

Form 2: Responsible Authority Report

(Regulation 17)

Nos. 55, 57, 57A, 57B, 59, 61 & 61A (Lots 522, 1, 2, 13, 3 & 1) Canning Beach Road and Nos. 2 & 6 (Lots 521 & 12) Moreau Mews, Applecross & Road Reservation Reference 3159495

16 Storey Mixed-Use Development comprising 224 Apartments, 12 Non-Residential Tenancies and Adjacent Foreshore Upgrades

DAP Name:		Metro Inner South JDAP
Local Government Area:		City of Melville
Proposed Amendments:		Minor changes to building height, various other compliant internal changes
Applicant:		Edge Visionary Living
Owner:		Edge Holdings Pty Ltd
Value of Amendment:		\$110 million
Responsible Authority:		City of Melville
Authorising Officer:		Steve Cope- Director Urban Planning
LG Reference:		DAP-2019-4/B
DAP File No:		DAP/19/01638
Date of Original DAP decision:		11 December 2019
Application Received Date:		8 November 2021
Application Statutory Process Timeframe:		90 Days
Attachment(s):	<ol style="list-style-type: none"> 1. Architectural Plans (13 January 2022) 2. Architects Report (October 2021) 3. Planning Consultant Report (21 January 2022) 4. Traffic Impact Assessment (28 January 2022) 5. Waste Management Plan Technical Note (11 February 2022) 6. Previous DAP Agenda incl. Plans and Associated Technical Reports 7. DAP Meeting Minutes 11 December 2019 8. Ordinary Meeting of Council Minutes (Extract)- 15 February 2022 	
Is the Responsible Authority Recommendation the same as the Officer Recommendation?	<input type="checkbox"/> Yes	Complete Responsible Authority Recommendation section
	<input type="checkbox"/> N/A	
***(to be completed following the council meeting)	<input type="checkbox"/> No	Complete Responsible Authority and Officer Recommendation sections

Responsible Authority Recommendation

That the Metro Inner South Joint Development Assessment Panel resolves to:

1. **Accept** that the DAP Application reference DAP/19/01638 as detailed on the DAP Form 2 dated 11 December 2022 is appropriate for consideration in

accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;

2. **Approve** DAP Application reference DAP/19/01638 and accompanying plans (A02-300- A02-317, A3-01 to A3-04) dated 13 January 2022, in accordance with the provisions of the City of Melville Local Planning Scheme No. 6, for the proposed minor amendment to the approved 15 storey mixed use development at No. 55-61A Canning Beach Road & 2-6 Moreau Mews, Applecross, subject to amended/additional conditions below;

Amended Condition

9. Prior to the commencement of development, an amended landscaping and reticulation plan is to be provided to and approved in writing by the City. The plan shall be fully implemented within the first available planting season after the initial occupation of the development and maintained as per the associated maintenance schedule, to the satisfaction of the City.

All other conditions and requirements detailed on the previous approval dated 11 December 2019 shall remain unless altered by this application.

Reasons for Responsible Authority Recommendation

****To be completed as required following the council meeting

Details: outline of development application

Region Scheme	Metropolitan Region Scheme
Region Scheme Zone/Reserve	Urban
Local Planning Scheme	Local Planning Scheme No. 6
Local Planning Scheme Zone/Reserve	Zone: Centre C2 Density: R-AC0
Structure Plan/Precinct Plan	Canning Bridge Activity Centre Plan
Structure Plan/Precinct Plan Land Use Designation	M10- Mixed Use Precinct
Use Class (proposed) and permissibility:	Permitted Land Uses: Residential (Multiple Dwellings) Restaurant Shop Office Small Bar Civic Use Discretionary Uses (previously approved): Uses Not Listed- Community Uses Consulting Room
Lot Size:	6341sqm
Number of Dwellings:	224
Existing Land Use:	Vacant Land
State Heritage Register	No
Local Heritage	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Heritage List <input type="checkbox"/> Heritage Area
Design Review	<input type="checkbox"/> N/A <input checked="" type="checkbox"/> Local Design Review Panel <input type="checkbox"/> State Design Review Panel <input type="checkbox"/> Other
Bushfire Prone Area	No
Swan River Trust Area	Yes- Adjacent to Development Control Area

Proposal:

Approval is sought from the Metro Inner South Joint Development Assessment Panel (JDAP) for the following amendments to the approved fifteen storey mixed use development:

- 1) An overall 1.95 metre building height increase of the towers, including incremental height additions to each level within towers, and an increase to the podium height of 45cm,
- 2) The removal of the approved penthouse mezzanine floors in two of the approved towers, and their replacement with a full level. The amendments to the penthouse mezzanine floors result in two towers being reclassified as 16 storeys in height,
- 3) The provision of four additional apartments up to a total of 224,
- 4) Internal changes to the podium including modifications of the commercial tenancies, reconfigured parking, residential stores and changes to the bin stores,

- 5) Internal apartment layout changes, and
- 6) The addition of a rooftop plant store.

Background:

In December 2019 the Metro South JDAP approved, with conditions, a three tower, fifteen storey mixed use development at 55 -61 Canning Beach Road and 2 – 6 Moreau Mews, Applecross (the subject site). The development included;

- 220 apartments,
- 4 Restaurant/Café tenancies,
- Three Community Spaces (Community Resource Centre, Makers Studio and Community Workshop),
- Medical Consulting Rooms,
- Ageing in Place Centre,
- Small Bar,
- Bike/Kayak Hire,
- Day Spa (Shop),
- End of Trip Facilities,
- 391 car parking spaces (incl. 20 additional public parking bays), and
- Upgrades to the adjacent Swan River foreshore

The subject site comprises 8 lots totalling 6341 square metres and fronts onto both Canning Beach Road and Moreau Mews (as shown in Figure 1 below). With the exception of the Swan River to the north, the subject site abuts a combination of single, grouped and multiple dwellings on the adjoining lots. The site is located within the Kintail Quarter (Q1) of the CBACP in the M10 Mixed Use zone as shown in Figure 2 below.



Figure 1 Subject site

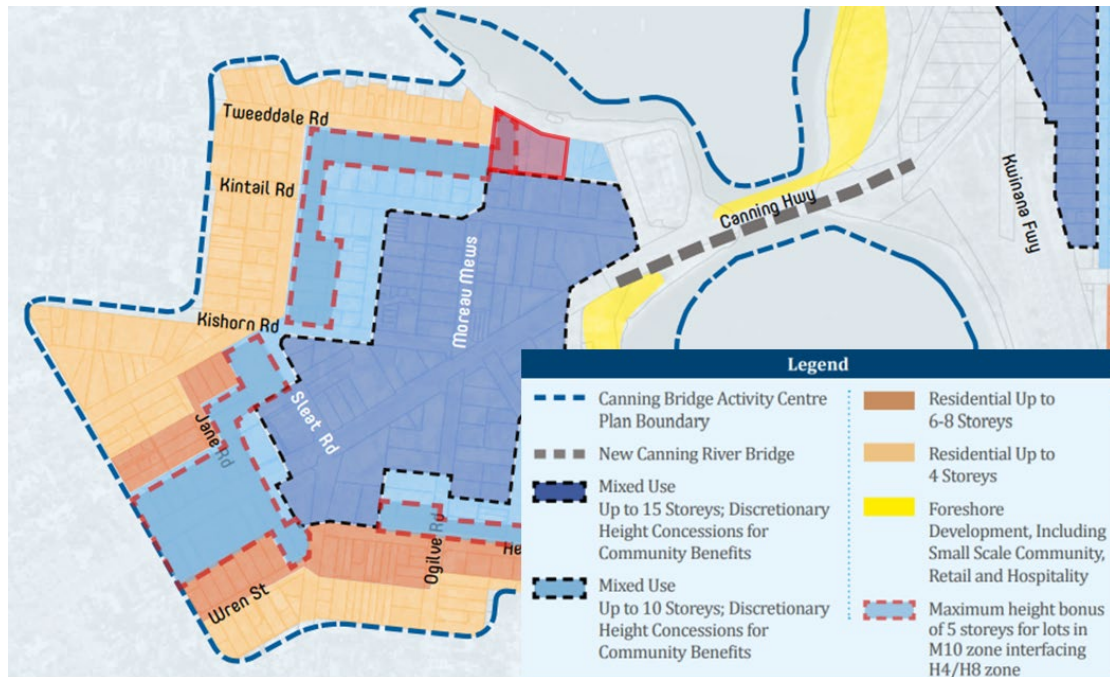


Figure 2 Subject site highlighted in red within the M10 zoning

Clause 17A Delegated Amendment

In April 2021 approval was granted by the City under Clause 17A of the Planning and Development (Development Assessment Panel) Regulations 2011. The minor amendments that were approved at that time included;

- The reconfiguration of the shape and size of some of the commercial tenancies,
- Modifications to the bin stores and residential stores,
- Changes to the commercial car parking layout and provision,
- Re-siting of bicycle stores, and
- Changes to the apartment mix and layouts (incl. an additional 4 apartments), and

The approved amendments were considered to be minor in nature as they did not materially affect the external appearance of the building. In addition, the amendments did not change the approved building heights or setbacks, nor did they compromise the approved community benefits or the overall design quality of the development.

Legislation & policy:

Legislation

- *Planning and Development Act 2005*
- City of Melville Local Planning Scheme No. 6 (LPS6)
- Canning Bridge Activity Centre Plan
- *Swan Canning River Management Act 2006*

State Government Policies

- SPP3: Urban Growth and Development
- SPP4.2: Activity Centres for Perth and Peel
- SPP7.0 Design for the Built Environment
- Swan Canning River Management Regulations 2007

Local Policies

- CP-029: Street Tree Policy
- LPP1.1: Planning Process and Decision Making
- LPP1.3: Waste and Recyclables Collection for Multiple Dwellings, Mixed Use and Non- Residential Developments.
- LPP1.4: Provisions of Public Art in Development Proposals
- LPP1.6: Car Parking and Access
- LPP1.8: Crime Prevention Through Environmental Design of Buildings Policy
- LPP1.10: Amenity
- LPP1.20: Canning Bridge Activity Centre Plan Density and Bonus Height Provisions

State Planning Policy 4.2 - Activity Centres for Perth and Peel

Under the provisions of State Planning Policy 4.2 (SPP4.2), Canning Bridge is classed as a District Centre. District Centres should develop into areas of diversity and intense activity, with a wide range of land uses including retail, commercial, entertainment and higher density development, in order to provide local employment opportunities, create a more compact and dense urban form and reduce travel demand.

City of Melville Local Planning Scheme No 6

Under the provisions of Local Planning Scheme No. 6 (LPS6), the site is within a Centre Zone C2. This is consistent with the status of Canning Bridge as a District Centre in SPP 4.2. Development controls for the Centre C2 zone are contained within the CBACP.

Canning Bridge Activity Centre Plan

The CBACP was jointly prepared by the City of Melville and the City of South Perth in conjunction with State Government transport and planning agencies. The CBACP was adopted by the WAPC in April 2016.

Under the provisions of the CBACP, the application site is located within the M10 zone of the Kintail Quarter. This is the central core of the plan area, where a nominated building height of 10 storeys applies. Despite this designation additional building height may be approved where the relevant Desired Outcomes of all Elements are met or exceeded, the achievement of exemplary design and the delivery of significant community benefit, as required by the criteria outlined in Elements 21 and 22.

Since its adoption there have been five minor amendments to the CBACP three of which have occurred since the previous DAP decision was made in 2019. Only one of these amendments affects the subject site (Amendment No. 3), which nominates a five storey bonus height limit for lots adjacent to the H4/H8 zone, a change that was brought about after consideration by the WAPC of a proposed amendment to the plan provisions to introduce a bonus height cap of five storeys across the whole of the M10 zone. The lots affected by Amendment No. 3 are identified in the CBACP map, an extract of which is shown in Figure 2 above. It is noted that one of the towers within the approved development shares an interface with the H4 zone; this tower is proposed to remain at 15 storeys and as such aligns with the amended plan provisions.

At its meeting held 20-27 August 2019, Council endorsed a series of actions to commence a comprehensive review of the Canning Bridge Activity Centre Plan (CBACP). Consultant Hatch Roberts Day (HRD) was appointed in August 2020 to undertake the review. HRD has prepared a draft amended CBACP which has been provided to the Elected Members for their consideration, with feedback to be provided to HRD before the matter is considered at a future Council meeting. If the proposed changes are endorsed at this Council meeting the draft CBACP will be subject to a period of public consultation. A report on submissions would be prepared for the consideration of Council and the final draft would be sent to the DPLH.

Proper and orderly planning would suggest that no material weight can be given to proposed modifications to the provisions of the CBACP, associated with the CBACP Review process until the proposed modifications have been subject to the rigour of a public consultation process, endorsement by Council and consideration by the WAPC.

Local Planning Policy 1.20 – Canning Bridge Activity Centre Plan Density and Bonus Height Provisions

Acknowledging that the approval pathway for Local Planning Policy was likely to be quicker than that for an amendment to the CBACP, Council at its meeting on 10 December 2019 supported a notice of motion to engage an external planning consultant to prepare a draft Local Planning Policy (LPP) relating to bonus heights in the CBACP.

Taylor Burrell Barnett (TBB) was appointed in mid-February 2020. TBB drafted a LPP in consultation with a 14-person Stakeholder Working Group (SWG) consisting of members of the community and property developers. Thereafter the draft LPP was presented to Council for consent to advertise. Determining that the draft policy prepared by TBB did not meet the expectations of the community, a notice of motion to reject and replace the report with one prepared by the SWG was instead supported. The alternative draft LPP was advertised and thereafter adopted by the

Council on the 16 February 2021. This document is known as Local Planning Policy 1.20- *Canning Bridge Activity Centre Plan Density and Bonus Height Provisions*.

Further information as to how the development as now proposed satisfies the provisions of LPP 1.20 in respect of Building Height is provided in the Planning Assessment section of this report.

Swan Canning River Management Act 2006 (SCRM)

The SCRM exists for the protection of the Swan and Canning Rivers and associated land to ensure maintenance of ecological and community benefits and amenity. It also establishes the powers of the Swan River Trust (SRT) who (amongst other things) provide advice in respect of development on or abutting the river system.

The foreshore upgrades approved as part of the original DAP decision include an increase in green space, additional native vegetation, erosion control, narrowing of the road and realignment of the footpath, all of which are considered to be consistent with the objectives of the SCRM and the associated Swan Canning River Management Regulations 2007.

Consultation:

Public Consultation

Formal consultation was undertaken in accordance with the provisions of Local Planning Policy *LPP1.1 - Planning Process and Decision Making*. The formal consultation process offered owners and occupiers of the surrounding lots the opportunity to comment on the proposed changes to the building height and consisted of:

- 97 letters; and
- The proposal plans and all relevant information uploaded to the City's public consultation portal 'Melville Talks'.

In response to the formal consultation, 6 submissions were received, all of which opposed the proposed amendments. The comments and concerns raised by the submissions received are summarised in the following table:

Summary of Objections

Issue Raised	Officer's comments
Podium height increase will reduce southern neighbour's amenity	Refer to Planning Assessment on Building Height
Overall height increase will further shadow adjoining southern neighbour's property	
Development does not meet a number of provisions in LPP1.20 including; 1. Exceeds 3 storey/30% height bonus	Refer to Planning Assessment on Building Height

2. Creation of stranded asset	The changes are to an existing approved development, therefore the consideration of a stranded asset is not considered relevant.
3. Not in accordance with SPP7.0	The minor changes do not impact on the consistency of the proposal relative to SPP7.0
Larger building profile will further impact on property values	This, on its own, is not a material consideration for planning purposes
Need to manage construction impacts like dust, noise, parking	A condition of approval has been applied which sets out the need for a Construction Management Plan, to be approved in writing by the City prior to commencement of construction. This CMP will assist in mitigating the impact of the construction process however it is acknowledged it will not remove such impacts completely.
Inconsistent with 'Centre Zone' objectives in LPS6, i.e. "Development should not be detrimental to the amenity of adjoining owners or residential properties in the locality"	The potential amenity impacts created by the proposed amendments are considered to be acceptable and are discussed in more detail in the Planning Assessment section of this report

Referrals/consultation with Government/Service Agencies

Swan River Trust (SRT)/Department of Biodiversity, Conservation and Attractions (DBCA)

The proposed amendments were re-referred to the Department of Biodiversity, Conservation and Attractions (DBCA) for consideration, acknowledging that the subject site abuts the DBCA's Development Control Area (DCA).

A referral response from the DBCA confirmed that it supports the proposed changes and has "no concerns about them having a material impact on the river, foreshore or the amenity".

Water Corporation

The original DAP application was referred to Water Corporation which supported the proposal without conditions. Since there are no changes to the works within the verge or an increase in water resource demands created by the proposed changes, no further referral was undertaken.

Design Review Panel Advice

The original application approved by the Metro Central JDAP was considered by the Canning Bridge Design Review Panel (DRP) on eight occasions between July 2018 and November 2019. At the last of these meetings the panel members unanimously determined that the development was “exemplary” for the purposes of Element 21 of the CBACP.

The City has reviewed the proposed amendments against the previous findings of the DRP (See Attachment 6) and determined that the minor changes do not detract from the design quality of the proposal. The key aspects of the development which resulted in its exemplary design status remain unaffected. For this reason no further referral to the DRP occurred.

Planning Assessment:

The proposed development has been assessed against all the relevant legislative requirements of the City of Melville Local Planning Scheme No.6, Local Planning Policies and Council Policies and the Canning Bridge Activity Centre Plan. The two areas of the proposal which require detailed consideration are;

- The ability for it to be considered as a Form 2 amendment; and,
- The changes to building height in terms of overall height, height in storeys and the podium height.

Each of these matters is discussed below;

Form 2

In considering this application, the JDAP needs to be satisfied that it is a minor amendment and as such is appropriate for consideration under Regulation 17 of Planning and Development (Development Assessment Panel) Regulations 2011 (the Regulations).

It is the opinion of the City based on legal advice received that the current Form 2 application is appropriate for consideration by the JDAP under Regulation 17, as an amendment to the initial approval issued by the JDAP, subject to the amendments that were endorsed by the City in April 2021 being incorporated within the current DAP application. These amendments have been duly incorporated into the current, subject DA. In this way, the JDAP may consider whether the amendments currently proposed, together with those previously approved by the City, would substantially change the initial JDAP approval such that a Form 2 application would be inadmissible in this case. It is the opinion of the City that it does not, on the basis that:

- a) The development as approved is a very substantial mixed-use development, and the changes proposed have to be assessed in that context. The physical changes proposed to the building height in total, and to the podium height are insignificant in the context of the approved development;
- b) The change to the number of dwellings is insignificant;
- (c) The change from 15-storey plus mezzanine to 16-storeys would not be perceptible externally;
- (d) The changes to the number, layout and mixture of the apartments would not amount to significant changes either quantitatively or qualitatively;

- (e) The same can be said about the changes to the ground floor tenancies;
- (f) The internal changes are largely to improve functionality, and are insignificant in the context of the approved development.

It is noted that it is not uncommon for amendments to be proposed with respect to major development proposals such as this after the grant of development approval as a result of ongoing technical consideration and input from the project team. Such amendments can be the result of the developer responding to specific requests from would be purchasers to amend specific aspects of an apartment layout. The proposed changes to the height of the building require an assessment against the relevant standards contained in the CBACP and other relevant documents. This is detailed in the relevant sections of the report below.

In summary, it is considered that the proposed amendments would not substantially change the approved development. The development retains the initial design intent and visual appearance made up of a podium form with three towers above, high levels of streetscape engagement, and a high quality, sculptural built form. It maintains its public-facing offering, including food and beverage, commercial and community uses at the ground floor. The development continues to provide a high-density and high-quality apartment product and this accords with the CBACP.

Building Height

The table below identifies the proposed changes to the building height sought as part of this amended application. The changes and their impacts are discussed thereafter.

Table 1	Assessment Provision	Requirement	Approved Application	Proposed Application
Podium Height	CBACP Cl. 3.2	13.5m max	14.2m max	14.65m max
Tower Height	CBACP Element 21 & 22- Bonus Provisions	Performance based	15 storeys with mezzanine	16 storeys
- Storeys - Height (m)			57m max height above NGL	59m max height above NGL

Podium Height

Element 5, Clause 5.1 of the CBACP requires the podium of all developments within the M10 and M15 zones to be built up to the side and rear boundaries. Element 3, Clause 3.3 requires these podiums to be between 7m and 13.5m in height above natural ground level.

As part of the JDAP decision in 2019, a performance assessment of the podium height was required. This was because the height of the podium along the eastern elevation of the site was an average height of 13.7m and a maximum height of 14.2m. Due to its relationship with the adjoining eastern property this height was acceptable, and was not considered to prejudice the adjoining neighbour or the

streetscape. The podium height was therefore considered to meet the associated Desired Outcomes, and was approved by the JDAP on that basis.

The proposed changes to the development include a modest increase in the height of the floors throughout the development, a change which is considered in greater detail in the tower height section below. Importantly however the changes to the floor heights in the podium result in the overall podium increasing by 450mm relative to the previous approval. The podium height will be more than 13.5 metres for a portion of the southern boundary as well as the eastern lot boundary and this change requires a performance assessment relative to the associated Desired Outcomes.

During the advertising process, submissions were received from two adjacent properties which objected to the change in the height of the podium wall. Since then, the applicant has amended the plans to relocate a 1metre high landscaped planter box/balustrade initially located on the podium edge, and now relocated away from the edge. This responds to the concerns raised by the submissions received, noting however that where those submitters interface with the podium wall, it is in fact consistent with the 13.5m maximum height set by Element 3, Clause 3.3.

The portions of podium which are actually greater than 13.5 metres in height are considered to be acceptable having regard to the Desired Outcomes of the CBACP for the following reasons.

- 1) The majority of the shadow cast from this development is from the tower elements, not the podium. The tower shadow extends to Kintail Road in the winter, beyond the shadow which would be cast by the podium levels. As such, the additional podium height will not generate additional shadowing towards those neighbours located to the south.
- 2) The increase of 45cm to the maximum podium height does not have a uniform impact across the development, and in some areas equates to no more than 13.5m. Given this, any additional bulk impacts that would result are minor and unlikely to result in any further impacts of concern. In addition, any additional bulk impacts are mitigated by;
 - a. The limited opportunity to perceive the extra height when viewed from the adjoining properties based on the angle of view from those properties, and
 - b. The podium elevations incorporate courtyard recesses and vertical landscaping within them. These relief elements serve to alleviate any adverse impacts towards adjoining properties, them being designed to align with the outdoor spaces of adjoining properties. (see Figure 3 below),

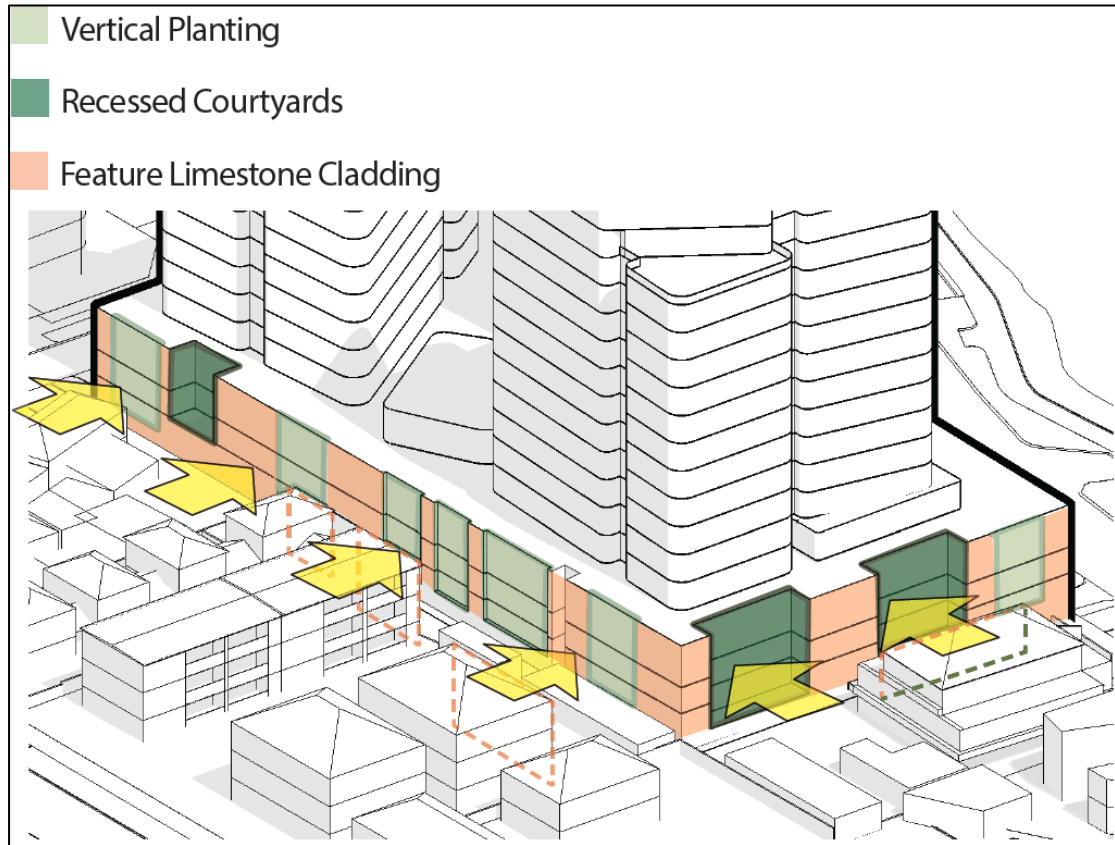


Figure 3 Landscape recesses and vertical planting in podium walls

- 3) The podium height change does not reduce the privacy of the adjoining neighbours,
- 4) All of the sites south of the subject site are within the M15 Mixed Use precinct of the CBACP. The development standards for this precinct also allow for podium levels heights between 7 and 13.5 metres and tower heights of 15 storeys or taller if bonus height is secured under Elements 21 and 22. As such it is likely that when development of the southern lots takes place, the podium walls in this case will interface with similar podium walls of similar height.
- 5) On the eastern side of the podium where the podium height is greatest, the podium adjoins four apartments. Each of these four apartments is street fronting, with their internal living spaces and outdoor living area at the front of the lot orientated towards the river. There is also a 5m separation because of a vehicle access leg between the proposed podium and adjoining built form. This site is also in the M10-Mixed Use zone. These facts combine to effectively mitigate any adverse impacts that might otherwise result from the podium wall at the height proposed in this location.



Figure 4- Subject lot (right of photo) relative to adjoining multiple dwellings



Figure 5- Podium height variation is greatest in NE corner of lot

Overall Building Height

The CBACP is a performance-based document requiring an assessment against the Desired Outcomes and the associated Element requirements. In relation to the M10-Mixed Use Zone, the nominated building height is 32m and 10 storeys; however under the provisions of Element 3, Cl.3.4 the opportunity exists for development to exceed the nominated heights, with such development being assessed in accordance with the provisions of Element 21 and 22. The following sections detail the proposed changes to building height and including the assessment of this relative to Elements 21 and 22.

1) Tower Height- Storeys

The existing approval for the subject site is for three towers, each fifteen storeys in height, or approximately 57m tall, excluding the tower 'crowns'. As approved, the top floor of each tower has two penthouse apartments, each with a mezzanine level contained within a double height floor space (see Figure 6 below). Under the provisions of the CBACP these mezzanine spaces do not constitute a building storey.



Figure 6- Previously approved penthouse and associated mezzanine level

The applicant now seeks approval to delete the mezzanine areas and create two storey apartments instead. It is proposed that this be achieved utilising the approved mezzanine floor area coupled with the use of the void space currently created by the approved mezzanine levels. The total increase in floor area is approximately 590sqm but this extra space does not result in the creation of any additional apartments, as the extra floor space remains linked to the corresponding apartment below. Notwithstanding the floor to floor heights being modified (see below), the modifications to the do not affect the height of the building (in metres), noting minor floor to floor heights explained below.

These changes to the mezzanine level constitute the introduction of an additional building storey, and as a result both the eastern and northern towers will be 16 storey in nature.

2) Tower Height- Metres

In addition to the mezzanine changes, the applicant proposes to adjust the floor to floor heights throughout the development. The change in height for each floor varies from 95mm to 300mm (averaging 125mm per floor). Each of the three towers increases in overall height by 1.95m.



Figure 7- Height comparison between existing approved development and proposed

The change to the floor to ceiling heights are brought about by the need to:

- 1) Conceal structural and mechanical elements within the building (incl. air intakes on the western façade facing Moreau Mews),
- 2) Remove ramps, steps and level changes in the communal areas of the podium, as well as provide for a more appropriate depth for the pools,
- 3) Achieve adequate clearance for services and acoustic separation treatments within ceiling voids, and
- 4) Provide for additional slab thickness required for loads from deep soil planting.

The applicant has provided more detailed technical justification for the change to each floor level (see Attachment 3) including issues with the fire systems in the mezzanine stores, slab thickening and buyer-led changes to apartment layouts.

Bonus Height - Elements 21 & 22

The aforementioned changes to the height of the towers, both in storeys and metres requires assessment against Elements 21 and 22 of the CBACP, the bonus height provisions. In order to access the bonus height provisions of the CBACP, a development must demonstrate that the Desired Outcomes of all Elements have been met or exceeded. The CBACP states in the preamble to Elements 21 and 22 (Bonus Provisions P40) that;

“For properties within the M15 or M10 Zone consideration of greater height than permitted in Element 3 may be approved where the relevant Desired Outcomes (DO) of all Elements are met or exceeded and where exemplary design is proposed in the opinion of the Design Advisory Group and where the development includes the provision of a significant benefit to the community” and

“Applicants shall respond to the requirements of Element 21 and Element 22 to be eligible for bonus provisions.”

This application is for a minor amendment to an extant approval, therefore the assessment of Elements 21 and 22 has been limited to those provisions directly linked to the tower height changes listed below.

- 1) Desired Outcomes DO3- Building Height
- 2) Element 21.4.1- Solar Access
- 3) Element 21.4.3- Traffic statement
- 4) Element 22.1- Provision of Community Benefit

- 1) Desired Outcomes DO3- Building Height

The Desired Outcomes of Element 3 states:

“To ensure that building heights are consistent with the desired scale and built form of the centre and to ensure that the interface between Zones is appropriately managed and the amenity of property both within and adjacent to the CBACP is adequately considered”

“Applicants are encouraged to provide variation in scale, bulk and form along the streetscape.....”

“Where an applicant proposes heights greater than those identified in these requirements the applicant may choose to have the development assessed against the requirements of Elements 21 and 22

The DAP previously determined that at 15 storeys and 57m in height the development was consistent with Desired Outcome DO3. The increase in the overall height of the building by 2m, and the effective addition of one storey, are not considered to prejudice the terms of the approval as initially granted by the JDAP. As stated earlier in this report, legal advice received by the City in respect of this DA included the statement that the development approved is a very substantial mixed-use development, and the changes proposed should be assessed in that context and physical changes proposed to the building height in total, and to the podium height are considered to be insignificant in the context of the approved development

On that basis and accepting of the minor nature of the changes now proposed, it is considered that as the provisions of Desired Outcome 3 were met by the initial development proposal as approved, and as the amendments included with the current DA are considered to be minor in the context of that initial approval, the Desired Objective DO3 remains satisfied.

- 2) Element 21.4.1- Solar Access

The additional 1.95m increase in the overall tower heights will result in additional shadowing to the south. Both DO5-Side and Rear Setbacks and Element 21.4.1 refer to the management of shadow impacts on adjacent and adjoining properties as a result of discretionary height bonuses.

The applicant has provided updated shadow modelling to show how the extra height will impact on properties located on the south side of Kintail Road. The shadow plan shows that the properties immediately south of the subject lot are unaffected by the



Figure 8- Revised shadow modelling

Acknowledging that the shadow extends across to the other side of Kintail Road, it is necessary to account for any additional impact affecting the three sites on the opposite side of the road. The shadow from the proposed towers falls within the first 7m of each of these lots. The properties and their impacts are as follows;

- 3) No. 16-18 Moreau Mews is a five storey apartment development setback 11m from the street. Visitor parking and a portion of a communal outdoor living area are in the affected setback area. Due to the solar orientation this communal outdoor area would only be over shadowed until midday, after which time the shadow will reduce.
- 4) No. 7 Kintail Road is a commercial office building setback 6m with a screened ground floor carpark fronting the street (offices above).
- 5) No. 3 Kintail Road is the second stage of Finbar's multi tower project known as Aurora. The shadow cast from the proposed development will land on a combination of Aurora's 3m street setback, behind which is a proposed ground floor commercial space and apartment lobby.

It is considered that the additional 3m of shadow created by the change to the height of the towers will not prejudice any of the three properties. Of the three sites identified above, only the apartment development contains any sensitive spaces within the front setback area and the shadow impacts only a small portion of this space generally falling over a part of the pool located towards the street boundary. The pool in this space is unlikely to be regularly used in the winter months when the shadow is at its longest. The remainder of the courtyard would have access to sunlight.

It is noted that the existence of four mature street trees present additional shadow impacts for these properties (see Figure 9 below) as would any development of lots on the north side of Kintail Road, where 15 storey development is permissible under the provisions of the CBACP.



Figure 9- Street view showing three of the four existing street trees

1) Element 21.4.3- Traffic statement

The applicant has provided an updated Traffic Impact Assessment to demonstrate that the changes proposed do not impact on the surrounding road network (see Attachment 4). The report accounts for the four additional apartments proposed and the changes to the mezzanine levels, and confirms that the development will not unduly impact on the local or regional road network. The City's Traffic and Road Safety Team raise no concerns in respect of the report's findings.

2) Element 22.1- Provision of Community Benefit

Further to the requirements of Element 21, the proposed development is also required to provide community benefits for the users of the Activity Centre Plan area in accordance with Element 22. These community benefits must be provided at a quantum and scale which is deemed to be in proportion to the bonus height proposed. Further consideration is required of the level of community benefit proposed, having regard to the level of community benefit associated with the initial development approval.

All of the community benefits previously agreed under the initial development approval continue to be proposed (see Attachment 6). These are summarised as follows:

- 1) More than 600sqm of community benefit spaces vested to the City. These spaces are proposed to include a public library (including a comprehensive fitout by the applicant), a maker's studio, and atelier/Men's Shed,
- 2) Extensive foreshore improvement works including a realigned and narrowed road (shared space), new foreshore dual use path and complex revegetation plan including erosion management and new passive recreation spaces,

- 3) Onsite public parking in addition to that required for the users of the building,
- 4) Publicly accessible end of trip facilities, public toilets, Adult Changing Place (including hoist and change table), and public bike storage,
- 5) An activated public piazza space (400sqm), and
- 6) More significant tower separation and offsetting to offer view corridors and better mid-winter sun to the properties further south.
- 7) Amana Living on-site ageing in place concierge service available to residents of the development and those within the broader area.

In consideration of the proposed amendments,, the applicant has agreed to provide enhancements to the two of the agreed community benefits, namely;

- 1) The lowering of the floor slab within the library/makers studio: This has been brought about as the City has progressed with preliminary fitout plans for the community benefit spaces. In doing so a number of changes to the layout and configuration of the community spaces were sought by the City including of particular note the dropping of the floor level within the proposed library/makers studio area. This allows for an access floor to be constructed so that the spaces can be adapted over time. The applicant has agreed to bear the costs associated with the works which includes additional dewatering, piling and the associated re-engineering which is likely to be in excess of \$50,000.
- 2) Condition 38 of the existing approval requires the applicant to prepare a draft foreshore improvement plan to a point where it is acceptable to the City and the DBCA.

To ensure the best outcome for the community results from the foreshore improvement works, a cross-functional team of City Officers and Officers from the DBCA has considered how best the foreshore works should be implemented.



Figure 10- Draft foreshore plan including additional works in red

Given that the changes to the development now proposed are considered to be minor in terms of their additional impact, and given that the level of community benefits and their associated value are considered to meet the requirements outlined by Element 22, the need to provide community benefits in addition to those described above is considered unnecessary.

Nonetheless the combination of the community benefits that have already been proposed, coupled with the additional costs being borne by the applicant in delivering those benefits, may be construed as demonstrating that community benefit is being provided in proportion to the additional height now being sought.

Roof Plant

For information purposes a further modification to the approved plans is noted, that being the inclusion of a screened rooftop plant room at the top of towers 1 and 2. The roof plant is consistent with the definition of height in the CBACP which excludes;

“Any lift plant, water tower or similar utility services, not exceeding 3.0 metres in height measured from the finished floor level of the roof deck”.

The generous setbacks from the tower edges ensure the plant stores will not be visible from the ground level and will not create any additional overshadowing impacts.

Given that the roof plant is excluded from the calculation of building height this change to the proposed built form does not require the decision maker to exercise discretion however it noted for information purposes.

Local Planning Policy 1.20

Since the initial approval of the development, the City has adopted a Local Planning Policy, LPP 1.20 ‘Canning Bridge Activity Centre Plan Density and Bonus Provisions’.

In resolving to prepare a Local Planning Policy to guide the application of discretion associated with bonus height development within the CBACP area, the City engaged a consultant planning firm to develop the policy. Part of that process involved engagement with a Stakeholder Working Group made up of interested residents, developers, and business owners. This engagement was intended to inform the content of the LPP.

The consultant planning firm completed its task and presented a draft LPP for the consideration of Council and approval to advertise. In the event, the draft LPP presented was set aside in favour of a LPP prepared by the SWG itself. This policy was the subject of advertising for public comment, and was ultimately adopted and approved by the City in accordance with the requirements set out by the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations) on 16 February 2021.

LPP 1.20 is part of the applicable policy planning framework for development within the CBACP. In accordance with the Regulations, the local government when making a determination under its Local Planning Scheme is required to have regard to a relevant LPP to the extent that it is consistent with that Local Planning Scheme. In

the hierarchy of planning policy documents, an Activity Centre Plan (ACP) such as the CBACP, is a higher order document when compared to a LPP. In that context, a LPP may provide guidance in relation to the application of ACP provisions, but may not vary the provisions of the higher order document, nor attempt to circumvent them.

One of the policy objectives of LPP 1.20 is to provide additional clarity as to the intended outcomes of the CBACP with respect to bonus height provisions. Legal advice obtained by the City in respect of LPP 1.20 and the weight that should be attributed to it in the assessment and determination of the development the subject of the current Form 2 DA, in summary, the policy provisions do not purport to prohibit height above the 'maximum' bonus height limit, and confirm that each application should be considered on its merits. The policy links the maximum bonus height limit to Desired Outcome 3 of the CBACP, which is concerned with building height being consistent with the desired scale and built form of the centre. That advice also indicates that LPP 1.20 is a guide to the exercise of discretion with respect to bonus height within the CBACP.

LPP 1.20 contemplates that maximum bonus height limits in the M10 would be three storeys. The application of this provision in respect of the subject proposal is influenced by the following:

- Any interpretation of the desired Outcome DO3 is influenced by the CBACP provisions themselves which allow for a maximum bonus height within the M10 of 5 storeys where a development interfaces with land within the H4 and/or H8 area of the CBACP.
- In planning terms, it would be reasonable to assume therefore that development within the M10 area which does not share an interface with H4 or H8 land is not subject to the height limitation imposed at the interface with H4 or H8 land provided that building heights are consistent with the desired scale and built form, taking into account amenity impacts.
- There is an extant development approval for the mixed use development of the site to provide a major and significant development including the construction of three 15 storey towers at a height of 57m. This bonus height development was approved on the basis that the provisions of the CBACP were met, and satisfied the bonus height Elements 21 and 22 of the CBACP.
- The fact that the amendments now sought by this Form 2 DA are minor in their nature.

In giving due regard to the provisions of LPP 1.20, it is considered that the weight that is given to the policy, particularly in respect of the bonus height provisions related to bonus height, is limited by the existence of the initial development approval as amended by the City in 2021. This, coupled with the amendments that are now sought which are considered to be minor in nature in the context of the extant approval, combine to limit the actual weight that can be given to the policy. For this reason, the proposed amendments associated with this Form 2 DA are considered to be acceptable in the context of the existing approved development. The subject Form 2 application is recommended for approval on that basis.

It is noted that the current review of the CBACP presents the City with an opportunity to amend the provisions of the document, including the bonus height provisions. When and if the provisions are reviewed and updated, development proposals will be assessed against those provisions. At this stage in the review process, whereby any proposed modifications to the CBACP associated with the CBACP Review are yet to

be endorsed for advertising by Council, the existing CBACP remains the key planning document against which development proposals within the CBACP area are assessed and determined.

Alternative Recommendation:

May be requested in accordance with Regulation 13

Conclusion:

A detailed analysis of the changes proposed as part of this application has determined that they are minor changes to the existing DAP approval. This qualifies the amendments to be considered under a Form 2 application pursuant to Clause 17 of the Regulations. Due consideration has been given to the relevant planning policy framework, and the development is recommended for approval on that basis

Officer Recommendation ***To be completed in the event council resolve not to support the officer recommendation