of Submission:** 6 December 2018

10 April 2019

9 May 2019

**Applicant:** Angreb Pty Ltd and Sentra Investments Pty Ltd**Architect:** Chenchow Little**Owner:** Angreb Pty Ltd and Sentra Investments Pty Ltd**Cost of Works:** \$38,687,000**Zoning:** B4 Mixed Use zone

Retail and office premises are all permissible with consent.

**Proposal Summary:** The proposal seeks consent for concept approval for the following:

- one building envelope, which has been reference tested to accommodate up to a total appropriate gross floor area of 9,860.2sqm or an FSR of up 3.85:1;
- a maximum height of 29m;
- indicative retail and office use on the ground floor;
- indicative office use above ground floor;
- vehicular access from Wyndham Street; and
- two levels of basement.

The proposal was notified from 19 December 2018 to 6 February 2019 (28 days plus additional allowance over holiday period). There were three submissions received.

**Proposal Summary  
(continued):**

These submissions raised concerns with the height of the proposal, overshadowing, construction impacts and traffic impacts. The height of the proposed development is consistent with the permitted height in Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The proposal is not considered to result in any unreasonable overshadowing. No works are approved as part of this concept approval and construction impacts will be subject to consideration as part of the detailed development application (DA). The indicative traffic impact is considered acceptable and will be subject to further assessment as part of the detailed DA.

Two amended information requests were sent to the applicant on 12 March 2019 and 6 May 2019. These requests raised the following concerns and requested the following changes:

- submission of a detailed environmental site investigation and a remediation action plan;
- updates to the plans including setting the basement down a minimum of 1.5m under the land to be dedicated to the City;
- submission of a landscape concept plan;
- updates to the submitted public benefit offer, design excellence strategy and public art strategy.

Amended plans and information were sent through in response to these issues on 10 April 2019 and 9 May 2019.

A draft voluntary planning agreement (VPA) for dedication of 102.804sqm of land with a value of \$20,560.80, public domain works with a value of \$80,184, and a monetary contribution \$707,922.53 towards community infrastructure in Green Square was publicly exhibited from 21 May 2019 to 18 June 2019. No submissions were received.

Subject to the imposition of conditions, as detailed in the report and at Attachment A, it is considered that the proposed development is generally compliant with the relevant planning controls for the site. Where the existing site conditions mean that the proposed envelope is located close to adjacent residential development, there is reasonable justification to support the proposed setbacks. There are also further opportunity through the competitive design process and as part of the detailed development application to further refine these elements of the proposal.

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

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) Sydney Airport Referral Act 1996
- (iii) Commonwealth Airports Act 1996
- (iv) Roads Act 1993
- (v) Environmental Planning and Assessment Regulations 2000
- (vi) State Environmental Planning Policy No.55 - Remediation of Land
- (vii) State Environmental Planning Policy (Infrastructure) 2007
- (viii) Sydney Local Environmental Plan 2012
- (ix) Sydney Development Control Plan 2012
- (x) City of Sydney Development Contributions Plan 2015
- (xi) Green Square Affordable Housing Program

**Attachments:**

- A. Recommended Conditions of Consent
- B. Proposed Building Envelope Plans
- C. Reference Plans

## Recommendation

It is resolved that:

- (A) The design excellence strategy for 290-294 Botany Road, prepared by Urbis and dated 7 May 2019, be approved pursuant to Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the Competitive Design Policy; and
- (B) Approval subject to a deferred commencement consent, be granted for Development Application No. D/2018/1500, pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, subject to conditions as detailed in Attachment A of the subject report.

## Reasons for Recommendation

The application is recommended to be approved subject to a deferred commencement consent for the following reasons:

- (A) The proposed land uses of retail, commercial and office are consistent with the objectives of the B4 mixed use zone as per the Sydney Local Environmental Plan 2012.
- (B) The proposed height is consistent with the permitted height pursuant to Clause 4.3 of Sydney Local Environmental Plan 2012.
- (C) The proposed development will be the subject of a competitive design process in accordance with Clause 6.21(5) of Sydney Local Environmental Plan 2012.
- (D) The proposed bulk and form of the development is consistent with existing and future planned development. The design excellence strategy includes ESD targets which have to be incorporated into the detailed design. A landscape strategy and public art strategy are also recommended to be approved as part of this consent. As such, the proposed development is considered to meet the requirements of Clauses 6.21(3) and 6.21(4), and Clause 7.21 of Sydney Local Environmental Plan 2012.
- (E) The proposed setbacks and design conditions will result in a development which does not unreasonably impact on the amenity of adjoining developments. This relationship can be further refined through the competitive design process and detailed development application.
- (F) The proposed development will result in additional community infrastructure in accordance with Clause 6.14 of Sydney Local Environmental Plan 2012, as per the submitted Public Benefit Offer and Voluntary Planning Agreement. A deferred commencement condition is recommended requiring this Voluntary Planning Agreement to be executed and registered on title prior to the consent becoming operative.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by staff on 25 February 2019.
2. The site is legally defined as lot 1 in deposited plan 82006 and lot 1 in deposited plan 85829. It is approximately 2561.1sqm in area. It is generally 'L-shaped', has a 42.5m frontage to Botany Road and a 18.4m frontage to Wyndham Street. The site is located north of the intersection of Botany Road, Bourke Road and O'Riordan Street and south of Mandible Street.
3. The site is not in a heritage conservation area, but it is located opposite Green Square School, which is a locally listed heritage item (item number I2071) under Sydney LEP 2012.
4. The site is located in Green Square locality which is an area undergoing urban renewal. The surrounding land uses are a mix of older style office and warehouse buildings, and newer style mixed use developments and office buildings.
5. Offices and residential flat buildings are located north of the site. These are included at figures 4, 7 and 8 below. Green Square School is located on the opposite side of Botany Road. A mix of older style commercial and industrial buildings and new commercial buildings are located to the east of the site, including Transport for NSW Rail Operations Centres (ROC). A picture of the ROC is at figure 9 below.
6. The site to the south of the subject development at 284 Wyndham Street and 296 - 298 Botany Road is undergoing redevelopment pursuant to DA D/2012/1021/F. This development consent approved demolition of existing structures, excavation for 1 level of basement accommodating 202 car parking spaces and construction of a two and three storey retail and commercial development. A construction certificate for demolition and remediation only and site preparation was issued on 14 November 2018.
7. In addition to this DA, a planning proposal was also processed and the Sydney LEP 2012 and Sydney DCP 2012 were amended (Amendment No 37 to Sydney LEP 2012 published 22 December 2017). Images of the massing based on the site specific controls prepared as part of the planning proposal (at Section 6.3.10 of Sydney DCP 2012) are included at figures 10 to 12.
8. Photos of the site and surrounds are provided below:

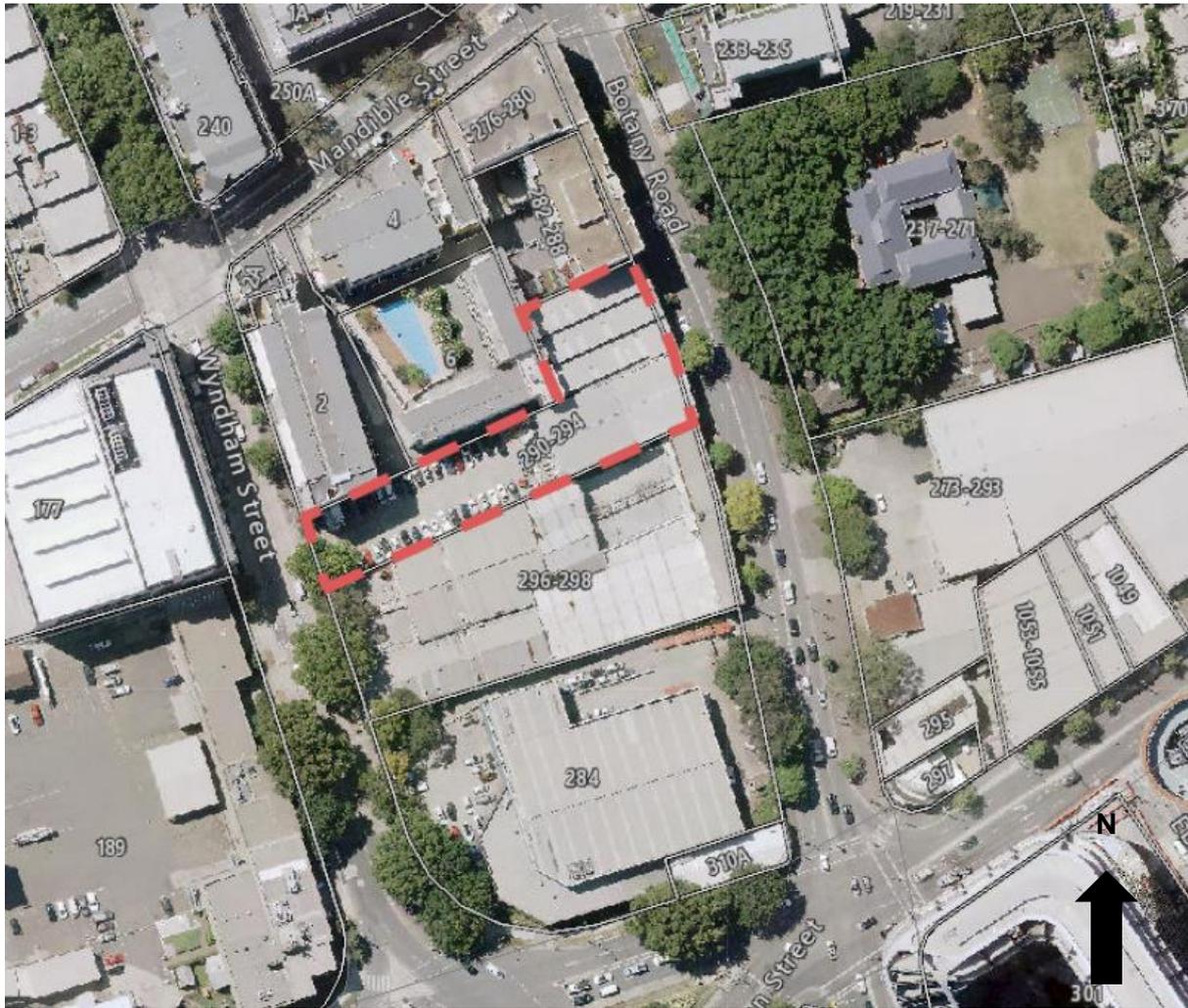


Figure 1: Aerial photograph of the site and surrounding development



Figure 2: Site viewed from Botany Road



Figure 3: Site viewed from Botany Road (looking north)



**Figure 4:** Adjoining buildings along Botany Road



**Figure 5:** Opposite side of Botany Road



**Figure 6:** Site viewed from Wyndham Street



**Figure 7:** Looking north up Wyndham Street



**Figure 8:** Looking south along Wyndham Street



**Figure 9:** Opposite side of Wyndham Street

Figure 6.132  
Building Envelope  
South East

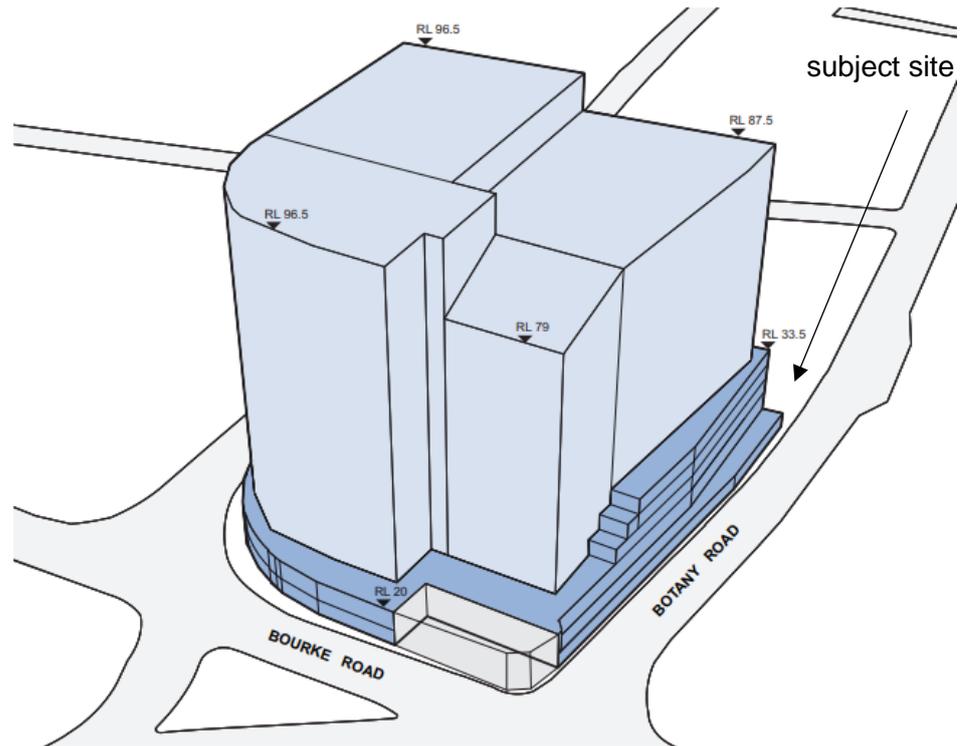


Figure 10: Figure 6.132 in Sydney DCP 2012 showing the proposed massing of the site to the south

Figure 6.131  
Building Envelope  
South West

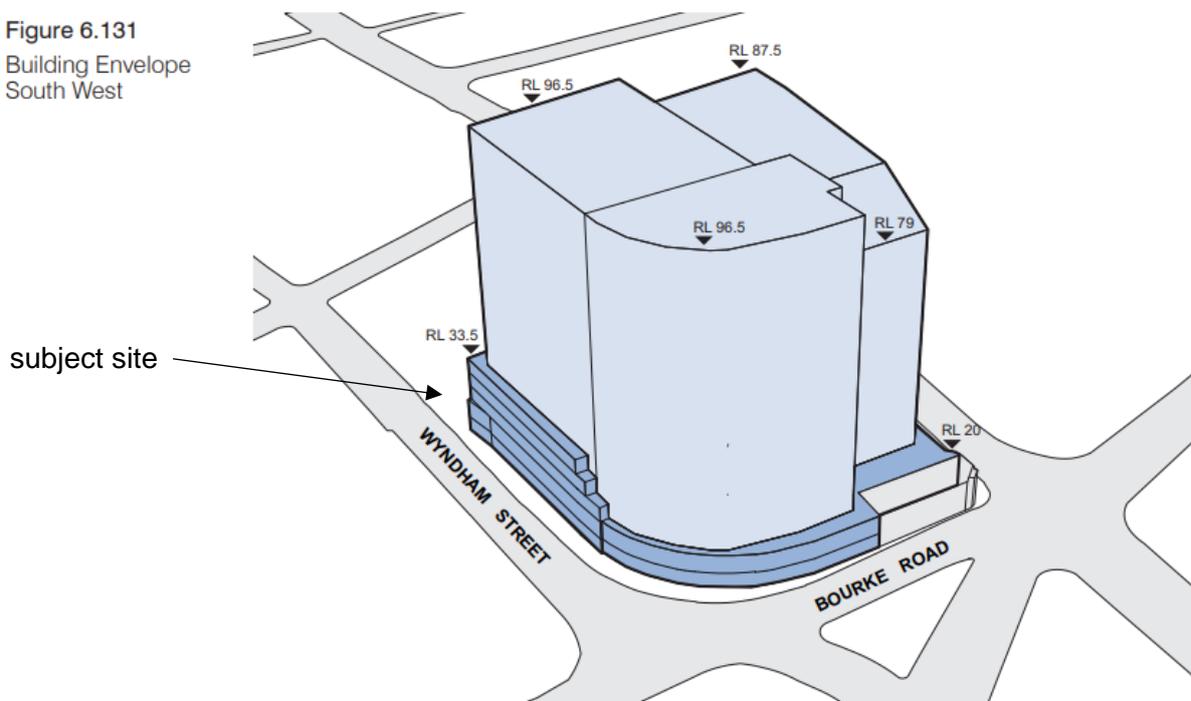
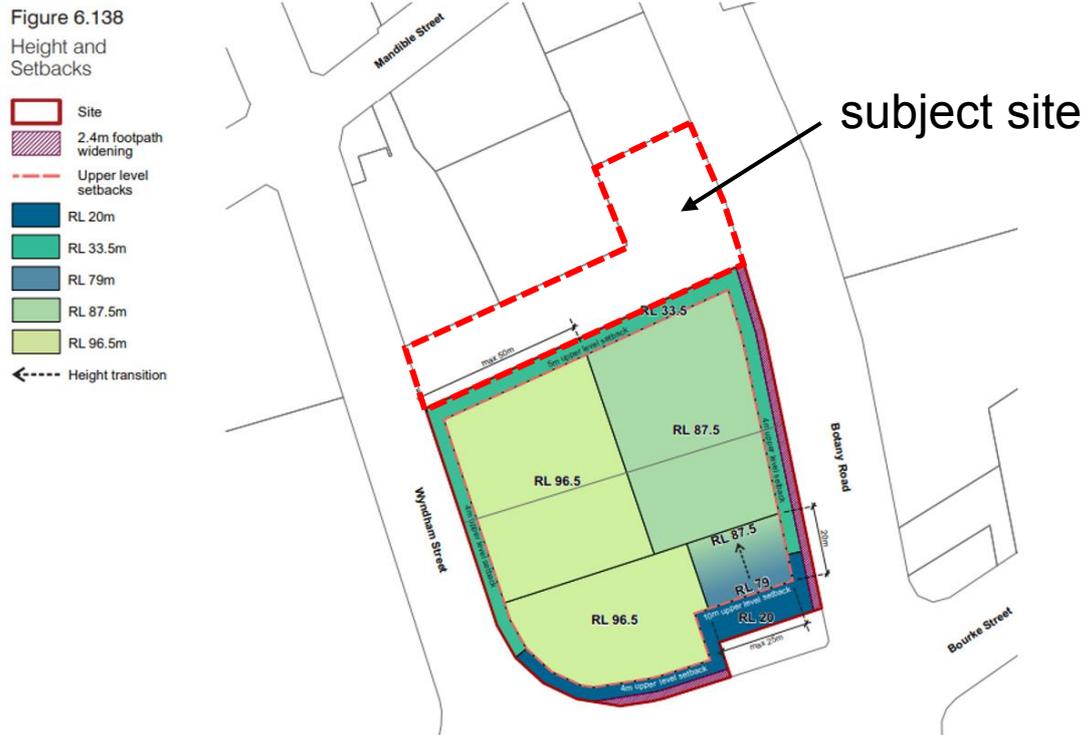


Figure 11: Figure 6.131 in Sydney DCP 2012 showing the proposed massing of the site to the south



**Figure 12:** Figure 6.138 in Sydney DCP 2012 showing the height and setbacks of the site to the south.

## Proposal

9. The subject application seeks consent for the concept proposal for the following:
  - (a) one building envelope, which has been reference tested to accommodate up to a total appropriate gross floor area of 9,860.2m<sup>2</sup> or an FSR of up 3.85:1;
  - (b) a maximum height of 29m;
  - (c) indicative retail use and office use on the ground floor;
  - (d) indicative office use above ground floor;
  - (e) vehicular access from Wynndham Street; and
  - (f) two levels of basement.
10. Plans of the proposed development are provided below:

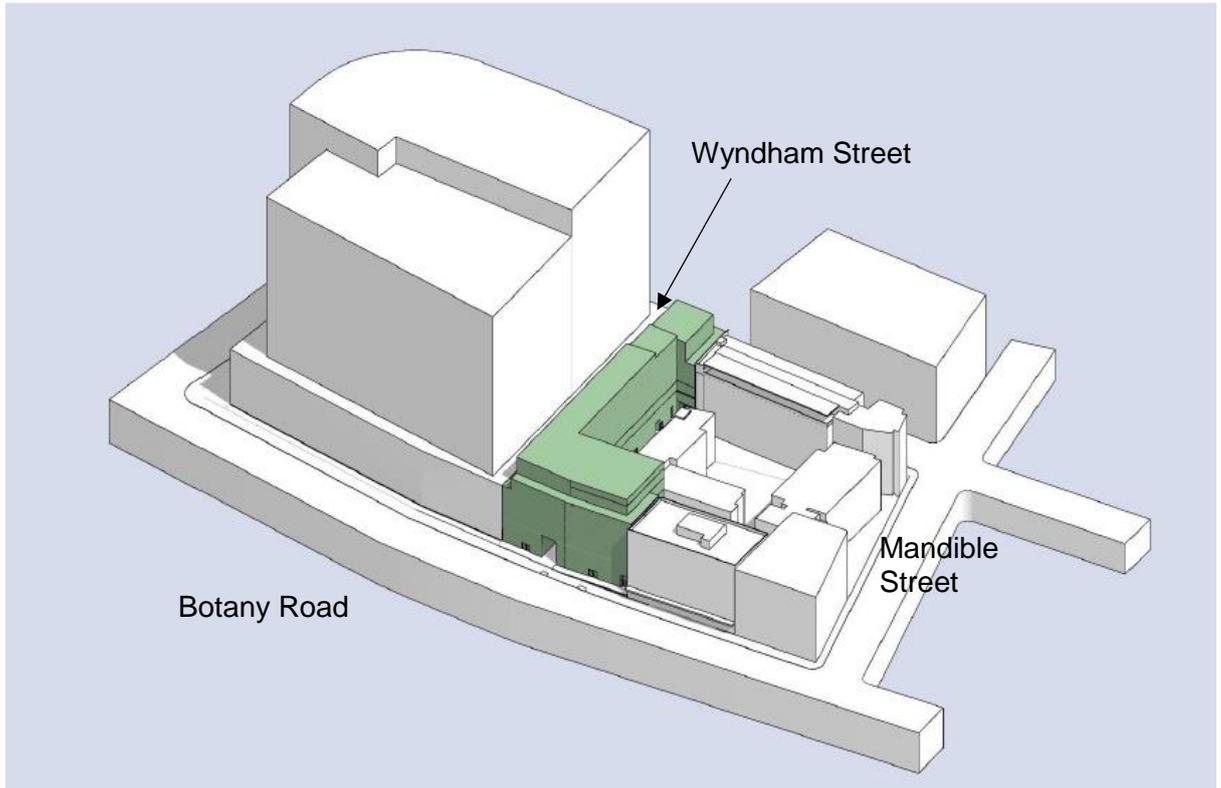


Figure 13: Proposed 3D envelope

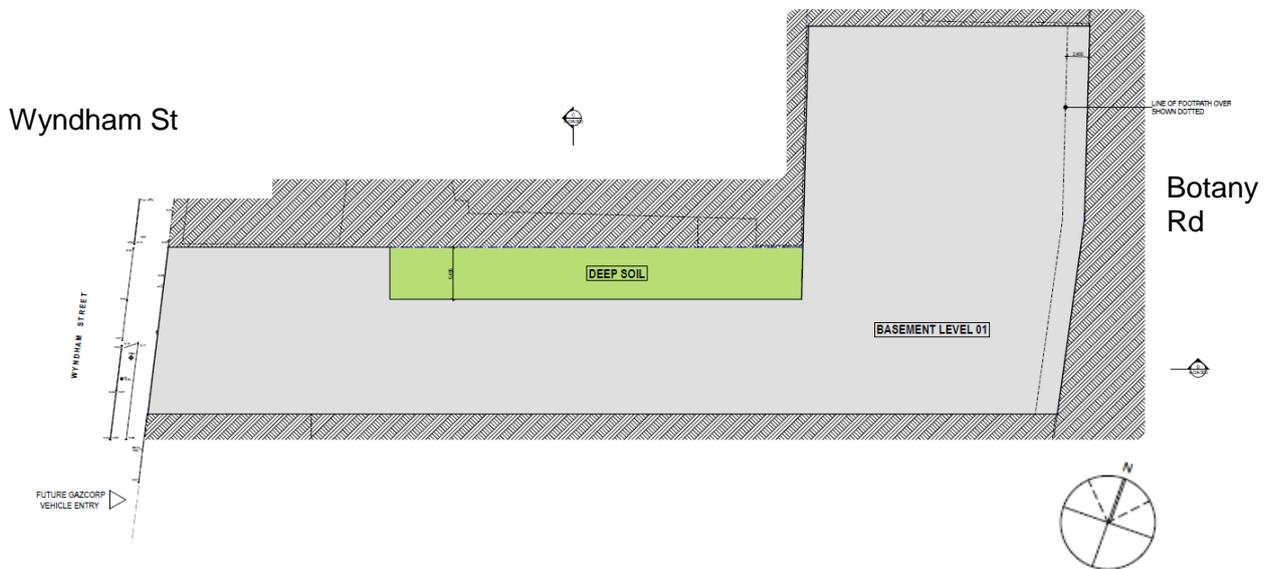


Figure 14: Basement level 1

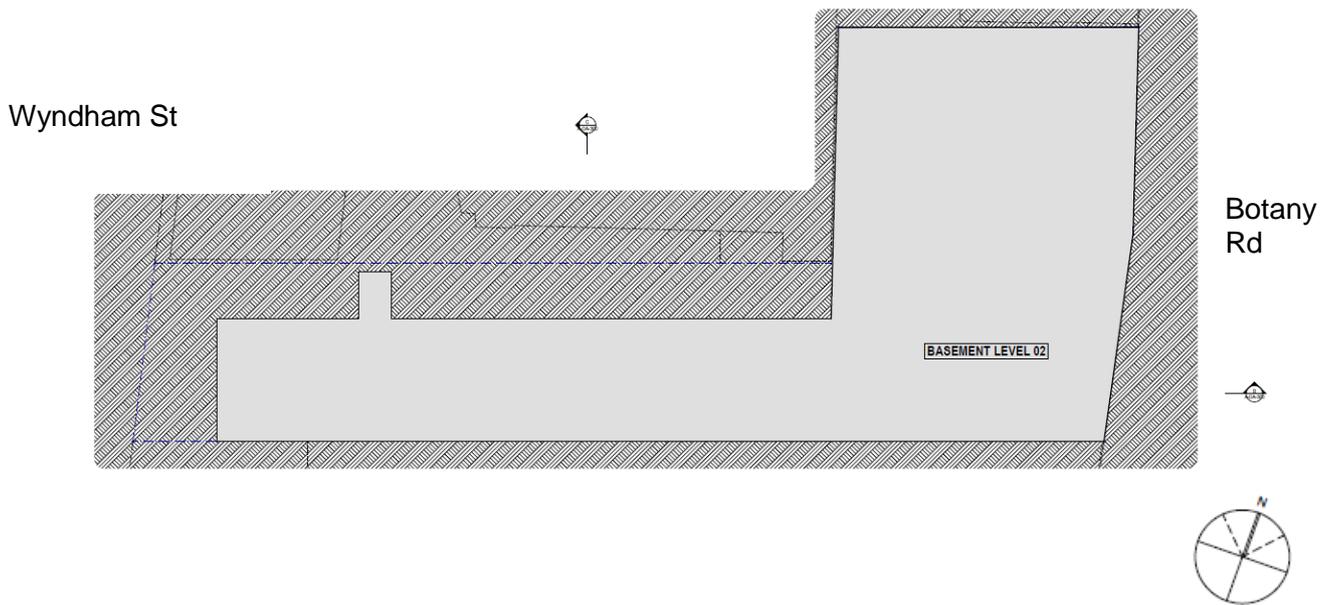


Figure 15: Basement level 2

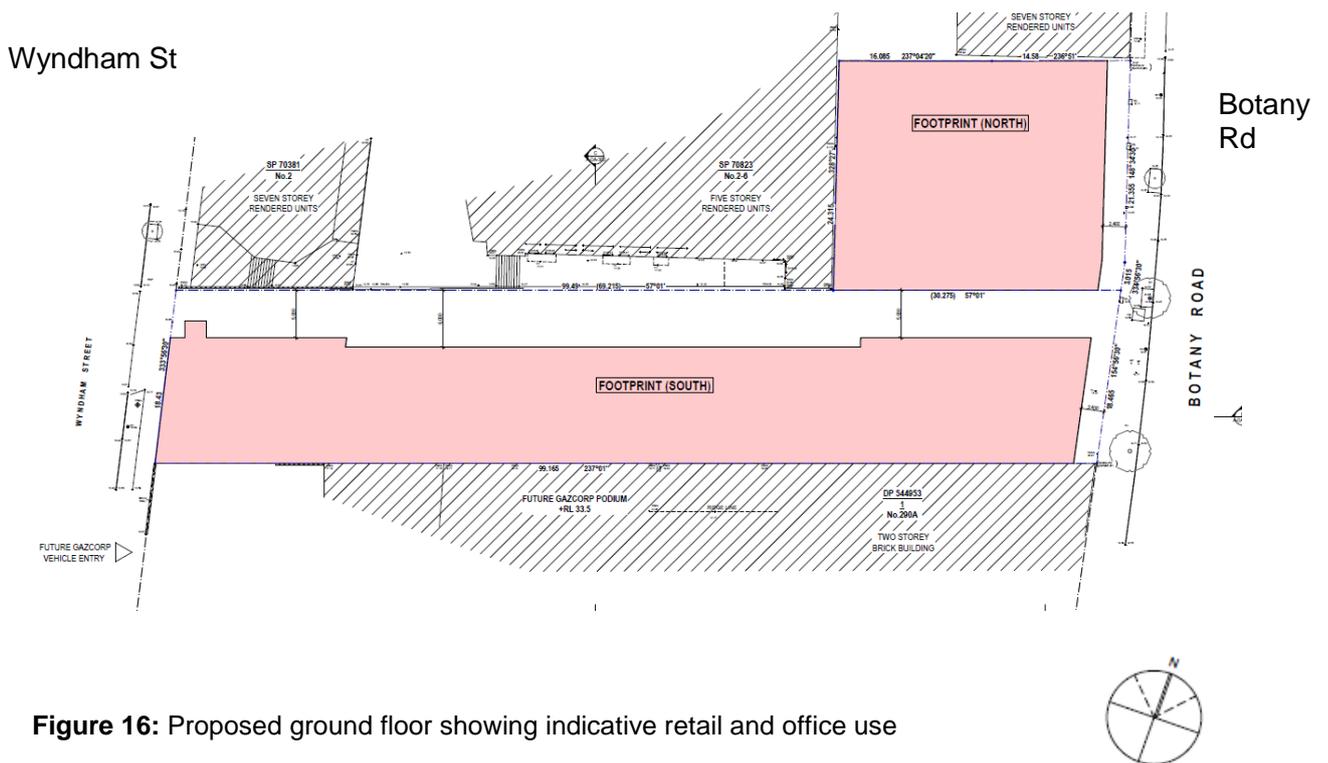


Figure 16: Proposed ground floor showing indicative retail and office use

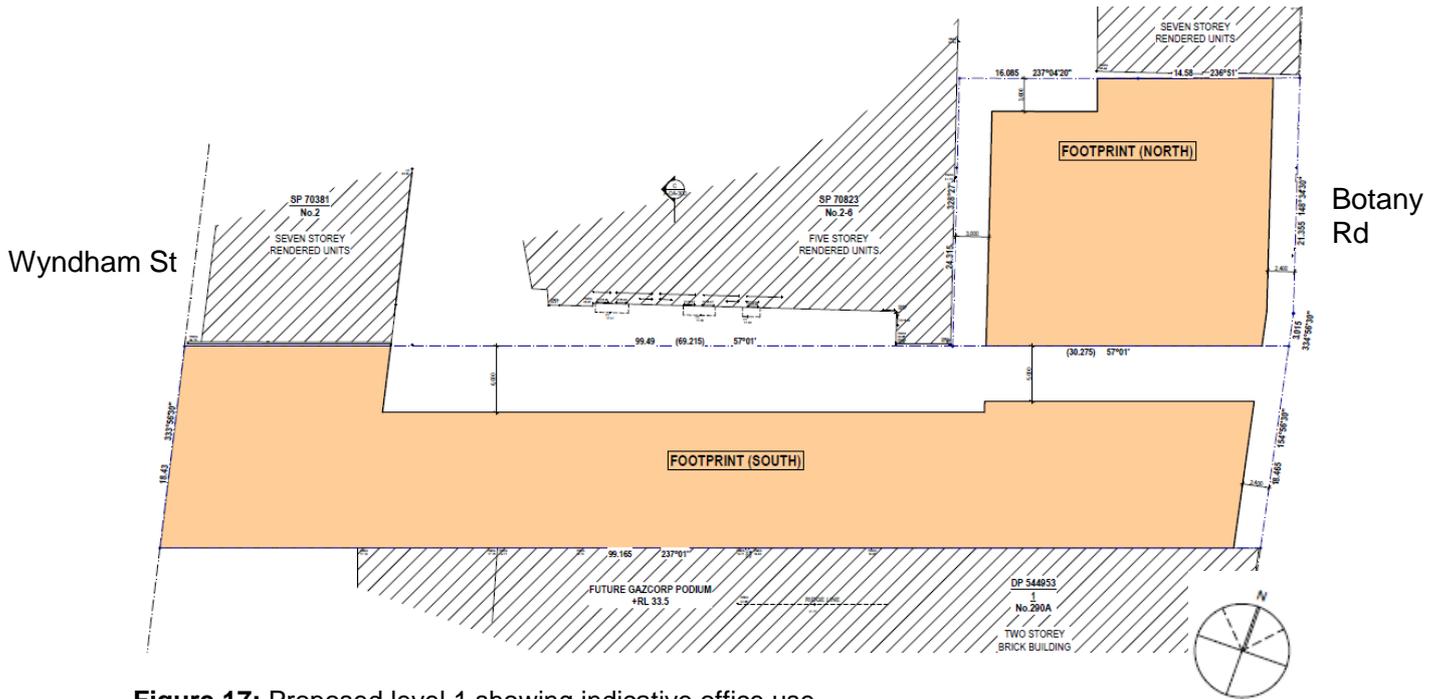


Figure 17: Proposed level 1 showing indicative office use

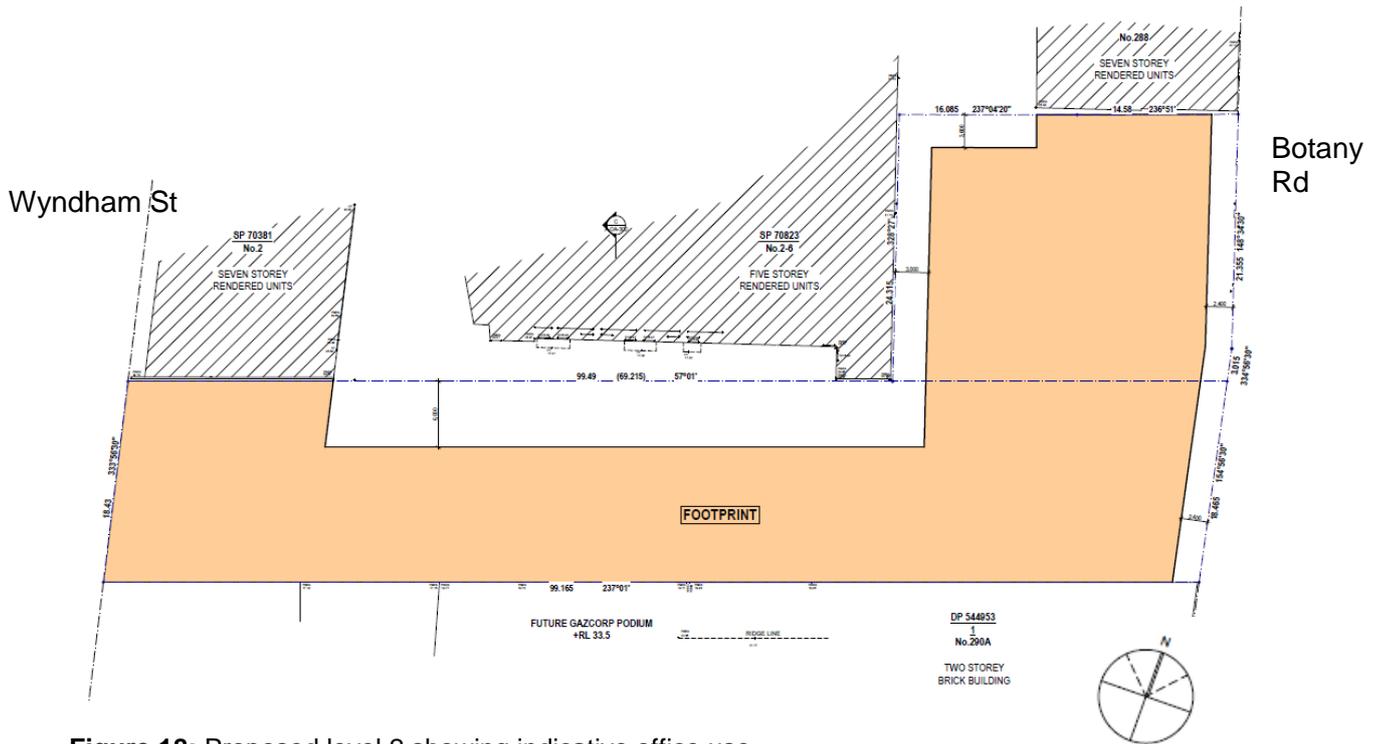


Figure 18: Proposed level 2 showing indicative office use





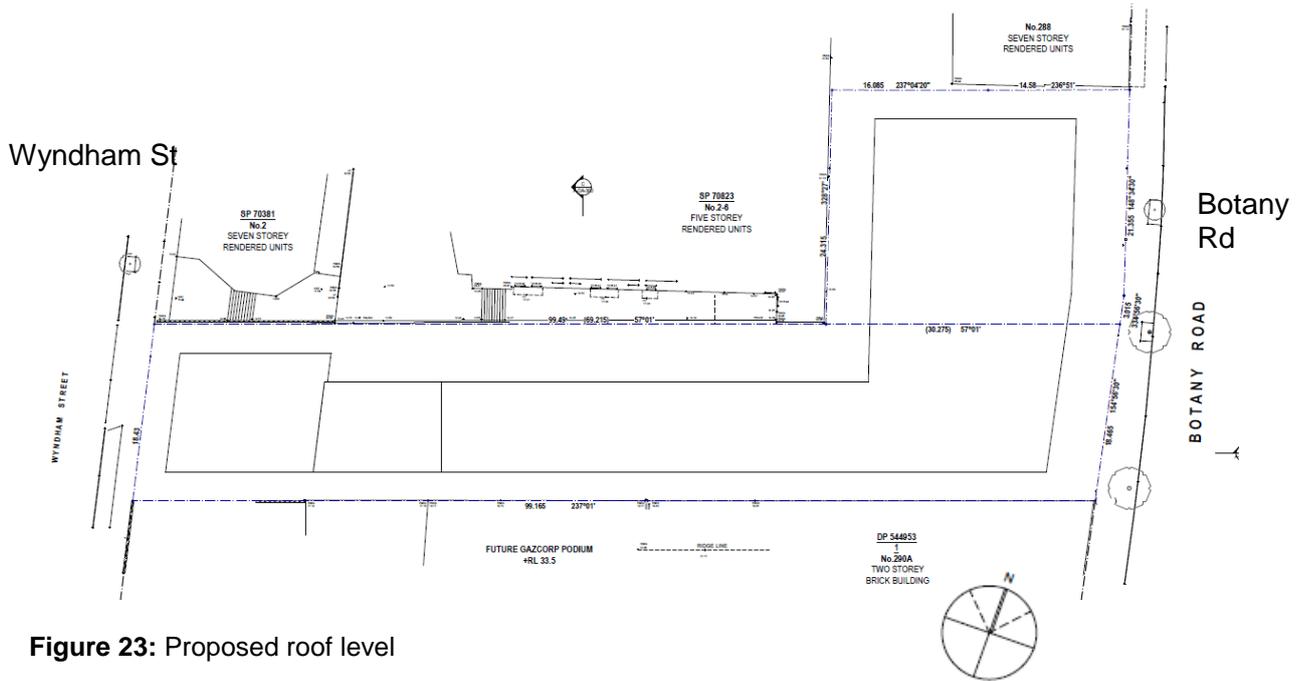


Figure 23: Proposed roof level

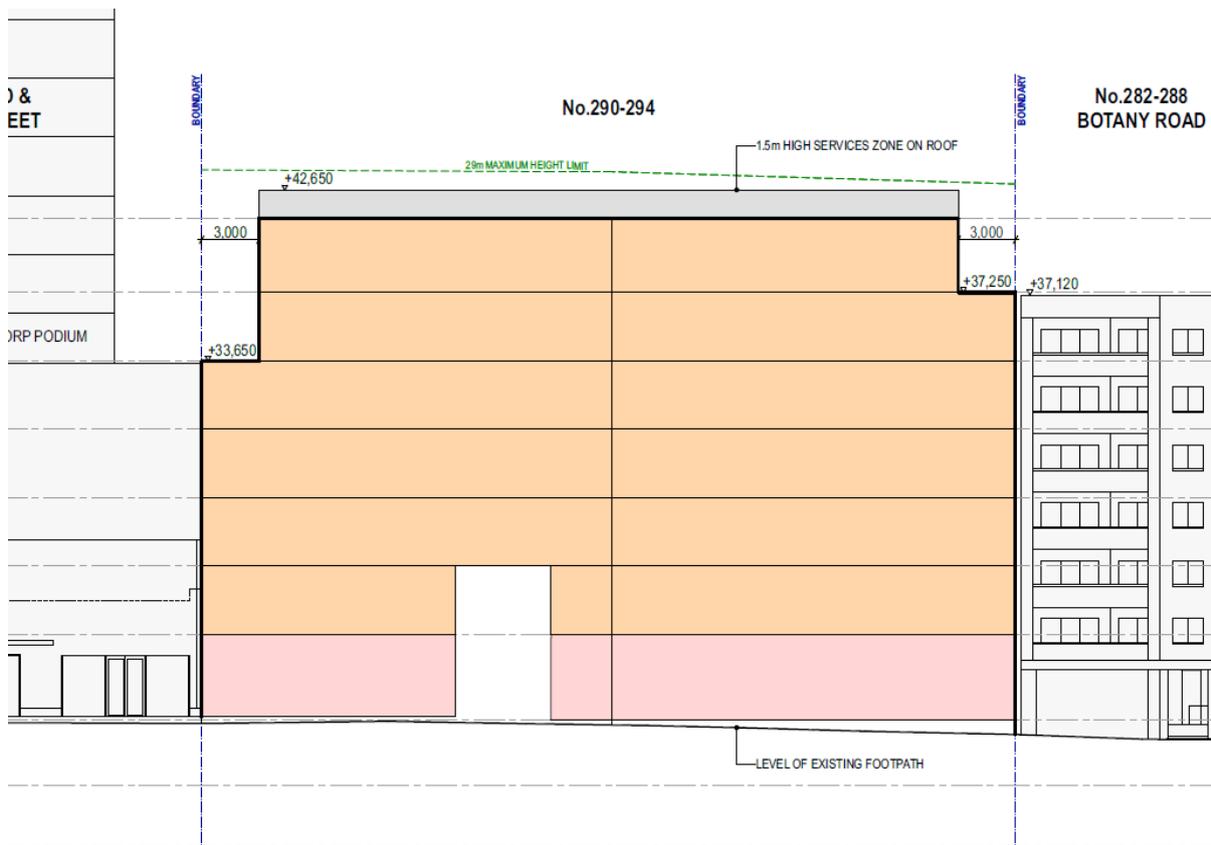


Figure 24: Proposed Botany Road elevation

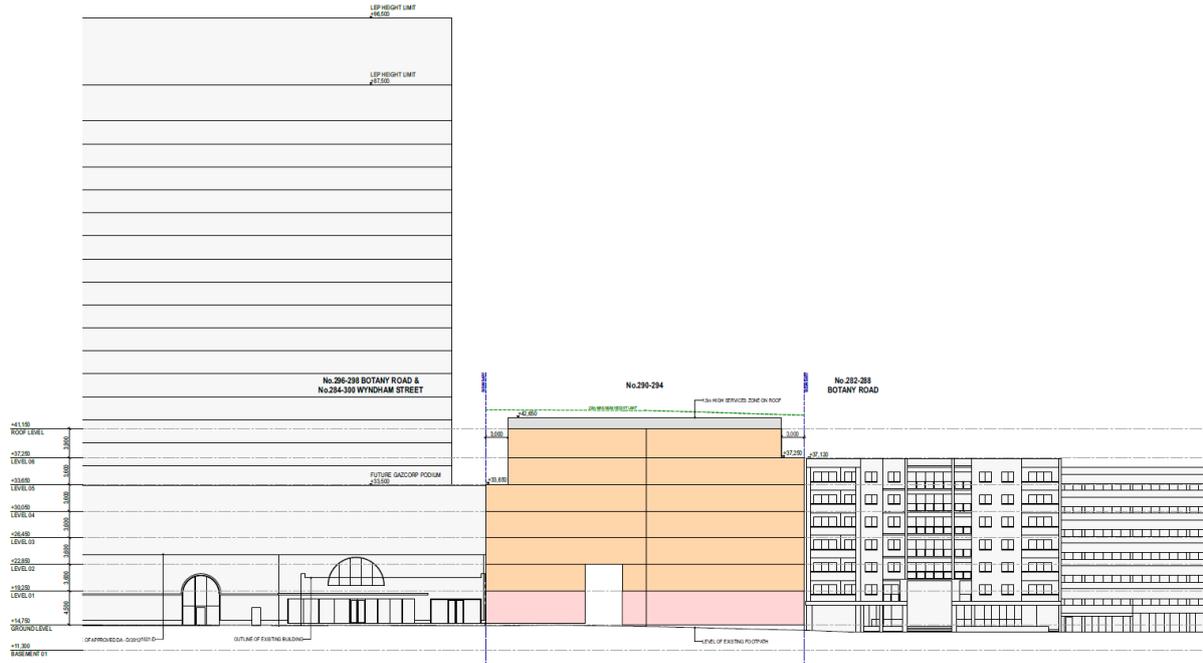


Figure 25: Proposed Botany Road elevation in future street context

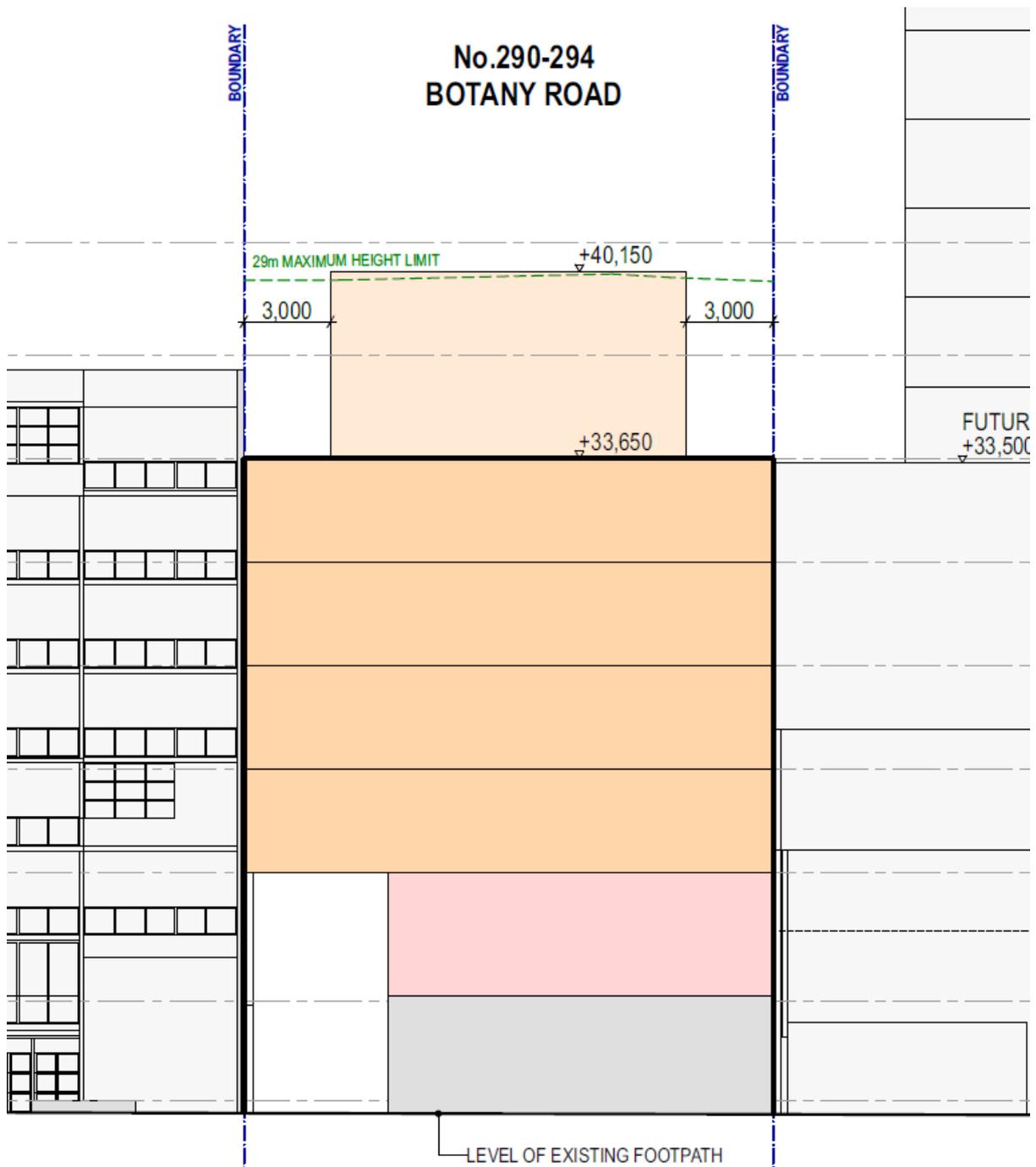


Figure 26: Proposed Wyndham Street elevation

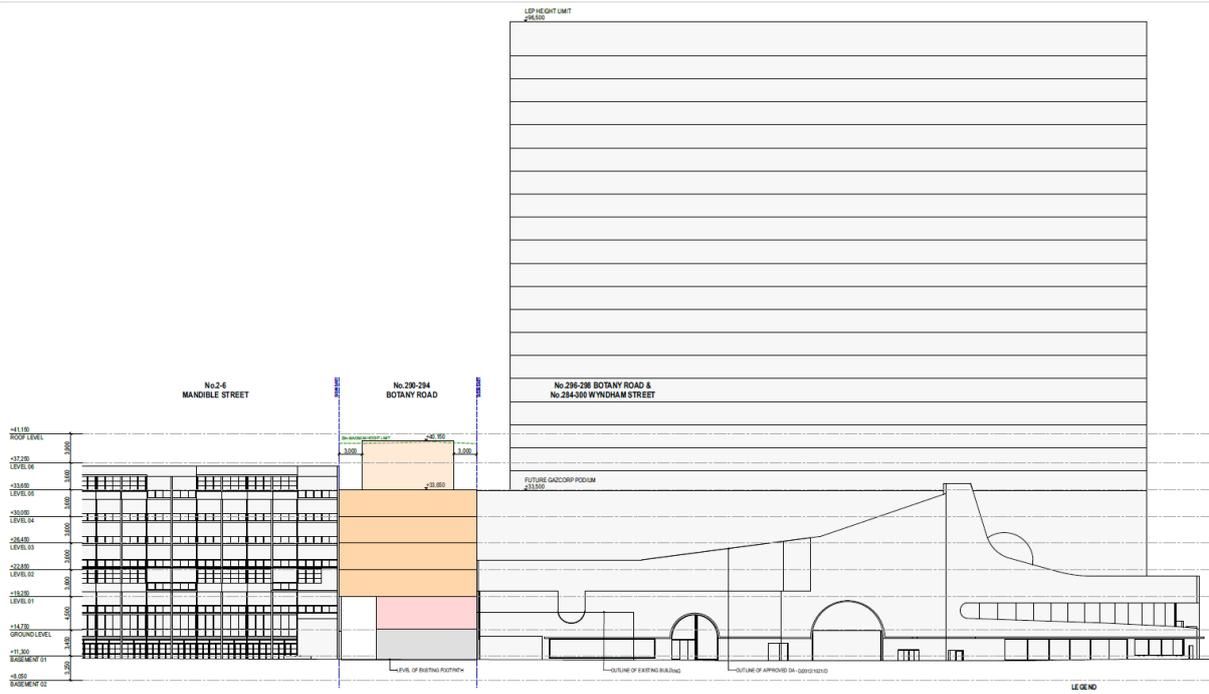


Figure 27: Proposed Wyndham Street elevation in future street context

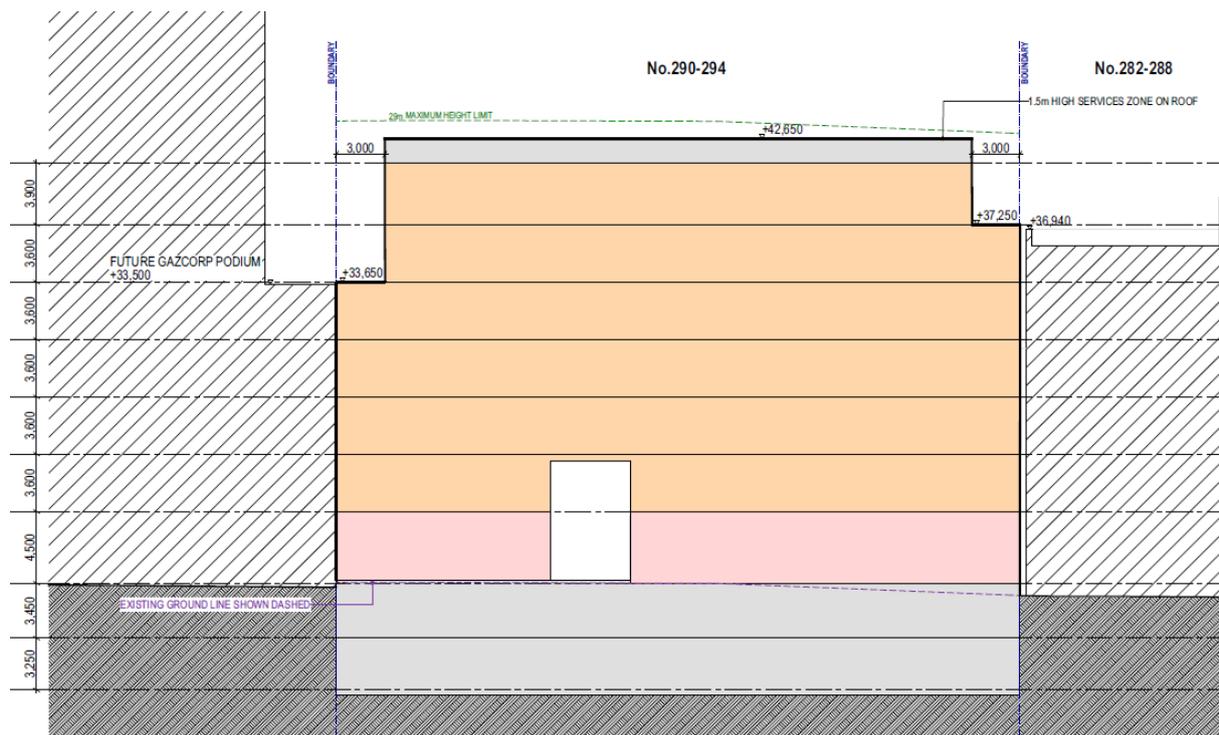


Figure 28: Proposed section AA

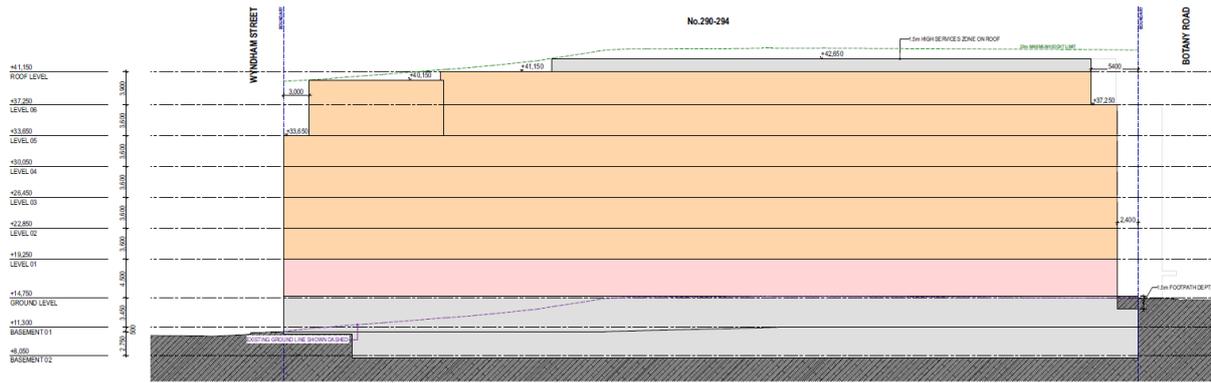
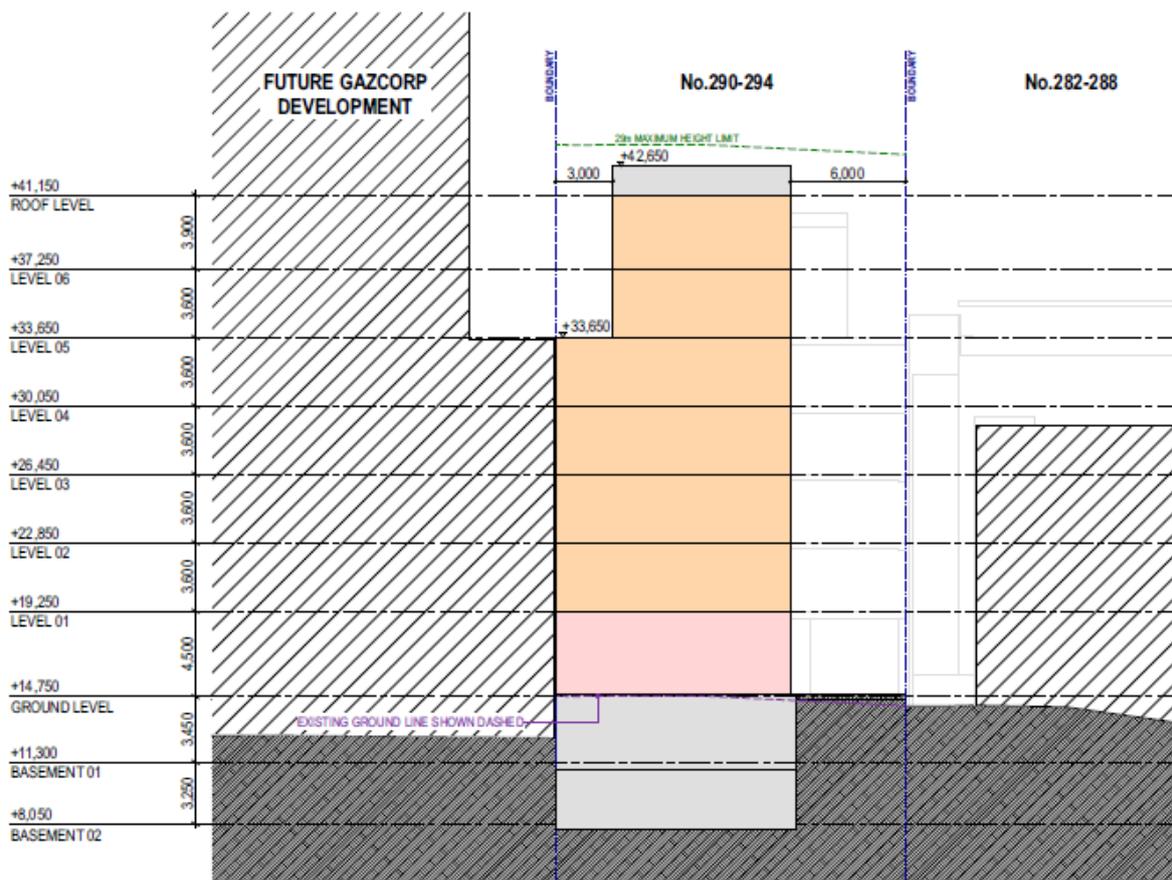


Figure 29: Proposed section B-B



SECTION C-C

Figure 30: Proposed section C-C

## History Relevant to the Development Application

11. Two amended information requests were sent to the applicant on 12 March 2019 and 6 May 2019. These requests raised the following concerns and requested the following changes:
  - (a) submission of a detailed environmental site investigation and a remediation action plan;
  - (b) updates to the plans including setting the basement down a minimum of 1.5 metres under the land to be dedicated to the City;
  - (c) submission of a landscape concept plan; and
  - (d) updates to the submitted public benefit offer, design excellence strategy and public art strategy.
12. Plans and information were sent through in response to these issues on 10 April 2019 and 9 May 2019.
13. The amended plans are included at figures 13 to 30 above. The plans and amended information are discussed in the table below.

## Economic/Social/Environmental Impacts

14. 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 DCPs.

## Sydney Airport Referral Act 1996/ Commonwealth Airports Act 1996

15. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, construction a building or other structure that protrudes into a prescribed air space is a controlled activity.
16. Although no building works are sought or will be approved under this application, the proposed envelope will be more than 15.24 metres above existing ground height. As per schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1998, the construction of buildings above 15.24 metres in this area are prohibited without prior approval.
17. 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 of the Civil Aviation Safety Authority (CASA).
18. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 20 December 2018. The approved height is a maximum of 42.7 metres AHD and is inclusive of lift overruns, vents, chimneys, aerials, TV antennae, construction cranes etc.

**Roads Act 1993**

19. Mandible Street is a regional classified road. As such, pursuant to Clause 138 of the Roads Act 1993, concurrence is required to be provided for access to/from Mandible Street.
20. Concurrence was provided by the Roads and Maritime Service (RMS) on 28 May 2019 and conditions are included at Attachment A in the recommended conditions of consent.
21. The application was originally referred to the RMS as integrated development. However, in correspondence from the RMS dated 9 January 2019, the RMS confirmed the application was not integrated development. This is because, pursuant to Section 4.46(3) of the Environmental Planning and Assessment Act 1979, Council is both the consent authority for the development and the roads authority.

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

22. SEPP 55 applies to the subject DA as the site has a past history of contaminating uses and will need to be remediated as part of the development.
23. The submitted Detailed Environmental Site Investigation (DESI) identified the presence of underground fuel tanks and some elevated levels of copper and zinc. Within the areas sampled, no evidence of hydrocarbon contamination was identified.
24. The investigation was limited due to access restrictions imposed by the existing buildings, which resulted in the categorisation being incomplete. Notwithstanding this, the DESI concludes that the land can be made suitable for the proposed development.
25. A Remediation Action Plan (RAP) has been submitted and recommends a remedial strategy to remove and dispose of all contaminants. However, the data gaps and incomplete site categorisation means the DESI and RAP recommend further site investigations and for a NSW EPA accredited site auditor to peer review the RAP as part of any future detailed DA.
26. Given the proposed land use will remain commercial (as opposed to a more sensitive land use) and the DA is for a concept consent only, the proposal is considered satisfactory. Conditions are also recommended for further testing to be undertaken and for further reports to be submitted as part of the detailed DA.

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

27. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the DA.

## Clause 45

28. 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 may be carried out within 5m of an exposed overhead electricity power line.
29. In accordance with the Clause, the application was referred to Ausgrid for a period of 21 days and no response was received.

## Clause 86

30. The application was referred to Sydney Trains and Sydney Metro on 18 December 2018 because of the proximity of the site to the rail corridor and future metro line.
31. A response was received from Sydney Metro on 18 January 2018 confirming that concurrence was not required.
32. No response was received from Sydney Trains. However it appears that the site is over 25 metres from the rail corridor (as per Clause 86(1) of SEPP (Infrastructure) 2007), and therefore concurrence from Sydney Trains is not required.

## Clause 101

33. The application is subject to Clause 101 of the SEPP as the site has frontage to Botany Road which is a classified road (state), and Wyndham Street which is a classified road (regional).
34. The proposal is considered to satisfy Clause 101 of the SEPP (Infrastructure) 2007. Concurrence has been provided by the RMS in relation to access to/from the site from Wyndham Street and advisory conditions are also recommended. These are recommended to be included on the consent. In respect to Clause 101(2)(c), the detailed DA will need to ensure that the development includes measures to ameliorate traffic noise and vehicle emissions.

## Clause 104

35. The application is subject to Clause 104 of the SEPP as the site proposes access from Wyndham Street which is a classified (regional) road and more than 2,500sqm in gross floor area.
36. Concurrence has been provided from the RMS in relation to the proposed access to and from the site. In addition, there are currently 38 car spaces provided onsite and the submitted traffic report says that based on the trip generation analysis, the forecast level of additional traffic generation is equivalent to fewer than one additional vehicle trip per three minutes during AM peak, and less than one additional vehicle trip per two minutes during PM peak.

**Sydney LEP 2012**

37. The site is located within the B4 mixed use zone. The proposed indicative land uses are defined as commercial, retail and office uses, and these are all permissible with consent.
38. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	Yes	A maximum height of 29m is permitted. A maximum height of 29m is proposed.

Development Control	Compliance	Comment
<p>4.4 Floor Space Ratio</p> <p>6.14 Community infrastructure floor space at Green Square</p>	<p>Able to comply</p>	<p>Clause 4.4 of Sydney LEP 2012 stipulates a base floor space ratio of 2:1 for the site.</p> <p>Clause 6.14 of Sydney LEP 2012 allows for additional 1.5:1 FSR where community infrastructure is provided.</p> <p>As part of the subject application, a public benefit offer has been made to the city for the dedication of 102.8m<sup>2</sup> of land with a value of \$20,560.80, public domain works with a value of \$80,184, and a monetary contribution of \$707,922.53 towards community infrastructure in Green Square.</p> <p>A draft VPA has been prepared and was on public exhibition from 21 May 2019 to 18 June 2019. No submissions were received. As such, the application is recommended to be approved, subject to a deferred commencement condition requiring the VPA to be executed and registered on title.</p> <p>The documentation submitted by the applicant demonstrates that the proposed building envelope is able to accommodate up to 9,860.2sqm of gross floor area, which would equate to an FSR of 3.85:1.</p> <p>In order to achieve this FSR, the applicant is reliant on any future architectural design being awarded the entirety of the 10% design excellence floor space bonus under the provisions of clause 6.21 of Sydney LEP 2012.</p>
<p>5.3 Development near zone boundaries</p>	<p>Not applicable</p>	<p>The subject site adjoins the SP2 infrastructure zone. The proposed use is permissible within the subject zone, that being B4 mixed use and as such, this clause does not apply.</p>

6.21 Design Excellence	Yes	<p>In accordance with Clause 6.21(7) of Sydney LEP 2012, up to additional 10% height or FSR 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>The applicant has submitted a design excellence strategy as part of this DA. The design excellence strategy is recommended to be endorsed as part of this consent, in accordance with clause 6.21(5) of the Sydney LEP 2012 and the City of Sydney Competitive Design Policy.</p> <p>As the proposal is a concept DA, no architectural design details are approved. Notwithstanding this; the proposed bulk, massing and form of the development is consistent with existing and future planned development. As such, the development is considered to meet Clause 6.21(4)(d)(v) of Sydney LEP 2012. The street frontage heights are consistent with the adjoining existing and future planned development, and are considered acceptable. As such, the development meets the requirement of Clause 6.21(4)(d)(vi) of Sydney LEP 2012.</p> <p>The proposed setbacks and design conditions will result in a development which does not unreasonably impact on the amenity of adjoining developments. As such, the development is considered to meet the requirements of clause 6.21(4)(d)(vii). The proposal will result in the dedication of 2.4m of land along Botany Road for footpath widening. As such, the development will increase pedestrian amenity and therefore meets the requirements of clause 6.21(4)(d)(ix) and (x) of Sydney LEP 2012.</p> <p>A landscape strategy and public art strategy have been submitted and are recommended to be approved as part of this consent. As such, Clause 6.21(4)(d)(xiii) is considered to be achieved.</p>
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Development Control	Compliance	Comment
		Therefore the proposed development is considered to meet the requirements of Clause 6.21 and Clause 7.20 of Sydney LEP 2012.
7.6 Car parking - office premises and business premises  7.7 Retail premises	Able to comply	The proposal illustrates two levels of basement parking containing a total of 68 car parking spaces.  Car parking numbers are approved as part of a detailed DA.
7.13 Contribution for the purposes of affordable housing	Able to comply	The detailed DA for the site will be subject to an affordable housing contribution under Clause 7.13 of Sydney LEP 2012.
7.14 Acid Sulphate Soils	Able to comply	The front portion of the site facing Botany Road is identified as containing class 5 acid sulphate soil. The rear portion of the site facing Wyndham Street is identified as having class 3 acid sulphate soils. Given the indicative scheme shows excavation, it is likely that the works will expose acid sulphate soils. The submitted DESI includes an acid sulphate soils management plan which is acceptable for this concept development.
7.15 Flood planning	Able to comply	The site is not identified as being flood affected during a 1% AEP flood event. The proposed floor levels as part of the detailed DA should comply with the Building Code of Australia and the interim flood management plan as stated in the submitted Site Flood Assessment dated 5 December 2018 and prepared by WMA Water.

Development Control	Compliance	Comment
7.16 Airspace operations	Able to comply	<p>The proposed envelope does not penetrate the prescribed airspace, and as such, does not trigger the concurrence requirements of this clause.</p> <p>The height of the proposed envelope will breach the 15.24 metre height limit defined in the schedules of the Civil Aviation (Building Control) Regulations.</p> <p>An approval for the erection of the development to a maximum height of 42.7 AHD, inclusive of all lift overruns, vents, chimneys, aerials, TV antennae, construction cranes was received on 20 December 2018.</p>
7.20 Development requiring preparation of a development control plan	Yes	<p>As the height of the subject development is over 25m, the provisions of Clause 7.20 of the Sydney LEP 2012 require the preparation of a site specific DCP.</p> <p>However, in accordance with section 4.23(3) of the Environmental Planning and Assessment Act 1979, the lodgement of a concept DA can be considered as an alternative to a site specific DCP.</p> <p>For Clause 7.20(4), see discussion under clause 6.21 of Sydney LEP 2012.</p>
7.23 Large retail development near Green Square Town Centre	Able to comply	<p>The subject site is located on land identified as restricted retail development on the Retail Premises Map. As such, development consent cannot be granted for the purposes of shops or markets with a gross floor area of greater than 1,000sqm.</p> <p>While indicative retail and commercial ground floor uses are proposed, the quantum of gross floor area is not approved as part of this concept DA.</p> <p>As such, the detailed DA will need to ensure it complies with this requirement.</p>

**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 – Waterloo Park**

The subject site is located in the Waterloo Park locality. The proposed concept DA is considered to be in keeping with the character of the locality in that it will provide non-residential uses and an active frontage along Botany Road, as well as a 2.4m setback to Botany Road to enable the creation of a better public domain.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.1.1.4 Footpaths	Yes	<p>A 2.4m setback to enable footpath widening is being provided along Botany Road. This land is being dedicated to the City via the VPA. This is consistent with the Public Domain setbacks map in the Sydney DCP 2012. The treatment of the footpaths is covered by the terms of the VPA.</p> <p>A basement is proposed to sit 1.5 metres under the land to be dedicated to the City. This is only considered to be acceptable in this instance as the narrow pan handle shape of the site constrains the ability to adequately service and provide bike parking and car parking facilities.</p> <p>As per Clause 5.2.11(2) of Sydney DCP 2012, where site constraints result in a car park being located under a public street, only common areas are permitted below (such as circulation space or unallocated parking) and the ownership of the street will be in stratum above the waterproofing membrane.</p> <p>These requirements are recommended as conditions on the concept development consent so that the requirements apply to the detailed DA.</p>

3. General Provisions	Compliance	Comment
3.1.2.2 Through-site links	Not applicable	<p>The DA, as originally submitted, included a through-site link connecting Wyndham Street and Botany Road. The original public benefit offer submitted also sought a credit for an easement over the through site link.</p> <p>However, as per Clause 3.1.2.2(1) of Sydney DCP 2012, a through site link is not identified in the Sydney DCP for this site. Further to this, as per Clause 3.1.2.2(2) of the Sydney DCP 2012, the site is not greater than 5,000sqm (it is 2,561sqm). The through site link was also proposed to be co-located with the proposed deep soil area on the site, which may have compromised the quality and amenity of the deep soil.</p> <p>As such, the through site link was removed from the plans and the public benefit offer. An area of unencumbered deep soil and 6 metre clearance running the length of the site is provided between Botany Road and Wyndham Street. There are opportunities to explore this interface as part of the competitive design process.</p>
3.1.5 Public Art	Able to comply	<p>A public art strategy has been submitted as part of this concept application. No budget has been proposed as part of this public art strategy. The budget can be resolved as part of the detailed design development and should be in line with industry best practice, which equates to 1% of the cost of development.</p>
3.2 Defining the Public Domain	Able to comply	<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>

3. General Provisions	Compliance	Comment
3.2.3 Active frontages	Able to comply	Botany Road is required to have an active frontage. The proposed retail use provides the opportunity to activate the frontage. A condition is recommended to ensure that this forms part of the design brief.
3.3 Design Excellence and Competitive Design Processes	Able to comply	<p>Prior to the lodgement of a detailed DA, a competitive design process is required to be undertaken.</p> <p>A Design Excellence Strategy, in accordance with section 3.3.8 of the Sydney DCP 2012, and as discussed in Clause 6.21 above, is recommended to be approved as part of this concept consent.</p> <p>In accordance with Clause 3.3.8 of Sydney DCP 2012, a revised landscape concept strategy and revised public art strategy have been submitted. These are considered to be acceptable and are recommended to be included as conditions on the consent.</p>
3.4 Hierarchy of Centres, City South	Able to comply	This is addressed in Clause 7.23 of Sydney LEP 2012 above and will be the subject of the detailed DA.

3. General Provisions	Compliance	Comment
3.5.3 Tree Management	Able to comply	<p>No tree removal is approved as part of this concept DA.</p> <p>The proposed building envelopes are likely to necessitate the removal of three trees. Tree 6 (London Plane) has a moderate retention value and tree 5 has a low retention value. These are suitable for removal and replacement planting as part of the detailed DA.</p> <p>Tree 7 (Chinese Hackberry) is 7 metres tall and considered to be an exempt species under the Sydney DCP 2012. This tree is located on the Gazcorp site to the south and is required to be removed as part of development consent D/2012/1021/F. A construction certificate for demolition and remediation has been issued.</p> <p>As such, given the tree on the neighbouring site is required to be removed as part of the neighbouring development and this development is underway, this tree is not considered to be an issue for the subject concept DA. In the event that tree 7 has not been removed prior to the detailed DA, this issue can be addressed at that time.</p>
3.6 Ecologically Sustainable Development	Able to comply	<p>The requirements under this clause will need to be demonstrated as part of the detailed DA. There are also environmental targets for the proposed development in part 8 of the design excellence strategy, which is recommended to be improved as part of this consent.</p>
3.7 Water and Flood Management	Able to comply	<p>See discussion under Clause 7.15 of Sydney LEP 2012. As part of the detailed DA, Clauses 3.7.2 and 3.7.3 of Sydney DCP 2012 will need to be addressed.</p>

3. General Provisions	Compliance	Comment
3.8 Subdivision, Strata Subdivision and Consolidation	Subject to detailed DA	No subdivision is proposed as part of this application, however subdivision will be required to excise off the 2.4m parcel of land to be dedicated to the City. This will form part of the detailed DA and conditions of that consent.
3.9 Heritage	Yes	Green Square School, which is a locally listed heritage item under Sydney LEP 2012, is located opposite the site on Botany Road. It is visually and physically well separated from the subject site across a wide road. There are also large trees present that obscures the visibility of the school from Botany Road.
3.11 Transport and Parking	Able to comply	<p>As the gross floor area is not approved as part of the concept development consent, the exact numbers of car parking and bike parking cannot be determined. Notwithstanding this; a traffic report was submitted with this application.</p> <p>The traffic report demonstrates that a 9.24m vehicle can enter and exit the site in a forward direction. It appears however that the applicant has proposed a clearance height less than the standard height of an MRV and Council's waste vehicle. This issue will need to be addressed as part of the detailed DA.</p> <p>In addition to this, as part of the detailed DA, the following information will need to be provided:</p> <ul style="list-style-type: none"> <li>(a) vehicle access details (including exact location and width must be supported by swept path analysis);</li> <li>(b) updated transport impact report including details about intersection performance; and</li> <li>(c) Green travel plan.</li> </ul>

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.13 Social and Environmental Responsibilities	Able to comply	This will be subject to the detailed DA.
3.14 Waste	Subject to detailed DA	A detailed waste management plan is required to be submitted as part of the detailed DA. There must be sufficient space to safely manoeuvre bins into the waste room and waste generation rates are to be calculated in accordance with the City of Sydney Water Management in New Developments.

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.2 Residential flat, commercial and mixed use developments</b>		
4.2.1 Building height	Able to comply	A maximum of nine storeys is permitted. Seven storeys plus a 1.5m services zone on the roof are proposed.
4.2.2 Building setbacks	Yes	There are no nominated building setbacks in the Sydney DCP 2012. The setbacks proposed are considered to appropriately respond to the site context and surrounding development, and are discussed further in the issues section below.

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3 Amenity	Yes	<p>The proposed development will result in a reasonable level of amenity for the occupants of the building and adjoining sites. An area of 10% for deep soil has been provided for in the concept plans and a landscape concept strategy has been submitted, which will form a condition on the consent.</p> <p>The proposed massing and setbacks are considered to be acceptable. The proposed envelopes will not unreasonably overshadow adjoining properties.</p> <p>The setbacks proposed are discussed further in the issues section below and conditions are recommended to ensure that the competitive design brief and detailed DA consider and mitigate any privacy and amenity issues created by way of the neighbouring building having habitable openings on and close to the boundary.</p>
4.2.4 Fine grain, architectural diversity and articulation	Able to comply	The proposed scale and massing of the building is considered to be comparable to existing and planned development in the surrounding locality. Detailed design elements and building articulation will form part of the detailed DA.
4.2.6 Waste and Recycling Management	Subject to detailed DA	A detailed waste management plan showing compliance with this control will need to be submitted, and adequate space in accordance with this control will need to be provided for in the detailed DA.

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Able to comply	The proposal will be compatible with adjoining residential development. The acceptability of the setbacks is discussed in the issues section below. Vehicular access is from Wyndham Street, which is similar to the current arrangement is considered acceptable. Other impacts of the development are able to be managed through conditions on the detailed DA consent.

5. Specific Areas  Green Square	Compliance	Comment
5.2.3 Community infrastructure	Yes	<p>The proposal relies on the additional 1.5:1 community infrastructure floor space. A public benefit offer was submitted by the applicant to access this floor space.</p> <p>This offer will contribute to the delivery of community infrastructure for Green Square through the dedication of 2.4m of land along Botany Road for footpath widening, public domain works and a monetary contribution.</p>
5.2.7 Stormwater management and waterways	Able to comply	This is addressed above in Clause 7.15 of Sydney LEP 2012 and in Section 3.7 of Sydney DCP 2012.
5.2.7.2 Water sensitive urban design	Able to comply	As part of the detailed DA, the stormwater design/report for the proposed development is required to comply with Council's adopted MUSIC Link model. The certificate/report from the MUSIC Link model and the electronic copy of MUSIC Model are required to be submitted as part of the detailed DA.

## Issues

### Setbacks to adjoining building at 6 Mandible Street

40. The neighbouring building at 6 Mandible Street has a nil setback its eastern boundary and a 3.5m setback to its southern boundary. The nil setback adjoins with the western side boundary of the subject development. The existing site condition is shown in the figure below.



**Figure 31:** Existing relationship between the subject building and the neighbouring building at 6 Mandible Street

### *History of approval*

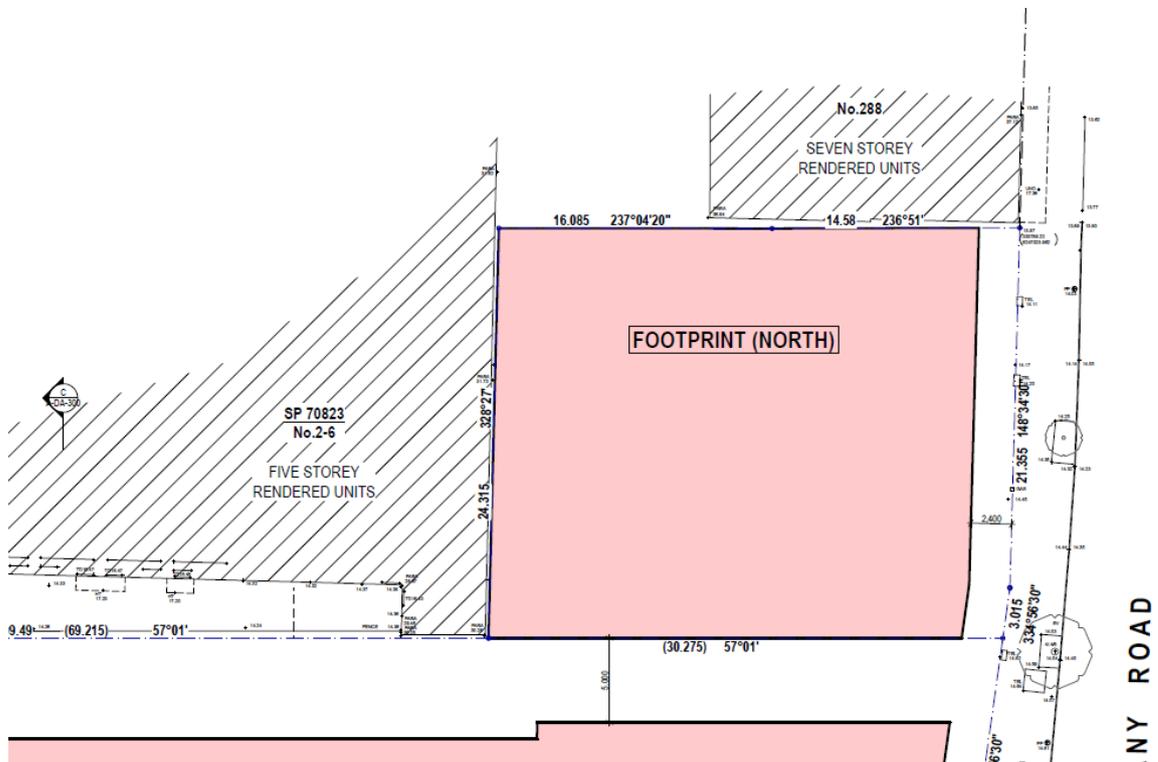
41. The neighbouring building at 6 Mandible Street was approved on 21 November 2001 pursuant to DA U01/00496 by South Sydney Council.

42. There are some discrepancies between the application drawings and the as built development. In particular;
  - (a) The plans show a zero setback on the southern boundary, however the building as built is setback approximately 3.5m from the southern boundary.
  - (b) The RLs on the existing plans for 2-6 Mandible Street also do not line up exactly with the RLs on the applicants survey.

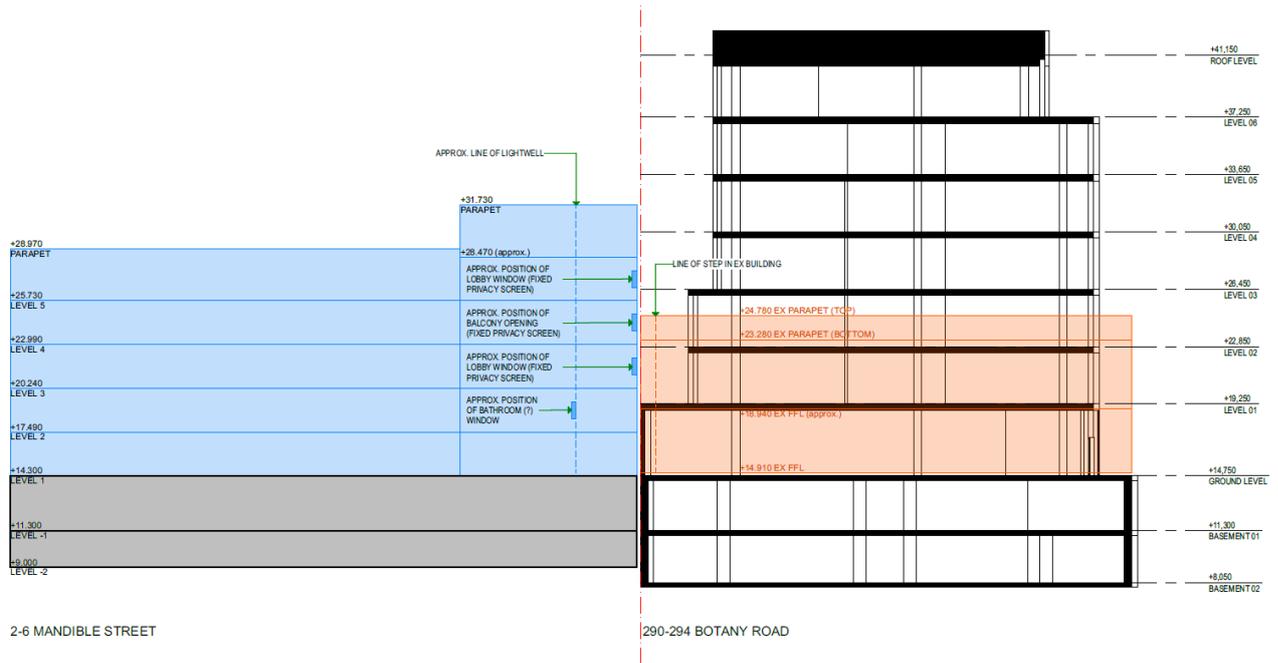
**Eastern/western boundary interface**

*Ground floor - nil setback*

43. The building envelope proposes a nil setback on the ground floor along the western boundary. This nil setback aligns with the ground floor and half of level 1 of the building at 6 Mandible Street, as per figure 33.



**Figure 32:** Proposed ground floor envelope



**Figure 33:** Section showing existing building at 6 Mandible Street, the existing development and the proposed envelope

- 44. Based on the site visit and the plans on file, there does not appear to be any habitable openings on the ground floor of 6 Mandible Street.
- 45. The only opening on the ground floor plan which will be impacted by this development is a light well to a lobby area. This is shown in the image below. Given this lobby is accessed from the ground floor of the internal courtyard and has access to light and air (when the door is open) it is considered reasonable to have an envelope extending to the boundary in this location.



**Figure 34:** Existing light well open to the sky and side boundary at 6 Mandible Street



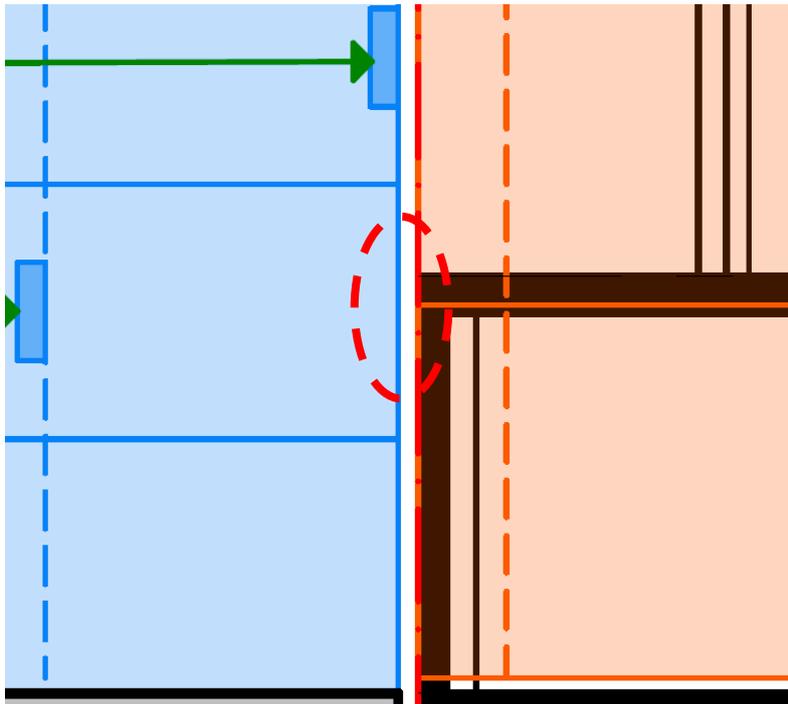
**Figure 35:** View of existing light well open to sky and side boundary from inside 6 Mandible Street

46. When the level 1 floor plan available in the DA file and the proposed ground floor plan are stitched together, it appears that intended balcony areas intersect with the subject development. The red circles in figure below indicate where the areas intersect.



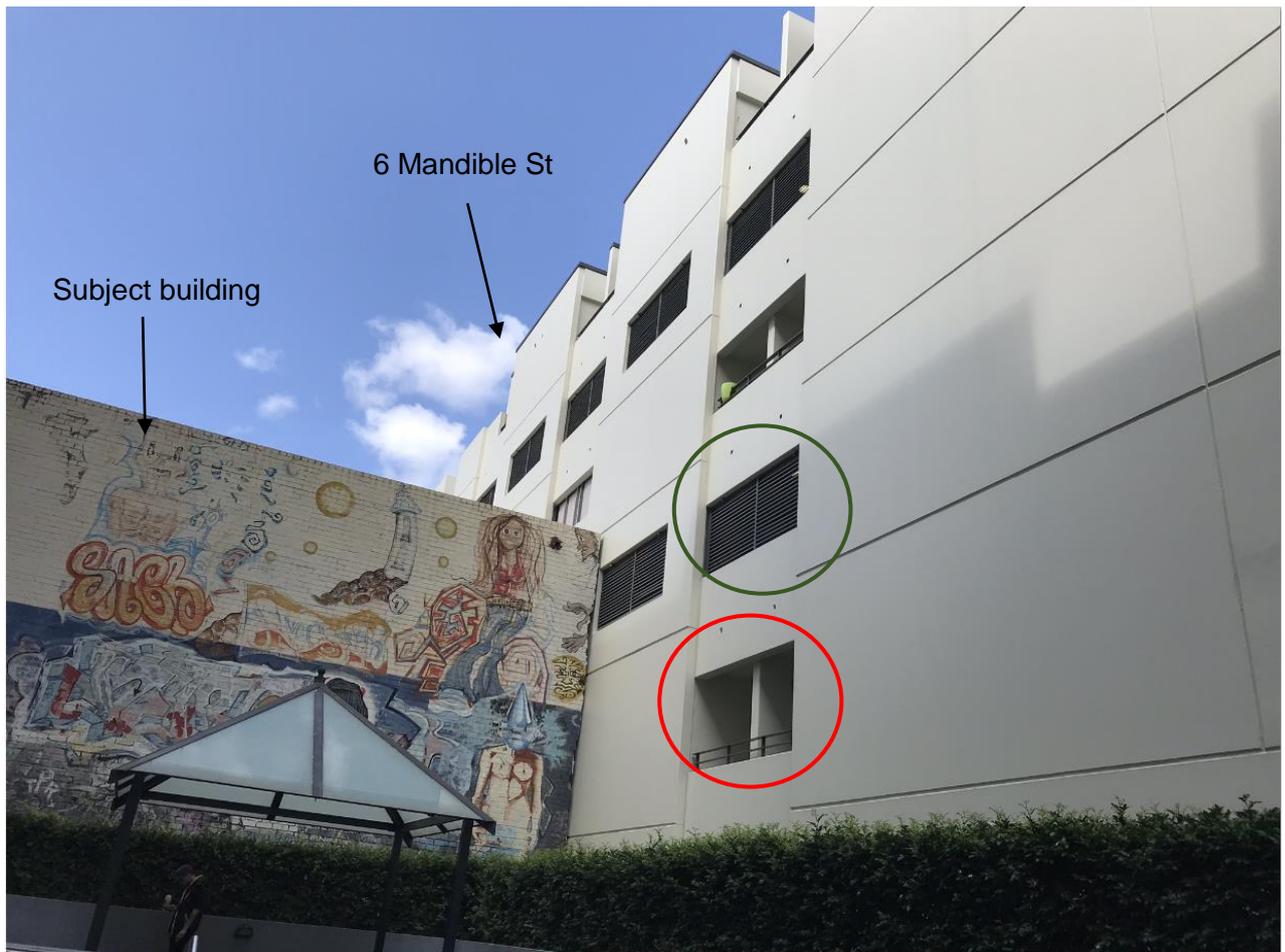
**Figure 36:** Relationship between level 1 floor plan of 6 Mandible Street and proposed ground floor envelope

47. The below section shows how the nil setback relates vertically to level 1. That is, the proposed envelope only goes up half of that floor level.



**Figure 37:** Section showing half of level 1 at 6 Mandible Street being enclosed by proposed ground floor nil setback.

48. On the first and second floor, as per the site visit, there is presently a set in panels and openings to corridors at 6 Mandible Street which are covered by the existing subject building. This is shown in the pictures below.



**Figure 38:** East/west boundary between existing development and neighbouring development at 6 Mandible Street. The red circle is the same level as the picture at figure 39, and the green circle is the same level as the picture at figure 40.



**Figure 39:** Existing relationship between subject site and neighbouring development at 6 Mandible Street. This is the same level as the red circle in figure 38.

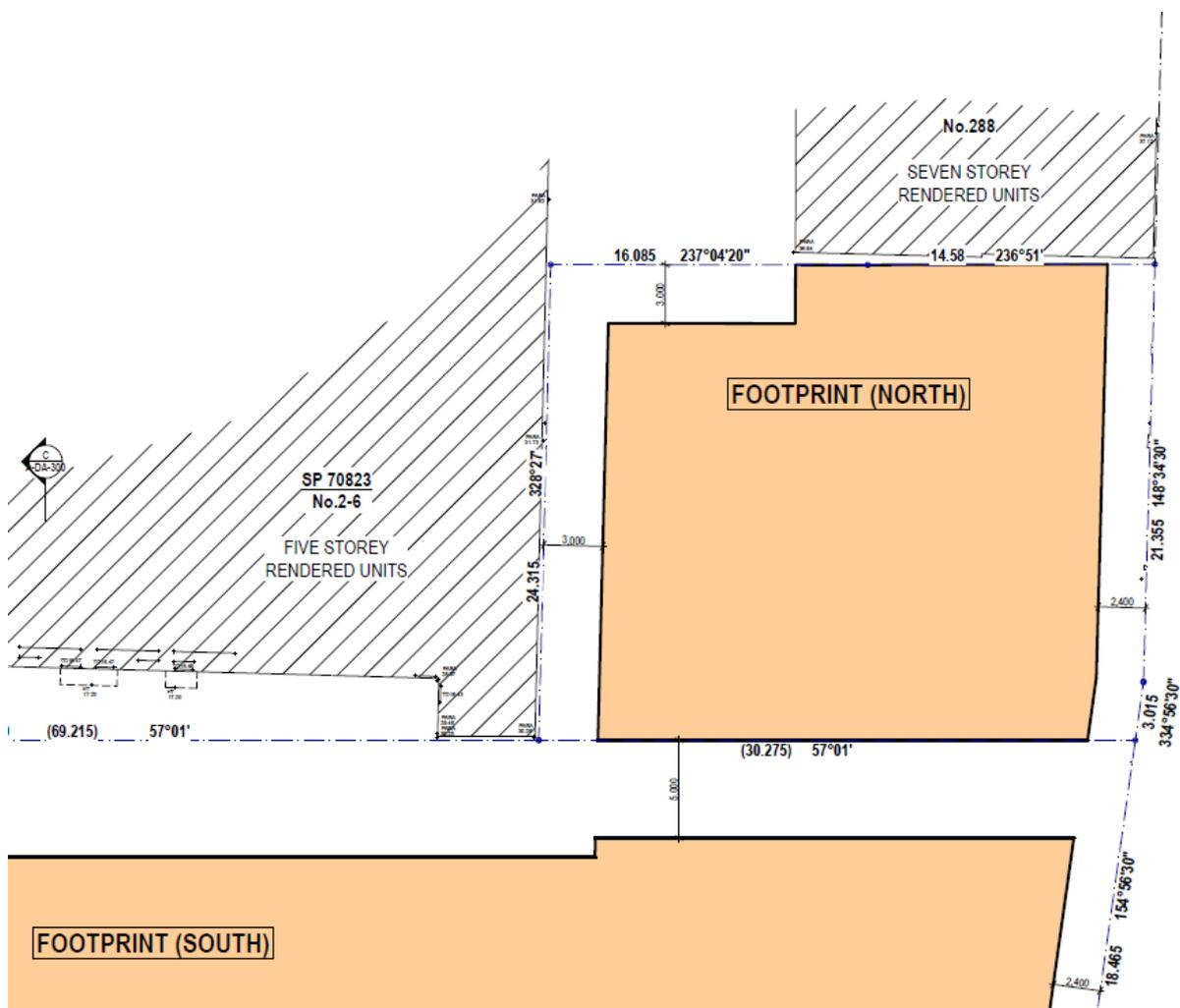


**Figure 40:** Existing relationship between subject building and building at 6 Mandible Street. This the same level as the green circle in figure 38.

49. The report for the development at 6 Mandible Street, written in 2001 and assessed under different planning controls, says that:

- (a) The openings on the eastern elevation are into 'study' areas and are not required by the Building Code of Australia to have natural daylight or ventilation.
  - (b) Privacy and amenity are able to be achieved because dwellings are orientated such that living rooms and private open spaces face into the internal courtyard.
50. Based on the above photos and documentation, it appears that the two red circled areas at figure 36 were intended as openings to habitable spaces. However these were never built as habitable openings and are covered by the existing building.
51. As such, it is considered that these apartments at 6 Mandible Street are orientated to the internal courtyard, were not designed to rely on these openings and do not appear to have been built as habitable openings. Therefore, it is considered that the proposed ground floor nil setback will not have any additional impact and is therefore acceptable.

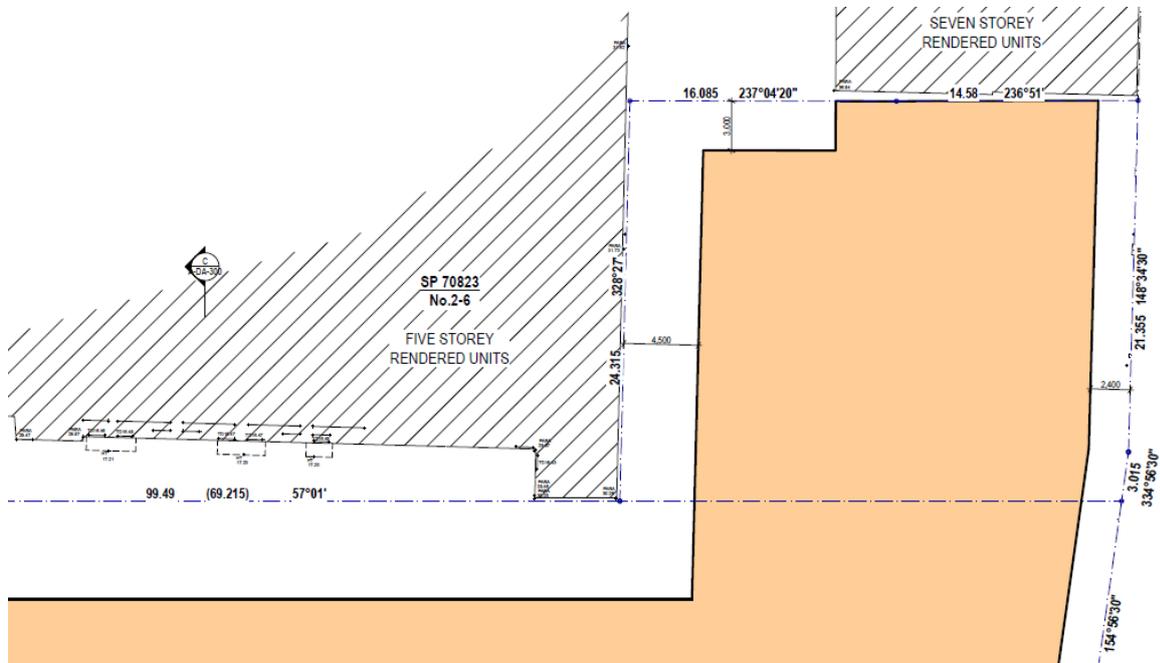
**First and second floor setbacks**



**Figure 41:** Proposed first and second floor plan

52. A setback of 3m is proposed for the first and second level of the northern building envelope. Given the ADG says that the minimum setback distance for non-habitable rooms is 3 metres, this setback is considered to be reasonable. This setback will improve the amenity of levels 2 and 3, and subject to detailed design conditions to mitigate potential overlooking, is acceptable.

**Levels 3 to 7 setbacks**



**Figure 42:** Proposed levels 3 to 7 setbacks

53. A setback of 4.5m is proposed for levels 3 to 7 of the northern building. Given the ADG says that the minimum setback distance for non-habitable rooms between 5 to 8 storeys is 4.5 metres, this setback is considered to be reasonable.

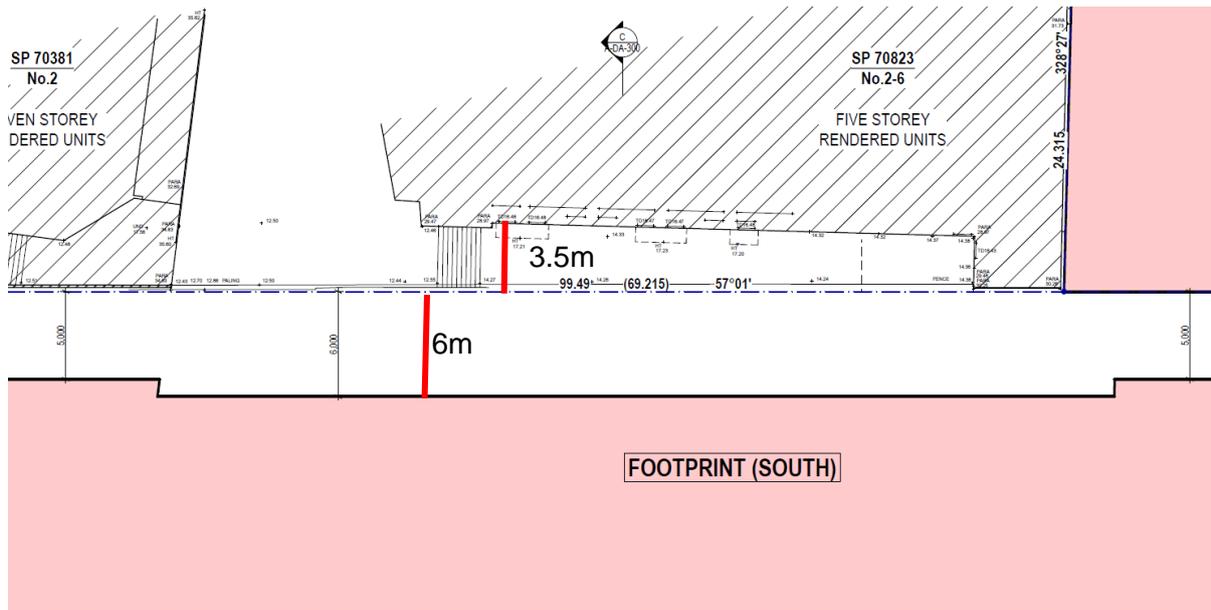
**Northern/southern boundary interface**

54. The residential flat building to the east of the site at 6 Mandible has an approximate 3.5m setback to its southern side boundary and has habitable openings on this boundary. This is shown in the figure below.



**Figure 43:** Southern facade of 6 Mandible Street. It is assumed that these are bathroom and corridor windows. Small balconies are also present at the western end of the facade.

55. The setback proposed from the sites northern side boundary is considered to be acceptable, subject to conditions, for the following reasons:
- (a) As per the figure 44 below, there is a 6m separation distance between the boundary and the proposed envelope (9.5m between buildings). This 6m separation distance is proposed for all seven storeys of the building in this location.
  - (b) The 6 metre setback on the ground floor is where the deep soil area is located, and as per the landscape concept plan, provides the opportunity for taller species to provide amenity.

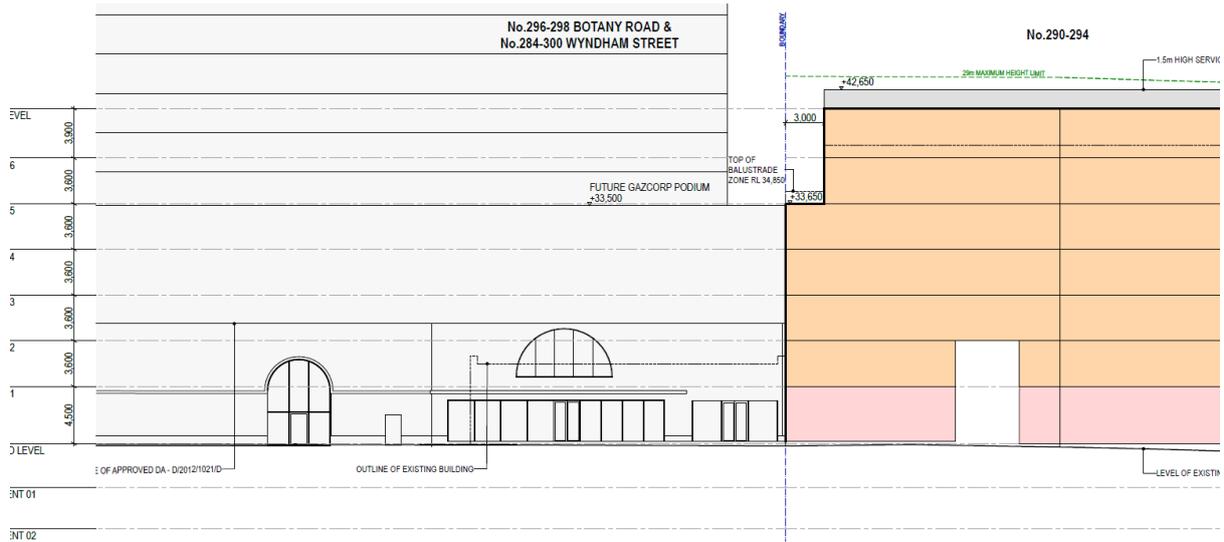


**Figure 44:** Proposed ground floor envelope

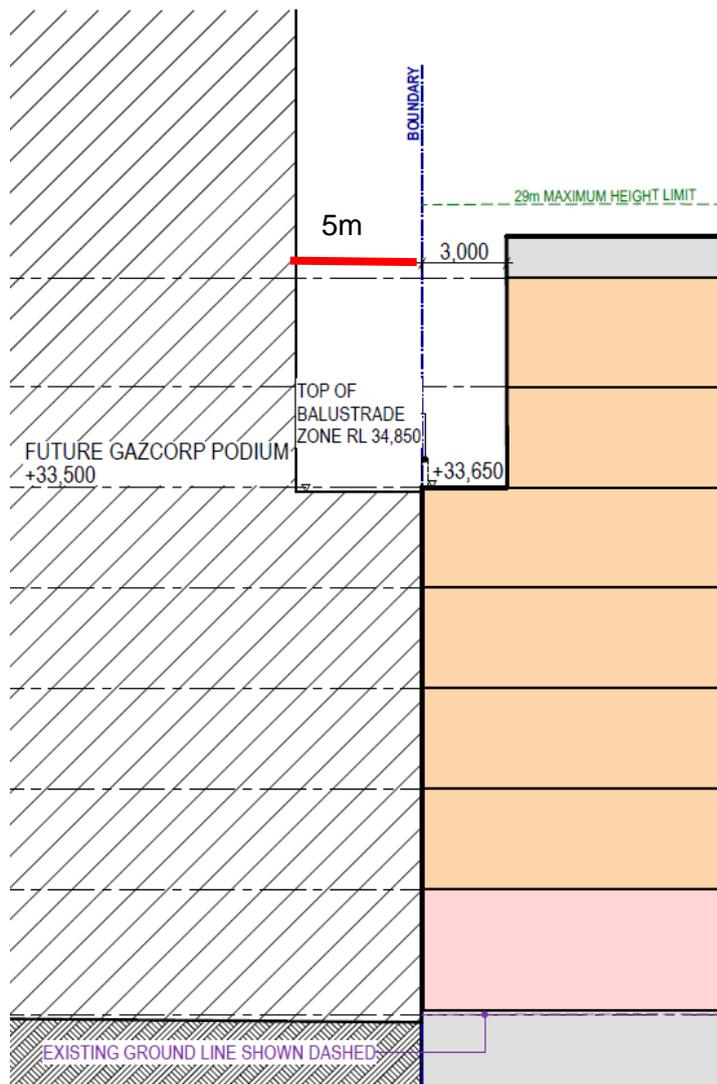
- (c) The apartment design guide (ADG) says that for non-habitable rooms between five and eight storeys, the separation from the boundary should be 4.5 metres. While there are habitable openings on the southern facing facade (as per figure 31 above), given the proposed development is setback in excess of the minimum requirements in the ADG, the setback from this boundary is considered to be reasonable.
- (d) Design elements of the detailed DA should ensure that direct overlooking is mitigated by facade and fenestration treatments, and this is recommended to be included as a condition on the consent, and included in the design brief for the detailed DA.

#### ***Side setbacks above podium height***

56. A 3 metre setback from the southern boundary is proposed above the podium height on the subject site. A 5 metre setback is proposed for the southern site above the podium height in the envelopes in the Sydney DCP 2012. This is shown in the figures below.



**Figure 45:** Relationship between subject development and adjoining site



**Figure 46:** Proposed section showing relationship of setbacks above the podium

57. The indicative land use in the tower is residential. As such, there is proposed to be 8 metres separation between the two envelopes. This is considered to be acceptable as:
- (a) As a reference, the Sydney DCP 2012 at Section 5.1.2.2, says that for tall buildings in Central Sydney, the minimum setback from the boundary above podium height is 3 metres. This is consistent with what is being proposed on both the northern and southern side boundaries for the proposed development, and will create an appropriate rhythm in the Botany Road street frontage.
  - (b) The ADG says (at Section 3F) the minimum setback for non-habitable rooms is 4.5m and for habitable rooms is 9m for at 5-8 storeys. Given that the residential tower envelope for the site to the south has a setback of only 5 metres, it is likely that if this envelope is developed to its maximum extremities, this facade will likely be non-habitable. This assumption is consistent with the photomontage of the southern site in the planning proposal, including in the figure below.



**Figure 47:** Photomontage included in the urban design report attached to the planning proposal for the site to the south

- (c) The subject site itself is only 18.4m wide at the Wyndham Street frontage. A 3 metre setback to the southern side boundary results in a floor plate with a width of 9.4 metres and 12.4 metres. This is shown in the figure below. The requirement to setback any further than the proposed 3 metres will result in floor plates which are narrow and unusable. This site is considered to be constrained and any further requirement for additional setbacks are not considered to be reasonable.

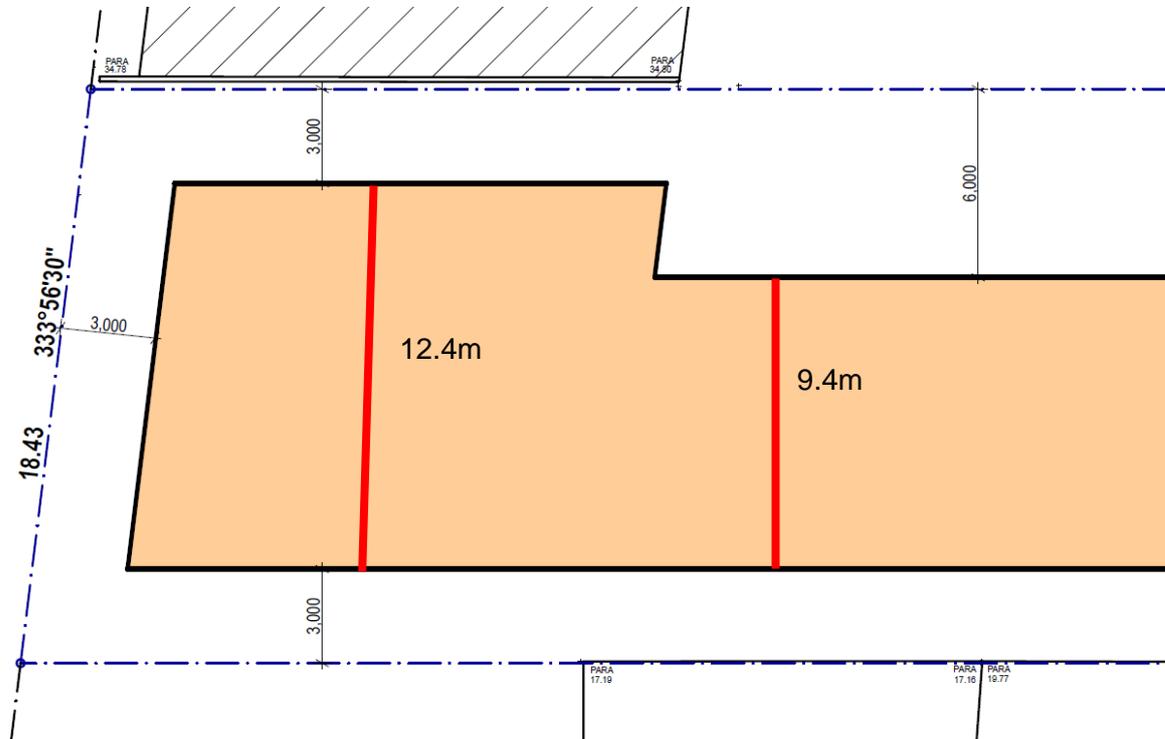


Figure 48: Proposed level 7

### Other Impacts of the Development

58. The proposed development is capable of complying with the BCA.

### Suitability of the site for the Development

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

### Internal Referrals

60. The conditions of other sections of Council have been included in the proposed conditions. Where applicable, comments have been discussed above and conditions are recommended to be included in the consent.

### External Referrals

### Notification, Advertising and Delegation

61. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised.

62. As such the application was required to be notified and advertised for a period of 28 days. However, as per the Environmental Planning and Assessment Regulations 2000, the notification was extended over the holiday period, and the application was notified between 19 December 2018 and 6 February 2019. As a result of this notification there were three submissions received. These submissions raised the following concerns:

- (a) Concern about the height of the building and potential overshadowing and overlooking of Green Square School. The height of the building should be five storeys.

**Response** - The proposed height of the building is consistent with the permitted height in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012. The proposed envelope will not unreasonably overshadow Green Square School.

- (b) Loss of sunlight to adjoining residential development.

**Response** - The proposed envelope is generally located south of the adjoining residential development. As such, the proposed envelope is not considered to unreasonably impact on the sunlight available to adjoining residential development.

The portion of the development which is located east of the neighbouring development at 6 Mandible Street will impact on sunlight currently available to the upper levels of the eastern facing windows in the morning. However, these windows are located on the boundary, have their primary living areas facing west and overall the amenity of these units will improve as a result of this development.

- (c) Impact of construction on neighbouring residential development, including financial loss.

**Response** - This is a concept DA and no works are approved under this consent. Conditions will be put on any subsequent concept DA to mitigate any unreasonable impacts of construction.

- (d) Do not see the need for more residential apartments given oversupply in area and existing traffic problems

**Response** - The proposal is for retail and office use, not residential use. The potential traffic implications are considered acceptable for this concept application. The actual number of car parking spaces and therefore traffic implications will be assessed as part of the detailed design DA.

### Public Interest

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

**S7.11 Contribution**

64. Section 7.11 contributions will form part of the detailed DA.

**Affordable housing contribution**

65. Affordable housing contributions will form part of the detailed DA.

**Relevant Legislation**

66. Environmental Planning and Assessment Act 1979, Roads Acts 1993, Sydney Airport Referral Act 1996 and Commonwealth Airports Act 1996

**Conclusion**

67. The proposal seeks consent for concept approval one building envelope with a maximum height of 29 metres. The proposed envelope has been reference tested to accommodate up to a total appropriate gross floor area of 9,860.2sqm or an FSR of up to 3.85:1. The proposal seeks consent for indicative retail, commercial and office uses, two levels of basement and indicative vehicular access from Wyndham Street.
68. The proposal is reliant on the provision of community infrastructure floor space pursuant to Clause 6.14 of Sydney LEP 2012. The applicant has made a public benefit offer for the dedication of land, public domain works and a monetary contribution. A draft VPA has been publicly exhibited and no submissions have been received. A deferred commencement condition is recommended to enable the draft VPA to be executed and registered on title.
69. The proposed form and massing are considered acceptable. The street frontage heights match the adjoining development (both existing and future). The side setbacks adequately respond to the location of neighbouring development.
70. As such, it is recommended that the application be determined to allow approval subject to deferred commencement conditions.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Erin Faulkner, Senior Planner