

Item 3.

Section 4.56 Modification Application: 219-231 Botany Road, Waterloo - D/2015/1358/C

File No.: D/2015/1358/C

Summary

Date of Submission: 4 February 2021, amendments submitted up to and including 27 May 2022

Applicant/Developer/Owner: HYG

Architect: Cottee Parker Architects Pty Ltd

Planning Consultant: Mecone

DAP and DAPRS: 22 April and 4 May 2021

Cost of Works: \$48,418,545

Zoning: The site is located in the Zone B4 Mixed Use. The subject application seeks to modify a concept consent that comprises future retail and residential uses and which are permitted with consent in the zone.

Proposal Summary: Section 4.56 application D/2015/1358/C seeks to modify the previously approved concept building envelopes in order to match design elements within a concurrent detailed design DA (D/2020/1419).

It is sought to amend the mixed-use concept envelopes to accommodate roof structures, balconies and an additional, second basement level.

This application seeks to modify an integrated concept consent which requires approval under the Water Management Act 2000.

Water NSW has provided revised General Terms of Approval which are included in recommended conditions of consent (refer to Attachment A).

Detailed Design DA D/2020/1419

Development Application D/2020/1419, for the detailed design of buildings to be contained within the site, has been assessed at the same time and is to be determined after the subject application.

Amendments to the Subject Application

Several iterations of amended drawings and additional information have been submitted over the course of the assessment of the application including amended concept envelope drawings, revised 3D CAD models and overshadowing analyses.

Notification and Exhibition

The subject application was initially notified between 17 February 2021 and 18 March 2021. Fourteen submissions were received.

Concerns raised in submissions include: tree preservation, deep soil provision and canopy cover, demolition and construction impacts, increased traffic, parking demand and road congestion, traffic noise and air pollution, view losses, overshadowing, structural impacts upon neighbouring buildings, increased demands on public transport and infrastructure, contamination, non-compliance with height controls, density, inadequate setbacks, noise from rooftop plant and equipment, risks to pedestrian safety, public art provision and stormwater management.

Following amendments to the proposal, the modified concept was renotified from 14 March to 29 March 2022. Four submissions were received.

Many concerns raised in response to the initial notification process were reiterated. New issues raised in these more recent submissions include overshadowing, visual privacy, construction noise and vibration, and structural and heritage impacts to the neighbouring Yudi Gunyi School.

Concerns raised in the submissions are addressed in this report.

Assessment

The proposed modifications under the subject application include increasing the height of concept envelopes for Buildings A and B such that the modified envelopes would exceed the 22m LEP height control by up to 2.751m. This is a 12.5% variation of the control.

The assessment detailed in this report concludes that the proposed variation is consistent with the objectives of the height of buildings development standard at LEP clause 4.3 and is supported.

Several conditions of consent are proposed to be modified to align with the proposed design amendments to the concept envelopes. These include changes to conditions (3) Approved Development, (6) Stage 2 (detailed design) To Be Contained Within Approved Envelope, (7) Building Height and to the revised General Terms of Approval at Schedule 3 as provided by Water NSW. These modifications are supported in the most part.

Condition (4) Design Requirements is also proposed to be amended to remove duplication of planning controls such as the natural cross ventilation requirements of the Apartment Design Guide. These modifications are supported in the most part.

The proposed modifications outlined above are consistent with the commitment to community infrastructure provision, which includes land dedication, embellishment works and a monetary contribution, as secured in the Voluntary Planning Agreement associated with the original concept approval (D/2015/1358).

Substantially the Same

The concept development consent, as proposed to be modified, is substantially the same development as that originally approved.

Delegation and Recommendations

The subject application is referred to the Local Planning Panel as the proposed modifications of the concept building envelopes contravene the height of buildings development standard contained in LEP clause 4.3 by more than 10%.

For the reasons outlined above the modifications proposed under the subject application are recommended for approval subject to the conditions as modified and detailed at Attachment A to this report.

Summary Recommendation: The subject section 4.56 modification application is recommended for approval.

- Development Controls:**
- (i) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
 - (ii) Sydney Local Environmental Plan 2012
 - (iii) Sydney Development Control Plan 2012

- Attachments:**
- A. Recommended Modified Conditions of Consent
 - B. Selected Drawings
 - C. Voluntary Planning Agreement

Recommendation

It is resolved that consent be granted to Section 4.56 Modification Application No. D/2015/1358/C subject to the amendment of the following conditions, with modifications shown in ***bold italics*** (additions) and ~~strikethrough~~ (deletions), as follows:

SCHEDULE 1A

(3) APPROVED DEVELOPMENT

- (a) Development consent is limited to ***the*** concept building envelope and indicative land uses within this envelope, in accordance with Development Application No. D/2015/1358 dated 21 September 2015 (as amended) and the following drawings:

Drawing Number	Drawing Name	Date
DA2000-1D	Basement Level Building Envelope Floor Plan	02/09/2016
DA2000-2F	Levels 1 (Street) & 2 Building Envelope Floor Plans	06/09/2016
DA2001-F	Levels 3 & 4 Building Envelope Floor Plans	06/09/2016
DA2002-F	Levels 5 & 6 Building Envelope Floor Plans	06/09/2016
DA2003-F	Levels 7 & 8 Building Envelope Floor Plans	06/09/2016
DA2004-F	Building Envelope Roof Plan	06/09/2016
<i>2004, A</i>	<i>Building Envelope – Above Ground Envelope Plan</i>	<i>01/12/2021</i>
DA3000-C D	Building Envelope Elevations 1 & 2	06/09/2016 01/12/2021
DA3001-D	Building Envelope Elevations 3 & 4	06/09/2016 <i>01/12/2021</i>

DA4000-D	Building Envelope Sections 1 & 2	06/09/2016 01/12/2021
DA4001-D	Building Envelope Sections 3 & 4	06/09/2016 01/12/2021

and as amended by the conditions of this consent.

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

(4) DESIGN REQUIREMENTS

The following design requirements must be incorporated into any **detailed design development** application submitted for assessment:

- (a) The front section of Building A facing Botany Road is to have a minimum of 1 lift core.
- (b) The rear section of Building A is to have a minimum of 1 lift core.
- (c) Building B is to have a minimum of 2 lift cores.
- (d) Building C is to have a minimum 1 lift core;
- (e) ~~Building C Levels 1 and 2 is to consist of cross through apartments, Levels 3 to 8 is to consist of 2 storey cross through apartments;~~
- (f) Building C is to have corridor access to the apartments from the south of the building;
- (g) All habitable rooms to the front section of Building A must be capable of receiving natural ventilation to the eastern(quiet) side of the building;
- (h) ~~Any air path used for natural cross ventilation or natural ventilation that relies on a corridor or circulation space on that air path, must pass through a non-habitable room to provide an acoustic buffer;~~
- (i) All openings to the south of Building C must incorporate appropriate visual privacy treatment to ensure no sightlines are provided to the building and grounds of Green Square School while allowing daylight to the openings.

(6) STAGE 2 TO BE CONTAINED WITHIN APPROVED ENVELOPE

With the exception of lift and stair overruns the detailed Stage 2 design, including services, must be contained within the building footprint and envelope approved as part of this consent ~~and comply with relevant planning controls.~~

(7) BUILDING HEIGHT

With the exception of lift **and stair** overruns, the maximum height of the buildings must not exceed the following:

- (a) The height of the front portion of Building A must not exceed RL ~~32.300~~ **34.00** (AHD) ~~to the top of the roof;~~
- (b) The height of the rear portion of Building A must not exceed: ~~RL 35.400 (AHD)~~ **to the top of the roof;**
 - (i) **RL 36.400 (AHD) to the top of the 1m Planter Zone;**
 - (ii) **RL 38.150 (AHD) to the top of the Stair/Pergola Zone;**
 - (iii) **RL 35.250 (AHD) to the section of envelope indicated by arrow numbered 2.1.**
- (c) The height of Building B must not exceed: ~~RL 36.000 (AHD) to the top of the roof;~~
 - (i) **RL 36.400 (AHD) to the top of the 1m Planter Zone;**
 - (ii) **RL 38.150 (AHD) to the top of the Stair/Pergola Zone;**
 - (iii) **RL 35.250 (AHD) to the portion of envelope indicated by arrow numbered 2.1;**
 - (iv) **RL 36.200 (AHD) to the top of the 0.8 Planter Zone;**
 - (v) **RL 33.100 (AHD) to the south-eastern corner of the roof.**
- (d) The height of Building C must not exceed RL 37.000 (AHD) ~~to the top of the roof.~~

SCHEDULE 3

TERMS OF APPROVAL

The Terms of Approval for Integrated Development as advised by ~~[name of authority]~~ **Water NSW** are as follows:

General

~~1. An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.~~

~~2. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently~~

~~extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.~~

~~3. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:~~

- ~~(a) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and~~
- ~~(b) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and~~
- ~~(c) where the habitable structure is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.~~

~~4. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.~~

~~5. DPI Water requires documentation (referred to as 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process. Information will be required at several stages: prior to construction commencing (initial report - which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted to DPI Water at Parramatta Office, in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.~~

~~Prior to excavation~~

~~6. The following shall be included in the initial report:~~

- ~~(d) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.~~
- ~~(e) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table during the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.~~

- (f) ~~details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.~~
- (g) ~~a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [DPI Water prefers that monitoring be undertaken on a continuous basis using automatic loggers in boreholes.]~~

~~7. The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.~~

~~8. Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.~~

~~9. Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.~~

~~10. A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability predicted by slug testing, pump testing or other means).~~

~~11. A copy of a valid consent for the development shall be provided in the initial report.~~

~~12. The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called "tailwater") must comply with the provisions of the Protection of the Environment Operations Act 1997 and any requirements of the relevant controlling authority.~~

~~13. Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in~~

~~the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.~~

~~During Excavation~~

~~14. Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.~~

~~15. Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.~~

~~16. Measurement and monitoring arrangements to the satisfaction of DPI Water are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.~~

~~17. Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.~~

~~18. Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.~~

~~19. The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.~~

~~20. Access to groundwater management works used in the activity is to be provided to permit inspection when required by DPI Water under appropriate safety procedures.~~

~~Following excavation~~

~~21. Following completion of the dewatering operations, the applicant shall submit to DPI Water, Parramatta Office, the completion report which shall include:~~

- ~~(a) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and~~
- ~~(b) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and~~

- (c) ~~a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.~~

~~22. The completion report is to be assessed by DPI Water prior to any certifying agency's approval for occupation or use of the completed construction.~~

Reference Number:	S961135420
Issue date of GTA:	18 May 2021
Type of Approval:	Water Supply Work
Description:	80mm submersible pump
Location of work/activity:	219-231 Botany Road, Waterloo NSW 2017
DA Number:	D/2015/1358/C
LGA:	City of Sydney Council
Water Sharing Plan Area:	Greater Metropolitan Region Groundwater Sources 2011

The GTA issued by WaterNSW do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to WaterNSW for the relevant approval after development consent has been issued by Council and before the commencement of any work or activity.

Condition Number	Details
	<i>Dewatering</i>
GT0115-0001	<i>Groundwater must only be pumped or extracted for the purpose of temporary construction dewatering at the site identified in the development application. For clarity, the purpose for which this approval is granted is only for dewatering that is required for the construction phase of the development and not for any dewatering that is required once construction is completed.</i>
GT0116-00001	<i>Before any construction certificate is issued for any excavation under the development consent, the applicant must:</i> <i>1. apply to WaterNSW for, and obtain, an approval under the Water Management Act 2000 or Water Act</i>

1912, for any water supply works required by the development; and

2. notify WaterNSW of the programme for the dewatering activity to include the commencement and proposed completion date of the dewatering activity
Advisory Note:

3. An approval under the Water Management Act 2000 is required to construct and/or install the water supply works. For the avoidance of doubt, these General Terms of Approval do not represent any authorisation for the take of groundwater, nor do they constitute the grant or the indication of an intention to grant, any required Water Access Licence (WAL). A WAL is required to lawfully take more than 3ML of water per water year as part of the dewatering activity.

4. A water use approval may also be required, unless the use of the water is for a purpose for which a development consent is in force.

GT0121-00001

Construction phase monitoring bore requirements
GTA:

a) A minimum of three monitoring bore locations are required at or around the subject property, unless otherwise agreed by WaterNSW.

b) The location and number of proposed monitoring bores must be submitted for approval, to WaterNSW with the water supply work application.

c) The monitoring bores must be installed and maintained as required by the water supply work approval.

d) The monitoring bores must be protected from construction damage.

GT0122-00001

Construction Phase Monitoring programme and content:

a) A monitoring programme must be submitted, for approval, to WaterNSW with the water supply work application. The monitoring programme must, unless agreed otherwise in writing by WaterNSW, include matters set out in any Guide published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no Guide is current or published, the monitoring programme must include the following (unless otherwise agreed in writing by WaterNSW):

i. Pre-application measurement requirements: The results of groundwater measurements on or around the site, with a minimum of 3 bore locations, over a minimum period of 3 months in the six months prior to the submission of the approval to WaterNSW.

ii. Field measurements: Include provision for testing electrical conductivity; temperature; pH; redox potential and standing water level of the groundwater;

iii. Water quality: Include a programme for water quality testing which includes testing for those analytes as required by WaterNSW; iv. QA: Include details of quality assurance and control v. Lab assurance: Include a requirement for the testing by National Association of Testing Authorities accredited laboratories.

b) The applicant must comply with the monitoring programme as approved by WaterNSW for the duration of the water supply work approval (Approved Monitoring Programme)

GT0123-00001

(a) Prior to the issuing of the occupation certificate, and following the completion of the dewatering activity, and any monitoring required under the Approved Monitoring Programme, the applicant must submit a completion report to WaterNSW.

(b) The completion report must, unless agreed otherwise in writing by WaterNSW, include matters set out in any guideline published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no guideline is current or published, the completion report must include the following (unless otherwise agreed in writing by WaterNSW):

1) All results from the Approved Monitoring Programme; and

2) Any other information required on the WaterNSW completion report form as updated from time to time on the WaterNSW website.

c) The completion report must be submitted using "Completion Report for Dewatering work form" located on WaterNSW website www.watems.com.au/customer-service/water-licensing/dewatering

GT0150-00001

The extraction limit shall be set at a total of 3ML per water year (being from 1 July to 30 June). The applicant may apply to WaterNSW to increase the extraction limit

under this condition. Any application to increase the extraction limit must be in writing and provide all information required for a hydrogeological assessment.

Advisory note: Any application to increase the extraction limit should include the following: - Groundwater investigation report describing the groundwater conditions beneath and around the site and subsurface conceptualisation - Survey plan showing ground surface elevation across the site – Architectural drawings showing basement dimensions - Environmental site assessment report for any sites containing contaminated soil or groundwater (apart from acid sulphate soils (ASS)) - Laboratory test results for soil sampling testing for ASS If ASS, details of proposed management and treatment of soil and groundwater. Testing and management should align with the NSW Acid Sulphate Soil Manual

GT0151-00001

Any dewatering activity approved under this approval shall cease after a period of two (2) years from the date of this approval, unless otherwise agreed in writing by WaterNSW (Term of the dewatering approval).

Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.

GT0152-00001

This approval must be surrendered after compliance with all conditions of this approval, and prior to the expiry of the Term of the dewatering approval, in condition GT0151-00001.

Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.

SCHEDULE

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by WaterNSW for integrated development associated with D/2015/1358/C as provided by Council:

- JK Report***
- To***
- Maville Bay Ply Ltd***
- on***
- Geotechnical Investigation***
- For***

- ***Prospective Residential Development***
- ***At***
- ***219 to 231 Botany Road, Waterloo, NSW***

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The concept development, as proposed to be modified, is substantially the same development as that originally approved and is consistent with Section 4.56 of the Environmental Planning and Assessment Act, 1979.
- (B) The proposed modification of conditions (3) Approved Development, (6) Stage 2 To Be Contained Within Approved Envelope and (7) Building Height, are to ensure that the detailed design development application D/2020/1419, which has been assessed at the same time as the subject modification application, is not inconsistent with the concept approval and is in accordance with the requirements contained in section 4.24(2) of the Environmental Planning and Assessment Act, 1979.
- (C) Notwithstanding non-compliances with the Height of Buildings development standard, the subject application demonstrates that the proposed modifications to the concept envelopes are consistent with the objectives of the development standard as specified at clause 4.3 of the Sydney Local Environmental Plan 2012 and with the commitment to community infrastructure provision, which includes land dedication, embellishment works and a monetary contribution, as secured in the Voluntary Planning Agreement associated with the original concept approval (D/2015/1358) and which has been registered on the title of the land.
- (D) The concept building envelopes, as proposed to be modified, are capable of accommodating a detailed design scheme that exhibits design excellence as defined by clause 6.21 of the Sydney Local Environmental Plan 2012.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 2 DP 554372, known as 219-231 Botany Road, Waterloo. It is irregular in shape with area of 4980 sqm. It has a single street frontage of 40.965m to Botany Road to the west. The site is located on the eastern side of Botany Road, immediately adjacent to the signalised intersection of Botany Road and Mandible Street. It is 230m north of the Green Square Town Centre and is located in the Green Square Urban Renewal Area.
2. There is a significant fall of about 10m across the site from its highest point at its south-eastern corner (RL 22.45) down to its north-western corner adjacent to its boundary with Botany Road (RL 12.46).
3. The site contains two warehouse buildings and hardstand areas. The site is currently accessed via two vehicle crossovers, one at each end of its frontage to Botany Road.
4. There are ten (10) trees contained within the subject site.
5. Adjacent to the north-west at 2 Allen Street (known as the 'Industri' development) on the corner of Botany Road and Allen Street, is a three to six storey mixed-use development comprising commercial uses at ground level and residential apartments above.
6. Adjacent to the north at 8 Allen Street, is a mixed-use development comprising three buildings up to six storeys in height with commercial uses at ground level fronting Allen Street and residential apartments behind and above.
7. Adjacent to the north-east at 356-358 George Street (known as the 'George and Allen' development) is a mixed-use development comprising four buildings up to six storeys in height. The building fronting Allen Street has commercial uses at ground level and residential apartments above. The remaining buildings fronting George Street contain residential apartments only.
8. Adjacent to the south at 233-235 Botany Road (known as the Belle and Lily development) is a mixed-use development up to about six storeys in height. This building comprises ground level commercial uses fronting Botany Road with residential apartments above and behind. Apartments within this building face its shared side boundary and have views to the north over the subject site.
9. On the opposite south-western corner of Botany Road and Mandible Street at 276-280 Botany Road is a seven-storey commercial building. On the north-western corner of Botany Road and Mandible Street at 274 Botany Road, is a large mixed-use development up to nine-storeys in height known as the Lincoln building. The Lincoln building comprises commercial uses fronting Botany Road and residential apartments above and behind.
10. On the opposite western side of Botany Road at 282-288 Botany Road is a mixed-use development up to seven storeys in height comprising commercial uses at ground level and residential apartments above and behind. Further south, on the opposite western side of Botany Road at 290-294 Botany Road is a two-three storey commercial building.

11. The site does not contain a heritage item and it is not located within a heritage conservation area. However, it adjoins a local heritage item 'Waterloo Public School group' of buildings (I2071) including landscaping. The heritage item is immediately adjacent to the south of the subject site at 237-271 Botany Road and currently operates as Yudi Gunyi School.
12. The site is located within the locality of Waterloo Park and is not subject to flooding.
13. Several site visits were carried out over the course of the assessment. These include a site visit to the Belle and Lily development adjacent to the south of the subject site which took place on 17 June 2022. Photos of the site and surrounds are provided below.

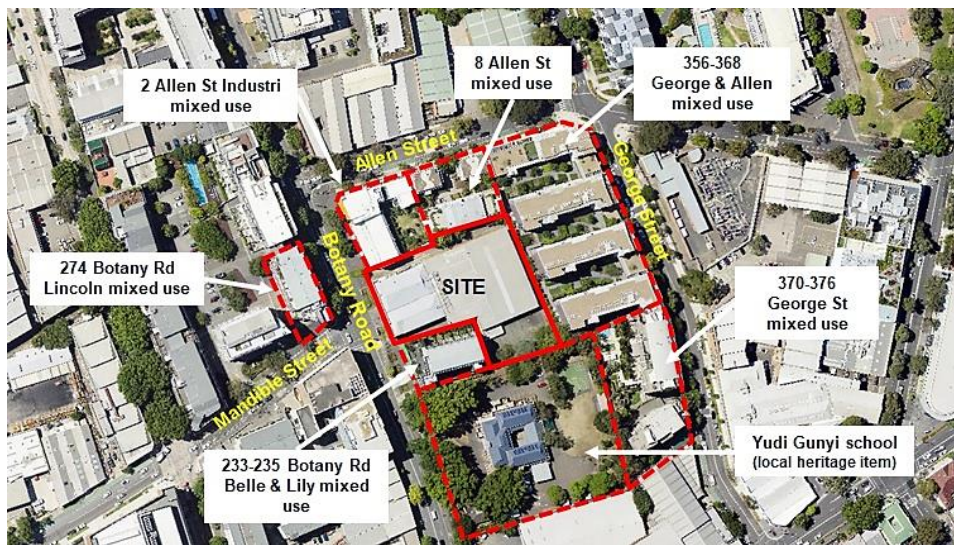


Figure 1: Aerial view of site and surrounds



Figure 2: Botany Road frontage of subject site, including adjacent traffic lights at the intersection of Botany Road and Mandible Street



Figure 3: Subject site looking south with arrow indicating strip of land to be dedicated in accordance with VPA



Figure 4: View along existing driveway servicing the rear of the site to the east



Figure 5: 'Industri' building at 2 Allen Street Waterloo, north-west of the subject site

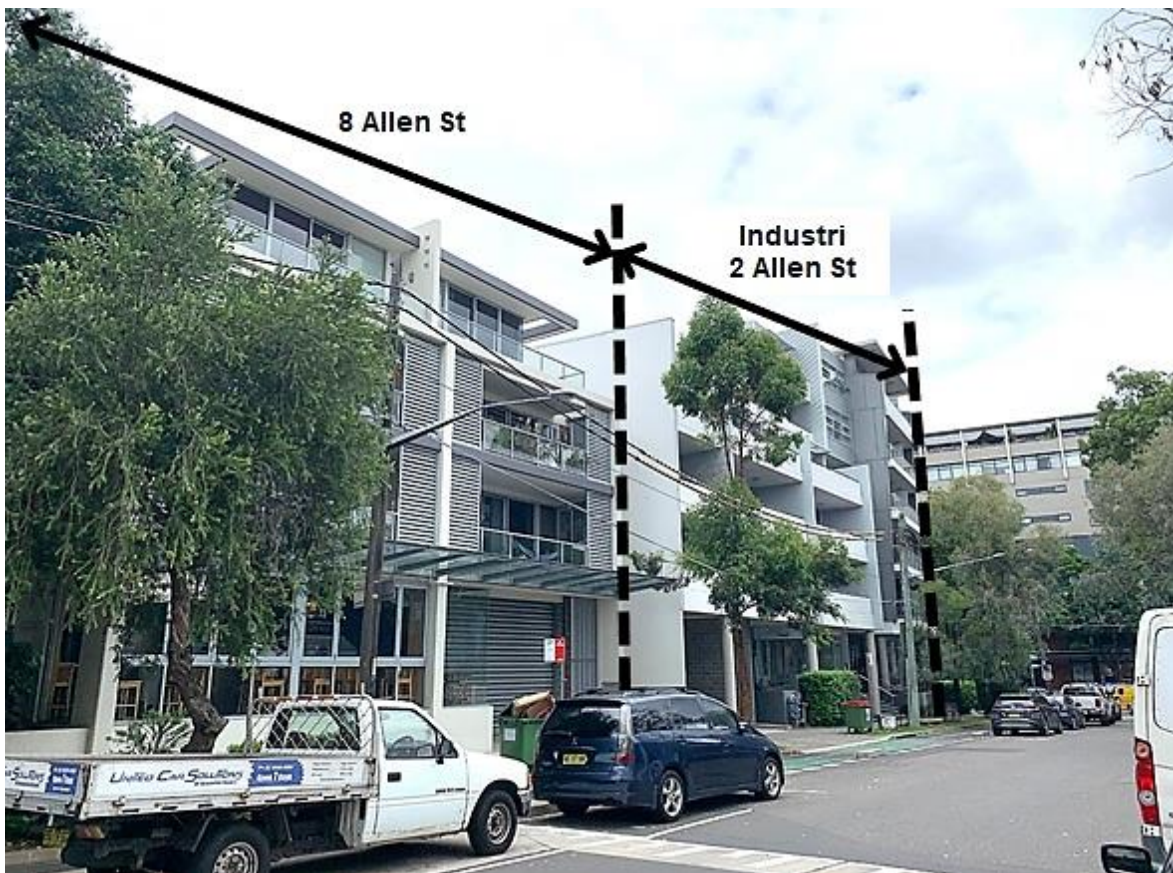


Figure 6: Allen Street frontage of mixed-use buildings to the immediate north of the subject site



Figure 7: 'George and Allen' buildings at 356-358 George Street Waterloo, north-east of the subject site



Figure 8: View from one of the podium-level courtyards of the 'George and Allen' building towards the subject site to the west



Figure 9: View from one of the podium-level courtyards of the 'George and Allen' building towards the subject site to the west



Figure 10: 'Belle and Lily' building at 233-235 Botany Road Waterloo, located to the immediate southwest of the subject site. Most of the apartments in this development overlook the subject site



Figure 11: Commercial building at 276-280 Botany Road Waterloo on the opposite south-western corner of Botany Road and Mandible Street



Figure 12: 'Lincoln' building at 274 Botany Road Waterloo on the opposite north-western corner of Botany Road and Mandible Street



Figure 13: Mixed-use building at 282-288 Botany Road Waterloo on the opposite / western side of Botany Road



Figure 14: Commercial building at 290-294 Botany Road Waterloo on the opposite / western side of Botany Road



Figure 15: Local heritage item (I2071) 'Waterloo Public School group' of buildings adjacent to the south of the subject site at 237-271 Botany Road and which currently operates as Yudi Gunyi School



Figure 16: View further south along Botany Road towards the Green Square Town Centre

History of Adjacent Sites

233-235 Botany Rd (Belle and Lily)

14. D/2015/887 – Lodged 26 June 2015 [prior to the lodgement of the concept DA (D/2015/1358) for the subject site], deferred commencement consent was granted by the Land and Environment Court of NSW on 20 October 2016 for demolition of the existing building and construction of a multi-storey mixed-use building.
15. D/2015/887/A – On 27 April 2017, a modification was approved to delete conditions requiring the installation of a median strip on Botany Road and inserting conditions restricting vehicular access to left in/left out.
16. D/2015/887/B – On 4 August 2017, a modification was approved to delete condition (14) Break Through Panel. This condition required a break through panel in the basement of the property at 233-235 Botany Rd to provide future shared driveway access for the subject site (219-231 Botany Rd). Modification of condition (36) was also approved to increase the maximum permitted width of driveways.
17. The works approved by D/2015/887 (as amended) were undertaken between 2017-2018.

237-271 Botany Rd (Yudi Gunyi school)

18. The local heritage item 'Waterloo Public School group' of buildings (I2071) was designed by prominent government architect William Kemp, constructed c. 1884 with additions by Richard Wells, Government Architect 1926-1929. The group has aesthetic significance as the scale and prominence of the buildings and plantings are landmarks in the local area.
19. Currently operating as the Yudi Gunyi school, it offers individual case managed education programs to support students to integrate successfully back into mainstream schools.

2 Allen Street (Industri)

20. D/2007/2294-01 – on 17 February 2010, development consent was granted for construction of a part 4, part 6 storey mixed use building with two commercial tenancies and one retail tenancy on the ground floor and 31 residential apartments to the upper floors (19 x two bedroom and 12 x one bedroom) over basement parking for 30 cars. The approval also entails a Planning Agreement to secure public domain improvements, land dedication and a monetary contribution to the Green Square Town Centre.

8 Allen Street

21. U02/01262-01 – On 30 October 2003, development consent was granted for the demolition of the existing buildings and for erection of 4 and 6 storey buildings, for a total of 24 units and basement car-parking.

356-368 George Street (George and Allen)

22. M/2011/1 – On 14 May 2012, a masterplan (deemed DCP) for the site was endorsed for building envelopes and footprints comprising 4 buildings ranging from 3 to 6 storeys in height, a maximum FSR of 2:1, land uses and floorspace areas accommodating commercial/retail space and residential units and vehicular access from Allen Street to a basement car park.

23. D/2011/1198 – On 27 July 2012, deferred commencement consent was granted for a detailed design DA for the demolition of existing structures, remediation of land and construction of a mixed-use commercial/retail and residential development including 128 residential units arranged within four blocks, commercial/retail fronting George and Allen Streets and basement car parking. The deferred commencement conditions were satisfied and the consent became operative on 23 July 2013. This consent was modified (D/2011/1198/A to I) to reduce the amount of commercial floor space, add apartments, for minor height increases and staged construction.
24. D/2013/1946 – On 12 May 2014, development consent was granted to amend development approved by D/2011/1198 (as amended) to add 2 storeys to the rear of Buildings B, C and D to create 9 additional apartments, increase the size of and reconfigure the retail premises, remove stair access from George Street to 3 apartments and amend access ramping in the courtyard. This consent was subject to modifications D/2013/1946/A to B.

History Relevant to the Subject Application

Concept Approval (D/2015/1358) and Voluntary Planning Agreement (VPA/2016/3)

25. D/2015/1358 - Lodged 21 September 2015, deferred commencement consent was granted by the Land and Environment Court of NSW on 07 November 2016 subject to a s34 agreement for three concept (stage 1) building envelopes containing residential and commercial uses with basement and above ground parking.
26. VPA/2016/3 - The Voluntary Planning Agreement (VPA) at Attachment C was negotiated in association with the concept DA to secure public benefits comprising dedication of a strip of land 2.4m wide along the site's street frontage for footpath widening, embellishment works and a monetary contribution of \$1,053,016 for community infrastructure improvements in Green Square. On 17 October 2017, the VPA was executed and deferred commencement conditions were satisfied. The consent was made operative and is valid to 17 October 2022.
27. D/2015/1358/A - On 17 January 2018, approval was granted to a s96AA application to modify the consent to refer to the approved Design Excellence Strategy (DEX Strategy).

Competitive Design Process (CMP/2016/10)

28. On 18 September 2017 a Competitive Design Alternatives Process Brief was endorsed by the City.
29. From October to December 2017 a competitive design alternatives process was undertaken. Four architectural firms participated being DKO, WMK, PBD Architects and Cottee Parker JPRA.
30. All four participants produced a final design submission for consideration by the Selection Panel. The Cottee Parker JPRA submission was selected as the winning design.
31. On 16 February 2018 the Competitive Design Process Report was submitted to the City and the competitive design process completed.

Detailed Design DA (D/2018/354), s4.56 modification (D/2015/1358/B) and Related Appeals

32. On 19 July 2019 Commissioner Smithson dismissed the deemed refusal appeal of:
- (a) D/2018/354 - detailed design DA for demolition existing structures, excavation and remediation works, subdivision and construction of a part 6, part 7 storey mixed use development within 3 buildings over 2 levels of basement parking; and
 - (b) D/2015/1358/B - associated modification of the concept consent to accommodate the development proposed in the detailed design DA. The modification application also sought to amend several concept DA consent conditions pertaining to:
 - (i) design requirements for vertical and common circulation areas;
 - (ii) natural ventilation for apartments in Building A (which fronts Botany Road);
 - (iii) maximum permitted building height;
 - (iv) compliance with State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development, the Apartment Design Guide (ADG), the Sydney LEP 2012 and the Sydney DCP 2012; and
 - (v) compliance with the landscaping requirements of the Sydney DCP 2012 and ADG.

Pre-lodgement Consultation (PDA/2020/128)

33. On 7 July 2020, a pre-DA meeting was held between Council officers and the applicant's new project team to discuss a new detailed design DA for the site.
34. On 24 July 2020, Council's planning officer provided written pre-DA advice pertaining to the following issues:
- (a) consistency with the concept DA consent and envelopes;
 - (b) pedestrian network, permeability and legibility;
 - (c) vehicle access arrangements;
 - (d) deep soil provision and landscaping; and
 - (e) recommended design amendments to Building plans.
35. The pre-DA advice recommended a further pre-lodgement meeting to discuss issues such as landscaping, acoustic privacy and natural ventilation that were not addressed in the pre-DA submission.
36. Notwithstanding the recommendation for further consultation no further pre-lodgement meeting was sought by the applicant.

Detailed Design DA (D/2020/1419)

37. On 20 January 2021, a detailed design DA (D/2020/1419) was lodged proposing:
 - (a) tree removal, demolition, excavation, remediation;
 - (b) construction of a mixed-use development comprising 3 buildings, 7-storeys in height, with a retail tenancy at ground level fronting Botany Road and 132 residential apartments above 2 basement levels, landscaping; and
 - (c) dedication of land and works for footpath widening along Botany Road.
38. Application no. D/2020/1419 is an Integrated DA that requires approval under the Water Management Act 2000.
39. Detailed design DA (D/2020/1419) is being assessed concurrently with the subject application.

Compliance Action

40. On 26 February 2021 a complaint was received about unauthorised works commencing on site. Council's Compliance Officers attended the site and did not observe any unauthorised works taking place. As such the compliance action was closed.

History of the Subject Application

41. On 4 February 2021, the subject section 4.56 modification application D/2015/1358/C was lodged with Council.
42. Following a review of the application documents Council Officers requested that the envelope drawings be revised to include levels (RLs) at critical junctures of the proposed modified envelopes and that a 3D CAD model of the proposed envelopes be submitted.
43. Amended envelope drawings and a 3D CAD model were submitted in response.
44. Following an assessment of the subject application, design amendments and additional information were requested, including:
 - (a) design modifications to proposed envelopes to accommodate rooftop structures incorporated in the detailed design such as pergolas and shading structures, parapets and rooftop planters;
 - (b) design modifications to proposed envelopes to delete envelope encroachments into the 3m setback to the eastern boundary; and
 - (c) analysis of overshadowing impacts to adjacent properties in accordance with the City's draft Minimising overshadowing of neighbouring apartments guide.
45. A meeting was held between the Proponent's project team and Council officers to discuss the requested design amendments and information.
46. Amended drawings were submitted, followed by solar access and overshadowing studies.

47. After an assessment of the amended application Council officers requested a meeting to discuss unresolved issues including further refinement of the proposed modified concept drawings and overshadowing. Council officers followed-up the meeting with a letter detailing the matters discussed.
48. Early in February 2022 amended envelope drawings, overshadowing analysis, a revised 3D CAD model and other supporting information was submitted to Council.
49. Following an assessment of the amended proposal Council officers requested that gaps in the overshadowing analysis be addressed.
50. On 27 May 2022 an amended overshadowing report was submitted.

Proposed Modifications

51. The subject application seeks to amend the concept envelope design as outlined in the table below.
52. The proposed modifications pertain to Integrated Development and require approval under the Water Management Act 2000.

Mod. no.	Proposed modification
General	
Unnumbered	Replace plans for each floor from Basement to Roof levels with a single building envelope plan (drawing no. 2004, A).
Unnumbered	Delete indicative locations of lift and stair overruns.
Unnumbered	With the exception of trees numbered T6 and T7, existing trees have been deleted from the drawings.
Unnumbered	Add a second basement floor beneath Buildings A and B and increase the depth (i.e. reduce the level) of the basement to RL 7.35.
Building A	
1.1	Envelope height increased from RL 32.30 TO RL 32.80.
1.2	Envelope height increased from RL 32.30 to RL 34.00.
Building B	
Unnumbered	The height of the south-eastern corner of the Building B envelope was previously RL 36.00 and is proposed to be reduced to a height of RL 33.10.

Mod. no.	Proposed modification
2.1	<p>Southern portion of Building A and B envelope height previously ranged in height from RL 35.40 to RL 36.00 and is proposed to be adjusted to a consistent height of RL 35.25.</p> <p>Note: proposed modification 2.1 as described in the schedule titled Summary of Proposed Amendment, is incorrect and does not correlate with the RLs annotated on the plan.</p>
2.2	Central portion of Building B envelope height previously at RL 36.00 is proposed to be increased in height to RL 36.40.
2.3	Portion of Building A and B envelope height previously ranged in height from RL 35.40 to RL 36.00 and is proposed to be adjusted to a consistent height of RL 38.15.
2.4	Portion of envelope set back from southern edge of Building B floor plate.
Building C	
Unnumbered	Increase the depth (i.e. reduce the level) of the basement from RL 11.20 to RL 11.15.
Unnumbered	<p>Correct inconsistencies in elevation and section drawings by labelling the indicative level above the basement/car parking level of Building C as 'Residential'.</p> <p>Note: in some instances (e.g. Section 2 on drawing no. 4000), the previously approved drawings labelled the indicative level above the lowest basement/car parking level of Building C as 'Car Parking'.</p>
3.1	This modification is not described in the schedule titled Summary of Proposed Amendment.

53. The subject application seeks to modify conditions of consent as outlined or as shown in ***bold italics*** (additions) and ~~striketroughs~~ (deletions) in the table below.

Proposed modification
<p>(4) DESIGN REQUIREMENTS</p> <p>The following design requirements must be incorporated into any Stage 2 application submitted for assessment:</p> <p>(a) The front section of Building A facing Botany Road is to have a minimum of 1 lift core.</p>

Proposed modification

- (b) The rear section of Building A is to have a minimum of 1 lift core.
- (c) Building B is to have a minimum of 2 lift cores.
- (d) Building C is to have a minimum 1 lift core;
- (e) ~~Building C Levels 1 and 2 is to consist of cross through apartments, Levels 3 to 8 is to consist of 2 storey cross through apartments;~~
- (f) Building C is to have corridor access to the apartments from the south of the building;
- (g) All habitable rooms to the front section of Building A must be capable of receiving natural ventilation to the eastern(quiet) side of the building;
- (h) ~~Any air path used for natural cross ventilation or natural ventilation that relies on a corridor or circulation space on that air path, must pass through a non-habitable room to provide an acoustic buffer;~~ **The provision of devices such as plenums to achieve natural cross ventilation shall not result in ceiling heights that are non-compliant with the ADG;**
- (i) All openings to the south of Building C must incorporate appropriate visual privacy treatment to ensure no sightlines are provided to the building and grounds of Green Square School while allowing daylight to the openings.

(7) BUILDING HEIGHT

With the exception of lift overruns, the maximum height of the buildings must not exceed the following:

- (j) The height of the front portion of Building A must not exceed RL 32.300 (AHD) to the top of the roof, **with the exception of parapets and an air conditioning plant to a maximum of 1300mm;**
- (k) The height of the rear portion of Building A must not exceed RL 35.400 (AHD) to the top of the roof, **with the exception of 'green roof' planting structures to a maximum height of 300mm and fire stairs and balustrades required to meet the National Construction Code 2019 (NCC);**
- (l) The height of Building B must not exceed RL 36.000 (AHD) to the top of the roof, **with the exception of fire stairs and balustrades required to meet the National Construction Code 2019 (NCC);**
- (m) The height of Building C must not exceed RL 37.000 (AHD) to the top of the roof.

- 54. Plans and elevations of the proposed modified envelopes are provided below. The annotated numbers in red boxes shown in Figure 17 below are referred to in a schedule of proposed modifications to the concept envelope drawings. Selected drawings are available at Attachment B to this report.

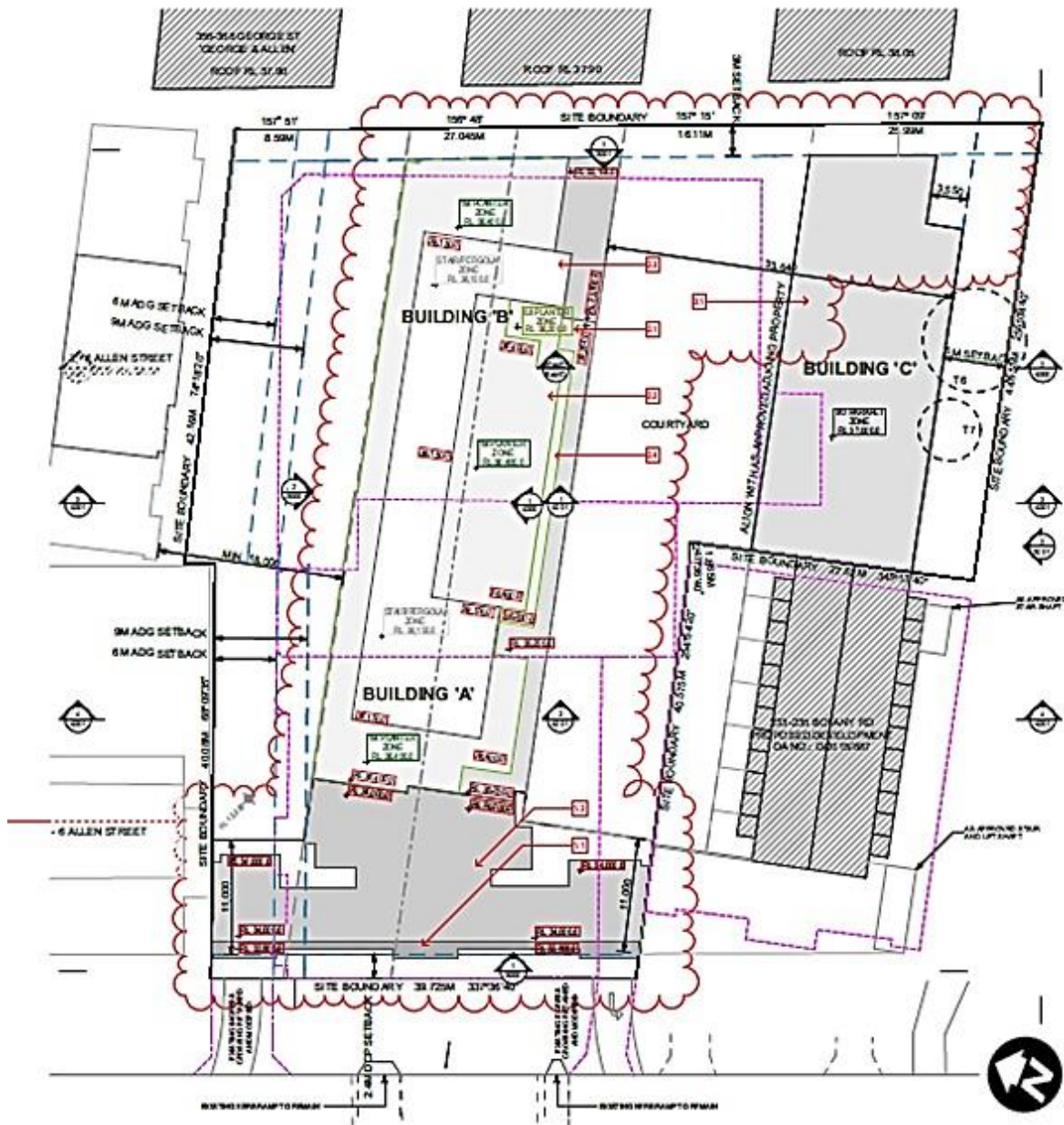


Figure 17: Proposed concept building envelope plan

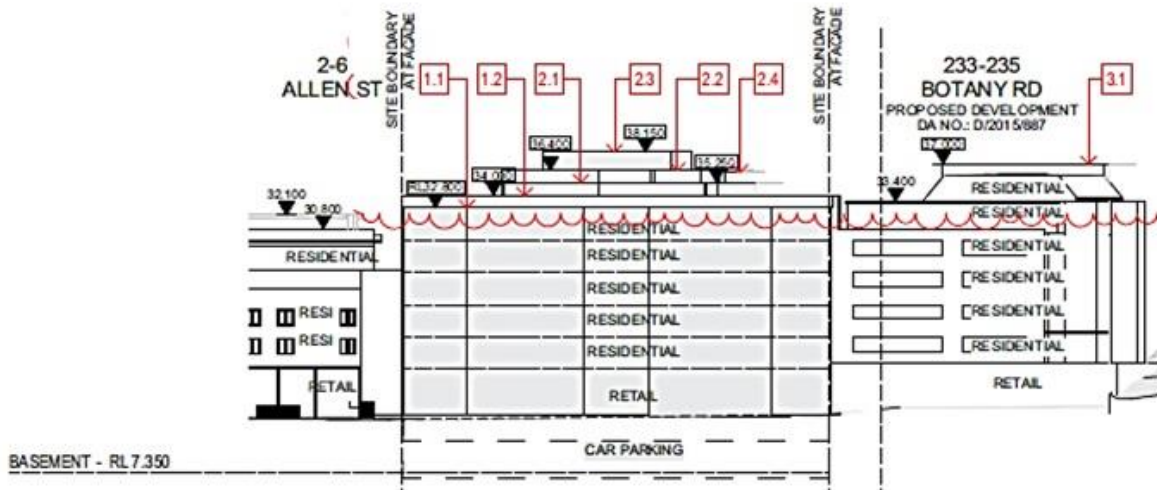


Figure 18: West (Botany Road) elevation

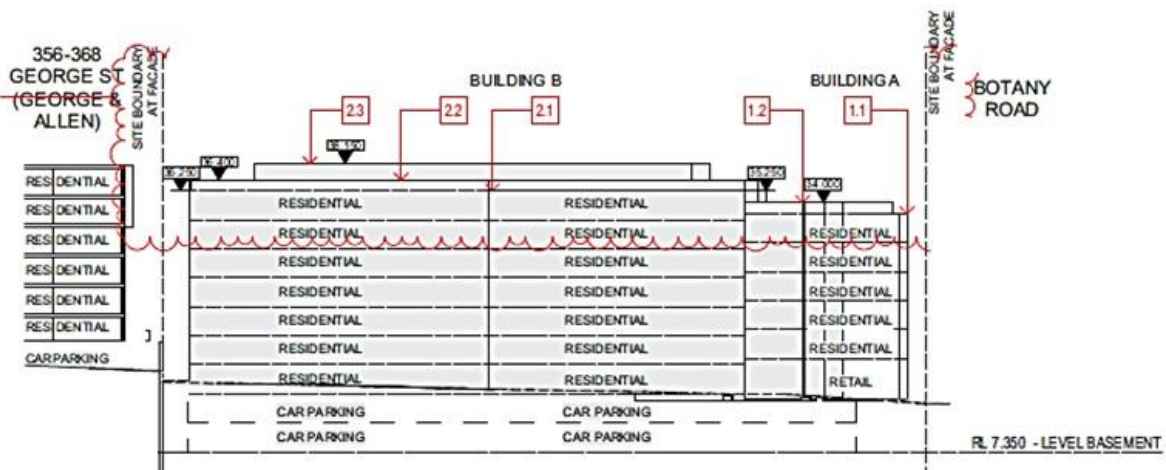


Figure 19: North elevation

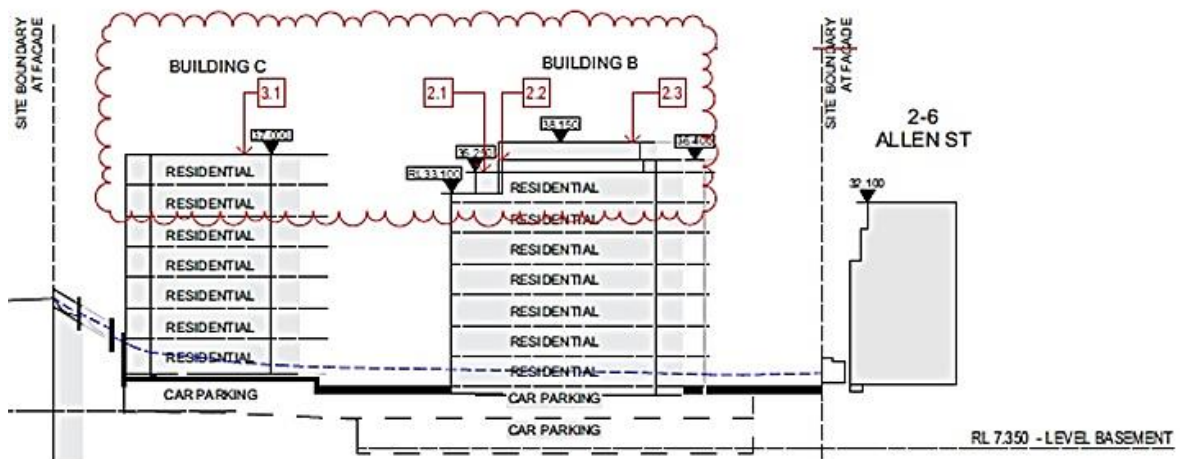


Figure 20: East elevation

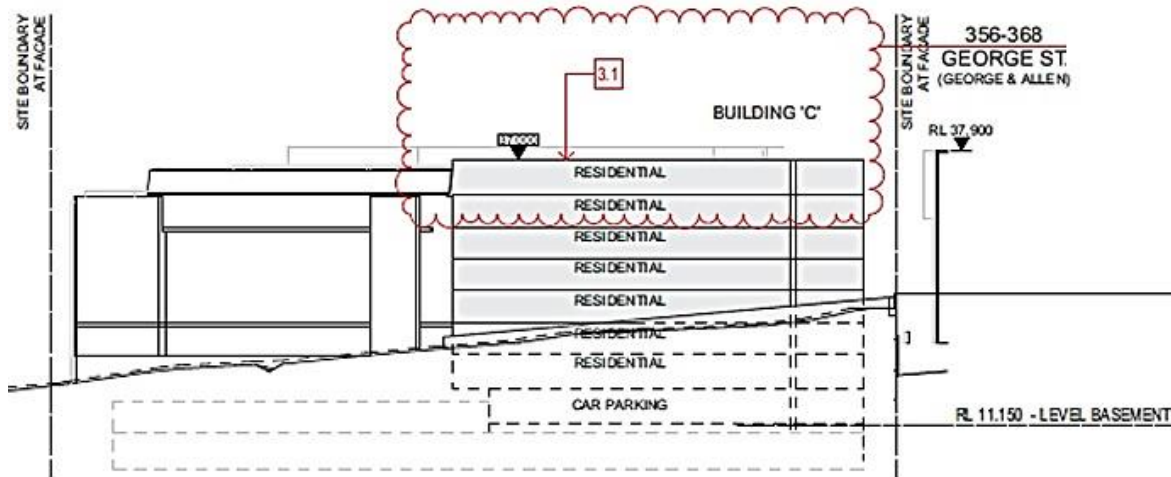


Figure 21: South elevation

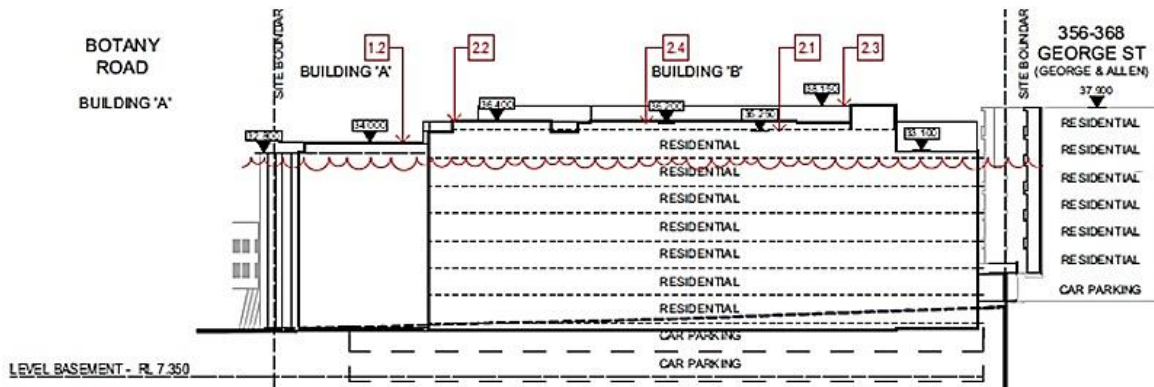


Figure 22: Section 1

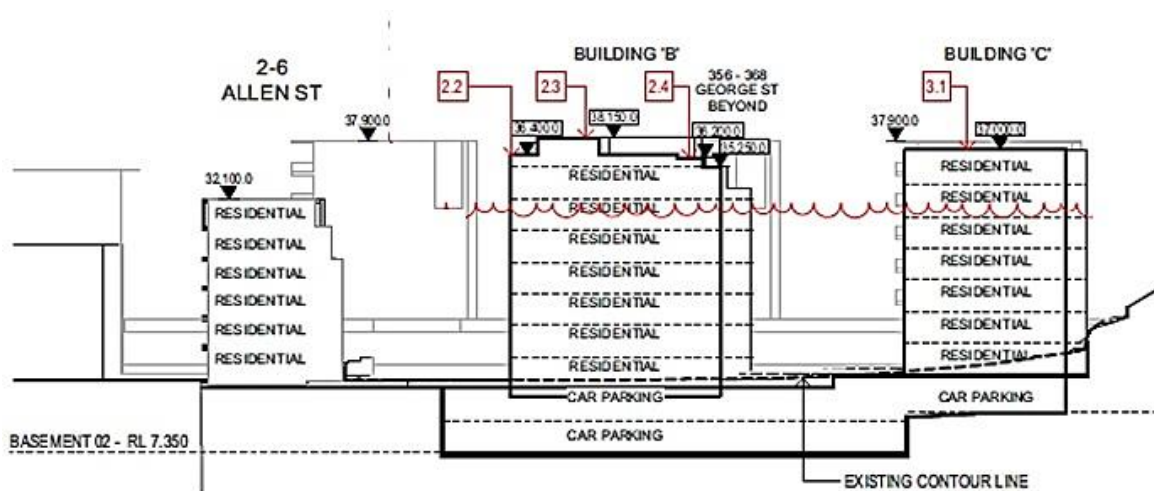


Figure 23: Section 2

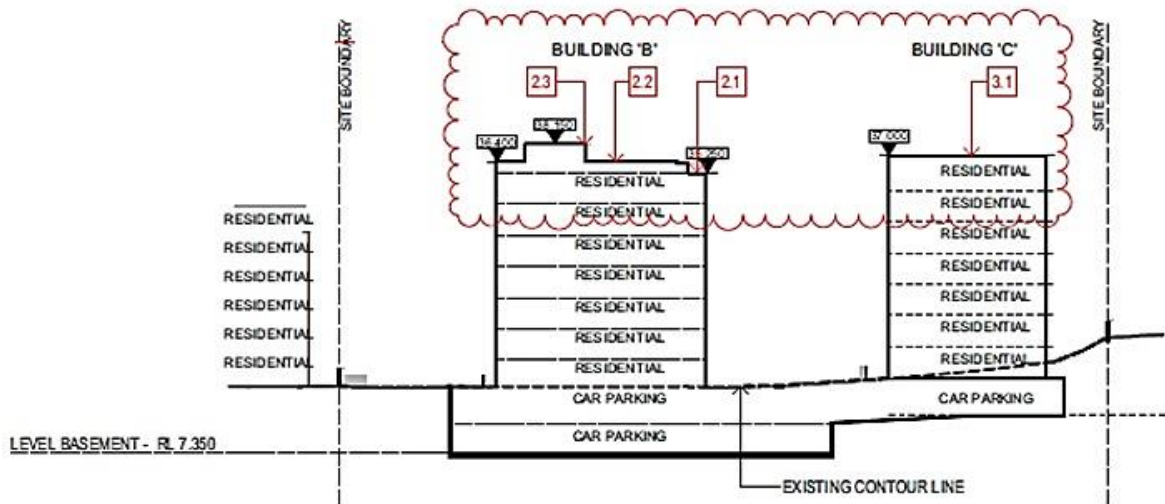


Figure 24: Section 3

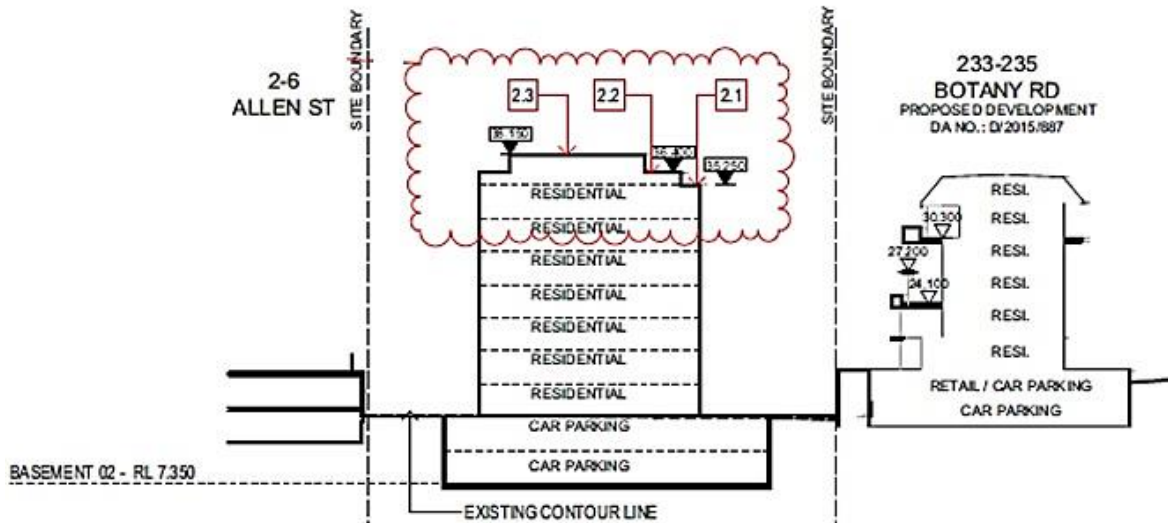


Figure 25: Section 4

Section 4.56 Threshold Test

- 55. As noted elsewhere in this report, the original concept consent contained condition (7) Building Height and which allowed lift overruns to exceed the maximum permissible building height specified in the condition. In effect, this granted tacit approval for lift access to the rooftops of the future buildings.
- 56. The proposed modifications to increase the height of various portions of the Building A and B envelope are to accommodate rooftop structures incorporated in the detailed design (stage 2 DA) scheme.
- 57. Those rooftop structures are to provide weather protection and facilities to enhance the amenity of rooftop common open space provided in the detailed design DA scheme.

58. The proposed modifications to the concept building envelopes and consent conditions are to clarify the parameters for the detailed design scheme and to ensure the detailed design (stage 2) DA is not inconsistent with the concept consent. These are not substantive changes to the approved concept.
59. For these reasons, the concept development consent D/2015/1358, as proposed to be modified by Section 4.56 modification application D/2015/1358/C is substantially the same as that originally approved.

Assessment

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

60. In accordance with the requirements of SEPP 65 and the Environmental Planning and Assessment Regulation 2021, a design verification statement and design report have been submitted by Roland Martinez, registered architect (Reg. No. 5984) of Cottee Parker Architects Pty Ltd. The statement satisfies section 29 of the Environmental Planning and Assessment Regulation 2021.
61. 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. These include principles pertaining to context, built form and scale and amenity.
62. As detailed in the Issues section of this report, the proposed modifications to the concept building envelopes are consistent with:
 - (a) the objectives of the Height of Buildings development standard contained in the Sydney Local Environmental Plan 2012 (the LEP); and
 - (b) objective 3B-2 (Overshadowing of neighbouring properties is minimised during mid-winter) of the Apartment Design Guide (ADG).
63. As such the proposed modifications to the concept building envelopes are considered to allow for development of a suitable bulk and scale, that minimise overshadowing impacts to neighbouring properties and that provides a suitable contextual response to its surrounds.
64. As detailed in the table below, the proposed modifications to conditions of consent are to align with the proposed design amendments to the concept envelopes and to remove design requirements that duplicate planning controls.
65. For these reasons the concept consent, as proposed to be modified, maintains consistency with the SEPP 65 design quality principles.

Sydney Local Environmental Plan 2012, Sydney Development Control Plan 2012 and Other Planning Policies

66. The provisions of the LEP, the Sydney Development Control Plan 2012 (the DCP) and other relevant planning policies have been considered in the assessment of the subject application and which is outlined in the table below.

Mod. no.	Proposed modification	Assessment
General		
Unnumbered	Replace plans for each floor from Basement to Roof levels with a single building envelope plan (drawing no. 2004, A).	<p>The replacement of concept plans for each level from basement to roof level with a single building envelope plan has been in an effort to simplify the concept envelope drawings and to minimise inconsistencies and errors across the drawing package.</p> <p>The simplification of the concept envelope plan is in accordance with Council's Planning Officer's recommendations and is supported.</p>
Unnumbered	Delete indicative locations of lift and stair overruns.	<p>Consent condition (6) Stage 2 To Be Contained Within Approved Envelope - this specifies that the detailed Stage 2 design scheme must be contained within the approved building envelope.</p> <p>Consent condition (7) Building Height currently states: 'With the exception of lift overruns, the maximum height of the buildings must not exceed the following...' the condition then goes on to specify the maximum heights of the approved concept envelopes.</p> <p>Like the proposed modification above, the deletion of indicative lift and stair overruns is to simplify and declutter the concept envelope drawings.</p> <p>The proposed modification is supported and it is recommended that conditions (6) Stage 2 To Be Contained Within Approved Envelope and (7) Building Height are amended to take a consistent approach to what structures are to be contained within the envelope and to refer to the modified building envelope heights as shown on the proposed envelope drawings.</p>

Mod. no.	Proposed modification	Assessment
Unnumbered	With the exception of trees numbered T6 and T7, existing trees have been deleted from the drawings.	<p>Condition (23) No Approval For Tree Removal states that the concept approval does not give consent for tree removal and specifies that an arborist's report that makes recommendations as to the retention, removal or pruning of trees, is to be provided with any subsequent Stage 2 DA.</p> <p>As condition (23) - No Approval For Tree Removal, provides protection for existing trees and requires an arborist's report to be submitted as part of any Stage 2 DA, the proposed modification is supported.</p>
Unnumbered	Add a second basement floor beneath Buildings A and B and increase the depth (i.e. reduce the level) of the basement to RL 7.35.	<p>The proposed modification has potential for increased interference with groundwater. Subsequently, the application was lodged as an Integrated application and referred to Water NSW.</p> <p>As discussed in the External Referrals section of this report, Water NSW has assessed the proposal and has issued amended General Terms of Approval and which are recommended for imposition on any consent granted.</p> <p>The detailed design DA demonstrates that the proposed modified envelopes are able to accommodate a second basement floor without compromising tree retention, the provision of deep soil and soft landscaping areas and car parking in accordance with the relevant planning controls.</p> <p>For these reasons the proposed modification is supported.</p>
Building A		
1.1	Envelope height increased from RL 32.30 to RL 32.80.	<p>The maximum permitted height is 22m.</p> <p>The subject portion of the envelope that fronts Botany Road was previously approved to a height of up to 19.88m.</p>

Mod. no.	Proposed modification	Assessment
		<p>The subject portion of envelope is proposed to be raised to a height of up to 20.38m and complies.</p> <p>The proposed increase in height to the subject portion of the envelope is supported.</p> <p>Refer to the Issues section in this report for a detailed discussion about building height, view loss and overshadowing.</p>
1.2	Envelope height increased from RL 32.30 to RL 34.00.	<p>The subject portion of the envelope, which is immediately behind the portion fronting Botany Road, was previously approved to a height of up to 19.88m.</p> <p>The subject portion of envelope is proposed to be raised to a height of up to 21.58m and complies.</p> <p>The proposed increase in height to the subject portion of the envelope is supported.</p> <p>Refer to the Issues section in this report for a detailed discussion about building height, view loss and overshadowing.</p>
Building B		
Unnumbered	The height of the south-eastern corner of the Building B envelope was previously RL 36.00 and is proposed to be reduced to a height of RL 33.10.	<p>The subject portion of the envelope, which comprises a rectangular shape in plan at the south-eastern corner of the Building B envelope, was previously approved to a height of up to 20.81m.</p> <p>The subject portion of envelope is proposed to be reduced to a height of 17.91m and complies.</p> <p>The reduction in height of the subject portion of the envelope is supported.</p> <p>Refer to the Issues section in this report for a detailed discussion about building height, view loss and overshadowing.</p>

Mod. no.	Proposed modification	Assessment
2.1	<p>Southern portion of Building A and B envelope height previously ranged in height from RL 35.40 to RL 36.00 and is proposed to be adjusted to a consistent height of RL 35.25.</p> <p>Note: proposed modification 2.1 as described in the schedule titled Summary of Proposed Amendment, is incorrect and does not correlate with the RLs annotated on the plan.</p>	<p>The subject portion of the envelope, which comprises a narrow strip along the southern edge of the Building A and B envelopes, was previously approved to a height of up to 21.63m.</p> <p>The subject portion of envelope has a height of up to 21.4m and complies.</p> <p>The proposed adjustment to the height of the subject portion of the envelope is supported.</p> <p>Refer to the Issues section in this report for a detailed discussion about building height, view loss and overshadowing.</p>
2.2	<p>Central portion of Building B envelope height previously at RL 36.00 is proposed to be increased in height to RL 36.40.</p>	<p>The subject central portion of the Building B envelope was previously approved to a height of up to 22.17m and which exceeded the LEP's 22m height control.</p> <p>The proposed increase in height to the subject portion of the envelope results in a height of up to 22.57m and which results in a minor increase to that non-compliance.</p> <p>The proposed increase in height to the subject portion of the envelope is supported.</p> <p>As discussed in the Issues section of this report, the proposed modifications to the envelope do not result in any increased overshadowing to neighbouring properties beyond that which would arise from the previously approved envelope.</p> <p>Refer to the Issues section in this report for a detailed discussion about building height, view loss and overshadowing.</p>

Mod. no.	Proposed modification	Assessment
2.3	Portion of Building A and B envelope height previously ranged in height from RL 35.40 to RL 36.00 and is proposed to be adjusted to a consistent height of RL 38.15.	<p>The subject portion of the Building A and B envelope was previously approved to a height of up to 21.63m.</p> <p>The proposed increase in height to the subject portion of the envelope results in a height of up to 24.75m and which results in a 12.5% (2.75m) non-compliance with the LEP's 22m height control.</p> <p>The proposed increase in height to the subject portion of the envelope is to accommodate rooftop structures including pergolas, shade structures and facilities within the rooftop communal open space of the detailed design scheme and is supported.</p> <p>As discussed in the Issues section of this report, the proposed modifications to the envelope do not result in any increased overshadowing to neighbouring properties beyond that which would arise from the previously approved envelope.</p> <p>Refer to the Issues section in this report for a detailed discussion about building height, view loss and overshadowing.</p>
2.4	Portion of envelope set back from southern edge of Building B floor plate.	<p>It is this setting back of the envelope, along with the various heights incorporated to different portions of the envelope that allows for a larger envelope without increased overshadowing to neighbouring properties.</p> <p>For this reason the proposed modification is supported.</p> <p>Refer to the Issues section in this report for a detailed discussion about building height, view loss and overshadowing.</p>

Mod. no.	Proposed modification	Assessment
Building C		
Unnumbered	Increase the depth (i.e. reduce the level) of the basement from RL 11.20 to RL 11.15.	<p>The proposed modification has potential for increased interference with groundwater. Subsequently, the application was lodged as an Integrated application and referred to Water NSW.</p> <p>As discussed in the External Referrals section of this report, Water NSW has assessed the proposal and has issued amended General Terms of Approval and which are recommended for imposition on any consent granted.</p> <p>The detailed design DA demonstrates that the modified envelopes are able to accommodate a second basement floor without compromising tree retention, the provision of deep soil and soft landscaping areas and car parking in accordance with the relevant planning controls.</p> <p>For these reasons the proposed modification is supported.</p>
Unnumbered	<p>Correct inconsistencies in elevation and section drawings by labelling the indicative level above the basement/car parking level of Building C as 'Residential'.</p> <p>Note: in some instances (e.g. Section 2 on drawing no. 4000), the previously approved drawings labelled the indicative level above the lowest basement/car parking level of Building C as 'Car Parking'.</p>	The proposed modification is supported.
3.1	This modification is not described in the schedule titled Summary of Proposed Amendment.	This appears to be a drafting error that has no substantive impacts or implications for the development.

67. An assessment of the proposed modifications to the conditions of consent as shown in ***bold italics*** (additions) and ~~strikethroughs~~ (deletions) is provided in the table below.

Proposed modification	Assessment
<p>(4) DESIGN REQUIREMENTS</p> <p>The following design requirements must be incorporated into any Stage 2 application submitted for assessment:</p> <p>(a) The front section of Building A facing Botany Road is to have a minimum of 1 lift core.</p> <p>(b) The rear section of Building A is to have a minimum of 1 lift core.</p> <p>(c) Building B is to have a minimum of 2 lift cores.</p> <p>(d) Building C is to have a minimum 1 lift core;</p> <p>(e) Building C Levels 1 and 2 is to consist of cross through apartments, Levels 3 to 8 is to consist of 2 storey cross through apartments;</p> <p>(f) Building C is to have corridor access to the apartments from the south of the building;</p> <p>(g) All habitable rooms to the front section of Building A must be capable of receiving natural ventilation to the eastern(quiet) side of the building;</p> <p>(h) Any air path used for natural cross ventilation or natural ventilation that relies on a corridor or circulation space on that air path, must pass through a non-habitable room to provide an acoustic buffer; <i>The provision of devices such as plenums to achieve natural cross ventilation shall not result</i></p>	<p>Condition (4)(e) - cross through apartments</p> <p>The proponent submits that the proposed deletion of condition 4(e) should be supported because:</p> <ul style="list-style-type: none"> • the condition prescribes a particular design strategy to address objective 4B-3 Natural Ventilation of the Apartment Design Guide (the ADG); and • there are many different design strategies that may be employed to achieve ADG objective 4B-3; • the detailed design (stage 2) DA is required to be considered against the objectives of the ADG and will be assessed on its merits. <p>The detailed design (stage 2 DA) scheme provides 60% of apartments that are naturally cross ventilated and as such complies with the design criteria to ADG objective 4B-3.</p> <p>The detailed design (stage 2 DA) scheme achieves compliance in this regard without applying the design requirements specified at condition (4)(e).</p> <p>As such and with the benefit of being able to assess the detailed design (stage 2 DA) scheme at the same time as the subject modification application, this lends weight to the Proponent's submission summarised above.</p>

Proposed modification	Assessment
<p><i>in ceiling heights that are non-compliant with the ADG;</i></p> <p>(i) All openings to the south of Building C must incorporate appropriate visual privacy treatment to ensure no sightlines are provided to the building and grounds of Green Square School while allowing daylight to the openings.</p>	<p>For these reasons the proposed deletion of condition (4)(e) is supported.</p> <p>Condition (4)(h) - ventilation</p> <p>The proponent submits that:</p> <ul style="list-style-type: none"> • the intent of the condition is to prevent acoustically attenuated plenums resulting in habitable rooms from not complying with ADG ceiling height guidelines; and • if this is the intent, then condition (4)(h) should be modified as shown in the adjoining 'Proposed modification' column. <p>The Proponent's interpretation and understanding of the condition are incorrect because:</p> <ul style="list-style-type: none"> • the condition does not make any reference to plenums; and • plenums cannot be relied upon to achieve natural cross ventilation. Rather plenums can only be utilised to achieve natural ventilation of a room. <p>Like condition (4)(e) above, condition (4)(h) does duplicate the requirements otherwise addressed by various objectives of the ADG including 3F Visual privacy, 4H Acoustic privacy and 2F Building separation.</p> <p>As the detailed design (stage 2 DA) scheme adequately addresses these ADG objectives it is recommended condition (4)(h) is deleted.</p>

Proposed modification	Assessment
	<p>The proponents wording is not warranted given the detailed design (stage 2) DA will be subject to a merits assessment against the SEPP 65 design quality principles, the objectives of the ADG and the controls contained in the LEP and DCP.</p>
<p>(7) BUILDING HEIGHT</p> <p>With the exception of lift overruns, the maximum height of the buildings must not exceed the following:</p> <ul style="list-style-type: none"> (a) The height of the front portion of Building A must not exceed RL 32.300 (AHD) to the top of the roof, with the exception of parapets and an air conditioning plant to a maximum of 1300mm; (b) The height of the rear portion of Building A must not exceed RL 35.400 (AHD) to the top of the roof, with the exception of 'green roof' planting structures to a maximum height of 300mm and fire stairs and balustrades required to meet the National Construction Code 2019 (NCC); (c) The height of Building B must not exceed RL 36.000 (AHD) to the top of the roof, with the exception of fire stairs and balustrades required to meet the National Construction Code 2019 (NCC); (d) The height of Building C must not exceed RL 37.000 (AHD) to the top of the roof. 	<p>Contrary to the general thrust of the other modifications proposed under the subject application, which is to simplify the concept envelopes, the Proponent's suggested wording shown in the column to the left would unnecessarily add to the complexity of the condition and the concept overall.</p> <p>Furthermore, the proposed modifications to condition (7) do not align with the heights (RLs) of the envelopes shown in the revised drawing set at Attachment B to this report.</p> <p>For these reasons the modification of condition (7) as proposed is not supported.</p> <p>It is recommended that conditions (6) Stage 2 To Be Contained Within Approved Envelope and (7) Building Height are amended to take a consistent approach to what structures are to be contained within the envelope and to refer to the modified building envelope heights as shown on the proposed envelope drawings.</p>

Issues

Building Height

68. As shown in Figure 26 below and described in the assessment table above, the proposed modifications to the concept envelope for Buildings A and B exceed the 22m LEP height control by up to 2.751m. This is a 12.5 per cent variation of the control. Please note that the diagram in Figure 26 shows that Building C does protrude above the 22m height plane. This variation was approved under the original consent. There is no modification to Building C envelope proposed under the subject application.
69. Only the modifications to Building A/B envelopes lead to new breaches of the height control and which are assessed below.

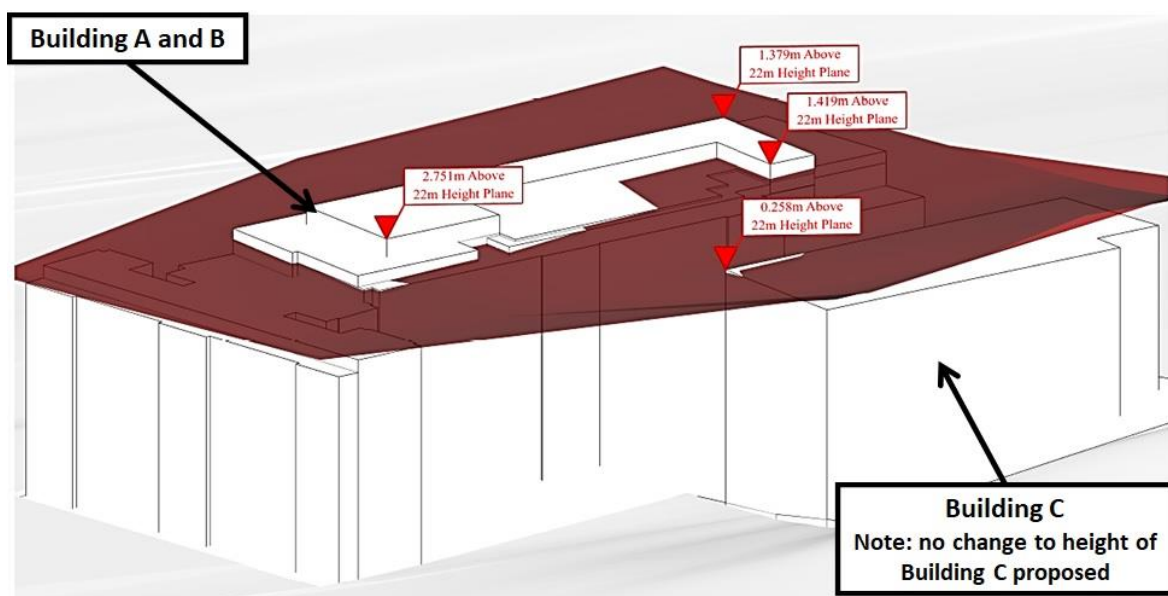


Figure 26: Variations to 22m LEP height control arising from proposed modifications

70. As the subject application is a section 4.56 modification and not a Development Application, LEP clause 4.6 does not apply. Nonetheless, the proposed variation to the 22m LEP height control is assessed against the objectives of the height of buildings development standard at LEP clause 4.3, as follows:
- (a) to ensure the height of development is appropriate to the condition of the site and its context,

assessment - as shown in Figure 26 above, the proposed modifications are to increase the height of various portions of the Building A and B envelope. The parts of the envelope that are proposed to be raised are setback from the street frontage to minimise impacts to the Botany Road streetscape. As discussed in the Overshadowing section of this report below, the subject portions of the envelope are also setback from the southern edge of the Building A and B envelope footprint to minimise impacts in accordance with ADG objective 3B-2: Overshadowing of neighbouring properties is minimised during mid-winter;

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

assessment - the parts of the Building A and B envelope that are proposed to be raised are separated from the heritage item at 237-271 Botany Road, the 'Waterloo Public School group', by the Belle and Lily apartment building at 233-235 Botany Road and by the Building C envelope within the subject site. As such the proposed variation to the building height development standard would not disrupt height transition from new development on the subject site to the nearby heritage item;

- (c) to promote the sharing of views outside Central Sydney,

assessment - as discussed in the View Loss section of this report below, the proposed variation to the building height development standard does not result in any unacceptable adverse view loss impacts beyond those that would arise from the previously approved concept envelopes;

- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

assessment - as shown in Figure 27 below, the very tall buildings that mark the Green Square Town Centre are located about 235m south of the subject site. In this context the proposed 2.751m variation to the building height development standard would not disrupt the height transition from new development on the subject site to the Green Square Town Centre;



Figure 27: View further south along Botany Road towards the Green Square Town Centre

- (e) in respect of Green Square—
- (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site,

assessment - as shown in Figure 26 above, the parts of the envelope that are proposed to be raised are restricted to a central location within the site. The Building A envelope that fronts Botany Road complies with the 22m LEP height control and has no unacceptable adverse impacts upon the public domain;

- (ii) to ensure the built form contributes to the physical definition of the street network and public spaces,

assessment - as shown in Figure 26 above, the parts of the envelope that are proposed to be raised are setback from the street frontage and will not undermine any contribution that the future built form will make to the physical definition of the street network and public domain.

- 71. As per the assessment above, the proposed variation of the 22m LEP building height control is consistent with the objectives of the height of buildings development standard at LEP clause 4.3 and is supported.

Overshadowing

- 72. The proposed modifications to increase the height of various portions of the Building A and B envelope are to accommodate rooftop structures incorporated in the detailed design (stage 2 DA) scheme and to ensure the detailed design (stage 2) DA is not inconsistent with the concept consent.
- 73. This consistency between the detailed design (stage 2) DA and the concept consent is a requirement of section 4.24(3) of the EP&A Act.
- 74. As illustrated in Figure 26 above, these portions of the envelope are set back from the southern edge of the Building A and B envelope footprint. These setbacks in massing have been incorporated into the proposed concept envelope design in consultation with Council Officers and are to minimise overshadowing of the adjacent residential apartments in the Belle and Lily building at 233-235 Botany Road.
- 75. The proposed modifications to the concept envelopes have been prepared in accordance with the design guidance to ADG objective 3B-2 and which is to minimise overshadowing to neighbouring properties in mid-winter. This is explained further below.

233-235 Botany Road (Belle and Lily)

- 76. As shown in Figures 28 and 29 below, the building at 233-235 Botany Road (Belle and Lily) is a 7-storey mixed-use building comprising basement car-parking, retail, car parking and services at ground and 29 apartments on the levels above (from the second to the seventh storey).

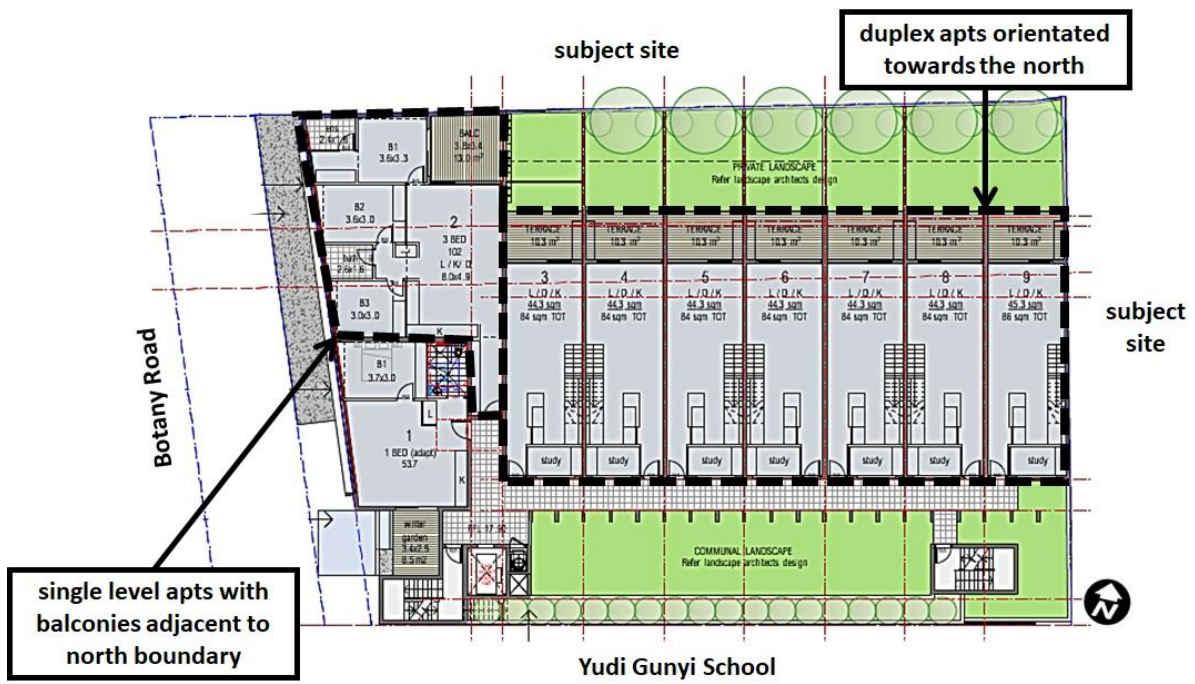


Figure 28: Second storey plan of Belle and Lily apartments

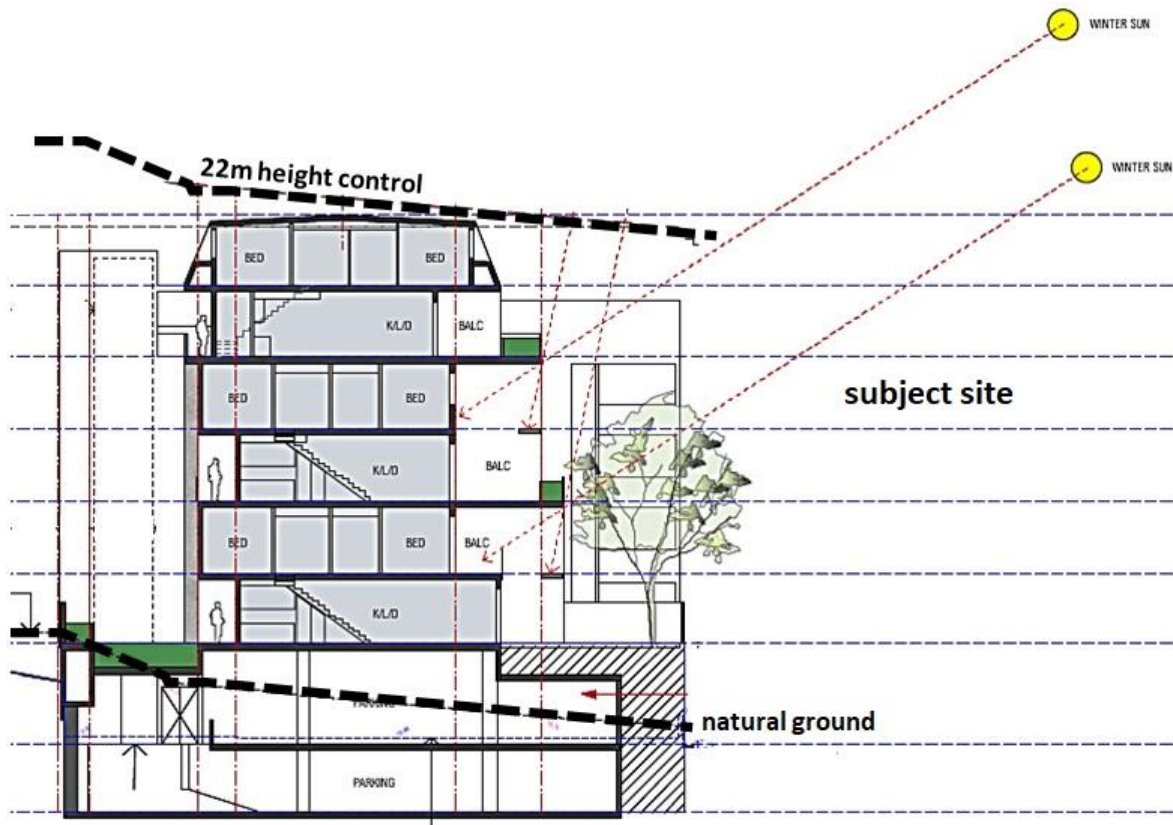


Figure 29: Section through Belle and Lily duplex apartments

77. Twenty-one (21) of the Belle and Lily apartments are duplexes with their terraces, balconies and living areas orientated towards the northern (side) boundary that is shared with the subject site.
78. Four (4) single level apartments incorporate balconies and living areas that are adjacent to the same northern (side) boundary. The living areas of these apartments are orientated to the north (towards the balconies) and the balconies are orientated towards the eastern rear boundary which is also shared with the subject site.
79. Four (4) single level apartments have living areas and balconies orientated towards Botany Road.
80. Under the existing conditions 86 per cent (25 of 29) of the Belle and Lily apartments receive at least 2 hours of solar access to living rooms and private open spaces between 9am and 3pm at mid-winter and all apartments receive some sunlight.
81. The concept envelopes approved under the original consent (D/2015/1358) result in 55 per cent (16 of 29) of the Belle and Lily apartments receiving at least 2 hours of solar access to living rooms and private open spaces between 9am and 3pm at mid-winter. Seven percent (2 of 29) receive no direct sunlight.
82. The concept envelopes approved under the original consent (D/2015/1358) do not achieve consistency with the design guidance to ADG objective 3B-2, which requires that where 70 per cent of neighbouring apartments receive at least 2 hours of sun, then development should not reduce that number below 70 per cent of apartments.
83. As illustrated in the Figures below, the modifications to the concept envelopes proposed under the subject application (D/2015/1358/C) do not exacerbate overshadowing to the Belle and Lily apartments beyond that which would arise from the concept envelopes as originally approved.
84. That is, 55 per cent (16 of 29) of the Belle and Lily apartments receive at least 2 hours of solar access to living rooms and private open spaces between 9am and 3pm at mid-winter and 7 per cent (2 of 29) of apartments receive no direct sunlight.

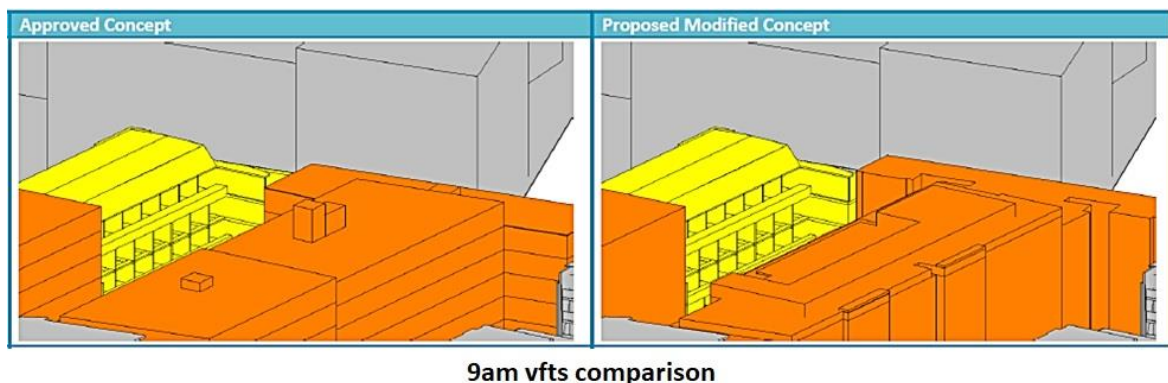
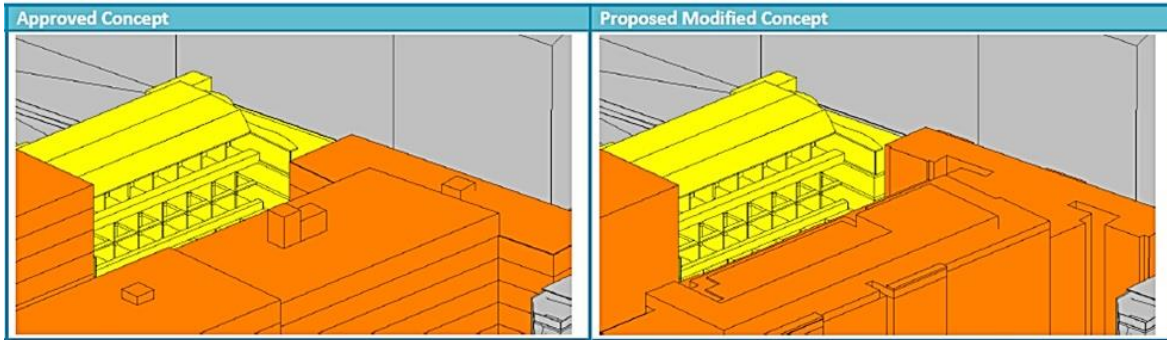
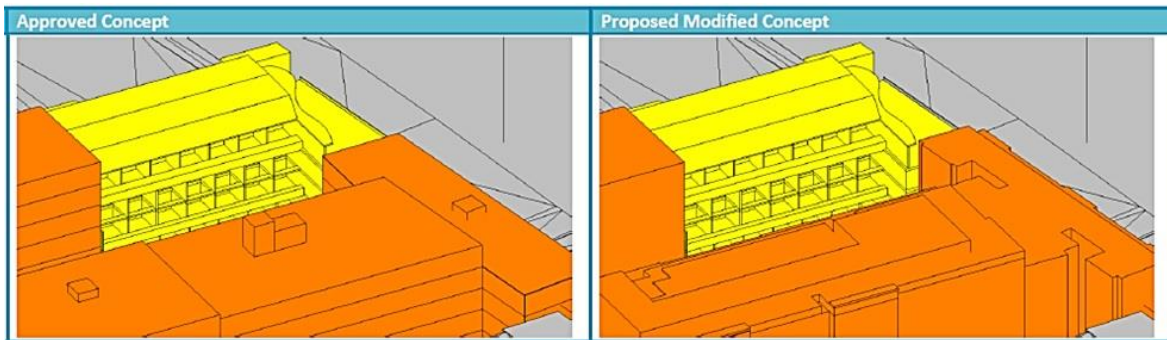


Figure 30: Comparison of view from the sun (vfts) diagrams at 9am at midwinter, the approved envelopes (left) and the proposed modified envelopes (right). Envelopes in the subject site shown in orange and Belle and Lily shown in yellow.



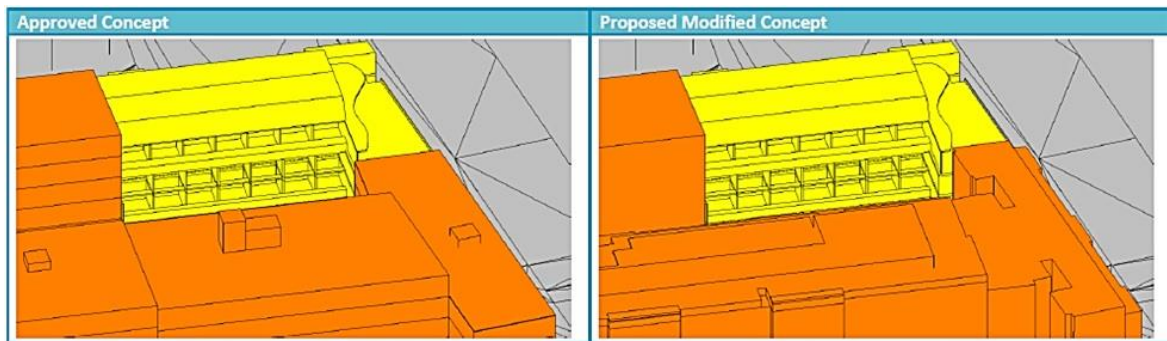
10am vfts comparison

Figure 31: Comparison of vfts diagrams at 10am at midwinter, the approved envelopes (left) and the proposed modified envelopes (right). Envelopes in the subject site shown in orange and Belle and Lily shown in yellow.



11am vfts comparison

Figure 32: Comparison of vfts diagrams at 11am at midwinter, the approved envelopes (left) and the proposed modified envelopes (right). Envelopes in the subject site shown in orange and Belle and Lily shown in yellow.



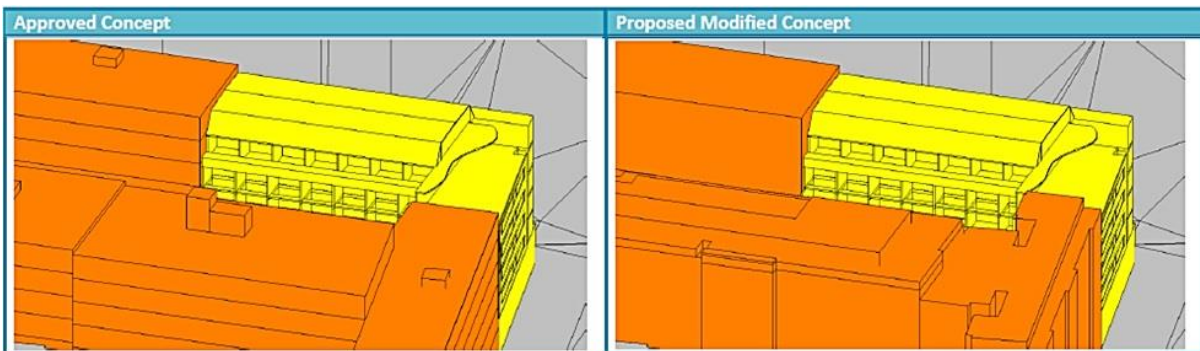
12pm vfts comparison

Figure 33: Comparison of vfts diagrams at 12pm at midwinter, the approved envelopes (left) and the proposed modified envelopes (right). Envelopes in the subject site shown in orange and Belle and Lily shown in yellow.



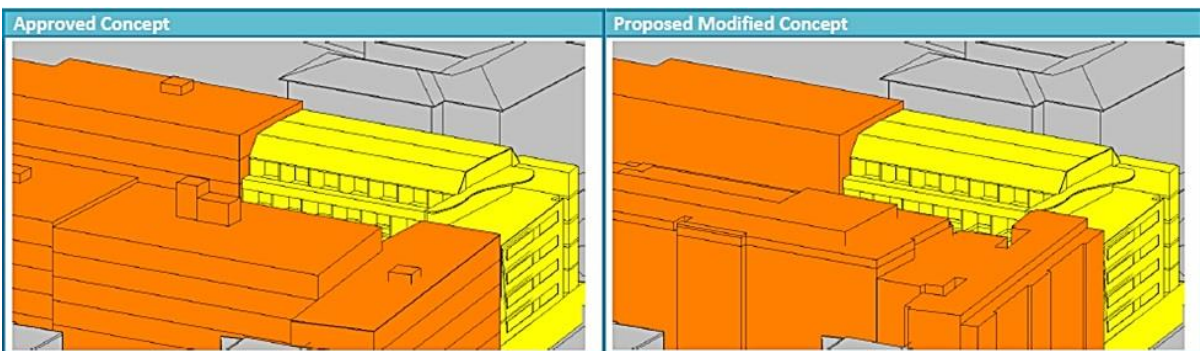
1pm vfts comparison

Figure 34: Comparison of vfts diagrams at 1pm at midwinter, the approved envelopes (left) and the proposed modified envelopes (right). Envelopes in the subject site shown in orange and Belle and Lily shown in yellow.



2pm vfts comparison

Figure 35: Comparison of vfts diagrams at 2pm at midwinter, the approved envelopes (left) and the proposed modified envelopes (right). Envelopes in the subject site shown in orange and Belle and Lily shown in yellow.



3pm vfts comparison

Figure 36: Comparison of vfts diagrams at 3pm at midwinter, the approved envelopes (left) and the proposed modified envelopes (right). Envelopes in the subject site shown in orange and Belle and Lily shown in yellow.

356-368 George Street (George and Allen)

85. As shown in Figure 37 below, the modifications proposed under the subject application include a reduction in height to a portion of the Building B envelope at its south-eastern corner, from RL 36.00 down to RL 33.10.
86. The south-eastern corner of the Building B concept envelope approved under the original consent (D/2015/1358) overshadows the ground and first floor apartments in the north-western corner of the southernmost building within the George and Allen site between 2.30 and 3.00pm at midwinter.
87. The modifications to the concept envelopes proposed under the subject application (D/2015/1358/C) do not exacerbate overshadowing to the George and Allen apartments beyond that which would arise from the concept envelopes as originally approved.

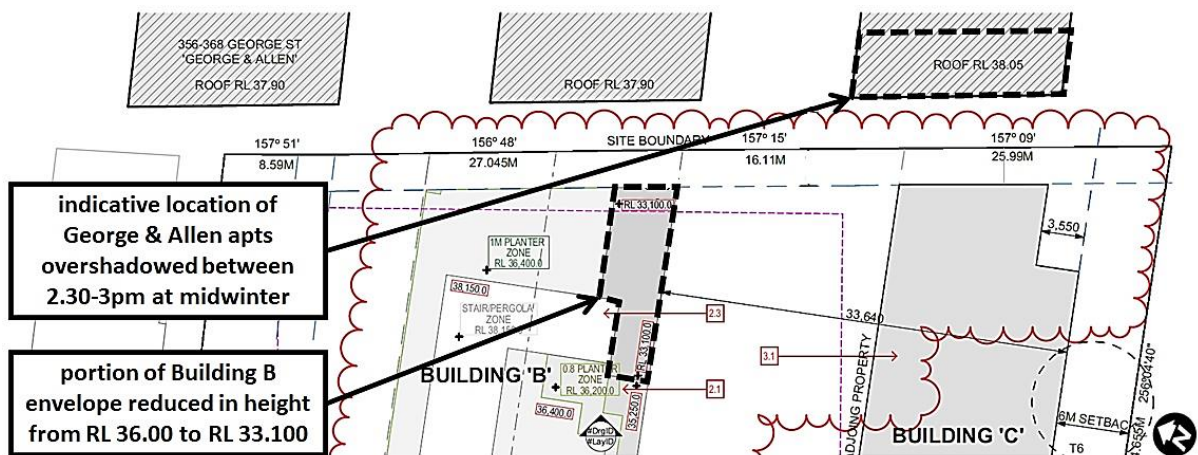


Figure 37: Excerpt of proposed envelope plan illustrating portion of envelope at south-east corner of Building B to be reduced in height from RL 36.00 down to RL 33.10.

No other apartments overshadowed by proposed modification of envelopes

88. Submitted overshadowing analysis confirms that other residential apartment buildings in the vicinity of the site such as the Lincoln apartments at 274 Botany Road and the apartments at 282-288 Botany Road, are not adversely impacted in terms of increased overshadowing beyond that which would arise from the concept envelopes as originally approved.

View Loss

89. Objections were received raising concerns that the modifications proposed under the subject application would obstruct views from upper level apartments to the south at 233-235 Botany Road (the Belle and Lily building) to the City skyline, including to iconic buildings such as the Sydney Tower.
90. In order to understand the view loss impacts of the proposal, the following assessment of these impacts is in accordance with the planning principle established by the Land and Environment Court decision of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 (Tenacity).

91. The proposal's view loss impacts are assessed according to the four-step process established in Tenacity, as follows.



Figure 38: View from standing position on 5th storey apartment balcony of Belle and Lily building to the Waterloo Estate and City skyline beyond

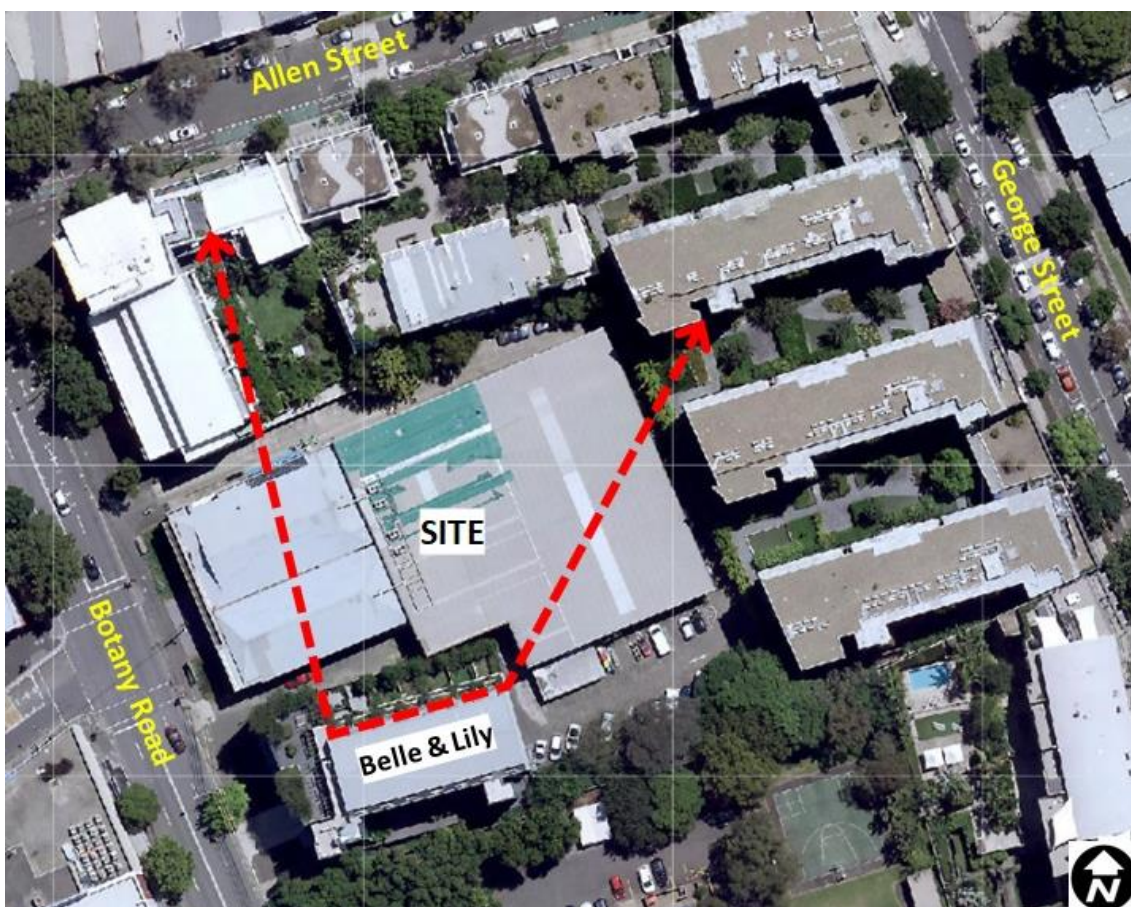


Figure 39: General location of Belle and Lily apartments that currently benefit from the view shown in the Figure above

92. Views to be affected -
- (a) the photo at Figure 38 above shows views to neighbouring buildings in the foreground, and then partial views to the Waterloo Estate public housing towers, to tall buildings located near Redfern Station and then to the City skyline beyond. The most valued element in these views is the City skyline;
 - (b) as shown in Figure 40 below, the concept envelopes as originally approved would have blocked most of the views of the City skyline. The remaining views of the City skyline that are likely to be blocked by the modifications proposed under the subject application could only be considered very partial views. Consistent with a Tenacity assessment, these remaining views are of a low value.
93. From what part of the property are the views obtained - the photo at Figures 35, 37 and 38 specifies that the photo was taken from a standing position on the balcony of a fifth storey apartment within the Belle and Lily building. The views are across neighbouring properties to the north, including the subject site and to the tall buildings in the distance. Consistent with a Tenacity assessment, the expectation that these views across side boundaries and neighbouring properties are to be retained is unrealistic.
94. Extent of the impact -
- (a) As shown in Figure 40 below, the concept envelopes as originally approved would have blocked most of the views of the City skyline and other buildings in Redfern and Waterloo, with the exception of the tallest towers of the Waterloo Estate.
 - (b) As shown in Figure 41 below, the proposed modifications to increase the height of the Building A and B envelope will block out the last glimpses of those tallest towers of the Waterloo Estate. According to Tenacity, the extent of the impact in this case is minor.

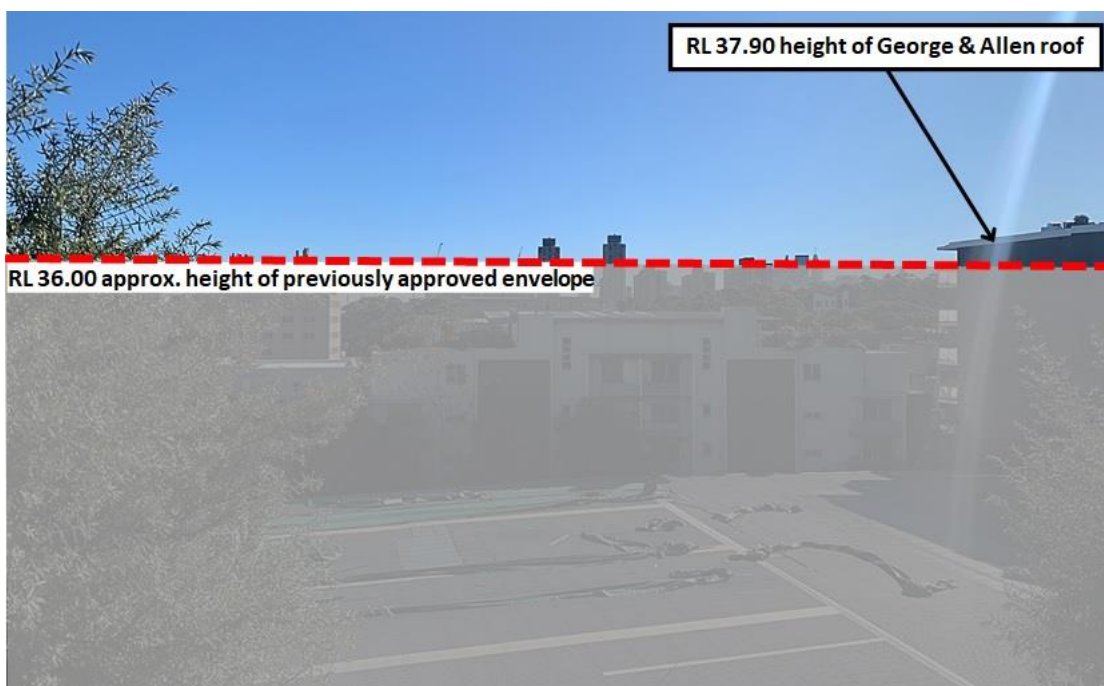


Figure 40: Approximation of view impacts arising from the originally approved envelopes.

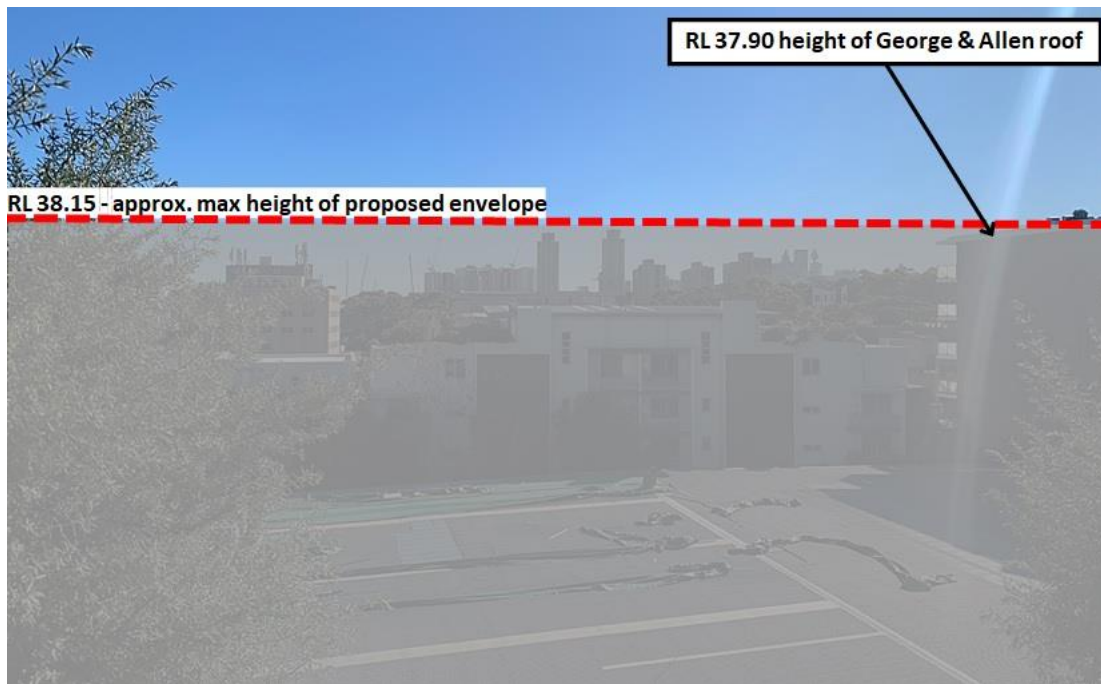


Figure 41: Approximation of view impacts arising from the proposed modified envelopes.

95. Reasonableness of the proposal -

- (a) The proposed modifications do in parts exceed the 22m LEP building height control. However, only portions of the proposed envelopes exceed the height limit, and these are centrally located within the site to minimise overshadowing to neighbouring apartments. That is the non-compliant portions of the envelope do not cause increased overshadowing to neighbouring apartments beyond that which would arise from the concept envelopes as originally approved;
- (b) the non-compliant portions of the envelope do not result in unacceptable overshadowing impacts nor do they result in adverse impacts to the streetscape, public domain or the adjacent heritage item. For these reasons the proposal is considered to be reasonable.

96. Consistent with the four-step process outlined in Tenacity -

- (a) the views to be affected are partial remnant views of the City skyline of a low value;
- (b) the extent of the impact arising from the proposed modification of the Building A and B envelope is minor;
- (c) the view shown in the photo at Figure 40 is currently available from the balconies of 16 apartments located on the fourth, fifth and sixth storeys of the Belle and Lily building, the expectation to retain these views across side boundaries and neighbouring properties is unrealistic;

97. Given the assessment according to the planning principle in Tenacity outlined above, the proposed modifications are supported despite views from some apartments within the Belle and Lily building being adversely affected.

General

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

Consultation

Internal Referrals

99. The assessment process has been informed by advice from Council's Urban Design Specialist. Where appropriate the advice contained in the Urban Design Specialist's referrals have been addressed by recommended modifications to conditions of any approval granted.

External Referrals

Water NSW

100. The original concept approval was for Integrated Development under the Water Management Act 2000. The conditions imposed on the consent included General Terms of Approval as issued by Water NSW.
101. The subject application proposes to add a basement level and increase the depth of basement construction. Subsequently, the application was referred to Water NSW on 17 February 2021.
102. On 26 February 2021, Water NSW requested that a Geotech Report be submitted to support the application.
103. On 1 March 2021, Council's Planning Officer forwarded the Geotech report lodged under the detailed design DA (D/2020/1419) to Water NSW.
104. On 29 March 2021, public submissions received in response to the first notification and exhibition period were provided to Water NSW through the NSW Planning Portal.
105. On 18 May 2021, Water NSW issued General Terms of Approval and which have been recommended for imposition on any consent granted.
106. On 8 September 2021, 6 and 30 April 2022, public submissions received in response to subsequent notifications and exhibitions of amended application documents, as detailed in the Advertising and Notification section of this report below, were provided to Water NSW through the NSW Planning Portal.

Advertising and Notification

First notification and exhibition

107. In accordance with the notification requirements for Integrated Development specified in the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021, the proposed development was notified for a period of 28 days between 17 February 2021 and 18 March 2021. A total of 1091 properties were notified and 12 submissions were received.

108. Issues raised in submissions are summarised and responded to as follows:

- (a) **Issue:** There are heritage listed fig trees and other mature trees near the site's southern and eastern boundaries with the School and the George and Allen buildings. These trees provide shade, amenity and privacy and acoustic mitigation between all three sites for residents and students. The Applicant should review the proposal to minimise tree removal and to maximise tree canopy coverage of the site in accordance with the 25 per cent target contained in the Draft Greener Places Design Guide along with the relevant City of Sydney policies.

Response: As noted elsewhere in this report, consent condition (23) No Approval For Tree Removal - states that the concept approval does not give consent for tree removal and specifies that an arborist's report that makes recommendations as to the retention, removal or pruning of trees, is to be provided with any subsequent Stage 2 DA. The subject application does not propose to modify condition (23). As such tree retention and removal is a matter to be addressed by the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (b) **Issue:** Construction noise, dust and vibration would have adverse impacts upon neighbours' health and amenity over an extended period.

Response: Works that may be undertaken in accordance with the (stage 2) DA for the detailed design of the building (D/2020/1419) as envisaged under the subject concept consent can be managed by imposition of conditions to regulate the environmental impacts that may arise. Refer to the assessment report for DA no. D/2020/1419.

- (c) **Issue:** The proposed development would result in increased traffic, parking demand and road congestion in the area, including at the intersection of Mandible Street and Botany Road, which has been the site of several road accidents. The proposal may exacerbate safety hazards at this intersection. Increased traffic will result in increased traffic noise and air pollution.

Response: Consent condition (5) Matters Not Approved In Stage 1 Development Consent states that the configuration and layout of basement levels and any potential car parking spaces, car share or loading spaces/zones are not approved under the subject consent. The subject application does not propose to modify condition (5) or any other conditions that relate to traffic, parking demand or road congestion. As such the concerns raised in the submission are matters for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (d) **Issue:** My apartment is located on the top floor of the (Belle and Lily) building adjacent to the south of the subject site, at 233-235 Botany Road. The proposed development is 7-storeys in height and separated by only 10m from north-facing balconies and windows of my building. I will lose views to the city skyline and sunlight to my apartment.

Response: As discussed in the Issues section of this report view losses have been assessed in accordance with the relevant planning principle established in Tenacity. Based on this assessment it is recommended that the proposed modifications be supported despite views from some apartments within the Belle and Lily building being adversely affected. The proposed modifications do not exacerbate overshadowing beyond that arising from the concept envelopes as originally approved. Apartments located on the top floor of the building to the south at 233-235 Botany Road will retain solar access in accordance with the minimum requirements specified in the Apartment Design Guide and as illustrated in the views from the sun diagrams provided elsewhere in this report.

- (e) **Issue:** The proposed 7-storey development is not in-keeping with the height of existing buildings in the area and breaches building height controls. It will overshadow the properties of adjacent residents as well as the public domain.

Response: As discussed in the Issues section in this report, the proposed variation of the 22m LEP building height control is consistent with the objectives of the height of buildings development standard at LEP clause 4.3 and is supported. The proposed modifications do not exacerbate overshadowing to adjacent apartments or to the public domain beyond that which would arise from the concept envelopes as originally approved.

- (f) **Issue:** Concerns are raised about the proposed additional basement car-parking level, the depth of excavation required and potential adverse structural impacts to adjacent buildings.

Response: The proposed modification to increase the depth of the basement envelope has potential for increased interference with groundwater. Subsequently, the application was lodged as an Integrated application and referred to Water NSW. As discussed in the External Referrals section of this report, Water NSW has assessed the proposal and has issued amended General Terms of Approval and which are recommended for imposition on any consent granted. These are matters for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (g) **Issue:** The following concerns about demolition and construction management are to be addressed:
- (i) the duration of construction and what construction hours will be permitted?
 - (ii) what boundary fencing will be provided to avoid debris spilling / falling into neighbouring properties?
 - (iii) What safety measures will be applied to manage the removal of hazardous materials?

- (iv) Will dilapidation reports be required to be carried out on neighbouring properties prior to construction?
- (v) How will demolition and construction be monitored to avoid structural damages to neighbouring properties?
- (vi) Will there be any encroachments during construction to neighbouring properties by cranes or other hoisting activity?
- (vii) Will access to neighbouring property be required during construction?
- (viii) How will construction traffic be managed?
- (ix) Will there be a 24hr hotline available to adjacent residents during construction?

Response: These are matters for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (h) **Issue:** The Belle and Lily building comprises 29 residential apartments, including 21 maisonette apartments arranged over 6 storeys, facing the north (side) boundary shared with the subject site, and 8 apartments fronting Botany Road. Four of the apartments facing Botany Road have north-east facing balconies adjacent to the subject site. The proposed development will reduce minimum solar access from 86 per cent (25 apartments) of apartments, down to 58 per cent (17 apartments) of apartments. The proposed development will increase the number of apartments that receive no direct sunlight from 0 per cent up to 24 per cent (7 apartments). The proposed development will result in unacceptable overshadowing beyond the extent of overshadowing that is permitted by the ADG.

Response: As discussed in the Issues section in this report, the proposed modifications to the concept envelopes have been prepared in accordance with the design guidance to ADG objective 3B-2 and which is to minimise overshadowing to neighbouring properties in mid-winter. Subsequently, the proposed modifications do not exacerbate overshadowing beyond that which would arise from the concept envelopes as originally approved.

- (i) **Issue:** Sixteen apartments on the 4th, 5th and 6th storey of the Belle and Lily building enjoy views to the City skyline. The proposed development will obstruct the entirety of views to the City skyline and to iconic buildings such as the Sydney Tower.

Response: As discussed in the Issues section in this report view losses have been assessed in accordance with the relevant planning principle established in Tenacity. Based on this assessment it is recommended that the proposed modifications be supported despite views from some apartments within the Belle and Lily building being adversely affected.

- (j) **Issue:** These view losses are considered to be severe or devastating in the terms set out in Tenacity. While the view losses arise from compliant elements of the building a more skilful design may allow views to be maintained from some apartments.

Response: As discussed in the Issues section of this report and in accordance with the planning principle established in Tenacity the views to be affected are of a low value and the extent of the impact arising from the proposed modification of the Building A and B envelope is almost negligible. For these reasons, the proposed modifications are supported despite views from some apartments within the Belle and Lily building being adversely affected.

- (k) **Issue:** The proposal will contribute to increased demands on public transport infrastructure and services which already exceed capacity during peak periods.

Response: These are matters for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Please refer to the assessment report for DA no. D/2020/1419.

- (l) **Issue:** The proposed development would overshadow balconies and windows to apartments at 1A Mandible Street.

Response: Apartments at 1A Mandible street are separated from the subject site by over 50m. Botany Road and the Lincoln building are located between the proposed development and apartments at 1A Mandible Street. As such the proposed modifications have no adverse overshadowing impacts upon apartments at 1A Mandible Street.

- (m) **Issue:** The submitted contamination report identifies asbestos and other hazardous materials being contained on the site. The site auditor's interim advice identifies data gaps in the information provided and which have not been adequately addressed.

Response: A contamination report has not been submitted under the subject application to modify the concept consent. Contamination information has been submitted under the (stage 2) DA for the detailed design of the building (D/2020/1419) and which are being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (n) **Issue:** Objection is raised to the proposed breach of the relevant height controls. Height limits should be enforced so that neighbours can have some certainty about the scale of development and the character of the places that they live in. The additional apartments that can be built as a result of breaches of the height limit result in extra demand on community facilities such as the new Gunyama Park swimming pool which was operating at capacity as soon as it opened.

Response: As discussed in the Issues section of this report, the proposed modifications to increase the height of various portions of the Building A and B envelope are to accommodate rooftop structures incorporated in the detailed design (stage 2 DA) scheme and to ensure the detailed design (stage 2) DA is not inconsistent with the concept consent. The aforementioned rooftop structures include shade structures, pergolas, facilities to support communal open space such as seating and barbeques, planters and equipment enclosures. These do not comprise additional apartments.

- (o) **Issue:** The proposed density of development is too great.

Response: This is a matter for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (p) **Issue:** DCP provision 4.2.2.1 requires 'The rear setback and alignment is to be consistent with adjoining buildings. When the setback or alignment varies, either the adjacent or average rear setback or alignment is to be adopted'. George and Allen has a 4m setback from its western boundary. Objection is raised to the proposed reduction of the setback from 3m to 2.5m to the eastern boundary. Modification of the envelope to reduce the setback of the envelope to the eastern boundary was a reason for refusal of the previous s4.56 modification application (D/2015/1358/B). This is inconsistent with the pattern of adjacent setbacks and is contrary to the desired future character of the area.

Response: Over the course of the assessment of the subject application the proposed concept envelopes have been amended in various ways, including to remove any proposed modifications to setbacks established in the original concept consent.

- (q) **Issue:** DCP 4.2.3.6 requires 10 per cent of site area (498sqm) to be provided as deep soil. DCP provision 3.5.2 requires 15 per cent of the site area tree canopy coverage. Objection is raised to the proposal's failure to satisfy these requirements. Deep soil and tree planting to the eastern boundary would enhance privacy and amenity for the subject site and neighbours to the east.

Response: This is a matter for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (r) **Issue:** The proposed rooftop AC location is 8m from windows to habitable rooms within the building at 356-358 George St. Conditions should be imposed to limit noise from rooftop plant in accordance with DCP noise criteria.

Response: This is a matter for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

109. After the first notification and exhibition period of the subject application and the detailed design DA, the detailed design DA (D/2020/1419) was amended in response to issues raised by Council Officers. The amended detailed design scheme and supporting materials were subsequently re-notified for a period of 28 days between 9 August 2021 and 7 September 2021.
110. Although the modification of the concept consent proposed under the subject application had not been amended and was not re-exhibited at this point two additional submissions were made pertaining to the subject modification application.

111. Additional issues raised in submissions are summarised and responded to as follows:

- (a) **Issue:** Concern is raised about the operation of the proposed driveways and the safety of pedestrians as cars enter and exit Botany Road.

Response: This is a matter for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (b) **Issue:** Installation of public art must be in-keeping with the character of the area and not promote illegal graffiti.

Response: This is a matter for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (c) **Issue:** Stormwater needs to be properly managed to prevent run-off to adjacent properties.

Response: This is a matter for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (d) **Issue:** The original court approval determined that trees T1 and T2 were to be retained. The amended DA proposes to remove trees T1 and T2 which provide shade, screening and a pleasant outlook from my apartment adjacent to the SE corner of the subject site.

Response: As noted elsewhere in this report, consent condition (23) No Approval For Tree Removal states that the concept approval does not give consent for tree removal and specifies that an arborist's report that makes recommendations as to the retention, removal or pruning of trees, is to be provided with any subsequent Stage 2 DA. The subject application does not propose to modify condition (23). As such tree retention and removal is a matter to be addressed by the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

Second notification and exhibition

112. The amended proposal to modify the concept approval was re-notified for a period of 14 days between 14 to 29 March 2022 in accordance with the requirements of the City's Community Participation Plan.

113. Additional issues raised in submissions are summarised and responded to as follows:

- (a) **Issue:** Concerns raised in previous submissions pertaining to overshadowing and view loss impacts upon apartments at 233-235 Botany Road (Belle and Lily) have not been addressed by the amended proposal.

Response: Refer to the response to this issue as raised in the Belle and Lily Owners' Corporation's submission above.

- (b) The proposed development is located adjacent to Yudi Gunyi school and which caters for students with a range of health needs, aged from 10-16 years who need additional support to develop skills and learning strategies to succeed in the mainstream school environment. Due to the specialist needs of students at Yudi Gunyi and due to the heritage significance of the school, impacts from the proposed development need to be given additional consideration –
- (i) **Issue:** a 7-storey building (Building C) located approximately 6 metres from the northern site boundary of the Yudi Gunyi School. The location of the building may lead to overshadowing and overlooking of the school's learning and play areas. It is requested that the City considers overshadowing impacts in its assessment and imposing conditions requiring privacy screening at the boundary and a visual privacy treatment to all south facing windows of Building C.

Response: There are no substantive modifications, such as changes to setbacks or increased heights, to the concept envelope for Building C is proposed under the subject application. Overshadowing and privacy concerns as described above are matters for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (ii) **Issue:** The proposal will include demolition, excavation and construction works. The school has specialist learning, health and well-being programs that will be adversely disrupted by intrusive noise and vibration. The potential impacts of noise and vibration have not been addressed in the proposal and it is requested that the City requires the Proponent to further consider these potential impacts. The City should also consider: Yudi Gunyi a noise sensitive receiver, imposing conditions requiring Noise and Vibration Impact Assessment to be carried out and requiring a Noise and Vibration management plan (NVMP) that incorporates ongoing monitoring and a Construction Management Plan to minimise impacts during construction.

Response: These are matters for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

- (iii) **Issue:** The Yudi Gunyi school is identified as a heritage item under the Sydney LEP 2012 and section 170 of the Heritage Act 1977. Insufficient heritage impact assessment has been undertaken to demonstrate that the proposed development's construction methods will not adversely affect significant landscape elements of the school or damage the significant heritage fabric of the school buildings. In addition to the noise and vibration impact issues identified above it is requested that the City require further Geotech investigation be undertaken to determine risk of damage to the school buildings from the proposed development, require a dilapidation report to be carried out for the school, require the ongoing monitoring of heritage fabric and trees during construction, for any dilapidation report repair works to be completed prior to issue of OC and require the dilapidation report be carried out in consultation with a qualified heritage consultant.

Response: These are matters for consideration in the assessment of the (stage 2) DA for the detailed design of the building (D/2020/1419) and which is being assessed at the same time as the subject application. Refer to the assessment report for DA no. D/2020/1419.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

114. Development contributions were not imposed upon the development approved under the original consent.
115. The subject application does not trigger any requirement for a development contribution to be imposed.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

116. Affordable housing contributions were not imposed upon the development approved under the previous consent.
117. The subject application does not trigger any requirement for an affordable housing contribution to be imposed.

Relevant Legislation

118. Environmental Planning and Assessment Act 1979.
119. Environmental Planning and Assessment Regulation 2021.
120. Water Management Act 2000.

Conclusion

121. Section 4.56 application D/2015/1358/C seeks to modify the previously approved concept envelopes for a mixed-use development to accommodate roof structures, balconies and an additional, second basement level. This application seeks to modify an Integrated development consent and which requires approval under the Water Management Act 2000. Development Application D/2020/1419 for the detailed design of buildings to be contained within the site, is being assessed concurrently with the subject application.
122. The proposed modifications under the subject application include increasing the height of concept envelopes for Buildings A and B such that the modified envelopes would exceed the 22m LEP height control by up to 2.751m. This is a 12.5 per cent variation of the control. The assessment detailed in this report concludes that the proposed variation is consistent with the objectives of the height of buildings development standard at LEP clause 4.3 and is supported.

123. Several conditions of consent are proposed to be modified to align with the proposed design amendments to the concept envelopes. These include changes to conditions (3) Approved Development, (6) Stage 2 To Be Contained Within Approved Envelope, (7) Building Height and to the revised General Terms of Approval at Schedule 3 as provided by Water NSW. These modifications are supported in the most part.
124. Condition (4) Design Requirements, is also proposed to be amended to remove duplication of planning controls such as the natural cross ventilation requirements of the Apartment Design Guide. These modifications are supported in the most part.
125. The proposed modifications outlined above are consistent with the commitment to community infrastructure provision, which includes land dedication, embellishment works and a monetary contribution, as secured in the Voluntary Planning Agreement associated with the original concept approval (D/2015/1358).
126. The concept development consent, as proposed to be modified, is substantially the same development as that originally approved.
127. For these reasons the modifications proposed under the subject application are recommended for approval subject to the conditions as modified and detailed at Attachment A to this report.

ANDREW THOMAS

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