

Item 3.**Development Application: 634 Botany Road and 45-47 Ralph Street, Alexandria
- D/2019/684****File No.:** D/2019/684**Summary****Date of Submission:** 28 June 2019. Amended plans and additional information were submitted up until 18 March 2020.**Applicant/Developer:** Lateral Estate P/L**Architect:** Smith & Tzannes**Owner:** Sameden P/L**Cost of Works:** \$45,728,777**Zoning:** B7 Business Park Zone**Proposal Summary:** Proposal

The subject application seeks consent for a concept building envelope for shop-top housing, including:

- in-principle approval for demolition of existing buildings, except for the interwar functionalist style industrial building at 49 Ralph Street which is to be retained;
- a concept building envelope up to 22m in height;
- vehicular access via an existing crossover from Ralph Street;
- indicative future land uses comprising:
 - basement parking, services and storage;
 - ground floor shops, commercial tenancies, parking, services, lobbies and landscaping; and
 - residential apartments and communal open space at upper levels.

This application is Integrated Development requiring approval under the Water Management Act 2000.

Issues

Over the course of the assessment the proposal has been amended to reduce the height of the envelope, retain the interwar functionalist industrial building fronting Ralph Street, to increase the width of the through site link, to provide a simplified loose-fit envelope and to improve the citing and layout of apartments to orient away from traffic noise on Botany Road.

Additional information has been submitted including remediation information, amended acoustic and natural ventilation strategies, an amended arborist's report, amended landscape concept plan, overshadowing analysis and an amended public benefit offer.

Conditions are recommended that require various modifications to the envelope and further investigation of unresolved issues through the competitive design and subsequent design development processes. These conditions pertain to common open space and deep soil provision, tree protection, landscaping and setbacks from Ralph Street and the north-eastern boundary. Together these requirements may result in a reduced apartment yield from the development.

The concept proposal and Design Excellence Strategy establish a loose fit envelope and suitable parameters for a competitive design process. Subject to the recommended conditions, the envelope is able to accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.

Notification

As integrated development the subject application was notified and advertised for 30 days between 9 July and 8 August 2019. As a result of this notification six submissions were received. Issues raised in submissions included:

- excessive height;
- adverse streetscape impacts;
- adverse impacts upon privacy and outlook;
- density of development and associated traffic, parking, noise, public transport and infrastructure impacts;

- inaccuracies in submitted drawings and shadow diagrams;
- inadequate building separation;
- overshadowing caused by large tree plantings adjacent to the south-western boundary;
- over-provision of 1 bedroom apartments; and
- tree removal.

Upon lodgement of substantially amended plans that reconfigured the proposed envelope the application was re-notified for 14 days between 17 February and 3 March 2020. As a result of this re-notification one submission was received. Aside from issues previously raised in other submissions, concerns raised included:

- loss of city views from adjacent properties;
- overshadowing impacts; and
- risks of structural damage arising from demolition, piling and excavation phases of development.

Voluntary Planning Agreement

The owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council. This will provide for dedication of a 1.4m wide strip of land along the site's Botany Road frontage, construction of footpaths and provision of a through site link secured by registration of an easement for a right of public access connecting Botany Road and Ralph Street.

The draft VPA has commenced its public exhibition period, which will continue for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

As the application is for development to which the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies and it is subject to an associated VPA, it is to be determined by the Local Planning Panel.

It is recommended that deferred commencement development consent is granted subject to the recommended conditions requiring the VPA to be executed and registered on title prior to the consent becoming operative.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) State Environmental Planning Policy No 55 - Remediation of Land
- (ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Envelope Drawings
- C. Perspective Envelope Drawings
- D. Reference Scheme Drawings
- E. Design Excellence Strategy
- F. Draft Voluntary Planning Agreement
- G. Landscape Concept Plan

Recommendation

It is resolved that:

- (A) the Design Excellence Strategy for 634 Botany Road and 45-47 Ralph Street, Alexandria prepared by Sutherland & Associates Planning on behalf of Lateral Estate, as shown in Attachment E to the subject report, be approved pursuant to Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the Competitive Design Policy; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2019/684 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) The concept proposal is for shop-top housing comprising apartment dwellings above ground floor commercial and retail premises. The site is located within the area subject to clause 1AA of Schedule 1 of the Sydney Local Environmental Plan 2012 (the LEP), which specifies development for the purposes of shop-top housing as being permitted with consent.
- (B) The proposed concept building envelope complies with the 22m height of buildings control pursuant to clause 4.3 of the LEP and is capable of accommodating development that complies with the floor space ratio controls pursuant to clauses 4.4 and 6.21 of the LEP. The concept proposal is capable of satisfying the relevant objectives of Sydney Development Control Plan 2012 (the DCP).
- (C) The concept proposal and Design Excellence Strategy establish a loose fit envelope and suitable parameters for a competitive design process. Subject to the recommended conditions, the proposed envelope is able to accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 791518 and Lot 31 DP 1000164, and is commonly known as 634 Botany Road and 45-47 Ralph Street, Alexandria.
2. The site is irregular in shape and has an area of 5,065sqm. It has a primary street frontage to Botany Road and a secondary frontage that contains three existing vehicle crossovers to Ralph Street. It is located approximately 68m north-east of the intersection of Botany Road and Gillespie Avenue.
3. The site contains three warehouse buildings currently used for furniture manufacturing. Fronting Botany Road is the largest of the three, constructed in 1949. In the western corner of the site, fronting Ralph Street is an inter-war functionalist style industrial building, constructed in the 1940s. The third warehouse is contained in the northern corner of the site. This is of simple design and originates from a later period being built some time before 1975.
4. Adjacent to the north-east is an open, concrete-lined stormwater canal. Further to the north-east at 39 Ralph Street is a 6-storey shop-top housing development currently under construction. This was approved in 2016 under development consent D/2016/865.
5. Adjacent to the south-west at 53-55 Ralph Street is a 4-storey residential apartment building. Also adjacent to the south-west and with frontages to Botany Road, Gillespie Avenue and Ralph Street is a mixed-use development, commonly known as 4 Gillespie Avenue.
6. On the opposite south-eastern side of Botany Road commonly known as 2-16 Harcourt Parade is a large business/industrial complex. South of that, on the corner of Harcourt Parade and Botany Road is a childcare centre. Further south is the Gardeners Road Public School.
7. Properties on the opposite western side of Ralph Street and that are north of Gillespie Street are within the B6 Enterprise Corridor zone.
8. South of Gillespie Avenue is a mix of business, industrial and shop-top housing developments. North-west of Ralph Street is a mix of commercial, technology and industrial uses.
9. The site does not contain a heritage item, but is in the vicinity of several local heritage items including the:
 - (a) former Wilson Bros Willow Ware factory at 38 Ralph Street (I2239);
 - (b) former Walter Barr Pty Ltd factory at 2-6 Birmingham Street (I2224);
 - (c) Gardeners Road Public School at 827 Botany Road (I1373); and
 - (d) the former 'British General Electric Co' at 797-807 Botany Road (I1372).
10. The site is not located within a heritage conservation area.
11. A site visit was carried out by staff on 25 July 2019. Photos of the site are below.



Figure 1: Aerial image of subject site and surrounding area including adjacent shop-top housing at 39 Ralph Street and 4 Gillespie Avenue and B6 Enterprise Corridor zone west of Ralph Street.



Figure 2: Botany Road frontage of subject site.



Figure 3: Development site adjacent to the north-east at 39 Ralph Street.



Figure 4: Adjacent property to the south at 4 Gillespie Avenue.



Figure 5: Business/industrial complex on opposite eastern side of Botany Road.



Figure 6: Childcare centre on opposite south-eastern side of Botany Road.



Figure 7: Gardeners Road Public School on the opposite side of Botany Road and further south.



Figure 8: Ralph Street frontage of the subject.



Figure 9: Northern end of the site's Ralph Street frontage.



Figure 10: Development site at 39 Ralph Street and stormwater canal, adjacent to the north-east.



Figure 11: View from subject site to adaptively reused warehouse for business uses at 32 Ralph St.



Figure 12: Interwar functionalist building fronting Ralph Street.



Figure 13: Southern facade of interwar functionalist building and existing driveway to Ralph Street.



Figure 14: North-eastern facade of building at 53-55 Ralph Street and apartment windows adjacent to the south-west.



Figure 15: Vehicle access to building at 53-55 Ralph Street adjacent to the south-west.



Figure 16: Adjoining buildings adjacent to the south-west fronting Ralph Street.



Figure 17: View further to the south-west along Ralph Street.



Figure 18: Adaptively re-used local heritage item the former Walter Barr Pty Ltd warehouse (I2224) at 2-6 Birmingham St. adaptively re-used for business uses.



Figure 19: Local heritage item the former Wilson Bros Willow Ware factory (12239) building at 38 Ralph St. adaptively re-used for commercial uses.



Figure 20: Business / industrial complex on the opposite north-western side of Ralph Street.



Figure 21: Former industrial building at 32 Ralph Street adaptively reused for technology industries.

History Relevant to the Development Application

Development history of the subject site

634 Botany Road and 45-47 Ralph Street

12. D/2003/90 - On 27 June 2003, development consent was granted for alterations to the Botany Road facade and internal alterations to create an office furniture showroom area and to display 4 signs.

634 Botany Road

13. There is an existing interwar functionalist-style industrial building at the rear of the property at 634 Botany Road, fronting Ralph Street. The building (with sawtooth roof) is shown in a 1943 aerial image. It is possible that the building was constructed in the early 1940s and features some art deco 1930s stylistic details. Except for the removal of a portion of the rear wall to connect the space with the larger building that fronts Botany Road, this polychromatic brick building is substantially intact and original.
14. The existing warehouse building at 634 Botany Road and which fronts Botany Road was constructed in 1949 for use as Albion Motors (Overseas) Ltd motor showroom and repair and assembly workshop. The front of the building has been modernised for its current use as the Australian Workstation Manufacturers (AWM) showroom.

15. D/1996/644 - On 3 October 1996, development consent was granted for alterations, fit out and use for manufacturing electrical equipment.

45-47 Ralph Street

16. D/2000/322 - On 24 May 2000, development consent was granted for a change of use to a clothing warehouse and associated alterations.

Development history of adjacent sites

39 Ralph Street (immediately adjacent to the north-east of the subject site)

17. D/2015/364 - On 10 September 2015, CSPC considered the application and delegated authority to determine the application to the CEO. On 3 March 2016, deferred commencement development consent was granted for an integrated concept (stage 1) envelope for a mixed-use development comprising shop top housing, ground floor retail uses and parking, and basement parking. On 18 November 2016 the consent was un-deferred and made operative.
18. CMP/2015/20 - In November 2015 a competitive design process was held to select a preferred design concept for redevelopment of the site.
19. D/2016/865 - On 8 December 2016, development consent was granted for an integrated (stage 2) DA for demolition of the existing buildings, tree removal, excavation and remediation works, construction of a 6 storey shop top housing development comprising 6 shop tenancies and 191 residential apartments, roof terrace, and basement parking.

53-55 Ralph Street (immediately adjacent to the south-west of the subject site)

20. D/2008/1218 - On 31 August 2009, development consent was granted for demolition of the existing building and construction of a new 4 storey residential building with 15 individual apartments over an excavated basement level.

4 Gillespie Avenue

21. U00/00865 - On 21 March 2001, development consent was granted for the subdivision of land into 2 lots, staged development of 104 apartments, office/ commercial/retail tenancies and 102 car spaces.

History of the subject application

Pre-DA lodgement

22. On 15 January 2019 a pre-DA meeting was held to discuss preliminary concept plans. Issues discussed included height non-compliances, height in storeys non-compliances, community infrastructure, flood planning, noise constraints, common open space, solar access and cross ventilation. Further written feedback was provided following the meeting.

Lodgement

23. The subject application was lodged on 28 June 2019.
24. The original proposal sought consent for in-principle approval for demolition of all existing structures and detailed concept envelopes to a height of approximately 24m. The originally proposed envelope included indicative rooftop plant, lift and stair overruns which breached the height control. The general design approach located massing around the perimeter of the site and did not provide a setback to Ralph Street, and underprovided deep soil. The design of the concept building envelope was considered to be overly detailed and had the effect of pre-empting design competition outcomes.
25. Council officers made preliminary requests seeking additional information including a detailed quantity surveyor's report, additional overshadowing information, a supplementary acoustic assessment, a remediation action plan and statement of interim advice from a site auditor.

Advice of the Design Advisory Panel Residential Subcommittee (DAPRS)

26. The proposal was presented to DAPRS on 15 October 2019. Issues discussed by DAPRS included non-compliance with key planning controls, location of massing and site planning, separation and setbacks from street trees on Ralph Street and the canal, simplification of the envelope design, adaptive reuse of the interwar functionalist building, landscape design of the through site link and deep soil provision.

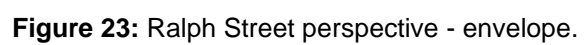
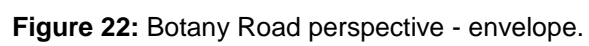
Amendments and additional information

27. In response to issues raised by Council officers and which incorporated the DAPRS advice, the applicant provided an amended DA package in February 2020. Further amendments and additional information have been provided up until the final submission at the end of March 2020. Over the course of the assessment the applicant's project team has met with Council officers on several occasions to discuss the various issues raised.
28. The final submitted amendments and additional information are summarised follows:
 - (a) retention of the interwar functionalist building fronting Ralph Street;
 - (b) reduction in the height of the envelope to comply with the height control;
 - (c) reconfiguration of the envelope to accommodate massing opportunities in the centre of the site and which is sculpted to minimise overshadowing to residential properties adjacent to the south at 4 Gillespie Avenue;
 - (d) provision of a 1.5m envelope setback from Ralph Street;
 - (e) simplification of the envelope drawings;
 - (f) provision of a 6m wide through site link, open to the sky, along the north-eastern boundary;
 - (g) location of Botany Road street trees included on the envelope plans;
 - (h) increased deep soil provision;

- (i) a revised reference scheme comprising 102 apartments (reduced from 115 in original proposal);
 - (j) a revised remedial action plan and interim advice letter from a site auditor;
 - (k) revised overshadowing and solar access analysis;
 - (l) a revised acoustic report and natural ventilation strategies;
 - (m) a revised landscape concept plan;
 - (n) a revised arboricultural impact assessment;
 - (o) a revised design excellence strategy and ESD target benchmarks; and
 - (p) a revised public benefit offer.
29. The final DA as amended by the revisions and additional submissions summarised above is the subject of this assessment report.

Proposal

30. The subject application seeks consent for a concept building envelope for shop-top housing, including:
- (a) in-principle approval for demolition of existing buildings, except for the interwar functionalist style industrial building at the rear of 634 Botany Road and fronting Ralph Street which is to be retained;
 - (b) a concept building envelope up to 22m in height;
 - (c) vehicular access via an existing crossover from Ralph Street;
 - (d) indicative future land uses comprising:
 - (i) basement parking, services and storage;
 - (ii) ground floor shops, parking, services, lobbies and landscaping; and
 - (iii) residential apartments and communal open space at upper levels.
31. This application is Integrated Development requiring approval under the Water Management Act 2000.
32. Drawings of the proposed development are provided below.



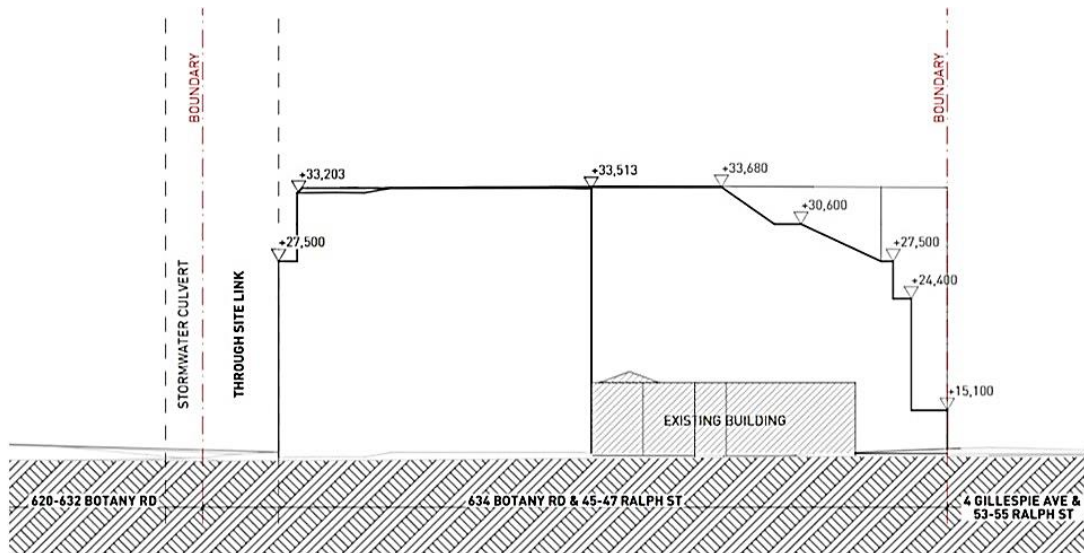


Figure 24: North-west elevation - envelope.

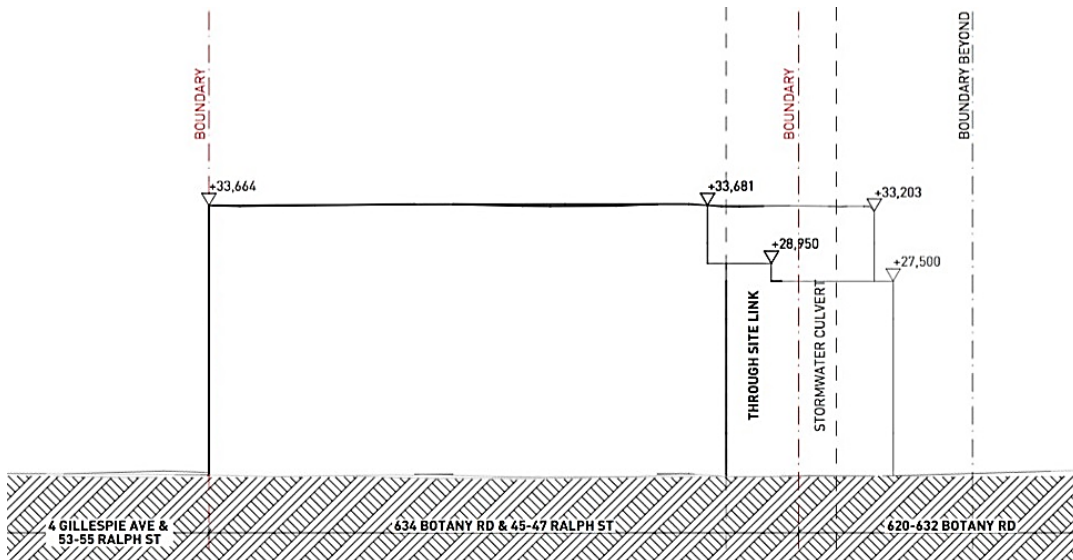


Figure 25: South-east elevation - envelope.

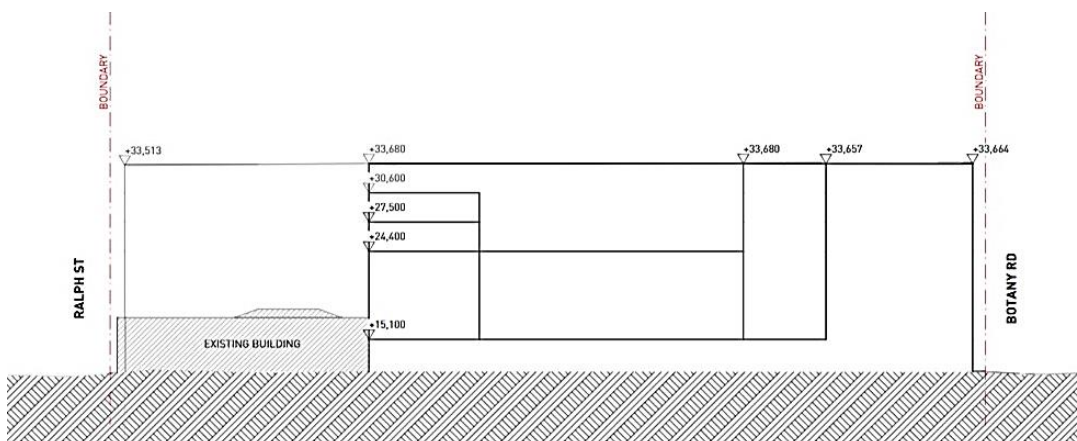


Figure 26: South-west elevation - envelope.

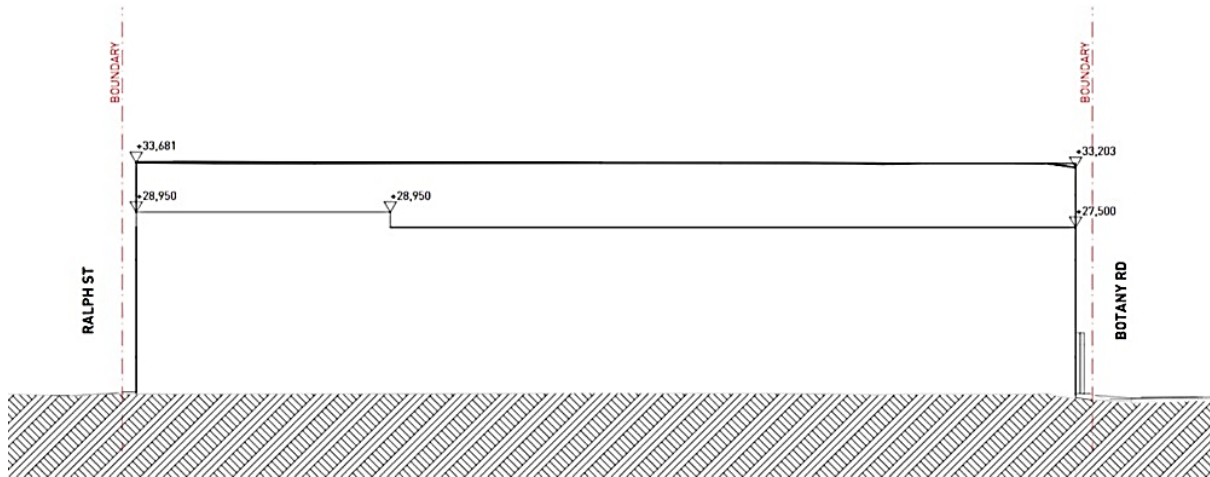


Figure 27: North-east elevation - envelope.

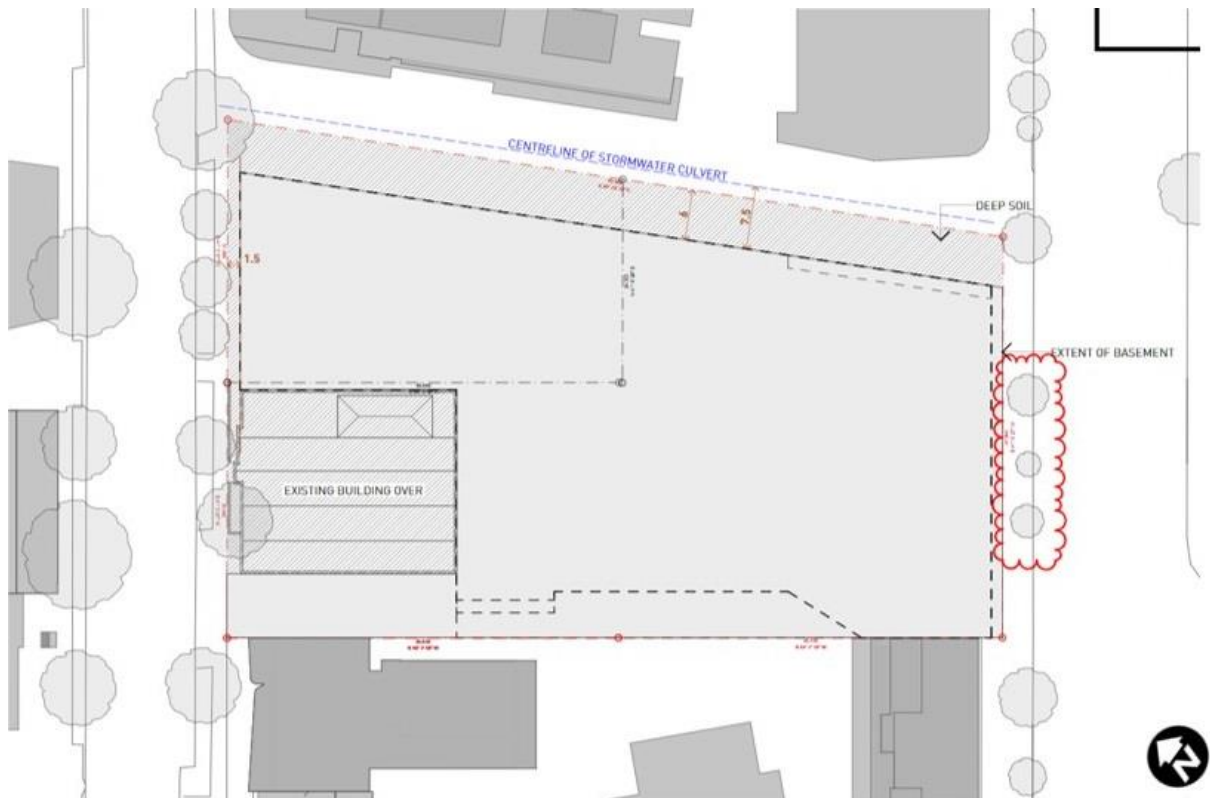


Figure 28: Basement plan - envelope.

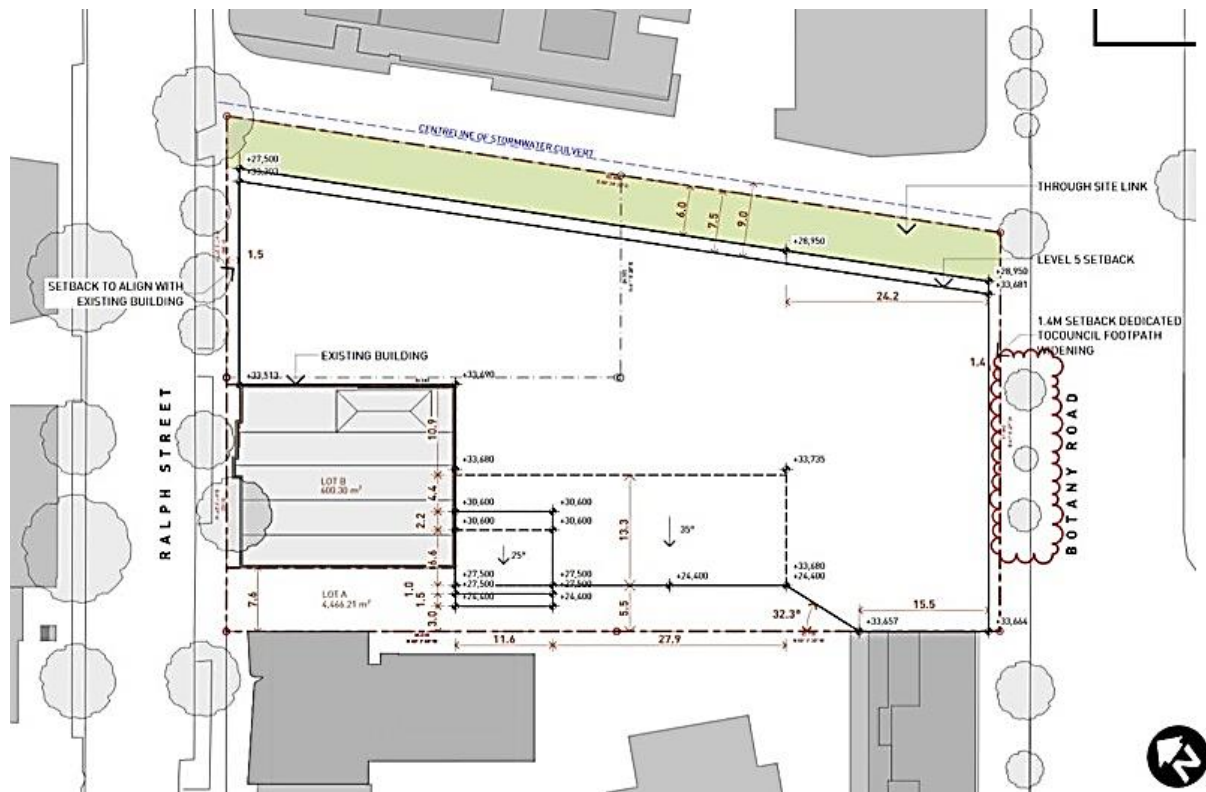


Figure 29: Envelope plan.

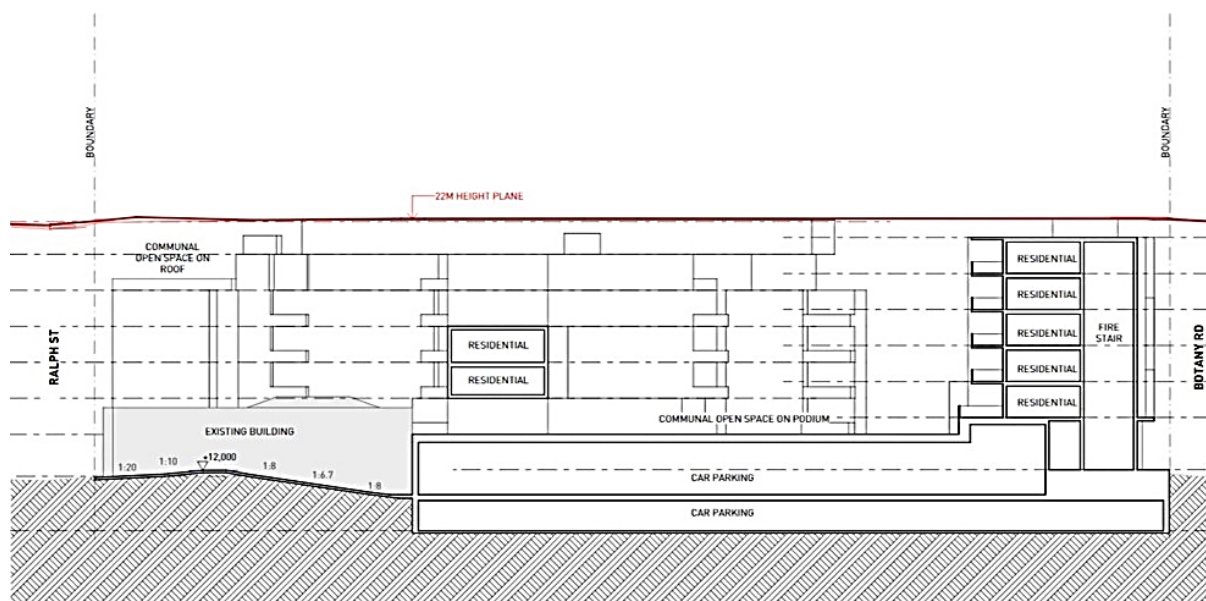


Figure 30: Section a - reference scheme.

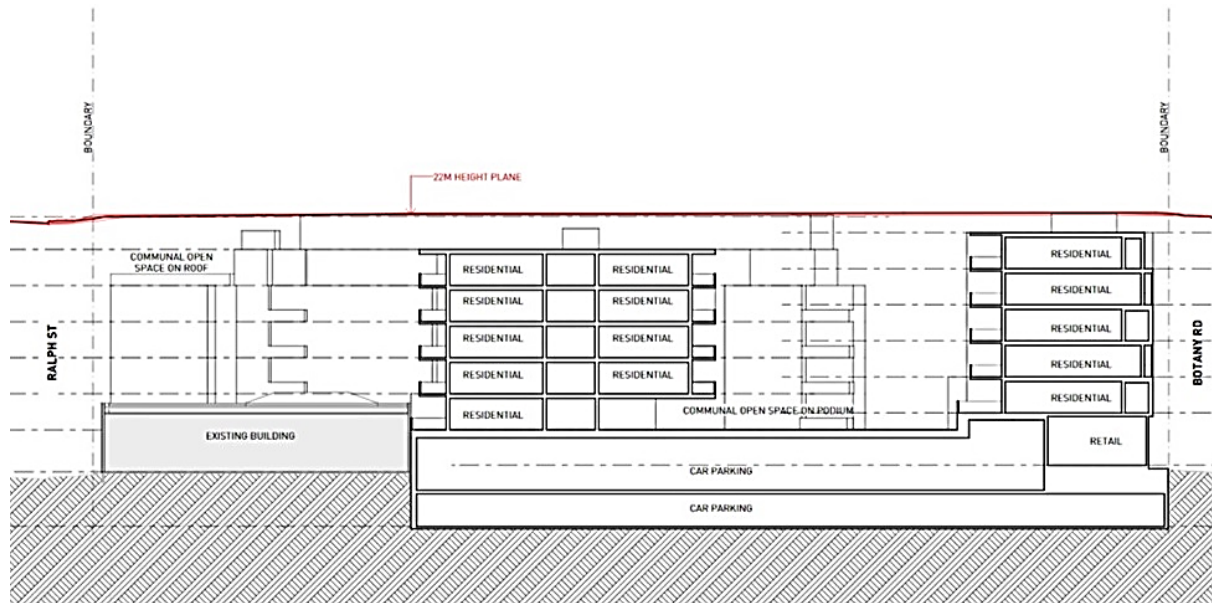


Figure 31: Section b - reference scheme.

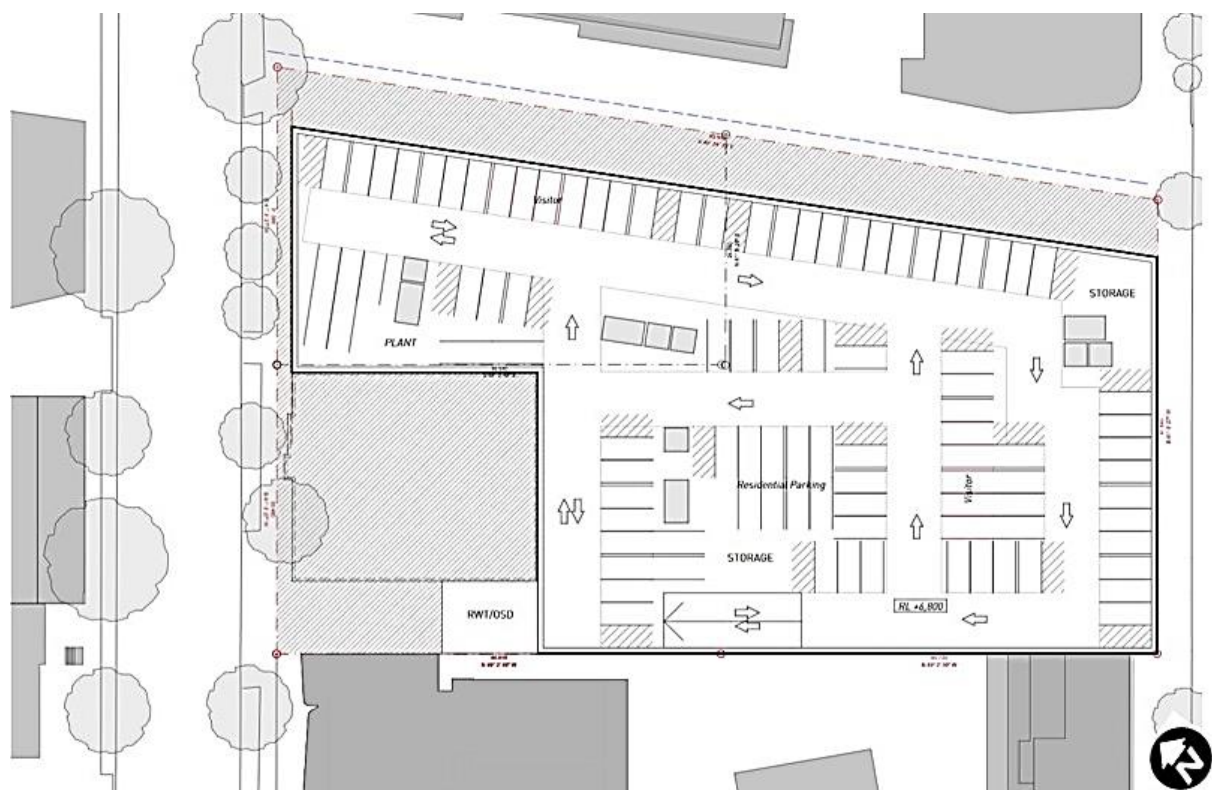


Figure 32: Basement plan - reference scheme.

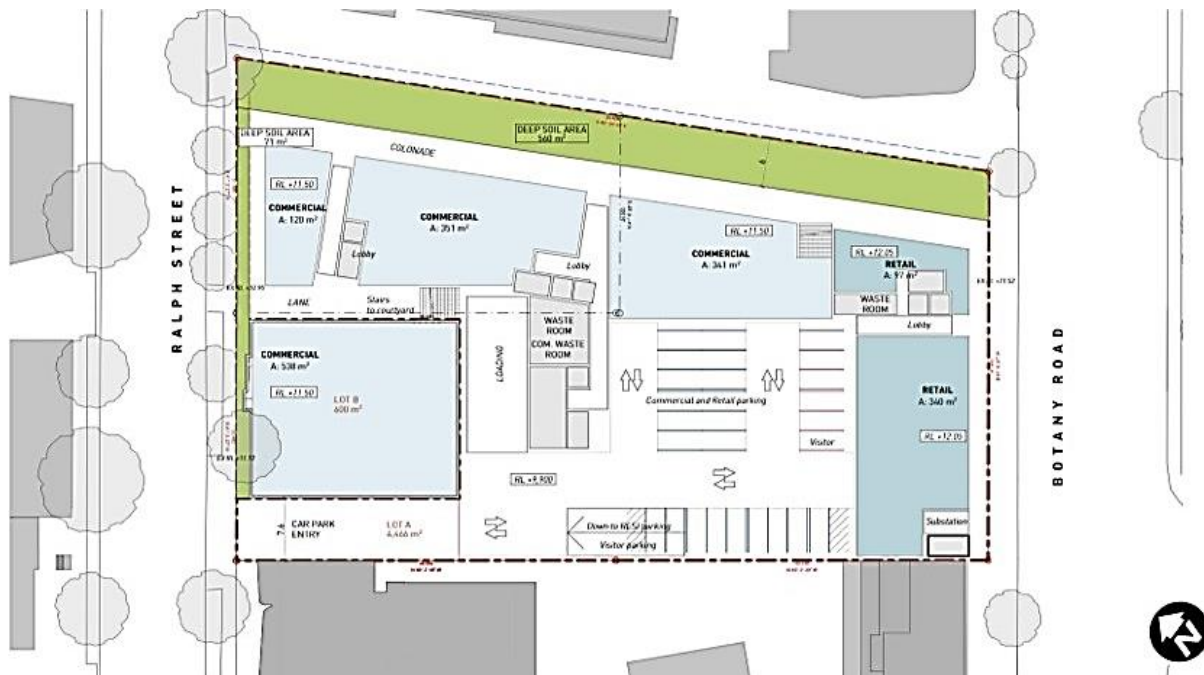


Figure 33: Ground level plan - reference scheme.



Figure 34: Level 1 plan - reference scheme.



Figure 35: Level 2 plan - reference scheme.



Figure 36: Level 3 plan - reference scheme.



Figure 37: Level 4 plan - reference scheme.

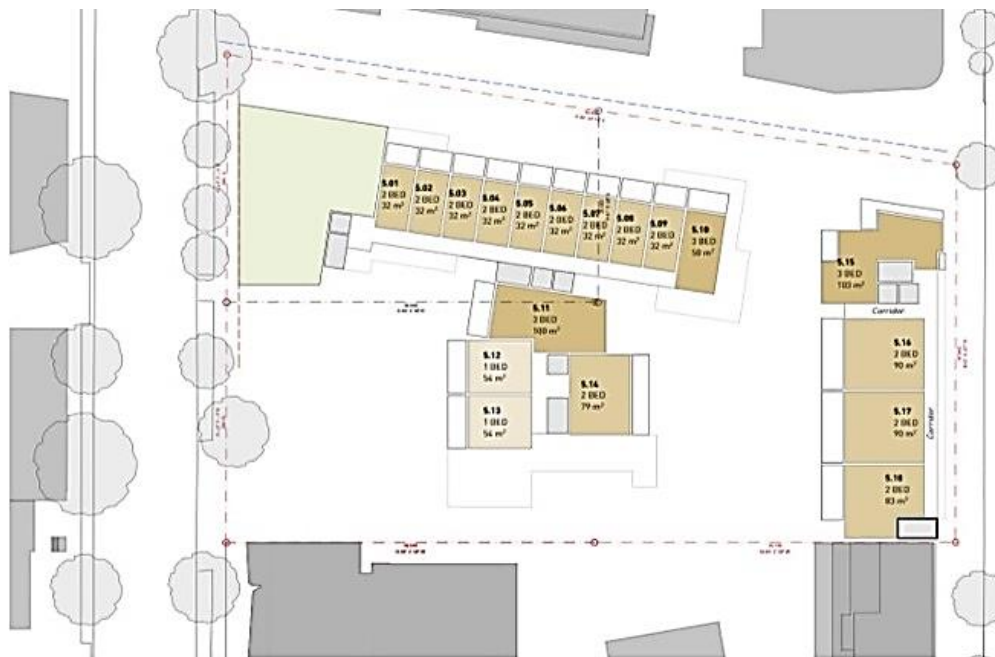


Figure 38: Level 5 plan - reference scheme.

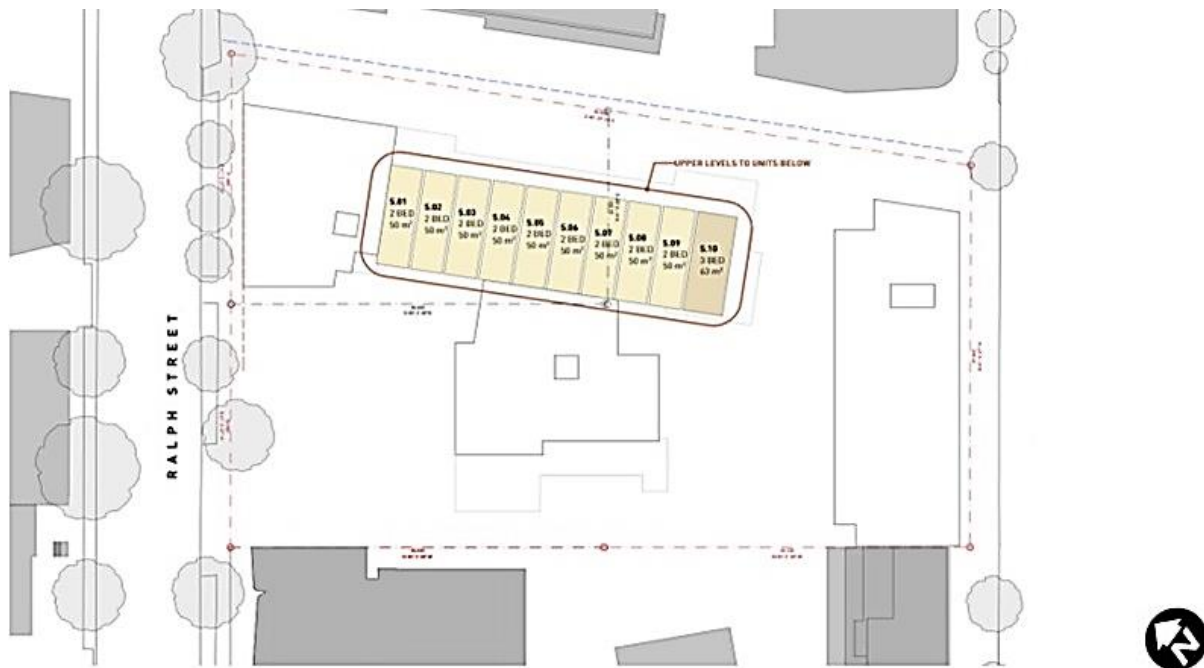


Figure 39: Level 6 plan - reference scheme.

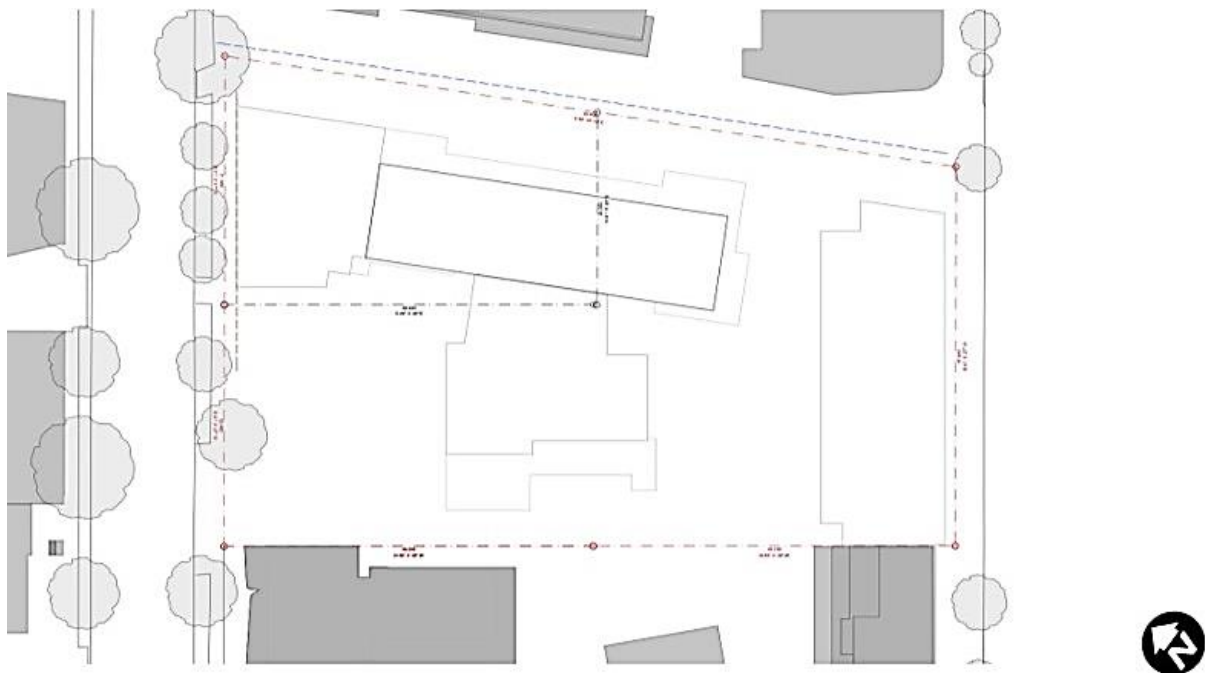


Figure 40: Roof plan - reference scheme.

Economic/Social/Environmental Impacts

33. 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

34. 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.
35. The submitted contamination information identifies contaminants within the site including heavy metals, polyaromatic hydrocarbons (PAH) in the soils and hydrocarbons in the groundwater, which are present due to its past industrial uses.
36. An amended Remediation Action Plan (RAP) and an amended letter of interim advice from a site auditor were submitted with the development application. Council's Environmental Health Specialist is satisfied that subject to the RAP being implemented, the site can be made suitable for the proposed use.
37. It is noted that the RAP has also been reviewed by Council's Public Domain team who are satisfied that the land can be dedicated to the City without any significant environmental encumbrances.

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

38. In accordance with the requirements of SEPP 65 and the Environmental Planning and Assessment Regulation 2000, a design verification statement has been prepared and submitted by Peter Smith, registered architect (no. 7024) of Smith & Tzannes.
39. SEPP 65 provides that in determining an application for a residential apartment development of three or more storeys and containing four or more apartments, that the consent authority take into consideration several matters relating to design quality, including 9 design quality principles, being:

(a) **Principle 1 and 2: Context and Neighbourhood Character, Built Form and Scale**

The proposed retention and reuse of the interwar functionalist building fronting Ralph Street is in keeping with the design principles and character statement for the Rosebery West locality set out at provision 2.10.5 of the Sydney DCP 2012 (the DCP).

The retention of this building establishes a building alignment at the ground floor level that is sympathetic to the adjacent buildings fronting Ralph Street. Conditions have been recommended that require the detailed building design to establish a sympathetic relationship with the interwar functionalist building that is to be retained and for interpretation of the site's industrial history.

Conditions have been recommended for the upper levels of the envelope fronting Ralph Street to be setback by a minimum of 3m from the boundary of Ralph Street to protect street tree canopies and to reinforce its amenity and character as being green and tree lined.

The retention of the interwar functionalist building fronting Ralph Street has required a redistribution of massing to the centre of the site. This has increased overshadowing of residential apartment buildings adjacent to the south-west at 53-55 Ralph Street and 4 Gillespie Avenue. However, this design move does not create a non-compliance with the overshadowing requirements of the ADG. Refer to the Issues section in this report for further discussion on overshadowing.

The concept proposal complies with the height controls for the site. It establishes a loose fit envelope to accommodate development of an appropriate bulk and scale that is capable of providing a sympathetic detailed design response to the key natural and built features of the area.

(b) **Principle 3: Density**

The reference scheme demonstrates that the proposed envelope is capable of accommodating development of a density envisaged under the relevant planning controls.

Conditions recommended elsewhere in this report require various modifications to the envelope and for unresolved issues to be addressed through the competitive design and subsequent design development processes. Together these requirements may result in a reduced development yield.

Subject to the recommended conditions the density that may be achieved is appropriate among its diverse urban surroundings in the Southern Employment Lands.

(c) **Principle 4: Sustainability**

The energy efficiency and sustainability of the design will form part of a subsequent DA for the detailed of the building.

ESD target benchmarks have been incorporated into the Design Excellence Strategy that is recommended for approval and which include a commitment to rooftop solar PV provision.

(d) **Principle 5: Landscape**

The reference scheme provides common open space in the form of two rooftop open spaces with a cumulative area of 1,269sqm (25% of the site area) and both with a minimum dimension of 6m and which satisfies the DCP's common open space size requirements.

A condition has been recommended for further investigation of opportunities for improved solar access to the principal and useable common open space(s) provided within the site, through the competitive design and subsequent design development processes. Refer to the Issues section in this report.

The reference scheme demonstrates the provision of 560sqm of deep soil area equal to 11% of the site area and with a minimum dimension of 6m can be achieved. The proposed deep soil zone is provided in the form of the through site link (TSL) that runs along the site's north-eastern boundary connecting Ralph Street and Botany Road. To address concerns about deep soil outlined in the Issues section of this report, conditions are recommended for modifications to the landscape concept plan to include design principles for the deep soil zone / TSL.

The reference scheme demonstrates that the various numerical requirements contained in the planning controls can be achieved. The recommended conditions are to integrate the design of landscape and buildings to provide for the amenity of the development and to achieve the desired future character of the area.

(e) **Principle 6: Amenity**

The subject concept proposal is for an envelope and indicative land uses only, with the amenity for future residents to be assessed upon lodgement of any subsequent development application for the detailed design of the building.

The concept proposal includes a reference scheme to demonstrate that the proposed envelope can accommodate a building designed in accordance with the SEPP design quality principles and that achieves the relevant SEPP objectives.

An assessment of the reference scheme, sometimes referred to as the 'proof of concept', concludes that the site can provide an adequate level of amenity as:

- (i) 71.5% (73 of 102) of apartments receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open space and which complies with the 70% minimum ADG requirement;
- (ii) 61% (50 of 82) apartments are naturally cross ventilated (Note: noise affected apartments located adjacent to Botany Road are sited and oriented away from Botany Road to be naturally ventilated from the quiet, north-western side of the building. These apartments have been excluded from the natural cross ventilation calculations); and
- (iii) the envelope can accommodate apartments that do not exceed the maximum depth, that achieve the minimum size requirements, with adequate private open space, that can achieve the requisite floor to ceiling heights, that are naturally ventilated and that provide suitable visual and acoustic privacy.

(f) **Principle 7: Safety**

The subject proposal is for an envelope and indicative land uses only, with the detailed design of the building to be the subject of a competitive design process and a subsequent development application.

It is considered that the building can be designed to address safety and the relevant Crime Prevention Through Environmental Design (CPTED) considerations.

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

The proposed concept envelope is able to accommodate common open space and common areas to provide opportunities for social interaction among residents.

The reference scheme provides the following unit mix:

- (i) 0% (0) studios - does not comply with DCP requirements;
- (ii) 33% (34) 1 bed - does not comply with DCP requirements;
- (iii) 57% (58) 2 bed - complies with DCP requirements;
- (iv) 10% (10) 3 bed - complies with DCP requirements.

The number and mix of apartments are not approved as part of any concept DA consent granted.

Any subsequent DA for the detailed design of the building will be assessed against the DCP's dwelling mix requirements.

(h) **Principle 9: Aesthetics**

The subject proposal is for an envelope and indicative land uses only, with the detailed design and aesthetics of the building to be the subject of a competitive design process and a subsequent development application.

40. The development is considered to be acceptable when assessed against the above stated principles and the SEPP generally.

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Able to comply	<p>The deepest apartments in the reference scheme have a depth of up to about 15m and which satisfies the requirements of this objective.</p> <p>Compliance with this objective will be assessed upon lodgement of any subsequent DA for the detailed design of the building.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> 12m between habitable rooms / balconies 9m between habitable and non-habitable rooms 6m between non-habitable rooms 	Able to comply	<p>The concept envelopes locate residential uses at level 1 and above, from a minimum height of about 3.6m above ground level (RL 15.100).</p> <p>In this assessment separation from the building to the north-east has been measured from the centreline of the canal that runs between the two sites. This is in keeping with the principle established in the ADG of sharing separation distances across adjoining sites. This was applied in the assessment of the neighbouring building to the north-east at 39 Ralph Street.</p>

2F Building Separation	Compliance	Comment
		<p>From the height of the second to the fourth storey the concept envelope is setback a minimum of 7.5m from the centreline of the canal and about 15m from the neighbouring building to the north-east at 39 Ralph Street.</p> <p>From the height of the second to the fourth storey the concept envelope has a varied setback of between 0m and 29.6m from the side boundary with properties adjacent to the south-west. The reference scheme demonstrates that apartments can be oriented away from or parallel to the south-western side boundary to avoid non-compliances with the minimum ADG separation and privacy requirements.</p> <p>Compliance with these requirements will be assessed upon lodgement of any subsequent DA for the detailed design of the building.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	Able to comply	<p>At the height of the fifth storey the concept envelope is setback a minimum of 7.5m from the centreline of the canal and about 15m from the neighbouring building to the north-east at 39 Ralph Street. This does not comply with the minimum 9m-18m separation requirement.</p> <p>From the height of the sixth to the seventh storey the concept envelope is setback a minimum of 9m from the centreline of the canal and about 18m from the neighbouring building to the north-east at 39 Ralph Street.</p>

2F Building Separation	Compliance	Comment
		<p>From the height of the sixth to the seventh storey the concept envelope has a variable setback of between 0m and 29.6m from the side boundary with properties to the south-west. The irregular shape of the envelope's south-western side has been sculpted to protect solar access to the adjacent residences.</p> <p>The reference scheme demonstrates that apartments can be oriented away from or parallel to the south-western side boundary to avoid non-compliances with the minimum ADG separation and privacy requirements.</p> <p>Compliance with these requirements will be assessed upon lodgement of any subsequent DA for the detailed design of the building.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Able to comply	The reference scheme provides common open space in the form of two rooftop open spaces with a cumulative area of 1,269sqm (25% of the site area) and which satisfies the size requirements of this objective.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Able to comply	<p>The reference scheme does not demonstrate compliance these common open space solar access requirements.</p> <p>Refer to the Issues section in this report.</p>

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	Able to comply	<p>The reference scheme demonstrates the provision of 560sqm of deep soil area equal to 11% of the site area and with a minimum dimension of 6m can be achieved.</p> <p>Refer to the Issues section in this report.</p>

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
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> 6m between habitable rooms / balconies 3m between non-habitable rooms 	Able to comply	Refer to the assessment against ADG objective 2B Building separation above.
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> 9m between habitable rooms / balconies 4.5m between non-habitable rooms 	Able to comply	Refer to the assessment against ADG objective 2B Building separation above.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Able to comply	The reference scheme demonstrates that 71.5% (73 of 102) of apartments receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open space.

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.	Able to comply	The reference scheme demonstrates that 11.7% (12 of 102) of apartments receive no direct sunlight between 9am and 3pm at midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Able to comply	<p>The reference scheme demonstrates that noise affected apartments adjacent to Botany Road can address noise and achieve natural ventilation through siting and layout of apartments.</p> <p>Some apartments facing Ralph Street and the north-eastern through site link are also noise affected and will require varying degrees of noise attenuation and alternative solutions to achieve natural ventilation of apartments.</p> <p>The submitted acoustic report recommends noise attenuation measures, including some high-level strategies to achieve the ISEPP's and DCP's internal noise criteria and natural ventilation objectives of the ADG. However, these strategies may require further refinement if they are to be included as guidance in any competitive design process brief.</p>
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Able to comply	The reference scheme demonstrates that 61% (50 of 82) apartments are naturally cross ventilated.

4B Natural Ventilation	Compliance	Comment
		Note noise affected apartments located adjacent to Botany Road are sited and oriented away from Botany Road to be naturally ventilated from the north-western side of the building. These apartments have been excluded from the natural cross ventilation calculations.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Able to comply	Compliance with this objective will be assessed upon lodgement of any subsequent DA for the detailed design of the building.

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	Able to comply	The reference scheme provides 3.1m floor to floor heights and which would provide sufficient tolerance at construction to provide 2.7m floor to ceiling heights.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Able to comply	The reference scheme provides in excess of 3.3m floor to ceiling heights to ground level retail and commercial uses.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² • 	Able to comply	<p>The reference scheme demonstrates that apartments can achieve minimum unit sizes.</p> <p>Compliance with minimum apartment sizes, depths, widths, habitable room depths, and room sizes are all to be assessed upon lodgement of any subsequent DA for the detailed design of the building.</p>

4D Apartment Size and Layout	Compliance	Comment
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.		

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p> <p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m² and a minimum depth of 3m.</p>	Able to comply	The reference scheme demonstrates that apartment balconies can achieve minimum area and dimension requirements.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Able to comply	The reference scheme demonstrates that a maximum of 8 apartments off a circulation core on a single level can be achieved.

4F Common Circulation and Spaces	Compliance	Comment
Daylight and natural ventilation are provided to all common circulation spaces.	Able to comply	<p>The reference scheme includes a common circulation space that serves the centrally located apartments, that does not have access to daylight and natural ventilation.</p> <p>Compliance with this objective will be assessed upon lodgement of any subsequent DA for the detailed design of the building.</p>

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ <p>(Minimum 50% storage area located within unit)</p>	Able to comply	As the detailed design including the number of apartments and basement levels will be determined as part of the DA for the detailed design of the building, compliance with this objective will be assessed at that later stage.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Able to comply	<p>As noted elsewhere in this report the Botany Road and Ralph Street frontages and parts of the north-eastern elevation are noise affected.</p> <p>The submitted acoustic report recommends noise attenuation measures, including some high-level strategies to achieve the ISEPP's and DCP's internal noise criteria and natural ventilation objectives of the ADG. However, these strategies may require further refinement if they are to be included as guidance in any competitive design process brief.</p> <p>A condition is recommended for a detailed acoustic assessment to be submitted as part of any subsequent DA for the detailed design of the building.</p>

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 45 - Development likely to affect an electricity transmission or distribution network

42. The proposed development is in the vicinity of electricity power lines and may affect an electricity transmission or distribution network.
43. In accordance with SEPP clauses 45 the application was notified to Ausgrid on 9 July 2019.
44. Ausgrid provided responses on 25 and 29 July 2019 advising that no objections were raised subject to the imposition of recommended conditions.
45. At the time of the re-notification of the amended DA package the application was re-notified to Ausgrid through the NSW Planning Portal (ref. no. CNR-868). No further comments were received and so the conditions recommended in referral comments received in July 2019 have been included in the conditions of consent set out in Attachment A to this report.

Clause 101 - Development with frontage to a classified road

46. The subject site has a frontage to Botany Road, which is a classified road.
47. In accordance with SEPP clause 101 the application was notified to RMS on 6 September 2019.

48. RMS provided a response on 26 September 2019 advising that no objection was raised subject to the imposition of recommended conditions.
49. At the time of re-notification of the amended DA package the application was re-notified to RMS through the NSW Planning Portal (ref. no. CNR-868). RMS responded on 9 March 2020 to confirm that the comments in the original referral remain relevant and the previously recommended conditions are to be imposed on any consent granted.
50. The conditions recommended in the referral dated 26 September 2019 are included in the conditions of consent set out in Attachment A to this report.

Clause 102 - Impact of road noise or vibration on non-road development

51. The subject site has a frontage to Botany Road which carries an average daily traffic volume of 20,000 vehicles and as such is subject to the requirements of clause 102 of the SEPP.
52. Council's Environmental Health Specialist has reviewed the submitted acoustic report and has advised that subject to the recommended noise attenuation strategies the proposed development can achieve the relevant internal noise criteria specified at clause 102 of the SEPP.
53. The Ralph Street and north-eastern site frontages are also noise affected and are subject to the internal noise criteria stated in the Sydney DCP 2012 and which are discussed elsewhere in this report.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

54. The aim of the SEPP is to protect the biodiversity values and amenity of non-rural areas of the State through the preservation of trees and other vegetation.
55. There are 6 street trees adjacent to the site within Ralph Street and 4 street trees adjacent to the site within Botany Road and 2 trees within the subject site.
56. Council's Tree Management Specialist has reviewed the proposal and gives in-principle support for the removal of the 2 trees contained within the site. These trees are planted flush against the Ralph Street facade of the interwar functionalist building and have misshapen canopies and branches as a result.
57. Conditions have been recommended to protect the street trees currently growing adjacent to the site's Botany Road and Ralph Street frontages including design modifications to set the envelope back by a further 1.5m (3m from the boundary) at upper levels fronting Ralph Street.
58. Refer to the Issues section in this report for a more detailed discussion on conditions imposed to manage adverse impacts on trees.

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

59. Any future development application for the detailed design of the building will be required to satisfy BASIX requirements.
60. A condition is recommended to advise that any future residential scheme must comply with SEPP (Building Sustainability Index: BASIX) 2004, and that a BASIX certificate must be submitted with any future development application for the detailed design of the building.

61. Target benchmarks for ecologically sustainable development including BASIX targets for the development are discussed elsewhere in this report.

Sydney Local Environmental Plan 2012

62. The site is located within the B7 Business Park Zone. The proposed development is for shop-top housing comprising apartment dwellings above ground floor retail and commercial premises. Residential accommodation and retail premises are prohibited in the zone.
63. The site is located within the area subject to clause 1AA of Schedule 1 of the Sydney Local Environmental Plan 2012 (the LEP), which together with Clause 2.5 specifies development for the purposes of shop-top housing as being permitted with consent.
64. For this reason, the proposed development is permitted with consent notwithstanding the proposed development being prohibited in the B7 Business Park Zone.
65. 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	Yes	A maximum height of 22m is permitted. A height of 22m is proposed.
4.4 Floor Space Ratio 6.21 Design Excellence	Able to comply	LEP clause 4.4 stipulates a base floor space ratio (FSR) of 2:1 for the site. In accordance with LEP clause 6.21 up to 10% additional FSR (0.2:1) may be approved subject to a competitive design process being carried out and the subsequent detailed design scheme exhibiting design excellence. Considering all the relevant FSR provisions contained in the LEP, the maximum permitted FSR for the development is 2.2:1 (11,143sqm GFA). The reference scheme has a FSR of 2.2:1 (11,143sqm GFA), which complies with the maximum permissible FSR for the site.

Development Control	Compliance	Comment
		<p>Note that no actual works or FSR are approved as part of any concept approval and that a condition has been recommended requiring that the floor space ratio of the detailed design must not exceed the permissible floor space ratio for the site.</p> <p>Subject to the recommended conditions including those for an increased upper level setback to Ralph Street and for improved solar access to common open space, it is considered that the future detailed building design may not be able to achieve the maximum permissible FSR as has been achieved by the reference scheme.</p> <p>The subject concept proposal has been assessed against the relevant requirements of LEP clause 6.21(4) including site suitability, proposed uses, bulk and massing, street frontage heights and other environmental impacts. It is considered that the concept proposal demonstrates that subject to the recommended conditions a suitable detailed building design can be achieved for the site. LEP clause 6.21(4) will be considered in the assessment of any subsequent DA for the detailed building design.</p>
5.10 Heritage conservation	Yes	<p>The site does not contain a heritage item but is in the vicinity of several local heritage items. The site is not located within a heritage conservation area.</p> <p>Council's Heritage Specialist has reviewed the proposal and gives in-principle support for the demolition of existing buildings on site, except for the interwar functionalist building fronting Ralph Street, subject to conditions for the interpretation of the site's industrial history.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Able to comply	<p>A Design Excellence Strategy (DEX Strategy) has been submitted with the application. This establishes a design excellence process for the development of the site.</p> <p>Conditions are recommended to approve the DEX Strategy and ESD targets, and for design requirements to be incorporated into any future competitive design process brief. These include requirements for the detailed building design to establish a sympathetic relationship with the interwar functionalist building that is to be retained.</p> <p>A competitive design process is to be undertaken prior to lodgement of any future DA for the detailed design of the building. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional FSR.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.5, 7.6 and 7.7 - Car parking ancillary to other development: residential flat buildings, commercial and retail premises	Able to comply	<p>The reference scheme indicates car-parking could be provided within a single basement level and with some at ground level.</p> <p>Car parking numbers for commercial, retail and residential uses can only be assessed as part of a subsequent development application for the detailed design of the building.</p> <p>The permissible number of car parking spaces are determined by the amount of commercial and retail floor space and the residential dwelling mix and which is only indicative at this concept stage.</p>

Part 7 Local Provisions - General	Compliance	Comment
		A condition is recommended to advise that no consent is granted for the number of car parking spaces or basement layout as part of any consent granted to the subject DA.
7.13 Contribution for the purpose of affordable housing	Able to comply	Any subsequent DA for the detailed design of the building will be subject to an affordable housing contribution.
7.14 Acid Sulphate Soils	Yes	The site contains class 5 acid sulphate soils and is close to class 3 acid sulphate soils. An acid sulphate soils management plan has been submitted with the application and which recommends measures to address acid sulphate soils contained within the site.
7.15 Flood planning	Able to comply	The site is affected by flooding and lies within the Alexandra Canal catchment. A site-specific flood level assessment has been provided with the application and confirms proposed buildings will comply with the required flood planning levels.
7.16 Airspace operations	Yes	<p>The proposed envelope does not penetrate the Limitation or Operations Surface.</p> <p>Refer to the discussion of other Sydney Airport approvals under the External Referrals section in this report.</p>
7.17 Development in areas subject to airport noise	Able to comply	<p>The proposed development incorporates residential development and the site is located within ANEF Contour 20 zone.</p> <p>The acoustic report submitted as part of the application has recommended acoustic treatments to achieve aircraft noise reduction in accordance with AS 2021-2000.</p>
7.20 Development requiring preparation of a development control plan	Yes	As the site area is greater than 5,000sqm, preparation of a site specific DCP is required.

Part 7 Local Provisions - General	Compliance	Comment
		<p>Pursuant to the provisions of Section 4.23(2) of the Environmental Planning and Assessment Act 1979, the lodgement of a concept proposal DA may be considered by the consent authority as satisfying this obligation.</p> <p>As detailed elsewhere in this report, subject to the recommended conditions the concept proposal adequately addresses the matters for consideration specified under this clause including, height, bulk, massing, streetscape and environmental impacts.</p>
7.23 Large retail development near Green Square Town Centre	Able to comply	<p>The subject site is on land identified as restricted retail development on the Retail Premises Map. As such, development consent cannot be granted for the purposes of individual shops or markets with a gross floor area of greater than 1,000sqm.</p> <p>While indicative ground floor shop tenancies of less than 1,000sqm in area are proposed, the quantum of gross floor area is not approved as part of this concept DA.</p> <p>As such, any subsequent DA for the detailed design of the building will be required to comply with this control.</p>
7.25 Sustainable transport on southern employment land	Able to comply	<p>This clause requires the consent authority to consider whether the development will promote sustainable transport modes and minimise traffic.</p> <p>A future detailed design is capable of complying with this clause given the site's proximity to public transport routes, the non-variable maximum LEP parking limits and DCP requirements for the provision of bicycle and car share parking spaces within the development.</p>

Part 7 Local Provisions - General	Compliance	Comment
		<p>As no works are approved as part of this concept DA the clause does not apply, however it will be a matter to be addressed by any subsequent DA for the detailed design of the building.</p> <p>Conditions are recommended to specify information to be provided as part of any subsequent DA for the detailed design of the building to adequately address this clause.</p>

Sydney Development Control Plan 2012

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

2. Locality Statements

2.10.5 Rosebery West

The subject site is in the locality of Rosebery West. The subject concept proposal is considered to make a positive contribution towards achieving the desired future character of the area, as follows:

- the recommended design modification conditions that require upper levels to be setback 3m from the boundary with Ralph Street are to allow for the future growth of street tree canopies, to reinforce the tree-lined character of Ralph Street and which is consistent with the character statement and design principles (a) and (e);
- non-residential uses are provided at ground level to ameliorate traffic noise impacts from Botany Road and which is consistent with the character statement and design principle (a);
- the proposed retention and re-use of the interwar functionalist warehouse building is consistent with design principle (b); and
- dedication of land and construction of footpaths for the widening of Botany Road through the associated Voluntary Planning Agreement (VPA) is consistent with design principle (i).

3. General Provisions	Compliance	Comment
<p>3.1.1 Public Domain Elements - Streets, lanes and footpaths</p> <p>3.1.1.4 Public Domain Elements - Footpaths</p>	Able to comply	<p>Construction of footpaths on land to be dedicated for widening of the Botany Road footpath has been secured in the VPA associated with this DA.</p> <p>New footpath is to be designed and constructed in accordance with the Sydney Streets Design Code.</p>
3.1.2.2 Public Domain Elements - Through site links	Yes	<p>The DCP through site links map identifies the adjacent lot to the north-east that contains the open canal, as being required to provide a through site link (TSL).</p> <p>Council's Strategic Planners have confirmed that the TSL map referred to under this provision contains a mapping error.</p> <p>Contrary to the DCP's TSL map, the TSL shown on the Southern Employment Lands Urban Strategy at section 5.8 of the DCP provides an indicative location for a TSL in the vicinity of the site. The TSL proposed to be secured as an easement for public access, registered on title as part of the VPA associated with this DA, will provide a suitable pedestrian connection and is supported.</p>
3.1.4 Public Open Space	Yes	The proposed development does not overshadow any public parks.
3.1.5 Public Art	Able to comply	<p>A Draft Preliminary Art Plan (draft PAP) has been submitted as part of the subject application and which sets out a budget, a clear methodology for the selection of artists and procurement of artwork, as well as opportunities within the site for artwork.</p> <p>The public art budget specified in the draft PAP is not commensurate with the scale and nature of the proposed development. As a guide, world's best practice is that the public art budget should be equal to 1% of the total development cost.</p>

3. General Provisions	Compliance	Comment
		A condition has been recommended for the public art budget to be reviewed prior to the commencement of the competitive design process and for art to be procured in accordance with the draft PAP.
3.1.6 Sites Greater Than 5,000sqm	Yes	<p>Refer to the assessment against TSL and Public Art provisions elsewhere in this compliance table.</p> <p>The reference scheme demonstrates that 24% of the development comprises maisonette apartments and which satisfies the requirements of this control.</p>
3.2.1.1 Improving the Public Domain - Sunlight to publicly accessible spaces	Yes	As noted in the assessment of DCP provision 3.1.4 above, the proposed concept envelopes do not overshadow any publicly accessible open space.
3.2.2 Addressing the Street and Public Domain	Able to comply	The reference scheme demonstrates that the flood planning levels recommended in the site-specific flood assessment can be achieved, that ground floor car-parking can be wrapped with active uses and that an appropriate interface can be provided to the public domain.
3.2.3 Active Frontages	Able to comply	<p>The Botany Road frontage is identified as an active frontage on the DCP Active Frontages Map.</p> <p>The reference scheme locates retail tenancies of a suitable depth adjacent to the Botany Road frontage and demonstrates that the development is able to satisfy the requirements of this provision.</p>
3.2.4 Footpath Awnings	Able to comply	The site's Botany Road frontage is identified as requiring a continuous footpath awning.

3. General Provisions	Compliance	Comment
		<p>A condition is recommended for design requirements to be incorporated into the competitive design process brief and any subsequent DA for the detailed design of the building, to provide a footpath awning to the Botany Road frontage.</p>
<p>3.3 Design Excellence and Competitive Design Processes</p>	<p>Yes</p>	<p>A Design Excellence Strategy (DEX Strategy) has been submitted with the application and which establishes a design excellence process for the development of the site.</p> <p>Conditions are recommended to approve the DEX Strategy and for design requirements to be incorporated into any future competitive design process brief. These include requirements for the detailed building design to establish a sympathetic relationship with the interwar functionalist building that is to be retained.</p> <p>A competitive design process is to be undertaken prior to lodgement of any future DA for the detailed design of the building. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional FSR.</p> <p>This provision requires submission of a landscape concept plan as part of any concept DA.</p> <p>A condition is recommended for further modifications to the landscape concept plan including deletion of any images that show parts of the reference scheme. These modifications are to be carried out prior to the commencement of any competitive design process so as to not fetter or bias architects participating in any future competitive design process.</p>

3. General Provisions	Compliance	Comment
		Refer to the assessment against DCP provision 5.8.2.5.1 Landscaping in the Southern Employment Lands section of the DCP compliance table below.
3.4 Hierarchy of Centres, City South	Able to comply	Refer to the assessment against clause 7.23 in the LEP compliance table above.
3.5 Urban Ecology	Able to comply	<p>The Council's Tree Management Specialist has reviewed the proposal and supports the removal of the 2 trees contained within the site which are planted hard-up against the Ralph Street facade of the interwar functionalist building, and which have misshapen canopies and branches as a result.</p> <p>Conditions have been recommended to protect the street trees currently growing in the verges adjacent to the site's Botany Road and Ralph Street frontages including design modifications to set the envelope back by a further 1.5m (3m from the boundary) at upper levels fronting Ralph Street.</p> <p>A condition is recommended for further modifications to the landscape concept plan to include a canopy cover target of at least 15% of the site area in accordance with the requirements of this provision.</p>
3.6 Ecologically Sustainable Development	Able to comply	ESD target benchmarks have been incorporated into the DEX Strategy that is recommended for approval and which include a commitment to rooftop solar PV provision.
3.7 Water and Flood Management	Able to comply	Refer to the assessment against clause 7.15 in the LEP compliance table above.
3.8 Subdivision, Strata Subdivision and Consolidation	Able to comply	The survey submitted with the application is not based on a boundary survey.

3. General Provisions	Compliance	Comment
		A condition is recommended that requires any survey submitted as part of an application for the detailed design of the building to be in accordance with the City's survey specifications including that it is based on a boundary survey of the site.
3.9 Heritage	Yes	Refer to the assessment against clause 5.10 in the LEP compliance table above.
3.11 Transport and Parking	Able to comply	<p>A condition is recommended for the approved vehicle access location via the existing south-eastern crossover to Ralph Street to be indicated on the approved envelope plans.</p> <p>Refer to the assessment against clause 7.25 in the LEP compliance table above.</p>
3.12 Accessible Design	Able to comply	Conditions have been recommended for any subsequent DA for the detailed design of the building to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.13 Social and Environmental Responsibilities	Able to comply	In accordance with the public domain interface and active use requirements discussed elsewhere in this report it is considered that any detailed design scheme is able to provide adequate passive surveillance and in accordance with the relevant CPTED principles.
3.14 Waste	Able to comply	<p>The waste management plan submitted as part of the subject application is insufficient and is not approved as part of any consent granted.</p> <p>A condition is recommended for any subsequent DA for the detailed design of the building to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

3. General Provisions	Compliance	Comment
3.17 Land Contamination	Yes	The application includes enough information for its assessment against the provisions of SEPP 55 - Remediation of Land.

67. Note: Some relevant DCP provisions that would otherwise be listed in the table below have not been addressed as they are matters to which clause (6A) of SEPP 65 applies and which renders those provisions to be of no effect.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed-use developments		
4.2.1.1 Building height - Height in storeys and street frontage height in storeys	Able to comply	<p>A maximum of 6 storeys is permitted.</p> <p>The number of storeys is not approved as part of this concept DA. However, the reference scheme incorporates a seventh-storey element adjacent to the through-site link and set-back from both its Botany Road and Ralph Street frontages.</p> <p>Any non-compliance with the height in storeys control is a matter to be considered through the competitive design process and ultimately upon determination of the subsequent DA for the detailed design of the building.</p> <p>This provision requires development to respond to the street frontage heights of adjacent buildings. The street frontage heights of adjacent buildings are as follows:</p> <ul style="list-style-type: none"> • 4 Gillespie Avenue - 5 storeys; • 53-55 Ralph Street - 4 storeys; • 39 Ralph Street - 6 storeys. <p>The proposed concept envelope allows for a suitable response to the street frontage heights of adjacent buildings.</p>

4. Development Types 4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
4.2.2 Building setbacks	Able to comply	<p>A condition is recommended that requires modification of the envelope to provide an increased setback to upper levels fronting Ralph Street.</p> <p>Refer to the Issues section in this report.</p>
4.2.3.5 Amenity - Landscaping	Able to comply	<p>This provision specifies the matters to be addressed by a landscape plan submitted as part of a DA for the detailed design of a building. This includes measures to minimise impacts on street trees.</p> <p>A condition has been recommended for design modifications to the envelope to allow for the future growth of street tree canopies and to minimise the need for pruning of street trees during construction.</p> <p>A condition is recommended requiring a sufficiently detailed landscape plan to be submitted with any subsequent DA for the detailed design of the building.</p>
4.2.3.8 Amenity - Common open space	Able to comply	<p>The reference scheme provides common open space in the form of two rooftop open spaces with a cumulative area of 1,269sqm (25% of the site area) and both with a minimum dimension of 6m and which satisfies the size requirements of this control.</p> <p>The reference scheme does not demonstrate compliance with either the ADG or DCP in terms of achieving solar access to the principal useable part of the common open space.</p> <p>Refer to the Issues section in this report.</p>
4.2.3.10 Amenity - Acoustic privacy	Able to comply	<p>The Botany Road and Ralph Street frontages and parts of the north-eastern elevation are noise affected.</p>

4. Development Types 4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
		<p>As Botany Road is a state classified road that carries over 20,000 average daily traffic movements it is subject to the noise criteria specified at clause 102 of the Infrastructure SEPP (the ISEPP).</p> <p>The submitted acoustic report specifies that openings to the Botany Road frontage cannot achieve the ISEPP's internal noise criteria with windows open. Openings to the Ralph Street frontage and parts of the north-eastern elevation cannot achieve the DCP's internal noise criteria with windows open.</p> <p>The submitted acoustic report recommends noise attenuation measures, including some high-level strategies to achieve the ISEPP's and DCP's internal noise criteria and natural ventilation objectives of the ADG. However, these strategies may require further refinement if they are to be included as guidance in any competitive design process brief.</p>
4.2.3.12 Amenity - Flexible housing and dwelling mix	Able to comply	<p>The reference scheme comprises the following dwelling mix:</p> <ul style="list-style-type: none"> • 0% (0) studios - does not comply; • 33% (34) 1 bed - does not comply; • 57% (58) 2 bed - complies; • 10% (10) 3 bed - complies. <p>The number and mix of apartments is not approved as part of any concept DA consent granted.</p> <p>Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control.</p>

4. Development Types 4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>This provision specifies a maximum building frontage length of 65m on streets with a width of 18m or more.</p> <p>Ralph Street is 20m wide and Botany Road is 26m wide adjacent to the subject site. The proposed envelopes satisfy the requirements of this control.</p>
4.2.5.3 Types of development - Development on busy roads and active frontages	Yes	<p>Botany Road carries over 20,000 average daily traffic movements. Subsequently, that part of the concept envelope fronting Botany Road is subject to this provision which requires non-residential uses to be provided at ground level.</p> <p>In accordance with the requirements of this provision the concept proposal locates retail premises at the ground floor level fronting Botany Road.</p>
4.2.6 Waste and Recycling Management	Able to comply	Refer to the assessment against provision 3.14 in the DCP compliance table above.
4.2.7 Heating and Cooling Infrastructure	Able to comply	Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control which encourage heating and cooling infrastructure to be consolidated into a centralised basement location near the street frontage.
4.2.8 Letterboxes	Able to comply	Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control which require the provision of lockable mailboxes located close to the major street entry to the site.

5. Specific Areas 5.8 Southern Employment Lands	Compliance	Comment
5.8.1 General	Yes	The subject concept proposal is in keeping with and will support the realisation of the Southern Employment Lands Urban Strategy.
5.8.2.1 Development - Subdivision	Able to comply	Refer to the assessment against provision 3.8 in the DCP compliance table above.
5.8.2.2 Development - Building setbacks	Yes	<p>In accordance with the DCP Public Domain Setbacks Map, a 1.4m setback to Botany Road is to be dedicated to Council for footpath widening through a Voluntary Planning Agreement (VPA). Refer to the Issues section in this report.</p> <p>A condition is recommended for the basement envelope plan to be modified so that it does not encroach into the 1.4m setback to Botany Road that is to be dedicated to Council.</p>
5.8.2.3 Development - Building height	Able to comply	Refer to the assessment against provision 4.2.1.1 in the DCP compliance table above.
5.8.2.4 Development - Building layout and design	Able to comply	<p>The reference scheme adequately addresses most of the requirements of this control as it pertains to how the building addresses the street, activation of its Botany Road frontage and overall site planning.</p> <p>A condition is recommended for the unaddressed requirements of this provision pertaining to provision of awnings over building entries, incorporation of masonry into facades and the design of rooftop structures, to be included among the design requirements in the competitive design process brief.</p>
5.8.2.5.1 Development - Landscaping	Able to comply	A minimum deep soil area equal to 10% of the site area and with a minimum dimension of 3m is required.

5. Specific Areas 5.8 Southern Employment Lands	Compliance	Comment
		<p>The reference scheme demonstrates the provision of 560sqm of deep soil area equal to 11% of the site area and with a minimum dimension of 6m can be achieved within the site.</p> <p>Refer to the Issues section in this report.</p>
5.8.2.5.2 Development - Fences	Able to comply	Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control which specifies suitable types of fencing.
5.8.2.6 Development - Parking, access and loading and servicing	Able to comply	Any subsequent DA for the detailed design of the building will be assessed against this control which specifies detailed design requirements for parking, access and loading areas.
5.8.3.2 Public Domain - Proposed streets and through site links	Yes	<p>As discussed in greater detail in the assessment of the DA against provisions 3.1.2.2 and 5.8.2.2 in the DCP compliance tables above, a dedication for a public domain setback to Botany Road and a through site link (TSL) are to be secured through the Voluntary Planning Agreement associated with this DA.</p> <p>The TSL is 6m wide, open to the sky and level with and fully accessible from footpaths in the public domain. As such it satisfies the TSL design requirements of this provision.</p>
5.8.4 Adaptable Parking	Able to comply	The reference scheme demonstrates that less than half of all car parking spaces can be provided above ground (i.e. at ground level), sleeved with commercial uses and with a floor to ceiling height in excess of 3.3m. As such it is considered that any subsequent DA for the detailed design of the building is able to satisfy the requirements of this provision.

5. Specific Areas	Compliance	Comment
5.8 Southern Employment Lands		
5.8.5 Managing Transport Demand	Able to comply	Refer to the assessment against clause 7.25 in the LEP compliance table above.
5.8.6.2 Land Use Interface and Building Design - Air quality	Able to comply	Any subsequent DA for the detailed design of the building will be assessed against this control which requires development to be designed to minimise the impacts of air pollution.
5.8.6.3 Land Use Interface and Building Design - Noise management	Able to comply	As discussed in the assessment against provision 4.2.3.10 in the DCP compliance table above, an acoustic report has been submitted as part of this application and which recommends noise attenuation measures, including some high-level strategies to achieve the ISEPP's and DCP's internal noise criteria and natural ventilation objectives of the ADG.
5.8.7.1 Environment - Storm water management and waterways	Able to comply	Refer to the assessment against clause 7.15 in the LEP compliance table above.
5.8.7.2 Environment - Urban ecology	Able to comply	Refer to the assessment against provision 3.5 in the DCP compliance table above.
5.8.7.3 Environment - Contamination	Yes	Refer to the assessment against SEPP 55 - Remediation of Land in the Economic /Social/Environmental Impacts section of this report.
5.8.7.4 Environment - Green roofs and walls	Able to comply	This provision encourages the implementation of green roofs and walls and specifies the matters pertaining to green roofs and walls to be addressed by any landscape plan submitted as part of a DA for a detailed building design.

68. Retention of the interwar functionalist building fronting Ralph Street is an important element of the concept proposal that will integrate the future detailed design into its context.
69. Conditions are recommended that require the detailed building design to establish a sympathetic relationship with the interwar functionalist building that is to be retained and for interpretation of the site's industrial history.
70. It is noted that the reference scheme provides suitable articulation of facades that face the interwar functionalist building.

Overshadowing

71. The retention of the interwar functionalist building fronting Ralph Street has required a redistribution of massing to the centre of the site. This has increased overshadowing of residential apartment buildings adjacent to the south-west at 53-55 Ralph Street and 4 Gillespie Avenue. However, this design move does not create a non-compliance with the overshadowing requirements of the ADG.

53-55 Ralph Street

72. The sun's eye view studies of solar access to the adjacent property to the south-west at 53-55 Ralph Street fail to correctly model the south-east-facing balconies of two apartments, one at the level of the third storey and one at the level of the fourth storey.
73. This is a flaw in the applicant's methodology for 'solar access accounting' in that these two apartments with south-east facing balconies that are overshadowed, have been counted as achieving the minimum solar access requirements of the ADG when they receive 2 hours of sunlight to their living rooms only.
74. The ADG requires that for an apartment to be considered to achieve the minimum solar access requirements, the apartment must receive at least 2 hours of sunlight to *both* its living room windows *and* its private open space.
75. Notwithstanding this error, the 74% (14 of 19) of apartments in the building at 53-55 Ralph Street achieve the minimum solar access requirements of the ADG and satisfy ADG objective 3B-2 to minimise overshadowing of neighbouring apartments at midwinter.

4 Gillespie Avenue

76. A similar error is made in the applicant's sun's eye view studies of solar access to the adjacent property to the south-west at 4 Gillespie Avenue. Again, the applicant's analysis counts apartments as achieving the minimum solar access requirements of the ADG, when they receive 2 hours of sunlight to their living rooms only.
77. The western apartment on the lowest level of the northern elevation of the central block, as shown in **Figure 42** below, does not receive 2 hours of solar access to its private open space.

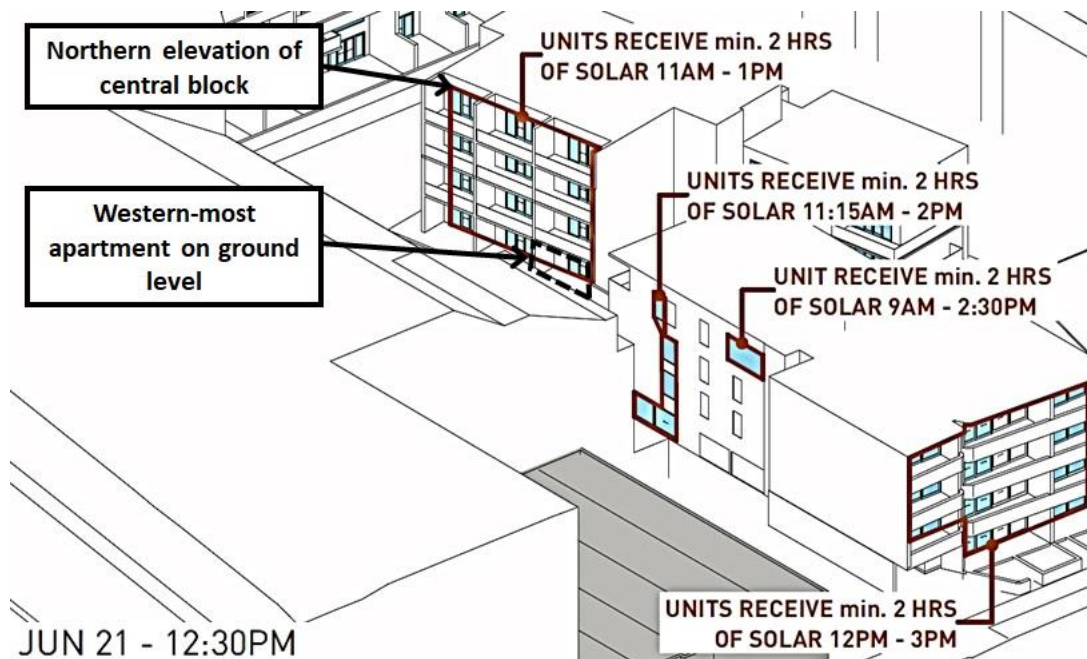


Figure 42: Sun's eye view of development adjacent to the south at 4 Gillespie Avenue.

78. The other north-facing apartments in the central block do appear to receive at least 2 hours of sunlight to both living room windows and private open spaces. However, without plans for the whole of the development at 4 Gillespie Avenue it cannot be ascertained as to whether solar access is retained for at least 70% of the apartments in that neighbouring development.
79. The development at 4 Gillespie Avenue comprises 102 apartments. It is considered that the loss of one apartment from the overall tally is unlikely to significantly change the percentage of apartments that do achieve the minimum solar access requirements of the ADG.
80. To address this concern, a condition is recommended for improvements to solar access to neighbouring apartments to be investigated through the competitive design process and subsequent detailed design development.

Common Open Space

81. The reference scheme provides common open space in the form of two rooftop open spaces with a cumulative area of 1,269sqm (25% of the site area) and both with a minimum dimension of 6m and which satisfies the size requirements of this control.
82. The reference scheme does not demonstrate compliance with either the ADG or DCP in terms of achieving solar access to the principal useable part of the common open space. Only the smaller and more isolated level 5 rooftop open space achieves the required 2hrs of sunlight to 30% of its area, whereas the large, central (principal) podium level open space receives almost no sunlight in midwinter.
83. This could be resolved by providing several roof terraces that receive adequate sunlight and which are directly accessible from each lift core. Massing would need to be reconfigured to achieve this and is likely to result in a reduced development yield.

84. As this is a critical issue that must be addressed to achieve design excellence, a condition is recommended for resolution of this issue to be incorporated as a key design objective in the competitive design process brief.

Tree Management

Trees to be removed

85. There are 6 street trees adjacent to the site within Ralph Street and 4 street trees adjacent to the site within Botany Road and 2 trees within the subject site.
86. Council's Tree Management Specialist has reviewed the proposal and gives in-principle support for the removal of the 2 trees contained within the site. These trees are planted flush against the Ralph Street facade of the interwar functionalist building and have misshapen canopies and branches as a result.

Upper levels setback from Ralph Street to protect street trees

87. Ralph Street has well established street tree plantings that greatly enhance the amenity of the public domain and private development fronting Ralph Street.
88. Following an assessment of the original proposal, Council officers requested that the envelope be modified to set back the western elevation at least 1.5m from the existing canopies of street trees on Ralph Street.
89. In response to Council officers' request the design was amended to set the envelope back from the property boundary with Ralph Street by 1.5m.

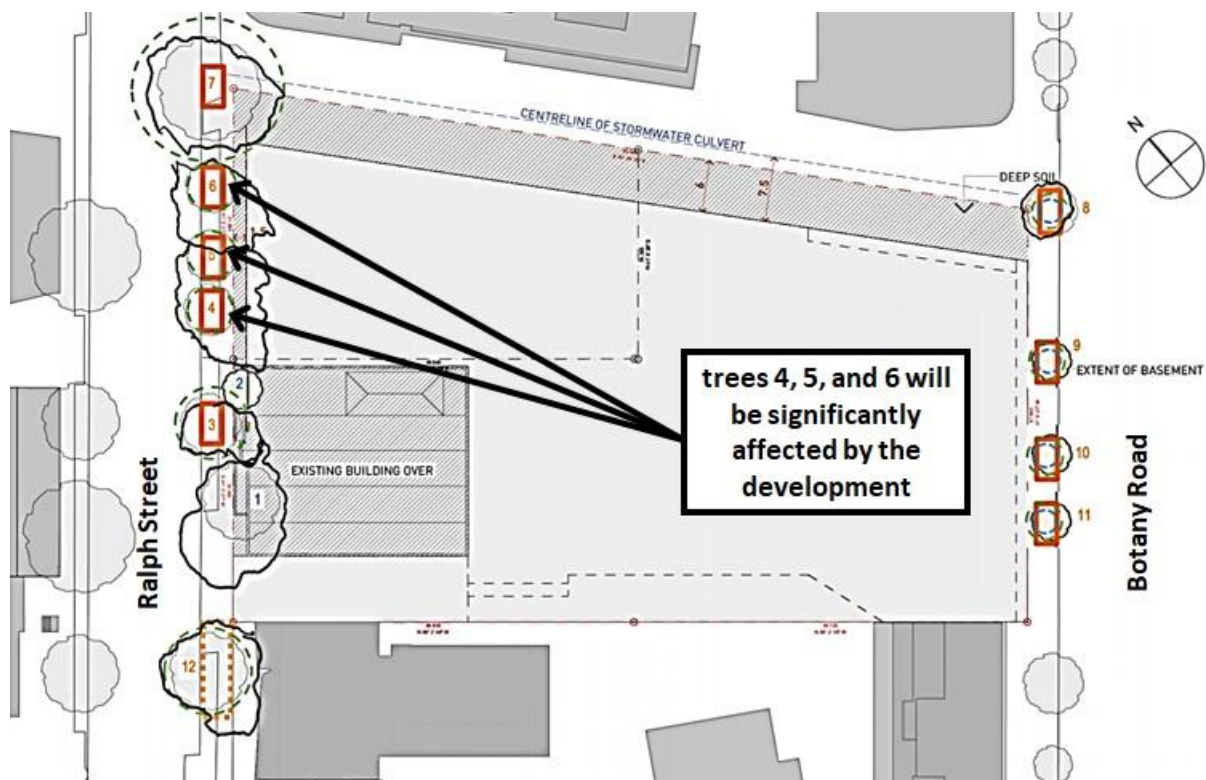


Figure 43: The arboricultural impact assessment report (the AIA report) shows trees 4, 5 and 6 will be significantly affected by the development.

90. As shown in **Figure 43** above, taken from the submitted arboricultural impact assessment report (the AIA report), street trees numbered 4, 5 and 6 will be significantly impacted by the development.
91. The AIA report states that the pruning of street trees will be required to accommodate the proposed building envelope as well as scaffolding, piling and rigging during the construction phase. This is borne out by recent experience of similar developments on Ralph Street in the block to the north, that have carried out severe pruning of street tree canopies. This has been detrimental to the character of the streetscape and to the amenity of the neighbourhood.
92. It is considered that excessive pruning will significantly diminish the health, form and lifespan of these street trees adjacent to the subject site.
93. DCP provisions 2.10.5 Rosebery West, 3.5 Urban Ecology, 4.2.2 Building Setbacks and 4.2.3.5 Amenity - Landscaping specify various controls to protect street trees and to enhance the character of tree lined streets.
94. In accordance with these controls and the advice from Council's Tree Management, Landscape and Urban Design Specialists, a condition is recommended for design modifications to the envelope to set back its upper levels a minimum of 3m from the boundary with Ralph Street and a minimum of 1.5m from the canopies of street trees in Ralph Street. Refer to **Figure 44** below.

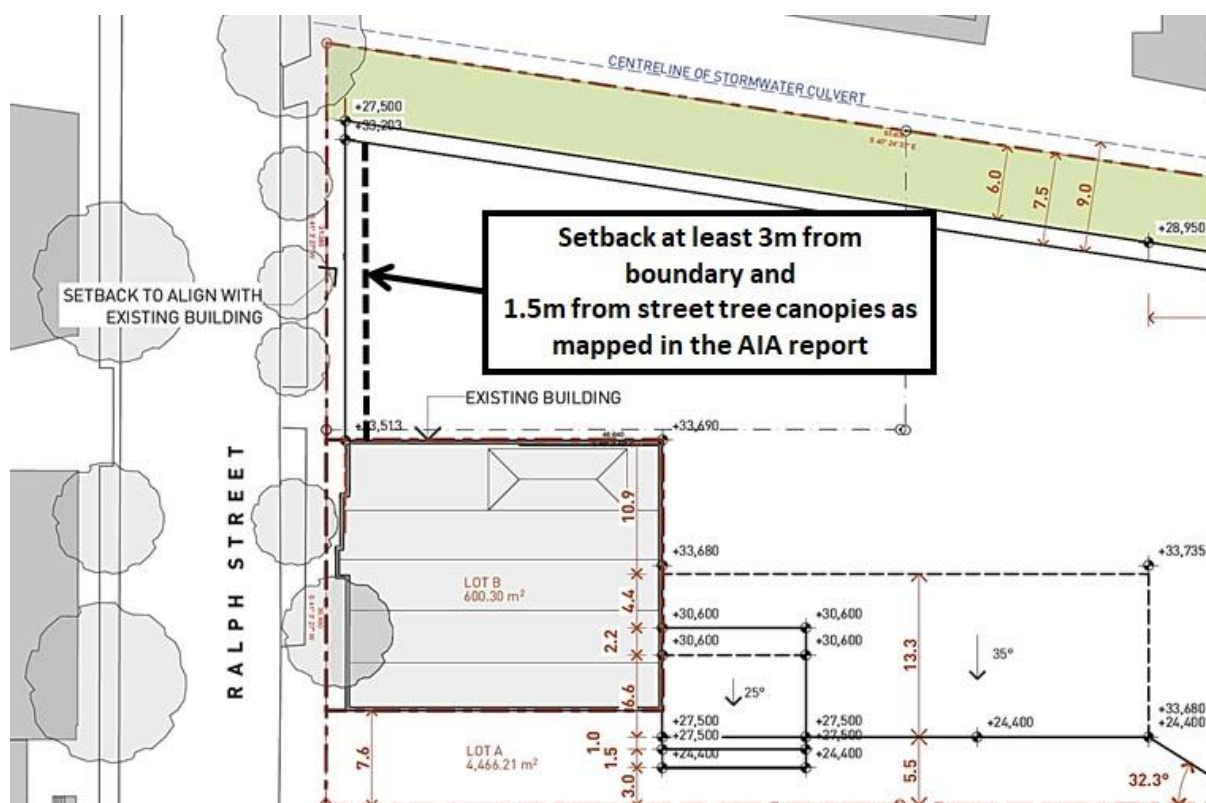


Figure 44: Street trees leaning over the subject site.

95. In addition to the condition described in the paragraph above, Council's Tree Management Specialist has recommended conditions to protect street trees and to address other shortfalls in the AIA report and associated DA documents, as follows:
- (a) design modifications for the envelope plan to include the tree canopy spreads as identified and illustrated in the AIA report;
 - (b) that the landscape concept plan be modified to include the minimum 15% canopy cover target and minimum 10% deep soil requirements for the site;
 - (c) requiring that any OSD tank and associated structures and services must not be located within the structural root zones of trees identified for retention; and
 - (d) specifying tree-related information to be submitted at the detailed design DA stage.

Deep Soil

96. DCP clause 5.8.2.5.1 requires provision of a minimum deep soil area equal to 10% of the site area and with a minimum dimension of 3m.
97. The 1.5m landscaped setback to Ralph Street does not achieve the minimum 3m dimension required and is therefore excluded for the purposes of calculating deep soil.
98. On this basis the reference scheme demonstrates the provision of 560sqm of deep soil area equal to 11% of the site area and with a minimum dimension of 6m can be achieved. The proposed deep soil zone is provided in the form of the through site link (TSL) that runs along the site's north-eastern boundary connecting Ralph Street and Botany Road.
99. The proposed deep soil zone / TSL does not co-locate deep soil with common open space as recommended in the ADG objective 3E. However, this is acceptable given the zoning constraints which prohibit residential uses at ground level.
100. Concerns have been raised in internal referrals about the proposed use of the deep soil zone as a TSL and this being at odds with the provision of large tree planting. Concern has also been raised about the submitted shadow diagrams which suggest that the deep soil zone / TSL will be in shade for most of the day during midwinter and this not being conducive to tree growth.
101. While it is not usual practice to provide deep soil in the form of a TSL, the TSL exceeds the minimum area requirement and is twice the minimum dimension required by the DCP. As such, the TSL should be able to provide sufficient soil volumes to support the growth of large trees.
102. Despite its use as a TSL, the deep soil zone will still allow for filtration of water into the ground.
103. As shown in **Figure 45** below, in plan the submitted diagrams provided at hourly intervals, show that the TSL is mostly in shadow, except for about an hour between 2 and 3pm at midwinter.

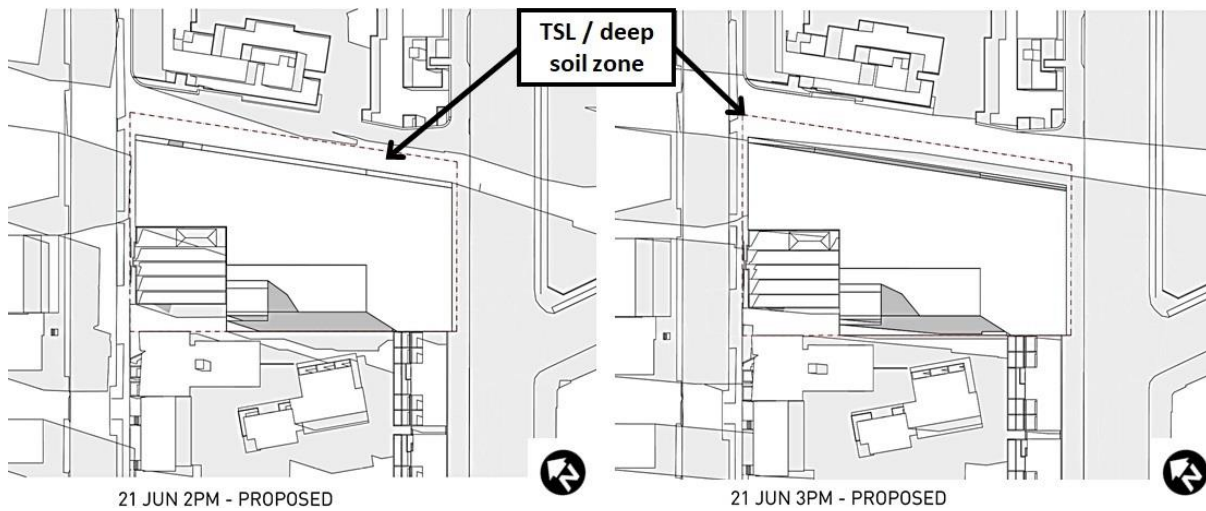


Figure 45: Shadow diagrams showing solar access to TSL, 2-3pm at midwinter.

104. However, as shown in **Figures 46 to 48** below, the sun's eye view diagrams provided in 15-minute intervals, show that part of the TSL receives sunlight along its full length between 1 and 3pm.

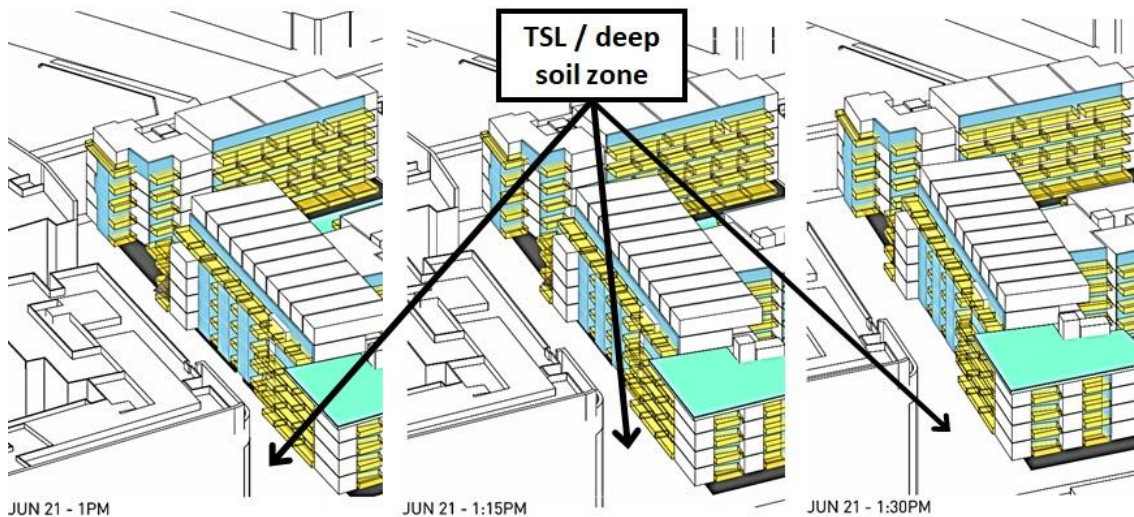


Figure 46: Sun's eye view drawings showing sun access to TSL, 1-1.30pm at midwinter.

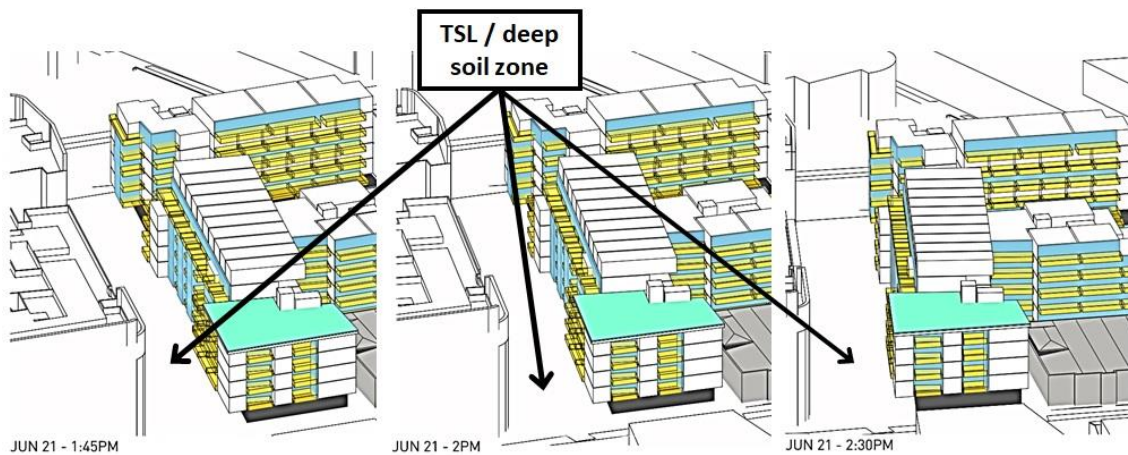


Figure 47: Sun's eye view drawings showing sun access to TSL, 1.45-2.30pm at midwinter.

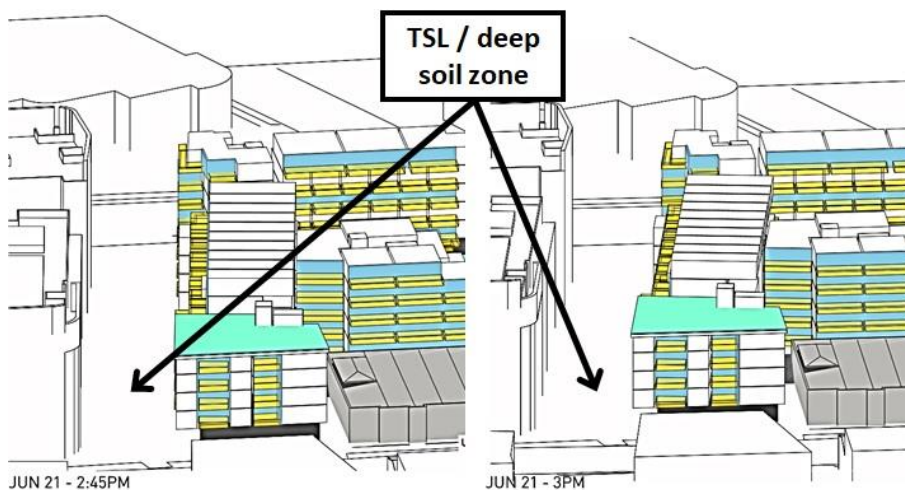


Figure 48: Sun's eye view drawings showing sun access to TSL, 2.45-3pm at midwinter.

105. Accounting for all the above, it is considered that the proposed deep soil zone provided in the TSL fulfils the deep soil objectives of the DCP and ADG within the constraints of the site.
106. To address the concerns about deep soil outlined above, conditions are recommended for modifications to the landscape concept plan to include design principles for the deep soil zone / TSL:
- (i) to provide at least 560sqm of deep soil in the TSL;
 - (ii) to maximise filtration of rainwater into the ground;
 - (iii) to accommodate large tree plantings;
 - (iv) to facilitate its use as a pedestrian connection between Botany Road and Ralph Street; and
 - (v) to address CPTED and safety concerns for users of the TSL.

Voluntary Planning Agreement

107. In correspondence dated 20 June 2019 the owner of the site made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) to provide a public domain setback and through site link as required under DCP provisions 4.2.2 and 5.8.2.2.
108. The draft VPA that has been prepared in association with the subject development application provides for the following public benefits:
- (a) dedication of a 1.4m wide strip of land along the Botany Road frontage of the development site to allow for a widened pedestrian footpath;
 - (b) construction of a new concrete footpath over the dedicated land in accordance with Council's technical specifications; and
 - (c) provision of a through site link secured by registration of an easement for a right of public access connecting Botany Road and Ralph Street.
109. The draft VPA will undergo 28 day publicly exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period has commenced, however at the time of preparing this report no submissions had been received.
110. Subject to there being no unresolvable objection to the draft VPA, the application is recommended for deferred commencement consent to require the owner of the site to execute this planning agreement and register it on title before activation of the consent. This will ensure that the consent cannot be acted upon without assurance that the public benefits will be delivered in accordance with the provisions of this agreement.

View Loss

111. An objection was received raising concern that the proposed massing will obstruct city skyline views from upper level apartments to the south-west at 4 Gillespie Avenue. The relevant planning controls make no provision for the protection of private views. Nonetheless, in order to understand the view loss impacts of the proposal, the following assessment of view loss impacts is in accordance with the planning principles established by the Land and Environment Court decision of *Tenacity Consulting v Warringah [2004] NSWLEC 140 (Tenacity)*.
112. The proposal's impacts upon distant views from apartments within the residential apartments noted above are assessed according to the four-step process established in *Tenacity*, as follows.



Figure 49: Views to city skyline from upper level apartment at 4 Gillespie Avenue.

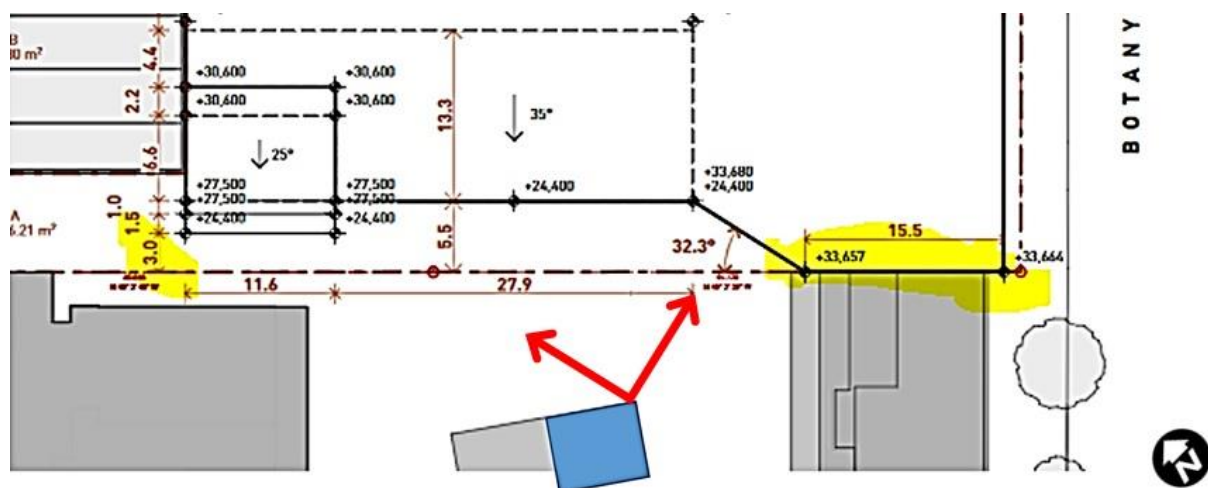


Figure 50: Approximate location of apartment from which photo above was taken.

113. Views to be affected - the photo at **Figure 49** above shows partial views of a handful of the tallest buildings on the city skyline. According to *Tenacity*, these views are of a low value.
114. From what part of the property are the views obtained - the objector that provided the photo at **Figure 49** above has advised that the photo was taken from the balcony of the apartment. The views are across neighbouring properties to the north and to the skyline in the distance.
115. Extent of the impact - the proposed envelope is at least a storey higher than the apartment from which the photo at **Figure 49** was taken. It is likely that views to the city skyline will be blocked. The impact is minor in the terms established in *Tenacity*.

116. Reasonableness of the proposal - as noted elsewhere in this report the proposed envelope complies with the LEP height control. It is considered that a future detailed building design can comply with separation and setback requirements set out in the ADG and DCP. Conditions have been imposed to increase setbacks to Ralph Street. However, this reduction in the massing of the envelope will have no effect on the view impacts described above. Given these considerations, the controls allow for development of a bulk and scale that will inevitably result in minor impacts to existing views across the subject and adjacent sites.
117. This analysis concludes that view impacts of the proposed envelope are considered minor in the case assessed above and the expectation to retain this view is unrealistic.

Other Impacts of the Development

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

Suitability of the site for the Development

120. The proposal is suitable for the site.

Internal Referrals

121. The assessment process has been informed by advice from Council's Specialist Surveyor, Environmental Health Specialist, Heritage Specialist, Urban Design Specialist, Design Excellence Unit, Public Domain Specialist, Landscape Design Specialist, Transport Planner, Quantity Survey Auditor, Tree Management Specialist, Public Art Specialist, Strategic Planner, VPA Coordinator, ESD Specialist, Waste Management Specialist and the Design Advisory Panel Residential Subcommittee (DAPRS).
122. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.

External Referrals

Notification and Advertising

123. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 9 July and 8 August 2019 in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000. As a result of this notification 6 submissions were received. Issues raised in these submissions are summarised and responded to as follows:

- (a) The height of the building is too great and exceeds the 22m LEP height control. If approved this would establish an undesirable precedent.

Response - Over the course of the assessment of the application the proposed concept envelope was amended to comply with the 22m LEP height control.

- (b) The height of the building is too great. At 7 storeys above ground floor shops, it will tower over neighbouring buildings, including the building adjacent to the south at 53-55 Ralph Street which is only 4-storeys in height. This will have unacceptable overshadowing impacts to the adjacent properties to the south including the large common open space to 57 Ralph St (4 Gillespie Avenue).

Response - The number of storeys is not approved as part of this concept DA. However, the reference scheme incorporates a seventh-storey element adjacent to the through-site link and set-back from both its Botany Road and Ralph Street frontages. Any non-compliance with the height in storeys control is a matter to be considered through the competitive design process and ultimately at determination of the subsequent DA for the detailed design of the building.

The proposed concept envelopes do have some overshadowing impacts to the adjacent properties to the south-west at 53-55 Ralph Street and 4 Gillespie Avenue. However, the concept envelopes do not create a non-compliance with the overshadowing requirements of the ADG. As such the proposed development is considered to be acceptable in this regard.

- (c) The proposed height will have adverse streetscape impacts upon the western side of Botany Road which is characterised by 4 to 5 storey buildings. This is inconsistent with the character of the area.

Response - DCP provision 4.2.1.1 requires development to respond to the street frontage heights of adjacent buildings. The street frontage heights of adjacent buildings are as follows:

- (i) 4 Gillespie Avenue - 5 storeys;
- (ii) 53-55 Ralph Street - 4 storeys;
- (iii) 39 Ralph Street - 6 storeys.

On this basis it is considered that the proposed concept envelope allows for a suitable response to the street frontage heights of adjacent buildings.

- (d) The proposed envelopes will have an adverse impact upon privacy and outlook of residential apartments in the adjacent buildings to the south. This includes overlooking from the proposed rooftop communal open spaces.

Response - As discussed in the ADG compliance tables elsewhere in this report, from the height of the second to the fourth storey the concept envelope has a varied setback of between 0m and 29.6m from the side boundary with properties adjacent to the south-west. The reference scheme demonstrates that apartments can be oriented away from or parallel to the south-western side boundary to avoid non-compliances with the minimum ADG separation and privacy requirements. Compliance with these requirements will be assessed upon lodgement of any subsequent DA for the detailed design of the building.

- (e) Limiting the height of the envelope so it is of a scale more akin to adjacent buildings, will limit its capacity and subsequent traffic noise and congestion associated with more residents and shoppers driving to and from the site.

Response - The concept proposal complies with the height controls for the site. The reference scheme demonstrates that the proposed envelope is capable of accommodating development of a density envisaged under the relevant planning controls. Subject to the recommended conditions the density that may be achieved is appropriate among its diverse urban surroundings in the Southern Employment Lands.

LEP clause 7.25 Sustainable Transport on Southern Employment Land, requires the consent authority to consider whether the development will promote sustainable transport modes and minimise traffic. This will be a matter to be addressed by any subsequent DA for the detailed design of the building. Conditions are recommended to specify information to be provided as part of any subsequent DA for the detailed design of the building to adequately address this clause.

- (f) Submitted drawings and shadow diagrams do not correctly indicate ground level private courtyards that run to the south-western side boundary and do not indicate the canal also adjacent to the south-west.

Response - As discussed in the Issues section of this report, shortcomings in the sun's eye view studies and solar access accounting provided by the applicant have been identified and considered in this assessment.

124. Upon lodgement of substantially amended plans that reconfigured the proposed envelope, the application was re-notified for 14 days between 17 February and 3 March 2020. As a result of this re-notification one submission was received. Aside from issues previously raised in other submissions, concerns raised are summarised and responded to as follows:

- (a) The proposal will have adverse impacts upon the privacy of apartments in the adjacent property to the south-west at 4 Gillespie Avenue, particularly from apartments adjacent to Botany Road and also those located within the centre of the site.

Response - As noted in the response at paragraph 123(d) above, the reference scheme demonstrates that apartments can be oriented away from or parallel to the south-western side boundary to avoid non-compliances with the minimum ADG separation and privacy requirements. Compliance with these requirements will be assessed upon lodgement of any subsequent DA for the detailed design of the building.

- (b) The proposed massing will obstruct city skyline views from apartments in the adjacent property to the south-west at 4 Gillespie Avenue.

Response - As discussed in the Issues section of this report, the proposed concept envelope complies with the height controls for the site. Any views to the city skyline are across a side boundary, across the subject site and across various other sites in the vicinity of the Green Square Town Centre and others that contain clusters of tall buildings. As the proposed envelope complies with the LEP height control it is considered reasonable. As views are across many private properties of varying heights the expectation of retaining these views is considered unrealistic. For these reasons any view losses arising from the proposal are considered acceptable.

- (c) Shadow diagrams show overshadowing of adjacent apartments in the property to the south-west at 4 Gillespie Avenue.

Response - As noted in the response at paragraph 120(b) above, the proposed concept envelopes do have some overshadowing impacts to the adjacent properties to the south-west at 53-55 Ralph Street and 4 Gillespie Avenue. However, the concept envelopes do not create a non-compliance with the overshadowing requirements of the ADG. As such the proposed development is considered to be acceptable in this regard.

- (d) The piling and excavation required for the proposed development, in such close proximity to the boundary poses the risk of causing structural damage to the existing buildings in the properties adjacent to the south-west.

Response - No works are approved as part of this concept DA however impacts upon the structural integrity of adjacent buildings is a matter to be addressed by any subsequent DA for the detailed design of the building.

Water Management Act 2000

125. Groundwater occurs at a depth of approximately 2-3m below ground level. The excavation required to accommodate the indicative basement level is expected to penetrate groundwater and may require dewatering of the site. This would require a water activity approval under the Water Management Act 2000 and as such the application is integrated development under the EPA Act.
126. On 10 July 2019, the application was referred to Water NSW through the NSW Planning Portal (ref. no. CNR-868) as integrated development, in accordance with section 4.47 of the EPA Act.
127. On 16 January 2020, Water NSW issued their General Terms of Approval.
128. On 10 February 2020, final amended plans and additional information submitted by the applicant were forwarded to Water NSW.

129. On 9 March 2020, the submission received in response to the notification and public exhibition of the amended DA was uploaded to the NSW Planning Portal.
130. No further correspondence was received from Water NSW. The originally issued General Terms of Approval have been included at Schedule 3 of the recommended conditions at Attachment A to this report.

Sydney Airport Referral Act 1996

131. The subject site is in an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority. Accordingly, the approval of Sydney Airport is required pursuant to s.183 of the Airports Act 1996.
132. The subject application was forwarded to Sydney Airport on 10 July 2019 and the amended DA was forwarded to Sydney Airport via the NSW Planning Portal on 17 February 2020.
133. The application for approval of a controlled activity was issued by Sydney Airport via the NSW Planning Portal on 18 February 2020.

Sydney Water Act 1994

134. On 11 July 2019, the application was referred to Sydney Water, in accordance with section 78 of the Sydney Water Act 1994.
135. On 28 August 2019, Sydney Water provided conditions and the following comments:
 - (a) The proposed development will be able to be serviced by the 150mm water main in Botany Road.
 - (b) The proposed development will connect to the 225m sewer main located at the southwest side of the property.
 - (c) No building or permanent structure is to be proposed over the stormwater channel / pipe or within 1m from the outside wall of the stormwater asset or within Sydney Water easement whichever is larger. Permanent structures include (but are not limited to) basement car park, hanging balcony, roof eaves, hanging stairs, stormwater pits, stormwater pipes, elevated driveway, basement access or similar structures. This clearance requirement would apply for unlimited depth and height.
 - (d) The submitted information is insufficient to make an assessment regarding whether the proposed building and permanent structures meet Sydney Water's minimum horizontal clearance requirements.
 - (e) Sydney Water would object to the proposal if it does not meet its minimum clearance requirements adjacent to the stormwater channel as described above.
 - (f) The applicant is required to submit the elevation drawings with the stormwater channel/pipe to ensure that the proposed buildings and permanent structures are 1 m away from the outside face of the stormwater channel and away from the Sydney Water easement.

136. On 17 February 2020, the amended DA was forwarded to Sydney Water via the NSW Planning Portal.
137. On 11 March 2020, Sydney Water advised that the amended DA had been reviewed and that the future detailed building design could address the constraints of the site. The previous referral comments provided by Sydney Water still stand.

Delegation

138. As the application is for development to which the State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development applies, it is to be determined by the Local Planning Panel in accordance with the Minister's local planning panels direction dated 23 February 2018.

Public Interest

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

S7.11 Contribution

140. Section 7.11 contributions will be imposed upon any consent granted to any subsequent DA for the detailed design of the building.

Affordable Housing Contribution

141. An affordable housing contribution will be imposed upon any consent granted to any subsequent DA for the detailed design of the building.

Relevant Legislation

142. Environmental Planning and Assessment Act 1979.

Conclusion

143. The subject application seeks consent for a concept building envelope for shop-top housing, including in-principle approval for demolition of existing buildings, except for the interwar functionalist building at 49 Ralph Street which is to be retained, a concept building envelope up to 22m in height, vehicular access via an existing crossover from Ralph Street, indicative future land uses comprising basement parking, ground floor shops, commercial tenancies, parking, lobbies and landscaping and residential apartments and communal open space at upper levels.

144. As an Integrated Development Application requiring approval under the Water Management Act 2000, the application, amendments and submissions received were referred to Water NSW over the course of the assessment. On 16 January 2020, Water NSW issued their General Terms of Approval and which have been included at Schedule 3 of the recommended conditions of consent at Attachment A to this report.
145. The draft VPA associated with the application will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period of the draft VPA has commenced. At the time of preparing this report, no submissions had been received. A deferred commencement condition is recommended to enable the draft VPA to be executed and registered on title.
146. The concept proposal and Design Excellence Strategy establish a loose fit envelope and suitable parameters for a competitive design process. Subject to the recommended conditions, the proposed envelope is able to accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.
147. For these reasons it is recommended that deferred commencement development consent is granted subject to the recommended conditions requiring the VPA to be executed and registered on title prior to the consent becoming operative.

GRAHAM JAHN, AM

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