Item 3.

Development Application: 290-294 Botany Road, Alexandria - D/2024/709

File Number: D/2024/709

Summary

Date of Submission:	4 September 2024 Final amendments received 26 May 2025
Applicant/Architect:	Antoniades Architects
Owner:	ANGREB PTY. LIMITED & SENTRA INVESTMENTS PTY LTD
Planning Consultant:	GSA Planning
Heritage Consultant:	Weir Phillips
DAPRS:	3 December 2024
Cost of Works:	$46,904,000
Zoning:	MU1 Mixed Use

Proposal Summary:	The application is a concept proposal for in-principle approval (no physical works) comprising:
	
	• Demolition of existing building and excavation of up to two basement levels for parking, loading, storage, plant and services.
	
	• A concept building envelope up to 31.73m in height
	
	• Vehicular access via Wyndham Street
	
	• Indicative future land uses comprising:
	
	  • Basement parking, services, plant and storage
	
	  • Ground floor retail and commercial uses, landscaping, communal open space, lobbies; and

- Residential (build-to-rent) apartments and communal open space at upper levels.

The indicative scheme submitted with the application shows that approximately 85 residential units, 2 retail premises, 4 commercial premises and 88 car parking spaces could be accommodated within the proposed envelope.

The application is referred to the Local Planning Panel for determination as:

- it is development to which Chapter 4 of the State Environmental Planning Policy (Housing) 2021 applies and it is 4 or more storeys in height and

- the application includes an offer to enter into a Voluntary Planning Agreement (VPA) with the City.

A competitive design process is proposed prior to the lodgement of a detailed design development application. This will seek an additional 10% Floor Space Ratio (FSR). A design excellence strategy is included with the proposal which establishes a design excellence process for future development and sets benchmarks for Environmentally Sustainable Design (ESD) targets.

The public benefits in the VPA include the dedication of 102.804sqm land with a value of $20,560.00, public domain works with a value of $93,239.60, and a monetary contribution of $1,648,540.00 towards community infrastructure at Green Square. The draft VPA is to be publicly exhibited in accordance with the requirements of the Environmental Planning and Assessment Act 1979. The VPA is currently on public exhibition.

The height of the proposed envelope is 31.73 metres, representing a 9.4% exceedance of the SLEP 2012 Height of Buildings standard. The application seeks a variation to the height control under Clause 4.6

The written Clause 4.6 request demonstrates that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention of the standard. The reasons outlined in the clause 4.6 variation request are acceptable and the variation is supported, subject to conditions.

The application is Integrated Development requiring approval under the Water Management Act 2000. General terms of approval were issued by Water NSW on 14 April 2025.

The original proposal was notified and advertised for a period between 10 September 2024 and 9 October 2024. The amended proposal was notified and advertised for a period between 3 April 2025 and 18 April 2025. A total of 431 properties were notified. A total of 13 submissions were received and raised issues relating to bulk and scale, view loss, overshadowing, impacts to the character of the area, construction impacts, noise, privacy and outlook, and landscaping.

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

Development Controls:

(i) Environmental Planning and Assessment Act 1979

(ii) Environmental Planning and Assessment Regulation 2021

(iii) Water Management Act 2000

(iv) Sydney Water Act 1994

(v) Commonwealth Airports Act 1996

(vi) State Environmental Planning Policy (Resilience and Hazards) 2021

(vii) State Environmental Planning Policy (Transport and Infrastructure) 2021

(viii) State Environmental Planning Policy (Sustainable Buildings) 2022

(ix) Sydney Local Environmental Plan 2012

(x) Sydney Development Control Plan 2012

(xi) City of Sydney Interim Floodplain Management Policy

(xii) City of Sydney Guidelines for Waste Management in New Developments (Waste Guidelines)

(xiii) City of Sydney Public Art Policy

(xiv) City of Sydney Competitive Design Policy

Attachments: A. Recommended Conditions of Consent

B. Envelope Drawings

C. Reference Scheme Drawings

D. Clause 4.6 Variation Request - Building Height

E. Design Excellence Strategy

F. Public Benefit Offer and Draft Voluntary Planning Agreement

G. Submissions

Recommendation

It is resolved that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2024/709 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

(A) The proposal is for a concept building envelope for a mixed-use development including indicative retail, commercial, and built-to-rent residential uses. The proposal secures public benefits comprising land dedication for footpath widening, public domain works, and a payment of a monetary contribution towards community infrastructure in Green Square. The development is permissible with consent in the MU1 - Mixed Use zone and is consistent with the objectives of the zone.

(B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that compliance with the height of buildings development standard in clause 4.3 of the Sydney Local Environmental Plan 2012 is unreasonable or unnecessary, and that there are sufficient planning grounds to justify contravening the clause.

(C) The concept proposal is capable of accommodating development that complies with the floor space ratio controls pursuant to clauses 4.4, 6.14, and 6.21D of the Sydney Local Environmental Plan 2012.

(D) The concept proposal is capable of satisfying the relevant objectives of the Sydney Development Control Plan 2012.

(E) The proposed development will be the subject of a competitive design process in accordance with Clause 6.21D of the Sydney Local Environmental Plan 2012. The concept proposal and Design Excellence Strategy establish a loose fit envelopes and suitable parameters for the competitive design process. Subject to recommended conditions, the proposed envelopes are able to accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in deposited plan 82006 and lot 1 in deposited plan 85829, known as 290-294 Botany Road, Alexandria. It is irregular in shape being 'L-shaped', with a total area of approximately 2,561.1sqm. It has a primary street frontage of 21.36 metres to Botany Road and a secondary street frontage of 18.43 metres to Wyndham Street. The site is located close to the intersection of Botany Road, Bourke Road and O'Riordan Street. Levels on the site fall by approximately 3.49m from east to west.

2. The site contains 2 two storey commercial buildings with frontages to Botany Road, and an outdoor car park that is accessed from Wyndham Street. There are two existing trees onsite planted adjacent to the Wyndham Street boundary.

3. The surrounding area is characterised by a mixture of land uses, primarily being commercial and residential.

    - **North:** Directly adjoining the site to the northwest is 2 Mandible Street, a 7-storey residential flat building, and to the north is 6 Mandible Street, a 5-storey residential flat building. A seven-storey mixed use building containing residential uses and offices is located to the northeast at 282-288 Botany Road.

    - **East:** Opposite the site to the east at 237-271 is Yudi Gunyi School which is also a local heritage item.

    - **South**: Directly adjoining the site to the south at 296-298 Botany Road and 284 Wyndham Street contains a one to three storey warehouse and commercial buildings. There is a recent approval for a 22-storey mixed use development.

    - **West:** 189 Wyndham Street contains a two and three storey development currently occupied by fire and rescue. At 177 Wyndham Street there is an eight-storey development occupied by the Rail Operations Centre.

4. The site is not a heritage item and it is not located within a heritage conservation area. A locally listed heritage item (I2071), known as " Waterloo Public School group buildings including interiors, landscaping and retaining wall", is located opposite the site at 237-271 Botany Road, and currently contains the Yudi Gunyi School.

5. The site is located within the Waterloo Park locality and is not identified as being subject to flooding.

6. A site visit was carried out on 29 October 2024. Photos of the site and surrounds are provided below:

7. Photos of the site and surrounds are provided below.

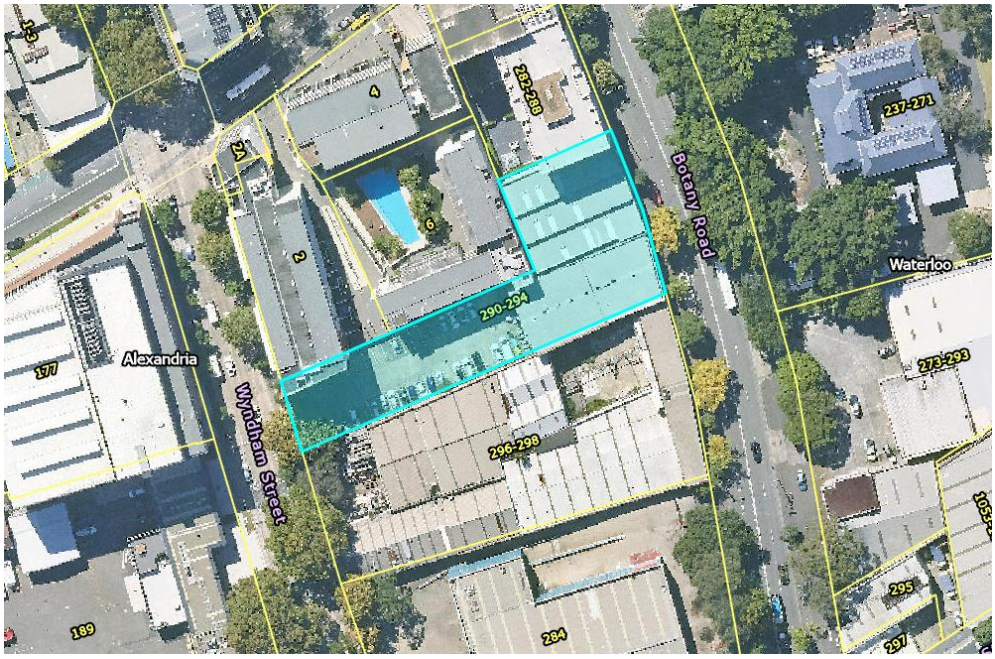

Figure 1: Aerial view of site (shown blue) and surrounds

Figure 2: Site (dashed yellow) viewed from Botany Road

Figure 3: 296-298 Botany Road viewed from Botany Road

Figure 4: 282 - 288 Botany Road viewed from Botany Road

Figure 5: Site (boundaries dashed yellow) viewed from Wyndham Street

Figure 6: Site (dashed yellow) viewed from existing carpark facing east

Figure 7: 2 - 6 Mandible Street viewed from existing carpark facing north

Figure 8: 296-298 Botany Road viewed from existing carpark facing south

History Relevant to the Development Application

Development Applications

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

- **D/2018/1500** – Deferred commencement consent was granted by the Local Planning Panel on 26 June 2019 for concept approval of a 29m building envelope for retail and office uses, vehicular access from Wyndham Street, a through-site link and indicative tree removal. The deferred commencement condition related to a Voluntary Planning Agreement.

  The consent was activated on 16 December 2019.

  The application was amended on 11 November 2020 under Section 4.55(2) Modification D/2018/1500/A to remove the basement level 2, extend the northeast portion of the building, increase certain setbacks, adjust the front and rear facade, and reduce the floor plate at each level. Figure 9 below shows the proposed envelope of the building, and Figure 10 shows a 3m setback from the southern boundary required under the approval.

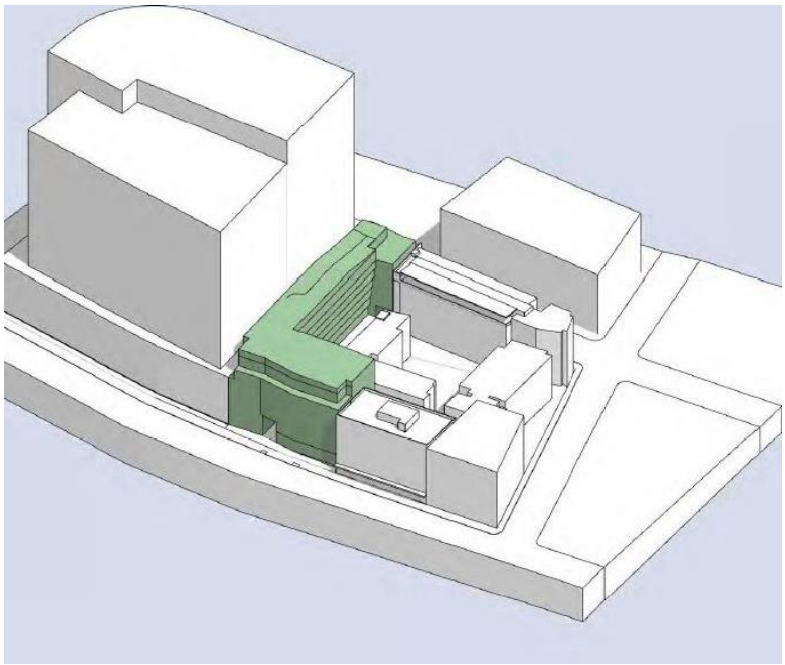

Figure 9: 3D Model of amended envelope proposed under D/2018/1500/A

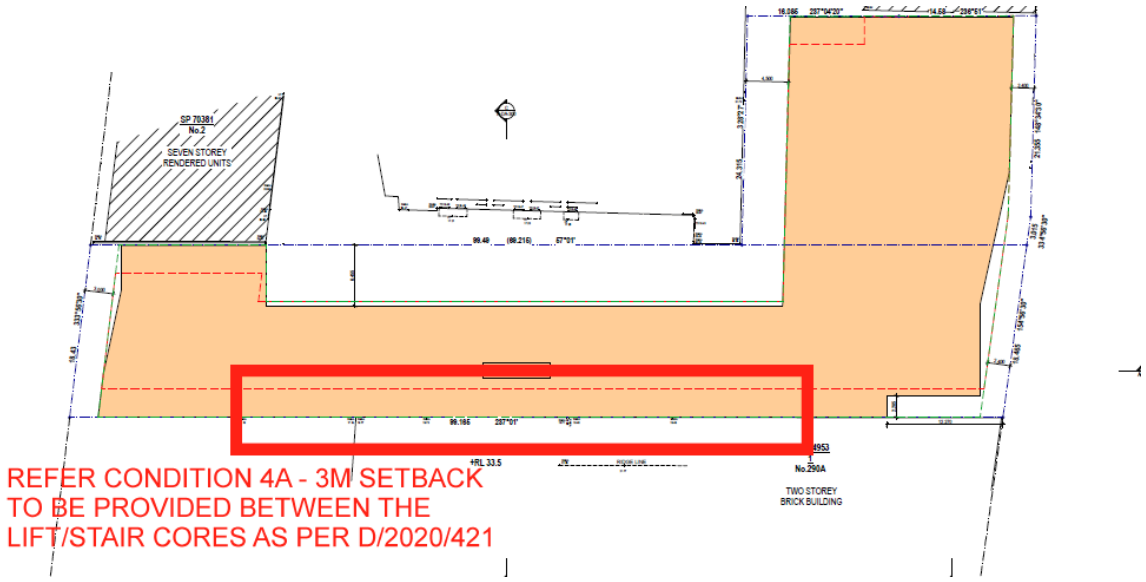

Figure 10: Approved Level 5 envelope with required 3m setback

- **D/2020/420** – Development consent was granted on 27 October 2020 for the demolition of all existing buildings and associated structures, tree removal, excavation and shoring to facilitate the future construction of a new 7-storey mixed use commercial building proposed under D/2018/1500 and D/2020/421.

- **D/2020/421** – Deferred commencement consent was granted on 11 November 2020 for a Stage 2 development for construction of a new 7 storey mixed use commercial development and associated through-site link, carparking and landscaping works.

  During assessment, concern was raised in relation to the setback from the southern boundary. At the time of assessment, D/2021/319 for the adjoining site (referred to below) had not been lodged but a pre-development application was submitted to Council and considered.

  In particular, impacts to the living room windows and communal open space of the proposed southern development were considered, but it was agreed that the impacts in elevation to the future living rooms of the site to the south would not be significant. However, it was noted that the lower-level living rooms would be impacted in terms of their solar access between 10am and 2pm on 21 June.

  Visual impacts from the 2 storey blank wall above the podium along the boundary were also considered to be a potential adverse outcome.

  A deferred commencement condition was imposed which required a minimum 3m setback to the southern boundary for levels 5 and 6 between the lift/stair cores.

9. The following applications relating to the adjoining sites are relevant to the proposal:

- **D/2021/319 (296-298 Botany Road, Alexandria)** - Deferred commencement was granted on 8 May 2024 for the construction of a mixed-use development including a two storey commercial podium above the existing approved retail podium and two residential towers containing 255 residential apartments (including 92 dual-key apartments) with associated communal outdoor space and parking.

- **D/2021/319/A (296-298 Botany Road, Alexandria) -** A Section 4.55 modification application was lodged on 7 November 2024 for the change of use of Tower C (located to the north of the site and adjacent to the subject site) from commercial to residential. The proposal will increase the number of residential units from 255 to 333. Assessment of the modification is underway and at the time of writing the application is yet to be determined.

- **U01-00496 (2-6 Mandible Street, Alexandria)** - Development consent for demolition of existing structures, and construction of 3 buildings containing 176 units including 45 live/work units, a café/convenience store and car parking for 137 vehicles was granted by South Sydney Council on 31 May 2001.

  The approved building contained an 'L-shaped' building aligning the eastern and southern boundaries.

  In the report, it was noted that the building in the south-eastern corner of the site would not prejudice reasonable development on the adjoining site.

Pre-Development Application Advice

10. A pre-development application (Pre-DA) request was received by Council officers on 24 February 2023 - PDA/2023/40.

11. The Pre-DA request sought advice in relation to the demolition of existing structures and construction of a 9-storey mixed use development comprising 91 apartments, 6 retail tenancies, and basement parking accessed from Wyndham Street.

12. Pre-DA advice was provided by Council officers on 1 May 2023.

13. It was advised that the scheme relied on additional FSR available under Clause 6.14 and Clause 6.21D of the Sydney Local Environmental Plan. The previous VPA and competitive design process related to the commercial scheme approved under D/2018/1500.

14. The following comments were provided:

    (a) The concept building envelope established under D/2018/1500 (as amended) was for a mixed-use commercial development, and did not cater for residential uses which requires very different design objectives and amenity outcomes when compared to commercial. As such, a new concept DA would be required and the amendments could not be considered under a section 4.55 modification application, because the change of use was not considered to be 'substantially the same' as required by the EP&A Act.

    (b) The additional FSR or height available under Clause 6.21D(3) of the LEP would only be provided to a 'building demonstrating design excellence'.

(c) Additional land contamination investigations and/or reporting would be required to demonstrate that the site can be made suitable for residential use;

(d) A site-specific flood assessment report would be required

(e) A Public Domain concept plan would be required to accommodate any future detailed design DA

(f) The building heights on both frontages need to better respond to the adjoining developments.

(g) Acoustic assessments and the detailed design of plenums would be critical to achieve acceptable amenity for apartments facing Botany Road and Wyndham Street.

(h) The proposed waste storage area was undersized and reference was made to the City's Guidelines for Waste Management in New Developments (2018).

(i) Compliance with SEPP 65 and the Apartment Design Guide must be achieved, particularly in relation to:

(i) Building separation, particularly to the western side boundary to 6 Mandible Street;

(ii) Natural cross-ventilation; and

(iii) Apartment, room and balcony sizes must achieve the minimum recommended by ADG.

History of the Subject Development Application

15. The subject application was received by the City on 4 September 2024.

16. Following lodgement of the development application, a request for 3D electronic and physical models was sent to the applicant on 12 September 2024.

17. The information was submitted and accepted by Council on 19 November 2024.

18. The application was presented to the Design Advisory Panel Residential Subcommittee (DAPRS) on 3 December 2024. The Panel noted that due to the irregular site geometry and the change of use from commercial to residential with the same FSR yield has resulted in fundamental design problems for the scheme, and unless additional height can be achieved on the two street frontage buildings, the proponent may need to consider a reduction of yield to achieve design excellence. It was recommended that applicant test alternative site planning and massing strategies that solved the issues identified. In particular, the DAPRS raised concerns in relation to:

(a) The inability of the reference scheme to demonstrate adequate consistency with the fundamental targets established by the Apartment Design Guide. It was noted that the reference scheme did not demonstrate compliance with minimum building separation distances, height, dwelling mix, cross ventilation, deep soil, or private open space.

(b) The proposed areas of private open space in terms of the quality of the areas provided, solar access, access to rooftop areas or privacy from the commercial premises.

(c) Privacy for apartments adjacent to communal open space.

(d) The removal of the proposed through-site link may assist in alternative site planning strategies, given that it is not required by Council.

(e) Consideration of an increased mixed-use component on the site may assist in achieving more floorspace

(f) The Wyndham Street frontage required a quality design solution to positively resolve pedestrian entry, vehicular entry and servicing demands.

(g) As a type, residential apartments demand greater separation distances and slimmer cross sections, which will inevitably result in reduced yield floor-by-floor when compared to commercial typologies.

19. Following a preliminary assessment by Council officers, a further request for additional information and amendments was sent to the applicant on 13 December 2024. The following was requested:

(a) Concept elevation drawings

(b) Amended reference scheme drawings which demonstrated that the development is able to comply with all relevant planning controls and sit within the proposed concept envelope. In particular, the plans were to demonstrate compliance with:

(i) natural cross ventilation

(ii) deep soil

(iii) communal and private open space

(iv) building separation requirements

(v) solar access

(vi) the required DCP unit mix

(c) The reference scheme drawings were also to address the following issues:

(i) The through-site link connecting Wyndham Street and Botany Road was not supported as it resulted in a poor connection between each road and provided poor amenity within the site**.**

(ii) The long L-shaped corridors were not supported and further breaks in the building were required to improve natural ventilation and light to the corridors**.**

(iii) A lift redundancy strategy was required as only one lift was provided in each core**.**

(iv) The viability of the commercial lots which did not face the public domain**.**

(v) The scheme was to allow for mailboxes, hydrant booster, meter cupboards, shading structures on roof, and access for a standard 10.6m length waste collection vehicle**.**

(vi) It was recommended that 3.15 or 3.2m floor to floor heights were proposed to ensure that waterproofing can comply with BCA requirements**.**

(vii) Trees were not to be proposed within the required 2.4m frontage to be dedicated for footpath widening**.**

(viii) The scheme was to show that the waste and recycling storage areas and dual chute system were able to comply with the City of Sydney Guidelines for Waster Management in New Developments 2018.

(d) The development was to comply with the maximum Sydney Local Environmental Plan height of buildings limit**.**

(e) An amended stormwater plan which complied with the City's Sydney Streets Technical Specifications.

(f) The proposed VPA was not supported and it was requested that the public benefit offer be amended to address the following matters:

(i) The through-site link was not a requirement under the Sydney Development Control Plan and was not supported. It was noted that it was rejected by Council under the previous concept DA for the site (D/2019/1500);

(ii) The area proposed as public open space was not supported as it was an internal courtyard which was not suitable for dedication for the City to own and manage as public open space;

(iii) The offer sought additional credit offsets for demolition, remediation and non-City related services and was not supported; and

(iv) A monetary contribution applied, given that the above inclusions were not accepted by the City.

(g) A Design Excellence Strategy which provided the required details set out in the City of Sydney Competitive Design Policy 2020.

20. On 29 January 2025, a meeting was held with the applicants to discuss Council's request for amendments and information. Issues relating to form and massing, cross ventilation, the through site link were discussed.

21. On 12 March 2025, a second meeting was held with the applicant to discuss an alternative proposed design to resolve the issues raised by Council. The amended design included a two-building form and an exceedance of the maximum height of buildings to address the requirements of the ADG and DCP, in accordance with the advice provided by the DAPRS.

22. On 19 March 2025 the applicant submitted a draft Design Excellence Strategy.

23. On 2 April 2025, the applicant submitted the following amended documents:

(a) Concept plans

(b) Detailed plans (reference scheme)

(c) Design verification statement

(d) Landscape plan

(e) Waste Management Plan

(f) Clause 4.6 variation request

(g) Traffic report

(h) Noise and ventilation report

(i) A letter prepared by the Partridge Hydraulic Services Pty Ltd dated 27 March 2025 relating to stormwater management. The letter confirmed that the proposed basement would not generate a base flow from the below ground levels and that any discharge would be directed into the on-site detention tank (OSD), prior to connection to Council's system via gravity outlet point at the kerb and gutter.

24. On 29 April 2025 the following information was requested:

(a) An amended Environmentally Sustainable Design (ESD) report which reflected the environmental targets outlined in the design excellence strategy.

(b) A preliminary public art plan.

(c) An amended physical model.

25. On 13 May 2025 the applicant submitted the requested documents and also an amended design excellence strategy .

26. On 21 May 2025 Council officers advised that the proposed amended ESD target of a 4 Star Greenstar rating was not supported and a revised design excellence strategy and ESD report were requested.

27. On 23 May 2025 the applicant submitted an amended ESD report and design excellence strategy.

Proposed Development

28. The application seeks consent for the following:

- Demolition of all existing structures
- Concept envelope for a mixed-use development comprising 2 buildings up to a maximum height of RL 46.10, or 31.73m
- Indicative future retail, commercial and build-to-rent housing land uses
- Vehicular access from Wyndham Street

- 2 indicative basement levels for associated car parking, services, storage and plant

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

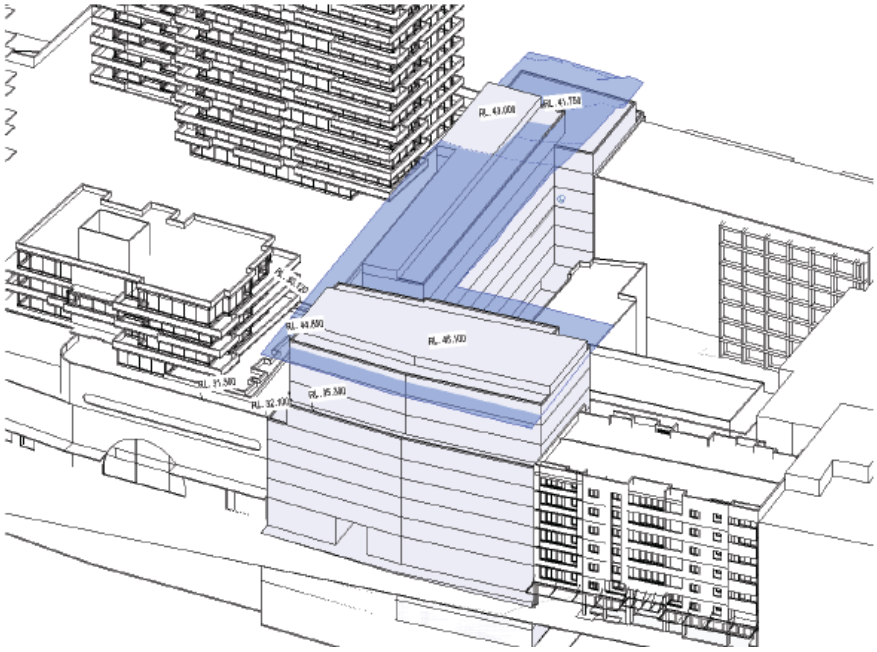

Figure 11: Proposed 3D massing from Botany Road

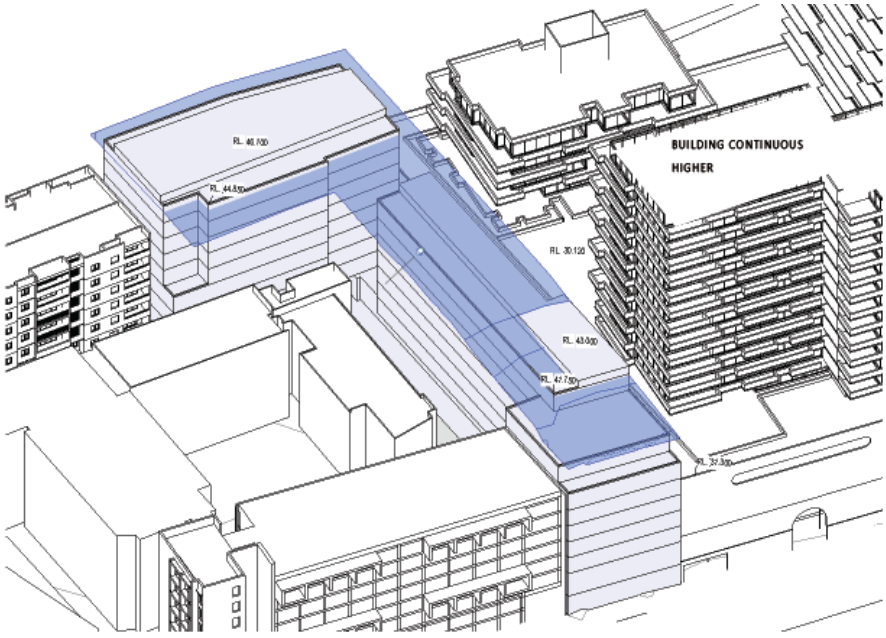

Figure 12: Proposed 3D massing from Wyndham Street

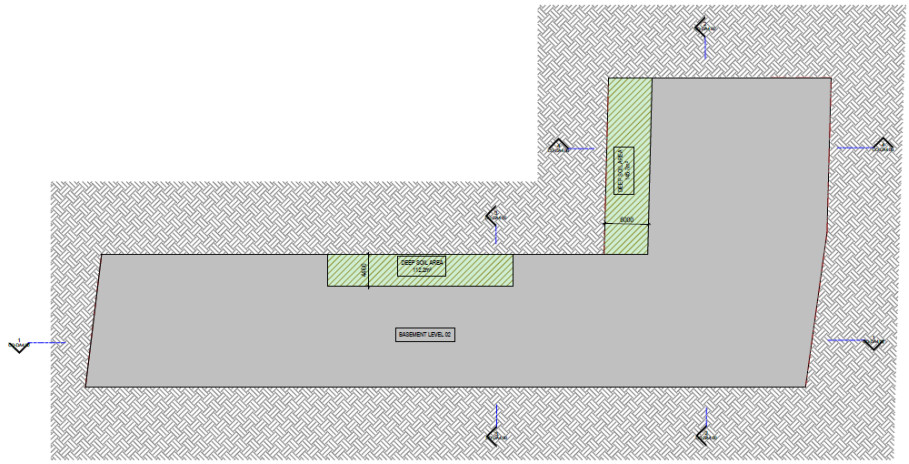

Figure 13: Proposed Basement Level 02

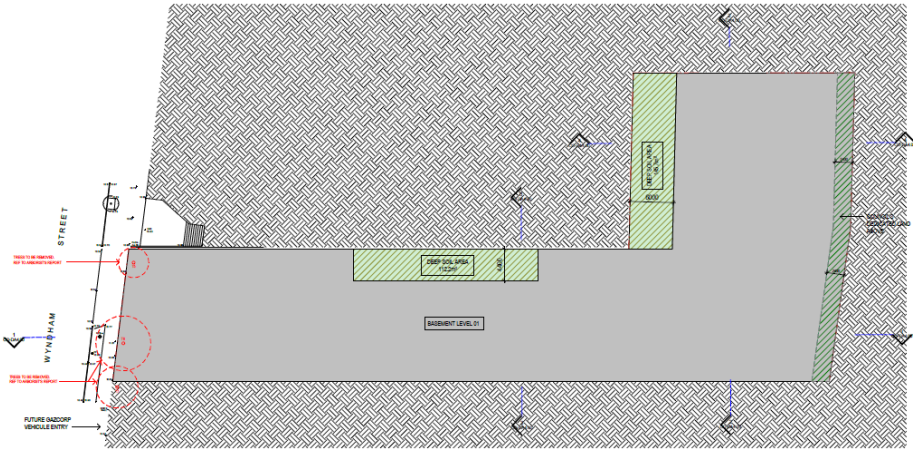

Figure 14: Proposed Basement Level 01

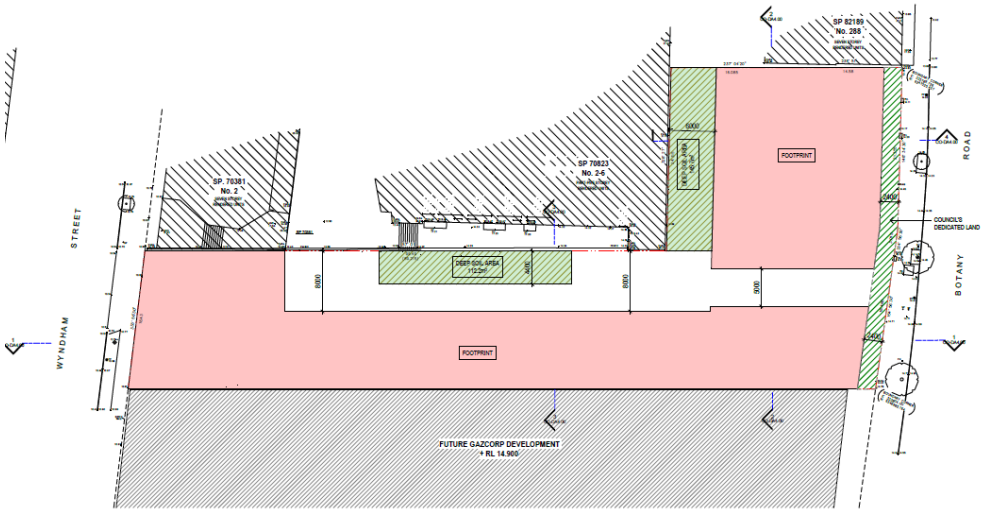

Figure 15: Proposed ground floor plan showing indicative retail/commercial uses (pink) and deep soil (green)

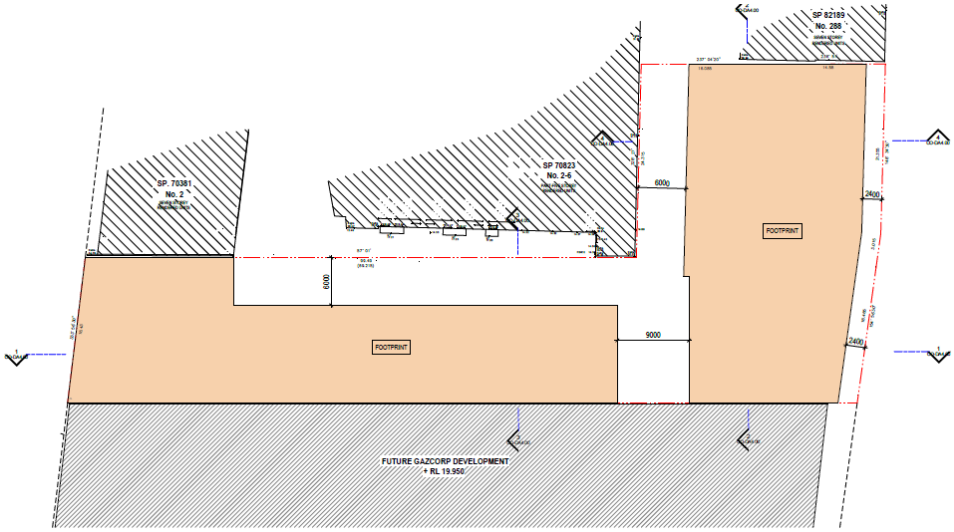

Figure 16: Proposed Levels 01-03 showing indicative residential use

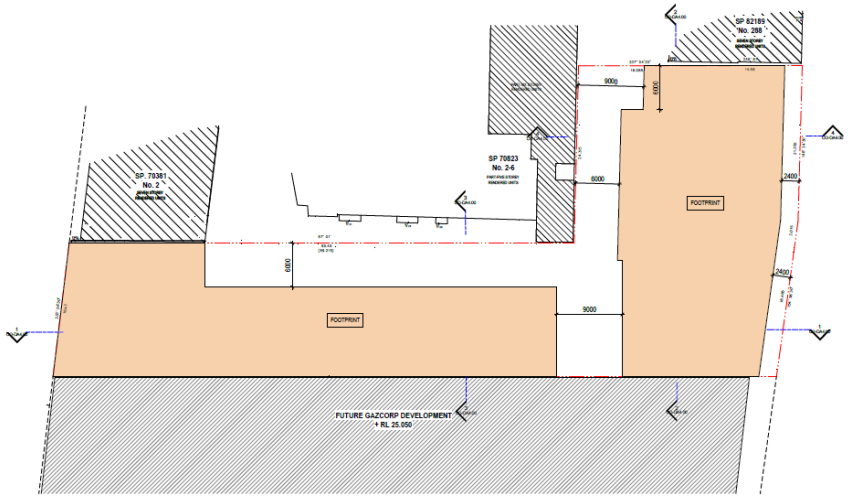

Figure 17: Proposed Level 04 showing indicative residential use

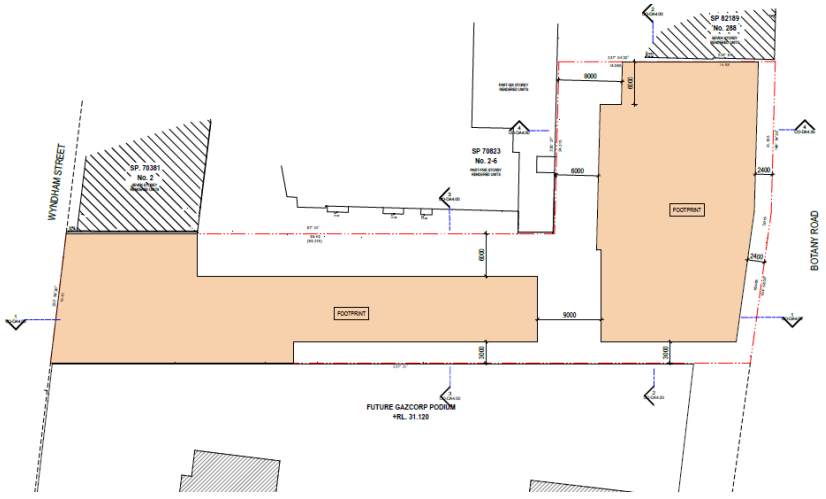

Figure 18: Proposed Level 05 showing indicative residential use

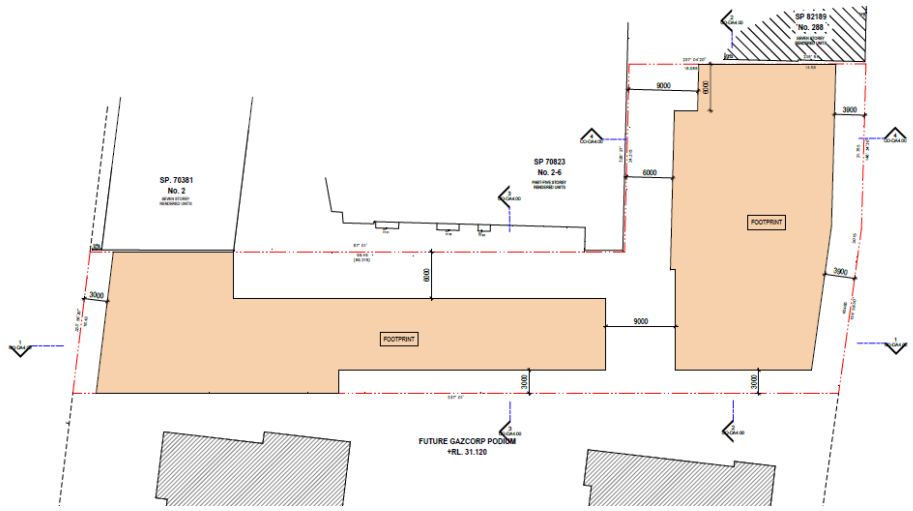

Figure 19: Proposed Level 06 showing indicative residential use

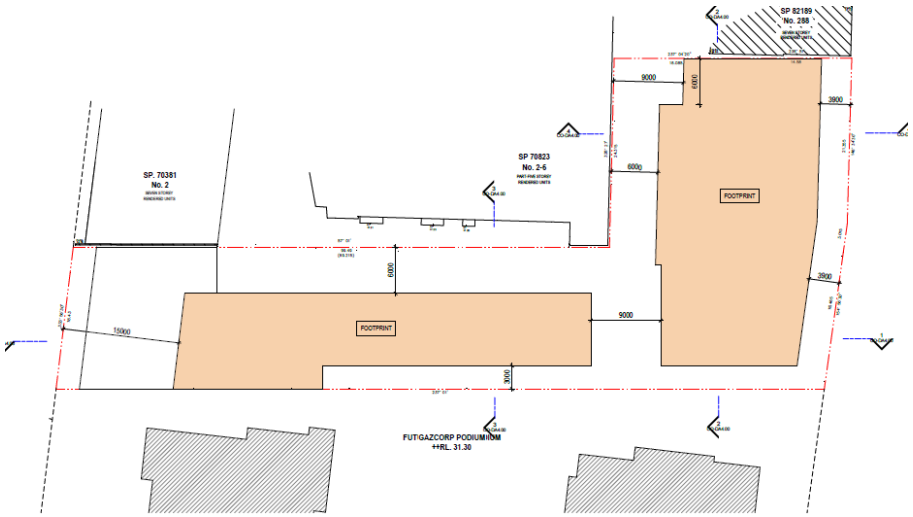

Figure 20: Proposed Level 07 showing indicative residential use

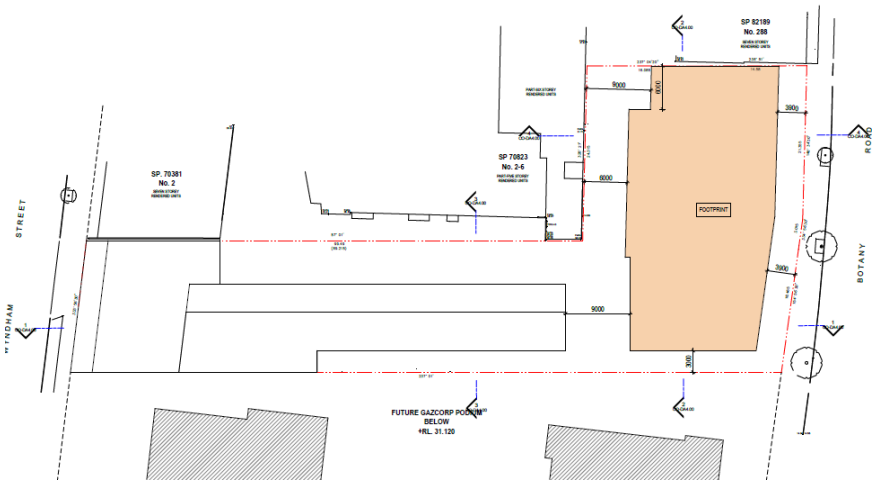

Figure 21: Proposed Level 08 showing indicative residential use

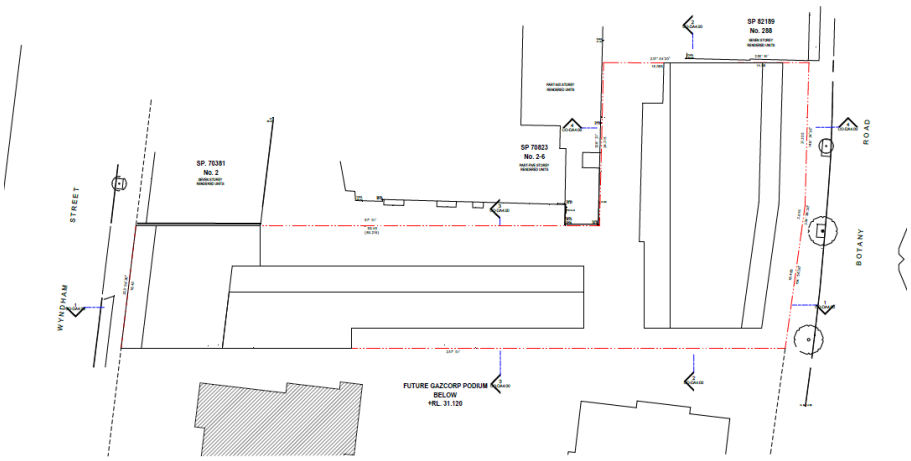

Figure 22: Proposed Roof showing area for services

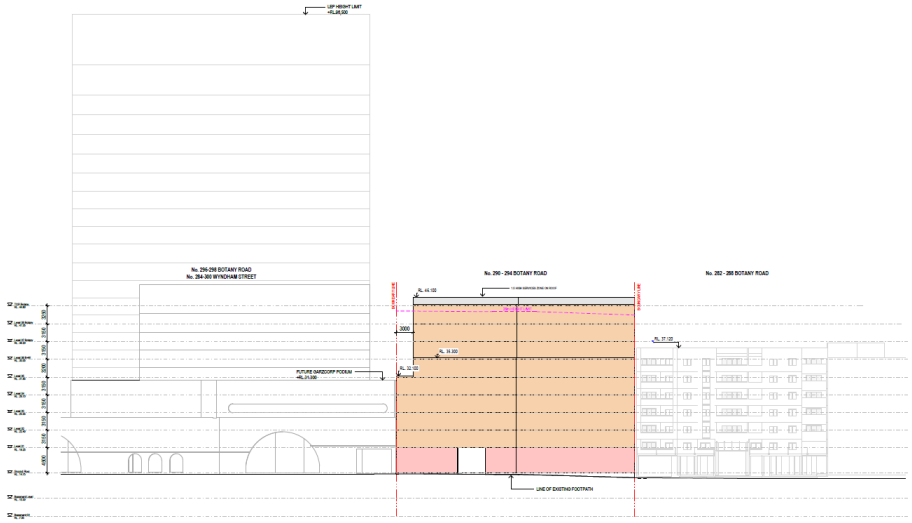

Figure 23: Proposed East Elevation (Botany Road)

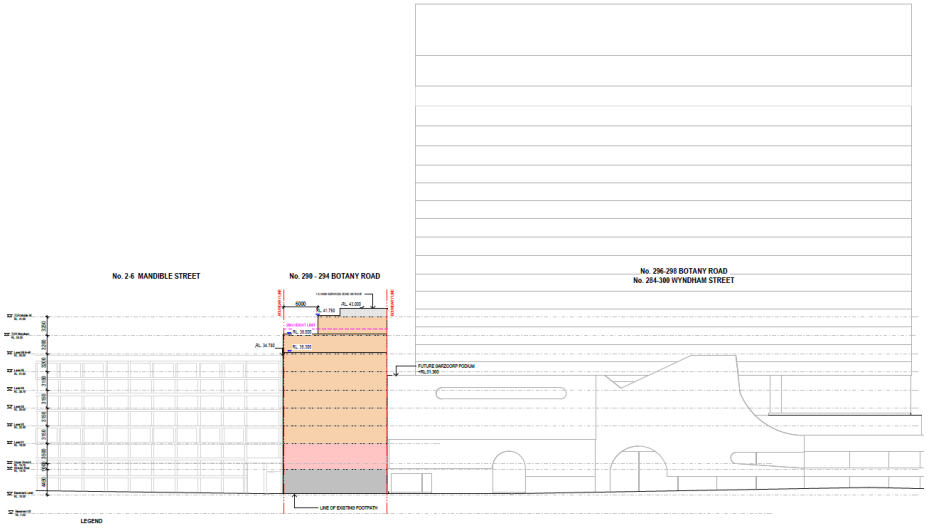

Figure 24: Proposed West Elevation (Wyndham Street)

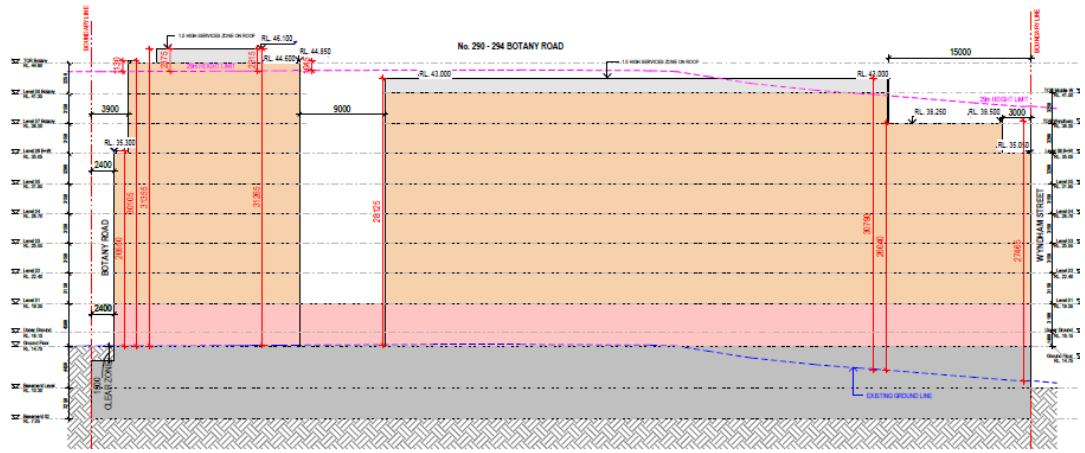

Figure 25: Proposed Section 1

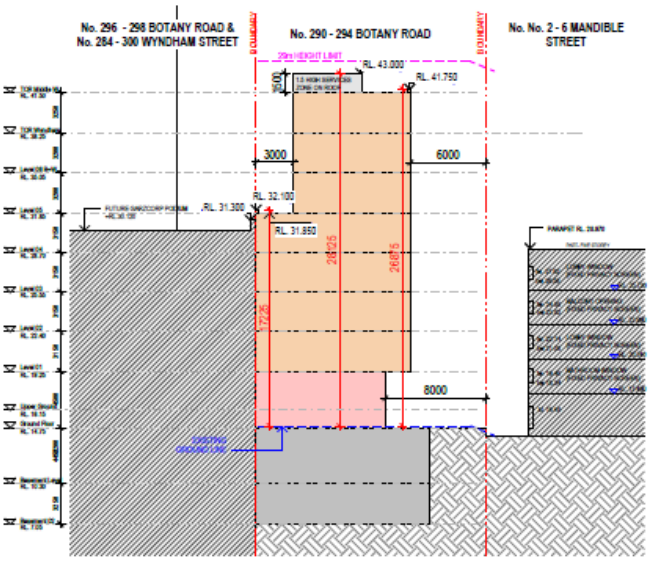

Figure 26: Proposed Section 2

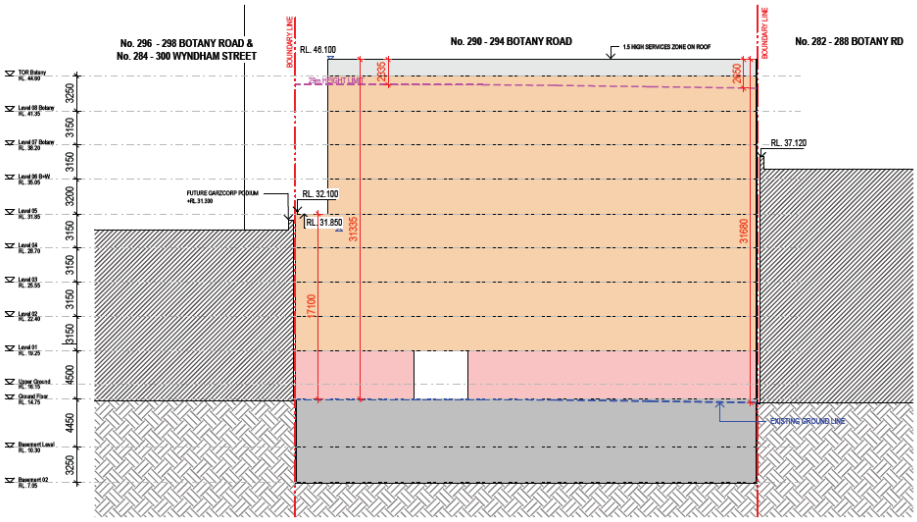

Figure 27: Proposed Section 3

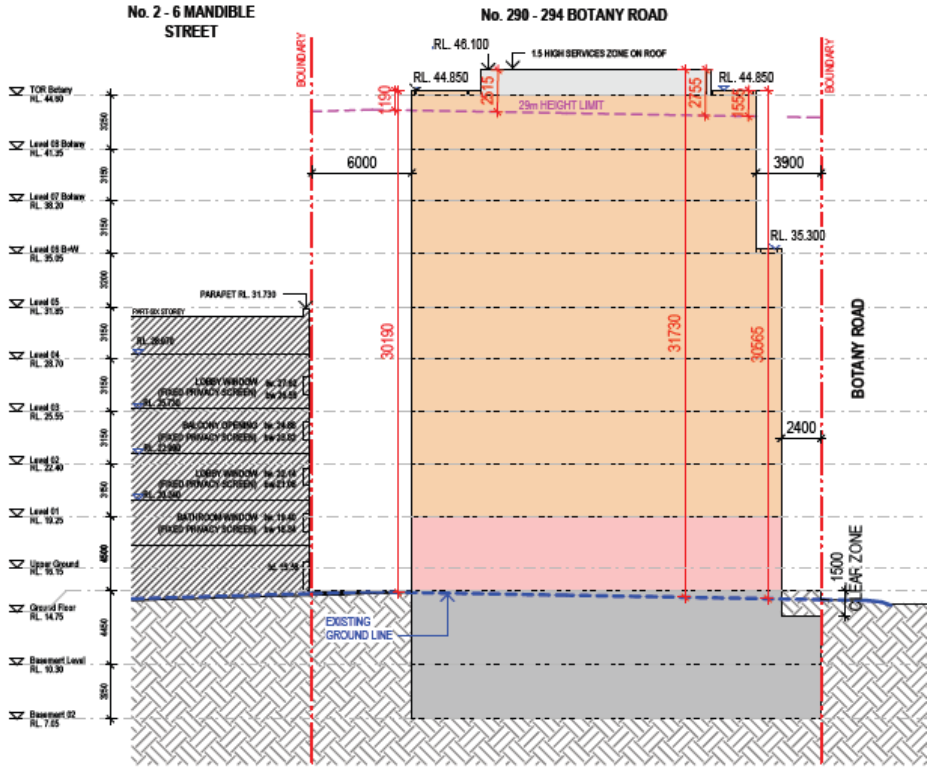

Figure 28: Proposed Section 4

Assessment

30. 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 that are associated with fill (soil):

- Three underground storage tanks (UST) in the west of the site;
- Fill soil impacted by total polycyclic aromatic hydrocarbons (PAHs);
- Copper and Zinc; and
- Groundwater impacted by zinc.

34. A Remediation Action Plan (RAP) relating to the site, prepared by JK Environments, dated 30 May 2024 has been submitted with the development application.

35. The RAP proposes excavation and off-site disposal of contaminated fill/soil. This is considered appropriate on the basis that:

(a) The UST and associated infrastructure are within the proposed basement footprint and will need to be removed to construct the basement; and

(b) The basement excavation will remove the majority of the soil from the site by default, including any localised contamination impacts around the UST and associated infrastructure.

36. The RAP concludes by stating that JK Environments are of the opinion that the site can be made suitable for the proposed residential and commercial use, provided that the RAP is implemented.

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

38. Council's Environmental Health Officer is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Sustainable Buildings) 2022

39. Any subsequent DA for the detailed design of the building will be required to satisfy the requirements of the SEPP (Sustainable Buildings) 2022, and the City's LEP and DCP provisions.

40. Conditions of consent are recommended to ensure that any subsequent Stage 2 detailed design DA will be accompanied by a valid BASIX certificate, NABERS certificate, Embodied Emissions form, in accordance with the provisions of the SEPP, and the City's Net Zero development controls.

State Environmental Planning Policy (Housing) 2021

41. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.

42. Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 allows for circumstances where an affordable housing contribution may be levied for development of land in Green Square. Financial contributions will be addressed under any subsequent DA for the detailed design of the building.

Chapter 3 Diverse Housing

Part 4 Build-to-rent housing

43. Chapter 3, Part 4 of the SEPP contains specific development standards, design requirements and conditions relating to build-to-rent housing.

44. However, section 1.9(2B)(a) of the Sydney LEP 2012 states that Chapter 3, Part 4 does not apply to land at Green Square.

45. Therefore, as the site is located on land at Green Square, Chapter 4 of the SEPP (Housing) and Apartment Design Guide (ADG) apply in full.

Chapter 4 - Design of Residential Apartment Development

46. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.

47. 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.

48. The applicant has submitted a design verification statement and design report prepared by Antoniades Architects (Andreas Antoniades - NSW Registration No. 7954) with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.

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

    (a) **Principles 1 and 2:** Context and Neighbourhood Character and Built Form and Scale

        The envelope is consistent with the desired future character for the area, it is generally consistent with the height of existing and proposed adjoining buildings and with the setback controls applying to the site.

        The subject site is positioned between two large developments to the north and south.

        To the north at 282-288 Botany Road, the existing building contains a street frontage height of 6 storeys. 2 Mandible Street is a continuous 7 storeys when viewed from Wyndham Street.

To the south at 296-298 Botany Road, the site has development consent to construct two 20-storey towers and a two storey development above the podium.

The envelope contains setbacks to the street and internal site boundaries to ensure that the building is compatible with the existing and proposed development when viewed from the public domain, as well as providing acceptable amenity to adjoining developments.

The proposed building heights create a cohesive streetscape along both Botany Road and Wyndham Street, as shown in Figure 29 below.

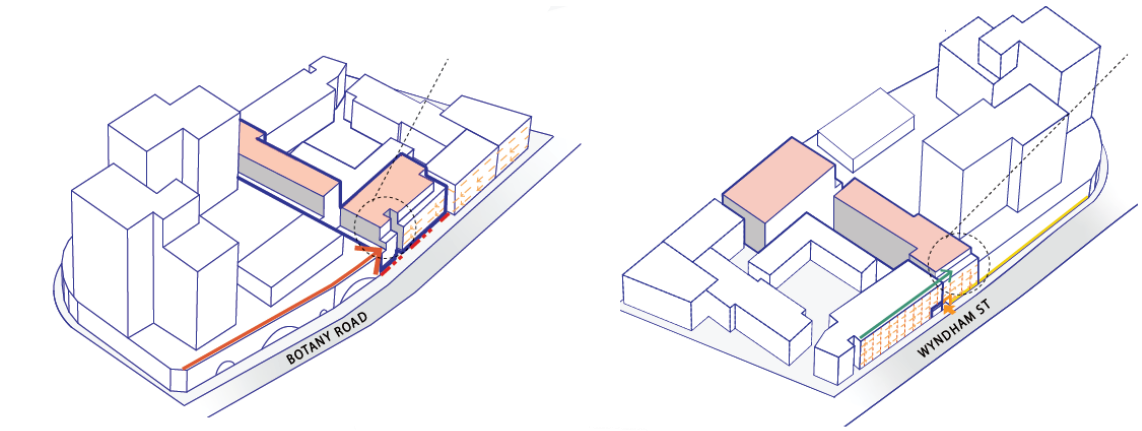

Figure 29: Façade integration to botany Road (left) and Wyndham Street (right)

(b) **Principle 3:** Density

The reference scheme demonstrates that the proposed concept envelope is capable of providing a level of density that is appropriate to the site and its context.

The site is approximately 150m from Green Square train station and community facilities, and several retail and commercial premises in Green Square. There is also development consent for 296-298 Wyndham Street, adjacent to the site, to construct a supermarket at the ground floor.

(c) **Principle 4:** Sustainability

The energy efficiency and sustainability of the design will form part of a subsequent DA for the detailed design of the building. ESD targets and benchmarks have incorporated into the Design Excellence Strategy which will form part of the competitive design process.

(d) **Principle 5**: Landscape

The submitted reference scheme demonstrates that deep soil, tree planting and areas for common open space can be accommodated on the site. Further details of landscape design will form part of a subsequent DA for the detailed design of the building.

(e) **Principle 6:** Amenity

The subject concept proposal is for an envelope and indicative land uses only, with the amenity for future residents to be assessed in further detail upon lodgement of any subsequent development application.

An assessment of the reference scheme concludes that the site can provide an adequate level of amenity as the envelope can accommodate apartments that do not exceed the maximum depth, that achieve the minimum size requirements, with adequate private open space, sufficient solar access, that can achieve sufficient floor to ceiling heights, that are naturally ventilated and that generally provide suitable visual and acoustic privacy.

(f) **Principle 7:** Safety

The subject proposal is for an envelope and indicative land uses only, with the detailed design of the building to be the subject of a competitive design process and a subsequent Stage 2 detailed development application.

It is considered that the building can be designed to address safety and the relevant Crime Prevention Through Environmental Design (CPTED) considerations.

(g) **Principle 8:** Housing Diversity and Social Interaction

The proposed concept envelope is able to accommodate internal and external common areas to provide opportunities for social interaction among residents. The number and mix of apartments are not approved as part of the concept DA and will be considered in further detail in the future detailed DA.

(h) **Principle 9:** Aesthetics

The proposed development is for an envelope and indicative land uses only, with the detailed design and aesthetics of the building to be the subject of a competitive design process and a subsequent development application.

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

2E Building Depth	Consistency	Comment
12-18m (glass to glass)	Able to comply	The deepest apartments in the indicative scheme have a depth of generally up to 15m which satisfies the requirements of the provision.

2F Building Separation	Consistency	Comment
Up to four storeys (approximately 12 metres): • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms	Able to comply	The proposed envelope drawings and reference scheme have accounted for the minimum building separation requirements when measured to the site boundary. See further details in the 'Discussion' section below.
Five to eight storeys (approximately 25 metres): • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms	Able to comply	
At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m.	Not applicable	Not applicable. There is no immediate change in zone between the subject site and adjoining lower density areas.

3B Overshadowing	Consistency	Comment
Living areas, private open space and communal open space should receive solar access in accordance with objectives 3D Communal and	Able to comply	An overshadowing analysis, including shadow diagrams, and view from the sun diagrams were submitted with the application. The diagrams demonstrate that a minimum of 2 hours' solar access

3B Overshadowing	Consistency	Comment
public open space and 4A Solar and daylight access. Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.		in midwinter is maintained to adjoining properties. The proposed envelope will result in minor overshadowing to the lower levels of the proposed adjoining development that is not considered to be significant.

3D Communal and Public Open Space	Consistency	Comment
Communal open space has a minimum area equal to 25% of the site.	Able to comply	A minimum of 640sqm of communal open space is required for the site. The indicative scheme provides 643.9sqm of communal open space in several areas across the site. At the ground floor, the indicative scheme provides areas of communal open space co-located within the area of deep soil (160sqm), and an outdoor gym for the residents (197.4sqm). Building A contains 86sqm of communal space to the Level 7 rooftop, with a minimum dimension of 5.2m. Building B contains an area of 200.5 sqm communal open space to the Level 6 rooftop, with a minimum dimension of 5.3m. Although the minimum quantum of communal open space is provided, the amenity provided by each area requires further consideration. See further details in the 'Discussion' section below.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2)	Able to comply	In the indicative scheme, the principle communal open space is located on the roof of level 6 of Building B, and has an area of approximately 200.5sqm.

3D Communal and Public Open Space	Consistency	Comment
hours between 9am and 3pm on 21 June (midwinter).		The area receives between 50% and 67% direct sunlight for each hour between 9am and 3pm midwinter, as required by the provision.

3E Deep Soil Zones	Consistency	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	Partial compliance	The proposed development provides 10% (258sqm) of the site as deep soil in two areas on the site, but does not provide a minimum dimension of 6m for all zones. The western boundary adjacent to Tower A has a minimum dimension of 6m. The northern boundary above Tower B has a minimum dimension of 4.4m. The ADG recognises that achieving the design criteria may not be possible on some sites, such as where the location as limited or no space for deep soil at ground level. Given that the site is a narrow L-Shaped lot, and contains an exceedance of the minimum 7% deep soil, the noncompliance with the required minimum dimension is considered acceptable.

3F Visual Privacy	Consistency	Comment
Up to four storeys (12 metres): • 6m between habitable rooms / balconies • 3m between non-habitable rooms	Able to comply	The proposed envelope drawings and reference scheme have accounted for the visual privacy design criteria. See further details in the 'Discussion' section below.
Five to eight storeys (25 metres):	Able to comply	

3F Visual Privacy	Consistency	Comment
• 9m between habitable rooms / balconies • 4.5m between non-habitable rooms		

4A Solar and Daylight Access	Consistency	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Able to comply	61 units (71.8%) receive 2 hours of direct sunlight during mid-winter in the indicative scheme.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Able to comply	5 units (5.9%) receive less than 15m of direct sunlight during mid-winter in the indicative scheme.

4B Natural Ventilation	Consistency	Comment
All habitable rooms are naturally ventilated.	Able to comply	The indicative scheme shows that all habitable rooms are naturally ventilated.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Able to comply	Out of the proposed 85 units in the indicative scheme, 32 units are noise affected, as they are located on the lower floors and face either Botany Road or Wyndham Street. Noise affected units are excluded from requiring natural cross ventilation. Of the remaining 53 units, 36 (67.9%) receive natural cross ventilation. However, in the indicative scheme, the centre units on Building B rely on ventilation from the communal access way containing louvres on the southern elevation. See further details in the 'Discussion' section below.

4B Natural Ventilation	Consistency	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Able to comply	Compliance with this objective will be assessed upon lodgement of any subsequent DA for the detailed design of the building.

4C Ceiling Heights	Consistency	Comment
Habitable rooms: 2.7m	Able to comply	The reference scheme provides 3.15 floor to floor heights for levels 1 - 8 which would provide sufficient tolerance at construction to provide 2.7m floor to ceiling heights.
Non-habitable rooms: 2.4m	Able to comply	The reference scheme provides 3.15 floor to floor heights for levels 1-8 which would provide sufficient tolerance at construction to provide 2.4m floor to ceiling heights.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Able to comply	The reference scheme provides 4.5m floor to floor heights at the ground floor but not the first floor. Commercial uses on the first floor were proposed under the original proposal which were removed in the amended plans. Any subsequent detailed DA will need to address compliance with this provision.

4D Apartment Size and Layout	Consistency	Comment
Minimum unit sizes: • Studio: 35sqm • 1 bed: 50sqm • 2 bed: 70sqm • 3 bed: 90sqm	Able to comply	The proposed reference scheme demonstrates that apartments can achieve the minimum unit sizes. Compliance with minimum apartment size, depths, width, habitable room depths, and room sizes are all to be assessed upon lodgement of any subsequent DA for the detailed design of the building.

4E Private Open Space and Balconies	Consistency	Comment
Studio apartments are to have a minimum balcony area of 4sqm with a minimum depth of 1m. One bed apartments are to have a minimum balcony area of 8sqm with a minimum depth of 2m. Two bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m. Three bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.	Able to comply	The reference scheme demonstrates that apartment balconies can generally achieve the minimum area and dimension requirements. 12 units (14%) in the reference scheme contain balconies with a depth ranging between 1m and 2-2.5m at different ends. The minimum required depth for these balconies is 2m. Where the units do not meet the minimum dimension, the balconies contain an exceedance of the minimum required total area, and the internal areas of the units also exceed the minimum required total area. This demonstrates that the site is capable of complying with the provision, which will need to be addressed in further detail upon lodgement of any subsequent DA for the detailed design of the building.

4F Common Circulation and Spaces	Consistency	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Able to comply	The reference scheme provides a maximum of 7 units off a circulation core on a single level.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Able to comply	Primary living room or bedroom windows do not open directly onto common circulation spaces in the reference scheme.

4F Common Circulation and Spaces	Consistency	Comment
Daylight and natural ventilation are provided to all common circulation spaces.	Able to comply.	Daylight and natural ventilation are provided to the common circulation spaces in the submitted reference scheme.

4G Storage	Consistency	Comment
Minimum storage provision facilities: • Studio: 4m3 • 1 bed: 6m3 • 2 bed: 8m3 • 3 bed: 10m3 (Minimum 50% storage area located within unit)	Able to comply	As the detailed design including the number of apartments and basement levels will be determined as part of a DA for the detailed design, compliance with this objective will need to be assessed at that later stage.

4H Acoustic Privacy	Consistency	Comment
Noise transfer is minimised through the siting of buildings and building layout. Noise impacts are mitigated within apartments through layout and acoustic treatments.	Able to comply	In the reference scheme, acoustic privacy has been addressed by setting quiet areas away from Botany Road and Wyndham Street where possible to face the internal courtyard. The submitted Environmental Noise and Natural Ventilation Stage 1 Assessment, prepared by Acoustic Logic, recommends that noise affected spaces facing Botany Road and Wyndham Street include horizontal plenums to allow for internal noise criteria and alternative ventilation criteria to be met. Acoustic privacy impacts will need to be considered further under the detailed Stage 2 DA.

4J Noise and Pollution	Consistency	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Able to comply	As noted above, environmental noise impacts have been considered in the design of the reference scheme. Noise and pollution impacts will need to be addressed in further detail in the detailed Stage 2 DA.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

52. The application is subject to Clause 2.119 of the SEPP as the site has frontage to Botany Road which is a classified road.

53. The proposed development satisfies the provisions of Clause 2.119 subject to conditions of consent, as access to the site is not provided from the classified road and therefore the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development

54. Any future detailed stage 2 DA which specifies vehicle parking numbers will need to address traffic impacts and will be required to be referred to TfNSW for their comments and concurrence in accordance with Schedule 3 of the SEPP as it is traffic generating development.

Clause 2.99 – Excavation in, above, below or adjacent to rail corridors

55. The application is adjacent to the heavy rail corridor and was subsequently referred to Transport for NSW (TfNSW) for concurrence. TfNSW have provided conditions which are included in the Notice of Determination.

Local Environmental Plans

Sydney Local Environmental Plan 2012

56. 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 located in the MU1 Mixed Use zone. The proposed indicative land uses are defined as residential and commercial uses which are permissible with consent in the zone. The proposal

Provision	Compliance	Comment
		generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 29m is permitted. A maximum height of 31.73m is proposed for Building A facing Botany Road, and a maximum height of 30.790m is proposed for Building B facing Wyndham Street. 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	Able to comply	Clause 4.4 of the Sydney LEP 2012 stipulates a base floor space ratio of 2:1 for the site. Clause 6.14 of the Sydney LEP 2012 allows for additional 1.5:1 FSR where community infrastructure is provided. As part of the subject application, the landowner has made an offer to enter into a Planning Agreement with the City. The public benefit offer includes the dedication of 102.804sqm land with a value of $20,560.00, public domain works with a value of $93,239.60, and a monetary contribution of $1,648,540.00 towards community infrastructure at Green Square. The documentation submitted by the applicant demonstrates that the proposed building envelope is able to accommodate 9789sqm of gross floor area, which would equate to an FSR of 3.82:1. In order to achieve this FSR, the applicant is reliant on any future architectural design being awarded the

		entirety of the 10% design excellence floor space bonus under the provisions of clause 6.21 of the Sydney LEP 2012. A deferred commencement condition requiring the VPA to be exhibited, executed and registered on title has been recommended.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under Clause 4.3 Height of Buildings. A 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
5.10 Heritage conservation	Able to comply	The site is adjacent to a local heritage item (I2071). Yudi Gunyi School, which is a locally listed heritage item under Sydney LEP 2012, is located opposite the site on Botany Road. It is visually and physically well separated from the subject site across a wide road. There are also large trees present that obscures the visibility of the school from Botany Road. Consideration of the heritage item will need to be addressed under any subsequent design competition or detailed DA.

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	Yes	Clause 4.4 of Sydney LEP 2012 stipulates a base floor space ratio of 2:1 for the site. Clause 6.14 of the LEP 2012 allows for an additional 1.5:1 FSR where community infrastructure is provided.

Provision	Compliance	Comment
		As part of the subject application, the landowner has made an offer to enter into a Planning Agreement with the City. The public benefit offer includes the dedication of 102.804sqm land with a value of $20,560.00, public domain works with a value of $93,239.60, and a monetary contribution of $1,648,540.00 towards community infrastructure at Green Square. The documentation submitted by the applicant demonstrates that the proposed building envelope is able to accommodate up to 9,789sqm of gross floor area, which would equate to an FSR of 3.82:1. In order to achieve this FSR, the applicant is reliant on any future architectural design being awarded the entirety of the 10% design excellence floor space bonus under the provisions of clause 6.21 of the Sydney LEP 2012. A deferred commencement condition requiring the VPA to be exhibited, executed and registered on title has been recommended.
Division 4 Design excellence		
6.21 Design excellence	Able to comply	This clause allows up to 10% additional floor space subject to a competitive design process being carried out, a winning scheme being selected and that scheme exhibiting design excellence at the detailed design DA stage. The concept envelope has been assessed against the relevant requirements of this clause including site suitability, proposed uses, bulk and massing, street frontage heights and other environmental impacts. The concept envelope demonstrates that a suitable detailed design can be accommodated on the site.

Provision	Compliance	Comment
		Satisfaction of the design excellence requirements, including eligibility for the up to 10% additional floor space, will be considered in the assessment of the future detailed DA.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing 7.6 Office premises and business premises 7.7 Retail premises	Able to comply	The proposed reference scheme indicates car-parking can be provided over two basements levels. The permissible number of parking spaces are determined by the amount of commercial and residential floor space and the residential dwelling mix and which is only indicative at this concept stage. A condition is recommended to advise that no consent is granted for the number of car parking spaces or basement layout as part of any consent granted to the subject DA.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils		The eastern portion of the site to Botany Road is identified as containing class 5 acid sulfate soils. The western portion of the site to Wyndham Street is identified as having class 3 acid sulfate soils. The indicative scheme includes excavation for basement carparking, and is likely to expose acid sulfate soils. The Remedial Action Plan prepared by JK Environments, dated 30 May 2024, contains details of the extent of Acid Sulfate Soils within the site and provides recommendations. It is advised that Acid Sulfate Soils related risks on adjacent

Provision	Compliance	Comment
		lands are unlikely to be exacerbated due to the proposed development. A detailed Acid Sulfate Soils Management Plan will be required to be submitted with any subsequent detailed development application.
7.15 Flood planning	Able to Comply	The subject site is located within the Alexandra Canal catchment. Botany Road is subject to minor flooding on the roadway. A site flood assessment has been prepared by WMA Water, dated 30 May 2024. The report states that the proposed floor levels are compliant with the City's Interim Floodplain Management Policy, and that the proposal demonstrates that the development will not result in significant flooding impacts on the subject site or neighbouring properties. The report was referred to the City's Public Domain and Water Assets units who raised no objections to the flood report and proposed levels. In a stage 2 DA, it is to be demonstrated that there be a direct connection into the stormwater pipe network, rather than through a Rectangular Hollow Section (RHS) discharge.
7.16 Airspace operations	Able to comply	The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport. The site is located within an area defined in the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height without prior approval of the Civil Aviation Safety Authority. The height of the proposed development will breach this limit.

Provision	Compliance	Comment
		An approval for the erection of the development to a maximum height of 46.1 metres AHD, inclusive of all lift overruns, vents, chimneys, aerials, TV antennae, construction cranes was received on 28 April 2025.
7.23 Large retail development near Green Square Town Centre	Able to comply	The subject site is located on land identified as restricted retail development on the Retail Premises map. As such, development consent cannot be granted for shops or markets with a gross floor area greater than 1000sqm. The proposed development includes indicative retail and commercial uses at the ground floor, however the quantum of gross floor area is not approved under this concept DA. Any subsequent future stage 2 DA will need to comply with the requirement.
7.26 Public art	Able to comply	A preliminary public art strategy was submitted with the proposal. Amendments to the strategy are required, including that it is to be prepared by a curator and requires further details including a budget commitment. A condition is recommended requiring amendments to meet the requirements of the City's Guidelines for Public Art, prior to the commencement of any future Design Competition.

Development Control Plans

Sydney Development Control Plan 2012

57. 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

58. The site is located within the Waterloo Park locality. The proposed development is in keeping with the unique character and the design principles of the locality as it will provide non-residential uses at ground level and an active frontage along Botany Road, as well as a 2.4m setback to Botany Road to improve the public domain.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1.1.4 Footpaths	Yes	A 2.4m setback to enable footpath widening is being provided along Botany Road. The land is being dedicated to the City via the VPA. This is consistent with the Public Domain setbacks map in the Sydney DCP 2012. A basement is proposed to sit 1.5m under the land to be dedicated to the City. This is only considered acceptable in this instance as the narrow shape of the site constrains the ability to adequately service and provide bicycle and car parking facilities. Provision 3.11.2 (5) of the Sydney DCP 2012, provides that where site constraints result in a car park being located under a public street, only common areas are permitted below (such as circulation space or unallocated parking) and the ownership of the street will be in stratum above the waterproofing membrane. These requirements are recommended as conditions on the concept development consent so that the requirements apply to the detailed DA.
3.1.2.2 Through-site links	Not applicable	The original proposal included a through-site link connecting Wyndham Street to Botany Road. The original public benefit offer also sought credit for an easement over the through site link. A through-site link is not identified for this site under SDCP provision 3.2.2.2(1). It is also not required under SDCP Provision 3.2.2.2(2) as the site is not greater than 5000sqm in area. The through-site link was proposed to also contain the area of communal open

Provision	Compliance	Comment
		space which compromised the amenity of the area. As such, the through-site link was removed from the public benefit offer. However, the inclusion of a through-site link has been demonstrated in the reference scheme. A through site link for this site is supported as it is considered necessary for the viability of commercial and retail uses at the ground floor, however any DA for the detailed design will need to address potential Crime Prevention through Environmental Design (CPTED) issues. See further details in the 'Discussion' section below.
3.1.5 Public Art	Able to comply	A preliminary public art strategy was submitted with the proposal. A condition is recommended requiring amendments to meet the requirements of the City's Guidelines for Public Art, prior to the commencement of any future Design Competition.
3.2 Defining the public domain	Able to comply	The relationship between the public domain and the subject site will need to be further development as part of any subsequent future competitive design process and detailed DA.
3.2.3 Active frontages	Able to comply	Botany Road is required to have an active frontage. The indicative proposal includes retail premises on the Botany Road frontage. This provides an opportunity to activate the frontage. A condition is recommended to ensure that this forms part of the design brief.
3.3 Design Excellence and Competitive Design Processes	Able to comply	A Design Excellence Strategy (DEX Strategy) has been submitted with the application, and which establishes a design excellence process for the development site. Conditions are recommended to approve the DEX Strategy and for design requirements to be incorporated into any future competitive design process brief.

Provision	Compliance	Comment
		A competitive design process is to be undertaken prior to lodgement of any future DA for the detailed design of the building. This competitive design process must adhere to the DEX Strategy and conditions of consent for the development to be eligible for up to 10% additional FSR.
3.4 Hierarchy of Centres, City South	Able to comply	This is addressed above under section 7.23 above.
3.5 Urban Ecology	Able to comply	The development includes the removal of 1 x Weeping Bottlebrush tree and 1 x London Plane tree. The tree removal was referred to the City's tree management officer who raised no objections, due to the trees low retention values. Any subsequent future Stage 2 DA will require a detailed landscape plan which demonstrates that the development will provide the minimum 15% canopy cover across the site.
3.6 Ecologically Sustainable Development	Able to comply	An ESD report was submitted which outlines design initiative for consideration to reduce the environmental impact of the design, construction and operation of the development. The ESD target benchmarks have been incorporated into the DEX Strategy that is recommended for approval.
3.7 Water and Flood Management	Able to comply	As part of the detailed DA, further details relating to stormwater management will need to be provided to ensure that the development meets the requirements of the City's flood planning controls. Refer to the discussion under section 7.15 above for further details.
3.8 Subdivision, Strata Subdivision and Consolidation	Not applicable	No subdivision is proposed as part of this application. Subdivision will be required to excise off the 2.4m parcel of land to be dedicated to the City. This will form part of any subsequent future detailed DA and conditions of that consent.

Provision	Compliance	Comment
3.9 Heritage	Able to comply	Yudi Gunyi School, which is a locally listed heritage item under Sydney LEP 2012, is located opposite the site on Botany Road. It is visually and physically well separated from the subject site across a wide road. There are also large trees present that obscures the visibility of the school from Botany Road. Consideration of the heritage item will need to be addressed under any subsequent design competition or detailed DA.
3.11 Transport and Parking	Able to comply	The proposed development was discussed with Council's transport planner who raised no objections to the location of proposed vehicular access, car and bicycle rates, provision of on-site servicing, 2.4m public domain setback to Botany Road, or the pedestrian connection between Botany Road and Wyndham Street. As this is a stage 1 DA the vehicle and bicycle parking numbers will not be determined at this stage. Compliance with the controls will need to be addressed under any subsequent detailed stage 2 DA, and conditions relating to the requirements have been recommended.
3.12 Accessible Design	Able to comply	Conditions have been recommended for any subsequent DA for the detailed design of the building to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.13 Social and Environmental Responsibilities	Able to comply	The indicative scheme includes a through site link but contains CPTED issues associated with 'dead-end' areas at the ground floor of the site. See further details in the 'Discussion' section below.
3.14 Waste	Able to comply	Conditions have been recommended for any subsequent DA for the detailed design of the building to comply with the

Provision	Compliance	Comment
		relevant provisions of City of Sydney Guidelines for Waste Management in New Development, including the provision of sufficient areas for waste storage.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Able to comply	The site is permitted a maximum building height of 9 storeys. The proposed reference scheme includes two buildings. Building A facing Botany Road is 8 storeys in height and Building B facing Wyndham Street is 7 storeys in height. The site is not subject to a street frontage height control, and the envelope is compatible with the scale and form of adjacent buildings.
4.2.3 Amenity		
4.2.3.1 Solar access 4.2.3.7 Private open space and balconies 4.2.3.9 Ventilation	Able to comply	Section 149 of the SEPP (Housing) states that a requirement, standard, or control for residential apartment development that is specified in a DCP and related to visual privacy, solar and daylight access, common circulation and spaces, apartment size and layout, ceiling heights, private open space and balconies, natural ventilation, and storage, have no effect if the ADG also specifies a requirement, standard or control in relation to the same matter. Refer to discussion and assessment under heading SEPP (Housing) and the ADG above.
4.2.3.3 Internal common areas	Able to comply	The common areas, corridors and lift lobbies have access to daylight and an

Provision	Compliance	Comment
		outlook and contain the minimum 2m width in front of lifts in the reference scheme.
4.2.3.5 Landscaping	Able to comply	A concept landscape plan has been submitted with the DA and will be attached to the future Design Excellence Brief. A condition is also recommended requiring a landscape plan to be submitted with any subsequent detailed design DA.
4.2.3.6 Deep Soil	Partial compliance	The DCP requires that for sites greater than 1000sqm. the minimum amount of deep soil is to be 7% of the site area, consolidated, and with a minimum dimension of 10m. The proposed envelope is demonstrated to provide 10% of the site as deep soil, but does not provide the minimum dimensions and the deep soil is not consolidated. See further details in the 'Discussion' section below.
4.2.3.8 Common Open Space	Able to comply	The submitted reference scheme provides 25% of the total site area as common open space. Not all areas contain a minimum dimension of 6m. The area also includes a covered gymnasium, which is excluded under the provision. See further details in the 'Discussion' section below.
4.2.3.11 Acoustic Privacy	Able to comply	An Environmental Noise and Natural Ventilation Report was submitted with the application. Council's Environmental Health unit raised no objections.

Provision	Compliance	Comment
		Acoustic measures to noise-affected units will need to be demonstrated under the future detailed DA.
4.2.3.12 Flexible housing and dwelling mix	Able to comply	The proposed reference scheme is comprised of a dwelling percentage mix of: • Studio: 5% - complies • 1 Bed: 6% - does not comply • 2 Bed: 72% - complies • 3 Bed: 18% - complies. The number and mix of apartments is not approved as part of any concept DA consent granted. Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control.
4.2.4 Fine grain, architectural diversity and articulation	Able to comply	The provision specifies a maximum building frontage length of 65m on streets with a width of 18m or more. Botany Road is 25m wide and the building frontage length is 40m. Wyndham Street is 20m wide and the building frontage length is 17m. The proposed envelope satisfies the requirements of the provision.
4.2.5.3 Types of development - Development on busy roads and active frontages	Able to comply	The development includes residential uses fronting Botany Road and Wyndham Street, which carry over 20,000 average daily traffic movements. An Environmental Noise and Natural Ventilation Assessment, prepared by Acoustic Logic, was submitted with the application. The report provides an assessment of the noise impacted units and recommends noise mitigation solutions for the development.

Provision	Compliance	Comment
		The proposed concept DA proposes non-residential uses at ground level, in accordance with the requirements of the provision. Noise and vibration impacts will need to be addressed in any subsequent future design competition or detailed Stage 2 DA.
4.2.6 Waste and recycling Management	Able to comply	The site has been designed to accommodate a 10.6m waste vehicle. Each building contains a waste chute with a recycling bin. The reference scheme has not been designed to accommodate 240L bins onsite. A condition has been recommended to conditions which ensure that the matters are addressed prior to the competitive design process and stage 2 DA.
4.2.7 Heating and cooling infrastructure	Able to comply	Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control which encourage heating and cooling infrastructure to be consolidated into a centralised basement location near the street frontage.
4.2.8 Letterboxes	Able to comply	Any subsequent DA for the detailed design of the building will be assessed against the requirements of this control which require lockable mailboxes located close to the major street entry to the site.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Able to comply	The proposed reference scheme includes indicative retail and commercial uses. The suitability of the proposed uses and any amenity impacts will be subject to assessment under future a development application for the uses.

Section 5 – Specific Areas - Green Square

Provision	Compliance	Comment
5.2.3 Community infrastructure	Yes	A public benefit offer was submitted with the application to access the additional 1.5:1 community infrastructure floorspace. The offer will contribute to the delivery of community infrastructure for Green Square through the dedication of 2.4m of land along Botany Road for footpath widening, public domain works, and a monetary contribution.
5.2.7 Stormwater management and waterways	Able to comply	Refer to sections 7.15 Flood Planning and 3.7 Water and Flood Management above for further information.
5.2.9 Building design	Able to comply	The height of the buildings have been designed to relate to the hierarchy of surrounding development. The height of the proposed buildings will not have an adverse impact on significant views to the City skyline or other views. Aspects of the detailed building design, such as proposed materials, landscaping, building facades, and entrances, will be assessed under any subsequent design competition and detailed stage 2 DA.
5.2.10 Setbacks	Yes	A 2.4m setback from the public domain is dedicated along the Botany Road site frontage.
5.2.11 Carparks under the public domain	Able to comply	The site includes a carpark under the public domain area required for dedication. The indicative scheme shows parking spaces and storage cages within the area below the 2.4m dedicated public domain setback. The DCP stipulates that where site constraints result in a car park being located under a public street, only common areas are permitted below (such as circulation space or unallocated parking) and the ownership of the street

Provision	Compliance	Comment
		will be in stratum above the waterproofing membrane. These requirements are recommended as conditions on the concept development consent so that the requirements apply to the detailed DA

Discussion

Clause 4.6 Request to Vary a Development Standard

59. The site is subject to a maximum height control of 29m. The proposed development has a height of 31.73m for Tower A, and 30.79m for Tower B.

60. 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)

61. The applicant seeks to justify the contravention of the height development standard on the following basis:

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

        (i) The applicant has referred to the earlier court decision of Wehbe v Pittwater Council [2007] NSW LEC 827. Under Wehbe, the most common way of demonstrating that compliance is unreasonable or unnecessary was whether the proposal met the objectives of the standard regardless of noncompliance. The variation request relies on the 5-part Wehbe test to justify this requirement. The applicant advises that although the development does not comply, it meets the objectives of the height standard.

        (ii) The applicant asserts that compliance with the standard is unreasonable or unnecessary in the circumstances as the objectives of the standard are met, given that much of the area exceeding the height limit relates to the services zone; that the height of the development is appropriate when considering the height of the adjoining development (shown in figures 30 and 31 below); that it partly relates to the sloping topography on the site; and that strict adherence to the standard would impact the feasibility of the maximum available GFA.

Figure 30: View of the building envelope, shown purple, from the north of Botany Road (left), and the north of Wyndham Street (right)

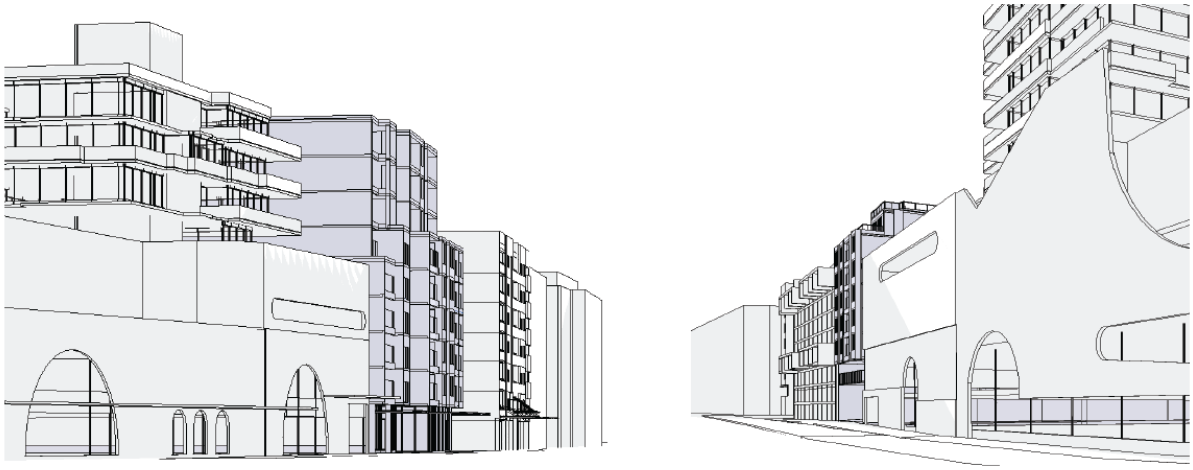

Figure 31: View of the building envelope, shown purple, from the south of Botany Road (left), and the south of Wyndham Street (right)

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

(i) The proposed development will remain compatible with the desired future character as it generally complies with the maximum building height, except for a limited area at the roof that is reserved for services and to achieve minimum ceiling heights.

(ii) The development creates an appropriate height transition from the Green Square Town Centre to the adjacent area and will significantly improve the streetscape along Botany Road and Wyndham Street, as:

(i) The approved development which immediately adjoin the site to the south includes towers that are significantly higher than the proposed development. The site also has a recently lodged S4.55 modification which seeks to convert the approved 9-storey tower to residential, which has a roof level at RL 47, higher than the subject site's Tower A roof level at RL 44.85.
(ii) The adjoining development to the north also has a maximum building height of 29m, and the possibility of undertaking a competitive design process to obtain a height bonus of up to 10% to 31.9m.

(iii) The development has been carefully considered to maximise the allowable FSR while complying with the controls set out in the LEP, DCP and ADG guidelines relating to setbacks, amenity (cross ventilation, solar access, outdoor open space), which is difficult given the L-shaped configuration of the lot.

The proposed development has been refined to reduce the number of towers and improving the potential internal layouts, and introducing a new level to Tower B. The amendments will strengthen the relationship with existing and approved neighbouring developments and provide better amenity outcomes for future occupants of the site.

The designated service zones will be essential for the efficient operation of the buildings. Strict compliance with the height standard would compromise vertical circulation and internal accessibility, as the removal of service zones (including lift overruns, equipment rooms for air-conditioning units, and potential solar panels which can be accommodated within the service zone) would negatively impact functionality and occupant amenity.

The service zones are reserved as the maximum required space for equipment storage in anticipation of the detailed design in Stage 2, but do not represent the actual utilised space.

(iv) The part of the height variation is also due to the site's sloping topography, where the existing ground level falls by 3.715m from RL 14.75 at Botany Road to RL 11.035 at Wyndham Street.

While most of Tower B adheres to the 29m height standard, its eastern corner exceeds this limit. The proposal has been designed to minimise the variation, with the top two levels of Tower B set further back from the Wyndham Street boundary. As a result, the height exceedance is confined to the western corner of the service zone and a negligible portion of the roof area.

(v) The height exceedance occurs as a result of compliance with LEP, DCP and ADG controls. Strict adherence to the height standard would necessitate the removal of a significant portion of the uppermost level of both towers, directly impacting the feasibility of the additional GFA and contradicting the objectives of the Competitive Design Process.

Internal amenity for future occupants would also be impacted as the required floor-to-ceiling and floor-to-floor heights would not be able to be achieved.

(c) The proposed development will be consistent with the objectives of the standard:

(i) Objective (a) - To ensure the height of development is appropriate to the condition of the site and its context:

The majority of the development is compliant with the LEP standard. The variation is limited to the reserved service zone above the roof level, the higher proportion of the topmost level of Tower A, as well as a negligible corner area on the roof of Tower B.

The adjoining site to the south at 296-298 Botany Road contains development consent for two 22-storey residential towers (Tower A and B), and a 9-storey tower (Tower C) directly adjoining the site which an approved height of RL48.35.

The adjoining sites to the north include 282-288 Botany Road and 2-6 Mandible Street (up to 7 storeys). It is acknowledged that the height of the proposed development exceeds the height of the existing buildings to the north. However, the sites to the north have also have a maximum permissible height limit of 29m, and the planning controls allow for up to 10% additional building height if a competitive design process were to be approved in a future development application.

When viewed from Wyndham Street, the proposed building height creates a transition from the taller buildings at 296-298 Botany Road, to the existing 7 storey building at 2 Mandible Street.

(ii) Objective (b) - To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas:

The site is not identified as a heritage item and it is not located within a heritage conservation area, but it is opposite to heritage item I2071 to the east.

It has been demonstrated in the Statement of Heritage Impact prepared by Weir Phillips Heritage and Planning that the proposal is unlikely to impact the nearby heritage items.

(iii) Objective (c) - to promote the sharing of views outside Central Sydney:

Several developments in Green Square, such as 296-298 Botany Road and buildings further to the east have heights greater than the proposed development. Any potential views from southern buildings toward the City CBD are likely to be obstructed by these buildings. The minor nature of the height variation will not further diminish those views.

(iv) Objective (d) - to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas:

The proposed building height aligns with the surrounding existing and approved developments, facilitating a suitable height transition along Botany Road and from the Green Square Town Centre to the adjacent area.

(v) Objective (e) - in respect of Green Square:

(i) To ensure the amenity of the public domain by restricting taller buildings to only part of a site.

The additional shadows resulting from the height variation on Botany Road are minimal in size and are limited to after 2.00pm during mid-winter. Given the location and limited extent, the variation is unlikely to affect the amenity of the public domain.

(ii) To ensure the built form contributes to the physical definition of the street network and public spaces.

The height variation is limited and not readily discernible from the neighbouring development or public domain, and it will not have an adverse impact on the physical definition of the area's street network or public spaces.

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

62. 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)?

63. The applicant refers to the test established in Wehbe v Pittwater to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. In this instance, compliance with the standard is unreasonable and unnecessary as the proposal meets the objectives of the standard regardless of the noncompliance.

64. The applicant has demonstrated that compliance with the standard is unreasonable or unnecessary as the proposed buildings are consistent with the established context, built form and topography.

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

65. The written request demonstrates that the height breach is consistent with the height of buildings standard.

66. The request demonstrates that the exceedance of the height limit is required to provide reasonable amenity for residents of the building and adjoining properties, by including the services zones on the top.

67. The request also demonstrates that the exceedance is necessary to comply with other LEP, DCP and ADG controls, including achieving the additional bonus FSR that is available to the site.

Conclusion

68. For the reasons provided above the requested variation to the height of buildings standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Height Exceedance

69. The proposal includes a height variation across the buildings footprints to provide flexibility for plant (being the lift overrun), shown on the concept drawings as a 'services zone'.

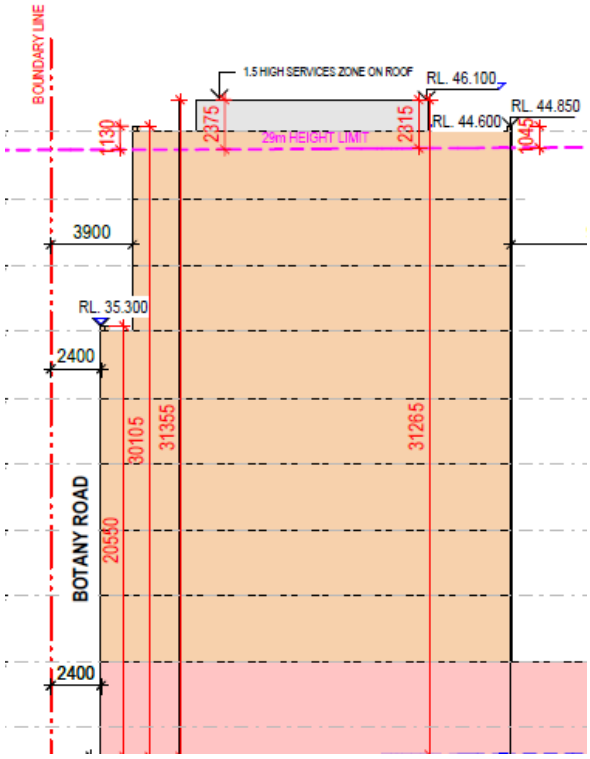

Figure 32: Section showing services zone (grey) above 29m height limit

70. The part of the height exceedance for the services zone shown on the concept drawings is acceptable only on the basis that:

    (a) The area is not intended to be wholly occupied for plant, it is only indicative of a zone. This provides flexibility for the design competition so that the lift overrun is not 'locked in' to a specific location.

    (b) It does not mandate that plant and services are to be located on the roof, or preclude plant and services being located elsewhere

    (c) It should not be interpreted as discouraging green roofs or communal open space at roof level, especially if there are planning controls that require minimum areas for green roofs

    (d) The 'services zone' above the maximum height limit, is solely for the purpose of accommodating plant and services.

71. A condition is recommended to ensure that the above requirements are included in the design competition brief.

Setbacks - subject site

72. Between the two proposed buildings, a 9m setback is provided which complies with the required minimum building separation proportionate to the building heights of up to 8 storeys from the ground floor. However, this distance is only acceptable for non-habitable rooms.

73. The proposed reference scheme includes a blank wall for the wall for the eastern elevation of Building B, and habitable rooms on the western elevation of Building A. This complies with the ADG requirements.

Setbacks - 2-6 Mandible Street (north)

74. The proposed level 4 of the subject site aligns with level 5 (the top floor) of 6 Mandible Street to the north, which contains habitable rooms on the southern elevation.

75. The ADG requires a 6m setback from the boundary for buildings up to 4 storeys in height between habitable rooms/balconies.

76. The proposed envelope is in accordance with the minimum ADG setback requirement, and contains the following setbacks (shown in figure 33 below):

    (a) The proposed Building B is setback 6m from the northern site boundary, and 9.5m from the building at 6 Mandible Street.

    (b) The proposed Building A is setback between 6 and 9 metres to the western site boundary.

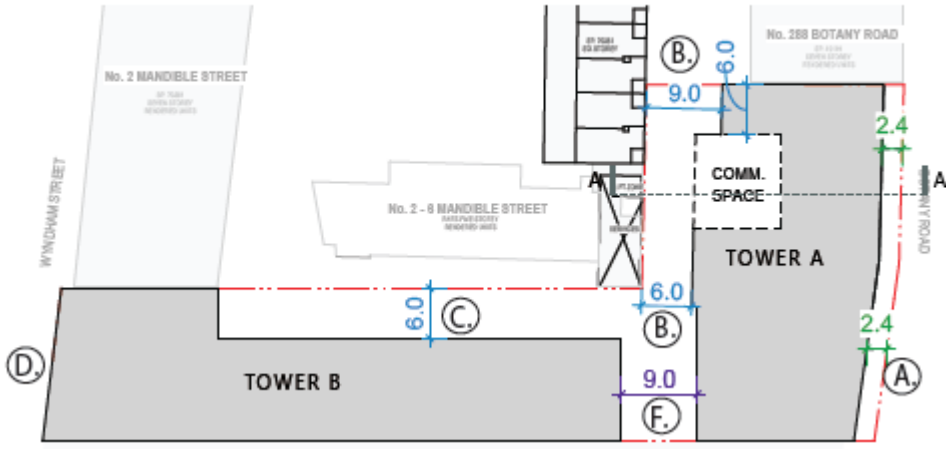

Figure 33: Proposed Level 4 (subject site) setbacks

Setbacks - 296-298 Botany Road (south)

77. The proposed envelope contains setbacks of between 0m and 3m to the southern boundary, shown in figure 34 below.

Figure 34: Proposed Level 6 and 7 setbacks

78. Levels 3 - 6 of the approved adjoining development contain residential uses with habitable rooms facing the northern boundary to the west of the site. The habitable rooms are setback between 4.9m and 6.2m from the boundary.

79. The proposed envelope contains a 0m setback provided up to levels 4-5, and a partial 3m setback has been provided from level 5 above. The 3m setback is consistent with the previously approved development (D/2020/421), which was required to mitigate overshadowing and outlook impacts to the development to the south.

80. The ADG states that no building separation is necessary where building types incorporate blank walls.

81. The southern elevations generally contain blank walls, except for part of tower B containing louvres required to provide natural ventilation. A condition is recommended requiring that any blank wall on the southern elevation is to be treated so that it does not present as a blank, shear wall.

82. Additionally, the subject site is only 18.4m wide at the Wyndham Street frontage. A requirement to setback any further than 3m would result in a floor plate that would be narrow and unusable. Given these site constraints, the setbacks are considered reasonable.

83. Privacy and outlook impacts to the adjoining residential units will need to be addressed under any detailed Stage 2 DA.

Cross Ventilation

84. Out of the proposed 85 units in the indicative scheme, 32 units are noise affected, as they are located on the lower floors and face either Botany Road or Wyndham Street. Noise-affected units are excluded from the requirements for natural cross ventilation. Of the remaining 53 units, 36 (67.9%) are shown to receive natural cross ventilation.

85. However, in the indicative scheme, some apartments shown to be naturally cross ventilated have an aspect facing a building recess. A building slot is required rather than a building recess for these apartments to count as being naturally cross ventilated.

86. Further, to achieve cross ventilation to the centre units on Tower B, ventilation is provided from the communal access way containing louvres on the southern elevation.

87. Achieving an unobstructed air flow path through the plenum zone would require detailing of proposed louvers to demonstrate adequacy as well consideration of fire protection requirements under the NCC and visual and acoustic privacy.

88. Given that the site is constrained by its narrow east-west lot, a solution containing a plenum zone is considered acceptable, but requires further consideration under a future detailed DA. A future detailed DA may also arrive at a different solution to achieve natural cross ventilation without the need for a plenum, such as the use of highlight windows with fire protection that open onto a corridor without any enclosure, or the introduction of an additional lift core.

Communal Open Space

89. The indicative scheme provides areas of communal open space co-located within the area of deep soil (155sqm), and an outdoor gym for the residents (197sqm).

90. The ADG notes that where developments are unable to achieve the minimum communal open space, they should provide communal spaces elsewhere such as a landscaped roof top terrace or a common room. The reference scheme already includes an indoor common room to Tower A.

91. The proposed outdoor gym creates a dedicated space for communal use that is separate and distinct from the through site link and thoroughfare, which is a positive outcome. However, the area is entirely under building cover and will have no solar access. It is also located on an upper ground level with access to be required via steps or a lift. The area will likely exposed to wind.

92. Additionally, the communal open space that is co-located with deep soil is immediately adjacent to proposed commercial spaces and will likely supplement to these tenancies rather than function as a communal space for residents.

93. Additional rooftop communal open space should be considered in the detailed stage 2 DA to address these issues and provide suitable amenity for the residents.

Through Site Link

94. The through site link proposed in the indicative scheme relies on a narrow and long flight of stairs from Wyndam Street. This delivers a suboptimal connection which lacks intuitive wayfinding and is poorly visible from both Wyndam Street and the courtyard space. The connection is also hidden from Botany Road.

95. There also are several areas in the reference scheme which CPTED issues, including the recessed area in front of the lift which forms a potential hiding place which is not visible from the street.

96. A condition has been recommended which requires that these matters be addressed in the future DA for the detailed design of the building.

Deep Soil

97. The ADG requires that for sites greater than 1,500sqm, the deep soil zone is to have a minimum dimension of 6m and is to be a minimum 7% of the site area.

98. The proposed envelope provides a total of 257.9sqm (10%) of deep soil in two separate areas. Only one of the areas complies with the minimum 6m dimension required, and the other has a minimum dimension of 4.4m.

99. The ADG notes that achieving the design criteria may not be possible on some sites, including where the location and building typology have limited or no space for deep soil at ground level. Where a proposal does not achieve the minimum requirements, acceptable stormwater management should be achieved and alternative forms of planting provided.

100. Given that the envelope provides an exceedance of the minimum required area of deep soil, and that the site is constrained by the narrow L-shaped lot, the noncompliance is considered acceptable.

Voluntary Planning Agreement

101. The owner of the site has made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) to provide a dedication of land and embellishment works to create a widened footpath and a monetary contribution towards other community infrastructure in the Green Square urban renewal area.

102. The draft VPA that has been prepared in association with the subject development application provides for the following benefits:

    (a) dedication of 102.804sqm land along the Botany Road frontage of the development site to allow for a 2.4m widened pedestrian footpath;

    (b) construction of the widened footpath; and

    (c) a monetary contribution of $1,648,540.00 towards community infrastructure at Green Square.

103. The draft VPA will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. The public exhibition period commenced on 19 May 2025 and will be completed on 17 June 2025.

104. Subject to there being no unresolvable issues arising from submissions to the draft VPA, the application is recommended for deferred commencement consent to require the owner of the site to execute the planning agreement and register it on title before activation of the consent. This will ensure that the consent cannot be acted upon without assurance that the public benefits will be delivered in accordance with the provisions of this agreement.

Consultation

Internal Referrals

105. The application was discussed with Council's:

    (a) Environmental Health Unit

    (b) Heritage and Urban Design Unit

    (c) Public Domain Unit

    (d) Transport and Access Unit

    (e) Tree Management Unit

(f) Waste Management Unit

(g) Public Art Unit

(h) Environmental Sustainability Advisor

(i) Planning Agreements Unit

(j) Design Excellence Unit

106. Issues were raised by the City's Urban Designer and Landscape officer regarding cross ventilation, communal open space and deep soil. See further details under the 'Discussion' section above.

External Referrals

Ausgrid

107. The application was referred to Ausgrid under section 2.48 of the SEPP (Transport and Infrastructure) 2021.

108. A response was received on 15 October 2024, and it was advised that Ausgrid consented to the development subject to conditions.

109. On 28 April 2025, the amended DA was forwarded to Ausgrid via the NSW Planning Portal.

110. No further correspondence was received. The originally issued conditions have been included in the recommended conditions at Attachment A to this report.

Sydney Airport

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

112. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).

113. The subject site is in an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the CASA.

114. The subject application was forwarded to Sydney Airport on 10 September 2024, and the amended DA was forwarded via the NSW Planning Portal on 28 April 2025.

115. The Sydney Airport Senior Airspace Protection Officer as an authorised person of the CASA, provided approval for the controlled activity on 28 April 2025.

Sydney Metro

116. Pursuant to Section 2.98 and 2.48 of the SEPP (Transport and infrastructure) 2021, the application was referred to Sydney Metro.

117. A response was received on 27 September 2024 advising that Sydney Metro has no comments and does not require the imposition of any conditions related to the DA.

118. On 28 April 2025 the amended DA were forwarded to Sydney Metro via the NSW Planning Portal.

119. No further correspondence was received.

Sydney Water

120. The application was referred to Sydney Water, in accordance with section 78 of the Sydney Water Act 1994.

121. A response was received on 1 October 2024 from Sydney Water, who advised the relevant requirements and recommended conditions of consent.

122. On 28 April 2025 the amended DA was forwarded to Sydney Water via the NSW Planning Portal.

123. No further correspondence was received. The originally issued conditions have been included in the recommended conditions at Attachment A to this report.

Transport for NSW

124. Pursuant to Section 2.99 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for concurrence.

125. Concurrence was received on 4 October 2024. Conditions of consent were recommended which are included in the Notice of Determination.

126. On 28 April 2025 the amended DA were forwarded to Transport for NSW via the NSW Planning Portal.

127. No further correspondence was received. The originally issued conditions have been included in Schedule 2 of the recommended conditions at Attachment A to this report.

Water NSW

128. Pursuant to Section 90(2) of the Water Management Act 2000, the application was referred to Water NSW as integrated development, in accordance with section 4.47 of the EPA Act.

129. On 28 April 2025 the amended DA were forwarded to Water NSW via the NSW Planning Portal.

130. Copies of public submissions made to the City of Sydney during the notification period were made available on the NSW Planning Portal on 7 May 2025.

131. General Terms of Approval were issued by Water NSW on 14 April 2025 and have been included in the schedules within the Schedule 3 of the recommended conditions of consent.

Advertising and Notification

132. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 10 September 2024 and 9 October 2024. The proposed development was later re-notified between 3 April 2025 and 18 April 2025 following receipt of amended plans. A total of 431 properties were notified and 12 submissions were received.

133. The objections raised the following issues:

Issue	Response
The proposed setbacks from northern site and boundary do not comply with ADG requirements	The proposed envelope setbacks comply with the ADG requirements for building separation, which allows a 6m setback from the boundary between habitable rooms. The site also has a previously approved DA for a commercial building containing a 6m setback from the northern boundary.
Overshadowing of the adjoining buildings at 2-6 Mandible Street	The proposed envelope is generally located south of the adjoining residential development. Residential units to the adjoining site also contain primary living areas facing north or west to the internal courtyard of that site. As such, the proposed envelope is not considered to unreasonably impact on the sunlight available to the adjoining residential development.
Impact to adjoining Linc apartment complex and local infrastructure	Impacts upon the structural integrity of adjacent buildings is a matter that will be addressed by any subsequent DA for the detailed design of the building.
Impact of construction on neighbouring residential development, including financial loss	This is a concept DA and no works are approved under this consent. Conditions will be imposed on any subsequent detailed DA to manage impacts of construction. There are no planning provisions which require the consideration of property values when assessing a proposed development.

Issue	Response
High rise apartments on this site will have a negative impact on the character of the area	The height of the proposed building envelopes are consistent of the existing and approved surrounding context, and generally in accordance with the height of buildings and storey planning controls. Where the height of the buildings exceed the maximum height, the applicant has demonstrated that it is appropriate within the context of the site. See further details under the 'Clause 4.6 Variation' heading above.
Loss of views to the sky/existing outlook	Any views to the skyline are across a side boundary, across the subject site and across various other sites in the vicinity of Green Square and others that contain a cluster of tall buildings. The proposal contains a minor height exceedance which is considered acceptable. Any view losses arising from the proposal are considered acceptable.
Noise impacts to existing residential units	This proposal is for a concept envelope and the construction of new buildings are not approved as part of this consent. Noise impacts to adjoining properties will be addressed under a future detailed DA.
The development does not comply with deep soil requirements	The development provides 10% of the site area as deep soil, which meets the minimum quantum required in both the ADG and DCP controls. This is considered acceptable. See further details under the 'Deep soil' heading above.
Insufficient information relating to the impacts to the shared boundary fence between 290-294 Botany Road and 2-6 Mandible Street	This proposal is for a concept envelope and details of the building including amendments to the existing boundary fence are not approved as part of this consent.

Issue	Response
The development will result in the overlooking of common open space of the adjoining property	This proposal is for a concept envelope and details of the building are not approved. Overlooking impacts will be addressed under a Stage 2 DA in future.
There has been a lack of early community consultation with adjoining properties	The development was notified in accordance with the City of Sydney Community Participation Plan 2019. Any subsequent future DAs seeking approval for the buildings will also be notified in accordance with the Plan.
There is a lack of mitigation measures to address privacy and amenity impacts to adjoining residential units	This proposal is for a concept envelope and details of the building are not approved. However, the applicant has demonstrated that the proposed building envelopes provide the minimum setbacks required under the ADG to ensure that visual privacy to adjoining properties is maintained. Privacy and amenity impacts will be addressed in further detail under a Stage 2 DA in future.
The proposed development may create potential shadow and visual privacy impacts from the communal open space and residential apartments to the southern development.	The envelope has been amended to include a partial 3m setback in the centre and east of the site to address privacy and overshadowing impacts to the development to the south. Additional View from the Sun diagrams were submitted with the amended plans that were notified between 3 and 18 April 2025.
Concern raised relating to the proposed boundary interface condition of a sheer blank wall directly adjacent to the southern site	Boundary interface impacts will be addressed in further detail under a detailed Stage 2 DA.
The Botany road setback alignment and interface of the Wyndham Street apartment adjacent to the approved driveway to the south should be further investigated.	The detailed street alignment to Botany Road will be addressed under the detailed Stage 2 DA. The indicative Wyndham Street apartment has been deleted from the reference scheme, however this would not have been approved under this DA

Issue	Response
	which addresses the concept envelope only.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

134. Section 7.11 contributions will be imposed upon any consent granted to the subsequent DA for the detailed design of the building.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

135. The site is located within the Green Square affordable housing contribution area.

136. Section 7.32 of the Environmental Planning and Assessment Act (Act) 1979 outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies.

137. The Act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:

    (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or

    (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or

    (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or

    (d) the regulations provide for this section to apply to the application

138. Any subsequent detailed DA will be assessed against the relevant jurisdictional prerequisites in Section 7.32(1) and 7.32(3) of the Act, and an affordable housing contribution may then be imposed upon that consent for the detailed design of the building.

Housing and Productivity Contribution of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024

139. A Housing and Productivity Contribution will be imposed upon any consent granted to the subsequent DA for the detailed design of the building.

Relevant Legislation

140. Environmental Planning and Assessment Act 1979.

Conclusion

141. The application seeks consent for a concept building envelope for a mixed-use development including indicative retail, commercial, and built-to-rent residential uses, vehicular access via Wyndham Street, basement parking, services, plant and storage, landscaping, communal open space.

142. As an Integrated Development Application requiring approval under the Water Management Act 2000, the application, amendments and submissions received were referred to Water NSW over the course of the assessment. On 14 April 2025 Water NSW issued its General Terms of Approval and which have been included at Schedule 3 of the recommended conditions of consent at Attachment A to this report

143. The draft VPA associated with the application will undergo a 28-day public exhibition period in accordance with the requirements of section 7.5 of the Environmental Planning and Assessment Act 1979. A deferred commencement condition is recommended to enable the draft VPA to be executed and registered on title.

144. The proposal secures public benefits comprising land dedication for footpath widening, public domain works, and a payment of a monetary contribution towards community infrastructure in Green Square. The development is permissible with consent in the MU1 - Mixed Use zone and is consistent with the objectives of the zone

145. The concept proposal and Design Excellence Strategy establish a concept building envelope and suitable parameters for competitive design process. Subject to the recommended conditions, the proposed envelope is able to accommodate a detailed building design of an appropriate bulk and scale, that responds to the character of the area and which is capable of achieving design excellence.

146. A variation to the height standard pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is supported as the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify contravening the development standard.

147. It is recommended that deferred commencement development consent be granted subject to the recommended conditions requiring the VPA to be executed and registered on title prior to the consent becoming operative.

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