

Clause 4.6 – Exceptions to Development Standards

Request to Vary Clause 7.4 – Building Separation in Liverpool City Centre

Address: 31-33 Shepherd St, Liverpool

Proposal: Construction of a 20 and a 24 storey tower, as part of the Shepherd Street Precinct

Date: 3 August 2023

1.0 Introduction

This clause 4.6 variation request has been prepared by SJB Planning on behalf of Lateral Estate, the applicant, for a development application (DA) seeking approval for the redevelopment 31-33 Shepherd Street Liverpool, for the construction of a high-density residential development with associated earthworks, infrastructure, and landscaping.

This written request seeks to contravene a development standard under Clause 4.6 – Exceptions to Development Standards of *Liverpool Local Environmental Plan 2008* (LLEP 2008). The development standard for which the contravention is sought is Clause 7.4 Building separation in Liverpool City Centre.

This clause 4.6 request is to be read in accordance with the architectural plans, the SEE, and urban design report which form part of this submission.

1.1 The Site

The land on which the development is proposed is 31-33 Shepherd Street Liverpool (the site), legally described as Lot 6 in DP 247485 and Lot 2 in DP 1266735. The location of the site is shown in Figure 1.

The site is generally bound by the Georges River to the east, Mill Park and Powerhouse Road to the south, railway line and industrial lands to the west and northwest, Shepherd Street and residential development to the north and northeast. The site has a total area of 7,872m²; with vehicular access available via Shepherd Street to the north and Powerhouse Road to the southwest.

The site, comprising two (2) lots which are to be subdivided into three (3) lots (one of which is to be a public road). The site is currently occupied by existing industrial related businesses and their associated buildings. An easement for access ('Powerhouse Road') runs the length of the site along its western boundary, providing access to Shepherd Street to the north and areas to the south of the site. The easement for access is proposed to be converted into a formal public road.



Figure 1: Aerial view of site and locality (Source: MetroMap)

1.2 The Proposed Development

The proposed development seeks consent for two (2) residential flat buildings, described as Building A and Building B, incorporating towers over a podium and basement parking. Significant public domain outcomes are proposed including publicly accessible through-site link, publicly accessible riverfront area, public road including public car parking.

Building A comprises a 20-storey tower, with a maximum height of 71.55m / RL 83,900, including 5-storey podium, with 4 levels of basement parking and rooftop amenities. Building B comprises a 24-storey tower, with a maximum height of 84.53m / RL 97,300, including 5-storey podium, with 5 levels of basement parking and rooftop amenities. Vehicular access to each building is provided by the new public road linking Shepherd Street and Powerhouse Road.

The proposal seeks consent for 341 residential apartments and 66 co-living dwellings, the latter being proposed in accordance with *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

The proposal will see the redevelopment of the final riverfront site within the Shepherd Street Precinct (refer to Figure 1).

1.3 Planning Context

The site is set in a precinct that is currently undergoing transformation from an industrial area to a high-density residential area. The surrounding lands forms a part of the Shepherd Street Precinct (refer to Figure 1) and is identified as being within Liverpool City Centre under LLEP 2008.

The site and wider Precinct have been the subject of master planning and a Planning Proposal (PP) and subsequent development consents, with development on the adjacent site to the north-east at 32 Shepherd Street (refer to Figure 3) having been approved (Development Application No. 471/2017), and recently completed as a high-density residential building.

Planning controls relating to the site, and wider Shepherd Street Precinct, were informed by the former PP which increased maximum building heights and FSRs across the Precinct. The PP was informed by a detailed masterplan that prescribed built form and landscaped outcomes. The PP was approved and LLEP 2008 amended (Amendment 65), being formally adopted on 1 November 2017.

The masterplan envisaged a built form character for the Precinct designed in response to a range of urban design principles, including positioning of urban markers and publicly accessible through-site links connecting Shepherd Street and the riverfront area (refer to Figure 2).

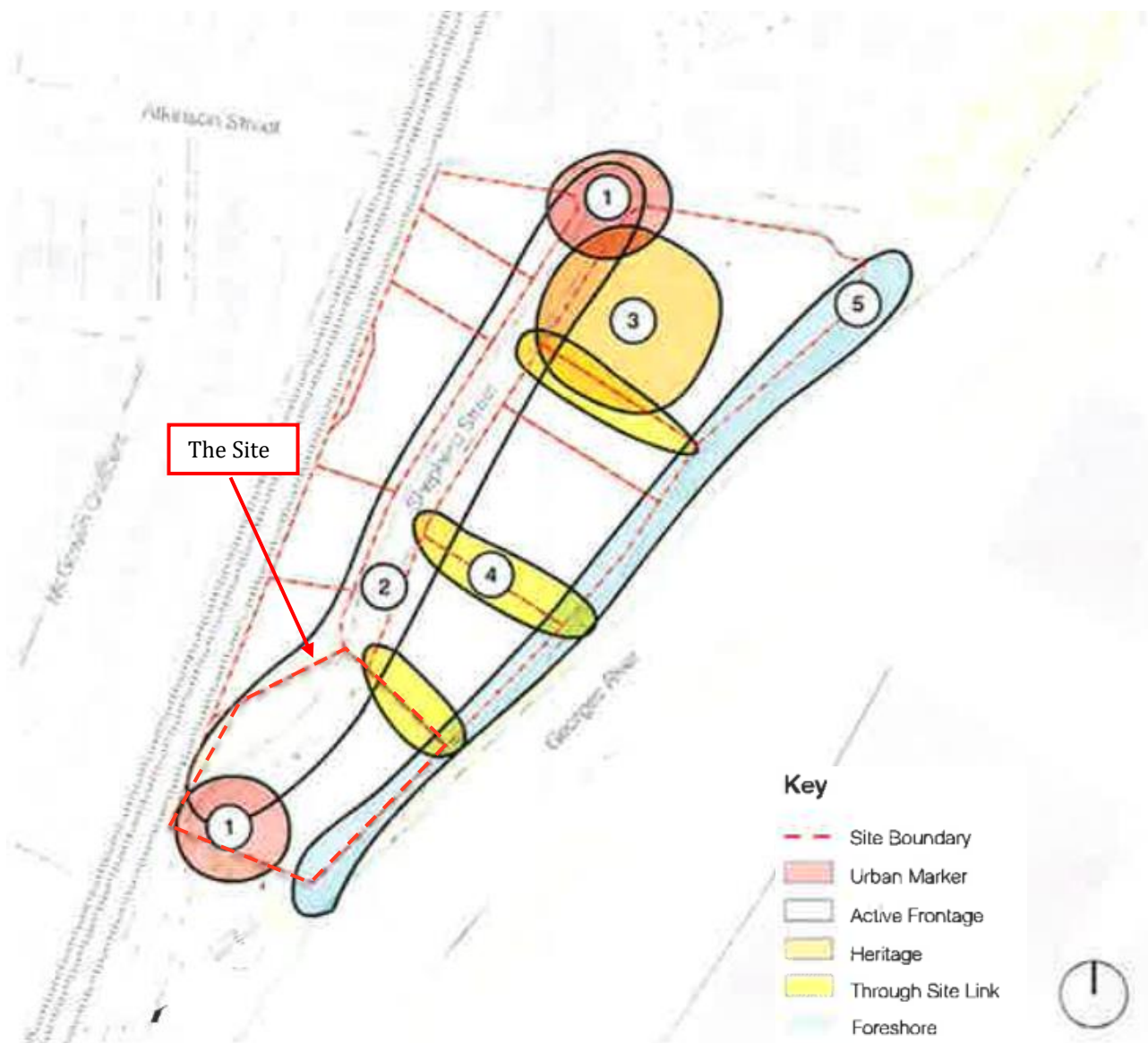


Figure 2: Extract of Section 3.2.3 Urban Design Principles of Shepherd Street Precinct masterplan

Building siting and massing were then established for each site, guided by these principles as well as modelling of solar access. The resultant siting and massing of buildings across each site is shown in Figure 3. The masterplan recommended that the sites along the eastern side of the precinct should be increased to allow for an

uplift of density across the precinct, as the site will have less impact on surrounding development and had the ability to achieve greater building separation.

Importantly, the masterplan prescribes a publicly accessible through-site link 18m wide, evenly distributed across the site and neighbouring site at 32 Shepherd Street (refer to Figure 3). It also identifies a key urban marker (built form) in the southern portion of the site (refer to Figure 2). Access through the site is also envisaged with the creation of a new road connecting Shepherd Street and Powerhouse Road.

Current LLEP 2008 development standards relating to FSR, height and building separation within Liverpool City Centre have been informed by the masterplan and the urban design work that in turn informs it.



Figure 3: Extract of Section 4.3 Preferred Concept – Plan of Shepherd Street Precinct masterplan

1.4 Proposed Urban Design, Massing and Built Form

The proposed development responds to the masterplan in that it will provide an urban marker (Building B), through site link, and new public road. Importantly, the proposal also responds to the recent development at 32 Shepherd Street, which was approved with a departure to the location of the publicly accessible through-site link envisaged under the masterplan, and subsequent boundary setbacks (refer to Figure 3).

In the absence of the publicly accessible through-site link being provided at this boundary location (as a result of the consent at 32 Shepherd Street not requiring this contribution in accordance with the intent of the masterplan), the proposal will make this commitment by taking the full burden of its delivery entirely across the site, providing access to the riverfront between Building A and Building B.

The revised location of the publicly accessible through-site link, and reduced setback of development at 32 Shepherd Street (as approved), has significantly influenced the siting of Building A and Building B. This has challenged the response to the sites ability to deliver the siting of built form in line with the masterplan, whilst achieving levels of solar access envisioned under the masterplan, particularly to the northern facade of Building A (refer to Figure 4).

As noted in the accompanying FSR 4.6, pursuant to LLEP 2008, the maximum base gross floor area (GFA) achievable across the amalgamated site is approximately 24,863.4m², being a cumulative FSR of 3.16:1, to be delivered across a permissible height range of 24m, 65m and 77m. In the first instance, the freeing up of the

ground plane to achieve the proposed public benefits (i.e., new public road, new public car parking and publicly accessible pedestrian through-site link) results in a distribution of floorspace that will contravene the permissible heights of 65m and 77m, while ensuring no built form associated with the podium and towers will be constructed within the 24m height limit part on the site.

Pursuant to *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) the applicant is able to include co-living housing as a component of the overall development. Clause 68(2)(a)(ii) provides for an additional 10% of the maximum permissible FSR if certain pre-conditions are met, this would potentially allow a maximum GFA of 27,349.74m², being a cumulative FSR of 3.47:1.

The inclusion of co-living housing into the proposed massing, whilst continuing to free up the ground plane for public benefits, further contributes to the contravention of the 65m and 77m height limit.

Again, as noted in the accompanying FSR 4.6, the proposal seeks a total GFA of 28,228m² across the entire site. Within this context, the maximum 'cumulative' FSR across all three (3) portions of the site equates to 3.59:1.

The buildings have been positioned and orientated to achieve optimal outlook and views of the river and park from the site whilst maximising solar access, natural ventilation, acoustic and visual privacy, and spatial functionality of the residential units within the building. The building mass is broken down by vertical 'slot' elements through the façade, contributing to the towers appearing slender and providing forms related to the remainder of the Shepherd Street Precinct.

Whilst resultant massing and modulation of built form across the site will contravene the height, FSR and building separation in the Liverpool City Centre development standards, this is a result of the applicant's ability to deliver diverse housing opportunities in an urban renewal location, supported by a range of public benefits in the form of a publicly accessible through-site link, new public road, public car parking, and open space areas at ground level, including publicly accessible riverfront area. A compliant development would therefore likely forgo these benefits in order to achieve an inferior built form outcome across the site.

The proposal is a response to the urban renewal process that has been occurring across the Shepherd Street Precinct in a north-east to south-west direction, with this proposed site now being the last riverfront site to be redeveloped. Accordingly, the proposal responds appropriately by providing a superior built form and landscape outcome having regard to site constraints and opportunities for public benefit.

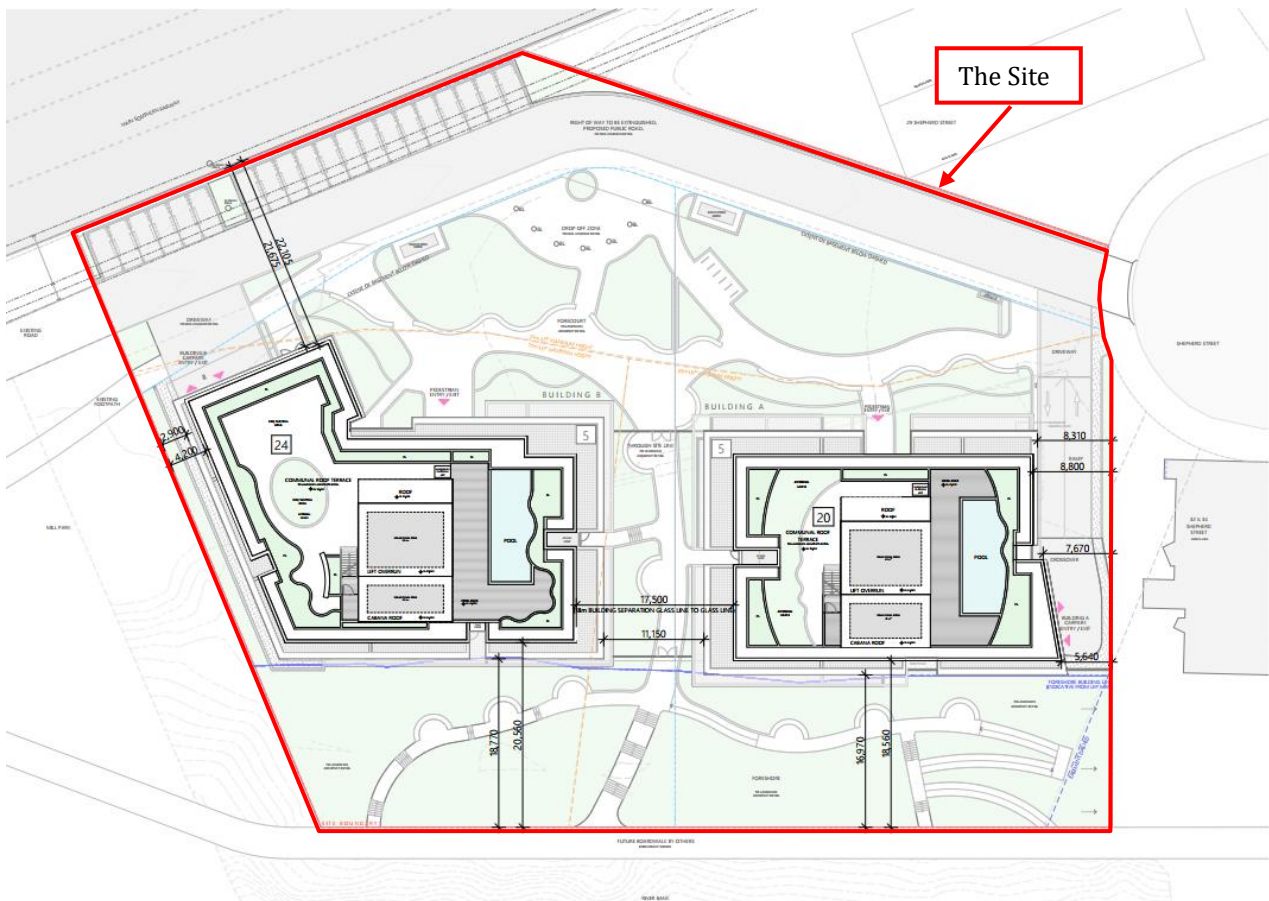


Figure 4: Site Plan (Source: Mosca Pserras architects)

2.0 Description of the planning instrument, development standard and proposed variation

2.1 What is the name of the environmental planning instrument that applies to the land?

The Liverpool Local Environmental Plan 2008 (LLEP 2008).

2.2 What is the zoning of the land?

The zoning of the land is R4 High Density Residential.

2.3 What are the Objectives of the zone?

The objectives of the R4 High Density Residential zone are:

- *"To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To minimise the fragmentation of land that would prevent the achievement of high density residential development."*

2.4 What is the development standard being varied?

The development standard being varied is the building separation in Liverpool City Centre development standard.

2.5 Is the development standard a performance based control?

No. The building separation development standard is a numerical control.

2.6 Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 7.4.

2.7 What are the objectives of the development standard?

The objective of Clause 7.4 is as follows:

"The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access."

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

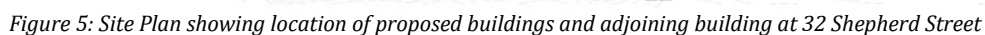
Clause 7.4 establishes minimum building separation requirements for buildings located on land in Liverpool City Centre.

The subject site falls within the Liverpool City Centre and Clause 7.4 Building Separation in Liverpool City Centre of the Liverpool Local Environmental Plan 2008 reads as follows:

"7.4 Building separation in Liverpool city centre

1. *The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
2. *Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least:*
 - a) *9 metres for parts of buildings between 12 metres and 25 metres above ground level (finished) on land in Zone R4 High Density Residential, and*
 - b) *12 metres for parts of buildings between 25 metres and 35 metres above ground level (finished) on land in Zone R4 High Density Residential, and*
 - c) *18 metres for parts of buildings above 35 metres on land in Zone R4 High Density Residential and*
 - d) *12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use, and*
 - e) *28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use."*

There are two (2) buildings proposed on the site, referred to as Buildings A and B. The location of the two buildings on the site, as well as the location of the adjoining building at 32 Shepherd Street, are shown in Figure 5 below.



With regard to clause 7.4(2)(a) and 7.4(2)(b), the proposal will comply with the 9m and 12m separation requirements for those parts of the building between 12m and 25m, and 25m and 35m respectively (refer to Table 1).

Height (m)	Separation Requirements (m)	Applicable Levels	Proposed Separation (m)	Compliance	Variation (m)	Variation (%)
12 – 25	9	3 – 7	11.15 – 22.4	Yes		
25 – 35	12	7 – 10	17.5 – 22.4	Yes		
35 +	18	10 - 19	17.5 – 22.4	No	0.5m	2.8%

Table 1: Building separation compliance summary - Building A & Building B



Figure 6: Proposed building separation – levels 10-19

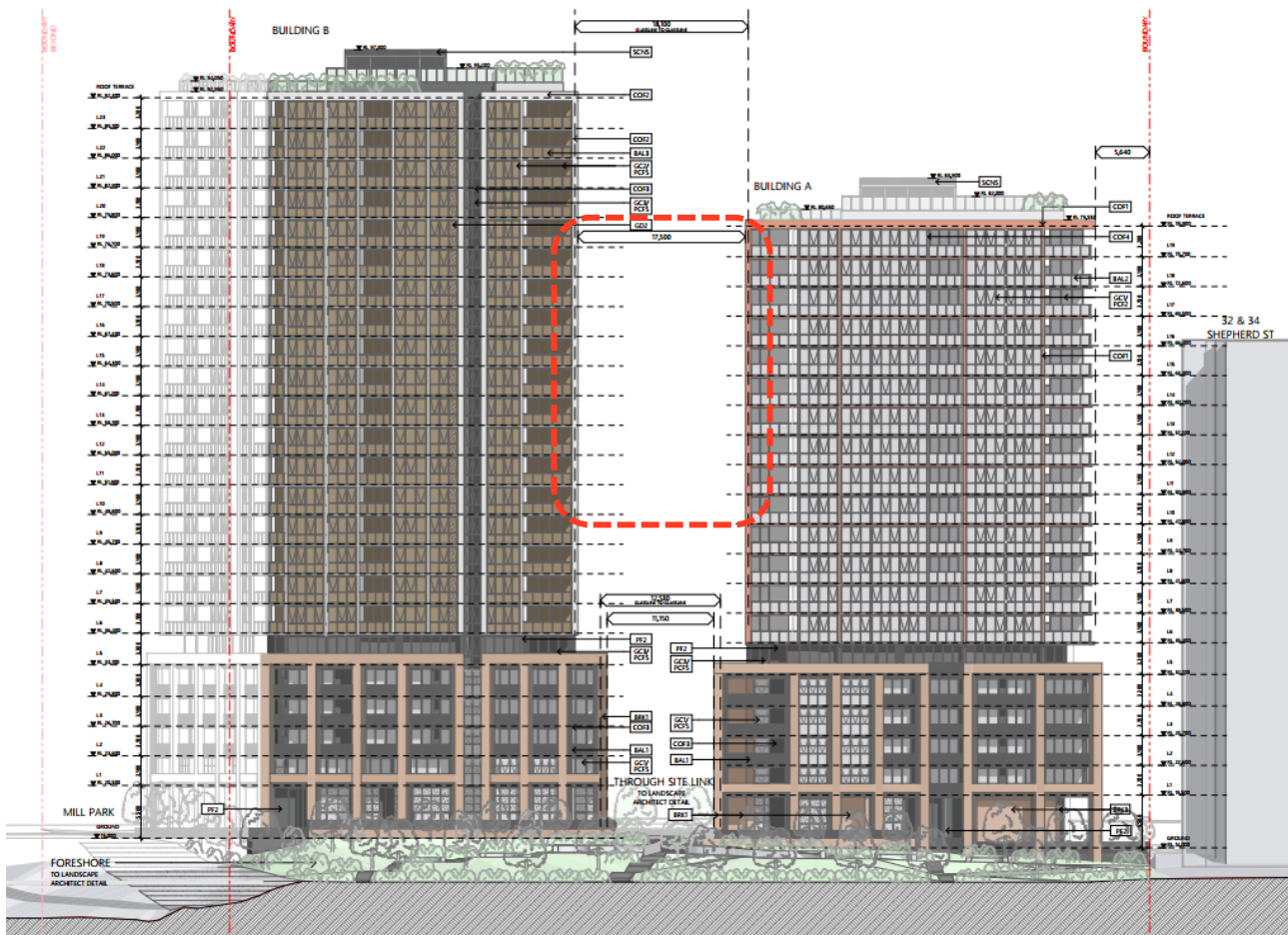


Figure 7: Proposed building separation – Levels 10-19

Building Separation – Building A and 32 Shepherd (external)

With regard to clause 7.4(2)(a) the proposal will comply with the 9m separation requirement for those parts of the building between 12m and 25m (refer to Table 2).

With regard to building separation required under clause 7.4(2)(b) (12m separation), the proposed separation between Building A and the adjoining building located at 32 Shepherd Street results in a minor non-compliance across a small portion of the façade (3.25m), where a minimum separation of between 10.435m and 11.09m is proposed between the screened fire stairs of 32 Shepherd Street and living and bedroom windows of the proposed development (refer to Table 2, Figures 8 and 9). This equates to a variation of between 7.6% and 13%, however compliance with the 12m separation requirement is compromised by the non-compliant siting and setbacks of 32 Shepherd Street, which provides a setback range of between 3.425m and 3.5m for the constructed fire stairs (refer to Figure 8).

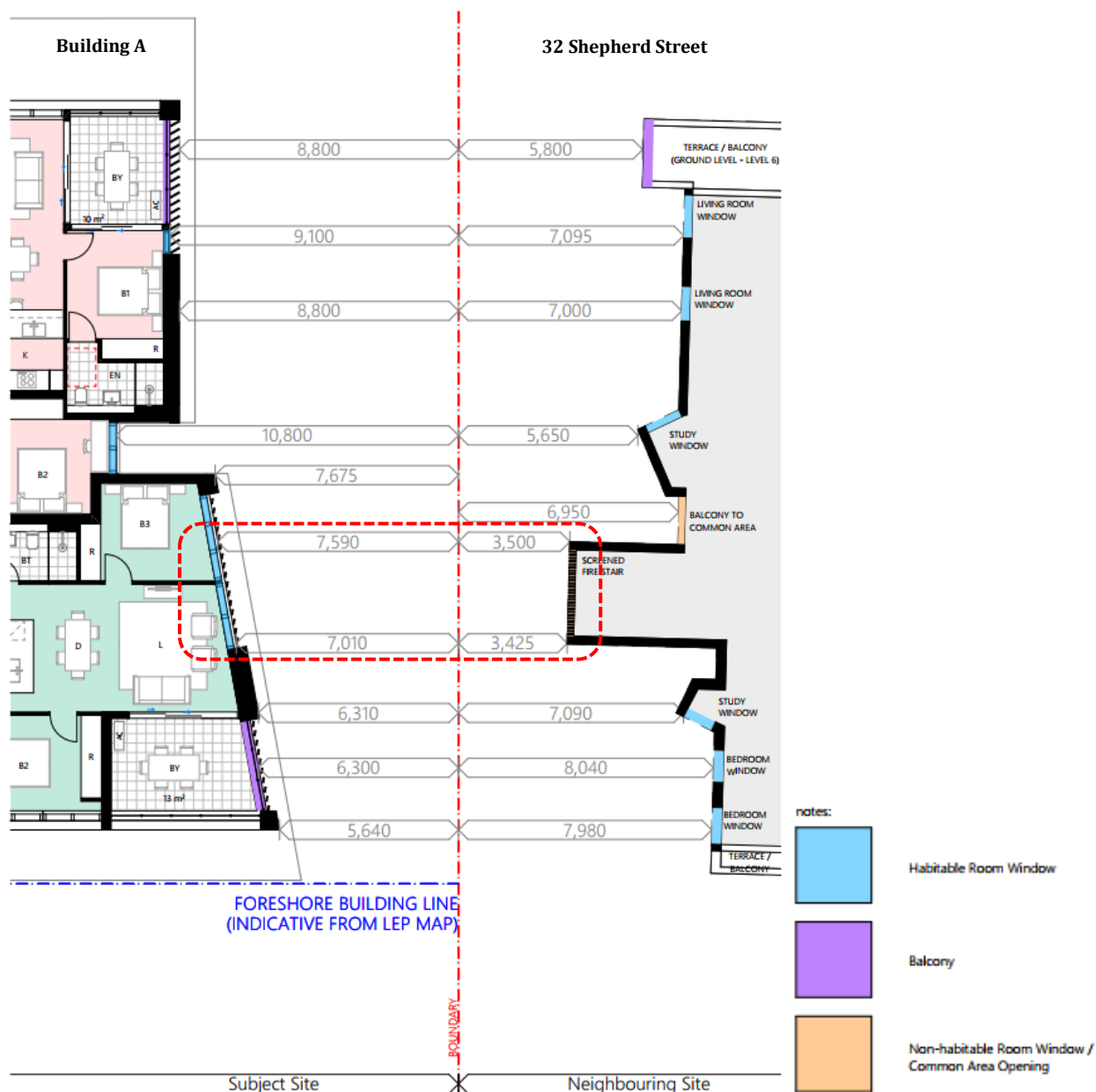


Figure 8: Proposed building separation with 32 Shepherd Street – Levels 7-10

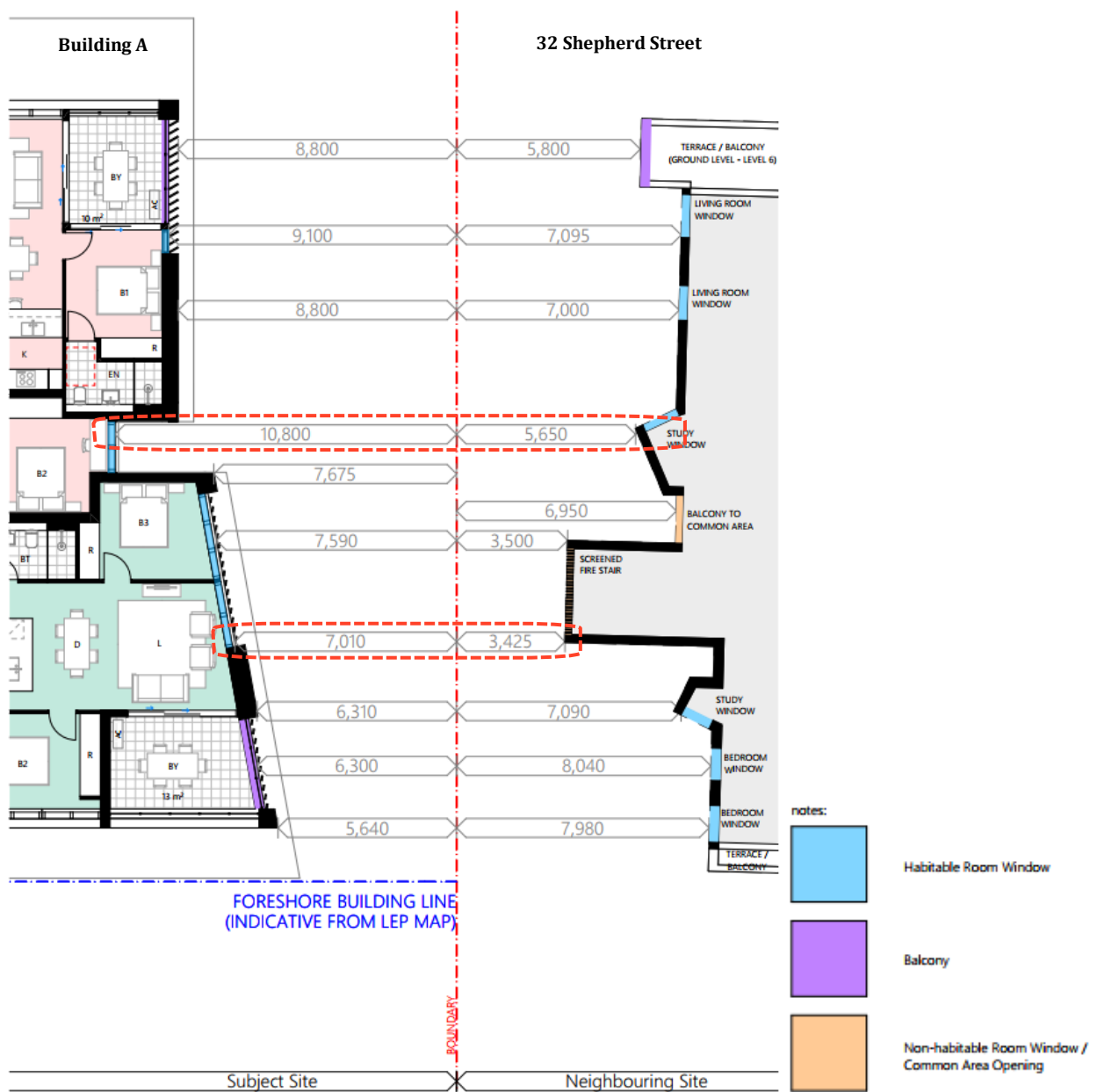


Figure 10: Proposed building separation with 32 Shepherd Street - levels 10 - 16

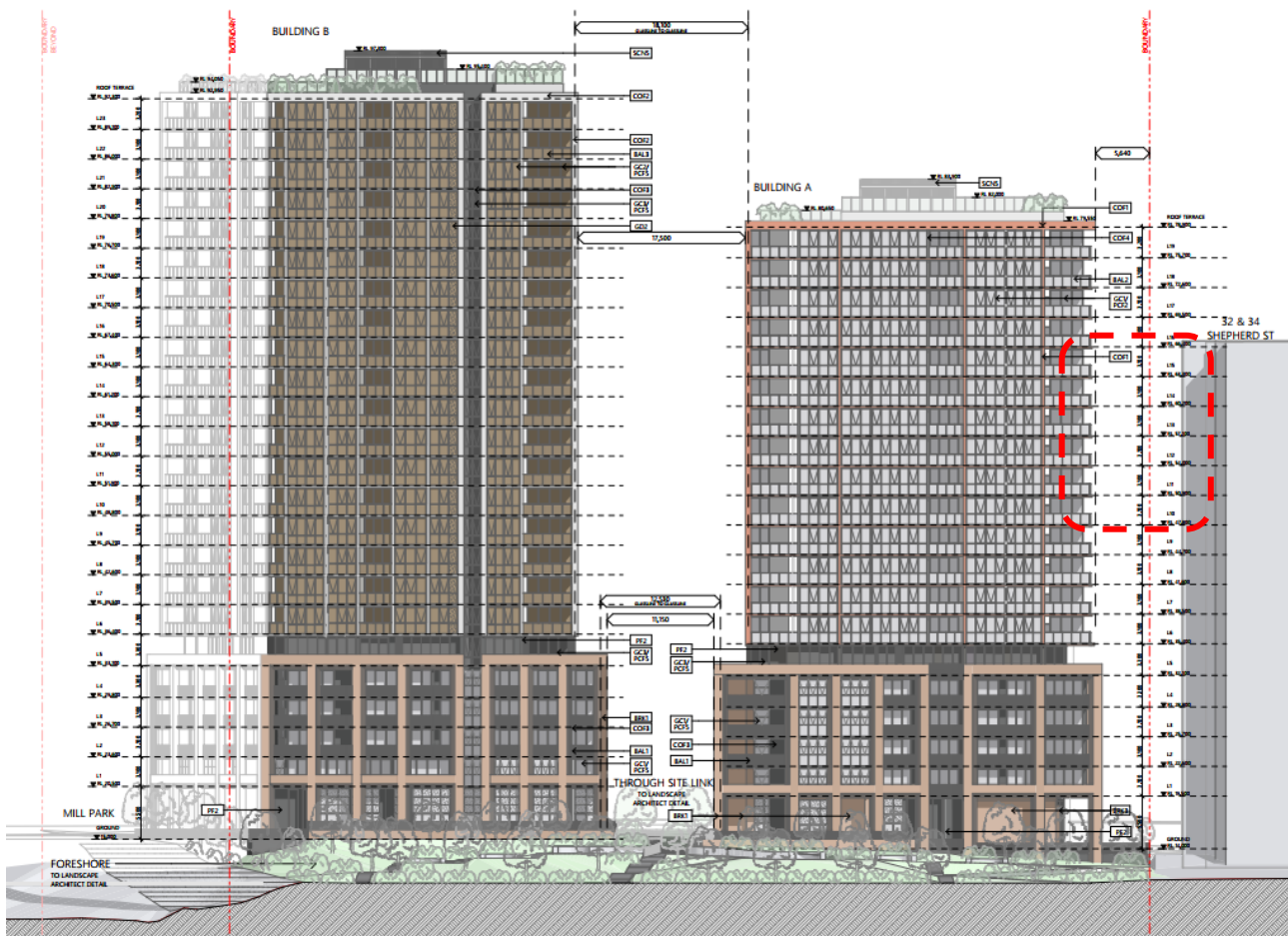


Figure 11: Proposed building separation - levels 10 – 16

Height (m)	Separation Requirements (m)	Applicable Levels	Proposed Separation (m)	Compliance	Variation (m)	Variation (%)
12 – 25	9	3 – 7	10.435 – 16.45	Yes		
25 – 35	12	7 – 10	10.435 – 110.09	No	0.91 – 1.565	7.6% - 13%
35 +	18	10 - 16	16.45 – 10.435	No	1.55 – 7.565	8.6% - 42%

Table 2: Building separation compliance summary – Building A & 32 Shepherd Street

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

Between Buildings A and B above 35m where the minimum separation requirement is 18m, the maximum variation proposed equates to 0.5m, being a variation of 2.7% (refer to Table 1 and Figure 6).

Between proposed Building A and the building at the 32 Shepherd Street between 12m and 25m where the minimum separation requirement is 12m, the variation equates to between 0.91m and 1.565m, being a variation of 7.6%% to 13% (refer to Table 2 and Figure 8).

Between proposed Building A and building at the 32 Shepherd Street above 35m where the minimum separation requirement is 18m, the variation equates to between 1.55m and 7.565m, being a variation of 8.6% to 42% (refer to Table 2 and Figure 10).

3.0 Assessment of the Proposed Contravention

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for development consent being granted for development that contravenes development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) are as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- “(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 development standard.”*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- “(a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and”*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained, and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- “(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline *Varying Development Standards: A Guide*, August 2001, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (‘Four2Five No 1’);*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (‘Four2Five No 2’);*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 (‘Four2Five No 3’);*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130;*
- *Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61; and*

— *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245.*

3.2 Clause 4.6(3)(a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Peston CJ set out the following justifications that may be used to demonstrate that compliance with a development standard is unreasonable or unnecessary:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- The underlying objective or purpose of the standard is not relevant to the development;
- The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required;
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

This was re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34], the Chief Judge held that 'establishing that the development standard would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary'.

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827).

It is submitted that the first justification is applicable in this instance.

3.2.1 *Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?*

A development that strictly complies with the building separation standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The proposal is consistent with the objectives of the R4 High Density Residential zone and building separation standard as outlined in section 3.4 below.
- The proposed non-compliance is associated with only small portions of the development as a whole, being:
 - A 0.5m setback variation at levels 10 to 20 between Building A and Building B
 - An approximate 3m length of Building A façade between levels 7 and 9 and 32 Shepherd Street
 - Façade of Building A between levels 10 and 16 with 32 Shepherd Street
- The development of the Shepherd Street Precinct as a whole has been considered from an urban design perspective, supported by Council under the Shepherd Street Planning Proposal. This development application is consistent with the urban design analysis and building footprints envisaged for the site as detailed in the introduction of this request. The proposal will achieve an acceptable visual appearance when viewed from the public domain, including Shepherd Street and riverfront setting, as well as viewed from the adjoining property at 32 Shepherd Street and existing residential properties to the south-west.

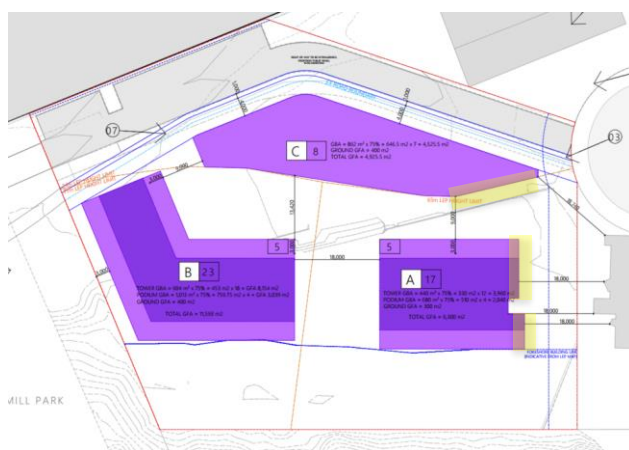
The capacity of the proposal to achieve the development standard between Building A and 32 Shepherd Street is challenged by the approved reduced setbacks of the building at 32 Shepherd Street, being inconsistent with the Shepherd Street Planning Proposal which anticipates an 18m building setback evenly distributed across site boundaries to facilitate a publicly accessible through-site link. In short, the building at 32 Shepherd Street does not provide anticipated side boundary setbacks to the boundary with the site.
- The contravention to the building separation control of itself does not increase the density of the development on the site or give rise to unacceptable adverse impacts on visual appearance, privacy and

solar access. This is verified in the comparison of impacts arising from hypothetical compliant and proposed development-Refer Annexures to this clause 4.6 request.

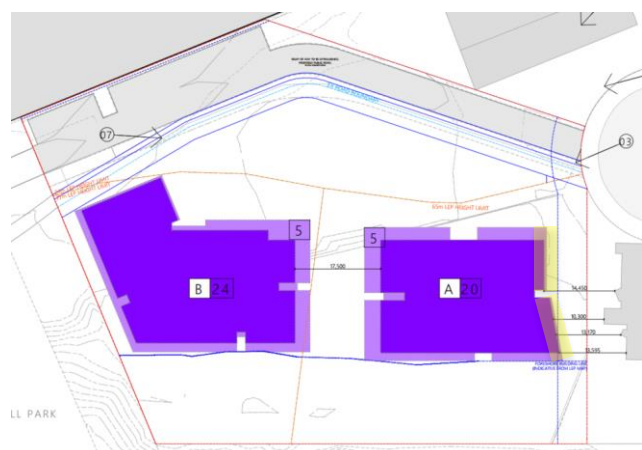
- The proposed placement of Building A and the resultant relationship with the adjoining building at 32 Shepherd Street allows for the construction of a generous publicly accessible through-site link between Building A and Building B, providing access to the riverfront. The proposed building separation provides for significant public benefit.
- The arrangement of Building A is constrained at the boundary with No. 32 Shepherd Street due to the proximity of the adjacent building and its minimal setbacks of up to 3.425m to the boundary. This deviated from the intent of the Shepherd Street Masterplan.
- The proposal provides appropriate window placement, window screening and use of architectural detailing on facades to maintain visual privacy both within the site and with regard to 32 Shepherd Street (refer to Figure 8). The design of such elements are in keeping with achieving a building of high quality design.
- The non-compliant setback between Building A and Building B at Levels 10 to 20 is minor at 0.5m. The building will continue to achieve the minimum separation requirement of 18m between windows on the façade, and between balconies.
- As demonstrated in the Architectural Drawing set provided in support of this application, the proposal provides solar access in accordance with *State Environmental Planning Policy (Housing) 2021*, *State Environmental Planning Policy No. 65* and corresponding Apartment Design Guide (ADG).
- Architectus makes the following observations regarding building separation (Refer also Annexure D :
 - *With regard to visual appearance, as noted through this report we do not believe that there is a significant issue for visual impact in terms of building separation. The building is encouraged to be massed on this edge to reduce the building bulk affecting more important views between Shepherd Street and Powerhouse Road. A regular tower above podium also prevents a better design approach than one that steps in with a reduced floorplate to achieve the required separation distances as the tower height increases.*

On the basis of above, with regard to visual appearance, the departures from the numerics of LEP clause 7.4 are considered a reasonable alternative in achieving the objectives of the clause.
- The proposed development would have on balance less building frontage to 32 Shepherd Street when compared to a hypothetical compliant development comprising three (3) buildings across the site (see figures below).

Hypothetical compliant development



Proposed development



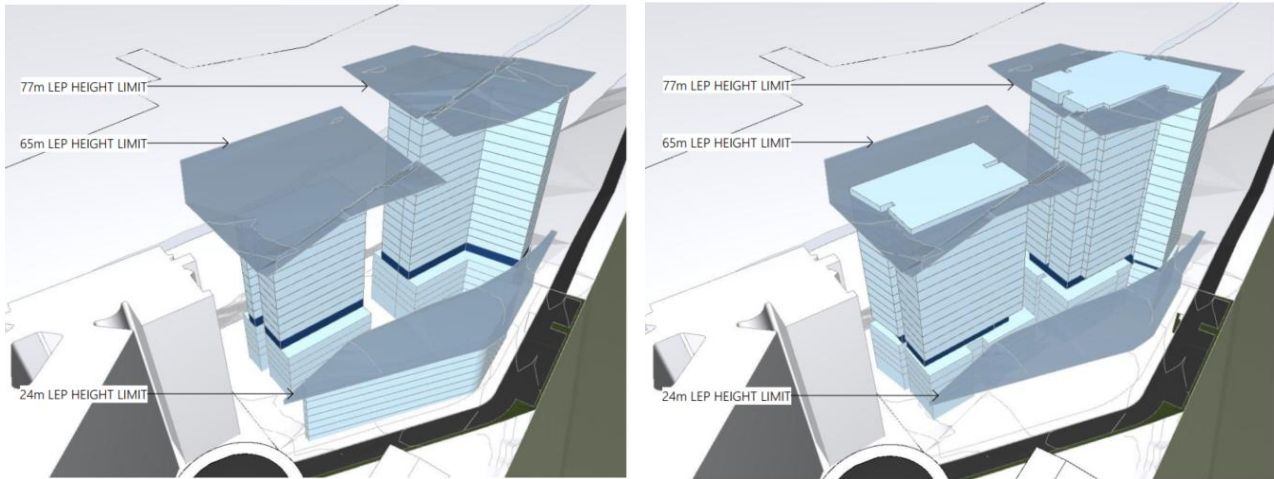


Figure 12 Comparison of hypothetical compliant development massing outcome (left) and proposed development massing (right)

3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The underlying objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

Not contested. The variation request does not seek to identify that the standard has been abandoned by Council.

3.2.4 Is the zoning of the land unreasonable or inappropriate?

Not contested. The zoning of the land is appropriate for the site.

3.3 Clause 4.6(3)(b) requires demonstration that there are sufficient environmental planning grounds to justify contravening the development standard

There are sufficient environmental grounds for the contravention of the building separation distances which are detailed below:

- The non-compliances are minor, and occur in only two conditions of the proposal being:
 - Between proposed Building A and Building B at levels 10 to 20 for the height above 35m. A separation of 17.5m is provided as opposed to the 18m required. This is a variation of only 2.7%. It is noted in this circumstance, separation between glass lines of each building (i.e., habitable windows) will continue to achieve the 18m separation requirement under Clause 7.4; and
 - Between proposed Building A and the existing building at 32 Shepherd Street from 25m to 35m, a minimum separation distance of between 10.435m and 11.09m is proposed to extend along an approximate 3m portion of the façade as opposed to the 12m separation requirement under Clause 7.4. This is a maximum variation of 13%. The portion of façade that does not comply faces fire stairs of the adjoining building at 32 Shepherd Street which are screened. Furthermore, proposed windows at this location will be appropriately screened with angled vertical louvres to obstruct views directly across the boundary.
- Unit windows and balconies are either offset or incorporate screening devices integrated into the building facade to ensure there are no visual privacy impacts.
- The separation distances between the proposed buildings will allow for view corridors from Shepherd Street, as well as public benefits including a publicly accessible through-site link towards the river and public access to the river frontage.
- The inclusion of this publicly accessible through-site link necessitates the variations to building separation, as sufficient setbacks cannot be reasonably achieved whilst delivering appropriate apartment

layouts given the orientation and width of the site, as well as constraints imposed by the foreshore building line. Refer to the hypothetical compliant development massing in Figure 12. The masterplan approved under the planning proposal envisaged that the through-site link would be located between Buildings A and 32 Shepherd Street, however the approval granted for 32 Shepherd Street did not include a proposal for a through-site link. Therefore, the location of the through-site link in this area of the precinct differs from the masterplan and has impacted the building separation, however, we say not in any adverse manner.

- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any meaningful benefits to the owners or occupants of the site and also the adjoining building at 32 Shepherd Street. Instead, strict compliance would constrain the achievement of sensible internal planning for the proposal and reduction in the number of dwellings that can be provided on the site (38 less residential apartments and 66 less co-living dwellings). That would be a suboptimal planning outcome. Avoiding that suboptimal planning outcome and achieving the proposed superior outcome constitutes sufficient environmental planning grounds to warrant the proposed variation to the building separation control.

3.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

3.4.1 Objectives of the Building Separation in Liverpool city centre development standard

The proposed development is consistent with the objective of the building separation standard:

‘(1) The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.’

- The variations to the building separation standard will not impact upon the visual appearance of the buildings, particularly when considering the overall precinct development of Shepherd Street. Each building is a high-quality architectural response to the individual constraints and opportunities of the site.
- Proposed massing approaches, development of the site as two towers with vertical ‘slot’ elements through the façades, contributes to the towers reading as slender, as well as providing forms that are related to the remainder of the Shepherd Street Precinct.
- Building facades and apartments have been designed to minimise overlooking and direct sightlines between windows and balconies to reduce visual or acoustic privacy impacts. Balconies and windows subject to reduced separation distances will incorporate a vertical metal screen system.
- Solar access to the development will be consistent with the ADG, and SEPP (Housing) for that part of the site designated for co-living housing.
- Solar access to nearby residential properties will be reasonably contained. The contravention of the development standard for building separation does not result in additional overshadowing over and above a complying development.

3.4.2 Objectives of the zone

The development is in accordance with the objectives of the R4 High Density zone as detailed below:

‘To provide for the housing needs of the community within a high density residential environment’

- The proposed development will make a substantial contribution towards the housing needs of the community by providing 341 new residential dwellings and 66 co-living dwellings within a high density residential environment with significant communal infrastructure and public domain on site.
- In contrast, the hypothetical compliant development would deliver 38 less apartments and 66 less co-living dwellings. The proposal therefore better achieves this objective.

‘To provide a variety of housing types within a high density residential environment’

- The development provides a variety of housing types including studio, 1, 2 and 3 bedroom units, as well as rooms associated with co-living housing.

- The hypothetical compliant development would not deliver the co-living housing. The proposed development therefore better achieves this objective.

To enable other land uses that provide facilities or services to meet the day to day needs of residents

- The proposal will incorporate co-living housing that will complement existing private housing within the Liverpool City Centre. The inclusion of co-living housing into the development will provide for housing diversity to meet the demand of residents seeking to locate within proximity to facilities and services, including educational institutions within the city centre.
- Considered in the context of the Shepherd Street Precinct, the development of new residential dwellings will encourage the provision of other land uses such as local shops and retail to provide facilities and services to meet the day-to-day needs of residents, as well as the revitalisation of the surrounding area and Georges River Precinct.

'To provide for a high concentration of housing with good access to transport, services and facilities'

- The proposed development has good access to transport including Liverpool and Casula Train stations and local pedestrian, cycling and bus routes.

'To minimise the fragmentation of land that would prevent the achievement of high density residential development'

- The proposal will rationalise the existing lot pattern resulting in a development that is generally consistent with the approved massing for buildings across the site envisaged in the Shepherd Street Precinct masterplan.
 - The proposal will provide a contemporary architectural design solution for the site, whilst incorporating large scale public benefits, including a publicly accessible through-site link and access to the river frontage.
 - The proposal demonstrates an outcome of high-density residential development without compromising the sites developable area so that it can achieve high levels of amenity for both residents and the public.
- 3.5 Whether contravention of the development standard raises any matter of significance for the State or regional environmental planning?

The proposed contravention of the building separation development standard will not raise any matter of significance for State or Regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

3.6 Is there public benefit in maintaining the development standard?

There is no public benefit achieved in maintaining the development standard in this instance and maintaining the standard would result in an inferior outcome for the site.

Strict compliance with the building separation standard would result in an inferior development outcome requiring a reduction in areas of public domain, particularly areas allocated to the publicly accessible through-site link. Accordingly, strict compliance with the standard would:

- Result in less residential development and less diverse development in Liverpool City Centre;
- Not respond appropriately to the site's context strategically in terms of the provision of housing in close proximity to high frequency transport as referenced to the Western City District Plan;
- Compromise the ability of the development to provide generous public benefits, including a publicly accessible through-site link, public car parking and public road;
- Not maximise the opportunity that the existing site context offers with regard to:

- The presence and development restrictions imposed by the foreshore building line and right of way linking Shepherd Street to the east and existing road to the west
- The scale of adjacent residential development of comparable height and character to its north, northeast as part of the Shepherd Street Precinct
- Be inconsistent with the opportunities pursued through the Shepherd Street Precinct planning proposal, as outlined in the relevant Council report dated 29 June 2016, which identifies:
 - *“A clear ambition to embrace the Georges River and to contribute to improving the recreational opportunities and amenities the river can provide, consistent with Council’s vision*
 - *The opportunity to create recreational space with good amenity adjacent to the Liverpool City Centre*
 - *Street network improvements for new connections from Shepherd Street to the river, realigning and upgrading the Shepherd Street connection through to Casula Powerhouse Arts Centre via Powerhouse Road*
 - *Provision of greater access to the Georges River by seeking to activate the foreshore area in line with Liverpool’s ambition to become a River City*
 - *Enhancement of the riparian corridor along the river subject to provision of detailed specifications of the works to be undertaken to achieve this outcome”.*

The proposal promotes the economic use and development of the land consistent with the R4 zone and will be in the public interest. There is no public benefit in maintaining the standard.

3.7 Is the objection well founded?

Yes. It is considered that the objection is well founded in this instance and that granting of a contravention to the development can be supported in the circumstances of the case.

4.0 Conclusion

The development, inclusive of the contravention of the standard, is considered appropriate and consistent with the objective and intent of Clause 7.4 of LLEP 2008. Having regard for the context of the site and surrounding approved development, strict compliance with the numerical standard in this instance is both unreasonable and unnecessary for the following reasons:

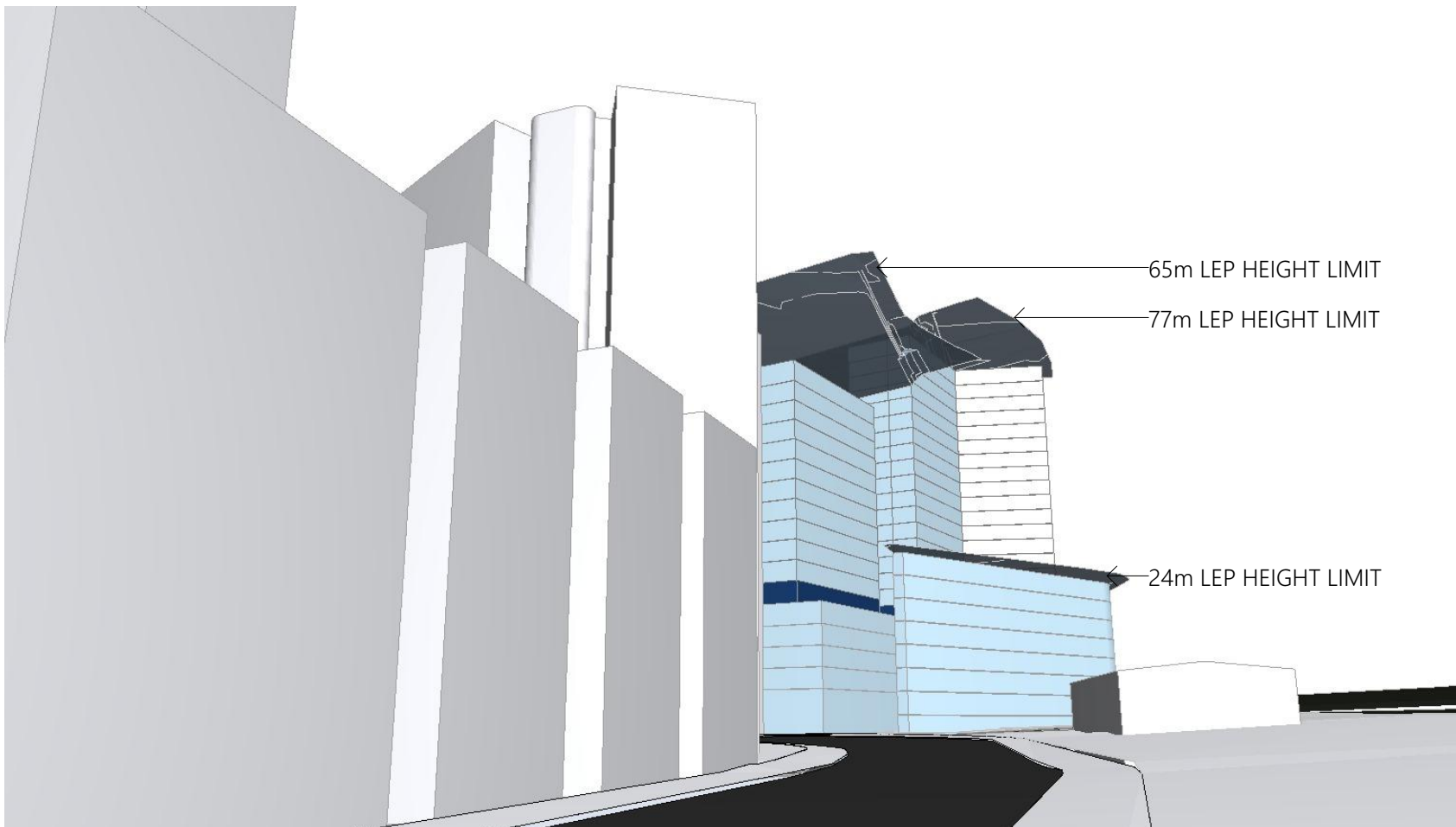
- As demonstrated in the proposal, the built form has been developed in response to site circumstances, surrounding context and the desired delivery of significant public benefits;
- The contravention will not result in any detrimental amenity impacts to surrounding development. Nor will the extent of the non-compliance result in any adverse amenity or privacy impact on the adjacent sites given that the objectives of the ADG separation are achieved through window shading, configuration of non-habitable and habitable rooms and placement of solid wall components in response to the adjacent 32 Shepherd Street;
- The proposal represents a superior design outcome, compared to the indicative massing and envelope design approved under the Shepherd Street masterplan, and provides a significant long-term social contribution through the provision of both private and co-living housing;
- The contravention will not hinder the ability to satisfy the objectives of the R4 High Density Residential zone;
- The contravention will not hinder the ability to satisfy the vision for the Liverpool City Centre or the Western City District Plan; and
- The proposal is highly consistent with the Greater Sydney Region Plan a Metropolis of Three Cities which acknowledges the need to provide housing in close proximity to high frequency transport services.

Based on the reasons outlined, it is concluded the request is well founded and the particular circumstances of the case warrant flexibility in the application of the building separation development standard.

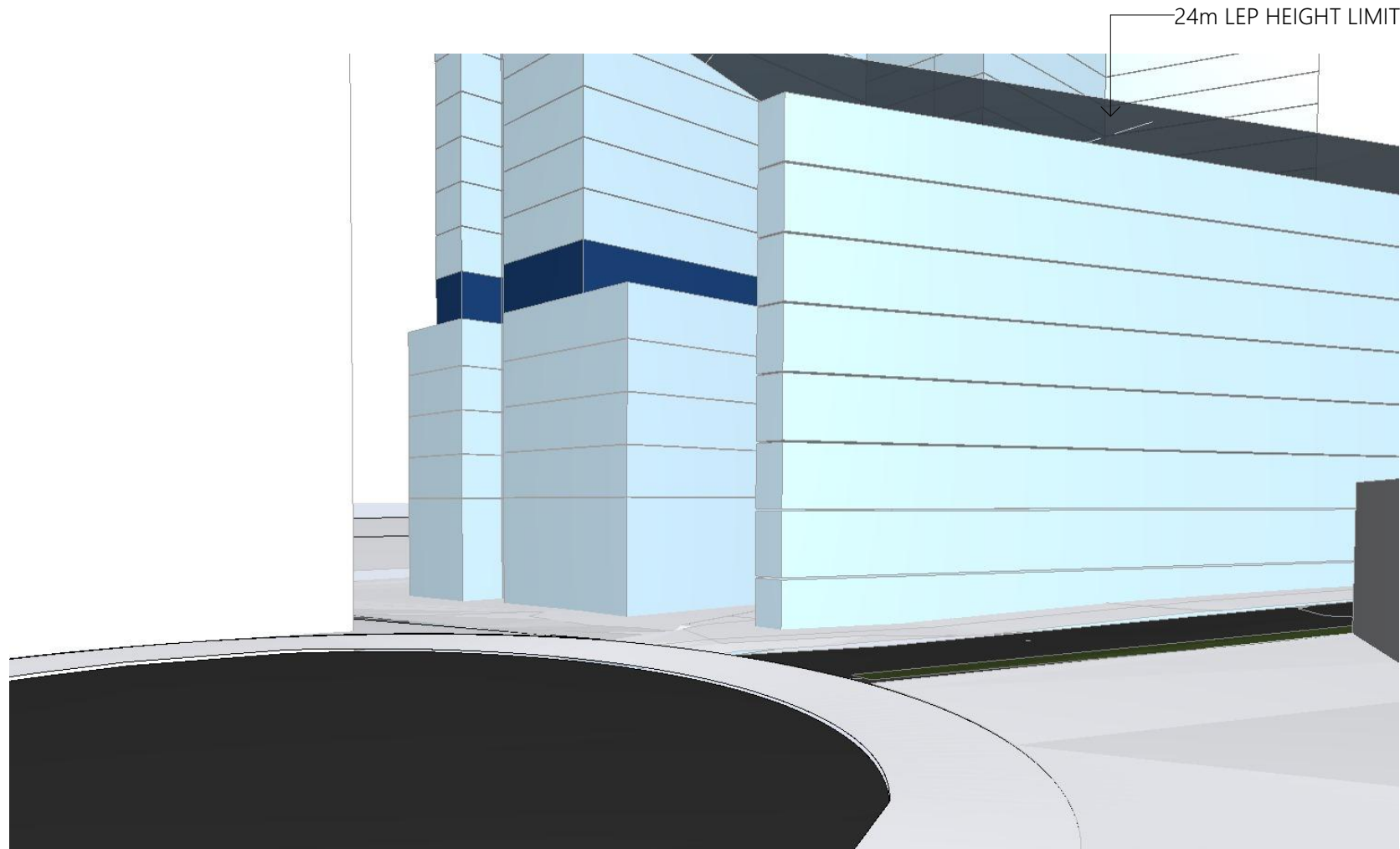
ANNEXURE A

Hypothetical compliant and proposed building envelopes and massing

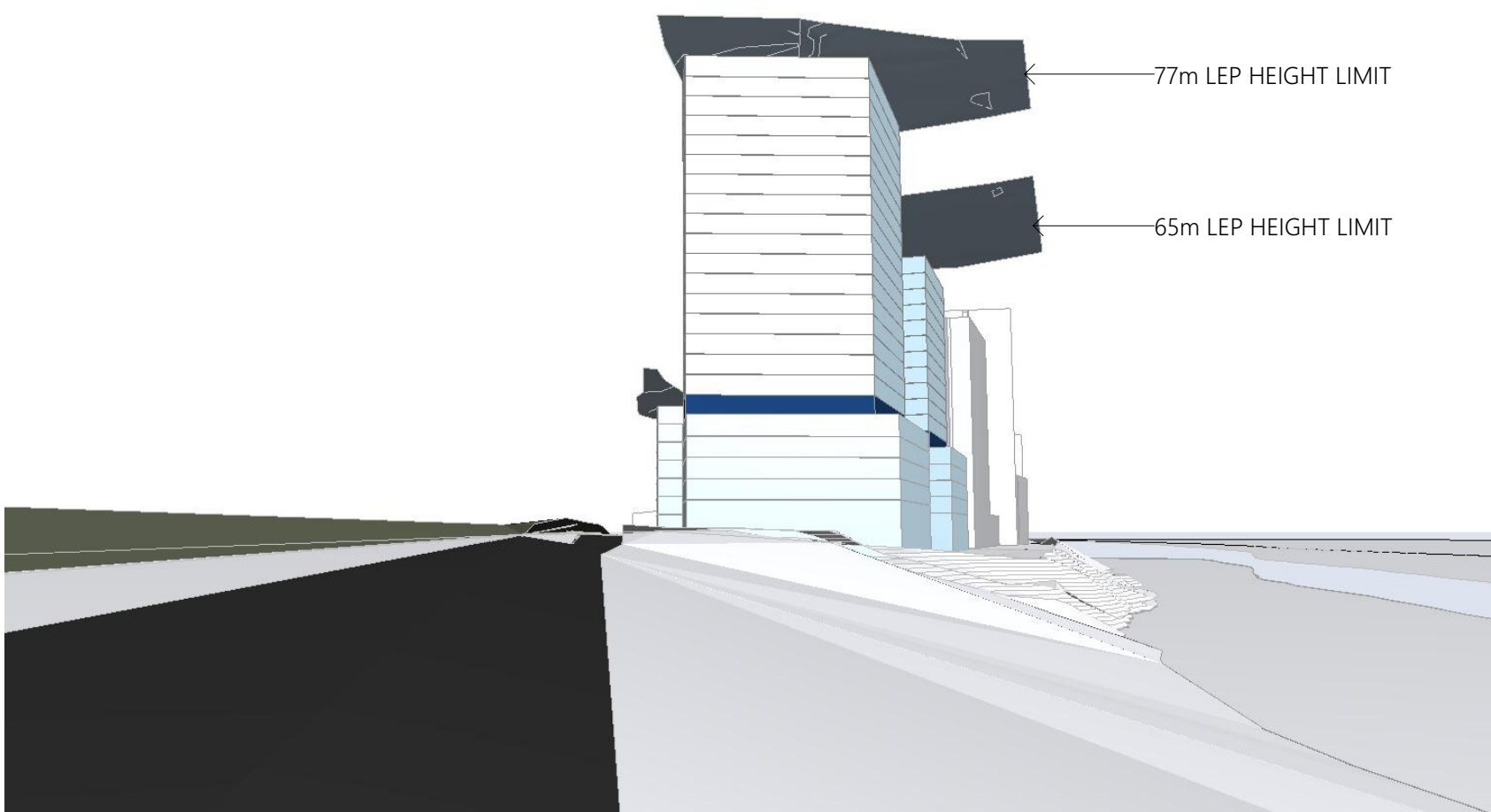
HYPOTHETICAL COMPLIANT DEVELOPMENT MASSING (EXCLUDES CO-LIVING HOUSING)



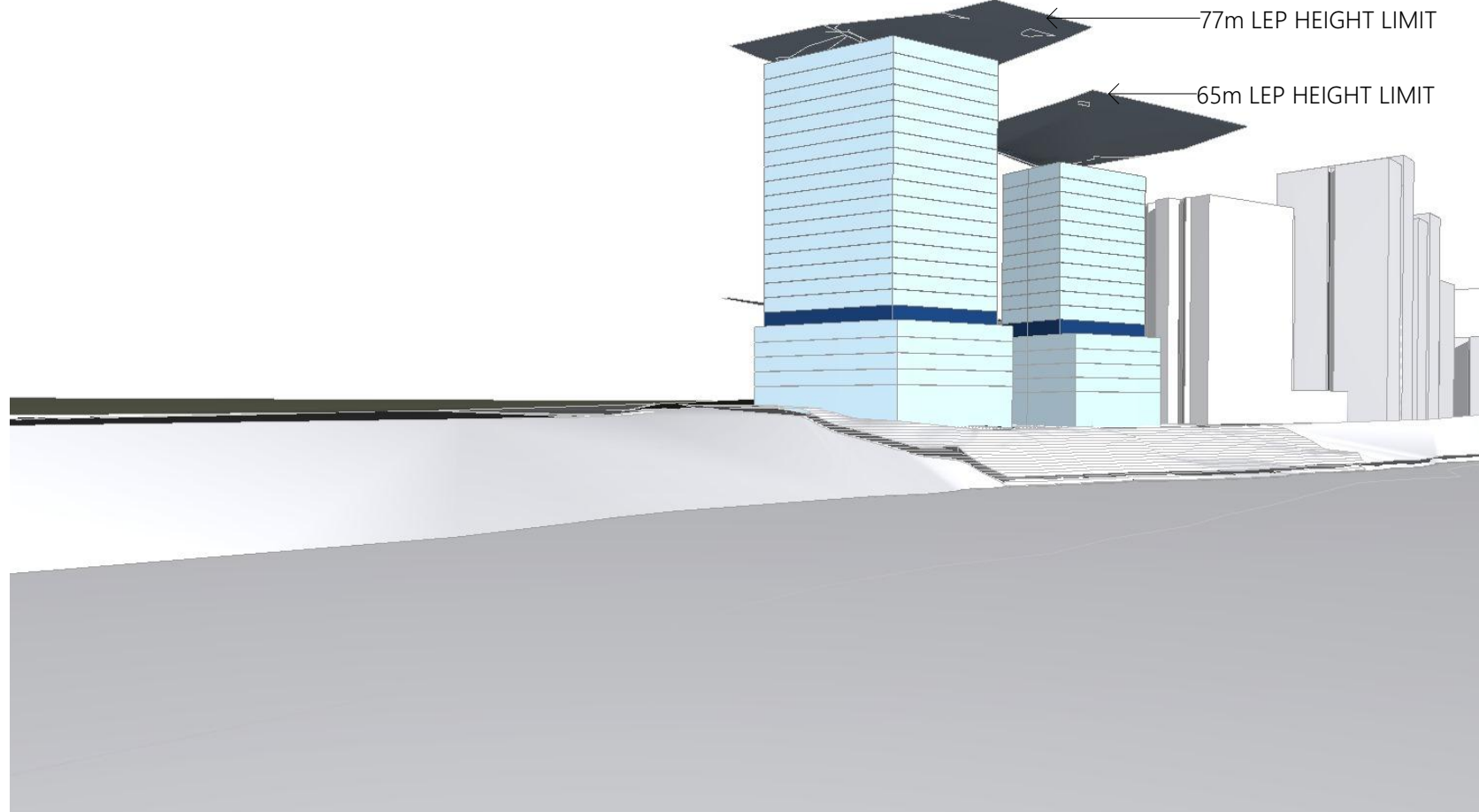
02 PERSPECTIVE 01 - VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



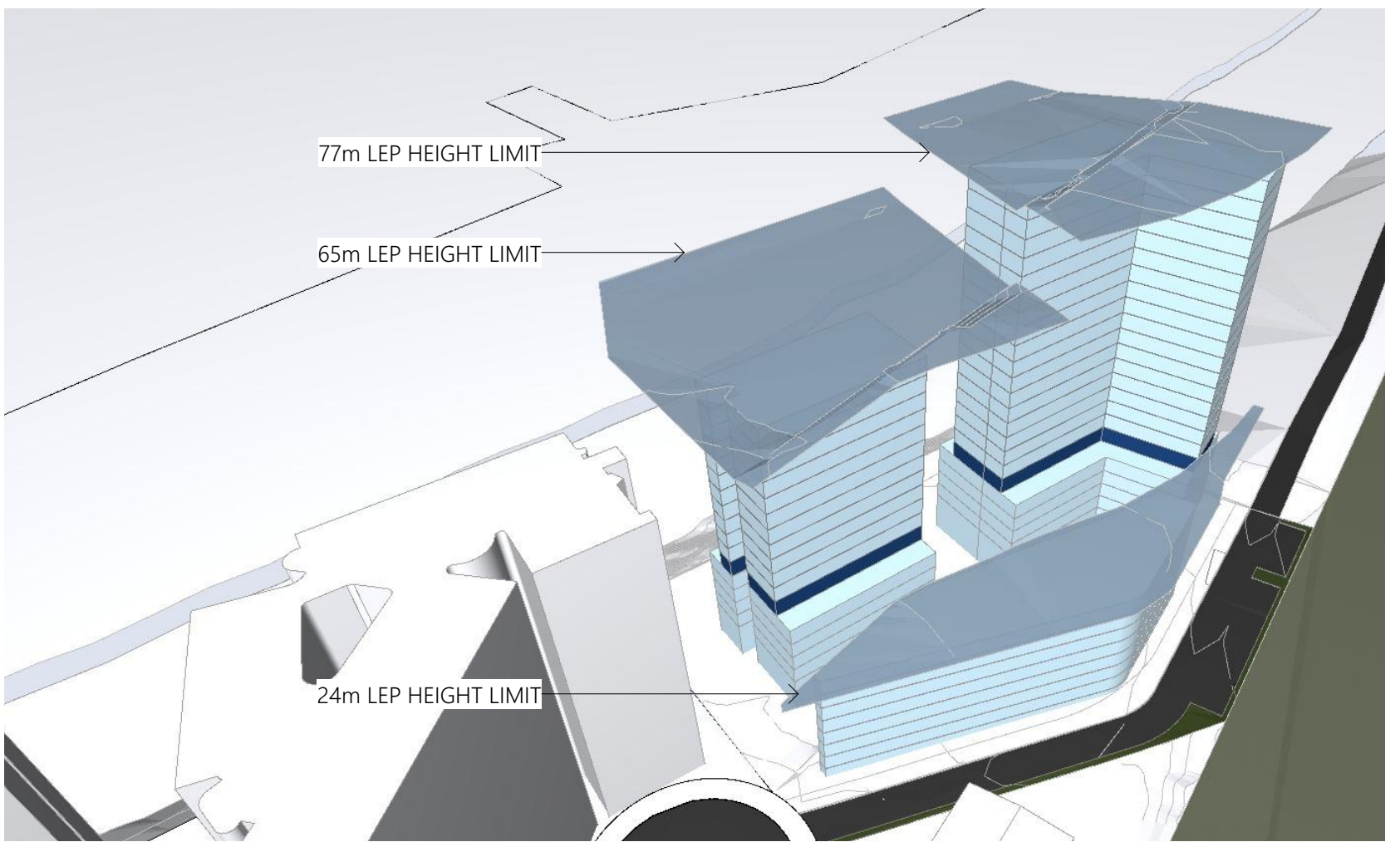
03 PERSPECTIVE 02 - PODIUM VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



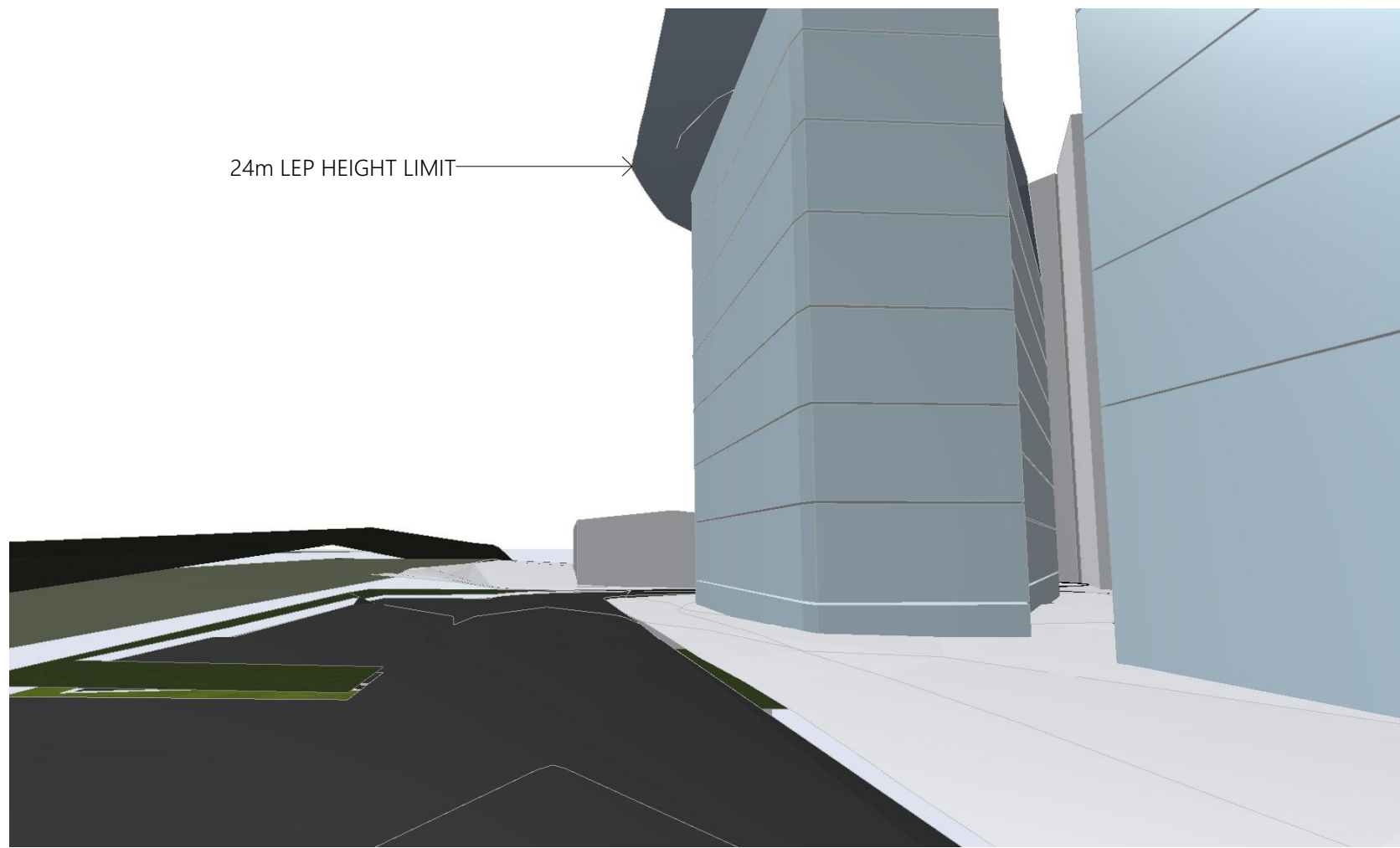
04 PERSPECTIVE 03 - RIVERSIDE VIEW FROM MILL PARK AND POWERHOUSE ROAD



05 PERSPECTIVE 04 - RIVERSIDE VIEW FROM HELLES PARK

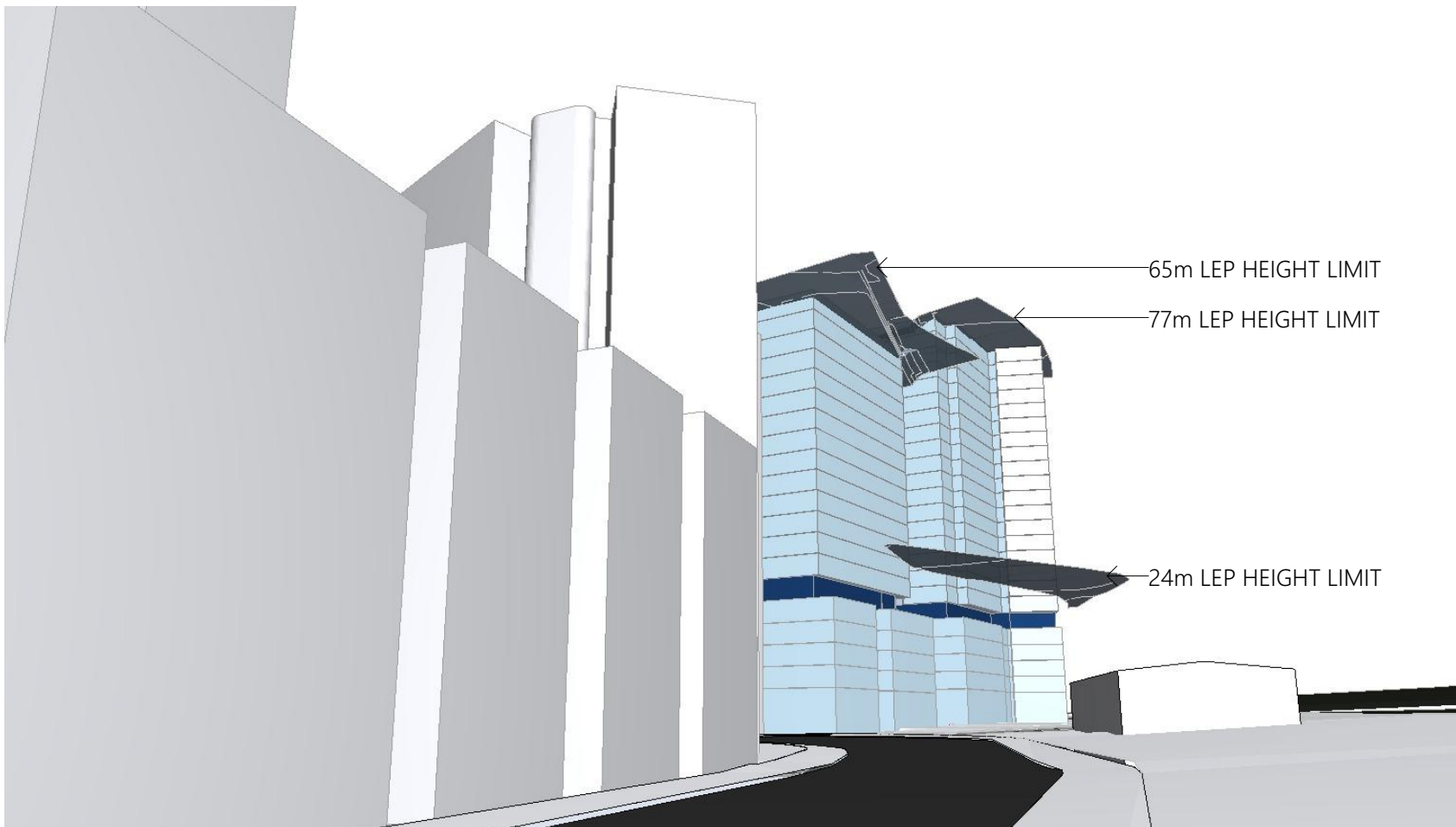


06 PERSPECTIVE 05 - HEIGHT LIMIT

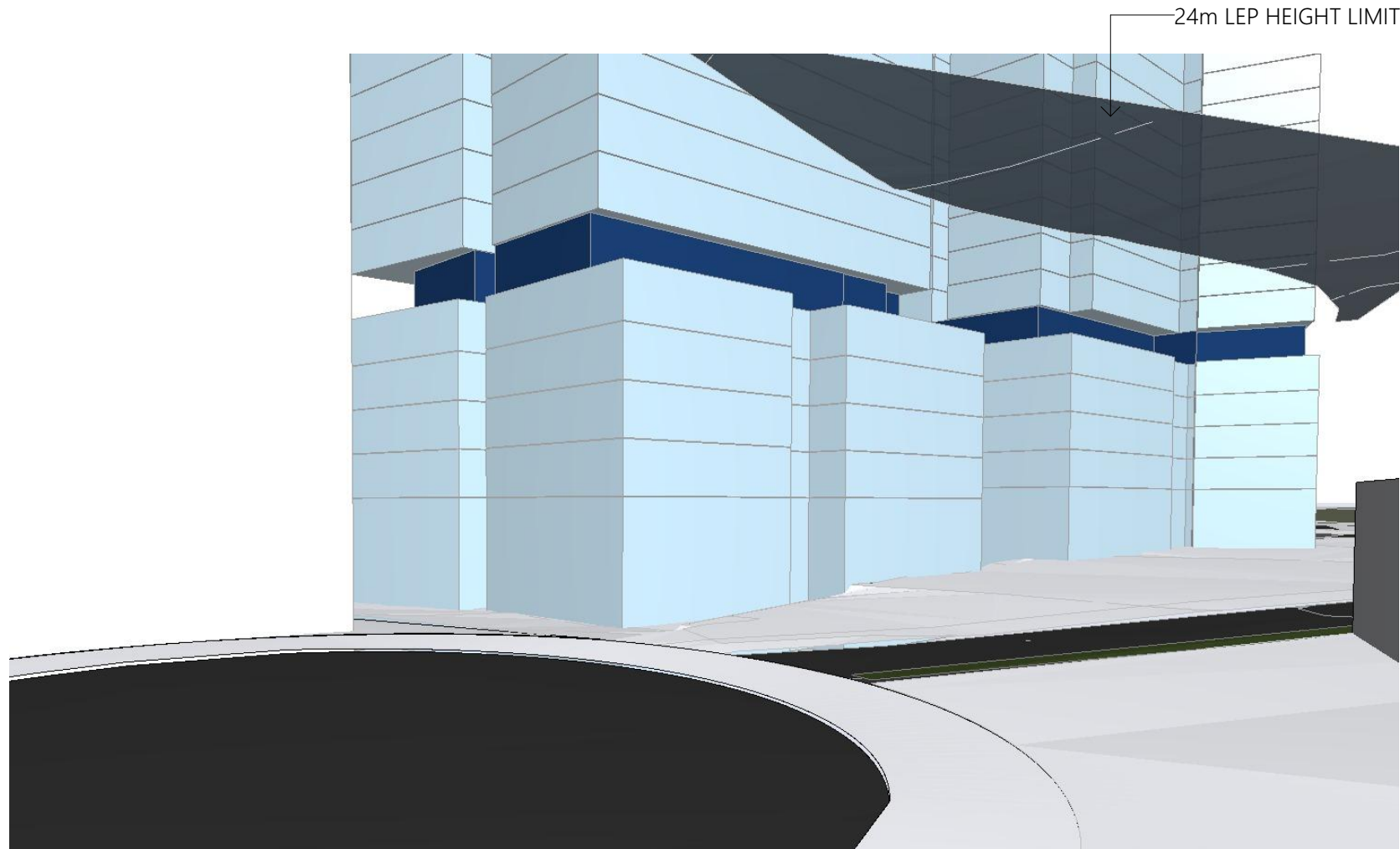


07 PERSPECTIVE 06 - VIEW FROM NEW PUBLIC ROAD TO SHEPHERD ST

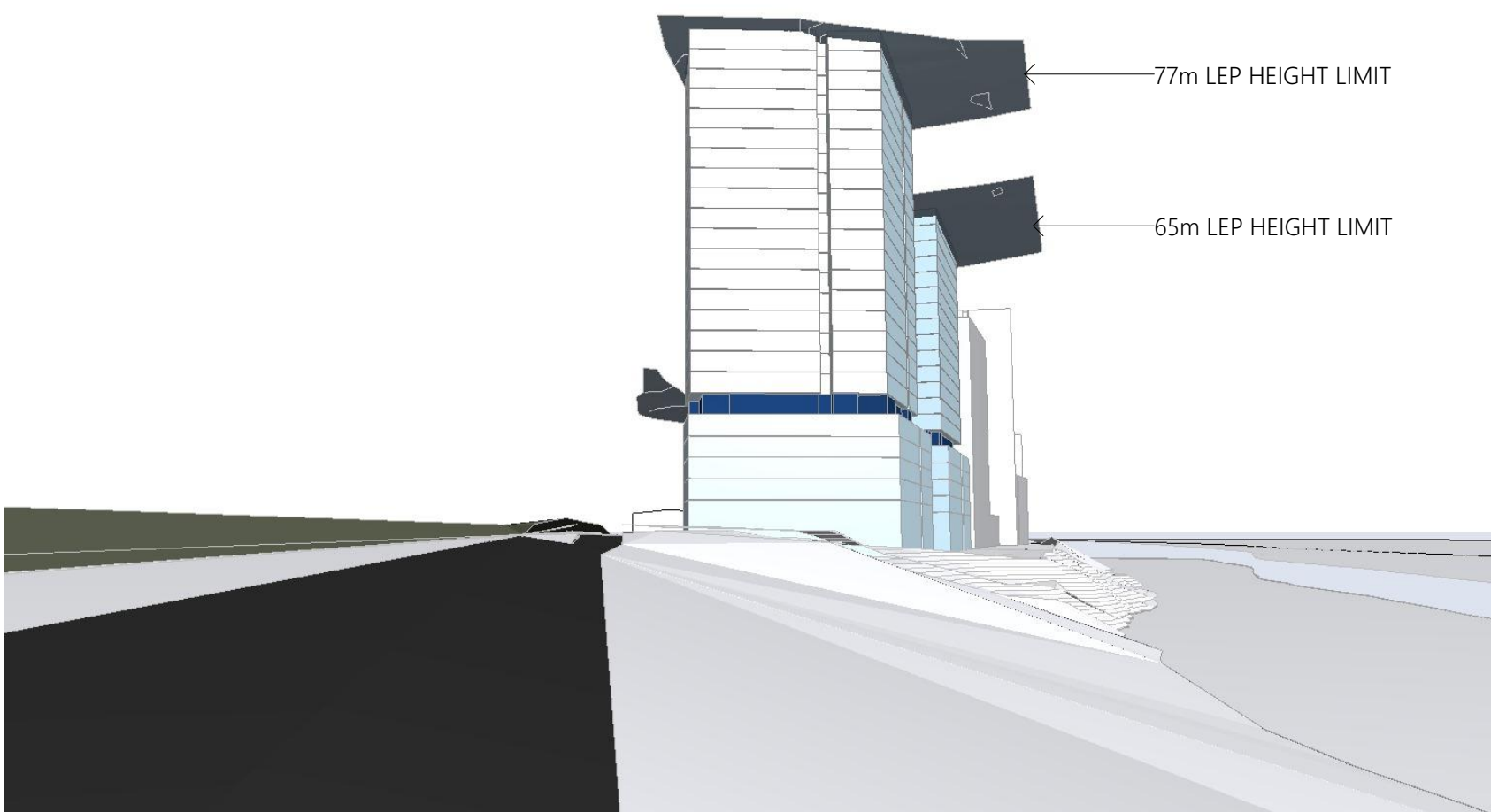
PROPOSED MASSING



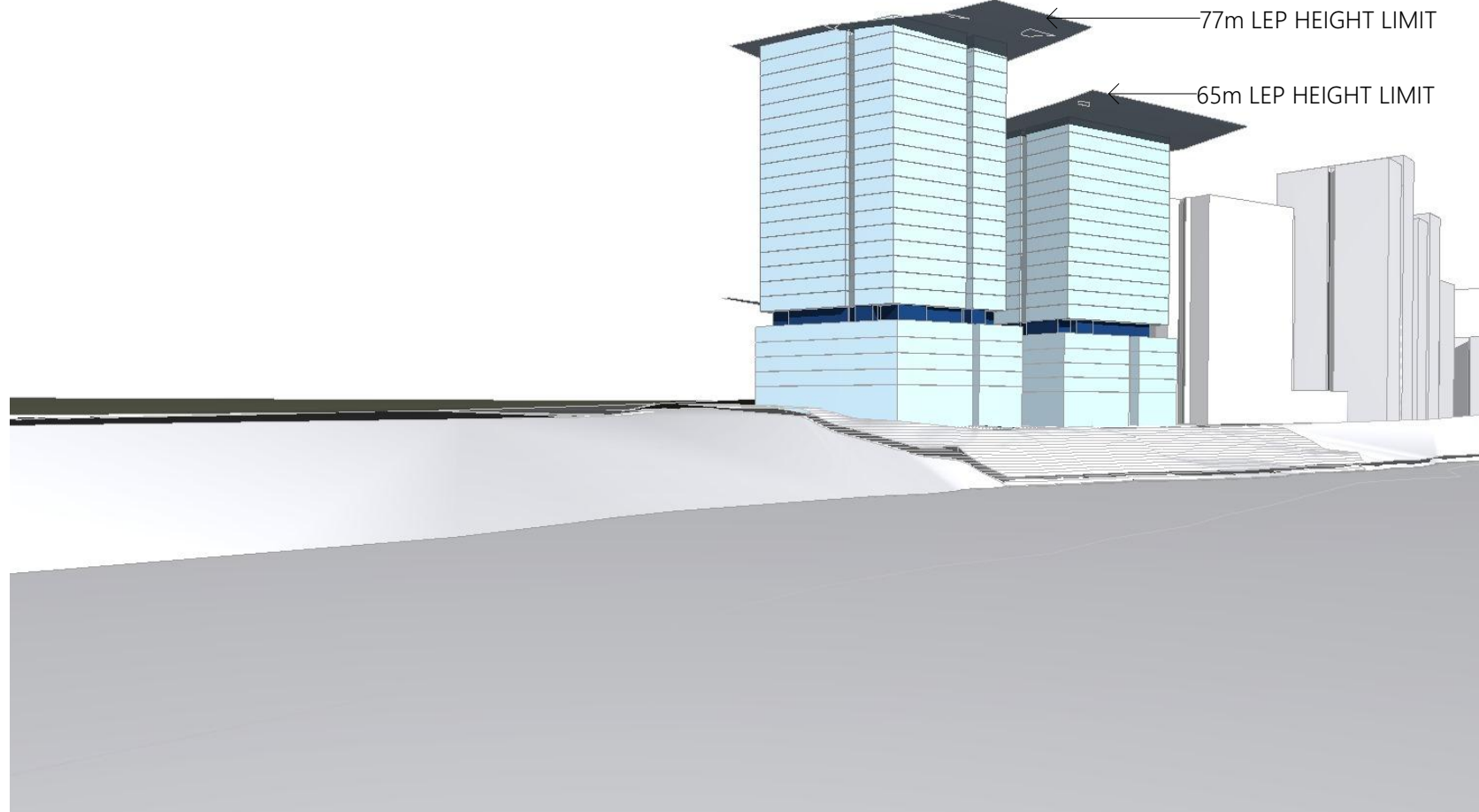
02 PERSPECTIVE 01 - VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



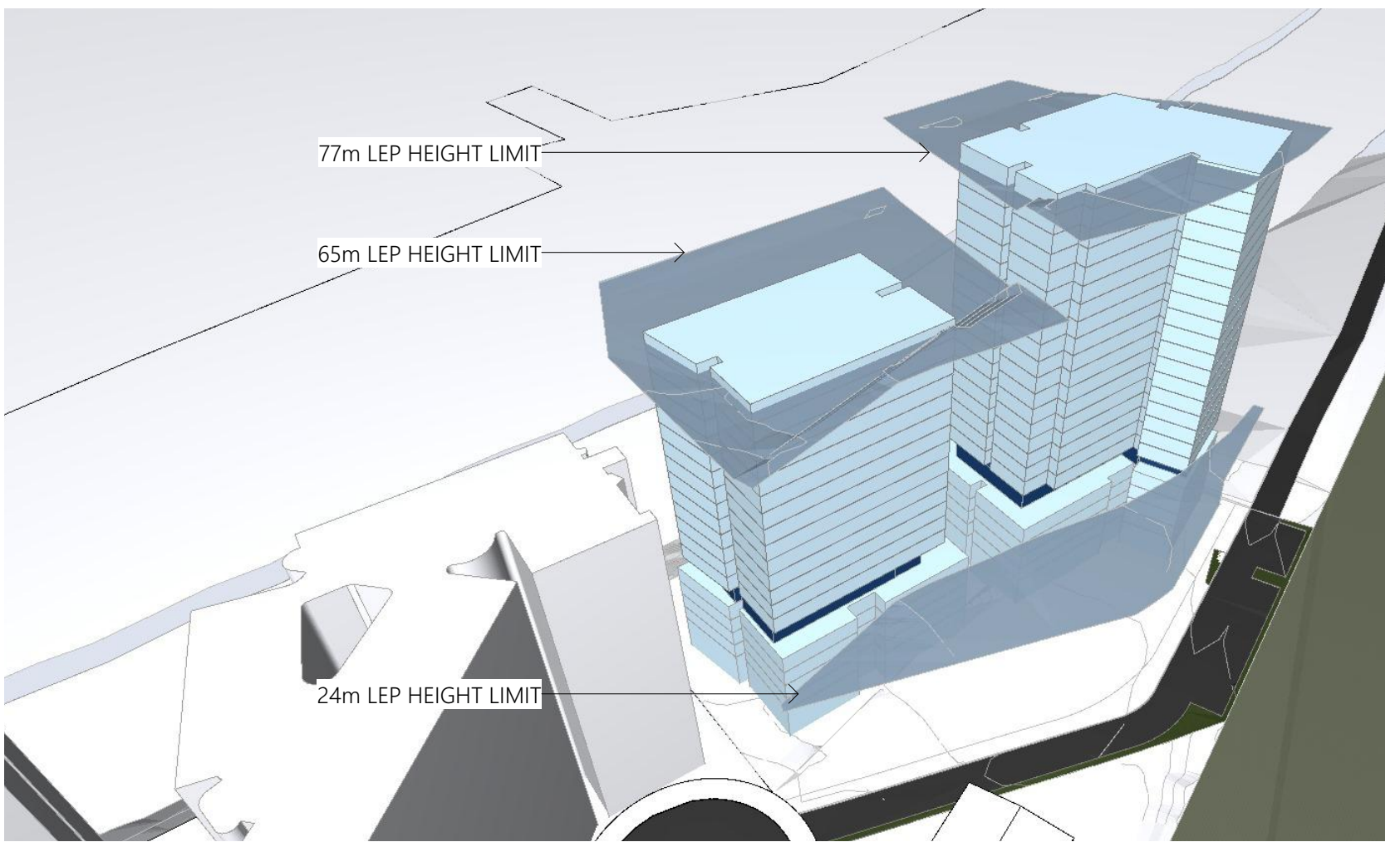
03 PERSPECTIVE 02 - PODIUM VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



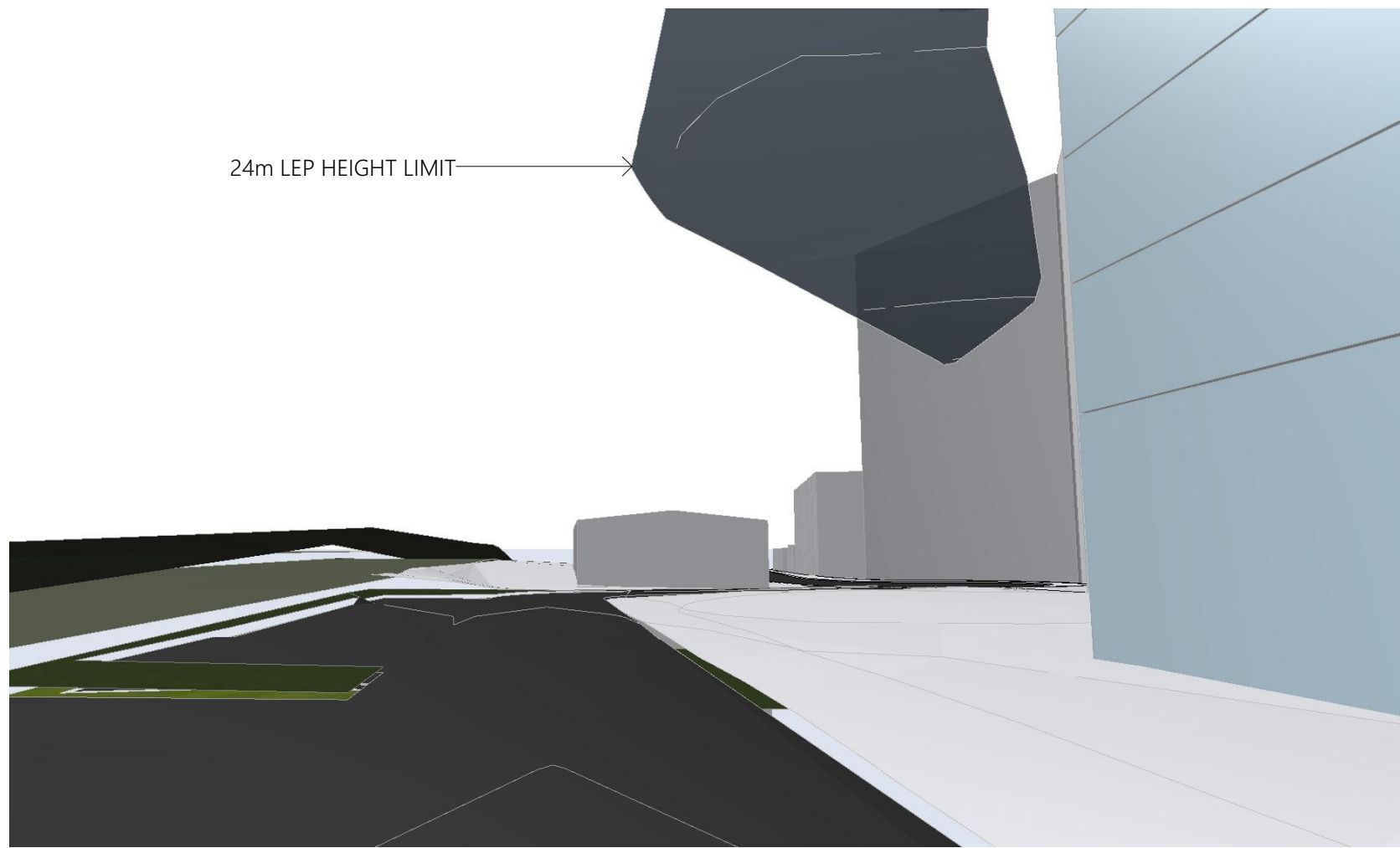
04 PERSPECTIVE 03 - RIVERSIDE VIEW FROM MILL PARK AND POWERHOUSE ROAD



05 PERSPECTIVE 04 - RIVERSIDE VIEW FROM HELLES PARK



06 PERSPECTIVE 05 - HEIGHT LIMIT



07 PERSPECTIVE 06 - VIEW FROM NEW PUBLIC ROAD TO SHEPHERD ST

ANNEXURE B

Shadow diagrams and detailed shadow analysis



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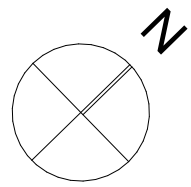
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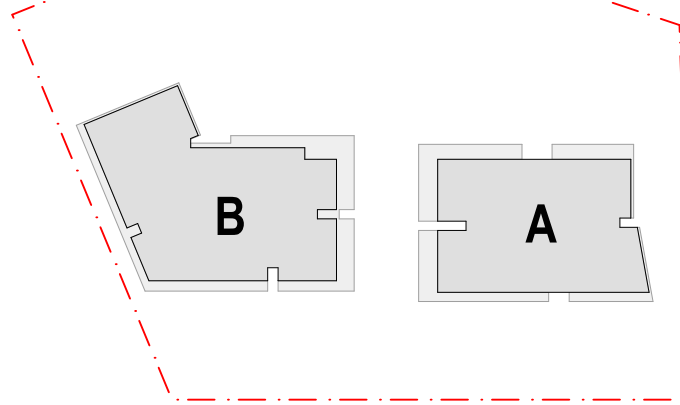
north point:



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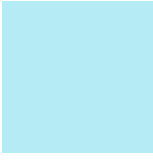
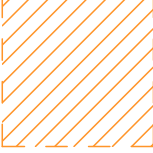

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

-  Existing shadows - neighbouring buildings
-  Proposed shadows
-  Hypothetical compliant development massing shadows (Refer to SK.10)
-  Built footprint of hypothetical compliant development massing shadows dashed (Refer to SK.10)

Note 1:
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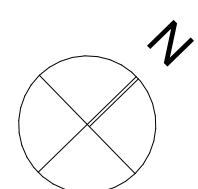
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location	31 - 33 Shepherd Street, LIVERPOOL
client	Lateral Estate
drawing title	Shadow Diagrams
Shadow Diagrams	Shadow Diagrams - 9am Winter Solstice
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project architect	FM
drawn	DB / EP
job no.	21023
drawing no.	SP02.1
revision	A



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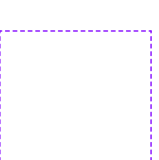
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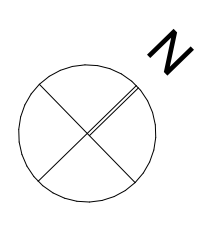




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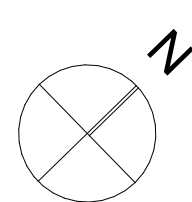


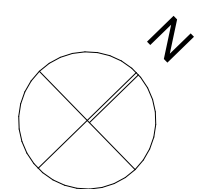


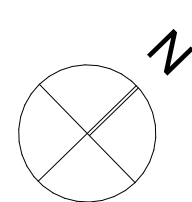
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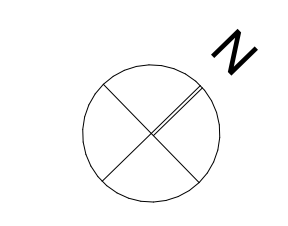


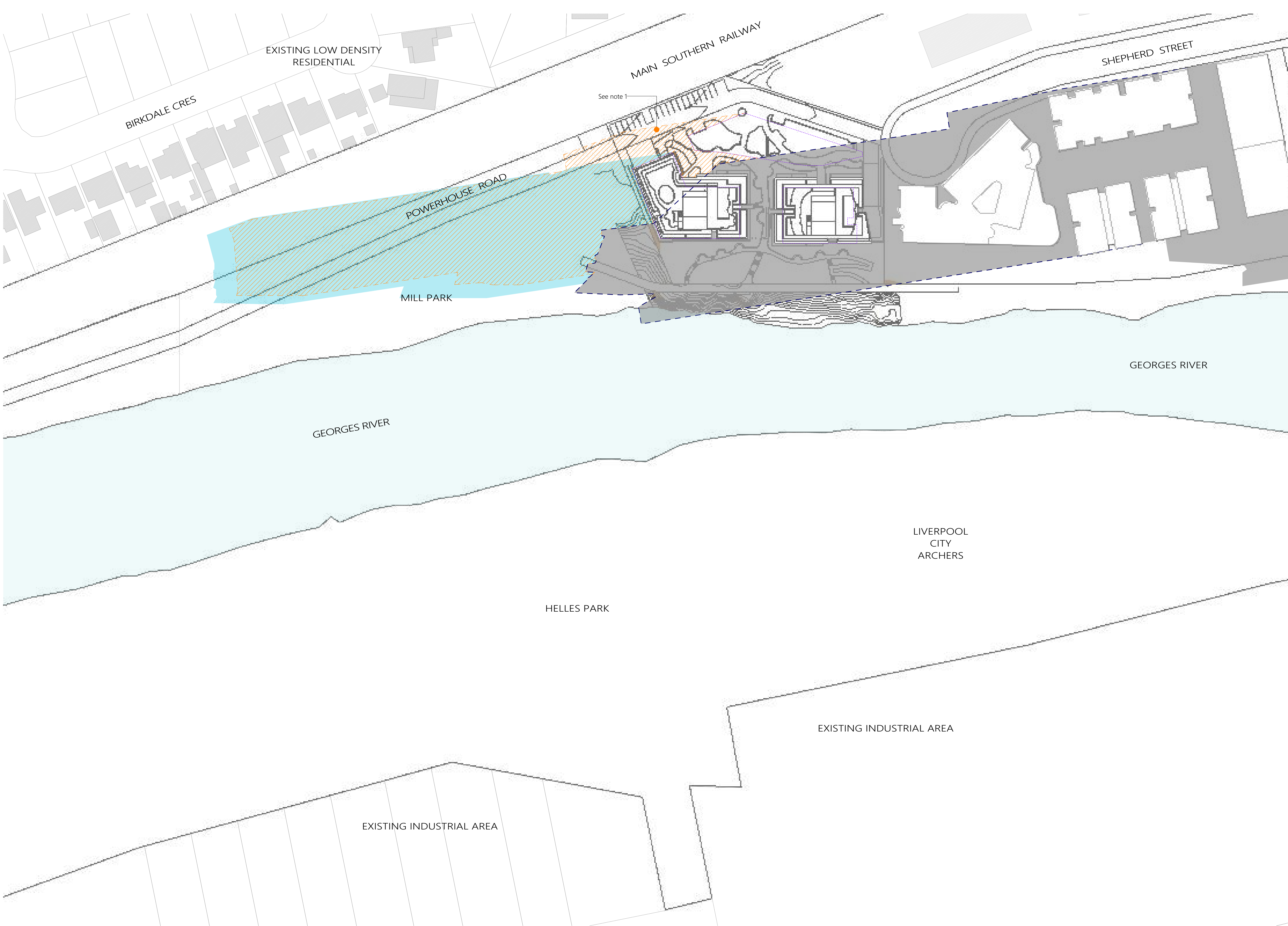


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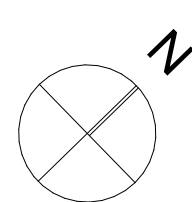


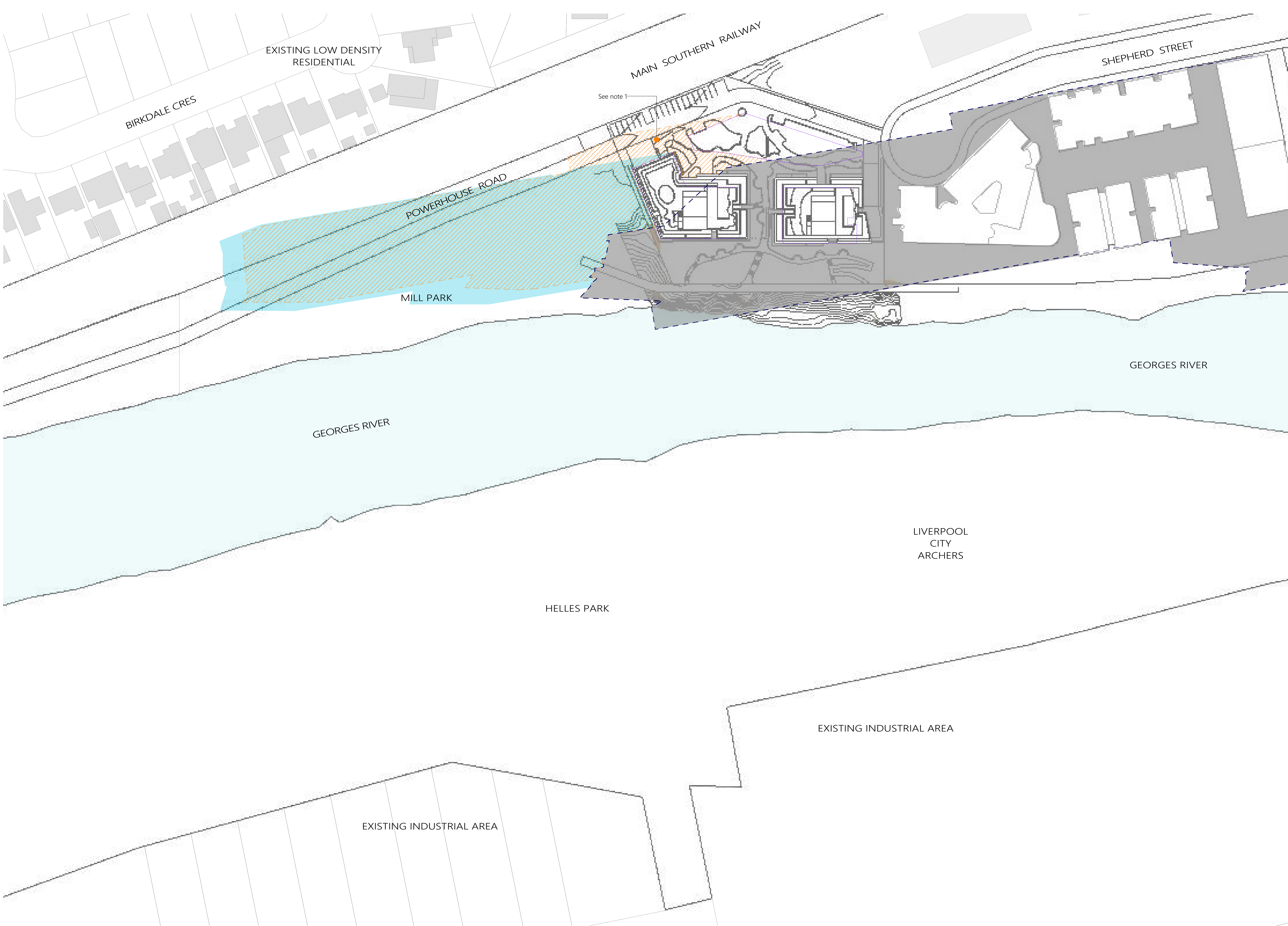


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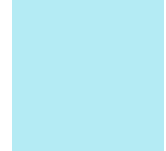


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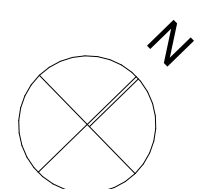




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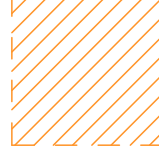

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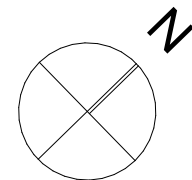




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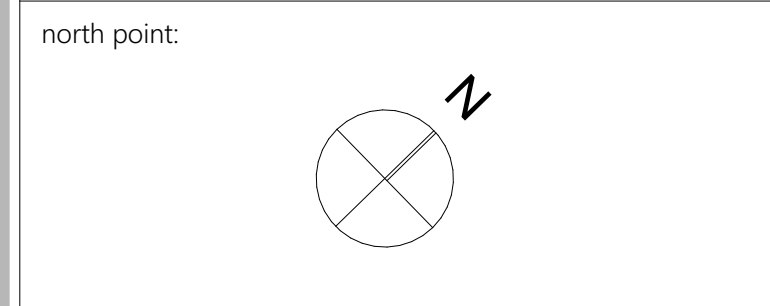
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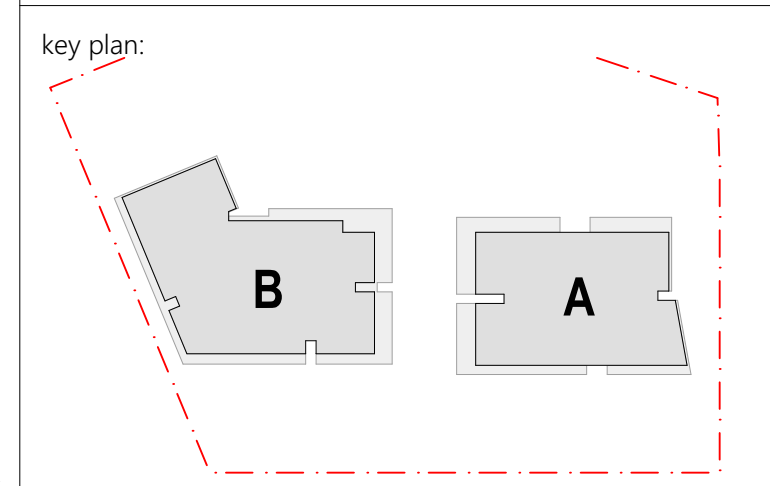
☐ Minor changes to building form and configuration may be required when drawings are subsequently prepared for construction purposes after the grant of development consent.

☐ Ceiling heights in kitchens to be 2400mm above finished floor level. Bulkheads may be required to habitable rooms, as required to comply with the NCC.

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Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23



- notes:
- legend :
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project			
Shepherd Street			
location			
31 - 33 Shepherd Street, LIVERPOOL			
client			
Lateral Estate			
drawing title			
Shadow Diagrams			
Shadow Diagrams - 10am Winter Solstice			
scale	1:750 @ A1	project architect	FM
job no.	21023	drawing no.	SP02.2
		revision	DB / EP
			A



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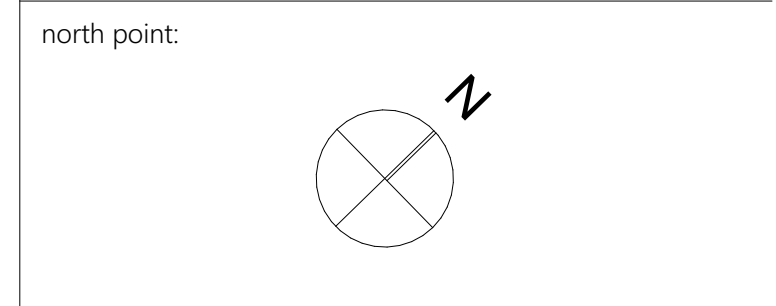
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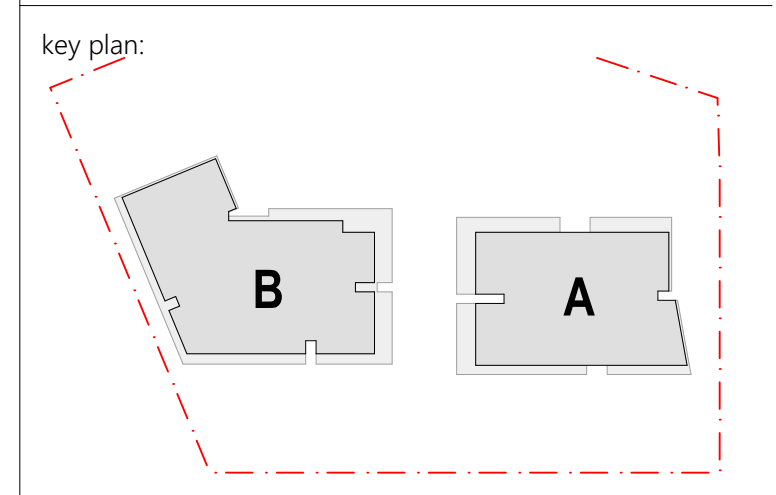
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amendments			
Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23



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project
Shepherd Street
location
31 - 33 Shepherd Street, LIVERPOOL
client
Lateral Estate
drawing title
Shadow Diagrams
Shadow Diagrams - 11am Winter Solstice

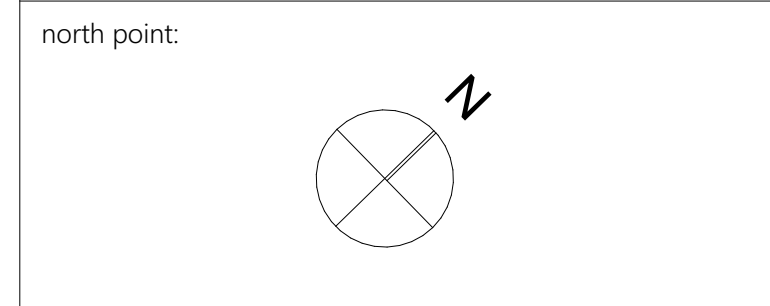
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job no.	21023	drawing no.	SP02.3	revision	A



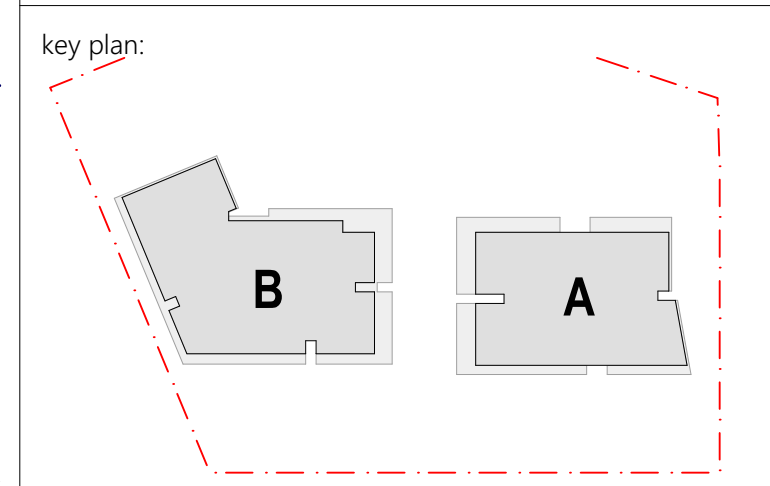
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project	Shepherd Street
location	31 - 33 Shepherd Street, LIVERPOOL
client	Lateral Estate
drawing title	Shadow Diagrams
Shadow Diagrams - 12pm Winter Solstice	
scale	1:750 @ A1
project architect	FM
drawn	DB / EP
job no.	21023
drawing no.	SP02.4
revision	A



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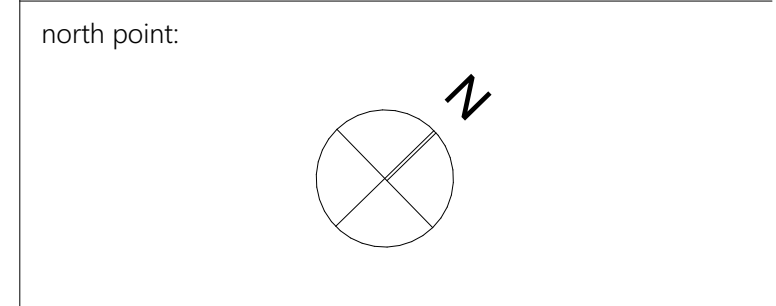
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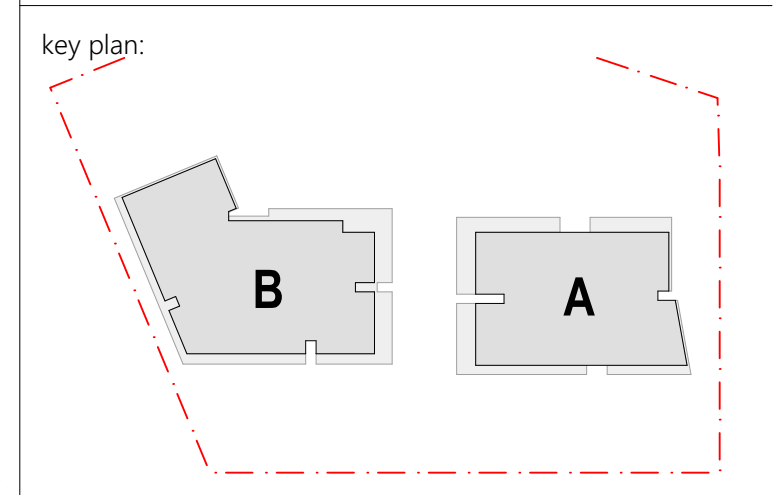
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A	Development Application Submission		



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location	31 - 33 Shepherd Street, LIVERPOOL
client	Lateral Estate
drawing title	Shadow Diagrams
Shadow Diagrams	Shadow Diagrams - 1pm Winter Solstice
scale	1:750 @ A1
project architect	FM
drawn	DB / EP
job no.	21023
drawing no.	SP02.5
revision	A



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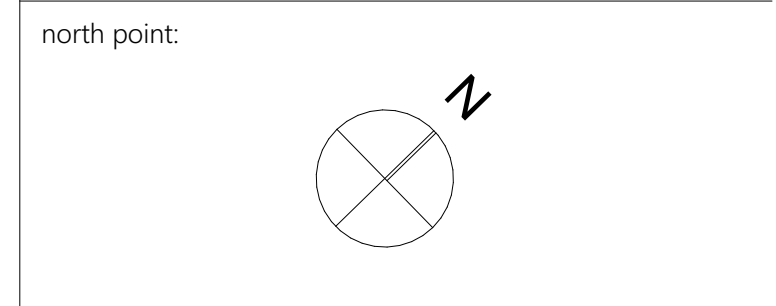
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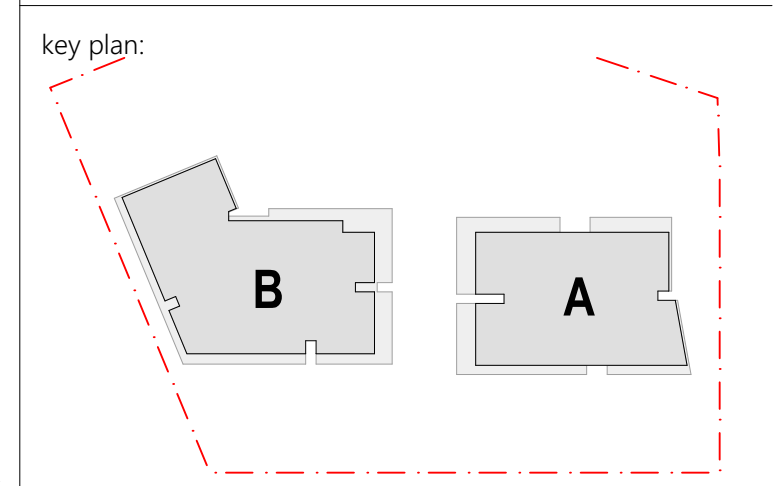
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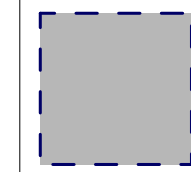
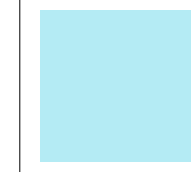
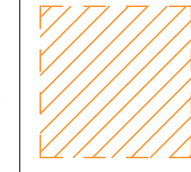
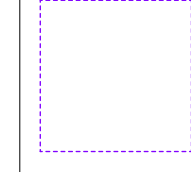
☐ Ceiling heights in kitchens to be 2400mm above finished floor level. Bulkheads may be required to habitable rooms, as required to comply with the NCC.

Nominated Architects: Frank Mosca - 5000 / Steve Pserras - 5001
e reception@moscapseerras.com.au
w www.moscapseerras.com.au



amendments		By	Date
Revision	Description	DB	5.6.23
A	Development Application Submission		




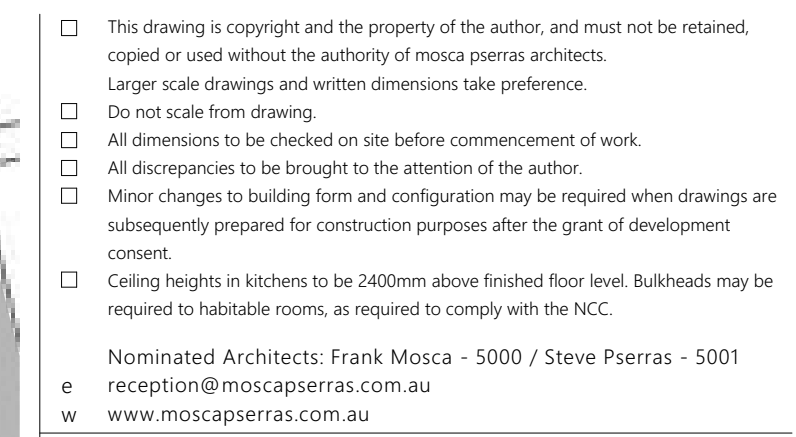
- notes:
- legend :
-  Existing shadows - neighbouring buildings
 -  Proposed shadows
 -  Hypothetical compliant development massing shadows (Refer to SK.10)
 -  Built footprint of hypothetical compliant development massing shadows dashed (Refer to SK.10)

Note 1:
Additional shadows shown are cast by the hypothetical compliant development massing shadows only. They are not cast by the proposed development.



project
Shepherd Street
location
31 - 33 Shepherd Street, LIVERPOOL
client
Lateral Estate
drawing title
Shadow Diagrams
Shadow Diagrams - 2pm Winter Solstice

scale	1:750 @ A1	project architect	FM	drawn	DB / EP
job no.	21023	drawing no.	SP02.6	revision	A

[illegible]

Existing shadows -
neighbouring buildings

Proposed shadows

Hypothetical compliant development
massing shadows
(Refer to SK.10)

Built footprint of hypothetical compliant development
massing shadows dashed
(Refer to SK.10)

Lateral™

mpa.

mosca pserras architects

project

Shepherd Street

location

31 - 33 Shepherd Street, LIVERPOOL

client

Lateral Estate

drawing title

Shadow Diagrams

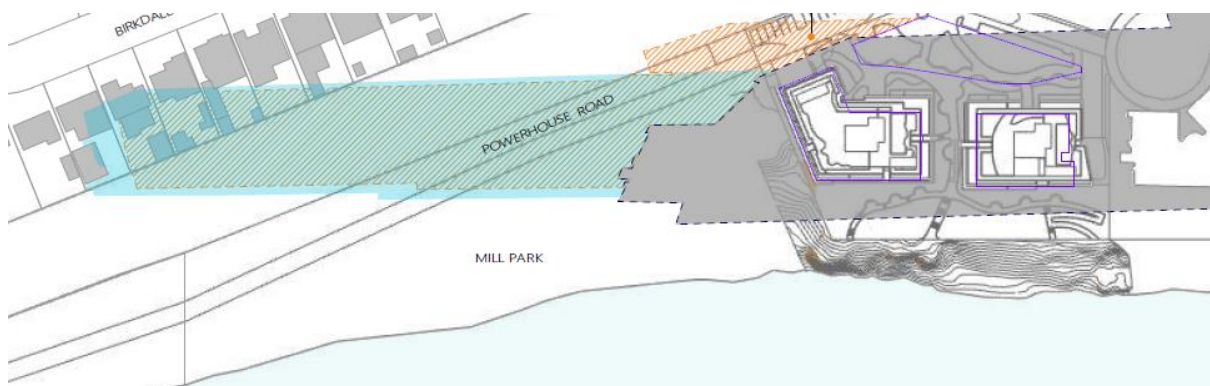
Shadow Diagrams - 3pm Winter Solstice

scale	1/750 @ A1	project architect	FM	drawn	DB / EP
job no.	21023	drawing no.	SP02.7	revision	A

9.00 AM

The below shadow diagram illustrates that 6 properties in Birkdale Crescent (39,41,43,45,47,49) are overshadowed by the proposed development at this time, five of which (39,41,43,45,47) have a similar level of overshadowing when compared to the shadow from a hypothetical compliant development.

The shadows to 39,41,43 are limited to the rear gardens whilst the shadows to 45,47,49 are limited to the rear garden, roofs, northern and north eastern facades



9.05 AM

The below shadow diagram illustrates that 6 properties in Birkdale Crescent (39,41,43,45,47,49) are overshadowed by the proposed development at this time, five of which (39,41,43,45,47,49) have a similar level of overshadowing when compared to the shadow from a hypothetical compliant development.

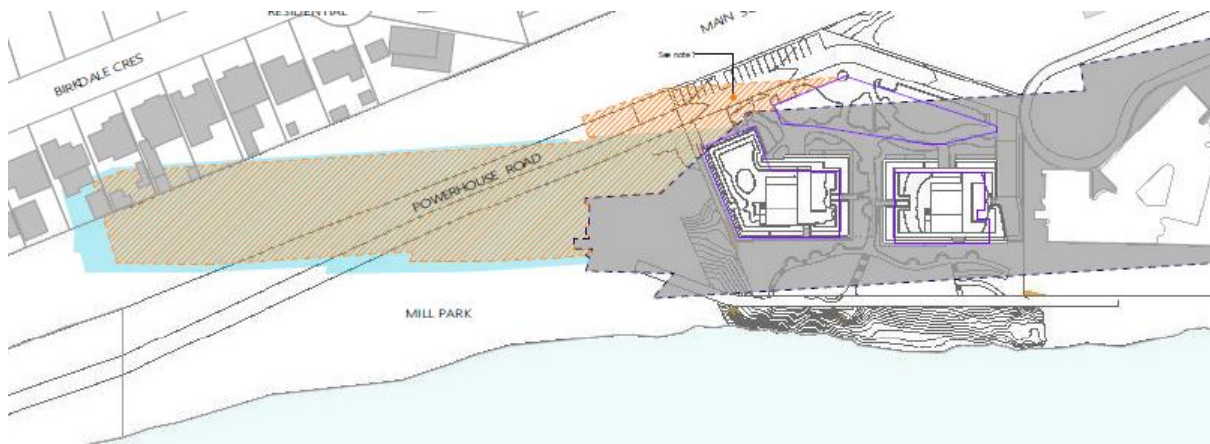
The shadow to number 39 is imperceptible affecting the south eastern corner which is occupied by a shed. The shadows to 41,43, 45 are predominantly limited to rear gardens whilst the shadows to 47, 49 are limited to rear garden, roofs, northern and north eastern facades



9.10 AM

The below shadow diagram illustrates that by 9.10 am 4 properties in Birkdale Crescent (41,43,45,47) are overshadowed by the proposed development at this time, three of which (41,43,45) have a similar level of overshadowing when compared to the shadow from a hypothetical compliant development.

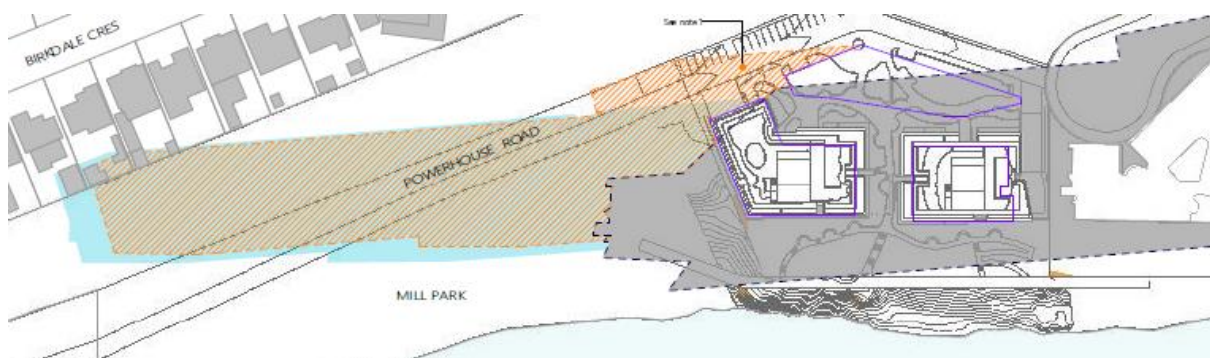
The shadows to 41, 43 are limited to less than 50% of the rear yards. The shadow to 45 is limited to the rear yard. The shadow to 47 is limited to the rear yard, a small portion of roof and north east façade.



9.15 AM

The below shadow diagram illustrates that by 9.15 am 4 properties in Birkdale Crescent (41,43,45,47) are overshadowed by the proposed development at this time, three of which (41,43,45) have a similar level of overshadowing when compared to the shadow from a hypothetical compliant development.

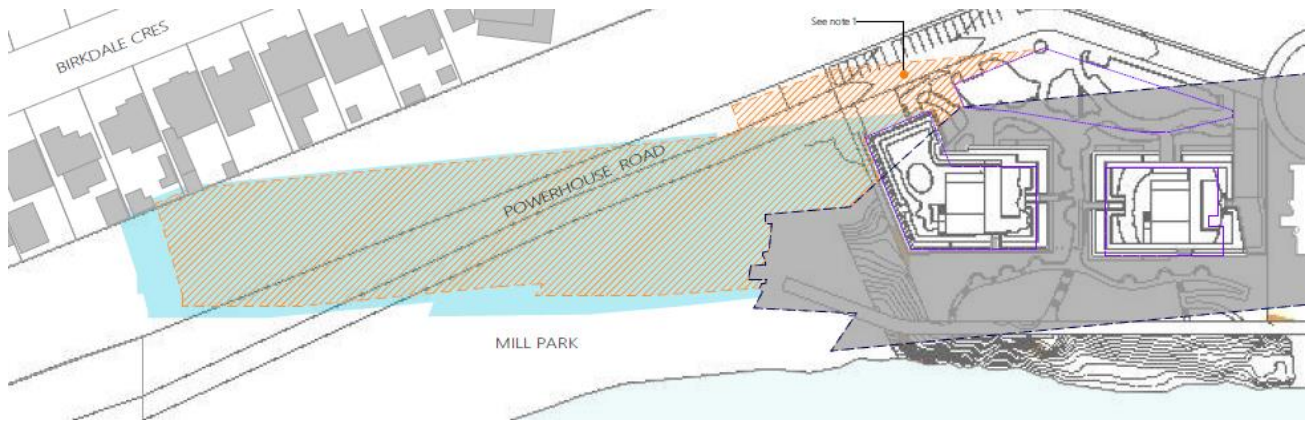
Shadows to 41 are barely perceivable. The shadows to 43,45,47 are limited to less than 50% of rear yards and predominantly over sheds.



9.20 AM

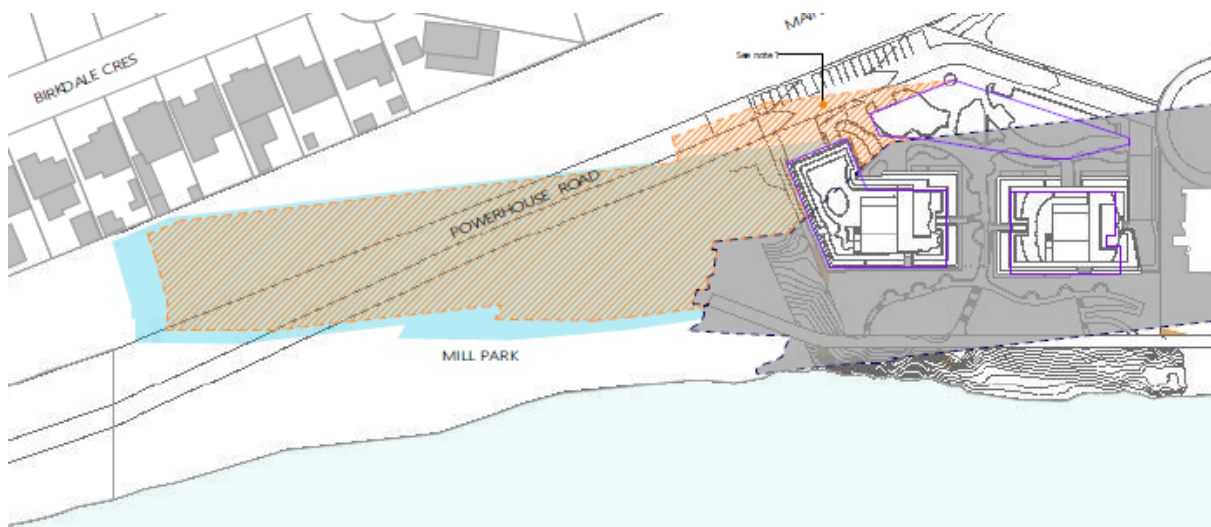
The below shadow illustrates that that by 9.20 am 3 properties in Birkdale Crescent (43,45,47) are overshadowed by the proposed development at this time, two of which (43,45) have a similar level of overshadowing when compared to the shadow from a hypothetical compliant development.

The shadows over 43 and 47 are predominantly over sheds whilst the shadow over 45 is over a shed and a very small portion of the rear yard.



9.25 AM

By 9.25 am the properties in Birkdale Crescent are no longer overshadowed.



9.30 AM TO 3.00 PM

Between these hours a fast moving shadow is cast over parts of the rail corridor, the new proposed road, parts of Mill Park and parts of the Georges River. From 1.00 pm to 3.00 pm a shadow is also cast over Hells Park. Refer hourly shadows within Annexure B.

Again the shadows resulting from the proposed development would be barely discernible from the shadows which would result from a hypothetical compliant development

In summary, between 3 and 6 properties in Birkdale Crescent are overshadowed by the proposed development for 20 minutes from 9.00 am. The shadows are predominantly on rear yards and sheds within those yards.

A fast moving shadowing is then cast over parts of the rail corridor, proposed road, Mill Park and Hells Park throughout the day.

The additional shadows resulting from the proposed development are barely discernible in comparison to a hypothetically compliant development.

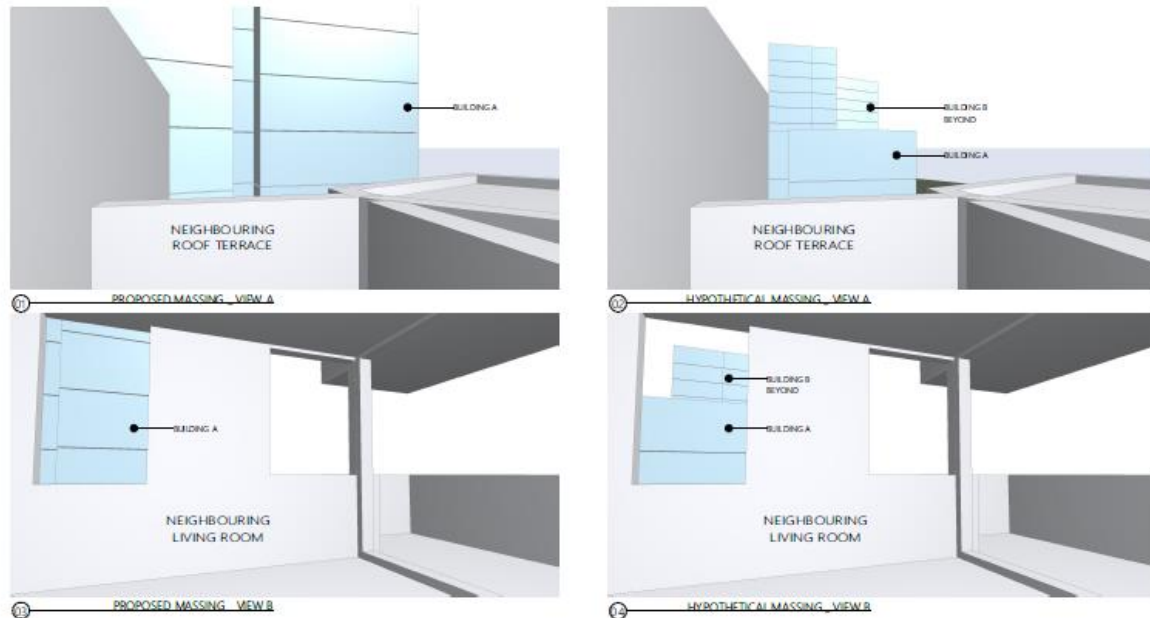
Accordingly, overshadowing from the proposed development is considered reasonable and acceptable.

ANNEXURE C

[View analysis 32-34 Shepherd Street](#)

In so far as the views from the neighbouring 32-34 Shepherd Street are concerned, the below view analysis of the hypothetical compliant and proposed developments illustrates that the view to the south are obstructed under both schemes. Views to north, west and east remain unaffected.

VIEWS FROM 32-34 SHEPHERD STREET



Accordingly, the view impacts on 32-34 Shepherd Street are considered reasonable and acceptable.

ANNEXURE D

Urban design principles and visual impact analysis report prepared by
Architectus

31 & 33 SHEPHERD ST

Urban Design
Principles and Visual
Impact Analysis

LIVERPOOL

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Project and report	31 & 33 Shepherd St, Liverpool	
Date	August 3, 2023 12:58 pm	
Client	Lateral	
Version and date issued	Issued to client - 3/4/23	Approved by: Tim Moore
	Issued to client - 2/8/23	Approved by: Tim Moore
Report contact	Oscar Stanish Senior Associate, Urban Design	
This report is considered a draft unless signed by a Director or Principal	Approved by:	
		
	Tim Moore, Principal	

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We pay our respects to Elders, past and present and emerging.

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CHAPTER

1

INTRODUCTION

Introduction and Purpose of this report

Architectus has been appointed by Lateral Estate to provide urban design advice for the site at 31 & 33 Shepherd Street Liverpool (shown adjacent) within the Shepherd Street Precinct of Liverpool.

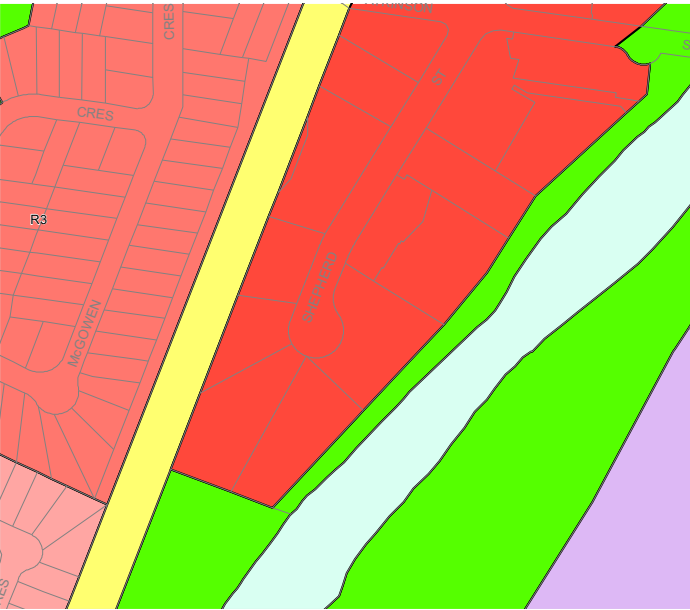
This work has been designed to respond to some of the comments from Liverpool City Council's Design Excellence Panel (DEP) which considered a scheme for the site developed by Mosca Pserras Architects (MPA) on 17 May 2022.

The scope of this work is divided into three sections presented in the following chapters of this review

- Principles for development massing
- Visual Impact testing of the preferred scheme
- Consideration of the final proposal in urban design terms against various elements within the LEP, requested by the project team

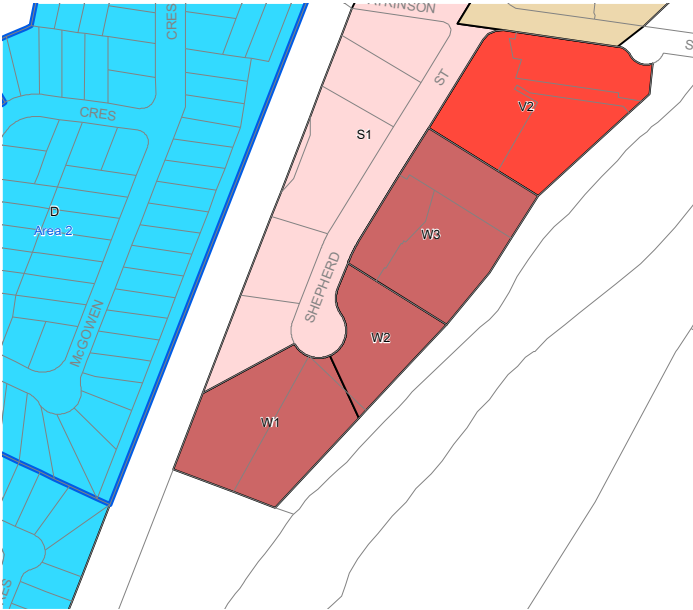


Planning Controls



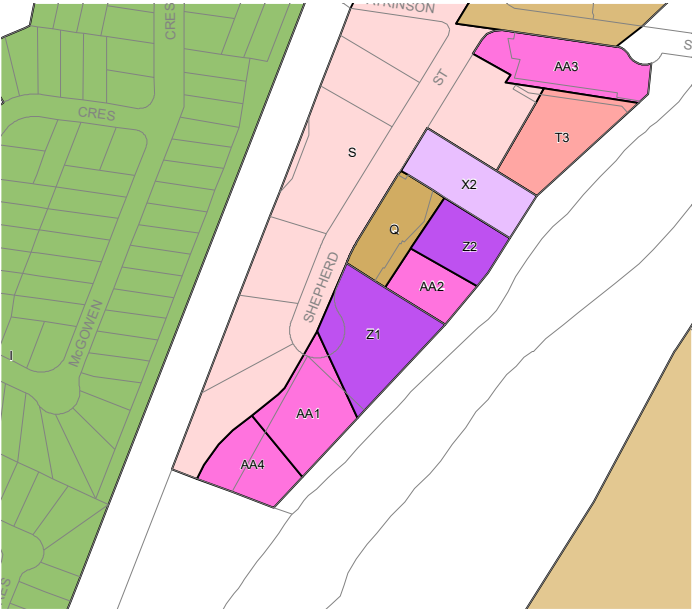
Land Use Zoning

- R2 Low Density Residential
- R3 Medium Density Residential
- R4 High Density Residential
- RE1 Public Recreation
- IN1 General Industrial



Floor Space Ratio

- D 0.5
- W1 3.5
- W2 3.6
- W3 3.7
- S1 1.5
- V2 3.3
- refer to clause 4.4



Building Height

- Q 20
- S 24
- T3 29
- X2 46
- Z1 56
- Z2 58
- AA1 65
- AA2 68
- AA3 76
- AA4 77



Heritage

- Conservation Area - General
- Item - General
- Item - Landscape

SJB Urban Design Concept 2016

The Urban Design Concept developed by SJB (2016) for 19-33 Shepherd Street is presented adjacent. This has been used as the basis for development of much of the precinct.

The principles in this concept present an appropriate basis for the development of 31 and 33 Shepherd Street and have been further developed on a site-specific basis through this document.

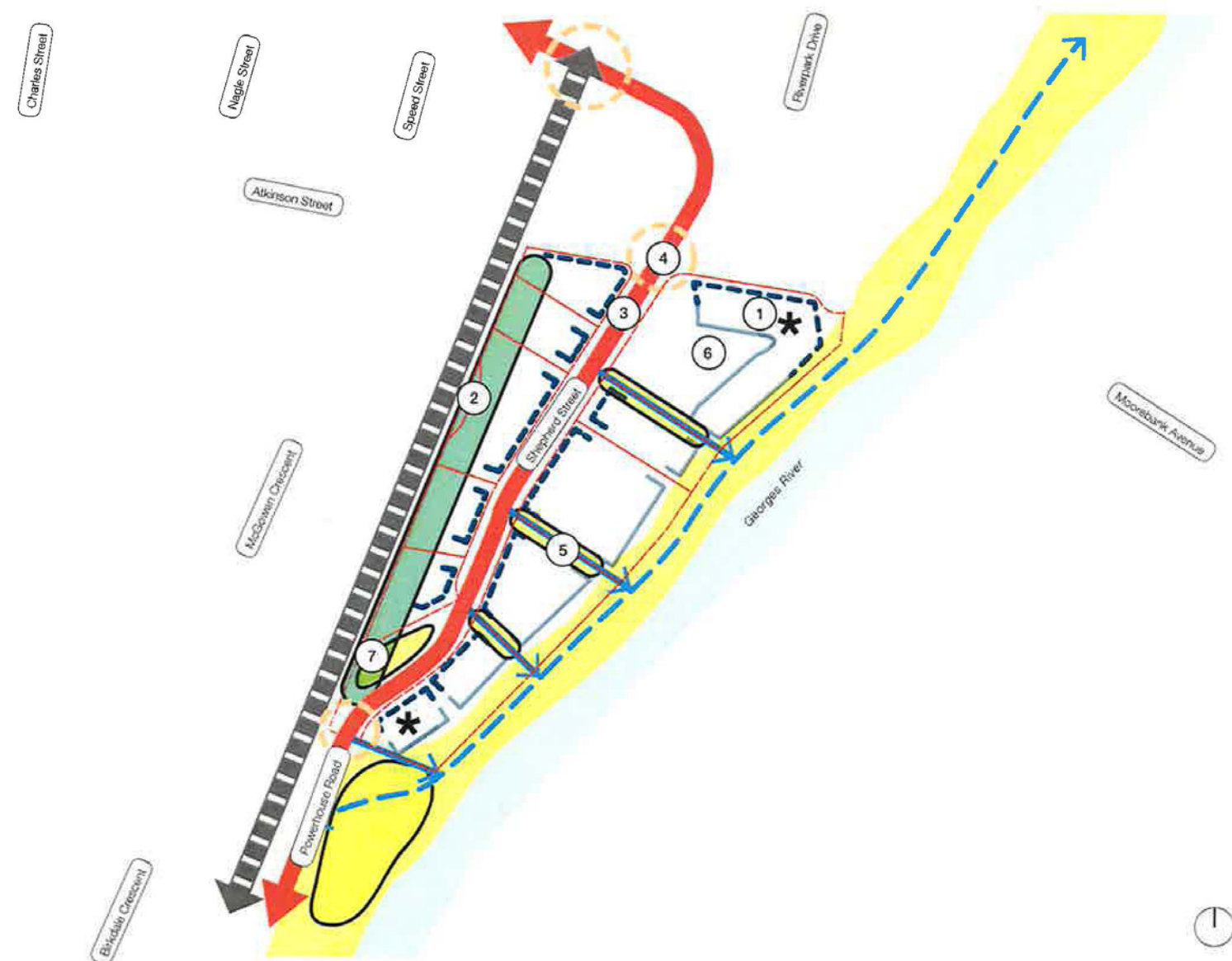
3.3 Urban Design Concept

From the principles and urban design responses above, the key ideas of the scheme are described in the adjacent concept sketch as follows:-

1. **Heights:** Height is focused on the eastern side of Shepherd Street with taller elements located towards the northern and southern edge of the precinct.
2. **Orientation + Separation:** Buildings orientated as best as possible on a north-south axis optimising solar access. A 12m Railway Corridor setback, 30m Foreshore Building Setback, as well as side and rear setbacks in line with the ADG define building locations.
3. **Active Frontage:** Each development should address its primary frontage to Shepherd Street, with residential frontages also fronting the Georges River Foreshore and any through-site links.
4. **Movement + Access:** Shepherd Street serves as the primary vehicular and pedestrian corridor, and should be enhanced as part of all proposals. Vehicular entrances off Shepherd Street should be rationalised where possible.
5. **Site Permeability:** Pedestrian permeability down to the boardwalk along the Georges River is important to create.
6. **Built Form Character:** Enhance the revitalisation of the precinct and introduce a fine grain character which responds to the scale of the Paper Mill. Variation in built forms and architectural styles is also encouraged.
7. **Planting Strategy:** Deep soil planting should be implemented in the 12m Railway Setback zone, which also creates a visual and acoustic barrier to the rail line. Streetscapes along Shepherd Street and along the rear boundaries fronting the Georges River can be enhanced through landscaping.

Key

--- Site Boundary	Existing Trees
Yellow Foreshore Open Space	Red Arrow Vehicular Corridor
Georges River	Blue Arrow Pedestrian Permeability
Blue Dashed Line Foreshore Pedestrian Connection	Circle Entry Access Points
Yellow Open Space	Light Blue Urban Marker
Green Deep Soil Planting	Blue Dashed Line Active Frontage
Black and White Railway Corridor	Blue Solid Line Frontage



CHAPTER

2

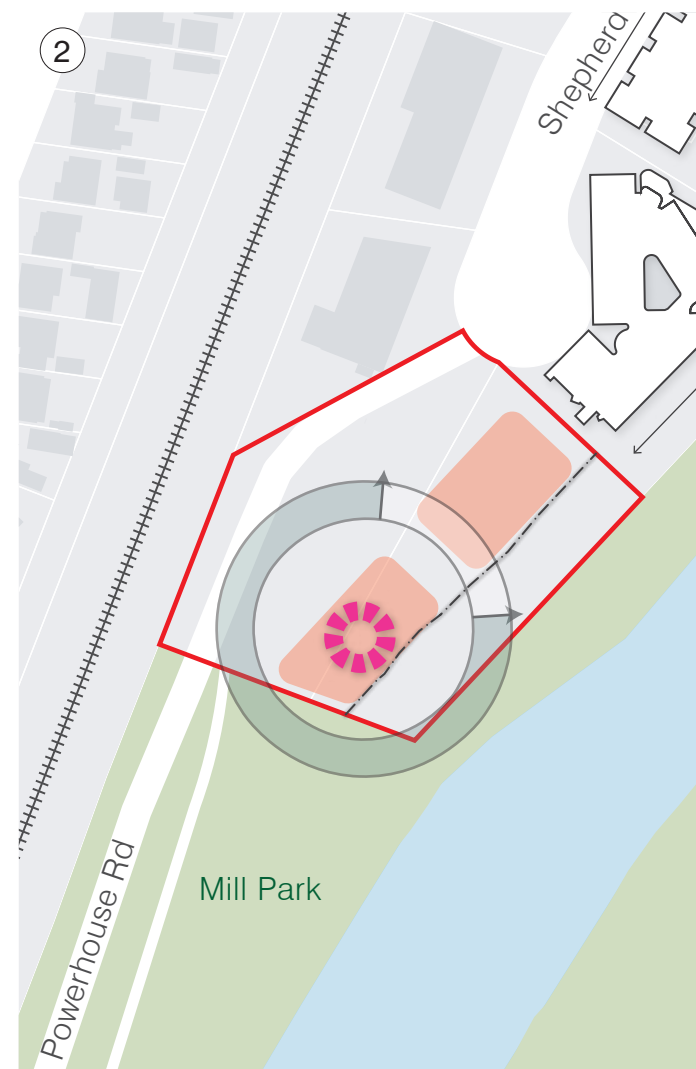
URBANDESIGN PRINCIPLES

Design principles for the site

The following four themes have been identified and detailed over the following pages with a series of key design principles related to each.



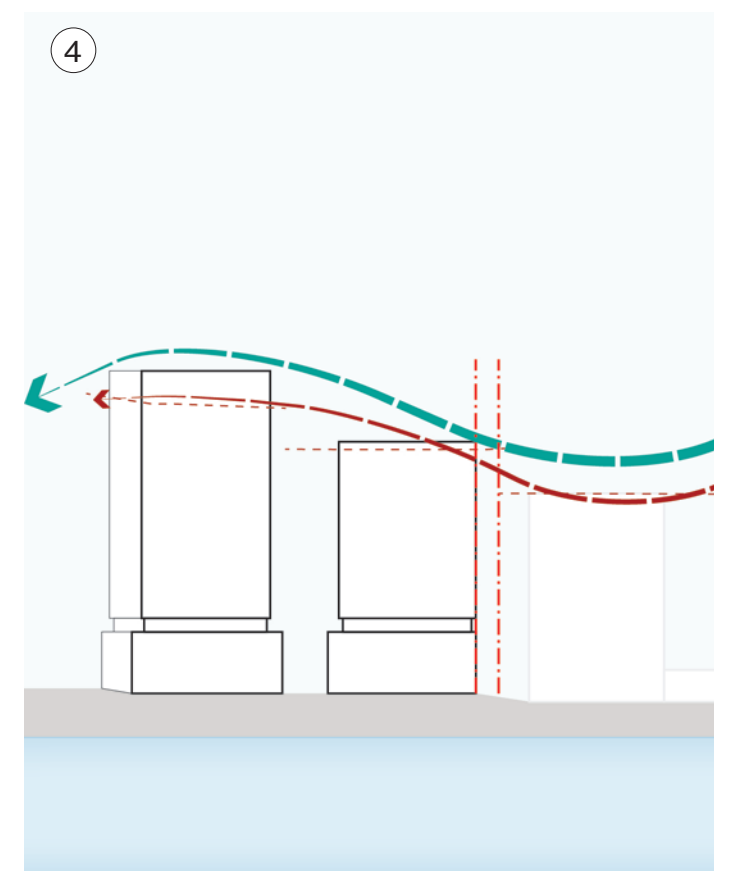
1. Deliver an attractive Shepherd Street / Powerhouse Road Link



2. Deliver a contextual and attractive response to views of the site



3. Deliver a contextual and human-scale street wall



4. Deliver an appropriate tower scale

1. Deliver an attractive Shepherd Street / Powerhouse Road Link

A Prioritize clear and simple pedestrian flow between Shepherd Street and Powerhouse Road and maximise visual aperture and visibility through site along this axis.

The link between Shepherd Street and Powerhouse Road / Mill Park is a regionally important active transport link. It will need to work in parallel with any future link provided along the Georges River Foreshore as planned by Liverpool City Council.

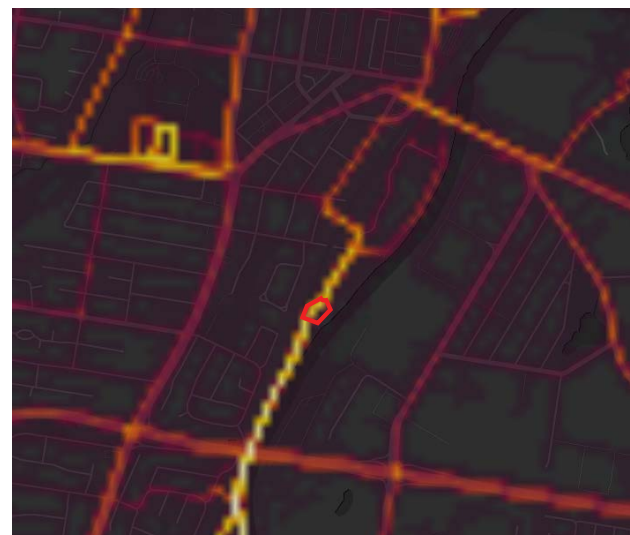
Visibility along this link is currently unclear as the easement winds through the site. It is also currently road-dominated despite the road seeing little active use. This should be addressed through redevelopment.

B Utilise north-facing landscape to maximise amenity of site and attractiveness of the through-site link.

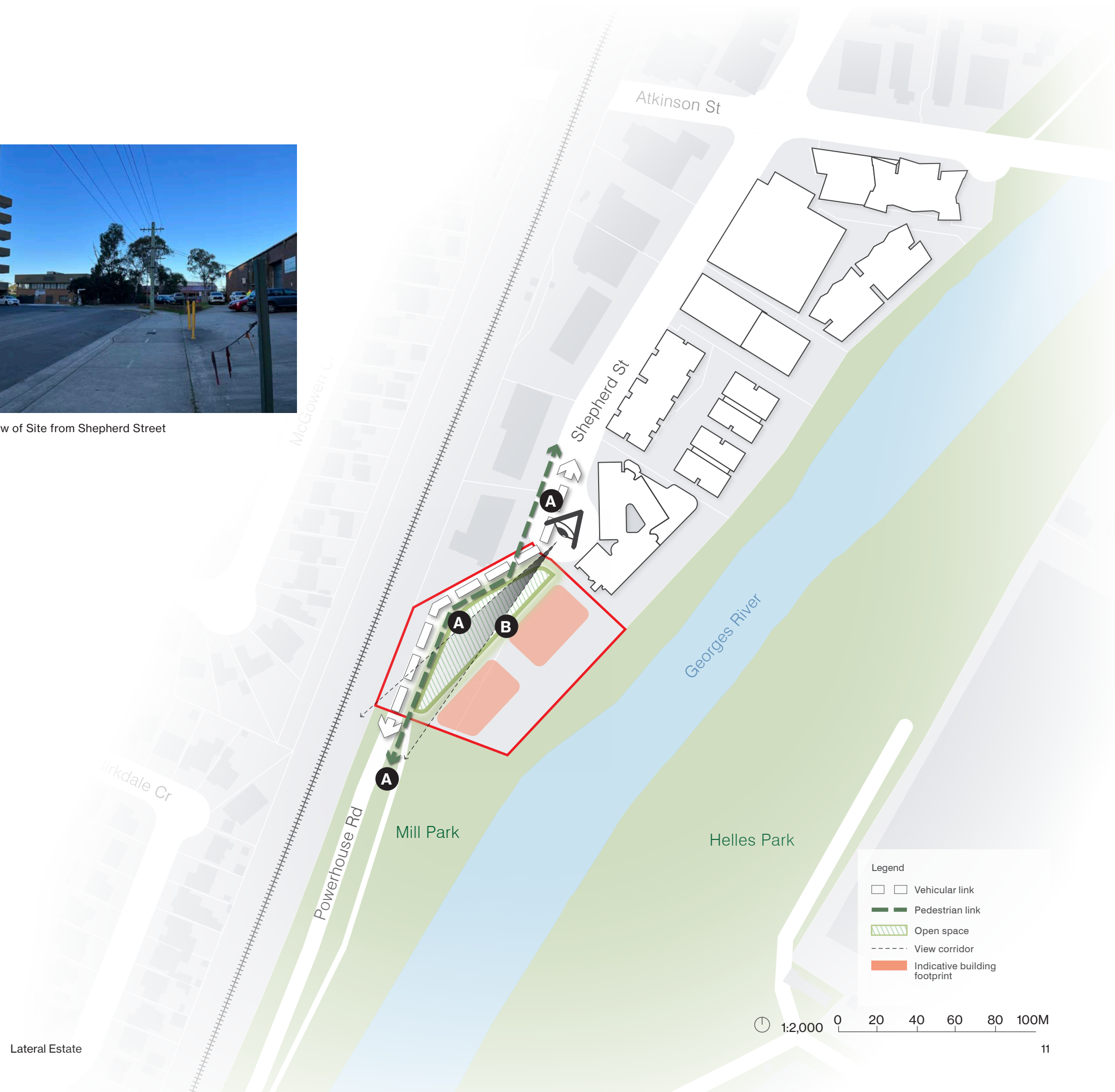
Built form will not occupy the entire remainder of the site. Active uses should be focussed on areas likely to be sunny after redevelopment of neighbouring sites.



Existing view of Site from Shepherd Street



Site (red outline) within 'Strava Global Heat maps' showing recreational walking and cycling routes



2. Deliver a contextual and attractive response to views of the site

A Separate development into two slender towers

Generally buildings in the Shepherd Street Precinct do not exceed 60m in length and those that are at this length are typically at a street scale rather than a tower scale.

Architectus' own research has found that a maximum of 40-45m in tower length represents a best practice for towers to read as visually slender in a Sydney context.

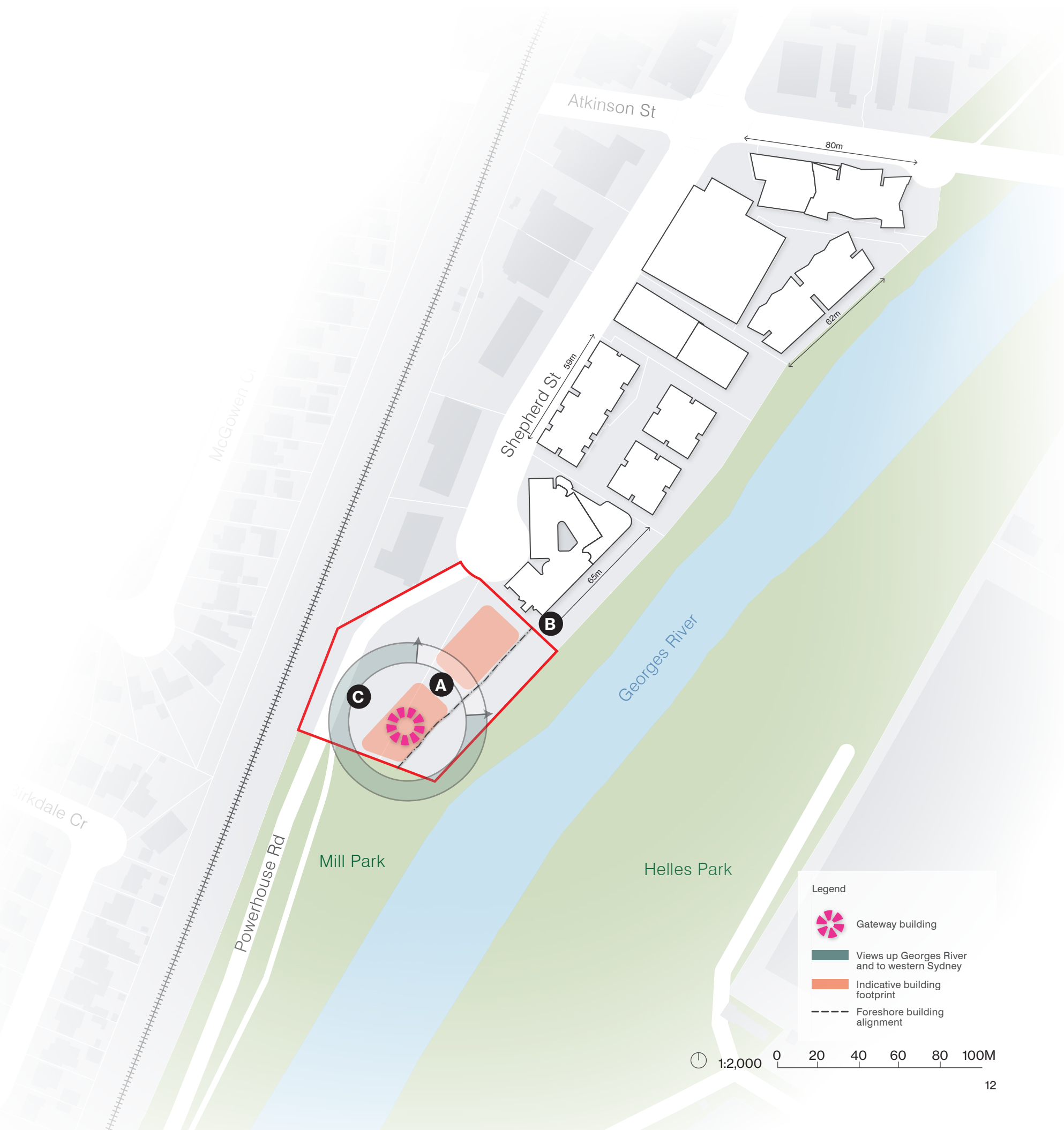
Separating the design of the site to two distinct buildings will address both these issues.

B Respect the foreshore building line and provide consistency of frontage with neighbours

The development will be seen and understood within the context of other buildings within the Shepherd Street Precinct. While there is some variation in building alignment in this context, the foreshore building line sets a technical requirement that should be respected.

C Consider and ensure design excellence in the southern tower, which will be prominent in distant views as the gateway to the precinct, as well as from Shepherd Street

This site is planned as the tallest in its context (see Height of Buildings Map presented earlier in this document). In particular it will have significant visibility from the south including along the Georges River. A high quality design response is essential in this context.



3. Deliver a contextual and human-scale street wall

A A 2-6 scale street wall scale should be delivered

The character of the existing Shepherd Street context streetscape is diverse, with a variety of street and building scales and approaches to setbacks, however typically a 2 to 6-storey scale 'street wall' has been delivered, particularly on the Shepherd Street interface.

B Towers should be set back from the street wall facing west (Shepherd Street). It may be appropriate to consider extending as far as the podium facing Mill Park and the River, subject to detailed future design of these spaces.

Facing the River and Mill Park, some towers near the site already have minimal setbacks from the street wall or a 'reverse setback' where towers overhang the ground levels. This responds to a different context where there is no 'street frontage' on this side. It could be appropriate that the delivery of the site continues this, if well designed to respond to other issues including retaining a clear street wall, dealing with any wind impact issues on the public domain and responding to the future Mill Park.

The street wall should be delivered in an attractive, tactile material such as brick

This is consistent with the existing context of other buildings on Shepherd Street as well as best-practice urban design.



Photograph showing 'reverse setback' approach 30 Shepherd Street 'the bindery'

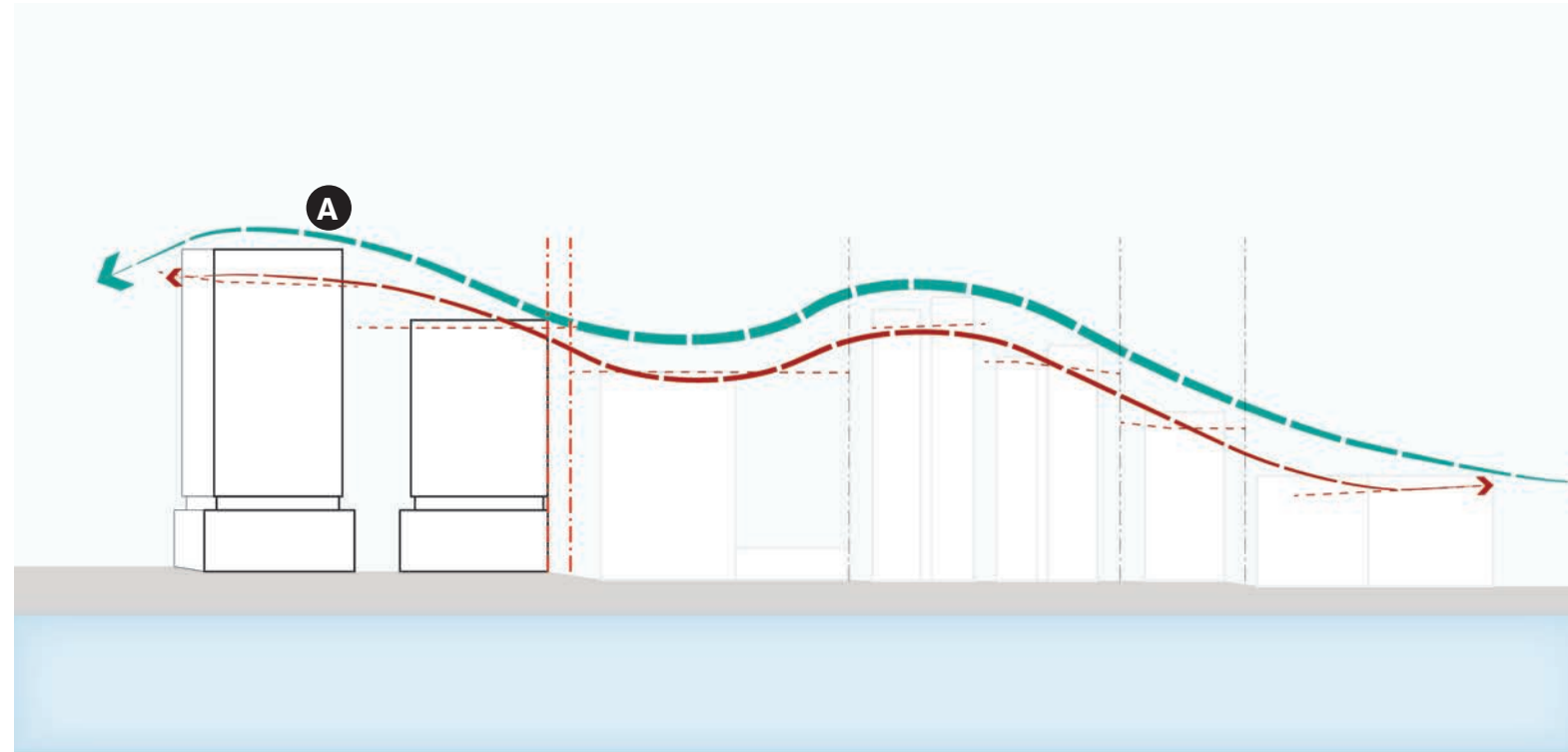


4. Deliver an appropriate tower scale

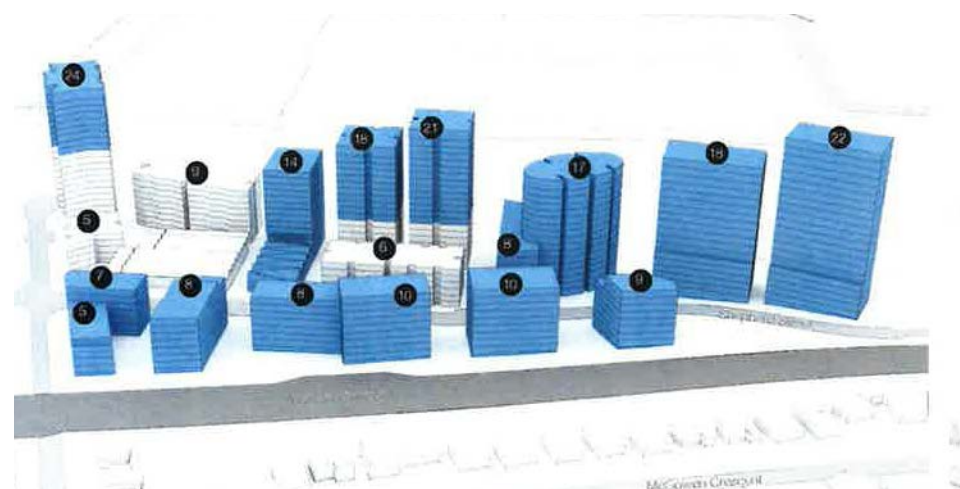
A Height increase above the LEP is appropriate on site, consistent with other variations approved in the Shepherd Street Precinct

This site has been planned as the tallest in its context. There has been some variation in delivered heights in the precinct over time which delivery of the site may need to respond to so as to ensure the planned 'height curve' described in the LEP and the SJB principles can be delivered.

Additionally, some height changes may be appropriate to accommodate floorspace where it would be more beneficial to locate for view and shadow impacts in a taller building than delivering greater width or larger floorplates at lower levels.



Sectional diagram showing tower height principles and relationship to LEP heights



Precinct Scale in SJB Shepherd Street Master Plan (July 2016)

CHAPTER

3

VISUAL IMPACT ANALYSIS

Introduction and approach

This chapter presents a visual assessment of a massing option for the site (provided by MPA) to understand its potential visibility in a range of views.

Methodology

The visual assessment is based on best practice and Architectus' experience in the field of the assessment of visual impact.

The assessment has been undertaken in the following steps:

1. Visual context analysis

Analysis of the context of the site and a broad range of views towards the site through site visit and desktop analysis. This analysis has been used to select views for photomontage analysis.

2. Photomontage assessment

Key views identified and selected in the visual context analysis are photomontaged with the proposed massing and assessed. To assist in the positioning of the camera, a 3D model was created through geo-referenced imagery, the model of the proposed massing and context provided by MPA, and Architectus' own modelling of the wider topographical and built form context. A representation of the view is created through geo-locating the model camera to the location where the photo was taken, and matching the focal length of the model view to the camera view.

3. Conclusion and Findings

A summary of findings is presented with consideration towards the urban design principles established in the first part of the report.

Design option used for the purpose of this testing (AP06, MPA)

Visual Context

Site Context

The site is at the southern end of the Shepherds St Precinct, for which a masterplan and urban design study was prepared by SJB, to inform amendments to the Liverpool LEP 2008 and in particular the FSR and height controls. The precinct is bounded by the Georges River to the east, a train line to the west, Mill Park to the south and medium density residential housing to the north. The visual context comprises existing high-density residential on Shepherd St, low-rise residential housing, green open space, the Georges River and riparian vegetation.

Photo selection

A range of photos were taken around key publicly accessible areas, with visibility to the site and potential view impact from proposed development. Despite being zoned as RE1, Helles Park appears to be semi-private and used by local recreation organisations.

A selection of 24 photos are mapped out and listed on the following pages. The selection of photos can broadly be categorised into two types:

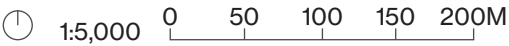
1. locations in the immediate vicinity of the site on Shepherd St, Mill Park and Powerhouse Rd where the view impact in terms of bulk and scale would be significant, and where urban design principles around legibility of pedestrian routes and connections, podium articulation and street wall height are important;
2. and in the distance i.e. from Helles Park on the eastern side of the Georges River, Discovery Park and further south on the Powerhouse Rd pedestrian path. In these views, the massing is read alongside the existing towers to the north of the site, and as part of a composition of buildings that is the Shepherds St Precinct.

Photography

Photos were taken on 15 July 2022 with an iPhone 13 and Huawei Mate 20 Pro; using a camera phone allowed the GPS coordinates for each photo to be extracted for positioning of the camera in the model.



Photo locations map

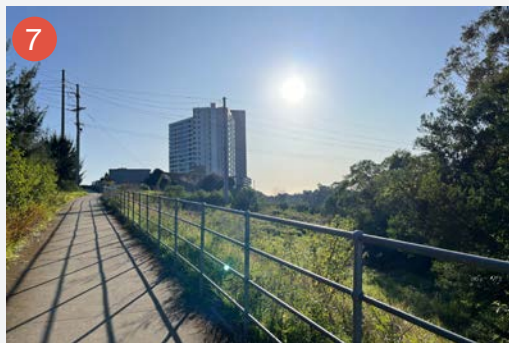
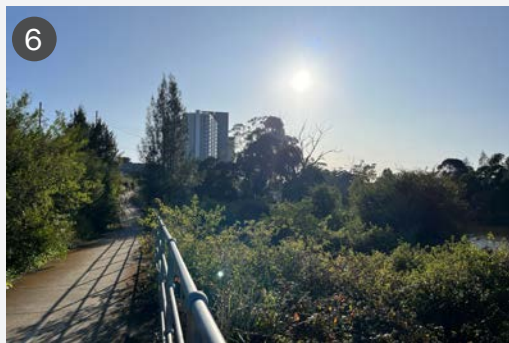
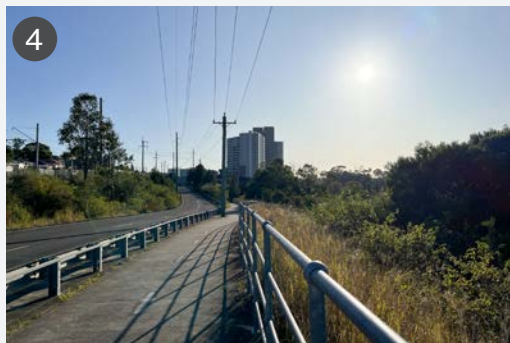


Visual Context

Shepherd St - looking south towards the site



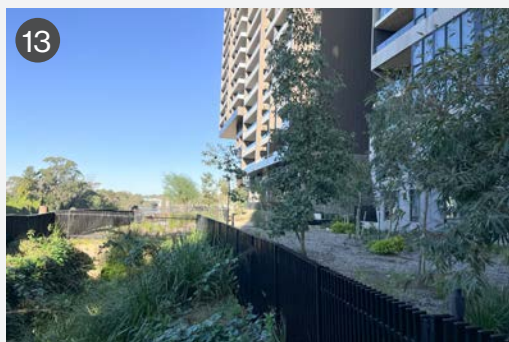
Powerhouse Rd footpath - looking north towards the site



Footpath adjacent to Mill Park - looking north towards the site



The Paper Mill - looking south along the Georges River



Legend

#

View selected for photomontage analysis

#

Other views considered

Visual Context

Helles Park - Barefoot water ski club



Helles Park - Archery club



Discovery Park - car park



Discovery Park - from Hume Highway



Legend

#

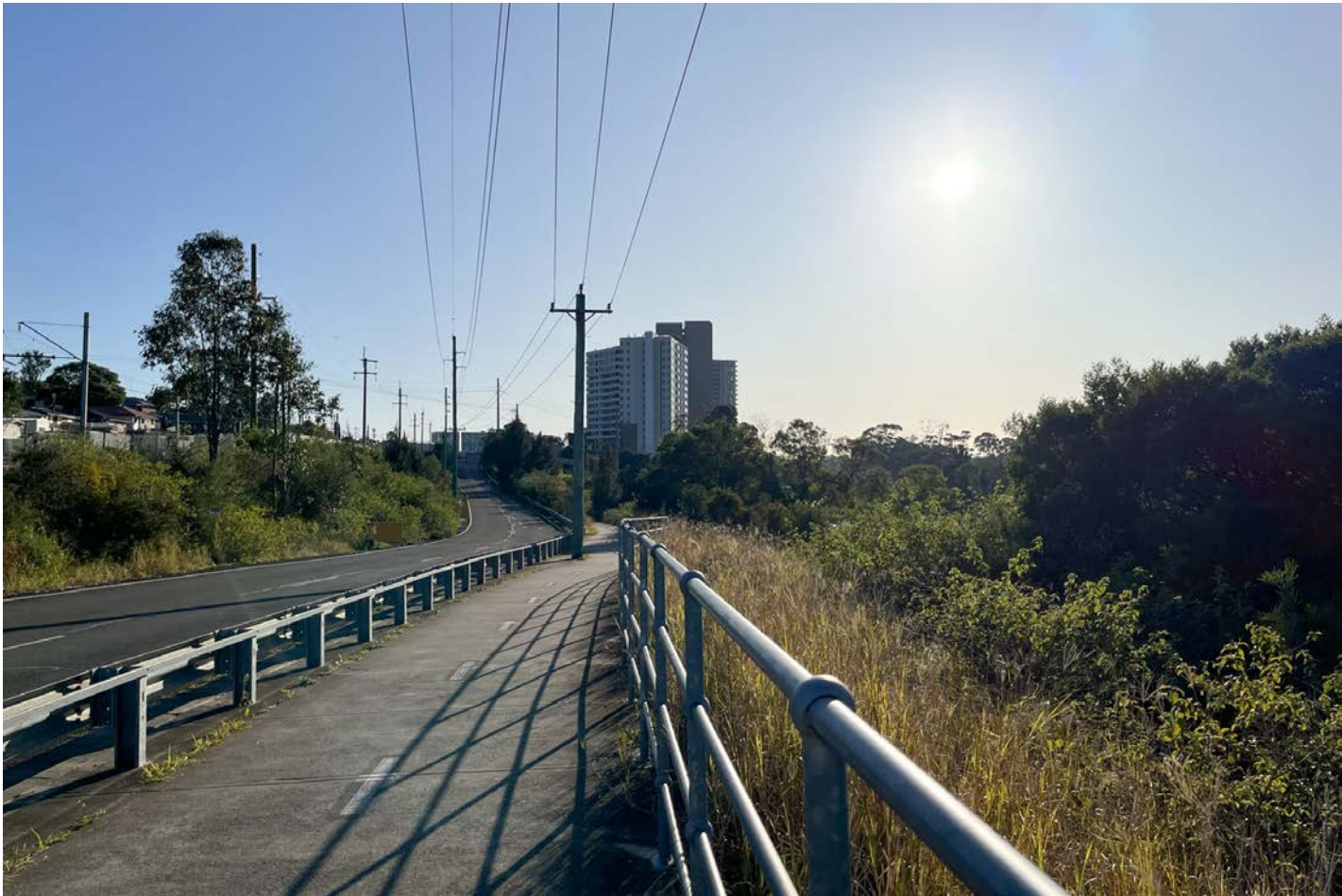
View selected for photomontage analysis

#

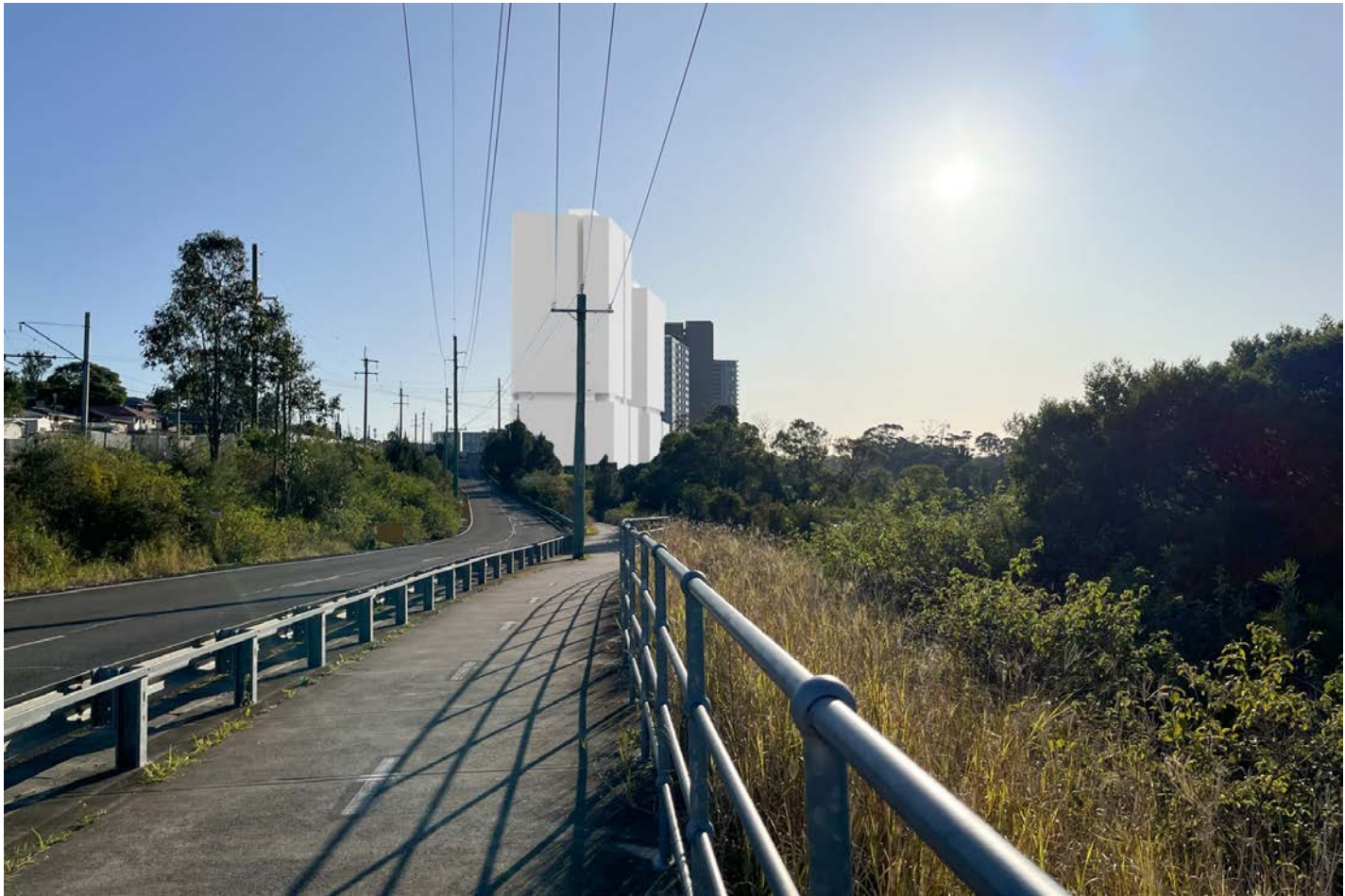
Other views considered

Photomontage assessment

View 1 - Powerhouse Rd



View One: Existing



View One: Photomontage of proposal



Key map

Description of existing view

The photo is taken from the pedestrian footpath adjacent to Powerhouse Rd looking north towards Mill Park and Shepherd St. There is already significant height and bulk from existing developments on Shepherd St (The Foundry, The Bindery, and The Paper Mill). The buildings in the photo range from 18-21 storeys. It is clear from the photo that there is a building foreshore setback line established to the Georges River (to right in the image).

View Impact

The proposed massing is prominent, standing in front of the remaining developments in the Shepherd St Precinct. Its massing provides a consistency of approach with the existing developments in podium form, tower form and setbacks. The taller height of the most southern building establishes this building as an urban marker, which was proposed for the site in the SJB masterplan, and reflected in the LEP height controls for the precinct and appropriate in urban design terms. The continuation of the building foreshore setback line, separation between buildings, slots in the tower massing, and tower setback on podium break down the scale and articulates the proposed massing to provide a consistent composition with the existing development.

Photomontage assessment

View 2 - Shepherd St



View Two: Existing



View Two: Photomontage of proposal (with planned developments west shown transparent)



Key map

Description of existing view

The photo is taken from the western footpath of Shepherd St (adjacent to 27 Shepherd St) looking south towards Mill Park. The existing low scaled buildings' footprints on the site already impede the view towards the Georges River and Mill Park. The connection through to the pedestrian path and Powerhouse Rd is not legible.

To assist in understanding the visibility along this corridor an alternative view is also provided from the eastern footpath.

View Impact

The proposal occupies the majority of this view. The podium scale provides a strong relationship to existing and future developments immediately adjacent as well as with the broader precinct.

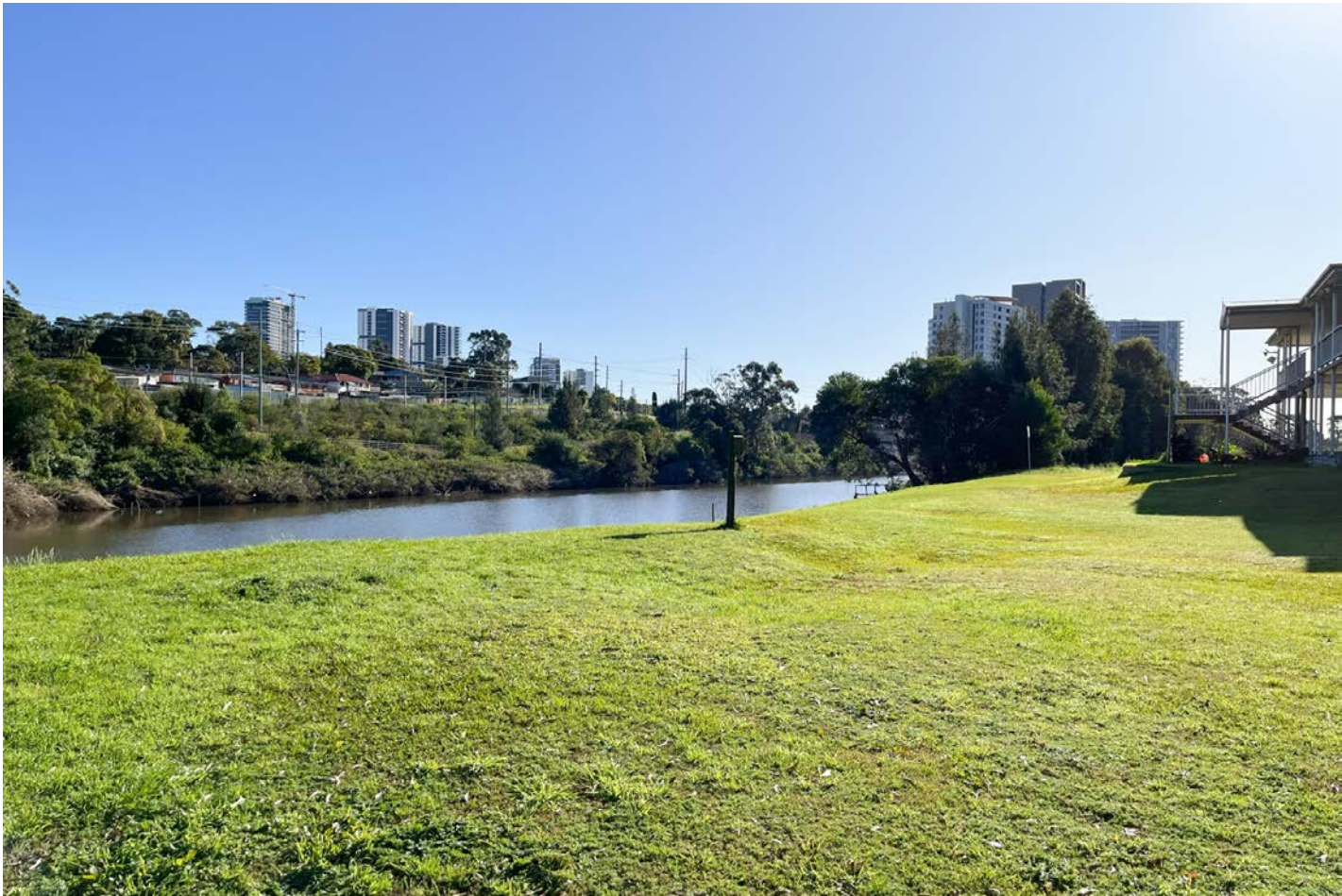
The view of the continuing north-south pedestrian and vehicular link (Powerhouse Road) will open up slightly further forward than this view is taken and can be further developed and emphasised through landscaping and public realm design (not shown in this image). The alternative view shown adjacent shows greater visibility of this link.



Alternative Model view further north along Shepherd St

Photomontage assessment

View 3 - Helles Park



View Three: Existing



View Three: Photomontage of proposal



Key map

Description of existing view

The photo is taken from Helles Park, opposite and south of the site along the Georges River. A 2-storey building used by the NSW Barefoot Water Ski Club can be seen to the right. Mill Park is visible to the left, with existing high-density development on Shepherd St in the background. High-rise towers on the Hume Highway are visible in the distance, to the left in the photo.

The view location is from public (RE1 zoned) land however the view may be described as semi-private as vehicular access is gated and the area appears to be primarily used by the club.

View Impact

Similar to the view from Powerhouse Road, the proposed massing is prominent in the view. This is expected given the LEP height and FSR controls for the site. The taller height of the southernmost tower, establishes any future tower here as an urban marker for the Shepherd St Precinct, as indicated in SJB's masterplan. The massing articulation, building separation, building foreshore setback line, and podium and vertical slots in the tower design break down the scale of the massing, and is responsive to the scale / grain of existing towers on Shepherd St to the north of the site.

Photomontage assessment

View 4 - Discovery Park



View Four: Existing



View Four: Photomontage of proposal



Key map

Description of existing view

The photo is taken from the Liverpool Regional Museum and Family History Centre, overlooking Discovery Park and looking east towards the site. The park and its surrounds are heritage listed (Collingwood Heritage Precinct). Collingwood House, the focus of the heritage precinct, can be seen in the middle ground of the view. The visual context is generally of low-rise suburban residential buildings, excepting the existing Shepherd St Precinct. The existing buildings (The Foundry and The Bindery) can be seen however the view impact of their height is mitigated due to higher topography at this location than the Shepherd St Precinct.

View Impact

The proposal is prominent from this view, which is expected from the LEP controls. The height of the proposed northermost tower (Building A) relates to the existing towers on Shepherd St. There is a step in height towards the proposed southernmost tower (Building B), which places significance on this tower as an urban marker at the southern end of the Shepherd Street Precinct. Due to the view orientation, view corridors between towers are difficult to achieve (evident with the existing buildings as seen in the photo). The articulation of the massing and step in height in this view, break down the scale of the proposed massing.

Summary and key considerations

Summary - importance of views

Development of the site is anticipated to have a high degree of prominence when seen in distant views as the existing LEP height of buildings control is the tallest in the context and at the southern end of the Shepherd Street Precinct. Three views have been photomontaged to demonstrate impacts from important locations from here from the south (Powerhouse Road), East (Helles Park) and west (Discovery Park).

Another area of view consideration is locally from Shepherd Street, where the street wall response is the focus. One view has been photomontaged here and an alternative 3d model view shown to demonstrate the local streetscape response.

Key design responses to respond appropriately to these issues

The prominence of the proposal means its design excellence should be carefully considered. This assessment considered the massing approach (not detailed materiality or landscape design). It finds that the proposal follows good practice design principles that assist in providing a positive visual response to the context across these issues including:

- The proposed massing approaches, development of the site as two towers with vertical 'slot' elements through the façades, contributes to the towers reading as slender, as well as providing forms that are related to the remainder of the Shepherd Street Precinct.

- The proposed massing continues the composition of existing taller buildings within the Shepherd Street Precinct, especially as seen from the River. This response is consistent with the original SJB masterplan for the precinct in this response.
- The variation in the LEP height proposed allows for a better response to views than a fully height-compliant scheme of the same FSR where towers could be shorter and bulkier.
- The street wall height proposed responds to the neighbouring existing building and also the envisaged height of future buildings on the western side of Shepherd Street.

Due to the above, Architectus considers that the proposed massing provides a good-practice response to the site's visual context and is happy to support the proposal's urban design response to these issues.



CGI of proposal from west (MPA) - the street wall approach, landscaped forecourt and breaks between buildings provide a clear response to the design principles discussed in this report.

CHAPTER

4

LEP CONSIDERATION

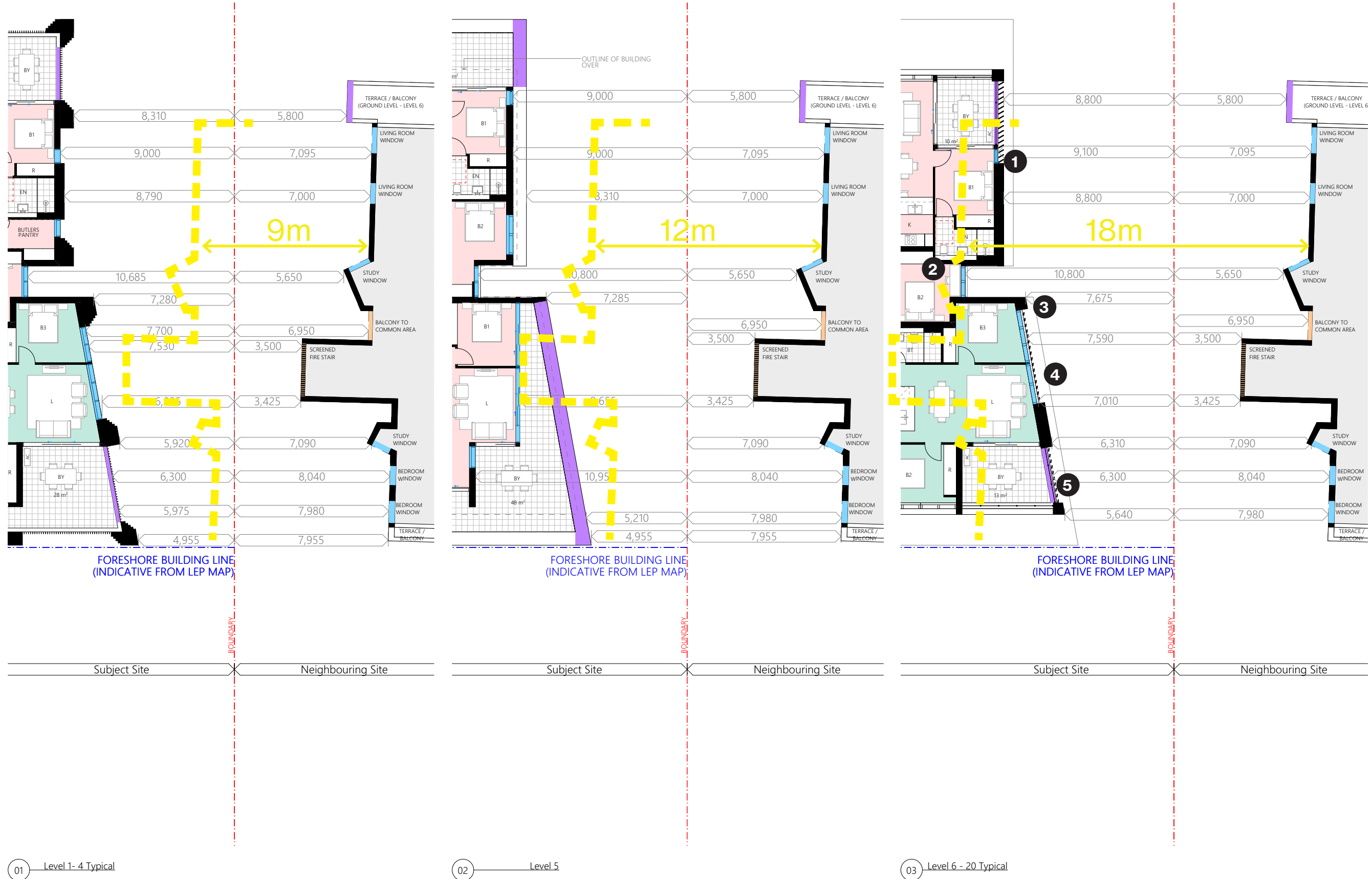
LEP cl. 7.4 Building Separation

7.4 Building separation in Liverpool city centre

Text of LEP clause	Comment
<i>(1) The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.</i>	Architectus has been requested to comment on the objectives of this clause with regard to visual appearance (with privacy and solar access considered by others). The site lies within the R4 High Density Zone and thus the minimum building-to-building separation of the LEP provision is:
<i>(2) Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least—</i>	<ul style="list-style-type: none">– 9m for heights 12m to 25m from ground level– 12m for heights from 25-35m from ground level– 18m for heights above 35 metres. A summary diagram of building separation (MPA SP08.1) is included opposite, annotated with key numerics from the above.
<i>(a) 9 metres for parts of buildings between 12 metres and 25 metres above ground level (finished) on land in Zone R4 High Density Residential, and</i>	Broadly the proposal a minor departure at 25-35m from ground level and a more significant departure at 35m+ from ground level. It should be noted that the neighbouring building has been approved establishes this relationship and the proposal generally provides greater separation than its neighbour to the shared boundary.
<i>(b) 12 metres for parts of buildings between 25 metres and 35 metres above ground level (finished) on land in Zone R4 High Density Residential, and</i>	With regard to visual appearance, as noted through this report we do not believe there is a significant issue for visual impact in terms of building separation. The building is encouraged to be massed on this edge to reduce the building bulk affecting more important views between Shepherd Street and Powerhouse Road. A regular tower above podium also presents a better design approach than one that steps in with a reduced floorplate to achieve the required separation distances as the tower height increases.
<i>(c) 18 metres for parts of buildings above 35 metres on land in Zone R4 High Density Residential and</i>	On the basis of above, with regard to visual appearance, the departures from the numerics of LEP clause 7.4 are considered a reasonable alternative in achieving the objectives of the clause.
<i>(d) 12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use, and</i>	
<i>(e) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use.</i>	

Consideration against LEP cl 7.4 building separation

Diagram showing key separation distances (MPA SP08.1) annotated with key numerics based on LEP control and key areas discussed



LEP cl. 7.5 Design Excellence

7.5 Design excellence in Liverpool city centre

Text of LEP clause	Comment
<i>(1) The objective of this clause is to deliver the highest standard of architectural and urban design.</i>	With regard to the building form and its impact on view corridors, this review has encouraged a strong western setback in the proposal to maximise the view corridor and legibility of the north south pedestrian and vehicular link (Shepherd Street to Powerhouse Road). This issue has had to be balanced against other issues where there has been concern including the overall height of the building (with regard to LEP controls), its proximity to neighbours and the solar compliance of the proposal as a whole. It is considered that the proposed building mass achieves this balance appropriately.
<i>(2) Development consent must not be granted to development involving the construction of a new building or external alterations to an existing building in the Liverpool city centre unless the consent authority considers that the development exhibits design excellence.</i>	
<i>(3) In considering whether development exhibits design excellence, the consent authority must have regard to the following matters—</i>	
<i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>	A regular 'podium-tower' form has been proposed which is a better urban design approach than one that steps in with a reduced floor plate to meet numeric separation distances as the tower height increases (see comment on LEP cl. 7.4 on previous page).
<i>(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,</i>	This review does not include the external appearance of the building, or heritage considerations.
<i>(c) whether the proposed development detrimentally impacts on view corridors,</i>	
<i>(d) whether the proposed development detrimentally overshadows Bigge Park, Liverpool Pioneers’ Memorial Park, Apex Park, St Luke’s Church Grounds and Macquarie Street Mall (between Elizabeth Street and Memorial Avenue),</i>	
<i>(e) any relevant requirements of applicable development control plans,</i>	

Text of LEP clause	Comment
<i>(f) how the proposed development addresses the following matters—</i>	
<ul style="list-style-type: none"><i>– (i) the suitability of the site for development,</i><i>– (ii) existing and proposed uses and use mix,</i><i>– (iii) heritage issues and streetscape constraints,</i>	The site is suitable for development from an urban design perspective and the uses are consistent with that envisaged by the LEP and the SJB Urban Design Concept 2016.
<ul style="list-style-type: none"><i>– (iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i><i>– (v) bulk, massing and modulation of buildings,</i>	<p>The proposal is consistent with the broad massing of the precinct envisaged through the SJB urban design concept 2016 and the current LEP controls. Including the 'height curve' described through these.</p> <p>The design principles described in this document set out Architectus' preferred approach to urban design outcomes with relation to bulk, massing, modulation and tower location, consistent with the SJB urban design concept and intent of the current LEP controls, with greater consideration to site-specific issues.</p> <p>As noted above (see response to this clause 7.5 (1) - this has resulted in a balance against other issues and design concerns. A discussion of appropriate separation and setbacks to the north is included in the previous subsection of this report 'LEP cl. 7.4 Building Separation'.</p>

Consideration against LEP 7.5 Design Excellence

Text of LEP clause	Comment
<ul style="list-style-type: none">– (vi) <i>street frontage heights,</i>	As described in Chapter 2, principle 3 of this document, an appropriate street wall to respond to the context is in a range of 2-6 storeys. The proposal presents a five-storey street wall that is appropriate for this context.
<ul style="list-style-type: none">– (vii) <i>environmental impacts such as sustainable design, waste and recycling infrastructure, overshadowing, wind and reflectivity,</i>– (viii) <i>the achievement of the principles of ecologically sustainable development,</i>	These issues are not the subject of this review.
<ul style="list-style-type: none">– (ix) <i>pedestrian, cycle, vehicular and service access, circulation and requirements,</i>– (x) <i>the impact on, and any proposed improvements to, the public domain.</i>	<p>As noted above and through this document a focus of this review has encouraged opening the key link between Shepherd Street to Powerhouse Road to minimise impacts. The proposal has appropriately addressed these issues.</p> <p>The development provides a significant contribution to the public domain through the proposed public road (including pedestrian footpath) and parking as well as an attractive landscaped forecourt that will significantly upgrade the public nature and attractiveness of connections between Shepherd Street and Mill Park.</p>
<ul style="list-style-type: none">– (4)–(8) (Repealed)	N/A

Hypothetical compliant development

Architectus has been requested to provide consideration of a 'Hypothetical compliant development' compared to the final proposal, as part of broader consideration of varying development controls.

The hypothetical compliant development includes a third building 'Building C' that is not present in the final proposed massing. It is slightly lower and slimmer than the final proposed massing.

This is largely as the final proposed massing has taken the design decision that opening the view corridor from Shepherd Street to Mill Park is an important part of ensuring the best development outcome for the site. This forms an important part of the design principles presented in this document and in the SJB Urban Design Principles of 2016.

In providing this open view corridor, the floorspace that may otherwise be attributed to 'Building C' has been moved into slightly taller, slightly wider (but also well articulated) buildings 'A' and 'B'.

These changes may be considered against the LEP objectives for cl. 4.4 'Floor Space Ratio' and cl. 4.3 'Height of Buildings' which are provided adjacent for reference.

In summary, from an urban design perspective:

- The final proposal provides significant additional benefits in providing a publicly accessible open space instead of Building C. This significantly reduces significant visual impact of built form between the public domain areas of Shepherd Street and Mill Park, and provides a major contribution to the urban realm through adding publicly accessible open space. It is consistent with the SJB Urban Design Principles of 2016 where the hypothetical compliant development is not.
- The minor increase in height and slightly broader footprint of the final proposed massing of Buildings A and B (excluding building C discussed above) is a negligible visual impact compared to the the hypothetical compliant development. Both of these buildings will be perceived in a similar way from the public domain and provide similar outcomes with regard to height and transition in built form, reflecting the principles for height increase established through SJB Urban Design Principles of 2016 and reflected in Councils LEP controls.

- The final proposal provides minor additional overshadowing compared to the hypothetical compliant development - as shown opposite during midwinter the shadow of the final proposed building is slightly greater at its maximum extent, however moves quickly across the landscape and does not either prevent buildings achieving good solar access in general or prevent open spaces from having sunny locations for people to enjoy.

Due to the above considerations, on balance the final proposal is considered a significantly improved outcome with regard to its response to context than the hypothetical compliant development. The delivery of a visual link and publicly accessible open space between Mill Park and Shepherd Street is a major contribution and consistent with the desired future character of the area.

Objectives of LEP cl. 4.4 'Floor Space Ratio'

- (a) *to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,*
- (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*
- (c) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) *to facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

Objectives of LEP cl. 4.3 'Height of Buildings'

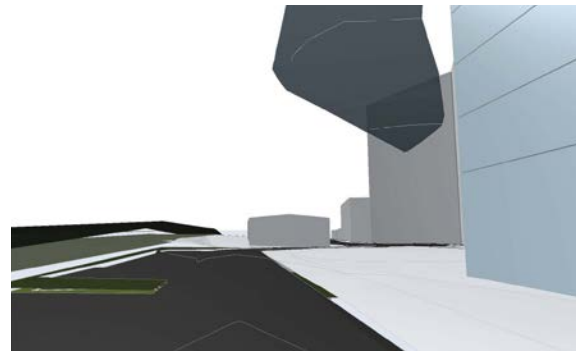
- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*



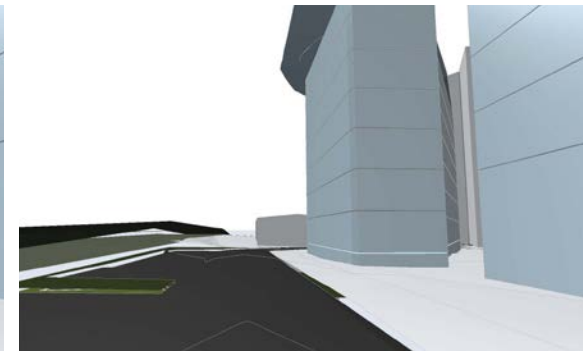
Final proposed massing (MPA)



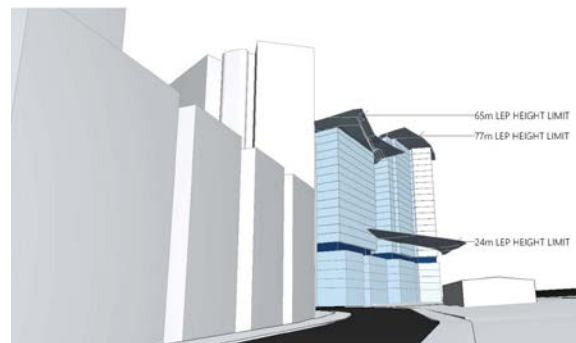
Hypothetical compliant development (MPA)



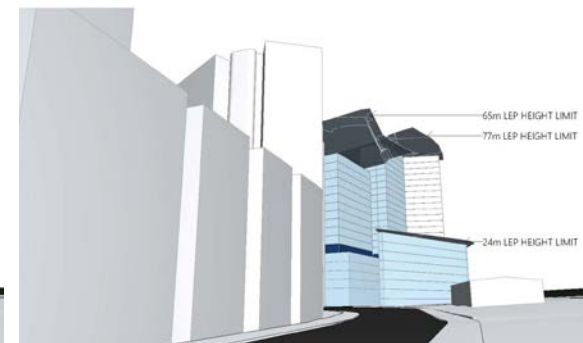
Final proposed massing
View from Mill Park to Shepherd St



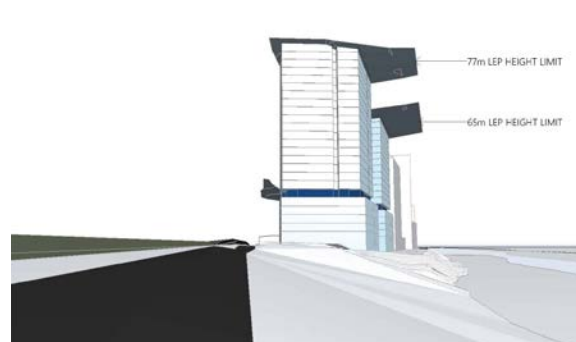
Hypothetical compliant development
View from Mill Park to Shepherd St



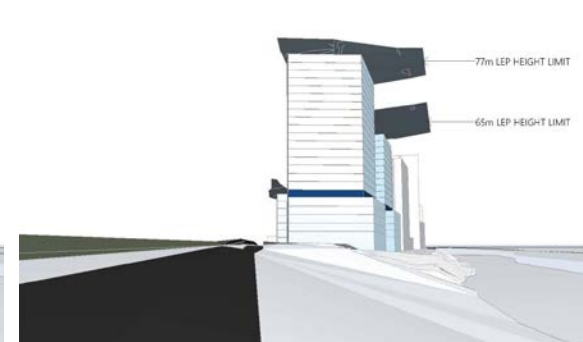
Final proposed massing
View from Shepherd Street



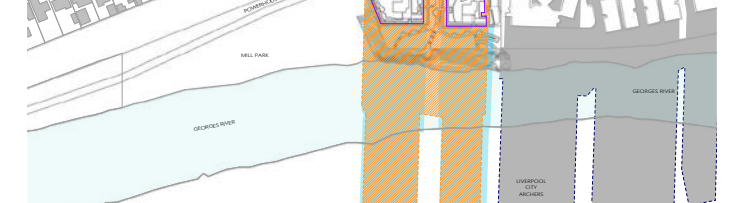
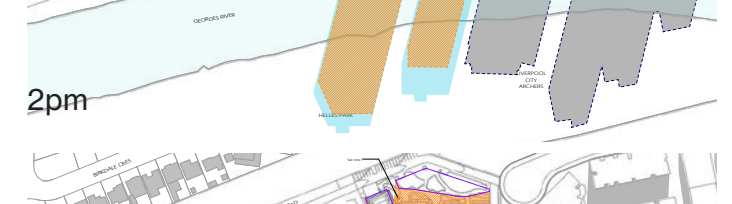
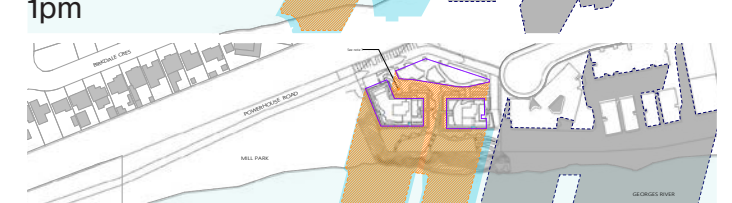
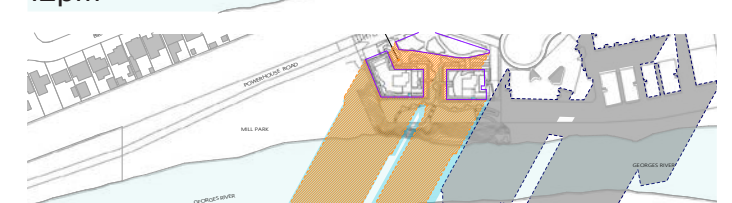
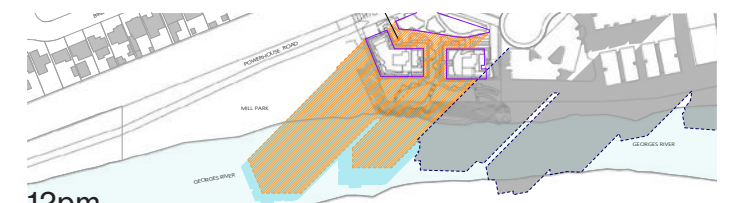
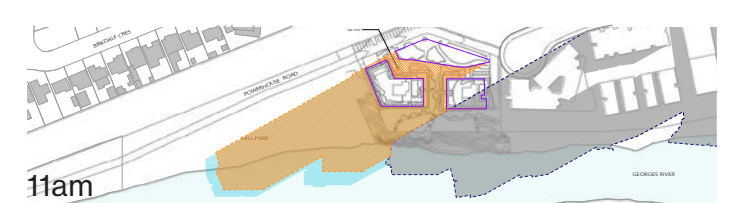
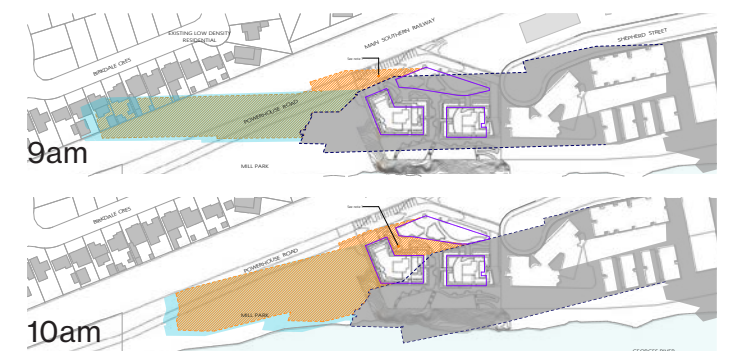
Hypothetical compliant development
View from Shepherd Street



Final proposed massing
View from Mill Park



Hypothetical compliant development
View from Mill Park



Right:
Overshadowing: Midwinter (June 21)
Hypothetical compliant development (orange hatch)
vs.
Final proposed massing (light blue)

