

**Item 6.****Section 4.55 Application: 22 O'Riordan Street, Alexandria - D/2019/686/A**

File No.: D/2019/686/A

**Summary**

<b>Date of Submission:</b>	25 May 2021
<b>Applicant/Owner</b>	Markham Real estate Partners
<b>Architect:</b>	Hassell
<b>Planning Consultant:</b>	Mecone
<b>DAP:</b>	15 July 2021
<b>Cost of Works:</b>	\$76,095,381
<b>Zoning:</b>	The site is zoned B7 - Business Park under the Sydney Local Environmental Plan 2012. The proposed uses include commercial premises and food and drink premises, which are permissible with consent.
<b>Proposal Summary:</b>	<p>This Section 4.55(2) modification application seeks to modify the concept approval for a commercial building envelope with a height ranging between 12m and 22m (approximately 3 to 5 storeys), a through site link co-located with deep soil areas, and the opportunity for 1 basement level of car parking accessed from Johnson Street.</p> <p>The proposed modifications include altering the approved building envelopes to align with the winning design competition scheme and detailed design development application (D/2021/529) in terms of height, bulk, separation, location of the through site link, and the numerical requirements for deep soil area. The detailed design development application has been assessed concurrently and is presented to the Central Sydney Planning Committee (CSPC).</p>

Proposed modifications to the concept approval are as follows:

- increase the maximum building height in the northern portion of the site from 22m to 25.8m and in the southern portion from 12m to 18.9m (the maximum height at the southern edge of the building envelope remains at 12m);
- reduce the setback to the eastern boundary from 5m to 3m and relocate the through site link to the middle of the site to be consistent with the winning design competition scheme;
- maintain a continuous deep soil area along the eastern setback as an opportunity for a biodiversity corridor that connects to the future landscaped area on Johnson Street and the existing McConville Reserve to the south; and
- reduce the numerical requirement for deep soil within the 'post-dedication' site area from 4.5% to 4.4%.

The application is referred to the CSPC for determination as the proposed modifications relate to "major development" for the purpose of the City of Sydney Act 1988.

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

The application was notified and advertised for a period of 28 days between the 1 June and 30 June 2021. One submission was received addressing the subject modification application and the concurrent detailed design DA. Issues raised include overshadowing, acoustic and visual privacy, and the provision of deep soil and tree canopy. These issues have been addressed in this report and the separate report for the detailed design DA.

As modified, the development is considered to be substantially the same as previously approved and contextually appropriate. The detailed design DA to be considered concurrently by the CSPC demonstrates that a generally compliant scheme can be provided within the amended envelopes. Consequently, the proposed modifications are recommended for approval.

The amendment is consistent with the executed VPA for the site, which requires:

- dedication of a 2.4m wide strip of land along the O'Riordan Street frontage for footpath widening;
- dedication of a 6.4m wide strip of land along the Johnson Street frontage of the site for footpath widening and associated landscaping;
- monetary contribution of approximately \$1,487,000 towards community infrastructure; and
- a guarantee for public domain works to be carried out by the developer within the abovementioned areas of land dedication.

**Summary Recommendation:** The modification application is recommended for approval.

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) City of Sydney Act 1988
- (iii) Sydney Airport Referral Act 1996
- (iv) Water Management Act 2000
- (v) State Environmental Planning Policy No. 55 - Remediation of Land
- (vi) State Environmental Planning Policy (Infrastructure) 2007
- (vii) Sydney Local Environmental Plan 2012
- (viii) Sydney Development Control Plan 2012

**Attachments:**

- A. Amended Conditions of Consent
- B. Selected Drawings

## Recommendation

It is resolved that consent be granted to Section 4.55 Application No. D/2019/686/A subject to the amendment of the following conditions (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~), as follows:

### (2) APPROVED DEVELOPMENT

- (a) Development consent is limited to a concept plan building envelope and indicative land uses including office premises, shops and ancillary car parking, in accordance with Development Application No. ***D/2019/686 dated 22 July 2019*** ~~D/2019/817 dated 1 August 2019~~ and the following drawings prepared by ***Hassell Bates Smart***:

Drawing Number	Drawing Name	Date
<del>DA 106</del> <b><i>DA 1_0002</i></b>	Building Envelope Street Elevations	<del>March 2020</del> <b><i>21.04.2021</i></b>
<del>DA 109</del> <b><i>DA 1_0003</i></b>	Building Envelope Plans	<del>March 2020</del> <b><i>21.04.2021</i></b>
<del>DA 115</del> <b><i>DA 1_0003</i></b>	Deep Soil Zone	<del>March 2020</del> <b><i>21.04.2021</i></b>

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

***(Amended – D/2019/686/A – 11 November 2021)***

**(4) DETAILED DESIGN**

- (a) The detailed design development application must address the following requirements:
- (i) A deep soil zone with a minimum area of ~~297~~ **288.4**sqm and minimum dimension of 3m must be provided within the new property boundaries. Deep soil zones must be unencumbered by structures within, above or below the zone, and must be adequately remediated as necessary.
  - (ii) All elevations should be designed with at least two distinct building components each with its own architectural character, having regard to Section 4.2.4 of the Sydney DCP 2012;
  - (iii) The alignment of the street wall at the northern elevation is to match Geddes Avenue and address the street wall relationship with 338 Botany Road to the east;
  - (iv) Facade activation of all street facing elevations and through-site link to be developed further. O’Riordan Street in particular is to comply with Section 3.2.3 of the Sydney DCP 2012 with regard to active frontages;
  - (v) Any exposed blank walls should be provided with a visually interesting treatment of high quality design;
  - (vi) Any required substation is to be integrated into the fabric of the building and must not be a free standing kiosk substation. The substation should not compromise activation of the streetscape or public domain.
  - (vii) All roof level services are to be concealed within an integrated parapet wall. Enclosures and screening of any plant areas and essential services are to be of high quality material equal in standard to the facade.
  - (viii) The floor to ceiling heights and floor to floor heights must comply with the minimum heights specified in Section 4.2.1.1 of the Sydney DCP 2012;
  - (ix) The provision of green wall/s and roofs should be explored in accordance with the provisions of Section 5.8.7.4 of the Sydney DCP 2012; and
  - (x) External sun shading, ***including passive shading***, to any glazed elevations.
  - (xi) ***Appropriate privacy treatment must be incorporated on the eastern elevation to protect the visual privacy of any future residential developments to the east.***
- (b) The competitive design process brief shall incorporate the above design requirements.

**(7) BUILDING HEIGHT**

The maximum building height including all roof top plant and equipment must not exceed ***the height of the approved envelope as approved under Condition 2 of this consent. 12m to Johnson Street and 22m to O’Riordan Street and Geddes Avenue as defined in Sydney LEP 2012.***

*(Amended – D/2019/686/A – 11 November 2021)*

**(14) THROUGH SITE LINK**

Any Stage 2/Detailed Design Development Application is to provide ***details of the location, dimensions and stratum limits (if any) of the a through-site link that addresses the following requirements:***

- (a) ***Has a minimum width of 6 metres and be open to the sky;***
- (b) ***Be appropriately activated on the ground plane;***
- (c) ***Achieves the relevant wind comfort criteria of Sydney Development Control Plan 2012; and***
- (d) ***Be publicly accessible 24 hours a day.***

***The*** proposed Through Site Link which will also be the subject of an Easement for Public Access and associated Positive Covenant.

*(Amended – D/2019/686/A – 11 November 2021)*

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979.
- (B) The proposed modifications ensure that the detailed development application (D/2021/529) is consistent with the concept approval, in order to satisfy Section 4.24 of the Environmental Planning and Assessment Act 1979.
- (C) The proposal generally satisfies the objectives and relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012. Where non-compliances exist, they have been demonstrated to be acceptable in the circumstances of the case.
- (D) The modified building envelope can accommodate a building design which is capable of exhibiting design excellence in accordance with Clause 6.21 of the Sydney local Environmental Plan 2012.

- (E) The increased height and bulk of the building envelope are in keeping with the desired future character of the area. These variations are reasonable and justified with regard to the concurrent detailed DA (D/2021/529).
- (F) The changes to the approved building envelopes are appropriate and are not likely to significantly impact the overall use of the building or the amenity of surrounding sites or locality.
- (G) The development, as amended, will remain consistent with the executed Voluntary Planning Agreement (VPA/2019/16).
- (H) The development as modified is in the public interest.

## Background

### The Site and Surrounding Development

1. A detailed description of the site and surrounds is provided in the assessment report for the detailed design development application (D/2021/529) that is presented to the Central Sydney Planning Committee (CSPC) concurrently for approval.

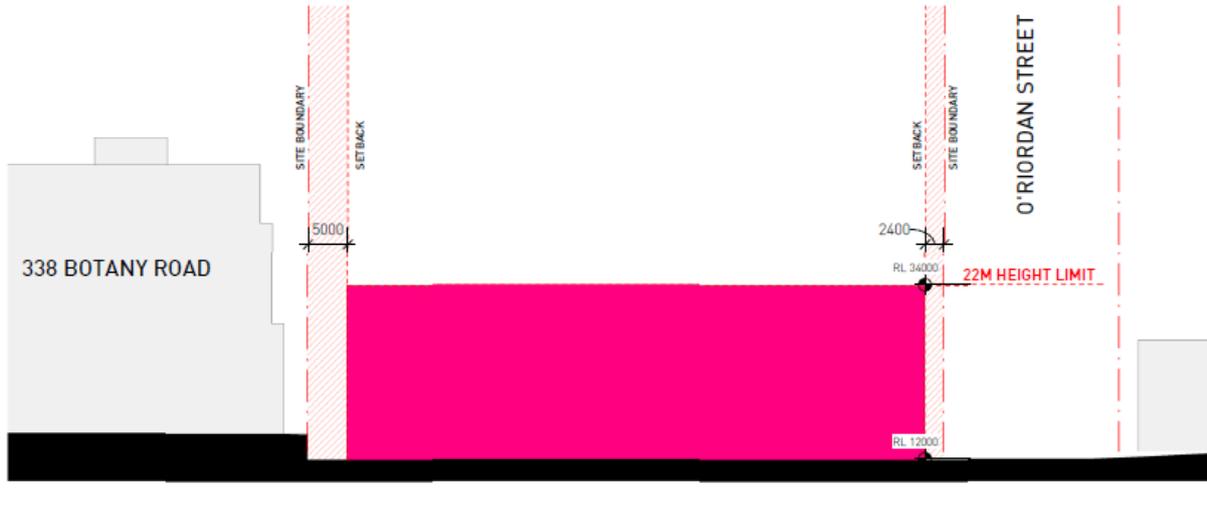
### History Relevant to the Development Application

#### Concept Development Application - 338 Botany Road

2. On 5 December 2019, concept development application - D/2019/87 was granted a deferred commencement consent by the CSPC, providing a building envelope for a mixed-use building comprising commercial uses and residential uses for the purposes of affordable housing.
3. The concept envelope has a maximum height of 33m and a maximum FSR of 4:1 with potential for an additional 10% subject to future design excellence process. The concept development application considers the subject site (22 O'Riordan Street) in its current context, assuming a blank and non-habitable interface to the common boundary.
4. The concept envelope requires a 1.4m setback to Botany Road, a 1.5m setback to the future Geddes Avenue, and a setback varying between 4.5m to 9m to the western (common) boundary.
5. The consent was made active on 17 March 2020, and a competitive design alternative process was subsequently held between 10 August and 1 October 2020, with the proposal presented by Chenchow Little selected as the winning scheme.
6. However, a detailed design development application has not been lodged with Council at the time of writing this report.

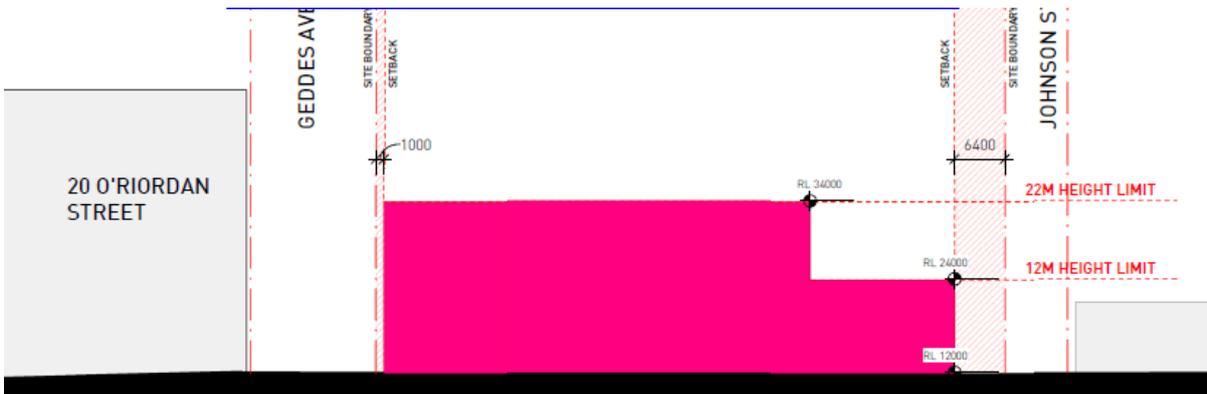
#### Concept Development Application - Subject Site

7. On 20 July 2020, concept development application (concept DA) - D/2019/686 was granted a deferred commencement consent by the (CSPC), providing a building envelope for future development.
8. The approved concept DA allows for a building envelope with a height of 22m in the north and a height of 12m in the south, with a setback of 5m along the eastern boundary for a mid-block through site link and deep soil area. Associated land dedications are attached to this concept approval via a Voluntary Planning Agreement (VPA) as discussed in the 'Planning Agreement' section below.
9. The deferred commencement condition included a requirement for the VPA to be executed and registered on title. The deferred commencement condition was satisfied, and the consent was made active on 25 September 2020.
10. This Section 4.55(2) modification application seeks to amend the approved concept design to ensure consistency with the detailed design application.
11. Plans and sections of the originally approved concept design are provide below.



GEDDES AVENUE ELEVATION

Figure 1: Approved Geddes Avenue elevation of the concept envelope



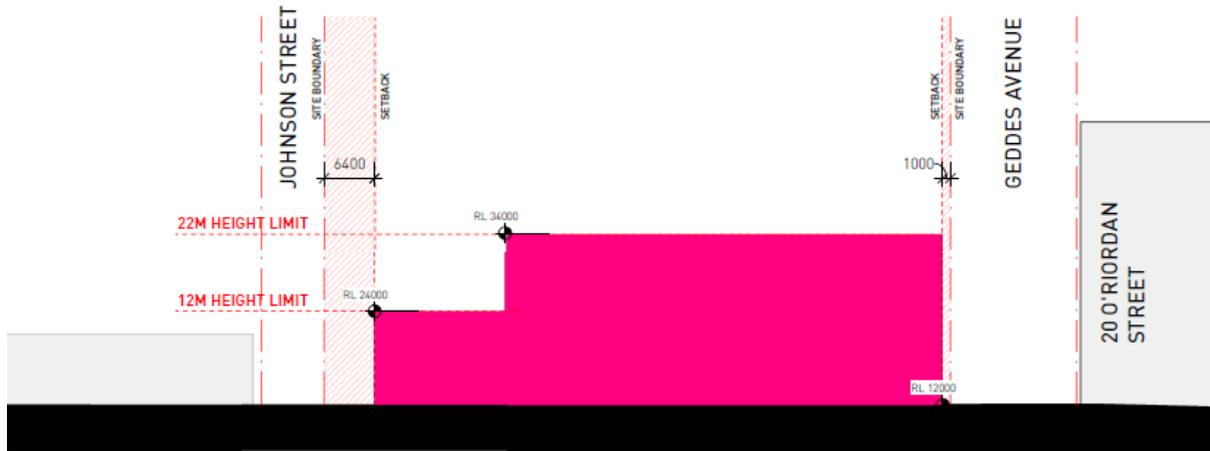
O'RIORDAN STREET ELEVATION

Figure 2: Approved O'Riordan Street elevation of the concept envelope



JOHNSON STREET ELEVATION

Figure 3: Approved Johnson Street elevation of the concept envelope



EAST ELEVATION

Figure 4: Approved East elevation of the concept envelope

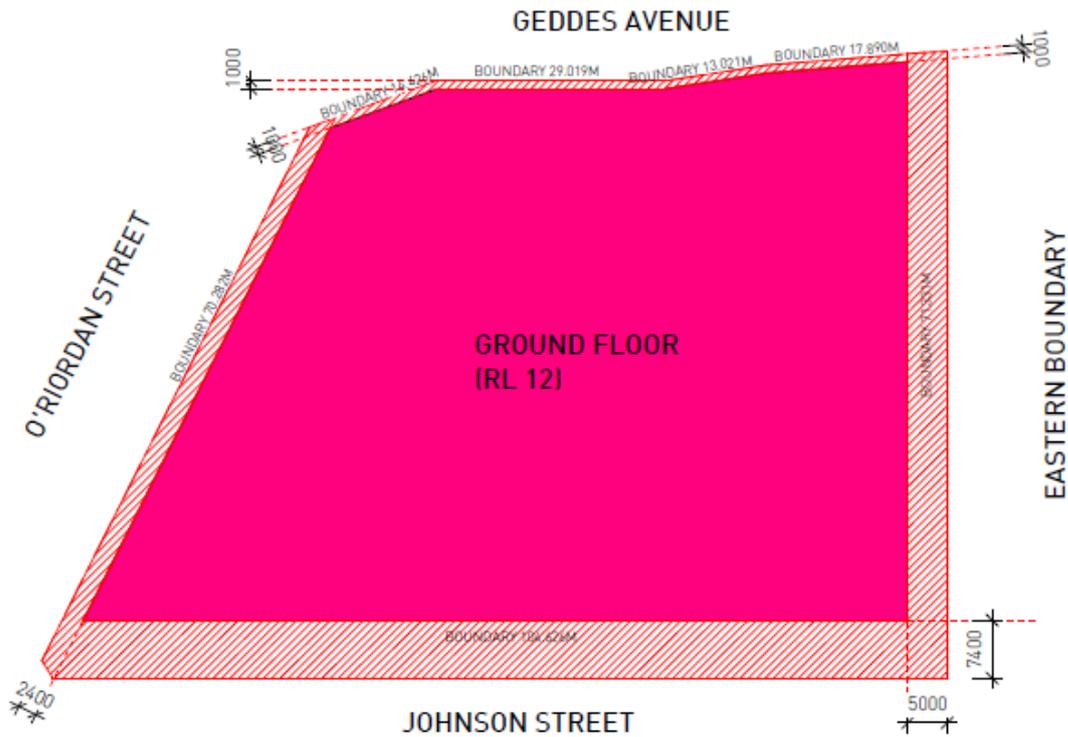


Figure 5: Approved concept envelope at ground level

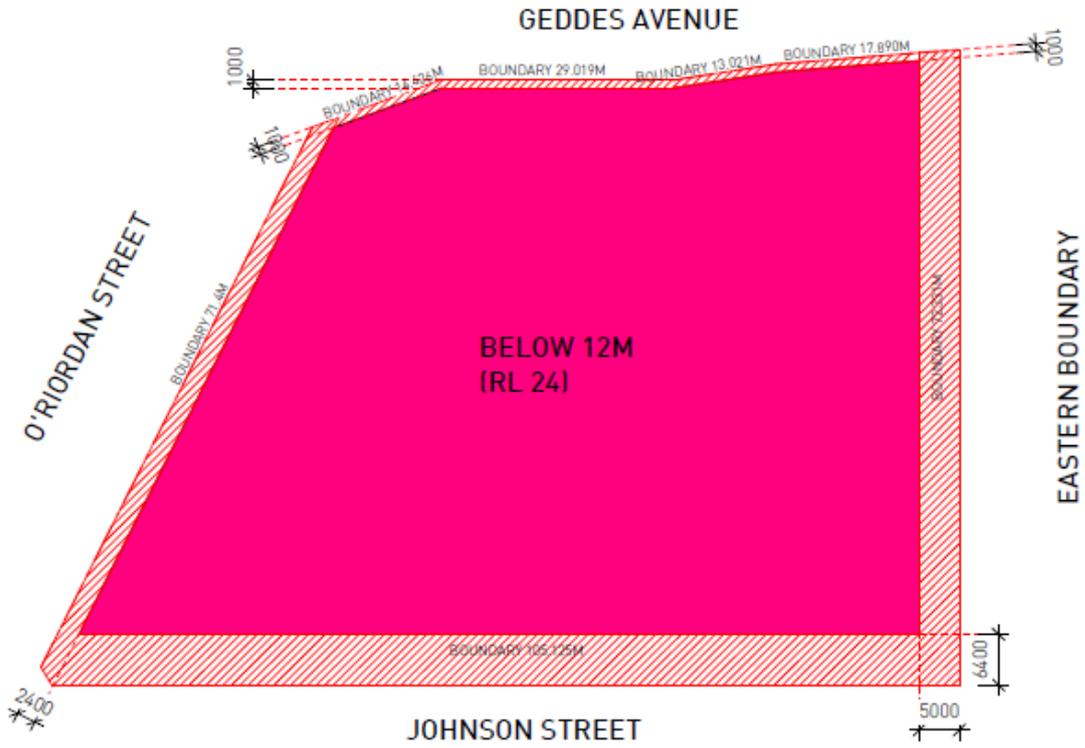


Figure 6: Approved concept envelope at RL24.00

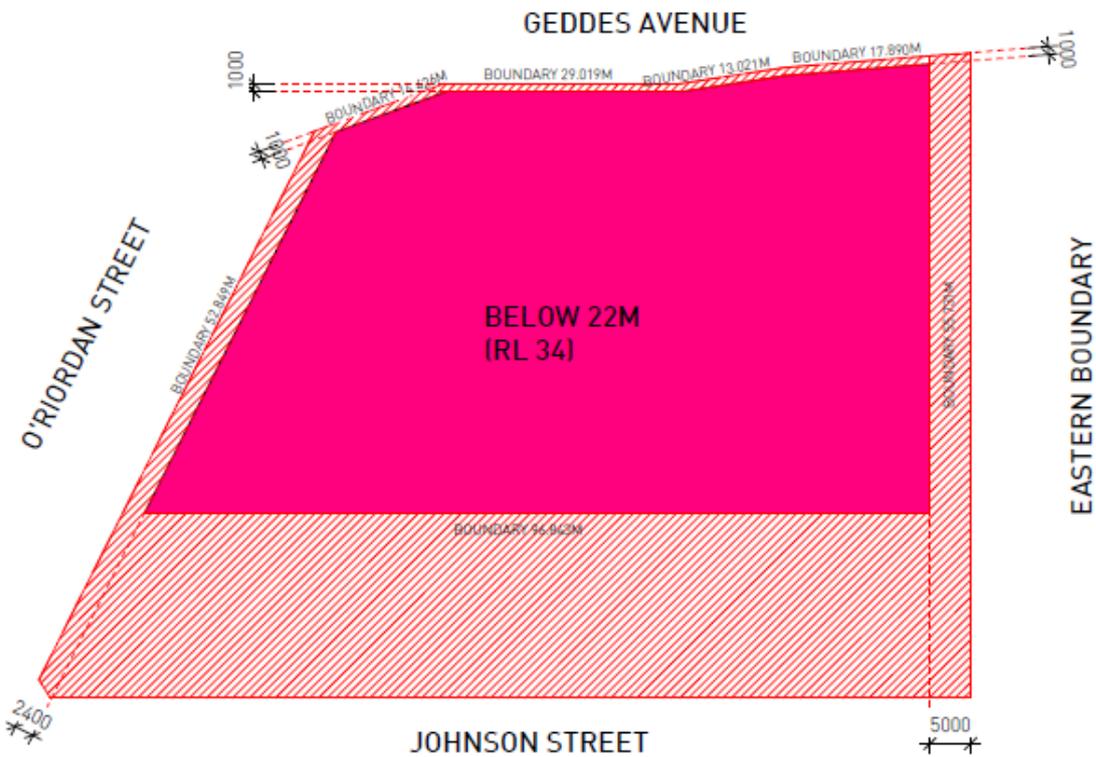
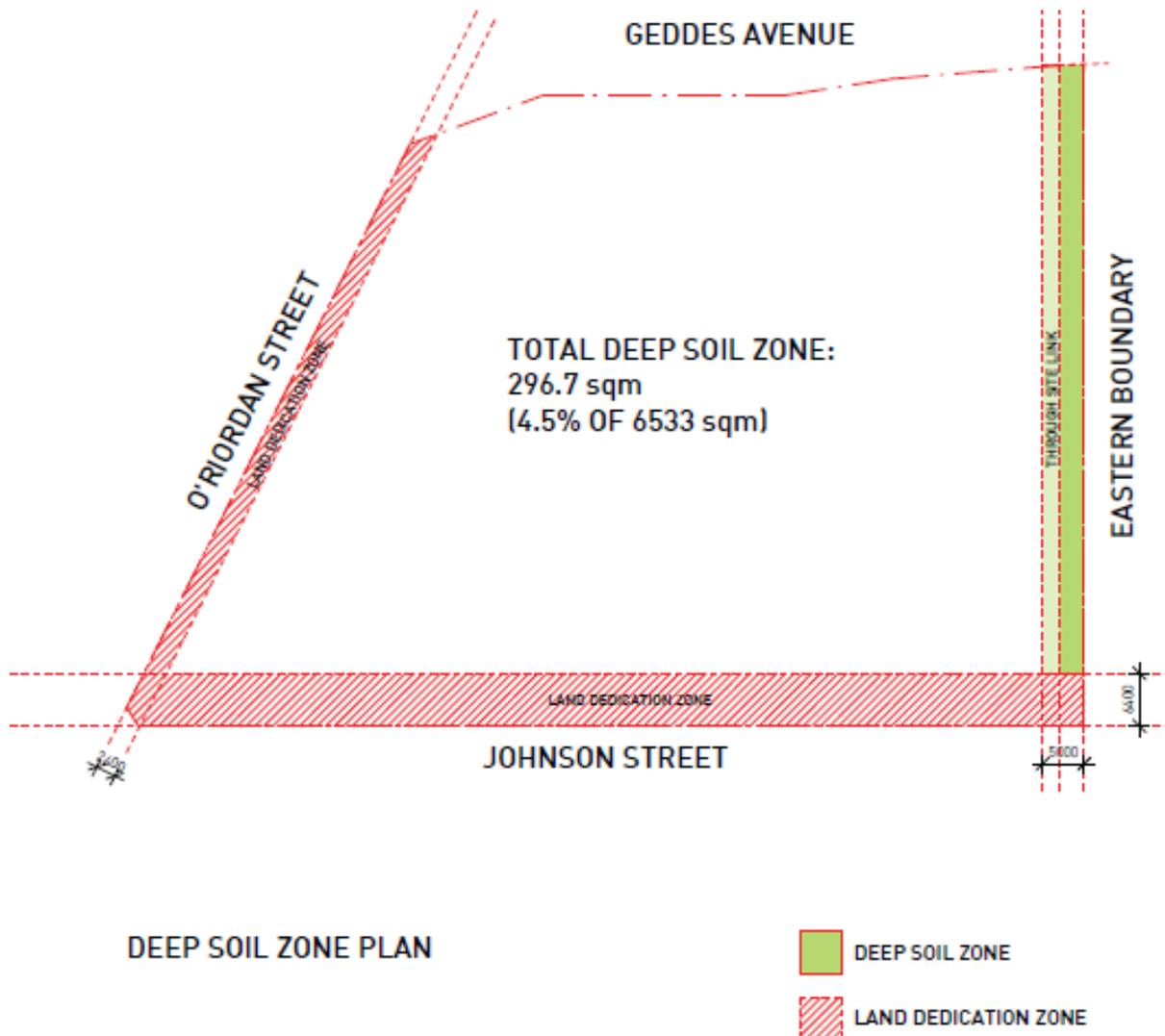


Figure 7: Approved concept envelope at RL34.00



**Figure 8:** Approved deep soil area of the concept DA, hatching indicates areas of dedication and the through site link along the eastern boundary shaded in light green

### Voluntary Planning Agreement

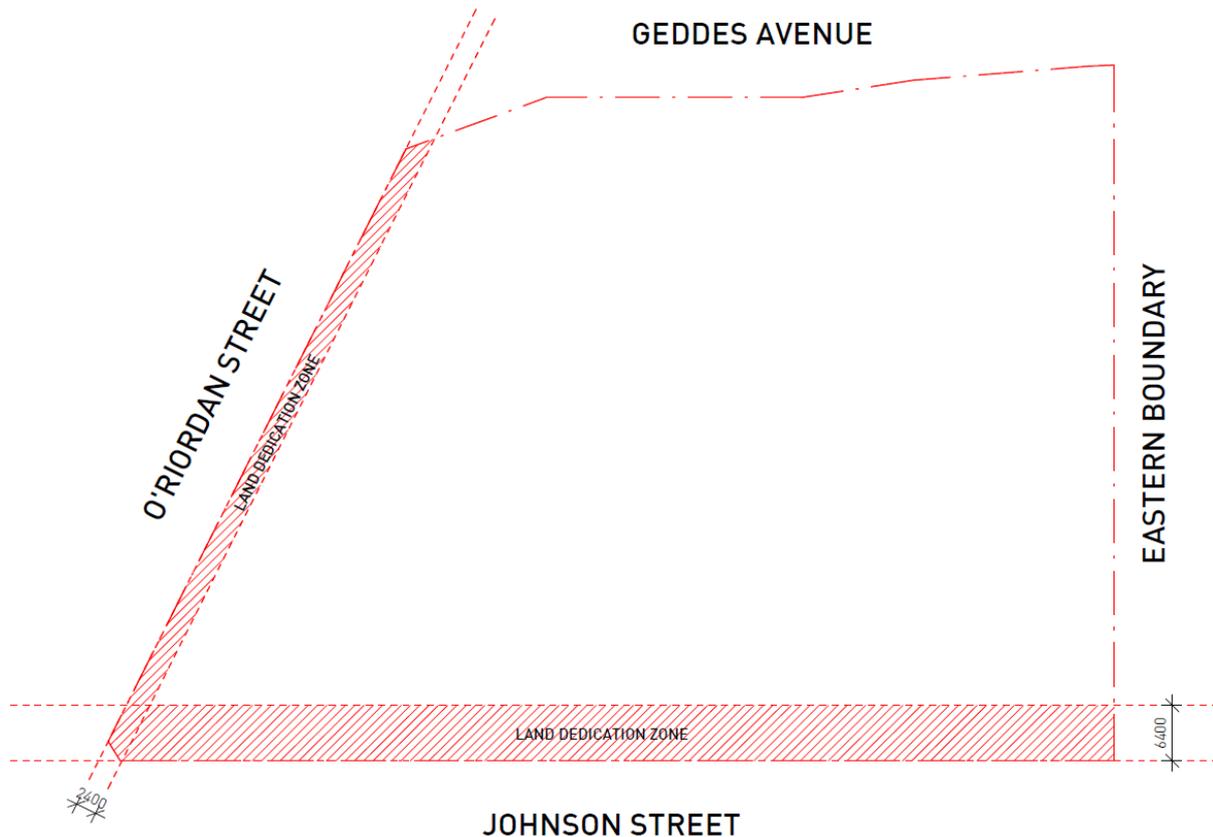
12. The site is subject to a VPA that is attached to the concept DA. The VPA was executed on 21 August 2020 and subsequently registered on title. It includes the following public benefits:
- (a) dedication of a 2.4m wide strip of land along the O'Riordan Street frontage for footpath widening; and
  - (b) dedication of a 6.4m wide strip of land along the Johnson Street frontage of the site for footpath widening and associated landscaping.

The total area to be dedicated to Council is approximately 885m<sup>2</sup>, and is shown in Figure 9 below:

- (c) monetary contribution of approximately \$1,487,000 towards community infrastructure

- (d) a guarantee for public domain works to be carried out by the developer within the areas of land dedication.

The value of public domain works carried out by the developer will be deducted from the monetary contribution before the contribution is paid. The detail design of the public domain works required will be resolved as part of the Public Domain Plan required by a recommended condition in Attachment A.



**Figure 9:** Site plan showing the areas of land dedication in red hatching along O'Riordan and Johnson Streets

13. The VPA does not affect the Section 7.11 contributions applicable under City of Sydney Development Contributions Plan 2015 or affordable housing contributions required under Clause 7.13 of Sydney LEP 2012 and the Green Square Affordable Housing Program.

#### **Competitive Design Alternatives Process - CMP/2019/8**

14. Following the concept DA, the applicant commissioned a competitive design alternatives process for the site, which was held between 7 September 2020 and 19 October 2020. Three (3) architectural firms were invited to submit a design proposal. The 3 architectural firms were:
- (a) Fitzpatrick and Partners
  - (b) Sissons
  - (c) Hassell

15. The 3 design proposals were presented to the selection panel via video conference on 19 October 2021. The selection panel concluded that the proposal presented by Hassell, subject to further refinement as discussed elsewhere in this report, is capable of achieving design excellence.
16. Images of Hassell's competitive design scheme, as presented to the selection panel, are provided below. The Hassell scheme is lodged with the detailed design DA.



**Figure 10:** Hassell competitive design scheme viewed from the corner of O'Riordan and Johnson Streets



**Figure 11:** Hassell competitive design scheme viewed from Geddes Avenue



**Figure 12:** Hassell competitive design scheme viewed from Johnson Streets, showing the pedestrian through site link

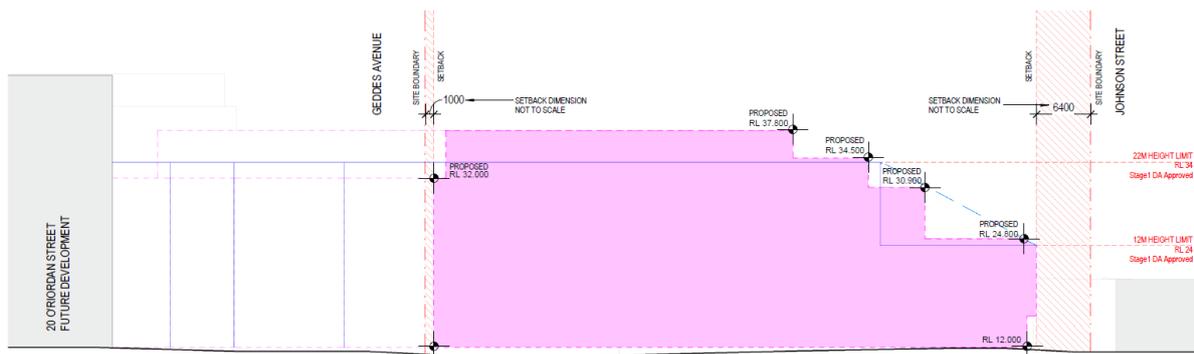
### **Detailed Design Development Application - D/2021/529**

17. On 25 May 2021, a development application for the detailed design of the site was lodged with Council. The DA proposes demolition of existing structures, remediation, excavation, and construction of 2 buildings, with a common basement, separated by a pedestrian through site link.

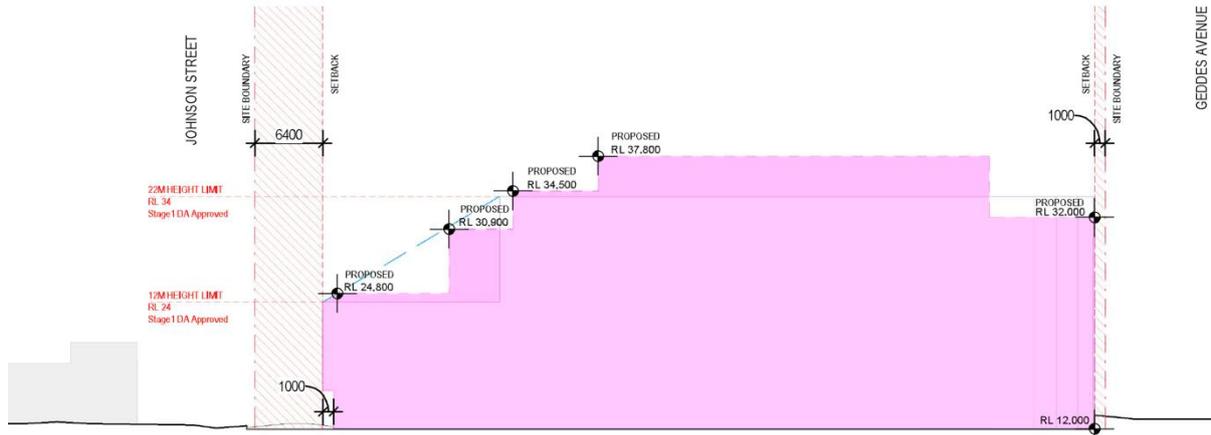
18. The application is being reported concurrently to the CSPC for determination. The detailed design development application is recommended for approval. Refer to the separate report for details.

**Proposed Modifications**

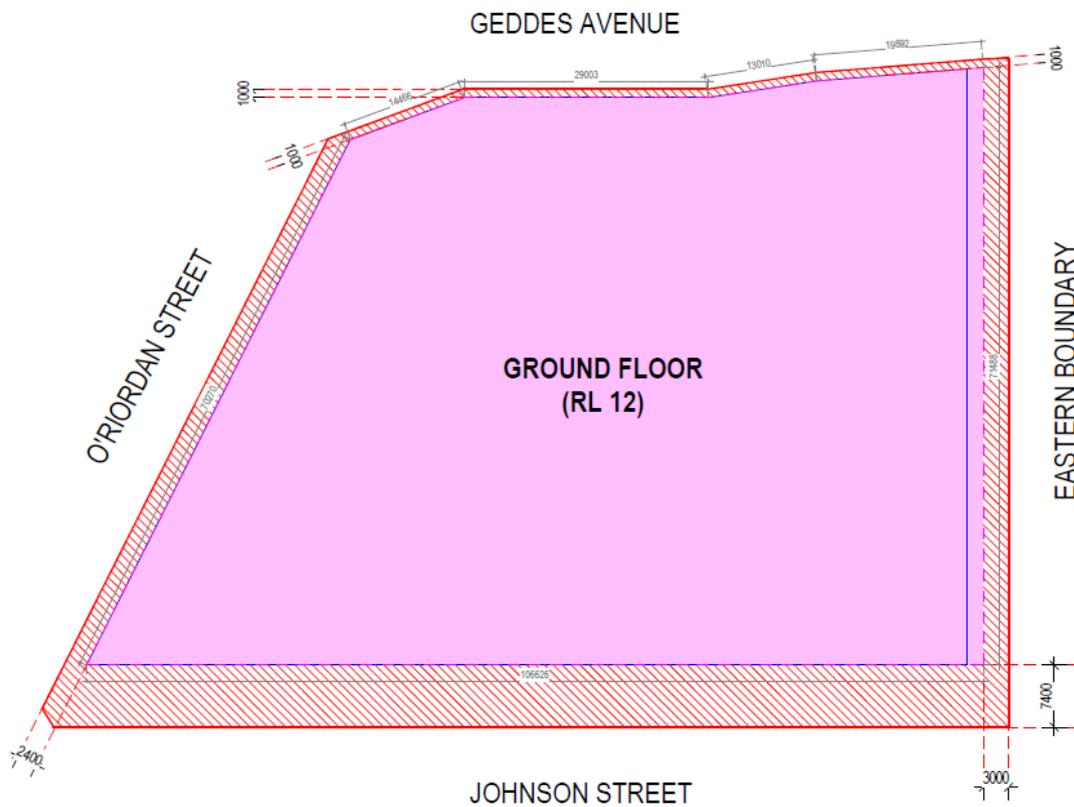
19. This Section 4.55(2) modification application seeks to modify the concept approval to bring it in line with the concurrent detailed DA.
20. The application seeks to modify the approved concept envelope to:
  - (a) increase the building heights in the northern portion of the site to a maximum of 25.8m and in the southern portion to a maximum of 18.9m (the maximum height at the southern edge of the building envelope remains at 12m);
  - (b) reduce the setback to the eastern side boundary from 5m to 3m and relocate the through site link to the middle of the site to be consistent with the winning design competition scheme;
  - (c) maintain a continuous deep soil area along the eastern setback as an opportunity for a biodiversity corridor that connects to the future landscaped area on Johnson Street and the existing McConville Reserve to the south; and
  - (d) reduce the required deep soil area within the 'post-dedication' site area from 4.5% to 3.95%.
21. Conditions 2 (Approved Development), 4 (Detailed Design), 7 (Building Height), and 14 (Through-site Link) are to be modified to reflect the amended plans and the detailed development application as proposed in D/2021/529.
22. Selected drawings of the proposed modifications are provided below.



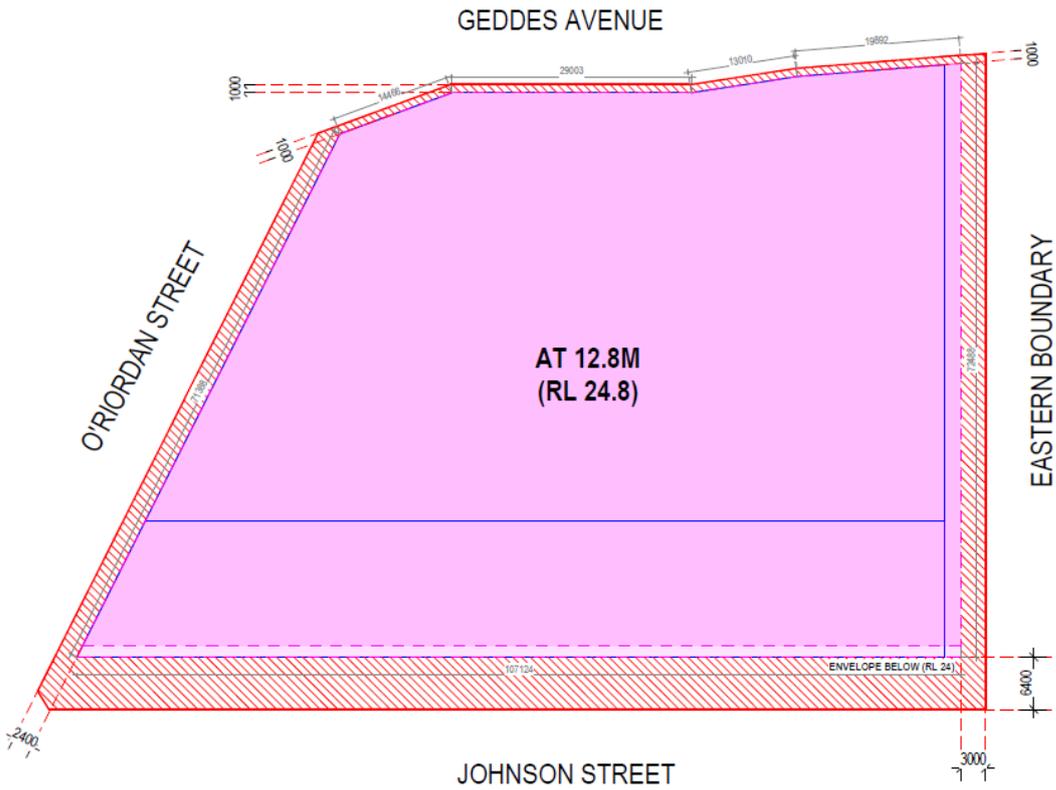
**Figure 13:** Proposed west elevation (O'Riordan Street), with the approved concept envelope outlined in blue solid line



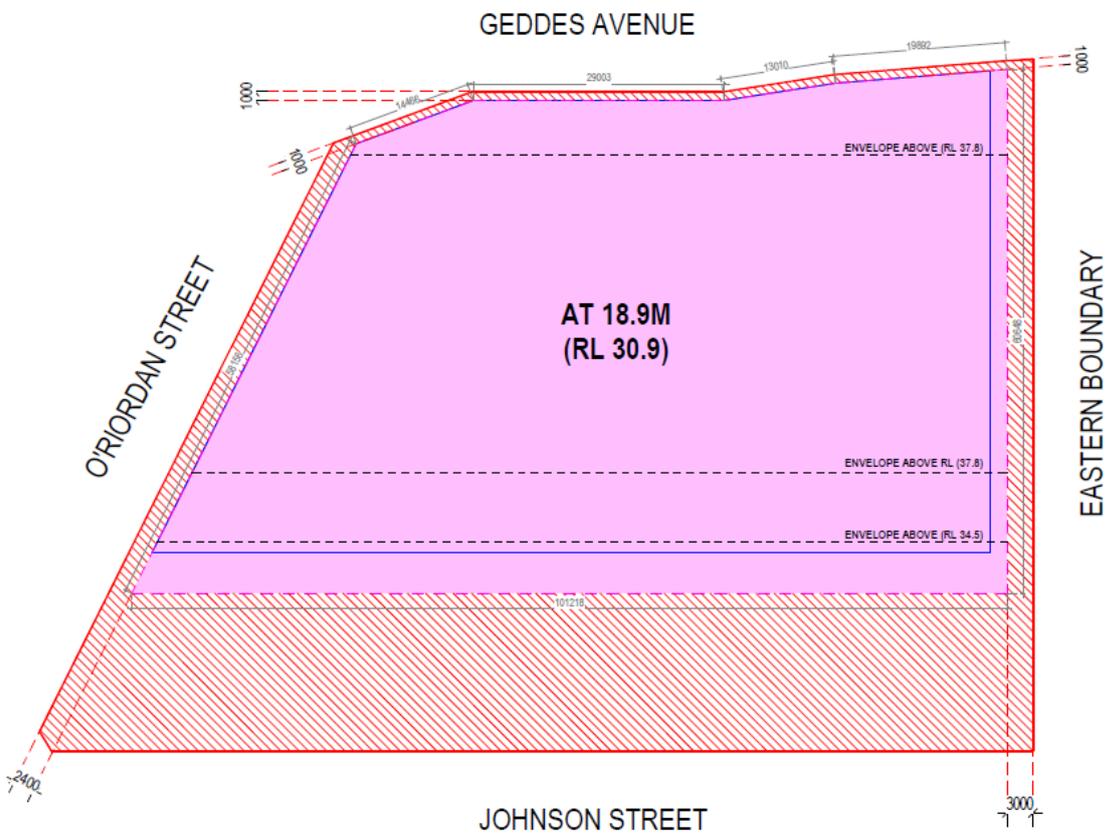
**Figure 14:** Proposed east elevation, with the approved height noted in red and the approved envelope outlined in purple



**Figure 15:** Proposed building footprint at ground level, with the approved footprint outlined in blue, showing a reduced setback to the eastern boundary



**Figure 16:** Proposed building footprint at 12.8m above ground level, with the approved footprint outlined in blue



**Figure 17:** Proposed building footprint at 18.9m above ground level, with the approved footprint outlined in blue





**Figure 20:** Massing of the modified building envelope

### Threshold Test

23. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelopes are not inconsistent with the intent of the approved concept envelope. As per the originally approved concept application, the proposed modifications will deliver a commercial building envelope that addresses the future Geddes Avenue, O'Riordan Street and Johnson Street, a through site link, and the opportunity for 1 basement level of car parking accessed from Johnson Street. Proposed modifications primarily relate to building height, bulk, separation, location of the through site link, and the numerical requirements for deep soil area.
24. The proposed modifications allows for consistency with the winning scheme following completion of the competitive design process, and the modifications are supported as they do not result in unacceptable overshadowing or privacy impacts, and deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties.

25. In accordance with Section 4.55(2), an assessment against the relevant provisions of Section 4.15(1) of the Act are provided under the headings in the "Discussion" section below.

### **Assessment**

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

### **Local Environmental Plans**

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

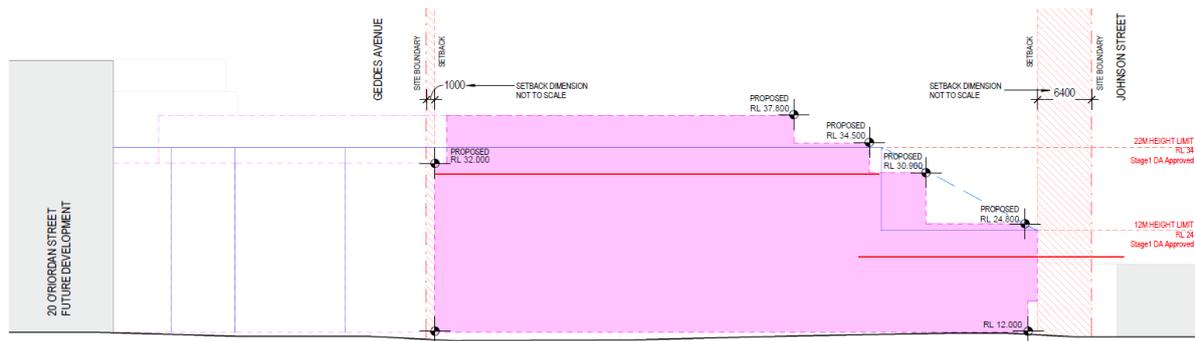
27. The relevant provisions of the Sydney LEP 2012 have been taken into consideration in the assessment of the proposal.
28. The site is located within the B7 business park zone. The proposed development, being a commercial premise, is permissible within the zone.
29. Compliance with Clause 4.3 height of buildings development standard is discussed below.
30. The detailed design development application (D/2021/529) demonstrates that the revised building envelope can accommodate compliant floor space ratio as outlined in Clause 4.4 and satisfy the objectives of Clause 6.21 Design Excellence.
31. The development is consistent with other relevant provisions

### **Discussion**

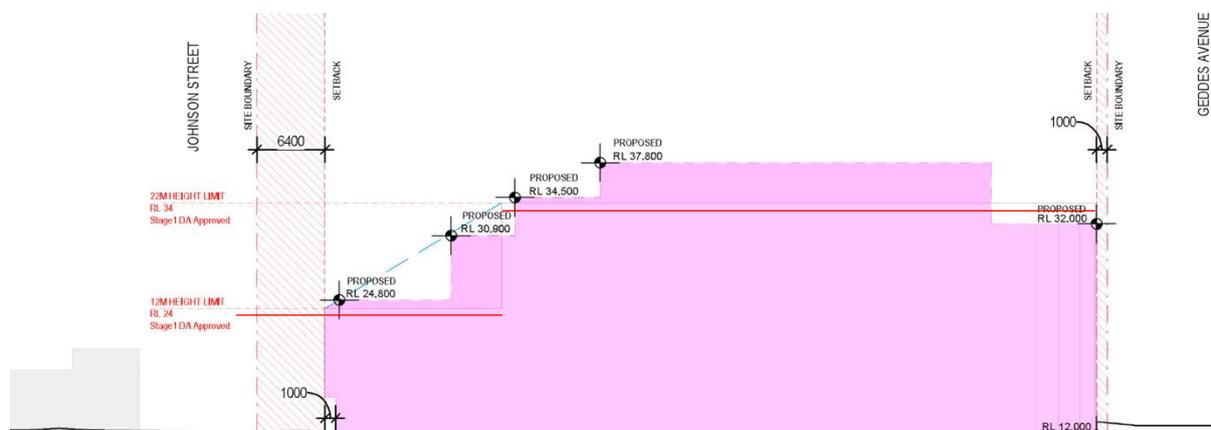
#### **Modifications to Building Envelope**

32. The concept approval set a maximum building height of 22 metres for northern portion of the site and 12 metres for the southern portion of the site consistent with the maximum 'height of buildings' development standard prescribed by Clause 4.3 of Sydney LEP 2012. The maximum corresponds to a development that is 5 storey in the northern portion and 3 storey in the southern portion.
33. The application proposes an increase to the approved height to allow a 7 storey development. The proposal exceeds the maximum 'height of buildings' development standard as follows:
  - (a) Northern portion - 25.8m, which represents a 3.8m or 17.27% variation. This is a consequence of two additional storeys to accommodate a centralised rooftop plant area that is set back from the northern boundary by approximately 7.4m and from the 'pre-dedication' southern boundary by approximately 32.2m; and
  - (b) Southern portion - 18.9m, which represents a 6.9m or 57.5% variation. This is a consequence of a lateral extension into the 12m height zone on levels 3 and 4. The lateral extension is set back from the 'pre-dedication' southern boundary by approximately 18.2m, maintaining the maximum 12m height in the southern-most portion of the building envelope.

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



**Figure 21:** O'Riordan Street elevation, with the maximum height outlined in red. This illustrates the lateral extension of the building into the 12m height zone and the increase in height to accommodate the rooftop plant area



**Figure 22:** East elevation, with the maximum height outlined in red. This illustrates the lateral extension of the building into the 12m height zone and the increase in rooftop height to accommodate the rooftop plant area

35. As a Section 4.55(2) modification, Clause 4.6 of Sydney LEP 2012 with regard to requesting a variation to the 'height of buildings' development standard does not apply. It is noted, however, that a detailed assessment under Clause 4.6 of the Sydney LEP 2012 has been carried out as part of D/2021529 for the detailed design, which also proposes a height variation.
36. The application also proposes to reduce the setback to the eastern side boundary from 5m to 3m and to relocate the through-site link to the middle of the site, dividing and separating the building mass, consistent with the winning design competition scheme. The 3m setback along the eastern setback will remain as a continuous deep soil area.
37. Updated overshadowing analysis has been provided to demonstrate that the modified building envelope will not result in any significant adverse overshadowing impact to the neighbouring residential developments on the southern side of Johnson Street. In particular, 1 Queen Street, being immediately south of Johnson Street, will continue to receive at least 2 hours of direct sunlight to at least 8m<sup>2</sup> of its private open space as recommended by Section 4.2.3.1. of Sydney DCP 2012.

38. The increased heights are also set back to maintain a 5 storey frontage height to the future Geddes Avenue and a 3 storey frontage height to Johnson Street to the south. The proposed envelope also retains the desired transition in height from the taller 10 storey buildings to the north and northeast to the 1-2 storey buildings in the Hillview Estate heritage conservation area to the south.
39. Despite a reduced setback to the eastern boundary, a continuous deep soil area with a minimum width of 3m will continue to be provided connecting to the future landscaped area on Johnson Street and the existing McConville Reserve to the south. A public through-site link will also be provided, but centrally located within the site as proposed by the design competition winning scheme. The resultant reduction in deep soil area is discussed further below, while the relocation of the through-site link to the centre of the site is discussed below and in the separate report for the concurrent detailed DA, and is considered to deliver a better planning outcome and is supported.
40. In light of the above, the proposed modified building envelope will not result in significant detrimental impact to neighbouring properties, reduce amenity for future occupants, or reduce the site's contribution to a high quality public domain.
41. The modified envelope is also capable of delivering a built form that is consistent with the existing and future desired character of the area. This is demonstrated by the detailed design development application. The variation to the 'height of buildings' development standard in this regard is related to the roof of the Level 5 plant room and the Level 6 plant room, which are significantly set back from all building edges and do not unreasonably add to the bulk and scale of the development when viewed from the public domain and surrounding buildings.

#### **Provision of Deep Soil**

42. Section 5.8.2.5.1 of the Sydney DPC 2012 recommends that 10% of the site area is required to contain deep soil landscaping, with a minimum dimension of 3m. Based on the 'post-dedication' site area of 6,533m<sup>2</sup>, a deep soil area of 653m<sup>2</sup> is required.
43. As part of the original concept approval, consideration was given to the requirements of VPA/2019/16, which the applicant is to dedicate at least 884m<sup>2</sup> of the site to the City, 686m<sup>2</sup> of which is to become a landscaped area on Johnson Street. Given the large dedication of site area for landscaping purposes, the original approval allowed a reduced deep soil requirement of 296.7m<sup>2</sup>, or 4.5% of the 'post-dedication' site area, as shown in Figure 23, on the basis that the 'pre-dedication' site area will provide approximately 982.7m<sup>2</sup> (15%) as deep soil, which exceeds the 10% required by Sydney DCP 2012.
44. While this modification application originally proposes a reduction to 258.2m<sup>2</sup>, or 3.95% to align with the detailed design DA, the detailed design DA has been amended to provide a deep soil area of 288.4m<sup>2</sup>, or 4.4%, that is greater than 3m in dimension and encumbered by structures above or below as shown in Figure 24.
45. Consistent with the approach adopted for the concept approval, the subject site based on the 'pre-dedication' site area will provide appropriately 974.4m<sup>2</sup> (13%) as deep soil, which is greater than the 10% required and therefore remain acceptable.
46. As the amended detailed design development application has demonstrated that a greater deep soil area can be provided, it is recommended that Condition 4(a)(i) be amended to require a minimum deep soil area of 288.4m<sup>2</sup> (4.4%) instead.

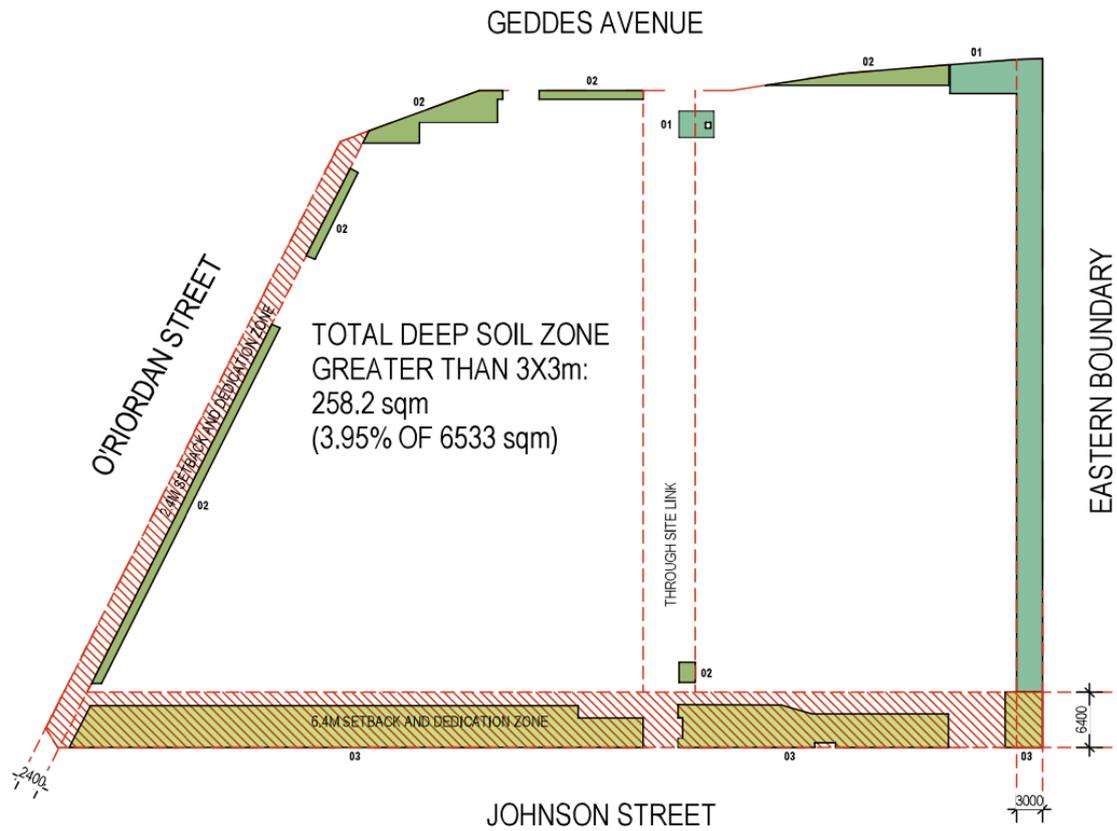


Figure 23: Proposed deep soil area and relocated through site link

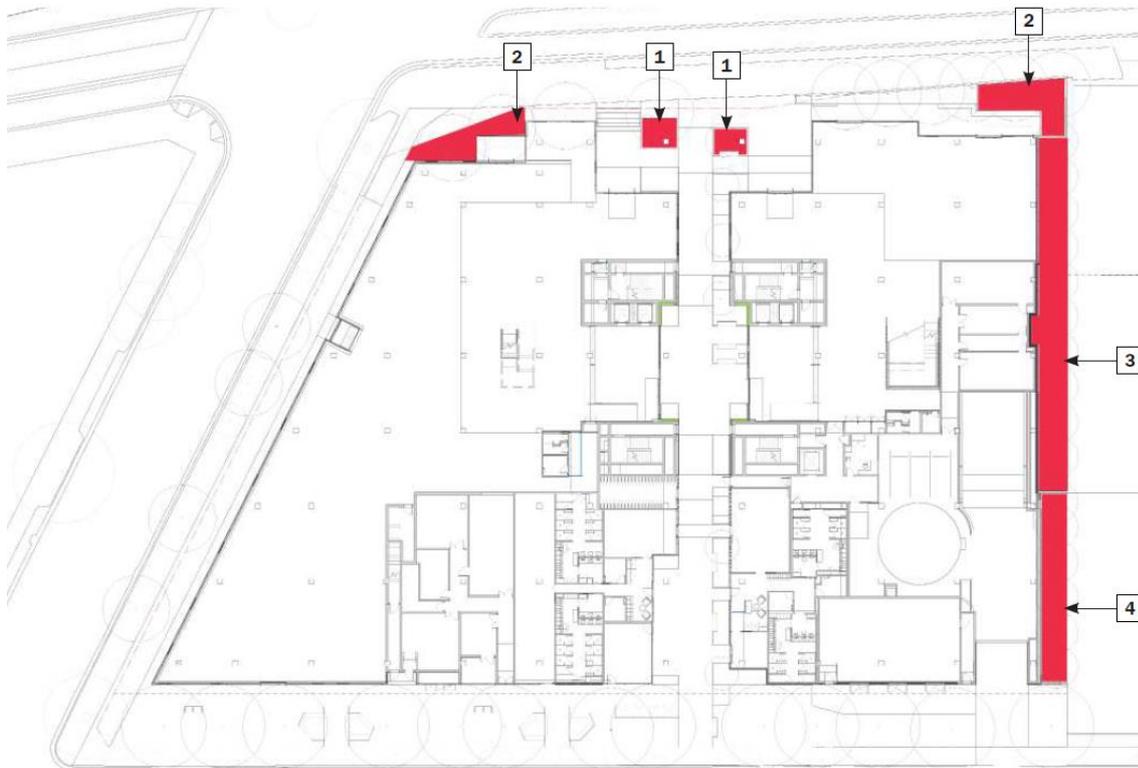


Figure 24: Proposed deep soil area (shaded red) of the concurrent detailed DA - D/2021/529

**Relocation of through-site link**

47. A pedestrian through-site link is not required by the *Employment Lands Urban Strategy* in Figure 5.182 of Sydney DCP 2012 or the *Employment Lands Street Hierarchy and Layout Map* in Figure 5.184 of Sydney DCP 2012. However, a through-site link is recommended under Section 3.1.2.2 of Sydney DCP 2012 as the site area is greater than 5,000m<sup>2</sup>, without specifying a location in the *Through-site Links Map*.
48. As part of the original concept approval, a pedestrian through-site link was indicated along the site's eastern boundary, co-located with deep soil area, with an overall width of 5m. This concept is illustrated in the original concept DA reference scheme, as shown in Figure 25 below.
49. The location of the link along the eastern boundary limits the opportunities to activate the through-site link, particularly at the southern end given that portion of the site would likely be burdened by services, loading and vehicular access in any future developments.
50. The eastern boundary location also limits the opportunity to activate the eastern edge of the through-site link, considering:
  - (a) the concept approval and subsequent design competition winning scheme for 338 Botany Road only consider the subject site as a non-habitable interface in its current context, and the design scheme submitted for pre-lodgement advice proposes a blank wall of approximately 4.8m high along the common boundary for the full depth of the site. The vehicular access point is also located adjacent to the common boundary to the future Geddes Avenue;
  - (b) the adjoining site to the east, being 340 Botany Road, is currently used as a construction equipment hire business (Coates Hire) and no development is currently proposed that would significantly improve the contribution of the site to the CPTED performance, in terms of activation and passive surveillance; and
  - (c) the recently completed motor vehicle showroom and repair building at 340A Botany Road also presents a blank wall of approximately 13.3m high for the full depth of the site.
51. In comparison, the proposed central location, supported by the proposed uses of the detailed design DA as shown in Figure 26, provides greater opportunity to ensure activation to the through-site link on either side, ensure good passive surveillance (CPTED), minimise level changes and ensure that the through-site link will be well-maintained. To ensure the amended concept approval will continue to achieve a high-quality pedestrian link without relying on the detailed design DA, amendments to Condition 14 are recommended to capture the key design criteria of a centrally located through-site link, being:
  - (a) have a minimum width of 6 metres and be open to the sky, unencumbered by structures above;
  - (b) be appropriately activated on the ground plane;
  - (c) achieve the relevant wind comfort criteria of Sydney Development Control Plan 2012; and
  - (d) be publicly accessible 24 hours a day.



### Privacy Treatment along the Eastern Boundary

52. As discussed under the 'History Relevant to the Development Application' section above, 338 Botany Road adjoining to the east has received a concept approval and selected a design competition winning scheme that would deliver a mixed use development with commercial uses and residential uses for the purpose of affordable housing. The introduction of residential use changes the context this concept approval was originally considered.
53. The concept approval for the subject site is for commercial premises with retail components on the ground floor. As such, it is not subjected to SEPP 55 and the Apartment Design Guide. However, an additional design requirement is recommended for Condition 4 to require appropriate privacy treatment to the eastern elevation. This is to ensure that any future residential development on 338 Botany Road will not be unreasonably burdened to manage visual and acoustic privacy along the common boundary.

### External Shading

54. Condition 4(a)(x) requires external sun shading to be provided for any glazed elevations. However, the competition winning scheme prepared by Hassell proposes passive shading to all elevations of the building as an alternative solution. As such, it is recommended that Condition 4(a)(x) be amended to explicitly allow for passive shading, but maintain the need for any future development to provide external shading instead of alternative glazing solutions, such as coloured, tinted, or reflecting glazing.

### Consultation

#### Internal Referrals

55. The application was discussed with Council's Design Advisory Panel; Urban design Specialists; Landscape Architect; Tree Management Officer; Environmental Health Unit, Transport and Access Unit; and the Waste Management Unit. Relevant comments have been addressed in this report, and where appropriate, recommended modifications and additions to conditions have been included in Attachment A.

#### External Referrals

56. The application was referred to TfNSW, WaterNSW, and Sydney Airport, who raised no objections to the proposed modifications, subject to recommended conditions already included in Attachment A.

### Advertising and Notification

57. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified and advertised for a period of 28 days between 1 June and 30 June 2021. A total of 100 properties were notified. One (1) submission was received, addressing this modification application and concurrent detailed DA. The issues relevant to this modification application are as follows:
  - (a) **Issue:** The maximum 22m height permissible under Clause 4.3 of Sydney LEP 2012 is sufficient to accommodate a 5 storey building. While the highest elements have been located towards the centre of the site, the proposal could still be amended to comply with the development standard.

**Response:** As discussed above, the additional height in the northern portion of the site is to accommodate a centralised plant area proposed under the detailed design DA. Lettable floor space of the proposed development is wholly contained within the 22m permissible height. A centralised plant area for each building is consistent with the recommendations of Section 4.2.7 of Sydney DCP 2012, and the roof location provides greater flexibility to adopt newer environmental technologies in the future while being co-located with the extensive solar panels and other ESD initiatives that the development is required to provide.

- (b) **Issue:** The overshadowing impact arising from the height exceedance, particularly to the future west facing apartments of 338 Botany Road is unclear.

**Response:** Shadow diagrams, included in Attachment B3, demonstrates that the proposed development will not overshadow 338 Botany Road in mid-winter between 9am and 3pm.

- (c) **Issue:** The proposed reduced setback to the site's eastern boundary will make it difficult for the future redevelopment of 338 Botany Road to comply with the building separation recommended by the ADG.

**Response:** Part 2F of the ADG clarifies that the recommended separation is to be applied by half to the boundary. The proposed development would not deter any future residential development of 338 Botany Road to comply with the recommended building separation within its boundary.

However, the concept approval for 338 Botany Road for affordable housing development changes the context of the site. As such, amendments to Condition 4 is recommended to required appropriate privacy protection be provided to the subject site's eastern boundary, including the interface with 338 Botany Road.

- (d) **Issue:** The reduced setback to the eastern boundary will hinder the provision of deep soil and dense vegetation screen planting.

**Response:** As detailed in the 'Discussion' section above, only a 2% reduction in the required deep soil area is recommended, and will not deter the provision of a continuous corridor of deep soil and tree planting along the 3m eastern setback as originally intended.

## Financial Contributions

### Contribution under Section 7.11 of the EP&A Act 1979

58. This modification development is not subject to a Section 7.11 development contribution. A condition has been recommended to require appropriate contributions as part of the concurrent detailed DA (D/2021/529).

### Contribution under Clause 7.13 of the Sydney Local Environmental Plan 2012

59. Similarly, a condition has been recommended to require an affordable housing contribution as part of the concurrent detailed DA (D/2021/529).

## Relevant Legislation

60. Environmental Planning and Assessment Act 1979
61. Sydney Airport Referral Act 1996
62. Water Management Act 2000
63. City of Sydney Act 1988

## Conclusion

64. This Section 4.55(2) modification application proposes to alter the approved building envelope to be consistent with the detailed design DA (D/2021/529), which is presented to the CSPC concurrently for approval.
65. The proposed modifications to the approved building envelopes will ensure consistency between the staged development applications, as required under Section 4.24 of the Environmental Planning and Assessment Act 1979.
66. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelopes are consistent with the intent of the approved concept development and will deliver a commercial building envelope with frontages to the future Geddes Avenue, O'Riordan Street, and Johnson Street, a through site link, a biodiversity corridor, and the opportunity for 1 basement level of car parking accessed from Johnson Street.
67. The proposed modifications primarily relate to the increase in height and building bulk, relocation of through site link, reduction in setback to the eastern boundary, and reduction of deep soil area within the 'post-dedication' site area. The proposed increase in height permits the a centrally located, fully enclosed, and fully integrated plant rooms to be located on Levels 5 and 6 and landscaping and shading to the roof terraces on Levels 3 and 5; while the relocation of the through site link and the reduction in the eastern setback and deep soil area permits the building envelope to be increased to align with the winning design competition scheme and the detailed design development application (D/2021/529).
68. The modifications to the envelopes are supported as they do not result in unacceptable amenity impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.

69. The proposed building envelopes are capable of accommodating a future building which exhibits design excellence in accordance with Clause 6.21 of the Sydney LEP 2012. The detailed design development application (D/2021/529) being considered concurrently by CSPC demonstrates that a generally compliant scheme can be provided within the amended envelopes that delivers design excellence in accordance with Clause 6.21 of Sydney LEP 2012.
70. The concept approval, as amended, will remain consistent with the executed VPA, being VPA/2019/16.
71. The proposed modifications are therefore in the public interest and are recommended for approval.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Bryan Li, Specialist Planner