

Item 5.**Section 4.55 Application: 155 Mitchell Road, Erskineville - D/2015/966/G**

File No.: D/2015/966/G

Summary

Date of Submission:	1 November 2023 Amended plans received 15 July 2024
Applicant:	Coronation Property Co Pty Ltd
Architect/Designer:	Architectus
Developer:	Coronation Property Co Pty Ltd
Owner:	Erskineville Developments Pty Ltd
Planning Consultant:	Urbis
DAP:	22 February 2024
DAP Sub-Committee	7 March 2024
Cost of Works:	\$636,739,189
Zoning:	The site is zoned E1 - Local Centre and MU1 - Mixed Use under the Sydney Local Environmental Plan (SLEP) 2012. The development as it pertains to Block E is located in the E1 zone, relates to building envelopes for residential accommodation, and is permissible with consent.
Proposal Summary:	This Section 4.55(2) application seeks to modify the concept approval for the redevelopment of nine (9) development blocks (known as Blocks A-I) within the eastern portion of the Ashmore Estate as a mixed-use precinct including residential, commercial and recreation uses, with a concept design for public domain works including new streets, a park and new trunk drainage.

Specifically, the modifications relate to 'Block E', which is situated between MacDonald Street and Metters Street. The modifications principally involve altering the approved building envelope for Block E to align with the winning design competition scheme and the detailed design development application D/2023/842 that is being presented to the Central Sydney Planning Committee (CSPC) concurrently for approval.

The modifications include revisions to height and upper level setbacks, as well as the introduction of a single storey structure at ground floor for an indoor communal pavilion within the central courtyard, new mansard roof forms and the extension of the eighth storey along the southern wing of the second residential flat building envelope.

Both the concept modification and the detailed design development application are referred to the CSPC as D/2023/842 has a cost of works of more than \$50 million.

The applications were notified concurrently between 15 November and 14 December 2023. The amended plans received on 15 July 2024 were not re-notified as the proposed changes resulted in less impact compared to the original application. Fifty-eight (58) submissions were received for the concept modification, and 20 submissions were received for the detailed design proposal as a result of this notification. Two of those submissions were received in support of the proposal. The submissions raised concerns about increased overall height and street wall height, the bulk and scale of the development, amenity impacts to surrounding properties and the future McPherson Park, traffic congestion and construction impacts. These concerns are addressed within this report.

As amended, the proposed building envelopes are considered to be substantially the same as previously approved and contextually appropriate.

The detailed design application will be considered concurrently by the CSPC under D/2023/842, demonstrating that a generally compliant scheme can be provided within the amended envelope. Consequently, the amendment is recommended for approval.

Summary Recommendation: The Section 4.55(2) modification application is recommended for approval, subject to conditions.

- Development Controls:**
- (i) Environmental Planning and Assessment Act, 1979;
 - (ii) State Environmental Planning Policy (Housing) 2021;
 - (iii) Sydney Local Environmental Plan 2012;
 - (iv) Sydney Development Control Plan 2012.

- Attachments:**
- A. Amended Conditions of Consent
 - B. Amended Building Envelope Drawings

Recommendation

It is resolved that consent be granted to Section 4.55 Application Number D/2015/966/G subject to the amendment of the following conditions (with modifications shown in **bold italics** (additions) and ~~strikethrough~~ (deletions), as follows:

(1) APPROVED STAGE 1 DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2015/966 dated 9 July 2015 and the following drawings:

Drawing Number	Architect	Date
DD01-02 Issue M-R-S Y	Architectus	07/04/2017 13/11/2017 16 January 2020 10 July 2024
DA01-03 Issue M	Architectus	07/04/2017
DA01-04 Issue L	Architectus	07/04/2017
DA01-05 Issue M-R-S Y	Architectus	07/04/2017 13/11/2017 16 January 2020 10 July 2024
DA01-06 Issue M-T-U Y	Architectus	07/04/2017 13/11/2017 16 January 2020 10 July 2024
DA01-07 Issue T-V-W Y	Architectus	10/10/2017 13/11/2017 16 January 2020 10 July 2024
DA01-10 Issue L	Architectus	07/04/2017
DA01-11 Issue U-Y AA-AB AE	Architectus	10/10/2017 17/11/2017 15/06/18 16 January 2020 10 July 2024

Site Locality and Indicative Phasing Plan	AECOM	22/09/2016
---	-------	------------

and as amended by the conditions of this consent and amended plans provided as required under deferred commencement condition (1).

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

(Amended 30 November 2017 – Mod A)

(Amended 5 December 2018 – Mod B)

(Amended 13 February 2020 – Mod C)

(Amended 15 August 2024 - Mod G)

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development as modified is substantially the same as was originally approved and is consistent with the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979.
- (B) The development has been considered against the reasons given by the Central Sydney Planning Committee for the grant of consent that is to be modified, and the proposal is consistent and acceptable, as per Section 4.55(3) of the Environmental Planning and Assessment Act, 1979.
- (C) The proposed modifications ensure that the detailed design development application is consistent with the concept approval to satisfy Section 4.24 of the Environmental Planning and Assessment Act, 1979.
- (D) The increased height and bulk of the building envelopes are in keeping with the desired future character of the area and will not adversely impact the amenity of the surrounding area. These variations are reasonable and justified with regard to the detailed design development application D/2023/842.
- (E) The proposed building envelopes are capable of accommodating a future building design which is capable of exhibiting design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.

Background

The Site and Surrounding Development

1. The site is located within the eastern half of the former light industrial estate known as the 'Ashmore Estate' in Erskineville. The majority of the sites within the Ashmore Estate have transitioned, or are currently in the process of transitioning to, a mixed-use area that is predominantly residential.
2. The site has an area of approximately 69,470sqm with frontages to Ashmore Street to the north, Foundry Street to the north-east, Mitchell Road to the east, Hadfields Street to the west and Coulson Street to the south. The site also intersects with Metters Street and Macdonald Street to the west.
3. At the time the original concept consent D/2015/966 was granted, the site was known as 57 Ashmore Street, and comprised nine blocks referred to as A-I. The site has since been subdivided, with Blocks A, B and C being redeveloped as residential flat buildings.
4. The land subject to this application is now known as 155 Mitchell Road, Erskineville, comprising Blocks D-I. See the general site plan depicting each block across the Ashmore Estate below at Figure 1.

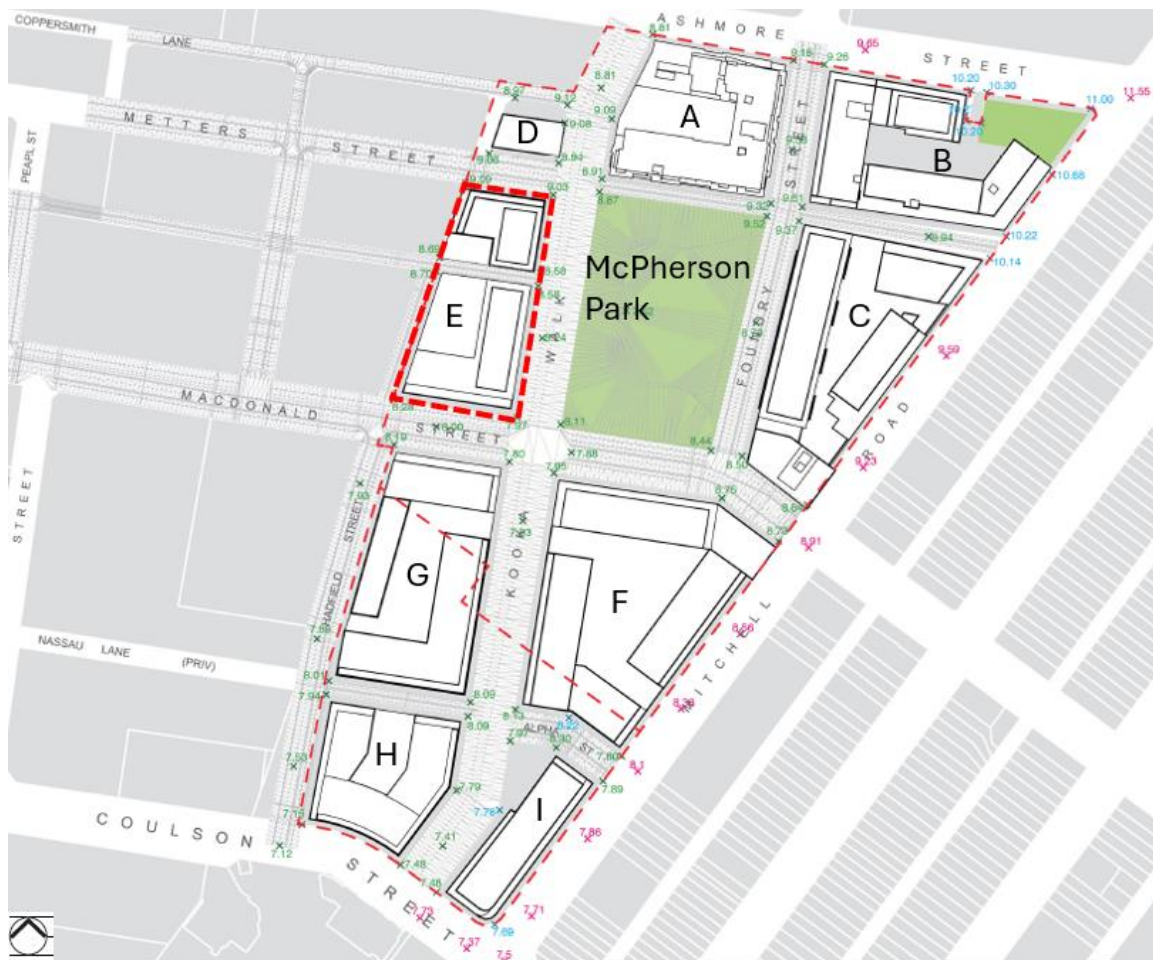


Figure 1: Site plan depicting building envelopes of Blocks A-I (from D/2015/966/C)

5. Specifically, this Section 4.55 application relates to Block E, which is located on the western boundary of the site, bounded by an extension to Metters Street (to be constructed) to the north, an extension to Macdonald Street (to be constructed) to the south, an extension to Kooka Walk (to be constructed) to the east, and a pedestrian link to the west. Block E is located directly across from the future McPherson Park to the east.
6. Block A is located to the north-east of Block E and is currently under construction as a part 3, 4 and 8 storey residential flat building comprising 165 apartments. Blocks B and C are located to the east of Block E and have been constructed. Block B is a 4 to 8 storey residential flat building containing 157 apartments. Block C is a 4 to 8 storey mixed-use development providing 173 apartments, ground floor retail and centre-based child care centre. Block D is located to the north of Block E, with approval for 6x 2 storey plus attic terrace houses. Construction has yet to commence. Blocks G-I have not been redeveloped.
7. Blocks A, B and C remain in the ownership of Greenland Golden Horse. Blocks D, E, F, G, H and I (including public domain works) are owned by Coronation Property Co.
8. The term 'the site' from hereafter, refers to Block E only.
9. Block E has a site area of 4,688sqm, and contains hardstand areas and an existing warehouse building that is currently being demolished. The site has been cleared of vegetation and trees.
10. The surrounding area is characterised by a mixture of building types and land uses. The site adjoins two 5-6 storey residential flat buildings to the west, at 7 Metters Street and 74 Macdonald Street. The three sites are separated by north-south pedestrian link. Metters Street contains two storey terraces to the north, and 5-6 storey residential flat buildings to the south. Macdonald Street contains 5-6 storey residential flat buildings to the north and 6-7 storey residential flat buildings to the south.
11. 155 Mitchell Road is not heritage listed and is not located within a heritage conservation area. There is an electrical substation at 1A Ashmore Street that is a heritage item of local significance (I1503). Mitchell Road west forms the boundary of the Cooper Estate Conservation Area (C2). Erskineville Estate Conservation Area (C22) is located to the north on Ashmore Street and Malcolm Estate Conservation Area (C24) is located to the east of the site at Coppersmith Lane.
12. Photos of the site and surrounds are provided below:



Figure 2: Aerial view of site and surrounds



Figure 3: Site viewed from Metters Street looking east



Figure 4: Subject site viewed from Metters Street, looking south. Site is to the left (east) and 7 Metters Street is to the right (west).



Figure 5: Metters Street streetscape, and view of subject site looking east



Figure 6: Pedestrian link between subject site and 74 Macdonald Street looking north to rear of 7 Metters Street



Figure 7: Pedestrian link between subject site and 74 Macdonald Street looking south



Figure 8: Macdonald Street elevation of subject site and 74 Macdonald Street looking north



Figure 9: Macdonald Street streetscape looking west



Figure 10: 5 Hadfields Street, south-west of the subject site

History Relevant to the Development Application

Concept Approval - D/2015/966

13. On 17 November 2016, deferred commencement development consent was granted by the CSPC for concept approval of the redevelopment of the eastern portion of the Ashmore Estate, as a mixed-use precinct including residential, commercial and recreation uses. The proposal included building envelopes for nine development blocks ranging in height between two and eight storeys and concept design for public domain works including new streets, a 7,446sqm park, and new trunk drainage.
14. The public domain works are subject to a Voluntary Planning Agreement (VPA). The CSPC delegated authority to the Chief Executive Officer (CEO) to determine the application following the completion of the public exhibition of the VPA. The CEO determined the application on 3 March 2017, subject to deferred commencement conditions requiring the VPA to be registered on title and for the building envelopes to be modified. The deferred commencement conditions were satisfied on 18 October 2017, and the development consent is now active.
15. **D/2015/966** has subsequently been amended as follows:
 - Modification A - On 17 November 2017, the CSPC approved a modification to the Concept Approval. The modifications included amendments to the building envelopes for Blocks B and C to match the detailed design of the building proposed in D/2017/681. The modification also amended the requirements for a public art strategy, including the timing for the submission of a single strategy for the precinct prior to above ground works for Phase 1 (Blocks B and C).
 - Modification B - On 3 December 2018, a modification application was approved to amend the building envelopes to Blocks B and C to accommodate five lift overrun increases of 130mm.
 - Modification C - On 20 February 2020, a modification application was approved by the CSPC to alter the building envelopes to be consistent with the detailed design development application for Block A (D/2019/393) and Block D (D/2019/291).
 - Modification D - On 29 August 2022, a modification application was approved to amend the Design Excellence Strategy applying to the site.
 - Modification E was cancelled.
 - Modification F - On 5 May 2023, a modification application was approved to amend Condition 4(d) - Development Sequence of D/2015/966 to enable commencement of Phase 3 (Block D) construction prior to Phase 2 (Block A) being substantially commenced.
16. Plans of the approved concept development (D/2015/966/C) are provided below.

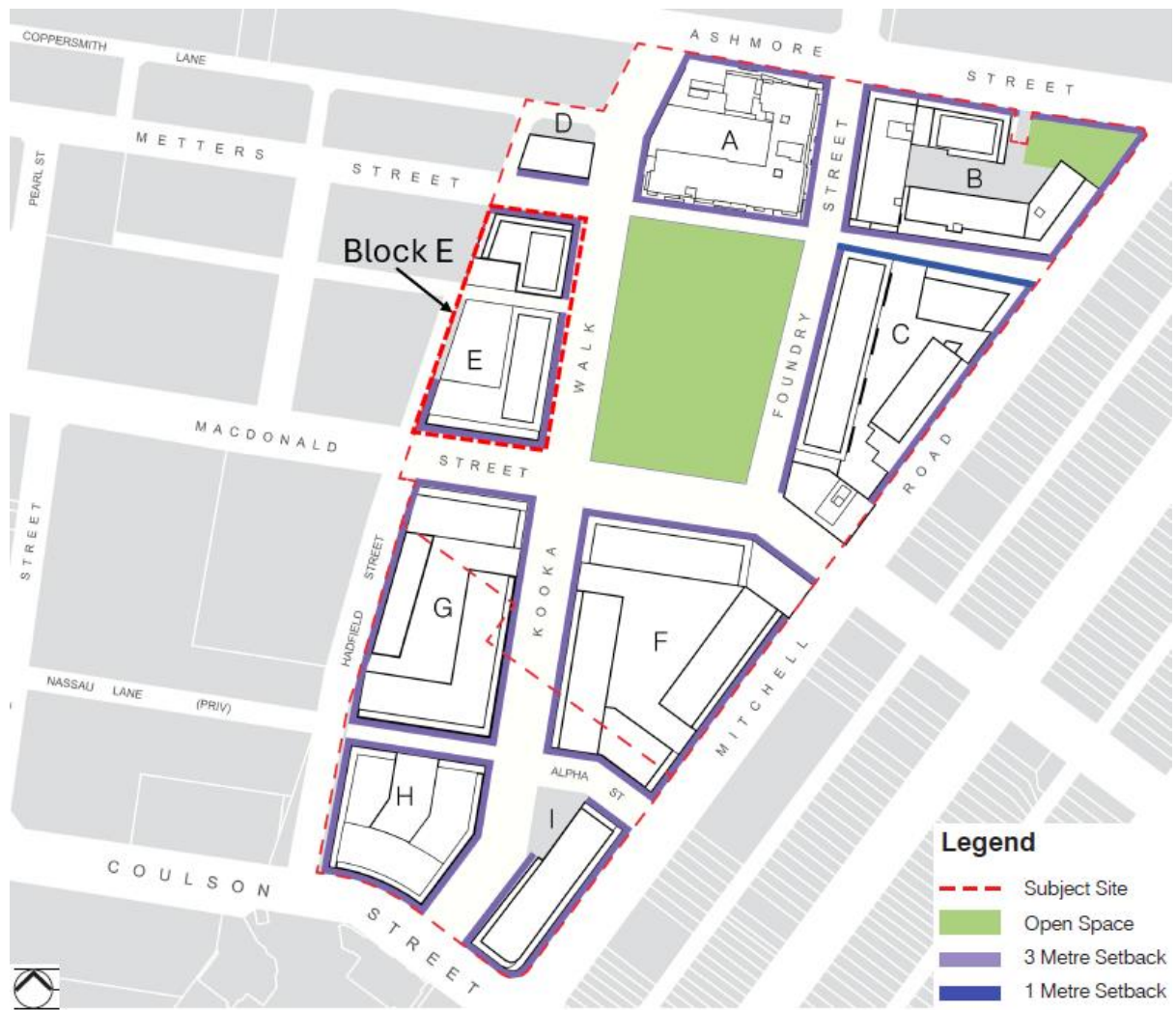


Figure 11: Approved ground level setbacks - D/2015/966/C



Figure 12: Approved Building Envelope Plans - D/2015/966/C

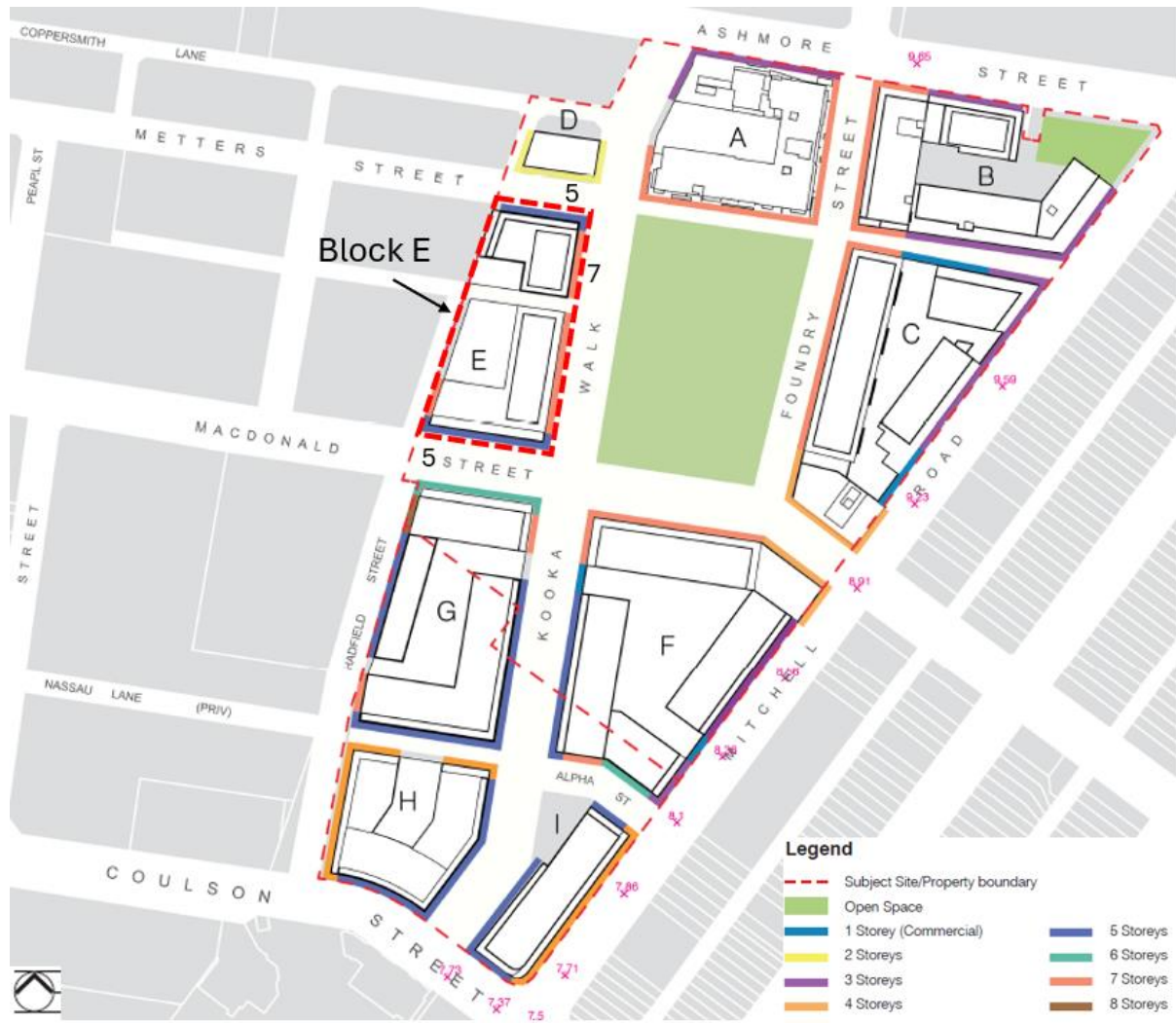


Figure 13: Approved Street Wall Heights - D/2015/966/C

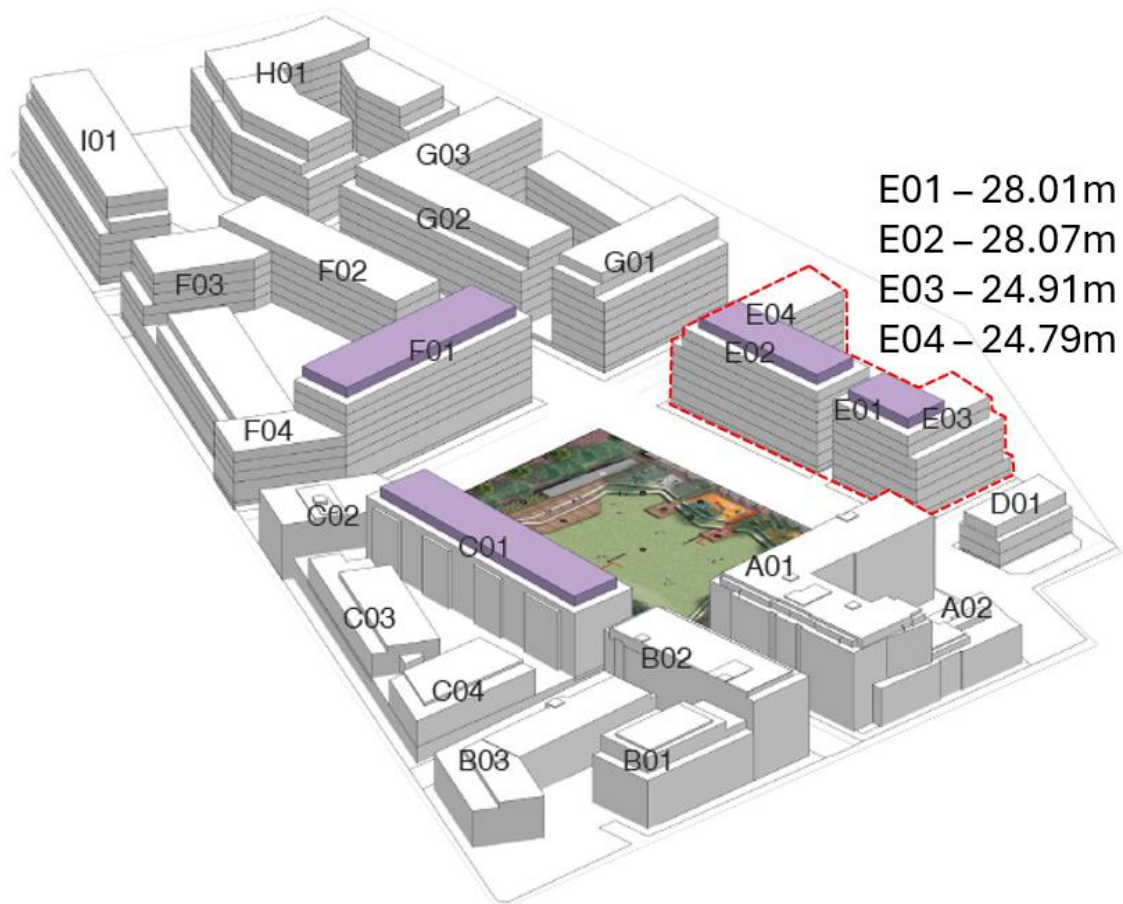


Figure 14: Approved axonometric concept plan indicating building height - D/2015/966/C

Planning Agreement - VPA/2015/39 (as amended)

17. The VPA (as amended) for the development site known as 155 Mitchell Road, Erskineville provides for the delivery of land and public domain works across 7 phases of the development.
18. The public domain works broadly consist of the following:
 - (a) two options for stormwater trunk drainage;
 - (b) a new 7,446sqm park to be known as 'McPherson Park';
 - (c) a new 7,815sqm 'Green Link' for pedestrians and cyclists to be known as 'Kooka Walk' to commence north at the north-western corner of the site on Ashmore Street and terminate south at Coulson Street;
 - (d) provision of two new pedestrian only links, one between Blocks B and C to be known as 'Stovemaker Lane', and one traversing through Block E;
 - (e) provision of two pedestrian and cycle links, one between Block A and McPherson Park, and one between Blocks G and H;
 - (f) extension of the existing Macdonald Street to connect to Mitchell Road at the existing intersection of Mitchell Road and Maddox Street;

- (g) extension of the existing Metters Street to terminate at the new Kooka Walk;
- (h) extension of the existing Coppersmith Lane to terminate at the new Kooka Walk;
- (i) provision of a new laneway west of Block D connecting the extended portions of Metters Street and Coppersmith Lane;
- (j) provision of a new road 'Foundary Street' to commence north at the intersection of the existing Ashmore Street and Fox Avenue and terminate south at the extended portion of Macdonald Street; and
- (k) provision of a new road 'Alpha Street' commencing approximately 80m north east of the existing intersection of Mitchell Road and Coulson Street and terminate at the new Kooka Walk.



Figure 15: Staging Plan prepared by AECOM, approved under D/2015/966 and the VPA

19. The public domain works as they relate to Block E, are discussed in further detail within the assessment report for the detailed design development application D/2023/842.

Other determinations (for the precinct)

- **D/2017/1026** – On 20 October 2017, development consent was granted to subdivide 57 Ashmore Street into 5 separate lots.
- **D/2017/1425** – On 22 December 2017 development consent was granted for an early works DA for the larger site. The approval allowed for excavation (beneath Blocks B and C, the future Foundry Street and part of the future McPherson Park), remediation, foundation works, construction of lift and stair cores for Blocks B and C, under slab services, construction of basement slabs and shell and construction of the tunnel connection to future Block A.
- **D/2017/681** – On 15 February 2018, a deferred commencement development consent was granted by the CSPC for construction of a 4 to 8 storey residential flat building (Block B) providing 157 dwellings, construction of a 4 to 8 storey mixed-use development (Block C) providing 171 dwellings, ground floor retail, and centre-based childcare facility; construction of one shared basement level; landscaping and public domain works. The consent was activated on 5 December 2018 and has since been modified 12 times (Modifications A-L).
- **D/2019/307** – On 3 February 2020, development consent was granted for early site preparation works at Block A) including site clearing, removal of one tree, establishment of site sheds and perimeter fencing, excavation for one basement level, and construction of the driveways and laybacks, base slab layer, piles, anchors and shoring walls. This consent has been modified once (Modification A).
- **D/2019/393** – On 13 February 2020, development consent was granted by the CSPC for the staged construction of a residential flat building on Block A, comprising 168 units with one basement level, landscaping, subdivision and public domain works. The consent has been modified 4 times (Modifications A-D).
- **D/2019/291** – On 18 March 2020, development consent was granted by the Local Planning Panel (LPP) for site preparation works, construction of six, 2 storey plus attic terrace houses with rooftop terraces and one car space per dwelling, subdivision, tree removal and public domain works including new roads on Block D. This consent has been modified once (Modification A).

Other Development Applications (under assessment)

- **D/2023/850** – A development application for early works for Block E, comprising bulk excavation, remediation, shoring, piling, new basement slab and associated services to facilitate future development is currently under assessment.
- **D/2023/962** – The proposal for new public domain works (Stage 2, Phase 4) including roads, public park (McPherson Park) and ancillary amenities structures is currently under assessment.
- **D/2024/382** and **D/2024/462** – Development applications for early works for Blocks G and H, and F and I respectively, comprising bulk excavation, remediation, shoring, piling and basement slab and associated services to facilitate future development are currently under assessment.

History relevant to Block E

Competitive Design Process

20. A competitive design alternatives process was undertaken in accordance with the provisions of Clause 6.21D of the SLEP 2012 and the City of Sydney Competitive Design Policy.
21. The developer sought additional floor space ratio (FSR) as part of the competitive design process.
22. Silvester Fuller was selected as the winning entrant by the four-member selection panel. The panel considered the winner to demonstrate the potential for design excellence and recommended a number of fundamental aspects of the proposal to be retained within the detailed design application. This is discussed further as part of the detailed design development application assessment.

Detailed Design Development Application - D/2023/842

23. The detailed design development application D/2023/842 has been lodged and is being assessed concurrently with this Section 4.55(2) application.
24. D/2023/842 seeks approval for the construction of two residential flat buildings, basement car parking and landscaping.
25. The application is to be determined by the CSPC and is recommended for approval. Refer to the detailed design development application D/2023/842 CSPC report.

Amendments

26. Following a preliminary assessment of the proposed detailed design development application (D/2023/842) by Council Officers, amendments were requested and have been made to the concept modification building envelopes to ensure consistency between the two applications on 15 July 2024.
27. The extent of amendments to the detailed design development application are discussed in greater detail in the assessment report for D/2023/842 being reported to the CSPC.

Proposed Development

28. The Section 4.55(2) modification seeks to amend the concept approval to bring it in line with the subsequent detailed design development application.
29. The application modifies the existing concept envelopes for Block E as follows:
 - (a) increase the height of the southern wing (facing the new Macdonald Street extension) of the second residential flat building envelope from 7 storeys to 8 storeys;
 - (b) increase the height of the western elevation of the first residential flat building envelope from 5 storeys to 7 storeys
 - (c) introduce a mansard roof form across the site above the 8th storey;

- (d) Changes to overall height of the building envelopes as described below:
 - (i) increase in height to top of mansard roof east elevation of first residential flat building from 28.01m to 30.095m;
 - (ii) increase in height of top of mansard roof east and southern elevation of second residential flat building from 28.07m to 30.87m;
 - (iii) reduction in height of top of 7th storey at northern elevation of first residential flat building from 24.91m to 23.96m;
 - (iv) reduction in height of top of 7th storey at eastern elevation of second residential flat building from 24.79m to 23.84m;
- (e) Changes to the upper level setback above the street wall height from 4m to 3.6m at the southern wing of the second residential flat building; and
- (f) Introduction of a single storey indoor communal pavilion within the central courtyard and single storey level to courtyard of the first residential flat building envelope, at the west elevation.

30. Plans and elevations of the proposed development are provided below.

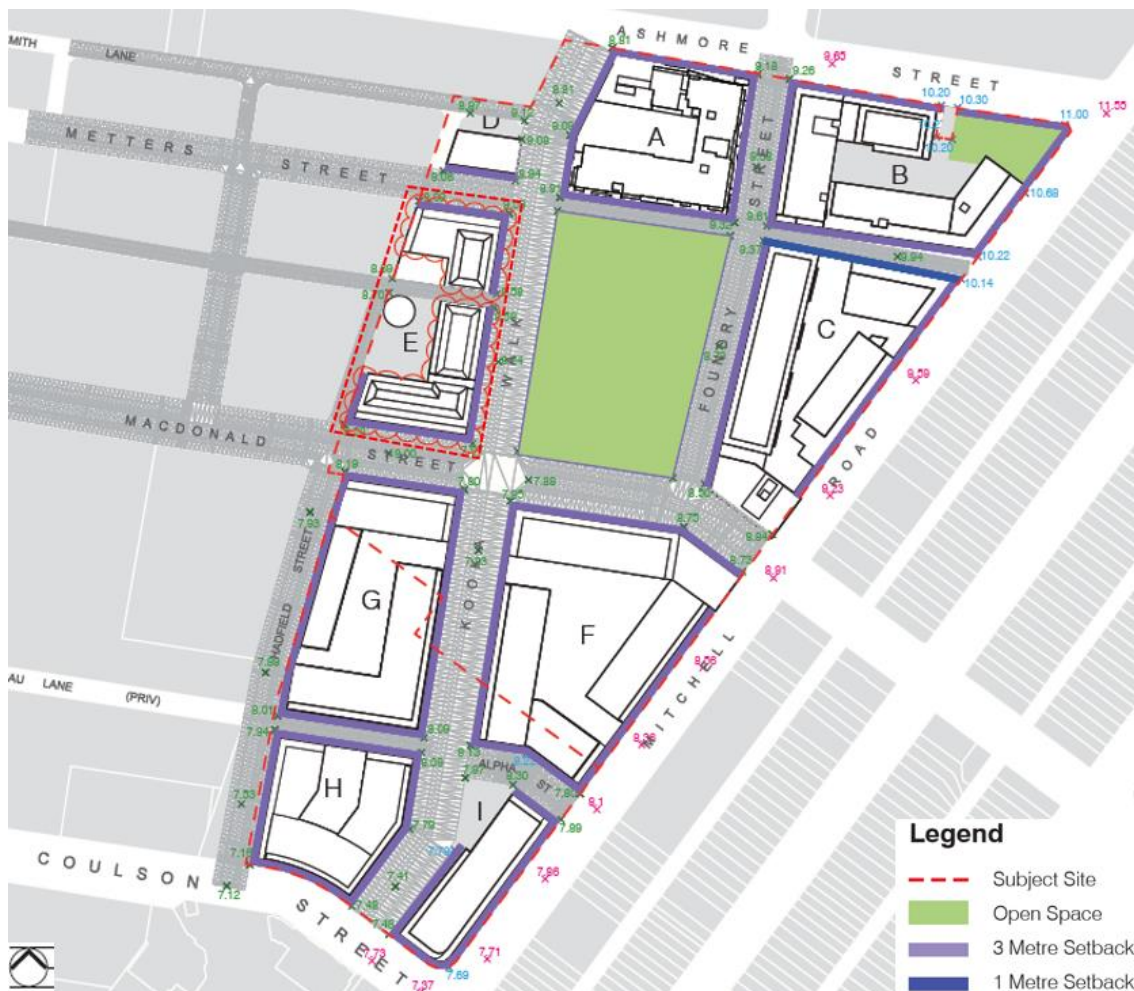


Figure 16: Proposed ground level setbacks (3m to Block E - outlined by red dashed lines and clouded)



Figure 17: Proposed building envelopes plan (Block E - outlined by red dashed lines and clouded)



Figure 18: Proposed building envelopes plan for Block E

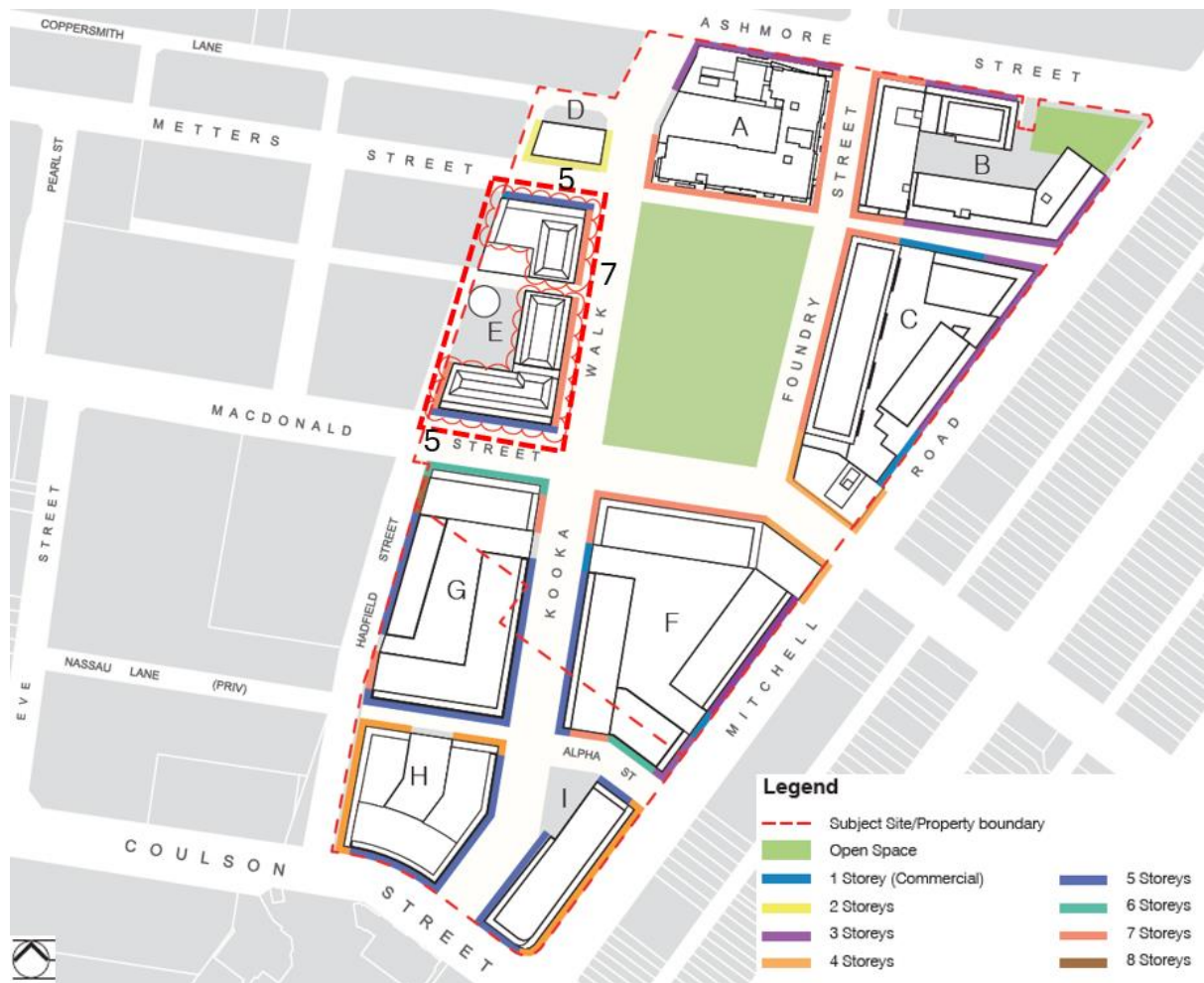


Figure 19: Proposed street wall heights (Block E - outlined by red dashed lines and clouded)



Figure 20: Proposed street wall heights for Block E

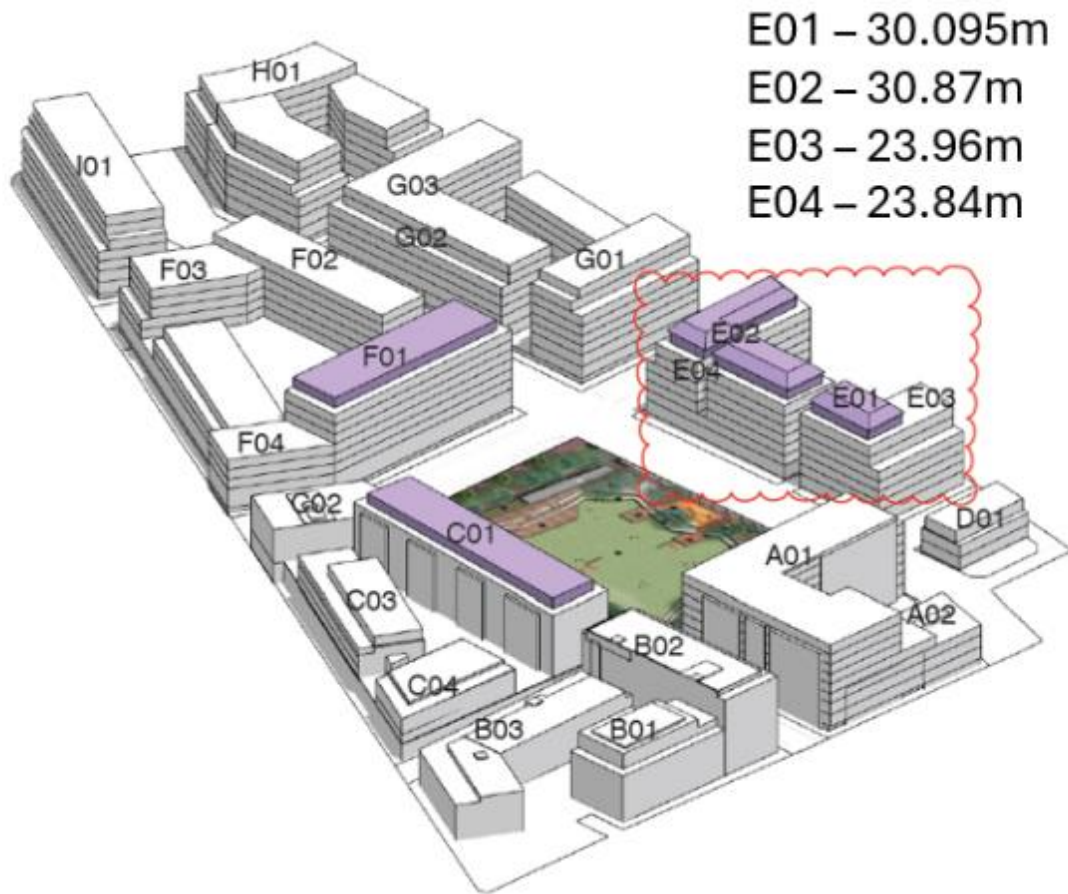


Figure 21: Proposed axonometric concept plan depicting building height (Block E - clouded)

Assessment

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

Threshold Test - substantially the same development

32. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelopes are consistent with the intent of the approved concept. The proposed modifications will deliver a 5-8 storey residential flat building envelope similar to that which was approved by D/2015/966 and D/2015/966/C. The proposed modifications primarily relate to building height and setbacks.
33. The height, setback and footprint changes are supported as they do not result in unacceptable overshadowing or privacy impacts, and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.

34. In accordance with Section 4.55(2), an assessment against the relevant provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979 are provided under headings in the Discussion section below.

Environmental Planning and Assessment Act, 1979

35. The 'development' as proposed to be modified is considered to be substantially the same as that originally approved, satisfying Section 4.55(2)(a) of the EP&A Act, because:
- (a) It remains a concept envelope for the redevelopment of the precinct, comprising two building envelopes in this portion of the site.
 - (b) It continues to facilitate to the approved mixed-use development for the precinct, comprising a residential use for Block E.
 - (c) It generally maintains the relationship between the concept envelope, adjoining properties, and the public domain.
 - (d) It remains generally consistent with the objectives of the relevant environmental planning instruments.
 - (e) It presents acceptable environmental impacts when compared to those previously assessed and considered acceptable by the original concept consent D/2015/966 (as amended).
 - (f) It is modified to allow for consistency with the proposed development of the concurrent Detailed Design DA (D/2023/842), which is based on the winning scheme of a competitive design process.
 - (g) It continues to deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties, as demonstrated in the assessment of the Detailed Design DA.
 - (h) It is consistent with the intent of the original approved concept development, in that the location and overall form of the building envelope is maintained.

State Environmental Planning Policies

State Environmental Planning Policy (Housing) 2021

Chapter 4 - Design of Residential Apartment Development

36. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
37. When determining an application for a residential flat development of three or more floors and containing four or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.

38. The applicant has submitted a design verification statement prepared by Architectus with the amended application. The statement is deemed to satisfy Clause 102 of the Environmental Planning and Assessment Regulation 2021.
39. An assessment of the proposal against the design quality is provided as follows:
- (a) Principle 1: Context and Neighbourhood Character

The amended building envelopes allow for a development that is contextually appropriate and consistent with the existing and desired future character of the area.
 - (b) Principle 2: Built Form and Scale

The amended envelopes are capable of providing a built form that has appropriate massing and scale.
 - (c) Principle 3: Density

The proposed building envelopes enable the site to achieve the maximum FSR available under the Sydney LEP 2012 without adverse or unacceptable amenity impacts to neighbouring properties.

In addition to the above, the proposed modifications allow the development to achieve a reasonable level of amenity for residential occupants under the Apartment Design Guide.
 - (d) Principle 4: Sustainability

Detailed design applications are required to comply with BASIX requirements. The detailed design proposal has demonstrated that sustainability targets can be met by the amended envelopes.
 - (e) Principle 5: Landscape

The amended envelopes allow for ample landscaping to be provided around the perimeter of the site, the centre of the site, as well as courtyard gardens for residents and at rooftop within the communal open space area. The development is capable of providing compliant deep soil zones.
 - (f) Principle 6: Amenity

The amended envelopes can accommodate a development with a reasonable level of amenity for future occupants of the development, as well as adjoining properties.
 - (g) Principle 7: Safety

The amended envelopes allow for a development that can achieve the principles of Crime Prevention Through Environmental Design (CPTED).
 - (h) Principle 8: Housing Diversity and Social Interaction

The amended envelopes allow for a development that can provide a suitable mix of dwelling types.

(i) Principle 9: Aesthetics

The amended envelopes are generally consistent with the design competition winning scheme, which was considered by the Jury as the entrant most capable of demonstrating design excellence.

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

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Assessed as acceptable	<p>The residential flat building envelopes have an overall depth of approximately 19.8m.</p> <p>While this exceeds the maximum building depth requirement, it matches the approved overall depth of the concept development.</p> <p>Additionally, the concurrent detailed design development application D/2023//842 demonstrates that apartments with compliant 12-18 metre depths can be accommodated within the amended envelope.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <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 	Assessed as acceptable	<p>The proposal generally complies with the recommended building separation distances and is capable of delivering a development that can provide for an acceptable level of privacy for future occupants and adjoining properties.</p> <p>See discussion section.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	The envelope modifications do not preclude the required amount of communal open space from being delivered at detailed design stage.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	Yes	The envelope modifications do not preclude the required amount of deep soil zones from being provided for the site.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	The development is capable of delivering minimum floor to floor heights

4C Ceiling Heights	Compliance	Comment
		of 3.1 metres, and floor to ceiling heights of 2.7 metres.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The majority of 155 Mitchell Road is located within the E1 - Local Centre zone, with the lower southern portion of the site (where part of Blocks G and F, and all of Blocks H and I are situated) being zoned MU1 - Mixed use. Block E is located within the E1 - Local Centre zone.</p> <p>The proposed development is defined as residential accommodation and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 27 metres is permitted.</p> <p>The residential flat building envelopes will have an overall height of 30.87m. This represents a variation of 14.3% to the 27 metre height control.</p> <p>Compliance with Clause 4.3 Height of Buildings development standard is discussed below.</p>
4.4 Floor space ratio	Yes	The detailed design development application demonstrates that the revised building envelope can accommodate compliant FSR.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The amended building envelopes and concept development consent D/2015/966 satisfactorily sets expectations for the form, massing, scale, environmental impacts, ESD outcomes, access outcomes, interface with ground level and landscaping outcomes of the development.

Part 7 Local provisions – general

Provision	Compliance	Comment
7.20 Development requiring or authorising preparation of a development control plan	Yes	<p>The proposed modifications to the approved building envelopes will result in the construction of buildings greater than 25 metres above the existing ground level. This triggers the requirement for the preparation of a site-specific DCP under Clause 7.20(2)(b).</p> <p>Section 4.23 of the Environmental Planning and Assessment Act, 1979 allows a concept development application to be lodged in lieu of preparing a DCP.</p> <p>The matters under Clause 7.20(4) of the Sydney LEP 2012 are satisfied by the documentation submitted with the application and the amended conditions in Attachment A.</p>

Development Control Plans**Sydney Development Control Plan 2012**

42. The proposed building envelope modifications do not alter the development's compliance with the relevant provisions within the Sydney Development Control Plan 2012.

Discussion

Building Height

- 43. Clause 4.3 of the Sydney LEP 2012 sets out a maximum building height of 27m for Block E. The current concept approval permits an overall height of 28.07m and 7-8 storeys with a 5 storey street wall height within the building envelope.

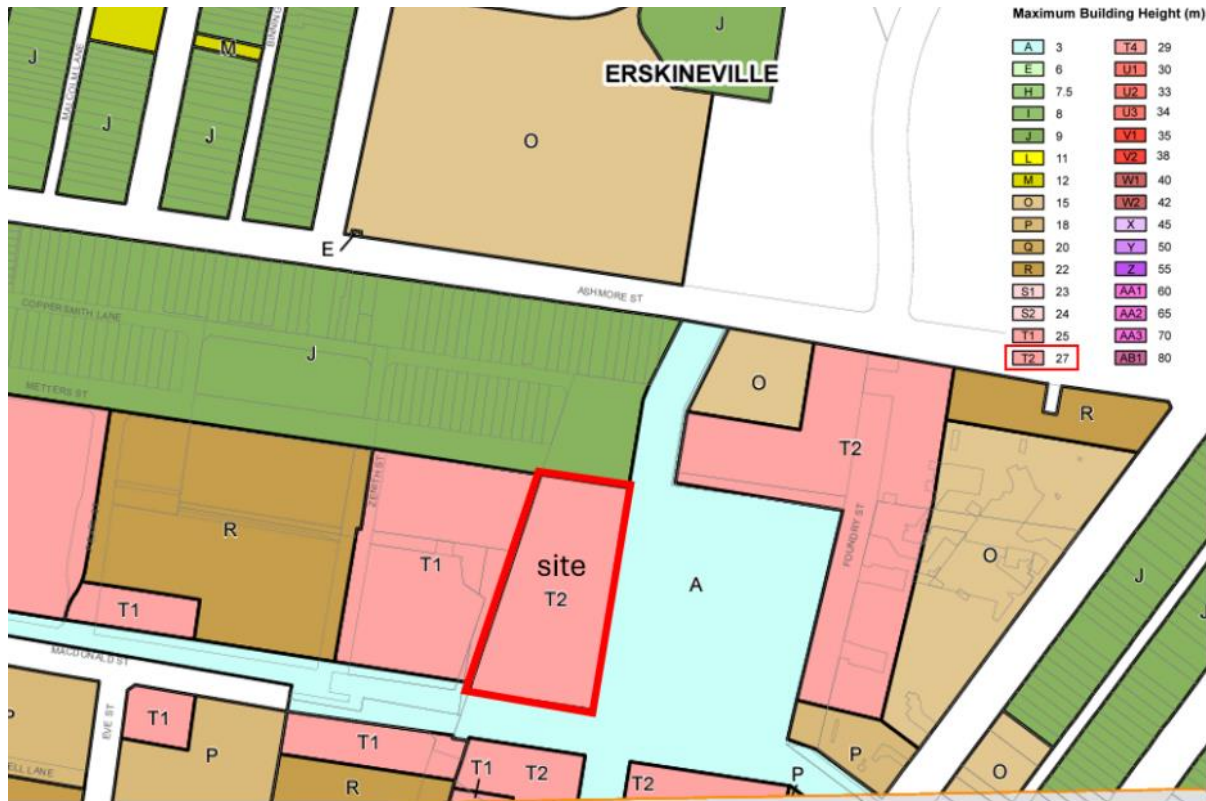


Figure 22: Extract of Sydney LEP 2012 Height of Buildings Map depicting maximum building height of Block E and surrounding sites

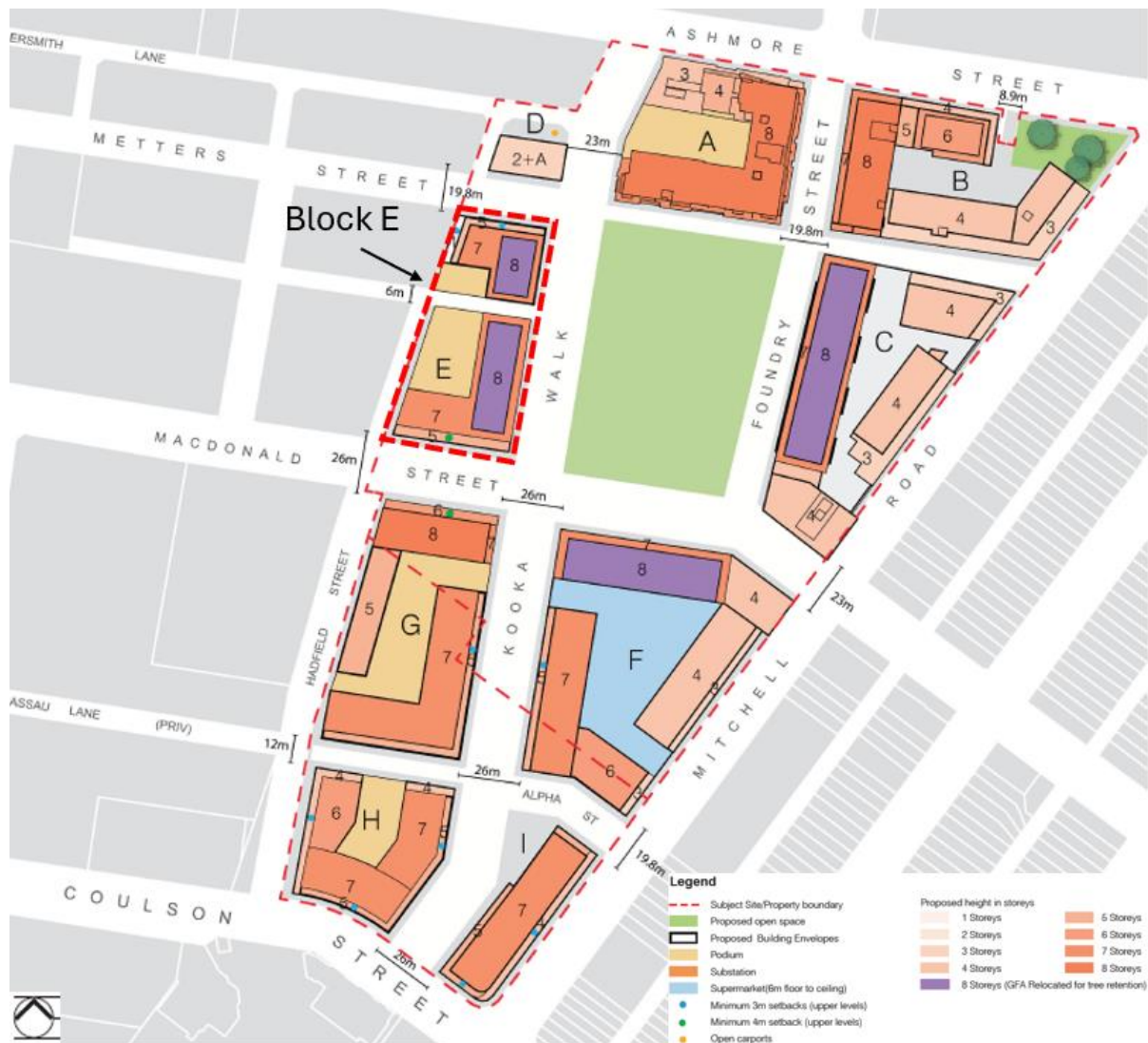


Figure 23: Approved maximum height in storeys diagram (D/2015/966/C) with Block E outlined in red

44. The application proposes to exceed the maximum 27m height of buildings development standard by up to 3.87m (14.3% variation), as depicted in the building envelope diagram below. The height in storeys of Block E is also proposed to increase, with the southern wing rising from 7 storeys overall to 8 storeys, and the western elevation from a 5 storey street wall height to 7 storeys.
45. The street wall heights to Metters Street and Macdonald Street will remain at 5 storeys. The street wall height to Kooka Walk will also remain at 7 storeys.

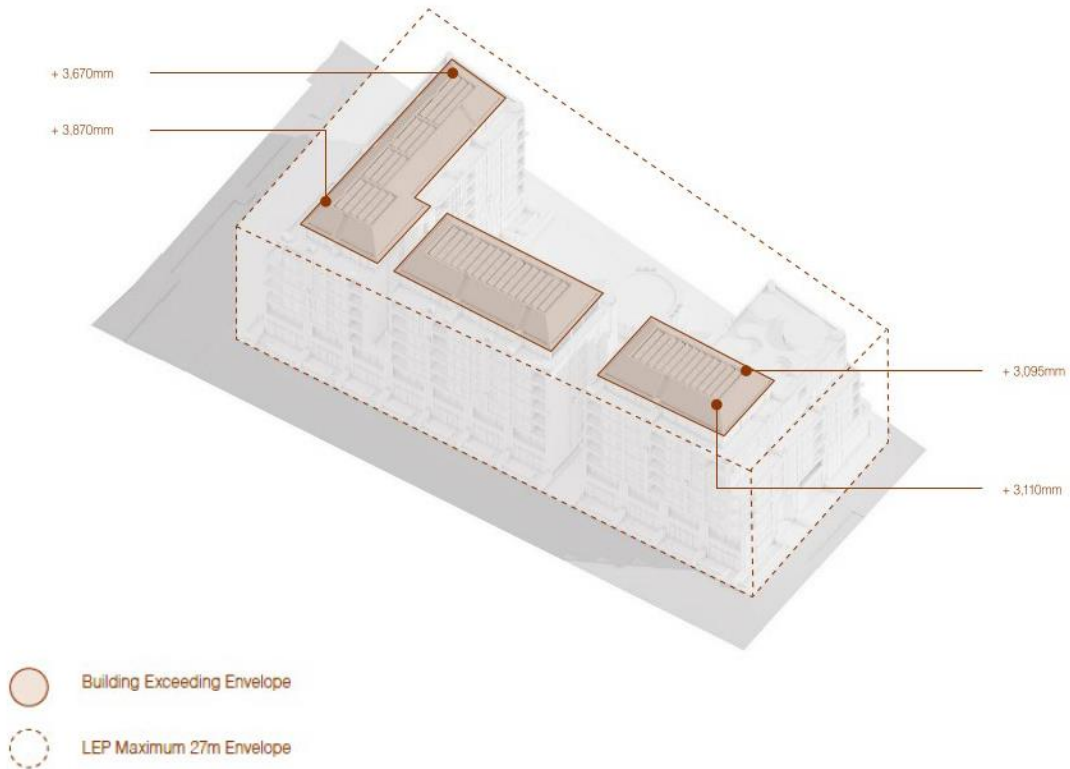


Figure 24: Proposed height exceedance - from D/2023/842

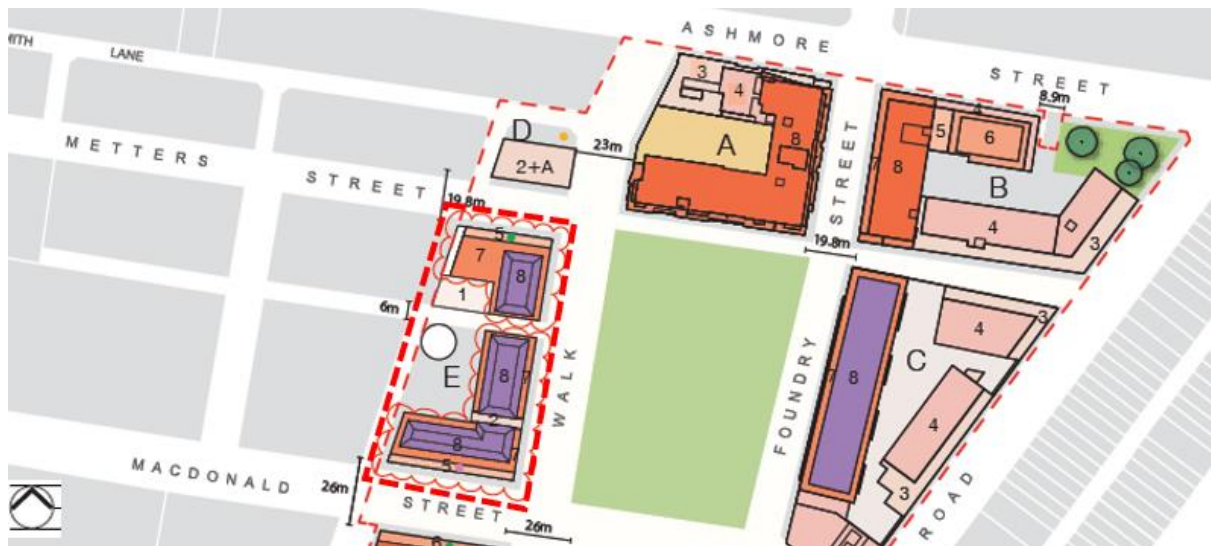


Figure 25: Proposed height in storeys for Block E - D/2015/966/G

Changes to overall height of building envelope

46. The additional height above the 27m height development standard forms part of the detailed design refinement of the roof form, with the introduction of a mansard roof housing plant area.

47. The change to the overall height resulting from the mansard roof was considered to be a key element of the design competition winning scheme. Additionally, the site is flood affected, with the ground floor raised 2.29m above natural ground level to comply with the City's Interim Floodplain Management Policy.
48. As a Section 4.55(2) modification application, Clause 4.6 of the Sydney LEP 2012 with regard to requesting a variation to the 'Height of Buildings' development standard does not apply. It is noted however, that a detailed assessment of Clause 4.6 has been carried out as part of D/2023/842 for the detailed design, which also proposes a height variation.
49. The eighth storey has been setback 5.4m from the Kooka Walk boundary (east), 9m from the Metters Street boundary (north) and 9.6m from the Macdonald Street (south), maintaining the approved street wall heights. This ensures a consistent scale to Blocks A, B and C as they face McPherson Park, with Block E providing an appropriate transition to residential flat buildings within Metters and Macdonald Streets.
50. The applicant has submitted shadow diagrams in order to assess the potential impact of the height increase on future development at Block G within the site to the direct south; and 5 Hadfields Street to the south-west of Block E.

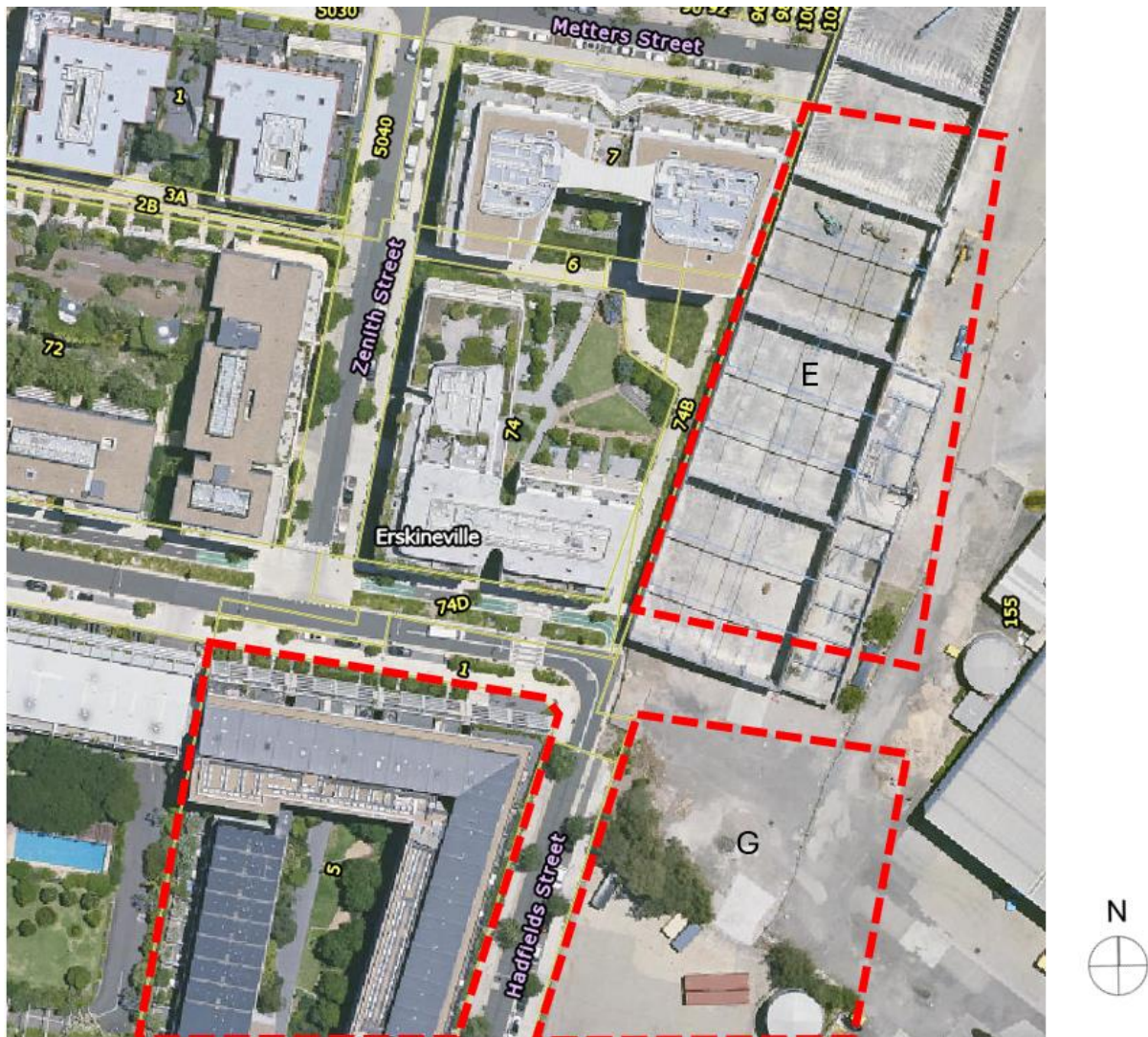


Figure 26: Aerial map depicting location of Subject Site, Block G and 5 Hadfields Street (all outlined)

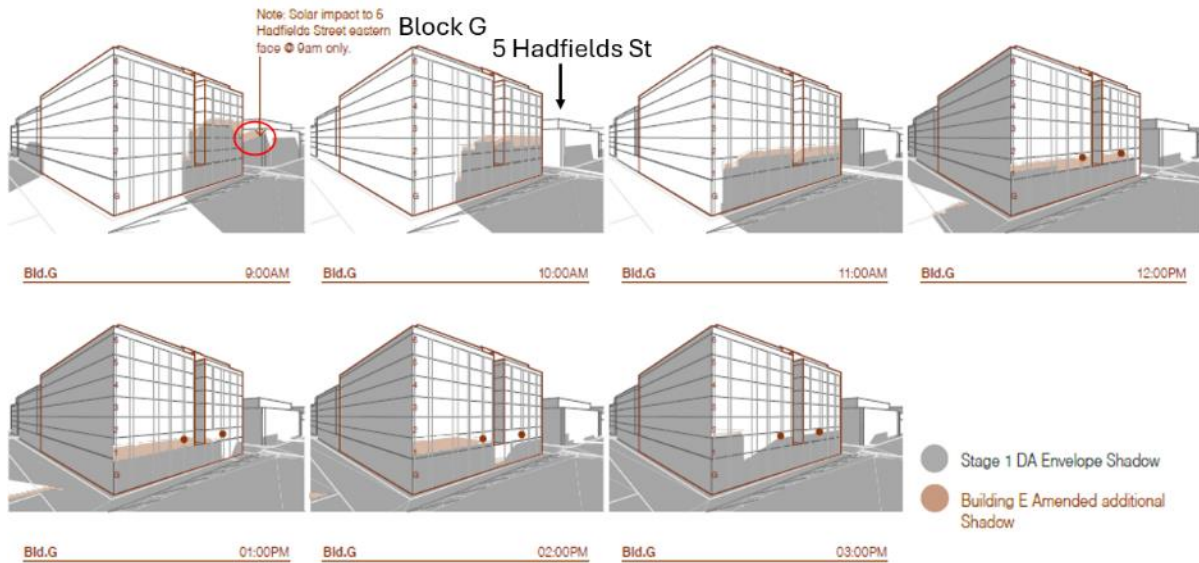


Figure 27: Solar analysis from D/2023/842 demonstrating Concept Modification impacts to Building G and 5 Hadfields Street

51. The increase in overall height will still allow for Block G to achieve solar access in accordance with ADG requirements at the winter solstice (when assessed against the Design Competition winning scheme). The increase in height will result in some additional overshadowing to the eastern facade of 5 Hadfields Street at 9am at the winter solstice. Noting the affected north-eastern apartment shaded and circled in red in the diagram above still receives direct sun from 9am to 3pm at the northern facade, overshadowing to the eastern facade will not affect solar access compliance for the apartment nor the overall development.
52. In addition to the above, the increased height will not adversely overshadow McPherson Park in accordance with Section 5.5.4.2 of the Sydney DCP 2012, allowing for 60% solar access at the winter solstice. The proposal will not compromise the amenity of future residents within Block E and to surrounding buildings.

Increase in street wall height to western elevation

53. The application proposes an increase in height from 5 storeys to 7 storeys at the western elevation of Block E. Directly opposite, is the eastern side elevation of 7 Metters Street, a 5 to 7 storey residential flat building.

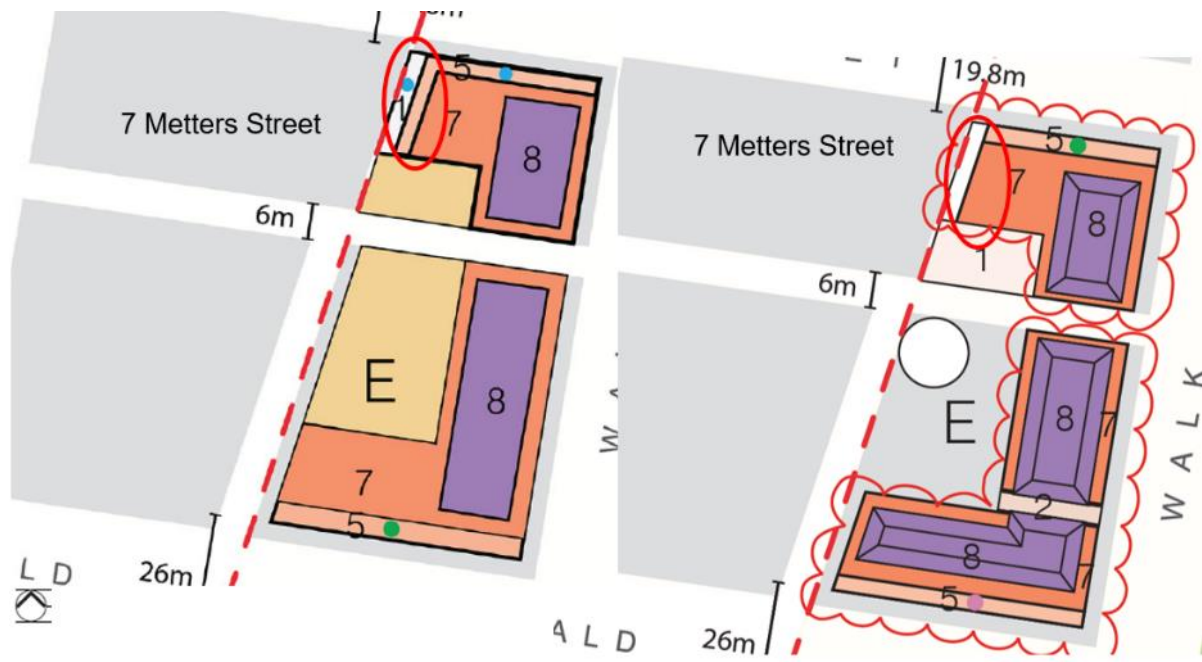


Figure 28: Approved (D/2015/966/C) and proposed (D/2015/966/G) height in storeys for Block E. Changes at the western boundary circled in red.

54. From levels 1 to 3, a minimum setback of 6m to the boundary applies where windows to habitable rooms or balconies are proposed, as per Section 2F and 3F of the Apartment Design Guide (ADG). At levels 4 and above, both buildings are required to be setback 9m from the boundary to provide appropriate separation between habitable rooms/balconies. No. 7 Metters Street is 7 storeys at this interface, with bedroom windows and balconies, and a setback of 3.625m to the western boundary of Block E. Block E proposes a setback of at least 3.15m from levels 2 to 6 at the western boundary as part of the detailed design proposal.

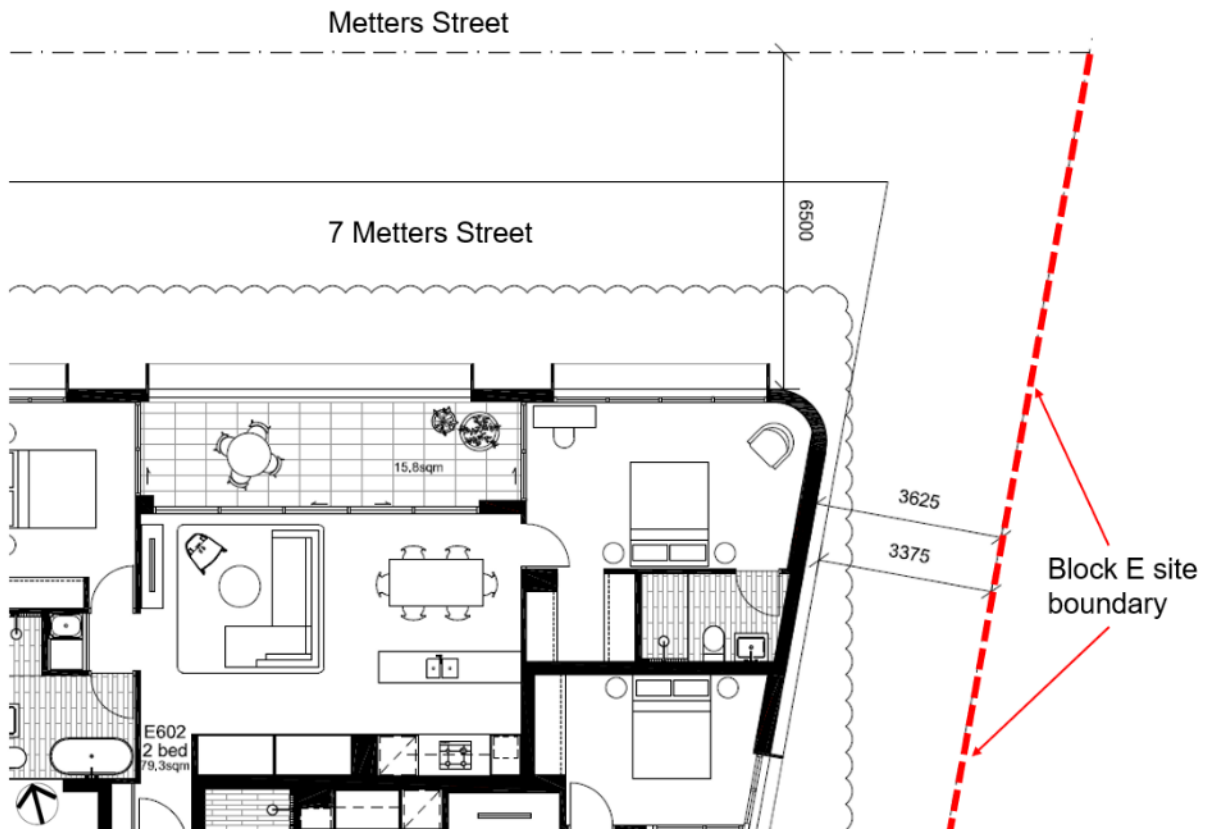


Figure 29: Approved floor plan - Level 6 of 7 Metters Street (D/2014/1703/A), depicting separation to side boundary with Block E



Figure 30: Proposed floor plan - Level 6 of Block E (D/2023/842), depicting separation to side boundary with 7 Metters Street

55. Although separation distances are not strictly achieved, the detailed design proposal D/2023/842 demonstrates that design features can be developed that ameliorate visual privacy concerns for future occupants and adjoining properties. The non-compliance at the western boundary is therefore supported.

Changes to upper level setback

56. The concept approval requires a 3m upper level setback to Metters Street and 4m upper level setback to Macdonald Street above the 5 storey street wall height to assist with the transition in density to McPherson Park and the interface with surrounding built form.
57. Both Metters and Macdonald Streets are consistent in scale and framing, with 5 storey street wall heights, and upper levels setback to reduce the appearance of overbearing and bulk in the streetscape.



Figure 31: Metters Street streetscape, and view of subject site looking east



Figure 32: Macdonald Street streetscape looking west

58. The proposal as amended, has a street frontage height of 5 storeys to both Metters and Macdonald Streets. The proposal seeks to maintain the 3m upper level setback above the street wall height to Metters Street, but proposes to reduce the setback to Macdonald Street from 4m to 3.6m. The variation to the southern upper level setback aligns with the neighbouring residential flat building at 74 Macdonald Street, which is setback 3.6m above the 5 storey street wall height. The setback also allows for additional depth to the upper level apartments, to achieve ADG compliant widths to habitable spaces in the detailed design proposal.



Figure 33: Proposed perspective of detailed design DA - depicting Block E from the corner of Macdonald Street and Kooka walk, with Macdonald Street streetscape in background

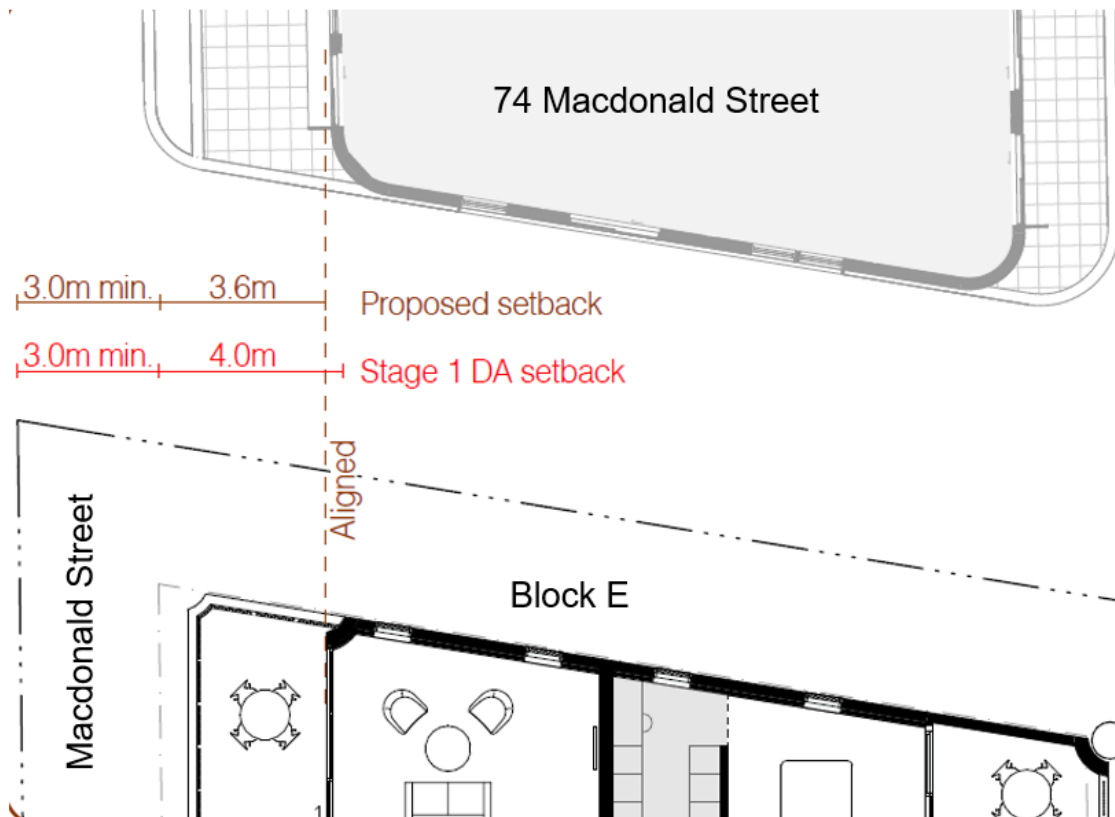


Figure 34: Proposed floor plan - Level 6 of Block E (D/2023/842), depicting aligned upper level setback with 74 Macdonald Street

59. The upper level setback variation of 400mm has minimal impact on overshadowing to adjacent properties on Macdonald and Hadfields Streets as discussed elsewhere in this report.
60. The proposed Macdonald Street upper level setback is supported as the intent of the setback, that is, the consistency, scale and framing of the streets, is still achieved by the concept modification.

Consultation

Internal Referrals

61. The application was discussed with internal units within Council. The proposal is acceptable subject to conditions.

External Referrals

Sydney Airport

62. 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.

63. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify that the site is subject to a prohibition of the construction of buildings more than 15.24 metres above existing ground level.
64. 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. The relevant approval body is the Civil Aviation Safety Authority (CASA).
65. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 17 October 2023.

Advertising and Notification

66. In accordance with the City of Sydney Community Participation Plan 2022, the proposed development was notified and advertised concurrently with D/2023/842 for the detailed design for a period of 28 days between 15 November 2023 and 14 December 2023. The amended plans were not re-notified as the proposed changes resulted in less impact compared to the original application.
67. A total of 3,331 properties were notified and 58 submissions were received for the concept modification, with two submissions in support of the proposal.
68. The submissions raised the following issues:
 - (a) Height, bulk and scale
 - Increased height to 8 storeys will result in loss of distant views, obstruction of light and open sky.
 - The additional height to 8 storeys is not consistent with the original intent of the neighbourhood and surrounding buildings.
 - Increasing height will destroy the bulk and scale modulation around the central park. All buildings are now 8 storeys.
 - The current height levels are appropriate for the area. Increasing height to fit in more apartments is not beneficial for the community.
 - The development shouldn't be allowed to break rules others have had to follow.
 - Unnecessary bulk.
 - Development looks like a single large block shape.

Response: A detailed discussion relating to the height non-compliance of the development is provided in this report.

The concept approval allows for an 8 storey development overall, which this proposal maintains, albeit with an extension of the eighth storey at the southern wing. The proposal has been amended to provide a 5 storey street wall height to Metters and Macdonald Streets, and a 7 storey street wall height to Kooka Walk and McPherson Park, as intended by the concept approval.

The changes to the building envelope, height in storeys, upper level setbacks and amenity impacts to surrounding development are discussed in comprehensive detail within this report and are acceptable.

The changes to height and height in storeys are considered appropriate in this instance, particularly in the context of the existing and future streetscape of the area. The concept approval to be amended to reflect the detailed design development application D/2023/842, ensuring consistency between the two applications.

(b) Street wall height

- Will set an undesirable precedent for other developments in the precinct to raise height
- The development should have a 5 storey street wall height with upper levels setback
- Substantially taller form opposite two storey terrace product on Metters Street. The street wall height should be reduced.
- Additional street wall height to Macdonald and Metters Streets detracts from the intended character and amenity of the neighbourhood
- The predominant scale of Macdonald Street is five storeys with upper levels setback from the street.

Response: The proposal has been amended to provide a 5 storey street wall height to Metters and Macdonald Streets, as intended by the concept approval.

(c) Overshadowing

- Reduced sunlight to surrounding streets.
- Will have an adverse impact on the new park due to increased shading.

Response: Refer to the discussion section with regard to overshadowing. The detailed information provided demonstrates acceptable solar impacts to surrounding properties compared to the concept approval. Overshadowing to McPherson Park complies with Section 5.5.4.2 of the Sydney DCP 2012.

(d) Traffic Impacts

- Additional residents will put further strain on local amenities, traffic congestion on Mitchell Road
- Addition of more apartments will put a strain on parking availability.
- Traffic, amenity and infrastructure provisions for the thousands of new residents already slated for the Ashmore Estate are under serious strain.
- Increasing the building height limits will increase foot traffic in an area where pedestrian safety is already an issue.

Response: Parking rates and traffic impact are assessed as part of the detailed development application D/2023/842.

The site is in an accessible location, being within walking distance of shops, restaurants, cafes as well as bus routes and train services. Notwithstanding, the development is required to provide bicycle parking for residents and visitors to encourage sustainable modes of transport to reduce congestion on local roads. This is discussed in the assessment report for D/2023/842.

An upgrade of the public domain (including extension of streets, construction of new streets) to address pedestrian routes around the precinct is subject to a separate development application D/2023/962.

(e) Construction Impacts

- Given the presence of buildings in the area with structural defects, approving additional height raises concerns about structural integrity of the building.
- As seen in other developments in the area, developers are willing to cut corners.

Response: The concept modification application relates to building envelopes only. Construction management, including noise, waste, dust and traffic, as well as dilapidation reports and structural certification are addressed in the detailed design development application D/2023/842.

(f) Wind impacts

- Increased height may negatively impact wind tunnels in the area.

Response: The detailed design development application includes a wind assessment of the public domain and the development site itself. Impacts are discussed in greater detail in the assessment of D/2023/842.

(g) Inadequate documentation

- The drawings do not show an analysis of the broader neighbourhood, only the area around the proposed park. This seeks to minimise the effect of the increase in height by not showing the scale of surrounding built form.
- The changes are being pushed through with inadequate documentation.
- The SEE simply lists impacts and does not justify them appropriately.

Response: Amended drawings have been provided during the assessment process of D/2015/966/G and D/2023/842 and additional information has been submitted with regard to the surrounding context.

The information provided for both applications is adequate for assessment.

(h) Modification of concept approval

- A revision of this magnitude should require a new DA and not a modification to the concept envelope.

- There are limited high-rise buildings in this area and this proposal would risk unravelling the City's work in managing the expansion of residential properties in this area.
- Inconsistent with the approved concept plan for the site.

Response: As discussed in this report, the proposed changes meet the test of Section 4.55(2) of the EP&A Act and are considered to be substantially the same development for the purposes of the assessment.

The proposal has been amended to maintain approved street wall heights, with upper levels setback generally in accordance with, and meeting the intent of, the concept approval.

(i) Affordable housing

- I hope that 10-20% of the stock is available at an affordable level

Response: No built affordable housing is proposed at this stage as part of the redevelopment of Block E. The planning controls do not mandate affordable housing to be provided as part of the development, however an affordable housing cash contribution will apply to D/2023/842.

(j) Property values

- Reduction in property values.
- Apartments surrounding the site were sold based on an approved development application with heights that are lower than proposed. Changing density and heights at this stage is inappropriate.

Response: The concerns are noted; however, movement in property values are not a planning consideration.

As discussed in this report, the height, bulk and scale of the building envelopes are considered to be appropriate to the site and the surrounding context.

(k) The balance between liveable villages and developer profit needs to be kept in check.

Response: The concept modification has been amended to reduce the bulk and scale of the development, resulting in a reduction in the number of apartments proposed as part of the detailed design development application D/2023/842.

(l) In order to offset inconvenience to residents during construction, the developer should explore opportunities to fast track the extension of Macdonald Street through to Mitchell Road, either for foot traffic or vehicle traffic as well.

Response: The public domain works required to be delivered by the Developer as part of the Voluntary Planning Agreement (including extension of streets, construction of new streets and McPherson Park) in the precinct are subject to a separate development application D/2023/962. These works are required to be completed prior to an Occupation Certificate being issued for Block E.

- (m) Support for the proposal
- I support increased density for this site and Erskineville more broadly.
 - I support the increase in apartments.

Response: Noted.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

69. The development is not subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. Appropriate contributions have been levied as part of the detailed design application D/2023/842.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

70. The site is located within the Residual Lands affordable housing contribution area. As the proposal relates to a concept approval only, the development is not subject to an affordable housing contribution under Section 7.13 of the SLEP 2012. Appropriate contributions have been levied as part of the detailed design application D/2023/842.

Housing and Productivity Contribution

71. The development relates to a concept consent and is not subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
72. Further to this, D/2023/842 for the detailed design was lodged prior to the introduction of the Housing and Productivity Contribution on 1 October 2023. As such, the development as a whole is excluded and is not subject to a Housing and Productivity Contribution.

Relevant Legislation

73. Environmental Planning and Assessment Act 1979.

Conclusion

74. This Section 4.55(2) modification application proposes altering the approved building envelopes to align with the detailed design development application D/2023/842. The detailed design development application is presented to the CSPC concurrently for approval.
75. The proposed modifications to the approved building envelopes will deliver consistency between staged development applications for the site, as required under Section 4.24 of the Environmental Planning and Assessment Act, 1979.

76. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelopes are consistent with the intent of the approved concept. As per the originally approved concept application, the proposed modifications will deliver two residential building envelopes. The proposed modifications primarily relate to building height and changes to upper level setbacks.
77. The modifications to the envelopes are supported as they do not result in unacceptable amenity impacts and deliver envelopes that are capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
78. The proposed building envelopes are capable of accommodating future buildings that exhibit design excellence in accordance with Clause 6.21C of the Sydney LEP 2012. The detailed design application D/2023/842 being considered concurrently by the CSPC demonstrates that a generally compliant scheme can be provided within the amended envelopes that delivers design excellence in accordance with Clause 6.21C of the Sydney LEP 2012.
79. The proposed modifications are therefore in the public interest and recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Jessica Symons, Senior Planner