

Attachment D

Clause 4.6 Variation Request Height of Buildings
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ASHMORE ESTATE AMENDING CONCEPT DEVELOPMENT APPLICATION

Clause 4.6 Variation Request

Prepared for

**ERSKINEVILLE INVESTMENT HOLDINGS PTY.
LTD. C/O CORONATION PROPERTY CO. PTY. LTD**
30 September 2025

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Project Code	P0054074
Report Number	Final



Acknowledgement of Country

Urbis acknowledges the Traditional Custodians of the lands we operate on.

We recognise that First Nations sovereignty was never ceded and respect First Nations peoples continuing connection to these lands, waterways and ecosystems for over 60,000 years.

We pay our respects to First Nations Elders, past and present.

The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

Title: Sacred River Dreaming
Artist Hayley Pigram
Darug Nation
Sydney, NSW

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REQUEST TO VARY A DEVELOPMENT STANDARD

REQUEST TO VARY CLAUSE 4.3 HEIGHT OF BUILDING IN SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

Address: 155 Mitchell Road, Erskineville

This application relates to the Amended Concept DA of Buildings F&I and G&H located within the southern portion of the Ashmore Precinct (the Precinct) and should be reviewed in conjunction with the Detailed DA for F&I and G&H.

Date: December 2024

SITE AND PROPOSED DEVELOPMENT

1. Site Description

The key features of the site are summarised in the following table.

Table 1 Site Description

Feature	Description
Street Address	155-165 Mitchell Road, Erskineville This application relates to the southern portion of the Precinct, which comprise Blocks F&I and G&H. Block F&I are located to the east of the site fronting Mitchell Road and Blocks G&H are located to the west of the site fronting Hadfield Street.
Legal Description	Lot 20 DP1290687
Easements and Restrictions	(A) Easement for water supply purposes 6 wide limited in stratum. (B) Easement for water supply purposes 8 wide. (C) Restriction on the use of land. (D) Planning agreement pursuant to section 7.6 Environmental Planning and Assessment Act 1979. (H) Easement for support variable width. (T1) Easement for turning area variable width.
Site Area	The total site area is approximately 22,653sqm
Site Dimensions	The site is irregular shaped.
Existing Development	The site currently comprises vacant warehouse and office buildings and ancillary structures, which are currently being demolished under Complying Development. The surrounding heritage context is as follows: ▪ C2 "Cooper Estate" heritage conservation area immediately east of the site. ▪ C22 "Erskineville Estate" heritage conservation area further north of the site.
Adjacent Development North	A mixture of mixed-use and residential flat buildings as part of the Ashmore Estate as well as the future McPherson Park.
Adjacent Development East	Townhouse developments adjacent Mitchell Road with heights ranging from one storey to four storeys.
Adjacent Development South	The Sydney Park high density residential flat building precinct.
Adjacent Development West	Mixture of medium and high density residential flat building developments.

Feature	Description
Access Network	The site is bound by Hadfields Street, Coulson Street and Mitchell Road. MacDonald Street along the site's northern extent is being delivered under a separate development application (D/2023/962). Vehicular access is available to the site off all frontages. Kooka Walk, to be delivered under a subsequent detailed DA, will be a pedestrian street and vehicular access will not be available. The site is well serviced by bus services, with the nearest bus stop within 200m from the site, and servicing the following routes: 370: Coogee to Glebe point Road. 308: Marrickville Metro to Bondi Junction Via Oxford St, Crown St and King St Erskineville Station is 850m from the site and provides services to: - T2 Parramatta or Leppington to City - T3 Liverpool or Lidcombe to city - T4 Bondi Junction to Waterfall or Cronulla

Figure 1 Location Plan

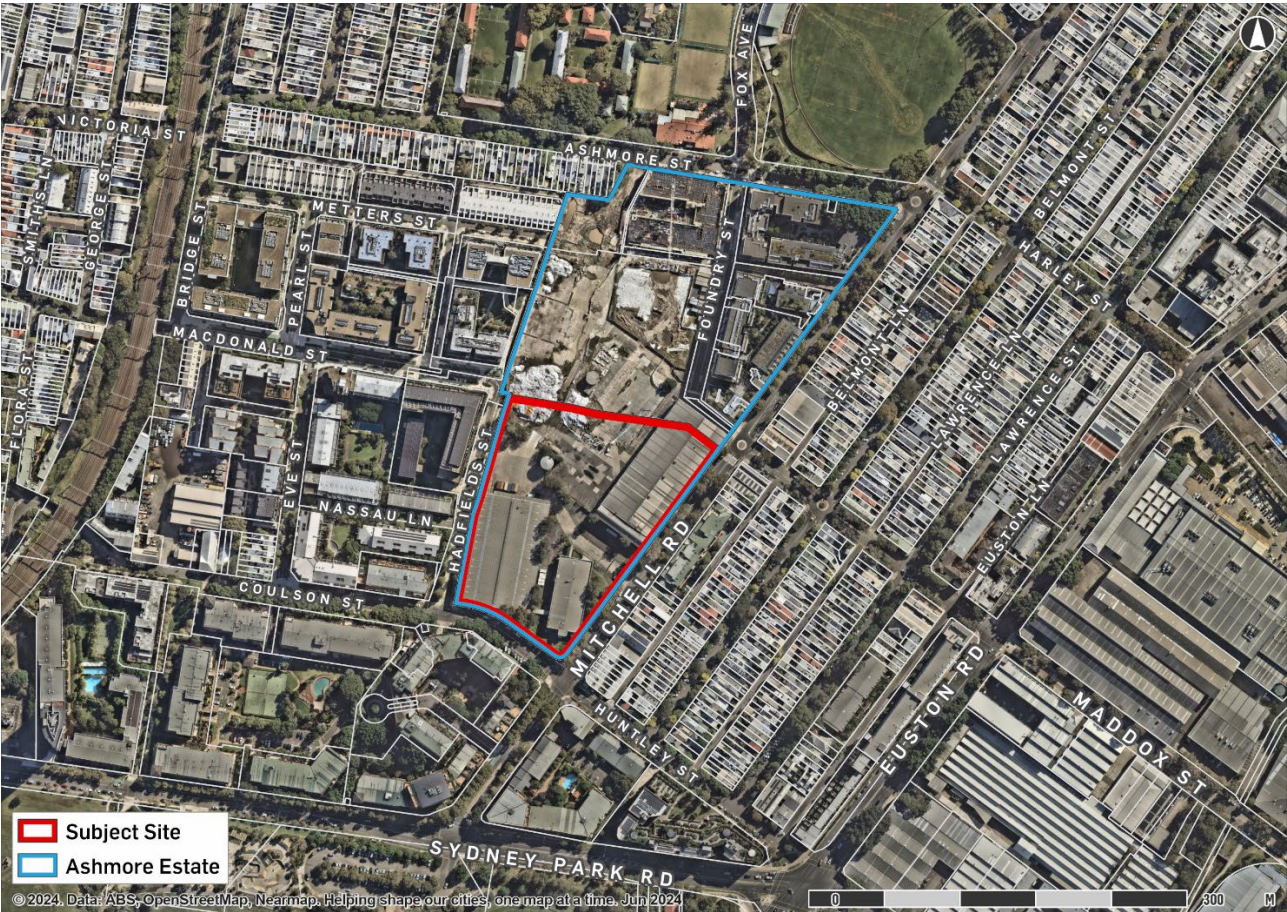


Figure 2 Aerial Photograph

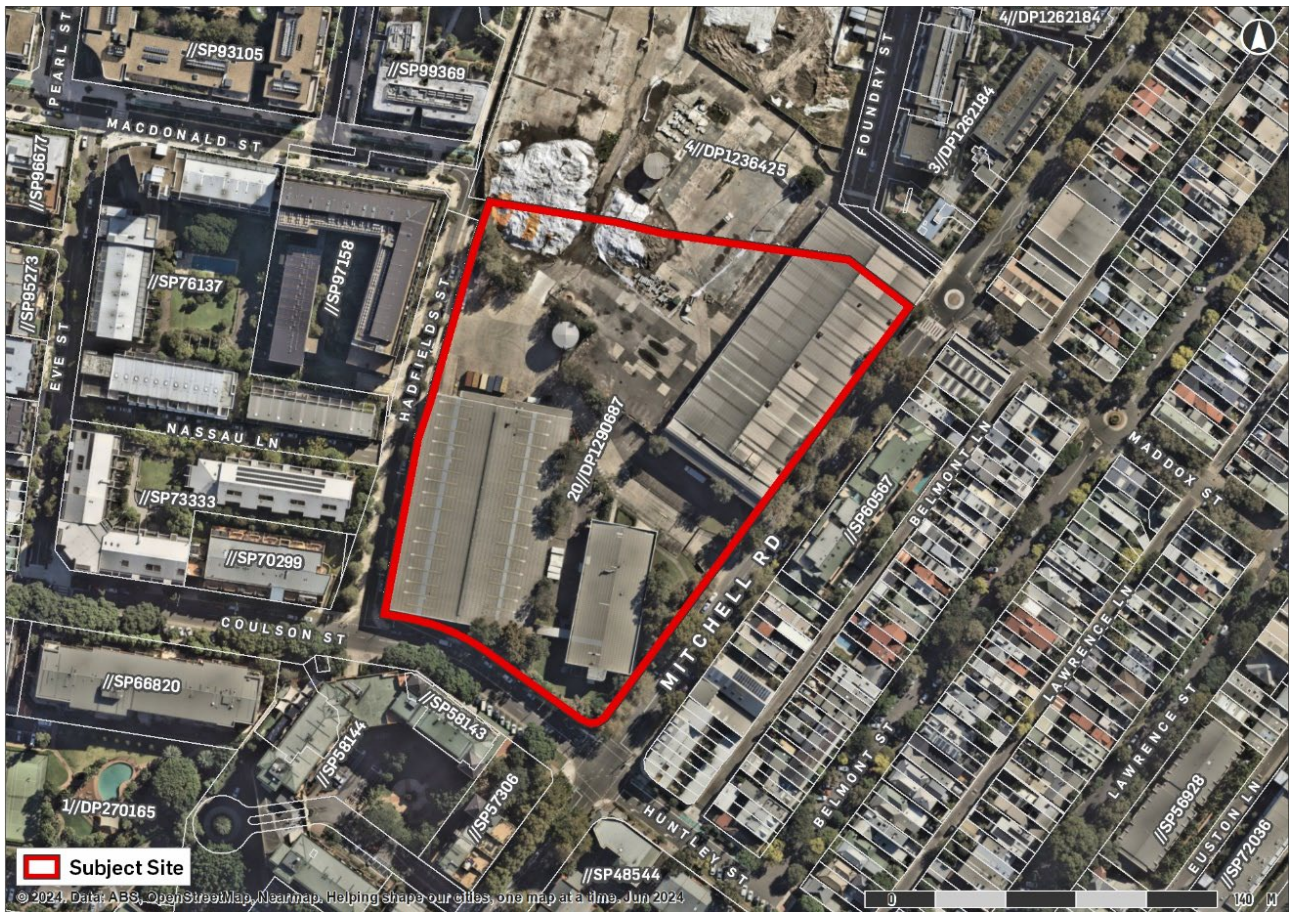


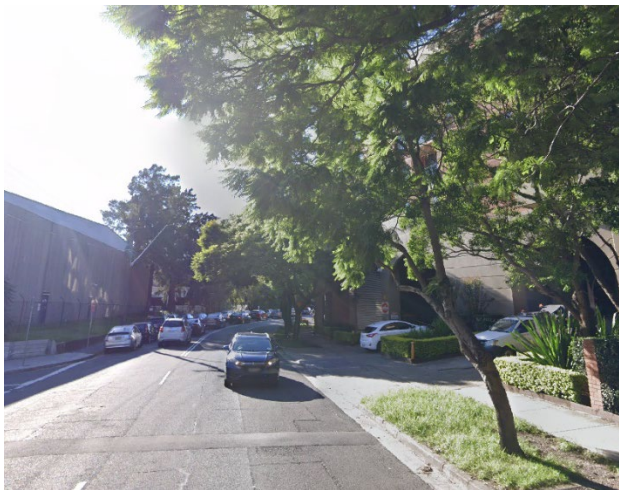
Figure 3 Site Photos



Picture 1 View south along Mitchell Road



Picture 2 Intersection of Mitchell Road and Coulson Street



Picture 3 View east along Coulson Street



Picture 4 View south along Hadfields Street

Source: Google Maps

2. Proposed Development

A summary of the key features and details of the proposed development (including land use and works) is provided in the table below:

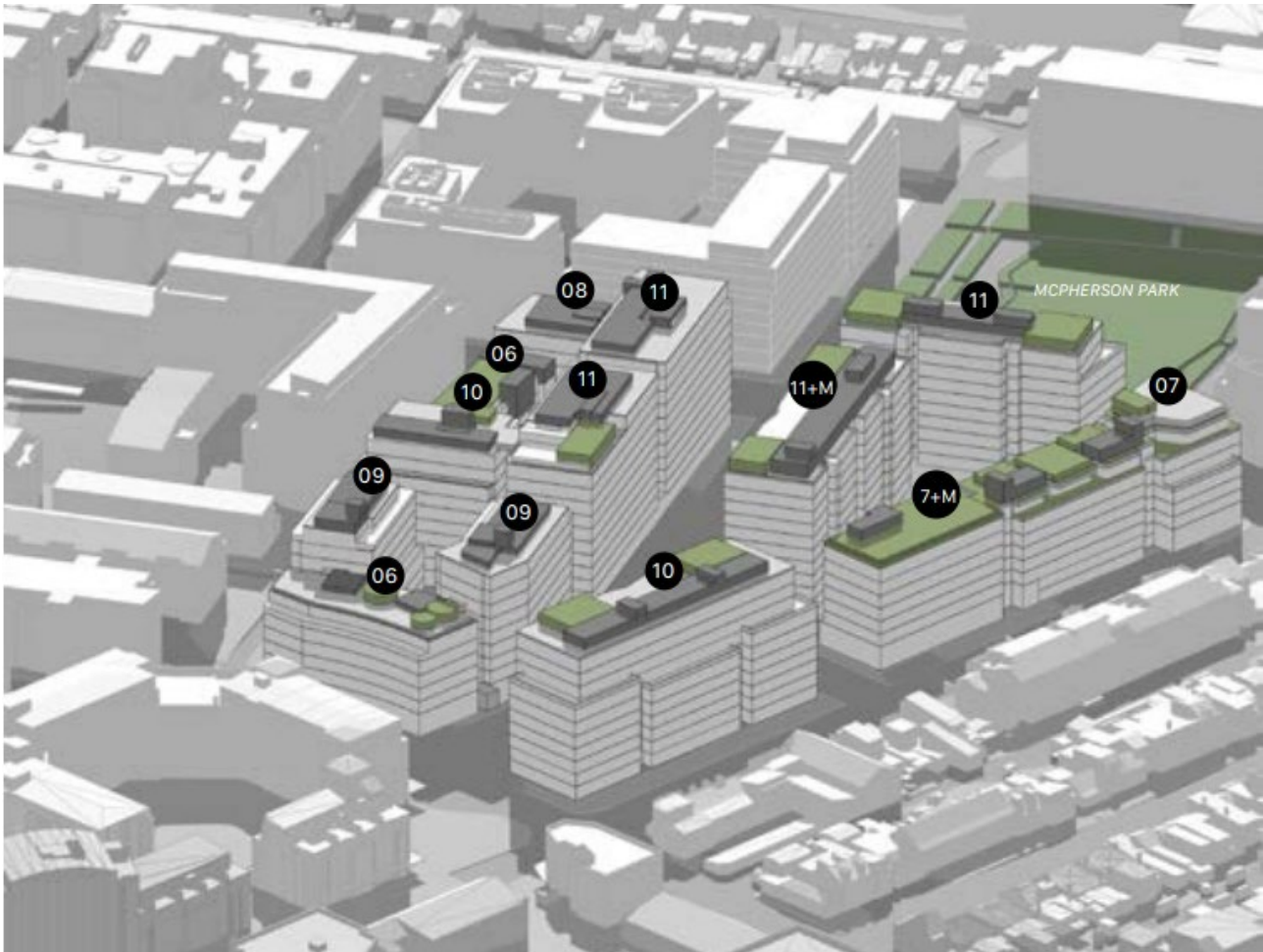
Table 2 Development Description

Key Element	Proposal			
Development Types (Land Use)	Mixed use development (Block F) & Residential flat building (Block I, G & H)			
Description of Development	Amended concept building envelopes for Blocks F & I and Blocks G & H, incorporating additional FSR and building height permitted by infill affordable housing bonuses under the Housing SEPP.			
Built Form & Design	Block F	Block I	Block G	Block H
Building height	▪ F1: 43.8m	▪ I1: 38.3m	▪ G1: 30m	H1: 37.27m

Key Element	Proposal			
	- F2: 44m - F3: 32.3m - F4: 32.3m		- G2: 42.28m - G3: 39.60m - G4: 38.68m - G5: 28.46m	- H2: 37.27m - H3: 25.42m
Note: the total envelope height has been increased by 300mm across all four blocks to allow for flexibility of plant, lift overrun, balustrades and design flexibility etc.				
Number of Storeys:	F1: 11	I1: 10	G1: 8	H1: 9
North Elevation	F2: 11 + Mezzanine		G2: 11	H2: 6
East Elevation			G3: 11	H3: 9
South Elevation	F3: 7 + Mezzanine		G4: 10	
West Elevation	F4: 7		G5: 6	
Gross floor area	38,062m ²	12,461m ²	26,829m ²	13,669m ²
Total:	91,021m ²			
Access and Parking				
Vehicle access	Block F & I: One shared vehicle entry off Alpha Street to the southern frontage of Block F. Block G & H: One shared vehicle entry off Hadfields Street to the western frontage of Block G. Both blocks will have shared basements resident parking, accommodating through-site link / proposed road requirements.			
Landscaping and Public Domain				
Landscape area	Blocks F & I Landscaped Area: 5,958sqm:		Blocks G & H Landscaped Area: 4,639sqm	
	Total: Landscaped Area: 10,597sqm The landscaping detail and deep soil area is a part of the detailed DA.			
Through site link(s)	Through-site links between Blocks F & I (for Alpha Street) and Blocks G & H (for Nassau Lane) are to be delivered as per the VPA executed for the Ashmore Estate.			
Staging and Infrastructure Delivery				
Development Staging	- Stage 1: Substructure and basement level 1 slab and fit out. - Stage 2: Structure. - Stage 3: Façade and fit out.			

Key Element	Proposal
ESD/Sustainability/BASIX/Section J - BCA	Key ESD commitments for the proposal include:

Figure 4 Proposed Concept Envelope



 Proposed Levels

Source: FJC Studio

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the planning instrument you are seeking to vary?

The application seeks to vary the State Environmental Planning Policy (Housing) 2021 (**Housing SEPP**) Sydney Local Environmental Plan 2012 (**SLEP 2012**).

4. What is the site's zoning?

E1 Local Centre and MU1 Mixed Use

5. What is the development standard to be varied?

The standard proposed to be varied is the maximum height of the building standard under Part 2, Division 1, Clause 16(3) and the non-discretionary development standard under Clause 74(2)(a) of the Housing SEPP.

Part 2, Division 1, Clause 16(3) of the Housing SEPP states:

16 Affordable housing requirements for additional floor space ratio

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.

Additionally, Chapter 3. Part 4, Clause 74 of the Housing SEPP states:

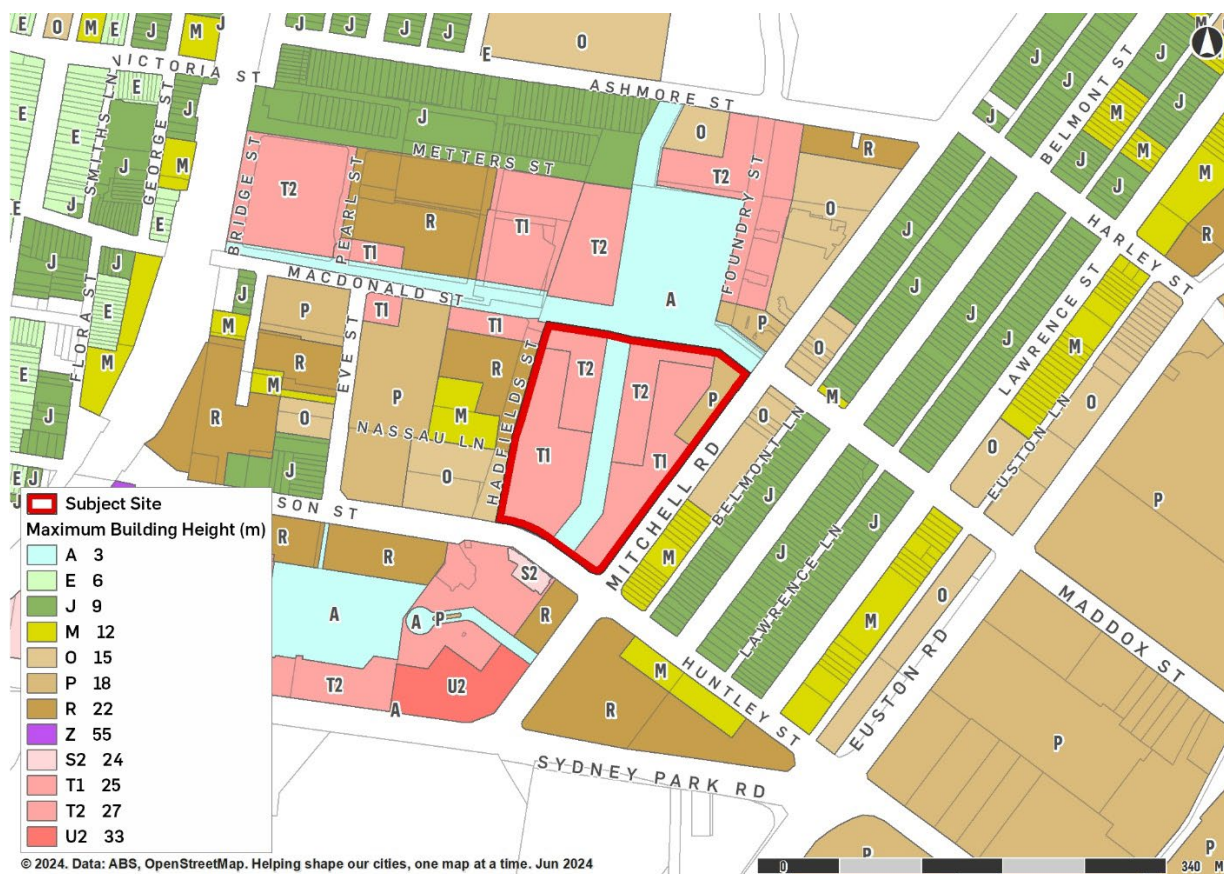
74 Non-discretionary development standards—the Act, s 4.15

(2) The following are non-discretionary development standards in relation to the carrying out of the development to which this Part applies—

(a) the building height of all proposed buildings is not more than the maximum building height permitted under Chapter 5, Chapter 6 or another environmental planning instrument for a building on the land,

The permissible building height for the land is set out in 4.3 Height of building under SLEP 2012. Varied height development standards apply to the site, ranging between 18m, 25m and 27m for buildings, and 3m within the public domain areas.

Figure 5 Height of Building Diagram



Source: Urbis, 2024

The maximum permissible height has been established through the incentives provided by the 'infill affordable housing' provisions under the Housing SEPP. The proposal seeks to provide the maximum 15% affordable housing, therefore will utilise the full 30% uplift in height available under the Housing SEPP.

The height of buildings development standard is not excluded from the operation of Clause 4.6 of the SLEP.

The objective of the In-fill affordable housing provisions of the Housing SEPP is as follows:

15A Objective of division

The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

The objectives of the development standard in the LEP are as follows:

1) The objectives of this clause are as follows—

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views outside Central Sydney,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (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.

6. Type of development standard?

Numerical.

7. What is the numeric value of the development standard in the environmental planning instrument?

As outlined above, the site is subject to several numeric development standards relating to the height of the building under the SLEP and the Housing SEPP. This results in a maximum permissible building height of the following, which applies to various locations of the site:

- 18m x 130% = 23.4m
- 25m x 130% = 32.5m
- 27m x 130% = 35.1m

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

A portion of Buildings F3 (only in the 25/32.5m height zone), G1, G5 and H3 can comply with the maximum building height control. The proposal exceeds the maximum height of building controls in other locations, which are described below:

Table 3 Areas of height exceedance

Building location	LEP height	Maximum permissible height	Proposed Height	Height exceedance	% of Variation
Building F					
F1	27m	35.1m	43.8m	8.7m	24.77%
F1*	25m	32.5m	43.8m	11.3m	34.76%
F2	27m	35.1m	44m	8.9m	25.35%
F2*	25m	32.5m	44m	12.8m	39.38%
F3	25m	32.5m	32.3m	complies	
F3*	18m	23.40m	32.3m	8.9m	38.03%
F4	18m	23.4m	32.3m	8.9m	38.03%
Building I					
I1	25m	32.5m	38.3m	5.8m	17.84%
Building G					

Building location	LEP height	Maximum permissible height	Proposed Height	Height exceedance	% of Variation
G1	27m	35.1m	30m	complies	
G2	27m	35.1m	42.28m	7.18m	20.5%
G3	25m	32.5m	39.60m	7.10m	21.9%
G3*	27m	35.10m	39.60m	4.50m	12.8%
G4	25m	32.5m	38.68m	6.18m	19.0%
G5	25m	32.5m	28.46m	complies	
Building H					
H1	25m	32.5m	37.27m	4.77m	14.7%
H2	25m	32.5m	37.27m	4.77m	14.7%
H3	25m	32.5m	25.42m	complies	

The figure on the following pages illustrates three clear components of the area of non-compliance comprising:

- Residential GFA (orange)
- Communal areas and structures and Balustrades (green)
- Plant and Lift Overrun (Grey)

This is to clearly denote the elements which are being breached.

The area of non-compliance relates to portions of the most top floor level across certain buildings within the site. The more significant height departure relates to rooftop plant, balustrades and lift overrun areas, which does not contain gross floor area (GFA) and are essential building structures that are required to provide amenities for the buildings.

GFA within buildings F4, H1 and H2 are below the maximum height limit. The areas of the building that contains GFA which are protruding beyond the height limit relates to the following buildings:

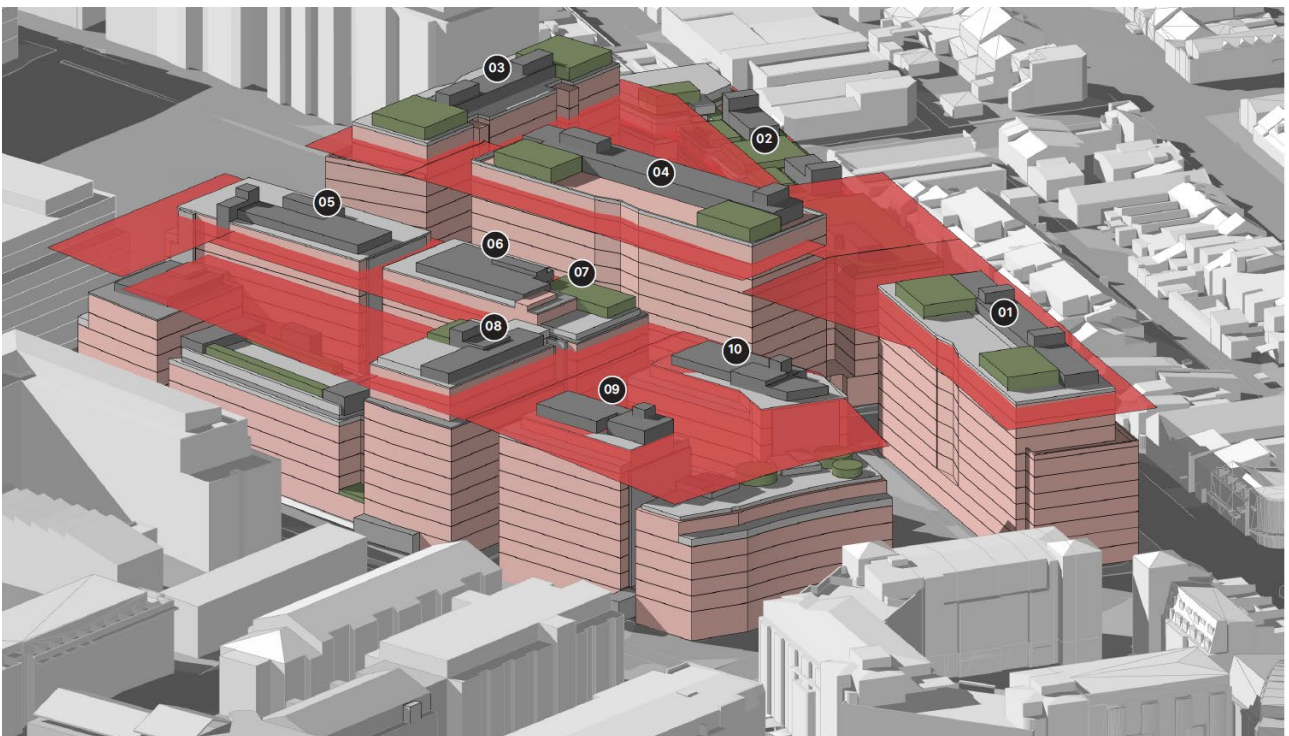
- Building F1
- Building F2
- Building F3 (in the 18m/23.40m zone)
- Building I1
- Building G2
- Building G3
- Building G4

Figure 6 Area of Non-Compliance (Block F&I)



Source: FJC Studio

Figure 7 Area of Non-compliance (Block G&H)



Source: FJC Studio

Sydney LEP Amendment:

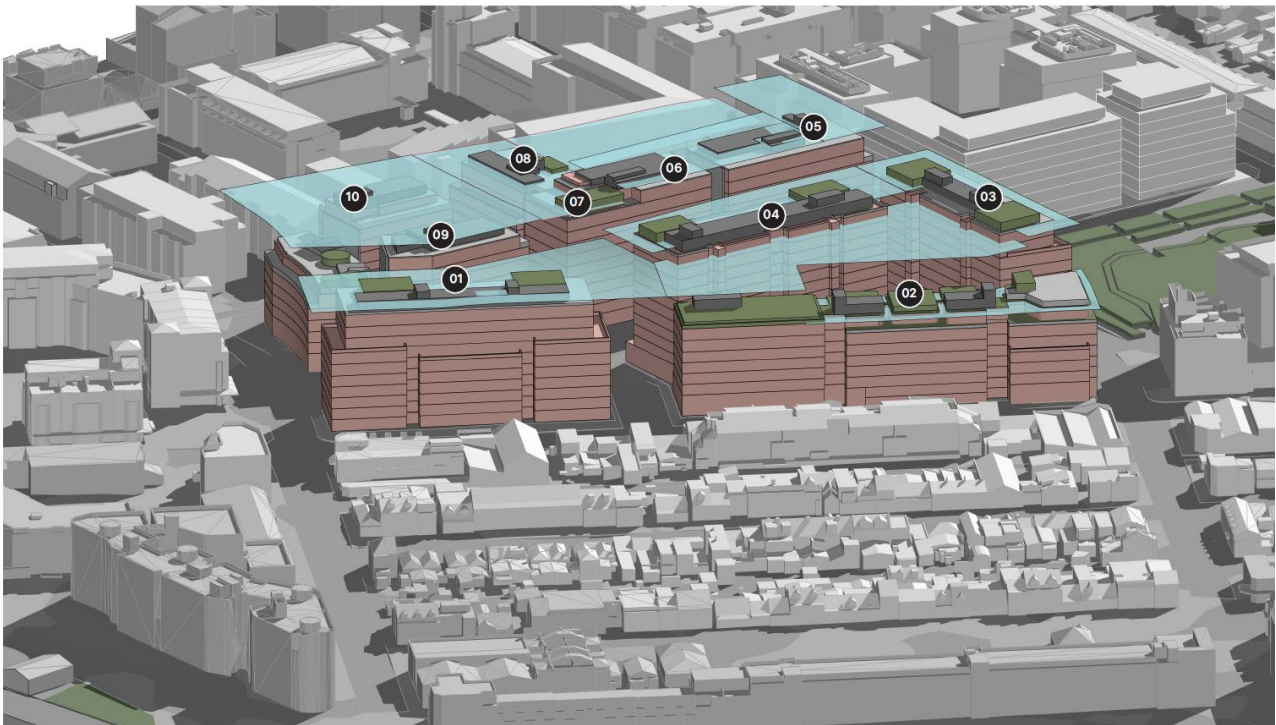
The City of Sydney has prepared a suite of proposed changes to the planning controls applying to Central Sydney and the wider LGA under the current Sydney LEP. One of the changes relate to the City of Sydney's Competitive Design Policy, including offering incentives of both 10% height and 10% floor space (whereas currently only one incentive can be elected, and in the context of this application, FSR was the elected bonus). In early December 2023 Council approved these amendments and seek a Gateway Determination

from the Department of Planning, Housing and Infrastructure subject to recommended changes. Public exhibition of the design excellence change has commenced.

Accordingly, given only FSR is the elected design excellence bonus with no corresponding height design excellence bonus, there is a discrepancy between the maximum height achievable on the site and the maximum allowable FSR on the site.

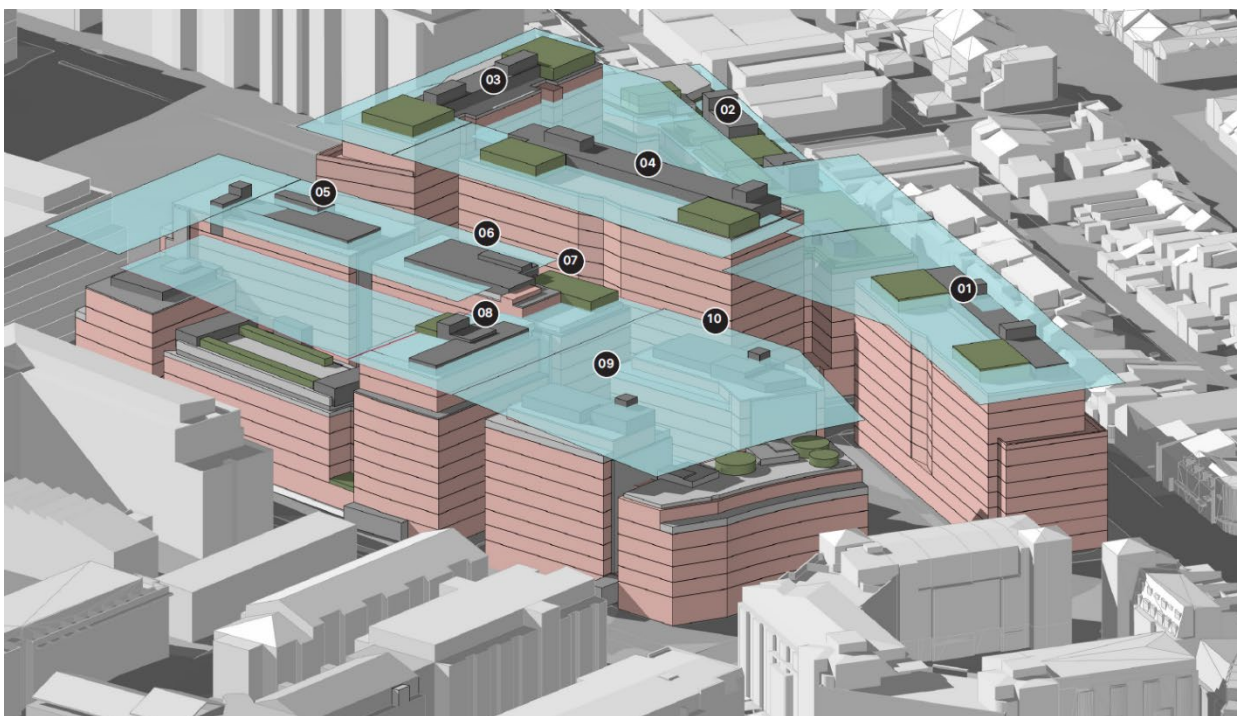
We acknowledge that the amendment will not apply to this application, however for the purpose of assessing the height non-compliance, we have also included the scenario where the draft design excellence height bonus is applied. Under this scenario, the extent of height exceedance is reduced to mostly non-GFA areas, e.g. plant and lift overrun. Please refer to the figures below.

Figure 8 Area of non-compliance Block F&I (30% Housing SEPP and 10% design Excellence)



Source: FJC Studio

Figure 9 Area of Non-compliance Block G&H (30% Housing SEPP and 10% design Excellence)



Source: FJC Studio

Site-specific justifications

The area of non-compliance is the result of:

- **Flood planning requirements** – the proposed envelope has been designed to comply with Council's interim floodplain management policy, requiring buildings to be raised to meet the probable maximum flood and 1%AEP flood levels. This has resulted in buildings being raised, in certain locations, up to 2 meters. Compliance with flood planning controls necessitated an increase in building height. This requirement has been resolved as part of the detailed DA submission but had not been anticipated when the LEP control and concept envelope were first established. As a result, the concept envelope was amended to ensure compliance with flood requirements.
- **Floor to floor height requirements** – Establishing floor to floor heights to satisfy the *Design Building and Practitioners Act 2020* (DBP Act). Various changes have occurred since the concept plans inception, which date back to 2015, (such as higher construction and building standards) that have necessitated new construction requirements while ensuring the minimum floor to ceiling heights of the ADG are met. A combination of floor-to-floor levels plus the flood planning level compliance results in minor portions of GFA sitting above the height plane.
- **Redistribution of massing** – to maintain a high standard of building amenity and to mitigate the external impacts of the development, the massing of Blocks F, I, G and H have been carefully redistributed. This includes lowered building heights in some locations, particularly Block G and H (Buildings H3, G5, G1), and the transfer of this GFA to elsewhere within the envelope. The massing strategy has been part of ongoing consultation with City of Sydney to develop an uplift opportunity and ensure a standalone affordable housing building is provided in Block H.
- **Provision of affordable housing** – the proposed development provides 15% of the total GFA for affordable housing in perpetuity. In achieving this, the bonus 30% has been carefully distributed across the site as part of the broader massing strategy, however, results in some GFA that sits above the height plane (notwithstanding the exceedances generated by the flood planning levels and floor to floor requirements). Any reductions to height, which the maximum affordable housing GFA relies upon (due to the sliding scale nature of the Housing SEPP), would result in less GFA being provided for affordable housing and impact the viability of providing affordable housing in perpetuity.
- **Access to rooftop amenities** – at the request of Council's urban design team, each building provides several areas for access to rooftop amenities. These areas require lift access, balustrading and shade structures that sit above the height plane, however, do not result in GFA and will not be visually

dominant. These rooftop amenity structures are semi-permeable (that is, not fully enclosed or designed to be solid elements) and therefore their visual presence on the rooftops will be recessed and minimized when viewed from street level. This approach is widely consistent with the City’s Policy and Housekeeping Amendments 2023 Planning Proposal (which is a draft EPI).

- **Allowance for plant and lift overrun** – the areas of the greatest height exceedances are attributed to plant and lift overrun zones to accommodate services. Despite these elements amplifying the agree of variation from the height of building control, these do not comprise GFA , do not comprise whole levels (that is, they are interspersed on the rooftops) and have been strategically recessed within the rooftops of individual buildings to minimise and conceal any visual impact of these structures. As the proposal complies with the maximum gross floor area across the Precinct, the proposed variation does not represent an overdevelopment of the site, and is the result of achieving the design excellence FSR bonus of 10%.

Additionally, the excess variation is also a result of an additional 300mm of height being added to the envelope to allow for design flexibilities through the detailed DA.

The proposed height is based on a massing that was nominated and reviewed by City of Sydney Council through consultation with the proponent. This acknowledged the site's capacity to provide affordable housing under the Housing SEPP in a manner that redistributed height across the precinct and to support a standalone affordable housing building (Block H).

Housing priority

The NSW government’s objectives for providing additional housing in well located areas close to infrastructure and transport, with amenities and work opportunities would be thwarted if strict compliance with the height development standard was required.

The practice note for in-fill affordable housing clearly states that the “*consent authorities should be flexible in the design response of the development having regard to....the Government’s policy intent to deliver more affordable housing.*”

If compliance with the height standard was adopted, this would result in deleting the additional height that contains GFA. However, this will require the deletion of an entire storey within Buildings F1, F2, F3, I1, G2, G3 and G4, which would result in a significant loss of dwellings and affordable dwellings on this key inner city site. Accordingly, this is inconsistent with the State priority. Also to note that the affordable housing provisions of the Housing SEPP work on a sliding scale so any loss of GFA will result in a loss of GFA allocated to affordable housing and the ability for the affordable housing to be delivered in perpetuity.

JUSTIFICATION FOR THE PROPOSED VARIATION

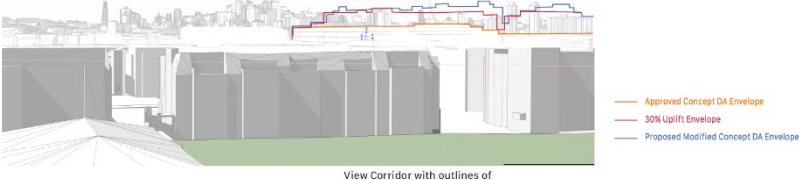
9. How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

Table 4 Unreasonable or Unnecessary Response

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	For completeness, this section addresses both the objective of the infill affordable housing provisions of the Housing SEPP and the objectives of the height of buildings development standard within the SLEP. The objective of Part 2, Division 1 of the Housing SEPP <i>15A The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.</i> The proposal allocates 15% of its total GFA to affordable housing to be operated by an CHP in perpetuity, in a location close to services, retail and public transport responding to an identified need for affordable housing. A covenant will be registered on the title to the relevant stratum lot reflecting this requirement. All of the affordable housing will be located within its own stratum rather than peppered throughout the overall development, which is proposed to be in building H. The operation of affordable housing in

Key Questions	Response
	perpetuity is also going above and beyond the requirement under the Housing SEPP, which only requires 15 years. Accordingly, the proposal delivers significant public benefits, including: ▪ Long-term affordable housing supply. ▪ High-quality amenity for affordable housing tenants will be delivered as part of the Detailed DA. ▪ Urban renewal aligned with broader strategic planning goals. ▪ The proposed height variation does not increase the intensity of the uses on the site. When assessed on a whole-site basis, the proposal also complies with the maximum permissible GFA applicable to the site. If the proposal was to require to meet the maximum permissible height, the building envelope will be reduced and it will result in the loss of affordable housing and residential dwellings, which will not be consistent with the objective of the Housing SEPP. The areas of non-compliance within Block H relates to the zones provided for the future plant areas and lift overruns. The lift overruns are needed in order to provide equitable access throughout the building. Assessment against the Sydney LEP objectives is discussed below.
Sydney LEP Objectives: <i>The objectives of the clause are to:</i> <i>(a) to ensure the height of development is appropriate to the condition of the site and its context,</i>	The site is located within the Ashmore Precinct. The character of the Precinct continues to undergo significant change Notwithstanding the non-compliance, the proposal results in an intensity of development that is both consistent and compatible with the desired future character of the area and provides a transition of scale with surrounding existing development. A large portion of the non-compliance of the building envelope is a result of lift overruns, rooftop plant, balustrade and rooftop amenity structures. The non-compliant elements are not in a location, or of a scale, that would result in the development being incompatible with the condition of the site and its context, as these are very common building structures that can be seen in the existing development surrounding the site. In addition, the areas of non-compliance are also a direct result of the following: ▪ Flood planning requirements ▪ Floor to floor height requirements ▪ Redistribution of massing ▪ Provision of affordable housing ▪ Access to rooftop amenities ▪ Allowance for plant and lift overrun The above items are explained in detail in Section 8 of this report. The plant rooms and lift overrun are all vital to the buildings operations and functionality. The lift provide equitable access to each floor and rooftop communal open space of the respective buildings. The Balustrading is required to provide safety to the rooftop communal areas. Additionally, the height has also been increased to accommodate the increased floor to floor height from 3.1m to 3.15m as required in the BCA. With that, an additional 300mm of height has been added to the envelope to areas of rooftop to provide some flexibility of design. In acknowledgment of this, the impacts of the envelope heights would be overstated (or worst case outcomes) as the detailed design will provide a high level of building articulation and permeability. In terms of the elements of breach that are non-GFA: ▪ The plant and lift overrun areas of envelope are consolidated and located centrally within the site/each building, away from key site interfaces with the public domain. ▪ The plant equipment envelope will be obscured by screening to be included in the detailed DA.

Key Questions	Response
	As such, the areas of non-compliance will not materially change the intent of the detailed design as part of the detailed DA. There are also areas of non-compliance that make up GFA. These are areas which are confined to the top level of the proposed envelope. These non-compliances are located in the following buildings. G02, G03, G04, F01, F02, F03 (in the 18m/23.40m zone), I01. Accommodating the maximum allowable floorspace within the heights envisioned by the planning controls was difficult to achieve as – ▪ The site is flood affected and the PMF level is 1.5m – 2m above street level. ▪ Changes to the NCC have required greater floor to floor heights Blocks F&I The non-compliances of blocks F&I along Mitchell Road are absorbed by the podium and street setbacks. The lower street wall height of 4 storeys to the north of Mitchell Road also reduces the perception of the bulk and scale of the non-compliant area. Block I to the south of Mitchell Road. A large section of the Block F envelope non-compliance is to accommodate rooftop gardens for communal open space in the detailed DA. These areas will provide vital communal space, while promoting social interaction and a sense of community that are easily accessible to each of the buildings. Due to a number of reasons such as flood planning and building separations (as outlined in Section 8 above), Block F01, F02 and F03 have been shifted further inward of the block. This has resulted in the buildings partially falling within the lower 32.50m height plane, increasing the variation for that part of the building to 34.76% (F01) and 39.38% (F02). The part of the non-compliant building that falls within the lower height plane is located inward of Block F and will not have any visual or amenity impacts external to the site. The buildings maintain the design principles outlined in the Design report prepared by FJC. Despite the height non-compliance with GFA area, the proposed envelopes generally maintain the same design principles providing a transition in scale by arranging taller built forms towards Kooka Walk and McPherson Park, which is one of the objectives under the DCP. Block G&H Despite the height non-compliance, the proposed built form is able to provide a transition of scale along Kooka Walk, from the north to the south of the site. This is achieved by having 11 storey to 10 storey built form within Block G (north to south) and a 9 storey built form within Block H. The width of the Kooka Walk is more than 20m, its generous width is able to absorb the area of non-compliance into its context. The width of Kooka Walk is also able to provide visual buffer so that the area of non-compliance will not create a sense of enclosure for future pedestrians. The areas of non-compliance relating to Buildings G4 are further setback at the street frontage. Transition of scale is still achieved despite the non-compliance, as Building G4 is a 10 storeys building, stepping down to a nine storey building at H1 and terminating with a six storey built form at the southern end of Hadfield Street. The variation of scale creates visual interest along this long frontage and reinforces the proposal's relationship to existing context along Hadfield Street. Lastly, the height non-compliance is a result of careful design consideration by distribution of additional Housing SEPP height and design excellence FSR bonuses across the group of multiple buildings, which has endorsed by the City of Sydney Council prior to lodgement.

Key Questions	Response
	Accordingly, the area of non-compliance will not prevent the buildings to be compatible with the height, bulk and scale of the future character of the locality and positively contribute to the streetscape and public space Context character is further assessed in the section below.
<i>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i>	The Copper Estate Heritage Conservation Area is located to the east of Block F and I, across Mitchell Road. A Heritage Impact Statement has been prepared by GBA Heritage which states that the proposed building envelopes and future detailed development will not have a negative impact on the surrounding heritage conservation areas. The proposed envelope is separated by the thoroughfare of Mitchell Road, which is lined both sides with mature trees that provide further visual relief to the areas of non-compliance. The trees along the western side of Mitchell Road are proposed to be retained. Future development will not impact on the ability for the terraced row housing along the eastern section of the HCA to contribute to the streetscape of Mitchell Road and the conservation area. The proposed envelope although increased, still maintains adequate setbacks and building separations which will improve the urban design outcome in comparison to the existing non-compatible warehouse buildings.
<i>(c) to promote the sharing of views outside Central Sydney,</i>	There are no identified significant views within the Ashmore Estate, in this instance the building separation are applied to ensure views are shared between buildings. However, under section 5.5.8.2 of the Sydney Development Control Plan (SDCP), views from Sydney Park to the CBD skyline are to be protected. The site as proposed is visible from Sydney Park. Potential distant view towards the CBD skyline maybe available from the upper level units from Sydney Park Village. The area of non-compliance is unlikely to impact on private view from these developments, because: ▪ The area of non-compliance will maintain view to sky. ▪ The area of non-compliance will be absorbed within the urban context of the surrounding environment, therefore will not look out of placed. The areas of non-compliance will impact on the distant CBD skyline view from the top of the hill at Sydney Park. The areas of non-compliance are likely to obstruct distant view towards the east. This impact is considered to be acceptable because: ▪ The primary view corridor towards the Sydney CBD (including centre point tower) is unobstructed. ▪ The area of non-compliance will only obstruct portion of the eastern view corridor which do not comprise iconic buildings or harbour view. ▪ The area of non-compliance will maintain view to sky. ▪ The area of non-compliance will be absorbed within the urban context of the surrounding environment, therefore will not look out of placed. Figure 10 Approved and Proposed Building Envelope viewed from Sydney Park  View Corridor with outlines of

Source: FJC Studio

Key Questions	Response
(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,	The subject site is not within close proximity to Central Sydney nor Green Square Town Centre. Accordingly, this objective is not applicable to the proposed variation.
(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 subject site is not within close proximity to Green Square. Accordingly, this objective is not applicable to the proposed variation.
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	<i>N/A – Section a above has been satisfied</i>
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	<i>N/A – Section a above has been satisfied</i>
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	<i>N/A – Section a above has been satisfied</i>
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	<i>N/A – Section a above has been satisfied</i>

10. Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes.

There are sufficient environmental planning grounds to justify contravening the development standard as follows.

Delivery Onsite Affordable Housing

The height variation enables the proposal to realise the full design excellence and affordable housing FSR incentives. These provisions are specifically intended to encourage the delivery of high-quality built form outcomes and to increase the supply of housing and affordable housing. Strict compliance with the height controls would reduce the development's capacity to achieve the additional floor space enabled by these provisions. In turn, this would result in fewer residential units, including a reduction in the amount of affordable housing that can be delivered on the site.

The proposed height variation, enables the proposal to fully realise these planning incentives, thereby delivering a greater number of dwellings, including affordable housing, within a highly accessible location. This outcome advances local housing targets and makes a direct contribution towards addressing the State's broader housing supply and affordability objectives.

Draft LEP Amendments

As noted above, the City of Sydney is progressing housekeeping amendments to Sydney LEP that are directly relevant to the proposed height variation and if these were applied the area of non-compliance will be reduced to rooftop plant and lift overrun areas only. Under the draft amendments, areas relating to green roofs and rooftop communal spaces will also be exempt from the height calculation and therefore would not result in non-compliance with the building height development standard, and the area of non-compliance will be further reduced to very minimal locations of the building. These draft amendments are well advanced,

having been publicly exhibited and endorsed by Council in June 2025 following Gateway determination by DPHI, and are now at the finalisation stage. Two key amendments are of particular relevance:

1. Design Excellence Provisions

The draft amendment seeks to apply the 10% design excellence bonus to both height and FSR. At present, only one incentive may be elected - and in the case of this application, the FSR bonus has been selected. Accordingly, given only FSR is the elected design excellence bonus with no corresponding height design excellence bonus, there is a discrepancy between the maximum height achievable on the site and the maximum allowable FSR on the site. If this amendment were to apply, the height noncompliance would be substantially reduced as shown in **Figure 11** below, and the area of non-compliance would only relate to rooftop plant, communal open space elements and lift overruns.

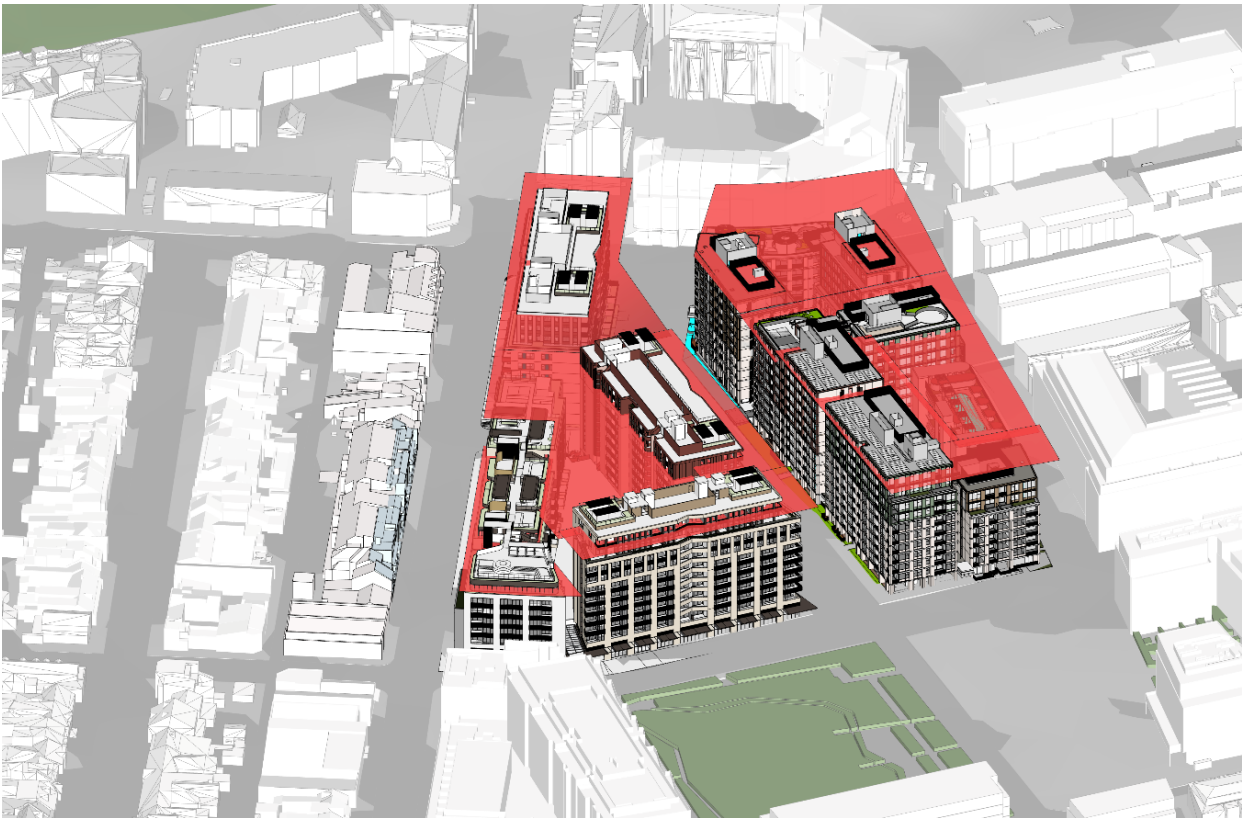
2. Exclusion of Green Roofs and Rooftop Structures from Height

The draft amendment seeks to introduce a new clause to the LEP to exclude rooftop gardens, communal open space, and associated ancillary structures (including access and amenities) from the calculation of building height, provided certain design and amenity criteria are satisfied. This change recognises the social and amenity benefits of green roofs and rooftop communal spaces, while ensuring impacts on surrounding properties (e.g. overshadowing, built form compatibility) are minimised. If this amendment were to apply, the area of noncompliance would be substantially reduced, and the area of non-compliance would only relate to rooftop plant areas that are not associated with rooftop communal spaces.

While it is acknowledged that these amendments do not formally apply to this DA, it is directly relevant to the assessment of the proposal's height non-compliance. If the draft height amendments were to be applied, the extent of exceedance would be materially reduced and limited primarily to non-GFA elements such as plant. These minor exceedances are typical in high-density development and do not undermine the intent of the height standard.

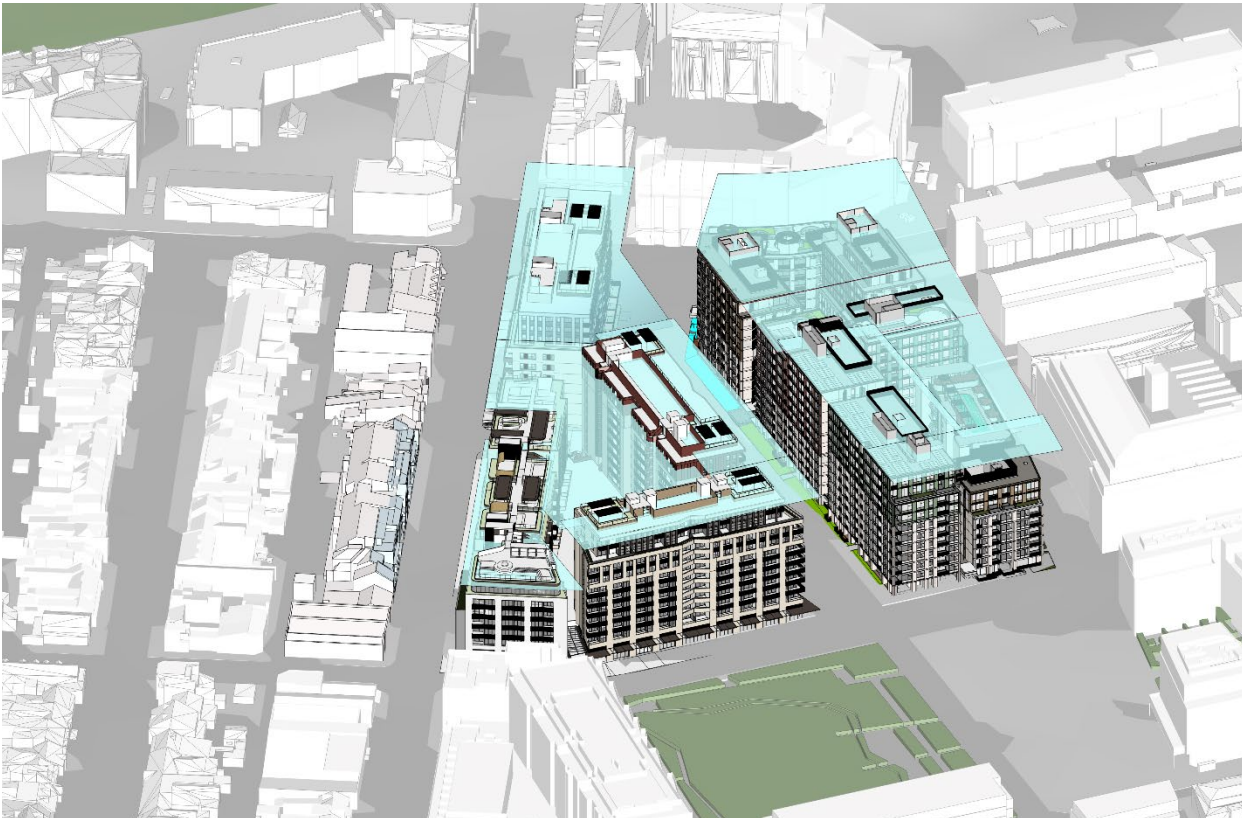
Accordingly, the current non-compliance arises from a timing issue in relation to LEP amendments that are already endorsed by Council and supported by DPHI. The proposal aligns with the direction of the City's intentions and delivers the type of outcomes - design excellence, affordable housing, rooftop greening - that current and future planning policies are intended to facilitate.

Figure 11 Area of non-compliance if design excellence bonus were to be applied to both height and FSR



Picture 5 Area of non-compliance – F&I and G&H (view from the north) – 130% scenario

Source: FJC



Picture 6 Area of non-compliance – F&I and G&H (view from the north) – 143% scenario

Source: FJC

Massing and Built Form

Block G

The massing has been redistributed across Block G resulting the G5 building, which fronts Hadfield Street being significantly lower than the maximum height plane. This mass has been redistributed to Block G2, G3 and G4 which has resulted in those buildings breaching the 130% height limit.

The area of non-compliance to Buildings G2, G3 and G4 is mostly limited to the upper most level plus roof plant and lift overrun zones with some area of the rooftop garden also protruding into the height plane. The area of non-compliance are generally setback from the street frontage by arranging taller built forms towards Kooka Walk and McPherson Park. The area of non-compliance does not compromise the ability for the development to provide an appropriate transition in scale despite the height non-compliance. This is consistent with one of the built form objectives of the DCP.

The area of non-compliance relating to Building G2 and G3 is further setback at the street. The upper level setback is able to provide visual relief and also a transition in scale from Building G1 to the proposed buildings within Block F. While a portion of these buildings are over the height plane, these protrusions are associated with a compliant overall Concept GFA for Buildings F, I, G and H. Therefore, the intensity of the use of the site remains compliant notwithstanding the height non-compliance. Further to this, the width of Kooka Walk also ensures that the areas of non-compliance to blocks G2 and G3 provide adequate solar access and amenity to Block F and the public domain.

The width of the Kooka Walk is more than 20m, its generous width is able to absorb the area of non-compliance into its context. The width of Kooka Walk is also able to provide visual buffer so that the area of non-compliance will not create a sense of enclosure for future pedestrians.

Figure 12 Kooka Walk Interface



Proposed Concept Envelope

Source: FJC Studio

The areas of non-compliance relating to Buildings G4 is further setback at the street frontage. The additional setback is able to reduce visual dominance of the area of non-compliance and reduce the perceivable bulk and scale of the built form. Figure 10 below shows the area of non-compliance in relation to Building G4.

Transition of scale is still achieved despite the non-compliance, as Building G4 is a 10 storey building, stepping down to a nine storey building and terminating with a six storey built form at the southern end of

Hadfield Street. The variation of scale creates visual interest along this long frontage and reinforces the proposal's relationship to existing context along Hadfield Street.

Figure 13 Hadfield Street Interface



Proposed Concept Envelope

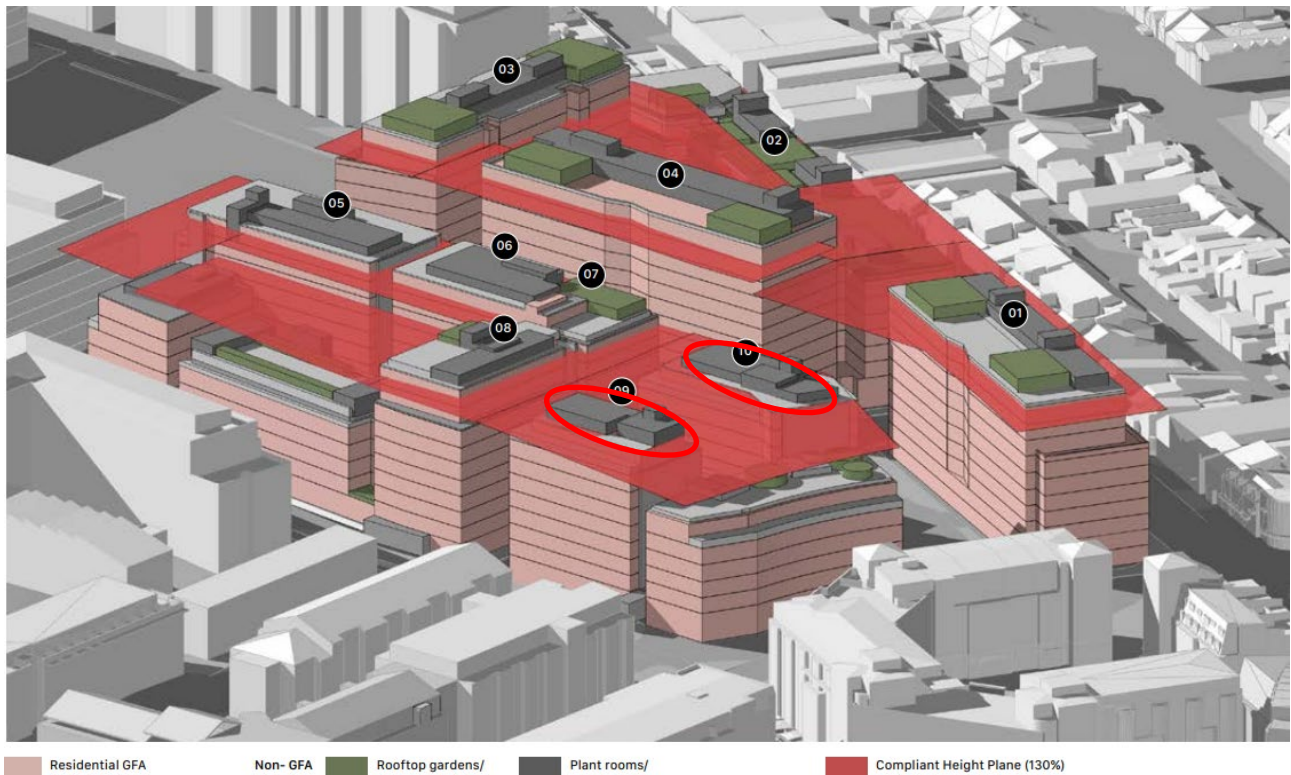
Source: FJC Studio

Block H

Similar to Block G, the massing of Block H has also been redistributed to establish a better street frontage interface with Coulson Street and improve solar access. Massing from Block H3 has been redistributed the H1 and H2.

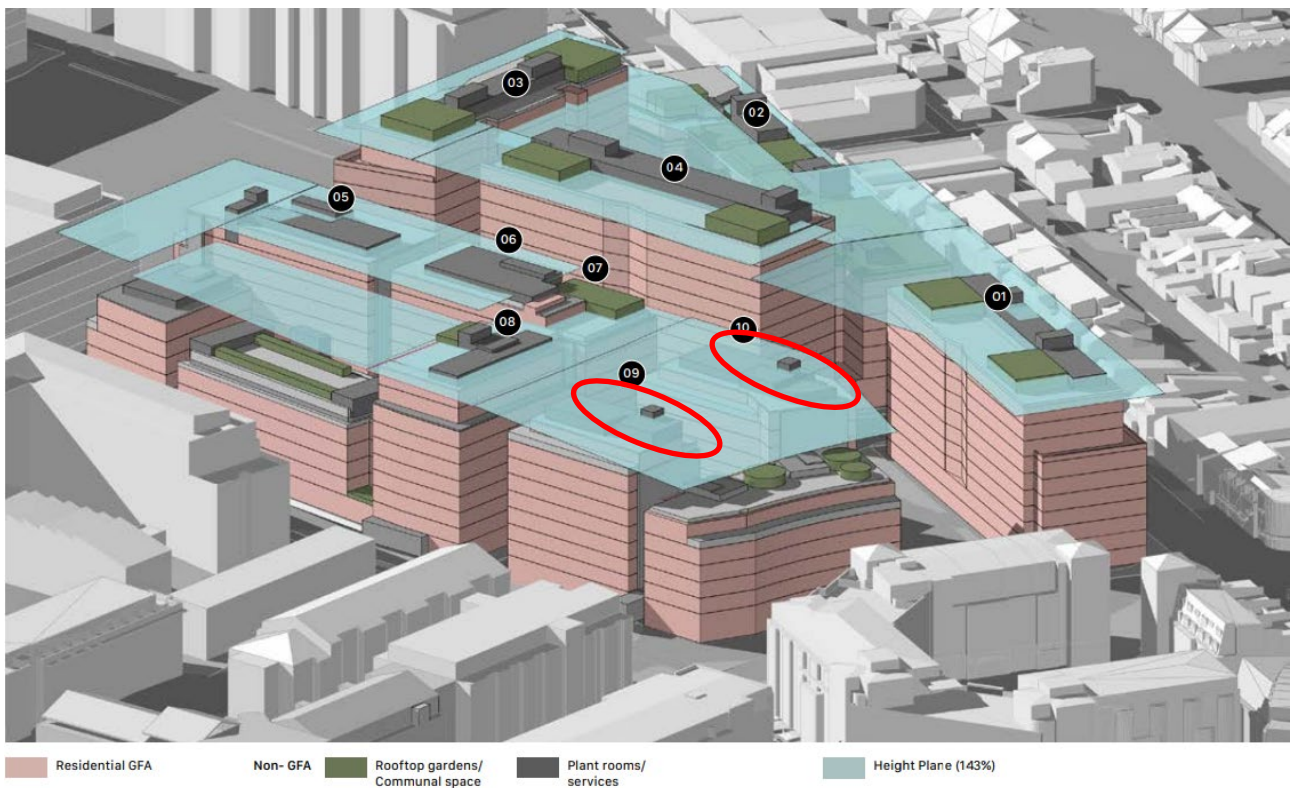
Although Building H1 and H2 are both non-compliant. It is strictly limited to non GFA area such as the future lift overrun and rooftop plant zones within the envelope. The areas of non-compliance within H1 and H2 are significantly setback from Coulston Road allowing adequate solar access to the south of the site. The lift overrun and rooftop plant are essential components of the buildings functionality and will be appropriately screened and setback from the building edge to further reduce visual impacts (to be addressed in the detailed DA). The areas of non-compliance relative to Hadfield Street and Kooka Walk is setback from the building frontage with the lift overrun being central to the building rooftop. When viewed from the public domain, this area is unlikely to be seen.

Figure 14 Proposed Building Heights within the 130% Height Plane



Source: FJC Studio

Figure 15 Proposed Building Heights within the 130% and 10% Design Excellence Height Plane



Source: FJC Studio

As demonstrated above, the areas of non-compliance for Block H are vastly reduced when the draft EPI 10% height bonus from the design excellence provisions are taken into consideration (as exhibited by the City). This is evident across most of the site where majority of the variation relates to non-GFA area. Block F

The area of non-compliance within Block F relates to F1, F2, F3 and F4 with the degree of variation varied across each building. In addition, areas of GFA sit above the height plane on all blocks as well. Accommodating the height the maximum allowable floorspace within the heights envisioned by the planning controls was difficult to achieve as –

- The site is flood affected and the PMF level is 1.5m – 2m above street level.
- Changes to the NCC have required greater floor to floor heights
- Ability to accommodate the 10% design excellence floorspace without also raising the height.

The envelope achieves a transition in height from the corner of MacDonald Street and Kooka Walk. The width of the Kooka Walk is more than 20m, its generous width is able to absorb the area of non-compliance into its context. The width of Kooka Walk is also able to provide visual buffer so that the area of non-compliance will not create a sense of enclosure for future pedestrians.

Along Macdonald's Street, the transition of height from Block F1 and F4 to Macdonald Street has a stepped build form which appropriately transitions to the lower density development to the east. This is demonstrated in Figure 15 below.

Figure 16 Section along Macdonald Street



Macdonald St- looking North

Source: FJC Studio

The areas of non-compliance are further setback from the street frontages. The additional setback is able to reduce visual dominance of the area of non-compliance and reduce the perceivable bulk and scale of the built form.

For Buildings F1 and F2 as part of design refinement, the massing has been shifted within Block F to improve solar access amenity for the eastern elevation of Building F2 and solar access to the communal open space at the elevated courtyard. As a result of this, a portion of these envelopes are now located within the 25 / 32.5m metre height control which results in a greater numerical non-compliance within the 25 / 32.5m metre height plane area.

The areas of non-compliance along Mitchell Road primarily relate to rooftop communal open space areas and future plant zones. These areas are setback from the Mitchell Road and would not be visible from the street. The Mitchell Road frontage at Buildings F3 achieves a transition in heights to reduce the perceived bulk and scale of the building.

Block I

The extent of non-compliance of Block I relates to both GFA and non-GFA area. However, the area that comprises GFA is very minor. The area of non-compliance again is setback from the street wall with the plant and lift overrun setback even further from the building edge along Mitchell Road and Coulson Street. The additional setback is able to reduce visual dominance of the area of non-compliance and reduce the perceivable bulk and scale of the built form. The area of non-compliance is outlined in Figure 16 below.

The extent of GFA which exceeds the height plane is minimal and the bulk of the non-compliance i plant and lift overrun zones (which does not comprise GFA) which is vital for the functionality of the building and the lift overrun provides equitable access to the rooftop communal areas.

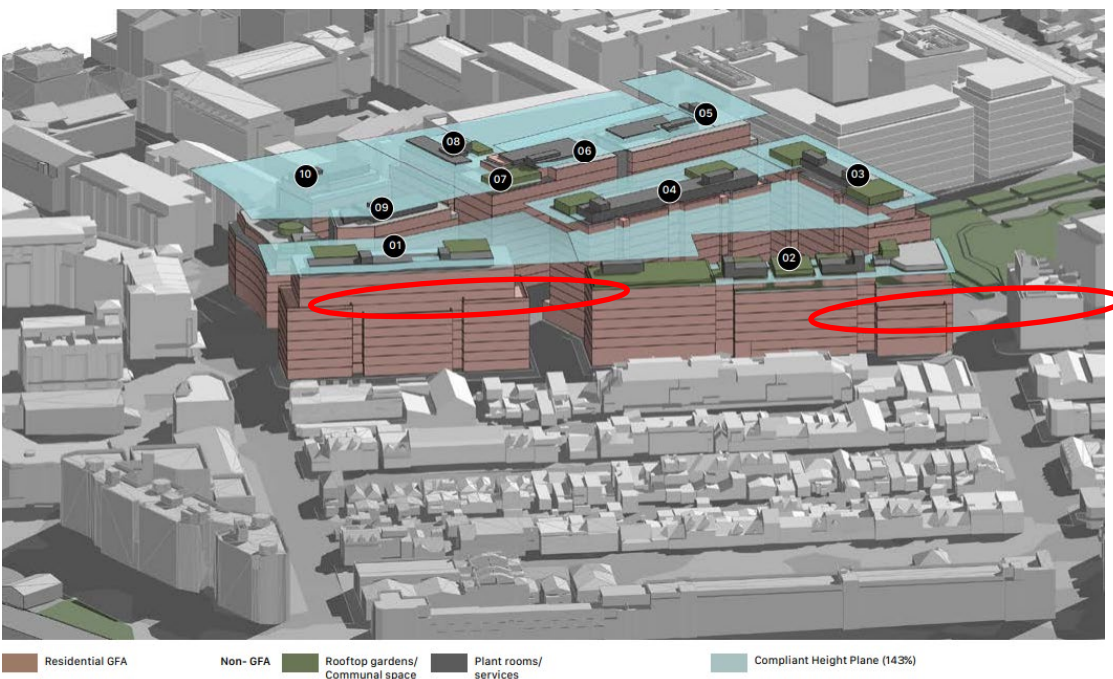
Figure 17 Mitchell Road Street Wall



Source: FJC Studio

The height non-compliance is a result of careful design consideration by distribution of additional Housing SEPP height and design excellence FSR bonuses across the group of multiple buildings, which has endorsed by the City of Sydney Council prior to lodgement. Overall, the proposal achieves an appropriate contextual fit and the areas of non-compliance have been appropriately designed to maintain the character and amenity of the Ashmore Estate and surrounds.

Figure 18 Proposed Building Heights within the 130% and 10% Design Excellence Height Plane



Source: FJC Studio

Redistribution of Massing across the site to Improve Amenity

The revised building envelopes and the resultant height variations are the product of an iterative design process that has balanced achieving development yield with mitigating impacts on surrounding properties and the public domain. While the envelopes remain generally consistent with the form nominated by Council, a series of refinements have been introduced to reduce overshadowing, improve amenity, and align with the detailed DA design outcomes. Key refinements include:

- **Reduction in Building Heights (Block H):** Heights have been reduced to improve solar access to adjacent dwellings on Coulson Street. Block H also consolidates the affordable housing component within a single block.
- **Redistribution of Massing:** Massing has been redistributed from Block H to the targeted locations within Block G that can accommodate additional uplift without resulting in adverse overshadowing or solar impacts on Hadfield Street and Coulson Street and balancing the overall built form across the site.
- **Improved Solar Access:** At Block F, massing fronting Kooka Walk has been shifted eastward, increasing the separation to Block G. This improves solar access to both residential units and the public domain.

These refinements demonstrate that the proposed redistribution of building mass delivers an improved planning and design outcome compared to strict compliance with the allowable height control. Despite the height variation, the proposal still seeks to achieve solar access, maintain urban design objectives, enhanced residential amenity and alignment with Council's nominated envelopes. In this context, strict compliance with the height controls would undermine the extensive design evolution of the building envelope and the intended outcomes.

Amenity

The areas of non-compliance relating to lift overruns, balustrade, shade structures and plant enclosures will not result in any visual privacy impacts, as they are building structures, which do not comprise any GFA. Where they are located central to the building form they will not be visible within the public domain. The areas of non-compliance relating to roof plant and lift overrun zones, will be appropriately screened and acoustic attenuation will be implemented. This is detailed in the Detailed DA.

Where areas of non-compliance comprise GFA, appropriate setbacks have been implemented to provide a recessive feel to the roof areas. These upper setbacks also help improve solar access. Appropriate façade design and treatment will also improve the areas of non-compliance.

Where areas of non-compliance include GFA, compliance with the relevant setback (visual privacy) controls in the ADG has been mostly achieved at a precinct level. Where the areas of non-compliance don't meet the minimum building separation, design elements such as privacy screens and building orientation as detailed in the detail DA have been used to mitigate privacy issues between habitable rooms.

Overshadowing

Detailed shadow studies have been prepared by FJC to assess the overshadowing impacts of the areas of non-compliance above the maximum permitted height on 21 June (refer **Figure 18**). The analysis considers the potential impacts on nearby residential development, particularly 300–322 Mitchell Road to the west and Sydney Park Village to the north.

At 300–322 Mitchell Road, there are 39 apartments located opposite Building F and I. Of these, 34 apartments fully comply with the Apartment Design Guide (**ADG**) requirement for a minimum of two hours of direct solar access to living areas between 9am and 3pm on 21 June. The area of non-compliance does not impact on these apartments' ability to continue to achieve solar compliance. Four apartments fall short of this requirement, as outlined below:

- **Apartment 1:** Receives 1 hour of solar access, representing a shortfall of one hour.
- **Apartment 3:** Receives 1 hour and 30 minutes of solar access, representing a shortfall of 30 minutes.

- **Apartment 11:** Receives around 10 mins of sun under the approved Concept DA envelope because this apartment is overshadowed by its own building elements. The solar non-compliance is not caused by the area of height non-compliance.
- **Apartment 20:** Receives 15 minutes of direct solar access. It is noted that this apartment was already affected under the approved Concept DA envelope, where it achieved only one hour of solar access due to the recessed windows.

Based on the views from the sun and shadow analysis submitted, the additional overshadow impacts are a combination of both compliant built form and non-compliant building elements such as plant, lift overrun and communal open space. The communal open space elements on the rooftop would be excluded from the building height calculation if the Draft LEP amendments were applied, therefore the shadow impact arising from these elements are considered to be acceptable.

Apartment 10 receives 1 hour and 50 minutes of solar access, falling only 10 minutes short of the required 2 hours. This represents a negligible shortfall. Nevertheless, this apartment is already overshadowed under the approved Concept DA envelope, therefore the 10min shortfall is not a result of the height non-compliance.

When considered in context, these impacts are minor. The area of non-compliance will only impact solar compliance to 5% of the apartments within 300–322 Mitchell Road, which is considered as minimal impact. On this basis, the proposal's shadow impacts are considered acceptable and not significant in the broader planning context.

The shadow analysis also identifies some impacts on Building 9 within the Sydney Park Village. The ground level of this building accommodates retail tenancies and basement access points, while residential apartments are located on the upper levels.

The greatest impact occurs in the morning period, when shadow extends across parts of the ground and upper levels. However, from approximately 11am onwards, the extent of overshadowing is limited to the ground plane only and does not affect residential apartments above. Between 11am and 3pm, upper-level apartments continue to receive direct sunlight, ensuring compliance with the Apartment Design Guide. In the afternoon, additional shadow falls across the ground level of Building 9. As these areas comprise retail and access points rather than residential units, the area of non-compliance will not impact on solar amenity of residential units within Building 9 of the Sydney Park Village.

In regard to the public domain, the development is located to the south of MacPherson Park, therefore the area of non-compliance will not have an impact on MacPherson Park. When compared to the complaint envelope, the area of non-compliance will not have any impact (aside from at 9am) on the public square within the Sydney Park Village development in the southwest corner of Coulson Street and Mitchell Road. The public square is able to receive minimum of three hours of direct sunlight between 10am and 3pm on 21 June. The impacts to the Sydney Park Village development itself are minimal between 9am – 12pm. It is important to note that any additional shadow caused by the area of non-compliance is the result of achieving significant housing uplift in a well located precinct, with the inclusion of affordable housing.

Figure 19 Overshadowing Analysis (9am-2pm)



Source: FJC

Views

There are no identified significant views within the Ashmore Estate, in this instance the building separation are applied to ensure views are shared between building envelopes.

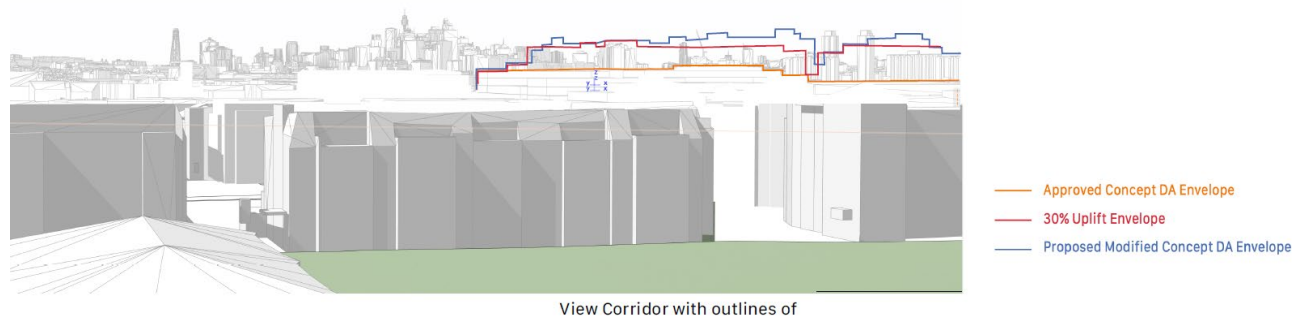
The areas of non-compliance will impact on the distant CBD sky view from the top of the hill at Sydney Park. The areas of non-compliance are likely to obstruct distant view towards the east. This impact is considered to be acceptable because:

- The distant CBD skyline view towards the east is obstructed by the compliant uplift envelope, not by the area of non-compliance.
- The area of non-compliance will not obstruct the primary view corridor towards the Sydney CBD (including centre point tower). This ensures that the most significant visual amenity is preserved for visitors.

- The area of non-compliance will only obstruct portion of the eastern view corridor, and it obstructs sky view, instead of views to iconic buildings or harbour view. This means that the obstruction does not significantly detract from the overall visual experience or cultural value of the skyline. The primary visual and cultural assets of the city remain visible and accessible.
- The area of non-compliance will maintain view to sky.
- Due to the spatial separation of these buildings, the area of non-compliance will be absorbed within the urban context of the surrounding environment, therefore will not look out of placed.

Accordingly, there is no material impact in terms of views from a complying 130% scheme and the area of non-compliance.

Figure 20 View impact assessment from Sydney Park– amended concept envelope assessment



Source: FJC Studio

11. Is there any other relevant information relating to justifying a variation of the development standard?

Public Interest

For development that contravenes a development standard, the consent authority must be satisfied the proposal will be in the public interest. This is achieved via consistency with the objectives of the development standard and the objectives of E1 and MU1 zones, which has been demonstrated below.

Table 5 Assessment of Compliance with E1 Local Centre Land Use Zone Objectives (**applicable to Block F and portion of Block G**)

Objective	Assessment
To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.	The additional height associated within Block F allows for the inclusion of more diverse and flexible spaces that can accommodate a variety of future retail uses on the ground floor, which will be designed as part of the Detailed DA. The majority of the area of non-compliance relates to rooftop plant and lift overrun zones, which is to provide access to future communal amenities and to facilitate building services to be designed as part of the detailed DA. Therefore, the area of non-compliance will enhance the overall functionality of the future development for the residents.
To encourage investment in local commercial development that generates employment opportunities and economic growth.	The height non-compliance will not have a direct impact on investment in local commercial development.

Objective	Assessment
To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.	The area of height non-compliance allows for the proposed building envelope to achieve the full design excellence and affordable housing FSR incentives, which in turn will allow for the provision of additional residential units to be included in the development. This will help to achieve housing targets in the local centre and directly contributes to addressing the State's housing crises. In addition to the above any reduction to the height would inadvertently reduce the amount of GFA for affordable and impact the viability to provide such housing in perpetuity. The proposed building envelope inclusive of the non-compliance will deliver a significant contribution of affordable housing to be provided in perpetuity.
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	The additional height on the upper floors does not detract from the provision of future ground floor retail uses within Block F, but rather complement it by providing the necessary infrastructure and support for these uses.
To maximise public transport patronage and encourage walking and cycling.	The area of height non-compliance allows for the proposed building envelope to achieve the full design excellence and affordable housing FSR incentives, which in turn will allow for the provision of additional residential units to be included in the development. In turn, this allows the overall development to promote higher public transport usage by providing more destinations and origins within a compact area. The plant and lift overrun zones while exceeding maximum height limits, do not negatively impact the pedestrian experience at street level and support the building's overall functionality.

Table 6 Assessment of Compliance with MU1 Mixed Use Land Use Zone Objectives (applicable to Blocks I, portion of Block G and Block H)

Objective	Assessment
To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.	Not relevant for Blocks I, portion of Block G and Block H, as no retail or commercial uses are proposed.
To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.	The detailed DA will incorporate features to contribute to an active frontage such landscaping on the ground floor and separate ground floor entries to enhance the pedestrian experience and contribute to activation. The areas of height non-compliance will not detract the ability for the future development to achieve a positive street-level experience.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	The proposed building envelope carefully considers the interface with adjoining zones, ensuring that the area of non-compliance does not

Objective	Assessment
	result in adverse impact on overshadowing, privacy issues, or other conflicts with neighbouring properties. The plant and lift overrun zones that are over the height plane are setback to minimise visual and operational impacts on adjacent land uses, maintaining harmony between different zones. The detailed DA will also include appropriate screening, and noise mitigation measures to further reduce potential impact from the plant zones that will be over the height plane.
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	Not relevant for Blocks I, portion of Block G and Block H, as no retail or commercial uses are proposed.
To ensure land uses support the viability of nearby centres.	The area of height non-compliance allows for the proposed building envelope to achieve the full design excellence and affordable housing FSR incentives, which in turn will allow for the provision of additional residential units to be included in the development. This will help to attract more residents in the area, which support activation and the economic viability of the future development.
To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.	The area of height non-compliance allows for the proposed building envelope to achieve the full design excellence and affordable housing FSR incentives, which in turn will allow for the provision of additional residential units to be included in the development. In turn, this allows the overall development to promote higher public transport usage by providing more destinations and origins within a mixed-use compact area. The plant and lift overrun zones while exceeding maximum height limits, do not negatively impact the pedestrian experience at street level and support the building's overall functionality.

DISCLAIMER

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