

Item 11.**Development Application: 888 Bourke Street, Zetland – D/2020/93****File No.:** D/2020/93**Summary**

Date of Submission:	4 February 2020. Most recent amended plans submitted 13 August and 3 November 2020
Applicant:	Toplace Pty Ltd
Architect/Designer:	Peddle Thorp & Walker (PTW) Architects
Developer:	Toplace Pty Ltd
Owner:	888 Place Ltd
Planning Consultant	LJB Urban Planning
Cost of Works:	\$60,648,790
Zoning:	The site is zoned B4 – Mixed Use under the Sydney Local Environmental Plan (SLEP 2012). The proposed uses include residential accommodation, serviced apartments and retail premises, which are permissible with consent within the zone.
Proposal Summary:	<p>Proposal</p> <p>Consent is sought for the redevelopment of the site, comprising remediation, excavation and construction of a mixed-use development comprising two buildings with a total of 89 serviced apartments, 1 retail tenancy and 92 residential apartments in total. This is detailed as follows:</p> <ul style="list-style-type: none">• A 7 storey building known as ‘Building A’ to the corner of Bourke Street and O’Dea Avenue containing 89 serviced apartments and 1 retail tenancy;• A 7 storey building known as ‘Building B’ to O’Dea Avenue containing 92 residential apartments; and• Construction of 2 basement levels for 106 car spaces accessed from Kingsborough Way.

Land dedication (footpath widening to Bourke Street and O'Dea Avenue, as well as the extension of Kingsborough Way within the site) is to occur by way of a previously executed Voluntary Planning Agreement.

The development involves dewatering and is Integrated Development, requiring approval from Water NSW under the Water Management Act 2000. General terms of approval have been issued by Water NSW and form part of the recommended conditions of consent.

The application is referred to the Central Sydney Planning Committee for determination as the proposal is "major development" for the purposes of the City of Sydney Act 1988.

The subject development application requires amendment of the approved concept envelope. A Section 4.55(2) application (D/2017/1723/A) has been lodged separately and has been assessed concurrently with the subject DA. This modification application is also being reported to CSPC and is recommended for approval. Subject to approval of D/2017/1723/A, the DA will be consistent with the concept development consent.

The development has been the subject of a competitive design alternatives process, with PTW preparing the winning scheme. The proposal is generally consistent with the intent of the winning scheme in terms of materiality and articulation and has addressed the recommendations of the selection panel.

A preliminary assessment of the application identified concerns relating to the height non-compliance, particularly overshadowing impacts to surrounding development, view loss and the communal open space/plant area at rooftop; as well as the interface of the development with the public domain, breaches to setbacks of the concept envelope, building separation within the site, noise and natural ventilation and contamination. These issues have largely been addressed through the submission of amended plans and documentation.

Development Standards

The proposal seeks to utilise the design excellence provisions pursuant to Clause 6.21 of the Sydney Local Environmental Plan 2012. This allows for a further 10% floor space ratio (FSR). The development therefore includes a maximum FSR of up to 2.2:1 (1.5:1 + 0.5:1 community infrastructure FSR + up to 10% additional FSR). The application proposes an FSR of 2.2:1 (15,541sqm) which complies.

A written request has been submitted to vary building height pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012. It is proposed to vary the Height of Buildings development standard of 22m which applies across the site. The height exceedance varies between 4.74m (Building A – 26.74m) to 4.93m (Building B – 26.93m) and relates to parapets, lift overruns and awnings associated with the rooftop communal open space. The Clause 4.6 statement demonstrates that compliance with the standard is unreasonable and unnecessary, and there are sufficient environmental planning grounds to justify contravening the standard. The proposed development meets the objectives of the B4 Mixed Use zone and the development standard and the proposed departure to building height is supported in this instance.

Notification

The development was notified for a period of 28 days between 13 February and 13 March 2020. 21 submissions were received. Following submission of amended plans, the application was re-notified for a period of 14 days between 13 August and 28 August 2020. 14 submissions were received.

Issues raised in submissions include height bulk and scale, view loss, overshadowing, visual privacy, amenity impacts arising from the use of Building A for serviced apartments, traffic and construction noise. These issues are addressed within the report.

Subject to conditions, the proposal is generally consistent with the applicable planning provisions including the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. Proposed non-compliances have been assessed as having merit in this case and are addressed in the report. The proposal exhibits design excellence, and its final form responds satisfactorily to surrounding development with a high standard of architectural design, materials and detailing, proposing a built form that is consistent with the future desired character of the area.

The application is recommended for approval subject to conditions.

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

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
 - (ii) City of Sydney Act 1988
 - (iii) Sydney Water Act 1994
 - (iv) Sydney Airport Referral Act 1996
 - (v) State Environmental Planning Policy No. 55 – Remediation of Land
 - (vi) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
 - (vii) State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)
 - (viii) State Environmental Planning Policy (Building Sustainability: BASIX)
 - (ix) State Environmental Planning Policy (Infrastructure) 2007
 - (x) NSW Apartment Design Guideline 2015
 - (xi) Sydney Local Environmental Plan 2012
 - (xii) Sydney Development Control Plan 2012
 - (xiii) City of Sydney Contributions Plan 2015

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings
 - C. Clause 4.6 Variation Request – Building Height
 - D. View Sharing Analysis
 - E. Solar Impact Analysis
 - F. Competitive Design Alternatives Report

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 the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2020/93 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 the 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/2017/1723/A.
- (E) The development subject to conditions, is considered to exhibit design excellence through its positive contribution to the streetscape and public domain. The development is generally consistent with the winning scheme of a competitive design process in terms of architectural design, materials and detailing. The development has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
- (F) It is appropriate within its setting with compatible uses that will support the vitality of the area, consistent with the desired future character for the locality.

Background

The Site

1. The site is located at 888 Bourke Street, Zetland and has a legal description of Lot 1 in DP 851451. The site is subject to a strata plan with 18 lots, identified as SP 52152.
2. The site has an irregular shape, with a total area of 7,069sqm and boundary dimensions of approximately 26m along Bourke Street and 113m to O'Dea Avenue.
3. The site has frontages and is at the junction of two streets, being located on the south-eastern side of Bourke Street and the southern side of O'Dea Avenue. It occupies the western half of the entire street frontage along O'Dea Avenue between Bourke Street to the west and Joynton Avenue to the east. The site also has a frontage to the future through-site link running east to west (Bourke Street to Kingsborough Way) contained within 890-898 Bourke Street.
4. The topography has a fall of approximately 2m across the site from the western frontage (Bourke Street) towards the eastern boundary, shared with the adjoining properties at 5 O'Dea Avenue and 17 Joynton Avenue.
5. The site is identified on the plan in Figure 1 and aerial photographs in Figure 2 and Figure 3 below.

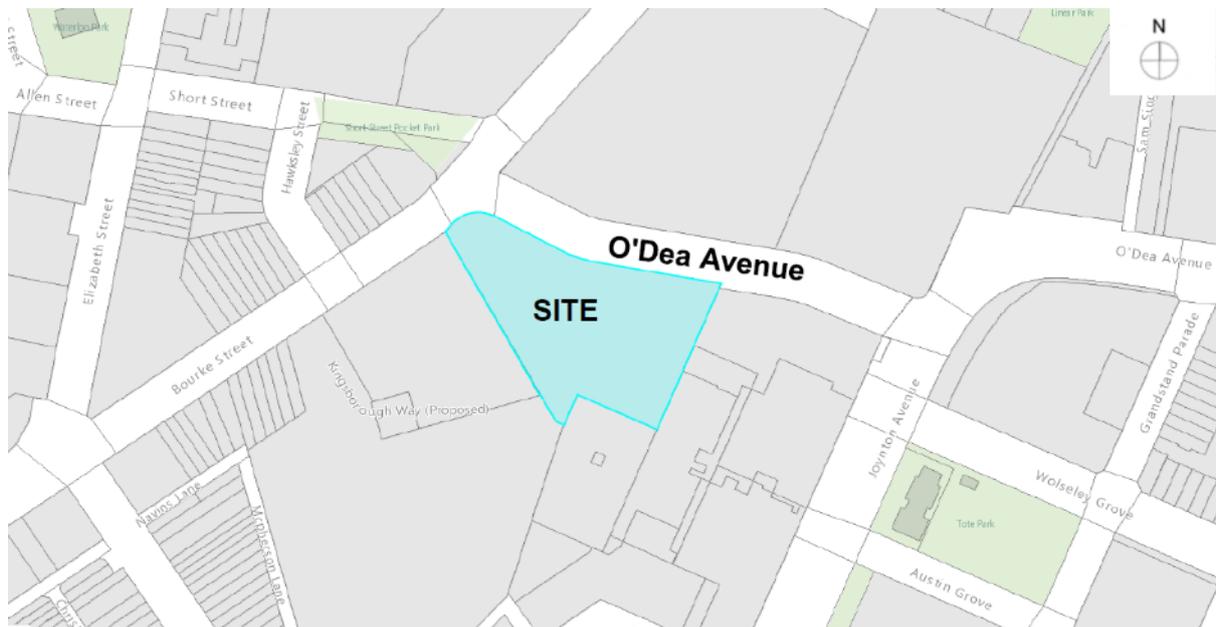


Figure 1: Plan image of the subject site and surrounding area (site shown in blue)



Figure 2: Aerial photograph of the subject site and surrounding area (site shown in blue)



Figure 3: Aerial photograph of the subject site and surrounding area (site outlined in blue), generally looking east

6. There are no significant trees or vegetation on the site, however there are 6 mature street trees located along the O'Dea Avenue frontage.
7. The site currently accommodates a 2 storey industrial development containing 18 units. The site has 2 vehicle access points to O'Dea Avenue with a central driveway providing access to car parking spaces associated with each tenancy.

8. The site is not identified as being a heritage item or located in a heritage conservation area in any environmental planning instruments.

Surrounding Development

9. The site is located within the Green Square Urban Renewal Area in the suburb of Zetland and is approximately 300m to the north-east of the Green Square Town Centre.
10. The surrounding area contains a diverse mixture of land uses and built forms. The adjoining site to the south west at 890-898 Bourke Street is occupied by similar industrial buildings. Development application D/2017/1762 approved the construction of a new 6 storey mixed use development comprising 145 apartments and 1 ground floor retail tenancy.
11. Adjoining sites to the south and east at 15 and 17 Joynton Avenue and 5 O'Dea Avenue contain 6 multi storey residential buildings, with the development being known as 'Emerald Park'.
12. To the south west is a new multi storey residential development containing 343 dwellings and a new public park at 906 Bourke Street and 6 Kingsborough Way. Construction is nearing completion on this development.
13. Directly across O'Dea Avenue to the north is a locally listed heritage item at 866-882 Bourke Street, which contains a Kennards self-storage facility.
14. Directly across the site to Bourke Road are 1 to 2 storey residential terraces that form part of the Zetland Estate Conservation Area, and a 2 storey warehouse.

15. Photographs of the site and the surrounding area are provided below.



Figure 4: Subject site viewed from the intersection of Bourke Street and O'Dea Avenue



Figure 5: O'Dea Avenue frontage of the subject site – depicting one of the two driveways for the site



Figure 6: O'Dea Avenue frontage of subject site



Figure 7: Second driveway of subject site viewed from O'Dea Avenue. 15 and 17 Joynton Avenue are located to the south and south-east of the subject site.



Figure 8: 981-983, 985 and 987 Bourke Street, located directly opposite the subject site. Nos. 985 and 987 Bourke Street are located within the Zetland Estate Heritage Conservation Area.



Figure 9: Heritage listed Kennards building viewed from the corner of O’Dea Avenue and Bourke Street



Figure 10: Heritage listed Kennards building viewed from O'Dea Avenue – directly opposite the subject site.



Figure 11: Partial north elevation of 15 Joynton Avenue, located directly south of the subject site



Figure 12: West elevation of 17 Joynton Avenue, located directly south-east of the subject site



Figure 13: 5 O’Dea Avenue, adjoining the subject site to the east



Figure 14: Subject site viewed from the south, looking towards O'Dea Avenue – 5 O'Dea Avenue is located to the east of the subject site

History Relevant to the Development Application

Concept Approval D/2017/1723

16. On 24 January 2019, concept development application (DA) D/2017/1723 was granted a deferred commencement consent under delegation of the CEO, providing a building envelope for future development.
17. The approved concept DA allows for two building envelopes (Buildings A and B) with a height of 22m, containing residential, serviced apartments and retail uses. Associated land dedications are attached to this approval via a Voluntary Planning Agreement (VPA) as discussed in the 'Planning Agreement' section below.
18. The deferred commencement conditions included a requirement for the VPA to be exhibited, executed and registered on title and a number of design modifications to the building envelopes. The design modifications centred around providing building setbacks and deep soil.
19. The deferred commencement conditions were satisfied and the consent was made active on 20 June 2019.

20. The subject development application for the detailed design proposal requires amendments to the approved concept envelope. A Section 4.55 modification of consent was lodged on 6 August 2020 to incorporate these variations, including:
 - (a) increase the height of Buildings A and B;
 - (b) enlarge the basement footprint to the north (O’Dea Avenue), a portion to the south (towards the through-site link), and at the eastern end of the site;
 - (c) enlarge the footprint of Building A at all levels to the south (towards the through-site link);
 - (d) enlarge the footprint of Building B at all levels to the eastern end of the site; and
 - (e) introduce level 6 floorplate to both buildings.

21. The Section 4.55 modification D/2017/1723/A is being assessed concurrently with the subject DA. The modification is also being reported to the CSPC for determination and is recommended for approval.

22. The approved setbacks, proposed ground floor, level 1 and 2 envelope plan, and a proposed section are provided below.

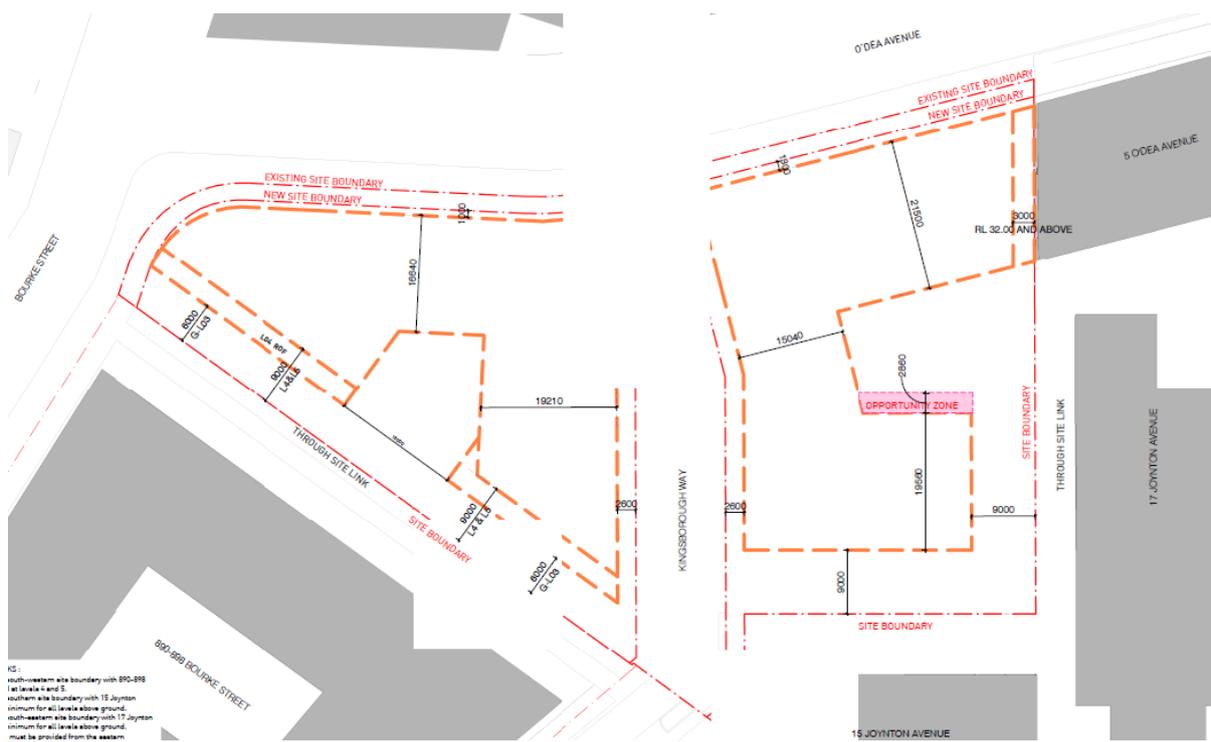


Figure 15: Floor plan depicting all approved setbacks for D/2017/1723

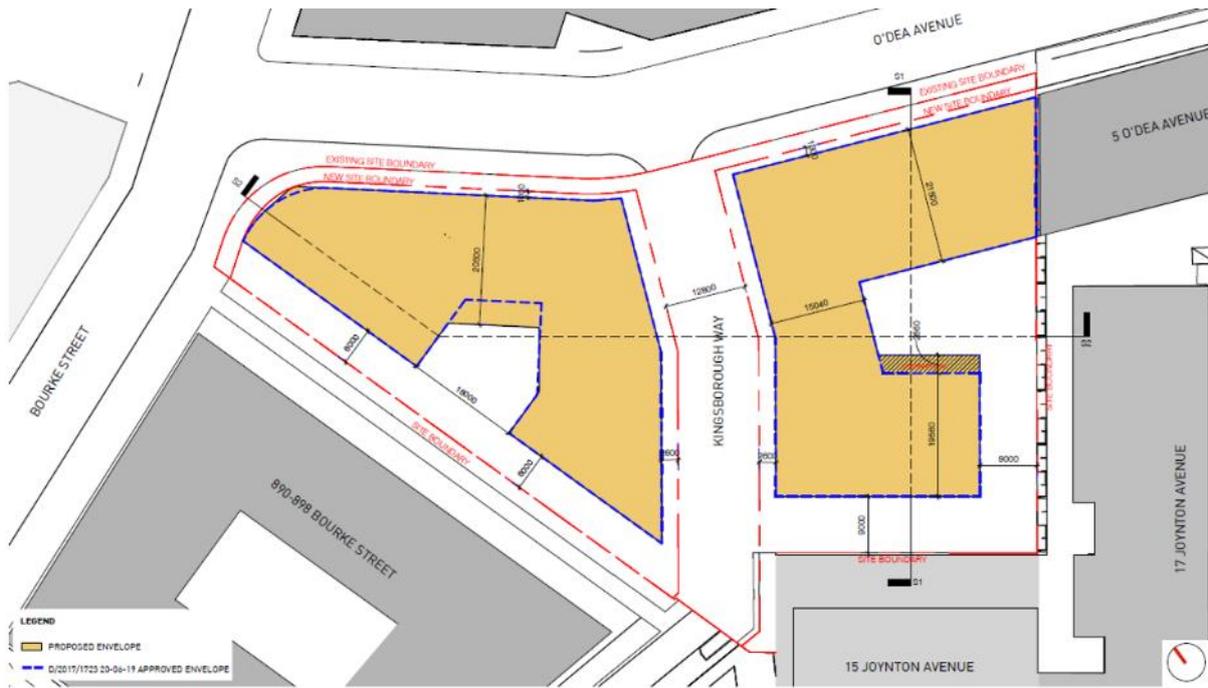


Figure 16: Proposed ground floor envelope plan for D/2017/1723/A, with the approved envelope outlined in blue

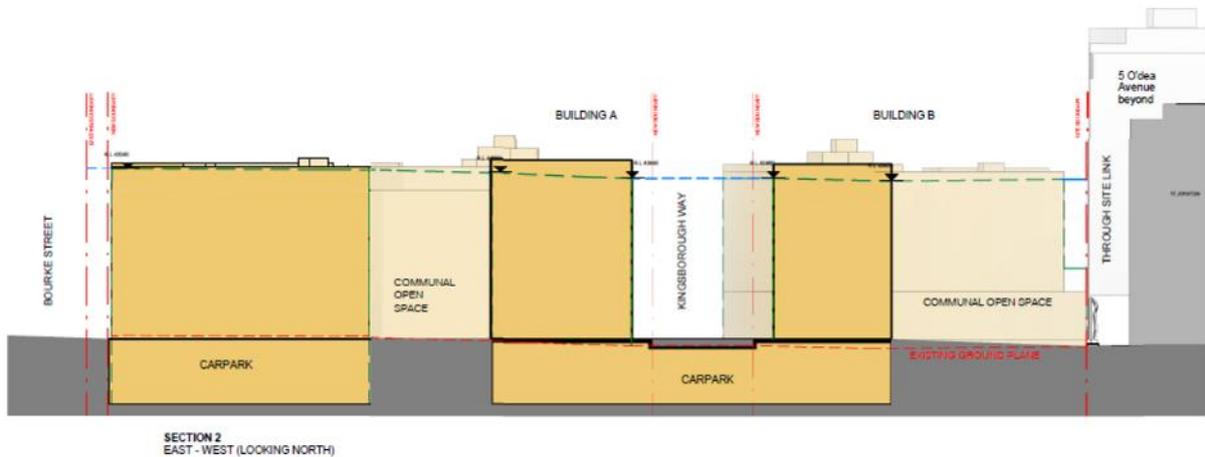


Figure 17: Proposed section for D/2017/1723/A, with the approved envelope outlined in green and 22m height limit outlined in blue

Planning Agreement

23. The site is subject to a planning agreement that is attached to the concept approval. The planning agreement was executed on 12 March 2019 and registered on title on 1 May 2019. The planning agreement includes the following public benefits:
 - (a) A monetary contribution of \$837,541.50 towards community infrastructure to utilise the additional FSR of 0.5:1 under the Green Square community infrastructure provisions contained in Clause 6.14 of the Sydney LEP 2012. This contribution is payable prior to the issue of the first Construction Certificate.

- (b) Dedication of land and construction works along the O'Dea Avenue and Bourke Street frontages for footpath widening. The piece of land is approximately 2.4m wide, with an area of 340sqm. The land is to be remediated to a minimum depth of 1.5m and transferred to Council after completion, but before the issue of the first Occupation Certificate.
- (c) Dedication and associated construction of a new road to be known as Kingsborough Way comprising an area of 917sqm and width of 12.8m. The land is to be remediated to a minimum depth of 1.5m and transferred to Council after completion, but before the issue of the first Occupation Certificate for the development.
- (d) The developer's works under the planning agreement include the construction of widened footpaths, the new internal road comprising stormwater, street lighting, footpaths, parking bays, landscaping and associated public domain works in accordance with the City's specifications to the value of \$589,946.

24. The areas to be dedicated to Council are indicated in the site plan below:

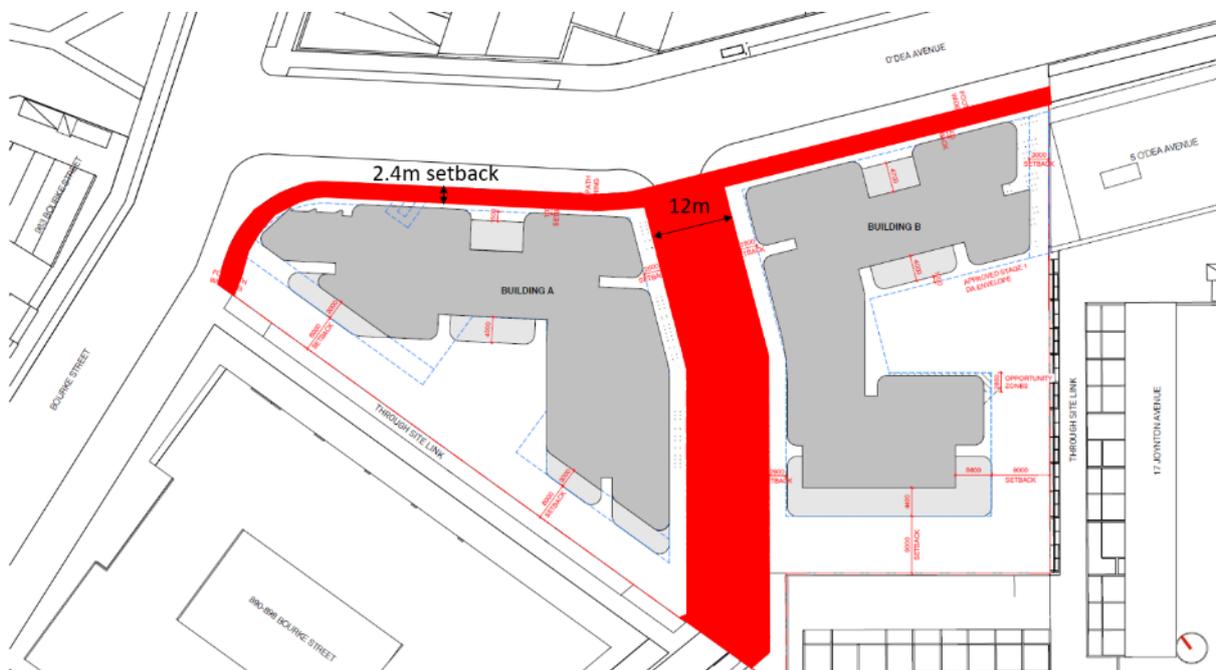


Figure 18: Site plan depicting land dedication for footpath widening and a new road within the site in red

25. The VPA does not affect the section 7.11 contributions applicable under the City of Sydney Development Contributions Plan 2015 or contributions for affordable housing required under SEPP 70, the Sydney LEP 2012 and the Green Square Affordable Housing Program.

26. The land to be dedicated to Council has been included in the plans submitted for assessment. Whilst civil drawings are provided, final details such as ground level RLs, treatment of the laneway, the left in, left out turning arrangement for Kingsborough Way etc. will be finalised as part of the public domain plan submission for the DA, prior to the issue of a Construction Certificate.

Competitive Design Alternatives Process – CMP/2018/1

27. Following the concept development approval, the applicant commissioned a competitive design alternatives process for the site. Three architectural firms were invited to submit a design proposal in August 2019. The three selected architectural firms were:
- (a) PopovBass;
 - (b) PTW; and
 - (c) SJB.
28. The schemes were encouraged to explore additional height (to a maximum of one storey), whilst minimising overshadowing to adjoining properties in accordance with the approved competitive design alternatives brief.
29. Presentations were given to the Selection Panel on 17 October 2019, where two schemes were shortlisted. The Selection Panel requested PopovBass and PTW provide additional information and address specific aspects of their schemes. In particular, the schemes had to review compliance with the ADG, limit the height of the buildings to 7 storeys and provide a compliant unit mix.
30. The competitor's responses presented to the Selection Panel on 5 November 2019. The Selection Panel resolved that the scheme prepared by PTW was preferred; however, noted a number of matters that required further resolution as part of the detailed design DA:
- (a) Following the removal of the 8th level, the buildings require a more considered design resolution of the parapet line that is consistent with the scale and proportioning of the facades below.
 - (b) The Kingsborough Way elevations have not been successfully resolved at the change in building height where they turn the corner from O'Dea Avenue. Consideration should be given to the use of an alternative materiality and detailing (for example a metal clad form) to ensure this element is well integrated.
 - (c) The revised corner expression of the building at the intersection of O'Dea Avenue and Bourke Street has lost its distinctive architectural quality. The original element was well-scaled and proportioned, as was the expression of the two storey form of the retail space. The design of this prominent element should be revisited.
 - (d) The pergolas on the upper level of Building B that are visible from Kingsborough Way are to be removed, and further consideration should be given to the treatment of the large blade walls associated with the driveway entry.

- (e) All ground floor units are to be elevated above the adjacent finished ground plane.
 - (f) Consideration should be given to the provision of equitable access to rooftop communal open space.
 - (g) A fully developed, generous landscape concept and plan for the public domain, the ground plane and the built form must be developed integrally with the next stage.
 - (h) The scheme's response to acoustic impacts along O'Dea Avenue and Bourke Street is unresolved and must be comprehensively addressed.
 - (i) Any minor additional overshadowing to the neighbouring properties should be accurately demonstrated and justified.
 - (j) Any further changes should not reduce standards of solar access or natural cross ventilation achieved.
 - (k) The proposed public art is promising and should be further developed.
31. The Selection Panel concluded that the preferred scheme by PTW, subject to further refinement (as per the comments above), is capable of achieving design excellence.
32. The PTW scheme was lodged with the subject development application. Images relating to the original scheme (presented 17 October 2019) are provided below.



Figure 19: View of competition winning scheme – looking down O'Dea Avenue



Figure 20: View of competition winning scheme (Building B) – on the corner of O’Dea Avenue and Kingsborough Way

33. A copy of the competitive design alternatives report, including the Selection Panel’s final recommendations, is provided at Attachment F and is assessed in further detail within this report in the Discussion section.

Early Works Approval – D/2019/1394

34. On 12 February 2020, development consent was granted under delegation for the demolition of all existing industrial buildings on the site.

Design Amendments

35. During the assessment, Council officers requested design amendments and further information to address concerns raised by the Design Advisory Panel and internal units within Council This included:
 - (a) suitability of the structures exceeding the height limit, including the provision of a detailed overshadowing analysis comparing the approved concept envelope to the proposal and its impact on adjoining properties; investigation into removal of parts of the 7th storey and view loss analysis;
 - (b) removal of structures encroaching onto Kingsborough Way setback;
 - (c) improvement of the ground floor interface (e.g. increase floor levels at ground floor to ensure compliance with the flood report, removal of kiosk substations and balancing privacy outcomes with activation between ground floor private open space and the adjoining through-site link, pedestrian paths and communal open space);

- (d) non-compliant ADG separation distances and overlooking impacts within the site;
 - (e) identification of noise affected apartments and provision of an acoustic assessment;
 - (f) civil drawings depicting how Kingsborough Way and lighting footings will be constructed; and
 - (g) contamination.
36. Modifications by the applicant include, but are not limited to:
- (a) relocation of plant equipment from level 7 to level 6 to reduce impacts of additional structures at rooftop;
 - (b) detailed solar and view loss analysis;
 - (c) provision of screening, landscaping to ameliorate visual privacy impacts;
 - (d) increase in some floor levels at ground floor to improve interface with the public domain. Other levels have been provided with measures to address flooding impacts;
 - (e) provision of wintergardens;
 - (f) submission of an amended Remediation Action Plan and Site Audit Statement; and
 - (g) detailed civil drawings of Kingsborough Way.
37. The applicant submitted amended drawings on 13 August 2020, which were re-advertised along with the Section 4.55(2) modification application for the concept building envelope for a period of 14 days. Further amended drawings were received on 13 November 2020, involving correction of minor drafting errors, inclusion of RLs of the adjoining through-site link.

Proposed Development

38. The proposal, as amended, is for the redevelopment of the site, comprising remediation, excavation and construction of a mixed use development with 2 buildings, incorporating 89 serviced apartments within Building A and 92 residential apartments within Building B and 78sqm of retail to the corner of Bourke Street and O'Dea Avenue. The development will also have a frontage to the future through-site link running east to west (Bourke Street to Kingsborough Way) contained within 890-898 Bourke Street.
39. As part of a planning agreement between the City and the Developer, the following areas are to be transferred to Council and have been depicted in schematic form in the subject application:
- (a) Dedication of land and construction works along the O'Dea Avenue and Bourke Street frontages of the site for footpath widening. The piece of land is approximately 2m wide, with an area of 340sqm; and

- (b) Dedication and construction of a new road to be known as Kingsborough Way comprising an area of 917sqm and width of 12.8m.
40. Building A will have an overall height of 26.74m and Building B will have an overall height of 26.93m. The proposal will have an FSR of 2.2:1 (15,541sqm)
41. Specifically, the proposal comprises the following:
- (a) Basement Levels 1 & 2
 - (i) 29 serviced apartment car spaces for Building A + 4 accessible car spaces;
 - (ii) 45 residential car spaces for Building B + 15 accessible car spaces;
 - (iii) 7 standard visitor spaces, 4 accessible visitor spaces;
 - (iv) 1 standard retail space, 1 accessible retail space;
 - (v) 10 motorcycle spaces;
 - (vi) 199 bicycle parking spaces;
 - (vii) 2 car wash bays;
 - (viii) 3 car share spaces;
 - (ix) 3 loading/servicing spaces;
 - (b) Ground Floor
 - (i) 78sqm retail tenancy to the corner of Bourke Street and O’Dea Avenue within Building A;
 - (ii) main serviced apartment lobby accessed via O’Dea Avenue, other lobbies within Building A accessed via Kingsborough Way and the through-site link;
 - (iii) main residential lobby accessed via O’Dea Avenue, other lobbies within Building B accessed via Kingsborough Way;
 - (iv) communal open space for occupants (349.84sqm for Building A and 463.94sqm for Building B);
 - (v) vehicular access to basement from Kingsborough Way;
 - (c) Building A (west) – frontages to Bourke Street, O’Dea Avenue, Kingsborough Way and the through-site link – 7 storeys, 89 serviced apartments
 - (i) 1 x studio;
 - (ii) 40 x 1 bedroom;
 - (iii) 46 x 2 bedroom;
 - (iv) 2 x 3 bedroom;

- (d) Building B – (east) – frontages to O’Dea Avenue and Kingsborough Way – 7 storeys, 92 residential apartments:
 - (i) 5 x studio;
 - (ii) 37 x 1 bedroom;
 - (iii) 40 x 2 bedroom;
 - (iv) 10 x 3 bedroom;
- (e) Rooftop
 - (i) communal open space – Building A: 519.45sqm; Building B – 670.1sqm.

42. Plans and elevations of the proposed development are provided below and in Attachment B.



Figure 21: Proposed basement level 02



Figure 22: Proposed basement level 01



Figure 23: Proposed ground floor plan



Figure 24: Proposed level 1 plan

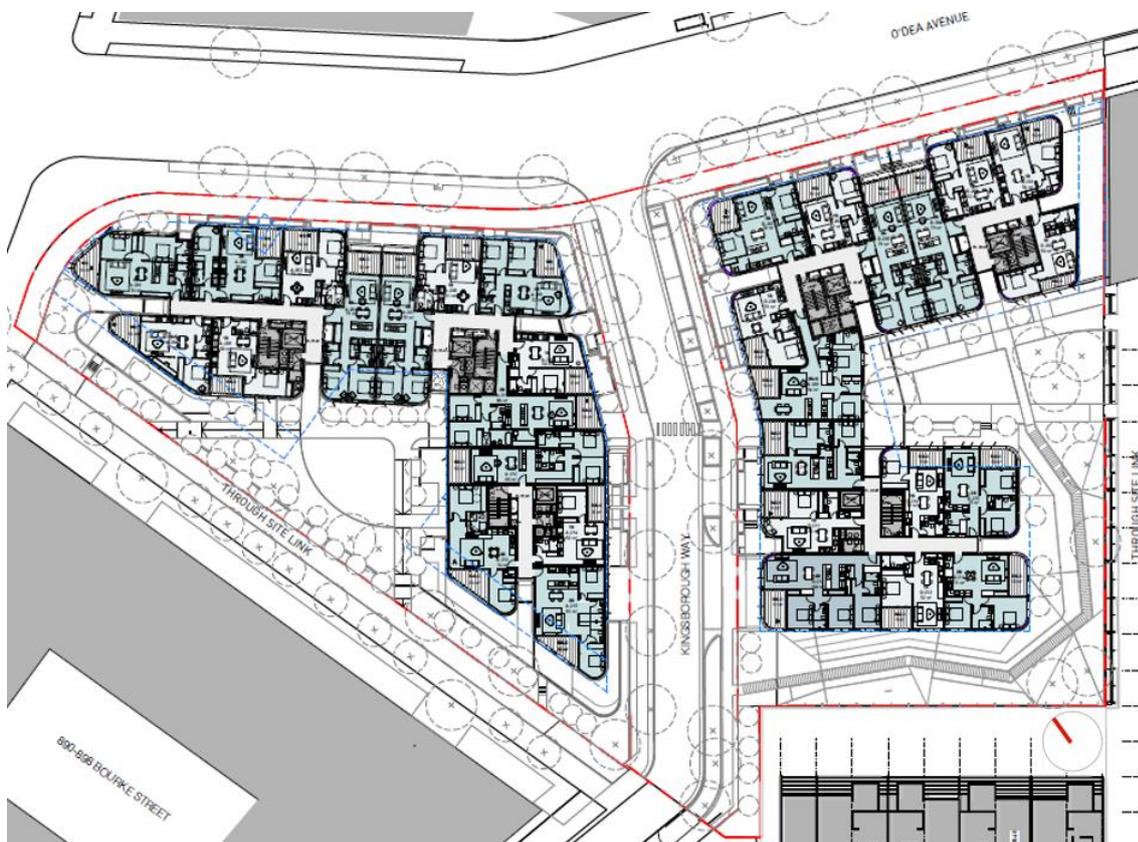


Figure 25: Proposed level 2 plan (level 3 similar)



Figure 26: Proposed level 4 plan

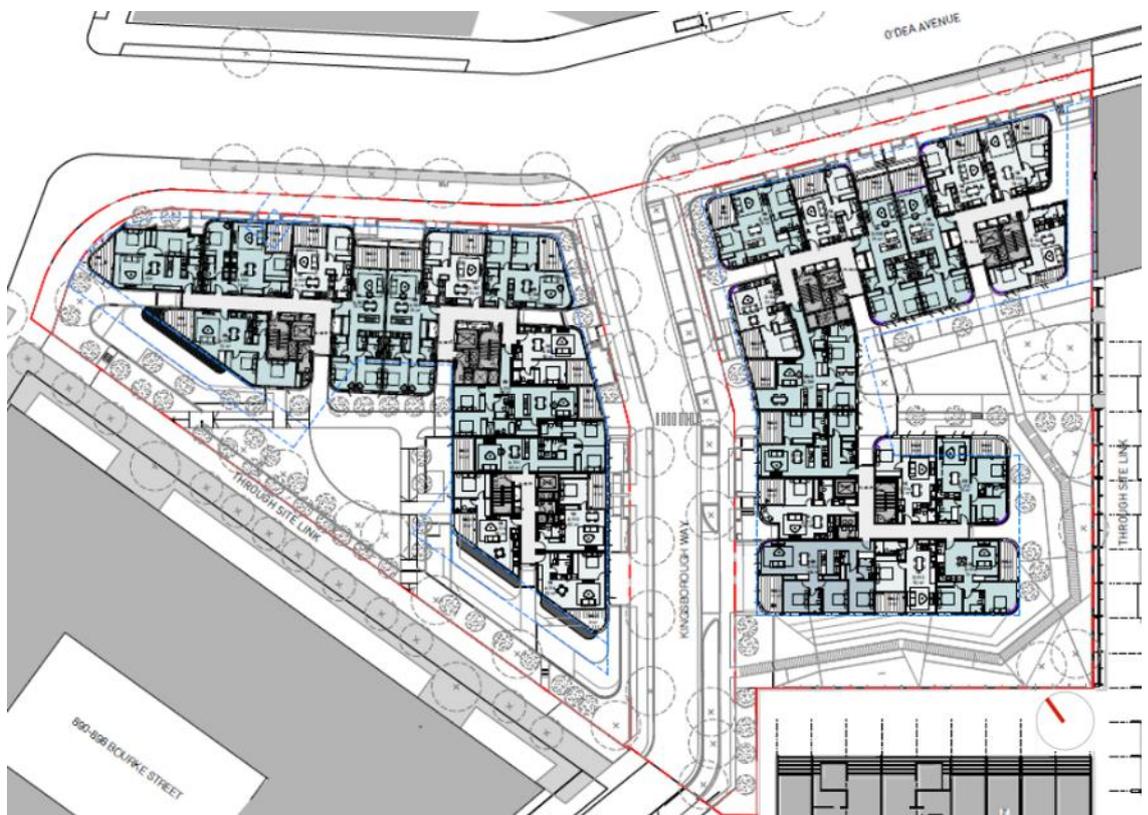


Figure 27: Proposed level 5 plan



Figure 28: Proposed level 6 plan



Figure 29: Proposed level 7 plan

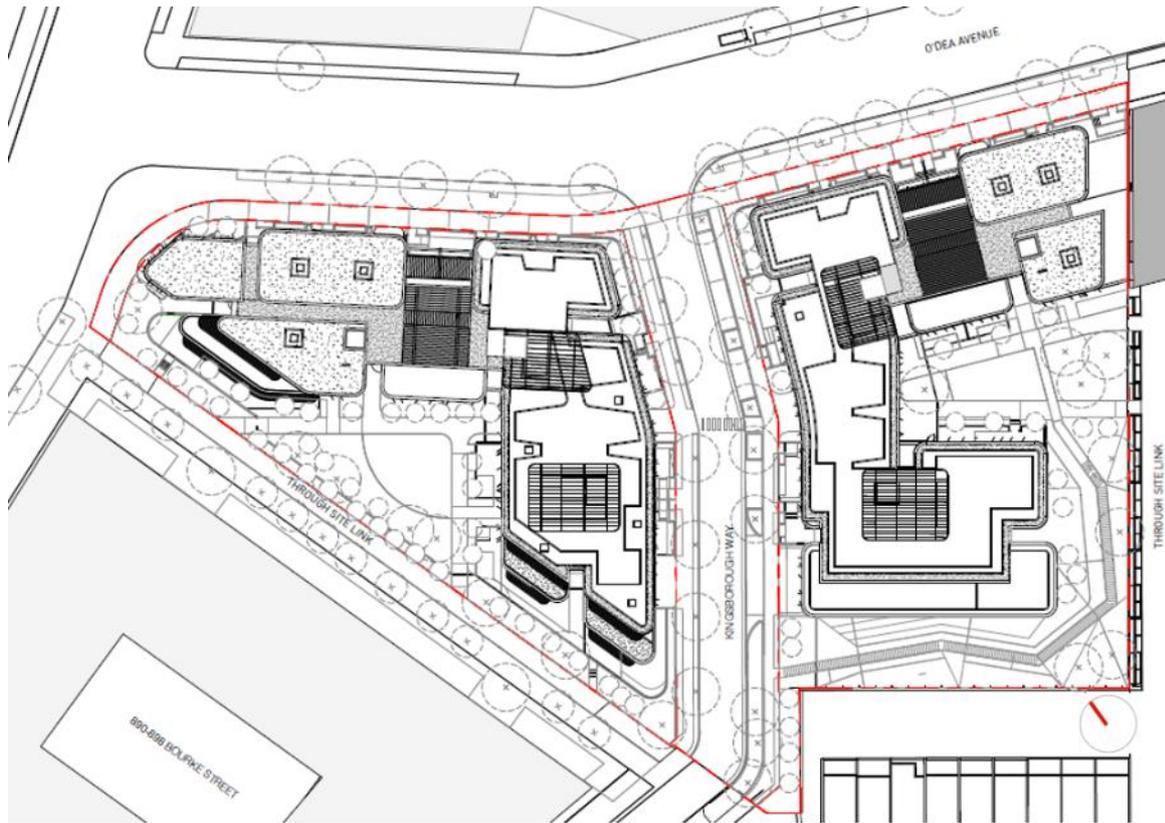
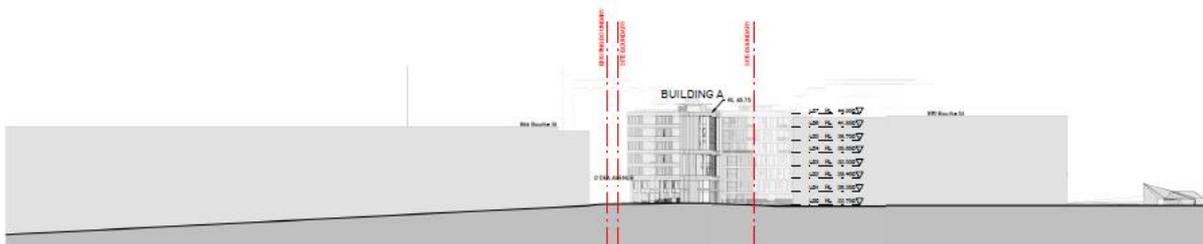


Figure 30: Proposed rooftop plan



01 - O'DEA AVENUE - NORTHERN ELEVATION 1:500 @A1



02 - BOURKE ST - WESTERN ELEVATION 1:500 @A1

Figure 31: Proposed north (O'Dea Avenue) and west (Bourke Street) elevations



1 NORTH ELEVATION
1 : 250



2 SOUTH ELEVATION
1 : 250

Figure 32: Proposed Building A elevations – north and south



3 EAST ELEVATION
1 : 250



4 WEST ELEVATION
1 : 250

Figure 33: Proposed Building A elevations – east and west



1 NORTH ELEVATION
1 : 250



2 SOUTH ELEVATION
1 : 250

Figure 34: Proposed Building B elevations – north and south



Figure 35: Proposed Building B elevations – east and west

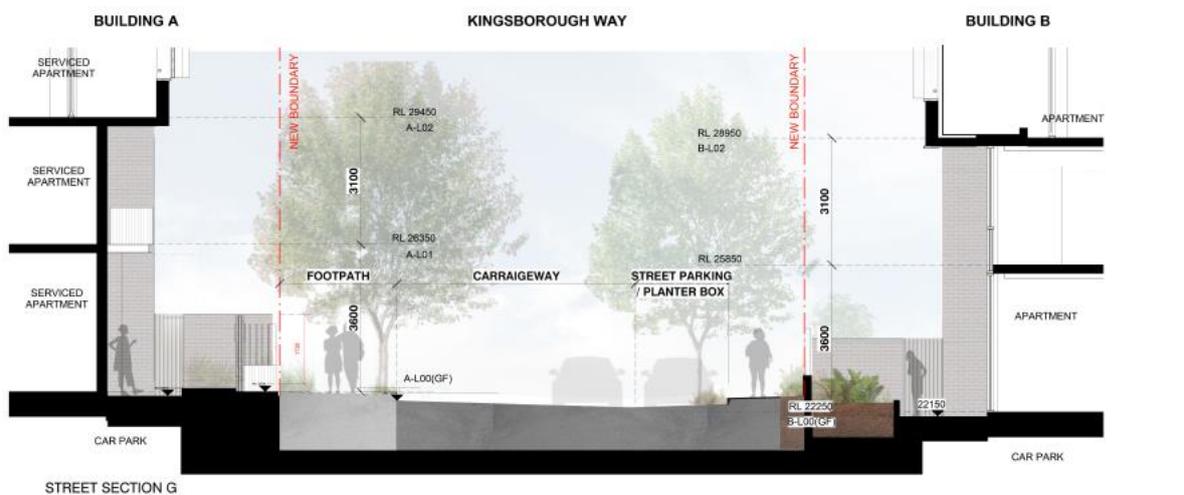


Figure 36: Proposed Kingsborough Way section



Figure 37: Proposed photomontage – viewed from the corner of Bourke Street and O'Dea Avenue



Figure 38: Proposed photomontage – viewed from the corner of O'Dea Avenue and Kingsborough Way



Figure 39: Proposed photomontage – Building A ground floor lobby and serviced apartments viewed from O’Dea Avenue



Figure 40: Proposed photomontage – Buildings A and B viewed from the through-site link

Assessment

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

Sydney Airport Referral Act 1996

44. The application did not require a referral to Sydney Airport Ltd as the proposed development does not penetrate the prescribed airspace for Sydney Airport.
45. The subject site has an OLS of 45.72m (AHD). Building A proposes a height of 26.35m (AHD).

Water Management Act 2000

46. The proposed construction of the basement will have an impact on the ground water levels within the site, with first ground water occurrence expected at depths of between 6m and 7.5m below ground level. The basement level is to sit at 4.6m below the observed ground water level.
47. In accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979, the application was forwarded to Water NSW as Integrated Development, and again as part of the re-notification process.
48. Water NSW provided their general terms of approval on 17 April 2020, which are included in Attachment A of this report.

State Environmental Planning Policies**State Environmental Planning Policy No 55 - Remediation of Land**

49. The aim of State Environmental Planning Policy (SEPP) No 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.
50. The subject site currently contains office and warehouse uses. Prior to the construction of these units in the mid-1990s, the site was used for a variety of industrial uses, including bituminous tar, oils and paint manufacturing.

Contamination within the subject site (excluding land to be dedicated / transferred to Council)

51. A Remediation Action Plan (RAP), endorsed by a NSW Accredited Site Auditor has been submitted with the application. The investigations into soil quality on-site identified that there is contaminated fill material, including asbestos. The RAP recommends excavation and off-site disposal of impacted soils that are unsuitable to remain on site. The interim advice confirms the approach recommended in the RAP is appropriate.
52. The Council's Health Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.
53. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

Land to be dedicated / transferred to Council

54. Parts of Bourke Road and O’Dea Avenue, along with the new Kingsborough Way that is located within the site are to be dedicated to the City as part of this development application and the VPA. Because of this, the City is required to be satisfied that the dedicated land can be delivered in a suitable state without the need for long term maintenance (i.e. environmental management plans). The RAP has been reviewed by the City’s Public Domain Unit, who are satisfied that the land will be satisfactorily remediated.

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

55. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
56. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.
57. The application proposes residential apartments and serviced apartments. Clause 4(4) of SEPP 65 states that this policy only applies to serviced apartments if required by a local environmental plan. In this regard, Clause 7.28(2) of the Sydney LEP 2012 requires the consent authority to consider the design quality principles of SEPP 65 and the design principles of the Apartment Design Guide (ADG) in relation to serviced apartments.
58. The applicant has submitted a design verification statement and SEPP 65 design report prepared by S Parsons (Architect No. 6098) and D Jones (Architect No. 4778) of PTW Architects with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.
59. An assessment of the proposal against the design quality is provided as follows:
 - a. **Principle 1: Context and Neighbourhood Character**

The site is located within the B4 – Mixed Use zone which permits mixed commercial, retail and residential developments, and is in close proximity to Green Square Railway Station (approx. 500m) as well as bus routes on O’Dea Avenue, Bourke Street, Elizabeth Street and Joynton Avenue. The site is approximately 4km to the south of the Sydney CBD.

The proposal provides appropriate land uses within the B4 zone and is consistent with the City's strategic vision for the area, which is a gateway to Green Square Town Centre. The development incorporates large masonry volumes that respond to the precinct's heritage context of industrial masonry architecture; as well as minimising impact on the amenity of neighbouring dwellings and urban character of the surrounding area, as discussed elsewhere in this report.

b. **Principle 2: Built Form and Scale**

The proposal does not comply with the Sydney LEP 2012 maximum building height, mainly to accommodate communal open space at rooftop and lift overruns to access this space. The proposal meets the maximum FSR of 2.2:1.

The area is in close proximity to the Lachlan Precinct and Green Square Town Centre and is undergoing a transition from industrial and warehouse uses to mixed use and predominantly residential development. The neighbourhood has a varied typology of residential development, containing lower scale terraces and taller residential flat buildings with ground floor commercial uses.

The development by way of its form and scale is generally consistent with the controls and that envisaged by the concept development approval (D/2017/1723/A). An assessment on the non-compliant height has been carried out and the additional height is acceptable in this instance. The elements above the height limit (lift overruns, awnings) are setback from Bourke Street and O'Dea Avenue and do not result in any significantly adverse amenity impacts to the surrounding locality.

c. **Principle 3: Density**

The proposal complies with the maximum FSR development standard, and the development provides a suitable number and variety of apartment types, with appropriate amenity for occupants.

The proposed density is considered appropriate given the site's proximity to established and proposed infrastructure, public transport and community and recreation facilities. The proposed density responds to the future context and does not result in unacceptable amenity impacts to neighbouring properties or future residents.

d. **Principle 4: Sustainability**

The proposal is compliant with the requirements of BASIX in terms of thermal comfort and meets water and energy targets required by the concept approval. An appropriate condition is recommended to ensure that the development complies with the commitments contained in the BASIX Certificate.

e. **Principle 5: Landscape**

The proposal incorporates landscaped areas along the through-site link, Kingsborough Way and along the perimeter as part of the deep soil / communal open space areas for Buildings A and B. At rooftop, there are areas of landscaping, and this is to be further embellished as a condition of consent to provide a visual buffer to surrounding development facing the communal open space.

Deep soil areas are provided for both Buildings A and B, totalling 11.1%. It is noted however, that deep soil areas will include substantial permeable paving and retaining walls. A condition is recommended to minimise footings and retain the expansive areas of deep soil. Refer to Attachment A.

f. **Principle 6: Amenity**

The proposal incorporates apartment planning that can deliver a high level of amenity for future occupants. Floor plans have been configured to maximise solar access and ventilation as well as provide compliant apartment and room sizes.

Compliance with the amenity controls are detailed in the ADG assessment table below.

g. **Principle 7: Safety**

The safety and security of the public domain and the site itself is enhanced by increased activity and casual surveillance of the surrounding streets from the residential apartments.

The residential entries are clearly defined, with individual and lobby entries located on Bourke Street, O'Dea Avenue, Kingsborough Way and the through-site link. The retail tenancy is accessed from Bourke Street. In all instances security and safety for residents is maximised.

The proposal is considered to be designed in accordance with the principles of Crime Prevention through Environmental Design (CPTED) and is consistent with this design quality principle.

h. **Principle 8: Housing Diversity and Social Interaction**

The proposal includes a mix of two-storey maisonette apartments, cross-through apartments and single aspect apartments within Buildings A and B, offering an appropriate variety of apartment types.

The development will accommodate 89 serviced apartments and 92 residential apartments (181 total), providing the following unit mix:

- (ii) 6 x studio apartments (3%)

- (iii) 77 x 1 bedroom apartments (43%)
- (iv) 86 x 2 bedroom apartments (48%)
- (v) 12 x 3 bedroom apartments (7%)

The proposed unit mix is broadly consistent with that envisaged under the Sydney DCP 2012, however there are minor non-compliances with the requirements for studios and 1 bedroom apartments (40% when combined) as well as 3 bedroom apartments (10 – 100%). It is noted that if Building A is assessed under the serviced apartment provisions for apartment mix (Section 4.4.8.5), compliance is achieved. Building B however, is slightly above the required studio and 1 bedroom mix if assessed separately at 45.6%. This is considered acceptable.

The proposal provides 21 adaptable apartments when 27 are required (being 15% of total dwellings) as per Section 3.12.3 of the Sydney DCP 2012. An appropriate condition is recommended.

i. **Principle 9: Aesthetics**

The proposed built form presents a high-quality design, using a variety of architectural elements and materials to provide visual interest. The proposed materials are supported, and the overall design will positively contribute to the aesthetic qualities of the streetscape.

The amended design is generally consistent with the competition winning scheme, which was considered by the selection panel to be capable of exhibiting design excellence with regard to materiality and architectural expression.

60. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently, compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	No, but acceptable	<p>The development proposes varying building depths, in part allowing for the provision of cross-through apartments. This results in a glass to glass depth of up to 22m at its greatest extent.</p> <p>However, it is well within the concept building envelope, and the proposed articulation of the facade helps to reduce building depth in most areas.</p> <p>Despite non-compliance with the building depth guidelines, the scale is appropriate to the site and provides an acceptable level of residential amenity. Accordingly, the aims of the building depth provisions have been met.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	Yes	<p>The development complies with separation distances from adjoining properties recommended by the ADG, with setbacks between 7m and 9m when measured to the boundary.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	Yes	<p>It is noted that 15 and 17 Joynton Avenue and 5 O'Dea Avenue have been constructed with non-compliant setbacks at the eastern and southern boundaries of the subject site.</p> <p>The development complies with habitable separation distances to adjoining properties as recommended by the ADG, at 9m.</p> <p>The habitable bedroom windows of Building B are setback 5m at the eastern boundary of 5 O'Dea Avenue, however levels 4 to 6 face the blank portion of the adjoining building which is acceptable.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	The application proposes communal open space at ground floor and rooftop, with a total area of 2003.34sqm or 28%. The principal area of communal open space at rooftop, however, will result in some privacy impacts to surrounding development and it is recommended that additional landscaping be provided as a buffer. Refer to Discussion section.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	It is acknowledged that the ground floor communal open space is constrained by overshadowing from the surrounding built form throughout the day, particularly during winter. The proposal, however, provides solar access to at least 50% of the rooftop communal open space, which is considered to be the principal usable area as per ADG requirements.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	Yes	The proposal provides 650sqm (11.1%) of deep soil with a minimum 6m dimension along the through-site link and adjacent to the driveway within the site.

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	Yes	The development provides oblique sightlines of at least 6m between the habitable rooms and balconies of apartments within Building A facing the communal area/deep soil zone (e.g. A206/A207 and A211/A212/213). Screens are proposed to mitigate any potential privacy impacts.

3F Visual Privacy	Compliance	Comment
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	No, but assessed as acceptable	<p>At levels 4 and 5, the development provides oblique sightlines of 6m between the habitable rooms and balconies of apartments within Building A (as per the above), when 9m is required.</p> <p>Screens are proposed to ameliorate visual privacy concerns for future occupants. A condition requiring detailed elevations of the proposed screening to ensure visual privacy is achieved is recommended in Attachment A</p>
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The proposal complies.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No, but assessed as acceptable	<p>The application proposes solar access to 60% of units (109/181). It is noted that 10 of the apartments achieve between 1-1.5 hours of solar access at midwinter.</p> <p>Notwithstanding, solar access is acceptable in this instance as the development has been designed to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	17 apartments, or 9% do not receive direct sunlight between 9am and 3pm at midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Partial compliance	All habitable rooms are to have windows capable of providing adequate natural ventilation. The bedrooms and living areas of apartments facing Bourke Street and O'Dea Avenue are affected by external noise. Wintergardens are proposed to those noise affected apartments for natural ventilation. Refer to Discussion section.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	A total of 109 apartments are cross ventilated, being 60% which complies.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Cross-through apartments have a maximum depth of 17m.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	A minimum floor to floor height of 3.1m is provided, which is capable of delivering a minimum floor to ceiling height of 2.7m.
Non-habitable rooms: 2.4m		
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.		
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Partial compliance	A floor to floor ceiling height of 3.6m is provided for all residential/serviced apartments at ground floor, and a floor to floor height of 6.7m is provided for the retail tenancy within Building A. A floor to ceiling height of 3.3m can be provided.

4C Ceiling Heights	Compliance	Comment
		At first floor, a floor to ceiling height of 2.7m is provided to residential uses on the first floor. This is acceptable given the proposal concentrates commercial space at ground floor with generous double storey ceiling height in the most appropriate location.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	All apartment sizes comply with the minimum area requirements.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	All habitable rooms have access to an external window, with the exception of a study to GA-11. The study is capable of being provided with a highlight window as it will front a common corridor. An appropriate condition is recommended.
Habitable room depths are to be no more than 2.5 x the ceiling height.	No, but assessed as acceptable	The proposal includes minor exceedances of the 8m depth requirement to some open plan living layouts (between 8 – 8.3m). However, these apartments have adequate amenity and will receive ample natural light.
8m maximum depth for open plan layouts.		

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	The proposal complies.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	No, but assessed as acceptable	<p>Cross through apartments are proposed within both buildings, and the majority of the apartment layouts comply with the minimum 4m width, with exception of the areas closest to the balconies. These areas have a minimum width of 3.9m in the living rooms.</p>
4m minimum width for cross over and cross through apartments.		

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	Yes	All apartments are provided with the required area of private open space.

4E Private Open Space and Balconies	Compliance	Comment
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m ² and a minimum depth of 3m.	Yes	All areas of private open space at ground floor meet the minimum size requirements.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The maximum number of units for each lift is 8.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	Windows do not open onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	All common circulation spaces have access to natural light and ventilation.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ (Minimum 50% storage area located within unit)	Yes	Adequate storage is provided within each apartment and at basement level in accordance with ADG requirements.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	<p>The development is required to respond to traffic noise from Bourke Street and O’Dea Avenue.</p> <p>Wintergardens are proposed to all apartments with private open space that is not setback from the Bourke Street and O’Dea Avenue frontages, and acoustic advice has been submitted certifying that affected apartments are able to comply with the relevant noise criteria.</p> <p>Natural ventilation of the noise affected apartments is addressed above under Objective 4B-1 of the ADG table and within the Discussion section. Subject to conditions, the proposal is considered acceptable.</p>

State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)

61. State Environmental Planning Policy (SEPP) No 70 relates to Section 7.32 of the EP & A Act and states that where the consent authority is satisfied that the development meets certain criteria, and a Local Environmental Plan authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.
62. Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 allows for circumstances where an affordable housing contribution may be levied for development of land in Green Square. This matter is discussed in further detail under the heading Financial Contributions below.

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

63. A BASIX Certificate has been submitted with the development application.
64. The BASIX certificate lists measures to satisfy BASIX and DCP 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

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

Clause 45 – Development likely to affect an electricity transmission or distribution network

66. The application is subject to Clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development as the development proposes a substation on Kingsborough Way to service the site and involves penetration of ground within 2m of an electricity distribution pole.
67. In accordance with the clause, the application was referred to Ausgrid for a period of 21 days. Ausgrid provided a response on 9 April 2020, requesting conditions relating to overhead and underground cables, as well as the design of the substation to be imposed. These conditions are included in Attachment A.

Subdivision 2 (Clause 101 & 102) – Development in or adjacent to road corridors and road reservations

68. The application is subject to Clause 101 (Development with frontage to classified road) and 102 (Impact of road noise or vibration on non-road development) of the SEPP as the site is adjacent to Bourke Street which has an annual average daily traffic volume of more than 20,000 vehicles and the development is likely to be adversely affected by road noise or vibration.
69. The amended development provides wintergardens for all noise impacted apartments. The updated acoustic report submitted has been reviewed by the City's Health and Building Unit and it is considered that the noise levels in the residential units will not exceed the levels specified by the SEPP.
70. In accordance with clause 101, the application was referred to Transport for New South Wales (TfNSW) for a period of 21 days. Ausgrid provided a response on 4 March 2020, recommending conditions to be imposed. These conditions are included in Attachment A.

Local Environmental Plans

Sydney Local Environmental Plan 2012

71. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is defined as residential accommodation, serviced apartments and retail premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>Clause 4.3 of the Sydney LEP 2012 stipulates a maximum building height of 22m.</p> <p>Building A proposes a height 26.74m and Building B proposes a height of 26.93m. Both heights are measured to the top of the lift overrun.</p> <p>The non-compliances are 21.5% and 22.4% respectively. A Clause 4.6 variation to the maximum height development standard has been submitted and is supported.</p> <p>Refer to Discussion section below.</p>
4.4 Floor space ratio 6.12 Additional floor space outside Central Sydney 6.14 Community infrastructure floor space at Green Square	Yes	<p>Clause 4.4. of the Sydney LEP 2012 permits a base FSR of 1.5:1 and an additional 0.5:1 community infrastructure floor space under Clause 6.14 as the site is located in Area 6. The concept approval for the site included a public benefit offer and VPA towards the delivery of community infrastructure within Green Square in order to utilise the additional FSR and this is addressed in further detail within the Discussion section below.</p> <p>The proposal seeks to utilise the design excellence provisions pursuant to Clause 6.21, where up to a further 10% FSR is possible. This is applicable where the design is the result of a competitive design process and is considered by the consent authority to exhibit design excellence.</p> <p>This proposal is eligible for up to an additional 10% design excellence bonus for FSR, being 2.2:1.</p> <p>The application proposes an FSR of 2.2:1 (15, 541sqm), which complies.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 (Height of Buildings). A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>Clause 6.21(5) of the Sydney LEP 2012 requires a competitive design process to be carried out for the site as the proposed development has a height greater than 25m (in areas other than Central Sydney) and has a site area of more than 5,000sqm (as per Clause 7.20(2)(b)).</p> <p>As detailed in the relevant history section of this report, a competitive design alternatives process was held in October and November 2019. The proposal prepared by PTW was preferred and named as the winning scheme.</p> <p>Pursuant to the provisions of Clause 6.21(7)(b) of the Sydney LEP 2012, where the proposal is the winning entry of a competitive design process and is considered to exhibit design excellence, up to a further 10% FSR may be awarded.</p> <p>The Selection Panel, in the architectural design competition report for the development dated 25 November 2019, concluded that they were of the view that the scheme was able to demonstrate design excellence and was worthy of being awarded the additional FSR.</p>

Provision	Compliance	Comment
		<p>The proposal as amended has retained the important features of the winning scheme, whilst responding appropriately to the planning controls where required. The development has been designed so that it is compatible with existing and future development along Bourke Street and O'Dea Avenue and will contribute positively to the area. The development achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</p> <p>The overall materiality, articulation and distinctive architectural contribution of the development to the area is considered to achieve design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.</p> <p>The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
<p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p> <p>7.7 Retail premises</p>	Partial compliance	<p>A maximum of 104 car parking spaces are permitted in accordance with the Sydney LEP 2012 (59 residential, 33 serviced apartment, 10 visitor and 2 retail car spaces).</p> <p>A total of 106 car parking spaces are proposed, as follows:</p> <ul style="list-style-type: none"> • 29 serviced apartment car spaces for Building A + 4 accessible car spaces; • 45 residential car spaces for Building B + 15 accessible car spaces; • 7 visitor car spaces + 4 accessible car spaces; and

Provision	Compliance	Comment
		<ul style="list-style-type: none"> 1 retail car space + 1 accessible car space. <p>It is noted that car share, service spaces and motorcycle car parking rates are covered by the DCP, not the LEP. However, 10 motorcycle spaces, 2 car wash bays, 3 car share spaces and 3 loading/servicing spaces are provided in addition to the above.</p> <p>The two additional car spaces (being 1 visitor and 1 residential car space) are not permitted and a condition is recommended to ensure both spaces are deleted from the plans.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	An affordable housing contribution is required. This is discussed in further detail in the contributions section below.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils and is within 500m of Class 3 Acid Sulfate Soils (to the west). The geotechnical report confirms that testing of soil samples indicate that potential acid sulfate soils are present on-site. It is likely that the proposed works will result in disturbance of such soil, requiring the preparation of an Acid Sulfate Soils Management Plan. An appropriate condition is included in Attachment A.
7.15 Flood planning	Yes	<p>The site is identified as being flood affected.</p> <p>The flood impact assessment confirms appropriate flood planning levels that the development is required to comply with, as stipulated in the City of Sydney Interim Floodplain Management Policy (May 2014).</p>

Provision	Compliance	Comment
		<p>The original proposal provided apartment floor levels and private open space below the required flood planning levels. This has since been amended so that Building A and the basement driveway are set at 0.3m above the gutter invert levels as required by the policy.</p> <p>As for Building B, the floor level of apartments fronting O’Dea Avenue have also been modified to comply with the flood planning level requirements of 1% AEP + 0.5m freeboard with the exception of Unit B-G06 (on the corner of O’Dea Avenue and Kingsborough Way). The non-compliance for B-G06 is 0.05m below the flood planning level. The flood depths in this location are very low relative to the freeboard requirement, and the proposed floor level is still 0.4m above the probable maximum flood level at this location. The non-compliance is therefore considered minor and is acceptable.</p> <p>The report has referenced the updated plans as part of its assessment of flood planning levels.</p> <p>The proposal is therefore considered to meet the requirements of Clause 7.15 of the Sydney LEP 2012 and Section 3.7 of the Sydney DCP 2012.</p>
7.20 Development requiring or authorising preparation of a development control plan	Yes	The site is subject to concept consent D/2017/1723. Pursuant to Section 4.23 of the Environmental Planning and Assessment Act 1979, the approval of the concept consent satisfies this requirement.
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	The application proposes a retail tenancy to the corner of Bourke Street and O’Dea Avenue. The tenancy is 78sqm which complies.

Provision	Compliance	Comment
7.28 Serviced apartments	Yes	Building A contains serviced apartments and has been considered against SEPP 65 and the ADG in this report as required by this clause.

Development Control Plans

Sydney Development Control Plan 2012

72. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

73. The site is located within the Mary O'Brien Park locality. The proposed development is in keeping with the unique character and the design principles of the Mary O'Brien Park locality. The development:

- (a) provides buildings that respond to the existing and future desired character of the area and the applicable planning controls for the site;
- (b) provides an active frontage and well-designed entry to Bourke Street; and
- (c) provides public domain improvements along Bourke Street, O'Dea Avenue and Kingsborough Way, including widened footpaths and setback areas to enhance the public domain and generate pedestrian activity.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public Art	Yes	The public art concept identifying potential locations in line with the design competition winning scheme has been reviewed by the City's Public Art Unit, who are generally supportive of the strategy. A condition is recommended for the detailed public art strategy to be finalised and submitted to Council for approval prior to the issue of the first Construction Certificate for the development.
3.1.6 Sites greater than 5,000sqm	Yes	The proposal provides a range of housing types, including single storey apartments, garden apartments and maisonette apartments.

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The proposal will enhance the public domain by providing a directly accessible ground floor retail tenancy to the corner of Bourke Street and O’Dea Avenue, providing an active frontage.</p> <p>The building has entries and access to residential units directly from both street frontages and the through-site link.</p>
3.2.6 Wind effects	Yes	<p>A wind assessment was submitted with the application.</p> <p>The conclusions of this assessment are that Kingsborough Way is likely to be subject to adverse wind conditions. The provision of densely foliating vegetation and impermeable screens, as well as sunshading elements on the facade will mitigate any funnelled winds at ground level.</p> <p>At upper levels some balconies are to be fitted with full height permeable screens to the southern corner of apartments to Kingsborough Way, and large areas of private open space are to have awnings above.</p> <p>It is noted that only some of these measures are indicated on the plans. It is recommended that a condition be imposed requiring all wind amelioration measures to be implemented and amended plans be submitted demonstrating as such.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>The proposed development has been the subject of a competitive design alternatives process. The selection panel deemed the entry of PTW as the design most capable of achieving design excellence.</p> <p>As discussed under Clause 6.21 of the Sydney LEP 2012 table, the development has been assessed as exhibiting design excellence and has sought to utilise the additional 10% FSR allowed by the controls.</p>

Provision	Compliance	Comment
3.4 Hierarchy of Centres, City South	Yes	The application proposes a 78sqm retail tenancy, which is classified as 'minor retail development' by the DCP. The tenancy activates the public domain and provides for a convenient shopping opportunity within walking distance of nearby residential apartments.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees. A condition is recommended to require street trees to be retained and protected during construction.
3.6 Ecologically Sustainable Development	Yes	The proposal meets the minimum BASIX targets for both water (40 points) and energy (50 points).
3.7 Water and Flood Management	Yes	The flood report submitted by the applicant identifies that the proposed floor levels and the basement entrance to the proposed development are set at appropriate levels to address Flood Planning Level requirements. The application is also accompanied by a detailed stormwater management report addressing stormwater quantity and quality management.
3.8 Subdivision, Strata Subdivision and Consolidation	N/A	There is no subdivision proposed as part of this DA. Future applications will deal with the subdivision to excise the land to be dedicated to the City and strata subdivision of the residential apartments.
3.11 Transport and Parking	Yes	<i>Waste collection</i> The application is accompanied by advice from a traffic consultant confirming that a Council garbage truck (9.25m in length) can enter and exit the site, with a minimum vertical clearance of 4m. The advice, however, acknowledges that the development will provide a 1:20 ramp, with a grade change to 1:6, when a maximum 1:8 is permitted. It is noted that the City's superseded waste policy accepted a 1:6 ramp.

Provision	Compliance	Comment
		<p>The advice has been reviewed by the City's Transport Access Unit who is satisfied that collection can occur within the basement. A condition ensuring that all servicing is to be carried out on-site is recommended.</p> <p><i>Bicycle parking</i></p> <p>The proposal 199 spaces, providing sufficient bicycle parking for residents and visitors. These are located at basement level.</p> <p><i>Car share and Service Spaces</i></p> <p>The proposal includes 3 car share spaces, 3 service vehicle spaces and a loading dock. The DCP requires 4 service spaces (meaning an additional residential service space is required). The location and design of these spaces otherwise comply with the DCP.</p> <p>Appropriate conditions are recommended to ensure an additional service space is provided, and that the residential, visitor and accessible spaces are designed in accordance with the Australian standard and allocated appropriately.</p>
3.12 Accessible Design	Partial compliance	<p>The development, including the retail tenancy, lobbies and communal open space at ground is accessible to all. It is noted that at rooftop, the lifts at the western elevation of Buildings A and B do not provide access. Residents normally accessing these lift cores will need to utilise the lifts at the eastern elevation of both buildings.</p> <p>The proposal provides 21 adaptable apartments when 27 are required (being 15% of total dwellings). An appropriate condition is recommended.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>

Provision	Compliance	Comment
3.14 Waste	No, but assessed as acceptable	<p>Waste collection can be accommodated in the basement, and adequate waste holding areas are provided for residential waste and recycling and bulky goods.</p> <p>It is noted however, that chutes within Building B will be located adjacent to habitable rooms. The application is accompanied by an acoustic report verifying appropriate acoustic treatments will be installed to minimise adverse impacts on these habitable rooms.</p> <p>A condition is recommended to require an amended waste management plan to be submitted.</p>
3.16 Signage and Advertising	Yes	The site does not require a signage strategy as it is not located within a heritage conservation area, does not involve a heritage item and does not contain more than four business premises.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height	No	<p>The application proposes 2 x 7 storey buildings, where the DCP permits a maximum of 6 storeys.</p> <p>Refer to Discussion section.</p>
4.2.2 Building setbacks	Yes	<p>There are no specified building setbacks for this site. The development complies with the setbacks of the approved concept envelope (D/2017/1723/A).</p> <p>The setback within the development and between neighbouring properties are acceptable.</p>
4.2.3 Amenity	Yes	The proposal has acceptable amenity regarding solar access, overshadowing, open space and ventilation and noise as outlined in the SEPP 65 and ADG assessment above.

		<p>While the proposed landscape approach is generally supported, conditions have been recommended to improve the landscape outcomes on the site. Refer to Discussions section.</p> <p>Integrated design measures have been incorporated into the design to address visual privacy within the development site and to the public domain.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The proposal achieves a fine grain diversity via the breakup of the development into two building forms, with varied masonry textures and colours, modulation and setbacks across all frontages to provide visual interest.</p> <p>The street frontage length of each building facade is approximately 40m to 50m, with diverse architectural elements and character adopted for each building.</p> <p>The scale, modulation and articulation of the facade responds appropriately to all four site frontages that are visible from the public domain.</p>
4.2.5 Types of development	Yes	<p>The proposal generally provides perimeter block buildings with communal open space in the middle that are visually connected to the public domain.</p> <p>The proposal seeks to minimise the impacts of external noise and pollution through the introduction of wintergardens.</p> <p>Ground floor apartments are setback a minimum of 4m from the property boundary and contain private open space.</p>
4.2.6 Waste and recycling Management	Yes	<p>Each dwelling has adequate space to manage waste. Garbage chutes, along with additional space for bins and storage of bulky goods are provided and are accessible on each level.</p> <p>Waste is collected from within the basement via an internal loading bay.</p>

4.2.7 Heating and cooling infrastructure	Yes	Heating and cooling infrastructure is located in a centralised area on level 6 and the rooftop, with air conditioning and hot water plant areas provided for each building as required. The rooftop hot water plant is part of the lift overrun area, which is setback from the edge of the building and not visible from the public domain.
4.2.8 Letterboxes	Can comply	Letterboxes can be provided within the lobbies of both building. A condition has been recommended to ensure that the letterboxes are depicted in plan.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>Building A contains a retail tenancy to the corner of Bourke Street and O’Dea Avenue.</p> <p>The proposed retail tenancy will activate the public domain and satisfies the active frontage provisions of the DCP.</p> <p>Facilities to service the commercial space, including waste management and deliveries have been integrated into the design of the basement.</p> <p>The operation of the premises is not expected to create unacceptable impacts on the surrounding area. The fit-out of the premises will be subject to an assessment under a separate complying development certificate or development application.</p>

4.4.8.1 Visitor Accommodation & 4.4.8.5 Additional provisions for serviced apartments

74. Section 4.4.8.1 and 4.4.8.5 set out provisions for visitor accommodation generally, and serviced apartments. It is noted that Building A has been assessed against SEPP 65 and the ADG in terms of providing amenity that is equivalent to that of residential apartments. The relevant provisions of Section 4.4.8.1 and 4.4.8.5 are provided below.

4.4.8.1 Visitor Accommodation

Provision	Compliance	Comment
(1) New development must be self contained with no common access ways with adjoining properties	Yes	Building A is to contain serviced apartments only, with separate lobby access, foyers, lift access, communal open space and circulation.
(2) A site manager must be on site when guests have access to the premises. For premises with less than 20 residents, a resident caretaker may be acceptable.	Yes	The plan of management submitted with the application states that reception will operate 24/7, with a site manager available overnight.

4.4.8.5 Additional provisions for serviced apartments

Provision	Compliance	Comment
(1) The maximum number of persons accommodated in a bedroom or dormitory is to be determined on the basis of a minimum of: (a) 5.5sqm per occupant staying more than 28 consecutive days; (b) or 3.25sqm per occupant staying 28 or less consecutive days in accordance with the Public Health (General) Regulation 2002 (<i>now 2005</i>).	Able to comply	An appropriate condition is to be imposed requiring the serviced apartments to operate in accordance with the relevant Acts and regulations.
(2) Serviced apartments are to be designed so that the level of residential amenity within each apartment is equivalent to the requirements of a residential flat development.	Yes	The proposal complies, as discussed elsewhere in this report.

<p>(3) Visitor accommodation including serviced apartments and residential apartments must not co-exist on the same floor of any building. The two uses may only co-exist in the same building if:</p> <p>(a) each use is wholly located on separate floors;</p> <p>(b) they are serviced from the street by separate foyers, lift access and circulation; and</p> <p>(c) it can be demonstrated, through an approved Plan of Management, that the visitor accommodation will not reduce the quiet enjoyment of uses by implementing appropriate measures. Where no approved Plan of Management for the visitor accommodation exists, then the introduction of residential uses into that building, either through additional floor area or change of use, is not permitted unless it is for the entire building.</p>	Yes	Building A is to contain serviced apartments only, with separate lobby access, foyers, lift access, communal open space and circulation.
<p>(4) Developments of more than 20 serviced apartments must provide the following mix of apartments:</p> <p>(a) studio and 1 bed apartments: 60% maximum; and</p> <p>(b) 2 or more bedroom apartments: 40% minimum.</p>	Yes	<p>The development provides:</p> <p>(a) 46.1% x studio and 1 bedroom serviced apartments;</p> <p>(b) 53.9% x 2 and 3 bedroom serviced apartments</p>
<p>(6) Provide a wash tub, washing machine and clothes dryer or clothesline within each apartment.</p>	Able to comply	The plan of management states that a common laundry is provided for guests, along with a dry cleaning service. No maximum capacity is specified.

<p>(7) Provide a garbage room or garbage receptacle storage area with space for recyclables.</p> <p>(8) Each bedroom is not to accommodate more than two adults and one child.</p> <p>(9) A sign advising the maximum residential capacity of each bedroom is to be displayed on each bedroom door or other obvious locations within the apartment.</p>		<p>It is recommended that the plan of management be updated to ensure a washing machine and clothes dryer is provided in each apartment and capacity is stated in accordance with the DCP.</p>
<p>(10) A Plan of Management must be submitted with every application for a serviced apartment describing how on-going operations are to be managed with regard to:</p> <p>(a) ensuring maximum occupancy requirements are not exceeded;</p> <p>(b) minimising the impact of noise from the premises to adjoining properties;</p> <p>(c) waste minimisation, storage and collection procedures;</p> <p>(d) staffing arrangements including the number of staff to be employed;</p> <p>(e) any proposed shuttle service providing a pick up and drop off service to guests, including details of the timetable and set down arrangements;</p> <p>(f) the maintenance and cleanliness of the premises;</p> <p>(g) ensuring the on-going workability of emergency systems including lighting and smoke detectors, sprinkler systems, and air conditioning;</p>	<p>Able to comply</p>	<p>The plan of management outlines procedures to deal with noise, visitors, rubbish collection, cleaning services and waste minimisation, as well as staffing arrangements and proposed security measures.</p> <p>A condition is recommended to ensure the plan of management complies with DCP requirements, particularly in relation to capacity, use of the communal open space of Building A, emergency systems and the like.</p>

<p>(h) ensuring staff are trained in relation to the operation of the approved Emergency Management and Evacuation Plan;</p> <p>(i) ensuring the placement and composition of furnishing and fittings achieve the appropriate fire safety requirements;</p> <p>(j) ensuring premises are regularly checked to ensure fire safety including that all required exits and egress paths are clear and free of locks and obstructions; and</p> <p>(k) on-site security.</p>		
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Section 5.2 – Green Square

Provision	Compliance	Comment
5.2.3 Community infrastructure	Yes	<p>As discussed within this report, the applicant has entered into a VPA with the City for the construction and dedication of land for footpath widening, the provision of a new road and the provision of a monetary contribution for community infrastructure to be delivered in Green Square in accordance with Clause 6.14 of the Sydney LEP 2012.</p> <p>The proposed public domain works and monetary contribution are considered to address the provisions of Section 5.2.3 of the Sydney DCP 2012.</p>
5.2.7 Stormwater management and waterways	Yes	This issue is discussed under Section 3.7 of the DCP.
5.2.8 Highly visible sites		<p>The site is located on the visually prominent corner of Bourke Street and O'Dea Avenue, and is identified as a highly visible site.</p> <p>The development provides an active interface at ground floor to this corner, by locating and designing a double height retail tenancy that has strong visual connectivity with the public domain.</p>

Provision	Compliance	Comment
		<p>The building element on the corner of O’Dea Avenue and Bourke Street has been designed so that it is visually prominent with a white brick curved facade and horizontal banding in a contrasting dark metal, emphasising the use of high quality materials and detailing of this development within the view corridor.</p> <p>As discussed elsewhere in this report, the development is considered to exhibit design excellence, and has been thoughtfully designed to reinforce the corner of O’Dea Avenue and Bourke Street.</p>
5.2.9 Building design	Yes	The proposed building is compatible with the surrounding area and has a cohesive architectural expression.
5.2.10 Setbacks	Yes	<p>The proposal complies with the public domain setbacks required under Section 5.2.3 of the DCP and the building complies with the 3m setback from the street frontages for residential units at ground floor.</p> <p>All street frontage setbacks will be landscaped and will positively contribute to the streetscapes and the desired future character of the area.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard

75. The site is subject to a maximum building height control of 22m. The proposed development proposes maximum building heights as follows:
- (a) Building A – 26.74m, which represents a 4.74m or 21.5% variation; and
 - (b) Building B – 26.93m, which represents a 4.93m or 22.4% variation.
76. The variation to height for Buildings A and B are both caused by the addition of rooftop communal open space, parapets, lift overruns and awnings. The extent of the variation to the Sydney LEP building height control is illustrated below.

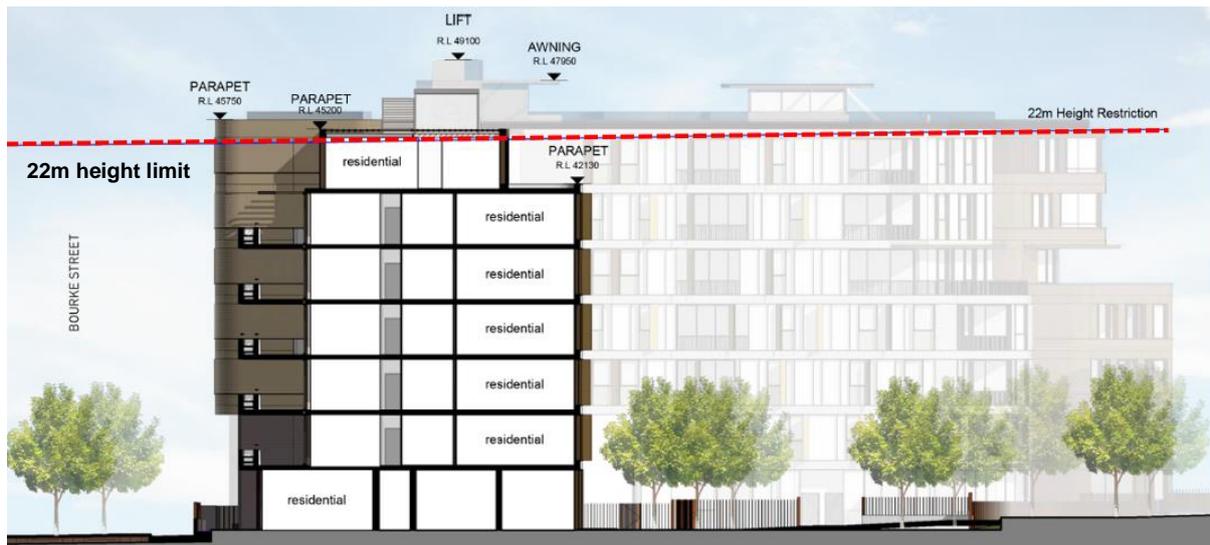


Figure 41: Section through Building A – 22m height limit illustrated by red dashed lines



Figure 42: Section through Building A - 22m height limit illustrated by red dashed lines

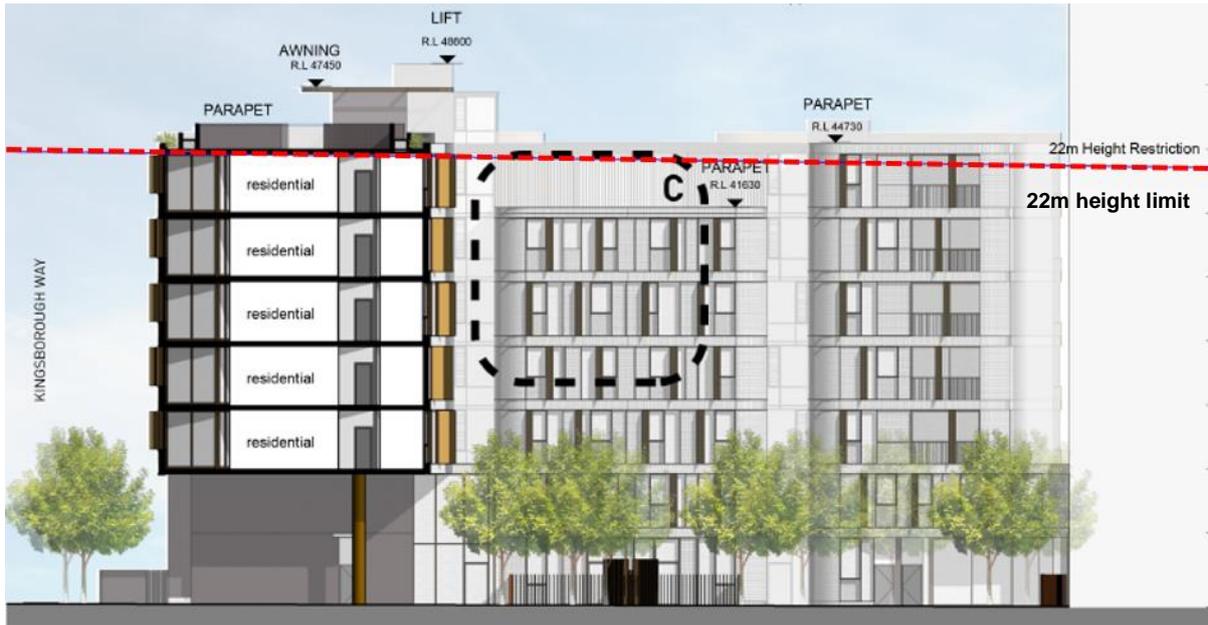


Figure 43: Section through Building B - 22m height limit illustrated by red dashed lines

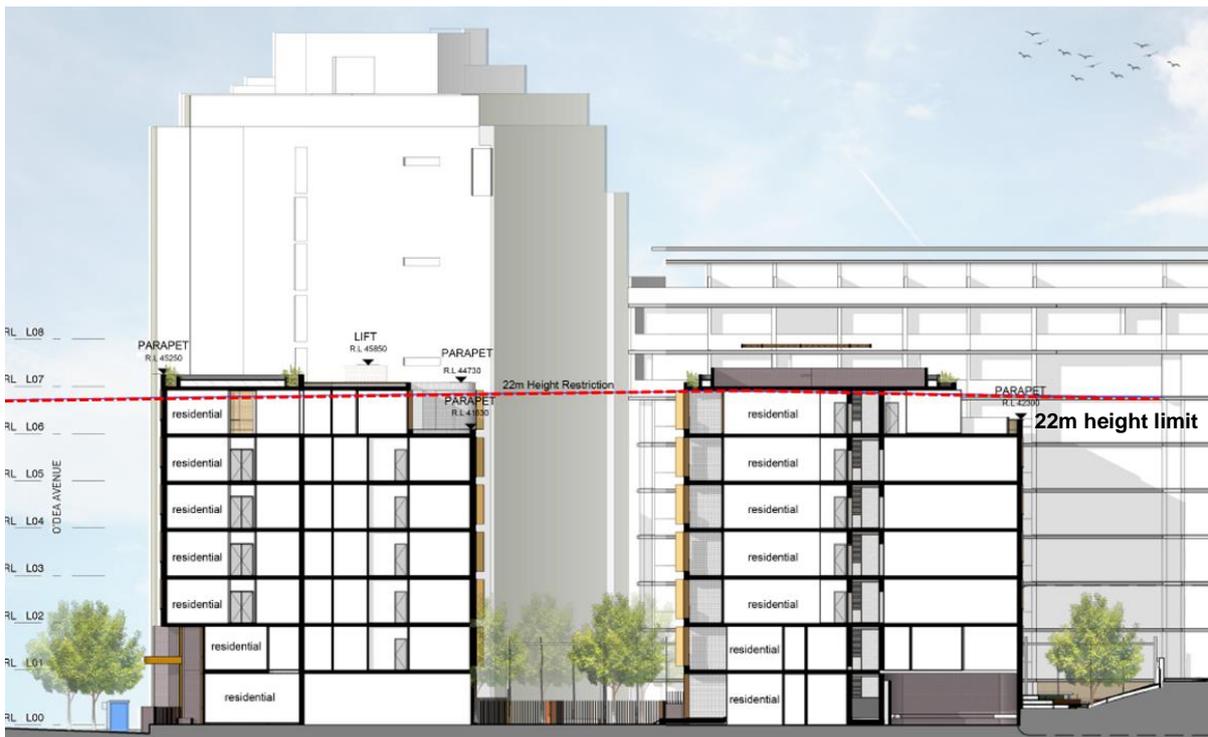


Figure 44: Section through Building B - 22m height limit illustrated by red dashed lines

77. 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; and

- b. That there are sufficient environmental planning grounds to justify contravening the standard;

78. A copy of the applicant's written request is provided at Attachment C.

Applicants Written Request - Clause 4.6(3)(a) and (b)

79. The applicant seeks to justify the contravention of the Height of Buildings 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 states that the development satisfies the objectives of Clause 4.3 Height of Buildings development standard. The objectives of Clause 4.3 and the applicant's justification are provided below:

Objectives of Clause 4.3 Height of Buildings

- 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,
- iii. The primary areas of non-compliance relate to the parapet, awnings to the communal open space and lift overruns on the roof. The lift non-compliance in particular is confined to areas setback from the edge of each building and the roof level variations do not consume the entire footprint of the buildings. The height is lowered in part to improve the interface with neighbouring properties, stepping the building form towards the through-site link.
 - iv. The variations sought will still achieve the transition of building height envisaged by the controls. A consistent height will be achieved along Bourke Street and O'Dea Avenue, with the variations not readily visible from the public domain.

- v. The applicant also states the development has been skilfully designed to ensure view sharing is achieved with surrounding developments, notwithstanding the variation to the height control.
- b. That there are sufficient environmental planning grounds to justify contravening the standard:
 - i. The applicant refers to the judgement in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSW LEC 2018 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 has provided the following environmental planning grounds to support the height variation:
 - a. Providing increased setbacks beyond the ADG requirements and shifting floor space results in a variation to the height control, however, improves the relationship with surrounding buildings. The increased setbacks will allow for protection of light and ventilation to the windows on the boundary of 5 O’Dea Avenue; and greater separation to the units at 15 and 17 Joynton Avenue (improving their visual and aural privacy, and allows for greater views across the site);
 - b. The minor variations do not affect the transition surrounding the site as the non-compliant areas are not readily viewed from the public domain;
 - c. The proposed height will not unreasonably affect future development of adjoining sites with compliant solar access being maintained;
 - d. In order to reduce the extent of the variation, this scheme as amended has shifted plant to level 6, resulting in a reduction of units on this level. There is also a reduction of building form at the southern end of the site to improve solar access;
 - e. The communal roof area and private rooftop terraces will provide high residential amenity for future residents, with clear and convenient access; and
 - f. The development complies with the maximum FSR. The shifting of the permitted GFA around the site creates a better planning outcome compared with strict compliance with the height control.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

80. 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)?

81. 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.
82. The applicant references the breach of the control being in relation to parapets, the lift overruns and awning structures. It is noted that these elements do not unreasonably add to the bulk and scale of the building when viewed from the public domain and surrounding buildings.
83. The applicant also references the varied heights of buildings in the surrounding precinct, where heights step up and down in response to the mix of land uses, the adjacent heritage conservation area and the Green Square Urban Renewal Area. The height, scale and design of the development 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)?

84. 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 *Initial Action Pty Ltd v Woollahra Municipal Council* case to justify contravening the standard as the development achieves a better outcome by allowing flexibility in particular circumstances.
85. The area of non-compliance is minor as it is confined to parapets, lift overruns and awnings and is setback. The non-compliance does not unreasonably add to the bulk and scale of the development when viewed from the public domain.
86. The proposal will not create unacceptable impacts on the amenity of surrounding properties with regard to views, solar access and visual privacy, which is discussed further below.

87. The provision of rooftop communal open space will provide increased amenity for future residents of the development.
88. The applicant is therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

Is the development in the public interest?

89. 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. As has been discussed within this report, the development is consistent with the objectives of Clause 4.3 notwithstanding the variation to the numerical standard.
90. The objectives of the B4 – Mixed Use zone are provided below:
 - (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.
91. 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.
92. The introduction of new accommodation will also assist in supporting the viability of the Green Square Urban Renewal area and the nearby Southern Employment Lands.
93. 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

94. 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 Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the Height of buildings development standard and the B4 – Mixed Use zone.

Consistency with the Concept Approval

95. Pursuant to Section 4.24 of the Environmental Planning and Assessment Act 1979, where a concept development application remains in force, a determination of any further development application in respect to that site cannot be inconsistent with the concept development consent.

96. The concept approval relating to this proposal is D/2017/1723. A Section 4.55(2) modification has been submitted to modify the concept approval to ensure consistency with the subject detailed design application. These modifications largely relate to height and building envelope and have been assessed as acceptable, as outlined in the assessment report for D/2017/1723/A submitted concurrently with this application. The subject application is assessed on the basis that the modification application has been approved.
97. As outlined below, the detailed design proposal is consistent with the key conditions imposed on the concept development consent (as amended).

(a) Condition 2 Approved development

The proposal is consistent with the approved plans in the concept approval (as amended), with the exception of some structures (i.e. landscaping, screening) being located within the 2.6m setback to Kingsborough Way. The additional structures within the setback are not supported and a condition is recommended ensuring there are no encroachments onto the public way.

(b) Condition 4 Competitive Design Process

Following determination of the concept approval, the applicant undertook a competitive design alternatives process in October and November 2019. PTW was named the winning scheme.

The condition requires that the proposal exhibit design excellence. The Selection Panel were of the opinion that the design was capable of achieving design excellence, however made a series of recommendations that have been addressed within this report (see below). Amendments have been made to height, bulk and scale, however, ultimately retain the intent of the design winning scheme.

The overall materiality, articulation and architectural contribution of the development is considered to achieve design excellence, as discussed elsewhere in this report.

(c) Condition 7 Detailed Design of Buildings

The concept approval includes design measures to be incorporated into the detailed design proposal as follows:

(a) *Minimise overshadowing on adjoining properties in accordance with ADG objective 3B-2*

Assessment: The applicant has submitted views from the sun diagrams and elevation shadow diagrams for 890-898 Bourke Street, 15 and 17 Joynton Avenue. The analysis compares the original concept approval (D/2017/1723) with that currently proposed as part of the detailed design, at the winter solstice in half hourly intervals.

Both the ADG and the DCP require overshadowing to adjoining properties to be minimised and that private open space and living areas are to receive a minimum of 2 hours solar access at the winter solstice. Objective 3B-2 of the ADG recommends solar access to neighbouring properties is not reduced by more than 20%.

The diagrams demonstrate that there will be some overshadowing impacts on all three affected sites at different times of the day, although the impact is within the ADG criteria and is acceptable.

An aerial map of the subject site and surrounding development, and excerpts of the shadow analysis are provided below. The full solar analysis is contained in Attachment E.



Figure 45: Aerial map of subject site and affected properties

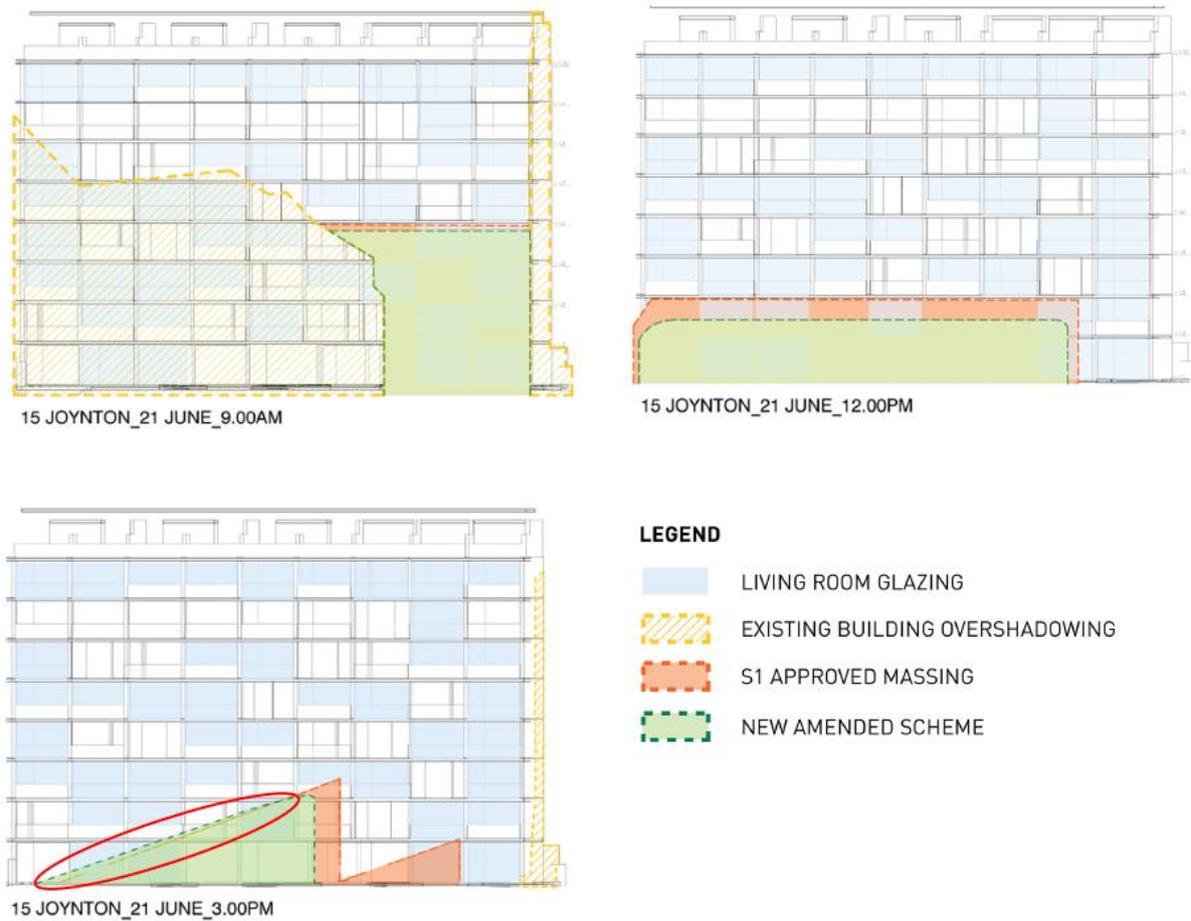


Figure 46: Shadow diagrams in elevation demonstrating impact to 15 Joynton Avenue at winter solstice (9:00am, 12 midday and 3:00pm).

The analysis demonstrates that 15 Joynton Avenue will experience a negligible increase in overshadowing between the hours of 1.30pm and 3pm at the winter solstice. Three apartments are affected, with one achieving 2 hours solar access, and the other two retaining 1.5 hours solar access, with a slight increase at 1.30pm. The slight increase for the two affected apartments still allows for direct sunlight as per Objective 4A-1 of the ADG.

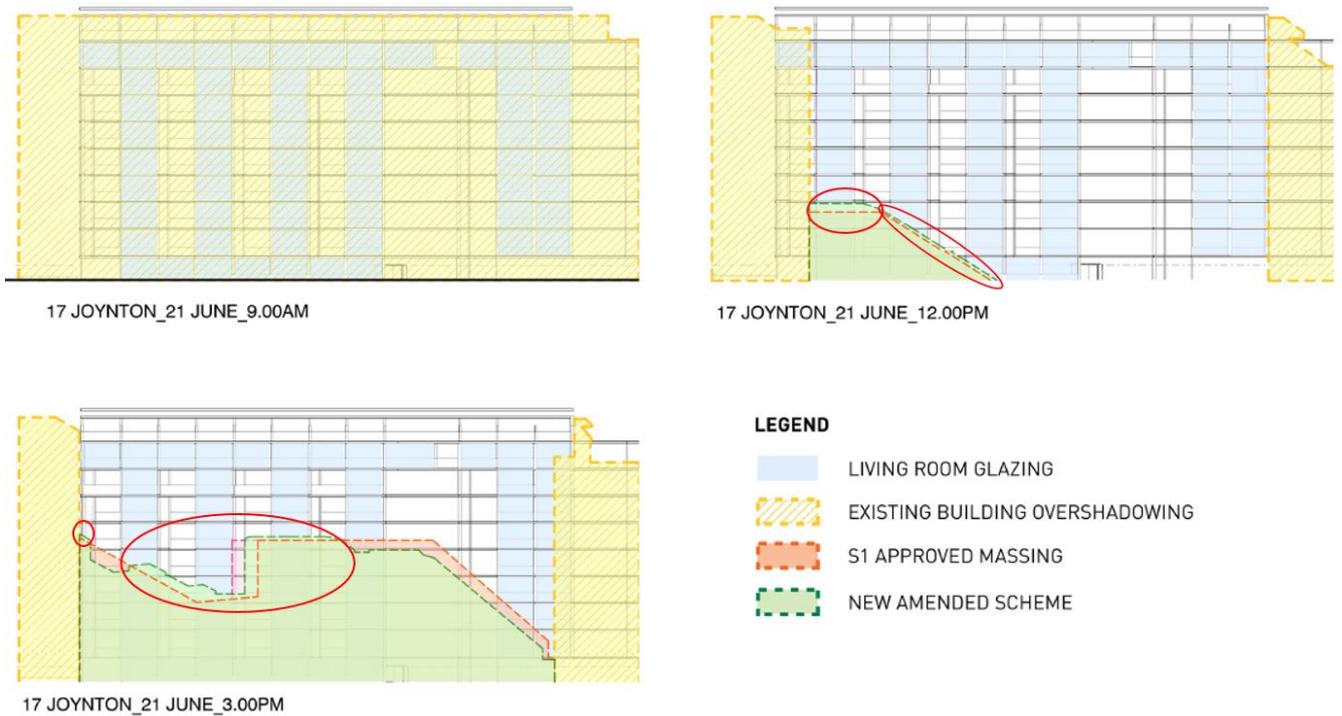


Figure 47: Shadow diagrams in elevation demonstrating impact to 17 Joynton Avenue at winter solstice (9:00am, 12 midday and 3:00pm). Additional overshadowing outside of the originally approved envelope is outlined by the red circles.

With regard to 17 Joynton Avenue, the detailed design proposal will cast additional shadow between 11.30am and 3:00pm. The overshadowing of the affected apartments shift as a result of the amended proposal. For example, the apartments at level 3 that are affected by overshadowing of the amended envelope between 2.30pm and 3pm, will receive solar access between 1.30pm and 2.00pm due to changes between the bulk of the original concept approval and the proposed detailed design.



Figure 48: Shadow diagrams in elevation demonstrating impact to 890-898 Bourke Street at winter solstice (9:00am, 12 midday and 3:00pm). Additional overshadowing outside of the originally approved envelope is outlined by the red circles.

The diagrams for 890-898 Bourke Street demonstrate that solar access will be retained from 12 midday onwards.

- (b) *Provide a compliant amount of communal open space in accordance with the ADG that receives adequate solar in accordance with the ADG*

Assessment: The application proposes compliant communal open space as per the ADG.

- (c) *If rooftop communal open space is proposed it must provide equitable access, be designed to prevent overlooking and noise impacts and all structures (including but not limited to plant and lift overruns) must be within the 22m height limit*

Assessment: Rooftop communal open space is proposed and conditions are recommended to reduce amenity impacts to adjoining development at the south and south-east boundaries. Lift overruns and awnings associated with the rooftop communal open space are not within the 22m height limit. As discussed elsewhere in this report however, the height non-compliance is acceptable and is consistent with the concept approval, as amended by D/2017/1723/A.

- (d) *Adequate privacy treatment for future ground floor units along the O'Dea Avenue and new street frontage*

Assessment: The ground floor apartments to O'Dea Avenue and Kingsborough Way are to have solid masonry walls with fencing and planters, to a height of approximately 1700mm to mitigate privacy impacts.



Figure 49: Ground floor photomontage depicting front fencing of residential apartments to O'Dea Avenue

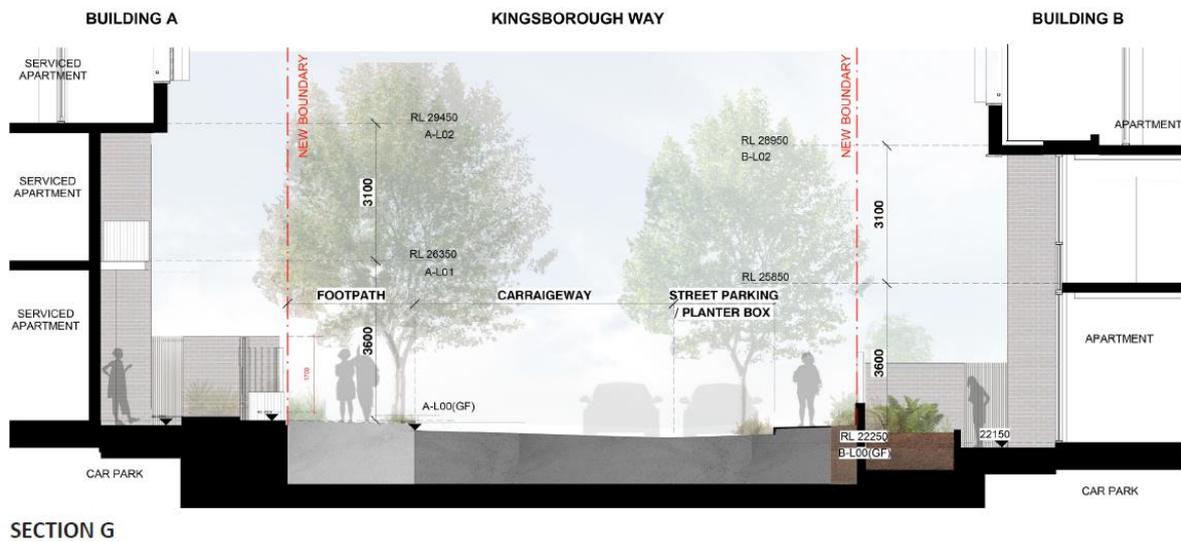


Figure 50: Proposed section of ground floor apartments, through Kingsborough Way

- (e) *Design development to address and integrate with the future through-site link at 890-898 Bourke Street*

Assessment: The applicant has provided information regarding RLs of the development compared to the future through-site link at ground level, with access to the site via ramps and steps. A condition is recommended requesting further details regarding the use of ramps, retaining walls and the like and its impact on deep soil zones. This is discussed in further detail below.

- (f) *Design development at the highly visible/landmark corner at Bourke Street and O’Dea Avenue in accordance with the requirements of Section 5.2.8 of the Sydney DCP*

Assessment: The development provides an active interface at ground floor to this corner, by locating and designing a double height retail tenancy that has strong visual connectivity with the public domain.

The building element on the corner of O’Dea Avenue and Bourke Street has been designed so that it is visually prominent with a white brick curved facade and horizontal banding in a contrasting dark metal, emphasising the use of high-quality materials and detailing of this development within the view corridor.

As discussed elsewhere in this report, the development is considered to exhibit design excellence, and has been thoughtfully designed to reinforce the corner of O’Dea Avenue and Bourke Street. The development therefore meets the requirements of Section 5.2.8 of the Sydney DCP 2012.

- (g) *Adequate treatment of the setback and facade of the development where it will adjoin 5 O’Dea Avenue*

Assessment: The development is setback 3m from the south-east boundary with 5 O’Dea Avenue at levels 4 and above as required by the approved concept envelope. The east elevation of Building B has been designed as a blank facade (due to ADG requirements for visual privacy and separation) with curved masonry bays and horizontal banding to provide visual interest.

- (h) *Provision of individual residential entries for ground floor units and a clear street address for both buildings*

Assessment: Each apartment at ground floor has an individual entry with direct access from either O’Dea Avenue or Kingsborough Way. Double height residential lobbies are also provided to both Buildings A and B from O’Dea Avenue, creating a clear street address for the development.

- (i) *Acoustic and ventilation treatments to Bourke Street and O’Dea Avenue frontages and the ground floor apartments that front the basement accessway in accordance with the requirements of the Sydney DCP and ADG*

Assessment: As discussed elsewhere in this report, wintergardens are proposed to apartments affected by traffic noise, and masonry fencing with landscape treatments are provided for ground floor apartments as an acoustic buffer.

- (j) *Waste management facilities in accordance with Section 4.2.6 of the Sydney DCP*

Assessment: Waste management facilities have been designed to address the requirements of Section 4.2.6 of the Sydney DCP 2012. A condition is recommended for an amended waste management plan to be submitted to ensure that adequate waste holding areas are provided for residential waste and recycling and bulky goods.

- (k) *A minimum 9m wide landscaped zone of which 3m is a deep soil zone is to be provided on the southern and eastern boundaries of Building B where the site adjoins 15 and 17 Joynton Avenue*

Assessment: A deep soil zone has been provided at the southern and eastern boundaries of Building B as required by Condition 7(k). This is discussed in further detail below under 'Landscape'. Additional details are required to ensure the area adjoining 15 and 17 Joynton Avenue has clear and direct sightlines to Kingsborough Way.

- (l) *An alternative location for the vehicular access to the basement must be provided under the building and not in the landscaped setback zone. Access to the development is to remain off Kingsborough Way*

Assessment: The driveway is located within the approved building envelope with direct access off Kingsborough Way, and does not interfere with the adjoining landscaped setback zone.

- (d) Condition 8 Public Art

A detailed public art plan is required to be submitted with the DA, providing information about selection of artists, rationale for each artist's concept, as well as a program for documentation, fabrication, installation and maintenance requirements.

The applicant requested as part of D/2017/1723/A and the subject DA that public art be resolved prior to the issue of the first Construction Certificate. Given that the public art vision for the competition winning scheme (discussed in further detail below) was supported by the Selection Panel, this can be developed further as part of the post consent documentation.

- (e) Condition 9 Ecologically Sustainable Development

The final design excellence strategy accompanying the concept approval outlines ESD performance expectations for the detailed proposal, being BASIX Energy score of 40 or higher and BASIX Water score of 50 or higher for the residential component.

The subject application is accompanied by NatHERs and BASIX documentation certifying 6.6 star, a BASIX Water score of 51 and a BASIX Energy score of 41 as required by the consent.

- (f) Condition 10 Floor Space Ratio

The detailed proposal complies with the maximum FSR outlined in Clause 4.4, 6.14 and 6.21 of the Sydney LEP 2012.

(g) Condition 11 Building Height

The detailed proposal complies with the building height of the concept approval, as amended by D/2017/1723/A.

(h) Condition 12 Detailed design to be contained within approved envelope

The detailed proposal fits entirely within the building envelope of the concept approval, as amended by D/2017/1723/A.

Competitive Design Alternatives Process

98. Following the approval of the concept development application, the applicant commissioned a competitive design alternatives process for the site. This is discussed in further detail under 'History relevant to the development application'.
99. The Selection Panel selected the scheme presented by PTW as the winning entrant. In the opinion of the panel, this scheme was most capable of achieving design excellence, subject to the retention of, and improvement on, a number of key design aspects.
100. The table below details how the amended design responds to the key recommendations made by the Selection Panel and retains the design integrity and key aspects of the winning scheme.

Aspects of the scheme to be retained	
Section Panel recommendation	DA response
<i>Use of high quality materials and detailing, particularly for facades as indicated in the photomontages is a key design quality aspect of this scheme including (but not limited to): choice and distribution of brick colours across the buildings; soldier course brickwork; continuing metalwork at window sills and heads to exaggerate horizontality; and more open balustrades to the courtyard side for light</i>	The development has retained the use of masonry brick elements and horizontal metal banding in contrasting colours, with each building utilising a variety of textures and tones in response to its location. That is lighter colours for the visually prominent O'Dea Avenue and Bourke Street corner, graduating to neutral and earthy tones as the development progresses along O'Dea Avenue and Kingsborough Way.
<i>That bricks are selected for their specific use, for instance curved bricks may be required to ensure that one of the projects key design qualities (curved external corners) is not eroded</i>	The development has retained the use of curved brick.

Aspects of the scheme to be retained	
<i>The character and clarity of interfaces with the public domain and through-site link</i>	The development provides 3.6m floor to floor heights at ground floor for the residential apartments with a direct line of sight between the public domain and communal open space. Communal open space is also co-located with the through-site link to activate the area.
<i>The two storey entry lobbies</i>	The two storey entry lobbies have been retained.
<i>The ground level pedestrian layout and network</i>	The Selection Panel considered the ground level pedestrian layout and network to be well resolved, enabling visual and physical linkages between the two sites. This aspect of the development has been retained, with clear and direct access within the site between the through-site link, Kingsborough Way and the communal open spaces.
<i>The clarity of the articulated building forms and legibility/expression of the facade</i>	This aspect of the development has been retained. The brick architecture and horizontal composition of the facades as been carried through to the proposed detailed design.
<i>The gently curved street wall to Kingsborough Way</i>	This aspect of the development has been retained.
<i>The simplicity and repetition of the floor plans including the availability of natural light and ventilation into the lobbies/corridors</i>	The building lobbies and corridors receive natural light and ventilation.
<i>The well planned, spacious units provide a fundamental quality to be retained</i>	All units comply with ADG room sizes, providing adequate amenity for future occupants.

Items for improvement	
Section Panel recommendation	DA response
<i>Following removal of the 8th level, the buildings require a more considered design resolution of the parapet line. The revised drawings indicated that the upper level has been simply excised, resulting in a visually tenuous, shallow parapet that is inconsistent with the scale and proportioning of the facades below</i>	The development has been redesigned to provide a strong brick parapet that replicates the original design competition scheme.
<i>The Kingsborough Way elevations have not been successfully resolved at the change in building height where they turn the corner from O'Dea Avenue. Consideration should be given to the use of an alternative materiality and detailing (for example a metal clad form) to ensure this element is well integrated</i>	The Kingsborough elevations of the development have been redesigned so that the masonry elements finish at level 5, with level 6 clad in metal framing comprising earthy tones. This provides a strong parapet element that replicates the corner element of the development at O'Dea Avenue and Kingsborough Way, and creates an appropriate, integrated transition as the building height changes.
<i>The revised corner expression of the building at the intersection of O'Dea Avenue and Bourke Street has lost its distinctive architectural quality. The original element was well-scaled and proportioned, as was the expression of the two storey form of the retail space. As acknowledged by PTW during the presentation, the design of this prominent element should be revisited</i>	The two storey expression of the facade to the corner of O'Dea Avenue and Bourke Street has been reinstated.
<i>The pergola/s on the upper level of Building B visible from Kingsborough Way is visually inconsistent and should be removed</i>	The rooftop of Building B has been redesigned so that the pergolas are no longer visible from Kingsborough Way.

Items for improvement	
<p><i>The scheme's response to acoustic impacts along O'Dea Avenue and Bourke Street as required by Section 4 of the Sydney DCP 2012 is unresolved and must be comprehensively addressed in the next stage</i></p>	<p>Wintergardens are proposed to address acoustic impacts of apartments that face Bourke Street and O'Dea Avenue. This aspect of the development is addressed in further detail under 'Natural Ventilation'. Subject to further details, the response to acoustic impacts is acceptable.</p>
<p><i>Ensure that all ground floor units are elevated above the adjacent finished ground plane</i></p>	<p>Raising the ground floor units as requested will create flow on effects with regard to accessing the lobby (and accommodating a ramp long enough to be 1:20 in slope). For example, if the entire ground level was raised for Building A, a 12m long ramp would be required that could not be accommodated. As addressed elsewhere in this report, the applicant's flood engineer has confirmed that all ground floor apartments (with the exception of BG-06 to the corner of O'Dea Avenue and Kingsborough Way) have been designed so that they comply with flood planning level requirements and as such, raising the ground floor units is considered unnecessary.</p> <p>From a privacy perspective, it is considered that the resulting interface with the ground plane is appropriate. A condition is recommended to ensure sills are provided to any bedrooms or windows and adequate landscaping is planted to screen apartments.</p>
<p><i>Consideration should be given to extension of all lifts to the roof level, to provide equity of access to rooftop communal open space and alternative access for residents in the event of a lift being unavailable or out of service</i></p>	<p>Two of the six lifts have access to the rooftop communal open space. Whilst all lifts having access to the rooftop is desirable, this is likely to result in additional view impacts to surrounding development. Equitable access is still provided for all residents based on this arrangement.</p>

Items for improvement	
<i>Many units have minimum wardrobe sizes in master bedrooms</i>	The development provides adequately sized master bedrooms (excluding wardrobe space) in accordance with ADG requirements.
<i>A fully developed, generous landscape concept and plan for the public domain, the ground plane and the built form must be developed integrally with the next stage</i>	Detailed landscape drawings have been provided with the subject development. Some recommendations are made to increase the quality of the deep soil area and overall landscape approach.
<i>Further consideration should be given to the treatment of the large blade walls associated with the driveway entry</i>	The blade walls have been designed so that they are clad in masonry, which is considered to be an appropriate design approach.
<i>Any minor additional overshadowing to the neighbouring properties should be accurately demonstrated and justified</i>	As demonstrated within this report, the additional overshadowing to neighbouring properties is within ADG requirements and has been accurately demonstrated and justified.
<i>Any further changes should not reduce standards of solar access or natural cross ventilation</i>	A total of 109 units (60%) receive at least 2 hours of solar access and 60% are cross ventilated. As discussed elsewhere in this report, some of these apartments require a wintergarden or potentially a passive plenum to deliver a natural ventilation solution for apartments that are affected by traffic noise.
<i>The Public Art Diagram outlined in the submission is promising and should be further developed and integrated into the architecture and landscape design</i>	The submission outlined opportunity areas for public art facing the through-site link, as well as along Kingsborough Way and adjoining the proposed driveway. These areas have been identified in the proposal as locations for public art, although a detailed public art strategy has not been submitted.

101. In light of the above, the proposal is considered to satisfy the provisions of Clause 6.21 of the Sydney LEP 2012 and accordingly is eligible for 10% additional FSR.

Design Advisory Panel

102. The application was presented to the City's Design Advisory Panel on 2 April 2020. The Panel made a number of recommendations that were put to the applicant.

103. The proposal has been redesigned to address the recommendations. The recommendations are reproduced below, with a summary of the design response.

- (a) *The proposal is generally a positive scheme, however, contains some SEPP 65, ADG, LEP and DCP non-compliances. The proposal does not comply with solar access, cross ventilation, building height, building separation and building setback requirements.*

Response: Non-compliances with building height and solar access are discussed in greater detail within this report. The development has been redesigned to comply with building separation and setback requirements.

- (b) *The additional storey could be explored, subject to the development not creating any additional overshadowing. The development overshadows adjoining properties. The Panel suggested that overshadowing could be minimised through careful manipulation of the floor plans, removing parts of the seventh floor from some locations and relocating these spaces;*

Response: The proposal has retained the additional storey and minimised the extent of the height non-compliance by relocated plant area to level 6. The additional overshadowing to neighbouring properties is within ADG requirements and has been accurately demonstrated and justified, as discussed elsewhere in this report.

- (c) *Any building envelope encroachments onto the street or into setback areas are not supported;*

Response: There are no longer any elements of the development that encroach into setback areas. A condition is recommended to ensure that there are no architectural elements that encroach onto the street.

- (d) *Sunken courtyards at ground level are not supported. Any apartments or balcony floor levels below flood levels is not acceptable.*

Response: The proposal has been redesigned so that no part of the development sits below flood planning levels.

- (e) *Road traffic noise needs to be considered and addressed by the proposal; and*

- (f) *Natural ventilation, solar loading and acoustics needs to be resolved.*

Response: The amended proposal provides wintergardens to all noise affected apartments facing Bourke Street and O’Dea Avenue. A noise assessment has been submitted, indicating that sound absorptive treatments to balcony soffits and wintergardens with an acoustically lined natural ventilation plenum would also be appropriate. This is discussed in further detail under the heading Natural Ventilation. Subject to conditions, the development is considered to adequately address road traffic noise and natural ventilation.

With regard to solar loading, folded perforated aluminium screens are proposed to the western facade to provide passive solar shading.

- (g) *Curved glass window elements are an essential detail element of the scheme. These elements need to remain and not changed to faceted elements.*
- (h) *The Panel was generally supportive of the proposal’s material palette and recommended that additional detail be provided to show how facade glazing will perform and deal with heat loads on the western facade.*

Response: The plans indicate the use of curved glass window elements. A condition is recommended requiring that this essential detail be carried through to construction, and not be replaced with faceted glazing. Folded perforated aluminium screens are proposed to the western facade to provide passive solar shading.

Height in storeys

104. Section 4.2.1.1 of the Sydney DCP 2012 permits a maximum of 6 storeys across the site. The application proposes 2 x 7 storey buildings. The extent of the non-compliance is illustrated below.



Figure 51: Proposed O’Dea Avenue elevation highlighting 7th storey with red dashed lines

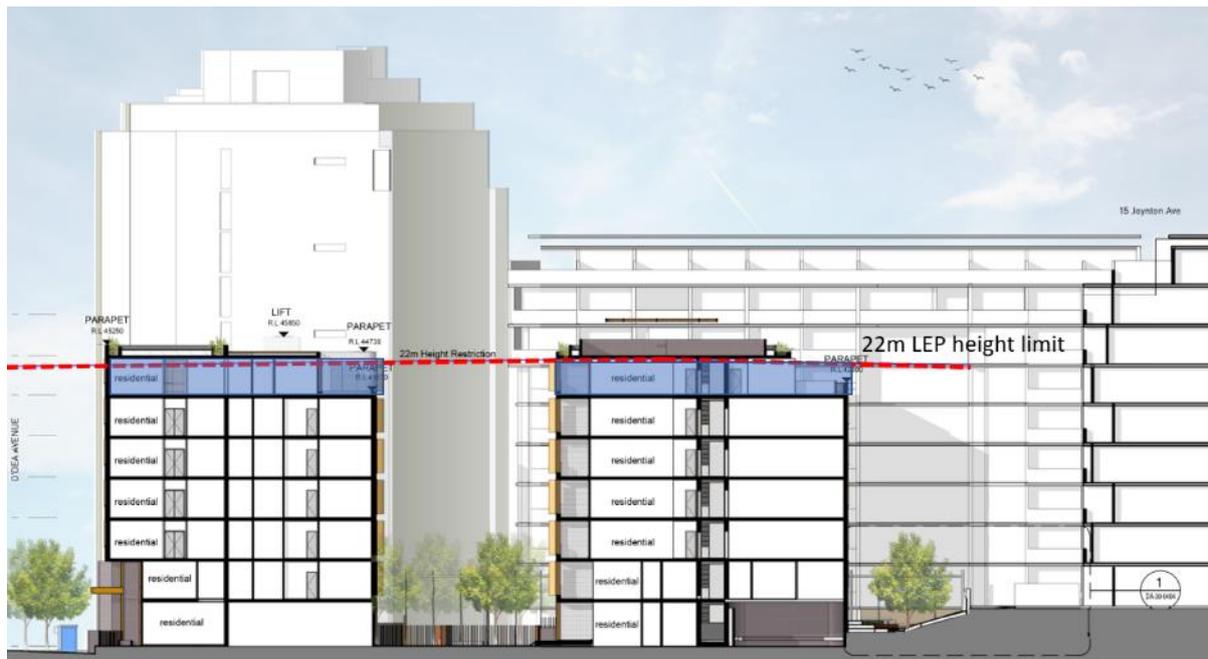


Figure 52: Proposed section through the development highlighting the 22m SLEP 2012 height limit in relation to the height in storeys non-compliance that is shaded in blue

105. The overall form, whilst a departure from the height in storeys control, is supported as:

- (a) The GFA for level 7 does not result in a non-compliance with the FSR control as the proposal complies with the maximum GFA;
- (b) The non-compliant additional storey is generally located within the 22m height limit set by the Sydney LEP 2012. All other elements above the height limit are features that are setback from the building edge and are not readily visible from the public domain;
- (c) The development is consistent with the winning design competition scheme which allowed for a 7th storey; and
- (d) The additional storey does not result in any significantly adverse impacts, particularly in relation to view loss and overshadowing to adjoining properties as shown elsewhere in this report.

View loss

106. While the relevant planning controls make no provision for the protection of private views, in order to understand the impact of the proposal on existing views, views resulting from a compliant building envelope and the proposal, an assessment has been made against the planning principles established by Senior Commissioner Roseth in the Land and Environment Court decision of *Tenacity Consulting v Warringah [2004] NSWLEC 140 (Tenacity)*.

107. In the submissions received in response to the public exhibition of the proposal, raise concerns about loss of views from neighbouring residential properties contained within 15 and 17 Joynton Avenue, to the south and south-east. An aerial image and site plan showing the location of these sites in relation to the subject site are provided below.

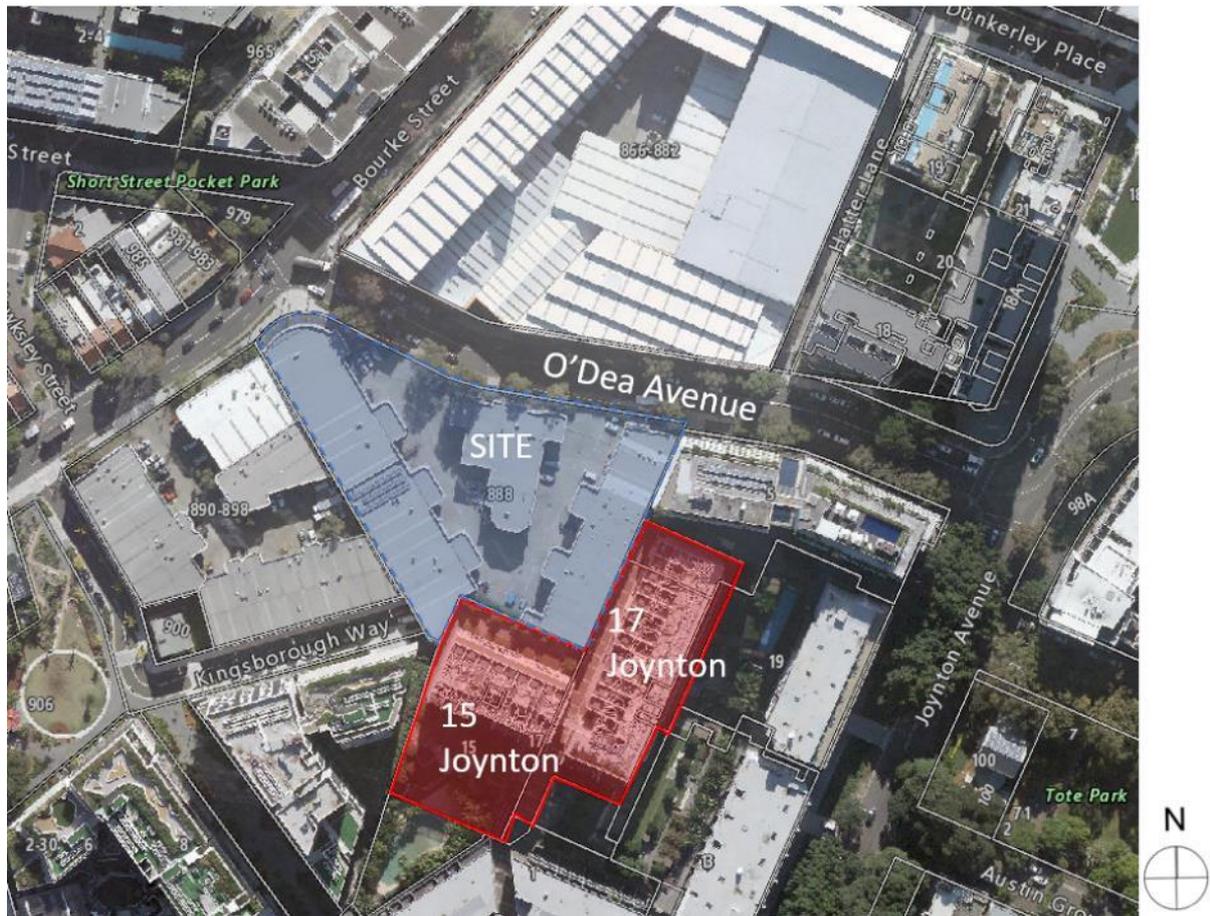


Figure 53: Aerial view of subject site and affected residential buildings – 15 and 17 Joynton Avenue

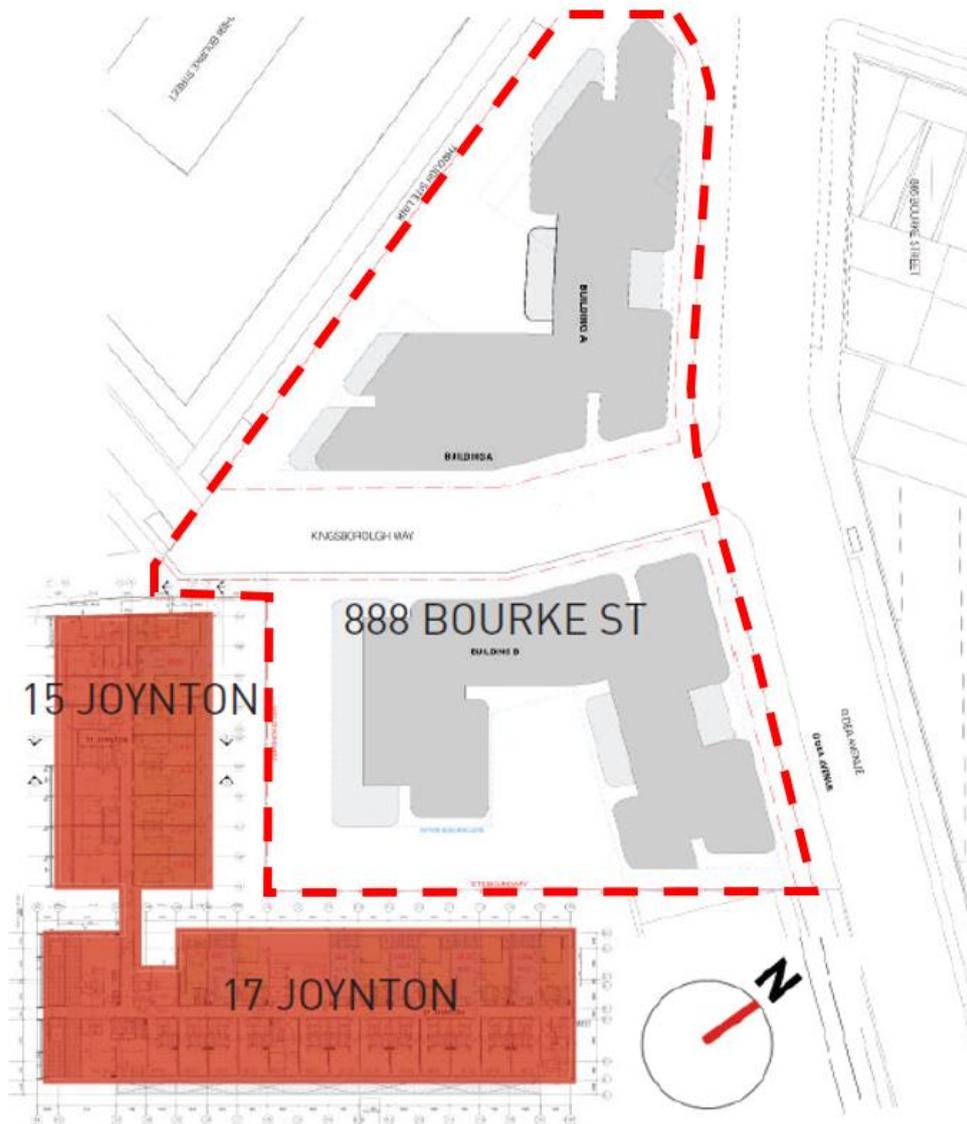


Figure 54: Site plan of subject site (with proposed buildings) and affected residential buildings – 15 and 17 Joynton Avenue

108. Senior Commissioner Roseth specifies that the notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment and it may in some circumstances, be reasonable.
109. The proposal's impacts upon views from apartments within the residential buildings noted above are assessed according to the four-step process established in *Tenacity* and compare the proposed view loss with the view impact created by the original concept envelope (at a compliant height of 22m). The impact is demonstrated below as follows:
- (a) 15 Joynton Avenue: view impacts were modelled for north facing apartments on levels 7, 8, 9 and 10 from locations within living rooms and bedrooms. The images shown in **Figures 55 to 61** are from the apartments on the level 7 and 8 floor plates and which illustrate the most affected views.

- (b) Three submitters have provided photographs from levels 8 and 9 of 15 Joynton Avenue, and levels 8 and 9 (rooftop) of 17 Joynton Avenue. Levels 8 and 9 of both sites are assessed as part of the view loss analysis. The photographs are also provided in Attachment H.

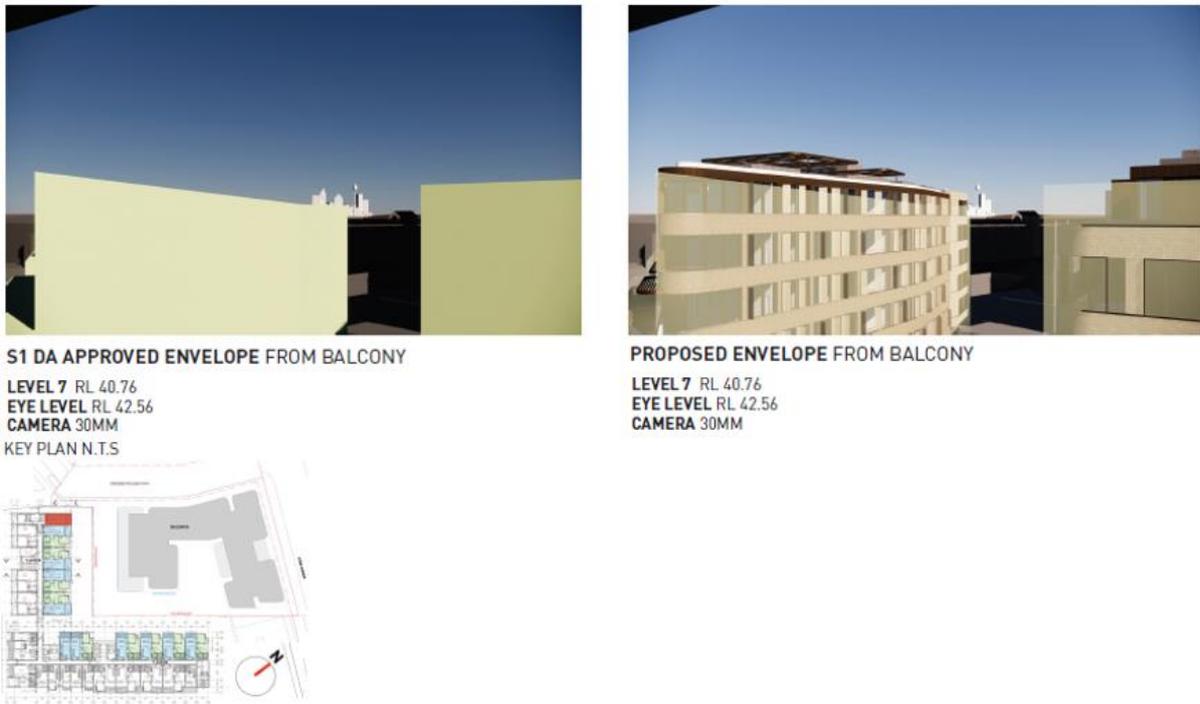


Figure 55: 15 Joynton Avenue: modelled impacts of view from balcony of south-western apartment on level 7.



Figure 56: 15 Joynton Avenue: modelled impacts of view from balcony of south-western apartment on level 7.



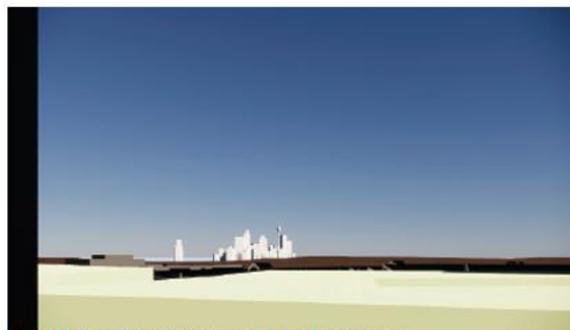
S1 DA APPROVED ENVELOPE FROM BEDROOM

LEVEL 8 RL 43.80
 EYE LEVEL RL 45.60
 CAMERA 30MM
 KEY PLAN N.T.S



PROPOSED ENVELOPE FROM BEDROOM

Figure 57: 15 Joynton Avenue: modelled impacts of view from bedroom of central apartment on level 8. This apartment has CBD views from the balcony (level 9) and rooftop terrace (level 10) that are not affected



S1 DA APPROVED ENVELOPE FROM BEDROOM

LEVEL 8 RL 43.80
 EYE LEVEL RL 45.60
 CAMERA 30MM
 KEY PLAN N.T.S



PROPOSED ENVELOPE FROM BEDROOM

Figure 58: 15 Joynton Avenue: modelled impacts of view from bedroom of central apartment on level 8. This apartment has CBD views from the balcony (level 9) and rooftop terrace (level 10) that are not affected



Figure 59: 15 Joynton Avenue: modelled impacts of view from bedroom of south-western apartment on level 8. This apartment has CBD views from the balcony (level 9) and rooftop terrace (level 10) that are not affected



Figure 60: 15 Joynton Avenue: modelled impacts of view from bedroom of south-eastern apartment on level 8. This apartment has CBD views from the balcony (level 9) and rooftop terrace (level 10) that are not affected



Figure 61: 15 Joynton Avenue: modelled impacts of view from bedroom of south-eastern apartment on level 8. This apartment has CBD views from the balcony (level 9) and rooftop terrace (level 10) that are not affected

- (c) 17 Joynton Avenue: view impacts were modelled for west facing apartments on levels 7, 8, 9 and 10 from locations within living rooms and bedrooms. The images shown in **Figures 62 to 63** are from the apartments on the level 8 floor plate and which illustrate the most affected views.



Figure 62: 17 Joynton Avenue: modelled impacts of view from balcony of south-eastern apartment on level 8. This apartment has CBD and district views towards the south of the city

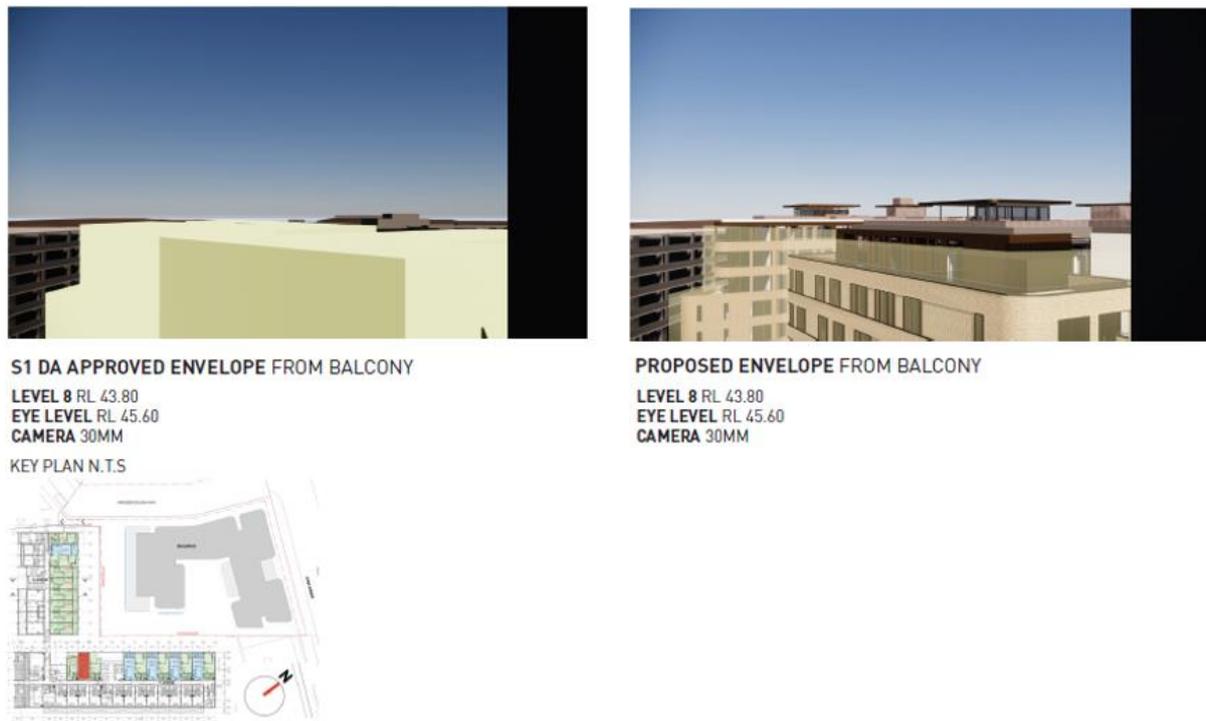


Figure 63: 17 Joynton Avenue: modelled impacts of view from balcony of south-western apartment on level 8. This apartment has no view of the CBD.

110. *Assessment of views to be affected:*

- (a) 15 Joynton Avenue – as shown above in Figures 53 to 59, views are to the north and west, and are partial and whole views of the CBD skyline, including Sydney Tower. According to *Tenacity*, these views are moderately to highly valued.
- (b) 17 Joynton Avenue – as shown above in Figures 60 to 61, views are to the north and west, and are partial views of the CBD skyline (not including Sydney Tower), as well as district views. According to *Tenacity*, these views are moderately valued.

111. *Consider from what part of the property the views are obtained:*

- (a) For both buildings, views are modelled from an approximation of a standing position (1.8m from the finished floor level). Bedroom views are taken at the glass line, and balcony views are about 2m from living rooms.
- (b) *Tenacity* outlines that the loss of standing views from living room windows are considered to be of greater impact than view loss from sitting and from balconies, bedrooms, kitchens or bathrooms. For the purposes of assessing view loss from within the neighbouring residential apartments, it would be unreasonable to expect all existing views alongside the boundaries to be protected, particularly when the loss of views is already identified as partial views and only impact some levels within the buildings.

- (c) Apartments that are potentially affected are located to the south-east and south-west of the subject site. These apartments are located at level 7 and 8 of the respective developments at 15 and 17 Joynton Avenue. As indicated in the plan view for each image, and the site plan, the views are across several neighbouring properties and are obtained from bedroom, living rooms and balconies.

112. *Extent of the impact in relation to views available:*

- (a) The extent of impact is assessed in consideration of the whole property and not just the view that is affected. For the case of the adjoining properties, the proposal would primarily impact on levels 7 and 8 of 15 and 17 Joynton Avenue.
- (b) *Tenacity* states that “the impact of views from living areas is more significant than from bedrooms or service areas”.
- (c) As can be seen from Figures 55 to 63 above, the development will have an impact on existing views to the CBD skyline, when viewed from bedrooms, although views at standing position from living rooms and balconies/terraces for the most part are maintained. As noted above, bedroom views are not deemed as important as views from living areas under *Tenacity*. When considering the proposed buildings compared to the original concept approval (D/2017/1723) however, the proposal will have moderate impacts upon views from these apartments in the terms established in *Tenacity*.

113. *Reasonableness of the proposal:*

- (a) The planning controls allow for development of a height and density that will result in some impact to existing views across the adjacent sites, as demonstrated by the images above depicting the originally approved concept envelope with a 22m height. The protrusions above the height limit (being the lift overruns and awnings), are considered acceptable as living rooms and rooftop terraces on upper levels of both 15 and 17 Joynton Avenue maintain unobstructed CBD views. Accordingly, the view impact is acceptable and view sharing is reasonable.

114. Although the view impacts are considered significant in some instances, these impacts are to bedrooms at lower levels which are not deemed as important as living room and balcony views. In this instance, living rooms and balcony views at upper levels are maintained. The expectation to retain these views at lower levels is considered unrealistic, particularly given that there are planning controls allowing for an envelope with a height of 22m; and as there is an approval in place for a concept building envelope that has similar impact.

Natural Ventilation

115. All habitable rooms are provided with windows capable of providing adequate natural ventilation as required by Objective 4B-1 of the Apartment Design Guide.

116. The site has frontages to and is impacted by road traffic noise from Bourke Street and O’Dea Avenue, both of which carry heavy traffic volumes. Section 4.2.3.11 of the Sydney DCP 2012 outlines criteria for internal noise levels in residential developments to ensure that occupants have an acceptable level of amenity in noisy environments. Compliance guidance is provided within the City of Sydney’s ‘Draft Alternative Natural Ventilation of Apartments in Noisy Environments – Performance Pathway Guideline’.
117. Wintergardens are proposed to noise affected apartments with bedrooms and living rooms facing Bourke Street and O’Dea Avenue for natural ventilation, however it is not clear whether this solution incorporates any openings.
118. An acoustic report has also been submitted verifying that ventilation may be achieved through an air conditioning system with a fresh air supply; and that toilet exhaust fans can facilitate ventilation. The assessment also indicates that sound absorptive treatments to balcony soffits and wintergardens with an acoustically lined natural ventilation plenum would be appropriate. An indicative diagram of the plenum has been provided by the applicant, but not depicted in plan.

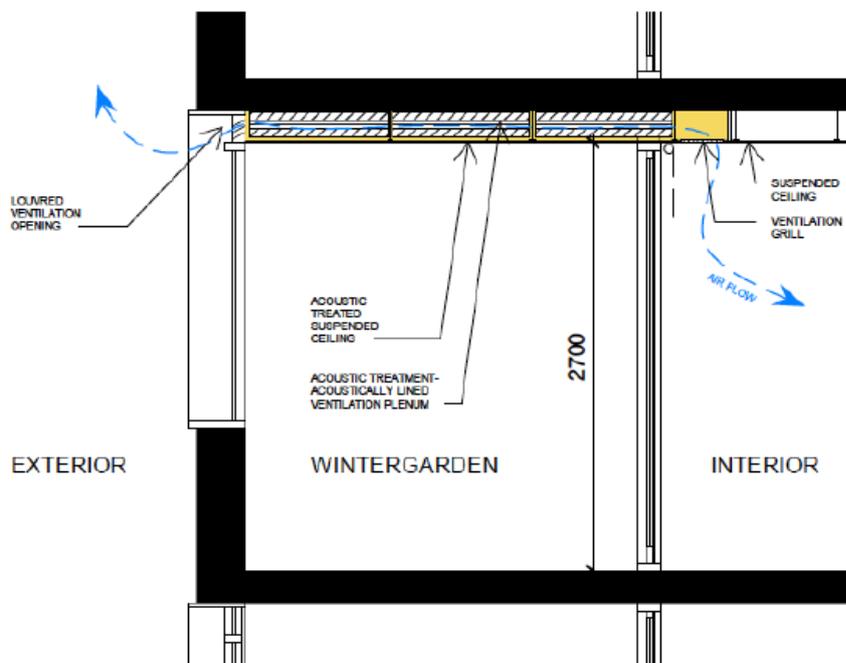


Figure 64: Proposed indicative diagram of plenum solution

119. The above solution does not demonstrate that internal noise levels and ventilation has been achieved. It is therefore recommended that a condition be imposed requiring a suitably qualified ventilation expert to prepare a ventilation assessment demonstrating that the proposal achieves the minimum performance requirements in the City’s ‘Draft Alternative Natural Ventilation of Apartments in Noisy Environments – Performance Pathway Guideline’.

120. All wintergardens will also need to demonstrate that they have openings (openable sashes and/or louvres) which achieve the minimum effective openable area (EOA) for ventilation purposes. An appropriate condition is recommended.
121. All recommended conditions for natural ventilation form part of Attachment A of this report.

Communal Open Space

122. The application proposes a combined area of 1,189sqm of communal open space at rooftop to Building A and B. The areas provide approximately 60% of the site's overall communal open space and are considered to be the principal usable area. Both areas allow for equitable access via a lift.
123. It is noted however, that the communal open space is located in close proximity to apartments of adjoining sites that will overlook the subject rooftop, including 890-898 Bourke Street, 15 and 17 Joynton Avenue. Although separation distances are a minimum of 9m to the boundary as per Objective 3F-1 of the ADG, there are concerns with regard to visual privacy and noise to surrounding properties. See **Figure 65** below depicting the proposed communal open space at rooftop and the proximity to neighbouring properties.

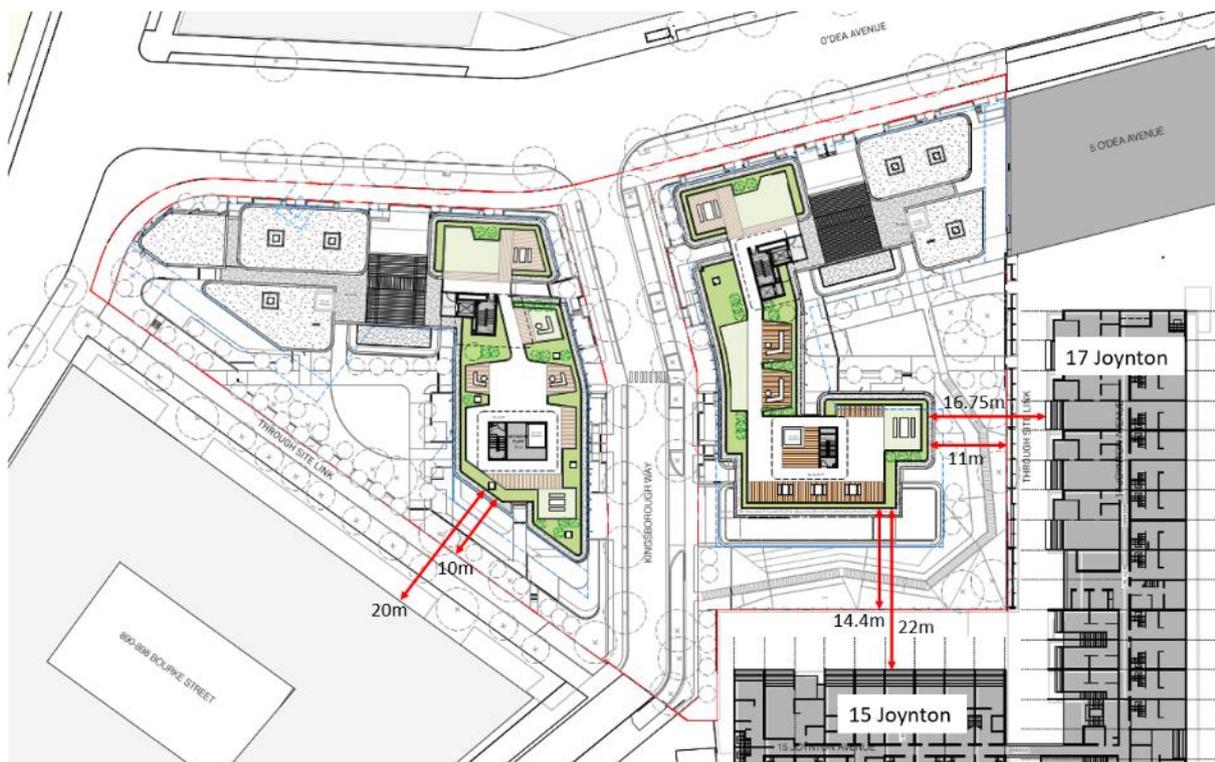


Figure 65: Proposed rooftop plan depicting communal open space and separation distances

124. In order to limit visual and possible acoustic privacy impacts to adjoining development, it is recommended that communal areas to the south and south-east of the southern-most lift overrun to each building be replaced landscaping buffers. The reduction in communal open space will still allow the subject site to achieve 25% as per Part 3D-1 ADG. **Figure 66** below depicts the areas to be replaced with landscaping in light green.
125. In addition to the reduced space, it is noted that the overall design of the rooftop communal open space provides little diversity of space or experience. There is vast expanses of paving, limited furniture and use of artificial turf in particular that is not supported due to its heat retaining properties. Proper grass, seating walls or fixed seating to the edges of the communal open space can be provided, along with fixed amenities such as tables, BBQs, play or playable elements and the like.
126. The entire rooftop communal open space requires further development to ensure well-considered, functional area for residents. Appropriate conditions are recommended as part of Attachment A.



Figure 66: Proposed reduction in rooftop communal open space – light green areas represent landscaped areas to be conditioned

Landscaping

127. The proposal incorporates landscaped areas along the through-site link, Kingsborough Way and along the perimeter of the site as part of the deep soil / communal open space areas for Buildings A and B.
128. At rooftop, there are areas of landscaping, and this is to be further embellished as a condition of consent to provide a visual buffer to surrounding development facing the communal open space (as discussed above).
129. Deep soil areas are provided for both Buildings A and B, totalling 11.1%. These areas are located within the communal open space areas at ground floor facing the through-site link and the eastern boundary facing 17 Joynton Avenue. There is deep soil zone that wraps around the driveway and southern boundary to 15 Joynton Avenue.
130. Whilst deep soil zones are provided in excess of ADG and DCP requirements, these areas will include substantial permeable paving and retaining walls to deal with site falls and access to the through-site link at the eastern boundary and general access within the site. Additionally, the landscape adjacent to 15 Joynton Avenue features a path through planting. This entire area of landscape/deep soil could be poorly overlooked and inactive, potentially raising a CPTED issue.



Figure 67: Proposed deep soil diagram

131. Conditions are recommended to minimise footings and retain the expansive areas of deep soil; and to provide low planting with a straightened path to the boundary of 15 Joynton Avenue to ensure a clear view from one end to another.

Consultation

Internal Referrals

132. The application was discussed with Council's Building Services Unit; Environmental Health Unit; Licenced Premises Unit; Heritage and Urban Design Unit; Public Domain Unit; Safe City Unit; Surveyors; Transport and Access Unit; Tree Management Unit and the Waste Management Unit who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Sydney Water

133. The application was referred to Sydney Water, who provided a response on 7 July 2020 advising of the water and wastewater servicing requirements for the development, and the need for a Section 73 application. The recommend conditions are included in Attachment A.

Advertising and Notification

134. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 13 February and 13 March 2020. A total of 21 submissions were received. Following submission of amended plans, the application was re-notified for a period of 14 days between 13 August and 28 August 2020 and 14 submissions were received. A total of 2,012 properties were notified.

135. The submissions raised the following issues:

Issue: Height, bulk and scale

- The height should remain compliant at 22m.
- Excessive bulk and scale.
- The height non-compliance will set an undesirable precedent in the area.
- The development provides insufficient setbacks (i.e. 3m to the eastern boundary and 2m to 892 Bourke Street).
- The height variations are not minor or inconsequential.

- The height variations are inconsistent with the concept approval.

Response: A detailed discussion relating to the height non-compliance is provided under the heading Clause 4.6 request to vary a development standard and Height in Storeys.

The changes to height are considered appropriate in this instance, and the concept approval D/2017/1723/A has been amended to reflect the proposal to ensure consistency between the two applications.

Setbacks have been provided for the development in accordance with the approved concept envelope and ADG requirements with regard to building separation.

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.

Issue: *Density*

- Adverse impacts have been created by the developer's desire to achieve the full 2.2:1 FSR.
- Higher density will lead to increased traffic and reduce overall liveability for current and future residents in the area.
- Zetland is rapidly becoming overdeveloped, evident in the rising vacancy rates in the area. This development will exacerbate the situation with more apartments than necessary.

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

The site is located within the Green Square Urban Renewal Area, which has a strategic strategy identifying increased housing and employment opportunities. Additionally, the site is located in a B4 Mixed Use zone, which permits residential flat buildings and serviced apartments as evidenced by development in close proximity to the site. The site is located within walking distance of a number of existing bus services and train stations to service current and future occupants.

Issue: *Overshadowing and solar access*

- Setbacks should comply to allow sunlight into the through-site link at the adjoining property on the eastern boundary.
- The breaches to the envelope result in unnecessary overshadowing.
- A shadow study for a compliant scheme should be submitted to demonstrate the impacts of the proposal.
- The shadow diagrams are inaccurate.

- The height increase will reduce sunlight to lower level apartments of adjoining sites.

Response: Refer to the discussion section under the heading Consistency with the Concept Approval. The information provided with regard to overshadowing was considered to be adequate for assessment.

The proposed exceedance of height will not result in any significantly adverse overshadowing impacts on adjoining properties.

Issue: *View loss*

- View sharing is not achieved when apartments are not able to see the horizon and/or CBD buildings.
- Additional setbacks will allow for view sharing.
- There does not appear to be much tolerance for differences in the height of the development before it begins to interfere with views. Construction may differ from the design and analysis shown.

Response: Refer to the discussion section under the heading View loss. The information provided with regard to the view loss analysis was considered to be adequate for assessment.

The proposed exceedance of height will not result in any significantly adverse view loss impacts to adjoining properties.

Issue: *Acoustic and visual privacy*

- The rooftop communal open space is likely to be a significant source of noise and nuisance.
- The acoustic report does not assess noise impacts of the rooftop.
- The rooftop space will look directly into the living areas and private open space of adjoining residences.
- A lot of the units from the subject site will be facing adjoining apartment buildings, with inadequate setbacks to control privacy impacts.
- Plant equipment should be located away from neighbours.
- Garbage trucks will move up and down the car ramp within the development constantly, increasing noise impacts.
- The driveway will increase traffic noise.

Response: The submitted acoustic report demonstrates that the plant areas and communal open space and rooftop of both buildings will be able to comply with the relevant noise criteria. It is recommended that for the communal open space in particular, that the hours of operation be restricted to between 8am and 10pm daily. As discussed elsewhere in this report, the communal open space is to be reduced in size to limit acoustic and privacy impacts to 15 and 17 Joynton Avenue. The acoustic report has been reviewed by the City's Environmental Health Unit and is acceptable.

Setbacks have been provided for the development in accordance with the approved concept envelope and ADG requirements with regard to building separation. This is addressed within the ADG compliance table of this report.

The driveway on Kingsborough Way is considered to be an appropriate location in light of clearances to intersections, the sloping of the site and the impact of vehicles entering and exiting the site. The noise impacts are considered to be acceptable given that the driveway is located within the site, and as waste collection will occur at basement level and not at street level.

Issue: *Construction Impacts*

- Noise impacts during construction will be significant. This area has had no respite for the last 6 years.
- Conditions should be imposed to minimise time periods for noise generation.
- Neighbours should be notified about construction work, and there should be a complaints handling procedure in place.
- Construction will compromise the integrity of adjoining buildings. Dilapidation reports are required.
- The Developer has already started works relating to demolition. These works are disturbing residents as there are no mitigation or protective noise measures in place.

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

A condition requesting dilapidation reports to be carried out for surrounding affected properties has been included in the proposed conditions of consent.

Issue: *Traffic Impacts*

- The extension of Kingsborough Way to O'Dea Avenue will have a negative impact on the local road network.
- There will be left and right turns from all directions to access Kingsborough Way which is inconsistent with surrounding approvals.
- Kingsborough Way will be used as a thoroughfare.

- Traffic calming measures will not stop traffic.
- Car share spaces have not been provided.

Response: Whilst the design of Kingsborough Way has not been finalised, it will be fitted with traffic calming measures so that vehicles are required to slow down. Access in and out of Kingsborough Way will be subject to left in, left out turns only, limiting the adverse impact on the greater traffic network.

The proposal provides 3 car share spaces as per the DCP, and a condition is recommended to ensure these spaces are allocated as such.

Issue: *Wind Impacts*

- The wind report does not consider the effect and impact of wind on adjoining neighbours.
- A wind tunnel may be created given the height non-compliance.

Response: The wind report is considered appropriate for the development, and a condition has been imposed to implement all relevant recommendations.

Issue: *Use of Building A for serviced apartments*

- The development is predominantly serviced apartments in an area that is almost entirely residential, or where commercial, operate standard business hours.
- This is a 24-hour, non-residential use that is transient by nature.
- This development will not provide housing for the future.
- Will the serviced apartments become residential apartments? The design is for temporary residents with very few vehicles. A change of use will affect amenity of future occupants and adjoining properties.
- The serviced apartments may be used as a quarantine hotel as it is so close to the airport.
- There is limited demand for serviced apartments in the area.
- Serviced apartments generate more noise and outdoor activity, increased anti-social behaviour, waste and vehicle trips.

Response: The site is located in a B4 Mixed Use zone, which permits serviced apartments. The Sydney LEP 2012 requires serviced apartments to be designed to provide a level of amenity that is equivalent to a residential flat building should a change of use to permanent residential accommodation occur in the future. As discussed within this report, the development meets the relevant requirements of SEPP 65 and the ADG, providing adequate amenity for future occupants.

The serviced apartment use is to operate in accordance with the plan of management, setting out security and noise measures, guest behaviour, hours of operation and the like, to reduce amenity impacts to surrounding development. Conditions are recommended for an amended plan of management to be submitted; as well as other noise and waste collection requirements.

Any change of use of Building A to a residential flat building will require a new development application that will be assessed on its merit. Although parking rates for residential apartments is different to that required for serviced apartments, the parking rates for both uses are a maximum under the Sydney LEP 2012.

The use of Building A as a quarantine hotel is at the discretion of the owner and/or developer and cannot be conditioned or controlled by Council.

Issue: Retail use

- The retail tenancy could be used as a late night trading premises, which is a concern given the proximity to residences.

Response: The specific use of the retail tenancy is not covered by the concept approval. Nonetheless, a separate development application or complying development certificate will be required for the fit-out and/or use of the tenancy, including hours of operation.

Issue: Modifications to approval and submission of revised plans

- There are concerns that further modifications will be lodged to increase the envelope should this be approved.
- Multiple iterations of the development have been lodged, making it difficult to track changes.

Response: The application has been amended and re-notified once for public comment. Additional information outlining and addressing the proposed changes was also placed on the City of Sydney website as part of the exhibition process.

Any further modifications of the development will be subject to a separate, merit-based assessment against the relevant planning controls.

Issue: Inconsistency with documentation

- The plans and documentation are inconsistent with regard to apartment numbers, design details etc. Reports are missing vital information (e.g. contamination report has not been reviewed by a site auditor).

Response: Where required, amendments and additional information have been requested. The plans and documentation have been reviewed by City staff and adequate detail has been provided to assess the proposal.

Issue: Design excellence

- The design competition brief allowed architects to explore variations to the height control, encouraging designs to be non-compliant.
- The application does not achieve design excellence as it compromises design quality and amenity.

Response: A competitive design process was undertaken in accordance with the provisions of Clause 6.21 of the Sydney LEP 2012. The brief allowed for a variation to the height control, to the maximum of one additional storey with consideration given to minimising view loss and overshadowing to surrounding developments.

The scheme proposed a similar bulk and scale to what is currently being assessed and was considered capable of achieving design excellence. As part of the detailed design development, the proposal has evolved to address concerns raised by the Selection Panel, Design Advisory Panel and City staff.

The scale, form, articulation and architectural contribution of the proposed development is considered to be appropriate to the site and the surrounding context. It has been determined within this assessment that the non-compliance with height is acceptable in this instance and will not result in any significantly adverse amenity impacts. The proposal is considered to achieve design excellence.

Issue: Sites owned by the Developer

- The Developer has had issues with other apartment buildings.
- Council needs to ensure the certifiers are from an organisation that is trusted.
- They will build and leave the site, never to return, then disclaim responsibility should issues arise.

Response: The concerns are noted. The construction of any new development is required to comply with the National Construction Code and the owner, developer and/or applicant is to address and comply with the conditions of consent imposed as part of any development approval.

Issue: Property values

- Property values will be affected
- Increasing the height will disadvantage those who have purchased properties and are impacted by the proposal.

Response: The submission is noted; however, property values are not a planning consideration.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

136. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. The contribution is based on the proposed number of keys for the serviced apartment component (based on the number of bedrooms provided), the proposed dwelling mix and the provision of retail GFA.
137. Credits have been applied for the most recent approved uses contained of the site, in this instance being bulky goods, office and general industry, based on the breakdown of GFA provided by the applicant.
138. 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.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

139. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$214.17 per square metre of total residential floor area (totalling 10,163sqm and \$2,176,609.71); and at a rate of \$71.36 per square metre of total non-residential floor area (totalling 9,913sqm and \$707,391.68. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

140. Environmental Planning and Assessment Act 1979.
141. City of Sydney Act 1988
142. Sydney Water Act 1994

Conclusion

143. The application proposes remediation, excavation and construction of two, 7 storey buildings containing 89 serviced apartments with 1 retail tenancy (Building A) and 92 residential apartments (Building B) on the corner of Bourke Street, O’Dea Avenue and Kingsborough Way, with two basement levels and vehicular access from Kingsborough Way.
144. The proposal is consistent with the amended concept approval being D/2017/1723/A.

145. The development exceeds the maximum 22m building height standard by 4.74m (21.5%) for Building A and 4.93m (22.4%) for Building B caused by parapets, lift overruns and awnings associated with rooftop communal open space. A request to vary Clause 4.3 Height of Buildings development standard has been submitted in accordance with Clause 4.6 of the Sydney LEP 2012. The statement demonstrates that compliance with the development 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.
146. Subject to conditions, the proposal is generally consistent with the relevant planning provisions, including SEPP 65, the Sydney LEP 2012 and the Sydney DCP 2012. Proposed non-compliances have been assessed as having merit in this case and are addressed in the report. Conditions are recommended to address non-compliances where appropriate.
147. 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 17 April 2020.
148. 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.
149. The development is in the public interest and is recommended for approval, subject to the conditions in Attachment A.

ANDREW THOMAS

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