

Item 9.**Development Application: 163-173 McEvoy Street, Alexandria – D/2019/1350****File No.: D/2019/1350****Summary****Date of Submission:** 25 November 2019. Most recent amended plans submitted 22 September 2020**Applicant:** Ceerose/Priansa Pty Ltd**Architect:** Andrew Burns Architecture and PBD Architecture**Developer:** Ceerose/Priansa Pty Ltd**Owner:** Priansa Pty Ltd**Planning Consultant** Daniel McNamara Planning Solutions**Cost of Works:** \$66,891,420**Zoning:** The site is zoned B4 - Mixed Use under the Sydney Local Environmental Plan (SLEP) 2012. Proposed uses include commercial premises and residential accommodation, both of which are permissible with consent.**Proposal Summary:** Approval is sought for the demolition of existing structures, remediation, excavation and construction of two buildings:

- A part 7/8 storey mixed use building containing residential apartments and commercial tenancies (and signage) fronting McEvoy Street; and
- A part 4/5 storey residential flat building to Lawrence Street.

Two basement levels are proposed with vehicular access from McEvoy Street.

The application was referred to the CSPC on the 23 July 2020 for determination and was recommended for approval. At this meeting, the CSPC resolved to defer the consideration of the application for further consideration of design and traffic issues. Specific concerns raised by the CSPC are as follows:

- Vehicle access via Lawrence Street and associated traffic impacts;
- Amenity of proposed Lawrence Street below ground apartments within Building B;
- Solar access to the adjoining residential flat building at 118-136 Lawrence Street;
- Privacy impacts to the adjoining terraces at 74-84 Lawrence Street; and
- Acoustic treatment to apartments fronting McEvoy Street within Building A.

Amended plans and additional information that address the above concerns were submitted on 22 September 2020. A summary of amendments and additional information is as follows:

- Relocation of vehicle access from Lawrence Street to McEvoy Street. Concurrence for vehicle access via McEvoy Street was provided by Transport for NSW on 9 November 2020;
- Deletion of below-ground apartments to Lawrence Street within Building B and increase in height of the building;
- Additional information to assess overshadowing to the adjoining property at 118-136 Lawrence Street;
- Additional privacy measures to the north eastern projecting bay of Building A;
- Clarification of proposed acoustic privacy measures to apartments within Building A fronting McEvoy Street.

The amended plans were notified for a period of 14 days between 3 September and 18 September 2020. 106 submissions were received. Issues raised include height, bulk and scale, density, traffic and parking, tree removal and landscaping, overshadowing, heritage, privacy, noise, construction impacts, design excellence and procedural issues.

The amended application is re-referred to the CSPC for determination as the cost of works exceeds \$50 million.

This report deals specifically with issues raised by the CSPC at the 23 July meeting, and contains an assessment of amended plans submitted to address these concerns, as well as public submissions received in relation to the most recently re-notified plans. All other issues and assessment items are contained within the 23 July CSPC meeting report, which is included at Attachment D to this report.

The subject development application requires amendment of the Court approved concept envelope. A section 4.56(2) application (D/2017/238/A) has been lodged separately and has been assessed concurrently with the subject application. This modification application is also being reported to CSPC this cycle and is recommended for approval. Subject to approval for D/2017/238/A, the subject development application will be consistent with the concept development consent.

The proposed development exceeds the maximum 24.2m building height standard (including the 10% design excellence bonus) by 1.65m (6.8%) for Building A and the maximum 12m building height standard by 3.32m (27.7%) for Building B. This is a consequence of the proposed architectural roof feature and air conditioner condensers and to address concerns over the amenity of below-ground apartments within Building B raised by the CSPC.

A request to vary the Clause 4.3 height of buildings development standard has been submitted in accordance with Clause 4.6 of SLEP 2012. The statement demonstrates that compliance with the standard is unreasonable and unnecessary, and there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives of the land use zone and height of buildings development standards and the proposed departure to building height is supported in this instance.

Subject to conditions, the proposal is generally consistent with the applicable planning provisions including SLEP 2012 and Sydney Development Control Plan (SDCP) 2012. Proposed non-compliances have been assessed as having merit in this case and are addressed in this report or within the original planning report at Attachment D. The proposal exhibits design excellence, with a high standard of architectural design, materials and detailing and a built form that is consistent with the future desired character of the area.

The proposal is Integrated Development under the Water Management Act 2000, requiring approval from Water NSW. General Terms of Approval were received from Water NSW on 6 February 2020.

The application is recommended for deferred commencement consent to allow for the detailed design of the McEvoy Street vehicle access and ensure the protection of existing street trees along Lawrence Street, prior to activation of the consent.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Roads Act 1993
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) State Environmental Planning Policy (Building Sustainability: BASIX) 2004
- (v) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (vi) NSW Apartment Design Guideline 2015
- (vii) Sydney Local Environmental Plan 2012
- (viii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Building Height
- D. Original Report to CSPC - 23 July 2020

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 'Height of buildings' in accordance with Clause 4.6 'Exceptions to development standards' of Sydney LEP 2012 be upheld; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2019/1350 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Sydney LEP 2012, that compliance with the 'Height of buildings' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of Sydney LEP 2012.
- (B) It is in the public interest because it is consistent with the objectives of the B4 - Mixed Use zone and the 'Height of buildings' development standard.
- (C) It has been assessed against the aims and objectives of the relevant planning controls including SEPP 65, Sydney LEP 2012 and Sydney DCP 2012. Where non-compliances exist, they have been demonstrated to be acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.
- (D) It is consistent with the amended concept approval for the site, being D/2019/238/A.
- (E) It is consistent with the design intent of the winning scheme of a competitive design process. The scale, form, articulation, materiality and architectural contribution of the proposed development is consistent with the site pursuant to Sydney DCP 2012 and the proposed development is consistent with the desired future character of the locality. The development satisfies design excellence provisions pursuant to Clause 6.21 of Sydney LEP 2012.
- (F) It is appropriate within its setting and is a mixed-use development comprising compatible uses that will support the vitality of the area, consistent with the desired future character for the locality.

Background

The Site and Surrounding Development

1. A detailed description of the site and its surrounds is contained in the original assessment report included in Attachment D.

History Relevant to the Development Application

Subject Application - Assessment History

2. The application was referred to the CSPC on the 23 July 2020 for determination.
3. At this meeting, the CSPC resolved to defer the consideration of the application for further consideration of design and traffic issues. Concerns raised by the CSPC are as follows:
 - (a) vehicle access via Lawrence Street and associated traffic impacts;
 - (b) amenity of proposed Lawrence Street below ground apartments within Building B;
 - (c) solar access to the adjoining residential flat building at 118-136 Lawrence Street;
 - (d) privacy impacts to the adjoining terraces at 74-84 Lawrence Street; and
 - (e) acoustic treatment to apartments fronting McEvoy Street within Building A.

Subject Application - Recent Amendments

4. Amended plans and additional information that addresses the above concerns raised by CSPC were submitted on the 22 September 2020.
5. A detailed summary of amendments is as follows:
 - (a) Building A:
 - (i) Relocation of vehicle access from Lawrence Street to McEvoy Street in the southern corner of the site;
 - (ii) Reconfiguration of the ground floor commercial tenancy 1 as a result of the relocated vehicle access;
 - (iii) Inclusion of projecting hoods on Levels 5 to 7 of the north eastern projecting bay of Building A, to prevent downward view to neighbouring dwellings at 74 - 84 Lawrence Street;
 - (iv) Increased window sill heights from 430mm to 1000mm on Levels 1 to 3 of the north eastern projecting bay of Building A to reduce aperture of glazing facing neighbouring dwellings at 74 - 84 Lawrence Street;
 - (i) Deletion of the irregular return on Levels 5 to 7 of the north eastern projecting bay of Building A to provide improved design clarity;

- (b) Building B:
- (i) Increase in the floor level of Level 1 (previously referred to as the ground floor) by 2.2m;
 - (ii) Reduction in floor to ceiling height of Level 1 from 3.4m to 2.7m;
 - (iii) Increase in overall height of the building by 1.5m as a result of floor level changes;
 - (iv) Introduction of an additional level (referred to as ground floor) to the internal courtyard incorporating bicycle storage, a swimming pool and cabanas;
 - (v) Reconfiguration of Level 1 apartments to provide north facing living rooms and private open space adjacent to Lawrence Street;
 - (vi) Increase in area of communal open space to the central courtyard from 1,310sqm to 1,422sqm and an increase of covered communal space from 495sqm to 815sqm;
 - (vii) Amendment to apartment B4.01 located on Level 4 to provide a 4m setback from the south-western property boundary;
 - (viii) Deletion of vehicle access via Lawrence Street and associated internal access ramp;
 - (ix) Inclusion of an additional apartment on Level 1 and Level 2 in the location of the previous vehicle access ramp.

2. A comparison of the amended proposal with the proposal that was presented to the CSPC on 23 July is outlined in the table below:

Control	Proposal presented to CSPC 23 July	Amended Proposal
Unit mix	42 x 1 bedroom (26%) 78 x 2 bedroom (48.5%) 41 x 3 bedroom (25.5%) Total - 161 apartments	40 x 1 bedroom (24.5%) 79 x 2 bedroom (48.5%) 44 x 3 bedroom (27%) Total - 163 apartments
Floor space ratio	2.48:1 (13,816.9 sqm)	2.5:1 (13,912.33 sqm)
Solar access	70%	70%
Natural cross ventilation (prescriptive and performance-based total)	83%	80%

Control	Proposal presented to CSPC 23 July	Amended Proposal
Communal open space (covered and uncovered)	32%	40%
Deep soil landscaping	10.7%	11.1%
Building height Building A	25.47m	25.85m
Building height Building B	13.97m	15.32m
Vehicle access	Lawrence Street	McEvoy Street

D/2017/238/A - Concept Development Application

6. As a result of amendments submitted to address CSPC concerns raised at the July meeting, the modification application has also been amended to ensure consistency with the subject detailed design application.
7. An assessment of the proposed modification has been undertaken and the application is recommended for approval. This application is presented to the CSPC concurrently for determination.

Proposed Development

8. The amended application seeks approval for the demolition of existing structures, remediation, excavation and construction of a part 7 / part 8 storey mixed use development (Building A) containing residential apartments and commercial tenancies to McEvoy Street and a part 4 / part 5 storey residential flat building (Building B) to Lawrence Street.
9. A total of 163 apartments and 3 commercial tenancies are proposed across Building A and B. The development is also serviced by two basement levels with vehicular access from McEvoy Street.
10. Floor by floor details are as follows:
 - (a) Basement 2:
 - (i) Parking for 94 resident vehicles and 11 motorcycles;
 - (ii) Residential storage areas;

- (b) Basement 1:
 - (i) Parking for 75 vehicles (51 resident, 2 carshare, 13 visitor, 3 service and 6 retail) and 3 motorcycles;
 - (ii) Residential storage area;
 - (iii) Chute rooms and bin holding areas;
 - (iv) Loading dock and service area;
 - (v) Plant, services and on-site detention tanks;
- (c) Ground Floor:
 - (i) 8 apartments within Building A (2 x 1 bed, 3 x 2 bed and 3 x 3 bed);
 - (ii) 2 residential lobbies fronting McEvoy Street;
 - (iii) 3 commercial tenancies fronting McEvoy Street;
 - (iv) Vehicular access off McEvoy Street;
 - (v) A pool and cabanas located within Building B;
 - (vi) Visitor bicycle parking (including 163 centrally located spaces within Building B);
 - (vii) Covered and uncovered common open space and landscaping;
 - (viii) Substation located within the north east corner of the front facade fronting McEvoy street;
- (d) Level 1:
 - (i) 8 apartments within Building A (2 x 1 bed, 2 x 2 bed and 4 x 3 bed);
 - (ii) 8 apartments within Building B (4 x 2 bed and 4 x 3 bed);
- (e) Level 2:
 - (i) 21 apartments within Building A (7 x 1 bed, 9 x 2 bed and 5 x 3 bed);
 - (ii) 6 apartments within Building B (4 x 2 bed and 2 x 3 bed);
- (f) Level 3:
 - (i) 21 apartments within Building A (7 x 1 bed, 9 x 2 bed and 5 x 3 bed);
 - (ii) 8 apartments within Building B (6 x 2 bed and 2 x 3 bed);
- (g) Level 4:
 - (i) 20 apartments within Building A (7 x 1 bed, 9 x 2 bed and 4 x 3 bed);
 - (ii) 7 apartments within Building B (2 x 2 bed, 3 x 3 bed);

- (h) Level 5:
 - (i) 20 apartments within Building A (7 x 1 bed, 9 x 2 bed and 4 x 3 bed);
- (i) Level 6:
 - (i) 18 apartments within Building A (4 x 1 bed, 11 x 2 bed and 3 x 3 bed);
- (j) Level 7:
 - (i) 18 apartments within Building A (4 x 1 bed, 11 x 2 bed and 3 x 3 bed);
- (k) Rooftop:
 - (i) Air conditioner condensers, ventilation shafts and lift overruns.

11. Plans and elevations illustrating the primary amendments are provided below. A full set of architectural drawings is at Attachment B.

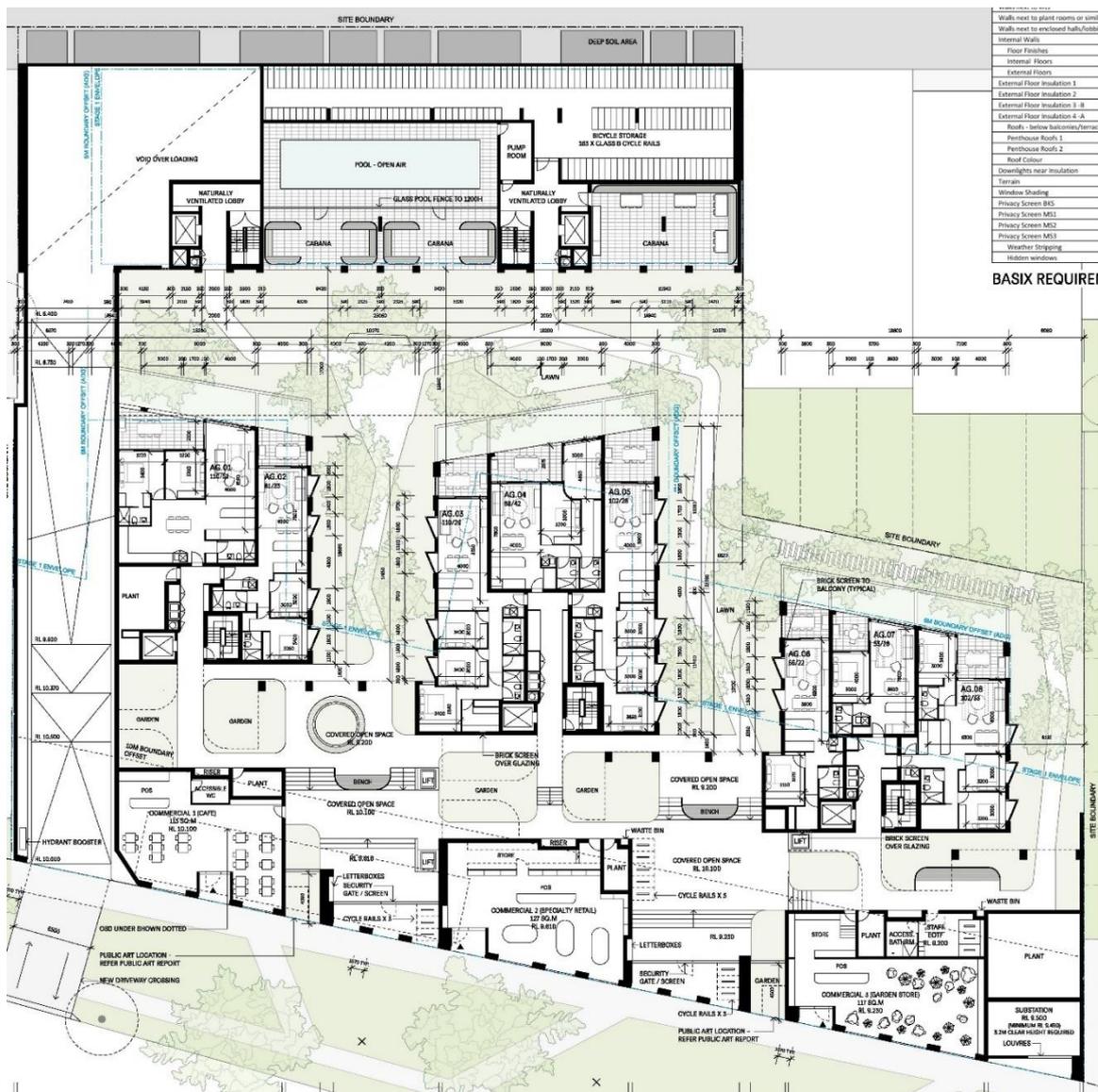


Figure 1: Proposed Ground Floor plan

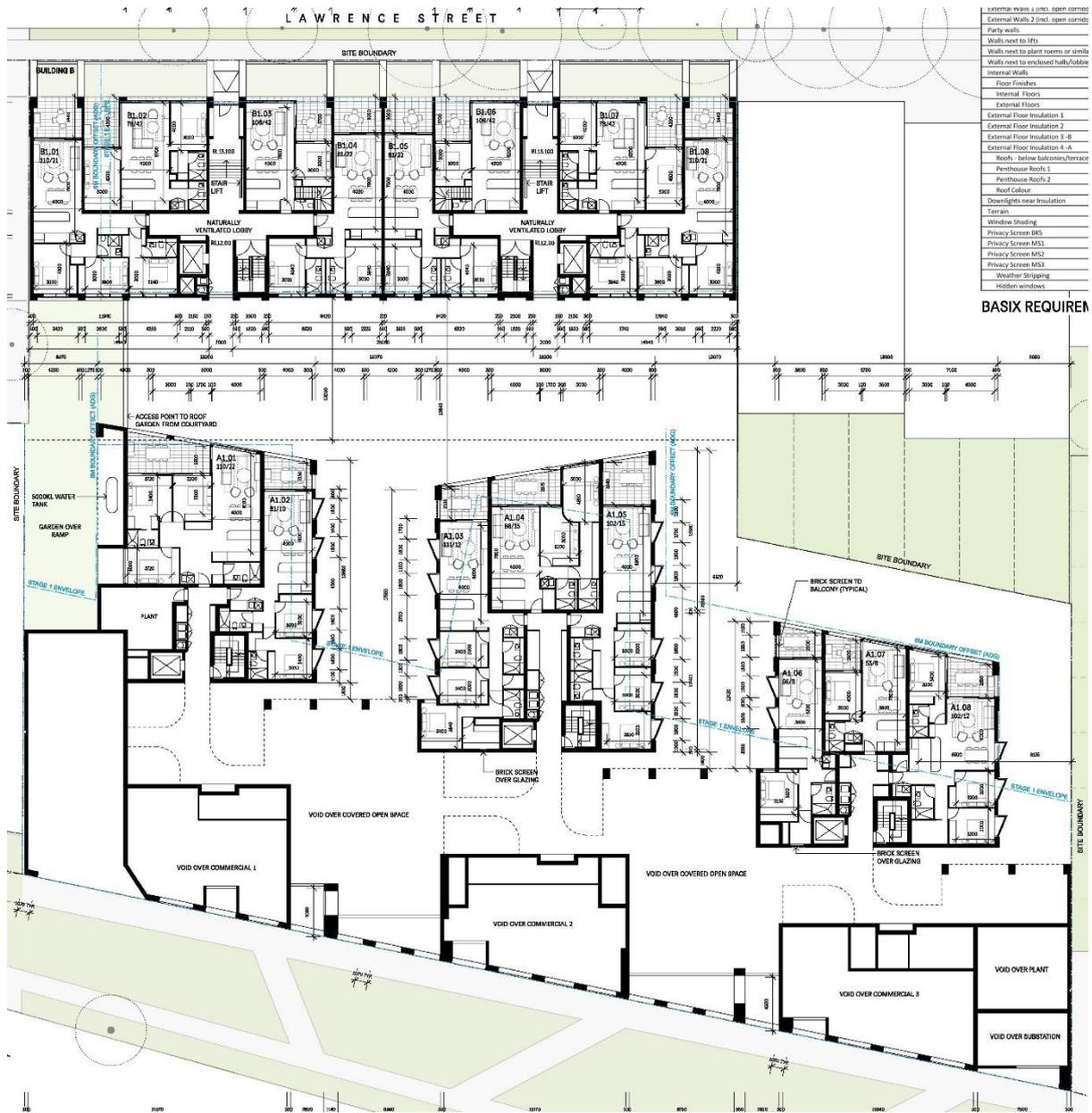


Figure 2: Proposed Level 1 plan



Figure 3: Proposed Level 4 plan



Figure 4: Proposed Level 7 plan



Figure 5: Proposed south east (McEvoy Street) elevation



Figure 6: Proposed north west (Lawrence Street) elevation

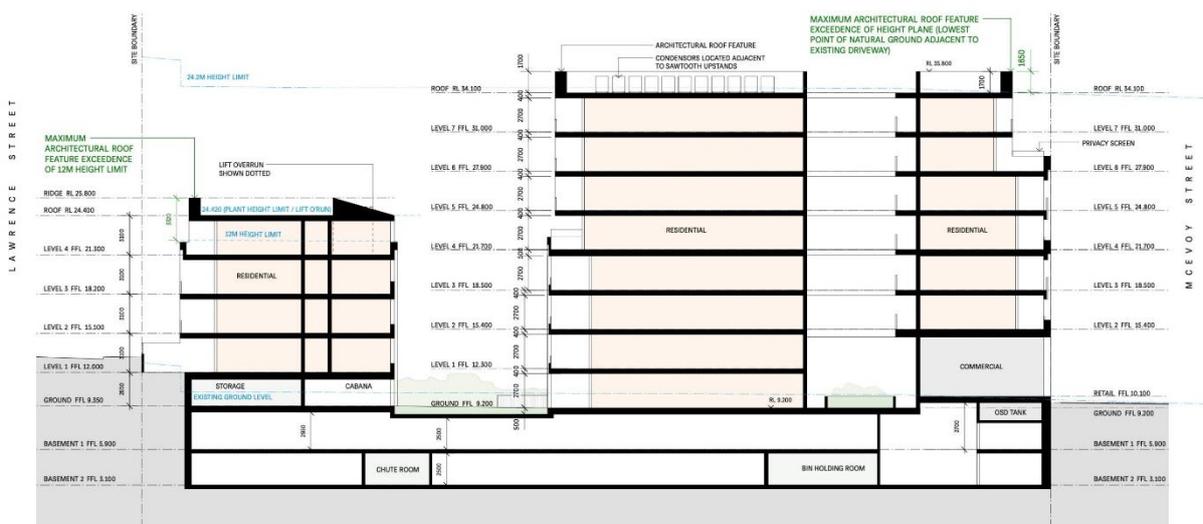


Figure 7: Proposed section BB

Assessment

12. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

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

13. The proposal has been designed by Andrew Burns Architecture and a design verification statement prepared by Andrew Burn who is a registered architect has been submitted. This statement verifies that the development has met SEPP 65 design quality principles.
14. A full assessment of the proposal against the 9 design quality principles and the Apartment Design Guide (ADG) is detailed in the original assessment report contained at Attachment D.
15. An assessment of the amended application against the relevant design quality principles as they relate to the most recent amendments is provided as follows:

(a) Principle 2: Built Form and Scale

Building B has been amended to present as 3.5 storeys to Lawrence Street, providing an appropriate transition to the 1-3 storey built form along the north-western side of Lawrence Street and the taller built form located along McEvoy Street, both within the site and on adjoining properties. The amended proposal maintains a 5-storey street wall height to McEvoy Street, with the upper levels of Building A setback from the predominate building line to provide an appropriate transition in scale.

The built form and scale is consistent with that envisaged in the concept approval (as amended under D/2017/238/A) and remains compatible with the emerging character of the area.

(b) Principle 3: Density

The FSR of the amended proposal complies with the LEP development standard under SLEP 2012 and is consistent with the amended concept proposal. The proposed density responds well to the areas existing and future context and does not result in unacceptable levels of amenity impacts for neighbouring properties.

(c) Principle 5: Landscape

Removal of residential apartments and associated private courtyards on the ground floor of Building B has allowed for a substantial increase in communal landscaped area to the centralised landscaped courtyard located between Buildings A and B. This space has been incorporated into communal open space within the central courtyard adjacent to the proposed cabanas.

(d) Principle 6: Amenity

The proposal continues to comply with amenity controls regarding the relevant provisions of the ADG. The amended proposal presents a minor reduction in natural cross ventilated apartments, as detailed in the table below.

(e) Principle 8: Housing Diversity and Social Interaction

The amended development will accommodate 163 apartments and provide the following amended unit mix:

- (i) 40 x 1 bedroom apartments (24.5%)
- (ii) 79 x 2 bedroom apartments (48.5%)
- (iii) 44 x 3 bedroom apartments (27%)

The proposed unit mix is broadly consistent with that envisaged under SDCP 2012, however there is a minor non-compliance with the requirement for 5-10% of apartments to be studios.

16. The development is acceptable when assessed against the SEPP including the stated principles and the associated ADG. These controls are generally replicated within the apartment design controls under SDCP 2012. Consequently, compliance with the SEPP generally implies compliance with Council’s own controls. An assessment of the amended application against the relevant ADG controls, as they relate to the amendments, is provided below.

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during midwinter	Yes	Detailed analysis has been provided to quantify the overshadowing impact to the only affected residential neighbour at 118-136 Lawrence Street. See discussion under the heading Issues.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	A total of 1,422sqm (26%) of uncovered common open space is proposed under the amended application. In addition, 504.5sqm (9%) of passive space is provided in the open-air lobbies of Building A and 313sqm (6%) of communal recreational space is provided on the ground floor of Building B in the form of a swimming pool and cabanas.

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	Accessed as acceptable	The proposal generally complies with the recommended building separation distances. Where separation distances are not achieved, the proposal incorporates design features to ameliorate visual privacy concerns for future occupants and adjoining properties. See discussion under the heading Issues.
Five to eight storeys (25 metres): <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 		

4B Natural Ventilation	Compliance	Comment
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Assessed as acceptable	<p>A total of 63 apartments (39%) are naturally cross ventilated in accordance with the ADG requirements. This is considered acceptable given site conditions fronting a classified Road.</p> <p>An additional 67 (41%) of apartments are naturally ventilated via plenums due to their location on McEvoy Street.</p> <p>The total number of apartments that receive either prescriptive or performance based natural cross flow ventilation is 130 (80%).</p>

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	A minimum floor to floor height of 3.1m is provided for all residential levels, which is capable to delivering a minimum floor to ceiling height of 2.7m.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	<p>Through the incorporation of plenums, apartments fronting McEvoy Street can achieve natural ventilation while also meeting an acceptable level of acoustic privacy.</p> <p>See discussion under the heading Issues.</p>

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

17. An amended BASIX Certificate has been submitted with the amended development application.
18. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Infrastructure) 2007**Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations**

Clause 101 – Development with frontage to classified road

19. The application is subject to Clause 101 of the SEPP as the site has frontage to McEvoy Street, which is a classified road.
20. Clause 101 states that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
 - (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land.*
21. The original proposal was designed with vehicle access via Lawrence Street, which satisfied the provisions of Clause 101. Concurrence from Transport for NSW (TfNSW) was provided on 22 January 2020 based on this design.
22. At its meeting on 23 July 2020, the CSPC raised concerns over the proposed vehicle access via Lawrence Street and the potential traffic impacts associated with the access arrangement. The application has since been amended to provide vehicle access via McEvoy Street.
23. The amended proposal was re-referred to Transport for NSW for concurrence under Section 138 of the Roads Act 1993, as well as the Infrastructure SEPP. Concurrence from TfNSW was granted on 9 November 2020. Further discussion of this amendment is contained under the heading Issues.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

24. A full assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is contained in the original assessment report at Attachment D.
25. An assessment of the amended application against the relevant provisions of Sydney Local Environmental Plan 2012, as they relate to the amendments is provided below.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Partial compliance	<p>A maximum LEP height of 22m is permitted to McEvoy Street. Following the application of an additional design excellence bonus of 10%, the permitted building height is 24.2m. A building height of 25.85m is proposed for Building A because of the architectural roof feature.</p> <p>A maximum height of 12m is permitted to Lawrence Street. Building B has a maximum height of 15.32m from existing ground level to the top of the architectural roof feature. It is noted that as per Condition 6(c) of the concept approval, the 10% design excellence bonus in building height was awarded to Building A and did not apply to Building B.</p> <p>A Clause 4.6 variation request has been submitted for the above height variations and is supported. See discussion under the heading Issues.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2.5:1 or 13,926.75 sqm is permitted.</p> <p>A floor space ratio of 2.5:1 or 13,912.33 sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.6 Architectural roof features	Yes	<p>The proposal includes architectural roof features in the form of saw tooth roofs that exceed the maximum building height.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The amended proposal continues to exhibit design excellence as required by Clause 6.21(4) of Sydney LEP 2012.</p> <p>The amended proposal retains the key elements of the winning design competition proposal and responds appropriately to the concept approval conditions and planning controls where required.</p> <p>The built form remains compatible with the emerging character of the area, while providing appropriate transition in scale to the adjacent heritage conservation area.</p> <p>The amended proposal maintains the principles of ecologically sustainable development and has an acceptable environmental impact regarding the amenity of the surrounding area and future occupants.</p> <p>The amended proposal continues to present a high standard of architectural design and the overall materiality, articulation and architectural expression of the development is in keeping with the relevant planning controls and reflecting the desired future character of the area.</p> <p>The amended proposal will have a positive contribution to the public domain through the protection of street trees and provision of active frontages and will present a satisfactory landscape approach, subject to conditions.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing 7.7 Retail premises	Yes	A maximum of 176 residential, commercial and visitor car parking spaces are permitted. 164 residential, commercial and visitor car parking spaces are proposed, which complies with the relevant development standards.
Division 4 Miscellaneous		
7.15 Flood planning	Yes	The amended vehicle access via McEvoy Street has been designed with a 500mm freeboard above the 1% AEP flood level. This arrangement has been reviewed by Council's Flooding Engineers and is acceptable.

Development Control Plans**Sydney Development Control Plan 2012**

26. A full assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is contained in the original assessment report at Attachment D.
27. An assessment of the amended application against the relevant Sydney Development Control Plan 2012 provisions, as they relate to the amendments is provided below.

Section 2 – Locality Statements

28. The site is located within the Euston Road/McEvoy Street locality. The amended development continues to align with the unique character and the design principles of the locality by converting an existing industrial complex into a mixed-use development with activated ground floor retail spaces with residential uses above.

Section 3 – General Provisions

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	The amended vehicle access allows for the retention of one additional street tree along Lawrence Street that was previously proposed to be removed. The driveway on McEvoy Street does not require the removal of any street trees.
3.11 Transport and Parking	Yes	<p>The amended proposal provides sufficient bicycle parking for residents and visitors. 163 of these spaces are in a centralised space on the Ground Floor of Building B. This location will allow easy level access from McEvoy Street, lift access via Lawrence Street and is supplemented by additional ground floor parking adjacent to McEvoy Street building entries and commercial spaces.</p> <p>The proposal includes 2 dedicated car share spaces, 3 service vehicles spaces and a loading dock. The location and design of these spaces complies with the DCP requirement.</p>

Section 4 – Development Types**4.2 Residential Flat, Commercial and Mixed Use Developments**

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Partial compliance	<p>Building B has been amended to present as 3.5 storeys in height to Lawrence Street and 5 storeys to the internal courtyard.</p> <p>See discussion under the heading Issues.</p>

Provision	Compliance	Comment
4.2.3 Amenity	Yes	The amended proposal has acceptable amenity regarding solar access, overshadowing, dwelling mix, open space and ventilation and noise as, outlined in the SEPP 65 and ADG assessment above and the Issues section below.

Discussion

Clause 4.6 Request to Vary a Development Standard

29. The site is subject to maximum building height controls as follows:
- (a) Building A - 24.2m (22m SLEP 2012 control + 10% design excellence bonus);
 - (b) Building B - 12m (SLEP 2012 control).
30. It is noted that as per Condition 6(c) of the concept approval, the 10% design excellence bonus in building height was awarded to Building A and did not apply to Building B.
31. The development proposes a maximum building height as follows:
- (a) Building A - 25.85m, which represents a 1.65m or 6.8% variation;
 - (b) Building B - 15.32m, which represents a 3.32m or 27.7% variation.
32. The variation to height is as a result of the following:
- (a) Building A - the proposed saw tooth roof design and air conditioning plant;
 - (b) Building B - the proposed saw tooth roof design and air conditioning plant, as well as a 1.5m increase in overall building height to improve amenity to the Level 1 apartments fronting Lawrence Street.
33. The extent of the variation to the LEP building height control is illustrated in Figures 8, 9 and 10.

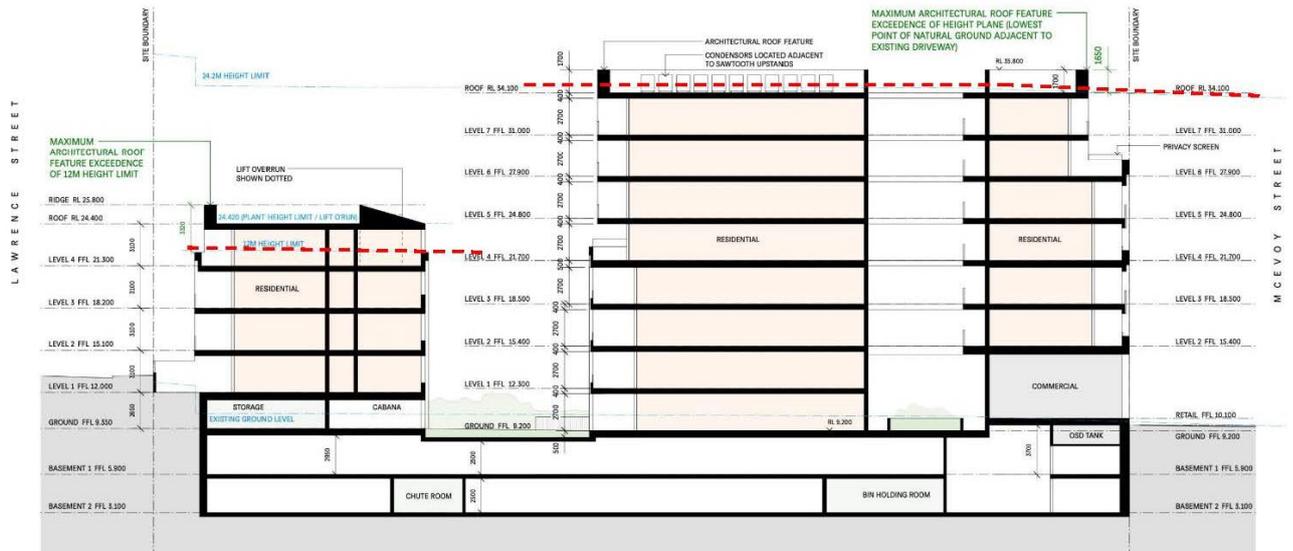


Figure 8: Proposed variation to LEP building height control (height control shown in red dash)

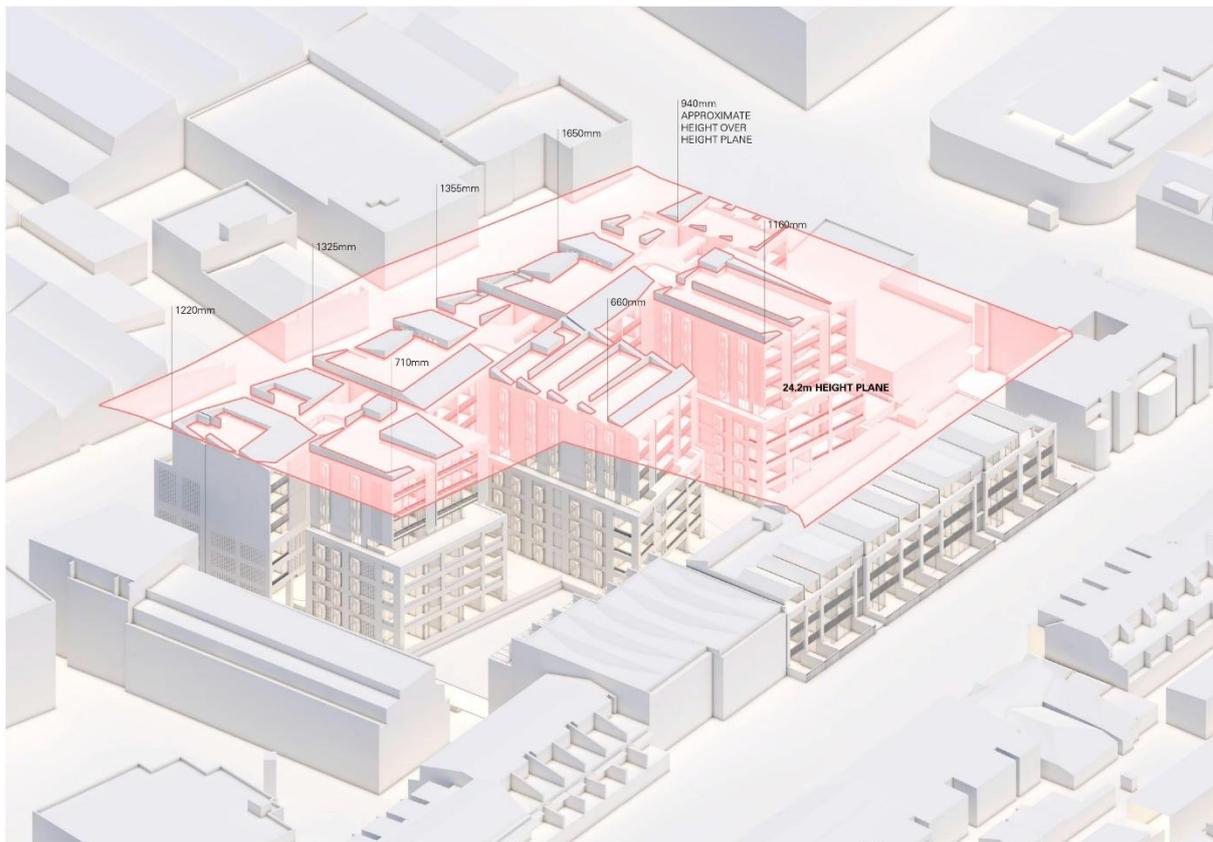


Figure 9: Proposed variation to LEP building height control – Building A



Figure 10: Proposed variation to LEP building height control – Building B

34. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) that there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) the proposed development will be consistent with the objectives of the zone; and
 - (d) the proposed development will be consistent with the objectives of the standard.
35. A copy of the applicant's written request is provided at Attachment C.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

36. The applicant seeks to justify the contravention of the building height development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
- (i) The applicant's statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard.
- (ii) The applicant maintains that the objectives of the standard are met as follows:
- The non-compliance is limited to architectural roof features for Building A, which comprise decorative elements on the uppermost part of the building which are permitted on merit by Clause 5.6 of SLEP 2012;
 - The resulting non-compliance is minor in nature for Building A (6.8%);
 - Although the non-compliance is more significant for Building B (27.7%), this is largely the result of where the maximum building height is measured from (being the finished level of industrial complex, which is below the Lawrence Street footpath);
 - Building B only rises approximately 11m above the Lawrence Street footpath, measured to top of roof slab, with only the architectural roof forms projecting beyond the prescribed 12m limit (if height was measured from the Lawrence Street footpath);
 - It is further noted that the 12m building height limit is permitted along the full eastern length of the Lawrence Street block between Fountain Street and Harley Street (and beyond), indicating that the proposed height of development at the street frontage would not be inconsistent with future development intended within the precinct;
 - The proposed development is consistent with the objectives of the building height standard and the zone objectives;
 - There is no loss of views or overshadowing or any adverse impacts upon adjacent properties that results of the non-compliance to the building height;
 - The architectural roof features are not intended as advertising structures;
 - The roof form does not include floor space area and is not reasonably capable of modification to include floor space area;

- The building height does not create additional overshadowing on any adjacent building; and
 - All building equipment for servicing the building (including air conditioning plant) contained in or supported by the roof feature is fully integrated into the design of the roof features.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The applicant refers to the recent LEC decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 to demonstrate sufficient environmental planning grounds to justify contravening the standard as the development achieves a better outcome by allowing flexibility in particular circumstances.
 - (ii) The applicant also references the provisions of Clause 5.6 of the LEP, which permits breaches of the maximum building height by architectural roof features where the requirements of that clause are satisfied.
 - (iii) The applicant provides the following environmental planning grounds to support the height variation in relation to the exceedances caused by the architectural roof feature on both Building A and Building B:
 - The non-compliance is limited to architectural roof features only, which comprise decorative elements on the uppermost part of the building;
 - The proposed architectural roof feature, which in part includes provision for clerestory windows and otherwise proposes unique roof forms, results in a roofscape which reinterprets the sawtooth roofs of the surrounding and historic industrial streetscape upon the site;
 - Proposed services are appropriately integrated with the roof form and building design and do not have any adverse visual or overshadowing impacts upon adjoining properties;
 - The architectural roof features do not include floor space area and are not reasonably capable of modification to include floor space;
 - The height exceedance for Building B is largely the result of the existing built form and finished ground levels, and as has been established, this building is generally consistent with the height of buildings expected to be developed on the eastern side of Lawrence Street.
 - (iv) The applicant provides the following environmental planning grounds to support the height variation of Building B only:
 - The concept envelope was approved with an exceedance to the prescribed maximum height limit, recognising the approximate 3m fall from the Lawrence Street footpath to the existing ground level of the industrial complex;

- The building has been lifted post consideration at the CSPC meeting on 23 July 2020 by 1.5m, in response to concerns for the proposed below ground apartments;
 - These concerns have been addressed by lifting the Level 1 apartments, increasing the amenity for future occupants, and utilising the resultant void for communal facilities and for storage;
 - A much better planning outcome is achieved by permitting flexibility of the development standard in these circumstances.
- (c) The proposed development will be consistent with the objectives of the zone:
- (i) The applicant maintains that the proposed variation to the building height does not hinder the proposal's ability to satisfy the zone objectives as the development will continue to provide for a mix of compatible land uses by integrating retail and residential development.
- (d) The proposed development is consistent with the objectives of the standard:
- (i) The applicant maintains that the objectives of the standard are met. The negligible breach to the maximum building height is a consequence of the architectural roof form arising from the architect's design competition entry. The breach to the maximum building height on Lawrence Street is consistent with the RL limitations prescribed by the concept application conditions of development consent, and have no adverse impact on the streetscape or rhythm of the established built form within the Cooper Estate heritage conservation area.

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

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

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

38. The applicant has correctly referred to the test established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the applicant has addressed the first part of the test by demonstrating that the development meets the objectives of Clause 4.3, notwithstanding non-compliance with the numerical standard.

39. The applicant references the breach of the control being in relation to the architectural roof feature, which is an integral part of the building design that has been carried through from the winning design competition scheme. It is noted that the architectural roof feature does not unreasonably add to the bulk and scale of the building when viewed from the public domain and surrounding buildings.
40. The applicant also references the established streetscape of the Cooper Estate heritage conservation area. Building B provides an appropriate height transition between adjoining buildings along Lawrence Street and within the conservation area. The height, scale and design of Building A is appropriate for the sites context, resulting in an acceptable built form within the streetscape.

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

41. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the Height of Buildings development standard. Specific reference is made to the Four2Five Pty Ltd v Ashfield Council case to justify contravening the standard as the development achieves a better outcome by allowing flexibility in particular circumstances.
42. The area of non-compliance for Building A is relatively minor and as it is confined to an architectural roof feature, does not unreasonably add to the bulk and scale of the building when viewed from the public domain and surrounding buildings.
43. The area of non-compliance for Building B is exacerbated by the existing ground level of the site being approximately 3m below the ground level of the Lawrence Street footpath. When viewed from the Lawrence Street footpath, the architectural roof feature of Building B only marginally exceeds the 12m height control (if the control was measured from the street). As such, the proposal is consistent with the height of buildings expected to be developed on the eastern side of Lawrence Street.
44. The proposal will not create unacceptable impacts on the amenity of surrounding properties with regard to views, solar access and visual privacy.
45. The architectural roof feature incorporates clerestory windows that improve the amenity of the apartments.
46. The sawtooth architectural roof form is utilised to conceal air conditioning condensers that are not able to be located within the basement plant area. The air conditioning plant will not be visible from the public domain.

Is the development in the public interest?

47. With regard to varying development standards, the public interest is deemed as being protected where a development meets the objectives of the zone and the development standard sought to be varied.

48. The relevant objectives of the building height development standard are:
- (a) *To ensure the height of development is appropriate to the condition of the site and its context,*
 - (b) *To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
 - (c) *To promote the sharing of views,*
 - (d) *To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.*
49. Building A complies with the 5-storey street wall height required by the Concept approval, resulting in an appropriate height in relation to the sites McEvoy Street context.
50. The height of Building B is consistent with the existing 3 storey buildings along Lawrence Street and provides an appropriate transition from the taller Building A to the 1-3 storey buildings within the conservation area.
51. The proposed exceedance in height will not impact on any views or result in any adverse amenity impacts to surrounding development.
52. The objectives of the B4 Mixed Use zone are:
- (a) *To provide a mixture of compatible land uses.*
 - (b) *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
 - (c) *To ensure uses support the viability of centres.*
53. The mixed-use development proposes a diverse range of housing sizes and types in an accessible area close to public transport, employment opportunities and services, while integrating a compatible new retail space.
54. The introduction of new accommodation will also assist in supporting the viability of the nearby Green Square urban renewal area and South employment lands.
55. The proposal is in the public interest because it is consistent with both the objectives of the height development standard and the objectives of the B4 Mixed Use zone.

Conclusion

56. For the reasons provided above the requested variation to the Height of Buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the SLEP 2012. The proposed development is consistent with the objectives of the building height development standard and the B4 Mixed Use zone and is considered to be in the public interest.

Vehicle access

57. McEvoy Road is a classified road and is currently controlled by Transport for NSW (TfNSW). Under Section 138 of the Roads Act, concurrence is required from TfNSW to connect to a classified road.
58. The concept application (D/2017/238) originally proposed vehicle access from McEvoy Street, and was referred to Roads and Maritime Services (now TfNSW) for concurrence. Clause 101(2a) of the Infrastructure SEPP states: “The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that: (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road”. Concurrence was not provided by RMS for the concept approval based on this scenario as the site had alternative access via Lawrence Street (a local road).
59. Based on the above, the proposal was designed with vehicle access via Lawrence Street. This arrangement was supported by TfNSW and concurrence was provided on 22 January 2020 based on this design.
60. At its meeting on the 23 July, the CSPC raised concerns over the proposed vehicle access via Lawrence Street and the potential traffic impacts associated with the access arrangement. The CSPC resolved to defer the consideration of the application for further consideration of traffic issues.
61. Following this resolution, the City undertook discussions with TfNSW regarding the potential for vehicle access to be maintained via McEvoy Street. In this regard, it is noted that a 16m driveway crossing currently services the site via McEvoy Street (see Figure 11).



Figure 11: Existing 16m vehicular access to McEvoy Street shown in red

62. A summary of the position taken by TfNSW regarding the proposed McEvoy Street access is provided below:
- (a) The proposed McEvoy Street access is contrary to the default position on driveway access on the State road (classified road) network when alternative access can be provided;
 - (b) Concerns are raised regarding the conflict of vehicle movements at the proposed driveway location;
 - (c) Intersection works at McEvoy Street and Fountain Street, combined with local road closures proposed by the City will change the traffic conditions in the area and traffic volumes on McEvoy Street are likely to increase;
 - (d) Access provision via McEvoy Street would need to consider potential conflicts at the proposed driveway location, as well as potential changes to stopping restrictions along McEvoy Street;
 - (e) A driveway via McEvoy Street could be considered if a compelling case was put forward.
63. In response to the above, the applicant provided two options for the proposed driveway to McEvoy Street as follows:
- (a) Option 1: 6.7m wide driveway (Figure 12). This option allows for the simultaneous entry and exit of passenger vehicles, where the exiting passenger vehicle joins McEvoy Street lane no. 2 (adjacent to the centre line).
 - (b) Option 2: 10m wide driveway (Figure 13). This option allows for the simultaneous entry and exit of passenger vehicles, where the exiting passenger vehicle joins McEvoy Street lane no. 1 (the kerb-side lane).

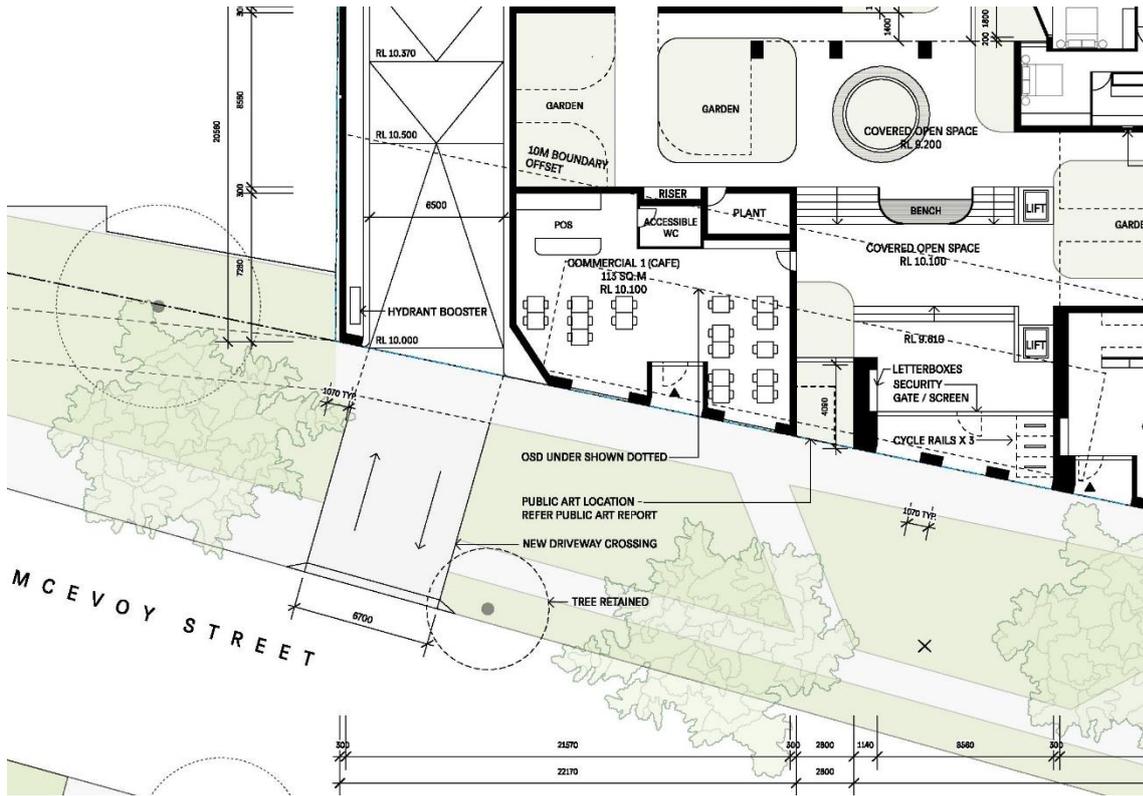


Figure 12: Option 1 – 6.7m wide driveway

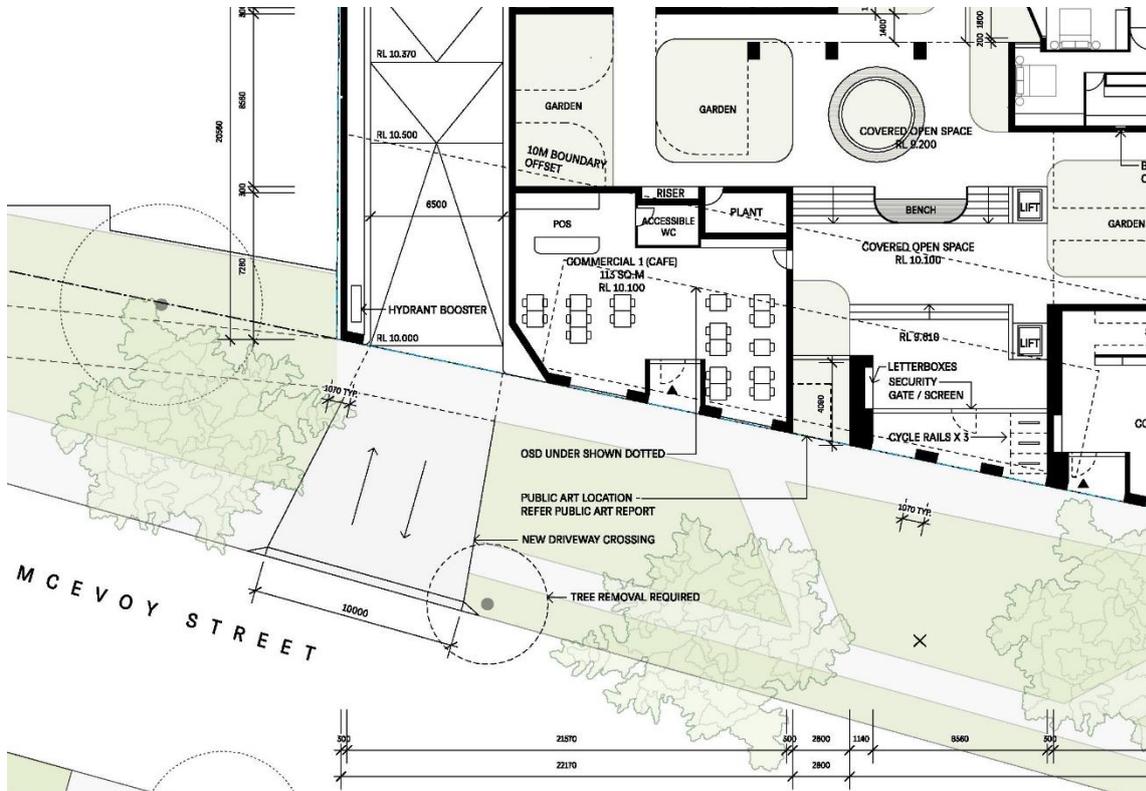


Figure 13: Option 2 – 10m wide driveway

64. The proposed access arrangements were referred to the City's Transport and Access Unit, who advised that the 6.7m driveway option is preferred. This option provides adequate room for access and also allows the retention for the existing street tree located to the east of the crossing.
65. The proposed access arrangements were referred to TfNSW for their consideration and on 9 November 2020, concurrence was provided from TfNSW, subject to the following deferred commencement conditions:
 - (a) Provision of a median strip along McEvoy Street that extends no less than 6m beyond either side of the width of the proposed driveway access to restrict vehicular movements to left-in, left-out only;
 - (b) The redundant driveway on the McEvoy Street boundary shall be removed and replaced with kerb and gutter to match existing;
 - (c) A "No Stopping" zone shall be erected along the full length of the McEvoy Street frontage of the site to maintain sight distance but to support the left-in, left-out only arrangement.
3. In addition to the traffic and transport considerations, the relocated vehicular access raises the following considerations:
 - (a) The ground floor commercial tenancy 1 has been reconfigured and reduced in size to accommodate the relocated vehicle access. This results in a negative impact on the streetscape of McEvoy Street and the amenity of the commercial tenancy. However, this is somewhat offset by the relocation of the hydrant booster from the street frontage to a more discreet location adjacent to commercial tenancy 3 and the relocation of the pump room to the basement. A design modification condition has been recommended requiring the submission of details of the hydrant booster prior to the issue of a construction certificate.
 - (b) The deleted Lawrence Street vehicle access allows for the retention of one additional street tree that was previously proposed to be removed.
 - (c) The amended vehicle access via McEvoy Street has been designed with a 500mm freeboard above the 1% AEP flood level. This arrangement has been reviewed by Council's Flooding Engineers and has been found to be acceptable.

Lawrence Street below-ground apartments

66. The original proposal, as reported to the CSPC in July, included below ground apartments within Building B orientated towards Lawrence Street. As illustrated in Figure 14, these apartments were set down approximately 3.3m below the existing street level. The CSPC raised amenity concerns in relation to these below ground apartments.

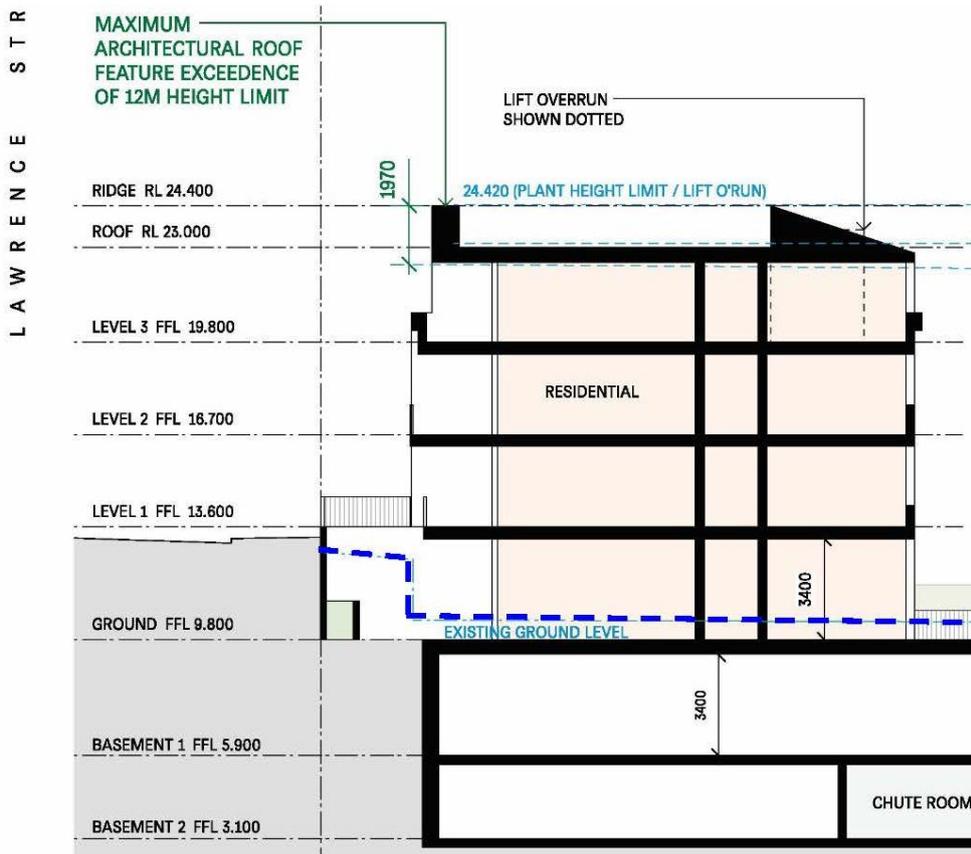


Figure 14: Section B original DA – Lawrence Street below ground apartments (existing ground level in blue dash)

67. As illustrated in Figure 15, the proposal has been amended to address these amenity concerns as follows:
- (a) increase in the floor level of Level 1 (previously referred to as the ground floor) by 2.2m;
 - (b) reduction in floor to ceiling height of Level 1 from 3.4m to 2.7m;
 - (c) introduction of an additional level (referred to as ground floor) to the internal courtyard incorporating bicycle storage, a swimming pool and cabanas; and
 - (d) reconfiguration of Level 1 apartments to provide north facing living rooms and private open space adjacent to Lawrence Street.

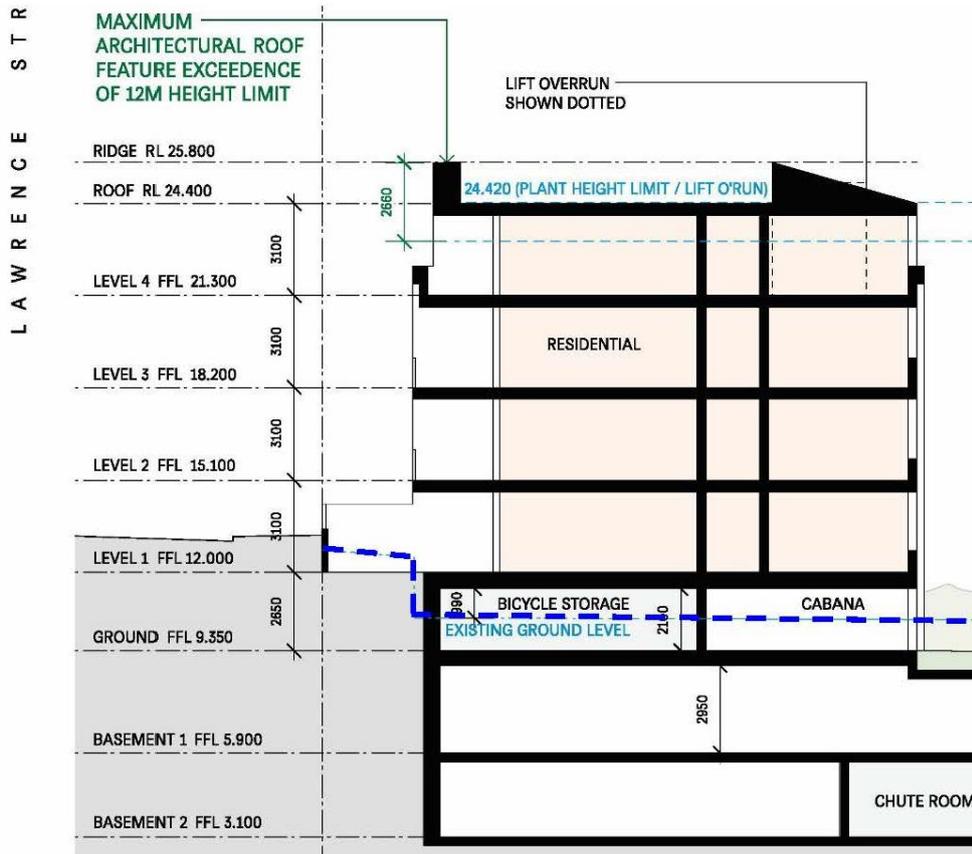


Figure 15: Section B amended proposal - Lawrence Street below ground apartments

68. The amendments result in improved amenity for Building B and the overall development as follows:
- (a) All Level 1 apartments are now located above the existing natural ground level.
 - (b) All apartments within Building B receive 2 hours of solar access to living rooms between 9am and 3pm mid-winter.
 - (c) The area of communal open space to the central courtyard is increased from 1,310sqm to 1,422sqm due to the removal of private open space within the central courtyard (see blue dash in Figure 16).
 - (d) An increase of covered open space from 495sqm to 815sqm through the provision of recreational facilities including a pool and cabanas (Figure 16).
 - (e) The provision of a large, centralised bicycle parking area on the Ground floor accommodating 163 spaces with level access from McEvoy Street and lift access from Lawrence Street (bicycle parking was previously located on basement level).

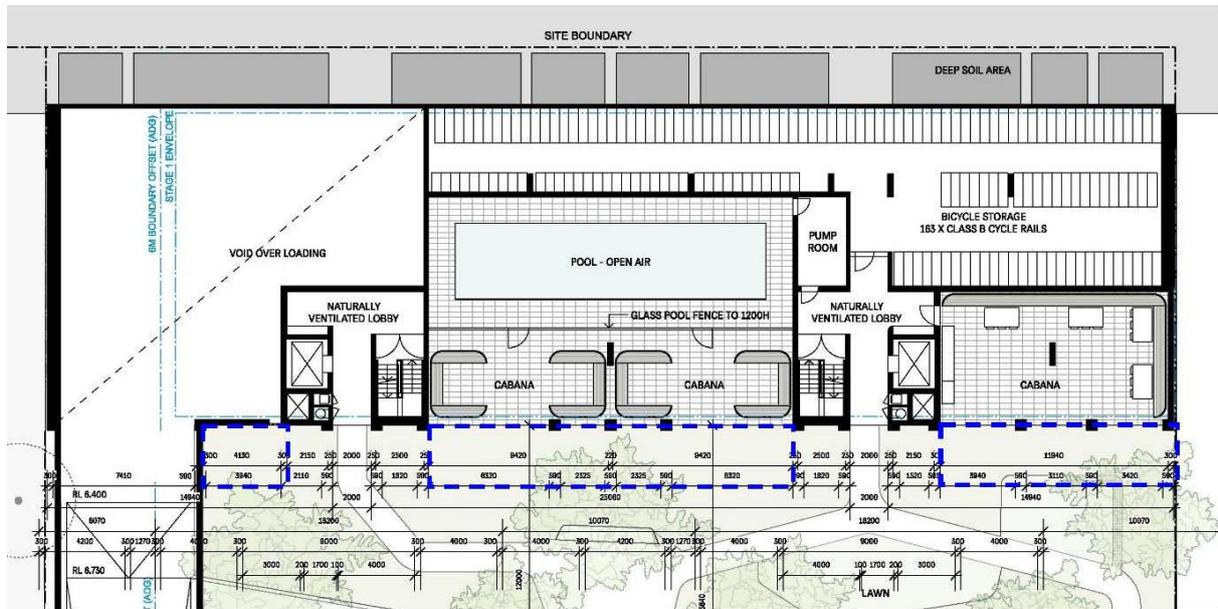


Figure 16: Proposed Ground floor area with pool, cabanas, bicycle storage and increased landscaped communal open space. Blue dash indicates private courtyards in original proposal.

- 69. The above amendments result in an increase in the overall height of the building by 1.5m, which results in a departure from the 12m LEP height control. A Clause 4.6 variation has been submitted to support this departure, which is acceptable.
- 70. The proposed height increase does not result in unacceptable impacts on adjoining properties. This issue is discussed in further detail under the heading Solar Access below.
- 71. The amendments result in a portion of Level 1 being located above the Lawrence Street footpath. As shown in Figure 17, Building B now appears as a 3.5 storeys when viewed from Lawrence Street.

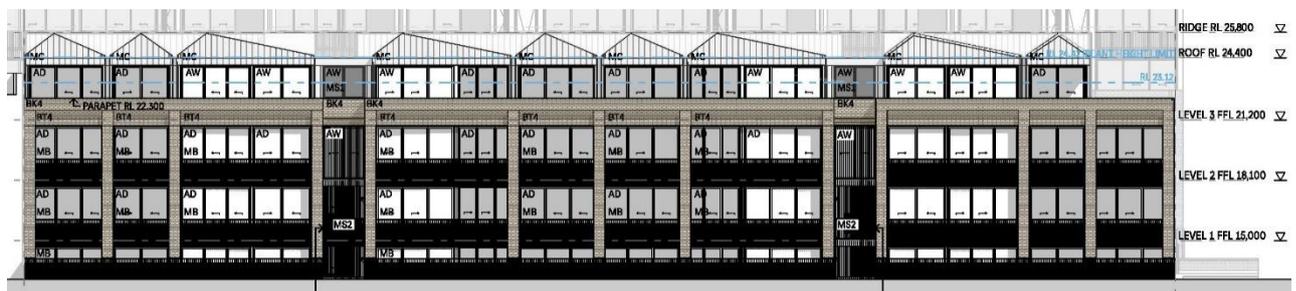


Figure 17: Building B Lawrence Street elevation

- 72. SDCP 2012 permits a maximum of 3 storeys to Lawrence Street. This minor departure to the height in storeys control is acceptable as the built form remains compatible with the emerging character of the area, while providing appropriate transition in scale to the adjacent heritage conservation area (Figure 18).

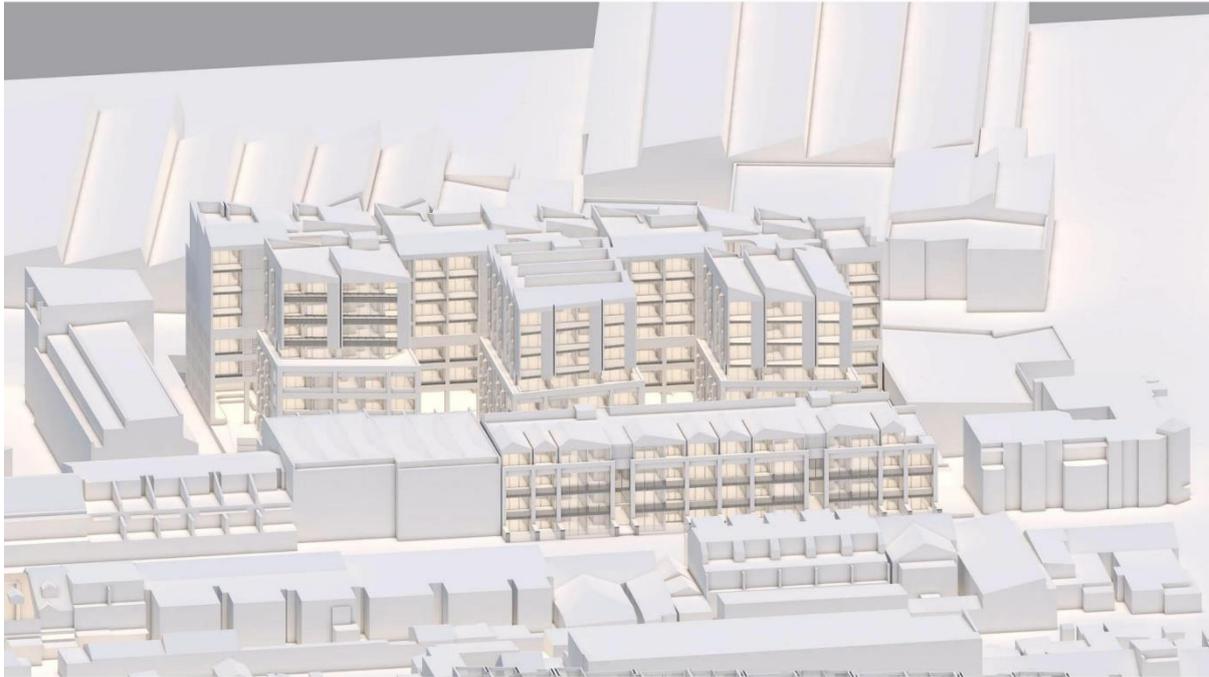


Figure 18: Perspective view of Building B illustrating compatibility with existing and emerging character

73. The removal of below-ground apartments within Building B results in compliance with Conditions 5(k) and 5(l) of the concept development consent. The proposal, as reported to CSPC on 23 July did not comply with these conditions. Conditions 5(k) and 5(l) are as follows:

5(k) No below ground habitable rooms are to be provided to any residential apartments.

5(l) Any void areas at ground level below the Lawrence Street building should be provided as non-habitable basement storage.

74. The amended proposal is now compliant with Condition 5(k) as no part of any residential apartments is located below existing natural ground level (see Figure 19).
75. The proposal has been amended to include bicycle storage at ground level, which complies with Condition 5(l). The majority of the pool and cabana area are all located above existing natural ground level and have direct access to the ground floor courtyard (see Figure 19).

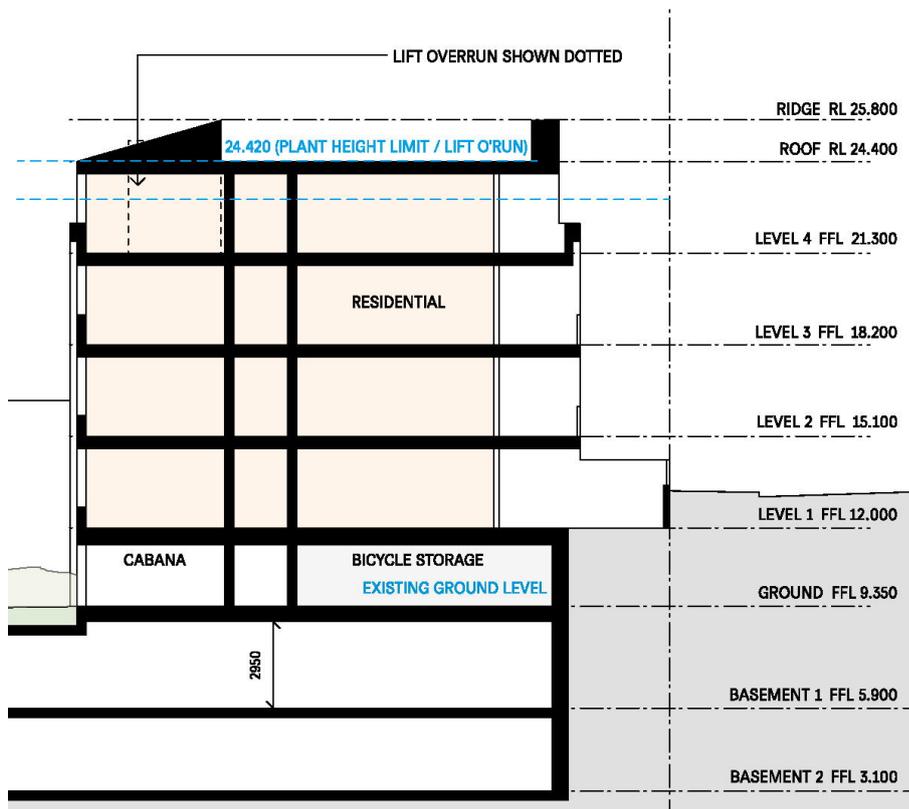


Figure 19: Section DD illustrating the majority of the ground floor is now located at or above the existing natural ground level

Solar access – 118-136 Lawrence Street

76. Additional information has been provided demonstrating that the amended proposal, including the increased in height to Building B, will not adversely overshadow neighbouring properties.
77. The amendments to Building B include a 4m setback on Level 4 from the south western property boundary (see Figure 20). This setback ensures compliance with the ADG solar access criteria as follows:
- (a) The adjoining property at 118-136 Lawrence Street currently receives solar access to 81% of its communal open space for 2 hours between 9am and 3pm at mid-winter.
 - (b) The original proposal, as reported to CSPC in July reduced solar access to the communal open space to a compliant 61% of common space area for 2 hours between 9am and 3pm mid-winter.
 - (c) The amended proposal, including the 4m setback to the south western boundary results in a compliant 63.6% of common space area receiving 2 hours of sunlight in mid-winter (see Figure 21). This complies with the ADG and SDCP 2012 minimum requirement of 50%.

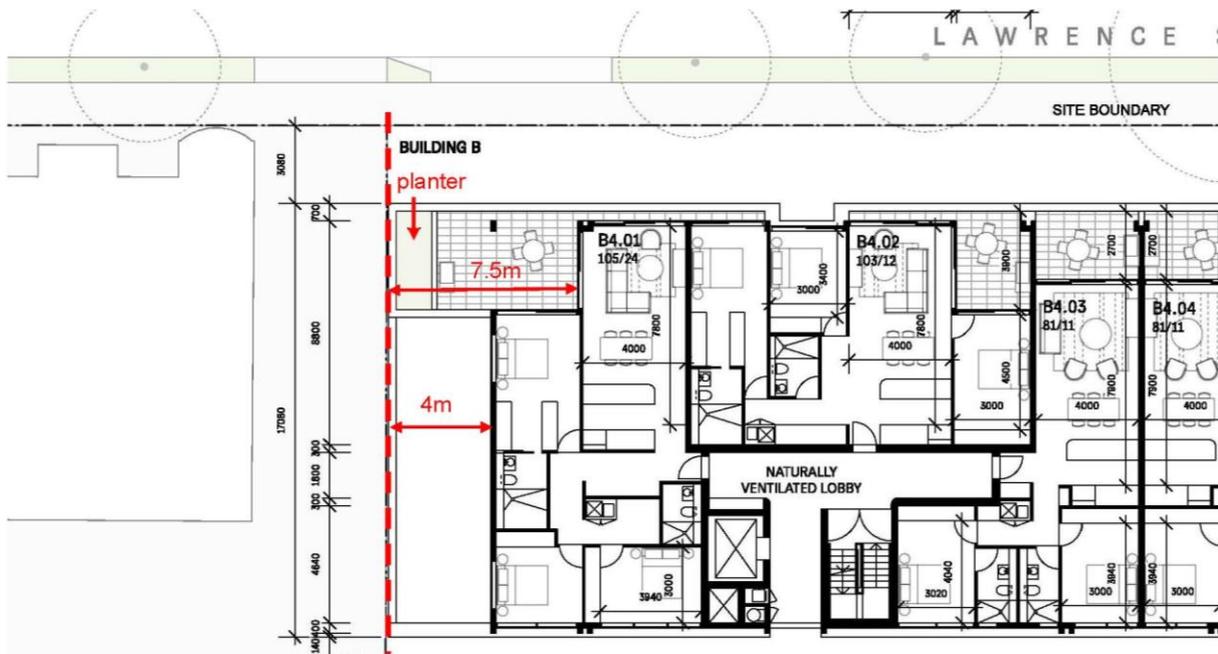


Figure 20: Proposed Level 4 setback to south western property boundary (boundary in red)

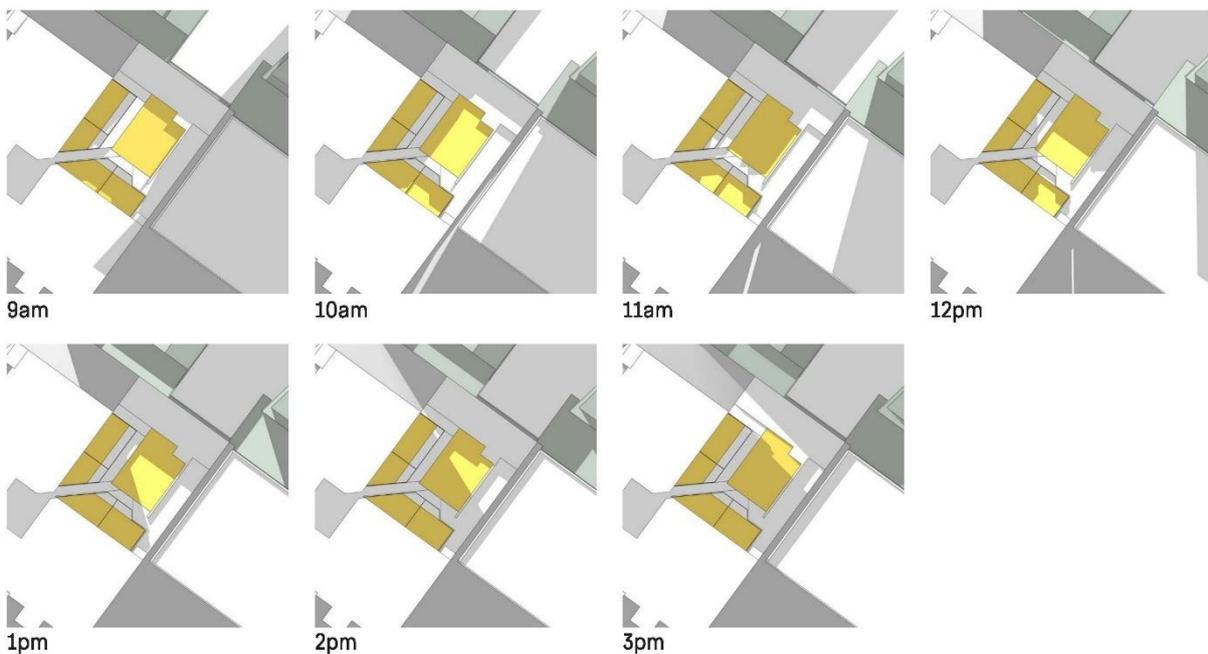


Figure 21: Overshadowing plans showing solar access compliance to adjoining communal open space

Privacy – 118-136 Lawrence Street

78. The proposed 4m setback does not comply with the 6m building separation to property boundaries, as required by the ADG. Further, the balcony of Unit B4.01 is located within the setback area. An assessment of the potential privacy impacts of this unit on the adjoining property at 118-136 Lawrence Street is below and is acceptable:

- (a) The balcony incorporates a 2m wide planter adjacent to the property boundary that can support appropriate screen planting to alleviate overlooking (Figure 20).

- (b) The building at 118-136 Lawrence sits below Building B. This height difference, combined with the 2m setback of the planter reduces sight lines to the adjoining property (Figure 22).
- (c) The bedroom windows on the south western elevation have a sill height of 2m (Figure 23).
- (d) The living room glazed door is located 7.5m from the property boundary (Figure 20).

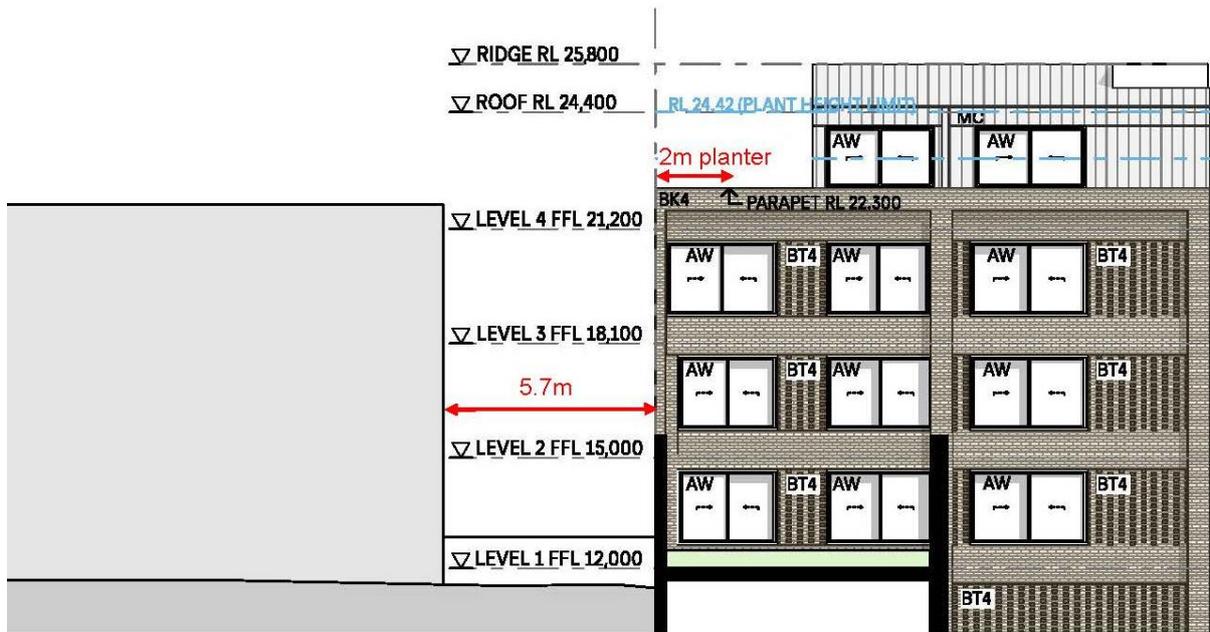


Figure 22: Courtyard section illustrating height of adjacent building at 118-136 Lawrence Street

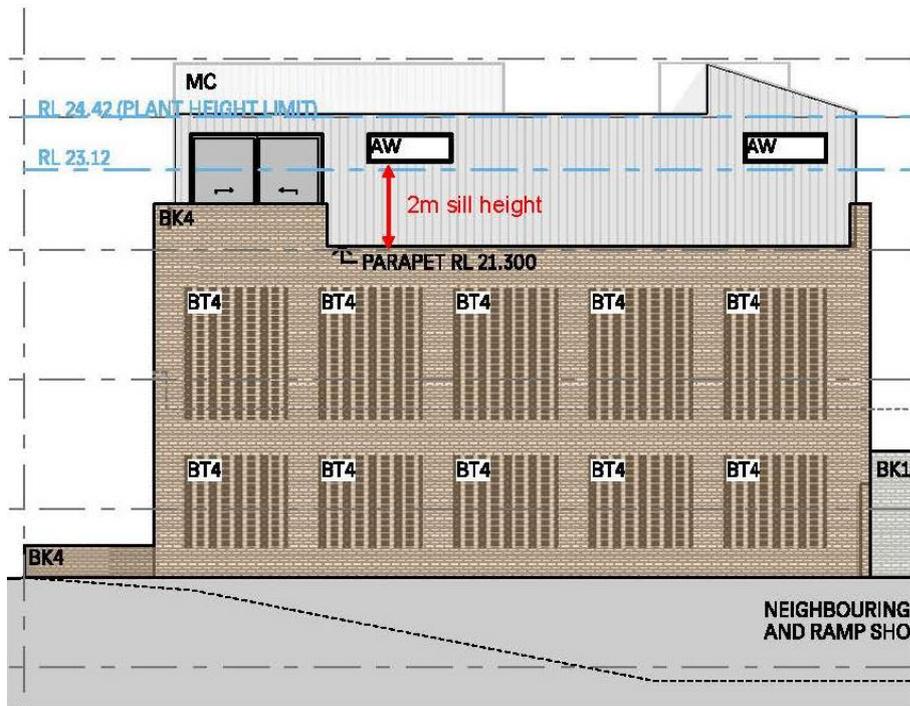


Figure 23: South western elevation to Unit B4.01

Privacy – 74-84 Lawrence Street

79. At its meeting on the 23 July, the CPSC raised privacy concerns from the proposed residential apartments located in the north western projecting bay to existing terraces located at 74-84 Lawrence Street. The relationship between these properties is shown in Figure 24.

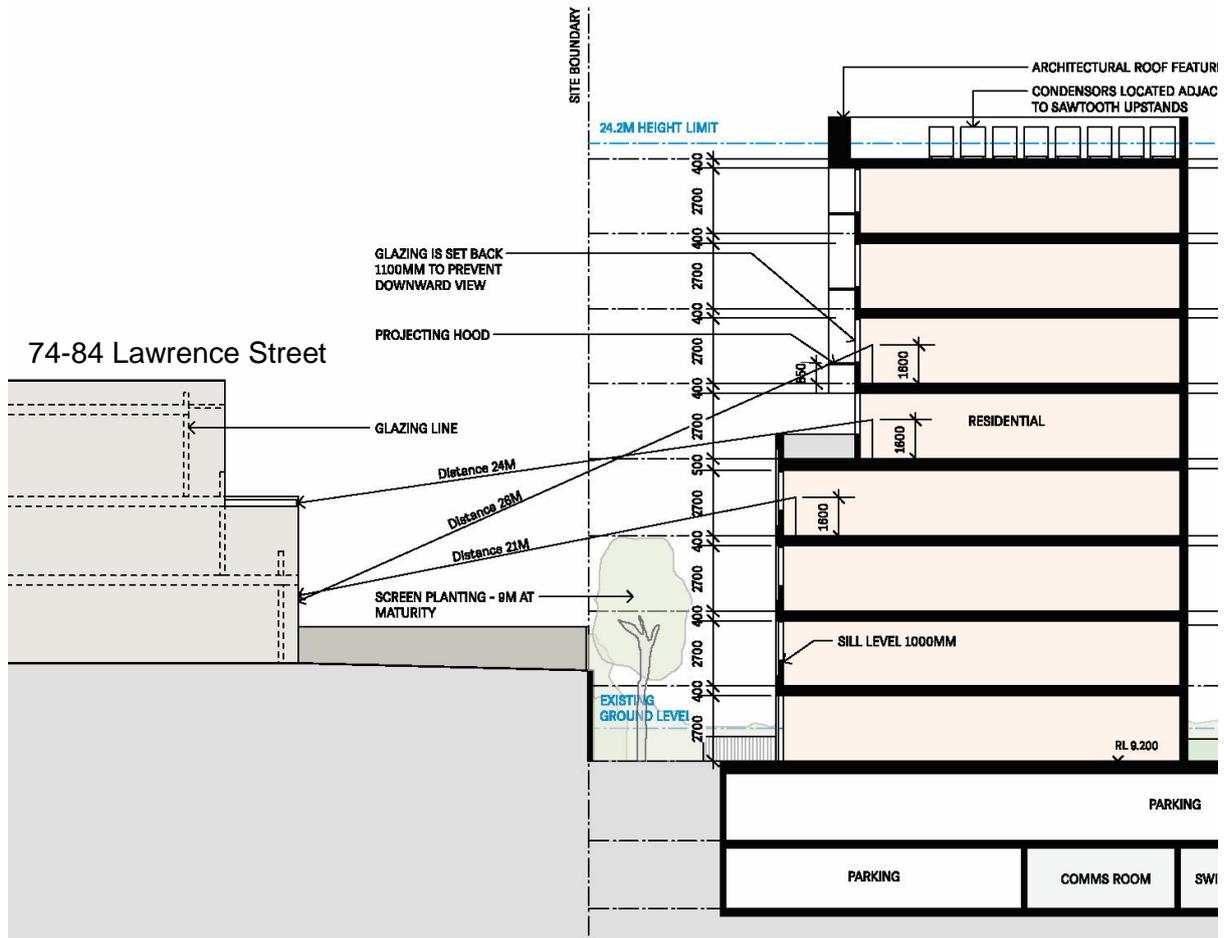


Figure 24: Relationship between Building A and existing terraces at 74-84 Lawrence Street

80. The proposal has been amended to incorporate additional measures to alleviate privacy concerns as follows:
- increase in height of glazing and balcony solid from 430mm to 1m on the Ground Floor through to Level 3 to reduce viewing aperture;
 - introduction of a solid sill upstand to 850mm in height in lieu of palisade screening on Levels 5 to 7;
 - introduction of 1.1m deep projecting hoods on Levels 5 to 7 to prevent downward view to terrace courtyards; and
 - additional screening tree planting to boundary in garden area.

81. In addition to the above privacy measures, the angle of the upper levels has been removed to provide improved design clarity. This angle was previously required to achieve ADG solar access compliance, but has since been removed due to increased compliance within Building B.
82. It is noted that the original proposal already largely complied with the ADG building separation and visual privacy requirements. However the amended proposal further increases privacy to existing adjoining properties. Illustrations of the proposed amendments are outlined in Figure 25.



Figure 25: Amended proposal including additional privacy measures to north eastern bay of Building A

Acoustic treatment - Building A

83. McEvoy Street is a busy road, with daily traffic movements projected to increase in excess of 40,000 average daily vehicle movements once the Euston Road off ramp to the Alexandria to Moore Park Connectivity Upgrade commences operation. Concerns over the potential acoustic impacts on the residential apartments within Building A were raised by the CSPC at its July meeting, particularly with regard to balconies fronting McEvoy Street.
84. The Acoustic Report submitted with the original application demonstrates that the development is able to meet the DCP criteria for internal noise if windows fronting McEvoy Street are closed, however the criteria would not be achieved with these windows open.
85. The proposal incorporates alternative means of natural ventilation to noise affected apartments fronting McEvoy Street. A combination of vertical and horizontal plenums are proposed to supply air to the bedrooms and living rooms of impacted apartments when windows and doors are closed. Locations of these plenums are illustrated in Figure 26.



Figure 26: Location of proposed vertical and horizontal plenums to noise affected apartments

86. In addition to the use of plenums, it is noted that of the apartments that have balconies fronting McEvoy Street, 50% of these balconies are secondary areas of private open space adjacent to bedrooms. Primary balconies located adjacent to living spaces are located at the rear of the building, increasing the amenity of primary open space for these apartments.
87. Further, for noise affected McEvoy Street apartments, additional windows have been included where possible to the internal light wells of Building A to provide increased opportunity for ventilation in the event openings fronting McEvoy Street are closed due to noise impacts. An example is shown in Figure 27 below.

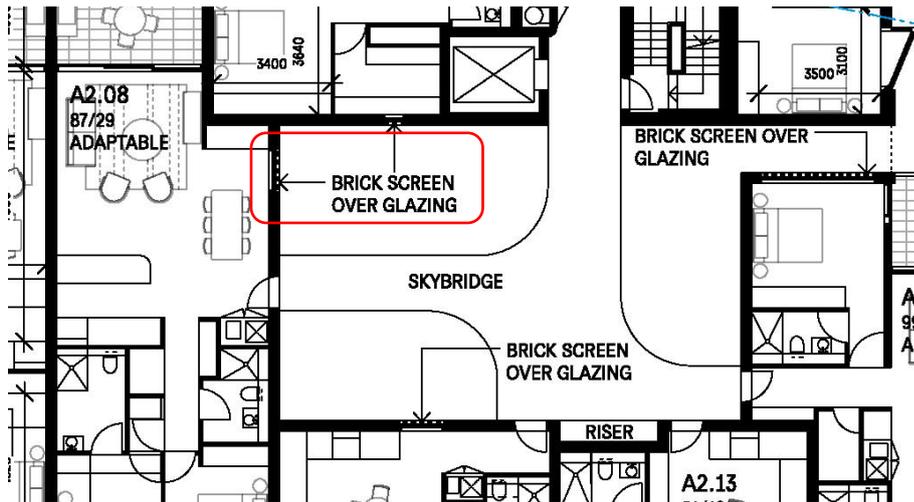


Figure 27: Additional dining room window to Building A lightwell

88. Potential to enclose the McEvoy Street balconies to further address acoustic concerns was raised at the 23 July CSPC meeting. The enclosure of McEvoy Street balconies would result in approximately 1,060sqm of additional GFA, which would result in a non-compliant FSR of 2.69:1. Further, enclosing the McEvoy Street balconies would significantly alter the solid to void ratio of the McEvoy Street elevation (see Figure 28).
89. In light of the above, further investigation of enclosing the McEvoy Street balconies was not undertaken.



Figure 28: McEvoy Street Photomontage

Consultation

Internal Referrals

90. The amended application was discussed with Council's Building Services Unit, Urban Design Unit, Public Domain Unit and Transport and Access Unit who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Transport for NSW

91. The amended application was referred to Transport for NSW for concurrence under Section 138 of the Roads Act 1993.
92. Concurrence was received on 9 November 2020. Deferred commencement conditions of consent were recommended which are included in the Notice of Determination.

Advertising and Notification

93. In accordance with the City of Sydney Community Participation Plan 2019, the amended development was re-notified for a period of 14 days between 3 September and 18 September 2020. The amended proposal was re-notified together with the amended concept proposal (D/2017/238/A). A total of 106 submissions were received in response to the re-notification of the amended proposal.
94. The submissions in relation to the re-notification of the amended proposal raised the following issues. Details of the submissions received regarding the originally proposed development are contained in the original assessment report at Attachment D.
- (a) Support for relocation of driveway from Lawrence Street to McEvoy Street.

Response – Noted.

- (b) Traffic generation, parking and associated impacts
- Impact of the development on the existing transport infrastructure and public transport network.
 - Proposal will exacerbate existing parking congestion.
 - Traffic impacts and risks to pedestrian safety as a result of the Lawrence Street driveway.

Response - The Parking and Traffic Impact Assessment submitted with the application demonstrates the proposed development will not give rise to an adverse increase in traffic and congestion in the locality. The proposal is expected to generate comparable traffic volumes to what is currently generated by the existing use. Proposed bicycle parking will encourage sustainable modes of transport to reduce congestion on local roads.

(c) Height, bulk and scale

- Proposed height and scale is inappropriate, does not respect the surrounding area, context or adjoining buildings.
- Objection to the additional height increase of Building B.
- Nil side setbacks for Building B is out of character in the area and contributes to the bulk and scale of the development.
- Development does not promote view sharing.
- Breaches to building height will set a precedent for further non-compliances in the area.

Response - Refer to the detailed discussion provided in the Issues section under the headings Clause 4.6 request to vary a development standard and Height in Storeys.

As demonstrated throughout the report, the proposal is in keeping with the character of the area for a new development and will not adversely impact the conservation area. Building B presents as 3.5 storeys to Lawrence Street and has been detailed sufficiently to provide a fine grain aesthetic sympathetic to the conservation area.

The provision of nil side setbacks is the underlying built form presented along Lawrence Street and within the Cooper Estate conservation area. The provision of nil side setbacks to Building B is consistent with the character of Lawrence Street. The proposal is of a similar scale to existing 2-3 storey contemporary and traditional terrace buildings within the conservation area.

The proposal will not result in the loss of views from surrounding properties.

Any future development application that may be submitted in the locality would be assessed against the relevant planning controls for the site and on the individual merits of the proposal.

(d) Density

- High density development is not in keeping with the low density of Lawrence Street.
- Removal of the restriction on below ground apartments allows for more apartments than would otherwise be the case.
- Support for increased density.

Response - The proposal complies with the floor space ratio requirement outlined in Sydney LEP 2012.

The site is located in a B4 Mixed Use zone, which permits residential flat buildings. The adjoining R2 General Residential zone along Lawrence Street also permits residential flat buildings, as evident by a number of developments that currently exist along Lawrence Street.

The site is located within walking distance of a number of existing and planned bus services and train/metro stations.

Below ground apartments have been removed from the amended application. All residential apartments within Building B now sit above the existing ground level.

(e) Tree removal and landscaping

- The proposal reduces deep soil zones and has limited opportunity for replacement planting. Specific concern that the width of deep soil zone (4m) for tree planting proposed to address privacy from Building A to adjoining terraces is inadequate to accommodate mature trees.
- Protection of Lawrence Street street trees.
- Excessive tree removal and pruning, with replacement trees being located inside the development which is not accessible or visible to the community.

Response - Conditions are recommended which require the resolution of deep soil and landscape design prior to the issue of the first construction certificate. These conditions require that the landscape design be revised to reflect the deep soil alignment as much as possible, reducing or removing any structures from within, and placing any fences, walls or footings outside the deep soil. A minimum width of 4m is sufficient for deep soil planting.

The development proposes the removal of 66 trees within the site boundary. Due to the location of the trees adjacent to the McEvoy and Lawrence Street property boundaries, all of these trees are located within the building footprint approved under the concept plan for the site.

The relocation of the Lawrence Street driveway allows the retention of all street trees along Lawrence Street. The submitted Arboricultural Impact Assessment show that all street trees are capable of retention, subject to the implementation of specific tree protection plans. Deferred commencement conditions have been recommended requiring non-invasive root investigations be undertaken in order to confirm the recommendations of the Arboricultural Impact Assessment and allow for any modification to the basement excavation plan, if required.

(f) Overshadowing and solar access

- Overshadowing to adjoining properties, in particular 118-136 Lawrence Street.
- Additional height will result in loss of solar access to adjoining properties.

Response - Views from the sun diagrams have been provided, demonstrating that the development as amended will not adversely overshadow neighbouring properties. Detailed analysis has been provided to quantify the overshadowing impact to the only affected residential neighbour at 118-136 Lawrence Street. As discussed in the Issues section above, the impacts on this building are minor and fall within the ADG threshold. The proposed exceedance in height will not result in any adverse overshadowing impacts on adjoining properties.

(g) Heritage impacts and character of the Cooper Estate area

- Inclusion of below ground habitable rooms on Lawrence Street will create a visual impact and the building will appear more dominate and is contradiction with the conditions relating to below ground apartments.
- Design and materials of Building B affects the integrity of the heritage conservation area.
- Lawrence Street and the conservation area will be visually impacted by the 8 storeys of Building A.
- The Heritage Impact Statement fails to properly consider the adjacent conservation area.

Response – The proposal has been amended to remove below ground apartments. All residential apartments within Building B now sit above the existing ground level.

The proposal is in keeping with the character of the area for a new development and will not adversely impact the conservation area. Building B presents as 3.5 storeys to Lawrence Street and has been detailed sufficiently to provide a fine grain aesthetic sympathetic to the conservation area. Landscape conditions are recommended that will enhance the appearance of the proposal when viewed from Lawrence Street.

(h) Privacy impacts

- Privacy impacts to adjoining properties.
- Window boxes direct views straight into adjoining properties.
- Overlooking from balconies of Building A to the rear yards of the Spectrum development.
- The proposal includes a new wing to Building A that doesn't comply with building separation requirements to the Spectrum development.

Response - The proposal generally meets the building separation design criteria outlined in the ADG and is contained within the concept approval envelope (as amended). Where separation distances are not achieved, the proposal incorporates design features to ameliorate visual privacy concerns for future occupants and adjoining properties.

(i) Noise impacts

- Objection over the inclusion of a pool in close proximity to Lawrence Street due to noise concerns.
- The noise impact assessment has not adequately addressed noise impacts from increased traffic and the commercial premises.

Response – The proposed pool space is partially enclosed and fronts the internal courtyard. The pool is not expected to generate unacceptable noise impacts on surrounding properties.

The submitted Noise Impact Assessment demonstrates that apartments facing Lawrence Street are capable of complying with the City's internal noise criteria with windows open. As such, unreasonable noise impacts are not expected to adjoining properties along Lawrence Street. The Noise Impact Assessment has been reviewed by the City's Environmental Health Unit and is acceptable.

(j) Construction impacts

- Construction impacts, including dust, noise pollution, safety and security.
- Request for appropriate protection of adjoining property during demolition, excavation and construction stage and liaison with neighbours.

Response - Appropriate construction management conditions are recommended to manage noise, excavation waste, dust and traffic.

Water NSW has provided General Terms of Approval for dewatering, which have been included in the recommended conditions.

A condition is recommended requiring dilapidation reports will be required to be prepared for the properties directly immediately surrounding the subject site.

(k) Design excellence

- The proposal does not exhibit design excellence.

Response - A competitive design process was undertaken in accordance with the provisions of Clause 6.21 of SLEP 2012 and the City of Sydney Competitive Design Policy. The proposal is consistent with the design intent of the winning scheme of a competitive design process and the development, as amended satisfies design excellence provisions pursuant to Clause 6.21 of Sydney LEP 2012.

The scale, form, articulation, materiality and architectural contribution of the proposed development is consistent with the site pursuant to Sydney DCP 2012 and the proposed development is consistent with the desired future character of the locality.

Where non-compliances with controls exist, they have been demonstrated to be acceptable.

(l) Boundary fence

- Existing warehouse buildings currently provide high boundary walls to the adjoining properties at 74-84 Lawrence Street terraces and apartments located at 147 McEvoy Street. This boundary wall provides privacy, security and noise insulation. The application does not provide details of the boundary wall treatment.

Response - Adjoining properties will be secured during construction by temporary fencing in the form of hoarding or the like.

Permanent fencing along a property requires owners consent for all adjoining properties, and the proposed material and height of boundary fences is a decision to be agreed on by all property owners. The applicant has advised that affected adjoining properties will be consulted regarding the construction of boundary fences.

(m) Submitted documentation

- Inconsistencies within the documentation, as well as inadequate and inaccurate representation of the proposal.

Response - The submitted drawings and supporting documentation is considered accurate and adequate in order to make an assessment against the relevant controls.

(n) DA process and re-notification period

- Inadequate time provided to review the modified documents placed on renotification.
- Complexity of proposal and amount of supporting documentation makes it difficult for community to assess.
- Criticism over the number of times the application has been amended.
- Request Council refuse to accept modifications to applications unless they are fully resolved and supportable.
- Criticisms over re-notification of amended driveway prior to concurrence from TfNSW being received.

Response - Amended plans and documentation was re-notified for a period of 14 days, which is line with Council's approach for the notification of amended documentation. A one-week extension to this period was granted where requested.

The proposal is complex in nature and has required an iterative process to address concerns raised by Council Officers, the CSPC, TfNSW and the community. Amending one aspect of a complex proposal often results in changes that create a different set of impacts, and therefore, an iterative process with ongoing amendments is often required.

In principle support for the relocation of the driveway was received by TfNSW prior to the amended plans being re-notified. Council has an obligation to assess development applications in a timely manner and as such, the proposal was re-notified prior to concurrence from TfNSW being received.

- (o) Advertisement/marketing of the proposal
- Concern that the developer is already marketing the development and has plans to construct a display suite nearby, but the development is yet to be approved.

Response – The marketing of a development prior to approval being granted is not a planning matter.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

95. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
96. Credits have not been applied as accurate information, including approved uses and GFA of existing warehouse buildings has not been supplied with the development application.
97. The following monetary contribution is required towards the cost of public amenities:
- | | |
|---------------------------|----------------|
| (a) Open Space | \$2,024,987.06 |
| (b) Community Facilities | \$402,446.89 |
| (c) Traffic and Transport | \$530,234.83 |
| (d) Stormwater Drainage | \$209,712.92 |
| Total | \$3,167,381.71 |
98. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Relevant Legislation

99. Environmental Planning and Assessment Act 1979.
100. Roads Act 1993

Conclusion

101. The application proposes the demolition of existing structures, remediation, excavation and construction of a part 7 / part 8 storey mixed use building containing residential apartments and commercial tenancies (and signage) to McEvoy Street, a part 4 / part 5 storey residential flat building to Lawrence Street, and 2 basement levels with vehicular access from McEvoy Street.

102. The proposal has been amended to address transport and design concerns raised by the CSPC at its meeting on 23 July 2020. Primary design amendments include the relocation of the vehicle access to McEvoy Street, improved amenity for Building B apartment and increased privacy measures to Building A.
103. The proposal is consistent with the amended concept approval being D/2017/238/B.
104. The development exceeds the maximum 24.2m building height standard (including the 10% design excellence bonus) by 1.65m (6.8%) for Building A and 3.32m (27.7%) for Building B caused by the architectural roof feature and AC condensers. A request to vary Clause 4.3 Height of Buildings development standard has been received in accordance with Clause 4.6 of SLEP 2012. The statement demonstrates that compliance with the standard is unreasonable and unnecessary, and there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives of the land use zone and height of buildings development standards and the proposed departure to building height is supported in this instance.
105. Subject to conditions, the proposal is generally consistent with the applicable planning provisions including SEPP 65, SLEP 2012 and SDCP 2012. Proposed non-compliances have been assessed as having merit in this case and are addressed in the report or within Attachment D. Conditions are recommended to address non-compliances were appropriate.
106. The proposal represents design excellence, with a high standard of architectural design, materials and detailing and a built form that is consistent with the existing and future desired character of the area.
107. The proposal is Integrated Development under the Water Management Act 2000, requiring approval from Water NSW. General Terms of Approval were received from Water NSW on 6 February 2020.
108. The development is in the public interest and is recommended for deferred commencement approval, subject to the conditions in Attachment A.

ANDREW THOMAS

Acting Director City Planning, Development and Transport

Natasha Ridler, Area Coordinator