

Clause 4.6 – Exceptions to Development Standards Request to Vary Clause 4.4 - Floor Space Ratio

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

Executive Summary

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 of 31-33 Shepherd Street Liverpool (the site) for the construction of a high-density residential development (including co-living housing) with associated earthworks, infrastructure, and landscaping.

The application also includes a plan of subdivision, which results in the dedication to the Council, free of cost, a public road through the site. The development proposal also includes a separate publicly accessible pedestrian access through the site (through-site link) from Shepherd Street to the public open space and boardwalk fronting the Georges River.

The subject site consists of two (2) individual lots (Lot 6 in DP247485 and Lot 2 in DP1266735) which are to be subdivided into three (3) lots (one of which is to be a public road).

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 4.4 Floor Space Ratio (FSR).

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 form a part of the Shepherd Street Precinct and is identified as being within Liverpool City Centre under LLEP 2008.

Planning controls relating to the site, and wider Shepherd Street Precinct, were informed by a Planning Proposal (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) on 1 November 2017.

Clause 4.4 of the LLEP 2008 identifies three (3) FSR controls for the site including:

- A maximum FSR of 2.5:1 to the western portion of the site incorporating Powerhouse Road;
- A maximum FSR of 3.5:1 to the central / eastern portion of the site towards Georges River; and
- A maximum FSR of 3.6:1 to the north-eastern portion of the site towards No. 32-24 Shepherd Street.

Refer to extract of the LLEP 2008 FSR map in Figure 1.

Floor Space Ratio Map - Sheet FSR_012

Maximum Floor Space Ratio (n:1)

A1	0.01
A2	0.1
A3	0.15
A4	0.25
D	0.5
F	0.6
G	0.65
I	0.75
N	1.0
P	1.2
S1	1.5
S2	1.7
T	2.0
U	2.5
V1	3.0
V2	3.3
W1	3.5
W2	3.6
W3	3.7
X	4.0
Z	5.0
AA	6.0
AE	10.0
refer to clause 4.4	
refer to clause 7.29	
refer to clause 7.32	
refer to clause 6.4A	
refer to clause 7.5A	

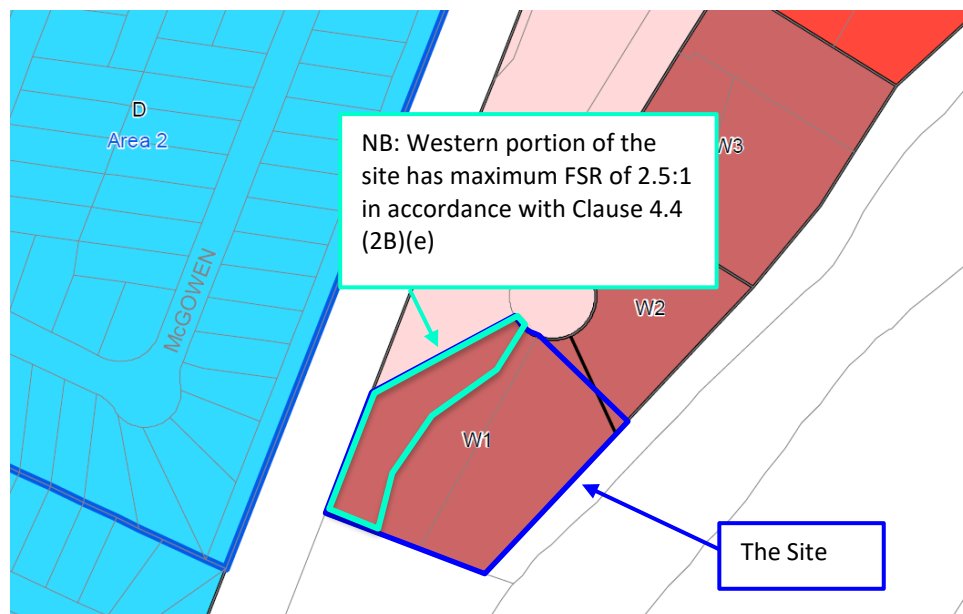


Figure 1: Excerpt from LLEP 2008 Floor Space Ratio Map

For the purpose of FSR calculation, the overall site consists of three (3) site areas which correspond with the three (3) FSR standards. Details of the three site areas are identified in Figure 2 and Table 1. The existing lot boundaries are applied for the purposes of Clause 4.5 of LLEP 2008 (as per *L & G Management Pty Ltd v Council of City of Sydney* [2021] NSWLEC 1084 at [58], [61]-[64]).

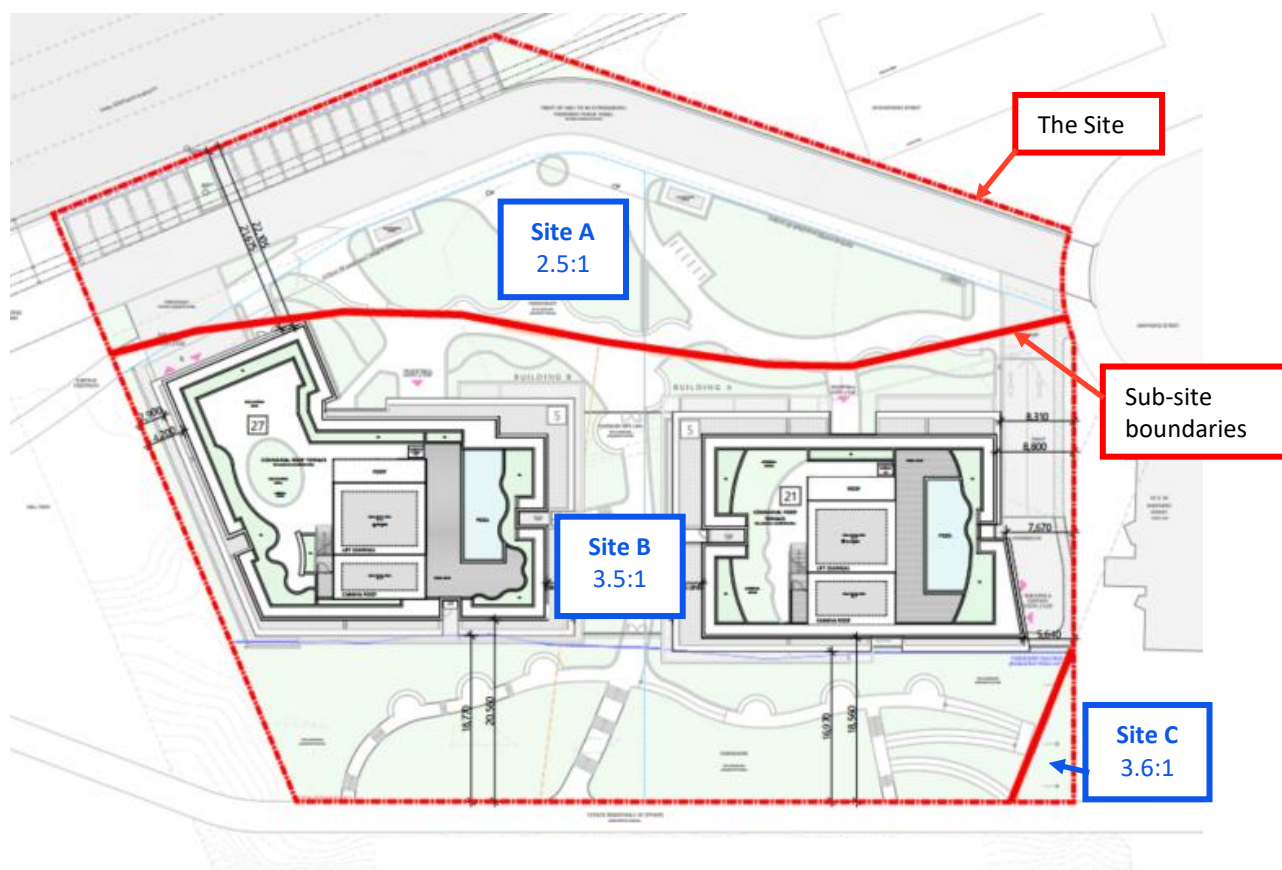


Figure 2: Overall site -including three (3) site areas for FSR purposes

Overall site	Site Area (m ²)
Site A	2,695

Site B	5,113
Site C	64
Total	7,872

Table 1: Overall site areas -including three (3) site areas for FSR purposes

The maximum gross floor area (GFA) and FSR applicable to the overall site (including FSR site areas) under Clause 4.4 of the LLEP 2008 are summarised in Figure 3 and Table 2 below. It is noted that a maximum 'cumulative' GFA of 24,863.4m² (FSR 3.16:1) applies across the overall site (when bonuses for co-living housing are excluded).

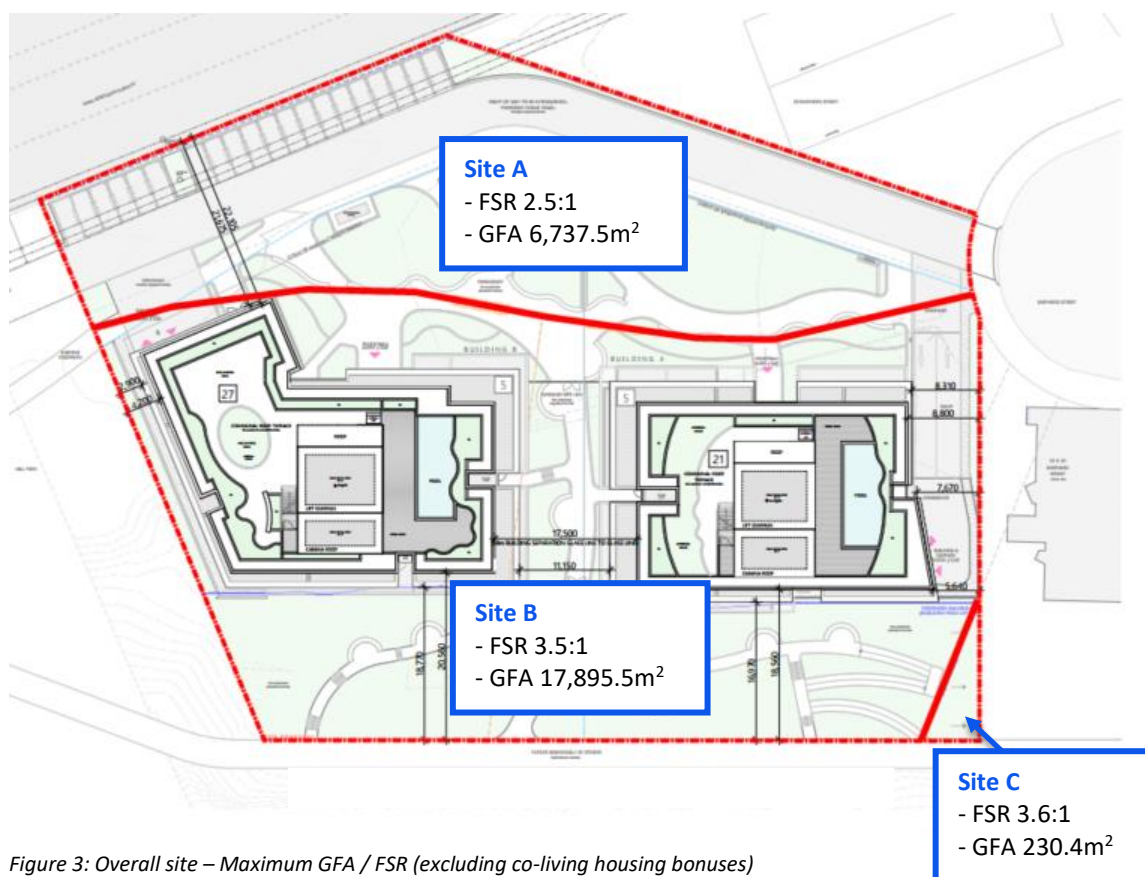


Figure 3: Overall site – Maximum GFA / FSR (excluding co-living housing bonuses)

Overall Site	Site Area (m ²)	FSR	GFA (m ²)
Site A	2,695	2.5:1	6,737.5
Site B	5,113	3.5:1	17,895.5
Site C	64	3.6:1	230.4
Total	7,872	3.16:1	24,863.4

Table 2: Overall site – Maximum GFA / FSR

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. Section 68(2)(a)(ii) provides for an additional 10% of the maximum permissible FSR if the additional floor space is used only for the purposes of co-living housing. Noting the proposed buildings (including the co-living housing component) are sited wholly within the central / eastern portion of the site (Site B), the resultant FSR including the 10% bonus is 3.85:1 (maximum GFA 19,685,05m²).

The maximum 'cumulative' GFA for the overall site (including the 10% bonus) increases to 27,349.74m² (if the co-living housing is applied across the overall site). See Table 3 below.

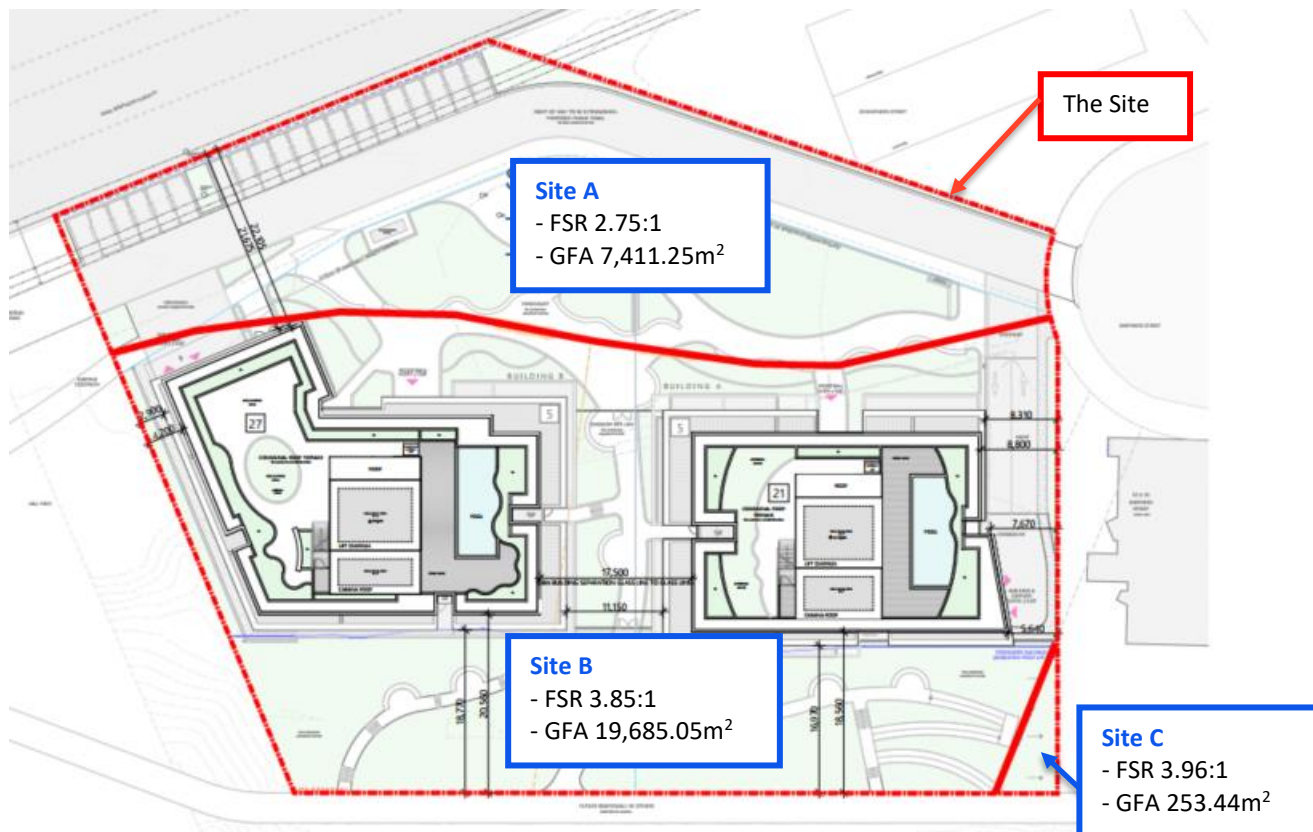


Figure 4: Overall site – Maximum GFA / FSR +10% across the site – when co-living bonus applied

Overall site	Site Area (m ²)	FSR+10%	GFA +10% (m ²)
Site A	2,695	2.75:1	7,411.25
Site B	5,113	3.85:1	19,685.05
Site C	64	3.96:1	253.44
Total	7,872	3.47:1	27,349.74

Table 3: Overall site – Maximum GFA / FSR +10% (Site B)

Within this context, the proposed development incorporates a maximum GFA of 28,228m² wholly within Site B. No buildings or floorspace are sited within Site A and C, however development in the form of a road, carparking, a vehicular accessway to the buildings and communal space/landscaping works are proposed in Site A. Development in the form of a communal space/landscaping works are proposed in Site C. The design rationale for the placement of buildings onsite arises from Council's strategic plan for the site and is explained in detail at Section 1.4.

In a strict sense, the co-living housing bonus is not available under section 68(2)(a) of the Housing SEPP. This is because section 68(2) only applies if the proposed floor space is not more than an additional 10% of the maximum

permissible floor space ratio. That is, section 68(2)(a) does not strictly apply when the proposed GFA within Site B exceeds 19,685.05m² (i.e. 3.85:1).

Accordingly — as 28,228m² of GFA will be wholly within Site B — the appropriate reference point for a strictly compliant Site B GFA is 17,895.5m² (i.e. 3.5:1). This equates to an FSR of 5.52:1 and a variation of 57.74% within Site B.

In real terms, this numerical non-compliance is not, in our opinion, reflective of the actual scale and density of development when the development as a whole is considered across the proposed overall site.

When the overall site is looked at as a whole, the **proposed** GFA of 28,228m² is equal to an FSR of 3.59:1. On an overall site basis, the **envisaged** FSR, without any co-living housing bonus, is 3.16:1. When a 10% co-living housing bonus is applied across the site (i.e. for a development that includes at least 2,486.34m² of co-living housing GFA) the envisaged FSR is 3.47:1.

The proposed development does include 2,486m² in GFA devoted to co-living housing. Accordingly, on an overall site basis, the proposed variation to FSR is 3.21%. It is submitted that this is a more meaningful measure of the extent of the proposed variation in the circumstances of this site.

Refer to the summary below in Figure 5 and Table 4.

The justification for the FSR contravention is detailed in this submission.

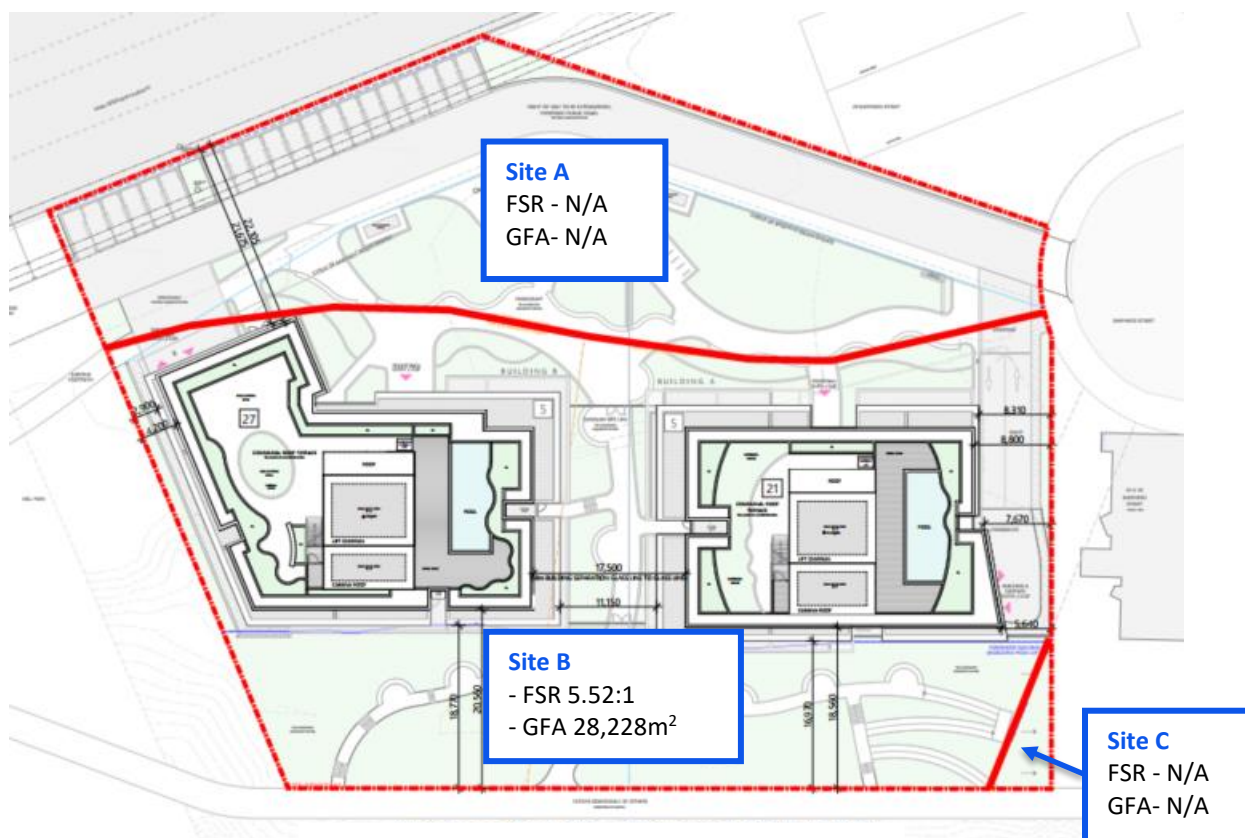


Figure 5: Overall site – Proposed GFA / FSR

Site	GFA / FSR standard (LLEP) - excluding co-living housing bonus (m ²)	Proposed (m ²)	Compliance	Variation (LLEP) (m ² / %)	GFA / FSR standard + 10% (if co-living bonus was available)	Variation (including the 10% available under SEPP Housing) (m ² / %)

<i>Site A</i>	6737.5 (2.5:1)	N/A	Yes	-6737.5	7411.25 (2.75:1)	-7411.25
<i>Site B</i>	17,895.5 (3.5:1)	28,228 (5.52:1)	No	+10.332.5 (57.47%)	19,685.05 (3.85:1)	+8,542.95 (43.40%)
<i>Site C</i>	230.4 (3.6:1)	N/A	Yes	-230.4	253.44 (3.96:1)	-253.44
<i>Total</i>	24,863.4 (3.16:1)	28,228 (3.59:1)	No	+3364.6 (13.53%)	27,349.74	+878.26 (3.21%)

Table 4: Overall site – Proposed GFA / FSR

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 (the Site) for the construction of a high-density residential development (including co-living housing) with associated earthworks, infrastructure, and landscaping.

This written request seeks to contravene a development standard under Clause 4.6 – Exceptions to Development Standards of the LLEP 2008. The development standard for which the contravention is sought is Clause 4.4 of the LLEP for FSR.

The architectural plans, statement of environmental effects and the urban design report form part of this clause 4.6 request.

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 DP247485 and Lot 2 in DP 1266735. The location of the site is shown in Figure 6.

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 north-west, Shepherd Street and residential development to the north and north-east. 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, 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.

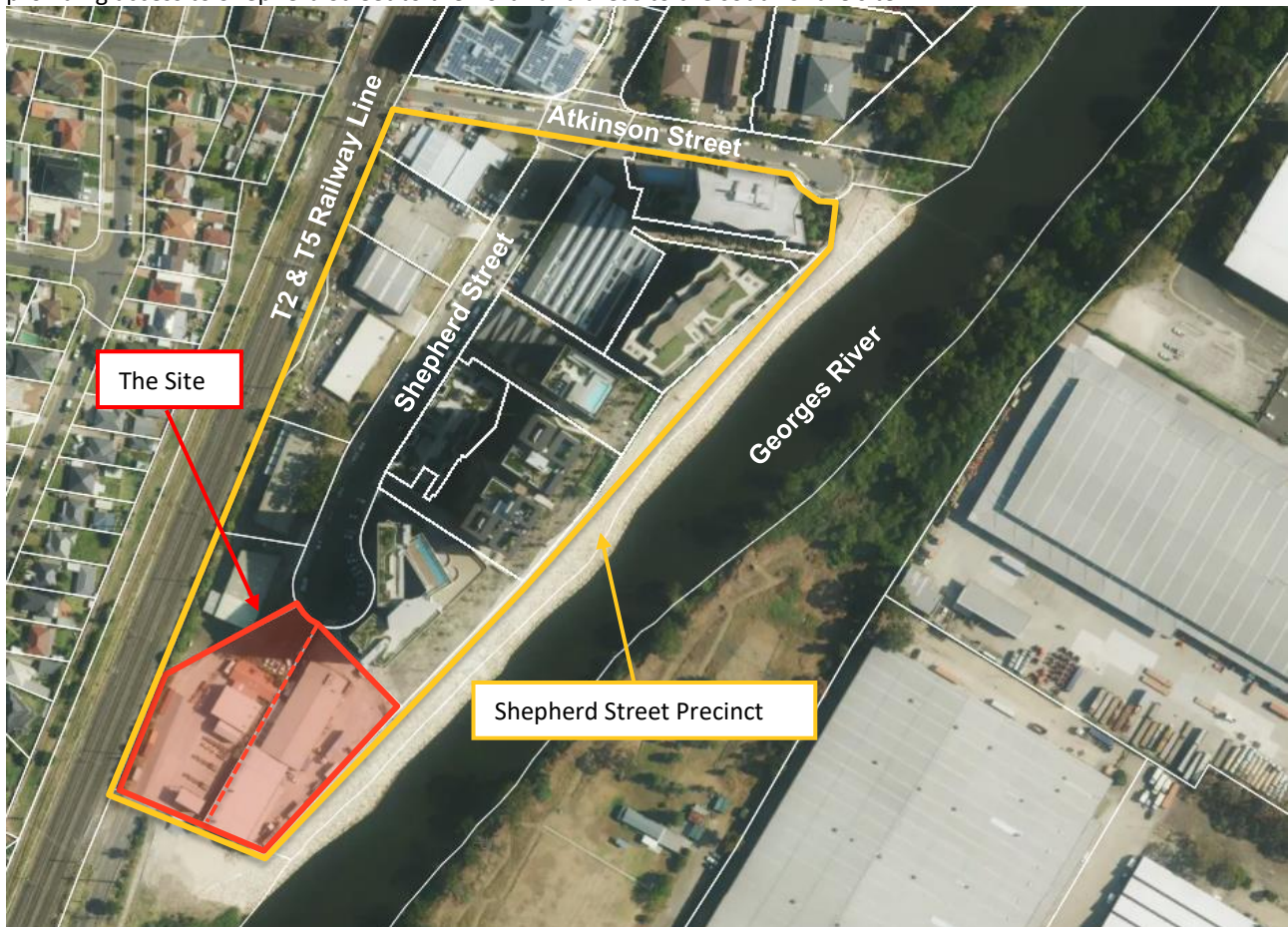


Figure 6: Aerial view of site and locality (Source: MetroMap)

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. These two buildings will straddle the existing lot boundary — with the effect that, but for the different FSR controls for the site, the ‘site area’ for FSR purposes would be both lots taken together.

Significant public domain outcomes are proposed including publicly accessible through-site link, publicly accessible riverfront area, and 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 / RL97,300, 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 flat building dwellings 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 7).

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 form a part of the Shepherd Street Precinct (refer to Figure 8) 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 having been approved (Development Application No. 471/2017), and recently completed as a high-density residential building (refer to Figure 19).

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), formally commenced 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 7).

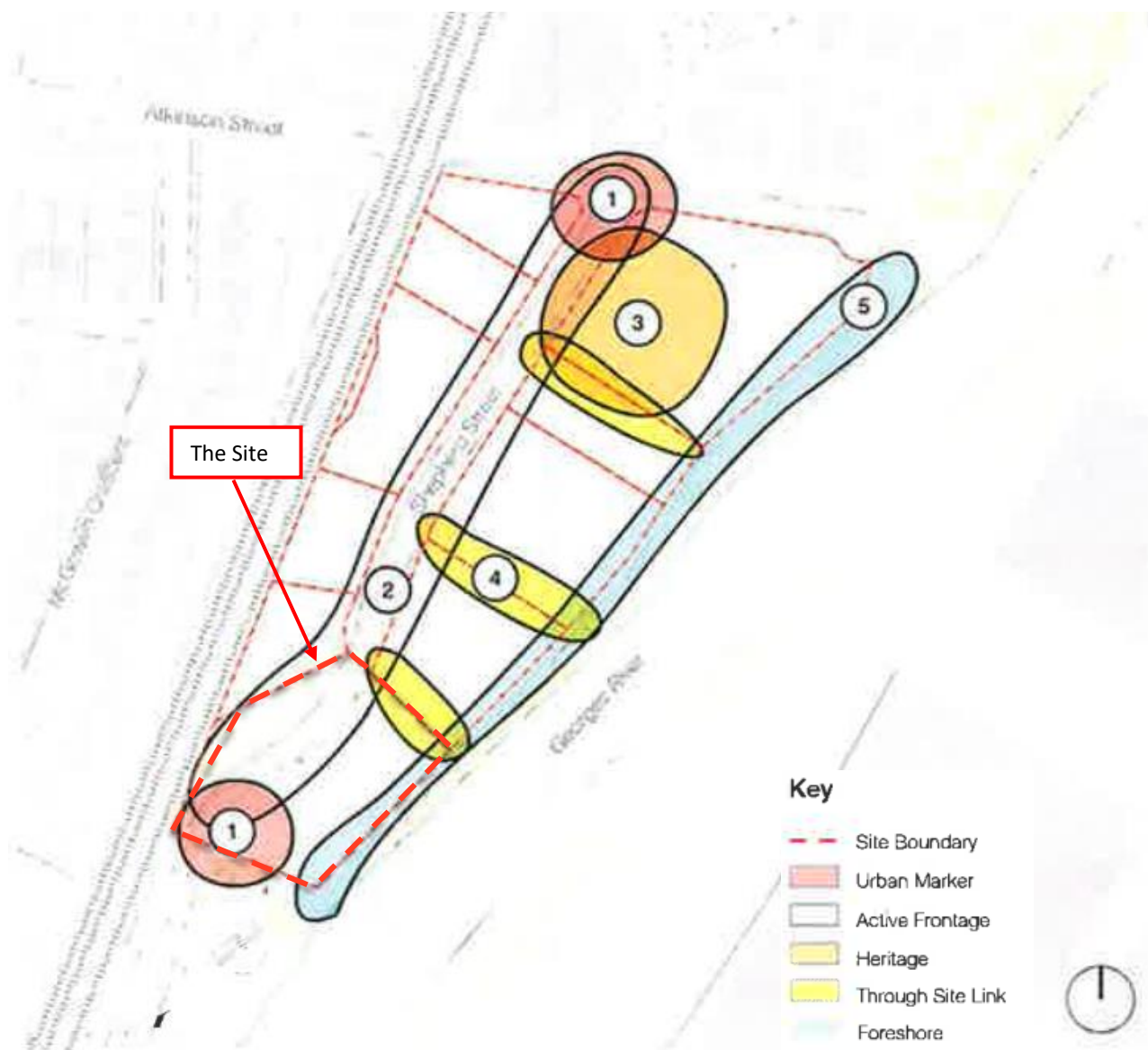


Figure 7: Extract of Section 3.2.3 Urban Design Principles of Shepherd Street Precinct masterplan

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 8. 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 this 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 shared and distributed across the site and neighbouring site at 32 Shepherd Street (refer to Figure 8). It also identifies a key urban marker (built form) in the southern portion of the site. 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.

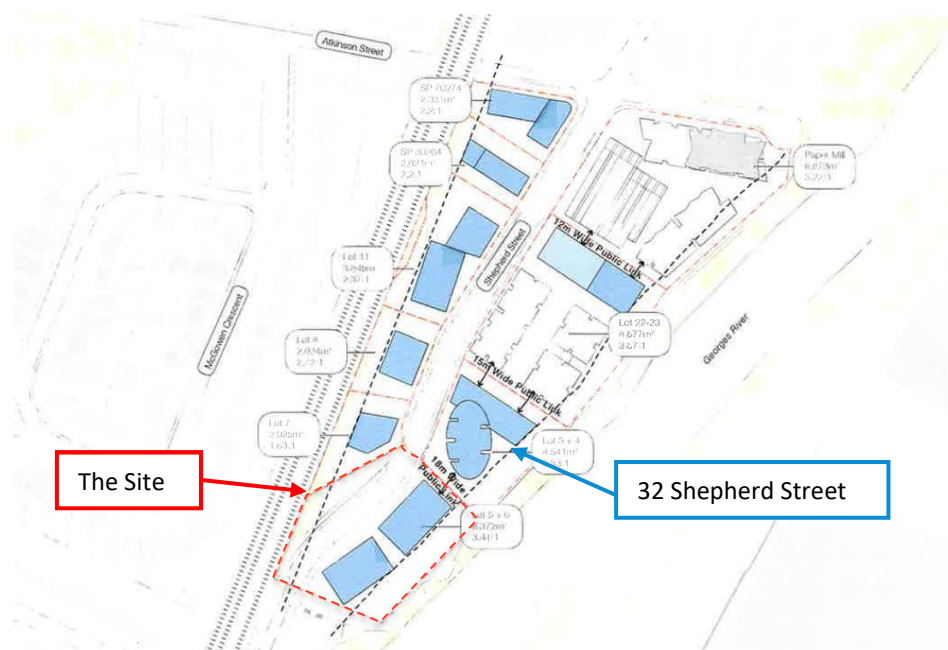


Figure 8: Extract of Section 4.3 Preferred Concept – Plan of Shepherd Street Precinct masterplan

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 9). The proposed development is consistent with the preferred concept massing in the masterplan.

4.5 Preferred Concept Massing

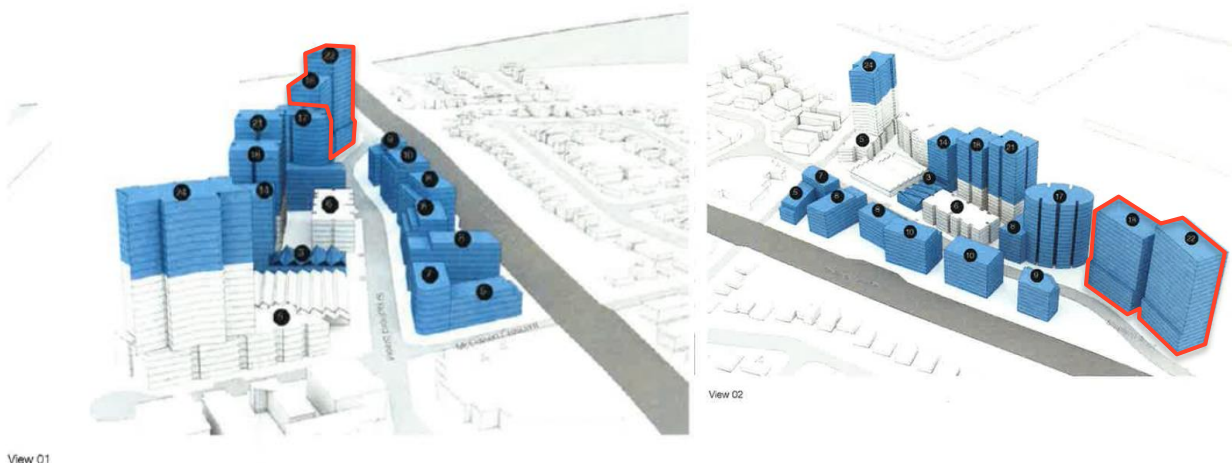


Figure 9: Extract of Views 1 and 2 - Section 3.2.3 Urban Design Principles of Shepherd Street Precinct masterplan (site in red)

The consent at 32 Shepherd Street does not require the publicly accessible through-site link to be provided at the boundary location. In fact, 32 Shepherd Street makes no contribution to the provision of this link, despite the intent of the masterplan.

As a result, the subject development makes good on the masterplan's intent 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 site's 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 119).

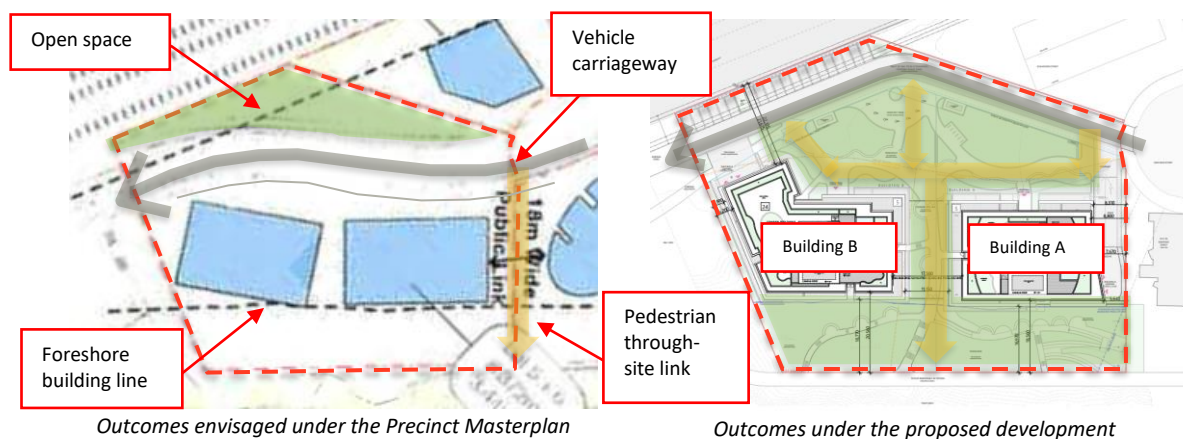


Figure 10: Extract of Section 4.3 Preferred Concept – Plan of Shepherd Street Precinct masterplan (left) and proposed site plan (Mosca Pserras architects) (annotations by SJB)

Pursuant to LLEP 2008, the maximum base gross floor area (GFA) achievable across the overall site is approximately 24,863.4m², being a cumulative maximum FSR of 3.16:1 (excluding any co-living housing bonus).

The permitted GFA is 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 FSR in the area of the site subject to a maximum permissible heights of 65m and 77m, while ensuring no built form associated with the podium and towers will be constructed within the area of the site subject to the 24m height limit under the LLEP.

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 if co-living housing, residential flat building or shop-top housing is permitted under another environmental planning instrument (clause 67 of the Housing SEPP). The site is zoned R4 and residential flat buildings are permitted with consent in this zone.

Section 68(2)(a)(ii) provides for an additional 10% of the maximum permissible FSR if the additional floor space is used only for the purposes of co-living housing. In order to access this bonus co-living housing floor space, the proposed development cannot be more than the maximum permissible floor space for residential accommodation on the land. With the benefit of this provision, this equates to a potential maximum GFA of 27,349.74m², being a cumulative FSR of 3.47:1 for the overall site.

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.

The proposal seeks a total GFA of 28,228m² across the entire site. Within this context, the proposed aggregate FSR for the entire site (including all three (3) distinct site areas for FSR purposes) 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 not be able to achieve these benefits to the same level of amenity and would result in 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 site being the last riverfront site to be redeveloped. Accordingly, the proposed contravention of FSR responds appropriately to the surrounding development by providing a superior built form and landscape outcome having regard to site constraints and opportunities for public benefit.

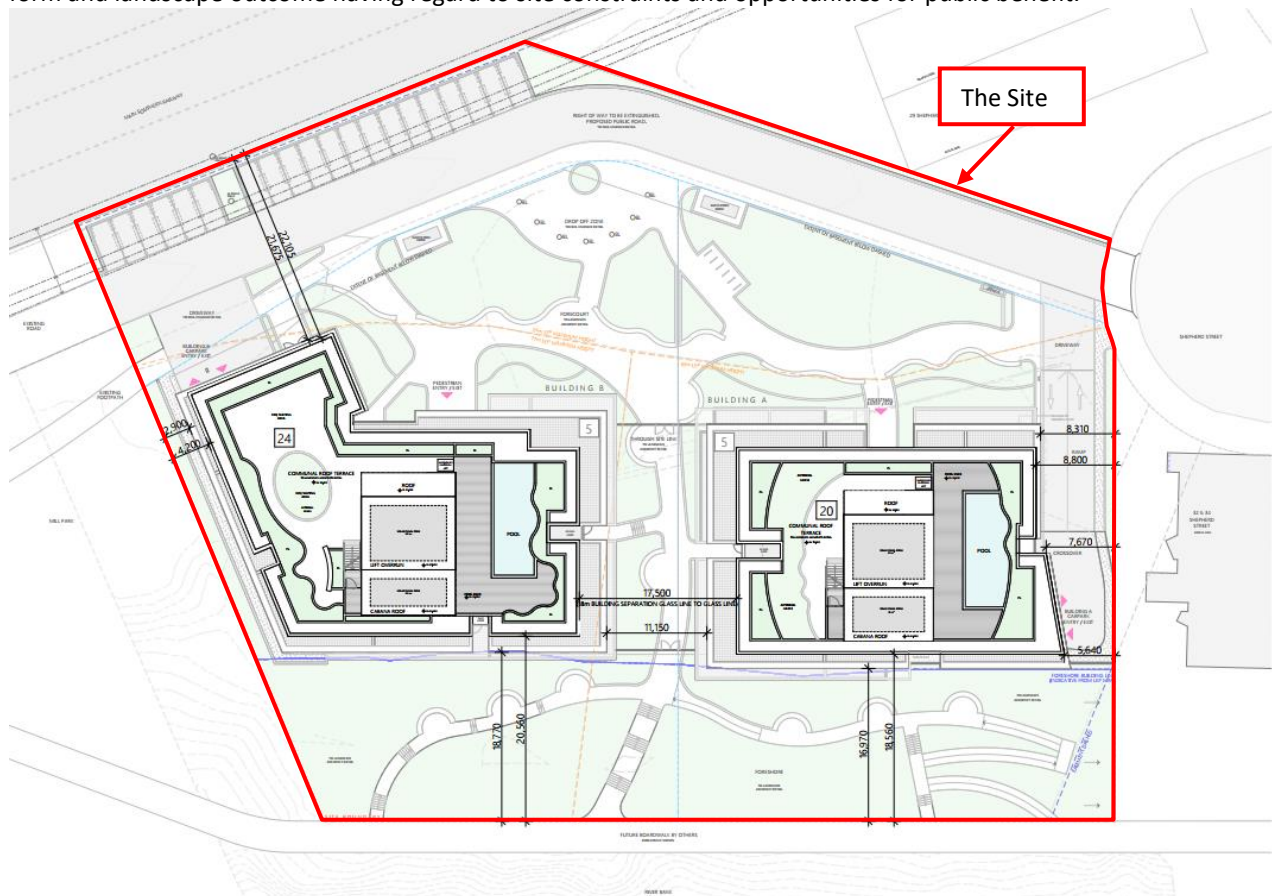


Figure 11: Site Plan (Source: Mosca Pserras architects)

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 under LLEP 2008.

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 floor space ratio (FSR) development standard.

2.5 Is the development standard a performance based control?

No. The FSR 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 4.4 of LLEP 2008.

2.7 What are the objectives of the development standard?

The objectives of Clause 4.4 are as follows:"

- “(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.”*

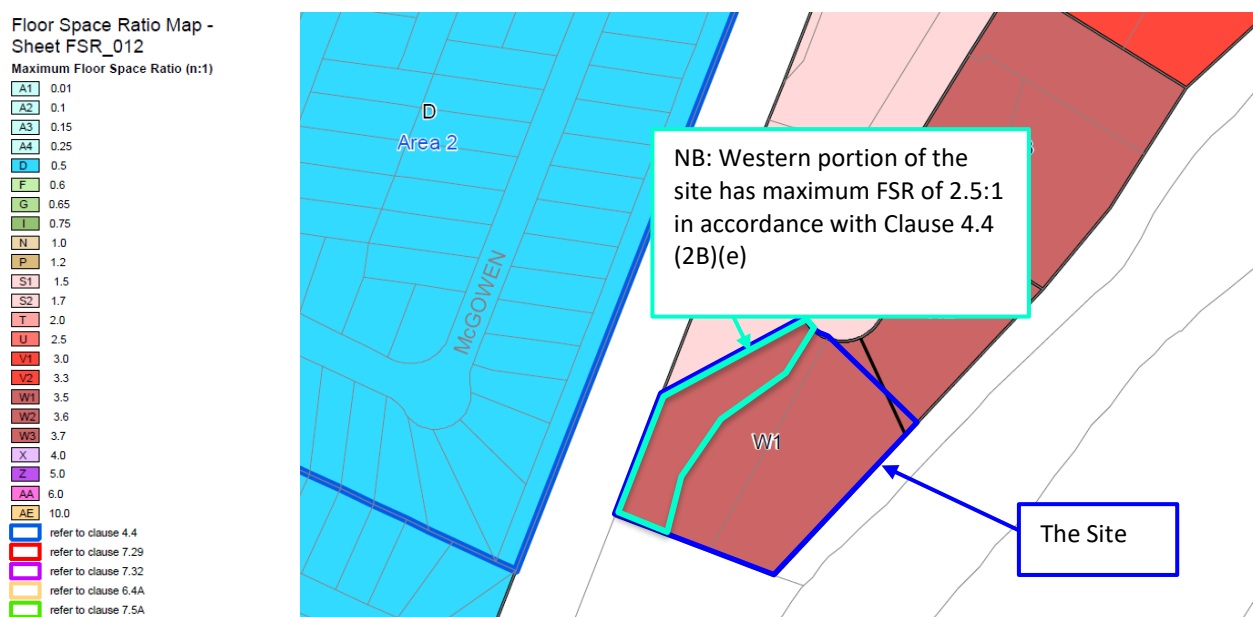
2.8 What is the numeric value of the development standard in the environmental planning instrument?

2.8.1 Clause 4.4 – Floor Space Ratio

Clause 4.4 establishes three (3) FSR controls for the overall site, including:

- A maximum FSR of 2.5:1 to the western portion of the site incorporating Powerhouse Road (outlined in grey and marked 'W1' in Figure 12).
- A maximum FSR of 3.5:1 to the central / eastern portion of the site towards Georges River (marked as 'W1').
- A maximum FSR of 3.6:1 to the north-eastern portion of the site towards No. 32-34 Shepherd Street (demarcated by the black line in an area marked 'W2').

The proposed overall site is outlined in blue in Figure 12.



However, we refer to clause 4.4(2B) of the LLEP, if sites meet certain pre-conditions a FSR control that differs from the LLEP FSR map applies. The western portion of the site (outlined in blue below) is shaded pink on the LLEP's height of buildings map and marked 'S' indicating it is subject to a 24m maximum permissible height. As the overall site is greater than 2,500m², clause 4.4(2B)(e) would apply (if the overall site was the site area for the purposes of calculating FSR). Based on the table in clause 4.4(2B) the relevant maximum FSR for this portion of the site is 2.5:1.

Height Of Buildings Map - Sheet HOB_012

Maximum Building Height (m)

I	8.5
M	12
O	15
P	18
Q	20
R	21
S	24
T1	25
T2	28
T3	29
U	30
V	35
X1	45
X2	46
Z1	56
Z2	58
AA1	65
AA2	68
AA3	76
AA4	77
AB	80
AC	100



Figure 13: Excerpt from LLEP 2008 Height of Buildings Map

For the purpose of FSR calculation, 'site area' is confined to the portion of the development site that is subject to the same floor space ratio control (*Mulpha Norwest Pty Ltd v Hills Shire Council (No 2)* [2020] NSWLEC 74). Accordingly, the proposed overall site consists of three (3) distinct site areas for the purposes of FSR calculation which correspond with the three (3) FSR standards. In the absence of a clause 4.6 request the proposed permitted gross floor area will be determined by the single 'site area' (for FSR purposes) within which the GFA is proposed.

Details of the amalgamated and FSR sub-site areas are identified in Figure 14 and Table 5.

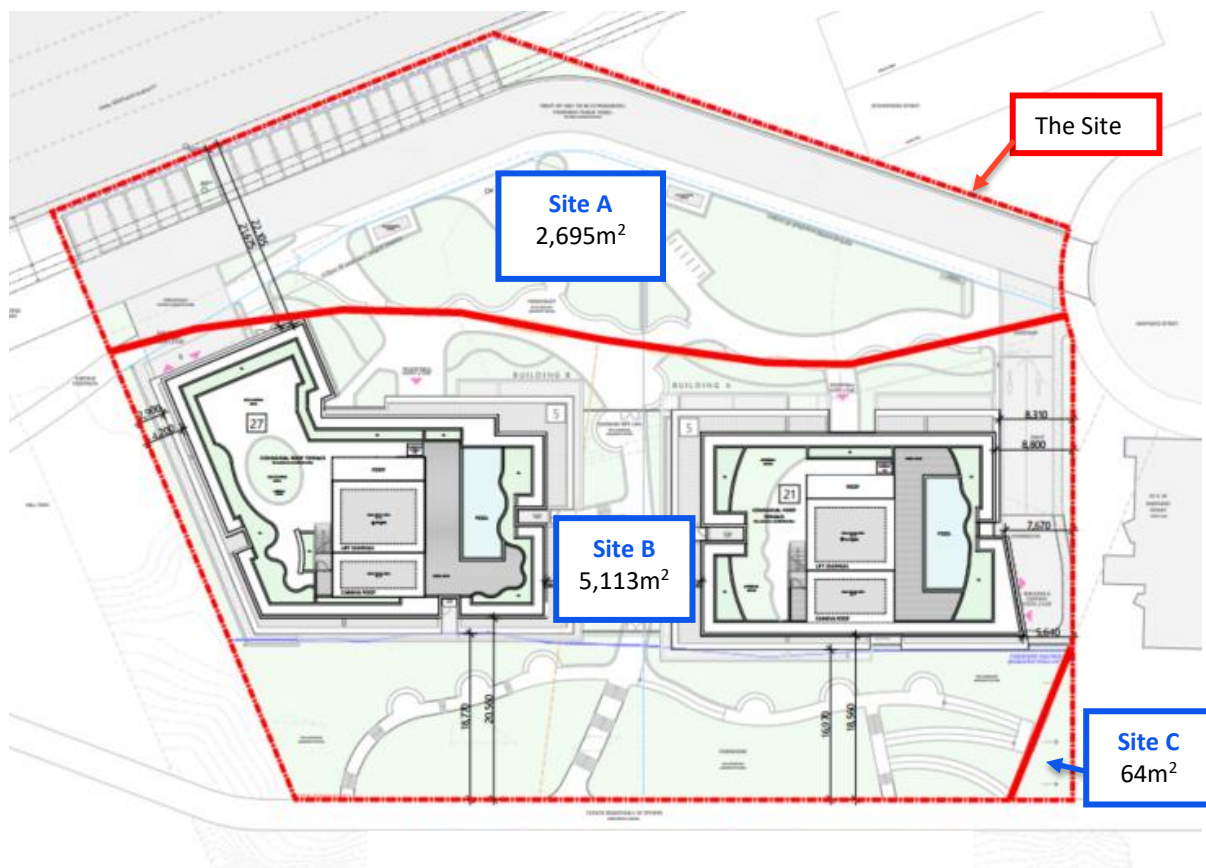


Figure 14: Overall site -including three (3) site areas for the FSR purposes

Overall site	Site Area (m ²) for FSR purposes
Site A	2,695
Site B	5,113
Site C	64
Total	7,872

Table 5: Overall site areas -including three (3) site areas for FSR purposes

The maximum GFA and FSR applicable to the proposed overall site (including site areas for FSR purposes) under Clause 4.4 of the LLEP 2008 are summarised in Figure 15 and Table 6 overleaf.

It is noted that a maximum 'cumulative' FSR of 3.16:1 applies across the overall site, when it is treated as a whole site (and any bonus for co-living housing is disregarded).

This clause 4.6 request is prepared on the basis that the best way of evaluating the carrying capacity of the land is to consider the proposed GFA in the context of the overall site. This is because the proposed development will result in zero GFA within Site A and Site C, falling short of the planned intensity for those parts of the land by 6,967.90m² (excluding any potential bonus for co-living housing). When considering the additional GFA in Site B, it appropriate to consider the absence of any GFA in Site A and Site C.

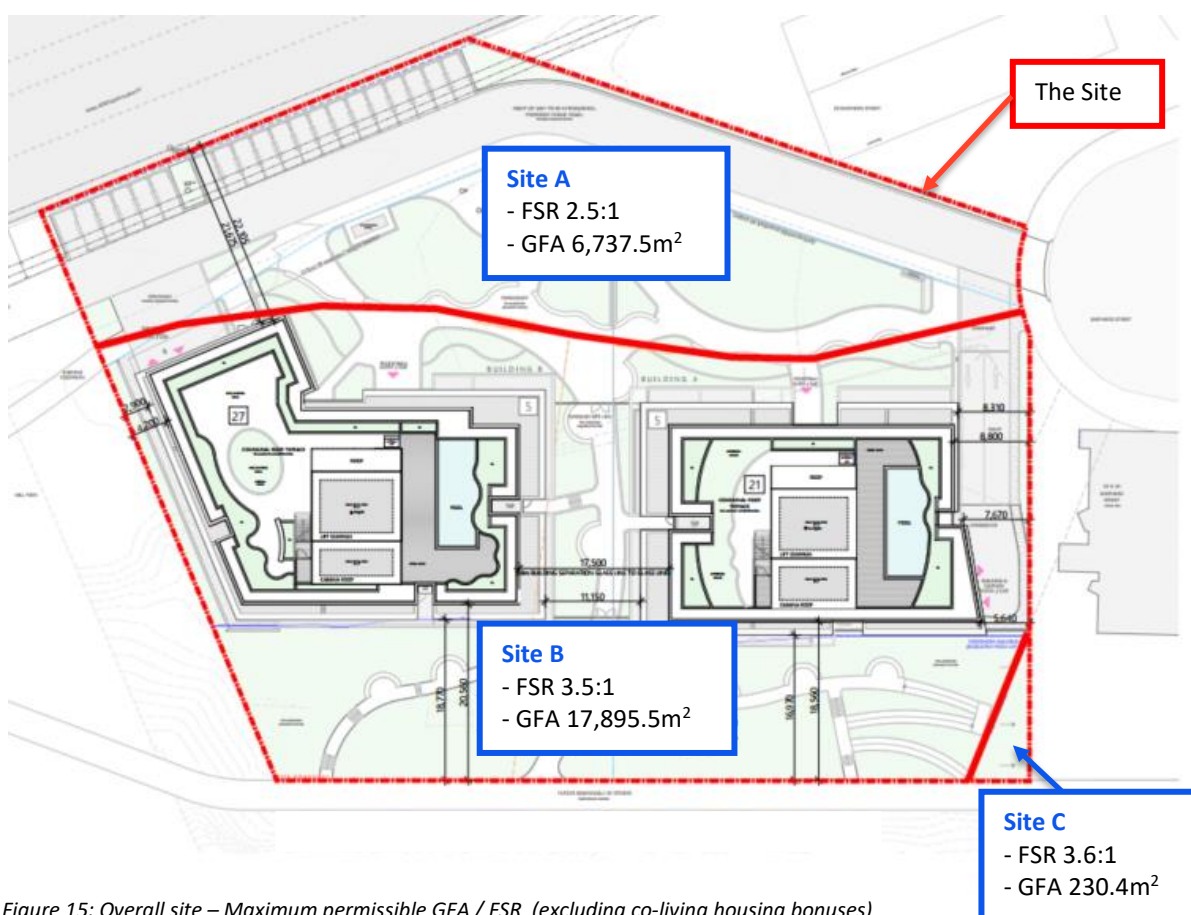


Figure 15: Overall site – Maximum permissible GFA / FSR (excluding co-living housing bonuses)

Overall site	Site Area (m ²)	FSR	GFA (m ²)
Site A	2,695	2.5:1	6,737.5

Site B	5,113	3.5:1	17,895.5
Site C	64	3.6:1	230.4
Total	7,872	3.16:1	24,863.4

Table 6: Overall site – Maximum permissible GFA / FSR (when co-living housing bonuses are excluded)

2.8.2 State Environmental Planning Policy (Housing) 2021 – Co-living housing bonus

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. Section 68(2)(a)(ii) provides for an additional 10% of the maximum permissible FSR if the additional floor space is used only for the purposes of co-living housing. Noting the proposed buildings (including the co-living housing component) are sited wholly within the central / eastern portion of the site (Site B), the resultant FSR including the 10% bonus is 3.85:1 for Site B (maximum GFA 19,685,05m²).

The maximum ‘cumulative’ FSR for the overall site (if the 10% bonus were applied across all three site areas) increases from 3.16:1 (as prescribed by LLEP) to 3.47:1 (refer to Figure 16 and Table 7).

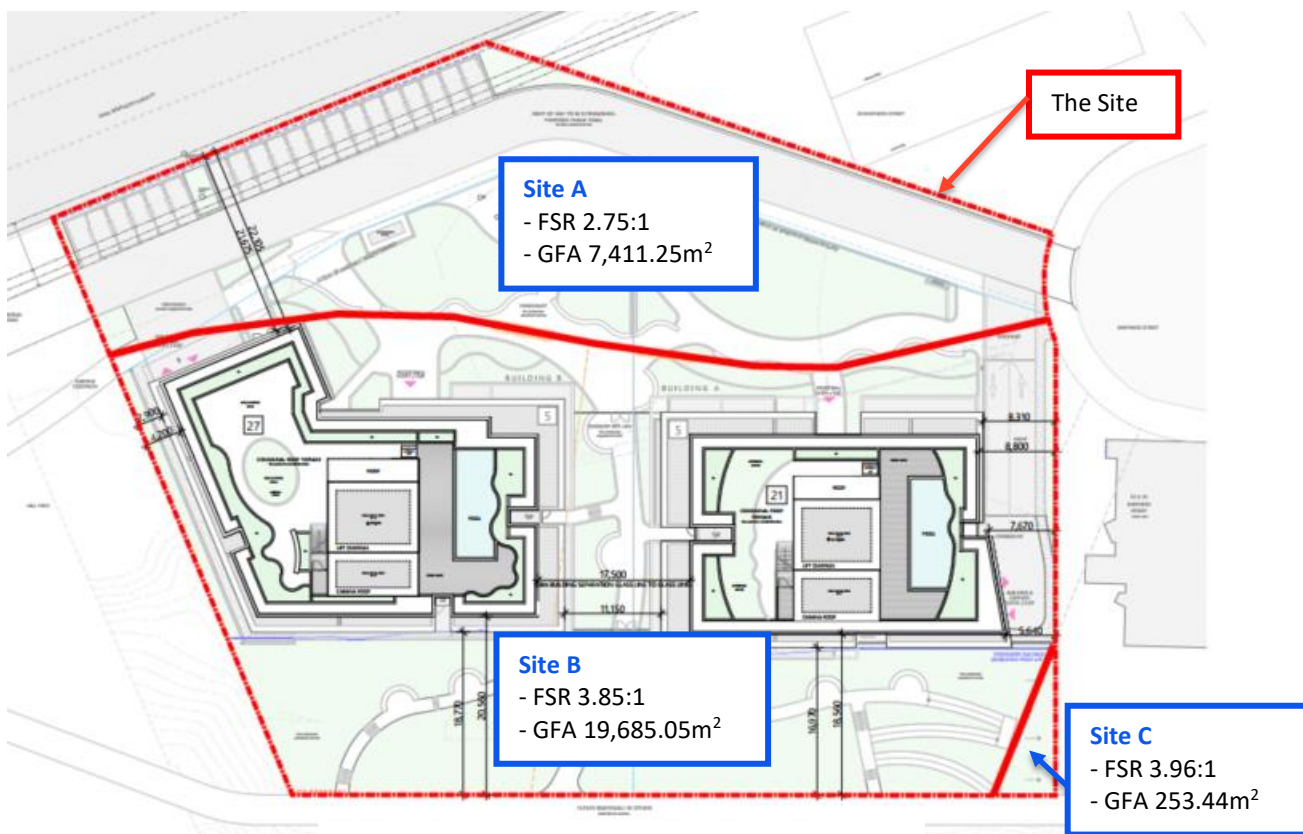


Figure 16: Overall site – Maximum GFA / FSR +10% across the site – when co-living bonus applied

Overall site	Site Area (m ²)	FSR+10% to each FSR site area	Planned GFA with co-living housing (calculated on FSR+10%) (m ²)
Site A	2,695	2.75:1	7,411.25
Site B	5,113	3.85:1	19,685.05
Site C	64	3.96:1	253.44
<i>Total (overall site)</i>	<i>7,872</i>	<i>3.47:1</i>	<i>27,349.74</i>

Table 7: Overall site – Maximum GFA / FSR inclusive of 10% bonus for co-living housing

2.9 What is the proposed FSR variation in the development application?

The proposed development seeks approval for a maximum GFA of 28,228m². The GFA is located solely within Site B and includes co-living dwellings. No buildings or floorspace are sited within Site A and C, however development in the form of a road, carparking, a vehicular accessway to the buildings and communal space/landscaping works are proposed in Site A. Development in the form of a communal space/landscaping works are proposed in Site C.

In a strict sense, the co-living housing bonus is not available under section 68(2)(a) of the Housing SEPP. This because section 68(2) only applies if the proposed floor space is not more than an additional 10% of the maximum permissible floor space ratio. That is, section 68(2)(a) does not strictly apply when the proposed GFA within Site B exceeds 19,685.05m² (i.e. 3.85:1).

Accordingly — as 28,228m² of GFA will be wholly within Site B — the appropriate reference point for a strictly compliant Site B GFA is 17,895.5m² (i.e. 3.5:1). This equates to an FSR of 5.52:1 and a variation of 57.74% within Site B.

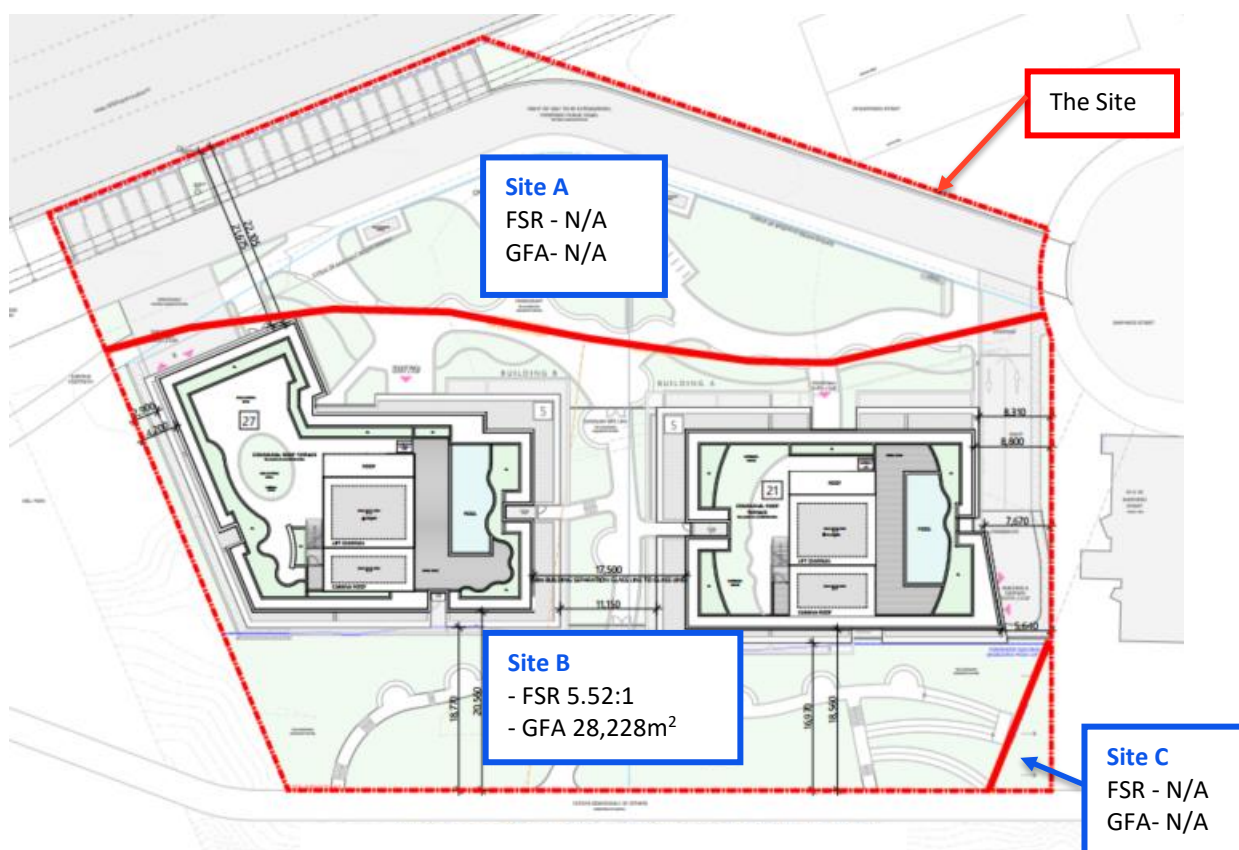


Figure 17: Overall site, showing site areas for FSR purposes – Proposed GFA / FSR

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

The proposed percentage variation to the maximum FSR development standard - Site B:

— +57.74% (10,332.5m²) above the maximum FSR (3.5:1) as prescribed by LLEP.

However, this numerical non-compliance is not, in our opinion, reflective of the actual scale and density of development, when the development as a whole is considered across the proposed overall site.

When the overall site is looked at as a whole, the **proposed** GFA of 28,228m² is equal to an FSR of 3.59:1. On an overall site basis, the **envisaged** FSR, without any co-living housing bonus, is 3.16:1. When a 10% co-living housing bonus is applied across the site (i.e. for a development that includes at least 2,486.34m² of co-living housing GFA) the envisaged FSR is 3.47:1.

The proposed development does include 2,486.00m² in GFA devoted to co-living housing. Accordingly, on an overall site basis, the proposed variation to FSR is 3.21%. It is submitted that this is more meaningful measure of the extent of the proposed variation in the circumstances of this site.

Refer to summary in Table 8.

Site	GFA / FSR standard (LLEP) (m ²)	GFA / FSR standard +10% (m ²)	Proposed (m ²)	Compliance	Variation (LLEP) (m ² / %)	Variation (+10% available under SEPP Housing) (m ² / %)
Site A	6737.5 (2.5:1)	7411.25 (2.75:1)	N/A	Yes	-6737.5	-7411.25
Site B	17,895.5 (3.5:1)	19,685.05 (3.85:1)	28,228 (5.52:1)	No	+10,332.5 (57.47%)	+8,542.95 (43.40%)
Site C	230.4 (3.6:1)	253.44 (3.96:1)	N/A	Yes	-230.4	-253.44
Total	24,863.4 (3.16:1)	27,349.74 (3.47:1)	28,228 (3.59:1)	No	+3364.6 (13.53%)	+878.26 (3.21%)

Table 8: Overall site – Proposed GFA / FSR

3.0 Assessment of the Proposed Contravention

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for contravening development standards applying under a local environmental plan. The maximum floor space ratio under Clause 4.4 is a development standard which can be varied pursuant to clause 4.6 of the LLEP.

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(2) of the LLEP provides that development consent can be granted, subject to the requirements of the clause, even though the development contravenes a development standard, unless a development standard is expressly excluded from clause 4.6. Clause 4.4 is not excluded by clause 4.6 of the LLEP.

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 request 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

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 FSR standard is unreasonable or unnecessary as the development achieves the objectives of the development standard, despite the proposed contravention. The objectives, together with the relevant analysis, are dealt with below.

Objective	How the development achieves the objective
(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,	<p>The proposed development only exceeds the planned density and intensity of the overall site (when taking into account the co-living housing bonus) by 3.21% as no buildings or floor space are proposed on Site A and C and all buildings are wholly sited within Site B. For this reason, the proposed development is compliant with the maximum FSR permitted across the western and north-eastern portions of the site (i.e. Site A and C).</p> <p>The primary cause of the ‘headline’ (or technical variation) of 57.74% (in Site B) arises from the re-distribution of GFA away from Site A and Site C, and for those parts of the land to be permanently set-aside for development that does not include GFA.</p> <p>In terms of additional vehicle traffic generation caused by the 878m² contravention (when considering the co-living housing bonus), it is reasonable to assume residents will utilise existing railway infrastructure – given proximity to the Liverpool City Centre – as primary means of transportation during peak periods. Moreover, the proposed density is appropriate and has been prepared with regard to the site’s location within Liverpool City Centre and its proximity to key road and rail infrastructure, as well as open space.</p> <p>Further, the development as a whole is well placed to cater for increased pedestrian traffic due to substantial public domain improvements proposed for Site A as it will add to infrastructure in the locality by providing a new public road, public car parking, a publicly accessible through-site link and public access to the river frontage.</p> <p>The Traffic and Parking Assessment accompanying this application concludes that “the traffic generation of the proposed development will be satisfactorily accommodated on the road system and there will not be any adverse impacts”.</p> <p>The proposed contravention will have no adverse impact upon demand on utility infrastructure such as water, sewer, and stormwater infrastructure as this has been envisaged under the Planning Proposal for the Shepherd Street precinct.</p>

Objective	How the development achieves the objective
	<p>On balance, the intensity and density of the development as a whole is in line with that envisaged by Council's strategic planning framework for the Shepherd Street precinct and additional vehicle and pedestrian infrastructure demand generated by the 3.21% contravention can be sustained by the traffic network given the site's proximity to the Liverpool City Centre and public transport network.</p>
<p>(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,</p>	<p>The desired future character cannot simply be derived from controls, but rather should take into account surrounding developments (<i>Woollahra Municipal Council v SJD DB2 Pty Limited</i> [2020] NSWLEC 115 at [59], [62]-[63], <i>Big Property Group Pty Ltd v Randwick City Council</i> [2021] NSWLEC 1161 at [44], [46];</p> <p>The desired future character of the site (as it relates to the allocation of development density) is defined by principles within the Shepherd Street Precinct Masterplan prepared by SJB Architecture dated July 2016 which establishes the following:</p> <ul style="list-style-type: none"> — Height focused on the eastern side of Shepherd Street with taller elements towards the edges of the precinct. — A 30m Foreshore Building Setback to Georges River. — Shepherd Street as primary vehicular pedestrian corridor with vehicle entrances off Shepherd Street. — Pedestrian permeability to Georges River. — Fine grain built form character with a variation in built forms and architectural styles encouraged. — Deep soil planting implemented in the 12m Railway Setback zone. <p>The proposed density and bulk as it relates to these principles are appropriate for the site and is consistent with the massing, siting and scale of built form envisaged under the adopted masterplan for the Shepherd Street Precinct, notwithstanding contravention to standard, given:</p> <ul style="list-style-type: none"> — The design and density of the proposal responds appropriately to an emergent high density urban grain in a new residential precinct, and the pattern of approved (and built) development in the Precinct.
	 <p>Figure 18: Street View of 6A and 6B Atkinson Street and 20 Shepherd Street (Google Maps, Aug 2020)</p>

Objective	How the development achieves the objective
	<div data-bbox="758 235 1316 600" data-label="Image"> </div> <p data-bbox="691 602 1382 627"><i>Figure 19: Street View of 28 - 32 Shepherd Street (Google Maps, Aug 2020)</i></p> <ul data-bbox="646 660 1428 1512" style="list-style-type: none"> — Exceeding the floor space ratio does not substantially contribute to the building's height, scale, bulk or density. The contravention to the standard is a consequence of the how the site area and FSR are calculated. This is because the site, for the purposes of FSR, is subject to three different FSR standards and each area is to be calculated individually. If areas of the site with different FSR standards were developed separately, bulk and scale of the development may result in less amenity and consistency with the desired future character by way of reduced public domain accessibility and visibility. — The contravention is, in part, directly attributed to the freeing up of the ground plane within Site A in response to Council's strategic planning controls for the site which approaches the design by: <ul style="list-style-type: none"> — Utilising two towers, with the taller of the two located at the edge of the Precinct separated by slots which read as two sender forms, which when compared to a fully compliant design, may result in shorter and bulkier forms. — Setting the forms back from the Foreshore Building line to allow use of the riverfront area. — Continuing the composition of existing taller buildings within the Shepherd Street Precinct, especially as seen from the Georges River – consistent with the SJB Masterplan for the precinct. — Apportioning a significant portion of the site as publicly accessible open space adjacent to the buildings and away from the noise impacts from being next to the railway line. <p data-bbox="643 1547 1428 1771">Overall, the contravention resulting in the proposed density and bulk of the development as a whole is appropriate for the site and are consistent with the massing, siting and scale of built form envisaged under the adopted masterplan for the Shepherd Street Precinct, resulting in the amendment to the LEP development standards. The design and density of the proposal responds appropriately to an emergent high density urban grain in a new residential precinct.</p>
<p data-bbox="167 1809 616 1935">(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</p>	<p data-bbox="643 1809 1356 1904">The minimisation of impacts does not mean the elimination of all impacts. Impacts may still arise (<i>Initial Action Pty Ltd v Woollahra Municipal Council</i> [2018] NSWLEC 118 at [94]-[95]).</p> <p data-bbox="643 1939 1428 2000">An assessment of impacts from new development on adjoining and nearby properties must identify a baseline of amenity currently enjoyed</p>

Objective	How the development achieves the objective
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by the properties (Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 at [80]).

The elements varying the control may impact baseline amenity of surrounding properties relating to solar access, visual privacy, and views as discussed below:

- **Solar access** - shadow diagrams below show a hypothetical compliant and the proposed building envelopes (Refer annexure A for hypothetical and proposed envelopes). Shadows are limited to 20 minutes in winter from 9am to existing low density residential properties along Birkdale Crescent as follows (Refer Annexure B for full shadows and more detailed shadow analysis).

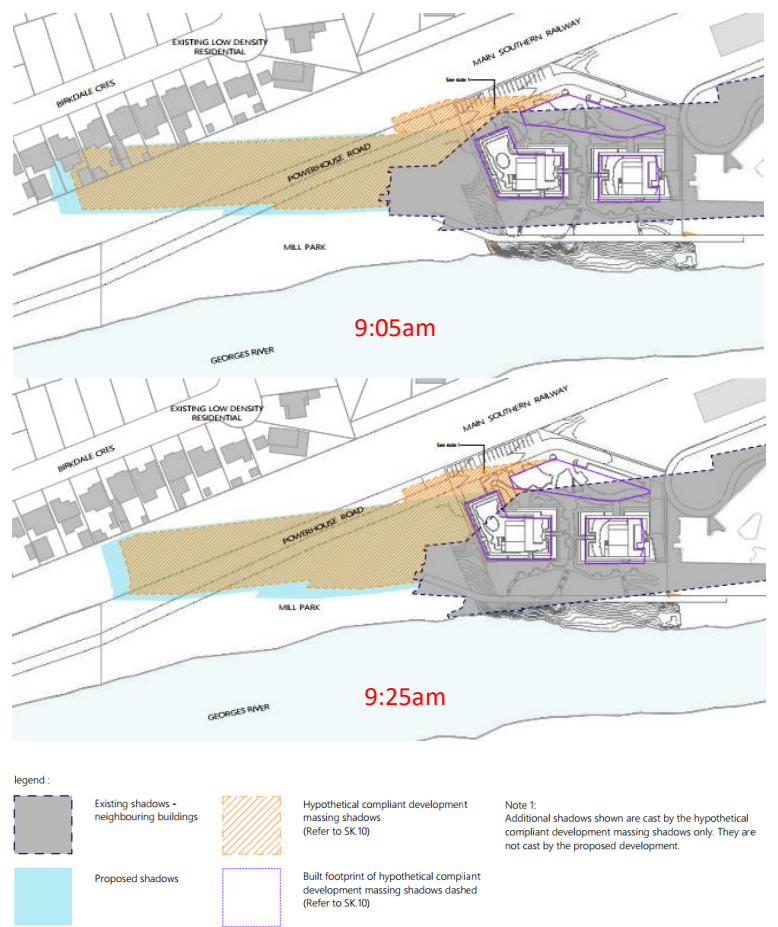


Figure 20: Extract of 9am and 9:30am Shadow Diagrams, Winter Solstice (Mosca Pserras Architects)

Objective

How the development achieves the objective

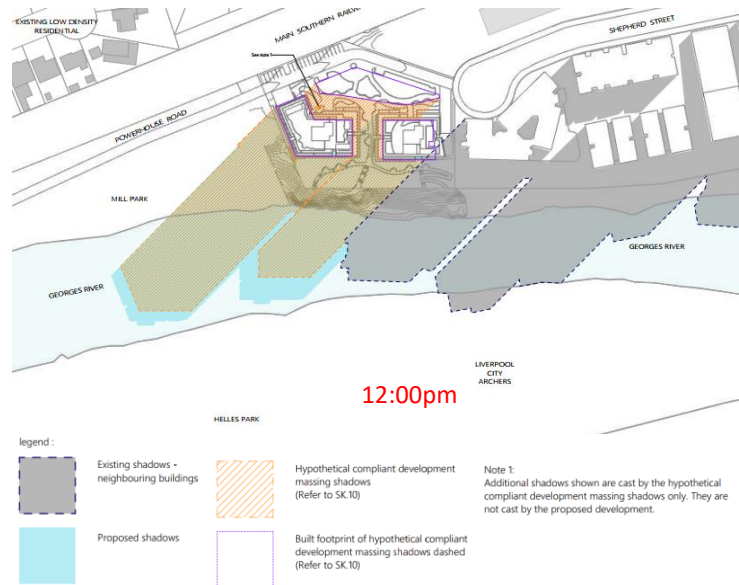


Figure 21: Extract of 12pm Shadow Diagrams, Winter Solstice (drawing SP02.4, Mosca Pserras Architects)

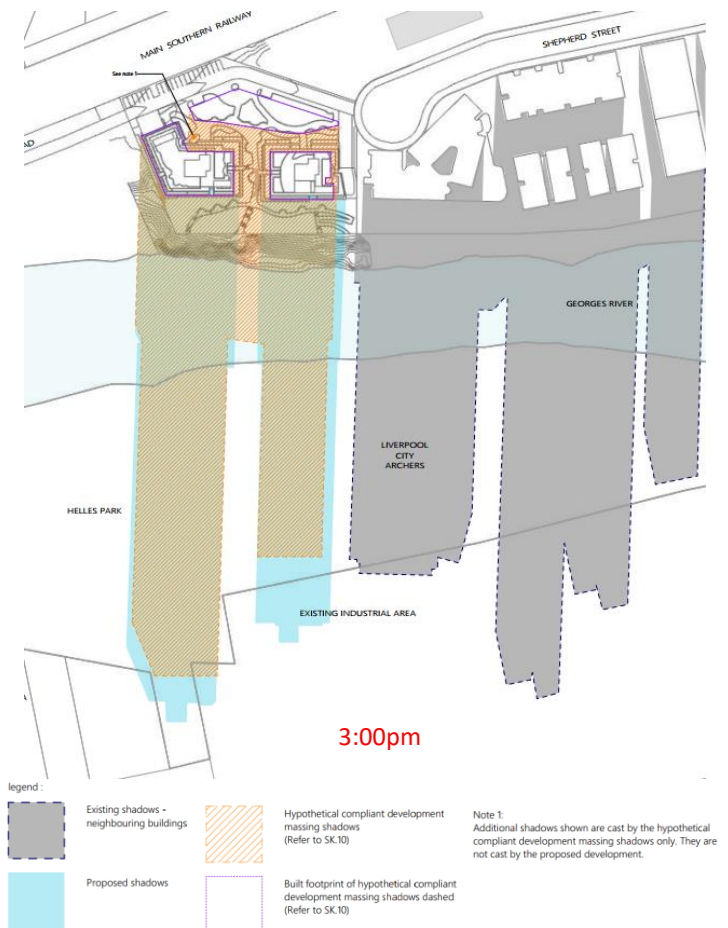


Figure 22: Extract of 3pm Shadow Diagrams, Winter Solstice (drawing SP02.7, Mosca Pserras Architects)

- **Visual privacy/overlooking** - the additional FSR will achieve the intent of this objective as visual privacy to neighbouring dwellings will be maintained through:

Objective

How the development achieves the objective

- privacy measures applied to any balconies or windows facing the adjoining building;
- measures including offsetting windows and balconies and installing fixed vertical screens to windows and balconies that direct views away from the adjacent building; and
- Apartment Design Guide/SEPP 65 compliant building separation between habitable room windows to neighbouring sites.

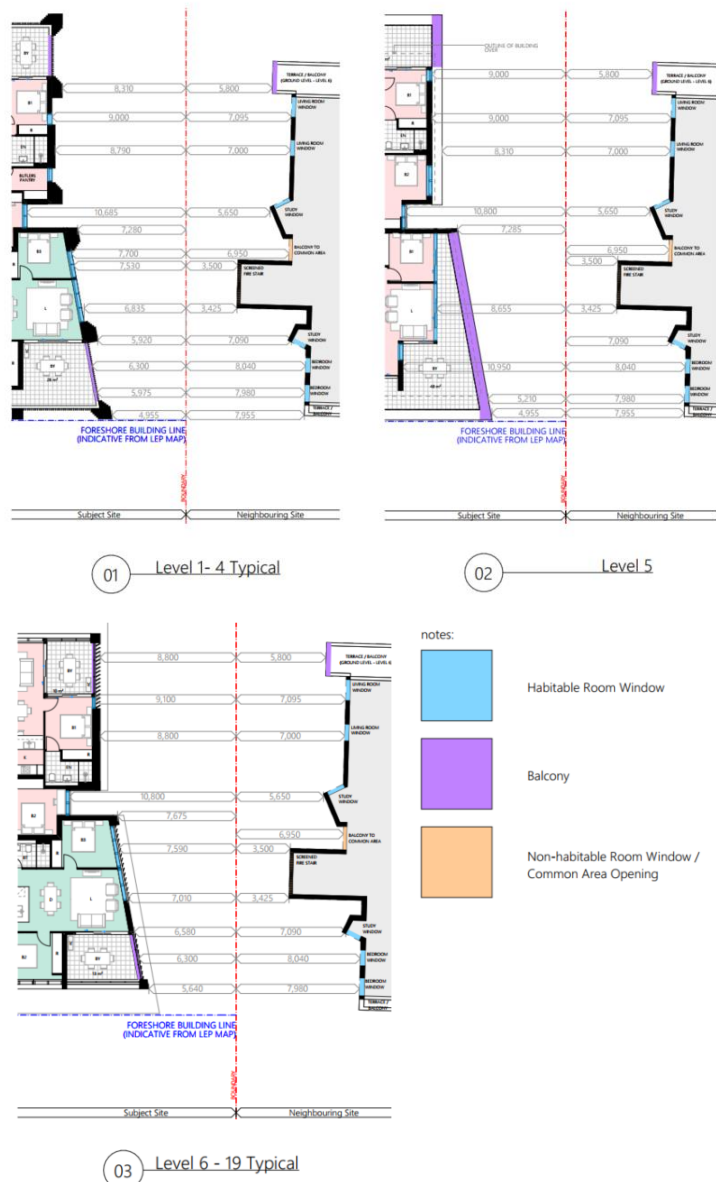


Figure 23: Extract of Building Separation Diagrams (Mosca Pserras Architects)

- **Visual impact** - While the development as a whole is prominent from all views, the additional floorspace contravening the standard will have no material impact to views from the locality as demonstrated in extracts of four key viewpoints shown below.

Objective	How the development achieves the objective
	 <p data-bbox="646 1339 869 1370"><i>Figure 24: View analysis</i></p> <p data-bbox="646 1400 1428 1489">Accordingly, the additional floorspace contravening the standard does not contribute to unacceptable impacts in terms of privacy, visual impacts or view loss to adjoining or surrounding properties.</p> <p data-bbox="646 1527 1428 1751">Specifically, in relation to the completed development at 32-34 Shepherd Street, the view analysis (in Annexure C) illustrates that the view from the apartments and rooftop open space facing south are obstructed in both the proposed and hypothetical compliant schemes. Views to the north, west and east remain unobstructed. Accordingly, the view impacts are considered to be consistent with those envisaged by the controls.</p>
<p>(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,</p>	<p>The proposal is located within the Shepherd Street Precinct and responds appropriately to the high-density residential character envisaged for this area framed by road and rail infrastructure to its west and Georges River to its east. The anticipated siting and scale of the development on the site was first conceived in the Shepherd Street Precinct masterplan, excerpts of which are included in Figures 24 and 25 below. The southern building, in this case represented by Building B,</p>

Objective	How the development achieves the objective
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was always envisaged to be an “urban marker” defining the southern end of the Precinct.

Beyond the Shepherd Street Precinct, the proposal will provide articulation and variety in scale to create visual interest and an urban landmark indicative of its City Centre location whilst complementing the surrounding environment.



Figure 25: Extract of Section 3.2.1 Urban Design Response of Shepherd Street Precinct masterplan



Figure 26: Extract of Section 3.3 Urban Design Concept of Shepherd Street Precinct masterplan

- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

The built form is proposed at a scale which is commensurate with the massing envisaged for the site under the Shepherd Street Precinct masterplan. The arrangement and massing undertaken for each building ensures opportunities for open space are maximised at ground level, whilst ensuring development appropriately responds to surrounding built form, and the provision of public benefits detailed earlier in this submission.

The hypothetical compliant scheme shown below results in a inappropriate development outcome for the site as it replaces a significant publicly accessible communal open space with additional built form. This is also confirmed by Architectus in their review of the hypothetical and compliant developments (refer Annexure D).

Objective	How the development achieves the objective
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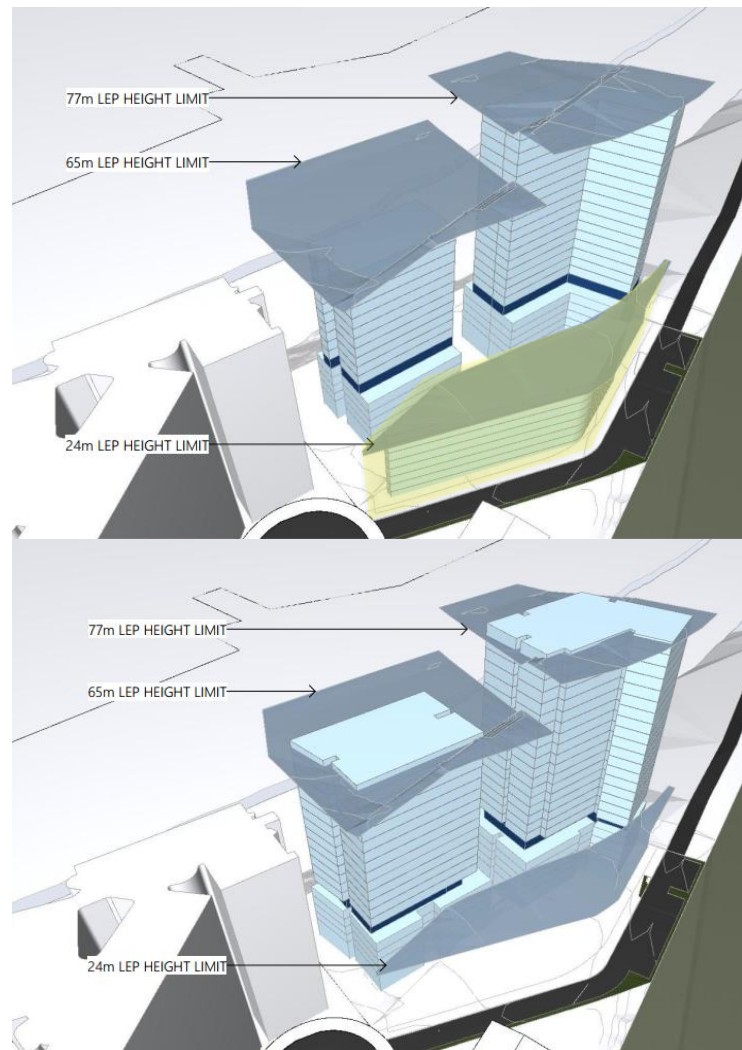


Figure 27 Hypothetical compliant development massing outcome (top) and proposed development massing (below)

- (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.

The proposal is considered to exhibit design excellence. In addition to high quality materials, the proposed massing and location of building envelopes across the site will allow for generous public domain outcomes including publicly accessible through-site link and public access to the riverfront which otherwise would not be available under the hypothetical compliant development. In doing so, the proposal establishes design excellence, ensuring that the design and placement of each building is guided by its relationship to surrounding infrastructure including railway, roads and existing development, including buildings within Shepherd Street Precinct.

Table 9: Assessment against Clause 4.4 Floor space ratio objectives

Overall, it is unreasonable to deny a contravention that would assist in increasing housing diversity and supply within a master planned precinct that envisages the development of high density residential development within the R4 High Density Residential zone in the circumstances where the contravention can occur without unacceptable adverse impacts, and which accords with Council's strategy for supporting an increase in the diversity of housing focused in the Liverpool City Centre and well serviced by public transport.

We refer to section 3.4.1 below, which demonstrates how the proposed development meets the objectives of the development standard.

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

In the circumstances of the case, there are sufficient environmental planning grounds to justify contravening the FSR development standard being:

- The proposed contravention allows the development to better achieve the objectives of the R4 High Density Residential zone, particularly as the proposed contravention will provide a variety and suitable concentration of housing types to both owners and renters near the City Centre, maintain views and public accessibility between Shepherd Street and Powerhouse Road, and not result in any land fragmentation preventing high density residential development as well as the objectives of the FSR standard as outlined in section 3.4 below;
- The proposed development, inclusive of the contravention, achieves the objectives of the height of building development standard and the land use zones. A design concept with strict compliance with the FSR development standard would, in this instance, result in an inferior development outcome for the site, as strict compliance would:
- limit the delivery of housing outcomes in close proximity to high frequency transport on the site, inconsistent with the strategic context as referenced in the Western City District Plan. Specifically, if the site was developed in accordance with the hypothetical compliant development, it would deliver 303 apartments and no co-living housing. The proposed development is for 341 residential apartments and 66 co-living housing dwellings. This contravention to FSR allows for 38 additional apartments and 66 co-living dwellings;
- limit opportunities for the development of diverse and affordable housing outcomes as the development as a whole would provide 16.2% as co-living housing intended for renters including key workers;
- not respond to the existing site context given the presence and development restrictions imposed by the foreshore building line, right of way linking Shepherd Street to the east and existing road to the west, and scale of residential development emerging in the Shepherd Street precinct; and
- be inconsistent with the opportunities pursued through the Shepherd Street planning proposal as outlined in the relevant Council report dated 29 June 2016 which sought:
 - *“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.”*
- Non-compliance with the FSR standard, by virtue of re-distributing the GFA on the site, does not contribute to unacceptable or adverse environmental impacts in terms of overshadowing, visual impacts, privacy or view loss as demonstrated in Section 3.2.1;
- The proposed development exceeds the planned density and intensity of the overall site (when taking into account the co-living housing bonus) by 3.21%. The proposed contravention will provide for an increase in the diversity and affordability of housing and an overall public benefit (in the form of a right of way relinquishment and public domain improvement of Site A and C) when compared with a development that sought to achieve the same public benefits but complied with the FSR control. This is in line with Council's ambition for providing increased housing diversity and affordable housing options in the City Centre and well serviced by public transport.
- The contravention allows for the provision of co-living housing that would not otherwise be provided. The co-living housing is a specific, more affordable, housing type that is reserved for renters, rather than owner occupiers. By providing for additional co-living housing, the objective of the EP&A Act 'to promote the delivery and maintenance of affordable housing' (section 1.3(d)) is better achieved (by virtue of the contravention).
- The objective of the EP&A Act in section 1.3(a) is achieved by contravening the development standard. Section 1.3(a) is *'to promote the social and economic welfare of the community and a better environment by the proper*

management, development ... of the State's natural and other resources'. The inefficient use of the site would not reflect the proper development of the state's limited supply of land suitable for high density residential housing.

- The proposed non-compliant development better achieves the objective in section 1.3(g) of the EP&A Act that is to promote good design and amenity of the built environment.

While the extent of the FSR contravention, if assessed against a compliant development is not small this is not, in itself, a material consideration as to whether the contravention should be allowed because:

- There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6 (*GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85]).
- It is not necessary to consider case studies in order to address the above issue, as each case ultimately turns on its own facts. However, decisions of the Land and Environment Court are informative, as they demonstrate how the flexibility offered by clause 4.6 works in practice. Some examples that could be included are as follows:
 - In *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 a height exceedance of 103 per cent was approved, along with a floor space ratio exceedance of 44.7 per cent.
 - In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003, the Land and Environment Court granted a development consent for a three (3) storey shop-top housing development in Woolloomooloo. In this decision, the Court approved a floor space ratio variation of 187 per cent.
 - In *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the Court granted a development consent for a residential flat building. In this decision, the Court approved a floor space ratio variation of 85 per cent (from 0.65:1 to 1.21:1).
 - In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583, the Court granted development consent for a four-storey mixed use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75 per cent (2.63:1 compared to the permitted 1.5:1).
 - In *Moskovich v Waverley Council* [2016] NSWLEC 1015, the Land and Environment Court approved a residential flat building in Bondi with a floor space ratio of 1.5:1. The development standard was 0.9:1. The exceedance was around 65 per cent.
 - In *Edmondson Grange Pty Ltd v Liverpool City Council* [2020] NSWLEC 1594, the Court granted a development consent for three residential flat buildings. In this decision, the Court approved a floor space ratio variation of 59 per cent (from 0.75:1 to 1.19:1).
 - In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386, the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.
 - In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, the Court granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42 per cent (3.54:1 compared to the permitted 2.5:1).
 - In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555, the Court granted development consent for a three-storey building containing a hardware and building supplies use with a floor space ratio exceedance of 27 per cent (1.27:1 compared to the permitted 1.0:1).

- 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?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

3.4.1 Objectives of the Floor Space Ratio standard

The proposal, inclusive of the contravention, remains consistent with the objectives of the FSR standard outlined in Clause 4.4 despite the contravention, as demonstrated in Section 3.2.1.

3.4.2 Objectives of the zone

The proposal is consistent with the objectives of the R4 High Density Residential zone, as demonstrated in the assessment of the objectives below.

Objective	How the development achieves the objective
<i>‘To provide for the housing needs of the community within a high density residential environment’</i>	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, open space and public domain on site. As a large site within a high-density urban renewal precinct, the site is well placed and capable of accommodating the density of development proposed.
<i>‘To provide a variety of housing types within a high density residential environment’</i>	The development provides a variety of housing types including 1, 2 and 3 bedroom units, as well as rooms associated with co-living housing.
<i>‘To enable other land uses that provide facilities or services to meet the day to day needs of residents’</i>	<p>The proposal will incorporate co-living housing that will complement existing private housing within the Liverpool CBD. 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 TAFE, tertiary institutions and health services. No non-residential uses are proposed.</p> <p>Considered in the context of the Shepherd Street Precinct, the development of new residential dwellings will encourage the use of other land uses such as local shops and retail in the Precinct that are facilities and services to meet the day-to-day needs of residents.</p>
<i>‘To provide for a high concentration of housing with good access to transport, services and facilities’</i>	The proposed development has good access to transport including Liverpool and Casula train stations and local pedestrian, cycling and bus routes. The proposal, with the inclusion of a public road, public car parking and publicly accessible through-site link to the river frontage and proposed boardwalk, will significantly improve transport infrastructure.
<i>‘To minimise the fragmentation of land that would prevent the achievement of high density residential development’</i>	<p>The proposal will rationalise the existing lot pattern resulting in a development that is consistent with the approved massing for buildings across the site approved under the Precinct masterplan.</p> <p>The proposal will provide a contemporary architectural design solution for the site, whilst incorporating large scale public domain benefits, including publicly accessible through-site link.</p> <p>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.</p>

Table 10 Assessment against objectives of the zone

3.5 Concurrence of the Planning Secretary

The second precondition in clause 4.6(4) that needs to be met prior to consent being granted that contravenes any development standard, is that the concurrence of the Planning Secretary has been obtained.

Clause 4.6(5) of the LLEP requires that the Planning Secretary consider the following matters (sections 3.5.1 and 3.5.2) before deciding whether to grant concurrence.

The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation, so long as the decision is made by a planning panel or the Land and Environment Court (and not by a delegate of the Council). This is because of Department of Planning Circular PS 20–003 ‘Variations to development standards’, dated 5 May 2020. This circular is a notice under section 55 of the *Environmental Planning and Assessment Regulation 2021*.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

3.5.1 *Whether contravention of the development standard raises any matter of significance for the State or regional environmental planning?*

Not applicable. The proposed non-compliance with the FSR 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.

3.5.2 *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 development outcome on a site capable of accommodating the proposed density while achieving significant public benefits.

The proposed development, inclusive of the contravention, achieves the objectives of the height of building development standard and the land use zones. A design concept to achieve strict compliance with the FSR development standard would result in an inferior development outcome for the site, as strict compliance with the FSR standard would result in a reduction in the delivery and diversity of housing, particularly where the additional FSR occurs as a result of the provision of co-living housing in accordance with the Housing SEPP. Accordingly, strict compliance with the standard would:

- Limit outcomes on the site, inconsistent with the strategic context in terms of the provision of housing in close proximity to high frequency transport as referenced to the Western City District Plan;
- Limit the ability of the development to provide for a high density of housing, that is both affordable and diverse in its form;
- Not respond to the existing site context 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 and north-east 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 zone and it is not contrary to the public interest. Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.

3.6 Is the objection well founded?

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

4.0 Conclusion

Despite the proposed contravention, the proposed development is consistent with the objectives for the R4 High Density residential zone and FSR development standard. The proposed variation is consistent with the scale of development that has occurred in the Precinct to date. The overall development will have a positive planning outcome for the locality.

The contravention, of itself, will not result in any significant adverse impacts with regard to the amenity of surrounding properties, district views, visual privacy and streetscapes.

The contravention to the development standard generally facilitates the accommodation of density envisaged under the relevant planning controls for the site in a manner that achieves improved amenity outcomes for residents.

The proposal allows for improved public outcomes including a new public road and public parking, publicly accessible and landscaped open space with good amenity and a through-site link to the foreshore, all of which would not be available if strict compliance with the standard was maintained.

It has been demonstrated that the proposal is of positive social and economic impact. The proposed contravention will provide housing diversity and affordability in a City Centre location. The inclusion of co-living housing will facilitate the ongoing contribution of diverse housing forms to the Liverpool City Centre. The inclusion of co-living dwellings alongside permanent dwellings will attract a variety of residents and assist in strengthening local retail opportunities within Shepherd Street and the wider Liverpool City Centre, resulting in a positive impact for the site and locality.

The contravention is not considered to result in any precedents for future development within the locality or broader LGA, given the site circumstances and surrounding pattern of development.

This shows that there are sufficient environmental planning grounds to justify the variation, and the proposal is considered to be in the public interest.

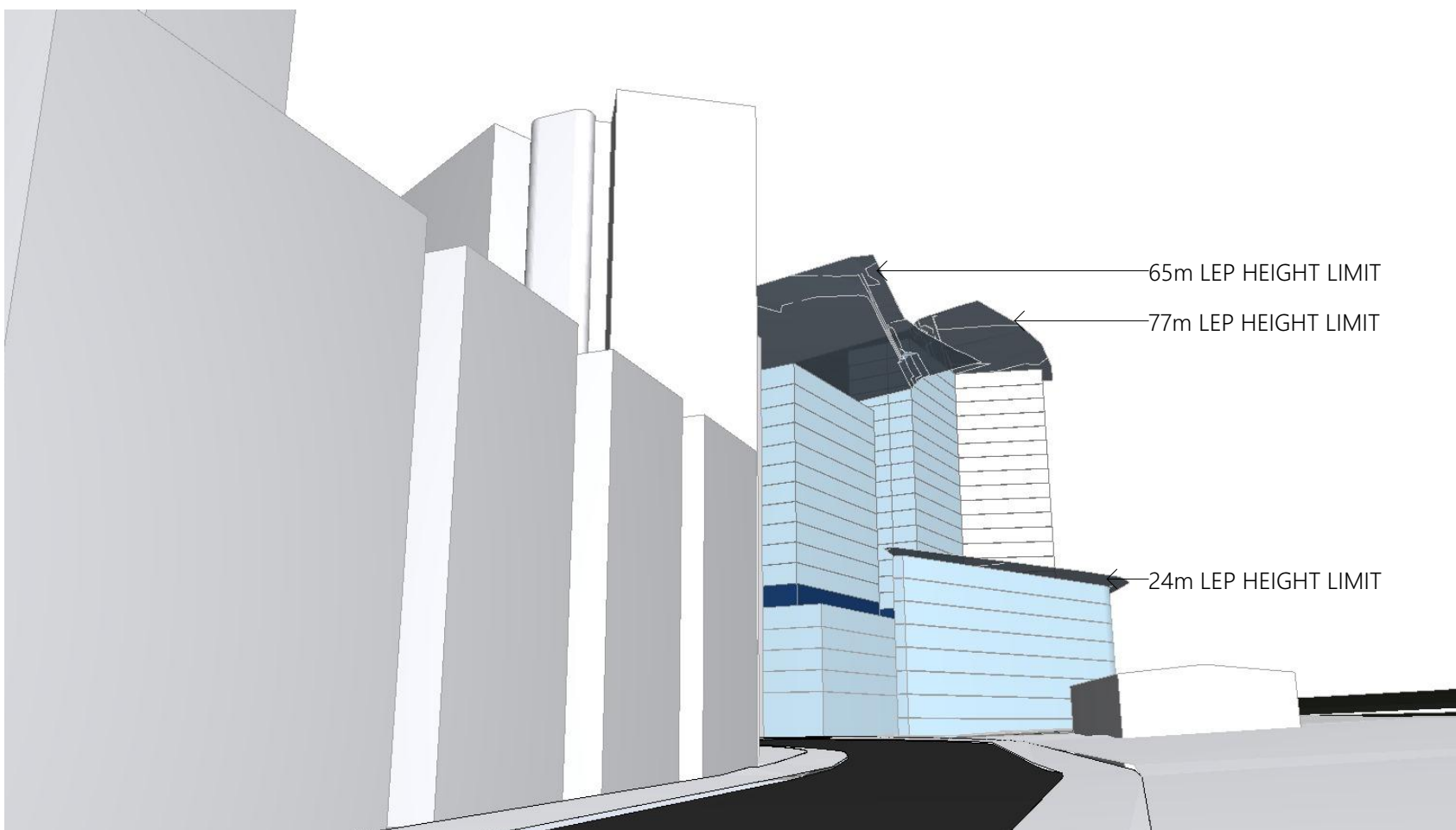
The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 20-003.

As demonstrated in this submission, it would be unreasonable and unnecessary for strict compliance with the FSR standard in the circumstances of the case.

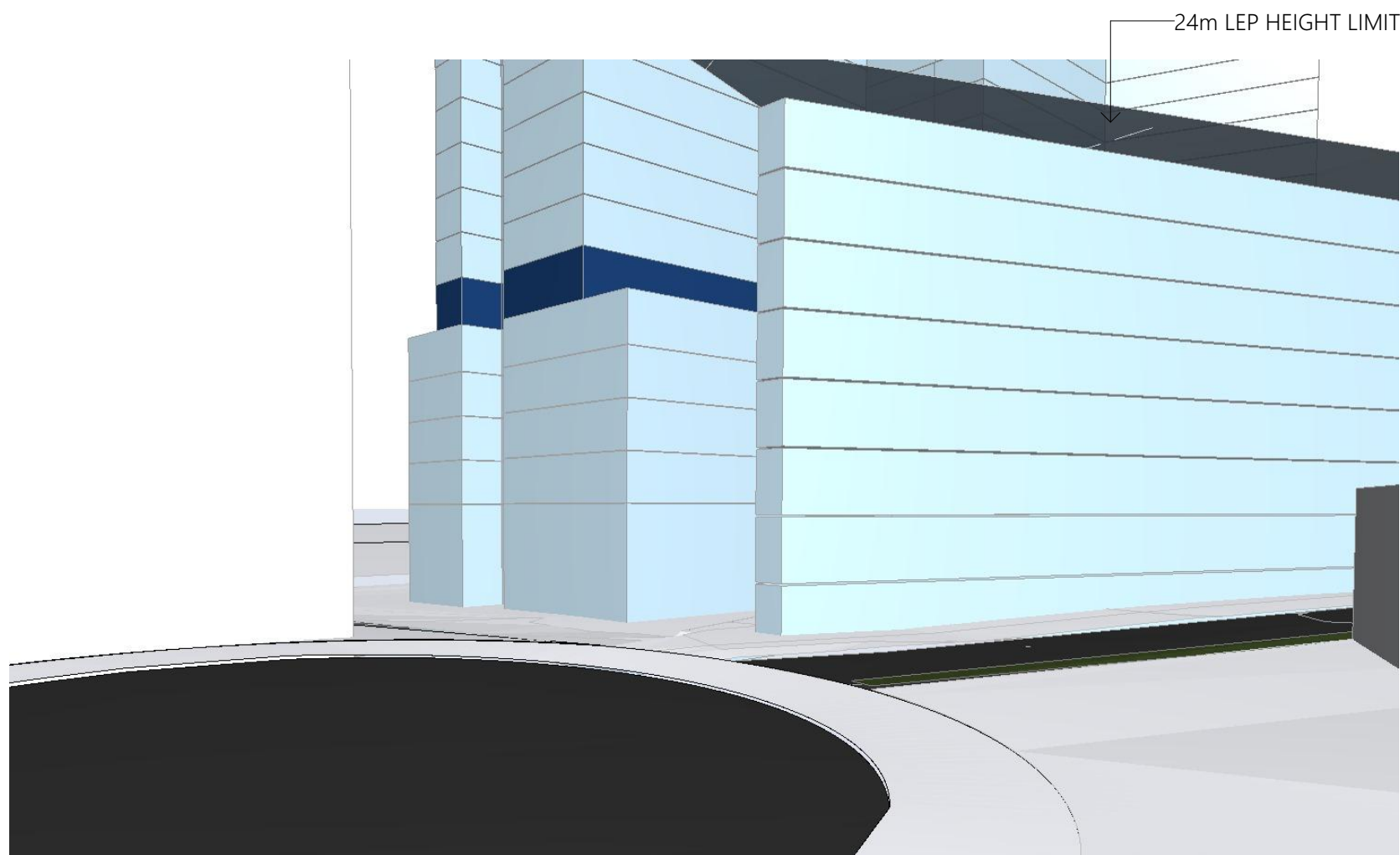
ANNEXURE A

Hypothetical compliant and proposed building envelopes and massing

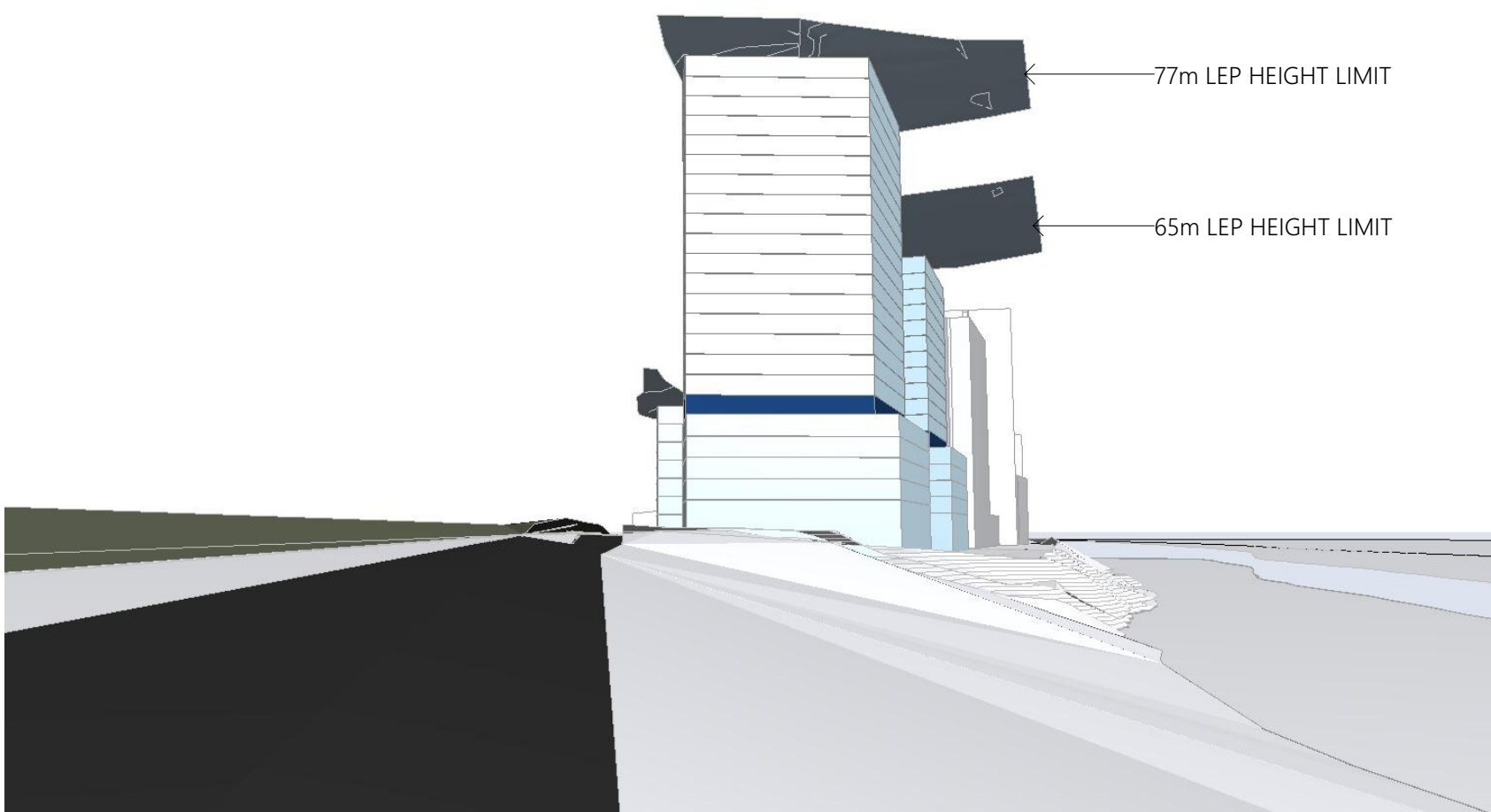
HYPOTHETICAL COMPLIANT DEVELOPMENT MASSING (EXCLUDES CO-LIVING HOUSING)



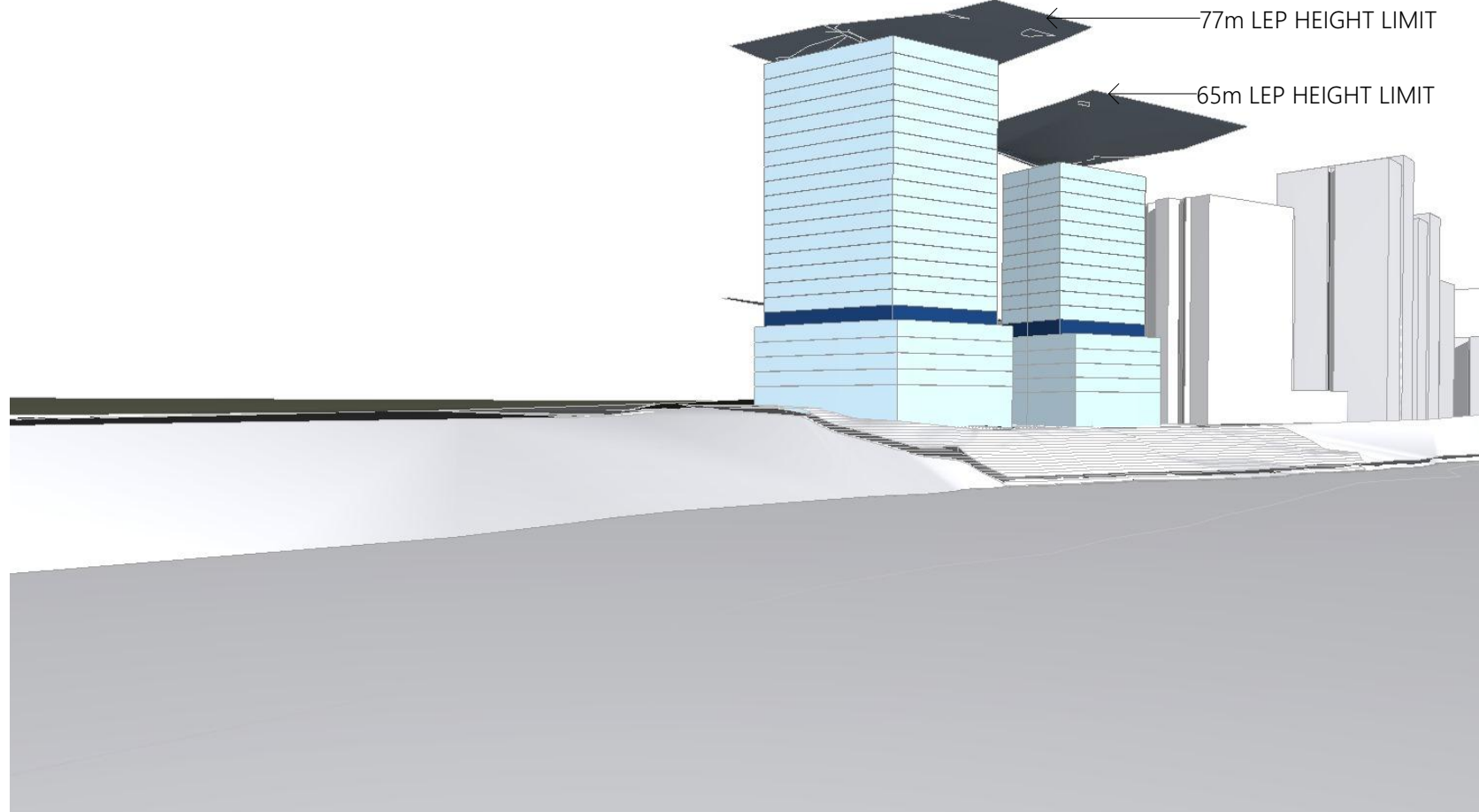
PERSPECTIVE 01 - VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



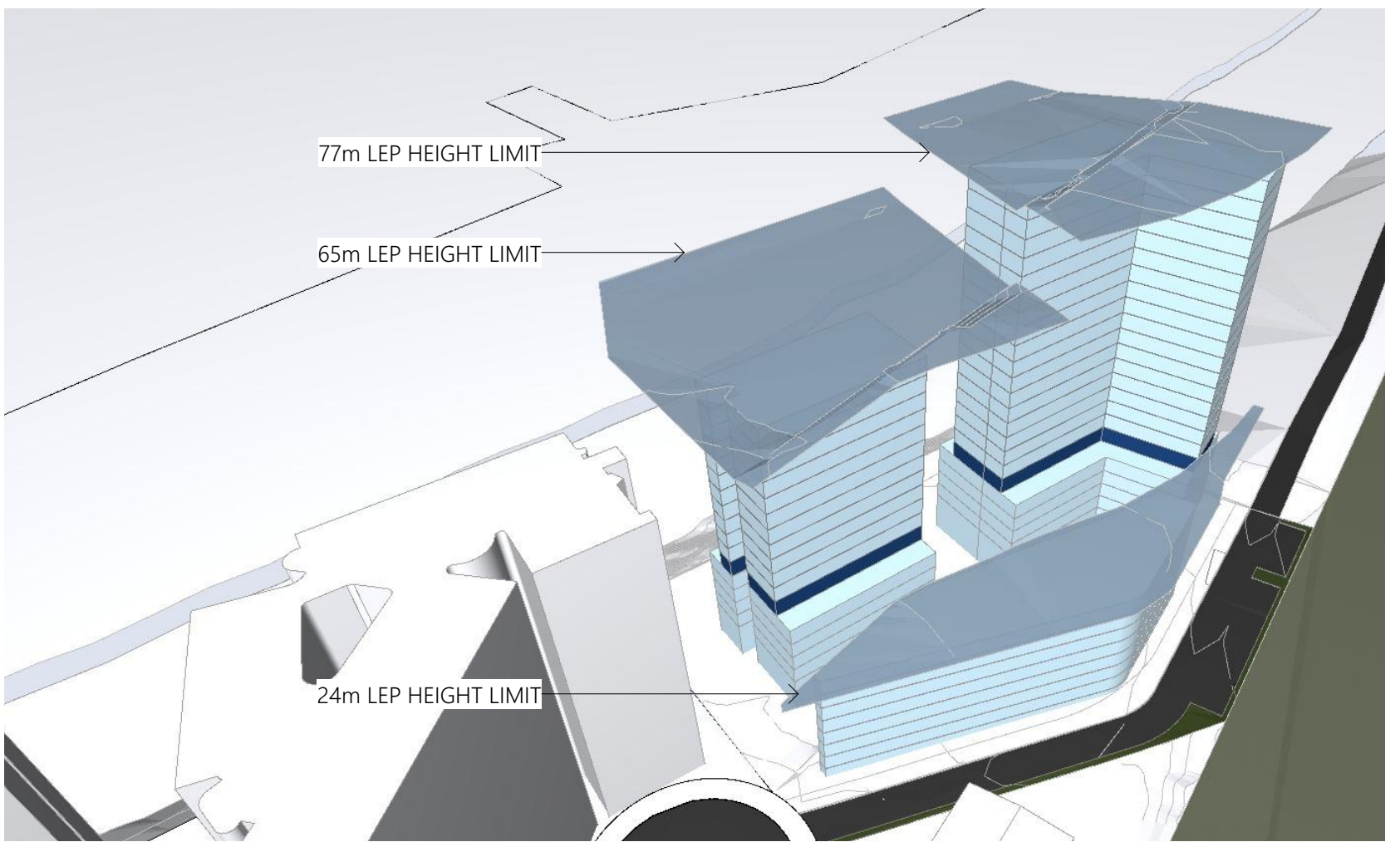
PERSPECTIVE 02 - PODIUM VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



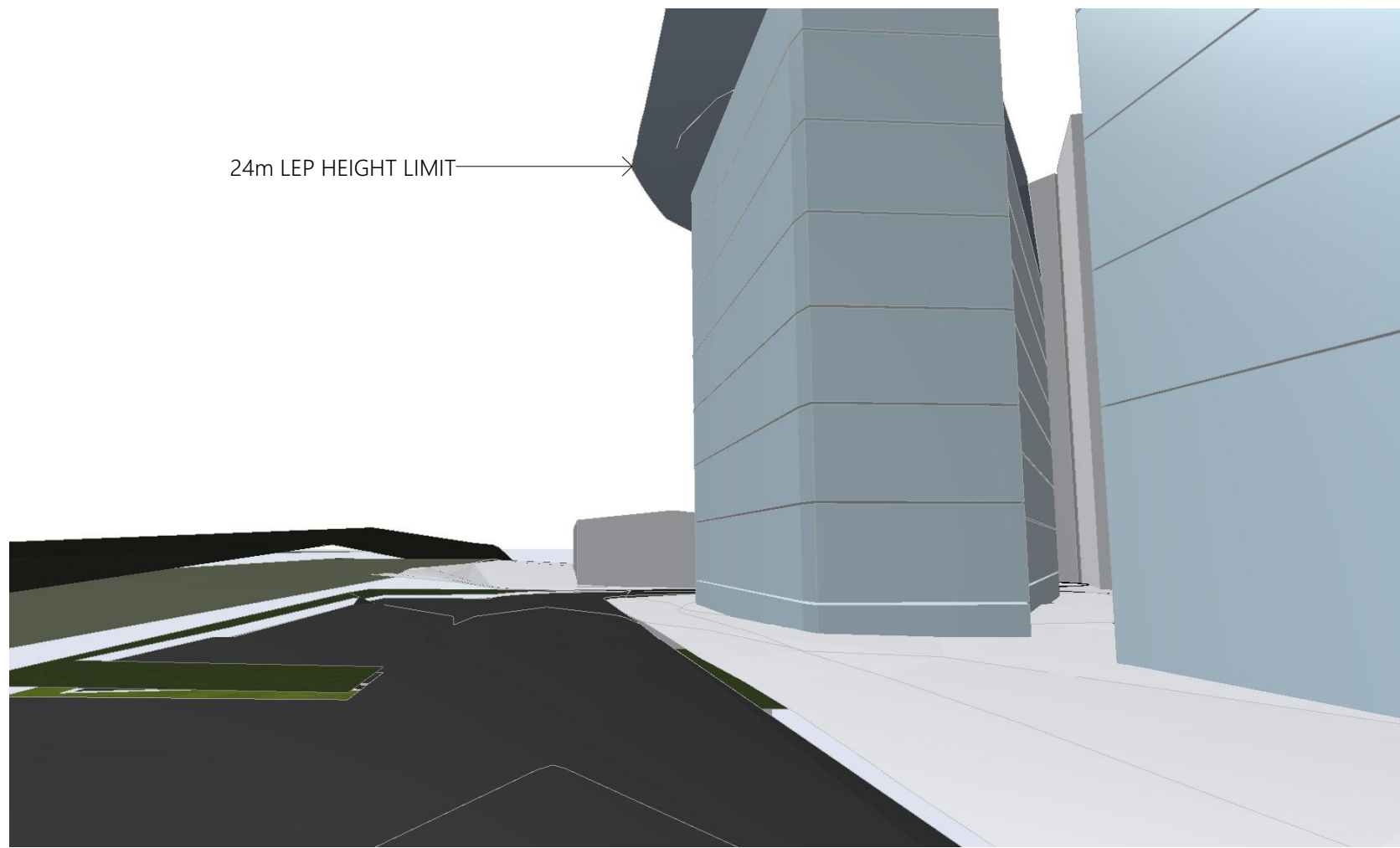
PERSPECTIVE 03 - RIVERSIDE VIEW FROM MILL PARK AND POWERHOUSE ROAD



PERSPECTIVE 04 - RIVERSIDE VIEW FROM HELLES PARK

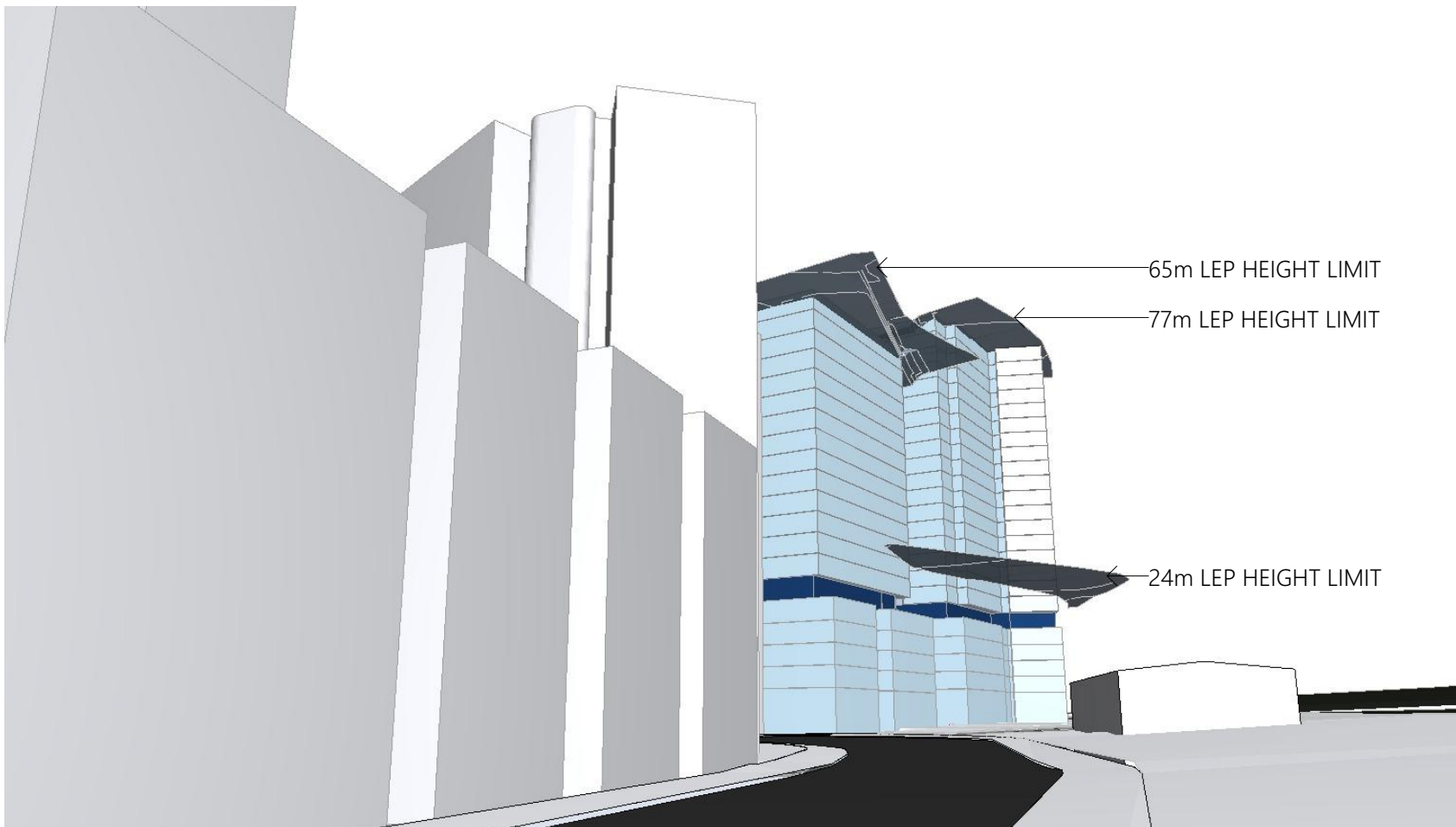


PERSPECTIVE 05 - HEIGHT LIMIT

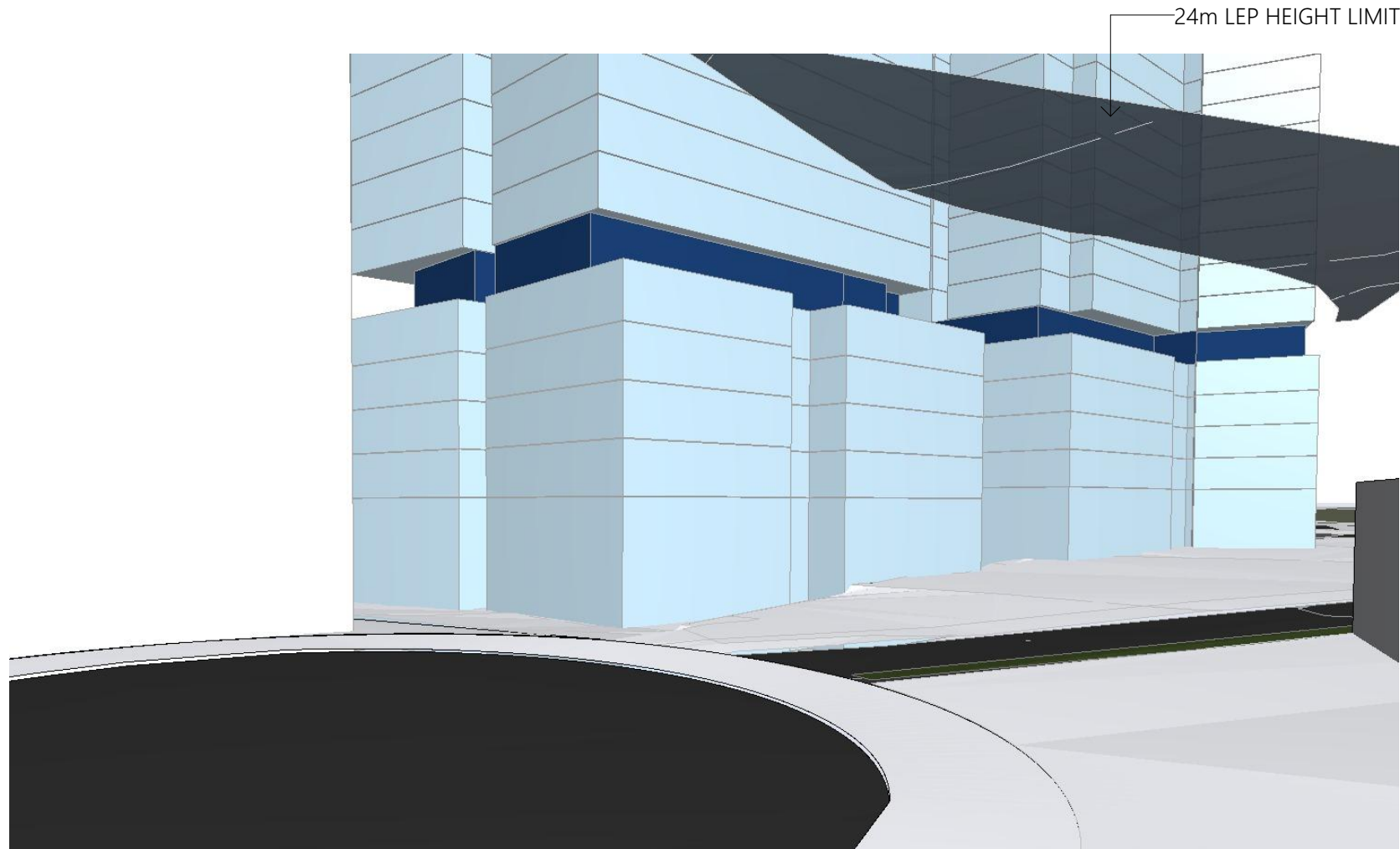


PERSPECTIVE 06 - VIEW FROM NEW PUBLIC ROAD TO SHEPHERD ST

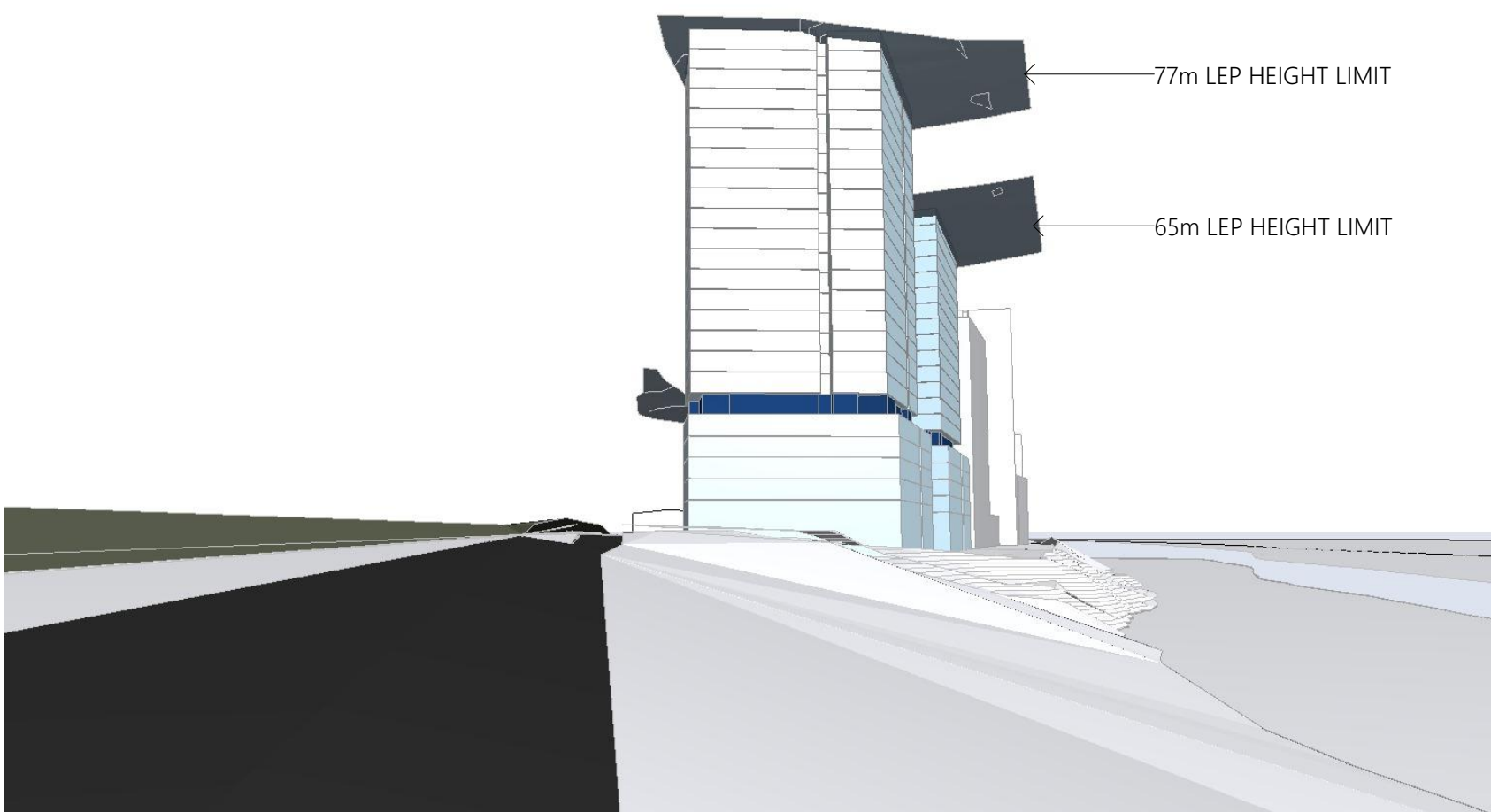
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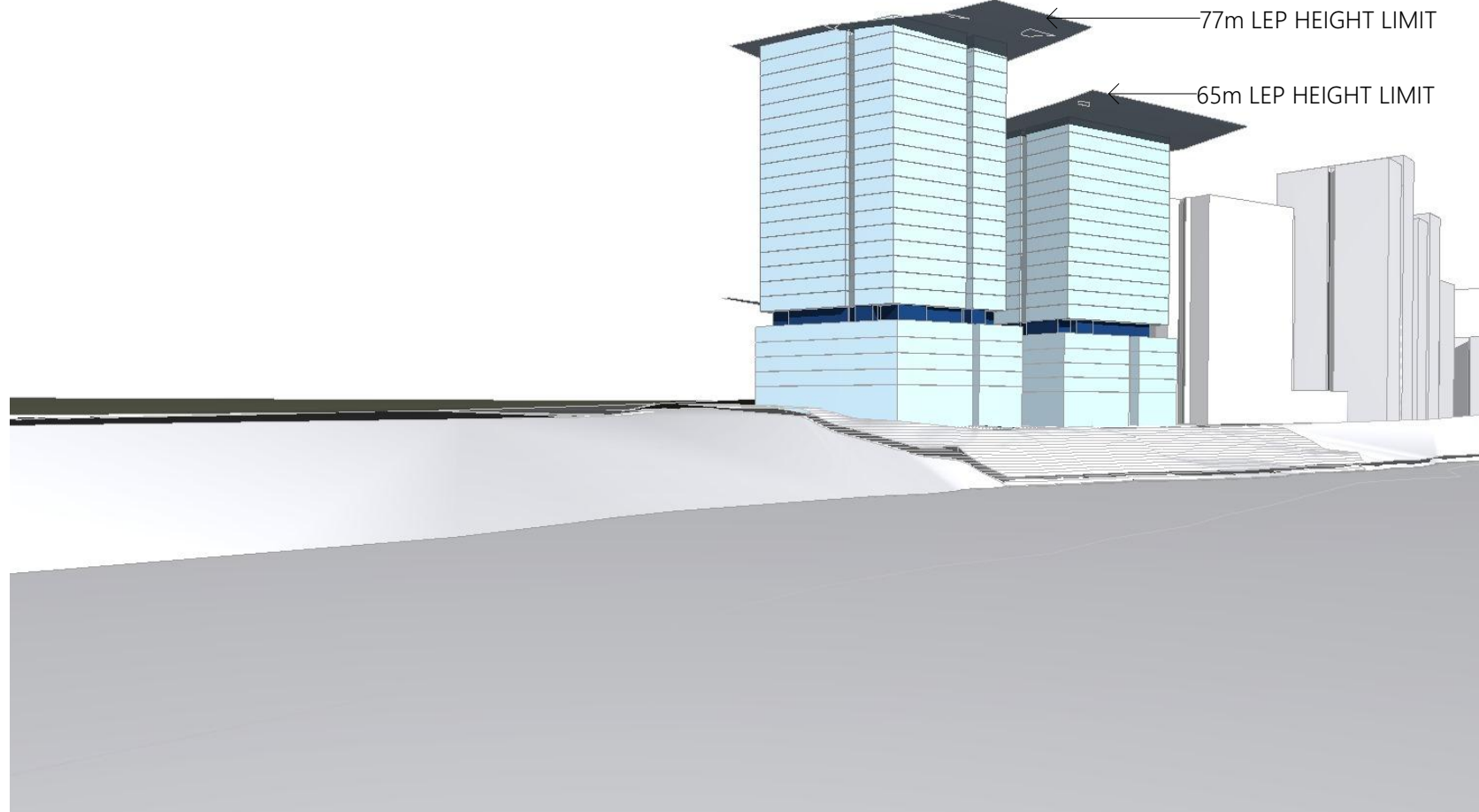
PERSPECTIVE 01 - VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



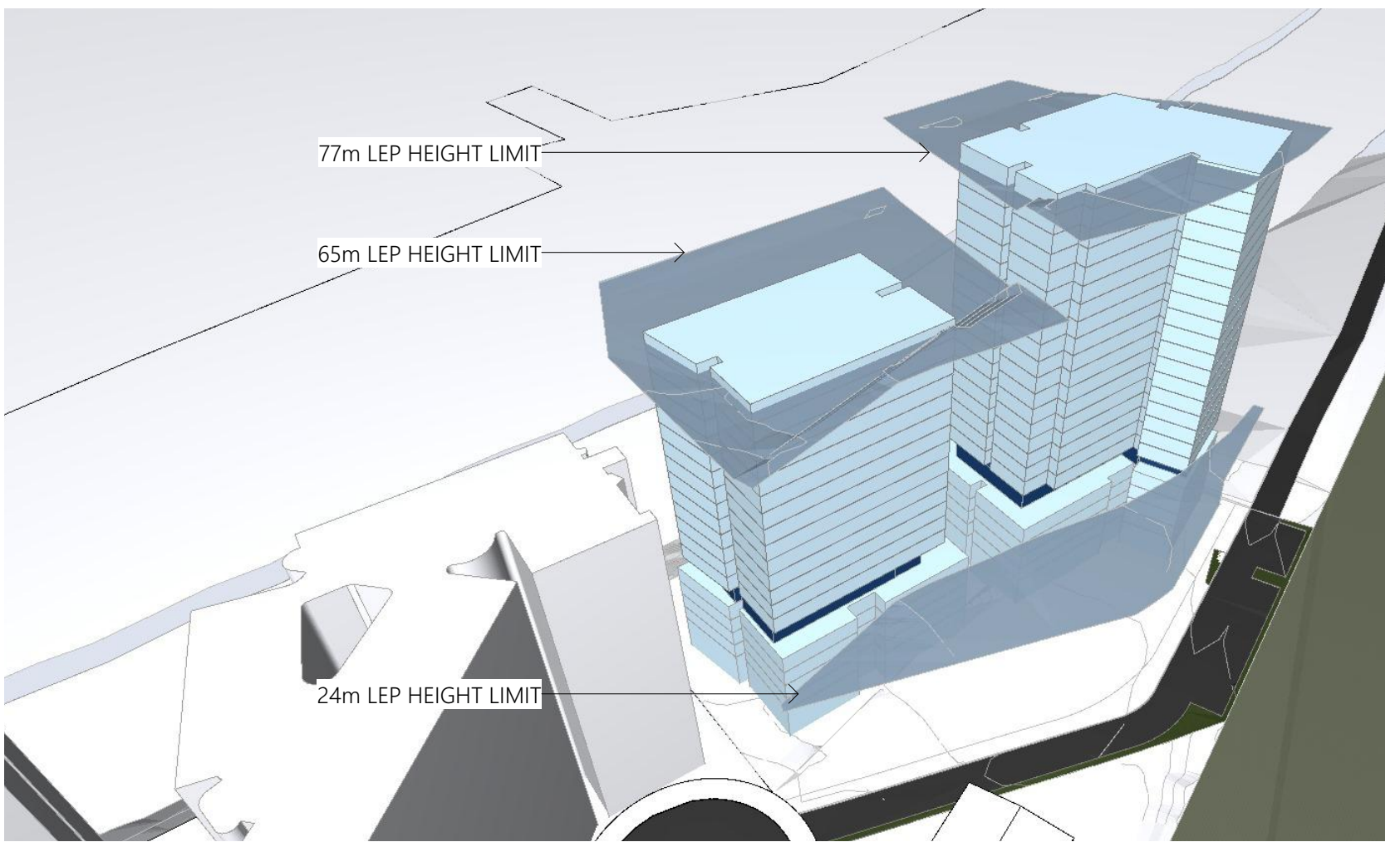
PERSPECTIVE 02 - PODIUM VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



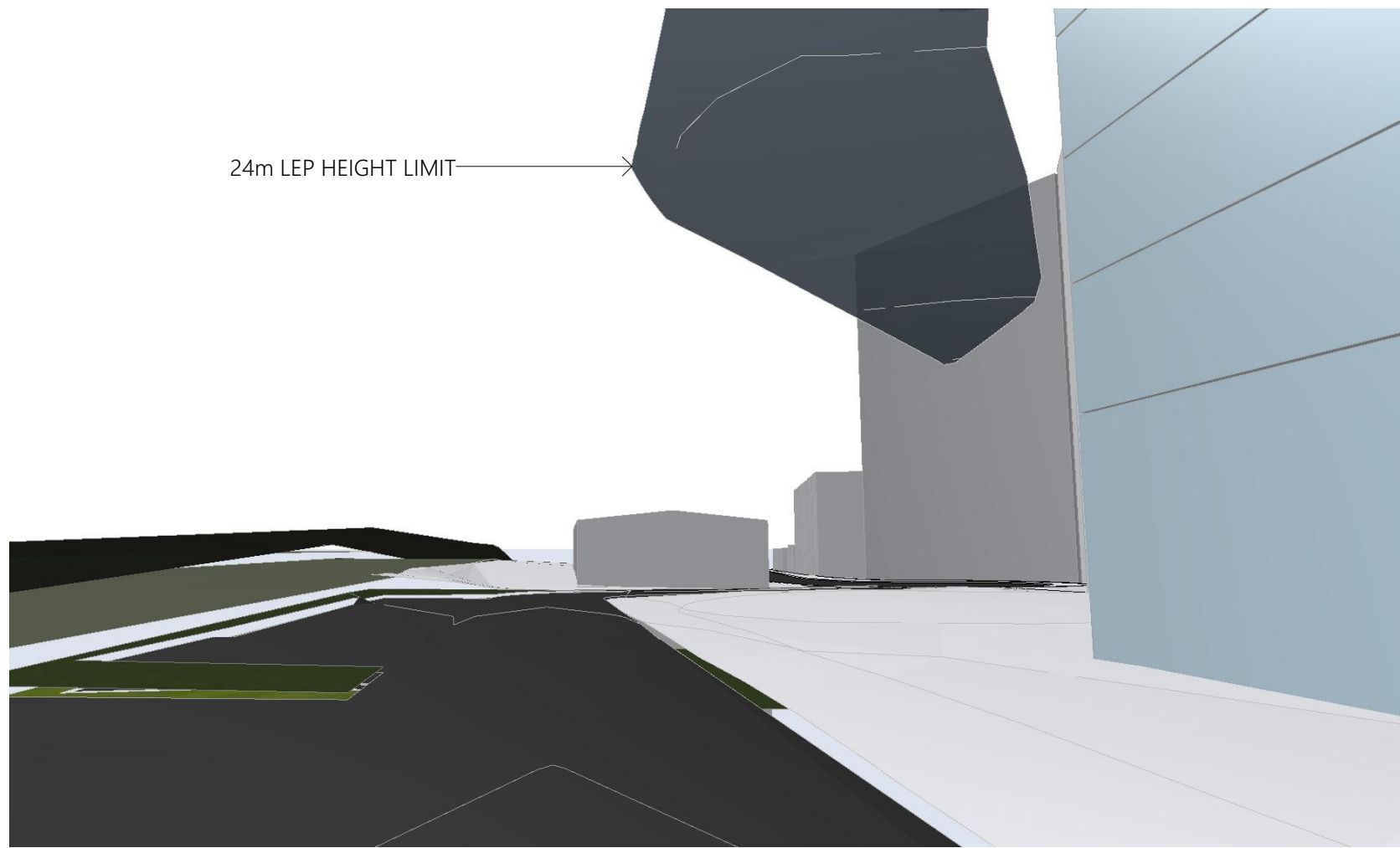
PERSPECTIVE 03 - RIVERSIDE VIEW FROM MILL PARK AND POWERHOUSE ROAD



PERSPECTIVE 04 - RIVERSIDE VIEW FROM HELLES PARK



PERSPECTIVE 05 - HEIGHT LIMIT



PERSPECTIVE 06 - VIEW FROM NEW PUBLIC ROAD TO SHEPHERD ST

ANNEXURE B

Shadow diagrams and detailed shadow analysis



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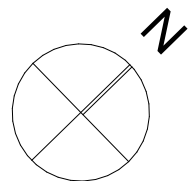
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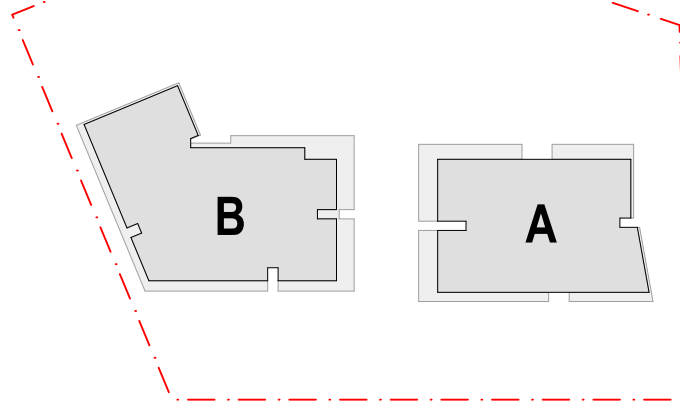
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amendments

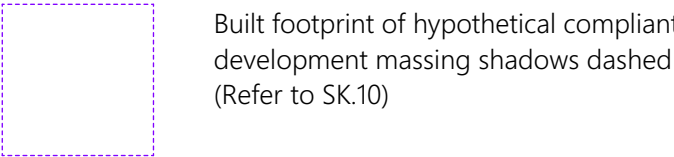
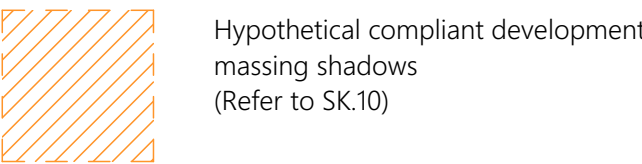
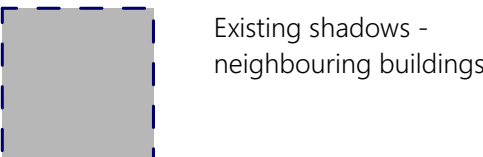
Revision	Description	By	Date
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key plan:



notes:

legend :



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

Lateral™



project

Shepherd Street

location

31 - 33 Shepherd Street, LIVERPOOL

client

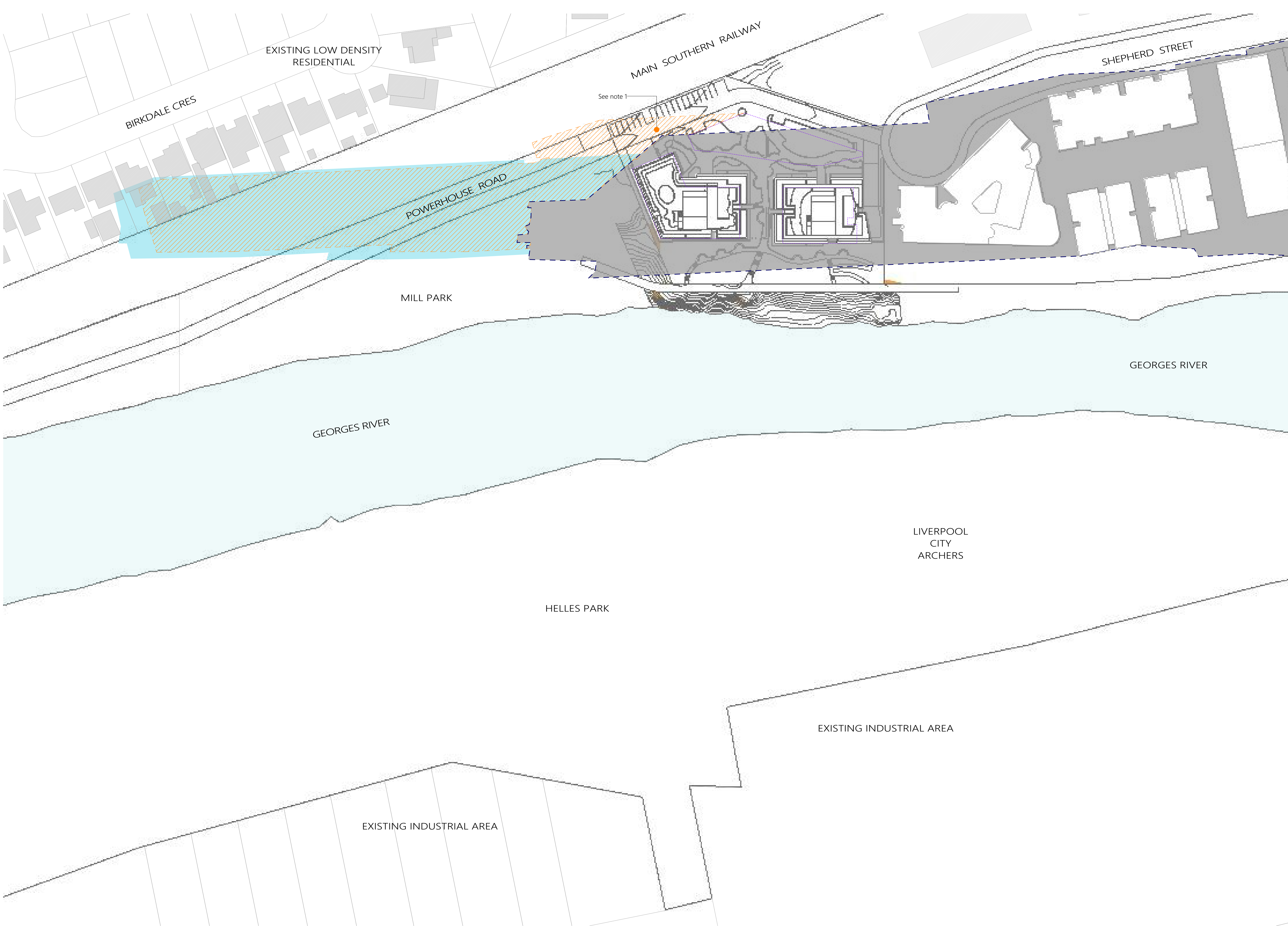
Lateral Estate

drawing title


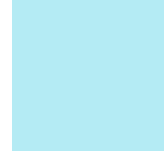


Shadow Diagrams

Shadow Diagrams - 9am Winter Solstice

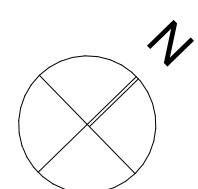
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job no.	21023	drawing no.	SP02.1	revision	A



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)

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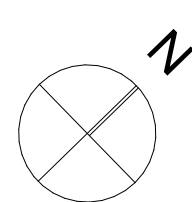


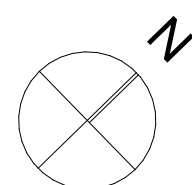


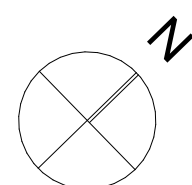
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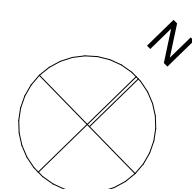


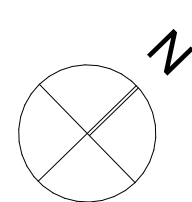


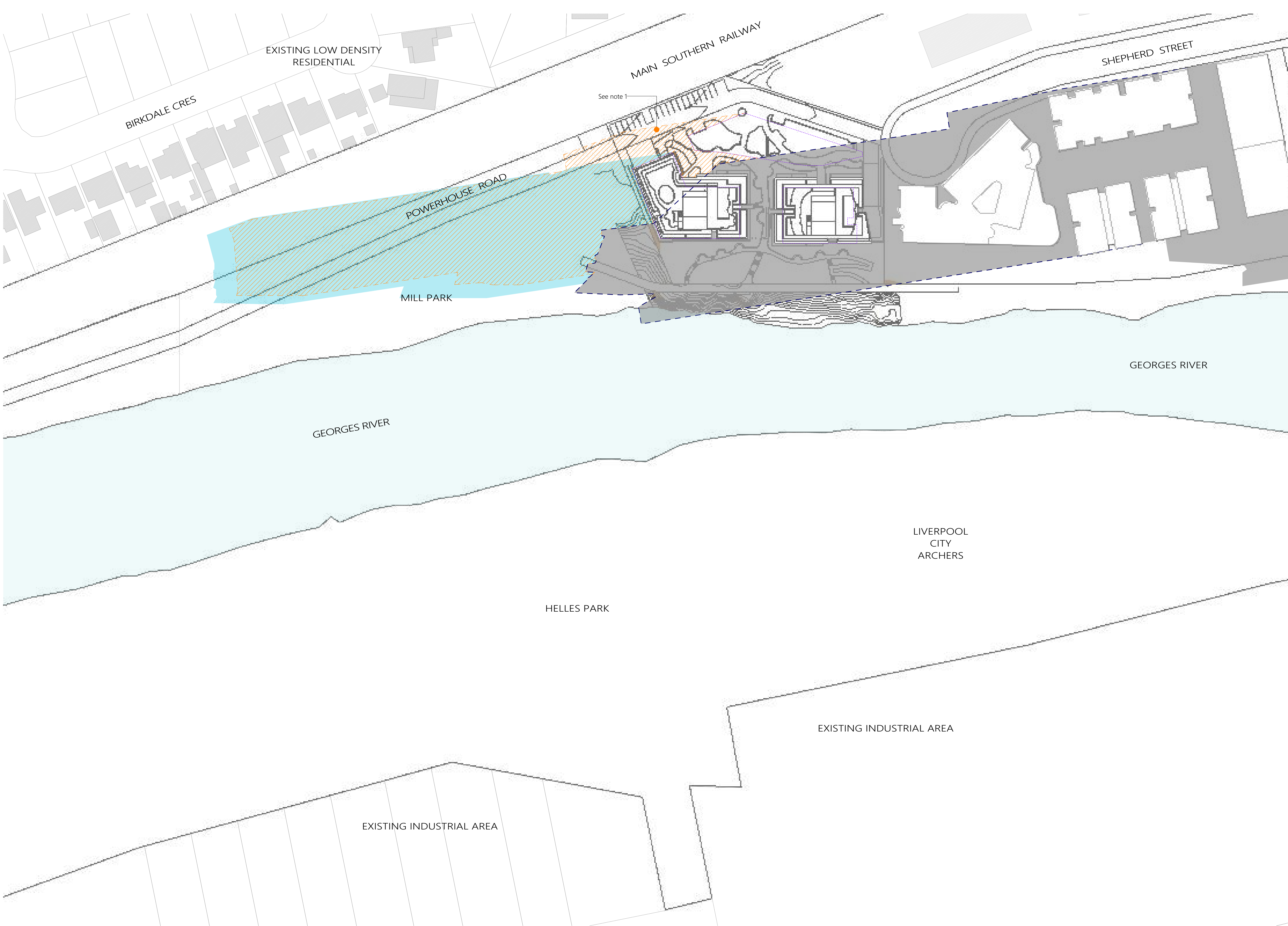
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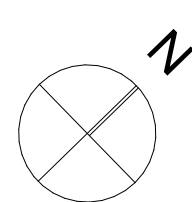




legend :





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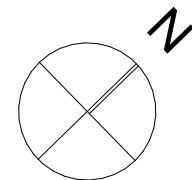


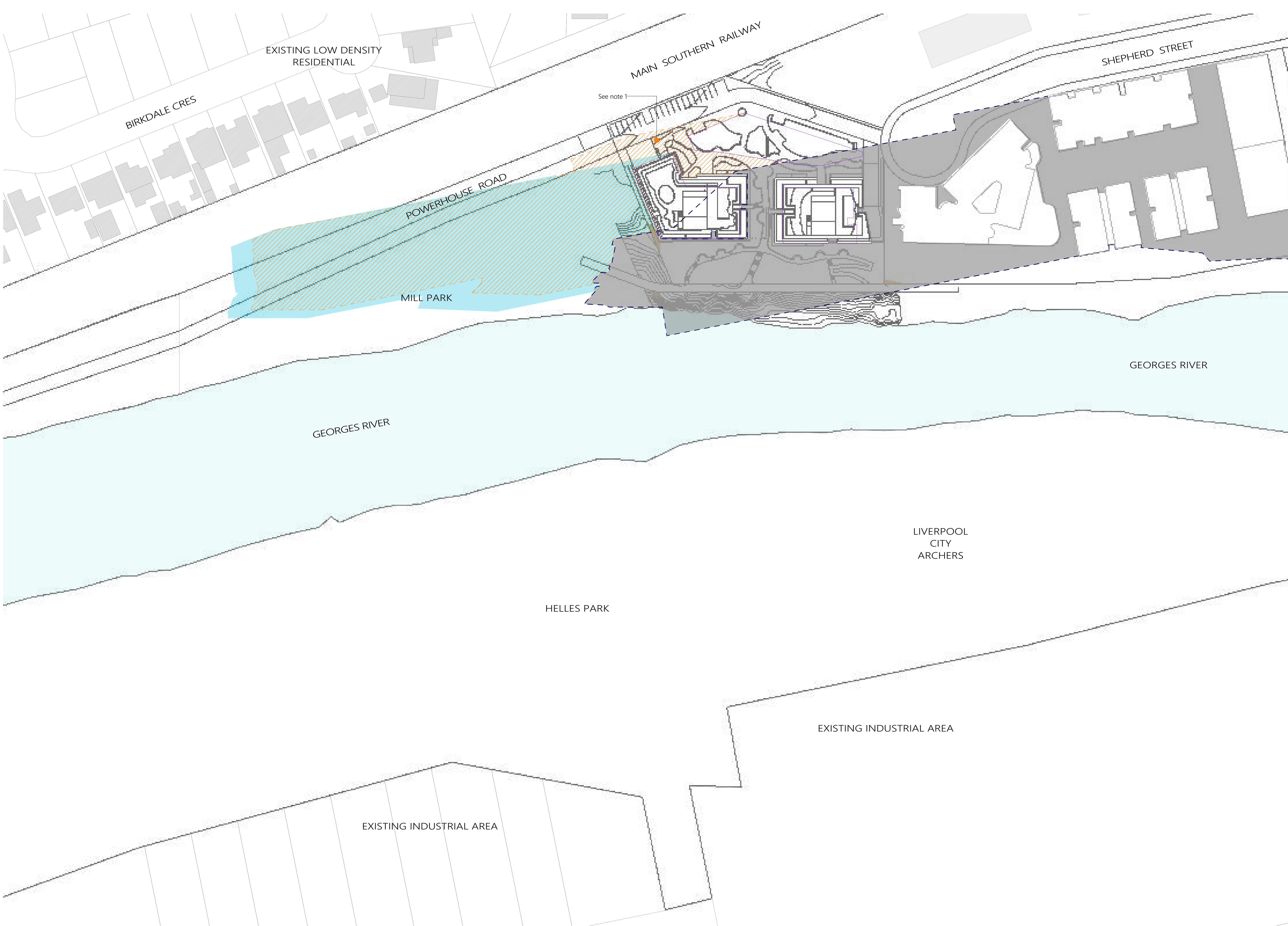


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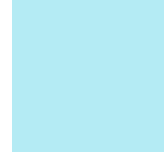

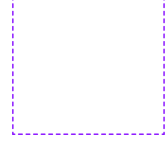
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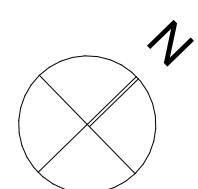




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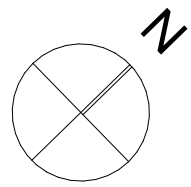


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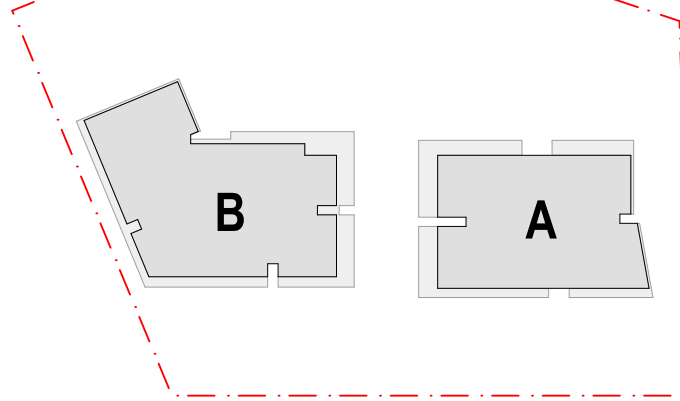
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amendments

Revision	Description	By	Date
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key plan:



notes:

legend :

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Lateral™



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 drawn DB / EP
job no. 21023 drawing no. SP02.2 revision A



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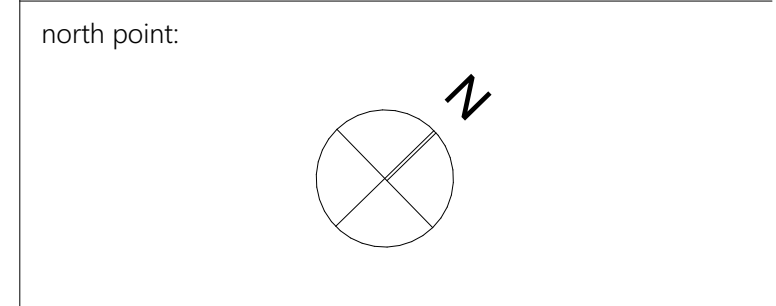
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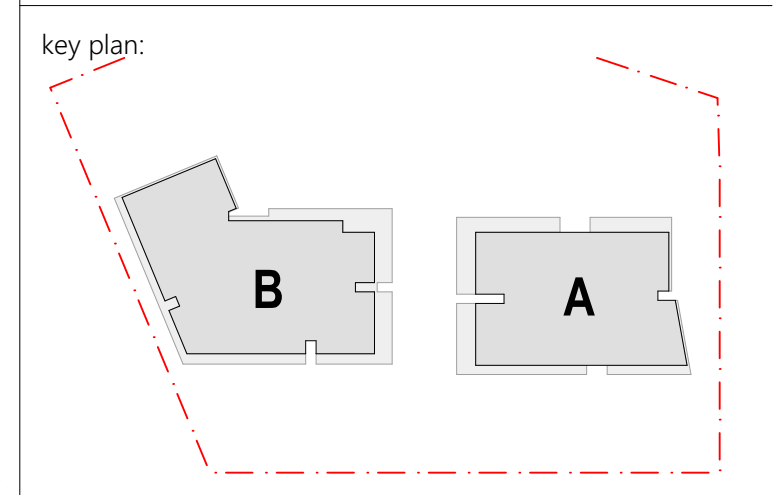
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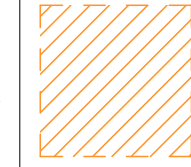

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e reception@moscapseerras.com.au
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amendments			
Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23



- notes:
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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

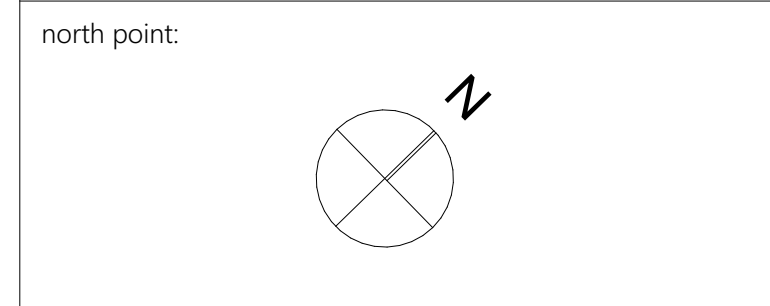
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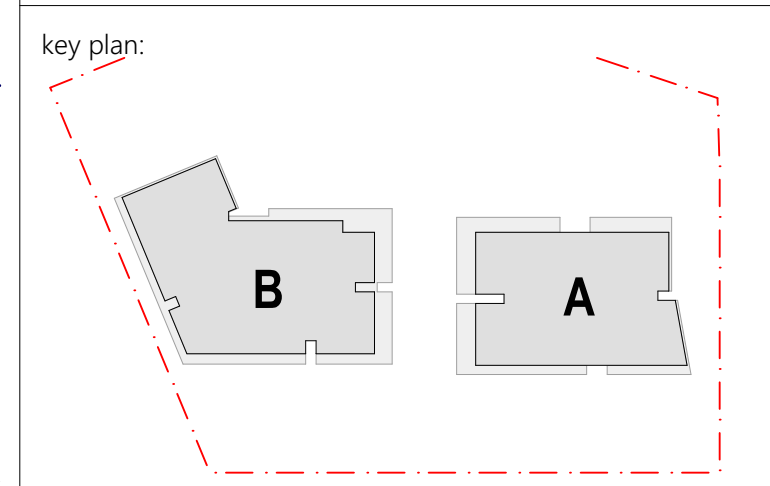
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amendments			
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project
Shepherd Street
location
31 - 33 Shepherd Street, LIVERPOOL
client
Lateral Estate
drawing title
Shadow Diagrams
Shadow Diagrams - 12pm Winter Solstice

scale	1:750 @ A1	project architect	FM	drawn	DB / EP
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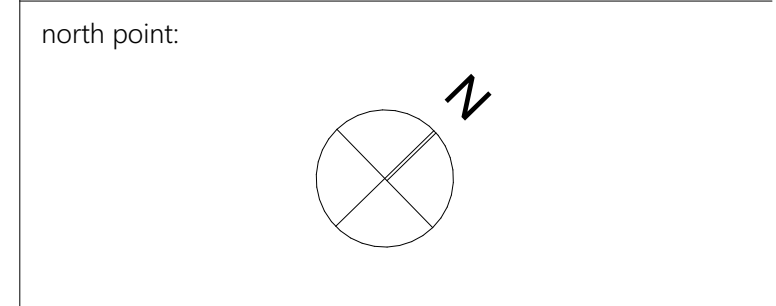
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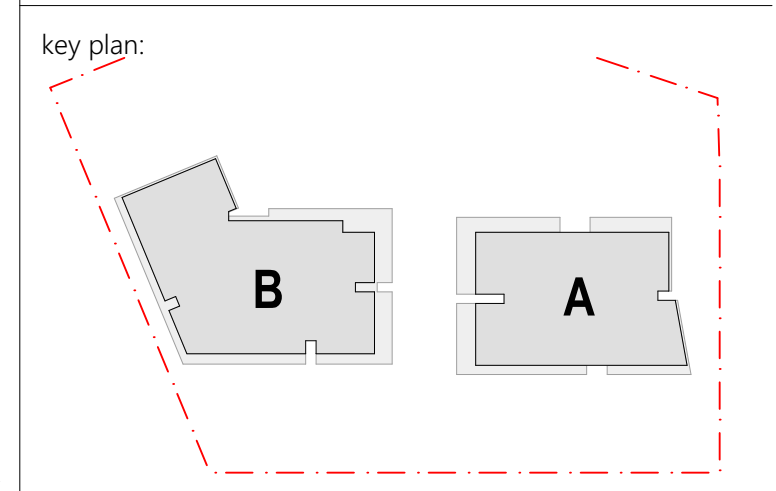
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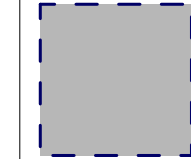
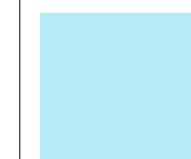
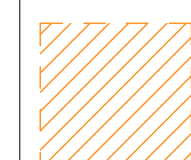
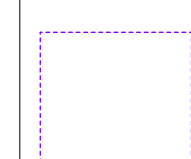
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amendments		By	Date
Revision	Description	DB	5.6.23
A	Development Application Submission		



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project	Shepherd Street
location	31 - 33 Shepherd Street, LIVERPOOL
client	Lateral Estate
drawing title	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



☐ This drawing is copyright and the property of the author, and must not be retained, copied or used without the authority of mosca pserras architects.
Larger scale drawings and written dimensions take preference.

☐ Do not scale from drawing.

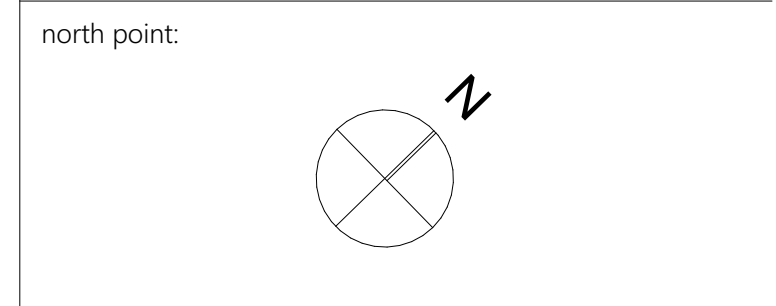
☐ All dimensions to be checked on site before commencement of work.

☐ All discrepancies to be brought to the attention of the author.

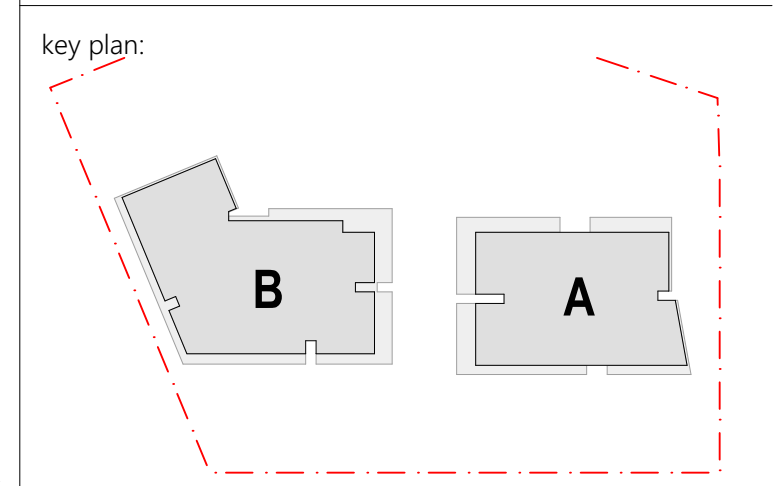
☐ Minor changes to building form and configuration may be required when drawings are subsequently prepared for construction purposes after the grant of development consent.

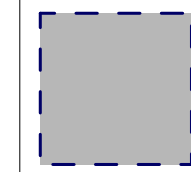
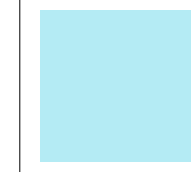
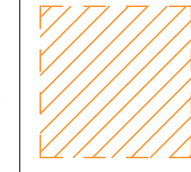
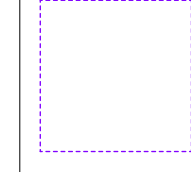
☐ Ceiling heights in kitchens to be 2400mm above finished floor level. Bulkheads may be required to habitable rooms, as required to comply with the NCC.

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

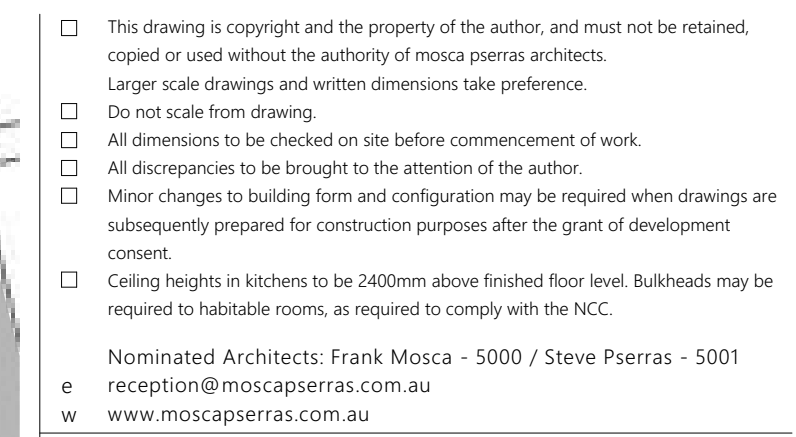
Note 1:
Additional shadows shown are cast by the hypothetical compliant development massing shadows only. They are not cast by the proposed development.

Lateral™

mpa.

mosca pserras architects

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



key plan:

The key plan shows two buildings, A and B, with a red dashed line indicating a boundary or path. Building A is on the right and Building B is on the left. The red dashed line starts at the top left, goes around the buildings, and ends at the bottom right.

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

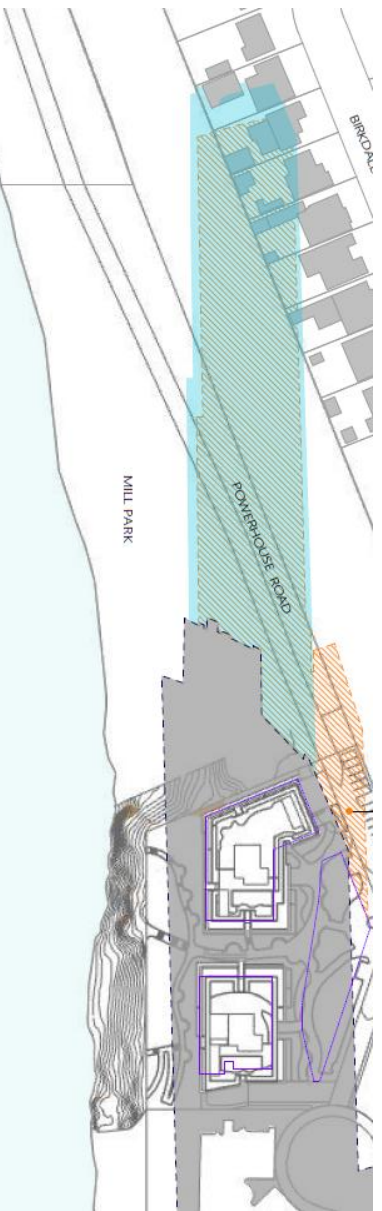
Shadow Diagrams - 3pm Winter Solstice

scale	1/750 @ A1	project architect	FM	drawn	D8 / 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.

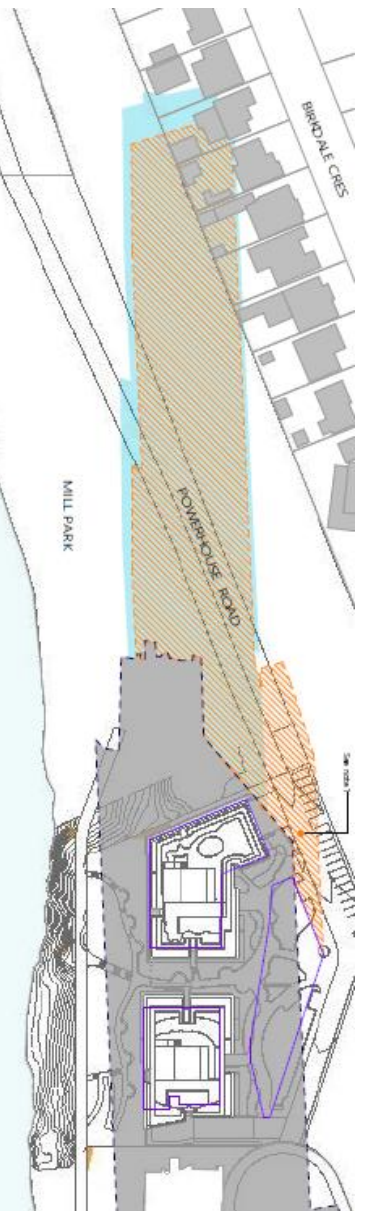
The shadows to 39,41,43 are limited to the rear gardens whilst the shadows to 45,47,49 are limited to the rear garden, roofs, northern and north eastern facades



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.

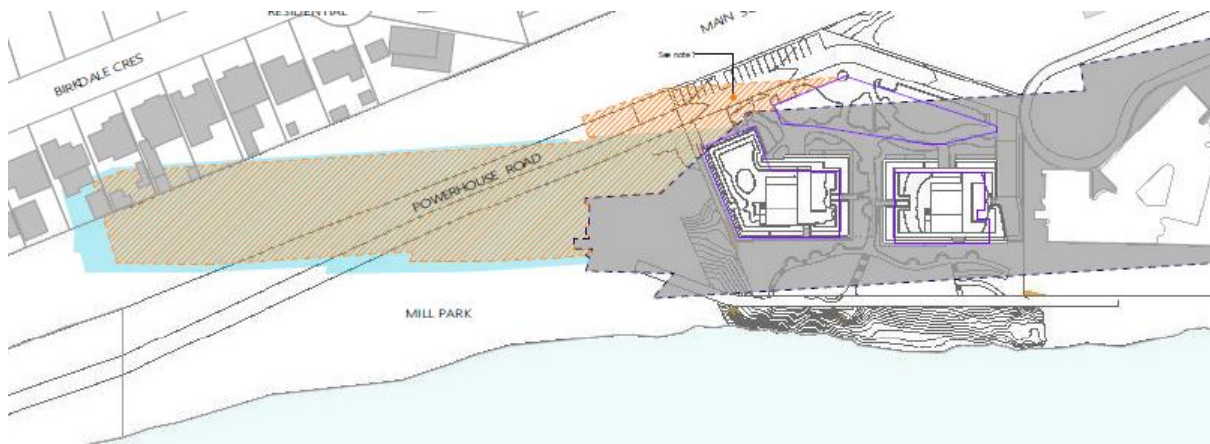
The shadow to number 39 is imperceivable affecting the south eastern corner which is occupied by a shed. The shadows to 41,43, 45 are predominantly limited to rear gardens whilst the shadows to 47, 49 are limited to rear garden, roofs, northern and north eastern facades



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.

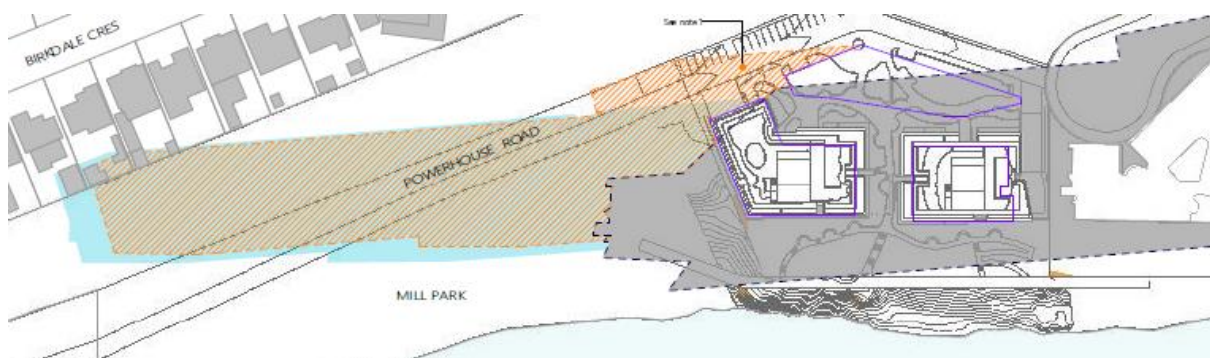
The shadows to 41, 43 are limited to less than 50% of the rear yards. The shadow to 45 is limited to the rear yard. The shadow to 47 is limited to the rear yard, a small portion of roof and north east façade.



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

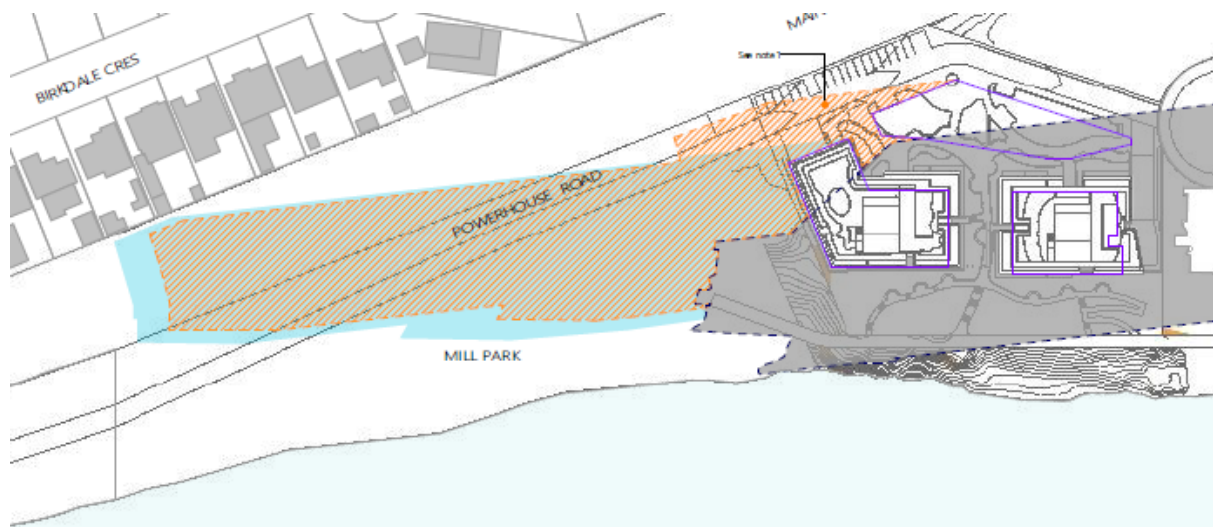
The below shadow illustrates that that by 9.20 am 3 properties in Birkdale Crescent (43,45,47) are overshadowed by the proposed development at this time, two of which (43,45) have a similar level of overshadowing when compared to the shadow from a hypothetical compliant development.

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.

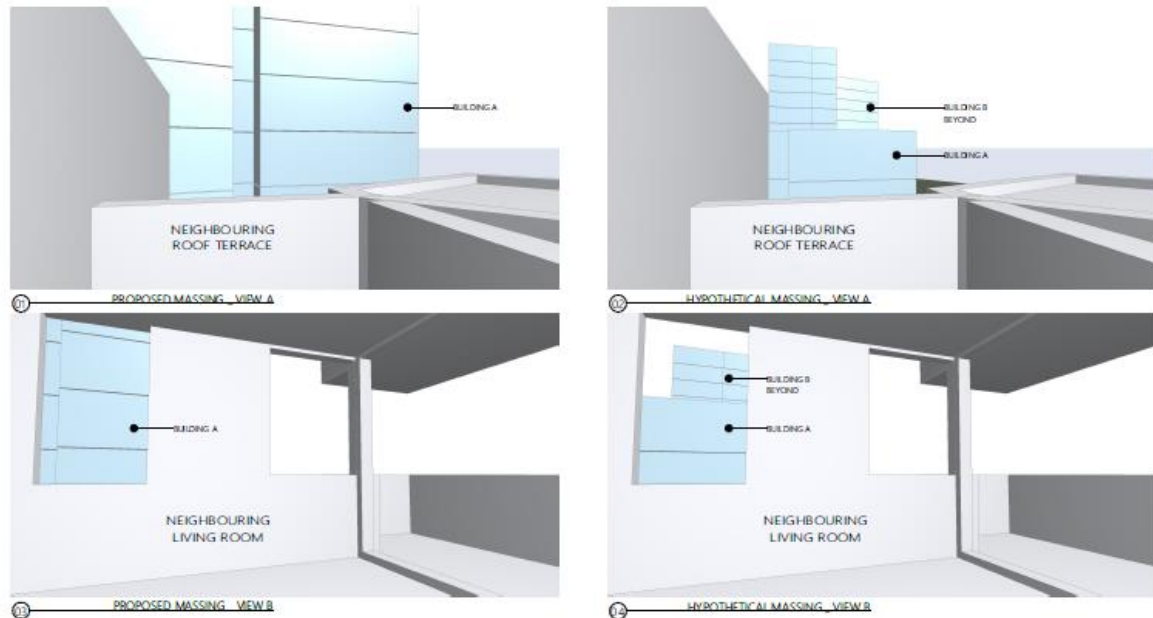
Accordingly, overshadowing from the proposed development is considered reasonable and acceptable.

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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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.

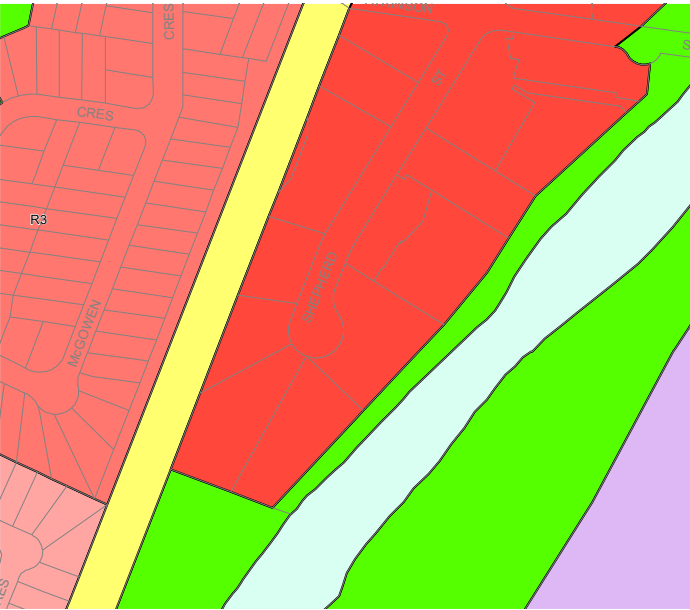
This work has been designed to respond to some of the comments from Liverpool City Council's Design Excellence Panel (DEP) which considered a scheme for the site developed by Mosca Pserras Architects (MPA) on 17 May 2022.

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

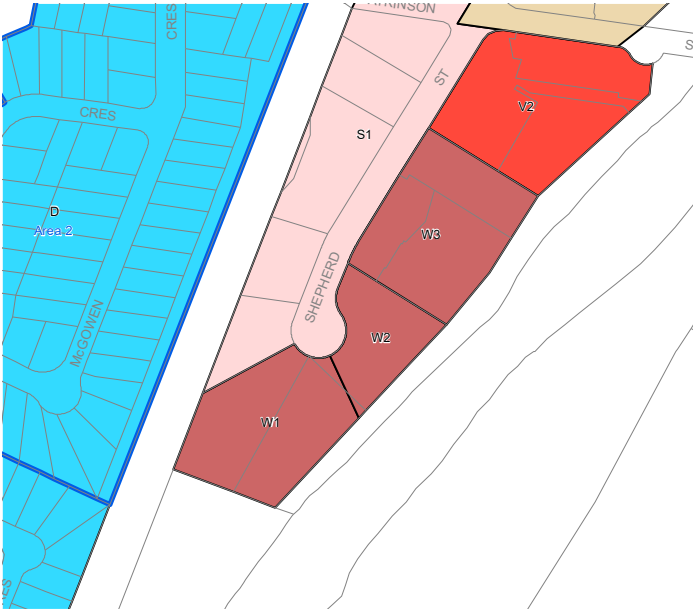


Planning Controls



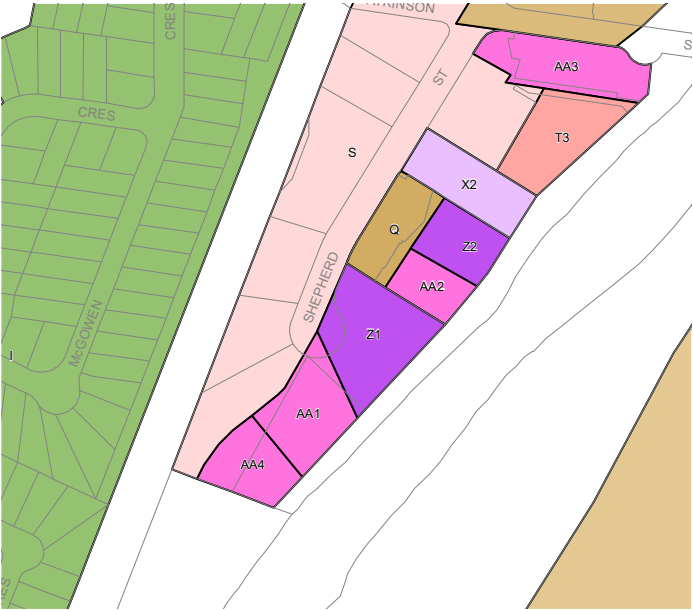
Land Use Zoning

- 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.

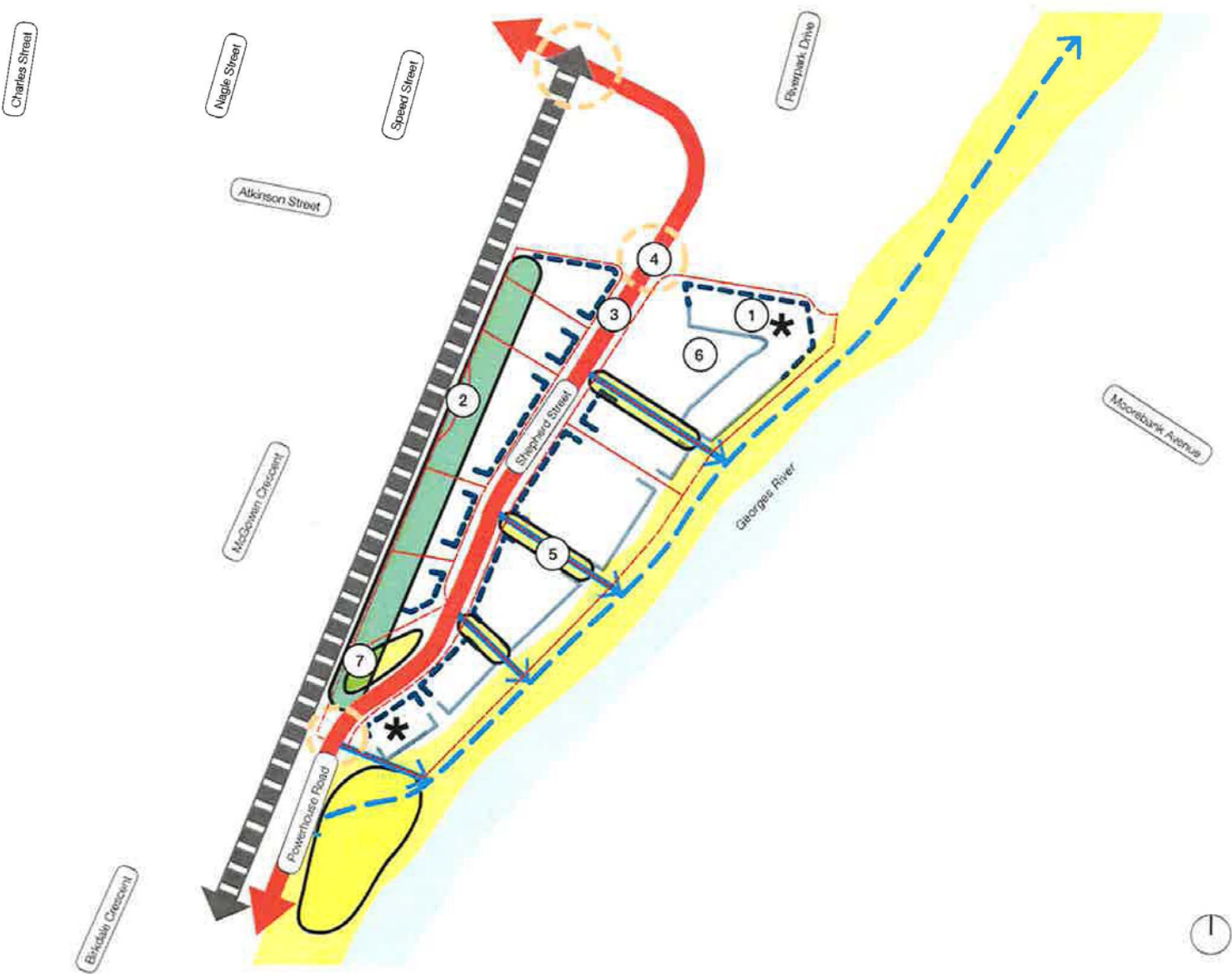
The principles in this concept present an appropriate basis for the development of 31 and 33 Shepherd Street and have been further developed on a site-specific basis through this document.

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
 Foreshore Open Space	 Vehicular Corridor
 Georges River	 Pedestrian Permeability
 Foreshore Pedestrian Connection	 Entry Access Points
 Open Space	 Urban Marker
 Deep Soil Planting	 Active Frontage
 Railway Corridor	 Frontage



CHAPTER

2

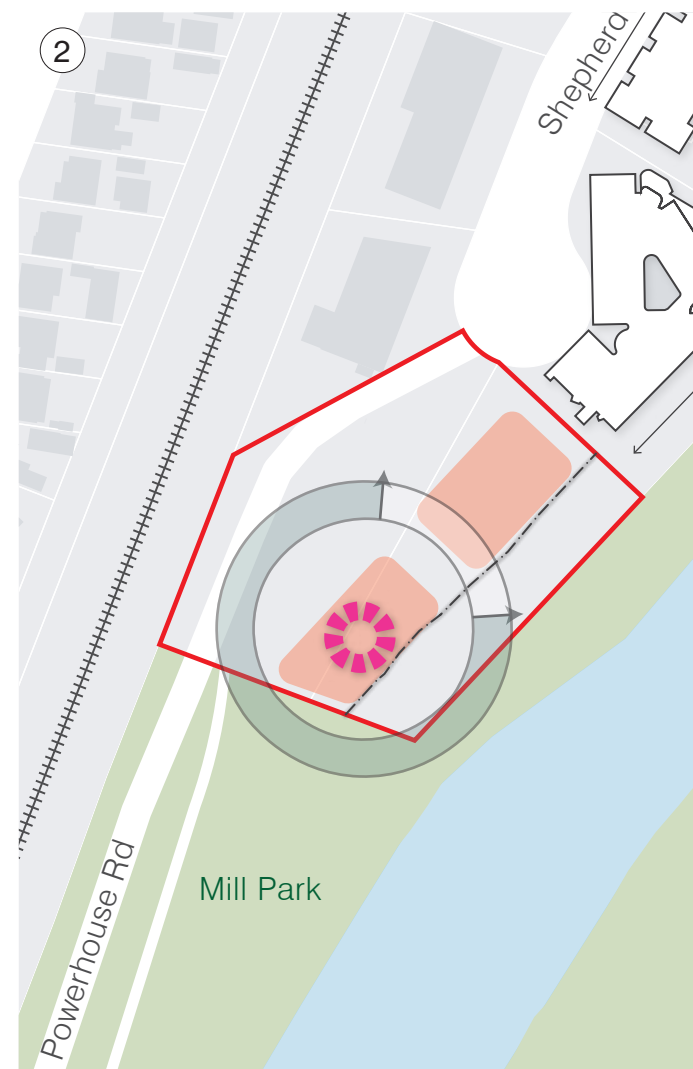
URBANDESIGN
PRINCIPLES

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.



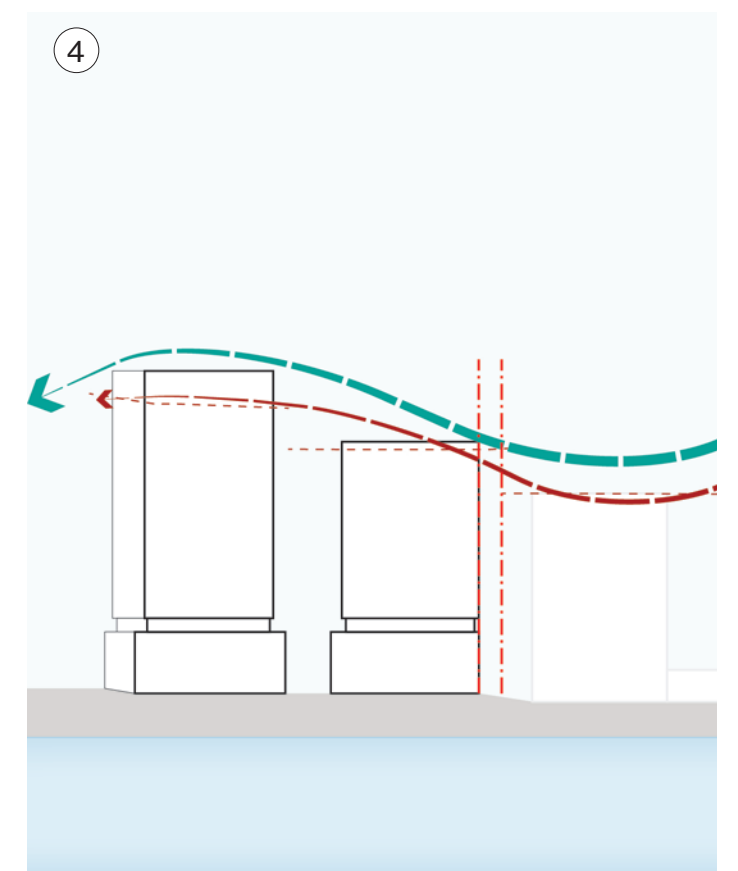
1. Deliver an attractive Shepherd Street / Powerhouse Road Link



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.

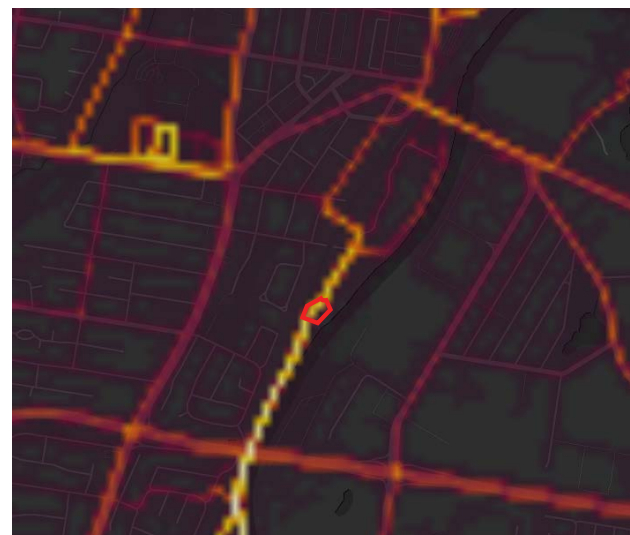
Visibility along this link is currently unclear as the easement winds through the site. It is also currently road-dominated despite the road seeing little active use. This should be addressed through redevelopment.

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

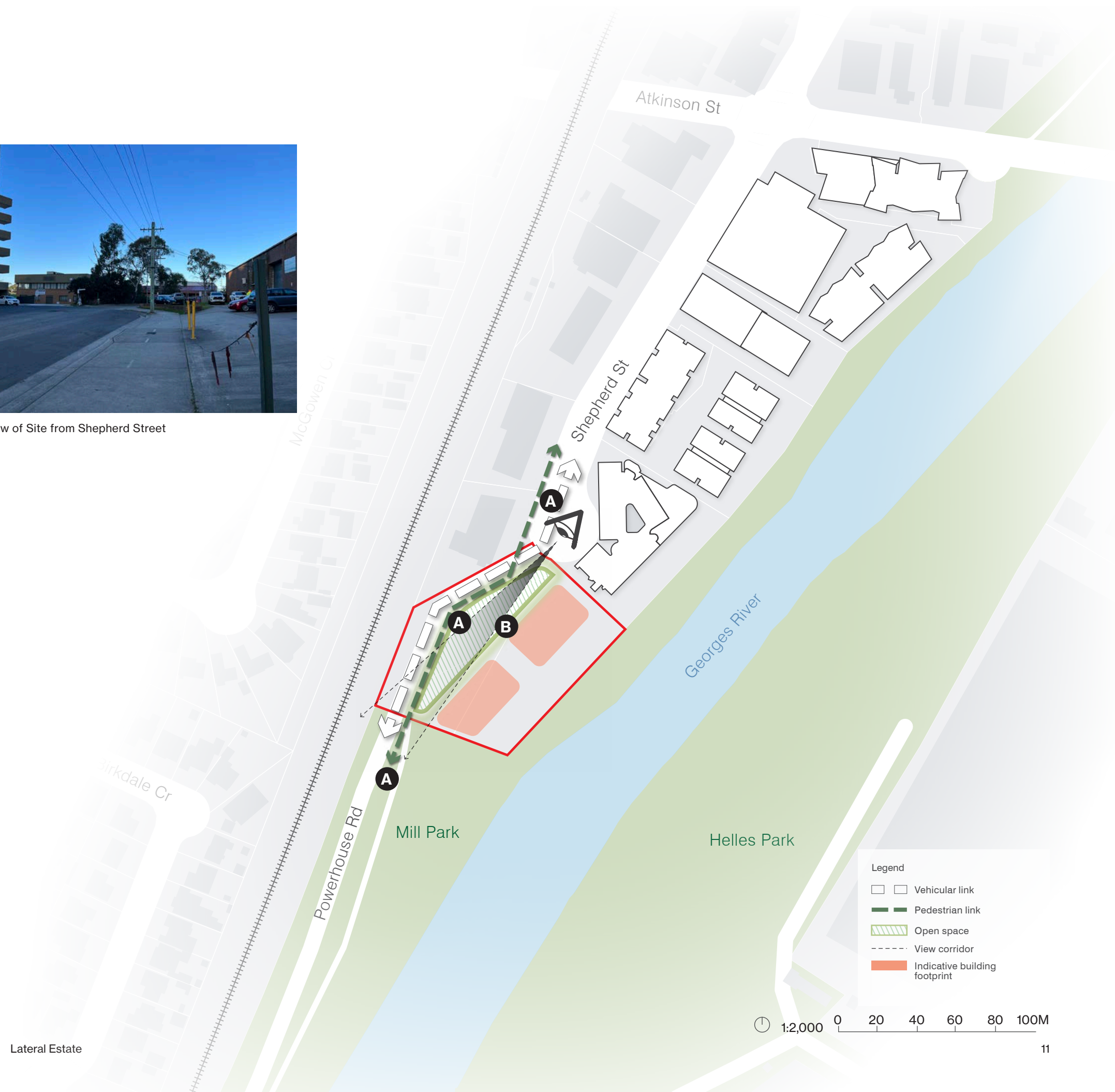
Built form will not occupy the entire remainder of the site. Active uses should be focussed on areas likely to be sunny after redevelopment of neighbouring sites.



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.

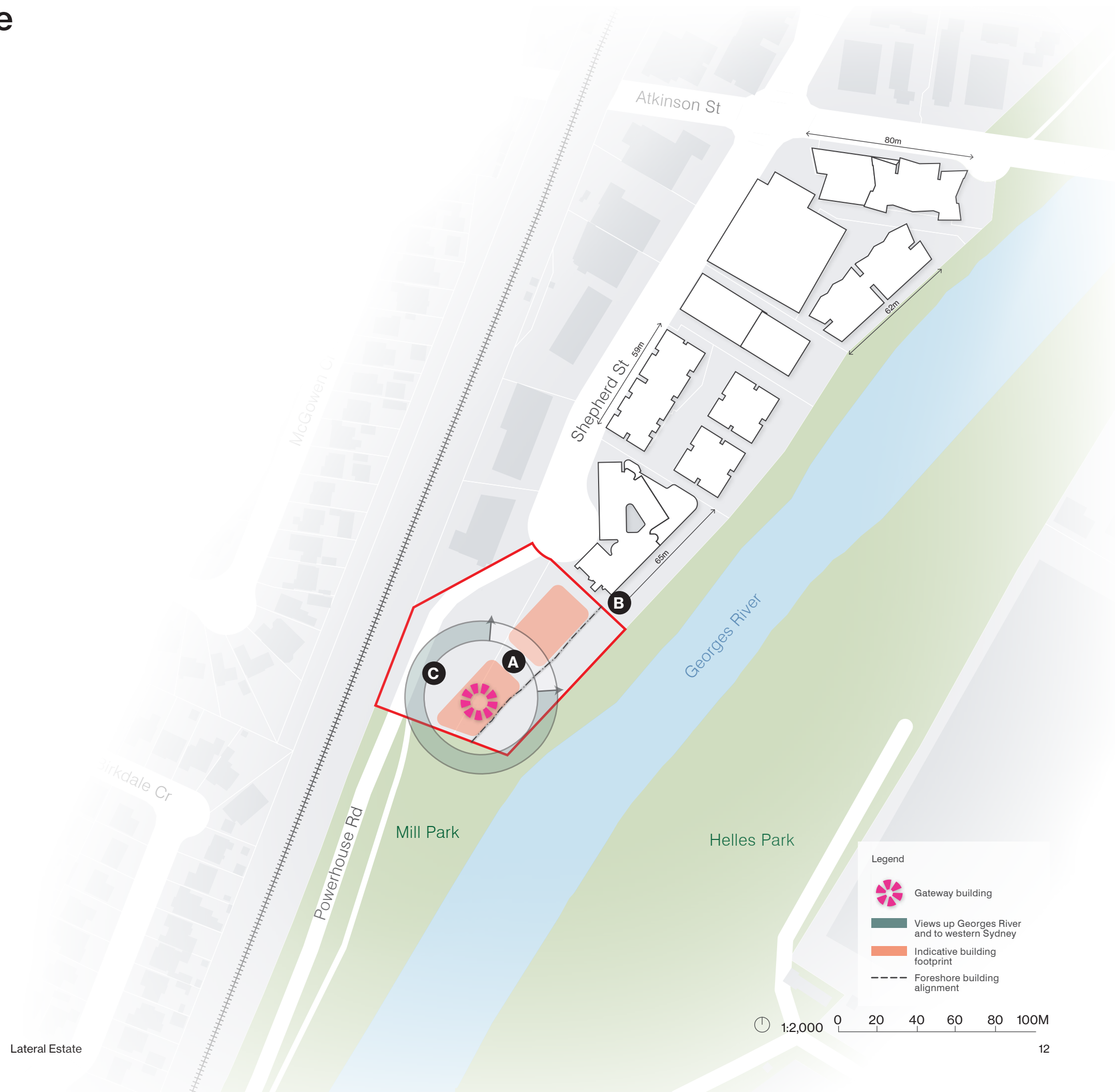
Separating the design of the site to two distinct buildings will address both these issues.

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'

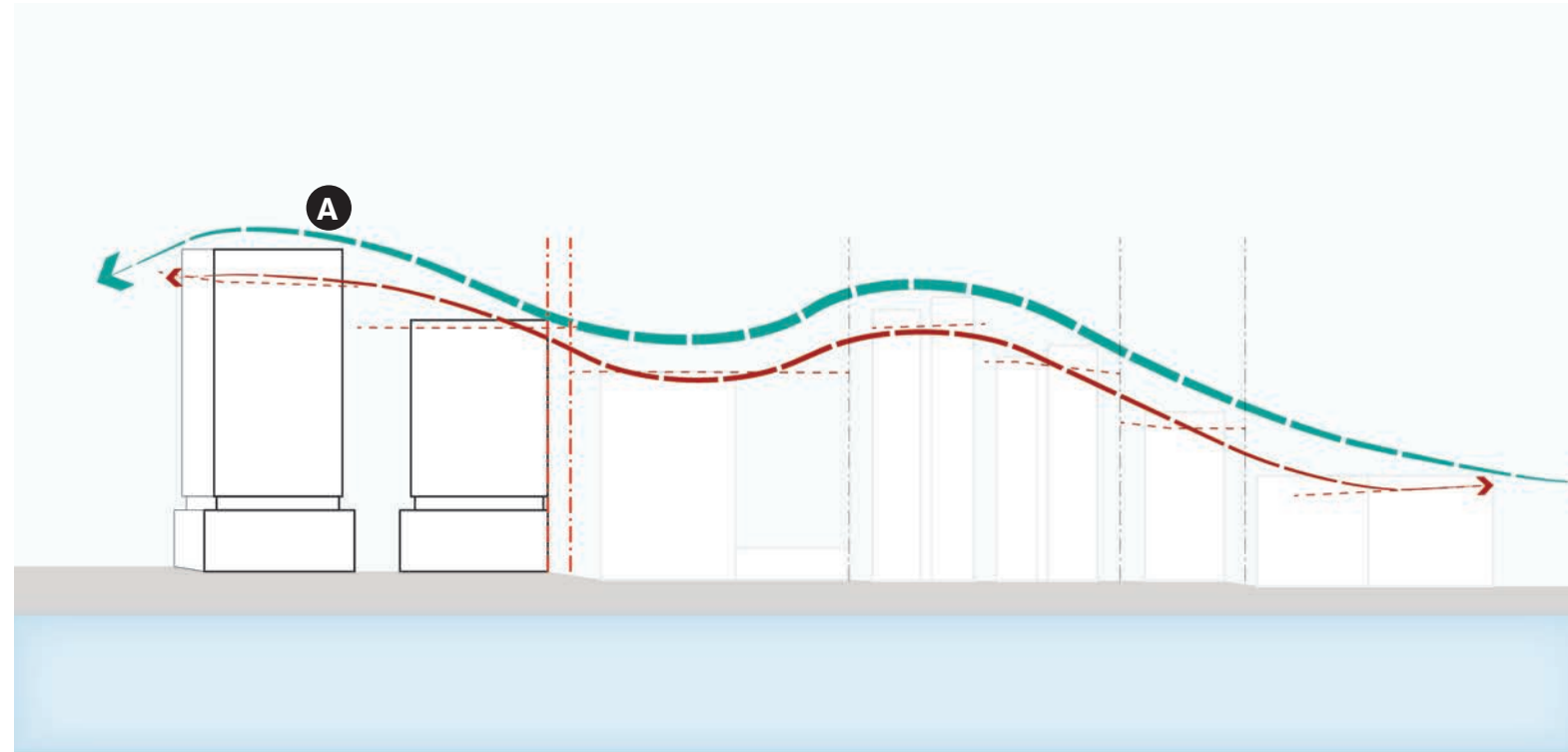


4. Deliver an appropriate tower scale

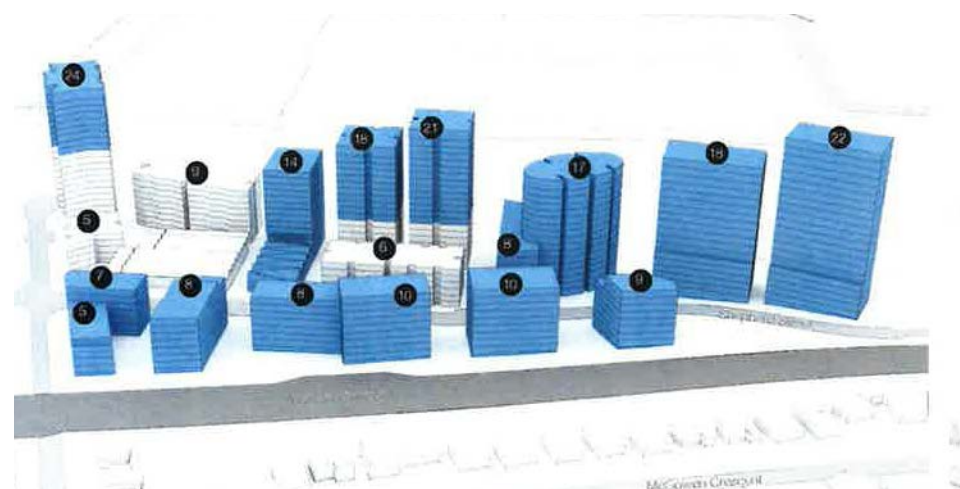
A Height increase above the LEP is appropriate on site, consistent with other variations approved in the Shepherd Street Precinct

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.



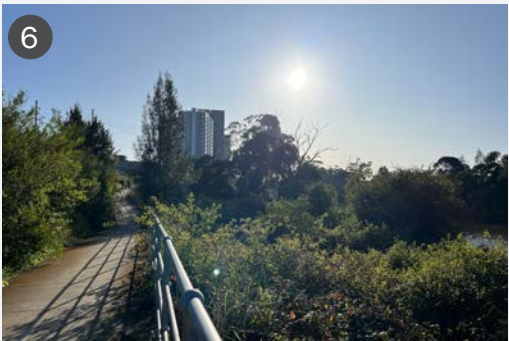
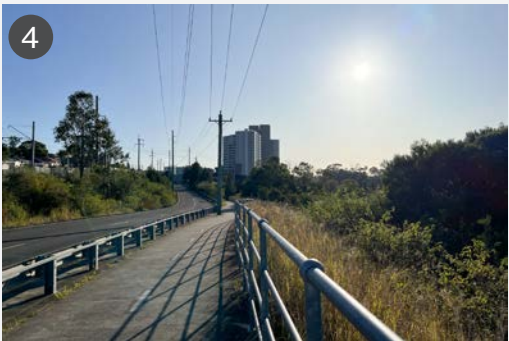
Photo locations map

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

#

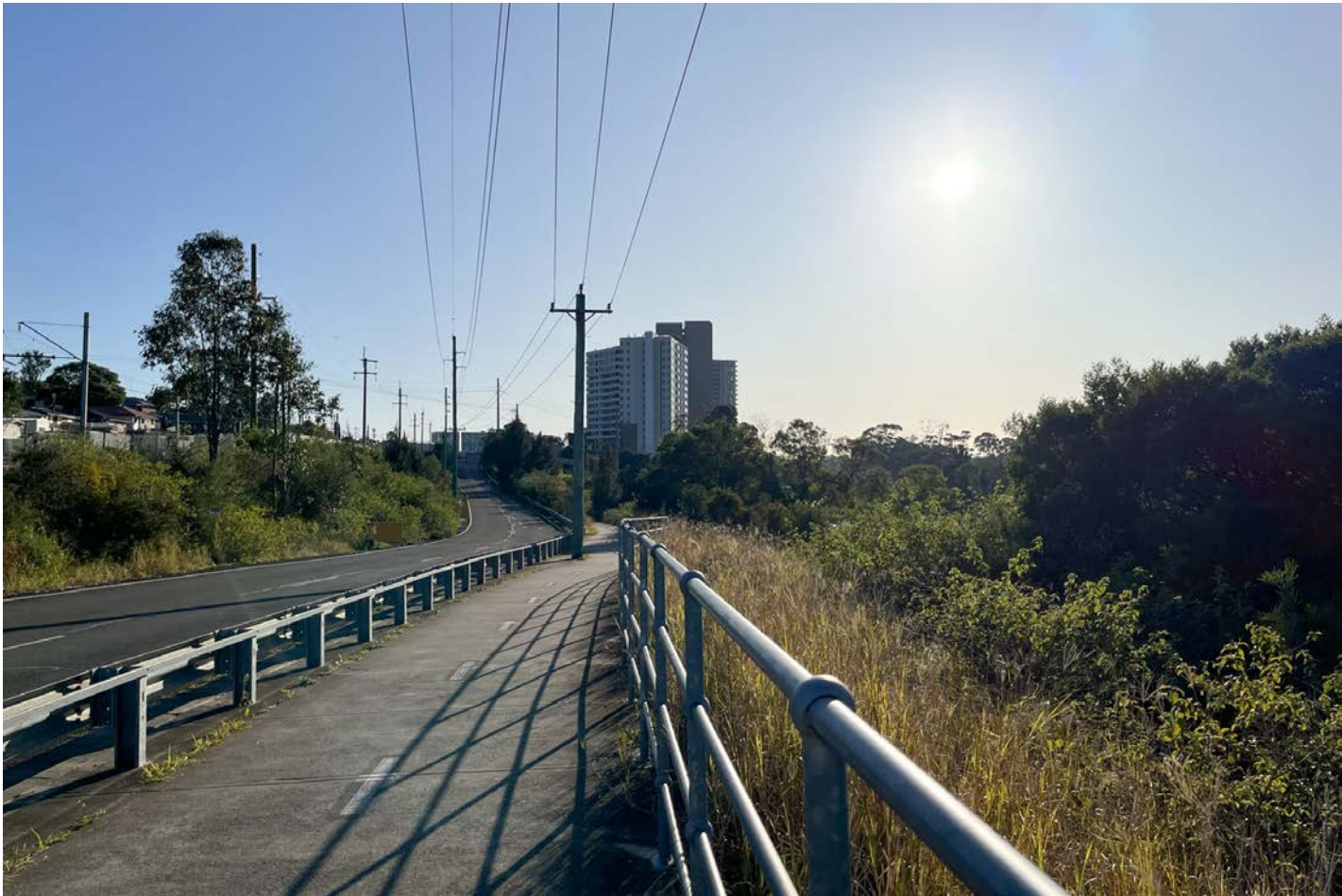
View selected for photomontage analysis

#

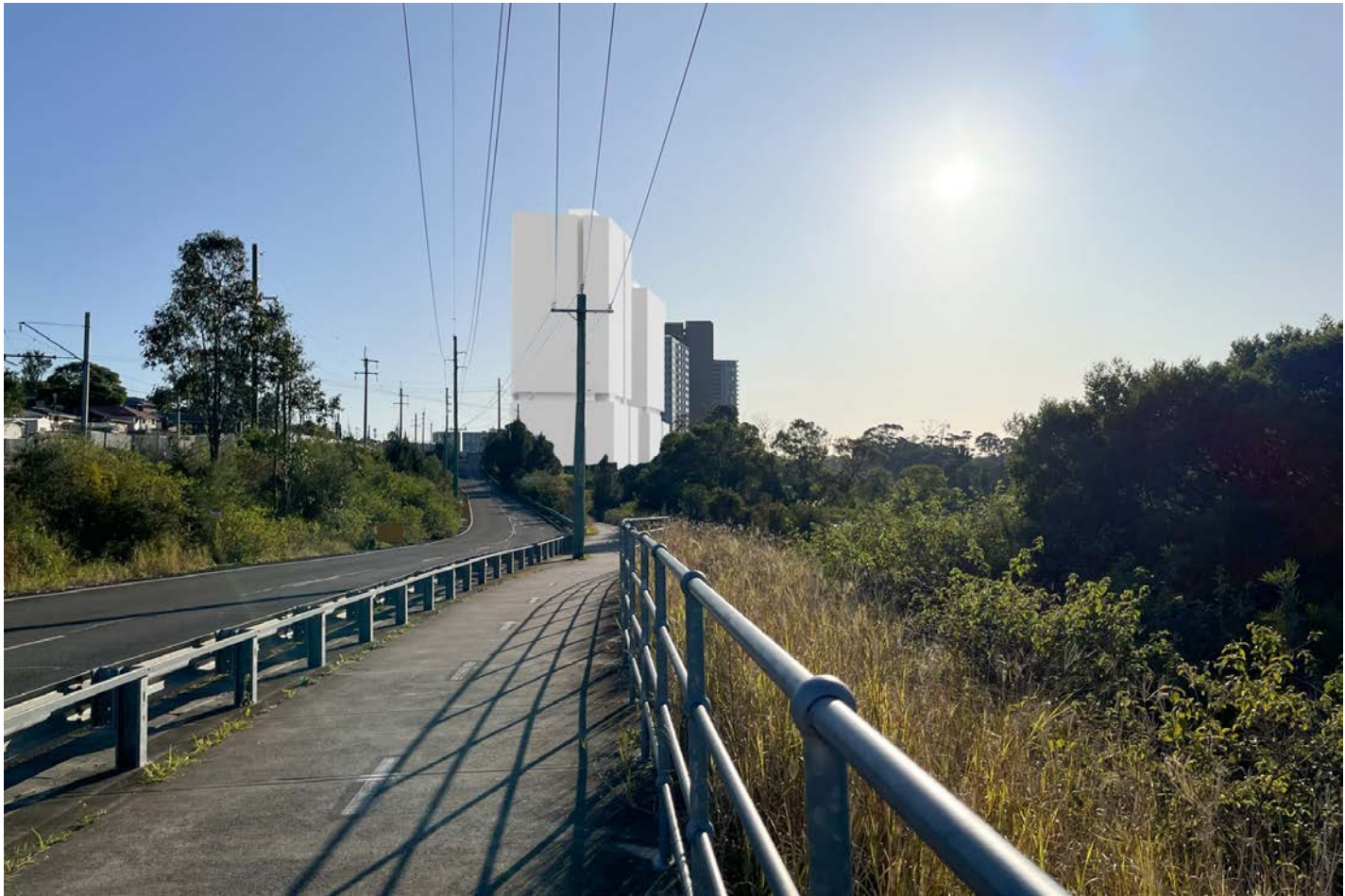
Other views considered

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.

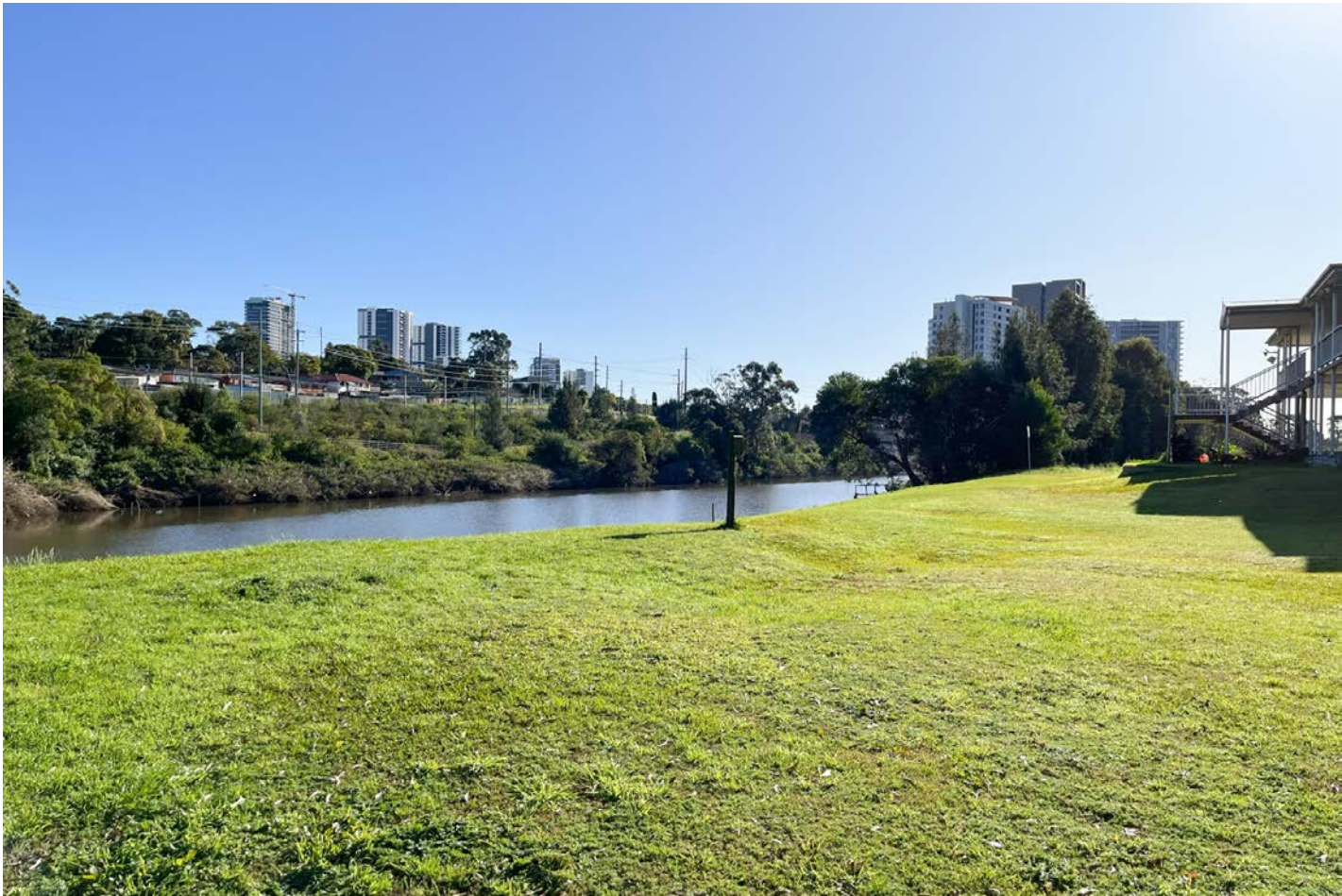
The view of the continuing north-south pedestrian and vehicular link (Powerhouse Road) will open up slightly further forward than this view is taken and can be further developed and emphasised through landscaping and public realm design (not shown in this image). The alternative view shown adjacent shows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

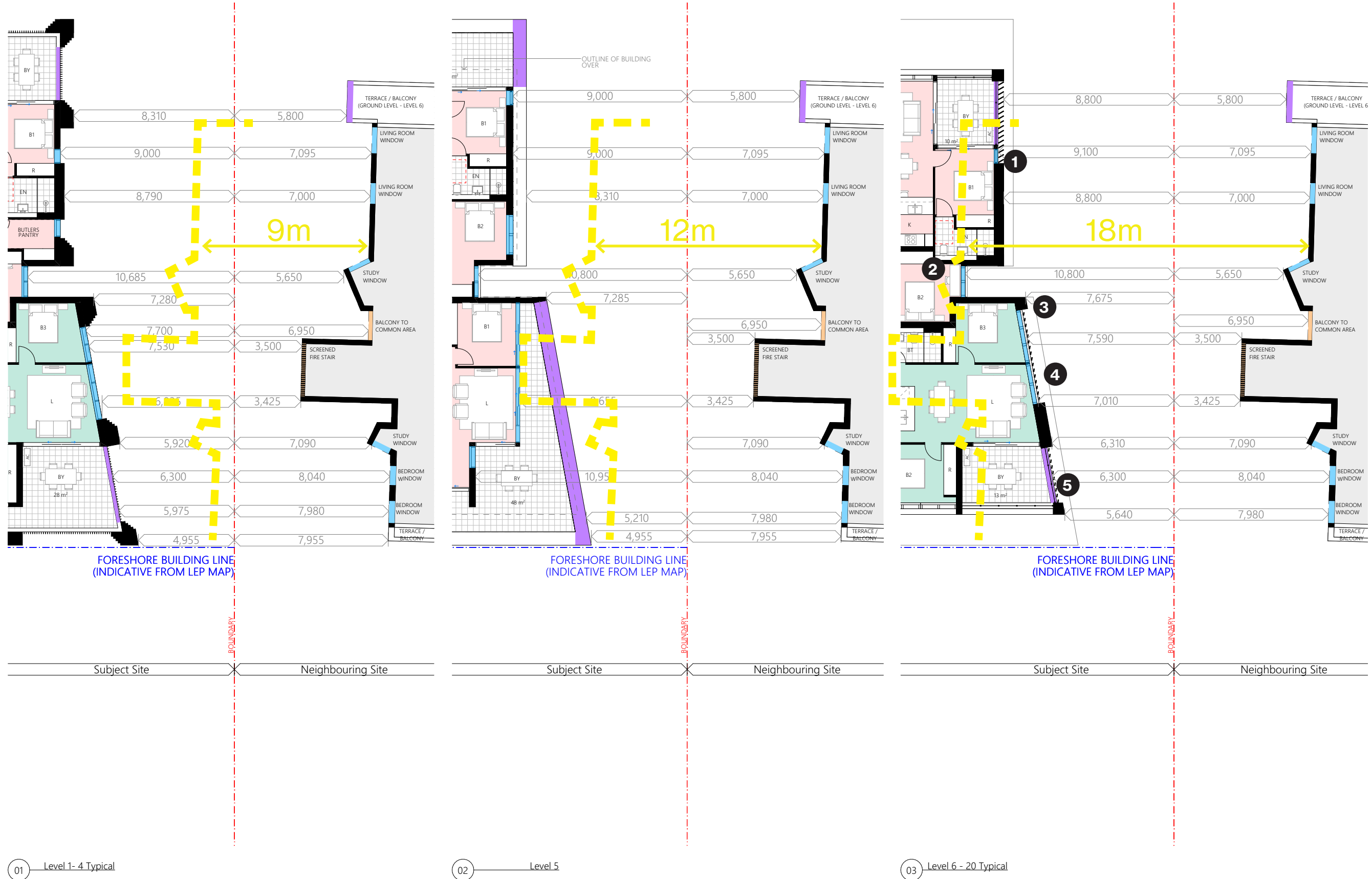
LEP cl. 7.4 Building Separation

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>	
<i>– (i) the suitability of the site for development,</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.
<i>– (ii) existing and proposed uses and use mix,</i>	
<i>– (iii) heritage issues and streetscape constraints,</i>	
<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>	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.
<i>– (v) bulk, massing and modulation of buildings,</i>	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.
	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'.

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'

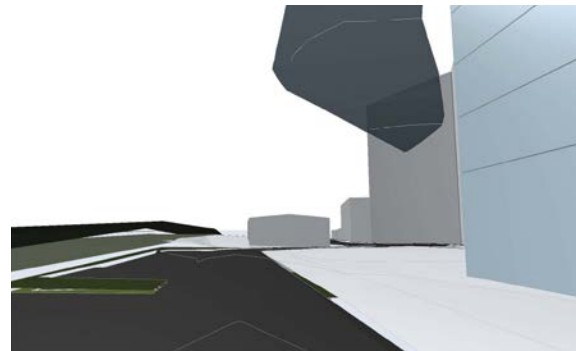
- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*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



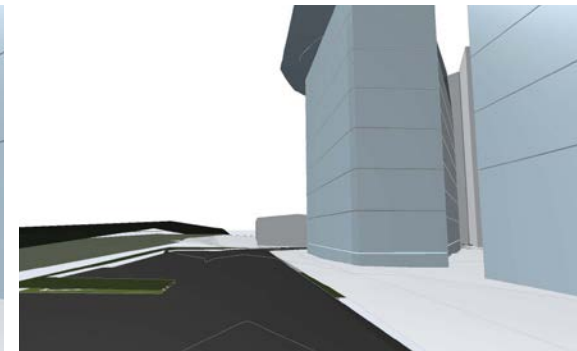
Final proposed massing (MPA)



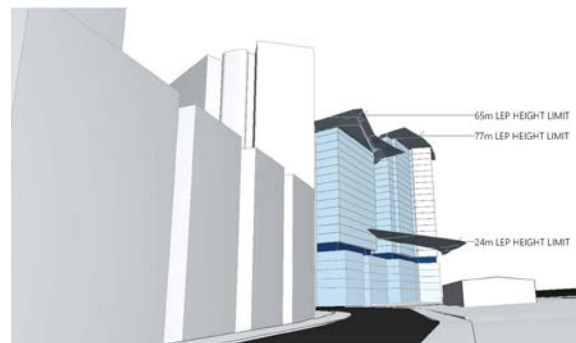
Hypothetical compliant development (MPA)



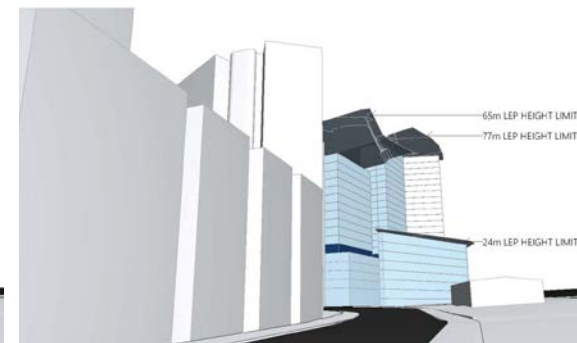
Final proposed massing
View from Mill Park to Shepherd St



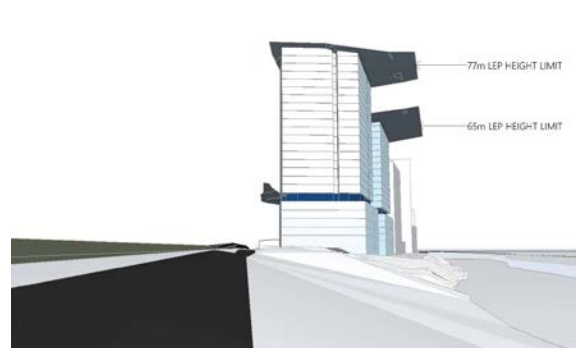
Hypothetical compliant development
View from Mill Park to Shepherd St



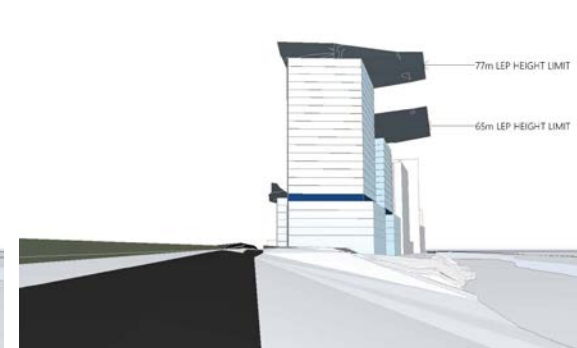
Final proposed massing
View from Shepherd Street



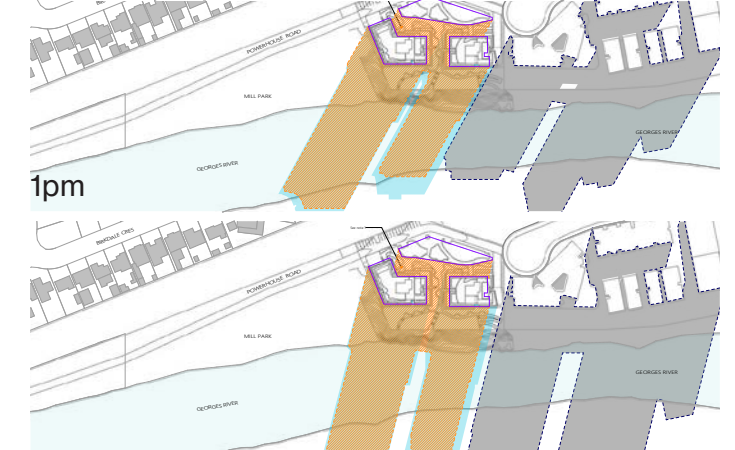
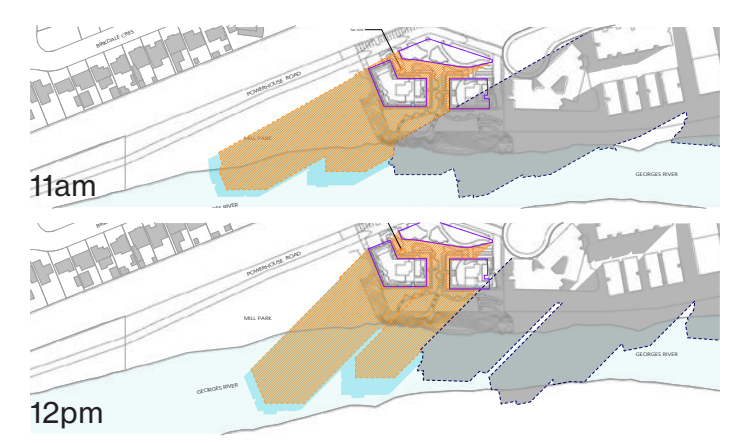
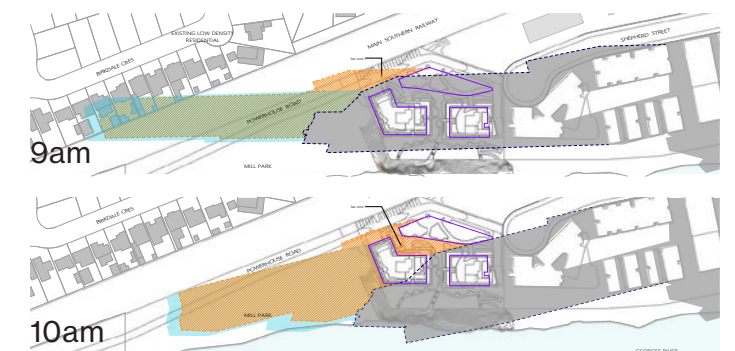
Hypothetical compliant development
View from Shepherd Street



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)

