

Attachment A

**Independent Assessment Report (Robinson
Urban Planning)**

Development Application: 14-26 Wattle Street, Pyrmont – D/2019/649**File No.:** D/2019/649**Summary**

Date of Submission:	21 June 2019
Applicant:	Landream Pyrmont Pty Ltd
Architect/Designer:	Tzannes
Developer:	Landream Pyrmont Pty Ltd
Owner:	Council of the City of Sydney
Cost of Works:	\$221,892,000
Zoning:	Zone B4 - Mixed Use (development is permitted with consent)
Proposal Summary:	Concept development application (DA) for Integrated Development under the Water Management Act 2000 (the proposal will require aquifer interference approval and under the Roads Act 1993 being works to a classified road). The application includes a 34.95m high building envelope. Indicative land uses include residential, commercial, retail, child care and recreational facilities.
Summary Recommendation:	This proposal is recommended for refusal.

Development Controls

- State Environmental Planning Policy No. 55 - Remediation of land
- State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Educational Establishments and Child Care Centres) 2017
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP)
- Sydney Local Environmental Plan 2012
- Apartment Design Guide 2015
- Sydney Development Control Plan 2012

Recommendation

It is resolved that consent be refused for Development Application No. D2019/649 for the following reasons:

- (A) Contrary to clause 4.6 of Sydney Local Environmental Plan 2012 (SLEP 2012), the applicant's clause 4.6 written request to vary the clause 4.3 Height of buildings standard does not demonstrate:
 - (i) that compliance with the height of buildings standard is unnecessary or unreasonable in the circumstance of the case, as per clause 4.6(4)(a)(i) of SLEP 2012;
 - (ii) that there are sufficient environmental planning grounds to justify contravening the development standard, as per clause 4.6(4)(a)(ii) of SLEP 2012;
 - (iii) that the objectives of the height of buildings standard at clause 4.3(1) of SLEP 2012 are achieved or that the objectives of the standard would be thwarted by compliance (and as a consequence the proposed development is not considered to be in the public interest); and
 - (iv) that the development presents a better outcome for and from the development as required by the objective at clause 4.6(1)(b) of SLEP 2012.
- (B) The Concept Development Application (DA) does not satisfy section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 as the proposed development does not satisfy State Environmental Planning Policy 65 - Design Quality of Residential Flat Development (SEPP 65), particularly the following provisions:
 - (i) SEPP 65 Design Quality: Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 5: Landscape and Principle 6: Amenity; and
 - (ii) Solar access, natural cross ventilation, noise, deep soil, communal open space and building separation design criterion in the Apartment Design Guide (ADG).

Given the above, the Concept Envelope Plans and Indicative Reference Scheme do not adequately address residential amenity, have not demonstrated that the proposed mix of uses can be supported on the site and provide insufficient guidance for the competitive design process and Detailed Design DA.

- (C) The Concept DA does not satisfy section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development is inconsistent with SLEP 2012, particularly the following provisions:
 - (i) Clause 4.3 Height of buildings as the proposed development exceeds the 27m height of buildings standard;
 - (ii) Clause 4.6 Exceptions to development standards (see (A) above);

- (iii) Clause 5.10 Heritage conservation as the height of the Jones Block is not consistent with the immediate context of the site comprising the heritage listed terrace houses at 282 – 318 Jones Street, the Winchcombe Carson Wool store at 28-48 Wattle Street and the Harbour Mill Apartments at 280 Jones Street (which provides a deliberate reduction in height adjoining the lower scale heritage listed terraces);
 - (iv) Clause 6.21 Design excellence as the proposed development does not adequately address the matters under clause 6.21(4) of SLEP 2012;
 - (v) Clause 7.15 Flooding planning as the Concept Envelope Plans do not show flood planning levels; and
 - (vi) Clause 7.20 Development requiring a site specific DCP as the proposed development does not adequately address the matters under clause 7.20(4) of SLEP 2012.
- (D) The Concept DA does not satisfy section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with Sydney Development Control Plan 2012 (SDCP 2012), particularly the following provisions:
- (i) The Locality Statement at section 2.12.2 Pyrmont as the proposed development does not respond to the detail and character of heritage items near the site, provide a high quality public domain along Jones Street, provide easily identifiable building entrances, show the location of driveway entries, respond to and complement heritage items and maintain views and vistas from the public domain;
 - (ii) Sections 3.1 and 3.2 in relation to the Public Domain as the proposed development does not provide appropriate public domain improvements. In particular, inadequate public domain improvements are proposed to Jones Street, extensive civil works are required to achieve the proposed Jones Street tree planting and the cantilevered footway, public views from Fig Lane Park will be obstructed and the scale of development does not relate to neighbouring buildings in Jones Street;
 - (iii) Section 3.5 - Urban Ecology as the proposed development does not retain the existing cliff face on the site as a habitat feature, contrary to SDCP 2012, s. 3.5.1(2);
 - (iv) Section 3.7 Water and Flood Management as inadequate information is shown on the Concept Envelope Plans to demonstrate compliance with the City's Interim Floodplain Management Policy;
 - (v) Section 3.9 Heritage (see (A) above);
 - (vi) Section 3.11 Transport and Parking as the Concept Envelope Plans do not show the location of driveways;
 - (vii) Section 3.13 Social and Environmental Responsibilities as increased activation of the through site link(s) on the site is required to adequately address safety concerns;

- (viii) Sections 3.14 Waste and 4.2.6 Waste and Recycling Management as the Concept Envelope Plans do not nominate the location and space allocated to waste and recycling management systems;
 - (ix) Section 4.2.1 Building height as the Concept Envelope Plans exceeds the 7 storey height control and 6 storey Fig Street street frontage height control;
 - (x) Section 4.2.3.1 Solar access as the Concept DA includes inadequate information to assess solar access to the proposed apartments and communal open spaces;
 - (xi) Section 4.2.3.6 Deep soil as a deep soil area of 5% of the site area is proposed when SDCP 2012 requires a minimum of 10%;
 - (xii) Section 4.2.3.8 Common open space as a common open space area of 21% of the site area is proposed when SDCP 2012 requires a minimum of 25%. Inadequate information is provided to assess solar access to the communal open space at the ground level. The distribution of communal open space is also inequitable;
 - (xiii) Section 4.2.4 Fine grain, architectural diversity and articulation as the proposed street frontage lengths to Jones Street (131m), Wattle Street (105m) and Fig Street (95m) are excessive. The proposed design principles are insufficiently detailed to overcome the non-compliance. The "articulation zone" extends to the Jones Street site boundary, encroaching into the cliff face. It is not clearly defined, there is no guidance as to what can occur within the articulation zone, how much of the zone can be filled and in part overlaps with the "Potential Jones Street Footpath Zone"; and
 - (xiv) Section 4.2.5.3 Development on busy roads and active frontages as no information on acoustic treatments has been provided in the Concept DA to inform the Competitive Design Process or Detailed Design DA.
- (E) The Concept DA does not satisfy section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the mix of proposed uses or the scale of the proposed development.
- (F) The proposed development is not in the public interest, contrary to clause 4.15(1)(e) of Environmental Planning and Assessment Act 1979 as:
- (i) The proposed development will have a detrimental impact on the heritage context of the site;
 - (ii) The proposed development will result in a 29.4% breach of the height development standard and the envelopes are not appropriate to the conditions of the site and its context;
 - (iii) The development will set an undesirable precedent and allow the use of a clause 4.6 to seek a substantial variation to a development standard, thereby eroding certainty in development standards and the development control process; and

- (iv) Submissions have been received which raise legitimate concerns about the proposed development.
- (G) The Concept DA provides insufficient information as detailed below:
- (i) Concept plans: The uses within the concept envelope are insufficiently described and should be denoted in plan, section and elevation (including the recreation centre and the childcare centre), all drawings should remove the dashed theoretical “LEP envelope” on the neighbouring building, and the Jones Street footpath requires more consideration. Deep soil areas should be increased and reference to 'constructed deep soil' should be deleted and areas that do not meet the ADG / DCP definition of deep soil zone should be removed. Flooding levels and vehicular and service driveways should be shown on the Concept Envelope Plans. Reference to LEP Envelope to Neighbouring Sites should be deleted;
 - (ii) Design Principles: The design principles provide insufficient certainty to overcome the inadequacies of the Concept Envelopes;
 - (iii) Indicative Reference scheme: The Indicative Reference Scheme should demonstrate compliance with the objectives and minimum requirements in the ADG. Compliance has not been demonstrated in relation to solar access and noise and non-compliance has been demonstrated in relation to common open space, deep soil, building separation and cross ventilation. The plans should include the Concept Envelope outline on all plans, sections and elevations. Reference to LEP Envelope to Neighbouring Sites should be deleted;
 - (iv) Through site link: The Concept Envelopes and principles depict the through site link as having a clear width of 9m, however the Design Excellence Strategy states that the through site link is to be 6m in width. The Design Excellence Strategy should be amended;
 - (v) Cliff: A structural assessment of the cliff is required; and
 - (vi) Land owner's consent: Landowner's consent is required from Transport for NSW to confirm that the through site link to the Wentworth Park Light Rail Station and associated tree removal can be achieved.

The Site and Surrounding Development

1. A site visit was carried out by the consultant planner on 29 October 2019.
2. The site is at 14-26 Wattle Street, Ultimo (Lot 200 DP 1224234). It has an irregular shape and an area of 12,125sqm. It has street frontages to Wattle Street (104.82m), Fig Street (97.84m) and Jones Street (149.70m).
3. From 1870 - 1888, the site was used as a quarry with the extracted sandstone used for development of Sydney's General Post Office. In 1906, the site was purchased by the City of Sydney and used as its depot. The remaining structures on the site (which are currently vacant) were constructed by Council.
4. The site lies on the western side of a ridge that forms the Pyrmont peninsula. The eastern edge of the site remains as an exposed sandstone rock face left from the former quarry use. The height difference from the main site ground level (RL 3.56-3.93) to Jones Street ranges from 11.5m to 14m. The actual exposed rock face is 6.5m to 8m high.
5. In late 2018, the Council announced the proposed sale of the site through an expression of interest process. The sale was subject to the purchaser demonstrating the ability deliver a 91 place childcare centre and an indoor recreation centre accommodating two multi-purpose courts. Landream Pyrmont Pty Ltd (the applicant) was awarded the purchase of the site.
6. Development and uses around the site comprise a mixture of attached heritage listed terrace houses, residential flat buildings, large former woolstores and warehouses and public open space as noted in the following description of nearby uses:
 - (a) **North:** Directly north of the site is Wentworth Park Light Rail Station with a row of trees and a metal paling fence along the common boundary. Adjoining the light rail station, a pedestrian link (comprising a lift and stair) connects the northern end of Jones Street to the Wentworth Park Light Rail Station and Wattle Street. High-density residential development and the Fish Markets are further north. A railway viaduct to the north-west of the site, crossing Wattle Street, is listed on the State Heritage Register (I800).
 - (b) **South:** Directly south of the site is Fig Street and a former woolstore at 28-48 Wattle Street, Ultimo ("Winchcombe Carson") which is a Local Heritage Item (I2059). The former woolstore is occupied by the Ultimo Trade Centre which accommodates a range of storage and light industrial activities. Fig Lane Park, which sits within the Ultimo Heritage Conservation Area (C69), is to the south-east of the site.
 - (c) **East:** To the east of the site is a group of one and two storey terrace houses at 286-318 Jones Street which is a Local Heritage Item (I1238). Harbour Mill Apartments, which includes remnants of the former Edwin Davies Flour Mill, at 280 Jones Street is to the north-east of the site. It is a Local Heritage Item (I1205). The Harbour Mill Apartments are 10 storeys to the north with a step down to 4 storeys to the south adjoining the terrace houses. The existing residential flat building was approved on 5 August 2013 (D/2011/1798) pursuant to former SLEP 2005. The development included the construction of a stair and lift link to the Wentworth Park Light Rail Station.

- (d) **West:** Directly west of the site is Wattle Street. Wentworth Park and the Wentworth Park Greyhounds racetrack are located further to the west.
7. The site is not a heritage item and is not located within a heritage conservation area but is in the vicinity of the heritage items described above.
8. Photos of the site and surrounds are provided at **Figures 1 to 12**. An extract from the Heritage Map to Sydney Local Environmental Plan 2012 (**SLEP 2012**) is provided at **Figure 13**.



Figure 1: Aerial image of site and surrounding area



Figure 2: The site - looking south towards the former Winchcombe Carson woolstore (heritage)



Figure 3: The site - Cliff face along the site's eastern boundary adjoining Jones Street



Figure 3: Site viewed from Wattle Street looking south



Figure 4: Site viewed from corner of Fig Street and Wattle Street looking east



Figure 5: Site viewed from Jones Street looking south (brick wall shows site boundary to Jones Street)



Figure 6: Jones Street terrace houses (286-318 Jones Street) (heritage)



Figure 7: Harbour Mill Apartments, 280 Jones Street (heritage)

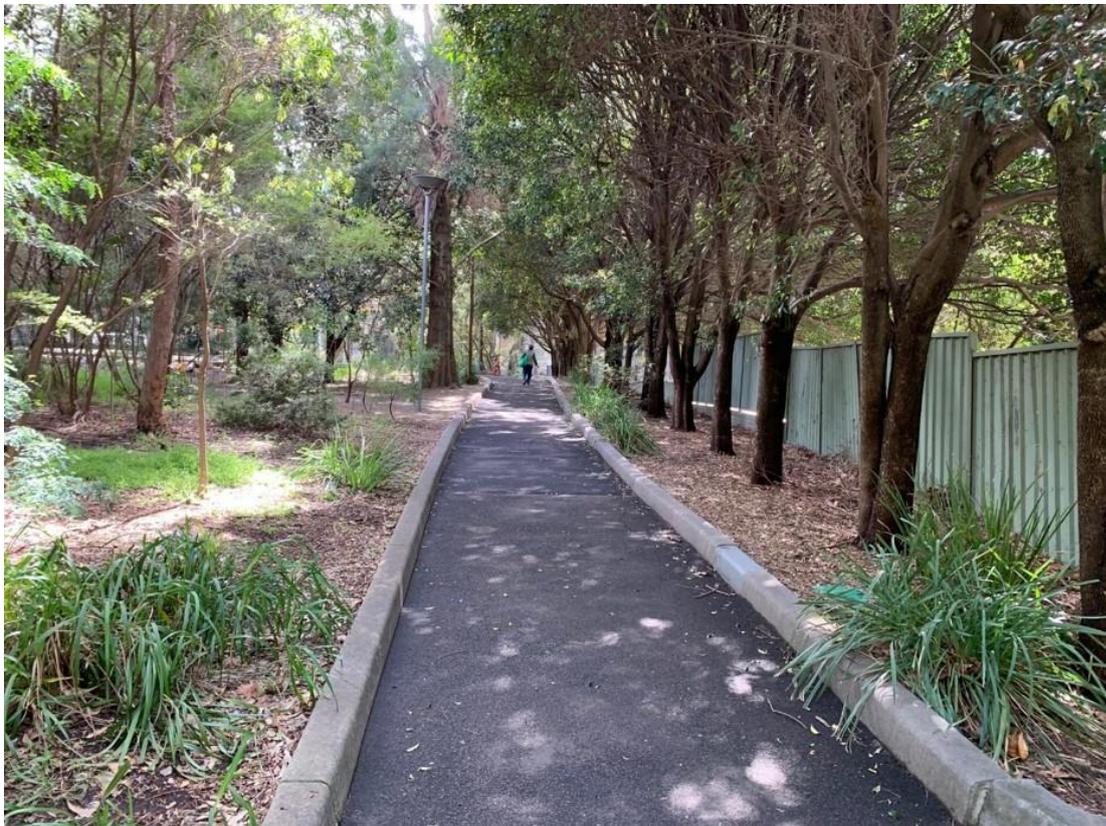


Figure 8: Pedestrian link from Wentworth Park Light Rail Station to Jones Street



Figure 9: Ultimo Trade Centre, 28-48 Wattle Street, Ultimo - Wattle/Fig Streets (heritage)



Figure 10: Ultimo Trade Centre, 28-48 Wattle Street, Ultimo - Jones Street (heritage)



Figure 11: Wentworth Park

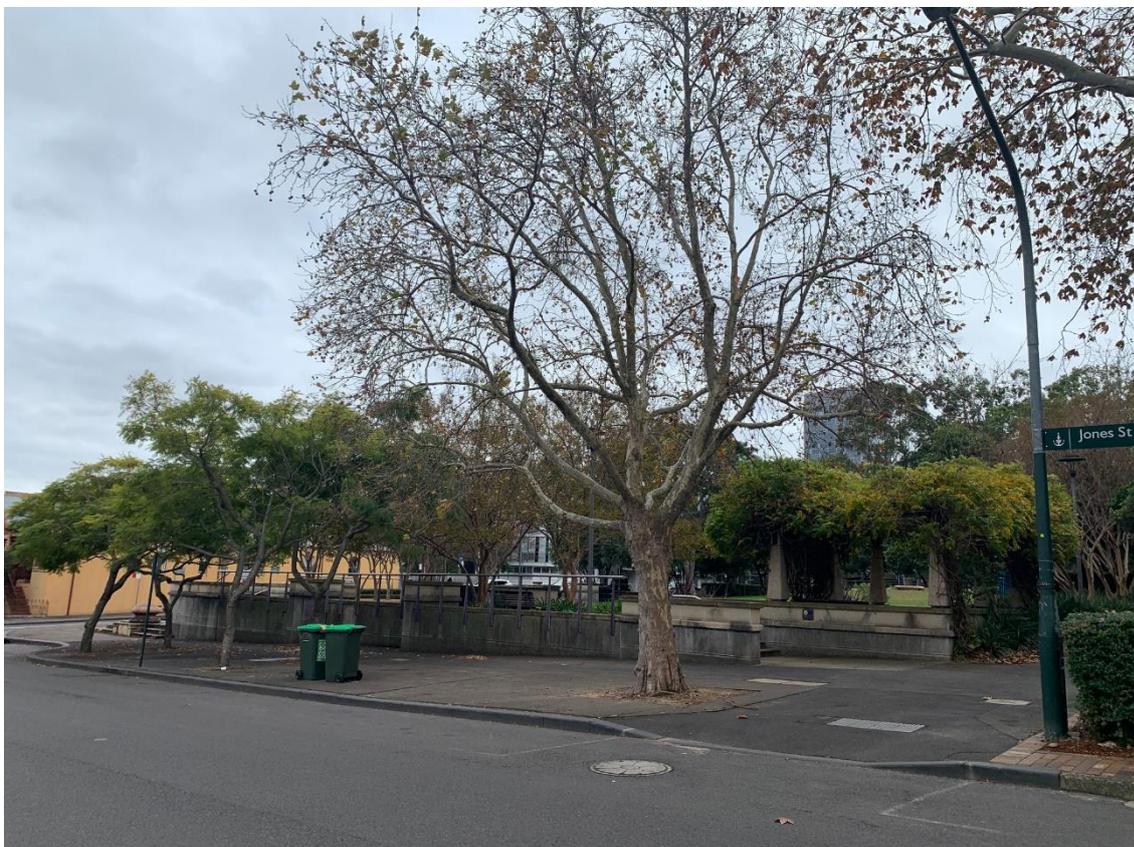


Figure 12: Fig Lane Park (located in the Ultimo Heritage Conservation Area)



Figure 13: Heritage Map, SLEP 2012 Sheet HER_008

Proposal

Overview

9. The Concept DA seeks approval for the following:
- (a) In principle approval for demolition of existing buildings and structures on the site;
 - (b) In principle approval for removal of 53 trees (including 35 x low/very low retention value, 14 x moderate retention value and 4 x high retention value); and
 - (c) Building envelopes and indicative future land uses for a mixed-use development comprising:
 - (i) Wattle/Mid Block: A building envelope on Wattle Street (RL 29.850) extending to the middle of the site (RL 30.450). Retail/non-residential uses are proposed at the ground level on Wattle Street, a child care centre is proposed at the base of the Mid Block and residential uses are proposed above;
 - (ii) Jones Block: A building envelope on Jones Street (RL 35.050) with lift overrun zones (RL 38.550) and a zone for pergolas and stairs (RL 37.150). A recreation centre is proposed at the base of the building with residential uses above;
 - (iii) Fig Block: A building envelope on Fig Street extending to Jones Street (RL 29.850/RL 34.050) accommodating commercial/non-residential uses;
 - (iv) Through site links: An east-west pedestrian connection is proposed between Jones Street and Wattle Street. A second north-south connection to the Wentworth Park Light Rail Station is shown on the Concept Plans but the applicant has advised that this connection is not part of the Concept DA as land owner's consent has not been provided by Rail Corp; and
 - (v) Car parking.

10. **Figures 14 to 20** show plans, elevations and envelope drawings. The complete set of Concept Envelope Plans and the Indicative Reference Scheme are provided at **Attachments A and B** (respectively).

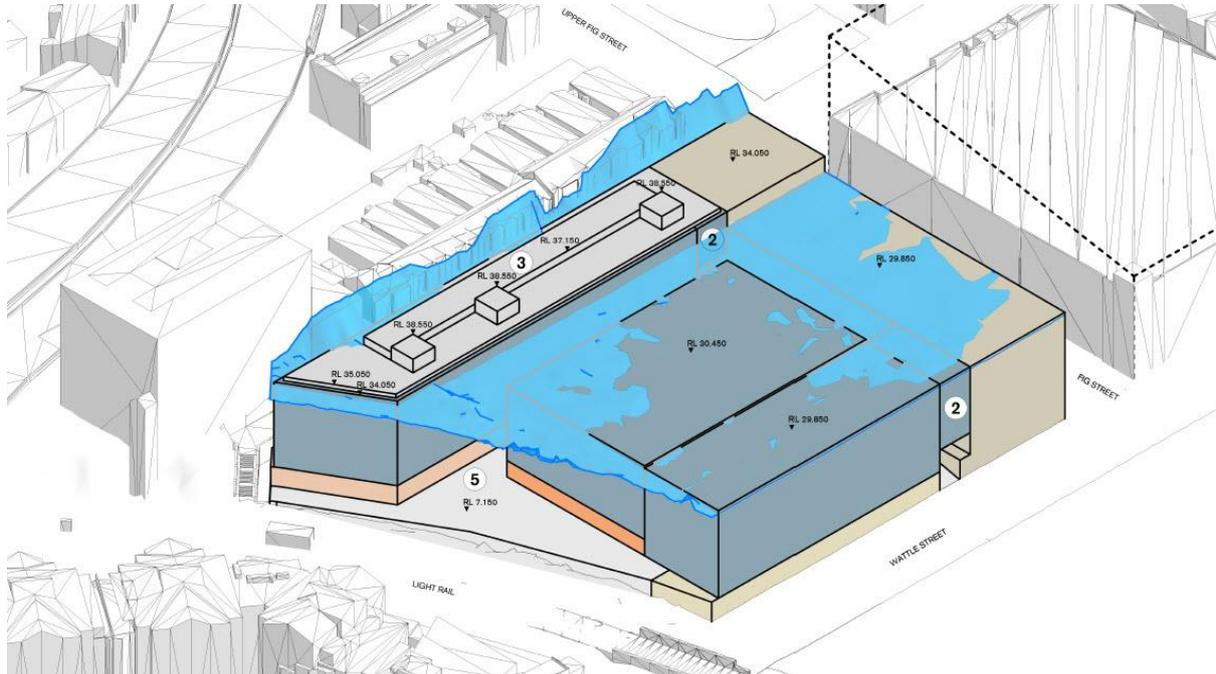


Figure 14: Concept Envelope 3d (WEST)

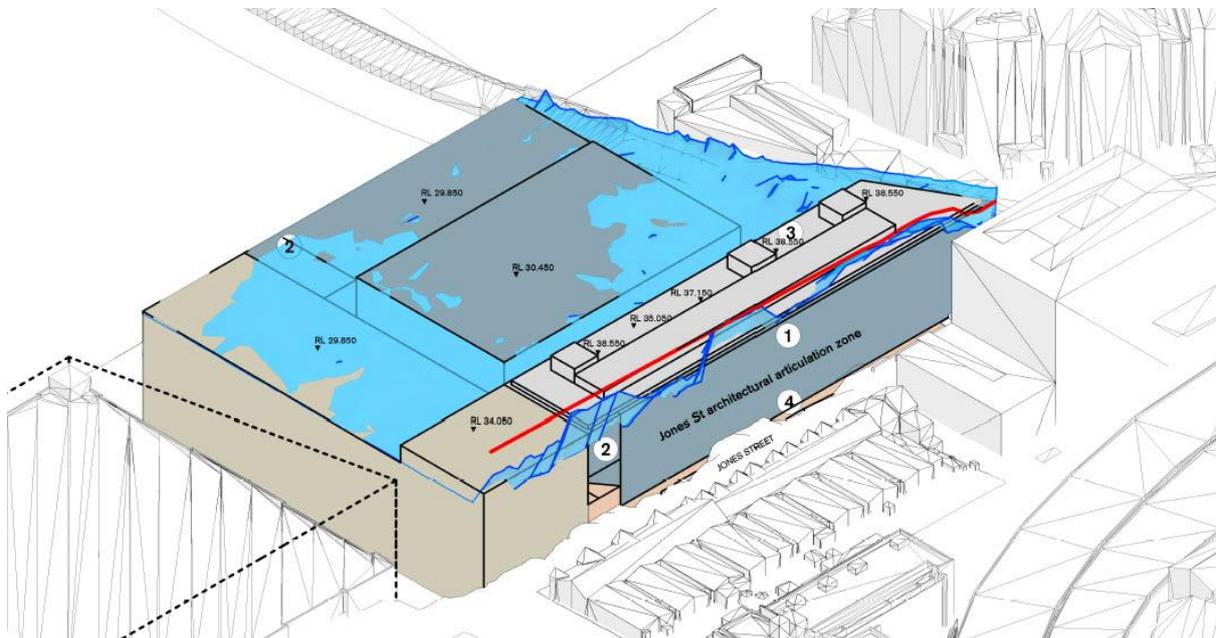
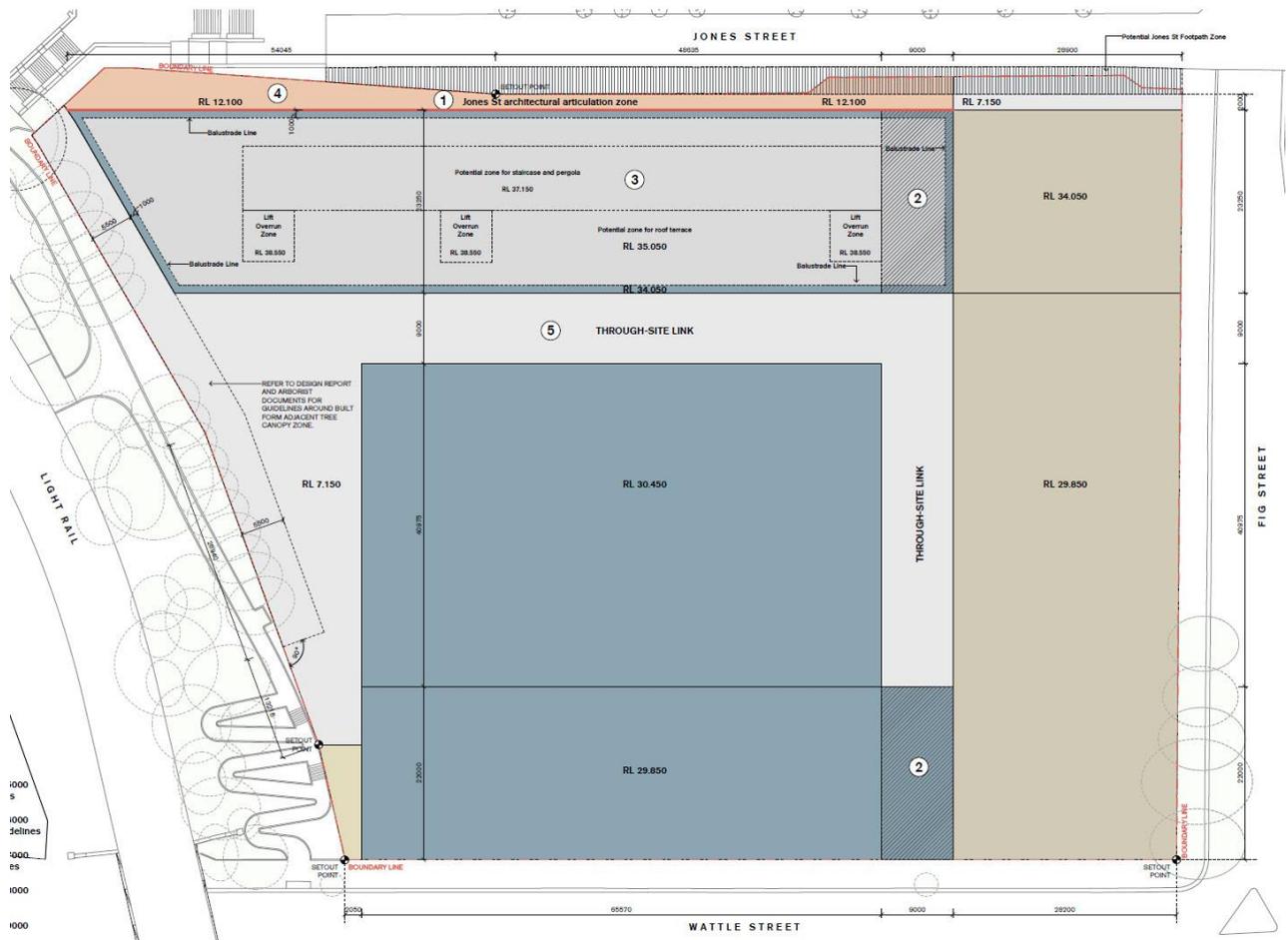


Figure 15: Concept Envelope 3d (EAST)



North

Figure 16: Concept Envelope Plan

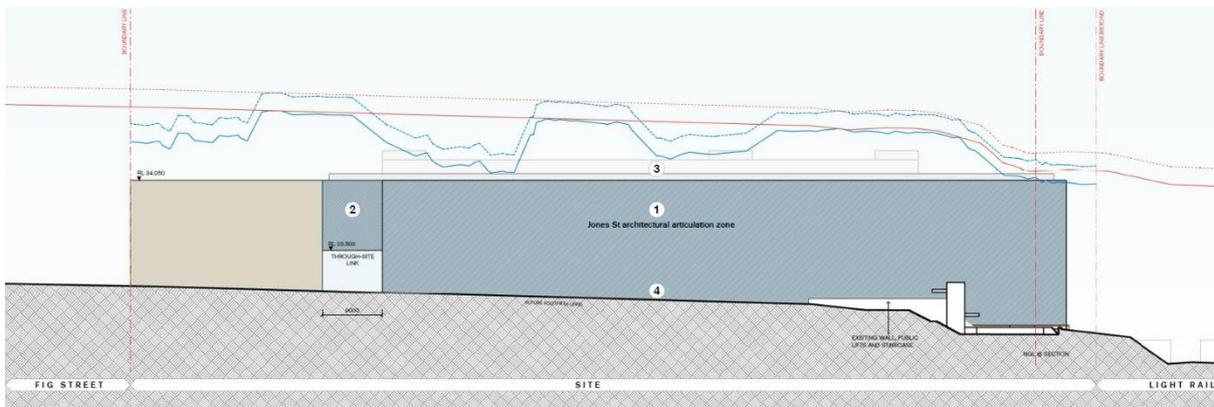


Figure 17: Concept Envelope Elevation - Jones Street (east)

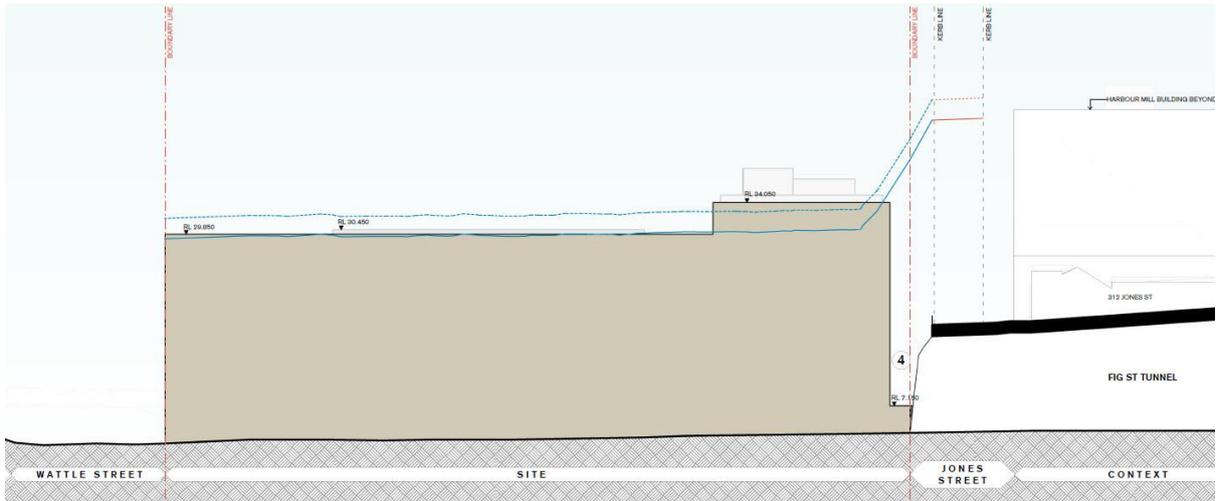


Figure 18: Concept Envelope Elevation - Fig Street (south)

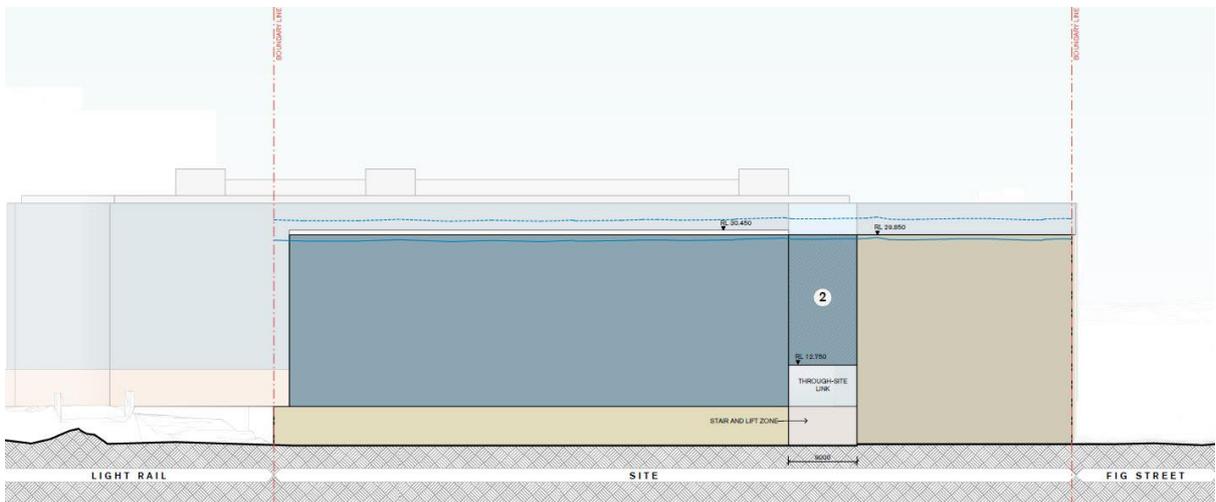


Figure 19: Concept Envelope Elevation - Wattle Street (west)

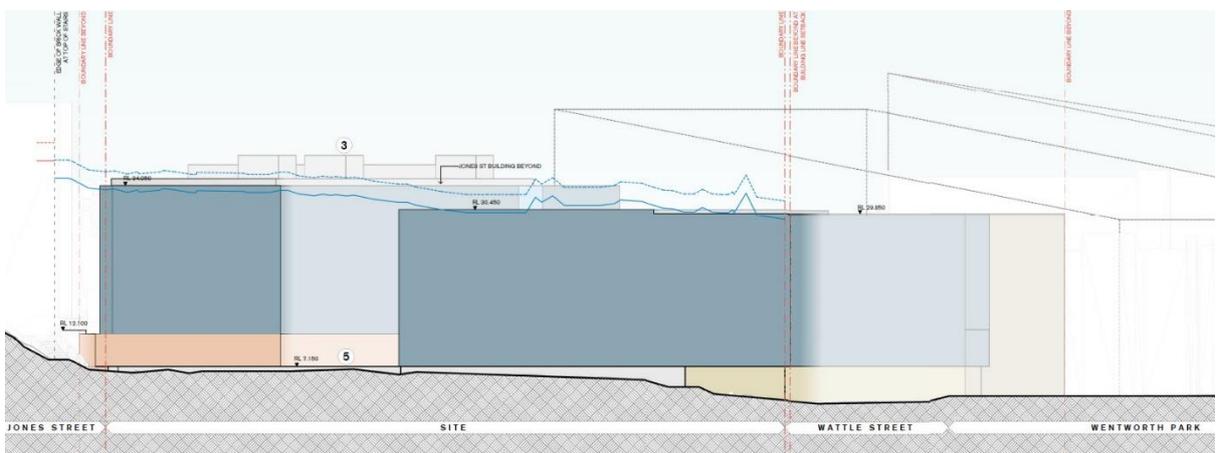


Figure 20: Concept Envelope Elevation - Light Rail (north)

History Relevant to the Development Application

11. A chronology of key events relevant to the Concept DA follows:

- (a) **15 April 2019:** The applicant attended a pre-DA meeting with Council officers and presented three massing options for the site (PDA/2019/49).
- (b) **14 June 2019:** A pre-DA letter of advice from Council was sent to the applicant confirming the approval pathway and noting the following key issues of concern:
 - (i) **Height/massing:** The three massing options are not supported. Compliance with the 27m height standard in SLEP 2012 and 7 storeys control in SDCP 2012 should be achieved. Storeys should be measured from the base of the cliff resulting in a 3-4 storey presentation to Jones Street;
 - (ii) **Jones Street:** Scale and massing should respond to the existing built form around the site (in particular heritage items including the terrace houses on Jones Street). Physical breaks and articulation zones required. Further design consideration required adjoining 280 Jones Street;
 - (iii) **Wattle Street:** Comply with 7 storeys control in SDCP 2012. Address residential amenity issues along Wattle Street;
 - (iv) **FSR:** Maximum FSR may not be achievable given mix of proposed uses;
 - (v) **Overshadowing:** Minimise overshadowing of Fig Lane Park and Wentworth Park and illustrate impacts beyond 9am-3pm;
 - (vi) **Through site link:** Provide high quality, high amenity, activated, safe through site links, including integration of child care and recreation centre. Express industrial character of Pymont;
 - (vii) **Cliff and site history:** Interpret site's history, facilitate views to cliff, retain as a habitat features. Provide meaningful interpretation of the weighbridge;
 - (viii) **Communal open space:** Must demonstrate appropriate levels of solar access and be equitably distributed and directly accessible for all residents. Envelopes must include lift access to roof terraces. Child care centre open space must be in addition to communal open space;
 - (ix) **Landscaping:** Provide meaningful and functional deep soil zones, free of structures. Provide 15% tree canopy within 10 years;
 - (x) **Contamination:** Fully address contamination in Concept DA;
 - (xi) **Flooding:** Fully address flood levels in the Concept DA;
 - (xii) **Transport:** Encourage sustainable and active transport. Address vehicular access, provide pedestrian access to light rail, reduce parking basement to provide opportunities for deep soil; and
 - (xiii) **Waste:** Address waste management.

- (c) **21 June 2019:** The Concept DA was lodged (to meet the applicant's contractual obligations). The applicant requested that the Concept DA not be considered or exhibited until they had an opportunity to revise the scheme based on Council's pre-DA letter of advice.
- (d) **3 September 2019:** The applicant submitted a revised Concept DA.
- (e) **20 September to 23 October 2019:** The Concept DA was notified/exhibited.
- (f) **12 December 2019:** The City's Design Advisory Panel (**DAP**) reviewed the Concept DA and advised that:

This proposal does not appear to reflect the City's strategic directions and commitment to design excellence.

- *The Panel is in agreement with the external planner's thorough assessment and issues highlighted.*
 - *Panel recommended a review of the massing and substantial reduction in height, the proposal should not create additional overshadowing onto Wentworth Park. The height calculation should include lift overrun and any other roof structures.*
 - *The through-site-link should be open to the sky with considerations to the amenity of adjoining apartments.*
 - *The apartments should comply with the ADG's provision for cross ventilation, solar access, privacy and building separation. The Panel is particularly concerned about the subterranean residential apartments.*
 - *The lack of useful and accessible communal open space and deep soil planting is unacceptable.*
 - *The Panel noted that whilst the intention to expose the cliff face is welcomed, the proposal does not appear to have adequately expressed it in a meaningful way. The Panel cited 30 The Bond as a precedent where the atrium rock face is a celebrated feature, naturally lit and contributes to the environmental amenity of the building.*
 - *The proposal's interface with the terrace houses need to be better considered in the redesign, and lower height to this street is recommended.*
- (g) **24 January 2020:** Council issued a letter to the applicant stating that the following additional information and/or amendments were required:
- (i) **Concept DA plans (building envelopes):** The Concept Envelope Plans provided inadequate information and should be amended to show distribution of uses, outline of buildings, reduced height to comply with SLEP 2012, +10% design excellence height (separately noted above the proposed envelopes), allowance for plant, lift overruns, roof features and roof terrace structures, full height building breaks, flood planning levels, proposed Jones Street footpath, shadow studies for 21 June;

- (ii) **Heritage:** Council's Senior Heritage Specialist requested an updated Archaeological Assessment, Structural Assessment and Design Guidelines for the cliff, a Heritage Interpretation Concept Strategy for the existing weighbridge, a reduction in the height of the Jones Block (to 3-4 storeys) and design guidelines for the treatment of the Jones Street elevation;
 - (iii) **Residential amenity/SEPP 65:** The Reference Design required amendment to improve the amenity of apartments in the Jones Block, cross ventilation, solar access, building separation, communal open space compliance and deep soil area compliance;
 - (iv) **Design Excellence:** Council's Design Excellence team requested amendments to the Design Excellence Strategy, compliance with the height standard with any additional height pursued through a competitive design process, assessment of the environmental impacts (overshadowing, views, visual impact etc) and compliance based on a building envelope that includes up to 10% additional height;
 - (v) **Traffic/Access:** Request that the applicant contact RMS in relation to access from Fig and Wattle Streets, demonstration that the proposal is capable of accommodating adequate loading facilities and suitable locations for the car park/service entry;
 - (vi) **Landscape Concept:** Request that the applicant prepare an amended Landscape Concept;
 - (vii) **DAP:** Issues raised by the DAP were noted in the letter (see above); and
 - (viii) **Land owner's consent:** The proposed through site link connection to the Wentworth Park Light Rail Station relies on the removal of trees outside of the Concept DA site. Landowner's consent should be obtained from Transport for NSW to confirm that this tree removal can be achieved. Transport for NSW have contacted the City requesting that they be required to provide owner's consent.
- (h) **12 February 2020:** The applicant, their representatives, Council officers and Council's consultant planner met to discuss Council's letter of 24 January 2020.
- (i) **23 April 2020:** The applicant responded to Council's letter of 24 January 2020 providing additional and amended information that in part but not fully addressed Council's requests. Key issues addressed that were not resolved are noted below:
- (i) **Concept DA plans (building envelopes):** The Concept DA plans were amended to show the general distribution of land use (although limited information is still provided); an outline for the Jones Block, Mid Block, Wattle Block and Fig Block; an allowance for plant, lift overruns, roof features and roof terrace structures; plans showing the location of the +10% design excellence height; a "potential" footpath to Jones Street; design principles for Jones Street, the through site links, roof features, and the cliff and additional shadow studies. A further flood report was also submitted. The amended Concept Envelope Plans do not show:
 - (i) Clear information on the distribution of land uses;

- (ii) A reduction in height to achieve compliance with the SLEP 2012 height standard or 3-4 storeys on Jones Street;
 - (iii) Full height building breaks to reduce the excessive building lengths; nor
 - (iv) Flood planning levels.
- (ii) **Heritage:** The amended information included a further statement on heritage and a heritage peer review. The following information/ amendments requested by Council's Senior Heritage Specialist was not submitted and the applicant proposes to complete the work at point (i) to (iv) at the Design Competition phase:
- (i) Updated Archaeological Assessment;
 - (ii) Structural Assessment of the cliff (although a structural statement is provided explaining that further work is required);
 - (iii) Design Guidelines for treatment of the cliff;
 - (iv) Heritage Interpretation Concept Strategy for the weighbridge; and
 - (v) Reduction in the Jones Block height
 - (vi) Heritage design guidelines for the treatment of the Jones Street elevation (although Jones Street design principles are included in the Concept DA plans).
- (iii) **Residential amenity/SEPP 65:** The reference design was amended to address concerns in relation to the Jones Block, cross ventilation, building separation and communal open space (including a new residential roof terrace on the Jones Block). Landscape treatments are proposed to offset the shortfall in deep soil including planting on structures and canopy tree replacement. Room layouts are shown to assist with the solar access assessment (which is below the solar and daylight access design criteria in the ADG).
- (iv) **Design excellence:** An amended Design Excellence Strategy was submitted.
- (v) **Traffic/access:** A Traffic and Transport Statement was submitted addressing Council's concerns, but the Concept Envelope Plans do not show the location of proposed vehicular entries to the car park (from Wattle Street) or loading dock (from Fig Street).
- (vi) **Landscape Concept:** A Landscape Concept Plan was submitted but the concerns remain in relation to deep soil, communal open space and treatment of the cliff.
- (vii) **DAP:** The amended Concept DA plans do not resolve the concerns of the DAP in relation to massing, height, overshadowing of Wentworth Park, residential amenity, deep soil and the relationship to the Jones Street heritage listed terrace houses.
12. The amended Concept Envelope, Indicative Reference Scheme and additional information are the subject of the assessment in this report.

Economic/Social/Environmental Impacts

13. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

Environmental Planning Instruments and DCPs.

State Environmental Planning Policy No 55 - Remediation of Land

14. 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.
15. The Concept DA is accompanied by a Remedial Action Plan (**RAP**), prepared by JBS&G which states the following conclusions and recommendations:
- *The reported contaminant concentrations in deep groundwater were generally lower and/or consistent with that reported in previous investigations;*
 - *The proposed redevelopment encompasses a fully tanked basement design which will act to limit the ingress of impacted groundwater to the basement structure;*
 - *Any groundwater extracted during redevelopment works will require onsite treatment;*
 - *The assessment of potential ground gas has indicated that there is a 'low risk' from hazardous gas migration from the underlying fill soils;*
 - *Unacceptable soil gas related risks for future users of the site have been shown to be highly unlikely; and*
 - *Overall, it is considered that the proposed actions outlined in the RAP conform with the relevant requirements, law policies and guidelines endorsed by NSW EPA. Subject to the successful implementation of the measures and recommendations made in the RAP, it is concluded that the site can be made suitable for the intended uses and that the risks posed by contamination can be managed in such a way as to be adequately protective of human health and the environment.*
16. An Interim Advice prepared by Zoic Environmental Pty Ltd (a NSW accredited auditor) was also provided noting that the Auditor considers that the RAP is conceptually appropriate for the known contamination and that the site is capable of being made suitable if the RAP is implemented.
17. Council's Environmental Health Specialist has recommended conditions stating that appropriate documentation is to be submitted as part of any subsequent Detailed Design DA to ensure that the site is made suitable for the proposed uses.

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

18. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority must take into consideration a number of matters relating to design quality, including nine design quality principles, which are considered below:

(a) Principle 1: Context and Neighbourhood Character

The site context and neighbourhood includes one and two storey terrace houses (heritage) to the east on Jones Street, the taller stepped Harbour Mill Apartments to the north-east also on Jones Street (a heritage item with the existing building approved pursuant to a 33m and 12m height standard under Sydney LEP 2005), Wentworth Park and Fig Lane Park to the west and south-east, the Wentworth Park Light Rail Station and pedestrian connection to the north and heritage listed former woolstores to the south (occupied by non-residential uses).

With a height of up to 34.95m, the Concept Envelope contravenes the 27m SLEP 2012 height standard (+ 29.4%). As demonstrated in the Indicative Reference Scheme, the proposed height in storeys above natural ground level is generally 8 storeys, with the Jones Block closer in scale to 9 storeys due to the recreation centre's high floor to ceiling height (11.1m). This exceeds the 7 storey SDCP 2012 height in storeys control.

The Concept DA documentation depicts neighbouring development to the south (at 45 Jones Street and over the former Winchcombe Carson woolstore at 28-48 Wattle Street) as having a future/theoretical development envelope that is unrealistic and does not take into consideration differing height standards, the topography of the land, the suite of relevant standards/controls, heritage constraints or approved development. As such, the depicted "future context" cannot not be relied upon. Instead, the assessment of context and neighbourhood character should be based on the existing buildings and uses in the vicinity of the site and in the case of 45 Jones Street, the approved development (see Issues Section of this report).

It is considered that compliance with SLEP 2012 height standard and SDCP 2012 storeys control (as well as other envelope refinements discussed in the Issues Section of this report) would assist in achieving an appropriate relationship with the site context and neighbourhood character.

While compliance with the Design Principles included in the Concept Envelope Plans may promote some architectural expression, it is considered that the proposed envelope does not establish sufficient parameters to achieve a suitable spatial relationship with the site context and neighbourhood character.

(b) Principle 2: Built Form and Scale

As noted above, the scale and consequent built form of the Concept Envelope is not appropriate and the proposed Design Principles are not sufficient to overcome this concern. Compliance with height standard and storeys controls is reasonable.

To maximise the flexibility derived from the competitive design process, the Concept Envelope Plans show a 'loose fit' building envelope that shows a single consolidated envelope for the Wattle, Mid and Fig Blocks (with an Indicative Building Outline only). In this instance, this strategy is not appropriate as the applicant has not demonstrated that the environmental impacts of the envelope or the future residential amenity on the site is reasonable.

In particular, the height and massing of the buildings addressing Jones Street should better respond to the scale of the surrounding development. A perceived height of 3 storeys plus a setback fourth storey above the Jones Street footpath level (along with amendments to the building length) is a contextually appropriate scale opposite the heritage listed terrace house. This would require the deletion of one storey to the Jones Block. As the land drops away to the north, the building will be perceived as taller, which will be appropriate given the relationship with the Harbour Mill Apartments.

It is considered that the Concept Envelope Plans provide inadequate certainty in relation to scale and form for the Competitive Design Process and Detailed Design DA.

(c) Principle 3: Density

It is noted that gross floor area (**GFA**) and floor space ratio (**FSR**) are not approved as part of any consent granted for a Concept DA. Notwithstanding, the Indicative Reference Scheme achieves a FSR of 3.68:1 which complies with the SLEP 2012 FSR standard of 4:1. However:

- (i) The FSR of the Indicative Reference Scheme does not include the additional GFA that would be realised on the Wattle Block, Mid Block and Fig Block if the applicant is awarded up to 10% additional height (as proposed in the Design Excellence Strategy). Any shortfall in GFA is likely to be fully realised in the Detailed Design DA; and
- (ii) In this instance, reliance on FSR compliance as a measure of appropriate density has limited utility as the proposed recreation centre has an 11.1m floor to floor height which equates to 3.5 residential storeys. Most of the recreation centre volume is above ground, therefore it adds to the bulk and scale of development on the site.

(d) Principle 4: Sustainability

The energy efficiency and sustainability of the design would form part of the future Detailed Design DA.

(e) Principle 5: Landscape

The Concept DA includes Landscape Design Principles, but provides inadequate deep soil and communal open space (and does not comply with the relevant SDCP 2012 controls and ADG design criteria). Landscape design would be further addressed at the detailed design stage, but it is considered that the Concept Envelope Plans provide inadequate certainty for the Competitive Design Process and Detailed Design DA and the non-compliances with landscape controls are unlikely to be resolved.

(f) Principle 6: Amenity

The Concept DA seeks consent for an envelope and indicative land uses, with the amenity for future residents to be assessed as part of any subsequent Detailed Design DA. However, Council's Urban Designer has raised concerns that the proposed envelope may not be capable of accommodating a building that achieves the relevant ADG residential amenity objectives (including concerns in relation to solar access/daylight, natural cross ventilation, noise, building separation/privacy) (see later).

(g) Principle 7: Safety

The Concept DA seeks consent for a building envelope, indicative land uses and through site links, with detailed design to be the subject of a competitive design process prior to the lodgement of a Detailed Design DA. Safety would be considered as part of the Detailed Design DA assessment. In particular, the ability to provide the north-south pedestrian link to the Wentworth Park Light Rail Station must be resolved (noting that land owner's consent has not been provided by Rail Corp). The Concept DA has not demonstrated that the though site links will be activated.

(h) Principle 8: Housing Diversity and Social Interaction

The Indicative Reference Scheme proposes the following dwelling mix which is consistent with SDCP 2012 s. 4.2.3.12:

- (i) 37 x studio/1 bedroom = 15.9% (SDCP 2012 control is maximum of 40%);
- (ii) 143 x 2 bedroom = 61.6% (SDCP 2012 range is 40-75%); and
- (iii) 52 x 3 bedroom = 22.4% (SDCP 2012 range is 10-100%).

Any consent for the Concept DA would not approve the dwelling mix which would be subject to change as part of the detailed design process.

Council's Landscape Officer has raised concerns in relation quantity, quality and unequal distribution of communal open space (see later). It is considered that these communal open space deficiencies would reduce the potential for social interaction between residents.

(i) Principle 9: Aesthetics

The Concept DA seeks consent for an envelope and indicative land uses only, with the detailed design and aesthetics of the building to be the subject of a competitive design process prior to the lodgement of a Detailed Design DA.

19. The development is considered unacceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). A detailed assessment of the proposal of against the ADG is provided below in **Table 1**.

Table 1 – Compliance with Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Able to comply	The Concept Envelope Plans propose building envelopes with a depth of >12-18m and more certainty in relation to building depth is desirable. Notwithstanding, this could be resolved as part of the Detailed Design DA.
2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): 12m between habitable rooms / balconies 9m between habitable and non-habitable rooms 6m between non-habitable rooms	Yes	Building separation up four storeys complies with the ADG.
Five to eight storeys (approximately 25 metres): <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	Partial compliance	<p>Internally</p> <p>The Indicative Reference Scheme does not increase the separation distance between the Wattle and Mid Blocks above Level 4 for habitable rooms/ balconies, instead placing a privacy screen on the windows. This may address privacy but does not address other relevant objectives of the separation distances such as scale, massing, residential amenity or landscaping.</p> <p>Given that this breach occurs to the north of the ground level common open space, it may impact sunlight to that space. (This is unknown as solar access to this space has not been demonstrated through shadow diagrams).</p>

2F Building Separation	Compliance	Comment
		<p>The separation breach will also reduce outlook and openness, from both apartments and the common open space. Compliance with the minimum separation distances would achieve a better outcome.</p> <p>Refer to Issues Section of this report.</p> <p>Externally</p> <p>More information is required to assess the building separation to the Harbour Mill Apartments.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	<p>Communal open space: 21% (2,518sqm).</p> <p>Refer to Issues Section of this report.</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).	More information required	<p>More information is required to assess solar access to the proposed communal open space. Concern is raised in relation to solar access to the ground level communal open space between the Wattle and Mid Blocks.</p> <p>Refer to Issues Section of this report.</p>

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	No	<p>5% (617sqm)</p> <p>Refer to Issues Section of this report.</p>

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

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	Yes	See 2F above
Five to eight storeys (25 metres): <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	Partial compliance	See 2F above
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The Indicative Reference Scheme separates habitable rooms from circulation space.

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.	No	Applicant: 63.8% (148 of 232 apartments) Council's Urban Designer: Insufficient documentation provided. Refer to Issues Section of this report.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	Applicant: 0% Council's Urban Designer: Insufficient documentation provided. Refer to Issues Section of this report.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	Able to comply

4B Natural Ventilation	Compliance	Comment
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No	Applicant: 66.8% (155 of 232 apartments) Council's Urban Designer: 37.5% - 43% (87-100 of 232 apartments) Refer to Issues Section of this report.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Able to comply	The depth of cross over apartments could be resolved as part of the Detailed Design DA.

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

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Able to comply
Non-habitable rooms: 2.4m	Yes	Able to comply
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	Able to comply
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Yes	Able to comply

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² 	Yes	Able to comply

4D Apartment Size and Layout	Compliance	Comment
<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>		
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	Yes	Able to comply
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p>	Yes	Able to comply
<p>8m maximum depth for open plan layouts.</p>	Yes	Able to comply
<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	Able to comply
<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: 4m 	Yes	Able to comply
<p>4m minimum width for cross over and cross through apartments.</p>	Yes	Able to comply

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	Able to comply
<p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m² and a minimum depth of 3m.</p>	Yes	Able to comply

4F Common Circulation and Spaces	Compliance	Comment
<p>The maximum number of apartments off a circulation core on a single level is eight (8).</p>	Partial compliance	Generally complies except that 10 apartments are accessed from Level 7 of the Jones Block. Daylight access is provided to all corridors.
<p>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.</p>	Yes	Able to comply
<p>Daylight and natural ventilation are provided to all common circulation spaces.</p>	Yes	Able to comply

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>	Yes	Able to comply

4J Noise and Pollution	Compliance	Comment
<p>Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?</p>	No	<p>While the Fig Block (commercial) will form a barrier to the Fig Street source of noise, other strategies for dealing with the issue of noise through careful siting and layout of buildings have not been addressed. Further studies have not been provided that show which buildings / facades are impacted by noise, and suggested strategies are not contemplated or suggested for inclusion in the design excellence brief. Furthermore, the cross ventilation diagrams and figures do not exclude noise affected apartments.</p> <p>Refer to Issues Section of this report.</p>

State Environmental Planning Policy (Infrastructure) 2007

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

Development likely to affect an electricity transmission or distribution network - Clause 45 - Determination of development applications—other development

21. The application is subject to Clause 45 of the SEPP. In accordance with the clause, the Concept DA was referred to Energy Australia for a period of 21 days and no objection was raised.

Clause 86 - Excavation in, above, below or adjacent to rail corridors

22. The Concept DA is subject to Clause 86 of the SEPP as the site is located within 25m of the Inner West Light Rail (IWLR) Corridor and includes excavation deeper than 2m. An assessment of the potential implications to the IWLR during the construction and operation of the subject development could be completed as part of the Detailed Design DA.

Clause 101 - Development with frontage to classified road and Clause 104 - Traffic-generating development

23. The Concept DA is subject to Clauses 101 and 104 of the SEPP as the site has frontage to Wattle and Fig Streets which are State Roads and the Concept DA proposes a development of a size and capacity specified at Schedule 3 of the SEPP.
24. The Concept DA was referred to Roads and Maritime Services (**RMS**) which (by letter dated 19 November 2019) provided concurrence for the proposed works on Wattle and Fig Streets under Section 138 of the Roads Act 1993, subject to Council's approval and conditions of consent.

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

25. The Concept DA is subject to Clause 102 of the SEPP as the average daily traffic volume of Wattle Street and Fig Street is more than 20,000 vehicles. The application is considered to satisfy Clause 102 of the Infrastructure SEPP subject to conditions of consent and compliance with the submitted Environmental Noise Impact Assessment by Wood & Grieve Engineers (dated 29 August 2019). Concern, however, is raised in relation to the impact of the required acoustic treatments on natural cross ventilation.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

26. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the deemed SEPP.
27. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
- (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.

28. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores and Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the deemed SEPP do not apply. The Concept DA is consistent with the controls contained with the deemed SEPP.

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

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

State Environmental Planning Policy (Educational Establishments and Child Care Centres) 2017

Clauses 23 and 25 of the SEPP incorporate provisions for centre based child care facilities which have been considered as part of the Concept DA.

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

30. The Vegetation SEPP regulates the clearing of vegetation that is below the Biodiversity Offset Scheme threshold referred to in the Biodiversity Conservation Act 2016. As the vegetation on the site has not been identified in accordance with Part 3 of the Vegetation SEPP, the Policy does not apply. In any event, Council's Tree Management Officer has advised that the proposed in principle tree removal is satisfactory, subject to conditions of consent.

Sydney Local Environmental Plan 2012 (SLEP 2012)

31. The site is located within the Zone B4 - Mixed Use. The proposed uses are defined as *residential accommodation, commercial premises, recreation facilities (indoor) and centre-based child care facilities* which are developments that may be carried out with development consent.
32. The relevant matters to be considered under SLEP 2012 for the proposed development are outlined in **Table 2**.

Table 2 – Compliance with SLEP 2012

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 27m is permitted whereas a height of up to 34.95m is proposed (a departure of up to 29.4%). Refer to Issues Section of this report.
4.4 Floor Space Ratio	Yes	A maximum FSR of 4:1 is permitted. The Indicative Reference Scheme has a FSR of 3.68:1 (not including additional GFA accommodated in the design excellence bonus height volume).

Development Control	Compliance	Comment
		It is noted that no GFA or FSR would be approved as part of any consent granted for the Concept DA.
4.6 Exceptions to development standards	See Issues Section	<p>The Concept DA is accompanied by a clause 4.6 Written Request in relation to the proposed contravention of the height standard. The applicant's written request has not demonstrated:</p> <ul style="list-style-type: none"> • 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 <p>Refer to Issues Section of this report</p>
5.9 Preservation of trees or vegetation	Yes	In principle approval for removal of 53 trees is proposed (including 35 x low/very low retention value, 14 x moderate retention value and 4 x high retention value). Council's Tree Officer has no objection to the Concept DA subject to the imposition of conditions.
5.10 Heritage conservation	No	<p>The site does not contain a heritage item and is not within a Heritage Conservation Area. However, it is in the vicinity of several heritage items. Council's Senior Heritage Specialist has reviewed the proposal and has advised that the heritage impacts are not acceptable.</p> <p>Refer to Issues Section of this report.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.21 Design excellence	No	Up to 10% additional height or FSR may be approved if a competitive design process has been undertaken and it is considered that the detailed design scheme exhibits design excellence.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		As detailed in the Issues Section of this report, it is considered that the Concept DA does not exhibit design excellence. In particular the Concept DA has not adequately addressed the impacts of the proposed development on the public domain, distribution of land uses, heritage issues and streetscape, and bulk.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Able to comply	<p>The Indicative Reference Scheme proposes 2 basement levels. Car parking numbers for residential, commercial, recreation and child care uses can only be assessed as part of a future Detailed Design DA.</p> <p>Concept consents are typically subject to a condition advising that no consent is granted for car parking numbers or the number of basement levels.</p>
7.13 Contribution for purpose of affordable housing	Able to comply	A condition of consent would be imposed on the Detailed Design DA requiring an affordable housing contribution.
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing Class 5 Acid Sulphate Soils and is approximately 15 metres from Class 2 Acid Sulphate Soils in Wentworth Park.</p> <p>Council's Environmental Health Specialist has no objection to the Concept DA subject to conditions.</p>
7.15 Flood planning	No	<p>The site is identified by Council as being flood prone. No flooding levels are shown on the Concept Envelope Plans providing inadequate certainty for the Competitive Design Process or Detailed Design DA.</p> <p>Refer to Issues Section of this report.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.20 Development requiring preparation of a development control plan	No	<p>As the site area is greater than 5,000sqm and the height of the proposed envelope exceeds 25 metres, the provisions of SLEP 2012 clause 7.20 apply and the preparation of a site specific DCP is required.</p> <p>Pursuant to Section 4.23 of the EP&A Act, the lodgement of a Concept DA would fulfill the requirement to prepare a DCP.</p> <p>It is considered that the Concept DA does not adequately address the matters to be provided in a site specific DCP as prescribed by this clause, in particular the Concept DA has not adequately addressed impacts on the public domain; distribution of land uses; heritage issues and streetscape; bulk, massing and modulation of buildings; street frontage heights; vehicular and service access; improvements to the public domain and landscape design.</p> <p>Refer to Issues Section of this report.</p>

Sydney Development Control Plan 2012 (SDCP 2012)

33. The relevant matters to be considered under SDCP 2012 for the Concept DA are outlined below in **Table 3**.

Table 3 – Compliance with SDCP 2012

2. Locality Statements	Compliance	Comment
2.12.2 Pyrmont	Partial compliance	<p>Consistent with the character statement, the Concept Envelope aligns with the adjoining streets, however the Concept DA does not:</p> <ul style="list-style-type: none"> • Respond to the detail and character of existing historic buildings • Provide a high quality public domain along Jones Street

2. Locality Statements	Compliance	Comment
		<ul style="list-style-type: none"> • Provide easily identifiable building entrances. • Show the location of driveway entries • Respond to and complement heritage items • Maintain views and vistas from the public domain. <p>Refer to Issues Section of this report.</p>

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	No	<p>The Concept DA does not provide appropriate public domain improvements. In particular, inadequate public domain improvements are proposed to Jones Street, extensive civil works are required to achieve the proposed Jones Street tree planting and the cantilevered footway.</p> <p>Refer to Issues Section of this report.</p>
3.2 Defining the Public Domain	No	<p>The Concept DA will detract from the public domain by obstructing public views from Fig Lane Park and by proposing a scale of development that does not relate to neighbouring buildings in Jones Street.</p> <p>Refer to Issues Section of this report.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>The applicant intends to undertake a competitive design process and has provided a Design Excellence Strategy.</p>
3.5 Urban Ecology	Partial compliance	<p>The Concept DA does not retain the existing cliff face as a habitat feature, contrary to SDCP 2012, s. 3.5.1(2). Refer to Issues Section of this report.</p>

3. General Provisions	Compliance	Comment
		The applicant proposes to achieve at least 15% canopy coverage of the site within 10 years from the completion of development. Consistent with SDCP 2012, s. 3.5.2(2).
3.6 Ecologically Sustainable Development	Yes	The Design Excellence Strategy proposes ESD targets.
3.7 Water and Flood Management	No	<p>The site is identified as being on flood prone land but inadequate information is shown on the Concept Envelope Plans to demonstrate compliance with the City's Interim Floodplain Management Policy.</p> <p>Refer to Issues Section of this report.</p>
3.9 Heritage	No	<p>The heritage impact of the Concept DA are not acceptable.</p> <p>Refer to Issues Section of this report.</p>
3.11 Transport and Parking	Partial compliance	<p>The Concept Envelope Plans illustrate 2 basement car parking levels but do not show the location of driveways. Refer to Issues Section of this report</p> <p>It is noted that parking numbers would not be approved as part of a Concept DA consent and would form part of the Detailed Design DA when the exact quantum and mix of land uses and residential apartments are known. Council's Transport Planner has reviewed the proposal and raises no objection subject to conditions.</p>
3.13 Social and Environmental Responsibilities	No	<p>The Detailed Design DA would be required to demonstrate compliance with the CPTED principles. Increased activation of the through site link would be required to adequately address safety concerns.</p> <p>Refer to Issues Section of this report.</p>

3. General Provisions	Compliance	Comment
3.14 Waste	No	The Concept DA does not nominate the location and space allocated to waste and recycling management systems.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>The SDCP 2012 Height in Storeys Map shows a 7 storey control for the site. The Concept Envelope Plan proposes the following number of storeys:</p> <ul style="list-style-type: none"> • Jones Block: 8 storeys (counting the 11.1m recreation centre as 1 storey) • Mid Block: 8 storeys • Wattle Block: 8 storeys • Fig Block: 7-8 storeys <p>The SDCP 2012 Building Street Frontage Height in Storeys Map shows a 6 storey control for the site along Fig Street and 7-8 storeys are proposed.</p> <p>Refer to Issues Section of this report.</p>
4.2.1.2 Building height – floor to ceiling heights and floor to floor heights	Yes	The Indicative Reference Scheme demonstrates that the DCP's floor to floor height controls can be achieved.
4.2.3.1 Solar access	No	<p>The Concept DA includes inadequate information to assess solar access to the proposed apartments and communal open spaces.</p> <p>Refer to Issues Section of this report.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3.6 Deep soil	No	<p>SDCP 2012 states that the minimum amount of deep soil is to be 10% of the site area, consolidated with a minimum dimension of 10m and all remaining deep soil areas are to have a minimum dimension of 3m. A deep soil area of 5% is proposed.</p> <p>Refer to Issues Section of this report.</p>
4.2.3.8 Common open space	No	<p>SDCP 2012 states that a common open space area of at least 25% of the site area with a minimum dimension of 6m is required. At least 30% of the required common open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June. A common open space area of 21% is proposed and inadequate information is provided to assess solar access to the communal open space at the ground level.</p> <p>Refer to Issues Section of this report.</p>
4.2.4 Fine grain, architectural diversity and articulation	No	<p>The maximum street frontage length of an individual building is 65m on streets with a width greater than or equal to 18m wide and 40m on streets with a width less than 18m wide. The Concept Envelope Plan proposes the following street frontage lengths:</p> <ul style="list-style-type: none"> • Jones Street: 131m • Wattle Street: 105m • Fig Street: 95m <p>Refer to Issues Section of this report.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.5.2 Courtyard buildings and perimeter street block buildings	Partial compliance	Consistent with SDCP 2012, the Concept Envelope Plans provide a publicly accessible through-site pedestrian link, but the communal open space at the ground level has not been designed to provide amenity for residents. Refer to Issues Section of this report
4.2.5.3 Development on busy roads and active frontages	No	SDCP 2012 specifies design features for residential uses on busy roads including solid balustrades, sun room behind the street frontage with a minimum clear depth of 1.2m, fully retractable privacy screens/glazed screens. No information has been provided in the Concept DA to inform the Competitive Design Process or Detailed Design DA. Refer to Issues Section of this report.
4.2.6 Waste and Recycling Management	No	No information on the provision of waste rooms has been provided in the Concept DA to inform the Competitive Design Process or Detailed Design DA.

Issues

Clause 4.6 request to vary a development standard

34. The site is subject to a 27m height of buildings standard pursuant to SLEP 2012, clause 4.3. The proposed development has a height of up to 34.95m (+29.4%) to the Jones Block lift overruns and up to 30.88m (+14%) to the Jones Block. The Fig Block, Wattle Block and Mid Block also exceed the height standard, as illustrated by **Figures 21 to 23**.
35. A written request has been submitted to Council in accordance with clause 4.6(3)(a) and (b) of SLEP 2012 seeking to justify contravention of the development standard by demonstrating:
- 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.
36. A copy of the applicant's written request is provided at **Attachment C**.

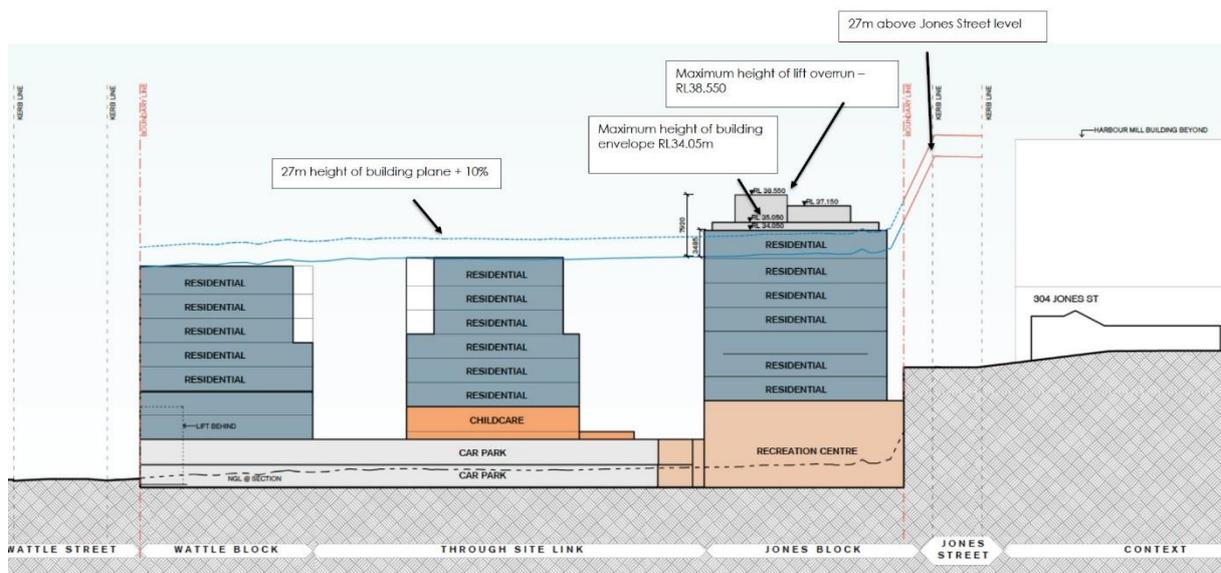


Figure 21: Reference design showing contravention of the 27m height of buildings standard (Source; Mecone, Clause 4.6 Written Request, Figure 3)

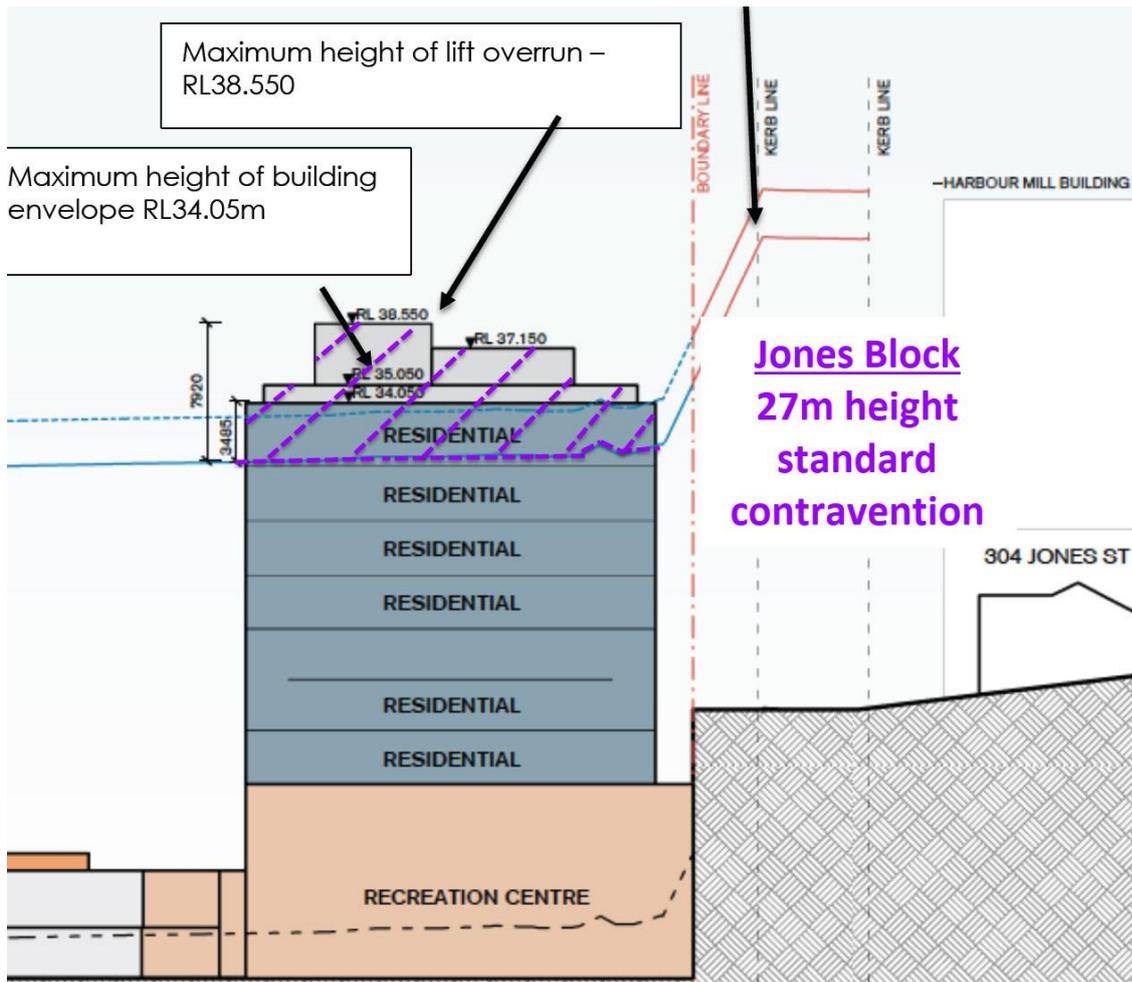


Figure 22: Reference design showing contravention of the 27m height of buildings standard - Jones Block (Source; Mecone, Clause 4.6 Written Request, Figure 3 marked up)

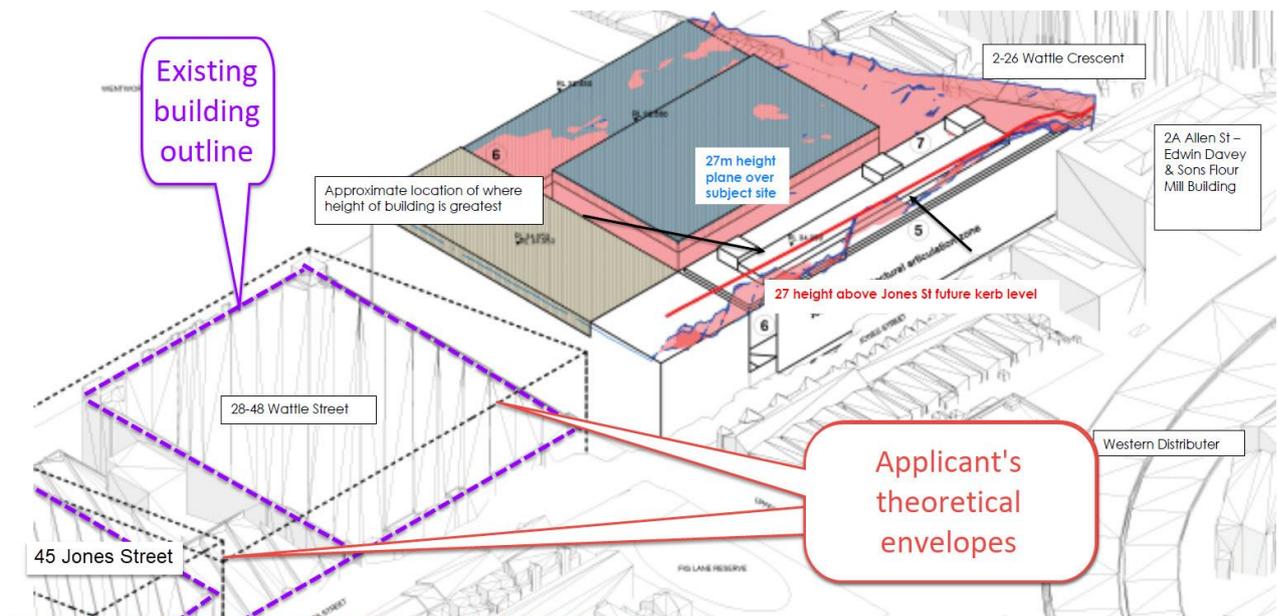


Figure 2 Height Plane Study and surrounding context (including 10% height option). Source: Tzannes Architects

Figure 23: Clause 4.6 Written Request Height Plane Study (Source; Mecone, Clause 4.6 Written Request, Figure 2 marked up)

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

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

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

38. **NO.** The applicant's written request has not adequately demonstrated that compliance with the 27m height of buildings standard is unreasonable or unnecessary. In particular, the written request relies on a flawed assessment of the conditions of the site and its context to satisfy the applicant's nominated Webhe tests (1 and 3). Relevantly, the written request has not demonstrated that the objectives of the height standard are achieved notwithstanding the contravention or that the objectives of the standard would be thwarted if compliance was required, noting the following comments on the written request:
- (a) **28-48 Wattle Street:** The written request refers to a theoretical/future building envelope over the former Winchcombe Carson woolstore at 28-48 Wattle Street as part of the site context (see **Figure 23** which is a mark-up of the height plane study included in the written request). This theoretical/future building envelope is reproduced on the Concept Envelope Plans and Indicative Reference Design Scheme plans. This theoretical/future envelope relies on a flawed assessment of *ground level (existing)* which exaggerates the permitted height. The written request overlooks the heritage listing of the former woolstore and its significant saw tooth roof which would constrain the potential for additional height. The context analysis does not assess whether there is any available GFA/FSR on the former woolstore site. The approved addition at 45 Jones Street (aka 54 Wattle Street) provides a more reliable guide to the scale of development that might be reasonable at 28-48 Wattle Street (see below and **Figure 24**).
 - (b) **45 Jones Street (aka 54 Wattle Street):** The written request refers to an approved/future addition at 45 Jones Street as part of the site context (see outline on **Figure 23**). The approved addition (DA D/2011/2126 approved on 7 March 2012), which has not been built, is modest and setback from the existing parapets. At Jones Street, the addition is well below the applicable 33m height standard. Furthermore, 45 Jones Street is approximately 150 metre to the south of the site and the properties have almost no visual connection.

- (c) **280 Jones Street (heritage):** The site context described in the written request refers to the existing part 10 storey part 4 storey building at 280 Jones Street (Harbour Mills Apartments). The written request claims that the DA for the Harbour Mills Apartments was approved contrary to the SLEP 2012 18m height standard that applies to that property. This is incorrect as the building was approved under the former SLEP 2005 and complied with the height standards in place at that time (being 28m and 12m plus up to 10% or 1 storey additional height) (D/2011/1798 approved on 5 August 2013). Consistent with the height standards in place in 2013, the Harbour Mills Apartments have a reduced building height (4 storeys) adjoining the heritage listed terraces houses to the south (see below). This reduction in height provides an appropriate height transition between the heritage listed terrace houses and the taller 10 storey Harbour Mills Apartments form to the north.
- (d) **Terrace houses at 286-318 Jones Street (heritage):** The group of one storey terrace houses to the east of the site are a Local Heritage Item (I1238). The proposed building envelope reaches its maximum height opposite the terrace houses (34.95m to the lift overruns and up to 30.88m to the roof of the Jones Block) (see **Figure 22**). The proposed Concept Building Envelope does not provide an appropriate height transition between new development on the site and the heritage listed terrace houses and this alone invalidates the written request's assessment of consistency with height standard objective (a) and (b). The written request also refers to a setback on Jones street to increase the separation between development on the site and the terrace houses. This is not a correct statement as the Concept Envelope Plans include an articulation zone (which could accommodate balconies and other architectural elements) that extends to the Jones Street boundary of the site.
- (e) **The site and adjoining public domain:** The conditions of the site (as a former quarry) have been in place for more than 100 years and the level of the public domain around it (at Fig Street, Wattle Street and the pedestrian path to the light rail station) generally correlates with the site's *ground level (existing)*. There are several references in the written request to the unnatural site conditions. SLEP 2012 measures height above the *ground level (existing)* not natural ground level. The justifications in the written request that height should be measured above a much earlier natural landform are not substantiated. The written request also misinterprets the ground level guidance set out in the Bettar and Stamford court judgements as the site's *ground level (existing)* can be easily determined and has been accurately surveyed.

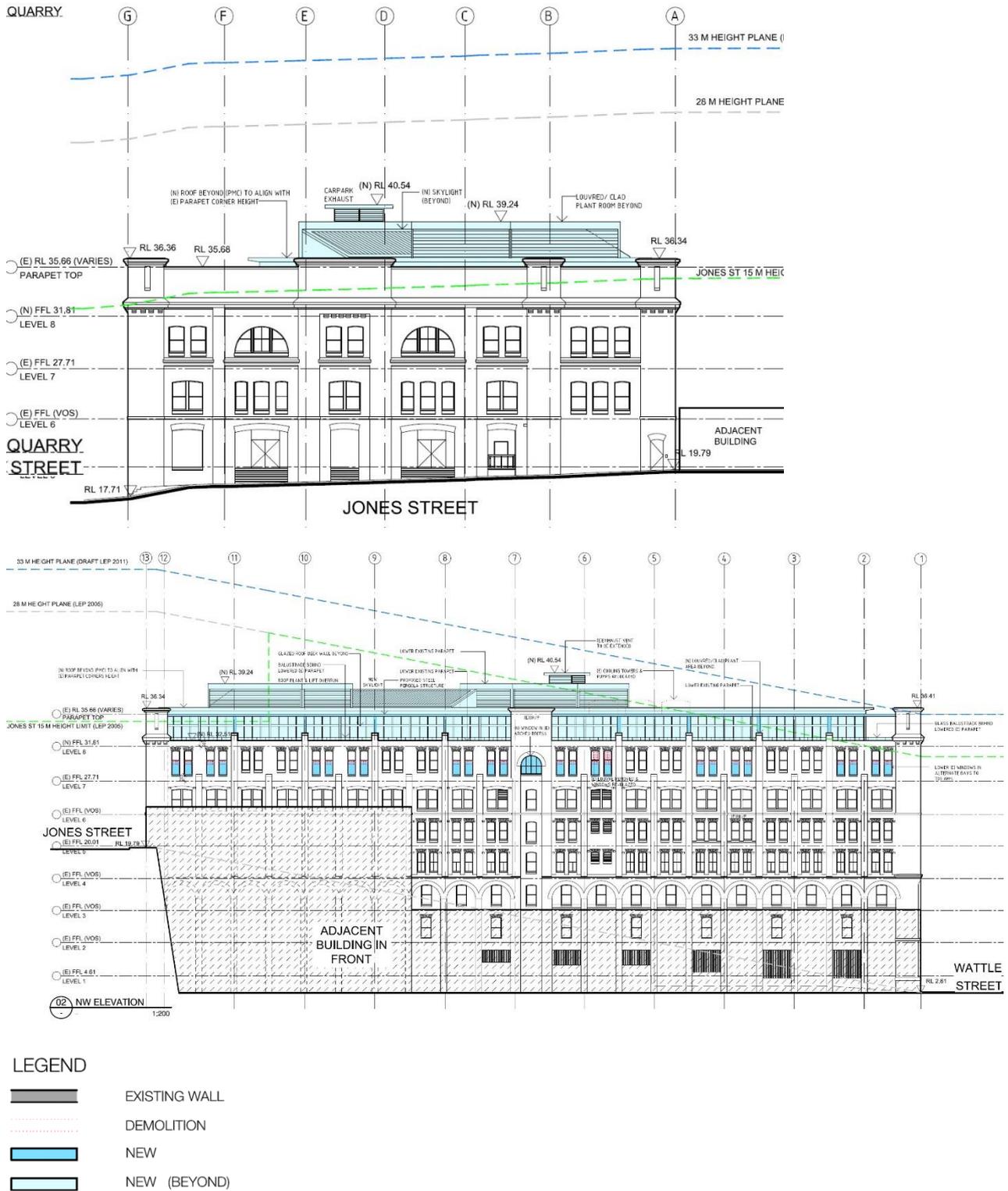


Figure 24: Jones and Quarry Street elevations of 45 Jones Street (aka 50-54 Wattle Street) showing approved addition (D/2011/2126/A)

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

39. **NO.** The applicant's written request has not stated sufficient environmental planning grounds to justify contravening the 27m height development standard. In particular, the environmental planning grounds in the written request:
- (a) Provide an insufficient assessment of the heritage impacts of the aspects of the development that contravene the height development standard (in particular an inappropriate height transition between the existing Jones Street terrace houses and the proposed development), relying too heavily on a flawed analysis of the existing and future site context (see above);
 - (b) Provides an insufficient assessment of the proposed density, bulk and scale, including statements that the Concept DA does not propose an overdevelopment of the site as it is below the maximum FSR standard (4:1 standard pursuant to SLEP 2012 compared with 3.68:1 shown in the Indicative Reference Scheme). Little weight should be given to this justification for the following reasons:
 - (i) The FSR relied upon in the written request is based on the Indicative Reference Scheme submitted with the Concept DA which does not include the additional GFA that would be realised on the Wattle Block, Mid Block and Fig Block if the applicant is awarded up to 10% additional height (as proposed in the Design Excellence Strategy). Any shortfall in GFA would be fully realised in the Detailed Design DA; and
 - (ii) In this instance, reliance on FSR compliance as a measure of appropriate density, bulk and scale has limited utility as the proposed recreation centre has an 11.1m floor to floor height which equates to more than 3.5 residential storeys (3.1m floor to floor for a residential storey). Most of the Recreation Centre volume is above ground, therefore it adds to the bulk and scale of development on the site; and
 - (c) Includes statements that rely on the contractual arrangements between the applicant and Council to support the proposed distribution of residential and commercial uses, stating that timing requirements limit the ability to deliver additional commercial floor space over the medium/long term. This commercial arrangement is not a relevant environmental planning ground.

Is the development in the public interest?

40. **NO.** The proposed development will not be in the public interest because it is not consistent with the objectives of the height standard. In particular, the development is inconsistent with the height objectives (a) and (b) which state:
- (a) to ensure the height of development is appropriate to the condition of the site and its context; and
 - (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
41. It is considered that the proposed development is consistent with the objectives of Zone B4 - Mixed Use.

Conclusion

42. The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.
43. For the reasons provided above, contravention of the height of buildings development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the SLEP 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.

Storeys

44. The DAP, Council's Urban Designer, Senior Heritage Specialist and Design Excellence Team have advised that the Concept Envelope Plans propose an excessive height.
45. Pursuant to SDCP 2012 s. 4.2.1, a 7 storey control applies to the site with a 6 storey street frontage height control at Fig Street. SDCP 2012 s. 4.2.1(2) also states that the maximum number of storeys may only be achieved where it can be demonstrated that the proposed development reinforces the neighbourhood character, is consistent with the scale and form of surrounding buildings in heritage conservation areas and does not detract from the character and significance of existing buildings. SDCP 2012 s. 4.2.1(5) states that the height of buildings and street frontage height should not match anomalous tall neighbouring buildings that are inconsistent with the neighbourhood.
46. The Indicative Reference Scheme shows that the Concept Envelopes can accommodate the following number of storeys (see **Figures 25 to 28**):
 - (a) Jones Block: 8 storeys plus lift overruns (counting the 11.1m recreation centre as 1 storey)
 - (b) Mid Block: 7 storeys
 - (c) Wattle Block: 8 storeys
 - (d) Fig Block: 7-8 storeys
47. It is considered that the height of the Jones Block is excessive and inconsistent with the existing scale of nearby heritage items and the neighbourhood character (see above review of the clause 4.6 written request). The Concept Envelope should be lowered to a maximum 3 - 4 storeys above Jones Street (with a setback at the top level). This would necessitate the deletion of at least 1 storey from the Concept Envelope.

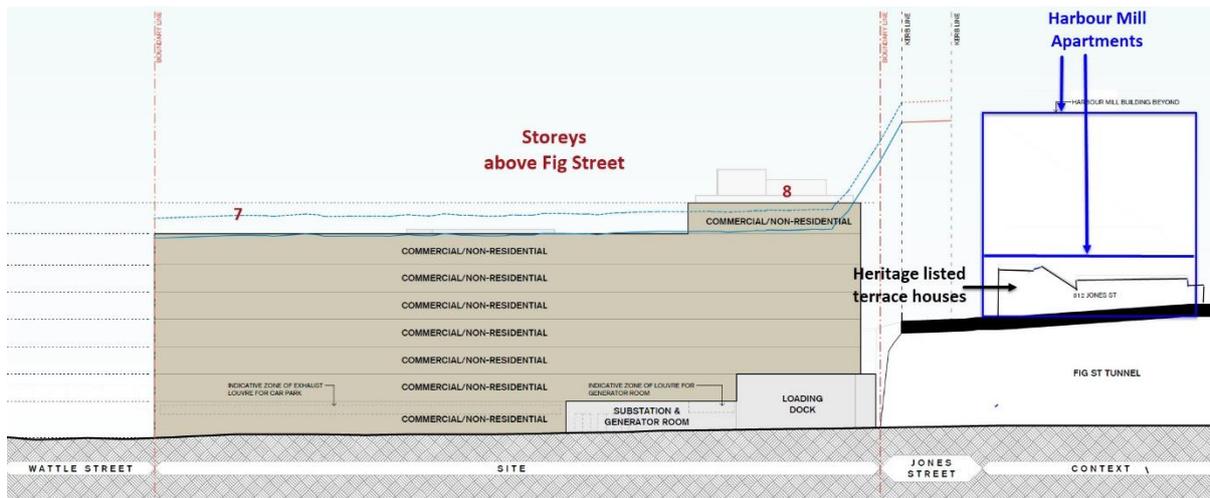


Figure 25: Proposed Storeys: Indicative Reference Scheme - Fig Street Elevation

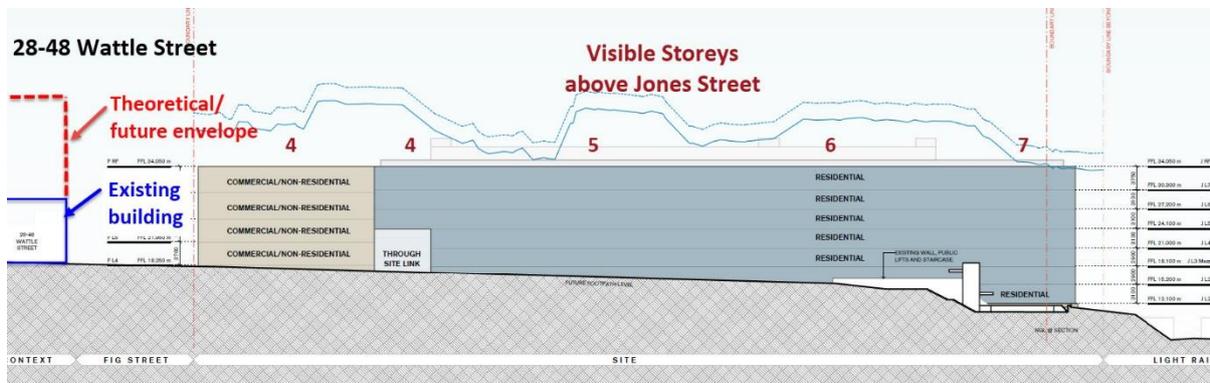


Figure 26: Proposed Storeys: Indicative Reference Scheme - Jones Street Elevation

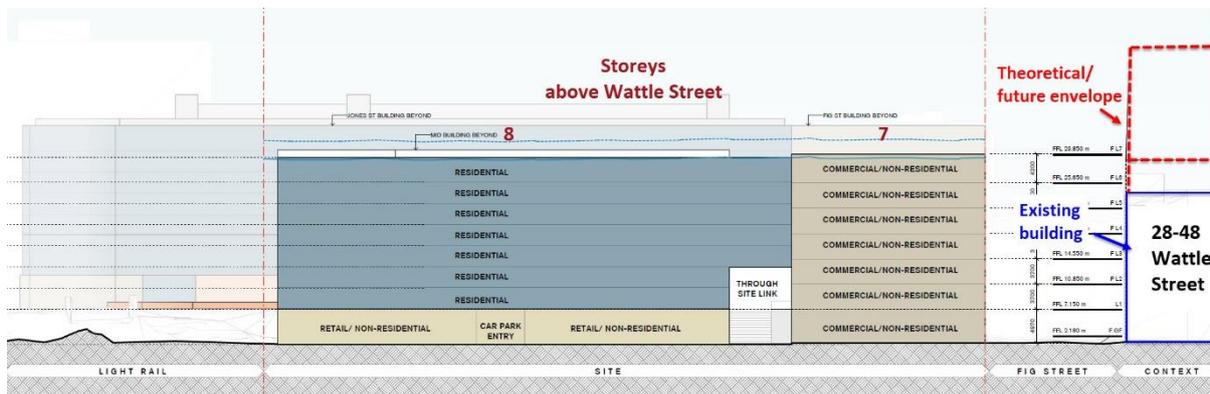


Figure 27: Proposed Storeys: Indicative Reference Scheme - Wattle Street Elevation

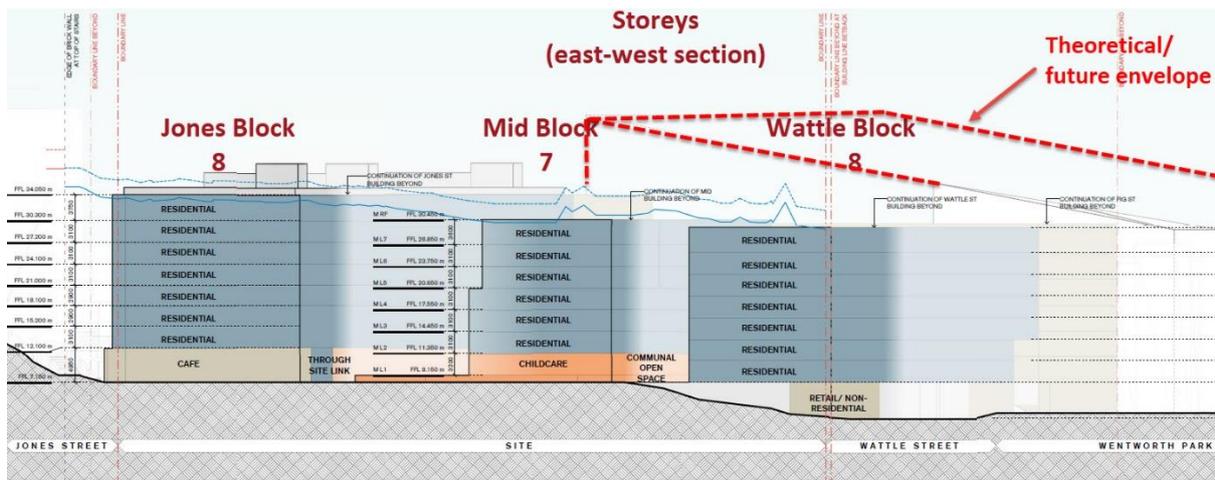


Figure 28: Proposed Storeys: Indicative Reference Scheme - East-West Section

Heritage

48. The site is not an heritage item and it is not located in a heritage conservation area. The following heritage items are in the vicinity of the site:
- Terrace houses to the east of the site at 286-318 Jones Street, Ultimo which is a Local Heritage Item (I1238);
 - Former woolstore at 28-48 Wattle Street, Ultimo (“Winchcombe Carson”) which is a Local Heritage Item (I2059);
 - Former Edwin Davies Flour Mill, at 280 Jones Street, Ultimo to the north-east of the site is a Local Heritage Item (I1205);
 - Railway viaduct to the north-west of the site, crossing Wattle Street, is listed on the State Heritage Register (I800); and
 - Ultimo Heritage Conservation Area (C69) which is to the south-east of the site.
49. Council's Senior Heritage Specialist advised that the Amended Concept DA has not adequately addressed the heritage issues set out in Council's letter of 24 January 2020. In particular, the Concept DA is not supported for the following heritage reasons:
- Jones Block building envelope:** The scale of the envelope to Jones Street is inappropriate and should be lowered. The 7 storey SDCP 2012 control should be measured from the base of the cliff to provide a maximum 3 - 4 storey presentation to Jones Street. The height of the Jones Block is not consistent with the existing scale relationship in the immediate context of the heritage listed terraces at 282 – 318 Jones Street, the Winchcombe Carson Wool store at 28-48 Wattle Street which is one storey at Jones Street (and unlikely to be extend as it has a significant saw roof structure and already accommodates a considerable GFA) and the Harbour Mill Apartments at 280 Jones Street which provides a deliberate reduction in height adjoining the lower scale heritage listed terraces. Such an approach should be followed for the proposed Jones Block.

- (b) **Structural stability of the cliff:** Structural investigations need to be carried out to provide a better understanding of the condition of the cliff and the works required to stabilise it. This work should ideally be carried out prior to the commencement of the design competition as the findings will influence the treatment of the escarpment and how it is incorporated in the design.
50. Conditions of consent could be imposed to require the applicant to prepare an updated Archaeological Assessment, Design Guidelines for Treatment of the Cliff, a Heritage Interpretation Concept Strategy for retention and interpretation of the weighbridge and Heritage Design guidelines for the Jones Street elevation prior to the commencement of the design competition.

Bulk and scale

51. The DAP, Council's Urban Designer and Senior Heritage Specialist have advised that the Concept Envelope Plans propose an excessive bulk and scale, as noted in the following points.
- (a) **Excessive building length:** The building length to Jones Street is excessive (140.58m). On Wattle Street, the neighbouring taller buildings have a building length of about half of that which is proposed on the site. The proposed building length is contrary to the SDCP 2012 objectives in section 4.2.4 for fine grain, architectural diversity and articulation and the control at section 4.2.4(1)(b) which states a maximum individual building length of 40m for streets with a width less than 18m wide. The proposed design principles stated in the Concept Envelope Plans are vague and insufficiently detailed to overcome this non-compliance. On Jones Street, the Concept Envelope should include two complete breaks (with one over the through site link). On Wattle Street, the Concept Envelope should provide a significant mid-block indentation.
 - (b) **Articulation zone:** The proposed "articulation zone" extends to the Jones Street site boundary, encroaching into the cliff face. It is not clearly defined on the Concept Envelopes, there is no guidance as to what can occur within the articulation zone or how much of the zone can be filled and the zone in part overlaps with the "Potential Jones Street Footpath Zone". It should be deleted from the plans.

Deep soil

52. The DAP, Council's Urban Designer, Landscape Officer and Public Domain Coordinator have raised concerns about insufficient deep soil in the Concept DA. The proposed deep soil zone is 617 sqm or 5% of the site area. As demonstrated in **Table 4**, the proposed deep soil area contravenes the requirements of SDCP 2012 and the ADG.

Table 4 – Compliance with deep soil requirements in SDCP 2012 and the ADG

Deep Soil	SDCP 2012	ADG	Concept DA
Control/design criteria	10% of site area Minimum dimension of 3m (s. 4.2.3.6)	7% - 15% site area Minimum dimension of 6m (Objective 3E-1)	5% site area
Definition	<i>Deep Soil is an area of natural ground with relatively natural soil profiles and it excludes areas where there is a structure underneath, pools and non-permeable paved areas but can include 50% of the area of any porous paving and essential accessible paths up to 1.2m wide, providing there is deep soil area to one side that is level with the footpath.</i>	<i>Area of soil within a development that are unimpeded by buildings or structures above and below ground and have a minimum dimension of 6m. Deep soil zones exclude basement car parks, services, swimming pools, tennis courts and impervious surfaces including car parks, driveways and roof areas</i>	

53. SDCP 2012 does not state an objective for the deep soil control but the ADG 3E Deep soil zone provides useful information on the role of deep soil:

Deep soil zones have important environmental benefits, such as allowing infiltration of rain water to the water table and reducing stormwater runoff, promoting healthy growth of large trees with large canopies and protecting existing mature trees which assist with temperature reduction in urban environments. Deep soil zones may be constrained by the size of the lot or the location of a proposed development. To provide shade and amenity for residents they can be co-located with communal open space.

54. ADG Objective 3E1 also states:

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

55. The applicant contends that constructed deep soil areas with soil depths of 500mm to 1.1m and three deep setback areas to in the basement should be included in the deep soil compliance calculation. Council's Senior Public Domain Coordinator has advised that this is not appropriate as:

"Constructed deep soil as proposed is misleading. The proposal are for planters with stormwater connections that are discharged, hopefully, to other parts of the site. This type of planter is common elsewhere but cannot be thought of as deep soil. More often than not the water makes its way to stormwater discharge points or is affected by the nutrients required for plant growth in planters, making it unsuitable for discharge into adjacent ground. Deep soil charges the groundwater directly below, not some distance away.

Capturing rainwater from deep soil to collect for use in the site in the way proposed is unlikely, given it is due to come from the only area of deep soil and would detract from the water available to existing and future planting. The idea that water is going to move backwards and forwards between deep soil and constructed deep soil is questionable. Creating a swale would need to be tested against impact upon existing trees. "

56. Given the size of the site, compliance is reasonable and could be achieved if the footprint of the proposed basement car park was reduced.

Communal open space

57. The DAP, Council's Urban Designer and Landscape Officer have raised concerns about concerns about insufficient communal open space in the Concept DA The proposed communal open space area is 2,518 sqm or 20.7% of the site area. This includes the communal roof terrace to the Jones Block and open space between the Wattle and Mid Blocks. As demonstrated in **Table 5**, the proposed communal area contravenes the requirements of SDCP 2012 and the ADG, noting that inadequate information has been provided to assess compliance with the requirements for solar access to communal open space.
58. The applicant contends that the publicly accessible through site links should be included in communal open space calculation. This contention overlooks the differing roles of through site links and open space dedicated to residents for recreation and relaxation. Given the size of the site and the importance of communal open space for resident wellbeing and social interaction, compliance is reasonable and could be achieved if communal roof terraces were provided on the Mid Block and Wattle Block. This would ensure an equitable distribution of high quality/amenity communal open space for all residents.

Table 5 – Compliance with communal open space requirements in SDCP 2012 and the ADG

Communal open space	SDCP 2012	ADG	Concept DA
Control/design criteria	25% site area Minimum dimension of 6m Unpaved landscaped area >50% of communal space (s. 4.2.3.8)	25% site area Minimum dimension of 3m (Objective 3D-1)	× 20.7% site area
Definition	<i>Communal Open Space is a useable community open space for the recreation and relaxation of residents which is under the control of a body corporate</i>	<i>outdoor space located within the site at ground level or on a structure that is within common ownership and for the recreational use of residents of the development. Communal open space may be accessible to residents only, or to the public</i>	
Solar access to communal open space	30% of required common open space receives 2 hours of sunlight, 9am-3pm on 21 June (s. 4.2.3.8(1))	50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter) (Objective 3E-1)	Inadequate information

Residential amenity

59. The DAP and Council's Urban Designer have advised that the Concept Envelope Plans and Indicative Reference Scheme do not adequately address residential amenity, have not demonstrated that the proposed mix of uses can be supported on the site and provide insufficient guidance for the competitive design process, as noted in the following points.

- (a) **Cross ventilation:** The natural cross ventilation figures provided are not considered accurate and an amended Indicative Reference Scheme is required providing a minimum of 60% naturally cross ventilated apartments, consistent with the ADG Objective 4B-3. Satisfaction of noise concerns may impact the natural cross ventilation of apartments.

- (b) **Noise:** The Acoustic Report by Wood and Grieve Engineers dated 29/08/2019 notes that the site is noise affected and that alternative means of natural ventilation are required for bedrooms and living rooms to meet the natural cross ventilation of ADG Objective 4B-3 and the DCP/Australian standard requirements for internal noise levels. More information on which facades of the building envelopes are affected by noise is required to inform the design excellence brief.
- (c) **Building separation:** The Indicative Reference Scheme does not comply with the minimum separation distances in Sections 2F and 3F of the ADG. The Wattle and Mid Blocks above Level 4 should be separated by a distance of 18m for habitable rooms/ balconies. Instead, the Indicative Reference Scheme places a privacy screen on the windows. This may address privacy but does not address the other reasons for building separation such as massing and spacing between buildings, residential amenity (visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook), providing suitable areas for communal open spaces, deep soil zones and landscaping.
- (d) **Solar access/daylight:** No views from the sun have been provided to enable an assessment against the solar access design criteria in ADG Section 4A - Solar and daylight access (to apartment living areas and apartment private open spaces) and ADG Section 3D - Communal and public open space (to common open space). Floor space in the Jones Block that accommodates subterranean apartments has insufficient solar access and may not be suitable for residential uses.

Cliff face (rockface)/Jones Street interface

- 60. The DAP, Council's Urban Designer, Senior Heritage Specialist and Landscape Office have raised issues in relation to treatment of the cliff on the site and the absence of adequate information to guide the Competitive Design Process and Detailed Design DA.
- 61. It is considered that the cliff face should be retained as a habitat feature as required by section 3.5.1 of SDCP 2102. Any building envelope should be setback from the rock face, allowing adequate separation from an ecological perspective. Subterranean apartments with a single aspect to the cliff face at close range or with the living area facing the rockface have poor amenity. Non-residential uses could be more suitable for levels 2 and 3 of the Jones Block. If subterranean habitable rooms are to face the cliff face, they should be setback 6m (subject to ecological requirements) consistent with the ADG requirement for a 6m separation between a habitable room and a blank wall (Section 3F). The footpath cantilevered over the cliff edge may not be appropriate given public domain officers, heritage and ecological concerns.

Public domain

- 62. Council's Urban Designer and Senior Public Domain Coordinators have advised that the Concept DA includes inadequate information on activation of the proposed through site links and public domain improvements to Jones Street. The Concept Envelopes show a "Potential Jones Street Footpath Zone" straddling the cliff, partly on the site but mostly within the Jones Street road reserve. No more details are included in the Concept Envelope Plans, with some limited information shown in the Landscape Principles Diagrams by Oculus indicating that extensive civil works would be required to achieve the proposed tree planting and cantilevered footway (as illustrated by **Figure 29**).

63. Additionally, the potential footpath zone is just 2m from the face of the Jones Block. The proposed Articulation Zone, which is likely to accommodate balconies, extends to (and overlaps with) the Potential Footpath Zone, compromising resident privacy. The solar access impacts for east facing residential uses in the Jones Block of the cantilevered footpath and heritage and ecological impacts on the cliff also require careful consideration.

Flood planning

64. **Council's Public Domain Coordinator** has advised that the site is flood affected by up to 1 metre in the 1% AEP flood and 2 metres in the PMF. The City's Interim Floodplain Management Policy provides the required Flood Planning Levels for all development. A Flooding Advice letter dated 15 April 2020 has been prepared by Cardno, but the flood planning levels are not shown on the Concept Envelope Plans providing insufficient guidance for the competitive design process.

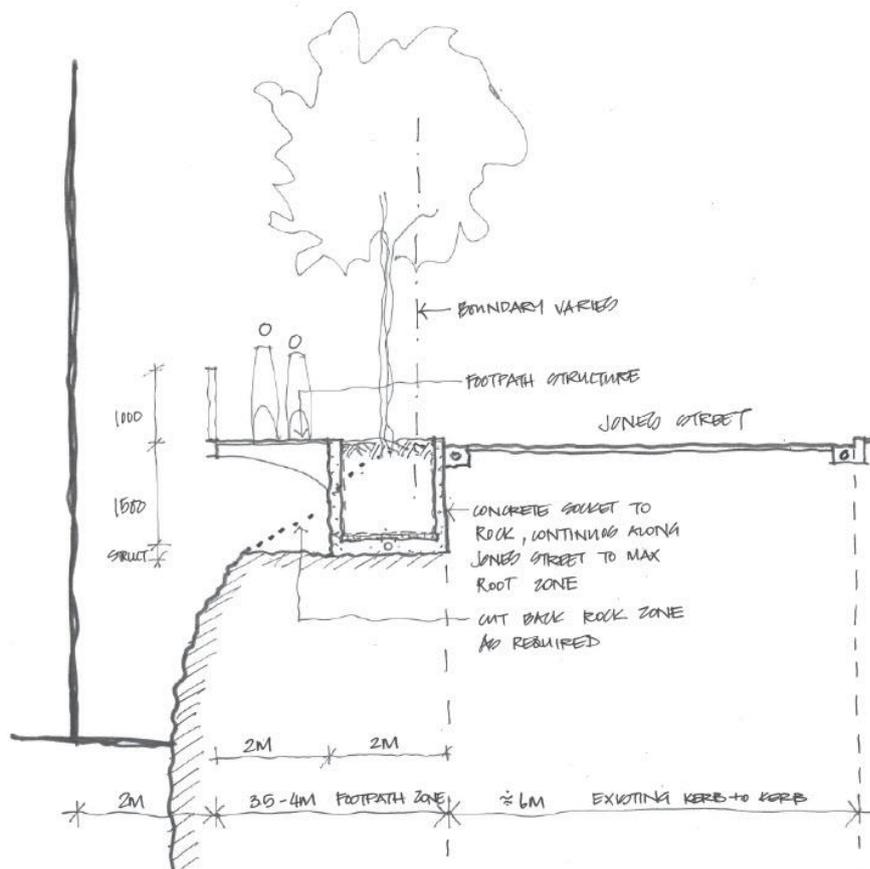


FIGURE 9.1 - Jones St Section

Figure 29: Jones Street Footpath Section (Source: Oculus DA1-9008)

Overshadowing

65. Shadow diagrams submitted with the Concept DA (9am to 3pm on 14 April and 21 June) indicate that the Concept Envelope will not overshadow the existing Harbour Mill Apartments, the terrace houses on the eastern side of Jones Street or Fig Lane Park (the diagrams illustrate the shadow impacts with and without the +10% design excellence bonus height).

66. In mid winter, between 9am and 12 noon, the Concept Envelope will overshadow the eastern end of Wentworth Park. The affected area is occupied by trees and the edge of playing fields. Whilst it is undesirable to overshadow public open space, the shadow is largely cast by built form that complies with the 27m height standard and 7 storey control. It is also noted that an extensive area of Wentworth Park would remain in sun.

Views

67. The Concept DA does not include a view impact analysis. Notwithstanding it is clear that the Concept Envelopes will affect views/outlook towards Wentworth Park and beyond from the existing Harbour Mill Apartments (including the Level 5 communal roof terrace), the terrace houses on the eastern side of Jones Street and Fig Lane Park. It is inevitable that development on the site carried out in accordance with the planning controls will have a view impact, but further articulation, building breaks and a reduction in height (as recommended in this report) could minimise the impact on views.

Design Excellence and Site specific DCP (SLEP 2012, clauses 6.21 and 7.20)

68. The Concept DA does not meet the requirements of a site specific DCP or Concept DA, as the proposal does not meet the requirements under clause 7.20(4) of SLEP 2012. In addition, the proposed envelopes do not demonstrate design excellence pursuant to clause 6.21 of SLEP 2012. Specifically, the Concept DA does not adequately address the following requirements set out specified at clause 6.21 and 7.20(4) of SLEP 2020 and therefore provides inadequate guidance and certainty for the competitive design process and site specific DA:
- (a) Insufficient information and/or an unacceptable form and external appearance which will not improve the quality and amenity of the public domain (contrary to clause 7.20(4)(a) and 6.21(4)(b));
 - (b) The site which is in the vicinity of several heritage items and a heritage conservation area is not suitable for the height, bulk and scale of development proposed. The envelopes do not adequately respond to the topography of the site (most particularly the cliff) and site frontage to major roads, resulting in a poor residential amenity (contrary to clauses 7.20(4)(c)(i) and 6.21(4)(i));
 - (c) The proposed mix of uses is not adequately described in the Concept Envelope Plans. Furthermore, the quantum of residential uses proposed may not be supportable on the site given its topography of the site (most particularly the cliff) and frontage to major roads (contrary to clause 7.20(4)(c)(ii) and 6.21(4)(d)(ii));
 - (d) Heritage issues and streetscape constraints have not been adequately addressed as the scale of the envelope to Jones Street is inappropriate and should be lowered and the heritage response to the cliff has not been adequately resolved (contrary to clauses 7.20(4)(c)(iii) and 6.21(4)(d)(iii));
 - (e) The proposed bulk, massing and modulation of buildings on the site have not been adequately addressed as the building lengths are excessive (particularly along Jones Street) and the proposed articulation zone to Jones Street is poorly defined. The proposed design principles provide inadequate certainty to overcome these shortcomings (contrary to clauses 7.20(4)(c)(v) and 6.21(4)(d)(v));

- (f) The street frontage height of 4 - 7 storeys to Jones Street is excessive given the site's proximity to the heritage listed terrace houses (contrary to clauses 7.20(4)(c)(vi) and 6.21(4)(d)(vi)) and should be reduced by at least one storey. The street frontage heights to Fig and Wattle Streets also contravene the storeys and street frontage height controls in SDCP 2012;
- (g) Inadequate residential amenity is provided for future residents on the site, noting departures from the ADG in relation to communal open space, deep soil, building separation, solar access and natural cross ventilation (contrary to clauses 7.20(4)(c)(vii) and 6.21(4)(d)(vii));
- (h) More information is required on the proposed through site link (activation and appropriate rest points) and landowner's consent has not been obtained from Transport for NSW providing uncertainty in relation to the through site link connection to Wentworth Park Light Rail Station. The Concept Envelope Plans do not show the location of vehicular and service access driveways (contrary to clauses 7.20(4)(c)(ix) and 6.21(4)(d)(ix));
- (i) The public domain improvement along Jones Street are vague and include a footpath and tree planting that requires extensive civil works, with heritage, ecology and residential amenity impacts that have not been properly considered or assessed (contrary to clauses 7.20(4)(c)(xii) and 6.21(4)(d)(xii));
- (j) The interface at Jones Street between the building and the public domain is not adequately resolved with an articulation zone that extends to the Jones Street site boundary, encroaching into the cliff face, no guidance as to what can occur within the zone or how much of the zone would be filled (contrary to clauses 7.20(4)(c)(xii) and 6.21(4)(d)(xii)); and
- (k) Landscaping excellence and integration has not been achieved, with deep soil and communal open space shortfalls and an inadequate assessment and response to the ecological value of the cliff (contrary to clauses 7.20(4)(c)(iii) and 6.21(4)(d)(xiii)).

Insufficient and incomplete information

69. The Concept DA provides insufficient information as detailed below:

- (a) **Concept plans:** The uses within the concept envelope are insufficiently described and should be denoted in plan, section and elevation (including the recreation centre and the childcare centre), all drawings should remove the dashed theoretical "LEP envelope" on the neighbouring building, the Jones Street footpath requires more consideration. Deep soil areas should be increased and reference to 'constructed deep soil' should be deleted and areas that do not meet the ADG / DCP definition of deep soil zone should be removed. Flooding levels and vehicular and service driveways should be shown on the Concept Envelope Plans. Reference to LEP Envelope to Neighbouring Sites should be deleted;
- (b) **Design Principles:** The design principles provide insufficient certainty to overcome the inadequacies of the Concept Envelopes;

- (c) **Indicative Reference scheme:** The Indicative Reference Scheme should demonstrate compliance with the objectives and minimum requirements in the ADG. Compliance has not been demonstrated in relation to solar access and noise and non-compliance has been demonstrated in relation to common open space, deep soil, building separation and cross ventilation. The plans should include the Concept Envelope outline on all plans, sections and elevations. Reference to LEP Envelope to Neighbouring Sites should be deleted.
- (d) **Through site link:** The Concept Envelopes and principles depict the through site link as having a clear width of 9m, however the Design Excellence Strategy states that the through site link is to be 6m in width. The Design Excellence Strategy should be amended.
- (e) **Cliff:** A structural assessment of the cliff should be provided (see Heritage comments above);
- (f) **Land owner's consent:** Landowner's consent is required from Transport for NSW to confirm that the through site link to the Wentworth Park Light Rail Station and associated tree removal can be achieved.

Suitability of the site for the Development

70. As detailed in this report, it is considered that the site is not suitable for the proposed development.

Public Interest

71. The provision of a child care centre, recreation centre and through site links on the site is in the public interest. However, the Concept DA is considered to be contrary to the public interest as:
- (a) The proposed development is contrary to numerous quantitative and qualitative planning objectives, controls and design criteria including:
 - (i) Height of buildings standard and objectives in SLEP 2012;
 - (ii) Heritage objectives and provisions in SLEP 2012 and SDCP 2012;
 - (iii) Design Excellence and Site specific DCP provisions in SLEP 2012;
 - (iv) Number of storeys control and provisions in SDCP 2012;
 - (v) SEPP 65 Design Quality: Principle 1: Context and Neighbourhood Character;
 - (vi) SEPP 65 Design Quality: Principle 2: Built Form and Scale;
 - (vii) SEPP 65 Design Quality: Principle 3: Density;
 - (viii) SEPP 65 Design Quality: Principle 5: Landscape;

- (ix) SEPP 65 Design Quality: Principle 6: Amenity;
- (x) Solar access, natural cross ventilation, deep soil, communal open space and building separation design criterion in the ADG; and
- (xi) Various amenity controls in SDCP 2012 including communal open space, deep soil, fine grain architectural diversity and articulation, public domain, flooding and urban ecology.

Internal Referral

72. The Concept DA was reviewed by Council's Senior Heritage Specialist, Urban Design Specialist, Landscape Assessment Officer, Tree Management Officer, Public Domain Team, Transport Planner, Senior Environmental Health Officer and Resource Recovery Officer.
73. The following internal referrals advised that the Concept DA is **supported** subject to the imposition of appropriate conditions:
- (a) Tree Management Officer;
 - (b) Transport Planner; and
 - (c) Senior Environmental Health Officer.
74. The following internal referrals advised that the proposal is **not supported** noting that the Amended Concept DA has not adequately addressed the issues set out in Council's letter of 24 January 2020:
- (a) **Senior Heritage Specialist:** Concept DA is not supported noting the excessive scale of the envelope to Jones Street and heritage issues relevant to the cliff (see Issues Section);
 - (b) **Urban Designer:** Concept DA is not supported as the Concept DA envelopes exceed the height controls, are excessively bulky, are inadequately guided by the stated Design Principles and the Indicative Reference Scheme has not established that a future detailed design can adequately address the requirements of the ADG. Uses other than residential should be considered for the site, to achieve maximum development yields within the planning controls.. Alternatively, the Concept Envelopes and Indicative Reference Scheme should be substantially amended to respond to the issues of concern in relation to building height, Excessive building length, Articulation zone, Cliff face (rockface)/Jones Street interface, Cross ventilation, noise, Building separation, Solar access/daylight (see Issues Section);
 - (c) **Landscape Assessment Officer:** Concept DA is not supported. Council's Landscape Officer raised concerns in relation to inadequate deep soil, inadequate communal open space and the proposed treatment of the cliff (see issues Section);

- (d) **Public Domain Coordinator:** Concept DA is not supported. Issues of concern and inadequate information identified by the Senior Public Domain Coordinators include inadequate information on activation of the proposed through site link and the need for a rest point/landing, inadequate public domain improvements to Jones Street, extensive civil works required to achieve Jones Street tree planting and a proposed cantilevered footway, inadequate information shown on the Concept Envelope Plans to demonstrate compliance with the City's Interim Floodplain Management Policy and inadequate deep soil including inappropriate reliance on 'constructed' deep soil.
- (e) **Resource Recovery Officer:** More detail is required in relation to the provision of waste rooms.

External Referrals

75. The Concept DA was referred to the following external agencies:

- (a) **Transport for NSW:** The Original Concept DA was referred to Transport for NSW (**TfNSW**) pursuant to clause 86 of SEPP (Infrastructure) 2007. By letter dated 14 October 2019, TfNSW advised that Land Owners Consent from RailCorp may be required in relation to the pedestrian connection and works to the light rail corridor. TfNSW requests Council confirm with Sydney Trains the need for Land Owners Consent for this development application and whether the Applicant will be required to lodge a formal request to Sydney Trains to obtain RailCorp Land Owners Consent. TfNSW also provided conditions of consent;
- (b) **Water NSW:** The Original Concept DA was referred to Water NSW. On 22 November 2019, Water NSW issued general terms of approval (**GTA**) for an integrated development;
- (c) **Ausgrid:** The original Concept DA was referred to Ausgrid under clause 45(2) of SEPP (Infrastructure) 2007. By letter dated 20 November 2019, Ausgrid provided comments but raised no objection to the Concept DA;
- (d) **Transport - Roads & Maritime Services:** The Original Concept DA was referred to RMS in accordance with Clause 101 and 104 of the SEPP (Infrastructure) 2007 and Section 138 of the Roads Act, 1993. By letter dated 19 November 2019, the RMS provided concurrence to the proposed works on Wattle and Fig Streets, subject to Council's approval and conditions of consent.

Notification, Advertising and Delegation

76. The application constitutes integrated development and as such the Concept DA was notified and advertised for 30 days between 23 September 2019 and 22 October 2019 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification, 19 submissions were received. Issues raised in the submissions are summarised and responded to as follows.

- (a) **Height:** The Concept DA should comply with the SLEP 2012 27m height standard and SDCP 2012 7 storey control, height should be measured above the ground level existing on the site, height on Jones Street should be reduced. Two basement parking levels could be excavated to reduce height. The recreation centre could be moved from the Jones Block to the Fig Block to reduce height. Complying with flood levels does not justify height contravention. Assessment of site context should consider existing neighbouring buildings not possible future envelopes.

Response: As detailed in the Issues Section of this report, the proposed height is considered to be excessive and the Concept DA envelopes are not supported. It is agreed that excavating the two basement car parking levels and/or moving the recreation centre to Fig Street would reduce the height of the Jones Block.

- (b) **Setbacks and building breaks:** Upper levels on Jones Street and Fig Street should be setback. There is no setback to Jones Street and balconies could be built to the street. Building breaks required on Jones Street to avoid walling effect. Through site link should be open to the sky.

Response: As detailed in the Issues Section of this report; the Concept DA envelopes should be amended to provide full height building breaks, setbacks and more articulation.

- (c) **Through site link:** Through site links ends in an inconvenient location. Provide a pedestrian footbridge from new through site link over Wattle Street to Wentworth Park.

Response: It is agreed that pedestrian connections between the site and Wentworth Park could be improved, however the commercial arrangements between Council and the applicant did not include the provision of a footbridge over Wattle Street.

- (d) **Design Excellence:** Options to redistribute the height should be explored including a reduction in height at Jones Street (east) and increase in height at Wattle Street (west) or at the northern end of the site.

Response: As detailed in the Issues Section of this report, the Concept DA envelopes are not supported.

- (e) **Views from Fig Lane Park:** Fig Lane Park was designed to provide views to Wentworth Park Viaduct and Blackwattle Bay. A view line should be maintained over the site including a reduced height and setback top level at Jones Street.

Response: As detailed in the Issues Section of this report, the Concept DA envelopes are not supported.

- (f) **Overshadowing of open space:** No shadow diagrams provided for 21 June. Building envelopes overshadow Wentworth park at 9am. Reduce height to address overshadowing.

Response: The additional information submitted to Council on 23 April 2020 included shadow diagrams for 21 June. As detailed in the Issues Section of this report, the Concept DA envelopes are not supported.

- (g) **Residential amenity for adjoining residents (terrace houses and Harbour Mill Apartments):** Light spill, overshadowing, overlooking, loss of views, wind, noise from recreation centre and non-residential uses at base of the Jones Block.

Response: As detailed in the Issues Section of this report, the Concept DA envelopes are not supported.

- (h) **Adverse amenity impacts of construction:** Concerns were expressed about the noise, health, dust, vibration damage and other impacts of construction, construction traffic and traffic routes, the need for effective community consultation between the applicant and community during construction.

Response: The impacts of construction would be addressed as part of a Detailed Design DA.

- (i) **Landscaping issues:** Increase deep soil and rooftop communal open space. Native species should be use, minimise use of concrete, remove concrete wall adjoining light rail, retain large trees in northwest corner of the site, maintain a water supply for use by Pymont Ultimo Landcare.

Response: As detailed in the Issues Section of this report, the landscape proposal is not supported, in particular the inadequate provision of deep soil and communal open space is an issue of concern. Detailed landscape design issues could be addressed as part of a Detailed Design DA.

- (j) **Traffic and parking:** Encourage sustainable transport. Provide drop off zones, disabled parking, motorcycle parking and bicycle parking only. Car parking will increase traffic congestion. No vehicular access or drop offs on Jones Street. Address Wattle Street congestion.

Response: Council's Transport Planner supports the Concept DA subject to the imposition of appropriate conditions.

- (k) **Public domain:** Widen Jones Street.

Response: As detailed in the Issues Section of this report, Council's Public Domain team does not support the Concept DA, including concerns in relation to the treatment of Jones Street.

- (l) **Relocation of cats:** Is there a plan to relocate the colony of cats that occupy the site?

Response: Feral cats are one of the major invasive species in Australia and have been linked to the decline and extinction of various native animals. They have been shown to cause a significant impact on ground-nesting birds and small native mammals.

- (m) **Recreation centre:** Should be wholly managed by Council. Priority access should be given to schools, sports teams, clubs and associations in the City of Sydney. Move to Wattle Street to increase community awareness.

Response: Management of the recreation centre is not a DA matter for consideration.

- (n) **Sandstone:** Excavated sandstone should be harvested.

Response: The harvesting of sandstone from the site could be addressed as part of a Detailed Design DA.

- (o) **Heritage:** Retain existing facades to Fig and Wattle Streets and incorporate into the new buildings.

Response: The site is not a heritage item and is not located in a heritage conservation area. Council's Senior Heritage Specialist does not object to demolition of the existing buildings on the site.

- (p) **Sustainability:** Aim to be carbon neutral.

Response: ESD has been addressed in the Design Excellence Strategy and would be considered as part of a Detailed Design DA.

- (q) **Support for the proposal:** The proposal replaces an eyesore with a modern, reasonably sized and quite attractive mixed development, it re-established Jones Street/Wattle Street pedestrian link, provides a child care centre and recreation facility, retains the sandstone cliff, promotes active and sustainable transport, provides vehicular access from Wattle Street with no construction activity on Jones Street.

Response: Noted.

S7.11 Contribution

77. No contribution under s. 7.11 is required as the application is for a concept proposal only. A s. 7.11 condition of consent would be imposed on any future consent for detailed design.

Conclusion

78. It is in the public interest to provide a child care centre, recreation centre and through site links on the site. However, given its size, heritage context, public domain interfaces and topography, the site is a sensitive one and the proposed Concept DA should be the subject of a comprehensive examination of all relevant planning considerations to ensure that it provides essential guidance for architects participating in the Competitive Design Process and the subsequent Detailed Design DA.
79. The Concept DA contravenes the SLEP 2012 height of buildings standard. The applicant bears the onus to demonstrate that the matters in clause 4.6(3)(a) and (b) have been adequately addressed. In this instance, contravention of the height of buildings development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the SLEP 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.
80. Additionally the Concept DA contravenes the following with adverse environmental impacts arising from the non-compliances:
- (a) Height of buildings standard and objectives in SLEP 2012;
 - (b) Heritage objectives and provisions in SLEP 2012 and SDCP 2012;
 - (c) Design Excellence and Site Specific DCP provisions in SLEP 2012;
 - (d) Number of storeys control and provisions in SDCP 2012;
 - (e) SEPP 65 Design Quality: Principle 1: Context and Neighbourhood Character;
 - (f) SEPP 65 Design Quality: Principle 2: Built Form and Scale;
 - (g) SEPP 65 Design Quality: Principle 3: Density;
 - (h) SEPP 65 Design Quality: Principle 5: Landscape;
 - (i) SEPP 65 Design Quality: Principle 6: Amenity;
 - (j) Solar access, natural cross ventilation, noise, deep soil, communal open space and building separation design criterion in the ADG; and
 - (k) Various controls in SDCP 2012 including communal open space, deep soil, fine grain architectural diversity and articulation, public domain, flooding and urban ecology.
81. Given the above, it is recommended that the consent authority refuse to grant consent to the Concept DA.

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