Item 4.

Development Application: 155 Mitchell Road, Erskineville - D/2023/962

File No.: D/2023/962

Summary

Date of Submission:	8 November 2023
Applicant:	Coronation Property Co Pty Ltd
Architect/Designer:	Arcadia and Architecture AND
Developer:	Coronation Property Co Pty Ltd
Owner:	Erskineville Developments Pty Ltd
Planning Consultant:	Urbis
DAP:	12 December 2024
Cost of Works:	$21,464,555
Zoning:	E1 Local Centre
Proposal Summary:	The application seeks consent for the public domain works outlined in the Voluntary Planning Agreement for the Ashmore Estate which includes the construction of roads (Macdonald Street and Kooka Walk), a neighbourhood park (McPherson Park) and extension of the new culvert, all of which are to be dedicated to Council. The application also includes remediation of the land and subdivision. The application is identified as integrated development as an approval under Section 90(2) of the Water Management Act 2000 is required for dewatering of the site. The application is referred to the Local Planning Panel for determination because it involves a variation to a development standard by more than 10%. The site has a maximum permitted building height of 3m in accordance with Clause 4.3 in SLEP 2012. The proposed amenities building, play equipment and shade structures exceed the height control with the shade structures having a maximum height of 5.5m, resulting in a variation of 2.5m or 83.3%.

The written request to vary the development standard made pursuant to Clause 4.6 in SLEP 2012 is well founded. Compliance with the development standard is considered unreasonable and unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify the variation.

The Design Advisory Panel made several recommendations to improve access to and the amenity of the park which have been incorporated into the recommended conditions of consent.

The proposed development includes significant stormwater drainage infrastructure for the precinct including the central section of a new trunk drain and a stormwater detention basin. Following further engineering advice the size of the detention basin may be reduced allowing improved level transitions throughout the park, being a key recommendation of the DAP.

In accordance with Council's Community Participation Plan, the development application was notified for 28 days between 15 November 2023 and 14 December 2023 and renotified between 9 September 2024 and 8 October 2024. A total of 3303 properties were notified and 7 submissions were received. The submissions raised issues in relation to the design of the park and its amenities, traffic and parking demand, and construction impacts. These issues are addressed below in this report and shown at Attachment D.

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

Development Controls:

(i) Water Management Act 2000

(ii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)

(iii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

(iv) SEPP (Resilience and Hazards) 2021

(v) SEPP (Industry and Employment) 2021

(vi) SEPP (Transport and Infrastructure) 2021

(vii) SEPP (Biodiversity and Conservation) 2021

(viii) SEPP (Planning Systems) 2021

(ix) City of Sydney Interim Floodplain Management Policy 2014

(x) City of Sydney Public Art Policy 2011 and City of Sydney Public Art Strategy 2011

(xi) City of Sydney Community Engagement Strategy and Participation Plan 2022

Attachments:

A. Recommended Conditions of Consent

B. Selected Drawings

C. Clause 4.6 Variation Request - Height of Buildings

D. Submissions

Recommendation

It is resolved that:

(A) the variation requested to Clause 4.3 in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and

(B) pursuant to section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979, consent be granted to Development Application Number D/2023/962 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

(A) The development is consistent with the Concept Plan for the redevelopment of the Ashmore Estate.

(B) The development is consistent with the objectives of the E1 zone.

(C) The development is consistent with the terms of the applicable Voluntary Planning Agreement.

(D) The development will deliver the necessary roads, pedestrian and cycling links, stormwater infrastructure, and public open spaces to support the renewal of the Ashmore Neighbourhood.

(E) Based upon the material available to the Panel at the time of determining this application, the Panel 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 is consistent with the objectives of the E1 Local Centre zone and the height of buildings development standard.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 4 DP1236425 and is known as 155 Mitchell Road Erskineville. The site comprises Phase 4B of the Ashmore Estate redevelopment which is subject to a Concept Approval (D/2015/966). The site is irregular in shape with an area of approximately 17,770sqm. It has a primary street frontage of 18m to Mitchell Road and a secondary frontage of 105m to Foundry Street. The site is located close to the intersection of Mitchell Road and Maddox Street and is located between Ashmore Street to the north and Coulson Street to the south. Levels on the site fall by 500mm towards the southeast.

2. The site previously contained warehouses, and concrete hardstand areas which have been demolished. Works are completed or progressing on Phases 1, 2, 3 and 4A of the redevelopment of the Ashmore Estate.

3. The surrounding area is characterised by a mixture of land uses, primarily being residential or mixed use. The land to the east contains a mixed-use building between four and eight storeys in height with ground floor retail. The land to the north is under development for a four to eight storey residential flat buildings. The land to the south is proposed to be developed, comprising a mixed-use development with a full line supermarket to the south and residential flat buildings to the southwest.

4. The site is not identified as a heritage item or located within a heritage conservation area. The site is in proximity to the Cooper Estate Conservation Area (C2) to the east and the Malcolm Estate Conservation Area (C24) to the north.

5. The site is located within the Ashmore locality and subject to flooding.

6. In the wider context, the site is located 2.25km southwest of Sydney Central Business District.

7. A site visit was carried out on 27 August 2024. Photos of the site and surrounds are provided below:

Figure 1: Aerial view of site and surrounds (Nearmap July 2024)

Figure 2: Site viewed from Mitchell Road facing north

Figure 3: Site viewed from Foundry Street facing northwest

Figure 4: Site of future Macdonald Street intersection viewed from the intersection of Mitchell Road and Maddox Street facing west

History Relevant to the Development Application

Development Applications

8. The following applications are relevant to the current proposal:

- **D/2015/996** – Deferred commencement consent was granted by CSPC on 18 October 2017 for a stage 1 development application to establish building envelopes for residential and commercial land uses and plans for public domain, landscape, flooding and stormwater management works. The consent was made operative on 2 March 2017. The consent has been modified six times (Mods A-D and F-G).

  The consent required the developer to enter into a Voluntary Planning Agreement (VPA/2015/39) for the delivery and dedication of public domain works including roads, a public park, and stormwater management works including a new trunk drain. The Agreement was executed on 25 July 2017 and a Deed of Variation executed on 22 January 2020.

  The public domain works included in the Agreement include the Ashmore Public Domain Strategy prepared on behalf of the City by AECOM dated 30 August 2016 (Annexure A of VPA).

- **D/2017/681** – Deferred commencement consent was granted by CSPC on 7 December 2018 for the construction of a residential flat building 'Block B' and mixed-use development 'Block C'.

- **D/2017/1026** – Development consent was granted under Delegation of Council on 20 October 2018 to subdivide the existing lot into five lots. The subdivision was registered on 26 March 2018.

- **D/2019/291** – Development consent was granted by SLPP on 18 March 2020 for a stage 2 development application for the construction of six attached dwellings 'Block D'.

- **D/2019/393** – Development consent was granted by CSPC on 13 February 2020 for a stage 2 development application for the construction of a part three-four and part eight storey residential flat building 'Block A' containing 168 apartments. The development also includes public domain works including the construction and dedication of footpaths to Kooka Walk and Foundry Street, and the construction of a shared pedestrian and cycleway being Stovemaker Lane.

- **D/2023/842** – Development Consent was granted by CSPC on 15 August 2024 for a stage 2 development application for the construction of two residential flat buildings of five to eight storeys being 'Block E' containing apartments and two levels of basement parking.

  The public domain works the subject of this application are required to be completed and dedicated to the City prior to the issue of the first occupation certificate for 'Block E' (D/2023/842).

  Two modification applications are currently under assessment (Mods A & B).

- **D/2023/850** – Development Consent was granted under Delegation of Council on August 2024 for early works for 'Block E' including bulk excavation, remediation, shoring, piling and associated services to facilitate D/2023/842.

- **D/2024/1232** – A development application was submitted on 20 December 2024 to amend the concept plan (D/2015/966) relating to buildings F&I and G&H of the Ashmore Estate. This application is currently under assessment.

- **D/2024/1231** – A stage 2 detailed development application was submitted on 20 December 2024 for the construction of a mixed-use development comprising buildings F&I and G&H of the Ashmore Estate. The development comprises approximately 1000 build-to-rent and affordable housing apartments. This application is currently under assessment.

- **D/2024/1213** – A development application was submitted on 20 December 2024 for early works for buildings F&I. This application is currently under assessment.

- **D/2024/1233** – A development application was submitted on 20 December 2024 for early works for buildings G&H. This application is currently under assessment.

Compliance Action

9. The site is not subject to any compliance action relevant to the proposed development.

Amendments

10. Following a review of the submitted documentation by Council Officers, a request for additional information was sent to the applicant on 1 December 2023. The request included the submission of:

    (a) civil drawings for the roads and infrastructure

    (b) detailed plans for the McPherson Park and Kooka Walk

    (c) physical and digital models

    (d) a Site Audit Statement or interim advice.

11. The Applicant did not respond to this request.

12. Following a preliminary assessment of the proposed development by Council Officers, a further request for additional information and amendments was sent to the applicant on 9 February 2024. The request related to:

    (a) the outstanding information outlined above

    (b) subdivision

    (c) signalisation of the Mitchell Road, Maddox Street and Macdonald Street intersection

    (d) park design

    (e) canopy cover

    (f) public art

(g) contamination.

13. The applicant provided additional information on 19 May 2024. The additional information included:

(a) civil drawings

(b) revised landscape plans and report.

14. Following further assessment of the proposed development by Council Officers, a consolidated request for additional information and amendments was sent to the applicant on 15 July 2024. The request related to:

(a) subdivision

(b) design of roads and infrastructure

(c) design of the stormwater culvert

(d) design of the children's playground design

(e) design of the park including circulation and access

(f) design of the amenities building

(g) capacity of the stormwater detention basin (and flooding impacts)

(h) canopy cover

(i) contamination.

15. The applicant provided additional information on 7 August 2024 and 14 August 2024. The amended plans and additional information included:

(a) revised statement of environmental effects

(b) revised civil drawings including changes to the stormwater culvert design

(c) revised architectural plans

(d) revised landscape plans (softscape and hardscape)

(e) revised remediation action plan

(f) interim Site Audit Statement

(g) revised stormwater management report

(h) revised Clause 4.6 variation

(i) subdivision plan (amending the application).

16. Following assessment of the proposed development by the Design Advisory Panel, a further request for additional information and amendments was sent to the applicant on December 2024. The request related to:

(a) outstanding flooding and stormwater modelling details regarding the proposed culvert design changes

(b) design changes to McPherson Park.

17. The applicant provided additional information on 2 December 2024 and 20 December 2024. The additional information consisted of:

(a) revised flood reports and modelling.

Proposed Development

18. The application seeks consent for the following:

- Construction of McPherson Park, a neighbourhood park, covering an area of 7,447sqm. The park includes:
  - an amenities building and structure located within the southwestern corner of the park with a covered barbeque area and amenities block with three WCs and a storeroom
  - a central lawn space, with terracing around the northern, western, and southern edges. The lawn area also functions as a stormwater detention basin
  - playground areas for toddlers, young children and older children along the western edge of the park with shade structures
  - internal footpaths, including two timber deck viewing platform off Kooka Walk
  - a detention basin (2,715cbm)
  - park furniture and fixtures, including lighting and wayfinding signage.
- Construction of Macdonald Street between Hadfield Street and Mitchell Road, including the signalisation of the Mitchell Road, Macdonald Street and Maddox Street intersection. The 20m wide road comprises two travel lanes and two parking lanes, with in road street tree planting, a bi-directional cycleway along the northern side and footpaths on each side. The southern footpath is temporary. Integration works are also required at the western end connecting to the existing portion of Macdonald Street and Hadfield Steet and near the eastern end connecting to the Foundry Street.
- Construction of Kooka Walk central, a 20m wide tree lined pedestrianised green spine, connecting Ashmore Road at the north to Coulson Street at the south. This portion of Kooka Walk connects with Kooka Walk north to be delivered as part of Phase 3 approved under development consent D/2019/291 for 'Block D'. Kooka Walk south is to be delivered as part of Phase 5 & 6 for 'Blocks F & I'. Kooka Walk includes the construction of the trunk drain extension and recycled water main.

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

Figure 5: Proposed McPherson Park plan

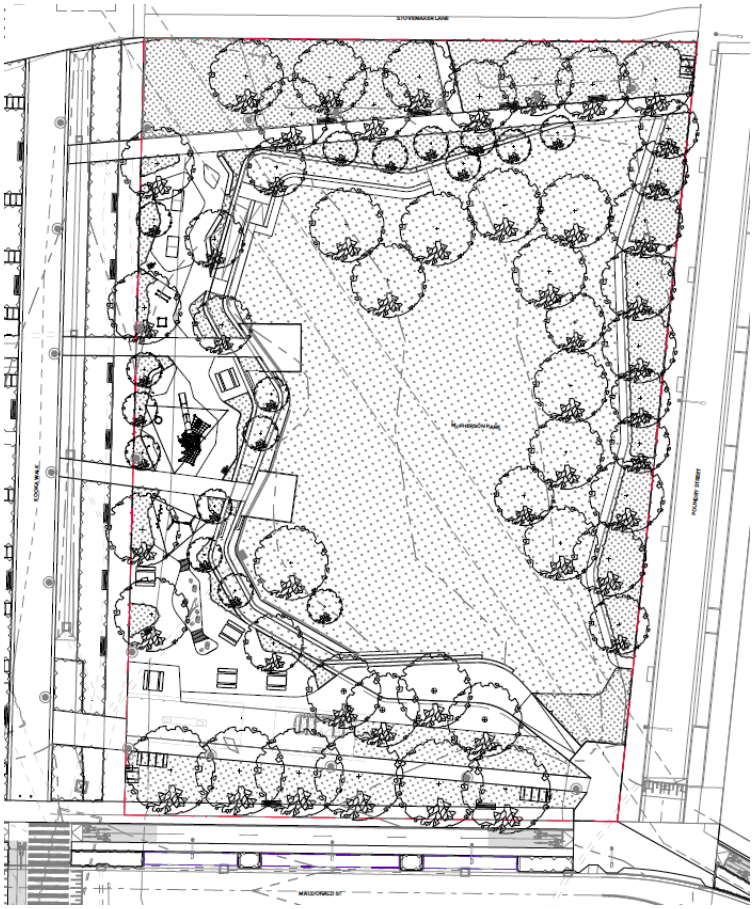

Figure 6: Proposed McPherson Park landscape plan

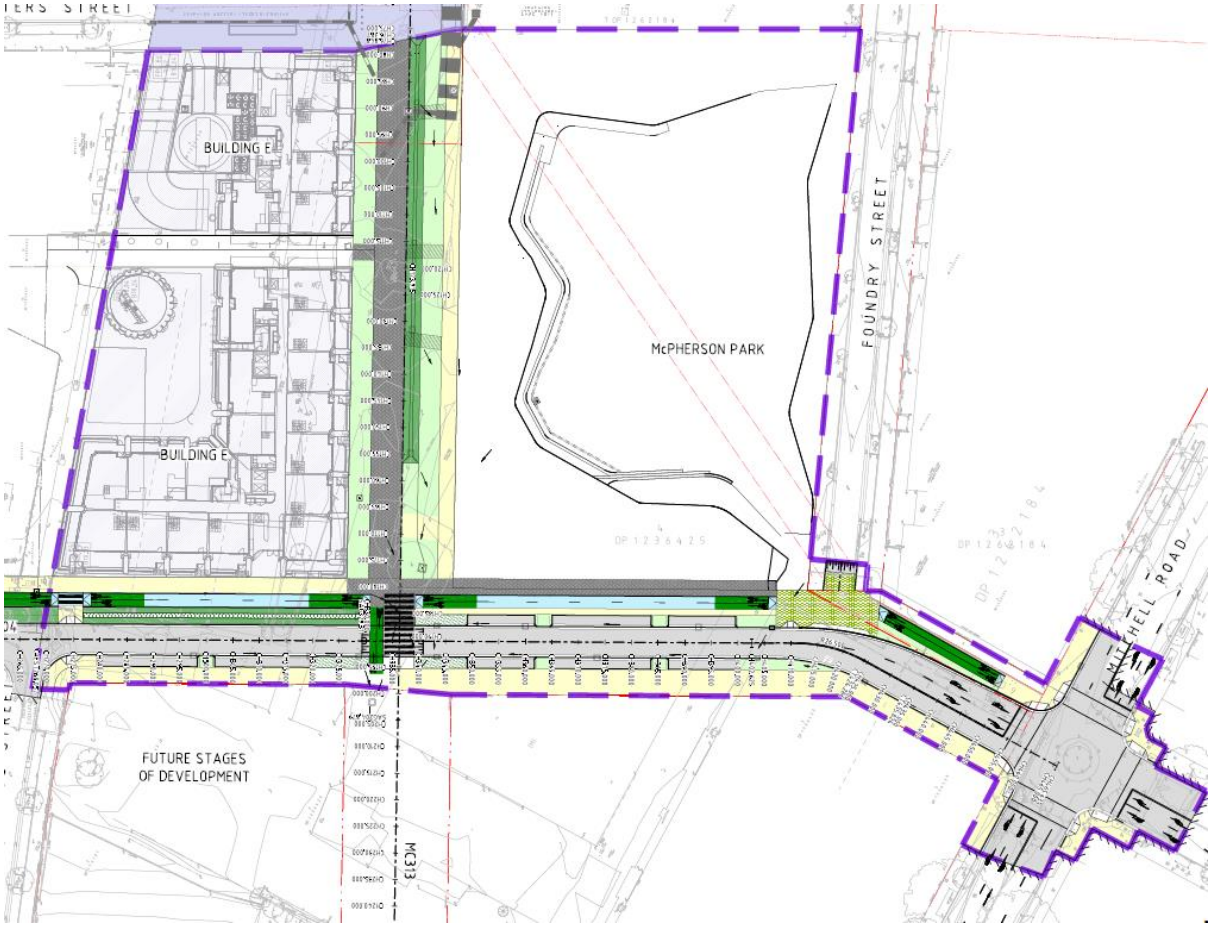

Figure 7: Proposed Kooka Walk and Macdonald Street plan

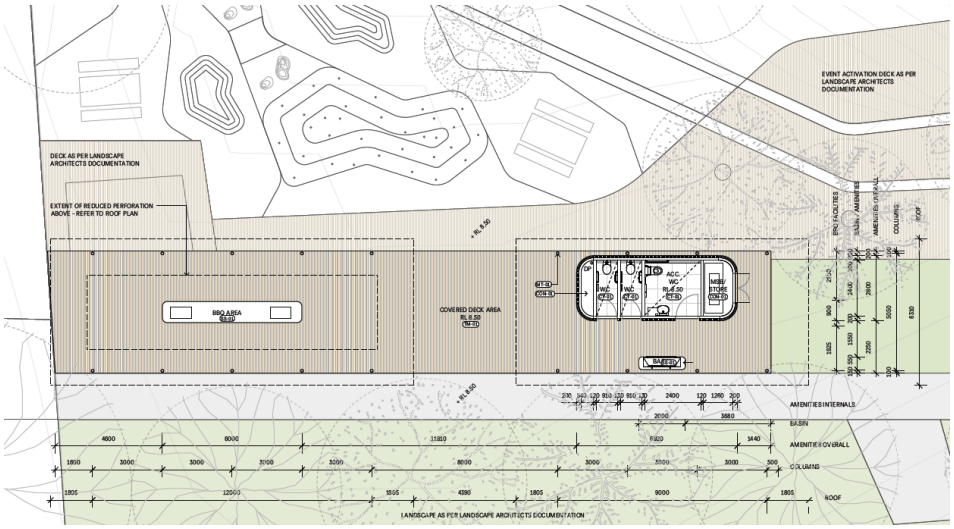

Figure 8: Proposed amenities building floor plan

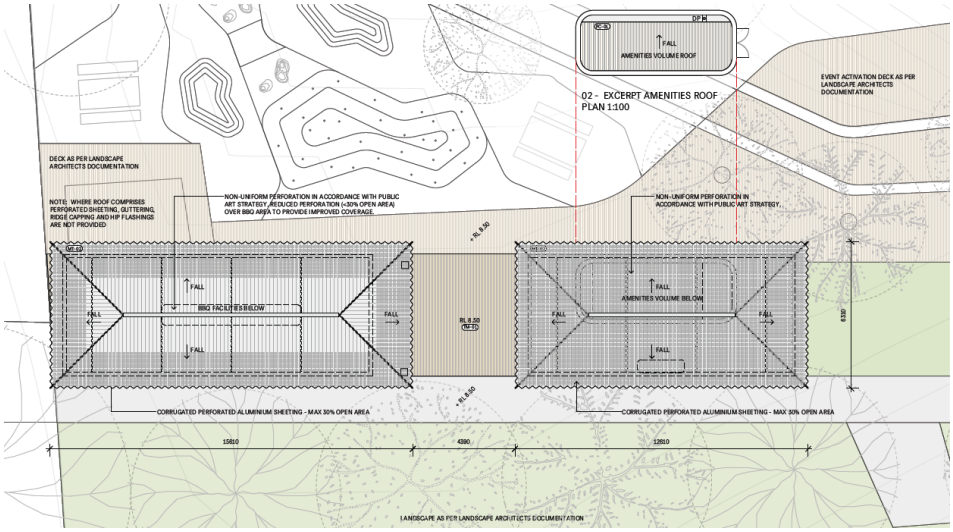

Figure 9: Proposed amenities building roof plan

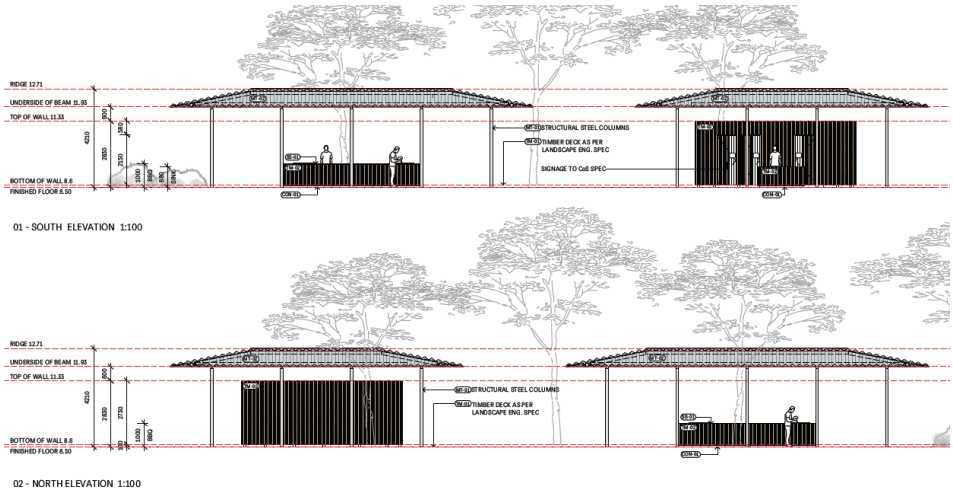

Figure 10: Proposed amenities building northern and southern elevations

Figure 11: Proposed playground equipment

Figure 12: Proposed palette of materials - roads

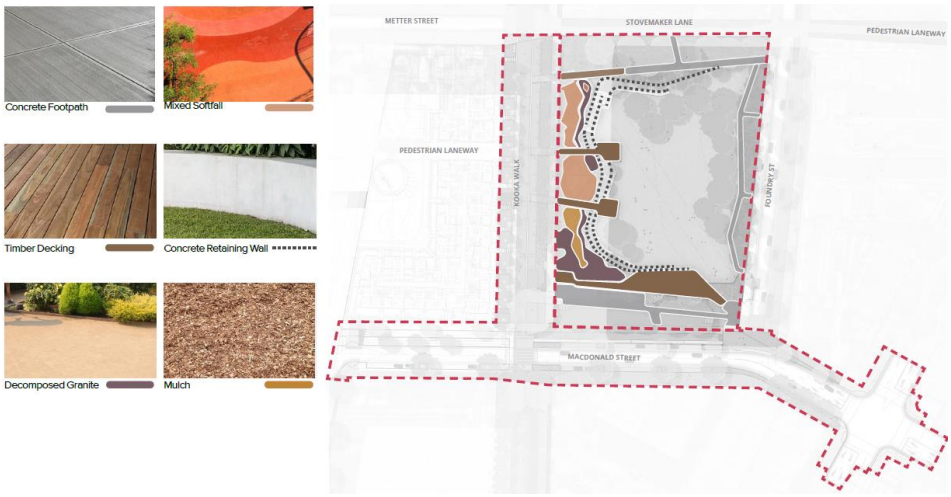

Figure 13: Proposed palette of materials - park

Assessment

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

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. Site investigations have identified the following contaminants as present on the site:

- Fill materials contain concentrations of heavy metals, TRHs, PAHs and asbestos exceeding the adopted human health and/or ecological site criteria.

34. A revised Remediation Action Plan (RAP) was submitted with the development application.

35. The RAP proposes to remediate the site as follows:

(a) Removal of underground petroleum storage systems (UPSS) infrastructure and associated hydrocarbon impacted fill materials/natural soils.

(b) Removal of soil exceeding the NEPC (2013) Residential, Parkland and Public Open Space management Limit criteria.

(c) Management of potential acid sulphate soils (PASS).

(d) Implement physical separation remediation strategy. Retained fill is to be a minimum of 1.5m and overlaid with a marker layer (orange geofabric) and validated imported fill material.

(e) All services are to be installed above the marker layer with deep service trenching to have a marker layer placed on the base and walls of the trench.

36. The proposed remediation approach will require a Long-Term Environmental Management Plan (LTEMP) to be developed and implemented.

37. Interim Audit Advice dated 2 August 2024 prepared by an NSW Accredited Site Auditor confirms that the RAP is appropriate.

38. The City's Environmental Health unit has reviewed the information provided and recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.

39. The City's Environmental Health unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Sustainable Buildings) 2022

40. The aims of this Policy are as follows:

(a) to encourage the design and delivery of sustainable buildings

(b) to ensure consistent assessment of the sustainability of buildings

(c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored

(d) to monitor the embodied emissions of materials used in construction of buildings

(e) to minimise the consumption of energy

(f) to reduce greenhouse gas emissions

(g) to minimise the consumption of mains-supplied potable water

(h) to ensure good thermal performance of buildings.

Chapter 3 Standards for non-residential development

41. Chapter 3 of the SEPP applies to development, other than development for the purposes of residential accommodation, that involves:

(a) The erection of a new building, if the development has a capital investment value of $5 million or more, or

(b) Alterations, enlargement or extension of an existing building, if the development has a capital investment value of $10million or more.

42. The proposed amenities building has a CIV of less than $5 million and therefore this Chapter of the SEPP does not apply.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

44. The City of Sydney is the roads authority for the subject roads including the intersection of Mitchell Road, Maddox Street and Macdonald Street.

45. The application was referred to Transport for New South Wales (TfNSW) and no objection was raised. TfNSW confirmed that the agency is willing to grant an approval, in-principle, under Section 87 of the Roads Act 1993 for the proposed signalisation of the intersection of Mitchell Road, Maddox Street and Macdonald Street, subject demonstrating acceptable design and operational impacts.

46. Condition 40 has been recommended requiring the applicant to consult with and obtain approval from TfNSW for the signalisation of the intersection.

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 works in the vicinity Ausgrid underground cables.

48. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised. The conditions recommended by Ausgrid have been including in the recommended conditions of consent at Attachment A.

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	The site is zoned E1 Local Centre. The proposed development is defined as *roads* and *recreation area* and are permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No, refer to clause 4.6	A maximum building height of 3m is permitted.

Provision	Compliance	Comment
		A maximum height of 5.5m is proposed constituting a variation of up to 2.5m or 83.3% The proposed development does not comply with the maximum height of buildings development standard. A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 1.75:1 is permitted. The proposed amenities block would have a nominal GFA of less than 20sqm. Condition (8) of the Concept Approval apportioned a maximum GFA to each development block although did not apportion any floor space to the park. Given the adjoining block E, also part of Phase 4, did not achieve the maximum allocation of floor space the proposal therefore does not exceed the total floor space permitted by the concept plan. Additionally, the proposal is not inconsistent with condition (8)(c) of the Concept Approval.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the height of buildings development standard prescribed under Clause 4.3. A written Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.1 and 5.1A Development on land intended to be acquired for public purposes	Not Applicable	Whilst the land is proposed to be dedicated for public purposes in accordance with a VPA, it is not identified as land intended to be acquired under this Clause.
5.3A Development below ground level in Zone RE1	Not Applicable	Whilst the land is zoned E1 Local Centre, it is proposed to be used for public recreation. Nevertheless, the

Provision	Compliance	Comment
		proposed development would not prevent the use of the land for public open space or recreation purposes.
5.10 Heritage conservation	Yes	The site is in proximity to the Cooper Estate Conservation Area (C2) to the east and the Malcolm Estate Conservation Area (C24) to the north, however, would not adversely impact the significance of the conservation areas.
5.21 Flood planning	Yes	The site is identified as being subject to flooding. Flood modelling was undertaken as part of the Stage 1 application (D/2015/966) and each subsequent Stage 2 application is required to assess the post- and interim-development flood impacts, noting that construction of the Ashmore Estate is phased and includes significant stormwater management works. Part of the stormwater management works are to be delivered by this application. The proposed development involves the construction of a section of the new trunk drain and a stormwater detention basin, with a capacity of 2,715 cubic which may be reduced to 372 cubic meters following further engineering advice. The development is able to comply with the City's Interim Flood Plain Management Policy and satisfies the provision.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	The proposed development, subject to conditions, is capable of achieving design excellence.

Provision	Compliance	Comment
6.21D Competitive Design Process	Not Applicable	The proposed development did not require a competitive design process, nor has the applicant chosen such a process.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.2 Car parking spaces not to exceed maximum set out in this Division.	Not Applicable	The future roads will include on street parking and is not captured by these Clauses. The extent of parking is consistent with the Ashmore Public Domain Strategy.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Not Applicable	The site is located on 'residual lands' but the application does not involve the creation or alteration of floor space of an amount or type requiring a contribution.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 3 Acid Sulfate Soils. The application proposes works requiring the preparation an Acid Sulfate Management plan. A condition is recommended requiring compliance with the submitted Acid Sulfate Management Plan.
7.20 Development requiring or authorising preparation of a development control plan	Yes	The proposed development is located outside of Central Sydney, with a site area that exceeds 5,000sqm. A site specific DCP is therefore required. This is a detailed development application submitted in accordance with Concept Approval D/2015/966 (as modified). Pursuant to Section 4.23 of the EP&A Act, the concept application was submitted in lieu of a site-specific

Provision	Compliance	Comment
		development control plan to satisfy this provision. The proposed development is consistent with concept approval D/2015/966/G and therefore satisfies this provision.
7.26 Public art	Yes	A preliminary Public Art Strategy has been prepared for the site. Condition (10) is recommended requiring the approval and implementation of a Public Art Plan in accordance with the endorsed Strategy.

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 of the Ashmore locality. The proposed development involves the delivery of significant public elements, consistent with the relevant principles in Subsections 2.7.8 (e), (f), (g) and (h).

Section 3 – General Provisions

Provision	Compliance	Comment
3.1.1.1 General	Yes	The new streets and footpaths will be constructed in accordance with the *Sydney Street Design Code* and will include street trees in accordance with the City's *Street Tree Masterplan.*
3.1.1.2 Streets	Yes	Streets are provided in accordance with the Ashmore Public Domain Strategy and specific area DCP. Water sensitive urban design features are provided including a swale along Kooka Walk and rain gardens within Macdonald Street.

Provision	Compliance	Comment
3.1.1.4 Footpaths	Yes	Footpaths are provided to all new streets in accordance with the Ashmore Public Domain Strategy.
3.1.2.1 Bike Network	Yes	The local bike network will be expanded through the construction of Kooka Walk, as a green link shared path, and the construction of Macdonald Street, with a bi-directional separated cycleway along the northern side of connecting with the existing portion further west along Macdonald Street.
3.2. Defining the Public Domain	Yes	The design of the existing and approved buildings surrounding McPherson Park have considered overshadowing to the lawn area to main sunlight to the publicly accessible space.
3.3 Design Excellence and Competitive Design Processes	Not Applicable	The public domain and park were not subject to a Competitive Design Process.
3.3.7 Public Art Strategy	Yes	A Public Art Strategy has been produced by UAP for the remaining development within the Ashmore Estate. Installation of public art within the park is required in accordance with the Planning Agreement. Condition (10) is recommended requiring the approval and implementation of a Public Art Plan in accordance with the endorsed Strategy.
3.4 Hierarchy of Centres, City South	Yes	The proposed public domain work supports the intended function of the Ashmore Estate as a local village by complementing the retail offering and improving accessibility within the locality, particularly for people walking and riding bikes.
3.5 Urban Ecology	Acceptable	Canopy coverage generally meets the City's Urban Forest Strategy 2023. 'See Discussion below'

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	N/A	Refer to SEPP (Sustainable Buildings) and discussion section.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under Section 7.15 above.
3.8 Subdivision and Consolidation	Yes	The proposed development involves subdivision of the site into four lots. The new allotments reflect the Concept Approval for the Ashmore Estate and align with the future development blocks and land to be dedicated. The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to condition of consent.
3.9 Heritage	Yes	The site is in proximity to the Cooper Estate Conservation Area (C2) to the east and the Malcolm Estate Conservation Area (C24) to the north, however, would not adversely impact the significance of the conservation areas.
3.11 Transport and Parking	Yes	McPherson Park is designed to be a neighbourhood scale park and would provide public open space for passive and active recreation for the surrounding residents. Minimal on street parking is provided along Macdonald Street in accordance with the Ashmore Public Domain Strategy.
3.12 Accessible Design	Yes	The proposed development achieves accessibility requirements. The playground area will include accessible and inclusive play equipment and are subject to further design development.
3.14 Waste	Yes	Rubish bins are to be provided within McPherson Park. Details are to be

Provision	Compliance	Comment
		provided prior to the issue of the relevant Subdivision Works Certificate.
3.16 Signage and Advertising	Yes	Street signage and wayfinding signage is be provided. Details are to be provided prior to the issue of the relevant Subdivision Works Certificate.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.5.1 Ashmore Neighbourhood	Yes	The proposed development is consistent with the objectives of the Ashmore urban strategy.
5.5.3 Local infrastructure and public domain	Yes	The design of Macdonald Street is consistent with the road design shown in Section A in Figure 5.122 of the DCP. The design of Kooka Walk central is consistent with the road design shown in Section F in Figure 5.128 of the DCP.
5.5.3.2 Movement and connectivity	Yes	The proposed development includes the signalisation of the Mitchell Road, Maddox Street and Macdonald Street intersection in accordance with the VPA.
5.5.3.3 Bike Network	Yes	The local bike network will be expanded through the construction of Kooka Walk, a green link shared path, and the construction of Macdonald Street, with a bi-directional separated cycleway along the northern side connecting with the existing cycleway further west along Macdonald Street. Bicycle parking rails are also provided within McPherson Park.

Discussion

Clause 4.6 Request to Vary a Development Standard

52. The site is subject to a maximum height of buildings development standard of 3m pursuant to Clause 4.3 of the LEP. See Figure 14 below.

Figure 14. Extract of Sydney LEP 2012 Height of building map depicting the standard for the site and surrounding area

53. The proposed development involves various structures that exceed the maximum height of buildings development standard as follows:

    (a) amenities building - maximum height of 4.21m or a variation of 1.21m (40.3%)

    (b) play equipment - maximum height of 5.0m or a variation of 2.0m (66.6%)

    (c) shade structures - maximum height of 5.5m or a variation of 2.5m (83.3%)

54. The definition of buildings in section 5 of the Act includes structures and therefore the above listed structures and buildings are subject to the development standard.

55. 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; and

    (b) That there are sufficient environmental planning grounds to justify contravening the standard.

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

56. 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 request demonstrates that objective (1)(a) is achieved because the variations are consistent with the anticipated nature and scale of structures required for a park of this size and will provide shade and weather protection and play equipment. The provision of amenities, play equipment and shade structures facilitate the use and enjoyment of the park as a public recreation area for the neighbourhood residents. The structures are consistent to the scale and function of the park and reflect the conditions of the site and surrounding development.

(ii) The request demonstrates that objective (1)(b) is achieved as the nearest heritage item or conservation is some 45m away and their significance would therefore not be impacted by the height of the proposed buildings.

(iii) The request demonstrates that objective (1)(c) is achieved as there are no notable views within the area of the park or relying on sightlines across the park. The park will be surrounded by taller buildings. The proposed structures will not affect the distant views of the CBD skyline viewed from the top of the hill in Sydney Park.

(iv) Objective (1)(d) and (1)(e) are not relevant to the site.

(b) That there are sufficient environmental planning grounds to justify contravention of the standard:

(i) The variations have an absence of any environmental harm.

(ii) The variations facilitate positive planning benefits arising from the proposed development, being weather protection for the BBQ and amenities building and shade and play equipment structures within the park, all of which would improve the overall usability and enjoyment of the public park and playground for the neighbourhood residents.

(iii) The variations do not give rise to any visual impact or overshadowing impacts. The structures will be located within the landscape setting of the park.

(iv) The proposal will provide significant social benefits. The structures support the usability of the park making it a more desirable place for people to congregate and enjoy passive and active recreation opportunities.

Consideration of Applicant's Written Request - Clause 4.6(3)

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

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

58. The applicant's written request adequately demonstrates that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved despite the non-compliance with the development standard in the circumstances of the case.

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

59. The applicant's written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the standard.

    The environmental planning grounds raised by the applicant are relevant to the variations sought and justify the nature and extent of the variations. The justifications are largely based on the positive public benefit of providing these structures which in addition would not cause any adverse impacts for the surrounding properties or public domain.

60. Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that written request adequately addressed the matters required to be demonstrated by subclause (3).

Is the development in the public interest?

61. The application was lodged prior to commencement of the Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) Order 2023 and therefore Clause 4.6(4) is required to be satisfied. This clause has since been omitted and Clause 4.6(3) amended.

62. Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the proposed development is in the public interest because it is consistent with the objectives of the particular standard and the objectives of development within the zone in which the development is proposed to be carried out.

63. The objectives of the height of buildings development standard have been achieved as demonstrated by the applicant's written request. Notwithstanding, the consent authority can also be satisfied that the proposed development is consistent with those objectives.

64. 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.

65. Only objectives (a) and (e) are considered to be relevant to the proposed development.

66. Regarding objective (a), the proposed development provides a new park with appropriate amenities which will be utilised by people who live in, work in or visit the area.

67. Regarding objective (b), the proposed development provides new transport infrastructure for people walking and cycling which will encourage people to walk or cycle through the area and to the park itself. The proposed park provides new public recreation areas for the Ashmore Neighbourhood reducing the need for people who live in the area to travel elsewhere to access public recreation areas with appropriate amenities.

68. The Panel may assume concurrence in accordance with Planning Circular PS 18-003.

Conclusion

69. 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 demonstrated 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 the height of buildings development standard and the E1 Local Centre zone.

Design Advisory Panel

70. The application was reviewed by the City's Design Advisory Panel on 24 October 2024. The following advice was provided:

    (a) Investigate reducing the capacity of the stormwater detention basis to minimise the level change between the playground and picnic areas and the lawn area to improve the level transitions and connectivity within the park.

    (b) The park edges currently present as barriers to the surrounding street network, with entries into the park, limited to select street block corners. It was recommended that an additional 'desire line' entry be provided within the northwestern corner and the proposed entries in the southeastern corner and eastern side be widened by reducing the adjoining mass planting areas.

    (c) Various level changes within the park, particularly along the edge of the playground and picnic areas separate these spaces. It was recommended that the level differences be reduced and more subtle level changes provided to improve the connectivity and views and vistas into the park.

    (d) The suitability of timber viewing deck structures over the lawn was questioned. Any access below the structures would need to be restricted. It was recommended that the structures be converted to paths, ramping down onto the lawn, and the timber decking material substituted with additional brick paving tying into Kooka Walk.

    (e) The duplication of the roof over the amenities building is considered unnecessary. It was recommended that the main roof be amended to provide weather protection, by reconsidering the perforated roofing, and the lower internal roof be deleted, simplifying the structure and improving natural ventilation.

71. Additional information was provided in December 2024 confirming that the capacity of the stormwater basin could be significantly reduced without having any adverse flooding impacts on the downstream land. This was required to satisfy Clause 5.21 of the LEP regrading flood planning. As a result, the currently shown two-tiered terracing along the western side of the lawn area may be reduced to a single tier and would also allow the children's playground areas to be slightly widened and the level transitions between the playground and picnic areas and the lawn to be improved.

72. The applicant met with City Staff on 18 December 2024 to discuss the proposed amendments to resolve the Panel's recommendations.

73. Condition (3) is recommended requiring design changes to resolve the above issues and incorporate the Panel's recommendations.

Voluntary Planning Agreement

74. Schedule 3 of the VPA requires the following to be delivered:

    (a) land dedication

    (b) extension of the Trunk drain

    (c) construction of roads and a green spine pedestrian and cycling link

    (d) construction of a park (McPherson Park)

    (e) installation of public art within the park

    (f) signalisation of the Mitchell Road, Macdonald Street and Maddox Street intersection.

75. The proposed development is consistent with the terms of the VPA.

Ashmore Public Domain Strategy

76. The Ashmore Public Domain Strategy was prepared by AECOM on behalf of the City in 2015 as part of the rezoning of the Ashmore Neighbourhood.

Figure 15. Extract of Ashmore Public Domain Strategy

77. The proposed development is generally consistent with the design and intent of the Strategy. Where amendments have been proposed or would occur as a result of the recommended conditions, these constitute the degree of design development anticipated noting the scope and limitation of the Strategy which was prepared as a concept for the broader Ashmore Neighbourhood.

Signalisation of the Mitchell Road, Macdonald Street and Maddox Street intersection

78. The applicant proposed to delay the signalisation of this intersection and instead install a temporary roundabout. This was not supported given the completion of Macdonald Street would introduce traffic from the Ashmore Neighbhourhood onto Mitchell Road and warrants signalisation of this intersection. The application was subsequently amended in August 2024 to reinstate the signalisation of the intersection in accordance with the terms of the VPA.

Stormwater Detention Basin

79. The lawn area within McPherson Park is designed to function as a stormwater detention basin. The Ashmore Public Domain Strategy design had a capacity of some 2,715 cubic meters.

80. Since this time, the redevelopment of the Ashmore Estate has progressed significantly, and further investigations have been undertaken. As a result, it has been demonstrated that the capacity of the basin can be significantly reduced without having any adverse flooding impacts on downstream land.

81. The Applicant provided civil and flood engineering advice, reviewed by the City's Water Assets unit, demonstrating the required volume is only around 392 cubic meters, a significant reduction.

82. This demonstrates that the DAP recommendation to reduce the capacity of the basin to improve level transitions throughout the park can be achieved.

83. Accordingly, condition (3)(a) *Design Modifications* is recommended allowing the capacity of the stormwater detention basin to be reduced in accordance with the advice.

Trunk Drainage Extension

84. The proposed culvert is required to be constructed as part of the VPA. The culvert traverses the length of Kooka Walk from Ashmore Street to Coulson Street within the boundaries of the broader site. The proposed development includes the central portion of the culvert.

85. The location of the proposed drainage culvert has been shifted further to the west to align the structure below the paving of Kooka Walk which allows additional canopy tree planting to be accommodated within the adjoining planting areas which would have previously been compromised by the culvert location below.

86. Details have been provided for the transition structure located at the intersection of Kooka Walk and Macdonald Street which allow for the connection of the existing culvert in Macdonald Street to the new culvert.

87. The existing Sydney Water culvert located predominantly within Kooka Walk south, but partially below Macdonald Street, is proposed to be retained for flood storage.

Integration and Temporary works

88. Integration works and some temporary works are required where the future public domain adjoining existing public domain areas or future development. These temporary works have in part been detailed and will be subject to further design documentation prior to the issue of the relevant Subdivision Works Certificate.

Canopy Cover

89. Trees are to be planted generally in accordance with the Ashmore Public Domain Strategy and Street Tree Master Plan.

90. The City's Urban Forest Strategy 2023 requires tree canopy coverage to achieve certain targets by 2050. The targets are assessed below:

(a) Streets

(i) Local Road - Macdonald Street - target 38%

(ii) Laneways - target 25%

(b) Parks

(i) Pocket Park - target 70%

(ii) Neighbourhood Park - McPherson Park - target 55%

(c) Kooka Walk is a hybrid between a pocket park and laneway. The targets for a pocket park and laneway are 70% and 25% respectively. A canopy coverage of 58.8% is proposed and is considered to be reasonable.

91. The proposed canopy coverage is unable to meet the targets in the Strategy. Macdonald Street achieves 18% and McPherson Park achieves 48% canopy coverage. Where the canopy is less than the target this reflects the approved Ashmore Public Domain Strategy and is in part balanced by the additional canopy in Kooka Walk and the landscape setbacks for the developments.

92. McPherson Park was also designed with a large lawn area intended to provide opportunities for sunlight access. Adding additional canopy coverage within this area would be contrary to the Strategy and Section 3.2 of the DCP.

Consultation

Internal Referrals

93. The application was discussed with the City's:

(a) Public Domain Unit

(b) Environmental Health Unit (Contamination)

(c) Urban Design Unit

(d) Safe City Unit

(e) Specialist Surveyors

(f) Access and Transport Unit

(g) Infrastructure and Traffic Operations

(h) Planning Agreements Unit

(i) Tree Management Unit

(j) Cleansing and Waste Unit.

94. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in recommended conditions of consent at Attachment A.

External Referrals

Ausgrid

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

96. A response was received on 11 December 2023 raising no objections to the proposed development.

97. The conditions recommended by Ausgrid have been including in the recommended conditions at Attachment A.

Sydney Water

98. Pursuant to Section 78 of the Sydney Water Act, the application was referred to Sydney Water for comment.

99. Sydney Water requested additional information on 19 October 2023 and 5 June 2024 requiring the Sydney Water's critical sewer main and critical stormwater main to be detailed on the plans before the application is rereferred to Sydney Water.

100. On receipt of the additional information, pursuant to Section 36 of the Regulations, the application was re-referred to Sydney Water.

101. Sydney Water provided advice and recommended conditions on 5 September 2024. The conditions have been included in the recommended conditions at Attachment A.

Transport for NSW

102. The application was referred to Transport for NSW (TfNSW) for comment. An approval under Section 138 of the Roads Act 1993 will be required, however, pursuant to Subsection 4.46(3) of the Act, the application is not integrated development as Council is the roads authority for the proposed works including the modifications to the intersection of Macdonald Street, Maddox Street and Mitchell Road.

103. TfNSW approval is required for the signalisation of the intersection.

104. TfNSW confirmed on 7 December 2023 that the agency is willing to grant an approval, in-principle, under Section 87 of the Roads Act 1993 to the proposed signalisation, subject to the demonstration of acceptable design and operational impacts. The conditions have been included in the recommended conditions at Attachment A.

Water NSW

105. Pursuant to Section 90(2) of the Water Management Act 2000 the proposed development requires a Water Supply Work approval. The application was referred to Water NSW for approval and is therefore Integrated Development as identified in Section 4.45 of the Act.

106. Copies of public submissions made to the City of Sydney during the notification period were forwarded to Water NSW (and other referral agencies) on 2 January 2024.

107. General Terms of Approval were issued by Water NSW on 26 March 2024 and have been included in the schedules within the recommended conditions of consent at Attachment A.

Advertising and Notification

108. 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 15 November 2023 and 14 December 2023. A total of 3,303 properties were notified and 4 submissions were received.

109. The application was notified identifying it as Integrated Development for 28 days in accordance with Section 8A of Schedule 1 of the Act.

110. The amended application was renotified for a period of 28 days between 9 September 2024 and 8 October 2024. Three further submissions were received.

111. The submissions raised the following issues:

(a) **Issue:** The proposed children's playground is unnecessary for the Erskineville demographic.

Response: The proposed playground is consistent with the Ashmore Public Domain Strategy prepared for the site and would contribute to the range of recreational and public open spaces for the neighbourhood residents.

(b) **Issue:** The proposed skate park is inappropriate in this location and has the potential to cause unreasonable noise impacts and disturbances.

Response: The proposed development was amended to delete the skatepark, noting the proximity to the larger skate park in Sydney Park.

(c) **Issue:** The proposed park will become a destination park people will drive to creating more traffic within the area.

Response: The proposed park design is consistent with that of a 'neighbourhood park'. Minimal parking is provided along Macdonald Street and is not intended to induce traffic.

(d) **Issue:** Additional parking should be provided for the park. It is suggested that 45-degree or similar parking be provided along the northern side of Macdonald Street.

Response: The proposed park design is consistent with that of a 'neighbourhood park'. Minimal parking is provided along Macdonald Street and is not intended to induce traffic.

(e) **Issue:** Traffic should be restricted from entering Macdonald Street from Mitchell Road to minimise local traffic and create a pedestrian environment.

Response: The Macdonald Street and Mitchell Road intersection is part of the wider planned street network and will primarily support only local traffic. Macdonald Street has been designed with wide footpaths and a bi-directional cycleway to provide a desirable environment for people walking and cycling.

(f) **Issue:** Suggestion that Jacaranda trees be planted within the park to contribute to the surrounding character where Jacaranda trees are prevalent along Ashmore Street.

Response: The proposed tree plantings are consistent with the City's Street Tree Master Plan and Tree Species list.

(g) **Issue:** Facilities should be provided for dogs.

Response: The detailed park design provided at subdivision works certificate stage will detail these facilities. The proposed park is intended to be subject to the City's general plan of management for parks which regulates dogs within parks.

(h) **Issue:** The proposed works will result in construction noise and disruption for an extended period of time.

Response: Construction will be subject to compliance with an approved Construction Noise and Vibration Management Plan which will be required to address and adequately manage the potential construction noise impacts.

(i) **Issue:** The proposed works will result in an increase in heavy vehicle traffic and result in delays and inconvenience for surrounding residents.

Response: Construction will be subject to compliance with an approved Construction Traffic Management Plan which will be required to address and adequately manage the potential traffic impacts associated with the construction work.

(j) **Issue:** A submission was received regarding the ongoing work being undertaken as part of Phase 3 'Block D' development and removal of a brick wall at the end of the gardens of dwellings along Ashmore Street this is not relevant to the subject application.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

112. The development of the Ashmore Estate (D/2015/966) is subject to Section 7.11 development contributions under the provisions of the City of Sydney Development Contributions Plan 2015.

113. The development application seeks consent for the Public Benefit works outlined in Schedule 3 of the VPA which include s7.11 works-in-kind and land dedications intended to offset Section 7.11 Contributions payable under this or any other phase of the development.

114. A contribution is therefore not payable for the works the subject of this development application.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

115. The development is not subject of an Affordable Housing Contribution under the provisions of Section 7.13 of the LEP.

Housing and Productivity Contribution

116. The development is not subject of a Housing and Productivity Contribution under the provisions of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

Relevant Legislation

117. Environmental Planning and Assessment Act 1979.

Conclusion

118. The matters for consideration in Section 4.15(1) of the Act have been satisfied. The proposed development is permissible in the E1 Local Centre zone and meets the development standards and relevant provisions of SLEP 2012, subject to Clause 4.6. The proposed development is consistent with the objectives of SDCP 2012.

119. The proposed amenities building, play equipment and shade structures exceed the height of buildings development standard of 3m in Clause 4.3 of SLEP 2012 by up to 2.5 or 83.3%. The variation is supported by a written request to vary the development standard pursuant to Clause 4.6 in SLEP 2012. The written request demonstrates that compliance with the development standard is unreasonable and unnecessary because the proposed development meets the objectives of the development standard, and there are sufficient environmental planning grounds to justify the variation in the circumstances. The proposed development would be in the public interest because it is consistent with the objectives of the zone and the standard proposed to be varied.

120. The proposed development is consistent with the terms of the Voluntary Planning Agreement and will deliver significant public infrastructure and recreational open space within the Ashmore Neighbhourhood.

121. The recommendations of the Design Advisory Panel have been considered and are able to be addressed through further design development undertaken prior to the issue of the relevant subdivision works certificates. The recommendations seek to improve the accessibility and amenity of the proposed park.

122. Issues raised in the submissions have been addressed by way of amendments or recommended conditions of consent where appropriate.

123. The proposed development is considered reasonable and is recommended for approval subject to the site specific and standard conditions of consent at Attachment A.

ANDREW THOMAS

Executive Manager Planning and Development

Michael Stephens, Senior Planner