

Item 3.**Development Application: 158 Wyndham Street, Alexandria - D/2024/803****File Number:** D/2024/803**Summary****Date of Submission:** 20 September 2024

Amended drawings and additional information were submitted on 28 February, 14 April and 19 May 2025.

Applicant: The Trustee for Blueshore Development Group Trust**Architect:** Studio.SC**Owner/Developer:** Denning Real Estate Pty Ltd**Planning Consultant:** Ethos Urban**DAPRS:** 5 March 2024 (Pre-DA) and 3 December 2024**Cost of Works:** \$5,841,009

Zoning: The site is located within the MU1 - Mixed Use zone under the Sydney Local Environmental Plan 2012. The proposed development comprises a residential flat building which is permissible with consent in the zone.

Proposal Summary: Approval is sought for site preparation and construction of a part 5, part 6 storey residential flat building comprising:

- 5 x 3 bedroom apartments
- site landscaping including:
 - ground floor deep soil and communal open space; and
 - private open space and communal open space on the rooftop
- bicycle parking, waste storage and services on the ground floor

The application is referred to the Local Planning Panel for determination as it is a type of sensitive development, being a development to which Chapter 4 of the State Environmental Planning Policy (Housing) 2021 applies and is 4 or more storeys in height. It is also subject to 25 or more unique submissions by way of objection.

Planning Agreement

The applicant has offered to enter into a Voluntary Planning Agreement (VPA) with the City, which applies to both the subject site and the adjoining site at 158 Botany Road.

The public benefits captured in the VPA relevant to this application include:

- the dedication and embellishment of land (34sqm) at the rear of the site for the future laneway network; and
- a monetary contribution towards other community infrastructure in Green Square.

The VPA was publicly exhibited in accordance with the requirements of the Environmental Planning and Assessment Act 1979 between 18 December 2024 and 7 February 2025. One submission was received.

Notification

The application was notified for a period of 21 days between 8 October and 30 October 2024. A total of 64 submissions were received, including 50 in objection and 14 in support. The objections raised issues relating to height, setbacks, traffic and parking, overshadowing and visual and acoustic privacy.

Clause 4.6 requests

A written request has been submitted to vary the height of buildings development standard pursuant to clause 4.6 of the Sydney Local Environmental Plan 2012. The proposal seeks to vary the 24m height control by 1% (approximately 225mm) to the top of the lift overrun.

The applicant's written request to vary the height of buildings development standard demonstrates that compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the standard. The minor height non-compliance is therefore supported in this instance.

A second written request has been submitted in relation to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide, as this is deemed a development standard under Section 148 of the State Environmental Planning Policy (Housing) 2021.

The recommended 3.3m ceiling height is not achieved on the ground and first floor. The applicant's request to vary the ceiling height development standard is supported in this instance.

Assessment

The proposal was reviewed by the Design Advisory Panel Residential Subcommittee (DAPRS) on 5 March 2024 as part of the pre-lodgement advice and again on 3 December 2024 following lodgement of the Development Application.

Amended drawings were submitted on 28 February 2025 to address issues raised by Council and the DAPRS. Further outstanding issues were raised by Council officers, resulting in amended plans provided on 14 April 2025 and a final set provided on 19 May 2025.

The final amended proposal adequately addresses the issues raised, subject to recommended conditions, as detailed in this report.

The proposal in its final form responds appropriately to the desired future character of the Botany Road Precinct, reflected by the planning controls that apply to the site and surrounding sites in close proximity to the Waterloo Metro Station. The development will provide housing in a highly accessible location, taking advantage of the surrounding local services and transport options, and the proposed building has been designed to not conflict with or restrict delivery of commercial and non-residential development on surrounding sites.

A deferred commencement condition is recommended requiring the Planning Agreement to be executed and registered on title prior to the consent becoming operational.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021

- (ii) Sydney Water Act 1994 and Sydney Water Regulation 2017
- (iii) State Environmental Planning Policy (Transport and Infrastructure) 2021
- (iv) State Environmental Planning Policy (Resilience and Hazards) 2021
- (v) State Environmental Planning Policy (Housing) 2021
- (vi) State Environmental Planning Policy (Sustainable Buildings) 2022
- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) City of Sydney Development Contributions Plan 2015
- (iv) City of Sydney Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height
- D. Clause 4.6 Variation Request - Ceiling Heights
- E. Submissions

Recommendation

It is resolved that:

- (A) the request to vary the height of buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the request to vary the ceiling heights development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) 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/2024/803 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 satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to the recommended conditions of consent, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that the applicant's written requests have adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings and the ceiling heights development standards is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening the development standards.
- (C) The development is permissible with consent in the MU1 - Mixed-Use zone and is consistent with the objectives of the zone.
- (D) The proposal has been assessed against the aims and objectives of the relevant planning controls including the Sydney Local Environmental Plan 2012, the Sydney Development Control Plan 2012, and State Environmental Planning Policy (Housing) 2021. Where non-compliances exist, they have been demonstrated in this report to be acceptable in the circumstances or are to be resolved by the recommended conditions of consent.
- (E) The proposed development demonstrates design excellence in accordance with the relevant provisions and matters for consideration in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (F) The proposed development has a form, bulk and massing that is suitable for the site and its context and is appropriate in the setting of the Botany Road Precinct.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in Deposited Plan 827390 and is known as 158 Wyndham Street, Alexandria. It is generally rectangular in shape with an area of approximately 271.8sqm. It has a street frontage of 7.6m to Wyndham Street and adjoins 158 Botany Road to the rear.
2. The site is located south of the intersection between Wyndham Street and Buckland Street. Alexandria Park is located directly west of the site and the Waterloo Metro Station is located to the north-east.
3. The site is generally flat and is currently vacant and surrounded by wire fencing. The site previously contained an attached single storey dwelling which was demolished following fire damage in 2019. An underground Sydney Water stormwater channel runs through the rear of the site.
4. The surrounding area is undergoing significant change within the Green Square urban renewal area and contains a mix of residential, industrial, retail, and commercial uses. The site is also located within the Botany Road Precinct which is subject to new planning controls that encourage employment generating land uses, and residential uses where appropriate, in response to public and private investment in the area including the Waterloo Metro Station.
5. Surrounding development includes:
 - North: The site adjoins a row of 8 x 3 storey residential terraces at 146-156 Wyndham Street. These were constructed as part of the mixed-use redevelopment at 156 Botany Road. Further north along Wyndham Street are predominantly two storey residential terraces.
 - East: The site adjoins 158 Botany Road to the east, which is currently vacant but subject to a concept approval for a 35m commercial development. Surrounding sites along Botany Road contain a range of residential and commercial uses.
 - South: Directly south of the site is a single storey dwelling at 160 Wyndham Street. Further south along Wyndham Street are a range of residential dwellings generally ranging from 1 to 3 storeys.
 - West: Alexandria Park is located directly opposite the site on the western side of Wyndham Street.
6. The site is not located within a heritage conservation and is not a heritage item. The Alexandria Park Heritage Conservation Area is located immediately west of the site, ending at the eastern end of Wyndham Street. Alexandria Park is also listed as a local heritage item. The site is identified as being subject to flooding.
7. A site visit was carried out on 28 May 2024 as part of the assessment of the concept application (see Development Applications section below). Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Wyndham Street looking east



Figure 3: Site viewed from Wyndham Street looking north-east



Figure 4: Looking south along Wyndham Street



Figure 5: Alexandria Park viewed from Wyndham Street looking west

History Relevant to the Development Application

Development Applications

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

- **D/2014/201** – Development consent was granted by the Land and Environment Court on 16 October 2015 for redevelopment of 158 Wyndham Street and 158 Botany road, comprising demolition of the existing structures and construction of a four storey mixed use building comprising ground floor retail fronting Botany Road and 24 residential apartments.

Physical commencement of D/2014/201 occurred with demolition of the existing structures across the site and therefore this consent is operational. A condition of consent is recommended that requires D/2014/201 to be surrendered prior to the issue of any Construction Certificate for the subject application.

- **D/2023/1012** - A concept Development Application (DA) applying to 158 Wyndham Street (subject site) and the adjoining site at 158 Botany Road was granted deferred commencement consent by the Local Planning Panel on 18 December 2024.

The concept DA includes:

- Concept building envelope for a commercial development at 158 Botany Road with a maximum height of 35m. No concept envelope was sought or required for 158 Wyndham Street;
- A Public Benefit Offer was submitted which included public benefits as follows:
 - dedication and embellishment of land at the rear of 158 Wyndham Street for the future laneway;
 - dedication and embellishment of land at the rear of 158 Botany Road for the future laneway;
 - dedication and landscaping of SP2 zoned land on the Botany Road frontage for footpath widening; and
 - monetary contribution towards other community infrastructure in Green Square.

The concept consent has not yet been made operational as the Voluntary Planning Agreement has not been executed or registered on title.

History of the relevant planning controls

9. The site is located within the Botany Road Precinct (the Precinct), which is subject to specific planning controls to facilitate renewal of the Precinct by encouraging commercial, enterprise and affordable housing floor space whilst delivering additional market residential housing in high amenity areas less suited to commercial development.
10. A Planning Proposal was approved by Council in June 2022 and the amendments to the Sydney LEP 2012 and Sydney DCP 2012 came into effect on 11 November 2022.
11. The new planning controls identify the sites on the eastern side of Wyndham Street, opposite Alexandria Park, as being suitable for residential uses. This includes the subject site. The planning controls for these sites were subsequently increased to allow a base floor space control of 1.25:1 and a maximum height of 24m. They were also rezoned from R1 General Residential to MU1 - Mixed Use.
12. In other parts of the Precinct, the controls identify 'opportunity lands' where development can utilise additional incentive height and floor space controls for the purpose of commercial or affordable housing development specifically. The incentive building heights and floor space ratio controls are not applicable to the subject site.
13. The Planning Proposal also amended the SDCP 2012 to introduce a new section 5.10 relating to development in the Precinct. An assessment of the proposed development against these provisions is provided in the DCP compliance table below.

Compliance action

14. In November 2019 Council issued an order in relation to the subject site requiring demolition of the dilapidated building due to safety concerns following fire damage in July 2019. The building was subsequently demolished and remains vacant. The compliance action is now closed.

Planning Agreement

15. The concept DA included a Public Benefit Offer to enter into a Voluntary Planning Agreement (VPA) with the City. The VPA applies to both 158 Botany Road and 158 Wyndham Street and contains two parts, one applying to each site.
16. The draft VPA was publicly exhibited between 18 December 2024 and 7 February 2025.
17. The portion of the draft VPA that applies to 158 Wyndham Street includes the following public benefits:
 - (a) Dedication and embellishment of 34sqm of land at the rear of the site for the future laneway extension; and
 - (b) A monetary contribution to community infrastructure in Green Square.
18. The land dedication for the laneway will occur in two stages:
 - (a) The land for the laneway will be subdivided and created as a separate title prior to issue of the first Occupation Certificate and will remain under ownership of the current landowner.
 - (b) The VPA will remain on the titles of the laneway lots until the City triggers the dedication clauses in the VPA.
19. The subject application is required to comply with the terms of the VPA. As the VPA has not yet been executed and registered on the title of the land, a deferred commencement condition is recommended which requires this to occur prior to the consent becoming operational.
20. The VPA does not affect Section 7.11 development contributions or affordable housing contributions applicable to the development.

Design Advisory Panel Residential Subcommittee

21. The application was reviewed by the Design Advisory Panel Residential Subcommittee (DAPRS) as part of the pre-lodgement advice application on 5 March 2024. The Panel provided the following key recommendations in response to the Pre-DA scheme:
 - (a) The planning controls permit a significant change to the scale of buildings facing Alexandria Park and therefore the facade design and upper-level setbacks must be carefully considered.
 - (b) On site car parking was proposed, which was not supported by the Panel. The car parking has since been removed.
 - (c) The scheme included a lightwell to achieve solar access, which the Panel did not support due to issues relating to visual privacy, acoustic separation, light spill and outlook. The lightwell has since been removed.
 - (d) Concerns were raised regarding the increased building depth to the rear due to overshadowing impacts.

- (e) Solar access could be improved by bringing living room windows further forward (west). Operable sun shading should be provided to moderate western heat gain in mid seasons and summer. Sun shading should also be provided on the east.
 - (f) The reduced front setback to match the neighbouring buildings to the north was supported by the Panel.
22. Following lodgement of the development application, the Design Advisory Panel Residential Subcommittee reviewed the amended scheme on 3 December 2024 and provided the following additional recommendations:
- (a) The Panel noted that the proposal benefitted from improvements made in line with the Panel's previous comments.
 - (b) The building's party walls will be visually prominent for the mid to long term and warrant further consideration.
 - (c) The development needs to integrate successfully into its immediate context, with terraces to the north and south unlikely to change in the short term. This should be achieved through facade design and materiality.
 - (d) The proposal must respond appropriately to the irregular side boundaries.
 - (e) The DCP upper level setback is to be observed to create a continuous future street wall.
 - (f) The private open space on the rooftop should be removed and replaced with communal open space.
 - (g) The composition of the lift overrun should be amended to reduce impact.
 - (h) The western balconies are to be redesigned to eliminate cross viewing and focus on the park to the west.
 - (i) The rear balconies should be removed or be made Juliet balconies with screening.

Amendments

23. Following a preliminary assessment of the proposed development by Council Officers and consultation with the DAPRS, a request for additional information and amendments was sent to the applicant on 17 December 2024 requesting the following information and design changes:
- (a) Street wall height - A 5 storey street wall and 3m setback for the upper storey must be provided in accordance with the DCP.
 - (b) Facade design - Recommend deletion of planter boxes, emphasising the 3 storey datum, changes to facade materials and operable sun shading on the eastern and western elevations.
 - (c) Party walls - Further consideration of party wall materiality and the cavities between neighbouring buildings was recommended.
 - (d) Rooftop structures:

- (i) Private open space on the rooftop was requested to be deleted and replaced with communal open space.
 - (ii) The height and bulk of rooftop structures was to be minimised.
 - (iii) Shade was to be provided on the rooftop.
 - (e) Balconies:
 - (i) Western balconies were to be amended to not borrow amenity from neighbouring sites.
 - (ii) Eastern balconies were to be removed or replaced with Juliet balconies.
 - (f) Overshadowing - Further information was requested to allow for an assessment of overshadowing impacts.
 - (g) Landscaping:
 - (i) 25% communal open space was to be achieved excluding land to be dedicated.
 - (ii) Design changes were required to soil depths, rooftop perimeter planting and planting design.
 - (h) Tree management:
 - (i) Owner's consent was required for the removal of Tree 1 - Yellow Cane Palm on the adjoining site.
 - (ii) Root mapping investigations were requested for Tree 2 - Jacaranda street tree.
 - (i) Bicycle parking - Changes were required to ensure bicycle parking meets the DCP and Australian Standards.
 - (j) Connecting with Country - The proposal must address the objectives and provisions relating to Connecting with Country in Section 5.10.5 and 2.13.13 of the SDCP 2012.
 - (k) Contamination - A Remediation Action Plan was requested.
 - (l) Waste Management - Minor changes were required to the Waste Management Plan.
 - (m) Materials and Finishes - A more detailed materials and finishes schedule was requested.
24. The applicant responded to the request on 28 February 2025 and submitted amended architectural drawings, landscape plans, Arborist Report, Remediation Action Plan and Waste Management Plan.
25. On 13 March 2025, Council officers wrote to the applicant identifying several outstanding issues including:

- (a) Solar access - Inadequate solar access was achieved to the proposed apartments. Design changes were recommended to optimise solar access between 1-3pm, including bringing forward the living room glazing towards Wyndham Street as per the DAPRS advice.
- (b) Front setback - Recommended bringing the building line forward by 830mm to align with the terraces to the north, as per the DAPRS advice.
- (c) Rear boundary - The rear balconies were maintained in the amended scheme with the addition of privacy screens. The balconies cause the building to not achieve the 9m rear building separation recommended by the ADG. It was noted that this could be achieved if the building is shifted forward as per point (b) above.
- (d) Street wall height - Advice from a fire engineer was requested to confirm that a performance solution is possible on the rooftop where side walls are not proposed. Alternatively, the upper-level setback was to be made non-trafficable.
- (e) Side boundaries - The irregular side boundaries had not been addressed in the design.
- (f) Sun shading - Further consideration was required regarding solar gain and sun shading as per the DAPRS advice.
- (g) Internalised studies - The amended plans introduced internalised studies without natural ventilation which was not supported.
- (h) Materials and finishes - The glass balustrades to the eastern and western facades were not supported.
- (i) Overshadowing - Further overshadowing analysis was required.
- (j) Contamination - A section B Site Audit Statement or letter of Interim advice was required in support of the RAP.
- (k) Stormwater and flooding - An updated Flood Report and stormwater design were requested.

26. The applicant responded to the request on 14 April and 19 May 2025.

Proposed Development

27. The application (as amended) seeks consent for site preparation and construction of a part 5, part 6 storey residential flat building comprising:

- 5 x 3 bedroom apartments
- site landscaping including:
 - ground floor deep soil and communal open space
 - private open space and communal open space on the rooftop level
- bicycle parking, waste storage and services on the ground floor

28. A photomontage of the proposed development is provided below.



Figure 6: Photomontage of the proposed development viewed from Wyndham Street

Assessment

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

Sydney Water Act 1994

30. The application is subject to the requirements of Section 78 of the Sydney Water Act 1994 and was referred to Sydney Water for comment.

31. Sydney Water responded on 16 October 2024 and provided conditions which have been included in the recommended conditions of consent.

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. A Detailed Site Investigation was prepared for the site, which detected elevated lead in a localised hotspot requiring remediation. Data gaps were also identified. The report therefore recommended that a Remedial Action Plan (RAP) be prepared to facilitate remediation of the lead hotspot and scope the requirements of the data gap closure.
34. A RAP was subsequently prepared, which recommends specific remediation techniques. An Interim Advice Letter from a NSW EPA Site Auditor was also provided.
35. The Council's Health Unit 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.
36. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.
37. It is noted that the proposed deep soil zone in the rear communal open space will likely need to be remediated. A condition of consent is recommended that requires details of clean fill including subsoil and topsoil layers to be provided with the amended landscape plans.

State Environmental Planning Policy (Housing) 2021

38. A condition of consent is recommended requiring payment of an affordable housing contribution prior to the issue of any Construction Certificate.
39. Section 7.32 of the EP&A Act applies to the development application because:
 - (a) the SEPP (Housing) 2021 identifies a need for affordable housing within each area of the State;
 - (b) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area;
 - (c) the proposed development will create a need for affordable housing within the area; and
 - (d) Section 222B of the Environmental Planning and Assessment Regulation 2021 states that section 7.32 of the EP&A Act applies to a development application to carry out development in the City of Sydney local government area.
40. The recommended affordable housing contribution is authorised to be imposed on the development by Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 for development of land in Green Square involving the erection of a new building the gross floor area of which is more than 200 square metres.

41. This matter is discussed in further detail under the heading 'Financial Contributions' below.

Chapter 4 - Design of Residential Apartment Development

42. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
43. 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.
44. The applicant has submitted a design verification statement and design report prepared by Thomas Hansen (NSW Architects Reg. No. 9527) 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.
45. An assessment of the proposal against the design quality is provided as follows:
- (a) Principle 1: Context and Neighbourhood Character

The proposed design responds to the site's urban context within the Botany Road Precinct. The materials align with the neighbourhood's domestic architecture and industrial past. Architectural features have been scaled to the grain of the site. The building provides an appropriate presentation to existing natural surroundings including Alexandria Park.
 - (b) Principle 2: Built Form and Scale

The building is of a scale, bulk and height that is appropriate to the future character of the street and surrounding buildings within the Botany Road Precinct. The building has been designed to optimise solar access and provide appropriate setbacks.
 - (c) Principle 3: Density

The proposal complies with the maximum floor space ratio permitted for the site and is of an appropriate density that is in keeping with the desired future character of the area. The proposed apartments have high amenity with generous outdoor spaces. The site is highly accessible and near public transport links including Waterloo Metro station. The existing infrastructure can support the proposed density.
 - (d) Principle 4: Sustainability

The design incorporates passive design principles including natural cross ventilation and optimisation of solar access in midwinter. The proposal addresses the regulatory requirements in the Sustainable Buildings SEPP 2022.
 - (e) Principle 5: Landscape

Adequate landscaping, deep soil, canopy cover and both private and communal open space is provided across the site. The landscape design is of a high quality, subject to conditions of consent confirming details.

(f) Principle 6: Amenity

The development achieves a high level of amenity for future occupants including generous apartment and bedroom sizes, natural cross ventilation, outlooks towards Alexandria Park and optimising solar access.

(g) Principle 7: Safety

The building has a good presentation to the public domain. The balconies facing Wyndham Street will provide passive surveillance and the rear windows and balconies will provide passive surveillance to the laneway in the future. The building has clearly defined secure access points and visibility.

(h) Principle 8: Housing Diversity and Social Interaction

The proposal includes 3 bedroom apartments. These will cater to a range of household types in close proximity to public transport, employment and social infrastructure within the locality. Social interaction is encouraged through the provision of common areas and communal open space.

(i) Principle 9: Aesthetics

The design responds to the local context with regard to materials, colours and textures and provides a high quality design response appropriate for the site, subject to conditions of consent. The built form elements are appropriate for the desired future character of the area.

46. 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)	No but acceptable	<p>The proposed apartments have a depth of approximately 23m glass line to glass line. The ADG recommends that where greater depths are proposed, acceptable amenity should be demonstrated.</p> <p>Good amenity is achieved through daylight access, natural cross ventilation, apartment and bedroom sizes and balcony sizes. This exceedance is therefore considered to be acceptable.</p>

2F Building Separation	Consistency	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> 12m between habitable rooms / balconies 9m between habitable and non-habitable rooms 6m between non-habitable rooms 	Partial compliance	<p>The proposal achieves approximately 17m building separation to the approved commercial envelope at 158 Botany Road directly east of the site.</p> <p>It is noted that office windows are to be considered as habitable space.</p> <p>The proposal is therefore consistent with the ADG recommendation of 12m separation up to 4 storeys, however, is inconsistent with the recommended 18m separation between 5 to 8 storeys.</p>
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> 18m between habitable rooms / balconies 12m between habitable and non-habitable rooms 9m between non-habitable rooms 		<p>The minor inconsistency is considered reasonable in this instance, as a minimum setback of 9m within the site boundary is achieved. The future laneway will also separate the site from adjoining properties on Botany Road. Refer to section 3F - Visual Privacy below for further details.</p>

3D Communal and Public Open Space	Consistency	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	<p>The proposal provides approximately 40sqm of communal open space on the ground floor (excluding the land to be dedicated) and 41sqm on the rooftop, resulting in a total of approximately 81sqm.</p> <p>This equates to 29% of the total site area, which complies.</p>
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	<p>The solar analysis submitted with the application demonstrates that solar access is provided to the two communal open space areas (ground floor and rooftop) in midwinter.</p>

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 3m	Yes	Deep soil equivalent to approximately 9.5% of the site area is provided.

3F Visual Privacy	Consistency	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> 6m between habitable rooms / balconies 3m between non-habitable rooms 	Yes	<p>The proposal provides a 9m setback to the rear boundary, which complies.</p> <p>The site's rear boundary will be readjusted in the future when the trigger clause in the VPA is enacted, requiring the dedication of land for the future laneway. Notwithstanding, an appropriate level of building separation and visual privacy will be achieved with the laneway providing the required separation.</p>
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> 9m between habitable rooms / balconies 4.5m between non-habitable rooms 		
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The proposal complies.

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.	No but acceptable	<p>1 out of 5 apartments receive 2 hours of direct solar access in midwinter (20%). This is largely due to the orientation of the site and various site constraints.</p> <p>The design has been amended to optimise solar access, resulting in the remaining 4 apartments achieving 1.5 hours of direct solar access in midwinter.</p>

4A Solar and Daylight Access	Consistency	Comment
		<p>This is considered to be acceptable on balance.</p> <p>Refer to the 'Discussion' section for further details.</p>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All apartments achieve direct sunlight.

4B Natural Ventilation	Consistency	Comment
All habitable rooms are naturally ventilated.	Yes	The proposal complies.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	100% of apartments are naturally cross ventilated.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No but acceptable	<p>The proposed cross-through apartments have a depth of approximately 23m glass line to glass line.</p> <p>This is considered acceptable in this instance, as the external window and door openings are equal on the inlet and outlet sides, the design minimises corners that might obstruct airflow, and appropriate ceiling heights are provided to achieve good residential amenity.</p>

4C Ceiling Heights	Consistency	Comment
Habitable rooms: 2.7m	Yes	The proposal complies.
Non-habitable rooms: 2.4m	Yes	The proposal complies.
If located in mixed use areas – 3.3m for ground and first floor	No, but Clause 4.6	3.3m is not achieved on the ground and first floor.

4C Ceiling Heights	Consistency	Comment
to promote future flexibility of use.	request supported	A Clause 4.6 variation request was submitted with the application as this control is identified as a development standard. See further details in the 'Discussion' section below.

4D Apartment Size and Layout	Consistency	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35sqm • 1 bed: 50sqm • 2 bed: 70sqm • 3 bed: 90sqm <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p>	Yes	The proposed apartments have a size of at least 107sqm which exceeds the minimum recommended.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	The proposal complies.
Habitable room depths are to be no more than 2.5 x the ceiling height.	No but acceptable	The open plan kitchen/ dining/ living room depths exceed 2.5m x the ceiling height. This is due to the living room glazing being brought forward to optimise solar access. Good amenity is achieved notwithstanding the room depth.
8m maximum depth for open plan layouts.	Partial compliance	As noted above, the open plan layouts exceed 8m due to the living room glazing being brought forward towards

4D Apartment Size and Layout	Consistency	Comment
		Wyndham Street to optimise solar access. However, the kitchen area remains within 8m of the eastern-most living room window, which complies.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10sqm • all other bedrooms: 9sqm <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	The proposal complies.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	No but acceptable	The living room and living/ dining room widths are approximately 3.7m. While this does not strictly comply for apartments with two or more bedrooms, the proposed widths are considered reasonable given the size and width of the lot and good amenity is achieved notwithstanding this non-compliance.
4m minimum width for cross over and cross through apartments.	Yes	The proposal complies.

4E Private Open Space and Balconies	Consistency	Comment
Three bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.	Partial compliance	<p>Apartment 1 has an 8sqm primary balcony off the living room on Level 1, which does not strictly comply with the 12m recommendation. However, an additional 5sqm balcony is provided at the rear and 12sqm provided on the ground floor adjacent to the rumpus room. This is considered acceptable.</p> <p>All other apartments comply.</p>

4F Common Circulation and Spaces	Consistency	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The building has one apartment per 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.	Yes	The proposal complies.
Daylight and natural ventilation are provided to all common circulation spaces.	No but acceptable	Small common areas are provided on each level to provide separation between the lift and apartment front doors. The location of the core means that these common areas are not able to access daylight or natural ventilation. Given each common area only services a single apartment, this is considered acceptable.

4G Storage	Consistency	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> 3 bed: 10m³ <p>(Minimum 50% storage area located within unit)</p>	Yes	A condition is recommended that requires 10sqm of storage to be provided for each apartment.

4J Noise and Pollution	Consistency	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	The proposal complies.

State Environmental Planning Policy (Sustainable Buildings) 2022**Chapter 2 Standards for residential development - BASIX**

47. A BASIX Certificate has been submitted with the development application (1761182M_04).
48. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented through to the construction certificate stage.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Clause 2.48 Determination of development applications – other development

50. The application is subject to Clause 2.48 of the SEPP and was referred to Ausgrid for comment.
51. Ausgrid raised no objection to the development application, subject to conditions of consent which are included in Attachment A.

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

52. 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 development is defined as a residential flat building and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No but clause 4.6 variation request acceptable	A maximum building height of 24m is permitted. The proposed building has a maximum height of 24.23m to the top of the lift overrun, which does not comply and results in a variation of 1%.

Provision	Compliance	Comment
		<p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2.25:1 or 611.6sqm is permitted. This includes:</p> <ul style="list-style-type: none"> • Base FSR of 1.25:1; and • An additional 1:1 for community infrastructure floor space in Green Square permitted by clause 6.14 of the SLEP 2012. <p>The proposal has a FSR of 2.25:1 and gross floor area of 611sqm, which complies with the development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the height of buildings development standard prescribed under Clause 4.3 of the SLEP 2012. A Clause 4.6 variation request has been submitted with the application.</p> <p>A second Clause 4.6 variation request was submitted to vary the ceiling height development standard under the ADG.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not identified as a heritage item and is not located within a Heritage Conservation Area.</p> <p>The site is adjacent to the C1 Alexandria Park Heritage Conservation Area. Alexandria Park is also listed as a local heritage item.</p> <p>The proposed development will not have detrimental impact on the heritage significance of the nearby heritage</p>

Provision	Compliance	Comment
		<p>conservation area and the heritage item. The proposed built form is generally consistent with the desired future character established by the planning controls for this part of Wyndham Street.</p> <p>The Planning Proposal for the Botany Road precinct acknowledged the presence of heritage within the Precinct, whilst simultaneously seeking to incentivise housing supply and choice with access to jobs, services and public transport.</p> <p>Conditions of consent are recommended ensure the proposed materials and finishes are more in keeping with the existing streetscape. Refer to the 'Discussion' section below.</p>
5.21 Flood planning	Yes	<p>The site is affected by flooding and has been accompanied by a Flooding Assessment Report.</p> <p>Additional flood modelling was undertaken by the applicant during the assessment to assess potential flood patterns in the future laneway. As a result, the Flood Planning Levels were modified and the proposed building has been adjusted to meet those levels.</p> <p>The proposal has demonstrated compliance with the City's Interim Flood Management Policy.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
6.14 Community infrastructure floor space at Green Square	Yes	<p>This clause permits an additional floor space of 1:1 if the development includes Green Square community infrastructure.</p> <p>The landowner has made an offer to enter into a Planning Agreement with the City. This involves the dedication of land to the City and a monetary contribution for community infrastructure provision.</p>

Provision	Compliance	Comment
		<p>Therefore, the development is eligible for the additional floor space.</p> <p>See 'Floor Space Ratio' assessment above under clause 4.4.</p>
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>
6.60B Botany Road Precinct Opportunity Land	N/A	<p>This clause applies to Botany Road Precinct Opportunity Land and allows incentive height and floor space controls for non-residential and affordable housing purposes.</p> <p>The subject site is not identified as opportunity land and is therefore not subject to this clause.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	<p>No car parking spaces are provided, which complies with the maximum number of car parking spaces permitted. The site is highly accessible and is near numerous public transport modes. The nil provision of car parking on this site is therefore supported.</p>
Division 3 Affordable housing		
7.13 Affordable Housing	Yes	<p>The site is located within Green Square and involves the erection of a new building. The affordable housing levy</p>

Provision	Compliance	Comment
		<p>contribution of 3% for residential Total Floor Area (TFA) and 1% for non-residential TFA applies.</p> <p>Total Floor Area diagrams were submitted calculating 1,062sqm of residential TFA.</p> <p>Accordingly, a contribution of \$371,067.05 is required. Subclause 7.13(2) satisfies Section 7.32 of the Act.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	<p>The site is identified as being subject to flooding.</p> <p>A flood report accompanies the application demonstrating that the development is able to comply with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.</p>
7.20 Development requiring or authorising preparation of a development control plan	Yes	<p>Pursuant to section 4.24(2) of the EP&A Act, where a concept development application for a site remains in force the determination of any future development application in respect to that site cannot be inconsistent with the concept consent.</p> <p>A concept consent applies to the subject site and the adjoining site at 158 Botany Road, which is under the same land ownership (D/2023/1012).</p> <p>The concept consent was required under this clause as the building envelope at 158 Botany Road exceeds 25m in height. While a concept envelope was not required for 158 Wyndham Street under this clause, this site was included in the Concept DA due to the</p>

Provision	Compliance	Comment
		<p>Planning Agreement applying to both sites.</p> <p>The proposed development is consistent with the concept consent in force for the site as it delivers the public benefits captured in the Planning Agreement, including land dedication for the future laneway and a monetary contribution towards community infrastructure.</p>

Development Control Plans

Sydney Development Control Plan 2012

53. 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

54. The site is located within the Botany Road Precinct locality under section 2.13.13 of the SDCP 2012.
55. The proposed development is in keeping with the unique character and the design principles of the locality as it:
- (a) provides housing in an appropriate location within the locality, taking advantage of the increased accessibility of the area afforded by the Waterloo Metro station;
 - (b) has been designed to not impede the delivery and operation of current and future employment generating land uses;
 - (c) provides an appropriate transition from the taller buildings on Botany Road down to the quiet, low density residential area of Alexandria Park Heritage Conservation Area; and
 - (d) improves pedestrian access to key public transport nodes by providing the required rear lane network.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>Land dedication is required for the future extension of Botany Lane at the rear of the site.</p> <p>This has been accounted for in the proposed design and captured in the VPA.</p>

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The proposal causes minor additional overshadowing to the south-western most portion of Alexandria Park at 9am in midwinter. No additional shadows are cast throughout the day compared to existing and approved development on surrounding sites.</p> <p>The building does not impede views from the public domain to highly utilised landmarks.</p> <p>The building has been designed to positively address the street and provides a legible and accessible entry.</p> <p>An active frontage is not required in this location.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>Conditions of consent are recommended to ensure existing trees within the site and surrounds are adequately retained and protected during construction.</p> <p>Conditions are also recommended to ensure the proposal provides 15% canopy cover and adequate soil depth to facilitate this.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements. Refer to SEPP (Sustainable Buildings).
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.8 Subdivision, Strata Subdivision and Consolidation	N/A	Subdivision is not proposed as part of this application.
3.9 Heritage	Yes	The proposed development will not have detrimental impact on the heritage significance of the adjacent Alexandria

Provision	Compliance	Comment
		<p>Park heritage conservation area or locally listed item Alexandria Park.</p> <p>Refer to clause 5.10 of the SLEP 2012 above.</p>
3.11 Transport and Parking	Yes	No car parking is proposed, which complies with the maximum car parking controls and is supported in this highly accessible location.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	<p>The City of Sydney Guidelines for Waste Management in New Development allow residential developments with six dwellings or less to have kerbside collection.</p> <p>Kerbside collection is proposed given the small size of the site. The waste collection arrangement is supported by Council's Waste Management unit.</p> <p>Conditions of consent are recommended to ensure waste is managed appropriately on the site.</p>

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	Yes	<p>The site is permitted a maximum building height of 6 storeys with a maximum street frontage height of 5 storeys.</p> <p>The proposed development is 6 storeys in height with a street frontage height of 5 storeys and complies.</p> <p>While the proposal complies with the maximum height in storeys numerically, the proposal includes variations to the</p>

Provision	Compliance	Comment
		<p>indicative building footprint and setbacks identified on the height in storeys map.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Partial compliance	<p>Provision (3) of this section recommends that ground and first floor units in a mixed use area provide finished ceiling heights of at least 3.3m to enable both residential and commercial uses.</p> <p>Ceiling heights of 2.7m are provided on ground and first floor. It is considered unlikely that this site would be converted to commercial uses in the future as this part of Wyndham Street has been identified as being appropriate for residential uses within the Botany Road Precinct.</p> <p>Ceiling heights are discussed further in the 'Discussion' section below.</p>
4.2.2 Building setbacks	Partial compliance	<p>The DCP indicates a 3m primary setback and a 3m upper-level setback for this site.</p> <p>The proposal does not comply with the 3m primary setback but provides the 3m upper-level setback.</p> <p>Refer to the 'Discussion' section for further details.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Partial compliance	<p><i>Solar access to proposed apartments</i></p> <p>1 out of 5 apartments receive 2 hours of direct solar access in midwinter (20%).</p> <p>The design has been amended to optimise solar access, resulting in the remaining 4 apartments achieving 1.5 hours of direct solar access in midwinter.</p> <p>Refer to the 'Discussion' section for further details.</p>

Provision	Compliance	Comment
		<p><i>Overshadowing to neighbouring dwellings</i></p> <p>A solar analysis was submitted with the application demonstrating the overshadowing impacts of the building on surrounding residential sites.</p> <p>Solar access impacts resulting from the proposed development are to be considered in the context of the objectives for the Botany Road Precinct.</p> <p>Refer to the 'Discussion' section below for further details.</p>
4.2.3.3 Internal common areas	Partial compliance	<p>A breezeway is provided on the ground floor, which is acceptable. However, the lift lobbies on each level do not have access to daylight and an outlook. This is acceptable as only one apartment is proposed per floor.</p> <p>Refer to Section 4F of the ADG above.</p>
4.2.3.4 Design features to manage solar access	No	<p>The proposal includes extensive glazing on the eastern and western facades, which is not supported.</p> <p>Conditions are recommended requiring a reduction in glazing and the provision of shading devices. Refer to the 'Discussion' section below for further details.</p>
4.2.3.5 Landscaping	Yes	<p>Landscaping is provided on the ground floor and the rooftop. Significant trees within and surrounding the site will be retained.</p>
4.2.3.6 Deep Soil	Minor non-compliance but acceptable	<p>The DCP recommends a minimum deep soil provision of 10% of the site area.</p> <p>26sqm of deep soil is provided at the rear of the site, which equates to 9.6% of the site area, which is acceptable. This exceeds the minimum ADG recommendation of 7%.</p>

Provision	Compliance	Comment
4.2.3.7 Private open space and balconies	Yes	The proposal meets the requirements of Section 4E of the ADG.
4.2.3.8 Common open space	Yes	The proposal provides approximately 40sqm of communal open space on the ground floor (excluding the land to be dedicated) and 41sqm on the rooftop, resulting in a total of approximately 81sqm. This equates to 29% of the total site area, which complies.
4.2.3.9 Ventilation	Yes	The proposal complies.
4.2.3.10 Outlook	Yes	All apartments receive an outlook towards Alexandria Park.
4.2.3.11 Acoustic privacy	Yes	The proposal complies with the acoustic requirements.
4.2.3.12 Flexible housing and dwelling mix	N/A	This clause applies to buildings with more than 20 dwellings and is therefore not applicable.
4.2.6 Waste and recycling Management	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Section 5 – Specific Areas

5.2 - Green Square

Provision	Compliance	Comment
5.2.2 Objectives for Green Square	Yes	The proposal is generally consistent with the urban strategy and objectives for Green Square as it provides housing in a highly accessible location and achieves an appropriate in-fill development in accordance with the controls.
5.2.3 Community infrastructure	Yes	The development meets the requirements for additional floor area for the provision of community

Provision	Compliance	Comment
		infrastructure. Refer to clause 6.14 of the SLEP 2012 above.
5.2.4 Local infrastructure	Yes	The development contributes to the future laneway network.

5.10 - Botany Road

Provision	Compliance	Comment
5.10.2.1 Land-use diversity	Yes	<p>The controls for the Botany Road Precinct seek to predominantly encourage commercial and business uses within the Precinct. However, residential uses are permitted where it does not undermine the employment generating function of the Precinct.</p> <p>The proposed development facilitates the delivery of housing that is complementary to surrounding non-residential uses as follows:</p> <ul style="list-style-type: none"> • The residential uses are located away from Botany Road to mitigate noise and pollution impacts. • Habitable rooms are naturally ventilated. • The apartments have been redesigned to optimise solar access from the primary street frontage. Refer to the 'Solar Access' discussion below.
5.10.2.3 Ground and first floor uses, active frontages and awnings	N/A	The subject site is not required to provide non-residential uses on ground and first floor like other parts of the Precinct. Similarly, active frontages and awnings are not required for this site.
5.10.2.4 Managing change	Yes	<p>This clause seeks to ensure that existing built form and land uses, including residential uses, do not unreasonably constrain growth and change in the Precinct.</p> <p>The proposed residential building has been designed to not adversely impact</p>

Provision	Compliance	Comment
		<p>the potential of adjoining sites (particularly those facing Botany Road) to be developed for a non-residential purpose.</p> <p>Amenity requirements for visual privacy, solar access and natural ventilation are satisfied within the development site and do not require design restrictions on future development on adjoining sites.</p> <p>Amenity impacts on existing or possible future residential development, such as loss of daylight or sunlight access, acoustic privacy or visual privacy, are to be considered in the context of the locality statement and objectives for the Precinct. This is considered in the 'Discussion' section below, particularly in relation to overshadowing impacts.</p>
5.10.3.1 Laneway network	Yes	<p>The DCP requires land dedication at the rear of the site for the extension of Botany Lane running north-south through the block.</p> <p>The purpose of this laneway network is to facilitate rear building servicing and vehicle access throughout the Precinct, increase permeability of large blocks and increase pedestrian connectivity.</p> <p>The laneway is intended to be designed as a shared zone to ensure pedestrian safety.</p> <p>The required land dedication has been captured in the VPA and is provided on the drawings.</p>
5.10.3.2 Vehicle access and car parking	Yes	<p>The Pre-DA scheme submitted to Council showed ground floor car parking, which is not permitted within the Precinct (per Provision 5 of this section).</p> <p>The scheme now provides no car parking spaces, which complies with the planning controls and is supported in this location.</p>

Provision	Compliance	Comment
5.10.4.1 Building heights	Partial compliance	<p>The site is subject to a maximum height in storeys control of 6 storeys, with a 5 storey street wall to Wyndham Street.</p> <p>The proposal generally complies with the height in storeys control, however variations are proposed to the building footprint and setbacks shown on the height in storeys map. This is outlined further in the 'Discussion' section below.</p> <p>This section also requires development to minimise overshadowing to parks and open space between 10am and 2pm at the winter solstice. The shadow diagrams demonstrate that the development will cause minor additional overshadowing to the south-eastern most portion of Alexandria Park at 9am. The proposal does not cause additional overshadowing between 10am and 2pm in midwinter compared to existing and approved development on surrounding sites. The proposal therefore complies.</p>
5.10.4.2 Building alignment and setbacks	Partial compliance	<p>A primary setback of 3m to Wyndham Street is required by the DCP. The proposal has a setback of 0.83m to the front boundary, which matches the neighbouring row of terraces to the north.</p> <p>The DCP also requires a 3m upper level setback. This is provided.</p> <p>Refer to the 'Discussion' section below for further details.</p>
5.10.4.3 Materiality and design	Yes	<p>The proposal includes floor to ceiling glazing and glass balustrades on the Wyndham Street facade, which is not in keeping with the materiality requirements for the Precinct.</p> <p>Conditions of consent are recommended to ensure the development is more consistent with the surrounding streetscape and nearby heritage conservation area. This includes the provision of a solid spandrel to sill height</p>

Provision	Compliance	Comment
		<p>in either masonry or metal cladding and a metal balustrade in lieu of glass.</p> <p>Refer to the 'Discussion' section for further details.</p> <p>Subject to these conditions, the proposed materiality will be appropriate for the locality.</p>
5.10.4.6 Visual and acoustic privacy	Yes	<p>Adequate building separation has been provided to ensure visual privacy is achieved to existing and future development to the east of the site. Refer to Part 3F of the ADG.</p> <p>The building has been designed to be orientated east-west and direct viewing towards Alexandria Park to the west.</p> <p>The east facing balconies have been amended to provide privacy screening to prevent overlooking to neighbouring properties.</p>
5.10.5.1 Connecting with Country - All development	Yes	<p>Development within the Botany Road Precinct is encouraged to consider opportunities for acknowledging and celebrating Aboriginal and Torres Strait Islander living cultures through art, performance, architecture and landscaping. Development should also identify potential impacts, such as displacement, on Aboriginal and Torres Strait Islander people and organisations.</p> <p>The applicant submits that the selection of materiality and landscaping draws inspiration from Alexandria's history, integrating natural materials and native planting. Potential displacement impacts have not been identified for the subject site, which is currently vacant.</p>
5.10.5.3 Aboriginal archaeology	Yes	<p>An Aboriginal Due Diligence Assessment was submitted with the application, which indicates that there is the potential for Aboriginal objects to remain within the study area.</p>

Provision	Compliance	Comment
		<p>As the proposed development would require building works for the construction of footings, piles and installation of services, the report provides recommendations including undertaking Aboriginal archaeological test excavations.</p> <p>A condition of consent is recommended that requires the recommendations of the Aboriginal Due Diligence Assessment to be implemented prior to the issue of a Construction Certificate.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Height of Buildings

56. The site is subject to a maximum height of buildings control of 24m. The proposed development has a maximum height of 24.23m, resulting in a variation of 1%. The height non-compliance is limited to the top of the lift overrun and is a result of the Finished Floor Level (FFL) needing to be raised during the assessment of the application to reflect updated flood modelling and Flood Planning Levels.
57. The extent of the height non-compliance is outlined in Figures 7 and 8 below.

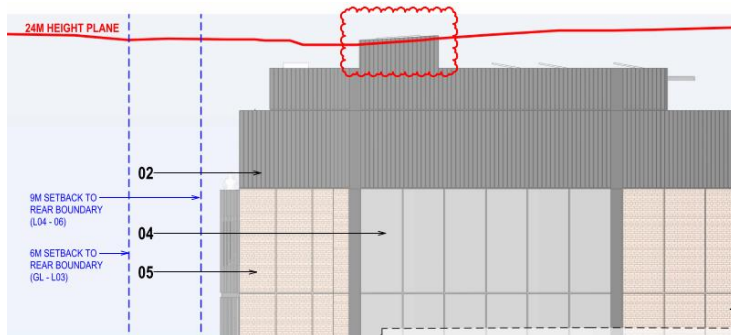


Figure 7: Extent of non-compliance to the top of the lift overrun. The 24m height plane is shown in red.

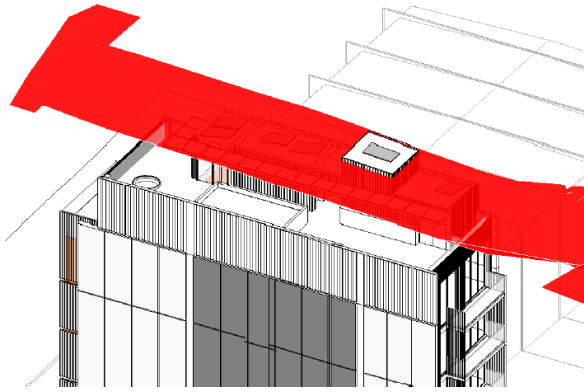


Figure 8: Height plane diagram showing the non-compliance to the top of the lift overrun

58. 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)

59. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant refers to the first method of the five-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary. This method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.
 - (ii) A summary of the applicant's assessment against the objectives of the height of buildings development standard contained in clause 4.3 of the SLEP 2012 is provided below.

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

The proposed building responds to the existing and future context through integrated built form elements that are highly articulated and reflective of the emerging character of Alexandria and the Botany Road Precinct.

The proposed height exceedance is localised to the lift core of the building, which is located within the central portion of the built form. The remainder of the building adheres to the 24m maximum height limit. The overall massing of the development has been carefully considered, informed by input from the Council Design Review Panel and is an appropriate built form addition to the site.

The proposed height variation of 225mm is extremely minor and does not preclude the remainder of the development from complying with the maximum height control.

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 heritage listed and is not within a heritage conservation area. However, there are a number of heritage items near the site, including Alexandria Park, as well as the Alexandria Park Heritage Conservation Area west of the site.

The minor exceedance in height of 225mm does not result in any additional impacts to the surrounding heritage items or heritage conservation areas.

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

The isolated height exceedance from the lift overrun will not obstruct any views. The height exceedance is not discernible when viewed from the public domain on Wyndham Street or Alexandria Park.

Additionally, the site is not positioned in a location that would obscure any views.

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

The site is located in within the Botany Road Precinct, which is undergoing major redevelopment reflected by the planning controls. The proposal is consistent with the objectives of the Precinct by providing housing on a currently vacant and underutilised site.

The proposed development provides a suitable transition in height to the surrounding context in accordance with the controls. Except for the 225mm exceedance of the lift overrun, the proposed building sits below the 24m maximum building height control that applies to the site.

The proposed height exceedance does not result in the ability of the site to provide an appropriate transition in height to the adjoining areas.

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

The exceedance is isolated to the lift core and is centralised within the floorplate of the building. It will not be perceivable from the public domain. As such, it will not adversely impact the amenity of the public domain.

The proposed development will positively contribute to the physical definition of Wyndham Street. The site is currently vacant. The proposed building height, including the minor exceedance, is consistent with the future vision and anticipated character for the Botany Precinct.

The uplift in building height sought on the site, including the massing and proposed number of storeys will assist in delineating and defining this part of Wyndham Street. The proposed height exceedance does not impact the ability of the building to achieve this and will not result in any adverse impact on the surrounding streetscape or Alexandria Park.

- (iii) In summary, the applicant submits that the development is consistent with the objectives of the height of buildings development standard. Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

- (i) **Enables appropriate flood levels**

The exceedance is required in order to achieve the necessary FPLs required at ground floor level, informed by the flood modelling conducted to support the proposed development. The finished floor level has been increased from RL 15.950 to RL 16.04 to meet the FPL.

- (ii) **No adverse visual or overshadowing impacts**

The increase in building height is minor and will be indiscernible from the street level. Updated solar and overshadowing diagrams have been prepared by SC Studio which demonstrate that there will not be any discernible overshadowing or solar impacts to surrounding development from the height exceedance.

The increase in building height is extremely minimal and will be indistinguishable from the street. As such, it will not cause any additional visual impacts from the public domain.

(iii) **Compliance with bulk and massing**

The minor increase in building height will not result in any increase to the bulk or scale of the overall development. The remainder of the proposed development remains below the 24m maximum building height control and the proposed bulk and scale of the development remains unchanged.

(iv) **Local amenity**

The proposed development does not result in an unacceptable impact on solar access to adjoining buildings and the public domain.

The portion of the building that exceeds the height control does not result in any visual privacy impacts to the surrounding development to the north, south and east of the site.

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

60. 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)?

61. The applicant has relied upon the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.
62. The applicant has satisfactorily demonstrated that the proposal meets the objectives of the height of buildings development standard, notwithstanding the non-compliance.

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

63. The applicant has sufficiently demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.
64. It has been demonstrated that height non-compliance is minor and localised, does not adversely impact the amenity of surrounding properties and will not cause visual impacts from the public domain.

Conclusion

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

Clause 4.6 Request to Vary a Development Standard - Ceiling Heights

66. Section 148 of the Housing SEPP contains development standards for particular matters relating to residential development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. This includes the recommended ceiling heights specified in Part 4C of the Apartment Design Guide (ADG), which is described as a 'non-discretionary development standard'.

67. If non-discretionary development standards are not complied with, Section 4.15(3) of the EP&A Act 1979 allows the consent authority to apply Clause 4.6 when determining the development.
68. Part 4C of the ADG recommends that development in mixed-use areas provide floor to ceiling heights of 3.3m on the ground and first floor to promote future flexibility of use.
69. The proposed development is for a residential flat building with apartments proposed on the ground and first floor. Ceiling heights of 2.7m are provided on the ground and first floor in accordance with the design criteria of Part 4C-1 of the ADG. This results in a variation of 18% on each floor. Refer to Figure 9 below.

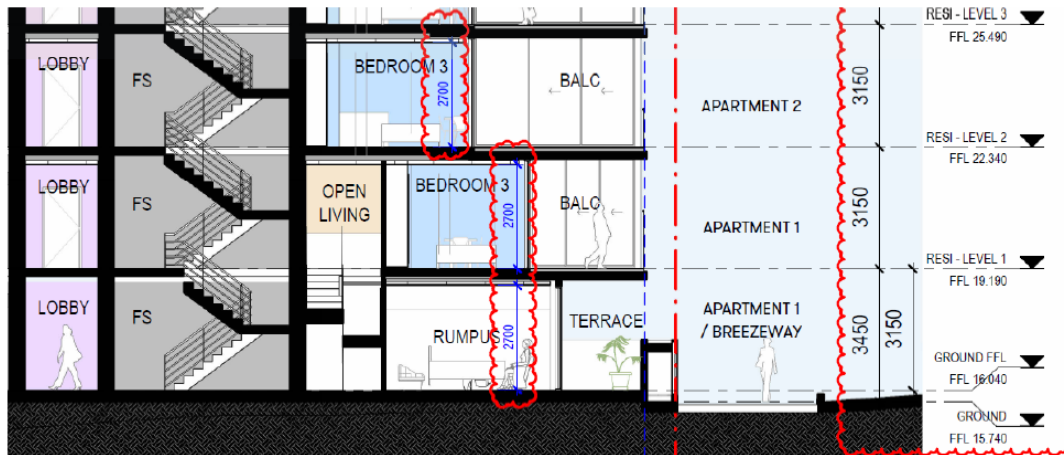


Figure 9: Section showing proposed floor to ceiling heights on ground and first floor

70. 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)

71. The applicant seeks to justify the contravention of the ceiling heights 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 refers to the first method of the five-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary. This method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.

- (ii) A summary of the applicant's assessment against the objectives of the ceiling heights development standard is provided below:

Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access

The ceiling height design criteria specified by the ADG is met at all levels with all apartments achieving ceiling heights of 2.7m. As such, this objective is achieved.

Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms

All habitable areas in the proposed development achieve compliance with this objective. The open plan arrangement of habitable living spaces optimises spatial perception and outlook, with well-proportioned rooms achieving a generous sense of space.

Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building

The proposed minor non-compliance is acceptable as the proposed development is for a purpose-built residential flat building. The prospects of a non-residential conversion of the ground and first floor in the future is considered highly unlikely given extensive retail and commercial floorspace is provided elsewhere in the local context, in more prominent, desirable and publicly active streetscape locations for such uses. This is consistent with the Sydney DCP 2012 Section 2.13.13 Botany Road Precinct Locality Statement which promotes the targeting of retail and commercial land uses to locations such as Botany Road and Regent Street.

Sydney DCP Section 5.10.2.3 (Ground and First Floor Uses and Active Frontages) states that ground floor and first floor uses are to be in accordance with Figure 5.254 Ground Floor Uses (reproduced below at Figure 10 below). Critically, it clearly does not identify the site as a location where non-residential uses are to be provided. Therefore, development of the site for residential purposes is clearly an expectation within the DCP and the requirement to provide ceiling heights of 3.3m at ground and first floor to accommodate future flexibility of use is not considered to be necessary.



Figure 10: Extract of Figure 5.254 Ground Floor Uses of the SDCP 2012, showing the subject site is not identified for non-residential uses

- (iii) In summary, the applicant submits that the development is consistent with the objectives of the ceiling heights development standard. Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
 - (i) All apartments meet the ADG's recommended minimum internal areas, with minimum room dimensions generally achieved and internal layouts demonstrating functional use of spaces.
 - (ii) The non-compliances of ceiling heights at the ground level and first floor are minor and are considered acceptable as the proposed development is for a purpose-built residential flat building located on a street characterised by residential uses.
 - (iii) The likelihood of a non-residential conversion of the ground and first floor is considered highly unlikely given extensive retail and commercial floorspace is provided elsewhere in the local context, in more prominent, desirable and publicly active streetscape locations.
 - (iv) The provision of retail and commercial uses on the site is not sought by the Sydney DCP 2012, which directs such uses to more appropriate locations such as Regent Street and Botany Road.

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

72. 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)?

73. The applicant has relied upon the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.
74. The applicant has satisfactorily demonstrated that the proposal meets the objectives of the ceiling heights development standard, notwithstanding the non-compliance.

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

75. The applicant has sufficiently demonstrated that there are sufficient environmental planning grounds to justify contravening the standard. The proposed floor to ceiling heights will provide acceptable amenity for future occupants and the minimum non-residential floor space requirements are met elsewhere within the Precinct.

Conclusion

76. For the reasons provided above the requested variation to the ceiling heights development 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 in storeys and building footprint

77. The site is subject to a maximum height in storeys control of 6 storeys, with a 5 storey street wall to Wyndham Street. The upper level is to be setback by 3m. The DCP height in storeys mapping is shown in Figure 11 below.

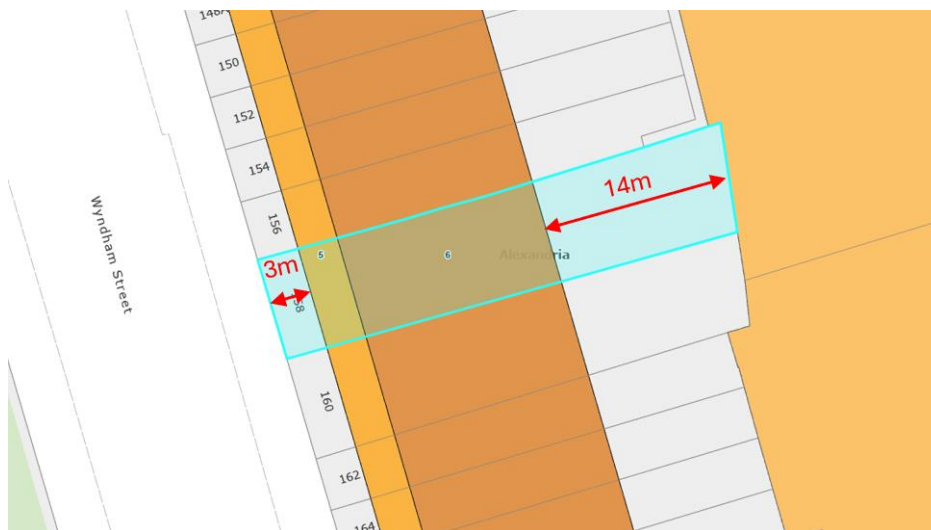


Figure 11: Height in storeys map in the SDCP 2012

78. As shown above, the DCP mapping indicates the following setbacks to establish the building footprint:
 - (a) 3m primary setback to Wyndham Street. This is discussed separately under the 'Primary setback to Wyndham Street' sub-heading below; and
 - (b) Rear building setback of approximately 14m to the existing rear boundary.

79. The intention of the 14m rear setback shown on the DCP map is to ensure ADG building separation distances can be achieved with the provision of the future laneway network.
80. During the Pre-DA process, the applicant submitted a detailed analysis of how the 14m rear setback requirement would impact future development on the site. This analysis demonstrated that compliance with the layout shown on the DCP may would restrict the floor space to approximately half of what is available under the SLEP 2012.
81. The scheme originally submitted with the DA proposed a 7.4m rear setback, which did not comply with ADG building separation distances and was not supported.
82. The design has been amended to provide a 9m setback to the rear boundary, as shown in Figure 12 below.

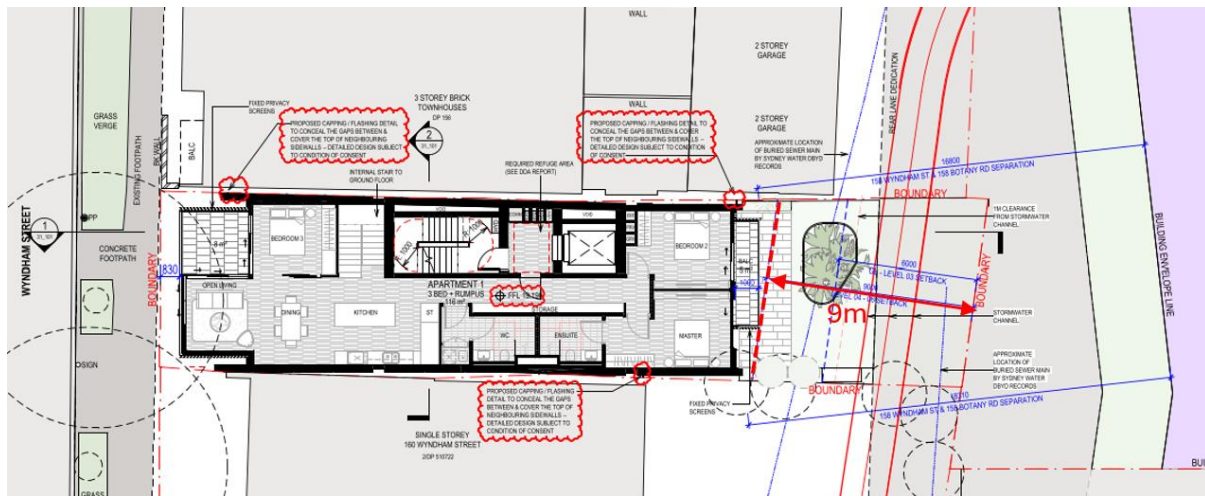


Figure 12: First floor plan showing proposed 9m setback to the rear boundary

83. The proposal now complies with the separation distances outlined in Part 3F of the ADG relating to visual privacy and is considered to provide adequate separation from future development to the east of the site. The proposed rear setback is therefore supported.

Primary setback to Wyndham Street

84. As mentioned in the discussion above, the DCP identifies a 3m primary setback to Wyndham Street.
85. The existing row of terraces to the north of the site at 148-156 Wyndham Street provide a front setback of approximately 830mm. This neighbouring development has a 3 storey wall along its southern boundary adjoining the subject site, which casts a shadow on the front portion of the proposed building where private open space and living room glazing are proposed. This 830mm setback and the neighbouring wall are shown in Figure 13 below.



Figure 13: 3 storey southern wall at 148-156 Wyndham Street, which overshadows the subject site

86. The Design Advisory Panel Residential Subcommittee recommended that consideration be given to a reduced front setback on the subject site to match the neighbouring properties to the north to improve solar access to proposed apartments, particularly on the lower levels. This was recommended as it was recognised that compliance with the 3m front setback would prohibit the proposed apartments from receiving solar access in midwinter.
87. Therefore, the development proposes a front setback of 0.83m, which aligns with the neighbouring development to the north, as shown in Figure 14 below.

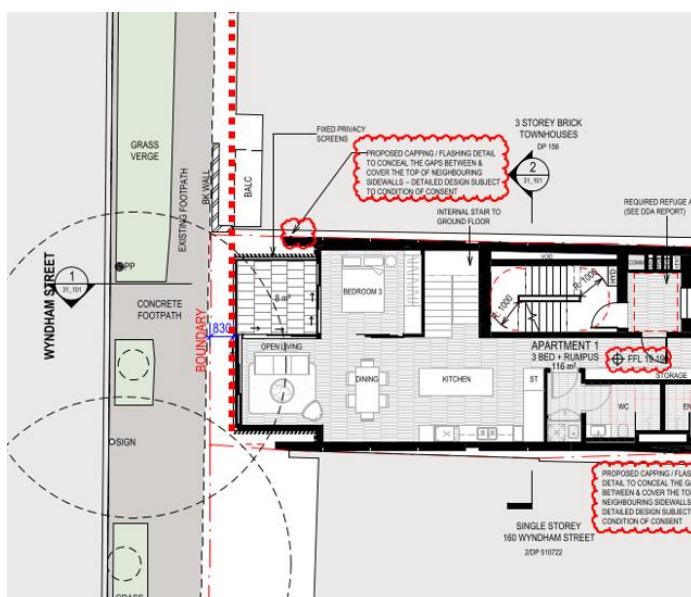


Figure 14: Proposed 830mm front setback to match existing development to the north

88. The non-compliance with the 3m primary setback control on this specific site is supported for the following key reasons:
- (a) Provision 5.10.2.2.1(6) requires residential development on Wyndham Street to receive solar and daylight access from the primary street frontage and not from a laneway, side, rear or interior facing facade. The existing development to the north prevents the site from being able to achieve adequate solar access from the primary street frontage whilst complying with the 3m primary setback;
 - (b) Bringing the building forward towards Wyndham Street optimises solar access to proposed apartments while shifting bulk away from the rear, which in turn minimises overshadowing to the south and increases building separation to the rear;
 - (c) The proposed 830mm front setback will match the existing development immediately north of the site and will therefore be consistent with the existing pattern of development on the street; and
 - (d) The objectives of the 'building alignment and setbacks' provisions in Section 5.10 of the SDCP 2012 are to 'establish appropriate street wall heights and horizontal articulation' and to 'provide a transition to nearby heritage items and heritage conservation areas'. Despite the non-compliance with the 3m primary setback control, the proposed development still provides an appropriate transition from taller development on Botany Road down to Alexandria Park and provides the required upper level setback to minimise bulk to the heritage conservation area. These objectives are therefore achieved; and
 - (e) The proposed setback is consistent with the recommendations of the DAPRS.
89. It is noted that consideration has been given to the potential precedent that this will set for future development along Wyndham Street. Front setbacks will need to be assessed on a site-by-site basis, taking into account specific site constraints. Consideration will need to be given to the level of solar access that can be achieved for each site having regard to existing boundary walls to the north, noting the requirement for residential development on Wyndham Street to receive solar access from the primary street frontage.

Solar access to proposed apartments

90. Provision 5.10.2.2.1(6) of the SDCP 2012 requires residential development on Wyndham Street to ensure dwellings receive solar access from the primary street frontage and not from a laneway, side, rear or interior facing facade.
91. One of the key constraints on this site is its east-west orientation and existing surrounding development (including future taller buildings on Botany Road), which makes achieving compliant solar access a challenge.
92. During the assessment, Council officers requested various design changes to optimise solar access as much as possible. Solar access has been improved through:
- (a) Bringing the living room glazing forward to the front building line (instead of being setback behind the front balcony); and
 - (b) Shifting the entire building forward to achieve a front setback of 830mm in line with the neighbouring building to the north (as discussed above).

93. With the above design changes, 1/5 apartments (20%) achieve the required 2 hours of direct solar access to living room glazing and private open space recommended by Part 4A of the ADG. The remaining 4 apartments achieve 1.5 hours of direct solar access in the afternoon. There are no apartments that receive no solar access.
94. While this does not strictly comply with Part 4A of the ADG, this provision of solar access is considered to be a good outcome considering the constraints of the site. Solar access has been optimised through the design of the building and the development is consistent with the objectives of the DCP by achieving solar access from the primary street frontage, rather than from the side or rear boundaries. The development will therefore not restrict future redevelopment of surrounding sites, which is a key objective of the Botany Road Precinct.

Overshadowing to neighbouring dwellings

95. An overshadowing analysis was submitted with the application. The analysis demonstrates views from the sun between 9am and 3pm at 30 minute intervals in midwinter for existing and proposed scenarios and considers the approved concept envelope on the adjoining site at 158 Botany Road. Shadows in plan view were also provided.
96. The overshadowing impacts are to be considered against Section 5.10.4.2 of the SDCP 2012, which seeks to manage change in the Precinct by ensuring existing built form and land uses, including existing residential uses, do not unreasonably constrain growth and change in the Precinct.
97. The DCP also states that amenity impacts such as loss of daylight or sunlight access, acoustic privacy and visual privacy are to be considered in the context of the locality statement and objectives of the Precinct. The objectives relevant to the proposed development include:
 - (a) The locality statement acknowledges that the Waterloo Metro Station will serve as a catalyst for urban change in the Precinct.
 - (b) To take advantage of the proximity to local services and transport options, the provision of housing may be appropriate where it does not conflict with or restrict delivery of commercial and non-residential development.
 - (c) Development is to provide a transition to the quiet, low density residential area of Alexandria Park Heritage Conservation Area.
98. Provision 4.2.3.1(2) of the SDCP 2012 requires neighbouring developments to achieve a minimum of 2 hours' direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space area. However, this provision is to be balanced with the locality statement and objectives for the Botany Road Precinct outlined above.
99. The overshadowing analysis demonstrates that the proposed development will cause overshadowing to residential properties to the south of the site. The impacts can be summarised as follows, noting that the analysis also takes into account future shadows cast by the approved concept envelope at 158 Botany Road (see Figure 15 below):
 - (a) 160-168 Wyndham Street (1-2 storey terraces) - The proposed development will cause overshadowing to the living room glazing and private open spaces between 11am and 2.30pm. However, the sites are not in full shade during that time and receive varying amounts of solar access between 11am and 2.30pm.

- (b) 172-174 Wyndham Street (3 storey terraces) - Some solar access is maintained at 9am, with overshadowing occurring to living room glazing and private open space between 12.30pm and 3pm. However, these dwellings receive good amounts of solar access between 12pm and 2pm.
- (c) 176-178 Wyndham Street (2 storey terraces) - The proposal will cause additional overshadowing to the living room glazing and private open spaces between 1pm and 2.30pm. However, solar access is still received between 12pm and 2pm.
- (d) 170 Wyndham Street - This building has north and south facing private open space and living room glazing. The proposal will cause additional overshadowing to part of the northern facade between 2pm and 3pm.

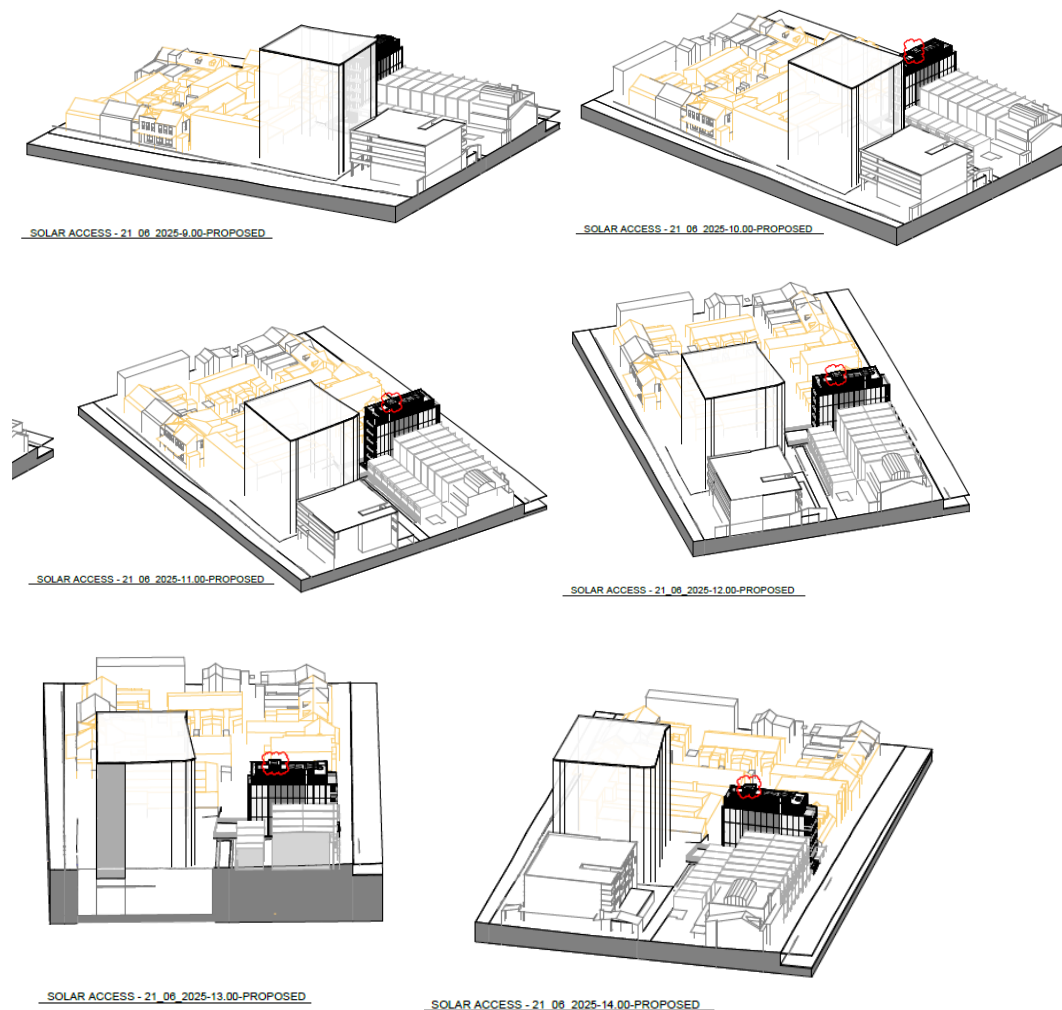


Figure 15: View from the sun diagrams showing overshadowing impacts in midwinter

100. Most affected properties will continue to receive varying amounts of solar access to living room glazing and private open space in midwinter, predominantly around midday and early afternoon when the sun is in between the buildings at 158 Botany Road and 158 Wyndham Street. Some of the properties may not achieve 2 hours' direct solar access required by provision 4.2.3.1(2) of the SDCP 2012.

- ## Visual privacy

-
- 24M HEIGHT PLANE
- 06
- RL 35.975
- 05
- EXPRESSED SLAB
- 03
- 01
- WYNDHAM STREET
- 03
- 01
- 01
- 03
- 01
- 03
- SINGLE STORY
160 WYNDHAM STREET
- 04
- STANLEY AVENUE
- SOUTH ELEVATION

105. Council's Request for Information letter recommended that the rear projecting balconies be deleted due to visual privacy impacts to neighbouring properties, or converted into juliet balconies.
106. The plans were amended to reduce the depth of the rear balconies to 1m and include privacy screening on the northern and southern sides to prevent overlooking to neighbouring properties. The rear setback of the building has also been increased to 9m to provide greater building separation to the east.

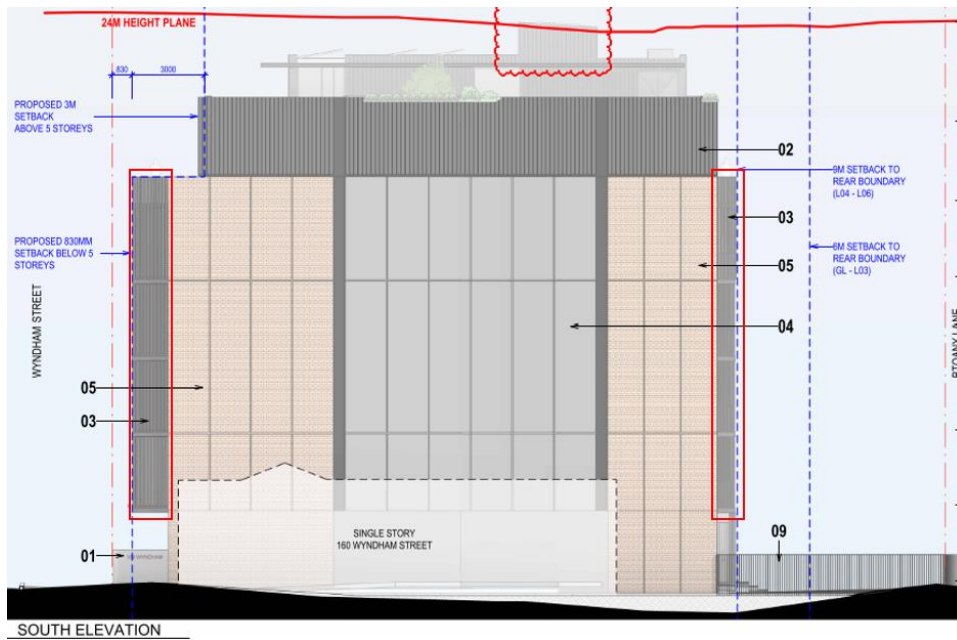


Figure 17: Amended southern elevation showing narrower balconies and privacy screening

107. The amended design adequately addresses visual privacy concerns prevents overlooking to neighbouring properties. The proposal is therefore acceptable.

Building expression, materials and finishes

108. The proposed materials and finishes consist predominantly of aluminium cladding, red precast brick and concrete. The sides of the balconies are proposed to be treated with fixed aluminium privacy screens. Significant amounts of glazing are proposed on the front and rear facades, including glass balustrades to the balconies.

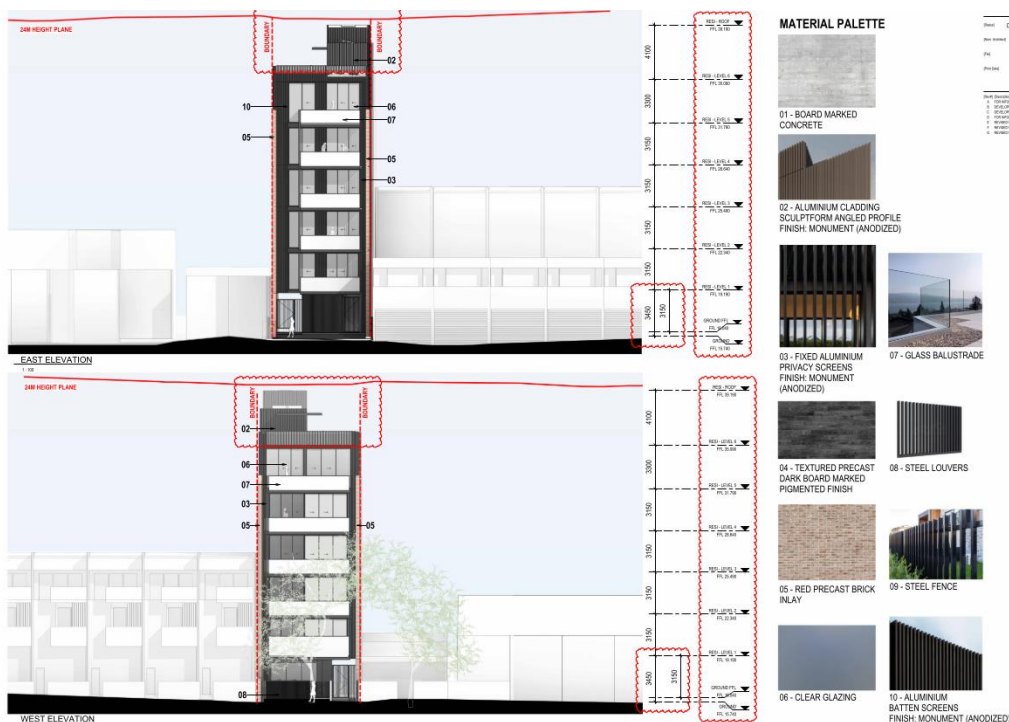


Figure 18: Front and rear elevations with proposed material palette



Figure 19: Proposed photomontage viewed from Wyndham Street showing large amounts of glazing

109. The proposed materiality is generally supported, however, conditions of consent are recommended to address the following issues:
- (a) Living room glazing - The living rooms on the front facade have floor to ceiling glazing. These will be highly exposed when viewed from the public domain, including from Alexandria Park directly opposite the site. A condition is recommended that requires the living rooms to have a solid spandrel to sill height in masonry or metal cladding to ensure visual privacy for residents and prevent internal visual clutter to be seen from the public domain. A more solid material will also provide a more appropriate contribution to the existing streetscape, which is comprised of facades with a greater proportion of solid to void.
 - (b) Balustrades - A condition of consent is recommended that requires the glass balustrades to be replaced with a metal with angled blades to prevent direct viewing to the balcony and to screen visual clutter on balconies.
 - (c) Sun shading - A condition of consent is recommended that requires fixed or operable vertical sun shading to the western facade. This is to protect the glazing from the summer sun while allowing the winter sun to be optimised. This is in line with advice from the Design Advisory Panel Residential Subcommittee.
110. Subject to the above conditions, the proposed materiality is acceptable having regard to the site and its surrounding context.

Consultation

Internal Referrals

111. The application was discussed with Council's internal units including:

- (a) Environmental Health;
- (b) Urban Design;
- (c) Landscape Design;
- (d) Public Domain;
- (e) Environmental Sustainability;
- (f) Planning Agreements;
- (g) Surveyors;
- (h) Transport and Access;
- (i) Tree Management Unit; and
- (j) Waste Management Unit.

112. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

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

114. Ausgrid raised no objections to the proposed development, subject to conditions which are included in Attachment A.

Sydney Water

115. The application is subject to the requirements of Section 78 of the Sydney Water Act 1994 and was referred to Sydney Water for comment.

116. Sydney Water responded on 16 October 2024 and provided conditions which have been included in the recommended conditions of consent.

Advertising and Notification

117. In accordance with the City of Sydney Community Participation Plan 2024, the proposed development was notified for a period of 21 days between 8 October and 30 October 2024. 64 submissions were received, including 50 in objection and 14 in support.

118. The objections raised the following issues:

Issue	Response
Building height and setbacks	
6 storeys is too high compared to nearby buildings	<p>The Botany Road Precinct is subject to new planning controls to incentivise development in a highly accessible area. Refer to the 'History of the relevant planning controls' section of this report for further background.</p> <p>The site is subject to a maximum height in storeys control of 6 storeys. The proposal is 6 storeys in height and complies.</p>
<p>The lot size is too narrow to accommodate a 6 storey building</p> <p>Amalgamation with adjoining sites should be required</p>	<p>The site is not subject to a minimum lot size or width control. The proposal has been considered against the objectives of the Apartment Design Guide and generally satisfies the relevant criteria for apartment design.</p>
The proposal does not comply with the 5 storey control	The required 5 storey street wall has been provided.
The building should provide increased separation to neighbouring buildings with a landscape perimeter	<p>The front setback has been established based on existing development to the north and the need to maximise solar access. The 9m rear setback complies with the ADG. Refer to the 'Discussion' section for further details.</p> <p>The site meets the landscaping requirements including deep soil, communal open space and tree canopy.</p>
The building does not comply with the required 3m front setback	The non-compliance with the 3m primary setback control is outlined in the 'Discussion' section above, under the 'Primary setback' subheading.
The rear setback does not align with adjoining properties	The rear setback has been increased to 9m which complies with the building separation and visual privacy requirements in the ADG.

Issue	Response
Local character	
<p>The building height will set an undesirable precedent for the area</p> <p>The design of the building is out of character for the Alexandria Park area</p>	<p>The building height is generally consistent with the planning controls that apply to the site and surrounding sites (with the exception of a minor variation of 225mm to the top of the lift overrun).</p> <p>The proposed development has been assessed against the planning controls for the Botany Road Precinct and is considered to be in keeping with the desired future character of the area.</p>
<p>The development would negatively impact the nearby heritage conservation area and Alexandria Park which is a heritage item</p>	<p>The proposal is generally in keeping with the planning controls that apply to the site and provides an appropriate transition from taller buildings on Botany Road down to the heritage conservation area. This is discussed under clause 5.10 of the SLEP 2012.</p>
Floor space ratio	
<p>The proposal is only eligible for 1.25:1 FSR</p>	<p>A maximum floor space ratio of 2.25:1 or 611.6sqm is permitted. This includes:</p> <ul style="list-style-type: none"> • Base FSR of 1.25:1; and • An additional 1:1 for community infrastructure floor space in Green Square permitted by clause 6.14 of the SLEP 2012. <p>The proposal complies with the FSR development standard.</p>
Solar access	
<p>The building will cause overshadowing to neighbouring dwellings, including:</p> <ul style="list-style-type: none"> • 160 Wyndham Street • 162 Wyndham Street • Alexandria Park 	<p>Overshadowing to neighbouring properties to the south has been considered in the 'Discussion' section above.</p> <p>Minor additional overshadowing is cast to Alexandria Park at 9am in midwinter. No additional shadows are caused from 10am compared to existing and</p>

Issue	Response
	approved development on surrounding sites.
The solar analysis does not include future development at 158 Botany Road	The solar analysis includes the approved envelope at 158 Botany Road. This has been considered in the 'Discussion' section above.
Visual and acoustic privacy	
The rooftop will cause visual privacy impacts to neighbouring dwellings	A condition of consent is recommended requiring additional planters to be provided along the south-eastern portion of the rooftop to prevent overlooking to neighbouring sites to the south.
The rooftop and open breezeway will cause acoustic impacts	Acoustic impacts from the proposed development have been reviewed by Council's Environmental Health unit, who advised that the proposal will maintain an acceptable level of acoustic amenity subject to compliance with the submitted Acoustic Report. Conditions requiring compliance with the Acoustic Report and other noise related management requirements are included in Attachment A.
Transport and traffic	
The proposal should provide car parking as there is insufficient parking in the area	<p>The site is subject to maximum, rather than minimum, car parking requirements. Therefore the provision of no car parking complies.</p> <p>The provision of car parking on this site is challenging due to the small lot size, existing street trees, and lack of access to the laneway in the short term.</p> <p>Given the site is highly accessible by public transport and close to the Waterloo Metro station, the nil provision of car parking on this site is supported. The proposal also provides the required amount of bicycle parking under the DCP.</p>

Issue	Response
Additional bicycle parking should be provided and some should not be wall mounted	The proposal has been amended to provide a horizontal bike rail for larger bikes. The provision of bicycle parking complies with the DCP.
Landscape and open space	
The development does not provide enough green space	The proposal complies with the planning controls in relation to landscaping, deep soil, communal open space and tree canopy provision.
Laneway network	
The dedication of land for the future laneway network would require acquisition of land at 146-156 Wyndham Street	<p>The proposal includes the dedication of land for the laneway network required by the SLEP 2012 and SDCP 2012.</p> <p>It is acknowledged that the privately owned land north of the site at 146-156 Wyndham Street and 156 Botany Road restricts the subject site from accessing Botany Lane to the north in the short term.</p> <p>The VPA takes this into account and only requires the land for the laneway to be subdivided and created as a separate title prior to the issue of the first Occupation Certificate and will remain under private ownership of the current landowner in the short term. The VPA incorporates a trigger clause, at which time the land will be dedicated to Council when the laneway is able to be formed with adjoining sites.</p> <p>The proposed development is therefore not dependent on the acquisition of land at 146-156 Wyndham Street.</p>
There needs to be a clearer plan for the laneway extension	The design of the laneway will be established by the City once all land required for the laneway extension is available.

Issue	Response
Apartment amenity	
The apartment sizes are too small	The proposed apartments meet the minimum requirements specified in Part 4D of the ADG.
The development does not provide adequate facilities or space for 3 bedroom apartments	The required amount of deep soil and communal open space has been provided as per the ADG.
The ground floor rumpus room could be used as an additional bedroom	The provision of a rumpus room or additional bedroom does not inhibit the proposal's ability to satisfy the design requirements in the ADG. It also does not impact the payment of Section 7.11 contributions as the relevant payment criteria is '3 or more bedrooms'.
Affordable housing	
The development does not provide public or affordable housing	The development is not required to provide public or affordable housing within the site. An affordable housing contribution of \$371,067.05 is payable under the City's Affordable Housing Program.
Local infrastructure	
The local area does not have sufficient infrastructure to accommodate additional apartments	<p>The development capacity of the Botany Road Precinct and the availability of local infrastructure was assessed as part of the Planning Proposal.</p> <p>The proposed development is consistent with the controls for the site, which were developed in accordance with infrastructure capacity.</p>
Other issues	
The apartments might be leased as short term rental accommodation	A condition of consent is recommended that requires a restriction on title to ensure the development is used as permanent residential accommodation only. However, it is noted that the NSW State Government Short Term Rental

Issue	Response
	Accommodation policy framework will apply notwithstanding these conditions.
The drawings do not accurately show surrounding buildings (162 Wyndham St specifically)	Adequate information has been submitted to allow an assessment of impacts to neighbouring properties.
Lack of transparency and public exhibition period was not long enough	The development was originally placed on public exhibition between 25 September and 17 October 2024, however there was an error with letters in the post. The application was therefore re-notified for 21 days between 8 October and 30 October 2024. The requirements of the City's Community Participation Plan 2024 have been satisfied.
Bins should not be left out on the nature strip for collection	<p>The Waste Management Plan proposes kerbside waste collection, which is permitted for apartment buildings with six dwellings or less.</p> <p>Kerbside collection is proposed given the small size of the site. The waste collection arrangement is supported by Council's Waste Management unit.</p>
<p>There is insufficient information regarding building foundations</p> <p>The development may cause damage to adjoining properties</p>	<p>All building foundations will be required to be contained within the subject site.</p> <p>Conditions are recommended to mitigate impacts to neighbouring properties, including the requirement for a dilapidation report.</p>

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

121. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.
122. A contribution of \$100,000.00 is payable. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

123. As discussed in the section above titled 'State Environmental Planning Policy (Housing) 2021', the application meets the requirements of section 7.32(1) and (3) of the EP&A Act 1979 allowing the imposition of a condition requiring the delivery of affordable housing by way of land dedication or monetary contribution.
124. The site is located within the Green Square affordable housing contribution area. The proposed development involves the erection of a new building with a gross floor area greater than 200sqm. Therefore, the development is subject to the requirements of section 7.13 relating to a contribution for the purpose of affordable housing.
125. The contribution amount payable is calculated based on the total floor area (TFA) of the proposed development. TFA calculation plans have been submitted, which identify 1,062sqm of residential TFA.
126. The contribution amount is calculated at a rate of \$11,646.80 per square metre, for 3% of the residential TFA. This results in a contribution of \$371,067.05.
127. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is appropriate and required. A condition of consent is recommended requiring payment prior to the issue of any Construction Certificate.

Housing and Productivity Contribution

128. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
129. The site is located with the Greater Sydney region, the development is a type of residential development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
130. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

Relevant Legislation

131. Environmental Planning and Assessment Act 1979
132. Sydney Water Act 1994

Conclusion

133. Approval is sought for site preparation and construction of a part 5, part 6 storey residential flat building.
134. The application has been assessed in accordance with section 4.15(1) of the Act and is considered satisfactory subject to the recommended conditions of consent at Attachment A.

135. The Planning Agreement associated with the application has been publicly exhibited 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 Planning Agreement to be executed and registered on title prior to the consent becoming operational.
136. The proposal has been assessed against the aims and objectives of the relevant planning controls including the SLEP 2012, the SDCP 2012 and the Housing SEPP. Where non-compliances are proposed, they have been assessed in this report as being acceptable in the circumstances of the case or can be resolved by the recommended conditions of consent.
137. The proposal achieves the principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future users of the site.
138. The proposed development demonstrates design excellence in accordance with the relevant provisions and matters for consideration in clause 6.21C of the Sydney Local Environmental Plan 2012.
139. Matters raised by internal and external referrals have been adequately addressed as discussed within this report.
140. The application was notified in accordance the requirements of the EP&A Regulations 2021 and the City's Community Participation Plan 2024. Issues raised in submissions have been addressed as discussed in this report.
141. The proposed development demonstrates a design that responds to the constraints of the site and will positively contribute to the desired future character of the Botany Road Precinct. The proposal will provide housing in a highly accessible location, consistent with the objectives of the Botany Road Precinct.
142. Subject to the recommended conditions of consent, the proposed development is considered to be in the public interest and is recommended for approval.

ANDREW THOMAS

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