SJB Planning

Clause 4.6 – Exceptions to Development Standards
Request to Vary Clause 4.3 – Height of Buildings

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, of 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 4.3 Height of Building (HOB).

The site is set in a precinct that is currently undergoing transformation from an industrial area to a high-density residential area. The surrounding lands forms a part of the Shepherd Street Precinct 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), formally adopted on 1 November 2017.

Clause 4.3 of the LLEP 2008 identifies four (4) HOB controls for the site including:

- A maximum HOB of 24m to the western portion of the site incorporating Powerhouse Road
- A maximum HOB of 77m to the southernmost portion of the site
- A maximum HOB of 65m to the central / eastern portion of the site towards Georges River
- A maximum HOB of 56m at the north-eastern portion of the site towards No. 32-24 Shepherd Street.

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Refer to extract of the LLEP 2008 HOB map in Figure 1. The overall site consists of four (4) HOB standards outlined in Figure 2.

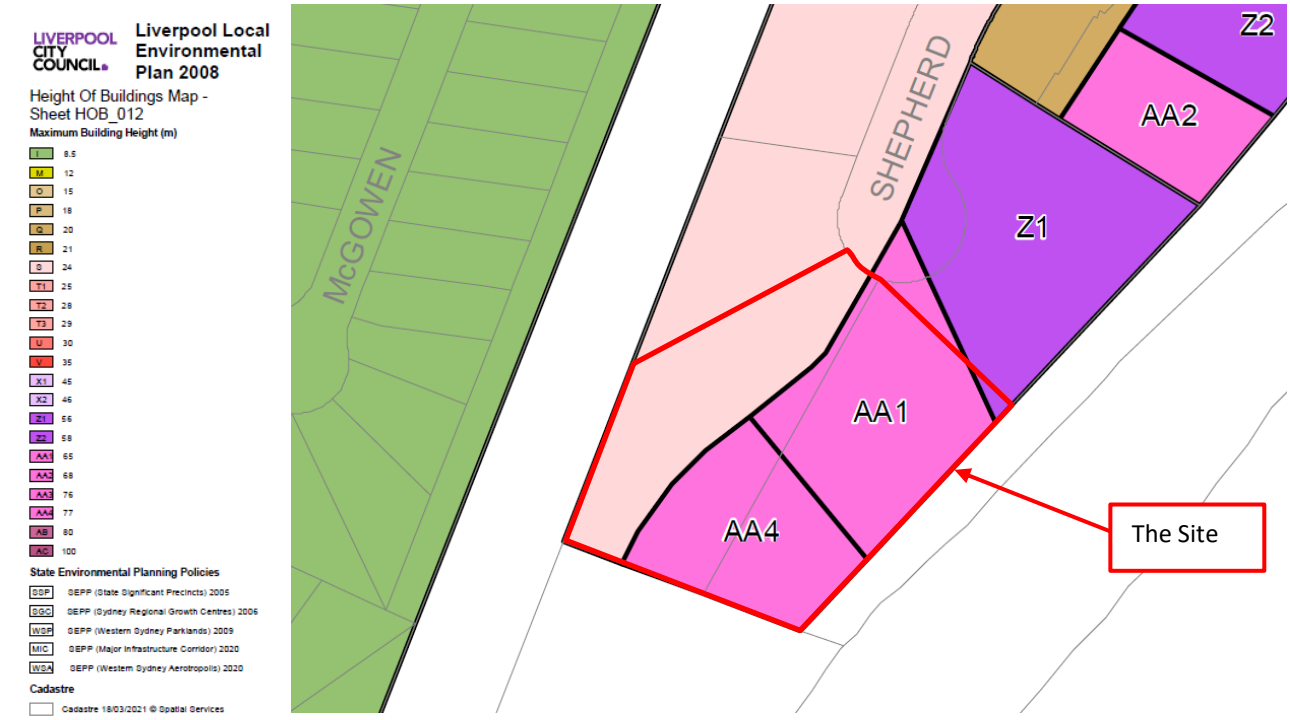


Figure 1: Excerpt from LLEP 2008 Height of Buildings Map

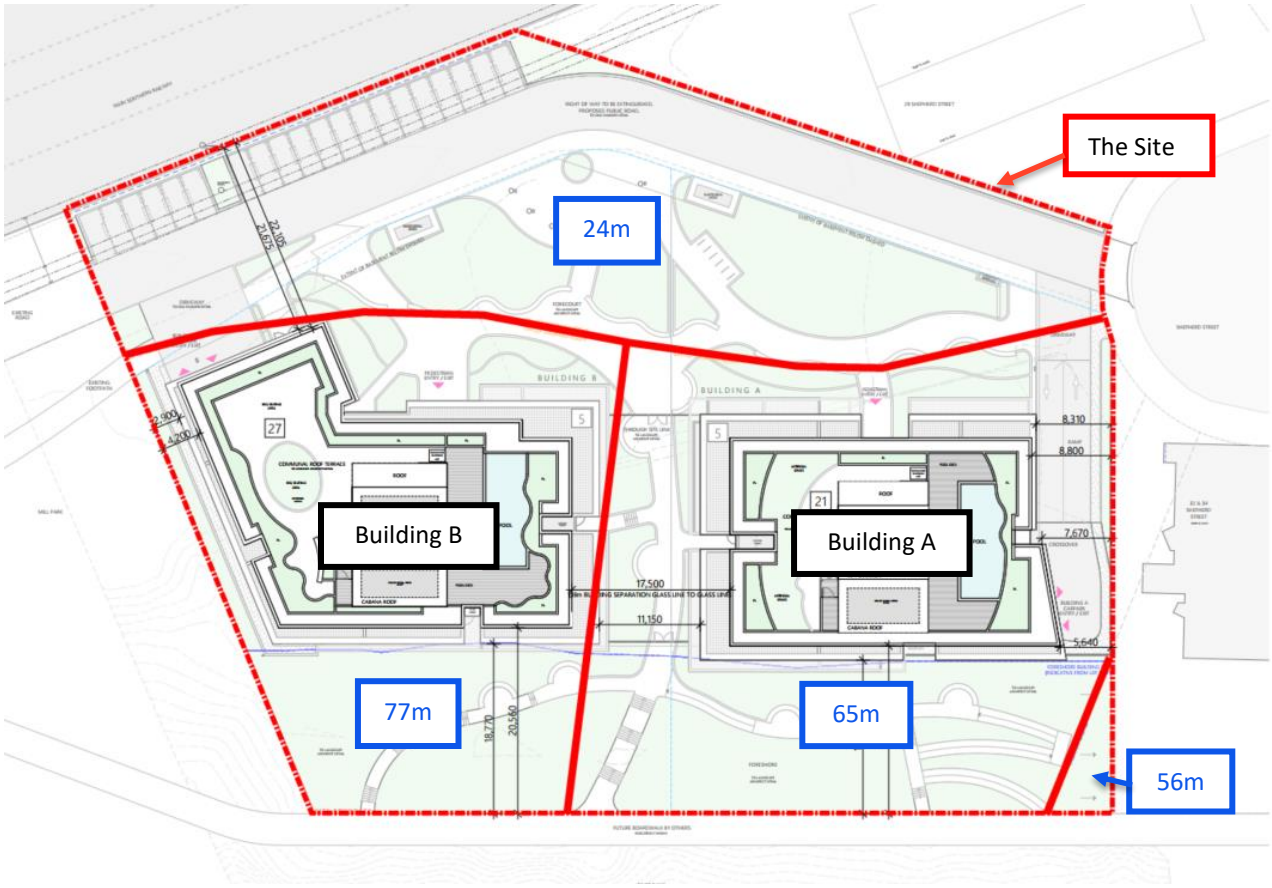


Figure 2: Applicable HOB standards

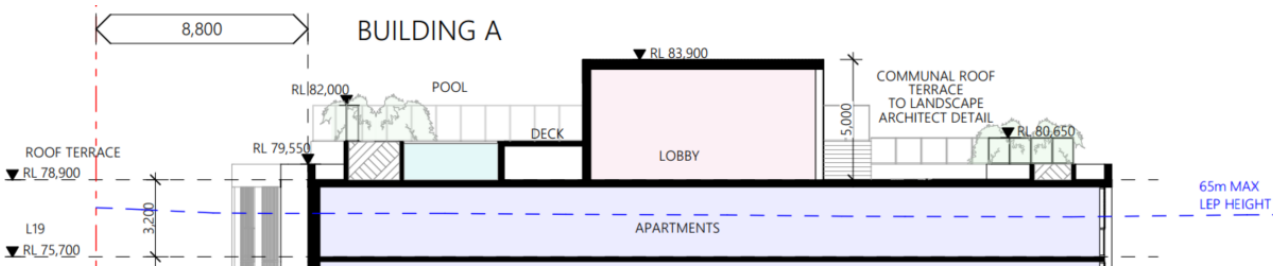
The proposed development has a maximum building height of:

— Building A: 71.55m (RL 83,900)

— Building B: 84.53m (RL 97,300)

Compliance tables outlining the extent of variations for Buildings A and B are provided in Table 1 and Table 2. A building height plane showing the relationship between the 65m and 77m height control and proposed structures is provided in Figure 3 and Figure 4.

Building A

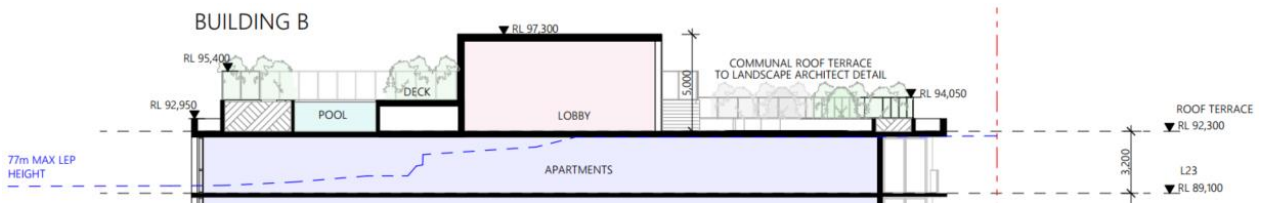


Extract of Section C - Building A, Level 19 (Mosca Pserras Architects)

LEP height (m)	Proposed height (m)	Compliance	Variation (m)	Variation (%)
65	71.55 (lift overrun) RL 83,900	No	6.55	10.08%
	71.03 (cabana roof) RL 83,250	No	6.03	9.28%
	69.71 (BBQ roof) RL 82,150	No	4.71	7.25%
	69.65 (wind barrier) RL 82,000	No	4.65	7.15%
	68.15 (pool deck) RL 80,500	No	3.15	4.85%
65	67.15 (parapet) RL 79,550	No	2.15	3.31%

Table 1: Compliance summary - Building A

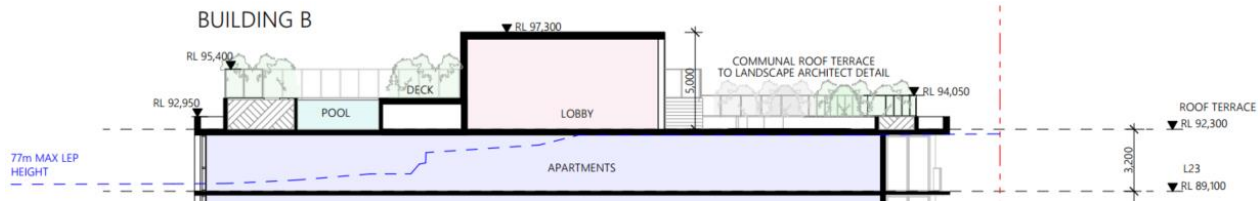
Building B



Extract of Section C - Building B, Level 23 (Mosca Pserras Architects)

LEP height (m)	Proposed height (m)	Compliance	Variation (m)	Variation (%)
77	84.03 – 84.53 (lift overrun) RL 97,300	No	7.03 – 7.53	9.13% - 9.78%

Building B



Extract of Section C - Building B, Level 23 (Mosca Pserras Architects)

LEP height (m)	Proposed height (m)	Compliance	Variation (m)	Variation (%)
	83.19 – 83.95 (cabana roof) RL 96,800	No	6.19 – 6.95	8.04% - 9.03%
	80.55 – 81.51 (BBQ roof) RL 95,550	No	3.55 – 4.51	4.61% - 5.86%
	81.97 – 82.93 (wind barrier) RL 95,400	No	4.97 – 5.93	6.45% - 7.70%
	80.475 – 81.43 (pool deck) RL 93,900	No	3.475 – 4.43	4.51% – 5.75%
	78.34 – 80.54 (parapet) RL 92,950	No	1.34 – 3.54	1.74% - 4.6%

Table 2: Compliance summary - Building B

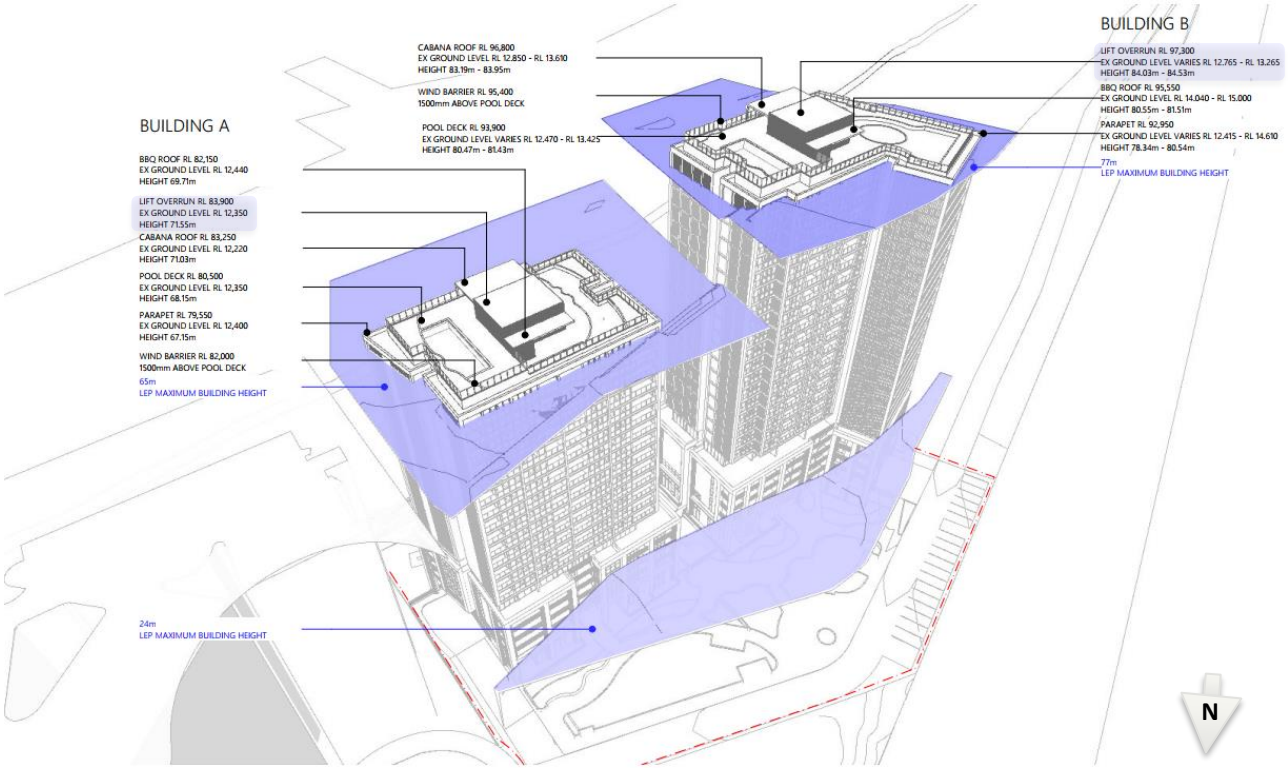


Figure 3: Proposed building heights

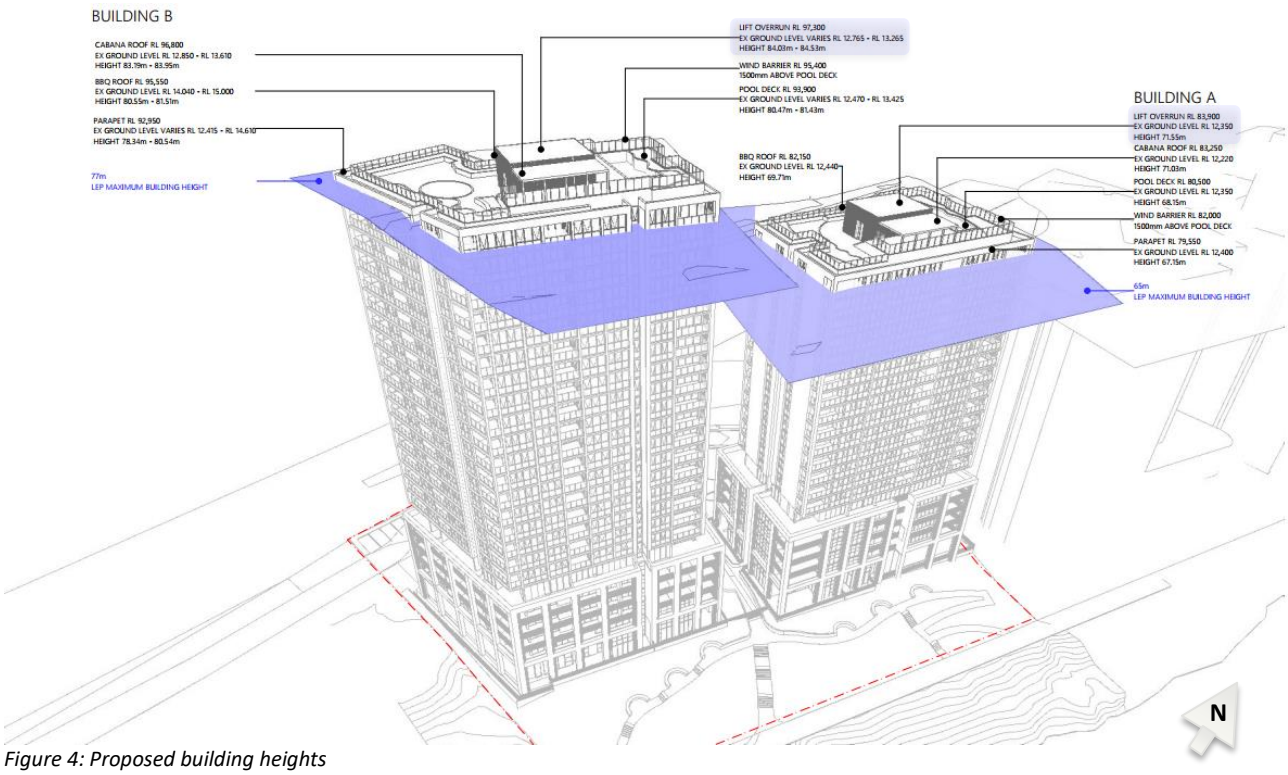


Figure 4: Proposed building heights

As detailed in the tables and figures above, the proposed building envelopes exceed the height of building development standard of 65m and 77m by a maximum of 10.08% (6.55m) for Building A and a maximum of 9.78% (7.53m) for Building B. It is noted that proposed massing will result in total GFA exceeding the maximum permissible and is supported by a separate clause 4.6 contravention request.

These maximum contraventions result from lift overruns for each building, which will generally be centred within the envelope of each building and obscured from view. However, the parapets of each building, a more legible perception of building height when viewed from ground level, are 67.15m (3.31%) for Building A and 78.34m – 80.54m (1.74% - 4.6%) for Building B.

Non-complying elements are generally ancillary structures above the roof level of the development. These are not considered to result in additional mass, size or scale to the development that would deem it incompatible with the future desired character of the precinct as these structures are in place to enhance resident amenity by introducing a rooftop communal open space for the benefit of residents and visitors.

The non-compliance is a result of a design development across the site undertaken to achieve the proposed massing, inclusive of additional residential co-living floor space (Building B), whilst also freeing up the ground plane to maximise opportunities for public benefit in the form of a publicly accessible through-site link, public road, public car parking, and public access to river frontage of the site.

Furthermore, the proposed modelling and distribution of floorspace into Building A and Building B, ensures the freeing up of the surrounding ground plane that would otherwise be allowable for built form up to a height of 24m.

The proposed buildings have been positioned to reflect location modelling undertaken as part of the Shepherd Street Precinct masterplan for the site, as well as constraints imposed on the site by the foreshore building line, proximity to railway infrastructure to the west, as well as a new public road providing vehicular access across the site connecting Shepherd Street and Powerhouse Road. Extensive modelling has been undertaken to ensure the proposed massing responds positively to the site and surrounding area in order to maximise public and resident amenity.

1. 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.

The application also includes a plan of subdivision, which results in the dedication to the Council, free of cost, of 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.

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 4.3 Height of buildings.

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 1.

The site is generally bound by the Georges River to the east, Mill Park and Powerhouse Road to the south, railway line and industrial lands to the west and northwest, Shepherd Street and residential development to the north and northeast. The site has a total area of 7,872m^2; with vehicular access available via Shepherd Street to the north and Powerhouse Road to the southwest.

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

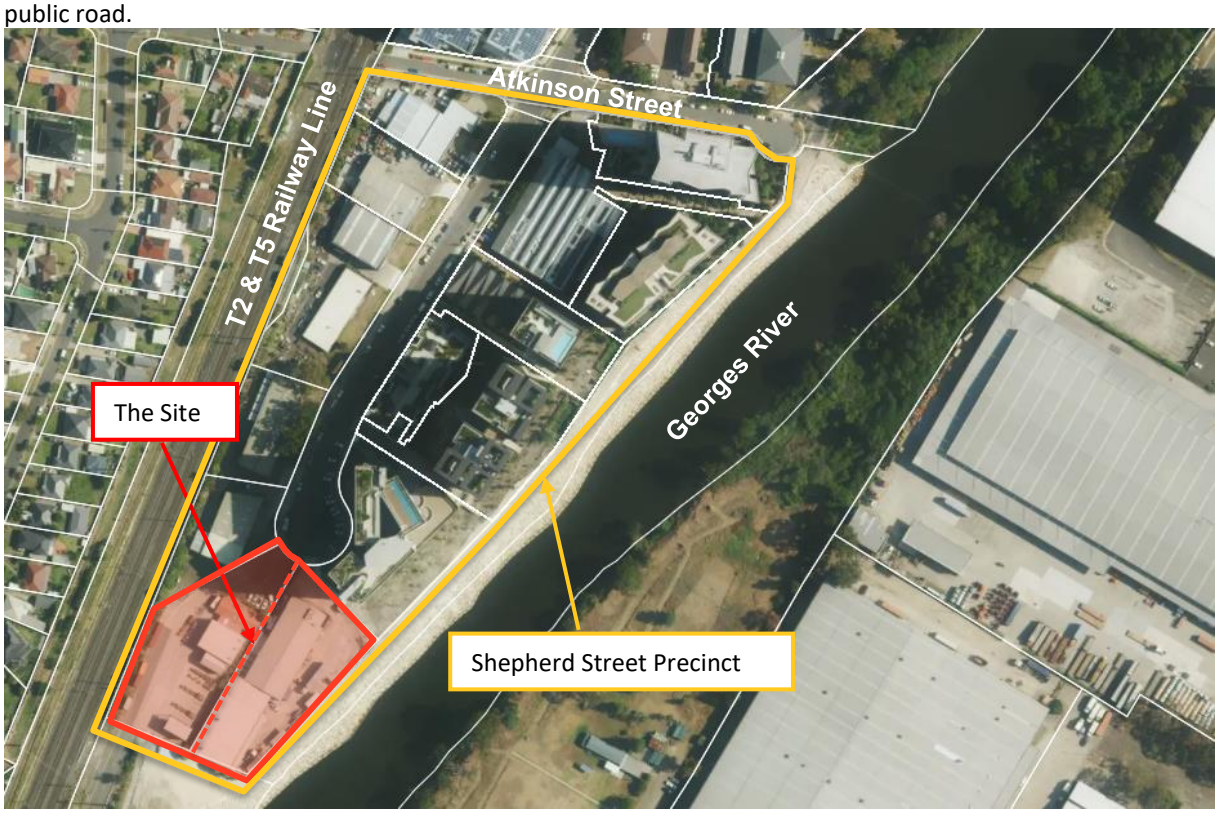


Figure 5: Aerial view of site and locality (Source: MetroMap)

1.2. The Proposed Development

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

Building A comprises a 20-storey tower, with a maximum height of 71.55m / RL 83,900, including 5-storey podium, with 4 levels of basement parking and rooftop amenities. Building B comprises a 24-storey tower, with a maximum height of 84.53m / 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 apartments and 66 co-living dwellings, the latter being proposed in accordance with *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

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

1.3. Planning Context

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

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

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

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

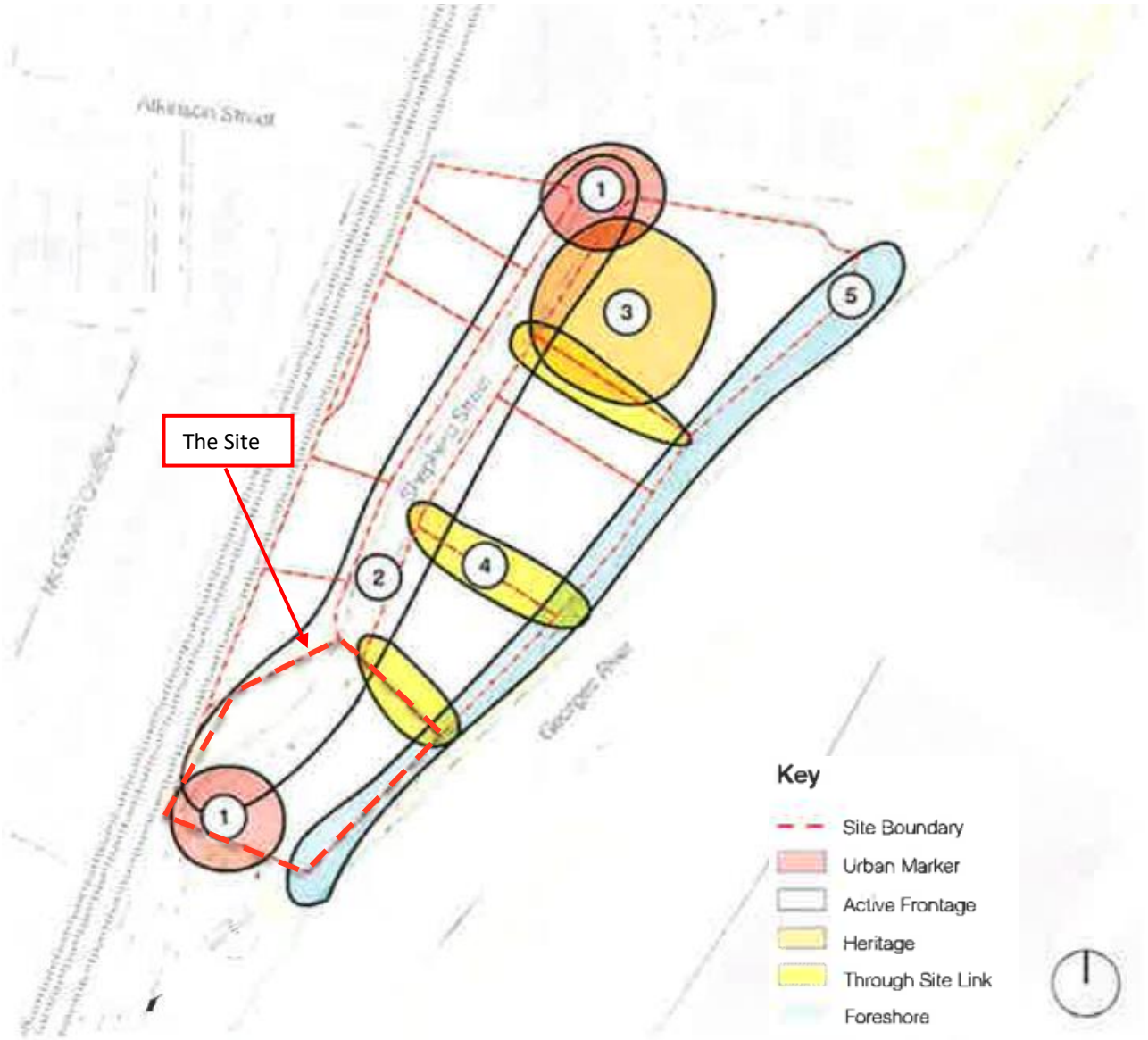


Figure 6: Extract of Section 3.2.3 Urban Design Principles of Shepherd Street Precinct masterplan

Building siting and massing were then established for each site, guided by these principles as well as modelling of solar access. The resultant siting and massing of buildings across each site is shown in Figure 3. The masterplan recommended that the sites along the eastern side of the precinct should be increased to allow for an uplift in 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 distributed across the site and neighbouring site at 32 Shepherd Street (refer to Figure 3). It also identifies a key urban marker (built form) in the southern portion of the site (refer to Figure 2). Access through the site is also envisaged with the creation of a new road connecting Shepherd Street and Powerhouse Road.

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

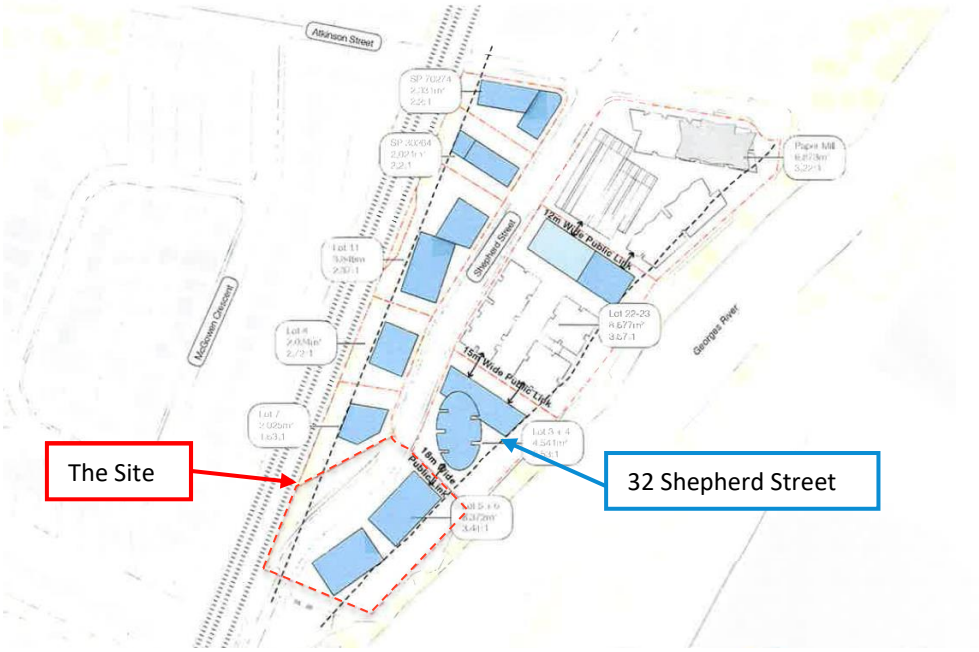


Figure 7: Extract of Section 4.3 Preferred Concept – Plan of Shepherd Street Precinct masterplan

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 8).

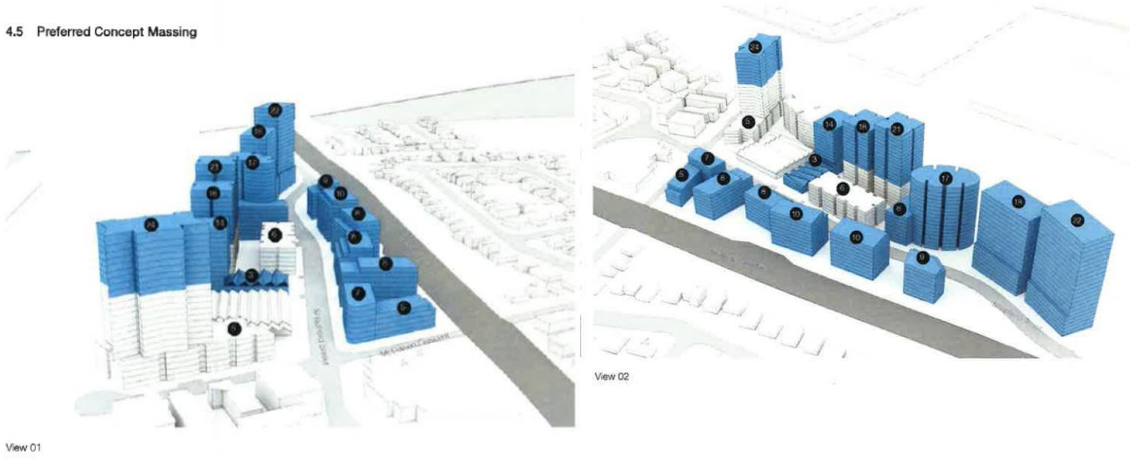


Figure 8

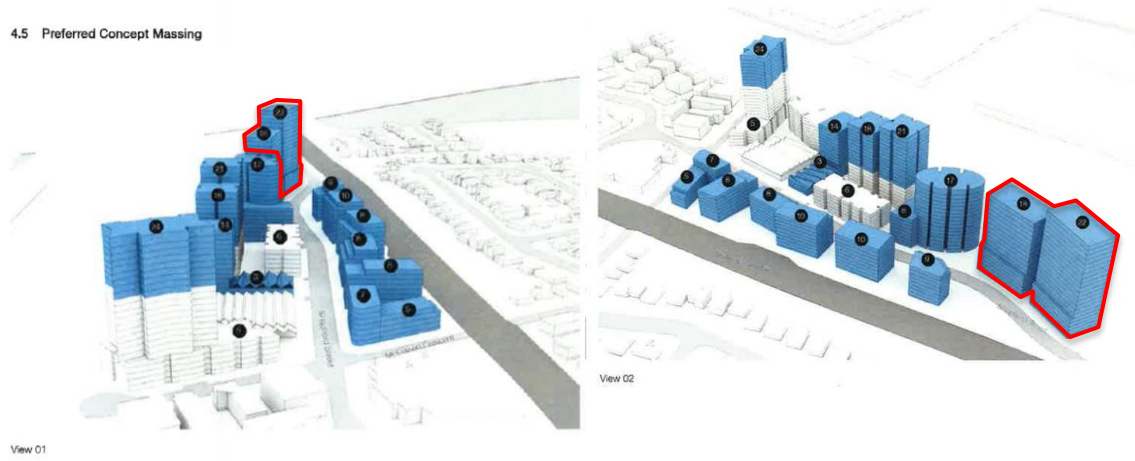


Figure 8: Extract of Views 1 and 2 - Section 3.2.3 Urban Design Principles of Shepherd Street Precinct masterplan (site in red)

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.

Pursuant to LLEP 2008, the maximum base gross floor area (GFA) achievable across the overall site is approximately 24,863.4m^2, being a cumulative maximum FSR of 3.16:1 (excluding any co-living housing bonus).

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 9).

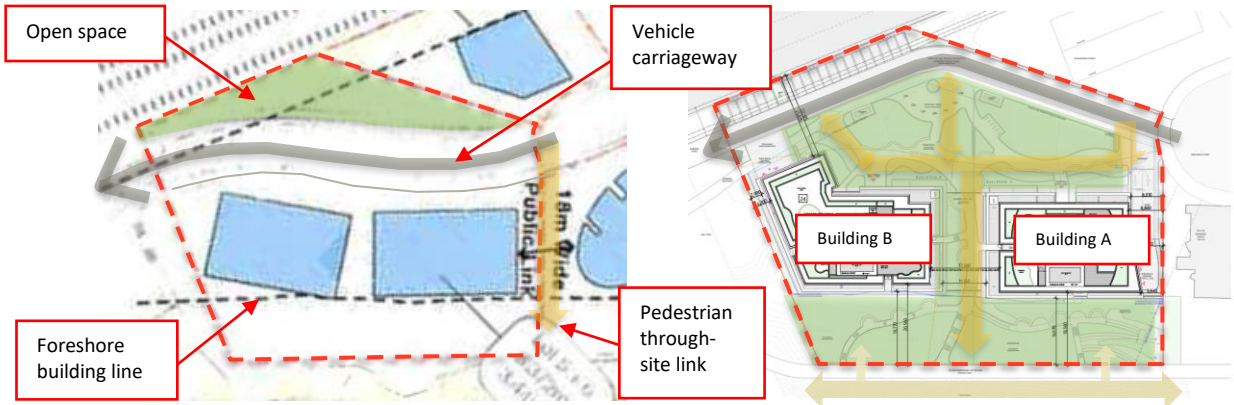


Figure 9: Extract of Section 4.3 Preferred Concept – Plan of Shepherd Street Precinct masterplan (left) and proposed site plan (Mosca Pserras architects) (annotations by SJB)

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 and open space) results in a distribution of floorspace that will contravene the permissible heights of 65m and 77m, while ensuring no built form associated with the podium and towers will be constructed within the 24m height limit.

As illustrated below in Figure 10, under a hypothetical compliant development scenario, this outcome would not achieve the public benefits of a publicly accessible landscaped forecourt and through site link. Refer also to Annexure A for hypothetical compliant and proposed building envelopes and massing.

Hypothetical compliant development **Proposed development**

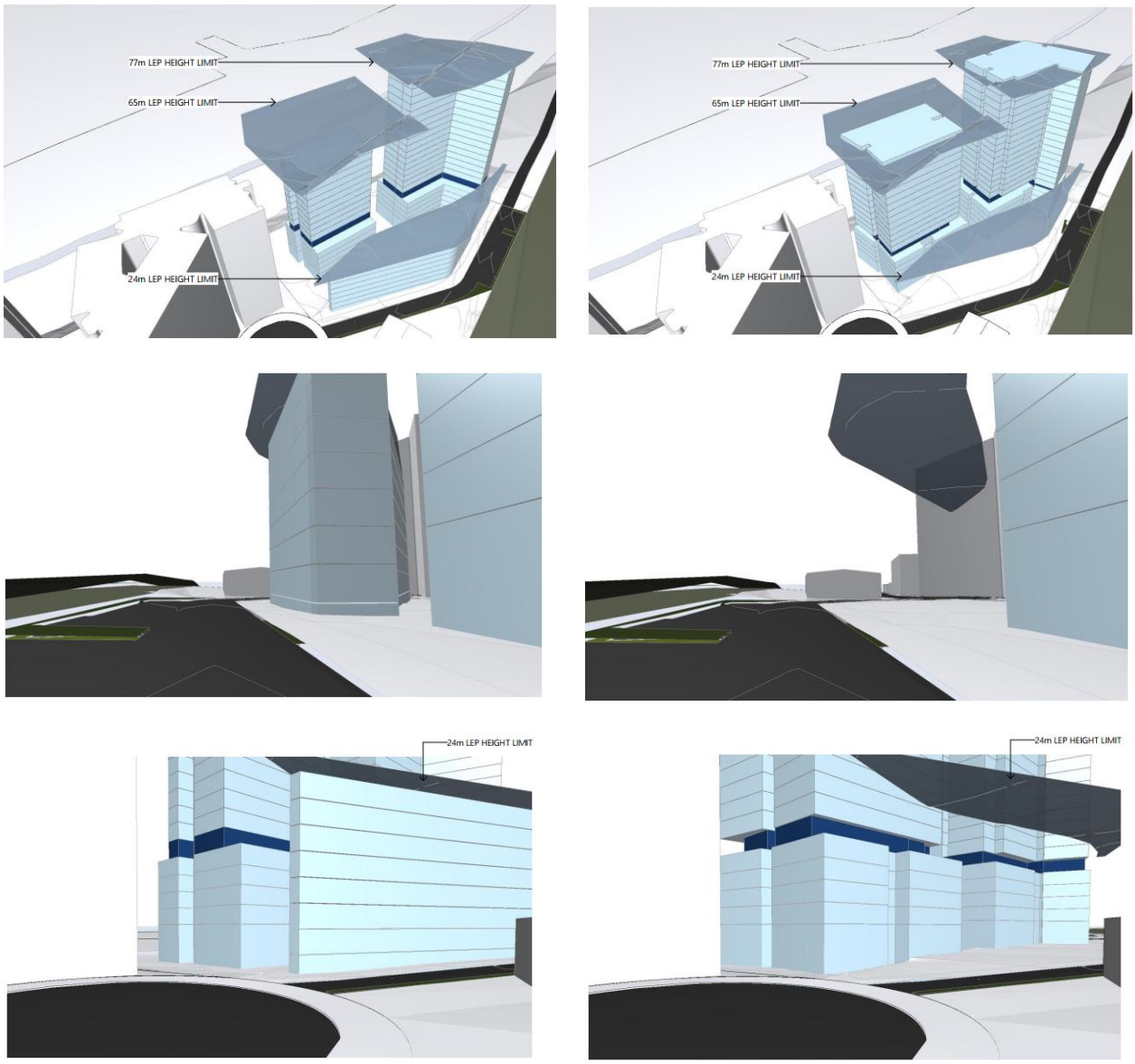


Figure 10 Comparison between a hypothetical compliant massing development and proposed development massing

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

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

Again, as noted in the accompanying FSR clause 4.6 request, the proposal seeks a total GFA of 28,228m^2 across the entire site. Within this context, the maximum 'cumulative' FSR across all three (3) portions of the site equates to 3.59:1.

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

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

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

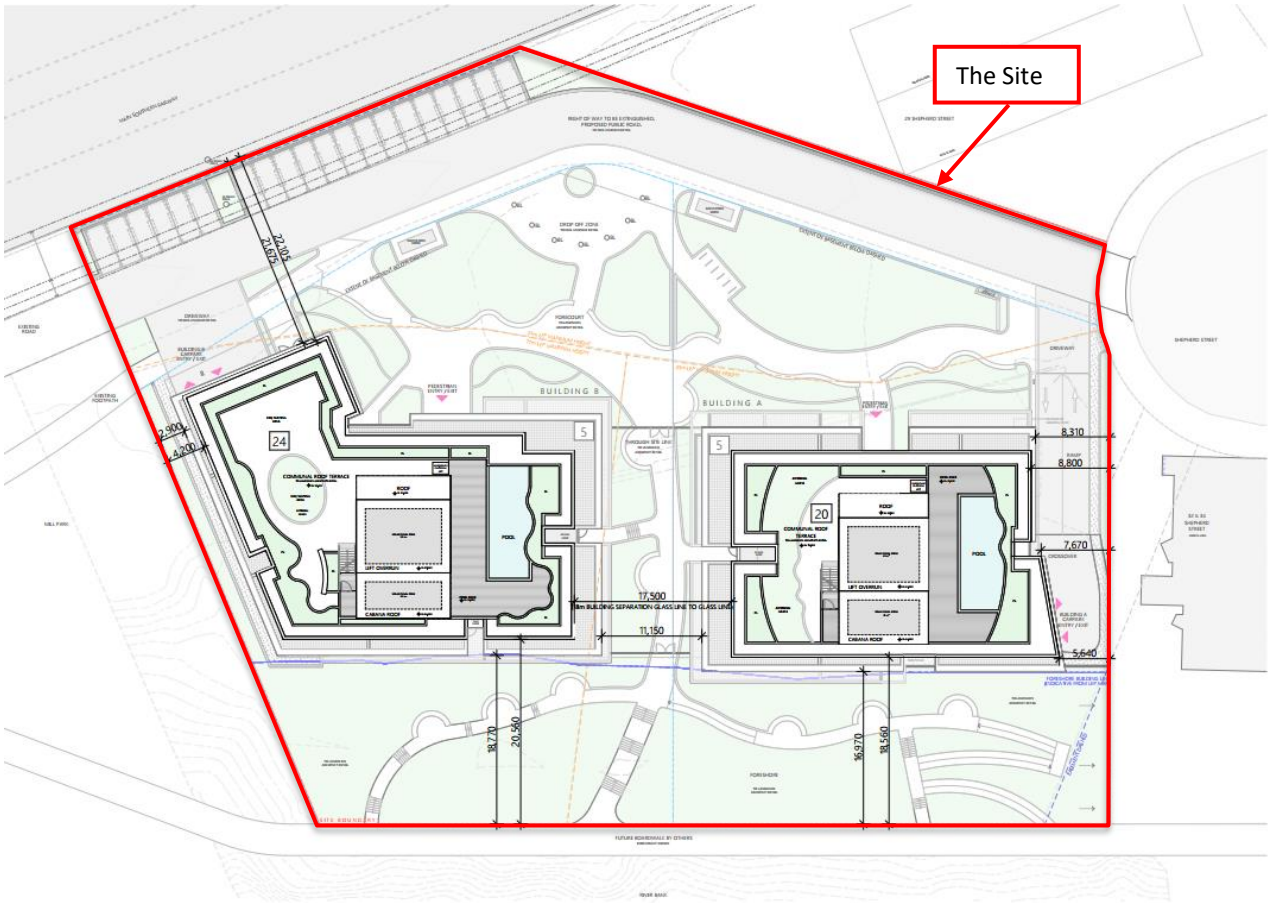


Figure 11: Site Plan (Source: Mosca Pserras architects)

2. Description of the planning instrument, development standard and proposed variation

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

The Liverpool Local Environmental Plan 2008 (LLEP 2008).

2.2. What is the zoning of the land?

The zoning of the land is R4 High Density Residential.

2.3. What are the Objectives of the zone?

The objectives of the R4 High Density Residential land 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 height of buildings development standard.

2.5. Is the development standard a performance based control?

No, the height of buildings 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 4.3 of LLEP 2008.

2.7. What are the objectives of the development standard?

The objectives of Clause 4.3 are as follows:"

"(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."

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

Clause 4.3 establishes maximum building heights of 24m, 56m, 65m and 77m for the site as illustrated in the extract of the Height of Buildings Map included in Figure 11 below.

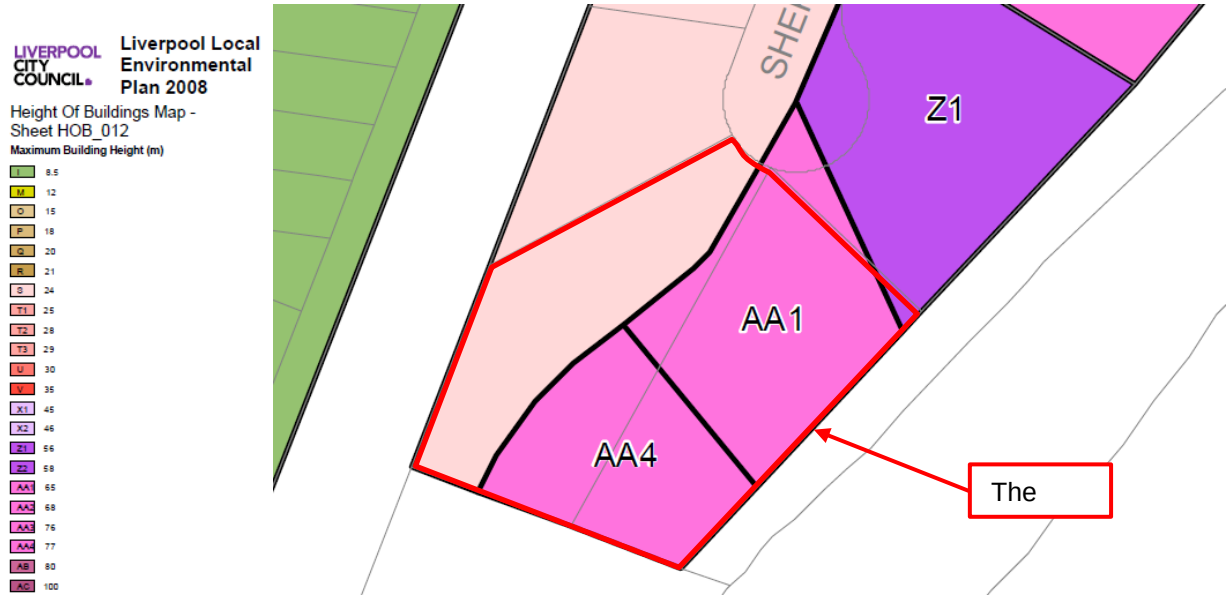


Figure 12: Excerpt from LLEP 2008 Height of Buildings Map

As shown in Figure 12, each building associated with the development will generally fall within the areas of the site nominated with a maximum building height of 65m (AA1) and 77m (AA4).

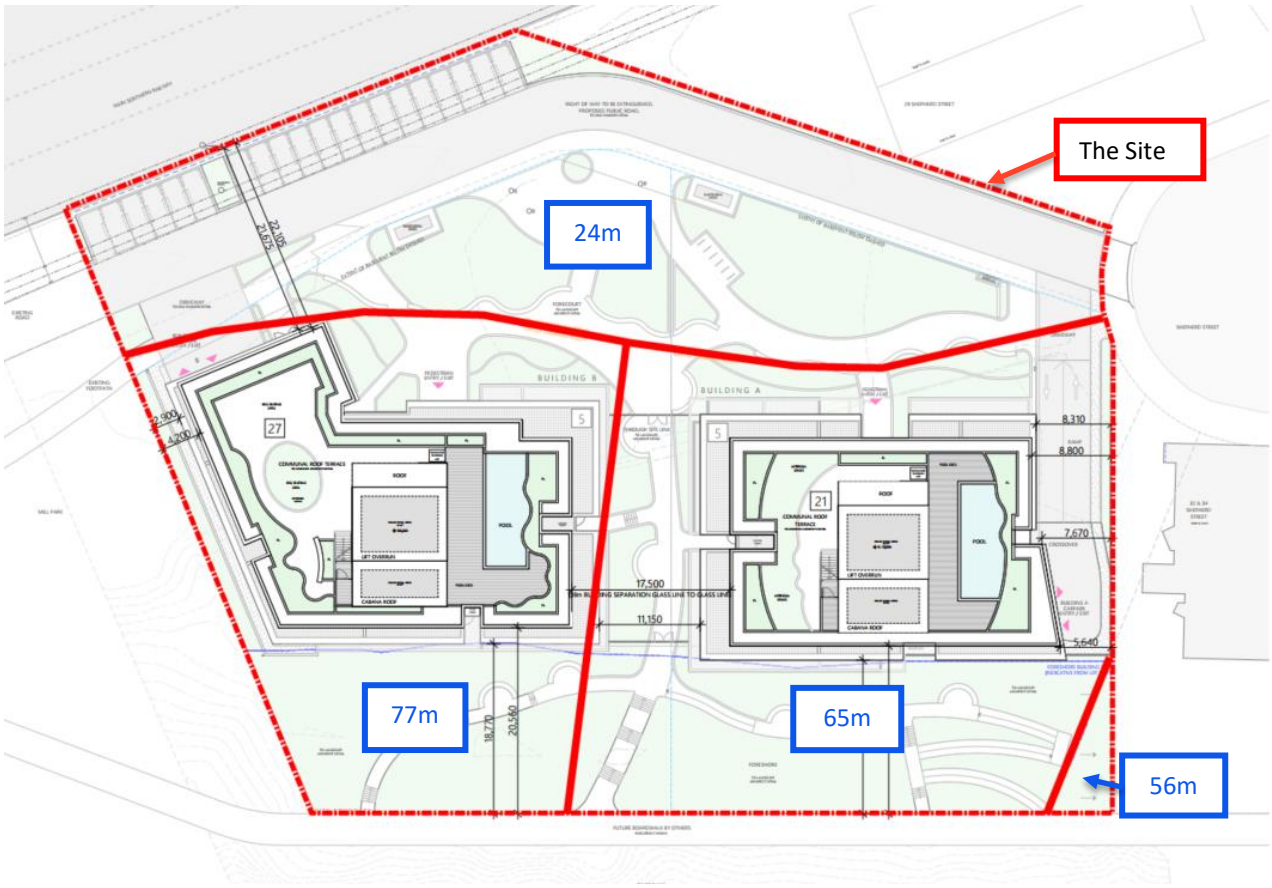
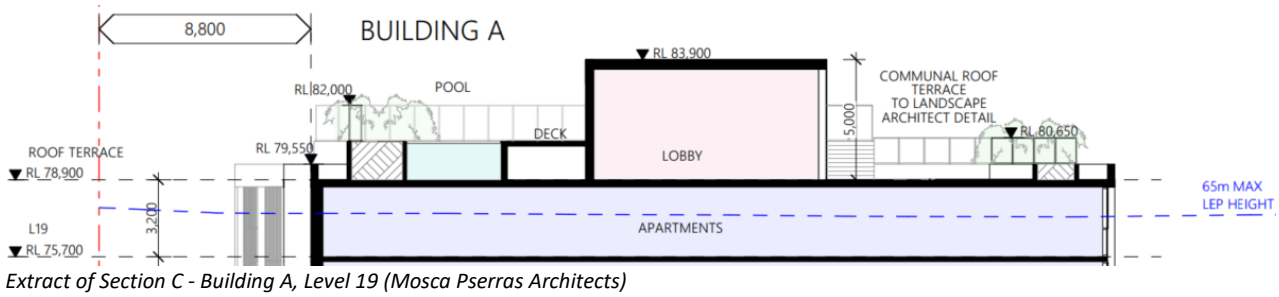


Figure 13: Proposed built form and overlay of height limit under LLEP 2008

2.9. What is the proposed height in the development application?

The proposed development has a maximum building height of 71.55m (RL 83,900) (Building A) and 84.53m (RL 97,300) (Building B) (Refer to Table 1 and Table 2). A visual representation of proposed building heights and proposed structures in relation to the 65m and 77m height control is shown in Figures 13 and 14.

Building A



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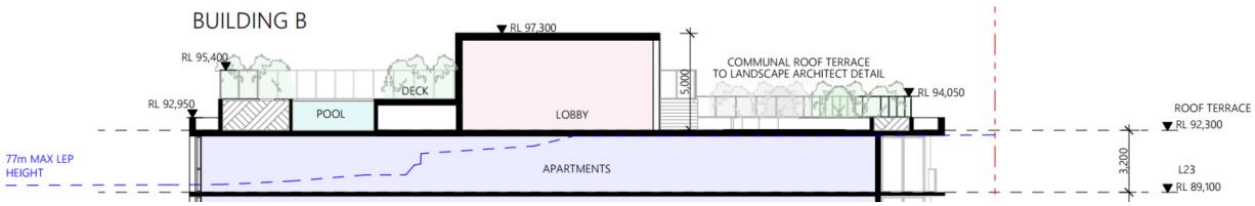
Building A				
	69.71 (BBQ roof) RL 82,150	No	4.71	7.25%
	69.65 (wind barrier) RL 82,000	No	4.65	7.15%
	68.15 (pool deck) RL 80,500	No	3.15	4.85%
	67.15 (parapet) RL 79,550	No	2.15	3.31%

Table 3: Compliance summary - Building A

Building B



Extract of Section C - Building B, Level 23 (Mosca Pserras Architects)

LEP height (m)	Proposed height (m)	Compliance	Variation (m)	Variation (%)
77	84.03 – 84.53 (lift overrun) RL 97,300	No	7.03 – 7.53	9.13% - 9.78%%
	83.19 – 83.95 (cabana roof) RL 96,800	No	6.19 – 6.95	8.04% - 9.03%
	80.55 – 81.51 (BBQ roof) RL 95,550	No	3.55 – 4.51	4.61% - 5.86%
	81.97 – 82.93 (wind barrier) RL 95,400	No	4.97 – 5.93	6.45% - 7.70%
	80.475 – 81.43 (pool deck) RL 93,900	No	3.475 – 4.43	4.51% – 5.75%
	78.34 – 80.54 (parapet) RL 92,950	No	1.34 – 3.54	1.74% - 4.6%

Table 4: Compliance summary - Building B

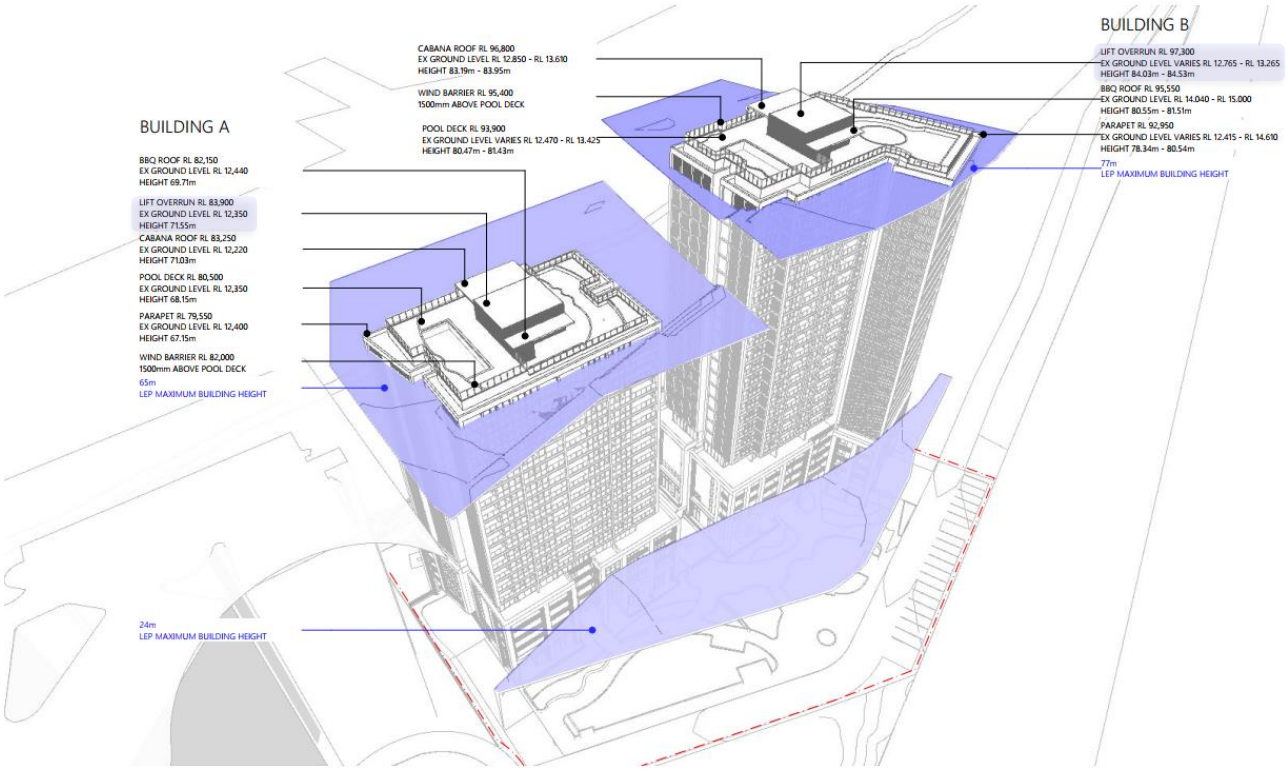


Figure 14: Proposed building heights

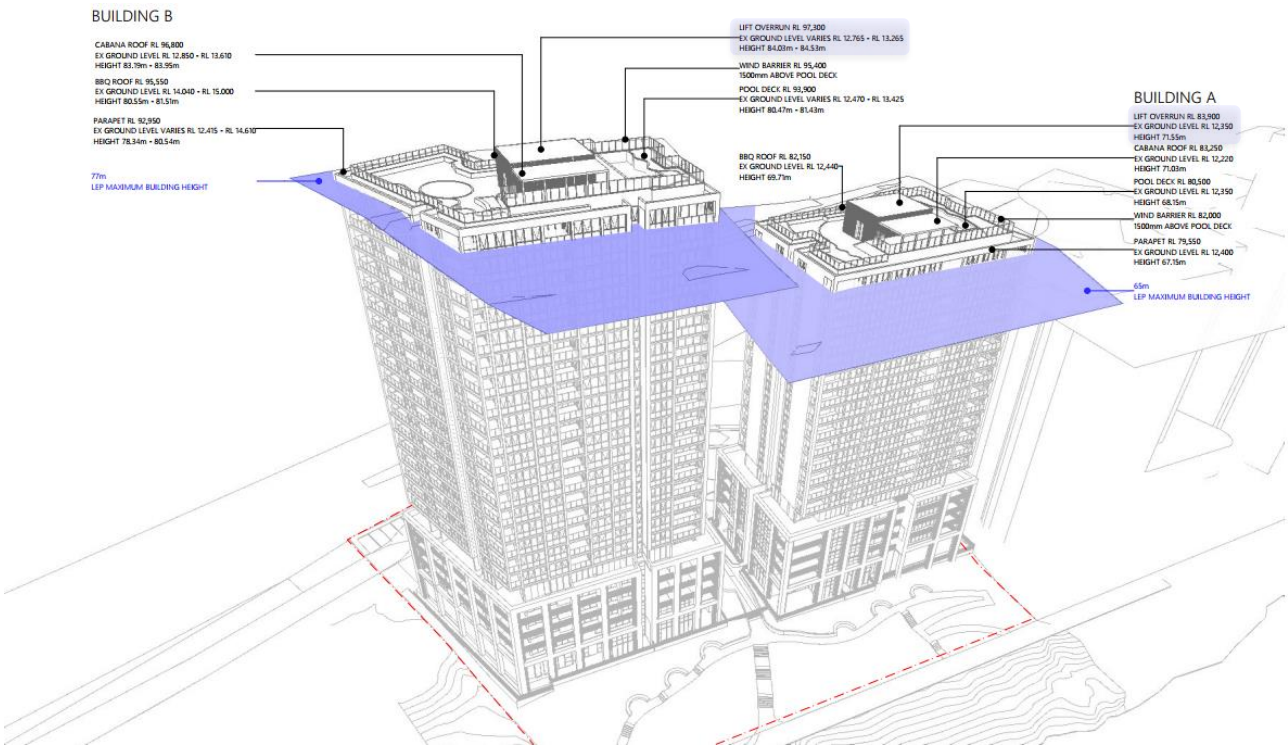


Figure 15: Proposed building heights

As detailed in Table 1 and 2, as well as Figures 13 and 14, the final massing of floorspace results in non-compliance to the 65m and 77m building height controls. Both Building A and Building B result in a maximum contravention of 10.08%, being 71.55m for Building A and 84.53m for Building B. These maximum contraventions are a result of the lift overrun for each building, which will generally be centred within the envelop of each building and obscured from view. However, the parapets of each building, these being considered a more legible perception of building height when viewed from ground level, the contraventions are reduced to 3.31% (67.15m) for Building A and 1.74% - 4.6% (78.34m – 80.54m) for Building B.

Furthermore, as detailed in Table 1 and Table 2, non-complying elements generally relate to ancillary structures above the roof level of the development and are not considered to result in additional mass, size or scale to the development that would deem it incompatible with the future desired character of the precinct. These structures will enhance the amenity of the rooftop communal open space for the benefit of residents and visitors.

It is noted that proposed massing will result in total GFA exceeding the maximum permissible and is supported by a separate 4.6 contravention request.

The non-compliance is a result of a design development across the site undertaken to achieve the proposed massing, inclusive of additional residential co-living floor space (Building B), whilst also freeing up the ground plane to maximise opportunities for public benefit in the form of a publicly accessible through-site link, public road, public car parking, and public access to river frontage of the site.

Furthermore, the proposed modelling and distribution of floorspace into Building A and Building B, ensures the freeing up of the surrounding ground plane that would otherwise be allowable for built form up to a height of 24m.

The proposed buildings have been positioned to reflect location modelling undertaken as part of the Shepherd Street Precinct masterplan for the site, as well as constraints imposed on the site by the foreshore building line, proximity to railway infrastructure to the west, as well as a new public road providing vehicular access across the site connecting Shepherd Street and Powerhouse Road. Extensive modelling has been undertaken to ensure the proposed massing responds positively to the site and surrounding area in order to maximise public and resident amenity.

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

The proposal exceeds the maximum height of building development standard of 65m and 77m by a maximum of 10.08% (6.55m) for Building A and a maximum of 9.78% (7.53m) for Building B, noting that Building B contains the co-living floor space.

3. 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 4.3 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 LLE.

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 clause 4.6 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 HOB 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 the maximum height limit in which buildings can be designed and floor space can be achieved,	The proposed development will achieve this objective despite contravention of the height standard as it will facilitate more housing opportunities with improved amenity outcomes for residents when compared to a hypothetical compliant development that will contribute towards fulfilling the vision for Liverpool as Sydney's 'third CBD.' Contravention of the height standard will, in this instance, contribute to increasing housing supply and improving housing diversity (by way of the provision of 66 affordable co-living dwellings) within a master planned precinct that envisages the development of high density residential outcomes within the R4 High Density Residential zone and in 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 city centre and well serviced by public transport. Strict compliance with the 65m and 77m height standard is unnecessary in this instance as it would result in the loss of approximately 3,364.6m^2 of residential floor space in Liverpool City Centre, in which 2486m^2 (73.9%) comprises more affordable co-living housing aimed at essential workers. Including the additional co-living housing floorspace, the proposed overall development equates to an increase of 1,575.05m^2 (5.91%) above the maximum permissible FSR permitted on the site (Permitted: 3.39:1 – including 10% co-living housing bonus, Proposed: 3.59:1). Specifically, the proposed development will deliver an additional 38 apartments and 66 co-living dwellings in comparison to the hypothetical compliant development.
(b) to permit building heights that encourage high quality urban form,	The proposed development achieves this objective as the part of the development that contravenes the standard has been designed to setback from the street boundary, assimilated into the tower envelope and podium such that it will not be readily discernible from a pedestrian viewpoint at ground level. Moreover, the proposed development as a whole has been designed across the site such that the massing of the built form and distribution of GFA across the site allows for high quality urban forms with substantial public benefit by way of a new publicly accessible through-site link to the Georges River foreshore, improved pedestrian visibility and safety between Shepherd Street and Powerhouse Road, the provision of a public road and north facing landscaped open space.

Objective	How the development achieves the objective

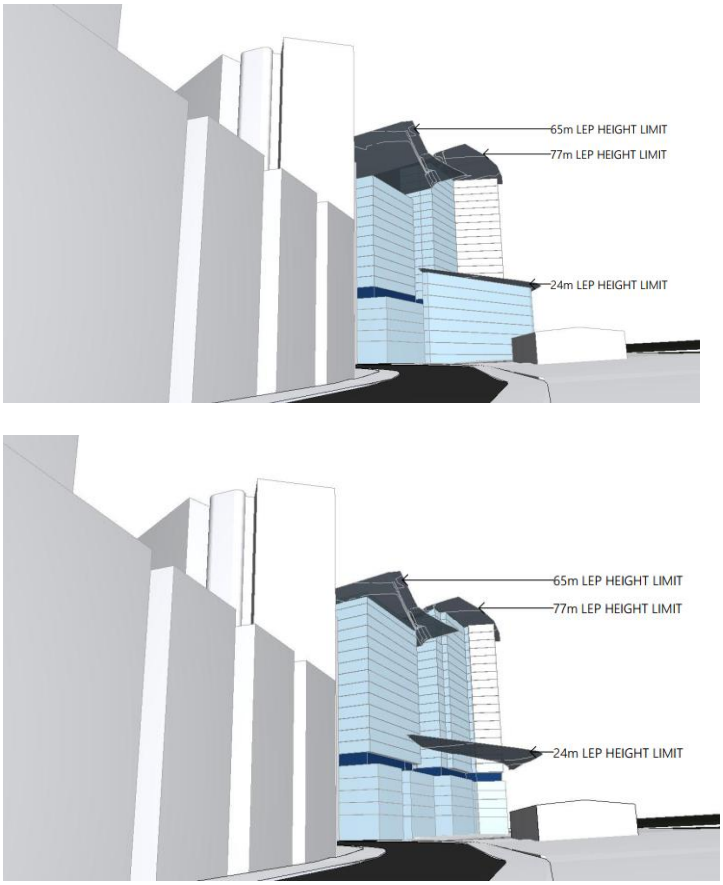
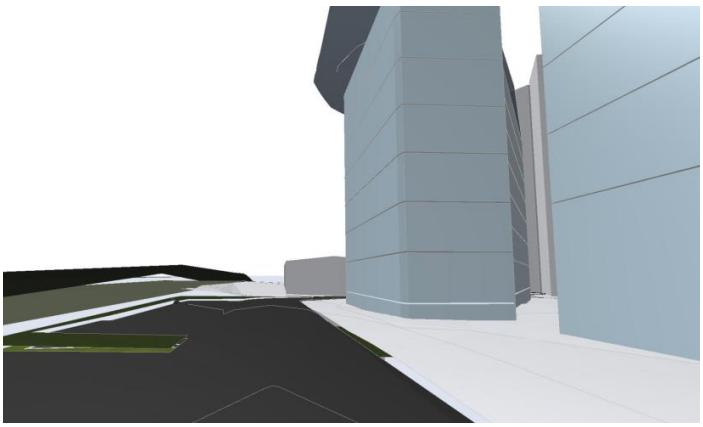
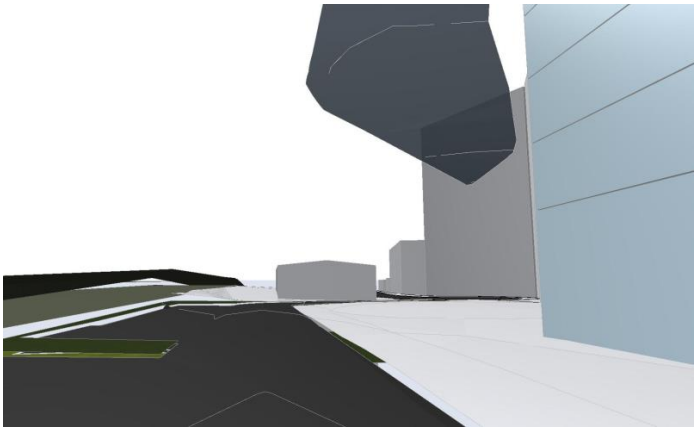


Figure 16: Comparison of Hypothetical Compliant with HOB standard Development (top) and Proposed development (bottom) views from Shepherd Street toward Mill Park



Objective	How the development achieves the objective
	 *Figure 17: Comparison of Hypothetical Compliant with HOB standard Development (top) and Proposed development (bottom) views from new public road toward Shepherd Street* Architectus has considered the proposed and hypothetical compliant developments and has concluded as follows (Refer also annexure D): "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 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. "
(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,	The proposed development will optimise solar access and achieve the 70% design criteria requirement for solar access to the proposed apartments in accordance with the Apartment Design Guide (ADG). Where the development will not comply with the maximum 15% of dwellings not receiving solar access, this arises due to the constraints of the site that have guided lot and building orientation, as well as the amenity outcomes achieved with southerly views across the Georges River and generous public domain outcomes at ground level. The siting of the towers is consistent with the Shepherd Street Precinct masterplan, as shown in the Figure below.

Objective	How the development achieves the objective

Figure 18: Extract of Section 4.3 Preferred Concept – Plan of Shepherd Street Precinct masterplan

Buildings and public areas surrounding the site will continue to receive satisfactory solar access as demonstrated by diagrams below which show the shadows of a compliant and the proposed building envelope in mid-winter. Overall, the proposed elements that contravene the standard will have a marginal increase to the shadow profile of the buildings at this time when compared to a compliant development. Existing low-density dwellings at Birkdale Crescent will continue to receive satisfactory solar access from the hours of 9:25am onwards on 21 June.

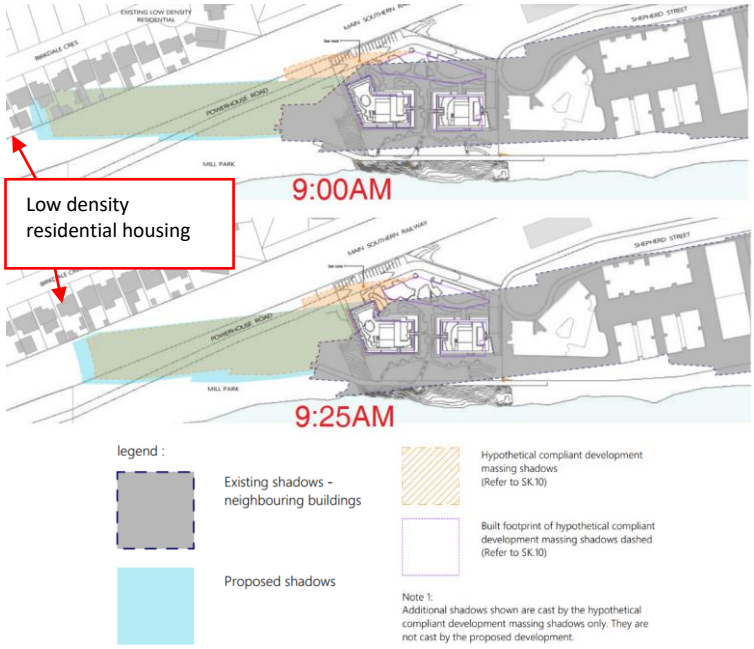


Figure 19: Extract of 9am and 9:30am Shadow Diagrams, Winter Solstice (Mosca Pserras Architects)

A hypothetical compliant development also does not allow freeing up of the ground plane and results in additional shadow in comparison to the proposed development.

Objective	How the development achieves the objective
	At all other times during the day, shadows will fall to Mill Park, Georges River and to existing industrial zoned land at Helles Avenue. Shadows from the proposed variation will have no significant impact on solar access to the Georges River foreshore area beyond what was envisioned by the Shepherd Street Precinct Planning Proposal. Refer to Annexure B for additional shadow diagrams and analysis.

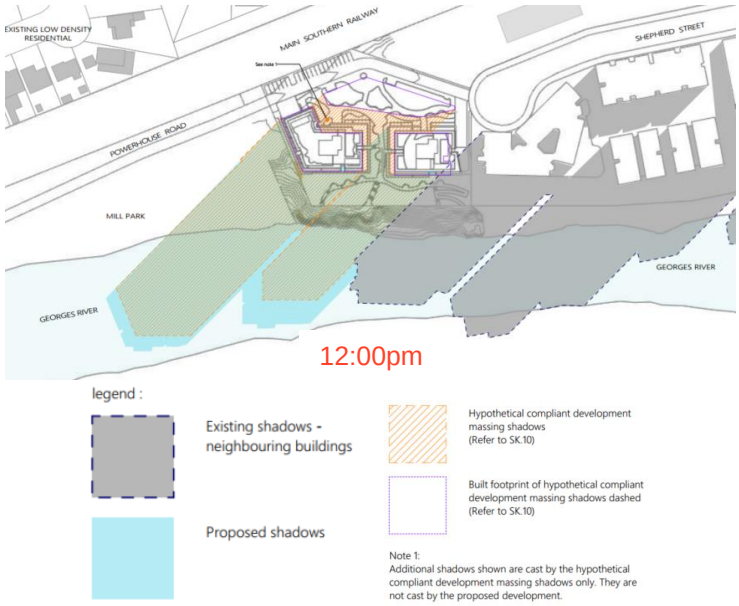
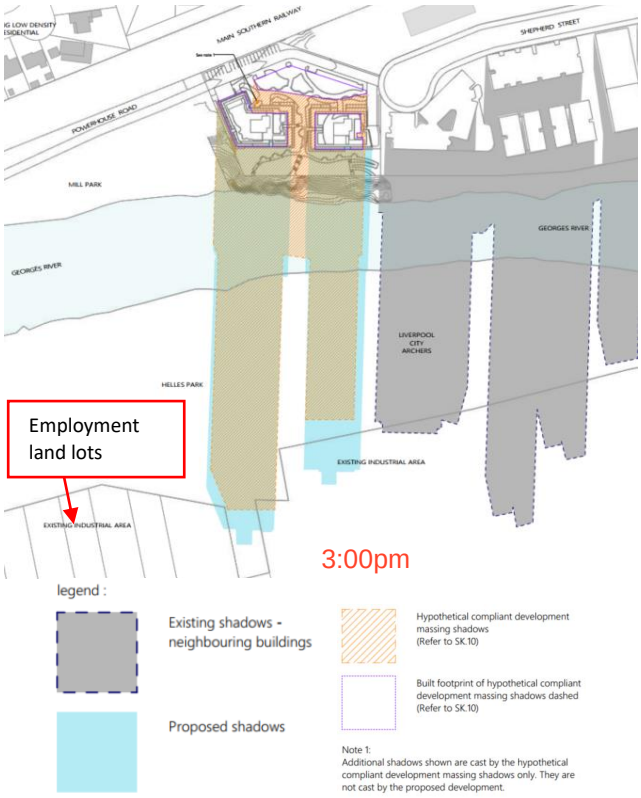


Figure 20: Extract of 12pm Shadow Diagrams, Winter Solstice (drawing SP02.4, Mosca Pserras Architects)



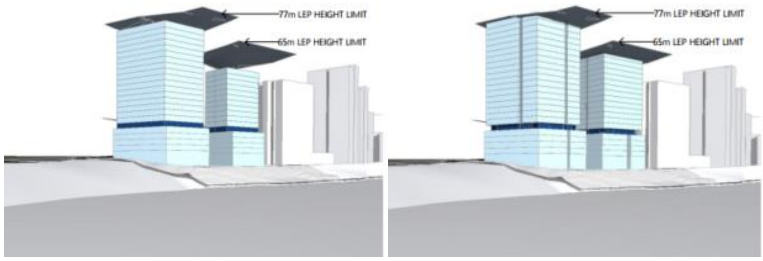
Objective	How the development achieves the objective
	Figure 21: Extract of 3pm Shadow Diagrams, Winter Solstice (drawing SP02.7, Mosca Pserras Architects)
(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.	The proposed development as a whole is generally consistent with the building envelope envisaged by the Shepherd Street Precinct Planning Proposal, to which sites in the precinct are currently undergoing a significant change in character, residential density, and building heights. The proposed development, inclusive of the contravention, is generally consistent with the principles of scale and form which envisioned taller buildings that 'bookend' the precinct. Contravention is due to development being located along the southern portion of the site adjacent to the foreshore building line and the freeing up of the site for substantial public open space and permeability through the site. The elements which depart from the height standard are generally lift overruns, and parapets at approximately 10%. The variation to the standard will have no significant view impact with respect to perceptions of the overall bulk and scale of the development when compared to a compliant development.  *Figure 22: Comparison of hypothetical development compliant with current HOB controls (left) and proposed development (right) when viewed from Helles Park (Mosca Pserras Architects)* On balance, the nominated heights are generally consistent with the emerging skyline of the Shepherd Street Precinct and Liverpool City Centre, will complement the surrounding and emerging built form in the Precinct, and will present no significant adverse impact to surrounding properties.

Table 5: Assessment against Clause 4.3 Height of Building 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.

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 HOB 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 HOB standard as outlined in Section 3.2;

— The proposed height arising from the contravention relates to a site within an emerging, highly urbanised precinct. The development has been purposely designed to provide a positive community and environmental benefit. Specifically, improved pedestrian visibility, access, and provision of open space for the community. Rather than distributing floor space across the site (which would reduce areas of ground level open space due to a greater building footprint – see Figure 23 - Figure 24) the majority of the additional floorspace is consolidated into Building B. Building B has always been envisaged as an "urban marker" as demonstrated in the Shepherd Street Precinct masterplan, as shown in Figure 25 - Figure 26.

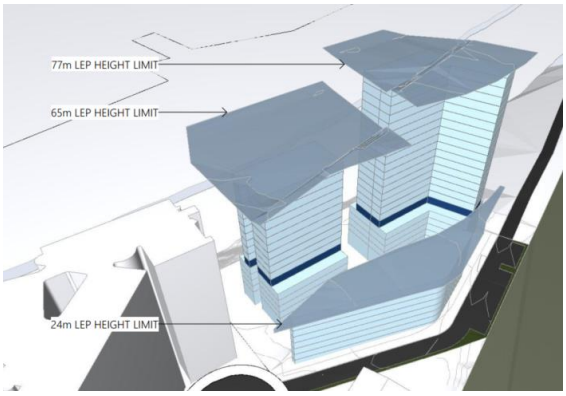


Figure 23: Extract of hypothetical development with compliant height of building

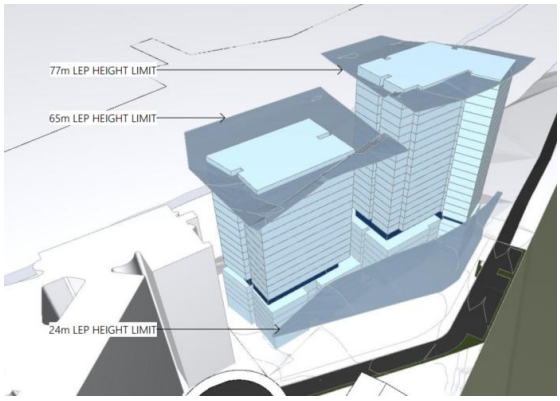


Figure 24: Extract of proposed development with variation to height of building

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

— The proposed development, inclusive of the contravention, achieves the objectives of the development standard and the R4 High Density Residential land use zone. A design concept with strict compliance with the 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;
  — 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;
  — 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 HOB 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 (refer Annexure C), privacy or view loss as demonstrated in Section 3.2.1;

— The proposed development exceeds the planned maximum height by 10.08% for Building A and 9.78% for Building B (intended to be an urban marker at the edge of the precinct by the Shepherd Street Planning Proposal). The proposed contravention will provide for substantial improvement to resident and visitor amenity by way of a reduction floorspace from the front of the site to the top of the proposed building

envelopes resulting in improved pedestrian accessibility, visibility, and safety, roof top communal open space, an net increase in diverse and affordable of housing in the City Centre, and 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 HOB 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.
- The Land and Environment Court has accepted, in the context of the environmental planning grounds that may justify a contravention of a height standard that it is not unreasonable that the conferring of additional FSR available under bonus/incentive provisions may result in an exceedance of the building height control because height controls and FSR provisions are usually in harmony with each other and do not generally take into account the potential for bonuses under state environmental planning policies; Lateral Estate Pty Ltd v Council of the City of Sydney [2020] NSWLEC 1381 at [17-18].

While the extent of the HOB 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 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?

3.4.1 Objectives of the Height of Building standard

The proposal, inclusive of the contravention, remains consistent with the objectives of the HOB 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 remains consistent with the objectives of the R4 High Density Residential zone, despite the non-compliance with the Height of Buildings standard as demonstrated in the assessment of the objectives below.

Objective	**How the development achieves the objective**
'To provide for the housing needs of the community within a high density residential environment'	The proposed development will make a substantial contribution towards the housing needs of the community by providing 341 new residential dwellings and 66 co-living dwellings within a high-density residential environment with significant communal infrastructure, 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. The proposed development allows for the delivery of 38 additional apartments and 66 co-living dwellings which otherwise would not be delivered if the hypothetical compliant scheme was pursued.
'To provide a variety of housing types within a high density residential environment'	The development provides a variety of housing types including 1, 2 and 3 bedroom units, as well as rooms associated with co-living housing.
'To enable other land uses that provide facilities or services to meet the day to day needs of residents'	The proposal will incorporate co-living housing that will complement existing private housing within the Liverpool 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. 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.
'To provide for a high concentration of housing with good access to transport, services and facilities'	The proposed development has good access to transport including Liverpool and Casula train stations and local pedestrian, cycling and bus routes. 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.

Objective	How the development achieves the objective
'To minimise the fragmentation of land that would prevent the achievement of high density residential development'	The proposal will rationalise the existing lot pattern resulting in a development that is consistent with the approved massing for buildings across the site approved under the Precinct masterplan. 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. The proposal demonstrates an outcome of high-density residential development without compromising the site's developable area so that it can achieve high levels of amenity for both residents and the public.

Table 6 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 Heigh of Building 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 as maintaining the standard in this instance would result in the loss of potential affordable housing, public domain improvements and pedestrian permeability in a key City Centre location.

The proposed development, incorporating the height contravention, achieves the objectives of the height of building development standard and the land use zone objectives. The contravention has been demonstrated to be appropriate and supportable in the circumstances of the case. A design concept to achieve compliance with the height of building development standard would result in an inferior development outcome for the site, as strict compliance with the height of building standard would require a reduction in the delivery and diversity of housing, particularly where the additional building height occurs due to the provision of co-living housing in accordance with the Housing SEPP and structures associated with safe and accessible communal open space areas with superior amenity.

There would be no public benefit in maintaining the development standard in this case as:

— The additional height and resultant housing will achieve consistency with the strategic objective of the provision of housing in close proximity to high frequency transport as referenced to the Western City District Plan.

- Strict compliance would compromise the opportunity to provide for a high concentration of housing, that is both affordable and diverse.
- An alternate scheme to achieve the same quantum of residential GFA would require a more horizontal and bulky development and require a reduction in the public benefits achieved at ground level.
- When compared to a compliant building height, proposed additional overshadowing to surrounding dwellings is not unacceptable as demonstrated in Figure 16, Figure 17, Figure 19 - Figure 21, .
- A compliant scheme would compromise the site's ability to demonstrate a consistency 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"*

Accordingly, the proposal promotes the economic use and development of the land consistent with its zone and purpose and it is not contrary to the public interest. There is 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 the contravention can be supported in the circumstances of the case.

4. Conclusion

Despite the proposed contravention, the proposed development is consistent with the objectives for the R4 High Density residential zone and HOB development standard. The proposed variation is consistent with the scale of development that has occurred in the Precinct to date, and 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 the density and scale of development envisaged under the Shepherds Street Precinct Planning Proposal for the site in a manner that facilitates heights conducive to a marker for the edge of the precinct and improved amenity outcomes for residents.

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 within the development overall 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's circumstances within the Shepherds Street Precinct and surrounding pattern of development. This request demonstrates 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.

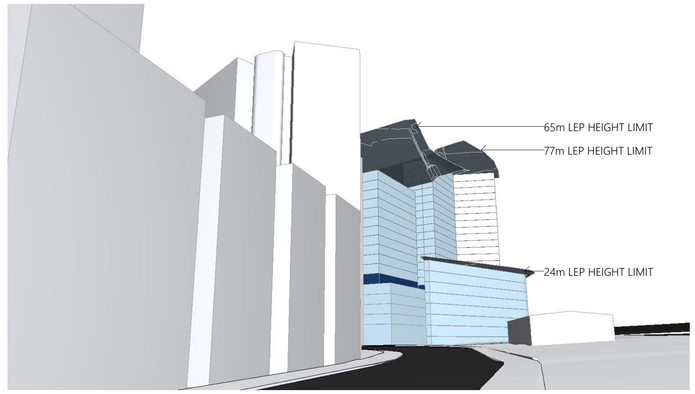
As demonstrated in this submission, it would be unreasonable and unnecessary for strict compliance with the HOB standard in the circumstances of the case.

ANNEXURE A

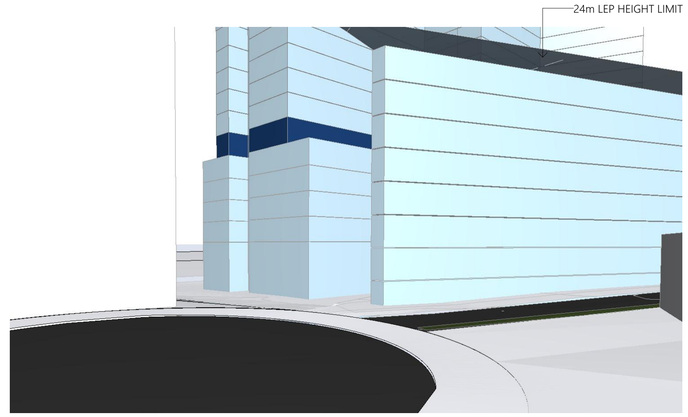
Hypothetical compliant and proposed building envelopes and massing

HYPOTHETICAL COMPLIANT DEVELOPMENT MASSING (EXCLUDES CO-LIVING HOUSING)

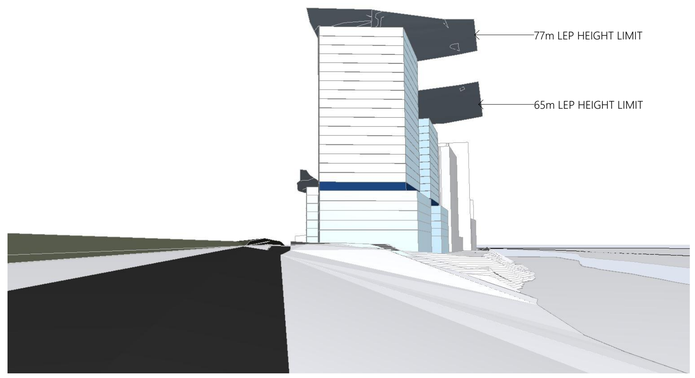
01 SITE PLAN



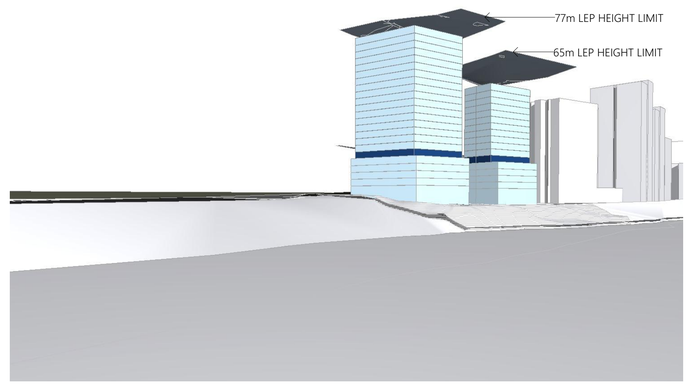
02 PERSPECTIVE 01 - VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



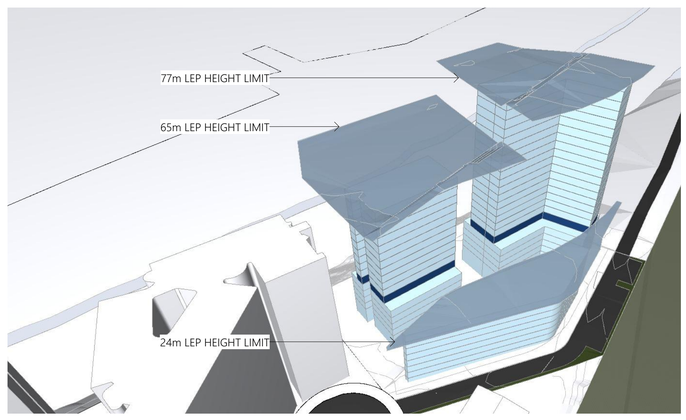
03 PERSPECTIVE 02 - PODIUM VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



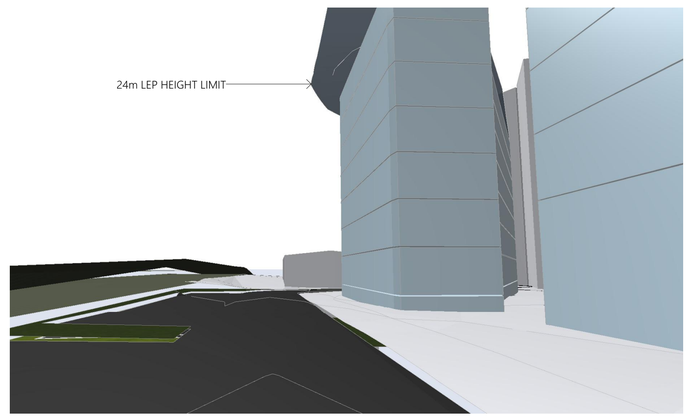
04 PERSPECTIVE 03 - RIVERSIDE VIEW FROM MILL PARK AND POWERHOUSE ROAD



05 PERSPECTIVE 04 - RIVERSIDE VIEW FROM HELLES PARK



06 PERSPECTIVE 05 - HEIGHT LIMIT



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

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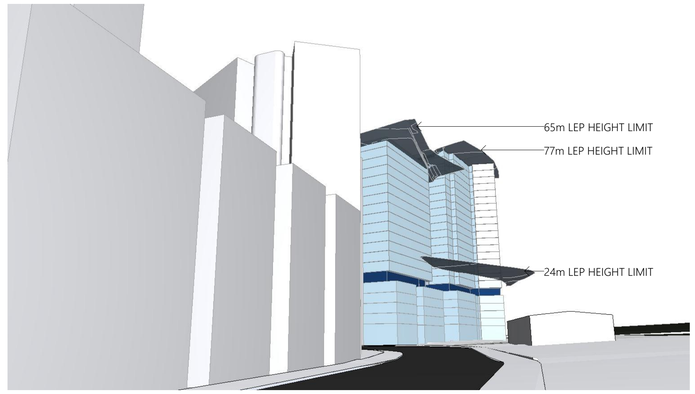
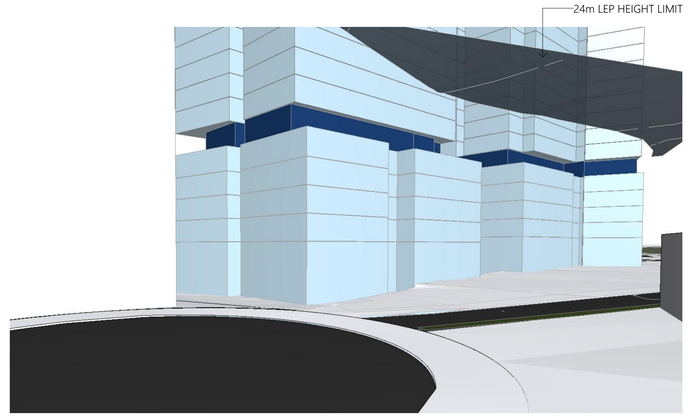
PROPOSED MASSING

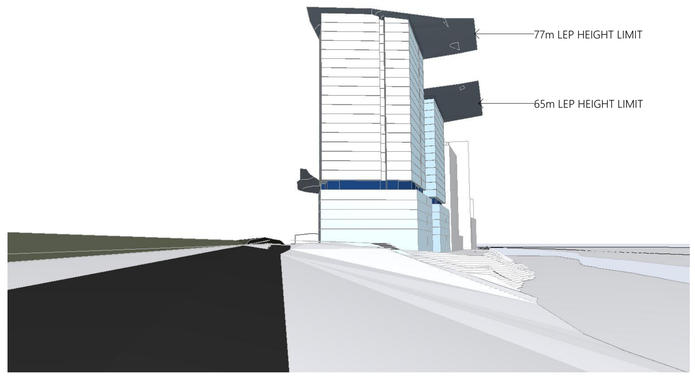
01 SITE PLAN



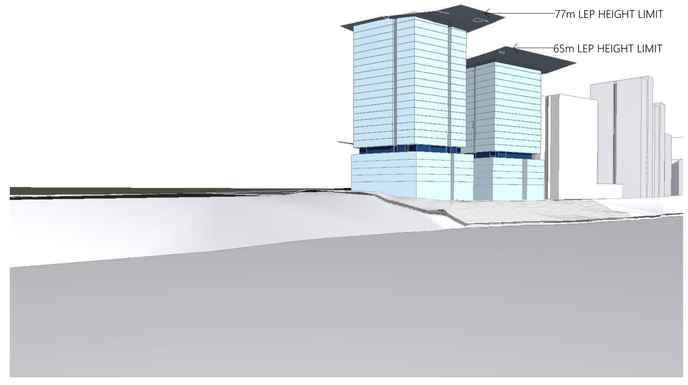
02 PERSPECTIVE 01 - VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



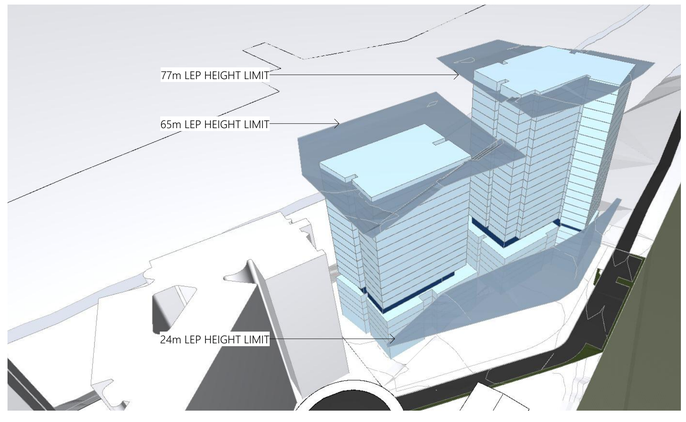
03 PERSPECTIVE 02 - PODIUM VIEW FROM SHEPHERD STREET TOWARDS MILL PARK



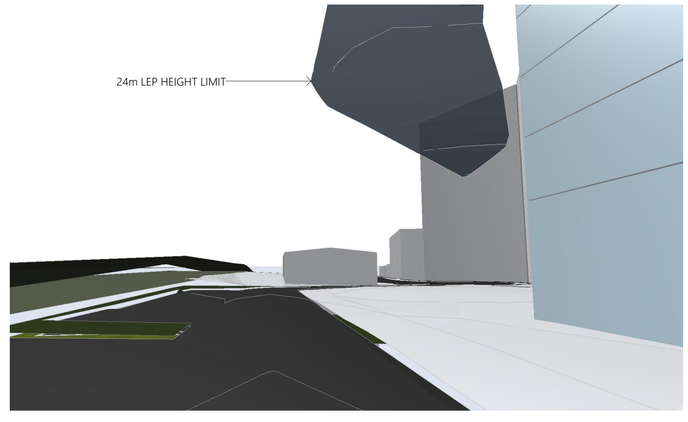
04 PERSPECTIVE 03 - RIVERSIDE VIEW FROM MILL PARK AND POWERHOUSE ROAD



05 PERSPECTIVE 04 - RIVERSIDE VIEW FROM HELLES PARK



06 PERSPECTIVE 05 - HEIGHT LIMIT



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

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ANNEXURE B

Shadow diagrams and detailed shadow analysis

Nominated Architects: Frank Mosca - 5000 / Steve Pserras - 5001
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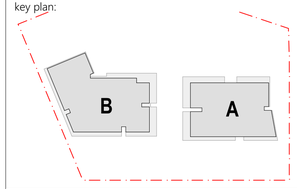
w www.moscapserras.com.au

north point:

amendments

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

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

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

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project
Shepherd Street
location
31 - 33 Shepherd Street, LIVERPOOL
client
Lateral Estate
drawing title
Shadow Diagrams
Shadow Diagrams - 9am Winter Solstice

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

EXISTING LOW DENSITY RESIDENTIAL

BIRKDALE CRES

MAIN SOUTHERN RAILWAY

SHEPHERD STREET

See note 1

POWERHOUSE ROAD

MILL PARK

GEORGES RIVER

GEORGES RIVER

LIVERPOOL CITY ARCHERS

HELLES PARK

EXISTING INDUSTRIAL AREA

EXISTING INDUSTRIAL AREA

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.

N

SK09.1 | SHADOW DIAGRAM - 9.05AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

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EXISTING LOW DENSITY RESIDENTIAL

BIRKDALE CRES

MAIN SOUTHERN RAILWAY

SHEPHERD STREET

See note 1

POWERHOUSE ROAD

MILL PARK

GEORGES RIVER

GEORGES RIVER

LIVERPOOL CITY ARCHERS

HELLES PARK

EXISTING INDUSTRIAL AREA

EXISTING INDUSTRIAL AREA

legend :

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

Note 1:
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N

SK09.2 | SHADOW DIAGRAM - 9.10AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

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EXISTING LOW DENSITY RESIDENTIAL

BIRKDALE CRES

MAIN SOUTHERN RAILWAY

SHEPHERD STREET

See note 1

POWERHOUSE ROAD

MILL PARK

GEORGES RIVER

GEORGES RIVER

LIVERPOOL CITY ARCHERS

HELLES PARK

EXISTING INDUSTRIAL AREA

EXISTING INDUSTRIAL AREA

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.

N

SK09.3 | SHADOW DIAGRAM - 9.15AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

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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.

N

SK09.4 | SHADOW DIAGRAM - 9.20AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

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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.

N

SK09.5 | SHADOW DIAGRAM - 9.25AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

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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.

N

SK09.6 | SHADOW DIAGRAM - 9.30AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

mosca pserras architects

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.

N

SK09.7 | SHADOW DIAGRAM - 9.35AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

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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.

N

SK09.8 | SHADOW DIAGRAM - 9.40AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

Lateral™

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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.

N

SK09.9 | SHADOW DIAGRAM - 9.45AM | No.31 & 33 Shepherd St, Liverpool | 1:750 @ A1

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Nominated Architects: Frank Mosca - 5000 / Steve Pserras - 5001
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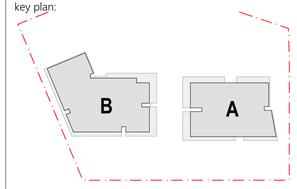
north point:

N

amendments

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

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

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

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project

Shepherd Street

location

31 - 33 Shepherd Street, LIVERPOOL

client

Lateral Estate

drawing title

Shadow Diagrams

Shadow Diagrams - 10am Winter Solstice

scale	1:750 @ A1	project architect	FM	drawn	DB / EP
job no.	21023	drawing no.	SP02.2	revision	A

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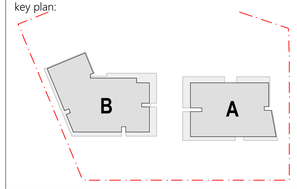
north point:

amendments

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

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

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

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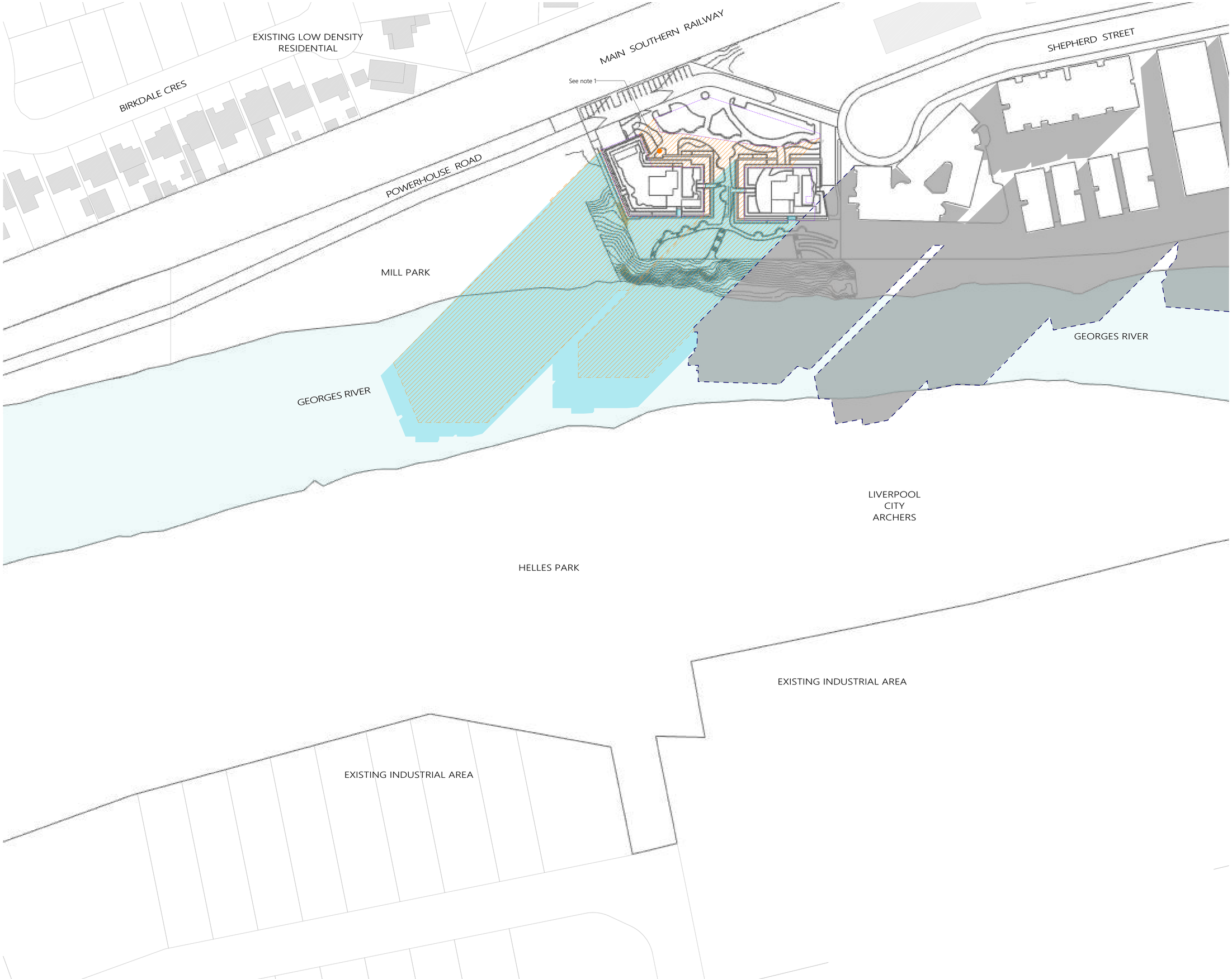
project
Shepherd Street
location
31 - 33 Shepherd Street, LIVERPOOL
client
Lateral Estate
drawing title
Shadow Diagrams
Shadow Diagrams - 11am Winter Solstice

scale	1:750 @ A1	project architect	FM	drawn	DB / EP
job no.	21023	drawing no.	SP02.3	revision	A



Nominated Architects: Frank Mosca - 5000 / Steve Pserras - 5001
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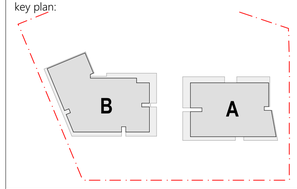
w www.moscapserras.com.au

north point:

amendments

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

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

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

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

scale	1:750 @ A1	project architect	FM	drawn	DB / EP
job no.	21023	drawing no.	SP02.4	revision	A

Nominated Architects: Frank Mosca - 5000 / Steve Pserras - 5001
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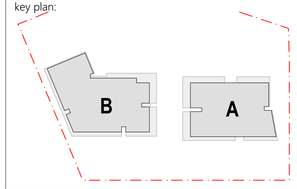
north point:

amendments

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

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

Note 1:
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Lateral™

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mosca pserras architects

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

Nominated Architects: Frank Mosca - 5000 / Steve Pserras - 5001
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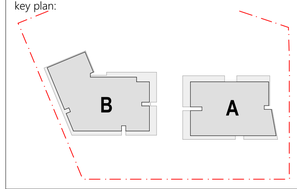
w www.moscapserras.com.au

north point:

amendments

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

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

Note 1:
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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

Nominated Architects: Frank Mosca - 5000 / Steve Pserras - 5001
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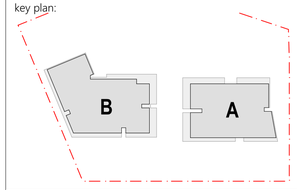
w www.moscapserras.com.au

north point:

amendments

Revision	Description	By	Date
A	Development Application Submission	DB	5.6.23

key plan:



notes:

legend :

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

Note 1:
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

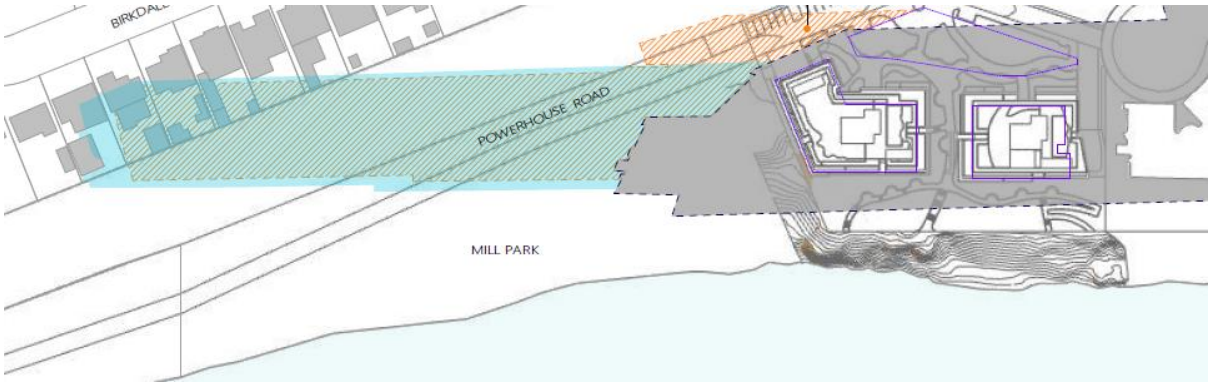
project
Shepherd Street
location
31 - 33 Shepherd Street, LIVERPOOL
client
Lateral Estate
drawing title
Shadow Diagrams
Shadow Diagrams - 3pm Winter Solstice

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

9.00 AM

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

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



9.05 AM

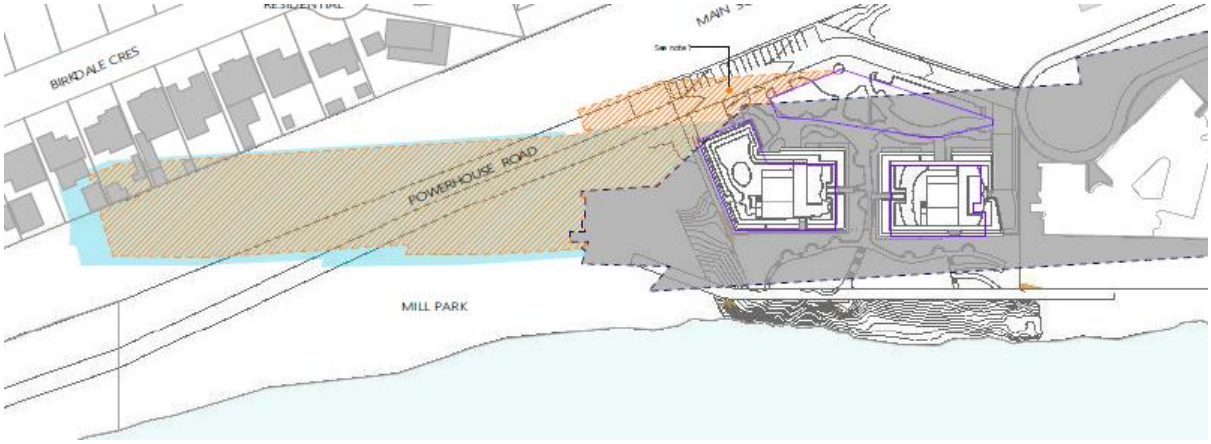
The below shadow diagram illustrates that 6 properties in Birkdale Crescent (39,41,43,45,47,49) are overshadowed by the proposed development at this time, five of which (39,41,43,45,47,49) have a similar level of overshadowing when compared to the shadow from a hypothetical compliant development.

The shadow to number 39 is 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.

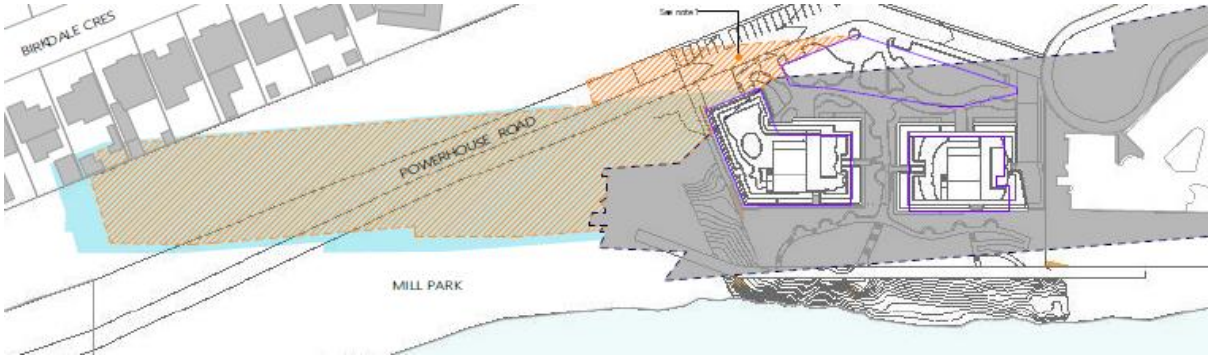
The shadows to 41, 43 are limited to less than 50% of the rear yards. The shadow to 45 is limited to the rear yard. The shadow to 47 is limited to the rear yard, a small portion of roof and north east façade.



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.



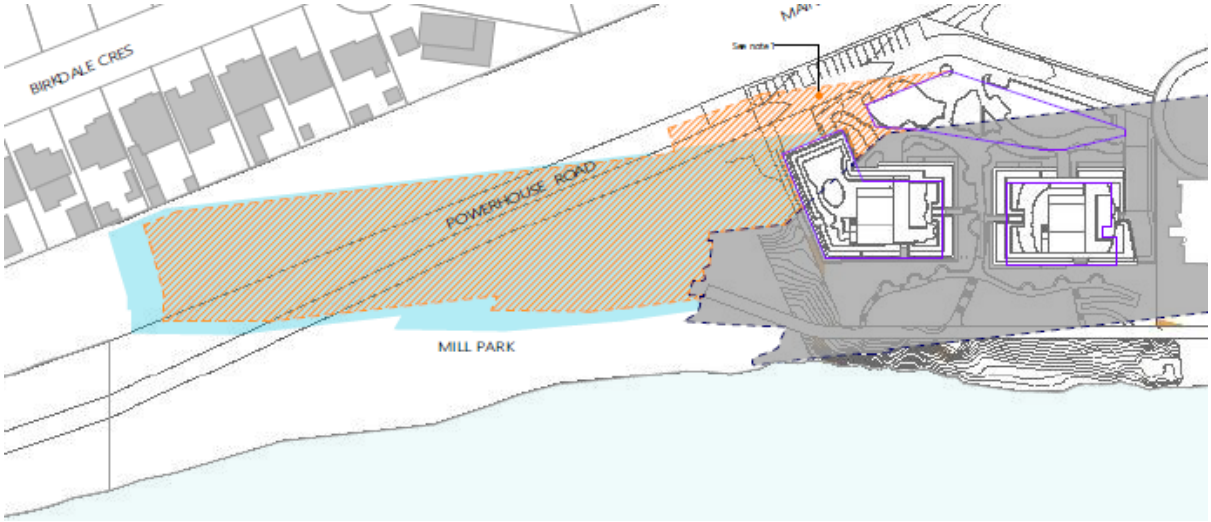
9.20 AM

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.

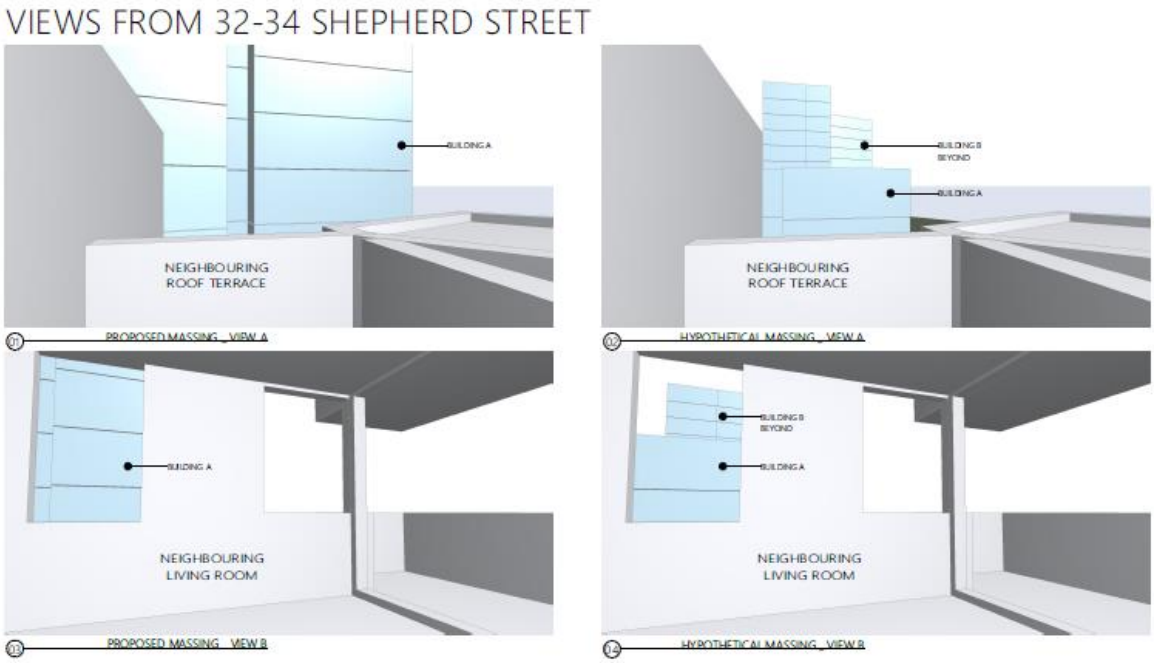
The additional shadows resulting from the proposed development are barely discernible in comparison to a hypothetically compliant development.

Accordingly, overshadowing from the proposes 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.



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

Prepared for: Lateral Estate
Date: August 3, 2023

architectus™

31 & 33 SHEPHERD ST LIVERPOOL

Urban Design
Principles and Visual
Impact Analysis

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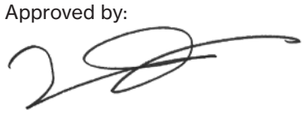
Project and report	31 & 33 Shepherd St, Liverpool	
Date	August 3, 2023 12:58 pm	
Client	Lateral	
Version and date issued	Issued to client - 3/4/23	Approved by: Tim Moore
	Issued to client - 2/8/23	Approved by: Tim Moore

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

Architectus acknowledges the Australian Aboriginal and Torres Strait Islander peoples of this nation as the Traditional Custodians of the lands on which we live and work.

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

Architectus is committed to honouring Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to the land, waters and seas and their rich contribution to society.

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Contents

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CHAPTER 1

INTRODUCTION

Introduction and Purpose of this report

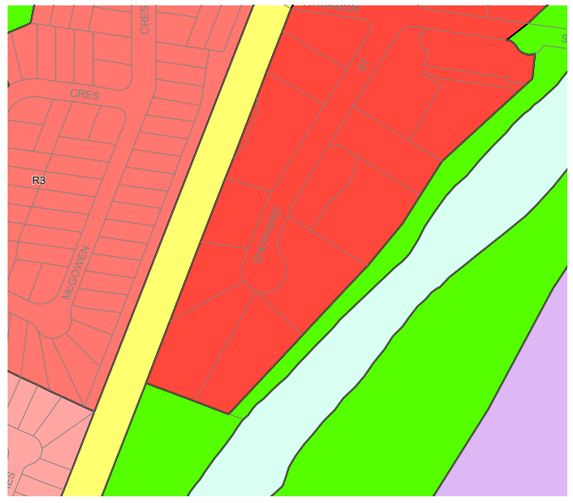
Architectus has been appointed by Lateral Estate to provide urban design advice for the site at 31 & 33 Shepherd Street Liverpool (shown adjacent) within the Shepherd Street Precinct of Liverpool.

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

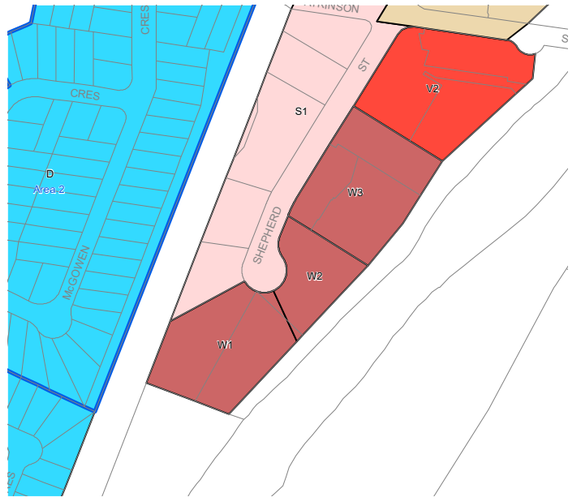
- Principles for development massing
- Visual Impact testing of the preferred scheme
- Consideration of the final proposal in urban design terms against various elements within the LEP, requested by the project team

Planning Controls



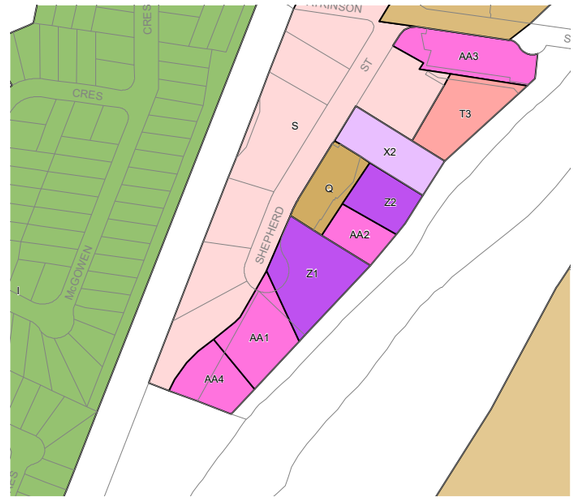
Land Use Zoning

- 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.

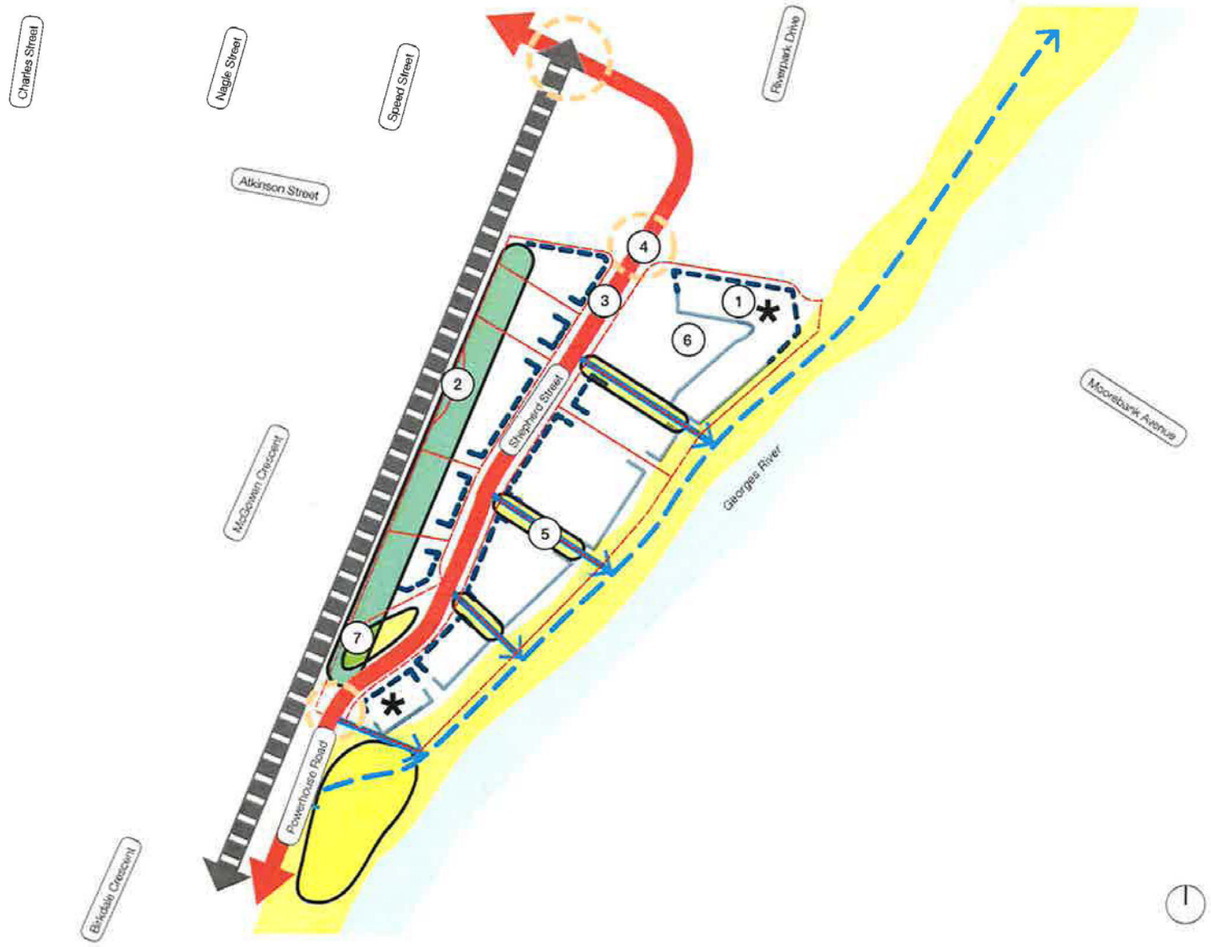
3.3 Urban Design Concept

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



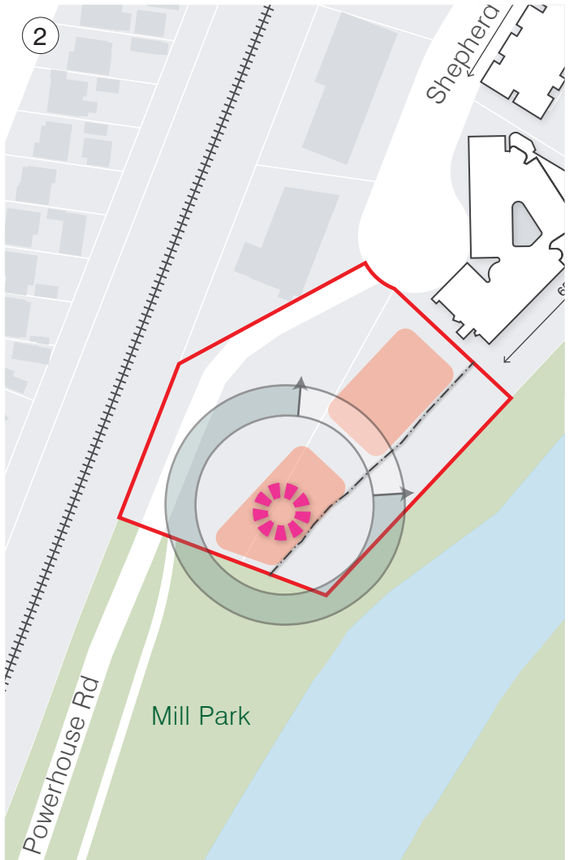
CHAPTER 2

URBAN DESIGN PRINCIPLES

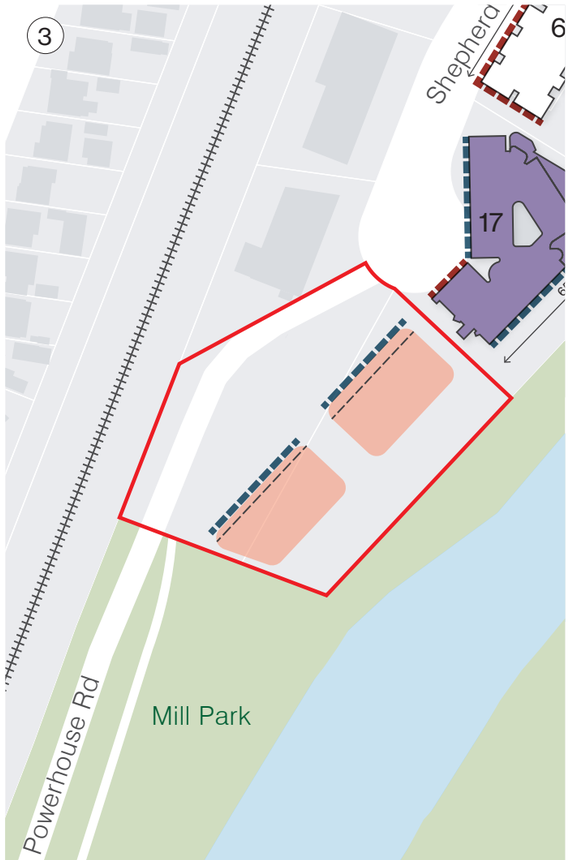
Design principles for the site

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

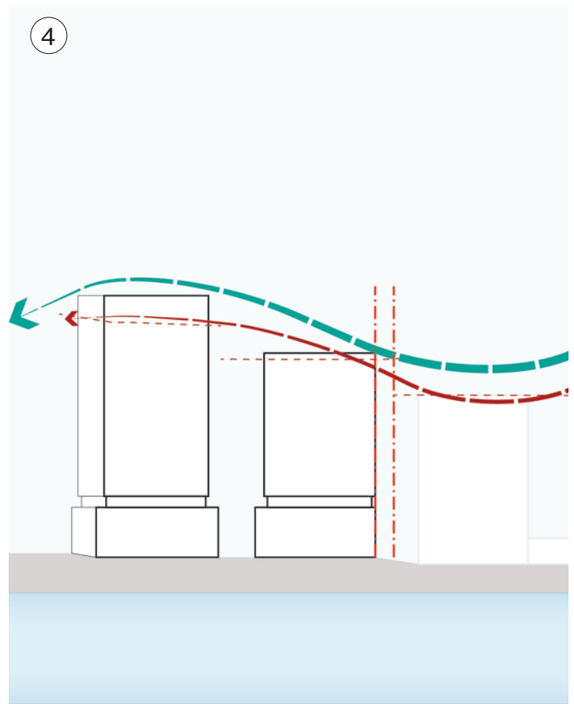
1. Deliver an attractive Shepherd Street / Powerhouse Road Link



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

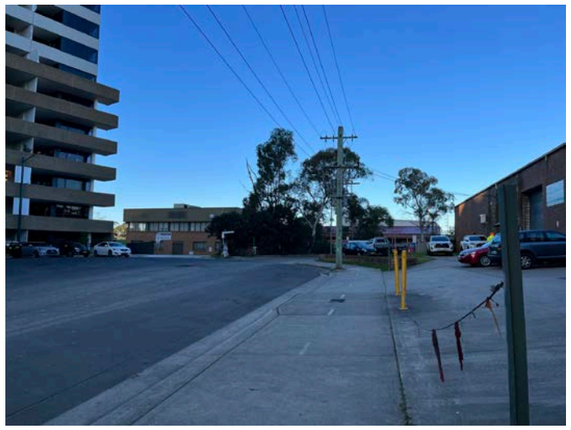
A Prioritize clear and simple pedestrian flow between Shepherd Street and Powerhouse Road and maximise visual aperture and visibility through site along this axis.

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**

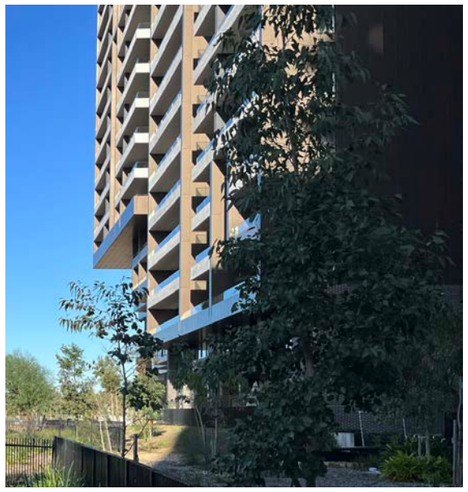
The character of the existing Shepherd Street context streetscape is diverse, with a variety of street and building scales and approaches to setbacks, however typically a 2 to 6-storey scale 'street wall' has been delivered, particularly on the Shepherd Street interface.

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.



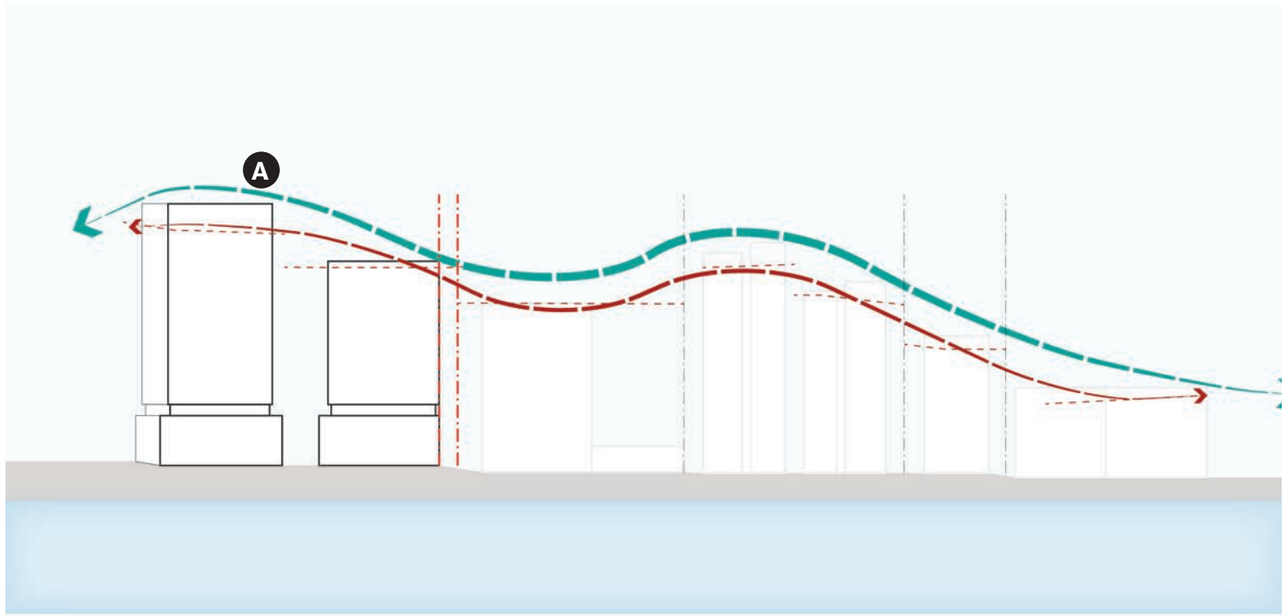
Photograph showing 'reverse setback' approach
30 Shepherd Street 'the bindery'

4. Deliver an appropriate tower scale

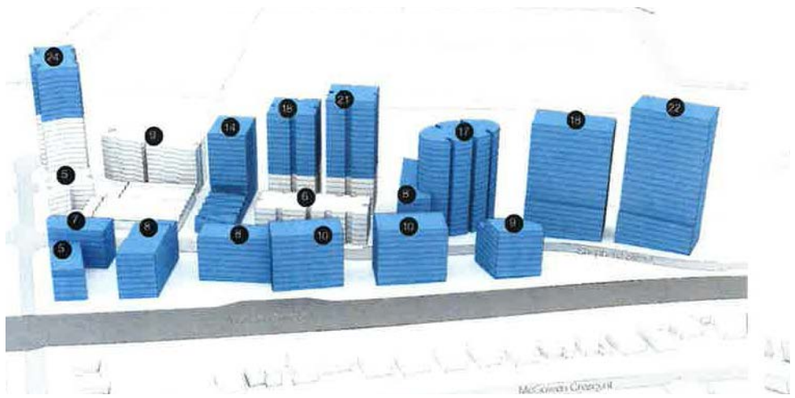
A Height increase above the LEP is appropriate on site, consistent with other variations approved in the Shepherd Street Precinct

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

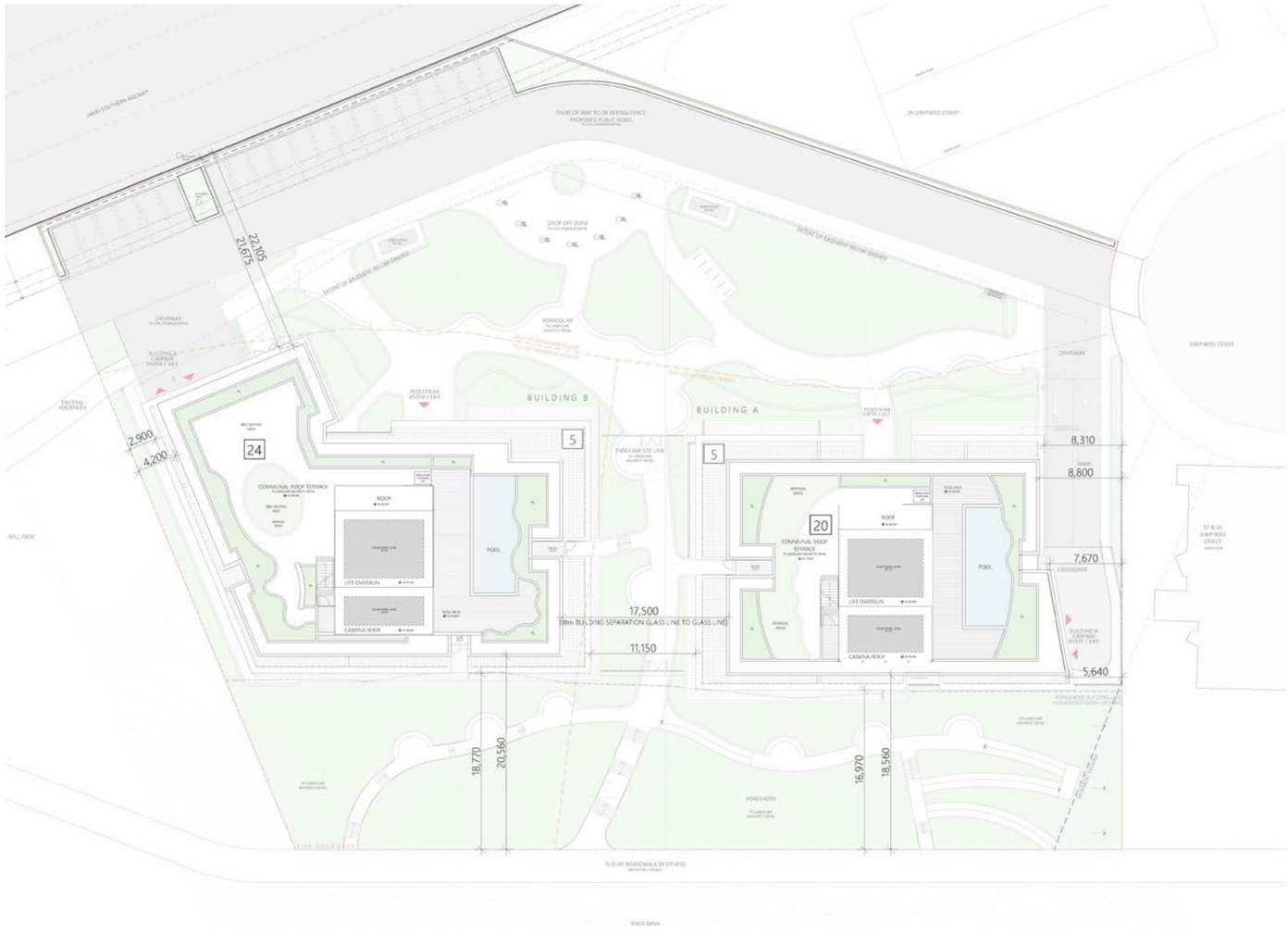
The visual assessment is based on best practice and Architectus' experience in the field of the assessment of visual impact.

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.

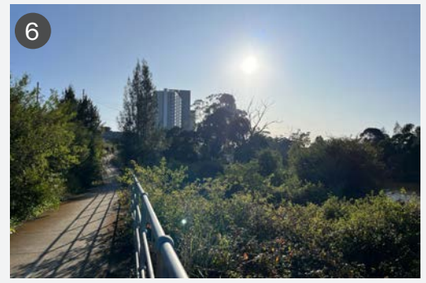
Photo locations map

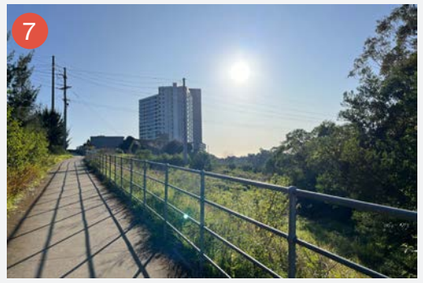
1:5,000 0 50 100 150 200M

Visual Context

Shepherd St - looking south towards the site

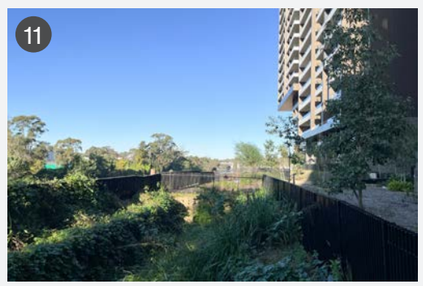
Powerhouse Rd footpath - looking north towards the site

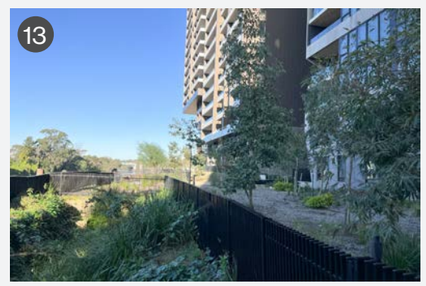




Footpath adjacent to Mill Park - looking north towards the site

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

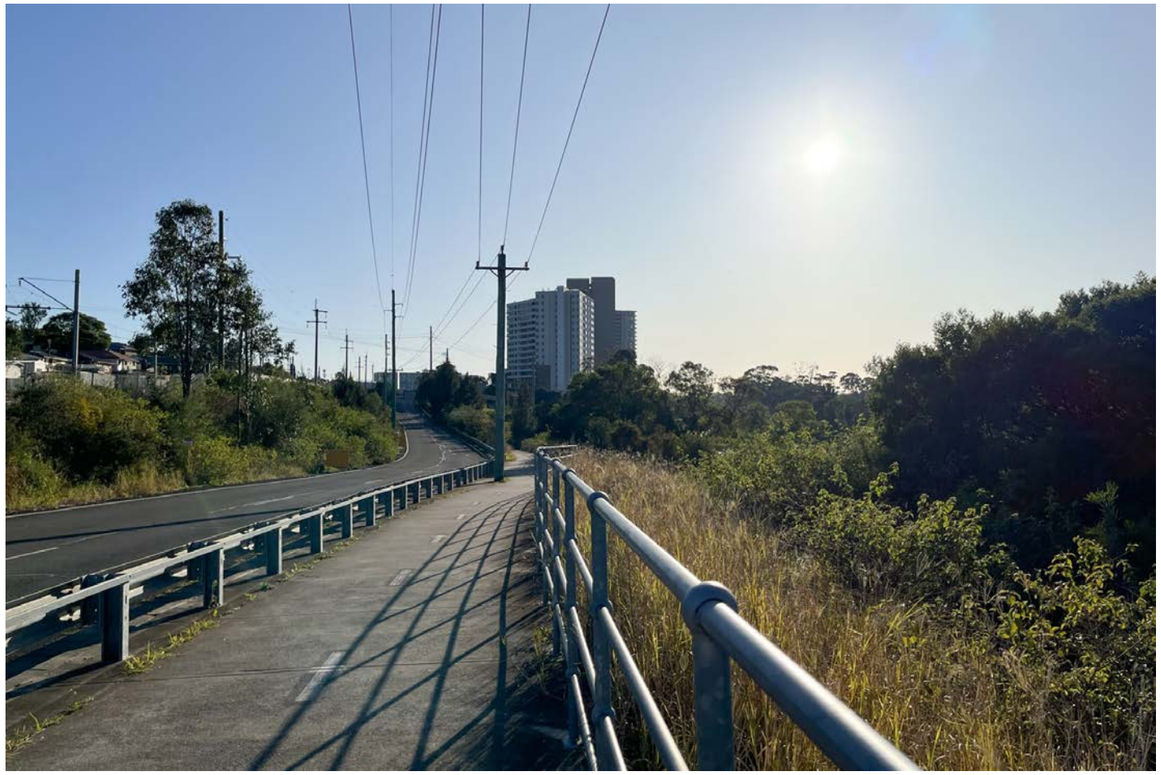
Discovery Park - car park

Discovery Park - from Hume Highway

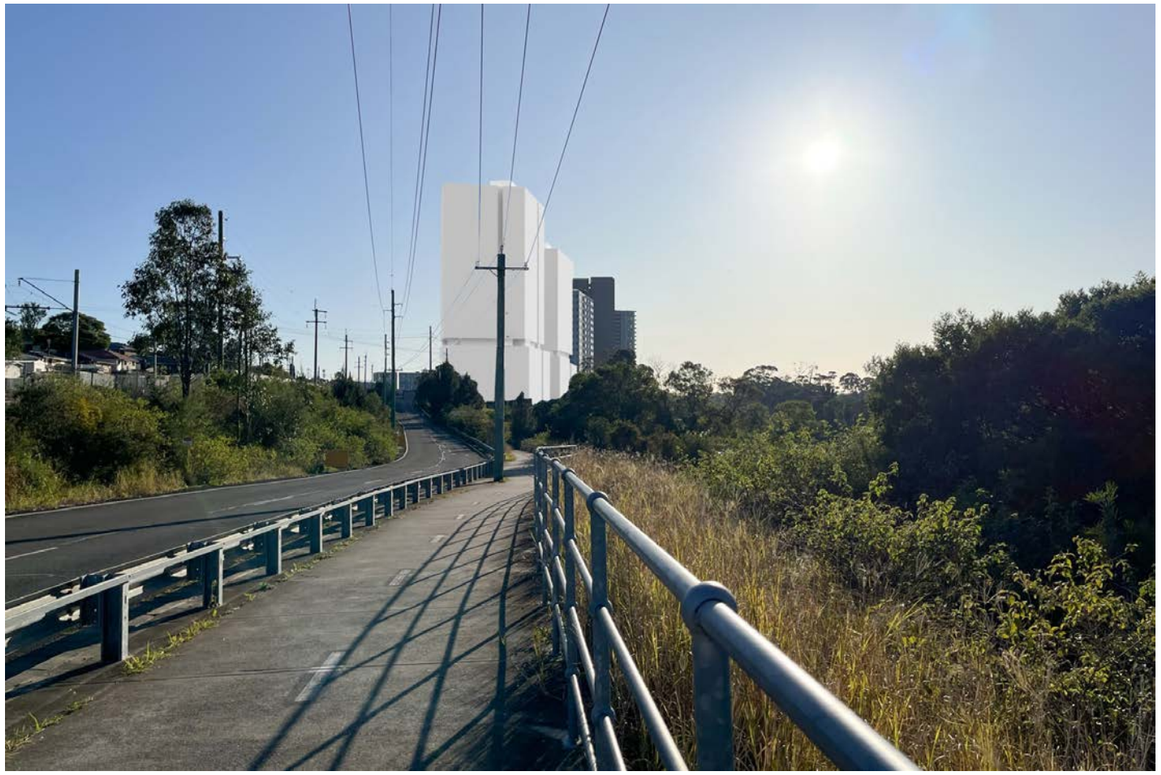
Legend

- # 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.

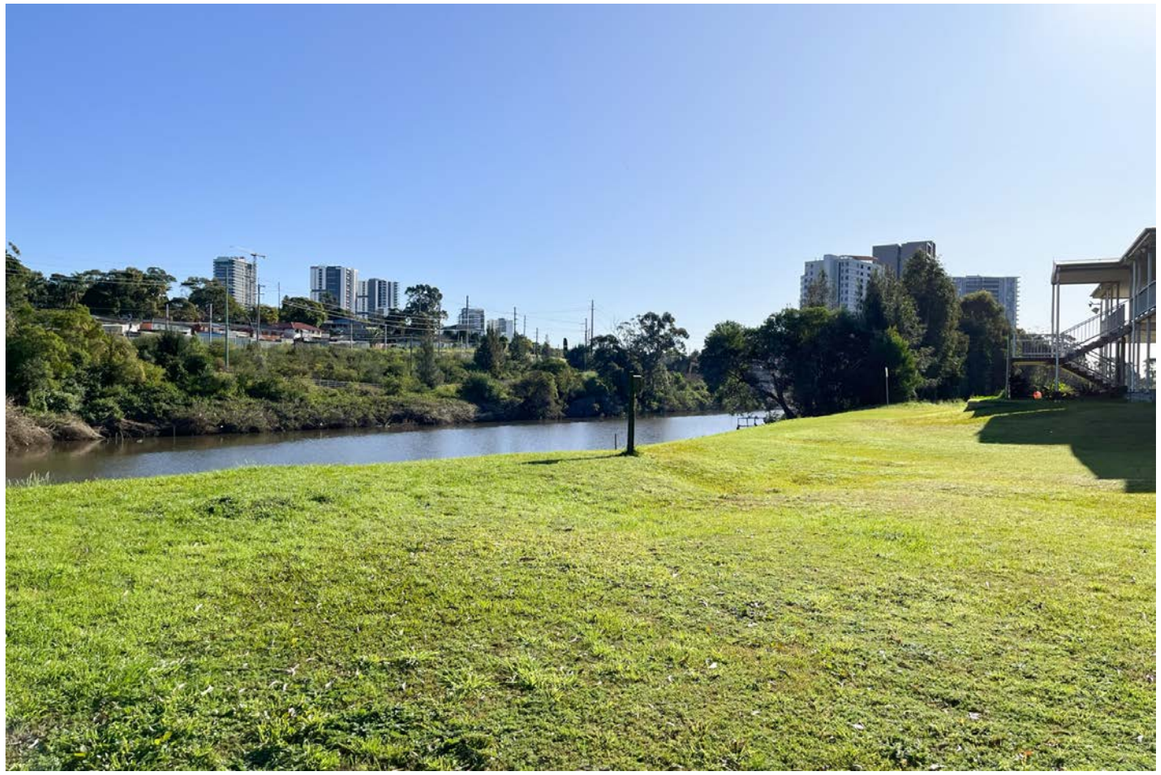
View Impact

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

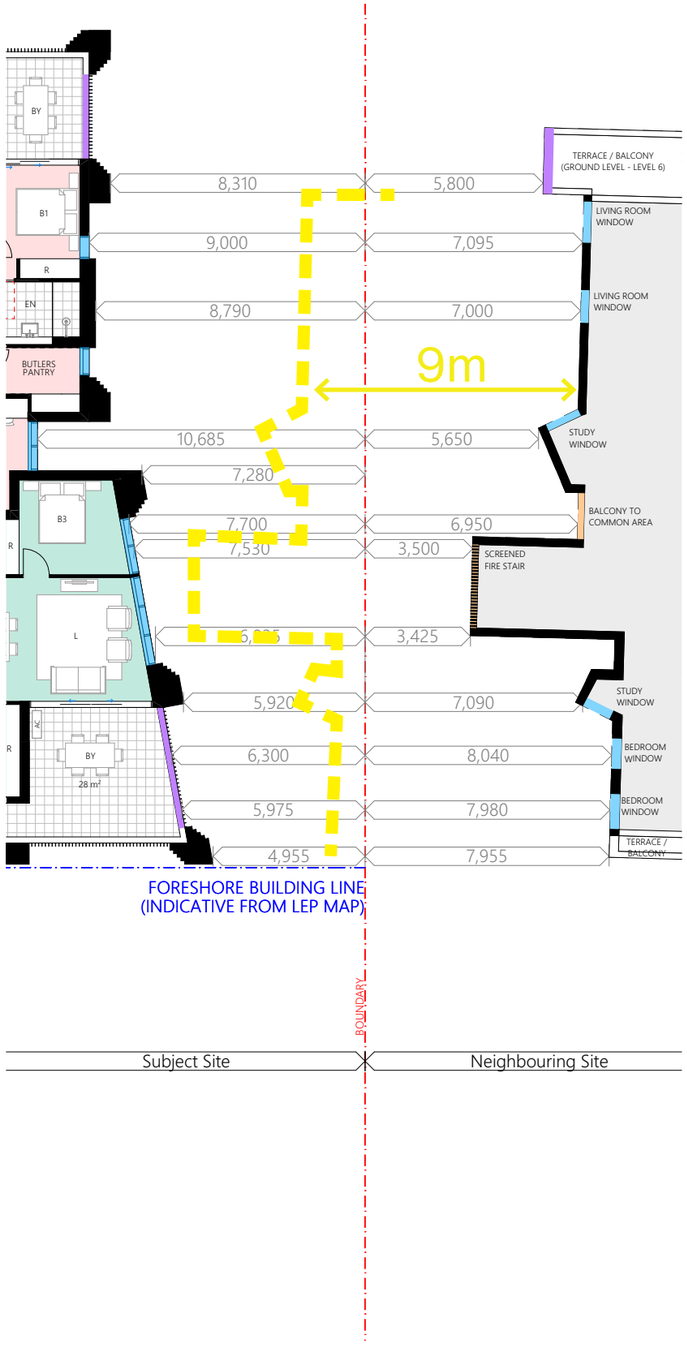
LEP cl. 7.4 Building Separation

7.4 Building separation in Liverpool city centre

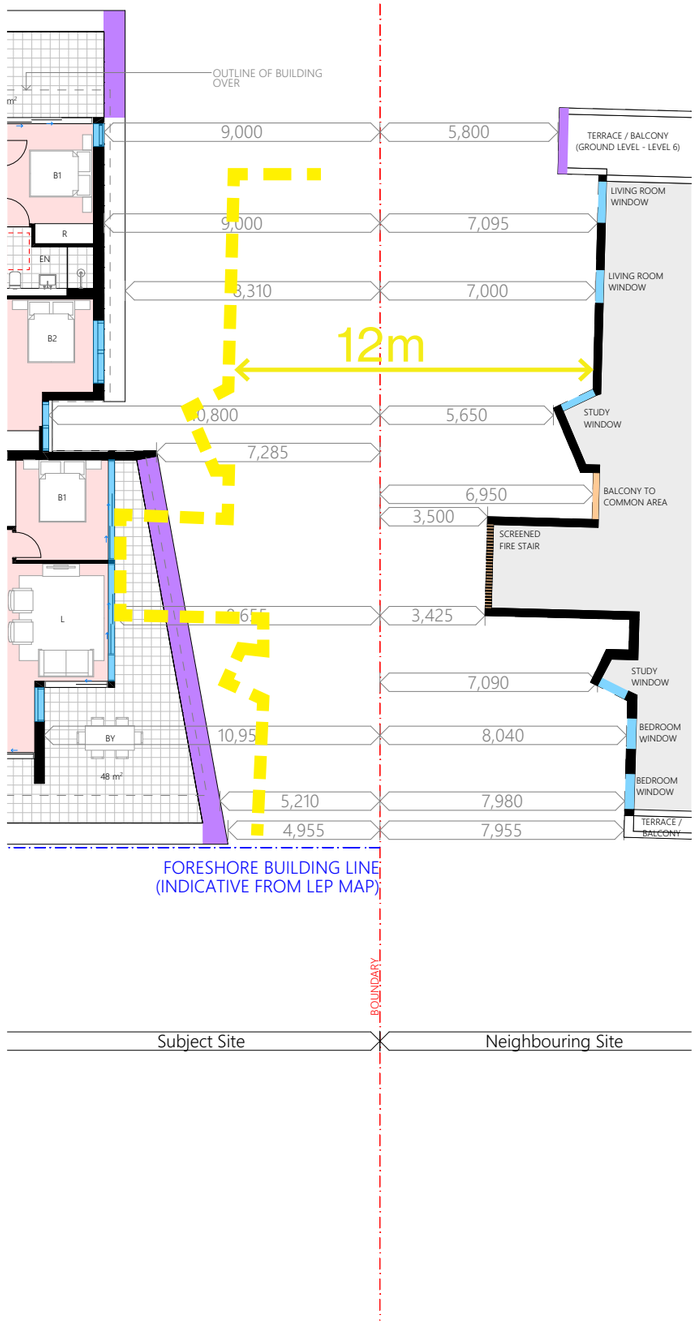
Text of LEP clause	Comment
(1) The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access. *(2) Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless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

Consideration against LEP cl 7.4 building separation

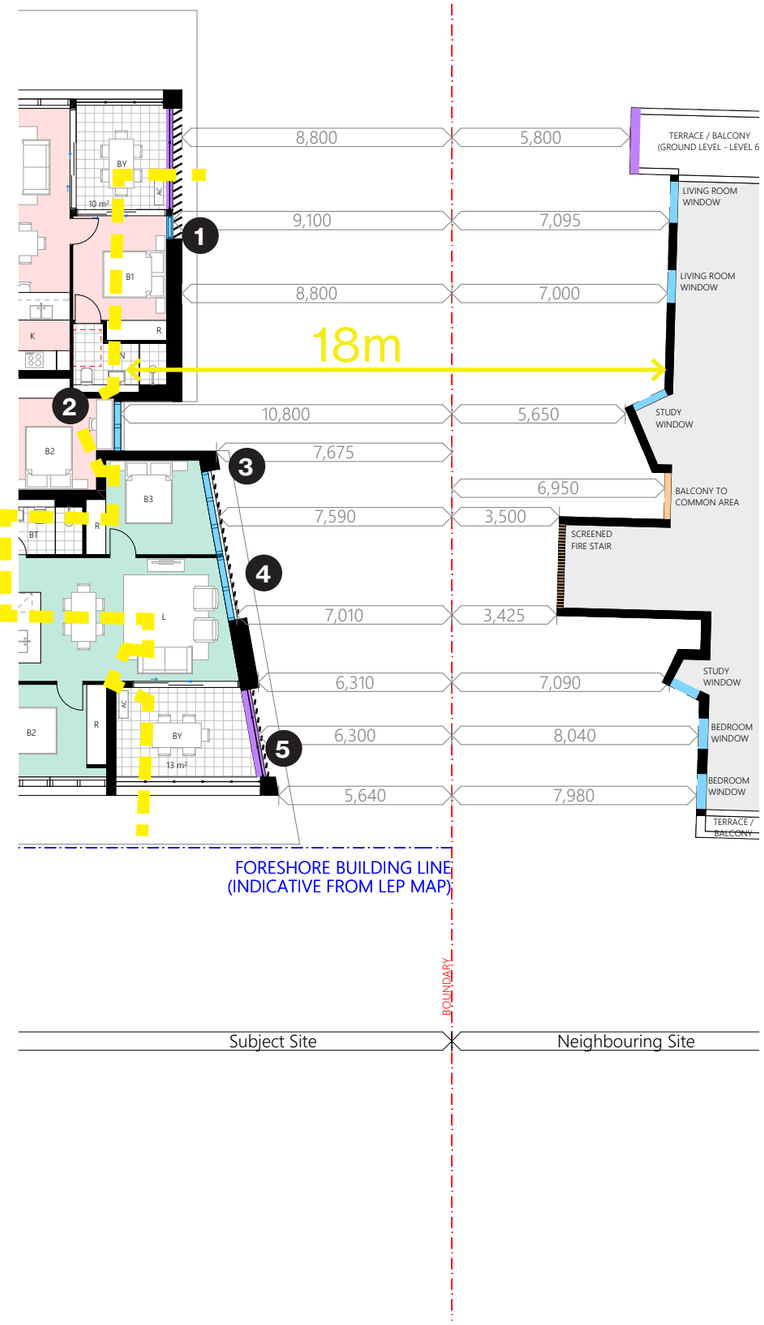
Diagram showing key separation distances (MPA SP08.1) annotated with key numerics based on LEP control and key areas discussed



01 Level 1- 4 Typical



02 Level 5



03 Level 6 - 20 Typical

LEP cl. 7.5 Design Excellence

7.5 Design excellence in Liverpool city centre

Text of LEP clause	Comment
(1) The objective of this clause is to deliver the highest standard of architectural and urban design. *(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.* *(3) In considering whether development exhibits design excellence, the consent authority must have regard to the following matters—* *(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,* *(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,* *(c) whether the proposed development detrimentally impacts on view corridors,* *(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),* *(e) any relevant requirements of applicable development control plans,*	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. 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). This review does not include the external appearance of the building, or heritage considerations.

Text of LEP clause	Comment
(f) how the proposed development addresses the following matters—	
– *(i) the suitability of the site for development,* – *(ii) existing and proposed uses and use mix,* – *(iii) heritage issues and streetscape constraints,*	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.
– *(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,* – *(v) bulk, massing and modulation of buildings,*	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. 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
– *(vi) street frontage heights,*	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.
– *(vii) environmental impacts such as sustainable design, waste and recycling infrastructure, overshadowing, wind and reflectivity,* – *(viii) the achievement of the principles of ecologically sustainable development,*	These issues are not the subject of this review.
– (ix) pedestrian, cycle, vehicular and service access, circulation and requirements, – (x) the impact on, and any proposed improvements to, the public domain.	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. 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 attractivness of connections between Shepherd Street and Mill Park.
– (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 insterad 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 negligable visual impact compared to the the hypothetical compliant development. Both of these buildings will be percieved 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'

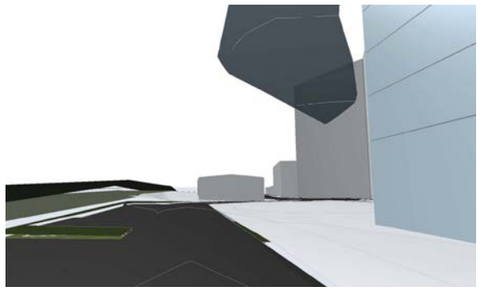
(a) to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,
(b) to control building density and bulk in relation to the site area in order to achieve the desired 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'

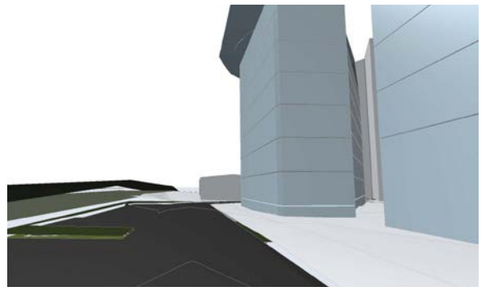
(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,
(b) to permit building heights that encourage high quality urban form,
(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,
(d) to nominate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

Final proposed massing (MPA)

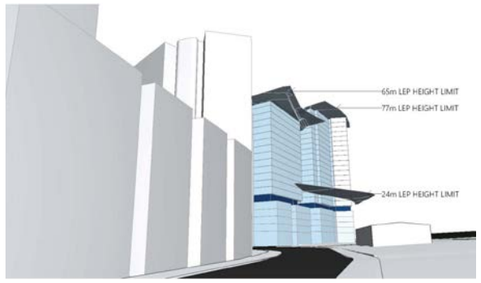
Hypothetical compliant development (MPA)



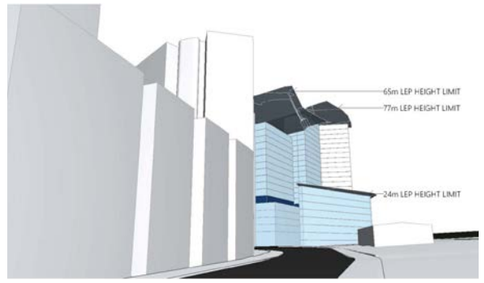
Final proposed massing
View from Mill Park to Shepherd St



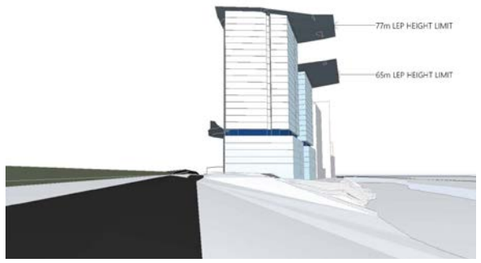
Hypothetical compliant devleopment
View from Mill Park to Shepherd St



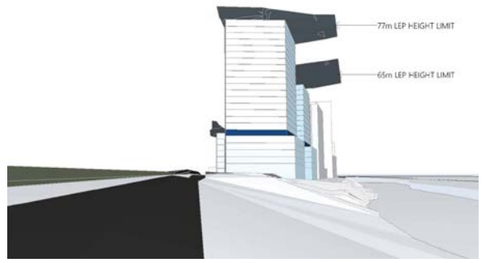
Final proposed massing
View from Shepherd Street



Hypothetical compliant devleopment
View from Shepherd Street

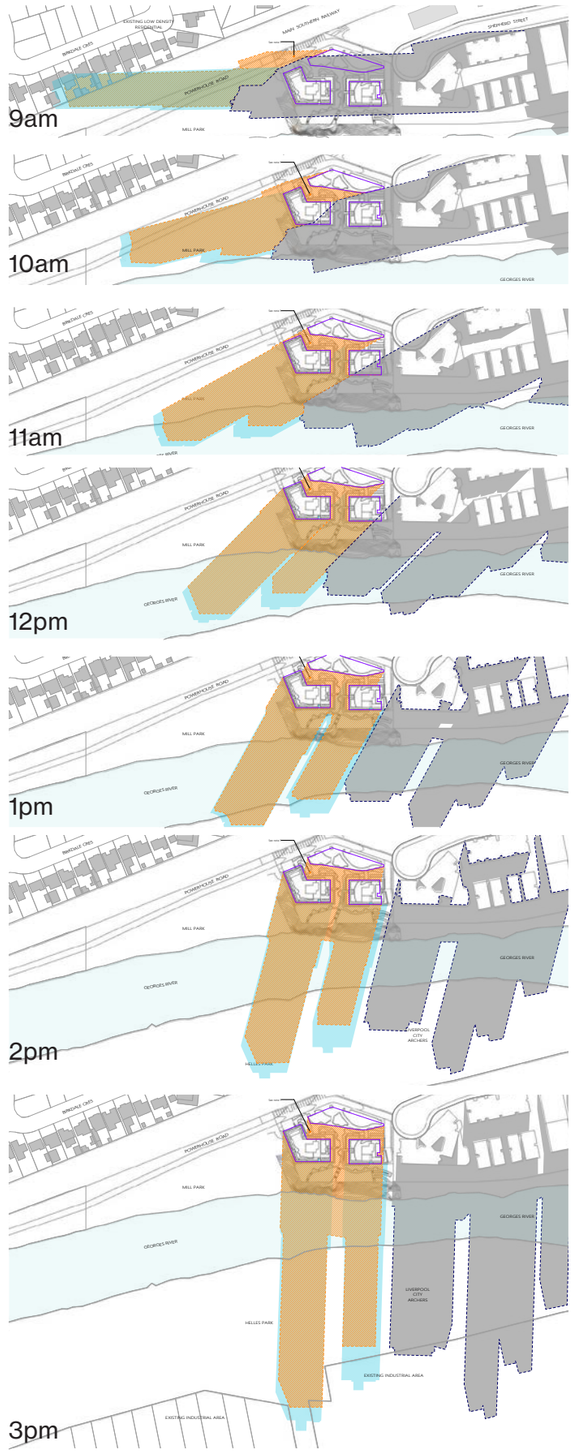


Final proposed massing
View from Mill Park



Hypothetical compliant devleopment
View from Mill Park

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



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