

Attachment A

Independent Assessment Report

Section 4.55(2) Application: 338 Botany Road, Alexandria - D/2019/87/C

File No.: D/2019/87/C

Summary

Date of Submission:	15 April 2024
Amended plans/ Additional Information:	Amended plans received 25 September 2024
Applicant/ Developer:	St George Community Housing Portfolio Limited
Architect:	DKO
Owner:	The Council of the City of Sydney
Planning Consultant:	Keylan
Design Advisory Panel:	4 May 2024 and 13 June 2024 (Detailed DA - D/2024/273)
Cost of Works:	\$72, 339,256
Zoning:	E3 (Productivity Support) - Affordable housing is permissible with consent in the zone by virtue of Clause 7.13A which operates to allow affordable housing in a business area
Proposal Summary:	<p>This section 4.55(2) application seeks to modify the concept approval for a mixed use building envelope incorporating commercial uses and residential uses for the purposes of affordable housing at 338 Botany Road, Alexandria.</p> <p>Specifically, the modification seeks to provide for changes to the approved building envelope in line with the detailed design following submission of a separate but concurrent detailed development application (D/2024/273).</p> <p>The detailed DA provides for the development of the site for a new 10 storey mixed use development comprising 111 dwellings for affordable housing, ground floor retail/commercial, ground floor car and bicycle parking, waste room, services, signage, landscaping, civil works and remediation</p>

The proposed modifications to Concept Approval D/2019/87 include:

- departure to the building envelope on the western elevation (a) at ground level to facilitate disabled car parking spaces and loading dock, reducing the western setback at ground level from 4.5m to 0m and (b) at Levels 8 and 9 partly reducing the setback from 9m to 7.967m.,
- alterations to the building height, with a maximum exceedance beyond the building envelope height of 33m by 3.2m resulting in a maximum height of 36.2m,
- increase in the permissible FSR to allow for a maximum FSR of 4.09:1 where 4:1 currently applies due to the inclusion of the area of the proposed east facing balconies given the increased wall height proposed to provide for noise attenuation, and
- changes to facilitate blade wall encroachments within footpath areas above ground level.

Both the concept modification and the detailed design development application (D/2024/273) are referred to the CSPC as the detailed DA has a cost of works of more than \$50 million.

The applications were notified concurrently between 4 May 2024 November and 13 June 2024. The amended plans received on 25 September 2024 were not re-notified as the proposed changes resulted in less impact compared to the original application. No submissions were received for either the concept modification or detailed design development application.

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

The detailed design application will be considered concurrently by the CSPC under D/2024/273, demonstrating that a generally compliant scheme can be provided within the amended envelope. Consequently, the amendment is recommended for approval.

The subject application has been independently assessed by Helena Miller, Director of MG Planning Pty Ltd on behalf of Council as Council is the owner of the land.

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

- Development Controls:**
- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
 - (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
 - (iii) SEPP (Resilience and Hazards) 2021
 - (iv) SEPP (Housing) 2021
 - (v) SEPP (Sustainable Buildings) 2022
 - (vi) SEPP (Transport and Infrastructure) 2021

- Attachments:**
- B. Recommended Conditions of Consent
 - C. Selected Drawings

Recommendation

It is resolved that consent be granted to Section 4.55(2) Application Number D/2019/87/C subject to the amendment of the following conditions (with modifications shown in bold italics (additions) and strikethrough (deletions) as follows:

(2) APPROVED STAGE 1 DEVELOPMENT

(a) Development must be in accordance with Development Application No. D/2019/87 dated 12 December 2017 and the following drawings prepared by DKO Architecture (NSW) Pty Ltd:

Drawing Number	Drawing Name	Date
Stage 1 Envelope Envelope Plan	Project Number 11942 Page 37 DA100 C	16.10.2019 24/09/2024
Stage 1 Envelope Envelope Plan	Project Number 11942 Page 38 DA101 B	16.10.2019 24/09/2024
Envelope Plan - Overall	Project Number 11942 DA102 B	24/09/2024
Stage 1 Envelope Stage 1 Envelope Elevations	Project Number 11942 Page 39 DA200 B	16.10.2019 24/09/2024
Stage 1 Envelope Stage 1 Envelope Elevations	Project Number 11942 Page 40 DA201 B	16.10.2019 24/09/2024

as amended by plans other conditions of this consent.

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

Condition amended via Section 4.55(2) on 14 November 2024

(8) DETAILED DESIGN OF BUILDINGS

The competitive design process brief and subsequent detailed design development application must incorporate the following requirements:

- a) Minimise overshadowing on adjoining properties in accordance with ADG objective 3B-2.
- ~~b) Ensure no overshadowing of approved residential apartments at 499 and 501 – 509 Botany Road, Alexandria~~
- c) Provide a compliant amount of communal open space in accordance with the ADG that receives adequate solar in accordance with the ADG.
- d) If roof top communal open space is proposed it must provide equitable access, be designed to prevent overlooking and noise impacts ~~and all structures (including but not limited to plant and lift overruns) must be within the 33m height limit.~~
- e) Acoustic and ventilation treatments to the east and northern frontages in accordance with the requirements of the Sydney DCP and ADG.
- f) Waste management facilities in accordance with Section 4.2.6 of the Sydney DCP 2012.
- g) An awning is to be provided over any building entries on Botany Road in accordance with Section 3.2.4 of the Sydney DCP 2012.

Condition amended via Section 4.55(2) on 14 November 2024

(13) FLOOR SPACE RATIO

The Floor Space Ratio for all detailed development applications on the site must not exceed 4.09:1 calculated in accordance with Clauses 4.4 and 6.14 of the Sydney Local Environmental Plan 2012.

~~Notwithstanding (a) above, the proposal may be eligible for up to 10% additional floor space pursuant to the provisions of Clause 6.21(7) of the Sydney Local Environmental Plan 2012 if the consent authority is satisfied that the resulting detailed design development application exhibits design excellence and is the result of a competitive design process in accordance with the requirements of the Sydney Local Environmental Plan 2012.~~

Precise calculations and details of the distribution of floor space must be provided with any subsequent detailed design development application or applications.

Condition amended via Section 4.55(2) on 14 November 2024

(14) BUILDING HEIGHT

The maximum height of the buildings must not exceed ~~33~~ **36.2** metres in accordance with the Sydney LEP 2012 **as provided for under D/2024/273**. No structures are to exceed the ~~33~~ **36.2** metres height limit.

Condition amended via Section 4.55(2) on 14 November 2024

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development as modified is substantially the same as was originally approved and is consistent with the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979.
- (B) The development has been considered against the reasons given by the Central Sydney Planning Committee for the grant of consent that is to be modified, and the proposal is consistent and acceptable, as per Section 4.55(3) of the Environmental Planning and Assessment Act, 1979.
- (C) The proposed modifications ensure that the detailed design development application is consistent with the concept approval to satisfy Section 4.24 of the Environmental Planning and Assessment Act, 1979.
- (D) The changes to the building envelope are in keeping with the desired future character of the area and will not adversely impact the amenity of the surrounding area. These variations are reasonable and justified with regard to the detailed design development application D/2024/273.
- (E) The proposed building envelope is capable of accommodating a future building design which is capable of exhibiting design excellence in accordance with Clause 6.21C of the Sydney Local Environmental Plan 2012.

Background

The Site and Surrounding Development

1. The subject site is located at 338 Botany Road, Alexandria and is legally described as Lot 13 in the proposed plan of subdivision of Lot 101 in Deposited Plan 569709.
2. The site is located within the Green Square urban renewal precinct which is currently being transformed from light industrial uses to a mixed use precinct comprising commercial, industrial and high density residential development.
3. The site is located approximately 180m to the south of Green Square Station and the Town Centre which includes world-class community facilities to support the development of the area including a new library and associated plaza (180m to the north) and Gunyama Park Aquatic and Recreation Centre approximately 420m to the east.
4. The subject site was created by the City of Sydney following the consolidation and subdivision of land known as 20 O'Riordan Street, 330-332 Botany Road, 334-336 Botany Road and 338 Botany Road, Alexandria. The subdivision application was approved by the Local Planning Panel on 13 June 2018 (D/2017/1341). The approval created four new lots comprising one lot for the east/west connector road (as part of the Green Square to Ashmore Connector Road project), two lots to be sold to community housing providers (to facilitate delivery of affordable housing developments including the subject lot) and one residual lot to be transferred to an adjacent property.
5. Council is the current owner of the land however the land is to be purchased by St George Community Housing for the purpose of affordable housing following development consent for the purposes of affordable housing.
6. The subject Concept Development Application (DA/2019/87) was approved on 5 December 2019. The current approval provides for the future use of the site for commercial use and affordable housing with a building envelope with a maximum height of 33m (or 9 storeys) and maximum FSR of 4:1 with potential for an additional 10% (within an additional storey) subject to a future design excellence process.
7. As Council is the owner of the land the subject application has been independently assessed by Helena Miller, Director of MG Planning Pty Ltd on behalf of Council.
8. The proposed lot is irregularly rectangular in shape, with a total area of 2,252 square metres and boundary dimensions of 83 metres to the new Green Square to Ashmore Connector Road to the north, 23 metres to Botany Road to the east, 29m to the west and 90 metres to the south.
9. The site is located at the junction of the new Green Square to Ashmore Connector Road to the north and Botany Road to the east. O'Riordan Street is located one lot to the west.
10. The gradient of the site is relatively gentle, with a gradual fall from east to west. It has a level of approximately RL15.33 at the eastern boundary (Botany Road), grading up to RL15.4 in the middle of the site then back down to RL14.66 at the north western boundary.

11. The site is identified on the plan at Figure 1 and aerial photographs at Figures 2 and 3 below.



Figure 1: Subject site location and surrounding area (site shown in red) (Source: Nearmap, Image capture 22 July 2024)

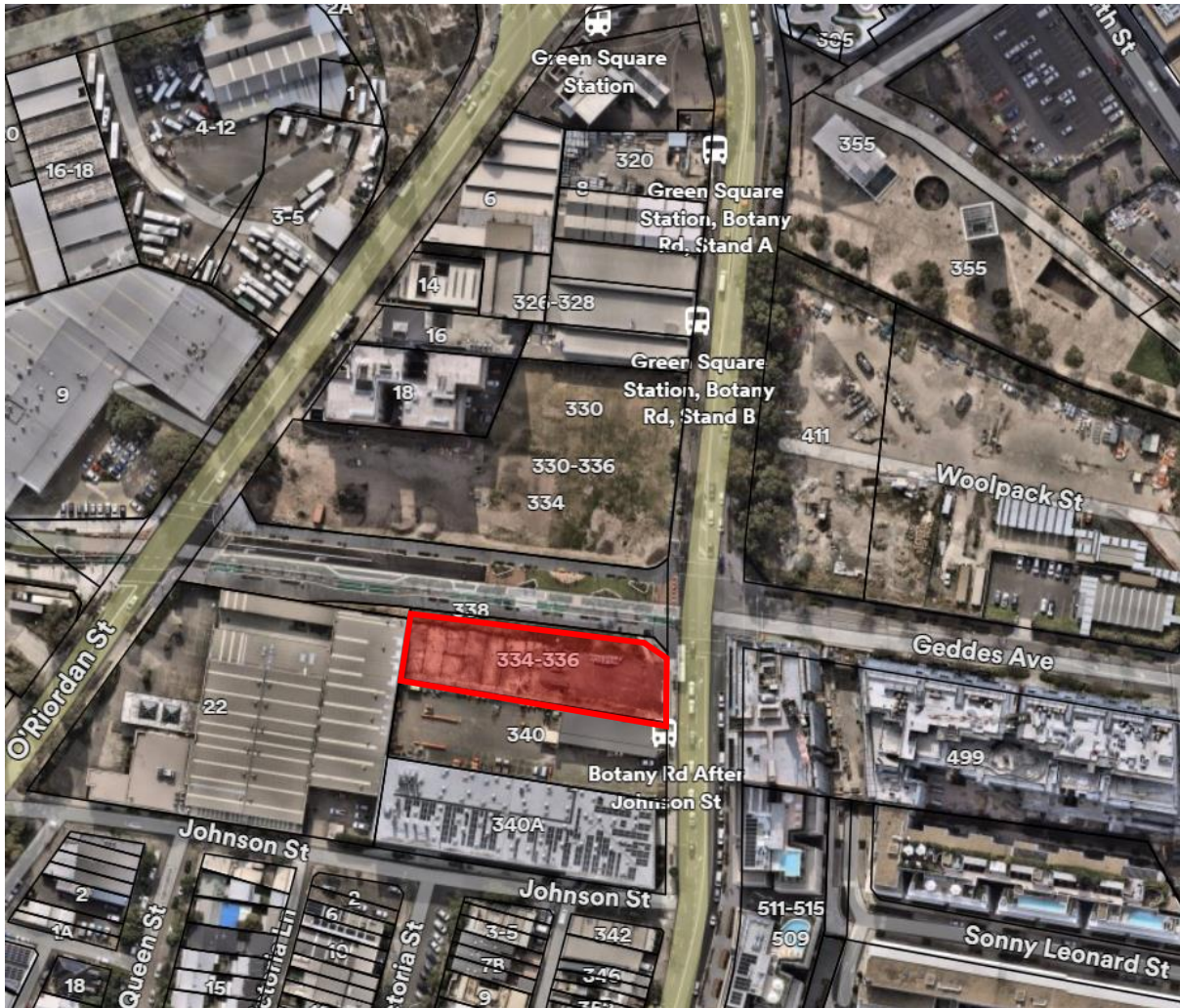


Figure 2: Plan image of site and surrounding area (Source: Nearmap, Image capture 22 July 2024)



Figure 3: Close up of new Green Square to Ashmore Connector Road (Source: Nearmap, Image capture 22 July 2024)

12. The site is currently vacant and fenced during the current construction of the new Green Square to Ashmore Connector Road project (refer Figure 3 above). It formerly accommodated outdoor storage areas on a concrete slab partly covered by an awning and some retaining walls and storage enclosures. No vegetation currently exists on site.
13. The site immediately to the north across the Ashmore Connector Road at 330 Botany Road (refer Figure 3 above) is similarly identified for redevelopment for affordable housing and is the subject of detailed D/2024/581 by the City West Housing Corporation currently under assessment. The detailed development application seeks consent for two mixed use buildings 10 storeys to 12 storeys in height, with 1 level of basement, for the purpose of 255 affordable housing units and ground floor commercial/retail uses. A modification (D/2021/1484A) is also concurrently sought to the existing concept approval for the site. The modification seeks to accommodate changes to the concept approval to reflect the detailed DA including:
 - (a) Amendments to the maximum building envelope to accommodate lift overruns, parapets, roof slab and minor portion of walls, and
 - (b) Amendments to conditions of consent to reference the amended building envelope drawings and to correct the indicative tree removal.



Figure 4: Photomontage of Detailed DA for 330 Botany Road to the north across Ashmore Connector Road viewed from Botany Road looking north west (Source: Ethos Urban, SEE, 10 July 2024)

14. Land immediately to the east on the eastern side of Botany Road (499 and 501-509 Botany Road) is currently under construction in accordance with D/2015/688 which provides for development of a 16 storey mixed use development containing 130 dwellings, five retail tenancies and two levels of basement car.
15. Land to the north east at 411 Botany Road and 6 Geddes Avenue is being developed by Mirvac as part of Stage 3 and 4 of the Green Square Town Centre. The site has concept approval for mixed use buildings ranging in height from 4 to 24 storeys, containing a mixture of residential, retail and commercial floor space.

16. Immediately adjoining the site to the south is a construction equipment hire business (Coates Hire) and further to the south is a mix of light industrial, commercial and residential developments.
17. Immediately to the west at 22 O’Riordan Street, the site is currently adjoined by a two-storey building formerly a Mercedes motor vehicle showroom and vehicle repair premises however a development application (D/2021/529) was approved for the site in November 2021 for a commercial development 5 storey in height (maximum 22m) with one level of basement parking. The site is currently for sale.
18. Further to the west of the site are various light industrial and commercial land uses extending along O’Riordan Street and further west, Bourke Street.
19. The site is not a heritage item nor is it located in a heritage conservation area.
20. A site visit was carried out on 19 July 2024. Photos of the site and surrounds are provided below:



Figure 5: Site viewed from intersection of Botany Road and Geddes Ave looking west



Figure 6: Site looking west towards 22 O'Riordan Street



Figure 7: View from site frontage looking east along Geddes Ave (Note: 499 and 501-509 Botany Road to right of frame)



Figure 8: Green Square to Ashmore Connector Road adjacent to site looking north west



Figure 9: Green Square to Ashmore Connector Road from western site boundary looking west to O'Riordan Street



Figure 10: View looking south along Botany Road



Figure 11: View looking north west from intersection of Botany Road and Geddes Avenue

History Relevant to the Development Application

Development Applications

21. As noted above the subject Concept Development Application (D/2019/87) was approved on 5 December 2019 and provides for:
 - A building envelope with a maximum height of 33m (or 9 storeys) and maximum FSR of 4:1 with potential for an additional 10% (within an additional storey) subject to a future design excellence process

- Indicative future commercial and residential uses for the purposes of affordable housing, and
 - Minimum building setbacks of 1.4 metres (footpath widening) to Botany Road and 1.5 metres (0.5m footpath widening plus 1.0m landscape zone) to the new Green Square to Ashmore Connector Road and variable setbacks to the south and west boundaries.
 - A public benefit offer and draft voluntary planning agreement (VPA) also accompanied the application.
22. The Concept DA has previously been modified on two occasions: D/2019/87A (approved 20 March 2020) to: amend the deferred commencement condition to be consistent with the VPA and activate the consent following registration of the VPA on title; and D/2019/87B (approved on 1 July 2020) to refer to an amended design excellence strategy which allowed the minimum number of competitors required to take part in the Design Competition to be reduced.

Amendments

23. The subject 4.55(2) modification application is submitted concurrent with a detailed development application for the site (D/2024/273). Following a preliminary assessment of the detailed development application by the independent assessment planner and Council Officers, a request for additional information was sent to the applicant on 7 August 2024. The applicant was advised that the 4.55(2) modification application should be amended to reflect any proposed changes to the detailed development application. Of note to the subject 4.55(2) modification application, the RFI raised concerns regarding the proposed Floor Space Ratio (FSR) and blade wall encroachments within footpath areas.
24. The applicant responded to the RFI request on 25 September 2024, and submitted the following information:
- revised building envelope plans, and
 - clause 4.6 variation request in respect of the floor space ratio development standard clause 4.4 under SLEP 2012.
25. The submitted clause 4.6 variation is not relevant in this case as the application seeks to modify an existing development approval in accordance with section 4.55(2) which provides for a modification to a consent notwithstanding a development standard that would otherwise result in a prohibition. Rather the key threshold test as outlined below is whether the development is substantially the same as the development for which consent was originally granted.

Proposed Development

26. The section 4.55(2) modification seeks to amend the concept approval to bring it in line with the subsequent detailed design development application.
27. The application modifies the existing concept envelope as follows:

- Amend the building envelope on the western elevation at (a) ground level to facilitate the required disabled car parking spaces and loading dock, reducing the western setback at ground level from 4.5m to 0m and (b) partly at Levels 8 and 9 to reduce the setback from 9m to 7.967m,
 - Increase the building height to a maximum height of 36.2m from approved building envelope height of 33m (i.e. increase of 3.2m or 9.69%),
 - increase in permissible FSR to 4.1:1 to allow for the detailed design FSR of 4.09:1 where a maximum of 4:1 applies (i.e. increase of 0.09:1 or 2.25%) due to the inclusion of the area of the proposed east facing balconies as a result of the increased wall height proposed (greater than 1.4m) to provide for noise attenuation, and
 - changes to facilitate blade wall encroachments within footpath areas above ground level.
28. It is noted that the applicant proposed in the application that the existing approval be amended to allow for a maximum FSR of 4.1:1 where a maximum FSR of 4.09:1 is proposed in the detailed design development application (D/2024/273). This would allow for an additional approx. 203m² above what is proposed in D/2024/273 which is not considered appropriate. Accordingly, this report recommends a maximum FSR of 4.09:1 in accordance with the D/2024/273.
29. The modification to the height as outlined by the applicant is required to:
- facilitate the provision of mechanical servicing and access
 - accommodate the minimum required floor to floor heights under the new Building Code of Australia (BCA) provisions since the approval of the original concept, and
 - achieve Council's requirement for the loading bay to provide for a 4.5m clearance height (Condition 20)
30. The modification also seeks amendments to Conditions 2(a), 8(d) and 14 relating to the approved building envelope plans, rooftop plan and lift overrun and maximum height.
31. Further the proposed modification seeks to delete Condition 8(b) which currently requires "no overshadowing of the approved residential apartments at 499 and 501 – 509 Botany Road, Alexandria". This condition is to be deleted with the application seeking rather to 'minimise' overshadowing to 499 and 501-509 Botany Road, Alexandria, and adjoining properties, in accordance with objective 3B-2 of the Apartment Design Guide. Condition 14 is also proposed to be amended in respect of the maximum permissible FSR.

32. Plans and elevations of the proposed envelope are provided below.

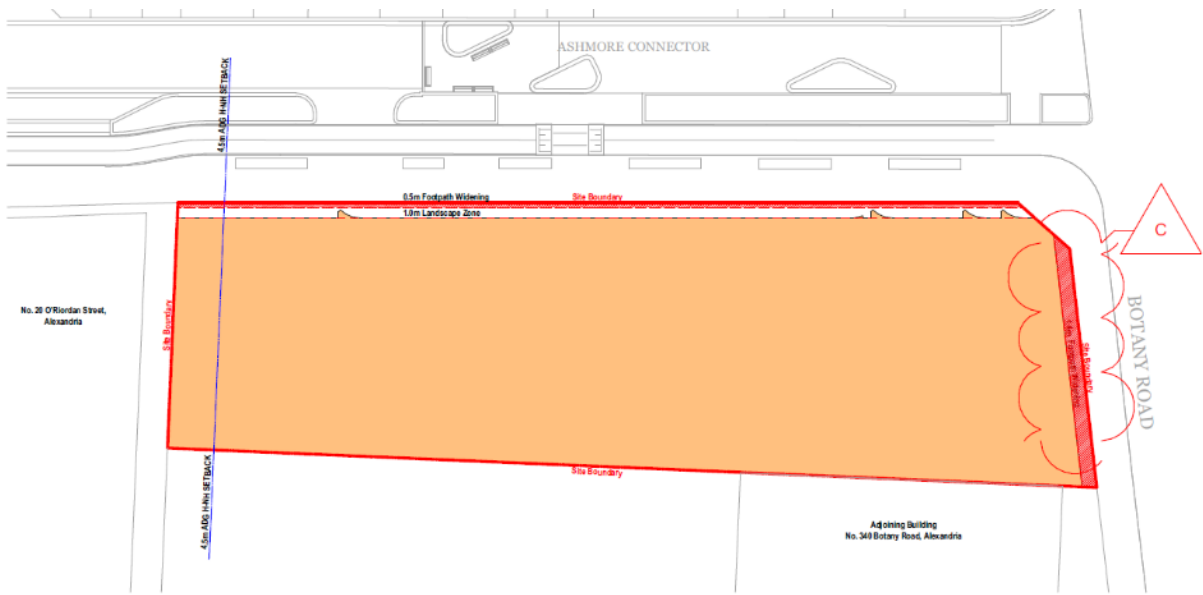


Figure 1: Proposed envelope plans - Ground (Note: existing approval provides for 4.5m western setback)

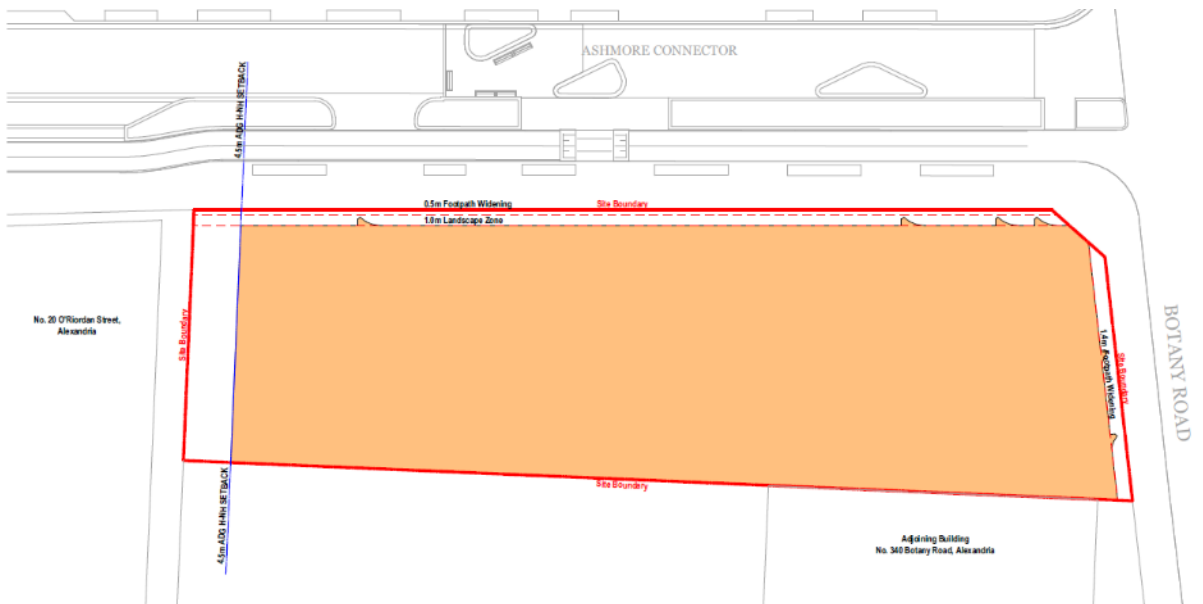


Figure 2: Proposed envelope plans - Levels 1 - 3 (Note: proposed blade projections above ground level over setbacks)



Figure 3: Proposed envelope plans - Levels 4 - 7 (Note: proposed blade projections above ground level over setbacks)

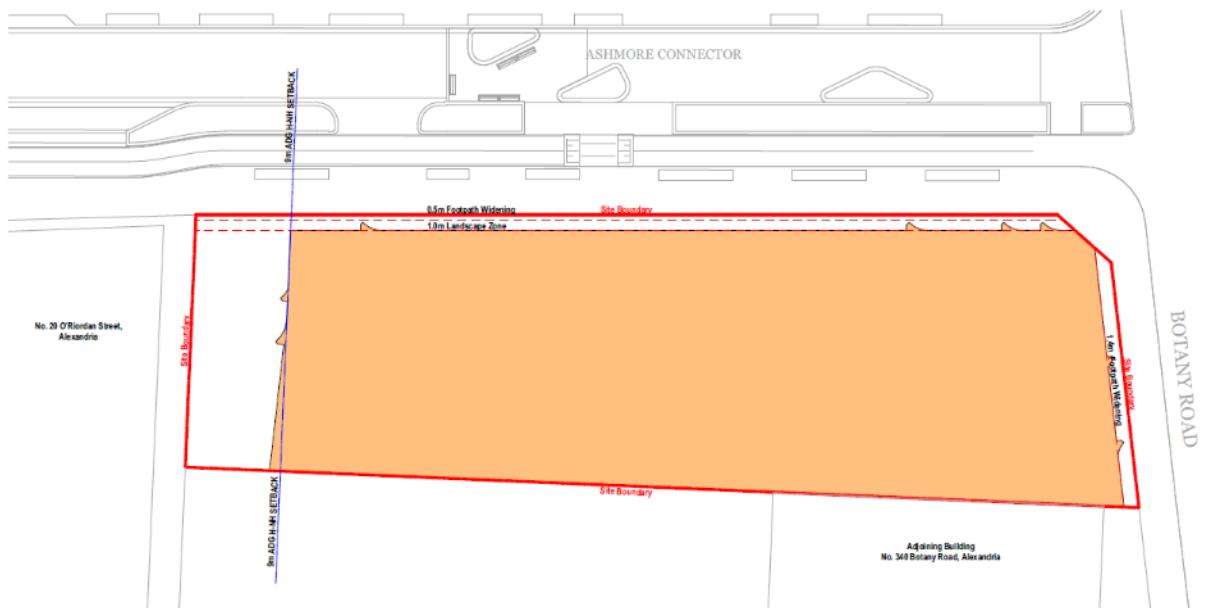


Figure 4: Proposed envelope plans - Levels 8 - 9 (Note: existing approval provides for full 9m western setback. Proposed blade projections above ground level over setbacks)

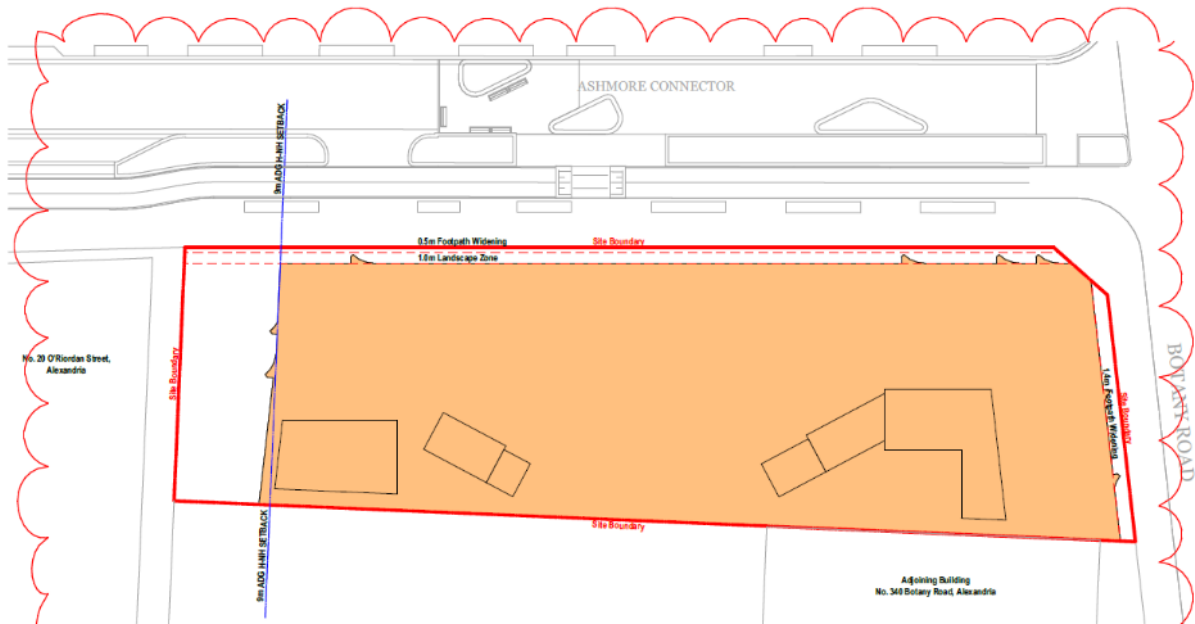


Figure 5: Proposed envelope plan - Level 10 (Note: This plan relates to the additional height within the envelope at the upper extent of Level 9)

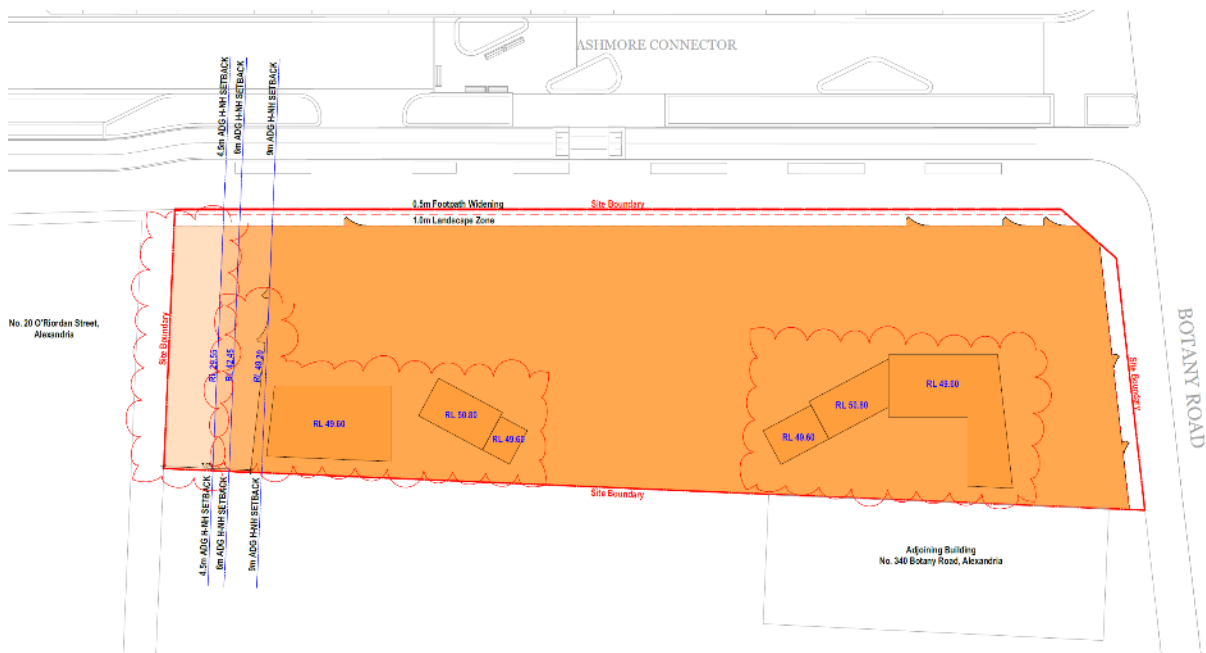


Figure 6: Proposed Overall Envelope Plan (Note: changes as above and shows maximum height of plant)

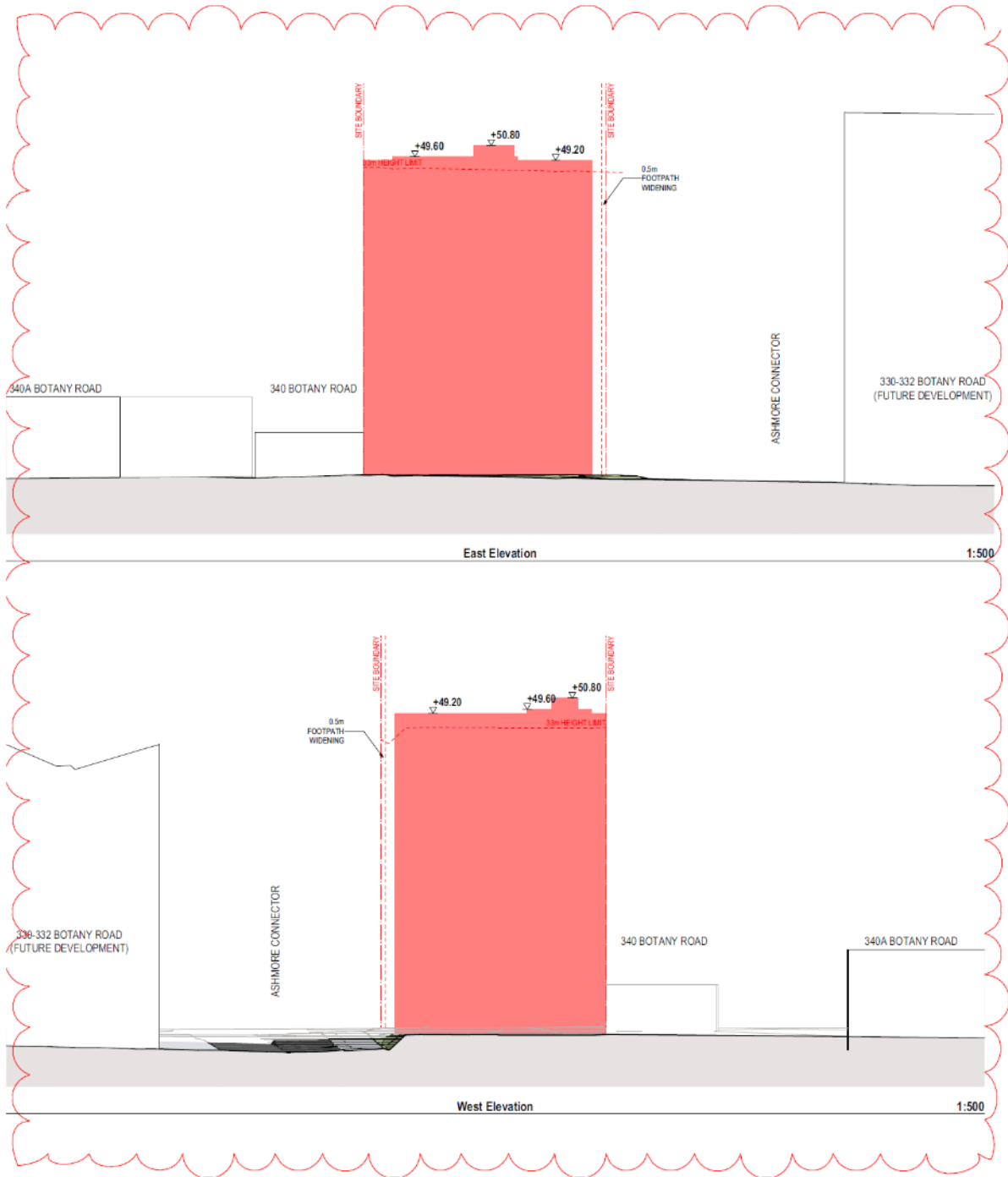


Figure 7: Proposed east and west elevations

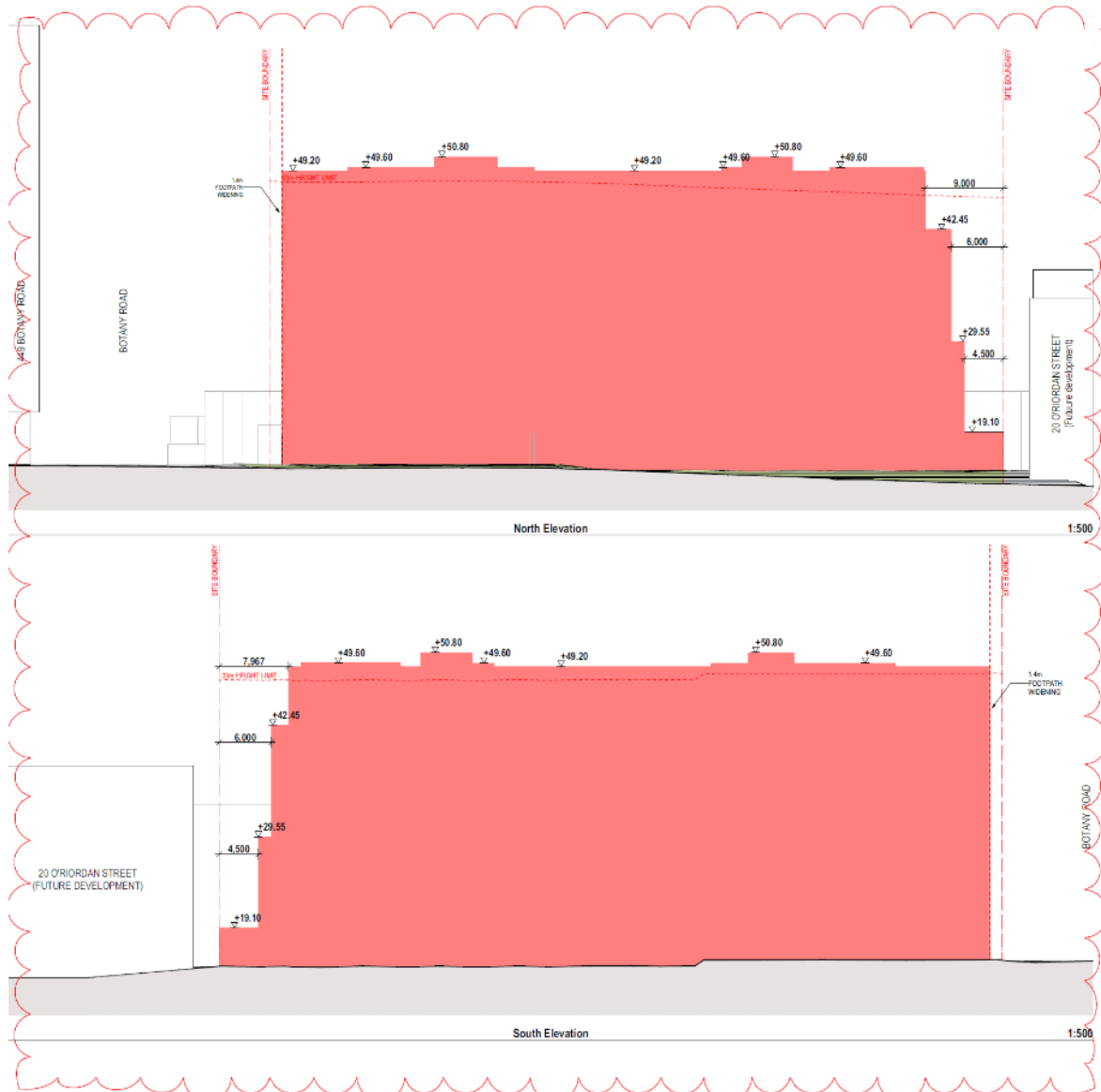


Figure 8: Proposed north and south elevations

Assessment

- 33. As required by section 4.55(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act) the proposed development has been assessed under Section 4.15 of the EP&A Act and against the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Threshold Test - substantially the same

34. The development as proposed to be modified is considered to be substantially the same as that originally approved. The location and overall form of the building envelope is consistent with the intent of the approved concept. The proposed modifications will deliver a 10 storey building envelope similar to that which was envisaged by D/2019/87. The proposed modifications primarily relate to building height and setbacks and to a lesser extent floor space ratio (as a result inclusion of areas of east facing balconies and GFA due to noise attenuation measures).
35. The height, setback and footprint changes are supported as they do not result in unacceptable overshadowing or privacy impacts and will deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
36. In accordance with Section 4.55(2), an assessment against the relevant provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979 is provided under headings in the Discussion section below.

Original reasons for the consent

37. The subject modification application has been assessed against the original reasons given by the consent authority for the granting of the consent and is considered to be consistent with these as outlined below:

No.	Reason	Comment
A	The proposed development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979, in that, subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Central Sydney Planning Committee.	Consistent - the proposed modifications have been assessed herein against s.4.15 and found to be appropriate and consistent with the objectives of the planning controls for the site.
B	The proposed development complies with the permitted height for the site under the Sydney Local Environmental Plan 2012 and has a height and form which is considered to be generally suitable for the condition of the site and its context.	Consistent - the proposed height is suitable to the site and its context and will not result in any adverse impacts.
C	The proposed building envelope is capable of accommodating a future building which can exhibit design excellence in accordance with Clause 6.21 of the Sydney Local Environmental Plan 2012.	Consistent - the concurrent detailed design development application (D/2024/273) demonstrates that the proposed envelope can achieve design excellence.

No.	Reason	Comment
D	The proposed envelope is capable of being consistent with the provisions of the State Environmental Planning Policy No 65— Design Quality of Residential Apartment Development and the Apartment Design Guide in that, subject to the recommended conditions it will provide a building envelope which is capable of accommodating a future building which can achieve high amenity for future residents with regard to communal open space, solar access, natural ventilation, private open space, building separation and privacy.	Consistent - the concurrent detailed design development application (D/2024/273) demonstrates that the proposed envelope is capable of complying with the requirements of the Housing SEPP (formerly SEPP 65) and ADG and providing a high level of amenity.
E	The public interest is served by the approval of the proposal, subject to recommended conditions imposed.	Consistent - the proposed modification has been assessed as being in the public interest consistent with the existing approval.
F	Conditions have been amended in line with requests made by the applicant, to refer to correct documentation and to clarify permitted uses under the Sydney Local Environmental Plan 2012.	N/A

Environmental Planning and Assessment Act, 1979

38. The 'development' as proposed to be modified is considered to be substantially the same as that originally approved, satisfying Section 4.55(2)(a) of the EP&A Act, because:
- (a) It remains a concept envelope for the redevelopment of the site for affordable housing allowing for a 10 storey development
 - (b) It continues to facilitate to the approved mixed-use of the site
 - (c) It generally maintains the relationship between the concept envelope, adjoining properties, and the public domain with only minor variations which will not result in any adverse impact
 - (d) It remains generally consistent with the objectives of the relevant environmental planning instruments
 - (e) It presents acceptable environmental impacts when compared to those previously assessed and considered acceptable by the original concept consent D/2019/87

- (f) It is modified to allow for consistency with the concurrent Detailed Design DA (D/2024/273), which is based on a scheme submitted to competitive design process that the Chair considers to be capable of achieving design excellence
- (g) It continues to deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties, as demonstrated in the assessment of the Detailed Design DA (D/2024/273), and
- (h) It is consistent with the intent of the original approved concept development, in that the location and overall form of the building envelope is maintained.

State Environmental Planning Policies

State Environmental Planning Policy (Housing) 2021

Chapter 4 - Design of Residential Apartment Development

- 39. The aim of Chapter 4 of the SEPP (Housing) 2021 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 Nicholas Byrne of DKO (Registration No. NSW ARB #7806) with the detailed design development application (D/2024/273), addressing the design quality principles and the objectives of Parts 3 and 4 of the Apartment Design Guide (ADG). The statement is deemed to satisfy Section 29 of the Environmental Planning and Assessment Regulation 2021.
- 42. An assessment of the proposed amended envelope against the design quality is provided as follows:
 - (a) Principle 1: Context and Neighbourhood Character

The amended building envelope allows for a development that is contextually appropriate and consistent with the existing and desired future character of the area as demonstrated by the detailed design development application (D/2024/273).
 - (b) Principle 2: Built Form and Scale

The amended envelope is capable of providing a built form that has appropriate massing and scale as demonstrated by the detailed design development application (D/2024/273).

(c) Principle 3: Density

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

In addition to the above, the proposed modifications allow the development to achieve a reasonable level of amenity for residential occupants under the Apartment Design Guide and in particular to address the noise constraints of the site as demonstrated by the detailed design development application (D/2024/273).

(d) Principle 4: Sustainability

Detailed design applications are required to comply with BASIX requirements. The detailed design development application (D/2024/273) has demonstrated that sustainability targets can be met by the amended envelope.

(e) Principle 5: Landscape

The amended envelope allows for ample landscaping to be provided on the ground level at the front of site and at rooftop within the communal open space area as demonstrated by the detailed design development application (D/2024/273). The development is also capable of providing compliant deep soil zones

(f) Principle 6: Amenity

The amended envelope can accommodate a development with a reasonable level of amenity for future occupants of the development, as well as adjoining properties as demonstrated by the detailed design development application (D/2024/273).

(g) Principle 7: Safety

The amended envelope allows for a development that can achieve the principles of Crime Prevention Through Environmental Design (CPTED) as demonstrated by the detailed design development application (D/2024/273).

(h) Principle 8: Housing Diversity and Social Interaction

The amended envelope allows for a development that can provide a suitable mix of dwelling types as demonstrated by the detailed design development application (D/2024/273).

(i) Principle 9: Aesthetics

The amended envelope is generally consistent with the design competition scheme which was considered by the Chair of the Jury as the non-winning scheme most capable of demonstrating design excellence. In this regard it is noted that the detailed design development application (D/2024/273) has been assessed as achieving design excellence and does not seek to utilise a design excellence bonus.

43. The amended envelope 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)	Yes	The concurrent detailed design development application D/2024/273 demonstrates a building depth that is relatively narrow with units are generally less than 10m in depth.

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	Yes	The amended envelope generally complies with the recommended building separation distances and is capable of delivering a development that can provide for an acceptable level of privacy for future occupants and adjoining properties. See discussion section.
Five to eight storeys (approximately 25 metres): <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	Yes	As above
Nine storeys and above (over 25m): <ul style="list-style-type: none"> • 24m between habitable rooms / balconies 	Yes	As above

2F Building Separation	Compliance	Comment
<ul style="list-style-type: none"> • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 		

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

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

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m Non-habitable rooms: 2.4m If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Yes	The envelope modifications for not affect the development's ability deliver minimum floor to floor heights.

Local Environmental Plans

Sydney Local Environmental Plan 2012

44. An assessment of the proposed modifications 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	The site is located in the E3 Productivity Support zone. The proposed development is defined as a mixed use development comprising residential accommodation development (affordable housing) and commercial and is permissible with consent in the zone. The proposal meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 33m is permitted.</p> <p>A height of 36.2m (RL50.8) is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard however section 4.55 allows for modification of the existing approval notwithstanding this provision. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 4:1 (including a base FSR of 3:1 plus 1:1 community infrastructure floor space under clause 6.14 of SLEP 2012) or 9,000sqm is permitted.</p> <p>A floor space ratio of 4.09:1 or 9,198sqm is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard however section 4.55 allows for modification of the existing approval notwithstanding this provision. See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.14 Community infrastructure floor space at Green Square	Partial compliance	<p>The proposed development is eligible for an additional floor space ratio of 1.1 for community infrastructure being within Area 8 as shown on the FSR Map. The Concept DA (D/2019/87) and associated VPA include a public benefit in the form of community infrastructure through:</p> <ul style="list-style-type: none"> • dedication of land along the Botany Road and the Green Square to Ashmore Connector Road • footpath construction, and • a monetary contribution towards community infrastructure. • The Concept DA approved a maximum FSR of 4:1 for the subject site on this basis. <p>The proposal provides for a maximum FSR of 4.09:1 given that balcony areas are required to be included in GFA given the proposed wall height required to provide noise attenuation. See further details in the 'Discussion' section below.</p>
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The amended building envelope and concept development consent D/2019/87 satisfactorily sets expectations for the form, massing, scale, environmental impacts, ESD outcomes, access outcomes, interface with ground level and landscaping outcomes of the development.</p>

Development Control Plans

Sydney Development Control Plan 2012

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

Discussion

Building Height

46. Clause 4.3 of the Sydney LEP 2012 sets out a maximum building height of 33m for the subject land. The current concept approval permits an overall height of 33m within the building envelope.



Figure 22: Extract of Sydney LEP 2012 Height of Buildings Map

47. The application proposes to exceed the maximum 33m height of buildings development standard by 3.2m to a maximum of 36.2m (RL 50.8) (14.3% variation), as depicted in the building envelope diagrams above. As noted above, the applicant has indicated that the increase in height is required to:

- facilitate the provision of mechanical servicing and access
- accommodate the minimum required floor to floor heights under the new Building Code of Australia (BCA) provisions since the approval of the original concept, and
- achieve Council's requirement for the loading bay to provide for a 4.5m clearance height (Condition 20).

48. The additional height is limited to the parapet, lift overrun, fire stair, hot water services and solar panels as shown on Figure 23 below which is extracted from the detailed design development application (D/2024/273). These elements are relatively minor and will generally not be visible or discernible from the street. As such, they do not contribute to the bulk and scale of the building.

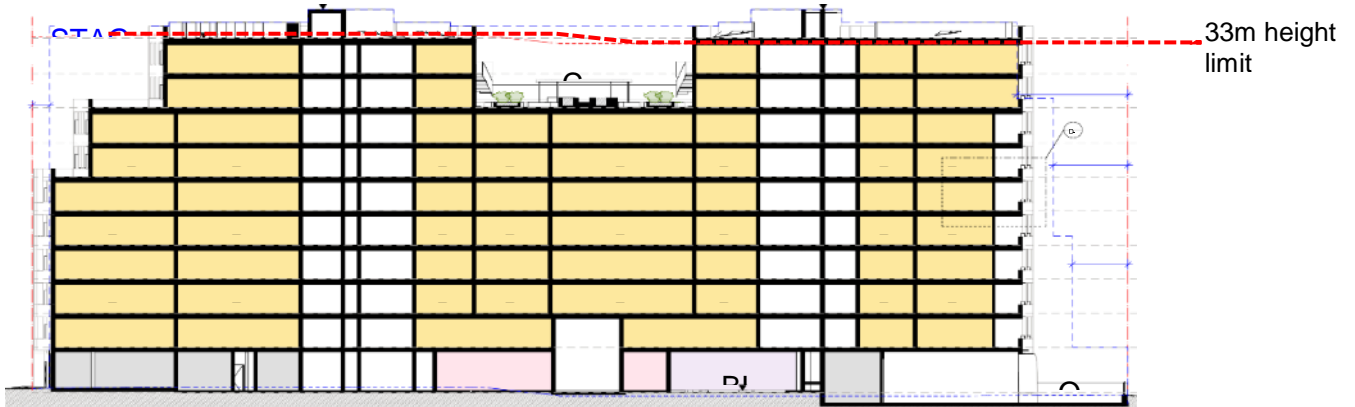


Figure 23: Detailed Design DA Compliance with max height

49. As a Section 4.55(2) modification application, Clause 4.6 of the Sydney LEP 2012 with regard to requesting a variation to the 'Height of Buildings' development standard does not apply. It is noted however, that a Clause 4.6 variation request in respect of height has been submitted as part of D/2024/273 and a detailed assessment carried out. The variation request has been assessed to be well-founded in this instance.
50. The applicant has submitted shadow diagrams in order to assess the potential impact of the proposed height on surrounding development (refer below). The majority of the shadow cast by the proposed amended envelope will fall on the commercial development to the south which is not sensitive to shadow impacts.

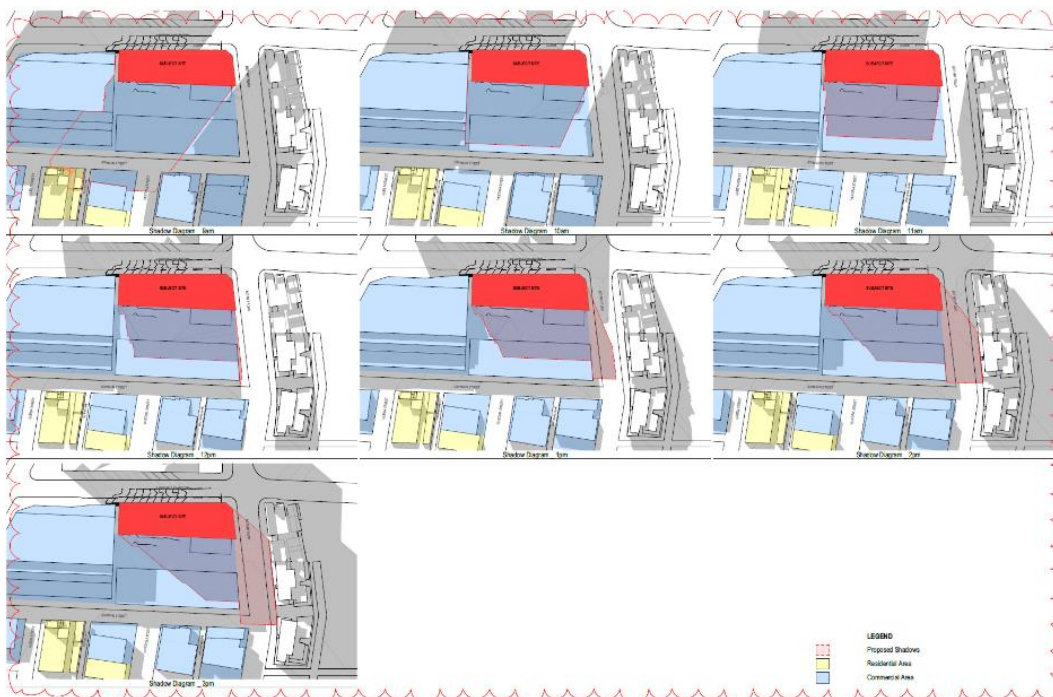


Figure 23: Shadow diagrams June 21

51. In respect of the existing approved developments at 499 and 501-509 Botany Road, the shadow impact is limited to after 2pm in midwinter as shown. Detailed solar access diagrams submitted with the detailed design development application (D/2024/273) show that the proposal will ensure that all units within the development at 499 and 501-509 Botany Road will continue to achieve a minimum of 2 hours of sunlight in midwinter. Shadows from the proposal do not extend over the subject site until after 2pm in midwinter. This is assisted by the stepping of the built form down toward the Botany Road frontage.

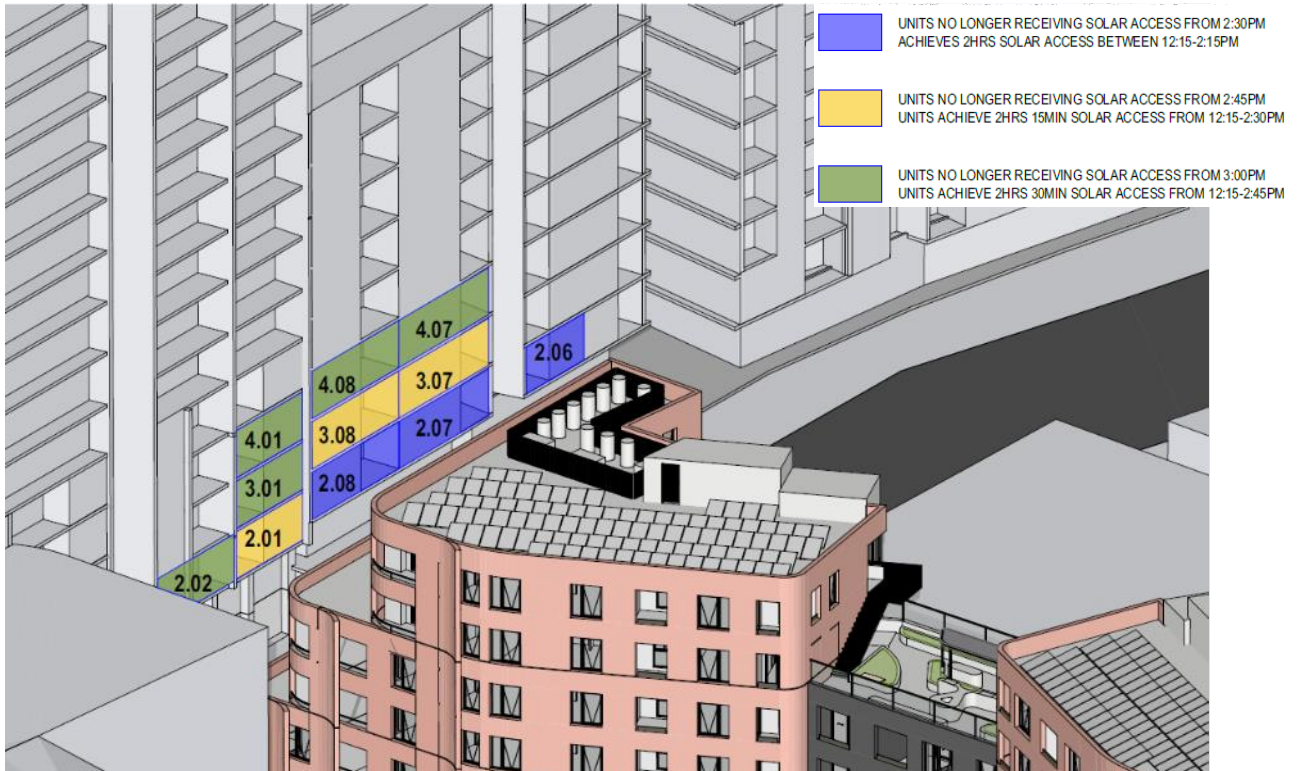


Figure 31: Solar impact of detailed design DA (D/2024/273) on 499 and 501-509 Botany Road

52. Other shadow impacts caused by the amended envelope are generally consistent with the shadow impacts of the approved building envelope. The additional height will provide for some minor additional shadowing however this is largely over commercial developments to the south and west. Some additional shadowing will occur to a terrace and its courtyard at 1 Queen Street to the south however this will be limited to between 9 - 10am in midwinter and solar access will not be affected after this time. Accordingly, this impact is considered to be acceptable.

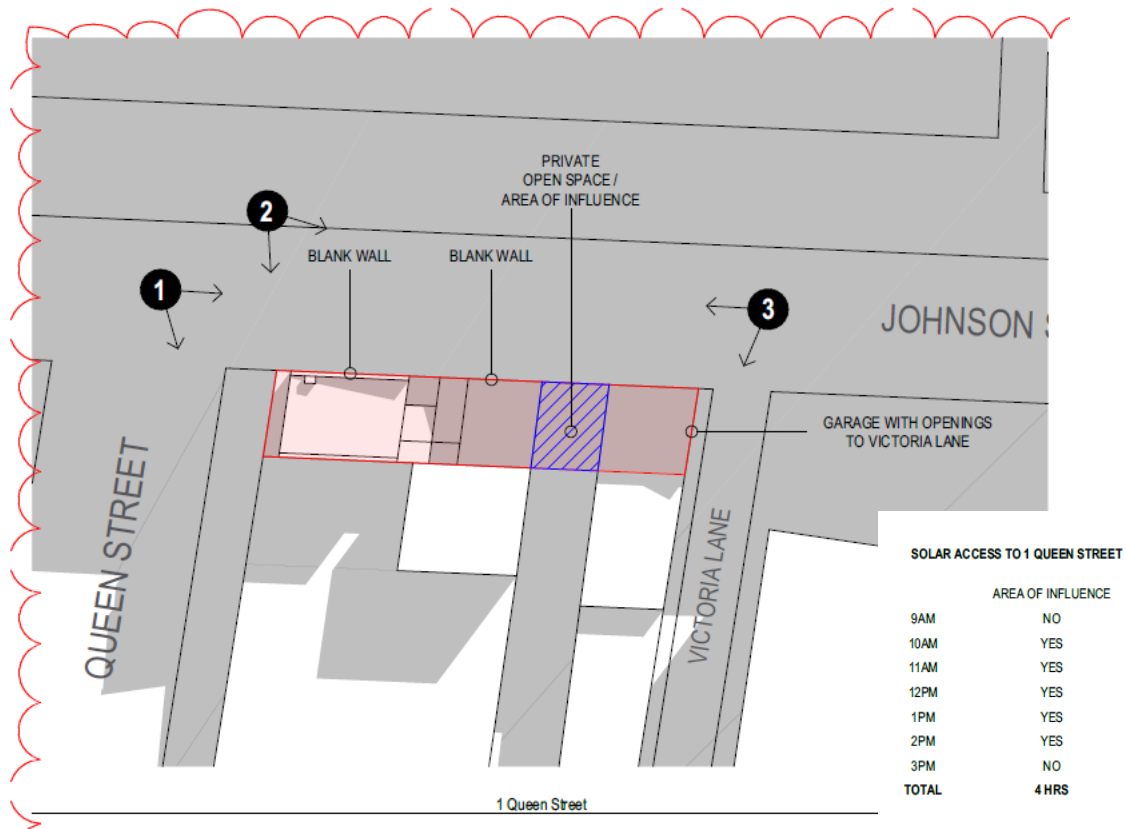


Figure 31: Solar access to 1 Queen Street

Floor Space Ratio

53. Clause 4.4 of the Sydney LEP 2012 sets out a maximum floor space ratio for the subject site of 3:1. In addition Clause 6.14 (Community Infrastructure floor space at Green Square) provides for an additional FSR of 1:1 above the mapped FSR in 'Area 8' (in which the site is located). The Concept Approval therefore provides for a maximum FSR of 4:1.

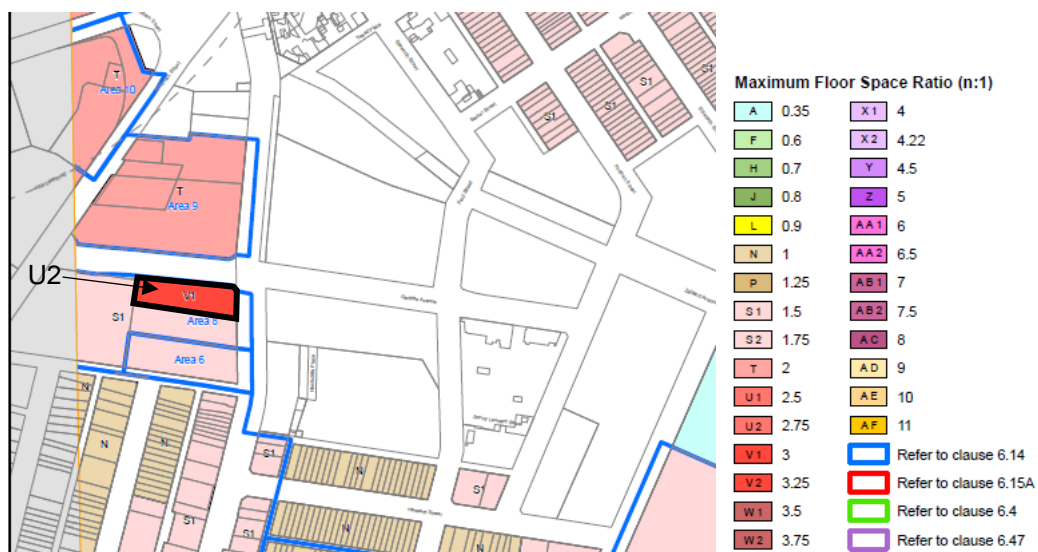


Figure 22: Extract of Sydney LEP 2012 Floor Space Ratio Map

54. The detailed design development application (D/2024/273) however provides for a total floor space ratio of 4.09:1. The exceedance is the result of the need to include the area of the balconies on the Botany Road frontage as GFA given that high screens (greater than 1.4m in height) are to be provided for acoustic attenuation. The definition of GFA contained in SLEP 2012 provides:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) *the area of a mezzanine, and*
- (b) *habitable rooms in a basement or an attic, and*
- (c) *any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes—

- (d) *any area for common vertical circulation, such as lifts and stairs, and*
- (e) *any basement—*
 - (i) *storage, and*
 - (ii) *vehicular access, loading areas, garbage and services, and*
- (f) *plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) *car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) *any space used for the loading or unloading of goods (including access to it), and*
- (i) ***terraces and balconies with outer walls less than 1.4 metres high, and***
- (j) *voids above a floor at the level of a storey or storey above.*

55. Therefore, as the walls to the east facing balconies have a height greater than 1.4m the area of the balconies must therefore be included as GFA. The modification application therefore seeks to modify condition 14 of the Concept Approval to provide for a maximum floor space ratio of 4.09:1 rather than the currently approved 4:1.

56. Figure 26 below provide a typical floor level showing balcony areas included as GFA on the Botany Road frontage:

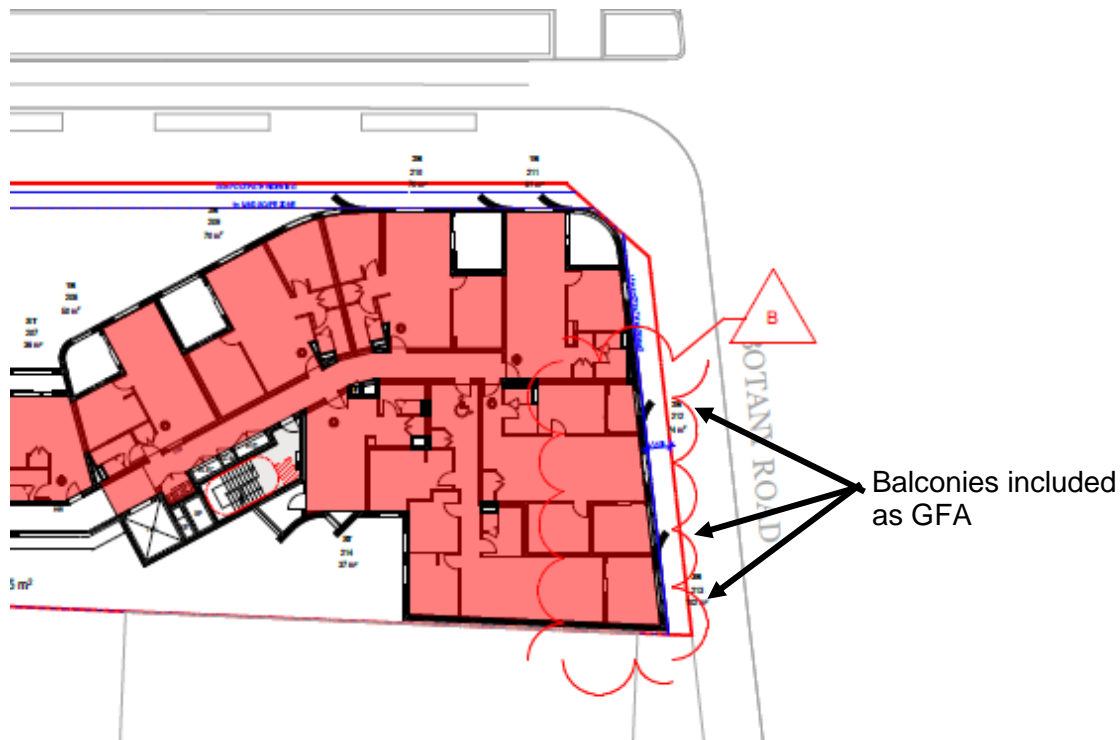


Figure 26: Balconies including as GFA due to wall height - typical floor level

57. Consistent with the height discussion above, as a Section 4.55(2) modification application, Clause 4.6 of the Sydney LEP 2012 with regard to requesting a variation to the 'Floor Space Ratio' development standard does not apply. A Clause 4.6 variation request in respect of floor space ratio has been submitted as part of D/2024/273 and a detailed assessment carried out. The variation request has been assessed to be well-founded in this instance.
58. The proposed additional GFA will not result in any increase to the bulk of the building and is largely considered to be a technicality. Further it will not result in a change that would affect the proposal being substantially the same as originally approval. Accordingly, it is considered that the proposed increase to the FSR is acceptable.

Building separation

59. The proposed modification also seeks to amend the approved building envelope adjacent to the western boundary at the ground level to provide for a nil setback where previously a 4.5m setback was approved. The proposed nil setback is intended to be to an open but screened car park / loading area as outlined in the detailed design development application (D/2024/273). This change will not give rise to any privacy or other impacts and accordingly is considered appropriate in the circumstances.

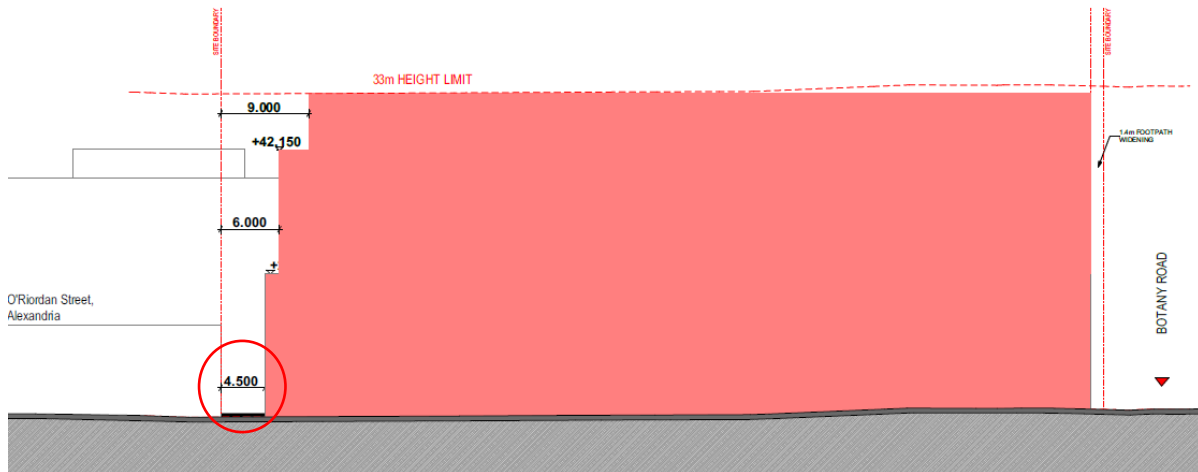


Figure 26: Approved envelope (southern elevation)

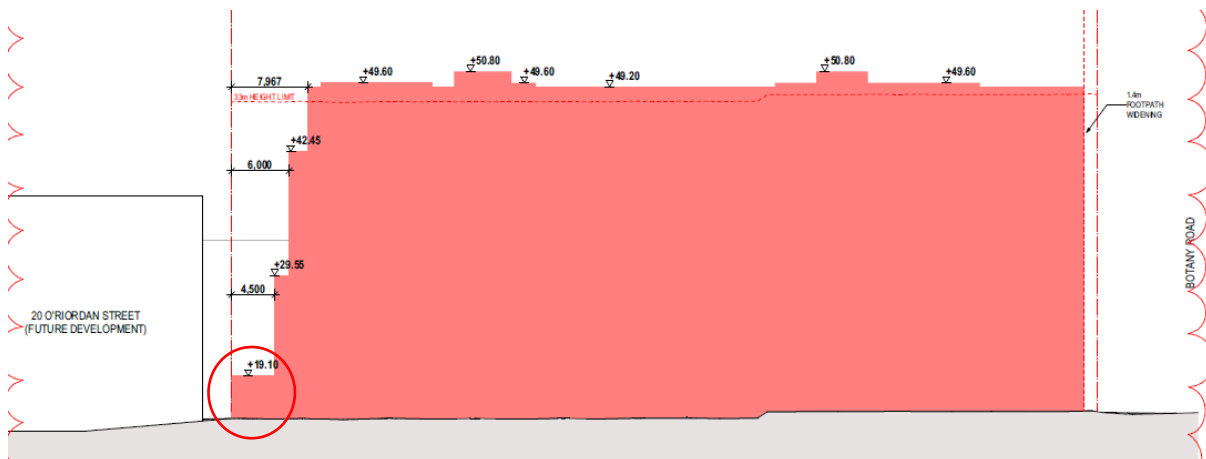


Figure 26: Proposed envelope (southern elevation)

60. A change is also proposed at Levels 8 and 9 (and 10) which previously had a western boundary setback of 9m (in accordance with the ADG) but which is now proposed to be setback a minimum of 7.967m in the south western corner of the site increasing to 9m approximately 50% along the frontage as shown below. This is considered to be acceptable in the circumstances given that the development to the west as approved is commercial and 5 storeys in height. No privacy impacts will therefore result from the non-compliance.
61. Further as shown below where the Concept Approval provided for an approved building envelope with 4.5m and 6m setbacks along this boundary at various levels in accordance with the ADG, the detailed design development application (D/2024/273) provides for the full frontage to have a setback of 7.967m - 9m thus increasing the separation beyond the requirements at the lower levels with the exception of at ground level where only parking is proposed.



Figure 28: Western boundary setback



Figure 29: Western interface (Note: greater than allowable setback provided at lower levels)

- 62. Overall, the reduced setbacks will not result in an increase to the bulk of the building or any privacy or other adverse impacts. Accordingly, it is considered that the proposed setback changes are appropriate in the circumstances.

Street setback encroachments

- 63. The proposed modification seeks to amend the approved building envelope adjacent to the northern and eastern boundaries to provide for architectural blade walls that project into the setbacks and footpath widening dedications above ground level (refer below). Originally these encroachments were proposed to extend to ground level however have been amended in response to Council's RFI comments. The proposed encroachments are approximately 800mm wide and will project above the landscape zone to the north and the footpath widening to the east. Generally, Council allows projections above footpaths of a maximum of 450mm however Council's specialist surveyor and public domain officer have advised that the proposed encroachment is acceptable in the circumstances.

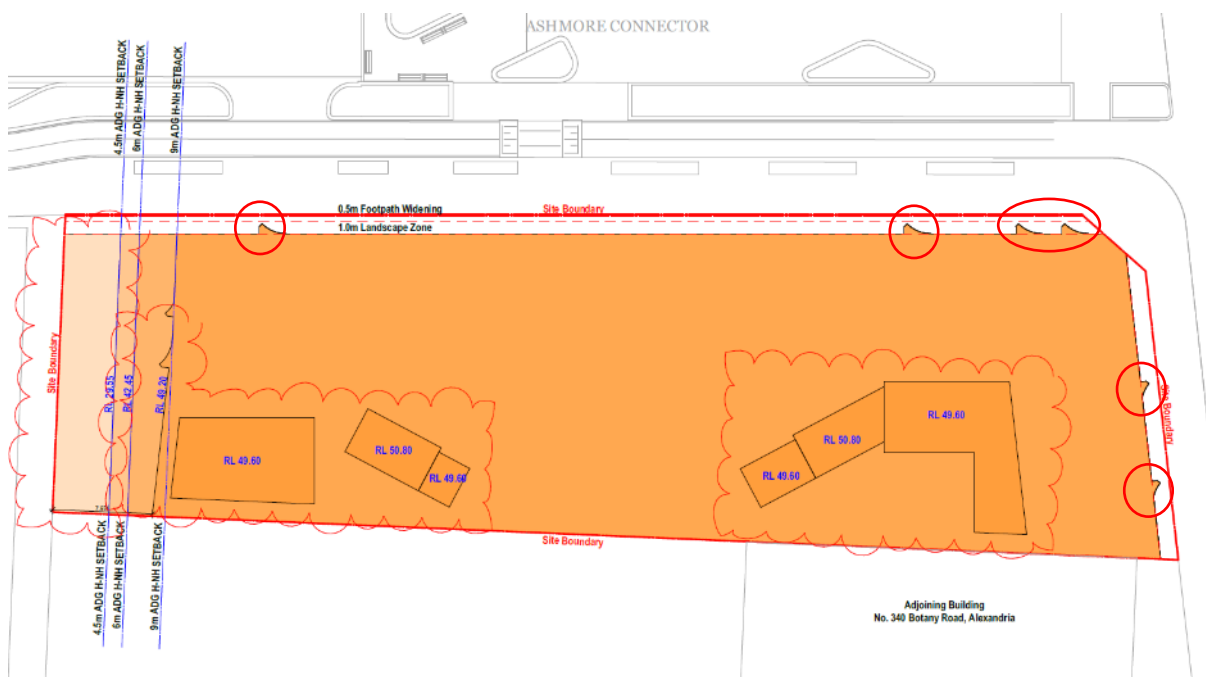


Figure 29: Blade wall setback encroachments shown with red circle

Other condition modifications

Condition 2

- 64. Condition 2 is proposed to be amended to reflect the revised building envelope plans as outlined above. This is considered appropriate having regard to the above assessment.

Condition 8

65. As outlined above the modification application also seeks to amend Condition (8)b which currently requires "no overshadowing of the approved residential apartments at 499 and 501 – 509 Botany Road, Alexandria". This condition is proposed to be deleted as the application has indicated that compliance with this requirement would result in the loss of approximately 14 affordable housing units. Additionally, condition (8)a requires that the subsequent detailed design development application "Minimise overshadowing on adjoining properties in accordance with ADG objective 3B-2". While the detailed design development application (D/2024/273) does result in some additional overshadowing of apartments within 499 and 501 – 509 Botany Road, Alexandria it minimises this overshadowing and demonstrate that notwithstanding the additional impact, a minimum of 2 hours of solar access will be retained to these units in midwinter between the hours of 9am and 3pm as required. Accordingly, it is considered that deletion of condition (8)b) is appropriate as it will provide for 14 additional affordable housing units whilst still minimising overshadowing impacts on neighbouring properties in accordance with condition (8)a).
66. Condition (8)d) is also proposed to be amended to reflect the new maximum height of 36.2m rather than the existing approved 33m as outlined above. This is considered appropriate having regard to the above assessment.

Condition 14

67. The applicant has requested that condition 14 be amended to reflect the increased maximum height limit as follows:

(14) BUILDING HEIGHT

*The maximum height of the buildings must not exceed 33 metres in accordance with the Sydney LEP 2012 **except where supported by a Clause 4.6 Variation request. Any Clause 4.6 Variation request will be assessed by Council in accordance with Clause 4.6(4) of the Sydney LEP 2012. No structures are to exceed the 33 metres height limit.***

68. To ensure simplicity and certainty it is however recommended that the condition be amended to merely update the maximum height as follows:

(14) BUILDING HEIGHT

*The maximum height of the buildings must not exceed ~~33~~ **36.2** metres in accordance with the Sydney LEP 2012. No structures are to exceed the ~~33~~ **36.2** metres height limit.*

Consultation**Internal Referrals**

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

Advertising and Notification

70. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 28 days between 16 May 2024 and 14 June 2024. A total of 375 properties were notified and nil submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

71. The City of Sydney Development Contributions Plan 2015 applies to the site. Affordable housing provided by a community housing provider is however excluded from the need to pay a contribution in accordance with section 1.3 of the Plan. A social housing provider is defined under the Housing SEPP and includes St George Community Housing, the Applicant. Accordingly, no contribution is required in this instance.

Housing and Productivity Contribution

72. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
73. While the site is located with the Greater Sydney region, the development is of a type listed in Schedule 2 of the Order as being exempt from the Housing and Productivity Contribution.

Relevant Legislation

74. Environmental Planning and Assessment Act 1979.
75. Environmental Planning and Assessment Regulations 2021

Conclusion

76. This Section 4.55(2) modification application proposes to alter the approved building envelope to align with the detailed design development application D/2024/273. The detailed design development application is presented to the CSPC concurrently for approval.
77. The proposed modifications to the approved building envelope will deliver consistency between staged development applications for the site, as required under Section 4.24 of the Environmental Planning and Assessment Act, 1979.

78. The development as proposed to be modified is substantially the same as that originally approved. The location and overall form of the building envelope is consistent with the intent of the approved concept. As per the originally approved concept application, the proposed modifications will deliver a single building envelope suitable for a mixed use development comprising predominantly affordable housing and ground floor retail / commercial use. The proposed modifications primarily relate to building height, FSR and changes to the ground and upper level setbacks on the western frontage.
79. The modifications to the envelope are supported as they do not result in unacceptable amenity impacts and deliver an envelope that is capable of achieving an acceptable level of amenity for future occupants and adjoining properties.
80. The proposed building envelope is capable of accommodating a future building that exhibits design excellence in accordance with Clause 6.21C of the Sydney LEP 2012. The detailed design application D/2024/273 being considered concurrently by the CSPC demonstrates that a generally compliant scheme can be provided within the amended envelope that delivers design excellence in accordance with Clause 6.21C of the Sydney LEP 2012.
81. The proposed modifications are therefore in the public interest and recommended for approval.

GRAHAM JAHN AM

Chief Planner / Executive Director Planning, Development and Transport

Helena Miller, Director, MG Planning Pty Ltd (Independent Assessment Officer)