

Item 13.**Section 4.55 Application - 205-213 and 215-225 Euston Road, Alexandria – D/2016/989/B****File No.:** D/2016/989/B**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 Pty Ltd
Cost of Works:	\$0
Zoning:	The site is located in the B4 mixed use zone. No change is sought to the approved indicatives uses, that being residential and commercial. These uses are both permissible with consent.
Proposal Summary:	<p>The subject 4.55(2) application seeks to modify the approved concept consent (stage 1), including by way of amending the approved building envelopes and conditions.</p> <p>A detailed development application (D/2018/907) has also been lodged alongside the modification. These applications are being reported simultaneously to CSPC.</p> <p>Clause 4.24 of the Environmental Planning and Assessment Act 1979 requires any subsequent development application to be consistent with a concept consent. As such, this modification seeks to be amend the concept consent, so that D/2018/907 is consistent with the amended concept consent (D/2016/989/B).</p> <p>The current concept approval incudes eight (8) mixed use building envelopes varying in height between 4, 5 and 6 storeys.</p>

The amendments sought to the concept consent are as follows:

- increase the approved building height;
- decrease the building setbacks to the north, west and southern boundaries which adjoin Sydney Park;
- delete the requirement for 1m minimum soil depth on roofs and decrease green roof requirement from 60% to 59%;
- delete of the staging requirement; and
- delete the RMS requirement for the deceleration lane design to be finalised prior to lodgement of the detailed design DA.

This modification application was notified for 14 days from 25 August 2018 to 8 September 2018. As a result of this notification, 21 submissions were received. These submissions raised concerns about the height and proximity of buildings to Sydney Park and the impact of the development on Sydney Park.

The modification is not supported and is recommended for refusal on the following grounds:

- The amended envelopes are not substantially the same as the approved development.
- The proposed envelopes are taller and bulkier than previously approved. They breach the permitted height under clause 4.3 of the Sydney Local Environmental Plan 2012, and do not comply with minimum separation distances under the Apartment Design Guide.
- The proposed envelopes will adversely impact on Sydney Park. The resultant building will encroach within the tree protection zones of 28 trees within Sydney Park, and necessitate the removal of three (3) trees and the pruning of one (1) tree.
- The proposed envelopes will be visually and spatially intrusive within Sydney Park, borrow amenity and overshadow the park.
- Given the impacts on Sydney Park, the modification is not considered to be in the public interest.

The amended envelopes also contradict existing conditions on this consent and result in adverse impacts on Sydney Park. The amended envelopes also do not fully contain the detailed building design being considered by the CSPC under D/2018/907, and therefore the bulk of the final envelope will be larger than represented in the envelope plans.

Summary Recommendation: This modification is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy No 65 – Design Quality of Residential Apartments
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012

Attachments:

- A. Proposed Amended Envelope Drawings
- B. Existing Approved Envelope Plans
- C. Notice of Determination - D/2016/989/A

Recommendation

It is resolved that consent be refused for Section 4.55 Application number D/2016/989/B for the following reasons:

- (A) The proposed amendment results in a development which is not substantially the same as that which was originally approved. As such, the development does not comply with section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979.
- (B) The proposed amendment will adversely impact on Sydney Park. The proposed change to the height of the buildings and the decrease in setbacks from the boundaries means that the development will be more visible from the Park and cause additional overshadowing. This is not in the public interest. As such, the development does not comply with section 4.55(3) and 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.
- (C) The loss of trees within Sydney Park is contrary to aims of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, and section 3.5.1 of the Sydney Development Control Plan 2012. It is also prohibited under sections 35, 36G and 36L of the Local Government Act 1993 and Sydney Park Plan of Management.
- (D) The proposed increase in height means that the development further exceeds the permitted 18 metre height limit across the site. This height is not appropriate for the site or the surrounding context, and therefore fails to meet objective (a) under clause 4.3 of the Sydney Local Environmental Plan 2012.
- (E) The proposed setbacks to the southern and western boundaries do not meet the minimum separation and setback requirements under parts 2F and 3F of the Apartment Design Guide. Further, the internal separation distances between the eastern end of the Parkside buildings, and the Euston Road buildings, do not meet the requirements under parts 2F and 3F of the Apartment Design Guide.
- (F) The modification cannot be considered to demonstrate good design, as per the Design Quality Principles in Schedule 1 of the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. The modified development does not respond appropriately to its context. The built form and scale of the modified development will cause adverse impacts on Sydney Park and it will result in sub-optimal residential amenity.
- (G) The modification does not demonstrate design excellence as per clause 6.21 of the Sydney Local Environmental Plan. The modified envelopes will result in a building that is over the permitted height control, is too close to Sydney Park boundaries and does not meet the minimum required separation distances as established by the Apartment Design Guide. The proposal will impact on trees located in Sydney Park and will be more perceptible for users of Sydney Park.

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 lower on its northern and western side than the adjacent Sydney Park. 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 contaminating uses such as a gasworks and metal manufacturing.
5. Surrounding land uses are predominately 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 a gasworks, brick works pits which later became a major landfill site. Recent testing of the park showed elevated concentrations of methane and carbon dioxide. These are by-products of organic materials when they decompose and typical of former landfill sites.
8. The elevated levels of methane were reported to the Environmental Protection Authority (EPA). In February 2019, the EPA declared the park 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 also adjoins Euston Road to the west. Euston Road is being upgraded as part of Westconnex 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 fully operational.
10. On the opposite side of Euston Road is the Alexandra Canal locality within the 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 in close proximity, directly opposite the site at 154-164 Euston Road, directly north of the site at 171A Euston Road and north east of the site at 132 Euston Road. These concrete batching plants all have conditional approval to operate 24 hours per day.
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. To the west and south of the site is Sydney Park.
15. Photos of the site and surrounds are provided below:

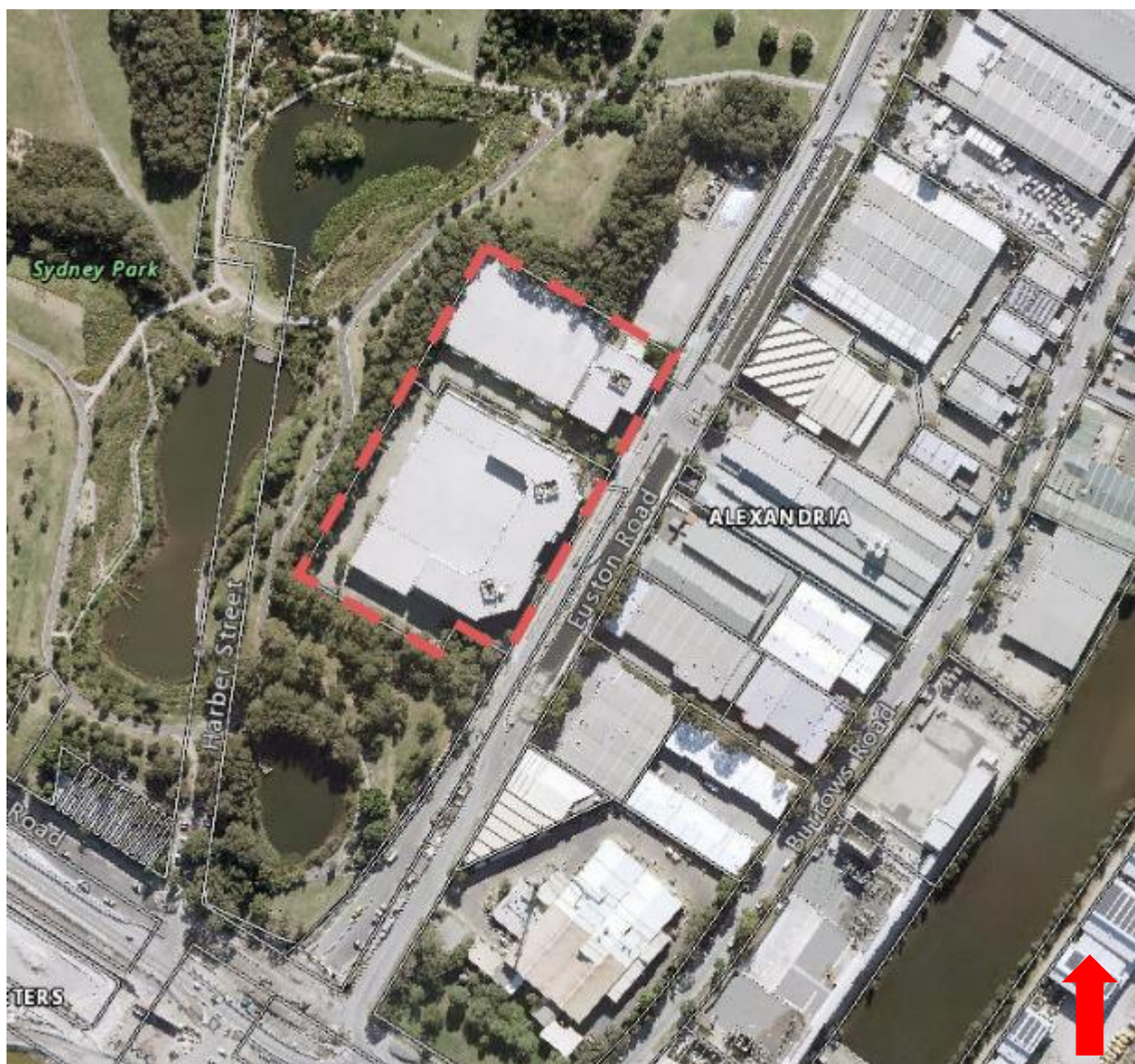


Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Surrounding context.



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 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 close to western boundary of site.



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



Figure 9: Adjacent footpath in Sydney Park south of the subject site.



Figure 10: View of site from Sydney Park



Figure 11: View looking south east from highest point within Sydney Park at subject site.



Figure 12: South east corner of Sydney Park looking at the subject site.



Figure 13: Looking northwest at site from the southeast corner.



Figure 14: Concrete batching plant on the opposite side of Euston Road.



Figure 15: Opposite side of Euston Road.



Figure 16: Concrete batching plant on the opposite side of Euston Road.



Figure 17: Looking south along upgraded Euston Road as part of the Westconnex project.



Figure 18: Concrete batching plant north of the site along Euston Road.

History of the site and surrounding land uses

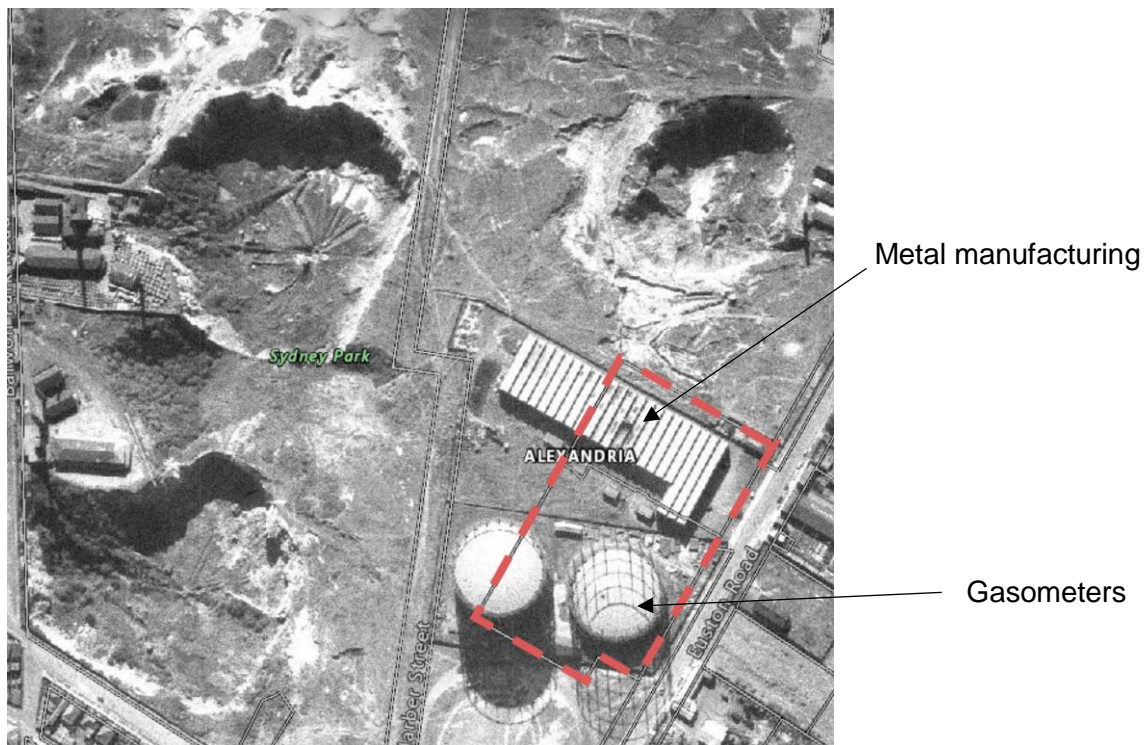


Figure 19: Aerial photograph of site from 1943.

16. An image of the site from 1943 is included above. The subject site is outlined. 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 a Bedford Brick works and a gasworks. In 1936, Austral bought out Bedford Brickworks and operated it until 1970s.
 - (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 was registered in March 1999.
 - (g) The current warehouse buildings located on the site were constructed in late 1990s. These were used by Fed Ex 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 consent

17. On 22 June 2017, deferred commencement approval was issued by the Central Sydney Planning Committee (CSPC) for a concept stage 1 application.
18. The concept stage 1 consent included demolition of existing buildings and the establishment of eight (8) building envelopes for 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, respectively.
19. The deferred commencement conditions were to update the approved envelope plans and the reference plans.
20. 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 approved envelopes represented the maximum achievable allocation of gross floor area across the site; that being 1.8:1.
21. The concept consent approved additional 20% or 3.7m height via a clause 4.6 variation for the buildings on the eastern part of the site (adjoining Euston Road). As per the assessment report, this included the provision of the bonus height (10%) available via the design excellence process.
22. On 23 August 2017, a modification to the concept consent was approved. This removed the deferred commencement condition 2. This condition sought updated indicative floor plans and its deletion was supported.

23. On 23 August 2017, deferred commencement condition 1 was satisfied and the consent became operational.
24. The concept consent approved 8 buildings, including four (4) finger buildings “perpendicular” to Sydney Park, one (1) building that fronts the northern boundary, and three (3) buildings which front Euston Road.
25. The four (4) finger buildings stepped back from the western boundary towards Euston Road. The envelopes were approved as being 4 storeys with a 6m setback, 5 storeys with a 10m setback and a 6th storey with a 36.2m setback from the western boundary.
26. The conditions also approved building heights of 12.9 metres (RL17.20), 16 metres (RL 20.30) and 21.7m (RL 26). This equated to a stepped 4, 5 and 6 storey built form moving from the western boundary (Sydney Park) to the eastern boundary (Euston Road).
27. The concept consent also included a number of conditions which were required to be complied with. These include the need to ensure the buildings, above and below ground, are setback from Sydney Park boundaries by a minimum of 6 metres. This is to protect the trees and create a buffer between the Park and buildings.
28. A condition also required the buildings to be setback a minimum of 6.5 metres from Euston Road. This is to accommodate a deceleration lane, which is also required to be designed and detailed prior to the detailed DA.
29. The approved concept plans are included below and at Attachment B.

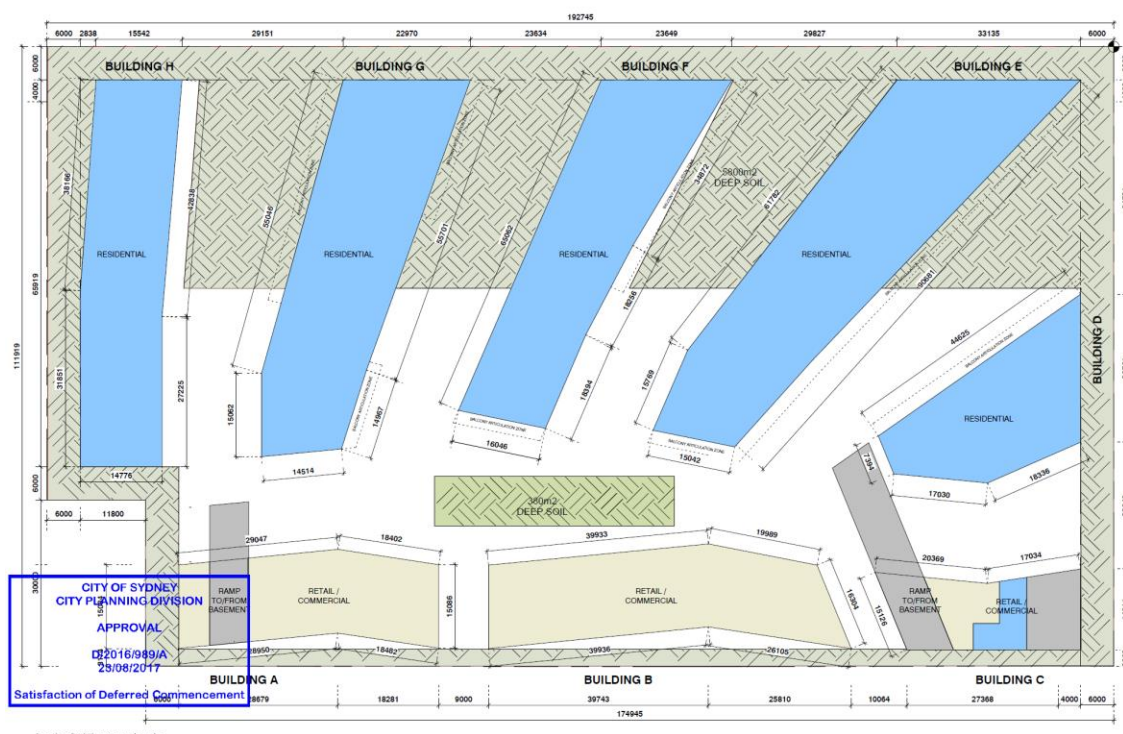
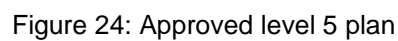
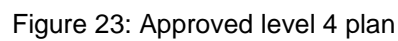


Figure 20: Approved ground floor plan.





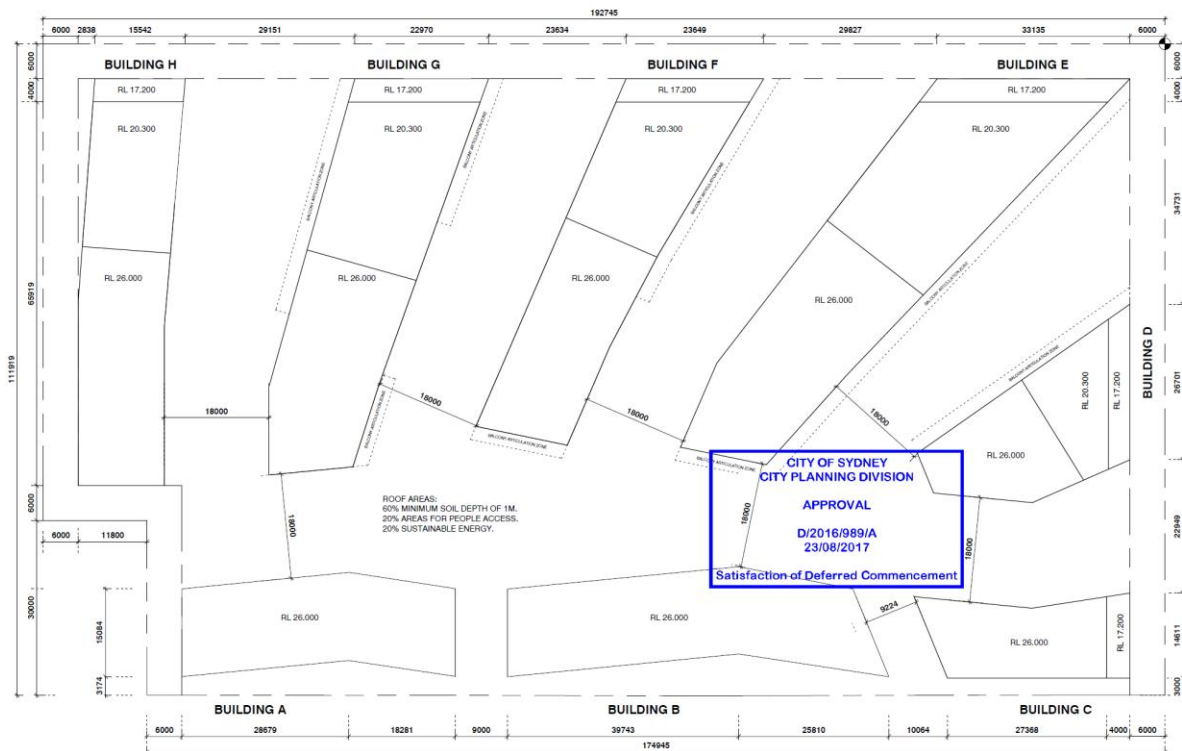


Figure 25: Approved roof plan

30. This concept development consent also included a number of conditions which needed to be met/achieved as part of any stage two/detailed DA. A number of these conditions have not been satisfied as discussed in this report.
31. This subject modification seeks to modify this concept consent so that it is consistent with the detailed design DA. Section 4.24 of *Environmental Planning and Assessment Act 1979* requires that a detailed stage 2 DA be consistent with the concept approval.

Design competition

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



Figure 26: Design competition photomontage

Other Relevant Applications

35. Two applications were lodged alongside this subject application to modify the concept consent. These are detailed below:
- (a) Development application D/2018/718. This is an early works DA. It seeks consent for demolition, excavation and remediation. This application can be determined under delegation.
 - (b) Development application D/2018/907. This is the detailed DA (Stage 2). This is being reported concurrently to CSPC and is recommended for refusal. It seeks consent for the construction of eight (8) mixed use buildings comprising 389 residential apartments, commercial uses in parts of the basement, ground floor and first floor and two basement levels.

As previously stated, the Act requires the detailed design to be consistent with the concept approval. It is noted that a number of issues discussed in this report are also relevant to the assessment of the detailed DA.

Proposal

36. This modification application seeks to amend the approved concept envelope so that it matches with the proposed detailed DA D/2018/907.
37. This modification seeks to amend the height of the Parkside buildings so that the stepped 4, 5 and 6 storey form is changed to a 5, 6 and 7 storey form. This modification also seeks to increase the approved heights from:
 - (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.
38. This modification seeks to amend the form of the envelope such that the buildings have a variable setback to Sydney Park.
39. There are a number of inconsistencies on the submitted envelope plans. The envelope plans do not show the reduced setbacks to Sydney Park within the building envelopes. The envelope elevations show parts of the reduced setbacks at the upper levels. It appears that the envelopes plans and parts of the elevations have excluded balcony areas, pergolas and architectural structures.
40. A review of the detailed DA plans, D/2018/907, with which these envelope plans are supposed to be consistent (as per the application) show minimum setbacks of 1.5m on the southern boundary and 1.5m on the western boundary.
41. Condition 9 of the concept consent requires that 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 contained within the approved envelopes." As such, these elements should be contained within the envelopes.

42. The proposed amended envelopes are shown below. Comparable ground floor and level 1 detailed DA plan is also included to show how much further the envelope would need to extend to accommodate the proposed detailed DA.



Figure 27: Proposed ground floor – noting balcony areas are excluded from the plans.



Figure 28: Proposed detailed DA ground floor plan. The red line indicates the 6m setback from the park boundaries.

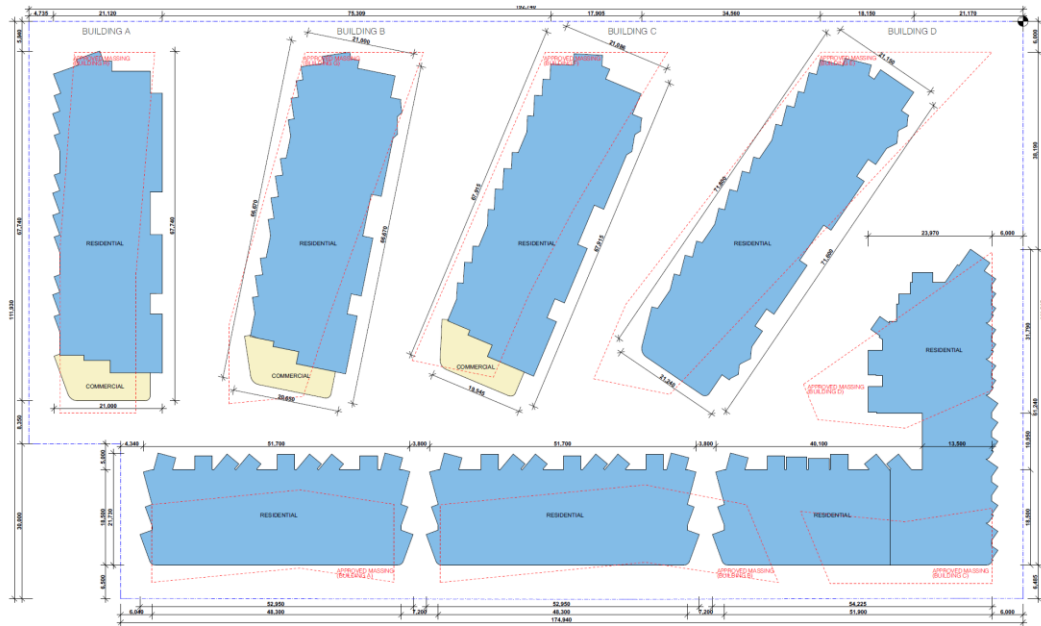


Figure 29: Proposed level 1 – noting balcony areas are excluded from the plans.

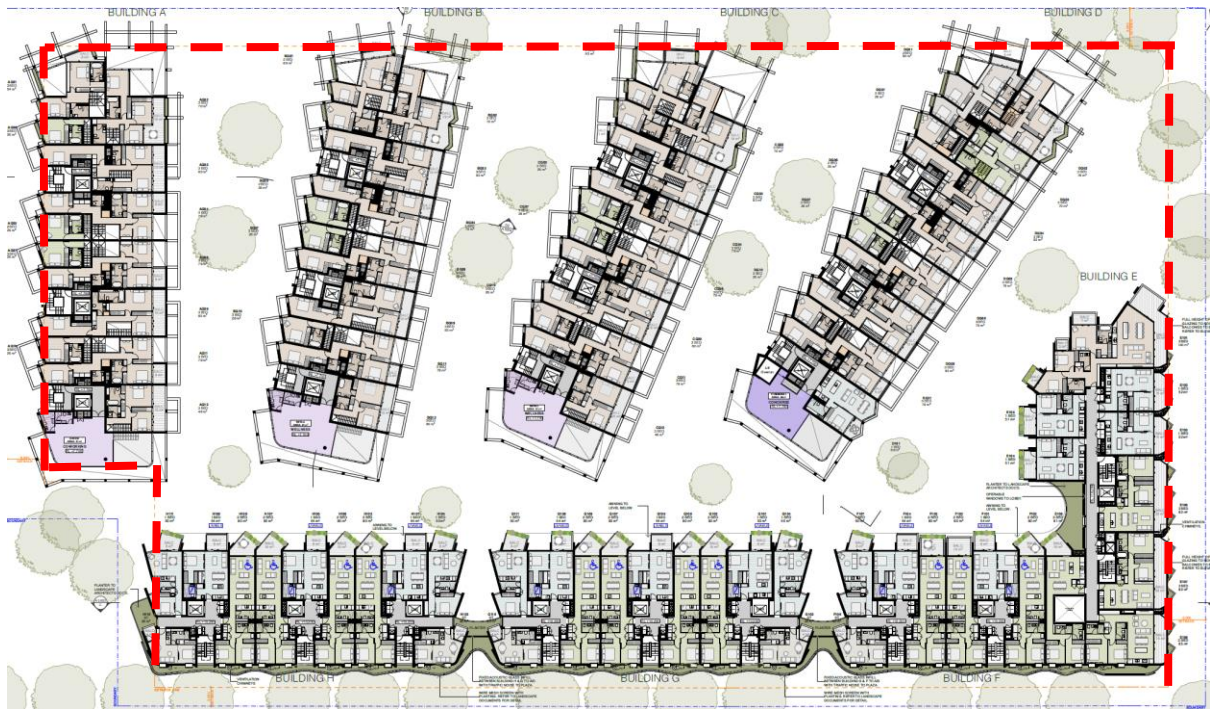


Figure 30: Proposed detailed DA – level 1. The red line indicates the 6m setback from the park boundaries.

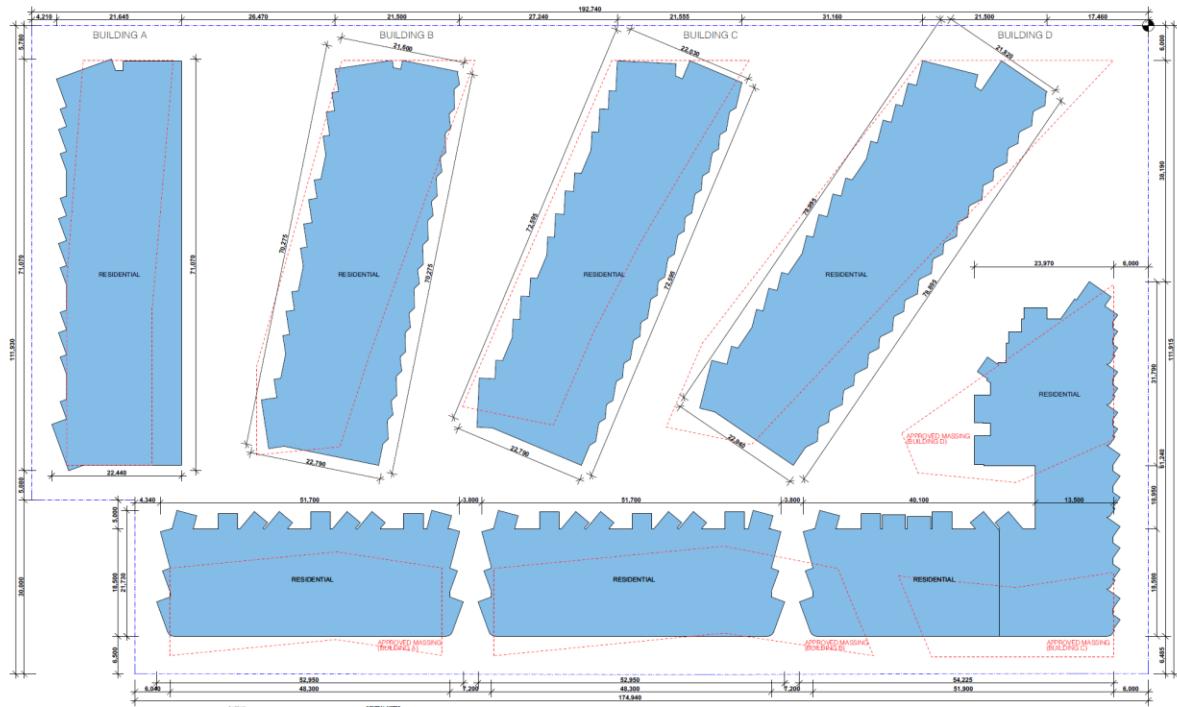


Figure 31: Indicative levels 2, 3 and 4 – noting balcony areas are excluded from the plans.

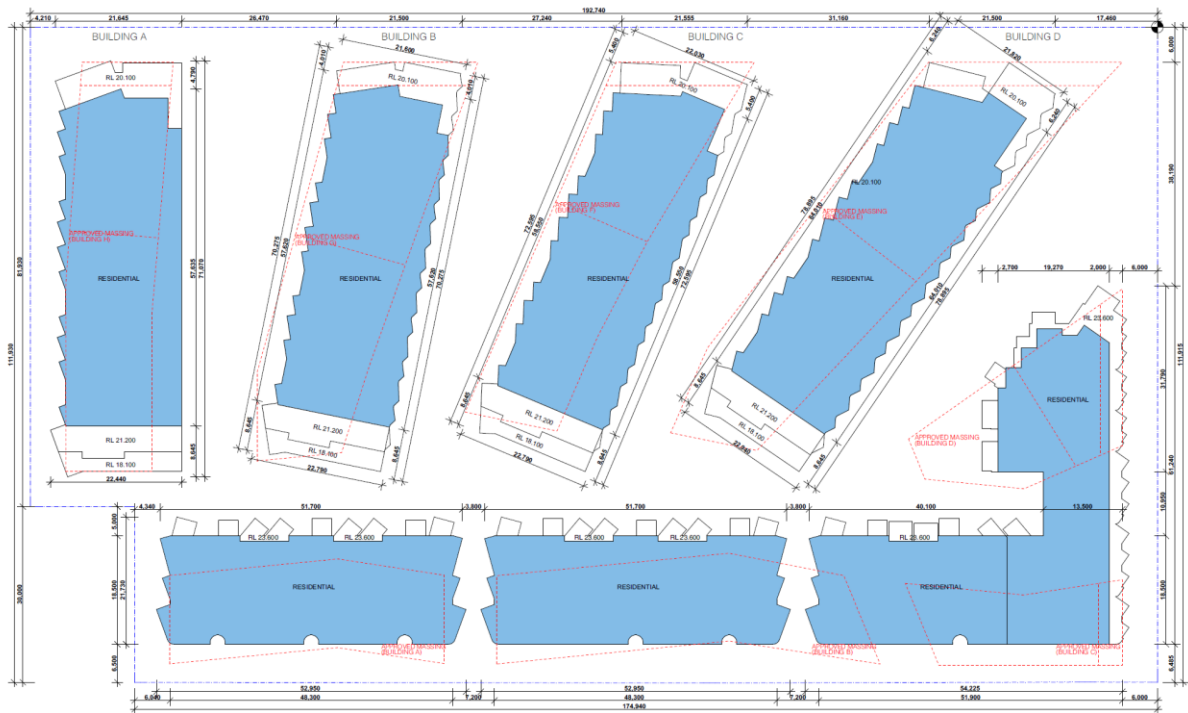


Figure 32: Proposed level 5 – noting balcony areas are excluded from the plans.

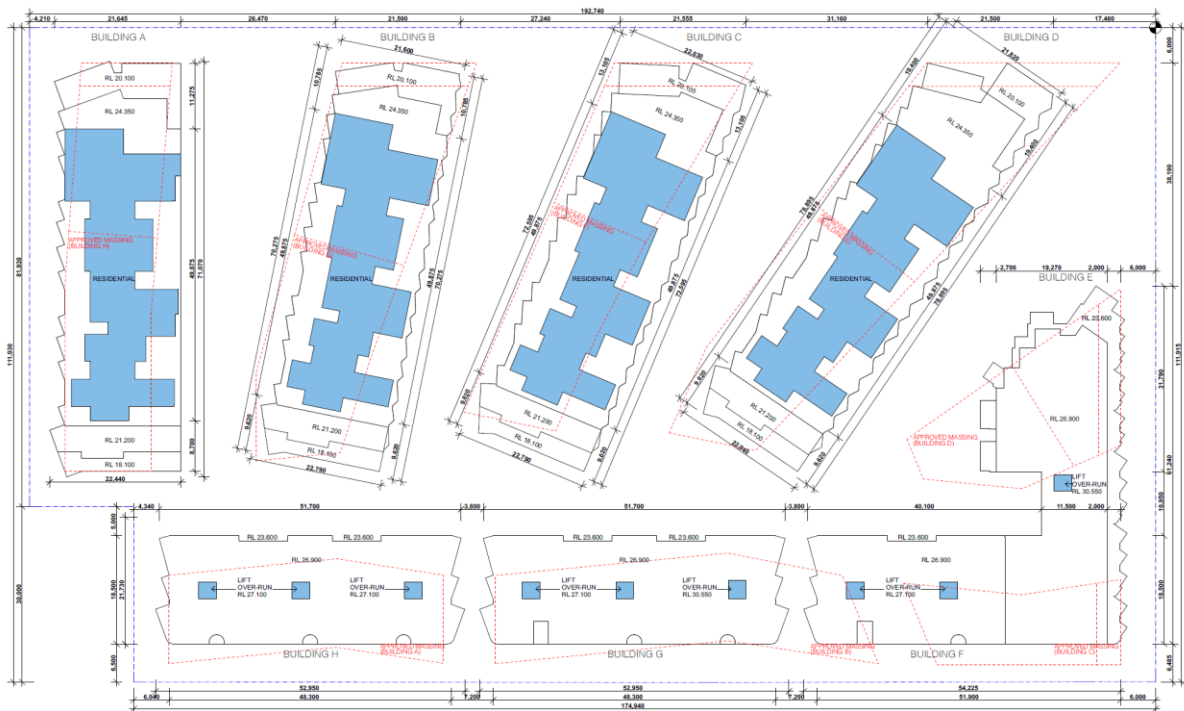


Figure 33: Proposed level 6 – noting balcony areas are excluded from the plans.

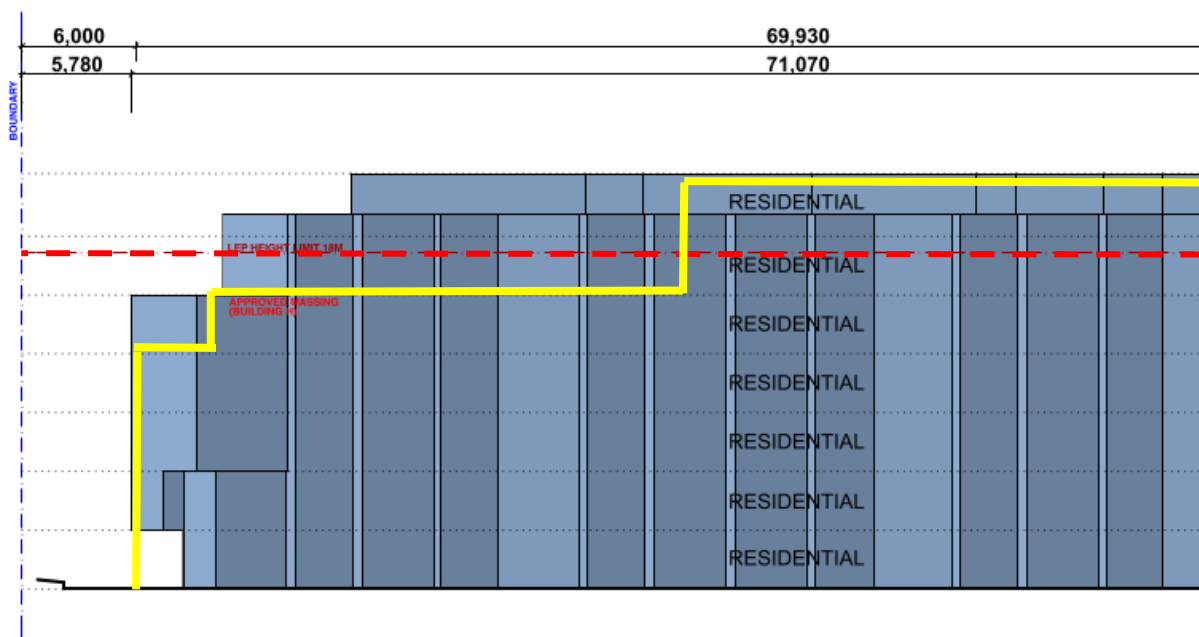


Figure 34: South elevation of building H (Parkside building). The blue represents the amended envelope. The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.

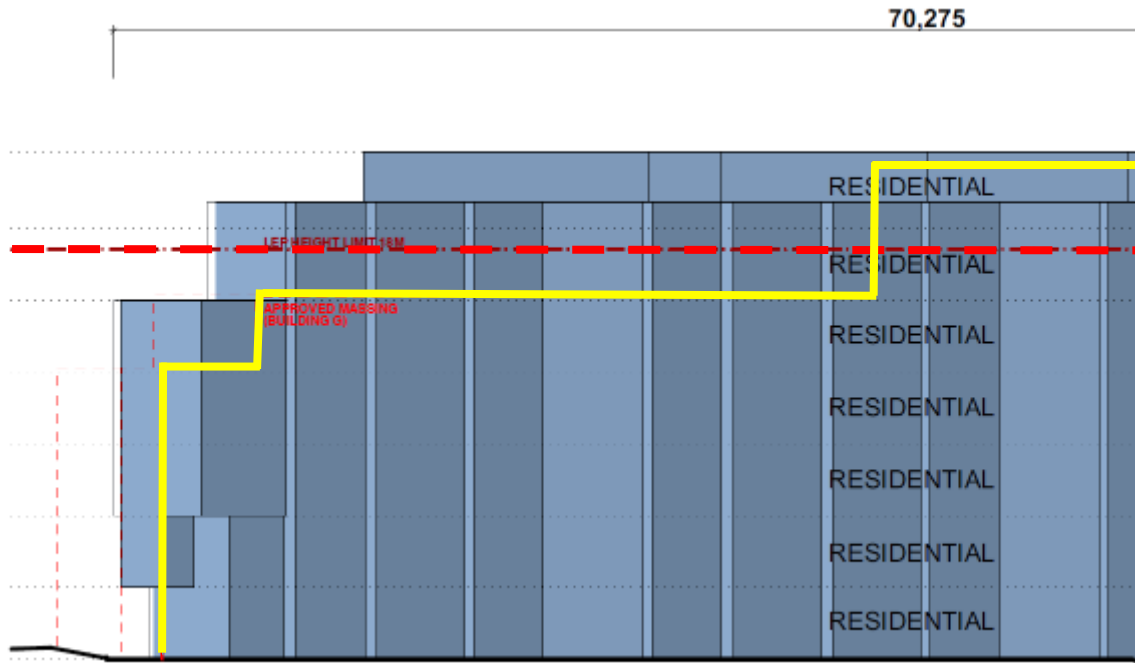


Figure 35: South elevation of building G (Parkside building). The blue represents the amended envelope. The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.

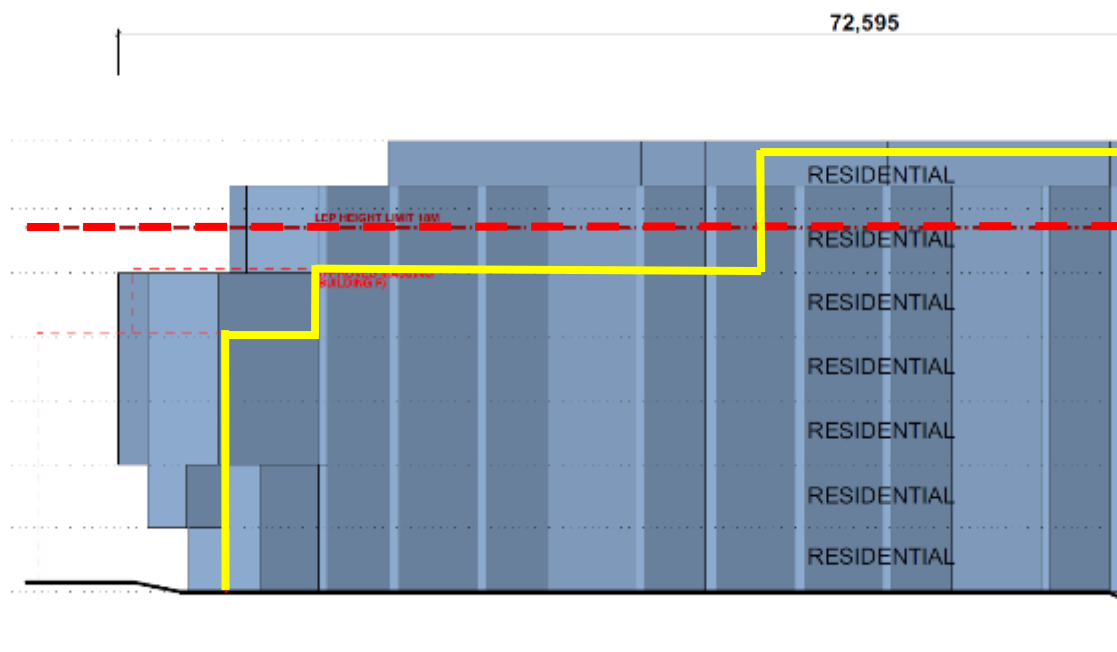
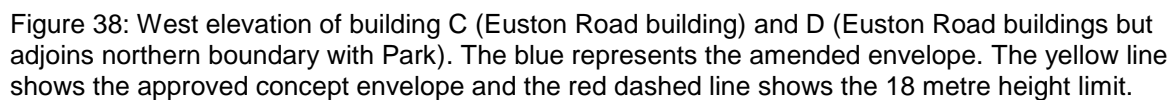
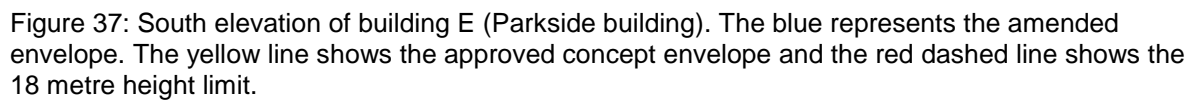


Figure 36: South elevation of building F (Parkside building). The blue represents the amended envelope. The yellow line shows the approved concept envelope and the red dashed line shows the 18 metre height limit.



43. This modification also seeks to amend the wording of the following conditions:
- (a) Condition 2 relating to staging of the development
 - (b) Condition 4(b) relating to landscaping of building roofs
 - (c) Condition 7 relating to maximum building heights
 - (d) Condition 19 RMS condition relating to driveway design.
44. 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.



Figure 39: Building layout across the site (noting this ground floor plan does not include balconies, pergolas or architectural features).

Issues letter

45. An issues letter was sent to the applicant as part of this assessment on 19 February 2019. The issue letter also raised concerns in relation to the concurrent applications for early works and detailed design.
46. In relation to this modification application, substantial concern was raised about how the amended envelopes were getting taller, wider and bulkier than the existing approved envelopes. Particular concern was also raised in relation to the decreased setbacks to boundary and decreased internal separation distances.

Amendments

47. Amended documentation was provided in November and December 2019. The basis of the applicant's justification for the amended development is that the amended proposal is the winner of a competitive design process and the bulk and additional height is masked by the proposed architecture and landscaping.
48. Additional information was submitted and changes were made the building D envelope and the upper levels of the Parkside buildings.
49. The envelope of building D (Euston Road building adjoining the northern boundary of Sydney Park) was amended show an additional 2m setback from the northern boundary. However, a review of the detailed DA changes showed that the changes included removal of a glass screen from a balcony and the replacement of living room space with balcony and green roof area. This is shown below.

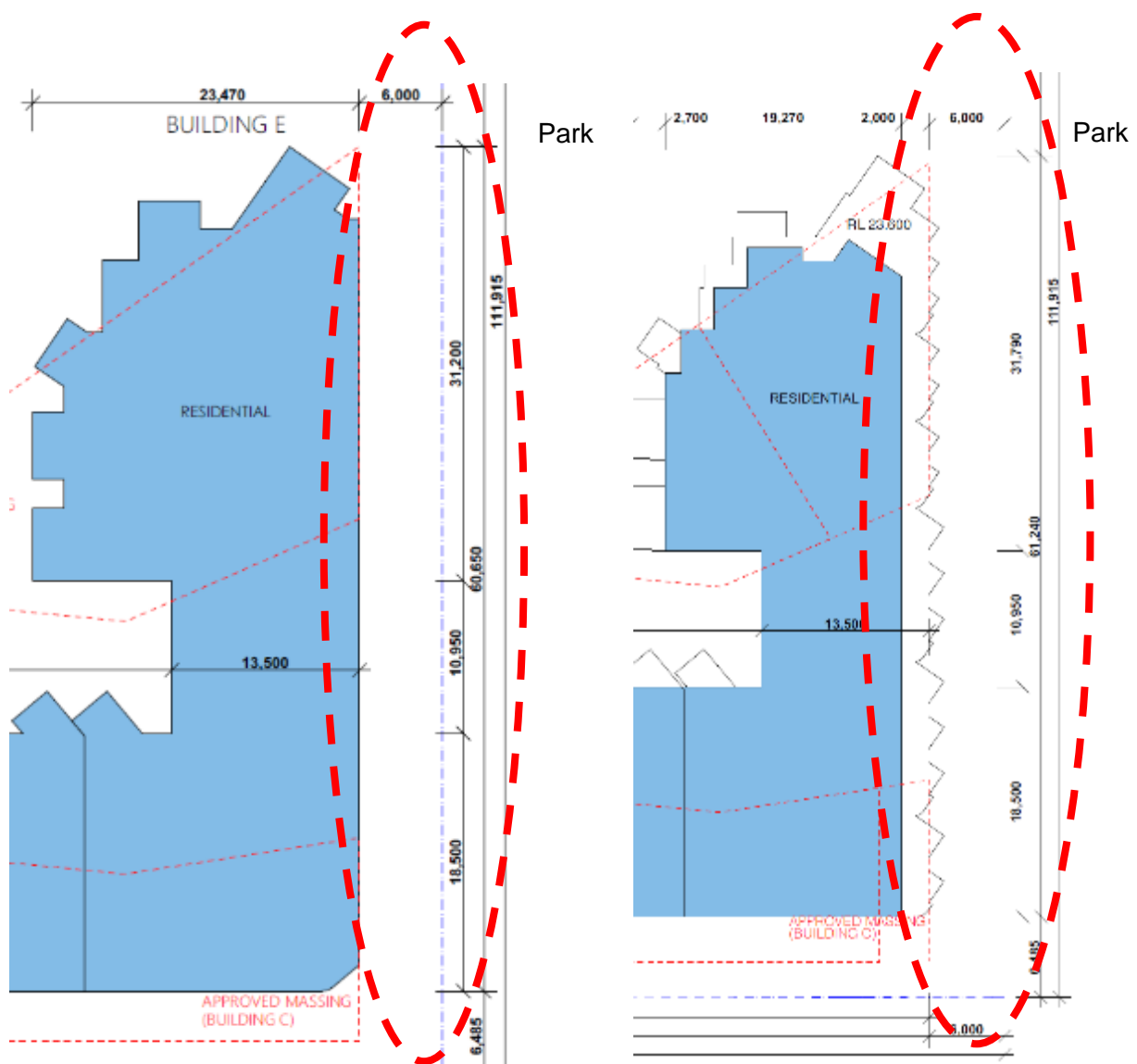
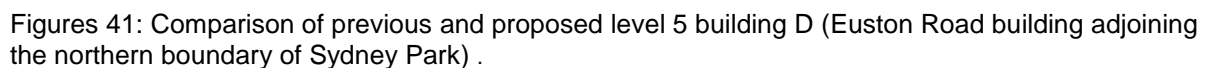


Figure 40: Comparison of previously submitted and currently proposed envelopes for building D (fronting northern boundary adjacent to Sydney Park) (labelled as building E on the plans).



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- Diagram illustrating the height levels and setbacks of a building facade, showing the relationship between the building's structure and the surrounding environment.
- Vertical Levels (from top to bottom):**
- Roof: RL +26.500
 - Level 5 Mezz: RL +23.226
 - Level 5: RL +20.100
 - Level 4: RL +17.000
 - Level 3: RL +13.900
 - Level 2: RL +10.800
 - Level 1: RL +7.700
 - Ground Floor: RL +6.800
- Horizontal Dimensions (from left to right):**
- Setback 1: 5.840
 - Setback 2: 3.100
 - Setback 3: 3.100
 - Setback 4: 3.100
 - Setback 5: 3.100
 - Setback 6: 3.100
 - Setback 7: 3.100
 - Setback 8: 3.100
 - Setback 9: 3.100
 - Setback 10: 3.100
 - Setback 11: 3.100
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 - Setback 93: 3.100
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 - Setback 95: 3.100
 - Setback 96: 3.100
 - Setback 97: 3.100
 - Setback 98: 3.100
 - Setback 99: 3.100
 - Setback 100: 3.100
- Key Features:**
- BOUNDARY:** Indicated by a vertical dashed line.
 - SYDNEY PARK:** Labeled on the left side of the diagram.
 - LEP HEIGHT LIMIT 18M:** Indicated by a horizontal dashed line.
 - APPROVED MASSING (BUILDING H):** Indicated by a red dashed circle.

31

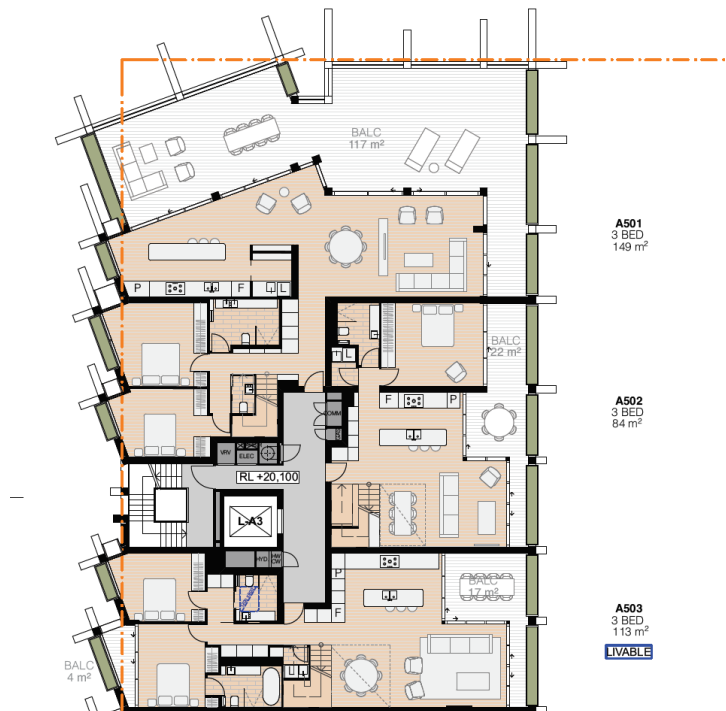


Figure 43: Level 5 floor plan for building H, which is located in the south west corner of the site. This plan shows the balconies, including pergolas on level 5, whereas the envelope plan shows there being nothing in this location.

Section 4.55(2) Environmental Planning and Assessment Act

51. Section 4.55(2) of the *Environmental Planning and Assessment Act* provides that, an application can be modified if:
- (a) the development is substantially the same as the development that was originally approved; and
 - (b) the development has been notified in accordance with the regulations or applicable development control plan; and
 - (c) any submissions are considered; and
 - (d) any relevant matters referred to in section 4.15(1) of the Act that are relevant are considered.

Section 4.55(2)(a) of the Environmental Planning and Assessment Act

52. The proposed modifications significantly vary the approved building footprints and envelopes. This results in significant impacts which the original approval was designed and conditioned to avoid.
53. The development, as modified, is not considered to be substantially the same as originally approved. This is discussed in the issues section of this report.

54. As such, the proposal does not meet the threshold test under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* and the application is recommended for refusal.

Section 4.15(1) of the Environmental Planning and Assessment Act 1979

55. The proposal will have significant environmental impacts on Sydney Park as discussed in the issues section of this report and is recommended for refusal.

Airport Act 1996 (Cth)

56. The amended proposal does not breach the operations surface limit layer, however it does penetrate the civil aviation safety authority layer, which is 15.24m above the ground. The modified proposal was referred to the Sydney Airports. On 4 September 2018, the Sydney Airport Airfield Design Manager provided approval for the controlled activity.

Water Management Act 2000

57. The original concept approval was not integrated under the Water Management Act 2000.
58. The modification now seeks to excavate a basement to a depth of 6.7 metres 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.
59. The amended application was referred to Water NSW and no objection to the proposed modification was raised subject to compliance with Water Management Act 2000.

Roads Act 1993

60. 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 of six lanes once the Westconnex upgrade is complete.
61. The modification also seeks to amend the wording of condition 19 to allow swept path details for access to the site to be resolved during the detailed stage 2 DA. In the event that approval was to be recommended, this could be supported. However, it is noted that the applicant has not designed or proposed the deceleration lane as part of the detailed DA and is therefore not complying with the terms of the proposed amended condition.
62. No comment was made by RMS on the proposed change sought to the wording of condition 19.

State Environmental Planning Policy No 55—Remediation of Land

63. No change is proposed to existing condition 26 which requires that a detailed remediation action plan and interim letter of advice from a NSW accredited site auditor be submitted with the stage 2/detailed DA.

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

64. The amended envelopes will impact on 28 trees within Sydney Park. The impact on trees on Sydney Park is not supported and is discussed further in the issues section below.

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

65. The modification proposed results in building envelopes that do not demonstrate good design when considered against the relevant design quality principles. This is as follows:

Principle 1 - Context and Neighbourhood Character; Principle 2 Built form and scale

- (a) The modified development does not demonstrate good design as it fails to consider the surrounding context. The amended built form, including non-compliant height and setbacks will adversely impact on and take away amenity from Sydney Park. That is, the amended envelope will adversely impact on 28 trees, create additional shadow and result in a development that is more visible and intrusive when viewed from Sydney Park. In this regard, the amended envelope fails to enhance the quality of the surrounding context.

Principle 3 - Density;

- (b) The concept approval anticipated that the development could only achieve 1.8:1, and not the full 2.5:1 permitted by the Sydney LEP 2012. The subject envelope is anticipated to hold approximately 2.09:1, and as a result, the amended envelopes are protruding outside of the approved envelopes in a manner which results in significant impacts. The exceedance of the height control, the non-compliant setbacks between the Park boundaries and the Parkside buildings, and non-compliant internal separation distances indicate that the proposed development is too big for the subject site. As such, the density as proposed is not considered appropriate for the site or its context.

Principle 6 – Amenity;

- (c) The amended envelopes do not meet the minimum separation distances between the Parkside buildings and Euston Road buildings. As a consequence, the inadequate separation between 6 and 7 storey buildings will contribute to a sense of enclosure for the plaza and result in adverse visual and acoustic privacy implications for the apartments.

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. The envelopes should be setback a minimum of 6metres from the rear and side boundaries and should be separated internally by 12metres for the first 4 storeys, and then 18metres for the upper part of the building. This is discussed further in the issues section below.

Sydney LEP 2012

66. The site is located within the B4 mixed use zone. The proposed uses are defined as residential accommodation and commercial. These land uses are permissible with consent.
67. 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.</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 and a 49% departure from the existing approved height. This is discussed further in the issues section below.</p>

Development Control	Compliance	Comment
6.21 Design excellence	No	The modified envelope is not considered to demonstrate a development that is capable of delivering design excellence.
7.15 Flood planning	No	The modified envelope increases the floor level RL 4.3 to RL 4.6. This is not supported by a flood assessment which complies with the City's Flood Risk Management Policy.
7.20 Development requiring preparation of a development control plan	No	The amended proposal deviates significantly from the original approval. That is, the original approval included height limits and setbacks aimed at ensuring the quality and amenity of the public domain, including Sydney Park, were not compromised as a consequence of this development. This objective has been undermined by the amended proposal.

Sydney DCP 2012

68. 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 included a number of conditions to ensure that the development did not adversely impact on Sydney Park and to ensure that the site was actually suitable for the development. These conditions have not been adhered to or met, and in this regard, the modified development is not suitable for this locality.

3. General Provisions	Compliance	Comment
3.2.1.1 Sunlight to publicly accessible spaces	No	The amended proposal creates additional shadow on Sydney Park. This is discussed in the issues section below and is not supported.

3. General Provisions	Compliance	Comment
3.2.2 Addressing the street and public domain	No	The amended 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 will borrow amenity from the public park.
3.5 Urban Ecology	No	The proposal will impact on 28 trees within Sydney Park. This is not acceptable and discussed further in the issues section below.
3.7 Water and Flood Management	No	The proposed floor level has been increased from RL 4.3 to RL 4.6. This is not supported by a flood assessment which complies with the City's Flood Risk Management Policy.

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 approval granted consent for 4, 5 and 6 storeys across the site. The amended envelope 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 amended proposal significantly reduces the approved setbacks of the concept envelope and does not meet the minimum setback distances established by the ADG. This is discussed further in the issues section below.

Issues

Development is not substantially the same

69. The proposal includes substantial quantitative and qualitative variations from the existing concept approval. These changes render the amended proposal substantially different to the original approval.

70. The proposed increase in height and changes to the envelopes are shown in the figures 44 to 47 below. These images were generated by the City's Modellers using the 3D models provided by the applicant. The red represents the amended proposal, and the white represents the approved envelopes. These changes illustrate how the envelope is much larger than the approved envelope, and how different the amended development will appear from the public domain.

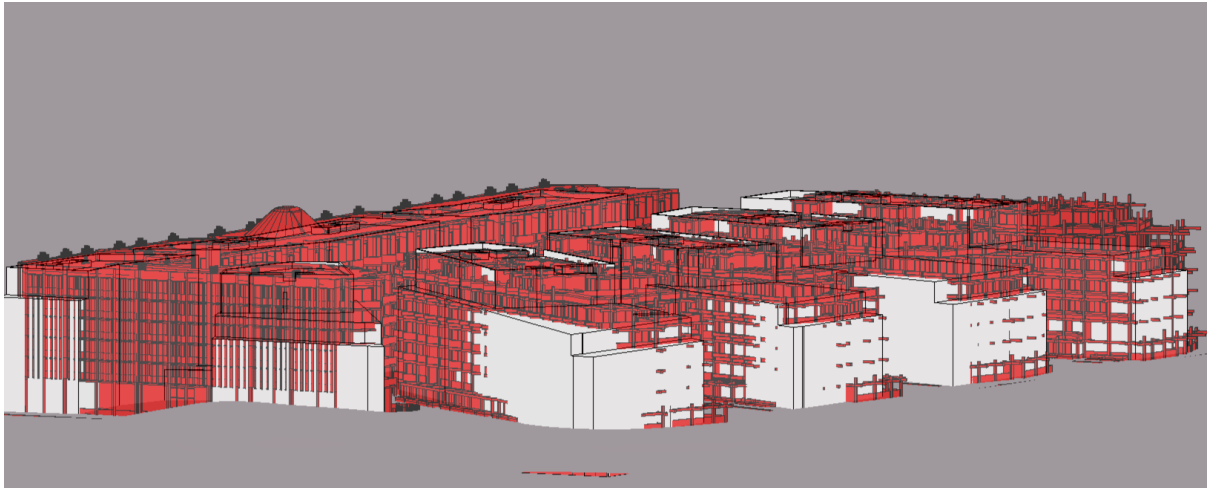


Figure 44: Comparison of approved (white) and amended (red) massing showing how the Parkside buildings and Euston Road buildings are taller, protruding closer to the boundaries and will be more visible from Sydney Park.

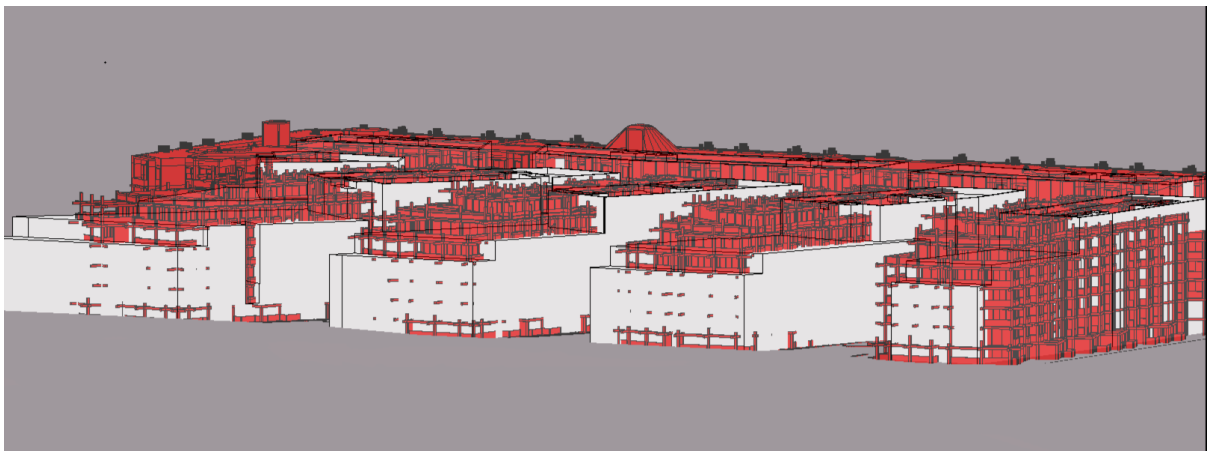


Figure 45: Comparison of approved (white) and amended (red) massing showing how the Parkside buildings and Euston Road buildings are taller, protruding closer to the boundaries and will be more visible from Sydney Park.

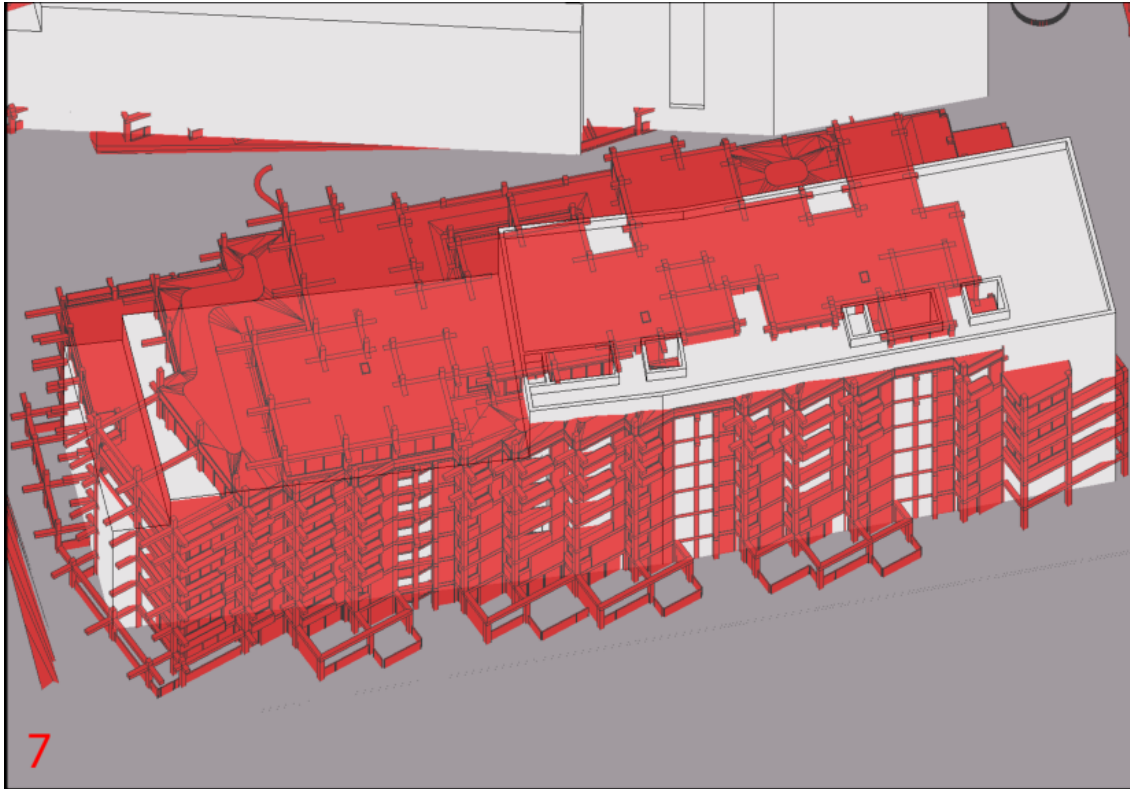


Figure 46: Comparison of approved (white) and amended (red) massing showing how building H is taller and closer to the south and west boundaries.

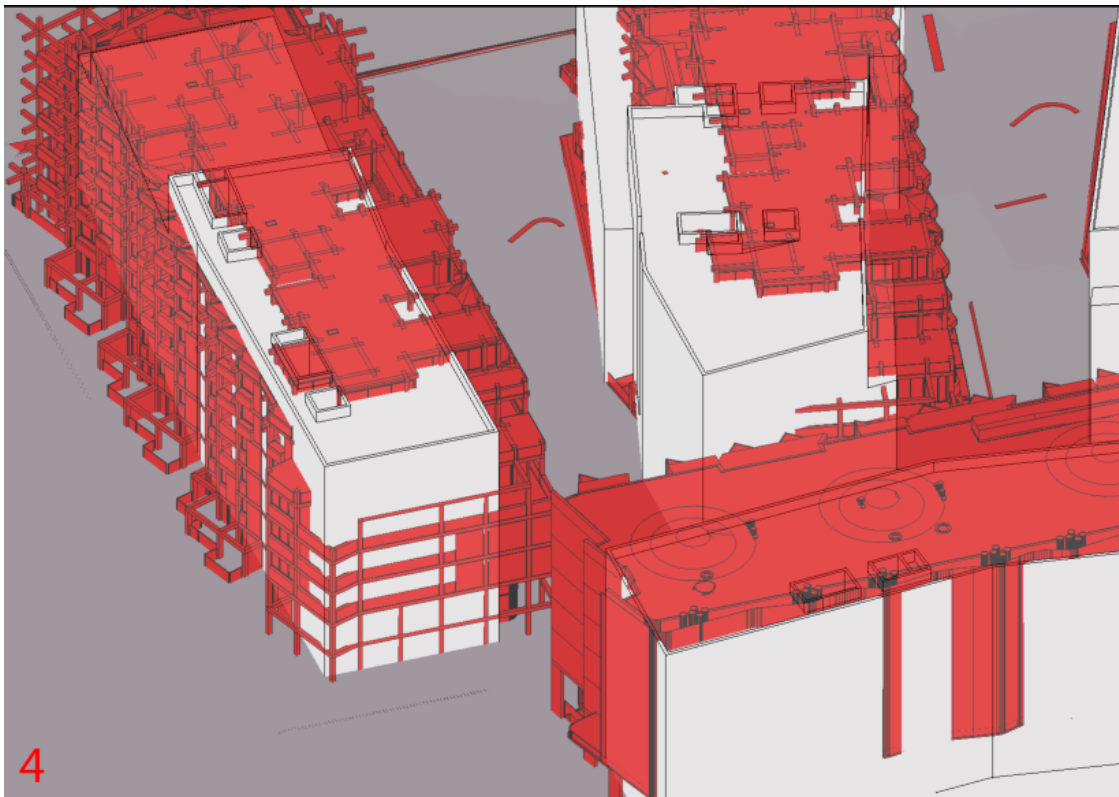


Figure 47: Relationship between buildings A, G and H showing how amended envelope (red) is taller and closer across the plaza than the approved envelope (white).

71. The original approval allowed a clause 4.6 variation which moved height to the eastern side of the site away from the Park. This was supported as it results in a better transition from landscape (Sydney Park) to urban (Euston Road) setting.
72. This objective is undermined by the proposed modification as building height is increased across the site. In particular on the Park side of the development. The current approval includes a 4, 5 and 6 storey stepped form increasing in height as the envelopes transition away from the Park. It is proposed to not only bring the envelope closer to the park boundary, but to also increase the height to a 5, 6 and 7 storey stepped form. In addition, very little delineation is provided between the lower park side buildings and the taller eastern (Euston Road) buildings. This is discussed further under the heading, 'height' below.
73. Further, the design conditions which were specifically included on the concept consent, including the requirements relating to ground and upper level setbacks have been abandoned. These are essential elements of the concept approval, and the removal of these will result in a materially different development. This is discussed further below under the heading 'setbacks'.
74. The additional height and bulk, and reduced setbacks mean that the development will visually and spatially intrude further into Sydney Park more than the existing approved envelope. It will also result in additional overshadowing on the Park. The development, in its context, will look and feel very different to that which was originally approved for the site. This is discussed further under 'visual bulk and shadow'.
75. The change to the setbacks of the buildings will adversely impact on 28 trees within Sydney Park. This includes the removal of three (3) trees and pruning of one (1) tree within Sydney Park.
76. The concept consent does not include Sydney Park as part of its development site and land owners consent has not been sought. To the contrary, condition 4(c) says that the buildings are to be setback a minimum of 6 metres so as to not adversely impact on the trees. This is discussed further under the heading 'tree loss.'
77. Quantitatively, the proposal is taller and bulkier than the original approval. The amended development will further and unreasonably impact on the amenity surrounding parkland including the tree canopy. These consequences arise as a direct breach of the approved concept envelopes and consent conditions.
78. Overall, the proposal results in a development that is "*materially different*" to that which was originally approved. As such, the development is not able to be considered to be substantially the same and fails the threshold test under section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

Increased Height

79. The concept approval was based on a carefully constructed height plane which moved height away from the Park. This massing arrangement was supported through an earlier clause 4.6 variation associated with the Stage 1. It allowed the height in storeys control, that being 5 storeys, to transition from 4 storeys on the park edge, 5 storeys in the centre of the site, and 6 storeys on the Euston Road frontage.

80. The exact wording used by the applicant's clause 4.6 variation request under the original approval 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."
81. This amended proposal is now seeking to be significantly further amended, with heights being increased across the site, but most significantly in the Parkside buildings which have increased from 5 to 7 storeys. Numerically, this equates to up to a 47% increase from the approved envelope to the amended envelope.
82. The proposed amendments contradict the design intent and merit of the original approved scheme. They result in adverse impacts and on this basis are not supported. It also renders the proposed envelope substantially different to that which was originally approved. That is, the circumstances of the original approval will be eroded if the current amendment to the height is supported.
83. The extent of the increases in height are included in figures 34 to 38 on the previous pages. Numerically the proposed increase in envelope height are outlined in the table below.

Building Name	Previous approved heights	Proposed heights	Variation from concept DA
A (Euston Road)	6 storeys - RL 26 (<u>21.7 metres</u>)	6 storeys - RL 26.90 (<u>22.3 metres</u>)	2.8%
B (Euston Road)		Lift overrun RL 27.10 (<u>22.5 metres</u>)	3.7%
		Lift overrun RL 30.55 (<u>25.95 metres</u>)	19.6%
C (Euston Road) and D (corner of Euston Road and northern boundary adjoining Sydney Park)	4 storeys - RL 17.20 (12.9metres)	5 storeys - RL 23.60 (<u>19 metres</u>)	47.3%
	6 storeys - RL 26 (<u>21.7 metres</u>)	6 storeys - RL 26.90 (<u>22.3 metres</u>)	2.8%

Building Name	Previous approved heights	Proposed heights	Variation from concept DA
		Lift overrun RL 27.10 <u>(22.5 metres)</u>	3.7%
		Lift overrun RL 30.55 <u>(25.95 metres)</u>	19.6%
E, F, G and H (Parkside)	4 storeys - RL 17.20 (12.9 metres)	5 storeys - RL 20.10 (15.5metres)	20%
	5 storeys - RL 20.30 (16 metres)	6 storeys - RL 24.350 <u>(19.7 metres)</u>	23%
	6 storeys - RL 26 <u>(21.7 metres)</u>	7 storeys - RL 26.90 <u>(22.3 metres)</u>	2.8%

Decreased setbacks to Sydney Park

84. The approved concept envelopes include a 6m setback to the north, west and south boundaries. This requirement was shown on the approved envelope drawings and included in condition 4(c) of the consent.

85. Condition 4(c) is worded as follows:

"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."

86. The approved setbacks comply with design requirements under parts 2F and 3F of the Apartment Design Guide (ADG). That is, on rear and side boundaries, habitable areas must have a minimum 6 metre setback. This increases to 9 metres after 4 storeys.

87. The proposed amendment seeks to reduce the southern ground floor setbacks to 1.5 metres, and the western ground floor setback to between 1.5metres and 3.5metres. This is shown in the figures below.

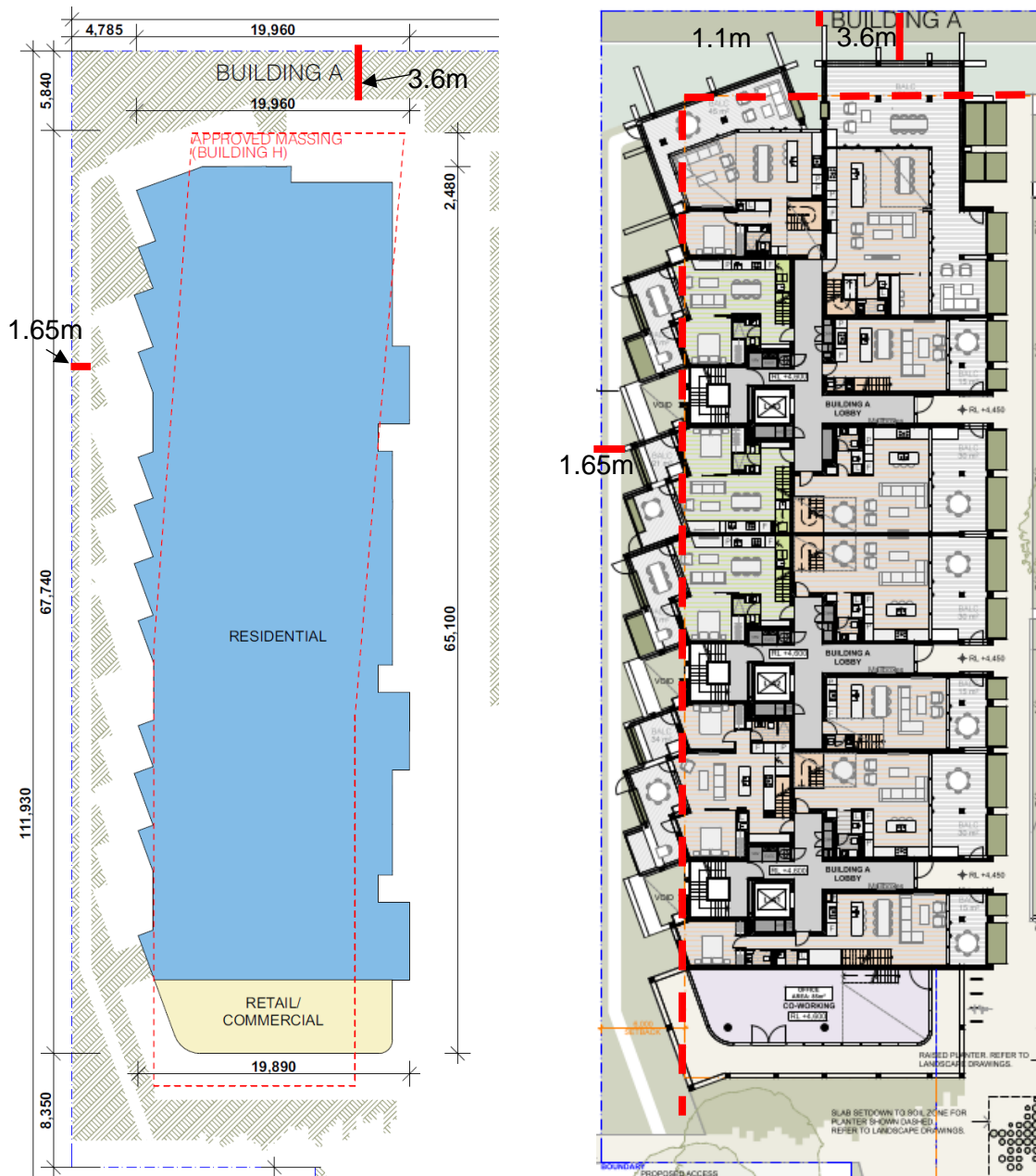


Figure 48: Proposed ground floor of building H located on the southern side of site adjoining Sydney Park. This shows the reduced setback to the southern and western boundaries.

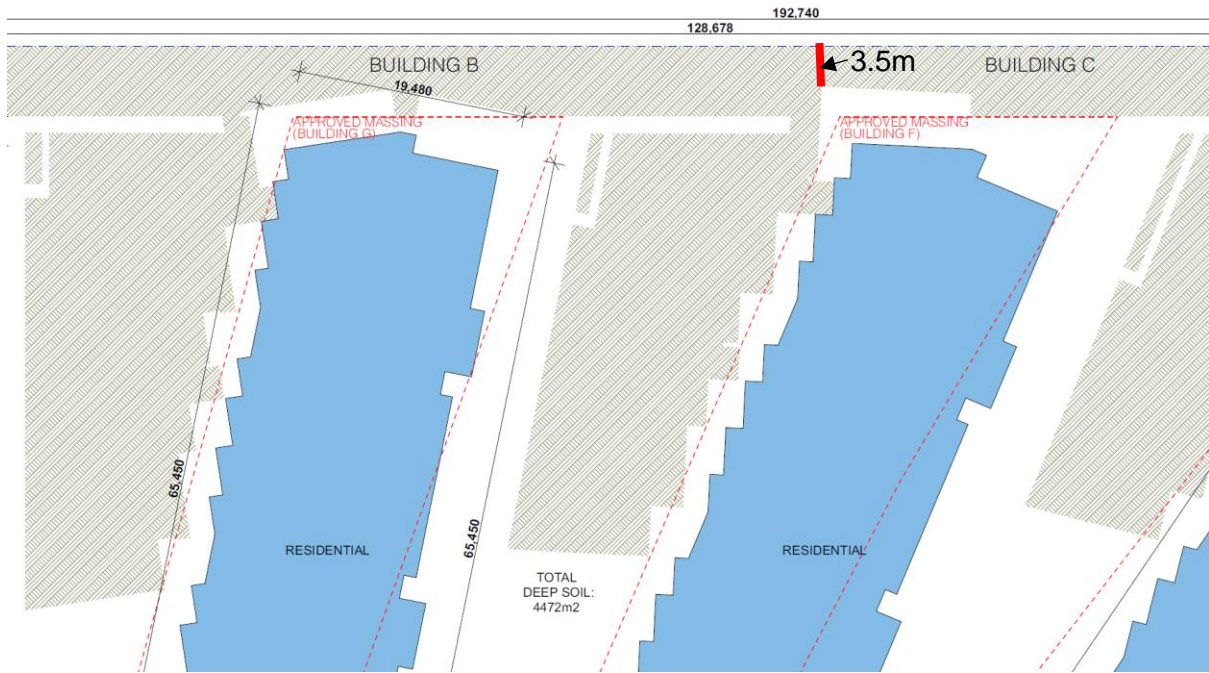


Figure 49: Proposed ground floor envelopes of buildings F and G (labelled B and C on the plans).

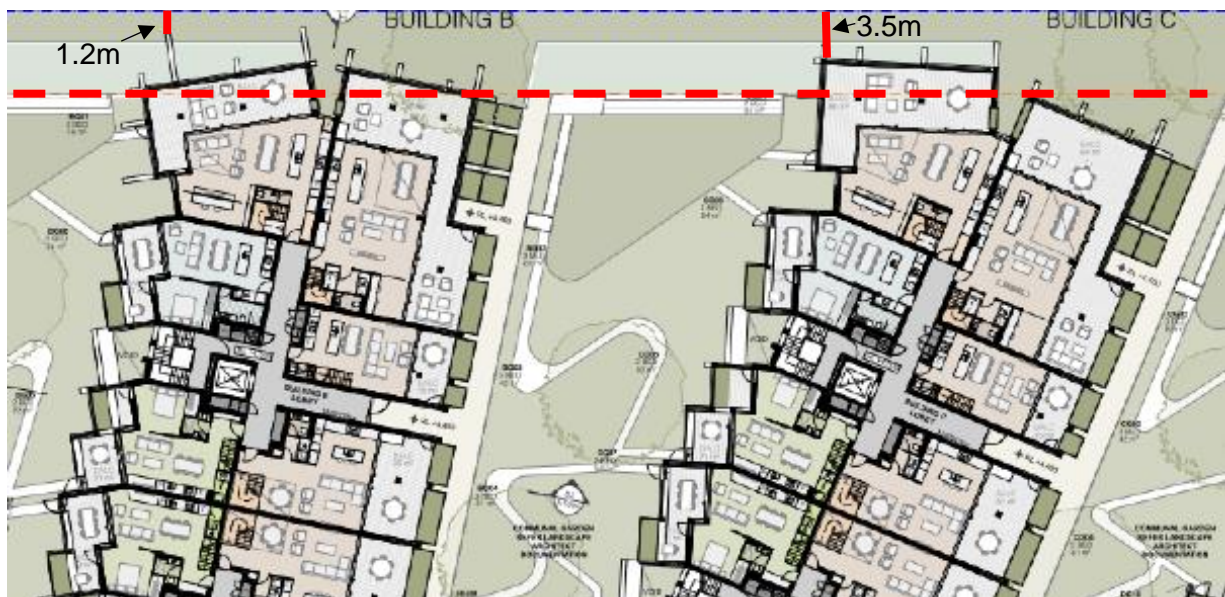


Figure 50: Proposed ground floor relative to 6 metre setback, reduced to minimum of 1.2m.

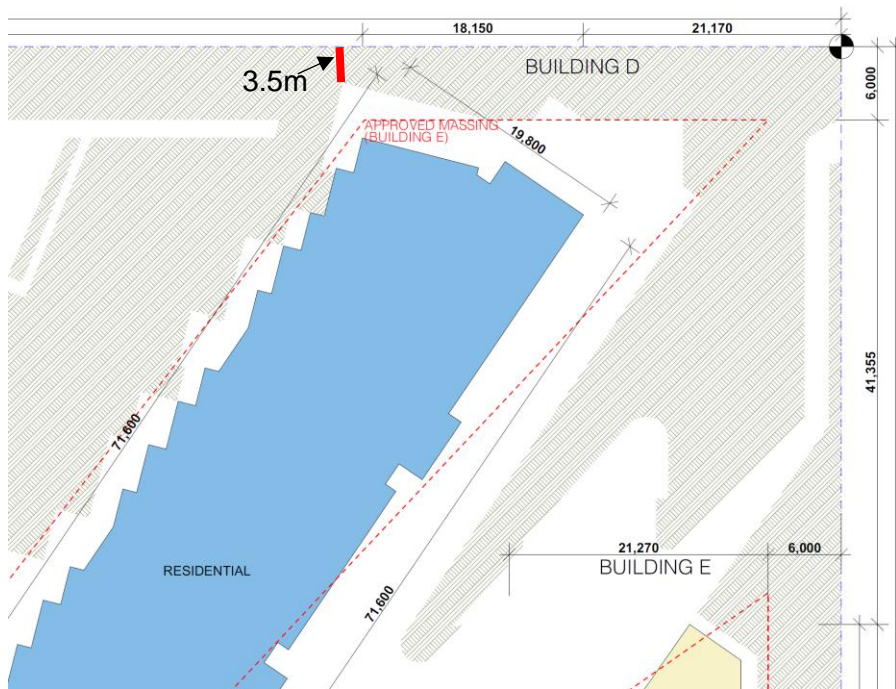


Figure 51: Proposed ground floor envelopes of buildings F and G (labelled B and C on the plans).



Figure 52: Proposed ground floor relative to 6 metre setback, reduced to minimum of 2.4m.

88. The upper levels of the buildings are also getting closer to the Sydney Park boundaries than previously approved. This is highlighted in figures 34 to 38 and 44 to 47 above.

89. These reduced setbacks adversely impact on trees within Sydney Park. The reduced setbacks and additional height also make the development appear more visible and imposing when viewed from Sydney Park, and create additional shadow.
90. The amended envelope will appear significantly differently to the original envelope. It will also result in impacts on Sydney Park that the original consent was specifically designed and conditioned to avoid. As a consequence, the development is not substantially the same and does not demonstrate design excellence.

Visual bulk and Shadow

91. This development is located in a very sensitive area where any additional height and bulk will be readily perceivable. The modified envelope will visually and spatially encroach further into the park and result in additional overshadowing when compared to the approved massing. This does not constitute design excellence and results in a substantially different envelope.
92. The applicant argues that the envelopes are acceptable because of the proposed landscaping and the “pixelated erosion” of the built form (this term is not defined or explained by the applicant). The setbacks and height contained in the concept approval are considered to be essential features of the concept consent. The architectural and landscape merit of the stage 2 DA does not warrant or justify the proposed departures from the concept consent.
93. The areas marked in orange on the following plans show the additional shadow created as a consequence of the additional height and bulk added to the envelope, and the reduced setbacks. The green shows a reduction in shadow, caused by the adjustment of the position and massing of the Parkside bindings. Figure 56 includes a photo of the area in the park that will be overshadowed as a consequence of the changes to the envelope.



Figure 53: Shadow diagram at 9am. Orange shows additional shadow and green shows shadow reduction. This plan does not include balconies, pergolas or additional structures.

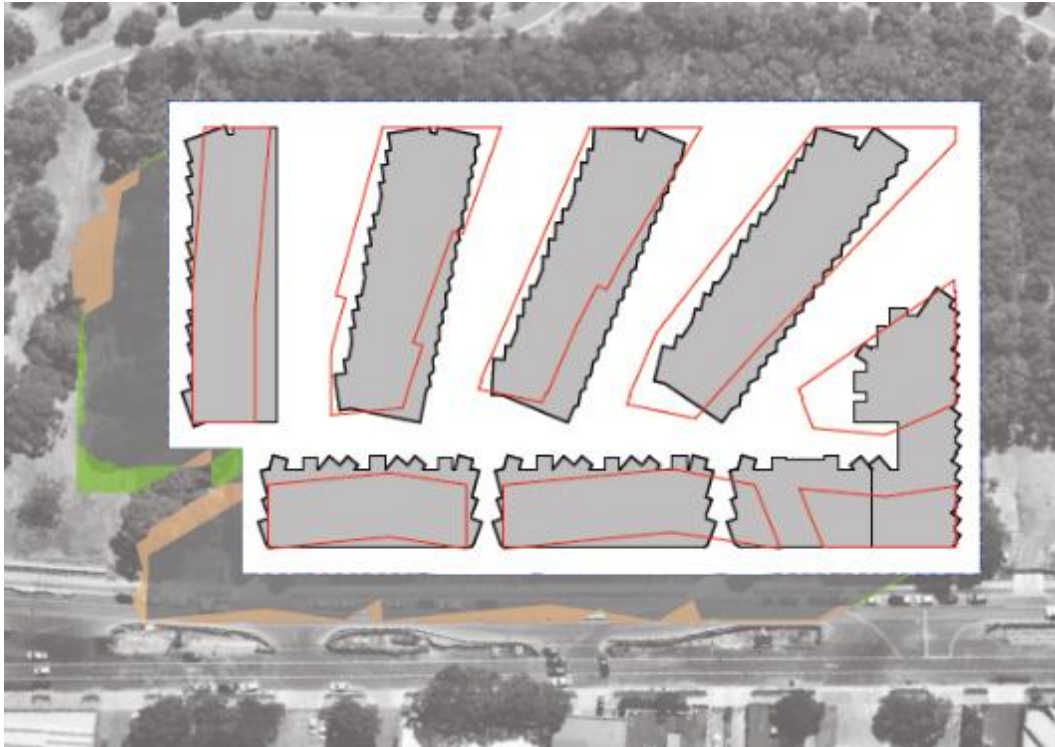


Figure 54: Shadow diagram at 12pm. Orange shows additional shadow and green shows shadow reduction. This plan does not include balconies, pergolas or additional structures.



Figure 55: Shadow diagram at 3pm. Orange shows additional shadow and green shows shadow reduction. This plan does not include balconies, pergolas or additional structures.



Figure 56: Parkland directly south of the site which will be overshadowed by the proposed amendments to the envelopes.

Tree loss

94. The original approval included a minimum 6 metre setback, above and below ground, for all buildings fronting Sydney Park. This modification seeks to reduce these setbacks, as discussed above.
95. As a direct consequence of the reduced setbacks, 28 trees within Sydney Park will have encroachments within their tree protection zones. The relationship of the building and the trees surrounding the site is shown in the figures below.



Figure 57: Image from arborist report showing the trees around the perimeter of the site.

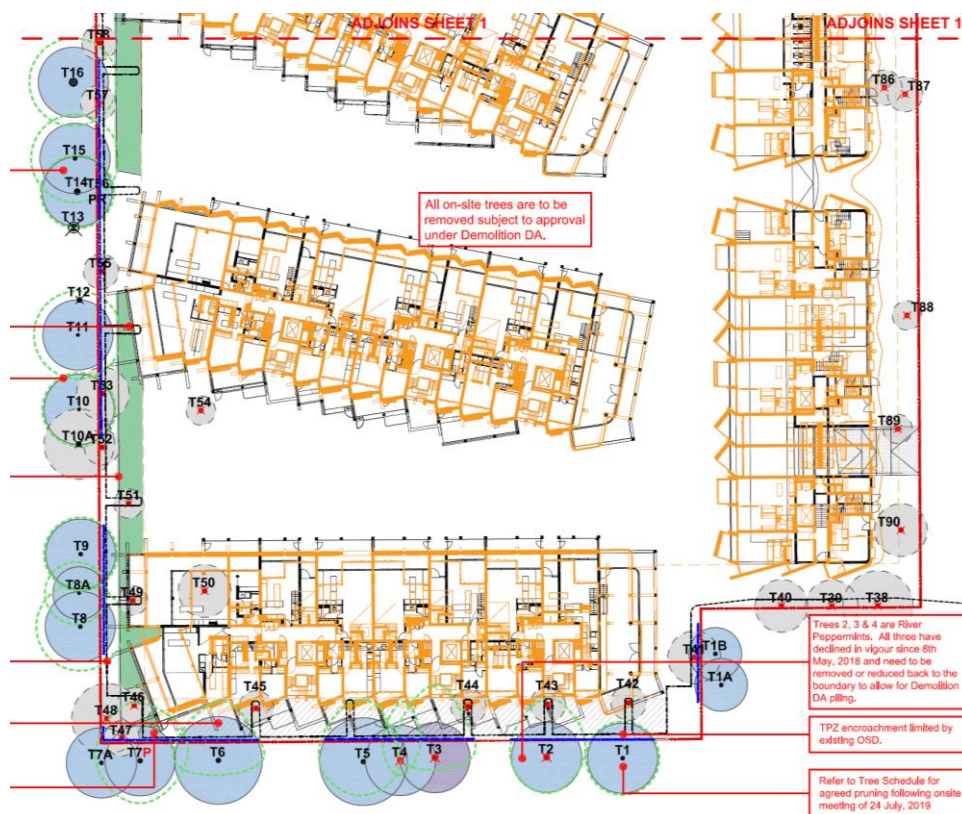


Figure 58: Image from arborist report showing the trees around the perimeter of the site.

96. 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 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.

97. The proposed removal of any 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 supported by Council or in accordance with the Australian Standard AS4373–2007 ‘Pruning of Amenity Trees’.
98. The proposed encroachment into 28 tree protection zones (TPZ) is also not supported. Council officers requested exploratory root mapping to determine the extent of the encroachments and so as to understand what impact the development works will have on these trees. This has not been provided by the applicant as they say there are no major tree protection zone encroachments.
99. 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.
100. 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 tree protection zones 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.

Land owners consent

101. The amended envelopes will necessitate the removal and pruning of trees from Sydney Park. No land owners consent from the City of Sydney Council, the owners of Sydney Park, has been sought for this modification application.

Internal separation distances

102. The original approval provides an 18 metre separation distance between the Parkside buildings and the Euston Road buildings. This is consistent with the ADG which requires 18 metres levels 4 to 7 (or 5 to 8 storeys). This is shown below.

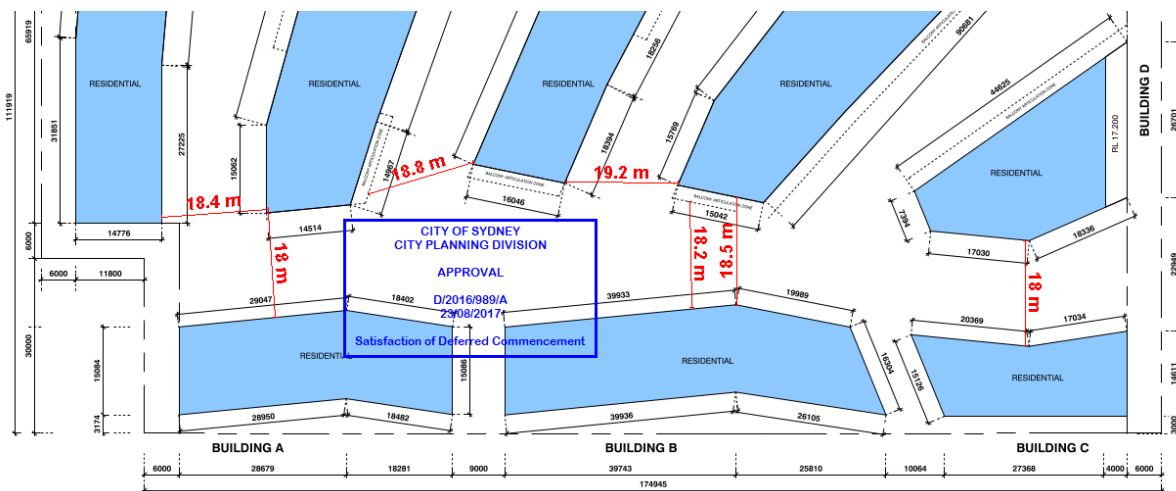


Figure 59: Level 4 plan approved plan showing 18 metre separation distances.

103. The proposed modification does not provide the minimum 18 metres separation distance. The buildings are now proposed to be a minimum of 8.6 metres apart. This is shown in the figures below.
104. These non-compliances will result in acoustic and visual privacy issues, and results in a narrowed, more enclosed plaza. This non-compliance is not considered acceptable.

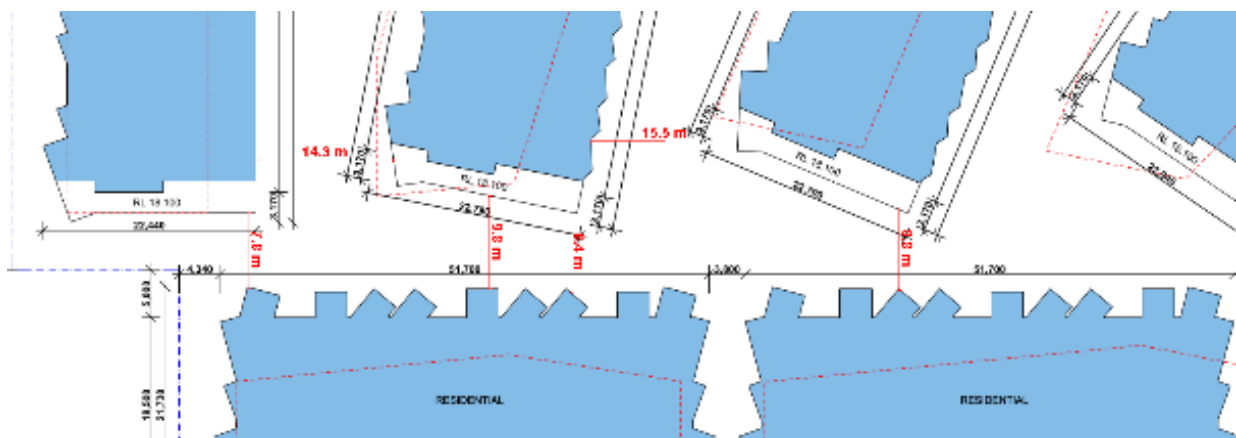


Figure 60: Level 4 plan envelope plan showing separation distances non-compliances.



Figure 61: Level 4 detailed design plan marked up showing separation distances non-compliances.

Landscaping design conditions

105. The applicant is seeking to amend condition 4 to say, "The building roofs are to accommodate ~~a minimum soil depth of 1m~~ landscaping to ~~60%~~ 59% of the roof area to ensure that a diversity of vegetation layers are utilised that effectively target the City's priority species for urban ecology...."
106. This could be supported as it would allow flexibility. However further details of the proposed soil depths would be required.

Staging conditions

107. Condition 2 requires three (3) separate stage 2 detailed DAs to be lodged. The applicant seeks to amend this condition to require only two stage 2 DAs. The proposed amendment relating to the staging of stage 2 DAs could be supported if approval were recommended.

Other Impacts of the Development

108. It is considered that the proposal will have a detrimental effect relating to environmental, social and economic impacts on the locality. As such, the modification is recommended for refusal.

Suitability of the site for the Development

109. The modification as proposed is not suitable for the site. The envelopes are excessive and will have a significant impact on surrounding Parkland. The envelopes will be more visible than the existing approved envelope. They will also impact on surrounding trees and cast larger shadows on the parkland.

Internal Referrals

110. The application was discussed with the Urban Design Specialists, Environmental Health, Public Domain, Transport and Access and Tree Management, who all advised that the proposed modification is not acceptable.
111. The application was also presented to the Design Advisory Panel (DAP). The DAP raised concern with the bulk of the proposal and commented that it needed to comply with the concept DA approval.

External Referrals

Notification, Advertising and Delegation (Submissions Received)

112. In accordance with Schedule 1 the Sydney DCP 2012, the proposed modification is required to be notified. As such the application was notified for a period of 14 days between 25 August 2018 and 8 September 2018. As a result of this notification, a total of 65 properties were notified and there were 19 submissions received, with 2 in support of the proposal and 17 opposing the proposal.

Objections

- (a) The conditions were introduced to reduce the bulk and scale of the development during the original assessment process.

Response: This is agreed and is the reason why it is considered that the modification is not substantially the same.

- (b) The amendment to the RMS condition fails to consider the impacts of any design requirements on the overall proposal. The ongoing and efficient movement of vehicles on Euston Road is critical to ensure surrounding industry can continue to operate.

Response: This is agreed and the change to the condition is not supported.

- (c) The primary justification for this application is that the modifications are required to facilitate the outcome of the design competition rather than the design competition outcome being consistent with the justification for the modifications proposed.

Response: The modification must be consistent with the concept consent, not the design competition outcome.

- (d) The development will be an eyesore on the edge of Sydney Park, which most members of the community use on a daily basis.

Response: The setback of the proposal to the Sydney Park boundaries is not supported.

- (e) Sydney Park is a green space which services the quickly growing population. Sydney Park is the lungs of the area which is already overdeveloped. The extra height is not right.

Response: The additional height is not supported.

- (f) The proposal should not be able to increase in height. Sydney Park is already under pressure from Westconnex. The increased height will create additional shadow on the park and this will reduce the quality of living for everyone.

Response: The additional height is not supported.

- (g) Additional height and bulk means additional density.

Response: The additional height and bulk is not supported.

- (h) Development has no right to invade the visual spaces of Sydney Park. It is one of the few spaces in the City where you can stand in the middle of the park and only see trees.

Response: The additional height is not supported.

- (i) The changes will impact on people enjoying the public spaces around the development.

Response: The additional height and bulk is not supported.

- (j) Council should buy back the land from the developers and turn it into green space.

Response: This is not a planning matter for consideration as part of this modification application.

- (k) The additional 10% height sought makes the development contrary to design excellence under clause 6.21 of Sydney LEP 2012.

Response: Design excellence is discussed in the 'merit assessment section above.'

In support

- (l) Sydney Park is underutilised and more developments are needed with easy access to green space.

Response: Concept approval has been given for the redevelopment of the site. However the proposed amendments to the concept envelopes will detract from the tree canopy and will result in a development that borrows amenity from Sydney Park. The Park is a community asset and it is not in the public interest for its quality to be eroded to improve a private development.

- (m) This DA provides further housing choice. The City should lobby for a new metro within the vicinity of this development and lobby for an improved Westconnex plan.

Response: Concept approval has been given for the redevelopment of the site in the form that allows for a range of housing. The recommended reasons for refusal of this modification are not associated with housing choice. Whether the City should or should not lobby for a new metro or improved Westconnex plan are not matters for consideration as part of this modification application.

- (n) Timing of determination

Response: The application is being reported to the Central Sydney Planning Committee (CSPC) as soon as practicable.

Public Interest

113. The amended proposal is not considered to be in the public interest. It will take away amenity from Sydney Park and this cannot be supported.

Relevant Legislation

114. Environmental Planning and Assessment Act 1979
115. Local Government Act 1993

Conclusion

116. The proposed modification application is recommended for refusal.
117. The proposed building envelopes are not considered to be substantially the same as the existing concept consent and therefore is not able to be approved.
118. The proposed modification results in taller and bulkier building envelopes than the approved concept plan. The setbacks from the boundaries and between buildings do not comply with the minimum set back requirements of the Apartment Design Guide.
119. The proposed envelopes will adversely impact on 28 trees within Sydney Park, create additional shadow, and mean that the development is more visible from Sydney Park. It will also result in reduced amenity within the site.
120. Parts of the building envelopes are significantly increased in height and the proposal will breach the permitted height under clause 4.3 of the Sydney Local Environmental Plan 2012 by up to 44%.
121. This modification is not in the public interest. A number of submissions were received which raised concerns with the proposed development and its impact on the surrounding parkland.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Erin Faulkner, Senior Planner