

Item 6.**Development application: Building A 57 Ashmore Street Erskineville****File No.: D/2019/393****Summary**

Date of Submission: 23 April 2019
(Most recent amended plans submitted 16 January 2020)

Applicant/Developer/Owner: Greenland Golden Horse Investment Pty Ltd

Architect: Turner

Cost of Works: \$65,309,701

Zoning: B2 - Local Centre zone. The development is permissible with consent.

Proposal Summary: The application proposes construction of a part three, four and eight storey residential flat building with basement car parking. It is proposed to contain 173 apartments, 115 car spaces, solar panels and associated landscaping including green roofs and a green wall. Public domain works, executed under an approved Voluntary Planning Agreement, will also be completed. Excavation was granted separate approval on 3 February 2020 for site clearing and excavation under development consent D/2019/307.

This is a detailed design development application in accordance with concept development application D/2015/966/C (which is presented to the Central Sydney Planning Committee (CSPC) concurrently with the subject application). The part of the site to which this application relates is known as 'Block A' and is the second phase of the overall development.

D/2015/966/C proposes to amend the existing concept approval by increasing the various approved heights of the Block A building envelope. Subject to approval of D/2015/966/C, the subject application will be consistent with the concept development consent.

A competitive design alternatives process has been held with Turner Architects selected as the winning scheme. The proposal is generally consistent with the scheme and the recommendations of the competitive design process selection panel recommendations.

Revised plans have been submitted which have in summary setback a portion of the fourth storey fronting Ashmore Street and Kooka Walk; reduced the westward lateral extension of the eighth storey along Ashmore Street; provided a setback to the eighth storey fronting Foundry Street and Stovemaker Lane, relocated and reduced the size of the roof top communal open space and included a green roof to the fourth storey roof; reduced the number of apartments from 176 and the gross floor area to comply with the maximum controls; and introduced sun shading devices to windows. The application has also been amended to withdraw a request for Integrated Development consent under the Water Management Act 2000.

The proposed development exceeds the maximum 15 metre height standard by 11.85 metres (79%) as a result of the 6.3 metre lateral extension of the eighth storey westward on Ashmore Street. The development also exceeds the 27 metre height standard by 0.5 metres (1.9%) caused by lift overruns, solar panels, architectural roof features and the car park exhaust. A request to vary Clause 4.3 - the height of buildings development standard has been received in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012. The revised statement demonstrates that compliance with the standard is unreasonable and unnecessary, and there are sufficient environmental planning grounds to justify contravening the standard. Notwithstanding non-compliance with the numerical controls, the variations are consistent with the objectives of the height of buildings development standard and the B2 - Local Centre zone and are therefore in the public interest.

A design verification statement prepared by Turner Architects accompanies the application and demonstrates that the development complies with the design quality principles of the State Environmental Planning Policy No. 65 and the objectives of Parts 3 and 4 of the Apartment Design Guide.

As amended, the development achieves a high standard of architectural design, materials and detailing, with particular attention to the materials and provision of landscaping that will contribute positively to the public domain. The development achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.

The application was notified and advertised for 28 days between 3 May 2019 and 1 June 2019 in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000. Three submissions were received raising concerns regarding:

- Flooding
- Traffic and transport
- Construction traffic
- Bike storage

These concerns are addressed within the report.

The development is acceptable and recommended for approval subject to conditions of consent.

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

Development Controls:

- (i) Sydney Airport Referrals Act 1996
- (ii) Sydney Water Act 1994
- (iii) Water Management Act 2000
- (iv) State Environmental Planning Policy 55 - Remediation of Land
- (v) State Environmental Planning Policy (Infrastructure) 2007
- (vi) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vii) State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development
- (viii) Apartment Design Guide 2015
- (ix) Sydney Local Environmental Plan 2012
- (x) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Solar Access Plans
- D. Landscape Plans
- E. Clause 4.6 Variation Request
- F. Competitive Design Process Selection Panel Recommendations

Recommendation

It is resolved that:

- (A) the Central Sydney Planning Committee support the variation sought to the development standard under Clause 4.3 Height of Buildings in accordance with Clause 4.6 'Exceptions to development standards' in Sydney Local Environmental Plan 2012; and
- (B) consent be granted to Development Application No. D/2019/393 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development is permissible in the B2 – Local Centre zone and consistent with the zone objectives.
- (B) Based upon the material available to the Committee at the time of determining this application, the Committee is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012, and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 - Local Centre zone and the height of buildings development standard.
- (C) The development achieves a high standard of architectural design, materials and detailing, with particular attention to the materials and provision of landscaping that will contribute positively to the public domain. The development achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore exhibits design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012 and consent may be granted.
- (D) The development is consistent with the concept approval granted under D/2015/966/C and the VPA for public domain works.
- (E) Subject to conditions, construction impacts can be managed to mitigate impacts on the amenity of neighbouring properties.
- (F) For the reasons above, the development is in the public interest.

Background

The Site and Surrounding Development

1. The site is located within a former light industrial estate known as the 'Ashmore Estate' in Erskineville. The majority of sites within the Ashmore Estate are in the process of transitioning to a mixed use, predominantly residential area. 57 Ashmore Street (legally known as Lot 23 DP 849857) is located within the eastern half of the former estate and has frontages to both Ashmore Street and Mitchell Road. The area of the site is 37,249sqm.
2. The application relates to a portion on the north of the site fronting Ashmore Street having an area of 5,235sqm.
3. The surrounding area is mixed in built form and land use. To the west, the site directly adjoins various sites that form part of the 'Ashmore Estate'. Some of the sites are still in light industrial use, some have been developed for predominantly residential use, and others are construction sites for future predominantly residential uses. Directly adjacent to the north western corner of the site on Ashmore Street is a row of houses, which are predominantly single storey and of a workers cottage typology. Directly to the north of the site is the Erskineville Public Housing Estate, the Alexandria Erskineville Bowling Club and Erskineville Oval. To the east are approved but not yet constructed mixed use and residential flat buildings (known as Buildings B and C). Directly to the south, at 165-175 Mitchell Road, the site remains in use for light industrial and commercial uses, however a public park, to be known as McPherson Park, is proposed in this location.
4. The site is not a heritage item nor is it located in a heritage conservation area. Notwithstanding this, the Malcolm Estate Conservation Area (C24) is located to the west and the Erskineville Estate Conservation Area (C22) to the north. There are several street trees adjoining the site.
5. In the wider Sydney context, the site is located 2.25km south west of the Sydney Central Business District. The northern frontage of the site is located 590m walking distance from Erskineville Railway Station. The site is approximately 1km north-east of the proposed WestConnex interchange at St. Peters. Sydney Park is in close proximity to the south.

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



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: The application regards Building A which is located at the northern end of the site fronting Ashmore Street.



Figure 3: The site viewed from the intersection of Fox Avenue and Ashmore Street, looking southwest.



Figure 4: A view of the site from Ashmore Street, west of the site with Buildings B and C under construction in the background. The future Kooka Walk will separate the development from the existing terrace housing and conservation area, to the right of the photo.



Figure 5: A view from further west along Ashmore Street looking towards the site.



Figure 6: A view from inside the site, looking northwest towards the Erskineville public housing estate.



Figure 7: A view from inside the site, looking northeast towards Erskineville Oval.

Proposal

7. The application seeks consent for the construction of a residential flat building containing 173 apartments and basement car parking. The U-shaped building will be three storeys adjacent to Ashore Street and the future Kooka Walk, four storeys fronting Ashmore Street and eight storeys fronting Foundry Street and Stovemaker Lane.

(a) **Basement**

- (i) Resident parking for 115 vehicles
- (ii) Two service vehicle parking bays
- (iii) Resident bike parking for 162 units
- (iv) Residential storage
- (v) Waste storage
- (vi) Plant and OSD tank

(b) **Ground Floor**

- (i) 23 apartments (1 x studio, 9 x 1 bed, 11 x 2 bed and 2 x 3 bed)
- (ii) Communal open space

- (iii) Communal kitchen and music room
 - (iv) Visitor bike parking
 - (v) Substation
- (c) **Levels 1 - 7**
- (i) 150 residential apartments (15 x studio, 45 x 1 bed, 76 x 2 bed and 14 x 3 bed)
 - (ii) Roof top communal open space and green roof
 - (iii) Roof top plant and solar panels
8. The development also proposes construction of footpaths to Kooka Walk, Foundry Street and the full width of Stovemaker Lane, which includes a cycleway. The land will be dedicated to the City.
9. Plans of the proposed development are provided below.



Figure 8: Artist's render of the north and east elevations from Fox Avenue and Ashmore Street looking southwest.



Figure 9: Artist's render of the south elevation viewed from the future McPherson Park and Foundry Street.



Figure 10: Ground floor plan.



Figure 11: Level 3.



Figure 12: Level 6.

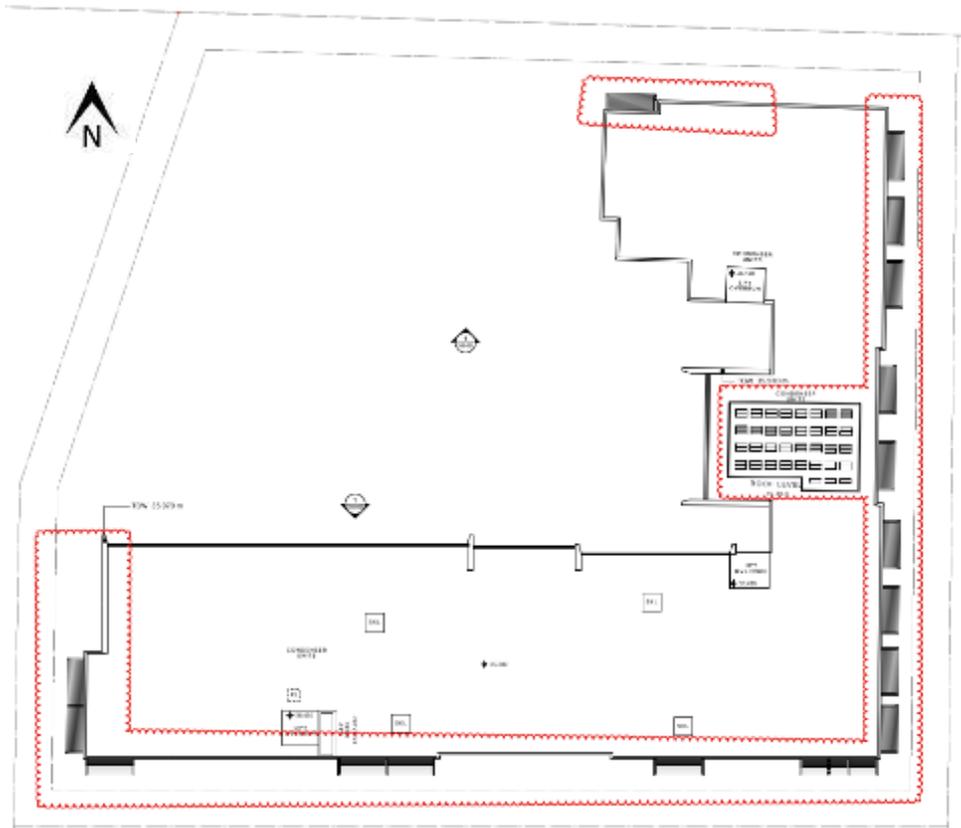


Figure 13: Roof plan.



Figure 14: North elevation (Ashmore Street).



Figure 15: Section B and internal north elevation.

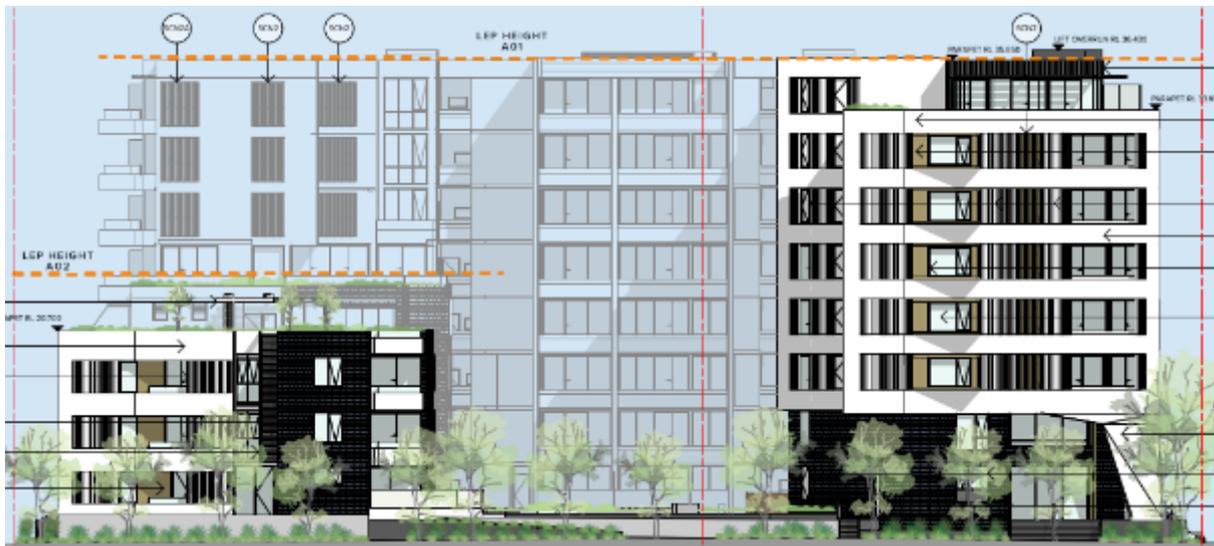


Figure 16: West elevation (Kooka Walk).

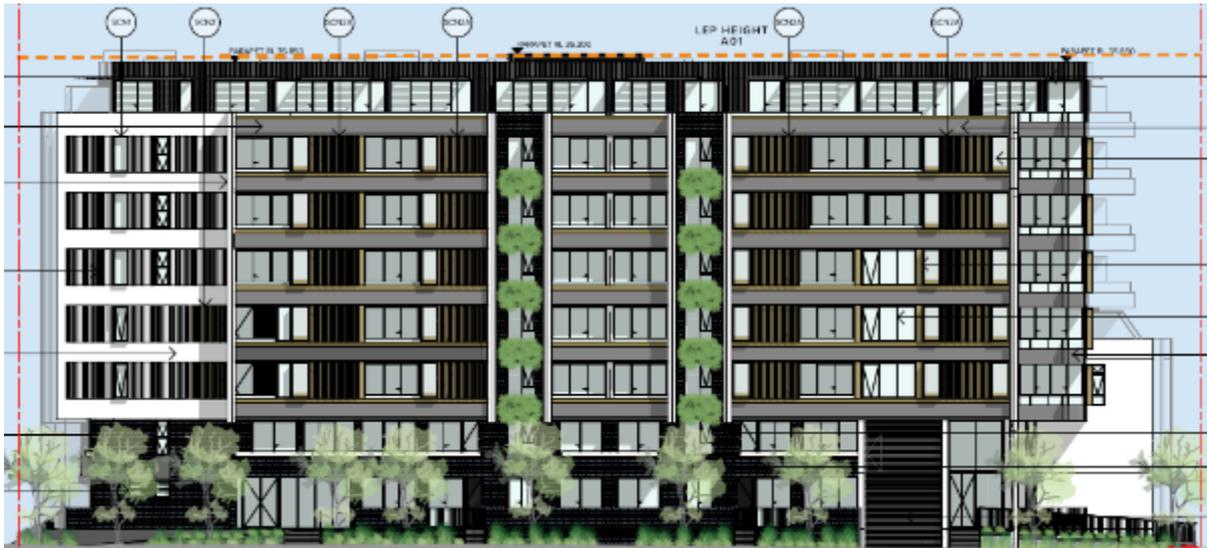


Figure 17: East elevation (Foundry Street).



Figure 18: South elevation (Stovemaker Lane).



Figure 19: A revised photomontage of the public art to be located fronting Stovemaker Lane - sculpture by Lucy Simpson.

History Relevant to the Development Application

Concept Approval

10. On 17 November 2016, development consent D/2015/966 was granted by the Central Sydney Planning Committee for concept approval regarding the redevelopment of the eastern portion of the Ashmore Estate, as a mixed use precinct including residential, commercial and recreation uses.
11. The proposal included building envelopes for nine development blocks ranging in height between two and eight storeys and concept design for public domain works including new streets, a 7,446sqm park, and new trunk drainage. These works are subject to a Voluntary Planning Agreement (VPA).
12. The CSPC delegated authority to the Chief Executive Officer (CEO) to determine the application following the completion of the public exhibition of the VPA. The CEO determined the application on 3 March 2017, subject to deferred commencement conditions requiring the VPA to be registered on title and for the building envelopes to be modified.
13. The deferred commencement conditions were satisfied on 18 October 2017, and the development consent is now active.

14. The application has subsequently been amended (Modifications A and B) including the following:
 - (a) Increase the height in storeys of Block B from five and seven storeys to six and eight storeys, and increase the street wall fronting Ashmore Street from three to four storeys.
 - (b) Increase the height in storeys and building envelopes of Block C fronting Stovemaker Lane and Mitchell Road from three storeys to four storeys.
 - (c) Increase the overall height in metres of Buildings B and C to accommodate lift overruns.
15. Modification C proposes modifying the approved building envelopes for Buildings A and D to ensure consistency with the detailed design applications. This application is presented to the CSPC concurrently for determination.

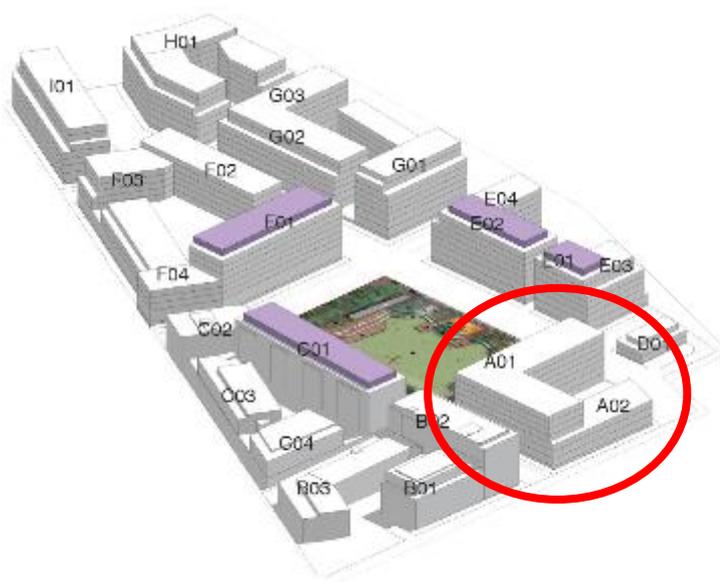


Figure 20: Existing axonometric concept plan with Block A circled in red.

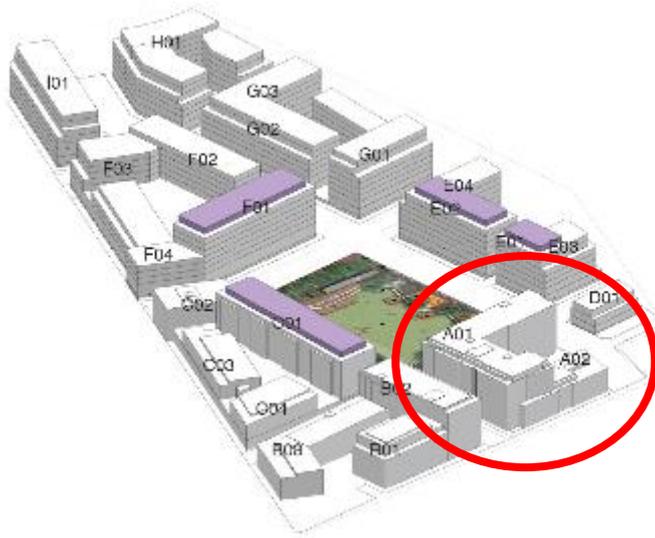


Figure 21: Proposed axonometric concept plan with Block A circled in red.



Figure 22: Approved maximum height in storeys diagram



Figure 23: Proposed maximum height in storeys diagram

Buildings B and C

16. On 22 December 2017, development consent D/2017/1425 was granted for early works including demolition and excavation to accommodate one level basement.
17. On 15 February 2018, deferred commencement consent D/2017/681 was granted by the CSPC for construction of a four to eight storey residential flat building (Block B) providing 157 dwellings, construction of a four to eight storey mixed use development (Block C) providing 171 dwellings, ground floor retail, and centre-based childcare facility, and construction of one shared basement level, landscaping and public domain works. The consent was made active on 5 December 2019 and construction has commenced.
18. The development has subsequently been amended however these amendments are not significant to the subject application.



Figure 24: An elevation plan of Building B fronting Ashmore Street.



Figure 25: An artist's render of Building C viewed from McPherson Park.

Building D

19. Development application D/2019/291 proposes construction of six x three storey terrace dwellings and public domain works including construction of Metters Street, Coppersmith Lane and Kooka Walk north. The application is due to be presented to the Local Planning Panel.



Figure 26: An artist's render of the terraces fronting Metters Street

Competitive Design Process

20. The applicant has undertaken a competitive design alternatives process prior to submitting the subject application in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012 and the City's Competitive Design Policy 2013. The competition was held in accordance with the Design Excellence Strategy approved under D/2015/966 and included three joint entries - made up of an established architect to design Building A and an emerging architect to design Building D. Of the three entries received, the joint entry by Turner (Building A) and Andrew Burns Architecture (Building D) was announced as the winner.
21. A copy of the competitive design alternatives report, including the selection panel recommendations, is provided at attachment F. A selection of the winning scheme's images regarding Building D presented during the competitive design process is provided below:



Figure 27: North and east elevations (Ashmore Street and Foundry Street)



Figure 28: East and south elevations (Metters Street/Stovemaker Lane and Kooka Walk)



Figure 29: South elevation (McPherson Park and Stovemaker Lane)

Design Modifications

22. Amended plans and documentation were submitted, most recently on 16 January 2020 in response to concerns raised by City staff, resulting in the following design modifications:
 - (a) Setting back the fourth storey from Kooka Walk and Ashmore Street
 - (b) Setting back the eighth storey fronting Foundry Street and Stovemaker Lane
 - (c) Reducing the number of apartments from 178 to 173
 - (d) Reducing the gross floor area to comply with the maximum controls
 - (e) Relocating and reducing the size of the roof top communal open space fronting Ashmore Street
 - (f) Alterations to balconies, fenestration, sun shading and architectural detailing
23. The applicant has also withdrawn a request for Integrated Development approval regarding a license under the Water Management Act 2000.

Excavation and early works

24. Development consent D/2019/307 was granted on 3 February 2020, allowing for excavation and early works associated with the construction of Building A.

Economic/Social/Environmental Impacts

25. 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.

State Environmental Planning Policy No 55 - Remediation of Land

26. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

27. Excavation and remediation will be undertaken under the early works consent D/2019/307. Conditions of consent were imposed to remediate the site to satisfy SEPP 55.

State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development

28. SEPP 65 provides that in determining an application for a residential apartment development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles at Schedule 1.

29. A design verification statement prepared by Stephen Cox (NSW registration 6391) accompanies the application to address the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement therefore satisfies Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.

30. The nine design quality principles under Schedule 1 and the relevant objectives of the Apartment Design Guide are discussed below.

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

The site is located within the Ashmore Estate, an identified urban renewal site 2.7km to the south west of the Sydney CBD and is within the catchment of Erskineville Train Station. The proposal contributes to the vitality of the redevelopment area.

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

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

The Ashmore Estate is currently in transition from former industrial and warehousing uses to a mixed use local centre. The built form and scale of this proposal is compatible with that envisaged in the Concept Approval (as amended). Variations to the height of buildings development standard are discussed under the Issues heading.

(c) **Principle 3: Density**

The proposal complies with the maximum quantum of gross floor area allocated to Block A by condition 8 'Allocation of Floor Space' of D/2015/966 (as amended) and the design excellence bonus provisions of Clause 6.21 of the Sydney LEP 2012.

The building accommodates 173 apartments which is appropriate for the site given its proximity to established and proposed infrastructure, public transport, and community and recreation facilities. The proposed density responds to the future context and does not result in unacceptable levels of amenity impact for neighbouring properties or future residents.

(d) **Principle 4: Sustainability**

A condition is recommended to ensure that the development complies with the commitments contained in the BASIX certificates.

(e) **Principle 5: Landscape**

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

(f) **Principle 6: Amenity**

Compliance with amenity controls is detailed with regard to the relevant provisions of the ADG in the table below. In summary, the proposal presents an acceptable level of residential amenity for future occupants. Further discussion is provided under the Issues heading where the development does not comply with the design criteria of relevant objectives.

(g) **Principle 7: Safety**

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

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

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

Subject to design modifications discussed under the Issues heading, the development will accommodate 168 apartments and provide the following unit mix:

- (i) 6 x studio apartments (3.6%);
- (ii) 54 x 1 bedroom apartments (32.1%);
- (iii) 93 x 2 bedroom apartments (55.4%); and
- (iv) 15 x 3 bedroom apartments (8.9%).

The proposed unit mix is broadly consistent with that envisaged under the Sydney DCP 2012, however there is a minor non-compliance with the requirement for a minimum 10% of apartments to be three-bedroom. The variation is equal to between one and two fewer three-bedroom apartments than required and is therefore a minor variation. It is noted that Buildings B and C combined provided nine more three-bedroom apartments than was required and as such the overall east-Ashmore redevelopment precinct is compliant.

The amended plans include a schedule of apartments suitable for adaptable housing and compliant with the Liveable Housing Guideline's silver level universal design features.

(i) **Principle 9: Aesthetics**

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

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

31. The development is considered generally acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney DCP 2012. Consequently compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal of against the ADG is provided below.

Apartment Design Guide

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during mid-winter	Yes	Views from the sun diagrams have been provided, demonstrating that the development as amended will not adversely overshadow neighbouring properties.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	The development as amended will provide 1,137sqm of communal open space, located at ground level within the centre of the site and on level four fronting Ashmore Street. This is equal to 24.4% of the site area.

3D Communal and Public Open Space	Compliance	Comment
		Having regard to the provision of substantial public open space within the wider development, this non-compliance is considered minor in this instance and is supported.
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).	No	The communal open space at level 4 receives six hours of solar access in midwinter, however it only represents 30% of the total area of communal open space. The development self-shadows the interior communal open space for most of mid-winter. Further discussion is provided under the Issues heading.

3E Deep soil zones	Compliance	Comment
A deep soil zone of 7% of the site area is to be provided, with a minimum dimension of six metres.	Partial compliance	The requirement for deep soil is accommodated within the future McPherson Park, as approved under the Concept Approval. Notwithstanding, the development provides deep soil within the landscape setback area to accommodate tree species.

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

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms • 	Partial compliance	Apartments are generally separated in accordance with minimum separation distances. However, some internal, courtyard facing apartments that do not comply and design modifications are recommended as discussed under the Issues heading.

3F Visual Privacy	Compliance	Comment
Five to eight storeys (25 metres): <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	Partial compliance	
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	Apartment layouts are designed to locate sensitive rooms and spaces away from internal communal corridors and spaces.

3G Pedestrian access and entries	Compliance	Comment
Building entries and pedestrian access connects to and addresses the public domain	Yes	Each of the four lift cores are provided lobbies with direct access from the surrounding streets. The entries are legible and accessible.
Access, entries and pathways are accessible and easy to identify		

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.	Partial compliance	<p>Subject to design modifications, 62% of apartments achieve a minimum two hours solar access to living rooms and private open spaces in midwinter.</p> <p>74% of apartments will receive a minimum 1 hour and 45 minutes of solar access to living rooms and balconies.</p> <p>Further discussion is provided under the Issues heading.</p>

4A Solar and Daylight Access	Compliance	Comment
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Partial compliance	14% of apartments are deemed to receive no solar access during mid-winter, where skylights to living rooms are considered. Further discussion is provided under the Issues heading.
Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.	Yes	Solar access is maximised to the living rooms of two south facing apartments on level 7 with skylights. A skylight is proposed to apartment
Design incorporates shading and glare control, particularly for warmer months.	Yes	The development has been amended to provide a mix of operable and fixed sun shading to windows on the north, east and west elevations. Sun shading is also provided to the communal open roof top space. A condition of consent is recommended requiring the provision of sun shading to north and west facing balconies to further improve sun shading to habitable rooms. Operable sun shading must also be provided to the bay windows on the east elevation.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Partial compliance	Concern is raised that awning windows will not be sufficiently operable with the provision of sun shading devices, particularly those devices that are operable. Furthermore some living rooms rely on sliding doors for ventilation which causes security issues. A condition of consent is recommended requiring a window schedule that demonstrates that sufficient operable areas (and fly screens) are provided for habitable rooms.

4B Natural Ventilation	Compliance	Comment
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	Subject to design modifications discussed further under the Issues heading, 60% of apartments will achieve natural cross ventilation.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The maximum depth of cross-through apartments is 18 metres.

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

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Minimum ceiling heights in habitable rooms are 2.7 metres.
Non-habitable rooms: 2.4m	Yes	Minimum ceiling heights in non-habitable rooms are 2.4 metres. A condition of consent is recommended requiring a surveyor to certify compliance at the completion of each floor of the building.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	No	As the site is zoned B2 - Local Centre the development is recommended to provide ceiling heights of 3.3 metres at ground and first floor. The competitive design panel also recommended increased floor to floor heights at ground level. Further discussion is provided under the Issues heading.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	<p>Minimum apartment sizes comply with Objective 4D-1.</p> <p>A condition of consent is recommended to remove the bedroom walls of apartment 1.10 to comply with the definition of a studio apartment.</p>
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	Yes	<p>The development provides compliant window areas in accordance with the objective.</p>
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p>	Yes	<p>The apartment layouts ensure habitable room depths do not exceed 2.5 x the ceiling height.</p>
<p>8m maximum depth for open plan layouts.</p>	Yes	<p>The maximum depth of an apartment measured from a window does not exceed 8 metres.</p>
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	<p>Apartments are provided bedrooms and living areas in accordance with minimum recommended internal areas.</p>

4D Apartment Size and Layout	Compliance	Comment
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	
4m minimum width for cross over and cross through apartments.	Yes	Cross-through apartments are provided a minimum width of 4 metres as recommended.

4E Private Open Space and Balconies	Compliance	Comment
Studio apartments are to have a minimum balcony area of 4sqm with a minimum depth of 1m.	Partial compliance	Two apartments are not provided with balconies. Further discussion is provided under the Issues heading.
One bed apartments are to have a minimum balcony area of 8sqm with a minimum depth of 2m.	Yes	Apartments are provided balconies generally in accordance with minimum recommended dimensions and areas.
Two bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m.	Yes	
Three bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.	Yes	
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15sqm and a minimum depth of 3m.	No	Four of 23 ground floor apartments are provided less than 15sqm of private open space. Further discussion is provided under the Issues heading.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	Subject to a condition requiring the consolidation of apartments on levels 2 and 3, the development will not provide more than eight apartments from one core.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed.	Yes	Primary living and bedroom windows do not open onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	All internal circulation spaces are provided external windows.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ (Minimum 50% storage area located within unit)	Partial compliance	A condition of consent is recommended requiring a storage schedule to be provided prior to any Construction Certificate demonstrating compliance.

4Q-1 Universal design	Compliance	Comment
Developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features	Yes	A schedule of apartments is provided incorporating the Liveable Housing Guideline's silver level universal design features. A condition of consent is recommended requiring 20% of apartments to achieve compliance.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 45

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

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

- 35. Revised BASIX Certificates have been submitted (Council reference 2020/039119).
- 36. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal, with the exception of a 10,000 litre rainwater tank. Conditions are recommended ensuring the measures detailed in the BASIX certificate are implemented.

Sydney LEP 2012

- 37. The site is located within the B2 - Local Centre zone. Residential flat buildings are permissible with consent.
- 38. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	<p>The site has two maximum height standards, 15 metres for much of the site fronting Ashmore Street and 27 metres fronting Foundry Street and Stovemaker Lane.</p> <p>The development as amended proposes to exceed the maximum 15 metre height standard by 11.85 metres (79% variation) and the 27 metre height standard by 0.5 metres (1.9%). Further discussion is provided under the Issues heading.</p>

Development Control	Compliance	Comment
4.4 Floor Space Ratio	Yes	<p>The concept approval distributed the maximum permissible base GFA across each of the development blocks.</p> <p>A maximum GFA of 12,945sqm was permitted for Building A. A maximum 10% bonus may be awarded for design excellence, thereby resulting in a potential 14,239.5sqm of gross floor area.</p> <p>The development as amended proposes 13,987sqm of GFA (representing an 8% design excellence bonus).</p>
4.6 Exceptions to development standards	Yes	<p>A revised statement seeking to vary the maximum height of buildings development standard has been submitted and is supported.</p> <p>Further discussion is provided under the Issues heading.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.21 Design excellence	Yes	<p>The development proposes a high standard of architectural design in keeping with the relevant planning controls and reflecting the desired future character of the area. Amendments have been made to incorporate sun shading, reduce the height and bulk of the building and provide additional tree canopy coverage. The form and materials are compatible with the emerging character of the area, whilst providing an appropriate transition in scale to the adjacent conservation area. ESD principles have been incorporated with solar panels to the roof and the use of recycled water for landscaping. The public domain is consistent with the controls for the site and will achieve the City's standards.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<p>The development as amended has adequately addressed the relevant provisions of Clause 6.21(4).</p> <p>The development is located outside of Central Sydney, exceeds a building height of 25 metres, a site area of 5,000sqm and follows the granting of a concept approval under Clause 7.20, as required.</p> <p>A competitive design process has been held with the winning scheme for Block D designed by Turner Architects. The proposal is generally consistent with the winning scheme and has adequately addressed the recommendations of the competitive design selection panel. See the Issues heading for further discussion. The development is eligible for bonus floor space in accordance with the design excellence strategy approved given concept approval. The development therefore satisfies Clause 6.21(5).</p>

Part 7 Local Provisions - General	Compliance	Comment
7.5 Car parking ancillary to residential flat buildings	Yes	<p>The development as amended is permitted a maximum of 115 resident car spaces. The application proposes 113 spaces.</p> <p>No visitor spaces are proposed.</p> <p>Further discussion is provided under the Issues heading regarding the provision visitor spaces, car share spaces and service vehicle parking within the basement.</p>
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing class 3 Acid Sulphate Soil.</p> <p>Excavation is subject to a separate application for early works. Conditions of consent relating to Acid Sulphate Soils have been applied to that consent.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.15 Flood planning	Yes	<p>The site is identified by Council as being flood prone.</p> <p>A Flood Assessment Report was submitted with the application which determined that all entry locations satisfy Council's Flood Planning Level (FPL) requirements.</p> <p>The application has been reviewed by Council's Flooding Engineers and has been found to be acceptable.</p>
7.16 Airspace operations	Yes	<p>The approval of Sydney Airport is required as the height of the building exceeds 15.24 metres. Approval was granted on 13 May 2019.</p>
7.20 Development requiring preparation of a development control plan	Yes	<p>The proposed building is located outside of Central Sydney and exceeds 25 metres in height. The site also exceeds 5,000sqm. A site specific DCP is therefore required.</p> <p>This is a detailed design application submitted in accordance with concept approval D/2015/966. Pursuant to Section 4.23 of the EP&A Act, the concept application was submitted in lieu of a site specific development control plan to satisfy the control.</p> <p>Subject to approval of D/2015/966/C, the development is consistent with the concept approval and therefore satisfies the provisions of the control.</p>

Sydney DCP 2012

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

2.7.8 Ashmore Locality

The subject site is located in the Ashmore locality. The proposal is in keeping with the desired future character for the area and design principles of the statement. Specifically, the development:

- Ensures building heights in Ashmore transition to neighbouring conservation areas
- Introduces a permeable network of streets
- Facilitates the provision of attractive public domain works with pedestrian and cycle connections
- Facilitates the provision of high quality streetscapes capable of accommodating tree planting and water sensitive urban design measures
- Provides adequate setbacks from the public domain to provide for a strong landscape character
- Protects key panoramic views from Sydney Park to the CBD skyline

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>The proposed development will make a positive contribution to the public domain. Public Domain elements are being delivered under the terms of the VPA. Public Domain works, including roads and footpaths will be delivered in accordance with the Ashmore Public Domain Plan and to the City's specifications.</p> <p>The proposal is generally in accordance with the DCP's public domain requirements.</p> <p>The public art plan has not been finalised at the time of writing this report, however a draft has been presented to the Public Art Advisory Panel, who are generally supportive of the concept. A condition of consent is recommended requiring the finalised plan to be submitted to the City prior to the issue of above ground Construction Certificates.</p>

3. General Provisions	Compliance	Comment
3.3 Design Excellence and Competitive Design Processes	Yes	<p>A competitive design process for the site was conducted to select the project architect. The selection panel deemed the entry of Turner Architects as the design most capable of achieving design excellence.</p> <p>The proposal seeks additional floor space for the achievement of design excellence, which is supported.</p>
3.5 Urban Ecology	Yes	Conditions of consent are recommended to increase tree canopy coverage, utilise native species and consider habitats for local fauna.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	<p>The site is identified as being on flood prone land. As identified earlier in this report, the proposal has been designed to the FPL and is acceptable in terms of flood planning.</p> <p>A condition of consent is recommended, requiring a Stormwater Quality Assessment Report to be prepared prior to the issue of a construction certificate. The Report is to include the MUSIC model and must demonstrate that the development will comply with the pollutant load standards detailed in Section 3.7.3 of the DCP.</p>
3.9 Heritage	Yes	The site is not a heritage item and is not located within a heritage conservation area. However, to the north of the site is the Erskineville Estate (C22) and to the west the Malcolm Estate (C24) conservation areas.

3. General Provisions	Compliance	Comment
		<p>An addendum to the Heritage Impact Statement accompanying the application has been submitted in response to the amended plans. The development is sympathetic to the character and appearance of the conservation area through stepping down from eight storeys to four and three storeys on Ashmore Street and incorporating entries and materiality similar in nature to a terrace typology. While the overall scale of the development will have some impact on views from the conservation area, these are consistent with the desired future character of the area.</p>
3.11 Transport and Parking	Partial compliance	<p>The development provides sufficient bike parking for residents and visitors.</p> <p>Four service vehicle spaces are required for the development. Two spaces are provided.</p> <p>Two car share spaces are required. The application proposes externalising demand to Foundry Street, rather than locating within the basement.</p> <p>The development is required to provide 25 accessible car spaces. 16 spaces are proposed.</p> <p>10 motorcycle spaces are required and provided.</p> <p>25 accessible resident spaces are required, however, only 16 are proposed. Furthermore, 5% of all car spaces are required to be dedicated to accessible visitor parking. No accessible visitor spaces are proposed.</p> <p>Further discussion is provided under the Issues heading.</p>

3. General Provisions	Compliance	Comment
3.12 Accessible Design	Yes	<p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p> <p>The amended plans include adaptable apartments. A condition is recommended requiring 25 adaptable apartments (15%), consistent with the DCP requirements.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	Yes	The DCP building heights are superseded by the Concept Approval (as amended). Further discussion is provided under the Issues heading regarding compliance with the concept approval.
4.2.2 Building setbacks	Yes	The DCP setbacks are superseded by the Concept Approval (as amended), of which the proposal is generally compliant.

4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The Concept Approval building envelopes provide for buildings that exceed the maximum street frontage lengths permitted by the DCP. The detailed proposal succeeds in breaking the form by providing additional full height breaks, and by providing articulation and surface modulation where necessary.</p> <p>Strict compliance with the provisions of the DCP would result in a significant redesign of the winning scheme, which is not appropriate.</p> <p>The proposal is acceptable. A discussion of this Detailed Proposal's consistency with the Concept Approval is provided under the heading Issues.</p>
4.2.7 Heating and Cooling Infrastructure	Partial compliance	<p>A significant portion of the heating and cooling infrastructure is located on the roof, with secondary infrastructure located throughout the building.</p> <p>A condition of consent is recommended requiring all condensers to be located on the roof.</p>
4.2.8 Letterboxes	Yes	Letterboxes are provided in secure areas in lobbies or designated mail rooms.

5.5 Ashmore Neighbourhood NB: These controls have largely been superseded by the Concept Approval	Compliance	Comment
5.5.4 Accessibility and amenity in the public domain	Yes	The development maintains a minimum 60% of the total area of McPherson Park having direct solar access between 10am and 2pm at the winter solstice
5.5.8 Building layout, form and design	Yes	<p>The provisions are largely superseded by the concept approval. The form and typology of the development is generally consistent with that envisioned for Block A.</p> <p>The building will exceed the maximum 27 metre height limit with the proposed lift overruns, roof top solar PVs and plant. The protrusions are minor and will not impact views of the City skyline from Sydney Park.</p> <p>The ground conditions including the relationship between public and private domains, landscaping and fencing are generally consistent with the controls. The materials proposed are consistent with the controls and were supported by the Competitive Design Panel.</p>

Issues

Clause 4.6 request to vary a development standard

40. The site is subject to two maximum height of buildings development standards as shown in the figure below. The area fronting Ashmore Street has a maximum building height of 15 metres, with the building fronting Foundry Street and Stovemaker Lane having a maximum building height of 27 metres.

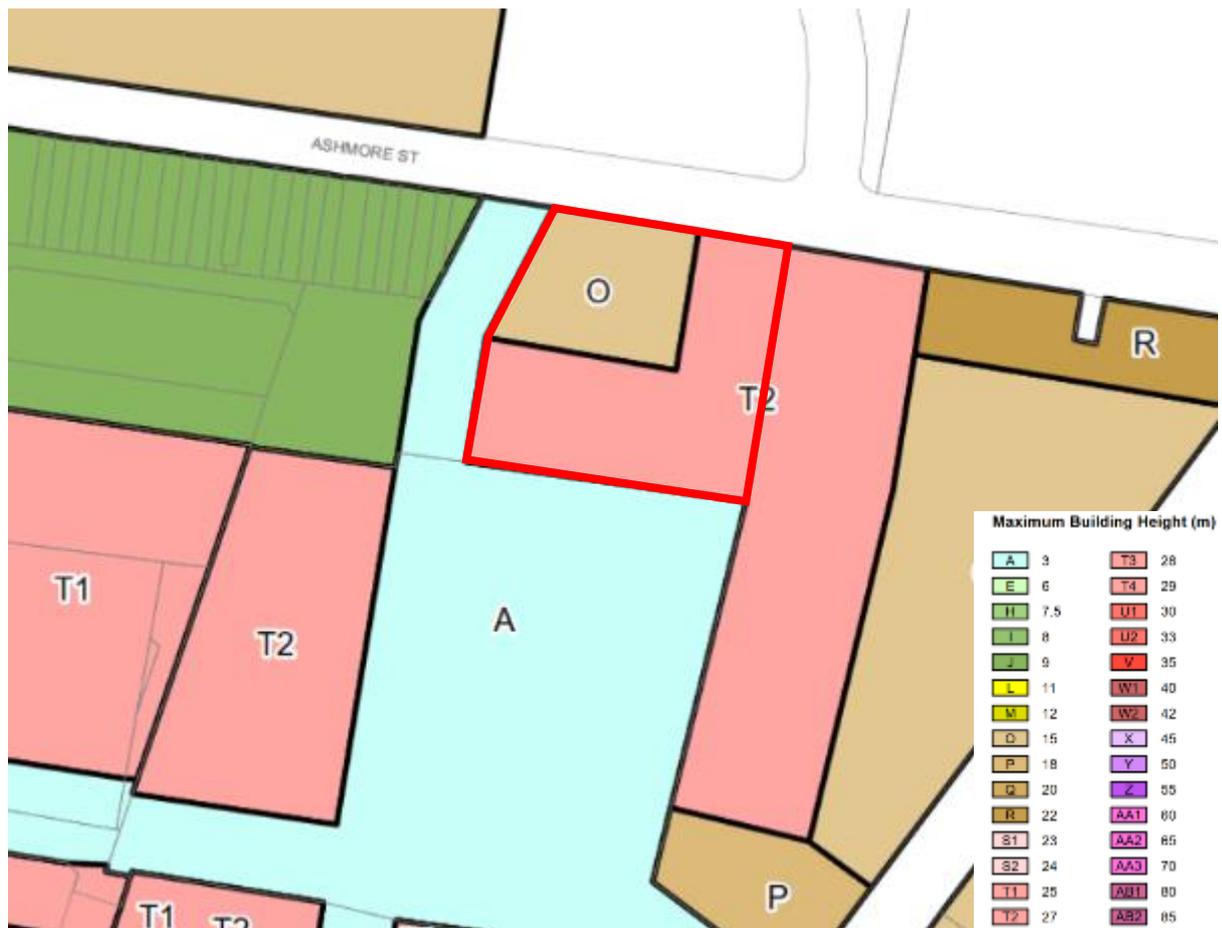


Figure 30: An extract from the height of buildings map with the site outlined in red.

41. The proposed development will exceed the maximum 15 metre height limit by 11.85 metres or 79%. This is due to the eight storey building extending laterally 5.2 metres to the west and 2.1 metres to the north as shown in the figures below.

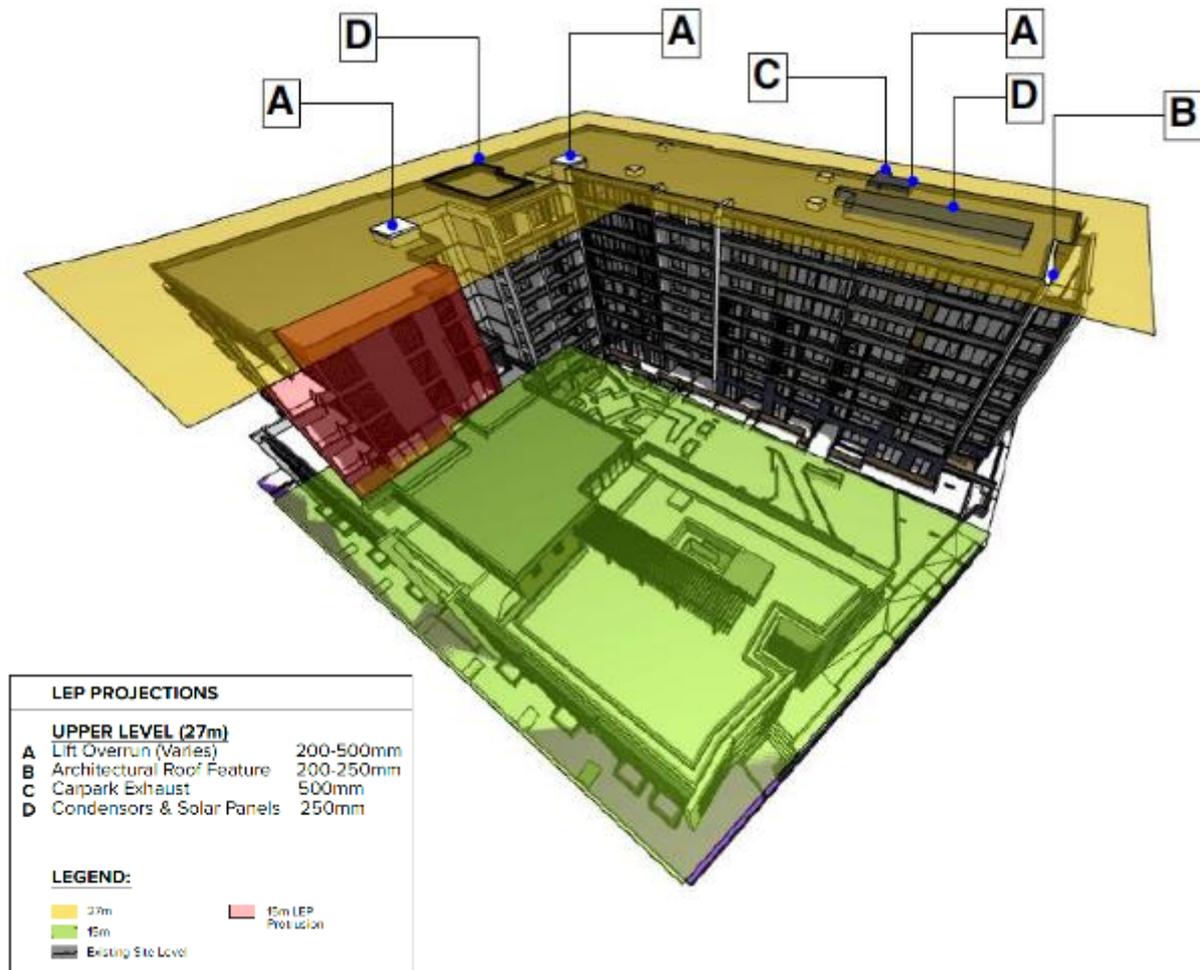


Figure 32: An axonometric diagram of the building illustrating the extent of non-compliances.

43. A revised written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.
44. A copy of the applicant's written request is provided at Attachment E.

Applicants Written Request - Clause 4.6(3)(a) and (b)

45. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

(i) The applicant has referred to *Wehbe v Pittwater*, whereby Preston CJ establishes the test for determining whether compliance with a development standard is unreasonable or unnecessary. A summary of the applicant's request and assessment is provided below.

(ii) The applicant states that the development is consistent with the objectives of Clause 4.3 - the height of buildings development standard, notwithstanding non-compliance with the numerical standard, and therefore satisfies the first test under *Wehbe*. The objectives of Clause 4.3 are provided below:

(a) to ensure the height of development is appropriate to the condition of the site and its context,

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

(c) to promote the sharing of views,

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

(e) in respect of Green Square—

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

(iii) In particular, with regard to **objective (a)**, the variations to the 27 metre height standard are minor and will be indiscernible from the surrounding area. The concentration of condensers on the roof is generally consistent with the objective of section 4.2.7 of the Sydney DCP 2012. The lift overrun, condensers, solar panels and exhaust are essential to servicing the building and requiring these elements to sit below the height standard would result in unreasonable design changes. The site is also constrained by the flood planning level, requiring the ground floor to be raised one metre which contributes to the overall height of the building.

- (iv) The lateral extension of the eight storey building into the 15 metre height standard redistributes floor space from the portion of the building fronting Ashmore Street and Kooka Walk, helping to transition towards the lower scale conservation area to the west and north. The form is consistent with that presented to and supported by the competitive design panel. The primary building line is setback six metres from Ashmore Street, reducing the bulk of the building. The development is also considered consistent with the height in storeys control under section 5.5.8 of the Sydney DCP 2012, which anticipates four storeys and eight storeys.
 - (v) With regard to **objective (b)**, the site adjoins the conservation areas to the north and west, generally characterised by single and two storey terrace dwellings. A revised Heritage Impact Statement accompanies the amended plans and demonstrates that the building respects the scale and form of the buildings characterising the conservation areas, as well as utilising appropriate materials. Any visual impact from the conservation areas is commensurate with the desired future character of the area as reflected in the planning controls.
 - (vi) With regard to objective (c), the additional height will not be visible from Sydney Park and therefore not impact on public views of the skyline. Furthermore, the lateral extension into the 15 metre height standard will not adversely impact on views from apartments within the building.
 - (vii) With regard to (d), the site is not within close proximity to the City or Green Square town centre and as such is not applicable.
 - (viii) The applicant also asserts that the development is not antipathetic to the objectives of the B2 - Local Centre zone.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:

Mass and Built Form

- (i) The lift overrun, condensers, solar panels and exhaust will result in a minor variation to the 27 metre height of building development standard and will not have an adverse impact with regards to the streetscape. As previously discussed, requiring these elements to sit below the height standard would result in unreasonable design changes.



Figure 33: The variations to the 27 metre height standard will not be readily visible from the immediately surrounding streets.

- (ii) The design has been amended to reduce the extent of variation to the 15 metre height standard, including reducing the fourth storey and relocating the roof top communal open space, and reducing the scale of the balconies and layout of apartments forming the lateral extension of the eight storey building westward. The apportionment of gross floor area across the site, compliant with that permitted under the concept approval, is sensitive both with regard to urban design and residential amenity as follows:
- The development provides a transition in scale to the adjacent conservation areas and provides visual interest in the streetscape.
 - The encroachment within the 15 metre height standard is minor compared to the overall frontage of the building subject to the standard.
 - The design, including the terrace-like typology within the lower height portion of the building, and setting the glass line back within the eight storey portion reflects the desired street wall height.
 - The balconies breaching the height standards have been reduced in scale whilst retaining the general form that contributed to the success of the scheme during the competitive design policy. This has assisted in reducing the bulk of the building.
 - The materiality, landscaping and upper level setback to the three and four storey portions of the building assist in reducing the bulk of the building and providing a transition in scale and typology.

Amenity

- (iii) The height and location of the services on the roof in breach of the 27 metre height standard are necessary to meeting the needs of residents and satisfy the relevant objectives of the EP&A Act, particularly (b) and (g) regarding sustainability and amenity. The solar panels are an energy saving measure, while as previously discussed the co-location of the condensers is generally consistent with the objective of section 4.2.7 of the Sydney DCP 2012.

Overshadowing and solar access

- (iv) The proposal overall will result in additional shadows to neighbouring properties however the areas of non-compliance will not result in adverse shadows to the detriment of residential and public amenity. The development will not result in overshadowing McPherson Park beyond what is permitted by Section 5.5.4.2 of the Sydney DCP 2012.
- (v) The extent of non-compliance does not compromise the amenity of apartments within the development with regard to solar access. The applicant asserts that 73% of apartments will receive a minimum 2 hours solar access to living rooms and balconies.

Views

- (vi) As previously discussed, the extent of the variations will not impact on public and private views, both existing and proposed.



Figure 34: The lateral extension of the eighth storey does not adversely impact the outlook of the two bedroom, north facing courtyard apartments.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

46. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

47. In demonstrating that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, the applicant has appropriately referred to the test established by Preston CJ in *Wehbe v Pittwater*. Specifically, the applicant has addressed the first part of the test by demonstrating that, notwithstanding non-compliance with the numerical standards, the development meets the objectives of Clause 4.3.
48. A detailed discussion of the applicant's submission with regard to the objectives of the height of buildings development standard has been provided and satisfies the test under Clause 4.6(3)(a), in that compliance with the standard is both unreasonable and unnecessary, to the extent of the variations proposed.
49. It is noted that Section 5.5.8.1 of the Sydney DCP 2012 refers, in brackets, to a maximum of four storeys fronting Ashmore Street, eight storeys fronting Foundry Street and eight storeys behind a five storey street wall fronting Stovemaker Lane. The applicant has argued, with reference to similar controls applying to other areas under Section 5, that this additional height is permissible where design excellence is demonstrated. Notwithstanding the building exhibits design excellence, as previously discussed, concept approval D/2015/966 has replaced the maximum permitted height in storeys under the Sydney DCP. These provisions, therefore, now carry limited weight in determining applications in the Ashmore Precinct. Future applications that seek to vary the height in storeys approved under the concept application will be assessed on their merits.

Does the written request adequately address those issues at clause 4.6(3)(b)?

50. The applicant has made reference to the recent decision of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council*, stating that strict compliance would result in a poor outcome for the site. In particular, strict compliance with the standard would compromise the function and amenity of the building with regards to the location of services and infrastructure on the roof and would not demonstrably improve compliance with numerical design criteria under the ADG. It is noted that the development complies with the maximum gross floor area permitted for Block A under the concept approval and is compatible with the emerging and desired future character of the area. The development is also consistent with the concept approval as amended.

51. The applicant has referenced the constraints of the site, the desired built form of the site and the minimal environmental impacts caused by the extent of the non-compliance to demonstrate that there are sufficient environmental planning grounds to justify contravening the height buildings development standard.
52. The ground floor has also been raised above the flood planning level to comply with the City's Interim Floodplain Management Policy which contributes to the overall height of the development.
53. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

Is the development in the public interest?

54. With regard to varying development standards, the public interest is deemed to be protected where a development meets the objectives of the zone and those of the development standard sought to be varied. As has been previously discussed, the development is consistent with the objectives of Clause 4.3 notwithstanding the variation to the numerical standard.
55. The objectives of the B2 - Local Centre zone are provided below:
 - To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - To encourage employment opportunities in accessible locations.
 - To maximise public transport patronage and encourage walking and cycling.
 - To allow appropriate residential uses so as to support the vitality of local centres.
56. With regard to the first and second objectives, the development reflects the approved concept approval which designates the site as accommodating residential dwellings. Retail, business, entertainment and community uses form part of Blocks C, F and H.
57. With regard to the third objective, the site is suitably located within walking distance of Erskineville Station and buses on Mitchell Road and Sydney Park Road. The concept approval provides retail, business, entertainment and community uses within walking distance of the site, encouraging walking and a local economy. The development provides sufficient space in the basement and adjacent to the lobbies for bike parking, and the site adjoins proposed cycle paths.
58. With regard to the fourth objective, the development is consistent with the concept approval to provide dwellings, which will support the emerging and existing local centres in the surrounding area.
59. The development as amended demonstrates that the extent of non-compliance with the height of buildings development standard is consistent with the objectives of Clause 4.3 and the B2 - Local Centre zone and is therefore in the public interest.

Conclusion

60. For the reasons provided above the requested variation to the height of building development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of building development standard and the B2 - Local Centre zone.

Solar Access

61. Objective 4A-1 requires development to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space. To satisfy the objective, the design criteria recommends a minimum 70% of apartments are provided 2 hours of solar access to living rooms and private open spaces between 9am and 3pm during the winter solstice. Furthermore, no more than 15% of apartments are to receive no solar access during midwinter.
62. The design guidance and accompanying technical note state that useable solar access that provides real benefits to residents can be measured as a minimum of 1sqm of direct sunlight 1 metre above floor level, achieved for at least 15 minutes. Applications are required to demonstrate that this measure is achieved cumulatively for two hours to both living rooms and private open spaces to meet the design criteria.
63. The applicant's solar access diagrams incorrectly identify apartments throughout the development receiving two hours solar access to both living rooms and balconies. For example, apartments fronting Foundry Street receive a maximum 1 hour 45 minutes of solar access to private open spaces (bay windows provide two hours to living rooms from 9am to 11am), while southwest corner apartments fronting Kooka Walk and Stovemaker Lane receive a maximum 1 hour 45 minutes to living rooms (the balconies receive two hours solar access from 1pm to 3pm). Apartment G.09 does not receive any direct solar access to living rooms and the courtyard, while the applicant states it receives two hours. As such, 62% of apartments achieve the design criteria.



Figure 35: A 'view from the sun' at 11am, demonstrating that the bay windows to living areas but not the balconies of the east facing apartments receive two hours solar access.



Figure 36: A 'view from the sun' at 1pm, demonstrating that the balconies but not the living rooms of the southwest corner apartments receive two hours solar access.

64. The table below identifies the solar access received to apartments, subject to design modifications including the provision of clerestory windows and reconfiguring or consolidating apartments.

Areas receiving solar access	% of apartments receiving 2+ hours	% of apartments receiving at least 1hr 45min	Total
Living rooms and private open spaces	62%	74%	
Clerestory windows to living rooms	63%	75%	
Living rooms	68%	N/A	
Private open spaces	64%		
No solar access			

65. The ADG states that where it is not possible to satisfy the design criteria, applications must demonstrate what other design responses are used to achieve the objective, with reference to the design guidance:
- (a) Compliance with the design criteria is constrained by the alignment of Foundry Street and the approved building envelope, which preclude balconies on the east elevation from receiving two hours solar access.
 - (b) The design has optimised solar access to living rooms on the east elevation by incorporating bay windows, which is encouraged by the design guidance of the objective.
 - (c) The development will also provide clerestory windows, providing direct sunlight from three south facing apartments, in accordance with Objective 4A-2.
 - (d) South facing apartments will benefit from views over McPherson Park, which is acknowledged as a reasonable alternative to achieving the design criteria.
 - (e) 75% of apartments will receive direct solar access for 1 hour 45 minutes during the winter solstice. The shortfall of 15 minutes to balconies on the east elevation and to living rooms of the southwest corner apartments is not detrimental to the amenity of these apartments.
66. The development has been amended to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space, notwithstanding non-compliance with the design criteria, and therefore achieves Objective 4A-1.

Communal Open Space

67. The design criteria of Objective 3D-1 of the ADG recommends 50% of the principal usable part of the communal open space is to receive a minimum 2 hours of solar access between 9am and 3pm during midwinter. The design guidance provides that, where development is unable to achieve the recommended criteria such as on small lots, sites within business zones or in a dense urban environment, the development should:
- (a) provide communal spaces elsewhere such as a landscaped roof top terrace or a common room
 - (b) provide larger balconies or increased private open space for apartments
 - (c) demonstrate good proximity to public open space and facilities and/or provide contributions to public open space
68. "Principal usable part of communal open space" is defined under the ADG as " a consolidated part of the communal open space that is designed as the primary focus of recreational activity and social interaction". Figure 3D.3 also states that "the principal usable part of communal open spaces *should be consolidated*" (emphasis added). The applicant has identified the communal roof terrace and a portion of the communal courtyard as being the principal usable part of communal open space.



Figure 37: The principal usable part of communal open space at ground level as indicated by the applicant, highlighted on the revised landscape plan.

69. There is no justification as to why this arbitrarily defined area of the communal open space at ground level should be considered the principal usable part of communal open space. The identification of two separate areas of principal usable parts of communal open space is contrary to the ADG, and not necessary considering the scale of the development. It is apparent that the applicant has nominated this area at ground level in an attempt to meet the solar access criteria of Objective 3D-1. This justification is not supported and is addressed so as not to be used in future applications within the precinct.
70. Furthermore, the applicant has resisted extending the northwest lift core to the communal roof terrace, raising concerns regarding its visual impact. However, the roof terrace is proposed to be accessible from only one lift core, as shown in the figure below.
71. This is unacceptable as it cannot be considered equitable access. The applicant has referred to the approved layout of Block B which only provides one lift core to the communal roof terrace, however the principal usable part of the communal open space for Block B (enjoying good solar access) is located at ground level and equitably accessible for all residents. In that instance, the roof top communal open space is secondary. The extension of the northwest lift core will also not reduce the area of communal open space and will not require the reconfiguration of apartments.
72. With a lift overrun not exceeding 1.4 metres, the lift can comply with the maximum 15 metre height limit. A condition of consent is therefore recommended requiring the northwest lift core to be extended to provide access to the roof terrace. Climbing plants or artwork can be used to reduce the visual impact of the structure.



Figure 38: The application proposes access to the communal roof terrace from one lift core, with the path of travel shown. The lift overrun within the communal roof terrace (circled) is recommended to be extended to provide an additional lift access to the roof terrace.

73. The roof top communal open space receives six hours of solar access in midwinter, however, it only represents 30% of the total area of communal open space. Non-compliance with the design criteria is acceptable in this instance as:
- (a) The development self-shadows the larger interior communal open space for most of mid-winter, a product of the approved building envelope.
 - (b) The development includes communal internal spaces including a music room and kitchen/dining room
 - (c) The development adjoins the future McPherson Park which will receive good solar access and amenity year round.
74. As such, and subject to conditions, the development meets Objective 3D-1 notwithstanding non-compliance with the design criteria.

Private Open Space

75. To enhance residential amenity, Objective 4E-1 recommends all apartments are provided primary balconies with the following dimensions:
- (a) Studio 4sqm (1 metre minimum dimension)
 - (b) One bedroom 8sqm (2 metres minimum depth)
 - (c) Two bedroom 10sqm (2 metres minimum depth)
 - (d) Three + bedroom 12sqm (2.4 metres minimum depth)
 - (e) Ground floor 15sqm (3 metres minimum depth)
76. The majority of apartments within the development comply with the minimum areas and dimensions. However, five of the 23 ground floor apartments (22%) are provided less than 15sqm of private open space, ranging in size from 9sqm to 14sqm. The design guidance states that non-compliance with the design criteria is acceptable where the apartments are:
- (a) located above 10 storeys and affected by strong winds
 - (b) in close proximity to road, rail or other noise sources
 - (c) exposed to significant aircraft noise
 - (d) affected by heritage or form part of an adaptive reuse of a building
77. In these instances, increased communal open space and other amenity benefits should be provided.
78. With regard to the ground floor apartments, the open spaces benefit from good outlook, sufficient separation from adjoining properties and are larger than the minimum requirements for apartments generally. As such this minor non-compliance is acceptable.

Privacy and outlook

79. Objective 3F-1 of the ADG regards visual privacy and outlook. The design criteria recommends a minimum 12 metre separation between habitable room windows and balconies up to four storeys, and a minimum 18 metres up to eight storeys for privacy. The minimum distances between habitable rooms and blank walls is 6 metres up to four storeys and 9 metres up to eight storeys to provide sufficient outlook.

Outlook

80. The development generally provides a reasonable outlook for apartments, with the exception of the following studio apartments:

- (a) 1.15 and 1.16
- (b) 2.17 and 2.18
- (c) 3.17

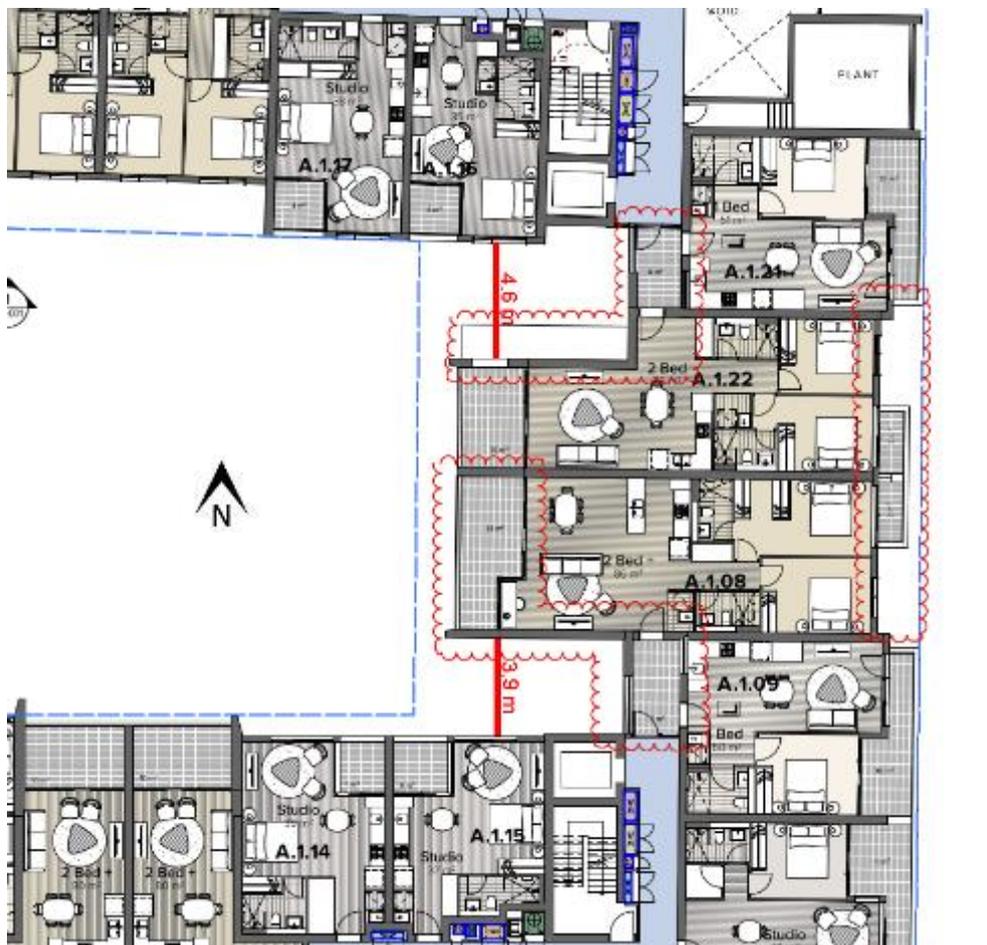


Figure 39: Extract from the level 1 plan, illustrating the separation distances between the studio apartments and blank walls opposite.

81. The apartments would provide poor outlook, create a sense of enclosure and compromise the amenity for residents, particularly the apartments with a southerly aspect which will not receive any direct solar access in mid-winter and are not cross ventilated. It is recommended to consolidate and reconfigure the two adjoining studio apartments into one x two bedroom apartment. As such, the following apartments will be consolidated and reconfigured to replicate the layout of apartment 4.15:

- (a) 1.14 and 1.15
- (b) 2.16 and 2.17
- (c) 3.16 and 3.17

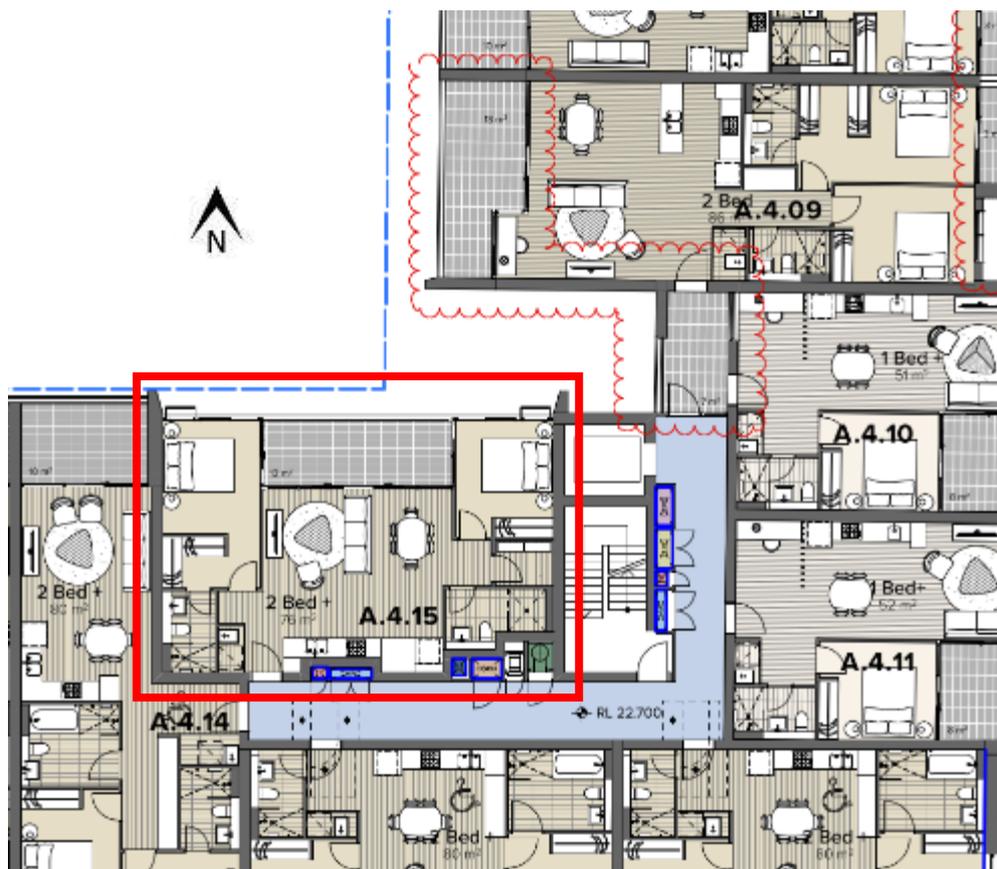


Figure 40: Extract from the level 4 plan, illustrating the apartment layout to be replicated on the levels below

82. The following apartments will be consolidated and reconfigured to replicate the layout of apartment 3.18:
- (a) 1.16 and 1.17
 - (b) 2.18 and 2.19

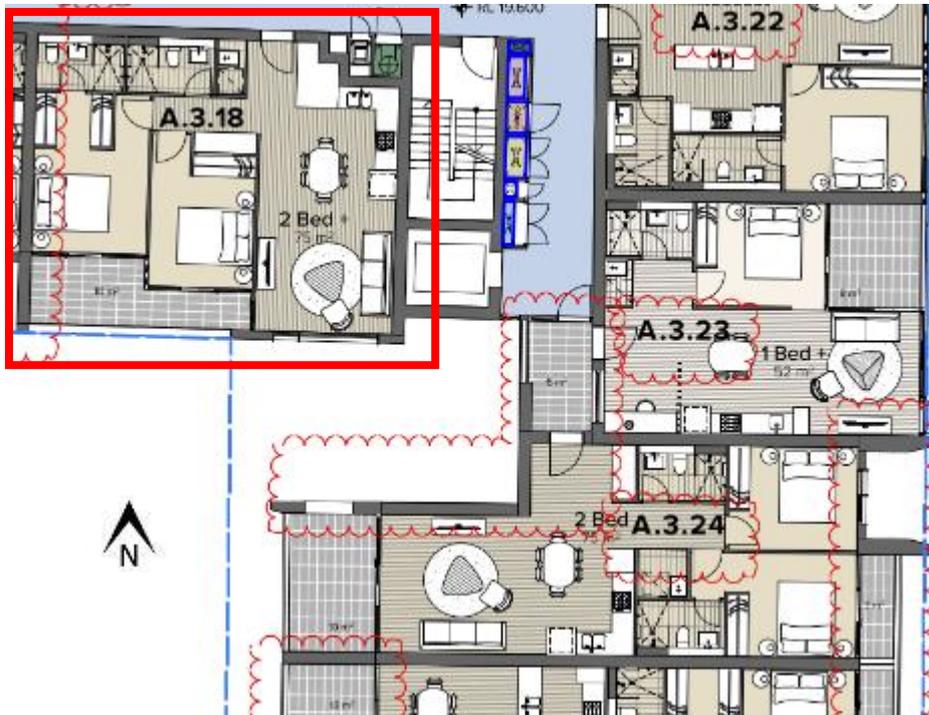


Figure 41: Extract from the level 3 plan, illustrating the apartment layout to be replicated on the levels below

83. While consolidation and reconfiguration will result in habitable room windows with separation less than recommended under the design criteria of Objective 3F-1, the apartments will achieve reasonable levels of external and internal privacy and outlook overall and are therefore acceptable.

Visual privacy

84. The development generally provides sufficient visual separation between windows and balconies in accordance with the design criteria. However, the following apartments do not comply having regard to unit configurations and reconfigurations discussed above:

- (a) G.09 and G.18
- (b) 1.08 and 1.22
- (c) 2.09 and 2.25
- (d) 3.09 and 3.24
- (e) 4.09 and 4.20
- (f) 5.07 and 5.17
- (g) 6.07 and 6.17
- (h) 7.06 and 7.15

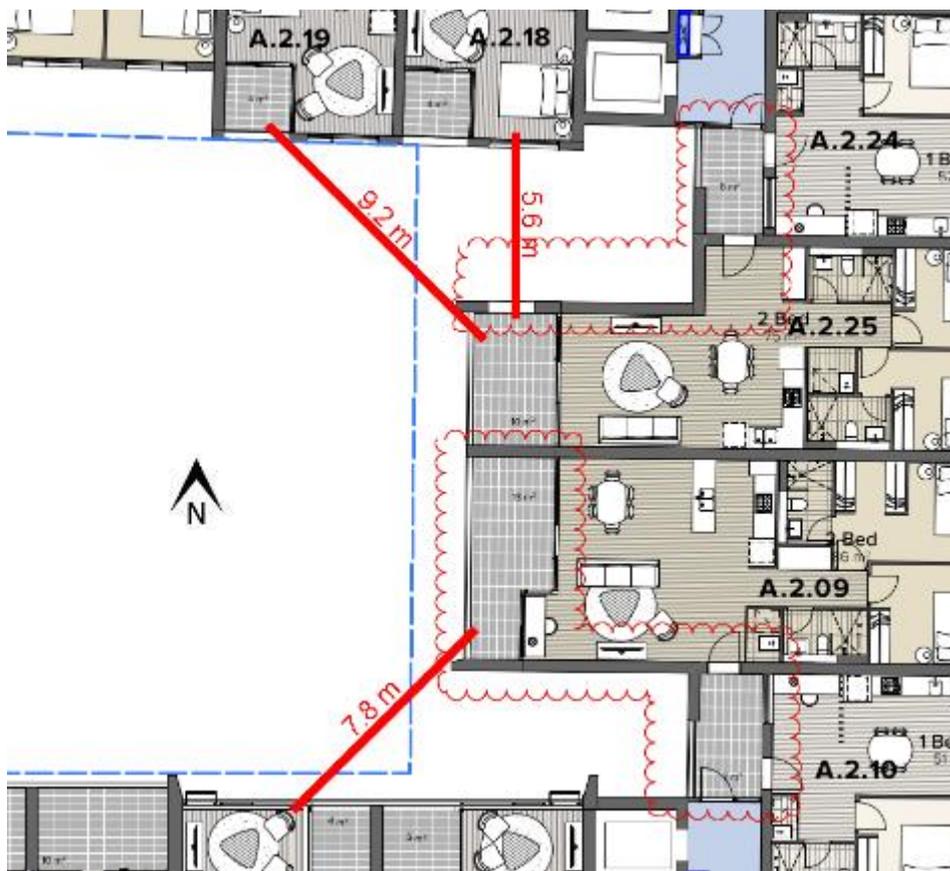


Figure 42: Extract from the level 2 plan, demonstrating that the west facing apartments are separated less than 12 metres from those perpendicular to the north and south.

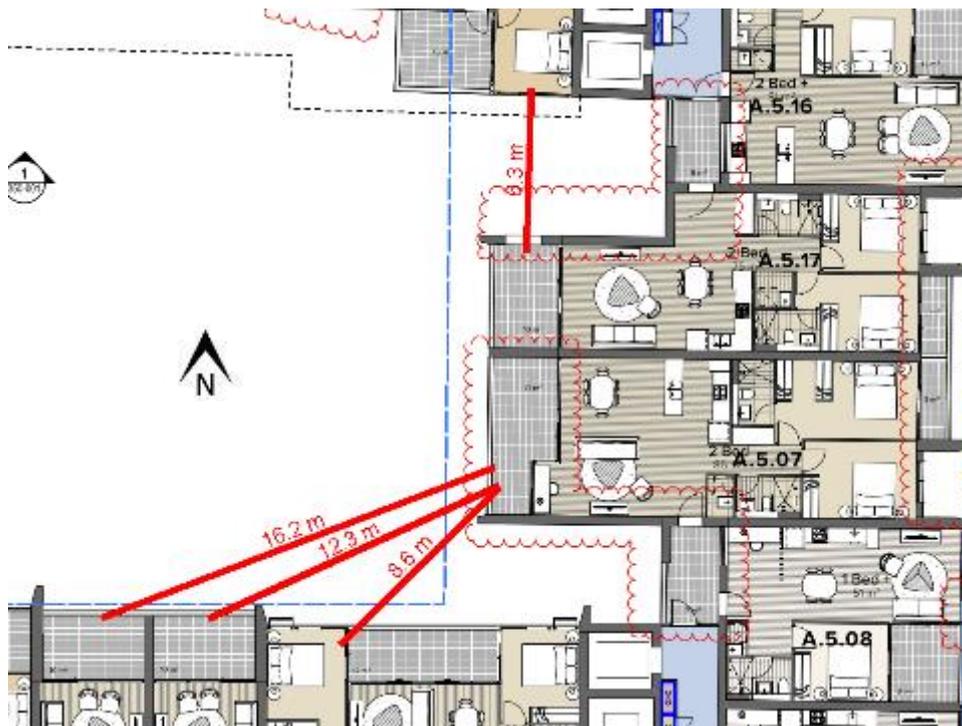


Figure 43: Extract from the level 5 plan, demonstrating that the west facing apartments are separated less than 18 metres from those perpendicular to the north and south.

85. The distances shown the extracts above are within a 45-degree view cone and demonstrate that insufficient separation is provided to comply with Objective 3F-1. The provision of sliding sun shades to the affected balconies will not only allow for visual privacy to the desire of the occupant, but also provide additional sun shading. A condition is recommended accordingly.
86. The opening in the northern balcony wall of the following apartments is to be enclosed, as it does not provide for solar access and impinges on the visual privacy of the apartment opposite:
- 1.22
 - 2.25
 - 3.24
 - 4.20
87. The south facing windows of bedrooms within the following apartments are to be brick walls to maintain privacy to the balconies opposite, which provide solar access to those apartments:
- 5.14
 - 6.14
 - 7.12

88. The roof top communal open space adjoins the private open space of apartment 3.19 and bedroom windows of apartment 3.20, creating visual and acoustic privacy conflicts. A condition of consent is recommended relocating the private open space of apartment 3.19 to the south elevation, setting back the western wall of apartment 3.20 and providing a landscape buffer to the communal open space to improve privacy.

Natural Cross Ventilation

89. Objective 4B-3 of the ADG recommends the number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents. A minimum of 60% of apartments within the building are recommended to be naturally cross ventilated to meet the objective.

90. Natural cross ventilation is defined in the ADG as follows:

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

91. The ADG states that effective natural cross ventilation is achieved when the inlet and outlet have approximately the same area, allowing air to be drawn through the apartment using opposite air pressures on each side of the building. The applicant has provided a computational wind assessment that contradicts this assertion, supporting the design of some stated naturally cross ventilated apartments with openings of significantly different sized openings, and where the supposed windward and leeward opens are in the same direction.



Figure 44: The applicant asserts that apartment 5.03 is naturally cross ventilated along the path shown, however the openings are significantly different sizes and do not open to windward and leeward sides.

92. City staff do not agree that these apartments demonstrate natural cross ventilation in accordance with the design guidance and definitions under the ADG, and have not been counted towards the building's compliance with the design criteria. Notwithstanding, subject to conditions consolidating and reconfiguring apartments and ensuring that skylight windows are converted to clerestory windows, the development will provide 60% of apartments with natural cross ventilation.

Public Domain Interface and Landscaping

93. Objective 3C-1 of the ADG regards the public domain interface, with a transition between private and public domains to be achieved without compromising safety and security. Opportunities should be provided for casual interaction between residents and the public domain.
94. Section 5.5.8 of the Sydney DCP 2012 provides site specific controls for Ashmore which address fencing, landscape setbacks, materials and ground and floor levels. The controls and competitive design panel recommend that the ground floor reference the two storey, vertically proportioned character of adjacent terrace dwellings.

Figure 5.135
Ashmore Ground
Floor Residential Flat

1. Primary building setback, clear full height - min. 2.5m
2. Deep soil landscape planting area - min. 3m
3. Ground floor private open space deck - min. 1.2m
4. Setback from the site boundary to the glass line - min. 4.2m
5. Site boundary fence - max. 1.4m high
6. Ground floor private open space deck max. 1m above street level

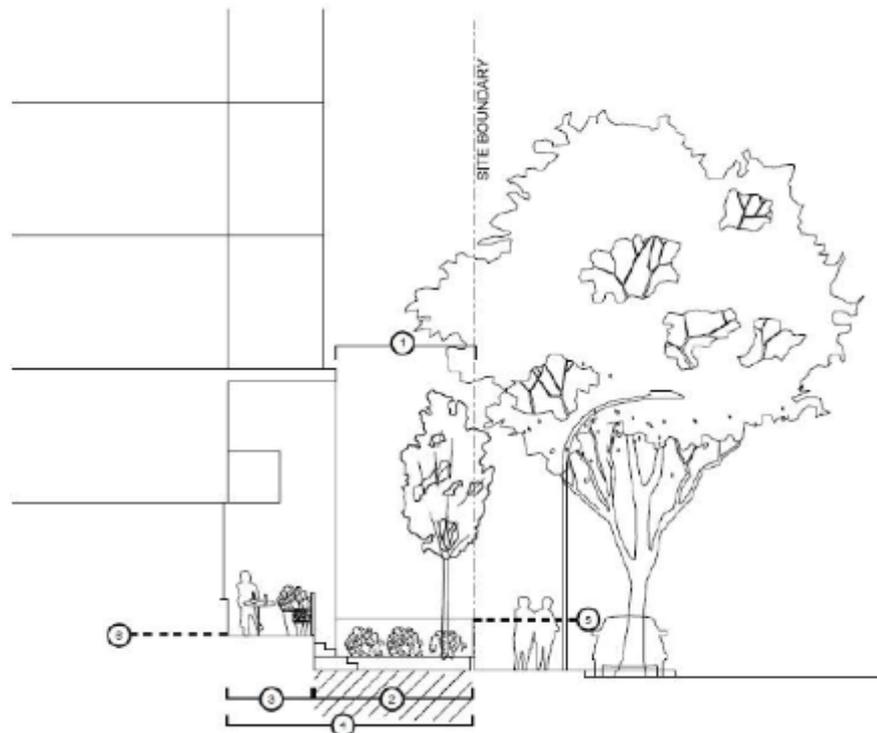


Figure 45: Figure 5.135 of the Sydney DCP 2012 illustrating the recommended ground floor design including setbacks, landscaping, differences in floor levels and fencing.

95. Conditions of consent are recommended to ensure that sufficient visual privacy, landscaping and fence details are provided.

Car Parking

Resident and visitor car parking

96. Pursuant to Clause 7.5 of the Sydney LEP 2012, the development as amended is eligible for a maximum of 114 resident car spaces and 14 resident visitor spaces. The application proposes providing 113 resident car spaces and no visitor parking.
97. Section 3.11.4(6) requires that resident and visitor car parking is allocated proportionately where fewer than the maximum number of car spaces are provided. The application is therefore inconsistent with the control.
98. The applicant has not provided a written statement seeking to justify non-compliance in accordance with Section 1.1 of the Sydney DCP 2012. Notwithstanding, non-compliance with the control is consistent with the approval of Blocks B and C and satisfies the objectives of the Sydney LEP 2012 to encourage alternative, sustainable transport modes.
99. It is important to reinforce that the provision of non-accessible car spaces (in accordance with the definition of accessible spaces under the Australian Standards) is not mandatory. However, it is reasonable and reinforced by the City's controls that, where car parking is provided, accessible parking should be prioritised. Further discussion with regard to the provision of accessible visitor car parking is provided further below.

Service vehicle parking

100. Section 3.11.6 and Schedule 7.8 of the Sydney DCP 2012 require that four service vehicle spaces are provided. The application proposes two service vehicle spaces, both of which are the size of a car space. It is noted that the approved tunnel connecting the basement of Building A to Building B cannot accommodate a medium rigid vehicle.
101. The applicant has not provided a written statement seeking to justify non-compliance in accordance with Section 1.1 of the Sydney DCP 2012. As the development will rely on access and servicing from Blocks B and C, a condition of consent is recommended requiring compliance with the Loading Dock and Basement Management Plan approved under condition 163 of that consent.
102. A condition of consent is also recommended for the service bays to be fitted with car wash facilities.

Car share spaces

103. The development is required to provide two car share spaces. The application proposes locating these spaces on Foundry Street, however their location is not shown on any plans. The location of these spaces in the public domain will be subject to separate approval which is not guaranteed. A condition of consent is recommended requiring the car share spaces to be located within the basement if spaces are not secured on the street.

Accessible spaces

104. Section 3.12 of the Sydney DCP 2012 requires 15% of apartments to be adaptable in accordance with Australian Standards. Subject to design modifications, the development is required to provide 25 adaptable apartments.
105. Section 3.11.9 and Schedule 7.8.5 of the Sydney DCP 2012 require that every adaptable apartment is provided an accessible car space. The development is therefore required to provide 25 accessible car spaces for residents. In addition, one space for every 20 car spaces is to be allocated as accessible visitor parking. The application proposes the provision of 16 accessible resident car spaces.
106. People with disability are less likely to be able to use public and sustainable transport modes and as such it is reasonable and consistent with the City's "A City for All Inclusion (Disability) Action Plan 2017-2021" to prioritise access accordingly. This is reinforced by the City's planning controls. As such, conditions of consent are recommended requiring that a minimum 25 spaces are accessible resident spaces and allocated to adaptable apartments, and that 5% of car spaces are allocated to accessible visitor parking.

Competitive design panel recommendations

107. The competitive design panel selected the scheme presented by Turner for presenting the most convincing response to the commercial and planning objectives of the brief and, in the opinion of the panel, was most capable of achieving design excellence, subject to the addressing the following issues:

- (a) Provide an increase in floor-to-floor height on the ground level

Assessment: The matter was discussed with the applicant in pre-submission discussions and agreed that, on balance, the provision of increased floor-to-floor heights was not required. The concept approval concentrates retail and other commercial uses elsewhere in Ashmore and as such it is not necessary to design the ground floor to accommodate alternative uses. Furthermore the internal amenity of the ground floor apartments is acceptable.

- (b) Consideration of a two-storey vertical articulation for the ground and first floor levels to relate to and reinforce the scale, rhythm and form of the Andrew Burns terraces

Assessment: The development has been amended through changes to materiality and vertically grouping the ground and first floor windows fronting Ashmore Street, to accentuate a two storey design.

- (c) Reconsideration of the roof level brise soleil to assist with reducing overshadowing of McPherson Park and to provide more formal variety, vertical rhythm and finer grain to the south façade.

Assessment: The brise soleil has been removed from the proposal.

- (d) The overall built form should provide more formal variety and fine grain articulated to resolve the uniform character.

- (e) Refine the solid to void ratios between windows and brickwork to optimise solar and visual amenity for occupants

Assessment: The development has simplified openings and, through changes in materials, brick patterns and providing shadow lines in the facade, sought to emphasise a vertical rhythm. A condition is recommended requiring the balustrade to apartments 1.09 and 1.10 to be separated to further reflect a terrace-like typology.

- (f) Improve the efficiency of basement planning

Assessment: The basement has been consolidated from three levels into one.

- (g) For sustainability, the area of soft landscape on the rooftop should be maximised

Assessment: The area of the roof fronting Ashmore Street has been dedicated to green roof, providing communal open space and a pleasant outlook for residents, visual interest from the street and reducing the area of hardstand. A substantial solar panel array and plant are located on the roof of the upper levels.

- (h) Provide sufficient soil depth for significant planting to podium deck.

Assessment: Amended landscape plans have been provided with sufficient soil depth to accommodate large trees.

- (i) The elevation treatment is to be developed and aligned with plans. Noting currently the proposals elevations and plans at the lower levels are not coordinated.

Assessment: The plans and elevations are consistent.

- (j) Presentation of the material palette (face brickwork) and precast concrete is considered important to the achievement of design excellence

Assessment: The development maintains the materials palette presented to the panel.

Consistency with Concept Approval

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

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

109. The detailed proposal for Block A fits entirely within the building envelope of the Concept Approval (as amended).

Condition 8 'Allocation of Floor Space'

110. The Concept Approval distributed the maximum permissible base FSR of 1.75:1 through allocations of GFA to each of the development Blocks.

111. A maximum gross floor area of 12,945sqm is permissible for Block A. In accordance with Condition 7 'Floor Space Ratio', and the bonus provisions of Clause 6.21 of the Sydney LEP 2012, 10% bonus floor space may be awarded where the building exhibits design excellence, which increases the maximum gross floor area to 15,139.5sqm.

112. The development as amended proposes a gross floor area of 13,987sqm and therefore complies.

Condition 11 'Detailed Design of Buildings'

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

- (a) The designs of all buildings are to position mailboxes inside secure areas, and mailboxes with non-master key locks are to be installed.

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

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

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

Condition 13 'Stage 2 Design Requirements for Waste Areas and Collection'

114. The concept approval requires a minimum area of 16sqm is provided for bulky waste in the basement. The development proposes 15sqm. The variation is minor and acceptable in this instance.

Condition 23 'Ecological Assessment Reports'

115. A flora and fauna assessment report accompanies the application which has been reviewed by the City's Ecologist. A condition of consent is recommended requiring the landscape plans to provide more habitat for small birds, such as fairy wrens and New Holland honeyeaters, reptiles and invertebrates.

Public domain

116. The following public domain works form part of this DA:

- (a) Construction of a temporary footpath along western edge of Building A fronting Kooka Walk.
- (b) Dedication of land to Council comprising the temporary footpath along the western frontage of Building A and across Stovemaker Lane to the south of the site.
- (c) Construction of final footpath along eastern edge of Building A fronting Foundry Street.
- (d) Construction and dedication of Stovemaker Lane pedestrian and cycle link between Building A and McPherson Park connecting Foundry Street to Kooka Walk.

Staged construction and stratum subdivision

117. It is proposed to stage the release of the construction certificates to allow for specific conditions relevant to each stage to be satisfied prior to the commencement of works at each stage. The relevant conditions of consent are recommended to be worded to account for the following staging plan:

- (a) Stage 1: Basement slab on ground
- (b) Stage 2: Building structure
- (c) Stage 3: Services, and building finishes
- (d) Stage 4: Public domain and landscape works

118. No objections are raised to the proposed staging. Occupation certificates are recommended to only be issued after the completion of all stages of construction.

119. The development will be the subject of a future stratum subdivision DA. The concept is to create three residential strata for each of Building A, B and C and a retail and childcare stratum for Block C. A Strata Management Statement will set out the structure for management of the future stratum lots including the adoption of a Building Management Committee and administration of a Shared Facilities Agreement.

Other Impacts of the Development

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

Suitability of the site for the Development

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

Internal Referrals

Design Advisory Panel

123. The Design Advisory Panel reviewed the development as originally proposed and raised concerns regarding:
- (a) the increased bulk compared to the approved building envelope
 - (b) compliance with the ADG
 - (c) increased shadowing of McPherson Park
 - (d) building modulation and articulation, particularly at the lower levels
 - (e) the provision of and access to the communal open spaces
124. As previously discussed, the applicant has undertaken subsequent design modifications which are considered to have satisfied the concerns raised by the Design Advisory Panel.

Urban Design

125. In addition to the design modifications discussed under the Issues heading, Council's Urban Designer recommended the lateral projection of the eighth storey into the 15 metre standard be reduced. The design modification would include deleting the projecting balconies, setting the western wall back 1.5 metres and replanning the internal configuration of affected apartments. This would reduce the bulk of the encroachment and extent of non-compliance proposed.
126. Reducing the extent of the projection into the 15m height zone is not considered necessary (refer to Clause 4.6 discussion in the Issues section). The changes would require a substantial redesign of a prominent facade of the building and significant internal reconfiguration with minimal reduction to the bulk of the building and no discernible improvement to the amenity of apartments.

127. The conditions of other sections of Council have been included in the proposed conditions.

External Referrals

Notification, Advertising and Delegation

128. The application constitutes integrated development and as such the application was notified and advertised for 28 days between 3 May 2019 and 1 June 2019 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification two submissions were received.

- (a) The flood report should be updated to reflect changes to downstream flood management proposals by Sydney Water.

Response: The developer and City staff have been in discussion with Sydney Water during the assessment of the application. The revisions to Sydney Water's infrastructure changes will not adversely impact the ability of the development to comply with Council's Interim Floodplain Management Policy.

- (b) Existing transport infrastructure cannot accommodate the additional demand created by the proposal.

Response: The quantum of floor space, land uses and their impact on local services and infrastructure have been anticipated in the approval of the Sydney LEP 2012, the City of Sydney Development Contributions Plan 2015 and the Voluntary Planning Agreement granted concept approval. The development promotes sustainable transport and walkable neighbourhoods.

- (c) The surrounding street network, in particular MacDonald Street, cannot accommodate construction traffic.

Response: A Construction Traffic Management Plan accompanies the application and is in principle acceptable. However, a condition of consent is recommended requiring the Plan to be updated to allow for changing traffic conditions since it was submitted last year.

- (d) Inadequate bike storage is provided.

Response: The development provides sufficient parking in accordance with Section 3.11.3 of the Sydney DCP 2012.

Sydney Airport Referral Act 1996

129. 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.

130. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify the subject site is subject to a prohibition of the construction of buildings more than 50 feet in height (15.24m) above existing ground height.

131. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).

132. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 13 May 2019, subject to conditions listed in Attachment A.

Water NSW

133. The original proposal constituted Integrated Development, requiring approval under the Water Management Act 2000. The City was previously advised that the Natural Resource Access Regulator was the relevant authority, however on 23 May 2019 the Regulator advised that Water NSW was the correct authority.
134. Correspondence was subsequently sent to Water NSW on 23 May, 5 June, 17 October and 10 December 2019 without a response. The applicant amended the application on 16 January 2020 to no longer seek Integrated Development approval, and will seek a license from WaterNSW separately.
135. Notwithstanding, Schedule 3 of the Concept Approval contains conditions of consent for any subsequent detailed design development application. A condition of consent is recommended requiring approval with these conditions.

Sydney Desalination Plant

136. The application was referred to Sydney Desalination Plant as the site adjoins a water pipe belonging to the company. No response was received at the time of determining this application.

Sydney Water

137. Sydney Water raised no objections to the proposal, noting that the developer will provide new water and wastewater extensions under an existing Sydney Water case.
138. The proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

139. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the development's net increase in resident, worker and/or visitor populations.
140. Credits for the warehouses previously on site were awarded to the calculation for contributions on Blocks B and C. As such, no credits apply to the proposal.

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

(a) Open Space	\$2,133,290.23
(b) Community Facilities	\$424,715.97
(c) Traffic and Transport	\$541,686.26
(d) Stormwater Drainage	\$214,236.27
Total	\$3,313,928.73

142. The contribution may be offset in accordance with the requirements and obligations identified in the Planning Agreement dated 25 July 2017 between The Council of the City of Sydney, Greenland Golden Horse Investment Pty Ltd and The Trust Company Limited.

Relevant Legislation

143. Environmental Planning and Assessment Act 1979.

144. Water Management Act 2000.

145. Sydney Airport Referral Act 1996.

146. Sydney Water Act 1994.

Conclusion

147. The application proposes construction of a part three, four and eight storey residential flat building with basement car parking. It is proposed to contain 173 apartments, 115 car spaces, solar panels and associated landscaping including green roofs and a green wall. Public domain works, executed under an approved Voluntary Planning Agreement, will also be completed.

148. This is a detailed design development application following the approval of a concept development application (D/2015/966, as amended) and in association with an early works development application D/2019/307 determined on 3 February 2020.

149. The development exceeds the maximum 15 metre height of buildings development standard by 11.85 metres (79%) and the 27 metre height of buildings development standard by 0.5 metres (1.9%). A request to vary the standard in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 has been submitted, demonstrating that compliance with the standard is unreasonable and unnecessary having regard to the objectives of the height of buildings development standard and that there are sufficient environmental planning grounds to justify the variation. The statement has adequately addressed the provisions of the clause and is in the public interest.

150. As amended, the development achieves a high standard of architectural design, materials and detailing, with particular attention to the materials and provision of landscaping that will contribute positively to the public domain. The development achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.
151. The application was notified and advertised for 28 days and received two submissions. The concerns raised are addressed within the body of the report.
152. The development is therefore in the public interest and recommended for approval subject to conditions in Attachment A.

ANDREW THOMAS

Acting Director City Planning, Development and Transport

David Zabell, Senior Planner