

Item 14.**Development Application - 205-213 and 215-225 Euston Road, Alexandria - D/2018/907****File No.: D/2018/907****Summary**

Date of Submission:	8 August 2018 Amended plans and information received 15 November, 2 December, 19 December and 20 December 2019
Applicant:	Hailiang Property Group Australia
Architect/Designer:	Silvester Fuller, MHNDUnion and Sue Barnsley Design
Developer:	Hailiang Property Group Australia
Owner:	Maxida International Alexandria Property Australia
Cost of Works:	\$234,680,600
Zoning:	B4 Mixed use
Proposal Summary:	<p>The proposal is a detailed design development application (stage 2). It seeks consent for the construction of eight mixed use buildings comprising 389 residential apartments, office and retail uses and two basement levels.</p> <p>The application is to be determined by the Central Sydney Planning Committee (CSPC) as the cost of works exceeds \$50 million.</p> <p>The proposed development is also Integrated Development under the Water Management Act 2000 and the Roads Act 1993.</p> <p>The development site is subject to a concept consent (D/2016/989/A) which approved eight (8) mixed use building envelopes for residential, retail and commercial uses.</p>

A modification to the concept approval was lodged alongside this application (D/2016/989/B). The modification seeks to amend the building envelopes and footprints to ensure consistency with the detailed proposal. Both applications are recommended for refusal.

The proposal was notified for 30 days between 24 August 2018 and 24 September 2018. There were 68 submissions received. These submissions raised concerns with the impact of the development on Sydney Park, the increased height, the traffic impact, the impact on nearby industrial land uses, and the suitability of the site for residential development.

The proposal is recommended for refusal for the following reasons:

- The development is inconsistent with the concept consent and approval is therefore contrary to clause 4.24(2) of the Environmental Planning and Assessment Act 1979.
- The development exceeds the permitted height standard under clause 4.3 of Sydney Local Environmental Plan 2012 (Sydney LEP 2012) by up to 44%.
- The clause 4.6 variation not adequately addressed why compliance with the height control is unreasonable or unnecessary as required to be addressed by Clause 4.6 of Sydney LEP 2012.
- The development does not demonstrate design excellence, as required by clause 6.21 of Sydney LEP 2012.
- The development does not adequately manage the flood risk on the site.
- The development does not adequately demonstrate how vehicle access from Euston Road will be provided to the site.

- The development does not provide adequate setbacks to Sydney Park, thereby impacting on 28 Sydney Park trees including requiring the removal of 3 trees and pruning of 1 tree.
- The development does not adequately demonstrate how the site will be remediated or the impacts of that on Sydney Park.
- The development does not demonstrate how the apartments will provide noise attenuation and receive natural ventilation, despite the surrounding major road, aircraft and industry noise.
- The development does not comply with the minimum separation distances between habitable openings, as outlined by parts 2F and 3F of the ADG.
- No land owners consent has been requested for works to Sydney Park. Given the provisions of the Local Government Act 1993 and Sydney Park Plan of Management, it is unlikely that land owners consent can or will be provided.
- The development will spatially and visually intrude on Sydney Park, overshadow the park to the south and require the removal of trees.
- The development as submitted is not considered to be in the public interest.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls

- (i) Environmental Planning and Assessment Act 1979
- (ii) Local Government Act 1993
- (iii) Roads Act 1993
- (iv) Water Management Act 2000
- (v) Sydney Airport Referral Act 1996
- (vi) Environmental Planning and Assessment Regulation 2000
- (vii) State Environmental Planning Policy No 55 - Remediation of Land
- (viii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (ix) State Environmental Planning Policy (Infrastructure) 2007
- (x) Sydney Local Environmental Plan 2012
- (xi) Sydney Development Control Plan 2012
- (xii) Sydney Park Plan of Management

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request

Recommendation

It is resolved that consent be refused for Development Application No. D/2018/907 for the following reasons:

- (A) The development is not consistent with the concept consent D/2018/989/A for the site. As such, the proposal does not comply with clause 4.24(2) of *the Environmental Planning and Assessment Act 1979*.
- (B) The proposed height exceeds the maximum permitted height development standard by up to 44%. The additional height and bulk of the building means that the development will overshadow and be more imposing on Sydney Park. As such, the development does not comply with:
 - (i) Clause 4.3 of *Sydney Local Environmental Plan 2012*, including objective (a)
 - (ii) Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*
 - (iii) Clause 6.21 of *Sydney Local Environmental Plan 2012*
 - (iv) Section 4.2.1 of the *Sydney Development Control Plan 2012*.
- (C) The proposed setbacks to the south and west boundaries are inadequate. The setbacks do not comply with the concept consent or parts 2F and 3F of the Apartment Design Guide (ADG). The development will detract from the quality and amenity of the Sydney Park. The development will also result in the removal of three (3) trees within Sydney Park, the pruning of one (1) tree and encroachment into the tree protection zone of 28 trees. In this regard, the development does not comply with:
 - (i) Clause 6.21 of the *Sydney Local Environmental Plan 2012*
 - (ii) Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*
 - (iii) Clause 1.2(l) of the *Sydney Local Environmental Plan 2012*
 - (iv) Schedule 1 of the *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development*
 - (v) Parts 2F and 3F of the Apartment Design Guide
 - (vi) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
 - (vii) Section 3.5.1 of the *Sydney Development Control Plan 2012*
 - (viii) Sections 35, 36G and 36L of the *Local Government Act 1993*
 - (ix) Sydney Park Plan of Management.

- (D) The proposal has not demonstrated how the flood risk on the site will be managed, or how the site will be drained. In this regard, the development does not comply with:
- (i) Clause 7.15 of the *Sydney Local Environmental Plan 2012*
 - (ii) City's Interim Floodplain Management Policy
 - (iii) Section 3.7 of the *Sydney Development Control Plan 2012*.
- (E) The proposal has not demonstrated how access from Euston Road will be provided to the site. It is not clear where the deceleration lane will go, how the footpath will be realigned, how this land will be dedicated and what the setback of the building will be relative to the new property boundary. These are fundamental components of the development, and in the absence of clarity, mean the development cannot be approved. In this regard, the development does not comply with:
- (i) Clause 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*
 - (ii) Clause 101 of the *State Environmental Planning Policy (Infrastructure) 2007*
 - (iii) Section 3.11 of *Sydney Development Control Plan 2012*.
- (F) The proposed remediation approach does not properly consider the works required to Sydney Park, the impact on trees or the impact on future residents. It also does not adequately demonstrate how the site can be made suitable for the proposed uses. In the absence of clarity of these issues, the development has not demonstrated that the site can be made suitable for the proposed use. In this regard, the development does not comply with:
- (i) Clause 7(1)(b) of State Environmental Planning Policy No 55 - Remediation of Land
 - (ii) Clause 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*
 - (iii) Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*
 - (iv) Clause 6.21 of *Sydney Local Environmental Plan 2012*.
- (G) The proposed development will likely require works to be undertaken on Sydney Park. This has not been sufficiently detailed. No land owners consent has been sought or is provided for the works required to be undertaken in Sydney Park. Tree removal and development works for the purposes of a private development is contrary to the objectives of management of Sydney Park. In this regard, the development does not comply with:
- (i) Clause 78A of the *Environmental Planning and Assessment Act 1979*
 - (ii) Clauses 49 and 50, and Schedule 1 of the *Environmental Planning and Assessment Regulations 2000*
 - (iii) Sections 35, 36G and 36L of the *Local Government Act 1993*
 - (iv) Sydney Park Plan of Management.

- (H) The site is impacted by road noise, aircraft noise and noise from nearby industrial land uses, including three (3) concrete batching plants. The proposal has not properly considered this acoustic condition, and has not demonstrated how the development can achieve the required internal noise levels and receive natural ventilation. In this regard, the development does not comply with:
- (i) Clause 7.18 of Sydney Local Environmental Plan 2012
 - (ii) Clause 102 of the State Environmental Planning Policy (Infrastructure) 2007
 - (iii) Department of Planning and Industry Development near rail corridors and busy roads- interim guidelines
 - (iv) Schedule 1 of the State *Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development*
 - (v) Part 4B of the Apartment Design Guide
 - (vi) Clause 6.21 of *Sydney Local Environmental Plan 2012*.
- (I) The development does not comply with the minimum separation distances between habitable openings, as required by parts 2F and 3F of the ADG. The apartments will have compromised visual and acoustic privacy, and the internal plaza will feel narrow and more enclosed. In this regard, the development does not meet the objectives of the following:
- (i) Schedule 1 of the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development
 - (ii) Parts 2F and 3F of the Apartment Design Guide
 - (iii) Clause 6.21 of Sydney Local Environmental Plan 2012.
- (J) The development does not provide a compliant ramp into the basement to allow Council's waste vehicles to adequately service the development. In this regard, the development fails to comply with section 3.14 of the Sydney Development Control Plan 2012.
- (K) The development in its current form does not demonstrate design excellence. The form and external appearance of the proposed development will detract from the quality and amenity of the public domain. The flood risk on the site has not been mitigated. The internal amenity of a majority of apartments is compromised. The development does not demonstrate whether the ecologically sustainable development targets have been implemented within the development. The access to the site does not demonstrate how pedestrian amenity will be prioritised. In this regard, the development does not meet clause 6.21 of Sydney Local Environmental Plan 2012

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 31 July 2018, 1 January and 24 February 2020.
2. The site is legally identified as lots 110 and 111 in deposited plan 883295 and has the street address of 205-213 and 215-225 Euston Road, Alexandria. It has an area of approximately 21,029m² and is rectangular in shape. The site has 178m frontage to Euston Road and the remainder of the site (431m) is bounded by Sydney Park.
3. The site is relatively flat and sits below the adjacent Sydney Park on its northern and western side. A bund adjoins the site to the north and west. Sydney Park includes a number of pedestrian pathways that traverse the park and immediately adjoin the site on its western and southern boundary.
4. The site currently contains two large warehouse buildings and is accessed by two driveways from Euston Road. These were previously occupied by 'Fed-Ex' and 'Kone elevators'. The site was also previously used for gasworks and metal manufacturing.
5. Surrounding land uses are predominantly industrial land uses and open parkland.
6. The site adjoins Sydney Park to the north, west and south. Sydney Park is a 40 hectare space which contains wetlands, green open spaces, trees and playgrounds. It is described in the Sydney Park Plan of Management as having "a diverse ecosystem, historical sites and extensive parklands."
7. Historically Sydney Park contained/adjoined a gas works, brick works with multiple pits which later became a major waste landfill site. Recent testing of the park showed elevated concentrations of methane and carbon dioxide, which are by-products of organic materials when they decompose.
8. The elevated levels of methane were reported to the Environmental Protection Authority (EPA). In February 2019, the EPA declared the park as a contaminated site under the Contaminated Land Management Act. The City, as the land owners, submitted a voluntary management proposal to the EPA in November 2019. The EPA approved the City's proposal in January 2020 and the City is now managing the park in line with the voluntary management proposal.
9. The site adjoins Euston Road to the west. Euston Road has been upgraded as part of Westconnex project and is being converted into a classified road with three lanes of traffic in each direction. There are 70,000 - 80,000 vehicles a day forecast to use this road once Westconnex is operational.
10. On the opposite side of Euston Road is the Alexandra Canal locality within Southern Employment Lands. The locality statement for this precinct in section 2.10.1 of the Sydney Development Control Plan 2012 (Sydney DCP 2012) identifies this area as needing to "accommodate industrial uses, including population serving industrial businesses essential to the efficient functioning of a growing inner-city residential population, as well as strategic industrial uses to support Sydney Airport."
11. The locality statement also says "the area is located close to the NSW Government's Westconnex interchange at St Peter's that will, once connected to the airport and Port, likely facilitate more efficient movement of freight into and out of the area."

12. Examples of these industrial land uses surround the subject site. There are three (3) concrete batching plants located directly opposite the site at 154-164 Euston Road, directly north of the site at 171A Euston Road and one at 132 Euston Road. The concrete batching plants all have conditional approval to operate 24 hours and are marked in yellow in figure 2 below.
13. Manufacturing and industrial operations, and distribution centres are located at 122-130, 134-148 and 150-152 Euston Road. Warehouse, office and distribution centres are located at 168 to 200 Euston Road. A former lead battery recycling operation centre is located at 202-212 Euston Road. There is also a proposal for a waste recycling facility north of the site at 112-120 Euston Road.
14. Photos of the site and surrounds are provided below.

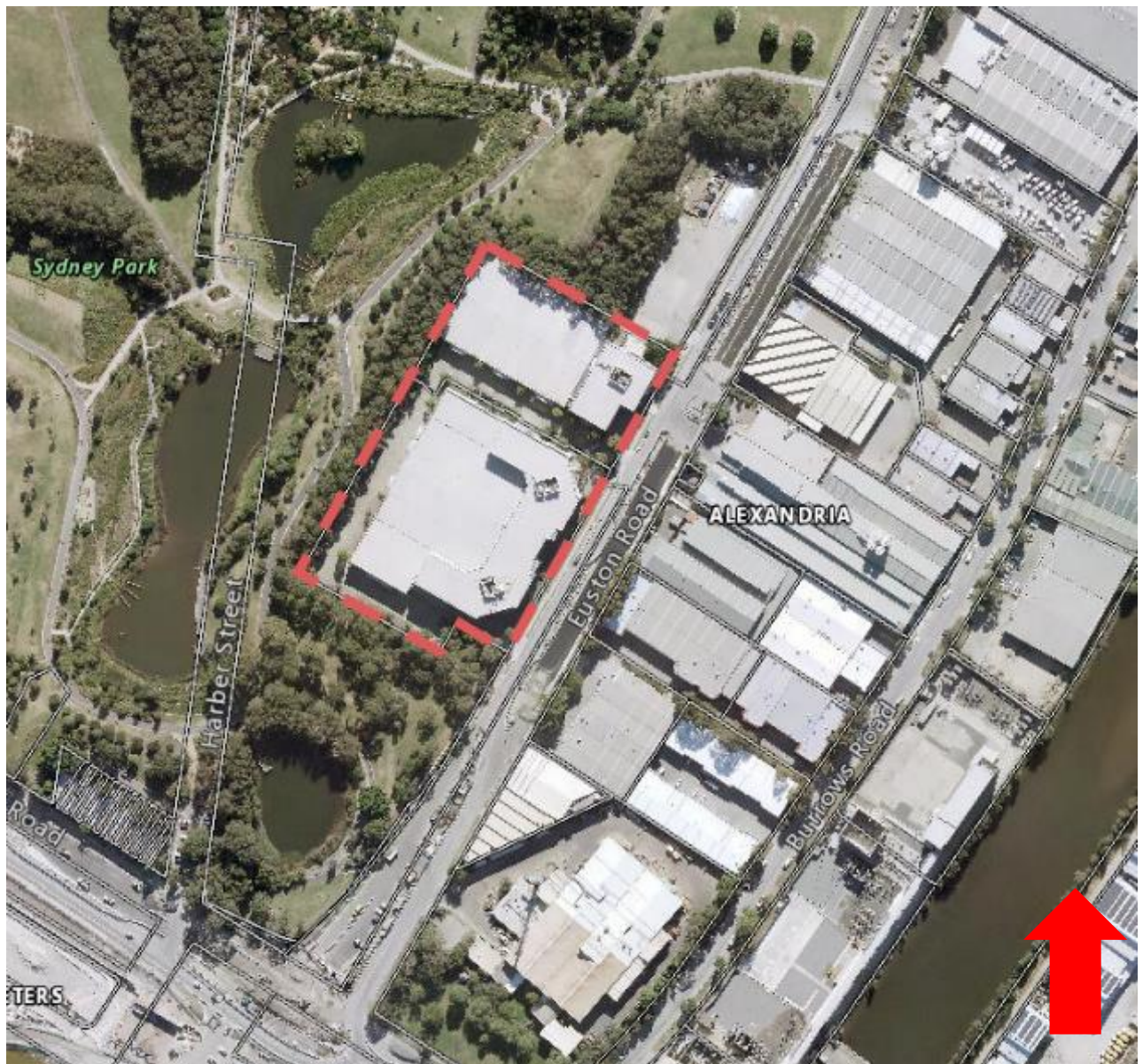


Figure 1: Aerial image of subject site and surrounding area.

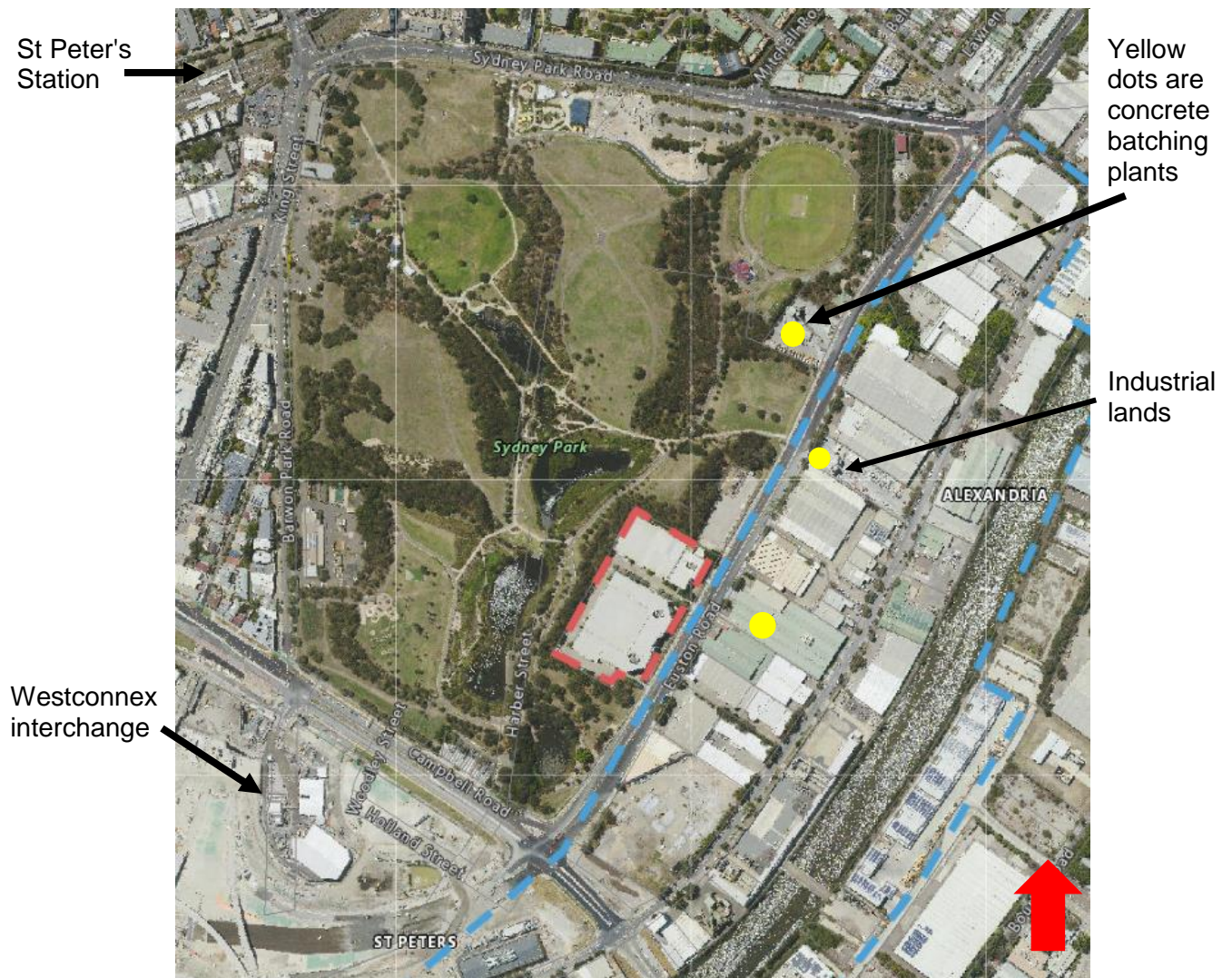


Figure 2: Surrounding approved land uses.



Figure 3: Bund around northwest side of the site, as viewed from Sydney Park.



Figure 4: Northern site boundary, as viewed from Sydney Park.



Figure 5: Looking at the northwest side of the site from walking path within Sydney Park. The trees are located within Sydney Park.



Figure 6: Looking at the western side of the site from Sydney Park. The trees are located within Sydney Park.



Figure 7: Footpath in Sydney Park that runs adjacent to western boundary of site.



Figure 8: Western site boundary, as viewed from Sydney Park.



Figure 9: Southern end of the site, as viewed from Sydney Park.



Figure 10: Adjacent footpath in Sydney Park.



Figure 11: View of site from Sydney Park.



Figure 12: View of site from highest point of Sydney Park.



Figure 13: South east corner of Sydney Park looking at the subject site.



Figure 14: Looking northwest at site from the southeast corner.



Figure 15: Concrete batching plant on opposite side of Euston Road.



Figure 16: Opposite side of Euston Road.



Figure 17: Concrete batching plant on the opposite side of Euston Road.



Figure 18: Looking south along upgraded Euston Road as part of the Westconnex project.



Figure 19: Concrete batching plant north of the site along Euston Road.

History of the site and surrounding land uses

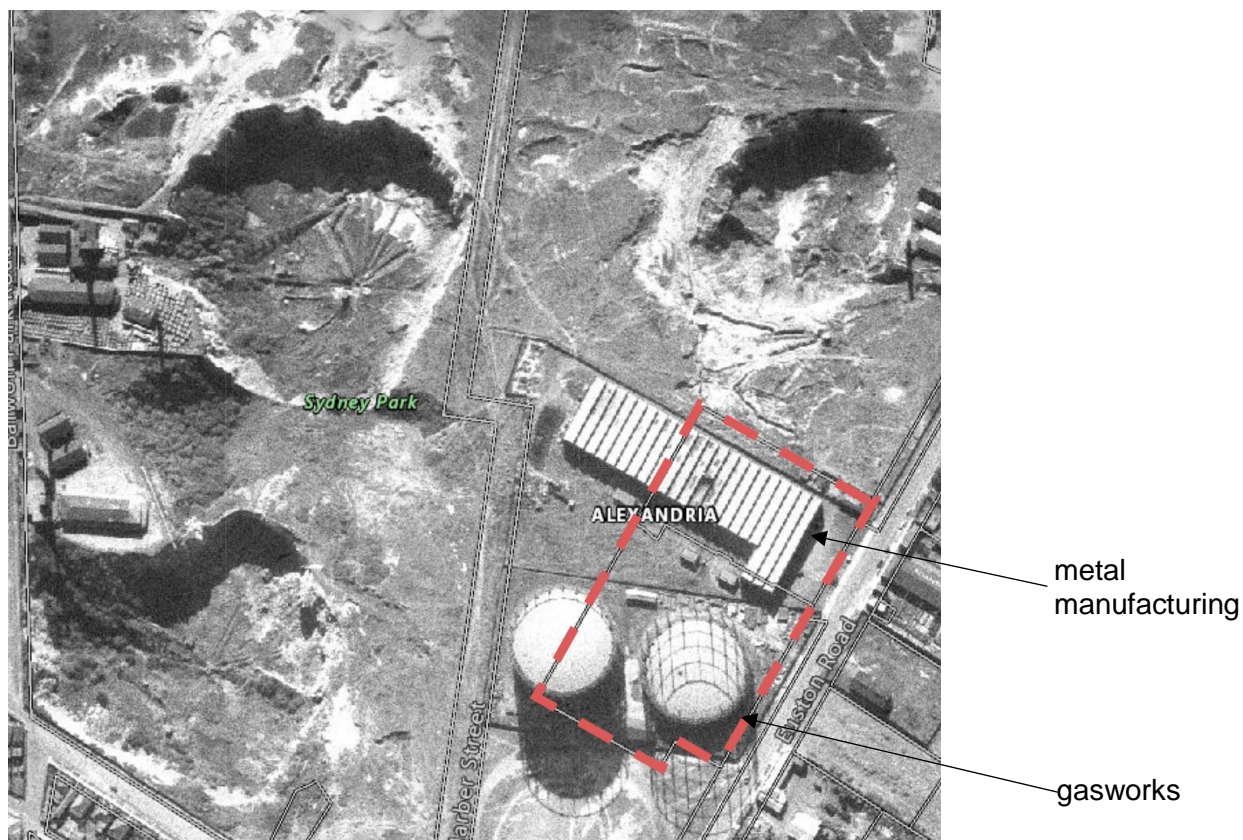


Figure 20: Aerial photograph of site from 1943.

15. An image of the site from 1943 is included above. The subject site is outlined taking in the former gas works area and industrial manufacture. The site and surrounding area has a history of a variety of different land uses. These include the following:
- (a) From 1887, Sydney Park was used as Bedford Brickworks. In 1936, Austral bought out Bedford Brickworks and operated it until 1970s. A gasworks with gasometers was located on the site.
 - (b) In 1948, the deep clay brick pits were used as municipal waste depot for Sydney. This use continued until circa 1976.
 - (c) After use as a waste depot, a layer of demolition rubble and soil was placed over the former brick pits to create a recreational park.
 - (d) The park was transferred to former South Sydney Council in 1991.
 - (e) Other parts of Sydney Park, including the subject site, were used for gas storage (1930s to 1980s), metal manufacturing (1930s to 1990s) and warehousing.
 - (f) The park was subdivided in the late 1990s and the subject lots were registered in March 1999.
 - (g) The current buildings located on the site were constructed in late 1990s. These are used for warehousing, offices and distributions.
 - (h) As part of the construction of these buildings, the eastern gasometer was filled to approximately 3 metres below the existing ground level.

Concept development application

16. On 22 June 2017, deferred commencement approval was issued by the Central Sydney Planning Committee (CSPC), issued for a concept consent (stage 1) application.
17. The concept consent included demolition of existing buildings and the establishment of eight (8) building envelopes for a future mixed-use development containing basement car parking and above ground retail/commercial and residential development. The approved plans and associated conditions are included at Attachments B and C of the report for D/2016/989/B.
18. The deferred commencement conditions were to update the envelope plans and the reference plans.
19. The assessment of the concept consent acknowledged that it was not possible to achieve the maximum FSR (2.5:1) on the site. The assessment said that the proposal represented the maximum achievable allocation of gross floor area across the site; that being 1.8:1.
20. The concept consent approved additional 20% or 3.7m height via a clause 4.6 variation. As per the assessment report, this included the provision of the bonus height (10%) available via the design excellence process.
21. On 23 August 2017, a modification application was approved which approved the deletion of deferred commencement condition 2. This condition sought updated indicative floor plans and its deletion was supported.

22. On 23 August 2017, deferred commencement condition 1 was satisfied and the consent became operational.
23. The concept approval includes a number of conditions that must be satisfied by a detailed DA (stage 2). Many are not satisfied; refer to the assessment against concept approval below.

Design competition

24. The development underwent a competitive design process from 30 August 2017 to 22 November 2017. There were four (4) competitors, being partnerships of architectural firms and landscape architects.
25. The selection panel selected Silvester Fuller and MHNDUnion and Sue Barnsley Design as the winner of the competitive design alternatives process.
26. The selection panel also prepared a report which included elements of the design which were considered positive, and elements which required further development.

Other Relevant Applications

27. The applicant has submitted three (3) applications alongside each other. This includes the subject detailed DA and the following:
 - (a) D/2018/718 - early works application which seeks consent for demolition, excavation and remediation. It is referred to as the 'early works DA'. This application can be determined under delegation.
 - (b) D/2016/989/B - section 4.55(2) modification to concept consent which seeks approval to amend the concept consent so that it is consistent with this DA. This modification application is recommended for concurrent refusal by the Central Sydney Planning Committee.
28. The subject application D/2018/907 is the substantive detailed design DA and is discussed in detail below.

Proposal

29. This application has been amended and seeks consent for the construction of eight mixed use buildings comprising 389 residential apartments, two basement levels, ground level and basement office, and ground floor retail spaces.
30. The apartment mix includes 25 x studios, 97 x 1 bedroom, 177 x 2 bedroom, 89 x 3 bedroom apartments and 1 x 4 bedroom apartment. The office spaces are proposed to be used for the Sydney Fringe Festival and are included on the plans as 'culture'.
31. A site plan showing the layout of the buildings and their labelling is included below. The modification has altered the labels as referenced within the existing concept consent. For ease of comparison this report refers to the envelopes as labelled under the existing consent. The building name proposed by the applicant is shown in (brackets) below. These plans do not represent the true building envelopes as they exclude balconies, pergolas and embellishments.

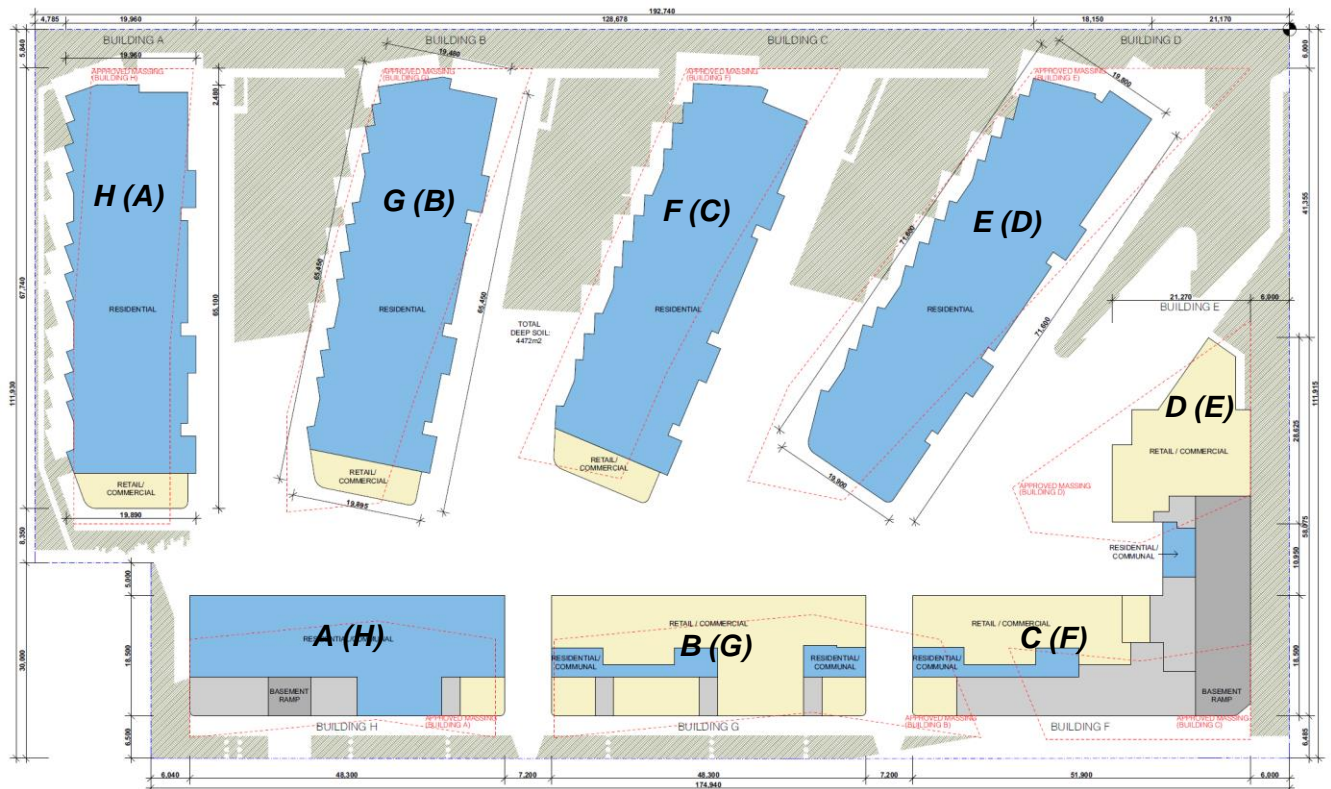


Figure 21: Building layout across the site (these plans do not represent the true building envelopes as they exclude balconies, pergolas and embellishments).

32. The proposal also includes the construction of a two level basement. This basement is open on the western side and includes a landscaped communal area which slopes down towards the basement. The lower level basement includes an arrival area, turntable and loading area. The upper level basement includes end of trip facilities and 238m² office space and a pool amenities area. Overall, the basement includes 379 car parking spaces.
33. The basement is to be accessed from a left in left out 6.5 metre wide driveway located on the north eastern part of the site. This driveway is to be connected to a deceleration lane off Euston Road. Land will need to be dedicated so that a realigned footpath can be provided. The basement is also proposed to sit underground with a setback of 3.5m from the existing property boundary. It is possible, depending on the final design, that the basement will sit underneath the new footpath.
34. A deceleration lane off Euston Road is required to provide access to north eastern driveway. Condition 19 of the concept consent required the detailed design of the deceleration lane to be completed prior to the lodgement of this application. The statement of environmental effects (SEE) states that the deceleration lane does not form part of this application and will be subject to a separate detailed design and approval by the Road and Maritime Service (RMS).
35. A second, left turn only, 6 metre wide exit driveway is also proposed at the southern end of the site.

36. The proposal includes eight (8) buildings including four (4) buildings which front Euston Road and wrap around the north east corner of the site. These are referred to as the 'Euston Road buildings' in this report. The proposal also includes four (4) finger buildings which splay from the centre of the site westward towards the boundary with Sydney Park. These are referred to as the 'Parkside buildings' in this report.
37. Between the Euston Road buildings and Parkside buildings is an 'internal plaza area.' This internal plaza area is accessed through the basement and from Euston Road. The plans show a "proposed access connection to Sydney Park on the north and south boundaries of the site", however the SEE states that "these access points do not form part of this application and are shown as indicative only and will be subject to a separate development application." It is intended for the plaza area to act as a communal space and if approval were recommended, a public access easement would likely be required.
38. The internal plaza area includes voids and light wells to the basement, and areas for planting. It also includes visitor bike parking. The retail tenancies and communal pool proposed in the Euston Road buildings face west into the plaza. Similarly, the retail and office spaces at the eastern end of the Parkside buildings face east into the plaza. The SEE states that the intent of this design is to activate the internal plaza area.

Euston Road buildings

39. Buildings A, B and C are separated by 7 metre wide breezeways on the ground floor. They are connected by fixed acoustic glass infill which sits between the buildings, and a metal veil along the front of all the buildings. The metal veil acts as a trellis base for landscaping. They appear as a continuous row of buildings.
40. Building D wraps around the north east corner of the site and has a frontage to Euston Road and Sydney Park.

Building A

41. Building A includes six (6) storeys plus rooftop structures and communal open space.
42. The ground floor contains:
 - (a) 6 metre wide exit driveway and ramp from the basement. This driveway exit will be left out only;
 - (b) communal pool;
 - (c) residential entries on the north and south building ends;
 - (d) office space; and
 - (e) services including gas regulator room and water meter.
43. Levels 1 to 5 contains 55 apartments including 20 x 2 bedroom, 25 x 1 bedroom and 10 studio apartments.
44. Level 6 (or level 5 mezzanine as referred to in the plans) includes 3 lift overruns, exhaust risers and communal garden space. The roof also includes a walkway connecting the roof top space to building B.

Building B

45. Building B includes six (6) storeys plus rooftop structures and communal open space.
46. The ground floor contains:
 - (a) office space that fronts Euston Road;
 - (b) two (216m² and 212m²) retail spaces which face the internal plaza area; and
 - (c) residential entries on the north and south building ends.
47. Level 1 to 5 contains 55 apartments including 20 x 2 bedroom, 25 x 1 bedroom and 10 studio apartments.
48. Level 6 (or level 5 mezzanine as referred to in the plans) includes 3 lift overruns, exhaust risers and communal garden space. The roof also includes a walkway connecting the roof top space to building A and C.

Building C

49. Building C includes six (6) storeys plus rooftop structures and communal open space.
50. The ground floor contains;
 - (a) 25m² retail space fronting Euston Road;
 - (b) 25m² retail tenancy fronts the internal plaza;
 - (c) residential lobby entrance at the southern end of the building; and
 - (d) services including a substation, fire pump room and cold water pump room, booster assembly.
51. Level 1 to 5 contains 35 apartments comprising 15 x 2 bedroom, 15 x 1 bedroom and 5 studio apartments.
52. Level 6 (or level 5 mezzanine as referred to in the plans) includes 2 lift overruns, exhaust risers and communal garden space. The roof also includes a walkway connecting the roof top space to building B.

Building D

53. Building D includes six (6) storeys plus rooftop structures and communal open space.
54. The ground floor contains:
 - (a) Left in and left out 6.5metre wide driveway including ramp;
 - (b) 351m² retail tenancy which faces internally within the site;
 - (c) residential entry located on the southern side of the building, accessed from within the site; and
 - (d) services including a cooling tower and hot water room.

- 55. Levels 1 to 5 contains 44 apartments comprising 1 x 4 bedroom apartment, 4 x 3 bedroom, 20 x 2 bedroom and 19 x 1 bedroom apartments.
- 56. Level 6 (or level 5 mezzanine as referred to in the plans) includes cooling tower exhaust riser, lift overrun, communal viewing deck and garden.

Parkside buildings

- 57. The proposal also includes four (4) 'finger' buildings, which are generally splayed perpendicular to Sydney Park. These buildings contain 7 storeys including two sets of two storey apartments, those being on the ground and first floor, and levels 5 and 6. Each building also contains two storeys of commercial uses at the eastern end adjoining the internal plaza. The roof contains green roof planting and photovoltaic panels.

Building E

- 58. Building E contains a concierge and mail/storage room at the eastern of the ground floor. It includes three residential lobby entrances on the northern side of the building.
- 59. This building contains 53 apartments comprising, 22 x 3 bedroom apartments, 26 x 2 bedroom apartments and 5 x 1 bedroom apartments.

Building F

- 60. Building F contains a 176m², two storey retail space on the eastern end of the ground floor and level 1. Three residential entries are also located on the northern side of the building.
- 61. This building contains 49 apartments comprising 20 x 3 bedroom apartments, 26 x 2 bedroom and 3 x 1 bedroom apartments.

Building G

- 62. Building G contains a 166m², two storey retail space on the eastern end of the ground floor and level 1. Three residential entries are also located on the northern side of the building.
- 63. It contains 49 apartments comprising 20 x 3 bedroom apartments, 26 x 2 bedroom and 3 x 1 bedroom apartments.

Building H

- 64. Building F contains a 176m², two storey office space on the eastern end of the ground floor and level 1. Three residential entries are also located on the northern side of the building.
- 65. It contains 49 apartments comprising 21 x 3 bedroom apartments, 24 x 2 bedroom apartments and 4 x 1 bedroom apartments.

Application background

66. An issues letter was sent to the applicant in February 2019. The most significant of these issues pertain to significant departures from the concept approval, the site's relationship with Sydney Park and the industrial uses in Euston Road, and the proposed remediation approach. These issues are listed below:
- (a) contamination, including the need to demonstrate how the site can be made suitable for the proposed use;
 - (b) land owners consent for any works proposed within Sydney Park;
 - (c) tree removal and pruning within Sydney Park;
 - (d) acoustic privacy and natural ventilation;
 - (e) departures from the concept consent;
 - (f) setbacks from the boundary;
 - (g) internal separation distances;
 - (h) height breaches;
 - (i) adequacy of the communal open space;
 - (j) "public" plaza;
 - (k) landscaping;
 - (l) design advisory panel's comments;
 - (m) stormwater drainage; and
 - (n) transport and traffic impacts including clarity around relationship between the deceleration lane and the development.
67. Amended drawings and information were submitted in November and December 2019. Changes included the deletion of one (1) apartment in building D, an update to the Euston Road facade and the addition of plenums and planter beds. However, the substantive issues raised by Council officers remain unresolved.

Economic/Social/Environmental Impacts

68. 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;
 - (b) the economic, social and environmental impacts of the development;
 - (c) the suitability of the site for the development;
 - (d) submissions made against the proposal; and
 - (e) the public interest.
69. The assessment detailed in this report demonstrates that the proposal will have a significant environmental impact, as proposed it is not suitable for the site and is not in the public interest. It is therefore recommended for refusal.

Airport Act 1996 (Cth)

70. The proposal does not breach the operations surface limit layer; however it does penetrate the civil aviation safety authority height level which is 15.24m above the ground floor.
71. Section 182 of the Commonwealth Airports Act 1996 specifies that constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
72. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
73. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 4 September 2018.

Water Management Act 2000

74. The proposal involves excavation to a depth of 6.7metres below existing ground level. The water table is approximately 0.37m to 2.74m below existing ground level. As such, dewatering is required and approval is required under the Water Management Act 2000.
75. The application was lodged and assessed as Integrated Development. The development and the amendments were referred to Water NSW. General Terms of Approval were received on 28 September 2018. If the application was recommended for approval, these would be included in the notice of determination.
76. The applicant should however note that in the event that this development application was approved, it would be unlikely that any water could be placed into Council's stormwater system due to risks associated with contaminated ground water.

Roads Act 1993

77. The application was referred to the Roads and Maritime Service (now Transport for NSW) pursuant to section 138 of the Roads Act 1993. This is because Euston Road will soon become a classified road once the Westconnex upgrade is complete.
78. Transport for NSW provided condition concurrence on the basis that a deceleration lane was provided. This is discussed further in the issues section below under the heading 'Access'. It is integral that this lane is designed as part of the detailed DA to understand the development's relationship with the consequential changes to the public domain. This is consistent with the wording of condition 19 on the concept consent.

Sydney Water Act 1994

79. In accordance with section 78 of the Sydney Water Act 1994, the application was referred to Sydney Water on 23 August 2018. No response was received. In the event that approval was recommended, standard Sydney Water conditions would be included.

Section 4.24 of Environmental Planning and Assessment Act 1979

80. The proposed development is not considered to be consistent with the concept consent as required by clause 4.24(2) of the Environmental Planning and Assessment Act 1979.
81. There is a concurrent modification application (D/2016/989/B) which is also recommended for refusal on the following grounds:
 - (a) The amended scheme is not substantially the same as the original approved development.
 - (b) The development is taller, bulkier and encroaches closer to the Sydney Park boundaries than the original concept approval.
 - (c) As a consequence of the changes to the built form, trees within Sydney Park will be damaged and/or need to be removed, the building is more imposing and perceptible from the park, the building creates additional shadow on the park and the building borrows amenity from the park.
82. It is also noted that the subject DA is not consistent with the updated envelope plans submitted for D/2016/989/B. There are also a number of conditions on the consent which are not proposed to be deleted or updated by D/2016/989/B. As such, even if D/2016/989/B were approved, this DA would not be consistent with the amended concept approval.
83. Below is an assessment of the subject proposal against the approved concept consent. This demonstrates that this DA is not consistent with the concept consent.

Concept consent	Compliance	Comment
Envelopes		
<p>Height</p> <ul style="list-style-type: none"> Parkside buildings - RLs, 17.20, 20.30 and RL 26 Euston Road buildings - RL 26 (21.7m) 	No	<p>The concept approval approved a 4, 5 and 6 storey built form. This application seeks consent for a 5, 6 and 7 storey form. It also seeks to increase the approved heights from:</p> <ul style="list-style-type: none"> (a) RL 17.20 to RL 20.10 on the western ends of the Parkside buildings; (b) RL 20.30 to RL 24.35 and RL 26.5 in the middle of the Parkside buildings; (c) RL 26 to RL26.5 on the eastern ends of the Parkside buildings; and (d) RL 26 to RL26.9, RL 27.10 and RL 30.55 on the Euston Road buildings. <p>As a consequence, the proposed development exceeds the maximum approved height of the concept consent by up to 47%.</p>
<p>Setbacks</p> <ul style="list-style-type: none"> Minimum of 6 metres on the above and below ground on the north, west and southern boundaries. Minimum of 3 metres plus likely 3.5 metres deceleration lane for Euston Road frontage 	No	<p>The development will have a setback of 1.5m to the western and southern boundaries.</p> <p>The development is setback 5.2metres from the Euston Road boundary. Conditions regarding the required deceleration lane have not been met which creates uncertainty regarding this setback.</p>

Concept consent	Compliance	Comment
Key concept consent conditions		
<p>Condition 4B</p> <p>"Building roofs are to accommodate a minimum soil depth of 1m to 60% of the roof area ... remaining roof space should accommodate 20% area for people to access and maintain the roof landscaping and 20% for sustainable energy generation and water re-use."</p>	Partial compliance	This has generally been achieved, however larger pot sizes should be provided and verification as to ESD components of development.
<p>Condition 4C</p> <p>"A minimum 6m setback, below ground and above ground, shall be incorporated into the buildings envelopes at all Sydney Park boundaries to provide the existing trees within Sydney Park the ability to continue to establish without being impeded by proposed structures or adversely impacted by building construction and ongoing building use. The increased setback must allow for an improved and substantially vegetated interface with Sydney Park including trees."</p>	No	This is not provided and is discussed in the issues section below.

Concept consent	Compliance	Comment
<p>Condition 4D</p> <p>"A minimum 4m setback shall be incorporated into the top most floor to buildings C, D, E, F, G and H from Sydney Park to the northern and western facing edges."</p>	No	This is not provided and an additional level has been added.
<p>Condition 4E</p> <p>"The Euston Road building setbacks shall be increased along Euston Road to allow for the RMS required 3.5m wide footway widening in condition 19 below. A minimum 3m building setback must be maintained to the realigned property boundary."</p>	No	This is not provided and is discussed in the issues section below.
<p>Condition 4F</p> <p>"Green roofs and green walls are to be incorporated into the development ..."</p>	Yes	This has generally been achieved.
<p>Condition 4I</p> <p>"Landscaped spaces between the building envelopes are to accommodate designs and scale that provide for varied typologies of users...."</p>	No	This is not achieved and is discussed under SEPP 65 below.

Concept consent	Compliance	Comment
<p>Condition 6A</p> <p>Matters not approved at stage 1:</p> <p>"The use of any part of the Euston Road building envelopes for residential accommodation. The buildings may only be used for residential accommodation and identified as such in stage 2 DAS on demonstration that noise goals and natural ventilation is achieved..."</p>	No	This is not met and is discussed in the issues section below.
<p>Condition 6G</p> <p>Matters not approved at stage 1:</p> <p>"the removal or pruning of any tree at Sydney Park"</p>	No	This is not met and is discussed in the issues section below.
<p>Condition 6H</p> <p>Matters not approved at stage 1:</p> <p>"Access pathways into Sydney Park."</p>	No	While not proposed as per the SEE, access pathways are shown on the drawings and the internal plaza concept relies on them.
<p>Condition 7</p> <p>Building Height</p>	No	This is not achieved. The proposal departs significantly from the concept consent and is not supported. This is shown in the images within the 'height' discussion below.
Condition 8 - FSR	Yes	This is achieved.

Concept consent	Compliance	Comment
Condition 9 "Subject to other conditions of this consent, the building envelopes are only approved on the basis that the ultimate building design, including articulation, balconies, services, privacy treatments and other projections will be entirely contained within the approved building envelopes."	No	The building does not fit within the approved concept envelopes - it significantly exceeds it.
Condition 12 - Public art	Yes	This is achieved.
Condition 13 - Signage strategy	Yes	This is achieved.
Condition 14 - Flood planning levels	No	This is not achieved and is discussed in the issues section below.
Condition 15 - Acid sulphate soils assessment	No	This is achieved.
Condition 16 - Construction environmental management plans	No	This is not achieved.
Condition 17 - Air quality assessment	Yes	This report was submitted.
Condition 19 - RMS conditions regarding deceleration lane and site access.	No	Access to the site still remains unresolved and is discussed in the issues section below.
Condition 20 - Service vehicle access	No	This is not achieved and is discussed in the issues section below.

Concept consent	Compliance	Comment
Condition 26 - Land contamination - detailed remediation action plan and interim letter of advice	No	This is not achieved and is discussed in the Issues section below.

Section 4.15 of Environmental Planning and Assessment Act 1979

State Environmental Planning Policy No 55—Remediation of Land

84. 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.
85. A RAP and section B site audit statement have been submitted. The remediation approach does not adequately demonstrate how the site can be made suitable for the proposed uses. This forms part of the recommended reasons for refusal and is discussed further in the issues section below.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 44

87. The application is subject to Clause 44 as the development involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is within 10m (measured radially) of the centreline of the Haymarket Optical fibre cable. In accordance with the Clause, the application was referred to Transgrid and no objection was raised.

Clause 45

88. The application is subject to Clause 45 as the development will involve the penetration of the ground near underground electricity cables. In accordance with the Clause, the application was referred to Ausgrid and no response was received.

Clause 101

89. The application is subject to Clause 101 of the SEPP as the site has frontage to Euston Road, which is soon to become a classified road as part of Westconnex.
90. The application is not considered to satisfy Clause 101 of the Infrastructure SEPP as the development does not provide safe access to the site. The impact of the development on Euston Road has not been sufficiently detailed. This is discussed further in the issues section below under the heading 'Access'.

Clause 102

91. The application is subject to Clause 102 of the SEPP as the average daily traffic volume of Euston Road will be more than 40,000 vehicles. The application is not considered to satisfy Clause 102 of the Infrastructure SEPP. This is discussed further in the issues section below under the heading 'Noise and natural ventilation.'

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

92. This SEPP applies to the subject development. This development will impact on 53 trees on site. It will also impact on the tree protection zones of 28 trees within Sydney Park and require the removal of three (3) trees and pruning of one (1) tree. The impact on trees on Sydney Park is not supported and is discussed further in the issues section below.

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

93. The BASIX Certificate has been submitted with the development application and is discussed further under the heading ESD in the table below.

State Environmental Planning Policy No 64 - Advertising and signage

94. The proposal incorporates wayfinding and directional signage appears to be generally consistent with the requirements of schedule 1 of the SEPP. However, prior to any approval, further details would be needed regarding the exact size of signs proposed in each location.

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

95. SEPP 65 requires that the consent authority take into consideration a number of matters relating to design quality, including nine design quality principles.
96. A design verification statement dated 29 November 2019, was submitted for the amended plans. It was prepared by Silvester Fuller, MHNDUnion and Sue Barnsley Design, under the guidance of registered architects, Penny Fuller, Jad Silvester and Brian Meyerson.
97. The nine (9) design principles are discussed below:
- (a) Principle 1 - Context and Neighbourhood Character
 - (i) The subject development does not demonstrate good design as it fails to consider the surrounding context. The built form, including height, bulk and setbacks, will adversely impact on and take away amenity from Sydney Park.
 - (b) Principle 2 Built form and scale
 - (i) The bulk, height and scale of the development is not appropriate for its context. The built form takes away from the public domain by proposing a development which is too close and too tall for the surrounding parkland. Rather than contributing to the amenity of the public domain, the subject proposal diminishes the quality and amenity of it.
 - (c) Principle 3 - Density;
 - (i) The exceedance of the height control, the non-compliant setbacks between the Park boundaries and the Parkside buildings, and non-compliant internal separation distances suggest that the proposed development is too big for the subject site. As such, the density is not considered appropriate for the site or its context.

- (d) Principle 4 - Sustainability;
 - (i) The sustainability measures proposed throughout the development are considered positive, however, further clarity is required to demonstrate how the development meets the necessary sustainability targets.
- (e) Principle 5 - Landscape
 - (i) The landscape scheme proposed is considered a positive element of the development. It is playful and integrated throughout the development.
- (f) Principle 6 - Amenity
 - (i) The subject apartments meet or exceed the minimum apartment sizes and private open space. The number of cores provided per building also optimises the number of apartments which are capable of achieving cross ventilation. However, given the noise issue, only 30.5% of the apartments will actually be naturally cross ventilated. The apartments also appear to receive the required amounts of solar access.
 - (ii) The subject buildings do not meet the minimum separation distances at the eastern ends and in doing so will create acoustic and visual privacy issues. The inadequate separation will contribute to a sense of enclosure for the plaza. Noise and natural ventilation have not been adequately resolved.
- (g) Principle 7 - Safety
 - (i) The development has not optimised safety within the development or the public domain. Buildings within the development do not have a legible street address, and the public domain surrounding the site is poorly lit and not adjacent to any active uses.
- (h) Principle 8 - Housing diversity and social interaction
 - (i) The communal open space areas do not provide for a range of people or provide opportunities for social interaction. The apartment mix does provide for a mix of housing typologies including 2 storey and single storey apartments, and a mix of studio (6%), 1 bedroom (25%), 2 bedroom (45%) 3 bedroom (23%) and 4 bedroom (1%).
- (i) Principle 9 - Aesthetics
 - (i) While articulated, each building reads as a singular mass, due to the lack of any deep recesses that would have 'broken up' the form of the buildings. The DAP recommended to simplify and reduce bulk of architecture and this has not occurred.
 - (ii) Approximately 70m of the Euston Road frontage is occupied by services and driveways, this represents approximately 40% of the built frontage. This is a poor urban design outcome.

Design Advisory Panel comments

98. The development application, as originally lodged, was presented to the Design Advisory Panel (DAP) on 22 November 2018. The panel provided a number of comments. Most relevantly, these include:
- (a) In order to access the bonus for design excellence, the design should conform to the stage 1 (concept DA) envelopes.
 - (b) The comments made by the Design Competition Jury need to be addressed. In particular, the requirement to simplify and reduce bulk of architecture, as well as the articulation of the buildings to Euston Road, has not been achieved. The design should be revised to address these issues.
 - (c) The buildings fronting Euston Road are particularly problematic with regards to the proposed sensitive uses and amenity. The street frontage to Euston Road is very exposed to heavy vehicle busy road. The Panel noted that they had previously commented on the Euston Road facade regarding ventilation problems with a glass facade in this location. The design has subsequently been changed to mesh. The performance of this solution needs to be validated.
 - (d) Non-compliance with communal open space and setback requirements is noted.
 - (e) The Panel reiterated that the overall concept for the site of landscape/planting moving from the park up through the development towards Euston Road was significant factor in the selection of this scheme in the design competition, and this seems to be compromised.
 - (f) The proposed internal apartment planning was considered acceptable.
 - (g) The Panel agrees that the planting on the buildings is fundamental to the success of the design and was a key consideration in this scheme being determined as the winner. This aspect of the proposed development needs to be guaranteed to work. Mounding around the lifts appears to be newly introduced since the competition, possibly to disguise an increase in bulk. The Panel expressed concern about the viability of this.
99. These comments overall were reflected in Council advice to the proponent. While some amendments have been made, the proposal fails to comply with the concept consent/stage 1, address the bulk of the development, or its interface with Euston Road or Sydney Park. This is discussed in the Issues section of this report.

Apartment Design Guide

2F Building Separation/ 3F Visual Privacy	Compliance	Comment
<p>Up to four storeys:</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Five to eight storeys:</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	No	The development does not meet the minimum setback/separation distances. This is discussed further in the issues section below.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Partial compliance	<p>The development provides 18% of the site area as communal open space. These are provided between the Parkside buildings and on the roof of the Euston Road buildings.</p> <p>If the plaza is counted as contributing towards communal open space, the development provides approximately 31% of the site area for communal open space.</p> <p>The development also does not provide BBQ facilities or areas for outdoor social gatherings or activities. In a development this size, these facilities should be provided.</p>
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).		

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.	Yes	While it is difficult to determine based on the information provided, it appears approximately 70% of apartments will receive 2 hours of solar access.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	No	This is discussed further in the issues section below.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No	While the design allows 64% of the proposed apartments to be naturally cross ventilated, the external noise environment means that only 30.5% of the apartments within the development (or 119 out of 389) will be naturally cross ventilated.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	All habitable rooms have a minimum floor to ceiling height of 2.7m.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Yes	<p>The ground floor of the buildings fronting Euston Road have a floor to floor height of 5.2metres.</p> <p>The office and retail uses at the eastern end of the Parkside buildings contain double height spaces for half of the tenancies (5.4metres) and 2.7m for the remainder of the tenancy. On balance this is acceptable.</p> <p>The large floor to ceiling heights along Euston Road contribute to the overall height of the building which exceeds the height standard. These retail spaces may also be filled in at a later date, which would add additional floor space to the development.</p>

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	The apartments all meet or exceed the minimum sizes.
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p> <p>8m maximum depth for open plan layouts.</p>	Yes	The development does not exceed the maximum room depth requirements.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	The bedrooms all meet or exceed the minimum bedroom sizes.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more, or cross through: 4m 	Yes	The apartments meet or exceed the minimum room widths.

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>	Yes	The development either meets or exceeds the minimum private open space requirements.
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m ² and a minimum depth of 3m.	Yes	

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Partial compliance	Overall, the number of apartments per core is below the maximum of 8. However, building D has 9 apartments per core for levels 1 to 5.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	No	The ends of the Euston Road buildings which adjoin the breezeways have balcony openings very close to corridor openings. This results in a conflict between achieving privacy to the balcony and light and air to the corridor. See figures under issues heading, 'separation distances' below for image of this.

4F Common Circulation and Spaces	Compliance	Comment
Daylight and natural ventilation are provided to all common circulation spaces.	Partial compliance	Light appears to be via the fire stairs to the centrally located cores. It is not clear whether the corridors would also have access to air and whether the fire stairs can be open given the noisy external environment.

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>	Partial compliance	While the quantum of storage provided meets the minimum requirements, a number of apartments do not have the half of the minimum storage required in the apartments.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	No	This has not been achieved and is discussed further in the issues section below.

Sydney LEP 2012

100. The site is located within the B4 mixed use zone. The proposed uses are defined as residential accommodation, office and retail. These land uses are all permissible with consent.

101. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Development Control	Compliance	Comment
4.3 Height of Buildings	No	<p>A maximum height of 18m is permitted or 19.8m with design excellence. The proposal is not considered to satisfy design excellence provisions.</p> <p>The approved concept DA approved building envelopes with a maximum height of 21.7m.</p> <p>The majority of the proposed buildings project above the heights established by the concept consent.</p> <p>A maximum height of 25.95 metres (or RL 30.55) is proposed. This represents a 44% variation above the base development standard.</p> <p>This is discussed further in the issues section below.</p>
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 2.5:1 is permitted. A FSR of 2.09:1 is proposed.</p> <p>This is significantly above the 1.8:1 considered appropriate for the site in the assessment of the concept application and has resulted in a built form that falls outside of the approved building envelopes.</p>
4.6 Exceptions to development standards	No	<p>The proposal seeks to vary the development standard prescribed under clause 4.3 height of buildings. This clause 4.6 variation is not supported and is discussed in the issues section below.</p>
5.3A Development below ground level in Zone RE1	No	<p>Sydney Park is zoned RE1. While no consent is sought, the development requires removal and pruning of trees in Sydney Park.</p> <p>The removal of trees is contrary to parts (a) and (b) of this clause. It is considered that this will have significant adverse effects on the environment within Sydney Park.</p>

Development Control	Compliance	Comment
6.21 Design excellence	No	The development is not considered to demonstrate design excellence. This is discussed further in the issues section below.
Division 1 Car parking ancillary to other development 7.5 Residential flat buildings 7.6 Office premises and visitor premises 7.7 Retail premises	Yes	<p>The subject site is located in category C under Sydney LEP 2012 transport and land use maps.</p> <ul style="list-style-type: none"> A maximum of 344 residential car spaces are permitted, and there are 344 spaces proposed. A maximum of 32 visitors spaces are permitted and 13 visitor's spaces are proposed. A maximum 9 office spaces are permitted and 9 visitor's spaces are proposed. A maximum of 14 retail spaces are permitted and 14 are proposed. There are also 6 car share spaces proposed.
7.13 Contribution for the purpose of affordable housing	Not applicable	The development is outside of the Green Square and Southern Employment Lands, and as such, is not subject to an affordable housing contribution.
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 3 Acid Sulphate Soil. An acid sulphate soil management plan, prepared by EP RISK and dated 14 November 2019 was submitted as part of the amended information package. This plan has been reviewed by Council's Environmental Health officers and is considered to be acceptable.
7.15 Flood planning	No	Flooding and stormwater have not been adequately addressed. This is discussed further in the issues section below.

Development Control	Compliance	Comment
7.16 Airspace operations	Not applicable	The proposed development does not penetrate the Obstacle Limitation Surface for Sydney Airport.
7.17 Development in areas subject to airport noise	No	The development is located within ANEF contour 15 and 20. It is also sensitive to aircraft noise. This clause is discussed in the issues section under acoustic privacy and natural ventilation.
7.20 Development requiring preparation of a development control plan	No	A concept development application has been approved for the subject site. However, as per the discussion under section 4.24 of the Environmental Planning and Assessment Act 1979, this DA is inconsistent with the approved concept consent and is not supported.
7.23 Large retail development near Green Square Town Centre	Yes	The subject site is located within the restricted retail area and therefore cannot have shops or markets with a floor area over 1,000m ² . The proposal does not include any shops or markets with a floor area greater than 1,000m ² .

Sydney DCP 2012

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

2. Locality Statements – Euston Road and McEvoy Street

The subject site is situated in the Euston Road and McEvoy Street locality. The locality statement says that the “south of Sydney Park Road the existing industrial character of the area will continue.”

While the concept consent approved a mixed-use development, it did include a number of conditions which were required to be satisfied to demonstrate that the site could in fact be made suitable. These conditions have not been met. The reasons for refusal of DA illustrates that this site is highly constrained and that the development, as proposed, is not suitable for this locality.

3. General Provisions	Compliance	Comment
<p>3.1.1 Streets, lane and footpaths</p> <p>3.1.1.4 Footpaths</p>	No	<p>As a consequence of the deceleration lane along Euston Road, the existing footpath is proposed to be realigned so that it sits directly between the deceleration lane and the building. The exact location of the deceleration lane and realigned footpath are not known. The Euston Road buildings are proposed to be 5.2m back from the existing property boundary. This means that there is limited opportunity for meaningful landscaping.</p>
3.1.5 Public Art	Yes	<p>An updated public art strategy has been provided with this DA. It proposes to select the Artist Fujiko Nakaya and a fog garden is proposed to be installed at the northern end of the central plaza, near the boundary with Sydney Park.</p>
3.1.6 Sites greater than 5,000m ²	No	<p>The rear buildings have no clear street address. There is limited permeability to the site, with access only able to be provided from Euston Road.</p>
3.2.1 Improving the public domain	No	<p>The subject proposal does not enhance the public domain. Access to the site is unresolved and is addressed in the issues section below. If the current access arrangement was approved, the arc of the proposed driveway would significantly compromise pedestrian safety and amenity. The proposal also necessitates the pruning and removal of trees within Sydney Park.</p>
3.2.1.1 Sunlight to publically accessible spaces	No	<p>The proposal creates additional shadow on Sydney Park. This is discussed in the issues section below and is not supported.</p>

3. General Provisions	Compliance	Comment
3.2.2 Addressing the street and public domain	No	The proposal demonstrates a poor interface with Sydney Park and Euston Road. The buildings are too close to the Sydney Park boundary, such that the private development borrows amenity from the public park. Access to the site is discussed further in the issues section below.
3.3 Design Excellence and Competitive Design Processes	No	<p>The development underwent a competitive design process which was undertaken in accordance with the City of Sydney Competitive Design Policy. The design excellence strategy was endorsed as part of the concept consent.</p> <p>The development is not considered to deliver design excellence and therefore is recommended for refusal.</p>
3.5 Urban Ecology	No	The proposal will encroach on 28 tree protection zones, and require the removal of three (3) trees and pruning of one (1) tree within Sydney Park. This is not acceptable and discussed further in the issues section below.
3.6 Ecologically Sustainable Development	No	While the development does include photovoltaic panels, the quality of the documentation submitted to support the ESD initiatives on the site is not acceptable. There is no detail of the insulation proposed on the plan, there is no summary of the modelling selections and the modelling assumptions are hidden in the report. The NatHERS summary certificate does not provide access to individual certificates for each apartment.
3.7 Water and Flood Management	No	<p>Flooding has not adequately been addressed on the site and is discussed further in the issues section below.</p> <p>It is also not clear how stormwater will be managed as part of the development. This is also discussed further in the issues section below.</p>

3. General Provisions	Compliance	Comment
3.11 Transport and Parking	Yes	<p>The proportion of residential spaces and visitor spaces is not acceptable. Given the maximum number of parking spaces permitted by Sydney LEP 2012 are not being provided, the number of residential spaces must be proportionate to the number of visitor spaces.</p> <p>The required number of bicycle spaces as per the Sydney DCP 2012 are provided for in the development. That is, there are 390 resident bike parking facilities, there are 11 staff bike parking facilities and there are 60 visitor bike parking facilities.</p> <p>There are also 6 car share spaces and 11 service bay spaces, as is required by the Sydney DCP 2012.</p>
3.12 Accessible Design	Partial compliance	<p>The correct number of adaptable car parking spaces have been provided. It is not clear whether the floor levels of the lobbies are correct to address flooding. If the floor levels need to increase, this will impact on accessible access.</p>
3.13 Social and Environmental Responsibilities	No	<p>The development is poorly located to access local public transport and buses. It will be difficult to walk to the site at night from either St Peter's or Mascot stations as it requires walking either through the park (which is only partly lit at night) or poorly lit industrial areas. The internal plaza relies on access to the park, yet this application does not seek consent for access, nor would access be supported (as it requires works to the park).</p>
3.14 Waste	No	<p>The driveway ramp does not comply with the Australian standards or the requirements in the Sydney DCP 2012 for waste truck access.</p>
3.16.1 Signage Strategy	Yes	<p>A signage strategy has been prepared for the site. In principle, the signage strategy is generally acceptable</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	The DCP recommends a building height of 5 storeys. The concept consent approved a 4, 5 and 6 storey stepped form. The proposal seeks consent for up to 7 storeys. This results in additional bulk and shadow and is not considered acceptable. Refer to issues section regarding height.
4.2.2 Building setbacks	No	The proposal does not retain the approved setbacks of the concept envelope or meet the minimum setback distances established by the ADG. This is discussed further in the issues section below.
4.2.3 Amenity	No	The proposal does not demonstrate good amenity. Noise, natural ventilation and privacy are discussed further in the issues section below.
4.2.3.6 Deep soil	Yes	Approximately 12.5% of the site area (or 2633m ²) is deep soil. This exceeds the minimum 10% requirement in the DCP.
4.2.4 Fine grain, architectural diversity and articulation	No	Approximately 70m of the Euston Road frontage is occupied by services and driveways, this represents approximately 40% of the built frontage. This is a poor urban design outcome.
4.2.5.3 Development on busy roads and active frontages	No	This is discussed further in the issues section below.
4.2.6 Waste and Recycling Management	No	This is discussed under section 3.14 waste above.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.8 Letterboxes	No	A concierge area including a mail room are located at the eastern end of building E. This does not have a direct street address and would need to be accessed via the basement or going through the breezeways on the Euston Road buildings.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	In the event that this development was supported, conditions would need to be imposed to ensure that the ground level commercial uses operated appropriately for the context.

Issues

Height

103. Clause 4.3 height of buildings permits a maximum height of 18 metres. The concept consent already includes a clause 4.6 to increase the height on the eastern part of the site to 21.7 metres. This was supported on the basis that the height stepped up as the development moves away from Sydney Park.
104. The exact wording used by the applicant's clause 4.6 variation request under the concept plan was that "the additional height sought through this variation request has been placed on the Euston Road frontage, furthest from Sydney Park to ensure an appropriate transition in built form from an urban to landscape setting." This has not been translated into the detailed/ stage 2 DA with heights being increased across the site, but most significantly in the Parkside buildings which have increased from 5 to 7 storeys.
105. The subject DA seeks consent for the following heights. The extent of the variation from maximum permitted height limit under clauses 4.3 (18m) and clause 6.21(7) of Sydney LEP 2012 (19.8m) are also included in the table below. It is considered that the variance should be measured from the development standard, being 18 metres.

Building Name	Concept approval	Proposed height	Variation from 18m LEP control	Variation from design excellence 10% bonus (19.8m)
A (Euston Road)	6 storeys - RL 26 (21.7 metres)	6 storeys - RL 26.90 (22.3 metres)	23.9%	12.6%
B (Euston Road)		Lift overrun RL 27.10 (22.5 metres)	25%	13.6%
		Lift overrun RL 30.55 (25.95 metres)	44%	23.7%
C and D (Euston Road (c) and northeast corner of site (d))	4 storeys - RL 17.20 (12.9metres)	5 storeys - RL 23.60 (19 metres)	5.6%	No variance
	6 storeys - RL 26 (21.7 metres)	6 storeys - RL 26.90 (22.3 metres)	23.9%	12.6%
		Lift overrun RL 27.10 (22.5 metres)	25%	13.6%
		Lift overrun RL 30.55 (25.95 metres)	44%	23.7%
E, F, G and H (Parkside buildings)	4 storeys - RL 17.20 (12.9 metres)	5 storeys - RL 20.10 (15.5metres)	Less than 18m height limit	Less than 19.8m

Building Name	Concept approval	Proposed height	Variation from 18m LEP control	Variation from design excellence 10% bonus (19.8m)
	5 storeys - RL 20.30 (16 metres)	6 storeys - RL 24.350 (19.7 metres)	9.5%	Less than 19.8m
	6 storeys - RL 26 (21.7 metres)	7 storeys - RL 26.90 (22.3 metres)	23.9%	12.6%

The below plan indicates the extent of the breach of the height limit proposed by the development.

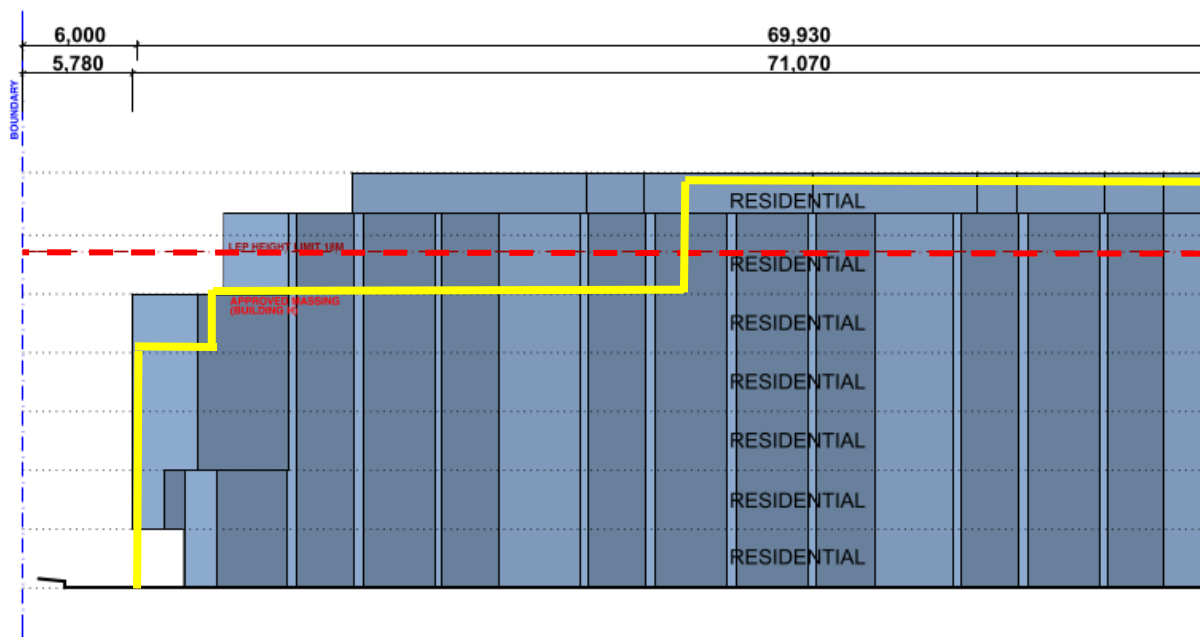


Figure 22: South elevation of building H (Parkside buildings). The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.

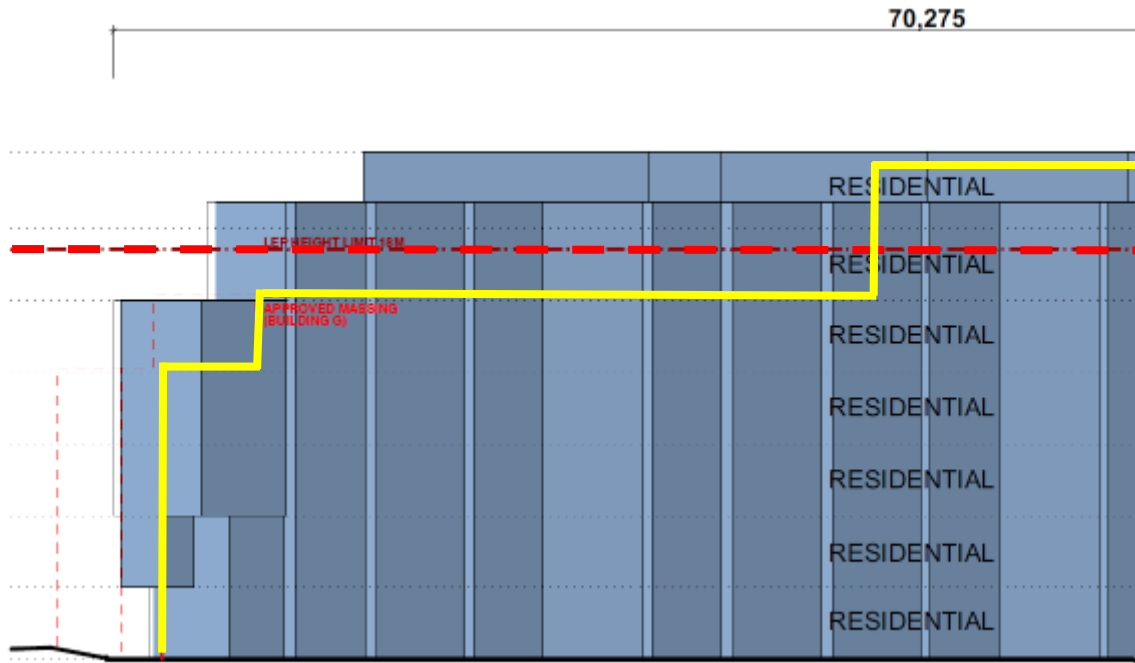


Figure 23: South elevation of building G (Parkside buildings). The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.

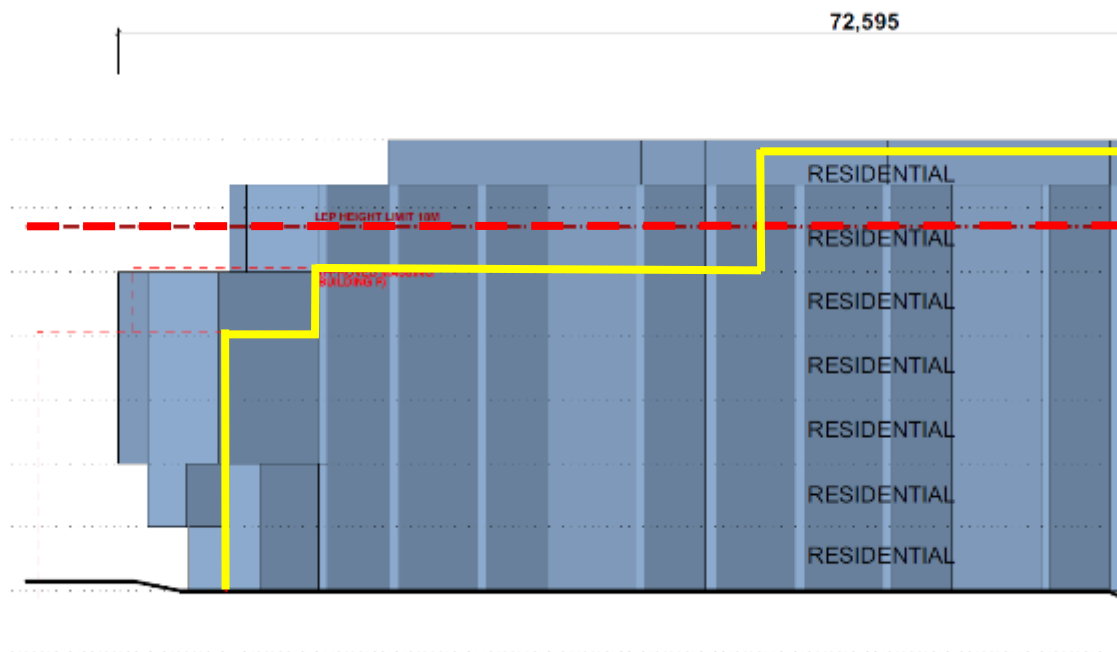


Figure 24: South elevation of building F (Parkside building). The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.

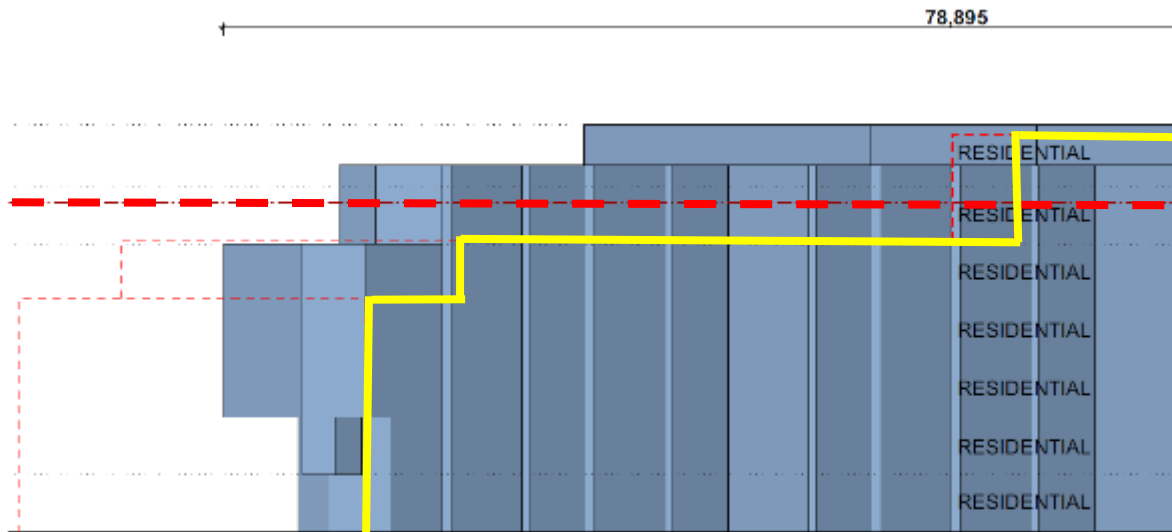


Figure 25: South elevation of building E (Parkside building). The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.

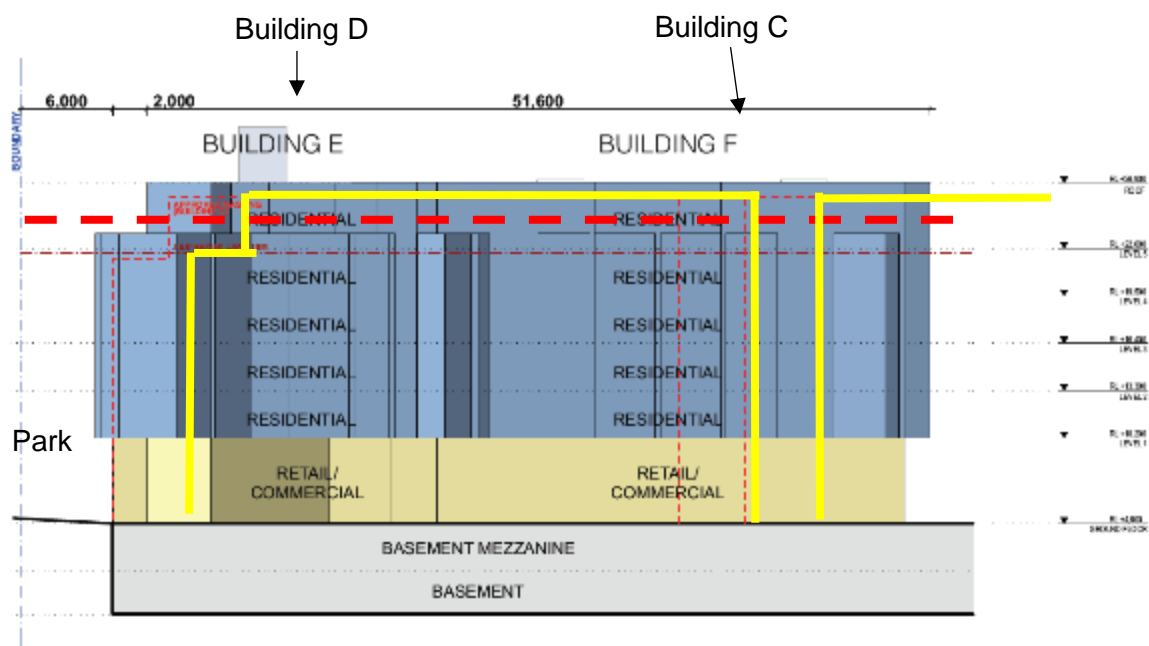


Figure 26: West elevation of building C (Euston Road) and D (corner of Euston Road and Sydney Park). The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.

106. In accordance with clause 4.6(3)(a) of the Sydney LEP 2012, a clause 4.6 request has been submitted to support the breach of the height controls. A copy of the applicant's written request is provided at Attachment B.

107. Overall, it is considered that the clause 4.6 variation request is not adequate, and that the additional height results in adverse impacts and therefore cannot be supported. This is outlined in detail below.

Clause 4.6 request to vary a development standard

Clause 4.6(3)(a) of Sydney LEP 2012

108. The applicant seeks to justify the contravention of the height of buildings development standard and submits that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
109. The reasoning provided is as follows:
- (a) The underlying objectives of the height of buildings development standard are achieved, notwithstanding the non-compliance with the numerical control.
 - (b) Objective (a) to ensure the height of the development is appropriate to the condition of the site and its context:
 - (i) The site has a unique setting, being located on the boundary of Sydney Park. The impact of the built form (including height) when viewed from Sydney Park therefore plays an important role in determining the appropriateness of development on the site. It is noted that the existing industrial warehouse development is visible behind the tree line, when viewed from Sydney Park.
 - (ii) The proposed development, whilst exceeding the maximum building height, has been designed in detail to respond to the leafy setting of the immediate surroundings. The building expression to Sydney Park is a broken façade which reduces the dominance of the built form on the surrounding landscape, particularly in comparison to the large building frontage of the existing development.
 - (iii) The buildings fronting Sydney Park have been specifically designed to provide significant tree planting at building edges (level 5 and level 5 mezzanine) and rooftop levels which acts to transition and continue the canopy and undulating topography of Sydney Park.
 - (iv) The building materiality uses colours and tones (timber look colours) and landscaping to complement Sydney Park and allow the building to seamlessly integrate with the Park setting. The proposed development viewed from Sydney Park is presented in figure 9.
 - (v) The proposed buildings are also set against the background of significantly taller and more noticeable development throughout Mascot. The proposal offers a sympathetic transition between the Park setting and the horizon of built form to the southeast of the site. Furthermore, in considering the stage 1 concept DA, as outlined above, Council considered that the (now approved) building envelopes would have a relatively reduced building frontage to the Park, compared to the existing warehouses on the site.
 - (vi) It is therefore considered that the proposed building height is appropriate for the site in its context.

- (c) Objective (b) to ensure height transitions between new development and heritage items and buildings in heritage conversation areas or special character areas.
 - (i) The site is not a listed heritage item, situated within a conservation area or in the immediate vicinity of a heritage item. A group of heritage terraces at 2-34 Campbell Road (Item I12) are located approximately 150m south west of Sydney Park. Approximately 550m north-west of the site is the nominated heritage item of Bedford Brickworks, including chimneys, kilns and grounds (Item I27).
 - (ii) There is sufficient separation and transition in built form from the site to the surrounding heritage items that the proposed exceedance of the maximum building height will have no impact on the readability of these items or any adverse shadow impacts.
- (d) Objective (c) to promote the sharing of views.
 - (i) Given the isolated nature of the site, the proposed development does not adversely or substantially impact on the existing private views. The massing of the development on the site enables the sharing of public views from Sydney Park by breaking up large massing and having slim building orientated at an angle to the park to limit the appearance of bulk (refer to figure 9 above). The proposed built form ensure internal privacy and view sharing for the future residents of the development.
- (e) Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.
 - (i) The site is not located in the transition areas surrounding Central Sydney and Green Square Town Centre. This objective is not applicable.
- (f) The object or purpose would be defeated or thwarted if compliance was required.
 - (i) The Alexandria area is a precinct which is currently undergoing a transition from historical industrial land uses to a mixed-use neighbourhood. This is evident in the B4 mixed use land use zone that applies to the site. The proposed development is consistent with this transition and has been specifically designed to respond to the unique site context.
 - (ii) It is also noteworthy that the proposed scheme provides an FSR of 2.07:1, which is well below the maximum FSR standard of 2.5:1 afforded under Sydney LEP 2012. As such, the proposed building height enables efficient use of the land commensurate to the density envisaged for the site.
 - (iii) The resulting height variation is a result of distributing the available GFA to the upper levels of the building. As such, the proposal offers and improved planning outcome for the site and therefore this outcome would be thwarted if compliance with the standard was required.

Clause 4.6(3)(b)

110. The applicant also submits in the clause 4.6 variation request that there are sufficient environmental planning grounds to justify contravening the standard. These reasons are as follows:

- (a) Improved flood planning outcome:
 - (i) The exceedance of the maximum approved concept envelope height (being 21.7m) will allow for an improved flood planning outcome and minimise flood risk.
 - (ii) The flood planning level under the approved concept FA was RL 4.3m.
 - (iii) A detailed flood planning study was undertaken after the Concept DA, which identified the need for a minimum flood planning level of RL 4.6.
 - (iv) The proposed envelope factors in the additional +300mm which has in turn pushed building heights. The exceedance of the approved concept envelope height and maximum 19.8m SLEP height is justified on the basis that the proposal will allow for an improved floor planning outcome that will minimise flood risk.
- (b) Reduced visual impact:
 - (i) The proposed development has been specifically designed to respond to the immediate site context and minimise the impact of the development on the adjoining Sydney Park.
 - (ii) The proposed built form, whilst visible from Sydney Park presents as a continuation of landscape cover including significant vegetation. The built form has been optimised to minimise the bulk and scale of the proposed development when viewed from Sydney Park.
 - (iii) The extent of the visual impact as a result of the height variation sought under this application is not of a discernible scale.
 - (iv) The building has been appropriately modulated (by recessing the upper levels) at the park edge interface. This will minimise visual bulk when viewed from the park. Further the building materiality and landscaping will serve to screen the upper levels and reduce visual prominence.
 - (v) Overall, the proposed development result in a reduced visual impact when viewed from Sydney Park in comparison to the development on the site.
- (c) Increased amenity to the public plaza and residential development:
 - (i) The proposed massing on the site has been revised from the massing approved in the Concept DA and through the competitive design process to increase the level of solar access to both the public plaza within the development and maximise the number of apartments receiving at least 2 hours of direct sunlight.
 - (ii) Overall the development achieves 2 hours of direct sunlight to 74% of the apartments on 21 June.

- (iii) This is achieved by redistributing the bulk away from the building edges and towards the centre of the building form as an additional mezzanine level.
 - (iv) The stepping provides a more sympathetic interface to the Park while maximising amenity along the public plaza and open space areas within the site.
 - (v) Council also considered as part of the approval of the Stage 1 Concept DA for the building envelopes that strict compliance with the height standard could result in sub-optimal site permeability, landscaped spaces and building separation.
- (d) Provision of energy generation and additional canopy cover
 - (i) The proposed development provides 27% of the total roof area covered with Photovoltaic (PV) solar electricity panels to provide for on-site electricity generation. The development also provides 59% of the roof area as landscape area, reducing the overall energy load from the development. In order to achieve both of these environmental aspects, the roofline must be staggered to ensure that the PV array is located above the vegetation in order to maximise the generation potential. This is also enabled by the minor increase in building height from that described in clause 4.3 of the Sydney LEP 2012 and that considered as part of the Concept DA.
- (e) The development is provided at an appropriate intensity for the site:
 - (i) The assessment of the variation to the maximum building height assessed at the concept DA considered that the exceedance in height was supported as the development was compliant with the maximum floor space ratio applied to the site.
 - (ii) The development, as proposed, provides a floor space ratio of 2.07:1, well below the maximum permitted on the site, being 2.5:1.
 - (iii) This demonstrates that although the proposed development exceeds the maximum permitted building height, overall, the proposal does not relate to an increased intensity of development to that desired under the planning controls.
- (f) Rooftop landscaping and screening of rooftop services
 - (i) The landscaping at the upper levels accommodate a variety of soil depths (300mm - 1000mm) that can support a mix of planting species and habitats that in turn will complement the overall urban ecology of the locality and improve the ecological relationship of the site to the park.
 - (ii) A number of landscape structures integrated within the architectural roof form, act to screen building plant including lift overruns. The inclusion of these landscaping features, whilst contributing to the exceedance of the maximum building height, results in an improved visual impact and increased environmental performance of the development.

111. In accordance with clause 4.6(4)(a) development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Adequacy of clause 4.6(3)(a) justification

112. It is considered that the applicant's clause 4.6 variation request does not adequately address that compliance with the height standard is unreasonable or unnecessary in the circumstances of the case.
113. This is because the clause 4.6 variation request fails to demonstrate how the development does not result in any additional shadow on the park. In doing so, the applicant has failed to properly consider whether the additional height is appropriate to the condition of the site and its context.
114. Further to this, the applicant has failed to properly demonstrate how the visual impact of a compliant scheme compares to the proposed visual impact of the proposed scheme. In the absence of comparing the proposed scheme with a compliant scheme, it is not possible to conclude that bulk and massing of the additional height when viewed from Sydney Park is acceptable.
115. Additionally, the clause 4.6 variation request fails to properly demonstrate the extent of the variation above the development standard under clause 4.3 of Sydney LEP 2012. Instead the clause 4.6 variation request assumes that the maximum permitted height for the site is 19.8 metres.
116. This figure (19.8m) incorporates an additional 10% bonus height. This is only available if a development undergoes a design competition and if the consent authority determines that the development demonstrates design excellence. In this instance, the development as submitted and amended is not considered to meet design excellence standards as discussed below in this report.

Adequacy of clause 4.6(3)(b) justification

117. It is also considered that the clause 4.6 variation does not adequately demonstrate that there are sufficient environmental planning grounds to justify the contravention of the control. In particular, no specific benefit has been provided which justifies the exceedance of the height control.
118. That is, the flood level proposed under this development is a requirement of the Sydney LEP 2012, and compliance with this requirement does not justify the additional height. In any event, this flood level is not supported and is too low for the subject development. This is discussed further under the heading 'flooding.'
119. Further, the provision of compliant solar access for apartments and the plaza area are also a requirement of the ADG. Solar access compliance is not specific to this development and should not be used as a justification for exceeding the height control.

120. Further, compliance with the permitted floor space ratio for the site also does not constitute an environmental planning ground to justify the contravention of the height control.
121. The proposed PV and green roofs are a requirement arising out of the concept DA and relate to the development delivering design excellence. The additional 10% height provides for this space.

Public interest

122. The development does not meet objective (a) of the height control. That being, "to ensure the height of development is appropriate to the condition of the site and its context."
123. The additional height results in additional built form located directly adjacent to Sydney Park. This is a sensitive area that provides for open space for the community to use. This additional height takes away from the amenity of Sydney Park by making the buildings appear bigger and more imposing and creating additional shadow on parkland. These impacts mean that the development is incapable of meeting objective (a) as the development does not take into account the impact that the height has on its surrounding context.
124. The development is therefore not consistent with the objectives of the height control. As such, the development therefore cannot be considered to be in the public interest

Conclusion

125. For the reasons provided above the requested variation to the height of buildings development standard is not supported. This is because the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of Sydney LEP 2012. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the height of buildings development standard.

Inconsistency with the concept consent

126. As per the report for D/2016/989/B, the proposed modification to the concept envelope to facilitate this development is not considered to be substantially the same as the original approval. Further to this, this DA is not considered to be consistent with the original concept approval. As such, pursuant to clause 4.24(2) of the Environmental Planning and Assessment Act, development consent cannot be granted to this development.
127. Elements of the concept consent are discussed throughout the issues section above and below. In summary, the key departures are as follows:
 - (a) The proposed development does not maintain the required setbacks to the boundaries with Sydney Park. This necessitates the removal and pruning of trees.
 - (b) The proposed development does not comply with the previous approved height. The proposal now exceeds the previously approved height by up to 47%.

- (c) As a consequence of the additional height and reduced setback, the resultant development is more visually and spatially intrusive when viewed from the park, and results in additional overshadowing on the adjoining parts of Sydney Park.
- (d) The development does not maintain minimum internal separation distances and this results in adverse visual and acoustic privacy issues.

128. The figures below were prepared by the City's Modellers using the 3D models submitted by the applicant. These demonstrate how the detailed DA (shown in red) is proposed to be significantly larger the original approved concept envelope (shown in white). These changes result in significant adverse impacts for Sydney Park.

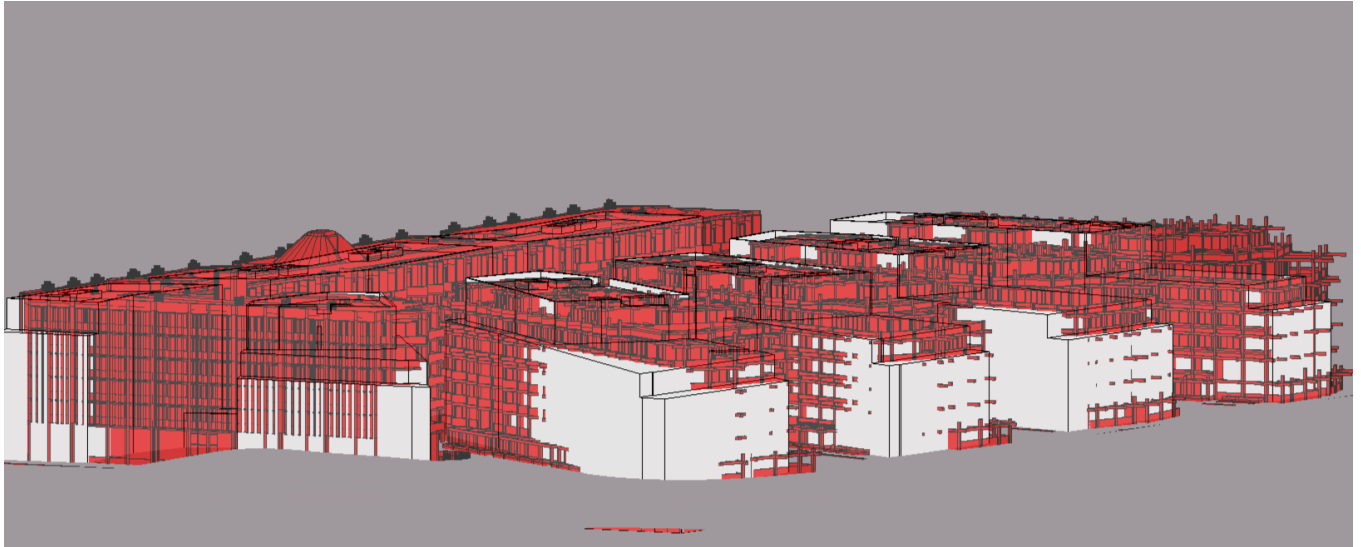


Figure 27: Comparison of approved (white) and proposed massing (red) showing how the Parkside and Euston Road buildings are taller, protruding closer to the boundaries and will be more visible from Sydney Park.

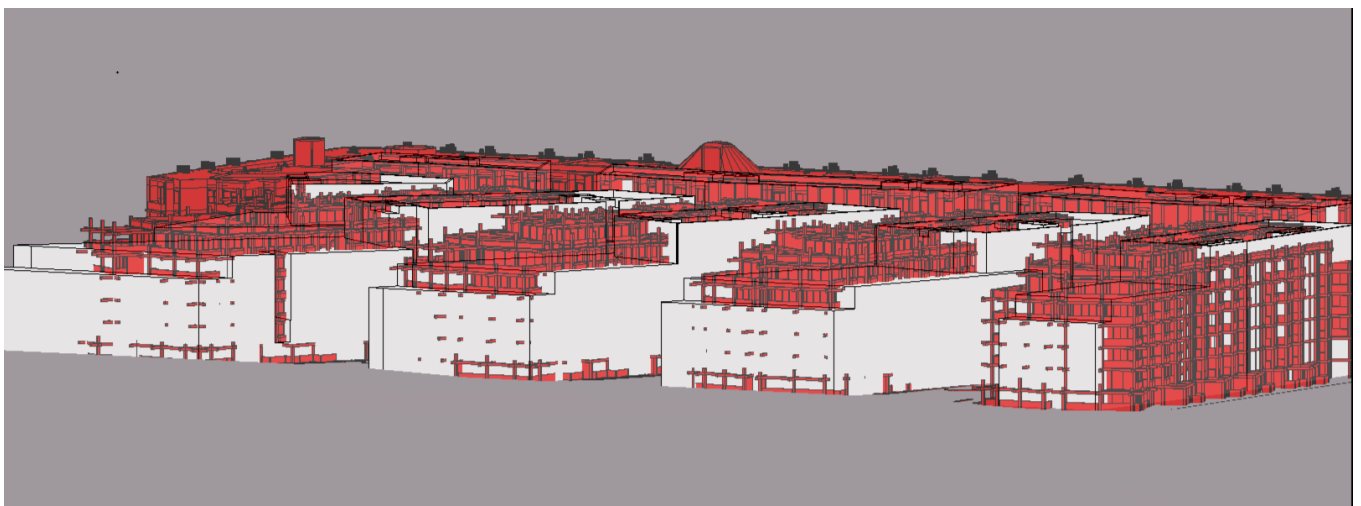


Figure 28: Comparison of approved (white) and proposed massing (red) showing how the Parkside buildings and Euston Road are taller, protruding closer to the boundaries and will be more visible from Sydney Park.

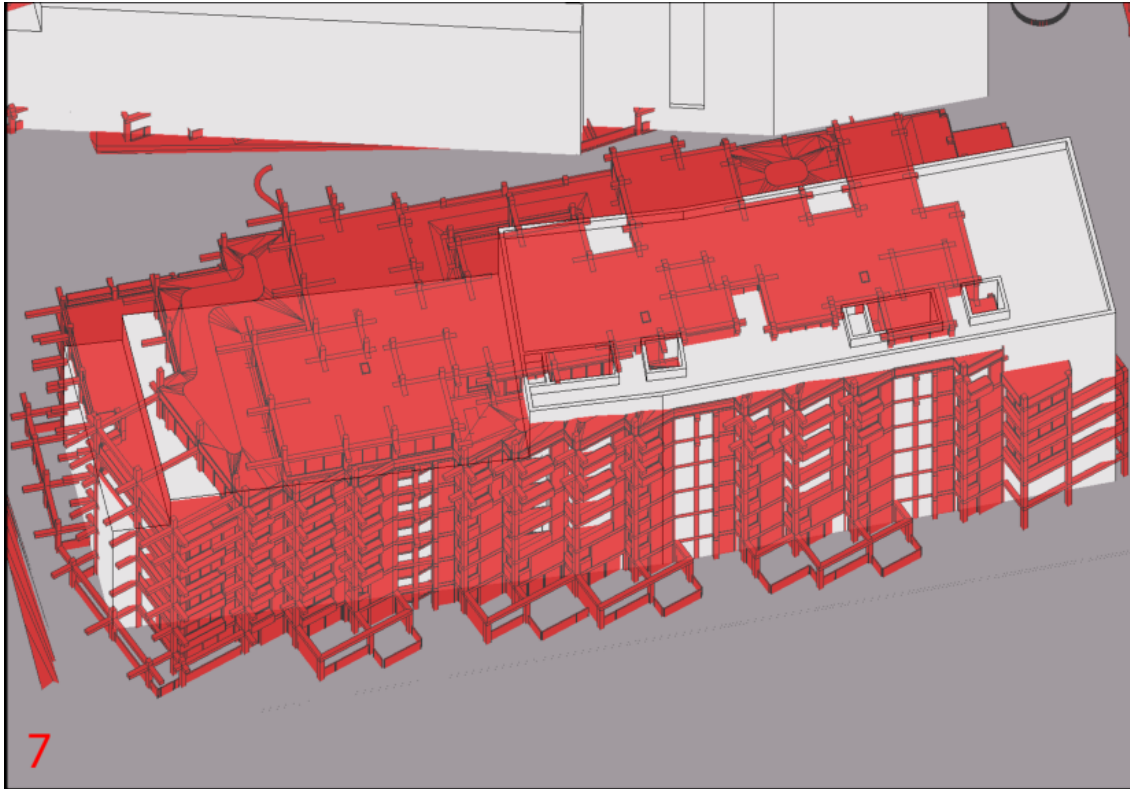


Figure 29: Comparison of approved (white) and amended massing (red) showing how building H is taller and closer to the south and west boundaries.

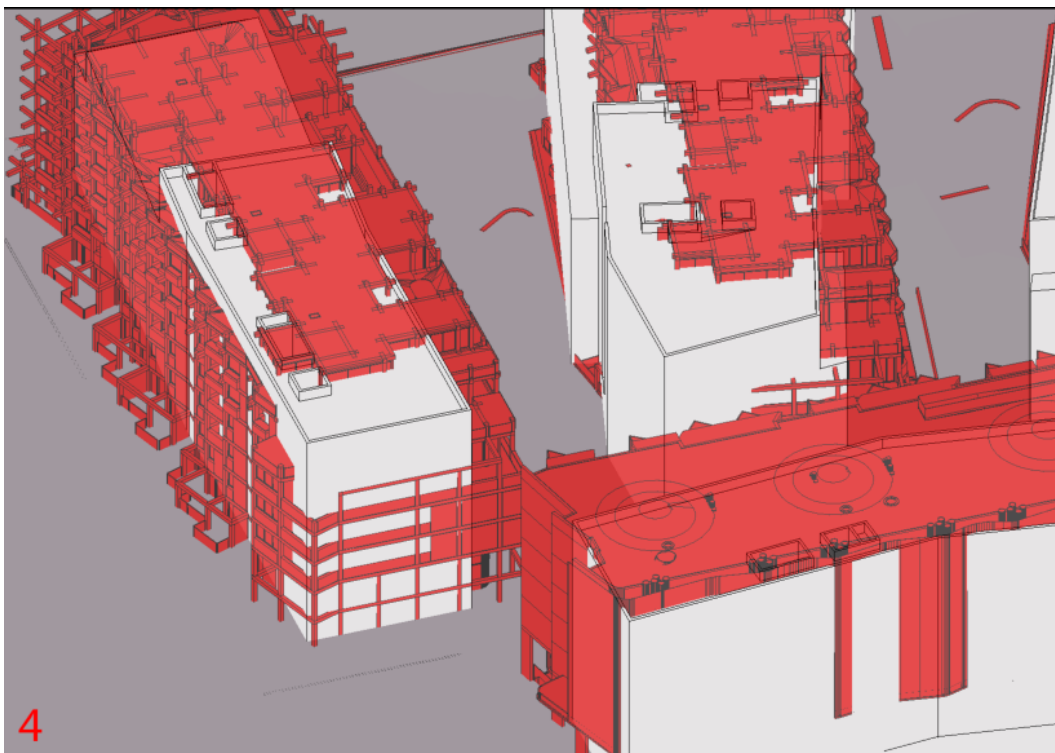


Figure 30: Relationship between buildings A, G and H showing how proposed (red) envelope is taller and closer across the plaza than the approved (white) envelope.

Setbacks to Sydney Park

129. The approved concept envelopes includes a 6m setback to the north, west and south boundaries. This was shown on the drawings and included in condition 4(c) of the consent. Condition 4(c) is worded as follows:
- (a) "A minimum 6m setback, below ground and above ground, shall be incorporated into the buildings envelopes at all Sydney Park boundaries to provide the existing trees within Sydney Park the ability to continue to establish without being impeded by proposed structures or adversely impacted by building construction and ongoing building use. The increased setback must allow for an improved and substantially vegetated interface with Sydney Park including trees."
130. This is consistent within the ADG which requires a minimum of 6 metre setback for habitable openings on the first 4 levels of the building and increasing to 9m for 5 to 8 storeys.
131. The proposed development seeks consent for;
- (a) 1.5m ground floor and basement setbacks to the park on the southern boundary; and
- (b) 1.2 to 3.5 metres to the park on the western boundary.

132. This is shown in the figures below.

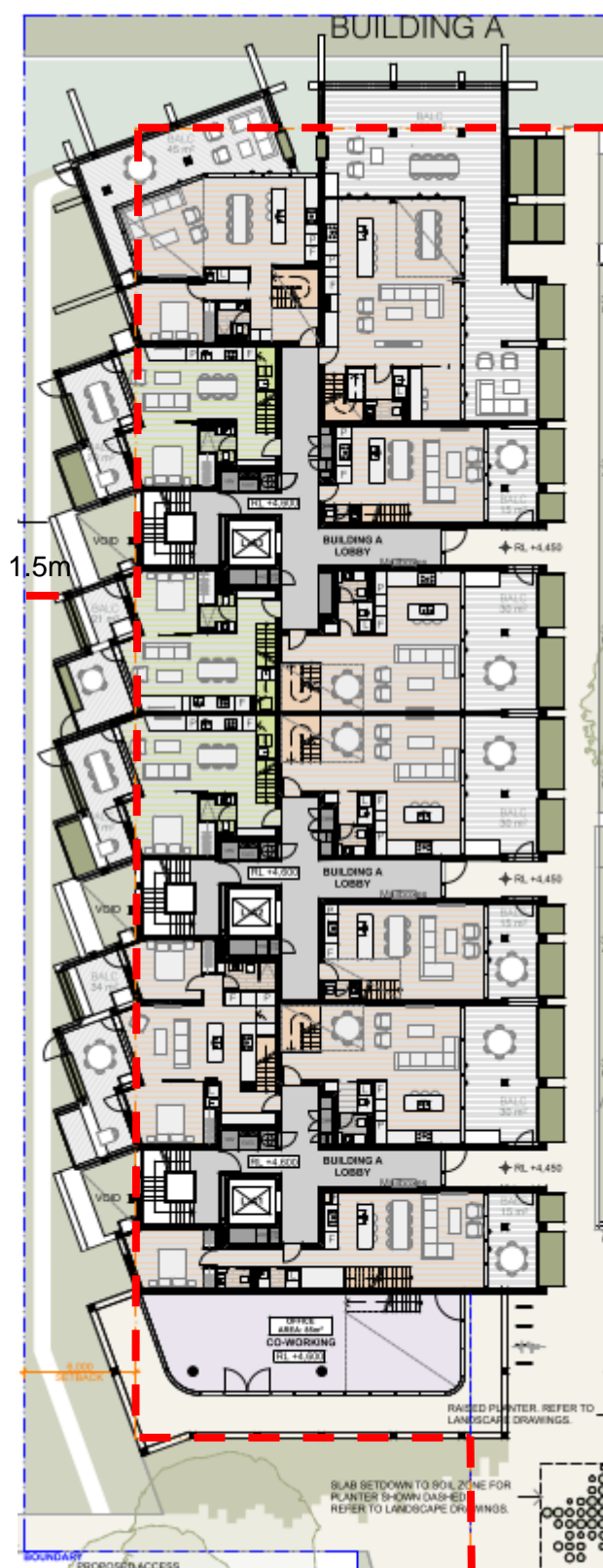


Figure 31: Proposed ground floor southern side of site adjoining Sydney Park, reduced to a minimum of 1.5m.

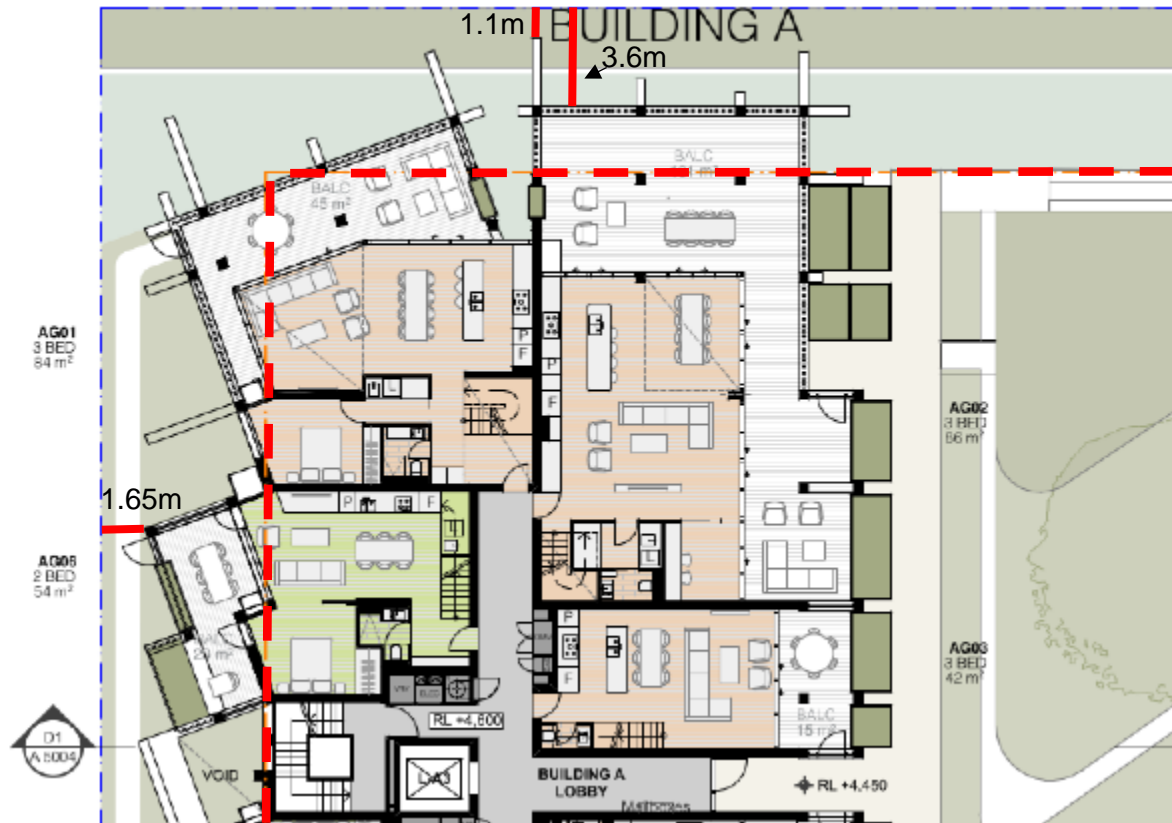


Figure 32: Proposed ground floor south west corner of the site adjoining Sydney Park, reduced to a minimum of 1.1m.

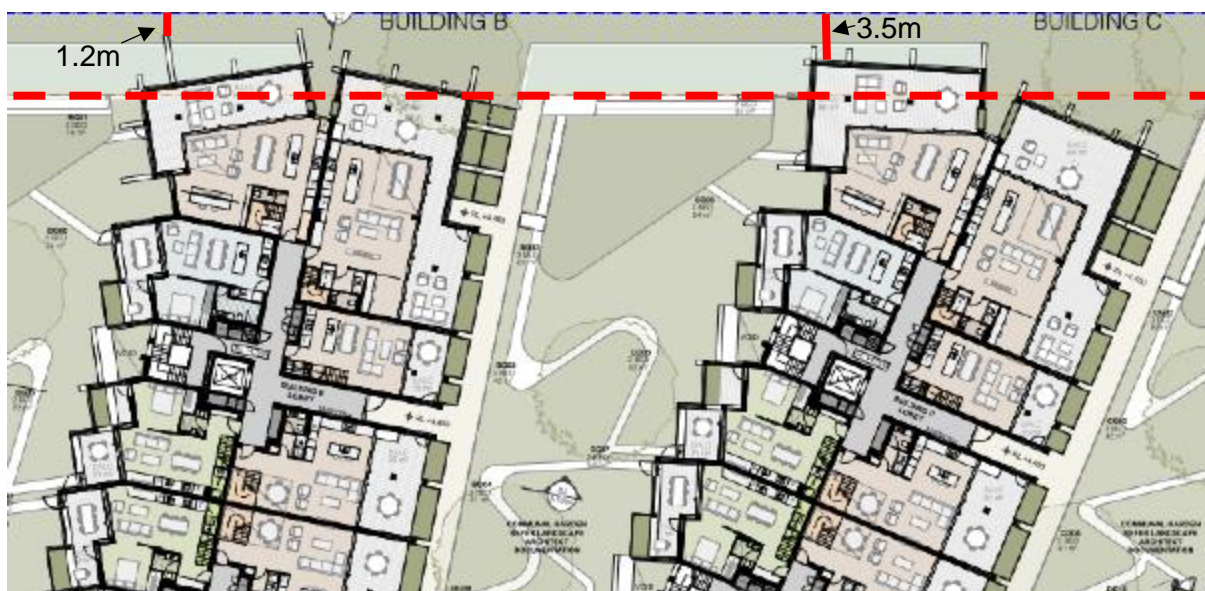
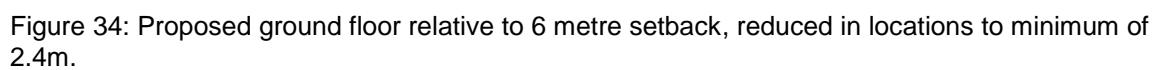


Figure 33: Proposed ground floor relative to 6 metre setback, reduced in locations to minimum of 1.2m.



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Tree loss

134. As a direct consequence of the reduced setbacks, 28 trees within Sydney Park will have encroachments within their tree protection zones (TPZ). The relationship of the building and the trees surrounding the site is shown in the figures below.



Figure 35: Image from arborist report showing the trees around the perimeter of the site.

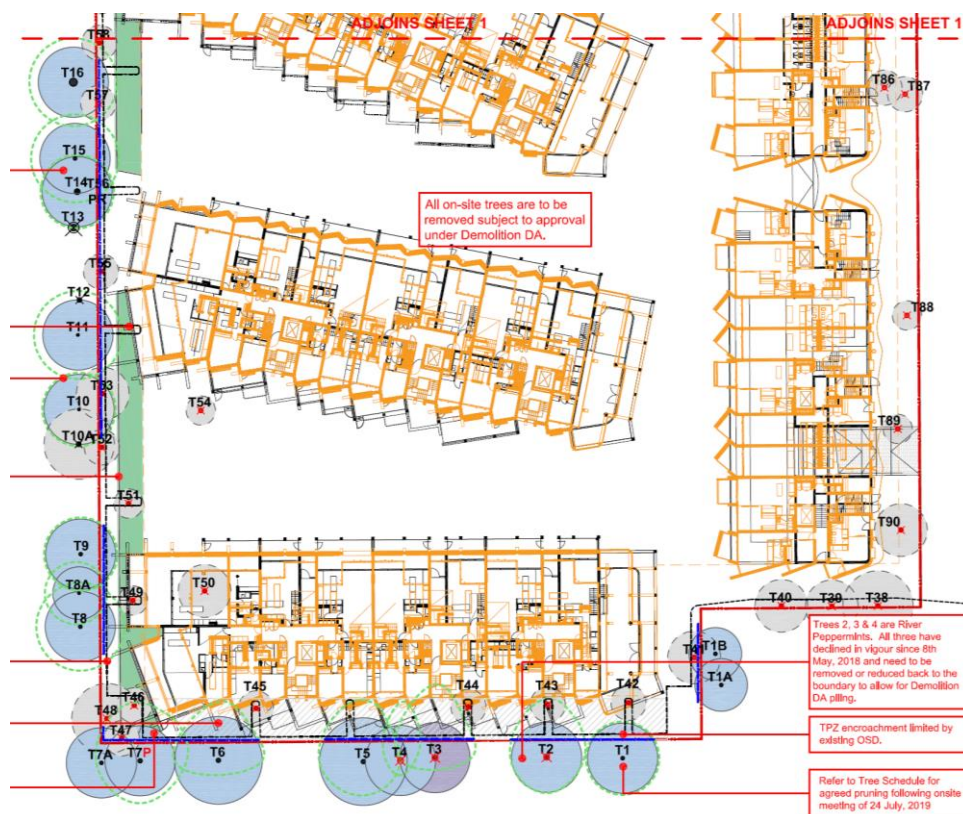


Figure 36: Image from arborist report showing the trees around the perimeter of the site.

135. Of these 28 trees, three (3) trees recommended for removal and one (1) tree is recommended for removal. That is as per the below table;

Tree Number and recommendation	Tree type	Cause of pruning/removal
Trees 2, 3 and 4 – removal	Trees 2, 3 and 4 are River Peppermints and have been classified as having a short (5-15 years) useful life expectancy.	Non-compliant building setback. Trees 2, 3 and 4 are located along the southern boundary of the site. In these locations the building, including basement is proposed to be setback 1.5metres from the boundary.
Tree 7 – pruning	Tree 7 is an 18m tall Sydney blue gum in good health and has a long life expectancy.	Non-compliant building setback. Tree 7 is located in the south west corner of the site, where the building is proposed to be setback 1.5metres.

136. The amended setbacks also result in a development that is contrary to the intent of condition 4(c). That being, to ensure the trees in Sydney Park were not impacted by the development and could continue to thrive, and that the development has space to create a vegetated buffer between it and Sydney Park.
137. The proposed removal of trees within Sydney Park to facilitate the development is not supported. Further, the proposed pruning of the trees is not supported. The pruning detailed in the arborist report indicates lopping of many trees. Lopping is a poor pruning practice that is not condoned by Council or in accordance with the Australian Standard AS4373–2007 'Pruning of Amenity Trees'.
138. The proposed encroachment into 28 tree protection zones is also not supported. Council officers requested exploratory root mapping to determine the extent of the encroachments and understand what impact the development works will have on the trees. This has not been provided by the applicant as they say there are no major TPZ encroachments.
139. Further, other recommendations included in the arborist reports have not been adopted as part of the proposed development. As such, it is highly likely that more trees on Sydney Park than identified in the report will be impacted by these works. These include:
- (a) Retain the existing stormwater pipe in-situ. This is because the existing stormwater pipe along the northern and western boundary as this pipe is located within the TPZs of several trees.
 - (b) Retain the existing OSD tank along the southern boundary to protect the tree roots beyond.
 - (c) Install a marker layer and capping instead of excavation within the tree protection zones. This is not the proposed remedial methodology.

Visual Bulk and Shadow

140. As a consequence of these setbacks and additional height, the building will be more visible and feel much closer (spatially intrusive) when viewed from Sydney Park. This is highlighted in figures 26 to 30 above.

Additional shadow

141. The additional height and bulk added to the envelopes results in the buildings overshadowing Sydney Park to the south between 9am and 3pm on 21 June. This is inconsistent with section 3.2.1.1 of Sydney DCP 2012, and clause 6.21 of Sydney LEP 2012. It is not in the public interest to allow a private development to exceed the permitted height standards and concept approval and create additional shadow on the park.
142. The areas marked in orange in the below images show the additional shadow created as a consequence of the additional height and bulk added to the development. The green shows a reduction in shadow, presumably caused by the adjustment of the position of the Parkside bindings.

143. The part of the park which will be overshadowed between 9am and 3pm is included at figure 40 below. This includes a number of trees and a walking path which connects Euston Road to the internal walking path within the Park.



Figure 37: Shadow diagram at 9am. Orange shows additional shadow and green shows shadow reduction. This plan does not include balconies, pergolas or additional structures.

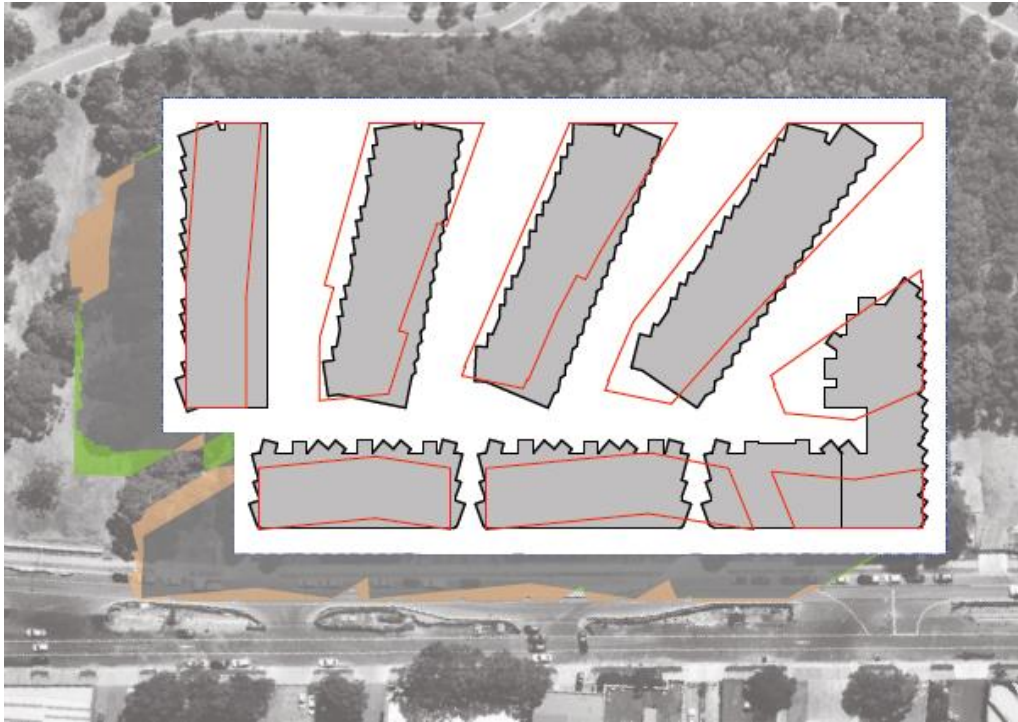


Figure 38: Shadow diagram at 12pm. Orange shows additional shadow and green shows shadow reduction. This plan does not include balconies, pergolas or additional structures.



Figure 39: Shadow diagram at 3pm. Orange shows additional shadow and green shows shadow reduction. This plan does not include balconies, pergolas or additional structures.



Figure 40: Parkland directly south of the site which will be overshadowed by the proposed amendments to the envelopes.

Remediation

144. A revised Remediation Action Plan, reference Ep1327.003_V2, prepared by EP Risk and dated 18 December 2019 (RAP) has been submitted to demonstrate how the site can be made suitable for the proposed use. The revised RAP has been endorsed by a NSW accredited site auditor and a Section B Site Audit Statement has also been submitted.
145. The RAP discusses existing known information and information from borehole testing. Additional groundwater monitoring wells were installed into address potential off-site sources and areas of concern for onsite for contaminated groundwater. Landfill gas wells were installed on the northern and western site boundaries.
146. This RAP and other environmental documentation was externally reviewed by Environmental Consultants, who agreed that there was a lack of detail in the RAP and raised concern with the level of contaminants presently on the site.
147. This RAP is very generic and is not properly tailored to respond to the site's history of past contaminating uses (including a gas works and metal manufacturing). It includes a number of inconsistencies and lacks detail about the proposed remedial methodology. These include:
 - (a) The impermeable barrier wall, which needs to be installed prior to excavation to keep the contaminated ground water out of the basement, will need to be anchored to the bedrock. Our external advice is that it needs to go down to the bedrock which is approximately 16 metres below the surface.

- (b) It is also not clear where the impermeable barrier will go. Part 8.4 says the impermeable barrier will be located 6m from the northern and western boundary, whereas part 9.7 says it is located around the perimeter of the site and 6m from the western boundary. The location of this wall will impact on existing tree roots of trees within Sydney Park.
- (c) The RAP is not clear whether the impermeable barrier will be removed, or whether it will remain in-situ. Our external advice is that the barrier will likely need to remain in-situ.

It is not clear whether a long term environmental management plan will be required. The RAP says it is not required, the SAS says it may be required, and the site auditor by email says it is not envisaged. This is very ambiguous and may result in ongoing management requirements to ensure the development remains suitable for the proposed land use. This is not in the public interest, particularly for future residents.

- 148. In addition, the section B site audit statement says the site can be made suitable for the proposed use envisaged by the concept development, however this is conditional on further information being provided.
- 149. Additionally, it is also noted that the RAP says that despite the exceedances of a number of criteria, the land owner do not need to notify the Environmental Protection Authority (EPA) under the Contaminated Land Management Act because the site will be remediated as part of the development.
- 150. Sydney Park has been declared by the EPA as a contaminated site under the Contaminated Land Management Act and is managed by the City under a voluntary management proposal which has been approved by the EPA. Council officers are of the view that the proximity of the site to the Park, and likelihood that works will impact the Park mean that the EPA should be notified of the proposed development and the RAP. This is necessary as any notification to the EPA may require additional considerations as part of the remediation of the site, and should be incorporated into any RAP associated with the development.

Land owners consent

- 151. No land owners consent from the City of Sydney Council, the owners of Sydney Park, has been sought for this development application. The proposal may result in the need for a number of consequential development works to be undertaken in the Park including tree removal and pruning. This needs to be clearly delineated and land owners consent obtained.
- 152. Further, Sydney Park is governed by the Local Government Act 1993 (LGA) and the Sydney Park Plan of Management. The LGA requires the parkland to be managed and used in particular ways. This includes, but is not limited to:
 - (a) Ensuring the land is used to meet the current and future needs of the local community and the wider public.
 - (b) Encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities.

- (c) To provide for passive recreational activities or pastimes and for the casual playing of games.
153. Any activities in Sydney Park should be consistent with the above objectives. Potential tree removal and development works for the purposes of a private development is contrary to these objectives and may not be permitted on Sydney Park.

Flooding

Flood planning levels

154. The subject site is flood affected. A flood report, prepared by CJ Arms and Associates, revision 01 and dated 14 November 2019, was submitted as part of the amended information request.
155. Council's flood engineer advised that the amended flood report is inadequate and therefore that the flood risk on the site has not been appropriately mitigated. It is not clear whether the floor levels (set at RL 4.6) are adequate to overcome the flood risk, and whether the open basement (which is set at -RL1.35) is appropriate given the flood risk.
156. In particular, Council's flood engineer raises the following concerns:
- (a) Flood levels for the whole site are unknown. Flood levels for 1% AEP (1 in 100 year flood) and PMF (probable maximum flood) need to be included so that appropriate flood planning levels (FPL) can be estimated. Justification for residential FPL of 4.6 m AHD is unknown and must be documented.
 - (b) Flood levels and depths along rear of the property boundary are unknown. The flood extent shown in the report at the rear boundary does not reflect proposed detention areas in this location.
 - (c) The flood depths for the rain gardens and open channels need to be assessed for potential flood risk as per Australian Disaster Resilience Guideline 7-3: Flood hazard (2017).
 - (d) Sensitivity analysis of sea level rise for 2050 & 2100 for post development scenario must be undertaken. These results need to be documented and adequacy of the proposed flood planning levels need to be tested against the effect of sea level rise.
157. The flood risk on the site must be mitigated. Any change to the required floor levels will impact on the height and overall design intent of the proposed development.

Stormwater drainage

158. The flooding report also does not demonstrate how the site will be drained. The application includes use of the existing discharge point which runs through Sydney Park. However, the City's public domain team have raised concerns that this pipe is currently waterlogged and it not clear whether it could be used for this development.
159. Further to this, the City's Parks team have advised that trenching or works to Sydney Park to upgrade this stormwater connection are unlikely to be supported given the impact they could have on the park.

160. The only option Council's public domain team considers, which may be appropriate, is to drain the site via Euston Road. However, this infrastructure has all recently been updated and it is not clear based on the applicant's documentation whether the viability of this option has been investigated.

Noise and natural ventilation

161. The subject site is impacted by three (3) different noise sources. These include:

- Vehicle noise from Euston Road which is being upgraded as part of Westconnex to a 6 lane roadway and is expected to accommodate approximately 70,000 vehicles per day.
- Noise from existing and future surrounding industrial land uses, including 3 concrete batching plants.
- Aircraft noise as the site is located in ANEF contours 15 and 20, as per the below figure. It is noted, as per note 1 in table 2.1, the ANEF contour 20 is difficult to define accurately because of the variation in aircraft flight paths.



Figure 41: Orange area is in ANEF contour 20 and yellow area is in ANEF contour 15

162. As a consequence of these environmental conditions, the site is noise affected. An image from the acoustic report, included below, shows which parts of the development are impacted by noise. The acoustic report concludes that in order to achieve the required internal noise criteria, acoustic treatment is required.

167. For example, apartment E502 (shown as D502 on the plans) includes detail of the proposed acoustic solution on the supplementary 'natural ventilation scenario' plans, but these are not shown on the development drawings.
168. Further to this, G507 (shown as B507 on the plans) is shown as being noise affected in the acoustic report, however no natural ventilation treatment is proposed on either the 'natural ventilation scenario' plan or the development drawings.
169. Overall, in addition to the concerns raised with the baseline acoustic data, the applicant has not demonstrated in detail how the natural ventilation solutions will work.
170. As such, the development fails to meet part 4B of the ADG, clause 102 of the Infrastructure SEPP and clause 7.17 of the Sydney LEP 2012.

Separation distances within the site

171. The development does not provide the minimum separation distances required by the ADG. On level 4 between the Euston Road buildings and the eastern end of the Parkside buildings, the minimum separation distance should be 18m. As per the below figure, at the closest, the buildings are only 8.6metres apart.



Figure 43: Level 4 plan marked up showing separation distances non-compliances. They should be separated by a minimum of 18metres.

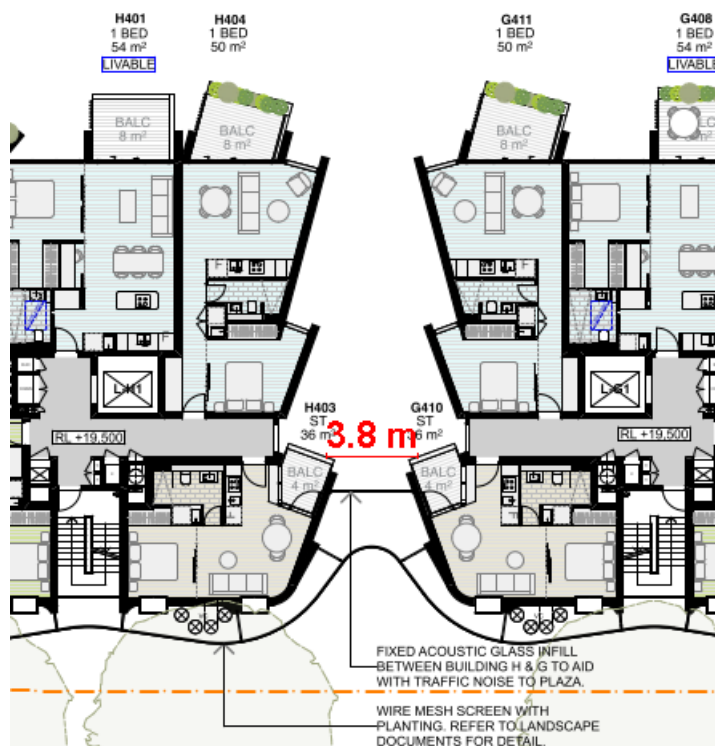


Figure 44: Level 4 plan marked up showing separation distances non-compliances between studio apartments. These should be separated by a minimum of 12 metres.

172. The Euston Road buildings also do not provide the minimum separation distances between the buildings. This is shown above whereby the distance between the studio apartments' private open spaces are only 3.8 metres. These private open spaces are also directly adjacent to the only corridor opening. The balconies and the units overall will have very compromised amenity, and the opening to the corridor is unlikely to be useable. This is not design excellence and cannot be supported.

Vehicular access arrangements

173. Euston Road has been updated to a 6 lane carriageway and will soon become a Classified Road. The RMS advised as part of the concept approval, that a 3.5m deceleration lane would need to be provided as part of this development to enable access into the site.
174. Condition 19 on the concept DA requires the following:
- (a) a 3.5m path with verge to be maintained along the Euston Road frontage in the development and competition phase and lodgement of any stage 2 DAs. Any realignment of the property boundary to facilitate the footway resulting from the proposed deceleration lane works must be dedicated as road to the RMS (i.e. the property boundary would likely need to be deviated to accommodate the 3.5m wide path on Euston Road). This should be shown in the plans.
175. The requirements of condition 19(a) have not been met and no further detail above that which was already demonstrated in the concept DA has been provided.

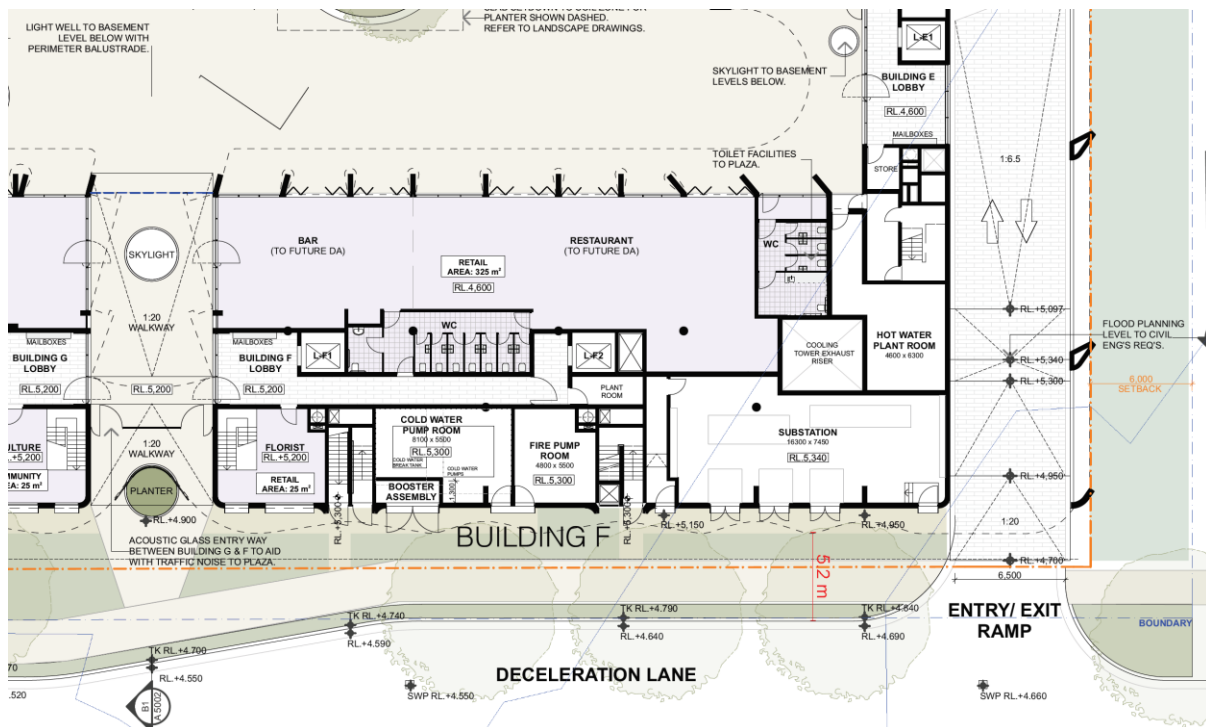


Figure 45: Proposed access to the site.

176. While the plans notate a deceleration lane, paragraph 4.9.2 of the submitted SEE says "it is noted that the deceleration lane does not form part of this application and will be subject to separate detailed design and approval by RMS." In addition to this comment, no detailed drawings of the deceleration lane have been submitted.
177. Access to the site is a fundamental component of the development that must be resolved prior to determination. The current approach raises the following issues:
- There is no updated survey detail demonstrating how wide the existing road reserve is and how the deceleration will adjoin the existing roadway (including the levels of it).
 - There is no updated survey detail to show the width of the existing footpath along Euston Road. This is needed to understand how much land is required to realign the footpath and road reserve.
 - There is no detail about where the new property boundary will be located. There is also no mechanism to dedicate this part of the site to the City, via a planning agreement, so that it can be used as footpath.
 - As there is no detail about where the realigned property boundary will be relocated is it not possible to determine how far building C will be setback from new boundary and whether that setback is considered acceptable. The minimum 3 metre requirement in the concept DA was from the realigned property boundary, but this boundary is not known.

178. In the absence of this information, and sufficient certainty as to how the deceleration lane will work, how much land is to be dedicated and where the building will sit relative to the realigned property boundary, this development cannot be approved.
179. In addition, the development cannot comply with clause 101 of the Infrastructure SEPP which requires that the development consent must not be granted unless the consent authority is certain that the safety, efficiency and ongoing operation of the road will not be impacted by the development.
180. Transport for NSW have also advised that the deceleration lane must be provided for the development to be supported. In the absence of a deceleration lane, Transport for NSW does not provide its concurrence under section 138 of the Roads Act.
181. It is also noted that Transport for NSW advised that the land to be dedicated for the works could also be dedicated to the City. The dedication of this land to the City should be via a planning agreement. No public benefit offer has been submitted as part of this application.

Design excellence

182. The development does not exhibit design excellence, as required by clause 6.21 of Sydney LEP 2012. There are some elements of the proposal which have merit, including the landscape scheme and the internal apartment planning. However, when considered as a whole, the development is not design excellence.
183. In addition to the issues raised throughout the report, the development is not considered to demonstrate design excellence for the following reasons:
 - (a) The form and external appearance of the proposed development will detract from the quality and amenity of the public domain. This proposal 'borrows' from the public domain rather than the private domain contributing greenery to Sydney Park.
 - (b) The design competition report raised 'the need to bring the building envelope into line with the applicable built form controls and Stage 1 DA – including building height of the finger buildings'. The development does not comply with this recommendation.

Suitability of the site for the Development

184. The site is bounded by Sydney Park on 3 boundaries, Euston Road (Westconnex) on the eastern boundary and is opposite a key parcel of industrial land within the City of Sydney local government area.
185. The concept consent approved a built form that stepped up from the park so as to ensure an appropriate relationship between the park and the development. It also included a number of conditions which were required to be met as part of the detailed DA.

186. The proposed development falls outside the approved building envelopes and it does not comply with concept consent conditions relating to noise, contamination, site access, height and setbacks to Sydney Park. In failing to meet these conditions, the applicant demonstrates that the development, as proposed, is not suitable for the site.

Internal Referrals

187. The application was discussed with the Urban Design Specialists; Environmental Health; Acoustic Specialists; Public Domain; Flood Engineers; Transport and Access; Tree Management; and Waste Management; who advised that the proposal is not acceptable and should not be supported.

External Referrals

188. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 24 August 2018 and 24 September 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification there were 68 submissions received.

189. The majority of these submissions fundamentally opposed the whole of the development. In summary, the following issues were raised:

- (a) This area should be purchased by the City of Sydney Council or the NSW State Government and added back into Sydney Park as parkland. This would help offset the intensity of development in the area.

Response: This is not a planning matter for consideration under the EPA Act.

- (b) The proposal is a gross overdevelopment of the site.

Response: The proposal is considered too tall and bulky for the site. It is not supported.

- (c) The proposal will negatively impact on Sydney Park, which is valuable green space in inner Sydney. The development will destroy the sense of open space and tranquillity. The natural beauty of the trees in Sydney Park will be back lit by the development. It will be an eyesore from Sydney Park.

Response: The proposal will adversely impact on Sydney Park. It is not supported.

- (d) Development will have a terrible impact on local community.

Response: The proposal is not supported.

- (e) Sydney Park is already impacted by Westconnex including significant portion of trees removed and disruption to habitat for local birds and wildlife.

Response: The proposal will adversely impact on Sydney Park. It is not supported.

- (f) The development is over the height in storeys and height in metres control. It is not appropriate to put extra height next to the park. The buildings should not breach height limit - what is the point of having height limits if they are exceeded?

Response: The additional height is not supported and the proposal is recommended for refusal.

- (g) Proposal will impact on trees in Sydney Park.

Response: The proposal will adversely impact on trees within Sydney Park and is not supported.

- (h) The development, including the deceleration lane, will adversely impact on the surrounding traffic network.

Response: The access to the site at this stage is unresolved and as a consequence cannot be supported.

- (i) This is a bad location for residential development. It is next to Westconnex and the stack and is under the flight path. The health of the occupants should be considered.

Response: The development has not demonstrated how all the apartments are able to get natural air given the surrounding context. As such, the proposal is not supported.

- (j) Proposal has the potential to adversely impact on critical industrial land uses around the site.

Response: The noise from these land uses is something the applicant has had to address in the acoustic report. As above, it is considered that the development does not demonstrate how the site can overcome the noisy environment it is in. As such, the development is not supported.

- (k) The building looks bulky and box like. The architecture looks like it is from the 1970s.

Response: The additional bulk of the building is not supported.

- (l) This site, if not parkland should be light industry, particularly given its location to the freeway. Any development should be much smaller and have a much larger green space adjacent to Sydney Park.

Response: This application can only consider the development that is currently proposed.

- (m) Infrastructure including schools and public transport not keeping up with development.

Response: The development is not recommended to be supported.

- (n) Timing of the determination.

Response: The application is being determined as soon as practicable.

Public Interest

190. It is considered that for all of the above reasons, in particular the impact the development will have on Sydney Park, the proposal is not in the public interest. As such, the application is recommended for refusal.

Financial Contributions

191. If this development was recommended for approval, it would be the subject of a section 7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
192. If this development was recommended for approval, it would not be the subject of an affordable housing contribution under clause 7.13 Sydney LEP 2012. This is because the site is not currently located in the Green Square or Southern Employment Lands locality.

Conclusion

193. The proposal is recommended for refusal. The proposal is not consistent with the concept approval, and therefore cannot be approved.
194. The submitted proposal seeks to vary the permitted height standard by up to 44%. This results in additional height and bulk of the building and means that the development will overshadow and be more imposing on Sydney Park, critical issues broached with the Stage 1 approval. The submitted clause 4.6 variation is not supported and does not meet the required test under clause 4.6 of the Sydney LEP 2012.
195. The proposal has not demonstrated how the flood risk on the site will be managed, or how the site will be drained.
196. The development does not deliver design excellence. The form and external appearance of the proposed development will detract from the quality and amenity of the public domain. The proposal 'borrows' from the public domain.
197. The proposal has not demonstrated how access from Euston Road will be provided to the site. Approval for a deceleration lane is not included as part of this application. It is not clear exactly where the deceleration lane will go, how the footpath will be realigned, how this land will be dedicated and what the setback of the building will be relative to the new property boundary. These are fundamental components of the development, and in the absence of clarity, mean the development cannot be approved.
198. The development does not comply with the minimum setbacks to Sydney Park. In doing so, the development does not comply with the concept DA or the ADG. As a consequence, 28 trees within Sydney Park will be encroachments within the tree protection zones, including three (3) trees needing to be removed, and one (1) trees needing to be pruned. These trees are located next to where the buildings extend to between 1.5m and 2m from the boundaries, rather than the minimum 6 metres required.

199. The remediation approach is not properly detailed and does not consider the impact on trees or the impact on future residents. In this regard, it is not considered that the application has demonstrate how the site will be made suitable for the proposed development.
200. It is highly likely that works will need to be undertaken within Sydney Park as a consequence of the development. This has not been sufficiently detailed and no land owners consent has been sought. It is also noted that land owners consent would likely be contrary to the Local Government Act and the Sydney Park Plan of Management.
201. The site is impacted and not sufficiently mitigated from road noise, aircraft noise and noise from nearby industrial land uses, including three (3) concrete batching plants. The subject proposal has not properly demonstrated what the external noise conditions are and the how the development can achieve the required internal noise levels and receive natural ventilation.
202. The development does not comply with the minimum separation distances between habitable openings, as required by parts 2F and 3F of the ADG. Apartments will have compromised visual and acoustic privacy that is not adequately resolved.
203. Given the impact this development will have on Sydney Park, the development is considered to be in the public interest that the proposal in its current form cannot be supported.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Erin Faulkner, Senior Planner