

Item 7.**Development Application: Building D - 57 Ashmore Street Erskineville - D/2019/291****File No.:** D/2019/291**Summary****Date of Submission:** 26 March 2019

Amended plans received 16 January 2020

Applicant/Developer/Owner: Greenland Golden Horse Pty Ltd**Architect/Designer:** Andrew Burns Architects**Cost of Works:** \$5,426,404**Zoning:** B2 - Local Centre. The development is permissible with consent.

Proposal Summary: The application proposes partial demolition of a warehouse and construction of six terrace dwellings, each with one car space and Torrens title subdivision. Public domain works include constructing the final sections of Metters Street and Copper Smith Lane, the northern portion of Kooka Walk and associated landscaping. A total of 20 trees will be removed from the site to accommodate the public domain works, with three trees on site and two street trees retained. Significant street tree planting is proposed, as well as six small trees within the front setbacks of the dwellings.

This is a detailed design development application in accordance with concept development consent D/2015/966/C. The part of the site to which this application relates is known as 'Block D' and is the third phase of the overall development.

A modification to the concept consent, D/2015/966/C, was granted approval by the Central Sydney Planning Committee on 13 February 2020. The changes include increasing the height of the building envelope, which exceeds the maximum height of buildings development standard.

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

The application has been amended to remove a request for integrated development approval under the Water Management Act 2000, reduce the height of the building and reduce the bulk of the roof, remove proposed basements, remove in-ground car stackers and introduce shading devices to windows.

The development exceeds the maximum 9 metre height of buildings development standard by 2.49 metres (27.7%), measured to the roof top privacy screens. A request to vary the height of buildings development standard has been submitted and adequately addresses the provisions of Clause 4.6 of the Sydney Local Environmental Plan 2012. Specifically, the applicant has demonstrated that compliance with the standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation. Notwithstanding non-compliance with the numerical control, the development demonstrates compliance with the objectives of the height standard and the B2 - Local Centre zone. The variation is therefore acceptable. The application is presented to the Local Planning Panel for determination as the variation to the height of buildings development standard is greater than 10%, in accordance with the delegations.

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 existing and proposed 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 a period of 30 days 8 April 2019 to 7 May 2019 in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000. No submissions were received.

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 Water Act 1994
- (ii) Water Management Act 2000
- (iii) State Environmental Planning Policy 55 - Remediation of Land
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request
- D. Competitive Design Alternatives Process Report

Recommendation

It is resolved that:

- (A) the Local Planning Panel support the variation sought to the development standard under Clause 4.3 Height of Buildings in accordance with Clause 4. Exceptions to Development Standards in the Sydney Local Environmental Plan 2012; and
- (B) consent be granted to Development Application No. D/2019/291 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 Panel 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 Local Environmental Plan 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening Clause 4.3 of the Sydney Local Environmental Plan 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, material and detailing, with particular attention to the materials, relationship to adjacent development and contributions to the public domain. The development achieves the principals 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 planning agreement for public domain works.
- (E) Subject to conditions, construction impacts can be mitigated to protect the amenity and function of the surrounding area.
- (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 of the site on the northwest corner with an area of 3,014sqm.
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. Adjacent to the application site is a two storey terrace row. Directly adjacent to the north western corner of the site on Ashmore Street is a row of houses, which are predominantly of a workers cottage typology. Directly to the north of the site is the Erskineville Public Housing Estate, the Alexandria Erskineville Bowling Club and Erskineville Oval. To the east 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.
4. The site is not a heritage item nor is it located in a heritage conservation area. Notwithstanding this, the site directly adjoins the Malcolm Estate Conservation Area (C24) to the north-west and the Erskineville Estate Conservation Area (C22) to the north. There are 20 trees located on the site.
5. In the wider Sydney context, the site is located 2.25km south west of Central Sydney. 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. A site visit was most recently carried out by staff on 3 January 2020. 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 D which is located at the northern end of the site and the surrounding streets highlighted.



Figure 3: The existing warehouse that will be partly demolished to accommodate the proposal.



Figure 4: The view of the existing warehouse from Coppersmith Lane, looking east



Figure 5: The existing warehouse in the distance from Metters Street looking east

Proposal

7. The application proposes demolition, excavation, remediation, subdivision and construction of a row of six terrace dwellings. Following subdivision, the site area of each lot will be between 116.5sqm and 127.5sqm.
 - (a) Ground floor
 - (i) Living areas
 - (ii) Six car parking spaces with roller doors to Coppersmith Lane
 - (iii) Retractable roofs to five car spaces
 - (iv) Decking
 - (v) Landscaping
 - (vi) Air conditioning units
 - (vii) Bin storage
 - (b) First floor
 - (i) Bedrooms

- (c) Second floor
 - (i) Bedrooms
 - (ii) Private roof terrace
 - (d) Roof
 - (i) Private roof terrace
8. The development also proposes the construction of roads, footpaths, bike paths and associated public domain infrastructure including street trees, street lighting and drainage. The development will extend Metters Street and Coppersmith Lane, and initiate the construction of the future Kooka Walk. These works form part of a Voluntary Planning Agreement approved under the concept development consent.
 9. The materials included face brick, bag rendered brick, Colorbond roof, powder coat aluminium windows and frames and timber front doors.
 10. Plans of the proposed development are provided below.



Figure 6: Artist's render of the Metters Street elevation.



Figure 7: Artist's render of the Coppersmith Lane elevation.



Figure 8: Artist's render of the Metters Street elevation, looking east toward Block A.



Figure 9: Artist's render of the Coppersmith Lane elevation, looking east toward Block A.



Figure 10: South elevation (Meters Street).

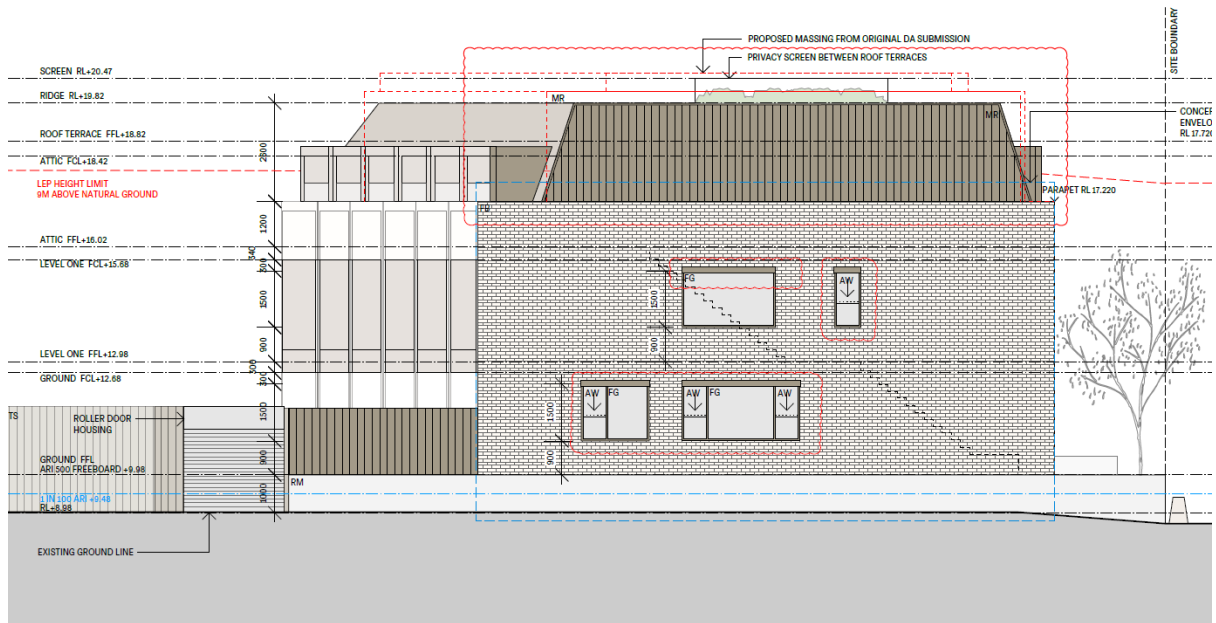


Figure 11: West elevation (Coppersmith Lane).

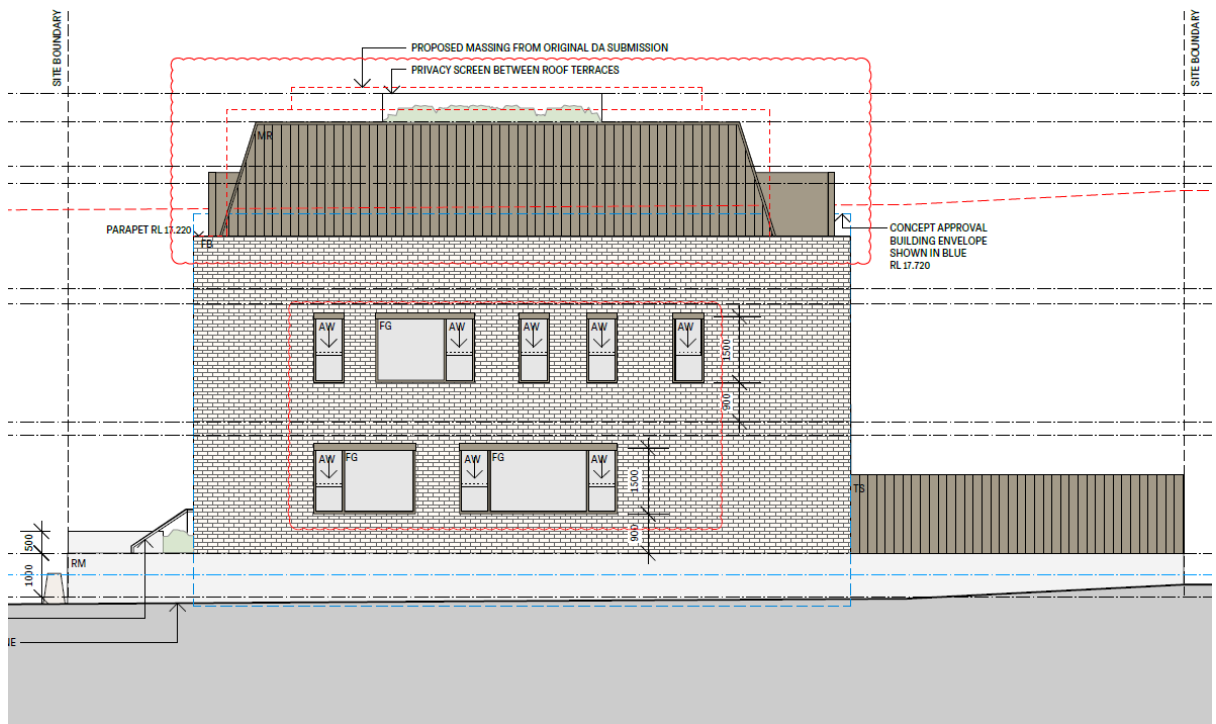


Figure 12: East elevation (Kooka Walk).

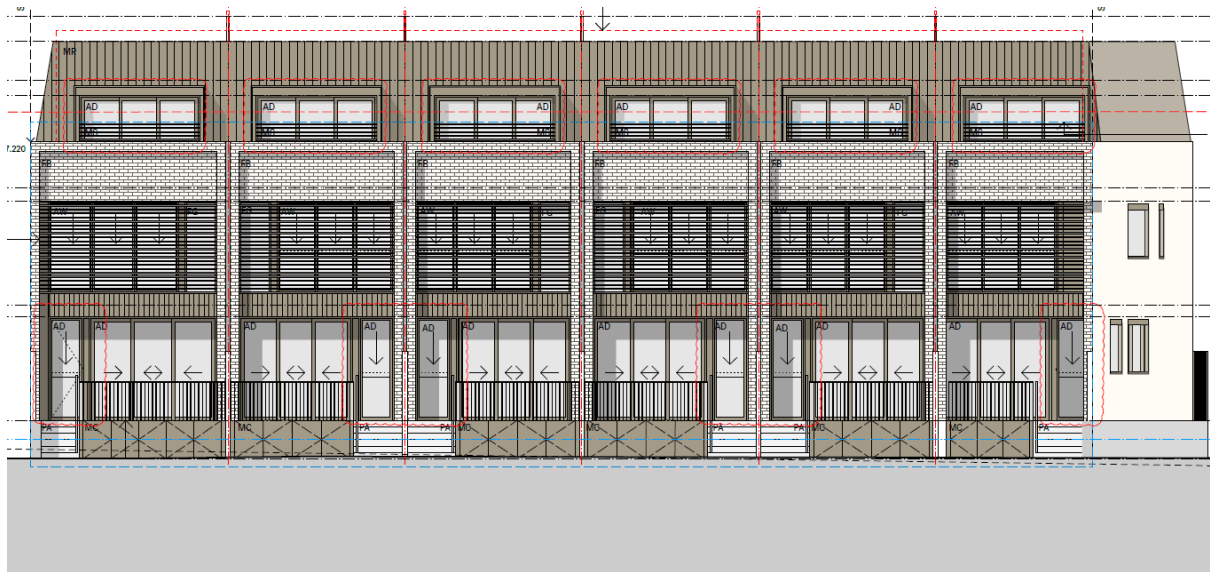


Figure 13: North elevation (internal).

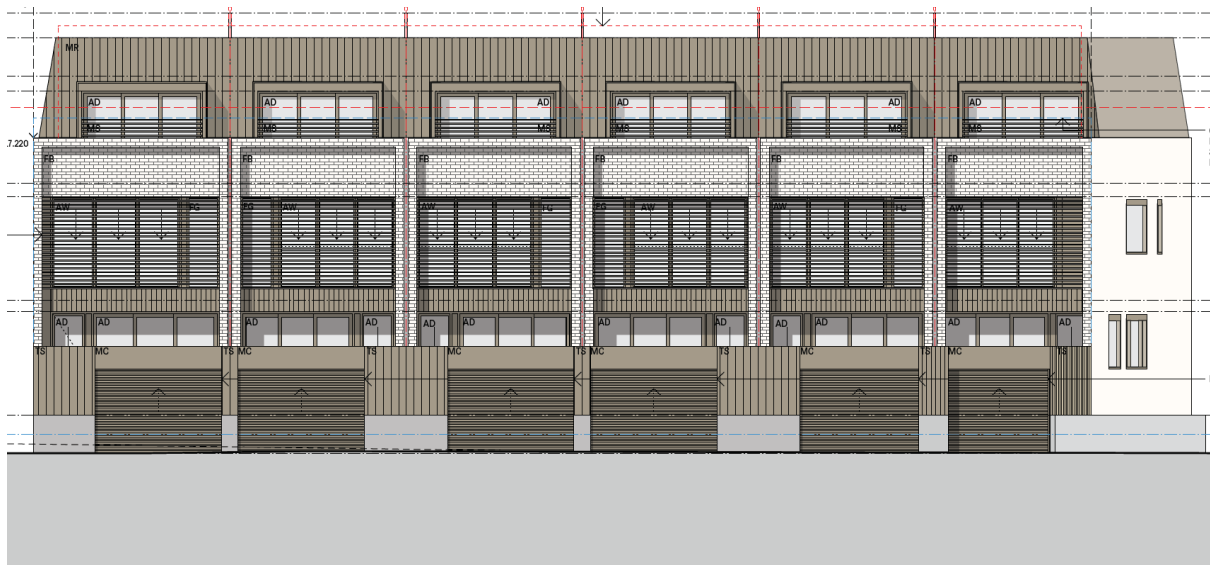


Figure 14: North elevation (Coppersmith Lane).



Figure 15: Ground floor.

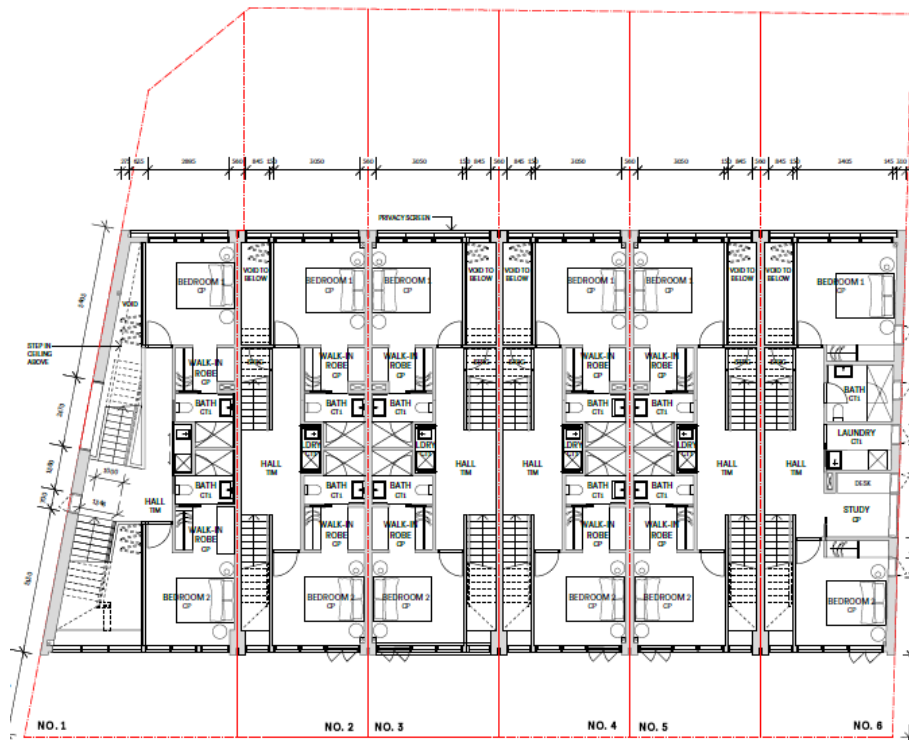


Figure 16: First floor.

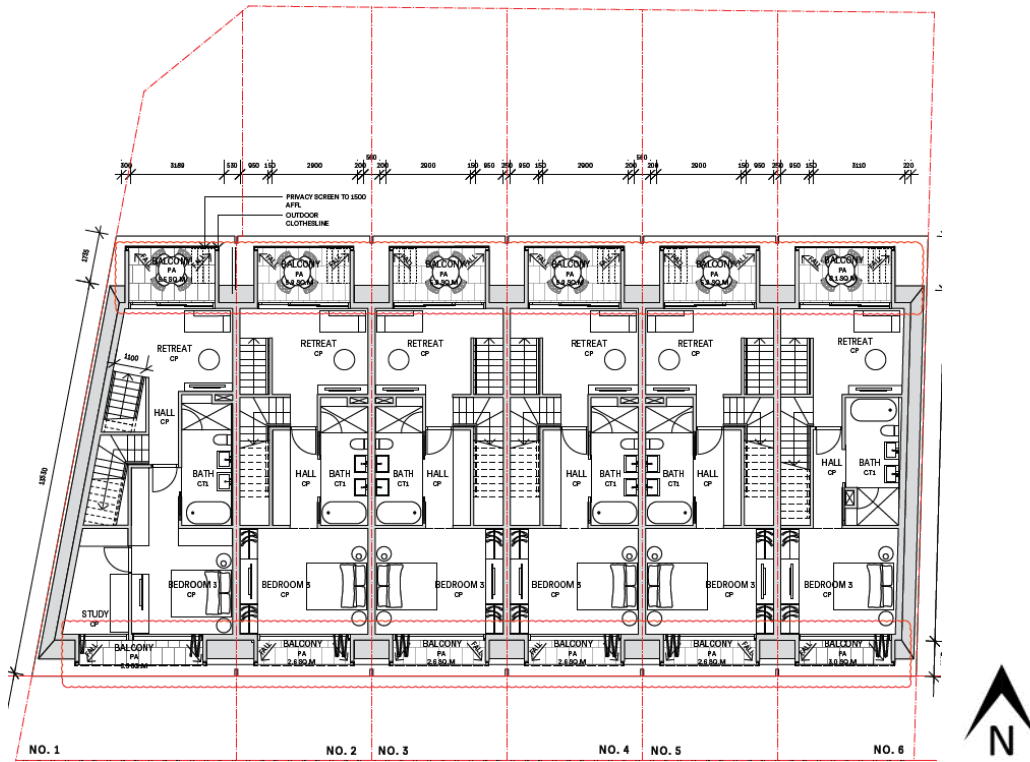


Figure 17: Second floor.

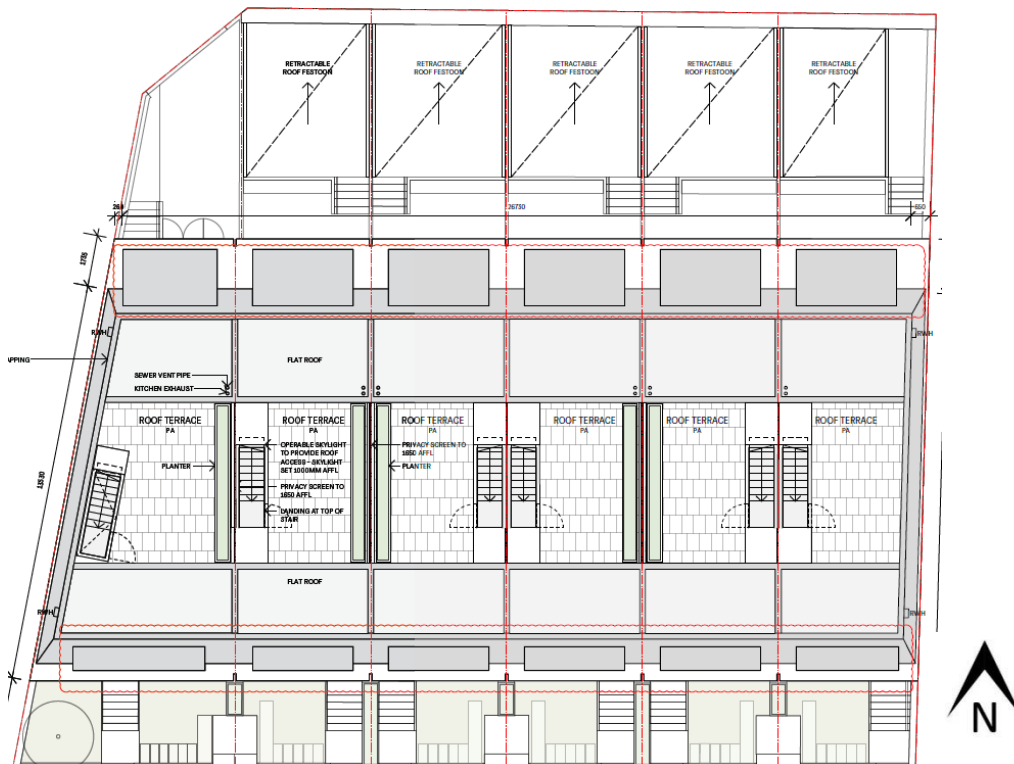


Figure 18: Roof.

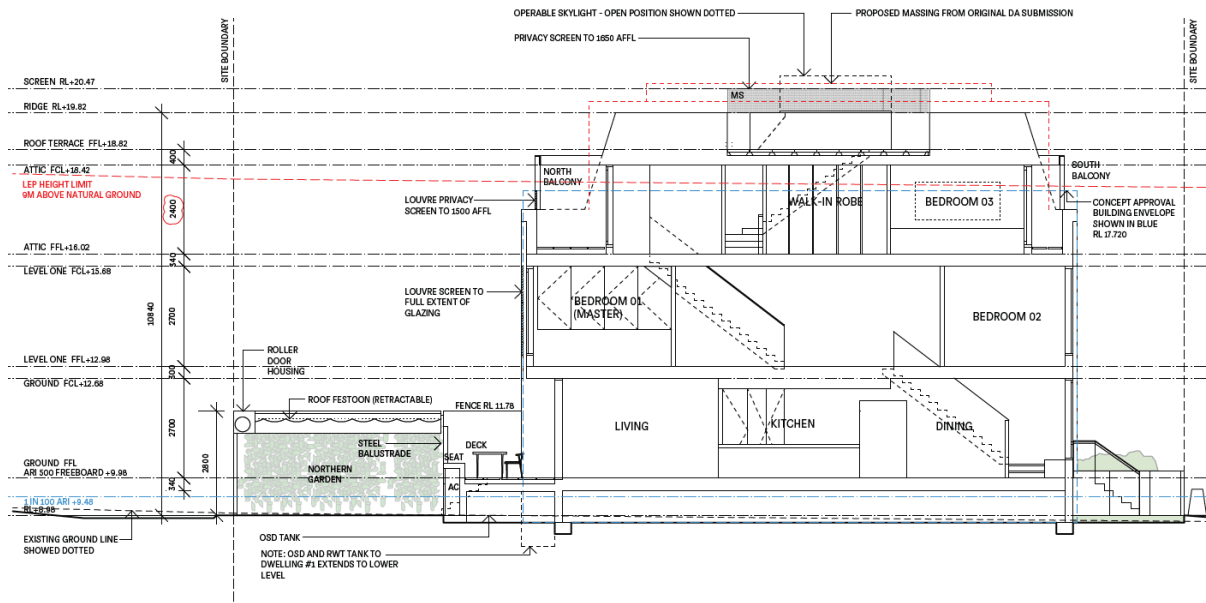


Figure 19: North-south section.

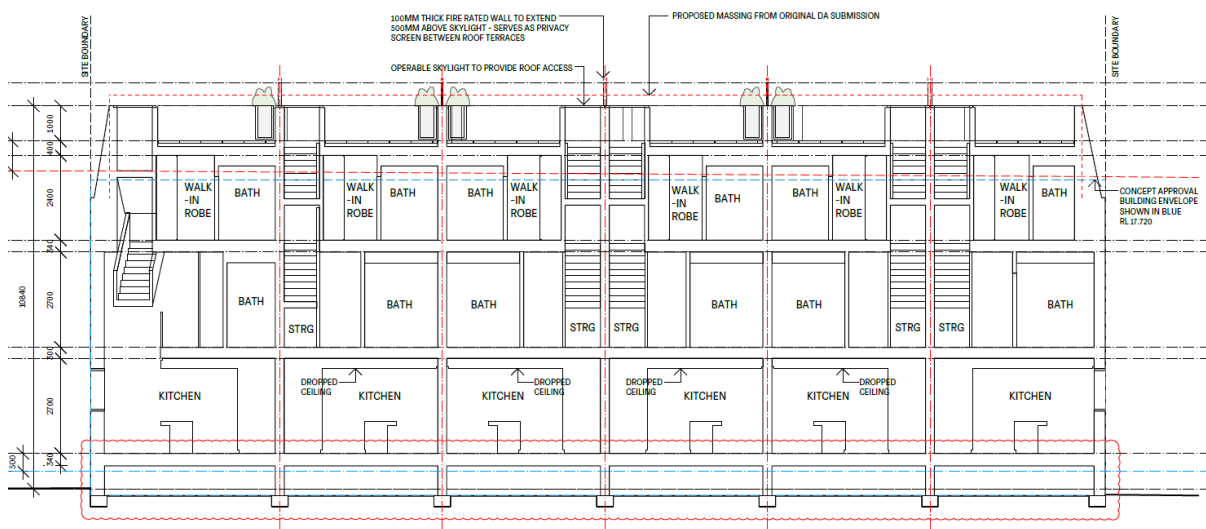


Figure 20: East-west section.

11. The development has been amended in response to concerns raised by City staff, including:
 - (a) The development is no longer seeking Integrated Development consent regarding a license under the Water Management Act 2000, which will be sought separately.
 - (b) The height of the building has been reduced from 11.74 metres to 11.49 metres.
 - (c) The attic has been amended to provide a mansard roof with increased setbacks from the front and rear primary building lines, and reduced the size of the dormers.
 - (d) The basements, media rooms and car stackers have been deleted.

- (e) The scale of the roof terrace has been significantly reduced and replanned.
- (f) Sun shading has been provided to north facing windows.
- (g) Six additional trees will be provided within the front setbacks of the dwellings.

History Relevant to the Development Application

Concept Approval

12. 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.
13. The proposal included building envelopes for nine (9) development blocks ranging in height between two (2) and eight (8) storeys and concept design for public domain works including new streets, a 7,446sqm park, and new trunk drainage. These works are subject to a Voluntary Planning Agreement (VPA).
14. 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.
15. The deferred commencement conditions were satisfied on 18 October 2017, and the development consent is now active.
16. 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.
17. On 13 February 2020, modification application D/2015/966/C was granted by the Central Sydney Planning Committee to increase the height in storeys, height in metres and bulk of Block A and increase the height of Block D. The approved modifications reflect the detailed design applications.

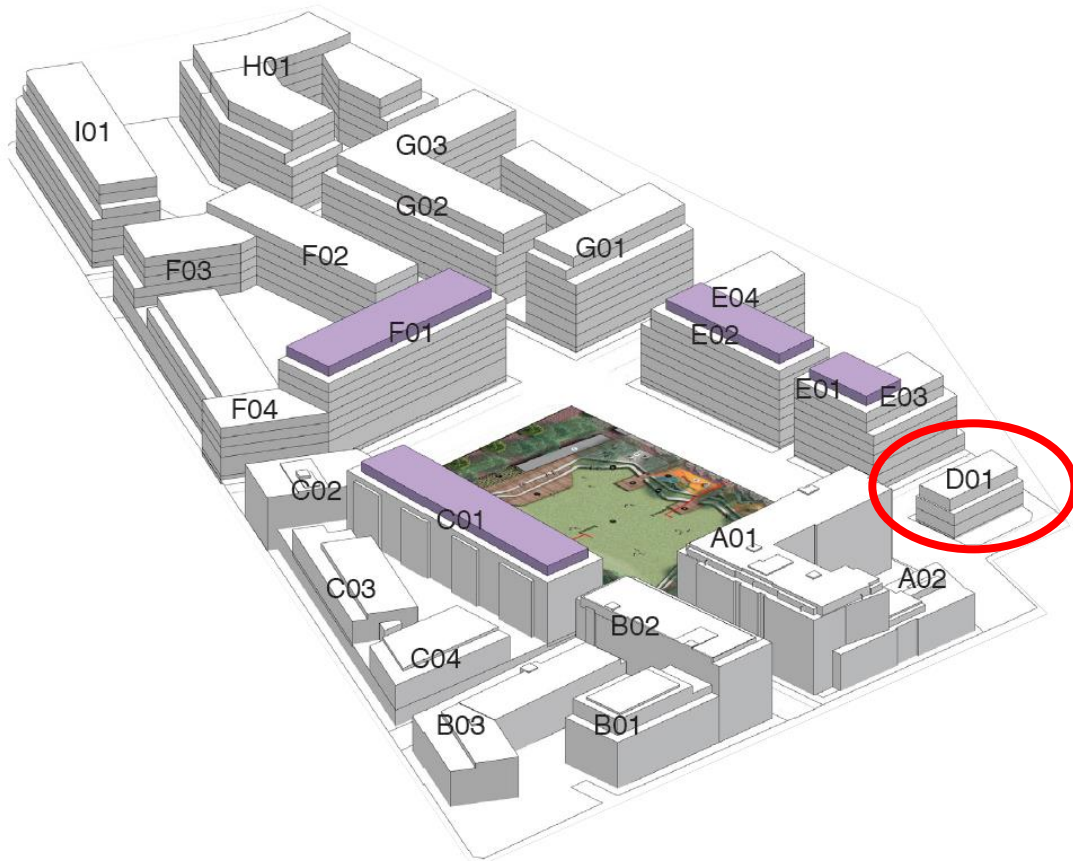


Figure 21: Axonometric diagram of the Ashmore estate, the approved Block D envelope is circled.

Building A

- On 13 February 2020, development consent D/2019/393 was granted by the Central Sydney Planning Committee for construction of a part three, four and eight storey building containing 168 apartments and basement car parking. The development includes public domain works such as the construction and dedication of footpaths to Kooka Walk and Foundry Street, and the construction of the shared pedestrian and cycleway of Stovemaker Lane.



Figure 22: Artist's render of Block A on Ashmore Street.



Figure 23: Artist's render of Block A on Stovemaker Lane, viewed from McPherson Park with Block D to the left of the picture.

19. On 3 February 2020, development consent D/2019/307 was granted for early site preparation works at Block A including site clearing, removal of one tree, establishment of site sheds and perimeter fencing, excavation for one basement level, and construction of the driveways and laybacks, base slab layer, piles, anchors and shoring walls.

Buildings B and C

20. On 22 December 2017, development consent D/2017/1425 was granted for early works including demolition and excavation to accommodate one level basement.
21. 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.
22. The development has subsequently been amended, however, these amendments are of little significance to the subject application.



Figure 24: Photomontage as viewed from the future MacPherson Park and across Foundry Street

Competitive Design Process

23. 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.

24. A copy of the competitive design alternatives report, including the selection panel recommendations, is provided at attachment D. A selection of the winning scheme's images regarding Building D presented during the competitive design process is provided below:



Figure 25: An artist's render of the view to the terraces from the future MacPherson Park



Figure 26: Artist's render of the terraces and Building A from Metters Street



Figure 27: Artist's render of the Metters Street (south) elevation



Figure 28: Artist's render of the north (rear) elevation

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. All contaminated land investigations have been completed as required by SEPP 55 and an auditor engaged. A Site Audit Report has been provided with this application which contains a Section B Site Audit Statement stating the nature and extent of the contamination has been appropriately determined and the site can be made suitable.
28. It is noted that all land to be dedicated to the City will be designed in accordance with the VPA approved under D/2015/966, which requires that all land to be dedicated to the City is remediated to ensure that any marker layer separating existing soil from imported fill is at a minimum depth of 1.5 m below the proposed finished levels. Within constructed garden beds (landscaped areas with accessible soils), validated materials protective of both human and ecological health will be used as growing media.

29. The proposal is subject to a Remediation Action Plan to satisfy State Environmental Planning Policy No. 55 - Remediation of Land. A Site Audit Statement accompanies and supports the Detailed Environmental Site Investigation and Remediation Action Plan. An Environmental Management Plan (EMP) is likely to be required for the site and a condition is recommended accordingly. As such, subject to conditions the site can be made suitable for the proposed development.

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

30. A revised BASIX Certificate has been submitted to accompany the amended plans.
31. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Sydney LEP 2012

32. The site is located within the B2 - Local Centre zone. The proposed use is defined as attached dwellings and is permissible.
33. 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 height standards.</p> <p>A three metre height standard applies to the portion of the site being the future Kooka Walk. The development does not exceed this height standard.</p> <p>A nine metre height standard applies to portion of the site accommodating the terraces. The development proposes a maximum building height of 11.49 metres, measured to the top of the partitions dividing the roof terraces. The development therefore exceeds the development standard by 2.49 metres (27.7%).</p> <p>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 977sqm was permitted for Building D. The development as amended proposes 952sqm of GFA and therefore complies with the maximum provisions.</p>
4.6 Exceptions to development standards	Yes	<p>A revised request to vary the height of buildings development standard has been received and adequately addresses the provisions of Clause 4.6. The variation is therefore supported.</p> <p>Further discussion is provided under the Issues heading.</p>
5.10 Heritage conservation	Yes	<p>The site is not a heritage item and is not located within a heritage conservation area.</p> <p>A revised heritage impact statement accompanies the application as the site adjoins two heritage conservation areas.</p> <p>The proposed development is of scale and character reflecting the desired future character of the area and not detracting from the adjoining conservation areas. The City has reasonable cause to suspect that the site may be of archaeological significance. A condition of consent is recommended regarding the discovery of any items of archaeological significance during excavation.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.21 Design excellence	Yes	<p>The development is located outside of Central Sydney and follows the granting of a concept approval under Clause 7.20, as required.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<p>A competitive design process has been held with the winning scheme for Block D designed by Andrew Burns 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 therefore satisfies Clause 6.21(5).</p> <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 reflect both the residential heritage and industrial character of the site and surrounds. The public domain is consistent with the controls for the site and will achieve the City's standards.</p> <p>The development as amended has therefore adequately addressed the relevant provisions of Clause 6.21(4).</p>

Part 7 Local Provisions - General	Compliance	Comment
7.4 Car parking ancillary to attached dwellings	Yes	The dwellings are each permitted two car spaces. The development as amended proposes one car space per dwelling.
7.14 Acid Sulphate Soils	Yes	The application proposes excavation more than 1 metre below natural ground surface, on a site is identified as containing class 3 Acid Sulphate Soil.

Part 7 Local Provisions - General	Compliance	Comment
		An Acid Sulfate Soils Management Plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and submitted to the City. The development therefore satisfies the provisions of the clause. A condition of consent is recommended requiring compliance with the ASS Management Plan.
7.15 Flood planning	Yes	The site is below the flood planning level and therefore subject to the provisions of Clause 7.15. A flood report accompanies the application demonstrating that the design of the dwellings satisfies the provisions of the City's Interim Floodplain Management Policy and therefore the provisions of Clause 7.15.
7.20 Development requiring preparation of a development control plan	Yes	<p>The site is located outside of Central Sydney and exceeds 5,000sqm in area. A site specific DCP is therefore required.</p> <p>This is a detailed design application submitted in accordance with concept approval D/2015/966 (as amended). 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>The development is consistent with the concept approval and therefore satisfies the provisions of the control.</p>

Sydney DCP 2012

34. 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>
3.2 Defining the Public Domain	Yes	<p>The proposal is consistent with the DCP provisions in that:</p> <ul style="list-style-type: none"> • It does not result in any additional overshadowing of MacPherson Park between 10am and 2pm at the winter solstice. • It will not affect public views.

3. General Provisions	Compliance	Comment
		<ul style="list-style-type: none"> It positively addresses the street, providing numerous entries and landscaping.
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 by Andrew Burns Architects as the design most capable of achieving design excellence.</p> <p>The proposal does not seek bonus floor space.</p>
3.5 Urban Ecology	Partial compliance	<p>The development is required to provide canopy cover equal to 15% of the site area.</p> <p>The development will result in the loss of 20 trees and the retention of seven trees:</p> <ul style="list-style-type: none"> Eight of the trees removed are of moderate retention value 12 trees of low or very low retention value are to be removed; The three trees of high retention value will be protected. No street trees will be removed. <p>The development proposes one small tree within the front setback of each dwelling, which would contribute to a mature tree canopy cover equal to 10% of the site area. A condition of consent is recommended requiring an additional three small trees minimum to the roof which will equal 15% site coverage. As such a minimum of nine small trees will be provided on site.</p>

3. General Provisions	Compliance	Comment
		<p>In addition to the new street trees, the development will provide 25% tree canopy coverage of the application site, consistent with the City's Urban Forest Strategy.</p> <p>Further discussion is provided under the Issues heading.</p>
3.6 Ecologically Sustainable Development	Yes	An amended BASIX certificate has been provided and are acceptable. A condition of consent is recommended requiring the development to implement the requirements of the BASIX certificate.
3.7 Water and Flood Management	Yes	<p>The site below the flood planning level and therefore subject to the provisions of Section 3.7. A flood report accompanies the application demonstrating that the design of the dwellings satisfies the provisions of the City's Interim Floodplain Management Policy and therefore the provisions of Section 3.7.</p> <p>A condition of consent is recommended requiring the stormwater drainage to comply with the City's MUSIC Link model.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The development proposes Torrens subdivision, consistent with the emerging pattern of subdivision in the street. Conditions of consent are recommended accordingly.
3.9 Heritage	Yes	A revised Heritage Impact Statement has been submitted, demonstrating that the development will not adversely impact the character and appearance of the adjoining heritage conservation areas.
3.11.3 Bike parking and associated facilities	Yes	The development provides sufficient area in the rear yard for a bike space.

3. General Provisions	Compliance	Comment
3.11.14 Parking area design	Yes	<p>Swept path diagrams have been provided demonstrating that cars can safely and efficiently enter and exit the properties.</p> <p>The draft public domain plans include the construction of a temporary driveway crossing at the end of Metters Street which will accommodate vehicles undertaking a three-point turn. Details are to be confirmed in accordance with public domain conditions.</p>
3.13 Social and Environmental Responsibilities	Yes	The development provides adequate passive surveillance and is generally designed in accordance with CPTED principles.
3.14 Waste	Partial compliance	<p>The applicant has completed Council's Waste Management in New Development checklist and generally meets the requirements of the Guidelines. However, it is noted that the checklist inaccurately states that less than 10m³ of soil will be removed from site which is contrary to the Stage 3 Remedial Works Plan. A condition of consent is recommended to clarify this matter.</p> <p>Council's Waste Unit has advised that waste collection will be possible with the proposed dead-end at Metters Street. A condition of consent is recommended prohibiting the removal of the bollards to Kooka Walk for a turning circle.</p>

4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.3.1 Solar access	Yes	The development provides more than two hours solar access to living rooms and private open spaces.

4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
		The development as amended includes adequate sun shading devices and architectural treatments to mitigate summer sun.
4.1.3.3 Landscaping	Yes	Revised landscape plans have been submitted, providing a landscape setback on Metters Street consistent with the emerging character of the streetscape.
4.1.3.4 Deep soil planting	Yes	The deep soil requirements for the development are covered by the concept approval are accommodated in MacPherson Park. Notwithstanding, the development provides sufficient deep soil to accommodate tree planting and landscaping.
4.1.3.5 Private open space	Yes	The development provides private open spaces adjacent to the living areas at ground level and on the roof, exceeding the minimum 16sqm required.
4.1.3.6 Visual privacy	Yes	The dwellings are provided sufficient visual privacy and will not overlook neighbouring properties.
4.1.7 Fences	Yes	The height and design of the fences generally complies with the provisions. A condition of consent is recommended limiting side boundary fences to a maximum height of 1.8 metres from the adjoining footpath/public domain alignment level.
4.1.8 Balconies, verandahs and decks	Yes	Decks and upper level roof terraces are designed to mitigate overlooking and are compatible with the architecture of the dwellings.
4.1.9 Car parking	Yes	The car spaces are appropriately located at the rear of the dwellings.

5.5 Ashmore Neighbourhood	Compliance	Comment
5.5.3 Local infrastructure and public domain	Yes	The streets will be designed in accordance with the controls. Public domain conditions of consent are recommended accordingly.
5.5.8 Building layout, form and design	Yes	The dwellings comply with the maximum 2 storey + attic control. The design is consistent with that selected under the competitive design competition and is compatible with yet discernible from the adjoining terraces in Metters Street.
5.5.9 Terrace housing	Yes	<p>The dwellings are more than 10 metres deep and provide dormers to the attic level. The application proposes Torrens title subdivision.</p> <p>A condition of consent is recommended limiting side boundary fences to a maximum height of 1.8 metres from the adjoining finished ground/floor level.</p>

Issues

Clause 4.6 request to vary a development standard

35. The site is subject to a maximum height of buildings control of nine metres pursuant to Clause 4.3 of the Sydney LEP 2012. The proposed development has a maximum overall height of 11.49 metres, measured to the top of the roof terrace privacy screens (27.7% variation) and 10.84 metres measured to the ridge line of the roof (20.4% variation). The extent of non-compliance is shown in the section below:

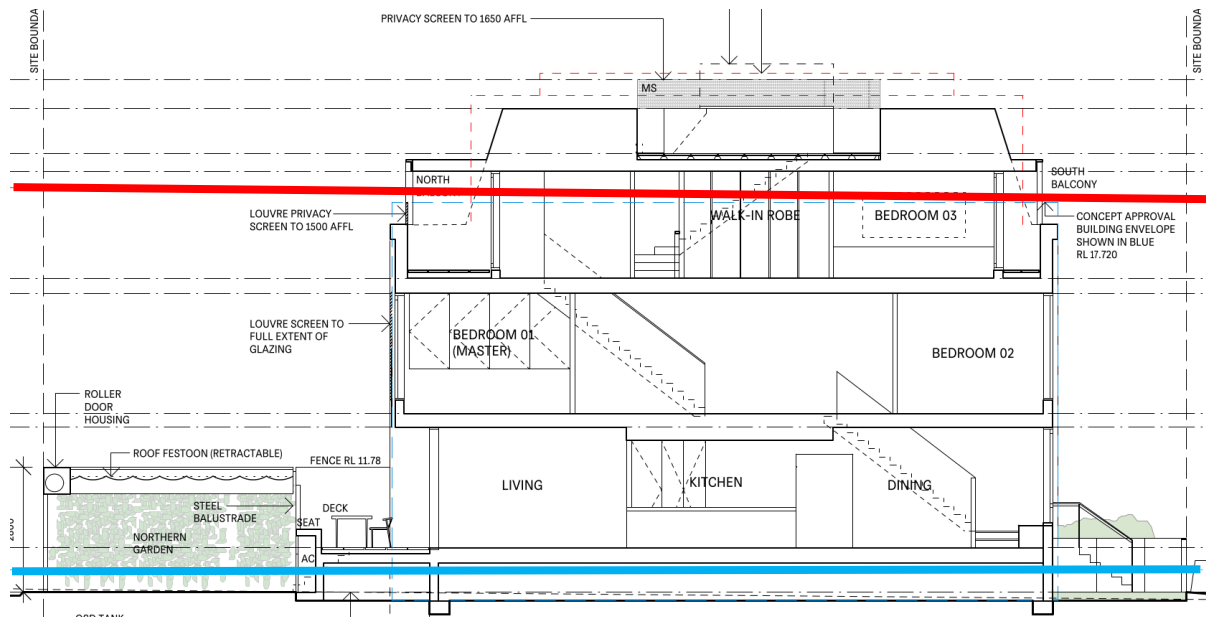


Figure 29: A section plan with the maximum nine metre height of building development standard shown in red and the flood planning level shown in blue.

36. The maximum height of the building has been reduced from 11.74 metres (30.4% variation).
37. It is noted that the CSPC granted approval on 13 February 2020 to amend the concept approval for Block D (see D/2015/966/C), to reflect the proposed development. The approved building envelope is shown below:

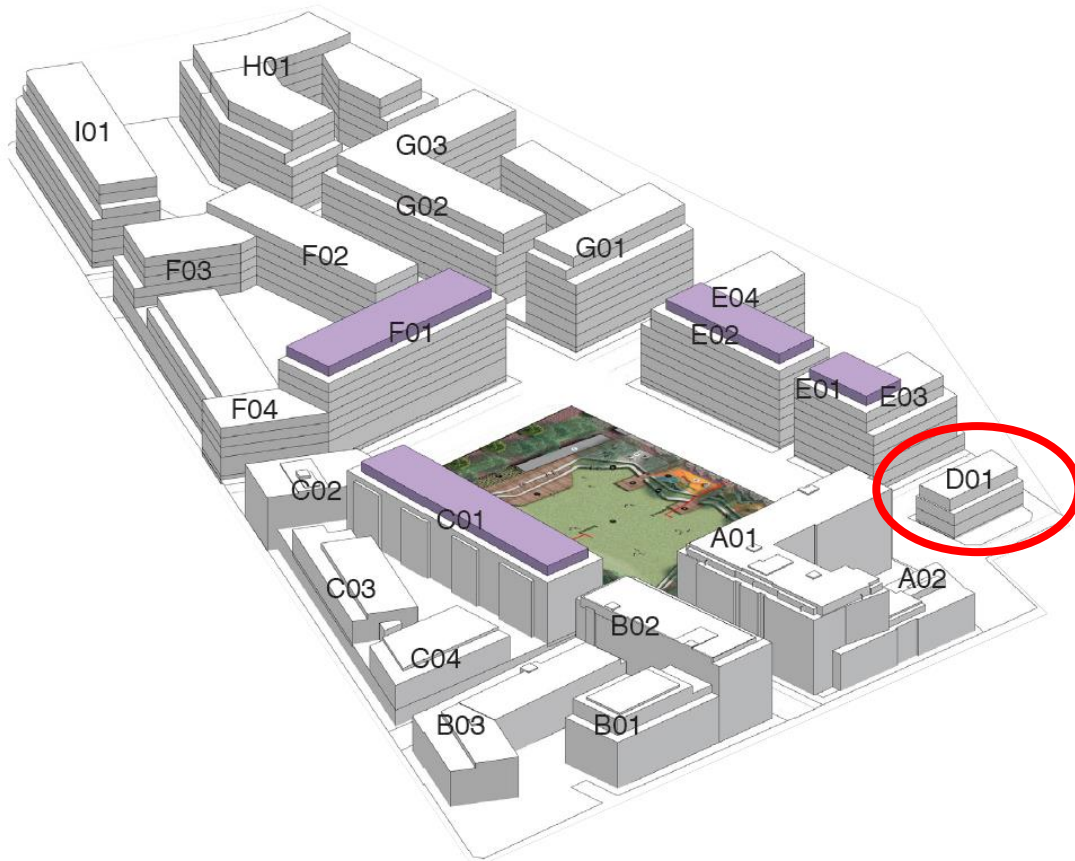


Figure 30: An axonometric diagram of the building envelope as amended.

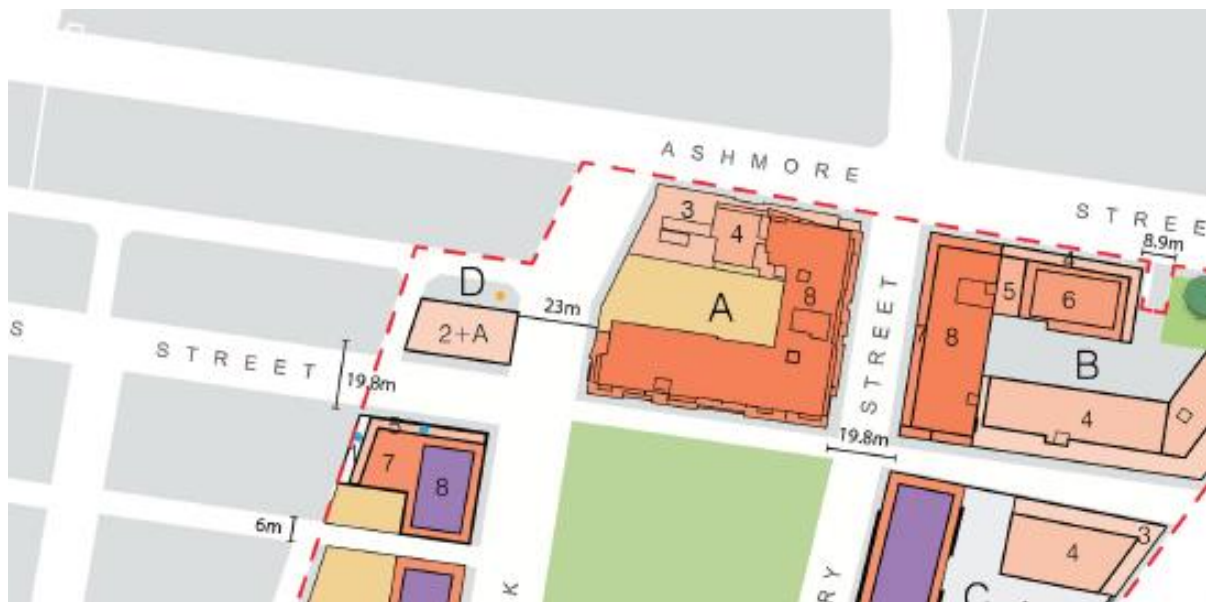


Figure 31: The existing height in storeys control for Block D remains at two storeys plus an attic.

38. 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.
39. A copy of the applicant's written request is provided at Attachment C.

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

40. 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 proposed variation to the height of building development standard reflects the cumulative impacts of the constraints of the site, applicable built form controls and providing improved amenity. The development is designed in accordance with the two storey + attic height in storeys control, reflecting the desired built form for the site and consistent with neighbouring developments on Metters Street. The site is flood affected, requiring the ground floor level to be raised 1.1 metres above ground level existing to comply with the City's Interim Floodplain Management Policy (500mm above the flood planning level shown in figure 29 above). Floor to ceiling heights of 2.7 metres have been provided at ground and first floor level, providing greater amenity for residents than the minimum 2.4 metres required under the NCC. It is noted that the attic floor to ceiling height has been reduced from 2.7 metres to 2.4 metres and the roof form reduced in scale as recommended by City staff to better reflect an attic form. The roof terrace has been set in from the street boundaries and will be discreet within the streetscape and views from MacPherson Park. Finally, the building continues to provide an acceptable transition to the taller buildings located to the east and south.
 - (iv) With regard to objective (b), the site adjoins two conservation areas to the north and northeast, generally characterised by single and two storey terrace dwellings. A revised Heritage Impact Statement accompanies the amended plans and demonstrates that the dwellings respect the scale and form of the buildings characterising the conservation areas, as well as utilising materials reflecting the industrial history of the site.
 - (v) With regard to (c), the development will not impact on views.
 - (vi) With regard to (d), the development reflects the transition in scale emerging within the Ashmore precinct.
 - (vii) Objective (e) is not relevant to the proposal.
 - (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:
- (i) The extent of the variation is confined to the roof, which has been amended to reduce to extent of non-compliance by 3% and appear recessive in form and material. View diagrams have been provided demonstrating that the privacy screens separating the roof terraces will not be readily discernible from the surrounding street network. The roof is setback from the north and south elevations, reinforcing the primary building lines. As previously discussed, the height is exacerbated by existing site constraints and the provision of enhanced ceiling heights, whilst complying with the desired built form for the site.

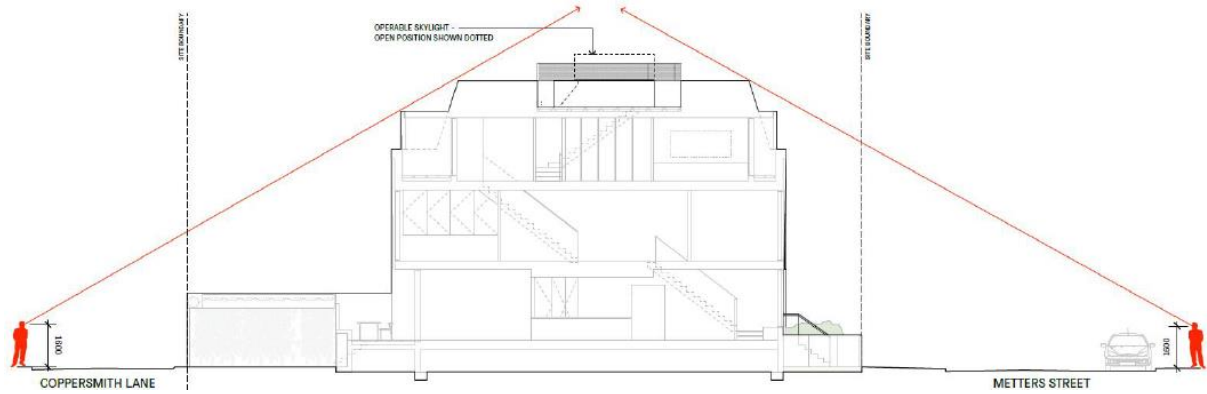


Figure 32: The roof top privacy screens are set back such that they will not be readily visible from the public domain.

- (ii) The development maintains visual privacy of neighbouring properties without compromising the architectural integrity of the buildings.

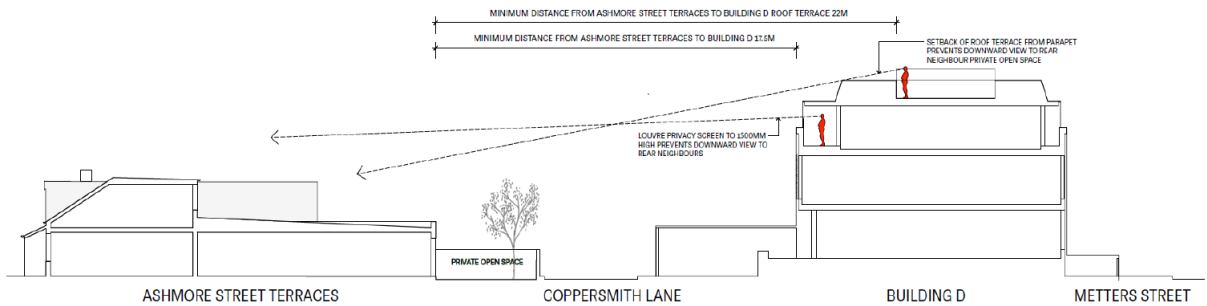


Figure 33: View diagrams from the attic level and roof terrace, demonstrating sufficient separation from neighbouring terraces to the north.

- (iii) The extent of the non-compliance will not adversely overshadow existing and proposed neighbouring properties.

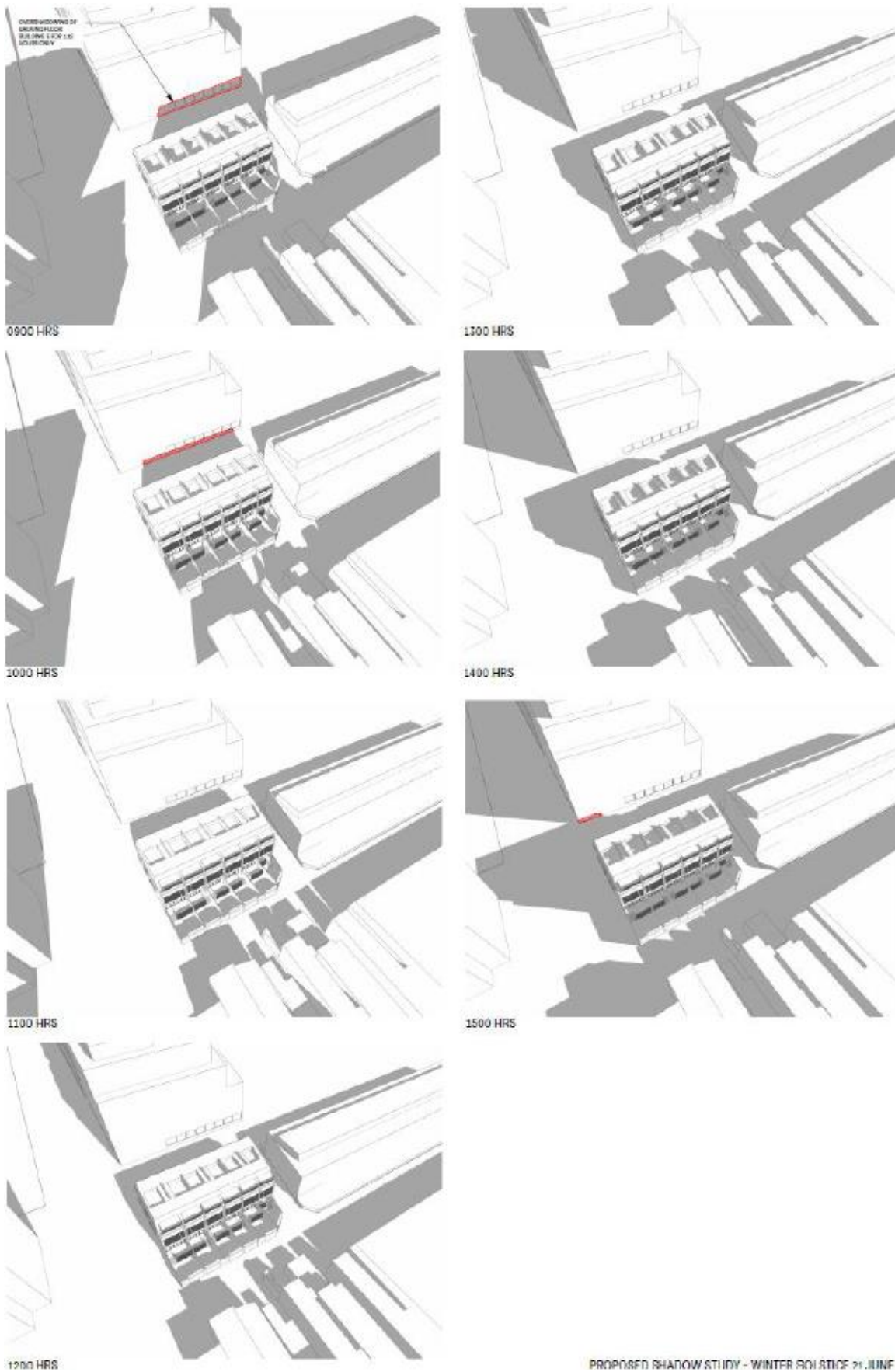


Figure 34: Shadow diagrams demonstrating that the development will not adversely overshadow neighbouring properties.

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

41. 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)?

42. 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 standard, the development meets the objectives of Clause 4.3.
43. 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 variation proposed.

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

44. 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 architecture of the building and result in a substantial loss of floor space, noting that the development complies with the maximum gross floor area permitted for the block and is compatible with the emerging and desired future character of the area. The development is also consistent with the concept approval as amended.
45. 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.
46. To summarise the applicant's submission, the site cannot deliver the desired two storey + attic dwellings of a high architectural standard, comply with the City's Interim Floodplain Management Policy and sit within the maximum height standard. The extent of the variation also has an acceptable environmental impact on the built form and amenity of the surrounding area as discussed within this report.
47. 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?

48. With regard to varying development standards, the public interest is deemed to be protected where a development meets the objectives of the zone and 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.
49. 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.
50. 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.
51. 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 rear garden for bike parking, and the site adjoins proposed cycle paths.
52. 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.
53. 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

54. 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.

Tree removal and canopy coverage

55. The application proposes the removal of 20 trees from the site, all located within the proposed roadways of Kooka Walk and Copper Smith Lane. The three trees of high retention value (Tallowood Eucalyptus) will be protected and no street trees will be removed. The figure below identifies those trees in green that will be retained, with all other trees removed. Specifically:
 - (a) Eight of the trees proposed to be removed are of moderate retention value.

- (b) 12 trees are of low or very low retention value.

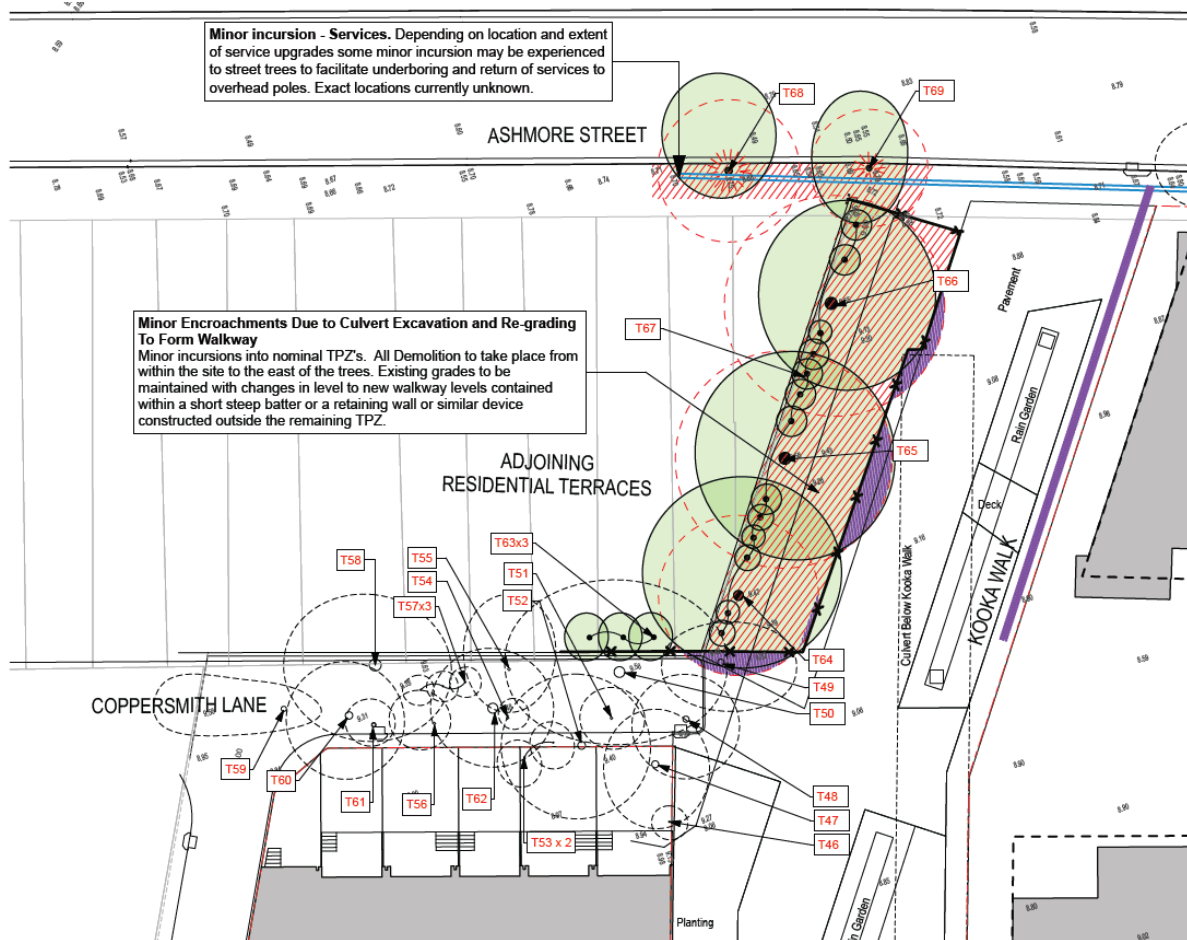


Figure 35: The trees in green are proposed to be retained.

56. The applicant proposes providing one small tree within the front setback of each dwelling, landscaping within the rear gardens, and significant street tree planting.
57. Section 3.5.2 of the Sydney DCP 2012 requires development to provide at least 15% canopy coverage of a site within 10 years from the completion of development. Council's Tree Management and Landscape officers have raised objections to the proposal as the tree canopy coverage provided to the terrace dwellings will not meet this requirement.
58. Small trees are identified within the City's Landscape Code as being 6-8 metres tall and with a minimum canopy width of 4 metres. The cumulative canopy coverage proposed on site would be equal to 10% (75sqm) and therefore not comply with the minimum 15% target under the Sydney DCP 2012.
59. Council's Tree Management office has recommended that four large trees with a minimum mature height of 10-15 metres and two small trees with a minimum height of 6-8 metres be provided within the boundaries of the terraces. The sites do not provide sufficient area to accommodate these trees and as such is not supported.

60. Instead, Council's Landscape officer has recommended that an additional three small trees are located on the roofs of the terraces, which will ensure that the site meets the minimum 15% tree canopy coverage target.
61. Having regard to the provision of landscaping within the public domain, the total tree canopy coverage proposed over the entirety of Block D (including Coppersmith Lane, Metters Street and Kooka Walk) will be approximately 25%, which is consistent with the City's Urban Forest target in urban residential areas. The development will significantly increase the tree canopy coverage on site from what is currently provided, with the majority of trees removed of low or very low amenity. It is noted that the provision of small trees within the front setback has not been undertaken at the adjacent terrace dwellings and as such is an improvement on previous development within the Ashmore estate.

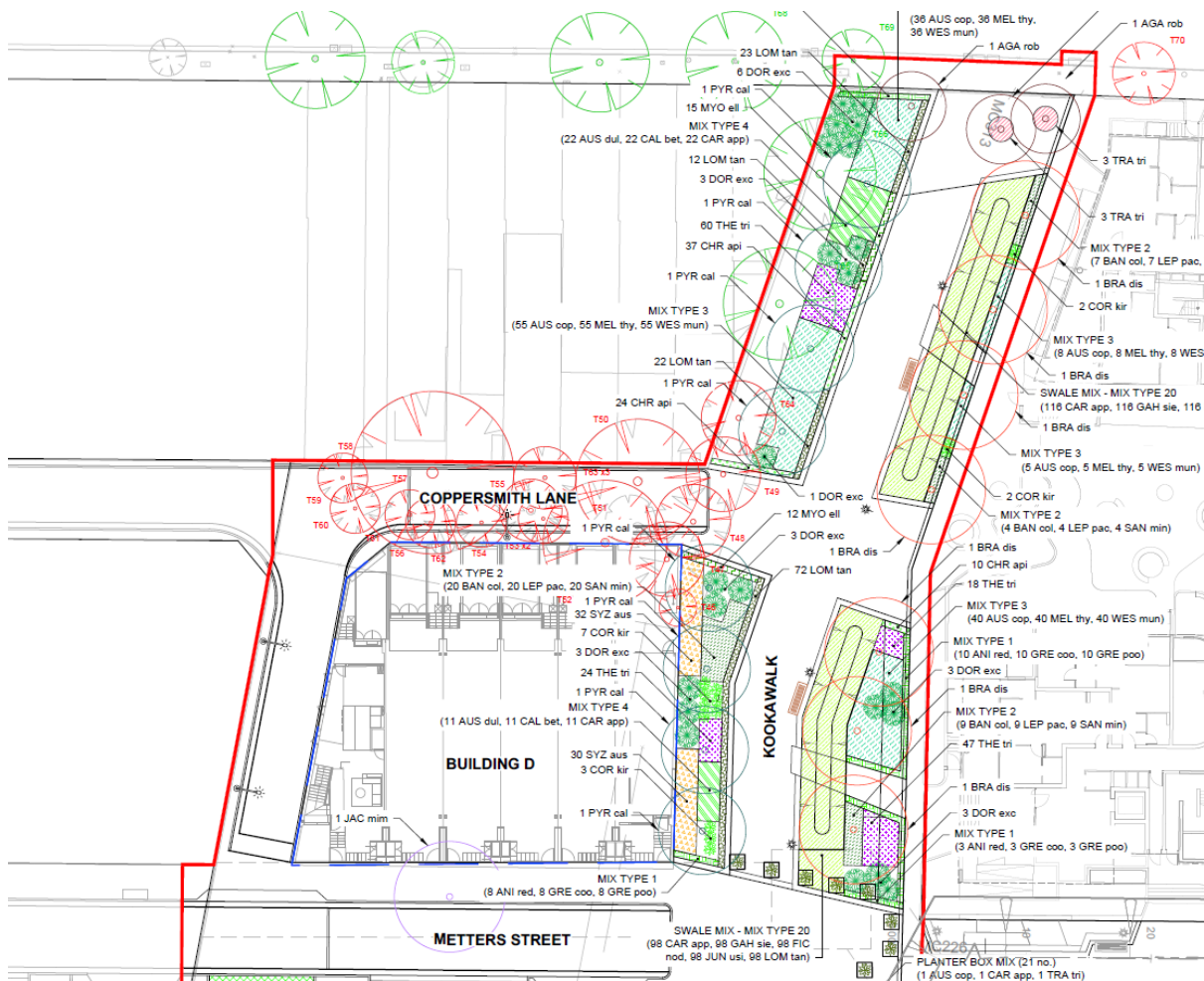


Figure 36: Draft public domain plain, identifying the total canopy cover proposed (excluding trees within private property).

Competitive design panel recommendations

62. The competitive design panel selected the scheme presented by Andrew Burns Architects 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 addressing the following issues:

- (a) Effective weather protection should be provided to windows, entry points and outdoor living spaces.

Assessment: The development has been amended to provide sun shading to first floor windows, hoods to the dormer windows, while the first floor overhangs the front and rear entries.

- (b) Improved privacy should be provided to all mid-level bedrooms.

Assessment: Views to the first floor bedrooms from the public domain will be protected by external screens and mature trees.

- (c) The Panel considers, pending environmental impacts that some additional height would be of benefit to any proposal for Block D, and recommend that this should be resolved with Council prior to submission of the DA.

Assessment: As previously discussed, non-compliance with the height standard is acceptable.

Consistency with Concept Approval

63. The Concept Approval D/2015/966/C includes various conditions which are applicable to this application. A summary of the proposal's compliance with relevant components and conditions is provided below.

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

64. The detailed proposed for Block D fits entirely within the building envelope of the concept approval.

Condition 8 'Allocation of Floor Space'

65. The Concept Approval distributed the maximum permissible base FSR of 1.75:1 through allocations of GFA to each of the development blocks.
66. A maximum gross floor area of 977sqm was permitted for Building D. The development as amended proposes 952sqm of GFA and therefore complies with the maximum provisions.

Condition 23 'Ecological Assessment Reports'

67. 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 private and public domain landscape plans to provide more habitat for small birds, such as fairy wrens and New Holland honeyeaters, reptiles and invertebrates.

Other Impacts of the Development

68. The proposed development is capable of complying with the BCA.
69. A condition of consent is recommended requiring fly screens to be added to at least one window or external door of every habitable room to facilitate natural ventilation.
70. 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

71. The proposal is of a nature in keeping with the overall function of the site.

Internal Referrals

72. The application was presented to the Design Advisory Panel who made the following comments:

- (a) *The development should reconsider the overall height of the building by reducing ceiling heights of upper levels, removing bulkheads and floor build-up. The attics should also be further setback from the primary building lines and be within a defined roof form.*

Response - The height of the building has been reduced by 0.25m, with the ceiling height of the attic reduced to 2.4 metres.

- (b) *The ground floor should be replanned to increase the area of outdoor space adjacent to the living areas. The car parking areas should be made permeable in keeping with the design competition entry.*

Response - The car stacker has been removed and the area made permeable. The area can be used as an extension of the private open space when a car is not parked in this spot.

- (c) *The development does not provide sufficient sun shading.*

Response - The development as amended provides operable shading to north facing bedroom windows and provides overhangs and fixed hoods to ground and first floor windows. East and west facing windows will be protected by neighbouring buildings and street trees.

- (d) *More solidity and landscaping is required to improve visual privacy.*

Response - More trees are provided within the front setback, with privacy screening and greater solidity introduced to the rear elevation.

- (e) *The ceiling height of the basement should be amended such that it cannot be used as a habitable room under the NCC.*

Response - The basements have been deleted from the plans.

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

External Referrals

Notification, Advertising and Delegation

74. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 8 April 2019 and 7 May 2019 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification no submissions were received.

Water Management Act 2000

75. 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.
76. 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.
77. 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.

Public Interest

78. The proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

79. 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.
80. A portion of the existing warehouse building will be demolished to accommodate the proposed works. Existing floor plans were not provided by the applicant and as such the approved plans under U97/00295 (development consent for an extension to the warehouse) have been considered. The gross floor area to be demolished and credited for contributions is calculated at 849.7sqm (an area of 41.3sqm has been excluded from the gross floor area calculation to account for loading which is excluded from the definition of GFA under the Sydney LEP 2012).

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

(a) Open Space	\$40,548.63
(b) Community Facilities	\$9,682.12
(c) Traffic and Transport	-\$26,975.94
(d) Stormwater Drainage	-\$10,665.22
Total	\$12,579.60

- 82.

83. 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 Comp any Limited.

Relevant Legislation

84. Environmental Planning and Assessment Act 1979.
85. Water Management Act 2000.
86. Sydney Water Act 1994.

Conclusion

87. The application proposes partial demolition of a warehouse and construction of six terrace dwellings, each with one car space. Public domain works include constructing the final sections of Metters Street and Copper Smith Lane, the northern portion of Kooka Walk and associated landscaping. 20 trees will be removed from the site to accommodate the public domain works, with three trees on site and two street trees retained.
88. This is a detailed design development application following the approval of a concept development application (D/2015/966/C). The proposed development is consistent with the concept approval.
89. The development exceeds the maximum nine metre height of buildings development standard by 2.49 metres (27.7%). 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.
90. 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. While 20 trees are proposed to be removed, conditions of consent are recommended requiring a minimum of nine small trees to be provided within the site boundaries of the terraces, in addition to significant street tree planting. The development therefore achieves design excellence.

91. The application was notified and advertised for 30 days and received no submissions.
92. The development is therefore in the public interest and recommended for approval subject to conditions in Attachment A.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

David Zabell, Senior Planner