

Item 4.

Development Application: 960A Bourke Street, Zetland - D/2023/849

File No.: D/2023/849

Summary

Date of Submission: 26 September 2023

Amended Plans/ Additional Information: Amended drawings and additional information were submitted on 22 December 2023, 31 January 2024 and 5 April 2024

Applicant/ Developer/ Owner: Mirvac Green Square Pty Ltd

Architect/Designer: Tzannes (Sites 7 and 17) and Bates Smart (Site 18)

Planning Consultant: Ethos Urban

Design Advisory Panel: 22 February 2024

Cost of Works: \$316,159,951.00

Zoning: The site is zoned MU1 - Mixed Use under the Sydney Local Environmental Plan (Green Square Town Centre) 2013. The proposed development comprises commercial, retail and residential uses which are permissible with consent in the zone.

Proposal Summary: Approval is sought for a mixed use development comprising three buildings over a shared basement on Sites 7, 17 and 18 of the Green Square Town Centre.

The development includes site preparation and remediation works, bulk excavation and construction and use of the following buildings:

- Site 7 - a 16 storey mixed use building with ground floor loading dock and retail, commercial uses on levels 2-5 and 124 apartments above;
- Site 17 - a 13 storey building comprising ground floor retail, commercial uses on levels 2-5 and 59 apartments above;

- Site 18 - a 20 storey building comprising ground floor retail and 77 apartments above; and
- A part-two, part-four level shared basement across the sites, containing 262 car parking spaces, 8 service vehicle spaces, bicycle and motorbike parking, storage and plant. Vehicle access is provided on Site 7 from Tweed Place.

The development also includes public domain works including the construction of Fellmonger Place and Barker Street and Torrens title subdivision of the site.

Land dedication is to occur by way of a Planning Agreement which was executed in 2013 and amended in November 2022.

The application is referred to the Central Sydney Planning Committee (CSPC) for determination as the cost of works exceeds \$50 million.

The CSPC previously granted deferred commencement consents for development on the site under D/2017/564 (Sites 7 and 17) and D/2017/503 (Site 18) on 20 June 2019. The deferred commencement consents were not made operational within the specified timeframe and subsequently lapsed. The overall built form proposed under this application is largely consistent with that approved under the previous consents.

The development involves dewatering and is therefore Integrated Development, requiring approval of WaterNSW under the Water Management Act 2000. General Terms of Approval have been issued by WaterNSW and form part of the recommended conditions in Attachment A.

A Competitive Design Alternatives Process was held for Site 18 pursuant to Clause 6.9 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013, as the development has a building height greater than RL 75.

The Bates Smart submission was selected as the winning scheme. The proposal is generally consistent with the overall intent of the winning scheme and has addressed the recommendations of the selection panel. A competitive design process was not previously required for Sites 7 and 17 for the reasons outlined in this report.

A written request has been submitted to vary the height of buildings development standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013. The proposal seeks to vary the height of buildings development standards on Sites 7 and 17 by 14% and 20% respectively due to horizontal projections (lateral projection) beyond the LEP envelope. The variation on Site 7 is limited to Levels 16-18, where the upper part of the building protrudes across the RL 64 height control with a height of RL 72.7.

The variation on Site 17 is limited to Levels 11-13, where the building protrudes laterally above the RL 50 height control with a height of RL 60.2. The proposal also seeks to vary the height of buildings development standard on Site 18 by 6.6%. The applicant's written request to vary the height of buildings development standard demonstrates that compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives of the land use zone and height of buildings development standards and the height non-compliances are therefore supported in this instance.

A second written request has been submitted in relation to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide, as this is deemed a development standard under Section 148 of the State Environmental Planning Policy (Housing) 2021. A floor to ceiling height of 2.4m is provided to kitchens, bathrooms and hallways, which does not meet the recommended 2.7m floor to ceiling height in the ADG. The applicant's request to vary the ceiling height development standard is supported in this instance.

The application was notified for a period of 28 days between 5 October and 3 November 2023. Five submissions were received. The key issues raised in the submissions relate to building height, visual privacy, traffic and parking, structural impacts and safety issues.

The proposal was reviewed by the Design Advisory Panel on 22 February 2024. The application has successfully addressed the issues identified by Council and the DAP, as detailed in this report.

The proposal in its final form responds appropriately to surrounding development and provides a desirable built form within the Green Square Town Centre. The development achieves a standard of architectural design that demonstrates design excellence in accordance with Clause 6.9 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 and will provide residential,

retail and commercial uses that will contribute to the activation of the locality.

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

Development Controls:

- (i) Sydney Airport Referral Act 1996
- (ii) Water Management Act 2000
- (iii) State Environmental Planning Policy (Transport and Infrastructure 2021)
- (iv) State Environmental Planning Policy (Resilience and Hazards) 2021
- (v) State Environmental Planning Policy (Housing) 2021
- (vi) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vii) Sydney Local Environmental Plan (Green Square Town Centre) 2013
- (viii) Green Square Town Centre Development Control Plan 2012
- (ix) City of Sydney Development Contributions Plan 2015
- (x) City of Sydney Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Clause 4.6 Variation Request - Ceiling Heights
- E. Submissions

Recommendation

It is resolved that:

- (A) the request to vary the height of buildings development standard in accordance with Clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 be upheld;
- (B) the request to vary the ceiling height development standard in accordance with Clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 be upheld;
- (C) the requirement under Clause 6.9 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 requiring a competitive design process for Sites 7 and 17 is unreasonable or unnecessary in the specific circumstances due to the site history, applications consolidation, and substantial input received from the Design Advisory Panel including forming a subcommittee; and
- (D) consent be granted to Development Application Number D/2023/849 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to conditions of consent, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.
- (B) Based upon the material available to the Committee at the time of determining this application, the Committee is satisfied that:
 - (i) the applicant's written requests relating to the maximum height of buildings and ceiling height development standards adequately addressed the matters required to be addressed under Clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013, that compliance with the respective development standards is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening the development standards; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the MU1 - Mixed Use zone and the height of buildings and ceiling height development standards.
- (C) The proposal has been assessed against the aims and objectives of the relevant planning controls including the Sydney Local Environmental Plan (Green Square Town Centre) 2013, the Green Square Town Centre Development Control Plan 2012 and the State Environmental Planning Policy (Housing) 2021. Where non-compliances exist, they have been demonstrated in this report to be acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.

- (D) The proposal demonstrates design excellence in accordance with the relevant provisions and matters for consideration in Clause 6.9 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013.
- (E) The proposed development for Site 18 is consistent with the design intent of the winning scheme of a competitive design alternatives process, held in accordance with the City of Sydney Competitive Design Policy.
- (F) The proposed development has a bulk, form and massing that is suitable for the site and its context within the Green Square Town Centre and the proposed mix of residential, retail and commercial uses are consistent with the objectives of the MU1 - Mixed Use zone.
- (G) The proposal is consistent with the terms of the executed Planning Agreement that has been registered on the title of the land and will facilitate the improvement of the public domain through the dedication of land for the new roads, being Barker Street and Fellmonger Place.

Background

The Site and Surrounding Development

1. The site is located at 960A Bourke Street, Zetland and is known as Sites 7, 17 and 18 within the Green Square Town Centre (GSTC). The site is legally described as Lot 6 in Deposited Plan 1199427.



Figure 1: Location of the site within the Green Square Town Centre (shaded in blue)

2. The collective site is irregular in shape, with an area of approximately 5,127sqm. It adjoins Ebsworth Street to the north-east, Paul Street to the south-east, Green Square Plaza to the south-west and Tweed Place to the north-west.
3. The site previously formed part of the Waterloo Incinerator site, which was decommissioned in 1996 and demolished in 2008. The site currently contains construction storage and car parking and is surrounded by hoardings on all boundaries, with a temporary through-site link known as Small Lane running through the site between Ebsworth Street and Green Square Plaza.
4. The surrounding area comprises a range of residential, commercial and mixed use developments within the broader Green Square urban renewal area, including:
 - (a) **North:** To the north of the site is the 'Ovo' building at 6 Ebsworth Street (Sites 5A and 5B) comprising a 10 storey and 28 storey mixed use building with ground floor retail uses and residential apartments above.

- (b) **North-east:** To the north-east at 18 Ebsworth Street (Sites 16A and 16B) is a 10 storey mixed use development including a supermarket and retail uses on the ground floor and residential apartments above.
 - (c) **East:** Directly east of the site at 77-93 Portman Street (Sites 15A, 15B, 15C and 15D) is a mixed use development containing four buildings ranging from four to 24 storeys, with ground floor retail uses and residential apartments above. This development is currently under construction and nearing completion.
 - (d) **South-east:** The Drying Green public park is located to the south-east of the site across from Paul Street.
 - (e) **South:** Immediately south of the site is the Green Square Plaza, containing the Green Square Library, and Neilson Square. On the southern side of the Plaza are sites 8A, 8B, 19A and 19B which are subject to Concept DA approval for building envelopes comprising four residential flat buildings.
 - (f) **North-west:** The site adjoins the 'Infinity' development at 305 Botany Road Zetland (Site 6). The development comprises a part 8, part 20 storey mixed use building containing commercial and retail tenancies with residential and serviced apartments above.
5. The site is not a heritage item and is not located within a heritage conservation area. The Zetland Estate Heritage Conservation Area is located to the north-east of the site.
6. A site visit was carried out on 6 December 2023. Photos of the site and surrounds are provided below.



Figure 2: Aerial view of site and surrounds



Figure 3: Site viewed from Green Square Plaza, looking north towards Ebsworth Street



Figure 4: Site viewed from Green Square Plaza at Botany Road, looking east



Figure 5: Site viewed from Green Square Plaza, looking north



Figure 6: Site viewed from Green Square Plaza, looking north-east towards Site 15



Figure 7: Looking east along Green Square Plaza towards the Drying Green



Figure 8: Looking towards the neighbouring properties along Ebsworth Street, viewed from the subject site looking north



Figure 9: Looking north-west along Ebsworth Street



Figure 10: Looking east along Ebsworth Street

History Relevant to the Development Application

Development Applications

7. The site has previously been subject to deferred commencement development consents under D/2017/564 (Sites 7 and 17) and D/2017/503 (Site 18). These consents were not activated within the specified timeframe and subsequently lapsed. A summary of the previous applications is outlined below.

Sites 7 and 17 - D/2017/564

8. Deferred Commencement development consent D/2017/564 was granted by the Central Sydney Planning Committee (CSPC) on 20 June 2019 for a mixed use development on Sites 7 and 17 comprising one 16 storey building and one 13 storey building with retail, commercial, entertainment (cinema) and residential uses and an integrated basement for car parking.
9. A photomontage of the scheme approved under D/2017/564 is provided below.



Figure 11: Photomontage of development approved under D/2017/564 for Sites 7 and 17

10. The deferred commencement conditions imposed by the CSPC required:
 - (a) Design modifications, including changes to the basement layout and provision of bicycle parking, level changes on the ground floor, privacy mitigation, building parapets, ceiling heights and solar shading; and
 - (b) A Loading Dock and Basement Management Plan.

11. A Section 4.55(1A) modification was submitted on 24 December 2021 to amend D/2017/564 as follows:
 - (a) Satisfy the deferred commencement conditions;
 - (b) Amend the basement layout;
 - (c) Amend floor to floor heights, internal configuration and apartment layout and mix; and
 - (d) Increase the building height of Site 17 from RL 62 to RL 62.5.
12. A Request for Information was sent to the applicant on 5 May 2022. The applicant provided amended plans in April 2023 and noted that the Request for Information from May 2022 was taken as an opportunity to revisit the broader scheme and address a shifting market. As a result, the changes sought under the amended plans were significant and included modifications to the land use and the architectural expression of the buildings.
13. Council officers subsequently advised that a new Section 4.55(2) or a new development application should be lodged, as the proposed modifications were considered beyond the scope permitted under Section 4.55(1A). D/2017/564/A was withdrawn by the applicant with the intention of lodging a new Section 4.55(2) modification.
14. D/2017/564 was not to operate until the deferred commencement conditions were satisfied, within 24 months of the date of determination. Under changes to the EP&A Act 1979 enacted by the COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020, an extension of 2 years was permitted, resulting in a lapse date of 20 June 2023. The deferred commencement conditions were not satisfied within the specified time period and therefore the consent lapsed.

Site 18 - D/2017/503

15. Deferred commencement development consent D/2017/503 was granted by the CSPC on 20 June 2019 for construction of a 20-storey mixed use residential building comprising 103 residential apartments over levels 2-20, retail uses on Level 1 (ground) and Level 2, communal facilities on the rooftop and Level 2, a three storey basement, site remediation and landscaping.
16. A photomontage of the scheme approved under D/2017/503 is provided below.



Figure 12: Photomontage of development approved under D/2017/503 for Site 18

17. The deferred commencement conditions required:
 - (a) Design modifications relating to the ground plane, communal indoor space, external operable sun shading, basement configuration and plant screening; and
 - (b) A Loading Dock and Basement Management Plan.
18. A Section 4.55(2) modification application was lodged on 10 January 2022 to amend D/2017/503 to resolve the deferred commencement conditions.
19. A Request for Information was sent to the applicant in May 2022. The applicant responded to the request in November 2022.
20. Further requests for information were sent to the applicant in February and May 2023 due to outstanding issues relating to urban design, public domain and waste management. There were also interrelated issues within the basement across Sites 7 and 17 that required issues under D/2017/564/A to be resolved before the modification for Site 18 could be determined.
21. Similarly to the DA for Sites 7 and 17, D/2017/503 was also not to operate until the deferred commencement conditions were satisfied, within 24 months of the date of determination. Under changes to the EP&A Act 1979 enacted by the COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020, an extension of 2 years was permitted, resulting in a lapse date of 20 June 2023. The deferred commencement conditions were not satisfied within the specified time period and therefore the consent lapsed.

Competitive Design Process

22. As a result of combining the three buildings into one development application, the collective proposal for Sites 7, 17 and 18 triggers the requirement for a design competition under Clause 6.9(5) of the SLEP (GSTC) 2013 as the combined capital investment value surpasses \$100 million. Site 18 underwent a competitive design process in 2016, whereas the development for Sites 7 and 17 did not trigger the requirement for a competitive process under the previous DA. Further details relating to each site are provided below.

Sites 7 and 17

23. Sites 7 and 17 were not previously subject to a competitive design process as the development proposed under D/2017/564 did not exceed a capital investment value of \$100 million and did not have a building height above RL 75.
24. Clause 6.9(6) of the SLEP (GSTC) 2013 allows a competitive design process to be waived if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances. Waiving the requirement for a competitive design process is supported in this instance. This is assessed further in the Discussion section below, under the 'Design Excellence' heading.

Site 18

25. A Competitive Design Alternatives Process was held between 26 October 2015 to 2 February 2016. Of the four schemes presented, the scheme proposed by Bates Smart was considered to be the most capable of demonstrating design excellence and was declared the winner.
26. The proposal is generally consistent with the overall intent of the winning scheme and has addressed the recommendations of the selection panel. A detailed review of the proposal against the selection panel's recommendations are outlined in the Discussion section below.
27. It is noted that the Sydney Local Environmental Plan (Green Square Town Centre) 2013 does not award a design excellence bonus for floor space or height.

Amendments

28. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 6 December 2023.
29. The following information and amendments were requested:
- (a) **Height, bulk and overshadowing** - Minor changes are proposed to the height and bulk of the buildings compared to the building envelopes approved under the lapsed consents. Further information was requested to demonstrate the impact that the amended height and bulk will have on solar access to public places.

(b) Acoustic and visual privacy

- To address traffic noise from Botany Road, further information was requested to ensure compliance with the windows open criteria without reliance on ducted air conditioning for natural ventilation.
- Increased provision for visual privacy and solar control was required for apartments facing the plaza.

(c) Balcony size and depth - Apartments on Sites 7 and 17 must achieve minimum ADG balcony size and depth requirements.

(d) Natural cross ventilation - Skylights above Apartments 811, 812, 813 and 814 on Site 7 should be replaced with an alternative means for natural cross ventilation.

(e) Apartment sizes - Apartments must achieve the minimum ADG design criteria for apartment size and depth.

(f) Other building amendments

- Music room on Site 7 should be co-located with the communal open space on Level 6 instead of Level 8.
- Apartment 815 on Site 7 has a very small living room window at an oblique angle which should be improved.
- Visual privacy for apartments 602 and 605 on Site 17 for windows facing onto communal open space should be addressed.
- The ground floor awning on the western edge of Site 17 should be reinstated.

(g) Wind impacts - Details outlining how the proposal has implemented the recommendations of the wind report were requested.

(h) Materials and finishes - Further information relating to materials and finishes for all sites was requested.

(i) Transport and access - Swept paths for SRV in the basement were requested.

(j) Tree management - Clarification sought as to whether any trees on site require removal and if there will be any impacts to existing street trees.

(k) Landscape

- Planters on the roof terraces should have more generous width to ensure viability.
- All facade planters should be reviewed to remove the need for specialist safety maintenance and to allow them to be accessed from a roof terrace, balcony or window box for maintenance.

- (l) **Sustainability**
 - Specify a clear intention to enter into a NABERS commitment agreement and provide reporting around proposed capacity to meet energy requirements.
 - As the proposal is heavily reliant on fossil fuels, it was recommended that the proposal incorporate electrification or associated strategy.
 - (m) **Waste management** - Further information regarding waste storage and chute rooms was requested.
 - (n) **Public art** - Preliminary Public Art Plan was requested.
 - (o) **Planning Agreement works** - Clarification was sought regarding Mirvac's intention for construction of the future roads.
 - (p) **Condition satisfied matters** - A number of deferred commencement conditions for the previously lapsed consents were not satisfactorily resolved and further information was requested regarding building parapets, ceiling heights, and solar sharing.
30. A preliminary/ partial response to the above was submitted by the applicant on 22 December 2023. A complete package was submitted on 31 January 2024, comprising the following information:
- (a) Amended plans;
 - (b) Overshadowing analysis;
 - (c) Amended LEP envelope drawings;
 - (d) Amended Clause 4.6 variation;
 - (e) Axonometric drawings;
 - (f) Amended ADG compliance summary;
 - (g) Amended wind report;
 - (h) Amended acoustic report; and
 - (i) Swept path assessment.
31. Further amendments were made by the applicant and submitted on 5 April 2024 to respond to feedback from the Design Advisory Panel in February 2024, which form the basis of this assessment.

Proposed Development

32. The application seeks consent for site preparation, remediation, bulk excavation and construction and use of three mixed use buildings on Sites 7, 17 and 18 containing retail, commercial and residential uses, including a total of 260 apartments. The development comprising the following:
- (a) Site 7 - 16 storey building (plus plant) with a 6 storey podium comprising a loading dock and retail uses on the ground floor, commercial uses on Levels 2-5 and 124 apartments above.
 - (b) Site 17 - 13 storey building (plus plant) with a 4 storey podium comprising retail uses on the ground floor, commercial uses on Levels 2-5 and 59 apartments above.
 - (c) Site 18 - 20 storey building (plus plant) comprising ground floor retail and 77 apartments above.
 - (d) Construction of a part-two, part-four level integrated basement across the sites, containing 262 car parking spaces, 8 service vehicle spaces, bicycle and motorbike parking, storage and plant. Vehicular access is provided on Site 7 from Tweed Place; and
 - (e) Public domain works including the delivery of Fellmonger Place and Barker Street and Torrens title subdivision of the site.
33. As discussed previously in this report, redevelopment of the site was previously approved under consents D/2017/564 and D/2017/503 which have since lapsed. This new DA proposes a number of changes compared to the previous approvals, which are summarised below:
- (a) The architectural expression of buildings on Sites 7 and 17 has changed from being sharply rectilinear and angular to now having more curvilinear forms. Key changes to materiality include increased brickwork for Site 17 and less reliance on FC painted wall panels overall, which is considered an improvement.
 - (b) The previously approved cinema use in the Site 7 podium has been replaced with commercial floor space use, in the same spatial arrangements so that cinemas it can retrofitted. However, the previously solid external walls of the former cinema have been replaced with vision panels (with aluminium privacy screening where required). The overall spatial requirements for the cinema and ceiling heights have been maintained so that the cinema use can be reintroduced into the podium if a cinema operator commits to this entertainment use as originally intended.
 - (c) The apartment mix and number across the three buildings has been revised to include larger owner occupier sized apartments, with the total number of apartments reduced from 298 to 260.
 - (d) 1.5 levels of basement have been added in the basement to allow improved circulation and to satisfy the current waste storage and loading requirements.
 - (e) External solar shading to Site 18 has increased.
 - (f) The floor to floor heights on Site 18 have increased to 3.15m.

34. Photomontages, plans and elevations of the proposed development (as amended) are provided below.



Figure 13: Photomontage of Sites 7 and 17 viewed from Green Square Plaza



Figure 14: Photomontage of Site 17, looking south on Ebsworth Street



Figure 15: Photomontage of Site 7, looking south on Ebsworth Street



Figure 16: Photomontage of Site 18 viewed from Neilson Square



Figure 17: Photomontage of Site 18 looking west

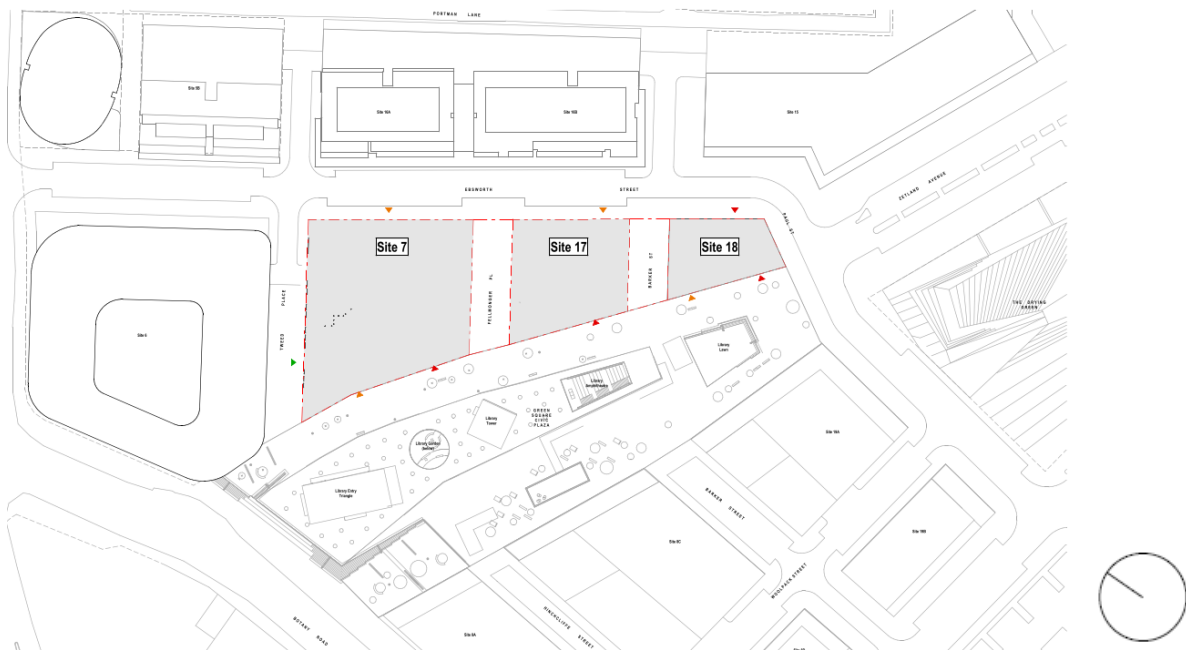


Figure 18: Proposed Site Plan

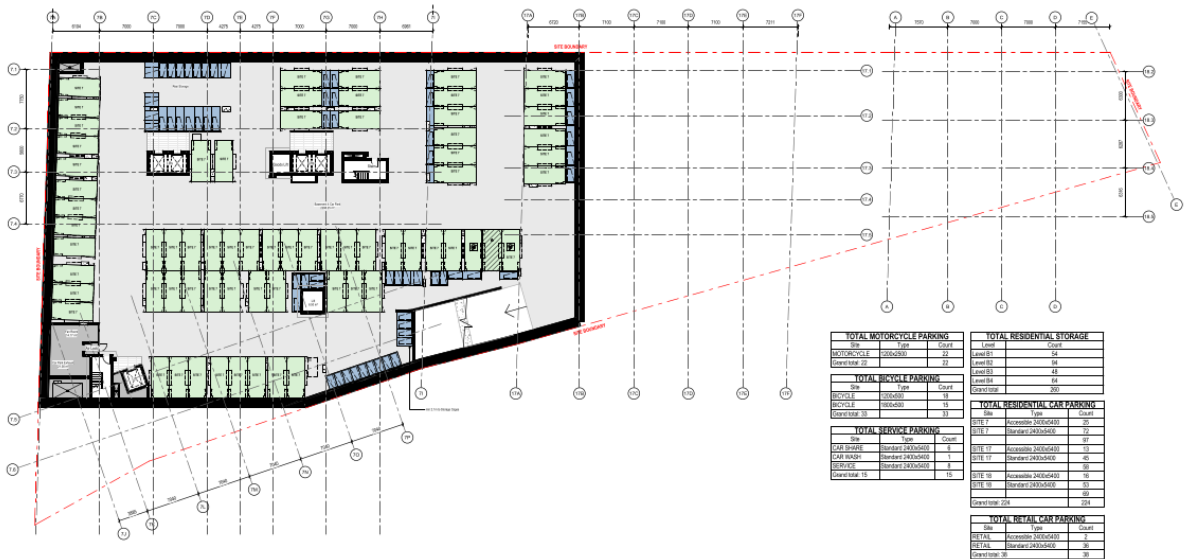


Figure 19: Proposed Basement Level 4 Plan

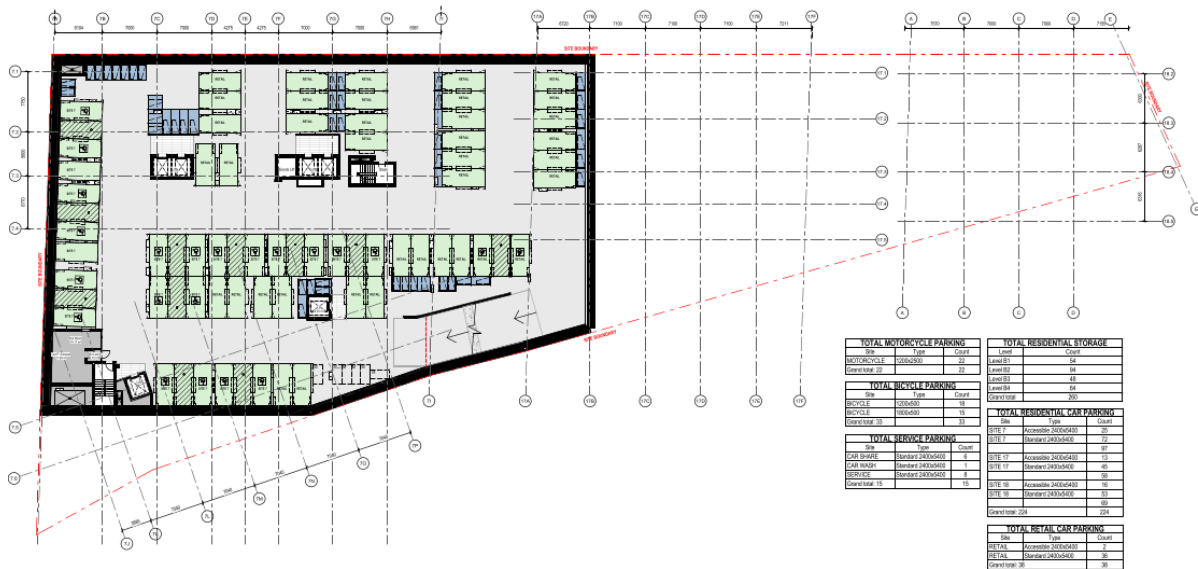


Figure 20: Proposed Basement Level 3 Plan



Figure 21: Proposed Basement Level 2 Plan

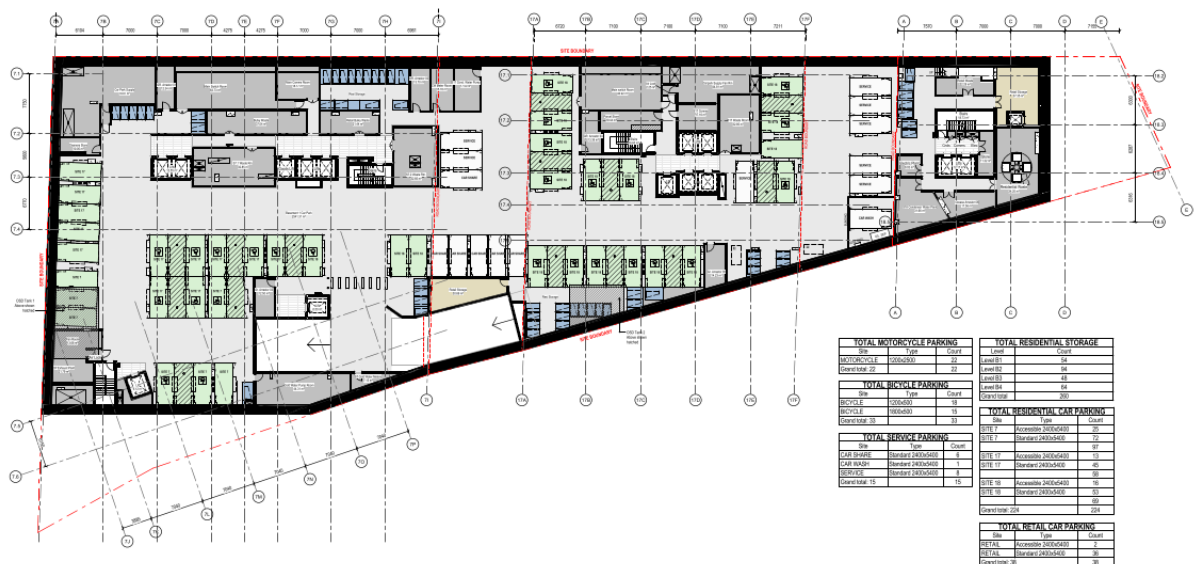


Figure 22: Proposed Basement Level 2 Plan

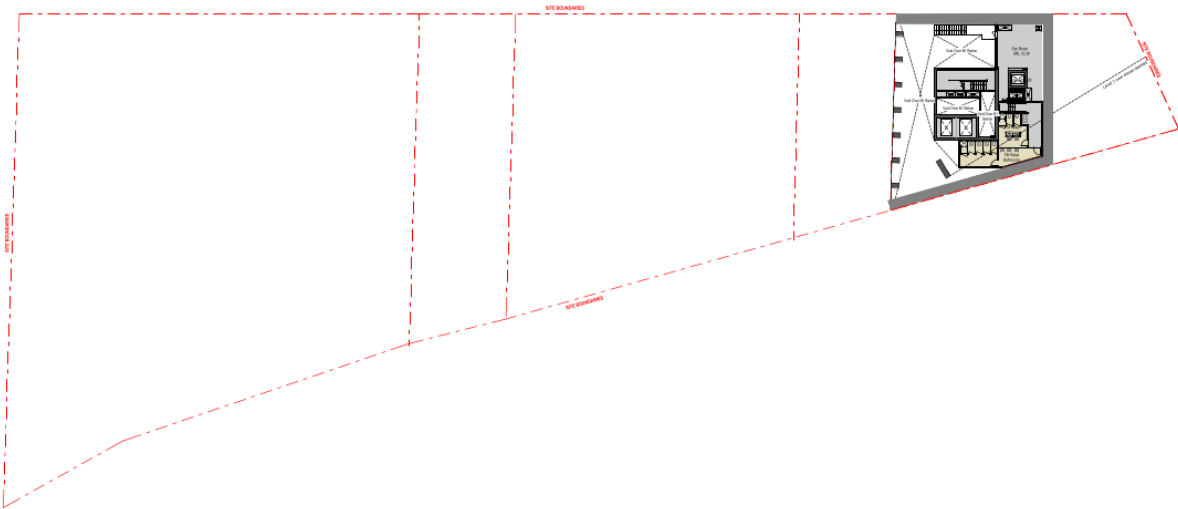


Figure 23: Proposed lower ground floor plan

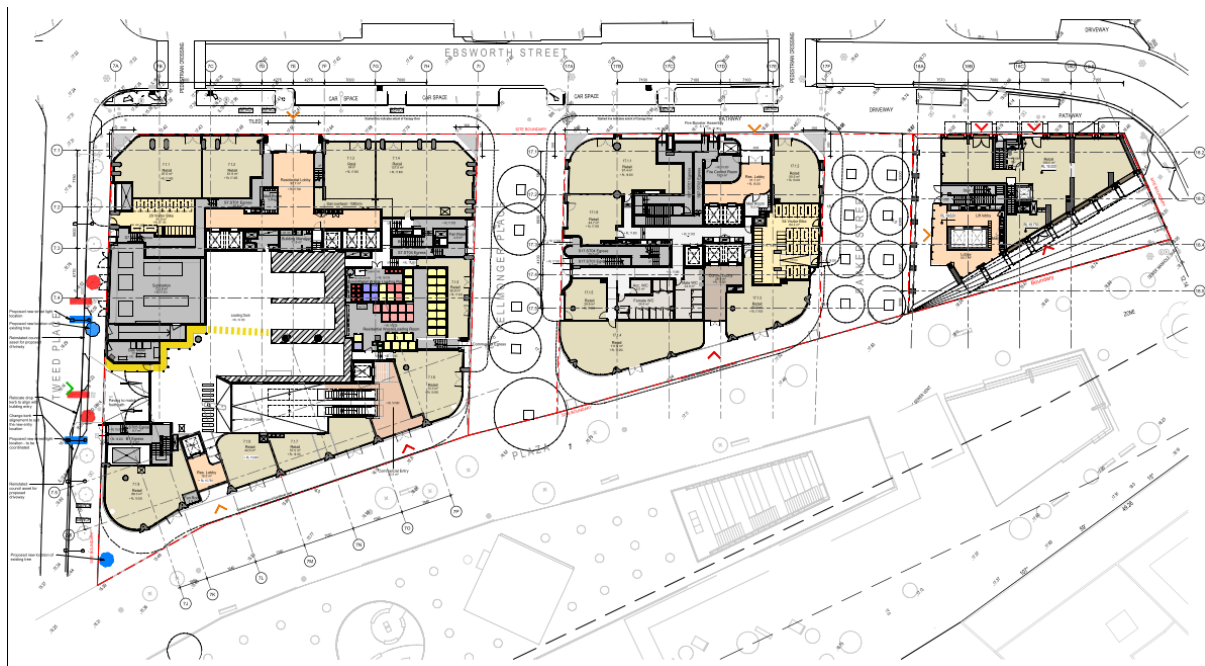


Figure 24: Proposed ground floor plan



Figure 25: Proposed Level 2 plan (first floor)



Figure 26: Proposed Level 3 plan

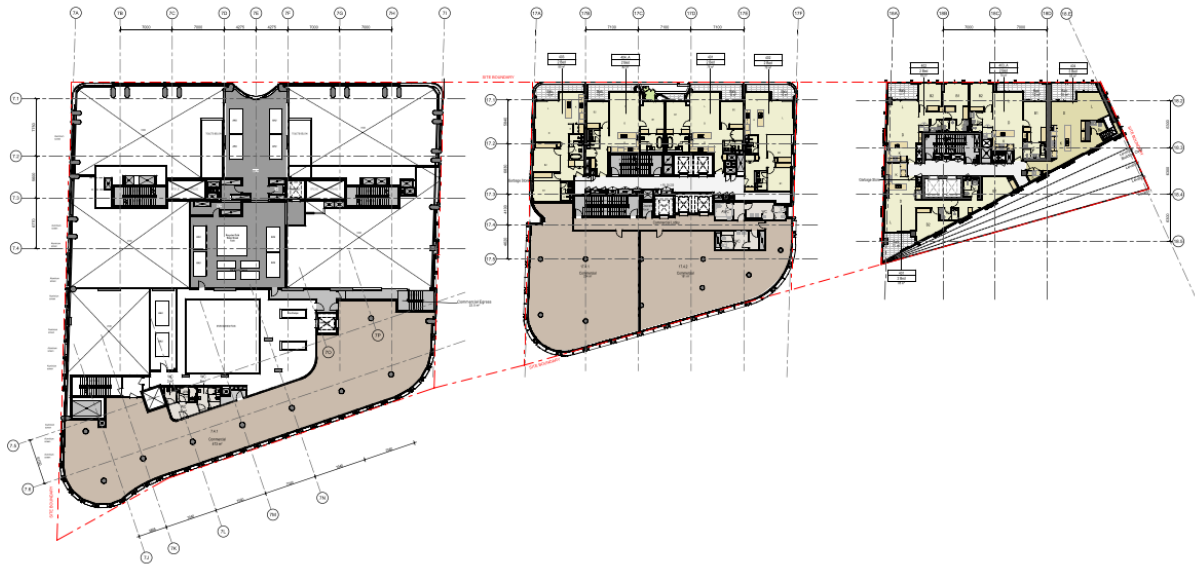


Figure 27: Proposed Level 4 plan

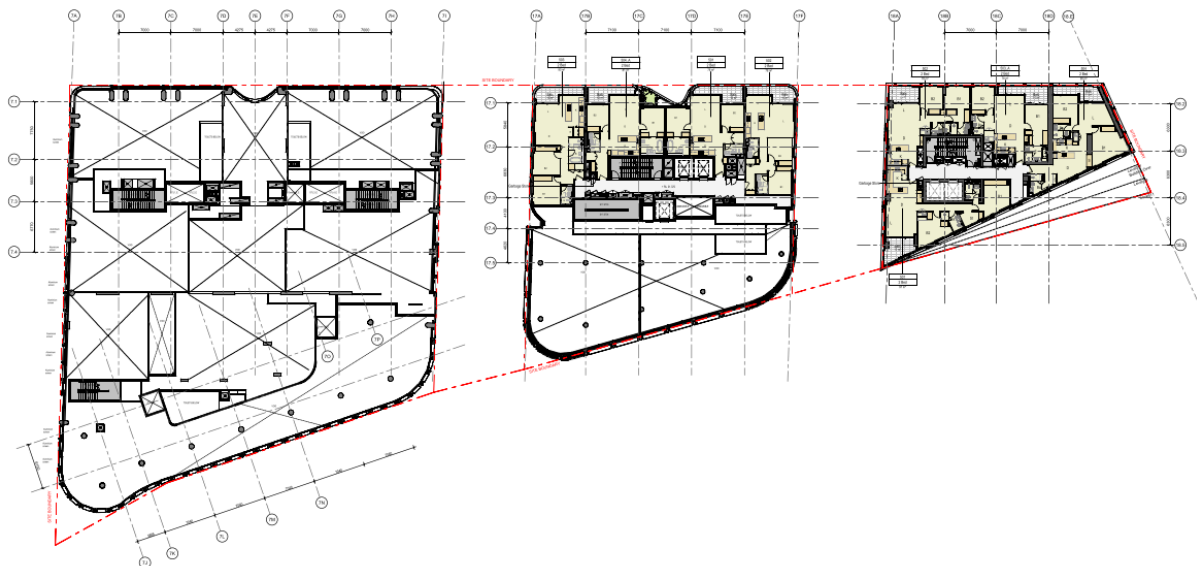


Figure 28: Proposed Level 5 plan



Figure 29: Proposed Level 6 plan



Figure 30: Proposed Level 7 plan



Figure 31: Proposed Level 8 plan

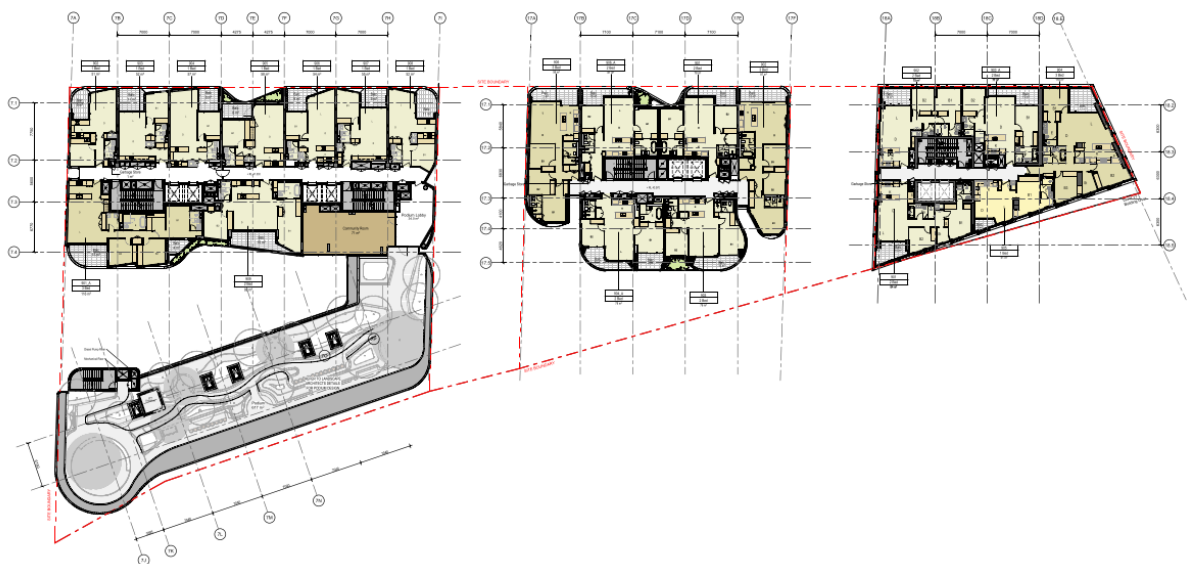


Figure 32: Proposed Level 9 plan

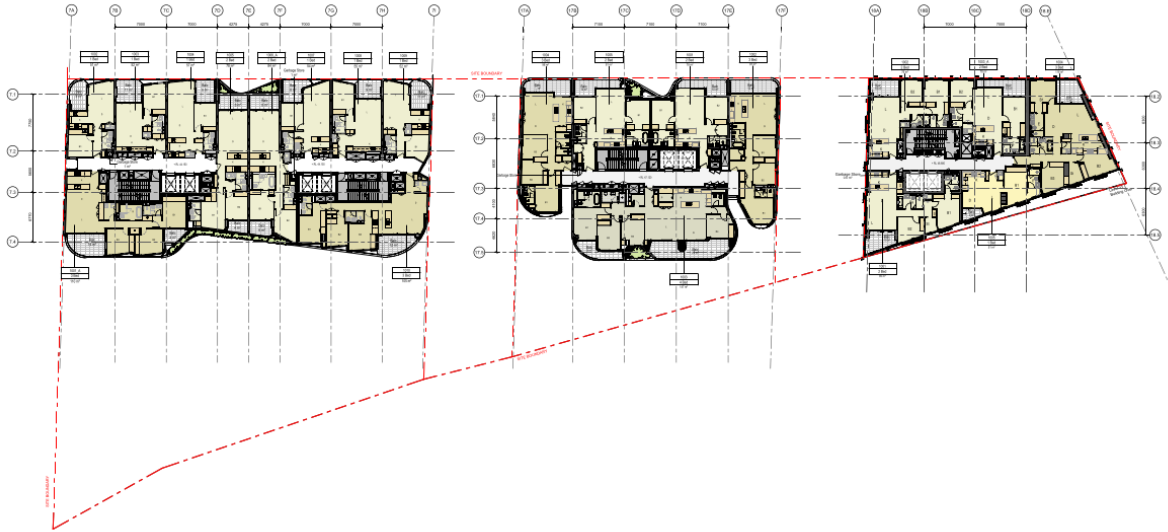


Figure 33: Proposed Level 10 plan

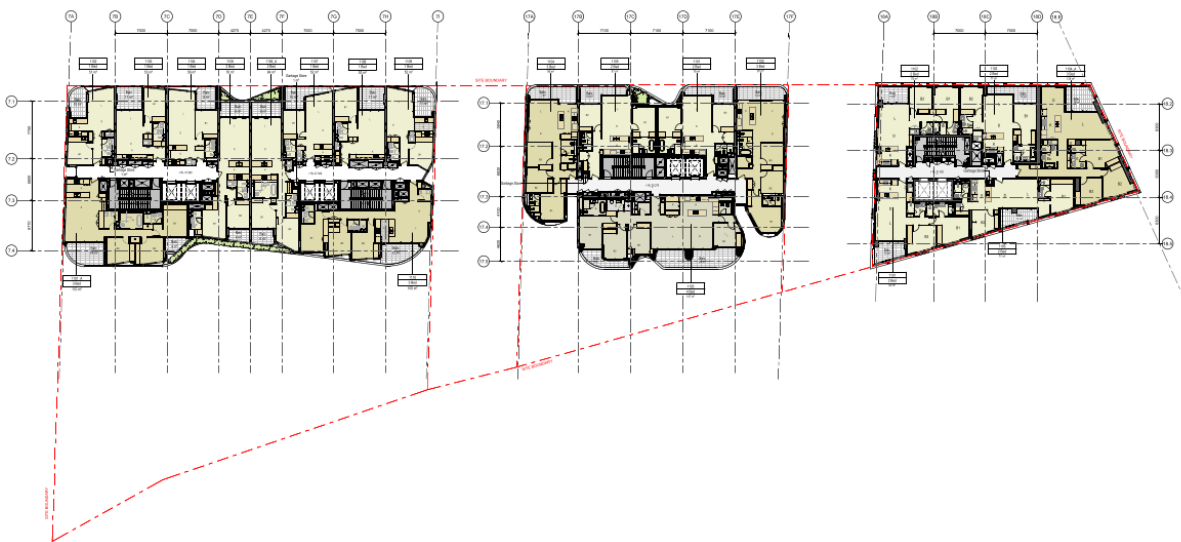


Figure 34: Proposed Level 11-12 plan

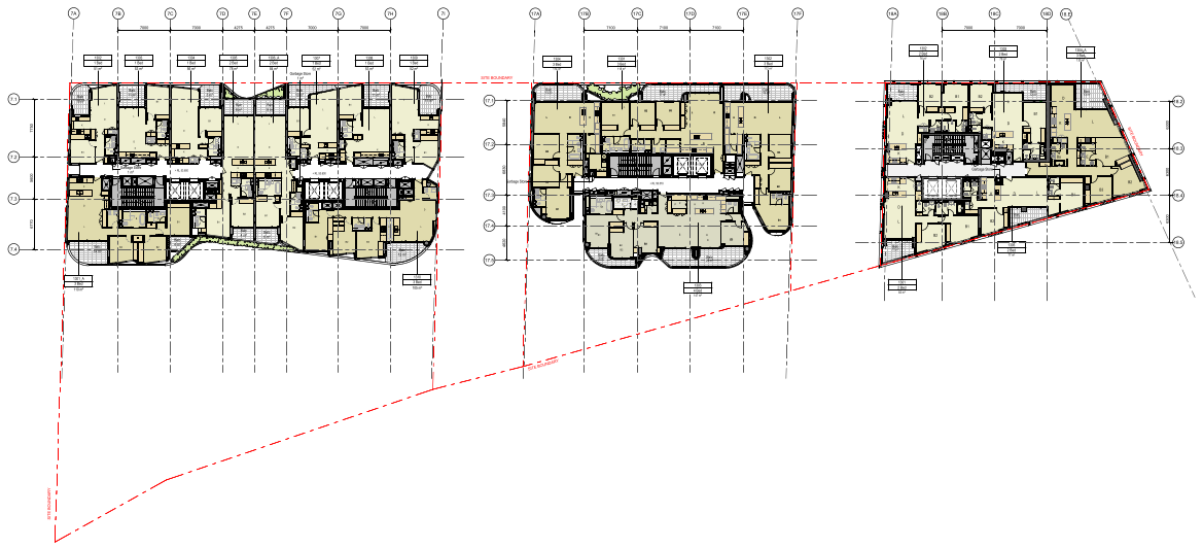


Figure 35: Proposed Level 13 plan

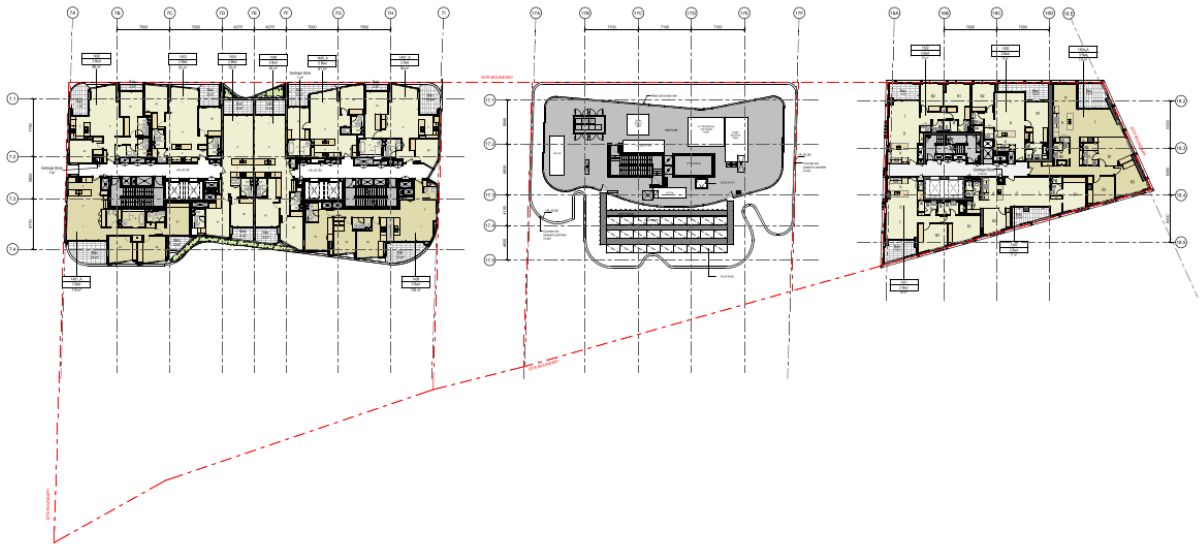


Figure 36: Proposed Level 14 plan

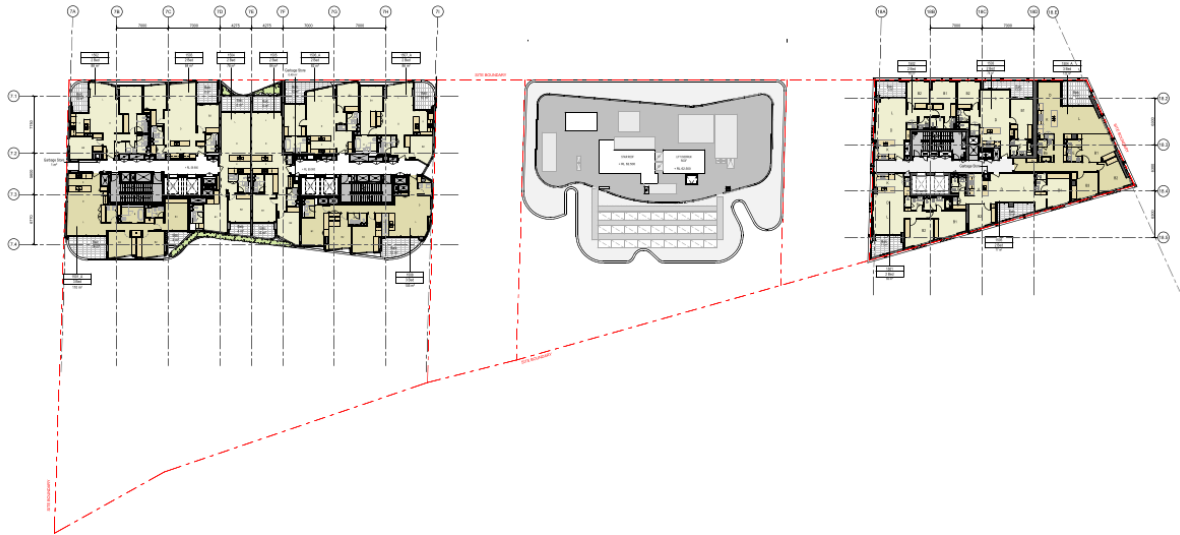


Figure 37: Proposed Level 15-16 plan

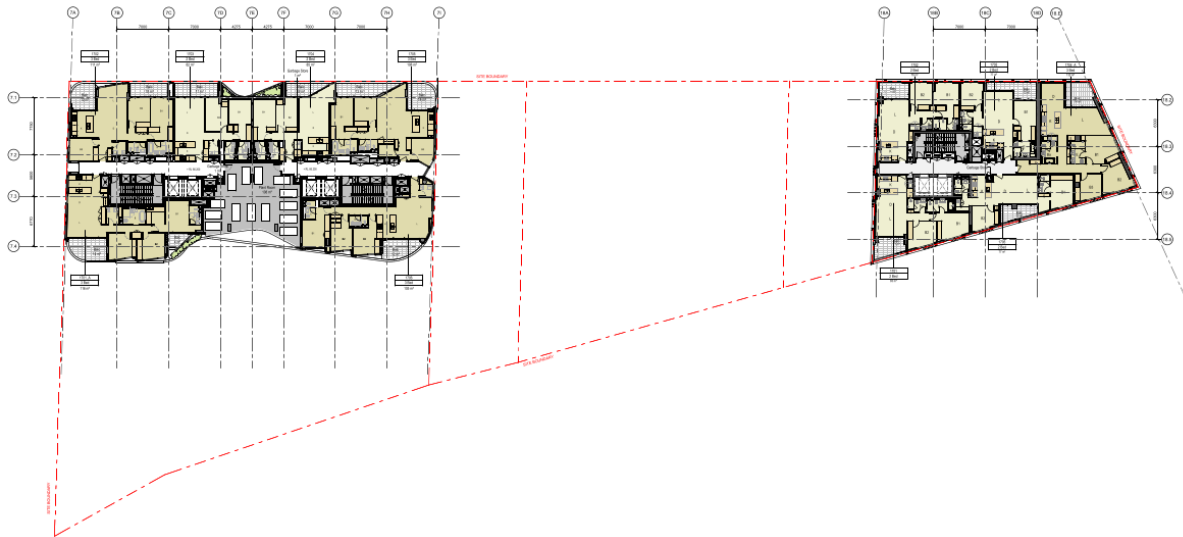


Figure 38: Proposed Level 17 plan

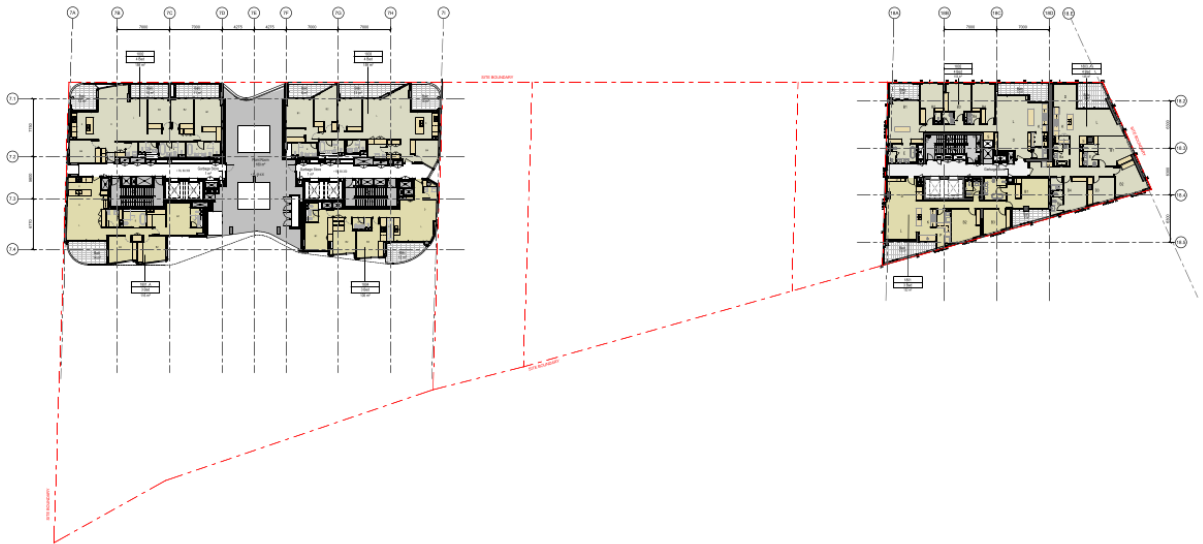


Figure 39: Proposed Level 18 plan

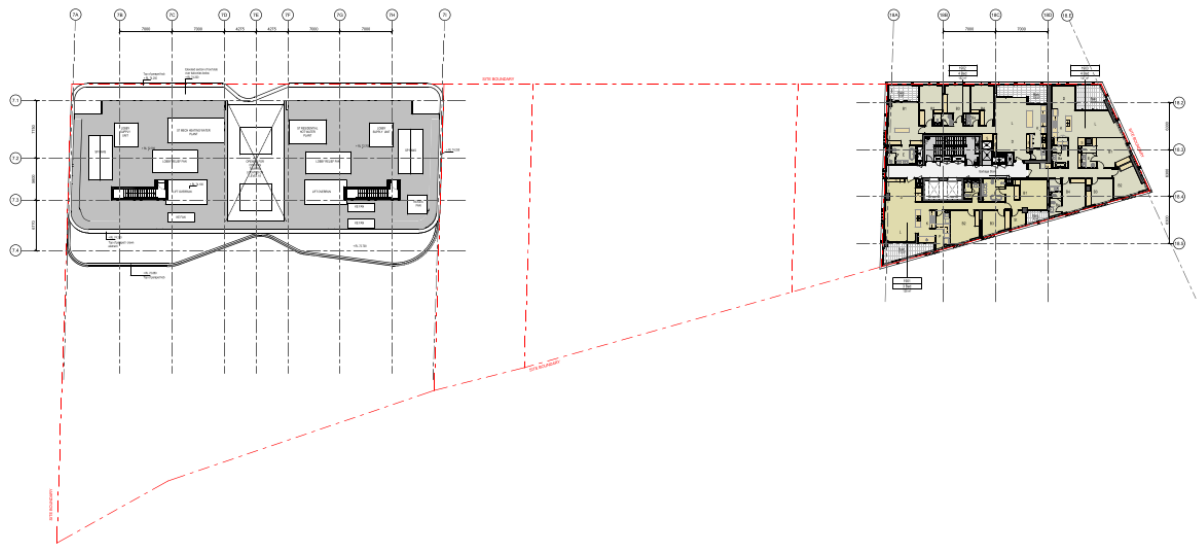


Figure 40: Proposed Level 19 plan

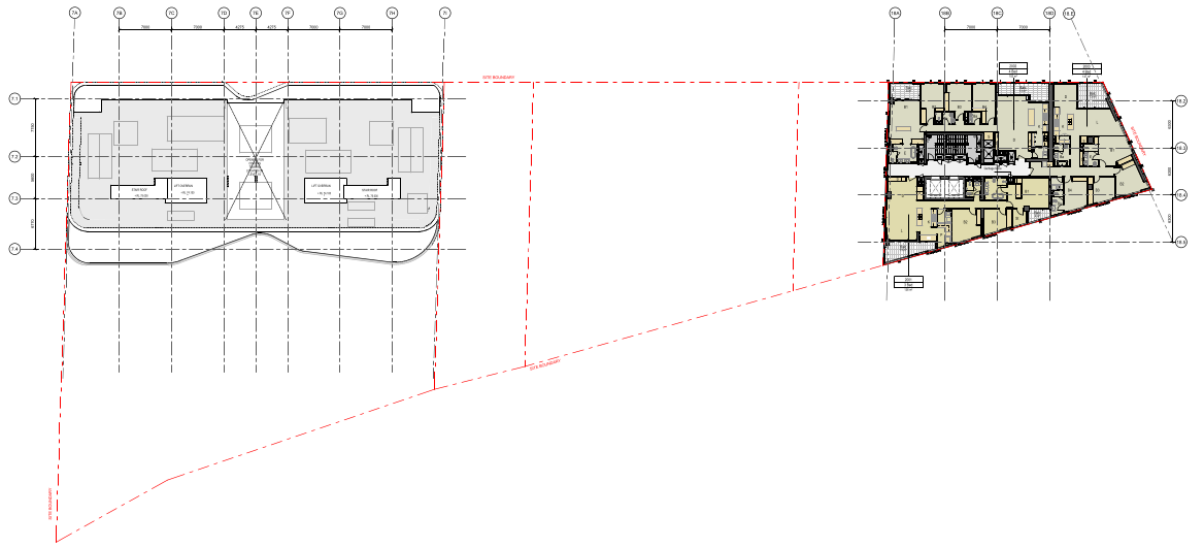


Figure 41: Proposed Level 20 plan

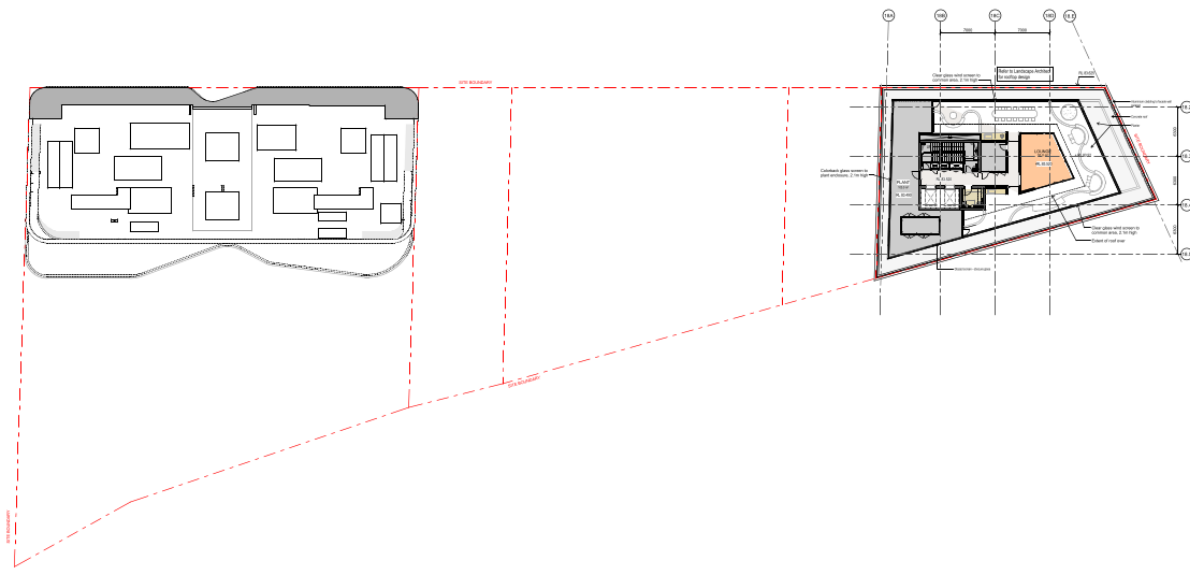


Figure 42: Proposed Level 21 plan

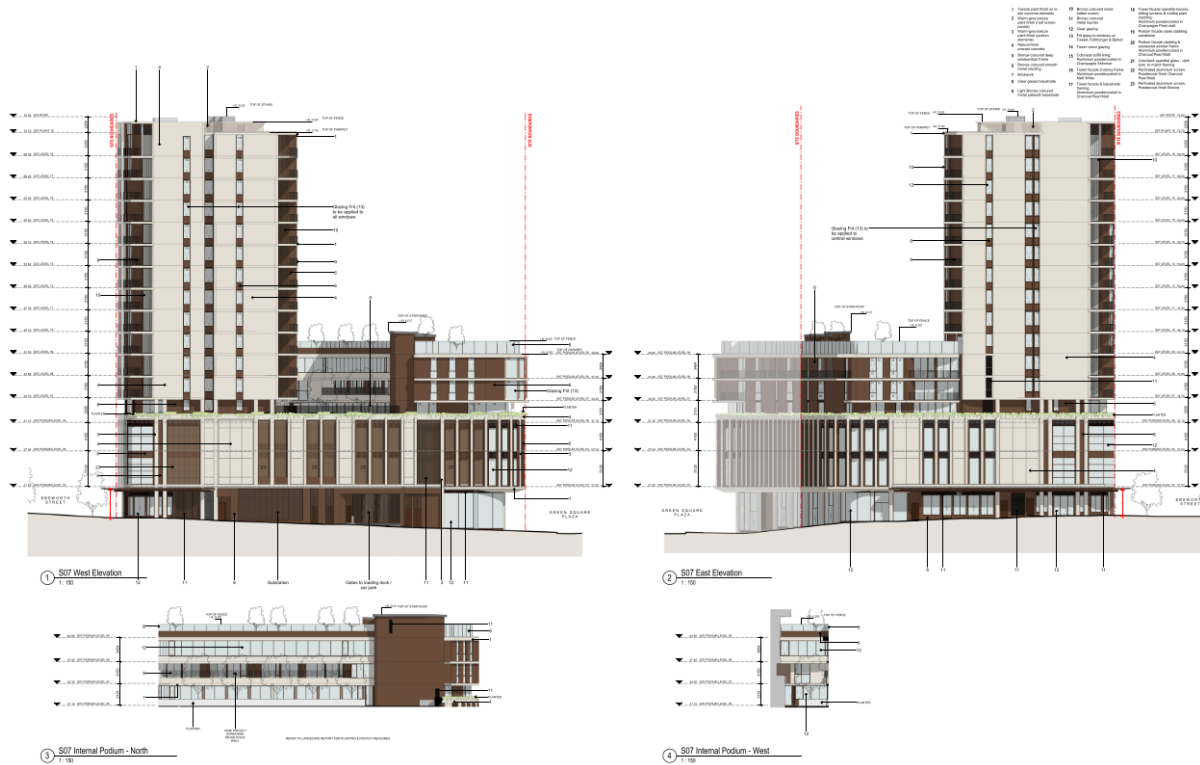


Figure 45: Site 7 elevations

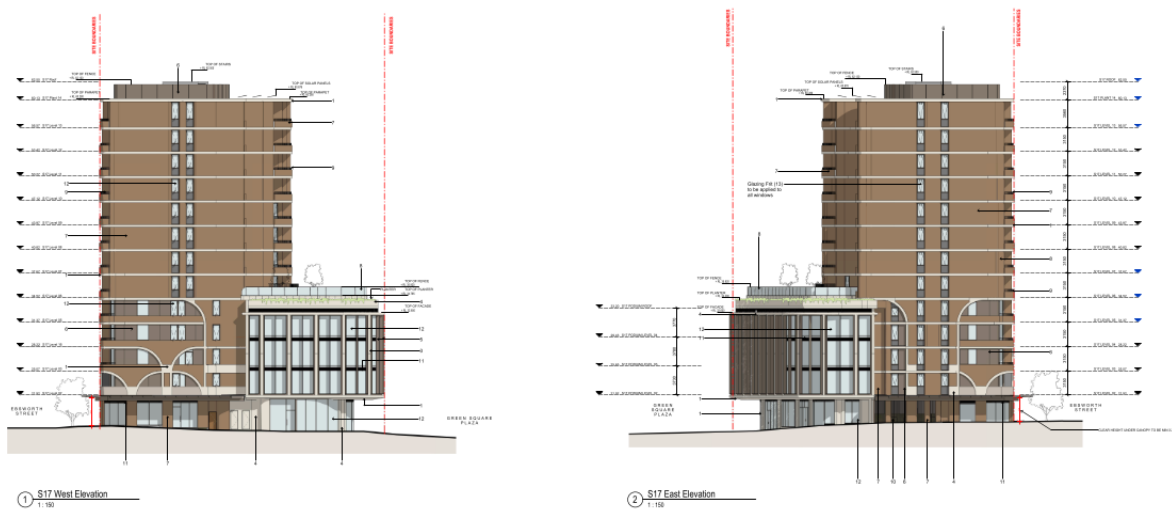


Figure 46: Site 17 elevations



Figure 47: Site 18 elevations

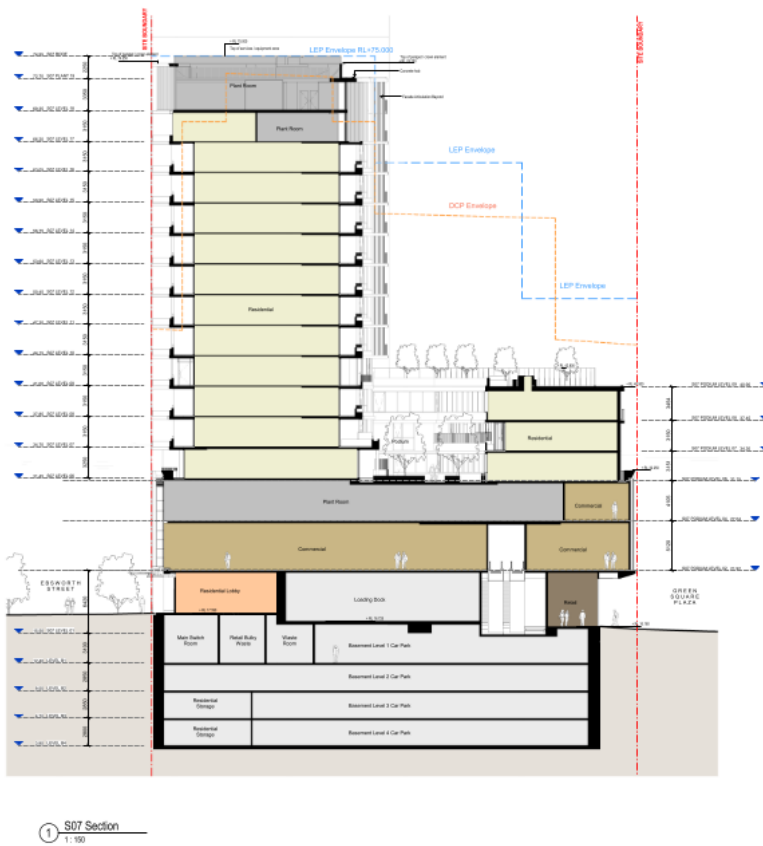
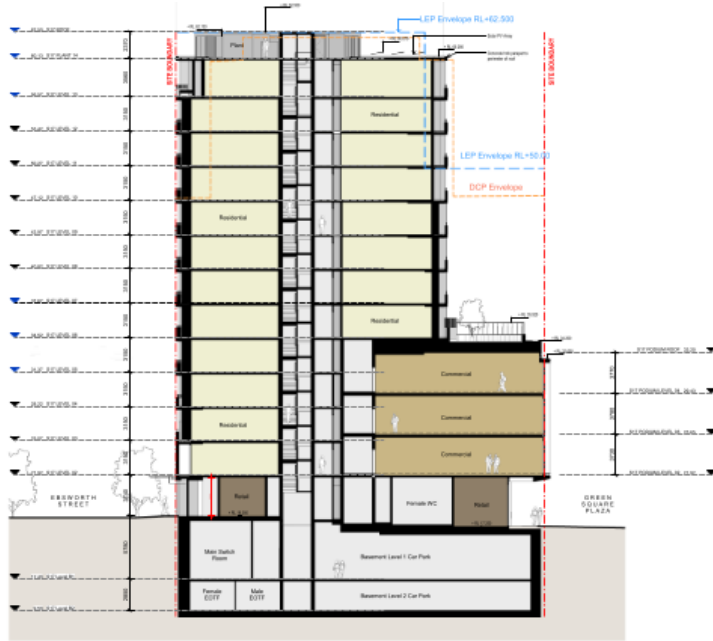
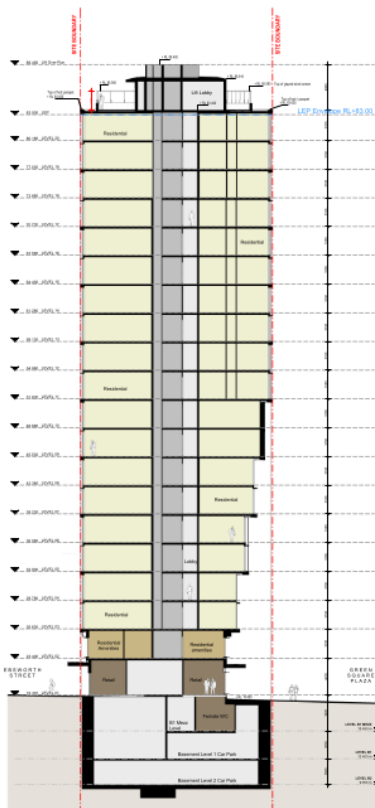


Figure 48: Site 7 section



1 S17 Section
1:150

Figure 49: Site 17 section



1 S18 Section
1:150

Figure 50: Site 18 section



Figure 51: East-west section through Sites 7, 17 and 18

Assessment

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

Sydney Airport Referral Act 1996

36. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
37. Clause 6(1) of the Civil Aviation (Building Control) Regulations 1988 identifies that 'prescribed airspace' includes 'the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services - Aircraft Operations (PANS-OPS) surface for the airport.'
38. The OLS for the subject site is 51m (AHD). With a maximum height of RL 88.49, the development will penetrate the OLS by 37.49m and is therefore a 'controlled activity'.
39. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted.
40. Clause 14 of the Civil Aviation (Building Control) Regulations 1988 provides that a proposal to carry out a controlled activity must be approved unless carrying out the controlled activity interferes with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned. Clause 14(1)(b) provides that an approval may be granted subject to conditions.

41. Under the Regulations, the Secretary of the Department is empowered to make decisions in relation to the approval of controlled activities and impose conditions on the approval. Approval was granted for the controlled activity on 22 December 2023, subject to conditions.

Water Management Act 2000

42. Pursuant to Section 90(2) of the Water Management Act 2000, the application was referred to WaterNSW for concurrence.
43. General Terms of Approval were issued by WaterNSW on 27 November 2023 and have been included in the recommended conditions of consent.

Sydney Water Act 1994

44. Section 78 of the Sydney Water Act 1994 sets out various requirements for the determination of development applications which would:
 - (a) increase the demand for water supplied by the Corporation; or
 - (b) increase the amount of waste water that is to be removed by the Corporation; or
 - (c) damage or interfere with the Corporation's works; or
 - (d) adversely affect the Corporation's operation.
45. The application was referred to Sydney Water for comment. Sydney Water responded on 8 November 2023 and provided conditions which have been included in the recommended conditions of consent.

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4

Remediation of Land

32. 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.
33. A Remediation Action Plan (RAP) relating to the site, accompanied by a letter of interim advice prepared by a NSW EPA Site Auditor has been submitted with the development application.
34. The RAP proposes to excavate material from the subject site and place it in a sub-basement void on the adjoining property at 6 Geddes Avenue. This remediation strategy has been approved under a separate consent (D/2022/548) which was approved by the Sydney Local Planning Panel on 19 July 2023. No changes are proposed to the approved remediation strategy under the subject development application.
35. The Council's Health Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the remediation measures outlined and for Council to be notified should there be any changes to the remediation strategy.

36. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Housing) 2021

37. The State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) was repealed on 14 December 2023. Chapter 4 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) now applies to all pending development applications including those lodged before 14 December 2023, such as the subject development application.
38. Chapter 4 - Design of Residential Apartment Development of the Housing SEPP aims to improve the design of residential apartment development in New South Wales.
39. When determining an application for a residential flat development of three or more floors and containing for or more apartments, the Housing SEPP requires the consent authority to take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.
40. The applicant has submitted a design verification statement and design report prepared by Tzannes for Sites 7 and 17 and by Bates Smart for Site 18, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statements are deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.
41. An assessment of the proposal against the design principles is provided as follows:

(a) Principle 1: Context and Neighbourhood Character

The site is located within the GSTC which has undergone significant urban renewal in recent years with various development, public domain and community infrastructure envisaged by the GSTC DCP 2012 being delivered.

The site responds to this context by providing further retail, commercial and residential floor space in a key location, which will serve the needs of the local and wider community. The built form is appropriate for the site and its context, forming the northern wall of the Plaza.

(b) Principle 2: Built Form and Scale

The GSTC DCP 2012 provides a framework for desirable built form and massing for the subject site. The site forms the northern edge of the civic plaza and provides a lower scale podium to the plaza, with the majority of the building mass located towards Ebsworth Street, which is in accordance with the general massing established in the DCP.

The overall built form and scale is largely unchanged from the DAs that were previously approved on the site.

(c) Principle 3: Density

The proposal complies with the maximum floor space ratio permitted for the site and presents an acceptable level of density while achieving a high level of amenity for future occupants. The proposed density is envisaged by the planning controls and can therefore be sustained by existing and future infrastructure, public transport, access to jobs, community facilities and the environment.

(d) Principle 4: Sustainability

The proposal complies with the requirements of BASIX and a condition is recommended to ensure these commitments are implemented.

As required by Section 8.2.1 of the GSTC DCP 2012, a NABERS Energy Commitment Agreement and associated energy modelling will be required prior to the issue of a Construction Certificate, as Sites 7 and 17 contain more than 1000sqm of Class 5 commercial space.

(e) Principle 5: Landscape

The proposal incorporates landscaping within the proposed buildings which will contribute positively to the amenity of the buildings and the streetscape. Conditions are recommended to ensure the landscape is viable and capable of being maintained long term.

(f) Principle 6: Amenity

The proposed apartments achieve good amenity with regard to apartment size and shape, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and ease of access. While Sites 7 and 17 do not strictly achieve the design criteria in the ADG relating to solar access due to the orientation of the site, the proposed massing strategy seeks to locate apartments on the northern part of the site to maximise sunlight.

Conditions of consent are recommended to maximise the amenity and provision of private open space and to protect visual privacy for apartments facing the plaza.

(g) Principle 7: Safety

The proposal is generally in line with the principles of Crime Prevention Through Environmental Design (CPTED). The development provides new opportunities for passive surveillance of new and existing streets and will increase on-street activity through the delivery of active retail uses on the ground floor.

(h) Principle 8: Housing Diversity and Social Interaction

A total of 260 apartments are proposed, ranging from one to three bedrooms. The apartment mix generally satisfies the requirements of the GSTC DCP which seeks to encourage a diverse population. Notably, the provision of 3 bedroom apartments has increased compared to the previous consents to accommodate larger households and families.

(i) Principle 9: Aesthetics

The visual appearance of the development responds to the future local context and is considered to achieve design excellence. The proposed materials are of a high quality and the overall design will positively contribute to the aesthetic qualities of the streetscape.

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

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 	<p>No but acceptable</p>	<p>Building separation distances were established under the GSTC DCP envelopes for the site prior to the commencement of the ADG.</p> <p>Refer to the Discussion section for further assessment of the proposed building separation distances.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 		
<p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> • 24m between habitable rooms / balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 		

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	<p>Communal open space is provided as follows:</p> <p>Site 7: 1,039sqm (41%)</p> <p>Site 17: 240sqm (20%)</p> <p>Site 18: 178sqm (28%)</p> <p>When calculated across the entire site, approximately 28% of the site is communal open space.</p> <p>The size and location of communal open space are largely consistent with the previously approved schemes for the site.</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).	No but acceptable	<p>Due to the location of the site being surrounded by tall buildings, the orientation of the site and the building envelopes established under the DCP controls, compliance with this control on Sites 7 and 17 is difficult to achieve.</p> <p>On Site 7, the Level 6 and 9 communal open spaces receive sunlight from 1pm-3pm in mid-winter.</p> <p>On Site 17, the Level 6 communal open space receives sunlight from 2pm-3pm in mid-winter.</p> <p>Beyond the above times of solar access, the communal open spaces on Sites 7 and 17 are largely overshadowed in mid-winter.</p> <p>The roof terrace on Site 18 complies with the control.</p> <p>The proposal is considered acceptable in the circumstances, noting the orientation of the site and its location within the GSTC amongst other tall buildings. The provision of solar access to the communal open space is consistent with the previous consents.</p>

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site	Not applicable	The GSTC DCP 2012 does not require the provision of deep soil on this site. Deep soil is not a matter for which the ADG prevails over a DCP.

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> 6m between habitable rooms / balconies 3m between non-habitable rooms 	No but acceptable	As discussed above under Section 2F, building separation distances were established under the DCP for the site prior to the ADG. Non-compliances are proposed between the buildings on the site and between the site and adjacent properties. This is outlined further in the Discussion section below.
Five to eight storeys (25 metres): <ul style="list-style-type: none"> 9m between habitable rooms / balconies 4.5m between non-habitable rooms 		
Nine storeys and above (over 25m): <ul style="list-style-type: none"> 12m between habitable rooms / balconies 6m between non-habitable rooms 		

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.	Site 7 and 17 - No but acceptable Site 18 - Yes	Due to the orientation of the site, the buildings on Sites 7 and 17 are heavily overshadowed by surrounding development. 61% of apartments achieve the required amount of solar access in mid-winter. This is consistent with the previously approved scheme. Site 18 achieves the required 70%. See further detail in the Discussion section below.

4A Solar and Daylight Access	Compliance	Comment
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	Sites 7/17: 14% of apartments receive no direct sunlight, which complies. Site 18: 12% apartments receive no direct sunlight in mid-winter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	The proposal complies.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	Sites 7/17: 60% is achieved. Site 18: 71% is achieved.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Partial compliance	<p>2.7m ceiling heights are provided to all living rooms and bedrooms.</p> <p>2.4m ceiling heights are provided to kitchens, bathrooms and hallways, which does not comply with the 2.7m requirement for habitable rooms.</p> <p>The above arrangement is consistent with the previous consent, which was deemed to be acceptable as the 300mm non-compliance within the kitchens is localised under the bulkhead where mechanical ventilation is provided.</p> <p>A Clause 4.6 variation request was submitted with the application as this control is identified as a development standard. See further details in the Discussion section below.</p> <p>Consistent with the previous consents, a condition of consent is recommended, requiring a registered surveyor to confirm a 2.7m floor to ceiling height is achieved in living areas and bedrooms and 2.4m is achieved in the kitchens, bathrooms, laundries and hallways.</p>

4C Ceiling Heights	Compliance	Comment
Non-habitable rooms: 2.4m	Yes	The proposal complies.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Partial compliance	<p>The proposal provides a 3.3m floor to ceiling height on the ground and first floor, except for the following areas:</p> <ul style="list-style-type: none"> • Site 17 - residential apartments on Level 2 have a floor to ceiling height of 3.15m. • Site 18 - residential amenities on Level 2 have a floor to ceiling height of 3.23m. <p>A Clause 4.6 variation request was submitted with the application as this control is identified as a development standard. See further details in the Discussion section below.</p>

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² 	Yes	<p>The proposed apartments meet the minimum size requirements.</p> <p>Sites 7 and 17:</p> <ul style="list-style-type: none"> • 1 bed: 50-72sqm • 2 bed: 74-97sqm • 3 bed: 95-136sqm • 4 bed: 156-160sqm <p>Site 18:</p> <ul style="list-style-type: none"> • 1 bed: 51sqm • 2 bed: 76-93sqm • 3 bed: 101-138sqm • 4 bed: 147-153sqm

4D Apartment Size and Layout	Compliance	Comment
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	The proposal complies.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	The proposal complies.
8m maximum depth for open plan layouts.	Yes	The proposal complies.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	<p>The minimum area for bedrooms is achieved across the site.</p> <p>On Site 18, 27 out of 180 apartments have a second bedroom with a minimum dimension less than 3m. This is a result of the angled geometry of the building. Given these are second bedrooms and consideration has been made for wardrobes and circulation by increasing the dimension in the other direction, this is considered acceptable.</p>
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	<p>The proposal generally complies.</p> <p>On Site 18, apartment 2001 has a minimum width of 3.7m at the dining room. This is due to the angled geometry of the building. The open plan living/ dining/ kitchen expands to a width of 4m at the living room, opening onto the balcony. Given the generous depth and access to windows on dual frontages, an acceptable level of amenity is achieved.</p>
4m minimum width for cross over and cross through apartments.	Yes	The proposal complies.

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	Partial compliance	<p>All apartments have private open space in the form of balconies.</p> <p>Four apartments on Site 7, being apartments 601, 607, 1403 and 1704, do not achieve the minimum area requirement for balconies. As these apartments only have one balcony, a condition is recommended that requires these balconies to meet the ADG area and depth criteria.</p> <p>Some apartments on Sites 7 and 17 do not meet the minimum depth criteria, predominantly within the podium levels, with minimum depths ranging from 1.8m-2.2m instead of the recommended 2.4m. This is partly caused by the curved geometry of the buildings. The balconies meet the minimum area requirement and are capable of being furnished. The associated living rooms are generous, with glazing lines 'pushed out' to optimise solar access.</p> <p>The design guidance under Objective 4E-1 states that increased communal open space should be provided where the number or size of balconies are reduced. Given the proposal provides excess communal open space and the balconies in question achieve the minimum area recommendation, on balance the balcony depths are considered acceptable.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The proposal complies.

4F Common Circulation and Spaces	Compliance	Comment
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Yes	The proposal complies.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	The proposal generally complies, with the exception of apartments 602 and 605 on Site 17 that have bedroom windows looking onto the Level 6 communal open space. A condition of consent is recommended that requires visual privacy screening for these windows.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Windows are provided to common circulation spaces.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ (Minimum 50% storage area located within unit)	Yes	The proposal complies with the storage requirements. A condition of consent is recommended that requires the Certifying Authority to be satisfied that storage is provided in accordance with the ADG prior to the issue of an Occupation Certificate.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	All apartments are capable of natural ventilation and provide acceptable acoustic amenity, subject to conditions. See Discussion section for further detail.

State Environmental Planning Policy (Housing) 2021

43. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
44. Section 7.32 of the EP&A Act and states that where the consent authority is satisfied that the development meets certain criteria, and a Local Environmental Plan authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.
45. Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 allows for circumstances where an affordable housing contribution may be levied for development of land in Green Square
46. This matter is discussed in further detail under the heading Financial Contributions below.

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

47. The aim of the SEPP BASIX is to encourage sustainable residential development. A BASIX Certificate has been submitted with the development application (1405977M_02).
48. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Sustainable Buildings) 2022

49. As the development application was lodged prior to 1 October 2023, the Sustainable Buildings SEPP does not apply to the proposed development.

State Environmental Planning Policy (Transport and Infrastructure) 2021

50. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Clause 2.48 Determination of development applications – other development

51. The application was referred to Ausgrid for comment in accordance with Clause 2.48 of the SEPP. Ausgrid does not object to the proposed development and recommended conditions of consent which are included in Attachment A.

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

52. The subject site is adjacent to the Airport Line rail corridor and was subsequently referred to Sydney Trains for comment. Sydney Trains advised that due to the distance from rail assets, no comments were required.

Clause 2.122 – Traffic generating development

53. The application was referred to TfNSW in accordance with Clause 2.122 - Traffic generating development. Recommended conditions of consent have been provided by TfNSW which are included in Attachment A.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

- 54. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
- 55. There are several trees within the site that require removal to facilitate the proposed development. Council's Tree Management unit supports their removal given the trees have low retention value and their removal is required to facilitate the proposed buildings.
- 56. There are several trees surrounding the site that will need to be retained and protected during building work. Conditions of consent are recommended to protect these trees.

Local Environmental Plans

Sydney Local Environmental Plan (Green Square Town Centre) 2013

- 57. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 (SLEP GSTC) is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the MU1 - Mixed Use zone. The proposed development is defined as mixed-use comprising retail, commercial and residential uses and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	The maximum permissible height varies across the sites as follows: <ul style="list-style-type: none"> • Site 7: RL 50, RL 64 and RL 75 • Site 17: RL 50 and RL 62.5 • Site 18: RL 83 The proposed heights are as follows: <ul style="list-style-type: none"> • Site 7: RL 40.9, RL 72.7 and RL 75 • Site 17: RL 60.28 and RL 62.5

Provision	Compliance	Comment
		<ul style="list-style-type: none"> Site 18: RL 88.4 <p>The proposed maximum heights on Sites 7 and 17 do not wholly comply with the LEP controls due to lateral protrusions. Site 18 does not comply due to rooftop structures.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the Discussion section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 5.47:1 or 28,045sqm is permitted across Sites 7, 17 and 18.</p> <p>Clause 4.4A allows Sites 7 and 17 (identified as Area 4 for the purpose of this clause) to exceed the maximum FSR where the proposal accommodates office premises or business premises, amongst other uses. The additional permitted floor space is 4,200sqm.</p> <p>Accordingly, the total GFA permitted for Sites 7, 17 and 18 is 32, 245sqm, or 6.28:1.</p> <p>The proposed GFA across the sites is 31,903.4sqm, which equates to an FSR of 6.22:1.</p> <p>The FSR breakdown across each site is as follows:</p> <p>Site 7: 15,138.47</p> <p>Site 17: 8,160.3sqm</p> <p>Site 18: 8,604.6sqm</p> <p>This incorporates 3,890.8sqm of additional floor space in accordance with Clause 4.4A.</p> <p>The proposal complies with the maximum floor space ratio permitted for the site.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the height development standard prescribed under Clause 4.3 of the SLEP (GSTC) and the ceiling height development standard under the ADG. Clause 4.6 variation requests have been submitted with the application.</p> <p>See further details in the Discussion section below.</p>

Part 6 Additional local provisions

Provision	Compliance	Comment
6.2 Flood planning	Yes	The proposal has been designed to the flood planning level and is supported by the City's Public Domain unit.
6.5 Affordable housing	Yes	A condition of consent requiring the payment of an affordable housing contribution is recommended in accordance with the requirements of this clause.
6.6 Active street frontages	Partial compliance	<p>All street frontages, excluding the southern-western frontage of Site 18, are identified on the Active Frontages Map.</p> <p>Retail uses and active frontages are provided across the ground floor on Sites 7, 17 and 18. On Site 7, the majority of Tweed Place accommodates vehicle access and services, which limits the amount of active street frontage that can be provided. This is consistent with the previous consent and is acceptable in the circumstances.</p>
6.8 Car parking	Yes	<p>A maximum of 308 car parking spaces are permitted, comprising residential, visitor, retail and commercial spaces.</p> <p>262 car parking spaces are proposed, comprising 224 residential spaces and 38 retail spaces.</p>

Provision	Compliance	Comment
		The proposal complies with the maximum permitted car parking spaces and is supported by the City's Transport and Access unit.
6.9 Design excellence	Yes	<p>The proposal has been designed to ensure the highest standard of architectural design, materials and detailing appropriate to the building type and location.</p> <p>Subject to the recommended conditions of consent, it is considered that the form and external appearance of the proposed development will provide a positive contribution to the quality and amenity of the public domain, and the proposal exhibits design excellence.</p> <p>Design excellence is discussed in more detail under the Discussion section below.</p>
6.10 Essential services	Yes	<p>Utility, drainage and road services are available to the site and are being delivered by the City in its rollout of essential infrastructure within the GSTC.</p> <p>The City has entered into a Voluntary Planning Agreement with the developer to construct the essential infrastructure around the site.</p>

Development Control Plans

Green Square Town Centre Development Control Plan 2012

58. An assessment of the proposed development against the relevant provisions within the Green Square Town Centre Development Control Plan 2012 (GSTC DCP) is provided in the following sections.

Section 2 – Locality Statements

59. The site is located within the Green Square Town Centre locality. The proposed development is in keeping with the unique character and the design principles of the locality as it proposes a mix of retail, commercial and residential uses and positively contributes to the GSTC becoming a planned major centre. The site is well integrated with surrounding development and the broader town centre, provides retail uses to activate the ground floor and will provide the required number of adaptable units.

Section 3 – Local infrastructure

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>The proposal does not adversely impact the surrounding public domain including the Green Square Plaza and Neilson Square.</p> <p>The solar analysis submitted with the application demonstrates that the proposal complies with the requirement to maintain direct solar access to 50% of a 4m wide strip along the southern edge of the Plaza between 12 midday and 2pm at midwinter.</p>
3.3 Street network	Yes	<p>The proposal broadly aligns with the street network and the corresponding reservation widths envisaged by the DCP.</p> <p>The proposal seeks consent for the construction of the new roads, being Fellmonger Place and Barker Street. Appropriate conditions of consent are recommended.</p>
3.4 Flooding and stormwater management	Yes	<p>The City's Public Domain Team have confirmed that the proposal has been designed to the flood planning level. Conditions relating to the management of stormwater are included in the recommended conditions of consent.</p>

Section 4 – Land uses

Provision	Compliance	Comment
4.1 Location of desired activities	Yes	<p>The proposal is consistent with the location of desired activities in the DCP.</p> <p>The DCP identifies the desired ground floor use across all sites as being retail. The proposal complies with this requirement.</p>

Provision	Compliance	Comment
		<p>On the first floor, the DCP specifies retail or commercial uses, with some residential uses permissible on the northern frontage facing Ebsworth Street. The proposal includes commercial uses on Site 7, commercial and residential uses on Site 17 and a residential gym on Site 18, which complies.</p> <p>On the second floor and above, the DCP specifies residential, retail or commercial uses. The proposal complies.</p>
4.2 Retail uses	Yes	Retail uses are located on the ground floor to activate the public domain and help create lively, attractive public spaces.
4.3 Active frontages	Yes	Active frontages are provided in accordance with the DCP.

Section 6 – Building layout, form and design

Provision	Compliance	Comment
6.1 Competitive design process	Yes	Site 18 has been subject to a design competition. Site 7 and 17 has not been subject to a design competition for the reasons outlined in the Discussion section under 'Design Excellence'.
6.2 Design and architectural diversity	Yes	<p>The proposed building frontages do not exceed 65m.</p> <p>The building on Site 7 is in excess of 45m. The building incorporates different building components, including a glazed commercial podium with a residential tower above. These two parts are separated by a recessed level, delineating the change of use and architectural expression.</p> <p>Site 17 is designed as a brick apartment building. It references the Site 7 podium height with a concrete and brick arch.</p>

Provision	Compliance	Comment
		<p>Site 18 has a maximum site frontage of 38m to Neilson Square. Therefore the DCP provisions do not apply.</p> <p>Overall, the proposal is generally consistent with the built form controls applying to the site and an appropriate level of architectural diversity and interest is achieved across the three buildings.</p>
6.3 Building layout	Yes	<p>The DCP identifies Site 7 as providing a podium, street wall and perimeter block building, and a tall building behind.</p> <p>Site 17 is identified as providing a podium with a street wall and perimeter block building.</p> <p>Less built form is provided towards the Plaza than permitted under the DCP, which is acceptable. Despite this, the proposal is generally consistent with the principles of the control in that the built form addresses and aligns with the street.</p> <p>Site 18 contains a tall building in line with the envisaged built form in the DCP.</p>
6.4 Height in storeys and street frontage	Acceptable	<p>The following heights are proposed:</p> <ul style="list-style-type: none"> • Site 7: 16 storeys on Ebsworth Street, which exceeds the control by one storey, and a 6 storey podium to the plaza, which complies. • Site 17: 13 storeys on Ebsworth Street, which exceeds the control by one storey, and a 4 storey podium to the plaza, which complies. • Site 18: 20 storeys, which does not comply. <p>See further detail under the Discussion section below.</p>

Provision	Compliance	Comment
6.5 Building alignment and setbacks	Partial compliance	<p><i>Street frontage alignments</i></p> <p>A 3m footpath widening setback is required across all three sites adjoining the plaza. This is provided.</p> <p>A 6m colonnade setback at ground and first floor is required on the Barker Street frontage of Site 18. A 3m colonnade setback on the first two floors is provided, which is consistent with the previous consent for the site. The reduced colonnade setback is offset by the greatly increased setback to Neilson Square provided by the cantilevered stepped form. On balance, the proposed setback is acceptable.</p> <p><i>Street frontage heights and secondary setbacks</i></p> <p>On Sites 7 and 17, the DCP specifies an 8 storey street frontage height to the plaza, with a variable secondary setback. With the exception of the southern corner of the Site 17 tower, the proposal complies.</p> <p>To Ebsworth Street, an 8 storey street frontage height with a 3m secondary setback is required. The proposal does not comply.</p> <p>Refer to the Discussion section for details.</p> <p><i>Building chamfers</i></p> <p>3m x 3m chamfered corner setbacks are required on ground and first floors. While chamfered corners are provided, they are only single storey. This is consistent with the previous consents for the site and is considered acceptable.</p>
6.6 Roof form	Yes	<p>The plant on Levels 17-19 of Site 7, Level 14 of Site 17 and Level 21 of Site 18 do not strictly comply with the minimum setbacks for rooftop plant.</p>

Provision	Compliance	Comment
		<p>However, in accordance with provision (3), the non-compliances are acceptable as the plant is architecturally integrated with the building and sun access to surrounding buildings and the public domain is not reduced.</p>
<p>6.7 Maximum floor plate of tall buildings</p>	<p>Acceptable</p>	<p>Above 14 storeys, Site 7 has a floorplate of approximately 971sqm, which is not within 5% of 800sqm as required by this control.</p> <p>The floorplate control works in conjunction with the setbacks control to minimise the bulk and scale of tall buildings and the resulting visual and amenity impacts on surrounding development and public spaces.</p> <p>The proposed setbacks have been assessed as being acceptable. Refer to Discussion section in this report.</p> <p>This control is not applicable to Sites 17 and 18.</p>
<p>6.8 Flexible housing and dwelling mix</p> <p>Studios: 5-10%</p> <p>1 bed: 10-30%</p> <p>2 bed: 40-75%</p> <p>3 bed+: 10-30%</p>	<p>Acceptable</p>	<p>The proposal is generally consistent with the DCP. The proposed unit mix is:</p> <p>Sites 7 and 17:</p> <p>Studio: 0%</p> <p>1 bed: 27%</p> <p>2 bed: 43%</p> <p>3 bed: 27%</p> <p>4 bed: 3%</p> <p>This is considered an improvement compared to the previous consent for Sites 7 and 17 which approved a higher proportion of 1 bedroom apartments than envisaged by the DCP.</p> <p>Site 18:</p> <p>Studio: 0%</p>

Provision	Compliance	Comment
		<p>1 bed: 3%</p> <p>2 bed: 67%</p> <p>3 bed: 22%</p> <p>4 bed: 8%</p> <p>The Site 18 apartment mix includes a slightly lower proportion of 1 bedroom/ studio apartments than recommended in the DCP, however all other apartment mixes comply. Overall, the proposal is considered to achieve the DCP objective of providing a mix of dwellings to cater for the needs of the resident population and to encourage a diverse population.</p>
6.9 Adaptable dwelling mix	Yes	Sites 7 and 17 have 20% adaptable apartments and Site 18 provides 21% adaptable apartments, which complies.
6.10 Amenity	Acceptable	Issues such as solar access, natural cross ventilation, privacy and wind are discussed in the ADG section above and in further detail in the Discussion section below.
6.11 Accessible design	Yes	The proposal complies with accessible design provisions.
6.12 Safety and design	Yes	The proposal is generally compliant with the safety and security provisions of the DCP.
6.13 Landscaping and open spaces	Yes	The proposed Landscape Plan has been reviewed by the City's Landscape Officer and was found to be generally acceptable, subject to more detailed design development. A condition of consent has been imposed accordingly.
6.14 Footpath awnings and colonnades	Yes	Awnings and colonnades are provided in accordance with the requirements of the DCP, as follows:

Provision	Compliance	Comment
		<p>Sites 7 and 17:</p> <p>Continuous awnings and weather protected footpath widening are provided to all frontages, with the exception of Tweed Place which contains the driveway, substations and servicing. This is acceptable.</p> <p>Site 18:</p> <p>Awnings are provided on the northern and southern frontages where the retail entries are located. The cantilevered stepped form on the northern side of the Plaza further provides a continuous covered path of travel.</p> <p>The awnings do not meet the minimum width control of 3m in the DCP, being approximately 2m wide. This is consistent with the previous approval for Site 18. The awnings on Ebsworth Street are set by the narrow footpath width on the corner of Ebsworth and Paul Streets. The proposed design is preferable compared to an awning that increases in width as the frontage moves away from the affected corner.</p> <p>The width of the awning on the Plaza is acceptable given the cantilevered stepped form assists with weather protection.</p> <p>The DCP also requires a colonnade with a width of 6m between the columns and face of the building on Barker Street. A colonnade is provided, however it has a width of approximately 3m, reducing to 2m at the residential lobby. This is generally consistent with what was approved under D/2017/503. The reduced colonnade is offset by the greatly increased setback to the Plaza provided by the cantilevered stepped form and is therefore acceptable.</p>

Section 7 - Signage and advertising

Provision	Compliance	Comment
Signage requirements	Not applicable	Signage is not proposed as part of this application. A condition of consent is recommended requiring a separate signage development application to be submitted.

Section 8 - Environmental management

Provision	Compliance	Comment
8.2 Energy	Yes	<p>BASIX certificates have been submitted for the proposal demonstrating compliance.</p> <p>As Sites 7 and 17 each contain more than 1,000sqm of Class 5 commercial space, the development will need to satisfy a NABERS Energy 5.5 star rating. A commitment agreement along with associated energy modelling will be required prior to the issue of a Construction Certificate.</p>
8.3 Materials	Yes	The proposed materials are suitable for the site and its context. A condition of consent is recommended requiring a detailed materials and finishes board to be submitted prior to the issue of a Construction Certificate.
8.4 Waste	Yes	The proposed arrangements for waste storage, management and collection are generally acceptable, subject to conditions.
8.5 Water	Yes	Water efficient fixtures and fittings are to be installed when BASIX requirements are met. Appropriate stormwater conditions have been recommended.

Section 9 - Social Sustainability and Impact

Provision	Compliance	Comment
General provisions	Yes	The development provides a variety of unit types, including adaptable units. The proposal is located within close proximity to employment opportunities, transport, community facilities and open space infrastructure.

Section 10 - Transport and parking

Provision	Compliance	Comment
10.1 Managing transport demand	Yes	A traffic, parking and access assessment has been submitted with the application. Refer to discussion of transport, parking and servicing under the Discussion section.
10.3 Vehicle parking	Yes	A shared basement is proposed across the site containing 262 car parking spaces, which is within the LEP maximum.
10.4 Vehicle access and footpaths	Yes	Vehicle access is provided via Tweed Place to Site 7 in accordance with the DCP.

Discussion**Clause 4.6 request to vary a development standard - Height of buildings**

60. Clause 4.3 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 specifies various maximum height of building development standards across the site, as follows:
- (a) Site 7 - maximum building height of RL 50, RL 64 and RL 75.
 - (b) Site 17 - maximum building height of RL 50 and RL 62.5.
 - (c) Site 18 - maximum building height of RL 83.

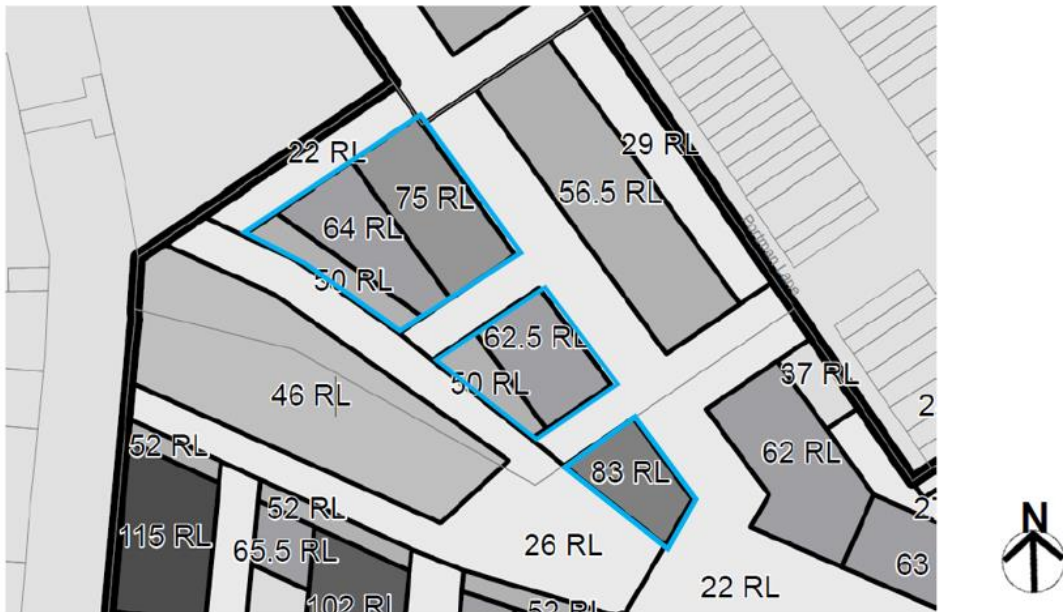


Figure 52: Height of Buildings map from the SLEP (GSTC) 2013, showing maximum RLs. The site is outlined in blue.

61. The development proposes the following building heights:
 - (a) Site 7 - RL 40.9, RL 72.7 and RL 75.
 - (b) Site 17 - RL 60.28 and RL 62.5.
 - (c) Site 18 - RL 88.4.
62. The proposed building heights are similar to the building heights approved under the previous consents for the site. Table 1 provides a comparison of the previously approved and proposed buildings heights.

Table 1: Previously approved and proposed building heights, with non-compliances in bold

	Control	Previously approved	Proposed
Site 7	RL 50	RL 43.4	RL 40.9
	RL 64	RL 72.4	RL 72.7
	RL 75	RL 75	RL 75
Site 17	RL 50	RL 60.46	RL 60.28
	RL 62.5	RL 62.45	RL 62.5
Site 18	RL 83	RL 86.5	RL 88.4

63. The protrusions beyond the LEP envelope are highlighted in red in Figure 53 below.

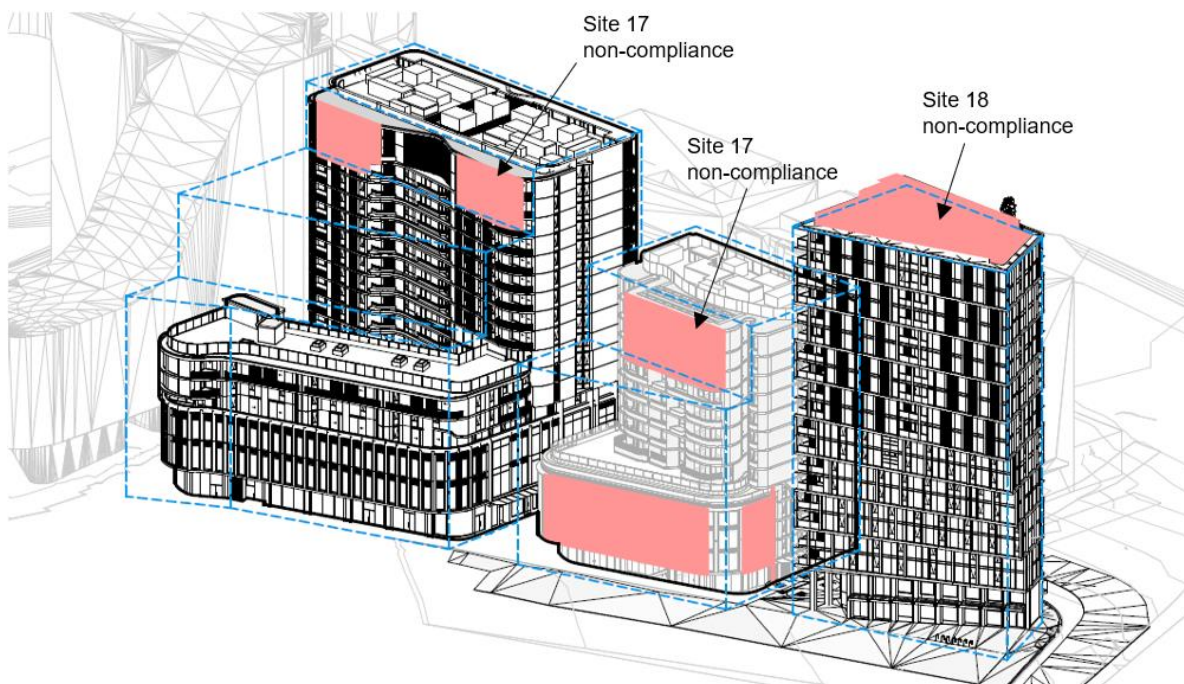


Figure 53: LEP envelope diagram showing the upper level height protrusions, viewed from the south-east of the site. Note: The lower level area in red on Site 17 is caused by minor facade projection over the public domain permitted by Schedule 6 of the GSTC DCP.

64. A summary of the non-compliances for each site compared to the previously approved building heights is provided below.

Site 7

65. A portion of the south-western facade of the tower on Levels 16-18 facing the plaza protrudes laterally above the RL 64 height control by approximately 1.3m. The proposed height in this location is RL 72.7, which equates to a height variation of 14%.

66. The location and extent of non-compliance is similar to the previous DA, shown in Figure 54 below.

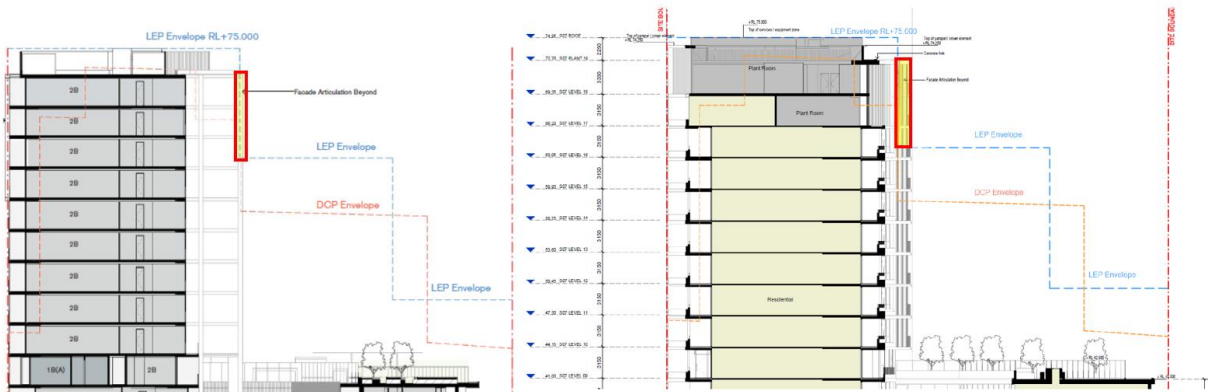


Figure 54: Site 7 previously approved height non-compliance (left) compared to the proposed height non-compliance (right). The non-compliant area is outlined in red.

Site 17

67. A portion of the south-western facade of the tower on Levels 11-13 facing the plaza protrudes laterally above the RL 50 height control by approximately 2m. The proposed height in this location is RL 60.28, which results in a height variation of 20%.
68. The location and extent of non-compliance is similar to the previous DA, shown in Figure 55 below. It is noted that the maximum height in this location has reduced slightly by 180mm.



Figure 55: Site 17 previously approved height non-compliance (left) compared to the proposed height non-compliance (right). The non-compliant area is outlined in red.

Site 18

69. The proposed maximum height is RL 88.49 to the top of the lift overrun, which exceeds the control of RL 83 by 6.6%. The previously approved maximum height was RL 86.5. The cause of the height increased compared to the previous approved DA is partly attributed to the increased floor to floor heights throughout the building.

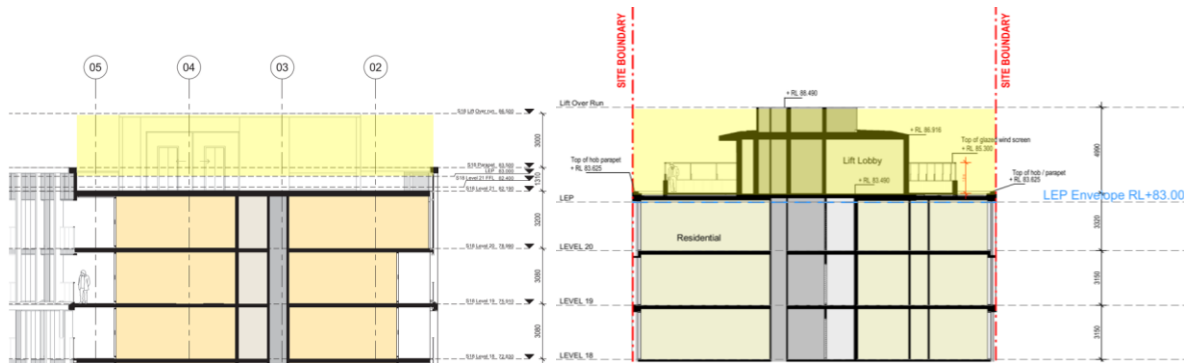


Figure 56: Site 18 previously approved height non-compliance (left) compared to the proposed height non-compliance (right)

70. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP (GSTC) 2013 seeking to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - That there are sufficient environmental planning grounds to justify contravening the standard;
 - The proposed development will be consistent with the objectives of the zone; and
 - The proposed development will be consistent with the objectives of the standard.

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

71. The applicant seeks to justify the contravention of the height development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - The applicant refers to the first method of the five-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary. This method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.

- (ii) A summary of the applicant's assessment against the objectives of the height of buildings development standard contained in Clause 4.3(1) of the SLEP (GSTC - Stage 2) 2013 is provided below:

Objective (a) - to ensure acceptable height transitions between new development and heritage items and buildings in heritage conservation areas

The site is located approximately 60m to the south-west of the Zetland Estate heritage conservation area. It is separated from the conservation area by a 10 storey building and 24 storey building.

The built form controls for the site allow taller development in the middle of the town centre around the Green Square Plaza, which transitions down to smaller development adjacent to the conservation area.

The proposed development achieves the objectives of the height control by providing a transitional built form. A Heritage Impact Statement has been previously prepared for Site 18 which confirms that due to the large separation, the proposed development will have negligible impact on the conservation area.

Objective (b) - to ensure sharing of views

The lateral protrusion on Sites 7 and 17 are not likely to result in detrimental visual impact compared to the LEP envelope and what was approved under the previous consent. These buildings provide a careful transition and transfer of building scale from the lower to upper levels.

The proposed exceedance in height at Site 18 is generally limited to the central portion of the roof area and will therefore not be readily visible from the surrounding public domain and will not impact views.

Objective (c) - to ensure acceptable height transitions from the Green Square Town Centre to adjoining areas

At Sites 7 and 17 the exceedance relates to a lateral protrusion, and otherwise, the heights of these two buildings are entirely within the maximum height limit. Therefore, the exceedance maintains the height transitions intended across the GTSC.

At Site 18, despite the additional height, the proposed built form retains the intended transition between Sites 8C and 19A (being 24 and 21 storeys) on the southern side of Green Square Plaza and the 12 storey development at Site 15. This allows a gradual slope in buildings from the middle of the town centre to the low density residential to the north east.

Objective (d) - to ensure the amenity of the public domain by restricting taller buildings to only part of a site

The building envelope has been developed to minimise overshadowing of the adjacent public domain through the proposed envelope. The significant setbacks and lower podium heights along the plaza edge in comparison to the DCP and SLEP GSTC 2013 envelopes result in a reduced impact on this important public space.

A shadow analysis has been undertaken which demonstrates that the development complies with the provisions relating to solar access to the Drying Green and the plaza.

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

The proposed buildings are bound by roads to the north, east and west and the Green Square Plaza to the south. The proposed built form defines the boundaries of the site, particularly the high street of Ebsworth Street with a nil setback to this boundary.

The proposed built form will contribute to the physical definition of the street network and public spaces despite the height non-compliances.

- (iii) In summary, the applicant submits that the development is consistent with the objectives of the height of buildings development standard. Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) ***Improved residential amenity***

The non-compliance on Sites 7 and 17 allows a greater number of apartments to be located within the higher levels of the buildings, which increases the number of apartments that achieve compliant solar access.

At Site 18, the relocation of floor space from the lower levels to upper levels will result in improved sightlines in the public domain. The area of additional height for the lift shaft and overrun provides access to the communal open space which provides essential residential amenity.

The proposed additional height at all buildings will not create additional overshadowing that would impact the solar amenity of surrounding buildings.

- (ii) ***Improved public domain outcome***

The additional areas of height on Sites 7 and 17 are located on the facade of the residential towers and do not create any additional overshadowing to the plaza. Relocating floor space to the upper levels of the building creates less bulk to Green Square Plaza which improves the backdrop to the public domain.

The Site 18 height exceedance is the direct result of the relocation of floor space on the lower levels to the upper levels to increase light to Neilson Square and improve public domain sight lines.

Overall, the surrounding public domain will not be compromised by the non-compliance and will result in an improved outcome.

- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The site is located within the MU1 - Mixed Use zone. The proposed development is in the public interest because it is consistent with the objectives of the zone, as follows:

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

The proposed development will provide a range of employment generating uses including retail uses on the ground floor on all sites and commercial uses within the podiums of Sites 7 and 17.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

The proposed retail uses on the ground floor will provide activation of the public domain including Neilson Square, Barker Street, Fellmonger Plaza, Ebsworth Street and Green Square Plaza, which will contribute to vibrant, diverse and functional streets and public spaces.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposed retail, commercial and residential uses are considered to be compatible within the site and with similar uses within the Green Square Town Centre.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

Retail uses are provided on the ground floor of all buildings.

To enable land uses that support the viability of centres.

The proposed retail, commercial and residential uses provide an appropriate land use mix that will support the viability of the town centre.

To integrate suitable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling.

The site is located in close proximity to existing and planned public transport services including Green Square railway station. The development will encourage active transport modes by providing bicycle car parking and orienting retail uses to the public domain.

- (d) The proposed development will be consistent with the objectives of the standard. A summary of the applicant's assessment against the objectives of the height of buildings development standard is provided under part (a)(ii) above.

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

72. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

73. The applicant has relied upon the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.
74. The applicant has satisfactorily demonstrated that the proposal meets the objectives of the height of buildings development standard, notwithstanding the non-compliance.

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

75. The applicant has sufficiently demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.
76. It has been demonstrated that the proposed development results in improved residential amenity and improved public domain outcomes. The height non-compliances will not result in adverse environmental impacts on the locality.

Is the development in the public interest?

77. With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied.
78. The development is consistent with the objectives of the MU1 - Mixed Use zone.
- (a) The proposed development will provide a range of employment generating uses including retail uses on the ground floor and commercial uses within the podiums of Sites 7 and 17.
 - (b) The proposed retail uses on the ground floor will provide activation of the public domain including Neilson Square, Barker Street, Fellmonger Plaza, Ebsworth Street and Green Square Plaza, which will contribute to vibrant, diverse and functional streets and public spaces.
 - (c) The proposed retail, commercial and residential uses are considered to be compatible within the site and with similar uses within the Green Square Town Centre.

- (d) The site is located in close proximity to existing and planned public transport services including Green Square railway station. The development will encourage active transport modes by providing bicycle car parking and orienting retail uses to the public domain
79. The development is consistent with the objectives of the height of buildings development standard.
- (a) The proposal maintains acceptable height transitions having regard to nearby heritage. The height non-compliances on Sites 7 and 17 are lateral protrusions only and will not adversely impact the heritage conservation area. Site 18 is of adequate separation to not impact the conservation area.
 - (b) The development ensures sharing of views and will not unreasonably impact view corridors from neighbouring properties.
 - (c) The proposal provides an acceptable height transition from the Green Square Town Centre to Ebsworth Street to the north.
 - (d) The taller buildings are restricted to Site 18 and the northern side of Sites 7 and 17, in accordance with the built form controls, and ensures the amenity of the public domain is protected.
 - (e) The built form contributes positively to the physical definition of the street network and public spaces.

Conclusion

80. For the reasons provided above the requested variation to the height of buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings development standard and the MU1 - Mixed Use zone.

Height in storeys

81. The GSTC DCP 2012 permits the following building height in storeys across the site:

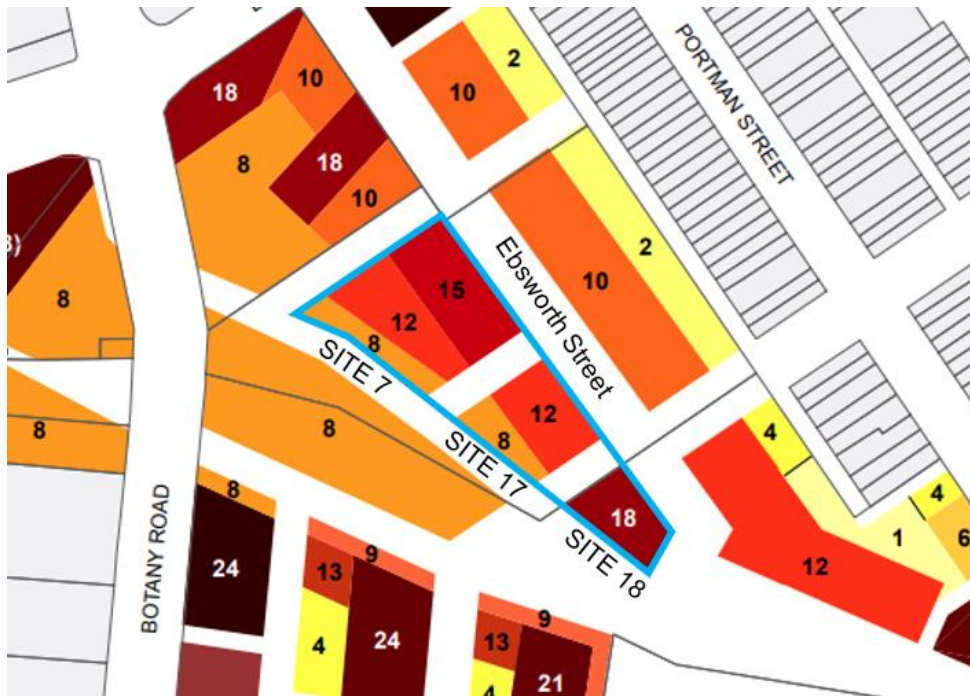


Figure 57: Height in Storeys map from the GSTC DCP 2012, with the site outlined in blue

82. The application proposes:

- (a) Site 7: 16 storeys on Ebsworth Street, which exceeds the control by one storey, and a 6 storey podium to the plaza, which complies.
- (b) Site 17: 13 storeys on Ebsworth Street, which exceeds the control by one storey, and a 4 storey podium to the plaza, which complies.
- (c) Site 18: 20 storeys, which exceeds the control by two storeys.

83. The proposed heights in storeys are consistent with the previously approved developments under D/2017/564 and D/2017/503.

84. The additional storey on Site 7 is shown in Figure 58 below. The non-compliant storey sits within the LEP height limit.

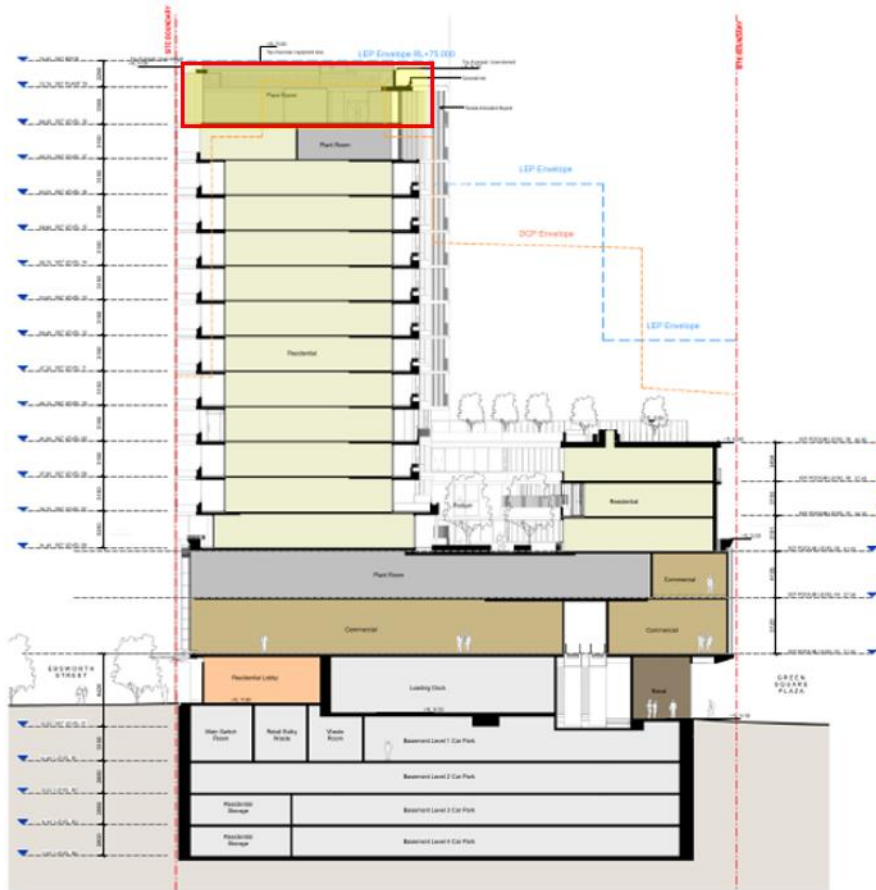


Figure 58: Section of Site 7, with the non-compliant 16th storey outlined in red

85. The additional storey on Site 17 is shown in Figure 59 below.

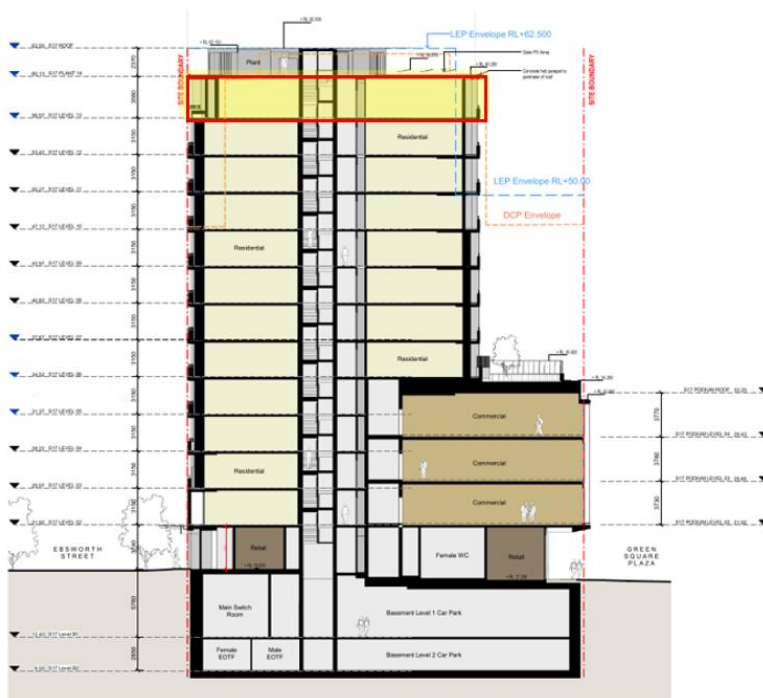


Figure 59: Section of Site 17 showing the additional storey outlined in red

86. Site 18 proposes a 20 storey building which exceeds the 18 storey control, as shown in Figure 60 below.

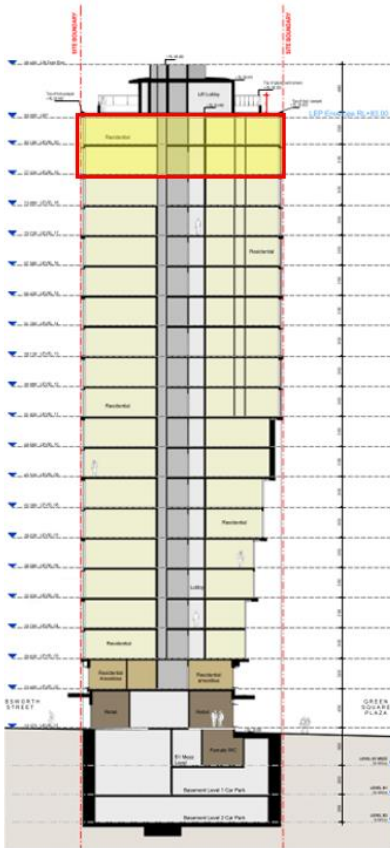


Figure 60: Section of Site 18 with the additional two storeys highlighted in yellow

87. The proposed variations to the height in storeys controls are acceptable for the following reasons:
- The objectives of the DCP controls have been met, as the gradual increase in height away from the plaza to reduce bulk and overshadowing is achieved.
 - The proposed massing maximises solar access by relocating apartments to the northern edge of the site within the tower.
 - Significant portions of the permitted DCP envelope are unused, particularly towards the middle of Sites 7 and 17 and within the podium.
 - The height in storeys of the podiums fronting the plaza are below the DCP height control and present an improved human scale.
 - For Site 18, the competition brief identified an opportunity to relocate floor space from the lower levels to the top of the building to allow an increased setback to the plaza and improve sightlines into civic spaces. It was therefore anticipated from an early stage that non-compliances with the height in storeys control would be considered.
 - The additional storeys do not result in unacceptable impacts to neighbouring sites or the public domain. See 'Overshadowing' discussion below.

- (g) The additional storeys were approved under the previous consents D/2017/564 and D/2017/503. No additional storeys beyond what was previously approved are proposed.

88. On balance, given the minimal impacts and the history of approved development on the site, the proposed non-compliance with the DCP height in storeys control is supported.

Overshadowing

89. The GSTCP DCP 2012 requires the following to be achieved in relation to solar access to public spaces:

- (a) The plaza is to achieve direct sunlight between 12pm and 2pm for at least 50% of a 4m wide strip along the full length of the southern edge.
- (b) There must be consolidated areas of direct sunlight between 12pm and 2pm at midwinter generally consistent with Figure 3.2 of GSTC DCP.

90. The previous assessments of D/2017/564 and D/2017/503 found that notwithstanding the height exceedances, the above criteria was achieved.

91. As discussed above, the proposed development includes minor changes to the height and bulk of the three buildings compared to the previously approved developments.

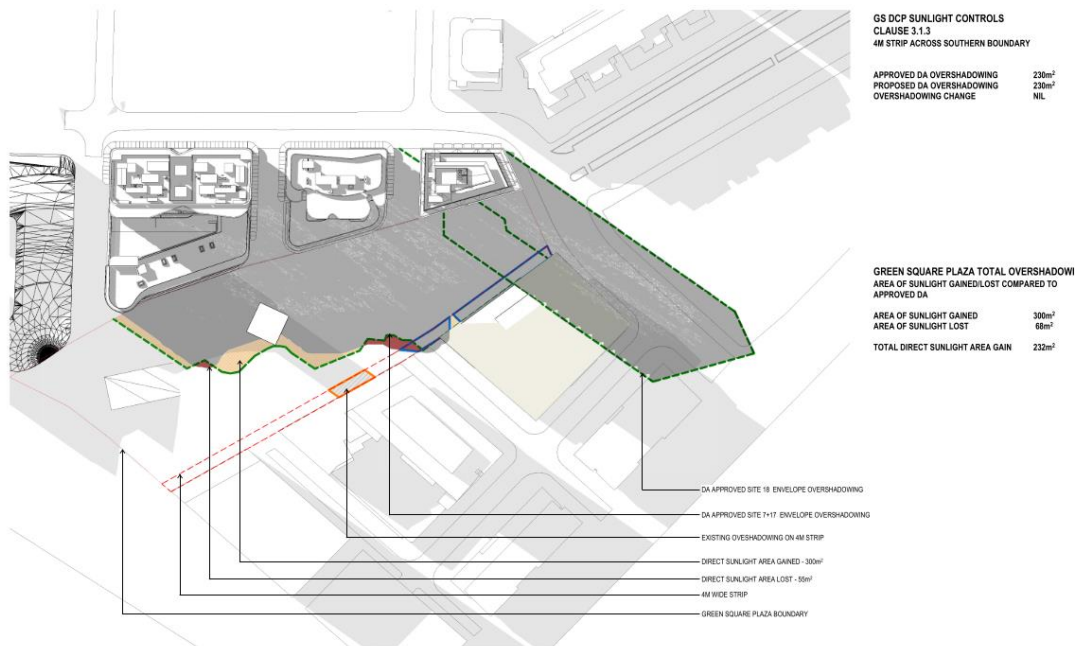
92. A detailed overshadowing analysis was submitted with the application and amended in January 2024. The overshadowing analysis compares the previously approved building envelopes compared to the proposed envelopes and highlights the changes to overshadowing.

93. The overshadowing analysis demonstrates that:

- (a) The loss and gain of solar access to Green Square Plaza varies throughout the day when measured in mid-winter. However overall, there is an increase in solar access to the Plaza between 12pm - 2pm ranging from 106-232sqm compared to the previous approvals.
- (b) No additional shadows are cast to the Drying Green compared to the previous approvals.

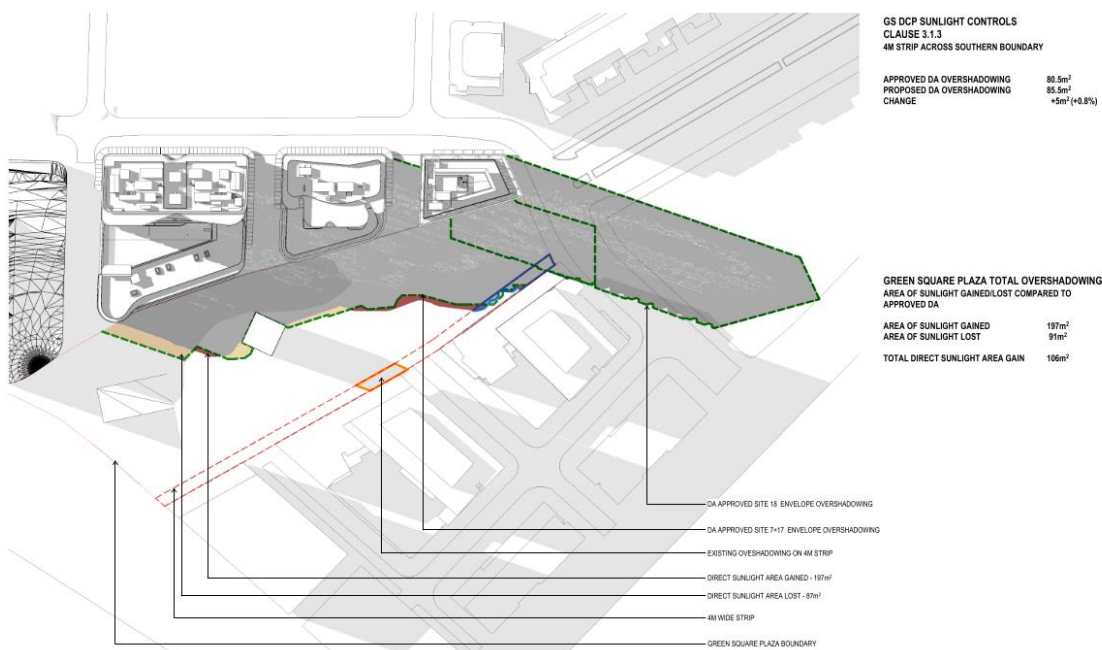
94. Given the above, it has been demonstrated that the proposed built form does not cause additional overshadowing to public spaces in mid-winter compared to the previously approved development and minor improvements to solar access to the Plaza are achieved.

95. The shadow diagrams highlighting the gain and loss of solar access in midwinter to the Plaza are provided below.



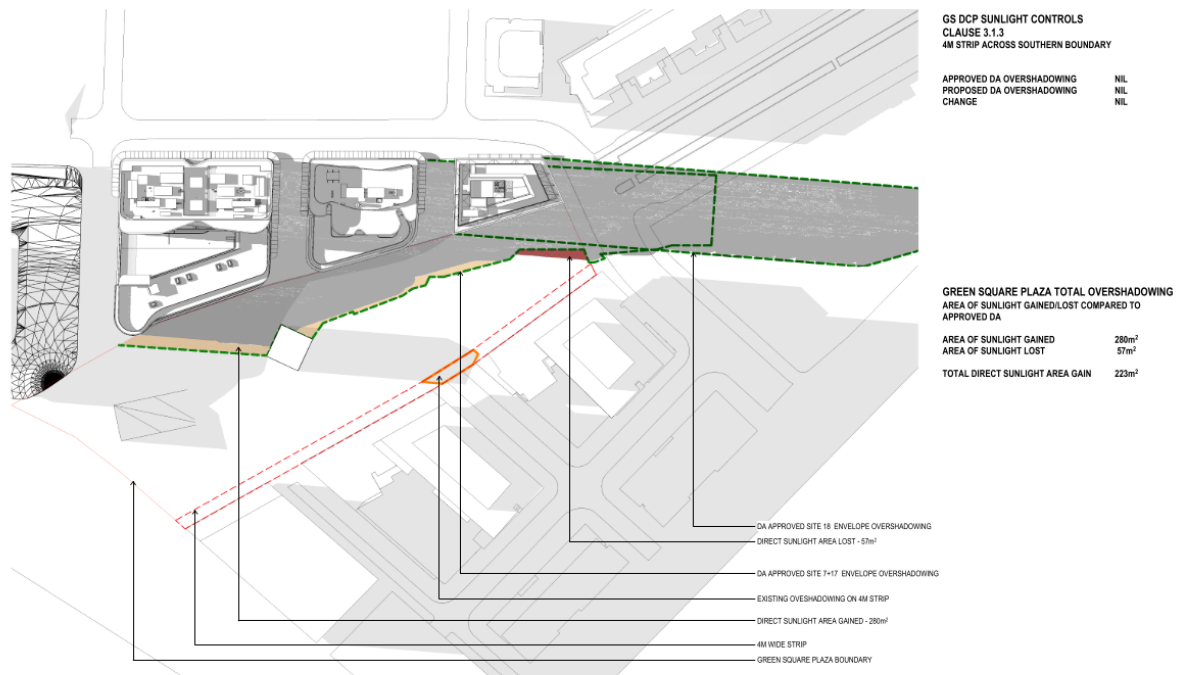
1 Winter Solstice - 1200 GS Plaza

Figure 61: Shadow diagram at 12 noon, midwinter comparing the approved vs proposed shadows. The additional shadows compared to approved are shown in red and sunlight gained is shown in yellow. Note the no change to the 4m strip.



2 Winter Solstice - 1300 GS Plaza

Figure 62: Shadow diagram at 1pm, midwinter. Additional shadows are shown in red, and sunlight gained is shown in yellow.



3 Winter Solstice - 1400 GS Plaza

Figure 63: Shadow diagram at 2pm midwinter. Additional shadows are shown in red, and sunlight gained is shown in yellow.

Floor to ceiling heights

96. Section 148 of the Housing SEPP contains development standards for particular matters relating to residential development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. These include car parking, minimum apartment sizes and ceiling heights, which are described in this provision as non-discretionary development standards.
97. If non-discretionary development standards are not complied with, Section 4.15(3) of the EP&A Act 1979 allows the consent authority to apply Clause 4.6 when determining the development.
98. The previous consents for the site, D/2017/564 and D/2017/503, treated the minimum floor to ceiling heights in the ADG as development standards and as such a Clause 4.6 variation was submitted. The same approach has been taken for the subject DA.
99. The proposal does not comply with the ceiling height design criteria established in Part 4D-1 of the Apartment Design Guide. The ADG requires the following:
 - (a) 2.7m minimum ceiling height in habitable rooms; and
 - (b) 3.3m minimum ceiling height on the ground and first floor to promote future flexibility of use.
100. For residential apartments, a minimum floor to ceiling height of 2.7m is provided to all living rooms and bedrooms. However, a floor to ceiling height of 2.4m is proposed to kitchens and bathrooms to accommodate AC units where required, which does not strictly comply with the ADG. This is demonstrated in Figure 64 below.

101. The above arrangement is consistent with the previous consents. It is also noted that the 2.4m ceiling heights exceed the minimum heights required under the National Construction Code (2.1m).

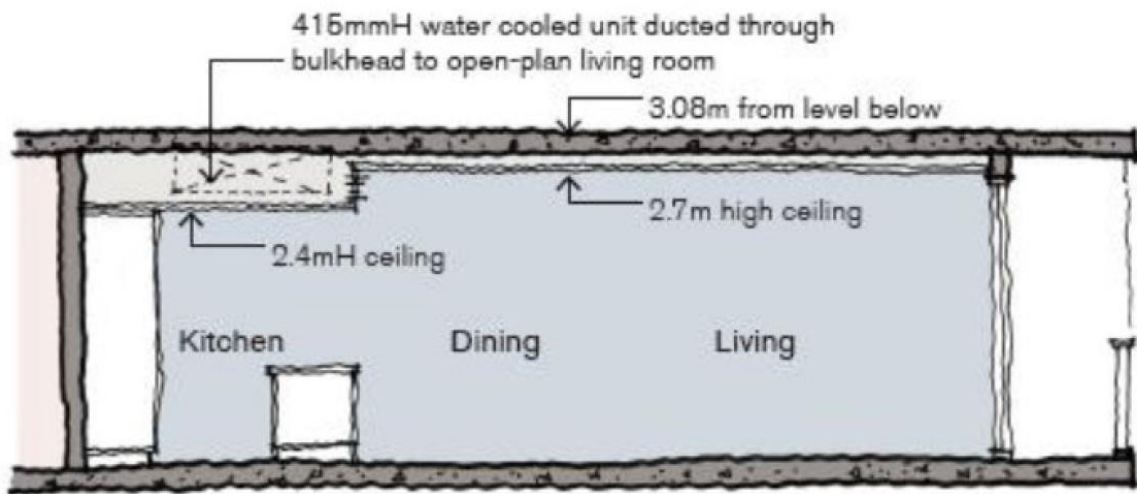


Figure 64: Typical kitchen section

102. 3.3m floor to ceiling heights on the ground and first floor are generally achieved, except for the following:
- (a) Site 17 - Residential apartments facing Ebsworth Street on Level 2 have a floor to ceiling height of 3.15m.
 - (b) Site 18 - Residential amenities on Level 2 have a floor to ceiling height of 3.23m.
103. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP (GSTC) 2013 seeking to justify the contravention of the floor to ceiling height development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

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

104. The applicant seeks to justify the contravention of the ceiling heights development standard on the following basis:

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

(i) The applicant refers to the first method of the five-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary. This method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.

(ii) A summary of the applicant's assessment against the objectives of the ceiling heights development standard is provided below:

Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access

The areas that do not achieve minimum floor to ceiling heights are generally located at the rear of apartments in order to not restrict natural light and air penetration within the apartments. Apartment depths are also limited to maximise ventilation and airflow.

The areas where residents spend the majority of time including living rooms and bedrooms are not impacted.

Level 2 of Site 18 is proposed to be a gym and therefore does not require the same solar access or ventilation standards of residential apartments. Level 2 of Site 17 provides heights well above 2.7m and therefore has adequate solar access and ventilation.

Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms

The proposed areas of non-compliance are consistent with the design guidance, in that the open plan flow of habitable living spaces optimises sense of space and outlook, with bulkheads limited as far as possible so as to not intrude into visual sight lines.

Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building

This objective relates to the non-compliances at Level 2 of Site 17 and 18. Both areas of non-compliance are minor, providing variations between 0.07m-0.15m. Therefore, there is still opportunity to provide varying uses at these levels while not compromising amenity and spatial requirements.

(iii) In summary, the applicant submits that the development is consistent with the objectives of the height of buildings development standard. Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The ceiling height provided in the kitchen area exceeds the NCC minimum height requirement of 2.1m for kitchens.
 - (ii) All kitchens are located adjacent to an open-plan living and dining layout, benefiting from adjacent daylight, ventilation, and outlook.
 - (iii) Apartment depths are limited to maximize ventilation and airflow.
 - (iv) All apartments meet the ADG's recommended minimum internal areas, with minimum room dimensions generally achieved and furniture placements demonstrating functional use of spaces.
 - (v) The non-compliances at Levels 2 of Sites 17 and 18 are minor, only being 0.07m-0.15m and therefore do not significantly inhibit flexibility in the uses at these levels.
 - (vi) It is also noted that comparable variations were previously approved on this site in relation to D/2017/503 and D/2017/564.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The site is located within the MU1 - Mixed Use zone. The proposed development is in the public interest because it is consistent with the objectives of the zone, as follows:

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

The proposed development will provide a range of employment generating uses including retail uses on the ground floor and commercial uses within the podiums of Sites 7 and 17.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

The proposed retail uses on the ground floor will provide activation of the public domain including Neilson Square, Barker Street, Fellmonger Plaza, Ebsworth Street and Green Square Plaza.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposed retail, commercial and residential uses are compatible within the site and locality.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

Retail uses are provided on the ground floor of all buildings.

To enable land uses that support the viability of centres.

The proposed retail, commercial and residential uses provide an appropriate land use mix that will support the viability of the town centre.

To integrate suitable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling.

The site is located in close proximity to existing and planned public transport services including Green Square railway station. The development will encourage active transport modes by providing bicycle car parking and orienting retail uses to the public domain.

- (d) The proposed development will be consistent with the objectives of the standard. A summary of the applicant's assessment against the objectives of the ceiling heights development standard is provided under part (a)(ii) above.

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

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

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

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

106. The applicant has relied upon the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.

107. The applicant has satisfactorily demonstrated that the proposal meets the objectives of the ceiling heights development standard, notwithstanding the non-compliance.

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

108. The applicant has sufficiently demonstrated that there are sufficient environmental planning grounds to justify contravening the standard. The residential floor to ceiling heights will provide acceptable amenity for future occupants. The non-compliances on Level 2 are minor and will not cause adverse impacts to the use of these spaces.

Is the development in the public interest?

109. With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied.

110. The development is consistent with the objectives of the MU1 - Mixed Use zone.
- (a) The proposed development will provide a range of employment generating uses including retail uses on the ground floor and commercial uses within the podiums of Sites 7 and 17.
 - (b) The proposed retail uses on the ground floor will provide activation of the public domain including Neilson Square, Barker Street, Fellmonger Plaza, Ebsworth Street and Green Square Plaza, which will contribute to vibrant, diverse and functional streets and public spaces.
 - (c) The proposed retail, commercial and residential uses are compatible within the site and with similar uses within the Green Square Town Centre.
 - (d) The site is located in close proximity to existing and planned public transport services including Green Square railway station. The development will encourage active transport modes by providing bicycle car parking and orienting retail uses to the public domain.
111. The development is consistent with the objectives of the ceiling heights development standard:
- (a) The affected apartments will achieve sufficient natural ventilation and daylight access. The apartments are capable of providing a sense of space and well proportioned rooms despite the non-compliance in the kitchens and bathrooms.
 - (b) The ceiling heights on Level 2 are capable of contributing to the flexibility of building use over the life of the building.

Conclusion

112. For the reasons provided above the requested variation to the ceiling heights development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 and the proposed development would be in the public interest because it is consistent with the objectives of ceiling heights development standard and the MU1 - Mixed Use zone.

Building separation and setbacks

Building setback - Ebsworth Street

113. The buildings on Sites 7 and 17 have a nil setback to Ebsworth Street, which does not comply with the following controls:
- (a) Under ADG 3F-1, the floors 9 storeys and above are to have a 24m separation from other buildings; and
 - (b) Under the GSTC DCP 6.5, a 3m setback is required above an 8 storey street frontage height.
114. The non-compliances with the DCP setback requirements are highlighted in Figures 65 and 66 below.

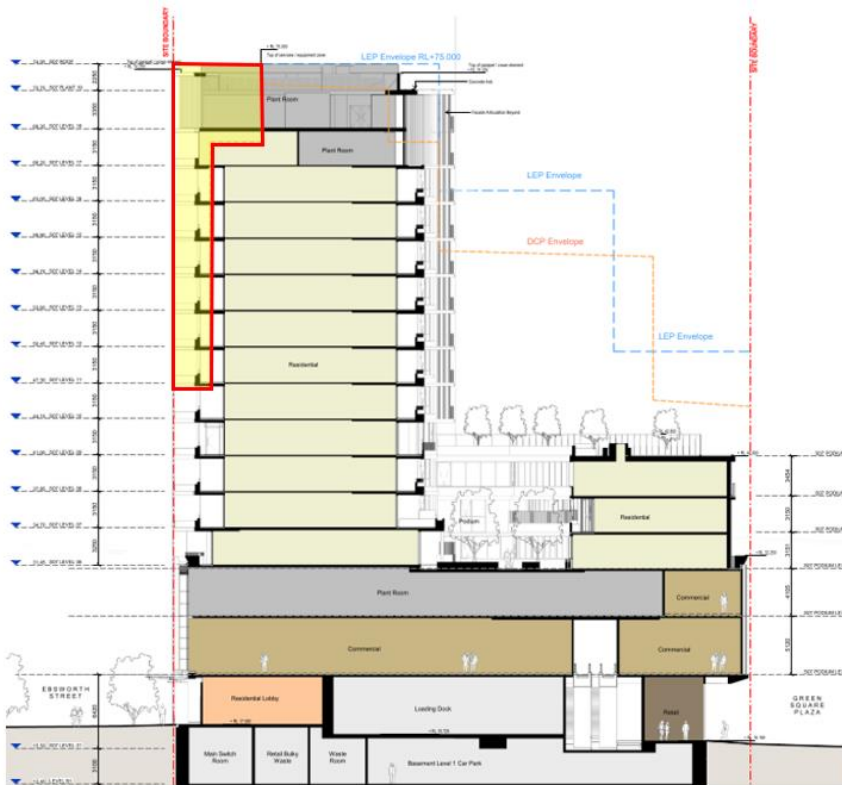


Figure 65: Site 7 section with non-compliance with DCP upper level setback highlighted in yellow

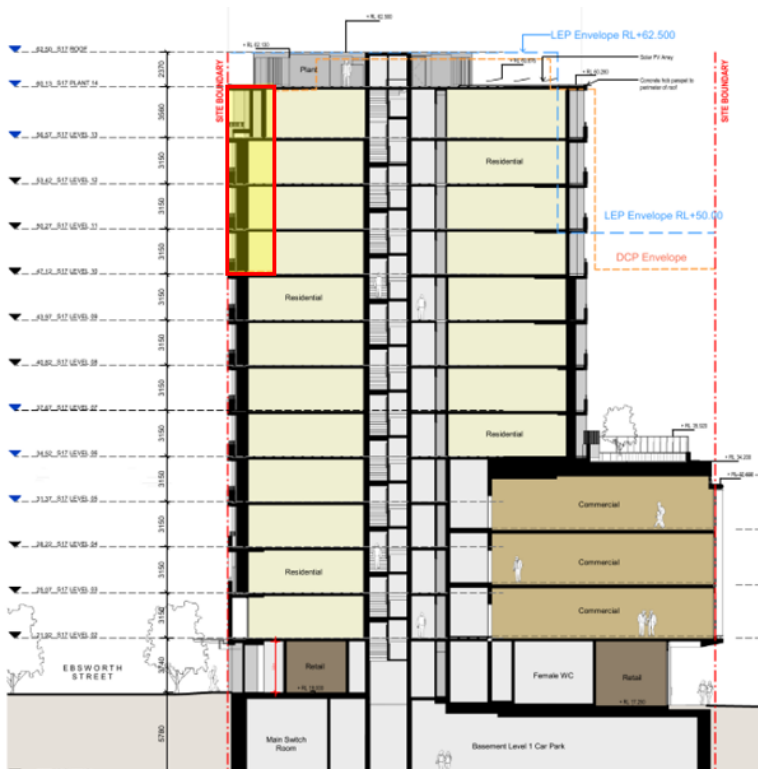


Figure 66: Site 17 section with non-compliance with DCP upper level setback highlighted in yellow

115. The proposed setbacks to Ebsworth Street are considered acceptable on balance, particularly noting the following:
- The proposed setbacks to Ebsworth Street were approved under the previous consent for Sites 7 and 17.
 - The setbacks to the existing residential flat buildings on the northern side of Ebsworth Street on Sites 16A and 16B (which terminate at Level 10) range between 19m and 21m, which the previous assessment report for D/2017/564 considered to be an acceptable level of separation and unlikely to result in significant impacts that would require mitigation.
 - Given the orientation of the site, optimum solar access to the proposed apartments is gained from the Ebsworth Street frontage. The nil setback therefore seeks to maximise the amount of sun received by apartments whilst reducing bulk to the Plaza.

Building setback - Green Square Plaza

116. The GSTC DCP prescribes an 8 storey street wall with a varied secondary setback to the Green Square Plaza frontage. The proposal generally complies with the setback controls, with minor exceptions on the upper levels where the lateral protrusions to the LEP height occur.
117. The minor areas of non-compliance on the upper levels are acceptable as the overall development is sufficiently setback from the plaza to provide an appropriate backdrop and the overall overshadowing cause by the development has been assessed as being acceptable.

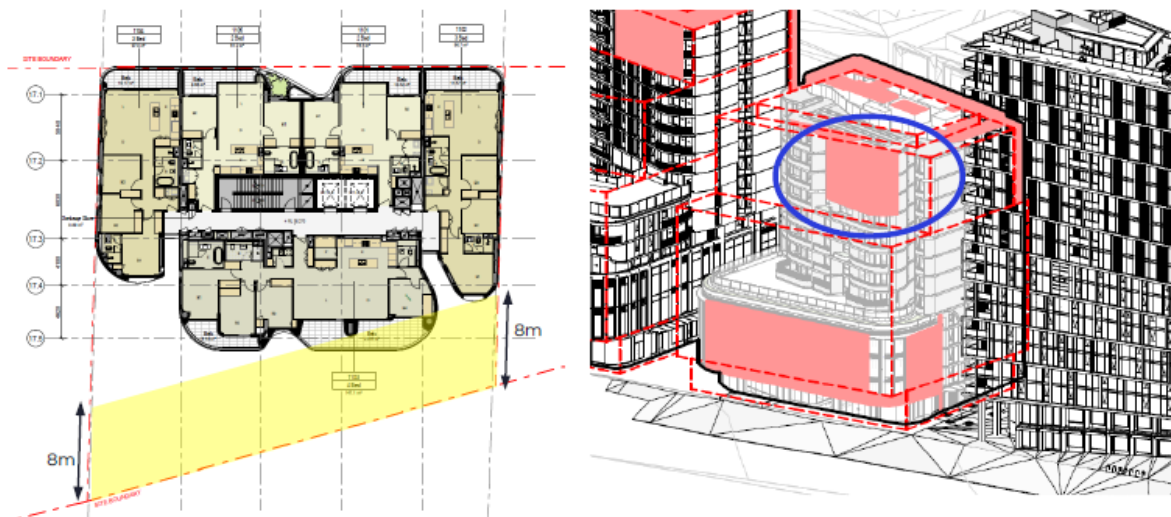


Figure 67: Site 17 non-compliance with secondary setback requirement to Green Square Plaza

Building separation - other frontages

118. The following building separation distances do not comply with the ADG design criteria between habitable rooms, which requires 18m for Levels 5-8 and 24m on Levels 9 and above:
- Between Site 17 and 18 across Baker Street a 12m separation is proposed.

- (b) Between Site 7 and the existing Infinity development on Site 6, a 12m separation is proposed.
 - (c) Between Sites 7 and 17 across the future Fellmonger Place a 12.2m separation is proposed.
119. It is noted that the building separation distances were established under the GSTC DCP envelopes prior to the ADG.
120. To mitigate visual privacy impacts caused by the non-compliant setbacks, the previous approval D/2017/564 required design modifications to windows on the affected levels of Sites 7 and 17.
121. The following privacy mitigation measures are proposed under this DA:
- (a) The side elevations of Sites 7 and 17 have been amended in this application to incorporate small and narrow vision panels and offsetting and angling glazing to avoid direct sight lines between buildings. Glazing frit is also proposed to certain windows. This is in line with the previous requirements under D/2017/564.
 - (b) On Site 7, privacy screening is proposed to the podium where the previously solid cinema facade has been replaced with a glass facade for commercial uses. The screening is proposed on the western elevation to avoid overlooking between Site 7 and the lower-level apartments in the Infinity building, across Tweed Place.
122. The proposed mitigation measures are considered to be sufficient to alleviate visual privacy impacts arising from the non-compliant separation distances.

Solar access

123. The ADG requires at least 70% of apartments to receive a minimum of two hours' direct solar access between 9am and 3pm at mid winter to living rooms and private open spaces.
124. Due to the location of the site being surrounded by tall buildings, the orientation of the site and the building envelopes established under the DCP controls, compliance with this control is difficult to achieve, particularly on Sites 7 and 17.
125. Under the previous consent for Sites 7 and 17, approximately 61% of apartments achieved the above criteria, which was considered acceptable on balance having regard to the constraints of the site. The proposed development similarly achieves 61% compliance. This non-compliance is considered acceptable for the following reasons:
- (a) The massing strategy includes a zero setback to Ebsworth Street to maximise solar access to apartments.
 - (b) The layout of roads and development lots have long been established and the proposed built form is generally consistent with that envisaged in the planning controls for the site within a dense urban environment.
 - (c) The proposed development achieves a similar level of compliance with the previously approved development for Sites 7 and 17.

126. Site 18 achieves the 70% requirement, which is a significant improvement from the previous scheme for Site 18 which achieved 51.5% compliance.

Visual privacy and solar control to Green Square Plaza

127. In Council's Request for Information, concern was raised about the lack of visual privacy and solar control provided for apartments facing the Plaza, particularly those located on Site 7 and on the Tweed Place corner (Levels 6-8). These apartments have increased exposure to the public domain and solar impacts in mid-summer from midday.



Figure 68: Apartments of concern on Site 7 outlined in red

128. Council officers recommended that increased provision for visual privacy and solar control to these apartments be provided, including sliding operable screens to the full width of balconies to enable user control over views in and out, and external operable louvres to the living room windows of Apartments 710 and 816 to the edge of the building in lieu of the reliance on fritted glass.
129. The applicant responded to the above by proposing fritted glass, mullion blades and internal blinds.
130. The proposed mitigation measures are not considered sufficient. A condition is therefore recommended that requires the following:
- (a) External operable louvres to the living room windows of Apartments 710 and 816 to achieve combined visual privacy and solar control in lieu of fritted glass.
 - (b) Sliding operable screens are to be provided to the full width of balconies to apartments 607-613 inclusive, located on Level 6 facing the plaza.
131. It is considered that an appropriate level of visual privacy and solar control for these podium apartments can be achieved subject to conditions of consent.

External glazing and solar control for Site 18

- 132. The winning competition scheme by Bates Smart featured a distinctive sculptural form, emphasised with a stepped frame facade expression with predominantly glazed facades. As part of the previous DA assessment for Site 18 (D/2017/503), the Design Advisory Panel advised that additional sun shading may be necessary for west facing apartments.
- 133. A deferred commencement condition of consent was therefore imposed under D/2017/503, requiring west facing apartments that receive solar access in the summer months, including apartments facing Barker Street and Neilson Square, to be provided with external operable sun shading devices. The devices were to be operable to facilitate solar access in winter whilst protecting occupants from excessive heat in summer. Where an apartment was not to be provided with sun shading, it was to be demonstrated that the apartment is not subject to solar exposure that may result in thermal discomfort.
- 134. Following the determination of D/2017/503, ongoing consultation occurred between the applicant and Council officers in 2021 to address the external shading deferred commencement condition. Detailed analysis was undertaken by Bates Smart to explore shading options.
- 135. Modification A to D/2017/503 was lodged to resolve the deferred commencement conditions and implement external shading. The plans for Modification A integrated the addition of operable shading to the north-western and south-western facades. Sun shading was achieved through a combination of full height colour backed solid spandrels, fixed horizontal and vertical sunshades and rotating operable vertical louvres. Sliding screens were also proposed to south-west facing balconies. Details of the proposed sun shading solutions are provided in Figures 69 and 70 below.
- 136. The shading strategy involved an alternating 6 and 7 louvre approach for the south-western facade facing the plaza and where 6 louvres were proposed, the expressed frame acted as a fixed 7th louvre. This was agreed to in-principle, however the consent lapsed.

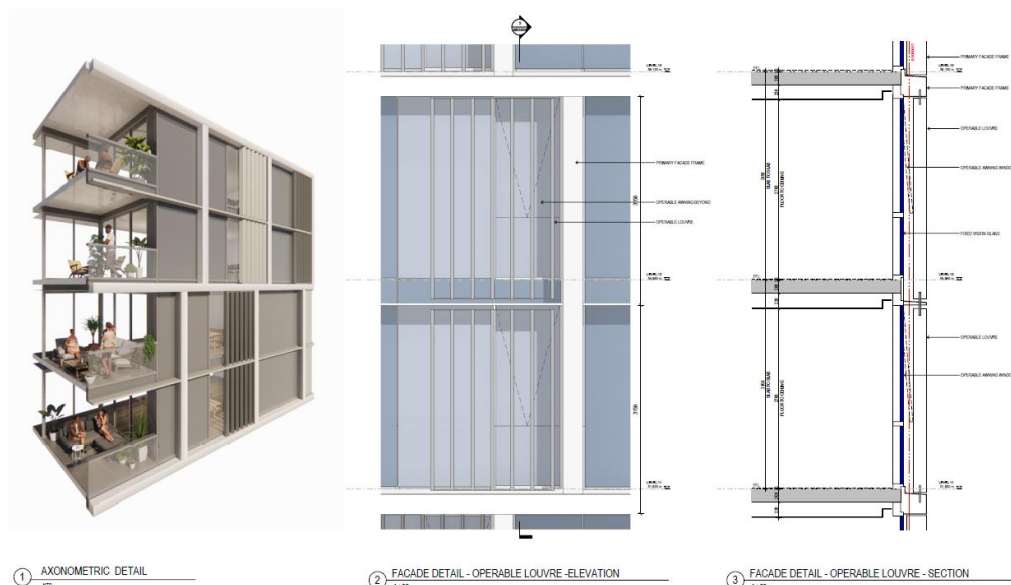


Figure 69: Details of proposed operable louvres submitted under D/2017/503/A

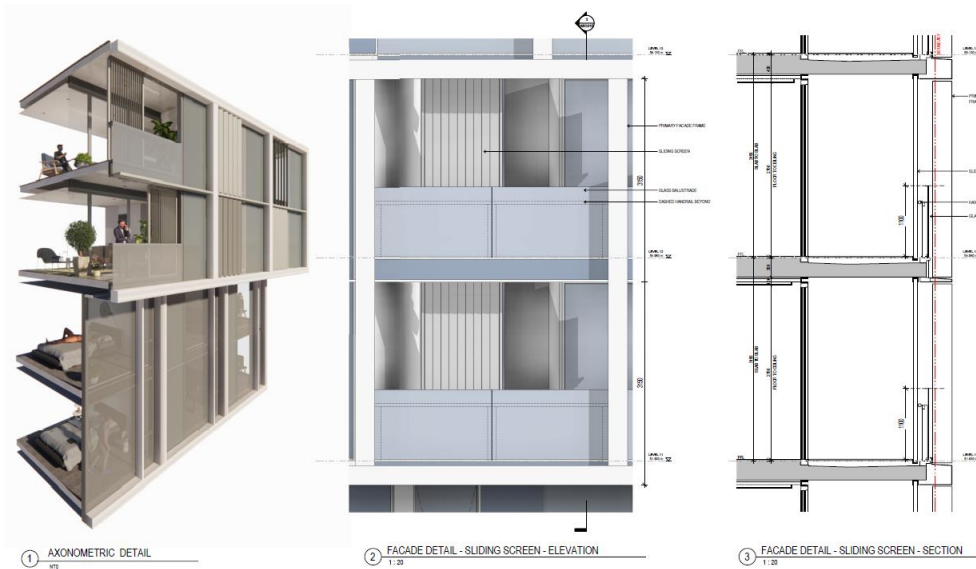


Figure 70: Details of proposed sliding screens submitted under D/2017/503/A

137. The above external sun shading approach was carried through to the new DA. Upon review of the new DA, the Design Advisory Panel raised concern that the proposed external sun shading remained inadequate.

138. To address the DAP's outstanding concerns, the drawings have been amended to extend the vertical operable louvres down to Levels 3-10 of the south-western facade. A comparison of the as-lodged vs amended design is provided in Figure 71 below.



Figure 71: Photomontages comparing the proposal as submitted vs as amended. The external shading has been extended down to the south-western facade within the area outlined in red.

139. The provision of operable louvres and sliding screens on the entire south-western facade is considered to adequately resolve this issue and ensure adequate solar protection to occupants. A condition of consent is also recommended that requires the sliding screens to cover the whole balcony to provide increased solar and privacy protection.

Acoustic privacy

Traffic and future plaza entertainment noise

140. During the assessment, Council raised concern in relation to traffic noise from Botany Road which would impact certain bedrooms on Site 7. The original Acoustic Report identified certain bedrooms closest to Botany Road that cannot achieve the required 'windows open' criteria and will instead rely on air conditioning to achieve natural ventilation. Council raised concern that this is inconsistent with Objective 4B-1 of the ADG which seeks to ensure that all habitable rooms are naturally ventilated.
141. In response, an updated Acoustic Report was submitted which included a revised acoustic assessment for the 'windows open' scenario. This confirmed that the non-compliance is limited to bedrooms of Site 7 apartments on Levels 6, 7 and 8 facing Botany Road, strictly in the windows open scenario.
142. To address this exceedance, an awning type window limited to a maximum opening of not more than 5% of the surface area of the window was recommended in the Acoustic Report. Concern is raised that this may not comply with BCA and ADG minimum ventilation requirements. Therefore, a condition is recommended that requires the awning windows to bedrooms to have an openable area that simultaneously meets the requirements of ADG 4B-1 and the required windows open acoustic criteria.
143. Green Square Town Centre Plaza provides for public space for activities and events which may otherwise cause acoustic disturbance to residential occupants which adjoin or face the plaza. A condition approving the acoustic report, based on an assumed future entertainment noise level, and requiring a specification of acoustic performance for glazing, window and door frames and other materials to mitigate acoustic noise to occupants of the apartments, has been included.

Loading bay, mechanical plant and entertainment noise

144. In February 2024 Council's Environmental Health Officer requested further information in relation to noise from the loading bay, mechanical plant and entertainment uses as follows:
- (a) Loading bay - Loading bay noise levels have been described in Section 5.8 of the Acoustic Report. However, there is minimal assessment of the impact this could have on residential receivers. It was requested that noise levels identified be compared with the background day and night levels inside impacted residential properties.
 - (b) Mechanical plant - Further details were requested demonstrating how the noise criteria relating to mechanical plant will be complied with.
 - (c) Entertainment noise - Further details were requested as to how future entertainment venues can comply with the relevant noise criteria to ensure residential premises are not impacted.

145. In April 2024, the applicant submitted an additional Acoustic Letter to address the above queries. The letter provided the following information:
- (a) Loading bay - A further noise analysis was undertaken in relation to the nearest residential receivers in the Infinity building. The noise assessment demonstrates compliance with the Noise Policy for Industry (NPfI) day and evening period limits but not night. An upgraded loading bay door could achieve compliance at night if required.
 - (b) Mechanical plant - Acoustic treatments are recommended to ensure the proposed plant and cooling towers comply with the relevant noise criteria for mechanical plant.
 - (c) Entertainment noise - The acoustic assessment acknowledges that the development will activate the surrounding street frontages with a mix of commercial uses. Recommendations are provided to ensure the entertainment noise criteria is met. This includes closing venue windows and doors after 10pm, music not being played outdoors, venues to close by midnight and acoustic barrier ceilings being installed to venues or noise masking systems installed to apartments immediately above the tenancies.
146. Council's Environmental Health officer was satisfied with the additional information submitted to address the relevant noise criteria. A condition of consent is recommended that requires the recommendations of the Acoustic Report and the additional Acoustic Letter to be incorporated in the design of the buildings prior to the issue of a Construction Certificate. Hours of operation and specific uses of commercial tenancies will be subject to separate approvals.
147. Regarding the loading bay, the proposed hours of operation are 6am-10pm Monday to Saturday and 8am-8pm on Sundays. The period between 6am-7am falls outside the 'daytime' period, which commences at 7am. The applicant's acoustic consultant therefore confirmed that, on face value, the loading bay door could be upgraded (ie. increased from the assumed $Rw=22$) to achieve compliance for the night time period.
148. The applicant also noted, however, that the NPfI allows for consideration of 'shoulder periods' before 7am when ambient noise levels are rapidly rising, and that the background noise levels for the 6am-7am shoulder period is equivalent to the evening period (which achieves compliance).
149. Having considered the above, it is recommended that the loading bay door be upgraded to achieve compliance for the night time period as a conservative approach, to avoid sleep disturbances for nearby residential receivers. The loading bay is located near residential receivers and noise is usually more accepted after 7am compared to 6am. Upgrading the loading bay door is therefore considered to be a reasonable measure to protect the health and amenity of residents. A condition of consent requiring this is recommended.

Wind impacts

150. A Pedestrian Wind and Thermal Comfort Assessment dated June 2022 was submitted with the application. The Wind Assessment includes numerous design recommendations that had not been implemented into the proposed design.
151. In Council's Request for Information, further detail on how the proposal has implemented the recommendations of the wind report were requested, noting that

there is a reliance on mitigation methods outside of the site and recommendations within the building that were not shown on the drawings.

152. In January 2024, the applicant responded by providing an updated Pedestrian Wind Study dated 26 June 2023.

The updated Pedestrian Wind Study notes that while the proposed building massing shelters and eliminates several existing safety exceedances on the site, the following areas with high wind exposures are identified:

- (a) High winds are observed at the eastern corner of Site 7 (Sensors 14 and 15). These are marginal exceedances that will benefit from localised measures including porous screening or dense landscaping in planter boxes around the retail entrances.
 - (b) Safety exceedances are also observed at the main lobby to Site 18 (Sensor 41). These winds are strong and will be detrimental to the operation of Site 18. Therefore it is recommended to extend awning cover of the entrance. Alternatively, porous screening at the southern corner could assist, or the lobby entrance could be shifted.
 - (c) High winds persist at the eastern edge of Green Square Plaza which will benefit from vertical measures (north-south aligned screening) to baffle the winds along Zetland Avenue. It is also recommended to design the corner in a way to reduce pedestrian lingering.
 - (d) The retail entrance at the southern corner of Site 18 should be relocated to more favourable wind areas along the southern aspect of the building, closer to Sensor 51.
 - (e) A safety exceedance is noted on the Site 18 rooftop. Extending the overhead roof cover over the edge can potentially mitigate this exceedance.
154. A diagram showing the abovementioned safety exceedances is provided in Figure 72 below.

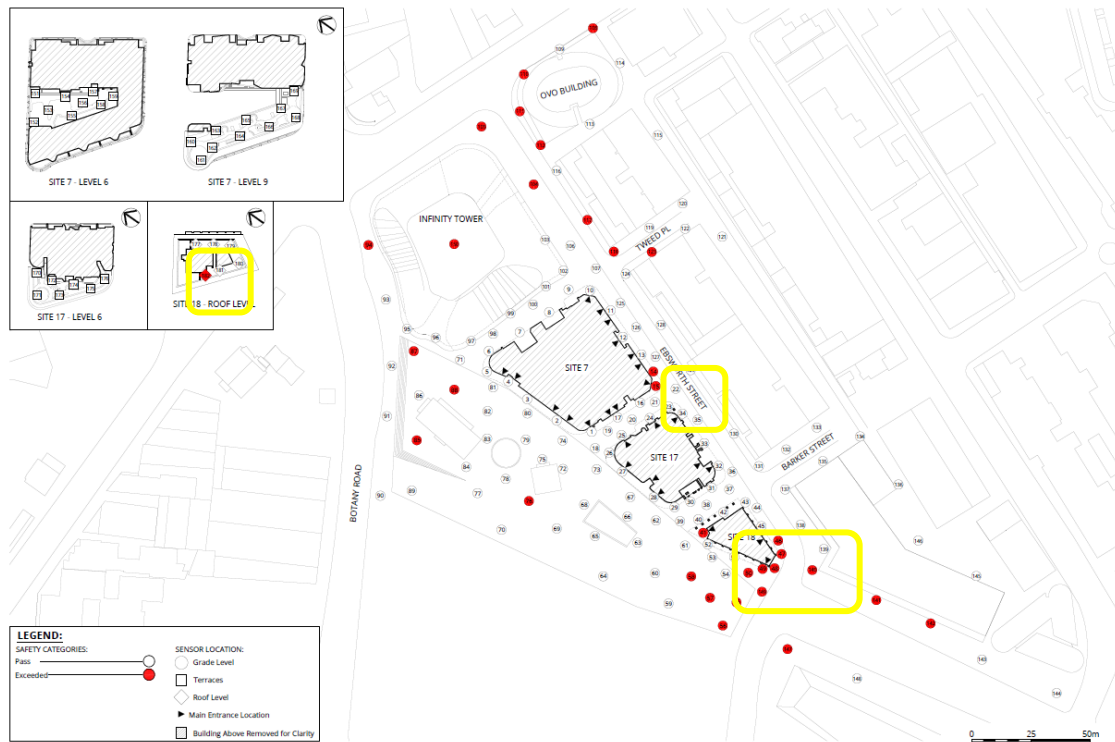


Figure 72: Pedestrian windy safety conditions (proposed), with exceedances in red. The areas of key relevance to this proposal are outlined in yellow.

155. On 26 February 2024, amended plans were submitted that incorporated design changes to address the wind recommendations. The changes included:
- (a) Site 7 eastern corner (sensors 14 and 15)
 - (i) A planter/ screen was proposed within the colonnade area.
 - (ii) Retail entry door relocated away from high wind area.
 - (b) Site 18 ground plane
 - (i) At the main residential entry, an indicative location for public art in the public domain was proposed as a wind mitigation measure.
 - (ii) Retail entrance doors relocated
 - (c) Site 18 rooftop
 - (i) Increase in the glazed balustrade height from 1.8m to 2.1m to deflect winds over the trafficable area onto the roof
156. On 29 February 2024, Council officers advised that for every location where there is a safety exceedance, and particularly where the condition is worse than existing (sensors 14, 15 and 46), it needs to be demonstrated that everything reasonably possible has been done to address these exceedances within the building envelope, not the public domain, to address mitigation for safety. Council officers made the following specific recommendations:

- (a) Site 7 eastern corner:
 - (i) The relocation of the retail access door is supported, however the proposed planter/ screen within the chamfered corner is not supported. The chamfered setback is required by Provision 6.5(7) of the GSTC DCP to allow adequate sightlines and pedestrian flow around corners. The installation of a screen in this location defeats the purpose of the chamfered setback.
 - (ii) The Wind Report indicates that wind conditions are worsened at Locations 14 and 15 compared to existing, which is currently below the safety criteria. This worsening condition must be addressed in the building design.
 - (b) Site 18 ground plane:
 - (i) Location 46 is worsened in the proposed scenario which must be addressed.
 - (ii) The reliance on public art for wind mitigation is not supportable.
 - (iii) Having the front door to the building in a non-compliant safety sensor is not preferable. It was recommended that the front door (residential lobby entrance) be relocated to sensor locations 42 or 52 which are well below the safety criteria.
 - (c) Site 18 rooftop:
 - (i) Information to demonstrate that the increased balustrade does not cause additional overshadowing to the public domain was requested.
157. On 5 April 2024, amended plans were submitted that feature design amendments to address Council's recommendations. An updated Wind memo was also submitted. The following changes were made:
- (a) Site 7 eastern corner
 - (i) The ground floor retail tenancy on the eastern corner of the site has been amended to pull back the facade glazing line by 800mm to alleviate wind conditions in this area (see Figure 73 below).

The wind consultant advised that the above design change will have the effect of slowing down the winds and it is expected that this would result in an improvement such that the wind conditions at these locations will likely meet the safety criteria. It was also noted that when the masterplan for GSTC is considered holistically, future precinct massing will further reduce wind activity at this corner.

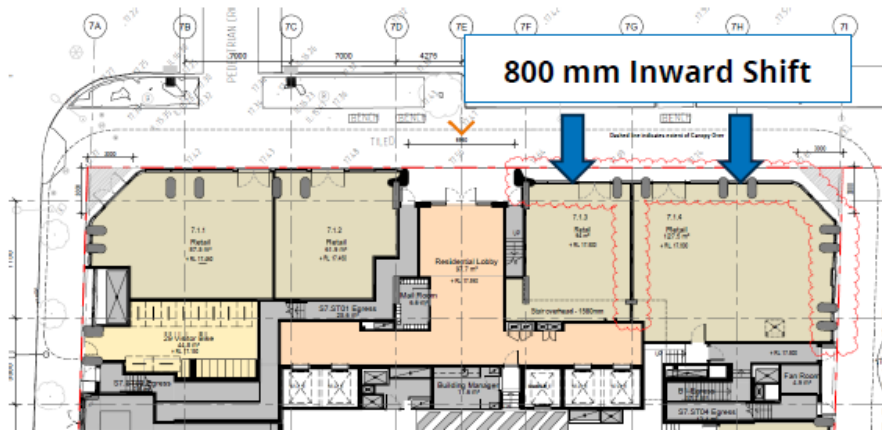


Figure 73: Amended Site 7 facade line fronting Ebsworth Street

(b) Site 18 ground plane

- (i) Residential and retail entrances have been relocated to areas that are compliant with the safety criteria (see Figure 74 below)
- (ii) It is noted that Sensor 46 on the eastern corner remains non-compliant with the safety criteria, however the wind memo outlines that given the winds on this corner are ground level winds, it is difficult to mitigate them without street level interventions such as porous screens.



Figure 74: Originally proposed building entrance locations (left) and amended locations (right)

(c) Site 18 rooftop

- (i) The rooftop balustrade height has been increased from 1.8m to 2.1m to redirect winds over the roof, as shown in Figure 75 below. The wind consultant advised that this will likely deflect winds over the trafficable area onto the roof cover and address the safety condition.

Given the sensitive location of this area being a communal open space on a rooftop, a condition of consent is recommended that requires wind tunnel testing to be undertaken to confirm that this design change achieves compliance with the safety criteria. If compliance with the safety criteria at sensor 182 is not able to be demonstrated, it is recommended that the area on the rooftop around sensor 182 be made to be non-trafficable.

- (ii) Solar analysis has been submitted to demonstrate that the height increase does not cause additional overshadowing.

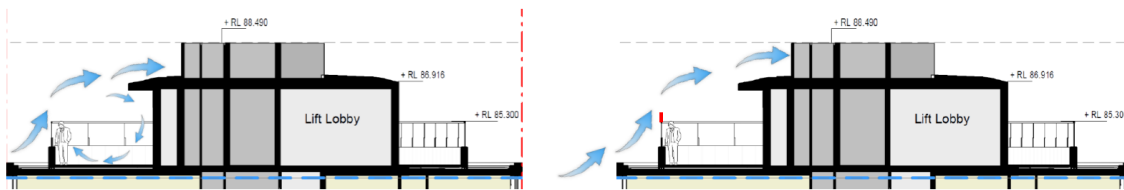


Figure 75: Site 18 rooftop wind movement, showing the 1.8m screening on the left and the amended 2.1m screening on the right

- 158.** Overall, the City is satisfied that the design amendments and supporting wind memo demonstrate that adequate measures within the built form have been implemented to address wind conditions across the site without relying on mitigation measures in the public domain. While it is acknowledged that a non-compliance remains at sensor 46 on the eastern corner of Site 18, it is appreciated that this location is difficult to address in the short term without reliance on screening in the public domain as the non-compliance is caused by ground-level winds, and it is noted that further improvements to wind conditions will occur with future development in the GSTC.

Transport and access

Site access

- 159.** Vehicular access to the site is via Tweed Place into Site 7 with a driveway width of 8m, which is consistent with the previous consent. The driveway provides access to the basement car parking and servicing area, which reduces the overall crossover width requirement.

Servicing

- 160.** Three truck and eight B99 service vehicle spaces are provided within the ground floor loading dock. The applicant has provided swept paths for the MRVs and SRVs to demonstrate that each can access the site while the other is parked in the adjacent space.
- 161.** Safety measures such as electronic displays, mirrors and pedestrian crossings are provided to minimise potential conflicts.
- 162.** The Loading Dock Management Plan is generally acceptable. However, Council's Transport Planner does not support requiring residents to use B99 vehicles for removals. A condition of consent is recommended that requires a final Loading Dock Management Plan to be submitted prior to the issue of an Occupation Certificate.

Car parking

- 163.** 262 car parking spaces are proposed, including 56 accessible spaces. This comprises 224 residential spaces, eight commercial spaces and 30 retail spaces. Six car share spaces are also provided.
- 164.** It is noted that the development does not propose any visitor car parking in order to encourage visitors to the site to utilise active or public transport modes.

165. The car parking provision complies with the maximum permitted under the SLEP GSTC 2013. Distribution of car parking spaces has been provided, which was required under the previous deferred commencement consents.

Bicycle parking

166. The development includes 260 residential bicycle parking spaces, 33 staff bicycle parking spaces and 83 visitor bicycle parking spaces. This exceeds the overall minimum requirement outlined in the DCP. There is a shortfall of two commercial staff spaces, however this is acceptable given the excess commercial and retail visitor parking spaces.
167. Visitor bicycle parking is provided on the ground floor with separate areas for residential and retail parking, which is supported. End of trip facilities are also provided adjacent to the staff bicycle parking.

Landscape

168. One of the key design changes to Sites 7 and 17 is the introduction of additional facade planters throughout the development. While the landscape design principles in the new scheme are generally sound, Council's Request for Information letter queried the value of facade planters that require specialist safety systems and aerial access for maintenance.
169. It is recommended that the facade planters be reviewed to allow them to be accessed from a roof terrace, balcony or window box for maintenance, negating the need for specialist safety maintenance which may cause long term maintenance issues.
170. In addition, it is recommended that planter walls on the roof terraces of Sites 7 and 17 be constructed with a more generous width to serve a secondary function of informal seating.
171. Council's Landscape Officer has provided conditions of consent that will facilitate an improved function for communal open spaces and the resolution of detailed design issues for facade greening.

Public art

172. A Preliminary Public Art Plan has not been submitted with the application. A condition is recommended that requires a Preliminary Public Art Plan to be submitted prior to the issue of the first Construction Certificate. A Detailed Public Art Plan will be required prior to the issue of any Construction Certificate for above ground works and the Public Art must be installed prior to the issue of any Occupation Certificate.

Waste management

173. The previously approved development was subject to the City of Sydney Policy for Waste Minimisation in New Development 2005. The new application has been amended to meet the requirements of the City's Guidelines for Waste Management in New Developments 2018 which provides more rigorous controls to promote the efficient storage, separation, collection and handling of waste in new developments.
174. Council's Waste Management Unit raised no objections to the proposal, subject to conditions. One minor outstanding issue the transfer of compacted bins up carpark ramps on a bin tug. A condition is recommended that requires the goods lift doors to be made wider to provide an alternative arrangement should the bin tug system fail.

Public domain

175. The application includes the construction of the new roads, being Barker Street and Fellmonger Place. Conditions of consent in relation to the new roads are recommended.
176. The plans show the relocation of the existing driveway on Tweed Place further south to align with the proposed loading dock. This requires the relocation of two existing trees and two light poles. The public domain shown on the plans is not approved and will be subject to a condition of consent requiring detailed public domain plans to be submitted.
177. The site is located within the Alexandra Canal catchment. A site specific flood assessment has been submitted with the application. The proposed development includes entry levels that are sufficiently raised to meet the flood planning level requirements and will have no impact on existing flood behaviour.

ESD

178. Sites 7 and 17 each contain more than 1,000sqm of Class 5 commercial space and will therefore need to satisfy a NABERS Energy 5.5 Star rating. A commitment agreement and associated energy modelling will be required before the issue of a Construction Certificate.
179. Standard conditions relating to NABERS, NatHERS and BASIX requirements are recommended.

Design Excellence***Competitive Design Alternatives Process - Site 18***

180. Site 18 was subject to a Competitive Design Alternatives Process between 26 October 2015 and 2 February 2016, pursuant to the City of Sydney Competitive Design Policy 2013 and Clause 6.9 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013.
181. Four architectural firms participated and the scheme proposed by Bates Smart was considered by the selection panel to be most capable of demonstrating design excellence for the following reasons:
 - (a) Challenging the Competitive Design Brief building envelope in order to deliver a superior site and precinct outcome;
 - (b) Careful transition of building scale from lower to upper levels and natural light benefits to the public domain;
 - (c) High level of rigour applied to facade composition;
 - (d) Two storey framing of the building facade;
 - (e) Ground floor layout and active interface;
 - (f) General compliance with building envelope and planning controls including solar access.

182. Recommendations provided by the selection panel with regard to design elements that require resolution are outlined below.

Table 2: Selection Panel recommendations for Site 18 and design response

Jury comment	Design response	Satisfactory
Resolve the core configuration, including the location of fire stairs, lifts and waste room. Refine apartment planning and services.	The previous DA D/2017/503 included rationalisation of internal apartment layout, circulation space and core arrangement to improve apartment planning and amenity. This was deemed acceptable.	Yes
Environmental conditions to be further considered, ensuring environmental performance of the building is not impacted by excessive heat loads and the amenity of residents is balanced with aesthetic requirements.	This was considered acceptable under the previous DA, subject to a deferred commencement condition requiring additional external sun shading to west facing apartments.	Yes
Relationship between stepped urban design form and structural solution should be investigated.	Additional structural analysis was developed and submitted as part of the previous approval for Site 18 (D/2017/503) and was considered to be adequate.	Yes
Align with target construction budget.	Identification and implementation of cost saving measures has been achieved.	Yes

183. The following features were identified by the Selection Panel as important elements to be retained:

- (a) Stepped urban design form at lower levels;
- (b) Underlying aesthetic of the design, being the composition and core intent behind the materials and finishes;
- (c) Integrated lifting solution, with the lift core providing access to each level in lieu of a shuttle lift option; and
- (d) The rooftop terrace which allows for exclusive private communal open space amongst the public open spaces to be delivered in the GSTC.

184. Overall, the proposed development is consistent with the merits of the winning competition scheme, has satisfactorily addressed the selection panel's recommendations and is consistent with the previously approved scheme for Site 18.

Competitive Design Process - Sites 7 and 17

- 185. Sites 7 and 17 were not previously subject to a competitive design process as the development proposed under D/2017/564 did not exceed a capital investment value of \$100 million and did not have a building height above RL 75.
- 186. Clause 6.9(6) of the SLEP (GSTC) 2013 allows a competitive design process to be waived if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances.
- 187. In this instance, a competitive design process for Sites 7 and 17 is deemed unreasonable and unnecessary for the following reasons:
 - (a) The previous scheme for Sites 7 and 17 approved under D/2017/564 was not required to undertake a competitive design process as it did not trigger the cost or height criteria in the LEP. The proposed development is generally consistent with the built form and scale approved under the previous consent.
 - (b) The design of Sites 7 and 17 has received substantial input from the Design Advisory Panel (DAP) since the lodgement of D/2017/564 in 2017, including the establishment of a DAP subcommittee as part of that DA. The new proposal also received input from the DAP in February 2024.
 - (c) The circumstances of this case are unique, given the previous consent has lapsed and the development for Sites 7 and 17 are now combined with Site 18, thus increasing the overall capital investment value and triggering the requirement for a competitive process.
 - (d) Undertaking a design competition would be unreasonable and burdensome given the site history and circumstances.

Design Advisory Panel

188. The City's Design Advisory Panel reviewed the proposal on 22 February 2024. The table below addresses the recommendations made by the Panel.

Table 3: Design Advisory Panel comments and design responses

Issue	Design response	Satisfactory
The new proposal does not include a cinema. The cinema has been replaced with retail. The proposal will be required to make spatial allowance, to not preclude introduction of a cinema in the future should demand and market conditions change.	The former cinema space has been replaced with an office premises, however the spatial allowance remains as per what was previously approved. The space remains capable of providing a cinema in the future.	Yes

Issue	Design response	Satisfactory
<p>The Panel is concerned that for Sites 7 and 17 there has been a detrimental shift in scale between this new proposal and the previous scheme and reduced detail and articulation in both the podiums in towers.</p>	<p>The City has undertaken a review of the proposed design and materiality for Sites 7 and 17 compared to the previous scheme. The building facades have undergone a redesign process since the previous approval for Sites 7 and 17. The key materiality changes are:</p> <ul style="list-style-type: none"> • Increased brickwork is proposed to Site 17. • The Site 7 podium facing Ebsworth Street, where the cinema was previously located, now features increased clear glazing in lieu of the solid concrete walls that were approved (with additional privacy screening where required). • There are less ambiguous FC painted wall panels than approved, which is considered an improvement. <p>Overall, the level of detail, articulation and materiality is acceptable subject to conditions.</p>	<p>Yes</p>
<p>The proposal for Site 18 has not addressed the competition jury's environmental concerns.</p> <p>Fully glazed apartments are no longer an appropriate building typology as the environment gets hotter and likely to result in unacceptably dark performance glazing.</p>	<p>Additional external sun shading devices have been proposed to the south western facade on Levels 3-10.</p>	<p>Yes</p>

Issue	Design response	Satisfactory
<p>The Panel noted the wind report accompanying the proposal identifies multiple locations where wind levels are not safe (according to current safety criteria) and recommendations to mitigate those exceedances have not been implemented. The requisite safety levels must be achieved.</p> <p>Mirvac has indicated that they will be looking into mitigating wind impacts. The Panel recommend reassessment once mitigation measure have been proposed.</p>	<p>Design amendments have been made to resolve the wind issues. See 'Wind impacts' discussion above.</p>	<p>Yes</p>
<p>The length of residential corridors in the Site 7 and 17 proposal are excessive, and corridor widths are too tight.</p>	<p>The proposed corridors are generally consistent with what was previously approved under D/2017/564.</p> <p>Site 7 northern portion has long corridors on Level 6 only. It is located above commercial (former cinema) podium and is required to provide access to communal open space. Natural light provided to both ends and dual lift banks to reduce travel length. Meets ADG with no more than 7 apartments per corridor.</p> <p>Site 7 southern portion corridors have an opening to create a 'gallery' style corridor which will provide high levels of sunlight and outlook to adjoining communal open space. This arrangement is only for 3 levels in the podium.</p> <p>Both corridors meet minimum width requirements.</p>	<p>Yes</p>

Issue	Design response	Satisfactory
<p>Minimum ADG apartment balcony size requirements should be met, however where a second balcony is being proposed, the proposed primary balcony size is acceptable.</p>	<p>A condition of consent is recommended requiring all relevant apartments to meet the minimum ADG size requirements.</p>	<p>Yes</p>
<p>There are a few major residential entries hidden behind commercial facades. Is it possible to provide more of a presence or residential address that distinguishes the residential entries?</p>	<p>Site 7 includes an inset main residential lobby entry along Ebsworth Street, which creates a wind break for residents and creates a waiting zone away from the primary retail zone. This is a similar arrangement for Site 17 which has the added complexity of ensuring plant/fire access is suitably co-located.</p> <p>Design amendments to mitigate wind impacts have resulted in the relocation of the residential entrance on Site 18 to Barker Street, which is a more prominent location than previously.</p> <p>The applicant also notes that opportunities for optimising wayfinding, lighting and materiality as part of the detailed design of the lobby entries will be explored to ensure they are legible, safe and inviting. A condition of consent to address this is recommended.</p>	<p>Yes, subject to conditions.</p>
<p>Encourage a multiplicity of fine grain retail uses onto Green Square and activate it. The retail tenancies do not appear fine grain enough.</p>	<p>The plans have been amended to provide more fine grain retail tenancies fronting the public domain on Sites 7 and 17.</p>	<p>Yes</p>

Issue	Design response	Satisfactory
The Panel has previously commented on the proposal through a DAP sub-committee. It recommended that the assessment team undertake a review of the sub-committee's advice and compare that advice to the new proposal.	See below.	Yes

189. As per the last recommendation listed above, the DAP noted that the Panel has previously commented on the scheme through a DAP subcommittee under the previous DA assessment (D/2017/564). The Panel requested that a review be undertaken of the subcommittee's previous advice and compare that advice to the new proposal. This review is provided below.

Sites 7 and 17

(a) Materiality

2018 DAP comment: There is too much difference in materiality, colour and form between the base and upper building parts. The shift should be more subtle.

2019 CSPC report: Materiality has been revised to a lighter scheme for both Sites 7 (larger site with space for cinemas) and 17 (smaller site), which was suggested by the DAP.

Proposed: The building facades have undergone a redesign process since the previous approval for Sites 7 and 17. The key materiality changes are:

- Increased brickwork to Site 17.
- The Site 7 podium facing Ebsworth Street, where the cinema was previously located, now features increased clear glazing in lieu of the solid concrete walls that were approved.
- Overall, there is less ambiguous FC painted wall panels than approved, which is considered an improvement.

(b) Cinema facade

2018 DAP comment: The solid framing of the white element around the blank facade of the cinema needs further investigation and refinement.

2019 CSPC report: The cinema facade was revised as recommended, extending the vertical flutes around the building corner and minimising the capping.

Proposed: The cinema use has been replaced with reversible commercial floor space, thus changing the blank concrete wall with glazing (and visual privacy screening where required).



Previous

Approved

Proposed

Figure 76: Comparison of the original, approved and proposed podium facade on Site 7 on Ebsworth Street

(c) Site 7 Level 6 corridor

2018 DAP comment: Plan amendments should be made to the Level 6 floor plan on Site 7 to improve the arrival experience to the front apartments. An additional lift core should be introduced. Changes should also be made to bring light into the corridor adjacent to the lift or from above. The panel recommended further articulation of the corridor to minimise the tunnel effect.

2019 CSPC report: An additional lift core was introduced as was supported by the DAP. The corridor walls are glazed to bring light into the corridor and provide an outlook onto the landscaped area. As this is not clear on the drawings, for the avoidance of doubt a condition of consent is recommended to ensure there is an operable component in the glazing. This, when combined with slightly recessed entries, will minimise the effect of a long corridor.

Proposed: The proposed corridor is similar to what was approved, with the entire northern wall of the corridor consisting of glazing to provide an outlook into the landscaped area. The western end of the corridor has been amended slightly to increase the size of the adjacent apartment, which reduces the corridor length. However, this is considered reasonable given the significant glazing proposed on the northern side of the corridor. A similar condition of consent is recommended requiring details of the window to ensure it provides acceptable amenity and ventilation to the corridor.



Approved



Proposed

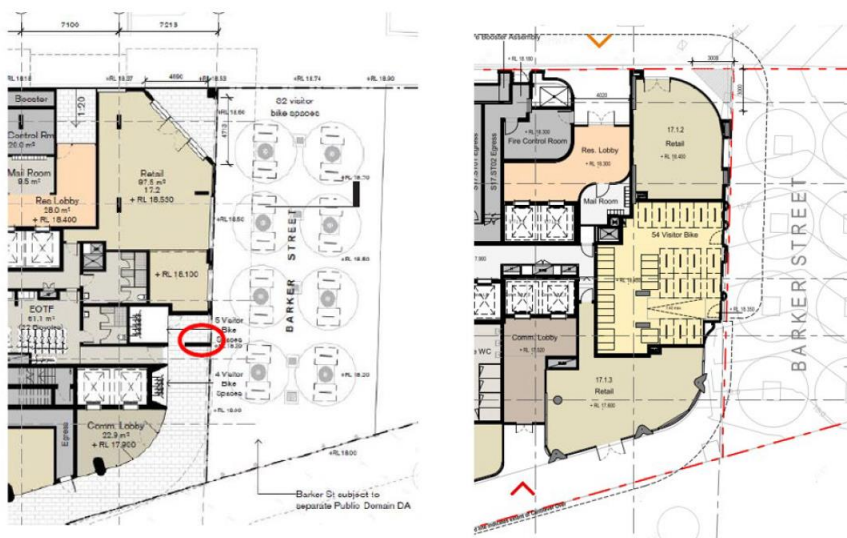
Figure 77: Site 7 Level 6 podium, with the approved floor plan on the left and the proposed plan on the right

(d) Site 17 eastern blade wall

2018 DAP comment: The datum of the colonnade is too low at the eastern end of Site 17. Access under a continuous awning cover is required at street level on the eastern corner of Site 17.

2019 CSPC report: This building element requires further design refinement to ensure an optimum design solution is achieved for this prominent corner. This should include investigating the suitability of the blade wall near the recessed visitor bicycle parking spaces. A condition of consent is recommended.

Proposed: The ground plane of Site 17 has been replanned, with bicycle parking now located on the eastern facade and the building alignment modified. The proposed arrangement is considered acceptable and removes the need for the blade wall previously proposed.



Approved

Proposed

Figure 78: Approved vs proposed ground floor plan on the eastern side of Site 17

(e) South-west solar control

2018 DAP comment: The curved element on the south-western corner of Site 7 should incorporate vertical fins to shade the podium apartments from the setting sun. Internal blinds are an unacceptable solution.

2019 CSPC report: Vertical fins have been provided, however sun protection needs further consideration. A condition of consent was imposed:

- (m) Solar shading shall be provided to the south west facing apartments within Sites 7 and 17 to alleviate the impacts from mid-summer afternoon sun.

Proposed: This issue is not satisfactorily resolved. A condition of consent is recommended that requires provision for combined visual privacy and solar control to these corner apartments including external operable louvres (in lieu of fritted glass) to the living room windows. A condition of consent is also recommended requiring sliding operable screens to the full width of balconies to podium apartments facing the plaza.

(f) Wind

2018 DAP comment: Additional assessment of wind conditions in Fellmonger Place is required.

2019 CSPC report: Wind conditions are generally acceptable for walking and standing. However, Fellmonger Place is not suitable for sitting for prolonged periods and wind mitigation is required. Any future outdoor seating areas along Fellmonger Place or the resultant requirement for a canopy or wind barriers and the like will be subject to a separate DA. No outdoor dining is approved as part of this consent.

Proposed: The wind recommendations have been implemented. See further details under the 'Wind Impacts' discussion above.

(g) Signage:

2018 DAP comment: Signage solutions with architectonic integrity should be incorporated.

2019 CSPC report: No signage is proposed as part of this DA. A separate DA for a signage strategy will be required.

Proposed: As above. A condition is recommended that requires a signage strategy to be approved under a separate DA.

Site 18

(h) Wind

2018 DAP comment: A wind study of the ground level around Site 18 is required.

2019 CSPC report: A wind study was submitted, which found nine locations around the ground plane that are non-compliant with the wind criteria. The exceedances are expected in the short term however they are expected to improve following the delivery of surrounding buildings. It is recommended that outdoor dining not form part of the consent and that any future application for outdoor dining is to be supported by a wind report demonstrating that the proposed outdoor dining area is suitable for that purpose.

Proposed: Design changes have been proposed to resolve this issue. See further details under the 'Wind Impacts' discussion above.

(i) Sun shading

2018 DAP comment: Additional sun shading should be provided on the western facades to improve solar protection.

2019 CSPC report: A deferred commencement condition of consent is recommended, requiring west facing apartments that receive solar access in the summer months, including apartments facing Barker Street and Neilson Square, to be provided with external operable sun shading devices.

- (d) West facing apartments that receive high levels of exposure to afternoon sun in the summer months, being apartments facing Barker Street and Neilson Square, are to be provided with external operable sun shading devices. It must be demonstrated that the devices are:
- (i) operable in order to facilitate solar access in the winter months; and
 - (ii) sufficient to protect the occupants from excessive radiant temperatures in the summer months.

Where an affected apartment is not provided with sun shading, it must be demonstrated that the apartment is not subject to solar exposure that may result in thermal discomfort. The materials used for sun shading are to be of a high quality and finish, are to display design excellence and are to integrate with the architecture of the building. The Architectural Drawings are to be updated to include 1:20 drawings illustrating typical details of the sun shading devices.

Proposed: This condition has been resolved, as outlined under the 'External glazing and solar control' issue above.

(j) Floor to floor heights

2018 DAP comment: The proposed floor to floor heights (which in the original submission were 3.05m), should be reviewed.

2019 CSPC report: The City generally requires a floor to floor height of 3.1m in order to ensure that a floor to ceiling height of 2.7m can be achieved whilst accommodating a standard slab and services. The proposed floor to floor heights are 3.08m which achieves a floor to ceiling height of 2.7m in living rooms and bedrooms. This is acceptable.

Proposed: The floor to floor heights have been amended to 3.15m which is an improved outcome.

(k) Apartment layouts and bedrooms

2018 DAP comment: Apartment layouts and bedrooms should be reviewed to achieve greater compliance with the amenity provisions of the ADG.

2019 CSPC report: Apartment layouts and bedroom sizes have been amended and compliance has greatly improved.

Proposed: The proposed apartment layouts and bedrooms for Site 18 have been assessed against the ADG and are acceptable.

(l) Height

2018 DAP comment: Height non-compliances may be acceptable subject to an assessment of the impact to the future Drying Green.

2019 CSPC report: An assessment of the overshadowing of The Drying Green has been carried out, which has determined that the additional overshadowing impact as a result of the noncompliant height is negligible. It is therefore not a determinative factor that would warrant refusal of the application.

Proposed: An overshadowing analysis has been prepared which demonstrates that the proposal does not cause additional overshadowing to the Drying Green compared to the previous approval.

Consultation

Internal Referrals

190. The application was discussed with the following internal referral units:

- (a) Urban Design
- (b) Environmental Projects
- (c) Planning Agreements
- (d) Public Domain
- (e) Public Art
- (f) City Access and Transport
- (g) Tree Management
- (h) Environmental Health
- (i) Landscaping
- (j) Cleansing and Waste
- (k) Surveyor

191. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

192. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.

193. A response was received raising no objections to the proposed development.

Sydney Airport

194. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.

195. The Obstacle Limitation Surface (OLS) for the subject site is 51m (AHD). With a maximum height or RL 88.49, the development will penetrate the OLS by 37.49m and is therefore a 'controlled activity'.
196. Approval was granted for the controlled activity on 22 December 2023, subject to conditions.

Transport for NSW

197. Pursuant to Section 2.122 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
198. Comments were received on 26 October 2023. Conditions of consent were recommended which are included in Attachment A.

Water NSW

199. Pursuant to Section 90(2) of the Water Management Act 2000, the application was referred to WaterNSW for concurrence.
200. General Terms of Approval were issued by WaterNSW on 27 November 2023 and have been included in Attachment A.

Advertising and Notification

201. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 5 October and 3 November 2023. A total of 975 properties were notified and five submissions were received.
202. The submissions raised the following issues:
- (a) **Issue:** The variation to increase the height of Site 7 should not be supported. The number of stories will impact the amount of sun in the Green Square area.
- Response:** The height non-compliance for Site 7 is discussed above in this report. The height variation is limited to lateral protrusions. The non-compliant components maintain acceptable solar access to public spaces and do not adversely impact neighbouring properties.
- (b) **Issue:** The proposal is increasing the amount of occupants on the site and the area is too densely populated.
- Response:** The GSTC has long been identified as an urban renewal site as reflected by the planning controls for the site. The proposed development of a similar scale and density was previously approved on the site under the lapsed consents (D/2017/564 and D/2017/503). The proposal complies with the maximum floor space ratio control for the site and is generally in accordance with the anticipated built form permitted by the planning controls.

- (c) **Issue:** There is insufficient visitor and retail parking proposed.

Response: Car parking provision is outlined in the Discussion section above under 'Transport and Access'. The City's car parking rates in Clause 6.8 of the LEP are maximums and there are no minimum requirements for visitor car parking. The proposal provides 224 residential spaces, 38 retail/ commercial spaces and 6 car share spaces, which complies with the maximum car parking spaces in accordance with the LEP and DCP. In addition, 29 visitor bicycle parking spaces are provided on Site 7 via Tweed Place and 54 visitor bicycle parking spaces are provided on Site 18 via Barker Street, which will encourage active modes of transport to the site. The site is also well serviced by public transport.

- (d) **Issue:** Privacy concerns to existing apartments in the Infinity development to the west of the subject site.

Response: The side elevation of Site 7 has been designed with a predominantly solid wall with small, narrow windows to limit overlooking between buildings. The windows will also be treated with glazing frit to minimise visual privacy impacts. On the podium levels, privacy screening is proposed to prevent overlooking from the commercial use on Site 7 into the lower-level apartments in the Infinity development.

One submission requests that similar privacy measures be installed to the Infinity development as is proposed to the new building, however this is outside the scope of what can reasonably be required as a condition of consent.

Overall, the visual privacy mitigation measures proposed under this consent are considered an improvement compared to the previous approvals for the site and the overall building separation and setbacks have not been reduced. d

- (e) **Issue:** Site 7 retention walls in the basement may cause impacts to nearby buildings.

Response: A Geotechnical Report was submitted with the application which provides information on the subsurface conditions of the site and provides comments relating to excavation, excavation support, groundwater and foundations. Conditions of consent are recommended to ensure the proposed development does not adversely impact adjoining properties.

- (f) **Issue:** High-rise balconies should be enclosed for safety reasons.

Response: The development has been designed in accordance with the requirements of the Building Code of Australia, including the minimum height requirements for balustrades.

- (g) **Issue:** Privacy and noise impacts from corner balconies that face the Ovo building. The balconies will face bedroom windows.

Response: The issues of visual privacy and building setbacks are outlined in the Discussion section above. The proposed setbacks to Ebsworth Street have not changed since the previously approved DAs and range between 19-21m, which are considered to provide an acceptable level of privacy between the buildings. The orientation and location of corner balconies are unlikely to cause significant overlooking issues compared to the previous approval, which included corner balconies on Site 7 fronting Ebsworth Street from Level 9 and above.

- (h) **Issue:** The lateral protrusions will cause visual impact to the neighbouring buildings including the Infinity development.

Response: The location of the lateral protrusions on the southern side of the site mean that they are unlikely to have any significant view impacts on surrounding development to the north of the site.

With regard to the Infinity development to the west of the site, the lateral protrusions of approximately 1.3m on Site 7 is considered to be minor when compared to the overall permissible built form envelope under the LEP and DCP towards the Plaza that the proposal does not seek to utilise. Figure 79 below highlights the lateral protrusions.



Figure 79: 3D view showing the lateral projections on Site 7 on the upper levels

The location and minor extent of the lateral protrusion is such that it is unlikely to cause significant visual impact. When considering the principles of *Tenacity Consulting v Warringah Council* (2004) NEWLEC 140 ('Tenacity'), including the value of the south-eastern views from the Infinity building, the protection of views across side boundaries and the minor extent of the impact, the view sharing achieved is considered to be reasonable.

- (i) **Issue:** The building setbacks for Sites 7 and 17 on Ebsworth Street do not comply with the DCP, which requires a 3m setback for structures above 8 storeys. This causes visual privacy impacts to 18-28 Ebsworth Street and reduces their access to sunlight.

Response: The issue of building separation and setbacks is outlined in the 'Discussion' section above.

The proposed setbacks to Ebsworth Street were approved under the previous consent for Sites 7 and 17. The building separation of the upper levels to buildings north of Ebsworth Street on Sites 16A and 16B (which terminate at Level 10) range between 19m and 21m, which has previously been assessed as being acceptable and is still considered acceptable.

- (j) **Issue:** The predominance of dark colours used for material 6 (bronze-coloured smooth metal cladding) and material 7 (brickwork) will reduce ambient lighting on Ebsworth Street.

Response: The proposed materials and finishes schedule introduces changes to the materiality of Sites 7 and 17 compared to the previous approval for the site. While the use of bronze-coloured smooth metal cladding is maintained, there is an increased use of brickwork on Site 17. There is also less ambiguous FC painted wall panels than what was approved, which is considered an improved urban design outcome with higher quality materials. Overall, the likelihood of the cladding and brickwork limiting the amount of light on Ebsworth Street is minimal and these are considered to be high quality materials. The City's Urban Design specialist and the Design Advisory Panel did not raise any issues in relation to potential predominance of dark colours.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

203. The development is subject to a Section 7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. However, the contribution is offset by the monetary contribution required under the terms of the Voluntary Planning Agreement. Accordingly, a condition requiring the payment of Section 7.11 contributions is not required.

Contribution under Section 6.5 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013

204. The site is located within the Green Square affordable housing contribution area.
205. The development proposes a Total Floor Area (TFA) of 47,162sqm, comprising 39,680sqm of residential floor area and 7,482sqm of non-residential floor area.

206. Therefore, a contribution is required at a rate of \$11,176.22 per square metre for 1% of the total non-residential floor area and 3% of the residential floor area.
207. This results in a monetary contribution of \$14,140,379.88. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

208. Environmental Planning and Assessment Act 1979
209. Sydney Airport Referral Act 1996
210. Water Management Act 2000
211. Sydney Water Act 1994

Conclusion

212. The proposal seeks consent for the redevelopment of the site, comprising Sites 7, 17 and 18 within the GSTC, including site preparation, remediation, bulk excavation and construction and use of three mixed use buildings.
213. A monetary contribution, land dedication and green infrastructure are to be provided by way of a previously executed Voluntary Planning Agreement.
214. The proposal has been assessed against the aims and objectives of the relevant planning controls including the SLEP (GSTC) 2013, the GSTC DCP 2012 and the Housing SEPP. Where non-compliances are proposed, they have been assessed in this report as being acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.
215. The proposal achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future users of the site.
216. The development demonstrates design excellence in accordance with Clause 6.9 of the SLEP (GSTC) 2013.
217. The proposed development for Site 18 is consistent with the design intent of the winning scheme of a competitive design alternatives process, held in accordance with the City of Sydney Competitive Design Policy. The waiving of a competitive design process pursuant to Clause 6.9(6) of the SLEP (GSTC) 2013 for Sites 7 and 17 is supported in this instance due to the site history and substantial input received from the Design Advisory Panel including a subcommittee.
218. As a result of public notification, five submissions were received. The concerns raised in the submissions have been addressed as discussed within this report.
219. All matters raised by internal and external referrals have been adequately addressed as discussed within this report.

220. The proposed development is considered to be appropriate within its setting, demonstrates a design that responds to the constraints of the site and will positively contribute to the desired future character of the locality. The proposal will provide residential, retail and commercial uses within the Green Square Town Centre and will provide activation to the locality.
221. Subject to conditions, the development is in the public interest and is recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Samantha Kruize, Senior Planner