

Item 8.**Section 4.55 Application: 890-898 Bourke Street, Zetland**

File No.: D/2015/98/B

Summary

Date of Submission:	19 March 2018 Final plans for detailed DA submitted 19 May 2020.
Applicant:	Baozheng Development Pty Ltd
Architect/Designer:	WMK
Developer:	Baozheng Development Pty Ltd
Owner:	Baozheng Development Pty Ltd
Cost of Works:	\$0
Zoning:	B4 Mixed Use zone. Modification of development consent providing concept building envelopes for the purposes of residential and retail development. Both uses are permissible in the zone.
Proposal Summary:	<p>A Section 4.55(2) application to modify the approved building envelope under D/2015/98.</p> <p>The application seeks to modify the approved building envelope to amend the location and size of the internal courtyard, increase the size of the basement and amend the size of a deep soil planter within the courtyard.</p> <p>The application should be read in conjunction with the detailed design development application D/2017/1672, which proposes construction of a 6 storey mixed use development with two levels of basement parking. Both applications are being reported alongside each other to CSPC.</p> <p>The approved concept DA included a VPA that is also being modified via a Deed of Variation which has been submitted with the detailed DA.</p>

The amendments to the envelopes are consistent with the detailed development application and do not propose any change to the height or setbacks of the approved envelope.

The application was notified for 14 days from 19 April 2018 to 4 May 2018. Two (2) submissions were received raising issues with increasing the building footprint and the impact on the heritage conservation area.

The amendment will require consequential amendment of a number of conditions relating to approved plans, design criteria, VPA reference and dwelling type.

The proposal complies within relevant deep soil controls and can provide for a compliant building. As such the modification is recommended for approval.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) State Environmental Planning Policy No. 55 - Remediation of Land
- (ii) State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) Sydney Development Contributions Plan 2015

Attachments:

- A. Amended Conditions of Consent
- B. Amended Building Envelope Plans

Recommendation

It is resolved that consent be granted to Section 4.55 Application No. D/2015/98/B, and that the following conditions of consent be amended (with amendments shown in ***bold italics*** and deletions shown in ~~strikethrough~~ as follows -

Amend Condition 2 (a) to insert following revised plans

Drawing Number	Architect	Date
DA – 2101 – Issue B <i>P2</i> Basement Plan Envelope	Candalepas Associates + Wendy Lewin <i>WMK Architecture</i>	23 June 2015 <i>7/03/2018</i>
DA – 2102 – Issue B <i>P2</i> Ground Floor Plan Envelope	Candalepas Associates + Wendy Lewin <i>WMK Architecture</i>	23 June 2015 <i>7/03/2018</i>
DA – 2103 – Issue B <i>P2</i> Typical Floor Plan Envelope	Candalepas Associates + Wendy Lewin <i>WMK Architecture</i>	23 June 2015 <i>7/03/2018</i>
DA – 2104 – Issue B <i>P2</i> Top Level Floor Plan Envelope	Candalepas Associates + Wendy Lewin <i>WMK Architecture</i>	23 June 2015 <i>7/03/2018</i>
DA – 2201 – Issue B <i>P2</i> Section AA Envelope	Candalepas Associates + Wendy Lewin <i>WMK Architecture</i>	23 June 2015 <i>7/03/2018</i>
DA – 2202 – Issue B <i>P2</i> Section BB Envelope	Candalepas Associates + Wendy Lewin <i>WMK Architecture</i>	23 June 2015 <i>7/03/2018</i>

DA – 2301 – Issue B P2 Elevations North and East Proposed Envelope	Candalepas Associates + Wendy Lewin	23 June 2015 7/03/2018
DA – 2302 – Issue B P2 Elevations South and West Proposed Envelope	Candalepas Associates + Wendy Lewin WMK Architecture	23 June 2015 7/03/2018

Amend Condition 4 to refer to the amendment to the VPA as proposed in the Deed of Variation as follows:

(4) COMPLIANCE WITH VOLUNTARY PLANNING AGREEMENT

The terms of the Planning Agreement entered into in accordance with Deferred Commencement Condition (1) Voluntary Planning Agreement **and as amended** must be complied with.

Amend parts (a), (b) and (o) of Condition 11 as follows -

(11) STAGE 2 DEVELOPMENT APPLICATION TO COMPLY WITH RELEVANT PLANNING CONTROLS

(a) *The building separation distances specified within the ADG relating to visual privacy **unless appropriate privacy screening devices are approved under any future detailed development consent.***

(b) *The minimum floor to floor and floor to ceiling heights within the ADG and Sydney DCP 2012 **unless a reduced floor to ceiling height is approved under any future detailed development consent.***

(o) *The requirements of Section 3.1.6 of the Sydney DCP 2012 relating to sites greater than 5,000 sqm, which ask for a range of complimentary uses and housing types, including single storey apartments and garden apartments. ~~and maisonette apartments or terrace houses be provided; and at least 5% of the total dwellings on the site are to be terrace houses or maisonette apartments;~~*

See Attachment A for the conditions of consent.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development as modified is substantially the same as was originally approved and is consistent with the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act 1979.
- (B) The proposed building envelopes are capable of accommodating a future building which exhibit design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (C) The proposed envelopes are capable of being consistent with the provisions of the State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the Apartment Design Guide.

Background

The Site and Surrounding Development

1. A number of site visits were carried out since the application was lodged, the most recent on 21 January 2020.
2. The site is irregular in shape with area of 5,193sqm, and is located close to the intersection of Bourke Street and O'Dea Avenue. It has a primary street frontage measuring 70m to Bourke Street, and secondary frontages to the west measuring 48m and south measuring 59m to Kingsborough Way.
3. The site currently contains 2 x two storey buildings that are occupied by units used for commercial, warehouse, and industrial purposes.
4. Vehicular access is via a driveway from Bourke Street, located centrally along the frontage. There is no significant vegetation within the site.
5. The site adjoining immediately to the east at 888 Bourke Street currently contains a two-storey complex with similar commercial and warehouse uses. Concept envelopes for two six storey residential buildings has been approved on this site. The detailed development application is currently under assessment.
6. The site adjoining immediately to the south-west at 900 Bourke Street contains a Sydney Water utility building that is approximately 9.5m tall.
7. Recently completed residential flat buildings of 8, 9, and 13 storeys are located directly to the south and south east across Kingsborough Way. The development is known as 'The Reserve'.
8. The site is located approximately 150m north of Mary O'Brien Park.
9. A new public park is located directly to the west. Further west of the park and on the opposite side of Bourke Street contains low rise terrace dwellings, which form part of the Zetland Estate Heritage Conservation Area.
10. Kingsborough Way is a new two-way road that will eventually connect Bourke and O'Dea Avenue. It is currently a dead end and will be completed upon the development of the adjoining site at 888 Bourke Street.
11. The site is not a heritage item and is not located in a heritage conservation area. The nearest heritage items are a group of terraces located to the north west across Bourke Road. Kennards self storage is a heritage item located on O'Dea Avenue to the east.
12. In the wider context, the site is located within the green square urban renewal area and is approximately 400m north east of the Green Square Town Centre and approximately 4km south of the Sydney CBD.

13. Photos of the site and surrounds are provided below.



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



Figure 2 - Context map

Proposal

14. The Section 4.55(2) application seeks to amend the existing concept envelope to -
 - Relocate the central internal courtyard 4m to the west and reduce the length of the courtyard by 5m. The proposed courtyard will measure 18m wide and 30m in length.
 - Replace a deep soil planter measuring 25sqm with a deep soil planter to a depth of 1.2m for the entire courtyard area.
 - Extend the basement envelope to accommodate two full basement levels.
 - Include an additional lift pit in the basement level 2.
 - Include the 300mm setback for the land to be dedicated to the City for footpath widening on Kingsborough Way.
15. Conditions 2, 4 and 11 of the consent are to be modified to reflect the amended plans and the detailed development application as proposed.
16. There are no changes to the height of the envelope or the setbacks from the boundaries as originally approved.

17. Plans of the amended envelopes are provided below.

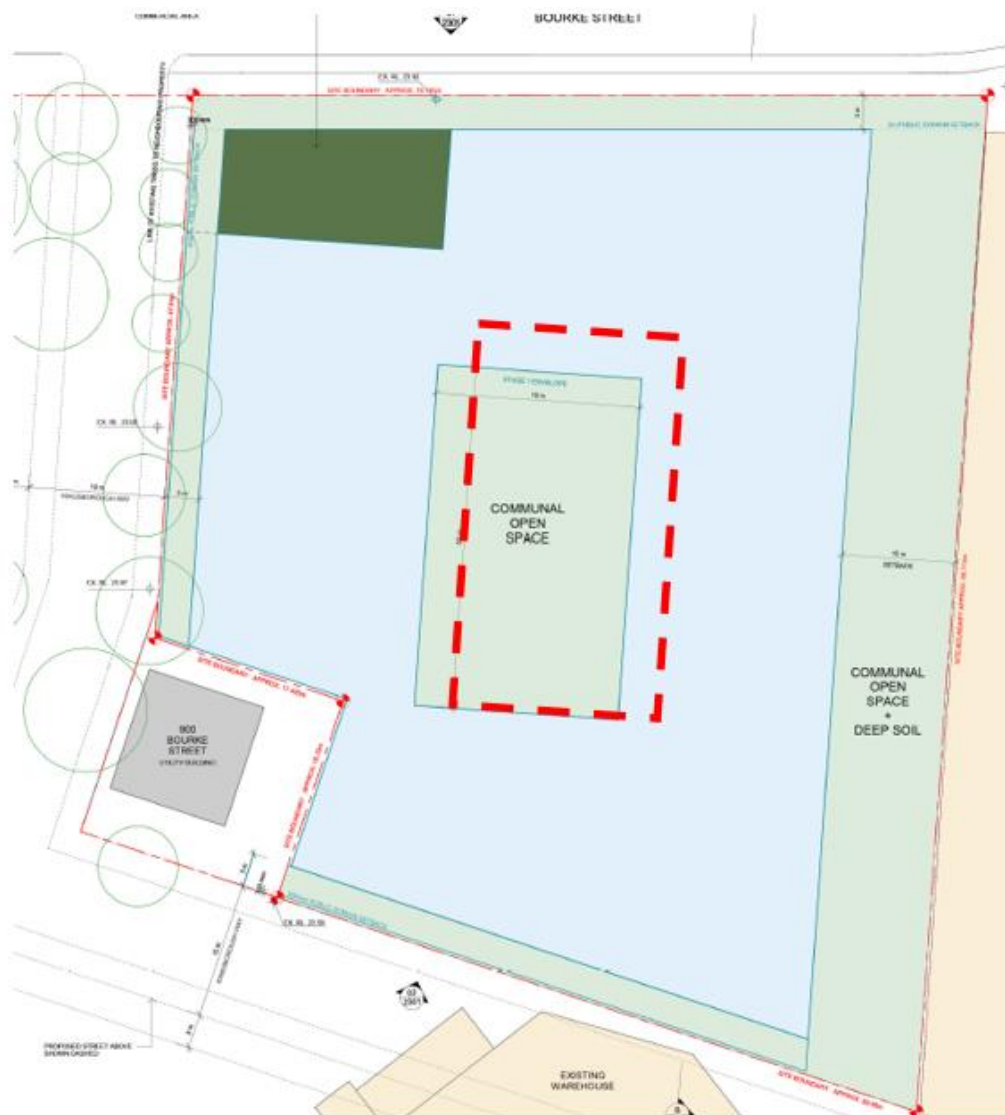


Figure 3 - Amended ground floor envelope with location of original courtyard shown in red

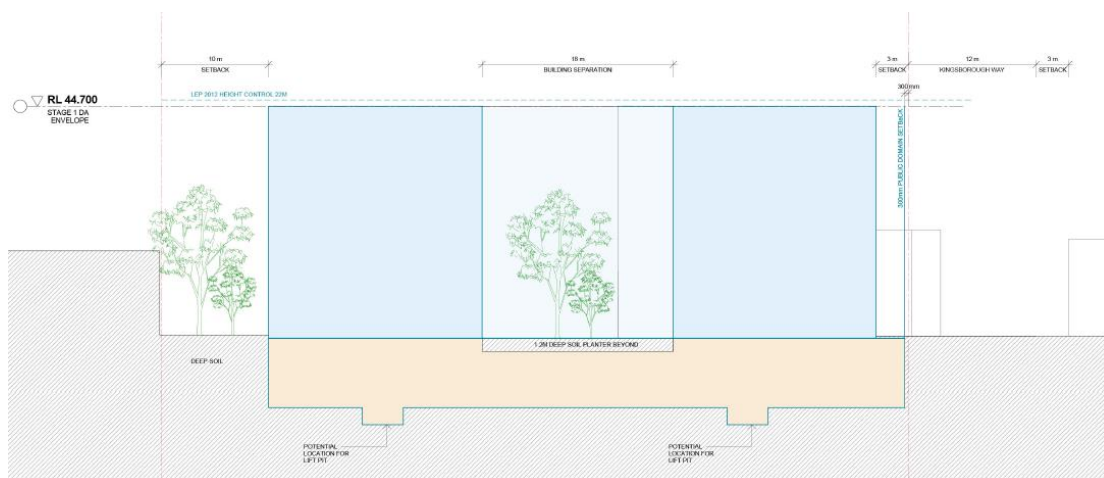


Figure 4 - Amended section showing amended planter in courtyard and additional lift pit.

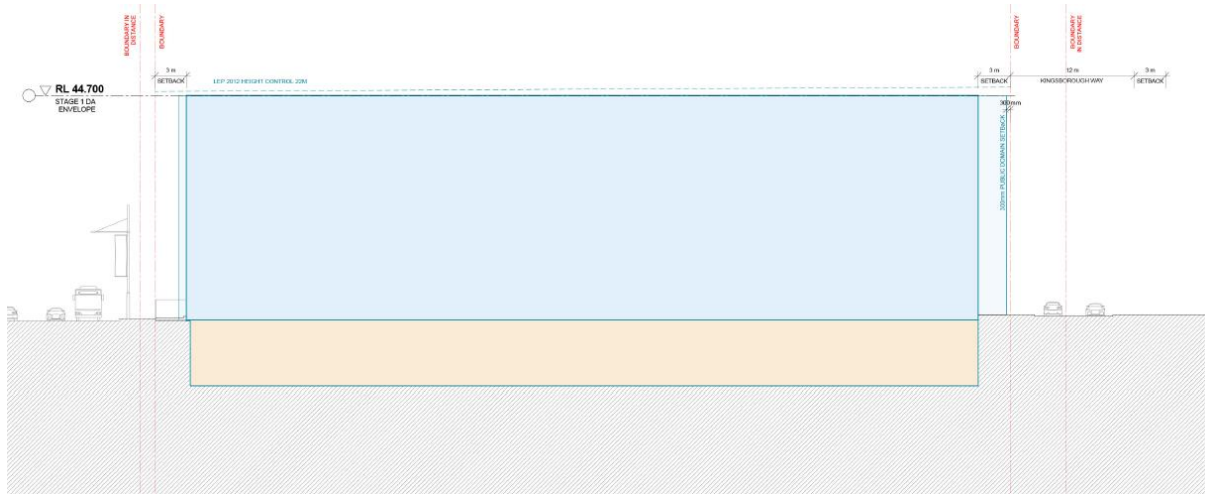


Figure 5 - Amended section showing increased basement at Level 2

History Relevant to the Development Application

18. The original consent D/2015/98, was approved by Planning Committee on 1 October 2015. The application was subject to a deferred commencement approval, requiring execution of the VPA. The VPA was executed and the concept consent activated on 21 December 2016.
19. The concept approval included a 22m high building envelope for a mixed-use development with multi-level basement car parking and tree removal.
20. D/2015/98/A was lodged and subsequently withdrawn.

Voluntary Planning Agreement

21. The concept DA was subject to a voluntary planning agreement (VPA). The City entered into a Planning Agreement which provided for the following public benefits:
 - Dedication of 210sqm of land for footpath widening on Bourke Street;
 - Developer's works to construct new widened footpath on Bourke Street; and
 - Monetary contribution of \$1,123,164 towards community infrastructure in Green Square.
22. A Dead of Variation to amend the VPA has been submitted with the detailed DA. This provides for a 300mm strip of land on Kingsborough Way to be dedicated to the City for footpath widening.

Competitive Design Process

23. A design competition was undertaken for the site in June 2017. A competition brief set out the requirements for the proposed competitive design alternatives process for the site, and three competitors participated. Of the three schemes presented, the scheme presented by WMK was considered by the selection panel most capable of demonstrating design excellence and was declared the winner.

Detailed Development Application

24. The detailed development application D/2017/1672 has been lodged and has been assessed concurrently with this Section 4.55(2) application.
25. D/2017/1672 proposes the demolition of existing buildings, excavation, and the construction of a 6 storey mixed used development with two levels of basement car parking, comprising 142 apartments, one ground floor commercial tenancy, site remediation and landscaping works.
26. The application is to be determined by the CSPC and is recommended for approval. This Section 4.55 application needed to be assessed concurrently with the detailed development application. Final amended plans were submitted in May 2020 which have addressed all issues and are deemed acceptable. Refer to detailed development CSPC report for details.

Threshold Test

27. The development as proposed to be modified is considered to be substantially the same as that originally approved.

Economic/Social/Environmental Impacts

28. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

Water Management Act 2000

29. The concept approval was Integrated Development and subject to general terms of approval from Water NSW.
30. The detailed design application which includes the larger basement was referred to Water NSW who issued general terms of approval which are included in the recommended condition of consent.

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

31. The detailed DA and amended envelopes have been assessed against the design principles of SEPP 65 and the objectives of Apartment Design Guide.
32. Consideration has been given to whether the amended building envelopes have the ability to achieve the 9 design quality principles set out in Schedule 1 of SEPP 65
 - (a) Principle 1: Context and Neighbourhood Character

The amended envelope allows for a development consistent with the existing and desired future character of the area.

(b) Principle 2: Built Form and Scale

The amendment to the envelope allows the infill (centre) building fronting Bourke Street to be setback further from the street which is an improved outcome. The amended building envelope adheres to the provisions of the Sydney LEP 2012, with the proposal responding satisfactorily to the surrounding context

(c) Principle 3: Density

The envelope allows for a development that complies with the maximum Floor Space Ratio development standard in Clauses 4.4 and 6.14 of the Sydney LEP 2012 and is consistent with the future character of the area.

(d) Principle 4: Sustainability

The detailed development has demonstrated it can achieve sustainable development targets and best practice environmental performance.

(e) Principle 5: Landscape

The detailed development has demonstrated that the amended envelope can accommodate sufficient landscaping on the site and exceeds the ADG requirement for deep soil.

(f) Principle 6: Amenity

The amended envelope can accommodate a development with a reasonable level of amenity for the residential occupants of the development and neighbouring properties. Compliance with the amenity controls are detailed in the ADG assessment table below

(g) Principle 7: Safety

The amended envelope allows for a development that is in accordance with the principles of Crime Prevention through Environmental Design (CPTED) and is consistent with this design quality principle.

(h) Principle 8: Housing Diversity and Social Interaction

The amended envelope allows for a development that provides a suitable mix of dwelling types.

(i) Principle 9: Aesthetics

The amended envelope is considered to maintain the integrity of the competition winning scheme, which was considered by the jury to be the scheme most capable of demonstrating design excellence.

33. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

Apartment Design Guide

34. The amended envelope has been assessed against the relevant ADG provisions -

2F Building Separation	Compliance	Comments
<p>Levels 1 to 4</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Levels 5 and above</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	Yes	<p>The amendments to the courtyard do not change the separation distances from adjoining properties.</p> <p>The width of the envelope remains at 18m wide. The length of the envelope at 30m provides sufficient internal separation distances.</p> <p>Reducing the length of the courtyard by 5m still remains compliant with the separation distances in the ADG. amended envelope complies with separation distances for all 6 storeys.</p>
3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	The reduction in courtyard length by 5m does not impact the amount of communal open space to be provided for the development. The detailed DA has demonstrated that the amended envelope can accommodate a development with a compliant 30% communal open space which satisfies the requirements of the ADG.

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	Yes	The detailed DA has demonstrated that the amended envelope allows for a development that exceeds the 15% deep soil recommended by the ADG whilst not including the courtyard area as deep soil.
3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	Partial compliance	<p>The ADG requires buildings on the same site to combine the required separation distances, and that gallery access circulation space should be treated as habitable space.</p> <p>Due to the configuration of the courtyard visual privacy at the pinch point of the courtyards was always anticipated to be an issue. As assessed and addressed in the detailed DA, visual privacy at the pinch points of the courtyard have been addressed through privacy screening on the windows and balconies of some units to prevent overlooking across the courtyard</p> <p>There no additional visual privacy impact caused by the proposed amended building envelope.</p>



Figure 6 - Proposed building footprint in grey as shown in relation to the approved building envelope (hatched)

35. Although 5m has been added to the depth northern part of the building envelope. The detailed DA proposes a building with a maximum depth of 16m which is less than the 18m maximum building depth recommended by ADG. ? wording
36. There is no change to the overall building height and setbacks from the property boundaries. The amendments to the central courtyard and basement will not be visible from the surrounding context.
37. There is no additional overshadowing created by the amended envelope. The amended shadows will be contained within the shadows cast by the approved building envelope.
38. The detailed DA has demonstrated the amended courtyard allows the development to comply with the ADG requirements for solar access and cross ventilation.

39. The increase to the extent of the basement ensures there is adequate space on-site to accommodate the required car, motorcycle and bicycle parking and service areas.

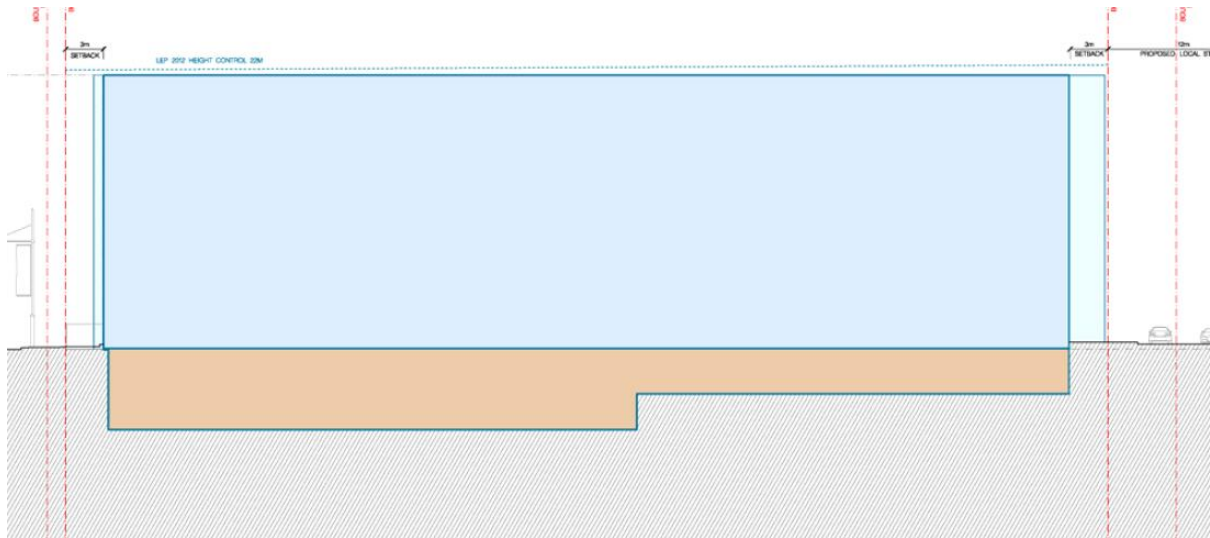


Figure 8 - Originally approved basement level

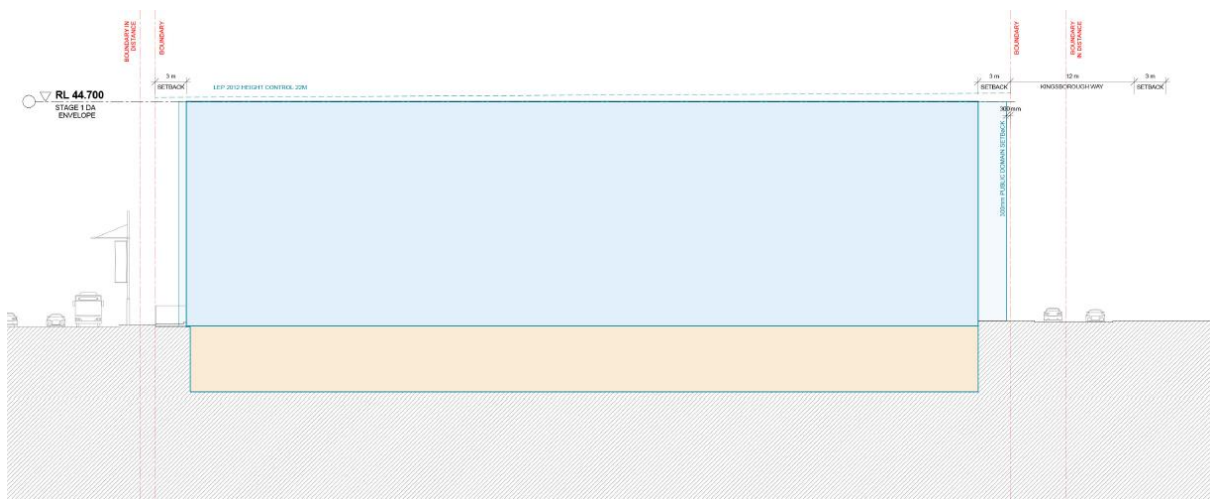


Figure 9 - Proposed extended basement level

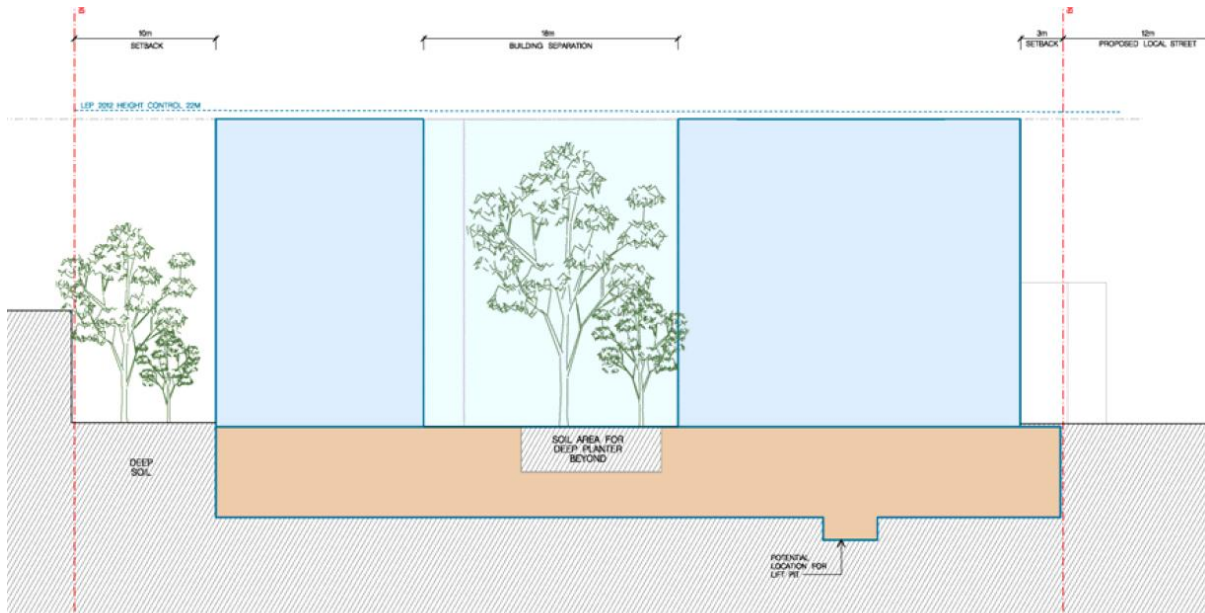


Figure 10 -Section originally approved

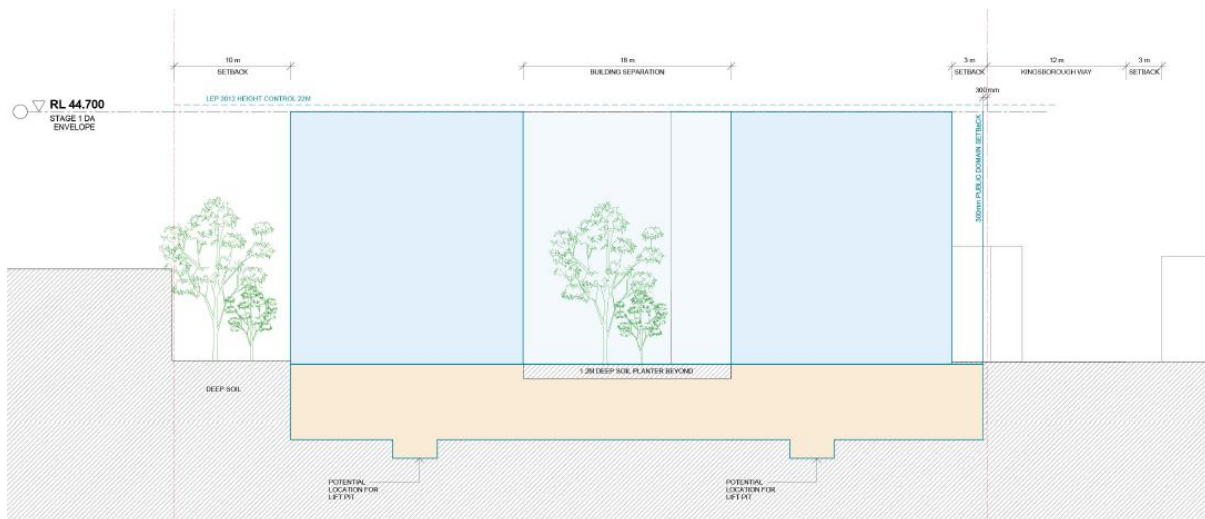


Figure 11 - Amended section showing deep soil planter

- 40. The amended envelopes are considered acceptable and allow a development that achieves a high level of compliance with the SEPP 65 and the ADG.

Sydney LEP 2012

- 41. The site is located within the B4 - Mixed Use zone. The mixed use development associated with the building envelopes is permissible in the zone.
- 42. There is no change to the building envelope height and it remains compliant with the 22m height control..
- 43. The proposed amendment to the envelope reflects the outcomes of the competitive design process, and the detailed development satisfies design excellence provisions.

44. The proposal is separated from the nearby heritage conservation area and will not impact on its significance.

Sydney DCP 2012

45. The amended envelope allows for a development that generally complies with the Sydney DCP controls. No amendments are sought to the envelope setbacks except for the 300mm setback which is an additional setback being provided for footpath widening on Kingsborough Way.

Conditions to be Modified

46. Condition 2 'Approved Development' will be amended to refer to the amended plans to be approved.
47. Condition 4 'Compliance with the VPA' will be amended to refer to the VPA 'as amended'. This will cover the Deed of Variation. Conditions to be imposed on the detailed DA will require the development to comply with both the VPA and the Deed of Variation.
48. Condition 11 of the consent is proposed to be amended as the detailed development of the site does allow for some variations to the ADG and DCP controls including -
- The separation distances relating to visual privacy as proposed in the detailed development application do not strictly comply with the ADG. Visual privacy can be addressed through screening on the windows and balconies of impacted units and is considered acceptable. This is discussed in the ADG assessment above.
 - The minimum floor to ceiling height specified in the ADG for sites in mixed use zones. A Clause 4.6 variation is proposed as part of the detailed development application to allow for 11 units on level 1 to have a floor to ceiling height of 2.7m instead of 3.3m required by the ADG. This has been assessed and is acceptable.
 - The requirement to have at least 5% of the total dwellings on the site to be terrace houses or maisonette apartments. The development does not provide terraces or maisonettes, however provides for a variety of different apartment sizes and the dwelling mix offers a range of housing to meet the different needs of the community. This variation is also deemed acceptable.
49. Refer to the detailed DA (D/2017/1672) for discussion on the variations proposed.

50. Parts (a), (b) and (o) of Condition 11 will be amended as follows -

(a) The building separation distances specified within the ADG relating to visual privacy ***unless approved under any future detailed development consent***

(b) The minimum floor to floor and floor to ceiling heights within the ADG and Sydney DCP 2012 ***unless approved under any future detailed development consent.***

(o) The requirements of Section 3.1.6 of the Sydney DCP 2012 relating to sites greater than 5,000 sq.m, which ask for a range of complimentary uses and housing types, including single storey apartments ***and*** garden apartments. ~~***and maisonette apartments or terrace houses be provided; and at least 5% of the total dwellings on the site are to be terrace houses or maisonette apartments;***~~

Other Impacts of the Development

51. It is considered that the amended proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

External Referrals

52. The detailed development application was referred to Water NSW, Roads and Maritime Services, Sydney Water and Ausgrid. No objections were raised and conditions have been included on the detailed development consent.

Notification, Advertising and Delegation (Submissions Received)

53. The application was notified in accordance with the Sydney DCP 2012 which was applicable at the time the application was lodged. As such the application was notified for a period of 14 days between 19 April 2018 and 4 May 2018 and there were two submissions received. The issues raised included -

(a) Increasing the building footprint will increase the bulk of the building

Response - The amended envelope will contain a building that complies with the height and FSR controls permitted on the site. The increase in the envelope footprint is internal to the site and does not allow for additional building floor space. The amendment to the envelope allows the infill (centre) building fronting Bourke Street to be setback further from the street.

(b) Impact on heritage conservation area.

Response - The modification to the internal courtyard of the building or increased basement size will not be discernible from outside the site and will not have any impact on the nearby heritage conservation area.

54. Issues raised in the submissions largely relate to the detailed development application. The issues of building bulk and impact on the heritage conservation are discussed in more detail in the CSPC report D/2017/1672.

Public Interest

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

S7.11 Contribution

56. The concept application is not subject to a S7.11 development contribution as it relates to a building envelope only. Section 7.11 contributions are imposed on the detailed DA.

Relevant Legislation

57. Environmental Planning and Assessment Act 1979.

Conclusion

58. This Section 4.55(2) application seeks to modify the concept approval D/2015/98 to be consistent with the detailed design development application D/2017/1672.
59. The impacts of modifying the internal courtyard, basement and deep soil planter have been assessed against the SEPP 65 and the ADG, the Sydney LEP 2012 and the Sydney DCP 2012 and are considered acceptable.
60. The amendments are supported and recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Aisling McGrath, Area Planning Coordinator