

**Item 7.****Development Application: 22 O'Riordan Street, Alexandria - D/2021/529**

File No.: D/2021/529

**Summary**

<b>Date of Submission:</b>	25 May 2021; with amended documentation received on 20 October 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>	\$97,597,453
<b>Zoning:</b>	The site is zoned B7 - Business Park under the Sydney Local Environmental Plan 2012. Proposed uses include commercial premises and food and drink premises, which are permissible with consent.
<b>Proposal Summary:</b>	<p>Approval is sought for the demolition of existing structures, remediation, excavation, and construction of two buildings with a common basement. The two buildings are separated by a pedestrian through-site link connecting Johnson Street to the future Geddes Avenue. Vehicular access to the common basement is obtained from Johnson Street.</p> <p>The proposal is integrated development requiring the approval of Water NSW under the Water Management Act 2000. General Terms of Approval have been issued and form part of the recommended conditions in Attachment A.</p> <p>The application is referred to the Central Sydney Planning Committee for determination as the cost of works exceeds \$50 million, and is therefore defined as a "major development" for the purposes of the City of Sydney Act 1988.</p>

The subject development application requires amendment of the approved concept envelope. A Section 4.55(2) modification application (D/2019/686/A) has been lodged, assessed, and reported to the Central Sydney Planning Committee concurrently with the subject development application. The modification application is recommended for approval.

Subject to the approval of the Section 4.55(2) modification application (D/2019/686/A), the subject development application will be consistent with the approved concept envelope. The proposal is also consistent with a previously executed VPA that 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.

Following the concept approval, a competitive design alternatives process was held, with the Hassell proposal selected as the winning scheme. Subject to conditions, the proposal is considered to exhibit design excellence and is eligible for 10% additional floor space ratio pursuant to Clause 6.21 of Sydney Local Environmental Plan 2012.

The application has been amended to address issues identified by Council officers during assessment. The key issues relate to:

- further design development to improve the quality and wind comfort of the through-site link and to provide the same level of facade modulation and passive shading as the winning scheme; and
- additional information to demonstrate acceptable passive shading, overshadowing, landscape design, and high-quality material and finishes.

The application was notified and advertised for a period of 28 days between 1 June and 30 June 2021. One submission was received raising concerns with:

- visual and acoustic privacy impacts;

- overshadowing; and
- hindering the ability to comply with SEPP 65 (Apartment Design Guide). This pertains to future affordable housing development approved under a concept plan to the east of the site.

The issues raised in the submission are addressed in the report and conditions of consent are recommended to address these issues where appropriate.

Subject to conditions, the proposal is largely compliant with the relevant planning provisions contained in the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. Any non-compliances have been assessed as having merit in the context of the site and are addressed in this report.

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

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) City of Sydney Act 1988
- (iii) Sydney 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
- (ix) City of Sydney Development Contributions Plan 2015
- (x) Green Square Affordable Housing Program

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Competitive Design Alternatives Report

## Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 'height of buildings' in accordance with Clause 4.6 'exceptions to development standards' of Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2021/529 subject to the conditions set out in Attachment A to this report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to the imposition of conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.
- (B) The proposal generally satisfies the objectives and relevant provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. Where non-compliances exist, they have been demonstrated to be acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.
- (C) Based upon the material available to the Central Sydney Planning Committee at the time of determining this application, the Committee is satisfied that:
  - (i) The applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Sydney Local Environmental Plan 2012, that compliance with the 'height of building' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney Local Environmental Plan 2012.
  - (ii) The proposal is in the public interest because it is consistent with the objectives of the B7 Business Park zone and the 'height of building' development standard.
- (D) The development is consistent with the amended concept approval for the site, being D/2019/686/A and the executed Voluntary Planning Agreement (VPA/2019/16).
- (E) The development is consistent with the design intent of the winning scheme of a competitive design process. The scale, form, articulation, materiality, and environmental performance of the proposal is consistent with the desired future character of the locality and exhibits design excellence to satisfy Clause 6.21 of Sydney Local Environmental Plan 2012.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 1004389, known as 22 O'Riordan Street, Alexandria. It is irregular in shape, and the site's northern boundary has been adjusted to facilitate the delivery of the future Geddes Avenue. This increased the site area to approximately 7,436m<sup>2</sup>. It has a street frontage to O'Riordan Street to the west and Johnson Street to the south. It will also have a street frontage to the future Geddes Avenue to the north.
2. The future Geddes Avenue is being designed and delivered by the City of Sydney. It is intended as a new road connecting the existing Geddes Avenue east of Botany Road and the existing Bowden Street west of Bourke Road. It will connect Green Square to the Ashmore precinct to the west. According to the latest design, as shown in Figure 9, the road reserve will be approximately 22.86m wide, providing a footpath with a 4.2m minimum width on each side, 2-way traffic lanes, and a dedicated cycleway that is separated from the traffic lanes by a landscaped median interspersed with bus stops and drop-off bays.
3. The site is approximately 200m south of Green Square Town Centre. It is located within the Green Square Urban Renewal Area and the Southern Employment Lands. The locality is in a transition from traditional industrial land uses to a higher density precinct. The B7 Business Park zone under the Sydney LEP 2012 comprises only commercial / industrial land uses. The only residential land uses permissible in the zone are residential flat buildings or shop top housing created solely for the purposes of affordable housing.
4. The site contains a two storey building with car parking within the front setback to O'Riordan Street, and has been used as a Mercedes Benz autobody paint and repair centre. Vehicular access to the site is currently provided from O'Riordan Street and Johnson Street.
5. Surrounding land uses are commercial and residential in nature. Immediately adjoining the development to the north at 330 Botany Road (beyond the land for the future Geddes Avenue), is an abandoned site containing low scale building structures and landscaping. This site extends from O'Riordan Street to Botany Road and has been identified for redevelopment for affordable housing up to 10 storeys (33m).
6. Three parcels of land immediately adjoin the eastern boundary of the site. A vacant block at 338 Botany Road that formerly contained outdoor storage areas. Approval has recently been granted for a 10 storey concept building envelope for affordable housing (D/2019/87, as amended). At 340 Botany Road is a construction equipment hire business (Coates Hire), and at 340A Botany Road is a recently completed motor vehicle showroom and repair building.
7. Further east (on the other side of Botany Road and within the Green Square town centre) is a site approved for a 16 storey residential flat building at 499 Botany Road (D/2015/294, as amended).
8. To the west of the site are various light industrial and commercial land uses extending along O'Riordan Street, including the Australian Red Cross Building, and the Ausgrid substation site.

9. Adjoining the site to the south, across Johnson Street, are low scale residential terraces that form part of the Hillview Estate heritage conservation area (C4), and the McConville Reserve. The area adjoining the site to the south is zoned R1 General Residential under the Sydney LEP 2012.
10. The subject site is not affected by any heritage provisions. However, the site is identified as being subject to flooding.
11. A site visit was carried out on 2 June 2021. Photos of the site and surrounds are provided below:
12. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from O'Riordan Street



Figure 3: Site viewed from Johnson Street



**Figure 4:** Site's existing vehicular access from Johnson Street, opposite Victoria Lane



**Figure 5:** The McConville Reserve to the south of the site, viewed from Johnson Street



**Figure 6:** The two storey warehouse building to the south of the site



**Figure 7:** The two storey terrace to the south of the site



**Figure 8:** The general building height along Victoria Lane



**Figure 9:** Latest design of the future Geddes Avenue

## History Relevant to the Development Application

### Concept Approval - D/2019/686

13. On 20 July 2020, concept development application (concept DA) - D/2019/686 was granted a deferred commencement consent by the Central Sydney Planning Committee (CSPC), providing a building envelope for future development.

14. 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 zone. Associated land dedications are attached to this concept approval via a Voluntary Planning Agreement (VPA) as discussed in the 'Planning Agreement' section below.
15. The deferred commencement condition included a requirement for the VPA to be executed and registered on title. The VPA has been executed to satisfy the deferred commencement condition, registered on title, and the consent was made active on 25 September 2020.
16. The subject development application for the detailed design proposal requires amendments to the approved concept envelope. A Section 4.55(2) modification application (D/2019/686/A) was lodged concurrently to incorporate these variations including:
  - (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 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 zone within the 'post-dedication' site area from 4.5% to 3.95%.
17. The modification application has been assessed concurrently with the subject DA and is being reported concurrently to the CSPC for determination. The modification application is recommended for approval.

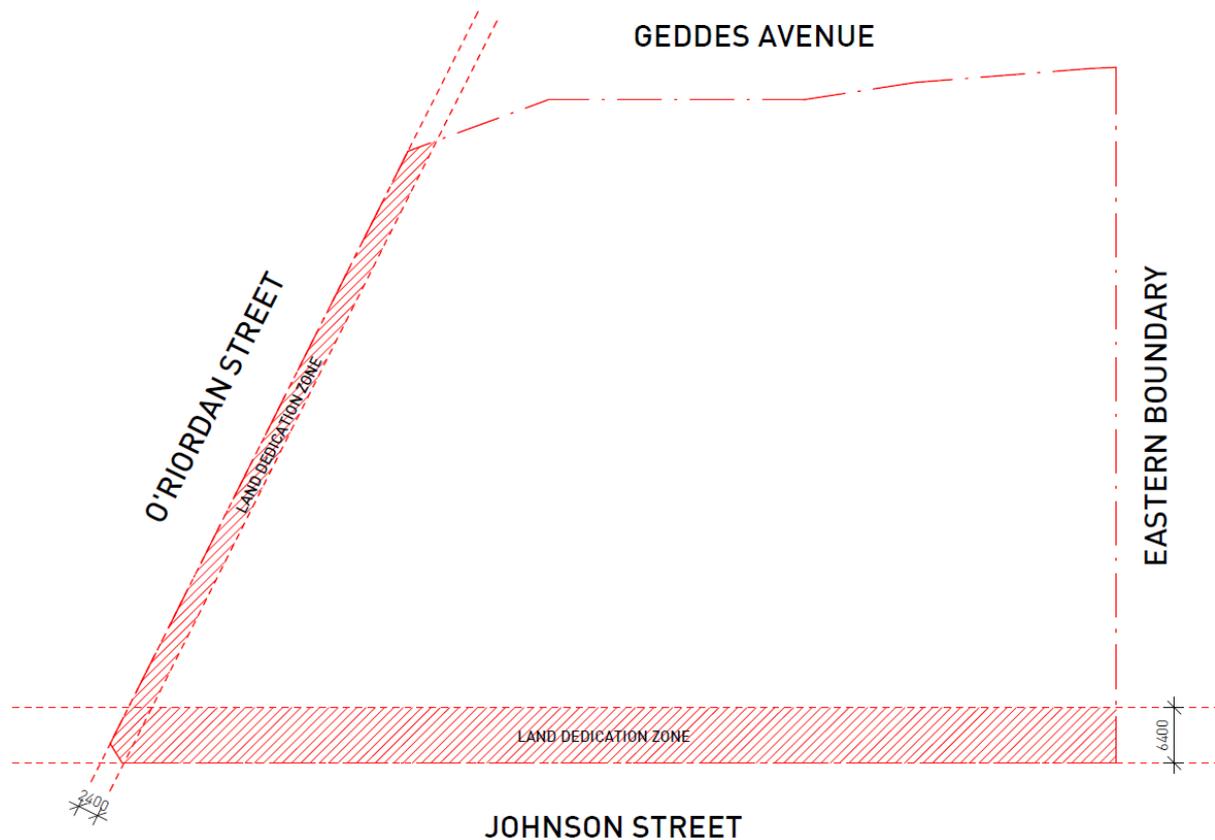
### **Voluntary Planning Agreement**

18. The site is subject to a voluntary planning agreement (VPA) that is attached to the concept DA. VPA/2019/16 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 10 below:

- (c) monetary contribution of approximately \$1,487,000 towards community infrastructure; and
- (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 10:** Site plan showing the areas of land dedication in red hatching along O'Riordan and Johnson Streets.

19. 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 the Green Square Affordable Housing Program.
20. The land to be dedicated to Council has also been clearly indicated in the drawings submitted for assessment for this DA.

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

21. 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

22. 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, was capable of achieving design excellence. This Panel also recommended a number of design refinements that are discussed further in this report.
23. Images of Hassell's competitive design scheme, as presented to the selection panel, are provided below. The Hassell scheme forms the basis of the subject DA.



**Figure 11:** Hassell competitive design scheme viewed from the corner of O'Riordan and Johnson Streets



**Figure 12:** Hassell competitive design stage proposal viewed from the future Geddes Avenue



**Figure 13:** Hassell competitive design stage proposal viewed from Johnson Street, showing the pedestrian through-site link

24. A copy of the competitive design alternatives report including the selection panel's final recommendations is provided in Attachment D and is assessed in further detail in the 'Discussions' section of this report.

**Amendments to Subject DA**

25. Following an assessment of the proposed development, a request for additional information and amendments was sent to the applicant in September 2021. Comments made by Council officers incorporated matters raised by the City's Design Advisory Panel. A number of design amendments were recommended and additional information regarding site conditions and impacts were requested. This is detailed below:
- (a) Recommended design amendments
    - (i) Maximise activation to the through-site link by better resolving the level changes at the northern end and by increasing the retail frontage and glazed facades of the end of journey facilities;
    - (ii) Widen the southern half of the through-site link to provide a more generous entrance from Johnson Street, increase opportunity for landscaping, and incorporate wind mitigation strategies recommended by the wind consultant to achieve the 'siting' comfort criteria.
    - (iii) Provide greater modulation to the built form vertically along O'Riordan to reinstate the notion of a break-up in built form as demonstrated in the winning scheme.
    - (iv) Reconsider the gradual increase in setback to the upper levels to provide a less tiered approach.
  - (b) Analysis /additional information:
    - (i) Demonstrate the achievement of 80% passive shading in summer through a set of solar insolation diagrams, noting that the 80% target is to be adjusted proportionally based on the window to wall ratio.
    - (ii) Provide more detailed shadow analysis to demonstrate that the centrally located additional height will not result in any additional overshadowing to the residential properties south of Johnson Street beyond the approved concept envelope.
    - (iii) Ensure the flood levels recommended by the flood risk assessment have been incorporated within the proposed building envelope, and do not rely on level changes on the public domain.
    - (iv) Clearly show the new site boundaries following land dedication required by the executed VPA and adjustments to the northern boundary.
    - (v) Updated landscape design to maximise opportunities to provide additional tree canopy within the 'post-dedication' site area and provide green walls in location that receive sufficient natural light to avoid the use of grow lamps.
    - (vi) Updated wind assessment to demonstrate that the amended design incorporating mitigation strategies is capable of achieving the 'siting' comfort criteria.

- (vii) A detailed and unambiguous digital material and finishes sample board to identify specific product information, including glazing selection. All glazing to commercial and other habitable spaces (except for spandrel panels) must be clear, non-coloured, non-tinted and non-reflective.
  - (viii) Updated public art strategy to investigate public art opportunity that addresses the length of the through-site link, appropriate engagement with Aboriginal consultants and/or artists to address a genuine co-creation of place, and include a budget commensurate with the scale and nature of the development and public art aspirations.
  - (ix) Updated waste management plan to demonstrate compliance with the City's guideline with a maximum collection frequency of 3 times a week for all waste streams.
26. The applicant responded to the request on 20 October 2021. The additional information and key modifications provided include:
- (a) Amendment of the ground floor interface to the future Geddes Avenue to better activate the north-western corner of O'Riordan Street and the north-eastern corner;
  - (b) Widening the southern portion of the through-site link, increase provision of landscaping to mitigate wind impact, and amendments to the layout of end of journey facilities and the food and drink premises to better activate the entrance from Johnson Street;
  - (c) Revised facade modulation of the O'Riordan Street elevation to be have the same articulation/ break-up as the competition winning scheme;
  - (d) Inclusion of shading structures to the north-facing terraces on level 5 and 2 additional green walls to the central atrium at the middle of the through-site link;
  - (e) Provision of an updated wind assessment that demonstrates the amended through-site link design is capable of achieving the 'siting' comfort criteria;
  - (f) An updated Design Report that includes solar insolation analysis, which demonstrates the overall building achieves 80% passive shading and satisfies the deem-to-satisfy requirements of Section J of the Building Code of Australia, despite the western (O'Riordan Street) elevation would not achieve that 80% without relying on existing street trees; and
  - (g) Updated material and finishes schedule, public art strategy, and waste management plan as required.

## Proposed Development

27. This application, as amended, seeks consent for the demolition of existing structures, remediation, and excavation and construction of a commercial development, comprising:
- (a) 2 separate buildings (East and West), each with an end of journey on the ground floor, 4 levels of commercial offices, a south facing terrace on Level 3, a north-facing terrace on level 5, and a centralised, fully enclosed plant area on Levels 5 and 6;
  - (b) 2 ground floor food and drink tenancies addressing the future Geddes Avenue, and 1 ground floor food and drink tenancy addressing the Johnson Street entrance of the through-site link;
  - (c) A common loading and servicing area on the ground floor of the East Building, with vehicular access from Johnson Street and a driveway to 1 level of common basement containing:
    - (i) 70 parking spaces, including 5 accessible parking spaces and 2 car share parking spaces;
    - (ii) 9 motor bike parking spaces; and
    - (iii) Waste storage area and plant rooms;
  - (d) A publicly accessible pedestrian through-site link between the 2 buildings this is open to the sky, public art, and a continuous 3m wide deep soil area along the eastern boundary.
  - (e) The materiality of the proposed curtain wall system includes clear, non-colour, non-tinted glass to all habitable area interspersed with brick-slip panels, CFC cladding, and spandrel glazing. The plant rooms on Level 5 and 6, including the roof, are fully screened by light-coloured aluminium battens. The detailed external colours and materials is provided in Attachment B3.
28. As discussed above, the following land dedications forms part of the proposed development as required by VPA/2019/16:
- (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.

29. The proposed development is also supported by a signage strategy, which is provided in Attachment B4. The strategy comprises 3 types of building identification signs, 2 types of wayfinding signs, and 6 types of tenancy identification signs, as detailed in the table below:

Key	Type	General Location
B1	Illuminated LED sign mounted on columns with tenancy ID, data and information	2 columns on the northern frontage to future Geddes Avenue
B2	Non-illuminated street number sign	Integrated into the building facade on all street frontages, and on the floor at the two ends of the through-site link
B3	Illuminated tenant ID sign	Located on the Johnson Street facade to end of journey facilities.
W1	Free-standing wayfinding sign	At the corner of Johnson Street and O'Riordan Street, and on Johnson Street at the through-site link
W2	Wall mounted wayfinding sign	On each side of the vehicular access on Johnson Street
S1	Illuminated tenancy ID threshold sign	At the tenancy entrances on all three street frontages
S2	Illuminated tenancy ID glazing sign	To be located on the fluted decorative glass adjust to tenancy entrances
S3	Non-illuminated vinyl sign with tenancy information	On the tenancy entrance doors on all street frontages
S4	Illuminated under awning tenancy ID sign	Along the three street frontages
S5	Non-illuminated cantilevered tenancy ID wall sign	On the two sides of the through-site link
S6	Illuminated upper level tenancy ID window sign	On level 4, with 2 fronting Johnson Street, and 1 each fronting O'Riordan Street and the future Geddes Avenue.

- 30.



31. Plans and elevations of the proposed development are provided below.

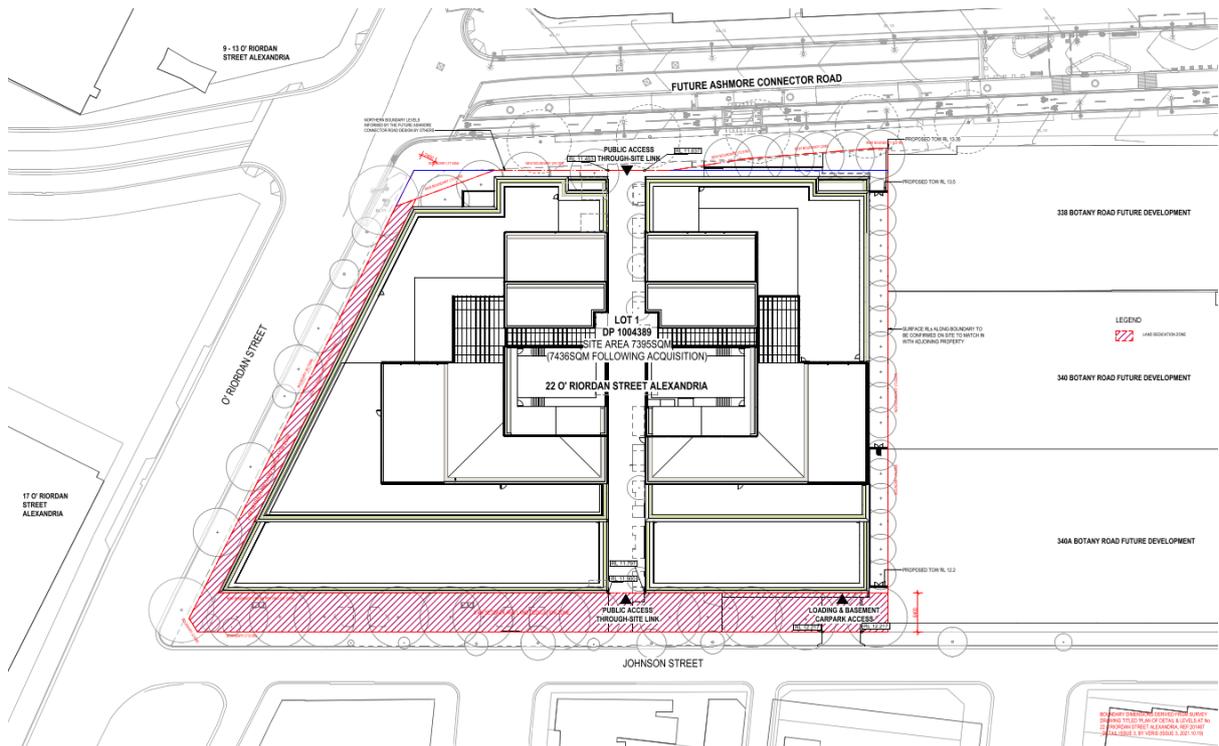


Figure 14: Proposed site plan

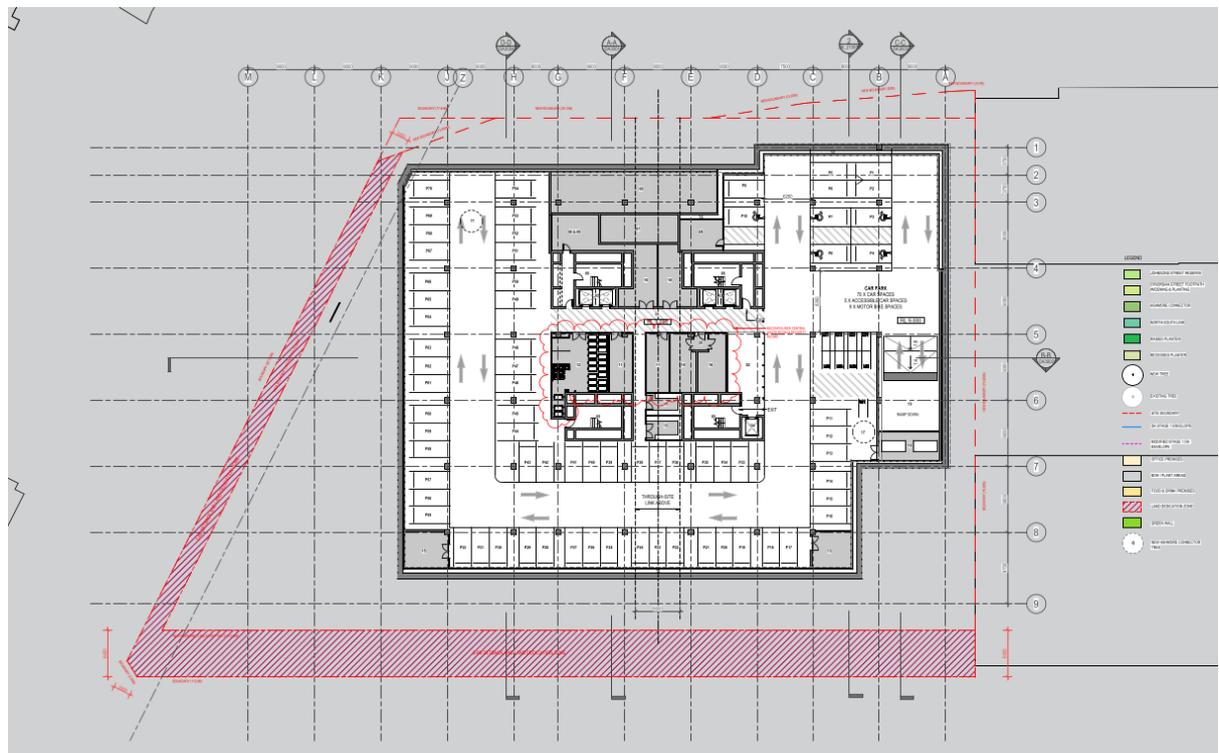


Figure 15: Proposed basement plan

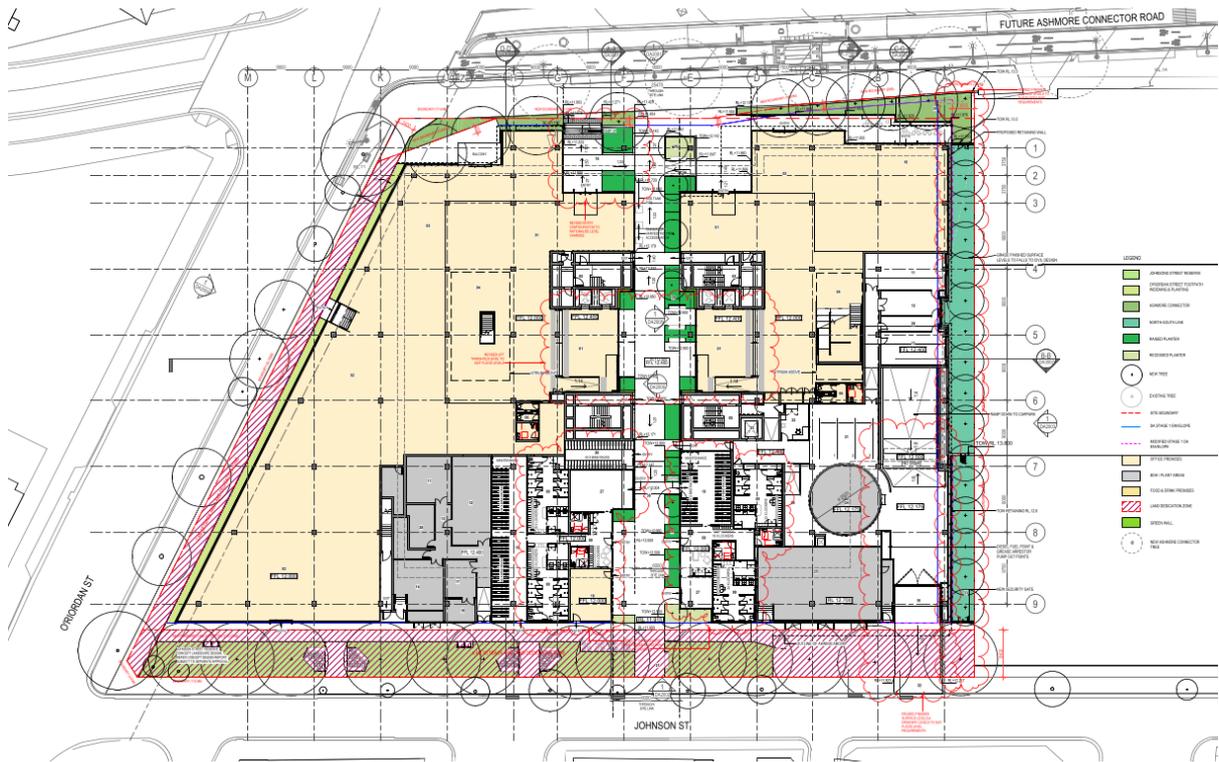


Figure 16: Proposed ground floor plan

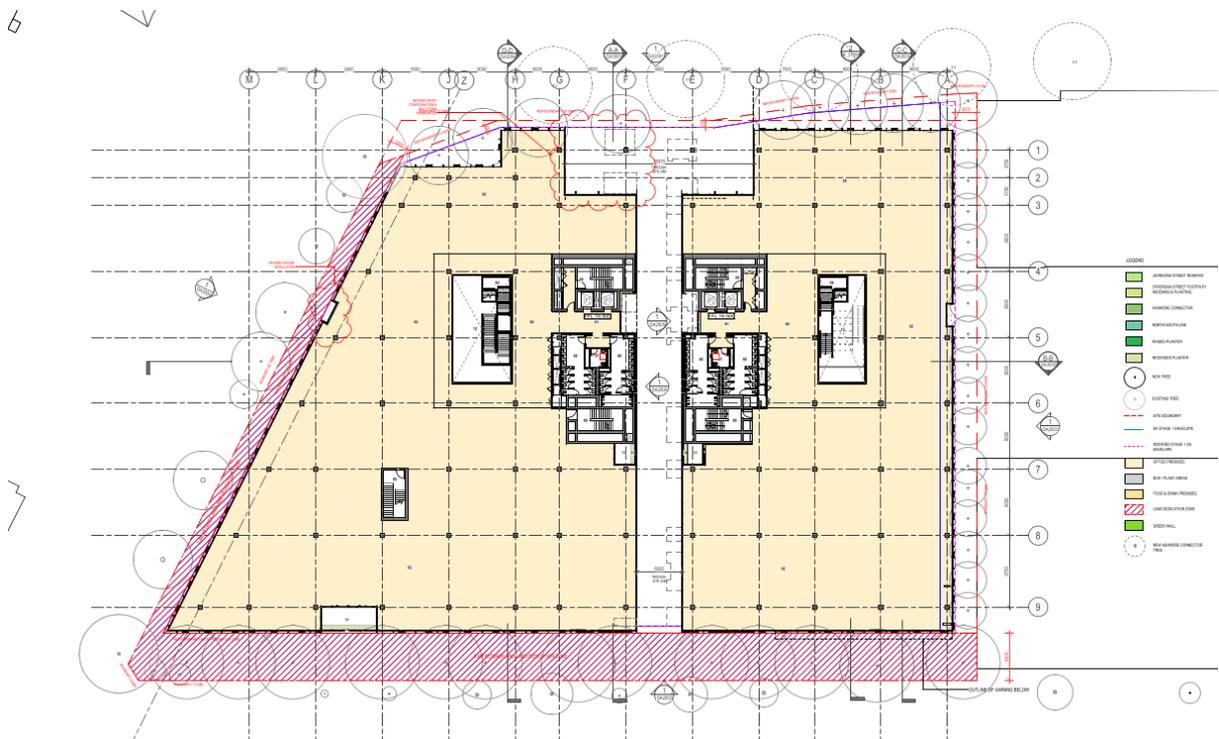


Figure 17: Proposed Level 1 plan









Figure 24: Proposed North (future Geddes Avenue) elevation



Figure 25: Proposed South (Johnston Street) elevation

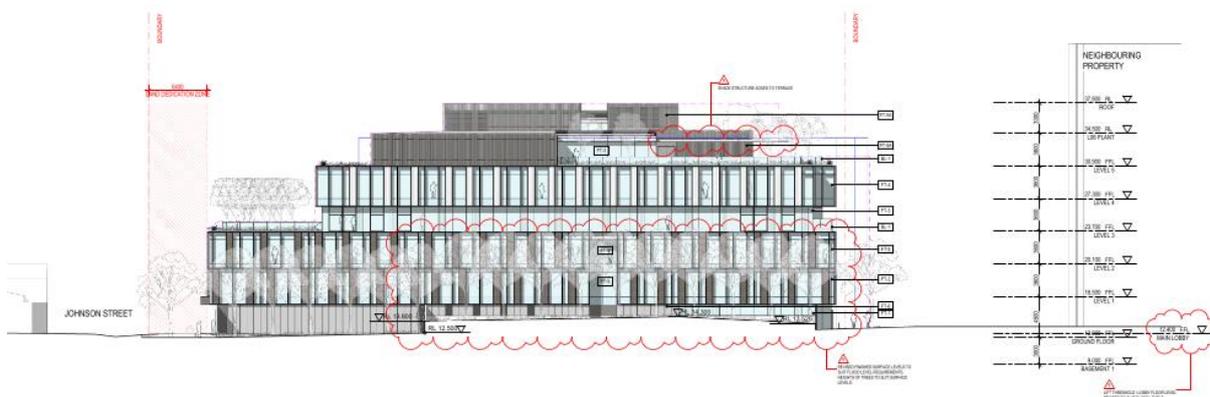


Figure 26: Proposed East elevation

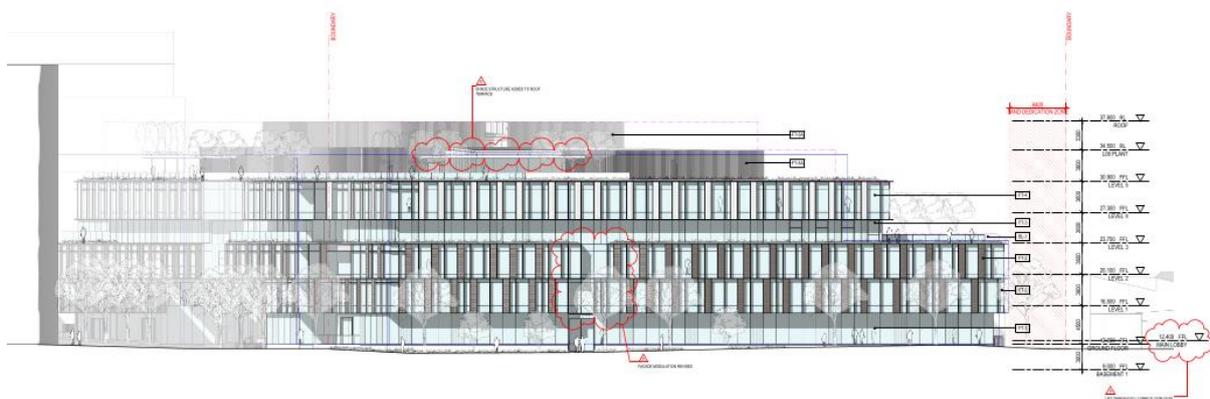
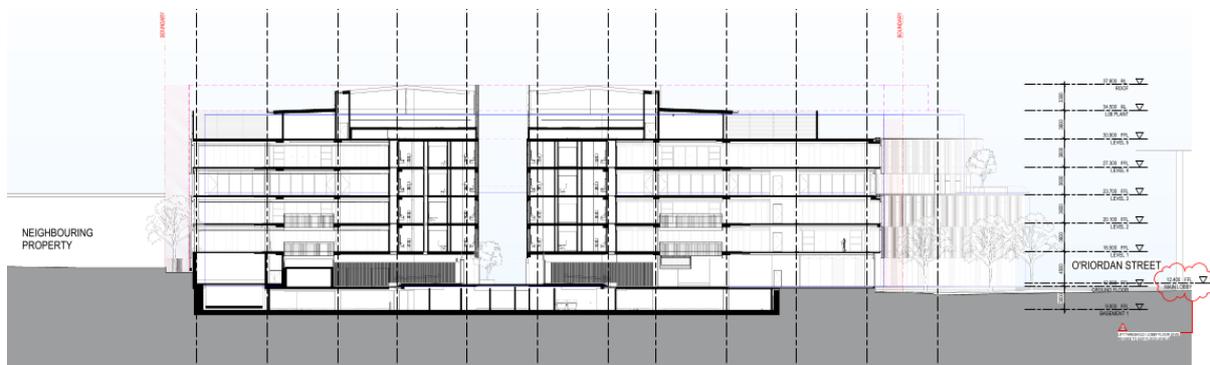


Figure 27: Proposed West (O'Riordan Street) elevation



**Figure 28:** Proposed section through the West building



**Figure 29:** Proposed cross section

## Assessment

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

### Sydney Airport Referral Act 1996

33. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airport is a controlled activity.
34. Schedule 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identified that the site is subject to a prohibition of the construction of buildings more than 50 feet (15.24m) above existing ground level.
35. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
36. Sydney Airport's Manager, Airfield Spatial and Technical Planning, as an authorised person of the CASA, provided approval for the controlled activity on 17 June 2021.

**Water Management Act 2000**

37. The proposed basement level will impact on the groundwater levels within the site. In accordance with Section 4.47 of the EP&A Act, the application was forwarded to Water NSW as an Integrated Development.
38. Water NSW provided General Terms of Approval on 20 September 2021, which form part of the recommended conditions in Attachment A.

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

39. The aim of State Environmental Planning Policy No 55 (SEPP 55) is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
40. Site investigations have identified soil contaminator within imported fill, containing heavy metals, Polyaromatic Hydrocarbons (PAH) and some Total Recoverable Hydrocarbons (TRHs), including in areas to be dedicated to the City as required by the Voluntary Planning Agreement (VAP).
41. A Remediation Action Plan (RAP) accompanied by a letter of interim advice has been submitted with the development application in accordance with Condition 16 of the concept DA - D/2019/686.
42. The preferred strategy detailed within the RAP is to excavate and dispose of the contaminants as part of the excavation for the proposed basement level. The interim advice confirms the above strategy is appropriate.
43. It is noted that the RAP also proposes a contingency plan for capping and containing of contaminants that would require a Long Term Environmental Management Plan. This would veer from the preferred strategy and would need to be approved prior to adoption on site. Recommended conditions require the preferred strategy to be undertaken and that no areas dedicated to the city are to include a LTEMP.
44. The City's Environmental Health Unit has reviewed the information provided, and is satisfied that the site can be made suitable for the proposed development subject to conditions to ensure compliance with the submitted RAP and for Council to be notified should there be any changes to the preferred remediation strategy. The recommended conditions are included in Attachment A.

**State Environmental Planning Policy No 64 - Advertising and Signage**

45. The aim of State Environmental Planning Policy (SEPP) No 64 is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
46. The proposed signage strategy has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 1 is provided in the table below.

47. In addition, the proposed signage strategy has also been considered against the provisions of Sydney DCP 2012 and amendments are recommended to achieve compliance with the relevant provisions to avoid potential visual cluttering, and minimise potential amenity impacts to existing and future neighbouring residential developments. The recommended amendments are discussed further under Section 3.16 of Sydney DCP 2012.

Provision	Compliance	Comment
1. Character of the area	Yes	Subject to the recommended amendments discussed under Section 3.16 of Sydney DCP 2012, the proposed signage strategy is generally consistent with the desired character of the area.
2. Special areas	Yes	The proposed signage included in the strategy, subject to conditions, will not detract from the amenity or visual quality of the locality or the adjoining Hillview Estate heritage conservation area.
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage zones, subject to conditions, are of an appropriate scale, proportion and form and provides a positive contribution to the streetscape, activation of the through-site link, and the setting of the area.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable and the materiality is compatible with the finishes and colours of the building. The final design and materiality of the signage are subject to a separate development application prior to installation as required by a recommended condition.
6. Associated devices and logos	N/A	Not applicable - detailed content of each signage is subject to a separate development application, which is required to be generally consistent with the signage strategy, as amended by recommended conditions.

Provision	Compliance	Comment
7. Illumination	Yes	Conditions of consent are recommended to ensure that the illumination does not result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

48. Subject to the amendments recommended to satisfactorily address Section 3.16 of Sydney DCP 2012, the proposed signage strategy is consistent with the objectives of SEPP 64 as set out in Clause 3(1)(a) and satisfies the assessment criteria specified in Schedule 1.
49. Conditions of consent are also recommended to require all future signage to be consistent with the approved amended signage strategy.

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

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

#### **Clause 45 Determination of development applications – other development**

51. The development site is within the vicinity of overhead powerlines and underground cables. As such, the application was referred to Ausgrid for a period of 21 days.
52. Ausgrid provided a response on 2 July 2021 recommending conditions relating to the protection of Ausgrid assets. The recommended conditions are incorporated into Attachment A.

#### **Clause 101 – Development with frontage to classified road**

53. The application is subject to Clause 101 of the SEPP as the site has frontage to O'Riordan Street which is a classified road. As such, the application was referred to TfNSW.
54. TfNSW provided a response on 17 June 2021 recommending conditions to ensure the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development. The recommended conditions are incorporated into Attachment A.

### **Local Environmental Plans**

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

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

**Part 2 Permitted or prohibited development**

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B7 Business Park zone. The proposed development is defined as a commercial premises and 'food and drink premises, and are permissible with consent in the zone. The proposal generally meets the objectives of the zone.

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings 4.6 Exceptions to development standards	No, but acceptable	<p>A maximum height of 22m is permitted for the northern portion of the site, and a maximum height of 12m is permitted for the southern portion of the site.</p> <p>A maximum height of 25.8m is proposed for the northern portion of the site and a height of 18.9m is proposed for the southern portion of the site.</p> <p>As the proposed development seeks to vary the 'height of buildings' development standard, A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio (FSR) 6.13 End of journey facilities 6.14 Community infrastructure floor space at Green Square	Yes	<p>A base FSR of 1.5:1 is permitted under Clause 4.4.</p> <p>An additional FSR of 1:1 has also been secured for the site under Clause 6.14 through a voluntary planning agreement (VPA/2019/16) to deliver community infrastructure within Green Square. The VPA has been executed.</p> <p>As the proposed design is the product of a competitive design process and exhibits design excellence, a bonus floor space of up to 10% is also available under Clause 6.21(7).</p>

Provision	Compliance	Comment
		<p>Therefore, a maximum FSR of 2.75:1 is available to the proposed development. The proposed development has a compliant FSR of 2.73:1</p> <p>Separate to the maximum FSR above, an additional FSR of up to 0.3:1 is available for the delivery of end of journey facilities in accordance with Clause 6.13. As a stand-alone test, the proposal includes a FSR of 0.087:1 for end of journey facilities and complies.</p>

### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site adjoins the Hillview Estate heritage conservation area, to the south. The conservation area generally comprises low scale fine-grain residential development.</p> <p>The proposed building envelope has been designed to provide a height transition from the greater 10 storey building heights north of the future Geddes Avenue to the 1-2 storey building heights south of Johnson Street. The massing of O'Riordan Street and Johnson Street elevations have also been appropriately modulated to appropriately respond to the finer-grain built form of the conservation area.</p> <p>In addition, the development is set back 6.4m from Johnson Street, which provides addition separation. To the conservation area. The 6.4m setback is required by the executed VPA to be dedicated to the City as a landscaped area</p>

Provision	Compliance	Comment
5.21 Flood planning	Yes	A site-specific flood risk assessment report has been submitted and reviewed by the City's Public Domain Unit, and is considered acceptable. The report demonstrates that the proposed development, as amended, is compliant with the City's Interim Floodplain Management Policy. Recommended conditions to address flood risk have also been included in Attachment A.

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

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	<p>As discussed above, an additional FSR of 0.3:1 is available for the delivery of end of journey facilities, which is an area where showers, change rooms, lockers, and bicycle storage areas are provided together.</p> <p>The proposed development provides end of journey facilities at a convenient and easily accessible location on the ground floor, at the southern end of the pedestrian through-site link. The facilities amount to a compliant stand-alone FSR of 0.087:1.</p>
6.14 Community infrastructure floor space at Green Square	Yes	Voluntary planning agreement (VPA/2019/16) has been executed to secure the additional FSR of 1:1 available. As discussed above, the proposed development complies with the maximum FSR permitted and is consistent with the executed VPA.
Division 4 Design excellence		
6.21 Design excellence	Yes	Clause 6.21(5)(c) requires a competitive design process to be carried out for the site as the site is subject to the requirements of Clause 7.20 as the site area is greater than 5,000m <sup>2</sup> .

Provision	Compliance	Comment
		<p>As detailed in the 'History Relevant to the Development Application' section of this report, a competitive design alternatives process was held in September and October 2020. The design proposal prepared by Hassell was selected as the winning scheme.</p> <p>Pursuant to Clause 6.21(7)(b), where the proposed development is the winning entry of a competitive design process and is considered to exhibit design excellence, up to a further 10% FSR may be awarded.</p> <p>The selection panel, as noted in the Competitive Design Alternatives Report in Attachment D, concluded that they were of the view that the Hassell scheme is able to demonstrate design excellence and is worthy of being awarded the additional FSR subject to future design development.</p> <p>The proposed development, as amended, has retained the important features of the winning scheme, responds to the recommendations of the selection panel where possible, while responding appropriately to the relevant planning controls.</p> <p>The resultant development is compatible with the desired future character of the area, achieves the principles of ecologically sustainable development, and appropriately manages its environmental impacts with regard to the amenity of the surrounding area and future occupants.</p> <p>The overall materiality, facade articulation, and distinctive architectural contribution of the development to the area is considered to exhibit design excellence to satisfy this clause.</p>

## Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	<p>The site is identified as 'Category E' on the Public Transport Accessibility Map.</p> <p>A maximum of 165 car parking spaces are permitted.</p> <p>The proposed seeks 70 car parking spaces, including 5 accessible parking spaces and 2 car share parking spaces, and complies with the relevant development standards.</p>
Division 3 Affordable housing		
7.13 Contribution for the purpose of affordable housing	Yes	<p>The proposed development is subject to the Green Square affordable housing contribution.</p> <p>See further details in the 'Financial Contribution' section below.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 3 and class 5 Acid Sulfate Soils.</p> <p>Evidence has been provided to the satisfaction of the City's Environmental Health Unit to demonstrate that an Acid Sulfate Management plan is not required.</p>
7.16 Airspace operations	Yes	<p>The proposed development will penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport.</p> <p>Sydney Airport's Manager, Airfield Spatial and Technical Planning, as an authorised person of the CASA, has provided approval for the controlled activity.</p>

Provision	Compliance	Comment
7.20 Development requiring or authorising preparation of a development control plan	Yes	The site is subject to a concept approval D/2019/686. Pursuant to Section 4.23 of the Environmental Planning and Assessment Act 1979, the consent approval satisfies this requirement.
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	The site is located within the restricted retail area which prohibits shops or markets with a GFA greater than 1,000m <sup>2</sup> .  The 3 proposed food and drink premise on the ground floor are each no greater than 176m <sup>2</sup> , which complies.
7.25 Sustainable transport of southern employment land	Yes	The site is 200m from Green Square train station and is in close proximity to a number of frequent bus routes along Botany Road.  Additionally, the proposal includes the provision of end of journey facilities at a convenient and accessible location to promote the use of sustainable transport options, and car share parking spaces are also provided in the basement to provide an alternative to the use of private vehicles.  The proposal is also accompanied by a Traffic Report identifying that the transport network is able to accommodate the proposed development.

## Development Control Plans

### Sydney Development Control Plan 2012

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

#### Section 2 – Locality Statements

57. The site is located within the East Alexandria locality. The proposed development is in keeping with the desired character and the design principles of the locality in that it will improve the public domain and pedestrian amenity through dedication of land for footpath widening, provision of an activated and high quality pedestrian through-site link that is publicly accessible at all times, and provide a high density employment generating use in Green Square.

## Section 3 – General Provisions

Provision	Compliance	Comment
<p>3.1 Public Domain Elements</p> <p>3.1.2.2 Through-site links</p>	Yes	<p>As the subject site is greater than 5,000m<sup>2</sup>, a through-site link is recommended despite a specific location not being identified in the through-site link map, or other precinct structure plans in Section 5.2 and Section 5.8 of this DCP.</p> <p>While the through-site link has been relocated to the middle of the site from the eastern boundary as identified in the concept approval, the relocation is considered to achieve a better quality through-site link in terms of activation of its eastern edge, good passive surveillance, and minimising level changes, particularly considering the detail design of the proposed development. See further details in the 'Discussion' section.</p> <p>The proposed through-site link is located on the ground floor, exceeds the 6m minimum width, and appropriately activated by retail tenancies (as food and drink premises), and entrances to end of journey facilities and upper floor commercial offices. The through-site link is open to sky to allow access to natural light, connecting Johnson Street to the future Geddes Avenue with clear line of sight between entrances, and include high-quality finishes, landscaping, and public art.</p> <p>The through-site link will be publicly accessible 24 hours a day. This will be secured by an easement on title.</p>
3.1.5 Public Art	Yes	<p>A public art strategy has been reviewed by the City's Public Art Unit and is considered acceptable. A condition is recommended requiring the final strategy to be submitted for approval.</p>

Provision	Compliance	Comment
3.1.6 Sites greater than 5,000m <sup>2</sup>	Yes	The proposed development provides a continuous deep soil corridor and a pedestrian through-site link to provide breaks between buildings and improve connection between street networks.
3.2. Defining the Public Domain	Yes	The proposal will enhance the public domain by providing retail (food and drink premises) and commercial tenancies to activate the three street frontages, and minimising the streetscape impacts typically associated with building services and vehicular access.
3.2.6 Wind effects	Yes	<p>An initial wind assessment concluded that the through-site link will likely be subjected to adverse wind conditions.</p> <p>A further wind assessment, including the results of a wind tunnel testing, has been provided to demonstrate that the provision of densely foliating vegetation, including small trees at the north and south entrances and green walls in the central atrium, and permeable screens to end of journey facilities will mitigate funnelled winds at ground level to achieve the targeted 'siting' comfort criteria for the through-site link.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>The proposed development has been the subject of a competitive design alternatives process. The selection panel deemed the design proposal of Hassell as the scheme most capable of achieving design excellence. See further detail under the 'Discussion' section on how the proposed development has addressed the selection panel's recommendations.</p> <p>As discussed under Clause 6.21 of the Sydney LEP 2012, the development has been assessed as exhibiting design excellence and has sought to utilise the additional 10% FSR allowed by the controls.</p>

Provision	Compliance	Comment
3.4 Hierarchy of Centres, City South	Yes	<p>The site is located outside of the Green Square Town Centre major retail area.</p> <p>The cumulative proposed indicative size of the ground floor food and drink tenancies is 339m<sup>2</sup>. Each tenancy is classified as 'minor retail development' under this section. Therefore, the proposed development will not undermine the economic viability of the Green Square retail area.</p>
3.5 Urban Ecology	Yes	<p><i>Trees Onsite</i></p> <p>The proposed development will remove 6 trees located on site. These trees are identified as exempt species, and their removal is acceptable.</p> <p><i>Street Tree</i></p> <p>All street trees on O'Riordan Street will be retained and appropriate conditions are recommended to require appropriate protection during the construction of the development.</p> <p>The proposed development will remove one (1) street tree on Johnson Street, being Tree 25, an Evergreen Ash. The removal is necessary to allow for the new vehicular access to the development; as such, it is acceptable subject to replacement planting.</p>
3.6 Ecologically Sustainable Development	Yes	<p>An ESD report has been provided to demonstrate that the proposed development is capable of meeting the performance targets established in the concept approval and the Design Excellence Strategy, being 5.5 stars NABERS energy rating and 5 star Green Star Design + As-Built ratings.</p> <p>The ESD report also outlines a range of water recycling/efficiency measures, including onsite rain/stormwater capture, storage and re-use; and connection to the Green Square town centre precinct-scale recycled water scheme.</p>

Provision	Compliance	Comment
		Conditions are recommended to secure the attainment of these targets and commitments detailed in the ESD report.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under Clause 5.21 of Sydney LEP 2012 above.
3.9 Heritage	Yes	<p>As discussed under Clause 5.10 of Sydney LEP 2012, the site adjoins the Hillview Estate heritage conservation area.</p> <p>The proposed building height and bulk has been appropriately managed to respond to the conservation area, and the development will deliver a landscaped setback of 6.4m to Johnson Street, as required by the executed VPA, which will further improve the proposed development's relationship with the conservation area.</p>
3.11 Transport and Parking	Yes	<p><i>Car Parking</i></p> <p>The proposal seeks 70 car parking spaces, including 2 car share space, and 5 accessible parking spaces.</p> <p><i>Motorcycle Parking</i></p> <p>The proposal provides a compliant number of 9 motorcycle parking spaces.</p> <p><i>Bicycle Parking</i></p> <p>The proposed number of bicycle parking spaces exceeds the minimum recommended and are co-located with other end of journey facilities, at a convenient and accessible location on the ground floor.</p> <p><i>Servicing</i></p> <p>An adequately sized service area is provided on the ground floor, with a turn table to allow all service vehicles to enter and exit the site in a forward direction to maximise pedestrian safety.</p>

Provision	Compliance	Comment
3.12 Accessible Design	Yes	The proposed development provides appropriate access and facilities for persons with disabilities, in accordance with the Building Code of Australia and Disability Discrimination Act 1992.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.16 Signage and Advertising	Partial compliance	<p>A signage strategy is submitted with this application, and is provided in Attachment B4 and the proposed signage are generally in accordance with this section of the DCP, subject to conditions for the following matters:</p> <p>All proposed illuminated signs are only permitted to be illuminated when the associated tenancy is open and trading as per Section 3.16.4 given the proximity to existing and future residential uses.</p> <p>Signage Type B1 to be deleted as dynamic content sign as it is not associated with an approved public artwork, exceeds the maximum height for typical tenancy identification signs, exceeds the maximum size of 1.5sqm, and displays tenancy name and logo despite the columns the signage are located on are not associated with any particular tenancy and detracts from the public nature of the through-site link.</p> <p>Signage Type W1 are to be deleted as they are located within the future public domain, i.e., outside the 'post-dedication' site boundary.</p> <p>Signage Type S2 to occupy no greater than one-third of the glazing panel.</p>

Provision	Compliance	Comment
		<p>Signage Type S4 to be relocated to be adjacent to each tenancy entrance to facilitate wayfinding, and allow only one under-awning sign per tenancy.</p> <p>Signage Type S6 are to be deleted as tenancy identification signs are to be located no higher than 3.5m and is not proposed to be a top of building sign that is allocated to a significant tenant.</p> <p>As the signage strategy only identifies the general location and maximum area for each signage, the installation of each sign is subject to further development consent, and must be generally consistent with the signage strategy, as amended by conditions.</p>

## Section 4 – Development Types

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

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Acceptable	<p>A maximum height of 5 storeys is permitted for the northern portion of the site, and a maximum height of 3 storeys is permitted for the southern portion of the site.</p> <p>The proposed development is generally compliant with the recommended maximum height, presenting a 5 storey bulk in the northern portion and a 3 storey bulk in the southern portion.</p> <p>The additional storeys, being the centrally located plant area on Levels 5 and 6, are significantly set back from the building edges. As such, it will not result in additional height when viewed from the adjoining public domain.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposed floor to floor heights are compliant, and able to delivery acceptable floor to ceiling heights.

Provision	Compliance	Comment
4.2.2 Building setbacks	Yes	The proposed development complies with the setbacks of the approved concept envelope, which includes all relevant public domain setbacks for land dedication.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The shadow diagrams provide in Attachment B3 demonstrate that the proposed development will not result in any additional overshadowing impact to the residential developments located south of Johnson Street compared to the approved concept envelope.</p> <p>In particular, 1 Queen Street, the property most affected by the proposed development, will continue to receive over 2 hours of direct sunlight to greater than 8m<sup>2</sup> of its private open space and to its primary living window as required by this section of the DCP.</p>
4.2.3.5 Landscaping	Yes	A landscape plan has been submitted with the application. Conditions of consent are recommended in Attachment A to require further details to be provided to ensure a high quality outcome.
4.2.3.6 Deep Soil	Partial compliance	<p>A site-specific deep soil requirement is identified in the concept approval.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.3.11 Acoustic privacy	Yes	An acceptable acoustic report has been submitted to outline the parameters for selecting plant equipment and recommend necessary acoustic treatments. Compliance with the acoustic report is required by a recommended condition in Attachment A
4.2.4 Fine grain, architectural diversity and articulation	Yes	The proposed development has provided adequate breaks in building bulk, particularly to the future Geddes Avenue and Johnson Street.

Provision	Compliance	Comment
		The longest elevation of the proposed development, being to O'Riordan Street also incorporates a stepped vertical break that is reinforced with the modulated panel system to provide a fine-grain and highly articulated facade to the public domain.
4.2.7 Heating and cooling infrastructure	Yes	Heating and cooling infrastructure is located in a centralised area on Levels 5 and 6 of each building. The plant area designed as an integral part of the built form and is substantially set back from the edges of the buildings and will not be readily visible from the public domain.

## Section 5 – Specific Areas

### 5.2 Green Square

Provision	Compliance	Comment
5.2.3 Community Infrastructure	Yes	As discussed within this report, has entered into a VPA with the city for the construction and dedication of land for footpath widening and the provision of a monetary contribution for Community infrastructure to be delivered in Green Square in accordance with Clause 6.14 of Sydney LEP 2012.
5.2.7 Stormwater management and waterways	Yes	This issue is discussed under Section 3.7 of the DCP.
5.2.9 Building design	Yes	Building is compatible with the surrounding area and has a cohesive architectural expression.  The proposed vehicular access point is also appropriately located on Johnson Street, which is the street frontage with the least traffic volume.
5.2.10 Setbacks	Yes	The proposal complies with the relevant public domain setbacks required and the further 1m setback from the street frontages to the future Geddes Avenue and Johnson Street.

Provision	Compliance	Comment
		No set back is required to O'Riordan Street, as that street frontage is a nominated active frontage.

## 5.2 Southern Employment Lands

Provision	Compliance	Comment
5.8.2.2 Building Setbacks	Yes	The proposed development complies with the setbacks of the approved concept envelope.
5.8.2.3 Building height	Acceptable	As discussed under Section 4.2.1.1 of the DCP above, the proposed development height is acceptable.
5.8.2.4 Building layout and design	Yes	<p>The circulation core of each building is appropriately located in the centre of the site to minimise building depth from natural light and outlook. The through-site link and the open stairs with skylight further introduce natural light into the centre of the building footprint.</p> <p>The plant rooms on Levels 5 and 6 have been incorporated into the design of the building as a high-quality, integrated rooftop element.</p>
5.8.2.5 Landscape and Fencing	Acceptable	<p>Despite a reduced amount of deep soil area within the 'post-dedication' site area, the proposed development as a whole is capable of providing high quality landscape outcome, including a biodiversity corridor along the eastern boundary, and a future landscaped area within the 6.4m wide land dedication area on Johnson Street.</p> <p>Private communal open spaces are also provided on the roof of Levels 3 and 5. The terraces are provided with appropriate landscaping, shading, paving and other facilities.</p>

Provision	Compliance	Comment
5.8.2.6 Parking access and loading and servicing	Yes	<p>Compared to the reference scheme that supported the concept approval, the proposed development provides a consolidated loading and servicing area that also provides access to basement parking. This significantly reduces the visual impacts to the streetscape and public domain quality of Johnson Street, which has a more sensitive interface with the lower-scale residential area to the south.</p> <p>The loading area is appropriately designed to enable all servicing to occur within the site. All vehicles can also enter and exit the site in a forward direction to maximum safety.</p>
5.8.2.7 Storage areas	Yes	Storage areas have been appropriately provided within the building envelope.
5.8.3 Public Domain 5.8.3.2 Proposed streets and through-site link	Yes	See further details in the 'Discussion' section below.

## Discussion

### Clause 4.6 Request to Vary a Development Standard

58. The site is subject to a maximum 'height of buildings' development standard of 22m in the northern portion and 12m in the southern portion as illustrated in Figure 30 below. The approved concept envelope is also consistent with the development standard.



Figure 30: Maximum building heights of the site and surrounds

- 59. In the northern portion, the proposed development is generally compliant, where the lettable commercial floor space of the buildings has a maximum height of 18.9m. This is exceeded by roof and solar panels of the Level 5 plant rooms, and the Level 6 plant rooms, solar panels, and lift overrun. The maximum height of 25.8m represents a variation of 3.8m, or 17.27 per cent.
- 60. In the southern portion, the roof parapet of Level 2 (the southern edge of the buildings) has a maximum height of 12m. This is exceeded by the raised planters, on the Level 3 south-facing terrace, and the extension of Levels 3 and 4 towards the south. The maximum height of 18.9m represents a variation of 6.9m, or 57.5 per cent.
- 61. The building envelope beyond the maximum heights denoted by a blue line are identified in section as shown in Figure 31 below.

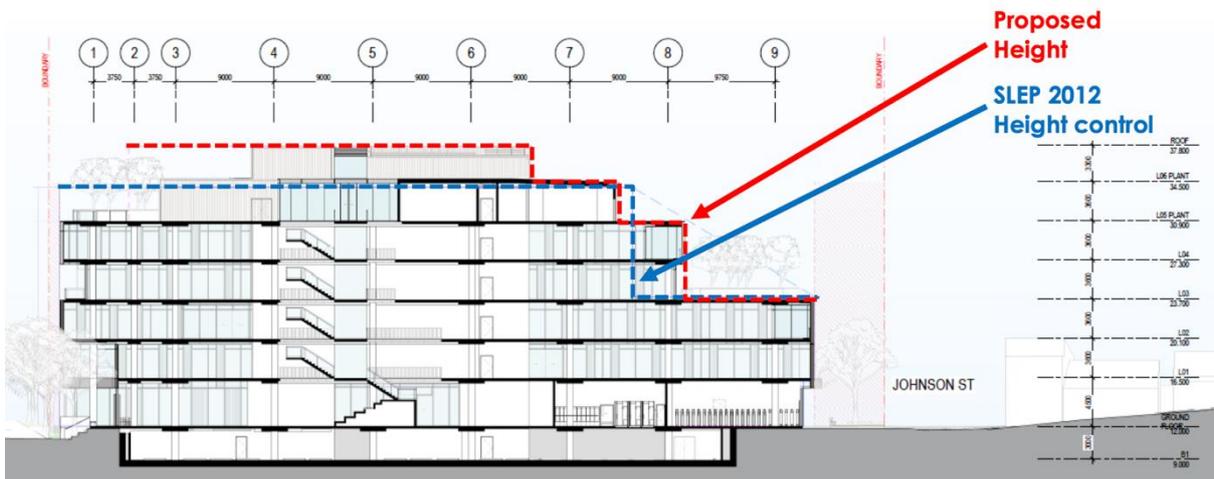


Figure 31: Height exceedance of the proposed development

62. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
63. A copy of the applicant's written request and figures referenced in their statement is provided at Attachment C.

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

64. The applicant seeks to justify the contravention of the 'height of buildings' development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
  - (i) Consistent with *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118, the statement referred to the one of the methods established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard.
  - (ii) A summary of the applicant's assessment against the objectives of the development standard are provided below:

*Objective (a): to ensure the height of development is appropriate to the condition of the site and its context*

- (iii) The height exceedance is limited to the roof of the Level 6 plant room, and the plant room on Level 6, and to facilitate a redistribution of GFA on Levels 3 and 4 to enable a new through-site link to be delivered as part of the proposed development.
- (iv) Despite the non-compliance, the proposed development achieves an appropriate bulk and scale that responds to the existing and future development to the east and south of the site. The development also continues to have negligible amenity impacts on surrounding development located east and south of the site in terms of overshadowing, privacy, or view, compared to the approved envelope. The development also maintains appropriate set back distances from the heritage conservation area to the south.

*Objective (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas*

*Objective (d) to ensure appropriate height transitions from Central Sydney and Green Square Town centre to adjoining areas*

- (v) As shown in Figure 30 above, the Sydney LEP provides a graduation reduction in building heights at a precinct level from the centre of Green Square to the south. The numerical height control, however, is assigned according to arbitrary property boundaries, extending the 33m height to 338 Botany Road adjoining to the east, which has a similar northern alignment with the site. In this context, the proposed variation, which is below the 33m height permitted to properties to the north, is inconsequential and remains consistent with the underlying transition in height from north to south, as envisaged by the development standard.
- (vi) With the exception of the Hillview estate heritage conservation area, the immediate surrounding properties are currently in the planning process. The proposed development is generally in accordance with the controls that apply to the site and surrounding developments, particularly the desired height transition from the north to the south.
- (vii) The areas of non-compliance have significant setbacks from the site boundary to assist in the proposed development reading as a part 3 and part 5 storey building when viewed from the adjoining public domain, as shown in Figure 31 above. This is consistent with the building height recommended by 4.2.1 of Sydney DCP 2012.
- (viii) The significant setbacks also ensure the elements of non-compliance are located within the sun plane of the 22m and 12m permissible height, avoid any solar impacts to the existing buildings within the heritage conservation area to the south, and limiting any overshadowing impacts to the roofs and driveway of the neighbouring properties adjacent to the eastern boundary as shown in the solar analysis included in Attachment B.
- (ix) These setbacks also ensure an appropriate stepped height transition towards the heritage conservation area to the south.

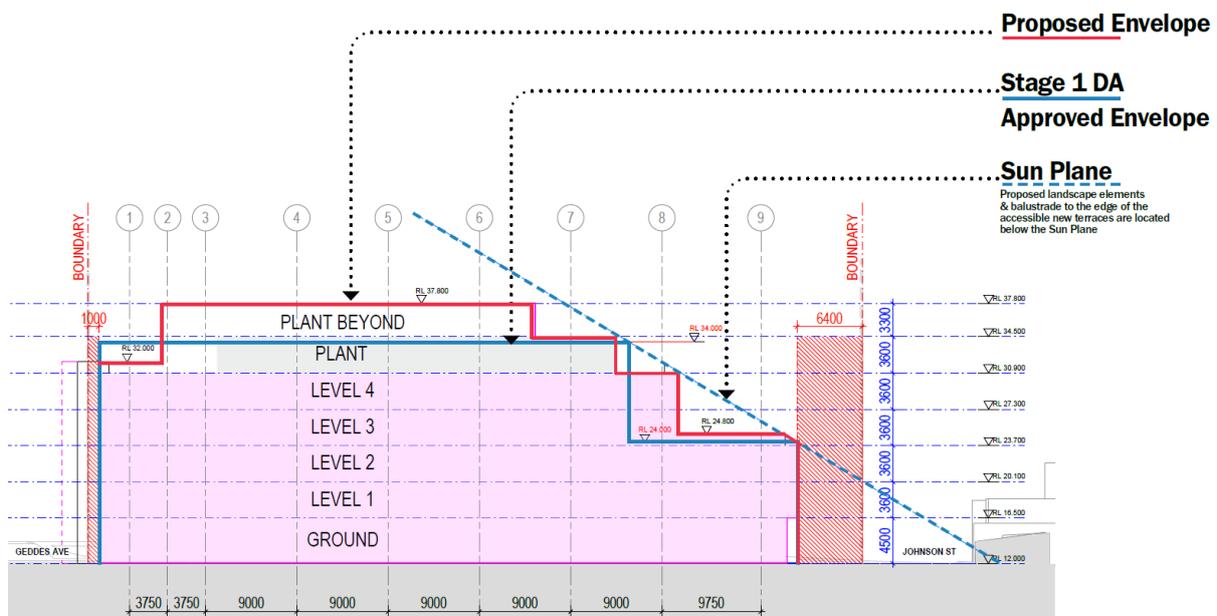


Figure 32: Cross section illustrating sun plane angle north to south

*Objective (c) to promote the sharing of views*

- (x) The site is not located within any significant view corridor, including that of the existing and planned taller developments to the north, or obstruct the general views into and out of the area. The highest elements of the development are also significantly set back to minimise the perceived bulk as viewed from the street.

*Objective (e) in respect to Green Square: (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and (ii) to ensure the built form contributes to the physical definition of the street network and public spaces*

- (xi) The building bulk, particularly any elements of exceedance, sits below a winter sun plane projected from the maximum building height permitted. As such, the proposed development will not create significant additional overshadowing compared to the approved concept envelope. Any additional overshadowing are case only areas not sensitive to overshadowing, including a small portion of Johnson Street, the rooftops and driveways of 340A Botany Road to the east.
  - (xii) The proposed development provides appropriate street walls and podium heights, and positively contributes to the physical definition of the street network and public spaces, particularly by the provision of the through-site link and the dedication of land along O'Riordan Street and Johnson Street.
  - (xiii) The tallest elements of the proposed development are significantly setback from the building edges, allowing the overall building bulk (measured to the parapets of Levels 3 and 5) to be contained within the maximum building heights and provide a generally 3 and 5 storey presentation desired by the planning controls.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) Promotion of site connectivity through GFA redistribution

While no specific location is identified for a through-site link under Sydney DCP 2012, a landscaped link was recommended along the eastern boundary in the concept approval. Design refinement during the design competition resulted in the relocation of the through-site link centrally within the site to improve site permeability, accessibility and amenity. This centralised through-site link is now provided in conjunction with a landscaped setback along the eastern boundary, which compromises the ability to achieve the development potential of the site within the approved concept envelope. The proposed variations are a consequence of the redistribution of GFA and servicing.

(ii) Overshadowing and amenity

The proposed development has been designed to minimise any unreasonable visual, privacy or solar impacts on surrounding developments. As demonstrated in the submitted architectural plans and Statement of Environment Effects, the numerical non-compliance will not create any unreasonable impacts on surrounding development compared to the approved envelope.

(iii) Built form considerations

Despite the numerical non-compliances, the proposed development remains appropriate for its context in that:

- It will be treated with appropriate materials and finishes to ensure they are recessive in nature and minimise their extent of visibility from the public domain, particularly the Levels 5 and 6 plant rooms.
- It will not unreasonably impact upon the character of the surrounding locality as there are new and recently completed developments within close proximity which exhibit heights greater than the proposed development. The development also maintains the appropriate height transitions to the heritage conservation area to the south with the volume's tiered nature aligned with the available solar access plane, naturally mitigating the impact of the built form overshadowing the neighbours.
- The proposed development has evolved from a design competition and exercises that analysed the surrounding sites and provided an outcome that reflects a consistent built form outcome, that does not reasonably impact on the adjoining sites, particularly with respect to streetscape character.

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

65. Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
- (c) The proposed development will be in the public interest because it is consistent with the objectives of the development standard in question;
- (d) The proposed development will be in the public interest because it is consistent with the objectives of the zone in which the development is proposed to be carried out.

66. The four matters are addressed individually below.

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

- (a) A detailed discussion of the applicant's submission with regard to the objectives of the development standard is provided above. The written request has adequately demonstrated that the proposed development meets the objectives of the 'height of buildings' development standard despite the non-compliance with the numerical standard. As such, to the extent of the variation proposed, compliance with the development standard is unreasonable and unnecessary.

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

- (b) A detailed discussion of the applicant's submission with regard to environmental planning grounds to justify contravening the development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site to justify the extent of non-compliance with the 'height of buildings' development standard. In this instance, the elements of non-compliance are required to achieve high residential amenity for the development and are appropriately located to fit within the context of the immediate surroundings. The written request has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

*Is the development in the public interest by being consistent with the objectives of the development standard in question?*

- (c) With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied. As discussed above, the development is consistent with the objectives of Clause 4.3 despite the non-compliance with the numerical standard and is therefore in the public interest.

*Is the development in the public interest by being consistent with the objectives of the zone in which the development is proposed to be carried out?*

- (d) Similarly, the public interest is considered protected where a development is consistent with the objectives of the B7 Business Park zone, in which the development is proposed to be carried out. The objectives of the zone are discussed below:

*First objective to provide a range of office and light industrial uses.*

- (e) The development provides A-grade commercial office space and ground floor food and drink premises with both horizontal and vertical flexibility for staging and tenancy occupation that allows for appropriate response to the changing requirements of the market. The development supports employment-generating uses in close proximity to public transport, future dedicated cycleway on Geddes Avenue, and existing nearby centres, including Green Square.

*Second objective to encourage employment opportunities.*

- (f) The development itself will generate employment opportunities during and after construction. The increased workers population generated by the development will also provide addition demand for services within the locality to further encourage employment opportunities.

*Third objective to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area*

- (g) Ground floor food and drink tenancies are provided as part of the proposed development that will provide services to partly address the day to day needs of workers in the area. The site is also within close proximity to Green Square Town Centre, and the increased workers population will provide additional demand services that supports the viability of the town centre.
- (h) The site also provides a compliant amount of communal roof terraces for its tenants, and a well-designed, highly accessible end of journey facilities that include a wellness centre along the through-site link for its tenants.

*Fourth objective to ensure uses support the viability of centres*

- (i) The development will provide additional retail and commercial floor space to provide employment opportunities to support nearby centres, including Green Square.

#### Conclusion

- 67. For the reasons provided above the requested variation to the 'height of buildings' development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of 'height of buildings' development standard and the B7 Business Park zone.

#### Consistency with the Concept Approval

- 68. Pursuant to Section 4.24 of the Environmental Planning and Assessment Act 1979, where a concept approval remains in force, the determination of any further DA in respect to that site cannot be inconsistent with the concept approval.
- 69. The concept approval relating to this proposal is D/2019/686. A Section 4.55(2) modification application has been submitted to modify the concept approval to ensure consistency with the subject detailed design DA. These modifications largely relate to height and building envelope and has been assessed as acceptable as outlined in the assessment report for the modification application submitted concurrently with this application.
- 70. The subject application is assessed on the basis that the modification application has been approved. As outlined below, the proposed development is consistent with the key conditions imposed by the concept approval (as amended).

- (a) Condition 2 Approve Development

The proposed development is consistent with the approved plans in the concept approval, as amended by D/2019/686/A.

## (b) Condition 4 Detailed Design

(i) *Deep Soil*

The detailed design complies with the deep soil requirements of the concept approval, as amended by D/2019/686/A.

(ii) *All elevations should be designed with at least two distinct building components, each with its own architectural character.*

All elevations have been designed with at least two distinct components, particularly on the O'Riordan Street elevation.

(iii) *North Elevation Street Wall Alignment*

The proposed street wall alignment is acceptable.

(iv) *Facade activation*

The facade design is consistent with the competitive design scheme, being appropriately articulated with modular panel system with recessed depth and vertical blades. A condition is also recommended for detailed 1:20 drawings to be provided to secure the high-quality finishes demonstrated in the Design Report prepared by Hassell.

(v) *Blank walls treatment*

The proposed design has minimised the amount of blank walls to the three street frontages. All blank walls are associated with utilities necessary to the development and are provided with high-quality facade treatment. A condition is also recommended for detailed 1:20 drawings to be provided to secure the high-quality finishes demonstrated in the Design Report prepared by Hassell.

(vi) *Substation to be fully integrated into the fabric of the building*

A substation has been fully integrated into the East building, adjacent to the vehicular access point on Johnson Street.

(vii) *All roof level services are to be concealed*

The proposed plant area on Levels 5 and 6 are fully concealed and has been integrated with the overall design as a recessive element.

(viii) *Floor to Floor heights to comply with the DCP*

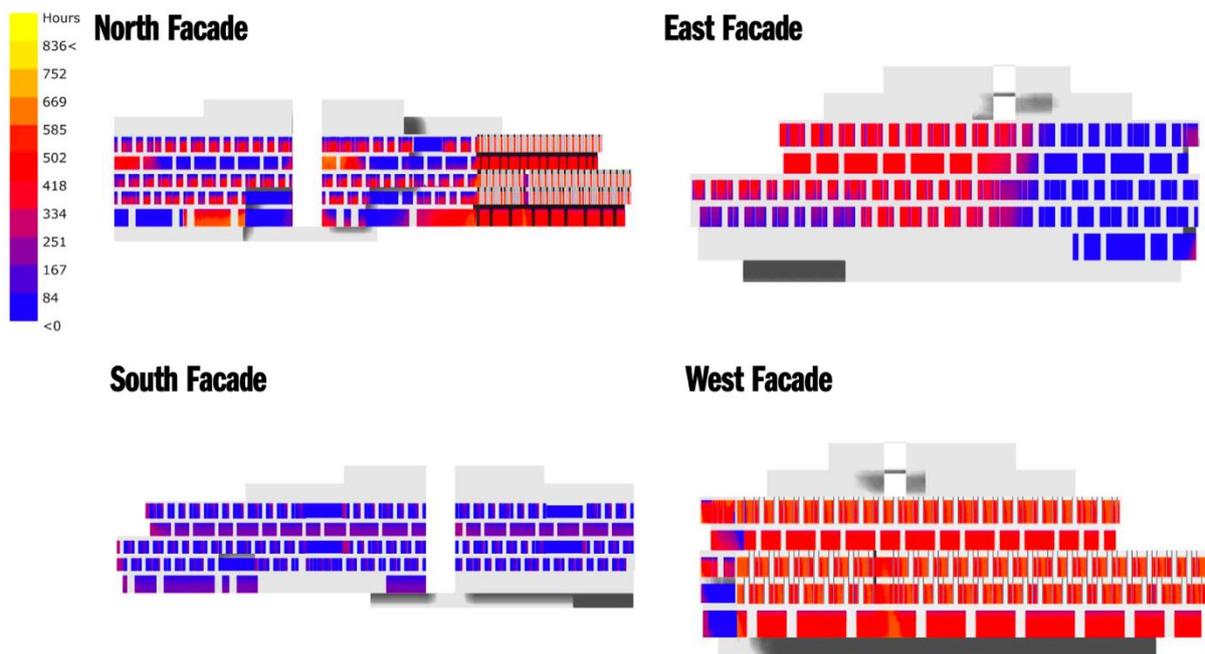
As discussed above, the proposed floor to floor heights comply with Sydney DCP 2012.

(ix) *Provision of green walls and roofs should be explored*

The proposed development includes four (4) green walls to the central atrium and additional landscaping on the roof terraces on Levels 3 and 5.

- (x) *External sun shading, including passive shading, to any glazed elevations.*

Detailed analysis has been provided in the amended Design Report prepared by Hassell in response to the Design Advisory Panel recommending that additional information be provided to demonstrate achievement of the 80% passive shading target adopted by the competitive design scheme. The analysis demonstrates that the proposed design provides acceptable passive shading to the North, East, and South elevations, and overall exceeds the deemed-to-satisfy requirements of Section J of the Building Code of Australia. The analysis, however, also demonstrates that only 86% of the proposed glazed area achieves the passive shading criteria, with the shortfall contributed primarily by the West elevation, as shown below:



**Figure 33:** Sun exposure diagrams for the summer months between 8am and 6pm

To address the Design Advisory Panel's recommendation, retain the environmental performance of the winning scheme, to protect occupants from excessive radiant temperature, and reduce the future operational costs of the building, a condition is recommended in Attachment A that requires further passive shading treatments to the West elevation be provided to the satisfaction of Council. A separate condition is also recommended to ensure all glazing (except spandrel panels) remain clear, non-coloured, non-tinted and non-reflective.

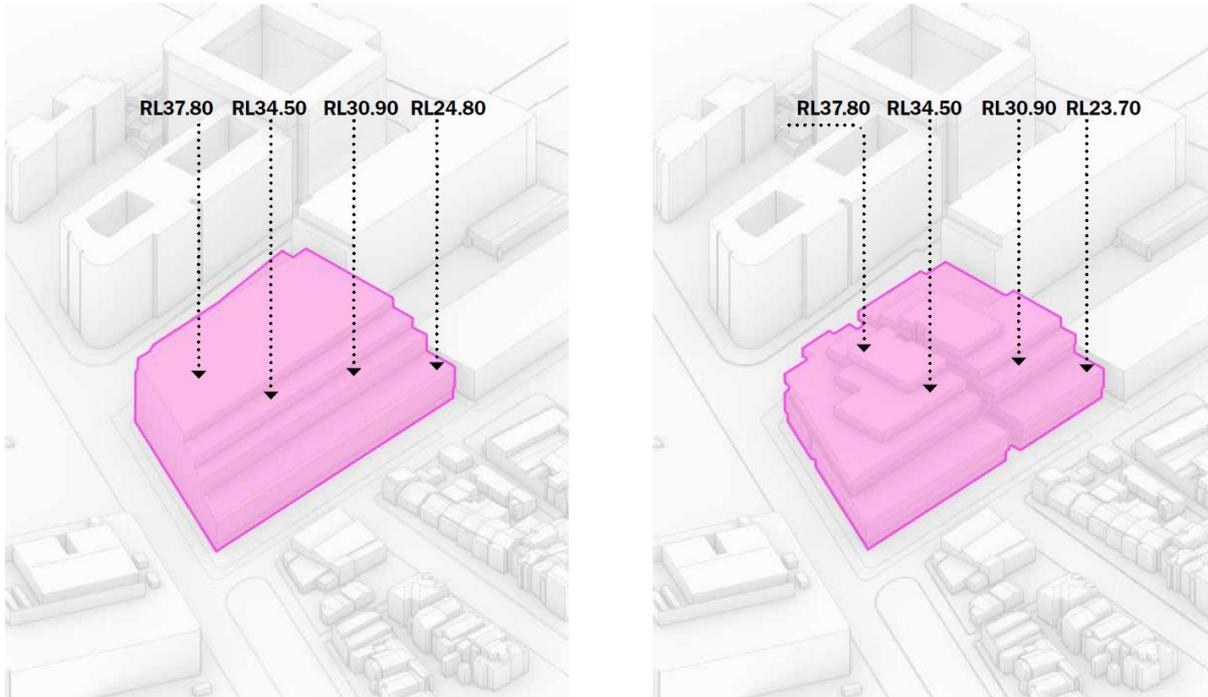
- (xi) *Appropriate privacy treatment on the eastern elevation to protect the amenity of any future residential developments to the east*

This condition is added as part of the concurrent modification application to reflect that the adjoining 338 Botany Road to the east has received a concept approval for a mixed use development that includes an affordable housing component, which requires future developments if the subject site to incorporate appropriate privacy treatment to the common boundary.

As discussed below, conditions are recommended in Attachment A to address the potential privacy impacts of the proposed development.

(c) Condition 5 Building Envelope

The proposed development fits entirely within the building envelope of the concept approval, as amended by D/2019/686/A, as illustrated below.



**Figure 34:** Comparison of the concept envelope as amended by D/2019/686/A (left) and the proposed massing (right) within the context of the surroundings

(d) Condition 6 Floor Space Ratio

The proposed development complies with the maximum FSR as outlined in Clauses 4.4, 6.13, 6.14 and 6.21 of Sydney LEP 2012.

(e) Condition 7 Building Height

The detailed design complies with the building height of the concept approval, as amended by D/2019/686/A.

(f) Condition 9 Competitive Design Process

Following the determination of the concept approval, the applicant undertook a competitive design alternative process in September and October 2020. The proposed scheme by Hassell was selected as the winning scheme.

Condition 9 requires the proposal to exhibit design excellence, and the selection panel were of the opinion that the Hassell scheme was capable of achieving design excellence, subject to satisfactorily addressing a series of recommendations, which are discussed further in the 'Competitive Design Alternative Process' section below.

(g) Condition 10 Ecologically sustainable development

As discussed under Section 3.6 of Sydney DCP 2012 above, an ESD report has been provided to demonstrate that the proposed development is capable of meeting the performance targets established in the concept approval and the Design Excellence Strategy, and will include a range of water recycling/efficiency measures. Conditions are recommended to secure the attainment of the targets and commitments detailed in the ESD report.

(h) Condition 11 Public Art

As discussed above, an acceptable public art plan has been submitted with this application and appropriate condition of consent has been recommended for the delivery of public art as part of the proposed development

**Competitive Design Alternative Process**

- 71. Following the approval of the concept approval the applicant commissioned a competitive design alternative process for the site who stop this is discussed in further detail under history relevant to the development application section.
- 72. The selection panel selected the proposal presented by Hassell as the winning scheme. In the opinion of the panel this scheme was most capable of achieving design excellence, subject to the retention of common an improvement on, a number of key design aspects.
- 73. The table below details how the amended design responds to the key recommendations made by the selection panel and retains the key design integrity and key aspects of the winning scheme.

Recommendations	Comment
Further development of the full site link to meet the objectives of the DCP is required. If the location of the through-site link is through the middle of the site, it is to present as a welcoming, publicly accessible space at agreed times. Be open to the sky and natural light as much as practicable. Appropriately activated along its edges to meets CPTED criteria.	The design of the through-site link achieves the objectives of the DCP, with a minimum width of 6m that is completely open to sky, and appropriately activated on the ground plane.
The Panel were not completely convinced of the quantity and location of deep soil planting proposed. It was noted that the extent of deep soils, specifically in regard to penetration to the basement level be revisited as the design progresses.	The design has been further developed to ensure all deep soil area is unencumbered by structures above or below. While the deep soil area proposed within the 'post-dedication' site area is reduced, reduction of vehicular access point compared to the reference scheme for the concept approval provides additional area for deep soil within the land dedication area on Johnson Street.

Recommendations	Comment
	The basement footprint as also be setback from the O'Riordan Street boundary to minimise impacts to the roots of existing street trees.
Resolution of the level changes and tree plantings at the north-eastern corner frontage to Geddes Ave.	The level changes at the north-eastern corner of the site have been improved, addressing flood risks while providing a visual connection between the ground floor food and drink tenancy and the future Geddes Avenue.
Rationalisation of the number of lift cores and the configuration of atria consider exploration of one larger centralised atrium with linear arcade-line connection to the north and south street frontages. The interconnecting atrium staircases between ground and roof levels are supported.	The number of lift cores and the alignment of the through-site link have been rationalised. Upper level connections between the East and West buildings have been removed to ensure the through-site link to be completely open to sky and maximise natural light in accordance with Sydney DCP 2012.
Resolution of fire engineering requirements in regard to open atria.	The proposed ground floor plane and through-site link have been simplified and is capable of complying with the relevant fire safety requirements.
Design develop all glazed roof elements to ensure an appropriate balance between balanced natural lighting, solar protection and thermal heat.	Skylight to the central atrium of each building has been retained to maximise natural light.
Further exploration and design development of terrace areas to ensure they are functional and fit for purpose.	Appropriate shading and landscaping have been provided to the terraces, particularly the north-facing Level 5 terrace.
The ground floor landscaped eastern set back (through-site link) requires further clarification of its intent through design development. Is it accessible to the public or is a private green space for tenants?	It has been clarified that the continuous tips of the area along the eastern boundary will not be accessible to the public but designed as biodiversity corridor that connects to the landscaped area on Johnson Street and McConville Reserve.

Recommendations	Comment
Environmental initiatives such as optimization of carbon capture and the strategic use of CLT construction as a method of reducing piling and structural weight should be resolved in the next phase of design development.	An ESD report has been provided to demonstrate that the proposed development can achieve the relevant performance targets and will include a series of water recycling/efficiency measures.
Ensure that appropriate elevator access is provided to level 5 communal roof terraces.	Equitable access is now provided to the Level 5 terraces.
Improve the scheme's efficiency (GBA/NLA and GFA/NLA) to ensure commercial feasibility whilst maintaining the merits noted above.	The proposed efficiency has been improved whilst maintaining the key merits of the competitive design scheme.
The scheme is reviewed with the proponent to ensure that it is more consistent with the budget identified in the competitive process brief. In undertaking this review, the overall design quality and intent of the scheme must be retained to address both the panel's recommendations and to Council's satisfaction.	The proposed development has retained the overall design quality and intent of the competitive design scheme, and appropriately responded to the relevant issues raised by the City's internal units. The proposed development, for reasons outlined in this report, is acceptable subject to the recommended conditions in Attachment A.

74. Section 4.4.2 of the Competitive Design Alternatives Report in Attachment D also noted that "The Panel is yet to be convinced of the functionality of the shading to the western elevation facade. The selection panel recommends that further study and design resolution be undertaken appropriate to the elevation, orientation and degree of required shading". As discussed above, additional analysis has been submitted to clarify the effectiveness of the proposed passive shading strategy, and conditions are recommended that additional passive shading treatment be provided to the western elevation to the satisfaction of Council without replacing the currently proposed clear, non-coloured, non-tinted and non-reflective glazing.
75. In light of the above, the proposal is considered to satisfy the provisions of Clause 6.21 of Sydney LEP 2012 and accordingly is eligible for 10% additional floor space.

#### Design Advisory Panel

76. The application was presented to the City's Design Advisory Panel on 15 July 2021. The panel made a number of recommendations that were put to the applicant.
77. The proposal has been amended, and additional information provided, to address the recommendations of the panel. The panel's recommendations and the design response included in the amended design are discussed below:

Recommendations	Comment
<p>The Panel noted that the competition scheme was stronger, with the rhythm and modulation of the built form on O'Riordan Street no longer evident in the current scheme. The provision of shading appears to have also decreased. The panel believes the strengths of the competition scheme should be reinstated, particularly in moderating the scale and length of the built form.</p>	<p>The proposed development has retained the transparent ground floor and Level 3 as the recessive elements of the building facades, particularly on O'Riordan Street, while Levels 1 and 2 are expressed as a singular articulated form and Level 4 as a separate singular form on top. The proposed development has also been amended to reinstate the stepped vertical break in the O'Riordan Street facade.</p> <p>The facades of Levels 1, 2 and 4 are also further articulated by the modulated panel system with recessed depth and vertical blades.</p> <p>As amended, the facade design is consistent with the competitive design scheme.</p>
<p>There needs to be clarification of the materials and details of the facade. It is understood that at competition scheme, proposed 80% solar protection in summer. The level of protection of the current scheme is unclear there. Solar protection should not be reduced.</p>	<p>A material and finishes schedule has been provided, including the specifications of glazing selection. The schedule has been reviewed by City's Urban Design Unit and is considered acceptable.</p> <p>Additional solar insolation analysis has also been submitted. As discussed above, a condition is recommended that further passive shading be provided to the western façade to satisfactory address the Design Advisory Panel's and the design competition Selection Panel's recommendations.</p>
<p>The Panel recommended that the mid-block public through-site link on the eastern boundary should be unambiguously public that reads as a link for the full 5 metres with landscaping, good amenity and meeting of CPTED criteria.</p>	<p>While the panel's recommendation is to reinstate the through-site link along the site's eastern boundary, the location between the 2 buildings proposed by the winning scheme and the amended proposed development would achieve a better outcome, particularly given the interface with the 3 neighbouring properties to the east. See further discussion below.</p>

Recommendations	Comment
<p>The central link within the proposal should be generally open to sky and surface and atrium to allow more light into the offices. With such deep floorplates with unlimited access to daylight, the central link also plays an important role of breaking the visual mass of the building.</p>	<p>The through-site link and the central atrium void within each building provides access to natural light to the centre of the building footprint. The through-site link, also assist in breaking the visual mass of the building.</p>
<p>The ground floor on Johnson Street, the central link, and the northwest corner of the scheme appears to be less activated and open compared to the competition scheme. The activation and openness of the competition scheme should be reinstated.</p>	<p>The proposed development has been amended to better activate through-site link and the northwest corner of the site, while the entrance of the through-site link on Johnson Street has been widened, with changes to the layout of end of journey facilities and ground floor commercial/retail tenancies to activate the southwest corner and the entrance of the through-site link.</p> <p>The proposed development's Johnson Street interface is a significant improvement compared to the reference scheme of the concept approval and maintains the key merits of the competitive design scheme.</p>
<p>The interface between the retail on Gaddes Ave and the street is compromised by ramps and level changes and should be reviewed.</p>	<p>The level changes along Gaddis Avenue has been addressed and improved.</p>
<p>The overall amenity of the proposal needs to be reviewed to include the amenity of the offices, the provision of deep soil, functional and sustainable landscape terraces, and viability of the street tree planting.</p>	<p>The proposed development has been amended to address concerns raised by the panel and City's internal unit. On balance, it achieves an acceptable level of amenity, subject to recommended conditions in Attachment A.</p>

### Location of the through-site link

78. 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*.

79. Under the concept approval, a pedestrian through-site link is located along the site's eastern boundary and co-located with deep soil area, with an overall width of 5m. This concept is illustrated in an analysis of the concept DA reference scheme, as shown in Figure 35 below.
80. However, while the eastern boundary location breaks up the street large block bounded by O'Riordan Street, Johnson Street, Botany Road, and the future Geddes Avenue, it significantly limits the opportunities to activate a through-site link, particularly at the southern end, given that area of the site would likely be burdened by services, loading and vehicular access.
81. The eastern boundary location limits the opportunity to activate the eastern edge of the through-site link because:
  - (a) the concept approval and subsequent design competition winning scheme for 338 Botany Road only considers the eastern side as a non-habitable interface to existing businesses; and the design scheme submitted for pre-lodgement advice proposed 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 eastern boundary to the future Geddes Avenue;
  - (b) the neighbouring site to the east at 340 Botany Road is currently used as a construction equipment hire business (Coates Hire) and no development is proposed that would significantly improve the contribution to the quality of a through-site link and it's CPTED performance; 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.

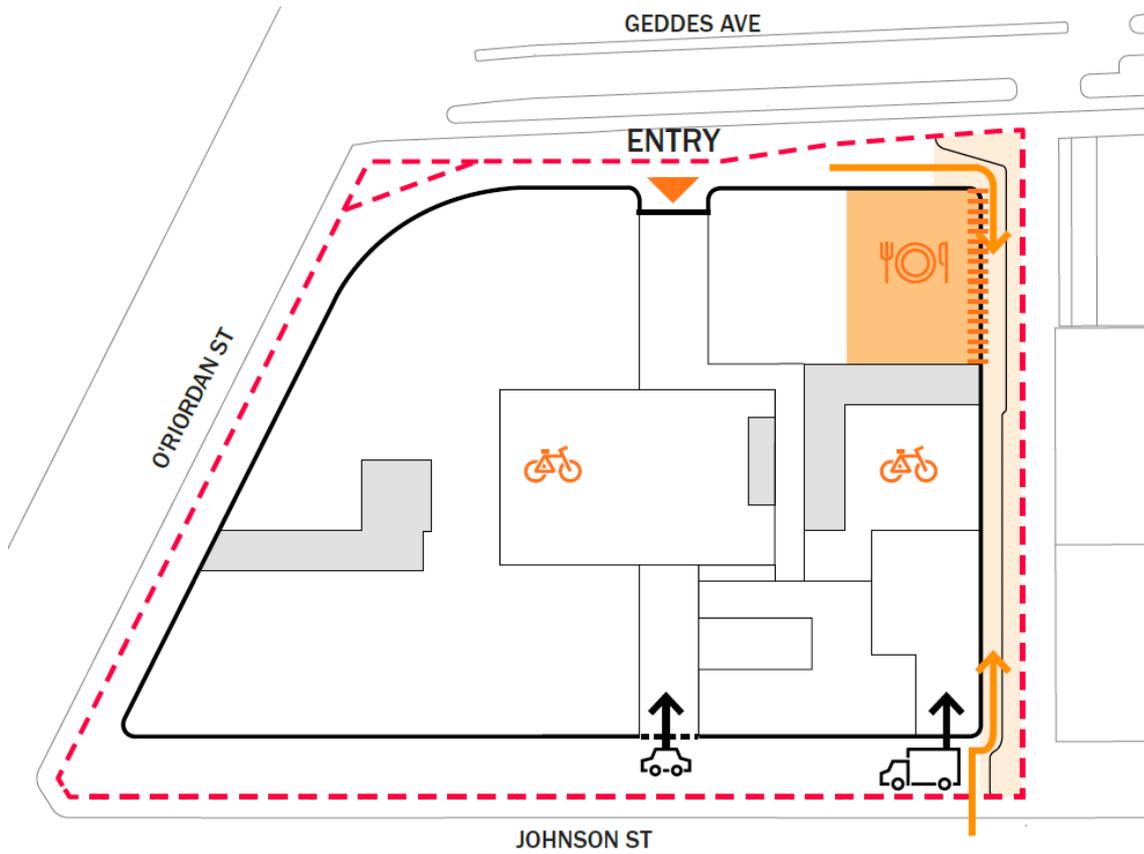


Figure 35: Analysis of the ground floor of the concept DA reference scheme

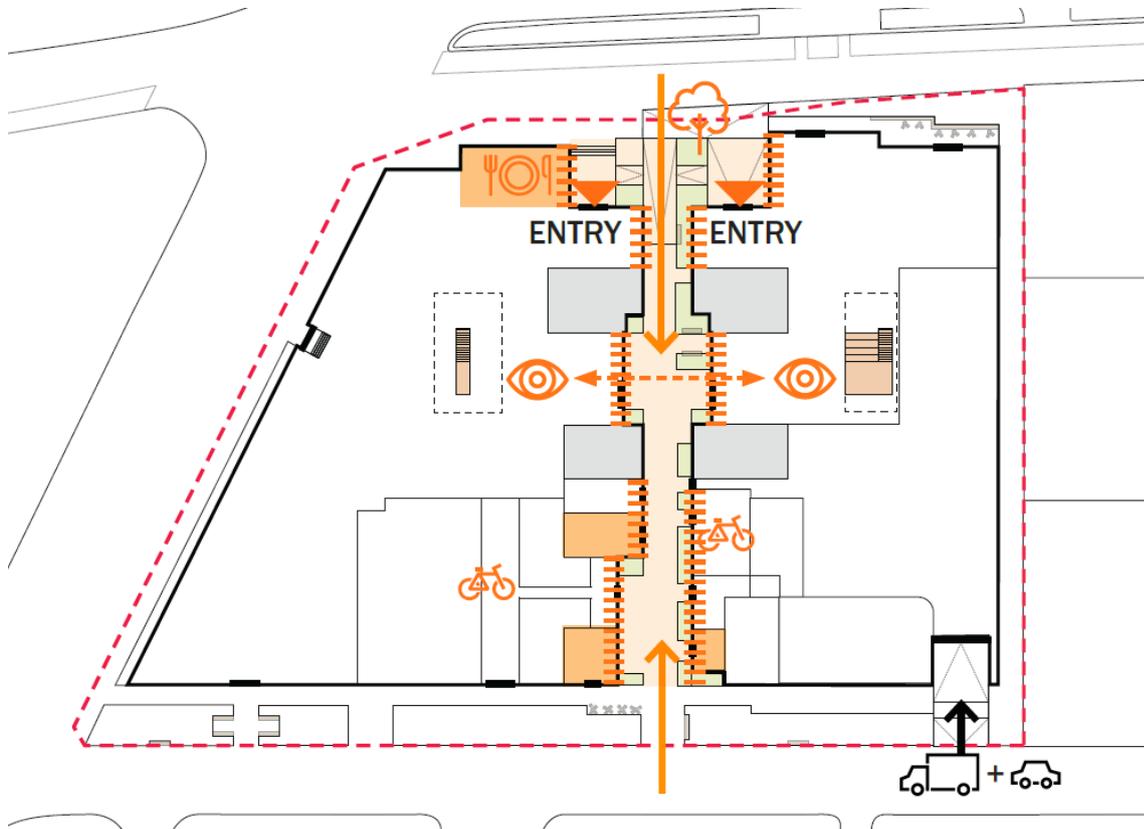


Figure 36: Analysis of the proposed ground floor by Hassell

82. In comparison, the proposed central location, as shown in Figure 36 above, provides greater opportunity to ensure activation of the through-site link, ensure good passive surveillance (CPTED) particularly during work hours, minimises level changes to be fully accessible without the cluttering effect of safety features, and ensure that the through-site link will be well-maintained at all times. The proposed design, as amended, addresses the competition selection panel's consideration and is more consistent with the relevant provisions of Sydney DCP 2012 in that:
- (a) it achieves the minimum 6m width required by Sections 5.2.5.2 and 5.8.3.2 of the DCP secured by an easement, like a new urban laneway;
  - (b) it is completely open to sky without bridges to allow northern sun and continuous access to natural light;
  - (c) the alignment provides a clear line of sight between the north and south entrances;
  - (d) both entrances are widened to at least 9m to be generous and welcoming;
  - (e) both edges are appropriately activated by retail tenancies (as food and drink premise), communal wellness centres, and entrances to end of journey facilities and the upper floor commercial offices, which is more consistent with Section 5.2.5.2 of the DCP, which explicitly states that blank wall facing a through-site link is not acceptable;
  - (f) landscaping is also incorporated, particularly in the central atrium, which aid in mitigating the likely wind impacts;
  - (g) the through-site link, as demonstrated by a wind tunnel testing, can achieve a 'siting' comfort criteria;
  - (h) the level changes along the through-site link has been minimised while addressing flood risks and will be fully accessible; and
  - (i) the proposed signage strategy and public art strategy also provide additional opportunities to further activate the length of the through-site link.
83. On balance, the proposed central location is appropriate particularly considering the detail design of the proposed development. The through-site link will be publicly accessible 24 hours a day, which will be secured by an easement on title as required by a recommended condition in Attachment A.

### **Provision of Deep Soil**

84. Section 5.8.2.5.1 of the Sydney DCP 2012 stipulates 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.
85. As part of the 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 concept approval allows a reduced deep soil requirement of 296.7m<sup>2</sup>, or 4.5% of the 'post-dedication' site area, on the basis that the subject site as a whole will provide approximately 982.7m<sup>2</sup> (15%) as deep soil.

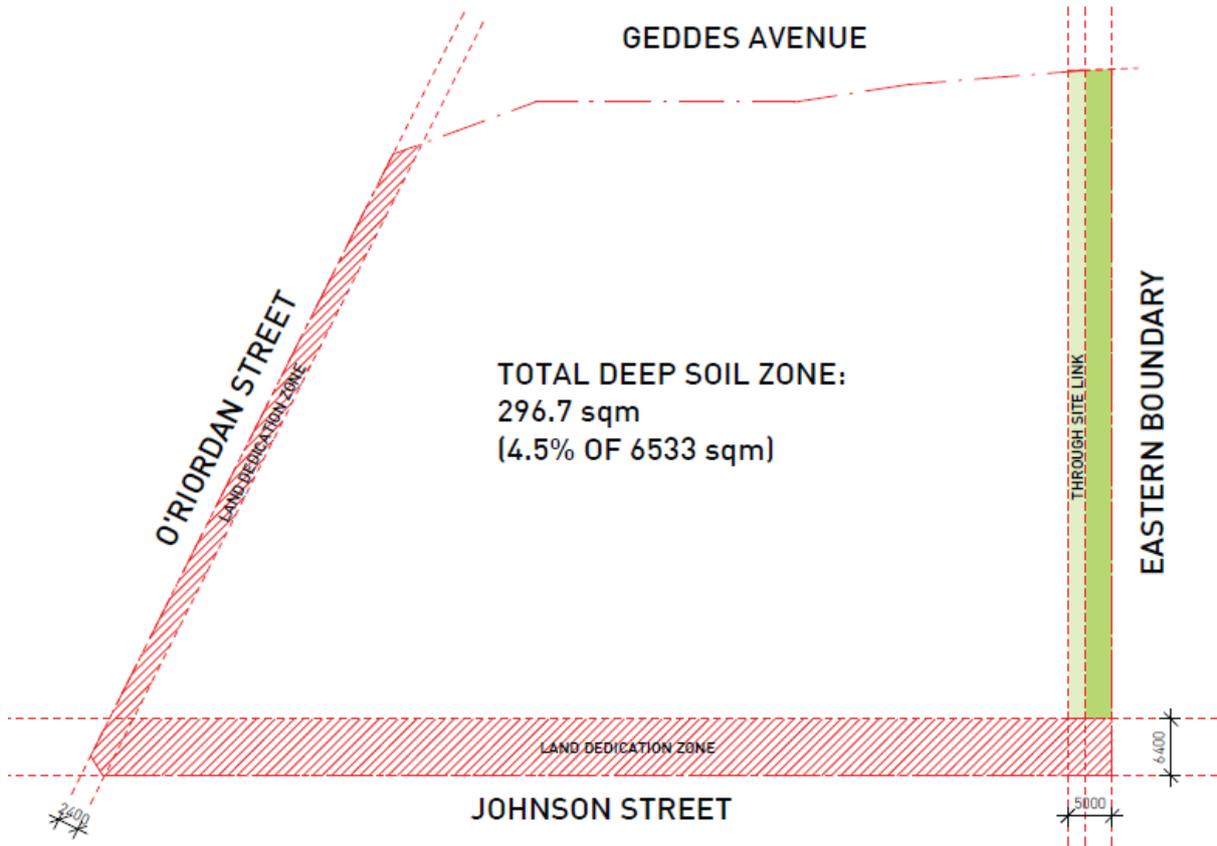


Figure 37: Approved deep soil zone plan (shaded green)

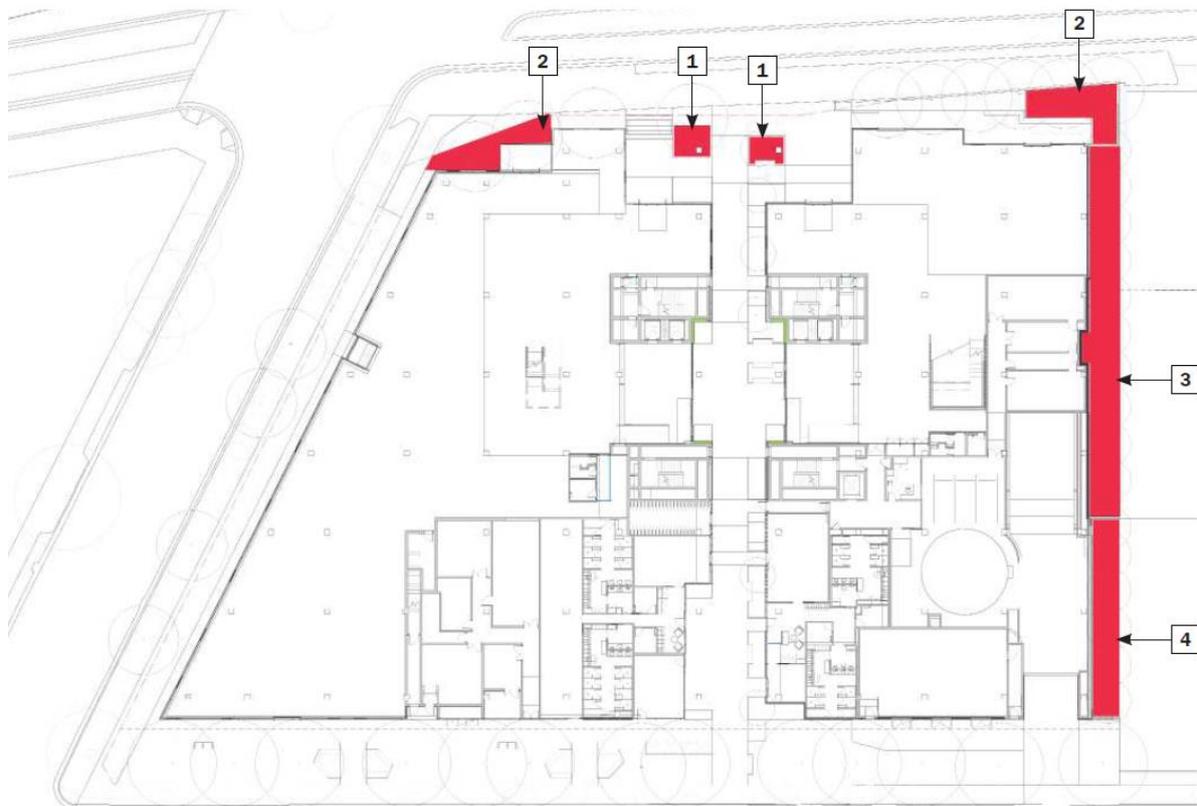
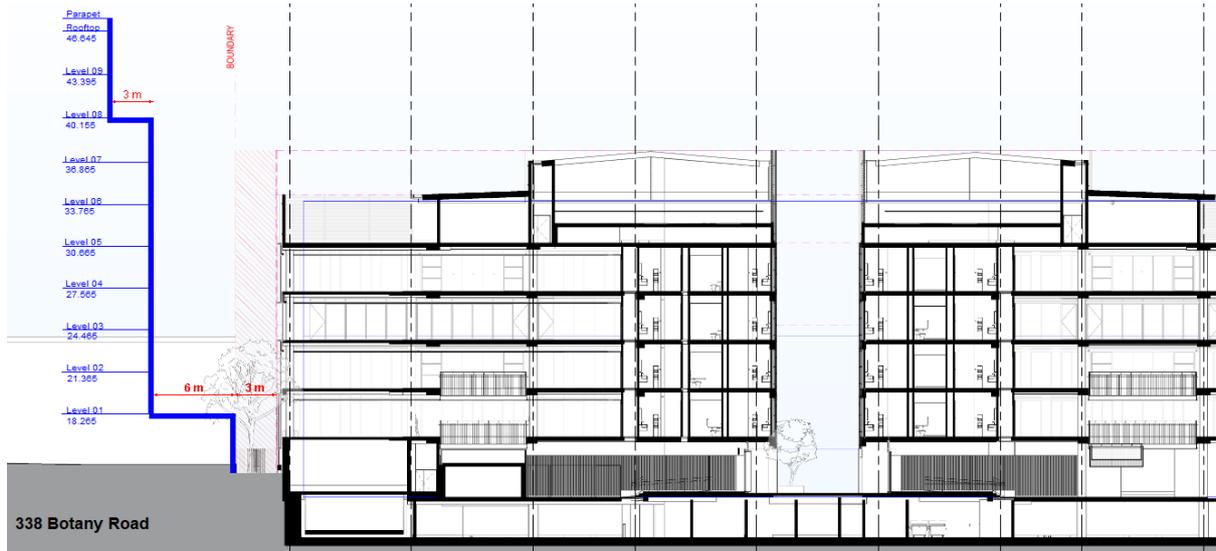


Figure 38: Proposed deep soil zone plan (shaded red)

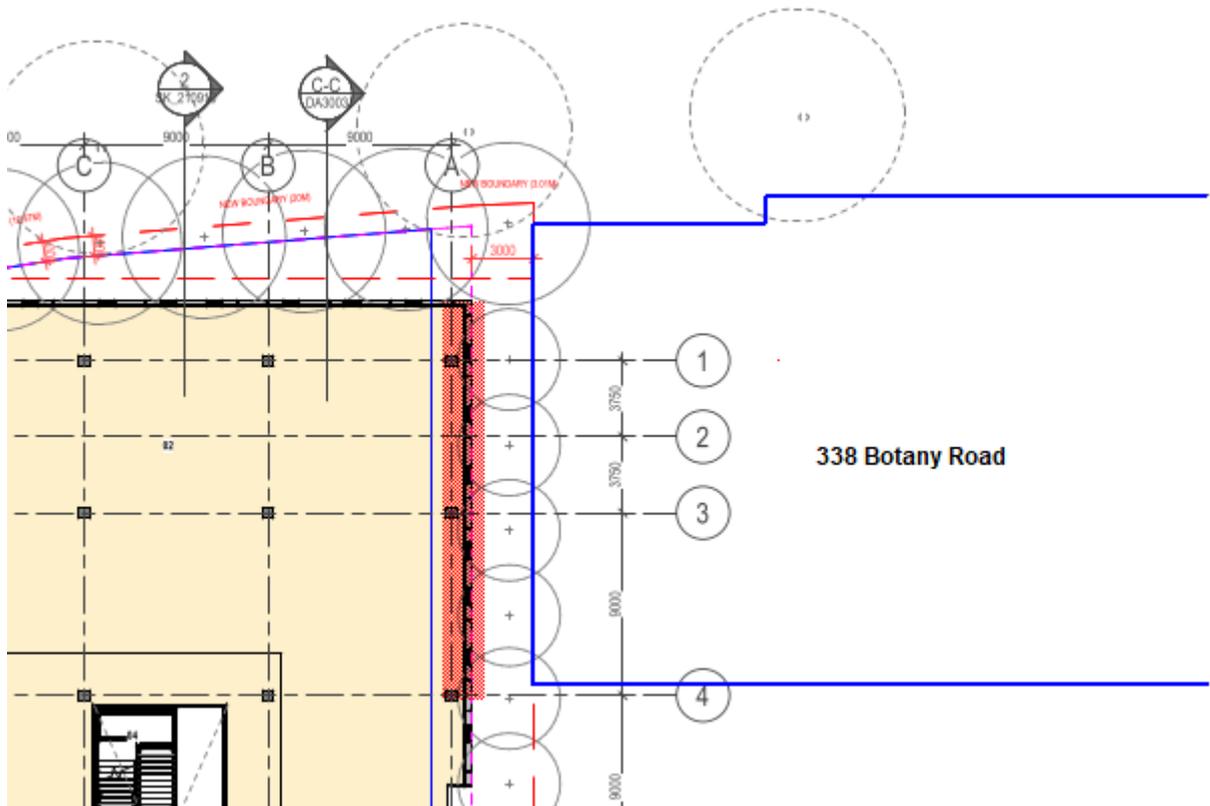
86. The proposed development, as amended, will provide a deep soil area of 288.4m<sup>2</sup>, or 4.4%, that is greater than 3m in dimension and unencumbered by structures above or below. Consistent with the approach adopted for the concept approval, the 'pre-dedication' site area as a whole will provide appropriately 974.4m<sup>2</sup> (13%) as deep soil, which is greater than the 10% required and is acceptable.
87. The delivery of the proposed 288.4m<sup>2</sup> of deep soil within the 'post-dedication' site area is secured by recommended conditions in Attachment A. In addition, the proposed development will also deliver approximately 1,328m<sup>2</sup> of additional landscaped elements, which include landscaping along the through-site link and tree planting on the roof terraces, and 4 green walls to the central atrium of the through-site link.

### **Privacy Protection to 338 Botany Road**

88. A concept development application (D/2019/87) was given a deferred commencement consent for a mixed-use building, comprising commercial uses and residential uses for the purposes of affordable housing. 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.
89. The introduction of residential use at 338 Botany Road changes the context for the subject site, and an amendment to Condition 4 of the concept approval is recommended to require future developments within the subject site to incorporate appropriate privacy treatment to the common boundary.
90. Regarding the proposed development, the commercial premises on Levels 1 to 4 are provided with full-height glazing along the eastern boundary. As shown in Figure 39 below, the finished floor levels of the proposed development generally aligns with those of the future affordable housing units at 338 Botany Road, according to the competition winning scheme. While the Apartment Design Guide does not apply to the proposed development, it is noted that the ADG recommends a 12m separation up to 4 storey, and increases the separation to 18m on the levels above, for the purpose of managing visual and acoustic privacy.
91. As the building separation along the common boundary is only 9m, privacy treatment is recommended to manage potential visual privacy impacts. To achieve this, a condition is recommended in Attachment A to require external fixed privacy screening device(s) to be provided between the northern edge of the building and gridline 4, as shaded in red in Figure 40. The screening is to be fully incorporated into the proposed modular facade system so not to detract from the quality of the development and be at least 60% obscure as recommended by Sydney DCP 2012.
92. The proposed development also includes a north-facing communal terrace on Level 5 of the East Building. A condition is recommended to restrict the hours of use of that terrace to the typical hours for commercial premise under a complying development certificate.



**Figure 39:** Long section showing the finished flood levels of the East Building and the competition winning scheme for the affordable housing units of 338 Botany Road (in blue)



**Figure 40:** Level 2 floor plan showing the extent of privacy screening (shaded red) in the context of the adjoining 338 Botany Road (outlined in blue)

## Consultation

### Internal Referrals

93. The application was referred to or discussed with the following officers, units, or panels:
- (a) Design Advisory Panel
  - (b) Urban Design Specialists
  - (c) Landscape Architect
  - (d) Tree Management Officer
  - (e) Specialist Surveyor
  - (f) Environmental Health Unit
  - (g) Public Domain Unit
  - (h) Public Art Unit
  - (i) Transport and Access Unit
  - (j) Waste Management Unit
94. The proposal has been amended where necessary to address issues raised, and relevant comments are included elsewhere in this report. The amended proposal is acceptable subject to the recommended conditions in Attachment A.

### Advertising and Notification

95. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 1 June and 30 June 2021. A total of 100 properties were notified. One (1) submission was received, addressing this DA and the concurrent modification application. The submission raised the following issues:
- (a) **Issue:** The proposed height exceedance facilitates the provision of roof terraces, that would result in visual and acoustic privacy impacts to the residential apartments of 338 Botany Road. The proposal should comply with the relevant provisions and remove the east-facing rooftop terrace at Level 5. Otherwise, that rooftop terrace should be setback in accordance with the Apartment Design Guide (ADG) with suitable landscape screening provided.

**Response:** The height exceedance, as discussed above, is primarily to accommodate a centralised plant area that is designed as an integrated component of the overall development, which is desirable. The proposed development, being commercial in nature, is not subject to SEPP 65 or the ADG. The provision of rooftop terraces is also consistent with the recommendations of Section 5.8.2.5.3 of Sydney DCP 2012, Notwithstanding, as detailed in the 'Discussion' section above, a condition of consent is recommended to limit the hours of use of the East Building's Level 5 terrace to avoid unreasonable privacy impacts.

- (b) **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:** The 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.

- (c) **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.

- (d) **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.

Notwithstanding, conditions of consent are recommended in Attachment A to provide privacy protection to 338 Botany Road.

- (e) **Issue:** Associated with the reduced setback to the eastern boundary, the proposed floor-to-ceiling glazing will result in privacy impact to the future west facing apartments of 338 Botany Road, given the reduced setback will also hinder the provision of deep soil and dense vegetation screen planting.

**Response:** As detailed in the 'Discussion' section above, a condition is recommended to require privacy treatments to the eastern elevation of the East Building for the depth of 338 Botany Road. The continuous corridor of deep soil and tree planting along the 3m setback along the eastern (common) boundary will also further aid privacy protection.

- (f) **Issue:** The proposed 6th storey is to house mechanical plants. Given its proximity to the future residential development at 338 Botany Road, there's concern with potential acoustic impacts. The plant area should be relocated within lower storeys of the building to mitigate potential impacts.

**Response:** The plant rooms are fully enclosed and set back from the eastern (common) boundary. An acceptable acoustic report is also submitted to outline the parameters for selecting plant equipment to ensure compliance with the relevant noise criteria. Compliance with the acoustic report, including a written Acoustic Verification Report, is required by a recommended condition in Attachment A.

## Financial Contributions

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

96. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
97. The contribution is calculated on the basis of the development's net increase in resident, worker and/or visitor populations, and credits have been applied for the most recent approved use of the site, being a vehicle body repair workshop, as a type of 'General Industry'.
98. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

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

99. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$76.16 per square metre of total non-residential floor area, being approximately 30,391m<sup>2</sup>, totalling \$2,314,578.56.
100. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

## Relevant Legislation

101. Environmental Planning and Assessment Act 1979
102. Sydney Airport Referral Act 1996
103. Water Management Act 2000
104. City of Sydney Act 1988.

**Conclusion**

105. The application proposes demolition of existing structures, remediation, excavation, and construction of two buildings with a common basement, separated by a pedestrian through-site link.
106. The proposal is integrated development under the Water Management Act 2000, requiring approval from Water NSW. General Terms of Approval have been received, and form part of the recommended conditions in Attachment A.
107. The proposal is consistent with the amended concept approval, being D/2019/686/A, and the executed VPA, being VPA/2019/16.
108. The development is consistent with the design intent of the winning scheme of a competitive design process. The scale, form, articulation, materiality, and environmental performance of the proposal is consistent with the desired future character of the locality and exhibits design excellence to satisfy Clause 6.21 of Sydney Local Environmental Plan 2012.
109. The development is in the public interest and is recommended for approval, subject to recommended conditions in Attachment A.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Bryan Li, Specialist Planner