



Channel 9 Site Concept Plan Modification 4

Modifications to Concept Approval for Residential
Development at the former Channel 9 Site, Willoughby
(MP10_0198 MOD 4)

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Cover image: Potential streetscape on Richmond Avenue (Source: Chrofi Architects)

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Glossary

Abbreviation	Definition
ADG	Apartment Design Guide
BCA	Building Code of Australia
CIV	Capital Investment Value
Council	Willoughby City Council
DA	Development Application
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group, DPIE
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
FEAR	Future Environmental Assessment Requirement
FSR	Floor Space Ratio
GFA	Gross Floor Area
Heritage	Heritage NSW, Department of Premier and Cabinet
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
SEARs	Planning Secretary's Environmental Assessment Requirements
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
RtS	Response to Submissions
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SRtS	Supplementary Response to Submissions
TfNSW	Transport for NSW

Executive Summary

This report is an assessment of a request to modify the Concept Plan Approval (MP10_0198) for the redevelopment of the Channel Nine site in the Willoughby Local Government Area.

The modification seeks approval to incorporate an additional allotment into the Concept Plan site (known as Lot 11, DP 327266 or the TXA transmission tower site), and establish an additional building envelope ('Building K') 4 to 5 storeys in height over basement carparking, with an associated increase in permitted GFA, in place of the existing tower.

The request has been lodged by Mirvac (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification request was publicly exhibited and notified to adjoining landholders, Willoughby Council and relevant State agencies. The Department received a total of 15 submissions, comprising four submissions from government agencies, one from Council and ten submissions (including seven objections) from the general public. The key issues raised in submissions included building heights and setbacks, impacts to bushland and greenspace and pedestrian access.

In response, the Proponent submitted a Response to Submissions (RtS) and then a Supplementary Response to Submissions (SRtS). Key amendments made in this process included reducing the height of the building envelope and increasing the southern boundary setback.

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act and has carefully considered the issues raised in public submissions and the Proponent's RtS. The Department's assessment concludes that the proposal is acceptable as:

- the proposal results in a significant public benefit and improved visual outcomes for both the immediate streetscape and wider locality by removing the visually imposing transmission tower
- the proposed envelope has been designed to respond to the site context, including the streetscape created by the approved adjacent Concept Plan envelopes, the site topography and surrounding bushland values, with additional conditions recommended to ensure appropriate design outcomes
- as the proposal does not seek to increase dwelling numbers, there would be no material impacts to the locality in terms of traffic or impacts to infrastructure compared to the Concept Plan as approved
- the proposal would not result in significant impacts in terms of tree removal or biodiversity impacts and subject to appropriate future landscape design is capable of improving native plantings and biodiversity outcomes
- the proposed envelope would not result in adverse outcomes for the amenity of neighbours in terms of solar access, privacy or view loss impacts
- the proposal supports the orderly and economic development of the land, by replacing redundant infrastructure with residential development that more closely relates to the development on the Concept Plan site and other neighbouring development.
- all other impacts including final building design, amenity, environmental and construction impacts would be considered in further detail by Council during the assessment of future development applications.

The Department's assessment therefore concludes the proposal is in the public interest and recommends the application be approved subject to conditions.

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1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of a request to modify the Concept Approval (MP10_0198) for the redevelopment of the Channel Nine Site at 6-30 Artarmon Road Willoughby for a residential development.

The modification request seeks approval to incorporate an additional allotment into the Concept Plan site (the TXA transmission tower site) and establish an additional building envelope (4 to 5 storeys in height) on this part of this part of the site to replace the transmission tower, with associated increase in permitted gross floor area (GFA).

The request has been lodged on 8 April 2020 by Mirvac Residential (NSW) Development Pty Ltd (the Proponent) pursuant to section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act).

1.1 The Concept Plan site

The site is known as the 'Channel 9' site and is located on the southern side of Artarmon Rad, Willoughby. It is approximately six kilometres (km) north of the Sydney CBD, within the Willoughby Local Government Areas (LGA) (**Figure 1**).

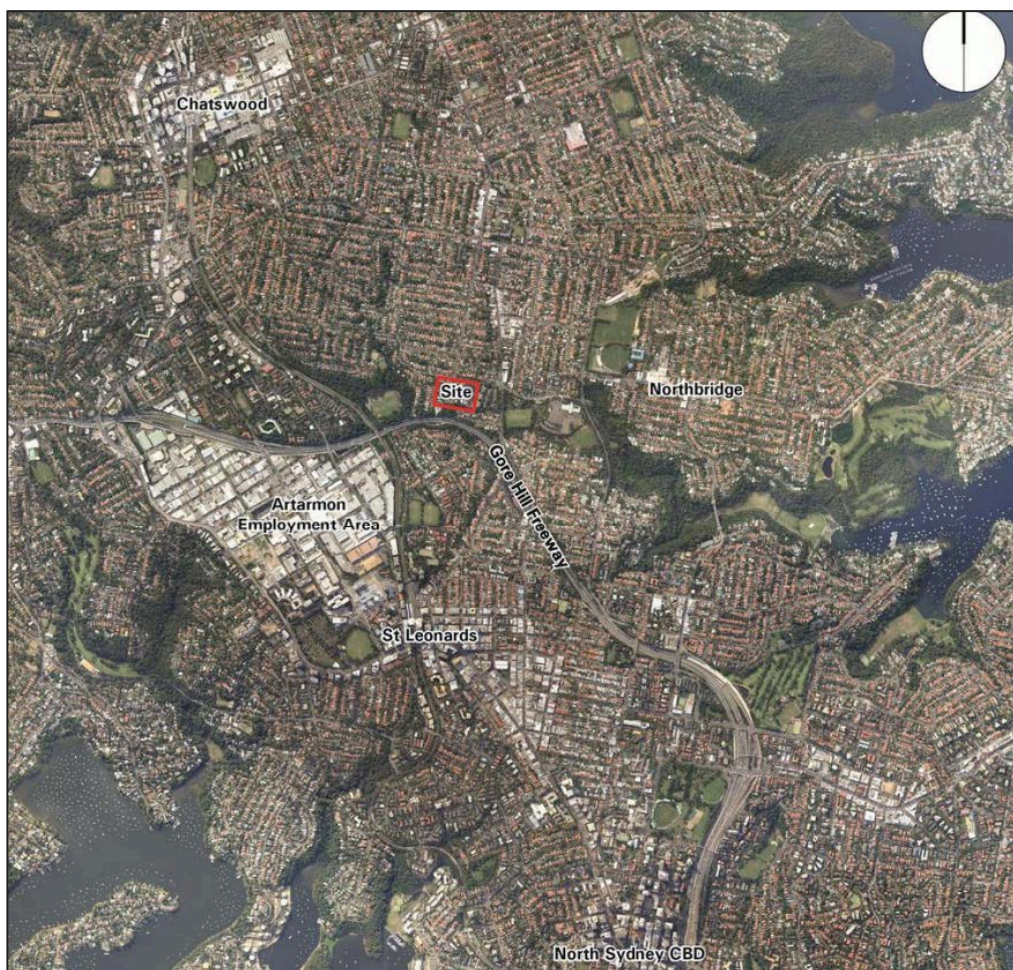


Figure 1 | Site Location (Source: Original Concept Plan Environmental Assessment)

This approved Concept Plan site consists of two distinct parcels of land (**Figure 2**):

- the larger main parcel is bound by Artarmon Road to the north, Richmond Avenue to the west, Walter Street Reserve to the south and residential development to the east. It has an area of 28,985 m² and contains buildings associated with the former use of the site for the Nine Network Australia
- the second parcel of land, known as Lot 12, located to the south of the existing TXA telecommunications tower and has an area of 739m². No development was approved on this part of the site.

1.2 The Proposed Modification site

The proposed modification relates to Lot 12, and an additional parcel of land, Lot 11 (**Figure 2**).

Lot 11 has an area of 2,132m² and contains the existing 233 m high television transmission tower (equivalent to 77 storeys).

Lot 11 has frontage to Richmond Avenue, and Lot 12 fronts an undeveloped portion of the road reserve. The land slopes generally from the north-west to the south-east and there is a steep embankment along the southern part of the site.

Neighbouring development comprises the Concept Approval site to the north, one and two storey detached dwellings to the west, and the Walter Street Reserve to the east. Land to the south is zoned road reserve however is managed as open space as part of the Walter Street reserve. The Gore Hill Freeway is located further south.

Figures 2 to 6 provide some images of the existing site and surrounds.



Figure 2 | Aerial view of the Concept Plan site (Source: Proponent's Modification Report)



Figure 3 | Aerial view of Lots 11 and 12 (Base Image Source: Google Maps)



Figure 4 | Site as viewed from the end of Richmond Avenue (Source: Google Maps)

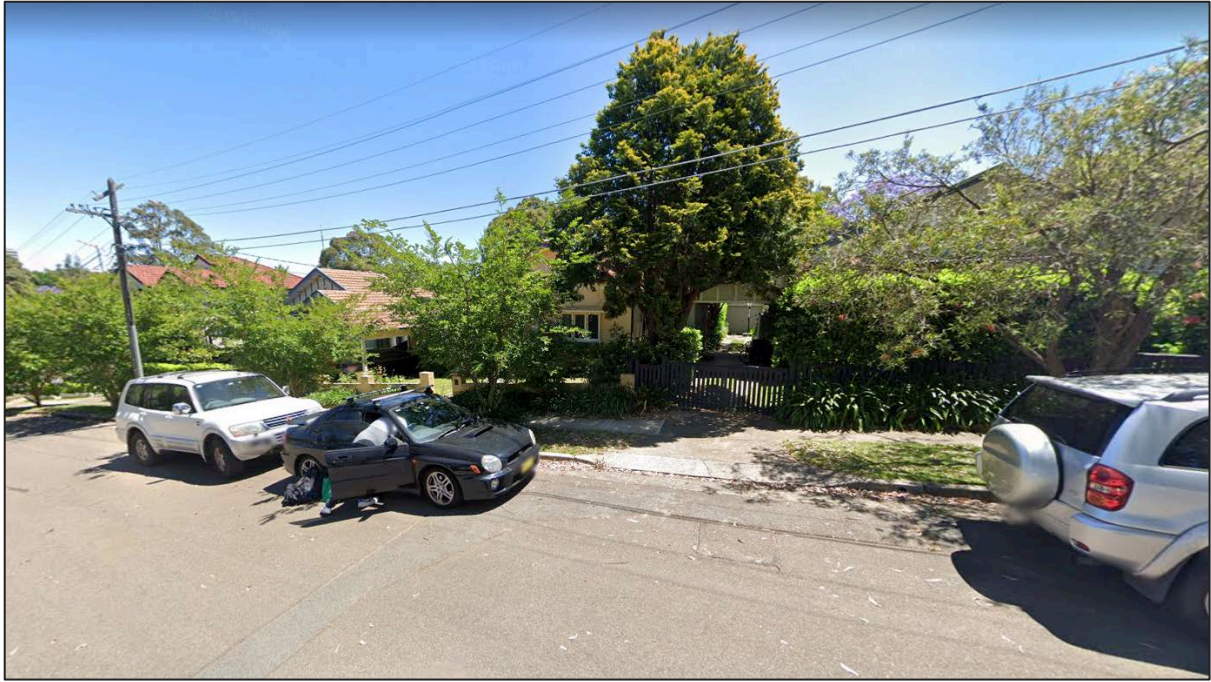


Figure 5 | Development opposite the site on Richmond Avenue (Source: Google Maps)

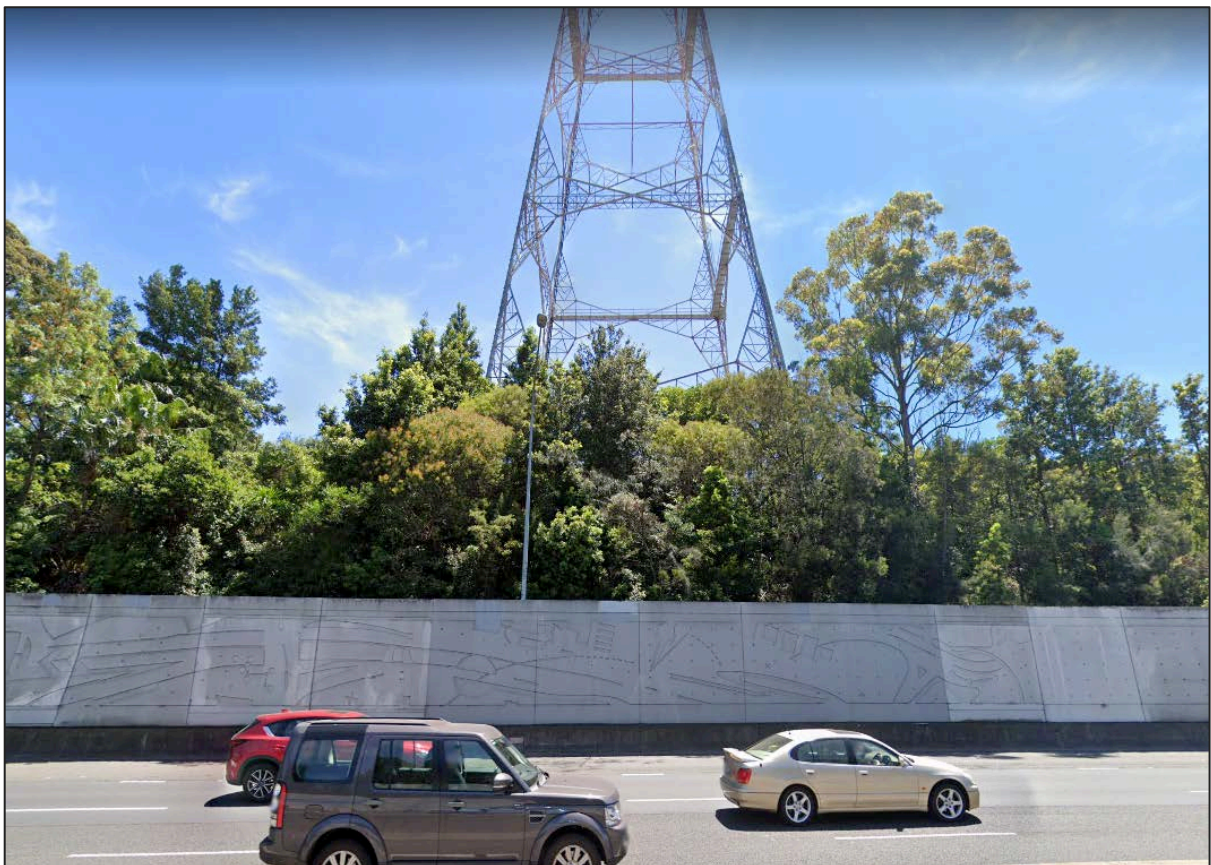


Figure 6 | Site as viewed from the end the Gore Hill Freeway (Source: Google Maps)

1.3 Approval history

Concept Approval

On 5 March 2014, the then Planning Assessment Commission (the Commission) granted Concept Approval to the redevelopment of the site, subject to conditions that limited the building height to eight storeys, a maximum of 350 dwellings and a GFA of 39,550 m².

The Proponent appealed the determination in the Land and Environment Court and following mediation between the Proponent, the Commission and Council, resulted in the Court directing the Commission to approve an amended Concept Plan.

On 23 December 2014, the Commission granted Concept Approval to the redevelopment of the site residential development and small-scale non-residential uses incorporating:

- building envelopes for five residential flat buildings above basement level parking and two rows of terrace houses incorporating:
 - up to 400 dwellings; and
 - up to 500m² floor space of non-residential uses to support the development;
- retention and adaptive reuse of No 6 Artarmon Road for retail/commercial purposes;
- new internal roadways and other infrastructure works to support the development;
- publicly accessible open space and through site link;
- temporary exhibition homes and / or exhibition villages; and
- superlot subdivision.

The Concept Plan has been modified on one occasion. On 31 January 2019 the Commission approved MOD 2, which amended the Concept Plan envelopes, dwelling numbers and floor space (**Figure 7**). The Concept Plan, as modified provides:

- building envelopes for nine residential flat buildings above basement level parking incorporating:
 - Up to 460 dwellings
 - Up to 42,557m² residential GFA;
 - Up to 300m² non-residential uses GFA.
- retention and adaptive reuse of No 6 Artarmon Road for retail/commercial purposes (within existing GFA of 1,050m²)
- new internal roadways and other infrastructure works to support the development
- publicly accessible open space and through site link
- temporary exhibition homes and/or exhibition village
- superlot subdivision.

Two other modification requests (MOD 1 and MOD 3) were lodged, but subsequently withdrawn.

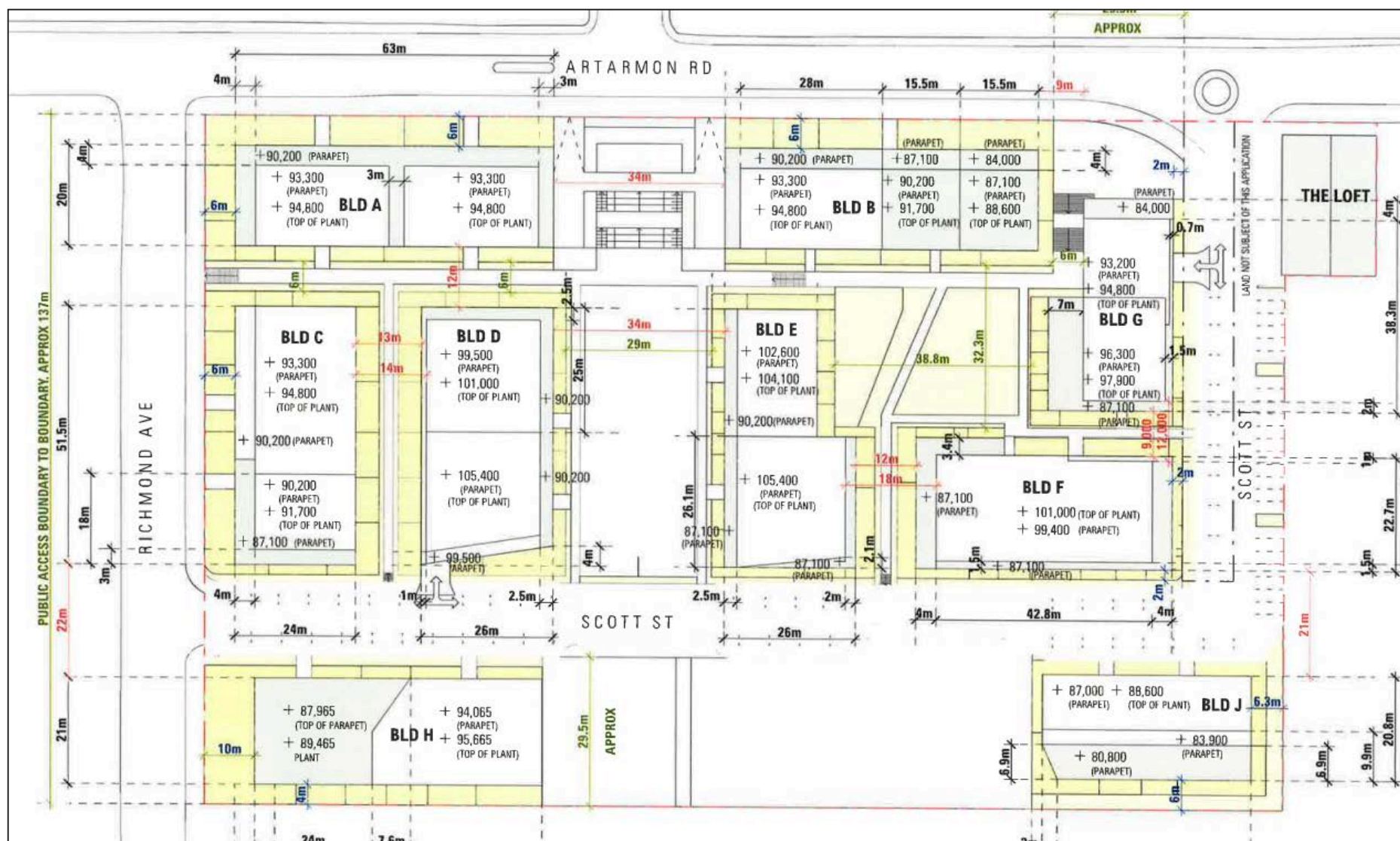


Figure 7 | Approved site layout (Source: MOD 2 Approved Plans)

2 Proposed modification

This section 75W modification request (MP10_0198 MOD 4) seeks approval to:

- incorporate Lot 11 into the Concept Plan site
- establish an additional building envelope ('Building K') on Lots 11 and 12 in place of the existing tower
- increase the maximum residential GFA from 42,557 m² to 46,853 m² (an increase of 4,296 m²).

The proposal does not seek to increase the number of dwellings on the site or make any changes to the remainder of the existing approved Concept Plan layout.

The Proponent requested the modification on the basis that the transmission tower is now redundant and it seeks to make use of the land in a manner consistent with the existing approval.

Following the notification of the request, the Proponent submitted a Response to Submissions (RtS), and a further Supplementary Response to Submissions (SRtS) and additional information which amended the proposal (refer to **Sections 5.5 and 5.6**).

The key components and features of the modification request (as refined in the SRtS and additional information) are provided in **Table 1** and are shown in **Figures 8 to 15**.

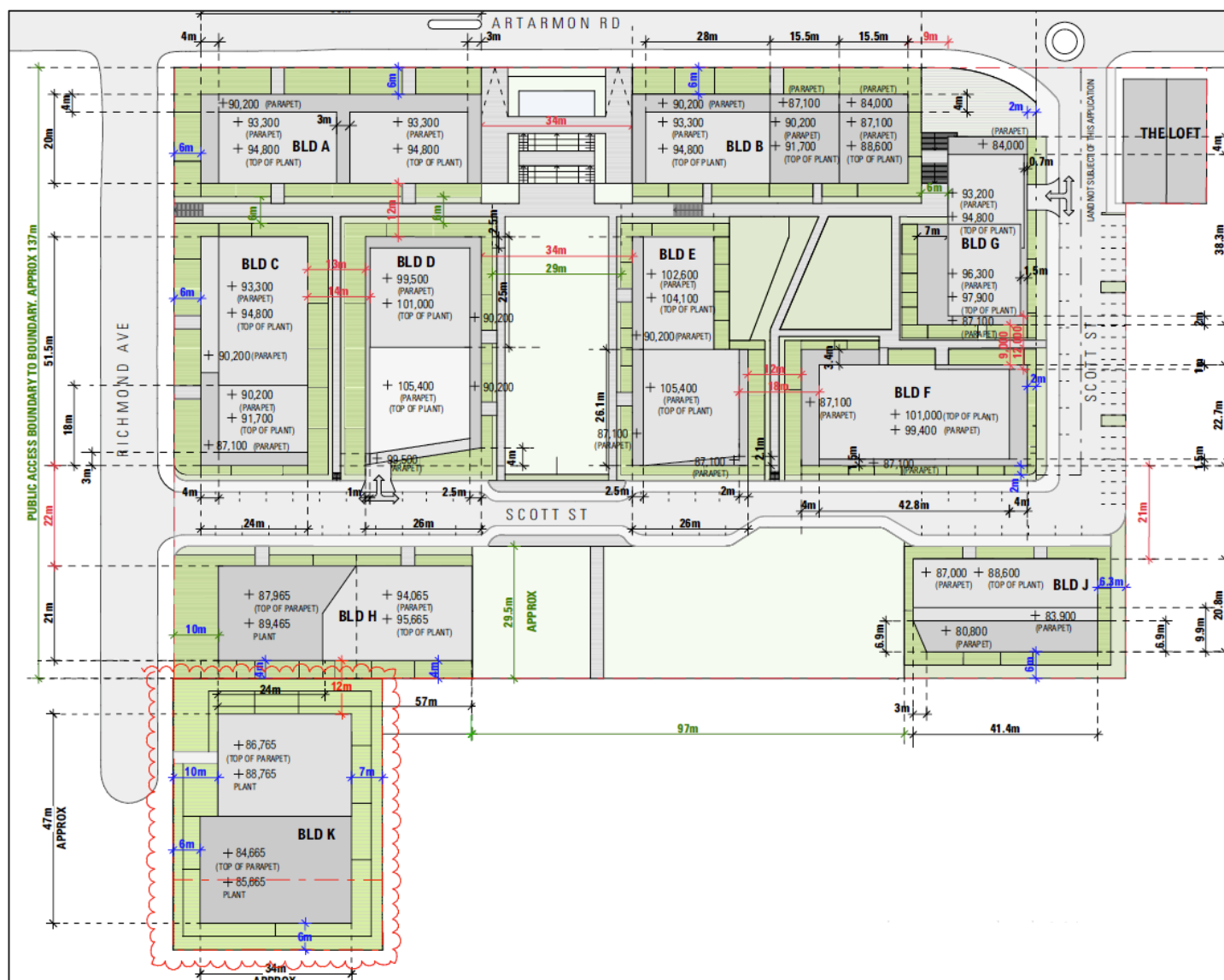
Table 1 | Main components of the modification request

Aspect	Approved Concept Plan	Proposed Modification
Overall Development Description	Residential development & small-scale non-residential uses	No change
Site Area	29,724 m ²	31,856 m ² (+2,132 m ²)
Site Area for purpose of FSR	28,985 m ²	31,856m ² (+2,871 m ²)
GFA	43,907 m ²	48,203 m ² (+4,296 m ²)
FSR	1.51:1	1.51:1 (no change)
Building Envelopes	Nine building envelopes 3 to 9 storeys Maximum height RL 105.4	Ten building envelopes No change to existing envelopes New Building K envelope: <ul style="list-style-type: none"> • 4-5 storeys • Stepped height (max RL 88.765) • Varied boundary setbacks 6m - 10m
Dwellings	460	460 (no change)
Publicly Accessible Open Space	6,385 m ²	6,385 m ² (no change)
Vehicle Access and Parking	Basement parking accessed via new internal road. Car parking rates set by the Concept Approval	No change: Basement carparking would be provided connected to the basement of Building K with access to the new internal roadway.

Aspect	Approved Concept Plan	Proposed Modification
Staging	2 Stages	3 Stages (Building K will be constructed in Stage 3)
Public Benefit	1,435 m ² plus 5% of any residential floor space above 35,886 m ² as affordable housing; \$1,500,000 contribution to roads and public open space upgrades	No change to existing benefits but it is proposed that the affordable housing requirements would not apply to Building K.



Figure 8 | Photomontage of indicative potential future building on the site as viewed from Richmond Avenue
(Source: Chrofi Architects' Urban Design Report)



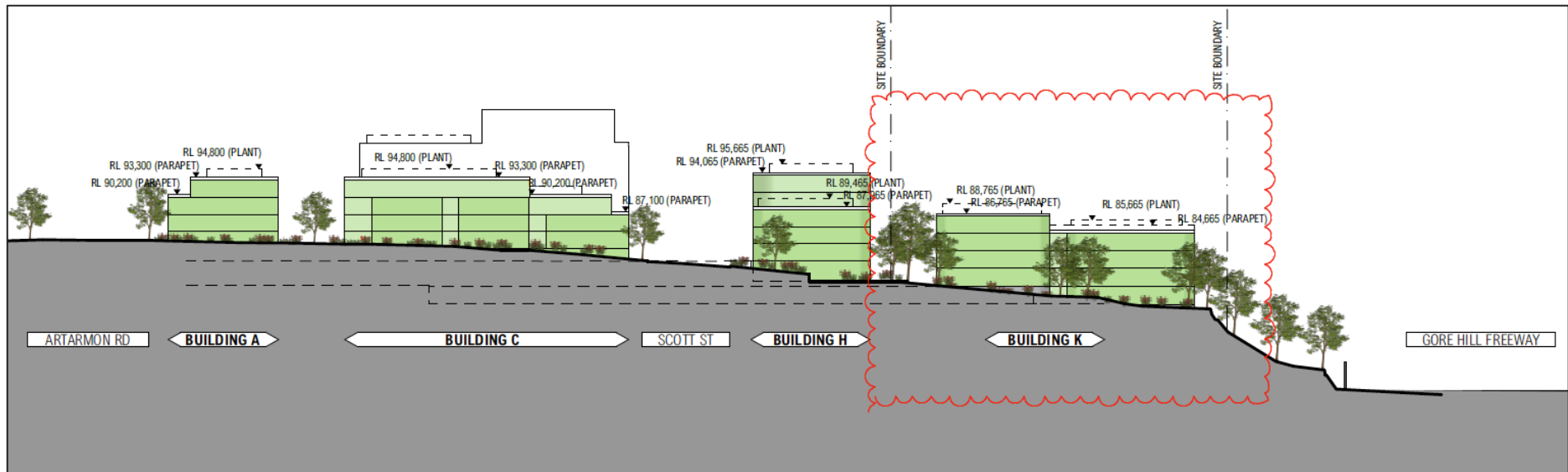


Figure 10 | Richmond Avenue Streetscape (Source: SRTS)

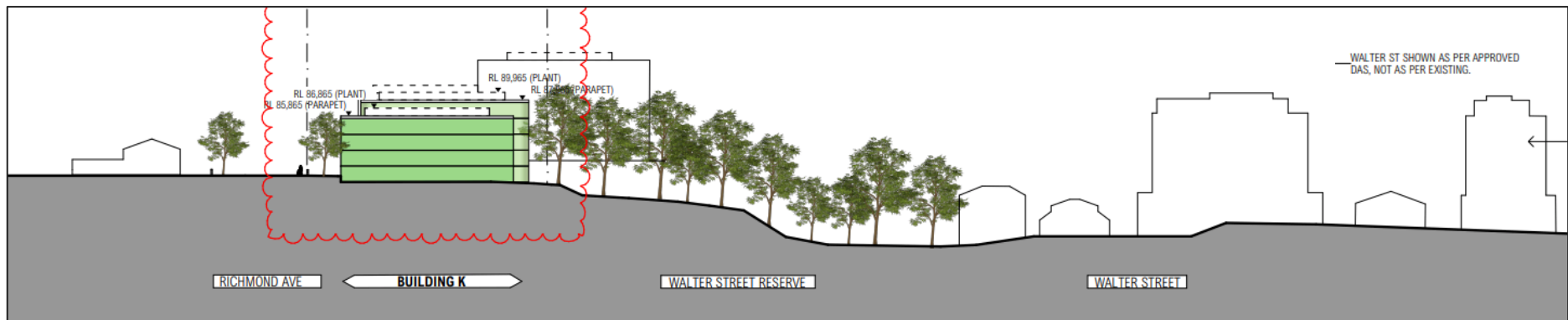


Figure 11 | Southern Elevation (note: envelopes were subsequently amended and parapets reduced by 1.2m (Source: RTS))

3 Statutory context

3.1 Modification of the Minister's Approval

The concept plan was originally approved under Part 3A of the EP& A Act. The application is a transitional Part 3A project under Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (STOP Regulation).

Under clause 3BA of Schedule 2 of the ST&OP Regulation, a concept approval may continue to be modified under section 75W after March 2018 where the Minister is satisfied that:

- the proposed modification is to correct a minor error, misdirection or miscalculation; or
- the proposed modification is of minimal environmental impact; or
- the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).

The Department concludes that the Minister (or delegate) can reasonably form the view that the modification request is substantially the same as the Concept Plan, as modified, and is within the scope of section 75W of the EP&A Act and is capable of being determined pursuant to the transitional provisions under clause 3BA of Schedule 2 of the ST&OP regulation.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or delegate) can be satisfied that the concept plan may be modified under section 75W of the EP&A Act.

3.2 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the modification request. However, the Director, Key Sites Assessments, may determine the request, as:

- a political disclosure statement has not been received, and
- less than 10 submissions were received from the public objecting to the proposal.

3.3 Permissibility

As with the adjoining land previously approved for residential development under the Concept Plan, the site is zoned SP2 Infrastructure (Telecommunications Facility) under WLEP 2012. The proposed residential uses are not permissible within the zone which prohibits all development other than roads, telecommunications facilities and associated ancillary development.

Notwithstanding, the authorisation of a Concept Plan for the site allows the Minister or delegate to consider the proposal on its merits and give approval for prohibited land uses and the existing Concept Plan approval overrides the zoning controls under WLEP 2012.

The incorporation of the site into the Concept Plan would have the same effect, enabling the development of residential land uses despite the prohibition under WLEP 2012.

The Department considers the proposed incorporation of the site into the Concept Plan site and approval for use for residential purposes is appropriate in this case as:

- the site is no longer required for telecommunications facilities, noting the telecommunications tower is no longer operational and has been replaced by digital technology
- the proposed residential land use would be compatible with land uses approved under the existing Concept Plan adjoining the site and surrounding residential land uses.

3.4 Environmental Planning Instruments

The following Environmental Planning Instruments (EPIs) are relevant to the modification request:

- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy No. 19 – Bushland In Urban Areas (SEPP 19)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Draft State Environmental Planning Policy (Remediation of Land) (Draft Remediation SEPP)
- Draft State Environmental Planning Policy (Environment) (Draft Environment SEPP)
- Willoughby Local Environmental Plan 2012.

The Department has considered the above EPIs in its assessment (**Section 6**) and in **Appendix D** is satisfied the modification does not result in any inconsistency with these EPIs.

3.5 Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.

4 Engagement

4.1 Department's engagement

The Department publicly notified the modification request for 14 days between 29 April and 12 May 2020. The request was made publicly available on the Department's website.

The Department also placed public exhibition notices in the Sydney Morning Herald and Daily Telegraphy on 29 April 2020 and provided written notice to the Councils, relevant Government agencies and adjoining landholders.

4.2 Summary of submissions

During the exhibition period, the Department received 15 submissions on the proposal. Of the submissions received, one was from Council, four were from Government agencies and 10 were members of the community. Seven of the public submissions objected to the proposal and three supported the proposal.

A summary of the submissions is provided at **Table 2** below, and a link to all the submissions is provided in **Appendix A**.

4.3 Key issues raised in Council and Agency Submissions

Key issues raised by Council and Government Agencies are summarised in **Table 3**.

Table 3 | Summary of Council and Government Agency submissions on the EIS exhibition

Willoughby City Council (Council)

Council advised it is generally supportive of the proposal which involves removal of the transmission tower. However it provided comments and suggested amendments to the proposal, including:

- the building envelopes should be amended so that the new building steps down with the topography of the site and presents as lower than adjoining upslope development.
- the building envelopes should be amended so that a consistent 6 metre setback is provided to the southern bushland boundary
- a public right of way should be incorporated to the north of the proposed new building to improve connectivity
- elements of the transition tower should be adaptively reused on the site with the input of an artist.

Council also provided recommended conditions of approval.

Environment, Energy and Science Group, DPIE (EESG)

EESG does not object to the proposal and has no further comments noting the modification is unlikely to create adverse impacts to natural hazards or Aboriginal cultural heritage issues.

Transport for NSW (TfNSW)

TfNSW does not object to the proposal and has no further comments noting the proposal would not increase the dwelling cap, increase retail gross floor area or change the approved road layout.

Sydney Water

Sydney Water noted there may be a requirement for amplification and extension of services to the site. This would be resolved at the Section 73 Application phase, required by existing condition of approval. Sydney Water also notes that the developer will be required to protect any existing waterwater mains on the site.

Heritage NSW

Heritage NSW does not object to the proposal and notes the site is not on the State Heritage Register, in the vicinity of any State heritage items, or known archaeological deposits. It confirmed that the transmission tower does not have State heritage significance.

4.4 Key issues raised in Public Submissions

Three public submissions (30%) supported the removal of the transmission tower, however seven public submissions were received objecting to the proposal for the reasons set out in **Table 4**.

Table 4 | Issues raised in Public Submissions

Issue	% of Submissions
Setbacks from Richmond Avenue should be increased	40
Building height should be reduced to step down the hill	30
Pedestrian access should not be via Richmond Avenue	30
Adverse impact to adjoining bushland reserve / road reserve	20
Reduction / loss of bushland / green space	20
Traffic impacts	20

Other issues raised in objections included biodiversity and wildlife impacts, the rear setback to the reserve, increased floor space impacts, impacts to nearby parklands, privacy and the potential for future applications to increase dwelling numbers.

4.5 Response to Submissions

Following exhibition, the Department placed all submissions on its website and requested the Proponent provide a response to the issues raised in submissions.

On 2 June 2020, the Proponent provided a Response to Submissions (RtS) (**Appendix A**). The RtS provided additional information and justification for the proposal but made no changes to the exhibited project.

The Department placed the RtS on its website and notified Council of the RtS.

Council reiterated its earlier recommendations in relation to building height, southern setback and adaptive reuse of the transmission tower, and recommended the provision of a public right of way, either to the north or south of the proposed development.

4.6 Supplementary Response to Submissions

Following receipt of the RtS, the Department met with the Proponent and requested further consideration be given to the proposal to address outstanding issues.

On 17 July 2020, the Proponent provided a Further Response to Submissions (SRtS) with additional information also provided on 22 July 2020 (**Appendix A**). The SRtS incorporated the following key changes:

- reduction in building envelope height by 1.2 metres (**Figure 12**)
- increased southern setback to a consistent 6 metre setback
- adaptive reuse of elements of the transmission tower subject to confirmation of suitability.

The Department placed the SRtS on its website and notified Council.

Council did not provide any further comments.

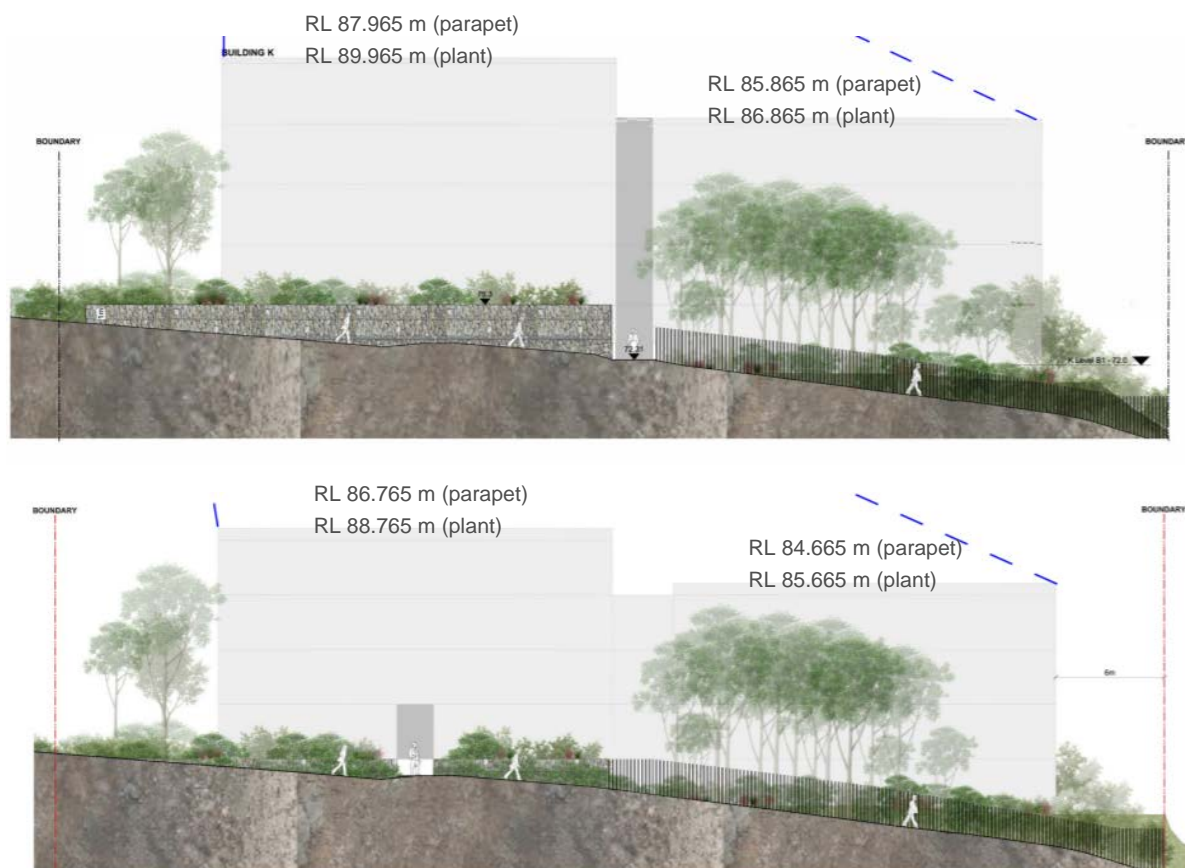


Figure 12 | Building K envelope height as initially proposed in the EA (above) and refined in the Proponent's SRtS (below) (Base image source: EA and SRtS)

5 Assessment

The Department has considered the proposal and the issues raised in submissions and the Proponent's RtS and SRtS in its assessment of the application. The Department considers the key issues associated with the proposal are:

- built form and urban character
- tree removal and biodiversity impacts.

These issues are discussed in the following sections of this report. Other issues relating to the application considered during the assessment of the application are addressed in **Section 5.3** of this report.

5.1 Built Form and Urban Character

5.1.1 Building Typology and Design

The Concept Approval provides three architectural typologies on the site, including 'street buildings', 'mid-rise towers' and 'bush buildings'.

The Proponent notes that the proposed new building envelope K would be a 'bush building', designed to be organic in form to integrate with the adjoining bushland context.

The proposal seeks to establish the following design principles for Building K:

- it should feel coherent with the overall approach of the approved masterplan, and cohesive with the built form approach for all buildings of the approved Concept Plan
- it should respond to the approved Concept Plan approach to Richmond Avenue in terms of scale and response to the existing houses on this street
- it should respond to the proposed building typologies of the approved Concept Plan and should architecturally relate to the approved buildings on the main site
- future layouts and apartment amenity should be coordinated with Building H (the adjacent building) to maximise outlook, solar access and privacy for both buildings
- it should respond to its own context and the natural topography of its site

While detailed building design will be determined as part of future DAs, the Department considers the proposed building typology and design principles are appropriate for the site and would provide guidance for the development of the detailed design.

The Department also notes that existing future environmental assessment requirements (FEARs) require demonstration of design excellence, high levels of modulation and articulation, a variety of high-quality materials and finishes and appropriate interface with the street and public domain.

The Department also met with representatives from the Government Architect's office (GANSW) to discuss the design of the proposal. GANSW supported the retention of CHROFI (the design winning architect) for the development of the modification and raised no concerns with the design.

The Department is therefore satisfied that the modified Concept approval would be capable of delivering a building of high-quality design on the site.

5.1.2 Building Height

The proposed building envelope would allow for a building 4 to 5 storeys in height in a stepped form to follow the topography of the site.

Council and public submissions raised concern with the height of the building as originally proposed, noting that the northern part of proposed Building K adopted the same height of adjacent Building H despite being located downhill from that building, and therefore not stepping down with the topography.

In response, the Proponent amended the building envelope heights in the SRtS, so that the northern parapet of Building K would be 1.2 metres below the approved parapet of Building H, stepping down another 2.1 metres in the southern part of the building (**Figure 13**).

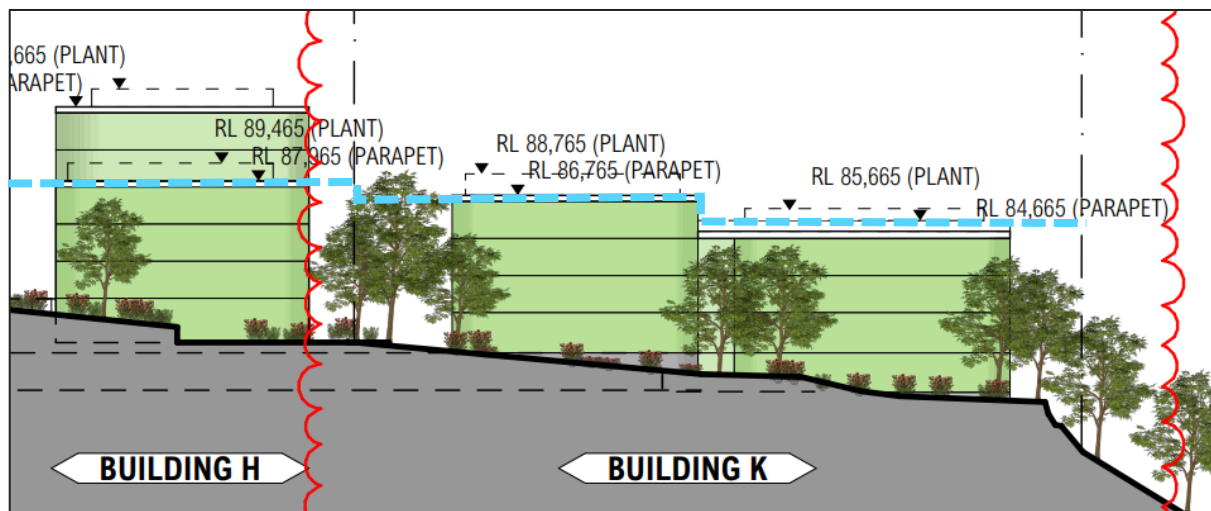


Figure 13 | Western (Richmond Avenue) elevation of building envelopes with street facing parapet line shown in blue (Base image source: SRtS)

Overall, the Department considers the proposed 4 – 5 storey envelope height represents a significant improvement from the existing visually imposing tower on the site (equivalent to approximately 77 storeys) which dominates the streetscape and the skyline.

The Department is satisfied that the revised building heights respond to concerns raised by Council and in submissions as:

- the amended building heights would provide for a built form that presents as similar in scale to the street as approved adjacent Building H on the site with a stepping down in levels in response to the topography
- as viewed from further afield, such as from Naremburn on the opposite side of the freeway, the building would sit comfortably below the heights of other surrounding buildings on the site (**Figure 14**)
- the building heights result in no adverse impacts for amenity in terms of overshadowing, privacy or view loss to neighbours as discussed in **Section 6.3**.

The Department concludes the proposal provides an appropriate response to the context of the site and would not result in any unacceptable streetscape impacts.

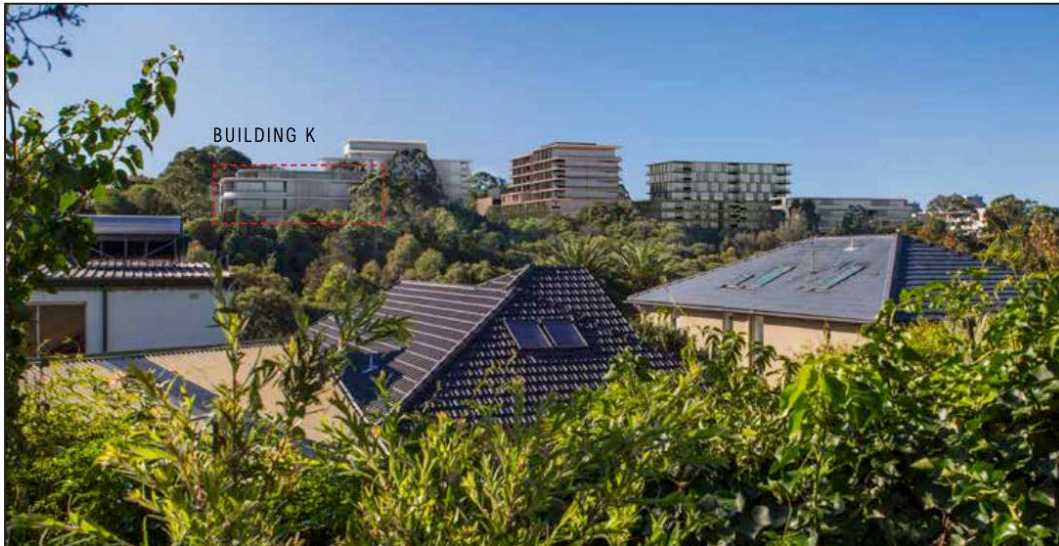


Figure 14 | Artist's impression of the site as viewed from Naremburn (Base image source: CHROFI Architects' Urban Design Report)

5.1.2 Building Setbacks

Concerns were raised in submissions in relation to the proposed southern and western (Richmond Avenue) building envelope setbacks.

Southern setback

Council raised concern that the envelope would extend as close as 3 m to the southern boundary and adjacent urban bushland. Council recommended a uniform 6 m setback should be provided to enable more substantial planting in the setback area to better integrate the development and be more sympathetic to the surrounding bushland.

In response to Council's concerns, the Proponent amended the scheme in the SRtS to provide a consistent 6 m setback to the southern boundary. The proposed building envelope setbacks are demonstrated in **Figure 15**.

The Department supports the 6 m southern setback to enable preservation of the natural values of the adjoining bushland and to provide opportunity for setback plantings to assist with screening the building and integrating it visually with the adjacent reserve areas.

However, the Department notes that there is a steep embankment in the southern part of the site. While some plans submitted with the modification indicate the proposed setback would ensure the embankment would be located to the south of the proposed envelope, an overlay of the survey with the proposed envelope plans indicates the building may extend over the embankment (**Figure 16**).

The Department considers that the building should respond to the topography of the site and therefore recommends a FEAR that should the future building extend beyond the top of the embankment, the building shall be designed to respond to the topography in this part of the site. Subject to this condition, the Department is satisfied the 6 m southern setback will ensure the future building on the site would respond appropriately to its bushland setting.

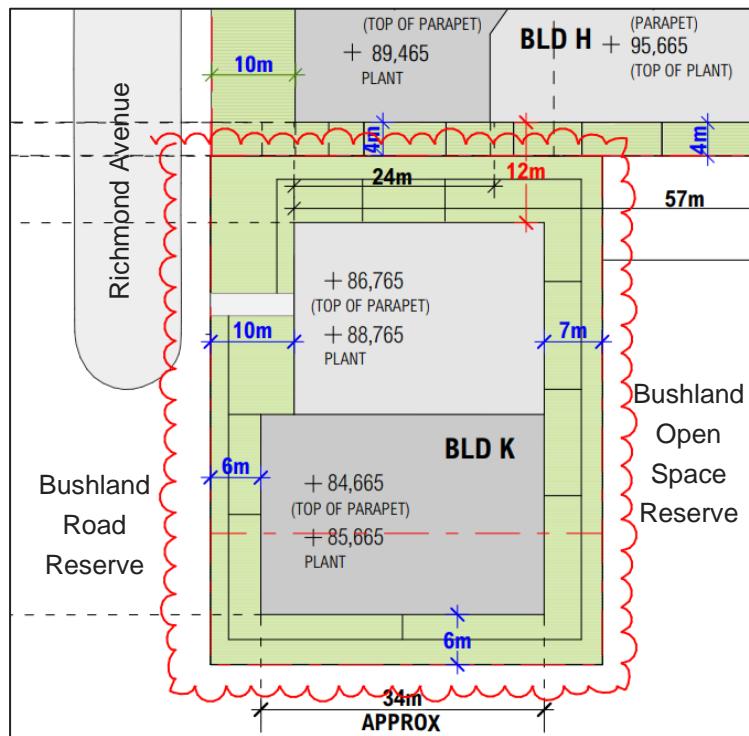


Figure 15 | Extract from proposed building envelope plan showing boundary setbacks (Base image source: SRTS plans)

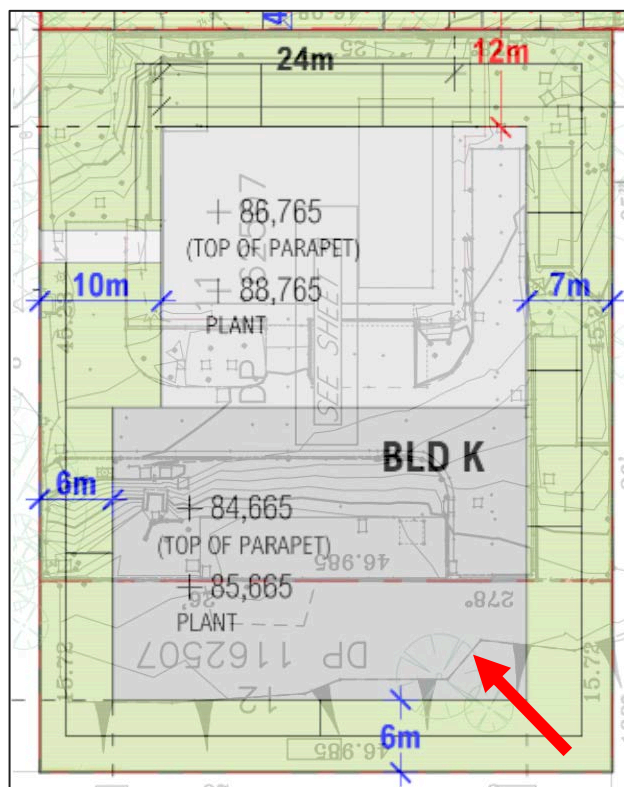


Figure 16 | Site survey Plan overlaid with building envelope plan indicating possible line of embankment (Base image source: site survey and SRTS plans)

Western (Richmond Avenue) setback

Public submissions raised concerns that part of the building would have a reduced setback to Richmond Avenue of 6 m, compared to Building H which has a setback of 10 m.

The Proponent considers the stepped 6 m to 10 m setback to be appropriate, noting other than Building H, all other buildings in the street have a 6 m setback. The Proponent also notes the proposed 6 m setback area is beyond the end of the cul-de-sac, where the road reserve provides generous landscaped separation to buildings opposite.

The Department has carefully considered the concerns raised in public submissions however considers the stepped setback for Building K is appropriate as:

- the 10 m western setback to Richmond Avenue would provide a visual relationship with the adjacent Building H and a consistent approach to the streetscape for that part of the building fronting the formed road
- the 6 m western setback for the southern part of the building is considered acceptable as the southern element of the building fronts the unformed road reserve and therefore is not read as part of the streetscape in the same way as the northern building element and would not result in material visual impacts to the streetscape.

5.2 Tree Removal and Biodiversity Impacts

Concerns were raised in public submissions that the proposal would result in the loss of vegetation and biodiversity impacts, including loss of habitat, noting existing Lot 12 and the adjacent undeveloped Richmond Avenue road reserve to the west currently effectively serve as an extension of the adjoining bushland reserve.

The modification request was referred to EESG who raised no concerns with potential biodiversity impacts or tree removal.

The Proponent provided an arborist report which notes:

- the site is weed infested and contains a number of exotic plants
- the proposal would result in the loss of approximately eight trees, including five native trees on the site and three trees in the road reserve
- another 20 trees in the road reserve immediately adjacent to the site would be capable of being retained and no trees within the open space to the east of the site would be affected by the proposal.

Tree removal and biodiversity impacts will be a matter for consideration as part of future DAs. However, the Department considers that impacts are unlikely to be significant given:

- much of the site is already cleared and occupied by the transmission tower
- the proposed building footprint would be similar in area to that of all existing built structures on the site
- of the five trees on the site likely to be removed, only one tree is within the proposed building envelope, therefore other trees may be capable of retention, subject to final design
- tree removal within the road reserve will be dependent on final footpath design and alignment to be determined at the DA stage, however it is estimated to be limited to five trees which would not have an adverse impact the natural values of the unused road reserve and public reserve

- the proposal provides potential to improve biodiversity outcomes on the site by removing existing weeds and exotic plants and planting of native species within setbacks in accordance with the indicative concept landscape plan.

The Department recommends the existing FEAR 23 in relation to tree protection be updated to confirm that removal of native trees associated with Building K (including alignment of any pedestrian paths) is to be minimised and that future applications are to demonstrate an improvement in provision of native vegetation on the site.

Subject to these requirements, the Department is satisfied the proposal would not in unacceptable impacts to biodiversity or the surrounding natural environment or bushland.

5.3 Other issues

Issue	Findings	Recommendations
Density and Floor Space	<ul style="list-style-type: none"> • The proposal seeks approval for an additional 4,296m² of residential GFA which increases the overall the maximum GFA on the site from 43,907m² to 48,203m². • The additional GFA would result in an FSR of 1.5:1 on this part of the site, which would exceed the control of 0.5:1 under Willoughby LEP 2012 for Lot 12. There is no FSR control applicable to Lot 11. • Notwithstanding, the Department notes the FSR is consistent with the Concept Plan (1.51:1) which prevails over the LEP planning controls. • Public submissions raised concerns that the additional floor space would take away from green space on the site, increase the burden on surrounding parklands, result in overcrowding and impacts on local infrastructure, including schools. • The Department has considered the concerns raised in public submission, however, considers that the proposed density is acceptable as: <ul style="list-style-type: none"> ○ the building footprint would be similar in area to that of all existing built structures on the site and therefore overall site landscape area would not be significantly altered ○ while the increased floor space would allow for a larger size units across the site, as the overall number of dwellings would be unchanged, impacts to infrastructure demands including nearby schools or open space would be marginal and there would be no change to the amount of publicly accessible open space on the site. ○ the bulk and scale of future development on the site will be controlled by the building envelope height and setbacks which are considered to be appropriate for the context of the site. • The Department therefore supports the additional floor space and is satisfied that it will not result in any adverse impacts. 	No changes required to approval.

Internal Residential Amenity

- The Application was accompanied by a design statement which considered the Design Principles of State Environmental Planning Policy 65 – Residential Apartment Development (SEPP 65), as well as indicative floor layouts to demonstrate the proposed envelope would be capable of complying with SEPP 65 and the Apartment Design Guide (ADG).
- The Department considers the proposed building envelope is generally consistent with the recommendations of the ADG, including requirements for building separation and deep soil landscaping.
- Although the proposed envelope has a maximum depth of 34 metres, exceeding ADG recommendations of 12 to 18 metres, the Department considers that, subject to the final design incorporating modulation, recesses and balconies, the future building can achieve good levels of solar access, ventilation and amenity, consistent with the objectives of the ADG.
- The Department is also satisfied that the future building is capable of achieving required internal noise levels to ensure acceptable residential amenity, despite its proximity to the Gore Hill Freeway, subject to appropriate glazing and acoustic treatments at the DA stage. An existing statement of commitment provides that future applications will be accompanied by a Noise Report which demonstrates compliance with the relevant standards for internal amenity.
- The Department is therefore satisfied that, subject to appropriate design at the DA stage, the proposal is capable of delivering a building with good levels of internal residential amenity. The future DA will be subject to existing FEAR 26 which requires future buildings to be designed in accordance with SEPP 65 and the ADG.

No changes required to approval.

Privacy and Overshadowing

- Public submissions raised concern with potential privacy impacts and access to sunlight. Residents were particularly concerned about loss of trees within the road reserve which provide screening to dwellings opposite.
- The Department considers the proposed building envelope would not result in any material adverse outcomes for the amenity of nearby premises, as:
 - the envelope would not result in any overshadowing of nearby residential properties
 - the proposal would not result in material view loss and as discussed above would improve visual amenity and outlook as a result of removal of the visually imposing tower
 - the future building would be setback more than 30 m from the closest dwelling on Richmond Avenue, exceeding accepted building separation recommendations for adequate

No changes required to approval.

privacy outcomes (the ADG recommends 12 metre separation)

- most trees providing screening within the road reserve are likely to be retained as discussed in **Section 6.2**.

Public Access

- The original Concept Approval included provision of an accessible bush track through Walter Street Reserve. In Mod 2, the requirement for the bush track was removed and replaced by a \$1,000,000 contribution to Council toward future public access and regeneration of Walter Street Reserve (in lieu of constructing the bush track).
- Council has requested that the current modification include provision for a right of way running either to the north or south of the proposed building that would enable public connection from the end of Richmond Avenue to the Walter Street Reserve.
- The Proponent considers that safe and legible public access to the Walter Street reserve is provided by Scott Street and raises concern that a public accessway adjacent to the building would compromise privacy and occupant amenity of future apartments.
- The Proponent also notes that a future connection may be created through Council owned land at the end of Richmond Avenue (**Figure 3**).
- The Department considers that the Concept Approval provides appropriate access to the Walter Street reserve via Scott Street and that the proposal does not preclude the construction of any bush track connections by Council from the end of Richmond Avenue.
- The Department concludes the approved public access remains acceptable, particularly as the proposed modification would not increase dwelling numbers or increase the demand for the public to access the future walking tracks from Richmond Avenue.

No changes required to approval.

Traffic and Parking Impacts

- Public submissions raised concerns that the proposal could result in increased use of Richmond Avenue resulting in parking and traffic impacts on that street. One submission raised concerns with traffic impacts to Edward Street.
- The modification request was accompanied by a Traffic and Transport Assessment, which demonstrated the proposal would result in no material impacts to traffic or parking in the vicinity of the site, noting the total number of dwellings would not change as a result of the proposal, nor would vehicle access points or parking rates. The intersection of Richmond Avenue and Artarmon Road would continue to operate at a very good level of service ('LOS' A).
- The Department is satisfied that the modification would not result in any unacceptable impacts to traffic or parking on Richmond Avenue or other surrounding streets.

No changes required to approval.

Heritage

- The site is not heritage listed. The Proponent's heritage consultant and the Council have both confirmed the transmission tower is not an item of heritage significance.
- Notwithstanding, Council recommended a heritage photographic survey be made prior to demolition. Council also recommend the adaptive reuse of elements of the transmission tower for use on the site with input of an artist.
- The Proponent agrees a photographic survey can be made but advises reintroduction of transmission tower materials onto the site may not be appropriate due to the potential structural and environmental condition of tower elements.
- The Department considers that although the tower has no heritage significance, it has been a highly visible element in the region since its construction in the 1950s and it is appropriate that a photographic record of the structure be made.
- Existing FEAR 21 of the Concept Approval requires that the landscape plans for the site incorporate commemorative features to acknowledge Channel Nine's contribution to the locality and to telecommunications.
- The Department considers this condition could be modified to enable adaptive reuse of elements of the tower, if found to be appropriate. However, if it is found that the structural and environmental condition of tower elements would prohibit their re-use, the Department does not consider it is essential for the adaptive reuse of the tower to be specifically required, given the tower does not have heritage significance.
- The Department is satisfied that subject to a photographic survey of the tower and incorporation of commemorative features on the site, including the repurposing of elements of the tower where suitable, the history of the site will be appropriately recorded and acknowledged.

A FEAR is recommended to ensure a photographic survey of the tower is made prior to its demolition.

FEAR 21 is recommended to be modified to include repurposing of materials of the tower, subject to confirmation of their suitability for reuse.

Contamination

- The modification was accompanied by a preliminary site investigation which identified the potential for soil and groundwater impacts to be present but concluded the site would be capable of being made suitable for the proposed development.
- Existing FEAR 39 requires future DAs to comply with SEPP 55, include a detailed contamination assessment and remediation as necessary.
- The Department is satisfied the site can be made suitable for the proposed development and that the existing FEAR will ensure remediation is addressed in accordance with SEPP 55 as part of future DAs.

No changes required to approval.

Affordable Housing Statement of Commitment

- The existing Voluntary Planning Agreement with Council requires the Proponent to provide 1,435 m² plus 5% of any residential floor space above 35,886 m² as affordable housing.
- The Proponent has updated their statement of commitments to clarify that this requirement would only apply to the existing site (to which the VPA applies) and not to Building K.
- The Department notes:
 - there is no statutory requirement under the Willoughby LEP to provide affordable housing on this site
 - the affordable housing contribution was a voluntary commitment made in relation to the original application and MOD 2, to support the increased residential density on the site
 - the removal of the transmission tower is a significant public benefit (improvement to the skyline, outlook, and visual amenity to the wider area)
 - the proponent has maintaining the dwelling cap of 460 dwellings across the site.
- On this basis, the Department is satisfied that no additional public benefits, including affordable housing are warranted.

The Department recommends the Statement of Commitments be updated as requested

Council Conditions

- Council recommended a wide range of conditions that could apply to future development on the site. Many of the conditions relate to matters that would be assessed as part of future DAs and applied to future approvals for construction (such as construction management plan, construction hours, erosion control).
- While some recommendations have been adopted in this approval (adaptive reuse of elements of the transmission tower, heritage photographic survey), the Department considers the remaining matters are for Council to consider in its assessment of the future DAs and to incorporate into any future approvals as necessary.

No changes required to approval.

Electromagnetic Radiation

- The Proponent has updated the statement of commitments to remove the requirement for Electromagnetic radiation (EMR) reports for future DAs and include a commitment to lodge a DA for the removal of the tower.
- The Department supports these amendments to the Statement of Commitments and the deletion of FEAR 40 which requires EMR reports.

The Department recommends FEAR 40 is deleted and the Statement of Commitments are updated as requested.

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department has carefully considered the issues raised in the submissions and the response of the Proponent and concludes that the proposal is acceptable as:

- the proposal results in a significant public benefit and improved visual outcomes for both the immediate streetscape and wider locality by removing the visually imposing transmission tower
- the proposed envelope has been designed to respond to the site context, including the streetscape created by the approved adjacent Concept Plan envelopes, the site topography and surrounding bushland values, with additional conditions recommended to ensure appropriate design outcomes
- as the proposal does not seek to increase dwelling numbers, there would be no material impacts to the locality in terms of traffic or impacts to infrastructure compared to the Concept Plan as approved
- the proposal would not result in significant impacts in terms of tree removal or biodiversity impacts and subject to appropriate future landscape design is capable of improving native plantings and biodiversity outcomes
- the proposed envelope would not result in adverse outcomes for the amenity of neighbours in terms of solar access, privacy or view loss impacts
- the proposal supports the orderly and economic development of the land, by replacing redundant infrastructure with residential development that more closely relates to the development on the Concept Plan site and other neighbouring development.
- all other impacts including final building design, amenity, environmental and construction impacts would be considered in further detail by Council during the assessment of future development applications

The Department's assessment therefore concludes the modification request is approvable, subject to future assessment requirements (outlined in **Appendix C**).

7 Recommendation

It is recommended that the Director, Key Sites Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application MP10_0198 MOD 4 falls within the scope of s75W of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the draft notice of decision;
- **modify** the approval MP10_0198
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



Amy Watson
Team Leader
Key Sites Assessments

8 Determination

The recommendation is **Adopted / Not adopted** by:



17/8/2020

Anthony Witherdin

Director

Key Sites Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – List of referenced documents

1. Modification Report

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8939

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8939

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8939

4. Supplementary Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8939

Appendix B – Environmental Assessment

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8939

Appendix C – Instrument of Approval of Modification

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8939

Appendix D – Statutory Considerations

The modification request has been considered against the following applicable EPIs:

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with the relevant public authorities about certain development during the assessment process. The Department has consulted and considered comments from relevant public authorities (**Section 4** and **5** of the report).

The Department also notes advice has been provided from the Proponent's acoustic consultant that future development will be capable of complying with clause 102 of the SEPP, that is, to incorporate noise attenuation to mitigate noise impacts from the adjacent freeway. The existing Statement of Commitments includes a commitment that future applications will be accompanied by a Noise Report which demonstrates compliance with the relevant standards for internal amenity

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

SEPP BASIX encourages sustainable residential development across NSW by setting targets that measure the efficiency of buildings in relation to water, energy and thermal comfort. SEPP BASIX requires all new dwellings meet sustainable targets of a 20% reduction in energy use (building size dependent) and 40% reduction in potable water.

BASIX requirements will be assessed as part of future DAs and existing commitments in the Concept Approval also require that future DAs are to exceed BASIX targets for sustainability. The Department is therefore satisfied the proposed additional buildings will comply with and exceed BASIX requirements.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

State Environmental Planning Policy 65 – Residential Apartment Development (SEPP 65) seeks to improve the design quality of residential developments and encourage innovative design. The ADG is closely linked to the principles of SEPP 65 and sets out best practice design principles for residential developments.

The ADG sets out a number of guidelines for residential flat development to ensure apartments are provided with an appropriate level of residential amenity. The application only seeks approval for concept building envelopes at this stage. Detailed floor plans layouts and façade design will be the subject of future DA(s).

The Application was accompanied by a design statement which considered the Design Principles of SEPP 65, as well as indicative floorplan layouts to demonstrate how the building envelope may achieve the ADG guidelines.

The Department has considered the envelope against the key ADG amenity criteria and concludes it is acceptable in terms of being able to provide apartment sizes, communal open space, solar access, natural ventilation and privacy, subject to future design. The proposal would result in a variation in building depth, however, the Department concludes this is acceptable as discussed at **Section 5.3**. The Department considers that the proposal is generally consistent with the aims and provisions of

SEPP 65 and the ADG and the development is capable of addressing the SEPP requirements and ADG guidelines at future DA stages.

State Environmental Planning Policy No. 55 - Remediation of Land

SEPP 55 aims to ensure that potential contamination issues are considered in the determination of a development application. The modification request was accompanied by a preliminary site investigation (PSI) to address the requirements of SEPP 55. The PSI identified there was potential for contamination on the site, but subject to appropriate investigation and remediation at the DA stage, the PSI concludes that the site is capable of being made suitable for the proposed residential land use.

The Department notes that existing FEAR 39 requires compliance with SEPP 55 and inclusion of a detailed contamination assessment and remedial action strategy as part of future DAs.

The Department is therefore satisfied that issues of contamination and remediation would be addressed at the development application stage to ensure compliance with SEPP 55.

State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19)

SEPP 19 seeks to protect and preserve bushland within urban areas. As the site adjoins bushland reserved for public open space purposes, including open space to the east of Lots 11 and 12 and road reserve which functions as, and is managed as open space, to the south and west of Lot 12, the Department is required to consider whether there is a need to retain bushland on the subject site, the effect of the development on the adjoining bushland. Retention of vegetation and impacts to the adjoining bushland have been considered in **Section 5**, and the Department is satisfied that subject to standard measures implemented as part of future DAs to control erosion and tree protection the proposal would not result in any unacceptable impacts on the adjacent bushland.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

SHC SREP provides planning principles for development within the Sydney Harbour catchment. The site is located within the Sydney Harbour Catchment area. The SHC SREP does not include any matters for consideration in the assessment of development applications within the Sydney Harbour Catchment. Nevertheless the proposal is consistent with the Planning Principles for the Sydney Harbour Catchment and will not have any significant adverse impact on the catchment as does not result in any adverse ecological impacts and future DAs will include measures to improve stormwater management and runoff from the site.

Draft State Environmental Planning Policy (Remediation of Land)

The Draft Remediation SEPP will retain the overarching objective of SEPP 55 promoting the remediation of contaminated land to reduce the risk of potential harm to human health or the environment. The Department is satisfied that the modified proposal would not raise any additional issues with regard to contamination objectives of the Draft Remediation SEPP.

Draft State Environmental Planning Policy (Environment)

The Draft Environment SEPP is a consolidated SEPP which proposes to simplify the planning rules for a number of water catchments, waterways and urban bushland areas. Once adopted, the Draft Environment SEPP will replace seven existing SEPPs, including, relevantly, the Sydney Harbour Catchment REP and SEPP 19 (both discussed above). The proposed SEPP will provide a consistent level of environmental protection to that which is currently delivered under the existing SEPPs. Where

existing provisions are outdated, no longer relevant or duplicated by other parts of the planning system, they will be repealed. Given that the proposal is consistent with the provisions of the existing SEPPs that are applicable, the Department concludes that the proposed development will generally be consistent with the provisions of the Draft Environment SEPP.

Willoughby Local Environmental Plan (WLEP) 2012

The WLEP 2012 aims to encourage the development of housing, employment, infrastructure and community services to meet the needs of the existing and future residents of the Willoughby LGA. The WLEP 2012 also aims to conserve and protect natural resources and foster economic, environmental and social well-being.

The Department has consulted with Council throughout the assessment process and has considered all relevant provisions of the WLEP 2012 and those matters raised by Council in its assessment of the development (refer to **Sections 4 and 5**). Permissibility of the development under WLEP 2012 has been considered in **Section 3.3**. Floor Space has been considered in **Section 5.3**. The Department concludes that other than the variation from the current zoning on the site and floor space requirements, future development would be consistent with the relevant provisions of the SLEP 2012.

Appendix E - Community views

The Department received ten submissions from the public. The consideration of the issues raised in submissions is included in **Table 1** below

Table 1 | Community views and consideration

Issue	Consideration
Richmond Avenue Setbacks	<p>The Department considers the 6m to 10m stepped setback for the building is appropriate as:</p> <ul style="list-style-type: none"> the 10 m setback for the northern part of the building would provide a visual relationship with the adjacent Building H and a consistent approach to the streetscape for that part of the building fronting the formed road the 6 m setback for the southern part of the building fronts the unformed road reserve and therefore is not read as part of the streetscape in the same way as the northern building element and would not result in material visual impacts to the streetscape the setbacks still provide generous building separation to dwellings opposite and do not result in any adverse impacts in terms of privacy, shadowing, views, or visual impacts.
Building height	<ul style="list-style-type: none"> In response to concerns raised by the Department, Council and public submissions, the Proponent reduced the proposed height of Building K by 1.2 m. The Department is satisfied that the revised building heights provide for a built form that presents as similar in scale to the street as approved adjacent Building H on the site and a steps down in height response to the topography Further, the proposed building heights would result in no adverse impacts for amenity in terms of overshadowing, privacy or view loss to neighbours or adverse streetscape impacts

Pedestrian access from Richmond Avenue	<ul style="list-style-type: none"> • The Department considers that it is appropriate to provide pedestrian access to Richmond Avenue, as the site has a frontage to Richmond Avenue. The proposed access to Richmond Avenue is unlikely to cause traffic and parking impacts as on-site parking will be provided in accordance with the conditions of the Concept Approval. • In response to concerns raised, the Proponent has indicatively relocated the pedestrian entry further to the north. The Department notes the footpath location and design will be a matter for consideration by Council as part of the future DA for the site. The Department recommends the existing FEAR 23 in relation to tree protection be updated to confirm that removal of native trees associated with Building K (including alignment of any pedestrian paths) is to be minimised and offset by improved plantings.
Bushland impacts	<ul style="list-style-type: none"> • The proposal provides a 6 m southern setback and a 7 m eastern setback to the adjoining reserve. • The Department considers the proposed building is unlikely to have adverse impacts to the adjoining reserve, noting: <ul style="list-style-type: none"> ◦ the setbacks of the building to surrounding reserve are more generous than setbacks of other approved buildings to the reserve, would not impact on any existing trees within the reserve, and enable provision of plantings within the setbacks to integrate the site with the surrounding reserve ◦ any tree removal in the adjoining road reserve would be limited to that required for provision of a council pedestrian path in Richmond Avenue (estimated to affect 3 trees) and would be offset by improved plantings as discussed above ◦ a FEAR has been recommended to ensure the building would not create overbearing visual impacts to the reserve and standard conditions of approval in future DAs relating to control erosion, sedimentation and tree protection could also further ensure the adjoining reserve is protected.
Loss of Green Space	<ul style="list-style-type: none"> • The site is privately owned and does not form part of the reserve and therefore cannot be considered 'green space'. • The Department notes that the site is largely weed infested and features exotic plants. The Department considers that the proposal is unlikely to cause biodiversity impacts given: <ul style="list-style-type: none"> ◦ there are only two trees on Lot 12 affected by the proposal ◦ areas of increased footprint on Lot 12 would be offset by improved setbacks and reduced footprint on Lot 11 ◦ the proposal provides potential to improve biodiversity outcomes on the site by removing existing weeds and exotic plants and providing new planting of native species within setbacks in accordance with the indicative concept landscape plan ◦ a FEAR is recommended to confirm that removal of native trees associated with Building K is to be minimised offset by an improvement in provision of native vegetation on the site.
Traffic Impacts	<ul style="list-style-type: none"> • The Department is satisfied that the modification would not result in any unacceptable impacts to traffic or parking on Richmond Avenue or other surrounding streets as the total number of dwellings would not change as a result of the proposal, nor would vehicle access points or parking rates. • The intersection of Richmond Avenue and Artarmon Rod would continue to operate at a very good level of service ('LOS' A), indicating Richmond Avenue will not experience unacceptable traffic impacts.
Increased GFA	<ul style="list-style-type: none"> • While the increased floor space would allow for a larger size units across the site, as the overall number of dwellings would be unchanged, impacts to infrastructure demands including nearby

schools or open space would be marginal and there would be no change to the amount of publicly accessible open space on the site.

Privacy

- The Department is satisfied that the modification would not result in any unacceptable impacts to privacy of nearby residents, noting the future building would be setback more than 30 m from the closest dwelling on Richmond Avenue, exceeding accepted building separation recommendations for adequate privacy outcomes (the ADG recommends 12 metre separation) with significant screening provided by the road reserve as well as potential front setback plantings.

Dwelling Numbers

- The proposal does not seek to change dwelling numbers.
-