

**Item 3.****Development Application: 1049, 1051 and 1053-1055 Bourke Street, Waterloo - D/2019/1082****File No.:** D/2019/1082**Summary**

**Date of Submission:** 27 September 2019. Amended plans and additional information were submitted up until 22 September 2020.

**Applicant / Developer:** Lateral Estate Pty Ltd

**Architect:** Smith and Tzannes

**Owner:** Grand Village Pty Ltd and Good Village Pty Ltd

**Cost of Works:** \$19,310,789

**Zoning:** B4 Mixed Use Zone - The concept proposal for mixed-use development comprising ground level retail and boarding house uses above are permitted with consent in the zone.

**Proposal Summary:** The subject application seeks consent for a mixed-use concept building envelope incorporating retail and boarding house land uses.

The development of the site does not trigger the requirement for a concept proposal and competitive design process under the Sydney LEP 2012. The proponent has chosen to 'opt' into this process in order to pursue an additional 10% floor space.

The concept proposal includes:

- in-principle approval for demolition of existing buildings;
- a concept building envelope up to 22m in height;
- vehicular access from Bourke Street;

- indicative future land uses comprising:
  - basement parking and services;
  - ground floor retail, manager's office and residence, communal areas, services and loading dock;
  - boarding rooms and communal areas at upper levels.

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

### Issues

Over the course of the assessment the proposal has been amended to reduce the height of the envelope and to remove design details from the envelope drawings and the landscape strategy plan.

Additional information has been submitted including an amended acoustic report, remediation information and a revised design excellence strategy and ESD targets.

A number of conditions are recommended and include:

- (a) an increase to the rear setback
- (b) labelling of a consolidated deep soil zone, driveway location and street tree locations; and
- (c) Future design requirements including:
  - (i) a maximum 4-storey street frontage height,
  - (ii) a continuous footpath awning,
  - (iii) key landscaping requirements;
  - (iv) minimum floor to floor heights; and
  - (v) restrictions on encroachments into the public domain setback (i.e. land to be dedicated to the City).

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

**Notification**

As integrated development the subject application was notified and advertised for 28 days from 18 October to 19 November 2019. As a result of this notification three submissions were received. Issues raised in submissions included:

- construction management;
- excessive building heights;
- adverse impacts upon the public domain; and
- lack of demand for more retail development in the area.

**Voluntary Planning Agreement**

The owner of the site has made a formal offer to enter into a voluntary planning agreement (VPA) with Council. This will provide for:

- dedication of a 3m wide strip of land along the site's Bourke Street frontage for footpath widening;
- construction of a widened footpath on that land;
- payment of a monetary contribution of \$308,588.70 for community infrastructure provision; and
- provision of a bank guarantee for \$57,558.00 to secure the developer's works.

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

As the application is subject to an associated VPA, it is to be determined by the Local Planning Panel.

**Recommendation**

It is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response.

Consideration should be given to granting deferred commencement consent subject to the recommended conditions requiring the VPA to be executed prior to the consent becoming operative.

**Summary Recommendation:** Authority be delegated to the Chief Executive Officer to determine the application following the conclusion of the public exhibition of the VPA and considering any public submissions received in response.

**Development Controls:**

- (i) State Environmental Planning Policy No 55 - Remediation of Land
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) State Environmental Planning Policy (Urban Renewal) 2010
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012

**Attachments:**

- A. Recommended Conditions of Consent
- B. Envelope Drawings
- C. Perspective Envelope Drawings
- D. Reference Scheme Drawings
- E. Design Excellence Strategy
- F. Public Benefit Offer and Draft Voluntary Planning Agreement

## Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine Development Application No. D/2019/1082, following the conclusion of the public exhibition of the draft Voluntary Planning Agreement and considering any public submissions received in response;
- (B) authority be delegated to the Chief Executive Officer to determine if the Design Excellence Strategy for 1049-1055 Bourke Street, Waterloo prepared by Sutherland & Associates Planning on behalf of Lateral Estate and dated August 2020, as shown in Attachment E to the subject report, be approved pursuant to Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the Competitive Design Policy;
- (C) if the Chief Executive Officer determines to approve the application, consideration be given, pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, to granting a deferred commencement consent to Development Application No. D/2019/1082 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

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

- (A) The concept proposal is for mixed-use development comprising ground level retail and boarding house uses above and which are permitted with consent in the B4 Mixed Use Zone as stated in the land use table in the Sydney Local Environmental Plan 2012 (the LEP).
- (B) The proposed concept building envelope complies with the 22m height of buildings control pursuant to clause 4.3 of the LEP and is capable of accommodating development that complies with the floor space ratio controls pursuant to clauses 4.4, 6.14 and 6.21 of the LEP. The concept proposal is capable of satisfying the relevant objectives of Sydney Development Control Plan 2012.
- (C) The concept proposal and Design Excellence Strategy establish a concept building envelope and suitable parameters for a competitive design process. Subject to the recommended conditions, the proposed envelope is able to accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 11 DP 1038557, Lot 1 DP 779640 and Lot 1 DP 735374 and is commonly known as 1049, 1051 and 1053-1055 Bourke Street, Waterloo.
2. Lot 11 DP 1038557, commonly known as 1053-1055 Bourke Street is benefitted by a right of access appurtenant to the property adjacent to the west at 295 Botany Road, Waterloo.
3. The site is irregular in shape and has an area of 1,737 sqm. It has a 53.68m frontage to Bourke Street that contains four existing vehicle crossovers. It is located on the northern side of Bourke Street approximately 22m north-east of the intersection of Bourke Street and Botany Road. The site falls by approximately 1 metre east to west.
4. The site contains three pre-1943 warehouse buildings that have been significantly altered and modified over time. The two eastern-most warehouses at 1049 and 1051 Bourke Street are connected and accommodate a catering business. The western-most warehouse at 1053-1055 Bourke Street contains a vehicle hire premises.
5. Adjacent to the west at 295 Botany Road, is a two-storey warehouse and office. It is contained in an L-shaped lot that fronts Botany Road and which has a secondary frontage with vehicle crossover to Bourke Street.
6. Further west on the corner of Bourke Street and Botany Road (at 297 Botany Road), is a single storey retail premise building with a hard-stand parking area and vehicle crossover to Bourke Street.
7. Adjacent to the north-west is a two-storey warehouse building, with two vehicle crossovers to Botany Road. This warehouse abuts the northern boundary of the subject site.
8. Adjacent to the north-east, at 1037-1047 Bourke Street, is a two-storey warehouse building comprising several commercial tenancies.
9. On the opposite, southern side of Bourke Street are the recently constructed, multi-storey, mixed-use, Ovo and Infinity buildings. Ovo and Infinity are located on each corner of the intersection of Bourke and Ebsworth Streets and form a gateway to the new Green Square town centre.
10. The site does not contain a heritage item and is not in the vicinity of a heritage item. It is not located within a conservation area. The site is located within the locality of Green Square under the Sydney LEP 2012.
11. Site visits were carried out on 18 October and 5 November 2019. Photos of the site and surrounds are provided below.



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



**Figure 2:** Bourke Street frontage of subject site





**Figure 3:** North-east facade of existing warehouse contained within the subject site



**Figure 4:** Property adjacent to the north-east at 1037-1047 Bourke Street





**Figure 5:** View to subject site to the south-west along Bourke Street



**Figure 6:** View towards the site to the south-west along Bourke Street





**Figure 7:** Infinity building on the southern side of Bourke Street

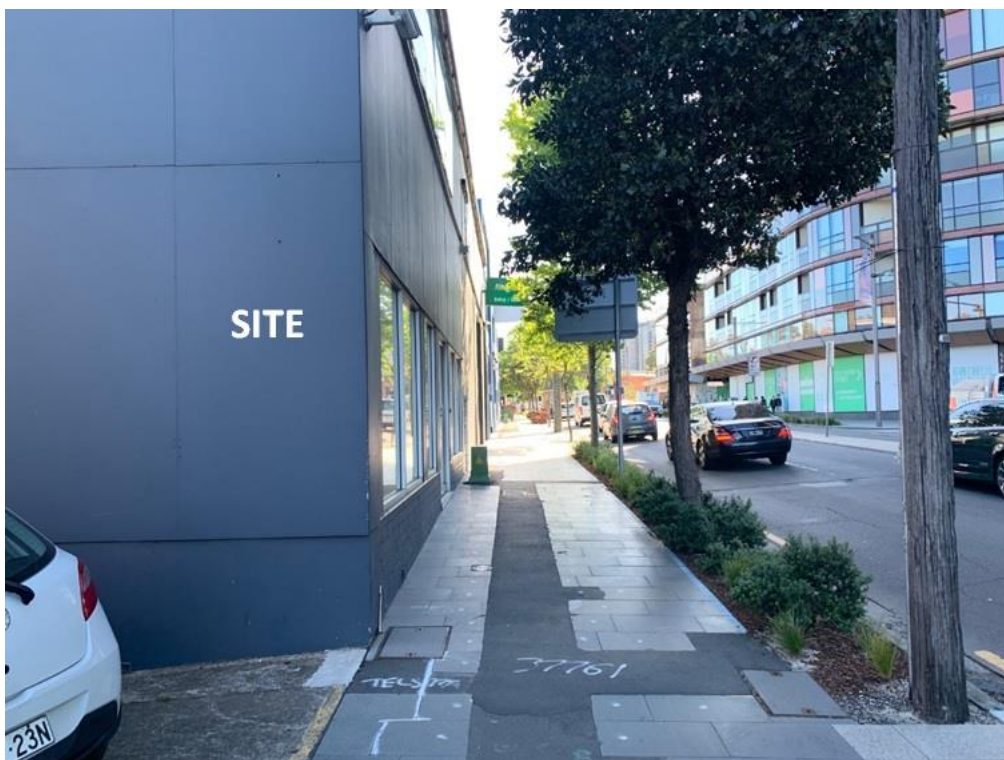


**Figure 8:** View down Ebsworth Street in the Green Square town centre

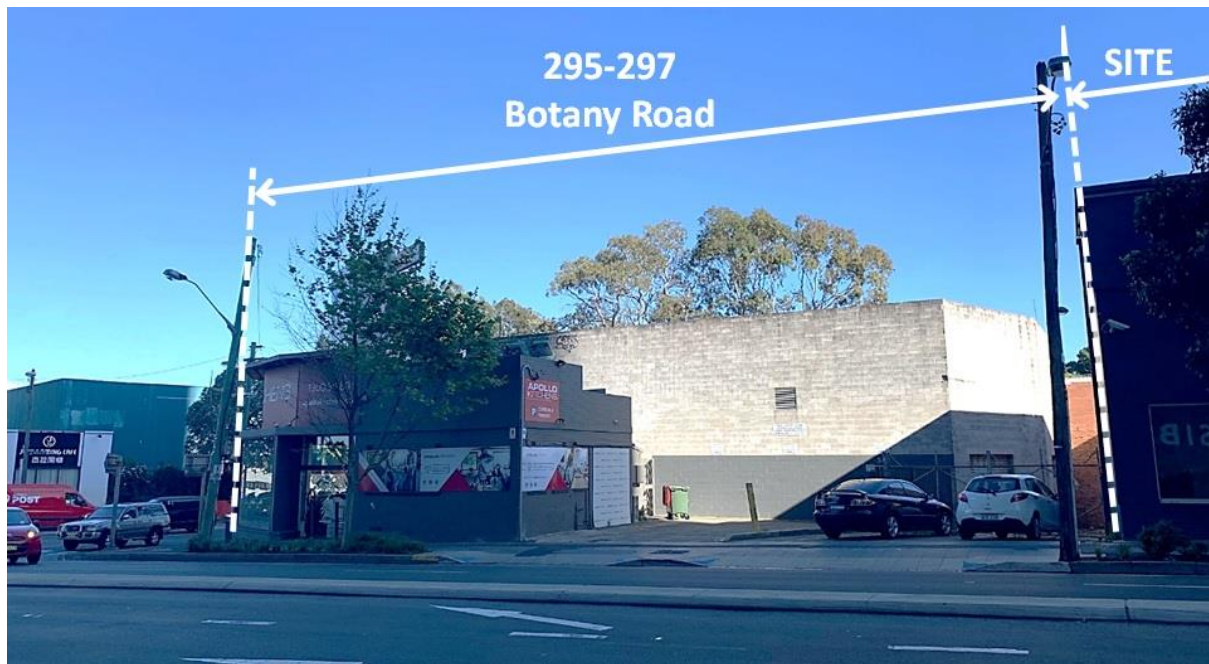




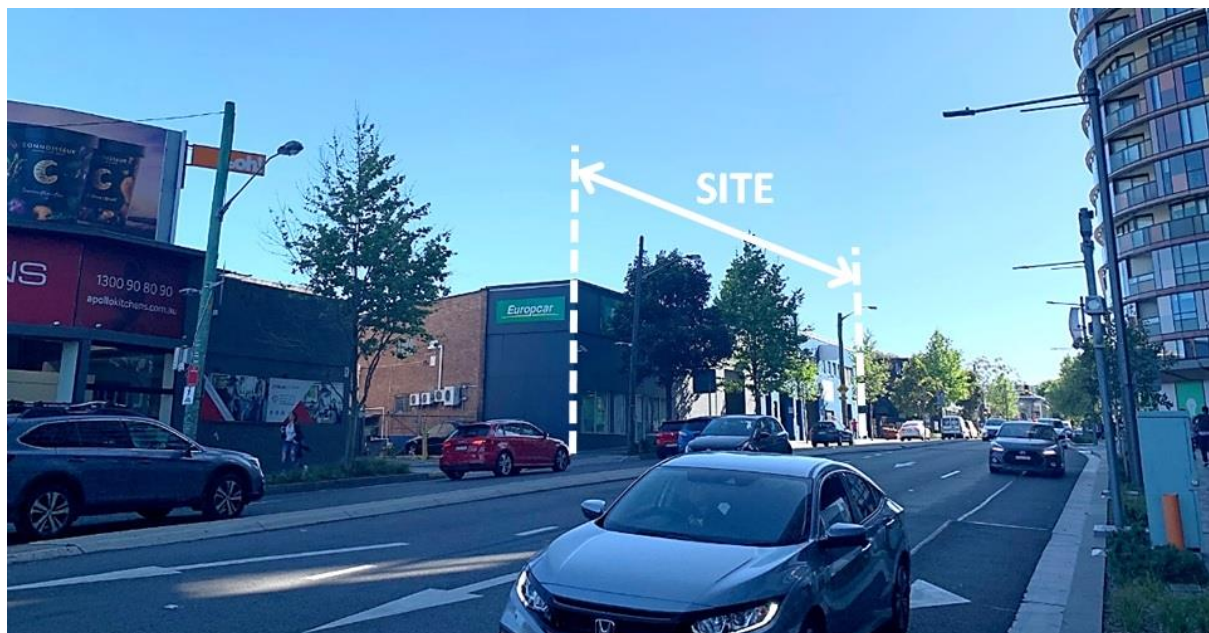
**Figure 9:** Ovo building on the southern side of Bourke Street



**Figure 10:** Bourke Street shared path, planted verge and carriageway



**Figure 11:** Property adjacent to the south at 295-297 Botany Road



**Figure 12:** View to the site, north-east along Bourke Street





**Figure 13:** 'Gazcorp' redevelopment site on the north-west corner of Botany Road and Bourke Street

## History Relevant to the Development Application

### Development history of the subject site

1049 and 1051 Bourke Street

12. U99/01132 – On 22 August 2000, development consent was granted for alterations and additions to the existing warehouse to create additional office space and a lunchroom/amenities area.

1051 Bourke Street

13. P/2019/1709 – On 13 August 2019, Complying Development Certificate No. 19/125123-1 was issued for minor internal alterations including the installation of a mechanical exhaust range hood and fan.

1053-1055 Bourke Street

14. U04/00648 – On 8 December 2004, development consent was granted for change of use to an automotive services and repairs workshop.

### Compliance

15. There are no ongoing compliance actions pertinent to the site.

## History of the subject application

### Lodgement

16. The subject application was lodged on 27 September 2019.
17. The original proposal sought in-principle approval for demolition and for a concept building envelope to a height of 23.56m (6 storeys), with indicative basement parking (for 57 vehicles) and services, ground level retail, a manager's office and residence and loading, and boarding house accommodation (91 rooms) on levels 1 to 5. The reference scheme submitted at lodgement incorporated substantial voids and a large ground level loading/servicing dock. This demonstrated that the proposed envelope could easily accommodate the maximum permitted FSR. It provided excessive numbers of car-parking spaces and did not provide adequate deep soil.
18. Council officers made requests seeking additional information including an amended acoustic report, additional remediation and acid sulphate soils information. A draft voluntary planning agreement was provided to the applicant and which was based on the applicant's public benefit offer submitted at lodgement.

### Advice of the Design Advisory Panel (DAP)

19. The proposal was presented to DAP on 12 December 2019. Issues noted and recommended by DAP included:
  - the amount of car parking is excessive (given the site's proximity to Green Square station);
  - the portion of the envelope identified as an articulation zone, occupied by balconies in the initial reference scheme, overhanging land to be dedicated for footpath widening is unacceptable;
  - configuration of communal open space and amenities required further review to provide equitable access from the ground floor level; and
  - that the concept be amended to align with design principles stated in the DCP locality statement which encourage active frontages at ground level and a four-storey street frontage height to provide streetscapes with high pedestrian amenity.

### Amendments and additional information

20. In response to issues raised by Council officers and which incorporated the DAP advice, the applicant provided an amended DA package in late April 2020. Further amendments and additional information have been provided up until the final submission in September 2020.
21. The final submitted amendments and additional information are summarised as follows:
  - (a) an amended acoustic report;
  - (b) reduction in the height of the envelope to comply with the height control;
  - (c) simplification of envelopes to remove design details such as articulation zones, internal levels and lift cores;

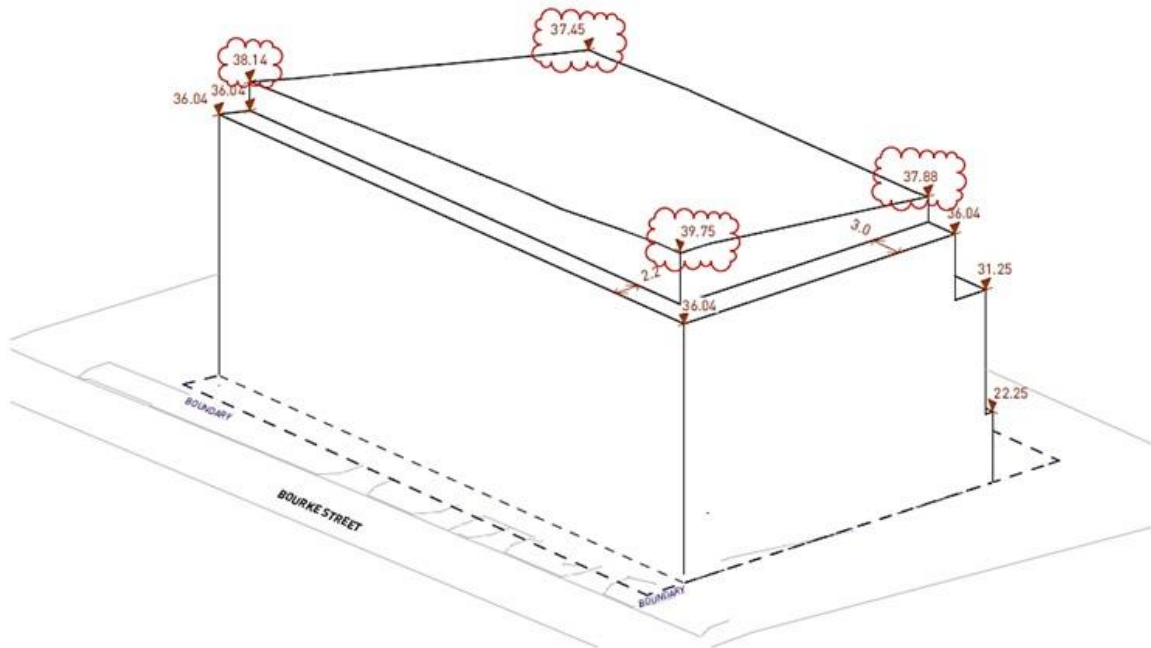


- (d) an amended landscape strategy;
  - (e) amended sections and elevations;
  - (f) amended remediation information including an amended remedial action plan, detailed site investigation and interim advice from a site auditor; and
  - (g) a revised Design Excellence Strategy which includes revised ESD target benchmarks.
22. The final DA as amended by the revisions and additional submissions summarised above is the subject of this assessment report.

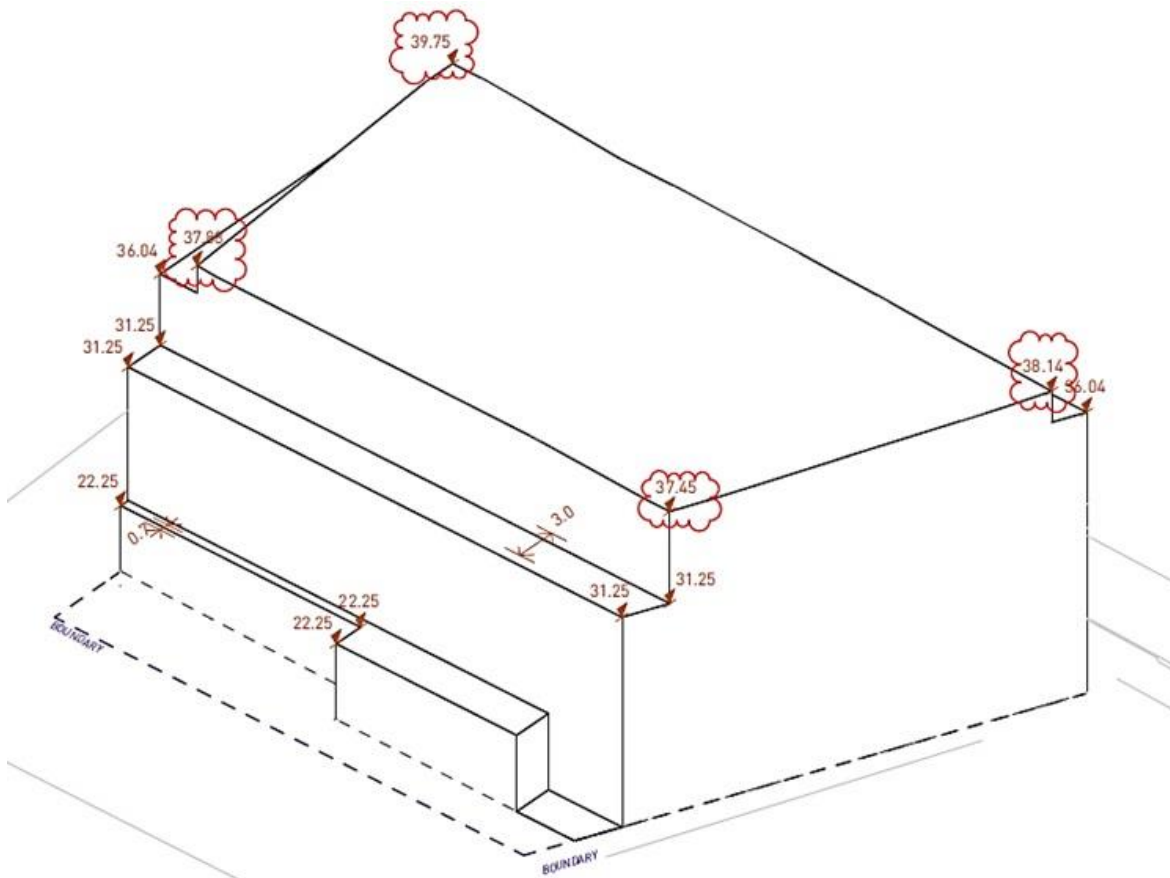
### **Proposal**

23. The subject application seeks consent for a concept building envelope for a mixed-use development, including:
- (a) in-principle approval for demolition of existing buildings;
  - (b) a concept envelope up to 22m in height;
  - (c) vehicular access via an existing crossover location at the north-eastern end of the site's Bourke Street frontage; and
  - (d) indicative future land uses comprising:
    - (i) basement and lower ground level parking and services;
    - (ii) ground floor retail, manager's office and residence, communal areas, services and loading dock; and
    - (iii) boarding rooms (91) and communal areas at upper levels.

24. Plans of the proposed development are provided below.



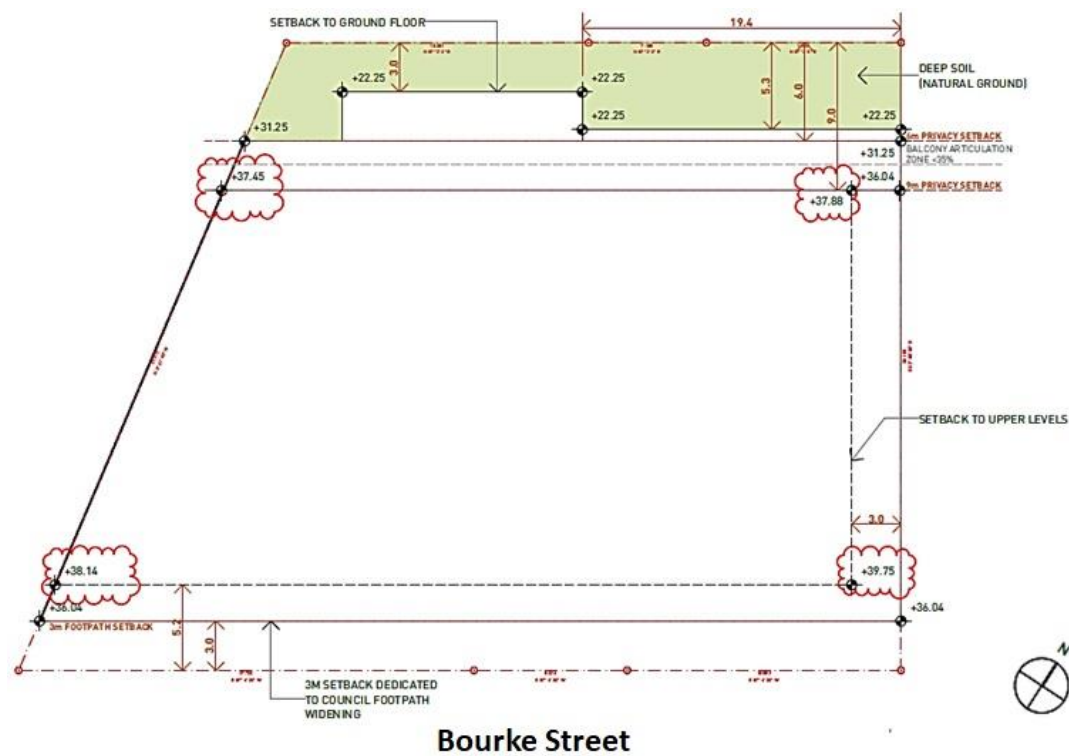
**Figure 14:** Bourke Street perspective - envelope



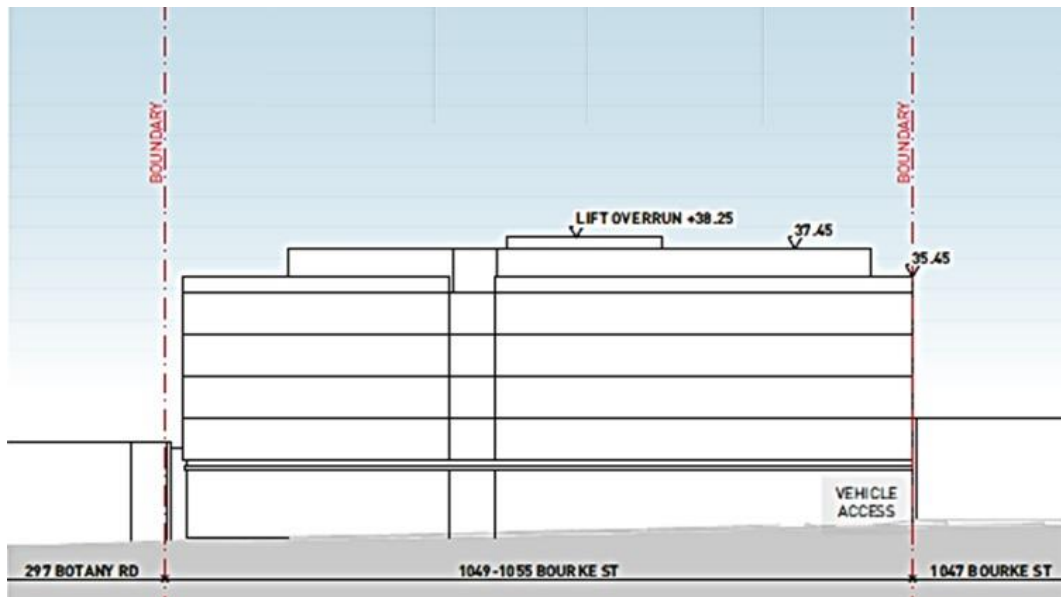
**Figure 15:** Rear perspective - envelope



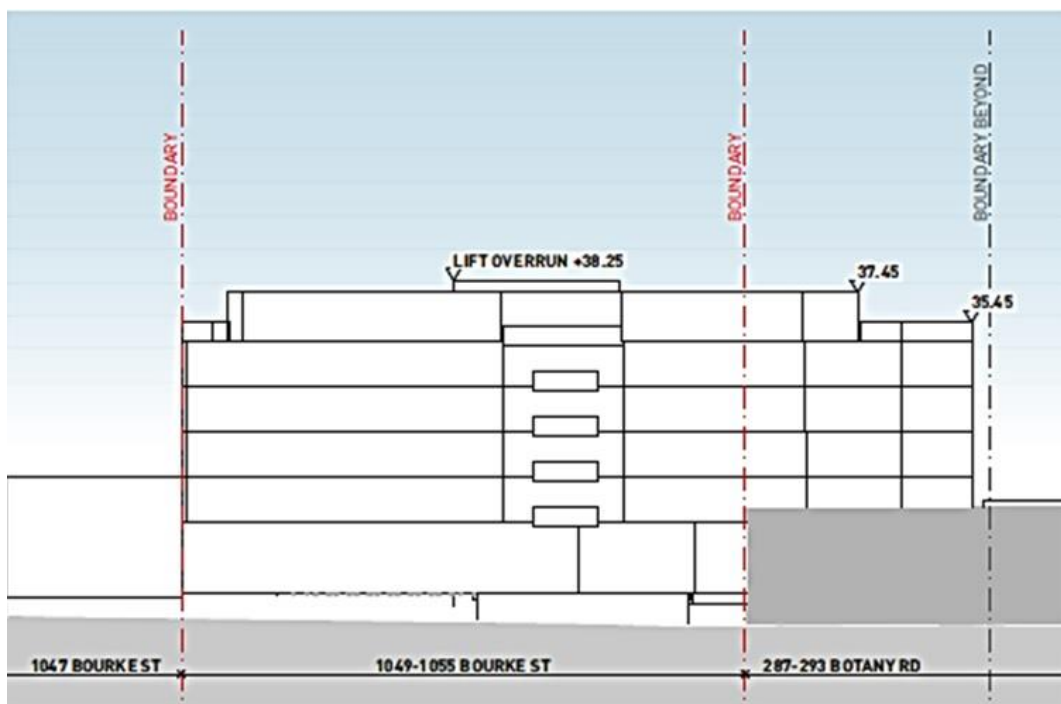
**Figure 16:** Basement plan - envelope



**Figure 17:** Above ground plan - envelope



**Figure 18:** South elevation - reference scheme



**Figure 19:** North elevation - reference scheme

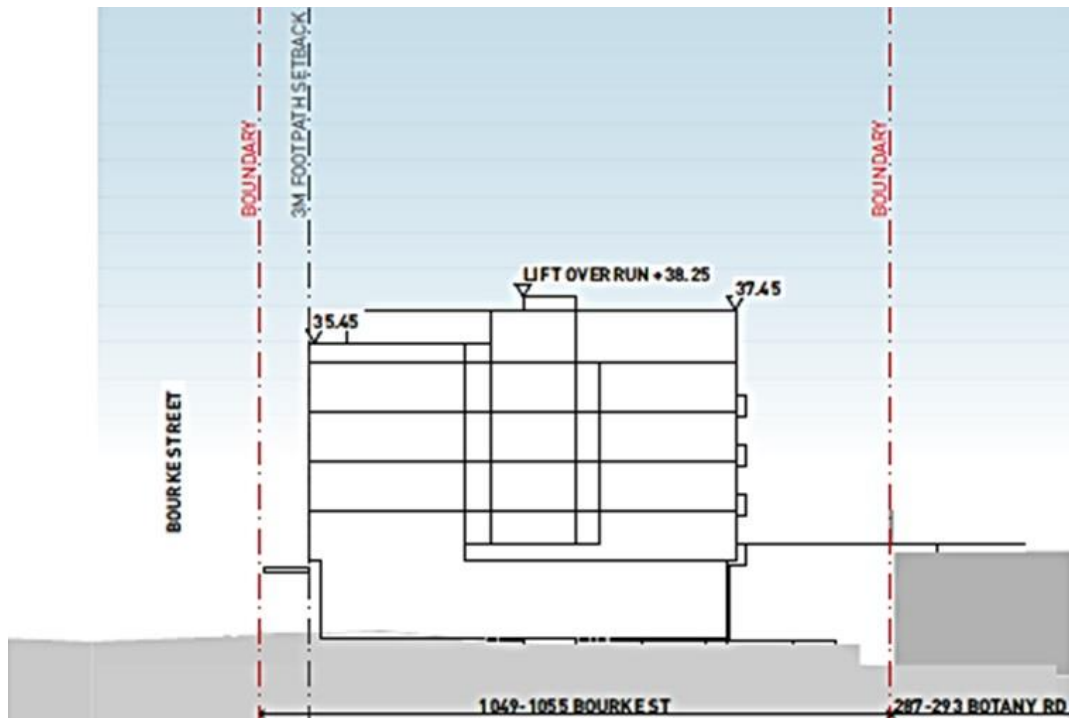


Figure 20: East elevation - reference scheme

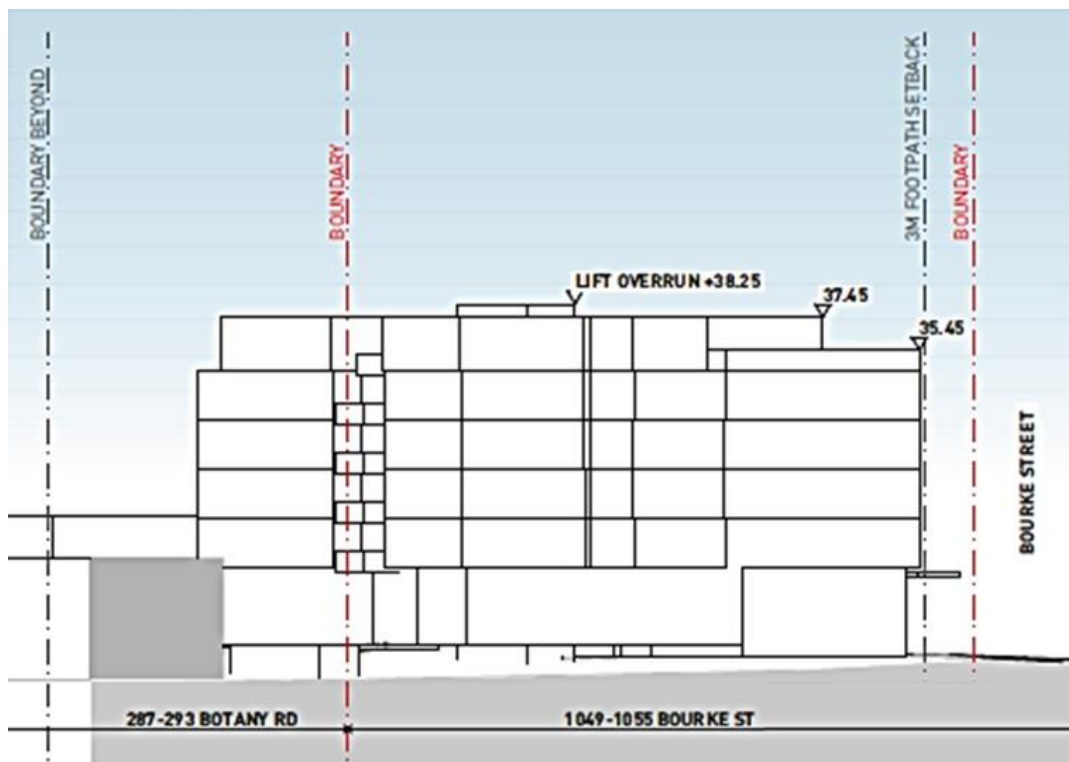


Figure 21: West elevation - reference scheme

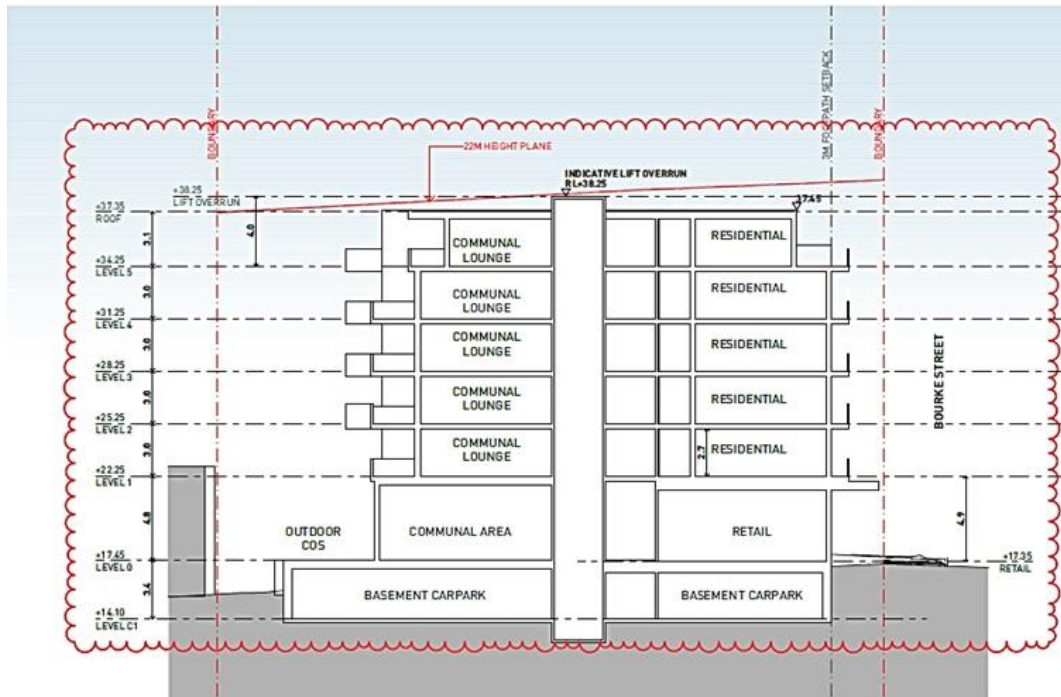


Figure 22: Section A - reference scheme

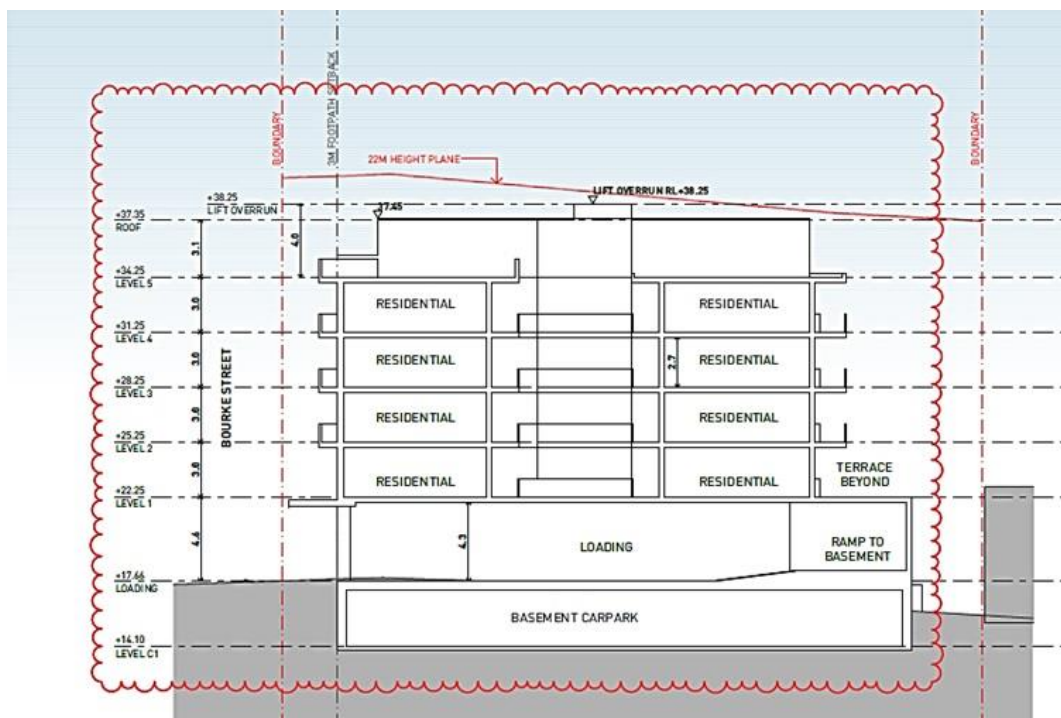
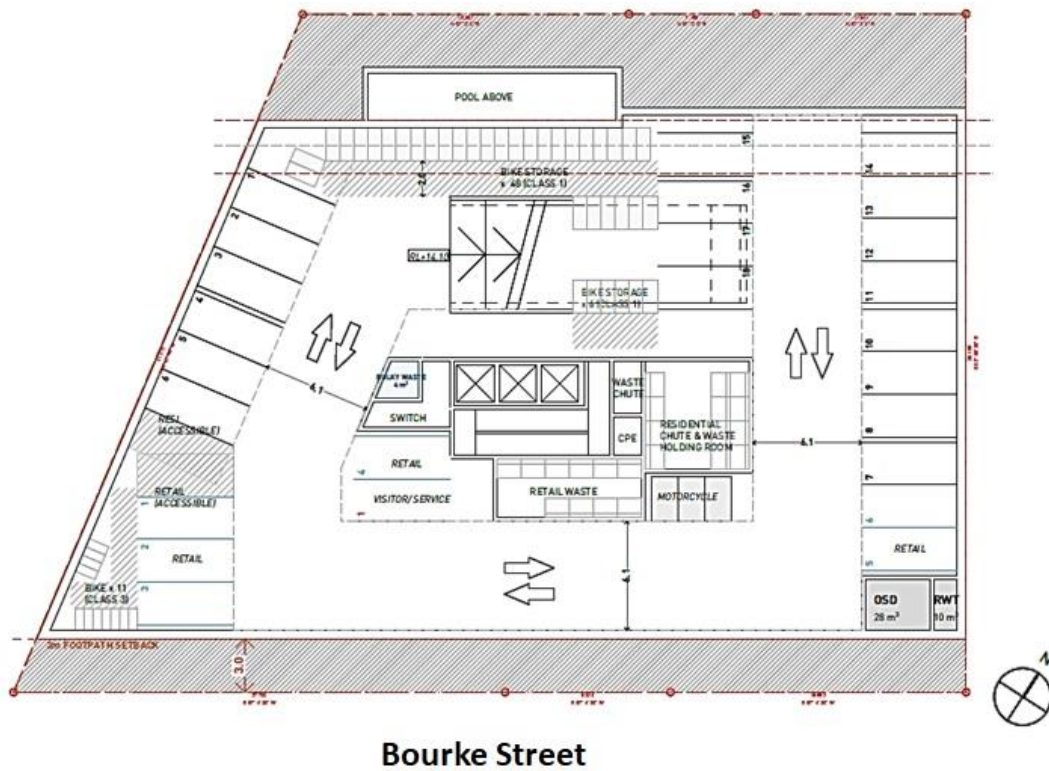
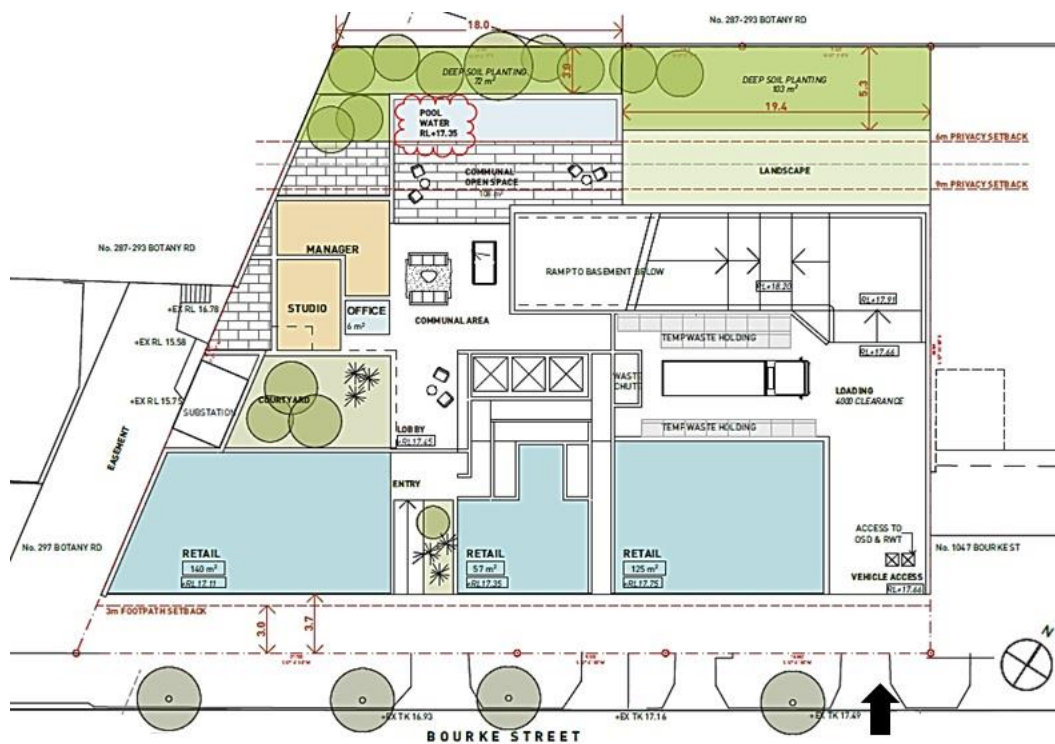


Figure 23: Section B - reference scheme





**Figure 24:** Basement plan - reference scheme



**Figure 25:** Ground level - reference scheme with vehicle location marked with an arrow

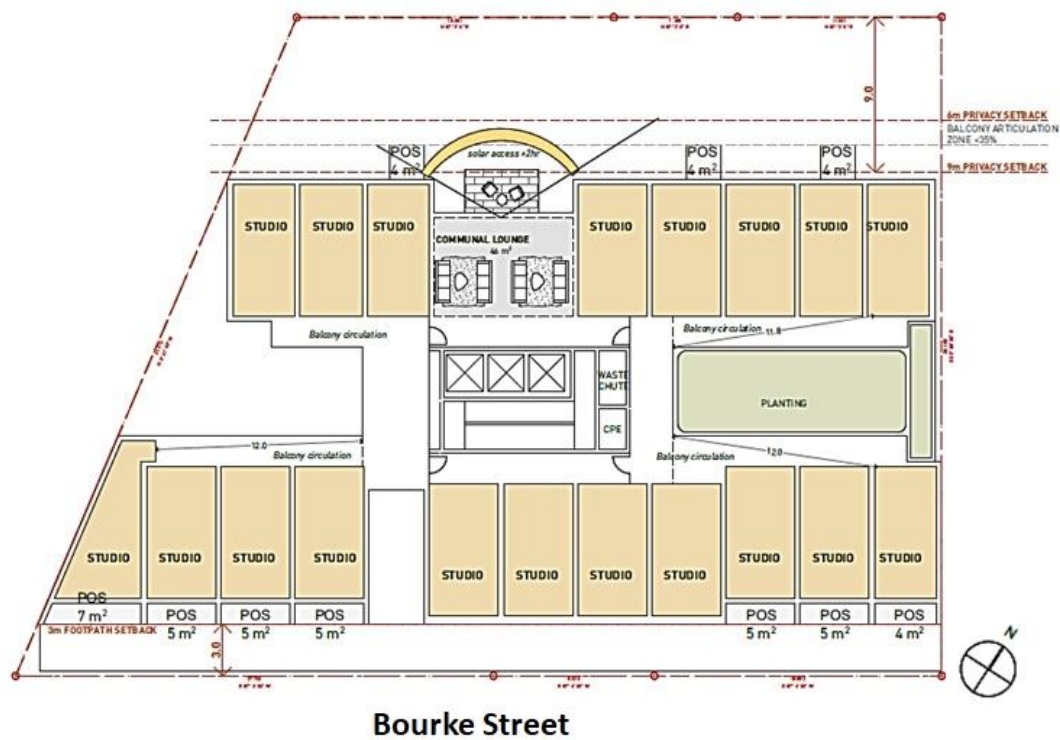


Figure 26: Level 1 - reference scheme

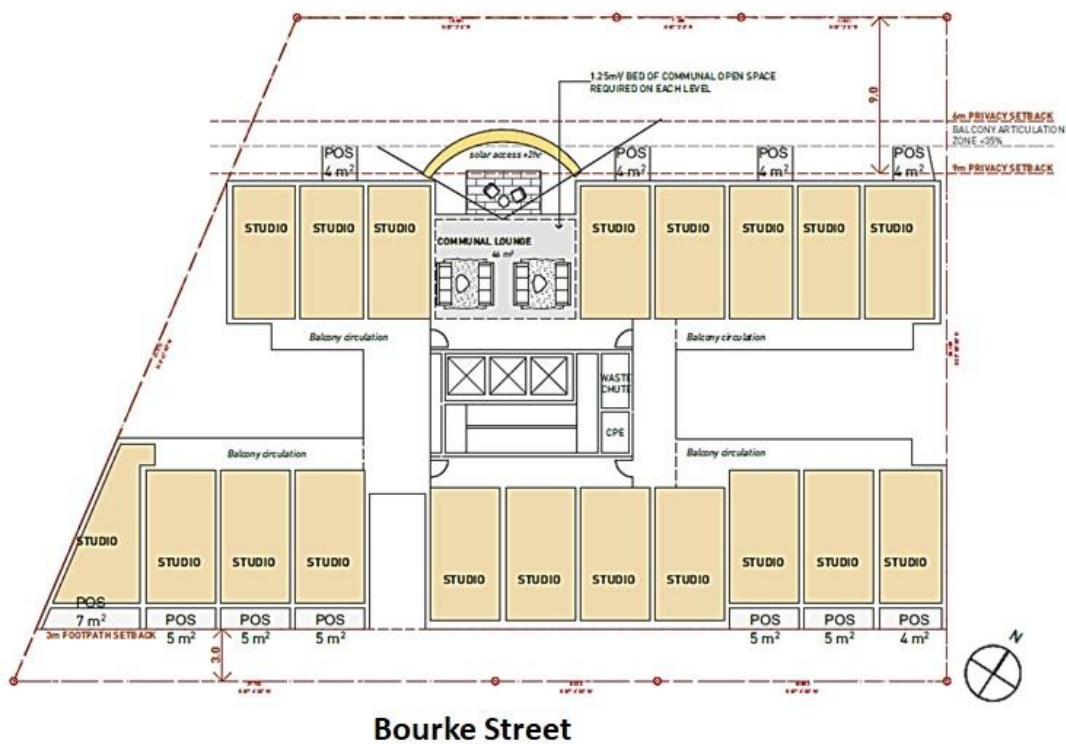


Figure 27: Level 2 - reference scheme



**Figure 28: Level 3 - reference scheme**



**Figure 29: Level 4 - reference scheme**

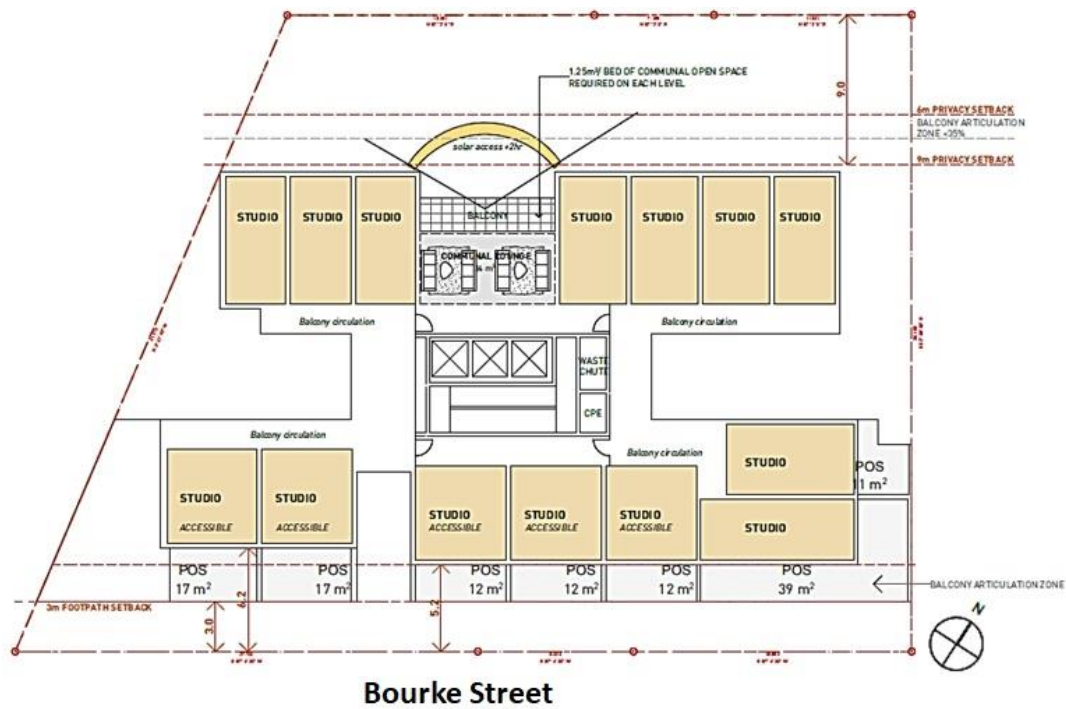


Figure 30: Level 5 - reference scheme

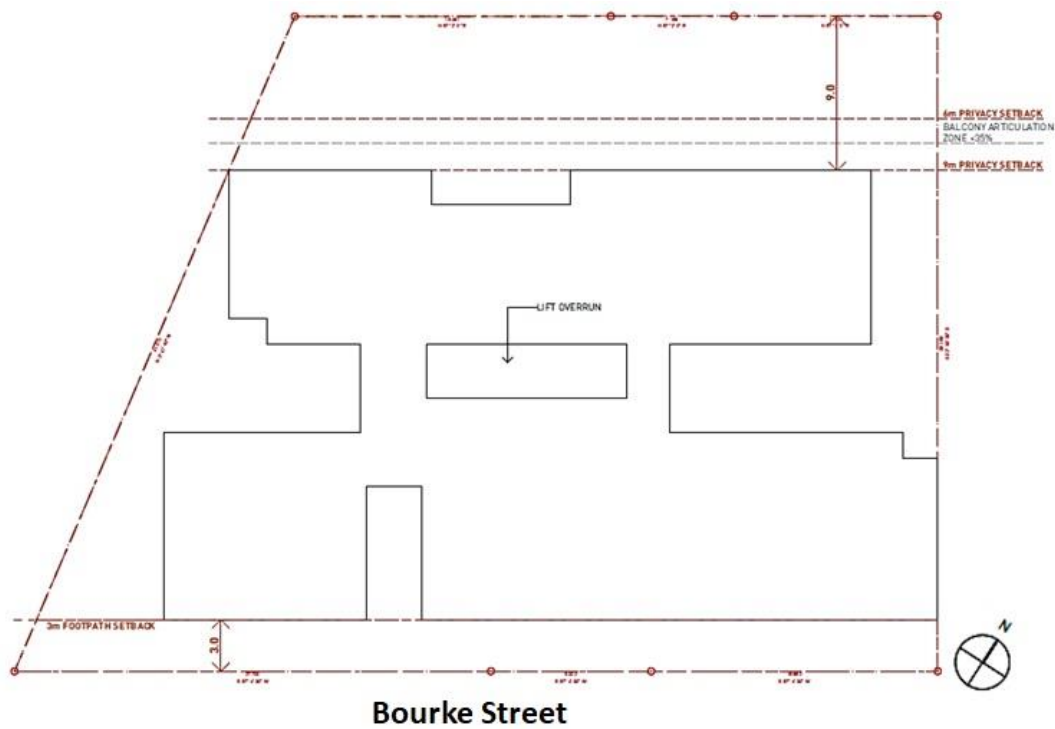


Figure 31: Roof plan - reference scheme

**Economic/Social/Environmental Impacts**

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

(a) Environmental Planning Instruments and DCPs.

**State Environmental Planning Policy No 55—Remediation of Land**

26. 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.
27. The submitted remediation information identifies contaminants in a layer of fill material near the ground surface including lead and polyaromatic hydrocarbons (PAHs). A small fragment of bonded asbestos was found in a sample and it is expected that other materials containing asbestos may be uncovered once the ground slab is removed.
28. A Detailed Environmental Site Investigation (DESI), Remedial Action Plan (RAP) and Letter of Interim Advice from an accredited Site Auditor have been submitted. The recommended remedial strategy is to remove and dispose of all contaminated materials during bulk excavation for the basement and which will effectively remediate the site. The RAP concludes that groundwater remediation is not required.
29. The RAP also recommends that all areas to be dedicated to Council are to be fully remediated or otherwise deemed suitable to remain for their proposed land use.
30. Council's Environmental Health Specialist is satisfied that subject to the RAP being implemented, the site can be made suitable for the proposed use.
31. The RAP has also been reviewed by Council's Public Domain team who accept the proposed remediation strategy, subject to the recommended conditions for the land to be dedicated to the City to be remediated in accordance with the terms of the VPA and without encumbrance by any overly onerous Long Term Environmental Management Plan.
32. The VPA requires the land to be dedicated to the City to be remediated, with all contaminants excavated and replaced with clean fill to a minimum depth of 1.5m below finished surface levels.

**State Environmental Planning Policy (Infrastructure) 2007**

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

Clause 44 and 45 - Development likely to affect an electricity transmission or distribution network

34. The proposed development is in the vicinity of electricity power lines and may be required to incorporate a new substation.
35. In accordance with SEPP clauses 44 and 45 the application was notified to Ausgrid on 18 October 2019. No response was received.

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

36. The proposed development is in the vicinity of a railway tunnel.



37. In accordance with SEPP clause 86 the application was notified to Sydney Trains through the NSW Planning Portal (ref. no. CNR-371) on 2 December 2019.
38. On 24 December 2019, Sydney Trains provided its concurrence to the proposal subject to imposition of the recommended conditions on any consent granted.
39. In accordance with clause 61 of the Environmental Planning and Assessment Regulation 2000, submissions received during the public exhibition period were forwarded to the concurrence and other authorities through the NSW Planning Portal on 11 February 2020.

Clause 104 - Traffic generating development

40. The proposed development is for residential accommodation comprising more than 75 dwellings and is within 90m of Botany Road, which is a state classified road. As such the proposal is identified as traffic-generating development pursuant to clause 104 of the SEPP.
41. In accordance with SEPP clause 104 the application was notified to RMS on 2 December 2019. No response was received.

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

42. Any future development application for the detailed design of the building will be required to satisfy BASIX requirements.
43. A condition is recommended to advise that any future residential scheme must comply with SEPP (Building Sustainability Index: BASIX) 2004, and that a BASIX certificate must be submitted with any future development application for the detailed design of the building.
44. Target benchmarks for ecologically sustainable development including BASIX targets for the development are discussed elsewhere in this report.

**State Environmental Planning Policy (Affordable Rental Housing) 2009**

45. Pursuant to clause 1.9 of the Sydney Local Environmental Plan 2012, as the site is located in Green Square, the SEPP (Affordable Rental Housing) 2009 does not apply to the subject site or application.

**State Environmental Planning Policy (Urban Renewal) 2010**

46. The aims of the SEPP are to facilitate the orderly and economic redevelopment of sites in and around urban renewal precincts and to facilitate delivery of the objectives of any applicable government strategies connected with the renewal of urban areas that are accessible by public transport.
47. The site is within the Redfern-Waterloo Potential Precinct and has a value greater than \$5 million and therefore is subject to the relevant provisions of the SEPP.
48. In accordance with SEPP clause 10 the relevant matters have been taken into account in the assessment of this application. It is considered that the proposed development will not restrict or prevent mixed-use development of a suitable density on the site. The proposal does not restrict or prevent development of infrastructure associated with future public transport in the potential precinct.



**Sydney Local Environmental Plan 2012**

49. The site is located within the B4 Mixed Use Zone. The proposed concept development is defined as a mixed-use development comprising retail premises and boarding house uses and is permitted with consent in the zone.
50. The relevant matters to be considered under Sydney Local Environmental Plan 2012 (the LEP) for the proposed development are outlined below.

## Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	A maximum height of 22m is permitted.  A height of 22m is proposed.
4.4 Floor Space Ratio  6.14 Community Infrastructure Floor Space at Green Square  6.21 Design Excellence	Able to comply	<p>LEP clause 4.4 stipulates a base floor space ratio (FSR) of 1.5:1.</p> <p>LEP clause 6.14 provides an opportunity for a further 0.5:1 FSR where community infrastructure is provided. As part of the subject application, the owner has made a formal offer to enter into a Voluntary Planning Agreement (VPA) with Council.</p> <p>This VPA is for dedication of a 3m wide strip of land along the site's Bourke Street frontage for footpath widening. Construction of a widened footpath on that land. Payment of a monetary contribution of \$308,588.70 for community infrastructure provision and provision of a bank guarantee for \$57,558.00 to secure the developer's works.</p> <p>In accordance with LEP clause 6.21 up to 10% additional FSR (0.2:1) may be approved subject to a competitive design process being carried out and the subsequent detailed design scheme exhibiting design excellence.</p> <p>Considering all the relevant FSR provisions contained in the LEP, the maximum permitted FSR for the development is 2.2:1 (3,821.4sqm GFA).</p> <p>The reference scheme has a FSR of 2.2:1 (sqm GFA), which complies with the maximum permissible FSR for the site.</p>

Development Control	Compliance	Comment
		<p>Note that no actual works or FSR are approved as part of any concept approval and that a condition has been recommended requiring that the floor space ratio of the detailed design must not exceed the permissible floor space ratio for the site.</p> <p>The subject concept proposal has been assessed against the relevant requirements of LEP clause 6.21(4) including site suitability, proposed uses, bulk and massing, street frontage heights and other environmental impacts. It is considered that the concept proposal demonstrates that subject to the recommended conditions, a suitable detailed building design can be achieved for the site.</p> <p>LEP clause 6.21(4) will be considered in the assessment of any subsequent DA for the detailed building design.</p>
5.10 Heritage conservation	Yes	<p>The site does not contain a heritage item and is not in the vicinity of a heritage item. It is not located within a conservation area.</p> <p>Council's Heritage Specialist has reviewed the proposal and gives in-principle support for the demolition of existing buildings contained within the site.</p> <p>The proposed development does not have any adverse heritage impacts.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Able to comply	A Design Excellence Strategy (DEX Strategy) has been submitted with the application. This establishes a design excellence process for the development of the site.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<p>Conditions are recommended to approve the DEX Strategy and ESD targets, and for design requirements to be addressed in any future competitive design process brief and subsequent DA for the detailed design of the building. These include requirements for deep soil, landscaping, floor to ceiling heights and provision of a continuous footpath awning to the site's Bourke Street frontage.</p> <p>A competitive design process is to be undertaken prior to lodgement of any future DA for the detailed design of the building. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional FSR.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Able to comply	<p>The reference scheme indicates 18 residential, 6 retail and 1 visitor/service vehicle parking space provided in a single basement level.</p> <p>Car parking numbers can only be assessed as part of a subsequent DA for the detailed design of the building.</p> <p>The permissible number of retail car parking spaces are determined by the amount of retail floor space in the development and which is only indicative at this concept stage.</p> <p>The LEP does not specify car parking rates for boarding house uses. Any car-parking provided in association with the boarding house use is to be justified on a merits basis.</p>

Part 7 Local Provisions - General	Compliance	Comment
		Given the proposed boarding house use and the site's proximity to Green Square train station, buses and cycle paths, car parking numbers can be minimised and with the added benefit of assisting the development to achieve deep soil and the specified BASIX targets.
Division 3 Affordable housing	Able to comply	Any subsequent DA for the detailed design of the building will be subject to an affordable housing contribution.
7.14 Acid Sulphate Soils	Yes	<p>The LEP maps identify the site as being within a Class 5 acid sulphate soils zone and 75m from a Class 3 acid sulphate soils zone.</p> <p>The submitted Detailed Environmental Site Investigation (DESI) states that no acid sulphate soils were identified by the borehole sampling investigations. It is considered that no further testing or management of acid sulphate soils is necessary.</p>
7.15 Flood planning	Able to comply	<p>The site is flood affected.</p> <p>A site-specific flood study has been submitted and which recommends flood planning levels (FPLs) for the development.</p> <p>Council's Public Domain Infrastructure Specialist has reviewed the proposal. The recommendations of the site-specific flood study are accepted, with the exception of the FPL for the access ramp to the basement car park.</p> <p>A FPL of 18.4m AHD is recommended for the basement access ramp threshold and which is the estimated probable maximum flood level.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.16 Airspace operations	Yes	The proposed concept envelope does not breach the 51m AHD Obstacle Limitations Surface, nor does it exceed the 45.72m height threshold that triggers any requirement from the relevant Commonwealth authority.
7.17 Development in areas subject to airport noise	N/A	The site is not located within a ANEF Contour 20 zone and is not subject to the requirements of this control.
7.20 Development requiring preparation of a development control plan	N/A	<p>The site is not greater than 5,000sqm in area and the proposed concept envelope does not exceed 25m in height. As such the subject DA does not trigger the requirement for the preparation of a Development Control Plan under this clause.</p> <p>Notwithstanding the above, the applicant has voluntarily lodged a concept DA so the development may be eligible for up to 10% additional floor space subject to achieving design excellence, pursuant to clause 6.21(7) of the LEP.</p>
7.23 Large retail development near Green Square Town Centre	Able to comply	<p>The site is on land identified as restricted retail development on the Retail Premises Map. As such, development consent cannot be granted for the purposes of individual shops or markets with a gross floor area of greater than 1,000sqm.</p> <p>While indicative ground floor shop tenancies of less than 1,000sqm in area are proposed, the quantum of gross floor area is not approved as part of this concept DA.</p> <p>As such, any subsequent DA for the detailed design of the building will be required to comply with this control.</p>

### Sydney Development Control Plan 2012

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

## 2. Locality Statements

### 2.5.11 Waterloo Park

The subject site is in the locality of Waterloo Park. The concept proposal has the ability to deliver the desired future character of the area, as follows:

- the concept envelope is in keeping with the low to medium scale character of the area, in accordance with the character statement and design principle (a);
- by incorporating non-residential uses and active frontages at ground level along Bourke Street which is consistent with design principle (d); and
- Any future development proposal will be able to provide a 4-storey street frontage height to Bourke Street to reinforce the street's pedestrian scale and to achieve good levels of solar access to the public domain. This is consistent with design principle (e).

3. General Provisions	Compliance	Comment
3.1.1 Public Domain Elements - Streets, lanes and footpaths  3.1.1.4 Public Domain Elements - Footpaths  3.1.2.1 Public Domain Elements - Bike network	Able to comply	Construction of concrete paths on land to be dedicated for widening of Bourke Street has been secured in the VPA associated with this DA.  The widened off-road shared bicycle/pedestrian path to be provided adjacent to the site's Bourke Street frontage is to be designed in accordance with the Sydney Streets Design Code.
3.1.4 Public Open Space	Yes	The proposed development does not overshadow any public parks.
3.1.5 Public Art	Able to comply	A Preliminary Art Plan (PAP) has been submitted as part of the subject application and which sets out a budget, a clear process for the incorporation of public art in the development and which identifies public art opportunities within the site.  A condition is recommended for a Public Art Strategy to be submitted as part of any subsequent DA for the detailed design.



3. General Provisions	Compliance	Comment
		It is recommended that in preparing the Public Art Strategy for the detailed design DA, the public art budget specified in the PAP is increased, commensurate with the nature and scale of the proposed development. It is also recommended that architects and designers are encouraged to consider public art locations, in addition to the single location in the residential entry lobby identified in the PAP.
3.2.1.1 Improving the Public Domain - Sunlight to publicly accessible spaces	Yes	The proposed concept envelope does not overshadow any publicly accessible open space.
3.2.2 Addressing the Street and Public Domain	Able to comply	The reference scheme demonstrates that the flood planning levels recommended in the site-specific flood assessment can be achieved without a significant level difference between ground level retail tenancies and the adjacent public domain.
3.2.3 Active Frontages	Able to comply	<p>The Bourke Street frontage is identified as an active frontage on the DCP Active Frontages Map.</p> <p>The reference scheme locates retail tenancies of a suitable depth adjacent to the Botany Road frontage and demonstrates that the development is able to satisfy the requirements of this provision.</p>
3.2.4 Footpath Awnings	Able to comply	<p>The site's Bourke Street frontage is identified as requiring a continuous footpath awning.</p> <p>A condition is recommended for design requirements to be incorporated into the competitive design process brief and any subsequent DA for the detailed design of the building, to provide a footpath awning to the Bourke Street frontage.</p>

3. General Provisions	Compliance	Comment
3.3 Design Excellence and Competitive Design Processes	Yes	<p>A Design Excellence Strategy (DEX Strategy) has been submitted with the application and which establishes a design excellence process for the development of the site.</p> <p>Conditions are recommended to approve the DEX Strategy and for design requirements to be incorporated into any future competitive design process brief. These include requirements for a setback above a 4-storey street frontage height, deep soil provision and landscape design.</p> <p>A competitive design process is to be undertaken prior to lodgement of any future DA for the detailed design of the building. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional FSR.</p> <p>A landscape concept plan has been submitted as part of the subject application. However, it does not provide suitable information or landscape design principles to guide the competitive design process or the detailed design of the development. Conditions are recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA including critical landscape design requirements that comprise a high-level landscape strategy.</p> <p>Refer to the assessment of the submitted landscape concept plan against DCP provisions 3.5 Urban Ecology and 4.2.3 Amenity, in the DCP compliance table below.</p>
3.4 Hierarchy of Centres, City South	Able to comply	Refer to the assessment against clause 7.23 in the LEP compliance table above.

3. General Provisions	Compliance	Comment
3.5.1 Urban Ecology - Biodiversity	Able to comply	A condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA. These requirements include that landscaping is to incorporate locally indigenous and native tree, shrub and groundcover species in accordance with the requirements of this provision.
3.5.2 Urban Ecology - Urban Vegetation	Able to comply	A condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA. These requirements include that urban tree canopy cover to at least 15% of the site area is to be provided within 10 years of the completion of the development in accordance with the requirements of this provision.
3.5.3 Urban Ecology - Tree Management	Able to comply	<p>There are no trees contained within the site.</p> <p>There are 4 street trees adjacent to the Bourke Street frontage. A condition is recommended for design modifications to the envelope drawings to incorporate street trees in the envelope plans.</p> <p>A condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA. Including that the footpath awning to Bourke Street is no wider than 2.5m to avoid any conflicts with street tree canopies during construction and into the future.</p> <p>Conditions can be imposed upon any consent granted to any subsequent DA for the detailed design of the building to protect street trees adjacent to the site's Bourke Street frontage.</p>

3. General Provisions	Compliance	Comment
3.6 Ecologically Sustainable Development	Able to comply	ESD target benchmarks are incorporated into the DEX Strategy that is recommended for approval and which include a commitment to rooftop solar PV provision.
3.7 Water and Flood Management	Able to comply	Refer to the assessment against clause 7.15 in the LEP compliance table above.
3.8 Subdivision, Strata Subdivision and Consolidation	Able to comply	<p>The survey submitted is not a boundary survey and is not consistent with the City's specifications for surveys.</p> <p>A condition is recommended that requires any survey submitted as part of an application for the detailed design of the building to be in accordance with the City's survey specifications including that it is based on a site boundary survey.</p>
3.9 Heritage	Yes	Refer to the assessment against clause 5.10 in the LEP compliance table above.
3.11 Transport and Parking	Able to comply	<p>As noted in the assessment against the car-parking provisions in the LEP compliance table above, given the proposed boarding house use and the site's proximity to Green Square train station, buses and cycle paths, car parking numbers can be minimised.</p> <p>Council's Transport Planner has reviewed the proposal and prefers that no car-parking is provided, and that vehicle access is limited to service vehicles.</p> <p>It is noted that the depth, extent, number, layout and design of basement levels and/or the configuration of car parking is not approved as part of the subject concept DA. These are matters to be determined at detailed design DA stage.</p>

3. General Provisions	Compliance	Comment
		<p>Conditions are recommended for:</p> <ul style="list-style-type: none"> <li>the approved vehicle access in the location of the north-easternmost existing crossover to Bourke Street to be annotated on the approved envelope plans; and</li> <li>any subsequent DA for the detailed design is to include a Transport Impact Study and a Parking and Access Report.</li> </ul>
3.12 Accessible Design	Able to comply	<p>Conditions are recommended for any subsequent DA for the detailed design to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p> <p>The reference scheme provides 6% (5 of 91) of dwellings as adaptable dwellings. This does not comply with the 15% of dwellings required to be adaptable in accordance with DCP rates.</p> <p>The minimum requisite number of adaptable dwellings to be provided will be determined by the total number of dwellings proposed in the detailed design DA.</p>
3.13 Social and Environmental Responsibilities	Able to comply	<p>In accordance with the public domain interface and active use requirements discussed elsewhere in this report it is considered that any detailed design scheme is able to provide adequate passive surveillance and in accordance with the relevant CPTED principles.</p>
3.14 Waste	Able to comply	<p>The waste management plan submitted as part of the subject application is insufficient and is not approved as part of any consent granted.</p> <p>A condition is recommended for any subsequent DA for the detailed design of the building to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

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

4. Development Types  4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
4.2.1.1 Building height - Height in storeys and street frontage height in storeys	Able to comply	<p>A maximum of 6 storeys is permitted.</p> <p>The reference scheme is 6 to 7-storeys in height, with the basement protruding by up to 1.7m above ground level at the rear.</p> <p>The number of storeys is not approved as part of this concept DA and will be considered in the assessment of any subsequent DA for the detailed design of the building.</p> <p>This provision also requires development to respond to the street frontage heights of adjacent buildings.</p> <p>Refer to the Issues section in this report.</p>
4.2.1.2 Building height - Floor to ceiling heights and floor to floor heights	Able to comply	<p>This provision requires a minimum floor to floor height of 4.5m on the ground floor and 3.1m to achieve a floor to ceiling height of 2.7m on upper levels.</p> <p>The reference scheme provides a minimum floor to floor height of:</p> <ul style="list-style-type: none"> <li>4.5m-5.14m on the ground floor; and</li> <li>3m on the upper residential levels.</li> </ul> <p>Floor to floor heights are not approved as part of this concept DA and will be considered in the assessment of any subsequent DA for the detailed design of the building.</p>

4. Development Types  4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
		A condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA, including that the development achieves minimum floor to floor heights as specified in the DCP.
4.2.2.2 Building setbacks - Setbacks above street frontage height	Able to comply	<p>As noted above a condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA.</p> <p>This condition includes the requirement that the development provides a street frontage height of 4-storeys to Bourke Street.</p> <p>In accordance with the requirements of this control the recommended condition also requires a minimum setback of 3m above the street frontage height.</p>
4.2.3.1 Amenity - Solar access	Yes	<p>The DCP requires that apartments in neighbouring developments must achieve a minimum of two hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space.</p> <p>There are no residential properties to the north, east and west.</p> <p>Overshadowing to the Infinity building to the south is to ground level commercial tenancies only.</p> <p>The only residential properties affected by overshadowing from the proposed envelope are in the Ovo building to the south-east.</p>



4. Development Types  4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
		<p>The submitted sun's eye view diagrams and analysis demonstrate that five apartments in the Ovo building are affected by overshadowing from the concept envelope. However, those affected apartments still receive the minimum two hours of sunlight to the minimum area of living rooms and private open spaces between 9am and 3pm on 21 June.</p> <p>The proposed concept envelope complies with this control.</p>
4.2.3.3 Amenity - Internal common areas	Able to comply	The submitted reference scheme demonstrates that internal common areas can be configured to have access to daylight and outlook and provide internal corridors at least 2m wide in front of lifts.
4.2.3.4 Amenity - Design features to manage solar access	Able to comply	The reference scheme does not provide any detail as to design features to manage solar access. This is a matter to be considered in the assessment of any subsequent DA for the detailed design of the building.
4.2.3.5 Amenity - Landscaping	Able to comply	<p>This provision specifies the matters to be addressed by a landscape plan submitted as part of a DA for the detailed design of a building.</p> <p>A landscape concept plan has been submitted as part of the subject application. However, it does not provide suitable information to guide the competitive design process or a suitable benchmark against which a detailed design may be assessed in future. For these reasons, it is recommended that the submitted landscape concept plan is not approved as part of any consent granted.</p>

4. Development Types  4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
		<p>Conditions are recommended:</p> <ul style="list-style-type: none"> <li>• for design requirements to be addressed in the future competitive design process brief and detailed design DA including critical landscape design requirements that comprise a high-level landscape strategy for the development; and</li> <li>• requiring a sufficiently detailed landscape plan to be submitted with any subsequent DA for the detailed design of the building.</li> </ul>
4.2.3.6 Amenity - Deep soil	Able to comply	<p>This provision requires 10% of the site area to be provided as a consolidated deep soil area and with a minimum dimension of 10m.</p> <p>The concept envelope provides 9% (165 sqm) of the site area as deep soil, with a minimum dimension of 3m.</p> <p>Conditions are recommended for design modifications to the envelope drawings to reduce the size of the basement and to provide a consolidated deep soil area with a minimum dimension of 9m for improved amenity and landscaping.</p> <p>Refer to the Issues section in this report.</p>
4.2.3.7 Amenity - Ventilation	Able to comply	<p>The reference scheme demonstrates that all boarding rooms limited in depth and with a window to provide adequate natural ventilation.</p>
4.2.3.10 Amenity - Outlook	Able to comply	<p>The reference scheme demonstrates that all boarding rooms can be provided with a suitable outlook.</p>

4. Development Types  4.2 Residential flat, commercial and mixed-use developments	Compliance	Comment
4.2.3.11 Amenity - Acoustic privacy	Able to comply	<p>The acoustic report submitted as part of the subject DA assesses background sound levels and provides recommendations to protect the amenity of future residents from traffic noise through various façade treatments.</p> <p>It recommends measures to minimise noise impacts to neighbouring properties from the proposed development.</p> <p>It concludes that there will be no adverse impacts upon future intended occupants from noise and vibration from the nearby rail tunnel.</p> <p>A condition is recommended that requires the detailed building design is to have regard to the recommendations of the acoustic report.</p> <p>As acoustic attenuation requirements may change subject to detailed design development, an acoustic report is to be submitted as part of any subsequent DA for the detailed building design.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The maximum permitted street frontage length is 65m.</p> <p>The proposed envelope has a street frontage length of approximately 54m.</p>
4.2.5.3 Types of development - Development on busy roads and active frontages	Able to comply	As noted above the acoustic report recommends measures to protect residential amenity from the impacts of traffic noise.
4.2.6 Waste and Recycling Management	Able to comply	Refer to the assessment against provision 3.14 in the DCP compliance table above.

<b>4. Development Types</b> <b>4.2 Residential flat, commercial and mixed-use developments</b>	<b>Compliance</b>	<b>Comment</b>
4.2.7 Heating and Cooling Infrastructure	Able to comply	Any subsequent DA for the detailed building design will be assessed against the requirements of this control which encourage heating and cooling infrastructure to be consolidated into a centralised basement location near the street frontage.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Matters arising from non-residential development in the B4 Mixed-Use zone, required to be considered under this provision, include noise impacts, privacy, vehicular and pedestrian traffic and overshadowing. These matters are addressed elsewhere in this report.

<b>4. Development Types</b> <b>4.4 Other development types and uses</b>	<b>Compliance</b>	<b>Comment</b>
4.4.1.1 Boarding Houses - Subdivision	Yes	The subject application does not propose subdivision or community title subdivision and satisfies the requirements of this control.
4.4.1.2 Boarding Houses - Bedrooms	Able to comply	<p>Considering all of the spatial requirements under this provision, the proposed boarding rooms are required to have a minimum area of 22sqm.</p> <p>All typical boarding room layouts in the reference scheme exceed the minimum size requirements specified under this provision.</p> <p>The reference scheme demonstrates that all boarding rooms can be configured to have access to natural light from a window (not a skylight).</p>

<b>4. Development Types</b>  <b>4.4 Other development types and uses</b>	<b>Compliance</b>	<b>Comment</b>
4.4.1.3 Boarding Houses - Communal kitchen areas	Able to comply	<p>The reference scheme does not provide a communal kitchen but rather a kitchenette in each boarding room instead.</p> <p>This approach is accepted but is a matter to be considered in the assessment of any subsequent DA for the detailed design of the building.</p>
4.4.1.4 Boarding Houses - Communal living areas and open space	Able to comply	<p>The reference scheme demonstrates that indoor communal areas and communal open space can be provided in accordance with the minimum size, location, solar access and other requirements of this provision.</p> <p>This is a matter to be considered in the assessment of any subsequent DA for the detailed building design.</p>
4.4.1.5 Boarding Houses - Bathroom, laundry and drying facilities	Able to comply	<p>The reference scheme does not provide communal laundry and drying facilities but rather a laundry washer/dryer in each boarding room instead.</p> <p>This approach is accepted but is a matter to be considered in the assessment of any subsequent DA for the detailed design of the building.</p>
4.4.1.6 Boarding Houses - Amenity, safety and privacy	Able to comply	<p>This provision sets out general design requirements to optimise amenity, safety and privacy of future intended occupants and to minimise adverse impacts on the amenity of adjacent properties.</p> <p>Conditions are recommended to provide a 9m setback to provide adequate separation from adjacent properties, deep soil and landscaping opportunities to provide suitable amenity to the future intended occupants and neighbours.</p> <p>Refer to the Issues section in this report.</p>

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.4 Other development types and uses</b>		
4.4.1.7 Boarding Houses - Plan of Management	Able to comply	<p>This provision sets out operational matters to be addressed in a Plan of Management (POM) to be submitted with any boarding house DA.</p> <p>A condition is recommended requiring a POM to be submitted as part of any subsequent DA for the detailed design and operation of the building.</p>

<b>5. Specific Areas</b>	<b>Compliance</b>	<b>Comment</b>
<b>5.2 Green Square</b>		
5.2.1 Green Square Urban Strategy 5.2.2 Objectives for Green Square	Able to comply	Subject to the recommended conditions the concept proposal is in keeping with the Green Square Urban Strategy and the Objectives for Green Square.
5.2.3 Community infrastructure	Yes	<p>The proposal relies on an additional 0.5:1 community infrastructure floor space.</p> <p>The applicant has made a public benefit offer and agreed to enter into a VPA - to deliver this infrastructure.</p> <p>Refer to the Issues section in this report.</p>
5.2.5.1 Pedestrian and bike networks - Bike networks	Able to comply	<p>Construction of concrete paths on land to be dedicated for widening of Bourke Street has been secured in the VPA associated with this DA.</p> <p>The widened off-road shared bicycle/pedestrian path to be provided adjacent to the site's Bourke Street frontage is to be designed in accordance with the Sydney Streets Design Code.</p>

5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.6 Public open space	Able to comply	The applicant has made a public benefit offer and agreed to enter into a VPA to dedicate land for footpath widening on Bourke Street in accordance with the <i>Public Domain Setbacks Map</i> and the requirements of this provision.
5.2.7.2 Stormwater management and waterways - Water sensitive urban design	Yes	The proposed development will increase deep soil area within the site and which will reduce stormwater run-off.
5.2.7.3 and 5.2.7.4 Stormwater management and waterways - Flood risk management and flood management	Able to comply	Refer to the assessment against clause 7.15 in the LEP compliance table above.
5.2.9 Building design	Able to comply	<p>The reference scheme adequately addresses most of the relevant requirements of this control which pertain to how the building addresses the street.</p> <p>A condition is recommended pertaining to materiality and use of masonry in facades, to be included among the design requirements in the competitive design process brief.</p>
5.2.10 Setbacks	Able to comply	<p>The applicant has made a public benefit offer and agreed to enter into a VPA to dedicate land for footpath widening on Bourke Street in accordance with the <i>Public Domain Setbacks Map</i> and the requirements of this provision.</p> <p>The concept envelope drawings have been amended so that the Bourke Street elevation aligns with the public domain setback. However, the reference scheme indicates balconies overhanging and encroaching upon the public domain setback to be dedicated to Council.</p> <p>Refer to the Issues section in this report.</p>

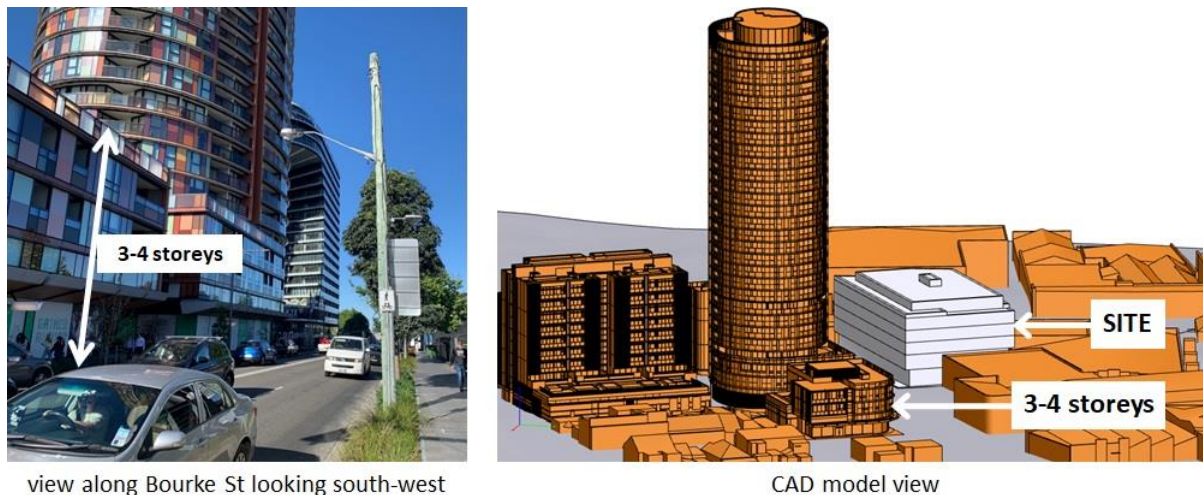


5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.12 Above ground and adaptable car parking spaces	Able to comply	<p>A maximum of 50% of proposed car-parking spaces may be above ground.</p> <p>Fifty-six percent (14 of 25) of car-parking spaces in the reference scheme are above ground level.</p> <p>A condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA including that no more than 50% of car-parking spaces are to be above ground.</p> <p>Refer to the Issues section of this report.</p>

## Issues

### Street Frontage Heights

52. DCP provision 4.2.1.1 requires development to respond to the street frontage heights of adjacent buildings.
53. Design principle (e) at DCP locality statement 2.5.11 Waterloo Park is for development to reinforce the street's pedestrian scale and to achieve good levels of solar access to the public domain.
54. As shown in **Figure 32** below, in the vicinity of the site, the south-eastern side of Bourke Street with the exception of the Infinity building, is characterised by a low street wall.
55. Buildings adjacent to the subject site, on the north-western side of Bourke Street are 1 to 2-storeys in height. These adjacent properties have not been redeveloped to their full potential and are subject to a maximum height of 6 storeys under the DCP.
56. The subject site is the first to be developed and will establish a precedent for the future redevelopment of this part of Bourke Street, between George Street to the east and Botany Road to the west.



**Figure 32:** Street frontage heights of up to 4-storeys in the vicinity of the site

57. In accordance with the DCP provisions noted above and the advice of the City's Design Advisory Panel (DAP), a condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA to provide a maximum street frontage height of 4-storeys to Bourke Street. Any storeys above the street frontage height are to be setback a minimum of 3m, in accordance with DCP provision 4.2.1.1.

### Concept Envelope Setback from Rear Boundary

58. The site is close to Green Square train station, buses and cycle paths. For this reason, it is considered that the proposed boarding house use would be able to function with no car-parking and with vehicle access restricted to service vehicles only.
59. The shrink-wrapping of the concept envelope around the reference scheme creates a series of steps in the north-western envelope to encapsulate the location of the pool, terrace and above ground parking of the reference scheme.
60. The flaws in this strategy are revealed by several non-compliances with DCP controls and inconsistencies across the DA documentation.

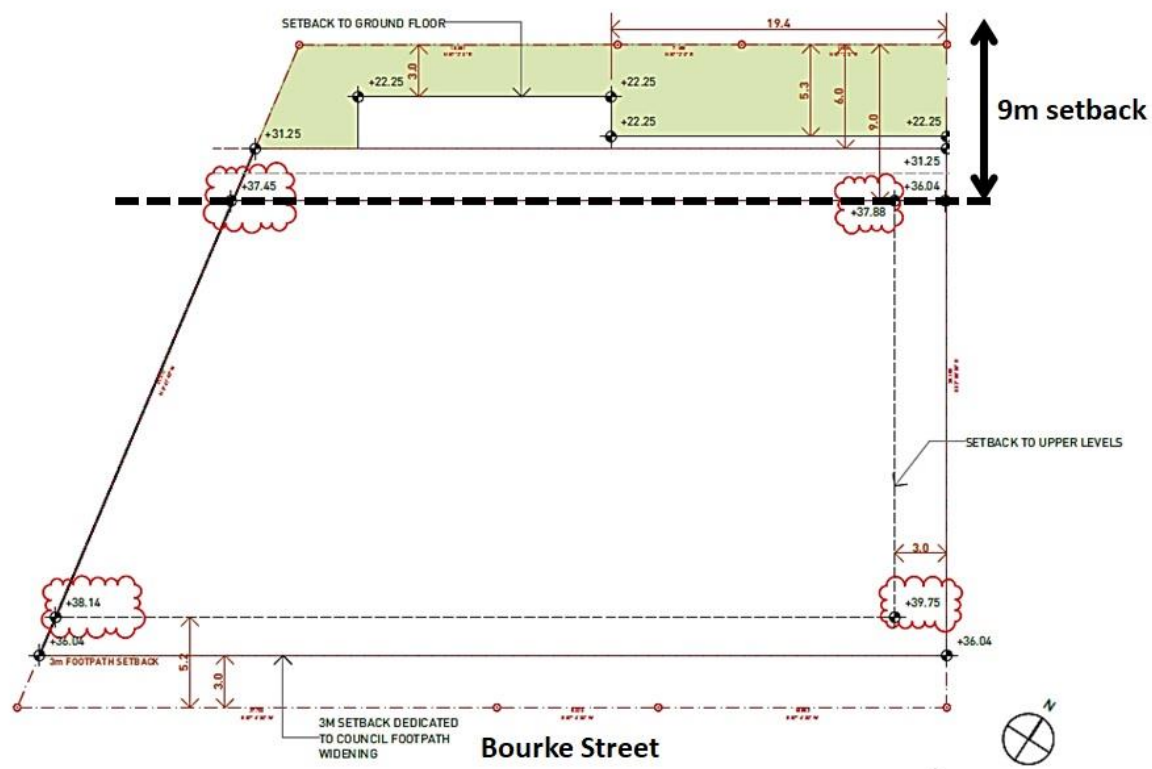
### Non-compliances with DCP controls

61. The reference scheme does not comply with above ground car parking controls. This is discussed further below.
62. The part of the reference scheme north-west of its circulation core breaches the DCP's 6-storey height control. The upper residential levels of the reference scheme do not comply with DCP requirements for minimum floor to floor heights.
63. The stepped envelope results in an awkwardly configured deep soil zone that fails to provide an adequately sized, consolidated area of deep soil that satisfies the DCP's minimum dimension requirements.

### Inconsistencies across drawings

64. The deep soil zone shown in the Ground and Above Envelope Plan does not align with that shown in the Basement Envelope Plan.

65. In plan, the reference scheme is consistent with the concept envelope, and indicates balconies to the Bourke Street facade being recessed behind the public domain setback alignment. But in section, the reference scheme indicates balconies overhanging and encroaching upon the public domain setback to be dedicated to Council. This is discussed further below.
66. The roof plan of the reference scheme breaches the concept envelope's 3m setback from the north-eastern boundary above RL 36.04.
67. To address these non-compliances, a condition is recommended for the concept envelope to be setback 9m from the rear boundary as shown in **Figure 33** below. This will reduce the amount of space available for car-parking, reduce the amount of above ground car-parking and will provide a contiguous deep soil area to address deep soil requirements and to provide opportunities for landscaping for improved amenity for the proposed development and to provide separation and screening to and from adjacent properties.

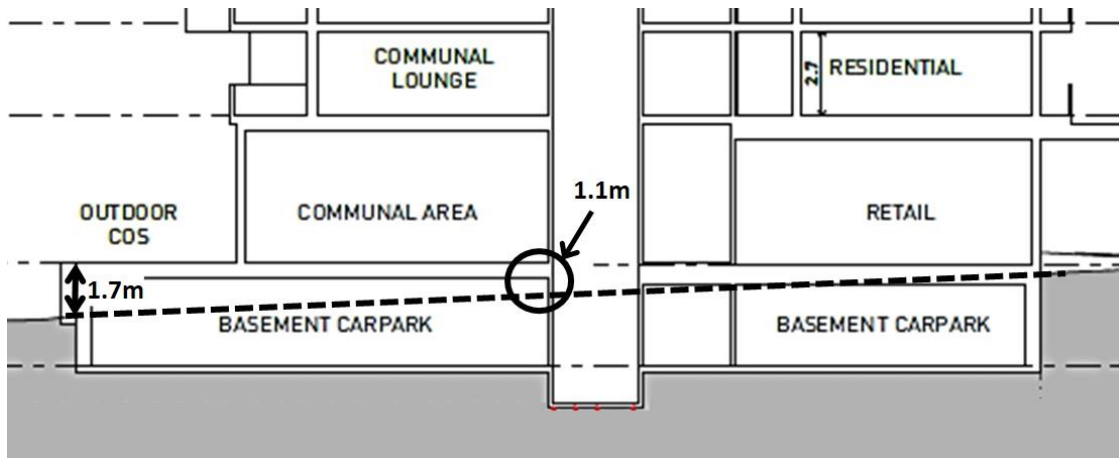


**Figure 33:** Recommended 9m setback from rear boundary

68. The substantial voids and large ground level servicing dock of the reference scheme suggest that the envelope can comfortably accommodate the maximum permissible FSR for the site. However, recommended conditions for an increased rear setback, a maximum 4-storey street frontage height, provision of minimum floor to floor and floor to ceiling heights and other requirements may make the up to 10% additional floor space for design excellence difficult to achieve.

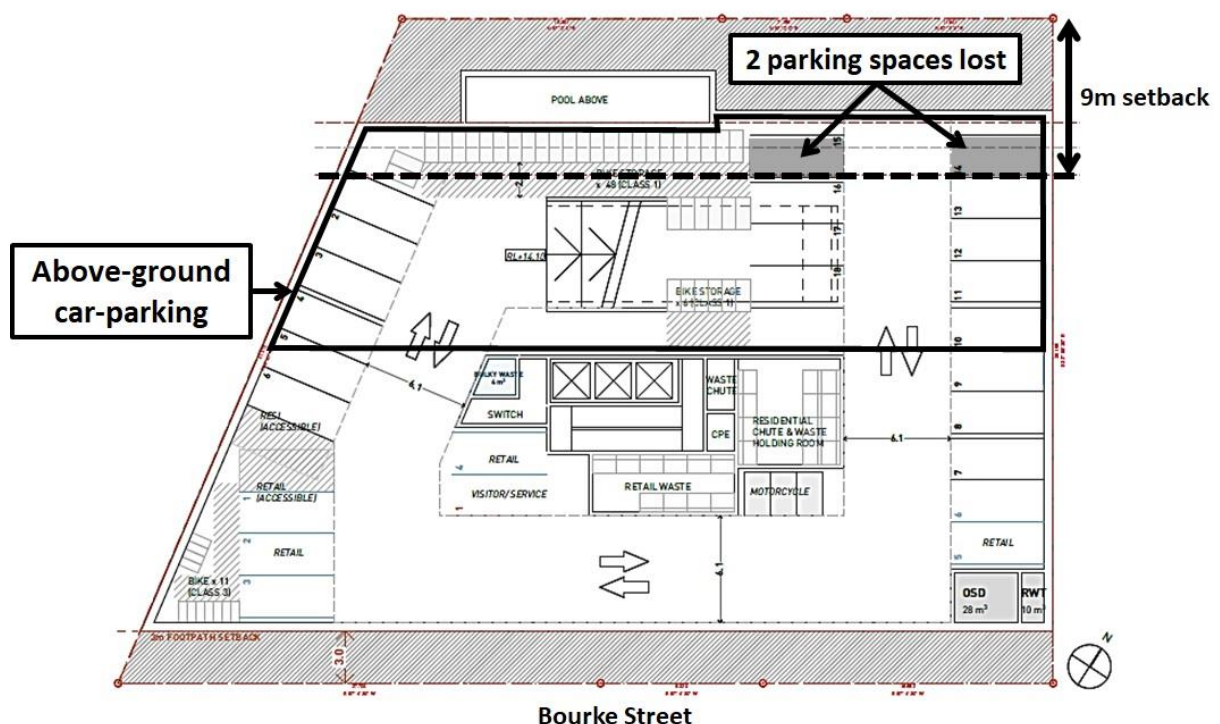
## Above ground car-parking

69. As shown in **Figure 34** below, in the reference scheme the portion of the car-parking area that is north-west of the central core, protrudes above ground level by 1.1m to 1.7m.



**Figure 34:** Section illustrating portion of car-parking area provided above ground

70. This above ground parking area, shown in **Figure 35** below, comprises 56% (14 of 25) of car-parking spaces in the reference scheme. This exceeds the maximum 50% above ground car-parking permitted under the DCP.



**Figure 35:** Illustration of indicative loss of car-parking resulting from 9m rear setback

71. As detailed elsewhere in this report, a condition is recommended to set the concept envelope back 9m from the north-western (rear) boundary. Based on the submitted reference scheme and as illustrated in **Figure 35** above, this would remove 2 car-parking spaces resulting in 52% (12 of 23) car-parking spaces being above-ground and which is more in-keeping with the control.
72. A condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA including that no more than 50% of car-parking spaces are to be above ground.

#### Deep soil

73. DCP provision 4.2.3.6 requires 10% of the site area to be provided as a consolidated deep soil area and with a minimum dimension of 10m.
74. The concept envelope provides 9% (165sqm) of the site area as deep soil, with a minimum dimension of 3m.
75. Conditions are recommended for design modifications to the envelope drawings to provide a consolidated deep soil area equal to 10% of the site area and with a minimum dimension of 9m for improved amenity and landscaping.

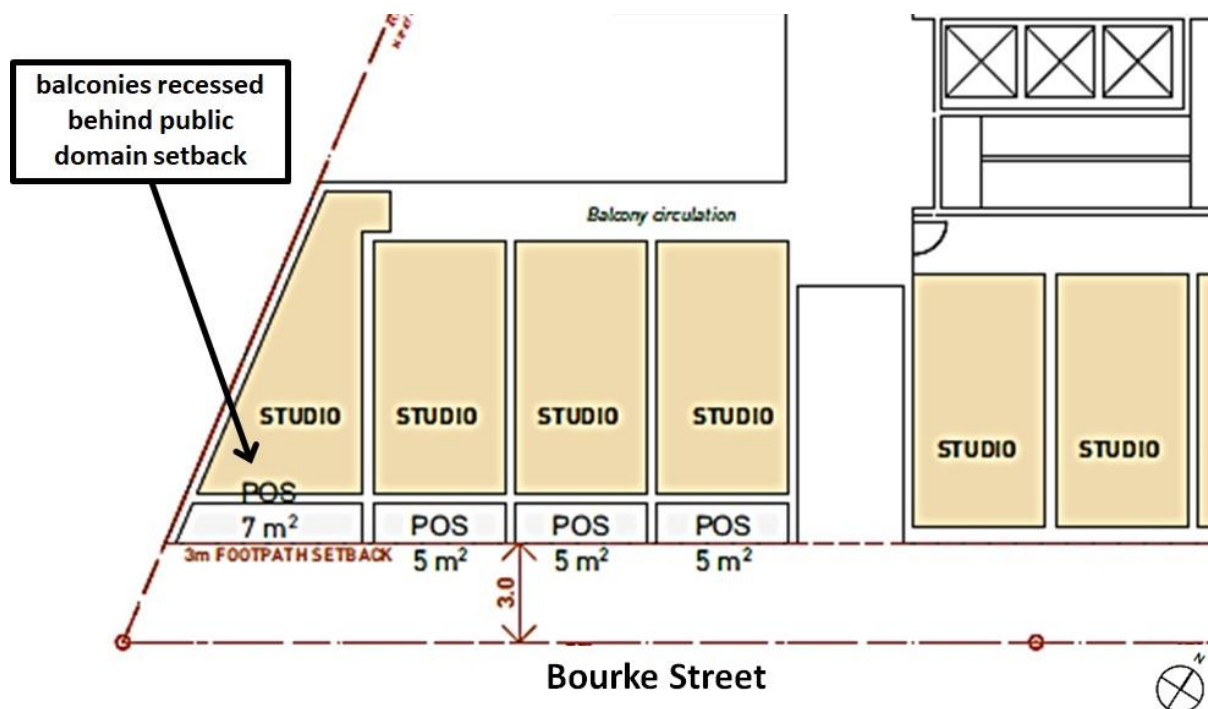
#### Landscaping

76. In accordance with DCP provision 3.3.8 a landscape strategy plan was submitted as part of the subject concept DA.
77. In response to problems with the landscape strategy plan raised by Council's planning officer, the landscape strategy plan was amended during the assessment period. Amendments included simplification of drawings shown on the landscape strategy plan, but which still located trees, common open spaces and entries in the locations shown on the reference scheme.
78. Annotations on the landscape plan mention opportunity for 10% deep soil and 15% urban canopy. But ideally deep soil is clearly identified on the concept envelope plans, consistent with the landscape strategy plan and urban canopy targets are specified as a minimum design requirement.
79. The concept proposal does not establish these baseline requirements in clear enough terms and sets up the risk that these minimum requirements are undermined through the competitive and detailed design processes.
80. Aside from the problems outlined above, the amended landscape strategy plan does not clearly identify the public domain setback to Bourke Street, envelope setbacks or constraints like the need to accommodate a chamber substation (near the western boundary or elsewhere). The landscape plan does not provide a strategy for landscaping on upper levels or rooftops and does not reference the Sydney Landscape Code Volume 2.
81. For these reasons, it is recommended that the submitted landscape concept plan is not approved as part of any consent granted. Conditions are recommended:
  - (a) for design requirements to be addressed in the future competitive design process brief and detailed design DA including critical landscape design requirements that comprise a high-level landscape strategy; and

- (b) requiring a sufficiently detailed landscape plan to be submitted with any subsequent DA for the detailed design of the building.

### Encroachments into the Public Domain Setback

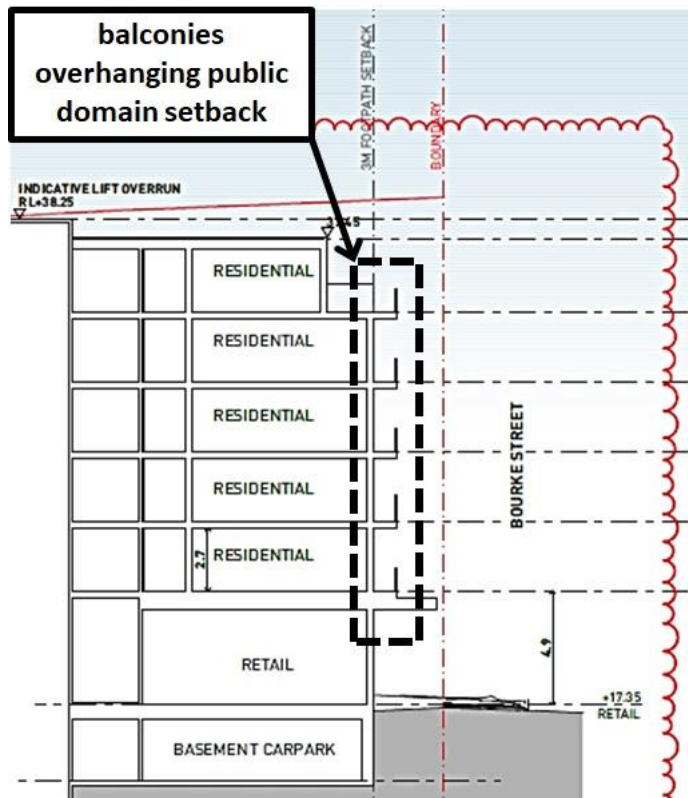
82. The applicant has made a public benefit offer and agreed to enter into a VPA to dedicate land for footpath widening on Bourke Street in accordance with the *Public Domain Setbacks Map* and the requirements of provision 5.2.10 of the DCP.
83. The concept envelope drawings have been amended so that the Bourke Street elevation aligns with the public domain setback. In plan, as shown in **Figure 36** below, the reference scheme is consistent with the concept envelope, and indicates balconies to the Bourke Street facade being recessed behind the public domain setback alignment.



**Figure 36:** Level 4 - reference scheme plan with balconies recessed behind public domain setback

84. However, in section as shown in **Figure 37** below, the reference scheme indicates balconies overhanging and encroaching upon the public domain setback to be dedicated to Council.





**Figure 37:** Section - reference scheme showing balconies overhanging public domain setback

85. A condition is recommended for design requirements to be addressed in the future competitive design process brief and detailed design DA including that there are to be no such encroachments into the public domain.

### Other Impacts of the Development

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

### Suitability of the site for the Development

88. The proposal is of a nature in keeping with the overall function of the site.

### Internal Referrals

89. The assessment process has been informed by advice from Council's Specialist Surveyor, Environmental Health Specialist, Heritage Specialist, Urban Design Specialist, Design Excellence Unit, Public Domain Specialist, Landscape Design Specialist, Transport Planner, Public Art Specialist, VPA Coordinator, ESD Specialist, Waste Management Specialist and the Design Advisory Panel (DAP).
90. Where appropriate, conditions recommended by these referrals are included for imposition on any consent given.



## External Referrals

### Notification and Advertising

91. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 18 October and 19 November 2019 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification three submissions were received.

- (a) Council officers' assessment should consider construction management. Bourke Street is busy and any construction sites accessed from Bourke St require night work. This was the case with the construction of Ovo and other buildings in the GSTC. Night work is extremely disruptive and has been exacerbated by poor planning and communication between developers and contractors.

**Response** - The subject application is a concept DA only. No consent is sought, and none is to be granted for any works to be carried out on site. A condition is recommended for a Demolition, Excavation and Construction Noise and Vibration Management Plan to be submitted as part of any subsequent detailed design DA under which consent for works is sought.

- (b) Ground level retail in the Ovo building, opposite the subject site, has been untenanted since its completion a year ago. Given this apparent lack of demand for retail space, objection is raised to any more being provided.

**Response** - Retail premises are permitted in the B4 Mixed Use Zone in which the site is located. The proposed ground floor retail tenancies are considered able to operate without unacceptable impacts to the amenity of the area subject to imposition of conditions on determination of any subsequent DA for the detailed design of the building.

- (c) The boarding room plans are unclear, this needs to be more clearly defined.

**Response** - The subject application is a concept DA only. The plans of the proposed boarding house and typical boarding room layouts are a reference scheme only. The purpose of the reference scheme is to demonstrate that the proposed concept can satisfy the relevant planning requirements. Detailed plans will be required to be submitted as part of any subsequent DA for the detailed design of the building.

- (d) Objection is raised to more high-rise development in the area, 4-5 storeys is preferred. Council consults on DAs, gets the same feedback about excessive building heights and continues to allow development to exceed height restrictions in the area.

**Response** - The maximum permitted height controls are 22m and 6 storeys. The proposed concept envelope complies with the 22m height control. The reference scheme is 6 to 7-storeys in height. The number of storeys is not approved as part of this concept DA and will be considered in the assessment of any subsequent DA for the detailed design of the building.

- (e) Regardless of the existing 22m height limit in this area, concern is raised about the impact of any additional large buildings opposite the dominating cluster of development in the Green Square Town Centre. The Central Park precinct is an example of overly dense multi-storey development. The result is streets that are almost always in shade and wind tunnels created by the narrow canyons the new structures have created. Sydney cannot keep building upwards without adverse effects, especially in precincts where much tall buildings already exist. While affordable housing in the inner city is sorely needed, it cannot come at the cost of liveability and residential amenity. To allow a lift overrun of a metre above the height limit could set a precedent for even greater non-compliance in the future. It is disingenuous to claim that adherence to the height limit will affect floor to floor heights and reduced amenity for residents, when that would easily be addressed by making the development 5 storeys instead of 6. As numerous other sites adjoining this one will be ripe for similar redevelopment, a long-term vision for the whole area, not just this site, must be considered. As this development will set the benchmark for development on the north side of Bourke Street, I believe it is unwise to grant any variations to existing controls.

**Response** - The concept envelope has been amended to comply with the 22m LEP height control. A maximum of 6 storeys is permitted. The reference scheme is 6 to 7-storeys in height. The number of storeys is not approved as part of this concept DA and will be considered in the assessment of any subsequent DA for the detailed design of the building.

#### **Water Management Act 2000**

92. Groundwater occurs at a depth of approximately 4.5m-6m below ground level. The excavation required to accommodate the indicative basement level may penetrate groundwater and may require dewatering of the site. This would require a water activity approval under the Water Management Act 2000 and as such the application is integrated development under the EPA Act.
93. On 2 December 2019, the application was referred to Water NSW through the NSW Planning Portal (ref. no. CNR-868) as integrated development, in accordance with section 4.47 of the EPA Act.
94. On 11 February 2020, submissions received in response to the notification and public exhibition of the DA were uploaded to the NSW Planning Portal.
95. On 11 February 2020, Water NSW issued their General Terms of Approval and which have been included at Schedule 3 of the recommended conditions at Attachment A to this report.

#### **Sydney Water Act 1994**

96. On 2 December 2019, the application was referred to Sydney Water, in accordance with section 78 of the Sydney Water Act 1994.
97. On 11 May 2020, Sydney Water provided conditions and the following comments:
- (a) Water Servicing - Potable water servicing should be available via a 250mm C1CL trunk watermain (laid in 1928) on Bourke Street. Amplifications and extensions may be required.

- (b) Wastewater Servicing - Wastewater servicing should be available via a 150mm SGW wastewater main (laid in 1951) on Bourke Street. Amplifications and extensions may be required.
- (c) This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application.

**Police**

- 98. On 2 December 2019, the application was referred to the local area police command.
- 99. On 16 December 2019, police provided comments and recommended conditions to address safety and security concerns.

**Delegation**

- 100. As the application is associated with an offer from the developer to enter into a voluntary planning agreement, it is to be determined by the Local Planning Panel in accordance with the Minister's local planning panels direction dated 23 February 2018.

**Public Interest**

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

**S7.11 Contribution**

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

**Affordable Housing Contribution**

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

**Relevant Legislation**

- 104. Environmental Planning and Assessment Act 1979.

## Conclusion

105. The subject application seeks consent for a concept building envelope for a mixed-use development, including in-principle approval for demolition of existing buildings, a concept envelope up to 22m in height, a vehicle access location at the north-eastern end of the site's Bourke Street frontage, indicative future land uses comprising basement parking and services, ground floor retail and communal spaces for boarders and boarding house uses at upper levels.
106. As an Integrated Development Application requiring approval under the Water Management Act 2000, the application was referred to Water NSW. On 11 February 2020, Water NSW issued its General Terms of Approval and which have been included at Schedule 3 of the recommended conditions of consent at Attachment A to this report.
107. The draft VPA associated with the application will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period of the draft VPA has commenced. At the time of preparing this report, no submissions had been received. A deferred commencement condition is recommended to enable the draft VPA to be executed and registered on title.
108. The concept proposal and Design Excellence Strategy establish a concept building envelope and suitable parameters for a competitive design process. Subject to the recommended conditions, the proposed envelope is able to accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.
109. For these reasons it is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. It is recommended that the CEO consider granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed and registered on title prior to the consent becoming operative.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Ben Chamie, Senior Planner