

Item 10.**Section 4.55 Application: 888 Bourke Street, Zetland – D/2017/1723/A**

File No.: D/2017/1723/A

Summary

Date of Submission:	6 August 2020
Applicant:	Toplace Pty Ltd
Architect/Designer:	Peddle Thorp & Walker (PTW) Architects
Developer:	Toplace Pty Ltd
Owner:	888 Place Pty Ltd
Planning Consultant	LJB Urban Planning
Cost of Works:	\$56,230,573
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, which are permissible with consent within the zone.
Proposal Summary:	<p>This Section 4.55(2) application seeks to modify the concept approval for two mixed use building envelopes. The envelopes comprise “Building A” fronting Bourke Street, O’Dea Avenue and Kingsborough Way; and “Building B” fronting O’Dea Avenue and Kingsborough Way.</p> <p>Deferred commencement consent for the current concept building envelopes was granted under delegation of the CEO on 24 January 2019.</p> <p>The proposed modifications principally involve altering the approved building envelopes to align with the winning design competition scheme and detailed design development application in terms of height and bulk and separation. An amendment to the provision of public art is also proposed. Proposed modifications are as follows:</p>

- (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.

The proposed modifications will deliver consistency between the staged development applications, as required under Section 4.24 of the Environmental Planning and Assessment Act 1979. The detailed design development application D/2020/93 is presented to the CSPC concurrently for approval.

The application was notified between 13 August and 28 August 2020 and 13 submissions were received. Issues raised include overshadowing, view loss, acoustic and visual privacy, construction and traffic impacts, as well as the serviced apartment and retail uses.

As amended, the proposed building envelopes are considered to be substantially the same as previously approved and contextually appropriate. The detailed design development application will be considered concurrently by the CSPC under D/2020/93, demonstrating that a generally compliant scheme can be provided within the amended envelope. Consequently, the amendment is recommended for approval.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) Sydney Airport Referral Act 1996
- (iii) Water Management Act 2000
- (iv) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012

Attachments:

- A. Amended Conditions of Consent
- B. Amended Building Envelope Drawings
- C. Solar Impact Analysis
- D. View Sharing Analysis

Recommendation

It is resolved that consent be granted to Section 4.55 Application No. D/2017/1723/A subject to the amendment of the following conditions (with modifications shown in ***bold italics*** (additions) and ~~strikethrough~~ (deletions), as follows:

(2) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2017/1723 dated 12 December 2017 and the following drawings prepared by ~~Krikis Taylor Architects~~ ***PTW Architects***:

Drawing Number	Drawing Name	Date
SK06.10 Issue A	Envelope Basement 1 & 2 Floor Plan	1 November 2018
SK06.11 Issue J	Envelope Ground to Level 5 Floor Plan	26 October 2018
SK06.16 Issue H	Envelope Elevations	24 July 2018
SK06.15 Issue J	Envelope Sections	1 November 2018
<i>S1DA-0010 Revision A</i>	<i>Amended Envelope Basement Floor Plan</i>	<i>7 August 2020</i>
<i>S1DA-0011 Revision A</i>	<i>Amended Envelope Ground & 1 Floor Plan</i>	<i>7 August 2020</i>
<i>S1DA-0012 Revision A</i>	<i>Amended Envelope Level 2 & 3 Floor Plan</i>	<i>7 August 2020</i>
<i>S1DA-0013 Revision A</i>	<i>Amended Envelope Level 4 & 5 Floor Plan</i>	<i>7 August 2020</i>
<i>S1DA-0014 Revision A</i>	<i>Amended Envelope Level 6 Floor Plan</i>	<i>7 August 2020</i>
<i>S1DA-0020 Revision A</i>	<i>Amended Envelope Sections</i>	<i>7 August 2020</i>
<i>S1DA-0030 Revision A</i>	<i>Amended Envelope Elevations</i>	<i>22 July 2020</i>

as amended by plans submitted in order to achieve compliance with deferred commencement condition (2) in Schedule 1 of this consent and the other conditions of this consent.

- (b) In the event of any inconsistency between the approved plans (including plans approved in accordance with deferred commencement condition (2) in Schedule 1) and supplementary documentation, the plans will prevail.

(8) PUBLIC ART

- (a) The document titled '888 Bourke Street, Zetland – Preliminary Public Art Plan', prepared by Site Image Public Artists, Issue C and dated 31 July 2018 must be included as annexure to the competition brief for the competitive design process.
- ~~(b) A detailed public art plan must be submitted with any subsequent development application for detailed design and construction of the development.~~
- (c) ~~The~~ **A** detailed public art plan ~~referred to in (b) above~~ must be prepared **for any subsequent detailed design proposal** in accordance with Section 3.1.5 of the Sydney Development Control Plan 2012, the City of Sydney Public Art Strategy and Policy and Interim Guidelines for Public Art in Private Development, and include:
- (i) A rationale for the selection of artists.
 - (ii) A rationale for each artist's concept relevant to the site.
 - (iii) An indication of how each artwork concept is commensurate with the scale of the development.
 - (iv) Provision of public art concepts, including the form, dimensions, materials and locations of the artworks.
 - (v) A program for documentation, fabrication and installation and integration with the construction program for the development.
 - (vi) Engineer's drawings, expected maintenance requirements and deaccessioning agreements.
- (d) Neither street furniture nor interpretation strategies must be considered as part of the public art component.

(11) BUILDING HEIGHT

The maximum height of the buildings must not exceed ~~22~~ **22.79** metres **to the parapet and 26.93 metres to the top of the lift overrun** in accordance with the Sydney LEP 2012. No structures are to exceed the **nominated heights 22 metres** height limit.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development as modified is substantially the same as was originally approved and is consistent with the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act 1979.
- (B) The proposed modifications ensure that the detailed design development application is consistent with the concept approval to satisfy Section 4.24 of the Environmental Planning and Assessment Act 1979.
- (C) The increased height and bulk of the building envelopes are in keeping with the desired future character of the area and will not adversely impact the amenity of the surrounding area. These variations are reasonable and justified with regard to the detailed design development application.
- (D) The proposed building envelopes are capable of accommodating a future building design which is capable of exhibiting design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.

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.
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.

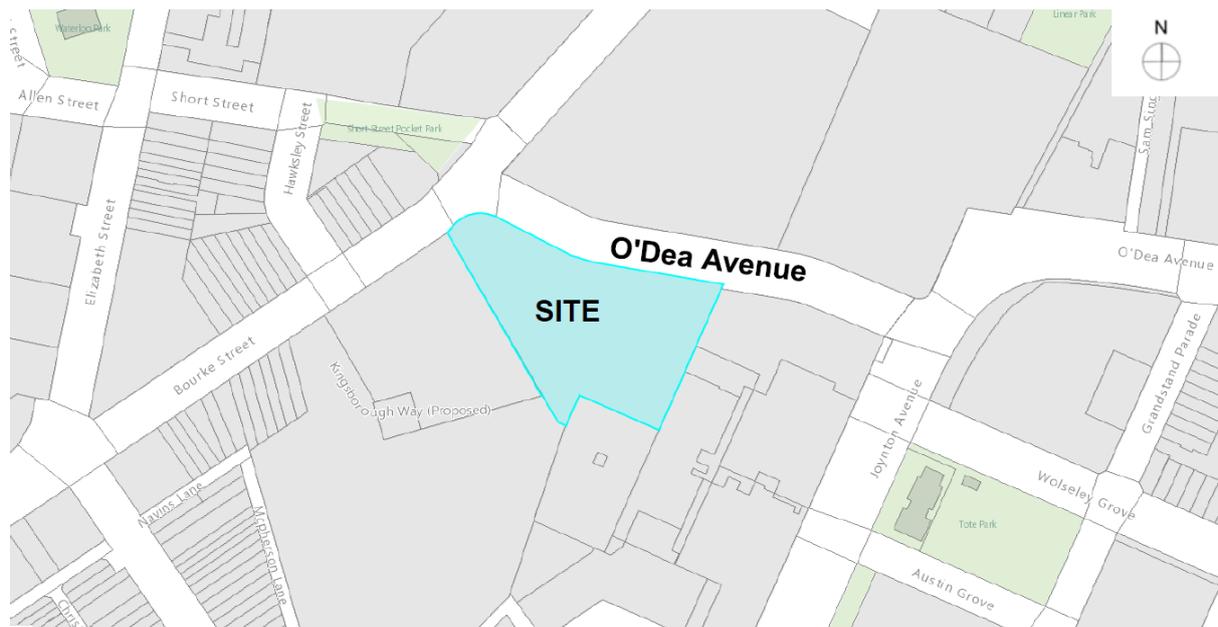


Figure 1: Plan image of the subject site and surrounding area (site shown in blue)

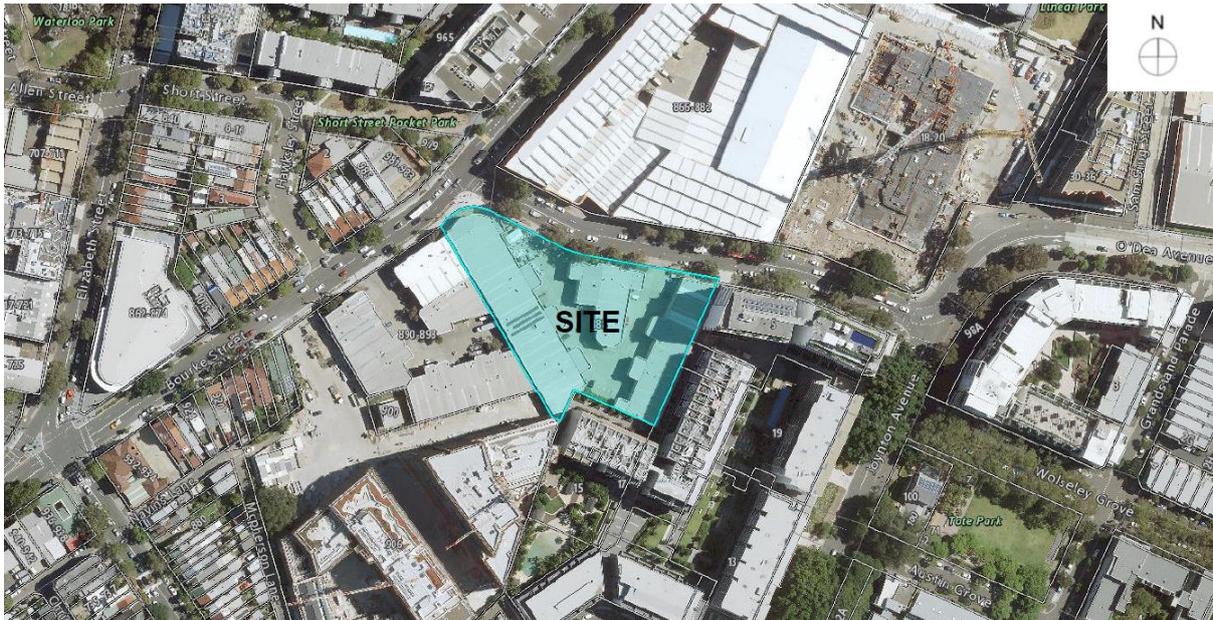


Figure 2: Aerial photograph of the subject site and surrounding area (site shown in blue)



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 site 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 Development Application – D/2017/1723

16. On 24 January 2020, 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 Section 4.55(2) modification application seeks to amend the approved concept design to ensure consistency with the detailed design application.

21. Plans and sections of the originally approved concept are provided below.

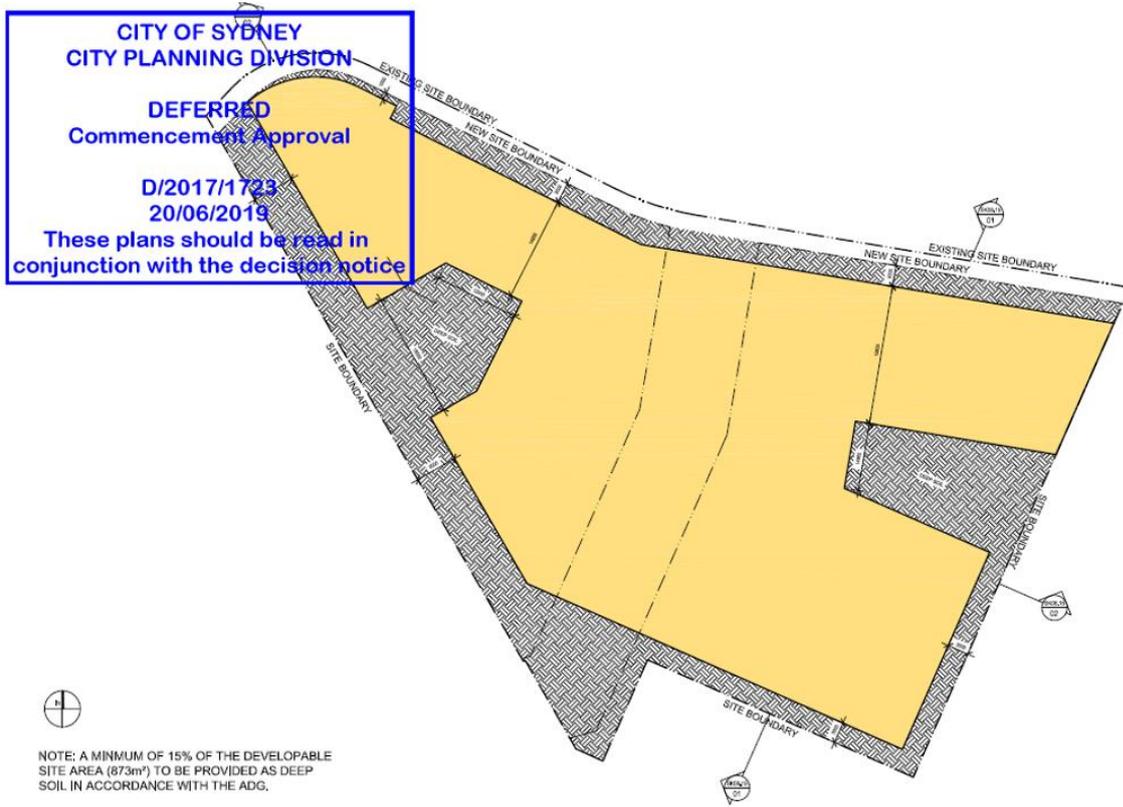


Figure 15: Approved envelope basement plan

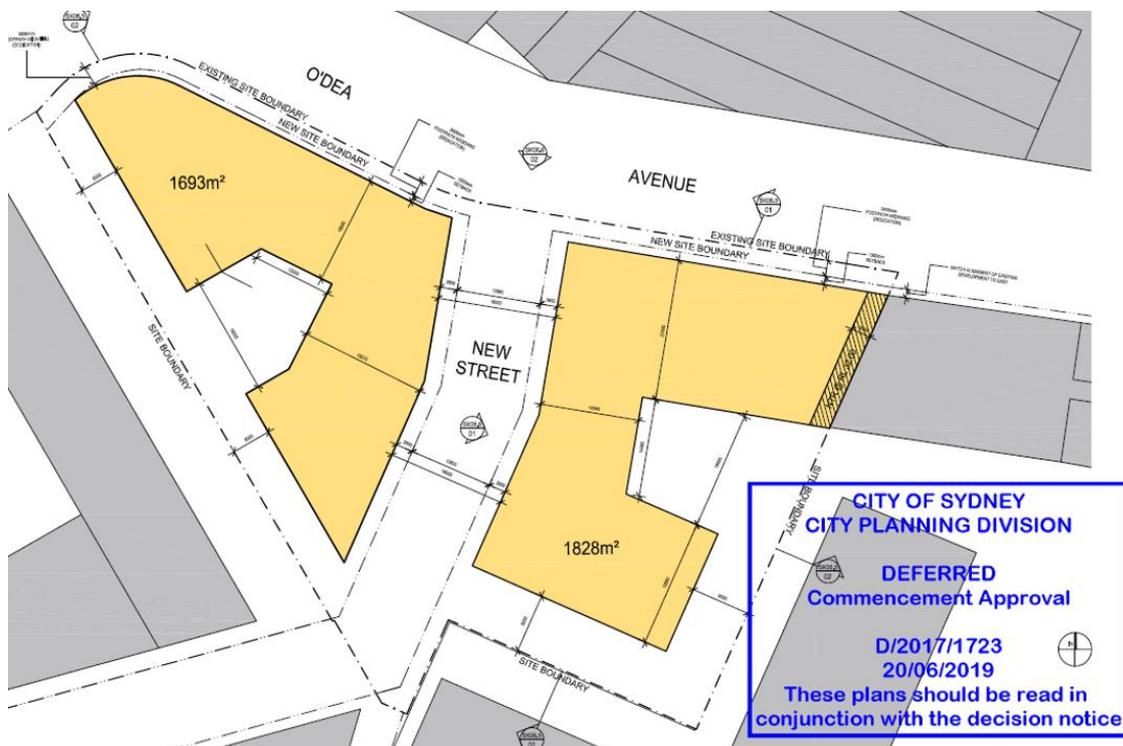


Figure 16: Approved envelope levels ground, 1, 2 and 3 floor plan

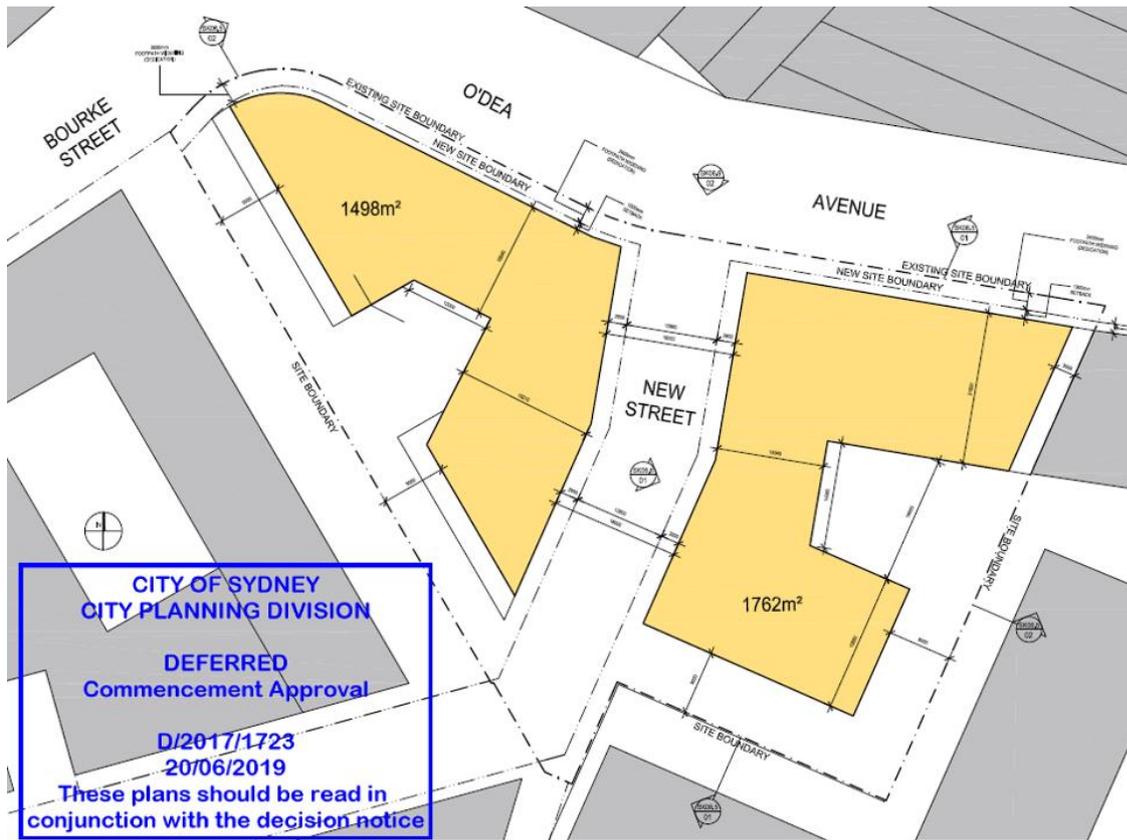


Figure 17: Approved envelope levels 4 and 5 floor plan

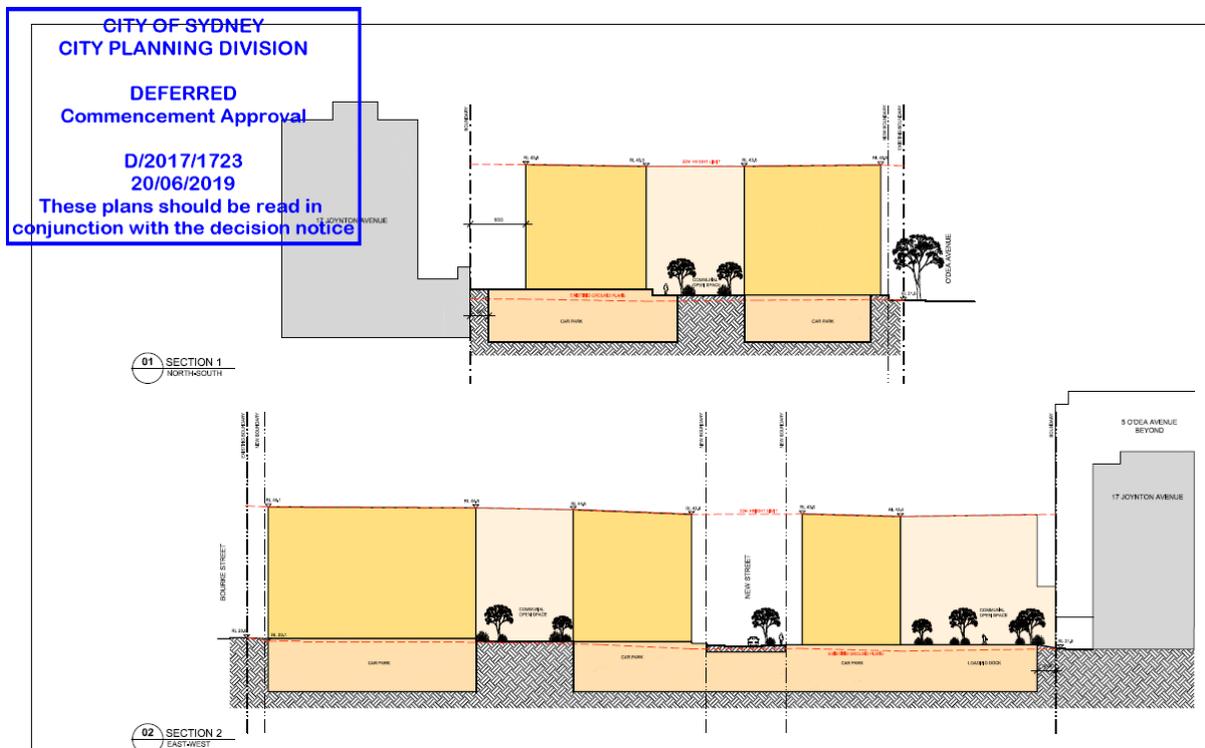


Figure 18: Approved envelope sections

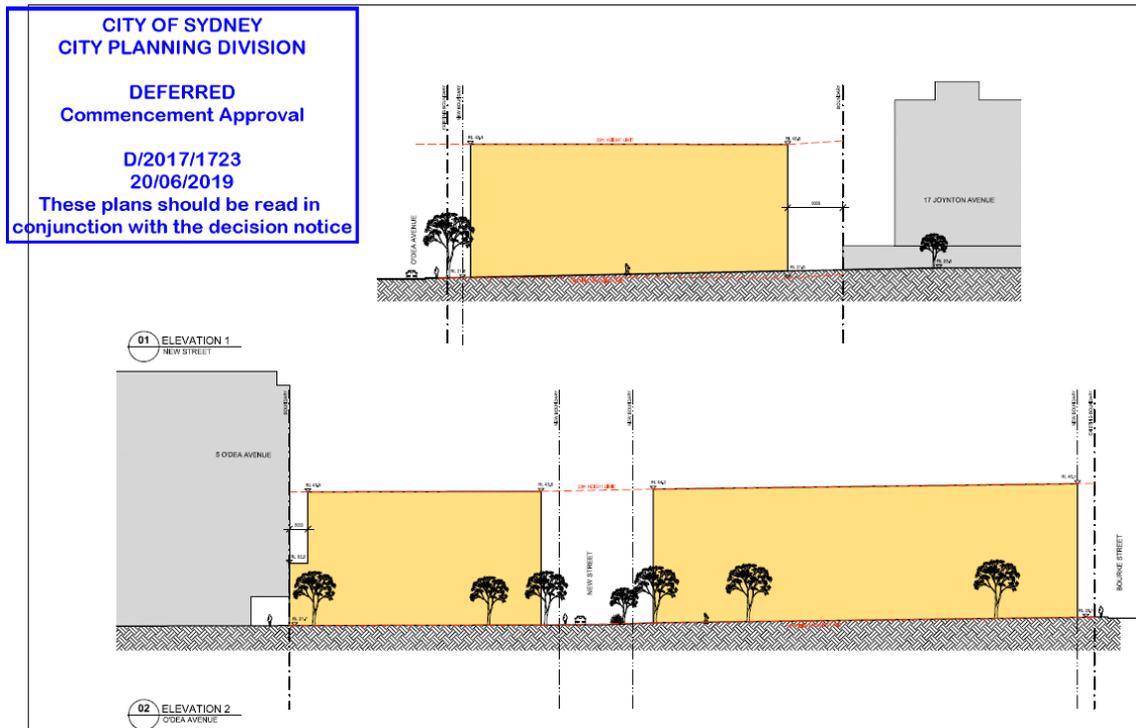


Figure 19: Approved envelope elevations

Planning Agreement

22. The site is subject to a planning agreement that is attached to the current 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:
- (f) 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 for the subject development;
 - (g) Dedication and associated construction of land 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. 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; and
 - (h) Dedication and associated construction of a new road to be known as Kingsborough Way comprising an area of 917sqm. 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.
 - (i) 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.

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

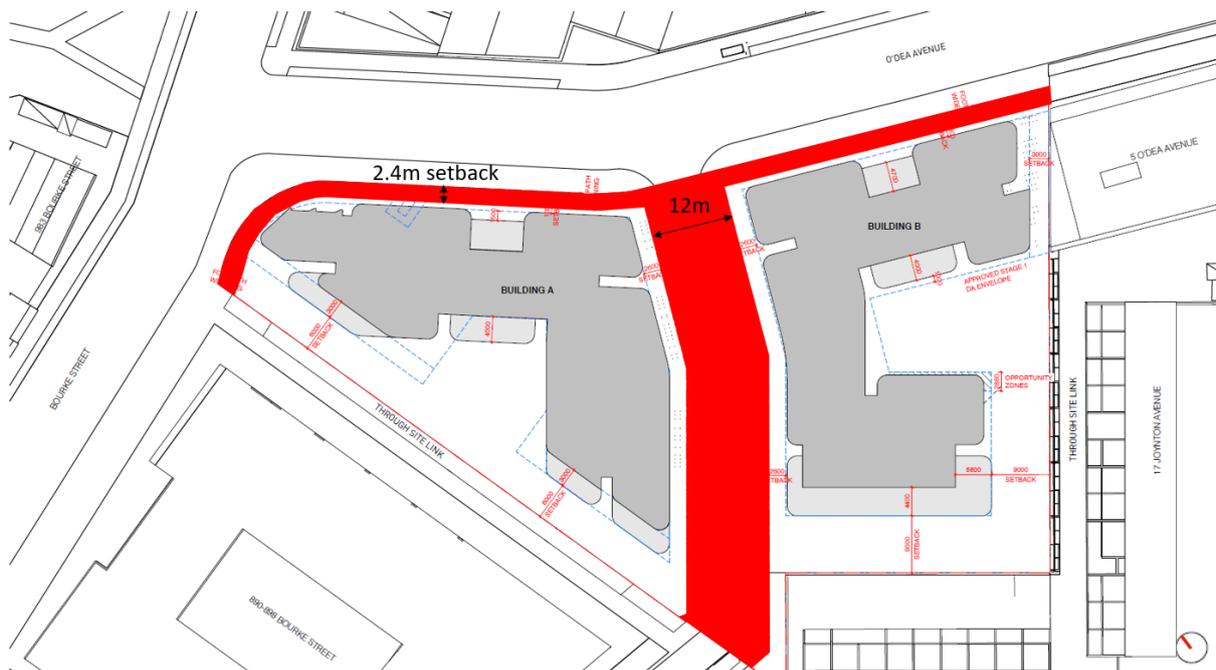


Figure 20: Site plan depicting land dedication for footpath widening and a new road within the site

2. The VPA does not affect 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.
3. The land to be dedicated to Council has been included in the plans submitted for assessment. Final details such as ground level RLs, treatment of the laneway etc. will be finalised as part of the public domain plan submission for the detailed design development application (D/2020/93) which is being assessed concurrently.

Competitive Design Process

24. 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.
25. 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.

26. 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.
27. 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; and
 - (k) The proposed public art is promising and should be further developed.
28. 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.

29. The PTW scheme forms the basis of the detailed development application being assessed concurrently with this Section 4.55 application. Images relating to the original scheme (presented 17 October 2019) are provided below.



Figure 21: View of competition winning scheme – looking down O'Dea Avenue



Figure 22: View of competition winning scheme (Building B) – on the corner of O’Dea Avenue and Kingsborough Way

Early Works Approval – D/2019/1394

30. Development consent was granted on 12 February 2020 for the demolition of all existing industrial buildings. No building works or excavation and no tree removal were approved as part of this consent.

Detailed Design Development Application – D/2020/93

31. On 4 February 2020, a development application for the detailed design of Buildings A and B was lodged with Council. This DA proposes remediation and construction of a mixed use development comprising residential and serviced apartments, and a retail tenancy.
32. The application is to be determined concurrently by the CSPC and is recommended for approval. Refer to detailed development application D/2020/93 CSPC report for details.

Proposed Development

33. The Section 4.55(2) modification application seeks to modify the concept approval to bring it in line with the subsequent detailed design application.
34. The application modifies the existing concept envelope to:
 - (a) increase the height of Buildings A and B;

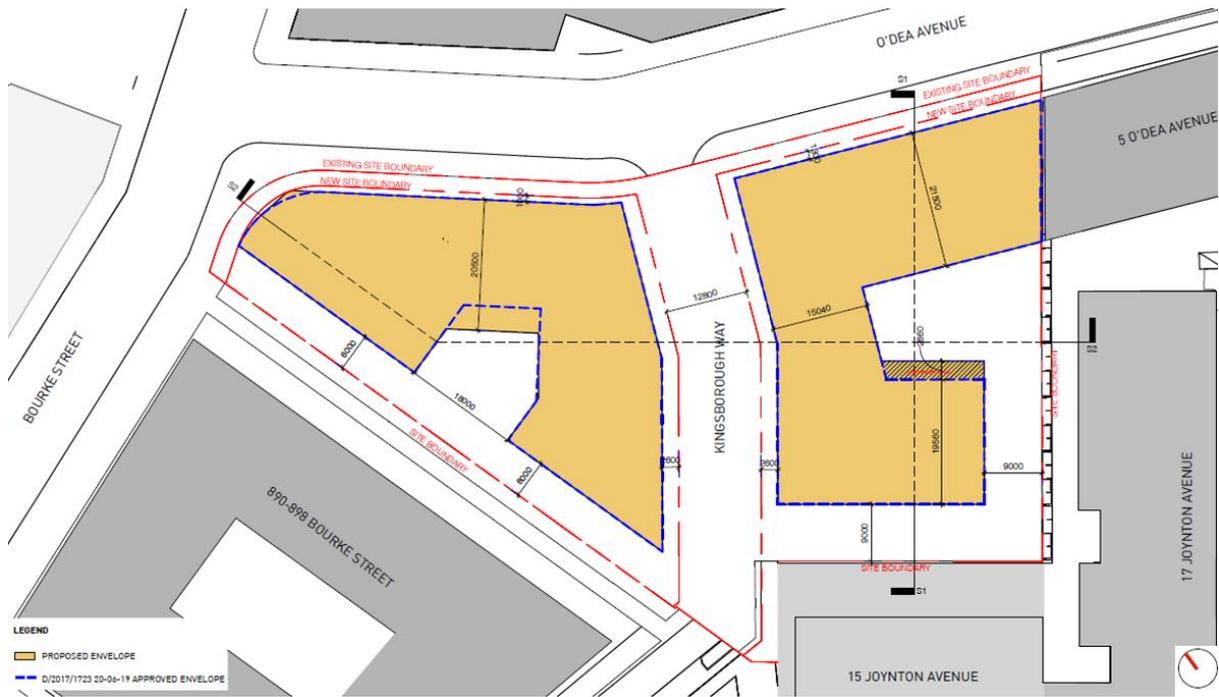


Figure 24: Proposed ground floor and level 1 envelope plan. Levels 2 and 3 are similar. Approved concept building envelope outlined in blue.

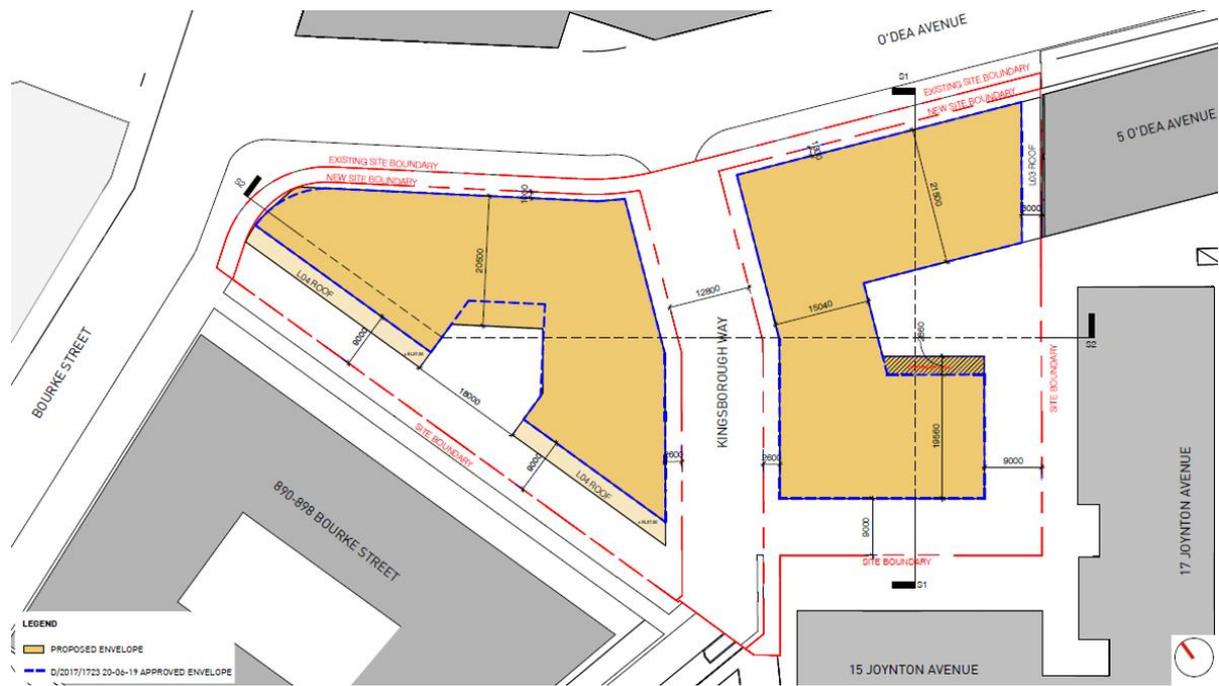


Figure 25: Proposed level 4 and 5 envelope plan. Approved concept building envelope outlined in blue.

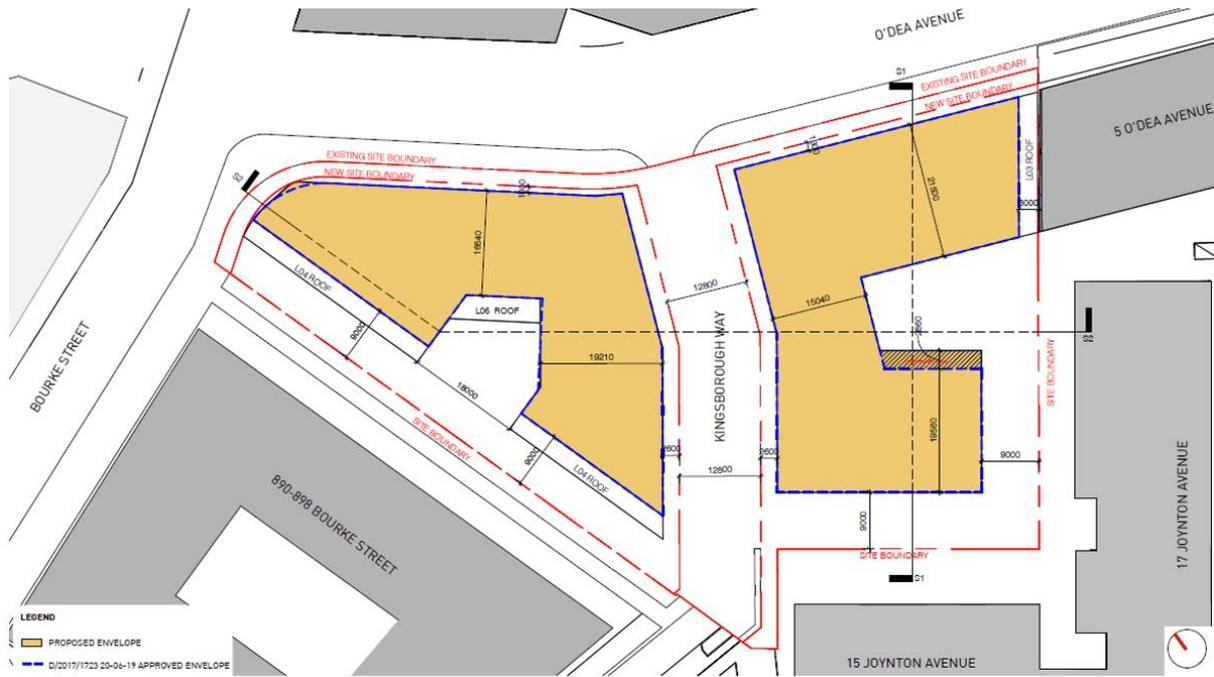
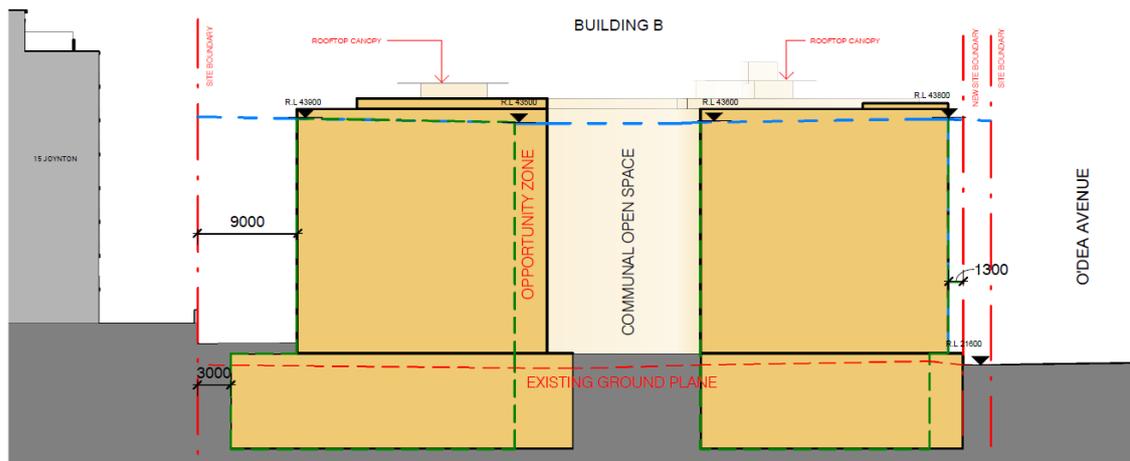


Figure 26: Proposed level 6 envelope plan. Approved concept building envelope outlined in blue.



SECTION 1
NORTH - SOUTH (LOOKING WEST)

Figure 27: Proposed section north-south. Approved concept building envelope outlined in blue.

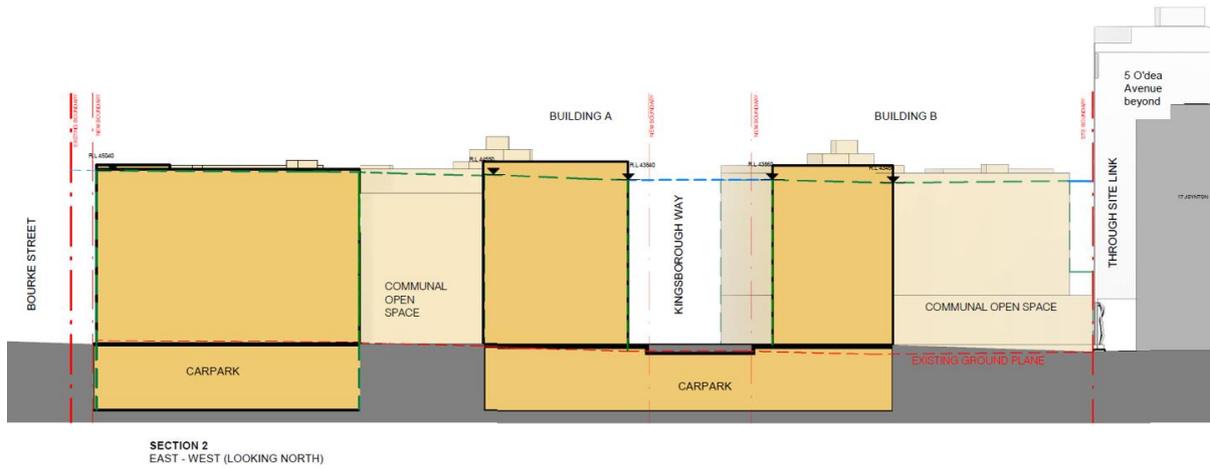


Figure 28: Proposed section east-west. Approved concept building envelope outlined in green and approved 22m height outlined in blue.

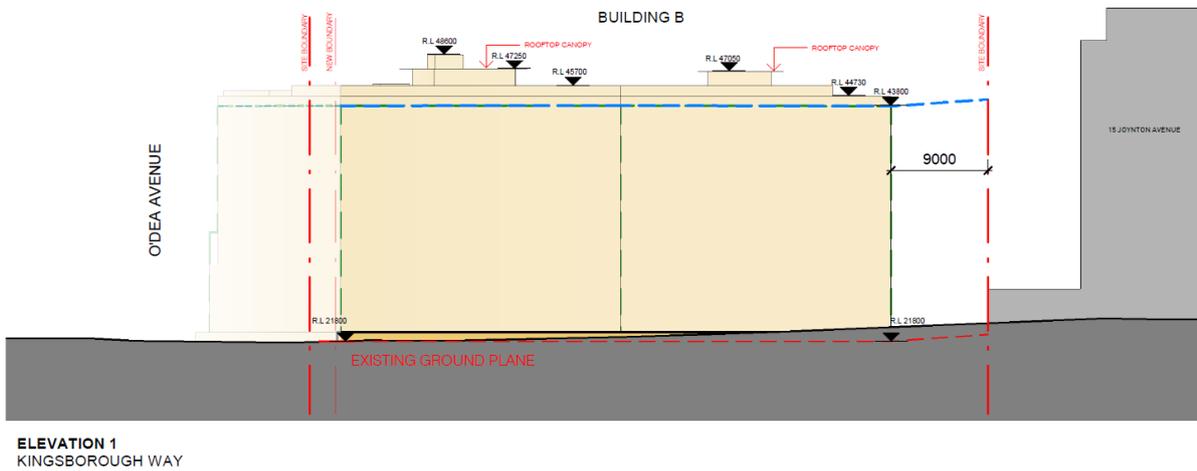


Figure 29: Proposed elevation – Kingsborough Way. Approved concept building envelope outlined in green and approved 22m height outlined in blue.

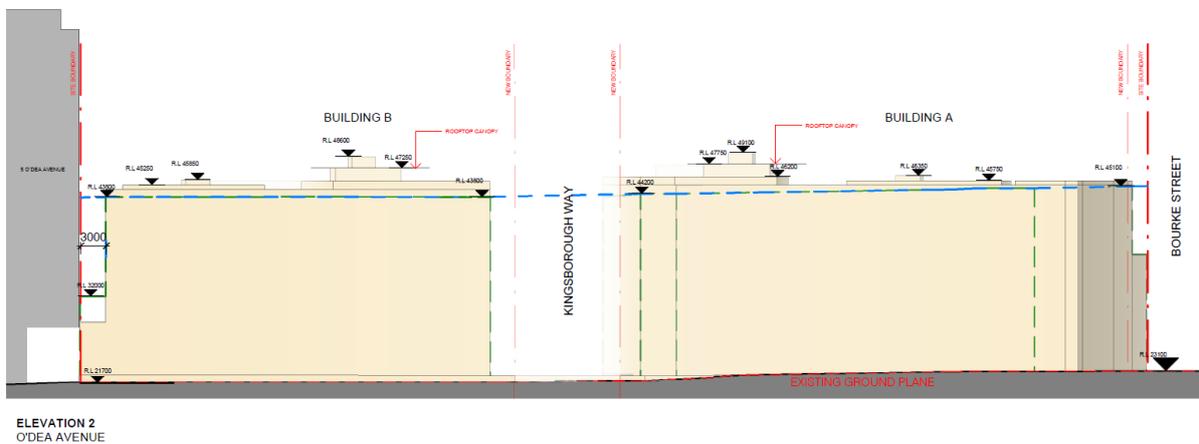


Figure 30: Proposed elevation – Kingsborough Way. Approved concept building envelope outlined in green and approved 22m height outlined in blue.

Threshold Test

37. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelopes are not inconsistent with the intent of the approved concept envelope. As per the originally approved concept application, the proposed modifications will deliver two mixed use building envelopes, with Building A fronting Bourke Street and Building B on the corner of Bourke Street and O'Dea Avenue. Proposed modifications primarily relate to building height, bulk and separation.
38. The height modification allows for consistency with the winning scheme following completion of the competitive design process.
39. Footprint changes are supported as they do not result in unacceptable overshadowing, view loss or privacy impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
40. In accordance with Section 4.55(2), an assessment against the relevant provisions of Section 4.15(1) of the Act are provided under the headings in the Discussion section below.

Assessment

41. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act) are still relevant.

State Environmental Planning Policies

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

42. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
43. 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.
44. 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.

45. An assessment of the proposal against the design quality is provided as follows:

(a) **Principle 1: Context and Neighbourhood Character**

The amended building envelopes allow for a development that is contextually appropriate and consistent with the existing and desired future character of the area.

(b) **Principle 2: Built Form and Scale**

The amended envelopes are capable of providing a built form that has appropriate massing and scale.

(c) **Principle 3: Density**

The proposed building envelopes enable the site to achieve the maximum FSR available under the Sydney LEP 2012 without adverse or unacceptable amenity impacts to neighbouring properties.

In addition to the above, the proposed modifications allow the development to achieve a reasonable level of amenity for the residential amenity for the residential occupants under the Apartment Design Guide.

(d) **Principle 4: Sustainability**

Detailed design applications are required to comply with BASIX requirements. This is subject to detail demonstrated within any stage 2 DA.

(e) **Principle 5: Landscape**

The amended envelopes allow for ample landscaping to be provided in the central courtyard areas and do not reduce the ADG and DCP minimum required deep soil zones required as part of the original concept approval.

(f) **Principle 6: Amenity**

The amended envelopes can accommodate a development with a reasonable level of amenity for the future occupants of the development, as well as adjoining properties.

(g) **Principle 7: Safety**

The amended envelopes allow for a development that can achieve the principles of Crime Prevention Through Environmental Design (CPTED).

(h) **Principle 8: Housing Diversity and Social Interaction**

The amended envelopes allow for a development that can provide a suitable mix of dwelling types under any future detailed design DA.

(i) **Principle 9: Aesthetics**

The detailed design proposal demonstrates the amended envelopes are able to produce a design that is capable of demonstrating design excellence.

46. 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.
47. A detailed assessment of the proposal against the relevant provisions of the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Assessed as acceptable	The envelopes of Buildings A and B will have maximum depths varying between 19.5m and 22m. Despite the non-compliance, the scale is appropriate and D/2020/93 for the detailed design has demonstrated that an acceptable level of residential amenity can be provided for future occupants.

2F Building Separation and 3F Visual Privacy	Compliance	Comment
Up to four storeys (approximately 12 metres):	Assessed as acceptable	No changes are proposed to the approved envelope setbacks from the site boundaries. Minor variations are proposed to the building depth of Buildings A and B. The proposed development is capable of delivering an acceptable level of privacy for future occupants and adjoining properties. See Discussion section.
<ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 		
Five to eight storeys (approximately 25 metres):		
<ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 		

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	The envelope modifications to the development does not preclude the required amount of communal open space from being delivered at detailed design stage.

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 envelope modifications do not preclude the required amount of deep soil zones from being provided for the site. The detailed design application shows that approximately 11.1% of deep soil zone planting is provided.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Section and elevation envelopes show minimum floor to floor heights of 3.1m, which are capable of delivering a minimum floor to ceiling height of 2.7m.
Non-habitable rooms: 2.4m		

48. The amended envelopes are considered acceptable and allow for a development that can achieve a high level of compliance with SEPP 65 and the objectives of the Apartment Design Guide.

Local Environmental Plans

Sydney Local Environmental Plan 2012

49. The provisions of the SLEP 2012 have been taken into consideration in the assessment of the proposal.
50. The site is located within the B4 – Mixed Use zone. The residential, serviced apartments and retail development associated with the building envelopes is permissible within the zone.
51. Compliance with Clause 4.3 Height of Buildings development standard is discussed below.
52. The detailed design development application demonstrates that the revised building envelope can accommodate compliant Floor Space Ratio as outlined in Clause 4.4 and satisfy the objectives of Clause 6.21 Design Excellence.

53. The development is consistent with other relevant provisions.

Discussion

Building height

54. The concept approval set a maximum building height of 22m as per Clause 4.3 of the Sydney LEP 2012, that corresponds to a 6 storey development.

55. The application proposes an increase to the approved height to allow for a 7 storey development. The proposal exceeds the maximum 22m Sydney LEP 2012 height of buildings development standard 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.

56. The extent of the non-compliance is illustrated below.

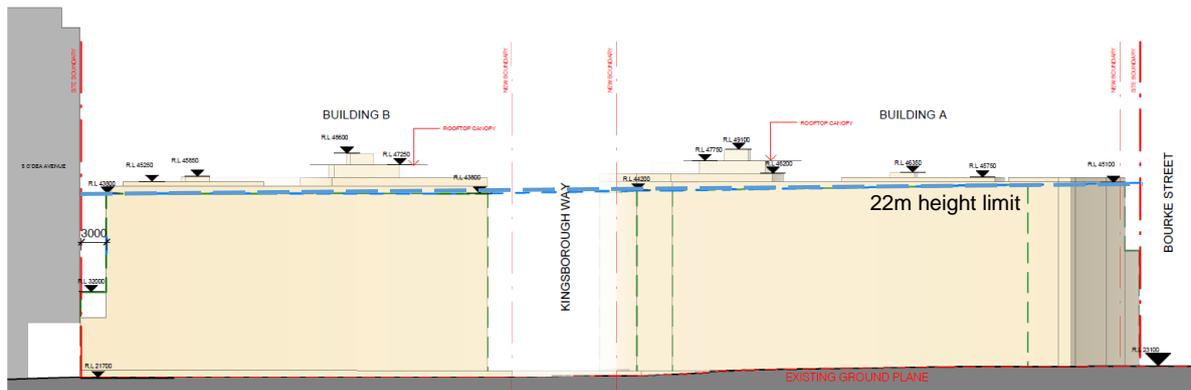


Figure 31: O’Dea Avenue elevation of approved concept building envelope – 22m height limit illustrated by blue dashed lines

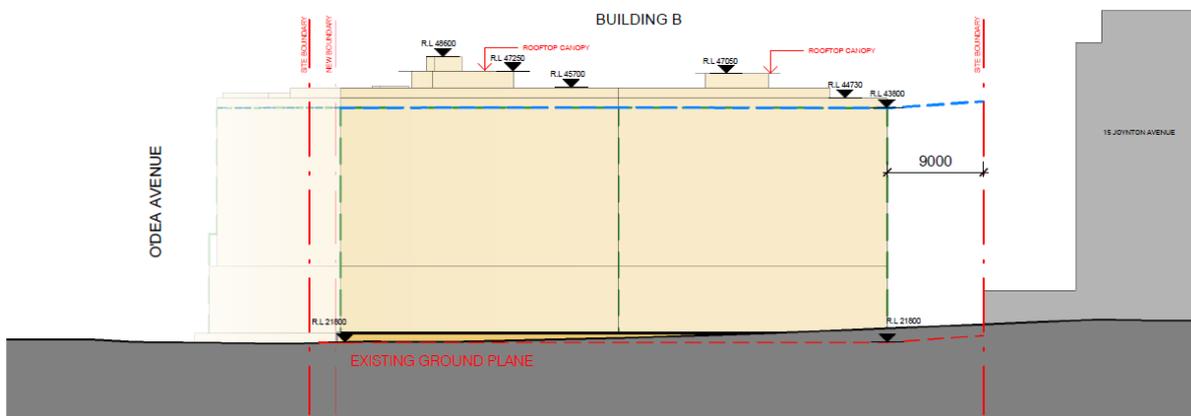


Figure 32: Kingsborough Way elevation of approved concept building envelope – 22m height limit illustrated by blue dashed lines

57. As a Section 4.55(2) modification, Clause 4.6 of the Sydney LEP 2012 with regard to requesting a variation to the 'Height of Buildings' development standard does not apply. It is noted however, that a detailed assessment under Clause 4.6 of the Sydney LEP 2012 has been carried out as part of D/2020/93 for the detailed design, which also proposes a height variation.
58. The applicant has submitted a solar impact analysis and view loss analysis in order to assess the potential impact of the height increase of the modified envelopes. The solar impact analysis is included at Attachment C, and the view loss analysis is provided at Attachment D. Key images from the analysis are reproduced in part below.
59. Detailed solar analysis has been provided to quantify the overshadowing impact of the nearest residential neighbours, being 15 and 17 Joynton Avenue, and 890-898 Bourke Street. See aerial map below with regard to the location of these properties.
60. Detailed view loss analysis has been provided to quantify the impact of the height increase on views from residential development at 15 and 17 Joynton Avenue, to the south and south-east of the subject site.



Figure 33: Aerial map of subject site and affected properties. Note that 890-898 Bourke Street is only assessed on overshadowing impacts.

61. An assessment of overshadowing and view loss is provided below:

(a) Overshadowing

- (i) 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 with that currently proposed as part of the amended concept envelope and detailed design, at the winter solstice in half hourly intervals.
- (ii) 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%.
- (iii) 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.

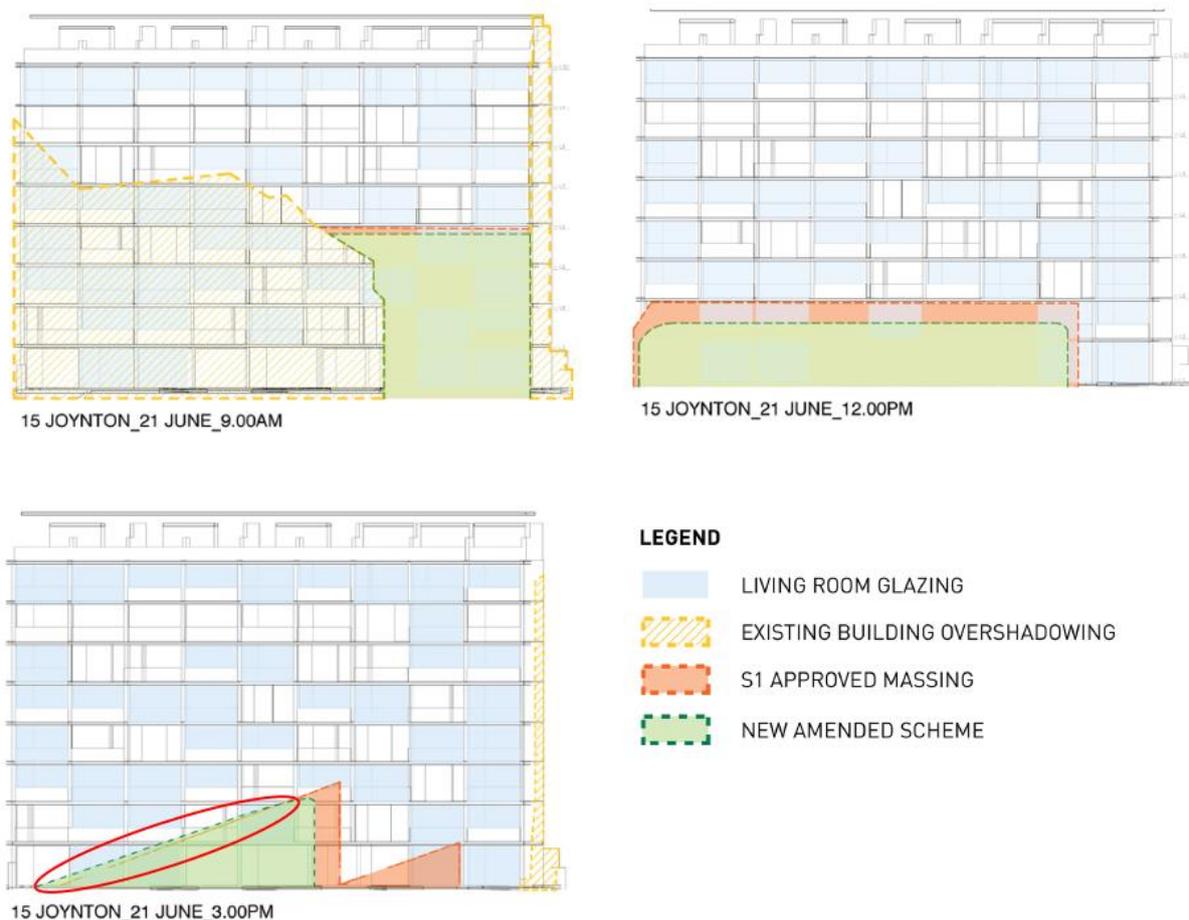


Figure 34: Shadow diagrams in elevation demonstrating impact to 15 Joynton Avenue at winter solstice (9:00am, 12 midday and 3:00pm)

- (iv) 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.

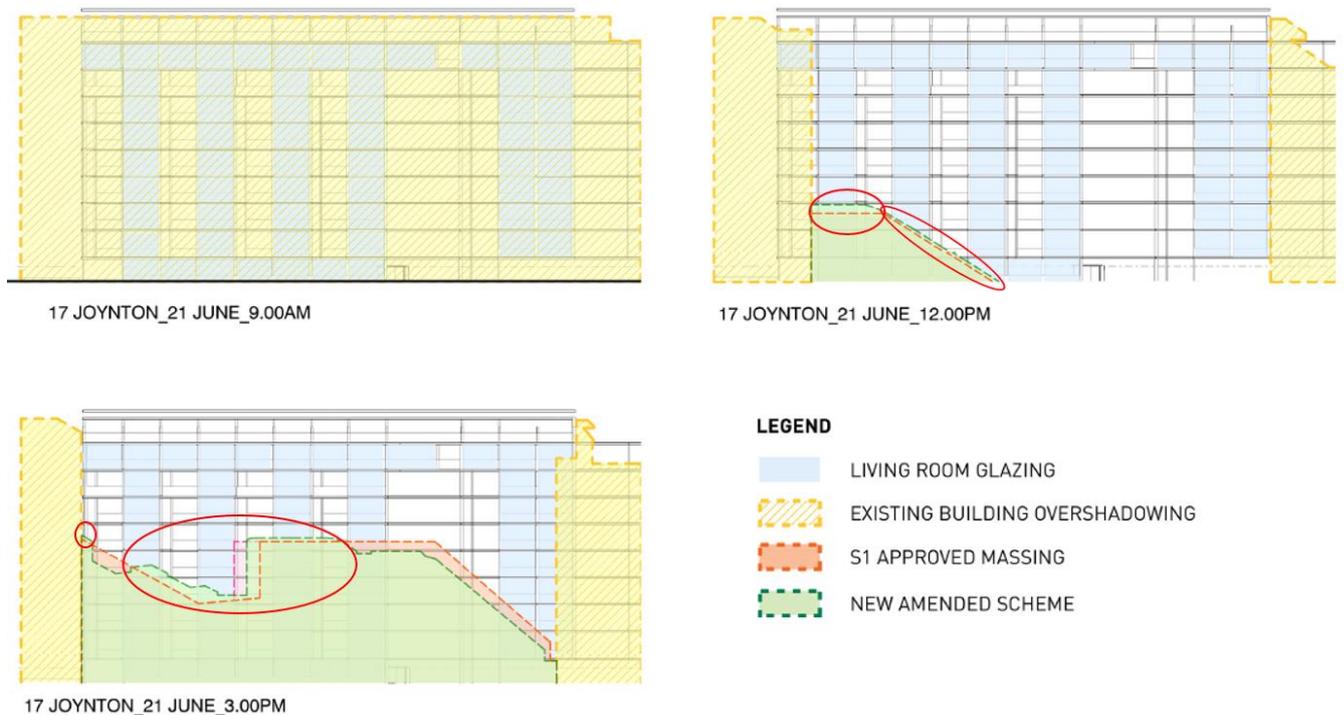


Figure 35: Shadow diagrams in elevation demonstrating impact to 17 Joynton Avenue at winter solstice (9:00am, 12 midday and 3:00pm). Additional overshadowing outside of the originally approved envelope is outlined by the red circles.

- (v) 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 36: 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.

- (vi) The diagrams for 890-898 Bourke Street demonstrate that solar access will be retained from 12 midday onwards.
- (b) View Loss
- (i) 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)*.
 - (ii) The proposal's impacts upon views from apartments within the residential buildings noted above (15 and 17 Joynton Avenue) 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).
 - (iii) With regard to 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 following images are from the apartments on the level 7 and 8 floor plates and which illustrate the most affected views.



S1 DA APPROVED ENVELOPE FROM BALCONY

LEVEL 7 RL 40.76
EYE LEVEL RL 42.56
CAMERA 30MM

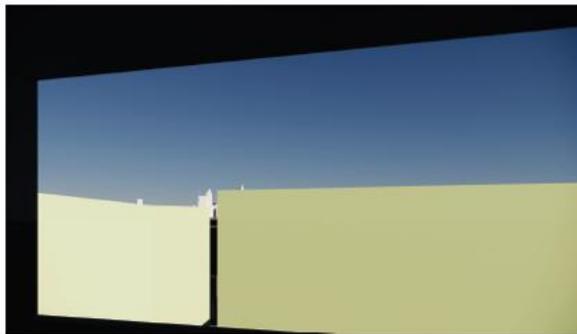
KEY PLAN N.T.S



PROPOSED ENVELOPE FROM BALCONY

LEVEL 7 RL 40.76
EYE LEVEL RL 42.56
CAMERA 30MM

Figure 37: 15 Joynton Avenue: modelled impacts of view from balcony of south-western apartment on level 7



S1 DA APPROVED ENVELOPE FROM BALCONY

LEVEL 7 RL 40.76
EYE LEVEL RL 42.56
CAMERA 30MM

KEY PLAN N.T.S



PROPOSED ENVELOPE FROM BALCONY

LEVEL 7 RL 40.76
EYE LEVEL RL 42.56
CAMERA 30MM

Figure 38: 15 Joynton Avenue: modelled impacts of view from balcony of south-western apartment on level 7



Figure 39: 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 40: 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 41: 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 42: 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 43: 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.

- (iv) With regard to 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 below are from the apartments on the level 8 floor plate and which illustrate the most affected views.



Figure 44: 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.

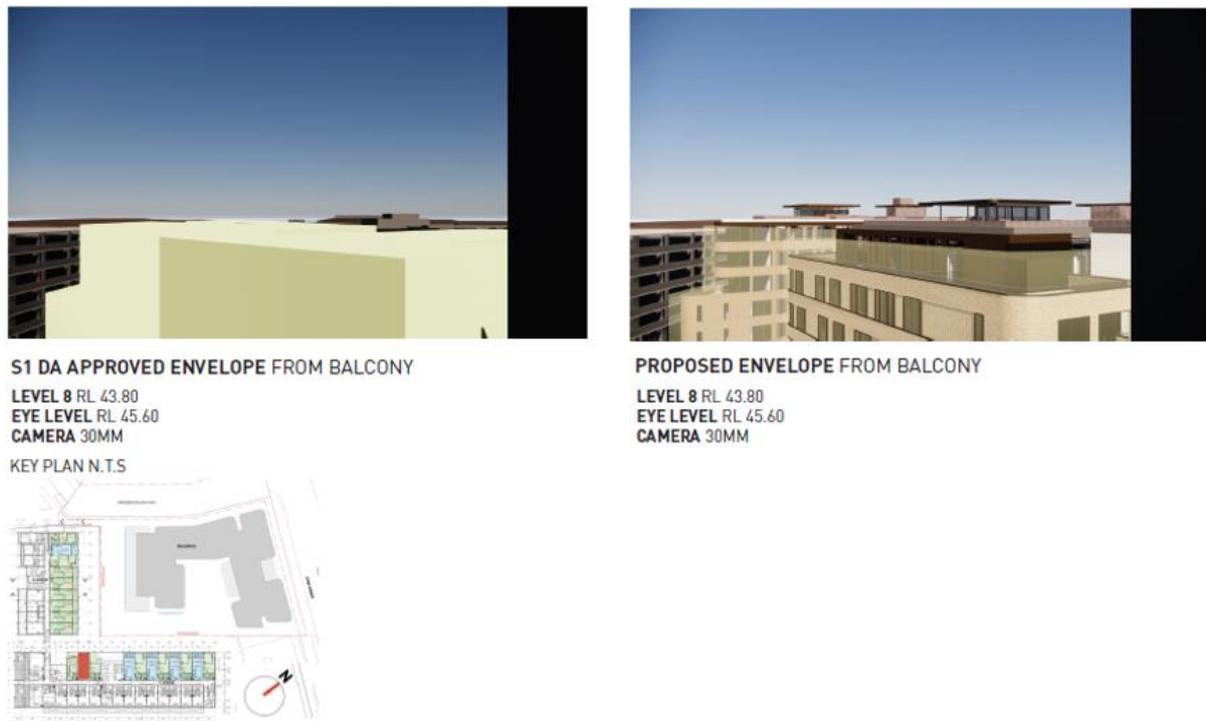


Figure 45: 17 Joynton Avenue: modelled impacts of view from balcony of south-western apartment on level 8. This apartment has no view of the CBD.

- (v) 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. As indicated in the plan view for each image, and the site plan, the views are across several neighbouring properties.
- (vi) *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.
- (vii) *Views to be affected:* 15 Joynton Avenue – as shown above, views are to the north and west, and are partial and whole distant views of the CBD skyline, including Sydney Tower. According to *Tenacity*, these views are moderately to highly valued. For 17 Joynton Avenue, views are to the north and west, and are partial distant views of the CBD skyline (not including Sydney Tower), as well as district views. According to *Tenacity*, these views are moderately valued.
- (viii) *From what part of the property are the views obtained:* 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. As indicated in the plan view for each image, and the site plan, the views are across several neighbouring properties.

- (ix) *Extent of the impact:* As can be envisaged from the images above, the development will have an impact on existing views in the most extreme cases, when viewed from bedrooms. Bearing in mind, *Tenacity* states that “the impact of views from living areas is more significant than from bedrooms or service areas”. Views from standing position from living rooms and balconies/terraces are for the most part maintained.
 - (x) When considering the proposed buildings compared to the original concept approval, the proposal will have moderate impacts upon views from these apartments in the terms established in *Tenacity*.
 - (xi) *Reasonableness of the proposal:* 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 in the detailed design DA), whilst having an impact on distant CBD views from bedrooms within 15 Joynton Avenue, are considered acceptable as the affected apartments have living rooms and rooftop terraces on upper levels that have unobstructed CBD views.
 - (xii) It is considered that the expectation to retain such views is 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.
62. The above demonstrates that the proposed envelope modifications will not result in unacceptable impacts on solar access or views to adjoining properties.
63. The additional height to both buildings will result in an additional storey, resulting in a 7 storey development rather than the approved 6 storey building envelope. The additional storey will not result in a reduction in amenity as compliant floor to ceiling heights can be delivered for the retail and residential/serviced apartment uses.
64. In light of the above, the proposed increase in height is supported as the additional height will not result in significant detrimental impact to adjoining properties or reduced amenity for future occupants.
65. The modified envelopes are also capable of delivering a built form that is consistent with the existing and future desired character of the area. This is demonstrated by the detailed design application. The variation to the ‘Height of Buildings’ development standard in this regard, is related to parapets, lift overruns and awnings that are generally setback from the building edge and do not unreasonably add to the bulk and scale of development when viewed from the public domain and surrounding buildings.

Increase in floorplate width

66. The proposal seeks to infill some areas of the floor plate at basement, ground and levels 1-5. The increased footprint is to be replicated at the new level 6. See floor plans below illustrating changes to the approved footprint.

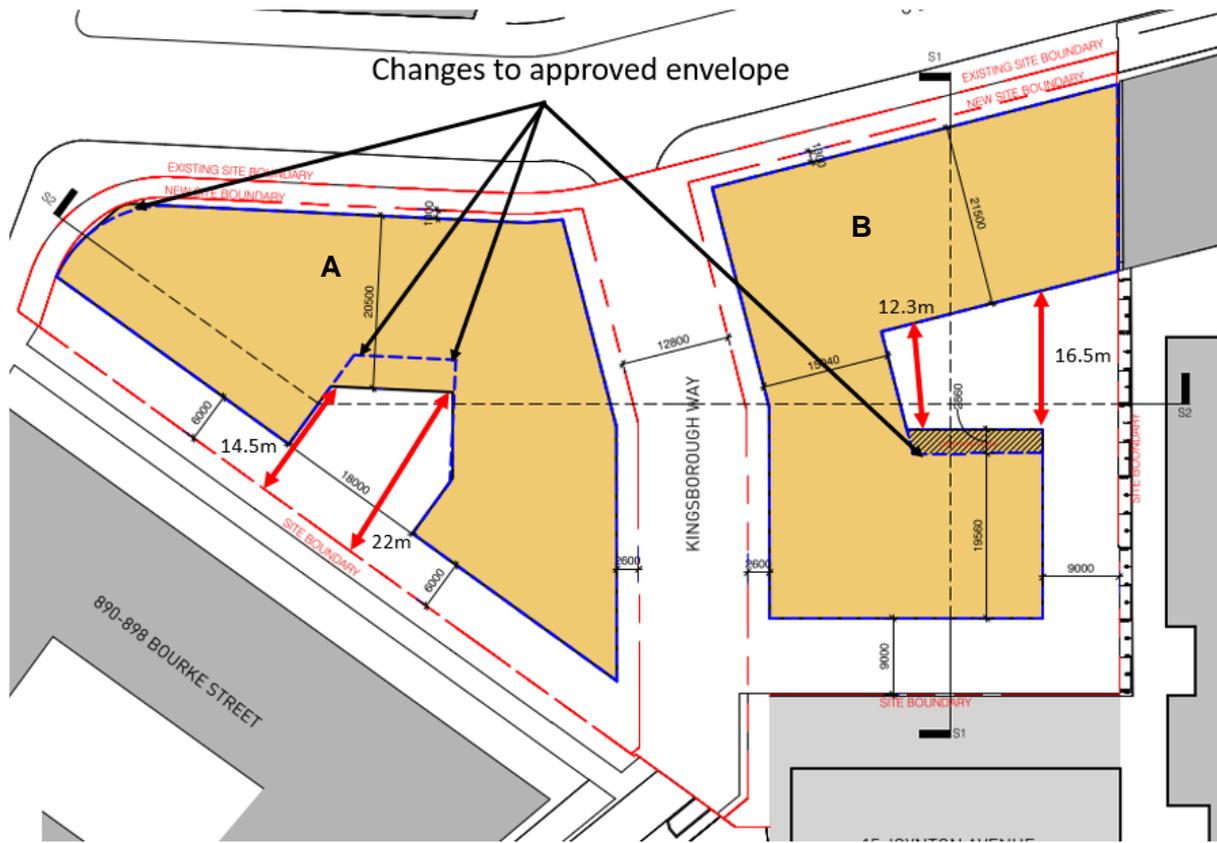


Figure 46: Proposed concept envelope floor plan (ground to level 3) depicting increased floorplate. The approved envelope is outlined in blue.

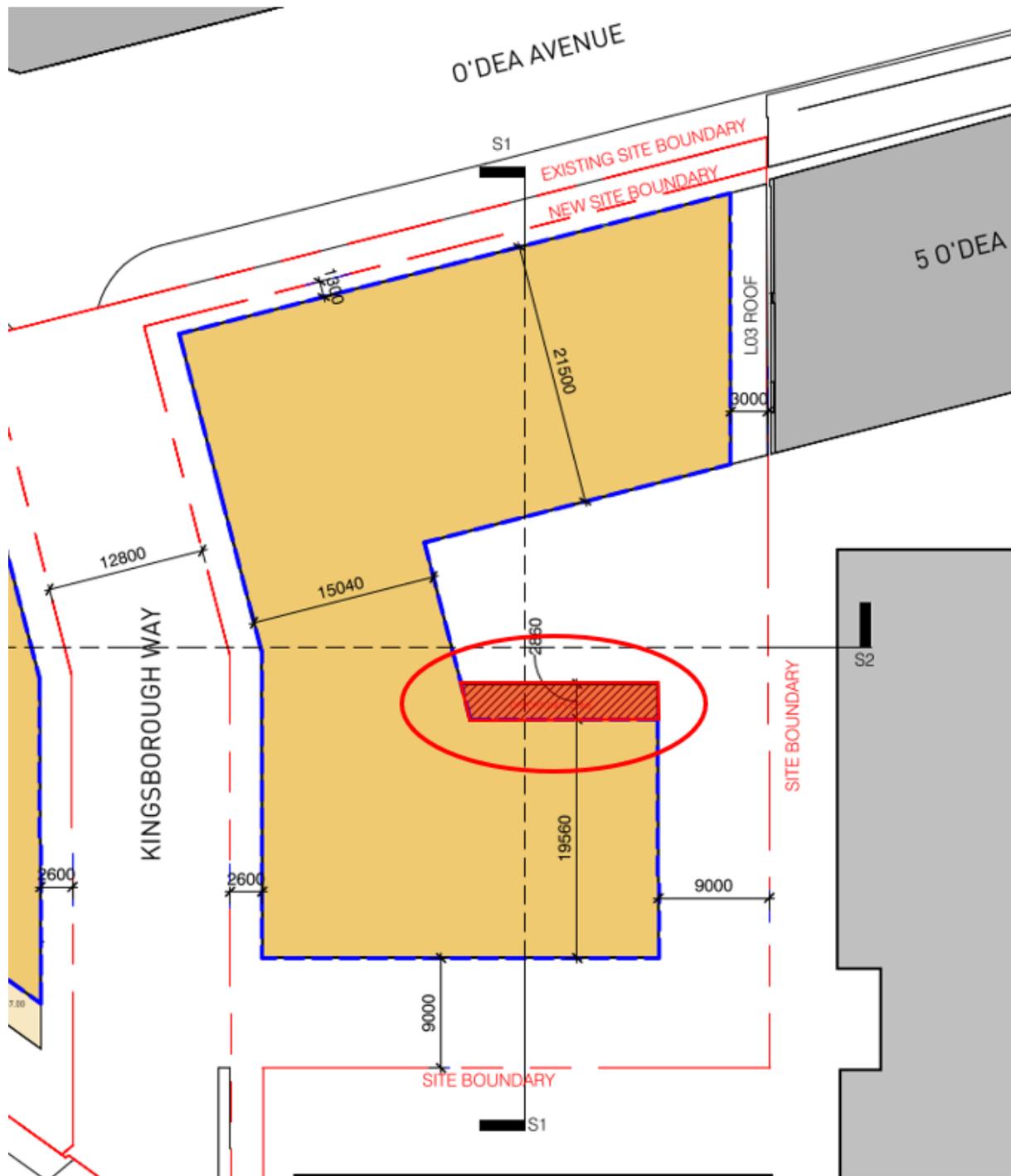
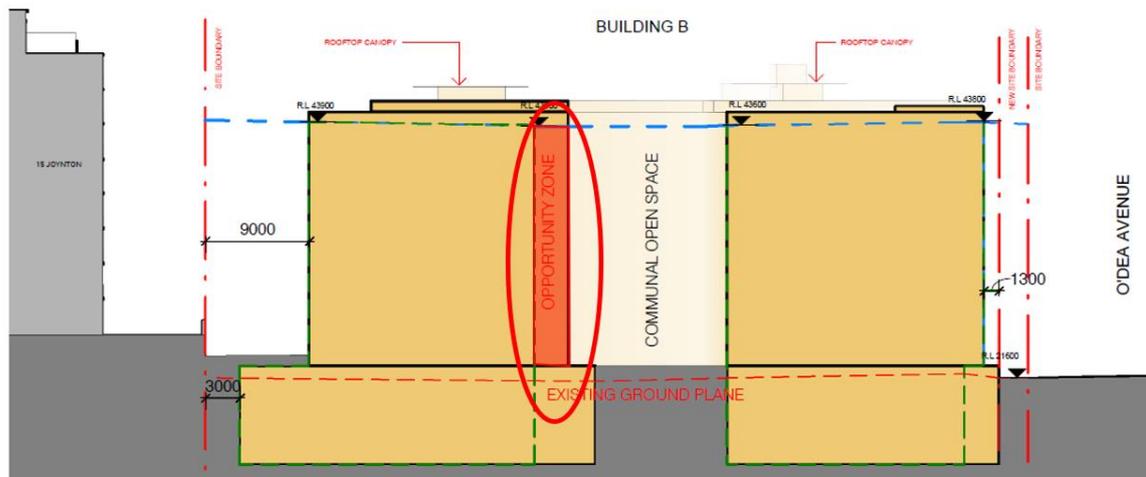


Figure 48: Opportunity zone depicted within Building B



SECTION 1
NORTH - SOUTH (LOOKING WEST)

Figure 49: Proposed envelope section depicting opportunity zone within Building B

68. The enlargement of the footprint facilitates a development that is consistent with the design competition winning scheme.
69. As shown in Figures 46 to 49 above, the modification increases floorplate width within Buildings A and B, however, does not alter overall separation distances to adjoining properties.
70. Separation distances between bays within each building however, are reduced, which will result in oblique sightlines for apartments within the development.
71. The proposal generally complies with the recommended building separation distances outlined in the Apartment Design Guideline and it is considered that an acceptable level of amenity and privacy can be delivered for future occupants and adjoining properties. Where separation distances are not strictly achieved, the detailed design proposal D/2020/93 demonstrates that design features can be developed that ameliorate visual privacy concerns for future occupants and adjoining properties.
72. With regard to the increased basement footprint, deep soil zones are provided in accordance with ADG, DCP, and consent requirements. Apartments at ground floor are still capable of planting and providing privacy through a combination of architectural treatments and landscape planters. This is addressed in the detailed design proposal D/2020/93.
73. The changes to the footprint, and inclusion of opportunity zones within the development will not create unacceptable impacts on surrounding properties, particularly with regard to view loss and overshadowing, as referenced in this report. This is further demonstrated within the detailed design application.

Public Art

74. Condition 8 of the consent requires a detailed public art plan to be submitted with the detailed design DA, providing information about a selection of artists, rationale for each artist's concept, as well as a program for documentation, fabrication, installation and maintenance requirements.
75. The applicant has requested that public art be resolved prior to the issue of the first Construction Certificate and has submitted a public art strategy (being a high-level discussion of public art opportunities) with the detailed design application D/2020/93. The submission outlines 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 detailed design proposal as locations for public art, which is consistent with the winning design competition scheme.
76. The concept approval does not give consent to works as such, and so rather than specifying a construction certificate, Condition 8 is to be reworded so that the detailed public art plan is prepared for the detailed design proposal. The submission of the detailed public art plan is addressed as part of D/2020/93.

Section 4.15 Assessment

77. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 are still relevant.

Consultation

Internal Referrals

78. The application was discussed with internal units within Council. The proposal is acceptable subject to conditions.

External Referrals

79. The application was referred to Transport for New South Wales, Water NSW Sydney Water and Ausgrid.
80. Comments from all the relevant external referrals are addressed or included in the recommended conditions of consent in Attachment A where relevant.

Advertising and Notification

81. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 13 August 2020 and 28 August 2020. A total of 13 properties were notified and 13 submissions were received.

82. The submissions raised the following issues:

Issue: *Height, bulk and scale*

- The height should remain compliant at 22m, regardless of whether there is an additional storey or not.
- Adding another high rise building to the area will create a claustrophobic feeling.
- The height non-compliance will set an undesirable precedent in the area.
- The height non-compliance will impact our view corridors, privacy and amenity.
- The proposed changes to height are inconsistent with Conditions 11 and 12 of the concept approval.

Response: A detailed discussion relating to the height non-compliance is provided under the heading Building height within the report, and as part of the detailed design DA report D/2020/93.

The changes to height are considered appropriate in this instance, and Condition 11 (Building Height) of the consent is to be amended to reflect the proposal. In light of this, the detailed design proposal D/2020/93 will be consistent with Condition 12, which requires the detailed design to be contained within the approved envelope.

Setbacks have been provided for the development in accordance with the approved concept envelope and ADG requirements with regard to building separation to reduce impacts relating to view loss, privacy and amenity.

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: *Overshadowing and solar access*

- Overshadowing is not negligible.
- The breaches to the envelope result in unnecessary overshadowing.
- The height increase will reduce sunlight to lower level apartments of adjoining sites.

Response: Refer to the discussion section under the heading Building height. 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.
- Losing views and privacy will greatly reduce the enjoyment of my property.
- The diagrams are substandard and possibly deceptive.

Response: Refer to the discussion section under the heading Building height. 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 and this hasn't been considered in the application.
- The rooftop space will look directly into the living areas and private open space of adjoining residences.
- Plant equipment should be located away from neighbours.
- The driveway will increase traffic noise.

Response: This application relates to building envelopes only, with no specific floor layout or use identified. The concept approval has conditions relating to residential acoustic amenity and a noise impact assessment has been provided as part of the detailed design development application D/2020/93.

Issue: *Construction Impacts*

- 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: No works are approved as part of this concept application. Construction impacts have been addressed as part of the detailed design development application D/2020/93.

Issue: *Traffic Impacts*

- The area has a high pedestrian volume that will need to navigate new crossings resulting from the developments in the area. Safety has not been considered.
- Kingsborough Way should not be a through-traffic street and right turns should be banned at either end of Kingsborough Way.
- No car share spaces have been provided.

Response: Traffic impacts have been addressed as part of the detailed design development application D/2020/93. The concept approval includes conditions relating to parking design, car share spaces and the need for a revised traffic report. These matters have been satisfactorily addressed as part of the detailed design development application.

Issue: *Public Park*

- A public park should be provided.

Response: A public park has not been accommodated within the concept building envelope. The detailed design development application D/2020/93 however, requires a financial contribution towards new and upgraded amenities in the area as required by Section 7.11 of the EP&A Act 1979 and the City of Sydney Development Contributions Plan 2015.

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

Issue: *Use of Building A for serviced apartments*

- The serviced apartments may be used as a quarantine hotel as it is so close to the airport.
- Serviced apartments are not appropriate as demand has not been demonstrated and the use is inappropriate in the zone.

Response: The site is located in a B4 Mixed Use zone, which permits serviced apartments.

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: Wind Impacts

- A wind tunnel may be created given the height non-compliance.

Response: Wind impacts have been addressed as part of the detailed design proposal D/2020/93. A wind assessment has been submitted with the detailed design, with recommendations that have been conditioned as part of the development approval.

Issue: Inconsistency with documentation

- The plans and documentation are inconsistent.

Response: The plans and documentation have been reviewed by City staff and adequate detail has been provided to assess the proposal.

Issue: Sites owned by the Developer

- The Developer has had issues with other apartment buildings.
- 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.

Public Interest

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

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

84. The development is not subject to a Section 7.11 development contribution as it is a concept approval. Appropriate contributions have been levied as part of the detailed design application (D/2020/93).

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

85. The site is located within the Green Square affordable housing contribution area. The development is not subject to a Section 7.3 affordable housing contribution as it is a concept approval. Appropriate contributions have been levied as part of the detailed design application (D/2020/93).

Relevant Legislation

86. Environmental Planning and Assessment Act 1979.
87. Water Management Act 2000.

Conclusion

88. This Section 4.55(2) application proposes altering the approved building envelopes to align with the detailed design development application D/2020/93. The detailed design development application is presented to the CSPC concurrently for approval.
89. The proposed modifications to the approved building envelope will deliver consistency between the staged development applications for the site, as required under Section 4.24 of the Environmental Planning and Assessment Act 1979.
90. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelopes consistent with the intent of the concept approval and will deliver two mixed use retail and residential building envelopes.

91. The proposed modifications primarily relate to building height, bulk and separation.
92. The height modification and building footprint changes are supported as they do not result in unacceptable overshadowing, privacy or view loss impacts; and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
93. The detailed design application being considered concurrently by the CSPC under D/2020/93 demonstrates that a generally compliant scheme can be provided within the amended envelopes, delivering design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.

ANDREW THOMAS

Acting Director City Planning, Development and Transport

Jessica Symons, Senior Planner