

Item 4.**Development Application: 219-231 Botany Road, Waterloo - D/2020/1419****File No.:** D/2020/1419**Summary****Date of Submission:** 20 January 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:** \$40,882,000**Zoning:** The site is located in the Zone B4 Mixed Use. The proposed development comprises retail and residential uses which are permitted with consent in the zone.**Proposal Summary:** The subject Development Application (DA) D/2020/1419 seeks consent for the demolition of all existing structures, tree removal, excavation and remediation and construction of a mixed-use development comprising 132 apartments in three buildings.

This application is for Integrated Development requiring the approval of Water NSW under the Water Management Act 2000.

Associated Voluntary Planning Agreement (VPA)

The proposed development includes the public benefits secured in the VPA associated with the original concept consent D/2015/1358. This VPA is for the dedication of 98.67sqm of land to Council, for the purposes of footpath widening on its Botany Road frontage, public domain works and a monetary contribution for community infrastructure provision in Green Square.

Section 4.56 modification D/2015/1358/C

Section 4.56 modification application D/2015/1358/C is being assessed concurrently and seeks approval to modify the concept building envelopes and conditions of the concept consent.

Subject to the approval of D/2015/1358/C the detailed design DA is not inconsistent with the concept development consent and therefore satisfies section 4.24(2) of the Environmental Planning and Assessment Act, 1979.

Notification and Exhibition

In accordance with the notification requirements for Integrated Development, the subject DA was notified for a period of 28 days between 17 February and 18 March 2021. Twelve 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 loss, 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.

After the first notification and exhibition period the subject DA was amended in response to issues raised by Council Officers. The amended detailed design scheme and supporting materials were subsequently re-notified between 9 August and 7 September 2021. Nine submissions were received.

Submissions received in response to the second round of notification largely reiterated concerns raised previously.

Following further amendments to the subject DA, the application was re-notified between 14 and 29 March 2022. Six submissions were received.

Issues raised in submissions in addition to those issues raised previously include: heritage and other impacts to the neighbouring Yudi Gunyi school.

Concerns raised in submissions are addressed in this report.

Assessment

The proposed development exceeds the 22m building height control contained in the Sydney LEP 2012 (the LEP) by up to 3.97m or 18 per cent. The building elements that exceed the height control are atop Buildings A and B and include lift and stair overruns, shade structures, planters and the north-western corner of the substantive roof structure that forms part of the rooftop common open space. In the main these structures are to provide access, weather protection and amenities to the rooftop common open space areas.

A written justification for the proposed variation to the building height development standard has been submitted in accordance with clause 4.6 of the LEP. The statement demonstrates that compliance with the standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify contravention of the standard.

The proposed development is consistent with the objectives of the Zone B4 Mixed Use and the height of buildings development standard and is in the public interest. For these reasons the proposed variation of the building height development standard is supported.

The proposed development complies with the relevant floor space ratio controls and other provisions of the LEP. It is consistent with the design quality principles contained within SEPP 65, the objectives of the Apartment Design Guide (the ADG) and the detailed provisions contained within the Sydney DCP 2012 (the DCP).

The proposed development exhibits design excellence and provides an appropriate contribution that is suitable in terms of its context, scale and built form and which is consistent with the desired future character of the area, as expressed in the applicable planning policies.

The proposed development is subject to SEPP 65 and is therefore sensitive development and is referred to the Local Planning Panel to be considered for this reason.

Integrated Development Approval

This application is for Integrated Development requiring the approval of Water NSW under the Water Management Act 2000.

Water NSW Officers have advised that the subject application is under assessment and that a decision will be made shortly.

As Water NSW has issued revised General Terms of Approval to the section 4.56 modification application (D/2015/1358/C) being assessed concurrently and which seeks to modify the concept building envelopes to add a second basement level, it is anticipated that any concerns Water NSW may have with the application may be addressed.

As such, it is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, subject to receipt of General Terms of Approval from Water NSW pursuant to the Water Management Act 2000 and then consideration be given to granting development consent subject to the conditions at Attachment A.

Summary Recommendation: Authority be delegated to the CEO to determine the application, once an approval from Water NSW has been received.

Development Controls:

- (i) State Environmental Planning Policy (Resilience and Hazards) 2021
- (ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- (iii) State Environmental Planning Policy (Housing) 2021
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (v) State Environmental Planning Policy (Transport and Infrastructure) 2021
- (vi) State Environmental Planning Policy (Precincts - Central River City) 2021
- (vii) State Environmental Planning Policy (Biodiversity and Conservation) 2021
- (viii) Sydney Local Environmental Plan 2012
- (ix) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Photomontages
- C. Selected Drawings
- D. Clause 4.6 Variation Request - Height of Buildings
- E. Voluntary Planning Agreement
- F. Competitive Design Alternatives Process Report
- G. Ausgrid Referral Comments
- H. Sydney Water Referral Advice

Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer (CEO) to determine Development Application No. D/2020/1419, subject to receipt of an approval from Water NSW, pursuant to the Water Management Act 2000;
- (B) the variation requested to the Height of Buildings development standard in accordance with clause 4.6 exceptions to development standards of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) if the Chief Executive Officer determines to approve the Development Application No. D/2020/1419 then consideration be given to granting development consent subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The site is located in the Zone B4 Mixed Use. The proposed development comprises retail and residential uses and which are permitted with consent in the zone.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney Local Environmental Plan 2012, that compliance with the Height of Buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the Zone B4 Mixed Use and the Height of Buildings development standard.
- (C) The proposed development complies with the maximum floor space ratio development standard contained in clause 4.4 of the Sydney Local Environmental Plan 2012.
- (D) The proposed development is consistent with the Voluntary Planning Agreement between The Council of the City of Sydney and Waterloo 1 Pty Ltd.
- (E) Subject to the approval of section 4.56 modification application D/2015/1358/C the detailed design development application is not inconsistent with the concept development consent and therefore satisfies section 4.24(2) of the Environmental Planning and Assessment Act, 1979.
- (F) The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form and which is consistent with the desired future character of the area. As such the detailed design scheme exhibits design excellence in accordance with the requirements contained in 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 an 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 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.

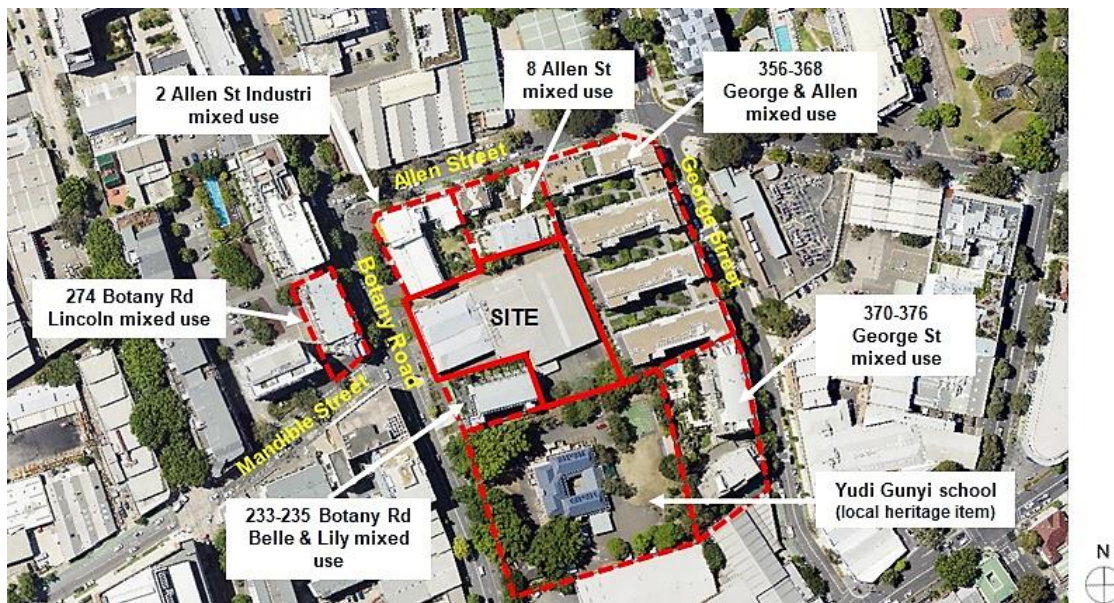


Figure 1: Aerial view of site and surrounds



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 the podium-level courtyard of the 'George and Allen' building towards the subject site to the west

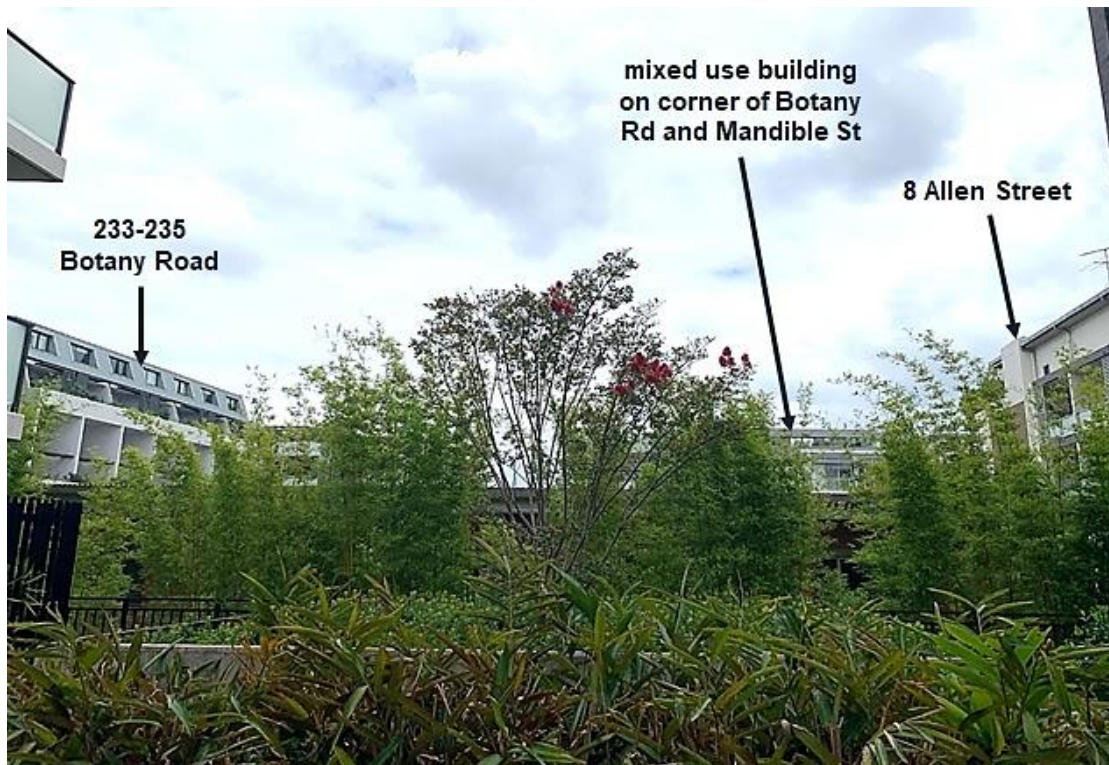


Figure 9: View from the podium-level courtyard of the 'George and Allen' building towards the subject site to the west



Figure 10: 'Belle and Lily' building at 233-235 Botany Road Waterloo, located to the immediate south-west 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. 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. The concept DA (D/2015/1358) for the subject site was lodged with Council in September 2015. This was just prior to the Court determination.
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 Road). 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 with a range of health needs to integrate 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 and included 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). This included the addition of 2 storeys to the rear of Buildings B, C and D to create 9 additional apartments, increase and reconfigure the size of 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 7 November 2016 subject to a section 34 agreement for three concept (stage 1) building envelopes containing residential and commercial uses with basement parking.
26. VPA/2016/3 - The Voluntary Planning Agreement (VPA) at Attachment E 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 section 96AA application to modify the consent to refer to the approved Design Excellence Strategy (DEX Strategy). The concept consent [D/2015/1358 (as amended)] is due to expire on 17 October 2022.

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 of 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.
33. Commissioner Smithson's judgment explains the reasons for the dismissal of the deemed refusal appeals, as follows:
- (a) the detailed design DA did not respond to the concept consent conditions or to the recommendations of the Selection Panel as detailed in the Competitive Design Process Report at Attachment F;
 - (b) site constraints did not justify breaches of controls and non-compliance with amenity requirements;
 - (c) 'near enough is not good enough' when design excellence is the required outcome and design excellence had not been achieved;
 - (d) the proposed increase in height of Building C did not provide a suitable transition to the heritage listed school; and
 - (e) the requirements and benchmarks established in a concept consent should not be watered down by modification to respond to an individual detailed design.

Pre-lodgement Consultation (PDA/2020/128)

34. 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.
35. 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 to improve access to light and air, acoustic and visual privacy and to ensure the detailed design of Building C is contained within the approved concept envelope for this Building.
36. 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.
37. Notwithstanding the recommendation for further consultation no additional pre-lodgement meetings were held.

Compliance Action

38. 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

39. On 20 January 2021, the subject development application D/2020/1419 was lodged with Council.

Preliminary Information Requests

40. Following a review of the application documents, Council Officers requested:
- (a) lodgement of a section 4.56 application to modify the concept envelopes;
 - (b) that information referred to in the Statement of Environmental Effects but which was missing from the information submitted at lodgement be provided. This included:
 - (i) an acid sulphate soils report;
 - (ii) drawings of adaptable apartment layouts; and
 - (iii) amended drawings that provide RLs notated on elevation and sections and that incorporate BASIX information and NatHERS stamps.
41. Amended drawings, an acid sulphate soil report, section 4.56 application to modify the concept consent and a 3D CAD model of the proposed modified envelopes were submitted in response.
42. Following assessment of the remediation information and acoustic reports submitted at lodgement, Council Officers requested:

- (a) a Detailed Environmental Site Investigation (DESI), Remedial Action Plan (RAP) and a Site Audit Statement or Interim Letter of Advice from a NSW EPA accredited Site Auditor; and
 - (b) an updated acoustic report that provides details and specifications for proposed plenums and acoustic treatments and that addresses current criteria for noise generated by proposed plant and equipment.
43. Over the following months the Applicant submitted the 3D CAD model, amended drawings and a revised acoustic report.

Design Advisory Panel (DAP) and DAP Residential Sub-Committee (DAPRS)

44. On 22 April 2021, the subject proposal was presented to the City's Design Advisory Panel (DAP). The DAP made the following recommendations:
- (a) the Panel supports the City's assessment that there are several problems with the design and which pertain to:
 - (i) the public domain interface, configuration of retail frontage and the design of the Botany Road building generally;
 - (ii) pedestrian and vehicle conflicts at its entries and loading dock area;
 - (iii) poor amenity for Building A apartments;
 - (iv) unresolved ground plane and common open spaces;
 - (v) poor design of roof level common open space;
 - (vi) the general landscape design;
 - (b) the Panel concurs with comments made by the Selection Panel in the Competitive Design Alternatives Process Report (refer to Attachment F);
 - (c) the detailed design scheme does not achieve design excellence in its current form;
 - (d) the Panel notes internal privacy issues between apartments have not been resolved;
 - (e) the Panel recommends that the design be referred to DAPRS to provide more detailed design guidance on all of the issues noted above.
45. On 4 May 2021, the subject proposal was presented to the City's Design Advisory Panel Residential Sub-committee (DAPRS). The DAPRS made the following recommendations:
- (a) to achieve design excellence the subject proposal should satisfy the amenity requirements of the Apartment Design Guide (ADG);
 - (b) any apartments that are located predominantly below the natural ground line are not supported;

- (c) the proposed dual driveway and ramp reduces street frontage activation, compromises amenity, pedestrian safety and admits noise and pollution to the interior of the site;
- (d) the open-top vehicle ramp to the south is an unacceptable solution and a consolidated basement ramp is encouraged;
- (e) the Panel concurs with comments made by the Selection Panel in the Competitive Design Alternatives Process Report (refer to Attachment F);
- (f) privacy and amenity in Building A fronting Botany Road, including the proximity of living and balcony areas and primary windows and balconies in the driveway undercroft are unsatisfactory;
- (g) it is unclear if the bedrooms facing Botany Road have sufficient natural ventilation for comfort and amenity. Natural ventilation solutions should be discussed and agreed with Council Officers;
- (h) the amenity of many of the proposed apartments is unsatisfactory, further resolution of the interface between private, semi-private and common open spaces throughout and particularly for the north facing apartments of Building B is required;
- (i) the roof top open space (on Building B) does not provide convenient or equitable access from other Buildings. More direct access to rooftop communal space from each building should be achieved;
- (j) the south-facing windows on Building C are heavily screened. This affects amenity and may be better delivered with 'pop-out' windows with glass to east and west or some other architectural device;
- (k) internal circulation spaces have not consistently optimised opportunities for the admission of natural light and ventilation to the lobbies and corridors. It is noted that fire engineered alternative solutions are required for a number of these longer corridors;
- (l) refinement of the architectural expression of the buildings is to be undertaken holistically.

Issues Letter

46. Upon receipt of the DAP and DAPRS advice and completion of a full assessment of the application, Council Officers sent the Applicant a letter requesting design amendments and additional information to address the following:
- (a) the advice and recommendations of DAP and DAPRS as outlined above;
 - (b) compliance with solar access and overshadowing requirements of the ADG and submission of supporting solar access and overshadowing studies and analysis;
 - (c) compliance with the natural cross ventilation requirements of the ADG;
 - (d) coordination of the design proposed under the subject application with the modifications proposed under section 4.56 application D/2015/1358/C;

- (e) problems with the planning and layout of apartments, waste areas and common circulation areas;
 - (f) accessibility;
 - (g) problems with architectural expression including: problems with facade design, the viability of and reliance upon planters to provide depth to facades, over-use of screening to the southern facade of Building C and lack of sun-shading to north-facing apartments;
 - (h) inadequate detail about the materials, finishes and products proposed for the building;
 - (i) landscape design;
 - (j) unclear and uncoordinated information pertaining to tree preservation;
 - (k) an unsuitable waste management plan;
 - (l) revision of vehicle access/egress in accordance with Transport for New South Wales's (TfNSW) concurrence requirements;
 - (m) previously requested remediation information;
 - (n) more detailed design of rooftop solar panels and incorporation of annotations of thermal design elements, NatHERS stamps and BASIX commitments into amended drawing sets; and
 - (o) provision of a Preliminary Public Art Plan.
47. A fortnight later the requested remediation information was submitted and a meeting between Council Officers and the Project Team was held to discuss the concerns raised in the issues letter.
48. Two months after the meeting, an amended DA package was submitted. About a week after that outstanding solar access, overshadowing and natural ventilation information was also submitted.
49. Council Officers issued information requests seeking further clarification on solar access, overshadowing and natural ventilation issues and forwarded questions from TfNSW to the Applicant about their response to the traffic and vehicle access requirements specified in Council Officers' issues letter.
50. The Applicant responded and provided amended solar access, overshadowing and natural ventilation studies, further amended architectural drawings and responses to TfNSW questions.

Focus Meetings

51. Following an assessment of the amended DA package, Council Officers requested a series of focussed meetings over October and November 2021, with relevant experts from the Project Team, to discuss unresolved issues as follows:
- (a) Meeting 1 - refining concept drawings, overshadowing of neighbouring apartments and breaches of the LEP height control;

- (b) Meeting 2 - natural ventilation, natural cross ventilation, Building A's Botany Road frontage and TfNSW requirements;
 - (c) Meeting 3 - coordination of architectural drawings, DDA access, privacy, sun-shading, waste management and BASIX requirements.
52. After each of the above meetings Council Officers issued written advice and requests for additional information and design amendments. This correspondence precipitated exchanges of preliminary sketches and feedback over the following months and into the new year (2022).

Affordable Housing Contributions

53. In January 2022, the Landowner amended the proposal to provide five dwellings within the development to be dedicated to and operated by a registered community housing provider.
54. These dwellings are in lieu of any monetary affordable housing contribution that may be levied by a condition of consent on any approval granted.
55. Affordable housing contributions are detailed in the Financial Contributions section of this report.

Second Amended DA Package

56. In February 2022, the Applicant submitted an amended DA package to respond to issues raised in focus meetings and which included:
- (a) amended architectural and landscape plans;
 - (b) amended solar access and natural ventilation studies;
 - (c) amended Waste Management Report;
 - (d) amended traffic impact assessment;
 - (e) amended access statement;
 - (f) natural ventilation modelling;
 - (g) amended BASIX and Part J reports;
 - (h) amended acoustic assessment; and
 - (i) an amended clause 4.6 justification for the proposed variation of the Height of Buildings development standard.

Elevations, Overshadowing, NatHERS and Affordable Housing

57. In May 2022, Council Officers requested a last round of drawings and information to address information gaps in the previously submitted amended DA package. This included requests for:
- (a) elevation drawings of the side boundary walls of the portion of Building A fronting Botany Road;
 - (b) overshadowing studies and analysis;

- (c) updated NatHERS and BASIX Certificates with corrected modelling and to address inconsistencies in floor areas and glazing specifications of various apartments;
- (d) a consolidated drawing set that incorporates annotations of thermal design elements, NatHERS stamps and BASIX commitments; and
- (e) details of how similar transfers of affordable housing apartments have been facilitated through a development consent in other local government areas.

58. The requested information was submitted up to and including 27 May 2022.

Proposed Development

59. The subject Development Application, as amended, seeks consent for the following:

- (a) demolition of all existing structures, tree removal, excavation and remediation;
- (b) construction of a shared basement with an ingress driveway proposed on the northern boundary and egress driveway proposed on the southern boundary. The basement is to contain 103 retail, residential and visitor car parking spaces plus car-share and service vehicle parking. A semi-circular driveway section behind the ground floor retail tenancy fronting Botany Road and that connects the northern and southern driveways will be gated and is to be used as a waste collection loading dock;
- (c) construction of a mixed-use development comprising 132 apartments three buildings (shown as buildings A, B and C in Figure 17 below) as follows:



Figure 17: Building identification plan

- (i) Building A1 - fronts Botany Road and is up to 6-storeys in height. It contains two vehicle entry/exit points, one at either end of its street frontage, with a retail tenancy at ground level and apartments above;
 - (ii) Building A2 - is up to 7-storeys in height and sits above two shared basement levels containing parking, storage and services, residential apartments in the levels above and rooftop common open space. It adjoins Building B to the east;
 - (iii) Building B - is up to 7-storeys in height and sits above two shared basement levels containing parking, storage and services, residential apartments in the levels above and rooftop common open space;
 - (iv) Building C - is up to 7-storeys in height and sits above a single level section of the shared basement level containing parking, storage and services and residential apartments in the levels above.
- (d) The proposed development is to be of primarily face brick construction, bronze and champagne coloured aluminium cladding, with black painted fences, gates and window frames and timber clad soffits.
- (e) Public art in the form of painted murals are proposed to soffits and internal faces of blade walls to the recessed northern and southern ends of the western (Botany Road) facade;
- (f) Deep soil areas are located in three consolidated locations adjacent to the eastern site boundary.
- (g) This is an Integrated Development Application and requires an approval under the Water Management Act 2000.
60. Section 4.56 application D/2015/1358/C proposes to modify the concept building envelopes and conditions of the concept consent. It has been assessed concurrently and reported to LPP simultaneously.
61. Selected drawings of the proposed development are provided below.



Figure 18: Photomontage of Botany Road facade looking south



Figure 19: Photomontage of Botany Road facade looking north. This includes illustration of indicative public art and gated sections of the driveway areas



Figure 20: Photomontage of courtyard looking west



Figure 21: Photomontage of Botany Road facade from the air



Figure 22: Photomontage of loading dock looking north



Figure 23: West (Botany Road) elevation



Figure 24: Buildings A2 and B north elevation



Figure 25: Buildings A2 and B south elevation



Figure 26: Building C north elevation

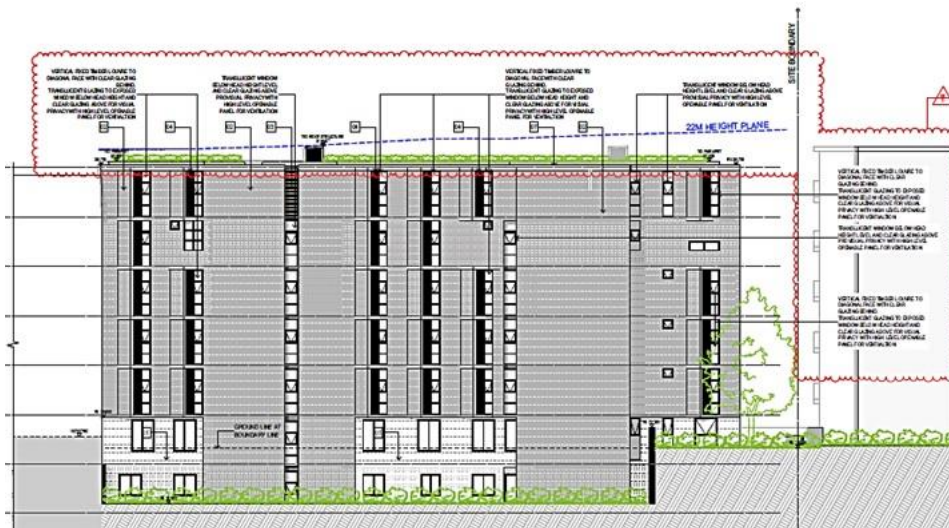


Figure 27: Building C south elevation

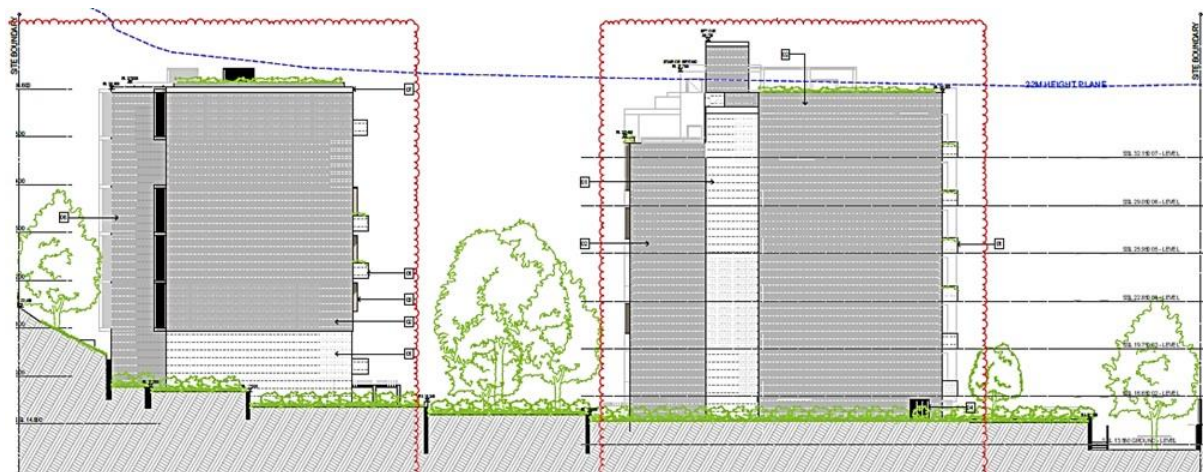


Figure 28: Buildings B (right) and C (left) east elevation

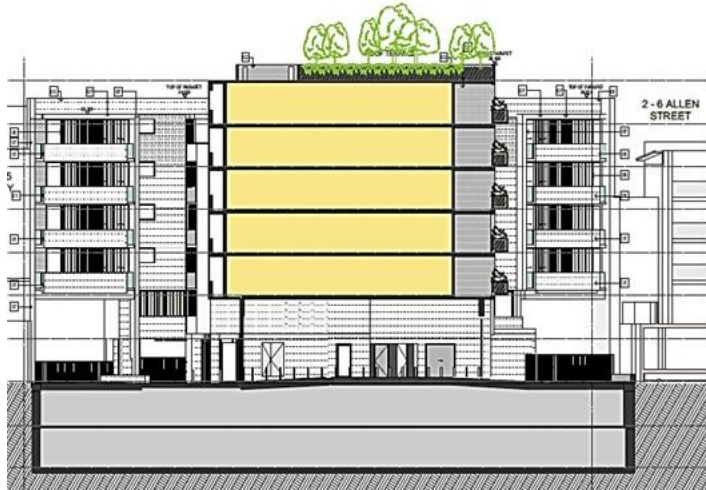


Figure 29: Building A sectional east elevation



Figure 30: Buildings A and B long section

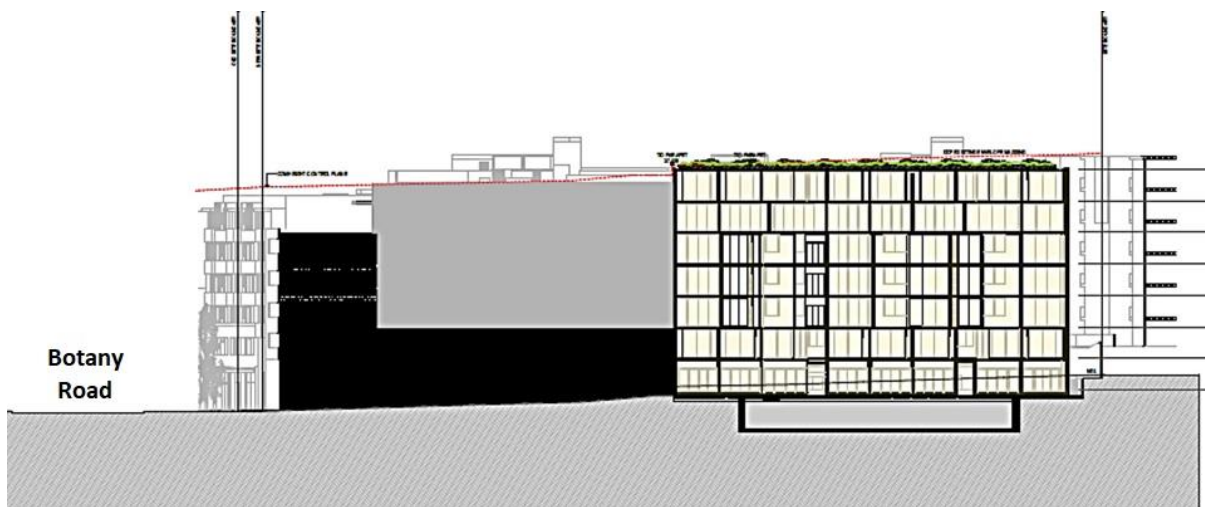


Figure 31: Building C long section

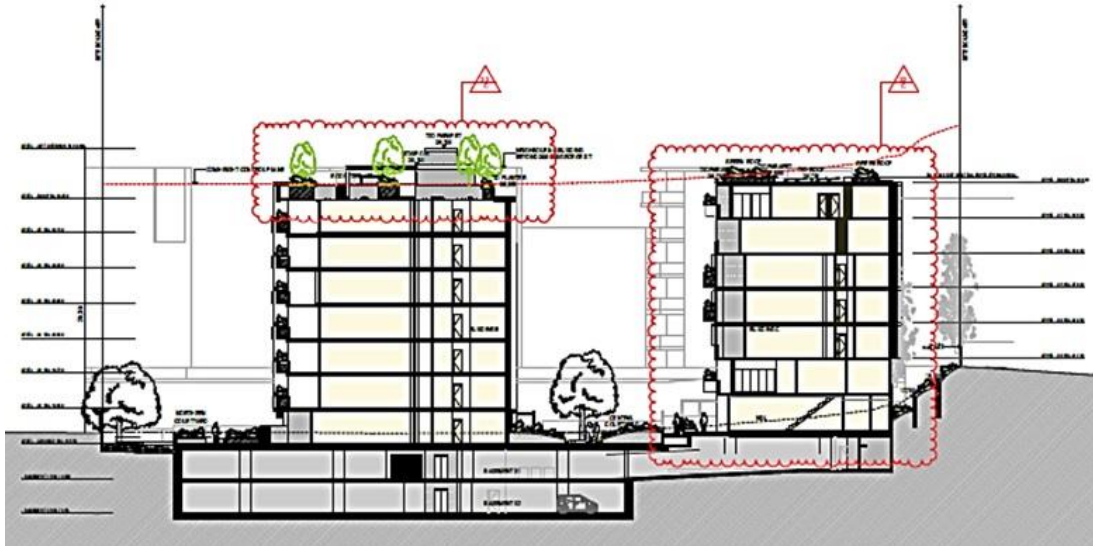


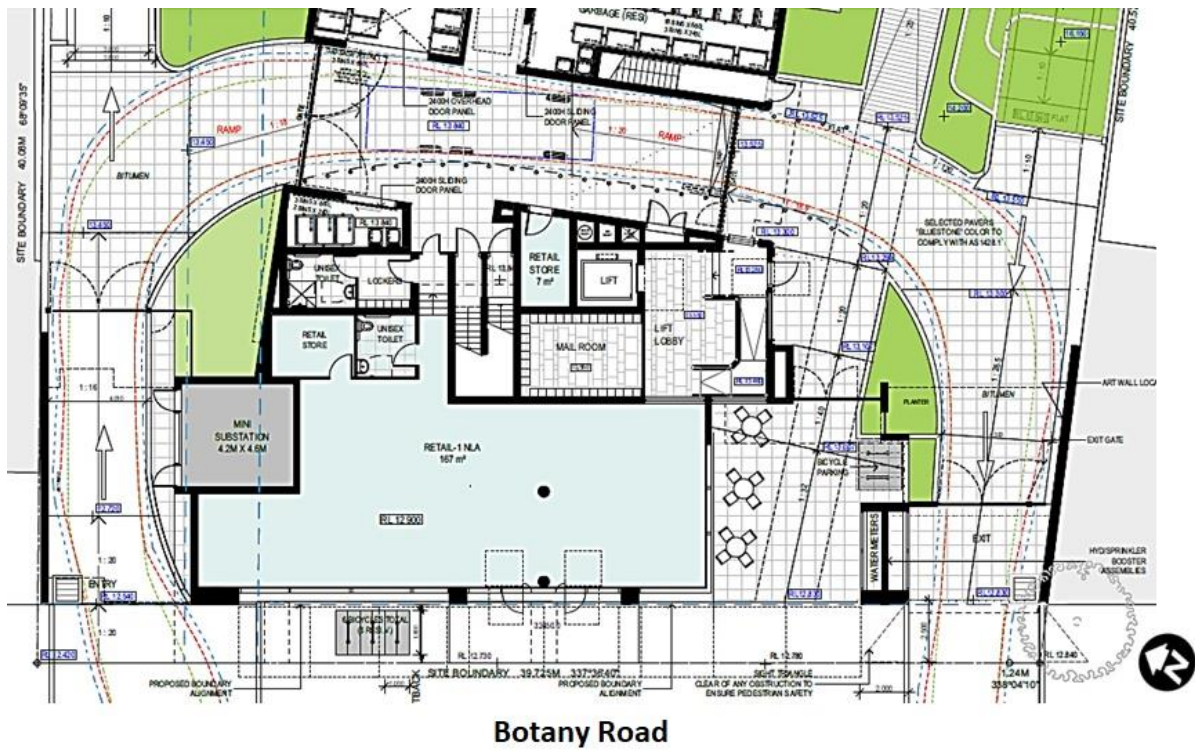
Figure 32: Buildings B (left) and C (right) section



Figure 33: Basement 02 plan



Figure 34: Basement 01 plan



Botany Road

Figure 35: Detail ground level plan of Building A and loading dock



Figure 36: Ground floor level 01 plan



Figure 37: Level 02 plan



Figure 38: Typical levels 03-06 plan



Figure 39: Level 07 plan



Figure 40: Roof plan

Assessment

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

Integrated Development - Section 4.46 of the Environmental Planning and Assessment Act 1979

63. The proposed development will penetrate the groundwater table as a result of the excavation to construct basements. The consequential dewatering is deemed to be an aquifer interference activity and an authorisation to conduct such an activity is required under the relevant water management legislation.

64. As the proposed development comprises Integrated Development under section 4.46 of the Environmental Planning and Assessment Act 1979, the subject DA was referred to Water New South Wales (Water NSW) through the NSW Planning Portal (portal reference numbers CNR-18345 and A-21474).
65. Each time the subject DA was amended the relevant drawings and supporting information were uploaded to the planning portal.
66. Submissions received in response to public notification and exhibition processes were uploaded to the portal on 29 March 2021, 8 September 2021, 6 April 2022 and 30 April 2022.
67. Water NSW Officers have advised Council Officers as recently as 5 July 2022, that the subject application is under assessment and that a decision will be made shortly.
68. As Water NSW has issued revised General Terms of Approval to the section 4.56 application (D/2015/1358/C) being assessed concurrently and which seeks to modify the concept building envelopes to add a second basement level, it is anticipated that any concerns Water NSW may have with the application may be addressed.
69. For these reasons, it is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, subject to receipt of General Terms of Approval from Water NSW pursuant to the Water Management Act 2000.

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021

70. The SEPP (Resilience and Hazards) 2021 commenced on 1 March 2022. While the provisions of SEPP 55 have been transferred to the Resilience and Hazards SEPP, this does not affect the operation or meaning of the provisions.
71. The objectives of Chapter 4 Remediation of land of the Resilience and Hazards SEPP is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.
72. Section 4.6 of the Resilience and Hazards SEPP requires that development consent must not be granted unless consideration has been given to whether the land is contaminated and if it is, then whether the land can be made suitable for its proposed use.
73. There is a history of industrial uses of the site. A Detailed Environmental Site Investigation (DESI), Remedial Action Plan (RAP) and Interim Advice were submitted at lodgement of the application.
74. Both the DESI and RAP identified gaps in the available data that informed their formulation. The Site Auditor's advice recommended that an updated RAP be provided following data gap investigations to determine the full extent of contamination and groundwater flow contours.
75. Subsequently, Council Officers requested additional information to address the concerns raised by the Site Auditor including a revised RAP. Council Officers also requested updated Site Auditor's advice.

76. The Applicant provided the requested information including data gap investigations which revealed an underground service tank and elevated levels of contaminants from imported fill materials.
77. The revised RAP proposes to remove and dispose of contaminants. The Site Auditor has endorsed the revised RAP and has confirmed that the site can be made suitable for the proposed uses without the need for any active Environmental Management Plan.
78. Council Officers have reviewed the information provided and recommend conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.

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

79. 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.
80. 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.
81. An assessment of the proposal against the design quality principles is provided as follows:
 - (a) Principles 1 and 2: Context and Neighbourhood Character and Built Form and Scale
 - (i) The proposed development is up to a height of 25.97m and exceeds the 22m building height control contained in clause 4.3 of the Sydney LEP 2012 (the LEP). This non-compliance arises from rooftop structures such as lift and stair overruns and shading structures. These building elements are consistent with the approved concept envelopes (as modified by D/2015/1358/C) and are necessary to provide rooftop common open space and a suitable standard of amenity for future intended occupants.
 - (ii) Portions of the building that breach the height control are set back from the southern edge of the Building A/B footprint to minimise overshadowing of neighbouring properties.
 - (iii) These height non-compliances are also set well back from the property boundary with Botany Road to minimise impacts to the public domain and streetscape.
 - (iv) The 6-storey street frontage height of the proposed development is consistent with that approved under the concept consent. It responds to the varying heights of buildings either side through variations to the materials, depth and composition of its Botany Road facade.

- (v) The proposed development is in keeping with the design principles for the locality of Waterloo Park in that it provides a mixed-use development and incorporates active retail uses at its ground floor level frontage to Botany Road.
 - (vi) In accordance with the Voluntary Planning Agreement (VPA) at Attachment E, the proposed development provides a 2.4m wide land dedication and footpath widening works to its Botany Road frontage and satisfies the urban strategy and objectives for Green Square.
 - (vii) In all, the proposed development provides an architectural contribution that is suitable in terms of its context, character, scale and built form and that is consistent with these design quality principles.
- (b) Principle 3: Density
- (i) Considering all of the relevant FSR provisions contained in the Sydney LEP 2012 (the LEP), the maximum permitted FSR for the development is 2.2:1 (10,956sqm GFA). The proposed development has a FSR of 2.19:1 (10,907sqm GFA) and complies with the control.
 - (ii) Therefore, the proposed density of development is consistent with that envisaged under the relevant planning controls and is appropriate given the context of the site.
 - (iii) The proposal is consistent with this design quality principle.
- (c) Principle 4: Sustainability
- (i) The proposed development provides natural ventilation to all apartments. It meets the relevant standards for natural cross ventilation and solar access and provides daylight and natural ventilation to common areas.
 - (ii) In combination, these qualities will reduce demands for artificial lighting, heating and cooling. Appropriate conditions are recommended to ensure sustainability measures included in the BASIX certificate are implemented at construction.
 - (i) The proposal is consistent with this design quality principle.
- (d) Principle 5: Landscape
- (i) The proposed development provides a combined area of common open space (COS) of approximately 1,059 sqm, equal to 21 per cent of site area.
 - (ii) COS is provided in the form of 436 sqm of ground level COS areas equal to about 9 per cent of the site area and 623sqm of rooftop COS equal to about 12 per cent of the site area.
 - (iii) The rooftop COS comprises residents' facilities, seating, shading and greenery to provide a high level of amenity and with all day solar access.
 - (iv) The proposed development provides 412 sqm of deep soil areas, equal to 8.3 per cent of site area and which includes a consolidated deep soil area with a minimum dimension of 10m.

- (v) The co-location of deep soil areas with ground level COS provides an opportunity for large tree plantings to enhance amenity and is in accordance with the design guidance to ADG objective 3D-1.
 - (vi) Overall, the proposed landscape design provides ample, good quality outdoor amenity for residents and is consistent with this design quality principle.
- (e) Principle 6: Amenity
- (i) Seventy-one percent (71%) or 94 of 132 apartments receive a minimum of 2 hours of sunlight to living rooms and private open spaces in midwinter.
 - (ii) All apartments achieve the minimum size requirements and 2.7m floor to ceiling heights to improve solar access and to provide a sense of spaciousness within apartments.
 - (iii) Adequate private open space, communal open space and deep soil are provided and incorporate a rooftop COS with facilities and all-day solar access.
 - (iv) The design addresses traffic noise by incorporating acoustically attenuated plenums to provide natural ventilation and suitable internal noise levels for noise affected apartments adjacent to Botany Road.
 - (v) In combination these design outcomes are considered to provide a good level of amenity for residents and neighbours as is consistent with this design quality principle.
- (f) Principle 7: Safety
- (i) The proposed development is able to provide appropriate levels of safety and security within the development and the public domain.
 - (ii) It is considered that the proposed development has been designed in accordance with the SEPP's safety principle and the principles of Crime Prevention through Environmental Design (CPTED).
- (g) Principle 8: Housing Diversity and Social Interaction
- (i) The proposed development provides a mix of dwelling types and adaptable apartments in accordance with DCP requirements.
 - (ii) The proposal is consistent with this design quality principle.
- (h) Principle 9: Aesthetics
- (i) The palette of materials includes several integral finishes such as blonde and dark face bricks, bronze coloured aluminium window frames, timber soffits and black painted fences, gates and window frames.
 - (ii) The application of this palette of materials and finishes is consistent with the design advice provided in the Competitive Design Process Selection Panel's report, to successfully modulate the bulk and scale of the Botany Road facade.

82. The development is acceptable when assessed against the design quality principles and the SEPP generally, the requirements of which are replicated in part within Council's planning controls.
83. A detailed assessment of the proposal against the relevant ADG objectives is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	Building depths range from around 10.5m to 18m and are consistent with the approved concept envelopes.

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	No, but acceptable	<p>All substantive building elements are contained within the concept envelopes (as modified by D/2015/1358/C) and achieve minimum separation distances for the first four storeys of the development, except for the eastern balcony to level 2 apartment A1.203 in Building A fronting Botany Road.</p> <p>The balcony to apartment A1.203 does not achieve the minimum recommended separation distance from the gallery circulation spaces contained within the same building.</p> <p>A condition is recommended to improve separation and privacy to and from this balcony. Refer to the Issues section in this report.</p> <p>Pop-out windows to the southern facade of Building C encroach into the requisite 6m setback from the southern boundary at its 3rd and 4th storeys.</p> <p>These minor variations to ADG separation requirements arising from the pop-out windows are supported for the following reasons:</p> <ul style="list-style-type: none"> • the pop-out windows are angled and fitted with fixed louvres so as to direct views towards the eastern boundary of the subject site;

2F Building Separation	Compliance	Comment
		<ul style="list-style-type: none"> • subsequently the pop-out windows only allow oblique views and do not allow direct views to the Yudi Gunyi School to the south; • the pop-out windows are separated from the neighbouring school building by more than 25m; • the pop-out windows are from bedrooms and which can reasonably be expected to be largely un-utilised during regular school hours (9am-3pm, Monday to Friday) when students may be on school grounds and residents are at work or mainly using living areas of apartments. <p>A condition is recommended requiring design details of various facade elements including those of the bay windows and their fixed privacy screens to be submitted to and approved by Council officers.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	No, but acceptable	<p>All substantive building elements are contained within the concept envelopes and achieve minimum separation distances for the fifth, sixth and seventh storeys of the development, except for the pop-out windows to the southern facade of Building C that encroach into the requisite 9m setback from the southern boundary.</p> <p>These minor variations to ADG separation requirements are supported for the reasons stated in regard to the same non-compliances noted above.</p>

3B Orientation	Compliance	Comment
<p>Buildings respond to the streetscape and site by:</p> <ul style="list-style-type: none"> • facing and incorporating building entries to the street • where the street frontage is to the east or west, rear buildings are orientated to the north 	Yes	<p>The proposed development:</p> <ul style="list-style-type: none"> • faces the street and incorporates residential and retail entries; and • Buildings B and C which are located behind the west facing Building A, are orientated to the north.
<p>Overshadowing of neighbouring properties is minimised during mid-winter by:</p> <ul style="list-style-type: none"> • ensuring neighbours' living areas, private and common open space receive solar access in accordance with ADG objectives 3D Communal open space and 4A Solar and daylight access • where a neighbouring property does not currently receive the required hours of solar access, the proposed building ensures solar access to affected neighbours' apartments is not reduced by more than 20% (in duration); • if the proposal significantly reduces the solar access to neighbours, building separation should be increased beyond the minimums required under ADG objective 3F Visual privacy; 	Yes, overshadowing is minimised	<p>The concept envelopes approved under the original consent (D/2015/1358) result in 55% (16 of 29) of the apartments at 233-235 Botany Road (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.</p> <p>The modifications to the concept envelopes proposed under the section 4.56 application (D/2015/1358/C) and which is being assessed at the same time as the subject application do not exacerbate overshadowing to the Belle and Lily apartments beyond that which would arise from the concept envelopes as originally approved.</p> <p>The subject detailed design DA scheme, with the exception of lift and stair overruns, is contained within the concept envelopes as proposed to be modified by D/2015/1358/C.</p> <p>The Building A/B envelope that is nearest to the property that contains the Belle and Lily apartments is separated by over 13m and which is in excess of the 9m minimum recommended at ADG objective 3F.</p>

3B Orientation	Compliance	Comment
<ul style="list-style-type: none"> overshadowing should be minimised by increased upper level setbacks. 		<p>The rooftop elements (as per the concept plan amendment) are setback from the southern edge of the Building A/B footprint to minimise overshadowing of neighbouring properties in accordance with the design guidance to ADG objective 3B-2.</p> <p>Refer to the Issues section in this report.</p>

3D Communal and Public Open Space	Compliance	Comment
<p>Communal open space has a minimum area equal to 25% of the site.</p>	<p>No, but acceptable</p>	<p>Genuine useable common open space (COS) at ground level comprises areas equal to about 9% (436 sqm) of the site area. Rooftop COS comprises an area equal to about 12% (623 sqm) of the site area. This amounts to a total COS equal to 21% (1,059 sqm) of the site area.</p> <p>A variation to the COS size requirement is supported for the following reasons:</p> <ul style="list-style-type: none"> the T-shaped concept Building A/B envelope responds to the irregular shape of the site and as a result limits any opportunity to provide a centrally located ground level COS. The useability of the narrow rectangular ground level courtyard is eroded by paths and plantings that are designed to screen windows of ground level apartments; the rooftop COS comprises residents' facilities, seating, shading and greenery to provide a high level of amenity and with all day solar access; and

3D Communal and Public Open Space	Compliance	Comment
		<ul style="list-style-type: none"> the co-location of deep soil areas with ground level COS provides an opportunity for large tree plantings to enhance amenity and is in accordance with the design guidance to ADG objective 3D-1.
<p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).</p>	Yes	<p>While the COS at ground level will receive little to no sun, the rooftop COS will receive sun throughout the day and as a result is considered the principal useable part of the COS.</p> <p>A condition is recommended requiring the rooftop COS, as the principal useable part of COS, to be able to be accessed by all residents including occupants of Building C.</p>

3E Deep Soil Zones	Compliance	Comment
<p>Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m</p>	Yes	<p>The proposed development provides 8.3% (412 sqm) of site area as deep soil. This includes a consolidated deep soil area with a minimum dimension of 10m.</p> <p>It is noted that the steep terraced area along the southern site boundary will require engineered retaining walls with substantial footings and cannot be considered deep soil.</p> <p>A condition is recommended for deep soil areas to be clearly marked on the architectural drawings and to specify that any structures such as decking or paving in these areas are to allow for filtration of rainwater into the ground.</p> <p>Refer to the Issues section in this report.</p>

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	No, but acceptable	As noted in the assessment against objective 2F above, adequate separation for visual privacy is achieved.
Five to eight storeys (25 metres): <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	No, but acceptable	As noted in the assessment against objective 2F above, adequate separation for visual privacy is achieved.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	No, but acceptable	As noted in the assessment against objective 2F above, the balcony to apartment A1.203 does not achieve the minimum recommended separation distance from the gallery circulation spaces contained within the same building. A condition is recommended to improve separation and privacy to and from this balcony. Refer to the Issues section in this report.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	71% (94 of 132 apartments) receive a minimum of 2 hours of direct sun to living rooms and private open space areas between 9am and 3pm at midwinter.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	15% (20 of 132 apartments) receive no direct sun between 9am and 3pm at midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are naturally ventilated. This includes bedrooms to ten noise effected apartments fronting Botany Road, that rely on acoustically attenuated plenums for natural ventilation.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	As noted above ten noise affected apartments fronting Botany Road rely on acoustically attenuated plenums for natural ventilation. Plenums cannot be relied upon for natural cross ventilation and so these ten apartments are excised from the accounting of naturally cross ventilated apartments in the development. On this basis, 60% (73 of 122 apartments) are naturally cross ventilated. Refer to the Issues section in this report.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	No cross-over or cross-through apartments exceed 18m in depth.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	All residential floor to floor heights are greater than or equal to 3.1m and are capable of providing 2.7m floor to ceiling heights to habitable rooms.
Non-habitable rooms: 2.4m	Yes	All residential floor to floor heights are greater than or equal to 3.1m and are capable of providing 2.4m floor to ceiling heights to non-habitable rooms.
Retail and commercial floors of mixed-use developments: 3.3m	Yes	A floor to floor height of 4.5m is provided to the ground floor level of Building A fronting Botany Road and which can achieve the minimum required floor to ceiling height of 3.3m.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	<p>All apartments achieve the design criteria for minimum apartment sizes, ranging in area as follows:</p> <ul style="list-style-type: none"> • Studio: 36 - 40 sqm; • 1 bed: 50 - 70 sqm; • 2 bed: 70 - 106 sqm; • 3 bed: 98 - 113 sqm.
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	Yes	<p>All habitable rooms have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p>	Yes	<p>All habitable rooms are no more than 6.75m (i.e. 2.5 x 2.7m ceiling height) deep.</p>
<p>8m maximum depth for open plan layouts.</p>	Yes	<p>All open-plan apartments are no more than 8m deep.</p>
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	<p>All apartments achieve the minimum areas and dimensions prescribed for bedrooms.</p>
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	<p>All apartments achieve the minimum areas and dimensions prescribed for living/dining rooms.</p>

4D Apartment Size and Layout	Compliance	Comment
4m minimum width for cross over and cross through apartments.	Yes	All cross over and cross through apartments achieve the minimum width specified in the design criteria for objective 4D-3.

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m².</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	No, but acceptable	<p>Balconies to all studio apartments comply with the 4sqm minimum area requirement except studio B1.204 which has a balcony with an area of 2sqm.</p> <p>Apartment B1.204 is the only instance of this non-compliance, which arises due to its location next to the void above the generously proportioned ground level pedestrian link to the common open space on the northern side of Building B.</p> <p>While the reduced balcony size is to the detriment of apartment B1.204, it is for the betterment of the design of the common areas below and an overall amenity improvement for all residents. For these reasons, this minor variation of design criteria is supported.</p> <p>All 1 bedroom apartments achieve the design criteria for minimum balcony sizes and dimensions and ranging from 8 to 10 sqm in area.</p> <p>All 2 bedroom apartments achieve the design criteria for minimum balcony sizes and dimensions and range from 10 to 17 sqm in area. Except for 2 bedroom apartments in Building C, which are duplexes and achieve this minimum size requirement cumulatively by providing a balcony at each level. In these instances, the main balcony adjoining living spaces is at least 8sqm in area, has a depth of 1.92m and provides a useable outdoor space for occupants. For this reason, this minor variation of design criteria is supported.</p>

4E Private Open Space and Balconies	Compliance	Comment
		<p>All 3 bedroom apartments achieve the design criteria for minimum balcony sizes and dimensions and range from 12-14 sqm in area, with the following exceptions:</p> <ul style="list-style-type: none"> the 3 bedroom apartments in Building C are also duplexes and achieve this minimum size requirement cumulatively, by providing a balcony at each level. In these instances, the main balcony adjoining living spaces is at least 8sqm in area, has a depth of 1.92m and provides a useable outdoor space for occupants. For this reason, this minor variation of design criteria is supported; the balconies to 3 bedroom apartments in Building A1 (fronting Botany Road) do not achieve the 2.4m minimum dimension requirement. A condition is recommended for these balconies to be increased in area to compensate for this non-compliance. <p>Refer to the Issues section in this report.</p>
<p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m² and a minimum depth of 3m.</p>	<p>No, but acceptable</p>	<p>Apartments at ground level have private open space (POS) that ranges from 13sqm to 31sqm in size. All ground level POS achieves the minimum dimension of 3m.</p> <p>Apartments B2.103 and C.108 have ground level POS of 14sqm (under-sized) and are located at the eastern end of their respective buildings. As the angled orientation of apartments is slightly offset against the angle of the buildings themselves, the POS of these apartments is slightly truncated and under-sized as a result. As these minor variations arise from and contribute to the geometry of the building plan they are considered acceptable.</p>

4E Private Open Space and Balconies	Compliance	Comment
		The ground level POS to apartment C.103 is annotated as having an area of 13sqm, which is 2sqm less than recommended by the ADG. However, this appears to be a drafting error as it is the same size and configuration as other similarly proportioned ground level POS areas such as those adjoining C.104 or C.105 and which are sized 15sqm or greater.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The maximum number of apartments accessed from a circulation core is five.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	No living room or bedroom windows open directly onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	All common circulation spaces have access to daylight and natural ventilation.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ (Minimum 50% storage area located within unit)	Yes	A schedule details provision of storage within apartments and the basement levels and accords with the design criteria to objective 4G of the ADG.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	<p>Noise and pollution have been considered in the siting and layout of buildings.</p> <p>Building A1 fronting Botany Road acts as a barrier that protects the remaining buildings behind from noise and pollution.</p> <p>Private open space and living areas in apartments in Building A1 are orientated to the east and away from the noise and pollution source of Botany Road.</p> <p>Habitable rooms adjoining the Botany Road facade utilise acoustically attenuated plenums for natural ventilation to achieve internal noise criteria.</p>

State Environmental Planning Policy (Housing) 2021

84. The SEPP (Housing) 2021 commenced on 26 November 2021. While the provisions of the SEPP 70 Affordable Housing (Revised Schemes) have been transferred to the Housing SEPP, this does not affect the operation or meaning of the provisions.
85. The Housing SEPP relates to section 7.32 of the Environmental Planning and Assessment Act 1979 and states that where the consent authority is satisfied that the development meets certain criteria, and a Local Environmental Plan authorises an affordable housing condition to be imposed, such a condition should be imposed.
86. LEP clause 7.13 (Contribution for purpose of affordable housing) allows for circumstances where an affordable housing contribution may be levied on development of land in Green Square.

87. Section 15 of the Housing SEPP requires the consent authority to consider several matters before imposing a condition under section 7.32 of the Act. Those matters include whether:
 - (a) affordable housing provided in accordance with such a condition is made available to very low, low and moderate income groups;
 - (b) it is to create balanced and socially diverse communities; and
 - (c) it is to be managed so that affordable housing is continued to be used for that purpose into the future.
88. The City's Affordable Housing Program (the Program) provides the framework for affordable housing to be provided in accordance with relevant legislative requirements.
89. The recommended conditions imposed in accordance with section 7.32 of the Act and pursuant to LEP clause 7.13 and which require an affordable housing contribution are imposed in accordance with the Program.
90. The Program addresses those matters for consideration specified at section 15 of the Housing SEPP and it is on this basis that the condition to levy a contribution has also addressed those matters.
91. Affordable housing contributions are discussed in further detail under the heading Financial Contributions below.

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

92. A BASIX Certificate (no. 901626M_10) has been submitted with the development application.
93. The BASIX certificate lists measures to satisfy BASIX requirements that have been incorporated into the proposed design. A condition of consent is recommended requiring the measures detailed in the BASIX certificate to be implemented at construction.

State Environmental Planning Policy (Transport and Infrastructure) 2021

94. The SEPP (Transport and Infrastructure) 2021 (the TISEPP) commenced on 1 March 2022. While the provisions of the SEPP (Infrastructure) 2007 have been transferred to the TISEPP, this does not affect the operation or meaning of the provisions.
95. The provisions of the TISEPP have been considered in the assessment of the development application.
96. The subject DA was notified to all referral agencies through the NSW Planning Portal (portal referral reference number CNR- 18345).
97. Each time the subject DA was amended the relevant drawings and supporting information were uploaded to the planning portal.
98. Submissions received in response to public notification and exhibition processes were uploaded to the portal on 29 March 2021, 8 September 2021, 6 April 2022 and 30 April 2022.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Section 2.48 Determination of development applications – other development

99. The development is in the vicinity of electricity power lines and may require a substation as a result of increased demand for electricity arising from the development.
100. In accordance with section 2.48 of the TISEPP the subject DA was notified to Ausgrid and Transgrid on 16 February 2021.
101. On 17 February 2021, Transgrid responded to advise that as there were no potential impacts to Transgrid infrastructure no objections were raised and no comments would be provided.
102. On 27 February 2021, Ausgrid provided referral comments and which are provided at Attachment G to this report.

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Section 2.98 – Excavation in, above, below or adjacent to rail corridors

103. In accordance with section 2.98 of the TISEPP the subject DA was referred to Sydney Trains for comment on 16 February 2021.
104. On 12 April 2021, Sydney Trains responded to provide concurrence. Those concurrence conditions are recommended for imposition on any consent granted at Attachment A to this report.

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

Section 2.118 – Development with frontage to classified road

Section 2.121 - Traffic-generating development

105. The site has a single street frontage to Botany Road which is a classified road.
106. In accordance with sections 2.118 and 2.121 of the TISEPP the subject DA was referred to Transport for NSW (TfNSW). The subject DA also sought approval from TfNSW pursuant to sections 87 (Traffic control facilities) and 138 (Works and structures) of the Roads Act 1993 through this referral process.
107. Following several submissions of amended plans and supporting information by the Applicant, TfNSW provided comments and concurrence conditions on 29 March 2022 and which are recommended for imposition on any consent granted at Attachment A to this report. TfNSW concurrence conditions require the following information to be submitted to and approved by TfNSW prior to commencement of works:
 - (a) design of excavation, piling and support structures;
 - (b) detailed design plans of the centre median, driveway, kerb, gutter and stormwater drainage systems;
 - (c) detailed design of the proposed modification of the Traffic Control Signals (TCS) adjacent to the Botany Road street frontage.

Section 2.119 – Impact of road noise or vibration on non-road development

108. The application is subject to section 2.119 of the TISEPP as the site has its only frontage to Botany Road which has an annual average daily traffic volume of more than 20,000 vehicles and as such is likely to be adversely affected by road noise or vibration.
109. The submitted acoustic reports have provided an assessment of traffic noise impact from Botany Road and address the internal noise criteria specified at section 2.119 of the TISEPP.
110. The submitted acoustic reports recommend facade treatments, including acoustic glazing and suitable performance requirements for acoustic plenums to achieve the necessary sound reductions to meet the specified internal noise criteria.

State Environmental Planning Policy (Precincts - Central River City) 2021

111. The SEPP (Precincts - Central River City) 2021 (the River City SEPP) commenced on 1 March 2022. While the provisions of the SEPP (Urban Renewal) 2010 have been transferred to the River City SEPP, this does not affect the operation or meaning of the provisions.
112. Section 6.2 of the River City SEPP identifies Redfern-Waterloo as a potential precinct. The subject site is located within the Redfern-Waterloo potential precinct.
113. The proposed development has an estimated cost of works greater than \$5 million and as such is subject to the requirements of section 6.8 of the River City SEPP.
114. The proposed development is consistent with the objectives of urban renewal and addresses the matters for consideration specified at River City SEPP section 6.8(3) as follows:
 - (a) The proposal comprises mixed-use development.
 - (b) The subject site is the last undeveloped site within the street block of which it forms part and as such does not prevent amalgamation of sites as there are no sites left to amalgamate.
 - (c) The proposed development does not prevent access to or development of infrastructure and public domain facilities associated with existing and future public transport. Rather, the VPA associated with the subject development and entered into as part of the concept DA process, includes dedication of land and embellishment works for footpath widening along the site's Botany Road street frontage and which will augment the public domain.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

115. The SEPP (Biodiversity and Conservation) 2021 (the B&C SEPP) commenced on 1 March 2022. While the provisions of the SEPP (Vegetation in Non-Rural Areas) 2017 have been transferred to the B&C SEPP, this does not affect the operation or meaning of the provisions.
116. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to the requirements of the B&C SEPP.

117. Council's Tree Management and Landscape Design Specialists have reviewed the proposal and have recommended conditions for tree retention and protection, tree removal and replacement planting.
118. Refer to the discussion about tree management in the Issues section of this report.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in Zone B4 Mixed Use. The proposed development is defined as a mixed-use development comprising retail and residential uses and is permissible with consent in the zone. The proposal meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No, but consistent with the concept consent (as modified)	A maximum building height of 22m is permitted. A maximum height of up to 25.97m is proposed. The proposed development does not comply with the maximum building height development standard. A request to vary the building height development standard in accordance with Clause 4.6 has been submitted. Refer to the Issues section in this report.
4.4 Floor space ratio 6.14 Community infrastructure floor space at Green Square 6.21C Design excellence 6.21D Competitive design process	Yes	LEP clause 4.4 specifies a maximum permissible floor space ratio (FSR) of 1.5:1. LEP clause 6.14 provides an opportunity for a further 0.5:1 FSR where community infrastructure is provided.

Provision	Compliance	Comment
		<p>As part of the original concept DA process, the owner of the site entered into a Voluntary Planning Agreement (VPA) with Council (refer to Attachment E). This VPA is for the dedication of 98.67sqm of land to Council, for the purposes of footpath widening on its Botany Road frontage with a value of \$19,734, public domain works with a value of \$28,000 and a monetary contribution of \$1,053,016 for community infrastructure provision in Green Square.</p> <p>In accordance with LEP clause 6.21D up to 10% additional FSR (0.2:1) may be approved subject to a competitive design process being carried out, a winning scheme being selected and that winning scheme exhibiting design excellence at DA stage.</p> <p>The subject detailed design DA scheme was selected as winner of a competitive design process. The subsequent detailed design DA has been through several iterations of amendments in response to Council Officers' feedback as well as the advice of the City's Design Advisory Panel (DAP) and its residential sub-committee (DAPRS).</p> <p>As such, the proposed development adequately addresses the matters at 6.21C(2)(d) including site suitability, its environmental impacts and ground level interface with the public domain and is considered to exhibit design excellence and is recommended for an award of up to 10% additional floor space.</p> <p>Considering all of the relevant FSR provisions contained within the LEP, the maximum permitted FSR for the development is 2.2:1.</p> <p>The proposed development has a FSR of 2.19:1 and complies with the control.</p> <p>Refer to the Issues section for Recommended design amendments.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the building height development standard prescribed under LEP clause 4.3.</p> <p>A Clause 4.6 variation request has been submitted with the application and addresses the objectives of the development standard and of the zone and is supported.</p> <p>Refer to the Issues section in this report for an assessment of the environmental impacts arising from the proposed variation of the height controls. This includes assessments of overshadowing and view loss impacts.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site does not contain a heritage item and it is not located within a heritage conservation area. However, it is located immediately adjacent to local heritage item 'Waterloo Public School group' of buildings including landscaping (I2071) and which is at 237-271 Botany Road and currently operates as Yudi Gunyi School.</p> <p>The proposal will have no adverse impacts upon the neighbouring heritage item.</p> <p>Council's Heritage Specialist has reviewed the proposal and raises no objection to the demolition of the warehouse buildings that exist on the site, subject to recommended conditions, including those requiring photographic archival documentation of the buildings.</p>
5.21 Flood planning	Yes	<p>The site-specific flood report confirms that the site is not flood prone.</p> <p>The site-specific flood report also recommends suitable levels for the buildings.</p>

Provision	Compliance	Comment
		Conditions are recommended to coordinate stormwater drainage, alignment levels and public domain plans for the development.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing 7.7 Retail premises	Yes	A maximum of 4 retail, 89 residential and 12 residential visitor car parking spaces are permitted. The proposed development includes 2 retail, 89 residential and 12 residential visitor car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Affordable housing	Yes	The site is located in Green Square and the proposed development is subject to an affordable housing contribution. As noted in the History of the Subject Application section of this report, the application was amended to propose the provision of actual dwellings within the development to be dedicated to and operated by a registered community housing provider instead of paying any monetary affordable housing contribution. Affordable housing contributions are detailed in the Financial Contributions section of this report.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land identified as containing Class 5 Acid Sulfate Soils. An Acid Sulfate Soils Assessment has been lodged with the application and confirms that an Acid Sulfate Soils Management Plan is not required.

Provision	Compliance	Comment
7.16 Airspace operations	Yes	<p>The Obstacle Limitation Surface (OLS) is at a height of RL 51m AHD in the location of the subject site.</p> <p>The proposed development has a maximum height to RL 39.75m AHD and does not penetrate the OLS.</p> <p>The other trigger that would require referral to the Civil Aviation Safety Authority (CASA), is development in the location of the site with a height greater than 45.72m above ground.</p> <p>The proposed development has a maximum height of 25.97m above ground and does not trigger this requirement.</p>
7.17 Development in areas subject to airport noise	n/a	The subject site is not located within ANEF 20 Contour zone and is not subject to the requirements of this control.
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>Once the existing structures are demolished the site will be wholly redeveloped under any consent granted to the subject DA.</p> <p>The proposal satisfies the requirements of this control.</p>
7.20 Development requiring or authorising preparation of a development control plan	Yes	The proposal is a detailed design DA that is consistent with the concept approval (as amended under the concurrent modification application D/2015/1358/C).
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	<p>The site is located within the restricted retail zone and is subject to the requirements of this control.</p> <p>The proposed retail tenancy does not exceed the 1000sqm maximum retail floor area that is permitted within the restricted retail zone and complies with the control.</p>

Development Control Plans

Sydney Development Control Plan 2012

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

Section 2 – Locality Statements

121. The site is located within the locality of Waterloo Park. The proposed development is in keeping with the unique character and the design principles of the locality in that it provides a mixed-use development that incorporates active retail uses at its ground floor level frontage to Botany Road.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public domain elements 3.1.1.4 Footpaths	Able to comply	<p>The works secured within the VPA associated with the concept (Stage 1) approval (D/2015/1358) include works for footpath widening along Botany Road.</p> <p>The detailed design of these works will be prepared as part of any public domain plan associated with the development and must be in accordance with the Sydney Streets Design Code as is required by this control.</p>
3.1.5 Public Art	Able to comply	<p>A Preliminary Public Art Plan (the PPAP) was submitted with the application.</p> <p>A condition is recommended for the PPAP to be modified to address the following matters:</p> <ul style="list-style-type: none"> to nominate a public art budget that is commensurate with the scale and nature of the development and with the ambition of the PPAP objectives. It is noted that a public art budget equal to 1% of the development cost is cited as best practice; to incorporate the soffit of the entry areas of the development as the identified location of a public art opportunity in addition to other identified opportunities; and

Provision	Compliance	Comment
		<ul style="list-style-type: none"> to reconsider the identified blade wall opportunity as a location for some kind of artwork other than a figurative work.
<p>3.2.1 Defining the public domain</p> <p>3.2.1.1 Sunlight to publicly accessible spaces</p>	Yes	The proposed development does not overshadow any publicly accessible open spaces such as public parks.
3.2.2 Addressing the street and public domain	Yes	<p>The proposed development has sought to maximise the quality of its presentation to the street despite the constraints of its two vehicle accessways and allocation of space to services.</p> <p>The proposed development provides active retail uses to its ground floor interface with Botany Road, a generous and legible pedestrian entry with direct sightlines to the communal courtyard within and both generally at grade with the public domain.</p>
3.2.3 Active frontages	No, but acceptable	<p>The DCP identifies the site's interface with Botany Road as an active frontage and requires 80% of its frontage to be activated by shopfront windows, customer service areas and activities that provide interest and interaction.</p> <p>While only 53% of the frontage is activated with shopfront windows and potential seating areas, it maximises the activation of its frontage within the constraints of many competing demands such as vehicle accessways and service requirements, on this, the site's only street frontage.</p>
3.2.4 Footpath awnings	Able to comply	<p>A footpath awning of lightweight construction is proposed to the central portion of the building's street frontage to provide shelter to the shopfront and pedestrian entrance.</p> <p>The footpath awning ranges between 3.7m to 4.1m in height above the footpath and complies with the DCP's design requirements in this regard.</p>

Provision	Compliance	Comment
		<p>The photomontages suggest the awning is to be constructed of transparent glazing, which is contrary to DCP provision 3.2.4.2 (3).</p> <p>Subject to a recommended condition requiring design details to be submitted and for the footpath awning to be constructed of solid, opaque (i.e. non-transparent) material, the proposed footpath awning is consistent with the DCP's design requirements and is supported.</p>
3.2.7 Reflectivity	Able to comply	A condition is recommended requiring the light reflectivity of the building's facade materials to be no greater than 20%.
3.3 Design Excellence and Competitive Design Processes	Yes	<p>As noted in the LEP compliance table above, up to 10% additional FSR may be awarded subject to a competitive design process being carried out, a winning scheme being selected and that winning scheme exhibiting design excellence at detailed design DA stage.</p> <p>The subject detailed design DA scheme was selected as winner of a competitive design process. The subsequent detailed design DA has been through several iterations of amendments in response to Council Officers' feedback as well as the advice of the City's Design Advisory Panel (DAP) and its residential sub-committee (DAPRS).</p> <p>As such, the proposed development is considered to exhibit design excellence and is recommended for an award of up to 10% additional floor space in accordance with the DCP's design excellence provisions.</p>
3.4 Hierarchy of Centres, City South	Yes	Refer to the assessment against clause 7.23 Large retail development outside of Green Square Town Centre and other planned centres in the LEP compliance tables above.

Provision	Compliance	Comment
3.5 Urban Ecology	Able to comply	<p>The proposal involves the removal of six trees.</p> <p>Tree removal is supported subject to the recommended conditions requiring replacement planting to achieve the DCP's 15% tree canopy cover targets.</p> <p>Refer to the Tree Management discussion in the Issues section in this report.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	Refer to the assessment against clause 5.21 Flood Planning in the LEP compliance tables above.
3.8 Subdivision, Strata Subdivision and Consolidation	Able to comply	<p>The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to conditions of consent including a condition requiring a boundary definition survey to be undertaken prior to commencement of construction works.</p> <p>Schedule 4 of the DCP contains provisions that allow facade elements from first floor level and above, such as balconies and sun-shading devices, to project into or to overhang the public domain by up to 450mm.</p> <p>A condition is recommended for design modifications to the cantilevered balconies and planters that are centrally located on the Botany Road facade to reduce their projection over the public domain by 50mm to comply with these provisions.</p> <p>Refer to the Issues section in this report.</p>
3.9 Heritage	Yes	Refer to the assessment against clause 5.10 Heritage Conservation in the LEP compliance tables above.
3.11 Transport and Parking 3.11.1 Managing transport demand	Yes	In accordance with the requirements of this provision the Applicant has submitted various transport and traffic reports over the course of this assessment.

Provision	Compliance	Comment
		<p>The submitted transport and traffic information satisfies the requirements of this provision.</p> <p>Conditions are recommended to manage cars, traffic and pedestrian safety as it relates to the development.</p>
3.11.2 Car share scheme parking spaces	Yes	<p>Based on the proposed car-parking provision 2 car share scheme parking spaces are required.</p> <p>Two car share scheme parking spaces are proposed.</p> <p>A condition is recommended to require 2 share scheme parking spaces are provided in the development.</p>
3.11.3 Bike parking and associated facilities	Able to comply	<p>This DCP provision requires a minimum of 132 resident, 13 visitor, 1 retail staff and 3 customer bicycle parking spaces be provided in the development. A total of 149 spaces.</p> <p>The proposed development provides 150 spaces including 132 secure resident spaces and 18 visitor and retail spaces.</p> <p>The proposal is capable of providing bicycle parking in accordance with the DCP's rates.</p> <p>A condition is recommended to allocate bicycle parking in accordance with DCP requirements.</p>
3.11.6 Service vehicle parking	Acceptable	<p>Two residential and one retail service vehicle parking spaces are proposed and are sufficient to cater for the servicing demand of the development.</p> <p>A condition is recommended to allocate service vehicle parking spaces within the development accordingly.</p>
3.11.7 Motorbike parking	Able to comply	<p>The DCP requires provision of 9 motorcycle parking spaces.</p> <p>Ten motorcycle parking spaces are proposed.</p> <p>A condition is recommended requiring a maximum of 9 motorcycle parking spaces are provided in the development.</p>

Provision	Compliance	Comment
3.11.9 Accessible parking	Yes	<p>This DCP provision requires a minimum of 20 accessible residential and 1 accessible residential visitor car parking spaces be provided in the development. A total of 21 spaces.</p> <p>The proposed development provides 20 accessible residential, 1 accessible residential visitor and 1 accessible retail car parking space.</p> <p>The proposal complies with the DCP's minimum accessible car-parking requirements.</p> <p>A condition is recommended to require the development to provide accessible car parking in accordance with DCP requirements.</p>
3.11.10 Vehicle access for developments greater than 1,000 sqm GFA.	No, but consistent with concept approval and TfNSW concurrence requirements	<p>This provision requires vehicle access points to be a minimum of 25m from a signalised intersection.</p> <p>The proposed vehicle access points are located immediately adjacent to the signalised intersection of Botany Road and Mandible Street</p> <p>The proposed vehicle access points were granted concurrence by the relevant road authority at the time of the concept approval (Roads and Maritime Services) and now by Transport for NSW (TfNSW), for their detailed design under the subject DA.</p> <p>The concurrence conditions recommended by TfNSW are included at Attachment A.</p> <p>Refer to the discussion about referral of the subject DA to TfNSW in the SEPP (Transport and Infrastructure) 2021 and the External Referrals sections of this report.</p>
3.11.11 Vehicle access and footpaths	Yes	<p>The northern gated vehicle entry is 4.01m wide and the southern gated vehicle exit is 4m wide and which generally comply with the 4m maximum 'roller door' opening permitted under this provision.</p>

Provision	Compliance	Comment
		Refer to the discussion of recommended design amendments in the Issues section of this report.
3.11.13 Design and location of waste collection points and loading areas	Yes	<p>Waste collection is proposed to be carried out in the ground level loading dock in Building A.</p> <p>The waste collection area is at-grade and off-street within a safe vehicular circulation system where vehicles will enter and exit the site in a forward direction.</p> <p>The loading dock is able to accommodate a Council garbage truck 9.25m in length and provides sufficient clearance above and to the back and sides of the truck to allow waste to be collected.</p>
3.12 Accessible Design 3.12.1 General	Able to comply	<p>The Access Reports submitted over the course of this assessment do not specify whether waste chute rooms that service adaptable apartments satisfy the relevant access requirements.</p> <p>This will need to be addressed at Construction Certificate stage.</p>
3.12.2 Adaptable dwelling mix	Yes	<p>The DCP requires 15% of apartments (i.e. 19 of 132) to be adaptable for easy modification in the future for occupation and visitation by people with a disability or people who may acquire a disability gradually as they age.</p> <p>The proposal provides 20 adaptable apartments and which satisfies the requirements of this provision.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste 3.14.1 Waste and Recycling Management Plans 3.14.2 Construction and demolition waste	Able to comply	Several Waste Management Plans (WMPs) and Reports have been submitted over the course of the assessment.

Provision	Compliance	Comment
3.14.3 Collection and minimisation of waste during occupation		<p>While the proposed WMPs demonstrate that sufficient waste facilities have been provided to accommodate the estimated waste generation, they fail to adequately detail demolition, construction and operational waste management processes for the development.</p> <p>Conditions have been recommended requiring suitable WMPs are submitted to and approved by Council officers to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	n/a	<p>The subject DA proposes generic retail use of the ground floor retail tenancy, without providing any details about the proposed hours of operation.</p> <p>A condition is recommended requiring a separate DA for the fitout and use of the ground level retail tenancy.</p> <p>Furthermore, the ground level plan suggests outdoor seating adjacent to the pedestrian entry. As no fit out or use details have been provided, a design modification condition has been recommended requiring deletion of this seating.</p>
3.16 Signage and Advertising	n/a	<p>No signage is proposed as part of the subject DA.</p> <p>A condition is recommended requiring a separate DA for the erection of any signage.</p>
3.17 Contamination	Yes	<p>Suitable information has been provided over the course of the assessment to address site contamination and remediation.</p> <p>Refer to the assessment against SEPP (Resilience and Hazards) 2021 elsewhere in this report.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed-Use Developments

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

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No, but consistent with concept approval	<p>The maximum permitted building height in storeys is 6 storeys.</p> <p>The proposed development is up to 7 storeys in height and which is consistent with the number of storeys approved under the concept consent.</p> <p>The DCP street frontage height in storeys map does not specify a street frontage height in storeys for the subject site. Subsequently, the DCP requires the development to be consistent with the street frontage height of adjacent buildings.</p> <p>The neighbouring building to the north has a street frontage height of 3 storeys at its interface with the subject site. The neighbouring building to the south has a street frontage height of 5 storeys.</p> <p>The proposed development has a street frontage height of 6 storeys and which is consistent with the street frontage height in storeys approved under the concept consent.</p>
4.2.2 Building setbacks	Yes	<p>The DCP setback and alignment map does not specify a setback beyond the 2.4m public domain setback that is to be dedicated to Council for footpath widening.</p> <p>As such, once this public domain setback is dedicated, the proposed development will align with neighbouring buildings to the north and south of the subject site.</p>

Provision	Compliance	Comment
		<p>There are no consistent side or rear setbacks within the street block. The side and rear setbacks of the proposed development have been largely dictated by the ADG's building separation requirements and which have shaped the originally approved concept envelopes.</p>
4.2.3 Amenity		
4.2.3.5 Landscaping	Able to comply	<p>Several iterations of the landscape plans have been submitted over the course of the assessment.</p> <p>The proposed landscape design is supported in-principle. However, further amendments are required to coordinate with architectural drawings and clarify how facade planters will be maintained among other unresolved issues.</p> <p>Conditions have been recommended for detailed landscape and green roofs plans to be submitted to and approved by Council Officers.</p>
4.2.3.6 Deep Soil	No, but acceptable	<p>Minimum deep soil equal to 10% of the site area is to be provided and is to include a consolidated deep soil area with a minimum dimension of 10m. All remaining deep soil areas are to have a minimum dimension of 3m.</p> <p>The proposed development provides 8.3% (412 sqm) of site area as deep soil and which includes a consolidated deep soil area with a minimum dimension of 10m.</p> <p>While the proposal does not satisfy the requirements of this DCP provision, it does satisfy the 7% minimum deep soil required under the ADG.</p> <p>Refer to the Issues section in this report.</p>

Provision	Compliance	Comment
4.2.3.8 Common open space	No, but acceptable	<p>Minimum common open space (COS) equal to 25% of the site area with a minimum dimension of 6m is required.</p> <p>At least 30% of the required COS area (373.5 sqm) is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June.</p> <p>Genuine useable COS at ground level comprises areas equal to about 9% (436 sqm) of the site area. Rooftop COS comprises an area equal to about 12% (623 sqm) of the site area. This amounts to a total COS equal to 21% (1,059 sqm) of the site area.</p> <p>A variation to the COS size requirement is supported for the following reasons:</p> <ul style="list-style-type: none"> • the inverted T-shaped concept Building A/B envelope responds to the irregular shape of the site and limits any opportunity to provide a well-proportioned centrally located ground level COS. The useability of the narrow rectangular ground level courtyard is eroded by paths and landscaping that is primarily designed to screen windows of ground level apartments; • the rooftop COS comprises residents' facilities, seating, shading and greenery to provide a high level of amenity and with all day solar access; and • the co-location of deep soil areas with ground level COS enhances amenity and is in accordance with the design guidance to ADG objective 3D-1. <p>While the COS at ground level will receive little to no sun, the rooftop COS will receive sun throughout the day.</p>

Provision	Compliance	Comment
		A condition is recommended requiring the rooftop COS, as the principal useable part of COS, to be able to be accessed by all residents including occupants of Building C.
4.2.3.11 Acoustic privacy	Able to comply	<p>Several submissions of acoustic information and analysis have been submitted over the course of the assessment.</p> <p>The submitted acoustic information provides an assessment of traffic noise impact from Botany Road and addresses the relevant internal noise criteria including those specified at section 2.119 of the SEPP (Transport and Infrastructure) 2021.</p> <p>The submitted acoustic information recommends facade treatments, including acoustic glazing and suitable performance requirements for acoustic plenums to achieve the necessary sound reductions to meet the specified internal noise criteria.</p> <p>A condition is recommended requiring detailed plenum design and acoustic performance information to be submitted to and approved by Council officers. This is to ensure plenums can achieve the requisite minimum airflows and sound reductions while addressing practical cleaning, maintenance and operability concerns.</p>
4.2.3.12 Flexible housing and dwelling mix	Yes	<p>The following dwelling mix is required:</p> <ul style="list-style-type: none"> • Studio and 1 bedroom 5-40% • 2 bedroom 40-75% • 3+ bedroom 10-100% <p>The following dwelling mix is proposed:</p> <ul style="list-style-type: none"> • Studio and 1 bedroom 39% (51 apartments)

Provision	Compliance	Comment
		<ul style="list-style-type: none"> 2 bedroom 48% (64 apartments) 3+ bedroom 13% (17 apartments) <p>The proposed dwelling mix complies and is supported.</p>
4.2.3.14 Apartments with setback bedrooms	Yes	No apartments contain setback bedrooms or 'snorkel' arrangements.
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>Maximum permitted street frontage length is 65m.</p> <p>The proposed building has a street frontage length of 39.74m and complies.</p>
4.2.5 Types of development 4.2.5.3 Development on busy roads and active frontages	Yes	<p>The subject site has an active frontage as identified on the DCP active frontages map and has a frontage to Botany Road which carried over 20,000 vehicles a day and is a busy road.</p> <p>The proposed development provides retail uses at its ground level interface with Botany Road and is designed to minimise the impacts of road noise and vibration on future apartments.</p>
4.2.6 Waste and recycling Management	Able to comply	Refer to the assessment against provision 3.14 Waste in the DCP compliance table above.
4.2.7 Heating and cooling infrastructure	Yes	The proposed development provides an appropriate spatial allocation in plan for heating and cooling infrastructure.
4.2.8 Letterboxes	Yes	The letterboxes are provided within the lobby of the building.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>The subject DA provides sufficient waste, servicing and staff amenities for the ground floor retail tenancy.</p> <p>The ground floor retail tenancy is able to operate without detriment to the amenity of the area.</p>

Provision	Compliance	Comment
		Conditions are recommended for mechanical ventilation for a future food and drink use and that require a separate DA to be submitted for any fit out and use of the ground floor retail tenancy.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.2 Green Square		
5.2.1 Green Square Urban Strategy 5.2.2 Objectives for Green Square 5.2.3 Community infrastructure	Yes	<p>The proposed development contributes to the realisation of the Green Square Urban Strategy, the objectives and the desired future character by making a contribution towards community infrastructure provision by way of dedication of land, embellishment works and a monetary contribution.</p> <p>Details of community infrastructure provision and contributions are provided in the assessment against DCP provision 5.2.6 Public open space below.</p>
5.2.6 Public open space	Yes	<p>The DCP identifies the site as being required to provide a 2.4m public domain setback to its Botany Road frontage.</p> <p>As part of the original concept DA process, the owner of the site entered into a VPA with Council (refer to Attachment E).</p> <p>This VPA is for the dedication of 98.67sqm of land to Council, for the purposes of providing the DCP prescribed public domain setback including footpath widening works with a value of \$28,000 and a monetary contribution of \$1,053,016 for community infrastructure provision in Green Square.</p>

Provision	Compliance	Comment
5.2.7 Stormwater management and waterways 5.2.7.2 Water sensitive urban design principles	Able to comply	A Water Sensitive Urban Design Report (WSUD Report) was submitted with the subject DA. Conditions are recommended requiring the measures outlined in the WSUD Report are implemented in the development and for the stormwater drainage design to be in accordance with the Sydney Streets Technical Specifications and Stormwater Drainage Manual.
5.2.9 Building design	Yes	Proposed building facades are composed of a variety of materials, finishes and textures including face brick that is typical of buildings in the area. The building entry provides a clear transition from the street to the site's interior and is separated from vehicle accessways.
5.2.10 Setbacks	Yes	Building A is proposed to align with the new property boundary to the street and which will be created by dedication of the DCP prescribed 2.4m public domain setback to Botany Road.

Issues

Clause 4.6 Request to Vary a Development Standard

123. The site is subject to a maximum building height control of 22m. As shown in Figure 41 below, the proposed development has a maximum height of up to 25.97m and exceeds the LEP's 22m height control by up to 3.97m or 18 per cent.
124. As shown in Figure 41 below, the building elements that breach the LEP's 22m height control are atop Buildings A and B and include:
- (a) lift and stair overruns;
 - (b) shade structures, planters; and
 - (c) the north-western corner of the substantive roof structure that forms part of the rooftop common open space.

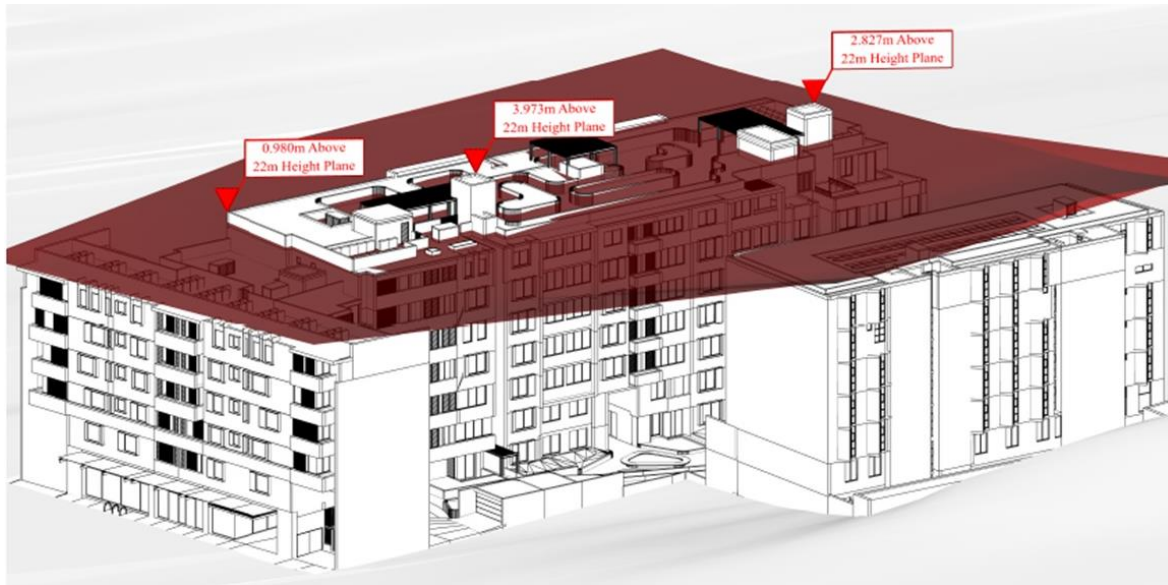


Figure 41: The proposed development has a height of up to 25.97m and exceeds the 22m height control by up to 3.97m

125. A written request has been submitted to Council in accordance with LEP clause 4.6(3)(a) and (b) and which seeks to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - That there are sufficient environmental planning grounds to justify contravening the standard;
 - The proposed development will be consistent with the objectives of the zone; and
 - The proposed development will be consistent with the objectives of the standard.

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

126. The applicant seeks to justify the contravention of the building height development standard on the basis that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
127. This is because the objectives of the standard are achieved notwithstanding non-compliance with the standard.
128. The relevant objectives of the standard are:
- to ensure the height of development is appropriate to the condition of the site and its context;
 - to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas;

- (c) to promote the sharing of views outside Central Sydney;
 - (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas;
 - (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; and
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.
129. The applicant's request states that objective (a) of the standard is achieved in the following manner:
- (a) The proposed development is compliant with ADG requirements regarding building separation between habitable and non-habitable rooms. As the height breaches are minor and are centrally located within the site, resulting impacts to neighbouring sites with regard to overshadowing or overbearing impacts are negligible.
130. The applicant's request states that objective (b) of the standard is achieved in the following manner:
- (a) While the site adjoins the heritage listed Green Square Primary School, all of the subject structures are located on Buildings A and B, such that they are separated from the School by Building C, which fully complies with the height standard.
131. The applicant's request states that objective (c) of the standard is achieved in the following manner:
- (a) The proposed development is consistent with the maximum building height under the original concept approval for the site. Any remaining views from neighbouring buildings are partial at best and subsequently of low value. Any expectation to retain views across a side boundary is unrealistic.
132. The applicant's request states that objective (d) of the standard is achieved in the following manner:
- (a) Being setback from prominent building frontages and being less than the equivalent of an additional storey in height, the proposed structures will not undermine the spatial distribution of building heights planned across the precinct.
133. The Applicant's request states that objective (e) of the standard is achieved in the following manner:
- (a) The subject structures will not be perceptible from or have any perceptible environmental effect on any public domain space, including parks and roads.
134. The Applicant's request states that there are sufficient environmental planning grounds to justify contravening the standard as follows:
- (a) The proposed height variation will not result in a significant intensification of the use.

- (b) The subject structures are located above the height of surrounding development and are setback from the building edge such that they will not result in any significant visual, noise or shadow impacts upon surrounding properties.
- (c) The proposed development will provide a high level of amenity to future occupants and will provide a more attractive roofscape than a standard utilitarian service roof.
- (d) The proposed height variation will not be perceptible from the streetscape or any public place and will therefore be in keeping with the desired future character of the area.
- (e) Existing development on surrounding sites limits the ability to achieve ADG solar access requirements to the proposed development's ground level communal open space. While the site has excellent access to surrounding public open spaces with ample solar access and private balconies achieve ADG solar access requirements, the provision of a rooftop communal open space will provide a sunny alternative to the more shaded ground level communal open space.

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

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

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

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

136. The Applicant's written request has adequately addressed LEP clause 4.6(3)(a) in that it demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the control, hence the standard is unreasonable or unnecessary
137. The written request has therefore established a development standard is unreasonable or unnecessary in the circumstances of the case in accordance with the method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

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

138. The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify varying the development standard.
139. The Applicant's justification, as described in detail above, is accepted. It is also accepted that the building elements that exceed the LEP's 22m height control will not result in any unacceptable adverse environmental impacts and that there are sufficient environmental planning grounds to vary the development standard.

Is the development in the public interest?

140. The proposed development is in the public interest as it is consistent with the objectives of the building height development standard as demonstrated above.
141. The proposed development is also consistent with the objectives of the Zone B4 Mixed-Use and which are to:
- (a) provide a mixture of compatible land uses;
 - (b) integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; and
 - (c) ensure uses support the viability of centres.
142. The proposed development is consistent with the objectives of the Zone B4 Mixed-Use for the following reasons:
- (a) the proposal provides a suitable mix of retail and residential uses and which are able to operate together without adversely impacting upon each other;
 - (b) the proposed retail and residential uses are located in reasonable proximity to Green Square train station, several bus routes on Botany Road and the City's network of separated cycle lanes on George and Allen Streets. The site's accessibility via a range of transport modes will encourage residents and workers to patronise public transport, to walk and to cycle to and from their homes or places of work;
 - (c) the proposed increase in residential population in proximity to the Green Square Town Centre will support this centre and the local economy, while the proposed retail tenancy will contribute to the range of goods and services available in the locality to meet the day to day needs of both residents and workers. The modest size of the retail tenancy will ensure that it does not undermine the economic success of nearby centres.
143. LEP clause 4.6(4)(b) states that the concurrence of the Planning Secretary must be obtained.
144. In the case of the Local Planning Panel which exercises consent authority functions for Council, the Secretary's concurrence to vary development standards may be assumed.
145. In deciding whether to grant concurrence, LEP clause 4.6(5) requires that the Secretary consider:
- (a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) The public benefit of maintaining the development standard, and
 - (c) Any other matters required to be taken into consideration by the Secretary before granting concurrence.
146. Giving consideration to these matters:

- (a) the proposed contravention of the development standard does not raise any matter of State or Regional significance;
- (b) the proposed development is in the public interest as it is consistent with the objectives of the building height development standard as demonstrated above; and
- (c) there are no additional matters that are required to be considered in exercising the assumed concurrence of the Secretary.

Conclusion

147. For the reasons provided above the requested variation to the LEP's 22m height control is supported as the applicant's written request has adequately addressed the matters required to be addressed by LEP clause 4.6 and the proposed development would be in the public interest because it is consistent with the objectives of the building height development standard and the Zone B4 Mixed Use.

Consistency with Concept Development Consent

148. On 7 November 2016, a deferred commencement integrated development consent D/2015/1358 was granted by the Land and Environment Court of NSW subject to a section 34 agreement for three concept (stage 1) building envelopes containing residential and commercial uses with basement parking.

149. Pursuant to Section 4.24 of the Environmental Planning and Assessment Act 1979, any subsequent detailed design development determination cannot be inconsistent with the concept development consent.

150. Subject to the approval of the modifications concurrently sought under D/2015/1358/C, the proposed detailed design sought under the subject application is consistent with the concept consent.

151. An assessment of compliance with these conditions, which specifically required details to be addressed as part of the detailed design application are provided below.

Condition no.	Condition Title and Requirements	Assessment
4	<p>Design Requirements</p> <p>This condition specifies elements to be incorporated into the detailed design scheme including minimum numbers of lift cores to be provided in Buildings A, B and C, ventilation strategies and privacy measures.</p> <p>Note: this condition is to be modified by s4.56 application D/2015/1358/C.</p>	<p>The detailed design DA scheme addresses all design requirements contained in condition (4), with the exception of condition (4)(g) which requires all apartments in Building A1 and that front Botany Road are to be naturally ventilated from the eastern (quiet) side of the building.</p>

Condition no.	Condition Title and Requirements	Assessment
		<p>The proposed design provides habitable rooms which are naturally ventilated from the western (noisy Botany Road) side of the building. This is achieved by the application of acoustically attenuated plenums and which are able to reduce noise sufficiently to achieve internal noise criteria.</p> <p>For this reason it is considered that the intent of condition (4)(g) is achieved by alternate means.</p>
6	<p>Stage 2 To Be Contained Within Approved Envelope</p> <p>This condition requires the detailed design DA scheme, with the exception of lift and stair overruns, is to be contained within the envelope.</p> <p>Note: this condition is to be modified by s4.56 application D/2015/1358/C.</p>	<p>Figure 42 below is an image of the 3D CAD model of the concept envelopes (as modified by D/2015/1358/C).</p> <p>Figure 43 below is an image of a comparison of the 3D CAD models of both the concept envelopes (as modified by D/2015/1358/C) and the detailed design DA scheme.</p> <p>As illustrated in Figure 43, all substantive building elements, with the exception of stair and lift overruns [which are permitted by condition (6) to be unconstrained by the envelope], are contained within the concept envelopes.</p> <p>Elements protruding outside the envelopes generally comprise window hoods and frames, pop-out windows, planters and the like.</p> <p>For these reasons the detailed design DA scheme is considered to be not inconsistent with the concept consent. It satisfies condition (6) and the requirements of s4.24 of the Environmental Planning and Assessment Act 1979.</p>

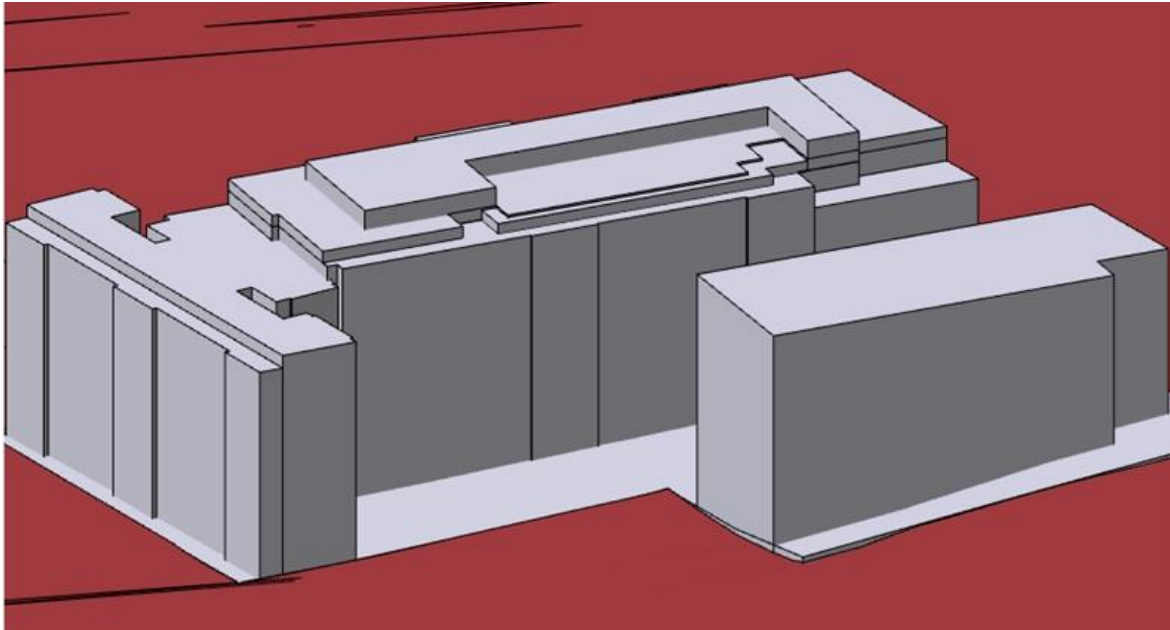


Figure 42: 3D CAD model of concept envelopes as proposed to be modified by D/2015/1358/C

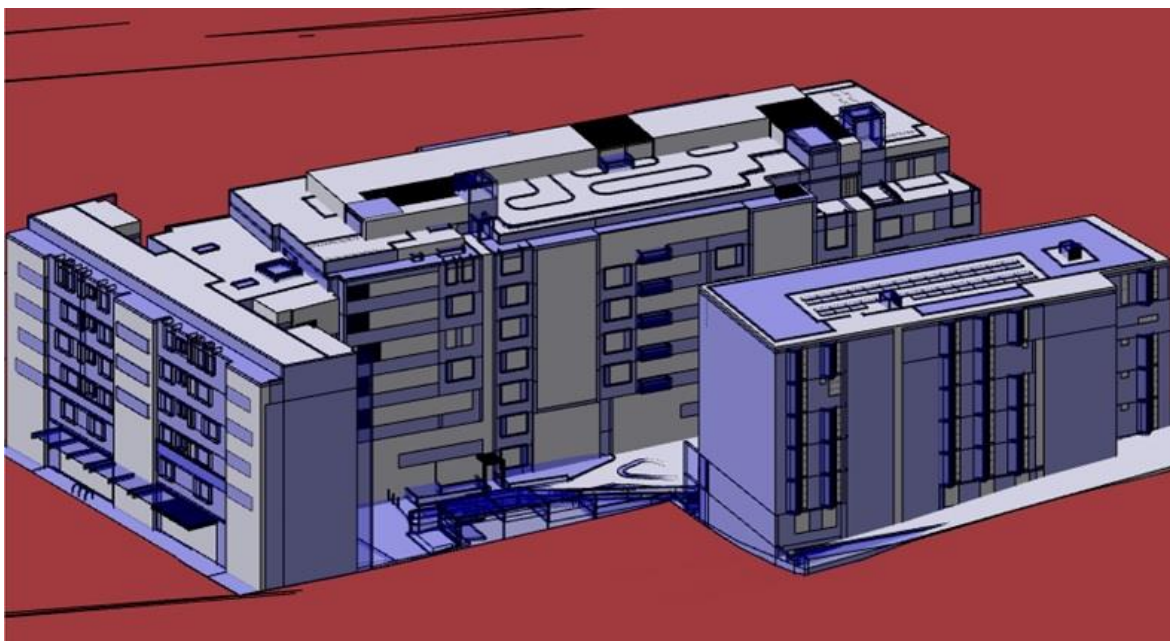


Figure 43: Comparison of the 3D CAD models of both the concept envelopes (as modified by D/2015/1358/C) and the detailed design DA scheme

Condition no.	Condition Title and Requirements	Assessment
7	<p>Building Height</p> <p>This condition specifies the maximum height of buildings that the detailed design DA scheme, with the exception of lift and stair overruns, is to comply with.</p> <p>Note: this condition is to be modified by s4.56 application D/2015/1358/C.</p>	<p>All substantive building elements, with the exception of stair and lift overruns [which are permitted by condition (7) to exceed the maximum heights specified], comply with the maximum permitted heights specified by condition (7).</p>
8	<p>Floor Space Ratio - All Other Areas</p> <p>This condition identifies the relevant floor space ratio (FSR) provisions contained in the LEP and the maximum permissible FSR that can be obtained subject to achieving design excellence.</p>	<p>The proposed development complies with the maximum FSR specified under this condition.</p>
9	<p>Design Excellence and Competitive Design Process</p> <p>This condition identifies the approved Design Excellence Strategy (DEX Strategy) and requires the detailed design DA scheme to exhibit design excellence.</p>	<p>The detailed design DA scheme was selected as a winner of the competitive design process and which was carried out in accordance with the approved DEX Strategy.</p> <p>As discussed elsewhere in this report the proposed detailed design DA scheme is considered to exhibit design excellence.</p>
10	<p>Stage 2 DA to Comply With Relevant Planning Controls</p> <p>This condition requires the detailed design DA scheme to comply with SEPP 65, the ADG, LEP and DCP and highlights provisions within these policies that require particular attention.</p>	<p>The proposed development satisfies the SEPP 65 design quality principles and satisfactorily addresses the objectives of the ADG.</p> <p>As discussed above, notwithstanding non-compliance with the LEP's 22m building height control the proposal is considered to achieve the objectives of the LEP's building height development standard and has provided a justification for this non-compliance in accordance with LEP clause 4.6.</p>

Condition no.	Condition Title and Requirements	Assessment
		Otherwise the proposed development generally satisfies the development controls contained in the LEP and DCP.
11	<p>Acoustic Report</p> <p>This condition requires an Acoustic Report to be submitted as part of any detailed design DA and identifies relevant matters that it is to address.</p>	An Acoustic Report has been submitted as part of the subject DA.
12	<p>Acid Sulphate Soils Management Plan</p> <p>This condition requires an Acid Sulphate Soils Management Plan to be submitted as part of any detailed design DA.</p>	An acid sulphate soils assessment has been submitted as part of the subject DA.
14	<p>Access and Facilities for Persons with Disabilities</p> <p>This condition requires the detailed design DA scheme to provide access and facilities for people with a disability in accordance with BCA requirements.</p>	<p>The proposed development incorporates adaptable housing and car parking in accordance with DCP requirements.</p> <p>Refer to the assessment against provision 3.12 Accessible Design in the DCP compliance tables above.</p>
15	<p>BASIX Certificate</p> <p>This condition requires a BASIX Certificate to be submitted as part of any detailed design DA.</p>	A BASIX Certificate has been submitted as part of the subject DA.
16	<p>Transport Impact Study</p> <p>This condition requires a Transport Impact Study to be submitted as part of any detailed design DA.</p>	A Transport Impact Study has been submitted as part of the subject DA.
17	<p>Safety Audit</p> <p>This condition requires a Safety Audit Report addressing pedestrian and traffic safety to be submitted as part of any detailed design DA.</p>	A pedestrian and traffic safety audit report has been submitted as part of the subject DA.

Condition no.	Condition Title and Requirements	Assessment
19	<p>On-Site Waste Collection</p> <p>This condition specifies information to be submitted as part of any detailed design DA including swept path diagrams for a Council waste collection vehicle. It also identifies relevant DCP provisions that are to be addressed.</p>	<p>Swept paths, a waste management plan and other information to address the development's waste management and collection requirements have been submitted as part of the subject DA.</p>
20	<p>Bicycle Parking and Facilities</p> <p>This condition requires bicycle parking information to be submitted as part of any detailed design DA and specifies relevant matters to be addressed.</p>	<p>Bicycle parking information has been submitted as part of the subject DA.</p>
21	<p>Service Vehicle Size Limit</p> <p>This condition requires swept path diagrams for the largest vehicle to enter the site to be submitted as part of any detailed design DA.</p>	<p>Swept path diagrams for the largest vehicle to enter the site has been submitted as part of the subject DA.</p>
22	<p>Loading Within The Site</p> <p>This condition requires information to be submitted as part of any detailed design DA to demonstrate all requisite loading and unloading operations can be contained within the site.</p>	<p>Traffic, parking and access information has been submitted as part of the subject DA and which adequately addresses servicing of the development.</p>
23	<p>No Approval For Tree Approval</p> <p>This condition confirms that no approval is granted for tree removal as part of the concept consent and requires an Arborist's Report to be submitted as part of any detailed design DA.</p>	<p>An arborist's report has been submitted as part of the subject DA.</p>

Condition no.	Condition Title and Requirements	Assessment
24	<p>Site Landscaping</p> <p>This condition requires landscape plans for the largest vehicle to enter the site to be submitted as part of any detailed design DA.</p>	<p>Landscape plans have been submitted as part of the subject DA.</p>
25	<p>Waste Facilities</p> <p>This condition requires waste management details to be submitted as part of any detailed design DA.</p>	<p>Waste management details have been submitted as part of the subject DA.</p>
26	<p>Stormwater and Drainage</p> <p>This condition requires stormwater and drainage details to be submitted as part of any detailed design DA.</p>	<p>A survey, site specific flood study and flood report were submitted with the subject DA.</p> <p>A condition has been recommended requiring detailed stormwater and drainage designs to be submitted to and approved by Council officers prior to issue of a Construction Certificate.</p>
27	<p>Set Back of Works In Botany Road</p> <p>This condition requires any detailed design DA scheme to be setback from the current property boundary with Botany Road by 2.4m.</p>	<p>The detailed design DA scheme is setback from the current property boundary with Botany Road by 2.4m.</p>
Schedule 3	<p>Terms of Approval</p> <p>This schedule sets out integrated General Terms of Approval as issued by Water NSW in accordance with the Water Management Act 2000.</p> <p>Note: this condition is to be modified by s4.56 application D/2015/1358/C.</p>	<p>The subject DA is for Integrated Development and has been referred to Water NSW during the assessment process.</p> <p>Refer to the discussion in the Integrated Development section of this report.</p>

Overshadowing

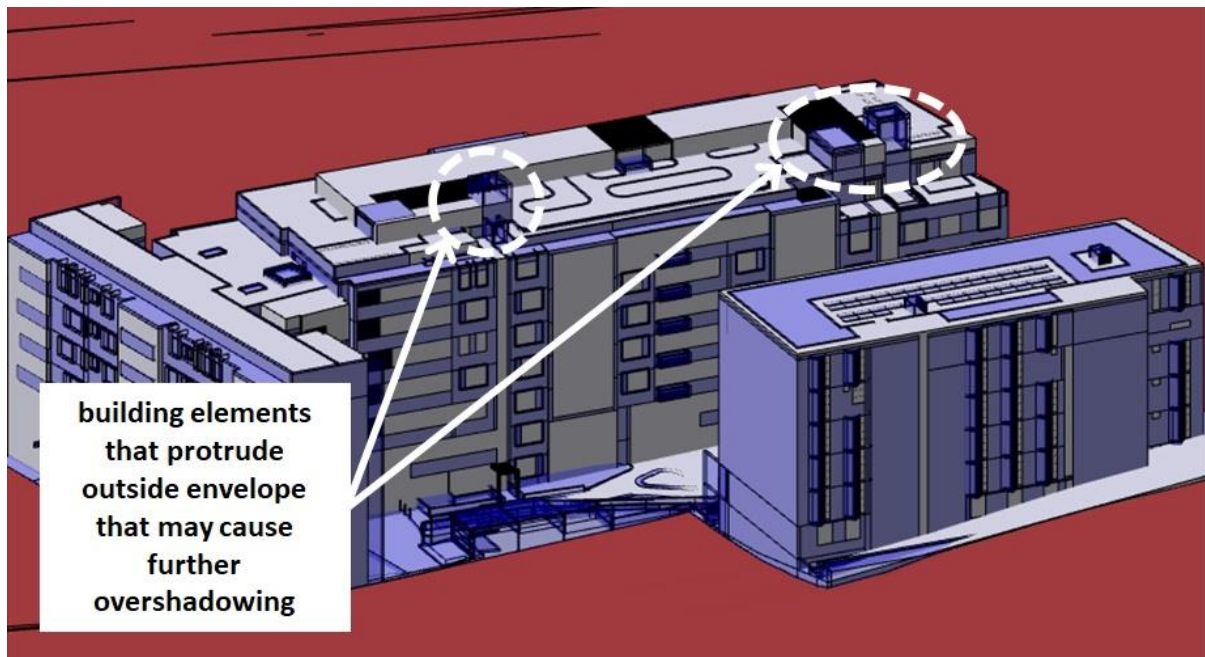


Figure 44: Comparison of the 3D CAD models of both the concept envelopes (as modified by D/2015/1358/C) and the detailed design DA scheme, with significant building elements that protrude outside of the envelope circled in white dashed line

152. Figure 44 above is an image of a comparison of the 3D CAD models of both the concept envelopes (as proposed to be modified by D/2015/1358/C) and the detailed design DA scheme.
153. As Figure 44 above illustrates, all substantive building elements, with the exception of stair and lift overruns [which are permitted by condition (6) of concept consent D/2015/1358/C to be unconstrained by the envelope], are contained within the concept envelopes (as proposed to be modified by D/2015/1358/C).
154. As detailed in the assessment report pertaining to section 4.56 modification application D/2015/1358/C (being considered at the same time as the subject application), the proposed modification of the concept envelopes do not exacerbate overshadowing to neighbouring apartments beyond that which would arise from the concept envelopes as originally approved.
155. The overshadowing impacts of those significant building elements circled in Figure 44 above and which protrude outside of the concept envelopes as proposed to be modified by D/2015/1358/C are discussed as follows.

233-235 Botany Road (Belle and Lily)

156. As shown in Figures 45 and 46 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).

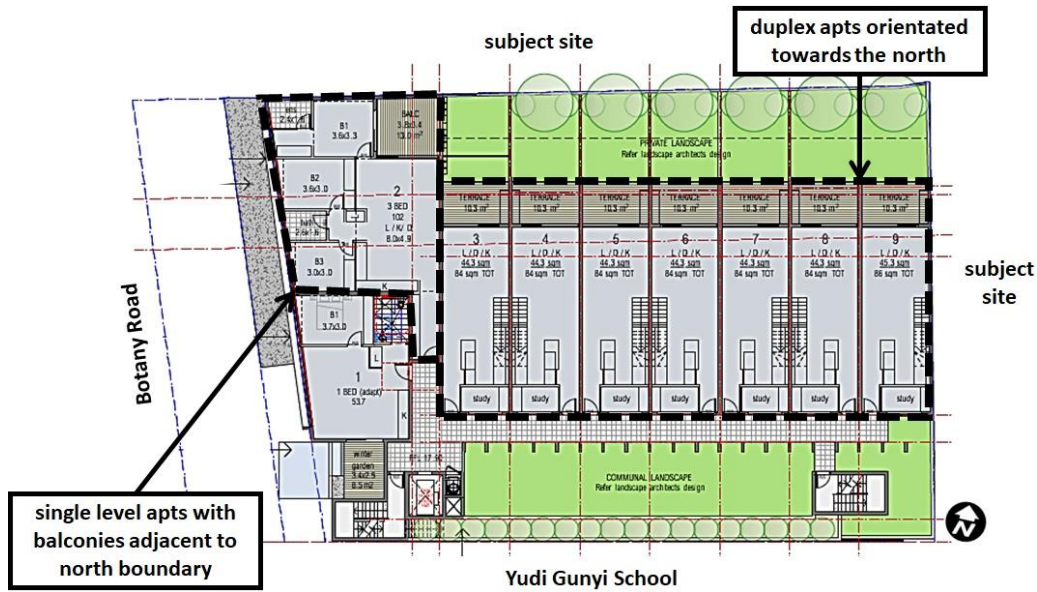


Figure 45: Second storey plan of Belle and Lily apartments

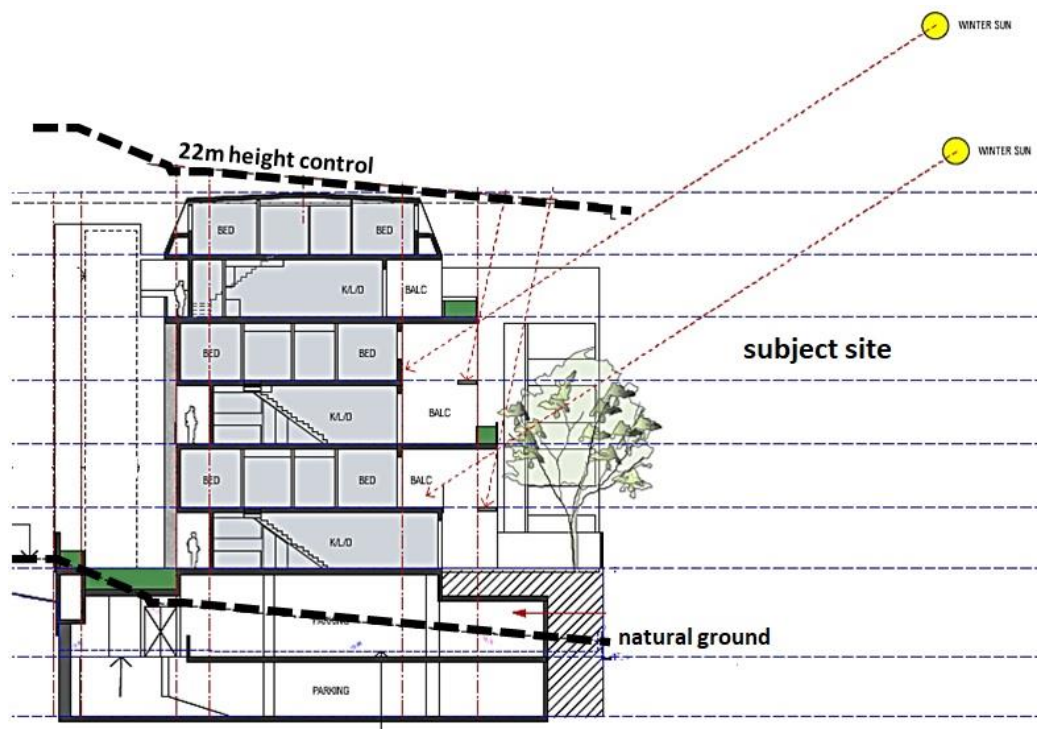
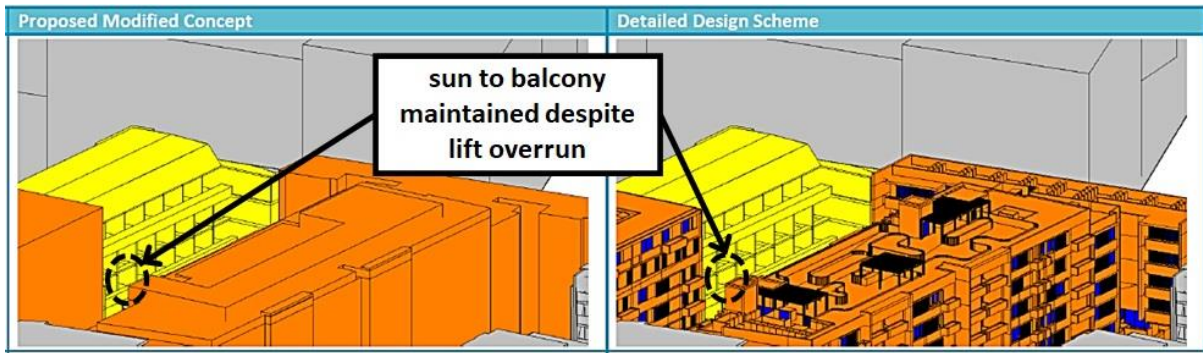


Figure 46: Section through Belle and Lily duplex apartments

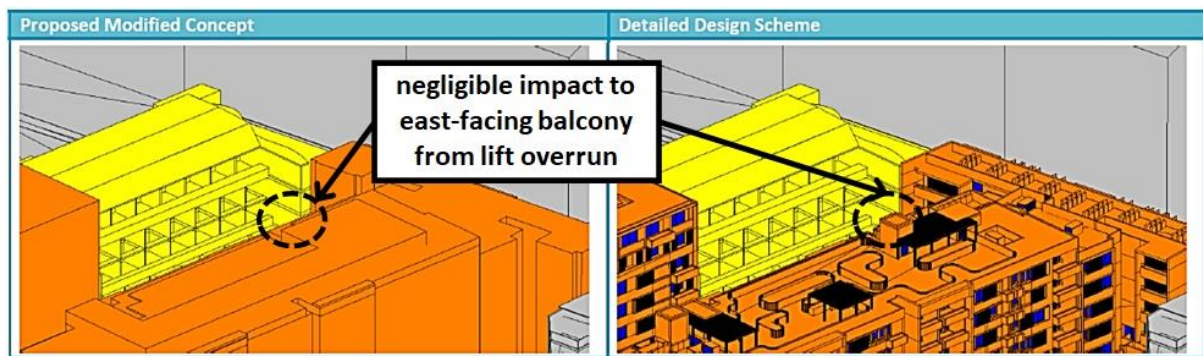
- 157. Twenty-one (21) of the Belle and Lily apartments are duplexes with their terraces, balconies and living areas orientated towards the northern (side) boundary that is shared with the subject site.
- 158. Four (4) single level apartments incorporate balconies and living areas that are adjacent to 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.

159. Four (4) single level apartments have living areas and balconies orientated towards Botany Road.
160. 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.
161. 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.
162. As mentioned above, the modifications to the concept envelopes proposed under the modification 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.
163. 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.
164. Figures 47 to 53 below show selected view from the sun (vfts) diagrams and demonstrate that those significant building elements that protrude outside of the concept envelopes as proposed to be modified by D/2015/1358/C do not exacerbate overshadowing of the Belle and Lily apartments.
165. As Figures 47 to 53 below demonstrate, the detailed design DA scheme does not exacerbate overshadowing of the Belle and Lily apartments. The detailed design DA scheme has 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 and is supported.



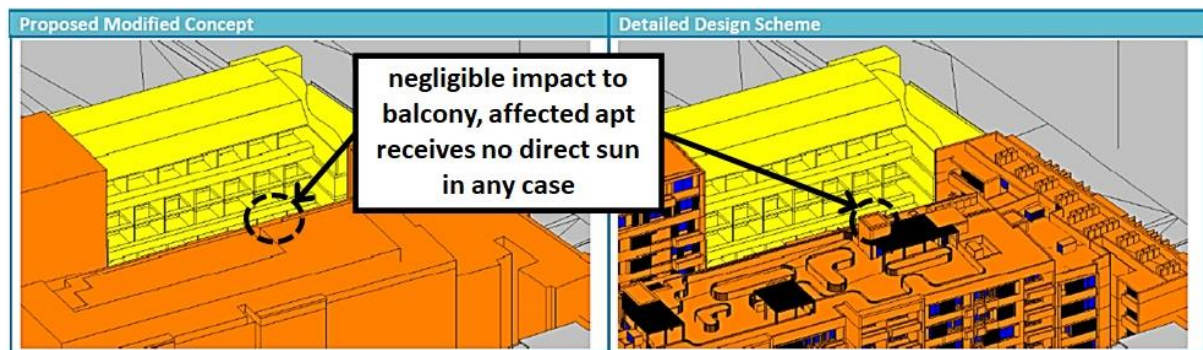
9am vfts comparison

Figure 47: Comparison of view from the sun (vfts) diagrams at 9am at midwinter, the modified envelopes as proposed to be modified by D/2015/1358/C (left) and detailed design DA scheme (right). Envelopes and detailed design DA scheme within the subject site shown in orange and Belle and Lily shown in yellow.



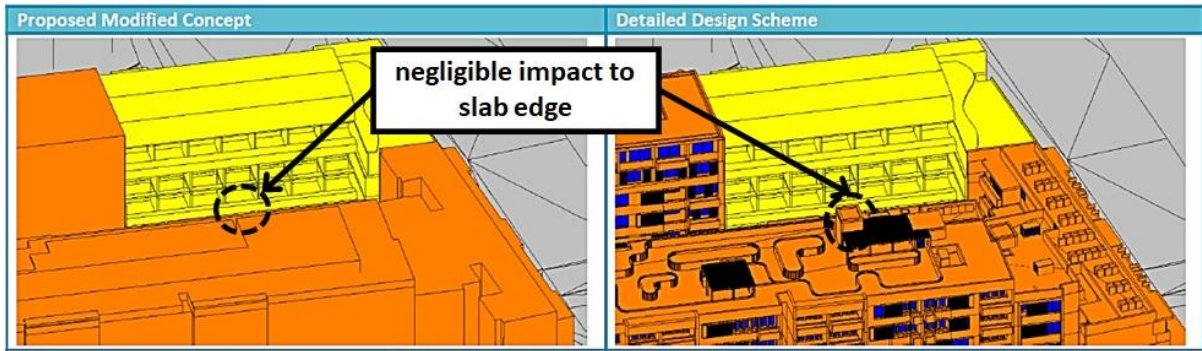
10am vfts comparison

Figure 48: Comparison of view from the sun (vfts) diagrams at 10am at midwinter, the modified envelopes as proposed to be modified by D/2015/1358/C (left) and detailed design DA scheme (right). Envelopes and detailed design DA scheme within the subject site shown in orange and Belle and Lily shown in yellow.



11am vfts comparison

Figure 49: Comparison of view from the sun (vfts) diagrams at 11am at midwinter, the modified envelopes as proposed to be modified by D/2015/1358/C (left) and detailed design DA scheme (right). Envelopes and detailed design DA scheme within the subject site shown in orange and Belle and Lily shown in yellow.



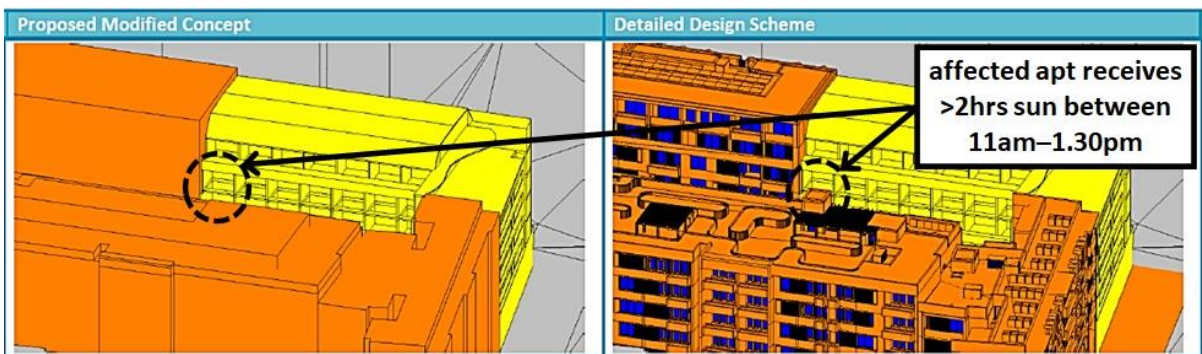
12pm vfts comparison

Figure 50: Comparison of view from the sun (vfts) diagrams at 12pm at midwinter, the modified envelopes as proposed to be modified by D/2015/1358/C (left) and detailed design DA scheme (right). Envelopes and detailed design DA scheme within the subject site shown in orange and Belle and Lily shown in yellow.



1pm vfts comparison

Figure 51: Comparison of view from the sun (vfts) diagrams at 1pm at midwinter, the modified envelopes as proposed to be modified by D/2015/1358/C (left) and detailed design DA scheme (right). Envelopes and detailed design DA scheme within the subject site shown in orange and Belle and Lily shown in yellow.



2pm vfts comparison

Figure 52: Comparison of view from the sun (vfts) diagrams at 2pm at midwinter, the modified envelopes as proposed to be modified by D/2015/1358/C (left) and detailed design DA scheme (right). Envelopes and detailed design DA scheme within the subject site shown in orange and Belle and Lily shown in yellow.

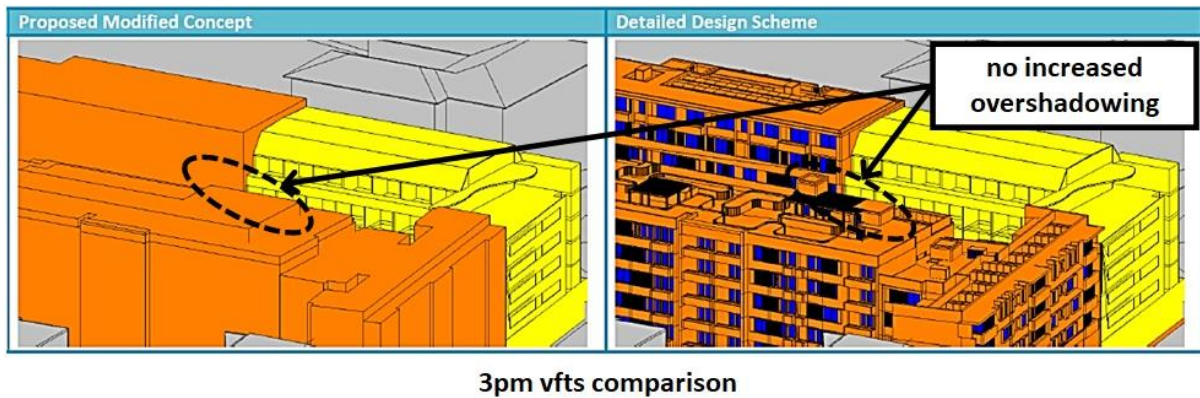


Figure 53: Comparison of view from the sun (vfts) diagrams at 3pm at midwinter, the modified envelopes as proposed to be modified by D/2015/1358/C (left) and detailed design DA scheme (right). Envelopes and detailed design DA scheme within the subject site shown in orange and Belle and Lily shown in yellow.

No other apartments overshadowed by proposed modification of envelopes

166. Submitted overshadowing analysis confirms that other residential apartment buildings in the vicinity of the site including those listed below, are not adversely impacted in terms of increased overshadowing beyond that which would arise from the concept envelopes as originally approved:
- (a) the Lincoln apartments at 274 Botany Road;
 - (b) the George and Allen apartments at 356-358 George Street; and
 - (c) the apartments at 282-288 Botany Road.

View Loss

167. Objections have been received raising concerns that the proposed development 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.
168. Figure 54 below is a photograph taken from a north-facing balcony of an apartment located on the 5th storey of the Belle and Lily building. It 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.
169. Figure 55 below is an aerial image that indicates which upper level apartments in the Belle and Lily building would enjoy similar views to that shown in Figure 54.



Figure 54: View from standing position on 5th storey apartment balcony in the Belle and Lily building to the Waterloo Estate and City skyline beyond

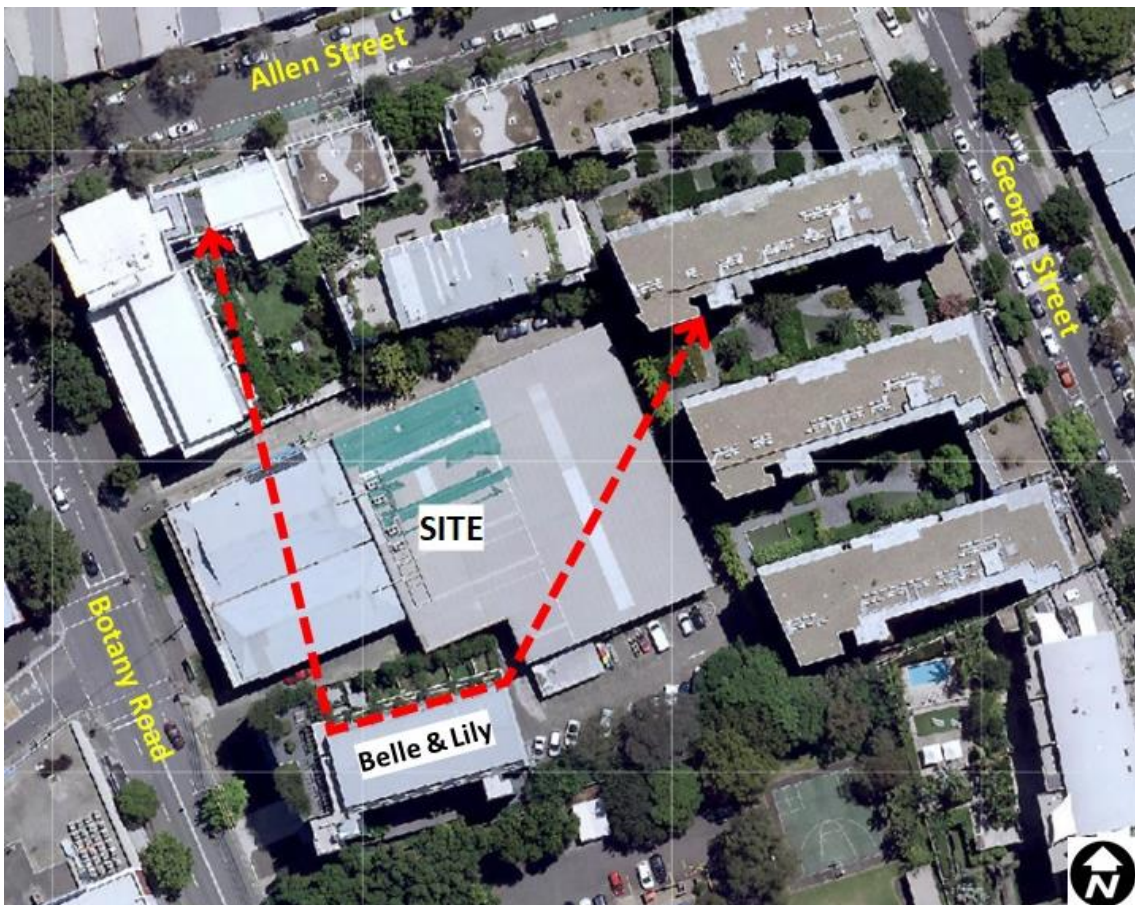


Figure 55: General location of Belle and Lily apartments that currently benefit from the view shown in the Figure above

170. As shown in Figure 56 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 application D/2015/1358/C (being assessed at the same time as the subject DA) could only be considered very partial views.

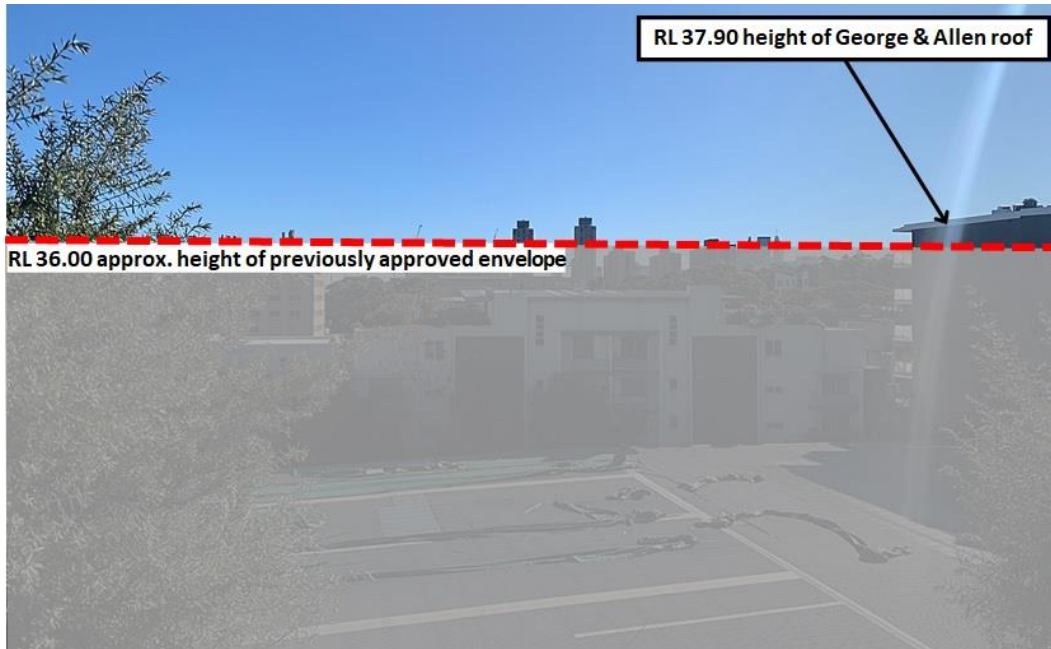


Figure 56: Approximation of view impacts arising from the originally approved envelopes

171. As shown in Figure 57 below, the modifications proposed under application D/2015/1358/C (being assessed at the same time as the subject DA) 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.

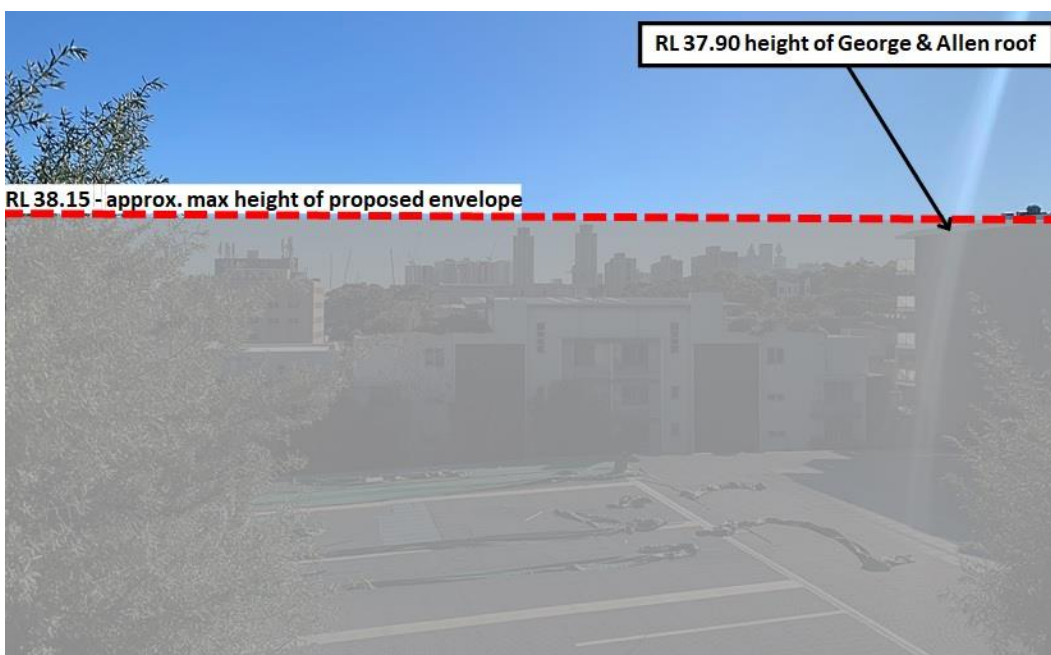


Figure 57: Approximation of view impacts arising from the proposed modified envelopes

172. As detailed in the assessment report pertaining to section 4.56 modification application D/2015/1358/C (being considered at the same time as the subject DA), the view loss arising from the proposed modification of the concept envelopes have been assessed using the four step process established in the Land and Environment Court decision of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 (Tenacity).
173. As detailed in the assessment report pertaining to section 4.56 modification application D/2015/1358/C, the view losses arising from the proposed modification of the concept envelopes are acceptable and the proposed modifications are supported.
174. If the proposed modification of the concept envelopes under D/2015/1358/C is approved, then there are no remaining views that may be further impacted upon by those significant building elements circled in Figure 44 above and which protrude outside of the concept envelopes.

Design - Botany Road Facade, Vehicle and Pedestrian Interface

175. Over the course of the assessment the detailed design of the loading dock and waste collection area has been amended to remove kerbs and include bollards for a seamless high-quality treatment to this area. As a result, the design of the residential entry experience has also been enhanced.
176. However, as shown in Figure 58 below, there appear to be some elements of earlier iterations of the design that have not been updated on the drawings, including:
 - (a) the kerbs and surface finishes/treatments of the northern driveway extent remains unchanged and depart from the un-kerbed pavers that have been applied to the remainder of the loading dock and driveways;
 - (b) "Bitumen" is noted as the finish to the tiled pattern extent on ground floor level plans. This is likely a drafting error. But in any case, it is not a finish of sufficient quality and it is not supported;
 - (c) bollards located at the northern end of the driveway block the opening operations of the loading dock gate;
 - (d) the awning, retail facade, integrated services and metalwork are either insufficiently detailed in the DA drawings. Especially the suite of standard entrance gates facing Botany Road. The quality of these elements and their architectural integration is key to presenting well to the public domain and to achieving design excellence.
177. Conditions are recommended for design modifications and additional information to be submitted to address these concerns.

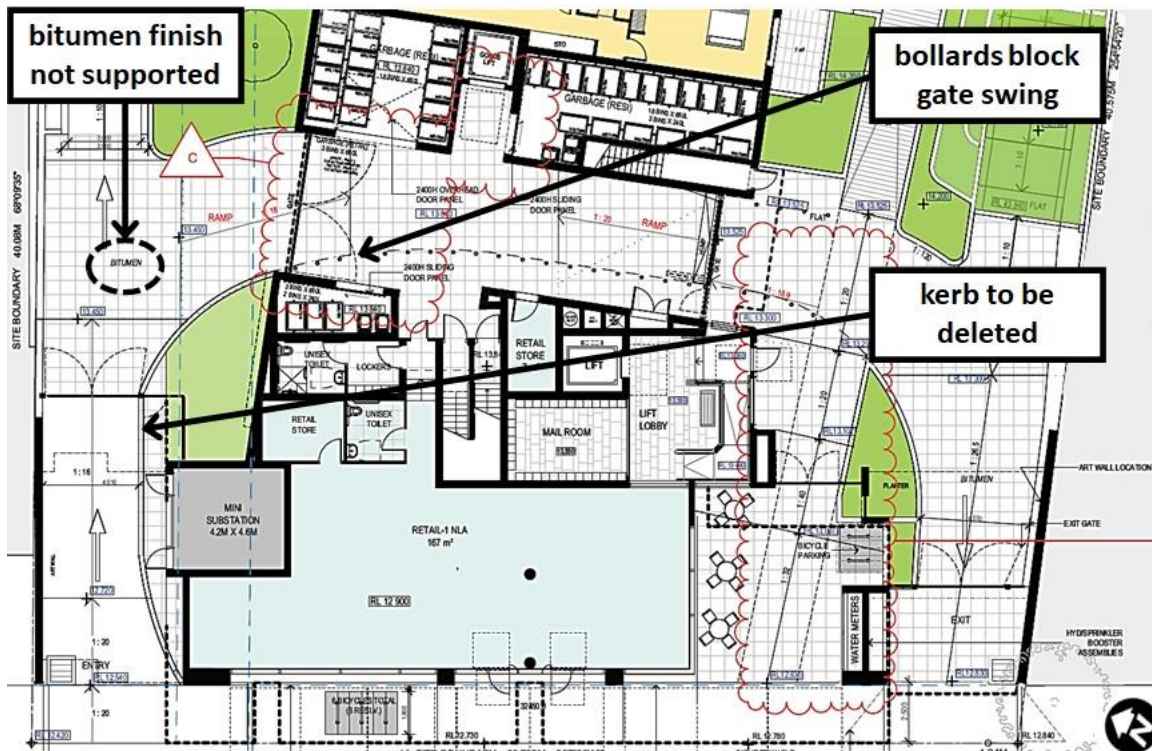


Figure 58: Ground level drawings to be amended to remove kerbs, apply high-quality finishes and remove bollards

Design - Projections Over the Public Domain

178. In the Competitive Design Process Report at Attachment F, the Competitive Design Process Selection Panel note the following in regard to Cottee Parker's winning design:

- (a) 'The design of the western facade of Building A fronting Botany Road, including the intent of the proposed materiality, projecting window boxes, recessed elements, parapet articulation and other design features help to modulate the scale of this frontage.'

179. The detailed design DA scheme retains these features and which make a significant contribution to modulating the Botany Road facade.

180. Schedule 4 of the DCP contains provisions that allow facade elements from first floor level and above, such as balconies and sun-shading devices, to project into or to overhang the public domain by up to 450mm.

181. In accordance with DCP requirements most of the facade elements described above cantilever into or overhang the public domain by no more than 450mm. However, as shown in Figure 59 below, centrally located balconies in the Botany Road facade project 500mm into the public domain.

182. A condition is recommended for the design of these balconies and planters to be modified so that they project into the public domain by no more than 450mm.

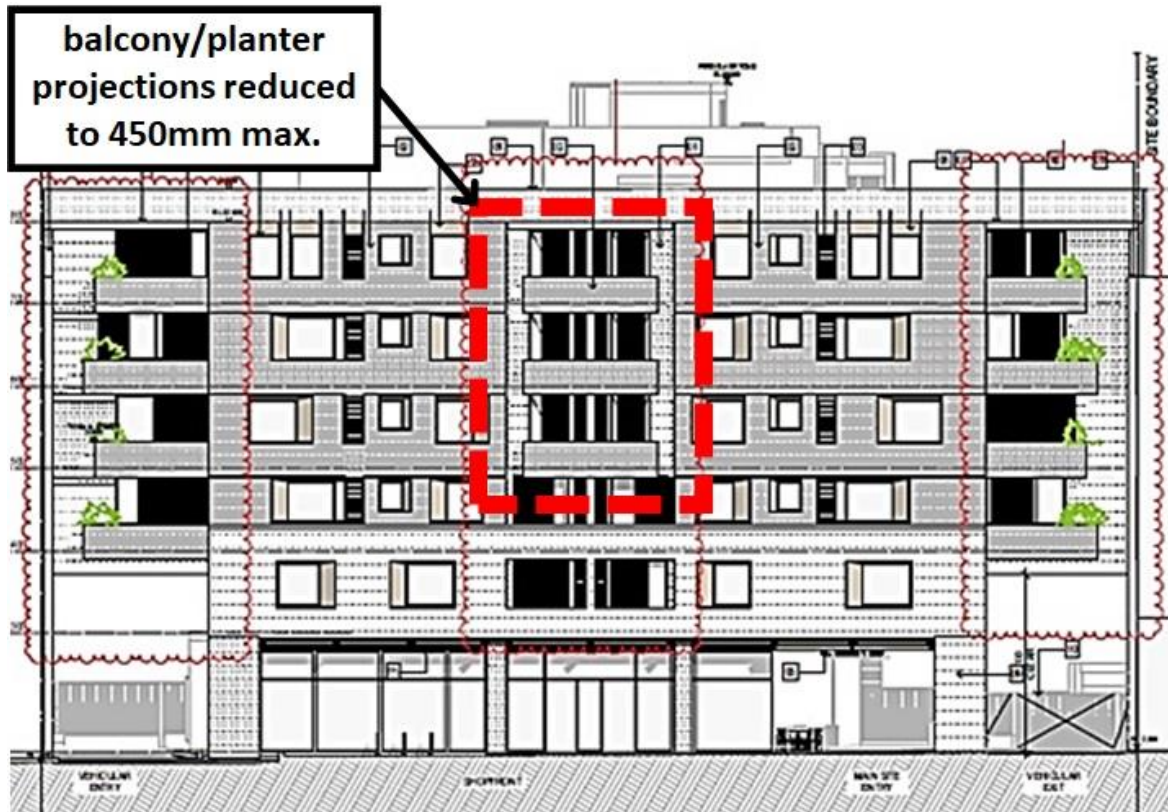


Figure 59: Condition is recommended for the design of centrally located balconies and planters to be modified so that they project over the public domain by no more than 450mm

Design - Improvements to A1.203 and Other Building A1 Apartments

Apartment A1.203

183. The level 02 corridor in Building A that runs north-south (parallel to Botany Road) borrows amenity from and is in close proximity to the private open space of apartment A1.203.
184. A condition is recommended for the following design modifications to the balcony of apartment A1.203 and the nearby corridor to improve privacy and to improve maintenance access to the corridor planter, as illustrated in Figure 60 below:
- (a) reduce the length of the planter at the northern end of the corridor to align with the living / dining room wall;
 - (b) relocate the privacy screen to the northern edge of the planter at the northern end of the corridor to align with the living / dining room wall;
 - (c) realign the balcony upstand wall to be rectangular in shape and reconfigure the balcony to provide a minimum area of 10sqm in accordance with ADG requirements;
 - (d) amend the design of the inaccessible roof with gravel finish that adjoins the balcony to accommodate the design modifications specified above; and
 - (e) provide operable sliding privacy screens on the balcony upstand wall for privacy.

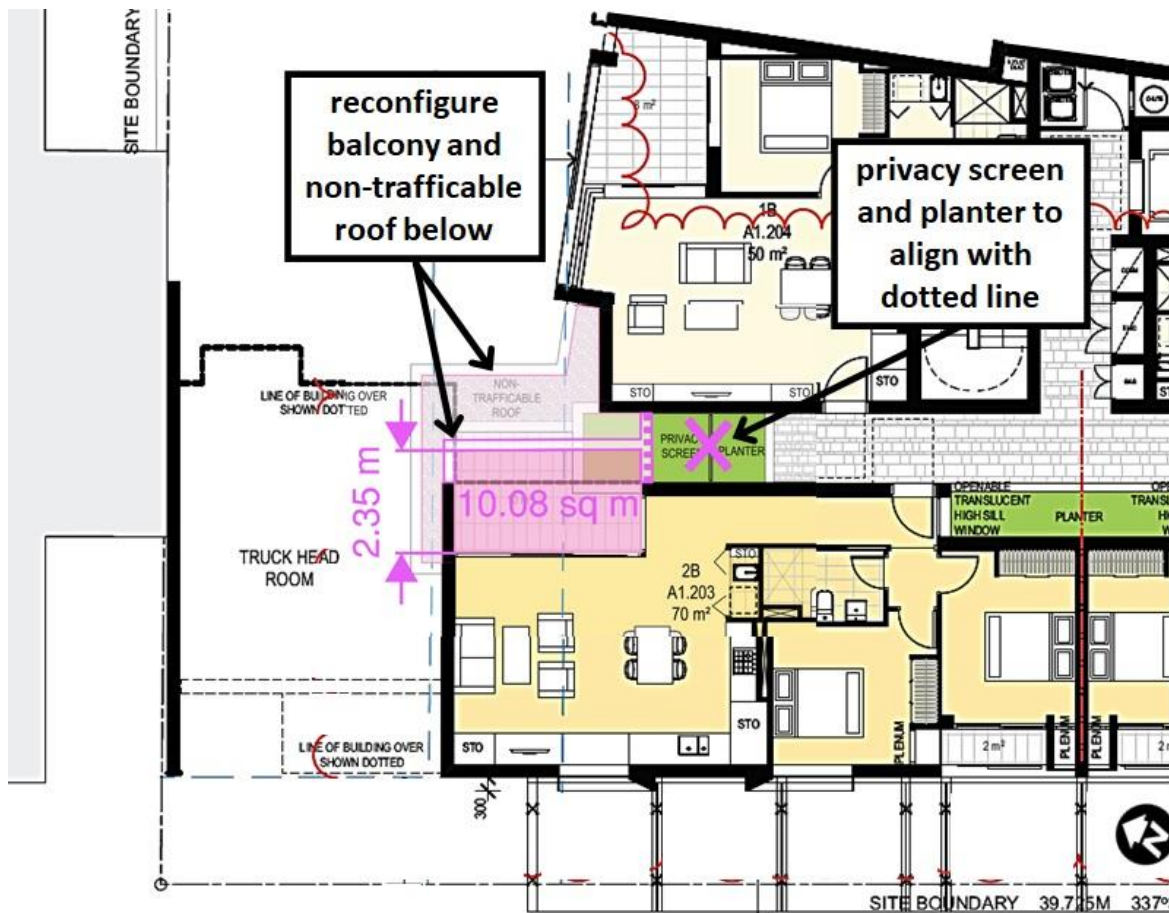


Figure 60: Conditions are recommended for design modifications to the balcony of apartment A1.203 and the nearby corridor to improve privacy and to improve maintenance access to the corridor planter

Hallway Windows to Apartments in Building A1

185. The east-facing hallway windows to apartments A1.302, A1.402, A1.502 and A1.602 open onto a path of fire egress and pose privacy concerns as they are not sufficiently separated from balconies and windows of nearby apartments. A condition is recommended for these windows to be deleted.

Balconies to 3 Bedroom Apartments in Building A1

186. The design criteria to ADG objective 4E-1 require 3-bedroom apartments to be provided with balconies with a minimum area of 12sqm and a minimum dimension of 2.4m.

187. The balconies to 3-bedroom apartments in Building A1 (fronting Botany Road) do not achieve the 2.4m minimum dimension requirement.

188. A condition is recommended for these balconies to be increased in area to compensate for this non-compliance and to improve the useability of the space provided. This is to be achieved by removing the step in the east-facing balcony facade as shown in Figure 61 below.

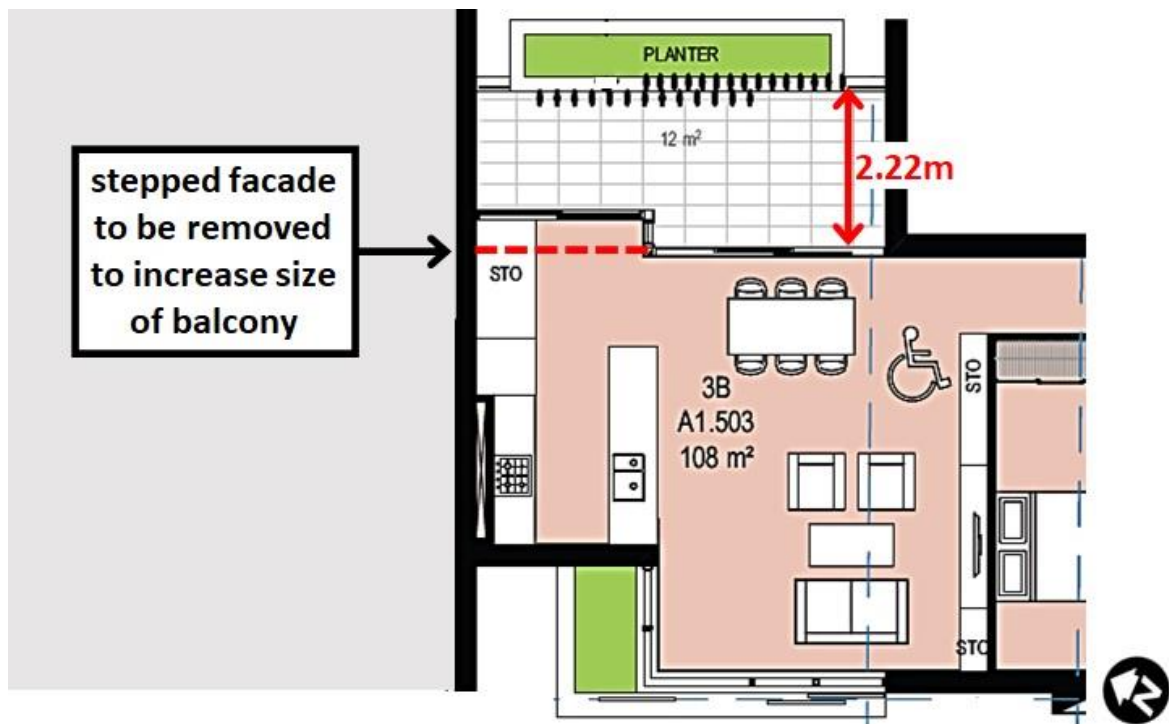


Figure 61: Conditions are recommended for design modifications to increase the size of balconies of apartments A1.302/A1.303/A1.402/A1.403/A1.502/A1.503/A1.602/A1.603

Design - Clerestory Enclosures and A1.601 Skylight

189. As is discussed elsewhere in this report, 60 per cent of apartments in the proposed development are naturally cross ventilated in accordance with the design criteria to ADG objective 4B-3.
190. Some level 7 apartments rely on clerestory windows that are adjacent to common open space areas to achieve natural cross ventilation.
191. Conditions are recommended to improve the privacy to clerestory windows to apartments A2.701 and A2.704, as illustrated in Figure 62 below.

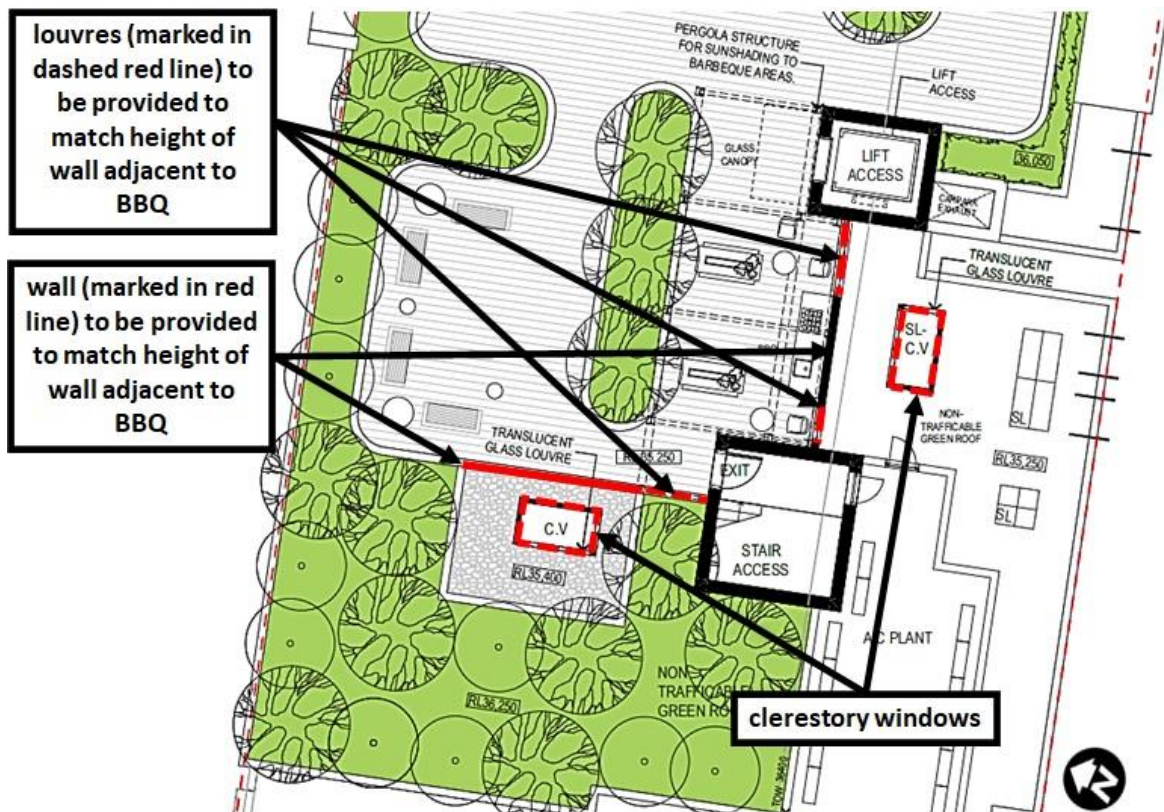


Figure 62: Conditions are recommended for design modifications to improve privacy to clerestory windows that are located near common open space areas

Deep Soil

192. DCP provision 4.2.3.6 requires:

- (a) minimum deep soil equal to 10 per cent of the site area;
- (b) which is to include a consolidated deep soil area with a minimum dimension of 10m; and
- (c) all remaining deep soil areas are to have a minimum dimension of 3m.

193. The design guidance to ADG objective 3E-1 requires:

- (a) minimum deep soil equal to 7 per cent of the site area; and
- (b) with a minimum dimension of 6m.

194. The proposed development provides 8.3 per cent (412 sqm) of site area as deep soil and which includes a consolidated deep soil area with a minimum dimension of 10m. The proposed deep soil provision is accepted.

195. It is noted that the steep terraced area along the southern site boundary will require engineered retaining walls with substantial footings and cannot be considered deep soil. It has been excluded from the calculation of deep soil areas for this reason.

196. A condition is recommended for deep soil areas shown in Figure 63 below to be clearly marked on the architectural drawings. The recommended condition also specifies that any structures such as decking or paving in these areas are to allow for filtration of rainwater into the ground.

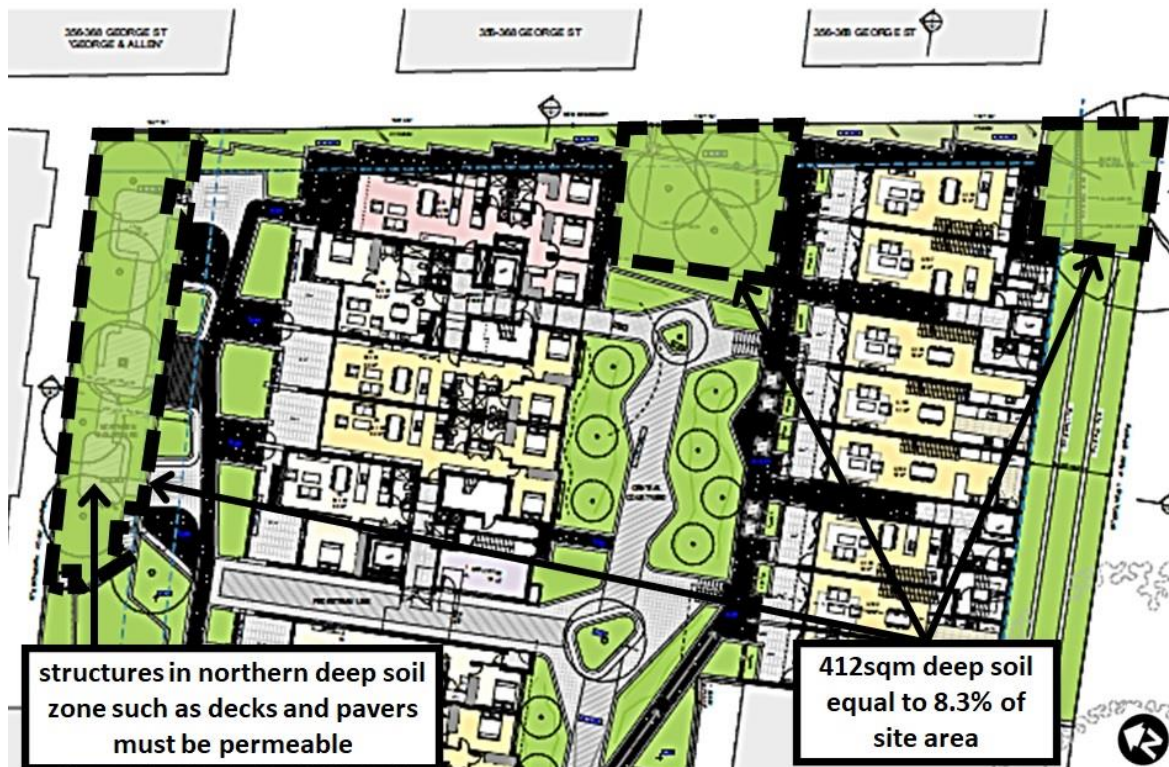


Figure 63: Deep soil areas to be annotated on the approved drawings

Tree Management

Trees to be removed

197. Trees numbered T1, T2, T3, T5, T6 and T7 are proposed for removal. Council's Tree Management Officers do not object to the removal and replacement of these trees.
198. The largest specimens are trees numbered T1 and T2. These trees are located in the south-eastern corner of the site in close proximity to tree T4 and which is shown in Figure 64 below. Trees T1 and T2 are multi-stemmed Port Jackson Figs. They appear to be self-seeded and are not sustainable in their current locations.

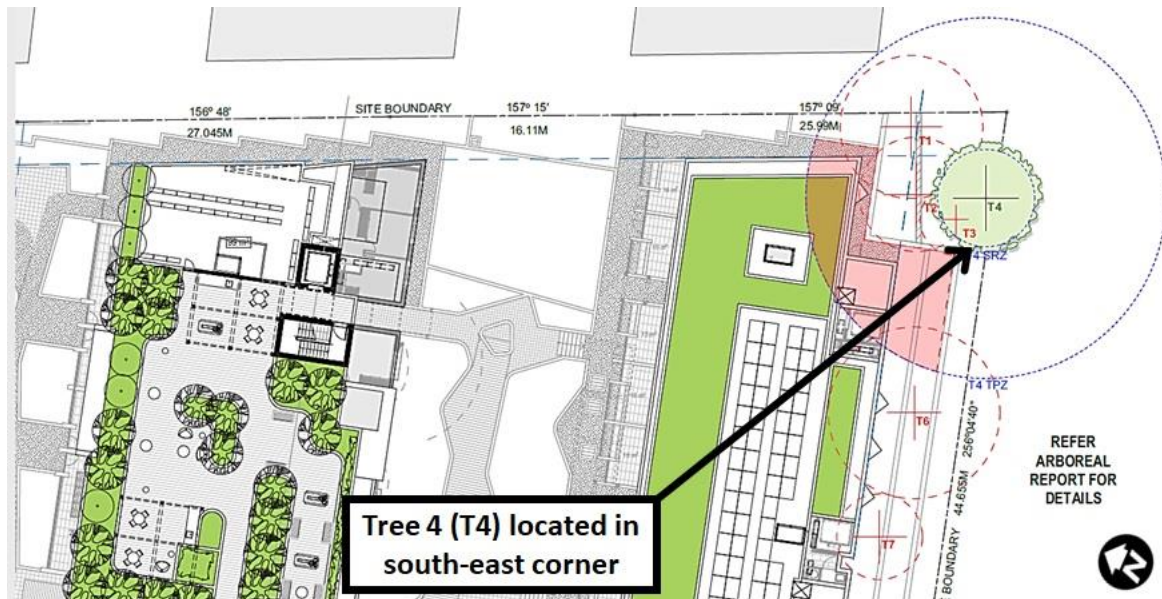


Figure 64: Excerpt from submitted Tree Identification Plan showing locations of trees numbered T1, T2, T3, T4, T6 and T7

Trees to be retained

199. As shown in Figure 64 above, tree T4 is located in the south-east corner of the site.

200. The submitted Arborist's Report identifies tree T4 for removal.

201. Tree T4 is a Camphor Laurel in moderate health and condition and contrary to the recommendations of the Arborist's Report, it is specified as a tree to be retained on both the landscape and architectural plans.

202. As tree T4 is located atop a portion of an existing embankment that is proposed to be retained tree T4 is likely to remain viable if it is protected in accordance with the conditions recommended at Attachment A to this report.

203. The submitted Arborist's Report also fails to address the trees located on or close to the site's northern boundary with the property at 2-6 Allen Street.

204. This row of semi-mature trees is located close to a portion of the subject site that is proposed as a deep soil and landscaped area. As such it is considered that these trees are able to be retained if protected in accordance with the conditions recommended at Attachment A to this report.

205. It is likely that some of these trees will require pruning to facilitate the movement of vehicles during the construction phase of the development. In such a case, this would need to be addressed as part of the pruning specification to be prepared by a qualified arborist and submitted to and approved by Council Officers in accordance with the conditions recommended at Attachment A to this report.

206. Trees T8, T9 and T10 are located within the Yudi Gunyi school at 237-271 Botany Road, close to its common boundary with the subject site. Given the school site and the trees contained therein are at a significantly greater height than the subject site it is the assessment of Council's Tree Management Officer that these trees will not be adversely affected by the proposed development despite some minor encroachments into their tree protection zones (TPZs) that are indicated in the submitted tree identification plan.

Street Trees and Overhead Wires

207. There are no street trees currently located outside the site.
208. In accordance with the VPA associated with the development, land is to be dedicated along the site's Botany Road street frontage for footpath widening. This will provide opportunities for new street tree plantings in accordance with the City's Street Tree Master Plan.
209. A condition has been recommended requiring existing overhead powerlines to be bundled to provide suitable clearance and to maximise space for the successful growth of future street tree canopies.

Consultation

Internal Referrals

210. The assessment process has been informed by advice from Council's Specialist Surveyor, Environmental Health Specialist, Safe City Unit, Heritage Specialist, Urban Design Specialist, Public Domain Specialist, Landscape Design Specialist, Transport Planner, Strategic Planner, Tree Management Specialist, ESD Specialist, Waste Management Specialist, Public Art Specialists, Voluntary Planning Agreement Coordinators, Legal Officers, the Design Advisory Panel (DAP) and Design Advisory Panel Residential Sub-Committee. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent granted.
211. As detailed in the History of the Subject Application section of this report, DAP and DAPRS considered the initial iteration of the design scheme. Concerns raised by DAP and DAPRS included the public domain interface, configuration of retail frontage and the design of the Botany Road building generally, pedestrian and vehicle conflicts at its entries and loading dock area and poor amenity for Building A apartments. The design has since been amended to address the concerns raised by DAP and DAPRS.

External Referrals

212. Refer to the discussion of consultation with external authorities under the SEPP (Transport and Infrastructure) 2021 and the Integrated Development referral to Water NSW in the Assessment section of this report above.
213. Other consultation with external referral authorities are as follows.

NSW Police

214. The subject DA was referred to NSW Police for comment.

215. A response was received raising no objections to the proposed development subject to the imposition of recommended conditions on any consent granted and which have in the most part been included among those listed at Attachment A to this report.

Transport for NSW

216. The subject DA was notified to Transport for NSW (TfNSW) through the NSW Planning Portal (portal referral reference number CNR- 18345).
217. Each time the subject DA was amended the relevant drawings and supporting information were uploaded to the planning portal.
218. Submissions received in response to public notification and exhibition processes were uploaded to the portal on 29 March 2021, 8 September 2021 ,6 April 2022 and 30 April 2022.
219. The site has a single street frontage to Botany Road which is a classified road and the proposal seeks to provide two new vehicle crossovers and entry/exit points to Botany Road.
220. Subsequently, the subject DA was referred to TfNSW seeking approval in accordance with sections 87 (Traffic control facilities) and 138 (Works and structures) of the Roads Act 1993.
221. Following several submissions of amended plans and supporting information by the Applicant, TfNSW provided comments and concurrence conditions 29 March 2022 and which are recommended for imposition on any consent granted at Attachment A to this report.

Sydney Water

222. The subject DA was notified to Sydney Water through the NSW Planning Portal (portal referral reference number CNR- 18345).
223. Each time the subject DA was amended the relevant drawings and supporting information were uploaded to the planning portal.
224. Submissions received in response to public notification and exhibition processes were uploaded to the portal on 29 March 2021, 8 September 2021 ,6 April 2022 and 30 April 2022.
225. In accordance with section 78 of the Sydney Water Act 1994, the subject DA was notified to Sydney Water as the proposed development was likely to increase water demand.
226. On 10 March 2021, Sydney Water provided referral advice and which is provided at Attachment H to this report.
227. Conditions are recommended for imposition on any consent granted and which require the developer to conduct a survey of all utility services, to notify all relevant authorities of any proposed service relocations, to submit any approved plans to Sydney Water's online 'Tap-In ' service and to obtain a section 73 compliance certificate pursuant to the requirements of the Sydney Water Act 1994.

Advertising and Notification

First Notification and Exhibition

228. 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.

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

- (a) **Issue:** Other design schemes submitted during the competitive design process were better than the Cottee Parker design. The subject design looks like all the other buildings going up around the City. Can't we do better?

Response: The Cottee Parker design was selected as the winner of the competitive design process by the Selection Panel for the reasons detailed in the Competitive Design Process Report at Attachment F.

- (b) **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 assessment against the Apartment Design Guide (the ADG), the Building A/B envelope that is nearest to the building at 233-235 Botany Road is separated by over 13m from the shared boundary and which is in excess of the 9m minimum separation distance recommended at ADG objective 3F. As demonstrated by the view from the sun diagrams shown above, top floor apartments within the building at 233-235 Botany Road will retain at least 2 hours of direct sun between 9am and 3pm at midwinter. This is consistent with the requirements of the ADG. As detailed in the View Loss section in this report and in the assessment report for modification application D/2015/1358/C, the originally approved concept envelopes block partial views across the subject site and to the city skyline that some apartments at 233-235 Botany Road currently enjoy. The modified envelopes proposed under application D/2015/1358/C do have some view loss impacts. These impacts are considered minor and are accepted on this basis.

- (c) **Issue:** There is an oversupply of apartment buildings in the area.

Response: Oversupply of apartments is not addressed in the planning controls and is not a matter for consideration in this development.

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

Response: Attachment A contains conditions recommended for imposition on any consent granted and which include those that require measures to manage and regulate adverse environmental impacts arising from demolition and construction phases of the development.

- (e) **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.

Response: As noted in the Consistency With Concept Consent section of this report the concept (stage 1) consent required a Road Safety Audit and Transport Impact Study to be submitted with the subject DA. These documents were submitted as required and the recommendations of the Road Safety Audit have been addressed. Botany Road, including its intersection with Mandible Street is a state classified road and which is controlled by Transport for NSW (TfNSW). In accordance with the requirements of the SEPP (Transport and Infrastructure) 2021 and the Roads Act 1993 the subject DA was referred to TfNSW for approval of the new driveway connections and its associated traffic impacts. As detailed elsewhere in this report TfNSW has provided its approval (its 'concurrence' in planning terms) and conditions to address traffic and safety concerns are recommended for imposition on any consent granted.

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

Response: Objectives of the LEP's floor space ratio (FSR) control are to among other things, control the generation of vehicle and pedestrian traffic and to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure. The proposed development complies with the LEP's FSR control and is considered to be acceptable in terms of any associated increase in demand on public transport infrastructure capacity it may cause.

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

Response: The proposed development will not have any overshadowing impacts upon residential apartments at 1A Mandible Street and which are located west of the Lincoln apartment building at 274 Botany Road (on the north-western corner of the intersection of Botany Road and Mandible Street).

- (h) **Issue:** The proposed development would overshadow the public domain.

Response: The proposed development will cause some overshadowing of the public domain. As discussed in the assessment against provision 3.2.1.1 Sunlight to publicly accessible spaces in the DCP compliance table in this report, in accordance with this DCP provision the proposed development does not overshadow any publicly accessible open spaces such as public parks and is acceptable on this basis.

- (i) **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: As discussed in the assessment against SEPP (Resilience and Hazards) 2021 elsewhere in this report, a Detailed Environmental Site Investigation (DESI), Remedial Action Plan (RAP) and Interim Advice were submitted at lodgement of the application. Both the DESI and RAP identified gaps in the available data that informed their formulation. Subsequently, Council Officers requested additional information including a revised RAP and Site Auditor's Advice to address these data gaps. The Applicant provided the requested information. The revised Site Auditor's statement endorses the revised RAP and has confirmed that the site can be made suitable for the proposed uses.

- (j) **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 swimming pool which was operating at capacity as soon as it opened.

Response: The proposed development exceeds the LEP's 22m building height control by up to 3.97m or 18 per cent. As discussed elsewhere in this report, a written justification for the proposed variation to the building height development standard has been submitted that demonstrates that compliance with the standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify contravention of the standard. The proposed development is consistent with the objectives of the Zone B4 Mixed Use and the height of buildings development standard and is in the public interest. For these reasons the proposed variation of the building height development standard is supported. The building elements that exceed the height control include lift and stair overruns, shade structures, planters; and the north-western corner of the substantive roof structure that forms part of the rooftop common open space. In the main these structures are to provide access, weather protection and amenities to the rooftop common open space areas and do not result in additional apartments.

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

Response: Objectives of the LEP's floor space ratio (FSR) control are to among other things, regulate the density of development. The proposal complies with the LEP's FSR control and is considered to be acceptable in terms of the density of development to be contained within the site.

- (l) **Issue:** The proposed development will have adverse impacts upon the Yudi Gunyi school, which is immediately adjacent to the south of the subject site.

Response: The assessment detailed in this report concludes that the proposed development does not have any unacceptable adverse impacts upon the Yudi Gunyi School.

- (m) **Issue:** More traffic lanes are required on Botany Road not wider footpaths.

Response: The proposed development and the associated VPA provides public benefits including dedication of land and embellishment works for footpath widening along its Botany Road frontage. This contribution towards community infrastructure provision is consistent with the DCP's Urban Strategy for Green Square and which identifies various locations along Botany Road for footpath widening.

- (n) **Issue:** Concerns are raised about the proposed depth of excavation and potential adverse structural impacts to adjacent buildings including to the apartment buildings at 2 Allen Street.

Response: Conditions are recommended to mitigate impacts arising from the demolition, excavation, remediation and construction phases of the development including the requirement for dilapidation reports to be provided for neighbouring buildings and for a demolition, excavation and construction noise and vibration management plan to be submitted to and approved by Council Officers.

- (o) **Issue:** Objection is raised to the removal of commercial / employment uses and their replacement with more residential properties.

Response: The proposed mix of residential and retail uses are consistent with the objectives of the B4 Mixed-Use zoning of the site and are permitted with development consent.

- (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: The detailed design DA scheme and the modifications to envelopes proposed under application D/2015/1358/C, as submitted at lodgement of these applications, did seek to reduce setbacks from the site's eastern boundary to the George and Allen development. Various iterations of design amendments to both these applications have been submitted over the course of their assessment. These amendments have in part sought to respond to issues raised in submissions. Amendments have included deleting changes to the setback from the eastern boundary. As a result, the detailed design DA scheme that is under consideration by the Local Planning Panel is consistent with the concept building envelope footprints and setbacks as approved under the original concept consent D/2015/1358.

- (q) **Issue:** DCP provision 4.2.3.6 requires 10 per cent of site area (498sqm) to be provided as deep soil. DCP provision 3.5.2 requires tree canopy coverage of 15 per cent of the site area. 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: The proposed development provides 8.3 per cent (412 sqm) of site area as deep soil and which includes a consolidated deep soil area with a minimum dimension of 10m. While the proposal does not satisfy the requirements of DCP provision 4.2.3.6, it does satisfy the 7 per cent minimum deep soil required under the ADG. The proposed development is able to achieve the DCP's 15 per cent tree canopy cover target and conditions are recommended for tree planting to achieve this.

- (r) **Issue:** The proposed rooftop air conditioner 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: Conditions are recommended at Attachment A to this report and which include conditions to limit noise from rooftop plant and equipment.

- (s) **Issue:** Belle and Lily 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) of apartments, down to 58 per cent (17) 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) of apartments. The proposed development will result in unacceptable overshadowing beyond the extent of overshadowing that is permitted by the ADG.

Response: As detailed in the Overshadowing section of this report, 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. The modifications to the concept envelopes proposed under 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. The submitted view from the sun (vfts) diagrams demonstrate that those significant building elements that protrude outside of the concept envelopes as proposed to be modified by D/2015/1358/C do not exacerbate overshadowing of the Belle and Lily apartments either. As such the rooftop elements that the proposed modifications to the concept envelopes are designed to contain are setback from the southern edge of the Building A/B footprint to minimise overshadowing of neighbouring properties in accordance with the design guidance to ADG objective 3B-2.

- (t) **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 be another (7th) storey in height above neighbouring buildings and will obstruct views to iconic buildings such as the Sydney Tower. The proposed development will obstruct the entirety of these views. 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 detailed in the View Loss section in this report and in the assessment report for modification application D/2015/1358/C, the originally approved concept envelopes block partial views across the subject site and to the city skyline that some apartments at 233-235 Botany Road currently enjoy. The modified envelopes proposed under application D/2015/1358/C do have some view loss impacts. These impacts are considered minor and are accepted on this basis.

Second Notification and Exhibition

230. After the first notification and exhibition period the subject DA 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. A total of 1091 properties were notified and 9 submissions were received.

231. Issues raised in submissions in addition to those issues raised previously and in response to the second notification and exhibition period are summarised and responded to as follows:

- (a) **Issue:** The proposed development will block key air space for the surrounding areas, increase construction during times of covid risk and lower the quality of life of the surrounding population.

Response: The proposed development exhibits design excellence and provides an appropriate contribution that is suitable in terms of its context, scale and built form that is consistent with the desired future character of the area, as expressed in the applicable planning policies. Conditions are recommended to manage and regulate adverse environmental impacts arising from demolition and construction phases of the development.

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

Response: As noted in the Consistency With Concept Consent section of this report the concept (stage 1) consent required a Road Safety Audit to be submitted with the subject DA. A Road Safety Audit was submitted as required and its recommendations have been addressed. Botany Road is a state classified road and is controlled by Transport for NSW (TfNSW). In accordance with the requirements of the SEPP (Transport and Infrastructure) 2021 and the Roads Act 1993 the subject DA was referred to TfNSW for approval of the new driveway connections and its associated traffic impacts. As detailed elsewhere in this report TfNSW has provided its approval (its 'concurrence' in planning terms) and conditions to address traffic and safety concerns are recommended for imposition on any consent granted.

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

Response: A Preliminary Public Art Plan (the PPAP) was submitted with the application. A condition is recommended for the PPAP to be modified to nominate a public art budget that is commensurate with the scale and nature of the development and to reconsider public art opportunities within the site. A revised PPAP will be submitted to Council's Public Art Specialists for approval and who consider the suitability of the PPAP in terms of its compatibility with the character of the area and how vandalism of proposed public art can be prevented.

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

Response: Conditions are recommended requiring stormwater and drainage design details and new stormwater connections to be submitted to and approved by Council Officers.

- (e) **Issue:** Concerns about overshadowing and solar access impacts raised in previous submission remain unresolved.

Response: Refer to the responses to concerns about overshadowing addressed above.

- (f) **Issue:** Concerns about view loss raised in previous submission are maintained.

Response: Refer to the responses to concerns about view losses addressed above.

- (g) **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: The original (stage 1) concept consent approved by the Land and Environment Court required an Arborists Report to be submitted as part of the subject (stage 2) DA. An Arborists Report was submitted at lodgement of the subject DA and additional arboricultural information was submitted over the course of its assessment. The Arborist's Report(s) recommend that trees numbered T1, T2, T3, T5, T6 and T7 are to be removed. Trees T1 and T2 are located in the south-eastern corner of the site and appear to be self-seeded Port Jackson Figs. Council's Tree Management Officers have assessed the proposed removal of trees T1 and T2 and consider that these trees are not sustainable in their current locations and do not object to the removal and replacement of these trees.

- (h) **Issue:** Concern raised in the submission to the original DA scheme about insufficient deep soil provision is maintained. It is recommended a 3m wide deep soil zone is provided adjacent to the site's eastern boundary to address this.

Response: As discussed in the Deep Soil section of this report, it is considered that the proposed development provides adequate deep soil areas. Significant deep soil zones with minimum dimensions of more than 3m about the site's eastern boundary and will enhance the amenity of adjoining residential properties.

- (i) **Issue:** Concerns raised in the submission to the original DA scheme about noise from rooftop plant and equipment is maintained. Conditions should be recommended to address this concern.

Response: Refer to the responses to concerns about noise from rooftop plant and equipment addressed above.

Third Notification and Exhibition

232. Following further amendments to the subject DA, the further amended detailed design scheme and supporting materials were re-notified for a period of 14 days between 14 and 29 March 2022. A total of 1093 properties were notified and 6 submissions were received.

233. Issues raised in submissions in addition to those issues raised previously and in response to the third notification and exhibition period are summarised and responded to as follows:

- (a) **Issue:** The amended proposal does not resolve concerns about overshadowing as raised in previous submissions.

Response: Refer to the responses to concerns about overshadowing addressed above.

- (b) **Issue:** The proponent claims 62 per cent of apartments in Belle and Lily will receive 2 hours' solar under proposed modified concept and detailed design DA conditions. Actually 58 per cent (17) of apartments will receive 2 hours and 24 per cent (7) of apartments will receive no sunlight under the proposed stage 1/detailed design DA conditions and which fail to comply with ADG requirements.

Response: Refer to the responses to concerns about overshadowing addressed above.

- (c) **Issue:** Concerns about view loss raised in previous submission are maintained.

Response: Refer to the responses to concerns about view losses addressed above.

- (d) 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) is proposed to be located approximately 6 metres from the northern 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: The school is located on higher ground than proposed Building C with a steep embankment rising up from Building C to the subject site's southern boundary to the school. As a result of this level change the appearance of the height and scale of Building C is reduced. There is no amendment to the concept envelope of Building C proposed under modification application D/2015/1358/C and as detailed elsewhere in this report, the detailed design of Building C is contained within its approved concept envelope. As such there are no additional overshadowing impacts beyond those that would arise from the concept envelopes as originally approved by the Land and Environment Court. The school has large grounds. The proposed development does not preclude the school from providing appropriate outdoor play spaces with good solar access in accordance with Principle 5 - amenity, in Schedule 8 Design Quality Principles in Schools of the SEPP (Transport and Infrastructure) 2021. The detailed design of Building C incorporates pop-out windows with fixed screens to its southern facade. The pop-out windows direct views away from the southern boundary, towards the east and west. Conditions are recommended for design details of the pop-out windows and screens to be submitted to and approved by Council Officers.

- (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: Attachment A contains conditions recommended for imposition on any consent granted and which include those that require measures to manage and regulate adverse environmental impacts arising from demolition and construction phases of the development and which address the points raised in this submission.

- (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: This assessment has considered heritage impacts to the school. Conditions are recommended requiring dilapidation reports to be prepared for all neighbouring buildings.

- (e) **Issue:** The proposed development has potential impacts on drainage.

Response: Refer to the responses to concerns about stormwater and drainage addressed above.

- (f) **Issue:** Concerns about contamination and data gaps in environmental / contamination reports are reiterated.

Response: Refer to the responses to concerns about contamination and remediation addressed above.

- (g) **Issue:** Flooding issues along Botany Road have only increased with recent heavy rains, storms in March 2021 resulted in flooding on the site that is the subject of this proposal.

Response: A Site-Specific Flood Assessment Report has been submitted as part of the subject DA. The Report recommends measures to manage flood and stormwater and which have been incorporated into the development. Refer to the responses to concerns about stormwater and drainage addressed above.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

234. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
235. Credits have been applied for the current worker population based on the existing gross floor area (GFA) and calculated according to the following rates:
- (a) 91.5 workers based on the 3,018sqm of existing office GFA [office premises (3 storeys or less)] and which is calculated at a rate of 33sqm per worker;
 - (b) 15.8 workers based on the 903 sqm of existing retail GFA (shops including neighbourhood shops) and which is calculated at a rate of 57sqm per worker;
 - (c) 12.1 workers based on 737 sqm of existing warehouse GFA (general industry) and which is calculated at a rate of 61sqm per worker.
236. After applying the credits outlined above, the development contribution is calculated according to the net increase in population contained within the site and based on the proposed dwelling mix of 51 one bedroom and studio apartments, 64 two bedroom and 17 three bedroom apartments and workers associated with the proposed 212 sqm retail tenancy.

237. A condition is recommended to levy development contributions calculated in accordance with the method outlined above and as shown in the table below.

Contribution	Amount
Open space	\$1,416,960.19
Community facilities	\$290,850.59
Traffic and transport	\$156,148.41
Stormwater and drainage	\$61,772.89
Total	\$1,925,732.08

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

238. The site is located in Green Square and the proposed development is subject to an affordable housing contribution.

Floor Space Contribution

239. As noted in the History of the Subject Application section of this report, the application was amended to propose the provision of actual dwellings within the development to be dedicated to and operated by a registered community housing provider instead of paying a monetary affordable housing contribution.
240. The area of the physical floor space contribution is equal to the sum of 1 per cent of the non-residential total floor area (TFA) and 3 per cent of the residential TFA.
241. In other words, the floor space contribution = (1 per cent of non-residential TFA) + (3 per cent of residential TFA).
242. In this case, the floor space contribution = (1 per cent of 211sqm TFA) + (3 per cent of 16,456sqm TFA) and which is equal to 495.79sqm.
243. The Applicant has proposed to dedicate apartments A1.201, A1.202, A1.203, A1.204 and A1.301, the associated basement storage areas and the common corridors on level 02 of Building A1 which serves apartments A1.201, A1.202, A1.203, A1.204 only.
244. Inclusion of this common corridor as part of the floor space contribution is permitted in accordance with section 2.1.5 of the City's Affordable Housing Program as the entirety of level 02 of Building A1 is to be provided as affordable housing.
245. The areas to be dedicated as affordable housing have a cumulative Total Floor Area of 502 sqm.
246. A condition of consent is recommended requiring evidence to be submitted to Council Officers to demonstrate that the title to the affordable housing unit(s) to be contributed will be transferred to a recommended affordable housing provider.

Payment in Lieu of a Floor Space Contribution

247. LEP clause 7.13 (Contribution for purpose of affordable housing) specifies that a condition imposed in accordance with this provision must allow for any affordable housing contribution to be made by dedication of dwellings or by payment of a monetary contribution.
248. The recommended condition, which is to levy an affordable housing contribution on the development, makes provision for this requirement to be satisfied by a monetary payment in the case that the Proponent does not or cannot dedicate actual physical dwellings for some reason.
249. In this case the total contribution amount is \$5,751,036.20. This amount is calculated by establishing the sum of the equivalent monetary contribution (\$11,599.74) multiplied by 1 per cent of the total floor area for non-residential development (211 sqm) and the equivalent monetary contribution \$11,599.74 multiplied by 3 per cent of the total floor area for residential development (16,456 sqm).

Relevant Legislation

250. Environmental Planning and Assessment Act 1979.
251. Roads Act 1993.
252. Sydney Water Act 1994.
253. Water Management Act 2000.

Conclusion

254. The subject Development Application D/2020/1419 seeks consent for the demolition of all existing structures, tree removal, excavation and remediation and construction of a mixed-use development comprising 132 apartments in three buildings.
255. The proposed development includes the public benefits secured in the VPA associated with the original concept consent D/2015/1358. This VPA is for the dedication of 98.67sqm of land to Council, for the purposes of footpath widening on its Botany Road frontage, public domain works and a monetary contribution for community infrastructure provision in Green Square.
256. Section 4.56 application D/2015/1358/C is being assessed at the same time as the subject application and seeks approval for proposed modifications to the concept building envelopes and conditions of the concept consent.
257. Subject to the approval of D/2015/1358/C the detailed design DA is not inconsistent with the concept development consent and therefore satisfies section 4.24(2) of the Environmental Planning and Assessment Act, 1979.

258. The proposed development exceeds the LEP's 22m building height control by up to 3.97m or 18 per cent. The building elements that exceed the height control are atop Buildings A and B and include lift and stair overruns, shade structures, planters and the north-western corner of the substantive roof structure that forms part of the rooftop common open space. In the main these structures are to provide access, weather protection and amenities to the rooftop common open space areas.
259. A written justification for the proposed variation to the building height development standard has been submitted in accordance with clause 4.6 of the LEP. The statement demonstrates that compliance with the standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify contravention of the standard.
260. The proposed development is consistent with the objectives of the Zone B4 Mixed Use and the height of buildings development standard and is in the public interest. For these reasons the proposed variation of the building height development standard is supported.
261. The proposed development complies with the relevant floor space ratio controls and other provisions of the LEP. It is consistent with the design quality principles contained within SEPP 65, the objectives of the ADG and the detailed provisions contained within the DCP.
262. The proposed development exhibits design excellence and provides an appropriate contribution that is suitable in terms of its context, scale and built form and which is consistent with the desired future character of the area, as expressed in the applicable planning policies.
263. The proposed development is subject to SEPP 65 and is therefore sensitive development and is referred to the Local Planning Panel to be considered for this reason.
264. This application is for Integrated Development requiring the approval of Water NSW under the Water Management Act 2000.
265. Water NSW Officers have advised that the subject application is under assessment and that a decision will be made shortly.
266. As Water NSW has issued revised General Terms of Approval to the section 4.56 application (D/2015/1358/C) being assessed concurrently and which seeks to modify the concept building envelopes to add a second basement level, it is anticipated that any concerns Water NSW may have with the application may be addressed.
267. As such, it is recommended that authority be delegated to the Chief Executive Officer (CEO) to determine the application, subject to receipt of General Terms of Approval from Water NSW pursuant to the Water Management Act 2000 and then consideration be given to granting development consent subject to the conditions at Attachment A.

ANDREW THOMAS

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