

**Item 5.**

**Development Application: 207-229 Young Street, 881-885 and 887-893 Bourke Street, Waterloo - D/2020/45**

**File No.:** D/2020/45

**Summary**

<b>Date of Submission:</b>	21 January 2020. Amended plans and additional information were submitted up until 5 July 2021.
<b>Applicant:</b>	Jeffman Pty Ltd, C/-McNally Management Pty Ltd
<b>Architect/Designer:</b>	Turner
<b>Owner/Developer:</b>	Jeffman Pty Ltd and Redbreast Pty Ltd
<b>Planning Consultant:</b>	Ethos Urban
<b>Heritage Consultant:</b>	GBA Heritage
<b>Cost of Works:</b>	\$237,356,209
<b>Zoning:</b>	B2 Local Centre and B4 Mixed Use - The proposed mixed-use and residential buildings, new public open space and new east-west street are permitted with consent.

**Proposal Summary: Proposal**

The subject application seeks consent for:

- concept building envelopes for three mixed-use buildings and for one residential apartment building;
- vehicle access locations for each of the four new concept building envelopes;
- a first stage of development, comprising:
  - phased demolition of all existing structures and remediation;
  - subdivision to create four new development parcels, transfer lands (for transfer and dedication to the City); and

- embellishment works including provision of the new east-west street including augmentation of existing traffic signals at its Bourke Street intersection, a through-site link, temporary access paths and public open space.

This is an integrated DA requiring approval from Transport NSW under the Roads Act 1993 and from Water NSW under the Water Management Act 2000.

### **Assessment**

Conditions are recommended that require minor modifications to envelopes and further investigation of unresolved issues through the competitive design and subsequent design development processes. These conditions pertain to vehicle access, the promotion of architectural diversity and modulation of building mass, minimising height and bulk at upper levels, tree protection, landscaped setbacks and providing suitable spatial allocations for waste management areas. Together these requirements may result in apartment yields marginally different than those indicated in the reference scheme plans for each respective development parcel.

The concept proposal and design excellence strategy establish envelopes and suitable parameters for future competitive design processes. Subject to the recommended conditions, these envelopes can accommodate detailed building designs of an appropriate height, bulk and scale, that respond to the character of the area and which are capable of achieving design excellence.

### **Notification**

As integrated development the subject application was notified and advertised for 28 days between 19 February and 19 March 2020. As a result of this notification 49 submissions were received. Issues raised in submissions included:

- height and scale to Danks Street
- impacts upon the character of Danks Street
- adverse traffic and parking impacts
- view losses
- overshadowing
- visual and acoustic privacy

- the lack of a cycle path in the new east-west street
- inadequate common open space provision
- lack of diversity in building types and uses
- excessive density of development in the area
- lack of a comprehensive development plan for the area
- inadequacy of the public open space and a lack of public amenities
- interim and long-term interfaces with adjacent properties
- construction traffic, noise, dust and pollution
- tree removal and replacement
- remediation and staging of remediation works
- non-provision of clause 4.6 request to vary the building height development standard
- inconsistencies in the submitted DA documents
- implementation of the voluntary planning agreement
- non-compliance with NSW government strategic planning policies and
- public art opportunities including artists' studios and accommodation.

### **Voluntary Planning Agreement**

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

This will provide for the phased delivery of community infrastructure as follows:

Phase 1 -

- remediation of the western portion of the site;
- transfer and dedication of land for the western portion of the new east-west street, future western share-way, the north-western portion of the new public open space and a through-site link;

- subdivision works including construction of the western portion of the new east-west street the through-site link to Danks Street and a pedestrian path in the location of the future western share-way;

Phase 2 -

- remediation of the eastern portion of the site;
- transfer and dedication of land for the eastern portion of the new east-west street, future eastern share-way and the north-eastern portion of the new public open space;
- construction of the eastern portion of the new east-west street including augmentation of traffic lights at its intersection with Bourke Street, pedestrian path in the location of the future eastern share-way and turfing and provision of basic lighting and furniture in the northern portion of the new public open space; and

Phases 3 and 4 -

- footpath widening of Bourke Street to the north-eastern (Parcel 2) Lot 104 and the south-eastern (Parcel 3) Lot 103.

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

### **Consent Authority**

The proposed development has an estimated cost of works more than \$50 million and is therefore required to be determined by the Central Sydney Planning Committee (CSPC).

**Summary Recommendation:** It is recommended that authority be delegated to the Chief Executive Officer to determine the application, following the conclusion of the public exhibition of the Voluntary Planning Agreement, and considering any public submissions received in response.

Consideration should be given to granting deferred commencement consent requiring the Voluntary Planning Agreement to be executed prior to the consent becoming operative and subject to the recommended conditions contained in this report.

**Development Controls:**

- (i) State Environmental Planning Policy No 55 - Remediation of Land
- (ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) State Environmental Planning Policy (Urban Renewal) 2010
- (vi) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- (vii) Sydney Local Environmental Plan 2012
- (viii) Sydney Development Control Plan 2012

**Attachments:**

- A. Recommended Conditions of Consent
- B. Draft Plan of Subdivision
- C. Demolition and Envelope Drawings
- D. Reference Scheme Drawings
- E. Public Benefit Offer and Draft Voluntary Planning Agreement
- F. Design Excellence Strategy
- G. Selected Landscape Strategy Drawings
- H. Sydney Airport Controlled Activity Approval
- I. Sydney Water Response Letter
- J. Envelope +10% Height Drawings

## Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine Development Application No. D/2020/45, following the conclusion of the public exhibition of the draft Voluntary Planning Agreement and considering any public submissions received in response;
- (B) authority be delegated to the Chief Executive Officer to determine whether the Design Excellence Strategy for 881-887 Bourke Street and 207-231 Young Street, Waterloo prepared by Ethos Urban on behalf of Jeffman Pty Ltd and Red Breast Pty Ltd and dated 19 April 2021, as shown in Attachment F to the subject report, ought to be approved pursuant to Section 3.3.1 of the Sydney Development Control Plan 2012 and Section 1.2 of the Competitive Design Policy;
- (C) if the Chief Executive Officer determines to approve the application, consideration be given, pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, to granting a deferred commencement consent to Development Application No. D/2020/45 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

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

- (A) The concept proposal is for building envelopes for three mixed commercial/ residential buildings and a residential apartment building. The proposal also delivers new public domain elements these being a new east-west street, a through-site link, and public open space. The development is permissible in the B2 Local Centre and B4 Mixed Use zones as stated in the land use table in the Sydney Local Environmental Plan 2012 (the LEP).
- (B) The proposed concept building envelopes comply with the 18m to 30m height of buildings controls pursuant to clause 4.3 and are capable of accommodating development that complies with the floor space ratio controls pursuant to clauses 4.4 and 6.14 of the Sydney Local Environmental Plan 2012.
- (C) The concept proposal is capable of satisfying the relevant objectives of Sydney Development Control Plan 2012 (the DCP).
- (D) The concept proposal and Design Excellence Strategy establish a concept building envelope and suitable parameters for a competitive design process. Subject to the recommended conditions, the proposed envelopes can accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.

**Background**

**The Site and Surrounding Development**

1. The site is irregular in shape and has an area of 2.1 ha (21,440.4 sqm). The site comprises several parcels of land with different owners and addresses as described in the table and shown in Figure 1 below.

Street Address	Lot and DP	Landowner
207-229 Young Street	Lot 3 DP 775039	Jeffman Pty Ltd
881-885 Bourke Street	Lot 4 DP 600884	Redbreast Pty Ltd
887-893 Bourke Street	Lot A DP 438772, Lot B DP 438772, Lot 1 DP 89250	Jeffman Pty Ltd



Figure 1: Aerial image of subject site, shown in pink, and surrounding area

2. The site has street frontages with lengths of 105.75m to Bourke Street to the east, 142m to Young Street to the west and 46.07m and 13.11m to Danks Street to the north.
3. There is a fall of approximately 4m across the site from an approximate level of RL 31.00 at its north-eastern corner to RL 27.00m at its south-western corner.
4. The property at 207-229 Young Street (Lot 3 DP 775039) comprises the western portion of the subject site. It contains a 2-storey warehouse complex, comprising several warehouse units, hardstand car-parking areas, an electrical substation and landscaped areas that contain some large tree plantings.
5. The property at 881-885 Bourke Street (Lot 4 DP 600884) is an L-shaped lot that comprises the north-eastern portion of the subject site. It contains one to two storey warehouse buildings fronting Bourke Street and which are connected by a long driveway and hardstand car-parking area to Danks Street. The warehouses accommodate a business known as Glicks Furniture.
6. The property at 887-893 Bourke Street (Lot A DP 438772, Lot B DP 438772, Lot 1 DP 89250) comprises the south-eastern portion of the subject site. It contains inter-connected, one to two storey warehouse buildings commonly known as the Lawrence Dry Cleaners (LDC) site.
7. The LDC and some adjacent sites are the subject of a Management Order (no. 20111403) issued by the NSW Land and Environment Court which require the remediation of contaminated land caused by dry cleaning operations on the LDC site. Refer to the History section of this report for further information on the Management Order that pertains to the site.
8. On the opposite, western side, of Young Street are various low-scale warehouses. These include the Hillsong church campus comprising several former warehouse buildings.
9. Adjacent to the north at 1 Danks Street, is a former industrial warehouse building that has been converted to a multi-storey mixed-use commercial/residential building. This building is commonly known as 'Warehouse 1'.
10. Adjacent to the north at 3-7 Danks Street is a former industrial warehouse building that currently accommodates various commercial uses. This lot is benefitted by an existing easement for support over a portion of its southern facade that is on its boundary with 881-885 Bourke Street (Lot 4 DP 600884) and which is part of the subject site.
11. Adjacent to the north at 9-15 Danks Street is a four-storey mixed-use building comprising multiple commercial and residential apartments. This building is commonly known as 'Xhibit' 9. The lot containing Xhibit 9 is benefitted by easements for drainage and a right of carriageway over parts of the lot that contain the Glicks Furniture warehouses and that connect to Danks Street.
12. Adjacent to the north at 17-19 Danks Street is a four to five-storey mixed-use building comprising commercial and residential apartments.
13. Adjacent to the north-east at 21-25 Danks Street, on the corner of Danks and Bourke Streets, is a one to two-storey warehouse building.

14. Further north, on the opposite northern side of Danks Street, are several buildings comprising various residential and commercial uses and building types and which range from one to five storeys in height.
15. Further to the north-east is a medium to high scale, mixed-use precinct comprising large sites that were developed around the turn of the 21st century. These include the former ACI site and the development commonly known as Moore Park Gardens.
16. Adjacent to the east is a mixed-use development comprising residential apartments above ground level retail tenancies, up to 10-storeys in height and commonly known as the Tiara buildings.
17. Adjacent to the east and south of the intersection of Potter and Bourke Streets is a commercial building that accommodates a car-dealership.
18. Adjacent to the south at 895-899 and 901 Bourke Street is what is commonly referred to as the City West Housing site. The City West Housing site contains two warehouse buildings, currently used as a function centre, retail premises and yoga studio. On 30 April 2018 deferred commencement consent (D/2015/941) was granted for redevelopment of this site for a 5-storey mixed use building comprising 72 affordable housing apartments, dedication of land for footpath widening on Bourke Street and for a future road.
19. The large, mostly vacant site adjacent to the south at 903-921 Bourke Street is commonly known as the Dahua site. The Dahua site was formerly owned by Sydney Water. The industrial buildings that once occupied the site have been demolished, except for the Pumping Station and Valve House which have been subdivided from the wider site and remain in the ownership of Sydney Water.
20. A portion of the Dahua site south of the Pumping Station building is zoned SP2 Infrastructure and is identified for acquisition by the relevant roads authority for the future widening of McEvoy Street.
21. The Sydney Water Pumping Station, Valve House and associated underground pipework are identified as a local heritage item (I2073). The Dahua site also contains part of the state heritage listed Pressure Tunnel and Shafts (SHR 01630) which is working water infrastructure that connects to the Valve House and then extends underground to the west.
22. The subject site is in the vicinity of other local heritage items including the Electrical Substation (I2104) at 241 Young Street and the Commercial Building (I2103) at 198-222 Young Street.
23. The site is not located within a heritage conservation area. It is within the 'Danks Street South' specific area that falls within the broader Green Square Urban Renewal Area.
24. Several site visits have been carried out by city officers. Photos are provided below.



Figure 2: Aerial view of subject site, outlined in red, and surrounds



Figure 3: Subject site frontage to Bourke Street



Figure 4: 'Tiara' mixed use commercial and residential building (788-822 Bourke Street) on opposite side of Bourke Street



Figure 5: Southern end of the subject site frontage to Bourke Street containing the existing Lawrence Dry Cleaners (LDC) building



Figure 6: Car-dealership building, on the corner of Bourke and Lachlan Streets at 824 Bourke Street, opposite the site



Figure 7: City West Housing site at 895-899 Bourke Street, to the immediate south of the site and adjoining Lawrence Dry Cleaners



Figure 8: South-eastern corner at the intersection of Lachlan and Bourke Streets



Figure 9: View to the east along McEvoy Street towards Bourke Street



Figure 10: View to the north along Young Street



Figure 11: View towards the City West Housing site and the subject site from McEvoy Street across the vacant site to the south



Figure 12: Local heritage item: Commercial Building (I2103) at 198-222 Young Street, opposite the site and to the west



Figure 13: Local heritage item: Electrical Substation (I2104) to the south at 241 Young Street



Figure 14: View west along approximate alignment of proposed new east-west road to Young Street



Figure 15: Warehouse buildings at 198-222 Young St. on the opposite, western side of Young Street



Figure 16: Southern end of the subject site frontage to Young Street



Figure 17: Subject site frontage to Young Street



Figure 18: Hillsong building on the south-western corner of Danks and Young Streets



Figure 19: Subject site frontage on the south-eastern corner of Danks and Young Streets



Figure 20: Subject site frontage to Danks Street



Figure 21: 'Warehouse 1' mixed use / residential building at 1 Danks Street, to the north of the subject site



Figure 22: Former warehouse commercial buildings at 3-7 Danks Street, to the north of the subject site



Figure 23: Subject site frontage to Danks Street, location of the future dedicated through site link



Figure 24: 'Xhibit 9' mixed use / residential building at 9-15 Danks Street, adjacent and to the north of the subject site



Figure 25: Mixed-use building at 17-19 Danks Street, adjacent and to the north of the subject site



Figure 26: Warehouse building at 21-25 Danks Street, adjacent to the north-east of the subject site



Figure 27: Mixed-use building at 6 Danks Street on the northern side of Danks Street



Figure 28: Former warehouse commercial building at 8-10 Danks Street on the northern side of Danks Street.



Figure 29: Mixed-use building at 169-175 Phillip Street on the northern side of Danks Street



Figure 30: 'Kasbah' mixed use / residential building at 18 Danks Street on the northern side of Danks Street



Figure 31: Commercial building at 863-871 Bourke Street on the northern side of Danks Street, including Aldi supermarket



Figure 32: View to the eastern end of Danks Street and ACI site to the north-east of the site

## History Relevant to the Development Application

### History of the Subject Site

881-885 Bourke Street, Waterloo

25. In 1937, Aladdin Industries Ltd occupied a large warehouse that had been constructed on the site over the course of the previous year.
26. Around 1949, a rear section of the factory was demolished, as was a four-storey brick building fronting Danks Street. A new single storey warehouse addition was constructed. This new rear addition adjoins a car park with vehicular access via Danks Street.
27. By 1956, Aladdin Industries Ltd had vacated the site. There were various tenants until 2011, when Glicks Furniture occupied the site. Glicks Furniture continues to occupy the site and operate there today.

887-893 Bourke Street, Waterloo

28. From 1937 to 1946, Ducon Condenser Pty Ltd progressively bought the lots comprising this property. From 1938, the factory buildings were expanded and occupied.
29. From 1954 to 1956, Ducon vacated the premises and sold the properties and which were eventually consolidated in the ownership of Pratten Industries. In the mid to late 1960s Pratten Industries undertook further alterations and additions.
30. In 1973, Jeffman Pty Ltd purchased the property and remain owners to this day. From 1989, Lawrence Dry Cleaners leased various parts of the buildings contained within the site and eventually came to lease and operate the whole factory complex.

207-229 Young Street, Waterloo

31. DA no. 44 86 0765 - On 17 June 1986, development consent was granted to erect a new industrial development. Many of the large trees at or near the corner of Danks Street shown in Figures 20 and 21 above, were planted as part of the landscaping works carried out under this consent.
32. D/2007/2454 - On 3 April 2008, development consent was granted for the conversion of the building fronting Dank Street to create seven (7) new ground floor retail tenancies, including refurbishment of the existing facade and landscaping, installation of a timber deck and awning to the street corner. The new awning and decking approved by this consent were designed to preserve the large trees at or near the corner of Danks Street.

### **History of EPA Orders on the Subject Site**

33. Part of the site and surrounding lands have been subject to a series of regulatory actions under the Contaminated Land Management Act 1997 (the CLM Act). These relate to Volatile Chlorinated Hydrocarbons (VCH) contamination associated with historical operations at the Lawrence Dry Cleaners facility.

### **Remediation Site**

34. On 2 November 2005, the NSW Environment Protection Authority (EPA) declared the presence of significant contaminants in groundwater as posing a risk of harm to human health and the environment at:
  - (a) Lot A and B in DP438772 and Lot 1 in DP89250 - LDC site
  - (b) parts of Lot 3 in DP775039 - Young Street properties
  - (c) parts of Lot 2 in DP 800705 (now Lot 2 in BP1203640) - Dahua site (former Sydney Water site) to the south of the application site and
  - (d) Lot 1 in DP 88482 and Lot B in DP 88095 - City West Housing site to the south of the application site.
35. This area is referred to as the 'Remediation Site', with the 'Source Site' of contaminants marked in dark hatching in Figure 33 below.



- Legend**
- Remediation Site (MO Notice Number 20111403)
  - Source Site (MO Notice Number 20154405)
  - Lawrence Dry Cleaners
  - Lot 3 Young Street
  - Lot 4 Bourke Street
  - Transformer Yard
  - Lot Boundary

Figure 33: Remediation Site (Source: Remediation Action Plan, Senversa, 26 February 2021)

**Management Order**

36. On 26 May 2011, the Management Order (number 20111403) was issued by the Chief Judge Brian Preston of the NSW Land and Environment Court (LEC) for the Remediation Site. This Management Order has subsequently been amended by the EPA on 28 August 2014, 27 February 2015, 9 February 2016 and 7 July 2017 as investigation and remediation works have progressed.
37. The Management Order requires that a series of investigation, monitoring and remediation actions are taken at the Remediation Site in accordance with the approved Remedial Action Plan, which was prepared by AECOM (the AECOM RAP).

38. The primary objectives of remediation activities being undertaken at the Remediation Site are to reduce dissolved concentrations of significant contaminants to meet remediation criteria and to satisfy the requirements of the approved AECOM RAP.
39. The Management Order will remain in effect on portions of the site within the Remediation Site until rescinded by the EPA.
40. It is noted that the Management Order does not refer to the suitability of the site for the land uses proposed under the subject concept DA.

### **History of Adjacent Sites**

903-921 Bourke Street (the Dahua site)

41. Between 1922 and 1927, the Waterloo Pumping Station was constructed. In 1935, the Valve House was constructed.
42. From 1935 to 1936, Sydney Water's Waterloo Central Workshop and Depot, including the Main Machine Shop, were erected to repair and maintain vehicles, plant and equipment.
43. In 1988, the Waterloo Central Workshop and Depot was closed, and equipment removed. From 1995 to 1996, these buildings were demolished. Only the Pumping Station and Valve House remain. From 2014 to 2015, Sydney Water subdivided the Valve House and Pumping Station from the wider site, creating easements for access and services.
44. The Pumping Station, Valve House and sub-ground services continue to be owned and operated by Sydney Water to regulate water pressure for the eastern suburbs. In 2015, the remainder of the site was sold to the current landowner (Dahua).
45. As planning and development controls for the Danks Street South precinct were being updated (as outlined below), a Voluntary Planning Agreement (VPA/2016/16) was prepared to deliver public domain and infrastructure on the Dahua site in accordance with the revised planning controls. The VPA was publicly exhibited from 1 to 29 November 2018. The VPA has been executed and registered on title. The dedication of land and works to establish public domain as secured in the VPA are required to be delivered prior to the issue of any Occupation Certificate for any new buildings constructed on the site.
46. To date, two competitive design alternatives processes have been carried out for the Dahua site:
  - (a) CMP/2016/20 – Competitive Design Alternatives Process Site 1 comprising the western side of the Dahua site fronting Young Street. Competitive design alternatives process 1 was an invited process where the proponent sought three competitors to respond to a Competitive Design Alternatives Process Brief. The process ran from 28 October to 12 December 2019 and a winning design was selected; and
  - (b) CMP/2019/3 - Competitive Design Alternatives Process Site 2 comprising the eastern side of the Dahua site fronting Bourke Street. Competitive design alternatives process 2 was an invited process where the proponent sought three competitors to respond to a Competitive Design Alternatives Process Brief. The process ran from 28 October 2019 to 5 February 2020 and a winning design was selected.

47. D/2019/428 - On 2 November 2020, development consent was granted for early works including demolition, excavation and preliminary remediation of the land.
48. There are no applications currently before the City for the detailed design of buildings or development of the Dahua site.

#### 895-899 and 901 Bourke Street (the City West Housing site)

49. D/2015/941 – On 30 April 2018 deferred commencement consent was granted for demolition of existing structures and construction of a 5-storey mixed use building with 72 affordable housing dwellings, 26 at grade car parking spaces and a commercial tenancy. The proposal includes a raised landscaped podium, dedication of land on Bourke Street for a future cycleway and dedication of land at the rear of the site for a future road.
50. This deferred commencement consent (D/2015/941) would have lapsed on 24 April 2021, were it not for amendments to section 4.53 of the Act. These amendments extend by two years any consent that would have lapsed during the (COVID-19 affected) period of 25 March 2020 to 25 March 2022. As such this deferred commencement consent is valid until 24 April 2023. As noted below the VPA has been executed and registered on title. As such the deferred commencement consent conditions have been satisfied and the consent will be made operative shortly. Once the deferred commencement consent is made operative, works can commence on the site.
51. VPA/2015/55 – Associated with DA no. D/2015/941, is a VPA for dedication of a strip of land 3m wide at the front of the site and works for footpath widening and dedication of a strip of land 12m wide, at the rear of the site for a future road. The VPA has been executed and registered on the title of the land.
52. D/2017/146 – On 8 June 2017 development consent was granted for a change of use of premises to a licensed function centre with ancillary retail premises, kiosk and yoga studio.
53. Prior to its current use as a function centre, kiosk and yoga studio the site accommodated Doug up on Bourke, a furniture and antiques showroom, warehouse and workshop and Porters Paints, a paint warehouse, retailer and supplier.

#### 1 Danks Street (Warehouse 1)

54. U02/00157-01 – On 14 June 2002, deferred commencement consent was granted to convert an existing warehouse into a mixed commercial residential building containing 1278 sqm of commercial/retail floor space and 13 residential units, with off street parking for 20 cars. The deferred commencement consent was made operative and the building has been constructed and is currently occupied.

#### 3-7 Danks Street

55. Council's records indicate that these gabled warehouse buildings that front Danks Street were constructed sometime between 1943 and 1975. Prior to the lodgement of U03/00788 described below, these warehouses accommodated various warehouse and commercial uses.

56. U03/00788 - On 16 December 2003, development consent was granted for internal alterations and use of the existing warehouses for wholesaling and retailing of fine foods and fresh produce. Since the issue of this consent, there have been other consents granted for various commercial uses of the tenancies contained within these buildings.

#### 9-15 Danks Street (Xhibit 9)

57. D/2004/1330 – On 1 September 2005, development consent was granted to convert an existing warehouse into a mixed-use building comprising 4 retail suites, 14 commercial suites and 8 apartments with off-street carparking. This consent has been modified several times, including to consolidate and reduce the total number of apartments to 6. This building has been constructed and is currently occupied.
58. D/2012/1063 - On 6 November 2012, development consent was granted to convert one of the existing commercial suites into a residential apartment.

#### 17-19 Danks Street

59. D/2012/969 – On 25 February 2013, deferred commencement consent was granted for Demolition of existing building, stratum subdivision and construction of a mixed-use development comprising two buildings, 43 residential apartments with two levels of basement parking. This building has been constructed and is currently occupied.

#### 21-25 Danks Street (North Shore Hardware)

60. Council's records indicate that this one to two-storey warehouse building on the corner of Danks and Bourke Streets was constructed sometime between 1986 and 1989.
61. U97/00093 - On 26 March 1997, development consent was granted for use of the premises for warehousing and wholesaling of timber products and an ancillary office.
62. D/2019/1371 - On 26 March 2020, development consent was granted for alterations to and use of the existing warehouse building as an indoor climbing facility (recreation facility - indoor).

#### 788-822 (aka 806) Bourke Street (the Tiara site)

63. U99/00763 - On 24 November 1999, deferred commencement development consent was granted for construction of stage 1 of the masterplan for the former ACI site comprising a mixed-use development made up of 335 residential apartments above ground level commercial tenancies and parking and basements. This building has been constructed and is currently occupied.

#### 188-196 Young Street (Hillsong)

64. U04/00545 - On 27 January 2005, development consent was granted for intensification of the existing church use by increasing the seating capacity from 600 to 1050, addition of 33 on-site parking spaces accessed from Morehead Street and noise attenuation works.

### History of the Relevant Planning Controls

65. In December 2016, Council and the Central Sydney Planning Committee (CSPC) resolved to publicly exhibit draft planning controls for the Danks Street South precinct.
66. Following Gateway approval from the Department, the Planning Proposal and draft DCP were publicly exhibited for 46 days from 2 May to 16 June 2017.

67. On 13 September 2019 the Planning Proposal was gazetted and the amended LEP and DCP controls came into force.
68. Together, the amended LEP and DCP controls establish appropriate height of building and built form controls to accommodate the existing floor space ratios for the site, as well as providing a greater level of detail about the public domain required to be provided in association with the future development of the land. The community infrastructure provision and indicative built form massing prescribed by the amended DCP are shown in Figures 34 and 35 below.
69. The amended DCP built form controls establish mid-rise perimeter street block buildings within the subject site of 4 to 8 storeys in height. These can be referenced to comparable urban renewal sites in the area such as the Moore Park Gardens (MPG) development. Like MPG, it is the interplay of the street-wall and deep soil zones in landscaped setbacks with medium and large tree plantings, that will be key to creating a successful relationship between the buildings, neighbouring development and the public domain.
70. The DCP identifies community infrastructure to be delivered within the subject site and includes:
  - (a) a new east-west street
  - (b) a pedestrian through site link connecting the new east-west street to Danks Street
  - (c) portions of the new public open space and shared zones along the public open space's eastern and western edges and
  - (d) footpath widening along Bourke Street.

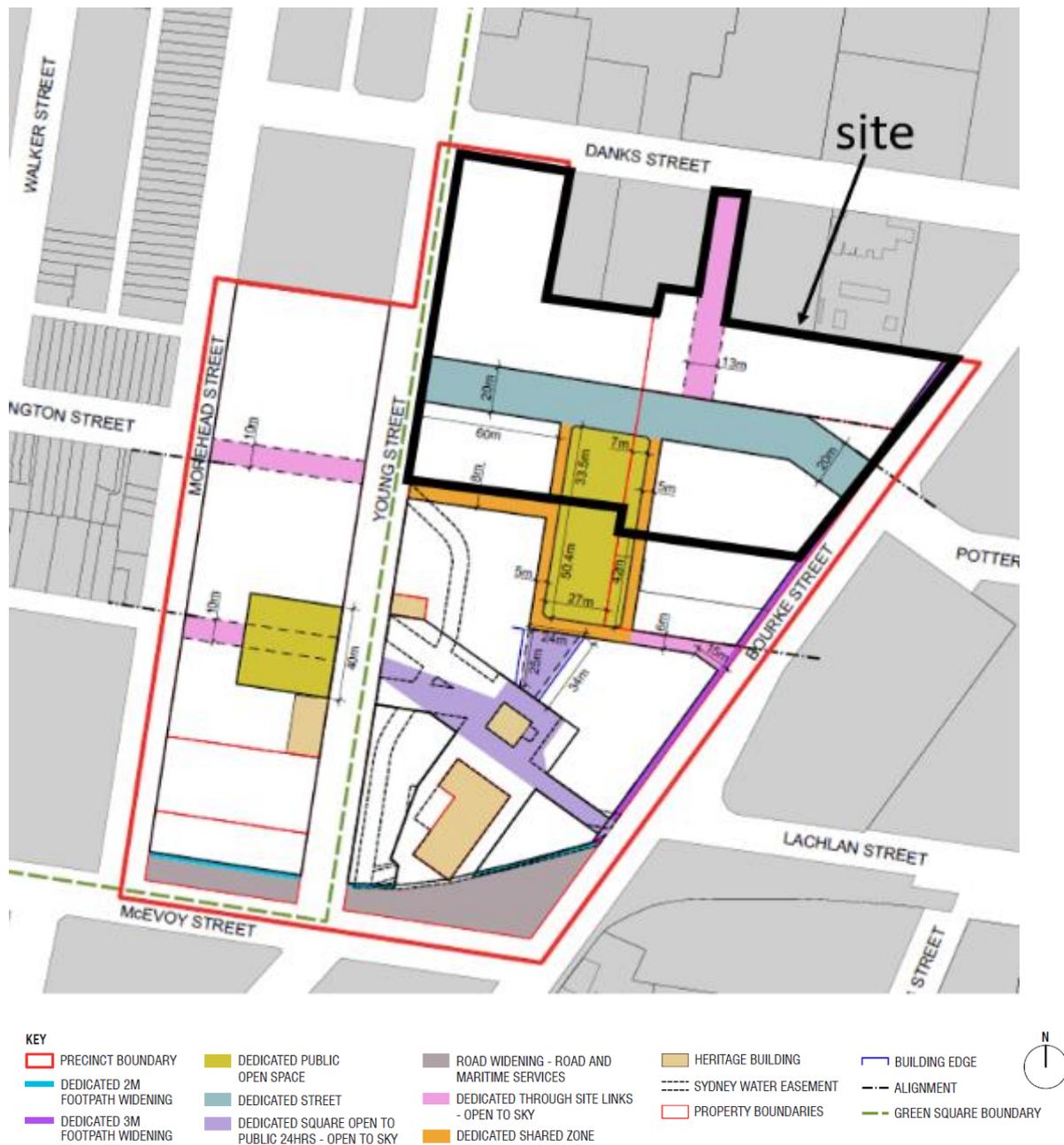


Figure 34: Excerpt from Danks Street South Dedications map (Sydney DCP 2012, Figure 5.199)

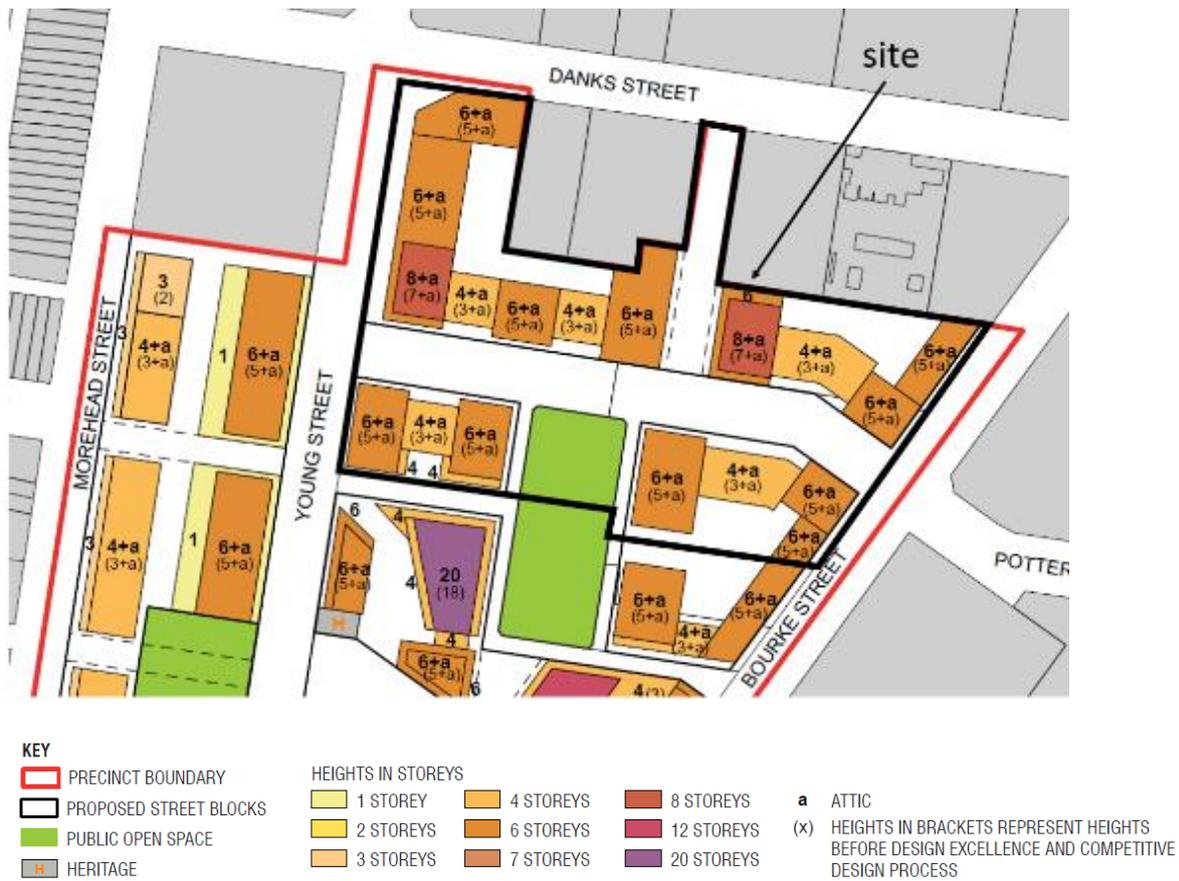


Figure 35: Excerpt from Danks Street South Indicative Built Form map (DCP Figure 5.209)

### History of the Subject DA

#### Pre-DA consultations

71. The applicant engaged with council officers in pre-DA consultations during the period December 2018 to November 2019. This involved several submissions of preliminary plans and other information, meetings and written correspondence.
72. Over the course of these pre-DA consultations, council officers issued advice about:
  - (a) the need for a staged (concept) DA process
  - (b) competitive design processes
  - (c) contamination and remediation requirements
  - (d) phased provision of community infrastructure; and
  - (e) DA documentation and submission requirements.

#### Post-lodgement

73. The subject integrated concept DA was lodged on 21 January 2020 and originally sought consent for:
  - (a) in-principle approval for demolition of all existing structures

- (b) two-phased subdivision into five development parcels and several lots for transfer and dedication
  - (c) two-phased provision of community infrastructure including the new east-west street, part of the public open space, a through site link, shared zones and a 3m public domain setback along Bourke Street for footpath widening and
  - (d) detailed concept envelopes.
74. Council officers made preliminary requests seeking additional information including a revised quantity surveyor's report, revised demolition plans and an acoustic report. Authorisation was sought from the applicant to exhibit submitted plans and for the application to be accepted as an integrated DA. Arrangements were made for council officers to visit the site.

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

75. The proposal was presented to DAP on 7 May 2020.
76. Issues discussed by DAP included:
- (a) gaps and inconsistencies in the submitted base environmental information and DA documents
  - (b) non-compliances with LEP and DCP controls and failure to adequately address SEPP 65 and ADG objectives
  - (c) that the phased delivery of community infrastructure needs to be clarified and more evenly spread across the two phases of development rather than postponing the larger component to the second phase
  - (d) that there should be greater permeability of the ground plane to improve residential amenity and
  - (e) that the two proposed north-western development parcels should be amalgamated to improve residential amenity.

#### Post-lodgement (continued)

77. Following receipt of the above DAP advice, council officers sent a comprehensive issues letter to the applicant making recommendations as to how various problems with the proposed development concept might be addressed.
78. Issues identified in the letter are summarised as follows:
- (a) unclear remediation information
  - (b) a lack of clarity around the proposed delivery of community infrastructure
  - (c) that the DA documentation submitted at lodgement was not of a suitable standard and was poorly coordinated:
    - (i) survey information was inadequate and outdated
    - (ii) the Landscape Strategy did not adequately address landscaping within the proposed development parcels

- (iii) there were inconsistencies across the Arboricultural Impact Assessment report, tree removal and demolition plans; and
  - (iv) overshadowing and noise impact assessments had not been provided.
- (d) The concept envelopes breached the LEP height controls. A written LEP clause 4.6 justification for the contravention of the building height development standard had not been submitted
- (e) the originally proposed concept envelope drawings indicated the number of storeys/internal levels, locations of lift and stair overruns. In this regard the originally proposed design of the concept building envelopes was overly detailed and had the effect of pre-empting competitive design process and detailed design outcomes
- (f) submitted documentation failed to demonstrate that the proposed development was capable of satisfying ADG and DCP requirements pertaining to solar access, natural ventilation, common circulation, depths of apartments and private open space
- (g) DAP recommendations including those pertaining to:
- (i) reconsideration of the postponement of the larger component of community infrastructure provision to the second phase of development
  - (ii) the need for increased permeability of the ground plane and
  - (iii) amalgamation of the two north-western development parcels to improve residential amenity.
- (h) the concept proposal is yet to resolve tensions between flood planning levels and the provision of equitable access and DCP prescribed active frontages and
- (i) that the Public Art Strategy submitted at DA lodgement failed to engage with the public art ideas for the Danks Street South precinct that had been developed through public consultations commissioned by the City.
79. In response to issues raised by Council officers, taking into account DAP advice, the applicant provided an amended DA package in mid-December 2020. Further amendments and additional information have been provided up until July 2021. Over the course of the assessment the applicant's project team has met with Council officers on several occasions to discuss the various issues raised.
80. The final submitted amendments and additional information are summarised follows:
- (a) revised survey information
  - (b) an amended draft plan of subdivision including amalgamation of the two north-western development parcels
  - (c) reduction in the height of the envelope to comply with the LEP height controls and simplification of the envelope drawings
  - (d) increased deep soil provision

- (e) a revised reference scheme comprising 390 apartments (reduced from 435 in the original proposal)
  - (f) a revised remedial action plan and site auditor's statement
  - (g) overshadowing and solar access analysis
  - (h) a revised acoustic report and natural ventilation strategies
  - (i) a revised landscape concept plan
  - (j) a new arboricultural impact assessment
  - (k) a revised design excellence strategy and ESD target benchmarks and
  - (l) a revised public benefit offer.
81. The final integrated concept DA as amended by submission of the revised drawings and additional information summarised above is the subject of this assessment report.

## Proposal

82. The subject application seeks consent for:
- (a) concept building envelopes for three mixed-use buildings contained within the proposed new north-western (Parcel 1) Lot 1, north-eastern (Parcel 2) Lot 104 and the south-eastern (Parcel 3) Lot 103 with indicative future land uses comprising:
    - (i) ground level commercial uses, parking, services, lobbies and landscaping and
    - (ii) apartments and communal open spaces at upper levels.
  - (b) a concept building envelope for one residential apartment building contained within the proposed new south-western (Parcel 4) Lot 2
  - (c) vehicle access locations for each of the four new concept building envelopes as follows:
    - (i) north-western (Parcel 1) Lot 1, from Young Street
    - (ii) north-eastern (Parcel 2) Lot 104, from the new east-west street
    - (iii) south-eastern (Parcel 3) Lot 103, from the new east-west street
    - (iv) south-western (Parcel 4) Lot 2, from Young Street; and
  - (d) a first stage of development, comprising:
    - (i) staged demolition of all existing structures including ground floor slabs and footings
    - (ii) staged remediation

- (iii) staged subdivision to create four new development parcels, transfer lands (for transfer and dedication to the city) and associated works
  - (iv) temporary relocation of the existing substation currently located near the street frontage of and within the property at 207-229 Young Street, further north
  - (v) tree removal and
  - (vi) phased provision of the new east-west street, augmentation of the traffic signals at the intersection of the new east-west street and Bourke Street, the through site link, temporary access paths and public open space area (comprising future shared zones and public open space).
83. The proposed envelopes shown in the figures below are to the maximum height permitted by the Sydney LEP 2012 (the LEP). The submitted design excellence strategy sets out competitive design processes for the site and specifies that up to 10% additional height is sought in accordance with the design excellence provisions contained in clause 6.21 of the LEP. Subject to the achievement of design excellence through competitive design processes and in subsequent DAs for detailed building designs, the proposed development may be able to achieve up to 10% additional height. This additional height is indicated by a dashed line in the elevation drawings below.
84. The owner of the site has made a written offer to Council to enter into a Voluntary Planning Agreement (VPA). The draft VPA that has been prepared in association with the subject development application provides for the following public benefits:
- (a) transfer and dedication of 6,901 sqm of land for new roads, public open space, a through site link and footpath widening on Bourke Street and
  - (b) developer's works to remediate and embellish these transfer and dedication lands to be delivered over four phases as follows:
    - (i) Phase 1 - dedication and construction of the western portion of the new east-west street and the through site link. Transfer of land and construction of temporary paths in the location of the future shared zone on the western edge of the public open space. This is to be provided prior to issue of an Occupation Certificate for any buildings contained within the north-western (Parcel 1) Lot 1 or the south-western (Parcel 4) Lot 2
    - (ii) Phase 2 - dedication and construction of the eastern portion of the new east-west street. Transfer and construction of the future shared zone on the eastern edge of the public open space. Transfer and embellishment (to a basic level comprising turf, some furniture, bins and lighting). This is to be provided prior to issue of an Occupation Certificate for any buildings contained within the north-eastern (Parcel 2) Lot 104 or the south-eastern (Parcel 3) Lot 103
    - (iii) Phase 3 - dedication of a 3m wide strip of land along the Bourke Street frontage of the north-eastern (Parcel 2) Lot 104 and construction of footpaths prior to issue of an Occupation Certificate for any buildings contained within the north-eastern (Parcel 2) Lot 104

- (iv) Phase 4 - dedication of a 3m wide strip of land along the Bourke Street frontage of the south-eastern (Parcel 3) Lot 103 and construction of footpaths prior to issue of an Occupation Certificate for any buildings contained within the south-eastern (Parcel 3) Lot 103 and
  - (c) provision of a bank guarantee for \$5,234,380 to secure the developer's works.
85. Drawings of the reference scheme have also been lodged with the application to illustrate how a compliant built form can be provided within the proposed concept envelopes. These reference scheme drawings are included below but are not approved as part of any consent granted and are for assessment purposes only.
86. This is an integrated DA requiring approval from Transport NSW under the Roads Act 1993 and from Water NSW under the Water Management Act 2000.
87. Drawings of the proposed development are provided below.

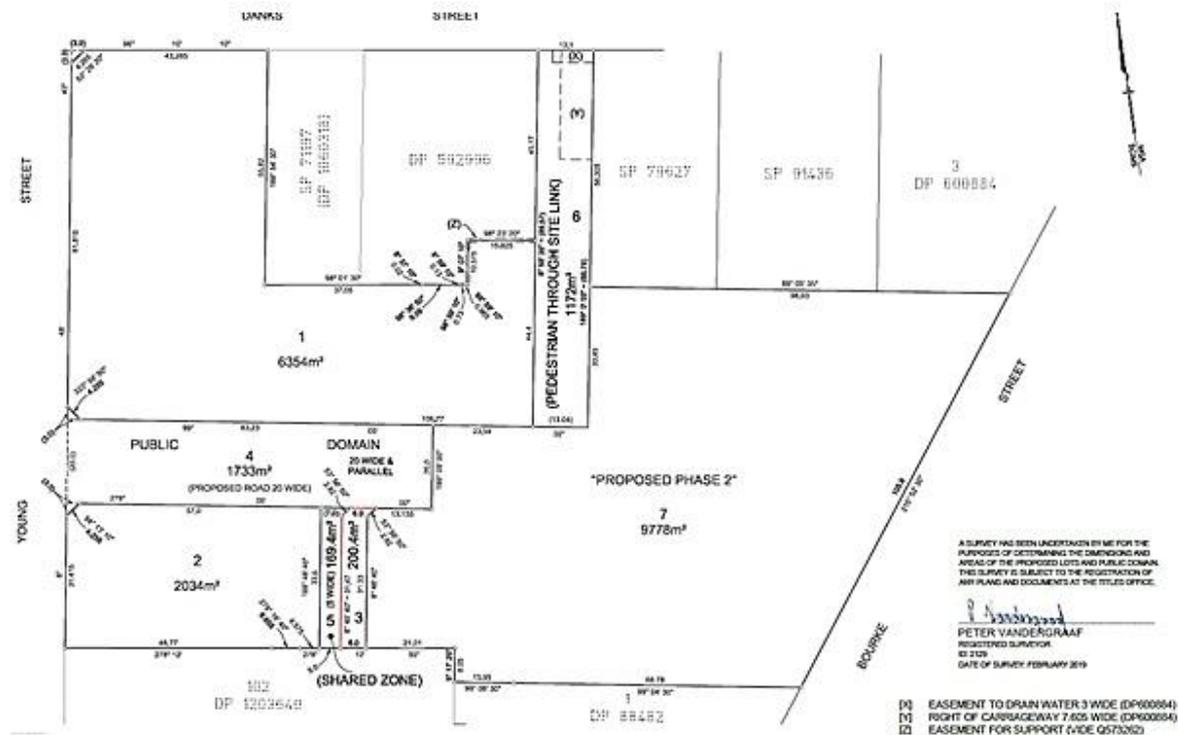


Figure 36: Phase 1 - draft plan of subdivision

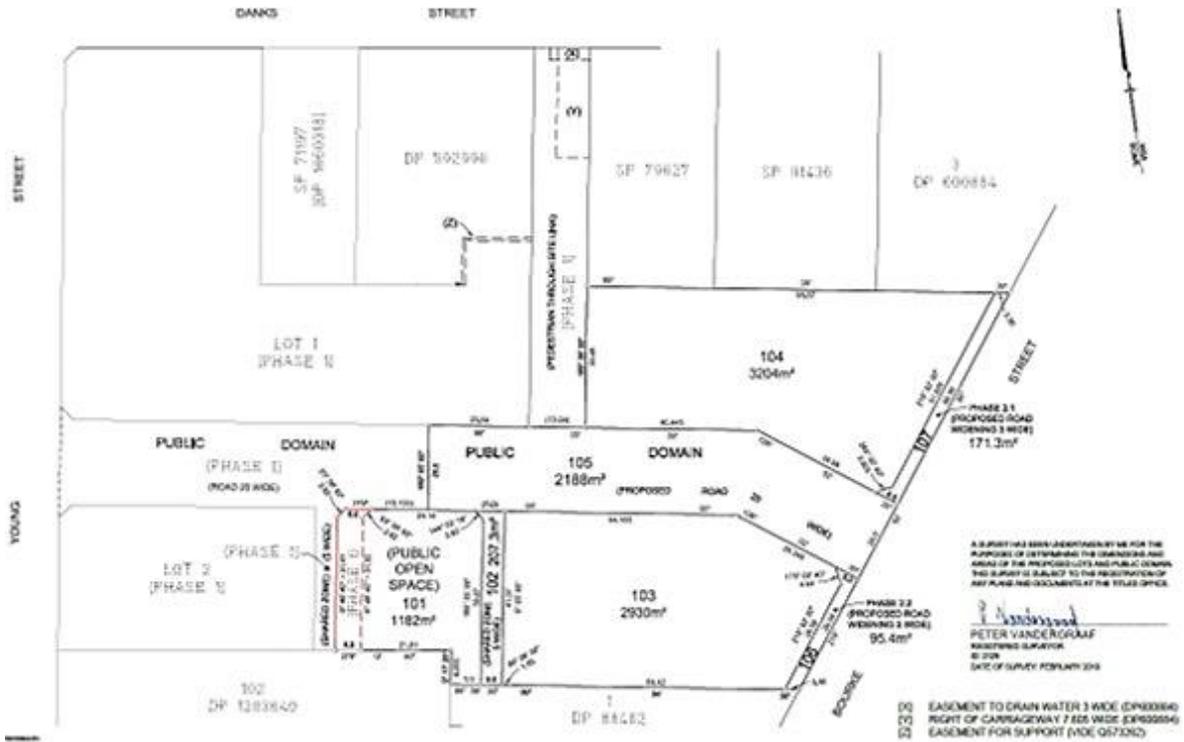


Figure 37: Phases 2, 3 and 4 - draft plan of subdivision

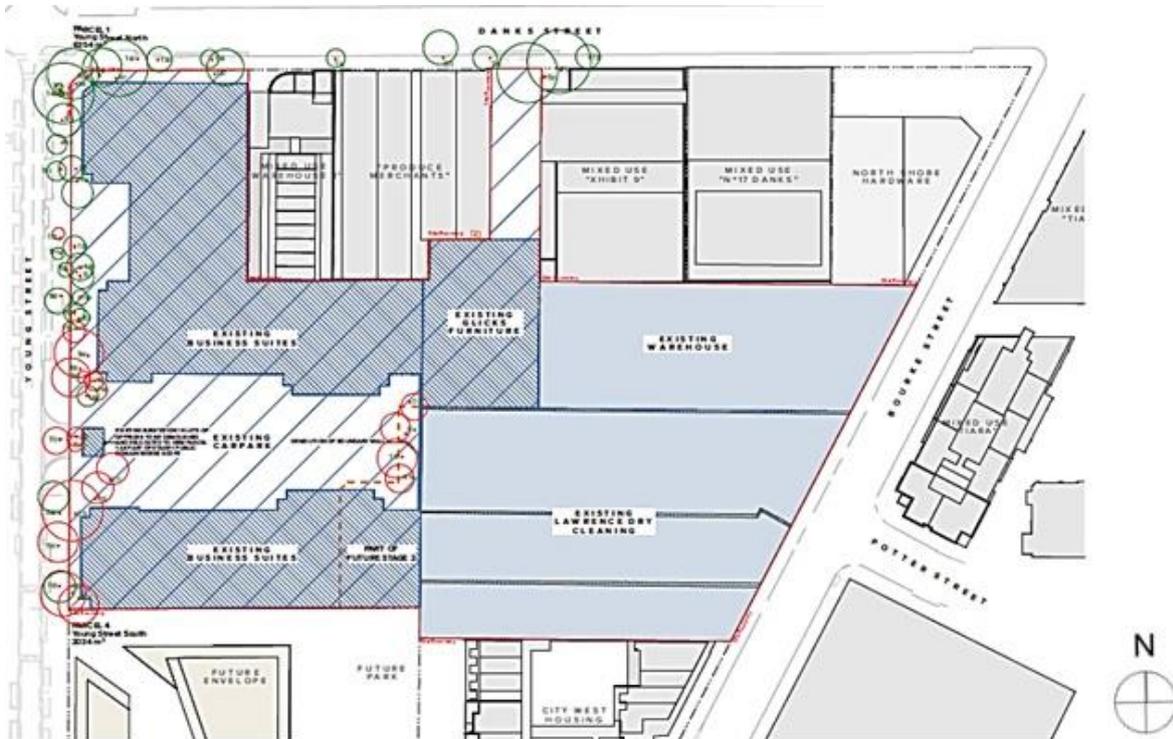


Figure 38: First stage demolition plan, indicated by hatching

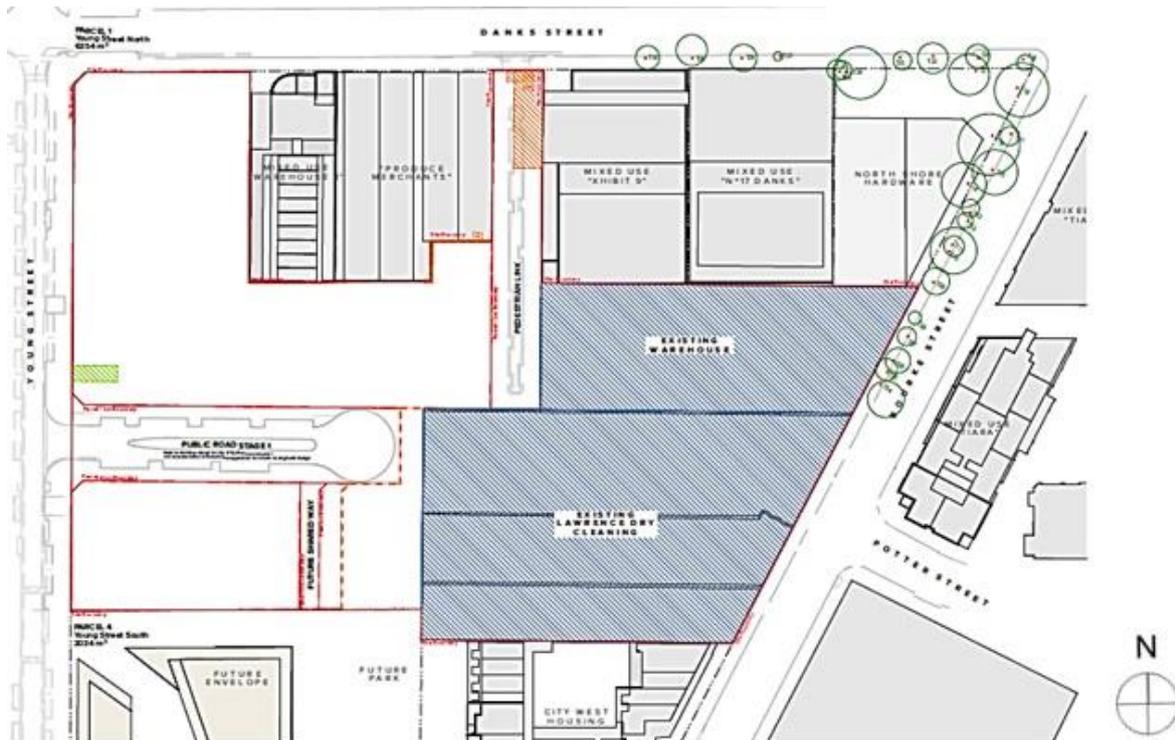


Figure 39: Second stage demolition plan, indicated by hatching

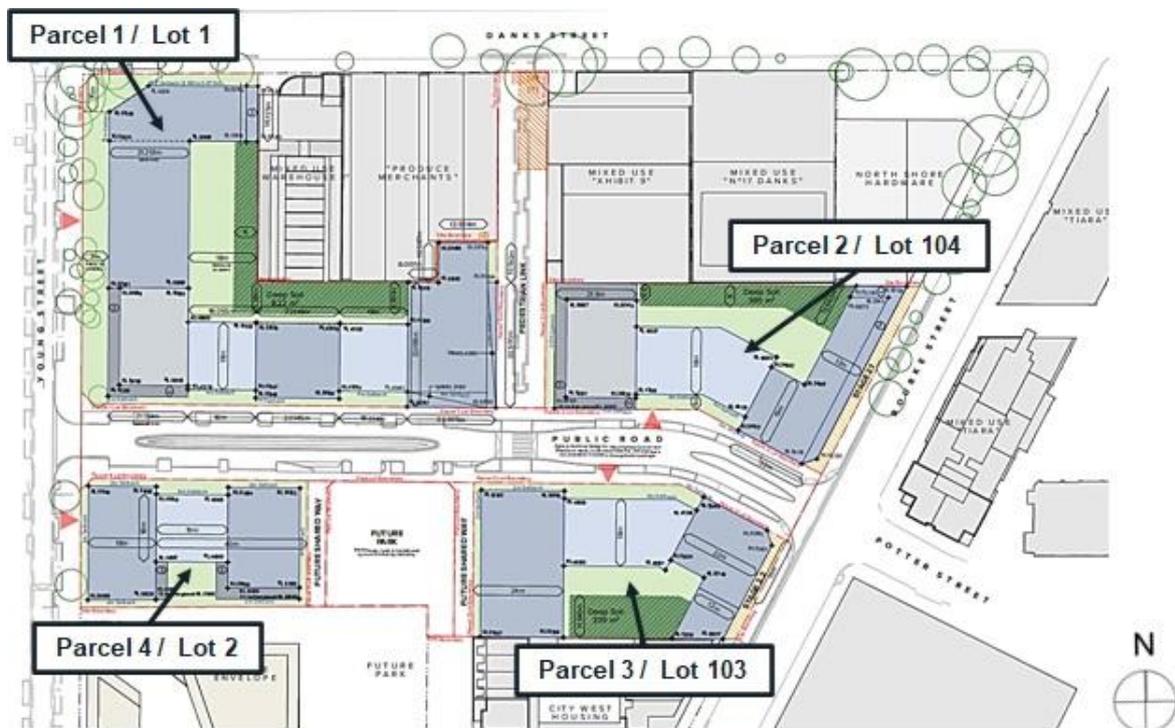


Figure 40: Envelope plan

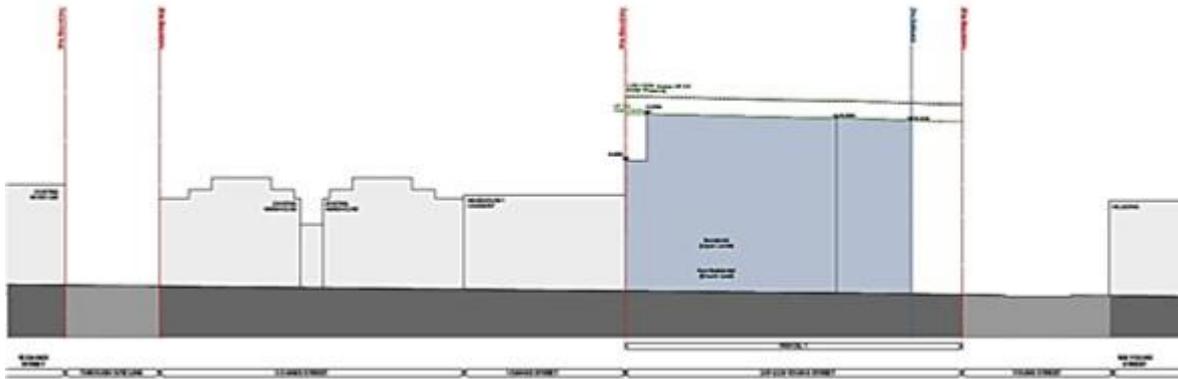


Figure 41: Envelope - north (Danks Street) elevation

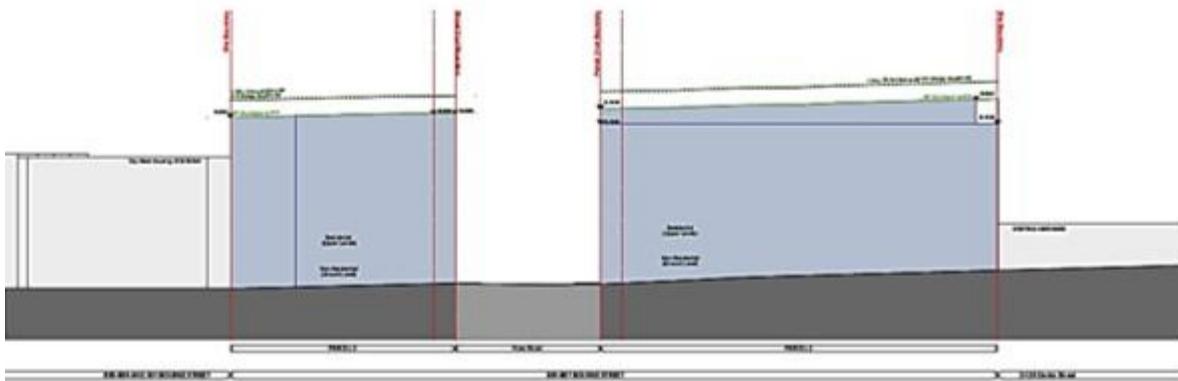


Figure 42: Envelope - east (Bourke Street) elevation

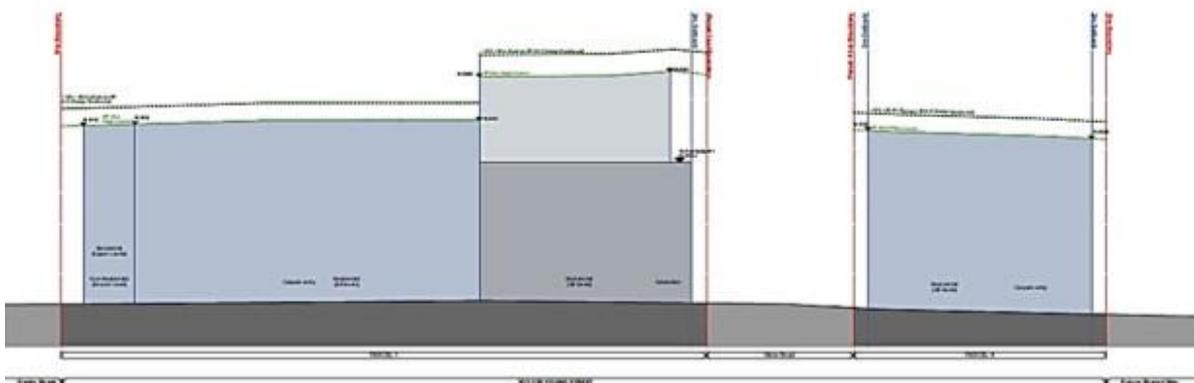


Figure 43: Envelope - west (Young Street) elevation

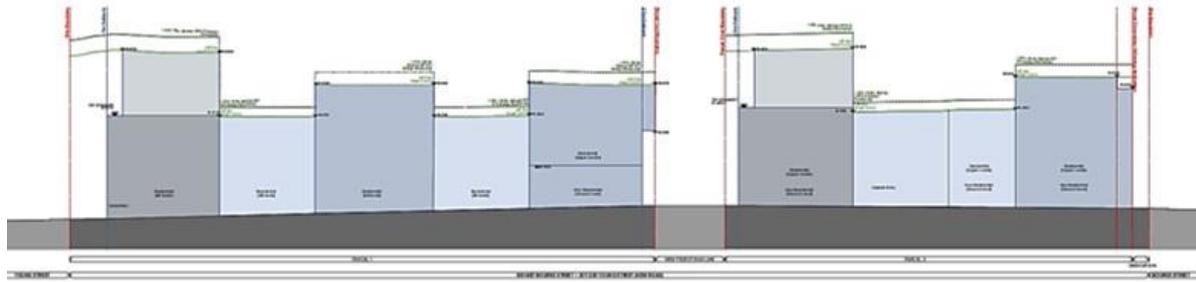


Figure 44: Envelope - south (new east-west street) elevation

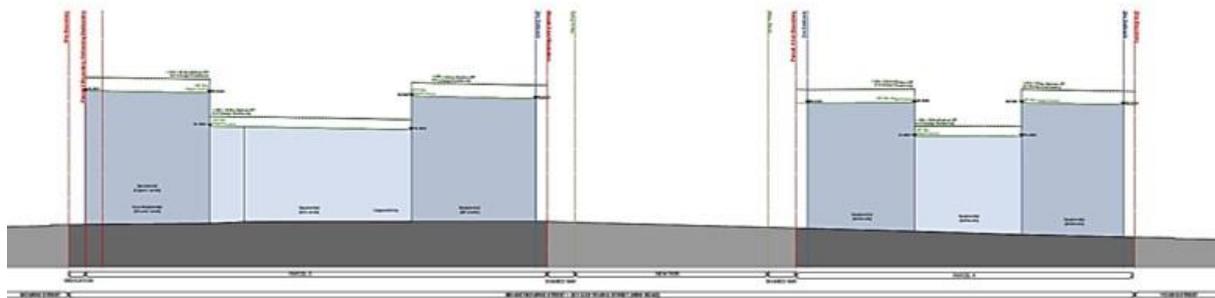


Figure 45: Envelope - north (new east-west street) elevation

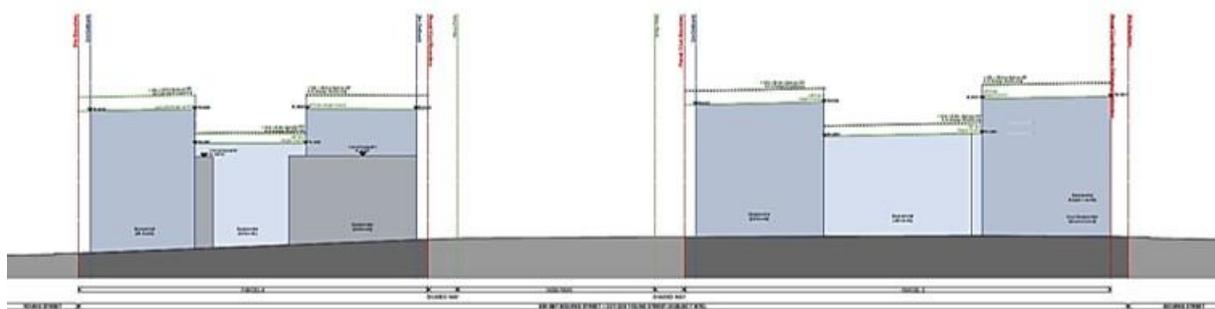


Figure 46: Envelope - south elevation

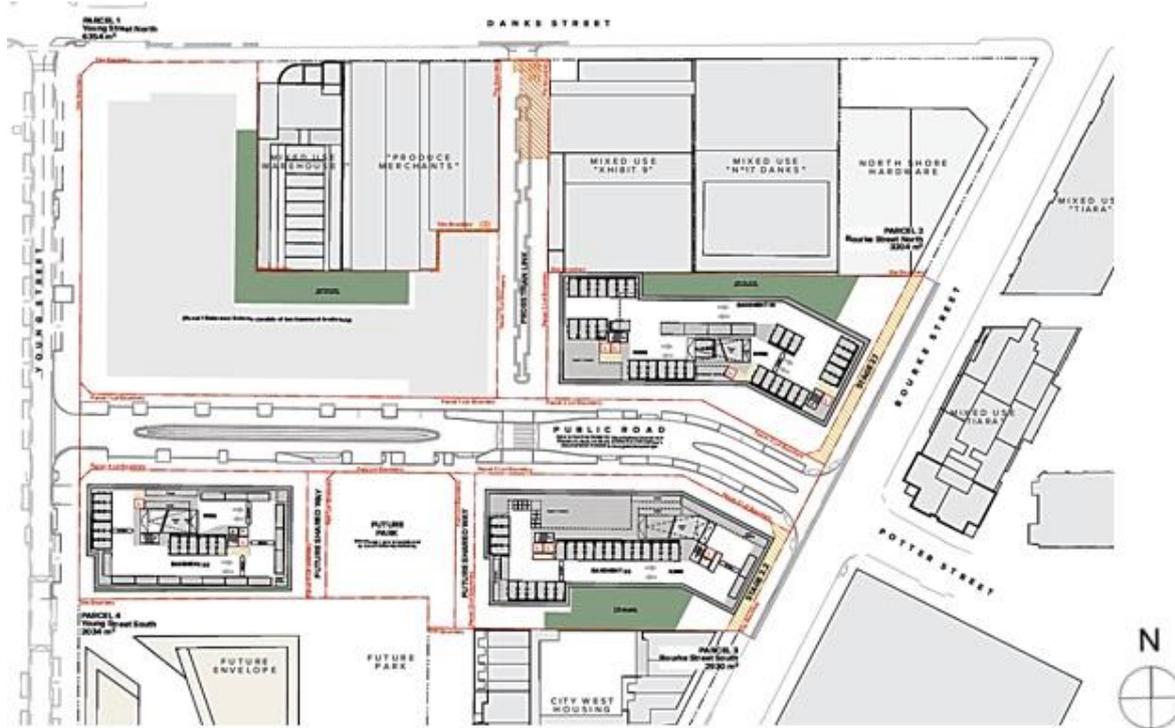


Figure 47: Reference scheme - basement 3

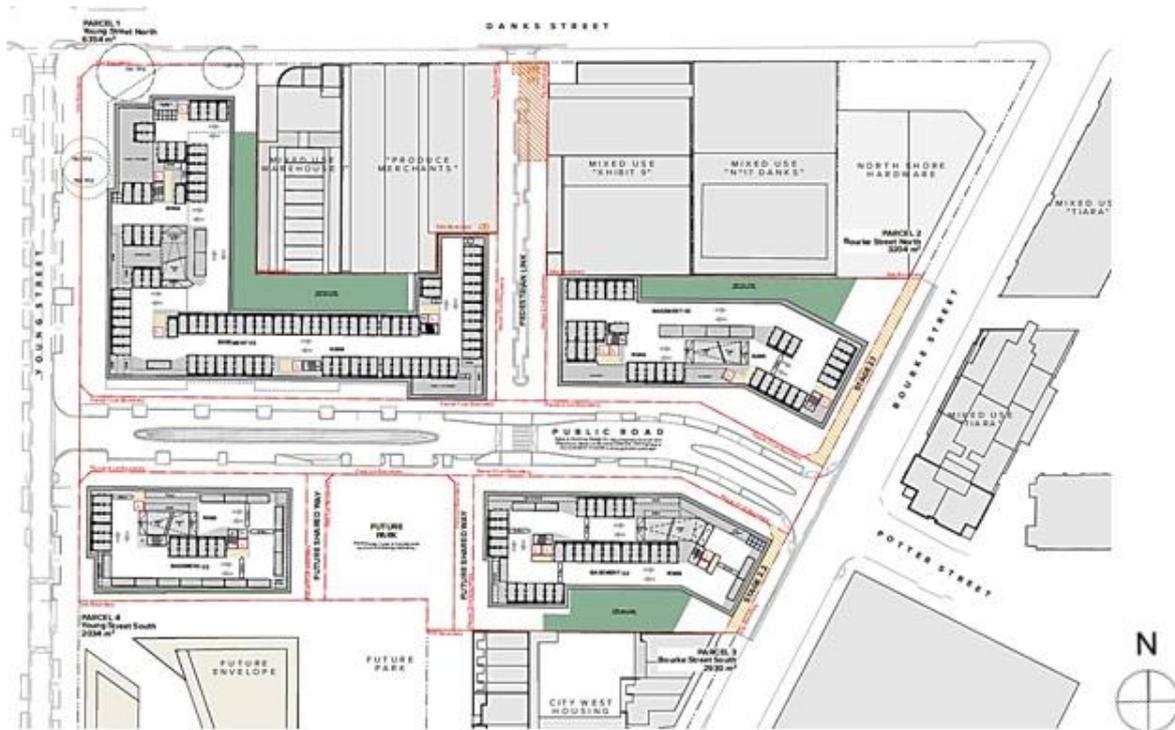


Figure 48: Reference scheme - basement 2

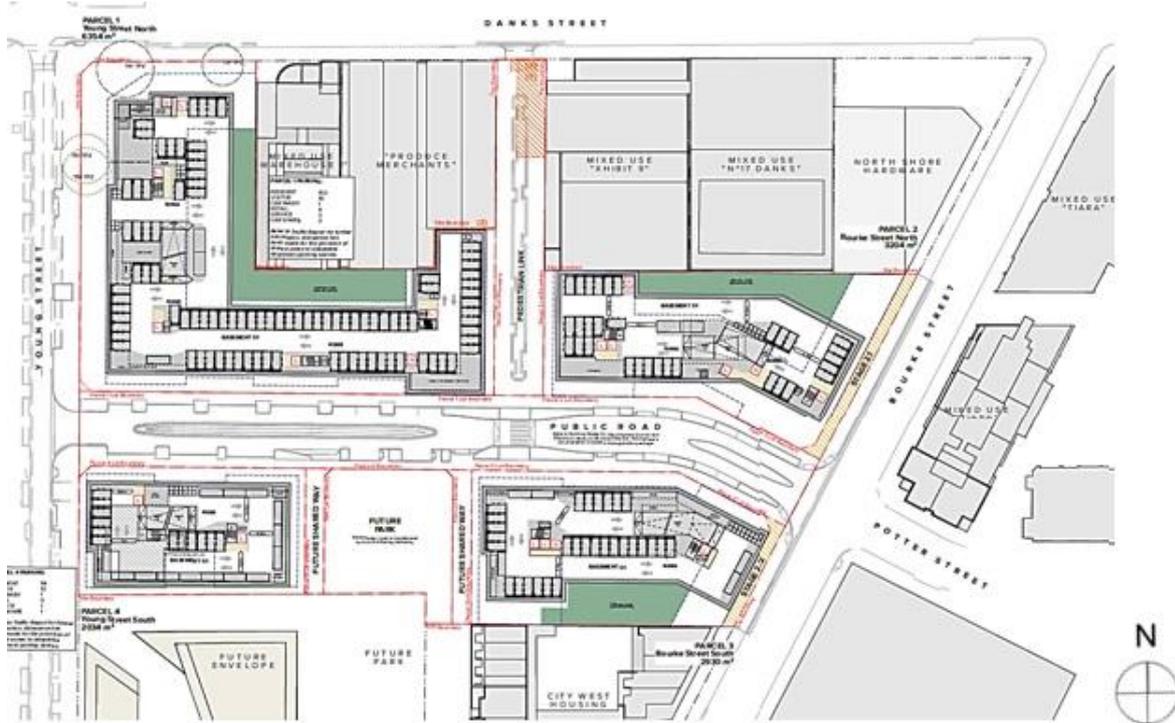


Figure 49: Reference scheme - basement 1

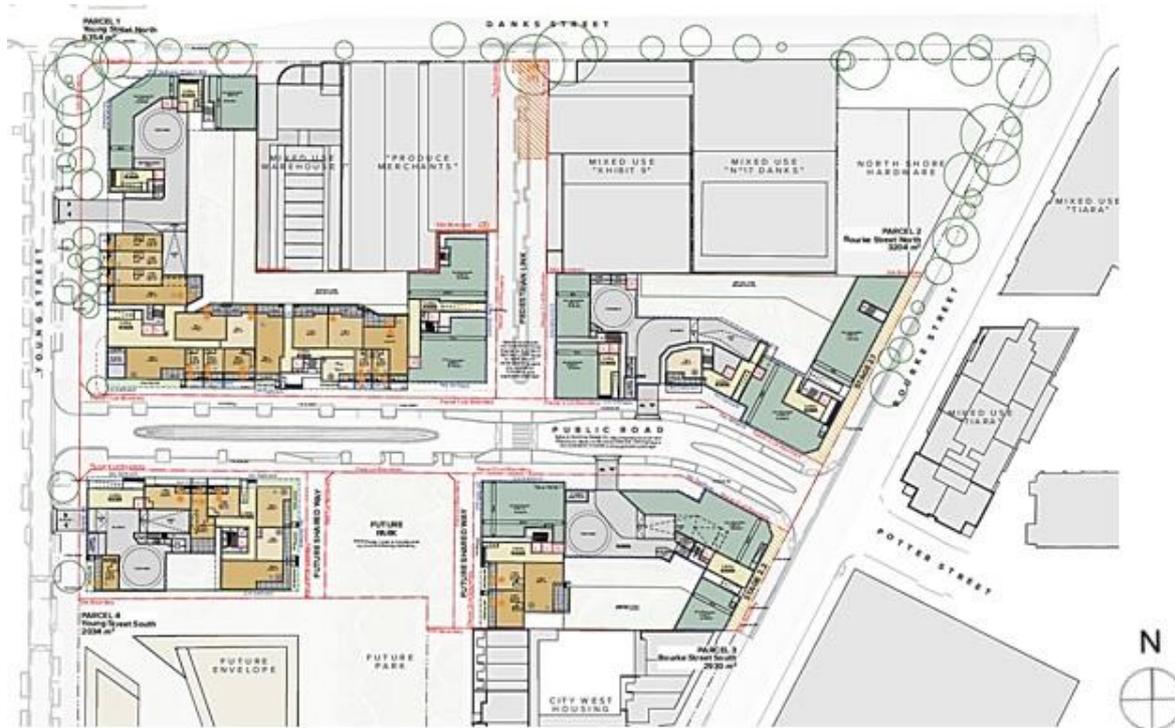


Figure 50: Reference scheme - ground level

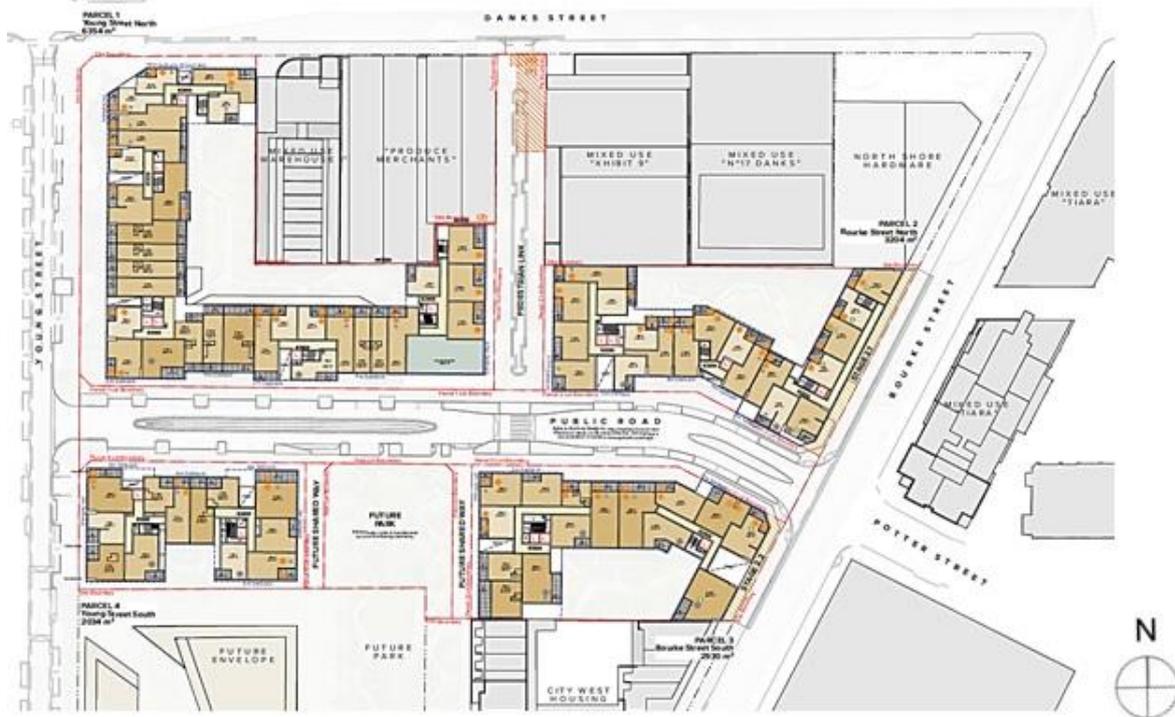


Figure 51: Reference scheme - level 1



Figure 52: Reference scheme - level 2



Figure 53: Reference scheme - level 3



Figure 54: Reference scheme - level 4

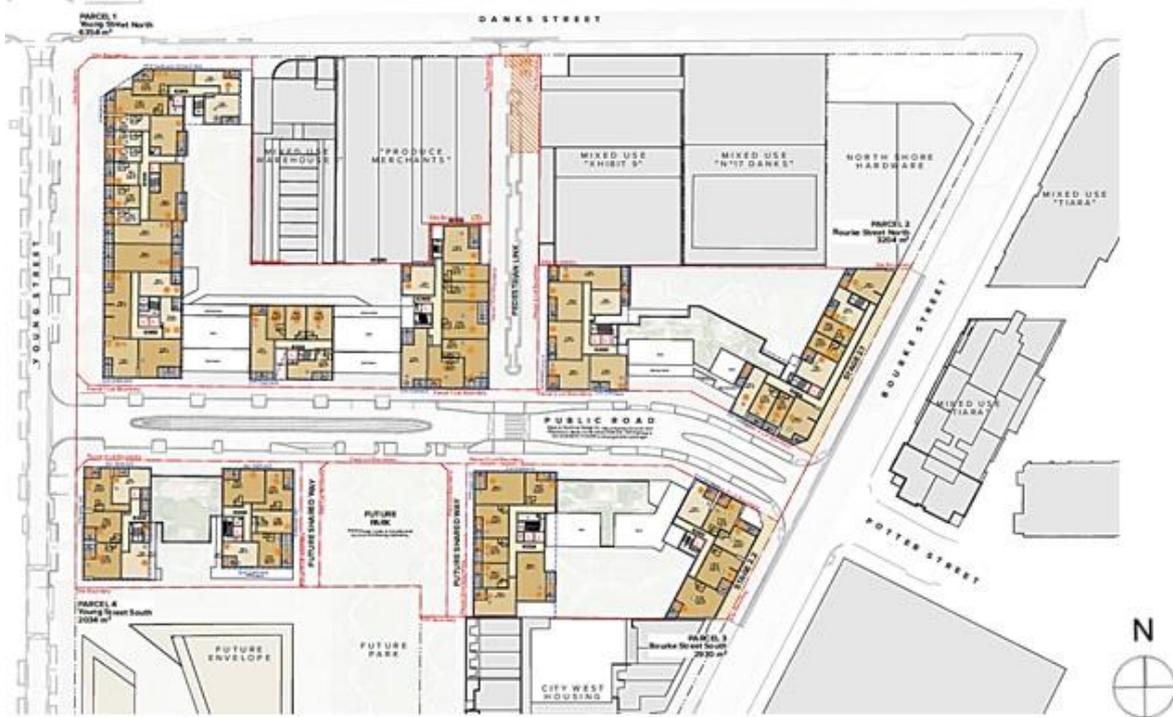


Figure 55: Reference scheme - level 5

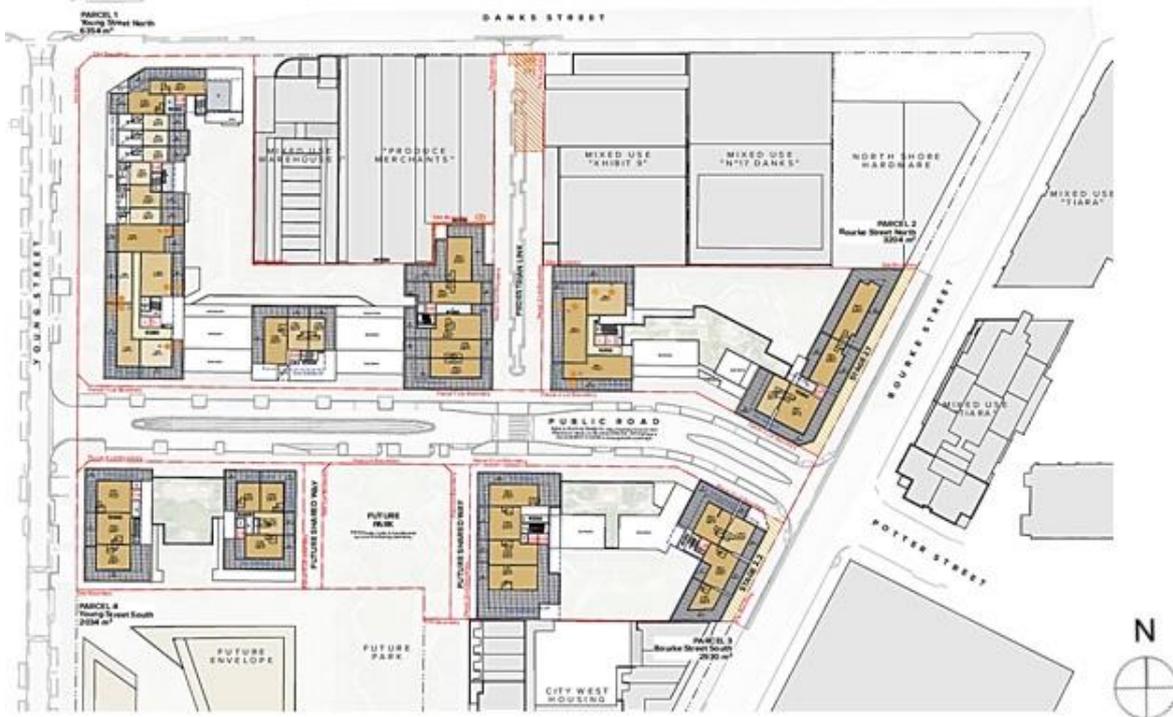


Figure 56: Reference scheme - level 6



Figure 57: Reference scheme - level 7



Figure 58: Reference scheme - level 8

## Economic/Social/Environmental Impacts

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

- (a) Environmental Planning Instruments and DCPs.

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

89. The aim of SEPP 55 is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health.

90. Contamination of the site, and the Dahua site to the south, has been the subject of various assessments over a sustained period of time. Initial investigations of the Dahua and LDC sites were undertaken in the early and mid-2000s, with assessment and investigative works to inform remediation strategies continuing up until 2012. Since remediation commenced in 2012, the focus has been on monitoring and assessing the remediation activities in accordance with the Management Order and the associated approved RAP.

91. Subsequent investigations have confirmed that volatile organic compounds (VOCs), including Volatile Chlorinated Hydrocarbons (VCH), Tetrachloroethene (PCE), Trichloroethene (TCE), 1,2-dichloroethene (DCE) and Vinyl Chloride (VC) have contaminated the site. Aside from dry cleaning operations at the Lawrence Dry Cleaning site, fill materials and a history of industrial uses has also been the causes of contamination of the subject and adjacent sites.

92. The amended DA package included a new Remedial Action Plan (RAP), a Site Audit Report and a Site Audit Statement.

93. During the assessment period Council officers raised concerns with the applicant. These are detailed as follows:

- (a) issues raised in submissions from the owner of an adjacent site. These concerns pertained to the RAP failing to clearly acknowledge and address the commercial and residential uses approved on the adjacent site and potential for contamination to migrate across the boundary into the adjacent site;
- (b) contingencies specified in the Site Audit Report, including reliance on long term environmental management plans (LTEMP):
  - (i) while the submitted RAP aims to completely remediate the site, it refers to the possibility of contaminants being retained on site during the staged remediation process and also the possibility of a 'passive' LTEMP where complete remediation of the site may not be practicable and
  - (ii) recommendations for a passive ventilation system beneath future buildings in the event of unacceptable vapour risks as part of a Passive Environmental Management Plan
- (c) that should a LTEMP and a passive ventilation system be required, this may place an unreasonable encumbrance on future owners (including the city as future owner of the new east-west street, public open space and widened footpaths).

94. The applicant has responded to the concerns raised by Council officers, as follows:
- (a) The submitted RAP and site audit statement address the issues raised in the submission from the owner of the adjacent site. The RAP acknowledges the approved mixed-use residential development approved on the adjacent site and includes measures to ensure contaminants do not migrate into adjacent sites during remediation works,
  - (b) The RAP is designed to remediate the site and fulfill the requirements of the Management Order,
  - (c) The sources of the contamination will be remediated as part of the second phase of development. Interim measures are proposed including the construction of sheet piling along containment lines (in the general location of the western boundary of the existing LDC site) to prevent any migration of contaminated groundwater to the western portion of the site which is to be remediated first or to adjacent properties.
  - (d) The NSW Environmental Protection Authority (the NSW EPA) reporting guidelines require that all such RAPs consider contingency measures, should the remediation process not go entirely as planned.
  - (e) Any such measures would have to be approved by the site auditor and paid for and constructed by the proponent. Therefore, the costs would fall on the developer at construction, rather than on future owners and there would be no on-going management costs as these systems would be passive.
  - (f) Furthermore, consent for construction of buildings contained within the proposed new development parcels will be the subject of subsequent detailed design DAs. Those DAs will need to address SEPP 55 and council's remediation requirements and will be the subject of an assessment at that time.
95. The Site Audit Statement provided as part of the amended DA package certifies that the site can be made suitable for the proposed residential, commercial and public domain uses, subject to remediation of the site in accordance with the submitted RAP.
96. Council officers have reviewed the submitted RAP, which has been peer reviewed and endorsed by EPA site auditor Andrew Kohlrusch, the Site Audit Report and Site Audit Statement, as well as the applicant's responses to issues raised over the course of the assessment. The Section B Site Audit Statement, which is a preliminary site audit statement, is accepted and conditions have been recommended as follows:
- (a) the site is to be remediated and validated in accordance with the RAP:
  - (b) appropriate measures are to be put in place to manage contamination risks during the staged remediation of the site
  - (c) a Site Audit Statement is to be submitted to and approved by Council upon completion of remediation works
  - (d) prohibiting any onerous LTEMP being required and

- (e) should a passive LTEMP be required to manage residual contamination of the future public domain or private development parcels, then the passive LTEMP must be submitted to and approved by city officers prior to construction on any part of the affected land.

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

- 97. In accordance with the requirements of SEPP 65 and the Environmental Planning and Assessment Regulation 2000, a design verification statement has been prepared and submitted by Claire Mallin, registered architect (no. 9449) of Turner architects.
- 98. SEPP 65 provides that in determining an application for a residential flat development of three or more storeys and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:

- (a) **Principle 1 and 2: Context and Neighbourhood Character and Built Form and Scale**

As noted elsewhere in this report, the DCP's precinct specific built form controls establish mid-rise perimeter street block buildings within the subject site of 4 to 8 storeys in height. Coupled with the DCP's objectives to create a strong and consistent landscape character throughout the precinct these controls aim to promote the interplay of the street-wall and landscaped setbacks, that will be key to creating a successful relationship between the buildings, neighbouring development and the public domain.

Except for the variations to setback controls discussed in the Issues section of this report, the proposed concept envelopes are generally consistent with DCP built form requirements.

The concept proposal complies with the height controls for the site.

Detailed testing has been undertaken to detail overshadowing impacts to adjacent residential properties. Conditions have been recommended to reduce overshadowing impacts and maintain solar access to adjacent residential properties in accordance with the design guidance and criteria to Apartment Design Guide (ADG) objectives 3B-2 and 4A-1. Refer to the detailed discussion of overshadowing impacts in the Issues section of this report.

The subject proposal establishes envelopes to accommodate development of an appropriate bulk and scale that is capable of providing a sympathetic detailed design response to the key natural and built features of the area.

A condition is recommended for a design requirement to be included in competitive design process briefs, for detailed building designs to provide a sympathetic design response to adjacent buildings on Danks and Bourke Streets.

(b) **Principle 3: Density**

The reference scheme demonstrates that the proposed envelopes are capable of accommodating development of a density envisaged under the relevant planning controls.

Conditions recommended elsewhere in this report require modifications to the envelopes and for unresolved issues to be addressed through the competitive design and subsequent design development processes.

Together these requirements will result in a reduced development yield. Refer to the Issues section of this report for a detailed discussion of conditions recommended to minimise overshadowing to neighbouring apartments and subsequent reductions in yield that are expected to result from these conditions.

Subject to these recommended conditions the density that may be achieved is appropriate among surrounding development in the Green Square urban renewal area.

(c) **Principle 4: Sustainability**

The energy efficiency and sustainability of the design will form part of subsequent DAs for the detailed of buildings.

ESD target benchmarks have been incorporated into the Design Excellence Strategy that is recommended for approval.

(d) **Principle 5: Landscape**

The reference scheme demonstrates that each development parcel, except for the parcel that comprises (Parcel 4) Lot 2, is provided with common open space (COS) in excess of the minimum 25% of site area required.

The parcel that comprises (Parcel 4) Lot 2 is provided with a common open space equal to 20% of its area. The proposed envelope within (Parcel 4) Lot 2 is consistent with indicative built form under the DCP. These controls constrain the ability to full satisfy SEPP 65 common open space and other amenity requirements (such as deep soil provision) within this parcel. However, a condition is recommended for communal open space provision within (Parcel 4) Lot 2 to be maximised, to and which is to be investigated through the competitive design process and future detailed design of the building to be contained in (Parcel 4) Lot 2.

Deep soil equal to a minimum of 7% of site area is required with a minimum dimension of 6m.

A total area of 1652 sqm of deep soil, equal to 8% of the site area, in various configurations, is proposed in accordance with the ADG and the precinct specific DCP provisions for Danks Street South.

A condition is recommended requiring deep soil to be provided in accordance with approved concept envelope plans.

(e) **Principle 6: Amenity**

The subject concept proposal is for envelopes and indicative land uses only, with the amenity for future residents to be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.

The concept proposal includes a reference scheme to demonstrate that the proposed envelope can accommodate buildings that comply with the SEPP design quality principles and objectives

An assessment of the reference scheme, sometimes referred to as the 'proof of concept', concludes that the site can provide an adequate level of amenity in keeping with ADG objectives pertaining to residential floor to ceiling heights, solar access and natural ventilation (as outlined in the ADG compliance table below).

Amenity objectives, such as those pertaining to minimum sizes of apartments, private open space, common circulation and storage will be assessed in detail upon lodgement of any subsequent DAs for the detailed design of buildings.

(f) **Principle 7: Safety**

The subject proposal is for envelopes and indicative land uses only, with the detailed design of buildings to be the subject of competitive design processes and subsequent DAs.

It is considered that the buildings can be designed to address safety and the relevant Crime Prevention Through Environmental Design (CPTED) considerations.

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

The proposed concept envelopes can accommodate common open space and common areas to provide opportunities for social interaction among residents.

The reference scheme provides the following dwelling mix:

- (i) 1% (3) studios
- (ii) 25% (98) 1 bed
- (iii) 47% (183) 2 bed
- (iv) 27% (106) 3+ bed.

The number and mix of apartments are not approved as part of any concept DA consent granted.

Any subsequent DAs for the detailed design of buildings will be considered in terms of this SEPP principle.

(h) **Principle 9: Aesthetics**

The subject proposal is for envelopes and indicative land uses only, with the detailed design and aesthetics of the buildings to be the subject of competitive design processes and subsequent DAs.

99. The development is considered acceptable when assessed against the above stated principles, the Apartment Design Guide (ADG) and the SEPP generally.

## Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Able to comply	<p>The deepest apartments in the reference scheme have a depth of up to about 16m which satisfies the requirements of this objective.</p> <p>Compliance with these requirements will be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul>	Able to comply	<p>The reference scheme locates residential apartments from ground level to level 3, that is within the first 4 storeys and within the proposed envelopes.</p> <p>Except for the variations to setback controls discussed in the Issues section of this report, the proposed concept envelopes are generally consistent with the built form and massing requirements of the DCP's precinct specific provisions for Danks Street South. Subsequently there are some parts of the proposed envelopes that do not comply with the ADG's minimum separation requirements.</p> <p>The reference scheme does not sufficiently resolve some of these interfaces, specifically:</p> <ul style="list-style-type: none"> <li>• only 6m internal separation is provided between apartments facing the southern courtyard of the building in (Parcel 4) Lot 2;</li> <li>• north-west facing apartments located in the north-eastern corner of the building in (Parcel 2) Lot 104;</li> <li>• apartments located at some internal corners.</li> </ul>

2F Building Separation	Compliance	Comment
		<p>These matters can be resolved through detailed design. They may result in a reduction in yield. Compliance with these requirements will be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable rooms</li> </ul>	<p>No, but acceptable</p>	<p>The reference scheme locates residential apartments from levels 4 to 7, that is within the fifth to eighth storeys and within the proposed envelopes.</p> <p>In addition to the problematic interfaces mentioned above, the proposed 'pop-out element' to the eastern elevation of the envelope in (Parcel 1) Lot 1 and which faces the through site link does not comply with the ADG's minimum separation requirements.</p> <p>The reference scheme does not sufficiently resolve this interface. Refer to the discussion of this matter in the Issues section of this report.</p> <p>Compliance with these requirements will be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.</p>
<p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> <li>• 24m between habitable rooms / balconies</li> <li>• 18m between habitable and non-habitable rooms</li> <li>• 12m between non-habitable rooms</li> </ul>	<p>Able to comply</p>	<p>The reference scheme locates a handful of residential apartments on level 8, that is within the ninth storey and within the proposed envelopes.</p> <p>These level 8 apartments are separated by between 4.5m and 19m from adjacent properties.</p> <p>These apartments are located above the height of neighbouring buildings.</p> <p>Compliance with these requirements will be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No, but acceptable	<p>The reference scheme demonstrates that each development parcel, except for the parcel that comprises (Parcel 4) Lot 2 is provided with common open space (COS) in excess of the minimum 25% of site area required.</p> <p>The parcel that comprises (Parcel 4) Lot 2 is provided with a common open space equal to 20% of its area. The proposed envelope within (Parcel 4) Lot 2 is consistent with the indicative built form massing in the precinct specific DCP provisions for Danks Street South and which constrain development achieving minimum common open space and other amenity requirements (such as deep soil provision) within this parcel. A condition is recommended for communal open space within (Parcel 4) Lot 2 to be maximised, and which is to be investigated through the competitive design process and future detailed design of the building to be contained in (Parcel 4) Lot 2.</p> <p>Compliance with these requirements will be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.</p>
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).	Able to comply	<p>The reference scheme demonstrates that the common open space provided within each development parcel is able to receive in excess of the required minimum of 2 hours of sunlight to 50% of the principal useable part (i.e. the communal rooftop terraces) of the common open space area.</p> <p>Compliance with these requirements will be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.</p>

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	<p>A total area of 1,652 sqm of deep soil, equal to 8% of the site area in various configurations is proposed in accordance with the ADG and the precinct specific DCP provisions for Danks Street South.</p> <p>A condition is recommended requiring deep soil is provided in accordance with approved concept envelope plans.</p>

Separation between windows and balconies is required to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.

3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul>	Able to comply	Refer to the assessment against ADG objective 2B Building separation above.
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> <li>• 9m between habitable rooms / balconies</li> <li>• 4.5m between non-habitable rooms</li> </ul>	No, but acceptable	Refer to the assessment against ADG objective 2B Building separation above.
<p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 6m between non-habitable rooms</li> </ul>	Able to comply	Refer to the assessment against ADG objective 2B Building separation above.

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.	Able to comply	<p>The submitted DA documentation states the following levels of solar access can be achieved for development within each parcel:</p> <p>north-west (Parcel 1) Lot 1 - 75%</p> <p>south-west (Parcel 4) Lot 2 - 79%</p> <p>south-east (Parcel 3) Lot 103 - 84%</p> <p>north-east (Parcel 2) Lot 104 - 76%.</p> <p>An assessment of the reference scheme indicates that compliance with the ADG's solar access objectives can be achieved and will be assessed in detail upon lodgement of any subsequent DAs for the detailed design of buildings.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Able to comply	<p>The submitted DA documentation - states that the proportion of apartments within each parcel that receive no direct sunlight, can be achieved as follows:</p> <p>north-west (Parcel 1) Lot 1 - 11%</p> <p>south-west (Parcel 4) Lot 2 - 12%</p> <p>south-east (Parcel 3) Lot 103 - 13%</p> <p>north-east (Parcel 2) Lot 104 - 13%.</p> <p>An assessment of the reference scheme indicates that compliance with the ADG's solar access objectives can be achieved and will be assessed in detail upon lodgement of any subsequent DAs for the detailed design of buildings.</p>

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Able to comply	<p>Concept envelope elevations fronting Bourke Street are affected by traffic noise.</p> <p>The submitted acoustic report recommends noise attenuation measures, including some strategies to achieve both the relevant internal noise criteria and the natural ventilation objectives of the ADG.</p> <p>The reference scheme incorporates the recommended noise attenuation measures and demonstrates that a suitable spatial allocation has been made to accommodate noise attenuated plenums and the like, while achieving the minimum ADG apartment size and other requirements.</p>
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Able to comply	<p>The submitted DA documentation states that the following proportion of apartments (excluding noise affected apartments) can be naturally cross ventilated within each parcel:</p> <p>north-west (Parcel 1) Lot 1 - 61%</p> <p>south-west (Parcel 4) Lot 2 - 60%</p> <p>south-east (Parcel 3) Lot 103 - 60%</p> <p>north-east (Parcel 2) Lot 104 - 59%.</p> <p>An assessment of the reference scheme indicates that compliance with the ADG's natural ventilation objectives can be achieved and will be assessed in detail upon lodgement of any subsequent DAs for the detailed design of buildings.</p>
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Able to comply	An assessment of the reference scheme indicates that apartments can comply with the ADG's recommended maximum depths and which will be assessed upon lodgement of any subsequent DA for the detailed design of the building.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Able to comply	The indicative sections provided in the reference scheme drawings provide 3.1m floor to floor heights and which would provide sufficient tolerance at construction to provide 2.7m floor to ceiling heights.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Able to comply	<p>Indicative section drawings of the reference scheme indicate floor to floor heights ranging from 4m to 4.2m in mixed-use buildings. Allowing at least 0.4m for the thickness of the floor slab above, the ground level would provide in the range of 3.6m to 3.8m clearance from floor to ceiling.</p> <p>Note: the all-residential building proposed to be contained in parcel (Parcel 4) Lot 2 indicates a 3.1m floor to floor height at ground level. This would provide sufficient tolerance at construction to provide the minimum 2.7m floor to ceiling height. The indicative sections of the reference scheme demonstrate that there is ample room within the maximum permitted LEP height (including 10% height uplift sought through design excellence) to achieve 3.3m floor to ceiling at the ground level.</p> <p>Conditions are recommended for provision of 3.3m or greater floor to ceiling heights at the ground level of the all-residential building to be investigated through competitive and detailed design processes.</p>

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul>	Able to comply	An assessment of the reference scheme indicates that apartments can comply with minimum apartment sizes, depths, widths, habitable room depths, and room sizes and which are all to be assessed upon lodgement of any subsequent DAs for the detailed design of buildings.

4D Apartment Size and Layout	Compliance	Comment
<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>		

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m<sup>2</sup> with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m<sup>2</sup> with a minimum depth of 2.4m.</p>	Able to comply	An assessment of the reference scheme indicates that apartments can comply with this objective and which will be assessed upon lodgement of any subsequent DA for the detailed design of the building.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Able to comply	It is noted that there are parts of the reference scheme, such as on the western side of the building contained within (Parcel 3) Lot 103, where 9 apartments on level 1 are located off a single core.

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
		While this can be addressed at detailed design DA stage, the necessary solution may require provision of additional cores, with a resultant reduction in yield.
Daylight and natural ventilation are provided to all common circulation spaces.	Able to comply	Compliance with this objective will be assessed upon lodgement of any subsequent DA for the detailed design of the building.

<b>4G Storage</b>	<b>Compliance</b>	<b>Comment</b>
Minimum storage provision facilities: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> (Minimum 50% storage area located within unit)	Able to comply	As detailed designs including the number of apartments and basement levels will be determined as part of the DAs for the detailed design of buildings, compliance with this objective will be assessed at that later stage.

<b>4J Noise and Pollution</b>	<b>Compliance</b>	<b>Comment</b>
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	Refer to the assessment against the precinct specific acoustic privacy controls for Danks Street South at provision 5.9.4.14 in the DCP compliance tables below.

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

100. 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

101. The proposed development is in the vicinity of electricity power lines and may affect an electricity transmission or distribution network.

102. In accordance with SEPP clause 45 the application was notified to Ausgrid and Transgrid through the NSW Planning Portal (ref. no. CNR-5025), on 24 February 2020.

103. Transgrid provided a response on 20 February 2020, to advise that no comments would be provided at this stage.
104. Ausgrid provided a response on 4 March 2020, to advise that the proposal was supported subject to the recommended conditions of consent.
105. On 6 April 2020 and 18 May 2021, Council's planning officer uploaded public submissions received in response to the notification and exhibition of the subject DA to the NSW Planning Portal.
106. The conditions recommended by Ausgrid in the referral dated 4 March 2020 are included in the conditions of consent set out in Attachment A to this report.

#### Clause 104

107. The proposed development is for more than 300 apartments and therefore is of the relevant size that it triggers the requirement for the subject DA to be referred to Transport for NSW (TfNSW) for comment.
108. In accordance with SEPP clause 104 the application was notified to TfNSW through the NSW Planning Portal (ref. no. CNR-5025), on 24 February 2020.
109. This notification also sought to refer the application to TfNSW in accordance with:
  - (a) section 87 of the Roads Act 1993, for the proposed traffic control signal (TCS) at the intersection of Bourke Street and Potter Street; and
  - (b) section 138 of the Roads Act 1993, seeking concurrence for the proposed works on Bourke Street.
110. TfNSW provided a response to all the above-mentioned statutory requirements on 16 March 2020, to advise that the proposal was supported subject to the recommended conditions of consent.
111. On 6 April 2020 and 18 May 2021, Council's planning officer uploaded public submissions received in response to the notification and exhibition of the subject DA to the NSW Planning Portal.
112. The conditions recommended by TfNSW in the referral dated 16 March 2020 are included in the conditions of consent set out in Attachment A to this report.

#### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

113. The aim of the SEPP is to protect the biodiversity values and amenity of non-rural areas of the State through the preservation of trees and other vegetation.
114. There are 50 street trees adjacent to the site within Danks, Young and Bourke Streets, 10 trees within adjacent sites and 32 trees within the subject site that are affected by the proposal.
115. Council's Tree Management Specialist has reviewed the proposal, including the amended envelope and demolition drawings, amended Arboricultural Impact Assessment (AIA) report and Remedial Action Plans.

116. Based upon this review conditions have been recommended for:
- (a) submission of further arboricultural information to address gaps in the information submitted to date. This includes pruning specifications and detailed tree protection plans
  - (b) tree removal, where trees cannot be retained due to conflicts with community infrastructure provision such as existing trees within the footprint of the new east-west street and
  - (c) tree protection, to ensure those trees to be retained are protected during the first stage of development and into the future.
117. Refer to the Issues section in this report for a more detailed discussion on conditions imposed to manage tree removal and other impacts on trees.

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

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

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

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

#### **Sydney Local Environmental Plan 2012**

124. The site is located within the B2 Local Centre and B4 Mixed Use zones. The subject DA seeks consent for concept building envelopes for three mixed commercial/residential buildings and a residential apartment building and a new east-west street, a through site link, and public open space. The proposed development is permitted with consent in the B2 Local Centre and B4 Mixed Use zones.
125. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

Provision	Compliance	Comment
<p>4.3 Height of Buildings</p> <p>6.21 Design Excellence</p> <p>6.43 Danks Street South Precinct</p>	<p>Able to comply</p>	<p>LEP clause 4.3 specifies maximum permissible building heights ranging from 18m to 30m for the site.</p> <p>LEP clause 6.43 provides that buildings in the Danks Street South precinct, that exhibit design excellence, are not eligible for additional floor space under LEP clause 6.21.</p> <p>Therefore, up to 10% additional height only, may be approved in accordance with LEP clause 6.21, subject to a competitive design process being carried out and the subsequent detailed design scheme exhibiting design excellence.</p> <p>Considering all the relevant building height provisions contained in the LEP, including 10% additional design excellence height uplift, the maximum permissible building heights for the site range from 19.8m to 33m.</p> <p>The reference scheme drawings include indicative sections that demonstrate that lift and stair overruns to access rooftop common open space, as well as rooftop plant and equipment, can be accommodated within the maximum building heights permitted for the site including the 10% additional design excellence height uplift.</p> <p>Note that no building construction works within the proposed new development parcels are approved as part of any concept approval granted and that a condition has been recommended requiring that the detailed building designs must not exceed the permissible building heights for the site.</p>

Provision	Compliance	Comment
		<p>Recommended conditions to address various issues, including those listed as follows, may reduce the achievable yield, from that shown in the reference scheme, of future detailed designs of buildings located within the proposed new development parcels. Conditions:</p> <p>to limit overshadowing and maintain ADG compliant solar access to neighbouring apartments;</p> <p>to minimise bulk and scale;</p> <p>to incorporate plant and lift overruns in the roof form; and</p> <p>to limit where design excellence height uplift can be utilised.</p> <p>The subject concept proposal has been assessed against the relevant requirements of LEP clause 6.21(4) including site suitability, proposed uses, bulk and massing, street frontage heights and other environmental impacts. It is considered that the concept proposal demonstrates that subject to the recommended conditions a suitable detailed building design can be achieved for the site. LEP clause 6.21(4) which allows for a potential 10% height increase will be considered in the assessment of any subsequent DA for the detailed building design.</p>
<p>4.4 Floor Space Ratio</p> <p>6.14 Community Infrastructure Floor Space at Green Square</p>	<p>Able to comply</p>	<p>LEP clause 4.4 stipulates a base floor space ratio (FSR) of 1.5:1.</p> <p>LEP clause 6.14 provides an opportunity for a further 0.5:1 FSR where community infrastructure is provided. As part of the subject application, the owner has made a public benefit offer to deliver community infrastructure identified under the DCP. This commitment is secured in a Voluntary Planning Agreement (VPA).</p>

Provision	Compliance	Comment
		<p>The VPA is for transfer and dedication of 6,901 sqm of land for new roads, public open space, a through site link and footpath widening on Bourke Street and developer's works to embellish these transfer and dedication lands, to be delivered over four phases, and for provision of a bank guarantee for \$5,234,380 to secure the developer's works.</p> <p>Considering all the relevant FSR provisions contained in the LEP, the maximum permitted FSR for the site is 2:1 (42,880.8 sqm GFA).</p> <p>The reference scheme has a FSR of 1.97:1 (42,283 sqm GFA), which complies with the maximum permissible FSR for the site.</p> <p>Note that no building construction works or FSR within the proposed new development parcels are approved as part of any concept approval and that a condition has been recommended requiring that the detailed building designs must not exceed the maximum permissible floor space ratio apportioned across the proposed new development parcels (expressed as a maximum quantum of GFA).</p> <p>Refer to the Issues section of this report for details of how maximum permitted GFA is recommended to be apportioned across the proposed new development parcels.</p>

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The subject site does not contain a heritage item and is not located in a heritage conservation area. However, it is in the vicinity of several heritage items including the Sydney Water Pumping Station and Valve House (I2073) on the Dahua site adjacent to the south, the Electrical Substation (I2104) at 241 Young Street and the Commercial Building (I2103) at 198-222 Young Street.</p> <p>The Heritage Impact Statement (HIS) submitted as part of the subject DA assesses the former Ducon condenser buildings on the LDC site (at 887-893 Bourke Street), as meeting the criteria for listing in the LEP as an item of local significance. It recommends that they be considered for local heritage listing and retained in part.</p> <p>The recommendations contained in the HIS are not supported for the following reasons:</p> <p>remediation of the site in accordance with the EPA's Management Order could not be achieved if the LDC buildings were retained;</p> <p>the new east-west street as mapped in the DCP and which requires demolition of these buildings, provides the most appropriate connection to Potter Street;</p> <p>were the buildings to be retained, the required reconfiguration of yield, most likely in taller buildings, would be inconsistent with the recently adopted LEP and DCP controls for the Danks Street South precinct; and</p> <p>the LDC buildings were not identified as being worthy of heritage listing under the city's recent Industrial Heritage Study.</p>

Provision	Compliance	Comment
		The demolition of all existing buildings is supported subject to the recommended conditions for archival recording, heritage interpretation and requiring further consideration be given to salvage and re-use of significant building elements in landscaping and public art.

#### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Able to comply	<p>A Design Excellence Strategy (DEX Strategy) has been submitted with the application. This establishes a design excellence process for the development of the site.</p> <p>Conditions are recommended to approve the DEX Strategy and the ESD targets contained therein, and for design requirements to be addressed in any future competitive design process briefs and subsequent DAs for the detailed design of buildings.</p> <p>A competitive design process is to be undertaken prior to lodgement of any future DAs for the detailed design of buildings. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional building height.</p>

#### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings 7.6 Office and business premises 7.7 Retail premises	Able to comply	The reference scheme indicates carparking could be provided within up to three basement levels beneath each of the respective buildings.

Provision	Compliance	Comment
		<p>The permissible number of car parking spaces are determined by the amount of commercial floor space and the residential dwelling mix and which are only indicative at this concept stage. Car parking will be assessed as part of subsequent DAs for the detailed design of buildings.</p> <p>A condition is recommended to advise that no consent is granted for basement levels or the number of car parking spaces as part of any consent granted to the subject DA.</p>
Division 3 Affordable housing		
7.13 Contribution for the purpose of affordable housing	Able to comply	Any subsequent DAs for the detailed design of buildings will be subject to an affordable housing contribution.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Able to comply	<p>The LEP acid sulphate soils map identifies the site as being located within a class 5 acid sulphate soils zone and over 800m from a class 3 acid sulphate soils zone.</p> <p>The RAP submitted as part of the DA has investigated the geology and hydrogeology of the site and concludes that an acid sulphate management plan is not required.</p> <p>A condition is recommended so that if any acid sulphate soils are unexpectedly discovered during the first stage of remediation works, then appropriate remediation measures are to be applied.</p>
7.15 Flood planning	Able to comply	The site is affected by flooding and is within the Alexandra Canal catchment.

Provision	Compliance	Comment
		<p>A site-specific flood study has been submitted and recommends flood planning levels (FPLs) for the development. The FPLs recommended in the flood study are consistent with the flood modelling prepared by council contractors to inform the recently completed Danks Street South Precinct Integrated Streetscape Concept Design.</p> <p>Council's Public Domain Infrastructure Specialist has reviewed the proposal. The recommendations of the site-specific flood study are supported and conditions recommended for the endorsed FPLs to be incorporated into any detailed building design submitted as part of any future DA for the site.</p>
7.16 Airspace operations	Yes	<p>The proposed development will not penetrate the 80m to 90m AHD Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport.</p> <p>Refer to the discussion under the Airports Act 1996 heading in the External Referrals section of this report below.</p>
7.17 Development in areas subject to airport noise	N/A	The site is not located within an ANEF Contour 20 zone and is not subject to the requirements of this control.
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>Pursuant to the provisions of section 4.23(2) of the Environmental Planning and Assessment Act 1979, the lodgement of a concept DA may be considered by the consent authority as satisfying the requirements of this control, that demolition may only be permitted where a site-specific DCP has been prepared for the site.</p> <p>Conditions are recommended for adequate measures to be applied to mitigate environmental impacts arising from the demolition works proposed as part of the first stage of development.</p>

Provision	Compliance	Comment
7.20 Development requiring or authorising preparation of a development control plan	Yes	<p>As the site area is greater than 5,000sqm, preparation of a site specific DCP is required.</p> <p>Pursuant to the provisions of Section 4.23(2) of the Environmental Planning and Assessment Act 1979, the lodgement of a concept proposal DA may be considered by the consent authority as satisfying this obligation.</p> <p>As detailed elsewhere in this report, subject to the recommended conditions the concept proposal adequately addresses the matters for consideration specified under this clause including, height, bulk, massing, streetscape and environmental impacts.</p>
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Able to comply	<p>The subject site is on land identified as restricted retail development on the Retail Premises Map. As such, development consent cannot be granted for the purposes of individual shops or markets with a gross floor area of greater than 1,000sqm.</p> <p>While indicative ground floor commercial tenancies of less than 1,000sqm in area are proposed, the quantum of gross floor area is not approved as part of this concept DA.</p> <p>As such, any subsequent DA for the detailed design of buildings will be required to comply with this control.</p>

## Development Control Plans

### Sydney Development Control Plan 2012

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

#### 2. Locality Statements

##### 2.5.3 Danks Street

The subject site is in the locality of Danks Street. The concept proposal is considered to be in keeping with the character of the area and design principles in that it will make a significant contribution towards the realisation of the desired future character of the locality. This includes provision of the new east-west street, part of the centrally located public open space and a pedestrian through site link to Danks Street. Conditions are recommended to minimise tree removal and to protect mature street trees where possible along Young Street in keeping with design principle 2.5.3(i).

### Section 3 – General Provisions

Provision	Compliance	Comment
3.1.1 Public Domain Elements - Streets, lanes and footpaths 3.1.1.2 Public Domain Elements - Streets 3.1.1.4 Public Domain Elements - Footpaths	Able to comply	Construction of the new east-west street and footpaths on land to be transferred or dedicated has been secured in the VPA associated with this DA.  Conditions are recommended for all new streets and footpaths to be designed and constructed in accordance with the Sydney Streets Design Code.
3.1.2.2 Public Domain Elements - Through site links	Yes	The DCP through site links map identifies the land contained in lot 6 in the proposed plans of subdivision (currently Glicks Furniture's hard-stand car parking area with access from Danks Street) as a through site link (TSL).  The DCP prescribed TSL is proposed to be secured by dedication to the city as part of the VPA associated with the subject DA and will provide a suitable pedestrian connection and is supported.  Refer to the Issues section in this report.
3.1.4 Public Open Space	No, but will be acceptable	This provision requires that public open spaces receive a minimum of 4 hours of sunlight to 50% of their area between 9am and 3pm at mid-winter.

Provision	Compliance	Comment
		<p>Submitted shadow diagrams demonstrate that the proposed concept envelopes allow the area of land allocated to future public open space to receive sunlight for 3 hours to more than 50% of the area of the public open space between 9am and 3pm at mid-winter.</p> <p>The future public open space design has not been finalised. The detailed design and construction of the future open space will be undertaken by the city in accordance with the public domain concept design prepared by Jane Irwin Landscape Architecture (JILA). As per the JILA concept design, the public open space will include paving, gardens and deep soil planting zones and will be designed to respond to solar access and other environmental conditions.</p>
3.1.5 Public Art	Able to comply	<p>The submitted Public Art Strategy does not satisfactorily address the Danks Street South public art projects, recommended in the Open Field Agency report and which has been developed by the city through an in-depth public consultation process. Nor does it satisfactorily address the requirements of the city's Guidelines for Public Art in Private Development.</p> <p>A condition is recommended for a Preliminary Public Art Plan to be submitted as part of any subsequent DAs for the detailed design of buildings.</p>
3.1.6 Sites Greater Than 5,000sqm	Yes	<p>Refer to the assessment against TSL and Public Art provisions elsewhere in this compliance table.</p> <p>The reference scheme demonstrates that more than the minimum requirement of 5% of dwellings contained with the site, can be provided as maisonette apartments and which satisfies the requirements of this control.</p>
3.2.1.1 Improving the Public Domain - Sunlight to publicly accessible spaces	No, but acceptable	Refer to the assessment against provision 3.1.4 Public Open Space in this compliance table above.

Provision	Compliance	Comment
3.2.1.2 Improving the Public Domain - Public views	Yes	Siting of the proposed concept envelopes is in keeping with the DCP's Danks Street South controls. As such, future development in accordance with the subject concept proposal will open up views from the newly created public domain areas to the new public open space and to local heritage items including the Sydney Water Pumping Station and Valve House to the south.
3.2.2 Addressing the Street and Public Domain	Able to comply	<p>The reference scheme demonstrates that the flood planning levels (FPLs) recommended in the site-specific flood assessment can be achieved, that ground floor car parking can be wrapped with active uses and that an appropriate interface can be provided to the public domain.</p> <p>Conditions are recommended for design requirements to be incorporated into all competitive design process briefs and any subsequent DAs for the detailed design of buildings to reconcile FPLs, inclusive accessible entries and active frontage requirements.</p>
3.2.3 Active Frontages	Able to comply	<p>Various frontages including those to Danks and Bourke Streets, the TSL and parts of the new east-west street are identified as active frontages on the DCP's Active Frontages Map.</p> <p>The reference scheme locates retail tenancies of a suitable depth adjacent to the DCP prescribed active frontage locations and demonstrates that the development is able to satisfy the requirements of this provision.</p>
3.2.4 Footpath Awnings	Able to comply	Conditions are recommended for footpath awnings to be provided to the eastern frontage of the north-western building (in Parcel 1/Lot 1) to the TSL and in the DCP prescribed active frontage locations to Bourke Street and the new east-west street.

Provision	Compliance	Comment
3.2.6 Wind Effects	N/A	<p>This provision applies to all buildings over 45m high.</p> <p>The proposed development, subject to demonstrating design excellence, may range from 19.8m to 33m in height.</p> <p>As such the proposal is not required to submit a wind effects report in this instance.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>A Design Excellence Strategy (DEX Strategy) has been submitted with the application and which establishes a design excellence process for the development of the site.</p> <p>Conditions are recommended to approve the DEX Strategy and for design requirements to be incorporated into any future competitive design process briefs. These include requirements to minimise bulk and scale and to provide a suitable street address and public domain interface at the ground level of buildings.</p> <p>A competitive design process is to be undertaken prior to lodgement of any future DA for the detailed design of the building. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional building height.</p> <p>A landscape concept plan was submitted as part of the subject DA in accordance with the requirements of this provision.</p> <p>A condition is recommended for a high-level landscape concept plan for each development parcel, based on the submitted landscape concept plan and as refined by the recommended conditions to be imposed on any consent granted.</p>
3.4 Hierarchy of Centres, City South	Able to comply	Refer to the assessment against clause 7.23 in the LEP compliance table above.

Provision	Compliance	Comment
3.5 Urban Ecology	Able to comply	<p>There are 50 street trees adjacent to the site within Danks, Young and Bourke Streets, 10 trees within adjacent sites and 32 trees within the subject site that are affected by the proposal.</p> <p>Council's Tree Management Specialist has reviewed the proposal, including the amended envelope and demolition drawings, amended Arboricultural Impact Assessment (AIA) report and Remedial Action Plans.</p> <p>Based upon this review conditions have been recommended for submission of further arboricultural information to address information gaps; to authorise the removal of 12 trees and tree protection, to ensure those trees to be retained are protected into the future.</p> <p>Refer to the Issues section in this report for a more detailed discussion on conditions imposed to manage tree removal and other impacts on trees.</p>
3.6 Ecologically Sustainable Development	Able to comply	ESD target benchmarks have been incorporated into the DEX Strategy that is recommended for approval and which include a commitment to rooftop solar PV provision.
3.7 Water and Flood Management	Able to comply	Refer to the assessment against clause 7.15 in the LEP compliance table above.
3.8 Subdivision, Strata Subdivision and Consolidation	Able to comply	Conditions have been recommended to regulate the subdivision of the site.
3.9 Heritage	Yes	Refer to the assessment against clause 5.10 in the LEP compliance table above.
3.11 Transport and Parking	Able to comply	The reference scheme indicates carparking could be provided within up to three basement levels beneath each of the respective buildings.

Provision	Compliance	Comment
		<p>The permissible number of car parking spaces are determined by the amount of commercial floor space and the residential dwelling mix and which are only indicative at this concept stage. Car parking will be assessed as part of subsequent DAs for the detailed design of buildings.</p> <p>A condition is recommended to advise that no consent is granted for basement levels or the number of car parking spaces as part of any consent granted to the subject DA.</p>
3.11.11 Vehicle Access and Footpaths	Able to comply	<p>The concept proposal seeks consent for vehicle access locations for each of the new development parcels.</p> <p>The proposed mid-block location for vehicle access to the new north-western (Parcel 1) Lot 1 from Young Street is supported.</p> <p>The proposed mid-block location for vehicle access to the new south-western (Parcel 4) Lot 2 from Young Street is not supported.</p> <p>The proposed locations for vehicle access to the new north-eastern and south-eastern (Parcels 2 and 3) Lots 104 and 103 from the new east-west street are supported in-principle.</p> <p>Refer to the Issues section in this report.</p>
3.11.13 Design and Location of Waste Collection Points and Loading Areas	Able to comply	<p>Indicative section drawings of the reference scheme indicate floor to floor heights of 4.2m in the mixed-use buildings. Allowing at least 0.4m for the thickness of the floor slab above, the ground level would provide 3.8m clearance from floor to ceiling. This does not satisfy the 4m minimum vertical clearance for waste collection vehicles required by this provision.</p>

Provision	Compliance	Comment
		<p>There are no indicative section drawings through the loading dock of the all-residential building. It is unclear as to whether the minimum clearance is provided for this building in the reference scheme.</p> <p>A condition is recommended requiring design submissions in future competitive design processes and detailed building designs submitted as part of future DAs to provide the minimum spatial allowances for waste collection vehicle access and on-site waste servicing.</p>
3.12 Accessible Design	Able to comply	Conditions have been recommended for any subsequent DA for the detailed design of the building to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.13 Social and Environmental Responsibilities	Able to comply	In accordance with the public domain interface and active use requirements discussed elsewhere in this report it is considered that any detailed design scheme is able to provide adequate passive surveillance and in accordance with the relevant CPTED principles.
3.14 Waste	Able to comply	<p>Like the waste collection vehicle access problems noted above, the submitted Waste Management Plan (WMP) fails to satisfy the requirements of the city's Guidelines for Waste Management in New Development (the Waste Guidelines).</p> <p>Most importantly the proposal relies on three times weekly residential waste collection. Whereas the Waste Guidelines require new development to provide adequate waste storage for once weekly collection. Subsequently, the reference scheme does not make a suitable spatial allocation for waste storage.</p>

Provision	Compliance	Comment
		This issue is to be addressed through competitive design processes and subsequent detailed design DAs and may result in a reduction in achievable yield for the development.
3.16.1 Signage and Advertising - Signage Strategy	Able to comply	A condition is recommended requiring a signage strategy to be submitted as part of any subsequent DAs for the detailed design of the mixed-use buildings.
3.17 Contamination	Yes	The application includes enough information for its assessment against the provisions of SEPP 55 - Remediation of Land and therefore satisfies the requirements of this provision.  Refer to the SEPP 55 section in this report.

127. Note: Some relevant DCP provisions that would otherwise be listed in the table below have not been addressed as they are matters to which clause (6A) of SEPP 65 applies and which renders those provisions to be of no effect.

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed-Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Building height - Height in storeys and street frontage height in storeys	Able to comply	Maximum permissible heights range from 4 to 8 storeys for the site.  Maximum street frontage height in storeys range from 4 to 6 storeys for the site.

Provision	Compliance	Comment
		<p>The number of storeys is not approved as part of this concept DA. However, it is noted that in several locations where the 6-storey height control applies, such as the western portion of the building in (Parcel 1) Lot 1, the reference scheme incorporates a seventh storey. In each of these instances the uppermost, full height, non-compliant storey is labelled 'attic'. But these non-compliant storeys are not attics - wholly contained within a roof form - as defined in the LEP.</p> <p>Any non-compliance with the height in storeys control is a matter to be considered through competitive design processes and ultimately upon determination of any subsequent DAs for the detailed design of buildings.</p> <p>Refer to the Issues section in this report.</p>
4.2.2 Building setbacks	No, but acceptable	Refer to the assessment against provision 5.9.3.5 in the DCP compliance table below.
4.2.3 Amenity		
4.2.3.5 Landscaping	Able to comply	<p>This provision specifies the matters to be addressed by a landscape plan submitted as part of a DA for the detailed design of a building.</p> <p>A condition is recommended for a landscape plan to be submitted as part of any subsequent DAs for the detailed design of buildings.</p>
4.2.3.6 Deep Soil	No, but acceptable	<p>Deep soil equal to a minimum of 10% of site area is required in a consolidated area with a minimum dimension of 10m.</p> <p>A total area of 1652 sqm of deep soil, equal to 8% of the site area in various configurations is proposed in accordance with the ADG and the precinct specific DCP provisions for Danks Street South.</p>

Provision	Compliance	Comment
		A condition is recommended requiring deep soil is provided in accordance with approved concept envelope plans.
4.2.3.8 Common open space	No, but acceptable	<p>The reference scheme demonstrates that each development parcel, except for the parcel that comprises (Parcel 4) Lot 2, is provided with common open space (COS) in excess of the minimum 25% of site area required.</p> <p>The parcel that comprises (Parcel 4) Lot 2 is provided with a common open space equal to 20% of its area. The proposed envelope within (Parcel 4) Lot 2 is consistent with the indicative built form massing in the precinct specific DCP provisions for Danks Street South and which constrain development achieving minimum common open space and other amenity requirements (such as deep soil provision) within this parcel. A condition is recommended for communal open space provision within (Parcel 4) Lot 2 to be maximised, and which is to be investigated through the competitive design process and future detailed design of the building to be contained in (Parcel 4) Lot 2.</p> <p>The reference scheme demonstrates that the common open space provided within each development parcel, except for the common open space in the parcel that comprises (Parcel 2) Lot 104, is able to receive in excess of the required minimum of 2 hours of sunlight to 30% of the common open space area.</p>

Provision	Compliance	Comment
		The common open space within (Parcel 2) Lot 104, receives 2 hours of sunlight to 20% of its area. The taller 6 to 8 storey elements at the eastern and western end of the building contained within proposed (Parcel 2) Lot 104 and the larger mixed-use buildings adjacent to the north fronting Danks Street, constrain development achieving minimum solar access to common open space requirements within this parcel. For these reasons a minor variation is supported in this regard.
4.2.3.11 Acoustic privacy	Able to comply	Refer to the assessment against the precinct specific acoustic privacy controls for Danks Street South at provision 5.9.4.14 in the DCP compliance tables below.
4.2.3.12 Flexible housing and dwelling mix	Able to comply	<p>The reference scheme comprises the following dwelling mix:</p> <p>1% (3) studios - does not comply</p> <p>25% (98) 1 bed - complies</p> <p>47% (183) 2 bed - complies</p> <p>27% (106) 3+ bed - complies.</p> <p>The number and mix of apartments are not approved as part of any concept DA consent granted.</p> <p>Any subsequent DAs for the detailed design of buildings will be assessed against the requirements of this control.</p>
4.2.4 Fine grain, architectural diversity and articulation	Able to comply	Each of the existing surrounding streets and the proposed new east-west street are more than 18m wide. Subsequently, this provision requires a maximum building frontage length of 65m to existing and proposed streets.

Provision	Compliance	Comment
		<p>All of the proposed envelopes, except for the envelope within (Parcel 3) Lot 103, are generally massed in accordance with the indicative built form massing specified in the precinct specific DCP provisions for Danks Street South. As such, the reference scheme designs for buildings contained within each development parcel, except for the building within the parcel that comprises (Parcel 4) Lot 2, are inconsistent with this 65m control.</p> <p>Notwithstanding the inherent tension between this provision which limits street frontage lengths, and the precinct specific DCP provisions for Danks Street South, this provision allows for non-compliance with the maximum frontage lengths subject to design measures to modulate the scale, grain, articulation, materiality and architectural character of such long frontages.</p> <p>Conditions are recommended for these design requirements to be incorporated into any future competitive design process briefs.</p>
4.2.5.2 Types of development - Courtyard development and perimeter street block buildings	Able to comply	<p>The reference scheme could provide better visual connections from private courtyard spaces to the public domain through entrances and breaks in the building.</p> <p>The conditions recommended to address DCP provision 4.2.4 above and the DAP advice: to maximise pedestrian permeability of the ground plane, are considered to address the requirements of this provision also.</p>
4.2.5.3 Types of development - Development on busy roads and active frontages	Yes	Various frontages including those to Danks and Bourke Streets, the TSL and parts of the new east-west street are identified as active frontages on the DCP's Active Frontages Map.

Provision	Compliance	Comment
		<p>Subsequently, those parts of the concept envelopes identified as active frontages are subject to this provision which requires non-residential uses to be provided at ground level.</p> <p>The reference scheme locates retail tenancies of a suitable depth at the ground level and adjacent to the DCP prescribed active frontage locations and demonstrates that the development is able to satisfy the requirements of this provision.</p>
4.2.6 Waste and Recycling Management	Able to comply	Refer to the assessment against provision 3.14 in the DCP compliance table above.
4.2.7 Heating and cooling infrastructure	Able to comply	Any subsequent DAs for the detailed design of buildings will be assessed against the requirements of this control which encourage heating and cooling infrastructure to be consolidated into a centralised basement location near the street frontage.
4.2.8 Letterboxes	Able to comply	Any subsequent DAs for the detailed design of buildings will be assessed against the requirements of this control which require the provision of lockable mailboxes located close to the major street entry to the site.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>Parts of proposed (Parcel 1) Lot 1, (Parcel 2) Lot 104 and (Parcel 3) Lot 103 are located within the B4 Mixed Use Zone and are subject to the requirements of this provision.</p> <p>The potential impacts upon residential amenity of proposed non-residential development contained within the parcels listed above have been considered and addressed in this assessment, as detailed in this report.</p>

## Section 5 – Specific Areas

## 5.2 Green Square

## 5.9 Danks Street South

Provision	Compliance	Comment
5.2.1 Green Square Urban Strategy 5.2.2 Objectives for Green Square	Able to comply	Subject to the recommended conditions the concept proposal is in keeping with the Green Square Urban Strategy and the Objectives for Green Square.
5.2.3 Community infrastructure	Yes	The proposal relies on an additional 0.5:1 community infrastructure floor space.  The applicant has made a public benefit offer and agreed to enter into a Voluntary Planning Agreement (VPA) to deliver this infrastructure.  Refer to the Issues section in this report.
5.2.4.1 Local infrastructure - Street network	Yes	Construction of the new east-west street on land to be dedicated to the city has been secured in the VPA associated with this DA.  The new east-west street is to be constructed in accordance with the requirements of this provision and with the Sydney Streets Design Code.
5.2.5.1 Pedestrian and bike networks - Bike network	Yes	Construction of paths on land to be dedicated for widening of Bourke Street has been secured in the VPA associated with this DA.  The widened off-road shared bicycle/pedestrian path to be provided adjacent to the site's Bourke Street frontage is to be designed in accordance with the Sydney Streets Design Code.

Provision	Compliance	Comment
5.2.5.2 Pedestrian and bike networks - Through site links	Yes	<p>As discussed in the assessment of the DA against provision 3.1.2.2 in the DCP compliance tables above, dedication of land for and construction of a through site link (TSL), are secured through the VPA associated with this DA.</p> <p>The TSL is able to satisfy the design requirements of this provision.</p>
5.2.6 Public open space	Yes	<p>The applicant has made a public benefit offer and agreed to enter into a VPA to dedicate land for part of the new public open space and for footpath widening on Bourke Street in accordance with the Public Domain Setbacks Map and the public open space requirements of this provision.</p>
5.2.7.2 - 5.2.7.4 Stormwater management and waterways - Water sensitive urban design, flood risk management and flood management	Able to comply	<p>The proposed subdivision works including construction of the new east-west street and public open space will be in accordance with the city's Public Domain Concept Design for Danks Street South and which incorporates water sensitive urban measures.</p> <p>The site-specific flood study submitted as part of the DA is consistent with the flood studies undertaken by city contractors and which have informed the city's Public Domain Concept Design for Danks Street South.</p> <p>Refer to the assessment against clause 7.15 in the LEP compliance table above.</p>
5.2.9 Building design	Able to comply	<p>The reference scheme adequately addresses most of the relevant requirements of this control which pertain to how the building addresses the street.</p> <p>A condition is recommended relating to materiality and use of masonry in facades, to be included among the design requirements in competitive design process briefs.</p>

Provision	Compliance	Comment
5.2.10 Setbacks	Yes	<p>The applicant has made a public benefit offer and agreed to enter into a VPA to dedicate land for footpath widening on Bourke Street in accordance with the Public Domain Setbacks Map and the requirements of this provision.</p> <p>The proposed plan of subdivision provides splays at the intersections of the new east-west street with existing streets in accordance with the requirements of this provision.</p> <p>Refer to the assessment against provision 5.9.3.5 in the DCP compliance table below.</p>
5.2.12 Above ground and adaptable car parking spaces	Able to comply	<p>Provision 5.9.3.3 below prohibits at grade or above ground parking.</p> <p>None of the car-parking spaces provided in the reference scheme are at grade or above ground.</p> <p>Car parking will be assessed as part of subsequent DAs for the detailed design of buildings.</p>
5.9.1 and 5.9.2 Danks Street South urban strategy and urban design principles	Able to comply	Subject to the recommended conditions the concept proposal is in keeping with the Danks Street South Urban Strategy and its associated urban design principles.
5.9.3.1 and 5.9.3.2 Local infrastructure and public domain - Public open space and new streets	Yes	The applicant has made a public benefit offer and agreed to enter into a VPA to transfer land for and embellish part of the new public open space, a new east-west street, footpath widening along Bourke Street, future shared zones and a through site link in accordance with the requirements of this provision.
5.9.3.3 Local infrastructure and public domain - movement and connectivity	No, but acceptable	Each of the proposed vehicle access locations represent minor departures from the vehicle access locations prescribed by this provision. Refer to the assessment of proposed vehicle access arrangements in relation to provisions 3.11.11 and 3.11.13 in the DCP compliance table above.

Provision	Compliance	Comment
		<p>In accordance with the requirements of this provision embellishments secured in the VPA associated with this DA include augmentation of the existing traffic signals at the intersection of Bourke and Potter Streets to accommodate the new east-west street.</p> <p>This provision prohibits at grade or above ground parking. None of the car-parking spaces provided in the reference scheme are at grade or above ground.</p>
5.9.3.4 Local infrastructure and public domain - bike routes and facilities	Yes	Refer to the assessment against provision 5.2.5.1 in the DCP compliance table above.
5.9.3.5 Local infrastructure and public domain - Quality of landscaping and landscape setbacks	No, but acceptable	<p>The proposal seeks to vary several setback requirements specified by this provision.</p> <p>Refer to the assessment against provision 5.9.4.8 in the DCP compliance table below.</p>
5.9.3.6 Local infrastructure and public domain - Street trees	Yes	Embellishment of land dedicated for the new east-west street includes construction of the street itself, landscaping and new street tree planting. These embellishments have been secured in the VPA associated with this DA and are to be carried out in accordance with the city's public domain design codes including the city's Street Tree Masterplan.
5.9.4.1 Building layout, form and design - Floor space ratio	No, but acceptable	<p>Contrary to the requirements of this provision the subject DA was lodged prior to amalgamation of lots that comprise the site.</p> <p>Nonetheless, the proposed development including staged subdivision of the site has been assessed on its merits and is supported subject to the recommended conditions.</p> <p>In accordance with the requirements of this provision the subject DA identifies the distribution of gross floor area across the proposed development parcels.</p>

Provision	Compliance	Comment
5.9.4.2 Building layout, form and design - Height of buildings	Able to comply	Refer to the assessment against provision 4.2.1.1 in the DCP compliance tables above and to the Issues section in this report.
5.9.4.3 Building layout, form and design - Indicative built form	Able to comply	Refer to the assessment against provisions 4.2.4 (above) and 5.9.4.8 (below) in these DCP compliance tables.
5.9.4.4 Building layout, form and design - Design excellence	Yes	<p>Refer to the assessment against LEP clauses 6.21, 6.43 and Division 4 Design Excellence and DCP provision 3.3 in the compliance tables above.</p> <p>The submitted DEX Strategy identifies competitive design process sites that are not inconsistent with those set out under this DCP provision.</p>
5.9.4.5 Building layout, form and design - Uses	Able to comply	<p>As detailed elsewhere in this report, the proposed development satisfies DCP provisions pertaining to active frontages and which prohibit at grade or above ground car parking.</p> <p>The proposed mixed-use building envelopes provide sufficient flexibility to accommodate a range of commercial and retail uses at ground level.</p> <p>The reference scheme demonstrates that maisonette or duplex apartments can be provided in accordance with the DCP's recommended building typologies.</p>
5.9.4.6 Building layout, form and design - Design and architectural diversity	Able to comply	<p>The requirements of this provision are similar to those contained in provision 4.2.4 Fine grain, architectural diversity and articulation, above.</p> <p>Conditions are recommended to promote architectural diversity, to be included among the design requirements in the competitive design process briefs for the relevant development parcels.</p>
5.9.4.7 Building layout, form and design - Public art	Able to comply	Refer to the assessment against provision 3.1.5 in the DCP compliance table above.

Provision	Compliance	Comment
5.9.4.8 Building layout, form and design - Development sites and building layout	Able to comply	<p>Aside from the variations to setback requirements contained in other provisions of the DCP, the massing of the western side of the envelope contained within (Parcel 3) Lot 103 departs from the DCP's indicative built form and building typology massing diagrams.</p> <p>Refer to the Issues section of this report.</p>
5.9.4.9 Building layout, form and design - Building alignment and setbacks	Able to comply	<p>The proposed envelopes comply with the setback above street frontage height requirements of this provision.</p> <p>Other detailed design requirements will be assessed at the detailed design DA stage.</p>
5.9.4.10 Building layout, form and design - Attics	Able to comply	<p>As noted in the assessment against provision 4.2.1.1 in the DCP compliance table above, in several locations such as the western portion of the building in (Parcel 1) Lot 1, the reference scheme incorporates a full height storey that exceeds the height in storeys control and which is labelled 'attic'. These non-compliant storeys are not attics - wholly contained within a roof form - as defined in the LEP.</p> <p>Refer to the Issues section in this report.</p>
5.9.4.11 Building layout, form and design - Fences	Able to comply	<p>The detailed design of front fences to residential properties will be assessed as part of subsequent DAs for the detailed design of buildings.</p>
5.9.4.12 Building layout, form and design - Substations	Able to comply	<p>As noted in the assessment against DCP provision 5.9.3.5 above, the subject DA proposes that the existing substation and enclosure is relocated further north to a location designated as a 7m landscaped setback zone adjacent to Young Street and within (Parcel 1) Lot 1. The proposed new location of the substation is not supported.</p>

Provision	Compliance	Comment
		Conditions are recommended for relevant design modifications and for any substation to be provided as a chamber substation that is integrated into the architecture of any building contained within the approved concept envelope in (Parcel 1) Lot 1.
5.9.4.13 Building layout, form and design - Contamination and remediation	Able to comply	<p>Refer to the assessment against SEPP 55 elsewhere in this report.</p> <p>In accordance with the requirements of this provision a condition is recommended that requires any land to be dedicated to the city as part of the VPA associated with this DA must not be encumbered by any onerous Long-Term Environmental Management Plan.</p>
5.9.4.14 Building layout, form and design - Noise and ventilation	Able to comply	<p>Many of the proposed concept envelopes' elevations are affected by noise, primarily traffic noise from Bourke Street.</p> <p>The submitted acoustic report specifies that openings to some of these noise sources will not be able to achieve the relevant internal noise criteria with windows open.</p> <p>The submitted acoustic report recommends noise attenuation measures, including some strategies to achieve both the relevant internal noise criteria and the natural ventilation objectives of the ADG.</p> <p>The reference scheme incorporates the recommended noise attenuation measures and demonstrates that a suitable spatial allocation has been made to accommodate noise attenuated plenums and the like, while achieving the minimum ADG apartment size and other requirements.</p>
5.9.4.15 Building layout, form and design - Wind testing	Able to comply	DCP provision 3.2.6 requires wind testing for any building over 45m in height.

Provision	Compliance	Comment
		<p>Considering all the relevant building height provisions contained in the LEP, including up to 10% additional design excellence height uplift, the maximum permissible building heights for the site range from 19.8m to 33m.</p> <p>As such it is considered reasonable to require wind testing to be conducted on detailed designs submitted as part of any subsequent DAs for the detailed design of buildings.</p>
5.9.5 Heritage	Yes	Refer to the assessment against clause 5.10 in the LEP compliance table above.
5.9.6 Staging and implementation	Yes	The proposed staging of development distributes and coordinates remediation and public domain delivery across the two proposed development phases in accordance with the requirements of this provision.

## Issues

### Tree Management

128. There are 50 street trees adjacent to the site within Danks, Young and Bourke Streets, 10 trees within adjacent sites and 32 trees within the subject site, that will be affected by the proposal.
129. Over the course of this assessment the concept envelope within the parcel comprising north-western (Parcel 1) Lot 1 has been modified to provide a setback of between 3m and 10m, from the property boundary with Danks Street. This setback has been provided to protect the large existing trees in the landscaped area between the existing building and Danks Street.
130. There have been several iterations of Arboricultural Impact Assessment (AIA) reports submitted over the course of the assessment. The most recent of which proposes to remove 17 of these existing trees as identified in Figure 59 below. An assessment of the proposed removal of each these trees is provided as follows:
- (a) the tree numbered 53 on the Tree Location Plan provided in the AIA report is a *Jacaranda mimosifolia* (Jacaranda) street tree. Removal of this tree is to make way for the proposed vehicle access point for the new building to be contained within (Parcel 1) Lot 1. The proposed vehicle access point minimises the number of trees required to be removed and is supported. A condition is recommended for removal of tree 53.

- (b) trees numbered 63 and 64 are mature healthy *Melaleuca quinquenervia* (Paperbark) street trees with a medium retention value. Trees numbered 65 and 66 are large mature *Corymbia citriodora* (Lemon-scented gum) trees located within the proposed new (Parcel 1) Lot 1. Over the course of this assessment several AIA reports have been submitted. Originally rated as high retention value trees, the most recently submitted AIA report rates these trees as having a medium retention value. The city's tree management officer considers trees numbered 65 and 66 have a high retention value. The AIA report does not explain why these trees are to be removed, but it appears that they are to be removed to make way for the relocated substation. For reasons outlined in the assessment against the requirements of provision 5.9.4.12 in the DCP compliance tables above, moving the existing substation and enclosure to a location designated by the DCP as a 7m landscaped setback zone is not supported. Removal of these trees 63, 64, 65 and 66 is not supported. Conditions are recommended for their retention.
- (c) trees numbered 67, 68, 70 and 71 are *Syagrus romanzoffiana* (Cocos palms). These trees are within the site and are exempt from the tree protections specified at DCP provision 3.5.3. A condition is recommended for their removal.
- (d) trees numbered 72, 73, 74 and 75 will require removal to facilitate construction of the new east-west street. Removal of these trees is supported, and conditions are recommended for their removal.
- (e) tree 78 is a *Cupaniopsis anacardiodes* (Tuckeroo) located within the site and will require removal to facilitate the remediation of the site. A condition is recommended for its removal.
- (f) trees numbered 79 and 83 are large mature *Corymbia citriodora* (Lemon-scented gum) trees located within the site. While these trees are in good health their retention would severely inhibit the development potential of the south-western development parcel (Parcel 4, Lot 2). A condition is recommended for their removal and
- (g) tree 81 is a large, mature and healthy *Melaleuca quinquenervia* (Paperbark) street tree (in Young Street). The subject DA proposes to remove tree 81 to make way for the proposed vehicle access point for the new building to be contained within (Parcel 4) Lot 2. Were the proposed vehicle access location to be approved, not only would the city lose a tree, but it would lose a tree pit/space and any subsequent opportunity for future street tree plantings in this location. Removal of this tree is not supported, and a condition is recommended for its retention. As discussed in the Vehicle Access Locations section of this report below, conditions are recommended for investigations into whether the vehicle access location to (Parcel 4) Lot 2 can be moved further south so tree 81 can be retained.

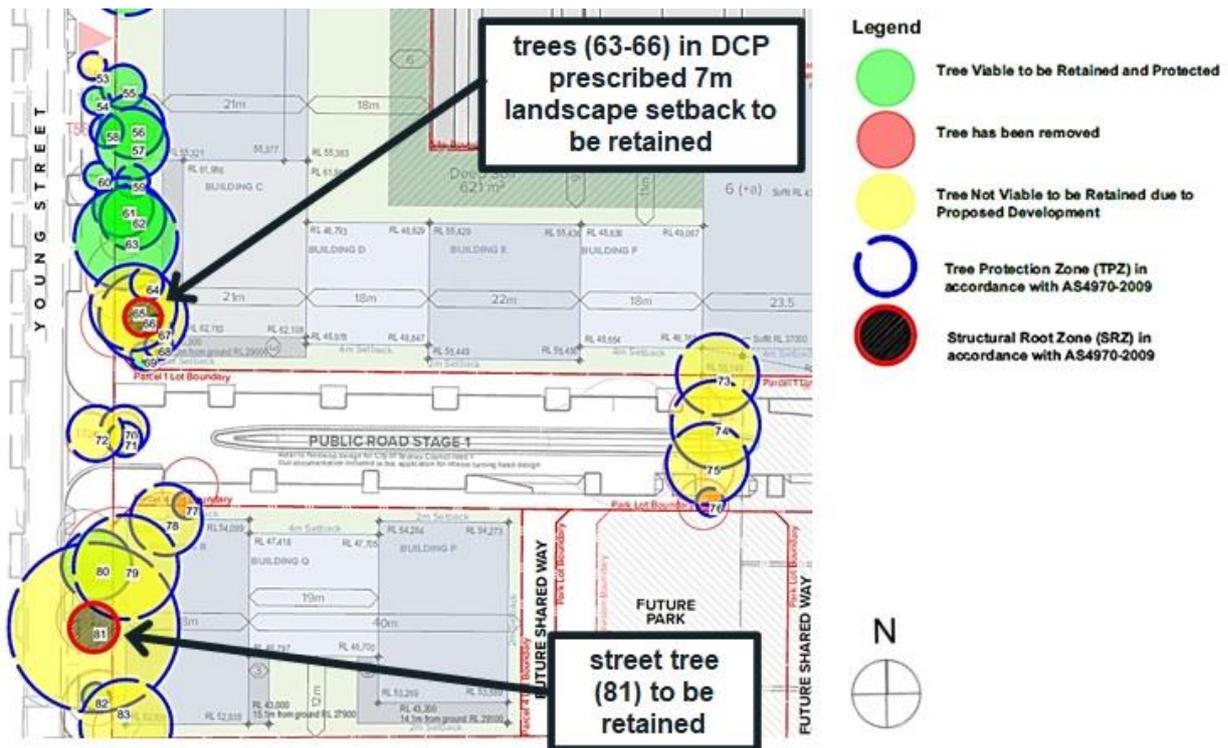


Figure 59: Excerpt from the Tree Location Plan (Source: AIA report, Birds Tree Consultancy, Rev. A, dated 14 April 2021)

131. Council's Tree Management Specialist has reviewed the proposal, including the amended envelope and demolition drawings and Remedial Action Plans. Based upon this review and the assessment provided above, conditions have been recommended for:
- submission of further arboricultural information to address gaps in the information submitted to date. This includes pruning specifications and detailed tree protection plans
  - tree removal, where trees cannot be retained due to conflicts with community infrastructure provision, such as those existing trees within the footprint of the new east-west street and
  - tree protection, to ensure those trees to be retained are protected during the first stage of development and into the future.

### Through-Site Link (TSL)

132. The DCP through site links map identifies the land contained in lot 6 in the proposed plans of subdivision (currently Glicks Furniture's hard-stand car parking area with access from Danks Street) as a through site link (TSL).
133. The DCP prescribed TSL is proposed to be secured by dedication to the city as part of the VPA associated with the subject DA and will provide a suitable pedestrian connection and is supported.

134. In addition to the DCP prescribed TSL, the proposed building envelopes allow for a pedestrian connection from the TSL to the western portion of the new east-west street upon completion of the Phase 1 subdivision works and construction of the buildings within the western development parcels.
135. This connection at the south-eastern corner of the building contained within (Parcel 1) Lot 1, as illustrated in Figure 60 below, will be covered by virtue of the upper levels of the building projecting over the link. This link satisfies DCP provisions in that it is 4m wide, has a clear height of approximately 6m, and provides a clear line of sight end to end. Without this link there would be no pedestrian access through the TSL to the western portion of the new east-west street upon completion of the Phase 1 subdivision works and construction of the buildings within the western development parcels. In due course the adjoining building will be demolished as part of the Phase 2 of the development and the link will become open to the east west road running through the development site.

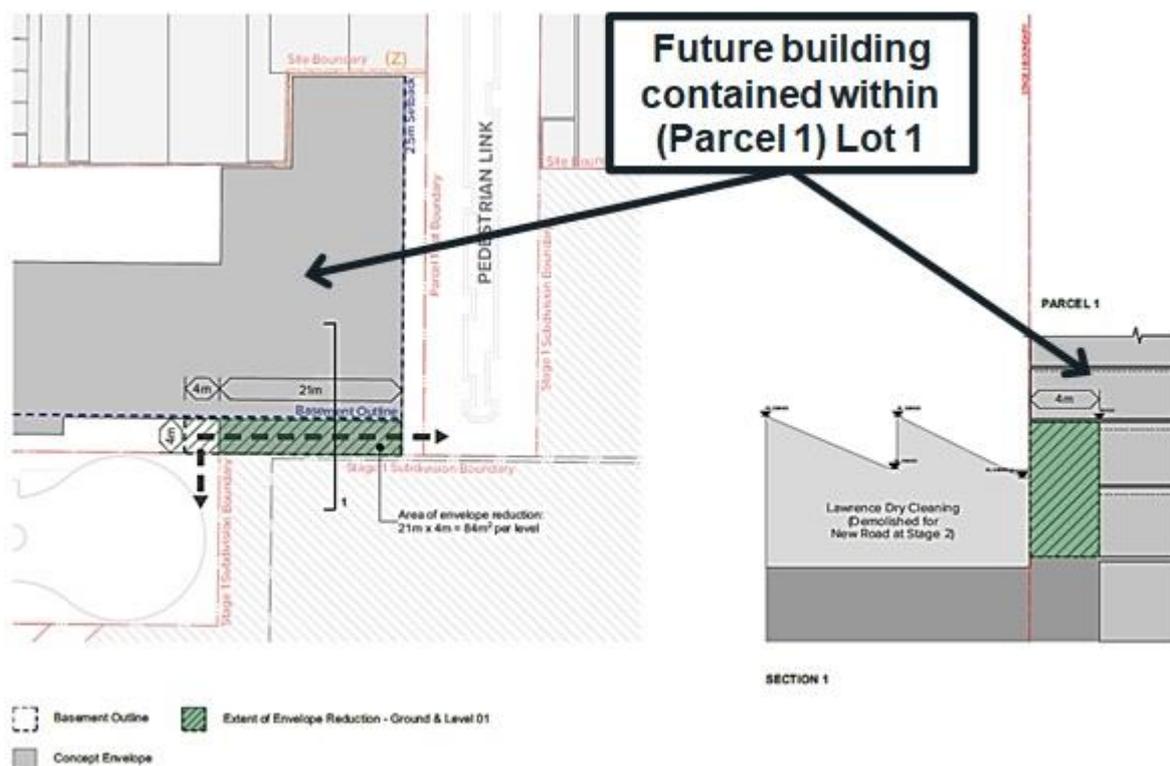


Figure 60: Additional TSL to provide pedestrian connection at end of phase 1 development

### Proposed Variations to DCP Setback and Massing Requirements

136. The proposal seeks to vary several setback requirements specified at DCP provision 5.9.3.5, as follows:

#### Substation encroachment on landscape setback to Young Street

- (a) as shown in Figure 61 below, it is proposed that the large existing substation currently located near the street frontage of and within the property at 207-229 Young Street is relocated further north to a position within the 7m landscape setback to Young Street;

- (b) this proposed variation would undermine the achievement of the objectives of the Danks Street South urban strategy to use landscaping to manage stormwater quality and to create a strong and consistent landscape character throughout the precinct. Furthermore, it would necessitate the removal of several trees (two large healthy Paperbark street trees and two large healthy Lemon-scented gum trees within the site);
- (c) the proposed new location of the substation is not supported. Conditions are recommended for relevant design modifications and for any substation to be provided as a chamber substation that is integrated into the architecture of any building contained within the approved concept envelope in (Parcel 1) Lot 1.

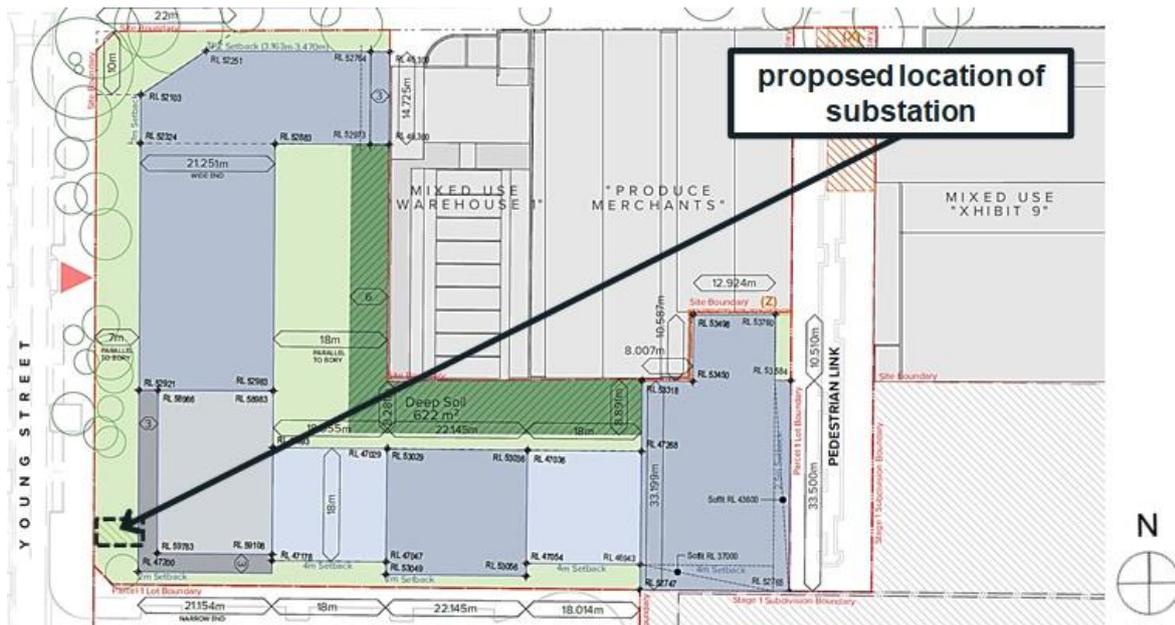


Figure 61: Proposed location of substation within proposed new (Parcel 1) Lot 1

Upper level encroachment into building setback to through site link

- (d) as shown in Figures 62 and 63 below the upper portion of the envelope contained within (Parcel 1) Lot 1 encroaches into the 2.5m building setback to the through-site link (TSL).
- (e) the proposed 'pop-out' element is to offset the GFA that would otherwise be lost as a result of providing the pedestrian connection from the southern end of the TSL to the eastern end of the new east-west street, as described above.
- (f) notwithstanding this non-compliance at upper levels, the eastern building alignment at the lower levels will comply with the DCP prescribed 2.5m setback to the TSL. This will provide opportunities for outdoor seating and activation of the ground level interface of the building with the TSL. Subject to conditions to set back the upper level 'pop-out' from the envelope's southern elevation (refer to Figure 64 below), the building contained within (Parcel 1) Lot 1 will provide a suitable gateway to the TSL when viewed from the south. This is consistent with the desired urban design outcome envisaged under the DCP setback controls.

- (g) relevant conditions are also recommended for design requirements to be included in any competitive design brief for the building contained within (Parcel 2) Lot 104. These conditions require:
  - (i) competitors to consider a similar distribution of bulk or a 'pop-out element' on the opposite side of the TSL to achieve some degree of volumetric symmetry to opposing buildings fronting the TSL (while acknowledging that the two buildings fronting the through site link will be of different heights) and
  - (ii) that the visual and acoustic privacy objectives 3F and 4H of the ADG are to be addressed notwithstanding potential non-compliances with the ADG's separation requirements arising from the proposed setback encroachment and design requirements recommended at sub-paragraph (i) above.

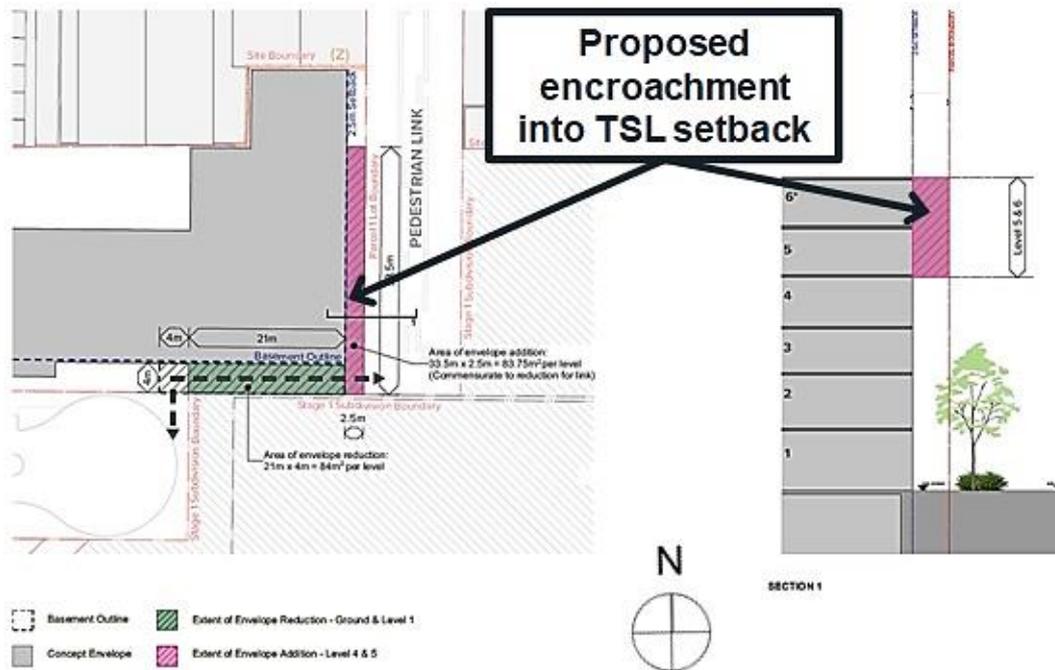


Figure 62: Plan and section diagrams of proposed upper level envelope encroachment into TSL setback

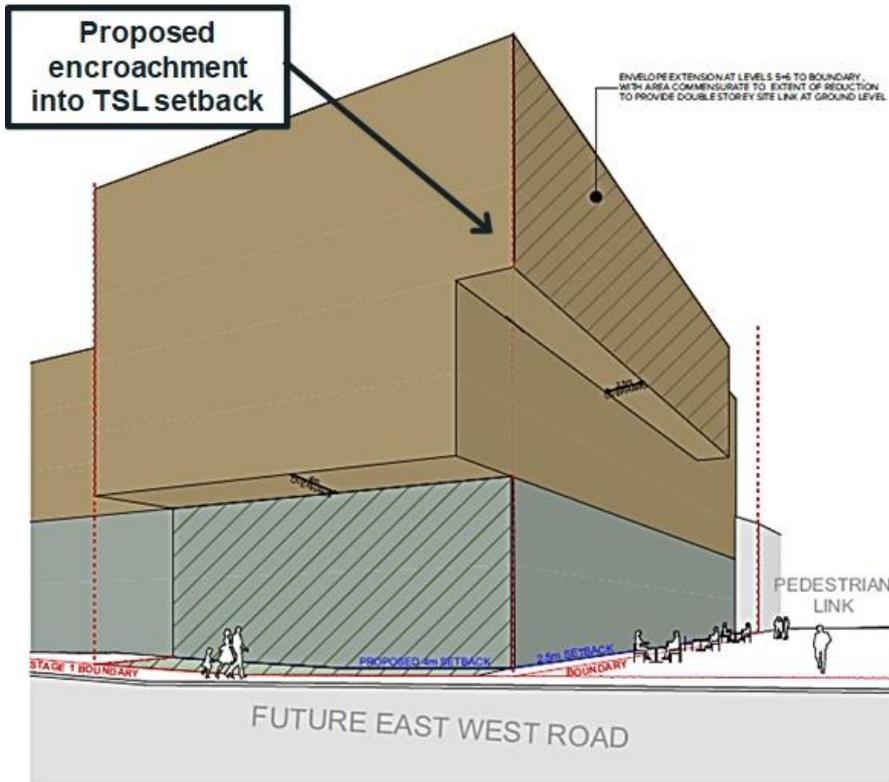


Figure 63: Perspective drawing of proposed upper level envelope encroachment into TSL setback

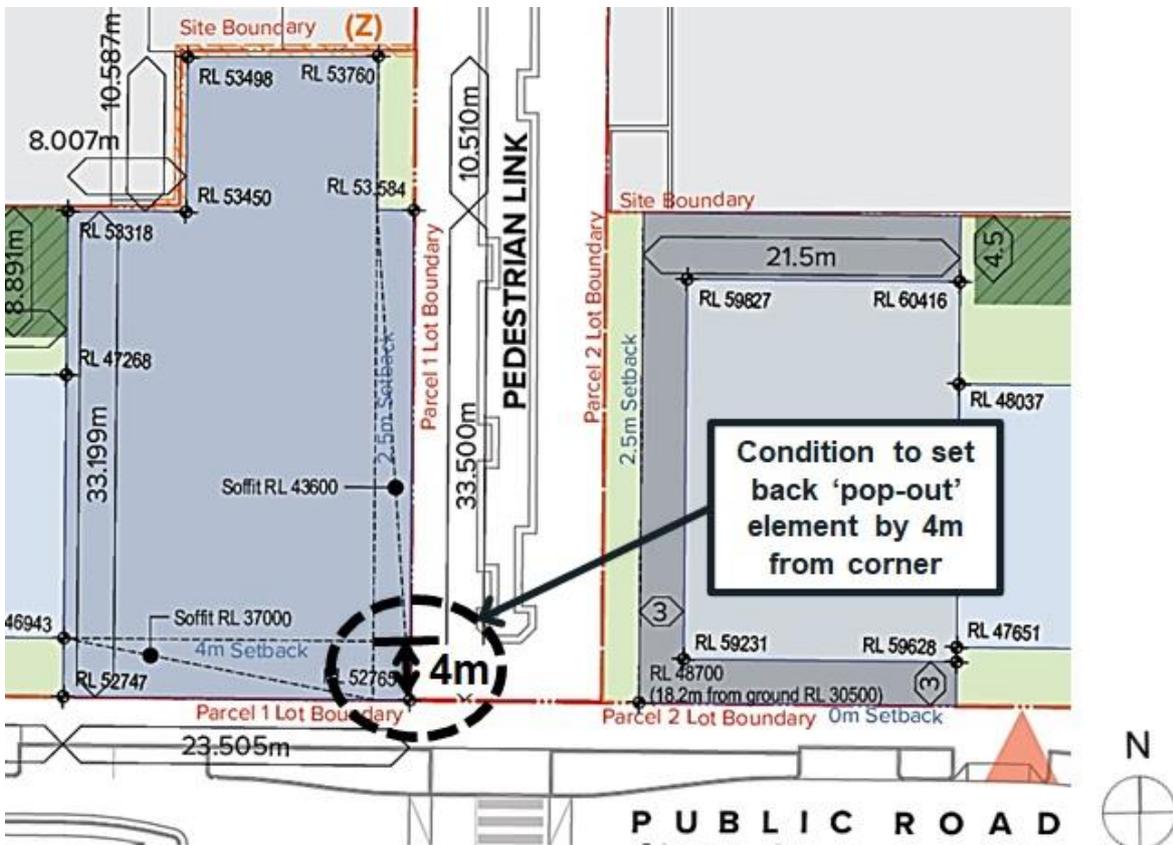


Figure 64: A condition is recommended to set-back the 'pop-out' element from the corner by 4m

Non-provision of setback to southern boundary of (Parcel 3) Lot 103

- (h) as shown in Figures 65 and 66 below, the proposed concept envelope contained in (Parcel 3) Lot 103 is configured to allow for a perimeter building massed in an inverted U-shape
- (i) the western side of the envelope seeks to vary the DCP prescribed 4.5m setback and depart from the DCP's indicative built form massing requirements by extending all the way to the southern boundary
- (j) the applicant submits that the mixed-use development approved on the City West Housing site (by consent no. D/2015/941) does not provide the DCP prescribed setback (of 9m) to its northern boundary. Subsequently, the proposed concept envelope has sought to mirror this by similarly departing from the relevant DCP setback requirement. The applicant submits that:
  - (i) were the proposed concept envelope to be setback by 4.5m from its southern boundary with the City West Housing site, then it would result in a narrow, unsafe and un-useable strip of land with reduced opportunities for activation of the western elevation
  - (ii) the proposed concept envelope with its nil-setback from the southern boundary provides for an improved urban design outcome which allows for a continuous active frontage to the public open space. Furthermore, the applicant submits that a future detailed design DA for the site could provide a double height building lobby to provide a visual and physical connection through to the internal courtyard instead.

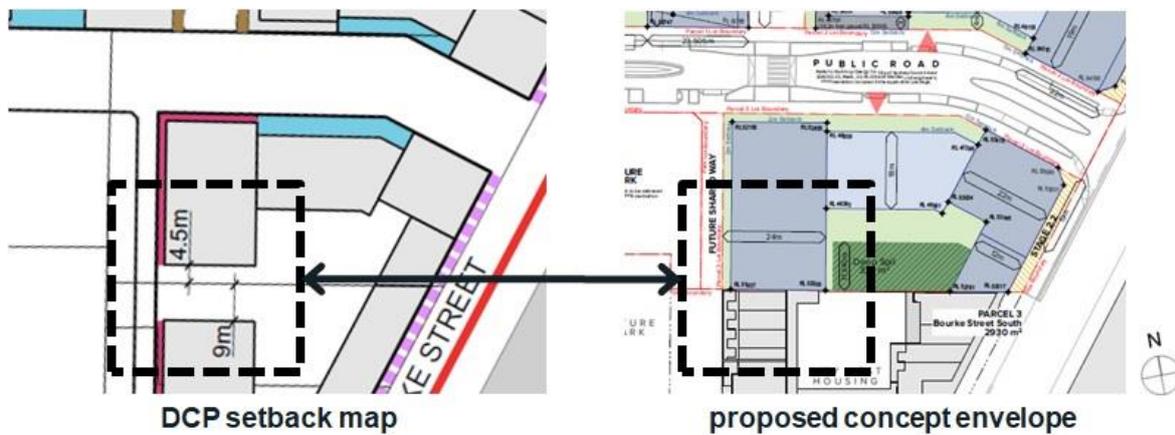


Figure 65: Comparison of DCP prescribed setbacks and proposed nil-setback to southern boundary of (Parcel 3) Lot 103 and the adjacent City West Housing site



Figure 66: Comparison of DCP prescribed setbacks and proposed nil-setback to southern boundary of (Parcel 3) Lot 103 and the adjacent City West Housing site

- (k) it is acknowledged that because the mixed-use development approved for the City West Housing site fails to provide the DCP prescribed setback (of 9m) to its northern boundary, then the strategic intent of the DCP setback controls cannot be fully achieved
- (l) however, the applicant's submission fails to address the following DCP objectives and controls:
  - (i) DCP provision 4.2.4 Fine grain, architectural diversity and articulation - this control limits the street frontage length to 40m for buildings fronting streets less than 18m wide [such as the building envelope contained within (Parcel 3) Lot 103]. The objective of the control is to provide fine grain, built form and varied architectural character so that the scale, modulation and articulation of development responds to its context. The proposed nil-setback will result in a combined street wall length of over 60m to the narrow future shared way on the eastern edge of the future public open space
  - (ii) DCP provision 5.2.9 Building design - the objective of which is to ensure appropriate building separation on large development sites to create visual connections between the public domain and courtyard spaces, and achieve appropriate residential privacy and amenity
  - (iii) DCP provision 5.9.4.8 Development sites and building layout - this control requires full height gaps to be provided between buildings for solar access and visual connections between the street and internal open spaces.
- (m) A condition is recommended requiring design measures to modulate the scale and architectural character of this parcel's long western frontage. These design measures are to be incorporated as design requirements into any future competitive design process brief for the detailed design of the building within (Parcel 3) Lot 103.

#### Clarification of DCP Setback and Deep Soil Requirements

137. As shown in Figure 67 below, DCP provision 5.9.3.5 sets out requirements for the provision of landscaped setbacks across the Danks Street South precinct.

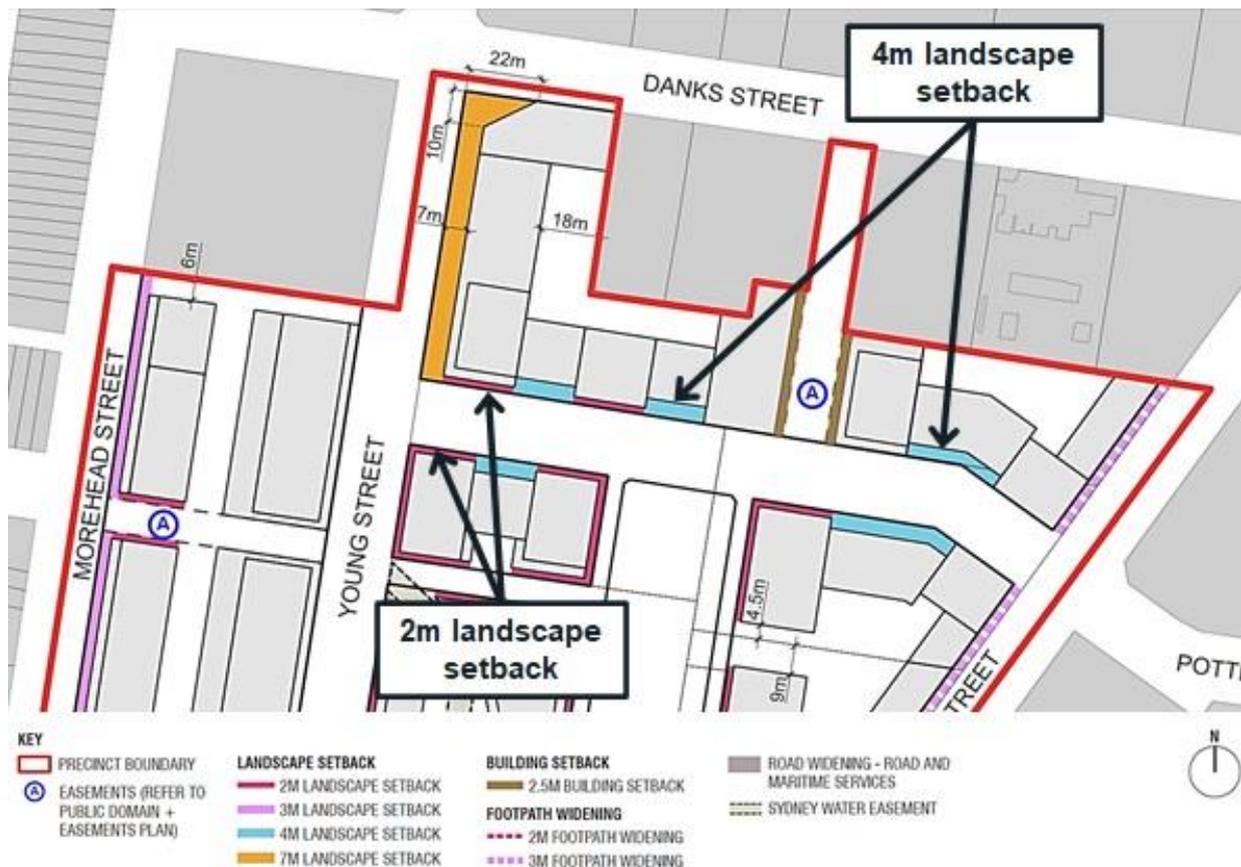


Figure 67: Excerpt from DCP Figure 5.214 Danks Street South Setback and Alignment map

138. These provisions specify the locations and the minimum widths of the landscaped setbacks to be provided, which vary from 2m to 7m.
139. DCP provision 5.9.3.5(3) states that 'a minimum dimension of 2 metres of the private front gardens required for ground floor apartments is to be included as deep soil.'
140. Over the course of this assessment the applicant has sought clarification of:
- whether the 2 metres of deep soil within private yards of ground level apartments fronting the landscape setback zones is to be provided in addition to the minimum landscaped setback or
  - if it may be incorporated into and counted towards the minimum landscaped setback to be provided.
141. Council's planning assessment officer has consulted internally about the strategic intent of these controls and can confirm that the 2m deep soil zone within private yards of ground level apartments can be incorporated into and counted towards providing landscape setbacks. But only in those instances where the specified landscape setback zone has a minimum width of 4m or more.
142. That is, deep soil zones within private yards of ground level apartments cannot be incorporated into and counted towards providing landscape setbacks in those locations where only a 2m landscape setback is required.

143. Conditions are recommended for:

- (a) this clarification to be inserted into any competitive design process briefs for the site and
- (b) any fencing of private yards within the 4m landscaped setback area is to be designed to be amongst landscaping to minimise the visible appearance of hard fencing.

#### **Vehicle Access Locations and Design**

144. The concept proposal seeks consent for vehicle access locations for each of the new development parcels.
145. The proposed location for vehicle access to the new north-western (Parcel 1) Lot 1 from Young Street is supported.
146. The proposed location for vehicle access to the new south-western (Parcel 4) Lot 2 from Young Street is not supported at this stage. A condition is recommended for further work to be undertaken to determine whether vehicle access can be re-located to retain a large, mature and healthy street tree (Tree 81) that would otherwise have to be removed to accommodate vehicle access as currently proposed. As discussed in the Tree Management section of this report, conditions are recommended for investigations into whether the vehicle access location to (Parcel 4) Lot 2 can be moved further south so tree 81 can be retained.
147. The proposed locations for vehicle access to the new north-eastern and south-eastern (Parcels 2 and 3) Lots 104 and 103, from the new east-west street are supported in-principle. However, as shown in Figure 68 below, the swept path analyses submitted as part of the subject DA demonstrate that the indicative driveway designs do not provide suitable access for large vehicles entering the site without mounting centrally located medians that form part of the city's Public Domain Concept Design for the new east-west street. The swept paths also demonstrate potential collisions of large vehicles entering/exiting the proposed new driveways.

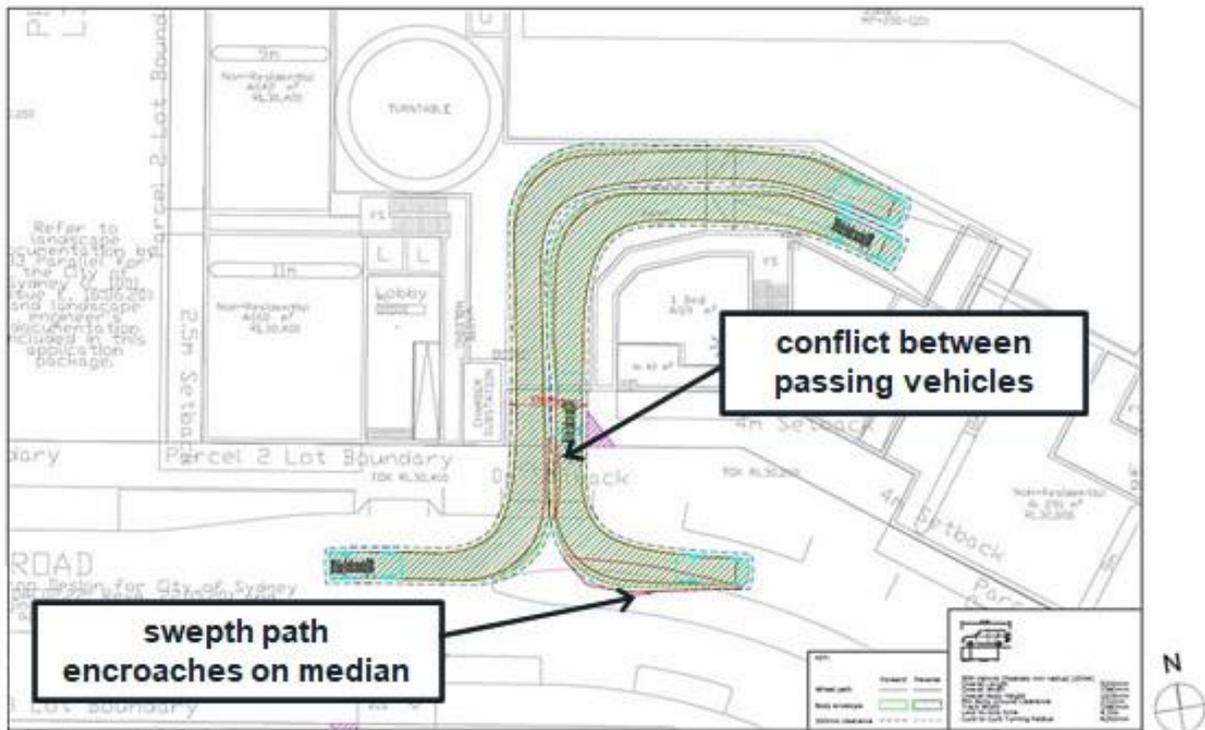


Figure 68: Swept path diagram demonstrating large vehicles turning into site mount central median

148. To address these concerns, conditions are recommended for:

- (a) further work to be undertaken in consultation with the city's public domain design team to resolve the design of vehicle access/crossovers to the new east-west street and the city's public domain design. Detailed design of vehicle access/crossovers to the new east-west street is to be finalised in consultation with the city's public domain design team and is to be documented in any subsequent DA for the detailed design of the building; and
- (b) traffic management measures, such as internal traffic light systems, to be implemented to prevent collisions as large vehicles pass each other on driveways as they enter or exit the site. Details of such measures are to be documented in any subsequent DA for the detailed design of the building.

#### Temporary Pedestrian Access on the New East-West Street

149. Other concerns have been raised by council's transport planner, public domain and VPA coordinator about pedestrian and vehicle access and the phased construction of the new east-west street.
150. The land to be dedicated for the new east-west street is 20m wide. This provides ample space for provision of a temporary vehicle turning head at its eastern end, as well as pedestrian footpaths.
151. Despite the adequacy of the dimensions of the land dedication, the indicative design of the new east-west street shown on the concept envelope drawings (see Figure 69 below) fails to provide a suitable pedestrian footpath to connect its eastern end to the pedestrian through site link.

152. Various conditions are recommended for the detailed design of the new east-west street and other civil works to be submitted to and approved by council officers, including the condition titled: Road Network and Geometric Road Design - Phases 1 and 2.

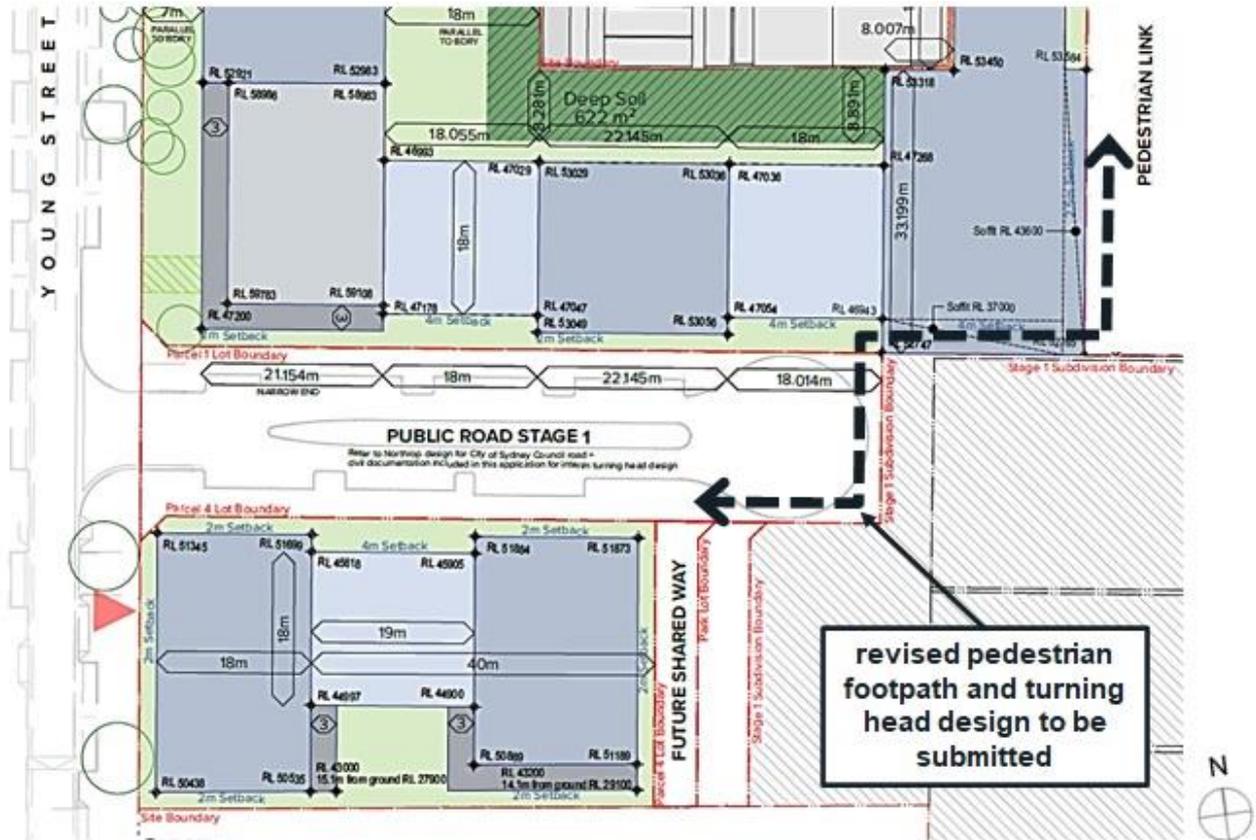


Figure 69: First phase subdivision works and concept envelopes

**Height, Bulk and Scale (including Attics)**

153. The height of buildings is regulated by the LEP height of buildings and the DCP height in storeys controls.
154. In some instances, and subject to the maximum 10% additional height uplift sought through the LEP's design excellence provisions, the LEP's height of buildings control allows for a full additional storey above the DCP height in storeys control.
155. The maximum height in storeys permitted by the DCP ranges from 4 to 8 storeys for the site. The number of storeys is not approved as part of this concept DA. However, it is noted that in several locations where the 6-storey height control applies, the reference scheme incorporates a seventh storey. In each of these instances the uppermost, full height, non-compliant storey is labelled 'attic'. But these non-compliant storeys are not attics as defined in the LEP.
156. The LEP defines an attic as 'any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like'.

157. DCP provision 5.9.4.10 specifies that 'all attic spaces are to have a maximum coverage of 50% of the floor below and are to be setback a minimum of 3 metres from the edge of the floor below'.
158. While the various height controls and objectives contained in the LEP, DCP and precinct specific DCP provisions for Danks Street South are not directly at odds with each other, there is some ambiguity as to their application in future assessments.
159. Council's planning assessment officer has consulted internally about the strategic intent of these controls and can confirm that it is more akin to the ADG's more contemporary conception of an attic as shown in Figure 70 below.

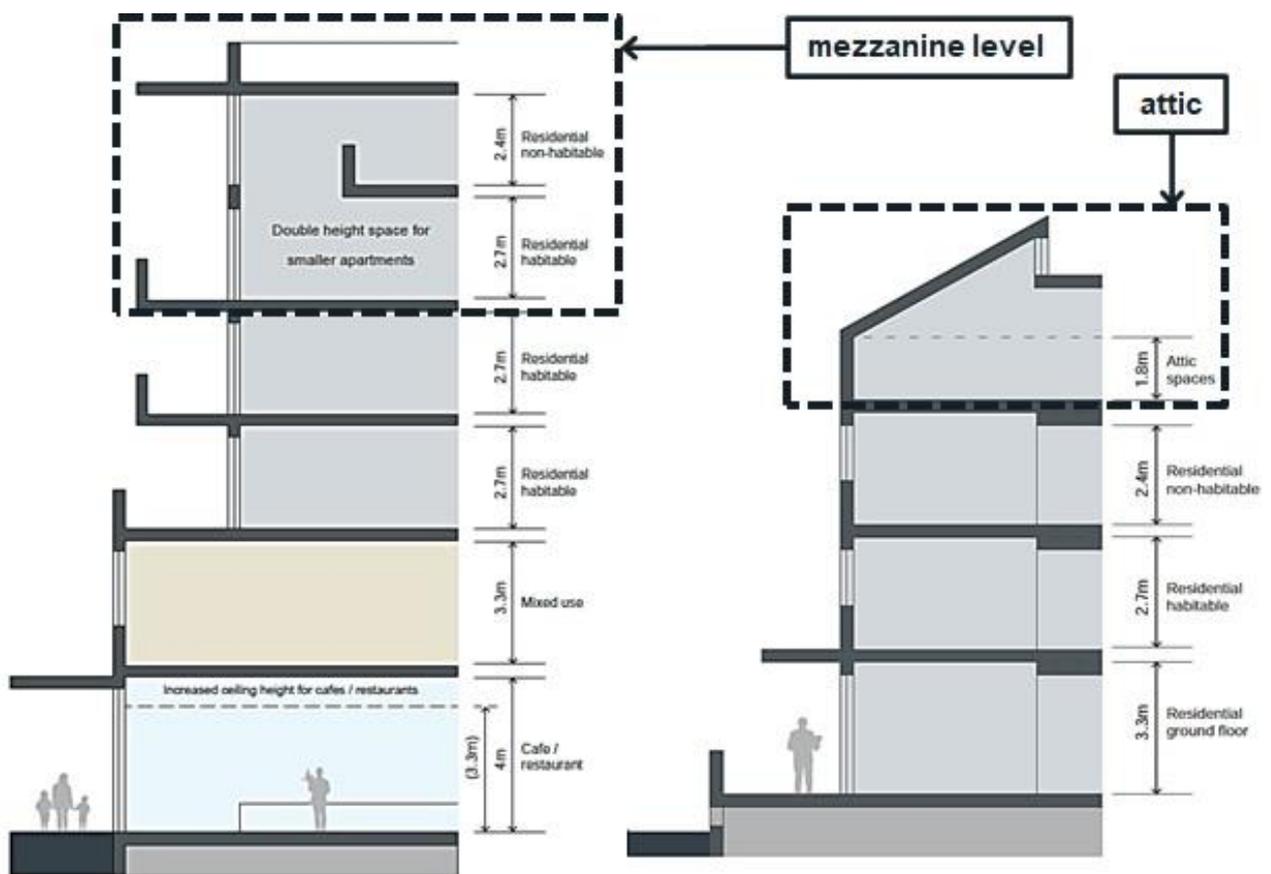


Figure 70: ADG Figure 4C.1 (on the left) illustrates a mezzanine level contained within a double height apartment. ADG Figure 4C.2 (on the right) illustrates an attic space with walls up to 1.8m high and a pitched roof.

160. A condition is recommended for this clarification, along with relevant DCP objectives for the minimisation of height and bulk, to be inserted into any competitive design process briefs for the site.

### Voluntary Planning Agreement

161. The owner of the site has made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) to transfer and dedicate land to the city and for embellishment works to provide community infrastructure in accordance with the DCP.

162. The draft VPA that has been prepared in association with the subject development application provides for the following public benefits:
- (a) transfer and dedication of 6,901 sqm of land for new roads, public open space, a through site link and footpath widening on Bourke Street; and
  - (b) developer's works to remediate and embellish these transfer and dedication lands to be delivered over four phases including construction of:
    - (i) the new east-west street
    - (ii) the through site link
    - (iii) temporary paths in the location of future shared zones
    - (iv) the public open space (to a basic level comprising turf, some furniture, bins and lighting) and
  - (c) for provision of a bank guarantee for \$5,234,380 to secure the developer's works.
163. The draft VPA will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period has commenced, however at the time of preparing this report no submissions had been received.
164. Subject to there being no unresolvable objection to the draft VPA, the application is recommended for deferred commencement consent to require the owner of the site to execute this planning agreement and register it on title before the consent is made operative. This will ensure that the consent cannot be acted upon without assurance that the public benefits will be delivered in accordance with the provisions of this agreement.

### **Overshadowing**

165. Over the course of the assessment council's planning officer requested that analyses of overshadowing impacts to neighbouring residential properties be submitted.
166. In response the applicant's architects submitted the requested information, including analyses of overshadowing impacts to the existing mixed-use buildings at 1 Danks Street (Warehouse 1) and 788-822 Bourke Street (Tiara), and to the approved mixed-use development at 895-899 and 901 Bourke Street (the City West Housing site). These neighbouring residential buildings are identified in Figure 71 below.



Figure 71: Neighbouring residential buildings affected by overshadowing

167. The applicant has provided analysis of the overshadowing impacts from:

- (a) envelopes that comply with the base height of buildings control permitted in accordance with clause 4.3 of the LEP and
- (b) envelopes that utilise up to 10% additional height sought in accordance with the design excellence provisions at clause 6.21 of the LEP and which are discussed in detail below.

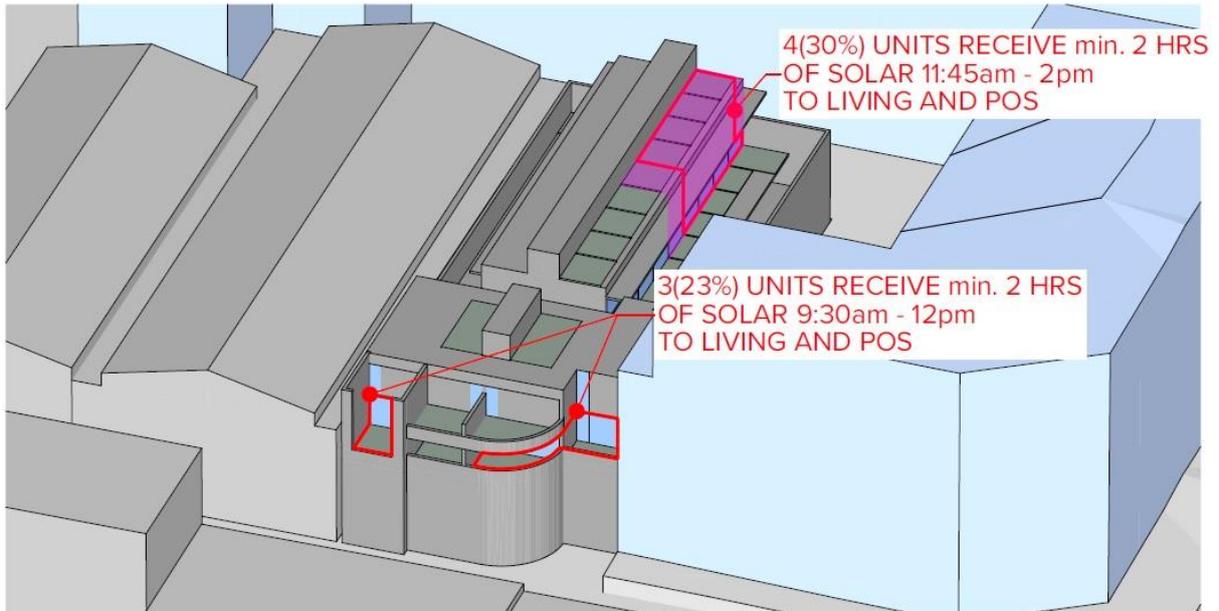
1 Danks Street (Warehouse 1)

168. Warehouse 1 is a mixed-use building comprising 13 apartments. Four of these apartments have living rooms and private open space areas orientated to the north and which face Danks Street. Nine of its apartments are orientated towards the west and currently rely on the borrowed amenity of sunlight passing across the subject site and its side boundary to the living rooms and private open spaces of these apartments.

169. Under current conditions, 84% of apartments (11 apartments) receive 2 hours of sunlight to living rooms and private open spaces, and all apartments receive some direct sunlight.

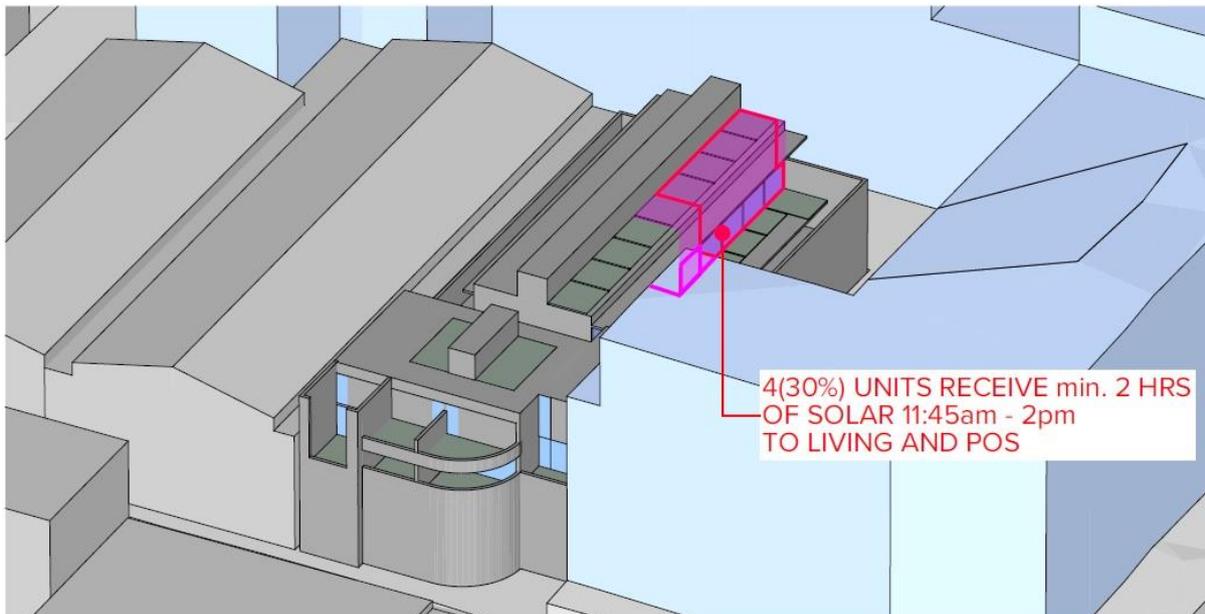
170. The proposed concept envelopes within the proposed new (Parcel 1) Lot 1, shown in blue in Figures 72 to 76 below, comply with the base height of buildings control at clause 4.3 of the LEP. These envelopes are separated from the Warehouse 1 building by up to 18m and are consistent with the built form and massing requirements of the DCP.

171. The proposed concept envelopes unamended would reduce solar access to the Warehouse 1 building, with 62% of apartments (8 apartments) receiving 2 hours of sunlight to living rooms and private open spaces. Under the proposed conditions all apartments will receive some direct sunlight.
172. The reduction in the number of apartments that receive a minimum of 2 hours' sunlight to living rooms and private open spaces from a compliant 84%, down to a non-compliant 62% of apartments, is not in-keeping with the design guidance to ADG objective 3B-2 or the design criteria to ADG objective 4A-1.
173. To achieve consistency with the ADG objectives, the detailed design of the building within the proposed new (Parcel 1) Lot 1 must ensure a minimum of 2 hours of sunlight to at least 9 apartments (which is equal to 70% of all apartments) in the Warehouse 1 building. Four of the apartments within Warehouse 1 that face Danks Street achieve these minimum levels of sunlight under both existing and proposed conditions. Subsequently, 5 (of the 9) apartments at the rear of the building and which face the side boundary, must retain solar access for at least 2 hours under the proposed conditions. The private open space and living room windows to these 5 apartments, to which solar access must be retained, are highlighted in pink in Figures 72 to 76 below.
174. Conditions are recommended for the proposed envelopes to be amended to retain minimum solar access to the apartments within Warehouse 1, in accordance with the design guidance to ADG objective 3B-2 and the design criteria to ADG objective 4A-1, as described in the paragraph above. Increased setbacks to building mass within the proposed new (Parcel 1) Lot 1 that are the likely design outcome from this condition are marked in a pink line in Figures 72 to 76 below. Note that the setbacks marked in a pink line are indicative only. The setbacks incorporated into detailed designs to address the recommended conditions will be established through modelling of the cumulative reductions in massing over the time periods shown in Figures 72 to 76.
175. It is noted that massing enabled by the 10% design excellence height uplift is unlikely to be achieved on those parts of the proposed new (Parcel 1) Lot 1, where it would cause overshadowing to the 5 apartments at the rear of the Warehouse 1 building in contravention of the recommended conditions.
176. These conditions are likely to result in a reduction in the FSR or yield of development within the proposed new (Parcel 1) Lot 1 and which is discussed further below.



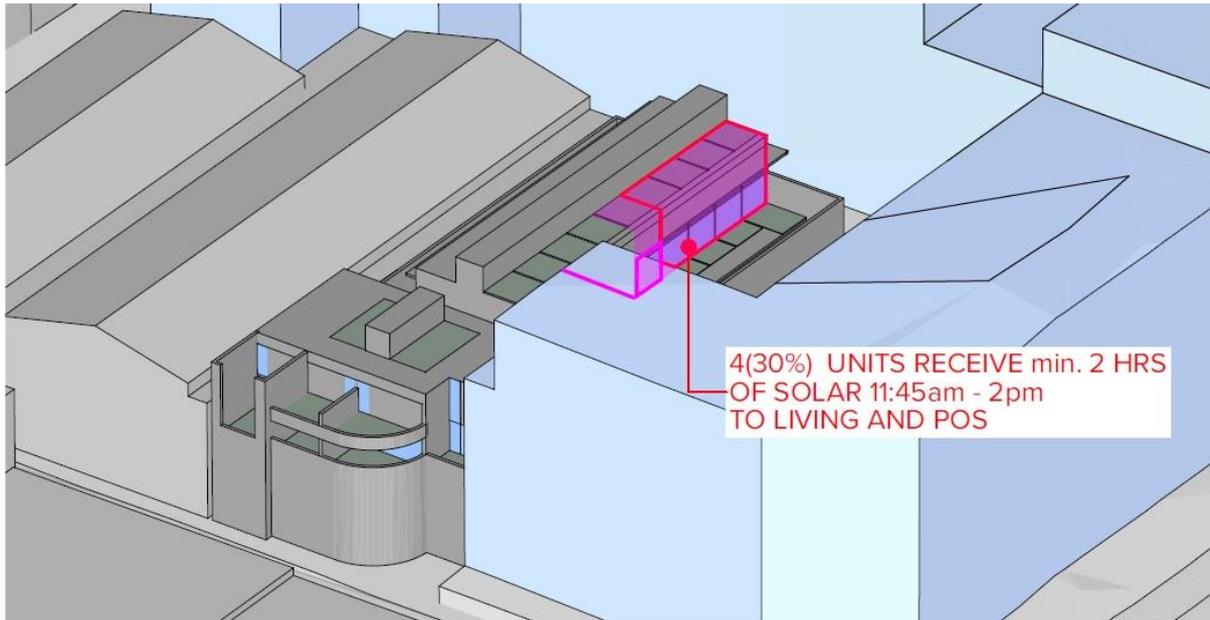
**Concept envelope 12pm**

Figure 72: Views from the sun diagram at 12pm to the Warehouse 1 building. Living room windows and private open space (POS) of the 5 west-facing apartments to which 2 hours of sunlight is to be retained are shaded pink.



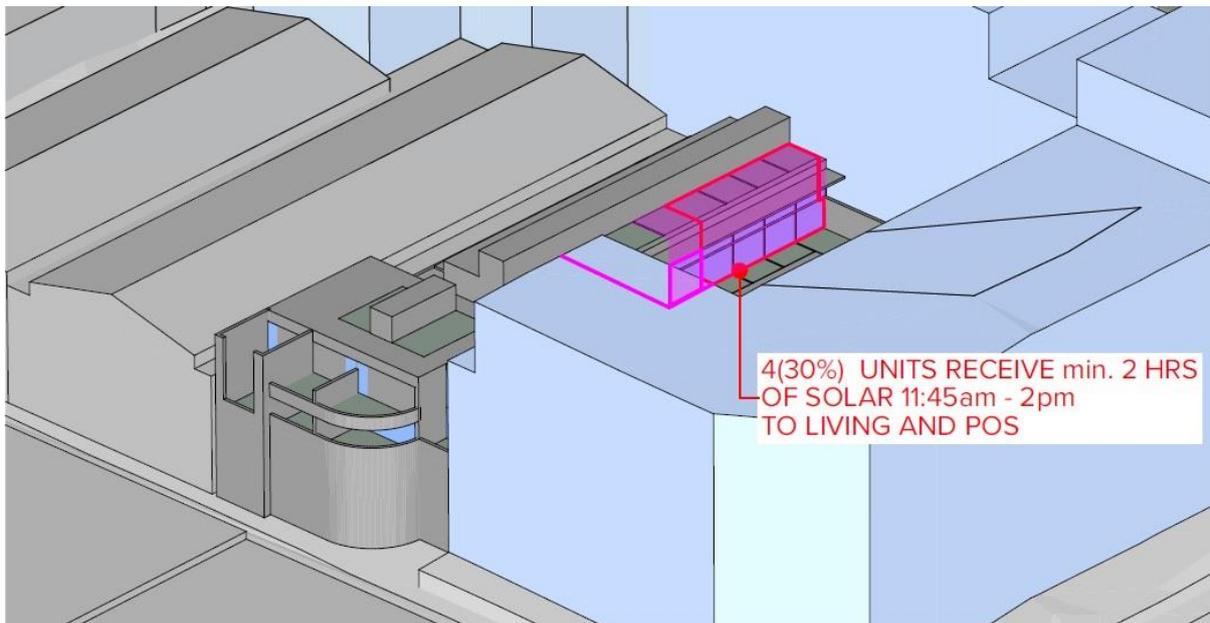
**Concept envelope 12.30pm**

Figure 73: Views from the sun diagram at 12.30pm to the Warehouse 1 building. Living room windows and private open space (POS) of the 5 west-facing apartments to which 2 hours of sunlight is to be retained are shaded pink.



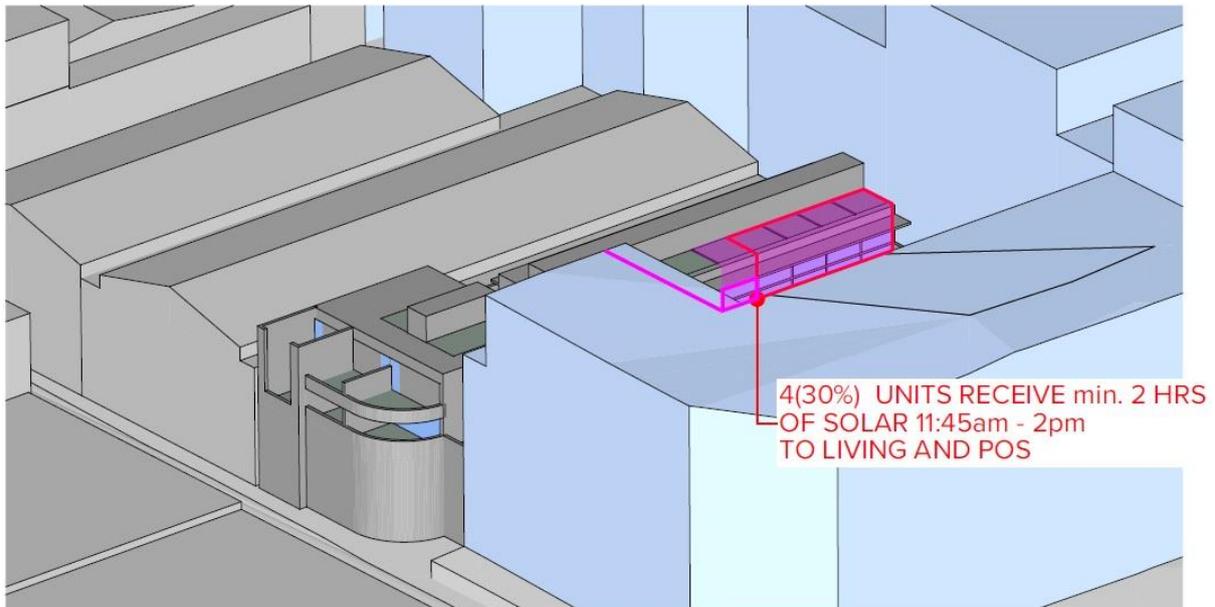
**Concept envelope 1pm**

Figure 74: Views from the sun diagram at 1pm to the Warehouse 1 building. Living room windows and private open space (POS) of the 5 west-facing apartments to which 2 hours of sunlight is to be retained are shaded pink.



**Concept envelope 1.30pm**

Figure 75: Views from the sun diagram at 1.30pm to the Warehouse 1 building. Living room windows and private open space (POS) of the 5 west-facing apartments to which 2 hours of sunlight is to be retained are shaded pink.



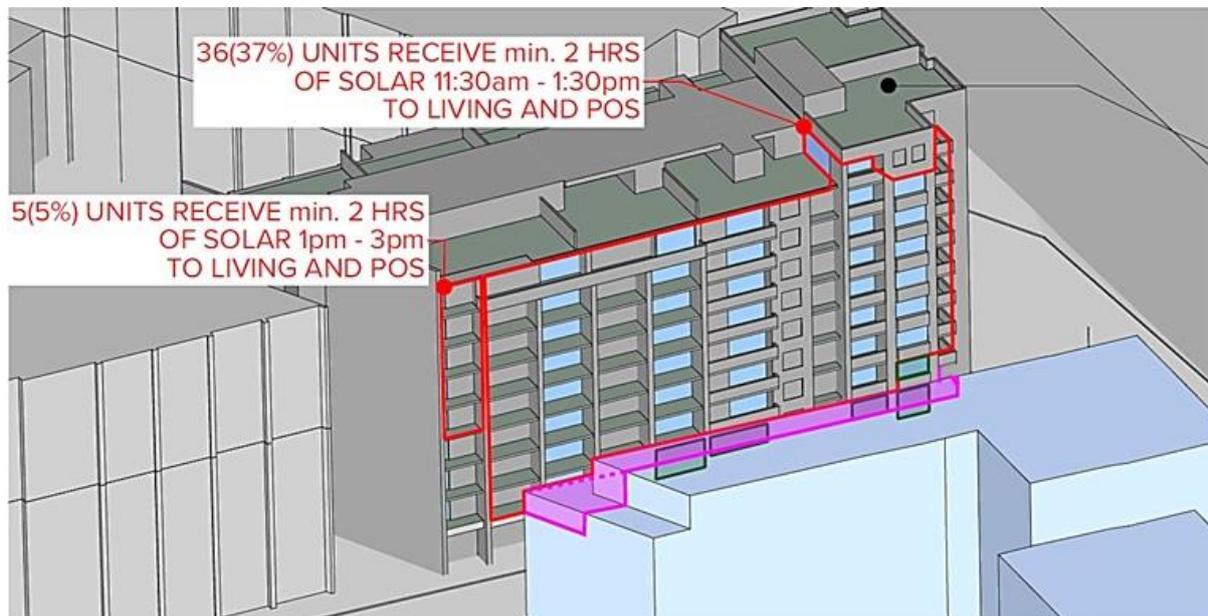
**Concept envelope 2pm**

Figure 76: Views from the sun diagram at 2pm to the Warehouse 1 building. Living room windows and private open space (POS) of the 5 west-facing apartments to which 2 hours of sunlight is to be retained are shaded pink.

#### 788-822 Bourke Street (Tiara)

177. Tiara is a mixed-use development comprising several buildings on the opposite side of Bourke Street to the east of the site. The building within the Tiara development that is affected by overshadowing from the proposed concept envelopes comprises 97 apartments. Most of those apartments are orientated towards either its Bourke Street frontage to the north-west or to the other side of the building to the south-east.
178. Under current conditions, 52% of apartments (50 apartments) receive 2 hours of sunlight to living rooms and private open spaces, and 42% of apartments (41 apartments) receive no direct sunlight. A large proportion of apartments receive no direct sunlight due to the northwest-southeast orientation of the building described above.
179. The proposed concept envelopes, shown in blue in Figures 77 to 81 below, comply with the base height of buildings control at clause 4.3 of the LEP. These envelopes are separated from the Tiara building by up to 26m and are consistent with the built form and massing requirements of the DCP.
180. The proposed concept envelopes unamended will reduce solar access to the affected building within the Tiara development, with 43% of apartments (42 apartments) receiving 2 hours of sunlight to living rooms and private open spaces and 42% of apartments (41 apartments) receiving no direct sunlight.
181. The reduction in the number of apartments that receive a minimum of 2 hours' sunlight to living rooms and private open spaces from a non-compliant 52% (50 apartments) down to 43% (42 apartments) of apartments is not in-keeping with the design guidance to ADG objective 3B-2 or the design criteria to ADG objective 4A-1.

182. To achieve consistency with the ADG objectives, the detailed design of the building within the proposed new (Parcel 2) Lot 104 must not result in a further reduction in the number of apartments in the affected Tiara building that receive the minimum 2 hours of sunlight to living rooms and private open spaces. The private open space and living room windows to the 50 apartments, to which solar access must be retained, are highlighted in pink in Figures 77 to 81 below.
183. Conditions are recommended for the proposed envelope to be amended to retain minimum solar access to the apartments within the affected Tiara building, in accordance with the design guidance to ADG objective 3B-2 and the design criteria to ADG objective 4A-1, as described in the paragraph above. Increased setbacks to building mass within the proposed new (Parcel 2) Lot 104 that are the likely design outcome from this condition are marked in a pink line in Figures 77 to 81 below. Note that the setbacks marked in a pink line are indicative only. The setbacks incorporated into detailed designs to address the recommended condition will be established through modelling of the cumulative reductions in massing over the time periods shown in Figures 77 to 81.
184. It is noted that massing enabled by the 10% design excellence height uplift is unlikely to be achieved on those parts of the proposed new (Parcel 2) Lot 104, where it would cause additional overshadowing to the apartments in the affected Tiara building in contravention of the recommended conditions.
185. These conditions are likely to result in a reduction in the FSR or yield of development within the proposed new (Parcel 2) Lot 104 and which is discussed further below.



**Concept envelope 1pm**

Figure 77: Views from the sun diagram at 1pm to the affected Tiara building. Living room windows of the 8 west-facing apartments to which 2 hours of sunlight is to be retained are shaded in dark green. Shaded pink areas are the likely requisite bulk reductions at the time shown.



Concept envelope 1.30pm

Figure 78: Views from the sun diagram at 1.30pm to the affected Tiara building. Living room windows of the 8 west-facing apartments to which 2 hours of sunlight is to be retained are shaded in dark green. Shaded pink areas are the likely requisite bulk reductions at the time shown.



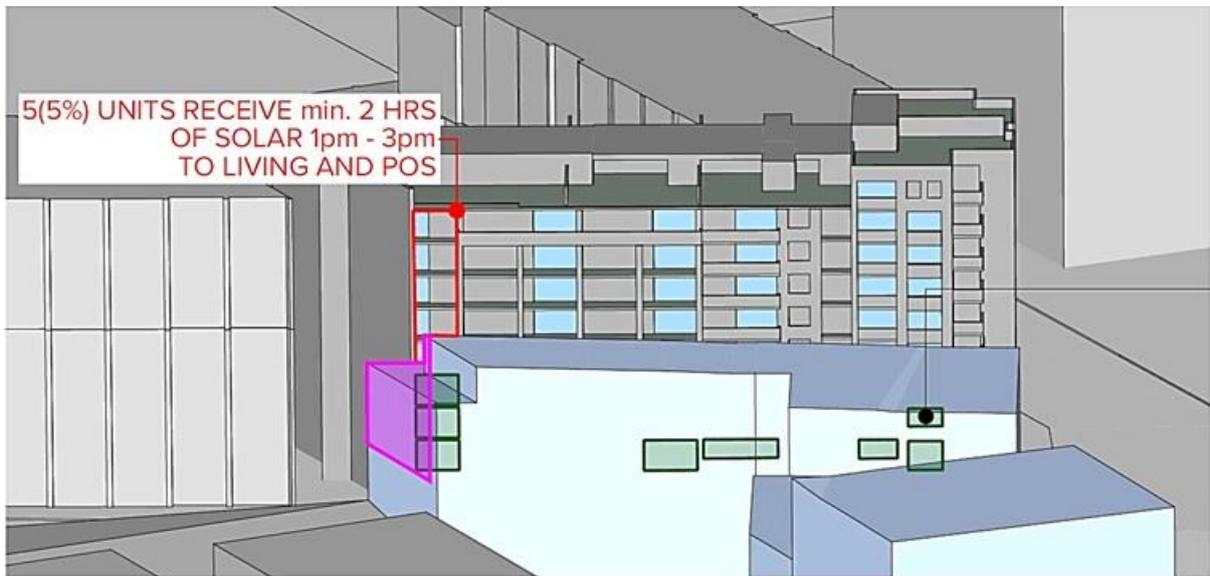
Concept envelope 2pm

Figure 79: Views from the sun diagram at 2pm to the affected Tiara building. Living room windows of the 8 west-facing apartments to which 2 hours of sunlight is to be retained are shaded in dark green. Shaded pink areas are the likely requisite bulk reductions at the time shown.



Concept envelope 2.30pm

Figure 80: Views from the sun diagram at 2.30pm to the affected Tiara building. Living room windows of the 8 west-facing apartments to which 2 hours of sunlight is to be retained are shaded in dark green. Shaded pink areas are the likely requisite bulk reductions at the time shown.



Concept envelope 3pm

Figure 81: Views from the sun diagram at 3pm to the affected Tiara building. Living room windows of the 8 west-facing apartments to which 2 hours of sunlight is to be retained are shaded in dark green. Shaded pink areas are the likely requisite bulk reductions at the time shown.

895-899 and 901 Bourke Street (the City West Housing site)

186. The City West Housing site is adjacent to the south of the proposed new parcel (Parcel 3) Lot 103, and contains two warehouse buildings, currently used as a function centre, retail premises and yoga studio. On 30 April 2018 deferred commencement consent (D/2015/941) was granted for redevelopment of this site for a 5-storey mixed use building comprising 72 affordable housing apartments, dedication of land for footpath widening on Bourke Street and for a future road.
187. Under current conditions, 87% of apartments (63 apartments) receive 2 hours of sunlight to living areas and private open spaces, and 6% of apartments (4 apartments) receive no direct sunlight.
188. The proposed concept envelopes, shown in blue in Figure 82 comply with the base height of buildings control at clause 4.3 of the LEP. These envelopes are separated from the building approved to be constructed on the City West Housing site by up to 19m and are generally consistent with the built form and massing requirements of the DCP.
189. The proposed concept envelopes will reduce solar access to these neighbouring properties, with 76% of apartments (55 apartments) receiving 2 hours of sunlight to living areas and private open spaces and 6% of apartments (4 apartments) receiving no direct sunlight.
190. The reduction in the number of apartments that receive a minimum of 2 hours' sunlight to living areas and private open spaces from a compliant 87% down to a still compliant 76% of apartments is in-keeping with the design guidance to ADG objective 3B-2 and the design criteria to ADG objective 4A-1.
191. For these reasons, it is considered that the proposed concept envelopes satisfy ADG objective 3B-2 to minimise overshadowing of neighbouring properties. The applicant has submitted modelling of overshadowing impacts from concept envelopes that incorporate up to 10% additional height as sought through the LEP's design excellence provisions.
192. This modelling demonstrates that subject to further setting back of any massing enabled by the 10% design excellence height uplift (as shown in Figure 82 below), there is no further reduction in solar access to apartments contained within the City West Housing site building beyond that which would be caused by concept envelopes that do not incorporate any additional height.

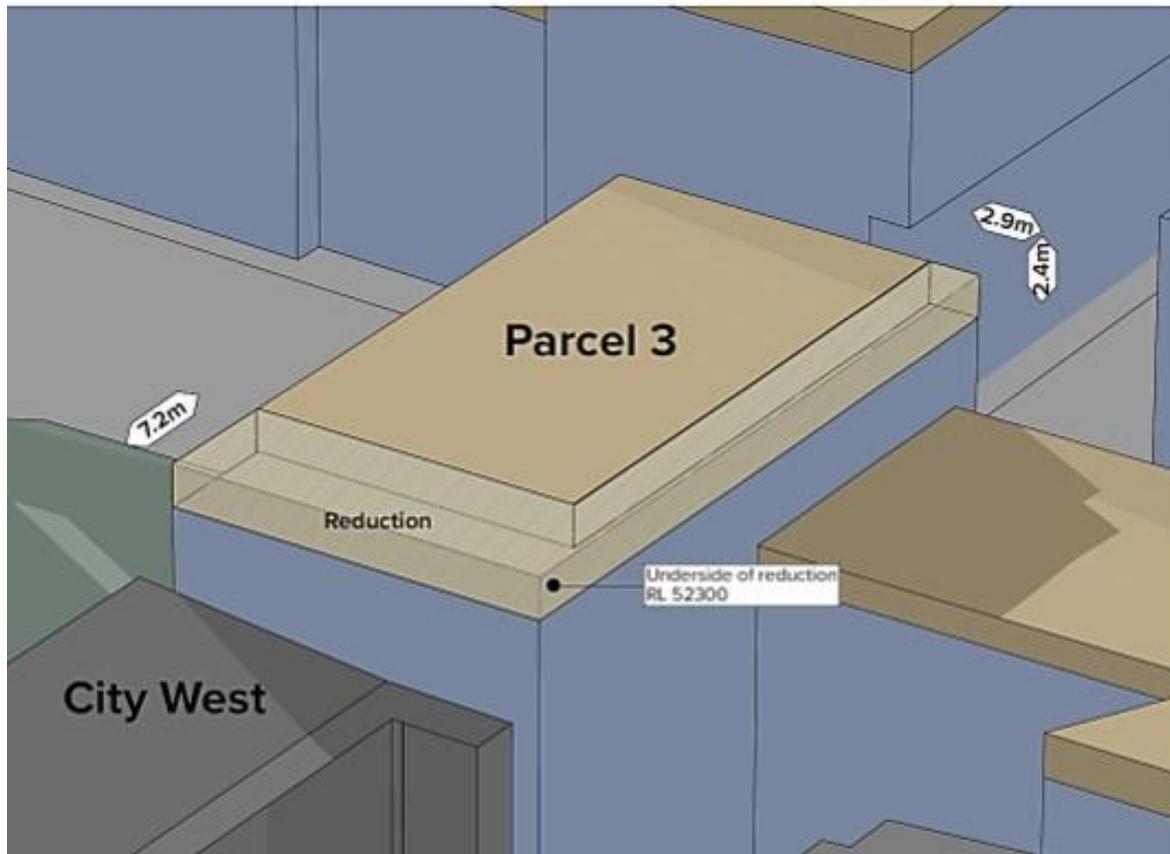


Figure 82: Diagram of further setting back of any massing enabled by the 10% design excellence height uplift to reduce overshadowing impacts to apartments in the City West Housing building

#### Conditions to Guide the Use of Additional Design Excellence Height Uplift

193. Conditions are recommended for the utilisation of additional height to be guided by the:
- (a) conditions recommended to retain ADG compliant levels of solar access to apartments in the Warehouse 1 and Tiara buildings
  - (b) information submitted as part of the subject DA, including concept envelope drawings that provide increased setbacks of any massing enabled by the 10% design excellence height uplift.

#### Likely Reductions in Yield Arising from Recommended Conditions

194. Conditions that are recommended to retain ADG compliant levels of solar access to neighbouring residential apartments are likely to result in significant reductions in the achievable yield to be achieved within the affected parcels.
195. To comply with the solar access requirements illustrated in Figures 72 to 76 above, building mass within the proposed new (Parcel 1) Lot 1, would have to be set back at its upper levels by a distance equal to about half the width of the envelope that faces Danks Street. That is approximately the two upper-most storeys, to be set back from the south-facing internal elevation below. It is estimated that up to 87sqm of GFA would be lost, based on an assessment of the GFA impacts upon the affected portion of the submitted reference scheme.

196. To comply with the solar access requirements illustrated in Figures 77 to 81 above, significant portions of building mass fronting Bourke Street within the proposed new (Parcel 2) Lot 104, would have to be deleted. It is estimated that up to 872sqm of GFA would be lost, based on an assessment of the GFA impacts upon the affected portion of the submitted reference scheme.
197. The reductions in maximum achievable GFA within each of the proposed new development parcels expected to result from compliance with the recommended solar access requirements are summarised in the table below.
198. These reduced yields are adopted in the recommended condition that allocates the maximum permissible GFA across the respective proposed new development parcels.

<b>Development Lot</b>	<b>Proposed Maximum Permissible GFA (sqm)</b>	<b>Reduced Maximum Permissible GFA (sqm)</b>
(Parcel 1) Lot 1	18,310	18,223
(Parcel 4) Lot 2	5,924	5,924
(Parcel 3) Lot 103	8,550	8,550
(Parcel 2) Lot 104	9,499	8,627

#### **Other Impacts of the Development**

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

#### **Suitability of the Site for the Development**

201. The proposal is suitable for the site.

#### **Internal Referrals**

202. The assessment process has been informed by advice from Council's Specialist Surveyor, Environmental Health, Heritage, Urban Design, Public Domain, Landscape Design, Tree Management, Public Art, ESD, Safe City and Waste Management Specialists, Legal Officers, Design Excellence Unit, Transport Planner, Quantity Surveyor, Strategic Planner and VPA Coordinator.
203. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.

## External Referrals

### Notification, Advertising and Delegation

204. The application constitutes integrated development and as such the application was notified and advertised for 28 days between 19 February 2020 and 19 March 2020 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification 49 submissions were received.

- (a) The excessive height of the development will establish an undesirable precedent for future development of the area.

Response - The planning controls, including the height of buildings and height in storeys controls contained in the LEP and DCP, establish the desired future character for the area. The proposed concept envelopes comply with the relevant height controls and subject to the recommended conditions are able to accommodate detailed building designs of an appropriate height, bulk and scale, that respond to the character of the area.

- (b) The proposed site coverage is contrary to the desired future character of the area and increases stormwater run-off.

Response - Objectives of precinct specific DCP provisions for Danks Street South include, among other things, the use of landscaping to manage stormwater quality. Apart from those variations to setback requirements discussed in the Issues section of this report, the footprints of the proposed concept building envelopes are generally consistent with the indicative built form massing set out in the precinct specific DCP provisions for Danks Street South. Proposed deep soil provision is in accordance with ADG requirements and the detailed design of stormwater management systems will be addressed through the detailed design processes of the proposed development parcels and of the public domain.

- (c) The concept proposal does not respond sympathetically or contribute to the enhancement of desirable elements of the area's existing character, adjacent sites, streetscape or industrial heritage.

Response - As noted at (a) above, the proposed concept envelopes comply with the relevant height controls and subject to the recommended conditions are able to accommodate detailed building designs of an appropriate height, bulk and scale, that respond to the character of the area. Conditions include those recommended for a design requirement to be included in competitive design process briefs, for detailed building designs to provide a sympathetic design response to adjacent buildings on Danks and Bourke Streets and conditions requiring archival recording, heritage interpretation and further consideration be given to salvage and re-use of significant building elements that are approved for demolition, in landscaping and public art.

- (d) The development (469 apartments) would create an oversupply of housing in the area.

Response - Development density for the Green Square precinct is identified within Council's strategy documents and helped develop the planning controls for this precinct. The final development density will need to accord with amenity controls and built form controls and this will dictate the final yield.

- (e) The proposed development will increase vehicular traffic to the area for future residents, visitors and service vehicles reducing safety for pedestrians and motorists, increasing noise and air pollution and increasing on and off-street parking demand. This will exacerbate existing shortages of on-street parking caused by the existing development in the area including the Hillsong church on Young Street. The 21 on-street parking spaces to be created in the new east-west street does not adequately offset the under-provision of private parking (328 spaces) for future residents (of 469 apartments). This will have an adverse effect on the viability of local businesses that seek to attract customers to the area.

Response - Development density for the Green Square precinct is identified within Council's strategy documents and helped develop the planning controls for this precinct. The final development density will need to accord with amenity controls and built form controls and this will dictate the final yield and any subsequent traffic generation impacts.

- (f) The submitted traffic report prepared in May 2018 is outdated as there have been significant increases in traffic in the area since that time.

Response - Over the course of the assessment of the subject DA additional information has been submitted including an updated traffic report dated 8 April 2021. The updated traffic report and its assessment of traffic conditions is accepted.

- (g) As many streets in the area have a 60km/hr limit the proposed widening of McEvoy Street will exacerbate existing traffic safety issues, including speeding in proximity to busy pedestrian areas such as Danks Street.

Response - Noted. Refer to the responses to other submissions raising traffic and transport issues in this section of the report.

- (h) Bourke Street is too narrow and its footpaths too congested to accommodate pedestrian-bike shared paths. The proposed Bourke Street shared-paths are a safety risk to pedestrians, commuters waiting at bus-stops and residents.

Response - Shared paths along Bourke Street are currently in place. The subject proposal does not seek to change the route of the existing shared paths but to widen the footpath along its Bourke Street frontages to alleviate the capacity constraints identified in the objector's submission.

- (i) If the development does proceed traffic measures should be implemented in surrounding streets to reduce the amount and speed of through traffic.

Response - Traffic speed limits may be introduced and road design will be to assist safe and manageable traffic speeds.

- (j) The proposed height and scale of the development at its north-western corner as it presents to Danks Street will tower over the adjacent building 'Warehouse 1' at 1 Danks Street. The 9 storeys proposed for this building envelope is inconsistent with the 4-storey character of Danks Street village. It is contrary to Danks Street South DCP provision 5.9.4: Building layout, form and design.

Response - Refer to the assessment against provision 4.2.1.1 in the DCP compliance tables and the discussion of height, bulk and scale (including attics) in the Issues section of this report. Several conditions are recommended to address concerns about the height of development, particularly at its interfaces with existing development on Danks Street. These include a condition for a design requirement to be included in competitive design process briefs, for detailed building designs to provide a sympathetic design response to adjacent buildings on Danks and Bourke Streets.

- (k) The proposed development will have adverse impacts upon views from apartments in the Warehouse 1 development including views from the bedroom, living room and rooftop terraces of the nine apartments in this existing building. The proposed 7-9 storey development will tower over the rooftop terraces of apartments in Warehouse 1 and will obstruct the existing views to the south. Should the applicant want to go to this height it is recommended that the City of Sydney require the developer to include our building in the development and basically purchase our buildings.

Response - The apartments within the Warehouse 1 building, aside from those facing Danks Street, are oriented in such a way that they borrow views and amenity across side (eastern and western) and rear (southern) boundaries. The decision of the NSW Land and Environment Court in the case of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (Tenacity) establishes a planning principle pertaining to the assessment of view loss impacts. The views mentioned in the submission are views to the locality, across side and rear boundaries and across the subject site. In the terms of the Tenacity decision, protecting views across side boundaries and adjacent properties is unrealistic. The view losses arise from the proposed concept envelopes that comply with the height of buildings controls contained in the LEP. For these reasons the view loss impacts are considered to be acceptable in this instance.

- (l) The proposal breaches the Height in Storeys control under the Sydney Development Control Plan (DCP) - namely proposed Block 1 and Block 5. By not complying with the control it is inconsistent with SEPP 65, Principle 1: Context and Neighbourhood Character which is about responding to both planned and existing urban character.

Response - Refer to the assessment against provision 4.2.1.1 in the DCP compliance tables and the discussion of height, bulk and scale (including attics) in the Issues section of this report.

- (m) The proposal fails to properly consider the impact of the height with regard to LEP clause 7.16 Airspace Operations, as there is no evidence of an assessment from an Aviation Consultant to confirm that the proposed height is beneath the Obstacle Limitation Surface (OLS). The proposal has not demonstrated whether it is appropriate to the operations of Sydney Airport.

Response - Refer to the assessment against the Airports Act 1996 below. Sydney Airport have reviewed the proposal and advised on 25 February 2020, that no objection was raised and granted a controlled activity approval.

- (n) The proposed development will overshadow the west facing living areas and private open spaces of apartments in Warehouse 1, which are all oriented towards the building envelope on Parcel 1 / Lot 1. This is contrary to the objectives of the Apartment Design Guide (ADG) relating to minimising the negative impacts on solar access (Objective 3B-2: Overshadowing of neighbouring properties is minimised during mid-winter. It will increase energy consumption in these apartments due to increased need for lighting and heating as a result of reduced solar access. This will also reduce the rental incomes derived from the leasing of apartments within the building.

Response - Refer to the assessment of overshadowing impacts to neighbouring properties in the Issues section of this report.

- (o) The proposed development will overshadow the western-lightwells to commercial units on level 1 (2nd storey) of the Warehouse 1 building.

Response - There are no controls that protect solar access to commercial properties within the state's or council's planning policies.

- (p) Shadow diagrams should be submitted so overshadowing impacts can be properly assessed. Shadow diagrams are only provided for midwinter. Shadow diagrams and analysis should be submitted that account for shadowing at other times of the year.

Response - Over the course of the assessment detailed overshadowing and solar access analyses have been provided. The ADG requires overshadowing impacts at mid-winter to be documented in shadow diagrams and the like as this is the time of the year when overshadowing impacts are greatest (when the sun is lower in the sky). An assessment of overshadowing impacts to neighbouring properties is provided in the Issues section of this report.

- (q) The western end of the Danks Street facade of the Warehouse 1 building is set back from the street to align with the adjacent building to the west (207-229 Young Street). The proposed building envelope at 207-229 Young Street should be setback to respond to this existing streetscape condition on Danks Street.

Response - Several iterations of amendments have been submitted over the course of the assessment, including to increase the setback to Danks Street to retain existing trees. This amendment also improves the relationship of future built form massing to the property adjacent to the east at 1 Danks Street (Warehouse 1).

- (r) The proposed height and scale of the development at its north-western corner as it presents to Danks Street will tower over the adjacent building 'Arthouse' at 2-6 Danks Street.

Response - The planning controls, including the height of buildings and height in storeys controls contained in the LEP and DCP, establish the desired future character for the area. The proposed concept envelopes comply with the relevant height controls and subject to the recommended conditions are able to accommodate detailed building designs of an appropriate height, bulk and scale, that respond to the character of the area.

- (s) The proposed development will have adverse impacts upon the visual and acoustic privacy currently enjoyed by the residents of the Arthouse development at 2-6 Danks Street as a result of overlooking and noise from facing balconies.

Response - The proposed envelope fronting Danks Street provides approximately 23m of separation to the facing balconies of apartments within the Arthouse development. This is in excess of the 18m minimum separation requirements specified by the ADG. For these reasons any adverse visual and acoustic privacy impacts upon the Arthouse development to the north across Danks Street are considered to be acceptable.

- (t) The proposed new east-west street does not provide a cycle path and is inconsistent with the City's goal of promoting cycling as a transport option.

Response - The proposed new east-west street is not identified as being part of the city's strategic network of cycling paths.

- (u) The proposed development will have adverse impacts upon the visual and acoustic privacy currently enjoyed by the residents of Warehouse 1 as a result of overlooking and noise from facing balconies, the rooftop common open space area and the enclosure of Warehouse 1 and other buildings fronting Danks Street, by the 7-9 storey C-shaped envelope on the NW corner of the site. Closing of windows and blinds to address these privacy concerns will lead to increased energy consumption from increased need for lighting and mechanical ventilation.

Response - The detailed design and layout of apartments is not approved by any consent granted to the subject DA. Any detailed design schemes submitted under subsequent DAs will be required to address the relevant visual and acoustic privacy requirements contained in the relevant planning controls, including the ADG and DCP. Notwithstanding this, the proposed envelopes are generally in-keeping with the ADG's minimum separation requirements and which are to provide adequate amenity, including visual and acoustic privacy, to the subject and neighbouring properties.

- (v) The proposed development will have adverse impacts upon the visual and acoustic privacy currently enjoyed by the residents of 9-15 Danks St as a result of overlooking and noise from facing balconies.

Response - Apartments from 9-15 Danks Street face the subject site across the future through site link (TSL). These are second storey apartments. Up to a height of four storeys, the ADG requires a minimum separation distance of 12m between buildings. In the location described in the submission, the proposed (Parcel 1 / Lot 1) envelope is setback 2.5m from the future alignment of the TSL, which itself is 13m wide. As such, approximately 15.5m separation is provided in this location and which exceeds the ADG's minimum separation requirements. For these reasons any adverse visual and acoustic privacy impacts upon apartments in the development at 9-15 Danks Street to the east across the TSL are considered to be acceptable.

- (w) The area of ground level common open space (i.e. not publicly accessible) is inadequate and increases reliance on rooftop common open space areas and increases amenity impacts to neighbouring properties as a result.

Response - Rooftop common open spaces are able to receive direct sunlight to a greater proportion of their area and for a longer period than common open spaces provided at ground level. As such these are considered to be the principal useable common open space areas. As described elsewhere in this report, the detailed design and layout of buildings including common open space areas, are not approved by any consent granted to the subject DA. Any detailed design schemes submitted under subsequent DAs will be required to address the relevant visual and acoustic privacy requirements contained in the relevant planning controls, including the ADG and DCP. Notwithstanding this, the proposed envelopes are generally in-keeping with the ADG's minimum separation requirements and which are to provide adequate amenity, including visual and acoustic privacy, to the subject and neighbouring properties.

- (x) The proposed development does not provide adequate diversity of building types and uses.

Response - Three of the four proposed concept envelopes are for mixed commercial and residential buildings and which are permitted with consent in the B2 Local Centre and B4 Mixed Use zones. The precinct specific DCP provisions for Danks Street South allow for built form massing that is predisposed towards apartment building typologies. In accordance with the requirements of DCP provision 3.1.6 the reference scheme demonstrates that more than the minimum requirement of 5% of dwellings contained with the site can be provided as maisonette apartments. Furthermore, any subsequent DAs for the detailed design of buildings will be assessed against the DCP's dwelling mix requirements for a range of studio, one, two- and three-bedroom apartments.

- (y) Developments like that proposed will be purchased by investors who will rent the property or use Air BnB as a source of income. This doesn't help house those who most need it and will alter the village-like character of Danks Street.

Response - Whether investors or others purchase apartments is not a planning consideration. Any future short-term rental accommodation would need to be in accordance with the relevant regulatory requirements. As noted above the proposed development is able to provide a mix of dwelling types to promote social diversity in the neighbourhood.

- (z) The proposed development will obstruct views to the west, currently enjoyed by the residents of the Tiara building (806 Bourke St).

Response - The apartments within the Tiara building and that are oriented towards the west face Bourke Street and enjoy longer district views across the subject site towards Waterloo Park and Mount Carmel. The decision of the NSW Land and Environment Court in the case of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (*Tenacity*) establishes a planning principle pertaining to the assessment of view loss impacts. The views mentioned in the submission are across the subject site. In the terms of the *Tenacity* decision, protecting views across adjacent properties is unrealistic. The view losses arise from the proposed concept envelopes that comply with the height of buildings controls contained in the LEP. For these reasons the view loss impacts are considered to be acceptable in this instance.

- (aa) The proposed development will overshadow apartments in the Tiara building (806 Bourke Street).

Response - Refer to the assessment of overshadowing impacts to neighbouring properties in the Issues section of this report.

- (bb) The proposed development will have adverse impacts upon the visual privacy currently enjoyed by the residents of the Tiara building (806 Bourke St) as a result of overlooking and noise from facing balconies.

Response - The proposed concept building envelopes are generally consistent with the indicative built form massing set out in the precinct specific DCP provisions for Danks Street South and which require development to be built to the new alignment of Bourke Street (which is to be widened by a 3m public domain setback). This provides separation of at least 23m across Bourke Street and between the Tiara building and the proposed envelopes. At this separation distance, it is considered that detailed building designs will be able to address visual privacy concerns as they pertain to the apartments facing the Tiara building across Bourke Street. As detailed elsewhere in this report, building elevations facing Bourke Street are affected by traffic noise and which poses a greater threat to the acoustic privacy of the Tiara building's occupants than any noise caused by the future intended occupants of the subject site.

- (cc) The proposed development will exacerbate problems associated with the existing density of development in the area. Problems such as noise, litter and pollution, overcrowding and inadequate public transport and infrastructure capacity particularly the bus stops and buses that service the area. The area needs a new public open space not more apartments.

Response - Concerns about density, traffic and parking are addressed in the response to the submission at sub-paragraph (e) above. The VPA associated with the subject DA secures the transfer and embellishment of land for the purposes of providing the northern portion of the public open space that is identified as being required by the DCP.

- (dd) The proposed development should not proceed until the Council formulates a comprehensive development plan for the whole area including the old water board site on the corner of McEvoy Street. The impacts of more apartment buildings will not be mitigated by provision of one small public open space.

Response - As detailed elsewhere in this report, in September 2019 amended LEP and DCP controls for the Danks Street South precinct came into force. Together, the amended LEP and DCP controls establish appropriate height of building and built form controls to accommodate the existing floor space ratios for the site, as well as providing a greater level of detail about the public domain required to be provided in association with the future development of the land. The new public open space, part of which is to be provided as part of the proposed development, is one in a network of new public open spaces to be provided in Green Square.

- (ee) Provision of public facilities such as public halls, meeting rooms and community centres should be required of the development.

Response - The VPA associated with the subject DA secures the transfer and embellishment of land for the provision of all the community infrastructure identified in the DCP that is located within the site. This includes a new east-west street, part of a new public open space, a through site link, future share-ways, and footpath widening on Bourke Street.

- (ff) The party wall on the northern boundary of 881-885 Bourke street Waterloo should be retained to provide security for the existing residents adjacent to the north during construction phases of the development.

Response - A condition is recommended for the demolition plan drawings to be amended to clearly indicate that the party wall on the northern boundary of the subject site and the property at 3-7 Danks Street (Lot 21 DP 592996) must not be demolished and is to be retained.

- (gg) Council should impose the toughest restrictions on construction hours and environmental controls during the construction phase to manage construction traffic, noise, dust and pollution.

Response - Conditions are recommended to regulate demolition and construction work hours, as well as demolition and construction traffic, noise, dust and pollution under any consent granted to the subject DA.

- (hh) As the proposed development will be immediately adjacent to the existing mixed-use Warehouse 1 building, the builder should conduct regular cleaning of all the common areas, windows and car park of Warehouse 1 during construction. The builder should be required to conduct a full structural audit of Warehouse 1 prior to commencing the development and is to agree to repair any damage caused.

Response - As noted above, conditions are recommended to regulate demolition and construction traffic, noise, dust and pollution so as to avoid the need for cleaning of neighbouring developments beyond regular cleaning requirements for those buildings. Conditions are also recommended for dilapidation reports to be carried out for all adjacent properties prior to commencement of construction works.

- (ii) As the area is flood prone and has a high-water table Council should assess impacts of the development in this regard to avoid adverse structural impacts on existing buildings.

Response - Refer to the assessment against clause 7.15 in the LEP compliance tables in this report.

- (jj) All mature trees in the area should be protected and any new or replacement trees should be fast growing to increase tree canopy cover in the area.

Response - Refer to the discussion of tree management in the Issues section of this report.

- (kk) A submission made on behalf of the owner of one of the adjacent sites raises various concerns including that:
- (i) the amended RAP and site audit report makes no reference to the residential development approved for the adjacent site. The only references to the adjacent site identify its historical commercial/industrial use. The likely redevelopment of the adjacent site for residential use require that this is treated as a key receptor in the remedial design;
  - (ii) no quantified criteria are specified for monitoring of potential emissions from remedial works. Table 4-3 of the RAP states Senversa understands that the adjacent site will be subject to redevelopment but is not aware of the nature of the development or associated contamination management. This flaw underlies several inaccuracies elsewhere in the RAP including that it relies on a health risk assessment from 2008 which pre-dates the DA approval for residential development on the adjacent site;
  - (iii) the RAP proposes to control air emissions through the active treatment of soils. Stockpiles of contaminated soils and pooled groundwater are not proposed to be contained or managed and may result in air emissions;
  - (iv) concerns are raised that Lawrence Dry Cleaning is still using pollutants that have contaminated the site in the past.

Response - The Lawrence Dry Cleaners site (the LDC site) and the immediately adjacent sites are regulated under the Contaminated Land Management Act 1997. It was confirmed by the NSW Environment Protection Authority (EPA) on 30 November 2020, that the adjacent site (to which the submission refers) has been successfully remediated. Nevertheless, the owner of the LDC site remains obliged to comply with the requirements of Management Order number 20111403 (MO), to prevent further contamination of the adjacent sites.

The subject DA is a concept proposal, which includes a first stage of works. Any construction works within the proposed new development parcels will be subject to subsequent detailed design DAs and will be required to address the requirements of SEPP 55 - Remediation of Land, through further remedial action plans. The remedial action plan (RAP) submitted as part of the subject DA is designed to further improve the condition of the adjacent site (to which the submission refers) through remediation of the source site to make it suitable for residential use without restriction (i.e. without the need for vapour protection) and to bring an end to the EPA's regulation of these sites under the Contaminated Land Management Act 1997.

The RAP acknowledges that the land uses proposed under the subject DA (i.e. mixed-use commercial/residential) are also intended for the adjacent site (to which the submission refers). If the subject DA is approved, it would allow remediation works to progress quickly and which would hopefully occur prior to occupation of the development approved on the adjacent site.

The RAP includes provisions to control air/odour emissions during remediation works, with these requirements (Table 6-1) to be defined in detail as part of enabling works and subject to site auditor review.

The MO requires owner of the LDC site to monitor air quality within, among other places, the adjacent site (to which the submission refers). This was initially quarterly and is now on a six-monthly basis and has been six-monthly since May 2011. The applicant has confirmed that the owner of the LDC site has completed all air quality monitoring in line with MO requirements. With each monitoring report, the applicant's remediation consultants were required to assess risk associated with significant contaminants to people and the environment, and on each occasion found the risk levels to be below the required level.

Various conditions are recommended, and which pertain to remediation of the site. These include a condition requiring an air quality management plan to be submitted to and approved by city officers prior to any works commencing. A condition is also recommended requiring a section A site audit statement so that auditor oversight of all remedial works and plans is formalised as a statutory responsibility.

For these reasons the recommended conditions and the submitted RAP are considered to address the concerns raised in the submission made on behalf of the owner of the adjacent site.

- (ll) The reference scheme drawings incorrectly show the approved development on the Citywest site (895-899 Bourke Street) as being set back from the boundary with Lot 4 / Parcel 3. The envelope fronting Bourke Street and adjacent to the Citywest site is misaligned with the approved development on the Citywest site.

Response - Over the course of this assessment plans have been amended to more accurately depict contextual information including the development approved by consent no. D/2015/941 on the City West Housing site.

- (mm) The level of detail and consideration the scheme proposes in terms of community infrastructure, design of the apartments, scale and new streets and pathways is impressive. The proposed development will make a positive addition to our community and is supported.

Response - Noted.

- (nn) The DA cannot legally be determined in its current form. The proposal seeks to vary the LEP height control but does not include a formal clause 4.6 request to vary the building height development standard.

Response - Over the course of this assessment plans have been amended to reduce the height of the proposed envelopes to comply with the LEP building height development standard. No 10% height uplift is approved as part of any consent granted as part of the subject DA. LEP clause 6.21(4) which allows for a potential 10% height increase will be considered in the assessment of any subsequent DA for the detailed building design.

- (oo) There are inconsistencies throughout the key application documents. This means the parameters of what is proposed are not clear and it is uncertain what Council is being asked to approve. The baseline (reference) scheme being assessed in the technical reports is unclear and conclusions about the environmental impacts of the development, as stated in the technical assessments may be inaccurate.

Response - Over the course of this assessment plans have been amended and additional information submitted to ensure consistency across all of the submitted DA documentation.

- (pp) Chlorinated hydrocarbon contamination has been caused to the application site and to adjoining Dahua land by the Lawrence Dry Cleaners (LDC) at 887-893 Bourke Street. This is a significant issue, particularly bearing in mind the requirements of part 4.15(1)(b), (formerly 79C), of the Environmental Planning and Assessment Act 1979 regarding the requirements to be considered in determining a development application. The submitted contamination remediation documents do not provide for the reduction of levels of contaminants on the LDC site to mitigate the current substantial impacts to adjoining sites.

Response - Refer to the assessment against the provisions of SEPP 55 - Remediation of Land and the response to the same concerns raised for the City West Housing site at sub-paragraph (mm) above.

- (qq) Proposed staging suggests the development will complete works to the Young St side first, with the source of the contamination (the LDC site) last. This will have significant negative contamination and VPA dedication implications for adjoining land unless the proponent is required to knock down the LDC building and remove the slabs prior to any overall redevelopment. Accordingly, the source of pollution from the LDC site must be addressed prior to issue of the first construction certificate for the wider development. The developer should be required to complete the roadworks and drainage required to service the entire development and manage flooding upfront, not at the last stage.

Response - The submitted RAP, which has been endorsed by a NSW accredited site auditor, sets out the proposed staging of remediation works. This includes containing the contamination source by the construction of concrete sheet piling walls along the western and southern boundaries of the LDC site. This will allow the source contamination to be contained while the first phase of demolition, remediation and subdivision works can be carried out on the western side of the site. Refer to the SEPP 55 section of this report for further information on the remediation strategy and conditions imposed to address concerns identified through council officers' assessment and as raised in submissions.

- (rr) With respect to the VPA offer, there are no dates or timeframes associated with the proposed land dedications or works in kind, and the scope of works outlined is limited. An implementation plan should be provided for all VPA works that aligns with the DA scope and staging of the Jeffman site. The VPA, including staging, timeframes and quality of works should be of the same level required of Dahua.

Response - Several iterations of the public benefit offer and subsequent VPA have been submitted over the course of the assessment. The phasing of the subdivision works is outlined in this report and detailed in the appended VPA.

- (ss) The proposed development does not comply with the City of Sydney or the Department of Planning's Design Excellence Process, Future Transport 2056, the Greater Sydney Commission's Three City Vision or the State Significant Precinct Guidelines – Waterloo.

Response - The subject DA includes a design excellence strategy prepared in accordance with the design excellence provisions of the LEP and the city's Competitive Design Policy. As outlined in the History section of this report, the Planning Proposal to amend the LEP and DCP controls for the Danks Street South precinct went through all of the mandatory strategic planning processes and addresses all relevant NSW government planning policies. As detailed elsewhere in this report the proposed development is generally consistent with the objectives of the relevant planning policies including those contained in the LEP and DCP.

- (tt) More public facilities should be included, particularly those that align with the Cultural Infrastructure Plan 2025. The developer should provide cultural benefits such as artist's studios, co-working spaces for artists and artist accommodation.

Response - Refer to the assessment against provision 3.1.2 in the DCP compliance tables elsewhere in this report.

### **Water Management Act 2000**

205. Groundwater occurs at a depth of approximately 2-4m below ground level. The excavation required to accommodate the indicative basement level is expected to penetrate groundwater and may require dewatering of the site. This would require a water activity approval under the Water Management Act 2000 and as such the application is integrated development under the EPA Act.
206. On 24 February 2020, the application was referred to Water NSW through the NSW Planning Portal (ref. no. CNR-5025) as integrated development, in accordance with section 4.47 of the EPA Act.
207. On 6 April 2020 and 18 May 2021, Council's planning officer uploaded public submissions received in response to the notification and exhibition of the subject DA to the NSW Planning Portal.
208. On 20 May 2020, Water NSW requested that the applicant submit a Geotech Report.
209. On 29 July 2020, the applicant submitted the requested Geotech Report.
210. On 30 October 2020, Water NSW issued its General Terms of Approval.
211. The General Terms of Approval provided by Water NSW in the referral dated 30 October 2020 are included in the conditions of consent set out in Attachment A to this report.

### **Roads Act 1993**

Sections 87 and 183 - Traffic control facilities and works and structures

212. The subject DA proposes construction of a new east-west street and which requires the augmentation of the existing traffic control signal (TCS) at the intersection of Bourke and Potter Streets. As such the proposal requires the consent of TfNSW pursuant to s87 of the Roads Act 1993.

213. The subject DA also proposes to connect the new east-west street to Bourke Street and carry out associated works on Bourke Street. As such the proposal requires the consent of TfNSW pursuant to s138 of the Roads Act 1993.
214. In accordance with sections 87 and 138 of the Roads Act 1993 the application was notified to TfNSW through the NSW Planning Portal (ref. no. CNR-5025), on 24 February 2020.
215. TfNSW provided a response on 16 March 2020, to advise that the proposal was supported subject to the recommended conditions of consent.
216. On 6 April 2020 and 18 May 2021, Council's planning officer uploaded public submissions received in response to the notification and exhibition of the subject DA to the NSW Planning Portal.
217. The conditions recommended by TfNSW in the referral dated 16 March 2020 are included in the conditions of consent set out in Attachment A to this report.

#### **Airports Act 1996**

218. The subject site is in an area defined in schedules of the Civil Aviation (Building Control) Regulations 1988 which limit the height of structures to 45.62m above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority pursuant to s.183 of the Airports Act 1996.
219. There was some ambiguity as to the height of the proposal, as shown in the drawings submitted at DA lodgement. Subsequently, the subject DA was notified to Sydney Airport as a matter of caution, through the NSW Planning Portal (ref. no. CNR-5025), on 24 February 2020.
220. Sydney Airport provided a response on 25 February 2020, to advise that no objection was raised and that a controlled activity approval was granted.
221. On 6 April 2020 and 18 May 2021, Council's planning officer uploaded public submissions received in response to the notification and exhibition of the subject DA to the NSW Planning Portal.
222. On 25 May 2021, Council's planning officer forwarded the controlled activity approval to the applicant. The approval letter is provided at Attachment I to this report.

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

223. On 24 February 2020, the application was referred to Sydney Water, in accordance with section 78 of the Sydney Water Act 1994.
224. On 6 April 2020, Council's planning officer uploaded public submissions received in response to the notification and exhibition of the subject DA to the NSW Planning Portal.
225. On 4 June 2020 Sydney Water provided a response to advise that no objection was raised. Sydney Water's response letter also requests that the applicant lodges a Water and Wastewater Servicing Feasibility Study with Sydney Water.
226. On 25 May 2021, Council's planning officer forwarded Sydney Water's response letter to the applicant. The letter is provided at Attachment J to this report.

## Public Interest

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

## S7.11 Contribution

228. Section 7.11 contributions will be imposed upon any consent granted to any subsequent DAs for the detailed design of buildings.

## Affordable Housing Contribution

229. An affordable housing contribution will be imposed upon any consent granted to any subsequent DAs for the detailed design of buildings.

## Relevant Legislation

230. Environmental Planning and Assessment Act 1979.

## Conclusion

231. The subject application seeks consent for concept building envelopes for three mixed-use buildings and a concept building envelope for one residential apartment building, vehicle access locations for each of the four new concept building envelopes and a first stage of development comprising staged demolition of all existing structures including ground floor slabs and footings, staged remediation, staged subdivision to create four new development parcels, transfer lands (for transfer and dedication to the city) and associated staged subdivision works.
232. As an Integrated Development Application requiring approval under the Water Management Act 2000 and the Roads Act 1993, the application was referred to Water NSW and Transport for NSW. On 16 March 2020 Transport for NSW issued its consent. On 30 October 2020, Water NSW issued its General Terms of Approval. These conditions and General Terms of Approval have been included at Schedules 1D and 3 of the recommended conditions of consent at Attachment A to this report.
233. The draft VPA associated with the application will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period of the draft VPA has commenced. At the time of preparing this report, no submissions had been received. A deferred commencement condition is recommended to enable the draft VPA to be executed and registered on title.

234. The concept proposal and Design Excellence Strategy establish concept building envelopes and suitable parameters for competitive design processes. Subject to the recommended conditions, the proposed envelopes are able to accommodate detailed building designs of an appropriate bulk and scale, that respond to the character of the area and which are capable of achieving design excellence.
235. For these reasons it is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, following the conclusion of the public exhibition of the VPA and considering any public submissions received in response. It is recommended that the CEO consider granting deferred commencement development consent subject to the recommended conditions requiring the VPA to be executed and registered on title prior to the consent becoming operative.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Ben Chamie, Area Planning Coordinator