

Attachment A

Independent Assessment Report

Section 4.56 Application: 12A and 14-26 Wattle Street, Pyrmont - D/2019/649/B**File No.:** D/2019/649/B**Summary**

Date of Submission	16 February 2023.
Amended Plans & Additional Information	7 November 2023 and 21 February 2024
Applicant:	The Trustees for Landream Pyrmont Unit Trust
Architect/Designer:	BVN
Developer:	The Trustees for Landream Pyrmont Unit Trust
Owner:	Council of the City of Sydney
Planning Consultant:	Gyde Consulting
Heritage Consultant:	Paul Davies Pty Ltd
DAP:	15 June 2023
Cost of Works:	\$221,892,000.00
Zoning:	Most of the site ((12,381m ²) is in Zone MU1 - Mixed Use pursuant to Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The development comprises residential, commercial, retail, child care and indoor recreation centre uses and is permitted with consent within Zone MU1. A small portion of the Jones Street road reserve (to be acquired by the applicant and included in the site area) is in Zone RE1 (20m ²). The modified building envelopes are not located on land in Zone RE1.

Proposal Summary:

This section 4.56 application seeks to modify the concept consent for D/2019/649.

The Central Sydney Planning Committee (**CSPC**) on 25 June 2020 refused the concept development application. The applicant appealed the refusal. Following discussions between the experts, an amended scheme was filed with changes including a deletion of one storey on some blocks, increased compliance with the height controls, increased setbacks to improve heritage outcomes and provision of compliant deep soil areas. A public benefit offer was also made for the provision and maintenance of a footpath along Jones Street. As a result of the amendments being made, the City's experts advised the court that all contentions had been resolved. The matter proceeded by way of a consent orders hearing and judgment granting a deferred commencement consent on 28 May 2021.

The concept consent provides for building envelopes with maximum height of 33.08m and indicative land uses (residential, commercial, retail, childcare and recreational facilities).

An architectural design competition was held between April and June 2022. BVN was selected as the winning architect.

The section 4.56 modification application is referred to the CSPC for determination as it relates to "major development" for the purposes of the City of Sydney Act 1988.

A separate and concurrent detailed design development application (D/2023/97) has been lodged and the section 4.56 application to modify the concept consent will allow both applications to 'align' as required under Section 4.24 of the Environmental Planning and Assessment Act, 1979 (**EPA Act**). The detailed design development application will be considered concurrently by the CSPC.

The section 4.56 modification application and detailed design development application were notified concurrently for 28 days from 28 February - 29 March 2023. Five submissions were received, including two submissions which provided comments/support and three objections raising concerns in relation to height, design excellence, public interest, certainty, precedent, contravention of the planning controls, heritage, overshadowing of Fig Street Park and Wentworth Park, amenity impacts for nearby residents, wind, density, vehicle and pedestrian traffic, impact on public transport, illegal dumping of rubbish and capacity of public services. The matters raised in the submissions are addressed within this report.

In response to a number of requests for information (**RFI**) from Council, the section 4.56 modification application has been amended. As amended and subject to conditions, the proposed modifications are considered to result in a development that is substantially the same as concept consent and are contextually appropriate.

The section 4.56 modification application is recommended for approval.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021
- (ii) City of Sydney Act 1988 and City of Sydney Regulation 2016
- (iii) State Environmental Planning Policy (**SEPP**) No. 65 - Design Quality of Residential Apartment Development and the NSW Apartment Design Guide
- (iv) SEPP (Resilience and Hazards) 2021
- (v) SEPP (Transport and Infrastructure) 2021
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012

Recommendation

It is resolved that consent be granted to Section 4.56 Application Number D/2019/649/B subject to the amendment of the following conditions (with modifications shown in *bold italics* (additions) and ~~bold strikethrough~~ (deletions) as follows:

(2) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2019/649 dated 21 June 2019 and the following drawings prepared by **Tzannes BVN**:

Drawing Number	Drawing Name	Revision	Date
DA2-0001	CONCEPT ENVELOPE -- 3D -- WEST	7	23.03.21
DA2-0002	CONCEPT ENVELOPE -- 3D -- EAST	7	23.03.21
DA2-1001	CONCEPT ENVELOPE -- BASEMENT 2 PLAN	8	23.03.21
DA2-1002	CONCEPT ENVELOPE -- BASEMENT 1 PLAN	8	23.03.21
DA2-1003	CONCEPT ENVELOPE -- LEVEL 1 PODIUM PLAN	10	23.03.21
DA2-1004	CONCEPT ENVELOPE -- WATTLE LEVEL 2 FIG LEVEL 2 PLAN	9	23.03.21
DA2-1005	CONCEPT ENVELOPE -- WATTLE LEVEL 3 FIG LEVEL 3 JONES LEVEL 2 PLAN	9	23.03.21
DA2-1006	CONCEPT ENVELOPE -- WATTLE LEVEL 4 FIG LEVEL 3 JONES LEVEL 3 PLAN	9	23.03.21
DA2-1007	CONCEPT ENVELOPE -- WATTLE LEVEL 5 FIG LEVEL 4 JONES LEVEL 4 PLAN	8	23.03.21
DA2-1008	CONCEPT ENVELOPE -- WATTLE LEVEL 6 FIG LEVEL 5 JONES LEVEL 5 PLAN	8	23.03.21

DA2-1009	CONCEPT ENVELOPE - WATTLE LEVEL 7 FIG LEVEL 6 JONES LEVEL 6 PLAN	8	23.03.21
DA2-1010	CONCEPT ENVELOPE - WATTLE LEVEL 8 FIG LEVEL 7 JONES LEVEL 7 PLAN	9	30.03.21
DA2-1011	CONCEPT ENVELOPE - WATTLE LEVEL 9 FIG LEVEL 8 JONES LEVEL 8 PLAN	10	31.03.21
DA2-1012	CONCEPT ENVELOPE - ROOF PLAN	10	31.03.21
DA2-2001	CONCEPT ENVELOPE - ELEVATION - JONES STREET	9	31.03.21
DA2-2002	CONCEPT ENVELOPE - ELEVATION - FIG STREET	9	31.03.21
DA2-2003	CONCEPT ENVELOPE - ELEVATION - WATTLE STREET	9	31.03.21
DA2-2004	CONCEPT ENVELOPE - ELEVATION - LIGHT RAIL	9	31.03.21
DA2-2005	CONCEPT ENVELOPE - ELEVATION - STREETSCAPE	6	31.03.21
DA2-3001	CONCEPT ENVELOPE - SECTION A	9	31.03.21
DA2-3002	CONCEPT ENVELOPE - SECTION B	9	31.03.21
DA2-3003	CONCEPT ENVELOPE - SECTION C	10	31.03.21
DA2-3004	CONCEPT ENVELOPE - SECTION D	9	31.03.21
DA2-3005	CONCEPT ENVELOPE - SECTION E	9	31.03.21
DA2-3006	CONCEPT ENVELOPE - SECTION F	10	31.03.21
DA2-5000	CONCEPT ENVELOPE - JONES STREET	8	31.03.21

DA2-6000	CONCEPT ENVELOPE -- THROUGH SITE LINKS	6	23.03.21
DA2-7000	CONCEPT ENVELOPE -- ROOF FEATURES	6	23.03.21
DA2-8000	CONCEPT ENVELOPE -- CLIFF	8	31.03.21
DA2-9500	CONCEPT ENVELOPE -- ACOUSTIC	4	17.03.21
DA2-9600	COMMERCIAL BUILDING ARTICULATION	5	31.03.21
AR-DA-MOD-0001	CONCEPT ENVELOPE 3D WEST	03	03/11/23
AR-DA-MOD-0002	CONCEPT ENVELOPE 3D EAST	03	03/11/23
R-DA-MOD-1001	GENERAL ARRANGEMENT PLAN - LEVEL 00	03	03/11/23
AR-DA-MOD-1002	GENERAL ARRANGEMENT PLAN - LEVEL 01	03	03/11/23
AR-DA-MOD-1003	GENERAL ARRANGEMENT PLAN - LEVEL 02	03	03/11/23
AR-DA-MOD-1004	GENERAL ARRANGEMENT PLAN - LEVEL 03	03	03/11/23
AR-DA-MOD-1005	GENERAL ARRANGEMENT PLAN - LEVEL 03 & LEVEL 04	03	03/11/23
AR-DA-MOD-1006	GENERAL ARRANGEMENT PLAN - LEVEL 04 & LEVEL 05	03	03/11/23

AR-DA-MOD-1007	GENERAL ARRANGEMENT PLAN - LEVEL 05 & LEVEL 06	03	03/11/23
AR-DA-MOD-1008	GENERAL ARRANGEMENT PLAN - LEVEL 06 & LEVEL 07	03	03/11/23
AR-DA-MOD-1009	GENERAL ARRANGEMENT PLAN - LEVEL 07 & LEVEL 08	03	03/11/23
AR-DA-MOD-1010	GENERAL ARRANGEMENT PLAN - LEVEL 08 & LEVEL 09	03	03/11/23
AR-DA-MOD-1011	GENERAL ARRANGEMENT PLAN - LEVEL 09 & LEVEL 10	03	03/11/23
AR-DA-MOD-1012	GENERAL ARRANGEMENT PLAN - LEVEL 10 & LEVEL 11	03	03/11/23
AR-DA-MOD-1013	GENERAL ARRANGEMENT PLAN - LEVEL 11 & LEVEL 12	03	03/11/23
AR-DA-MOD-1014	GENERAL ARRANGEMENT PLAN - LEVEL 13	03	03/11/23
AR-DA-MOD-1015	GENERAL ARRANGEMENT PLAN - LEVEL 14	03	03/11/23
AR-DA-MOD-2001	JONES ST ELEVATION	04	03/11/23
AR-DA-MOD-2002	JONES ST ELEVATION	03	03/11/23
AR-DA-MOD-2003	WATTLE ST ELEVATION	03	03/11/23

AR-DA-MOD-2004	LIGHT RAIL ELEVATION	03	03/11/23
AR-DA-MOD-2005	LIGHT RAIL ELEVATION	03	03/11/23
AR-DA-MOD-3001	SECTION A	04	03/11/23
AR-DA-MOD-3002	SECTION B	03	03/11/23
AR-DA-MOD-3003	SECTION C	04	03/11/23
AR-DA-MOD-3004	SECTION D	04	03/11/23
AR-DA-MOD-3005	SECTION E	04	03/11/23
AR-DA-MOD-3006	SECTION F	04	03/11/23
AR-DA-MOD-4001	CONCEPT ENVELOPE - JONES STREET	01	03/11/23
AR-DA-MOD-4002	CONCEPT ENVELOPE - THROUGH SITE LINKS	01	03/11/23
AR-DA-MOD-4003	CONCEPT ENVELOPE - ROOF FEATURES	01	03/11/23
AR-DA-MOD-4004	CONCEPT ENVELOPE - CLIFF	01	03/11/23

AR-DA-MOD-4005	CONCEPT ENVELOPE - ACOUSTIC	01	03/11/23
AR-DA-MOD-4006	COMMERCIAL BUILDING ARTICULATION	01	03/11/23

- (b) and as amended by the conditions of this consent.

In the event of any inconsistency between the approved concept development plans and other supplementary documentation, the approved concept development plans will prevail.

(3) MATTERS NOT APPROVED IN CONCEPT DEVELOPMENT CONSENT

The following matters are not approved and do not form part of this concept development consent:

- (a) The use for any part of the building envelopes for residential accommodation. The buildings may only be used for residential accommodation and identified as such in a detailed design development application on demonstration that acoustic amenity and natural ventilation are achieved simultaneously in accordance with Objectives 4B-1 and 4J of the Apartment Design Guide (ADG). Should suitable design resolution not be achieved, the use of some of all of the buildings are to revert to non-residential use or non-permanent use in a future detailed design development application.
- (b) The pedestrian connection to the Wentworth Park Light Rail Station (and any associated tree removal). In principle approval is required from Sydney Trains for any future pedestrian connection to the Wentworth Park Light Rail Station (and any associated tree removal) prior to the commencement of the competitive design process.
- ~~(c) The location and design of the pedestrian access zone as illustrated on the concept plan drawings DA2-1006 Rev 9, DA2-1007 Rev 8, DA2-1012 Rev 10 and DA2-8000 Rev 8 on the Jones Street frontage of the site.~~
- (d) Any works, including demolition, excavation and/or construction.
- (e) The removal or pruning of any tree on the site.
- (f) The siting and location of a substation.
- (g) The number of basement levels, car parking spaces, bicycle spaces, car share spaces and loading spaces/zones.
- (h) The precise total quantum, ratio and distribution of commercial, recreation, child care centre and residential floor space.
- (i) The indicative floor layouts of buildings.
- ~~(j) The floor or ceiling levels of each storey.~~

- (k) The number and configuration of residential apartments and commercial tenancies.
- ~~(l) Up to 10% design excellence uplift in building height or floor space ratio.~~

(5) DETAILED DESIGN OF BUILDINGS

The drawings lodged for the competitive design process brief and detailed design development application must incorporate the following requirements:

~~(a) Amended Fig Block building envelope showing the following:~~

- ~~(i) Commercial Levels 4, 5 and 6: The setback to the Jones Street site frontage (as shown on DA2-1007_8, DA2-1008_8 and DA2-1009_8) is to be increased by at least 3.2m. The Jones Street footpath is to be extended to the face of the realigned commercial levels, with opportunities provided for public views down to the rockface below;~~
- ~~(ii) Residential Level 7 (and up to 10% additional height subject to design excellence): Provide a minimum setback of 4m from the Commercial Level 6 street wall height on the Jones Street site frontage;~~
- ~~(iii) Residential Level 7 balustrade/planter zone: Provide a minimum setback of 1.3m to the balustrade/planter zone from the realigned Jones Street street wall (generally in accordance with that shown on DA2-1010_9, DA2-1011_10, DA2-20002_9 and DA2-3003_10); and~~
- ~~(iv) Level 7 Residential communal open space: Retain the residential communal open space shown on DA2-1010_9 and relocate it to the western end of the Fig Block (Level 7).~~

(a) Amended Building C – Courtyard building envelope showing the following:

- (i) The Plant Room Equipment and Parapet Zone height (and any other structures at Level 13 of Building C – Courtyard) is to be reduced by at least 2m (to a maximum of RL 43.55 (AHD)).**
- (b) A new footpath and street tree planting along the site's frontage to Jones Street, as required by condition 12 below.
- (c) Areas nominated as deep soil zones must be designed as actual deep soil throughout the competitive design process and detailed design development application. Deep soil zones must be unencumbered by built elements above and below. This include basements, through site links and other paved areas
- (d) Tree planting must be able to provide a minimum of 15% canopy cover across the site within 10 years of completion.

(7) BUILDING HEIGHT

The maximum heights of the building envelopes, as defined in Sydney Local Environmental Plan 2012, are:

(a) ~~Jones Block:~~

~~(i) RL 35.700 (AHD) to the Communal roof terrace zone for lift overrun and pergola structures~~

~~(ii) RL 32.400 (AHD) to the Level 8 Communal roof terrace balustrade/planter zone~~

~~(iii) RL 31.400 (AHD) to the Level 7 Residential Roof~~

~~(iv) RL 29.000 (AHD) to the Level 7 balustrade/planter zone~~

~~(v) RL 28.00 (AHD) to the Level 6 Residential Roof~~

(b) ~~Fig Block:~~

~~(vi) RL 32.550 (AHD) to the Level 7 Residential Roof~~

~~(vii) RL 30.150 (AHD) to the Level 7 balustrade/planter zone and Communal roof terrace balustrade/planter zone facing Jones Street, Fig Street and Wattle Street~~

~~(viii) RL 29.150 (AHD) to the roof of Level 6 Commercial Roof~~

(c) ~~Wattle Block:~~

~~(i) RL 35.950 (AHD) to the Level 9 Residential Roof~~

~~(ii) RL 33.550 (AHD) to the Level 9 balustrade/planter zone facing Wattle Street~~

~~(iii) RL 32.550 (AHD) to the Level 8 Residential Roof~~

~~(iv) RL 30.150 (AHD) to the Level 8 balustrade/planter zone facing Wattle Street~~

~~(v) RL 29.150 (AHD) to the roof of Level 7 Residential Roof~~

(d) ~~Café/retail building: RL 11.150 (AHD) to the roof.~~**(a) *Building A – Retail Pavilion:***

(i) RL 10.75 (AHD) to the roof

(ii) RL 11.05 (AHD) to the parapet wall

(b) *Building B - Jones Street:*

(i) RL 37.100 (AHD) to the PV array on top of plant and lift overrun

- (ii) *RL 36.600 (AHD) and RL 36.800 (AHD) to the top of plant and lift overrun*
 - (iii) *RL 35.10 (AHD) to the Level 10 roof*
- (c) *Building C - Courtyard:*
 - (i) *RL 43.55 (AHD) to the Plant Room Equipment and Parapet Zone*
 - (ii) *RL 42.35 (AHD) to the Level 12 roof*
 - (iii) *RL 39.45 (AHD) to the Level 09 parapet*
- (d) *Building D - Wattle Street:*
 - (i) *RL 36.450 (AHD) to the PV array*
 - (ii) *RL 36.250 (AHD) to the Level 11 roof*
 - (iii) *RL 32.750 (AHD) to the Level 10 roof*
 - (iv) *RL 30.850 (AHD) to the Level 09 balustrade/planter zone*
 - (v) *RL 29.550 (AHD) to the Level 09 roof*
- (e) *Building E - Fig Street:*
 - (i) *RL 37.950 (AHD) to the top of plant and lift overrun*
 - (ii) *RL 36.350 (AHD) to the Level 10 roof*
 - (iii) *RL 32.350 (AHD) to the Level 09 roof and RL (AHD) 33.550 to the Level 09 parapet*
 - (iv) *RL 29.150 (AHD) to the Level 08 roof and RL (AHD) 29.950 to the Level 08 parapet*

The maximum heights shown above are inclusive of additional height approved pursuant to the provisions of Clause 6.21D(3) of Sydney Local Environmental Plan 2012. The development is not eligible for any additional height under any circumstances.

~~Notwithstanding clause (a) and (b) above, the Jones Block and Fig Block may be eligible for up to 10% additional height pursuant to the provisions of Clause 6.21(7) of Sydney Local Environmental Plan 2012 if the consent authority is satisfied that the resulting detailed design development application exhibits design excellence and is the result of a competitive design process.~~

(12) PUBLIC DOMAIN CONDITION

- (a) Prior to any competitive design process, a Public Domain Concept Plan must be prepared by a suitably qualified architect, urban designer, landscape architect and engineer. The plan must show all existing and proposed public domain elements within the surrounding site frontages, any through site links, land dedications and/or setbacks.
- (b) The Public Domain Plan and Levels and Gradients are to include detailed sections sufficient to show how the footway, ~~tree and verge planting~~ will be delivered along the length of Jones Street. A footway of not less than 1.2m in width is to be provided from the kerb along the width of Jones Street. The Sections need to be from the centre line of Jones Street to the internal floor of the buildings and clearly show access, retaining structures and any engineering information to demonstrate the proposal is feasible and deliverable.
- (c) The final Public Domain Concept Plan, shall be submitted as part of the documentation submitted as part of the detailed design development application.

(14) LANDSCAPING OF THE SITE

- (a) The detailed design development application must include a Landscape Concept Plan and Landscape Design Statement prepared by a qualified landscape architect or landscape designer.
- (b) The ~~Landscape Concept Plan and Landscape Design Statement~~ ***detailed design development application*** must:
 - (i) Clarify the vision and design principles for all landscaping to achieve design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012 and the integration of landscape design.
 - (ii) Identify any site, landscape, streetscape, heritage view and/or planning constraints, including (but not limited to), microclimate, ground contamination, existing levels, services and easements, existing trees, landscape features, landscape setbacks and screening/buffer requirements.
 - (iii) Identify the location of deep soil areas, tree planting, communal open spaces, green roofs and walls, sustainable design measures including water sensitive urban design treatments, sustainability targets and direct sunlight to communal and private open spaces.
 - (iv) Quantify and illustrate landscape design compliance with the relevant codes including Parts 3 and 4 of the Apartment Design Guide, Section 4.2.3 of the Sydney Development Control Plan 2012 and Sydney Landscape Code Volume 2.
 - (v) Tree planting that will provide a minimum of 15% canopy cover across the site within 10 years of completion.
 - (vi) Provide deep soil zones to a minimum area of 7% of the total site area, with a minimum dimension of 6 metres.

- (c) The Landscape Concept Plan and Landscape Design Statement must establish a clear commitment to designing landscape sustainably and in an integrated manner and demonstrate that the function and aesthetic of both the landscape and the building have been considered concurrently in relation to each other.
- (d) The requirements noted above in (a) through (c) inclusive must be included in the competition brief for the competitive design process.

(22) PARKING DESIGN

The design, layout, signage, line marking, lighting and physical controls of all off-street car parking facilities is to **generally** satisfy the Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Australian Standard AS/NZS 2890.2 - 2002 Parking facilities Part 2: Off-street commercial vehicle facilities and Australian Standard AS/NZS 2890.6 - 2009 Parking facilities Part 6: Off-street parking for people with disabilities. The design must be provided as part of the detailed design development application.

(30) TREE PROTECTION PLANS AND DETAILED DESIGN APPLICATION

All detailed architectural, building, engineering (structural, stormwater and drainage services) and landscape documentation submitted as part of the detailed design development application shall clearly show on all drawings the retention of all existing trees recommended for retention in the Arboricultural Impact Assessment Report prepared by 'Earthscape Horticultural Services' (**Report No. 22-069, Version 11, dated 6th February 2023, Addendum [1] (dated 11 October 2023) and Addendum 2 dated 14 February 2024 dated 3 September 2019 (Version 6) dated 3 September 2019 (Version 6)**), including the position of their trunks, full diameter of their canopies, Structural Root Zones (SRZs) and Tree Protection Zones (TPZs)

(31) STREET TREES AND DETAILED DESIGN APPLICATION

- (a) All existing street trees surrounding the site which are recommended for retention in the Arboricultural Impact Assessment Report prepared by 'Earthscape Horticultural Services' (**Report No. 22-069, Version 11, dated 6th February 2023, Addendum [1] (dated 11 October 2023) and Addendum 2 dated 14 February 2024 dated 3 September 2019 (Version 6)**) must be included for retention with any subsequent detailed design development application subject to the following amendment:
 - (i) **Retain Tree 46 (London Plane tree)**
- (b) Any design elements (awnings, street furniture, footpath upgrades etc) within the public domain must ensure appropriate setbacks are provided from the street tree to ensure ongoing retention and allow the maturity of new tree to be achieved.

- (c) The location of any new driveways shall ensure it does not require the removal of any existing street trees which are recommended for retention in the Arboricultural Impact Assessment Report prepared by 'Earthscape Horticultural Services' (*Report No. 22-069, Version 11, dated 6th February 2023*) *Addendum [1] (dated 11 October 2023) and Addendum 2 dated 14 February 2024* ~~dated 3 September 2019 (Version 6)~~ as amended by (a) above. The driveway shall be appropriately setback so as it does not have any adverse below or above ground impacts for any existing street trees which are to be retained.
- (d) A pruning specification prepared by a qualified Arborist (minimum AQF 5) ~~must~~ **must** be submitted with detailed design development application. Pruning of any street tree must not exceed more than 15% overall canopy with a maximum branch diameter of 100mm will be permitted by Council.

Reasons for Recommendation

The modification application is recommended for approval for the following reasons:

- (A) The development as modified is substantially the same as the development originally approved and is consistent with the requirements of section 4.56(1)(a) of the EPA Act.
- (B) The development has been considered against the reasons given by the Land and Environment Court for the grant of the consent that is to be modified, and the proposal is consistent and acceptable, as per section 4.56(1A) of the EPA Act.
- (C) The proposed modifications ensure that the detailed design development application will be consistent with the concept consent to satisfy section 4.24 of the EPA Act.
- (D) Subject to conditions, the increased height and bulk of the building envelopes generally reflects the architectural design competition winning scheme and will not adversely impact the amenity of the surrounding area. These modifications are reasonable and justified with regard to the detailed design development application.
- (E) The proposed building envelopes are capable of accommodating a future building design which is capable of exhibiting design excellence in accordance with clause 6.21D of the Sydney LEP 2012.

Background

The site and surrounding development

1. The site has a total area of 12,381m² comprising:
 - (a) 14-26 Wattle Street, Ultimo (Lot 200 DP 1224234) which has an irregular shape and an area of 12,125m²; and
 - (b) 12A Wattle Street, Ultimo which is part of the Jones Street road reserve. It has a site area of 256m², an irregular shape and directly adjoins the main site.
2. The proposed development also includes works at Lot 1 DP 868833 which is owned by Transport Asset Holding Entity (**TAHE**) (**TAHE owned land**). By letter dated 5 December 2023, TAHE provided land owner's consent for the lodgement of the development application.
3. The site has street frontages to Wattle Street (104.82m), Fig Street (97.84m) and Jones Street (149.70m).
4. From 1870 - 1888, the site was used as a quarry with the extracted sandstone used for development of Sydney's General Post Office. In 1906, the site was purchased by the City of Sydney and used as its depot. The remaining structures on the site (which are currently vacant) were constructed by Council.
5. The site lies on the western side of a ridge that forms the Pyrmont peninsula. The eastern edge of the site remains as an exposed sandstone rock face left from the former quarry use. The height difference from the main site ground level (RL 3.56-3.93) to Jones Street ranges from 11.5m to 14m. The actual exposed rock face is 6.5m to 8m high.
6. The site is identified as being subject to flooding.
7. In late 2018, the Council announced the proposed sale of the site through an expression of interest process. The sale was subject to the purchaser demonstrating the ability deliver a 91 place childcare centre and an indoor recreation centre accommodating two multi-purpose courts. Landream Pyrmont Pty Ltd (the applicant) was awarded the purchase of the site.
8. Development and uses around the site comprise a mixture of attached heritage listed terrace houses, residential flat buildings, large former woolstores and warehouses and public open space as noted in the following description of nearby uses:
 - (a) **North:** Directly north of the site is Wentworth Park Light Rail Station with a row of trees and a metal fence along the common boundary. Adjoining the light rail station, a pedestrian link (comprising a lift and stair) connects the northern end of Jones Street to the Wentworth Park Light Rail Station and Wattle Street. High-density residential development and the Fish Markets are further north. A railway viaduct to the north-west of the site, crossing Wattle Street, is listed on the State Heritage Register (I800).

- (b) **South:** Directly south of the site is Fig Street and a former woolstore at 28-48 Wattle Street, Ultimo (“Winchcombe Carson”) which is a local heritage item (I2059). The former woolstore is occupied by the Ultimo Trade Centre which accommodates a range of storage and light industrial activities. Fig Lane Park, which sits within the Ultimo Heritage Conservation Area (C69), is to the south-east of the site.
- (c) **East:** To the east of the site is a group of one and two storey terrace houses at 286-318 Jones Street which is a local heritage item (I1238). Harbour Mill Apartments at 280 Jones Street, which includes remnants of the former Edwin Davies Flour Mill, is to the north-east of the site. It is a local heritage item (I1205). The Harbour Mill Apartments are 10 storeys to the north with a step down to 4 storeys to the south adjoining the terrace houses. The existing residential flat building was approved on 5 August 2013 (D/2011/1798) pursuant to former Sydney LEP 2005. The development included the construction of a stair and lift link to the Wentworth Park Light Rail Station.
- (d) **West:** Directly west of the site is Wattle Street. Wentworth Park and the Wentworth Park Greyhounds racetrack are located further to the west.
9. The site is not a heritage item and is not located within a heritage conservation area but is in the vicinity of the heritage items described above.
10. Photos of the site and surrounds are provided at **Figures 1 to 9**. Extracts from the Land Zoning, Building Height, Floor Space Ratio and Heritage Maps to Sydney LEP 2012 are provided at **Figure 10**.
11. A site visit was carried out by the consultant planner on 8 June 2023.

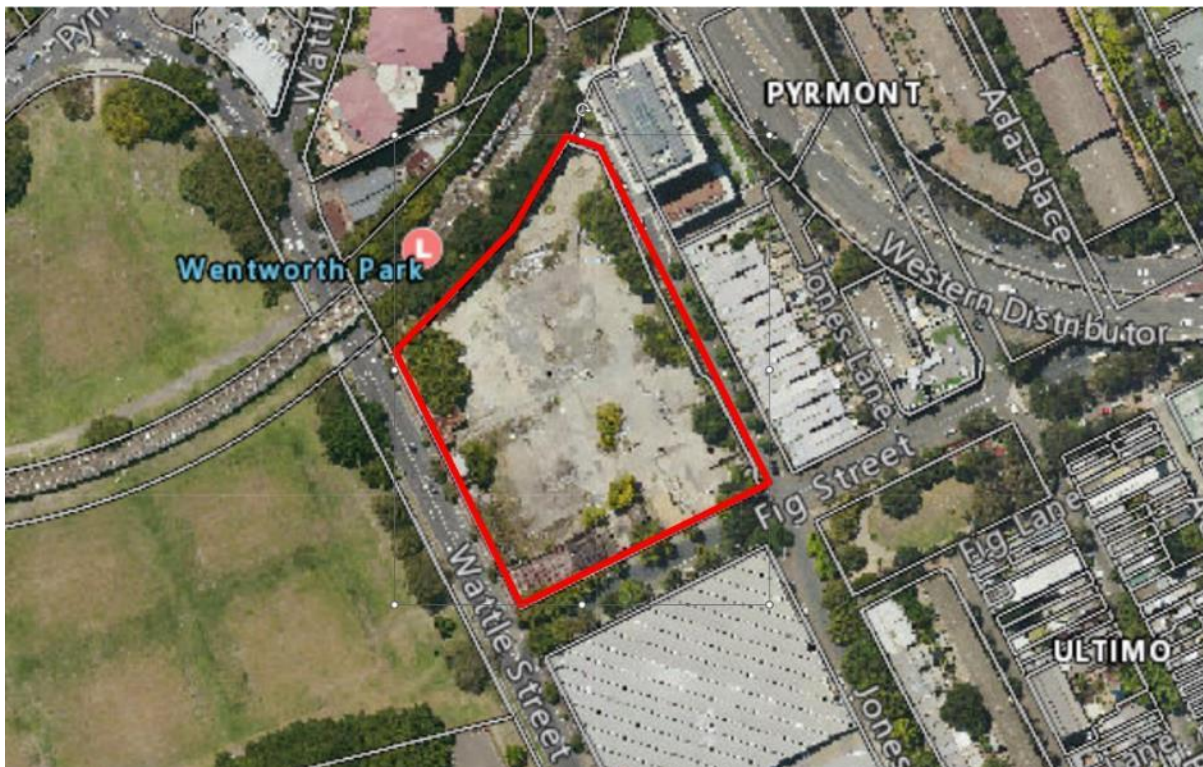


Figure 1: Aerial view of the site and surrounds



Figure 2: Cliff face along the site's eastern boundary adjoining Jones Street



Figure 3: The site viewed from public stairs at western end of Jones Street



Figure 4: Site viewed from Jones Street looking south (brick wall shows approximate location of the site boundary to Jones Street)



Figure 5: The site (Wattle Street) as viewed from Wentworth Park looking north-east



Figure 6: The site and Ultimo Trade Centre viewed from corner of Fig and Wattle Streets looking east



Figure 7: Pedestrian path from Wattle Street to Light Rail Station to the north of the site looking east



Figure 8: Harbour Mill Apartments, 280 Jones Street (heritage) to the north-east of the site



Figure 9: Jones Street terrace houses (286-318 Jones Street) (heritage) to the east of the site



Figure 10: Sydney LEP 2012 Land Zoning Map, Building Height Map, Floor Space Ratio Map and Heritage Map

History relevant to the section 4.56 modification application

Concept development application - D/2019/649

12. The CSPC on 25 June 2020 refused the concept development application (D/2019/649) which proposed demolition of the existing buildings, removal of trees, and building envelopes for a mixed use development comprising residential, commercial, retail, child care and recreation uses. The applicant appealed the refusal.

13. Following discussions between the experts, an amended scheme was filed with changes including a deletion of one storey on some blocks, increased compliance with the height controls, increased setbacks to improve heritage outcomes and provision of compliant deep soil areas. As a result of the amendments being made, the City's experts advised the court that all contentions in the matter had been resolved. The matter proceeded by way of a consent orders hearing and judgment was handed down on 28 May 2021 granting deferred commencement consent to the concept development application. The deferred matter required a voluntary planning agreement (VPA).
14. The VPA relates to a new footway (1200mm to 1500mm) and public access easement along the Jones Street frontage of the site (illustrated on **Figure 11**).

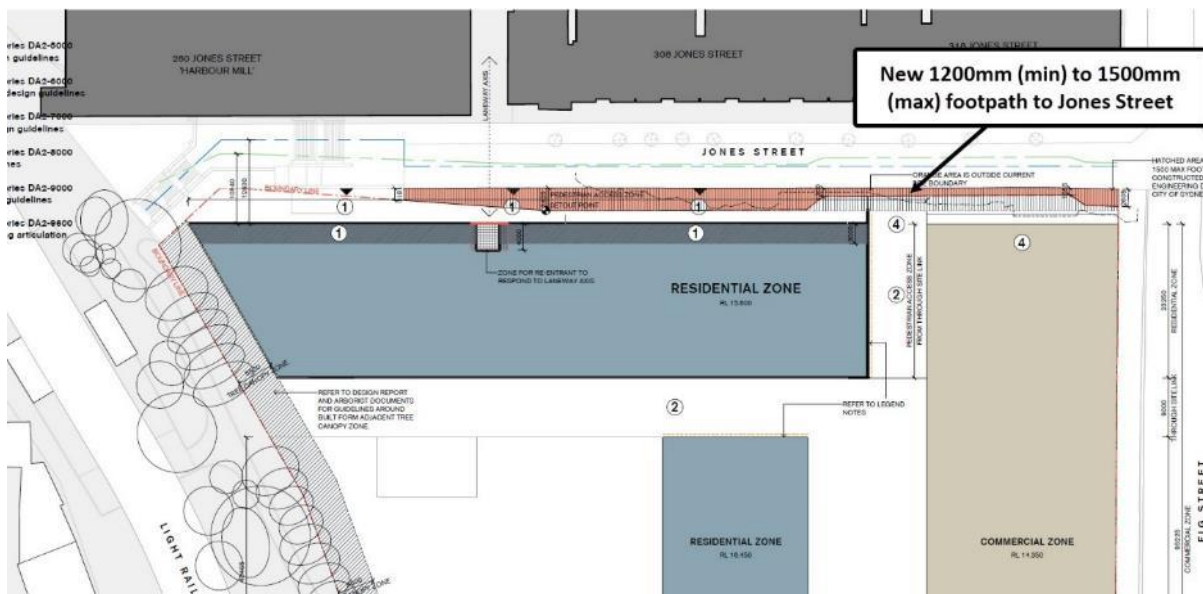


Figure 11: VPA extract showing a plan of the new footway to Jones Street

Competitive design process

15. Between 28 April and 2 June 2022, a competitive design process was undertaken for the site in accordance with the provisions of clause 6.21D of Sydney LEP 2012 and the City of Sydney Competitive Design Policy.
16. As a result of this competitive design process, the applicant is seeking 10% additional height pursuant to clause 6.21D of the Sydney LEP 2012.
17. The architectural firms who participated in the 'invited' architectural design competition were Bates Smart, BVN, Carter Williamson, SJB and Tzannes. The jury for competitive design process selected the BVN scheme as the winning scheme. Photomontages of the winning scheme are provided in **Figures 12 and 13** below.
18. An assessment of compliance with the jury recommendations is included in the assessment report on the detailed design development application.



Figure 12: Photomontages of the BVN winning scheme (part of the Jones Street elevation)



Figure 13: Photomontage of the BVN winning scheme (part of the Wattle Street elevation)

Detailed design development application (D/2023/97)

19. A detailed development application (D/2023/97) has been lodged and assessed concurrently with this section 4.56 modification application.
20. The detailed design development application proposes the demolition of existing structures, remediation, removal of trees, excavation and construction of a mixed use development comprising residential, commercial, retail, childcare and indoor recreation centre across five (5) buildings, basement car parking, landscaping, public domain and civil works and subdivision.

21. An assessment of the detailed design application has been undertaken and the application is recommended for approval. The application is being reported concurrently to the CSPC for determination and is recommended for approval. Refer to the separate report for details.

Subdivision development application (D/2023/1073)

22. A development application proposing road closure and subdivision of part of Jones Street was submitted to Council on 23 November 2023. Assessment of the development application is underway and the application is yet to be determined.

History relevant to the section 4.56 modification application

23. A chronology of key events relevant to the section 4.56 modification application (and detailed design development application) follows:
 - (a) **5 October 2022:** The applicant's representatives, Council officers and Council's consultant planner attended a pre-lodgement meeting (video conference).
 - (b) **14 October 2022:** A pre-lodgement letter of advice was sent to the applicant setting out the information requirements for the applications and potential issues of concern including design excellence and additional height.
 - (c) **16 February 2023:** The section 4.56 modification application and development application were lodged.
 - (d) **28 February - 29 March 2023:** The section 4.56 modification application and development application were notified/exhibited.
 - (e) **15 June 2023** The City's Design Advisory Panel (**DAP**) reviewed the section 4.56 modification application and development application and advised that:
 - (i) The building envelope controls are sufficient for the site and should not be exceeded beyond the concept consent. Non-compliances with building separation controls are not supported.
 - (ii) There are several non-compliances with height controls which increase overshadowing to Wentworth Park. The Panel does not support additional height or any further overshadowing to the park.
 - (iii) The scheme is at the upper limit of FSR allowances. Additional FSR has been applied to the site through the acquisition and upgrade of the adjacent public footpath. The general density of the site has resulted in deep building footprints and several bedrooms with poor access to natural light, which should be reconsidered.
 - (iv) The Childcare facilities should be further considered in order to provide adequate circulation space for pram movement and storage in the lobby and corridors, adequate lift provision, and greater solar access and a more generous ceiling height to the outdoor play area.
 - (v) A wind analysis is required as part of the assessment.
 - (vi) Further consideration of the courtyard amenity is required and should address natural ventilation and noise.

- (vii) Environmental performance of north-west façade should have further analysis and consideration.
- (viii) Engagement with the First Nations history of the site requires further consideration.
- (ix) The opportunity to expose views to and interpret the quarry face has not been fully realised.
- (x) Public art should be further considered to provide an interpretation of the place, rather than be applied as a wayfinding element.

Recommendation

The Panel advises that the proposal has not yet achieved design excellence. Should the proposal address all recommendations of the design competition jury, comply with building envelopes and building separation controls, and respond to this DAP assessment, then it has the potential to achieve design excellence.

- (f) **28 July 2023:** A RFI from Council was sent to the applicant noting the following issues of concern relevant to the section 4.56 modification application:
 - (i) Concept consent condition (2) drawings: The proposed increase in envelope height and footprint is not supported (overdevelopment of the site, inadequate building separation, poor residential amenity, overshadowing of Wentworth Park and outlook impacts). Plans and information submitted with the Section 4.56 modification application are inadequate.
 - (ii) Concept consent conditions of consent: The modification application has not sought approval to modify all conditions.
 - (iii) Section 4.56 matters for consideration: The modification application has not adequately addressed s. 4.56 of the EPA Act.
- (g) **7 August, 30 August and 18 September:** The applicant's representatives, Council officers and Council's consultant planner attended meetings to discuss solutions to Council's RFI.
- (h) **7 September 2023:** A supplementary RFI was sent to the applicant providing further direction in relation to height (and inboard bedrooms which was relevant to the detailed design development application).
- (i) **13 October 2023:** The applicant's representatives and Council officers attended a meeting to discuss solutions to Council's RFI.
- (j) **7 November 2023:** The applicant responded to Council's RFI including amended building envelope plans. The proposed changes included a 616m² reduction in the gross floor area (**GFA**) accommodated by the modified envelope plans and the following changes to the concept consent building envelop plans:
 - (i) Reducing the maximum height of Building E - Fig Street by approximately 1.6m (from RL39.56 to RL37.95) by lowering of the floor to floor height from 3.8m to 3.6m.

- (ii) Cropping of the western and southern sides of the floor plates at Level 08 and 09 of Building E - Fig Street to minimise additional overshadowing of Wentworth Park beyond the concept consent.
 - (iii) Reinstating the articulations to the ground floor façade of Building E - Fig Street that faces the east-west through-site link.
 - (iv) Reducing the maximum height of Building D - Wattle Street by approximately 1.7m (from RL38.18 to RL36.45) by relocating the rooftop plant room to Building C - Courtyard and enclosing the remaining plant units within the roof form.
 - (v) Re-instating the pitch of the roof to Building D - Wattle Street consistent with the winning scheme to minimise overshadowing of Wentworth Park.
 - (vi) Re-instating the setback at the south-western corner of Building D - Wattle Street to minimise additional overshadowing of Wentworth Park beyond the concept consent.
 - (vii) Reducing the extent of rooftop plant on Building B - Jones Street.
 - (viii) Concentrating the rooftop plant and equipment to Building C - Courtyard, with an 800mm increase in height (from RL44.75 to RL45.55).
 - (ix) Widening of the indented courtyards in the Jones Street and Wattle Street Buildings.
 - (x) Reinstating the rooftop terrace on the northern side of Building D - Wattle Street.
- (k) **23 January 2024:** A further RFI was sent to the applicant detailing issues arising from Council's internal and external referrals. Most issues related to the detailed design development application.
- (l) **21 February 2024:** The applicant responded to Council's further RFI.

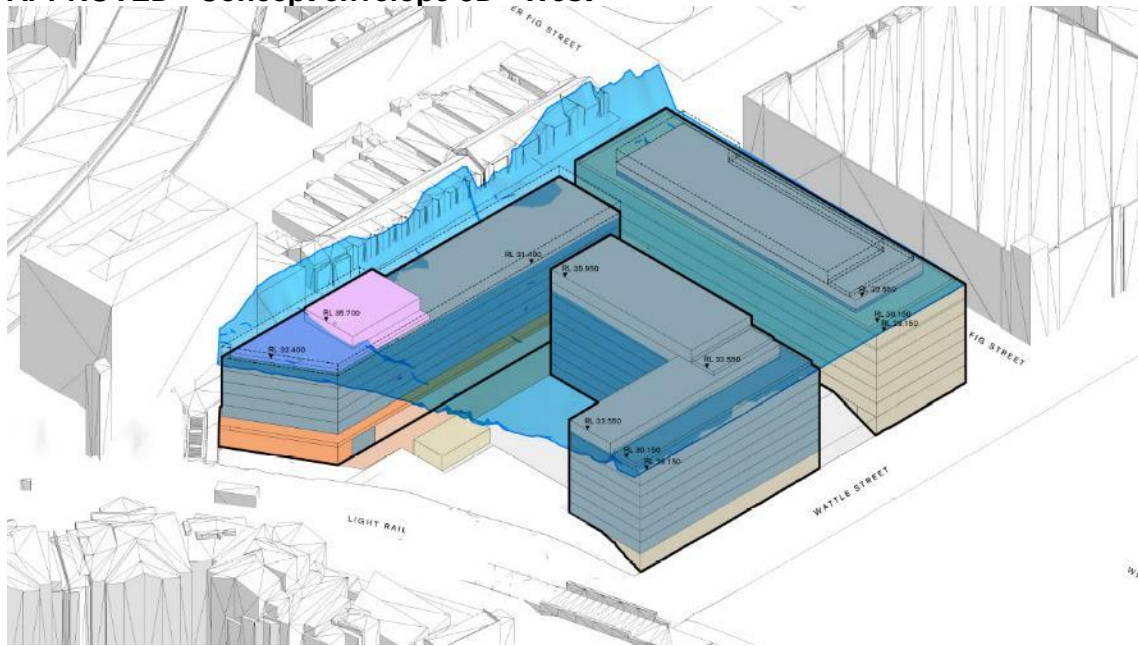
Proposed modifications

24. The section 4.56 modification application seeks consent to modify the concept consent (D/2019/649) to achieve general consistency with the winning scheme and consistency with the detailed design development application (D/2023/97) concurrently lodged and reported to the CSPC.
25. Illustrations and a description of the section 4.56 modification application follow at **Figure 14 to 34** (comparing the approved stamped/condition satisfied plans and the proposed/modified building envelope plans). A complete set of the proposed/modified building envelope plans is at **Attachment B**.
- (a) Building A - Retail pavilion
 - (i) Modification of the building shape and siting and reduction in building height (RL 11.150 approved and RL 10.75 proposed).

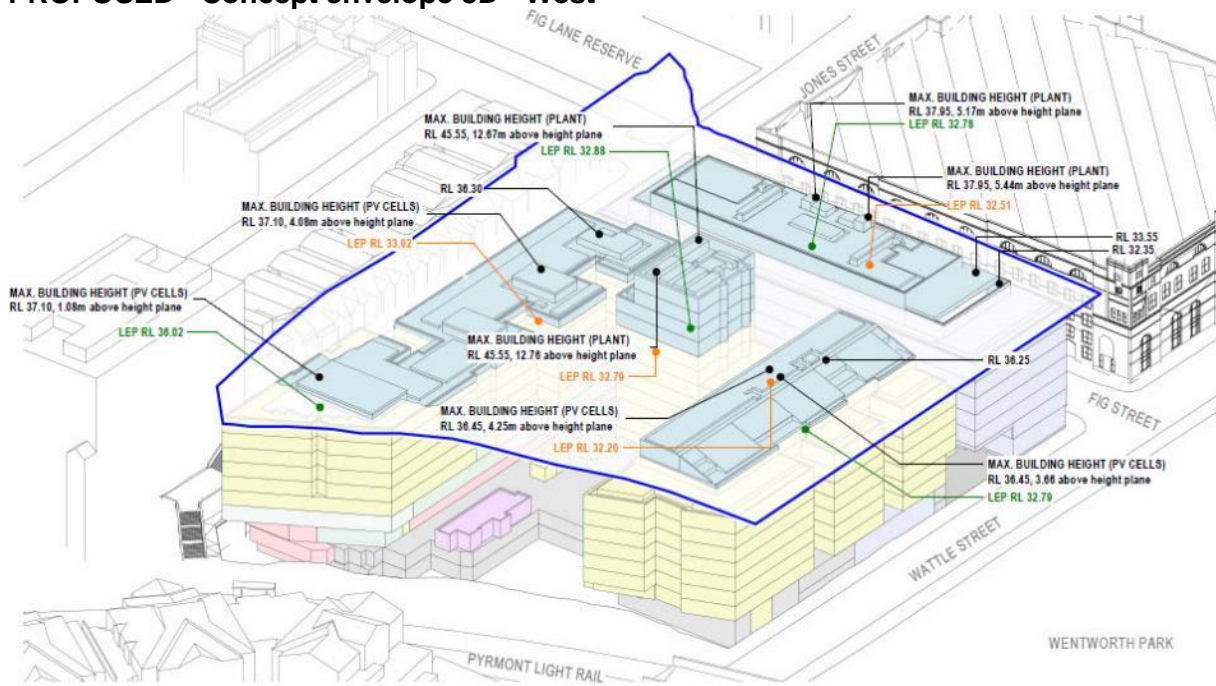
- (b) Building B - Jones Street
 - (i) Increased residential floor-to-floor heights from 3.1 metres to 3.2 metres in accordance with the Design and Building Practitioners Act 2020.
 - (ii) Deeper, wider and higher than the approved envelope (RL 35.70 approved and RL 37.10 proposed).
 - (iii) Increased articulation.
- (c) Building C - Courtyard and Building D - Wattle Street
 - (i) Reconfiguration of the approved L-shape building to create a separate (taller) Building C - Courtyard Building and a separate Building D - Wattle Street with an additional north/south through-site link.
 - (ii) Increased residential floor-to-floor heights from 3.1 metres to 3.2 metres in accordance with the Design and Building Practitioners Act 2020.
 - (iii) Building D - Wattle Street has a deeper, wider and higher envelope than the relevant part of the approved Wattle Street Building (RL 33.50/32.550 approved and RL 36.25 proposed).
 - (iv) Building C - Courtyard is higher than the relevant part of the approved Wattle Street Building (RL 35.950 approved and RL 45.55 proposed).
 - (v) Increased articulation.
- (d) Building E - Fig Street
 - (i) Conversion of the approved residential floors (Levels 7 and 8) to commercial.
 - (ii) 3.6m floor to floor height.
 - (iii) Higher than the approved envelope (RL 35.95 approved and RL 37.95 proposed).
 - (iv) Increased articulation.

Conditions 2, 3, 5, 7, 12, 14, 22, 30 and 31 of the concept consent are to be modified to reflect the modified/proposed plans and information.

APPROVED - Concept envelope 3D - West



PROPOSED - Concept envelope 3D - West

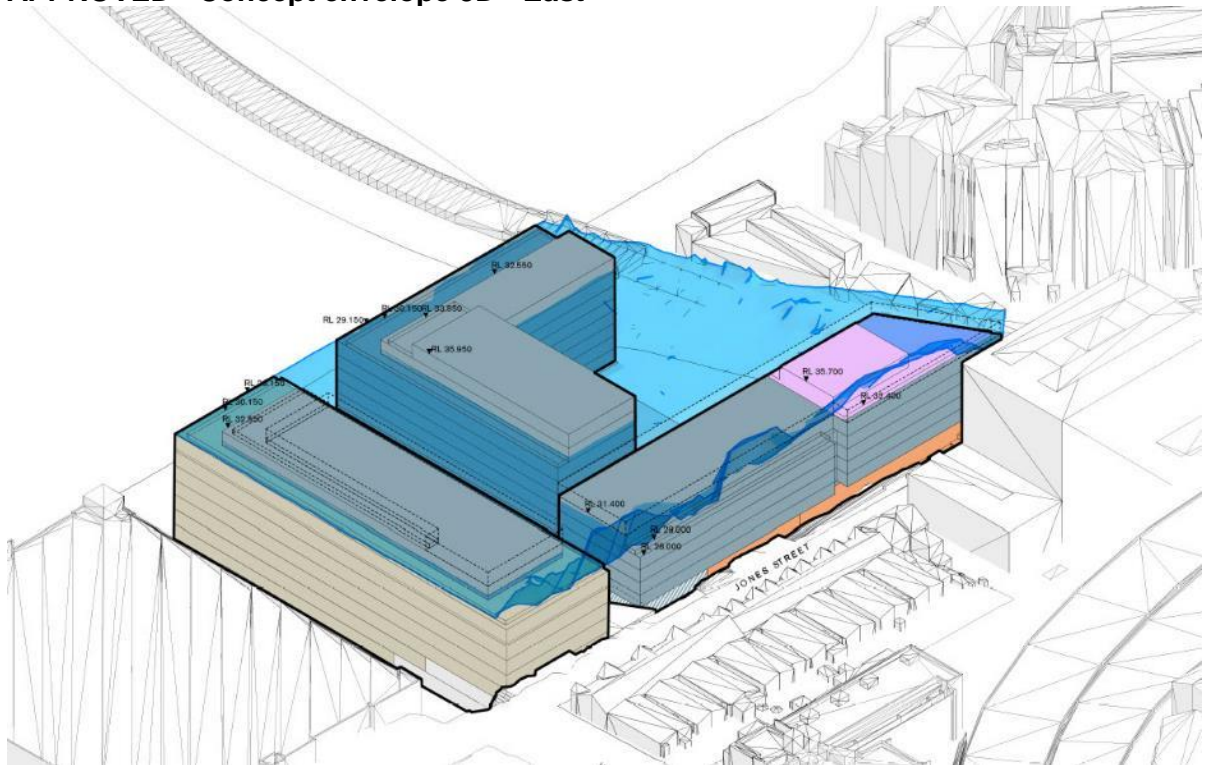


STAGE 1 DA MODIFICATION MASSING - WEST

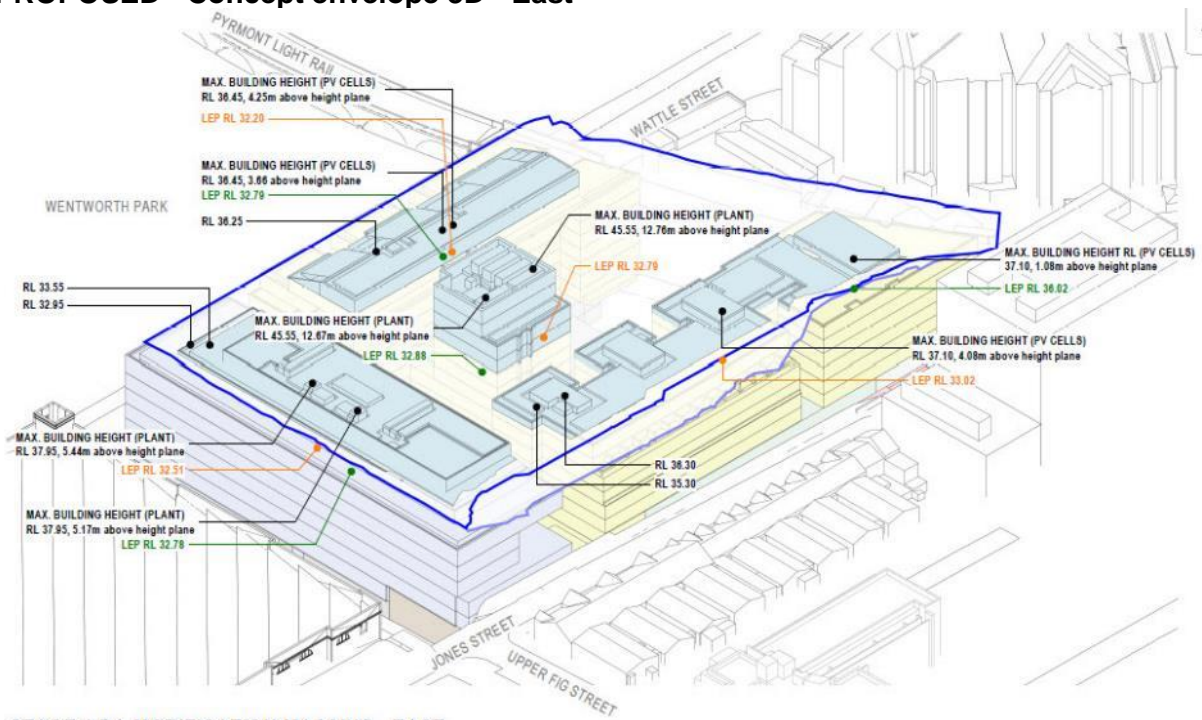
— LEP HEIGHT LIMIT + 10% PLANE
(29.7M ABOVE EXISTING GROUND LEVEL)

Figure 14: Envelope plans: Approved and proposed 3D massing West

APPROVED - Concept envelope 3D - East



PROPOSED - Concept envelope 3D - East

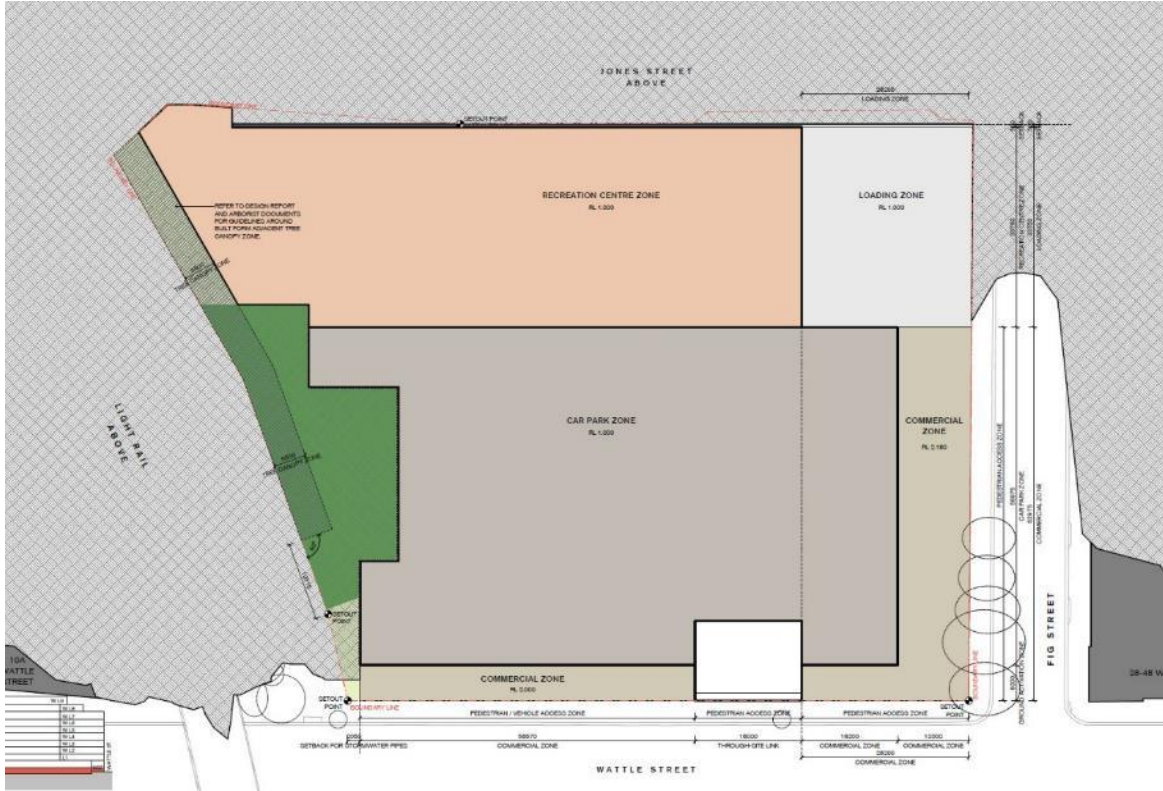


STAGE 1 DA MODIFICATION MASSING - EAST

— LEP HEIGHT LIMIT + 10% PLANE
(29.7M ABOVE EXISTING GROUND LEVEL)

Figure 15: Envelope plans: Approved and proposed 3D massing East

APPROVED - Basement 2



PROPOSED - Level 00

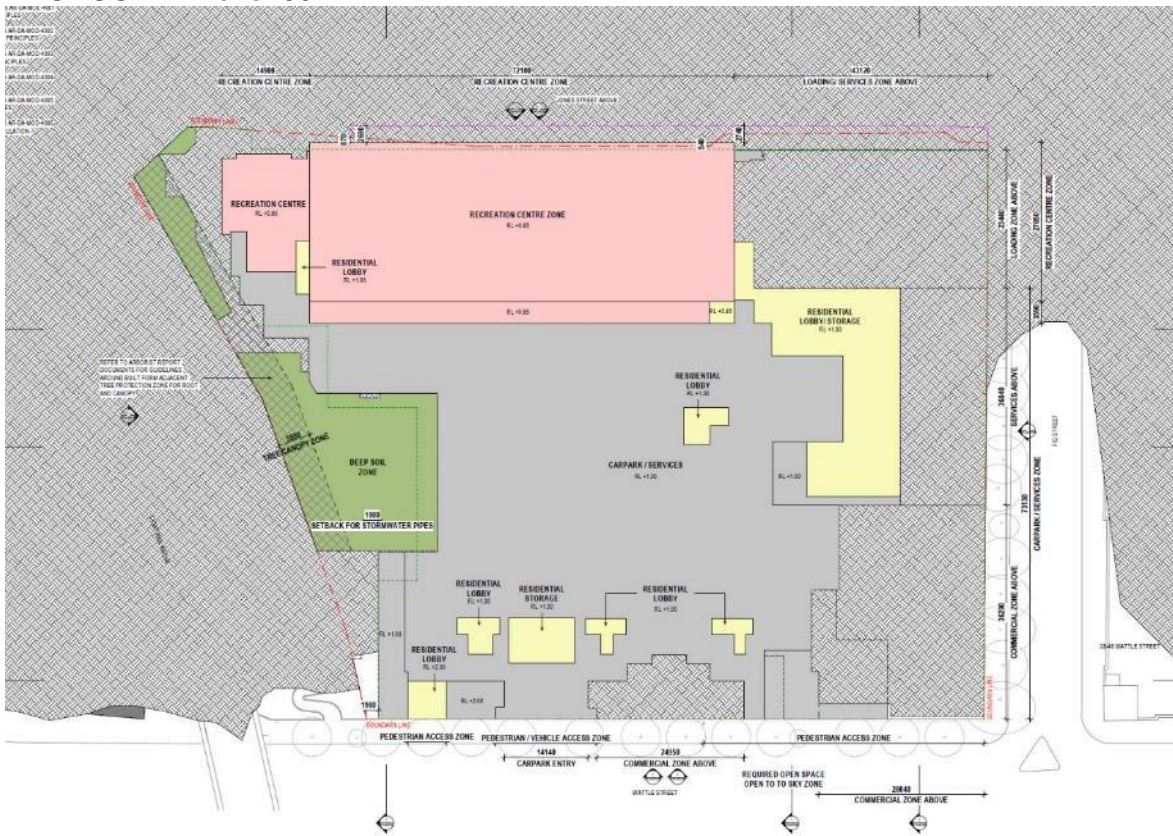
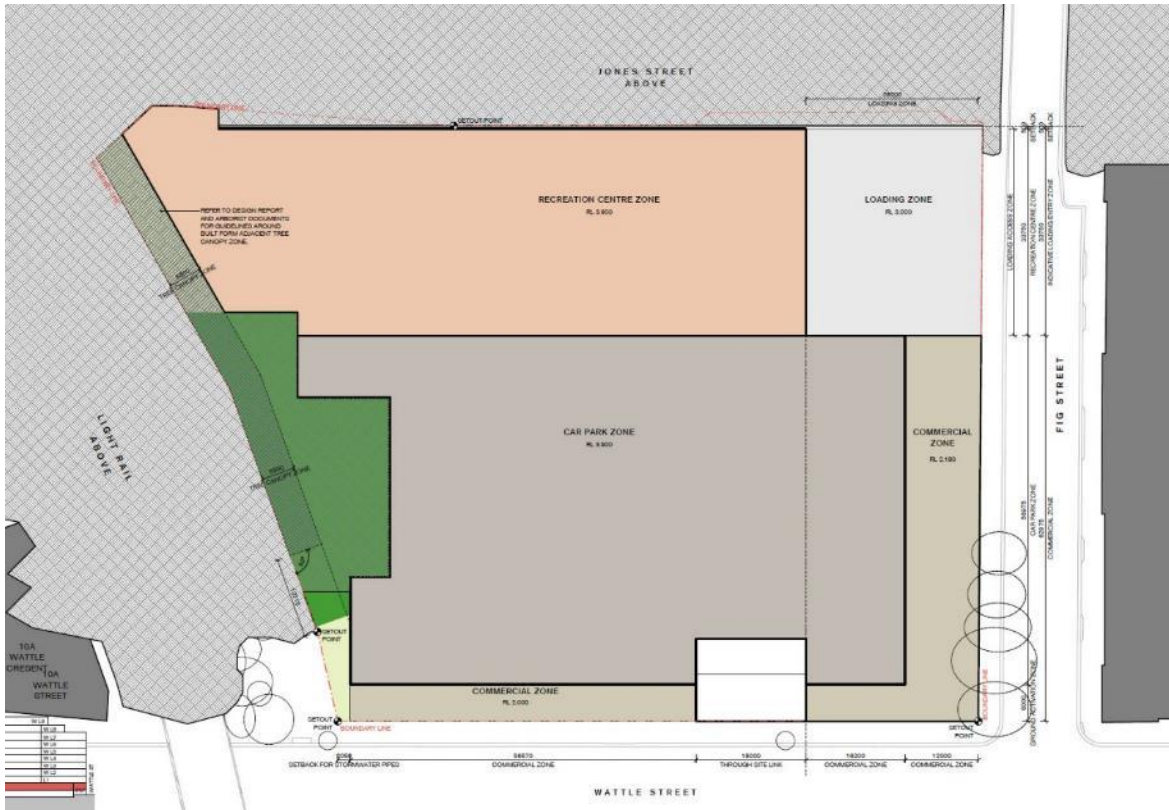


Figure 16: Envelope plans: Approved Basement 2 and proposed Level 00

APPROVED - Basement 1



PROPOSED - Level 01

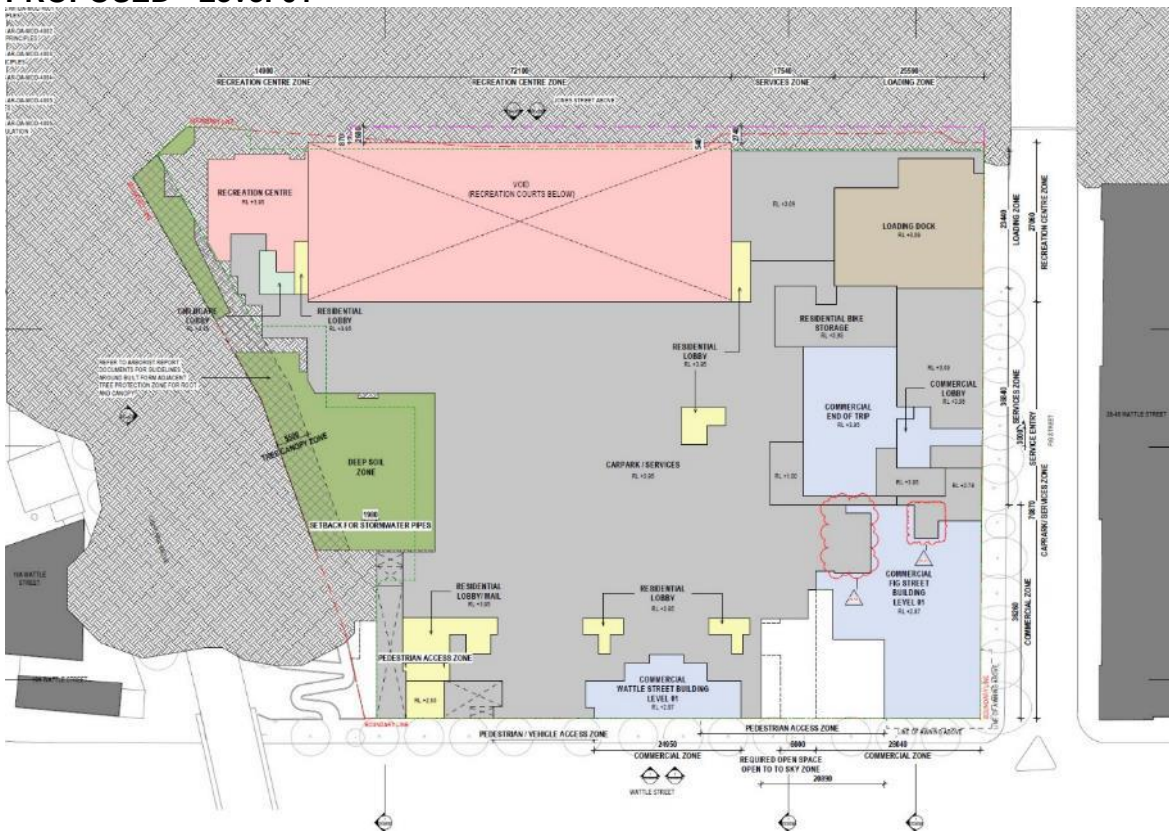
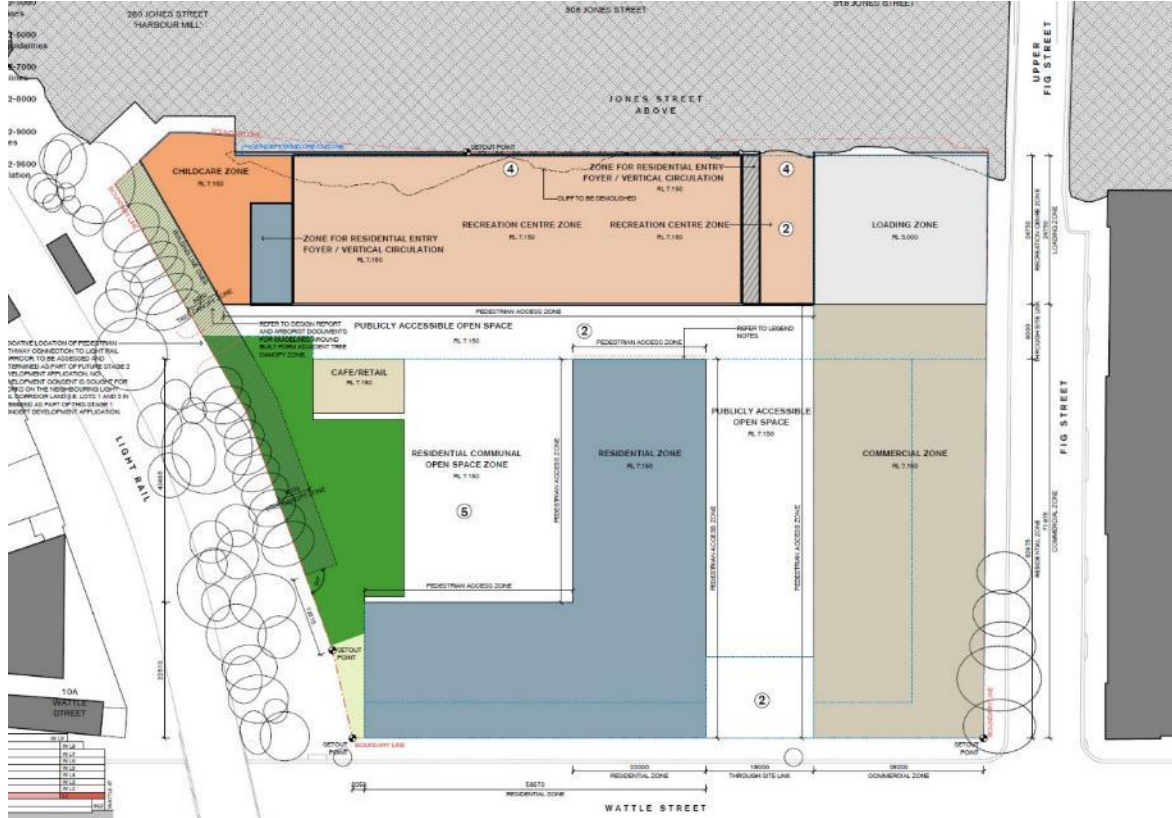


Figure 17: Envelope plans: Approved Basement 1 and proposed Level 01

APPROVED - Level 1



MODIFIED - Level 02

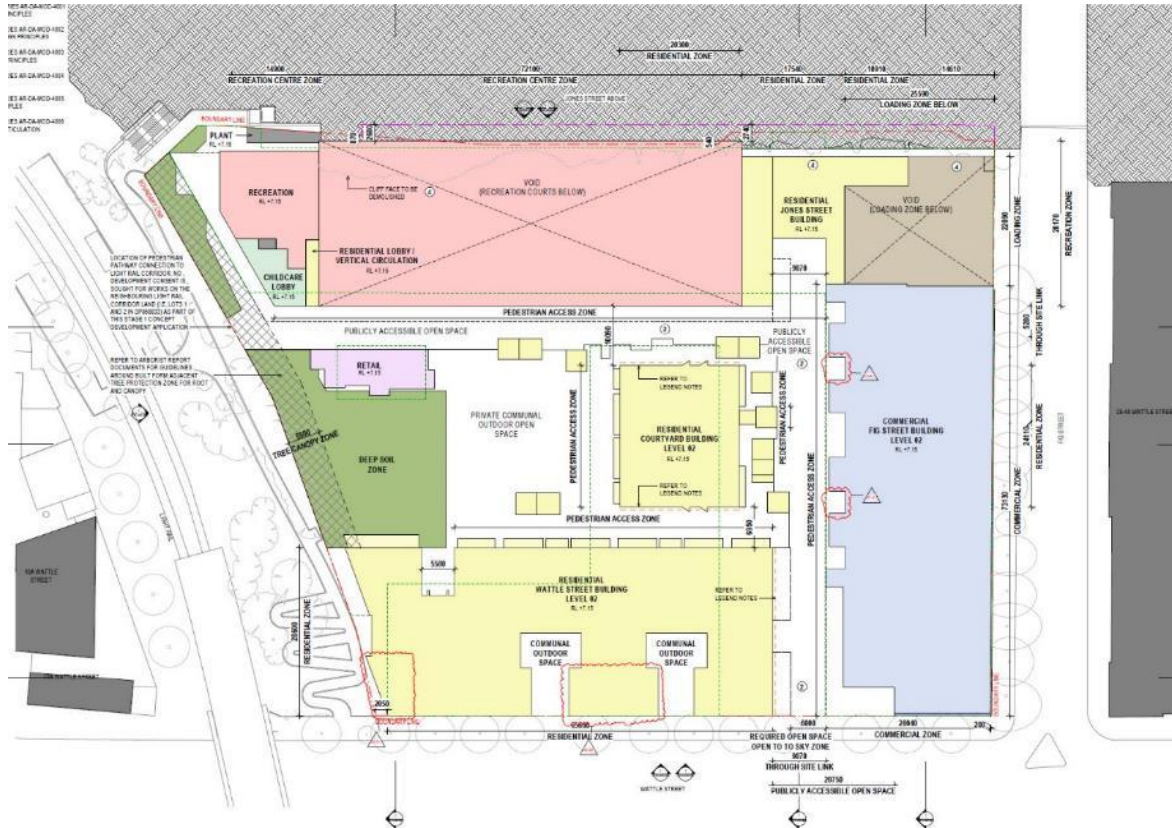
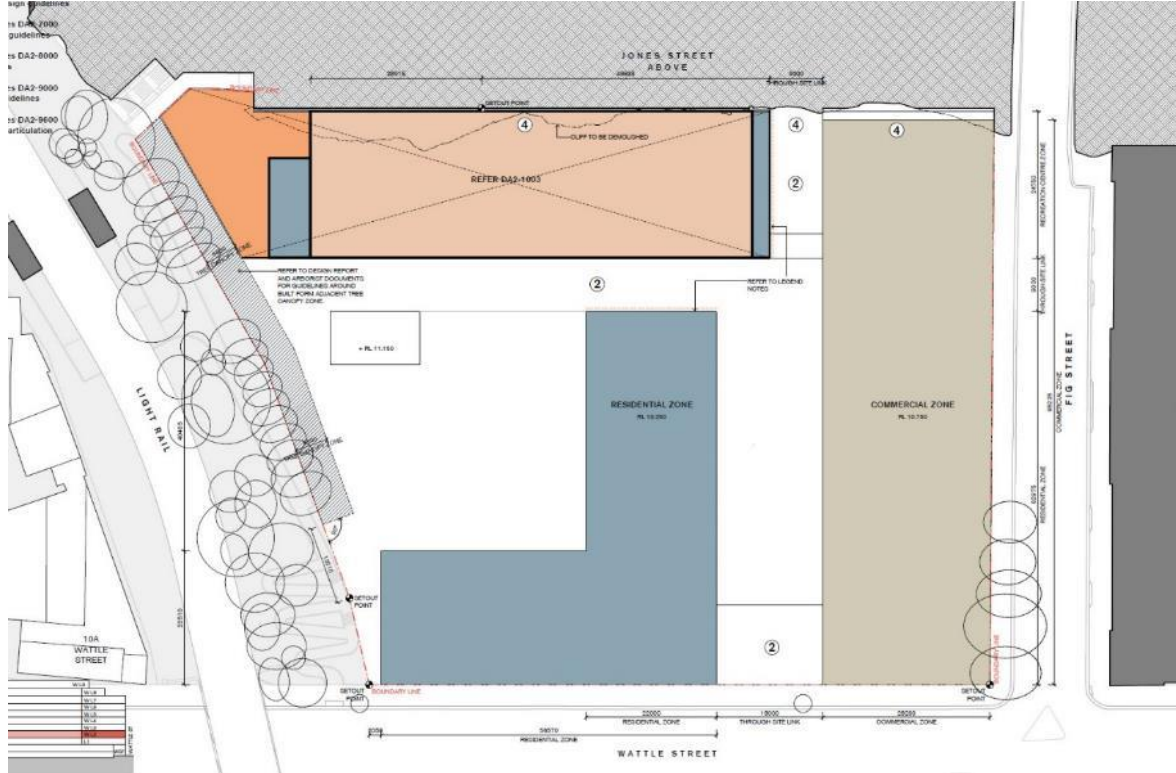


Figure 18: Envelope plans: Approved Level 1 and proposed Level 02

APPROVED - Level 2



PROPOSED - Level 03

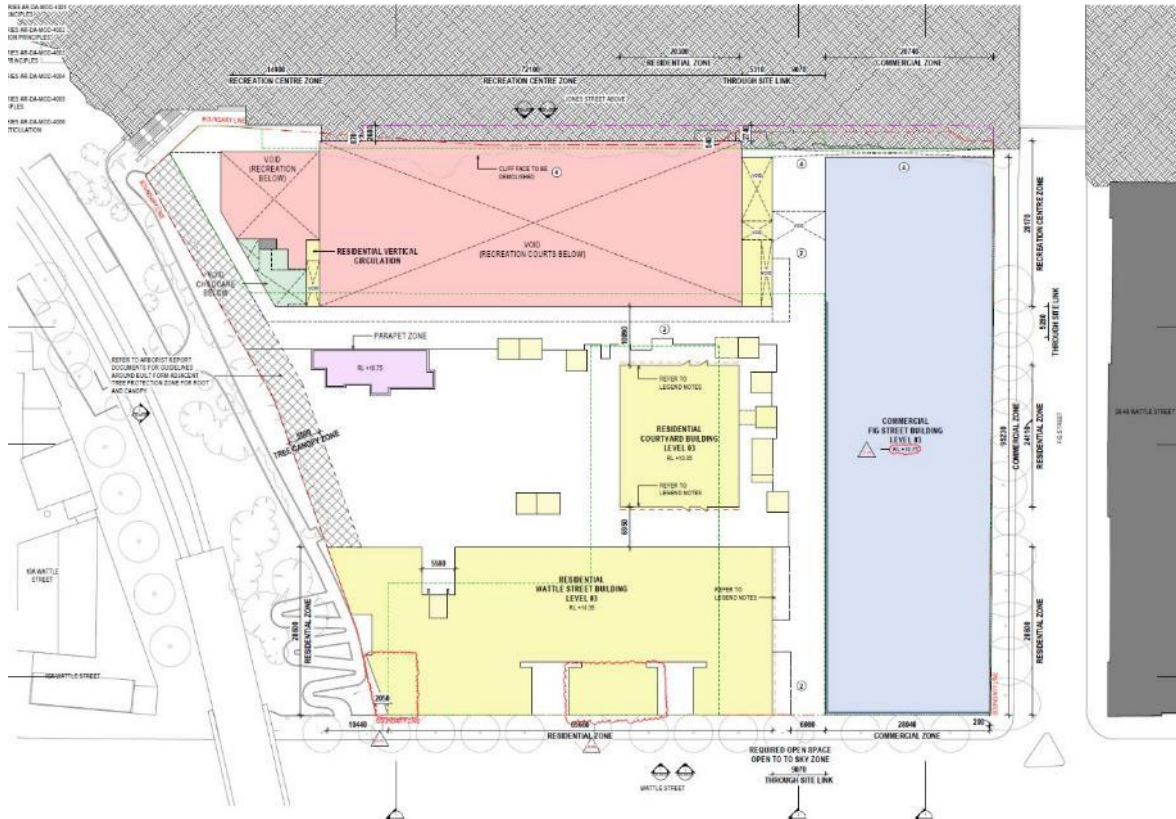
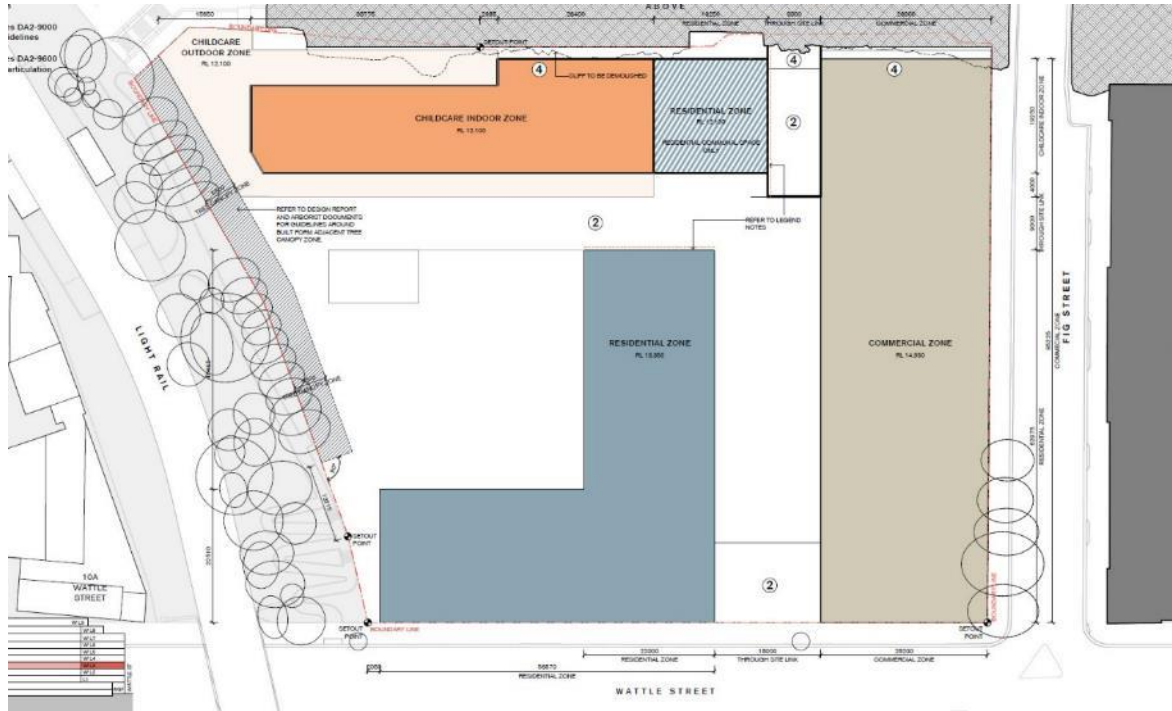


Figure 19: Envelope plans: Approved Level 2 and proposed Level 03

APPROVED - Level 2/3



PROPOSED - Level 04

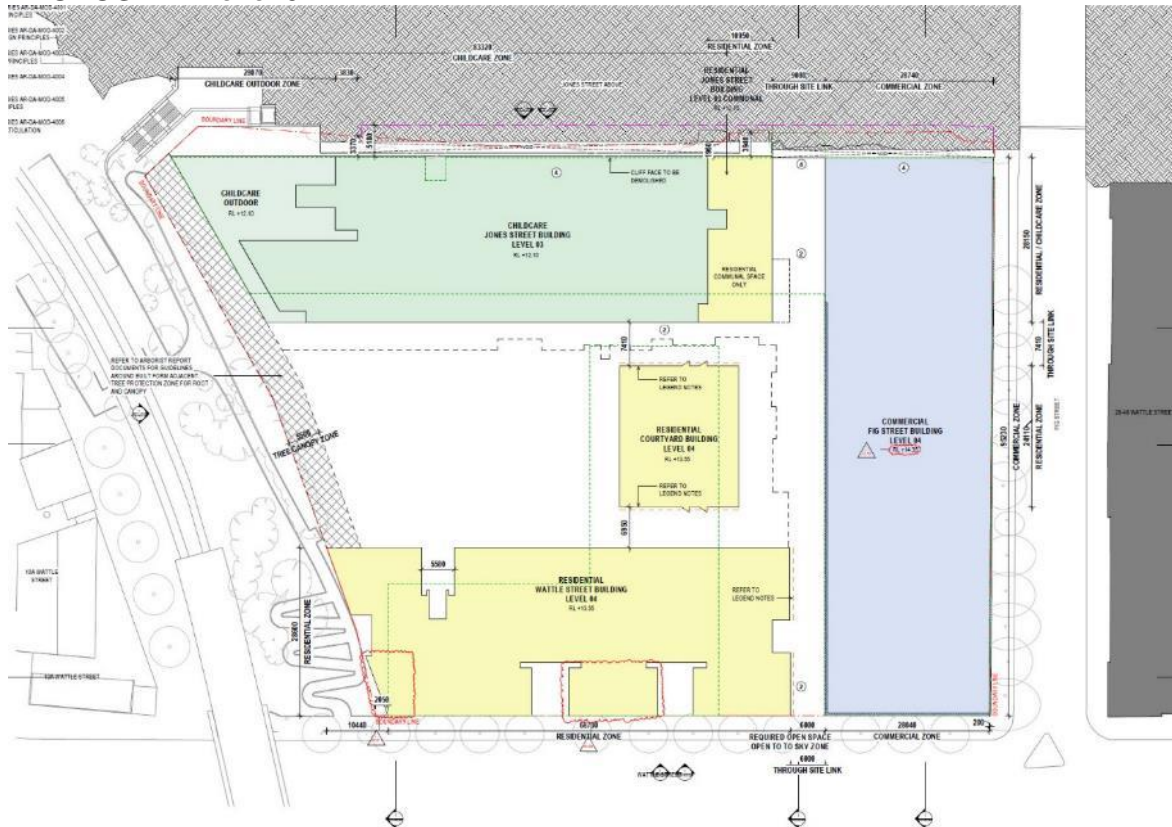
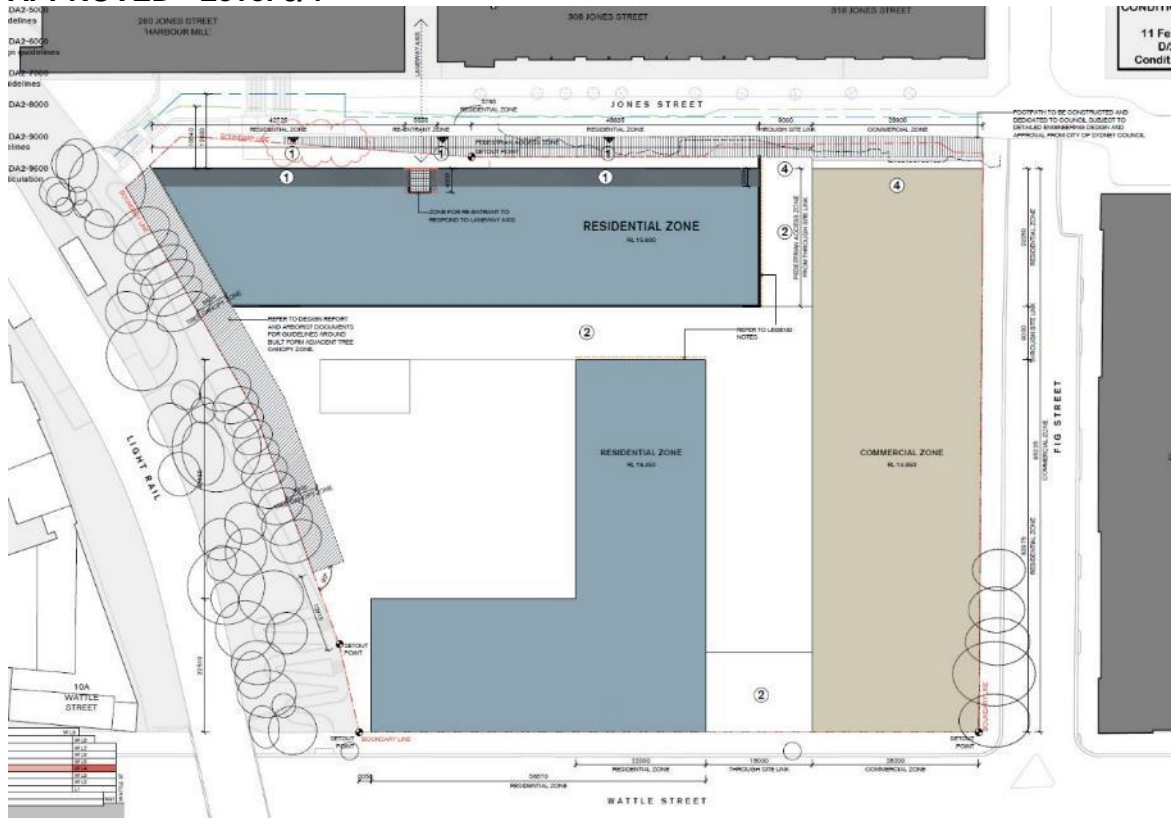


Figure 20: Envelope plans: Approved Level 2/3 and proposed Level 04

APPROVED - Level 3/4



PROPOSED - Level 04/05

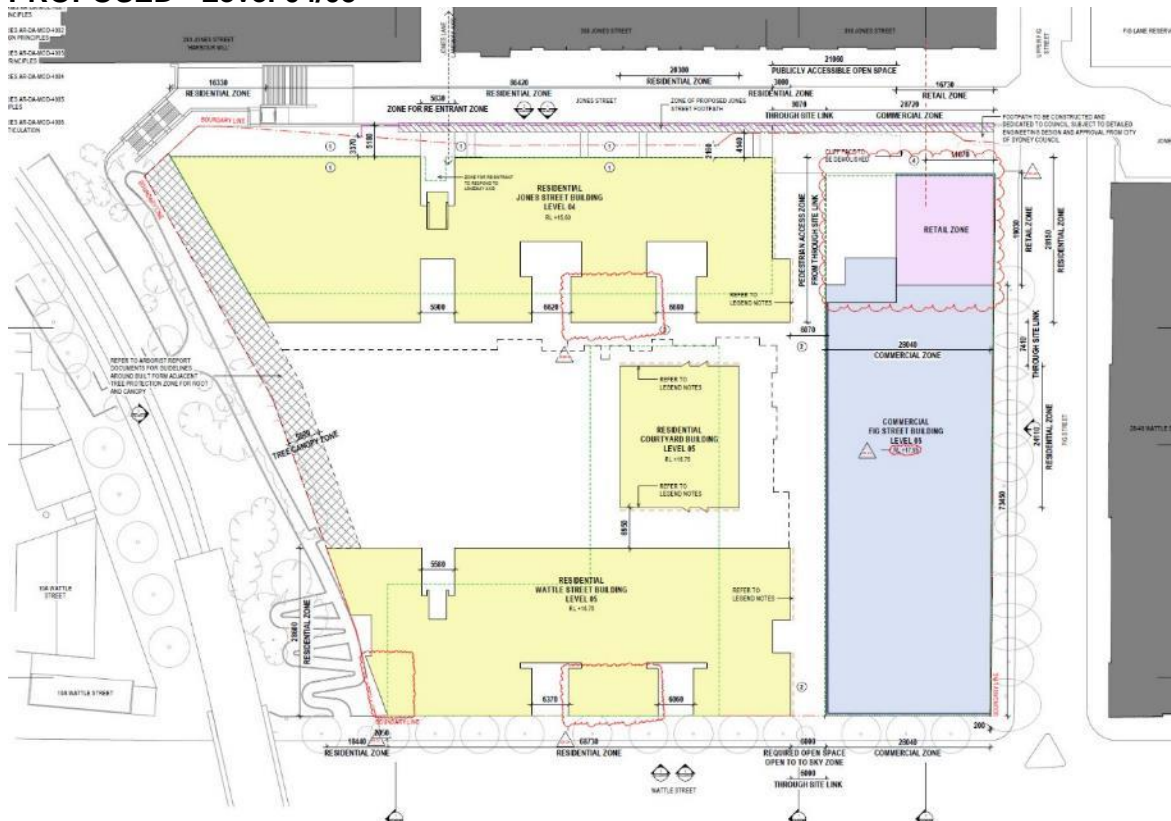
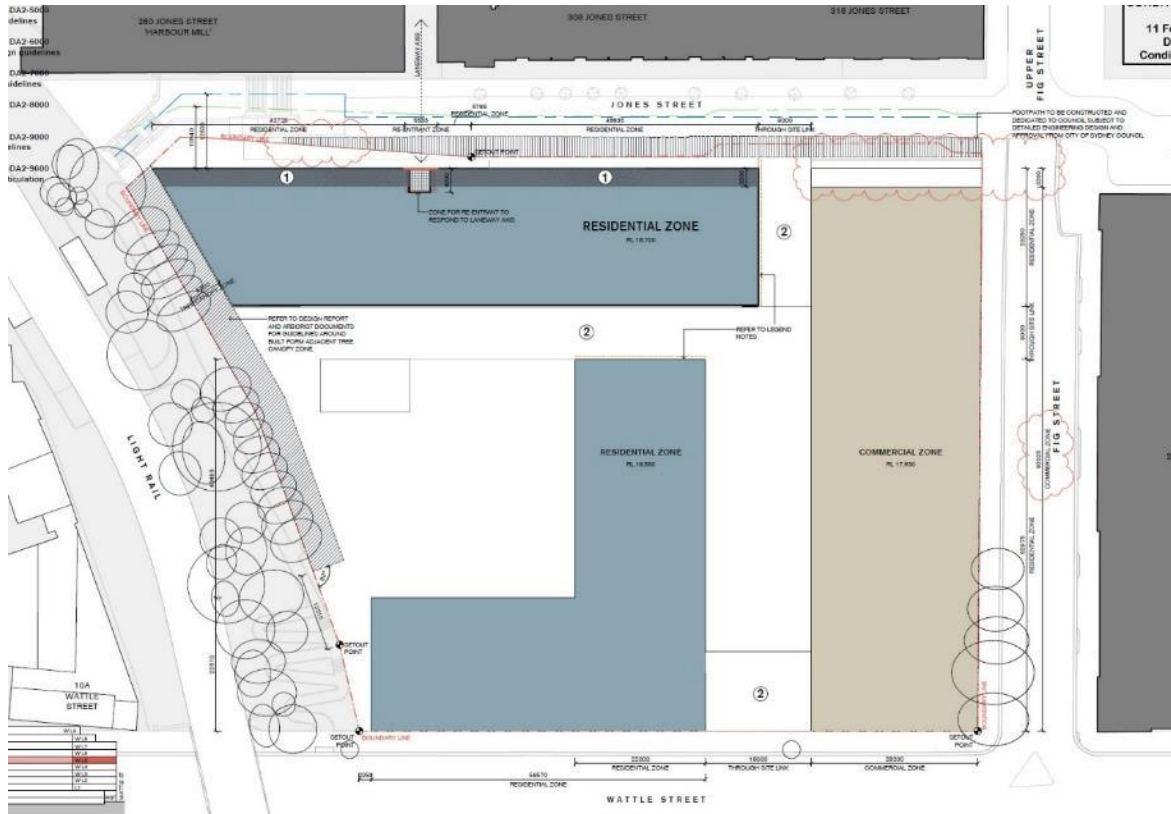


Figure 21: Envelope plans: Approved Level 3/4 and proposed Level 04/05

APPROVED - Level 4/5



PROPOSED - Level 05/06

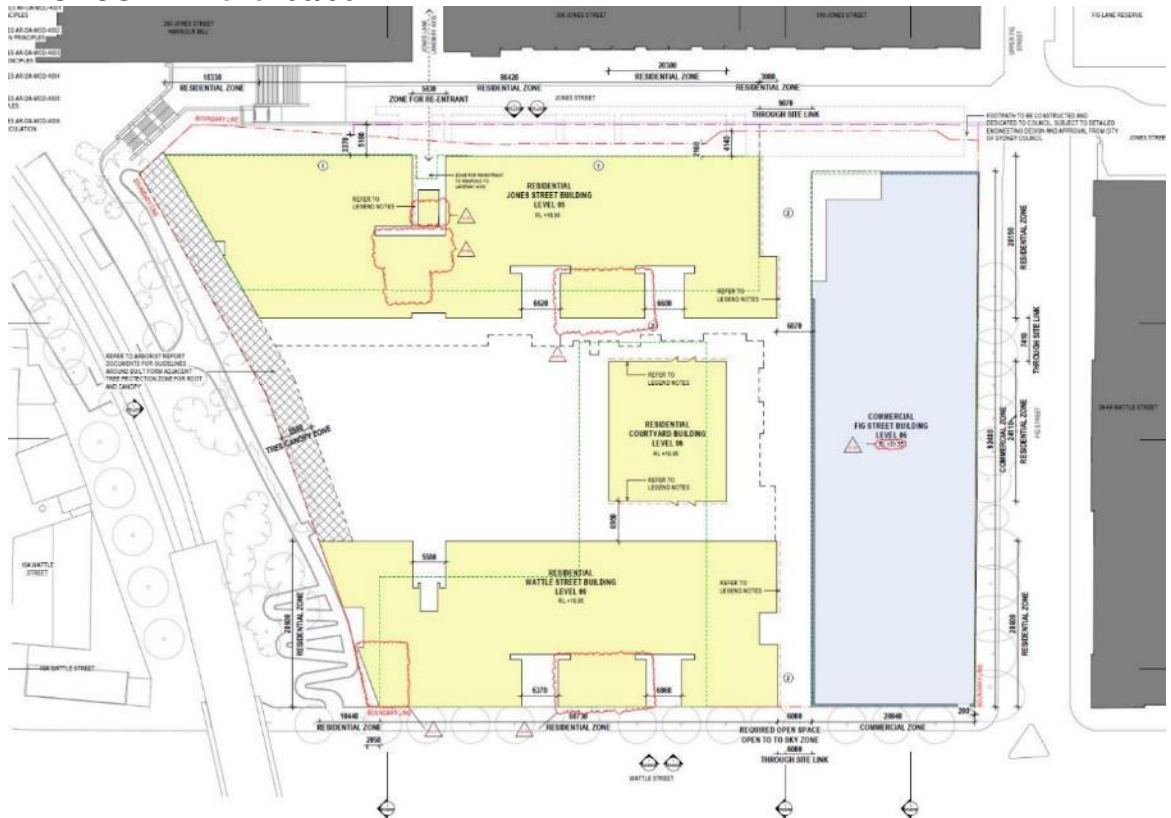
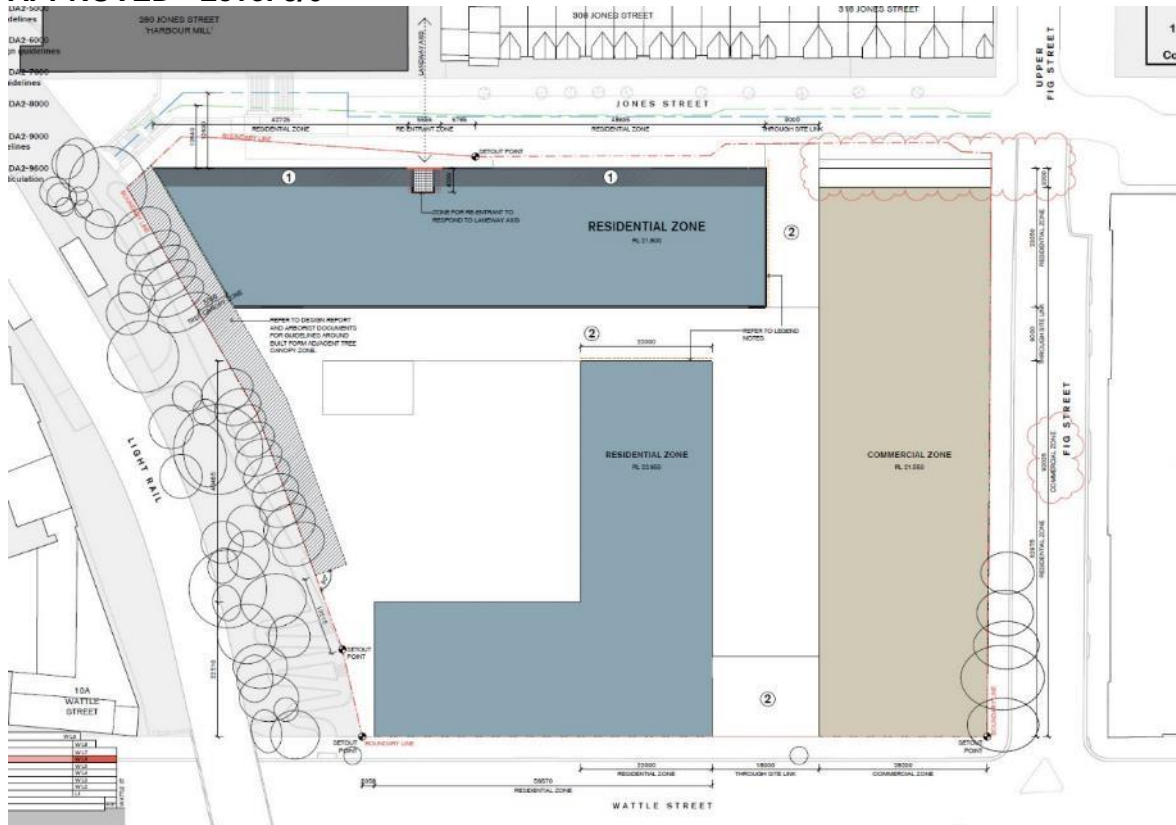


Figure 22: Envelope plans: Approved Level 4/5 and proposed Level 05/06

APPROVED - Level 5/6



PROPOSED- Level 06/07

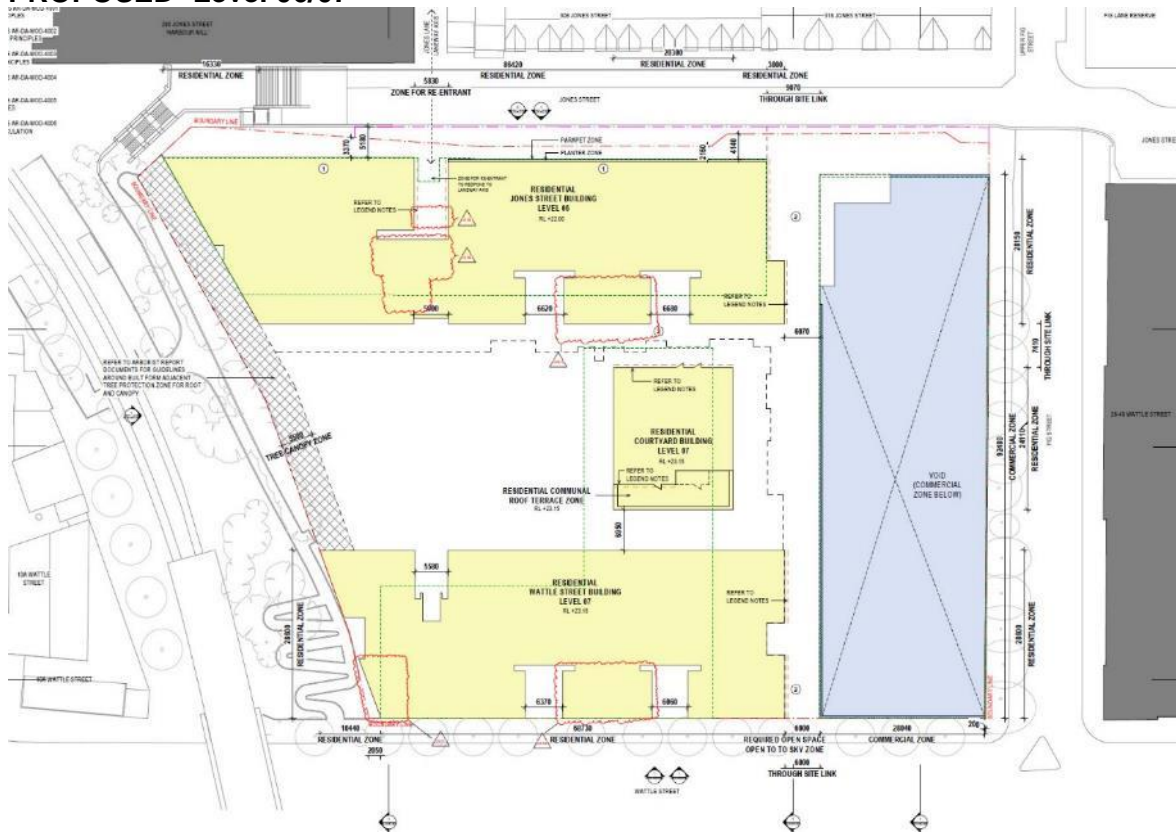
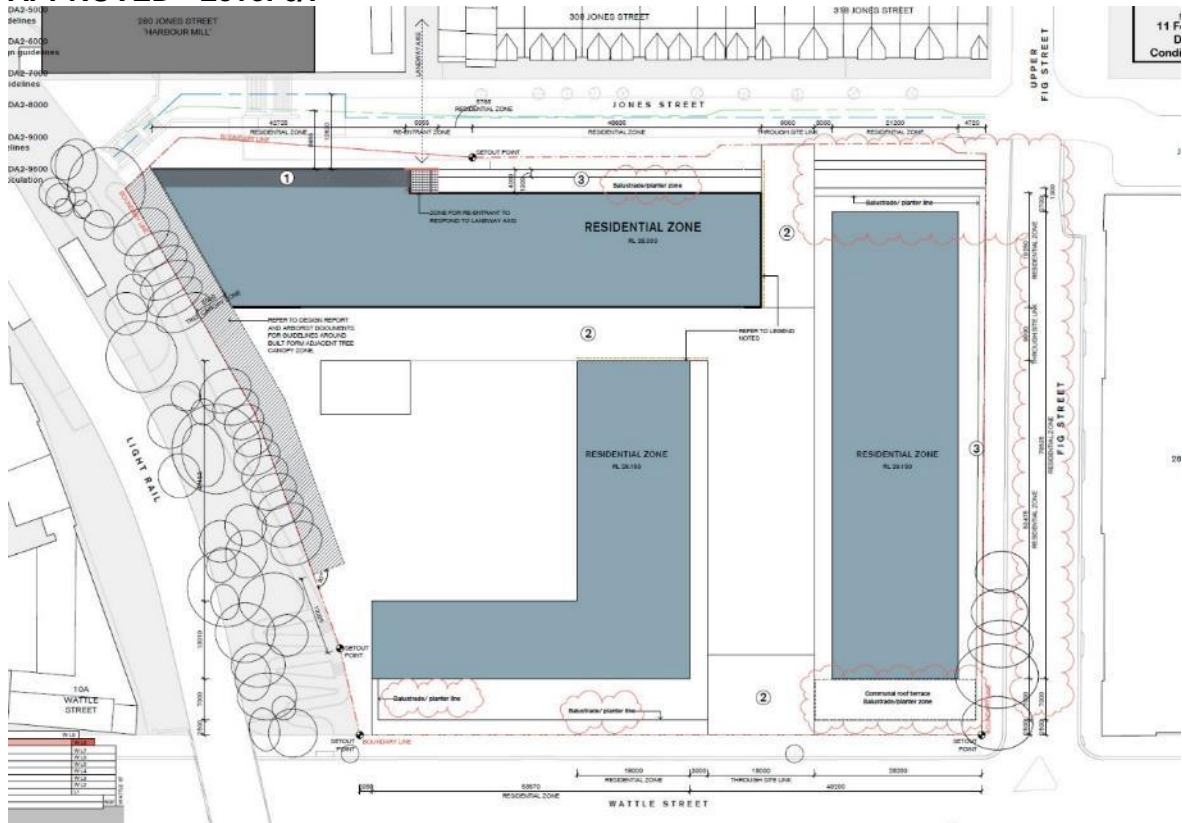


Figure 23: Envelope plans: Approved Level 5/6 and proposed Level 06/07

APPROVED - Level 6/7



PROPOSED - Level 07/08

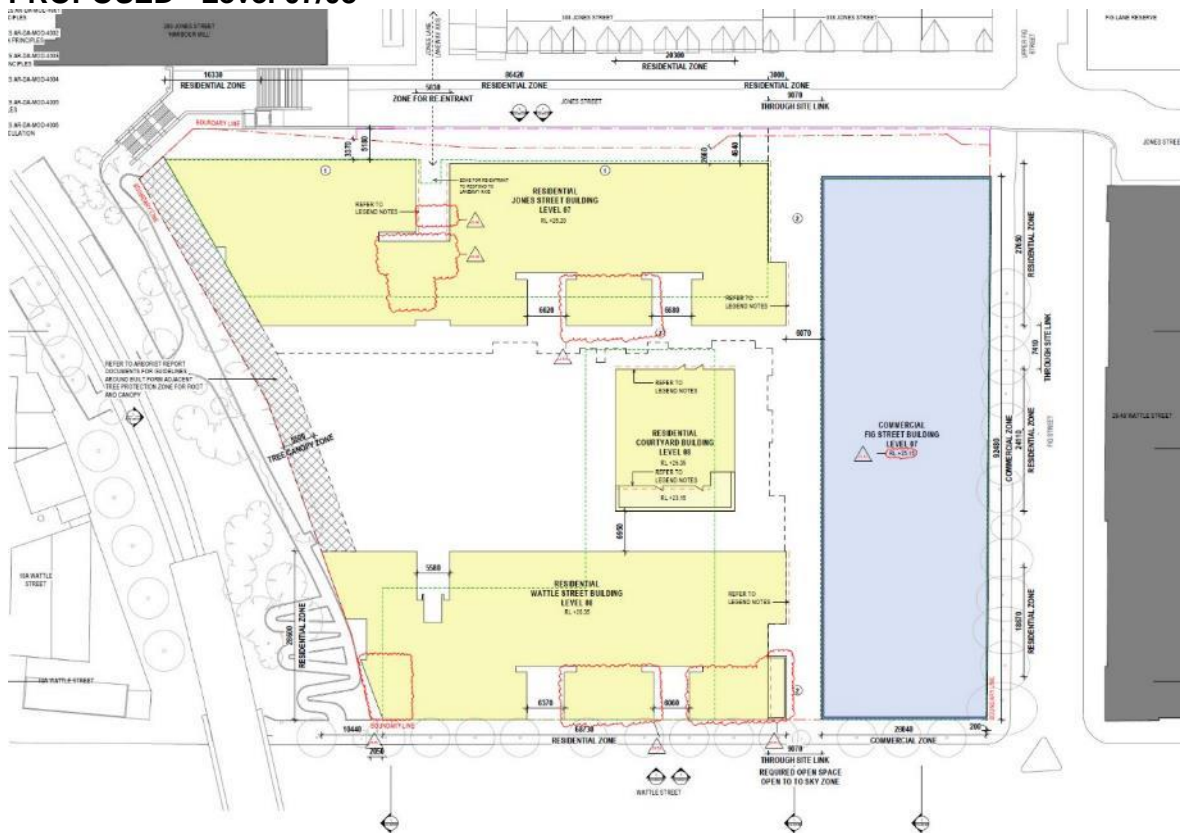
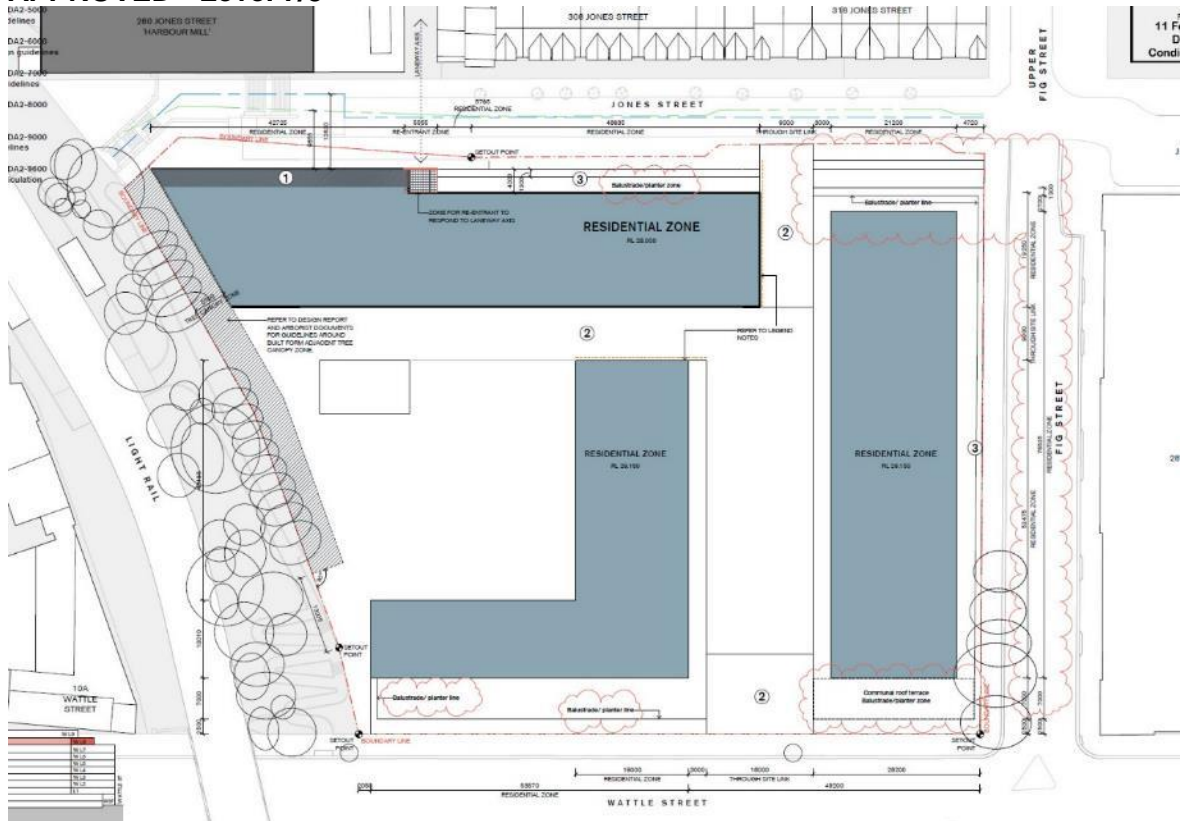


Figure 24: Envelope plans: Approved Level 6/7 and proposed Level 07/08

APPROVED - Level 7/8



PROPOSED - Level 08/09

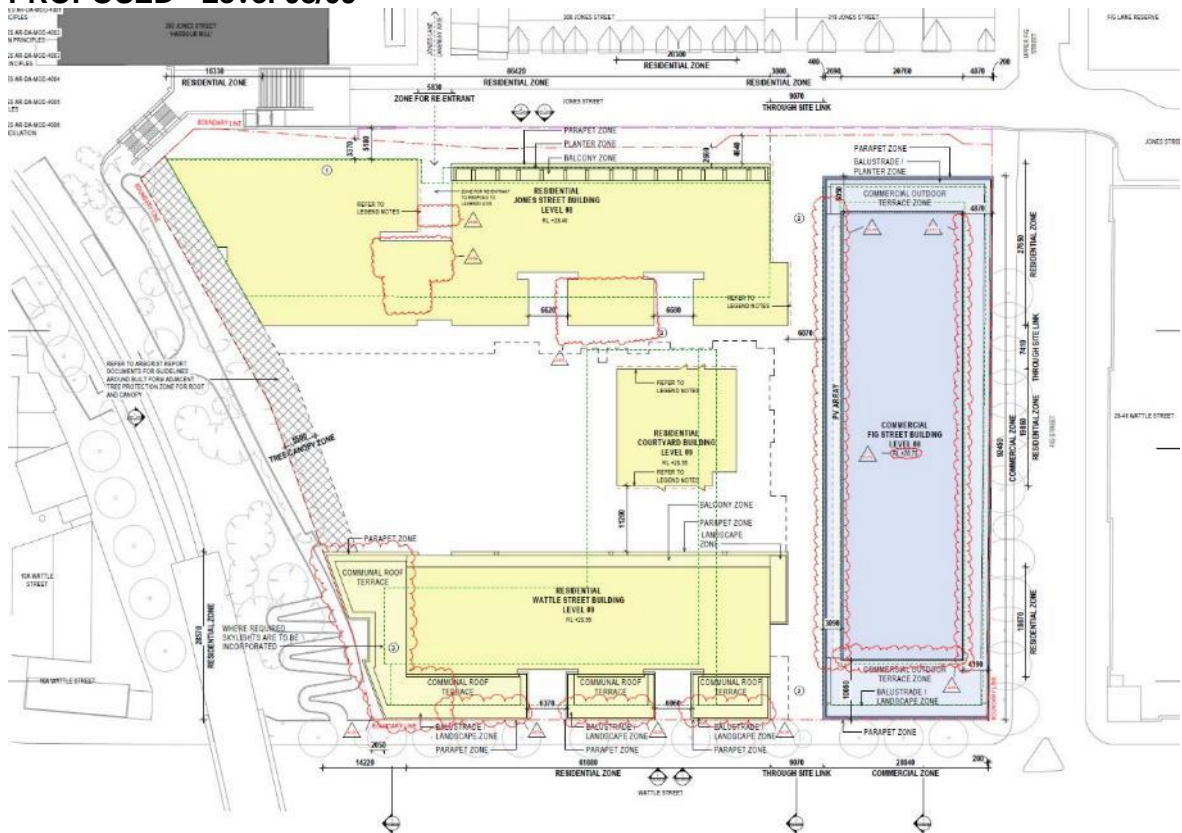
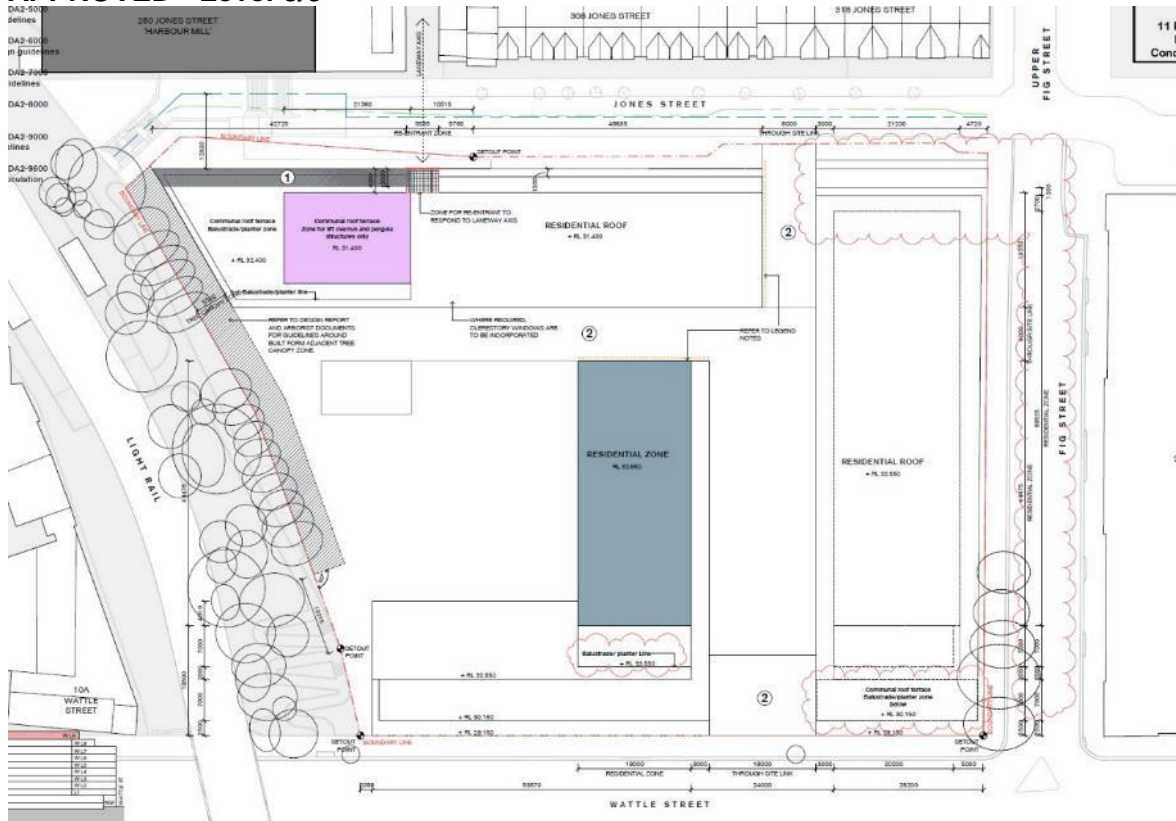


Figure 25: Envelope plans: Approved Level 7/8 and proposed Level 08/09

APPROVED - Level 8/9



PROPOSED - Level 09/10

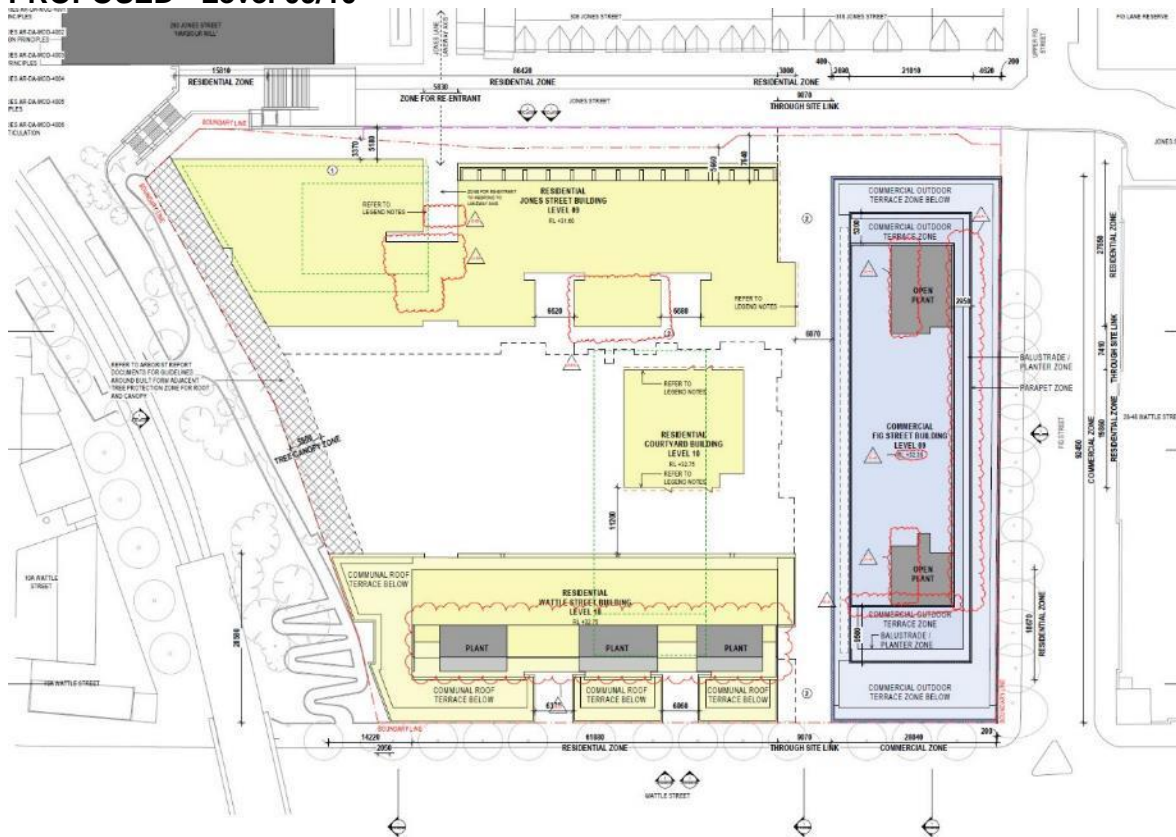
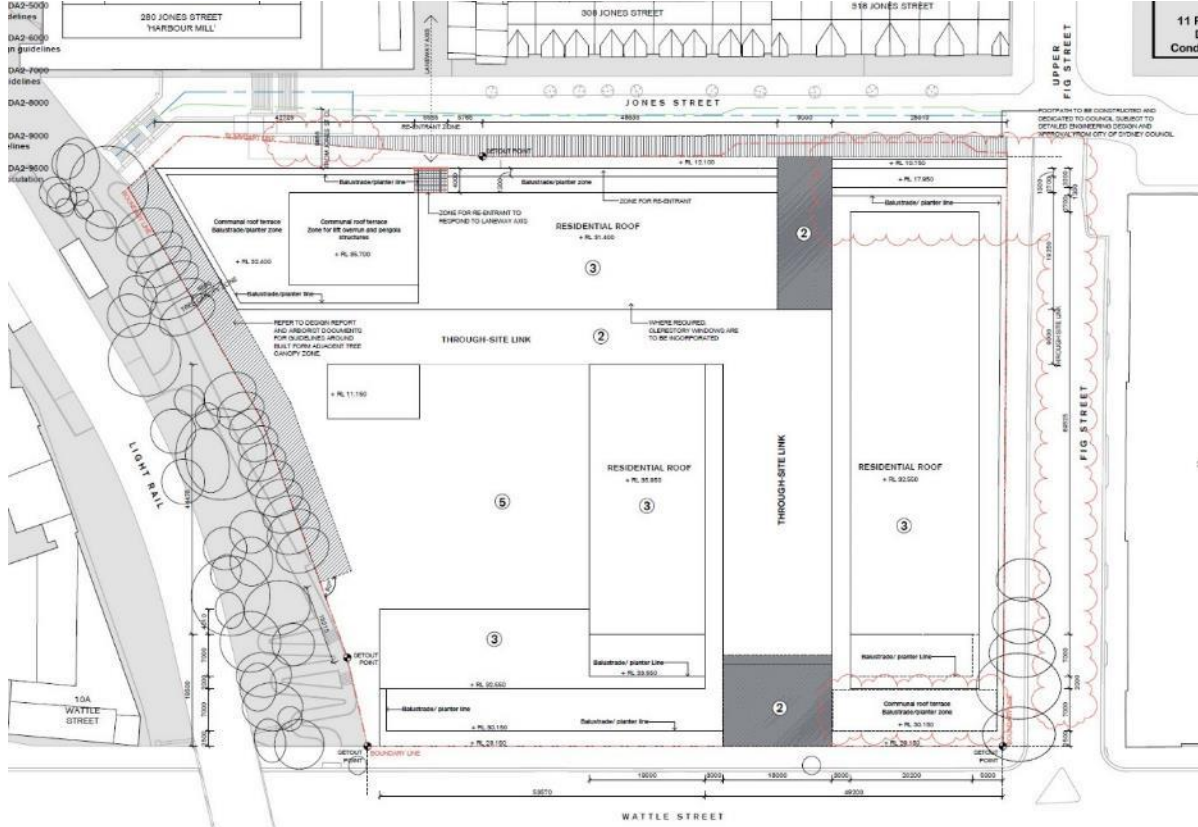


Figure 26: Envelope plans: Approved Level 8/9 and proposed Level 09/10

APPROVED - Roof



PROPOSED - Level 10/11

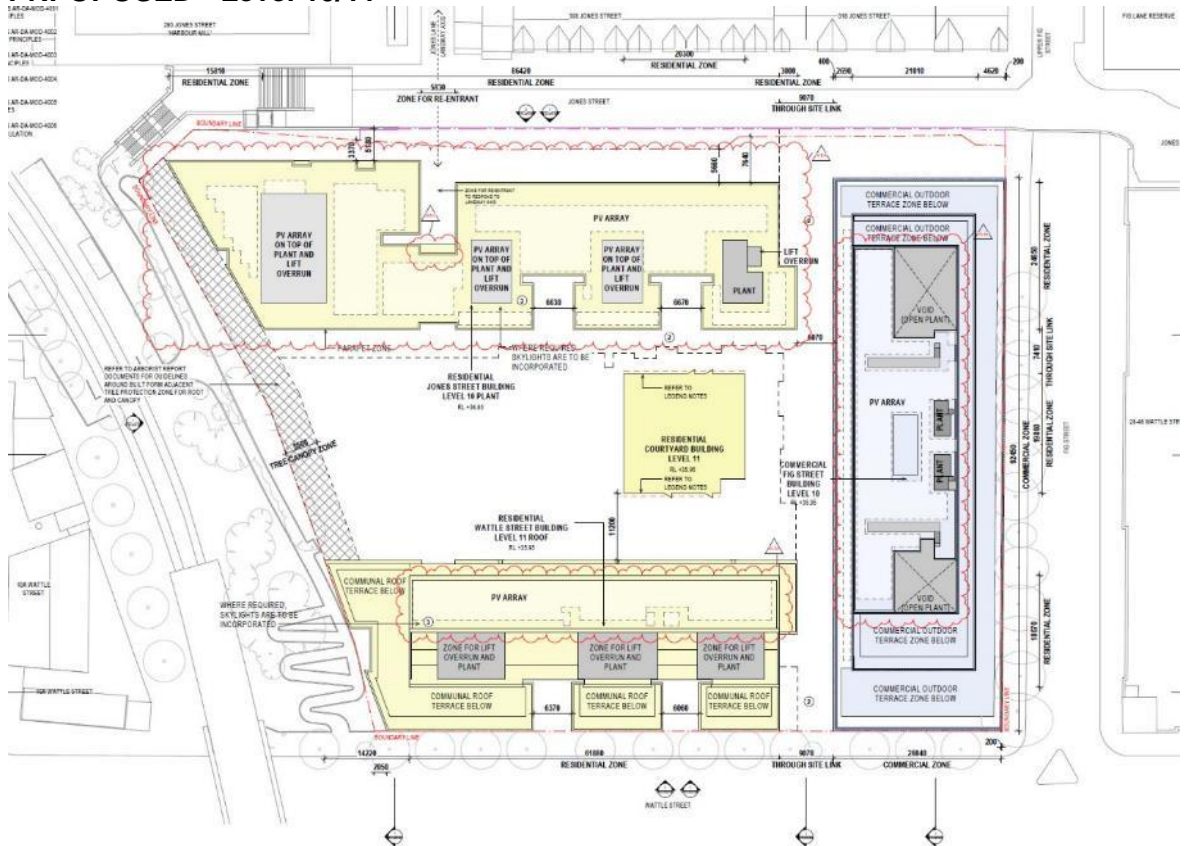


Figure 27: Envelope plans: Approved Roof and proposed Level 10/11

APPROVED - N/A

PROPOSED - Level 11/12

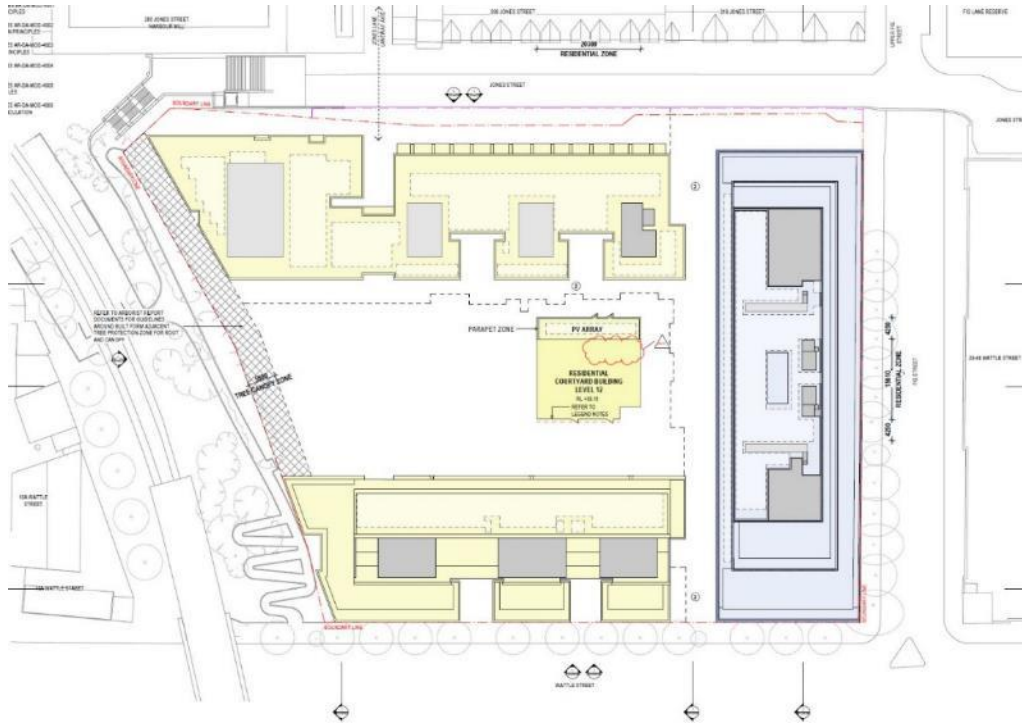


Figure 28: Envelope plans: Proposed Level 11/12

APPROVED - N/A

PROPOSED - Level 13

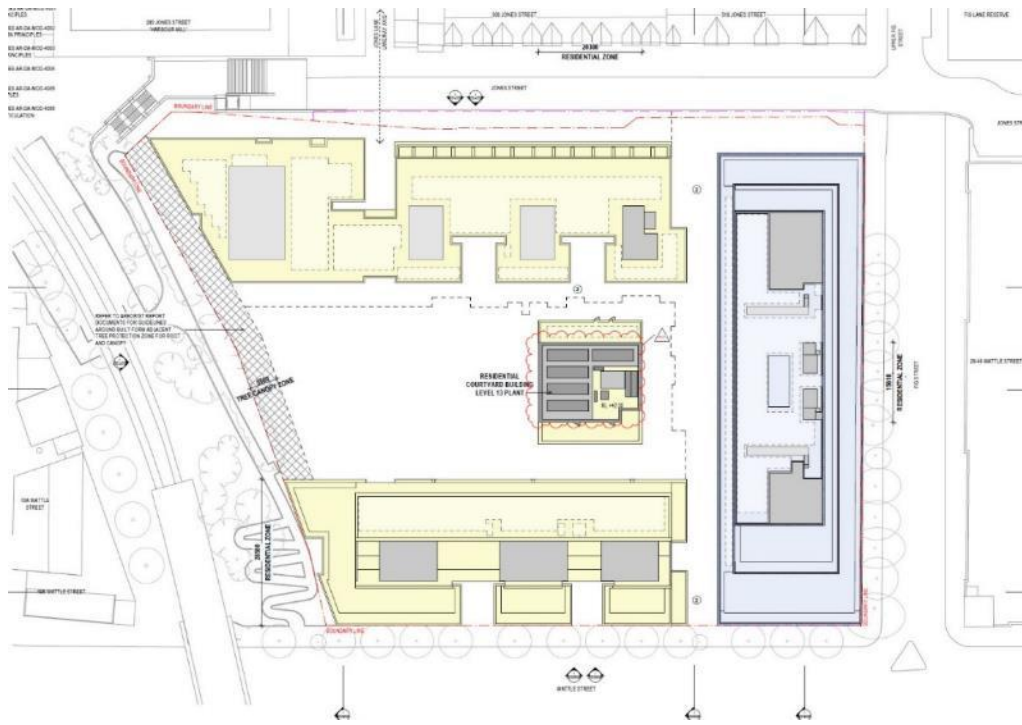


Figure 29: Envelope plans: Proposed Level 13

APPROVED - N/A

PROPOSED - Level 14 (Roof)

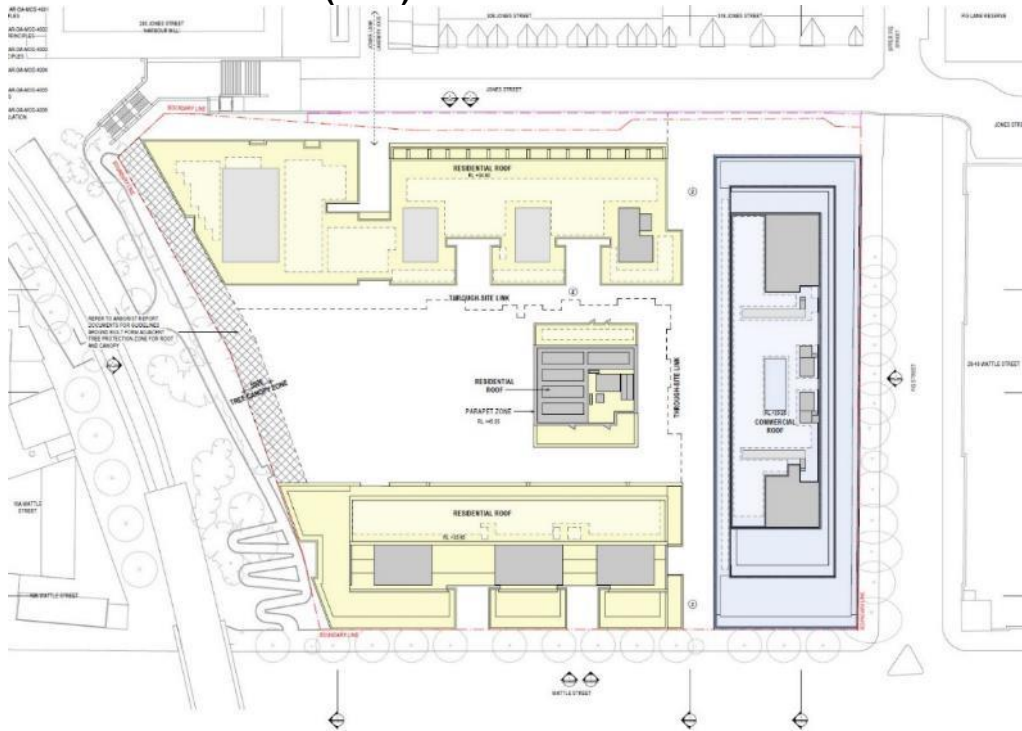
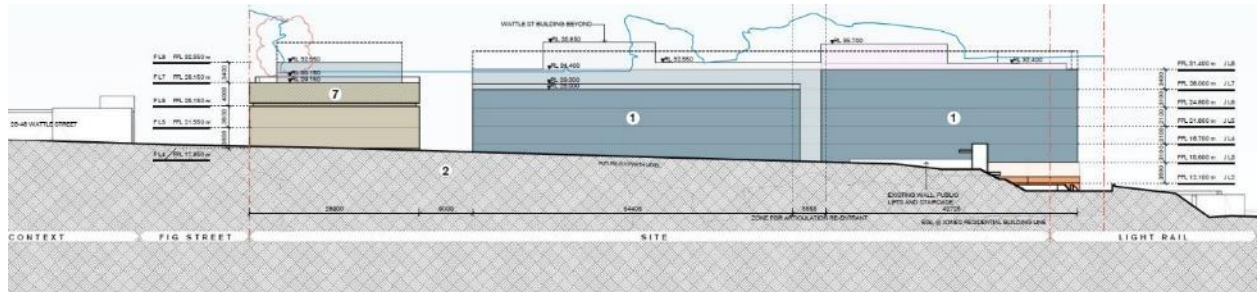


Figure 30: Envelope plans: Proposed Level 14 (Roof)

APPROVED - Jones Street Elevation



PROPOSED - Jones Street Elevation

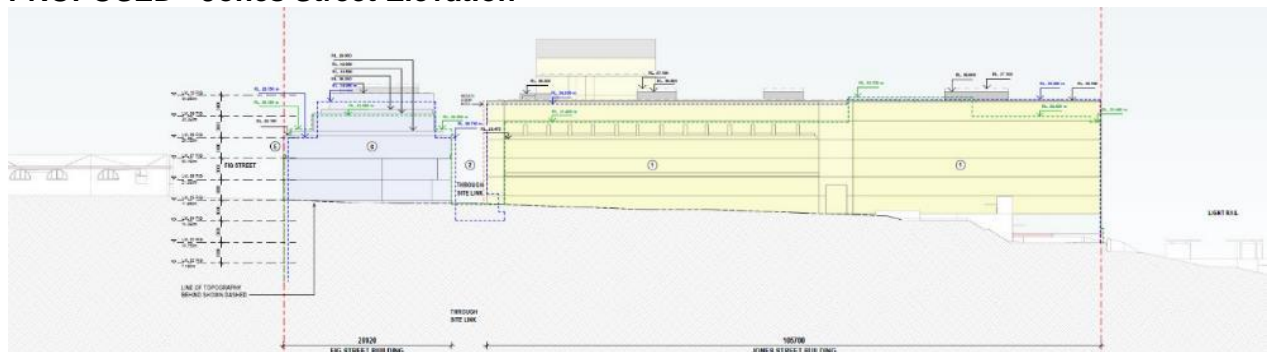
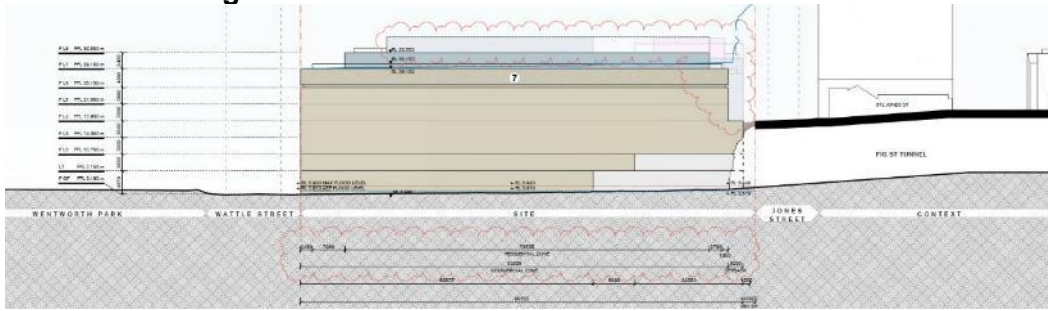


Figure 31: Envelope plans: Approved and proposed Jones Street Elevation

APPROVED - Fig Street Elevation



PROPOSED - Fig Street Elevation

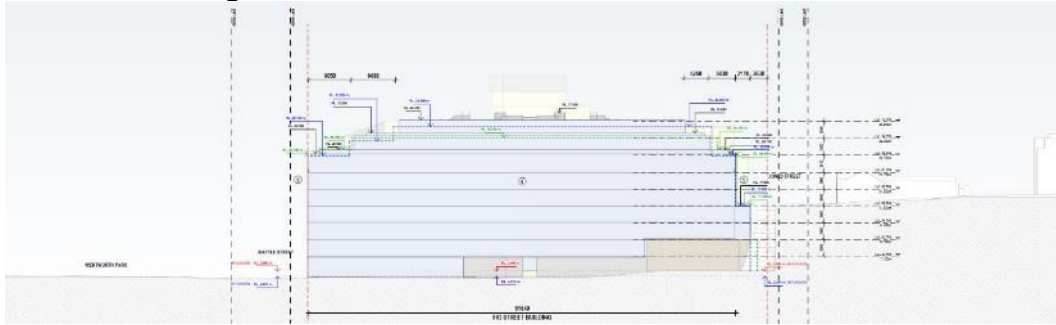
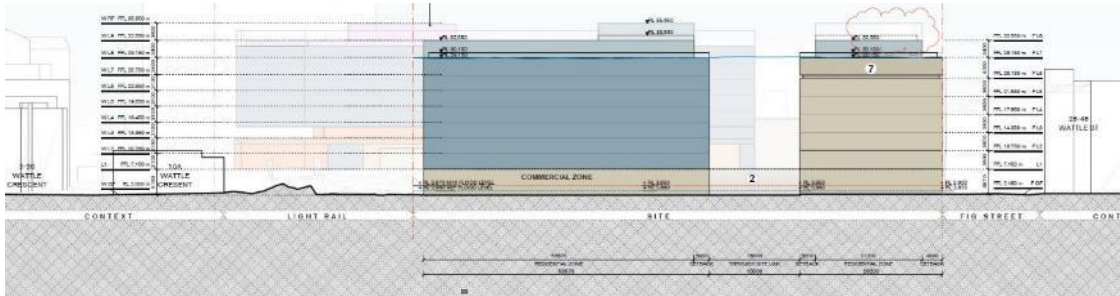


Figure 32: Envelope plans: Approved and proposed Fig Street Elevation

APPROVED - Wattle Street Elevation



PROPOSED - Wattle Street Elevation

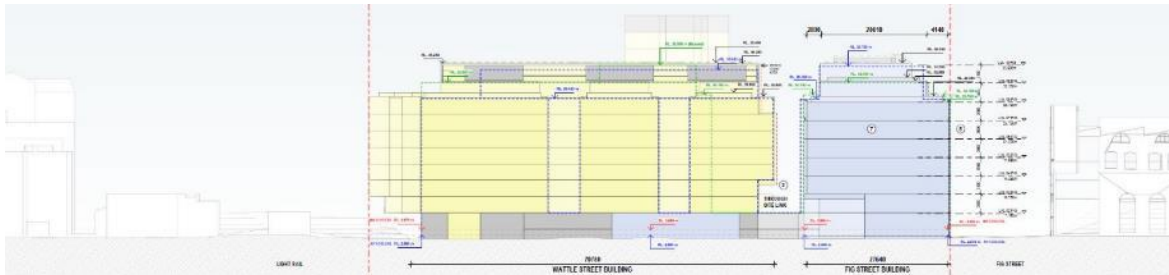


Figure 33: Envelope plans: Approved and proposed Wattle Street Elevation

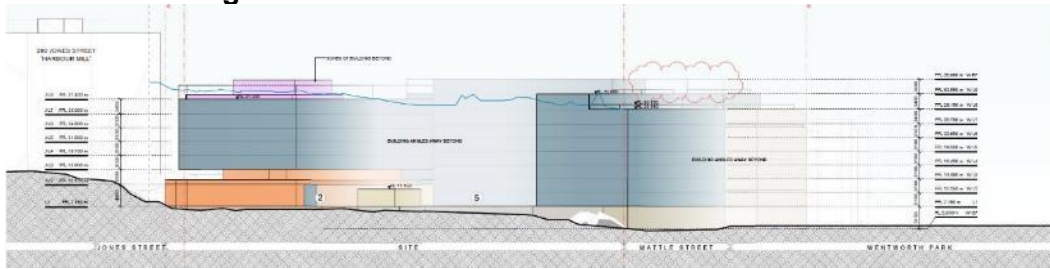
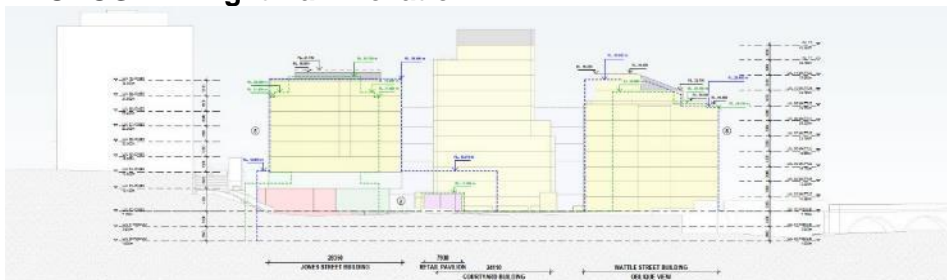
APPROVED - Light Rail Elevation**PROPOSED - Light Rail Elevation**

Figure 34: Envelope plans: Approved and proposed Light Rail Elevation

Threshold test

26. Consistent with Section 4.56(1)(a) of the EPA Act, the modified development is considered to be substantially the same as the development for which the consent was originally granted as the section 4.56 modification application, like the concept consent, would realise:
 - (a) A mixed-use development accommodating residential uses, commercial uses, a recreation centre and a child care centre
 - (b) Separate buildings surrounding a central courtyard and addressing Wattle Street, Fig Street, Jones Street and the light rail station and located above two levels of car parking
 - (c) Vehicular access from Wattle Street (for cars) and Fig Street (for loading)
 - (d) A north-south pedestrian through site link between Wattle Street and Jones Street (with additional east-west pedestrian connections proposed).
27. Proposed modifications primarily relate to building footprints, building separation and height and are proposed to generally align the concept consent with the winning scheme and the detailed design development application (D/2023/97).
28. The proposed modifications to the building envelopes are supported (subject to conditions) as they do not result in unacceptable amenity impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
29. In accordance with Section 4.56(1A) of the EPA Act, the following sections provide:
 - (a) An assessment of the section 4.56 modification application against the relevant provisions of Section 4.15(1) of the EPA Act

- (b) A consideration of the reasons given by the consent authority for the grant of the concept consent(D/2019/649). A copy of the Land and Environment Court Judgment is provided at **Attachment C**.

Economic, Social and Environmental Assessment

Environmental Planning and Assessment Act, 1979

30. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 4.15 of the EPA Act are still relevant.

SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

31. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
32. The detailed design development application is accompanied by A Remedial Action Plan and a Data Gap Investigation prepared by JBS&G. Council's Health Unit is satisfied that, subject to conditions on the detailed design consent, the site can be made suitable for the proposed use.

SEPP No 65 - Design Quality of Residential Flat Development

33. The aim of SEPP 65 is to improve the design quality of residential apartment development in New South Wales.
34. The proposed/modified building envelopes have been assessed against the design principles of SEPP 65 and the objectives of the Apartment Design Guidelines (**ADG**).
35. It is considered that the proposed/modified building envelopes have the ability to achieve the nine design quality principles set out in Schedule 1 of the SEPP as explained below.

- (a) Principle 1: Context and Neighbourhood Character

The proposed/modified building envelopes (subject to conditions) allow for a development that is contextually appropriate and consistent with the existing and desired future character of the area.

- (b) Principle 2: Built Form and Scale

The proposed/modified envelopes (subject to conditions) are capable of providing a built form that has appropriate massing and scale. As detailed in the Discussion section, a reduction in the height of Building C - Courtyard is recommended to reduce the contravention from the Sydney LEP 2012 height standard and make the building envelopes more consistent with the built form and scale of the winning scheme.

- (c) Principle 3: Density

The proposed/modified building envelopes allow for a development that can deliver a complying maximum floor space ratio (**FSR**) standard at clause 4.4 of Sydney LEP 2012.

(d) Principle 4: Sustainability

The detailed design development application complies with BASIX requirements and the sustainability conditions set out in the concept consent, demonstrating that sustainability targets can be met by the modified/proposed building envelopes.

(e) Principle 5: Landscape

The proposed/modified building envelopes allow for satisfactory landscaping in the central courtyard area and provide deep soil zones consistent with the concept consent.

(f) Principle 6: Amenity

The proposed/modified building envelopes can accommodate a development with a reasonable level of amenity for the future occupants of the development, as well as adjoining properties.

(g) Principle 7: Safety

The proposed/modified building envelopes allow for a development that can achieve the principles of Crime Prevention Through Environmental Design.

(h) Principle 8: Housing Diversity and Social Interaction

The proposed/modified building envelopes allow for a development that can provide a suitable mix of dwelling types.

(i) Principle 9: Aesthetics

The proposed/modified building envelopes (subject to conditions) are generally consistent with the design competition winning scheme, which was considered by the design competition jury as the entrant most capable of demonstrating design excellence.

36. The modified development (subject to conditions) is acceptable when assessed against the SEPP including the above principles and the associated ADG. These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012 (**Sydney DCP 2012**). Consequently compliance with the SEPP generally implies compliance with Council's own controls. An assessment against the relevant objectives of the ADG is provided below.
37. The proposed/modified building envelopes (subject to conditions) are considered acceptable and allow a development that can achieve a satisfactory standard of compliance with SEPP 65 and the objectives of the ADG as detailed below in **Table 1**.

Table 1: Assessment of compliance with the objective of the ADG

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	No	<p>Acceptable on merit.</p> <p>Building B - Jones Street (28m), Building C - Courtyard (20m) and Building D - Wattle Street (28m) exceed the ADG building depths.</p> <p>Deep recesses in the buildings (which were supported by the jury for the competitive design process) and the internal arrangement ensure that apartments receive adequate daylight, natural ventilation and natural cross ventilation.</p>

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 	Partial compliance	<p>Acceptable on merit.</p> <p>Building separations between the following buildings do not achieve the ADG building separation controls:</p> <ul style="list-style-type: none"> • Building D - Wattle Street and Courtyard Building (6.95m - 11.2m) • Building B - Jones Street and Building C - Courtyard (7.4m) • Building D - Wattle Street and Building E - Fig Street (6.95m) • Building B - Jones Street and Building E - Fig Street (6.07m) <p>It is considered the development can provide for an acceptable level of privacy for future occupants and adjoining properties.</p> <p>See Discussion section.</p>

2F Building Separation	Compliance	Comment
Five to eight storeys (approximately 25 metres): <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	No	See above
Nine storeys and above (over 25m): <ul style="list-style-type: none"> • 24m between habitable rooms / balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 	No	See above

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	<p>Applicant's calculation: 4,249m² (34.7%) including private communal and public communal open space</p> <p>Council's Landscape Assessment Officer calculation: 2,843m² (23%) of uncovered common open space is proposed including a communal roof terraces on Building B - Jones Street, Building C - Courtyard and Building D - Wattle Street.</p> <p>See Discussion section.</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).	Yes	A good standard of solar access to the required communal open space is provided as >50% of the principal usable part of the communal open space will receive a minimum of 2 hours between 9am and 3pm on 21 June.

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>Deep soil zones with a total area of 876m² (7% of the total site area) are provided across the site. Most deep soil is provided in a centralised area at the northern end of the site adjoining the Wentworth Park Light Rail Station and trees to be retained along the common boundary.</p> <p>Supplementary deep soil zones are provided in the north-east corner of the site, adjoining the Wentworth Park Light Rail Station and near the stairs up to Jones Street.</p>

3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	No	See 2F above
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	No	See 2F above
<p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 6m between non-habitable rooms 	No	See 2F above

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.	Partial compliance	<p>The amended/proposed envelope plans are capable of accommodating a development that complies with the ADG solar access design criteria.</p> <p>The detailed design development application shows that a total of 164 of 237 of apartments (69.1%) achieve a minimum two hours solar access to private open space in mid-winter. The minor shortfall (two apartments) is considered to be reasonable noting that all apartments receive some direct sunlight.</p> <p>Solar access is addressed in detail in the assessment report on the detailed design development application assessment report.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All apartments would receive some direct sunlight.

4B Natural Ventilation	Compliance	Comment
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No	<p>Acceptable on merit</p> <p>Due to heavy traffic surrounding the site, natural ventilation cannot be achieved for many the apartments without exceeding acoustic requirements. Where there is an exceedance of the internal noise level criteria with windows open, an alternative means of ventilation is required in accordance with the NCC (acoustic plenum). Ventilated skylights and ventilation ducts have also been utilised to further enhance natural ventilation performance.</p> <p>Natural cross ventilation is addressed in detail in the detailed design development application assessment report.</p>

4B Natural Ventilation	Compliance	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No	See 2E above.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Residential floor to floor heights have been increased from 3.1m (concept consent) to 3.2m to comply with this design criteria.
Non-habitable rooms: 2.4m	Yes	As above

SEPP (Transport and Infrastructure) 2021 – Chapter 3 Educational Establishments and Child Care Facilities

38. The proposed centre based child care facility is subject to the provisions of the above SEPP. Compliance with the relevant provisions is set out in the detailed design development application assessment report.

SEPP (Transport and Infrastructure) 2021 - Chapter 2 Infrastructure

39. The section 4.56 modification application and development application were referred to AUSGRID and Transport for NSW (formerly known as Roads and Maritime Services). The proposed modifications do not change the agency conditions on the concept consent (and agency conditions are included in the development application recommended conditions of consent).

Sydney Local Environmental Plan 2012

40. Almost all of the site is located in Zone MU1 Mixed Use Zone. Uses permitted with consent in Zone MU1 include centre-based child care facilities, commercial premises, community facilities, recreation facilities (indoor), residential flat buildings and shop top housing. The proposed uses are permitted with development consent.
41. A small part of the Jones Street road reserve (to be acquired by the applicant and included in the site area) is in Zone RE1 (20m²). The proposed buildings are not located on land in Zone RE1.
42. With a maximum height of 42.46m (to the top of Building C - Courtyard), the section 4.56 modification application contravenes the 27m height standard (clause 4.3) by up to 15.46m (+57%) and the 29.7m design excellence height (clause 6.21D) by up to 12.76m (+43%). The numerical compliance of the section 4.56 modification application with the height standards is summarised in **Table 2** (which was prepared by the applicant's planning consultant, Gyde). The height contravention is discussed in the Discussion section below.

43. With a proposed FSR of 3.88:1 (based on a gross floor area of 47,954m² and a site area of 12,361 m² being the site area of land in Zone MU1), the detailed design development application demonstrates that the proposed/modified building envelope can accommodate a development with a FSR of less than 4:1 (being the FSR standard at clause 4.4 of Sydney LEP 2012).
44. It is considered that the proposed/modified envelope (subject to conditions) is capable of accommodating a development that achieves design excellence, consistent with clause 6.21C of Sydney LEP 2012.
45. Sydney LEP 2012 clause 6.18 specifies a sun access plane which provides that "development consent" must not be granted to buildings causing additional overshadowing of Wentworth Park between 10am - 2pm at any time of the year. Relevant to the section 4.56 modification application (D/2019/649/B), the EPA Act s. 4.56(1C) states that:

"(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified."
46. Noting s. 4.56(1C) of the EPA Act, the Wentworth Park sun access plane at clause 6.18 of Sydney LEP 2012 does not apply to the section 4.56 modification application as the modification of a development consent is not to be taken as the granting of development consent.
47. The sun access plane at clause 6.18 of Sydney LEP 2012 is not applicable to the detailed design development application (D/2023/97) as cl. 1.8A(7) of Sydney LEP 2012 specifies a relevant savings provision. The savings provision provides that a development application made, but not finally determined, before the commencement of SEPP Amendment (Blackwattle Bay Precinct) 2022 (made on 9 June 2023) must be determined as if that Policy had not commenced. The detailed design development application was made on 16 February 2023 well before the SEPP Amendment (Blackwattle Bay Precinct) 2022 was made.
48. The section 4.56 modification application does not alter the compliance of the development with other relevant provisions in Sydney LEP 2012.

Table 2: Proposed heights assessment of compliance (prepared by Gyde)

BUILDING NAME	PROPOSED MAXIMUM BUILDING HEIGHT IN SUBJECT STAGE 2 DA	NUMERICAL EXCEEDANCE OF MAXIMUM BUILDING HEIGHT	NUMERICAL EXCEEDANCE OF MAXIMUM BUILDING HEIGHT + BONUS	EXTENT OF THE VARIATION (%)
Building B (Jones Street)	30.78 metres (RL37.10) at the PV cells on the northern part of the roof to 33.78 metres (RL37.10) at the PV cells in the mid area of the roof	3.78 metres at the PV cells on the northern area of the roof to 6.78 metres at the PV cells in the mid area of the roof	1.08 metres at the PV cells on the northern area of the roof to 4.08 metres at the PV cells in the mid area of the roof	LEP height limit: 14-25% LEP + design excellence (DE) bonus: 4- 14%.
Building C (Courtyard)	42.37 metres (RL45.55) at the southern rooftop plant to 42.46 metres (RL45.55) at the northern rooftop plant	15.37 metres at the southern rooftop plant to 15.46 metres at the northern rooftop plant	12.67 metres at the southern rooftop plant to 12.76 metres at the northern rooftop plant	LEP height limit: 57% LEP + DE bonus: 43%.
Building D (Wattle Street)	33.36 metres (RL36.45) to 33.95 metres (RL36.45) at the PV cells at the middle of the roof	6.36 metres to 6.95 metres at the PV cells at the middle of the roof	3.66 metres to 4.25 metres at the middle of the roof	LEP height limit: 24-26% LEP + DE bonus: 12-14%.
Building E (Fig Street)	34.87 metres (RL37.95) to 35.14 metres (RL37.95) at the PV cells on the mid-southern roof	7.87 metres to 8.14 metres at the PV cells on the mid-southern roof	5.17 metres to 5.44 metres at the PV cells on the mid-southern roof	LEP height limit: 29-30% LEP + DE bonus: 17-18%.

Development Control Plans

Sydney Development Control Plan 2012

49. The section 4.56 modification application does not alter the compliance of the development with Sydney DCP 2012.

Discussion

Building envelope modifications and building height contravention

50. Sydney LEP 2012 prescribes the following height of buildings provisions for the site:

- (a) Clause 4.3: 27m
- (b) Clause 6.21D: 29.7m (being 27m plus up to 10% design excellence height).

51. **Table 3** assesses the compliance of the concept consent and the section 4.56 modification application (and the concurrently lodged development application) with these height provisions, aligning the relevant buildings and elements (as much as possible). It shows the following maximum heights and height non-compliances (which occur at the centre of the site):

- (a) **Concept consent:** Maximum height of 33.08m which exceeds the 27m clause 4.3 height standard by 6.08m (+22%) and exceeds the 29.7m height permitted by clause 6.21D height by 3.38m (+11%)
- (b) **Section 4.56 modification application:** Maximum height of 42.46m which exceeds the 27m clause 4.3 height standard by 15.46m (+57%) and exceeds the 29.7m height permitted by clause 6.21D height by 12.76m (+43%).

52. **Figures 35 and 36** illustrate the height non-compliances of the concept consent and section 4.56 modification application (noting the name of each building). The winning scheme also exceeded the 29.7m height permitted by clause 6.21D height (see **Figure 37**).

Table 3: Height assessment - Concept consent approved and Section 4.56 modification application and development application proposed

Building name	Concept Consent - Height approved				Section 4.56 modification application/ development application - Height proposed		
	Height approved	Exceedance of 27m (cl. 4.3 of SLEP 2012)	Exceedance of 29.7m (cl. 6.21D of SLEP 2012)	Allowance for up to 10% additional height shown on plans	Height proposed	Exceedance of 27m (cl. 4.3 of SLEP 2012)	Exceedance of 29.7m (cl. 6.21D of SLEP 2012)
Building B - Jones Street	27.5m to residential roof	0.5m (+2%)	-	YES	30.9m to residential roof	3.09m (+14%)	1.2m (+4%)
	28.5m to balustrades	1.5m (+6%)	-	YES	33.78m to PV cells centre	6.78m (+25%)	4.08m (+14%)
	31.8m to lift overrun roof and pergola north	4.8m (+18%)	2.1m (+7%)	NO	30.78m to PV cells north	3.78m (+14%)	1.08m (+4%)
Building C - Courtyard	33.08m to plant at centre of site	6.08m (+22%)	3.38m (+11%)	NO	42.46m to plant	15.46m (+57%)	12.76m (+43%)
Building D - Wattle Street	29.65m (approx) to setback level	2.65m (+10%)	-	NO	33.95m to PV cells	6.95m (+26%)	4.25m (+14%)
Building E - Fig Street	30.55m to setback residential level	3.55m (+13%)	0.85m (+3%)	YES	35.14m to plant	8.14m (30%)	5.44m (+18%)

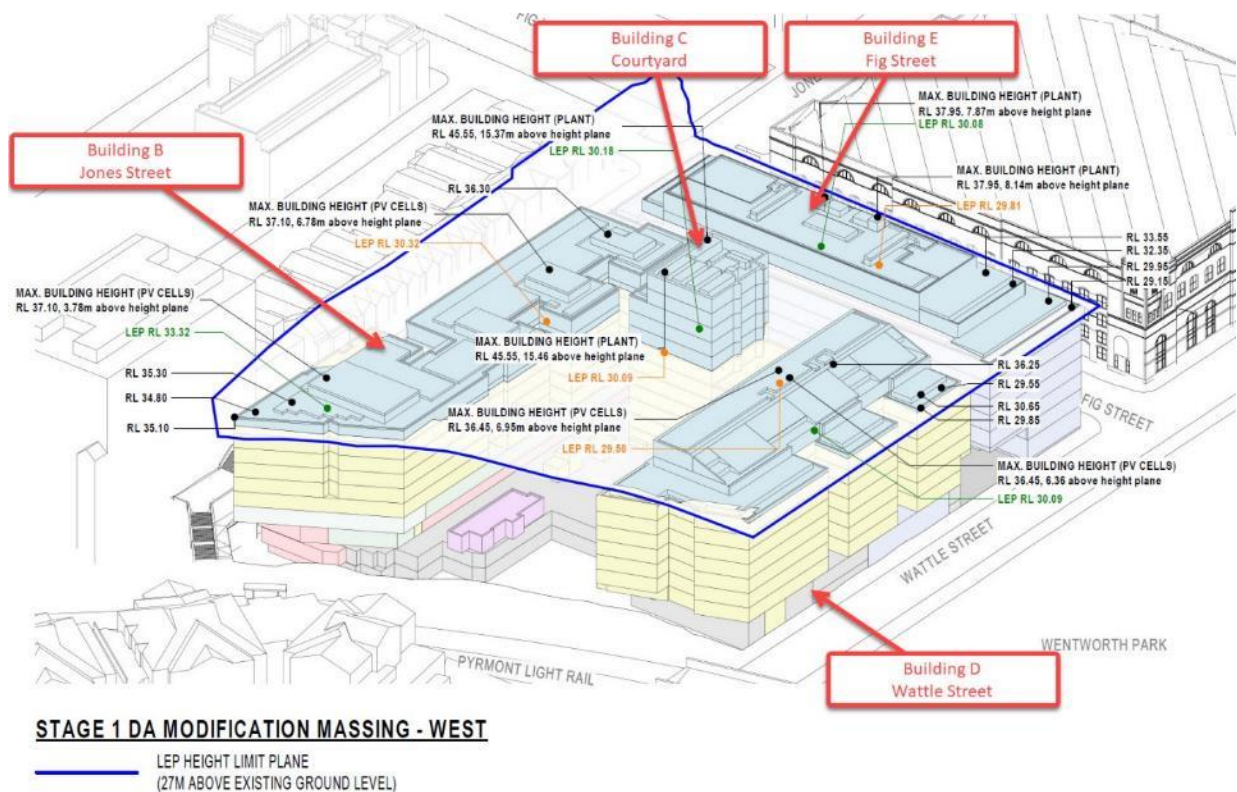
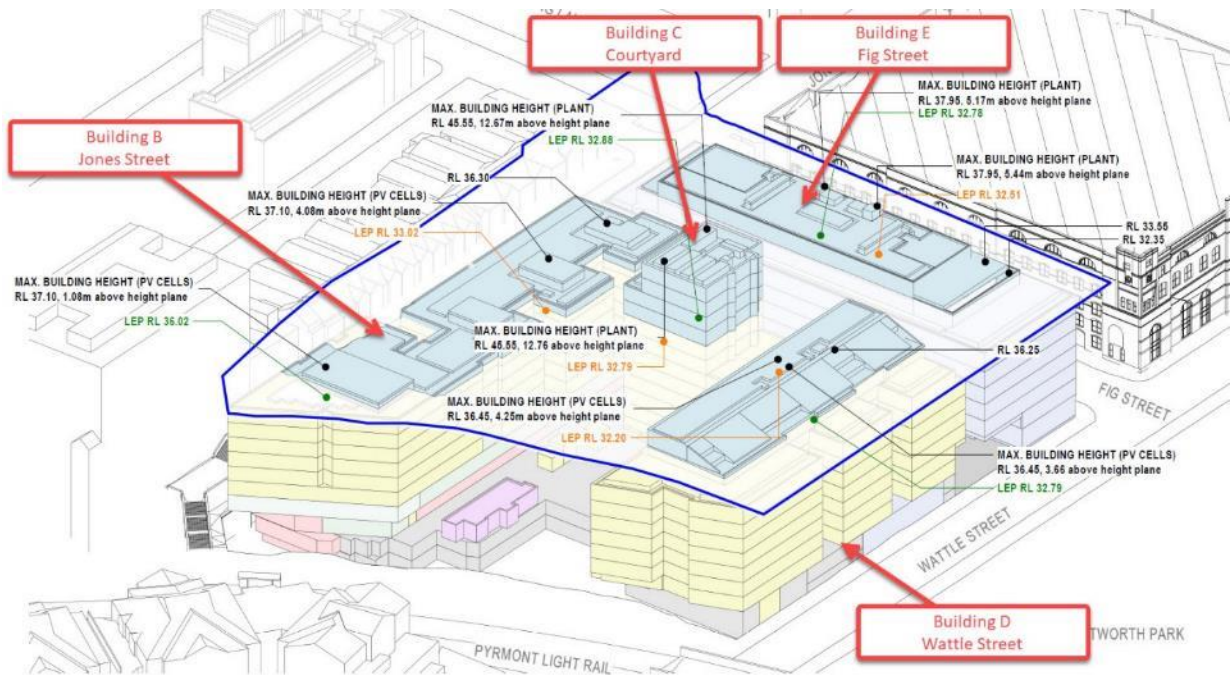


Figure 35: Section 4.56 modification application: Isometric drawing showing non-compliance with the 27m height standard permitted by clause 4.3 of Sydney LEP 2012 (western view)



STAGE 1 DA MODIFICATION MASSING - WEST

— LEP HEIGHT LIMIT + 10% PLANE
(29.7M ABOVE EXISTING GROUND LEVEL)

Figure 36: Section 4.56 modification application: Isometric drawing showing non-compliance with the 29.7m height permitted by clause 6.21D of Sydney LEP 2012 (western view)

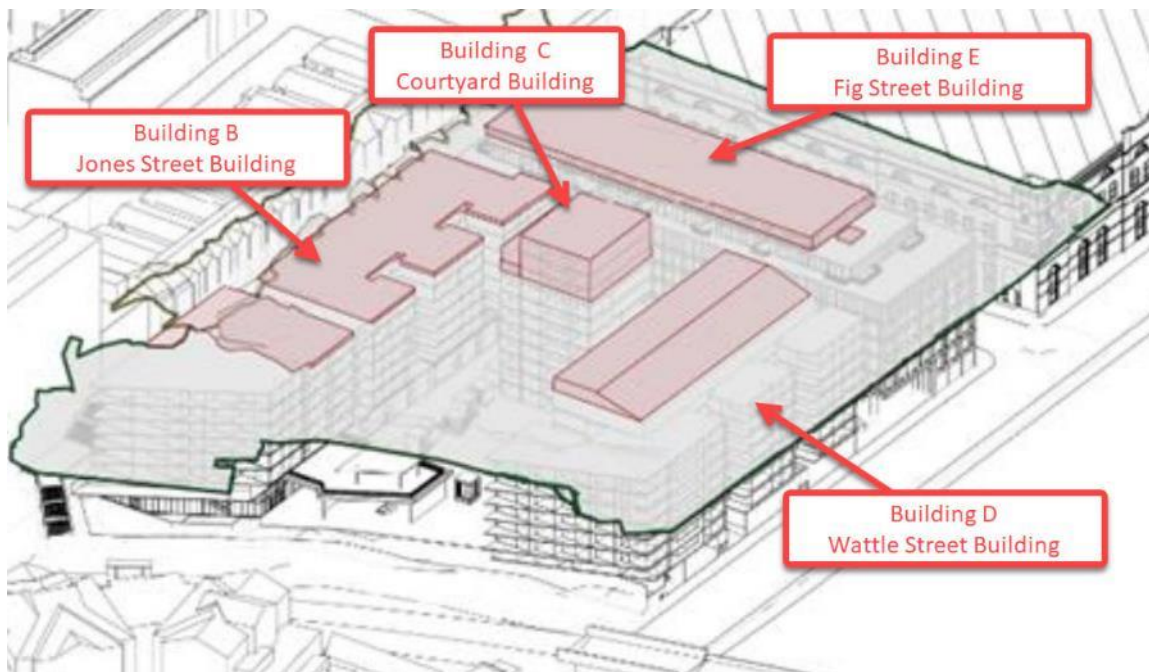


Figure 37: Winning scheme: Isometric drawing showing non-compliance of the winning scheme with the 29.7m height permitted by clause 6.21D of Sydney LEP 2012 (western view)

53. With a FSR of 3.88:1 (based on a gross floor area of 47,954m² and a site area of 12,361 m² being the site area of land in Zone MU1), the detailed design development application demonstrates that the proposed/modified building envelope accommodates a development with a FSR of less than 4:1 (being the FSR standard at clause 4.4 of Sydney LEP 2012). Given this, the additional height does not result in an overdevelopment of the site.
54. The proposed modifications to the building envelopes (including the increase in height) for each building are discussed below:

(a) Building B - Jones Street

- (i) The concept consent specifies maximum RLs for Building B - Jones Street which equate to five storeys (residential) above Jones Street. As shown by **Table 3**, the consent envelope plans for Building B - Jones Street generally complied with the 27m height standard (except for balustrades and an approved zone for plant, balustrades and lift overruns). As noted in **Table 3**, the concept consent conditions provide for up to 10% uplift in building height on most of Building B - Jones Street (other than the zone for plant, balustrades and lift overruns).
- (ii) The section 4.56 modification application proposes six storeys (residential) above Jones Street for Building B - Jones Street (see **Figure 38**).
- (iii) The proposed/modified envelope for Building B - Jones Street exceeds the 27m height standard height permitted by clause 4.3 of Sydney LEP 2012 by up to 6.78m (+25%). The proposed height above 27m is illustrated in section on **Figure 39**.
- (iv) The proposed/modified envelope for Building B - Jones Street exceeds the 29.7m permitted by clause 6.21D of Sydney LEP 2012 by up to 4.08m (+14%). Measured to the residential roof, the Jones Building exceeds the 29.7m permitted by clause 6.21D of Sydney LEP 2012 by 1.2m (+4%). The proposed height above 29.7m is illustrated in section on **Figure 40**.
- (v) The proposed building height for Building B - Jones Street is considered to be satisfactory for the following reasons:
- (i) At the site frontage to Jones Street, the proposed building envelope complies with the 27m height standard (see **Figures 38, 39 and 40**).
- (ii) The proposed building envelope provides a transition between the nearby Jones Street terrace house group (1 storey) and the Harbour Mill Apartments (4-10 storeys), consistent with the concept consent.
- (iii) The proposed/modified building envelope is generally consistent with the winning scheme. The increase in height above the concept consent and winning is largely attributable to an increase in the residential floor to floor heights (from 3.1 metres to 3.2 metres in accordance with the Design and Building Practitioners Act 2020) which is considered to be reasonable.

- (iv) The applicant has submitted a solar impact analysis (included at **Attachment B**) assessing the overshadowing impact of the proposed/modified envelopes highlighting the additional shadow cast by the modification application beyond the building envelopes approved by the concept consent. The analysis shows that the additional height on Building B - Jones Street will overshadow the roadway of Jones Street and for a short time and the front yard of several Jones Street terraces (29m² at 3pm in midwinter, Labelled with an "E" on **Figure 41**). An assessment of compliance with the relevant solar access controls in Sydney DCP 2012 follows:
 - i. Sydney DCP 2012 s. 4.1.3.1 Solar access states that neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1m² of living room windows and at least 50% of the minimum amount of private open space. As the increase in height to Building B - Jones Street would not cast any additional shadow onto any living room windows, the east facing private open space at the rear of the Jones Street terraces or the Harbour Mill Apartments, the modified development complies with this solar access control.
 - ii. Sydney DCP 2012 s. 3.1.4 Public open space states that 50% of the total area of a park is to receive sunlight for 4 hours from 9am to 3pm on 21 June. As the increase in height to Building B - Jones Street would not overshadow Fig Street Park or Wentworth Park, the modified development complies with this solar access control.
- (v) Compared with the building envelope plans approved by the concept consent and a compliant building height, the additional height for Building B - Jones Street proposed by the section 4.56 modification application would have a negligible impact on outlook from the communal open space and dwellings in the Harbour Mill Apartments and the terrace houses on Jones Street.
- (vi) An increase to the width of Building B - Jones Street is proposed. Deep recesses in the proposed/modified envelopes and the internal arrangement proposed by the detailed design development application ensure that apartments receive adequate daylight, natural ventilation and natural cross ventilation.

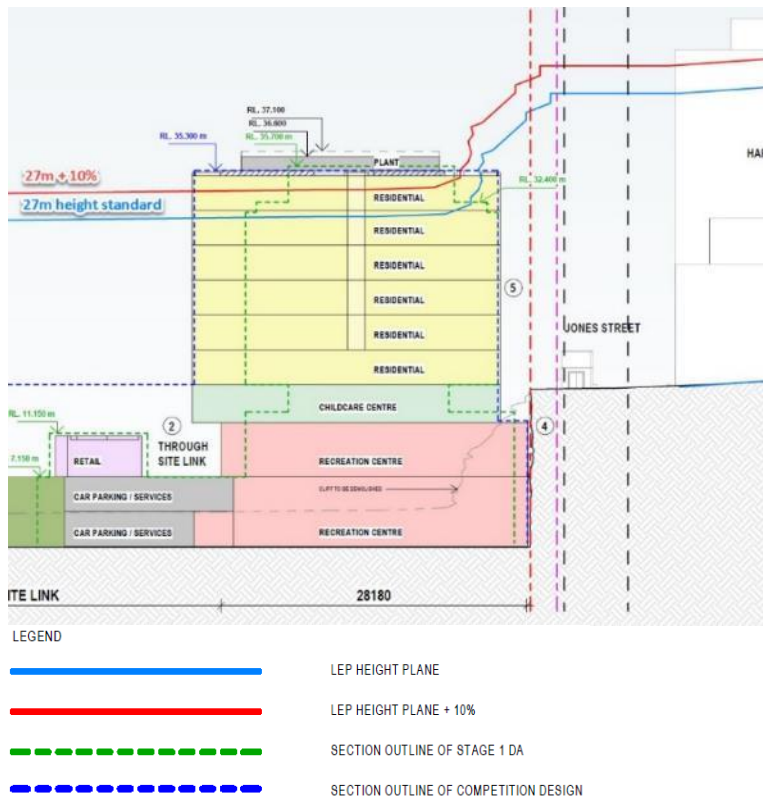


Figure 38: Building B - Jones Street Section: Proposed/modified building envelope

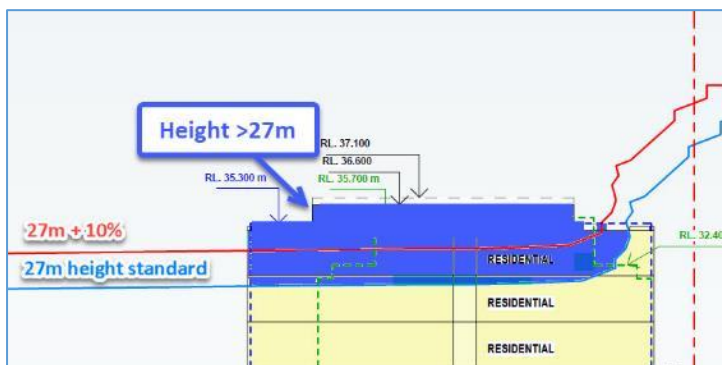


Figure 39: Building B - Jones Street Section Detail: Height >27m (Sydney LEP 2012, clause 4.3)

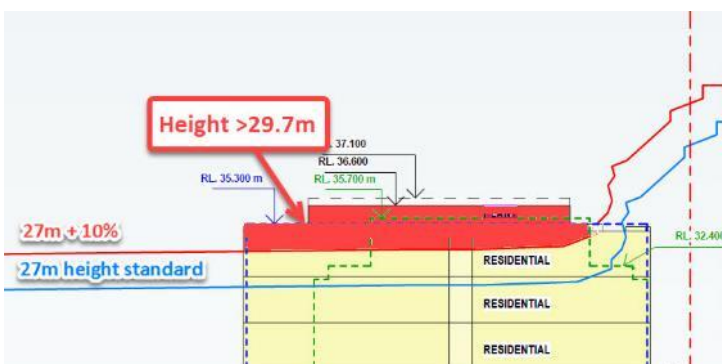
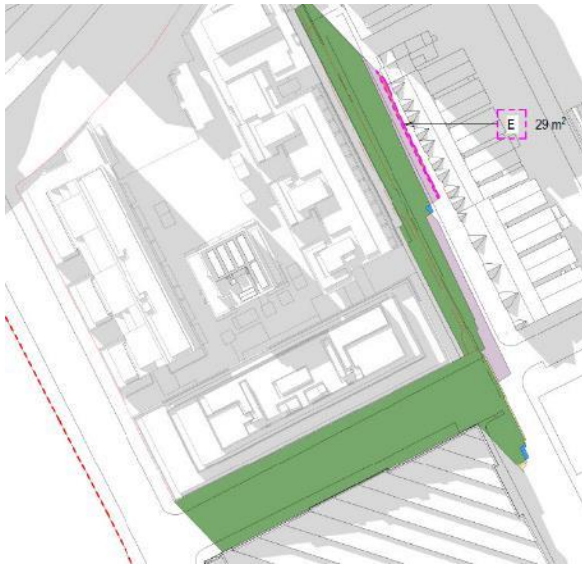


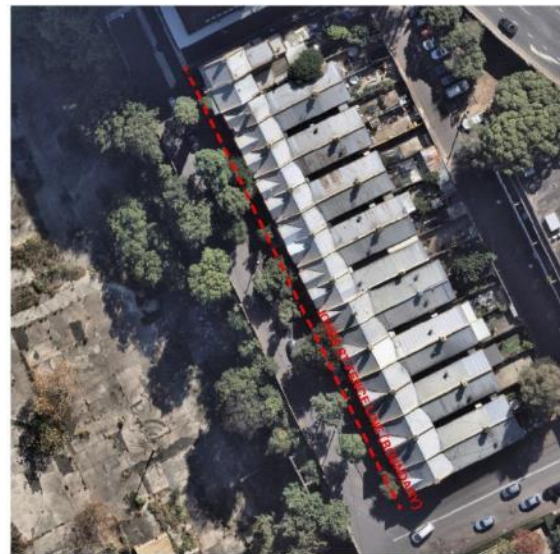
Figure 40: Building B - Jones Street Section Detail: Height >29.7m (Sydney LEP 2012, clause 6.21D)



- E SHADOW CASTED IN THE FRONT YARD OF EXISTING JONES ST TERRACE HOUSE
- STAGE 1 DA APPROVED (WITHOUT EXTRA 10% HEIGHT)
- STAGE 2 DA AMENDED - WATTLE ST BUILDING
- STAGE 2 DA AMENDED - COURTYARD BUILDING
- STAGE 2 DA AMENDED - FIG ST BUILDING
- STAGE 2 DA AMENDED - JOHN ST BUILDING
- AREA OF SHADOWING REDUCED COMPARED TO STAGE 1 DA APPROVED



21ST JUNE, 3PM SHADOW



SATELLITE IMAGE



Figure 41: Building B - Jones Street: Shadow diagram at 3pm in midwinter

(b) Building C - Courtyard

- (i) The concept consent approved an "L" shaped Wattle Street Building (see (see **Figures 14** and **15**). The section 4.56 modification application splits the approved "L" shaped envelope into Building D - Wattle Building (considered below) and Building C - Courtyard (considered here).
- (ii) At the centre of the site, the concept consent specifies maximum RLs that equate to nine storeys (residential). As shown by **Table 3**, the concept consent envelope plans for Building C - Courtyard exceeded the 27m height standard by 6.08m (+22%). As noted in **Table 3**, the concept consent conditions provide that this envelope is not eligible for up to 10% additional design excellence height.
- (iii) The proposed/modified envelope for Building C - Courtyard exceeds the 27m height standard height permitted by clause 4.3 of Sydney LEP 2012 by up to 15.46m (+57%). The proposed height above 27m is illustrated in section on **Figures 42** and **43**.
- (iv) The proposed/modified envelope for Building C - Courtyard exceeds the 29.7m permitted by clause 6.21D of Sydney LEP 2012 by up to 12.76m (+43%). The proposed height above 29.7m is illustrated in section on **Figures 42** and **44**.
- (v) The increase in height above the concept consent and the winning scheme is attributable to an increase in the residential floor to floor heights (from 3.1 metres to 3.2 metres in accordance with the Design and Building Practitioners Act 2020) and relocation of roof-mounted plant rooms from the Wattle and Jones Street Buildings to Building C - Courtyard (enclosed by a 3.2m parapet).
- (vi) Compared with the winning scheme, the modification application proposes a 4m increase in the height of Building C - Courtyard (RL 41.55 in the winning scheme and RL 45.55 proposed). Only some of this increase is caused by the proposed increase in residential floor to floor heights discussed above (1.1m). This modification is considered to be inconsistent with the winning scheme and jury recommendations.
- (vii) Given the significant increase in height above the concept consent and the winning scheme and the generous height of the proposed plant level parapet (3.2m which is equivalent to one residential level), the recommended conditions of consent (Condition (5)(a)) require the Building C - Courtyard plant room equipment and parapet zone (and any other structures at Level 13 of Building C - Courtyard) to be reduced by at least 2m (to a maximum of RL 43.55 (AHD)). Compliance with this recommended condition would make the envelope more consistent with the winning scheme and reduce contravention of the 27m + 10% height plane. **Figure 42** illustrates (approximately) the required reduction in building height.
- (viii) Subject to recommended Condition (5)(a), the proposed building height for Building C - Courtyard is considered to be satisfactory for the following reasons:

- (i) Building C - Courtyard has a small footprint when compared with the other building envelopes and is located at the centre of the site reducing its streetscape and overshadowing impacts.
- (ii) The increase in height on Building C - Courtyard accommodates floor space lost by breaking the approved "L" shaped Wattle Street Building. Breaking of the "L" shaped building was supported by the jury for the competitive design process as it provides for an additional through site link and improves residential amenity.
- (iii) The increase in Building C - Courtyard height is partly attributable to an increase in the residential floor to floor heights (from 3.1 metres to 3.2 metres) which is considered to be reasonable. Other changes relate to re-arrangement of the envelope in accordance with the design competition and relocation of plant from Building D - Wattle Street to minimise overshadowing of Wentworth Park.
- (iv) The solar impact analysis (included at **Attachment B**) shows that the plantroom equipment and parapet to Building C - Courtyard will cast an additional shadow onto Wentworth Park at 9am in midwinter (58m² labelled with a "D" on **Figure 48**). Recommended condition (5)(a) would eliminate this increase in shadow. Building C - Courtyard itself would also cast an additional shadow, but this shadow overlaps with the additional shadow cast by modified Building D - Wattle Street (Labelled with a "B" on **Figure 48**). An assessment of compliance with the relevant solar access controls in Sydney DCP 2012 follows:
 - i. Sydney DCP 2012 s. 4.1.3.1 Solar access states that neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1m² of living room windows and at least 50% of the minimum amount of private open space. The increase in height to Building C - Courtyard would not overshadow any neighbouring dwellings.
 - ii. Sydney DCP 2012 s. 3.1.4 Public open states that 50% of the total area of a park is to receive sunlight for 4 hours from 9am to 3pm on 21 June. The proposed increase in overshadowing of Wentworth Park described above is not supported, but it is acknowledged that it complies with the Sydney DCP 2012 control and is unlikely to have a significant impact on the amenity of Wentworth Park given the large size of the park and the shape and position of the additional shadow which is enveloped by shadow cast by the approved concept consent envelope. In any event, recommended Condition (5)(a) would reduce the shadow cast by Building C - Courtyard so that it falls within the shadow cast by modified Building D - Wattle Street.

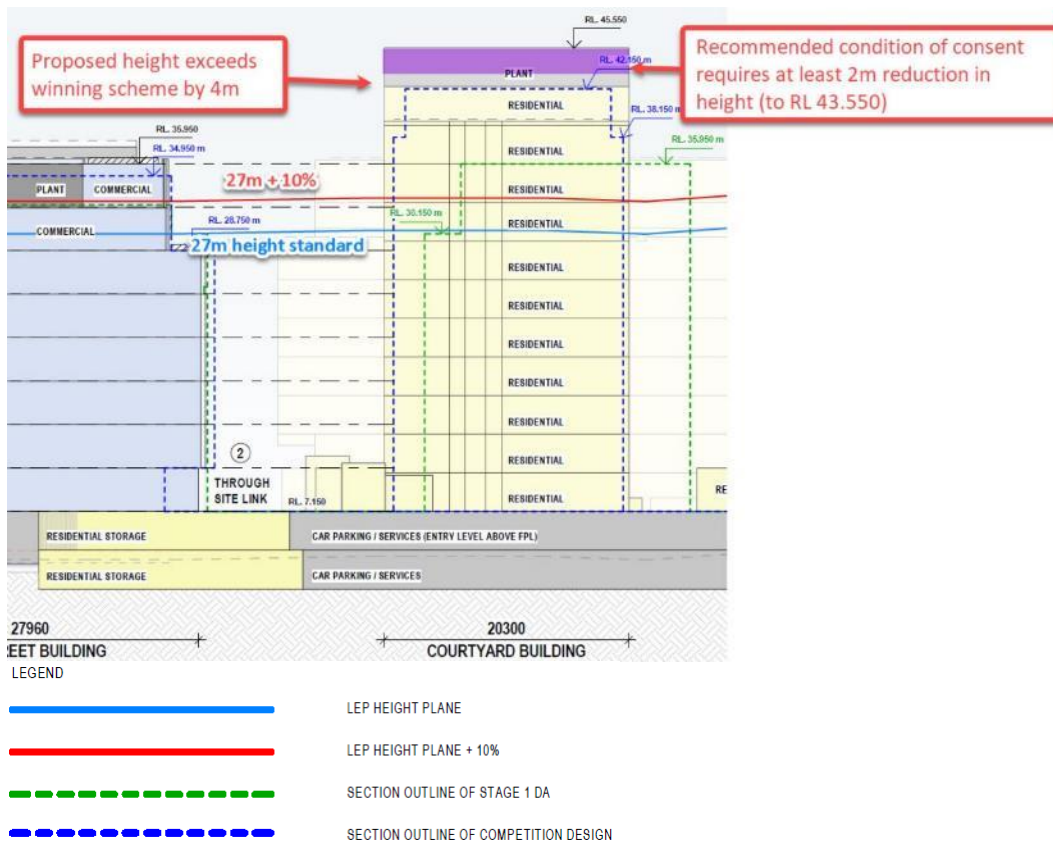


Figure 42: Building C - Courtyard Section: Proposed/modified building envelope

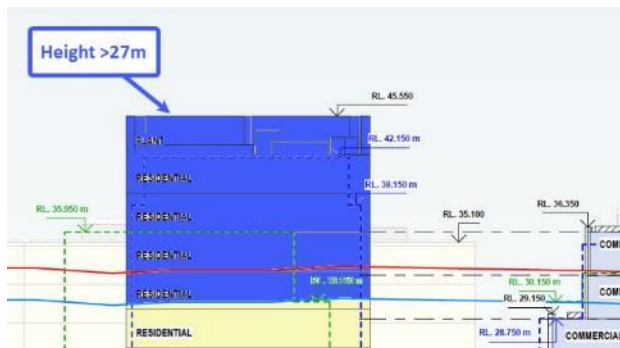


Figure 43: Building C - Courtyard Section Detail: Height >27m (Sydney LEP 2012, cl. 4.3)

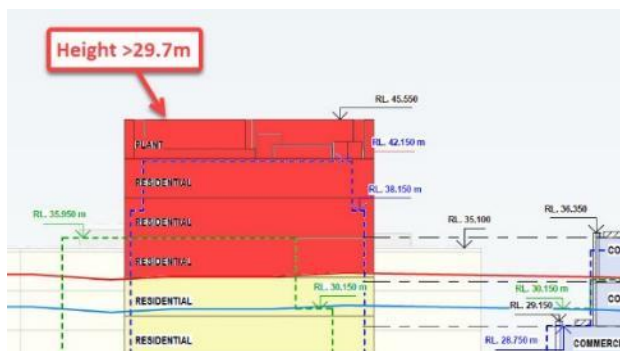


Figure 44: Building C - Courtyard Section Detail: Height >29.7m (Sydney LEP 2012, cl. 6.21D)

(c) Building D - Wattle Street

- (i) The concept consent approved an "L" shaped Wattle Street Building (see (see **Figures 14** and **15**). The section 4.56 modification application splits the approved "L" shaped envelope into Building D - Wattle Street (considered here) and Building C - Courtyard (considered above).
- (ii) On Wattle Street, the concept consent specifies maximum RLs for Building D - Wattle Street which equate to eight storeys (residential). As shown by **Table 3**, the concept consent envelope plans for Building D - Wattle Street exceeded the 27m height standard by up to 2.65m (+10%). As noted in **Table 3**, the concept consent conditions provide that Building D - Wattle Street is not eligible for up to 10% additional design excellence height.
- (iii) The proposed/modified envelope for Building D - Wattle Street exceeds the 27m height standard height permitted by clause 4.3 of Sydney LEP 2012 by up to 6.95m (+26%). The proposed height above 27m is illustrated in section on **Figures 45** and **46**.
- (iv) The proposed/modified envelope for Building D - Wattle Street exceeds the 29.7m permitted by clause 6.21D of Sydney LEP 2012 by up to 4.35m (+14%). The proposed height above 29.7m is illustrated in section on **Figures 45** and **47**.
- (v) The proposed building height for Building D - Wattle Street is considered to be satisfactory for the following reasons:
 - (i) At the site frontage to Wattle Street and adjoining the future through site link on the site, the proposed Wattle Street Building envelope generally complies with the 27m height standard (see **Figures 45, 46** and **47**).
 - (ii) The proposed/modified Building D - Wattle Street envelope is generally consistent with the winning scheme.
 - (iii) The increase in height is largely attributable to an increase in the residential floor to floor heights (from 3.1 metres to 3.2 metres in accordance with the Design and Building Practitioners Act 2020) which is considered to be reasonable. Other changes relate to re-arrangement of the envelope in accordance with the design competition.

- (iv) The applicant has submitted a solar impact analysis (included at **Attachment B**) assessing the overshadowing impact of the proposed/modified envelopes highlighting the additional shadow cast beyond the building envelopes approved by the concept consent. The analysis shows that increasing in floor to floor height of Building D - Wattle Street and re-arrangement of the envelopes in accordance with the design competition will cast additional shadow onto Wentworth Park from 9am to 11am in midwinter (396m² at 9am, 205m² at 10am, 128m² at 11am in midwinter as Labelled with an "A" and "B" on **Figure 48**). In March, the additional shadow occurs from 9am to 10am. In other places, there would be a small reduction in shadow when compared with the envelope approved by the concept consent (11-24m² between 10am and 11am in midwinter coloured blue on **Figure 48**). An assessment of compliance with the relevant solar access controls in Sydney DCP 2012 follows:
- i. Sydney DCP 2012 s. 4.1.3.1 Solar access states that neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1m² of living room windows and at least 50% of the minimum amount of private open space. The increase in height to Building D - Wattle Street would not overshadow any neighbouring dwellings.
 - ii. Sydney DCP 2012 s. 3.1.4 Public open space states that 50% of the total area of a park is to receive sunlight for 4 hours from 9am to 3pm on 21 June. The proposed increase in overshadowing of Wentworth Park described above is not supported, but it is acknowledged that it complies with this Sydney DCP 2012 control and is unlikely to have a significant impact on the amenity of Wentworth Park given the large size of the park and the shape and position of the additional shadow which is enveloped by shadow cast by the approved concept consent envelope.
- (vi) An increase to the width of Building D - Wattle Street is proposed. Deep recesses in the proposed/modified envelopes and the internal arrangement proposed by the detailed design development application ensure that apartments receive adequate daylight, natural ventilation and natural cross ventilation.

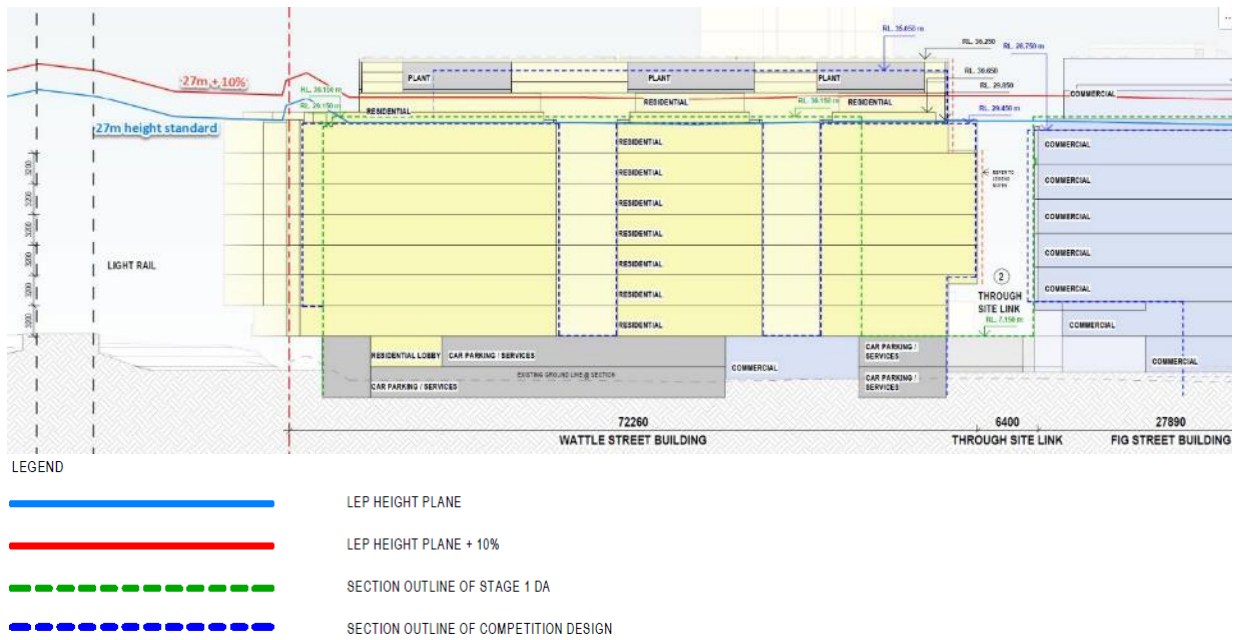


Figure 45: Building C - Wattle Street Section: Proposed/modified building envelope

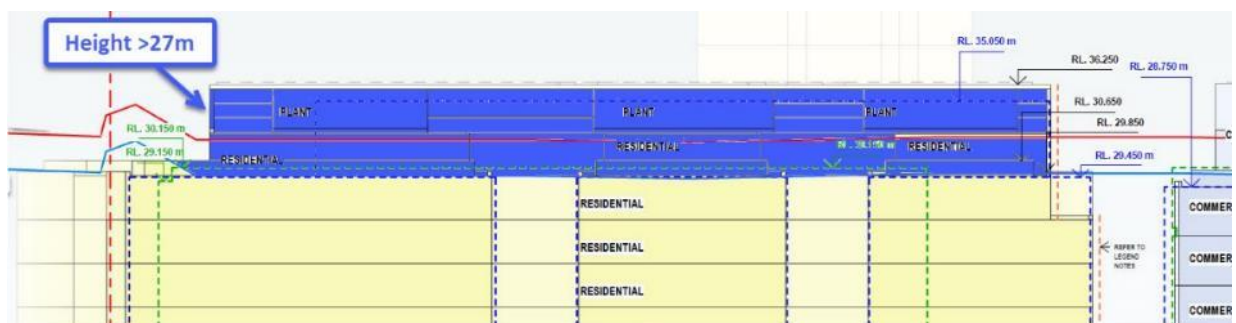


Figure 46: Building C - Wattle Street Section Detail: Height >27m (Sydney LEP 2012, clause 4.3)



Figure 47: Building C - Wattle Street Section Detail: Height >29.7m (Sydney LEP 2012, clause 6.21D)



Figure 48: Building D - Wattle Street, Building C - Courtyard and Building E - Fig Street: Shadow diagram at 9am in midwinter

(d) Building E - Fig Street

- (i) The concept consent specifies maximum RLs for Building E - Fig Street which equate to eight storeys (seven commercial storeys plus one residential storey at the top of the building). As shown by **Table 3**, the approved Fig Street Building envelope exceeded the 27m height standard by up to 3.55m (+13%). As noted in **Table 3**, the concept consent conditions provide for up to 10% uplift in building height on the Fig Street Building.
- (ii) The section 4.56 modification application proposes nine storeys for Building E - Fig Street (all commercial) (see **Figure 49**).

- (iii) The proposed/modified envelope for Building E - Fig Street exceeds the 27m height standard height permitted by clause 4.3 of Sydney LEP 2012 by up to 8.14m (+30%). The proposed height above 27m is illustrated in section on **Figure 50**.
- (iv) The proposed/modified envelope for Building E - Fig Street exceeds the 29.7m permitted by clause 6.21D of Sydney LEP 2012 by up to 5.4m (+18%). The proposed height above 29.7m is illustrated in section on **Figure 51**.
- (v) The proposed building height for Building E - Fig Street is considered to be satisfactory for the following reasons:
 - (i) At the site's street frontages to Jones Street, Fig Street and Wattle Street and adjoining the future through site link on the site; the proposed Fig Street Building envelope complies with the 27m height standard (see **Figures 49, 50 and 51**).
 - (ii) Like the concept consent, the proposed Building E - Fig Street envelope has setback upper levels (Level 8 and 9) and is compatible with the street wall established by the former Winchcombe Carson woolstore (heritage item) on the southern side of Fig Street.
 - (iii) The proposed/modified Building E - Fig Street envelope is generally consistent with the winning scheme.
 - (iv) The proposed increase in height above the concept consent and winning scheme is partly attributable to implementing the design competition jury recommendation to change the top two levels of Building E - Fig Street from residential to commercial, increasing in the floor to floor heights at these levels (from 3.1 metres residential to 3.6 commercial).
 - (v) The applicant has submitted a solar impact analysis (included at **Attachment B**) assessing the overshadowing impact of the proposed/modified envelopes highlighting the additional shadow cast beyond the building envelopes approved by the concept consent. The analysis shows external shading fins on Building E - Fig Street will cast a small additional shadow onto Wentworth Park (11m² at 9am, 31m² at 10am and 1m² at 11am in midwinter) (Labelled with a "C" on the 10am shadow diagram at **Figure 52**). An assessment of compliance with the relevant solar access controls in Sydney DCP 2012 follows:
 - i. Sydney DCP 2012 s. 4.1.3.1 Solar access states that neighbouring dwellings are to achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1m² of living room windows and at least 50% of the minimum amount of private open space. The increase in height to Building E - Fig Street would not overshadow any neighbouring dwellings.

- ii. Sydney DCP 2012 s. 3.1.4 Public open space states that 50% of the total area of a park is to receive sunlight for 4 hours from 9am to 3pm on 21 June. The small additional shadow cast onto Wentworth Park from fins to Building E - Fig Street does not compromise compliance with this control.

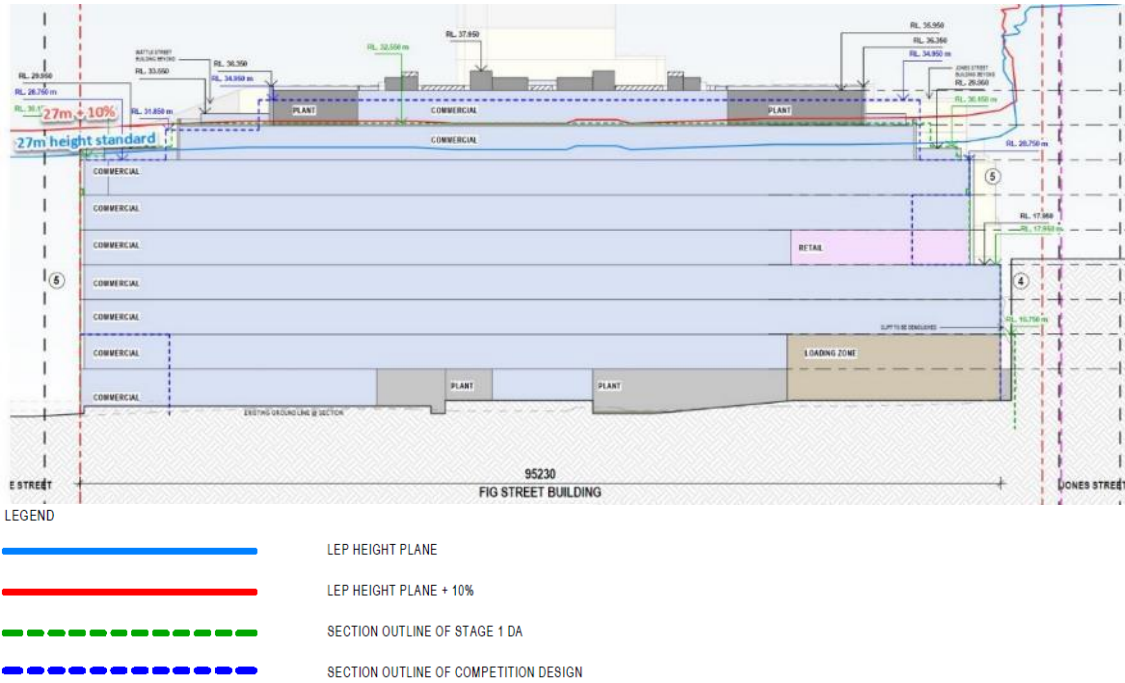


Figure 49: Building E - Fig Street Section: Proposed/modified building envelope

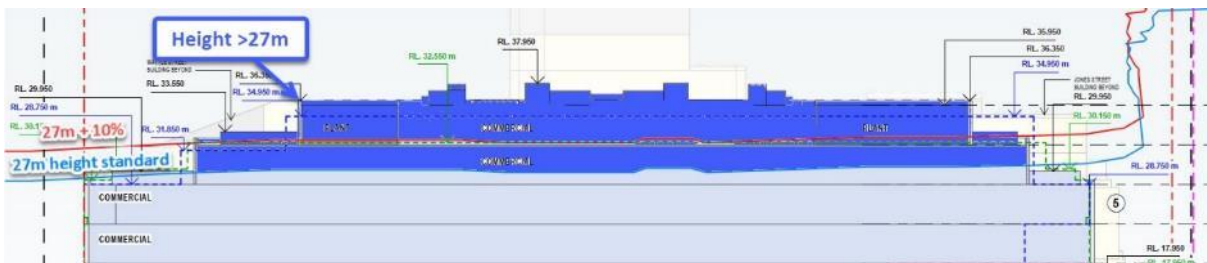


Figure 50: Building E - Fig Street Section Detail: Height >27m (Sydney LEP 2012, cl. 4.3)

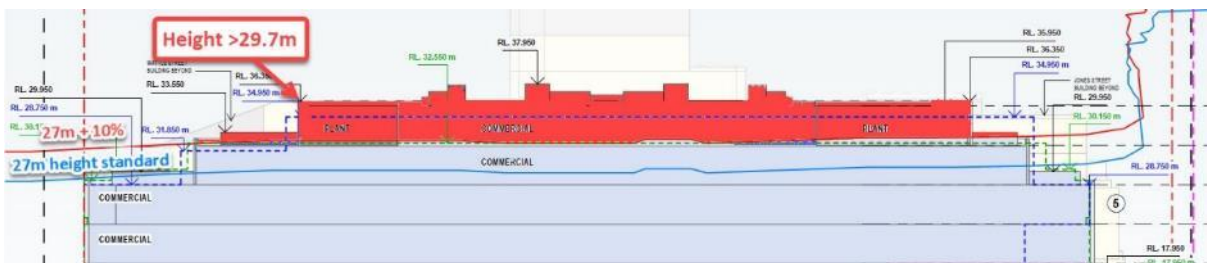


Figure 51: Building E - Fig Street Section Detail: Height >29.7m (Sydney LEP 2012, cl. 6.21D)

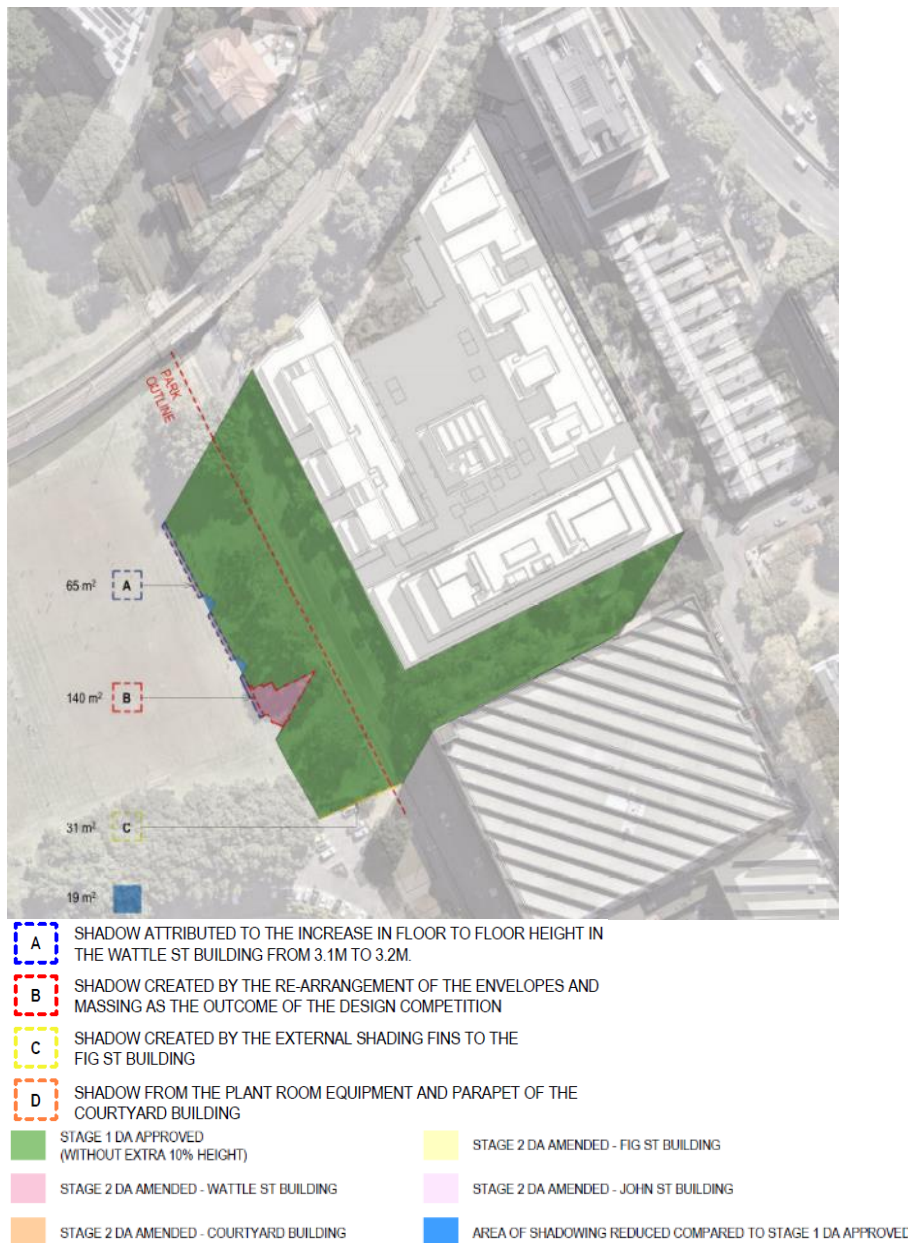


Figure 52: Building D - Wattle Street, Building C - Courtyard and Building E - Fig Street: Shadow diagram at 10am in midwinter

Building separation and visual privacy

55. **Table 4** shows the separation distances between windows and balconies set out in Objective 3F-1 of the ADG.

Table 4: ADG Objective 3F-1 separation distances between windows and balconies

Building height	Habitable rooms & balconies	Non-habitable rooms
Up to 12m (4 storeys)	12m	6m
Up to 25m (5-8 storeys)	18m	9m
Over 25m (9+ storeys)	24m	12m

56. The building envelopes proposed by the section 4.56 modification application do not fully achieve these separation distances. The sections at **Figures 53 to 55** illustrate where the proposed envelopes do not achieve the ADG separation distances (the diagrams were prepared by BVN and are included in concurrently lodged development application). Non-compliances occur between the following buildings:

- (a) Building B - Jones Street/Building F - Fig Street (see **Figure 53**, Sections AA, BB and CC)
- (b) Building D - Wattle Street/ Building F - Fig Street (see **Figure 54**, Section EE, FF and GG)
- (c) Building C - Courtyard/Building B - Jones Street (see **Figure 55**, Section HH)
- (d) Building C - Courtyard/Building D - Wattle Street (see **Figure 56**, Section HH)

57. In the non-compliant locations, the modified envelope plans include a notation providing that openings in the façade:

- Belong to a non-habitable room
- Have a privacy screen / landscape buffer
- Do not have direct sight line into adjacent buildings
- Have narrow slot windows with deep reveals
- Have windows offset from opposite façade.

58. The non-compliances subject to the notation on the building envelope plans are considered to be satisfactory and capable of achieving reasonable levels of external and internal privacy (the mitigation measure notation is also generally consistent with the approved building envelope plans which include a similar notation where ADG separation distances are not achieved). The detailed design development application demonstrates that daylight and natural ventilation are not compromised by the building separation non-compliances.

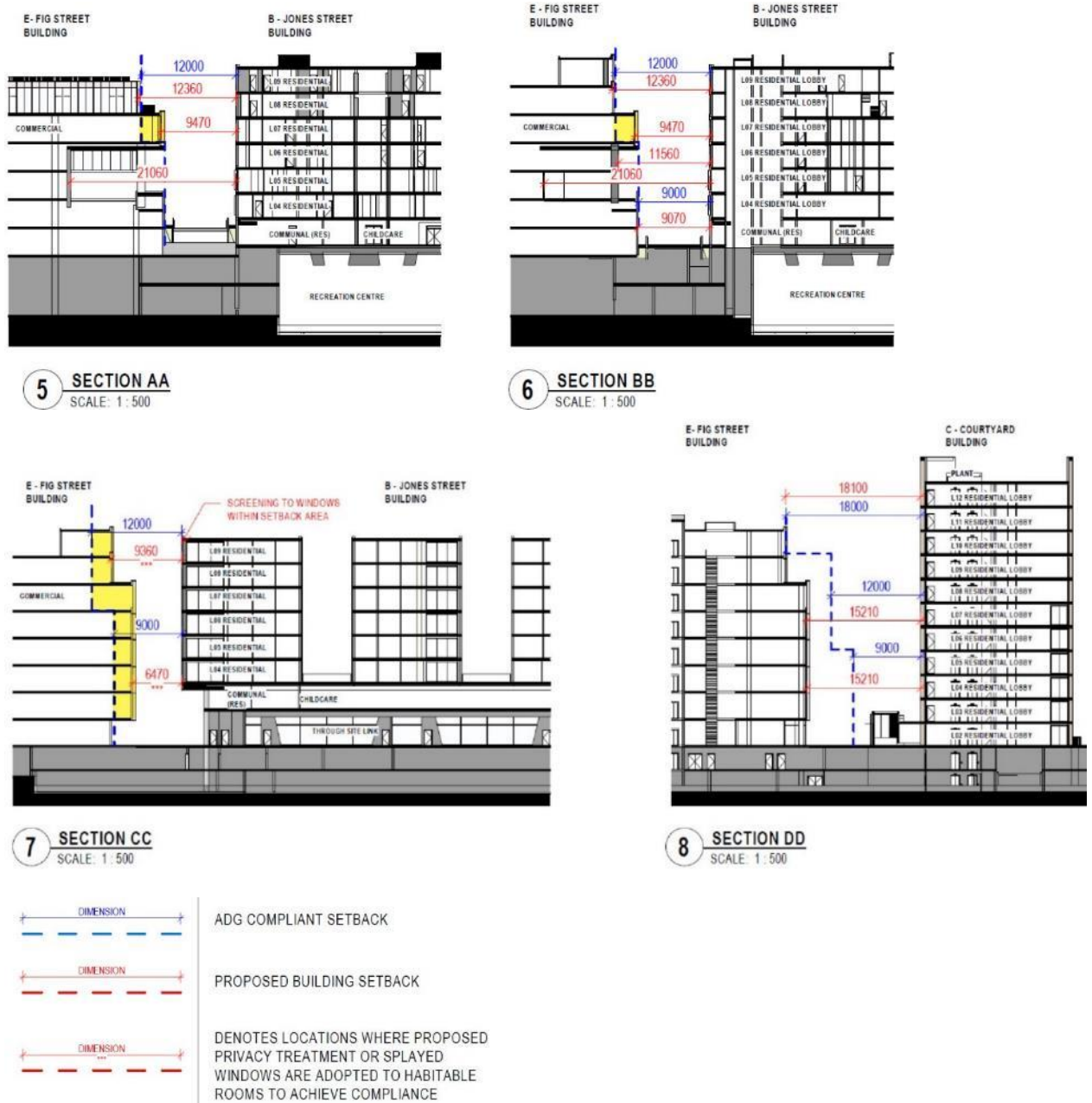


Figure 53: Assessment of compliance with ADG Objective 3F-1 separation distances (Sections AA, BB, CC and DD) (non-compliances highlighted)

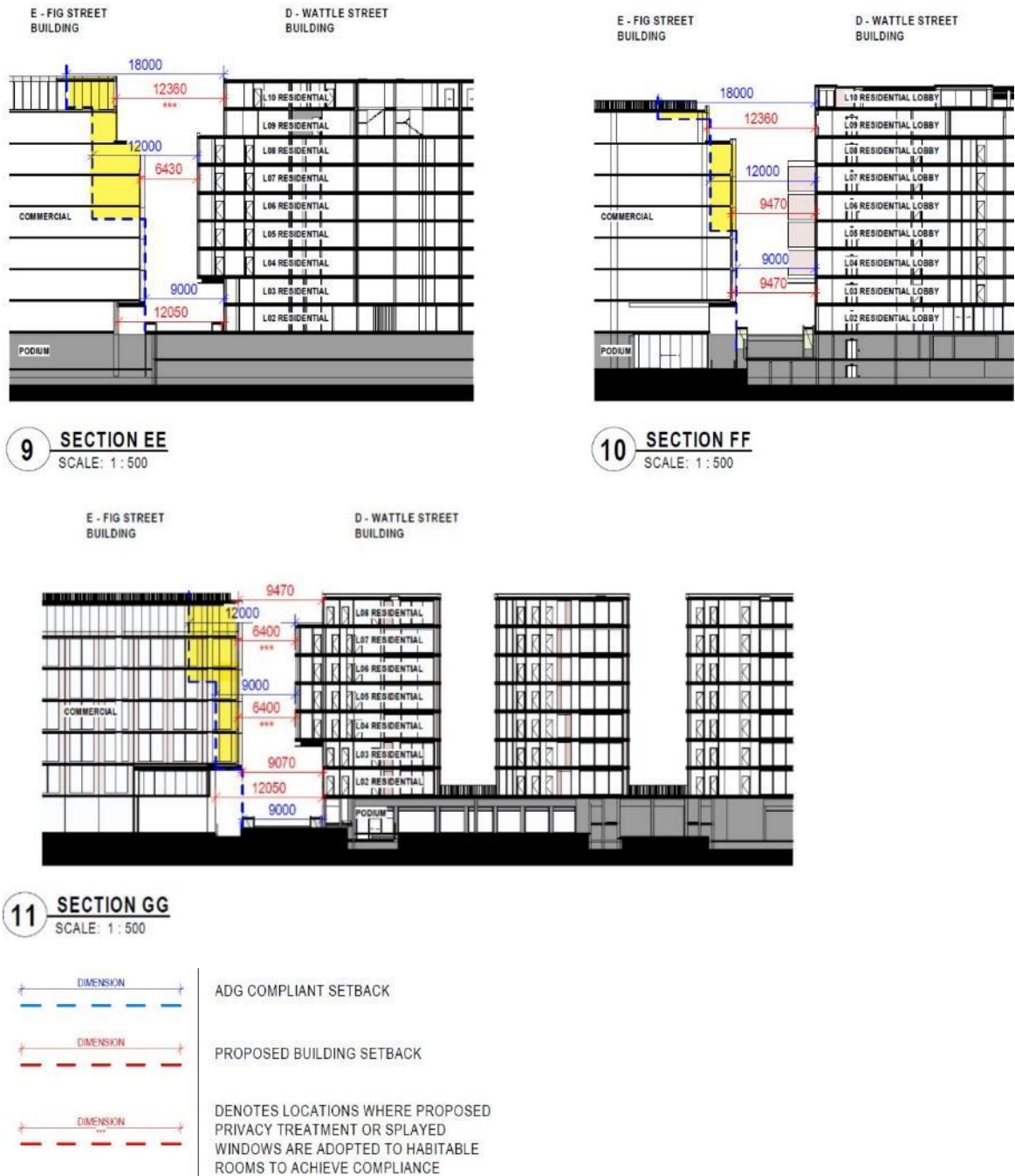
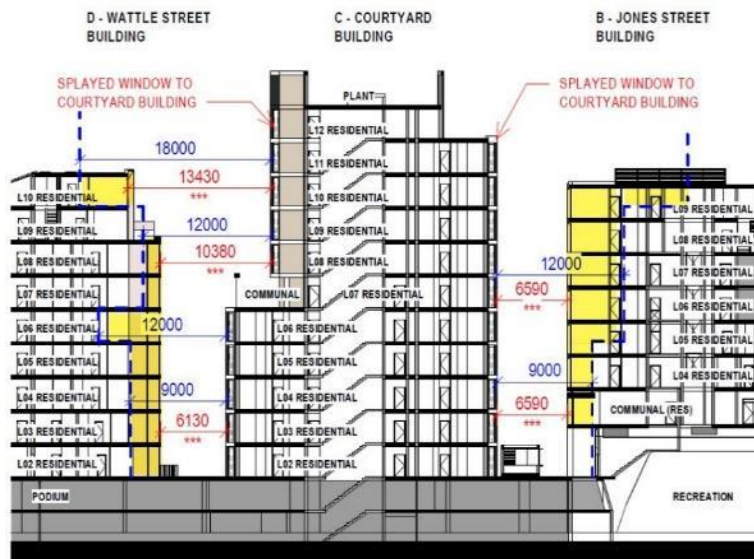


Figure 54: Assessment of compliance with ADG Objective 3F-1 separation distances (Sections EE, FF and HH) (non-compliances highlighted)



12 SECTION HH
SCALE: 1 : 500

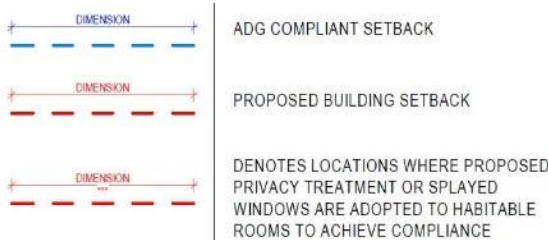


Figure 55: Assessment of compliance with ADG Objective 3F-1 separation distances (Section HH) (non-compliances highlighted)

Reasons given by the consent authority for the grant of the consent

59. Section 4.56(1A) of the EPA Act states that in determining a section 4.56 modification application, the consent authority must take into consideration the reasons given by the consent authority (in this instance the Court) for the grant of the consent that is sought to be modified. A copy of the Land and Environment Judgment for the concept consent is provided at **Attachment C**. The Commissioner provided the following key reasons for granting consent to the concept consent:

- (a) The height exceedance is owed, in part, to the unique site topography which includes a level difference of approximately 11.5 to 14 metres from the Jones Street property boundary.
- (b) The proposal appropriately responded to the conditions of each frontage, notably:
 - "In response to the Light Rail interface to the north of the site, the built form is both minimised and setback, preserving existing trees and resulting in an inviting prospect for through-site links adjacent to communal open space on the site, subject to owners consent that Sydney Trains has indicated may be granted subject to conditions..."

- The proposed height of the Wattle Street frontage is designed to be compatible with the street wall established by the former Winchcombe Carson woolstore to the south of the site. Additional height is setback to avoid additional overshadowing to Wentworth Park, and so that it is not visible in the context of the dominant street wall along Wattle Street.
 - Likewise, the Fig Street interface is compatible with the street wall height established by the former wool store to the south of the site, but differs from the other frontages in that no pedestrian links are proposed given the function of Fig Street as a major traffic route into the CBD, and on to Sydney Harbour Bridge. Setbacks are provided, firstly, to Jones Street of 10m in deference to the heritage-listed terrace group, and secondly, the topmost levels setback from Fig Street so that it is not visually a part of the Fig Street presentation.
 - The Concept DA proposes a four-storey street wall height setback 4m from the Jones Street boundary, with additional height setback further to avoid adverse impacts beyond that of a compliant envelope. The additional height which is, in effect, built form relocated from the 4m setback to Jones Street. Such a reallocation of built form is preferable as it provides benefits to the public domain, appropriately scales proposed development when considered in context with existing terraces, allows the sandstone rock face to be visible to public areas and aligns to heritage buildings to the south of the site."
- (c) "... the western views over Wentworth Park currently enjoyed by the Jones Street terrace group... would be lost by a development wholly compliant with the height control... the proposed height... adopts a lower profile that achieves the sharing of views."
- (d) "... strictly applying the 27 metre height plane to the unique topography of site permits a built form along Jones Street that would impose a far greater impact than that which is now proposed as a result of the decision to redistribute the floor space in favour of a lower envelope, and provides a setback accommodating a footpath on an important pedestrian link to the Light Rail station where none exists today."
- (e) In approving the consent concept, the Commissioner provided the following key reasons for supporting the clause 4.6 written request to contravene the height standard:
- "Strict compliance with the height standard is unreasonable or unnecessary... in 3-dimensional terms the topographical condition of the site, and the context of the existing built form adjacent to the site... transition between the proposed new development and heritage items and buildings in the vicinity.

- ... sufficient environmental grounds to justify the contravention of the height standard... I accept that the exceedance is owed, in part, to the unique topography of the site in the location of the sandstone rock face, and in response to which Building B - Jones Street is setback, and modulated in 3-dimensions so as to transition between the scale of existing development on Jones Street and the height of buildings generally permitted on the site. Furthermore, the exceedance occurs in areas set well back from the boundary lines where adverse impacts can be managed, and where the uppermost levels are least visible from the street frontages.
- ... the objectives of the B4 zone are achieved. The development... proposes a mix of public and community uses... on a site that imposes constraints, in response to which the exceedance is reasonable. The site is bounded on 3 sides by transport corridors, and on Jones Street by the sandstone rock face that precludes solar access to lower levels that would permit residential uses, and by considerations of heritage places above that. I accept that the location and scale of communal open space, including through site links, will encourage access to, and use of, the Light Rail corridor and encourage walking.
- I accept that the height of development is appropriate to the condition of the site and its context. In particular... I accept that strictly applying the 27m height plane ... would impose a far greater impact than that which is now proposed as a result of the decision to redistribute the floor space in favour of a lower envelope, and provides a setback accommodating a footpath on an important pedestrian link to the Light Rail station where none exists today."

60. The applicant has considered the Court's reasons for the grant of consent and notes that:

"While increasing the numerical extent of the height of buildings on the site, the proposed redistribution of building masses, creation of a Courtyard Building, replacement of residential floors at Building E (Fig Street), and increase in floor to floor heights, do not result in an inconsistency with the reasons given by the NSW Land and Environment Court in granting consent to the Stage 1 Concept Approval. The preparation of this concurrent Section 4.56 modification application is arguably procedural in nature as the changes have arisen from the Competitive Design Process required by Condition 4 of the Stage 1 Concept Approval (D/2019/649) and new building standards arising from the Design and Building Practitioners Act 2020. The proposed modifications maintain an appropriate response to the site context and characteristics and the desired future character of the Pymont Peninsula."

Condition modifications

61. The proposed modifications to concept consent conditions, an assessment of their acceptability and the recommended conditions of consent are discussed below:

Condition (2) Approved development

- (a) The section 4.56 modification application seeks consent to modify condition (2) to reference the modified plans. This modification is recommended for approval.

Condition (3) Matters not approved by the concept development consent

- (a) The section 4.56 modification application seeks consent to delete reference to a superseded plan for the Jones Street footpath (condition (3)(c)). This modification is recommended for approval.
- (b) The recommended conditions delete condition (3)(j) which states that the concept consent does not approve "the floor or ceiling heights of each storey". The proposed increase in building height has in part been justified by a proposed increase in residential floor to floor height (3.1m approved and 3.2m proposed). The proposed Fig Street Building height is also dependant on 3.6m commercial floor to floor heights. Given these attributes, it is considered that floor to floor heights should be fixed by the concept consent. This modification was not part of the application.
- (c) The recommended conditions delete condition (3)(l) which states that the concept consent does not approve "up to 10% design excellence uplift in building height or floor space ratio". As the proposed/modified building envelopes include an uplift in building height in accordance with clause 6.21D of Sydney LEP 2012, the concept consent should be modified to ensure that no further application can be made for additional design excellence uplift in height or FSR. This modification was not part of the application.

Condition (5) Detailed design of buildings

- (a) The section 4.56 modification application seeks consent to delete condition (5)(a) which specified building envelope amendments for Building E - Fig Street. As the proposed/modified envelope plans for Building E - Fig Street are generally consistent with the winning scheme, this deletion is recommended for approval.
- (b) The recommended conditions of consent include a new condition (5)(a) which relates to Building C - Courtyard and requires the Plant Room Equipment and Parapet Zone height (and any other structures at Level 13 of Building C - Courtyard) to be reduced by at least 2m (to a maximum of RL 43.55 (AHD), as explained above in the Discussion section. This modification was not part of the application.
- (c) The section 4.56 modification application seeks consent to modify condition (5)(b) to delete reference to street tree planting along the frontage to Jones Street as engineering advice has confirmed that trees are not appropriate in close proximity to the cliff on the site. This modification is recommended for approval.

Condition (7) Building height

- (d) Condition (7) of the concept consent specifies the maximum height for various elements of each building (eg. roofs, balustrades, lift overruns). The section 4.56 application seeks consent to modify the maximum heights to reflect the modified/proposed building envelopes but proposes a reference the uppermost level of each building only (i.e. lift overruns/plant).
- (e) Like the concept consent, the recommended changes to condition (5) specify maximum heights for various elements of each building. The requirement to reduce the height of Building C - Courtyard Plant Room Equipment and Parapet Zone by at least 2m is also stated.

- (f) The following words appears at the end of condition (7):

"Notwithstanding clause (a) and (b) above, the Jones Block and Fig Block may be eligible for up to 10% additional height pursuant to the provisions of Clause 6.21(7) of Sydney Local Environmental Plan 2012 if the consent authority is satisfied that the resulting detailed design development application exhibits design excellence and is the result of a competitive design process."

- (g) The section 4.56 modification application seeks consent to modify these words to allow the application of the 10% additional design excellence height on all buildings (except the Building A - Retail). This modification is not supported as it infers that a further uplift in height is available. The recommended conditions instead include the following words at the end of condition (7) to ensure that there would be no further increase in building height:

"The maximum heights shown above are inclusive of additional height approved pursuant to the provisions of Clause 6.21D(3) of Sydney Local Environmental Plan 2012. The development is not eligible for any additional height."

Condition (12) Public domain

- (a) The section 4.56 modification application seeks consent to modify condition (12)(b) to delete reference to tree and verge planting along the frontage to Jones Street as engineering advice has confirmed that this is not appropriate in close proximity to the cliff on the site. This modification is recommended for approval.

Condition (14) Landscaping of the site

- (a) The section 4.56 modification application seeks consent to modify condition (14)(a) to require compliance with the landscaping requirements as part of the detailed design development application. This modification is recommended for approval.

Condition (22) Parking design

- (b) The section 4.56 modification application seeks consent to modify condition (22) to enable flexibility in compliance with Australian Standard AS/NZS 2890.1 - 2004 Parking facilities Part 1: Off-street car parking and Australian Standard AS/NZS 2890.2 - 2002 Parking facilities Part 2: Off-street commercial vehicle facilities and Australian Standard AS/NZS 2890.6 - 2009 Parking facilities Part 6: Off-street parking for people with disabilities. The modification is recommended for approval (noting that the reasonableness of any departures from the relevant standards is considered in the detailed design development application assessment).

Condition (30) Tree protection plans and detailed design application and Condition (31) Tree protection plans and detailed design application

- (c) The section 4.56 modification application seeks consent to update the arboricultural report referenced in conditions (30) and (31). This modification is recommended for approval, subject to clarifying a requirement to Tree 46 on Fig Street.

Other Impacts of the development

62. The modified development will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the development

63. The proposal is of a nature in keeping with the overall function of the site.

Consultation**Internal referrals****Design advisory panel**

64. The original development application and section 4.56 modification application were presented to the DAP on 15 June 2023. The DAP raised a number of concerns (see History section above) that were included the first RFI to the applicant dated 28 July 2023. Additional and amended information has been provided to address the issues raised by the DAP including additional information on building separation and privacy protection, reduced height (although the height of Building C - Courtyard was increased), reduced overshadowing of Wentworth Park, a small reduction in floor space, residential amenity improvements including widening of the indented courtyards, additional information on the child care centre and concurrence from NSW Education, wind analysis and public art (including endorsement by City's Public Art Unit and Public Art Advisory Panel).

Council units

65. The section 4.56 modification application and development application were referred to the following Council units:
- (a) Building Services
 - (b) Child and Family Services
 - (c) Environmental Health
 - (d) Environmental Projects
 - (e) Heritage
 - (f) Landscape
 - (g) Planning Agreement
 - (h) Public Art and Public Art Advisory Panel
 - (i) Public Domain
 - (j) Safe City
 - (k) Survey
 - (l) Transport and Access

- (m) Tree Management
 - (n) Urban Design
 - (o) Waste Management.
66. The above units advised that the proposal is acceptable subject to conditions (which predominantly relate to the development application).

External referrals

67. The section 4.56 modification application and development application were concurrently. The agencies raised no objections to the applications subject to conditions which are addressed or included in the recommended conditions of consent in **Attachment A** where relevant (agency conditions relate to the detailed design development application).

Advertising and notification

68. The section 4.56 modification application and detailed design development application were notified concurrently for 28 days from **28 February - 29 March 2023**. Five submissions were received, including two submissions which provided comments/support and three objections raising concerns in relation to height, design excellence, public interest, certainty, precedent, contravention of the planning controls, heritage, overshadowing of Fig Street Park and Wentworth Park, amenity impacts for nearby residents, wind, density, vehicle and pedestrian traffic, impact on public transport, illegal dumping of rubbish and capacity of public services.
69. Relevant to the section 4.56 modification application, submissions raised the following issues:
- (a) **Issue:** Building height:
 - The height approved by the Land and Environment Court should be not increased
 - Height contravention sets an undesirable precedent
 - Increase in height is not in the public interest
 - Additional height impacts views from Fig Street Park
 - Additional height overshadows Fig Street Park
 - Additional height overshadows Wentworth Park
 - Additional height adversely impacts the historic and cultural significance of the area
 - Adverse impact on the amenity of apartments and communal open space of 280 Jones Street (Harbour Mill Apartments)

- Wind tunnel
- Increased height of Building C - Courtyard

Response: An assessment of the proposed increase in height is set out in the Discussion section of this report. It explains that a condition is recommended to reduce the height of Building C - Courtyard Plant Room Equipment and Parapet Zone by at least 2m. Also in response to the issues of concern noted above, the increase in height will not cast a shadow onto Fig Street Park, the additional shadow cast onto Wentworth Park is not supported but complies with the relevant Sydney DCP 2012 controls and would have little impact on the amenity of the park. The increase in height would have a negligible impact on the amenity of apartments and communal open space of 280 Jones Street (Harbour Mill Apartments) when compared with a compliant envelope as well as the envelope approved by the concept consent. Conditions of consent are recommended for the development application requiring compliance with the wind impact assessment.

- (b) **Issue:** Density, traffic, pedestrian safety and amenity and impact on public services/assets

Response: With a proposed FSR of 3.88:1, the detailed design development application demonstrates that the proposed/modified building envelopes can accommodate a development with a FSR of less than 4:1 (being the FSR standard at clause 4.4 of Sydney LEP 2012). Given this, the density of development is consistent with the planning controls relevant to the site. Council's Access and Transport Unit raised no objection to the section 4.56 modification application.

Public interest

70. It is considered that the section 4.56 modification application will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

Financial contributions

71. The development is not subject to development or affordable housing contributions as it is for a concept approval. Appropriate contributions have been recommended as part of the detailed design application (D/2023/97).

Conclusion

72. This section 4.56 modification application proposes changes to the approved building envelopes to align the concept consent (D/2019/649) with the detailed design development application (D/2023/97) which has been concurrently lodged and reported to the CSPC.
73. The proposed modifications to the approved building envelope will deliver consistency between staged development applications for the site, as required under Section 4.24 of the EPA Act.

74. The development as proposed to be modified is substantially the same as that which was originally approved. Like the concept consent, the proposed modifications would realise a mixed-use development accommodating residential uses, commercial uses, a recreation centre and a child care centre, a number of separate buildings surrounding a central courtyard located above two levels of car parking, vehicular access from Wattle Street (for cars) and Fig Street (for loading) and a north-south pedestrian through site link between Wattle Street and Jones Street (with two additional east-west pedestrian connections proposed).
75. Subject to conditions, the increased height and bulk of the building envelopes generally reflects the winning scheme and will not adversely impact the amenity of the surrounding area.
76. The proposed building envelopes are capable of accommodating a future building which exhibits design excellence in accordance with s 6.21C of Sydney LEP 2012.
77. The proposed modifications are recommended for approval.

SANDRA ROBINSON BTP (HONS) REGISTERED PLANNER PLUS (EIA)

Director, Robinson Urban Planning Pty Ltd