

Item 6.**Development Application: 155 Mitchell Road, Erskineville - D/2023/842**

File No.: D/2023/842

Summary

Date of Submission:	27 September 2023 Amended plans received 11 July 2024 and 25 July 2024
Applicant:	Coronation Property Co Pty Ltd
Architect:	Silvester Fuller
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:	\$75,986,864
Zoning:	The site is zoned E1 - Local Centre and MU1 - Mixed Use under the Sydney Local Environmental Plan (SLEP) 2012. The development pertaining to Block E is for residential accommodation, located in the area zoned E1, and is permissible with consent.
Proposal Summary:	<p>Approval is sought for the staged construction of two residential flat buildings of 5-8 storeys within Block E, comprising 141 apartments and two basement levels of car parking with vehicular access from Metters Street and an east-west pedestrian link to the future Kooka Walk.</p> <p>The proposal is Integrated Development under the Water Management Act, 2000, requiring approval from WaterNSW. General Terms of Approval were received on 17 November 2023.</p>

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

The subject application requires amendment of the approved concept envelope. A Section 4.55(2) modification application (D/2015/966/G) has been lodged concurrently with the subject DA. This modification application is also being reported to the Central Sydney Planning Committee (CSPC) this cycle and is recommended for approval. Subject to the approval of D/2015/966/G, the subject development application will be consistent with the concept development consent.

The proposed development has a height of 30.87m, exceeding the maximum 27m building height standard by 14.3%, resulting from the mansard roof and compliance with flood planning requirements.

A request to vary the Clause 4.3 'Height of Buildings' development standard has been submitted in accordance with Clause 4.6 of the Sydney LEP 2012. The statement demonstrates that compliance with the standard is unreasonable and unnecessary, and there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives of the E1 - Local Centre land use zone and Height of Buildings development standard, and the proposed departure to building height is supported in this instance.

The proposal complies with the floor space ratio development standard for the overall site and the gross floor area allocated to Block E as part of the Concept Approval.

A competitive design alternatives process was held with Silvester Fuller selected as the winning scheme. A number of recommendations were made by the selection panel in order for the development to achieve design excellence.

The development application was first considered by the Design Advisory Panel (DAP) at its meeting on 22 February 2024. Following recommendation from the panel, a DAP Sub-Committee was formed with an assessment of the development application being undertaken on 7 March 2024. The sub-committee made recommendations for design changes in order for the proposal to achieve design excellence, including a reduction in street frontage heights, improvements to the landscape setbacks and facade greening strategy, the design and extent of the mansard roof, further consideration of the site's interface with other developments along Metters and Macdonald Streets, deep soil provision and the design of the driveway to Metters Street.

These issues have been largely addressed through the submission of amended plans and additional information over the course of assessment. The amended proposal is more consistent with the winning scheme and the recommendations of the selection panel.

The proposal was notified and advertised concurrently with Concept Modification D/2015/966/G 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. In total 78 submissions were received, 58 in relation to the concept modification and 20 in relation to the detailed design proposal. The submissions raised concerns about increased height, bulk and scale, density, privacy and overshadowing impacts as well as traffic and construction impacts. These concerns are addressed within this report.

The development application (DA) is recommended for deferred commencement approval to allow for an early works DA (D/2023/850) and public domain works DA (D/2023/962) for this site to be determined prior to the subject development consent becoming operational.

Subject to conditions, the proposal is generally consistent with the applicable planning provisions including Sydney LEP 2012 and Sydney Development Control Plan (Sydney DCP) 2012.

Proposed non-compliances have been assessed as having merit in this case and are addressed in the report. The proposal exhibits design excellence, with a high standard of architectural design, materials and detailing and a built form that is consistent with the future desired character of the area.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation 2021
- (ii) City of Sydney Act 1988 and City of Sydney Regulation 2016
- (iii) Water Management Act, 2000 and Water Management (General) Regulation 2018
- (iv) State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021

- (v) SEPP (Housing) 2021
- (vi) SEPP (Transport and Infrastructure) 2021
- (vii) SEPP (Biodiversity and Conservation) 2021
- (viii) SEPP (Planning Systems) 2021
- (ix) Sydney Local Environmental Plan 2012
- (x) Sydney Development Control Plan 2012
- (xi) City of Sydney Development Contributions Plan 2015
- (xii) City of Sydney Interim Floodplain Management Policy 2014
- (xiii) City of Sydney Public Art Policy 2011 and City of Sydney Public Art Strategy 2011
- (xiv) City of Sydney Community Engagement Strategy and Participation Plan 2022

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings (B1-B6)
- C. Solar Access Plans
- D. Competitive Design Alternatives Report
- E. Clause 4.6 Variation Request - Height of Building

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 'Height of buildings' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan (LEP) 2012 be upheld; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2023/842 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement approval for the following reasons:

- (A) 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 request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the 'Height of buildings' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney LEP 2012.
 - (ii) The proposal is in the public interest because it delivers planned housing from this site and is consistent with the objectives of the E1 - Local Centre zone and the 'Height of buildings' development standard.
 - (iii) The proposal has been assessed against the aims and objectives of the relevant planning controls, including the State Environmental Planning Policy (Housing) 2021, Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012. Where non-compliances exist, they have been demonstrated to be acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.
 - (iv) The development achieves a high standard of architectural design, materials and detailing, and will contribute positively to the public domain. The development achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore exhibits design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.
 - (v) The proposal is consistent with the amended concept approval for the site, being D/2015/66/G, and is consistent with the design intent of the winning scheme of a competitive design process.
 - (vi) The proposal is appropriate within its setting and is a development comprising a compatible use that will support the vitality of the area, consistent with the desired future character for the locality.

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 part of land 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 development 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 and Golden Horse. Blocks D, E, F, G, H and 1 (including future public domain road and park 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: Pedestrian link between subject site and 74 Macdonald Street looking south



Figure 10: Pedestrian link between subject site and 74 Macdonald Street looking south

History Relevant to the Development Application

Concept Approval - D/2015/966

13. On 17 November 2016, deferred commencement development consent was granted, with the CSPC delegating authority to the Chief Executive Officer (CEO) to determine the application, 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 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 been amended (under Modifications A-F).
16. The subject development application for the detailed design proposal requires amendments to the approved concept envelope. A Section 4.55(2) modification of consent was lodged on 1 November 2023 to incorporate these variations, including:
 - (a) Increase the heights of the residential flat building envelopes;
 - (b) Introduction of a mansard roof form to both residential flat building envelopes; and
 - (c) Changes to upper level setbacks.
17. The Section 4.55(2) modification D/2015/966/G is being assessed concurrently with the subject Development Application. The modification is also being reported to the CSPC for determination and is recommended for approval.
18. The proposed plans of the Concept Section 4.55(2) modification are provided below.

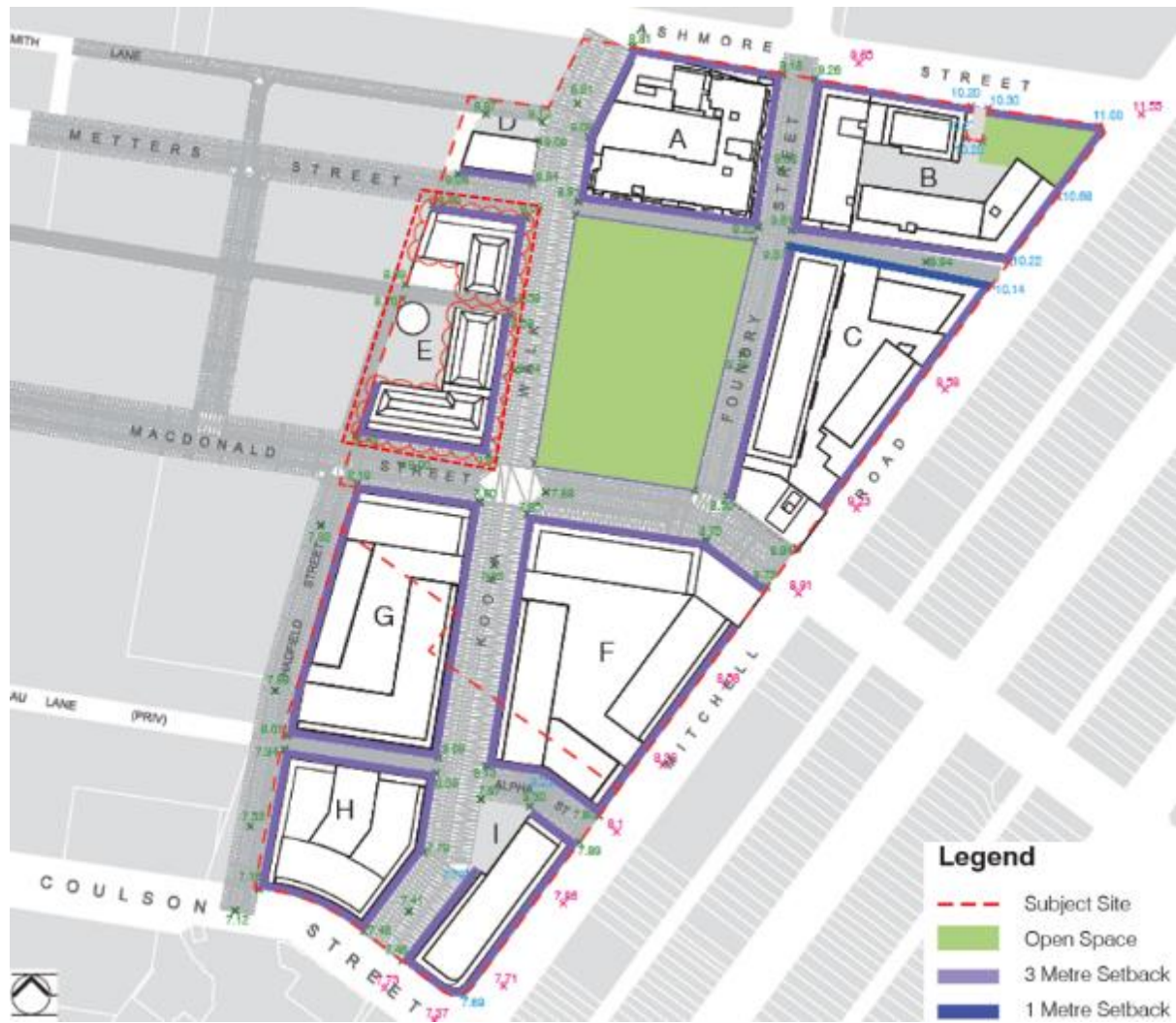


Figure 11: Proposed ground level setbacks (3m to Block E - outlined by red dashed lines and clouded) - D/2015/966/G

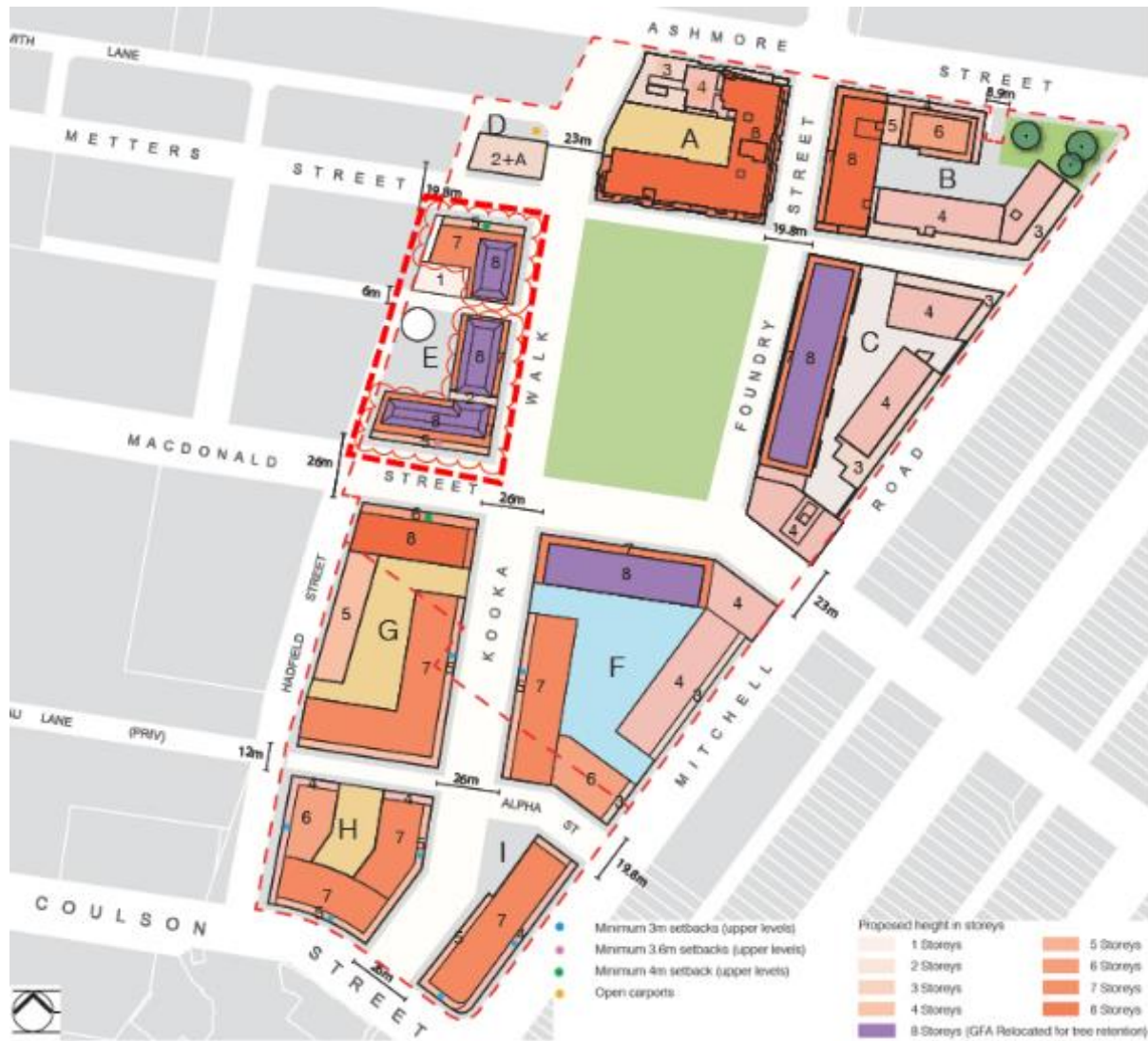


Figure 12: Proposed building envelopes plan (Block E - outlined by red dashed lines and clouded) - D/2015/966/G



Figure 13: Proposed building envelopes plan for Block E - D/2015/966/G



Figure 14: Proposed street wall heights (Block E - outlined by red dashed lines and clouded) - D/2015/966/G

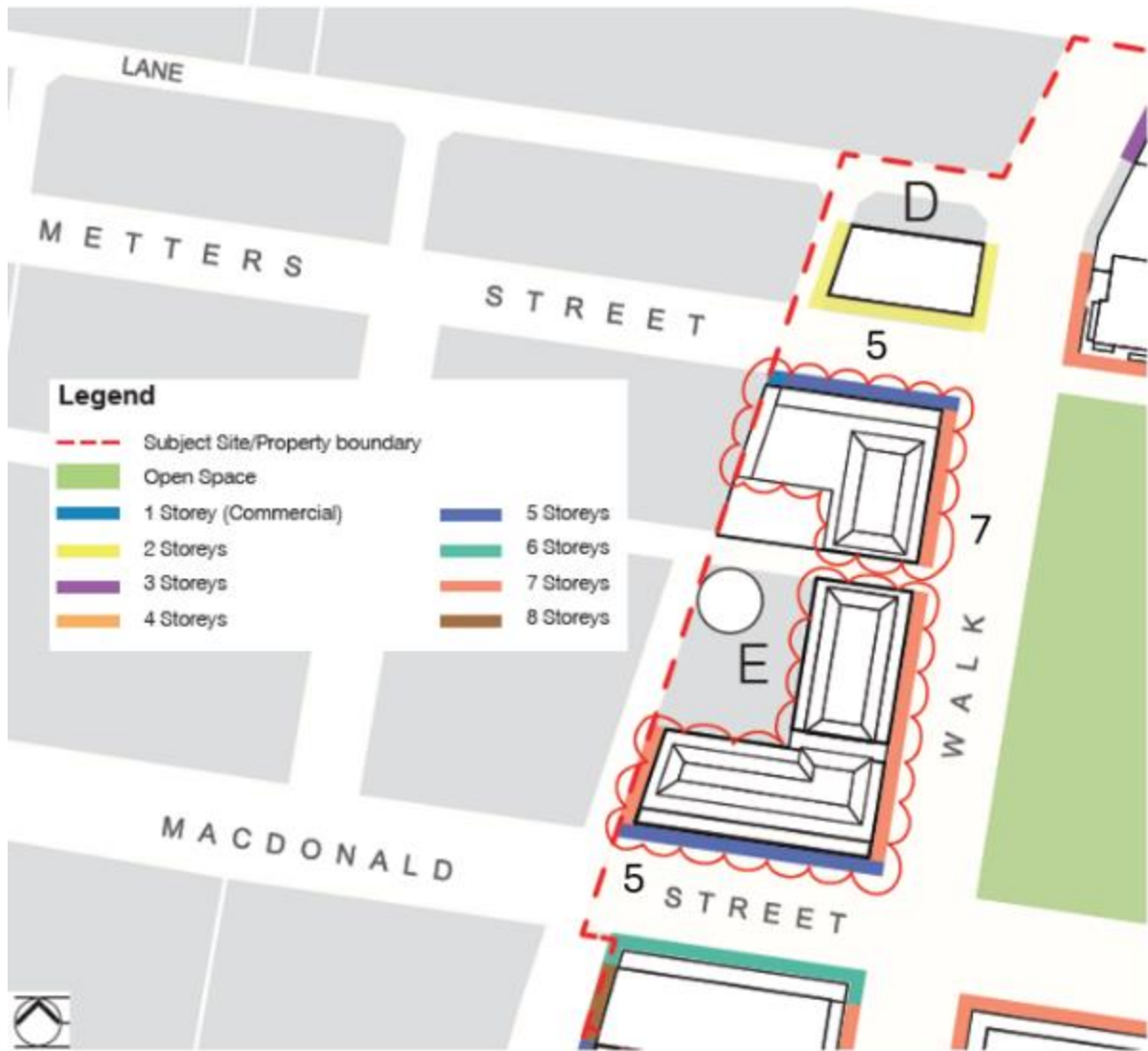


Figure 15: Proposed street wall heights for Block E - D/2015/966/G

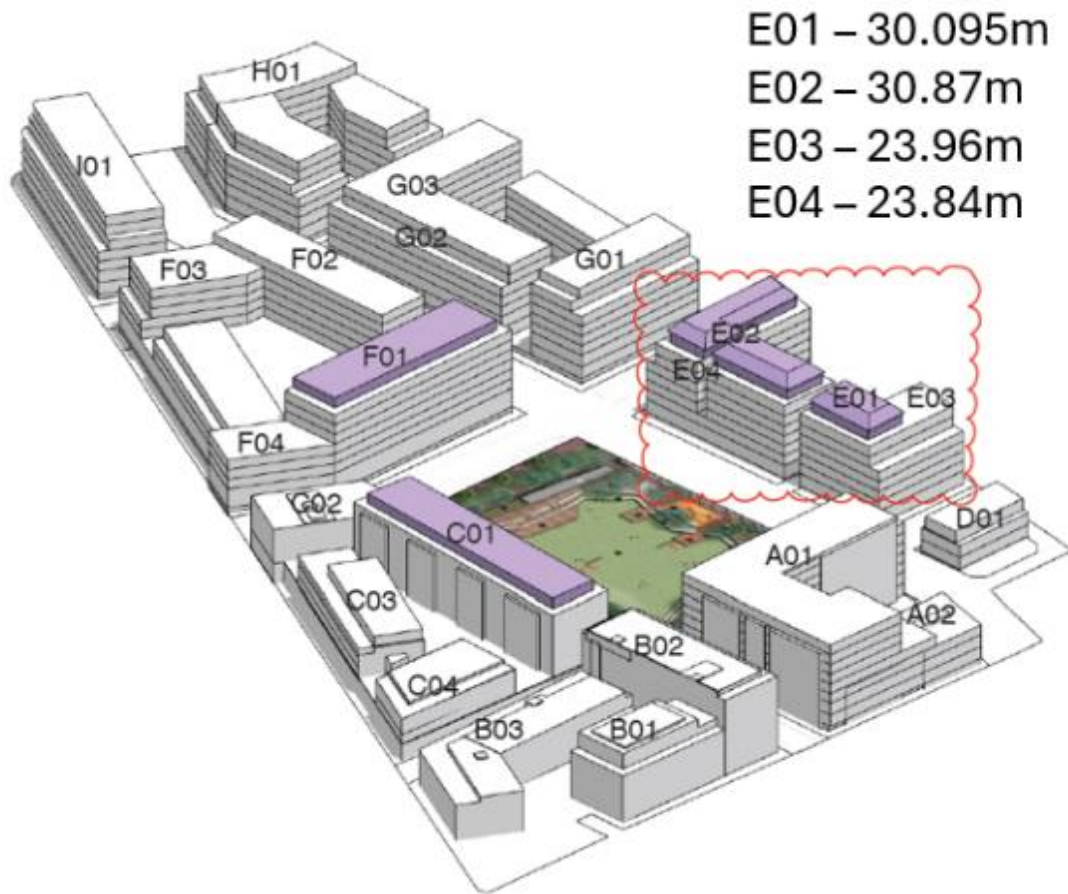


Figure 16: Proposed axonometric concept plan depicting building height (Block E - clouded) - D/2015/966/G

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

19. 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.
20. 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 17: Staging Plan prepared by AECOM, approved under D/2015/966 and the VPA

21. The Phase 4 public domain works relating to Block E consist of the following:
 - (a) removal of temporary turning head and construction of permanent works to Foundry Street;
 - (b) dedication and embellishment of 2,083sqm of land for Kooka Walk (central) between Stovemaker Lane and Macdonald Street, including construction of recycled water main below the Kooka Walk alignment;
 - (c) creation of an easement and embellishment of 272sqm for Pedestrian Link 2 between Building E;
 - (d) dedication and embellishment of 3,527sqm of land for Macdonald Street between western boundary of the site and Mitchell Road, including the construction of recycled water main below the Macdonald Street alignment at Kooka Walk;
 - (e) construction of temporary footway on Macdonald Street on the northern edge of Buildings F and G;
 - (f) construction of new signalised intersection at Mitchell Road and Macdonald Street, including demolition of existing roundabout (these works are offsite);
 - (g) dedication and embellishment of 7,446sqm for McPherson Park;
 - (h) construction of Public Art within McPherson Park; and
 - (i) construction of trunk drainage below the alignment of Kooka Walk (central) between Stovemaker Lane and MacDonald Street. (Option Y).
22. All of the infrastructure for Phase 4 is required to be delivered prior to the first Occupation Certificate for Block E.
23. The majority of the above works are proposed as part of D/2023/962 for public domain works (discussed under other development applications under assessment below).

Other determinations (for the precinct)

- **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).



Figure 18: Photomontage of Blocks B and C, viewed from McPherson Park, looking east, approved under D/2017/681 (WMK Architecture)

- **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/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).



Figure 19: Artist's render of Block D terraces, with view to Block A from Metters Street, approved under D/2019/291 (Andrew Burns Architects)

- **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).



Figure 20: Photomontage of Block A facing McPherson Park, approved under D/2019/393 (Turner Architects)

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.

24. Design competitions have been undertaken for Blocks G and H, and F and I.

Competitive Design Alternatives Process for Block E

25. 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.
26. The developer sought additional floor space ratio (FSR) as part of the competitive design process.
27. Silvester Fuller was selected for the winning design by a four-member selection panel. The selection panel considered the winning entry 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 in the assessment report.



Figure 21: Photomontage of Block E, design competition - viewed from McPherson Park looking west

Design Advisory Panel (February 2024)

28. The proposal was first considered by Council's Design Advisory Panel (DAP) at its meeting on 22 February 2024. Issues raised by the DAP in respect of the proposal as lodged included:
 - (a) Development controls, such as height, height in storeys, street frontage height, street setback and deep soil planting have not been complied with;
 - (b) Solar access, cross ventilation, private and common open space, and building separation controls and ADG requirements have not been met either;

- (c) Competition jury recommendations included a recommendation to rearrange floor space away from Metters Street by increasing building height to 8 storeys on Macdonald Street. The design changes, however, have resulted in a monolithic block whose scale and height does not fit with neighbouring buildings and context. Street wall heights and building setback controls should be observed to fit neighbouring buildings;
 - (d) The slope of the mansard roof is too steep and should be reduced as recommended by competition jury. The Panel also posited that the extent of mansard roof was excessive, adding unnecessary bulk to building, questioning whether there was that much plant on the roof that needed to be hidden;
 - (e) Tree pods - construction, maintenance, and management of tree pods will be practically and administratively problematic and are not supported;
 - (f) Minimum deep soil requirements need to be met. Rearrangement of the basement, albeit to a less efficient layout, could enable more deep soil planting provision;
 - (g) Similarly, construction, maintenance and management of the tree pods cantilevered of the facades needs to be carefully considered;
 - (h) The Panel was concerned with the proposals long corridors and convoluted lift access in some areas between basement and upper levels; and
 - (i) Selective use of roller blinds on some windows and not others to achieve thermal comfort is a poor way of addressing the issue, aesthetically and practically. Maintenance will be an issue for owners and body corporate.
29. The DAP agreed that a DAP Sub-Committee be formed to consider the proposal in-depth, and how it can improve to achieve design excellence.

Design Advisory Panel Sub-Committee (March 2024)

30. An assessment of the proposal was undertaken by the DAP Sub-Committee on 7 March 2024. The Sub-Committee recommended design changes in order for the proposal to achieve design excellence, which are summarised below:
- (a) Height in storeys and street frontage height
 - (i) The overall increase in height (i.e. 8 storeys to the southern building) could potentially be supported subject to a solar access study for Building G and 5 Hadfields Street. Notwithstanding, the approved 3m setback above the approved street frontage height at the 7th and 8th storeys is required;
 - (ii) The approved 5 storey street wall height provides consistency with other buildings on both Metters and Macdonald Streets and it is important to comply. The consistency, scale and framing of the streets are thrown out of sync as a result of the proposed 7 storey street wall height;
 - (b) Mansard roof form
 - (i) The proposed mansard roof is not accepted as meeting the definition of an architectural roof feature. It reads as an additional storey in terms of bulk and scale (meaning 9 storeys overall) and is not designed as a proper mansard roof. The plant area should be as compact as possible;

- (ii) Whilst steeper than the competition winning scheme, the lower pitch recommended by the selection panel would not read as a mansard roof;
- (iii) The design competition winning scheme was designed with fragmented sections of mansard roof rather than the continuous block of the current proposal. The winning scheme is preferred in this regard;
- (c) Deep soil compliance and landscape setback
 - (i) Rationalising the basement planning would provide additional deep soil;
 - (ii) The communal open space at rooftop is not equitable. A better designed space at ground level is needed (noting an extra 47sqm is required to comply with 25% communal open space);
 - (iii) Consider removing the rotunda to provide quality communal open space – although it is acknowledged that this was raised by the Design Competition selection panel as a key design element to be retained. Its current form is oversized and bulky;
 - (iv) Reconfigure the structures and elements within the Macdonald Street landscape setback;
- (d) Tree pods
 - (i) Tree pod landscape approach (facade and suspended planting) – construction, maintenance, structural integrity, wind impacts, vibration, drainage, weight of saturated soil and plantings have not been addressed;
 - (ii) Tree pods within through-site link zone conflict with the potential location for public art;
 - (iii) Overall, a better solution is required to provide greening with longevity;
- (e) ADG compliance
 - (i) There are concerns regarding ADG compliance with natural cross ventilation, solar access, communal open space, building separation and visual privacy. These issues would need to be addressed when replanning the development;
 - (ii) Some bedrooms do not meet minimum dimension of 3m (excluding wardrobe space);
 - (iii) Corridors at each level are long and unrelieved and are to be minimised in length;
- (f) Driveway to Metters Street
 - (i) Waste and car access be combined as per the Design Competition selection panel's comments with associated improvements to the ground level presentation of the north facade to minimise the impact on the streetscape of Metters Street;

- (g) Other matters
 - (i) A wind assessment is required for the entire building;
 - (ii) The landscape resolution of the through-site link needs to incorporate public art and a lighting strategy.

Amendments

31. In response to DAP and DAP-Sub-Committee comments, as well as internal and external referrals, a revised scheme was submitted on 11 June and 12 July 2024. A summary of the key amendments made is as follows:

- (a) Reconfiguration of the facade:
 - (i) Reducing the depth of scoops from 600mm to 450mm;
 - (ii) Introduce lighting orbs within the facade scoops in-lieu of tree pods (replacing 48 tree pods with 34 lighting orbs);
 - (iii) Introduction of planter boxes along the level 7 balconies interfacing with the facade scoops;
- (b) Reduction to street wall height from 7 storeys to 5 storeys facing Metters Street and Macdonald Street, with upper level setbacks of 3m and 3.6m respectively from levels 5 and above;
- (c) Level 7 and roof further setback 6.6m along Macdonald Street;
- (d) Design amendments to the mansard roof form:
 - (i) Introducing scoops to break up the roof form;
 - (ii) Plant consolidated and reduced to allow for the reduction of roof area;
- (e) Reconfiguration of loading dock area:
 - (i) Amalgamation of loading dock and car park entry;
 - (ii) Increase loading dock area to accommodate at 10.6m Council garbage truck;
 - (iii) Child's play area previously located above the entry driveway is replaced with a landscaped garden (planter pods, textured lit up scoops and cascading planting);
- (f) Reconfiguration of basement to maximise deep soil landscaping:
 - (i) Increase in deep soil from 217.9sqm to 404sqm;
- (g) Reduction in number of car parking spaces from 127 spaces to 111 spaces;
- (h) Rationalisation of landscape design and tree planting to provide 32% tree canopy coverage;

- (i) Submission of a Clause 4.6 variation request to height of buildings development standard;
- (j) Reduction in number of apartments from 146 to 141; and
- (k) Submission of a wind assessment.

Proposed Development

32. The proposed works, as amended comprise the following:
- (a) Construction of two residential flat buildings containing 141 apartments, including:
 - (i) 49 x 1 bedroom apartments;
 - (ii) 74 x 2 bedroom apartments; and
 - (iii) 18 x 3 bedroom apartments.
 - (b) The buildings will have a five storey street wall height to Metters and Macdonald Streets, with the levels above setback between 3m and 3.6m at each elevation respectively. Both the east and west (Kooka Walk) elevations are seven storeys in height, with the eighth storey setback at least 2.4m;
 - (c) Two levels of basement are proposed, with 111 car spaces (75 residential, 22 residential accessible, 13 visitor and 1 visitor accessible), 2 car share spaces, 2 service spaces and 4 motorbike spaces, as well as storage areas, services, OSD and rainwater tank;
 - (d) Communal open space within the central courtyard and at level 7;
 - (e) Indoor communal pavilion containing kitchen/barbeque facilities and mechanical exhaust from the car park;
 - (f) Vehicular access to car park from Metters Street with combined access to loading dock for waste collection by a 10.6m Council garbage truck (via turntable);
 - (g) Mansard roof form containing plant equipment and services;
 - (h) Solar PV panels; and
 - (i) Landscaping works across the site at ground level as well as lighting orbs and some facade planting.
33. The proposal includes the construction of an east-west pedestrian link/through-site link of 272sqm between the two residential flat buildings to connect to the future Kooka Walk. This forms part of the executed VPA.
34. The proposal also seeks approval for the staging of construction, and release of construction certificates in accordance with the following stages:
- (a) Stage 1: Substructure and basement level 1 slab and fit-out;

- (b) Stage 2: Structure; and
 - (c) Stage 3: Facade and fit-out.
35. Approval is not sought for the following:
- (a) Demolition;
 - (b) Early works (excavation, remediation, foundation works, basement slab);
 - (c) Construction of Kooka Walk as it fronts Block E; and
 - (d) Extension of Macdonald and Metters Streets to Block E.
36. The above works form part of separate development applications.
37. Plans and elevations of the proposed development are provided below.

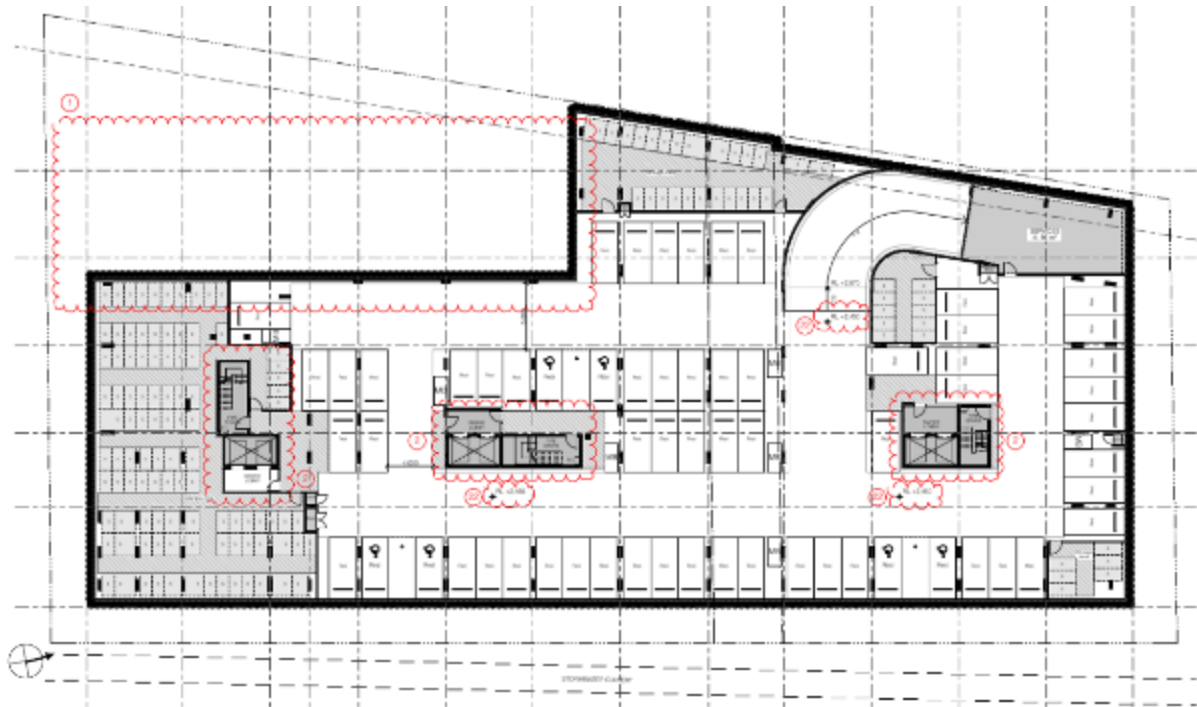


Figure 22: Proposed basement level 2

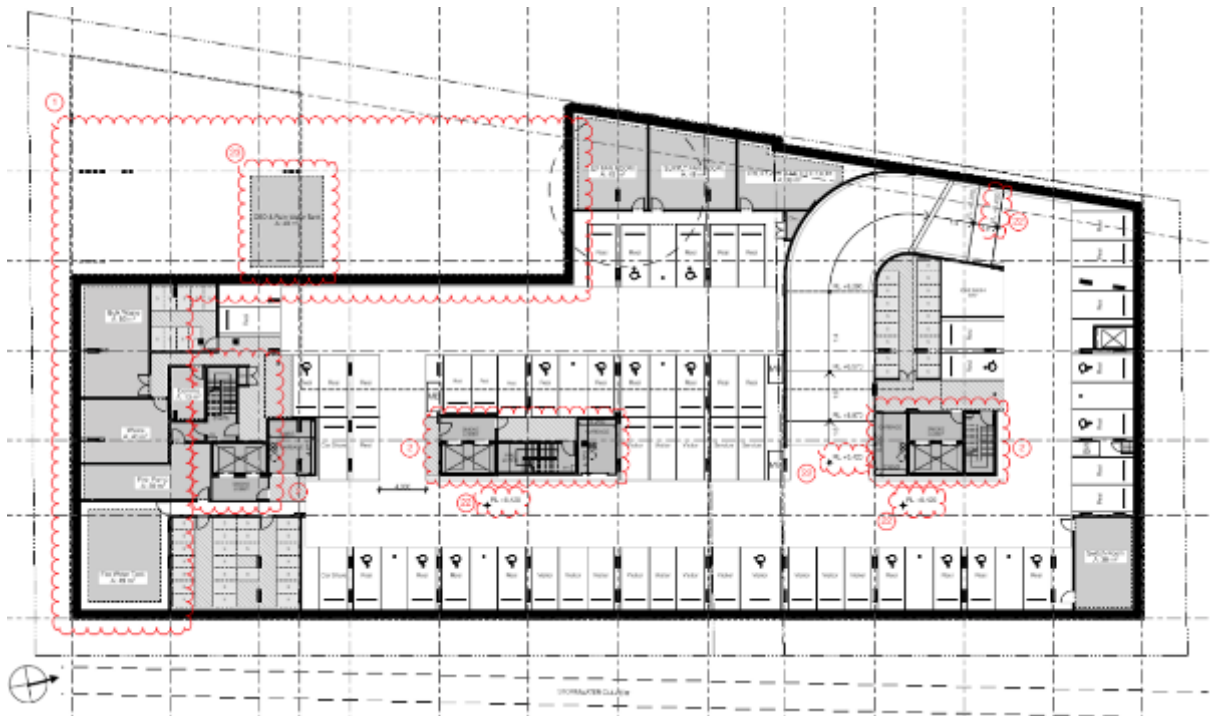


Figure 23: Proposed basement level 1



Figure 24: Proposed ground floor

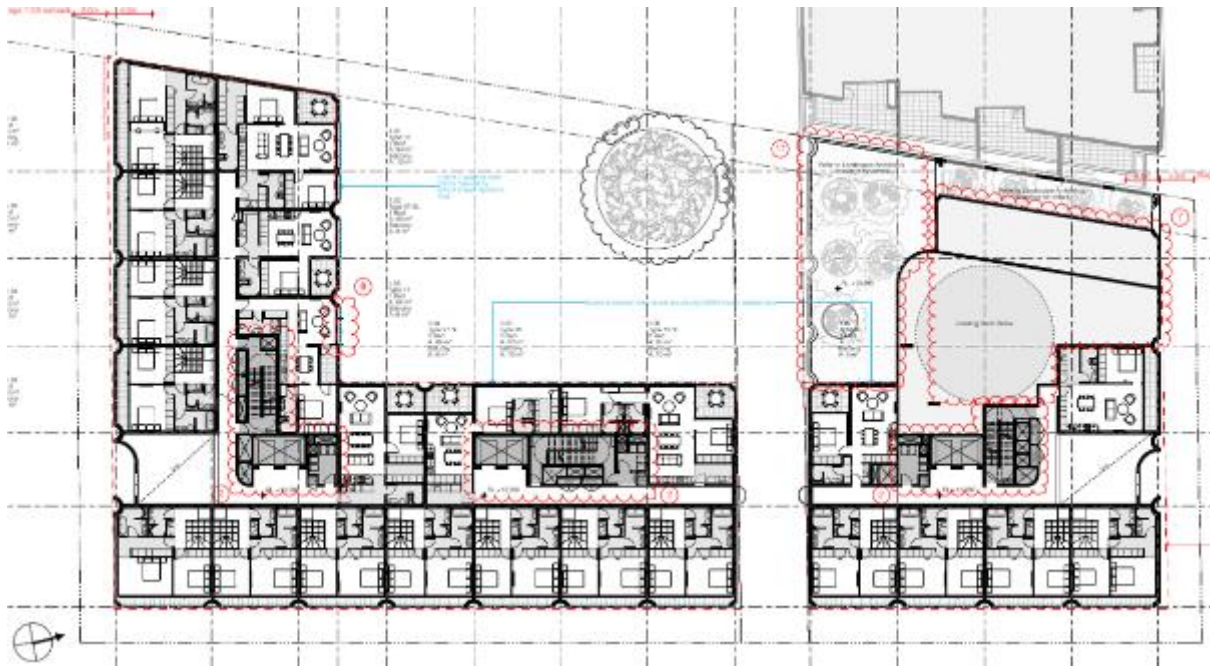


Figure 25: Proposed level 1



Figure 26: Proposed level 2 (levels 3 and 4 similar)

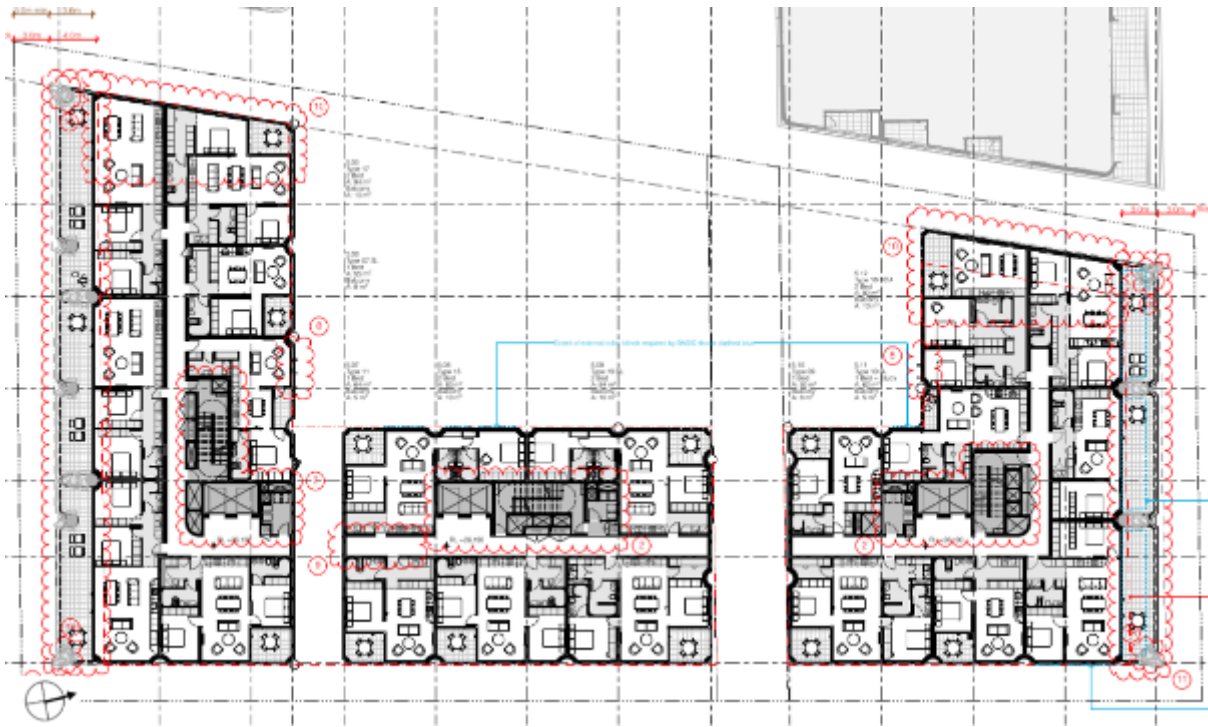


Figure 27: Proposed level 5



Figure 28: Proposed level 6



Figure 29: Proposed level 7

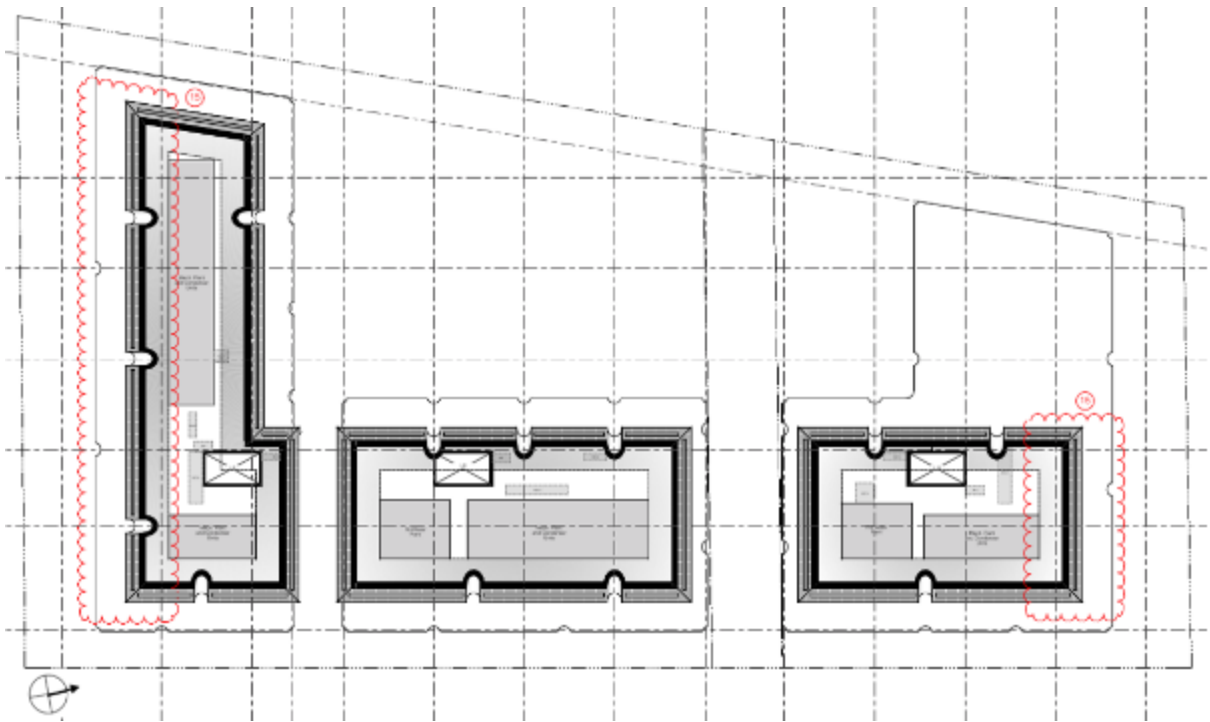


Figure 30: Proposed plant area

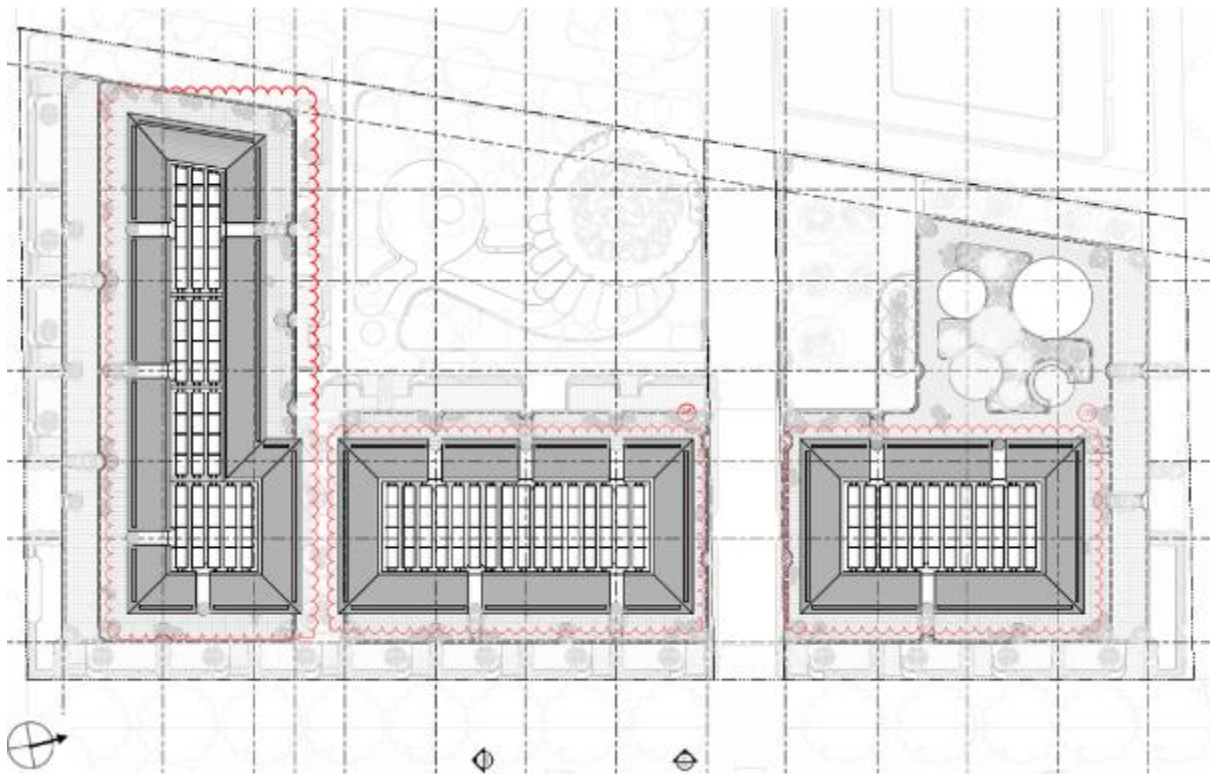


Figure 31: Proposed roof level



Figure 32: Proposed north elevation (Metters Street)



Figure 33: Proposed east elevation (Kooka Walk)



Figure 34: Proposed south elevation (Macdonald Street)



Figure 35: Proposed west elevation (facing 7 Metters Street and 74 Macdonald Street)



Figure 36: Proposed internal north elevation (to pedestrian link within site)

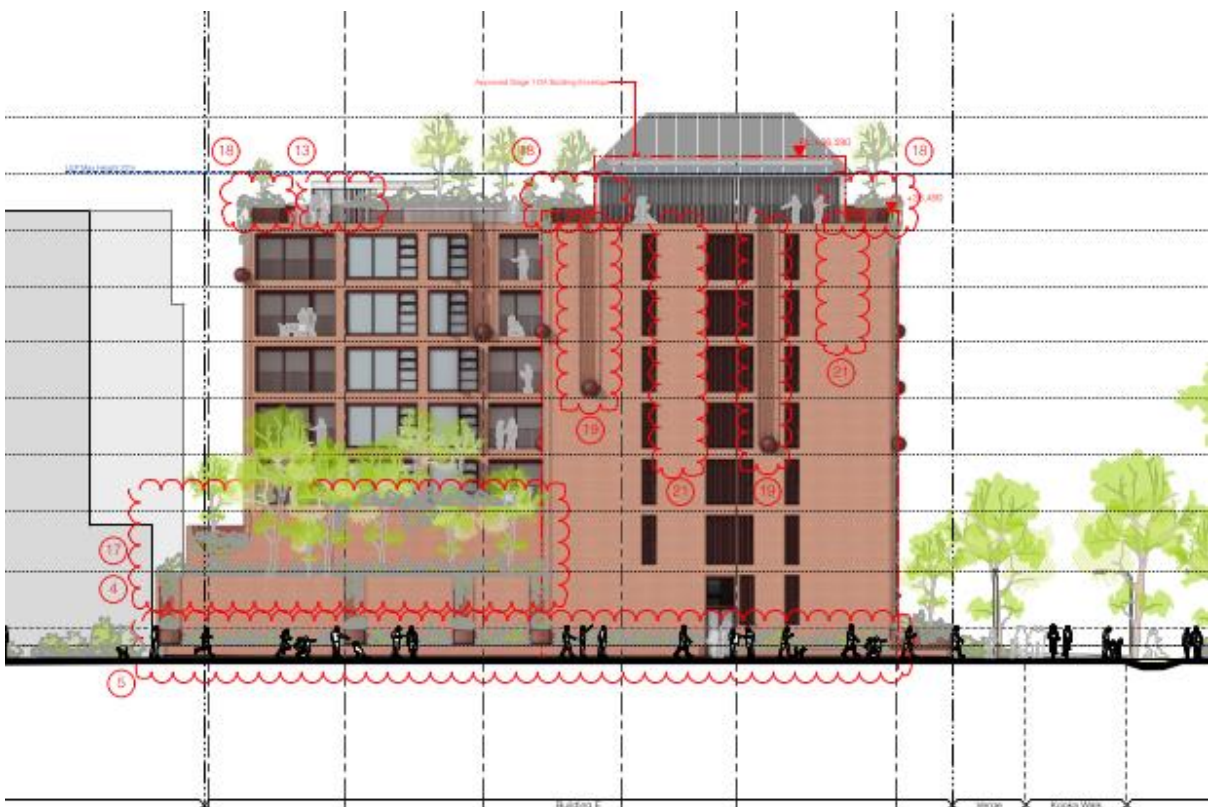


Figure 37: Proposed internal south elevation (to pedestrian link within site)

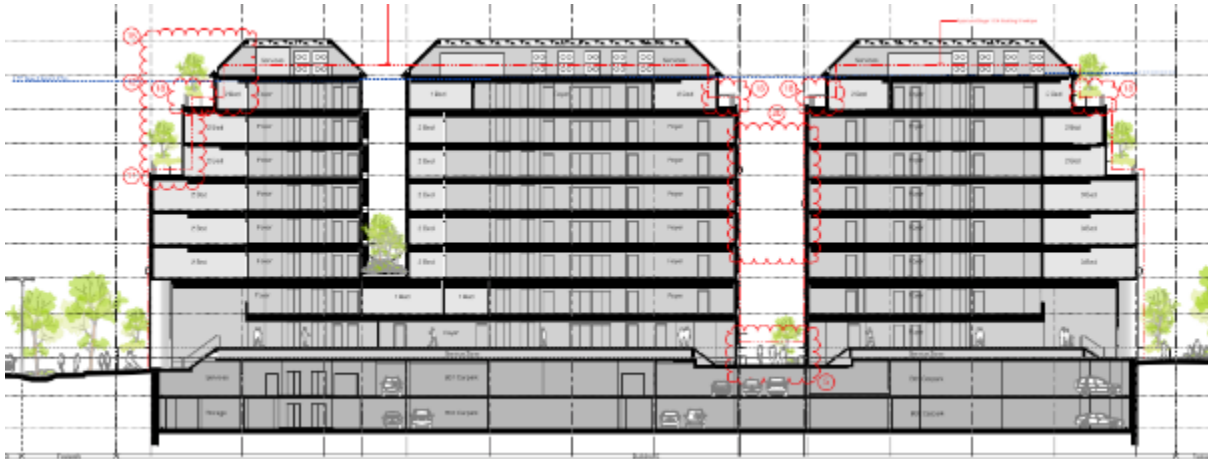


Figure 38: Proposed Section A through development (Macdonald Street to Metters Street)



Figure 39: Proposed Section B through development (Metters Street to Macdonald Street)



Figure 40: Proposed Section C through development (Kooka Walk to pedestrian link within 74 Macdonald Street)



Figure 41: Perspective of proposal - viewed from Metters Street - looking south-east



Figure 42: Photomontage of Block E, viewed from McPherson Park looking west



Figure 43: Photomontage of Block E, viewed from Macdonald Street looking north-west

Assessment

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

Water Management Act 2000

39. The proposal constitutes Integrated Development, requiring approval under the Water Management Act, 2000. WaterNSW issued General Terms of Approval on 17 November 2023.
40. WaterNSW were advised of submissions on 18 December 2023, and notified of amended plans pertaining to the basement on 4 July 2024.
41. No further response was received within the statutory timeframe, however the original General Terms of Approval have been included in the recommended conditions of consent contained in Attachment A.

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. Excavation and remediation works are proposed to be undertaken as part of the early works development application D/2023/850.
34. Notwithstanding, adequate contamination information has been submitted to be satisfied that the site can be made suitable for the proposed residential use.

State Environmental Planning Policy (Housing) 2021

35. 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.
36. 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.
37. 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 Residual Lands
38. This matter is discussed in further detail under the heading Financial Contributions below.

Chapter 4 - Design of Residential Apartment Development

39. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
40. 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.
41. The applicant has submitted a design verification statement and design report prepared by Silvester Fuller (NSW ARB 7889 and 8027), with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.

42. An assessment of the proposal against the design quality is provided as follows:

(a) Principle 1: Context and Neighbourhood Character

The site is located within the Ashmore Estate, an identified urban renewal site 2.7km to the south west of the Sydney CBD and is within the catchment of Erskineville Train Station. The proposal contributes to the vitality of the redevelopment area.

The development is proposed within the E1 'Local Centre' zone and is broadly in accordance with the aims and objectives of the Sydney LEP 2012, the Sydney DCP 2012, and the Concept Approval (as amended).

(b) Principle 2: Built Form and Scale

The Ashmore Estate is currently in transition from former industrial and warehousing uses to a mixed use local centre. The built form and scale of this proposal is compatible with that envisaged in the Concept Approval (as amended). Variations to the height of buildings development standard are addressed under the Discussion heading.

(c) Principle 3: Density

The proposal complies with the maximum quantum of gross floor area allocated to Block E by Condition 8 - Allocation of Floor Space of D/2015/966 (as amended).

The development provides a suitable number and variety of apartment types, with appropriate amenity for occupants. The proposed overall density of development is consistent with that envisaged under the relevant planning controls and the Concept Approval, and is acceptable given the context.

The development will accommodate 141 dwellings, which is an appropriate level of residential density for the site, given its proximity to established infrastructure, public transport, and community and recreation facilities.

The proposed density of the new building does not result in unacceptable levels of amenity impact for neighbouring properties or future residents of the development. The proposed density responds to the future context and does not result in unacceptable levels of amenity impact for neighbouring properties or future residents.

(d) Principle 4: Sustainability

The proposal is compliant with the requirements of BASIX in terms of thermal comfort and meets the required water and energy targets. An appropriate condition is recommended to ensure that the development complies with the commitments contained on its BASIX certificate.

(e) Principle 5: Landscape

A mix of hard and soft landscaping is provided, with opportunities for passive and active recreation. Where required, landscaping has been incorporated to mitigate visual privacy, particularly between dwellings and the communal open space areas. Deep soil zones across the site also allow for canopy tree planting.

(f) Principle 6: Amenity

The proposal incorporates apartment planning that can deliver a high level of amenity for future occupants. Floor plans have been configured to maximise solar access and ventilation and provide compliant apartment and room sizes.

Compliance with amenity controls regarding the relevant provisions of the ADG is detailed in the table below.

(g) Principle 7: Safety

The proposal is broadly in line with the principles for Crime Prevention Through Environmental Design (CPTED).

The development provides new opportunities for passive surveillance of existing streets and will increase street activity. The existing pedestrian link between the site and 74 Macdonald Street will be further activated by the central courtyard, the presence of residential apartments and the connection with the new east-west pedestrian link. The residential flat buildings will also provide adequate passive surveillance of the future Kooka Walk to the east and McPherson Park once constructed.

(h) Principle 8: Housing Diversity and Social Interaction

The proposal includes a mix of two storey maisonette apartments, through apartments and single aspect apartments, offering an appropriate variety of apartment types across the development.

The development will accommodate 141 dwellings, providing the following mix:

- (i) 49 x 1 bedroom apartments (34.8%)
- (ii) 74 x 2 bedrooms apartments (52.5%)
- (iii) 18 x 3 bedroom apartments (12.7%).

The proposed unit mix is broadly consistent with that envisaged under the Sydney DCP 2012.

The proposal provides 22 adaptable apartments which equates to 15% of the total dwellings, complying with the Sydney DCP 2012 requirement.

(i) Principle 9: Aesthetics

The proposed built form presents a contemporary, well-modulated and articulated development, using a variety of architectural elements and materials to provide visual interest. The proposed materials are supported, and the overall design will positively contribute to the aesthetic qualities of the streetscape.

The amended design is generally consistent with the competition winning scheme, which was considered by the selection panel to be capable of exhibiting design excellence with regard to materiality and architectural expression.

43. 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)	No, but acceptable	<p>The depth of the building at its greatest extent, is 19.8m. this occurs at ground floor and level 2.</p> <p>These exceedances occur within the concept building envelope, and the proposed articulation of the facade helps to reduce building depth in most areas.</p> <p>The depth of individual apartments generally achieve compliance, with the design of the development ensuring that adequate light and ventilation is achieved for each dwelling. Accordingly, the aims of the building depth provisions have been met.</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 	No, but acceptable	<p>Where separation distances are not achieved internally and to the western boundary, the proposal incorporates design features to ameliorate visual privacy concerns for future occupants and adjoining properties.</p> <p>The proposed development has been generally designed in accordance with the concept building envelopes which establish reduced ADG separation and set backs.</p> <p>See further assessment under the discussion section.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No, but acceptable	The applicant has calculated communal open space as 1,106sqm (23.5%) including on the level 7 rooftop terrace, indoor community pavilion and the south-western landscape setback the runs along the pedestrian link at 74 Macdonald Street. See discussion section.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	It is acknowledged that the ground floor communal open space is constrained by overshadowing from the surrounding built form throughout the day at the winter solstice. The proposal, however provides a good standard of solar access to the required communal open space. More than 50% of the principal usable part of the communal open space will receive a minimum of 2 hours between 9am and 3pm on 21 June.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	Yes	The amended proposal is measured to provide 365.9sqm of deep soil (7.8% of site area).

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 	Acceptable	The proposal does not achieve the minimum ADG separation requirements but does provide generally acceptable visual privacy outcomes. The proposal has been generally designed in accordance with the concept building envelopes, which do not

3F Visual Privacy	Compliance	Comment
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	Acceptable	<p>achieve the ADG setback and separation provisions for visual privacy.</p> <p>Refer to the assessment under the Discussion heading.</p>
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	Apartment layouts are generally designed to locate sensitive rooms and spaces away from internal communal corridors and spaces.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	102 out of 141 dwellings achieve solar access in accordance with the objective, which is 72%.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	20 out of 141 apartments receive no direct sunlight at the winter solstice, which equals 14%.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are naturally ventilated.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	87 out of 141 apartments are naturally cross ventilated, equalling 62%.
Overall depth of a cross-over or cross-through apartment does not exceed 18m,	Yes	The proposal complies.

4B Natural Ventilation	Compliance	Comment
measured glass line to glass line.		

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Floor to floor heights of at least 3.15 metres are provided, achieving 2.7m floor to ceiling heights for habitable rooms and 2.4m minimum ceiling heights for non-habitable rooms. 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 kitchens, bathrooms, laundries and hallways.
Non-habitable rooms: 2.4m	Yes	
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	The proposal complies.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	No, but acceptable	Block E proposes floor to floor heights that will facilitate a floor to ceiling height of 3.4m on ground floor and 2.7m on the first floor. Given that the Concept Approval does not permit commercial uses in Block E, this is acceptable.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> • Studio: 35sqm • 1 bed: 50sqm • 2 bed: 70msq • 3 bed: 90sqm The minimum internal areas include only one bathroom.	Yes	All apartment sizes comply with the minimum area requirements.

4D Apartment Size and Layout	Compliance	Comment
<p>Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p>		
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	<p>Partial compliance</p>	<p>All bedroom and living rooms comply with the requirement.</p>
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p>	<p>Yes</p>	<p>Apartment depths comply.</p>
<p>8m maximum depth for open plan layouts.</p>	<p>Yes</p>	
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10sqm • all other bedrooms: 9sqm <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	<p>No, but acceptable</p>	<p>There is 1 x 2 bedroom apartment within the development (Type 31) where the second bedroom is 2.5m in width instead of 3m.</p> <p>The affected room is of a regular shape, and is still capable of accommodating a queen size bed, as illustrated on the architectural drawings.</p> <p>The proposal is 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 	<p>No, but acceptable</p>	<p>There are 10 apartments (7%) that do not meet the minimum width requirements. All affected apartments are one bedroom. In 6 of the apartments, a minimum width of 3.3m (for dining rooms) is provided, and in 4 of the apartments, a minimum width of 2.7m (for dining rooms) is provided.</p> <p>These variances, however, are considered minor given that all living rooms comply with the ADG. The proposal is acceptable.</p>

4D Apartment Size and Layout	Compliance	Comment
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 4sqm with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8sqm with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.</p> <p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15sqm and a minimum depth of 3m.</p>	No, but acceptable	All apartments are provided with private open space, however 44 (31%) do not meet minimum requirements for private open space. Refer to the private open space discussion below.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The maximum number of units for each lift is 8 per level.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether	Yes	No living room or bedroom windows open directly onto circulation spaces.

4F Common Circulation and Spaces	Compliance	Comment
open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.		
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	All common circulation spaces have access to natural light and ventilation on at least one end.

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	Adequate storage is provided within each apartment in accordance with ADG requirements.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	The design groups similar uses and services together to ensure the acoustic privacy of the dwellings are maintained. This includes locating waste facilities within the basement.

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

44. The development application was lodged prior to the introduction of the Sustainable Buildings SEPP 2022. Therefore, SEPP BASIX applies. A BASIX Certificate has been submitted with the development application
45. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. The plans have also been stamped with the NatHERS rating as required by the policy. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network**Clause 2.48 Determination of development applications – other development**

47. The application is subject to Clause 2.48 of the SEPP as the development involves the penetration of ground within 2m of an underground electricity power line and is in close proximity to overhead powerlines.
48. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised, subject to the imposition of conditions that are included in Attachment A of this report.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

49. 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.</p> <p>The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No, but acceptable	A maximum building height of 27m is permitted.

Provision	Compliance	Comment
		<p>The proposal has a height of 30.87m to the top of the building, resulting in a variation of 14.3%.</p> <p>Additionally, the Concept Approval D/2015/966 (as amended) does not fully comply with the LEP height provisions.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>The Concept Approval distributed the maximum base GFA permissible in line with 1.75:1 across each of the development blocks A-I.</p> <p>A maximum GFA of 14,066sqm is allocated to Block E. The 10% bonus floor space, which may be awarded for design excellence, increases the maximum GFA to 15,472.6sqm.</p> <p>The proposal has a GFA of 14,011sqm. This complies with the allocated maximum GFA for Block E.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the 'Height of Building' development standard prescribed under Clause 4.3.</p> <p>A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.21 Flood planning	Yes	<p>The site is identified as being subject to flooding.</p> <p>A Flood Statement Report was submitted with the application which determined that all entry locations satisfy Council's Flood Planning Level (FPL) requirements.</p>

Provision	Compliance	Comment
		<p>The application has been reviewed by Council’s Flooding Engineers and has been found to be acceptable.</p> <p>The development is able to comply with the City’s Interim Floodplain Management Policy and satisfies the provisions of the standard.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
<p>6.21C Design excellence 6.21D Competitive Design Process</p>	<p>Yes</p>	<p>The proposal was the winner of a competitive design alternatives process and has retained the key elements of the winning proposal while addressing recommendations made by the selection panel for improvements. These recommendations are detailed further in the Issues section of this report.</p> <p>The proposal responds appropriately to the concept approval conditions and planning controls where required, and the built form is compatible with the heritage character of the area, providing suitable transition in scale to Macdonald and Metters Street where the established street wall height is generally consistent.</p> <p>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 occupants.</p> <p>The proposal presents a high standard of architectural design and the overall materiality, articulation and architectural expression of the development is in keeping with the relevant planning controls and reflecting the desired future character of the area.</p> <p>The proposal will have a positive contribution to the public domain through</p>

Provision	Compliance	Comment
		<p>the provision of a pedestrian link within the site and landscape setback to Macdonald Street.</p> <p>Subject to conditions, the development achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Can comply	<p>The maximum of car parking spaces permitted are as follows:</p> <ul style="list-style-type: none"> • Residential: 77 spaces • Residential accessible: 22 spaces • Visitor: 12 spaces • Visitor accessible: 1 space <p>The application proposes 75 residential spaces and 22 residential accessible spaces, which complies.</p> <p>However, 14 visitor spaces are proposed, one of which is accessible. A condition is recommended to convert one visitor car space into a residential car space.</p> <p>Subject to an amendment to the allocation of car spaces, the proposal is acceptable.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	<p>A contribution for the purpose of affordable housing applies to the development, as the proposal involves the creation of more than 200sqm of residential accommodation GFA.</p> <p>A condition of consent is recommended to reflect this.</p>
Division 4 Miscellaneous		

Provision	Compliance	Comment
7.14 Acid Sulfate Soils	N/A	<p>The site is identified as containing Class 3 Acid Sulfate Soil.</p> <p>Excavation is subject to a separate application for early works, with acid sulfate soils being addressed in the assessment of D/2023/850.</p>
7.20 Development requiring or authorising preparation of a development control plan	Yes	<p>The proposed building is located outside of Central Sydney, with a site area that exceeds 5,000sqm. A site specific DCP is therefore required.</p> <p>This is a detailed design development application submitted in accordance with concept approval D/2015/966 (as amended). Pursuant to Section 4.23 of the EP&A Act, the concept application was submitted in lieu of a site-specific development control plan to satisfy the control.</p> <p>Subject to the approval of D/2015/966/G, the development is consistent with the concept approval and therefore satisfies the provisions of the control.</p>

Development Control Plans

Sydney Development Control Plan 2012

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

Section 2 – Locality Statements

51. The site is located within the Ashmore locality. The proposed development is in keeping with the unique character and the design principles. Specifically, subject to the recommended conditions of consent, the proposal:
- (a) Ensures building heights in Ashmore transition to neighbouring conservation areas;
 - (b) Introduces a permeable network of streets;
 - (c) Facilitates the provision of attractive public domain works with pedestrian connection to the future Kooka Walk;

- (d) Facilitates the provision of high quality streetscapes capable of accommodating tree planting and water sensitive urban design measures;
- (e) Provides adequate setbacks from the public domain to provide for a strong landscape character;
- (f) Contributes to the mix of commercial and residential uses deemed appropriate for the precinct; and
- (g) Protects key panoramic views from Sydney Park to the CBD skyline.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>The proposed development will make a positive contribution to the public domain.</p> <p>The proposal provides an east-west pedestrian link/through-site link connecting the north-south pedestrian link between the site and 74 Macdonald Street to the future Kooka Walk. This link is identified in the planning agreement. It is noted that there is some inconsistency between the architectural drawings and landscape drawings with regard to the detailing of the link within the site. A condition is recommended to ensure that the drawings match up. Additionally, an easement for public access will need to be created.</p> <p>The part extension of Macdonald and Metters Streets, provision of the future 'Kooka Walk' and McPherson Park as they relate to Block E are to be delivered under Phase 4 of the development, and are being assessed under D/2023/962.</p> <p>The public art plan has not been finalised at the time of writing this report, however a draft has been presented to the Public Art Advisory Panel, who are generally supportive of the concept. A condition of consent is recommended requiring the finalised plan to be submitted to the City prior to the issue of above ground Construction Certificates.</p>
3.3 Design Excellence and Competitive Design Processes	Yes	A competitive design process for the site was conducted to select the project

Provision	Compliance	Comment
		architect. The selection panel deemed the entry of Silvester Fuller Architects as the design most capable of achieving design excellence.
3.4 Hierarchy of Centres, City South	Yes	<p>The wider site, 155 Mitchell Road, is a planned 'local village centre'. The DCP envisages a range of future retail uses on the site, to meet local daily shopping. As part of the Concept Approval, Block E is not required to provide any retail.</p> <p>The proposal is consistent with the Concept Approval.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees. Conditions of consent are recommended to ensure surrounding street trees are protected.</p> <p>The landscape plans lack sufficient detail regarding canopy cover for the site, showing <i>Angophora costata</i> (Sydney red gum) as having a mature canopy spread of seven metres.</p> <p>According to the City of Sydney Tree Species List, this species has a mature size of 20 metres in height and 12 metres in width.</p> <p>A condition is recommended for the plans to be revised to take into consideration the trees' mature size to ensure the successful establishment and growth of the new trees.</p> <p>Notwithstanding, Council's Tree Officer has noted that this will provide sufficient canopy cover on the site.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The proposal has been designed to the FPL and is acceptable in terms of flood planning.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Conditions recommended by the City's Specialist Surveyor with regard to any future subdivision are included in Attachment A.

Provision	Compliance	Comment
3.11 Transport and Parking	Partial compliance	<p>The previous iteration of the proposal provided bike parking within storage spaces at basement level 2 for residents. The current proposal has omitted these parking spaces and opted for storage only. It is noted that there are 141 storage cages at basement 2. It is therefore recommended that a condition be imposed requiring 141 bike spaces to be provided within these storage cages for residents.</p> <p>Visitor bike parking is provided for at ground floor in accordance with the DCP.</p> <p>Two service vehicle spaces are required for the development, which have been accommodated at basement level 1.</p> <p>Two car share spaces are proposed which complies with DCP requirements.</p> <p>11 motorbike spaces are located at basement levels 1 and 2, complying with DCP requirements.</p> <p>The proposed loading dock at ground floor allows for a 10.6m Council garbage truck, with adequate space for the presentation of 24 x 1100L bins. It is recommended, however, that conditions be imposed requiring the plans to be updated to depict a linear track system for the chutes and a marked up area in the loading dock for the bin tipper and presentation area for the collection of bulky waste.</p>
3.12 Accessible Design	Yes	<p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the NCC.</p> <p>The amended plans include 22 adaptable apartments (15%) which is consistent with DCP requirements.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>

Provision	Compliance	Comment
3.14 Waste	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.17 Contamination	Yes	Contamination and remediation is subject to a separate early works development application (D/2023/850).

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Acceptable	<p>The DCP building heights are superseded by the Concept Approval (as amended).</p> <p>Compliance with height in storeys and street frontage heights specified in the Concept Approval is addressed in the 'Discussion' section.</p>
4.2.2 Building setbacks	Acceptable	<p>The DCP setbacks are superseded by the Concept Approval (as amended).</p> <p>Compliance with setbacks specified in the Concept Approval is addressed in the 'Discussion' section.</p>
4.2.3 Amenity	Yes	<p>The DCP requires development applications to demonstrate the shadow impact on neighbouring development between 9:00am and 3:00pm at the winter solstice. New development should not create additional overshadowing onto a neighbouring dwelling (unless very minor) where that dwelling currently receives less than 2 hours' direct sunlight to habitable rooms and 50% of the private open space.</p> <p>The proposal is accompanied by a shadow analysis prepared in accordance with the control. The analysis identifies some additional</p>

Provision	Compliance	Comment
		<p>overshadowing to Block G within the development site (to the direct south) and 5 Hadfields Street (south-west). Solar impact to both sites complies with the DCP control. This is discussed in further detail under the heading 'Overshadowing'.</p> <p>The proposal has acceptable amenity regarding solar access, overshadowing, open space and ventilation and noise as outlined in the SEPP 65 and ADG assessment above.</p> <p>The landscaping design is acceptable, subject to the landscape conditions recommended in Attachment A.</p> <p>Integrated design measures have been incorporated within the design to address visual privacy within the development site and to adjoining properties. See discussion section.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The detailed proposal complies with maximum street frontage lengths as per the DCP. The proposal succeeds in breaking the form by providing an east-west pedestrian link, and by providing articulation and surface modulation where necessary.
4.2.6 Waste and recycling Management	Yes	<p>A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p> <p>The proposal has been reviewed by the City's Waste Services Unit and is found to be acceptable, subject to conditions.</p>
4.2.7 Heating and cooling infrastructure	Yes	Heating and cooling plant is located within the mansard roof form and is not visible from the public domain.
4.2.8 Letterboxes	Yes	Letterboxes are provided in secure areas in lobbies at ground floor.

Section 5 – Specific Areas: Ashmore Neighbourhood

Note: These provisions are largely superseded by the Concept Approval D/2015/966 (as amended) and are only addressed where relevant.

Provision	Compliance	Comment
5.5.4 Accessibility and amenity in the public domain	Yes	The development maintains a minimum 60% of the total area of McPherson Park having direct solar access between 10am and 2pm at the winter solstice
5.5.8 Building layout, form and design	Yes	<p>The provisions are largely superseded by the concept approval.</p> <p>Notwithstanding, the form and typology of the development is generally consistent with that envisioned for Block E. The development provides 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 required by the DCP.</p> <p>The building will exceed the maximum 27 metre height limit with the proposed mansard roof form which contains some habitable ceilings, as well as plant area and solar pv panels. However, the protrusion above the height limit is considered acceptable as discussed in further detail below, and will not impact views of the City skyline from Sydney Park.</p> <p>The ground conditions including the relationship between public and private domains, landscaping and fencing are generally consistent with the controls.</p> <p>Conditions are recommended to ensure the individual entries from apartments directly onto the future Kooka Walk are consolidated.</p> <p>Having numerous individual entries with paving within the public domain gives the appearance of privatising public land. Minimising these entries will also allow for the provision of continuous deep soil planting along Kooka Walk which is a positive outcome.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard

52. The site is subject to a maximum height control of 27m. See Figure 44 below.



Figure 44: Extract of Sydney LEP 2012 Height of buildings map depicting maximum building height of Block E and surrounding development

53. 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.

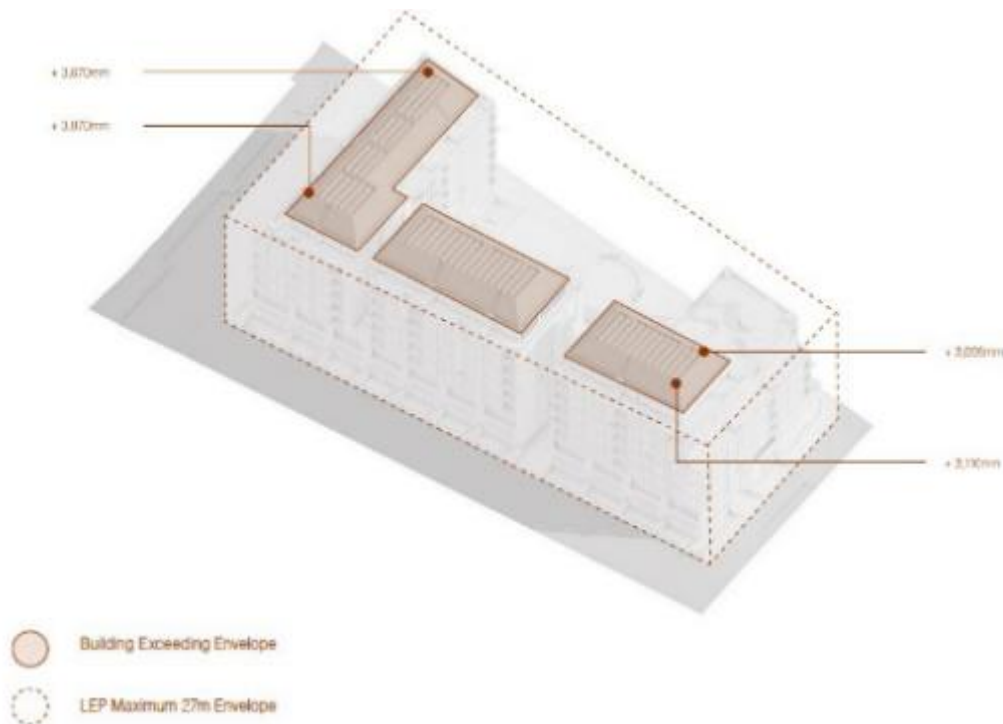


Figure 45: Proposed height exceedance

54. The additional height forms part of the refinement of the roof form, with the introduction of a mansard roof housing plant area. The change to the overall height resulting from the mansard roof was considered to be a key element of the design competition winning scheme. There is also a minor height exceedance (to 200mm) at the south building’s southeastern corner, which comprises ceiling space of the apartment below.

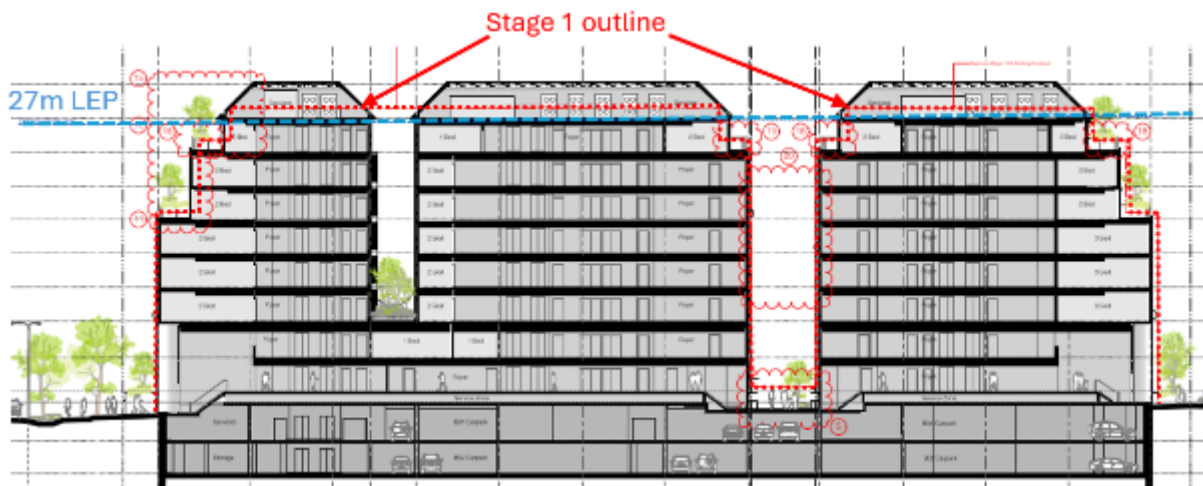


Figure 46: Proposed residential flat buildings height non-compliance depicted above the maximum permitted height plane of 27m outlined in blue. Approved concept envelope (D/2015/966/C) outlined in red.

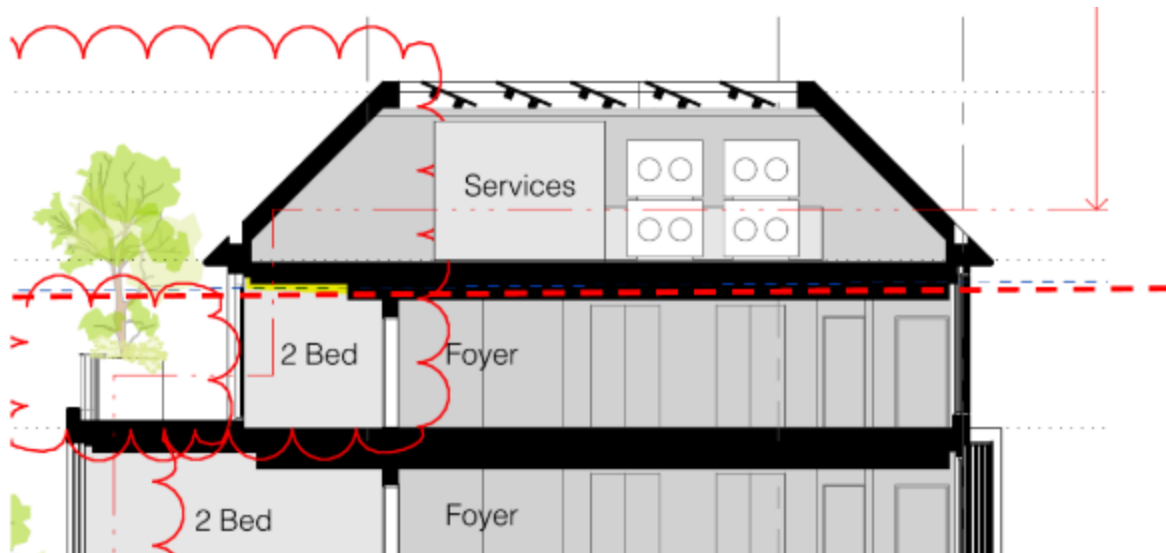


Figure 47: 27m height limit indicated by red dashed line, with area of non-compliance that comprises GFA highlighted in yellow

55. The site is also flood affected, with the ground floor raised 2.29m above natural ground level to comply with the City's Interim Floodplain Management Policy. It is noted that no design excellence bonus for height applies to the development.
56. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the 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;
57. A copy of the applicant's written request is provided at Attachment Applicant's Written Request - Clause 4.6(3)(a) and (b)
58. The applicant seeks to justify the contravention of the height of buildings 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 states that the development satisfies the objectives of Clause 4.3 Height of buildings development standard. The objectives of Clause 4.3 and the applicant's justification are provided below.

Objectives of Clause 4.3 Height of buildings

 - (i) To ensure that the height of development is appropriate to the condition of the site and its context,

- (ii) To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,
 - (iii) To promote the sharing of views outside Central Sydney,
 - (iv) To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,
 - (ii) The proposed maximum building height is 30.87m.
 - (iii) The area of height of non-compliance relates to the roof form, which is further setback from the building line and has been designed with a hipped form. Two degrees of setback and pitched form reduce visual impact when viewed from the public domain, allowing the consistent 5 storey street wall form to be the prominent visual character.
 - (iv) The overall height of the development will be complementary to the scale of development to the east and west, and future development to the south (which range between six to eight storeys). Therefore, despite the height non-compliance, the development will be sympathetic to the range of building height in the immediate locality such that it will 'sit comfortably' in its future context.
 - (v) The closest heritage conservation area is approx. 45m from the site – and is separated by other approved buildings. The development is therefore unlikely to impact on heritage conservation areas to further to the north of the site given the distance and presence of other buildings between the site and conservation area. The area of non-compliance will therefore not impact the transition in density to these heritage items.
 - (vi) There are no identified significant views within the Ashmore Estate and the buildings are of comparable heights so in this instance the building setbacks are as important to ensure views are shared between buildings. The area of non-compliance is further setback from the building line, therefore view impact is minimised. Furthermore, the proposal will have no material impact on the desired distant CBD skyline view from the top of the hill at Sydney Park.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The majority areas of non-compliance relate to the articulated roof form, which comprise of rooftop plant and building services rather than additional GFA. The potential massing, built form and privacy impacts of this variance are addressed by the following:
 - (i) The area of building height non-compliance is primarily driven by the flooding constraints of the site, the PMF level for the lowest end of the site (southeastern corner) being 2.29m above natural ground level. Compliance with the FPLs ultimately contributed to roof from being above the Sydney LEP 2012 height of buildings control.
 - (ii) The rooftop-built form is setback 5.5m from the Kooka Walk boundary (east), 9.2m from the Macdonald Street boundary (south) and 8.6m from the Metters Street boundary (north). These significant

setbacks minimise the visual prominence of these elements when viewed from the immediate public domain area.

- (iii) The additional built form does not disrupt the desired transition of height across the precinct. Despite the non-compliance, the proposal will be viewed primarily as a five-storey built form along Metters Street, which provides a variety in height from the five-storey street wall height at 74 Macdonald Street to the seven-storey street wall height at Building C.
 - (iv) Similarly, along Macdonald Street, despite the non-compliance the proposal is able to provide a break in the consistency of building height from the five-storey street wall height at 74 Macdonald Street to the seven-storey street wall height at Block C. The proposal also responds to the future built form at Block F, which will be an eight-storey built form fronting Macdonald Street. Overall and despite the non-compliance, the proposal is able to achieve a transition in height and contribute to being a marker building to the Park, which is aligned with the DCP vision for the area.
 - (v) The design of the articulated roof form is considered “expressive and provides a neat skyline” as noted by the selection panel during the Competitive Design Alternative Process for the proposal. The roof form provides built form screening to unsightly plant rooms and equipment while naturally resolving the dwelling sections of the proposal with light materiality and a gentler slope. The design assists with the design quality of the proposal while acting as an effective method to resolve otherwise unsightly plant and service facilities.
 - (vi) The minor portion of GFA captured in the area of non-compliance (200mm within the south building’s southeastern dwelling) is a result of the site slope, a small area which does not contribute significantly to the overall GFA of the proposal. The proposal remains consistent with the approved GFAs under the Concept Stage 1 DA (with design excellence bonus). No additional privacy concerns will result from this 200mm exceedance.
 - (vii) Finally, the additional height is the direct result of responding to the design Panel’s recommendation and pursuit of the additional GFA allowable when a design alternatives process is undertaken. This is consistent with approved outcomes on Blocks A, B and C within the precinct, which have approved for additional storeys and height of building non-compliances as design excellence was deemed to be achieved.
- (ii) The services contained within the roof form are building services and structures that provide accessibility, cooling/heating systems and energy saving measures, which are all necessary to deliver contemporary amenity to the future residents of the proposal. These structures satisfy the objectives of the Environmental Planning and Assessment Act 1979, especially objectives (b) and (g) which relate to promoting ecologically sustainable development and good amenity in the built environment.
 - (iii) Silvester Fuller have assessed the overshadowing impact associated with the height of building control area of non-compliance.

- (iv) The proposal overall will result in a small amount of additional overshadowing within the streetscape to the west from 9am to 11am. After 11am the additional shadow falls within the footprint of the subject site with areas of reduced shadow. From 1pm to 3pm additional shadow falls within the public domain to the east. Minor additional shadow falls within McPherson Park from 2pm with some areas of reduced shadow.
- (v) Notwithstanding the minor areas of additional shadow, a minimum 68.15% of McPherson Park can still achieve direct solar access between 10am and 2pm at the winter solstice. Accordingly, the proposal is able to comply with DCP control and will not result in unreasonable overshadow impacts to McPherson Park.
- (vi) The overshadowing diagrams confirm that whilst the additional height does result in a small amount of additional overshadowing, the extent is indiscernible in the context of the wider Ashmore estate.
- (vii) The area of non-compliance on the roof form is minor considering the approved concept building envelope and the location of Block E. Being west of McPherson Park and within a cluster of other residential flat buildings of similar building height, views from McPherson Park and Sydney Park to the south will not be impacted because of the area of non-compliance.
- (viii) The area of non-compliance will not result in any detrimental view impacts to surrounding development when compared to a complying design. The non-compliant roof elements are related to building servicing features, which provide essential amenity to the residents and are necessary within the development. Therefore, the proposed height of building non-compliances is considered appropriate and can be supported on environmental planning grounds.

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

59. 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)?

60. In demonstrating that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, the applicant has specifically demonstrated that the development meets the objectives of Clause 4.3, notwithstanding non-compliance with the numerical standard.

61. A detailed discussion of the applicant's submission with regard to the objectives of the height of buildings development standard has been provided and satisfies the test under Clause 4.6(3)(a), in that compliance with the standard is both unreasonable and unnecessary, to the extent of the variation proposed.

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

62. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the Height of Buildings development standard.
63. The applicant has referenced the constraints of the site, the desired built form of the site and the minimal environmental impacts caused by the extent of the non-compliance to demonstrate that there are sufficient environmental planning grounds to justify contravening the height of buildings development standard.
64. The area of non-compliance is relatively minor as it is confined to the mansard roof form, and does not unreasonably add to the bulk and scale of the building when viewed from the public domain and surrounding buildings.
65. The ground floor has also been raised above the flood planning level to comply with the City's Interim Floodplain Management Policy which contributes to the overall height of the development.
66. The proposal will not create unacceptable impacts on the amenity of surrounding properties with regard to views, solar access and visual privacy.
67. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

Is the development in the public interest?

68. With regard to varying development standards, the public interest is deemed to be protected where a development meets the objectives of the zone and those of the development standard sought to be varied. As has been previously discussed, the development is consistent with the objectives of Clause 4.3 notwithstanding the variation to the numerical standard.
69. The objectives of the E1 - Local Centre zone are provided below.
- (a) To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
 - (b) To encourage investment in local commercial development that generates employment opportunities and economic growth.
 - (c) To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
 - (d) To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
 - (e) To maximise public transport patronage and encourage walking and cycling.

70. The proposed area of non-compliance with the height of building control enables the delivery of a mix of apartments which provide good amenity to the future residents of Block E.
71. The development will facilitate additional housing, which will have a positive impact as it will support the continued investment in other development blocks in the estate that are flagged to incorporate retail uses, and thereby facilitating further job creation in future.
72. The active non-residential land uses are to be located on the eastern side of McPherson Park, and not this site. The ground level will, however, be activated via direct dwelling entries off Kooka Walk to optimise casual surveillance of the public domain.
73. More broadly the development supports the intensification of activity around existing public transport and bicycle infrastructure and provide the requisite on-site facilities to support this. Accordingly, it is expected future residents, visitors and employees contained to the proposal will increasingly choose to travel by bike or public transport instead of a car.
74. The development as amended demonstrates that the extent of non-compliance with the height of buildings development standard is consistent with the objectives of Clause 4.3 and the E1 - Local Centre zone and is therefore in the public interest.

Conclusion

75. 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 2012 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 E1 - Local Centre zone.

Consistency with Concept Approval D/2015/966 (as amended)

76. Pursuant to Section 4.24(2) of the Environmental Planning and Assessment Act 1979, where a concept development application for a site remains in force, a determination of any further development application in respect to that site cannot be inconsistent with the concept development consent.
77. The concept approval relating to this proposal is D/2015/966/F. A Section 4.55(2) modification has been submitted to modify the concept approval to ensure consistency with the subject detailed design application. These modifications largely relate to height and building envelope and have been assessed as acceptable, as outlined in the assessment report for D/2015/966/G submitted concurrently with this application and as discussed above. The subject application is assessed on the basis that the modification application has been approved.
78. As outlined below, the detailed design proposal is consistent with the key conditions imposed on the concept development consent as modified, and the consent authority is satisfied that the development is substantially the same.

Condition 6 - Stage 2 is to be contained within approved envelope

79. The proposal is consistent with the approved plans in the concept approval (as amended) The changes to the envelope have been assessed in this report and as part of D/2015/966/G and are acceptable.

Condition 8 - Allocation of Floor Space

80. The Concept Approval distributed the maximum permissible base FSR of 1.75:1 through allocations of GFA to each of the development blocks. A maximum gross floor area of 14,066sqm is permissible for Block E. In accordance with Condition 7 'Floor Space Ratio', and the bonus provisions of Clause 6.21 of the Sydney LEP 2012, 10% bonus floor space may be awarded where the building exhibits design excellence, which increases the maximum gross floor area to 15,472.6sqm.
81. The development as amended proposes a gross floor area of 14,011sqm and therefore complies.

Condition 11 - Detailed Design of Buildings

82. The Concept Approval requires a number of design measures to be incorporated into the design of this Detailed Proposal. A summary of these design measures, and an assessment of compliance, is provided below:
- (a) The design of car park entries is to minimise the possibility of light beams from vehicle headlights shining into habitable rooms when exiting car parks.
- Assessment:** The 'up' ramp of the car park is setback 19.7m behind the boundary, and the driveway itself is directly opposite Coppersmith Lane. This minimises the possibility of light beams from vehicle headlights shining into habitable rooms of the terraces of Block D to be located on the opposite side of Metters Street.
- (b) Mailboxes to be located inside secure areas and mailboxes with non-master key locks are to be installed.
- Assessment:** Mailboxes are provided in secure areas in lobbies or designated mail rooms.
- (c) Ensure no openings to basement levels are located below the PMF level.
- Assessment:** The Flood Report submitted with the application indicates that all basement entry points are located at or above the PMF in both the interim scenario and following installation of the future trunk drainage being delivered under the planning agreement.
- (d) The design of the northern building on Block E is to incorporate on its western side boundary:
- (i) A nil setback at ground level;
 - (ii) A minimum setback of 3m on all levels where blank walls are proposed;
 - (iii) A minimum setback of 3m on Levels 1-3 where windows to non-habitable rooms are proposed;
 - (iv) A minimum setback of 6m on Levels 1-3 where windows to habitable rooms or balconies are proposed;
 - (v) A minimum setback of 4.5m on Levels 4-7 where windows to non-habitable rooms are proposed; and

- (vi) A minimum setback of 9m on Levels 4-7 where windows to habitable rooms or balconies are proposed.

The above criteria must be satisfied, unless it can be adequately demonstrated that Objective 3F-1 of the ADG has been met despite non-compliance with this criteria.

Assessment: The development provides a setback of 3.2m to the western side boundary at levels 1 to 6 where windows to habitable rooms and balconies are proposed, which is inconsistent with the above condition. As discussed in this report, the proposal has adequately demonstrated that it is consistent with Objective 3F-1 of the ADG despite the non-compliance.

Other submission requirements

- 83. A review of the application has been undertaken to confirm that the detailed design development proposal is in accordance with the Concept Approval in terms of the supporting documentation required to be submitted.

Competitive Design Panel Recommendations

- 84. The competitive design panel selected the scheme presented by Silvester Fuller as the winning entrant. In the opinion of the panel, this scheme was most capable of achieving design excellence, subject to the retention of, and improvement on, a number of key design aspects.
- 85. As detailed in the table below, the amended design responds to the key recommendations made by the panel and retains the design integrity and key aspects of the winning scheme.

Panel Recommendation Key Principles to be retained	DA Response
The vertical slot along the eastern elevation	The vertical slot has been retained as part of the amended proposal.
The general planning of the internal street.	Whilst the general planning of the internal street achieves the intent of the winning scheme, there is some discrepancy between the architectural drawings and landscaping drawings. A condition is recommended to ensure details are consistent.
The expression of building entries and address to the street	Whilst the width and double height expression of building entries has been retained, the City's Public Domain Unit has raised concern with the perceived potential appearance of privatisation of Kooka Walk. There are numerous entries with paving stones within the public domain which

Panel Recommendation Key Principles to be retained	DA Response
	should be consolidated. This is discussed in further detail below.
The circular communal facility on the ground floor	The circular communal facility has been retained.
Not fencing the communal open space area on the ground floor	The communal open space at ground floor is not fenced as per the selection panel recommendation.
Richness and thoughtfulness of landscape design	The greening strategy has been revised, replacing tree pods with lighting orbs. This is considered more appropriate
Building separation relationship with the western neighbour	As discussed further in this report, building separation to 7 Metters Street is to be addressed by privacy screening.
The general floorplate layout	The general floorplate layout is consistent with the winning scheme.
The amenity of common circulation areas and core arrangement	Common circulation areas have improved in the amended scheme.
The texture and colour of concrete	The amended proposal utilises concrete of similar colour and texture to the winning scheme. However, further specification is required in terms of the proposed materials finishes to ensure the finish building continues to exhibit design excellence.

Panel Recommendation Areas for further resolution	DA Response
Further consider incorporating additional areas at the eighth storey to the south, which has been identified as per Figure 5.144 Ashmore Height in Storey under the Sydney DCP. However, there are likely to be other opportunities for Silvester Fuller to explore. The transition in height to	The proposal includes an extension of the eighth storey to the southern wing (facing Macdonald Street), as advised by the selection panel. The amended scheme has maintained the 5 storey street wall height to ensure the transition in height to neighbouring blocks on both Metters and Macdonald Streets is not compromised.

Panel Recommendation	DA Response
<p>Areas for further resolution</p> <p>neighbouring blocks should not be compromised.</p>	
<p>Silvester Fuller is encouraged to explore opportunities to improve efficiency in unit planning. Silvester Fuller is encouraged to explore converting the rooftop split level apartments into single-level apartments. This is contextually appropriate and will have less external impact. Similarly, Silvester Fuller should consider converting the two-storey ground level apartments facing the courtyard into single-level apartments to increase efficiency in unit planning. The amenity of the apartments and common circulation areas should not be reduced by any reconfiguration.</p>	<p>The ground floor courtyard apartments and the rooftop apartments have been converted to single level apartments as per the recommendation.</p>
<p>3m ground floor landscape setback should be achieved. The selection panel saw the conversion of the ground floor units to retail use in the future as an interesting concept, however perhaps unrealistic. As such the ground floor apartments should be further setback to provide increased frontage landscaping, while retaining amenity for work from home arrangements. This will enable the scheme to be more consistent with Sydney DCP controls relating to ground floor apartments. Reconfiguration of basement levels should be explored to accommodate additional deep soil along the landscape setback areas.</p>	<p>The basement has been reconfigured to provide deep soil planting, and a 3m landscape setback has been provided at ground floor, albeit containing private open space and other structures. This is acceptable and is discussed in further detail below.</p>
<p>Silvester Fuller is encouraged to be more selective with the placement of the tree pods. The selection panel encourages exploration of alternative methods for greening on the building façade. Whereas the tree pods may be placed above the through-site link and around the community facility as a point of interest in the public domain.</p>	<p>The tree pods have been removed from the proposal given the issues with wind, vibration and weight of saturated soil and planting, as well as maintenance and structural integrity of the pods as they are fixed to the facade.</p> <p>Instead, lighting orbs are proposed with some tree plantings on the facade as an alternative greening strategy for the development.</p>

Panel Recommendation Areas for further resolution	DA Response
The selection panel considers the scheme requires further detail to improve increased sun shading by recessing the windows in the facade, with review of the grid facade depth and investigating an appropriate sun-shading and facade arrangement.	This has been addressed by the amended proposal. Retractable awnings have been provided for sun shading.
Further consideration should be given to the use of timber window framing which may pose a maintenance risk over time. Alternatives for material should be considered.	The timber framing has been replaced with metal framing to reduce ongoing maintenance requirements.
The possibility of higher ceilings and additional width should be investigated for the long ground floor internal street and entry lobby areas for better amenity and user interface.	Double height ceilings are provided to all building entries. It is not possible to provide increased ceiling heights to the internal street now that single level apartments have been introduced to the internal courtyard facing ground levels.
The roof form and design are considered expressive and provide a neat skyline. Consideration should be given to re-calibrating the roof form to have a gentler slope, while keeping the mansard form and conceal the plant within. The ceiling height of the uppermost habitable level should be contained within the maximum building height.	The roof form has been retained and refined with a slope that optimises solar access requirements and plant space. The ceiling height of all rooftop homes sits below the LEP maximum building height of 27m, with the exception of a small intrusion of 150mm to the corner of the southeastern rooftop home. The ceiling of all rooftop homes sits well within the Stage 1 DA envelope.
Car parking appears to be over the maximum permitted. A reduction in car parking below the through site link should be considered to provide an opportunity for additional deep soil landscaping.	The proposal as been amended to reduce the size of the basement to provide additional deep soil. Car parking rates now comply with LEP requirements, subject to a visitor car space becoming a residential car space.
Reflectivity from the façade should be minimised. Refer to Section 3.2.7 of SDCP 2012.	An appropriate condition is recommended to ensure reflectivity complies with DCP requirements.
Driveway should be reconfigured to combine waste collection and car access, minimising crossover area on footpath. Consideration should be given to resolve the clearance issues for cars and collection	The proposal has been revised to combine waste collection and vehicular access via a single driveway entry.

Panel Recommendation	DA Response
Areas for further resolution	
vehicles by terracing the shadiest north-western portion of the communal open space area.	

Changes to upper level setbacks and height in storeys

Upper level setbacks

- 86. The original 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.
- 87. 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 48: Metters Street streetscape, and view of subject site looking east



Figure 49: Macdonald Street streetscape looking west

88. The proposal as amended, has a street frontage height of 5 storeys to both Metters and Macdonald Streets, which is consistent with the Concept Approval and Section 5.5.8.1 'Height of buildings' of the Sydney DCP 2012. 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.
89. The variation to the southern upper level setback aligns with the neighbouring residential flat building at 74 Macdonald Street, which has been built with a setback of 3.6m above the 5 storey street wall height. See floor plan at level 6 below. The proposed setback also allows for additional depth to the upper level apartments, to achieve ADG compliant widths to habitable spaces.

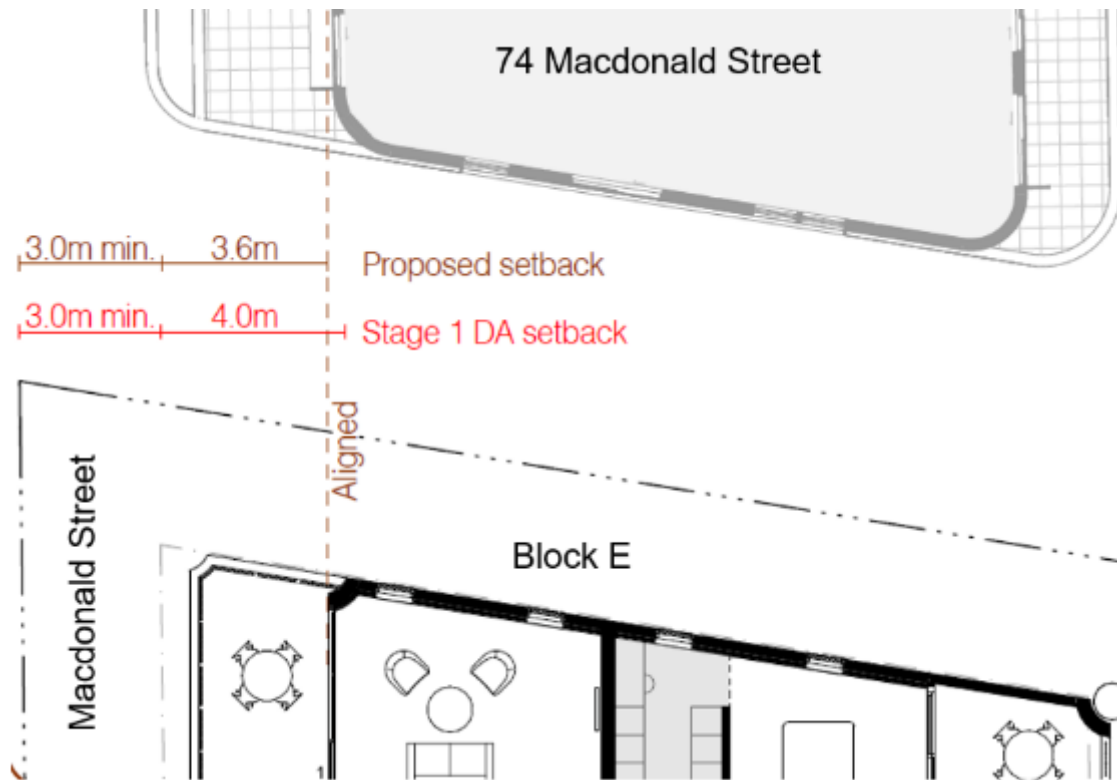


Figure 50: Proposed floor plan - Level 6, depicting aligned upper level setback with 74 Macdonald Street

90. The proposed variation to the upper level setback will not result in any significantly adverse overshadowing impacts, as discussed in this report, and is not inconsistent with the appearance of the Macdonald Street streetscape.

Height in storeys

91. The detailed development application proposes an additional storey to the southern wing of the second residential flat building, totalling 8 storeys. This is in response to the Design Competition selection panel comment as follows:

"Further consider incorporating additional areas at the eighth storey to the south, which has been identified as per Figure 5.144 Ashmore Height in Storey under the Sydney DCP. However, there are likely to be other opportunities for Silvester Fuller to explore. The transition in height to neighbouring blocks should not be compromised."

92. An excerpt of Figure 5.144, as it relates to the site and surrounding context, is provided below.



Figure 51: Figure 5.144 of Section 5.5.8.1 of the Sydney DCP 2012. Block E is outlined by red dashed lines and the area identified as potentially accommodating an additional storey is outlined in by a black circle.

93. The eighth storey is setback 6.6m to Macdonald Street at the southern wing, as illustrated in the section below.



Figure 52: Figure 5.144 of Section 5.5.8.1 of the Sydney DCP 2012. Block E is outlined by red dashed lines and the area identified as potentially accommodating an additional storey is outlined in by a black circle.

94. The additional storey is supported as:

- (a) The residential flat building at this elevation has a 5 storey street wall height to Macdonald Street, as required by the concept approval. By positioning the lowest heights along this frontage, overshadowing impacts to existing and future development to the south of the site is minimised.
- (b) Level 7 (the eighth storey) is setback 9.6m from the boundary and 6.6m from the building line, meaning it is not readily apparent in the streetscape or when viewed from adjoining boundaries.
- (c) The upper floor is clad in a light, neutral shade of concrete with the roof comprising a powdercoat finish enabling the top floor and the mansard roof to be viewed as independent, recessive elements of the building.
- (d) The eighth storey is below the permitted LEP Height of buildings control, which is 27 metres, except for a minor portion of 150mm to the corner of the south-eastern rooftop home that sits above.
- (e) The gross floor area at level 7 does not result in a non-compliance with the FSR control as the proposal complies with the maximum GFA.
- (f) The additional levels do not result in any significantly adverse amenity or overshadowing impacts, as discussed in further detail in this report.

95. The proposal as currently designed does not generate any substantial or significantly adverse environmental impact compared to a 7 storey building envelope as demonstrated elsewhere in this report. The location of the additional storey is appropriate and is supported.

Overshadowing

96. 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. As discussed elsewhere in this report, there is a variation to upper level setback above the 5 storey street wall height to Macdonald Street, and the extension of the eighth storey to the southern wing of the residential flat building.
97. Section 4.2.1.3 of the Sydney DCP 2012 requires development applications to demonstrate the shadow impact on neighbouring development between 9:00am and 3:00pm at the winter solstice. New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours' direct sunlight to habitable rooms and 50% of the private open space.
98. The proposal is accompanied by a shadow analysis prepared in accordance with the control. This is in order to assess the impact of the height increase and extension of the approved building envelopes beyond that approved under D/2015/966/C. The solar impact analysis is discussed within the assessment of D/2015/966/G being reported to CSPC concurrently.
99. The applicant has submitted shadow diagrams in order to assess the impact of the proposal on future development at Block G within the site to the direct south; 5 Hadfields Street to the south-west of Block E and McPherson Park to the east.



Figure 53: Site Plan depicting location of Blocks E and G, and 5 Hadfields Street

100. For the purposes of this assessment, the applicant has used the design competition winning scheme layout for Block G in order to determine overshadowing impact. The solar analysis is also included at Attachment C.

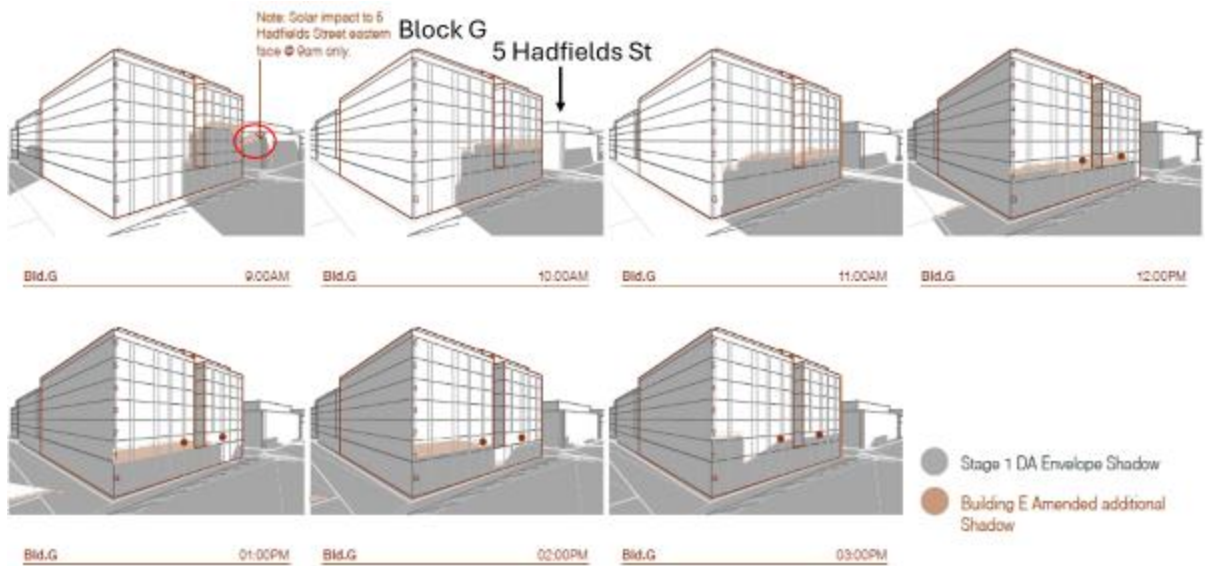


Figure 54: Solar analysis demonstrating impacts to Building G and 5 Hadfields Street



Figure 55: Solar analysis demonstrating impacts to McPherson Park

101. The increase in height and changes to upper level setbacks will still allow for Block G to achieve solar access in accordance with ADG requirements at the winter solstice. The proposal 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.
102. The proposal will not adversely overshadow McPherson Park in accordance with Section 5.5.4.2 of the Sydney DCP 2012, allowing for at least 60% solar access at the winter solstice. The proposal will not compromise the amenity of future residents within Block E and to surrounding buildings.

Building Separation and Privacy

103. 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. Further south-west along the site boundary, is the eastern side elevation of 74 Macdonald Street, a 5 to 7 storey residential flat building.
104. 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.
105. 74 Macdonald Street is 7 storeys at its eastern boundary, containing windows to habitable and non-habitable rooms facing Block E, with a separation distance of 6.125m at all levels to the boundary. At level 5, balconies are located at the building's north-east and south-east corners.



Figure 56: Proposed level 6 floor plan depicting separation distances to 74 Macdonald Street

106. As illustrated on the proposed level 6 floor plan, overall, there is a separation distance of 9.3m between the two buildings at this interface, and majority of the windows are offset. Where windows are directly in line with each other, Block E has provided privacy fins. Additionally, the balconies of 74 Macdonald Street are provided with some levels of privacy via the solid balustrades that wrap around each corner.
107. 7 Metters Street is 7 storeys at the side interface with Block E, with bedroom windows and balconies to the western boundary of Block E. The windows have externally angled louvre screens that appear to be operable.
108. The subject site does not have any balconies directly facing 7 Metters Street. Rather, the western elevation contains bedroom, living room and study room windows.
109. Block E proposes a setback of at least 3.15m from levels 2 to 6 to 7 Metters Street, with a total separation of 6.8m between the two buildings.



Figure 57: Proposed floor plan at Level 6 of Block E depicting separation to side boundary with 7 Metters Street

110. The majority of windows to the western elevation of Block E have been offset, and all are provided with privacy fins, which is acceptable.

111. In addition to the above, there is the potential for overlooking from apartments within the site, particularly between the living rooms of southern wing and the balconies in the middle bay of the development as depicted below. Privacy has been addressed via the inclusion of angled fins.

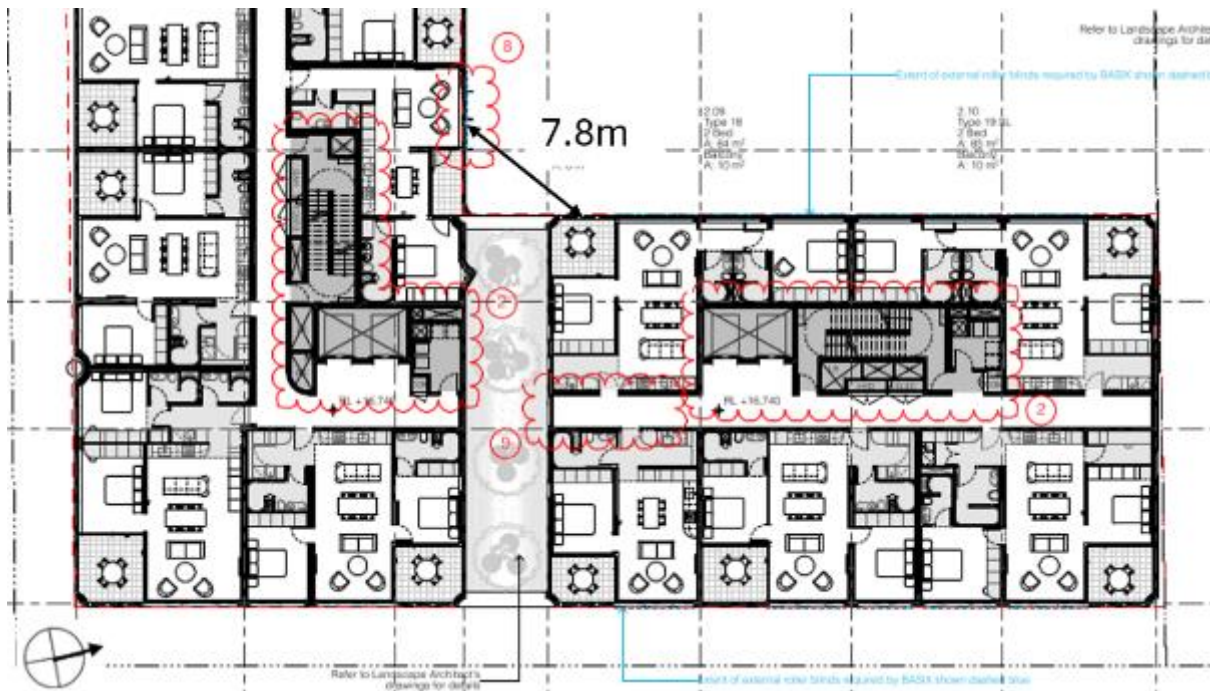


Figure 58: Proposed floor plan at Level 2 of Block E (similar at all levels) depicting separation between apartments within the development

112. Conditions are recommended requiring the submission of details relating to the privacy measures to ensure these elements offer appropriate levels of privacy for future occupants and surrounding development.

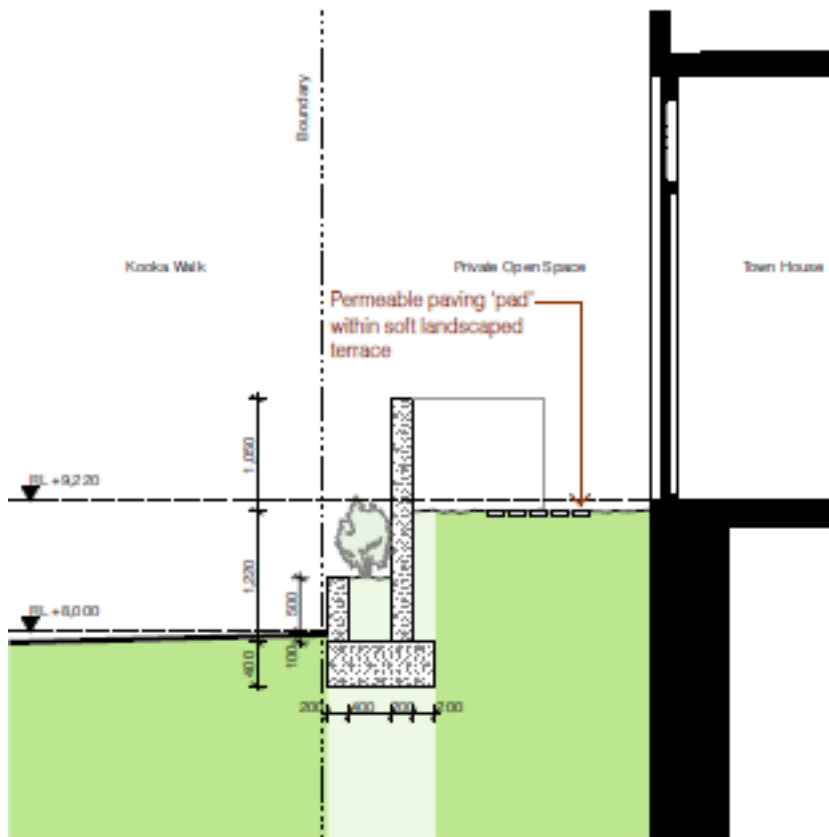
Public Domain Interface and Landscaping

Landscape Setback

113. Section 5.5.8.5 of the Sydney DCP 2012 requires the provision of 3m landscape setbacks to the ground floor to Macdonald and Metters Streets as well as Kooka Walk. The setback should comprise deep soil planting areas, with private open space located outside of this setback.
114. The 3m setback is also replicated in the original Concept Approval, although not specifically referenced as a landscape setback.
115. The application proposes a 3m setback to the building line at all three elevations, containing staggered landscaped areas that also comprise private open space and walls, and have been excluded from deep soil calculations.
116. The double tiered planting has been designed as a privacy buffer to the apartments at ground level, with permeable pavers proposed and minimal footings.



Figure 59: Proposed ground floor plan with 3m setback highlighted



Section A

Figure 60: Proposed section depicting landscaped setback to Kooka Walk

117. Although not strictly compliant with the DCP, it is noted that other developments fronting Macdonald Street and Metters Street vary in terms of design (i.e. either have tiered structures or have landscaping) as illustrated below.



Figure 61: Various setbacks within the Macdonald and Metters Street streetscapes

118. Despite the non-compliance, the proposed setbacks achieve the intent of the DCP control by providing a landscaped buffer of similar nature to neighbouring development, thereby contributing positively to the strong landscaped character of Ashmore the streetscape.

Kooka Walk Interface

119. The ground conditions including the relationship between public and private domains, landscaping and fencing are generally consistent with Section 5.5.8.4 'Building form and design' of the Sydney DCP 2012.
120. However, the City's Public Domain Unit have raised concerns with having numerous entries with paving stones directly onto Kooka Walk, as this gives the appearance of privatising public land.

121. Conditions are recommended to ensure the individual entries from apartments directly onto the future Kooka Walk are consolidated. Minimising these entries will also allow for the provision of continuous deep soil planting along Kooka Walk, as intended by the DCP, which is a positive outcome. See below for an indicative plan for alternative access.



Figure 62: Proposed indicative plan of consolidated/relocated apartment entries facing Kooka Walk

Communal open space

122. The design criteria at Objective 3D-1 of the ADG requires communal open space that has a minimum area equal to 25% of the site area. The ADG defines communal open space as:

"outdoor space located within the site at ground level or on a structure that is within common ownership and for the recreational use of residents of the development. Communal open space may be accessible to residents only, or to the public."

123. The applicant and Council's Landscape Officer have calculated the following communal open space areas:
- (a) Applicant's calculation: 1,106sqm (23.5%) including private and communal and public communal open space. This comprises the level 7 rooftop terrace, indoor community pavilion and the south-western landscape setback the runs along the pedestrian link at 74 Macdonald Street. The applicant has excluded the east-west pedestrian link from site area, therefore claiming to provide 25% communal open space.
 - (b) Council's Landscape Officer calculation: 831sqm or 17.8%, excluding the indoor community pavilion and south-western landscape setback. This is because the outdoor pavilion is not open to the sky, and the southern western landscape setback does not meet the minimum dimension of 3m as per Section 4.2.3.6 of the Sydney DCP 2012. The 17.8% is based on the entire site area of Block E, including the pedestrian link. When the pedestrian link is excluded from the site area, 18.75% communal open space is provided.
124. Council's Landscape Officer notes a shortfall of 340sqm and suggests the provision of communal open space at Level 1 where an inaccessible green roof is proposed, or on another roof terrace on the southern building wing at level 7. However, both options would result in the deletion of an apartment.
125. Notwithstanding the shortfall, the proposed communal open space area and arrangement is considered to be satisfactory as:
- (a) The ADG definition of communal open space includes areas accessible to the public (the applicant has relied on this definition).

- (b) A variety of facilities are provided within the central communal open space including seating, lawn areas and barbeque/kitchen facilities within the pavilion. Level 7 contains barbeque facilities, communal vegetable gardens and a pergola. At level 7 it is recommended that additional planters be provided at the western boundary to provide a privacy buffer to 7 Metters Street.
 - (c) It is also recommended that the indoor community pavilion structure reinstate the full extensive green roof that was proposed as part of the original DA submission.
 - (d) The reduced communal open space at ground floor is largely the result of reconfiguring the driveway and loading dock entries to Metters Street to accommodate a single entry for a Council garbage truck.
126. Having regard to the provision of substantial public open space within the wider development, this inconsistency is considered acceptable in this instance and is supported.

Private open space

127. Objective 4E-1 requires all apartments to have appropriately sized private open space and balconies to enhance residential amenity as follows:
- (a) One bed apartments are to have a minimum balcony area of 8sqm with a minimum depth of 2m.
 - (b) Two bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m.
 - (c) Three bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.
 - (d) Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15sqm and a minimum depth of 3m.
128. The majority of apartments within the development comply with the minimum areas and dimensions. However, 44 (31%) do not meet minimum requirements in terms of size and depth.
129. At ground floor, 4 x 3 bedroom apartments are provided with approximately 14sqm of private open space at ground floor when 15sqm is required.
130. At upper levels, 1 bedroom apartments have 6sqm balconies, and depths ranging between 1.1m to 1.7m; and 2 bedroom apartments have balconies ranging between 8sqm and 9.5sqm with depths of 1.8m to 2.9m.
131. Notwithstanding, all apartments comply with minimum size requirements, and the open spaces benefit from good outlook, and sufficient separation from adjoining properties. As such this minor non-compliance is supported.

Materials, colours and finishes

132. The Design Competition selection panel requested that the colour and texture of the concrete be retained. The proposal specifies coloured concrete, but it is not clear if it will be stained or painted. Similarly, other materials throughout the development are not clearly specified.

133. While the design of the proposal is supported overall, further specification is required in terms of the proposed materials finishes to ensure the finish building continues to exhibit design excellence.
134. In light of this, a condition of consent is recommended requiring a comprehensive schedule of materials, finishes and colours, and an updated materials sample board to be submitted for Director approval.
135. In addition, a further condition of consent is recommended, requiring the architectural drawings to be updated to include 1:20 drawings illustrating typical details of the fencing, privacy screens and balustrades.
136. The amended drawings, schedule of materials and finishes, and materials sample board are to be submitted to and approved by Council's Director City Planning, Development & Transport prior to the consent becoming operational.

Staged construction

137. The proposal includes a request for the wording of the conditions to account for the following staging plan in relation to the release of construction certificates:
 - (a) Stage 1: Substructure and basement level 1 slab and fit-out;
 - (b) Stage 2: Structure; and
 - (c) Stage 3: Facade and fit-out.
138. The recommended conditions of consent are staged accordingly.

Staged Approval

139. The proposal is for the construction of the detailed design development comprising 2x residential flat buildings and at east-west pedestrian link / through-site link.
140. Demolition, excavation, remediation, installation of shoring walls, retention systems, anchors and associated piles, as well as construction of foundations, basement slab and basement walls do not form part of the proposal. These works are the subject of development application D/2023/850, which, at the time of writing this report, is under assessment.
141. The planning agreement for the greater site comprises the following works that relate to Block E:
 - (a) removal of temporary turning head and construction of permanent works to Foundry Street;
 - (b) dedication and embellishment of 2,083sqm of land for Kooka Walk (central) between Stovemaker Lane and Macdonald Street, including construction of recycled water main below the Kooka Walk alignment;
 - (c) creation of an easement and embellishment of 272sqm for Pedestrian Link 2 between Building E;

- (d) dedication and embellishment of 3,527sqm of land for Macdonald Street between western boundary of the site and Mitchell Road, including the construction of recycled water main below the Macdonald Street alignment at Kooka Walk;
 - (e) construction of temporary footway on Macdonald Street on the northern edge of Buildings F and G;
 - (f) construction of new signalised intersection at Mitchell Road and Macdonald Street, including demolition of existing roundabout (these works are offsite);
 - (g) dedication and embellishment of 7,446sqm for McPherson Park;
 - (h) construction of Public Art within McPherson Park; and
 - (i) construction of trunk drainage below the alignment of Kooka Walk (central) between Stovemaker Lane and MacDonald Street. (Option Y).
142. All of the infrastructure for Phase 4 is required to be delivered prior to the first Occupation Certificate for Block E.
143. With the exception of part (c), which is the east-west pedestrian link proposed as part of this detailed design, the public domain works are subject to a separate development application D/2023/962, which, at the time of writing this report, is also under assessment.
144. The construction of Block E relies upon the early works proposal and public domain works being determined (particularly extension of Macdonald and Metters Streets and the new road Kooka Walk). Therefore, a deferred commencement condition is recommended to ensure that these development applications are determined before this development consent for Block E can become operational.

Consultation

Internal Referrals

145. The application was discussed with Council's;
- (a) Building Services Team
 - (b) Environmental Health Team
 - (c) Urban Design
 - (d) Landscape Officer
 - (e) Planning Agreements
 - (f) Public Art
 - (g) Public Domain Unit
 - (h) Safe City Team;
 - (i) Land Surveyors

- (j) Sustainability Officer
- (k) Transport and Access Unit
- (l) Tree Management Team and
- (m) Waste Management Team

146. The above advised that the proposal, as amended, generally addresses the matters raised throughout the assessment and is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Sydney Airport

- 147. 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.
- 148. 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.
- 149. 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).
- 150. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 17 October 2023.

Sydney Water

- 151. The application was referred to Sydney Water for comment.
- 152. Sydney Water advised in correspondence dated 19 October 2023 and 5 June 2024 that the architectural drawings had to include Sydney Water assets, including the critical sewer main and stormwater main in relation to the building.
- 153. The amended plans were forwarded to Sydney Water on 9 July 2024. No response was received at the conclusion of this assessment.

Advertising and Notification

- 154. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised concurrently with the concept modification D/2015/966/G 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.
- 155. A total of 3,331 properties were notified and 20 submissions were received.
- 156. 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.
- The current height levels are appropriate for the area. Increasing height to fit in more apartments is not beneficial for the community.
- The application is over the LEP height and Stage 1 concept DA approval height.
- The mansard roof amplifies the bulk of the building and is unnecessary.
- The plant level is particularly large and bulky and its architectural resolution

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 is to be amended to reflect the detailed design proposal, ensuring consistency between the two applications.

(b) Street wall 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 and Metters Street is five storeys with upper levels setback from the street.
- The character of the neighbourhood has not informed the design response.

- The design excellence panel noted in its awarding of the preferred design that: “The transition in height to neighbouring blocks should not be compromised”. This aspect of the design recommendations has been completely ignored in the proposed development.

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) Density

- Additional height is proposed simply to maximise FSR.
- In trying to maximise FSR on the site, the height provisions have been substantially breached. FSR is an upper limit, and should not be the driver of design outcomes.

Response: The proposal has been revised and FSR is now under that permitted by the Concept Approval. As discussed, the height non-compliance is considered acceptable.

(d) Overshadowing

- Reduced sunlight to surrounding streets.
- The SEE does not correctly address the obvious risk and eventual overshadowing of the additional storeys to be added to the building envelope.

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.

(e) Privacy and building separation

- Building separation to 74 Macdonald Street and 7 Metters Street is a concern.
- The privacy of Casa I is greatly impacted by the proposed usage of the rooftop of 155 Mitchell Street. A landscape buffer/setback should be introduced to alleviate privacy concerns.
- The increased height to the west elevation results in direct overlooking onto the balconies and living areas of 7 Metters Street.
- The increase to 7 storeys at the western facade will result in reduced privacy, increased overshadowing and increased bulk and scale.

Response: Refer to the detailed discussion provided in relation to visual privacy and building separation. Adequate separation is provided to limit privacy impacts. Where required, privacy measures are to be installed, particularly at Level 7 rooftop.

(f) Landscaping

- Question viability of suspended trees, particularly those over communal lanes, with regard to wind, maintenance and appearance. A simpler design approach would be more suitable.
- There should be 3m deep soil to Macdonald Street.
- Areas of additional planting and reduced hard paved areas would help to shroud the building at ground level whilst still offering resident outdoor amenity.

Response: The proposal has revised its greening strategy and the tree pods have been replaced with lighting orbs. This is considered more appropriate in terms of wind impact and maintenance compared to the original design.

As discussed within this report, although a 3m deep soil setback has not been provided to Macdonald Street, the ground floor conditions are acceptable, particularly as it is of similar nature to other developments in the streetscape.

Additional planting, particularly along the existing north-south pedestrian link to 74 Macdonald Street, and above the driveway of the development, has been provided.

(g) Traffic Impacts

- Additional residents will put further strain on local amenities, public services 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.
- City of Sydney will introduce timed parking, not give out parking permits and will end up fining residents.

Response: Strategic and urban design studies have identified this part of the Ashmore Estate as being capable of accommodating additional residential and mixed use development, based on its location and proximity to local infrastructure, amongst other things. Additionally, the Concept Approval anticipated residential development across the nine blocks of varying scale within this precinct.

The proposed car parking rates comply with LEP and DCP requirements, subject to conditions. Parking permit eligibility is a separate matter to the assessment process.

The Traffic Impact Assessment submitted with the application demonstrates the proposed development will not give rise to an adverse increase in traffic and congestion in the locality.

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.

Parking permits can only be issued in accordance with Council's policy.

(h) Construction Impacts

- The Developer has already started works, using construction machines that generate extremely high-pitched noise without any soundproofing.
- I have already witnessed heavy construction vehicles driving carelessly towards and out of the Site, causing serious traffic hazards to the residents, pedestrians and students. This will only get worse as the construction work continues.
- Despite the serious contamination under and around the Site, the construction work has progressed without any proper management of hazardous materials.
- There is potential damage that could be done if construction work were carried out incorrectly or with insufficient safety measures.

Response: Any non-compliance with development consents relating to noise, construction safety and improper management of hazardous materials is to be reported to Council for further investigation.

Appropriate construction management conditions are recommended to manage noise, waste, dust and traffic for Block E.

Conditions relating to dilapidation reports being carried out for surrounding affected properties, as well as bank guarantees relating to public domain damage have been included in the proposed conditions of consent.

(i) 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.

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.

(j) Adaptable housing and unit types

- I urge the council to ensure that more than 10 per cent of the dwellings in this proposed development are accessible, especially given recent public works to make Erskineville Station wheelchair accessible.
- The developers should provide high quality, spacious multi bedroom apartments targeted at supporting families live in the Erskineville area.

Response: The development provides 22 adaptable dwellings, which equals 15% of the total number of dwellings proposed. With regard to 3 bedroom dwellings, 18 are proposed, equalling 12.7% of the total development. The provision of adaptable and 3 bedroom dwellings complies with DCP requirements.

(k) 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 require affordable housing to be provided as part of the development, however an affordable housing cash contribution would otherwise apply.

(l) Property values

- Reduction in property values.
- In high density areas, property values are negatively affected despite proximity to the city.
- When we purchased property here, we were assured no buildings would be higher than those already built.

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.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

157. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.

158. No credits have been applied, as the site is currently vacant.

159. A contribution of \$2,804,446.70 applies to 141 dwellings.

160. The contribution may be offset in accordance with the requirements and obligations identified in the Planning Agreement.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

161. The site is located within the Residual Lands affordable housing contribution area under Clause 7.13 of the SLEP 2012.

162. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The Act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:
- (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
 - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
 - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
 - (d) the regulations provide for this section to apply to the application.
163. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to consideration of the following:
- (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
 - (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and
 - (c) the condition requires a reasonable dedication or contribution, having regard to the following -
 - (i) the extent of the need in the area for affordable housing,
 - (ii) the scale of the proposed development,
 - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.
164. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.
165. As the proposed development includes additional floor space for residential accommodation, a contribution is required at a rate of \$11,176.22 per square metre of total residential floor area 19,810sqm totalling \$6,642,028.87. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.
166. A condition of consent is recommended requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

Housing and Productivity Contribution

167. The development is not subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023, as the development application was lodged prior to its introduction on 1 October 2023.

Relevant Legislation

168. Environmental Planning and Assessment Act, 1979.
169. Water Management Act, 2000.

Conclusion

170. The application proposes construction of two, part 5, 7 and 8 storey residential flat buildings with basement car parking. The buildings are to contain 141 apartments, 111 car spaces, with associated landscaping including green roofs, facade and rooftop greening. An east-west pedestrian link, forming part of the approved and executed Voluntary Planning Agreement, will also be completed.
171. The development exceeds the maximum 27m building height development standard by 3.87m, in order to accommodate compliant flood planning levels and a mansard roof accommodating plant and services. A request to vary Clause 4.3 'Height of buildings' development standard has been received in accordance with Clause 4.6 of the Sydney LEP 2012. The statement demonstrates that compliance with the standard is unreasonable and unnecessary, and 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 standard and the proposed departure to building height is supported in this instance.
172. Subject to conditions, the proposal is generally consistent with the applicable planning provisions including the Housing SEPP 2021, Sydney LEP 2012 and Sydney DCP 2012. Proposed non-compliances have been assessed as having merit in this case and are addressed in the report. Conditions are recommended to address non-compliances where appropriate.
173. The proposal represents design excellence, with a high standard of architectural design, materials and detailing and a built form that is consistent with the existing and future desired character of the area.
174. The proposal is Integrated Development under the Water Management Act 2000, requiring approval from WaterNSW. General Terms of Approval were received from WaterNSW on 17 November 2023.

175. This is a detailed design development application following the approval of a concept development application (D/2015/966, as amended). There are also two development applications relating to Block E for early works (D/2023/850) and public domain works (D/2023/962) that this development relies upon before construction can commence. A deferred commencement condition is recommended to ensure that these development applications are determined before this development consent can become operational.
176. The development is in the public interest and is recommended for deferred commencement approval subject to the conditions in Attachment A.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

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