

**Item 3.****Development Application: 888 Bourke Street, Zetland - D/2021/514****File No.:** D/2021/514**Summary****Date of Submission:** 13 May 2021

Amended drawings and additional information received on 11 October 2021 and 17 November 2021

**Applicant:** Toplace Pty Ltd**Architect/Designer:** PTW Architects**Developer:** Toplace Pty Ltd**Owner:** 888 Place Pty Ltd**Planning Consultant:** LJB Urban Planning**Cost of Works:** \$3,220,228**Zoning:** The site is located in the B4 Mixed Use. The proposed development is defined as residential accommodation and is permissible with consent within the zone.**Proposal Summary:** Consent is sought to amend the approved design under the base development consent D/2020/93 (Stage 2 consent for detailed built form) for the change of use of the 89 serviced apartments in Building A to 90 residential apartments. This also includes reconfiguration of the basement levels and parking and consequential design changes.

Under the base development consent two buildings were approved on the site. A new road divides the two buildings and is known as Kingsborough Way. This connects Bourke Road with O'Dea Avenue.

The approval included:

- A 7 storey building known as Building A (on the eastern side of the site) with 89 serviced apartments and 1 retail tenancy;

- A 7 storey building known as Building B (on the western side of the site) with 92 residential apartments; and
- 2 basement levels that sit beneath each building and are connected under the new roadway and accessed from the new Kingsborough Way.

The subject amending development application proposes to convert Building B to residential apartments and includes 134 car parking spaces that would service the entire site.

The proposal results in no changes to the executed Voluntary Planning Agreement (VPA) which includes land dedication to Council for the footpath widening to Bourke Street and O'Dea Avenue, as well as the extension of Kingsborough Way within the site.

The proposal has been amended to address concerns regarding inadequate information, sufficient waste, and apartment layout.

The application is referred to the Local Planning Panel for determination as SEPP No 65 Design Quality of Residential Apartment Development applies to the change of use from serviced apartments to residential apartments and is therefore considered as a "sensitive development" as per the Local Planning Panel delegations.

The application was advertised and notified for a period of 21 days between 10 June 2021 and 2 July 2021 and re-notified 9 August 2021 to 31 August 2021. A total of 12 submissions were received. Issues raised in submissions include traffic impact, change in contributions and parking and concerns that relate to the base consent. These issues are addressed within the report.

The proposal has been amended to address concerns on internal layout, amenity of occupants and waste management.

The proposal is consistent with the overall approved design and as a result is generally consistent with the design principles under SEPP No 65 Design Quality of Residential Apartment Development and Apartment Design Guidelines and the applicable planning provisions including the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. The proposal is also consistent with the approved concept plan.

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

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy No. 55 – Remediation of Land
- (iii) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development
- (iv) State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)
- (v) State Environmental Planning Policy (Building Sustainability: BASIX)
- (vi) NSW Apartment Design Guideline 2015
- (vii) Sydney Local Environmental Plan 2012
- (viii) Sydney Development Control Plan 2012
- (ix) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B1. Selected Drawings
- B2. Selected Drawings
- C. Approved Drawings - D/2020/93
- D. Notice of Determination - D/2020/93/A

## Recommendation

It is resolved that consent be granted to Development Application No. D/2021/514 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development is consistent with the concept approval conditions in accordance with the provisions of Division 4.4 Concept Development Application of the Environmental Planning and Assessment Act 1979.
- (B) The development is consistent with the design principles under SEPP No 65 Design Quality of Residential Apartment Development and the NSW Apartment Design Guideline.
- (C) The development is consistent with the objectives of the B4 Mixed Use zone in accordance with Sydney Local Environmental Plan 2012.
- (D) The development complies with the permitted Floor Space Ratio pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (E) The development retains the approved height, built form, scale and overall design and external appearance of the building and improves the amenity for future occupants. Therefore, similarly to the approved design, the amended development achieves design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
- (F) The development is compatible with the character of the Mary O'Brien Park Locality Statement, as per Section 2 of the Sydney Development Control Plan 2012.
- (G) The development is consistent with the objectives of the Sydney Development Control Plan 2012 in particular, Section 4.2 Residential Flat Buildings and Section 5.2 Green Square.
- (H) Suitable conditions of consent have been applied and the development is considered to be in the public interest.

## Background

### The Site

1. The site has a legal description of Lot 1 DP 851451, known as 888 Bourke Street, Zetland. The site has an irregular shape, with a total area of 7,069sqm and boundary dimensions of approximately 26m along Bourke Street and 113m to O'Dea Avenue.
2. The site has frontages and is at the junction of two streets, being located on the south eastern side of Bourke Street and the southern side of O'Dea Avenue. It occupies the western half of the entire street frontage along O'Dea Avenue between Bourke Street to the west and Joynton Avenue to the east. The site also has a frontage to the future through-site link running east to west (Bourke Street to Kingsborough Way) contained within 890-898 Bourke Street.
3. The topography has a fall of approximately 2m across the site from the western frontage (Bourke Street) towards the eastern boundary, shared with the adjoining properties at 5 O'Dea Avenue and 17 Joynton Avenue.
4. There are no significant trees or vegetation on the site, however there are 6 mature street trees located along the O'Dea Avenue frontage.
5. The site previously accommodated a 2 storey industrial development containing 18 units. These building has since been demolished in accordance with development consent D/2019/1394. The site is currently a fenced off construction site.
6. The site is not identified as being a heritage item or located in a heritage conservation area in any environmental planning instruments.

### Surrounding Development

7. The site is located within the Green Square Urban Renewal Area in the suburb of Zetland and is approximately 300m to the north-east of the Green Square Town Centre.
8. The surrounding area contains a diverse mixture of land uses and built forms. The adjoining site to the south west at 890-898 Bourke Street is occupied by similar industrial buildings. Development application D/2017/1762 approved the construction of a new 6 storey mixed use development comprising 145 apartments and 1 ground floor retail tenancy. To the south west also includes a new multi storey residential apartment development and 34 dwellings at 6 Kingsborough Way and a new public park at 906 Bourke Street.
9. Adjoining sites to the south and east at 15 and 17 Joynton Avenue and 5 O'Dea Avenue contains multi storey residential buildings, with the development being known as 'Emerald Park'.
10. Directly across O'Dea Avenue to the north is a locally listed heritage item at 866-882 Bourke Street, which contains a Kennards self-storage facility.
11. Directly across the site to Bourke Street are 1 to 2 storey residential terraces that form part of the Zetland Estate Conservation Area, and a 2 storey warehouse.
12. A site visit was carried out on 12 August 2021 and 11 November 2021. Photos of the site and surrounds are provided below:

13. Photos of the site and surrounds are provided below:



**Figure 1:** Aerial photograph of the subject site and surrounding area (site shown in blue)

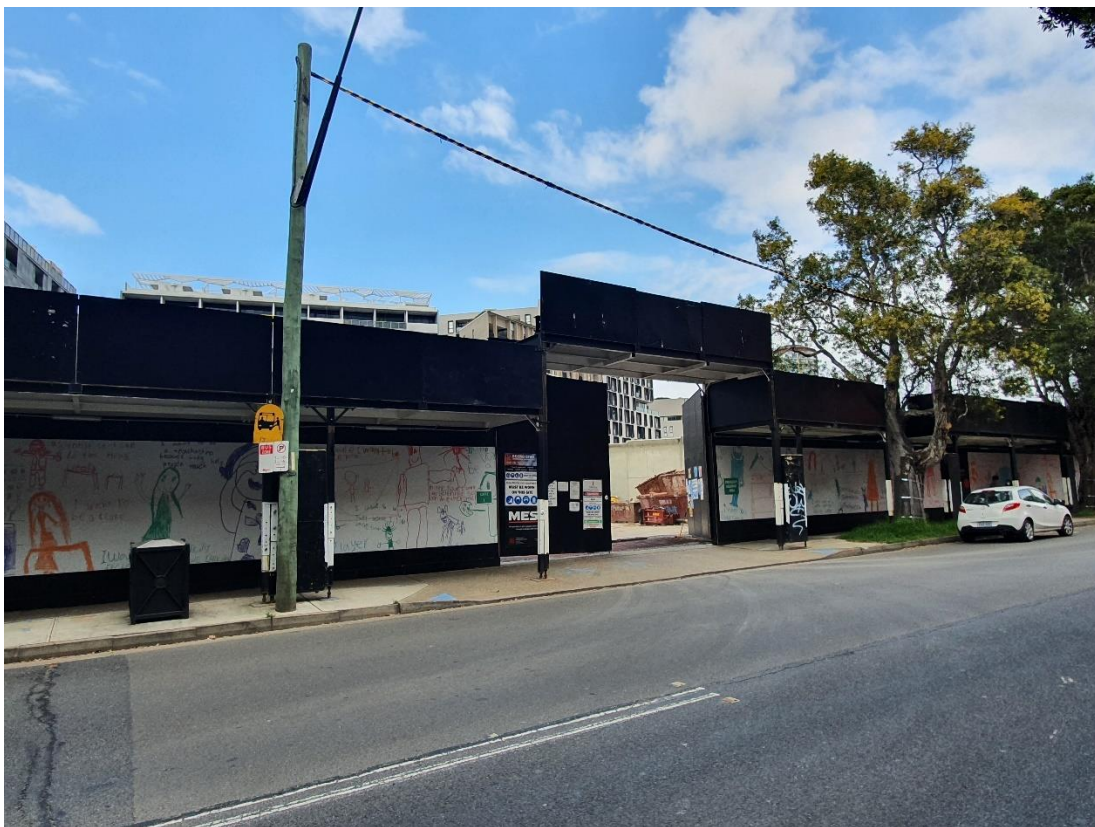


**Figure 2:** Subject site viewed from the intersection of Bourke Street and O'Dea Avenue



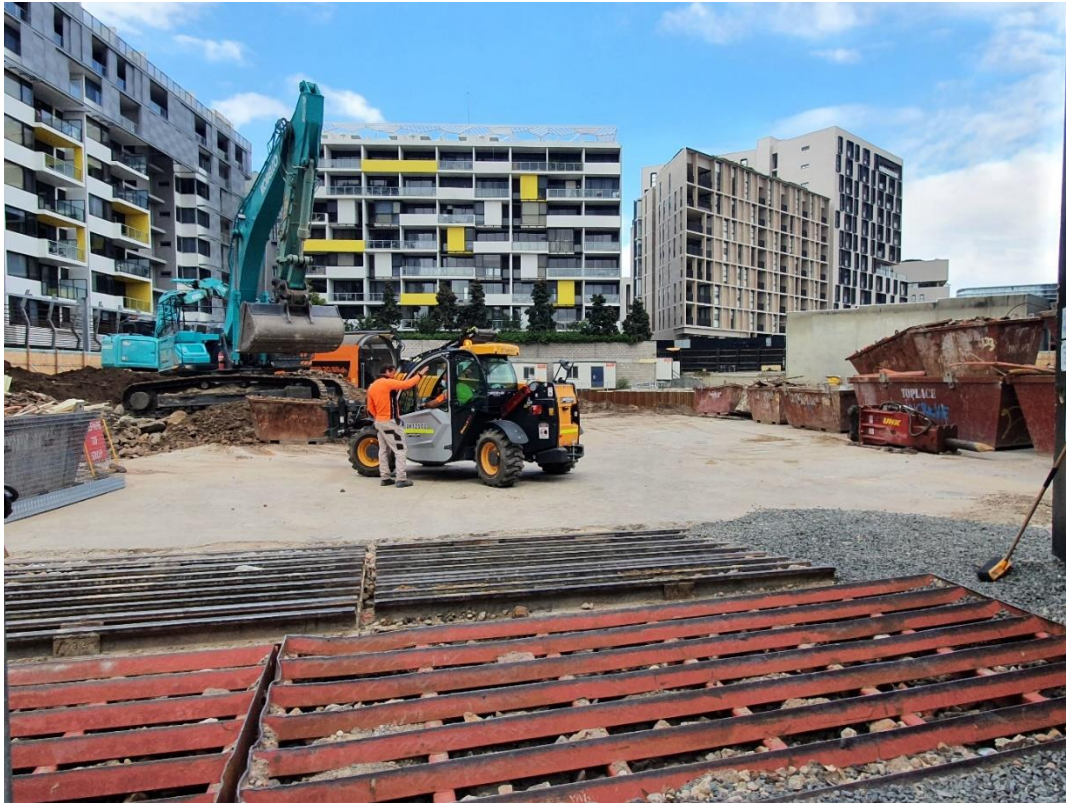


**Figure 3:** O'Dea Avenue frontage of the subject site, looking east



**Figure 4:** O'Dea Avenue frontage of subject site, looking west





**Figure 5:** View of subject site with existing buildings being demolished and currently a construction site. View also shows the northern elevation of 15 Joynton Avenue and 6 Kingsborough Way and the western elevation of 17 Joynton Avenue.



**Figure 6:** 5 O'Dea Avenue, adjoining the subject site to the east





**Figure 7:** Heritage listed Kennards building viewed from O'Dea Avenue – directly opposite the subject site.



**Figure 8:** Heritage listed Kennards building viewed from the corner of O'Dea Ave and Bourke St





**Figure 9:** 981-983, 985 and 987 Bourke Street, located directly opposite the subject site.



**Figure 10:** 890-898 Bourke Street located adjoining to the west of site



**Figure 11:** South of site (black fenced) viewed from Kingsborough Way which is to extend through subject site

## History Relevant to the Development Application

### Concept Approval (Stage 1 approval)- D/2017/1723 and D/2017/1723/A

14. On 24 January 2019, a deferred commencement consent D/2017/1723 under delegation of the CEO was granted, providing a building for future mixed use development containing residential flat buildings and retail premises. The approved concept DA allows for two building envelopes (Building A and B) with a height of 22m.
15. Associated land dedications are attached to this approval via a Voluntary Planning Agreement (VPA). The land dedications include the footpath widening of Bourke Street and O'Dea Avenue, as well as the extension of Kingsborough way within the site.
16. The deferred commencement conditions included a requirement for the VPA to be exhibited, executed and registered on title and a number of design modifications to the building envelopes.
17. The deferred commencement conditions were satisfied, and the consent was made active on 20 June 2019.
18. On December 2020, the Central Sydney Planning Committee (CSPC) granted consent to modify the concept envelope under D/2017/1723/A to increase the height, enlarge the footprint of the basement and enlarge the footprint for both building at all levels and introduce a level 6 floorplate for both buildings.



19. The modification of the concept envelope was a result of the detailed design under development consent D/2020/93 and therefore, was assessed and approved concurrently.
20. The proposed subject application is to change the serviced apartment use to Building A to residential apartments with associated works. The proposed change of use to residential apartment is within the approved uses of the concept approval.

**Planning Agreement - VPA/2018/11**

21. The site is subject to a planning agreement that is attached to the concept approval. The planning agreement was executed on 12 March 2019 and registered on title on 1 May 2019. The planning agreement includes the following benefits:
  - (a) A monetary contribution of \$837,541.50 towards community infrastructure to utilise the additional FSR of 0.5:1 under the Green Square community infrastructure provisions contained in Clause 6.14 of the SLEP 2012. This contribution is payable prior to the issue of the first Construction Certificate.
  - (b) Dedication of land and construction works along O'Dea Avenue and Bourke Street frontages for footpath widening. The piece of land is approximately 2.4m wide, with an area of 340sqm. The land is to be remediated to a minimum depth of 1.5m and transferred to Council after completion, but before the issue of the first Occupation Certificate.
  - (c) Dedication and associated construction of a new road to be known as Kingsborough Way comprising an area of 917sqm and width of 12.8m. The land is to be remediated to a minimum depth of 1.5m and transferred to Council after completion, but before the issue of the first Occupation Certificate for the development.
  - (d) The developer's works under the planning agreement include the construction of widened footpaths, the new internal road comprising stormwater, street lightening, footpaths, parking bays, landscaping and associated public domain works in accordance with the City's specifications to the value of \$589,946.

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



**Figure 12:** Site plan depicting land dedication for footpath widening and a new road within the site in red

23. The proposed subject application does not impact or result in the modification of the planning agreement.

#### **Competitive Design Alternatives Process - CMP/2018/1**

24. Following the concept development approval, the applicant commissioned a competitive design alternatives process for the site. Three architectural firms were invited to submit a design proposal in August 2019. The three selected architectural firms were:
- (a) PopovBass;
  - (b) PTW; and
  - (c) SJB
25. Presentations were given to the Selection Panel on 17 October 2019 and on 5 November 2019 the Selection Panel resolved that the scheme prepared by PTW was preferred, however, noted a number of matters that required further resolution as part of the detailed design development application.
26. The detailed design approval under D/2020/93 is generally consistent with the winning scheme and addressed the number of matters raised by the Selection Panel. The amending proposal is also generally consistent with the winning scheme and does not re-open any matters raised by the Selection Panel.

#### **Early Works Approval - D/2019/1394**

27. On 12 February 2020, development consent was granted under delegation for demolition of existing buildings. A Construction Certificate was issued on 4 November 2020 to demolish the existing industrial buildings which has been completed. The site is currently a fenced off construction site.

**Detailed Design Approval - D/2020/93 and D/2020/93 (Stage 2 approval / base consent)**

28. On 10 December 2020, the CSPC granted development consent for remediation, excavation, and construction of two 7 storey buildings. 'Building A' is to contain 89 serviced apartments and 1 retail tenancy and 'Building B' is to contain 92 residential apartments. The consent included the construction of 2 basement levels for 104 car spaces accessed from the new road (extended Kingsborough Way) and located under both buildings and under the new road. The dedication and subdivision of a new road, footpath widening and associated public domain works also form this consent.
29. Building A was approved with an overall height of 26.74m and Building B approved with an overall height of 26.96. The development was approved with an FSR of 2.2:1 (15,541sqm).
30. Specifically, the development comprises the following:
  - (a) Basement Levels 1 and 2
    - (i) 29 serviced apartment car spaces for Building A + 4 accessible car spaces;
    - (ii) 45 residential car spaces for Building B + 15 accessible car spaces;
    - (iii) 7 standard visitor spaces, 4 accessible visitor spaces;
    - (iv) 1 standard retail space, 1 accessible retail space;
    - (v) 10 motorcycle spaces;
    - (vi) 199 bicycle parking spaces;
    - (vii) 2 car wash bays;
    - (viii) 3 car share spaces;
    - (ix) 3 loading/servicing spaces
  - (b) Ground floor
    - (i) 78sqm retail tenancy to the corner of Bourke Street and O'Dea Avenue within Building A;
    - (ii) main serviced apartment lobby accessed via O'Dea Avenue, other lobbies within Building A accessed via Kingsborough Way and the through-site link;
    - (iii) main residential lobby accessed via O'Dea Avenue, other lobbies within Building B accessed via Kingsborough Way;
    - (iv) communal open space for occupants (349.84sqm for Building A and 463.94sqm for Building B);
    - (v) vehicular access to basement from Kingsborough Way



- (c) Building A (west) – frontages to Bourke Street, O’Dea Avenue, Kingsborough Way and the through-site link – 7 storeys, 89 serviced apartments
    - (i) 1 x studio;
    - (ii) 40 x 1 bedroom;
    - (iii) 46 x 2 bedroom;
    - (iv) 2 x 3 bedroom;
  - (d) Building B – (east) – frontages to O’Dea Avenue and Kingsborough Way – 7 storeys, 92 residential apartments
    - (i) 42 x 1 bedroom;
    - (ii) 40 x 2 bedroom;
    - (iii) 10 x 3 bedroom
  - (e) Rooftop
    - (i) communal open space – Building A: 519.45sqm; Building B – 670.1sqm.
31. On 19 July 2021, development consent was granted under delegation for the modification to stage the issue of construction certificates and amend 17 conditions. The staging of construction certificates was approved as the following:
- (a) Condition to be satisfied prior to any Construction Certificate
  - (b) Condition to be satisfied prior to the issue of any Construction Certificate for below ground works other than for demolition, excavation, site remediation works and construction of basement with no fitout.
  - (c) Condition to be satisfied prior to the issue of any Construction Certificate for above ground works.
32. The proponent is currently satisfying various conditions of the development consent and a construction certificate has not yet been issued.
33. The subject application is an amending development application to this existing base consent.
34. Perspectives of the approved detailed design are provided below, and the approved stamped plans have been provided in Attachment D.



**Figure 13:** Perspective of approved design from corner of Bourke Street and O'Dea Avenue. Building A shown in the forefront.



**Figure 14:** Perspective from O'Dea Avenue of the approved design of Building B and the extended Kingsborough Way with entrance of O'Dea Avenue.



**Figure 15:** Perspective of entry level and façade

### Compliance Action

35. Since the commencement of the demolition, excavation, basement and remediation works under the base consent there has been a number of complaints regarding noise, dust, vibration and damage. These complaints have been investigated and are closed. It is noted that the base consent includes conditions requiring noise, dust and vibration to be managed with minimal and reasonable impacts to neighbouring properties and the public. The applicant and the Accredited Certifier are to ensure compliance with these conditions.

### Background on subject application

36. Following an assessment of the subject development application (as amended) by Council Officers, a request for additional information and amendments was sent to the applicant to address the following concerns:
- GFA calculation plans showing the increase in GFA from approved design;
  - Demonstrate compliance for communal open space areas and storage areas in accordance with the ADG controls;
  - Provide 28 adaptable dwellings in accordance with the SDCP 2012;
  - Recess entry doors for apartments located at entry corridors to lifts;
  - Amend undersized apartments to comply with the ADG controls;
  - Provide waste temporary holding room close to the loading area and address dual chute room failure.



37. The applicant provided additional information and amended plans on 11 October 2021 and 17 November 2021 addressing the above concerns and is the subject of this assessment report.

### **Proposed Development**

38. The proposed application seeks to amend the approved design under the development consent D/2020/93 (base consent). The subject development application has been lodged as an 'amending' development application to the base consent. The proposed amendments are listed below.

### **Change of use from serviced apartments to residential apartments**

39. The application seeks to change the previously approved serviced apartments within Building A to residential apartments. As a result, the following works are proposed to Building A:
- (a) Removal of the 'back of house' serviced apartment uses. This includes removal of:
    - (i) housekeeping area and toilets in basement level 02
    - (ii) clean and dirty linen rooms in basement level 01
    - (iii) reception, office, lounge areas, luggage room and WC in ground floor level
    - (iv) auxiliary rooms and linen chutes to each level
  - (b) The addition of a two bedroom apartment located to the ground floor resulting in 90 residential apartments in Building A (originally approved as 89 serviced apartments).
  - (c) The conversion of single bedroom apartment (AG04) to a two bedroom apartment.

### **Basement and parking levels reconfiguration**

40. The application seeks to reconfigure the basement, storage and parking arrangement to the following:
- (a) Additional car parking from the approved 104 car parking spaces to 134 carparking spaces which includes:
    - (i) 45 residential car spaces for Building A + 12 accessible car spaces;
    - (ii) 44 residential car spaces for Building B + 16 accessible car spaces;
    - (iii) 12 standard visitor spaces, 3 accessible visitor spaces;
    - (iv) 1 standard retail space, 1 accessible retail space
  - (b) Additional motorcycle spaces from 10 to 11 spaces

- (c) Additional bicycle parking spaces from 199 to 200 bicycle spaces (182 located within storage space and 18 visitor spaces)
- (d) 2 electric charging spaces
- (e) No changes to the provisions of 3 car share spaces, 2 car wash bays and 3 x loading/servicing spaces
- (f) Consolidation of basement into single residential carparking from the previously separated serviced apartments and residential car parks

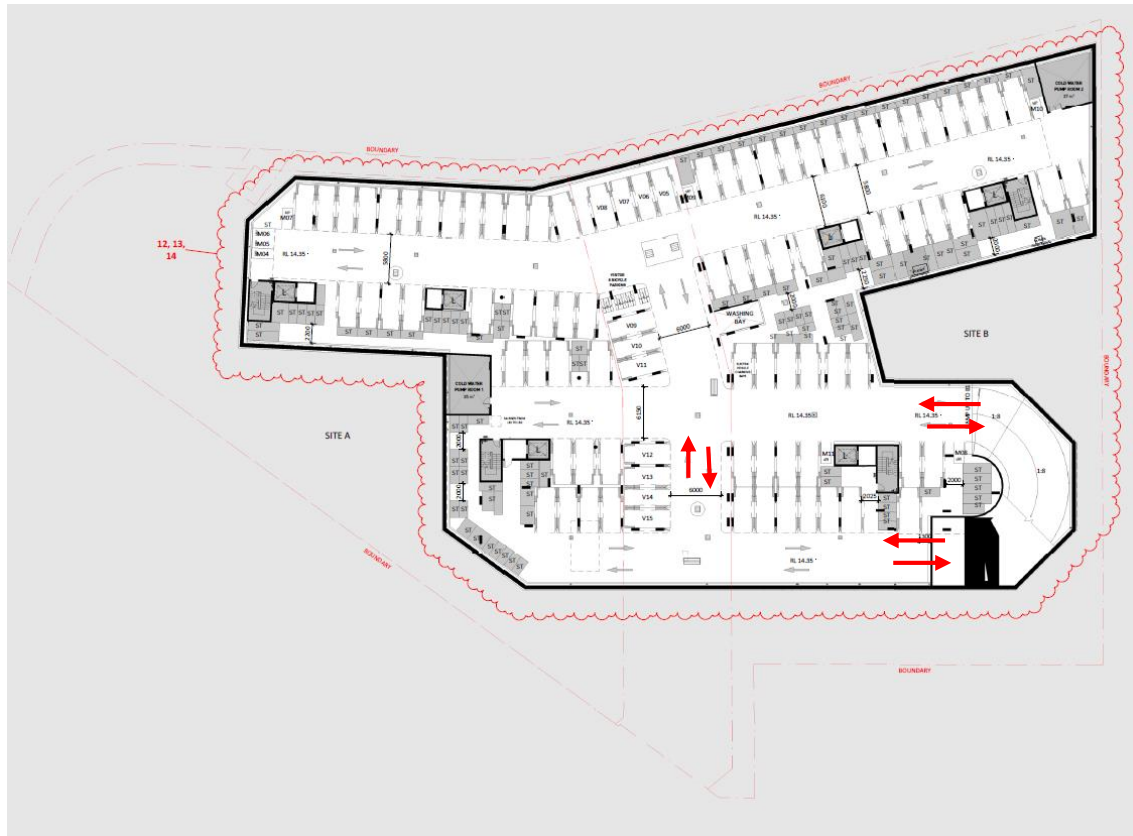
**Design refinement changes**

41. The application seeks to undertake design refinement changes within both Building A and Building B. The design changes will not alter the approved architectural expression or height and scale of the buildings with the built form, footprint and setbacks being maintained as approved under the base consent. The proposed design refinement changes include the following:

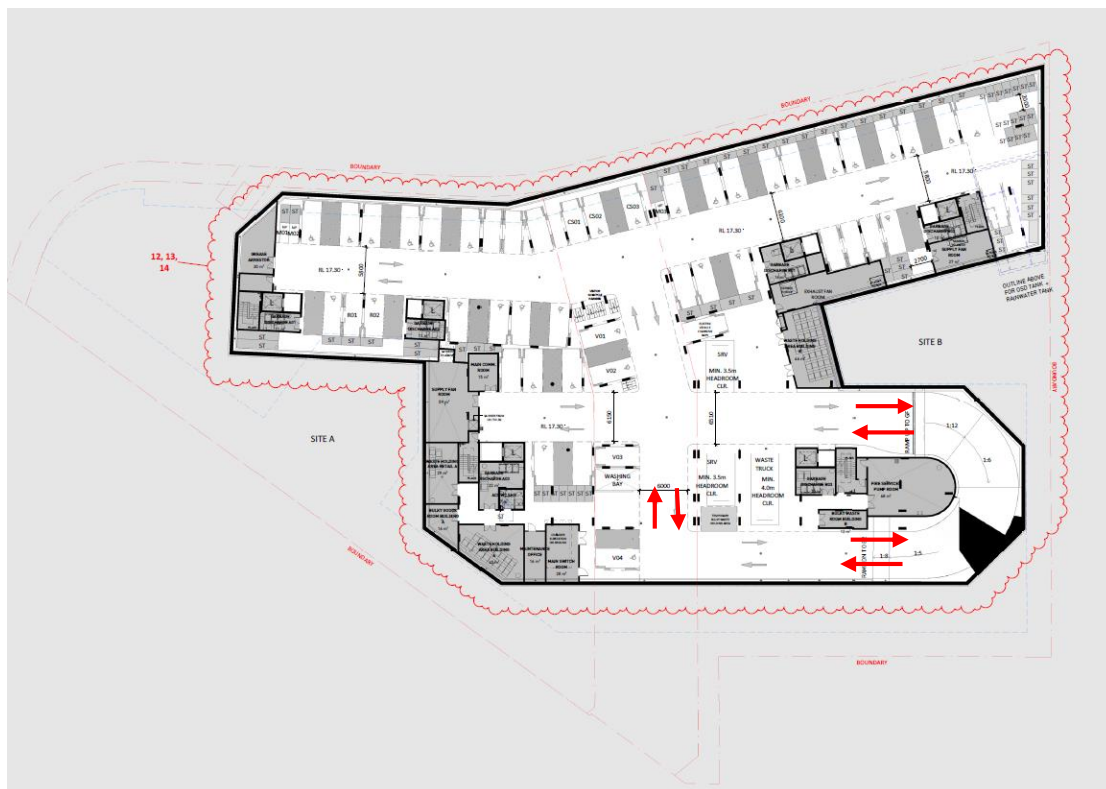
- (a) internal changes to improve apartment internal layout, services and air condenser layout, and fire stair layout;
- (b) the removal and design refinement of plant, building services and building columns results in the gross floor area being increased by 10sqm from 2.2:1 (15,541sqm) to 2.2:1 (15,551sqm); and
- (c) facade changes include changes to position of windows to reflect internal apartment layout changes and amendment to provide feature brick walls.

**Modification to conditions**

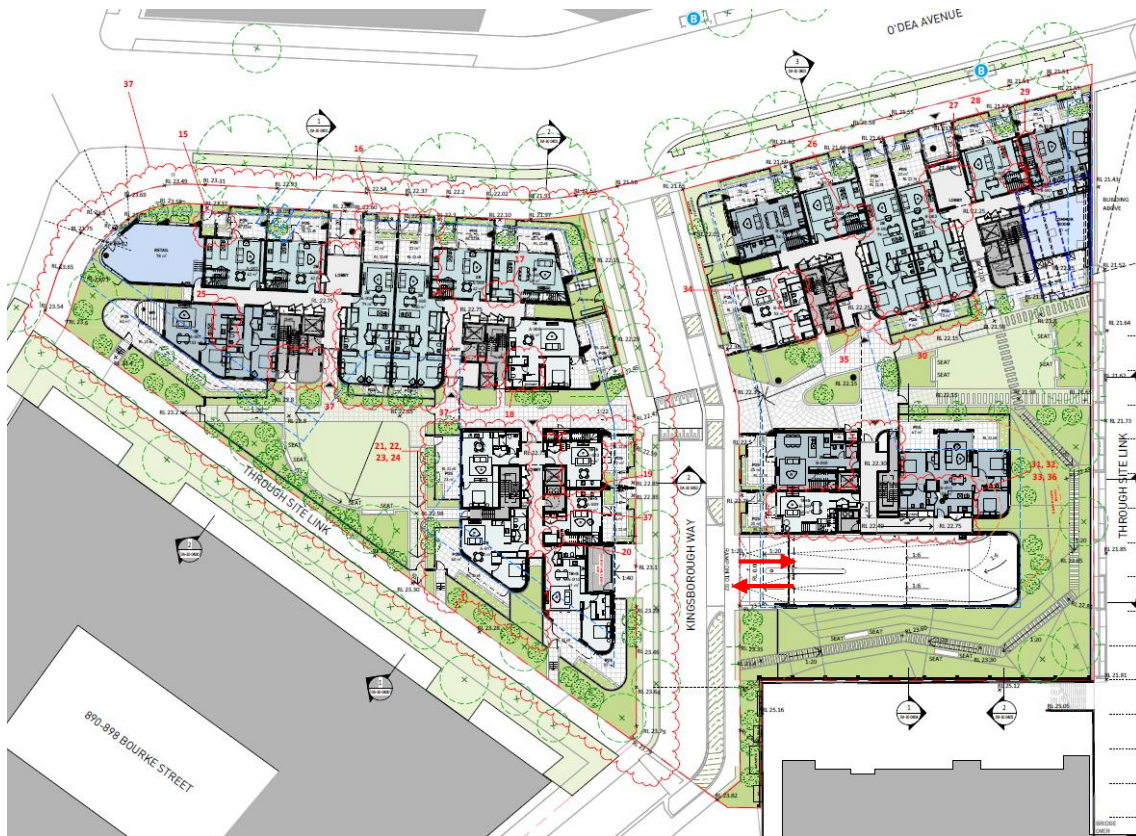
- (a) delete Condition 4 Communal Open Space of the base consent as addressed by rooftop communal open space changes shown in level 7 and roof plan;
  - (b) delete Condition 5(c) Design Modification of the base consent; and
  - (c) amend wording of Condition 5(e) Design modification of the base consent.
42. Plans and elevations of the proposed development are provided below.



**Figure 16:** Proposed basement 2 floor plan



**Figure 17:** Proposed basement 1 floor plan



**Figure 18:** Proposed ground floor plan



**Figure 19:** Proposed level 1 floor plan

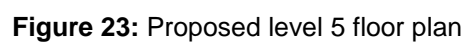
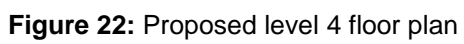




**Figure 20:** Proposed level 2 floor plan



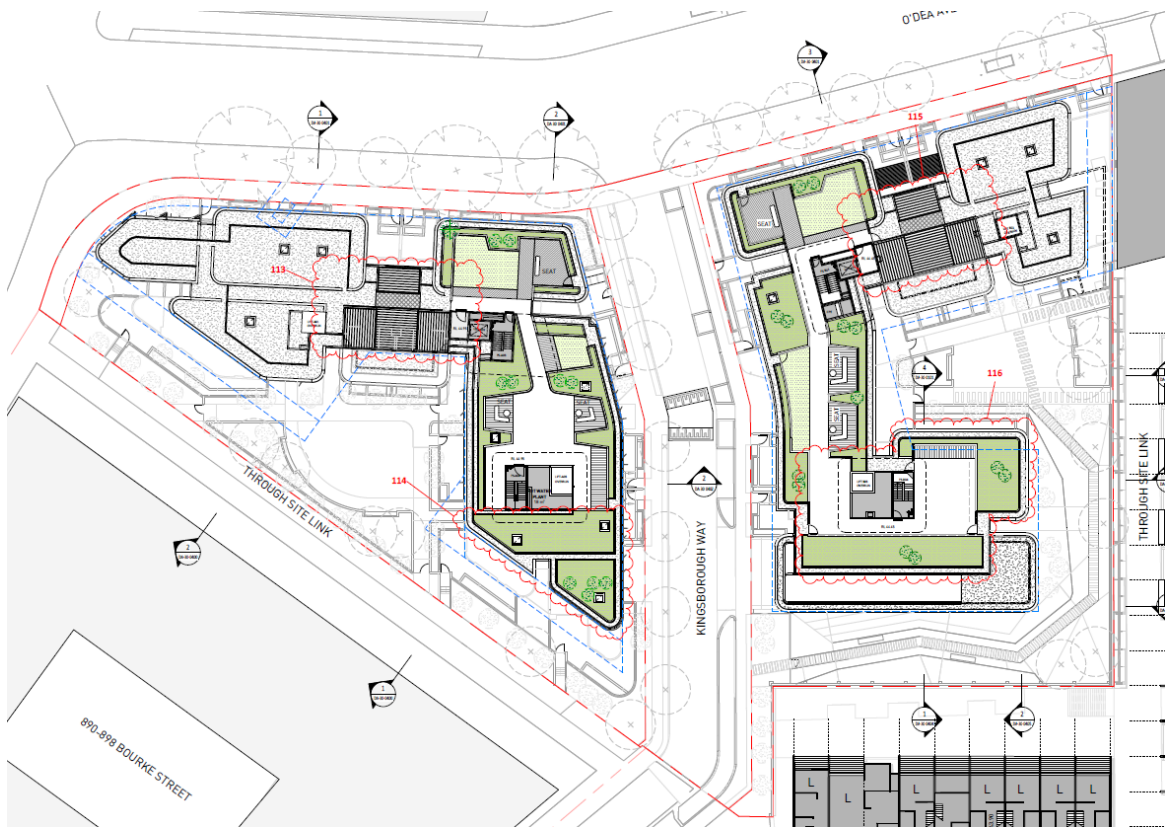
**Figure 21: Proposed level 3 floor plan**



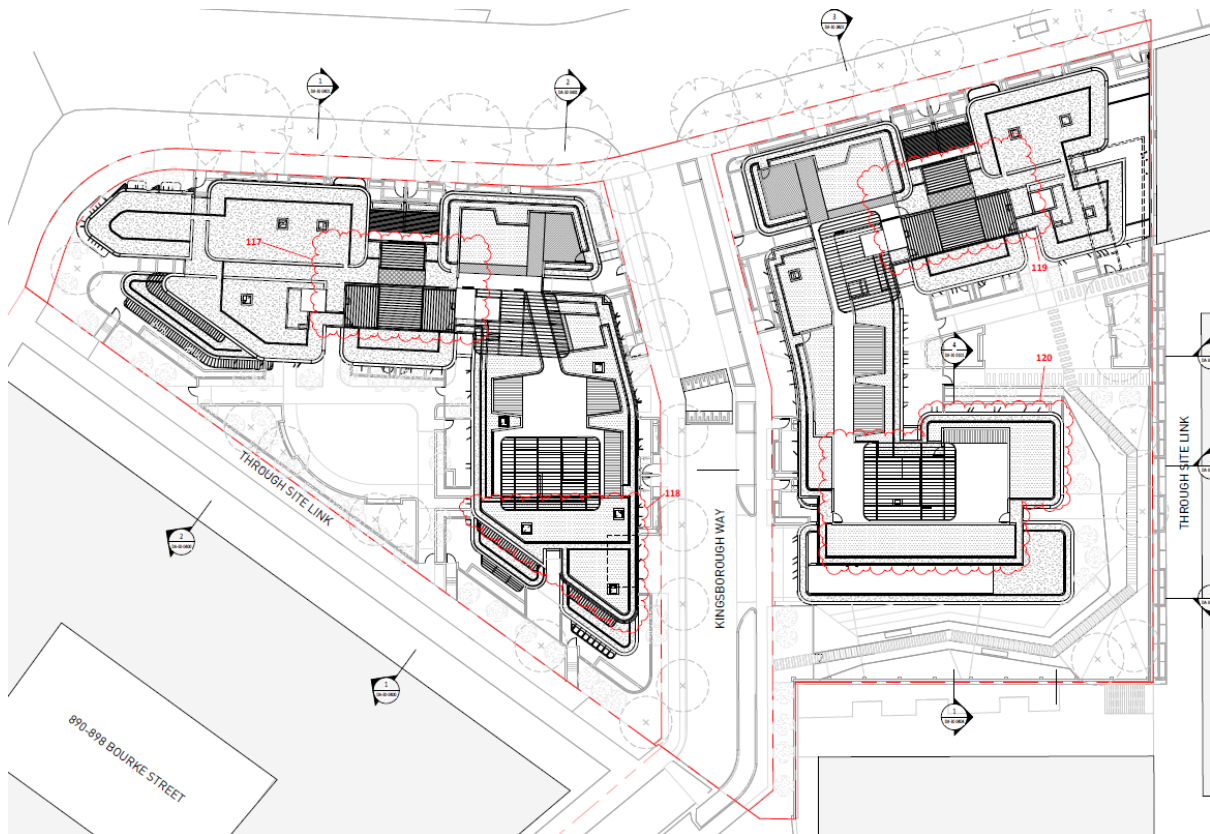




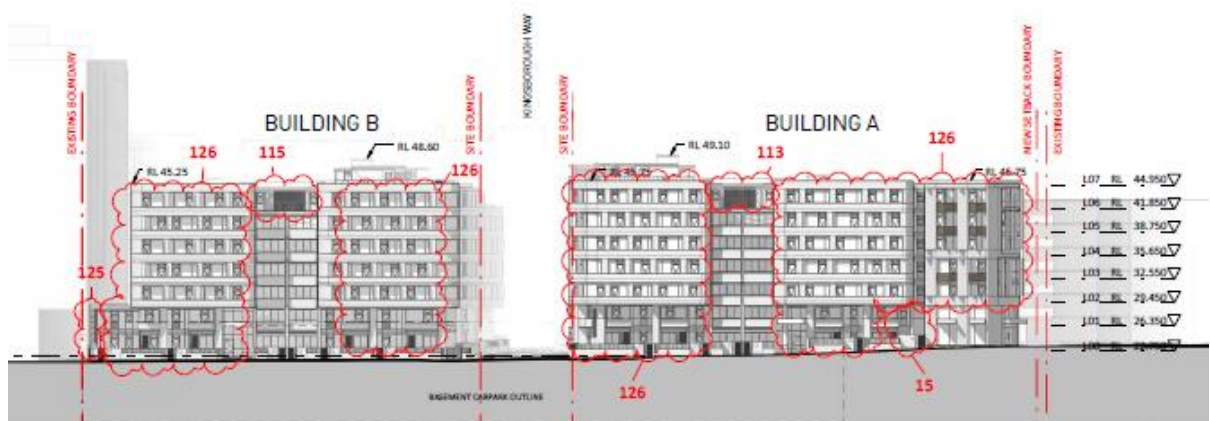
**Figure 24:** Proposed level 6 floor plan



**Figure 25:** Proposed level 7 floor plan

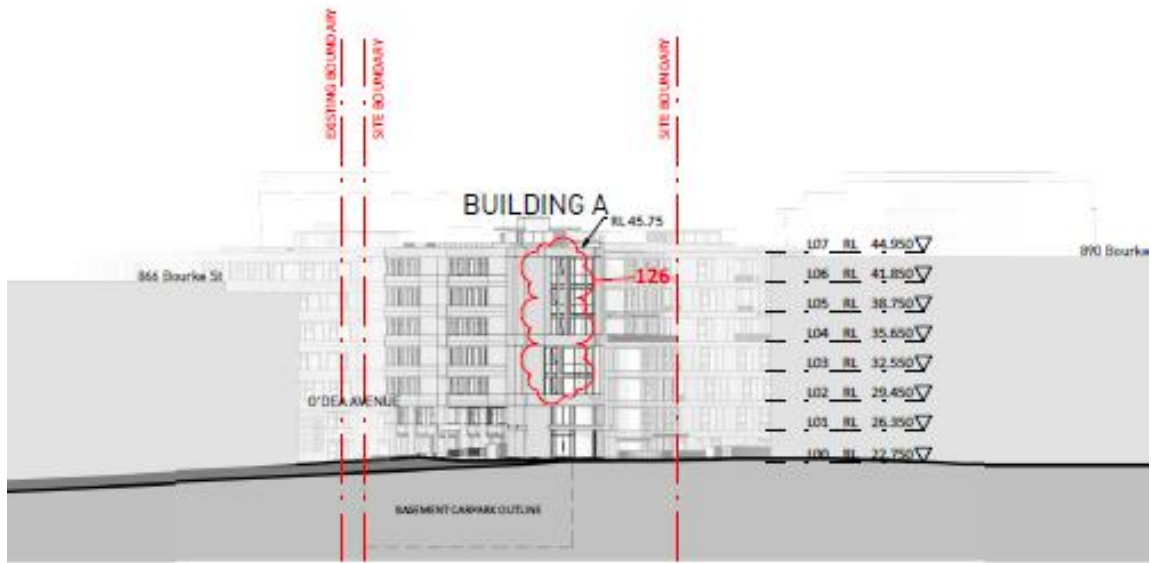


**Figure 26:** Proposed level 6 floor plan

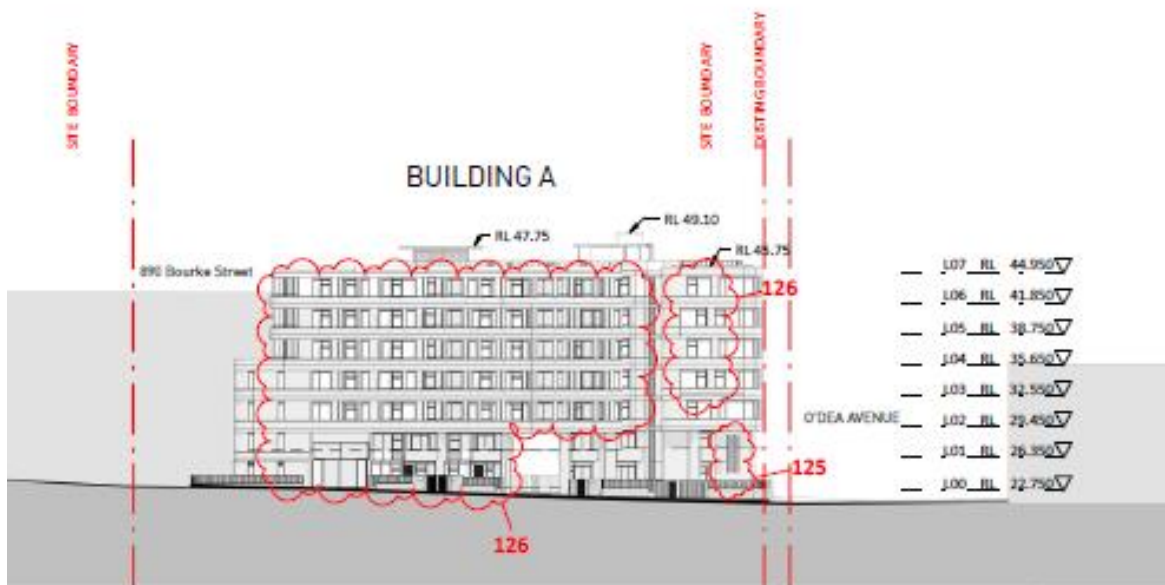


**Figure 27:** Proposed O'Dea Avenue/northern elevation





**Figure 28:** Proposed Bourke Street/western elevation



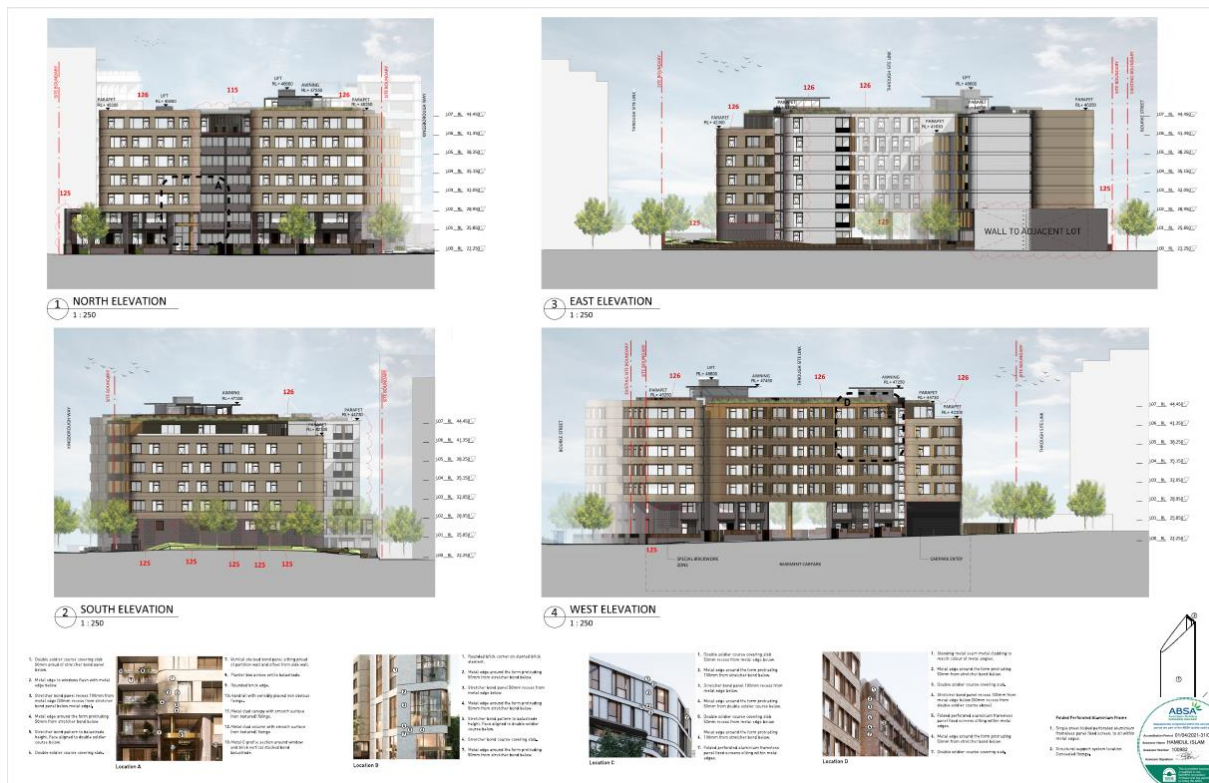
**Figure 29:** Proposed Kingsborough Way/eastern elevation



Figure 30: Proposed Kingsborough Way/western elevation



Figure 31: Proposed Building A elevations



**Figure 32: Proposed Building B elevations**

## Assessment

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

## Amending Development Application

44. The proposed application seeks to amend the approved design under the development consent D/2020/93 (base consent).
45. The recommendation includes a condition to make it clear that it relies on the base consent D/2020/93 and is subject to compliance with the conditions under D/2020/93 unless the conditions are being replaced or deleted by the subject application. The conditions of the base consent are provided in Attachment E.
46. As the base consent is being amended by the proposed application, the recommendation includes conditions to delete and replace conditions of the base consent pursuant to Section 4.17(b) and (c) of the Environmental Planning and Assessment Act 1979.

47. The subject application deletes conditions on the base consent that no longer apply as those conditions either relate to the serviced apartments component that is being changed to residential apartments or have been satisfied by the amended plans submitted with the subject application. The base consent conditions that are to be replaced with conditions under this application are include the approved drawing set, affordable housing contribution, Section 7.11 contribution, maximum floor space ratio, allocation of parking, waste and the change of use from serviced apartments to residential.

## **State Environmental Planning Policies**

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

48. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
49. The subject site contained office and warehouse uses and has been used for a variety of industrial uses, including bituminous tar, oils and paint manufacturing.
50. A Remediation Action Plan (RAP), endorsed by a NSW Accredited Site Auditor has been submitted and approved under the detailed design consent D/2020/93. The RAP recommended excavation and off-site disposal of impacted soils that are unsuitable to remain on site and the interim advice confirmed that the RAP's recommended approach is appropriate. The RAP also confirmed that land to be dedicated / transferred to Council can be delivered in a suitable state without the need for long term maintenance (i.e. environmental management plans).
51. Subject to conditions recommended under the base consent, the site can be made suitable for the proposed use and the land to be dedicated will be satisfactorily remediated.

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

52. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
53. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.
54. As the application proposes to change the approved 89 serviced apartments of Building A to 90 residential apartments, the design principles of SEPP 65 and the Apartment Design Guideline (ADG) is to be taken into consideration.
55. The applicant has submitted a SEPP 65 design verification statement and report prepared by S Parsons (Architect No. 6098) and D Jones (Architect No. 4788) of PTW Architects with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.



56. The SEPP 65 design verification statement and report outlines that as part of the assessment under the base consent the approved serviced apartments were considered against SEPP 65 as per Clause 7.28(2) of the SLEP 2012 and as a result, the serviced apartments were determined to be generally consistent with the SEPP 65 and ADG design principles.
57. Whilst the amending proposal results in an additional two bedroom apartment located to the ground floor, the layout of the apartments and footprint within Building A and Building B largely remains consistent with the approved design under the base consent which as highlighted, is generally consistent with the SEPP 65 and ADG design principles.
58. Nonetheless, an assessment of the proposal against the design quality is provided as follows:

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

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

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

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

The approved buildings do not comply with the SLEP 2012 maximum building height, mainly due to accommodating communal open space at rooftop and lift overruns to access this space. An assessment on the non-compliant height has been carried out under the detailed design approval and the additional height has been approved. The subject amending DA proposes no changes to the existing approved height, built form and scale.

It is noted that the approved elements above the height limit (lift overruns, awnings) are setback from Bourke Street and O’Dea Avenue and do not result in any significantly adverse amenity impacts to the surrounding locality.

The proposed internal changes result in additional gross floor area however, the proposed FSR meets the maximum FSR of 2.2:1 under the concept approval and SLEP 2012.

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

The development by way of its form and scale is generally consistent with the controls and that envisaged by the concept development approval.

(c) **Principle 3: Density**

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

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

(d) **Principle 4: Sustainability**

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

(e) **Principle 5: Landscape**

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

Deep soil areas are provided for both Buildings A and B, totalling 11.1%. The subject amending application proposes no changes to the existing deep soil areas. It is noted that the deep soil areas will include substantial permeable paving and retaining walls and therefore, a condition is included in the base consent to minimise footings and retain the expansive areas of deep soil.

(f) **Principle 6: Amenity**

The proposal incorporates apartment planning that can deliver a high level of amenity for future occupants. Floor plans have been configured to maximise solar access and ventilation as well as provide compliant apartment and room sizes. Compliance with the amenity controls are detailed in the ADG assessment table below.

(g) **Principle 7: Safety**

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

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

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

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

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

The development will accommodate 182 residential apartments providing the following unit mix:

- (i) 82 x 1 bedroom apartments (45%)
- (ii) 88 x 2 bedroom apartments (48%)
- (iii) 12 x 3 bedroom apartments (7%)

The approved development accommodated 89 serviced apartments and 92 residential apartments (181 total) providing the following unit mix:

- (iv) 83 x 1 bedroom apartments (46%)
- (v) 86 x 2 bedroom apartments (48%)
- (vi) 12 x 3 bedroom apartments (7%)

The proposed unit mix is consistent with the approved unit mix and broadly consistent with that envisaged under the Sydney DCP 2012. Whilst there are minor non-compliances with the requirements for 1 bedroom apartments (over 40%) as well as 3 bedroom apartments (under 10 – 100%) it is considered acceptable in catering the needs of the existing and future resident population.

The proposal also provides 28 adaptable apartments as per Section 3.12.3 of the Sydney DCP 2012.

(i) **Principle 9:** Aesthetics

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

The design is generally consistent with the competition winning scheme, which was considered by the selection panel to be capable of exhibiting design excellence with regard to materiality and architectural expression. The amending DA proposes no changes to the overall design except for the addition of a feature brick design to the plain brick walls to enhance the presentation of the building to the streetscape.

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



2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	<p>The subject amending DA proposes no changes to the approved depth of the building.</p> <p>However, it is noted that the approved development has varying building depths, in part allowing for the provision of cross-through apartments. This results in a glass to glass depth of up to 22m at its greatest extent. The approved scale is appropriate to the site and provides an acceptable level of residential amenity. Accordingly, the aims of the building depth provision have been met in the approved design.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul>	Yes	<p>The subject amending DA proposes no changes to the approved building separation from adjoining properties.</p> <p>However, it is noted that the approved development complies with separation distances from adjoining properties recommended by the ADG, with setbacks between 7m and 9m when measured to the boundary.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable rooms</li> </ul>		

<b>3D Communal and Public Open Space</b>	<b>Compliance</b>	<b>Comment</b>
Communal open space has a minimum area equal to 25% of the site.	Yes	As discussed below, the reduction in communal open space to satisfy Condition 4 of the base consent results in a total area of 1944.06sqm (28%) of communal open space being provided for the site which complies.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	The proposal provides solar access to at least 50% of the rooftop communal open space, which is considered to be the principal usable area as per ADG requirements.

<b>3E Deep Soil Zones</b>	<b>Compliance</b>	<b>Comment</b>
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	Yes	<p>The approved design provides 650sqm (11.1%) of deep soil with a minimum 6m dimension along the through-site link and adjacent to the driveway within the site.</p> <p>The subject amending DA proposes no changes to the approved deep soil zones.</p>

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul> <p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> <li>• 9m between habitable rooms / balconies</li> <li>• 4.5m between non-habitable rooms</li> </ul>	Yes	<p>The subject amending DA proposes no changes to the approved building.</p> <p>The development ensures oblique sightlines are provided between habitable rooms and balconies with screens proposed to mitigate any potential privacy impacts. Consequently a base consent condition requires detailed elevations of the proposed screening to ensure reasonable visual privacy is achieved.</p>

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The proposal complies

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	The application proposes solar access to 70% of apartments (127/182) to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	21 apartments, or 11% do not receive direct sunlight between 9am and 3pm at midwinter.

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are to have windows capable of providing adequate natural ventilation.  Wintergardens are approved to those noise affected apartments for natural ventilation and a condition is included in the base consent requiring a suitably qualified ventilation expert to prepare a ventilation assessment demonstrating that the approved design achieves the minimum performance requirements in the City's 'Draft Alternative Natural Ventilation of Apartments in Noisy Environments – Performance Pathway Guideline'.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	A total of 111 apartments are cross ventilated, being 61% which complies



4B Natural Ventilation	Compliance	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Cross-through apartments have a maximum depth of 17m.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	A minimum floor to floor height of 3.1m is provided, which is capable of delivering a minimum floor to ceiling height of 2.7m.
Non-habitable rooms: 2.4m		
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.		
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Partial compliance	<p>A floor to floor ceiling height of 3.6m is provided for all residential at ground floor, and a floor to floor height of 6.7m is provided for the retail tenancy within Building A. Therefore, a floor to ceiling height of 3.3m can be provided at ground floor.</p> <p>At first floor, a floor to ceiling height of 2.7m is provided to residential uses on the first floor. This is acceptable given the proposal concentrates commercial space at ground floor with generous double storey ceiling height in the most appropriate location.</p>

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul>	Yes	All apartment sizes comply with the minimum area requirements.

4D Apartment Size and Layout	Compliance	Comment
<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>		
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	Yes	All habitable rooms have access to an external window.
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p> <p>8m maximum depth for open plan layouts.</p>	Partial compliance	The development includes minor exceedances of the 8m depth requirement to some open plan living layouts (between 8 – 8.3m). However, these apartments have adequate amenity and will receive ample natural light.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> <li>• master bedroom: 10m<sup>2</sup></li> <li>• all other bedrooms: 9m<sup>2</sup></li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	The proposal complies
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>	Partial compliance	Cross through apartments are proposed within both buildings, and the majority of the apartment layouts comply with the minimum 4m width, with exception of one living rooms per level. These areas have a minimum width of 3.9m in the living rooms. The proposed non-compliance still allows for a variety of furniture arrangements and/or removal. The proposal is acceptable.
<p>4m minimum width for cross over and cross through apartments.</p>		

<b>4E Private Open Space and Balconies</b>	<b>Compliance</b>	<b>Comment</b>
<p>Studio apartments are to have a minimum balcony area of 4m<sup>2</sup> with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m<sup>2</sup> with a minimum depth of 2.4m.</p>	Yes	All apartments are provided with the required area of private open space
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	Yes	All areas of private open space at ground floor meet the minimum size requirements.

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The maximum number of units for each lift is 7.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	Windows do not open onto common circulation spaces.

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	All common circulation spaces have access to natural light and ventilation

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

<b>4J Noise and Pollution</b>	<b>Compliance</b>	<b>Comment</b>
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	Wintergardens are approved to those noise affected apartments for natural ventilation and a condition is included in the base consent for final details on the plenum design and a suitably qualified ventilation expert is to prepare a ventilation assessment demonstrating that the approved design achieves the minimum performance requirements in the City's 'Draft Alternative Natural Ventilation of Apartments in Noisy Environments – Performance Pathway Guideline'.

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

60. State Environmental Planning Policy (SEPP) No 70 relates to Section 7.32 of the EP & A Act and states that where the consent authority is satisfied that the development meets certain criteria, and a Local Environmental Plan authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.



61. Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 allows for circumstances where an affordable housing contribution may be levied for development of land in Green Square. This matter is discussed in further detail under the heading Financial Contributions below.

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

62. A BASIX Certificate has been submitted with the development application.
63. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

### **Local Environmental Plans**

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

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

#### **Part 2 Permitted or prohibited development**

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

#### **Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 22m is permitted.</p> <p>Building A has been approved to a height of 26.74m and Building B has been approved to a height of 26.93m. Both heights are measured to the top of the lift overrun.</p> <p>Under the base consent, a variation to the maximum building height under Clause 4.6 of the SLEP 2012 was assessed and determined the above heights to be acceptable and the concept approval amended to allow for these heights.</p> <p>The subject amending DA proposes no changes to the approved height and the lift overrun features.</p>

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	<p>Clause 4.4 of the Sydney LEP 2012 permits a base FSR of 1.5:1 and an additional 0.5:1 community infrastructure floor space under Clause 6.14 as the site is located in Area 6. The approval for the site included a public benefit offer and VPA towards the delivery of community infrastructure within Green Square in order to utilise the additional FSR.</p> <p>The approval utilised the design excellence provisions pursuant to Clause 6.21, where up to a further 10% FSR is possible. This was applicable as the approved design is the result of a competitive design process and is considered by the consent authority to exhibit design excellence.</p> <p>Therefore, the development has a maximum FSR of 2.2:1 (15,551.8sqm).</p> <p>The approved FSR is 2.2:1 (15, 541sqm), which complies.</p> <p>The proposed internal design refinement changes to the building has resulted in the reduction of service areas, fire stairwell, plant, building column etc which are areas that are excluded from the gross floor area calculation. The reduction of these items has resulted in an increase in calculated gross floor area which has been used to improve the apartment layout. As a result, the gross floor area has been increased by 10sqm.</p> <p>A floor space ratio of 2.2:1 or 15,551sqm is proposed which complies with the maximum FSR. A condition is recommended in this consent to not exceed the FSR of 2.2:1 or 15,551sqm.</p>

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

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>As detailed in the relevant history section of this report, a competitive design alternatives process was held in October and November 2019. The proposal prepared by PTW was preferred and named as the winning scheme.</p> <p>The development has been approved with exhibiting design excellence and has utilised the additional 10% FSR allowed by these controls.</p> <p>The amending DA maintains the existing external design of the development and, as such, the development retains a high degree of architectural and landscape design merit. Furthermore, the amending DA improves the apartment layout for future occupant's amenity and proposes the addition of a feature brick design to the plain brick walls to enhance the presentation of the building to the streetscape.</p> <p>The development therefore achieves design excellence.</p>

**Part 7 Local provisions – general**

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
<p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p> <p>7.7 Retail premises</p>	Yes	<p>A maximum of 133 car parking spaces are permitted in accordance with the Sydney LEP 2012 (116 residential, 15 visitor and 2 retail car spaces).</p> <p>A total of 134 car parking spaces are proposed, as follows:</p> <ul style="list-style-type: none"> <li>45 residential car spaces for Building A + 12 accessible car spaces;</li> </ul>

Provision	Compliance	Comment
		<ul style="list-style-type: none"> <li>• 44 residential car spaces for Building B + 16 accessible car spaces;</li> <li>• 12 standard visitor spaces, 3 accessible visitor spaces;</li> <li>• 1 standard retail space, 1 accessible retail space</li> </ul> <p>It is noted that car share, service spaces and motorcycle car parking rates are covered by the DCP, not the LEP. However, 11 motorcycle spaces, 2 car wash bays, 3 car share spaces and 3 loading/servicing spaces are provided in addition to the above.</p> <p>The one additional car space (being 1 residential car space) is not permitted and a condition is recommended in this consent to ensure this space is deleted from the plans.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	An affordable housing contribution is required. This is discussed in further detail in the contributions section below.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils and is within 500m of Class 3 Acid Sulfate Soils (to the west). It is likely that the proposed works will result in disturbance of such soil, requiring the preparation of an Acid Sulfate Soils Management Plan.</p> <p>An appropriate condition is included in the base consent.</p>



Provision	Compliance	Comment
7.15 Flood planning	Yes	<p>The site is identified as being flood affected.</p> <p>Flood management of the development is managed under the base consent with appropriate conditions included in the base consent.</p>
7.20 Development requiring or authorising preparation of a development control plan	Yes	<p>The site is subject to concept consent D/2017/1723 and D/2017/1723/A. Pursuant to Section 4.23 of the Environmental Planning and Assessment Act 1979.</p> <p>The amended proposal is consistent with the conditions of consent under this concept approval as discussed below under 'Discussion' section.</p>

## Development Control Plans

### Sydney Development Control Plan 2012

65. 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

66. The site is located within the Mary O'Brien Park locality. The proposed development is in keeping with the unique character and the design principles of the Mary O'Brien locality. The development:
- (a) provides buildings that respond to the existing and future desired character of the area and the applicable planning controls for the site;
  - (b) provides an active frontage and well-designed entry to Bourke Street; and
  - (c) provides public domain improvements along Bourke Street, O'Dea Avenue and Kingsborough Way, including widened footpaths and setback areas to enhance the public domain and generate pedestrian activity.

**Section 3 – General Provisions**

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public Art 3.1.6 Sites greater than 5,000sqm	Yes	<p>A preliminary public art strategy has been approved with the development and a condition included in the base consent for the final detailed public art strategy to be finalised and submitted to Council for approval.</p> <p>The proposal provides a range of housing types, including single storey apartments, garden apartments and maisonette apartments.</p> <p>The base consent includes the construction, dedication and subdivision of a new road, footpath widening and associated public domain works that will improve the public domain.</p> <p>For ease of better understanding Condition 106 Road Network and Geometric Road Design imposed under the base consent, it has been replaced by Condition New Road Design in this consent.</p>
3.2. Defining the Public Domain	Yes	<p>The approved development will enhance the public domain by providing a directly accessible ground floor retail tenancy to the corner of Bourke Street and O'Dea Avenue, providing an active frontage.</p> <p>The building has entries and access to the residential units directly from both street frontages and the through-site link.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	<p>As detailed in the relevant history section of this report and in Clause 6.21 above, a competitive design alternatives process was held in October and November 2019. The proposal prepared by PTW was preferred and named as the winning scheme.</p> <p>The development has been approved as demonstrating design excellence and has utilised the additional 10% FSR allowed by these controls. The amending DA proposes no changes to the overall design excellence of the building.</p>

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees.</p> <p>A condition is included in the base consent to require street trees to be retained and protected during construction.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The site is identified as being flood affected. Appropriate flood management and stormwater conditions are included in the base consent.
3.8 Subdivision	Yes	It is recommended that Condition 93 Land Subdivision - Separate DA Required under the base consent is deleted. This condition is not relevant to the approval and the subdivision of land to be dedicated to Council is being dealt with under the VPA and public domain conditions.
3.11 Transport and Parking	Yes	<p>City's Transport Access Unit is satisfied that collection can occur within the basement. A condition is included in the base consent ensuring that all servicing is to be carried out on-site.</p> <p>The amending DA provides 200 bicycle parking spaces located in the basement levels with residential bicycle parking accommodated within adequately sized storage room. The minimum requirement for bicycle parking is 204 bicycle parking spaces (182 residential, 19 residential visitor, 1 retail staff, 2 retail visitor). The site is considered capable of meeting this requirement. Therefore, a condition is recommended for the minimum bicycle requirement to be provided.</p> <p>The proposal includes 11 motorcycle spaces, 2 car wash bays, 3 car share spaces and 3 loading/servicing spaces. The DCP requires 4 service spaces. The location and design of these spaces otherwise comply with the DCP.</p>

Provision	Compliance	Comment
		Appropriate conditions are recommended to ensure an additional service space is provided, and that the residential, visitor and accessible car, bicycle and motorcycle spaces are designed in accordance with the Australian Standards and allocated appropriately.
3.12 Accessible Design	Yes	<p>The development, including the retail tenancy, lobbies and communal open space at ground is accessible to all and each level on both buildings is accessible by the lift.</p> <p>The proposal provides 28 adaptable apartments which meets the minimum requirement. As a result, the design modification Condition 5(b) of the base approval has been satisfied by way of this amended DA and can be deleted.</p>
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	<p>Waste collection can be accommodated in the basement, and adequate waste holding areas are provided for residential waste and recycling and bulky goods.</p> <p>It is noted however, that chutes within Building A and Building B will be located adjacent to habitable rooms. The existing base approval was accompanied by an acoustic report verifying appropriate acoustic treatments will be installed to minimise adverse impacts on these habitable rooms. A condition has been included in the existing base approval ensuring compliance with the acoustic report.</p>



Provision	Compliance	Comment
		A condition is recommended in this consent requiring a waste management plan is to be submitted and approved by Council and it to include details of the ongoing management of the chute system including bin transfers, rotations, servicing and chute failure and include appropriate acoustic treatment for adjoining habitable rooms to the chute system.

## Section 4 – Development Types

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

Provision	Compliance	Comment
4.2.1 Building height	Yes	<p>The site is permitted a maximum building height of 6 storeys.</p> <p>The approved development is 2 x 7 storey buildings.</p> <p>The amending DA proposes no changes to the approved height, built form and storeys</p>
4.2.2 Building setbacks	Yes	The amending DA proposes no changes to the approved building setbacks and built form.
4.2.3. Amenity	Yes	<p>The proposal has acceptable amenity regarding solar access, overshadowing, open space and ventilation and noise as outlined in the SEPP 65 and ADG assessment above.</p> <p>The amending DA proposes no changes to the approved solar, privacy and view impact to neighbouring properties.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The proposal retains an appropriate built form including two building forms, with varied masonry textures and colours, modulation and setbacks across all frontages to provide visual interest.

Provision	Compliance	Comment
		<p>The street frontage length of each building facade is approximately 40m to 50m, with diverse architectural elements and character adopted for each building.</p> <p>The scale, modulation and articulation of the facade responds appropriately to all four site frontages that are visible from the public domain.</p>
4.2.5 Types of development	Yes	<p>The proposal generally provides perimeter block buildings with communal open space in the middle that are visually connected to the public domain.</p> <p>The proposal seeks to minimise the impacts of external noise and pollution through the introduction of wintergardens.</p> <p>Ground floor apartments are setback a minimum of 4m from the property boundary and contain private open space.</p>
4.2.6 Waste and recycling Management	Yes	<p>Each dwelling has adequate space to manage waste. Garbage chutes, along with additional space for bins and storage of bulky goods are provided and are accessible on each level.</p> <p>Waste is collected from within the basement via an internal loading bay.</p>
4.2.7 Heating and cooling infrastructure	Yes	<p>The heating and cooling infrastructure is located in a centralised area on level 6 and the rooftop, with air conditioning and hot water plant areas provided for each building as required. The rooftop hot water plant is part of the lift overrun area, which is setback from the edge of the building and not visible from the public domain.</p>
4.2.8 Letterboxes	Yes	<p>Letterboxes can be provided within the lobbies of both building. A condition has been included in the base consent to ensure that the letterboxes are depicted in plan.</p>

**Section 5.2 – Green Square**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
5.2.3 Community infrastructure	Yes	<p>As discussed within this report, the applicant has entered into a VPA with the City for the construction and dedication of land for footpath widening, the provision of a new road and the provision of a monetary contribution for community infrastructure to be delivered in Green Square in accordance with Clause 6.14 of the Sydney LEP 2012.</p> <p>The proposed public domain works and monetary contribution are considered to address the provisions of Section 5.2.3 of the Sydney DCP 2012.</p>
5.2.7 Stormwater management and waterways	Yes	This issue is discussed under Section 3.7 of the DCP.
5.2.8 Highly visible sites	Yes	<p>The site is located on the visually prominent corner of Bourke Street and O'Dea Avenue, and is identified as a highly visible site.</p> <p>The development provides an active interface at ground floor to this corner, by locating and designing a double height retail tenancy that has strong visual connectivity with the public domain.</p> <p>The building element on the corner of O'Dea Avenue and Bourke Street has been designed so that it is visually prominent with a white brick curved facade and horizontal banding in a contrasting dark metal, emphasising the use of high quality materials and detailing of this development within the view corridor.</p> <p>As discussed elsewhere in this report, the development is considered to exhibit design excellence, and has been thoughtfully designed to reinforce the corner of O'Dea Avenue and Bourke Street.</p>

Provision	Compliance	Comment
5.2.9	Yes	The proposed building is compatible with the surrounding area and has a cohesive architectural expression.
5.2.10 Setbacks	Yes	<p>The proposal complies with the public domain setbacks required under Section 5.2.3 of the DCP and the building complies with the 3m setback from the street frontages for residential units at ground floor.</p> <p>All street frontage setbacks will be landscaped and will positively contribute to the streetscapes and the desired future character of the area.</p>

## Discussion

### Compliance with Concept approval (D/2017/1723/A)

67. The provisions of Clause 4.24 of the EP&A Act, 1979 state that where a concept approval (D/2017/1723/A) for a site remains in force, that the determination of any further development application in respect to that site cannot be inconsistent with the concept approval.
68. The proposed amending DA complies with the requirements of the concept plan. The table, below, provides an assessment of the proposed development against the key concept approval conditions imposed on the concept approval, being D/2017/1712/A.

Stage 1 consent requirement	Compliance	Comment
<p>Approved development (Condition 2)</p> <p>Detailed design to be contained within approved envelope (Condition 12)</p> <p>This condition requires that the proposal is to comply with the approved plans and contained within the building envelope</p>	Yes	The proposal is consistent with the approved plans and fits entirely within the building envelope of the concept approval.



Stage 1 consent requirement	Compliance	Comment
<p>Competitive Design Process (Condition 4)</p> <p>This condition requires that the detailed design of the building is to be consistent with the competition winning scheme and exhibit design excellence</p>	Yes	<p>The design is generally consistent with the competition winning scheme by PTW Architect, which was considered by the selection panel to be capable of exhibiting design excellence with regard to materiality and architectural expression. The amending DA proposes no changes to the overall design except for the addition of a feature brick design to the plain brick walls to enhance the presentation of the building to the streetscape.</p>
<p>Residential land use (Condition 6)</p> <p>This condition requires the residential component of the development must comply with the principles of SEPP 65 and ADG</p>	Yes	<p>As discussed in the SEPP 65 and ADG table above, the amended proposal is generally consistent with the principles of SEPP 65 and ADG and is considered acceptable.</p>
<p>Detailed Design of buildings (Condition 7)</p> <p>This condition includes design requirements that are to be addressed by the detailed design.</p>		<p>The design requirements under this condition has been resolved by the approved detailed design under the base consent and by way of conditions.</p> <p>The amended design remains consistent with the design requirements under this condition and does not result in amendments to the building that compromises the satisfaction of these design requirements.</p>
<p>Ecologically Sustainable Development (Condition 9)</p> <p>This condition requires the development to comply with a BASIX Energy score of 40 or higher and BASIX Water score of 50 or higher for the residential component</p>	Yes	<p>The amended application is accompanied by BASIX documentation certifying the development to have a BASIX Energy score of 40 and BASIX Water score of 51.</p>

Stage 1 consent requirement	Compliance	Comment
<p>Floor Space Ratio (Condition 10)</p> <p>This condition requires the development to comply with the maximum FSR of 2.2:1</p>	Yes	<p>The amended proposal results in an increase in the GFA by 10sqm and as a result a floor space ratio of 2.2:1 or 15,551sqm is proposed which complies with the maximum FSR as per this condition.</p>
<p>Building Height (Condition 11)</p> <p>This condition requires both buildings to not exceed the maximum height of the 22.79 metres to the parapet and 26.93 metres to the top of the lift overrun.</p>	Yes	<p>Building A has been approved with a height of 26.74m and Building B has been approved with a height of 26.93m which is measured to the top of the lift overrun. Both buildings do not exceed 22.79m at the parapet.</p> <p>The subject amending DA proposes no changes to the approved height from the parapet and lift overrun. Changes are proposed to the communal roof top but only to reduce the size in accordance with Condition 4 of the base consent. No additional form or features are proposed to the rooftop.</p>
<p>Parking Design (Condition 15)</p> <p>This condition requires parking to comply with the Australian Standards and any basement parking facility located under land to be dedicated to public domain is to be limited to either circulation space, common property, or unallocated visitor parking spaces</p>	Yes	<p>The reconfiguration of the basement level has ensured that all development located directly under the land that is to be dedicated to public domain i.e. the extended Kingsborough Way, is either circulation space, unallocated visitor spaces or common property. No areas that could be privately own by a tenant is allocated to these areas</p>

### Basement and parking levels reconfiguration

69. A maximum of 133 car parking spaces are permitted in accordance with the Sydney LEP 2012 (116 residential, 15 visitor and 2 retail car spaces).
70. A total of 134 car parking spaces are proposed, as follows:
  - 45 residential car spaces for Building A and 12 accessible car spaces;
  - 44 residential car spaces for Building B and 16 accessible car spaces;

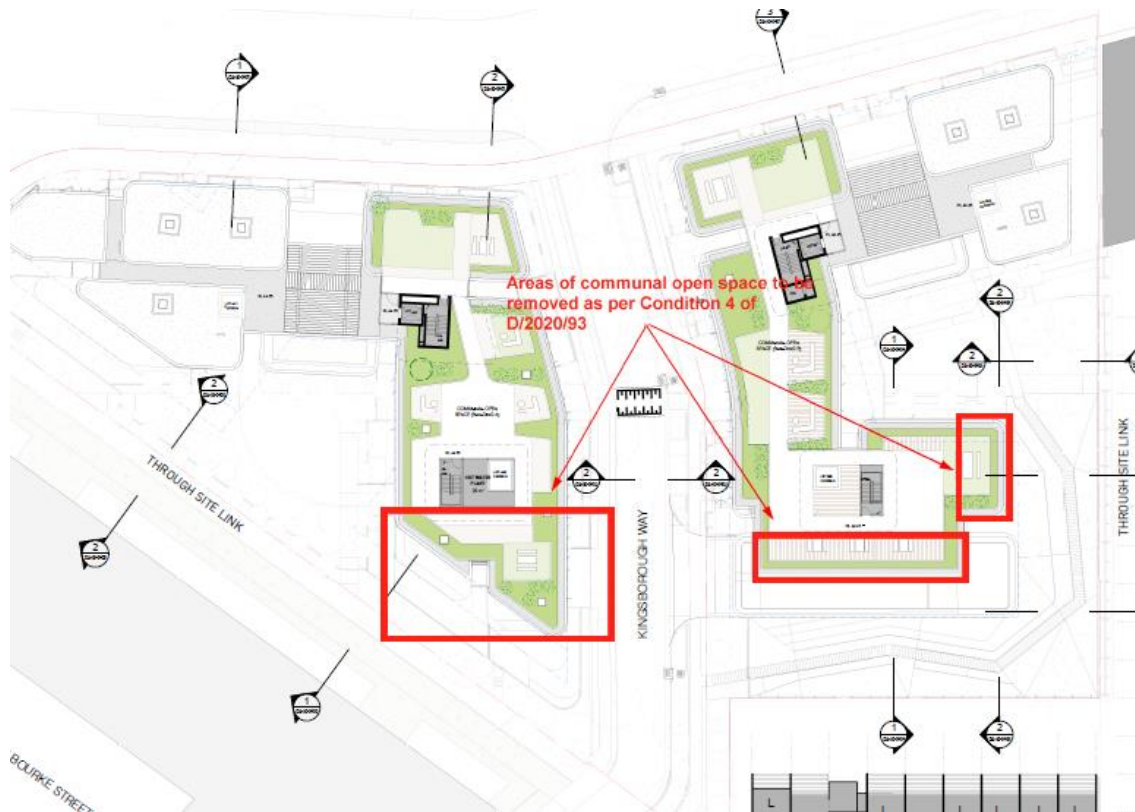
- 12 standard visitor spaces, 3 accessible visitor spaces;
  - 1 standard retail space, 1 accessible retail space
71. The one additional car space (being 1 residential car space) is not permitted and a condition is recommended in this consent to ensure this space is deleted from the plans.
72. City's Transport Access Unit is satisfied that collection can occur within the basement. A condition is included in the base consent ensuring that all servicing is to be carried out on-site.
73. The amending DA provides 200 bicycle parking spaces located in the basement levels with residential bicycle parking accommodated within adequately sized storage room. The minimum requirement for bicycle parking is 204 bicycle parking spaces (182 residential, 19 residential visitor, 1 retail staff, 2 retail visitor). The site is considered capable of meeting this requirement. Therefore, a condition is recommended for the minimum bicycle requirement to be provided.
74. The proposal includes 11 motorcycle spaces, 2 car wash bays, 3 car share spaces and 3 loading/servicing spaces. The DCP requires 4 service spaces. The location and design of these spaces otherwise comply with the DCP.
75. Appropriate conditions are recommended to ensure an additional service space is provided, and that the residential, visitor and accessible car, bicycle and motorcycle spaces are designed in accordance with the Australian Standards and allocated appropriately.

### **Design Refinement**

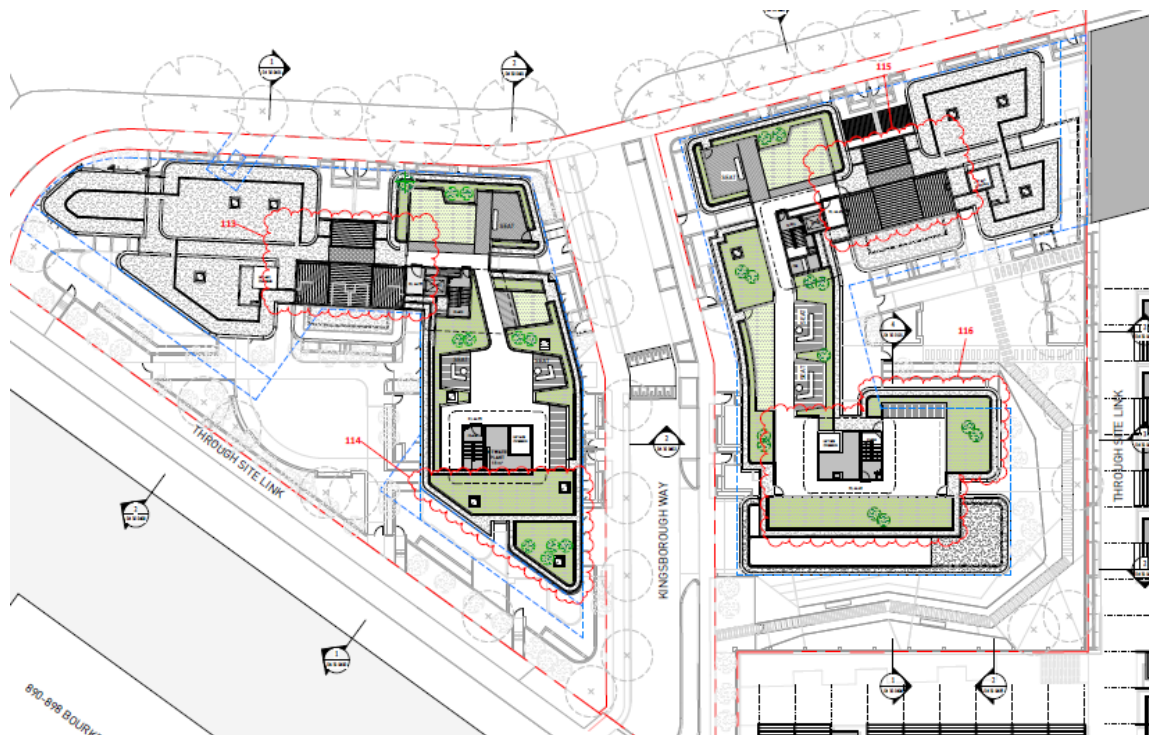
76. The application seeks to undertake design refinement changes within both Building A and Building B. The design changes will not alter the approved height and scale of the buildings with the footprint, setbacks and overall external design being maintained as approved under the base consent.
77. The internal changes to the apartment's layout, services and air condenser layout, and fire stair layout will improve the internal building design and improve the amenity for future occupants.
78. The removal and design refinement changes of plant, building services and building columns results, in the internal gross floor area being increased by 10sqm from 2.2:1 (15,541sqm) to 2.2:1 (15,551sqm). As discussed above, the proposed FSR still meets the maximum FSR permitted in accordance with Clause 4.3 of the SLEP 2012 and will result in no additional perceivable floor area and no changes to the built form which is acceptable.
79. The facade changes include amendments to add a feature brick wall pattern to enhance the external appearance of a plain brick wall design. The facade changes also include changes to the position of windows to reflect internal changes to the apartment layout. These changes will have no adverse impacts to the streetscape and amenity of neighbouring properties.
80. Given the above, a condition is imposed amending the approved drawings to the proposed drawings and replacing the FSR condition to reflect the proposed FSR.

## Communal Open Space

81. Rooftop communal open spaces with the areas of 519.45sqm for Building A and 670.1sqm for Building B has been approved under the base consent. Due to concerns on adverse visual privacy and noise impacts to the neighbouring properties at 890-898 Bourke Street and 15 and 17 Joynton Avenue, Condition 4 Communal Open Space was imposed under the base consent requiring the design of the rooftop communal open spaces to be modified to reduce the extent of useable communal areas as follows (see Figure 33):
- (a) Building A communal open space is to be setback in line with the south-west lift overrun/hot water plant and fire stair structure. All area beyond this point to the edge of the rooftop is to be replaced with appropriate landscape treatment to provide a visual privacy buffer 890-898 Bourke Street.
  - (b) Building B communal open space is to be setback from the south-east, south and south-west and replaced with appropriate landscape treatment to provide a visual privacy buffer to 15 and 17 Joynton Avenue as follows:
    - (i) To the south and south west (facing 15 Joynton Avenue): a setback of 4.6m from the inner edge of the parapet; and
    - (ii) To the south-east (facing 17 Joynton Avenue): a setback of 6.8m from the inner edge of the parapet.
82. The rooftop communal areas as shown in the propose level 7 and rooftop plan (see Figure 34) has been modified to address Condition 4 of the base consent and therefore this condition can be deleted. It is noted that the reduction in communal open space will still allow the subject site to achieve 25% as per Part 3D-1 ADG with a total area of 1944.06sqm (28%) of communal open space being provided for the site i.e. rooftop communal open spaces with the areas of 411.67sqm for Building A and 544.4sqm for Building B has, and ground level communal open spaces with the areas of 349.84sqm for Building A and 638.15sqm for Building B. It is also noted that these changes do not increase height as it is reducing the communal area built form, not adding more.
83. The detailed design of the communal open spaces and landscape is dealt with under condition 11 and 12 of the base consent which is to be satisfied prior to the issue of any Construction Certificate for above ground works.



**Figure 33:** Approved rooftop terrace plan outlining the areas of communal open space to be removed as per condition 4 of D/2020/93



**Figure 34:** Proposed rooftop terrace plan showing the removal of communal open space areas as per condition 4 of D/2020/93 and replaced with landscaping/green roof



**Design modification condition changes**

84. The applicant is seeking to delete Condition 5(b) Design modification which reads as follows:
- 5(b) The study contained within apartment AG11 is to either be provided with a highlight window (at least 1.8m above finished floor level) or deleted from the floor plan.
85. The apartment is now titled A-G09 in the amended plans and the study to this apartment has been deleted and replaced with storage. Therefore, as a highlight window for light and ventilation is not required to storage, the condition is to be deleted.
86. The applicant is seeking to delete Condition 5(c) Design modification which reads as follows:
- (5)(c) All windows to all ground floor habitable rooms are to have a sill height of at least 1 metre.
87. The applicant submits that the apartments have been designed with full height windows to maximise light into the apartments and privacy is dealt with by the incorporation of screening and fences.
88. City's Urban Design Specialist has reviewed the applicant's submission. The location of fencing and landscaping appropriately screens the windows to achieve a reasonable level of privacy for the occupants and public, see Figure 35. Therefore, deletion of this condition is acceptable.
89. The applicant is seeking to amend Condition 5(e) Design Modification which reads as follows:
- (5)(e) All entry doors to ground level apartments are to be detailed as a solid swing door with fanlight above
90. The applicant submits that the wording also includes the sliding doors which should be retained as it allows for light and ventilation. Furthermore, fanlights above the entry swing doors is not required for additional ventilation and the inclusion would impact on the design intent which is to have a solid vertical element in the façade.
91. City's Urban Design Specialist has reviewed the applicant's submission. The intent of the condition is to only apply to the 'external facing entry swing doors' to ground level apartments, not sliding doors. Also, the fanlight above should be noted as 'operable' as it is intended to provide additional ventilation instead of solely relying on sliding doors which does not provide security for occupants when opened. As the condition as written is unclear, the condition is to be amended to the following wording so that it can satisfied as intended:
- (5)(e) All external facing entry swing doors to ground level apartments are to be detailed as a solid door with an operable fanlight above
92. Given the above, a new Condition 6 Design Modification is included in the subject application which is to replace Condition 5 Design Modification of the base consent.



**Figure 35:** Ground floor photomontage depicting front fencing and landscaping of ground floor residential apartments that provides screening at a height of at least 1m from finish floor level

## Consultation

### Internal Referrals

93. The application was discussed with Council's Urban Design Unit, Public Domain Unit, Transport and Access Unit, Landscape Unit and the Waste Management Unit who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Recommended Conditions of Consent..

## Advertising and Notification

94. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 10 June 2021 and 2 July 2021. A total of 1528 properties were notified and 9 submissions were received.
95. Given that the originally notified application was lacking sufficient information to clearly understand the proposal, the application was re-notified for 21 days on 9 August 2021 to 31 August 2021. A total of 1528 properties were notified, and 3 submissions were received. Therefore, in total 12 submissions were received.
96. A number of the submissions raised the following issues that relate to the base consent:
- Construction Impacts
  - View loss
  - Overshading impact
  - Traffic impact
  - Height, bulk and scale

- Privacy impacts
  - Property values
97. As noted throughout the report, the amending proposal does not propose any changes to the approved height, built form, scale, road network design and overall design of the building. As a result, the amending proposal does not change the approved designs impact on views, overshadowing, traffic flow arrangement, privacy and construction management. The assessment of these issues is detailed in the original planner's report including appropriate conditions imposed in the base consent to address these concerns.
98. The submissions raised the following issues that relate to the amended proposal:
- (a) **Issue:** Section 7.11 Contribution is to be amended to reflect change of use from serviced apartments
- Response: As discussed in the report, a condition is recommended to amend the Section 7.11 Contribution to reflect the changes from serviced apartments to residential dwelling mix.
- (b) **Issue:** Traffic study provided with the subject application that recommends traffic flow arrangements that would result in adverse impacts to neighbouring properties
- Response: The recommendations in the Traffic Study prepared by Positive Traffic dated April 2021 are not supported and do not form a part of this consent. The final design of Kingsborough Way is to be addressed via condition of consent under the base consent. As noted in original planner's report, the final design of Kingsborough Way will include traffic calming measures so that vehicles are required to slow down.
- (c) **Issue:** The base consent was approved with arguments supporting serviced apartments. The validity of the original approval is considered questionable.
- Response: As discussed in this report, amending a development consent through this subject application is valid process under the EP&A Act. The change of use to residential apartments is a permissible use within the B4 Mixed Use zone with minimal changes being proposed to Building A to accommodate this change of use. Furthermore, the use is consistent with the existing and desired future uses for the locality.
- (d) **Issue:** Additional visitor parking should be provided and made easily accessible for visitors
- Response: As discussed in this report, car parking rates are a maximum under the SLEP 2012 and the maximum visitor parking that is permissible for this development is 15 visitor residential parking space. The amending proposal provides 15 visitor residential parking space and therefore, no further visitor parking is permissible. These spaces will be accessible from street level and can be accessed through intercom system.

- (e) **Issue:** Change of use from serviced apartments to residential will generate more traffic

Response: As discussed in this report, car parking rates are a maximum under the SLEP 2012, and a condition is imposed ensuring the proposed car parking to the site does not exceed the permissible maximum car parking rate. The site is also located within walking distance to a number of existing bus services and train stations to service future occupants.

- (f) **Issue:** Removal of walkways and recreation areas to southern side

Response: No changes are proposed in the amending DA to the walkways, recreational areas and through site link located to the south of the site.

## Financial Contributions

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

99. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. As the amended application changes the approved serviced apartment use to residential apartments, the development contribution under the base consent is to be amended to reflect the proposed residential dwelling mix.
100. As with the base consent, credits have been applied for the most recent approved uses contained of the site, in this instance being bulky goods, office and general industry, based on the breakdown of GFA provided by the applicant.
101. Given the above, a condition has been included in the recommended conditions of consent replacing the existing S7.11 contribution amount of \$1,337,736.88 to \$2,959,354.41.
102. A condition relating to this development contribution has been included in the recommended conditions of consent in the Recommended Conditions of Consent which will replace the condition in the base consent. The condition will require the contribution to be paid prior to the issue of a construction certificate and to replace the base consent contribution condition.

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

103. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space the affordable housing contribution condition in the base consent is to be amended.
104. A contribution is required at a rate of \$228.58 per square metre of total residential floor area (totalling 10,173sqm and \$2,325,344.34); and at a rate of \$76.16 per square metre of total non-residential floor area (totalling 9,913sqm and \$754,974.08).
105. Given the above, a condition has been included in the recommended conditions of consent replacing the existing affordable housing contribution amount of \$2,884,001.39 to \$3,080,318.42. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

**Relevant Legislation**

106. Environmental Planning and Assessment Act 1979.

**Conclusion**

107. The application proposes to amend the approved design under the development consent D/2020/93 (base consent) for the change of use of the 89 serviced apartments in Building A to 90 residential apartments, reconfiguration of the basement levels and parking reconfiguration with additional parking provided and design refinement changes.
108. The development is consistent with the concept approval conditions in accordance with the provisions of Division 4.4 Concept Development Application of the Environmental Planning and Assessment Act 1979.
109. Subject to conditions, the proposal is generally consistent with the relevant planning provisions, including SEPP 65, the Sydney LEP 2012 and the Sydney DCP 2012. Proposed non-compliances have been assessed as having merit in this case and are addressed in the report. Conditions are recommended to address non-compliances where appropriate.
110. The proposal represents design excellence, with a high standard of architectural design, materials and detailing and a built form that is consistent with the existing and future desired character of the area.
111. The development is in the public interest and is recommended for approval, subject to the conditions in Attachment A.

**ANDREW THOMAS**

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Charise Chumroonridhi, Specialist Planner