

13 October 2021

Jason Maslen
Team Leader
School Infrastructure Assessments
NSW Department of Planning, Industry and Environment
320 Pitt Street, Sydney 2000

Dear Jason

**RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION
FORT STREET PUBLIC SCHOOL, SECTION 4.55(2) MODIFICATION APPLICATION (SSD-10340)**

This covering letter provides a response to the letter issued by the Department of Planning, Industry and Environment (DPIE) on 10 August 2021 which requested additional information to demonstrate how the modification has responded to the advice and recommendations of the NSW State Design Review Panel's (SDRP). It also provides a response to the letter issued by DPIE on 23 August 2021 that requested additional information to address the issues raised in the supplementary submissions received from the Lord Mayor, Council, agencies and members of the public. Finally, it provides a response to the letter received from Heritage NSW dated 24 August 2021.

The proponent, School Infrastructure NSW (SI NSW) and its specialist consultant team have reviewed and considered all issues raised by the SDRP, as well as supplementary Council, agency and public submissions. These issues have been addressed in an amended modification, proposed in accordance with Clause 85A of the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg). The scheme, as amended, continues to comply with all relevant statutory controls. These changes are documented within an Information Package prepared by FJMT at **Attachment A**.

A detailed response to the SDRP comments and issues raised in the supplementary submissions is provided in the response table provided at **Attachment B**. This covering letter and the response table should be read in conjunction with the following attached documentation:

- Information Pack prepared by FJMT (**Attachment A**);
- Detailed Response to Request for Additional Information Table prepared by Ethos Urban (**Attachment B**); and
- Heritage and Archaeology Response to Request for Additional Information prepared by Curio Projects (**Attachment C**).

This covering letter provides a response to the following key issues raised:

- Design of Building J and associated heritage impacts;
- Trees, planting and canopy cover;
- Rooftop play space; and
- View impacts

All remaining issues relating to matters such as vehicle movements, access and waste management are addressed in the detailed response table at **Attachment B**.

It is also noted that SI NSW has undertaken ongoing stakeholder consultation with DPIE, the City of Sydney, Heritage NSW and the Project Reference Group, and has received in-principal support for the amended proposal. Additional comments issued following Heritage NSW consultation on 15 September 2021 have been addressed in the Detailed Response to Additional Information Table (**Attachment B**), while feedback received during consultation with the City of Sydney and DPIE on 6 October 2021 has also been addressed within the responses. Moreover, community support has been obtained, with the Fort Street Public School P&C confirming their support for the amended design and requesting an approval in a timely manner during the Project Reference Group meeting held on 28 September 2021.

1.0 Design of Building J and Associated Heritage Impacts

1.1 Issue

Heritage NSW, the SDRP, the Lord Mayor and Council have raised concerns over the bulk and visual impact of the additional partial storey to Building J that was proposed in the original Section 4.55 scheme. While Council acknowledged that the impact of the partial additional level needs to be balanced against other aspects of the modification which seek to improve heritage outcomes on the site, such as relocation of the lift from the Met Building to Building J, Council suggested that the bulk of Building J could be reduced without compromising the design. As such, the Lord Mayor and Council have requested that SI NSW consider deleting the roof from the top of the south stair and plant area and lowering the screening of the plant deck so that it does not read as a full floor. The SDRP followed with additional feedback on a number of design options presented at SDRP 5 on 1 September 2021 that incorporated Council's suggestions.

Heritage NSW echoed these concerns, stating that the modification scheme would adversely impact on the heritage interpretation of the Met Building, including views to and from Observatory Hill.

1.2 Response

In response to feedback from Heritage NSW, the Lord Mayor, Council and the SDRP, changes have been made to reduce the bulk and scale of the Building J rooftop to mitigate visual and heritage impacts.

This has been achieved through the relocation of plant areas, a reduction in the extent of the lift and stair enclosure, and improved transparency so that the additional partial storey to Building J is effectively removed. These changes have been made in consultation with the relevant agencies.

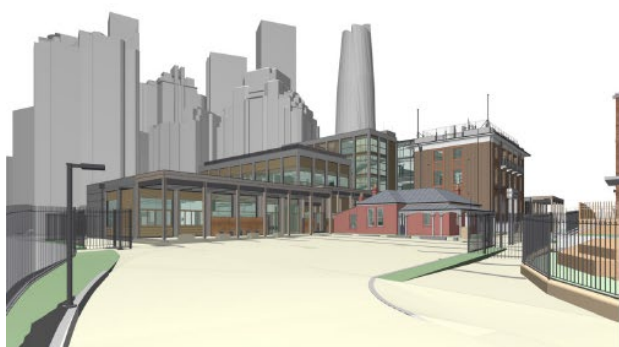
In making these changes, the design team has gone to great lengths to maintain the functionality of the design and meet end user requirements, whilst reducing the bulk and scale to reflect the previously determined building envelope. The amended proposal represents the best outcome for the project, as well as the site's heritage and archaeological resources.

Specifically, the key changes to the Building J design are:

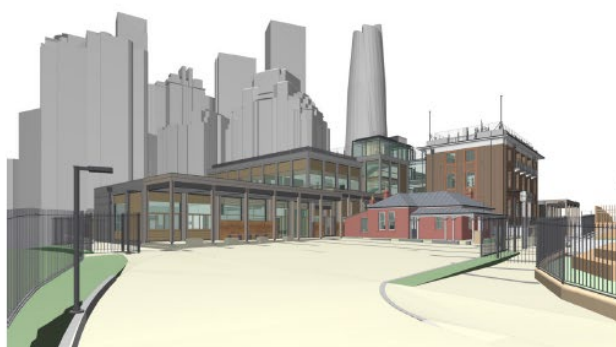
- Relocation of plant from the additional partial storey to Building J, including:
 - Condensers relocated from the Building J rooftop to the ground level south of Buildings J/H/G.
 - Mechanical fans relocated from rooftop to Level 2 in spaces currently used for storage and WC.
- Removal of the enclosed walls and roof to Level 3, replaced with a glazed balustrade on the southern, eastern and western perimeter.
- The new lift shaft and Stair 4 (the northern stair) will be the only remaining structures on the Building J rooftop, comprising:
 - Glazed walls to the lift shaft and Stair 4 at Level 3, including a fire separated wall between the lift and stair.
 - A solid enclosed roof to Stair 4 and the lift shaft.
 - A solid fire rated exhaust riser, integrated within the enclosed roof of Stair 4 and the lift shaft.

- Modification of Stair 5 (the southern stair) to create an open stair.
- Removal of the enclosed rooftop link bridge between Building J and the MET Building, and replacement with a glazed balustrade.
- Relocation of plant from the western side of the Met Building rooftop to the south-eastern corner of the Met rooftop to avoid conflict in the stair below.
- Exploration of the remainder of the Level 3 rooftop for use as outdoor learning space.

Refer to the Information Package prepared by FJMT (**Attachment A**) for further detail on the new amended design. These changes are discussed further below. A comparison of the originally proposed Section 4.55 scheme and the amended scheme, from key vantage points within the site, is provided below in **Figure 1**.



Section 4.55



Revised Modification Scheme



Section 4.55



Revised Modification Scheme



Section 4.55



New Proposal



Figure 1 View comparison between original section 4.55 scheme and amended proposal

Source: FJMT

1.2.1 Building J and MET Building Design Changes

Building J Plant Relocation

A key response to reduce the height and bulk of Building J was to relocate all rooftop plant to other parts of the site, which has substantially reduced the number of solid structures on the Building J rooftop. The rooftop plant previously proposed in the original Section 4.55 scheme to be located from the Building J rooftop, has been broken down into components and distributed into several locations across the site, including as smaller clusters on-grade, located around the southern boundary perimeter of the site and onto Level 2 of the Building H/J group.

Condensers have been relocated to on-grade locations adjacent to Buildings J/H/G around the southern perimeter of the site (refer to **Figure 2** below). They will be co-located with the building they service, with additional visual screening to conceal equipment from the public domain and acoustic treatment to manage noise amenity. Functionally, in-ground pathways will be required for services reticulation at each plant cluster location. The on-grade plant clusters will not affect circulation around the rear of those buildings for egress.

It is noted that these areas were excluded from the open space calculations, and so repositioning of the plant on-grade will not impact existing open space calculations.

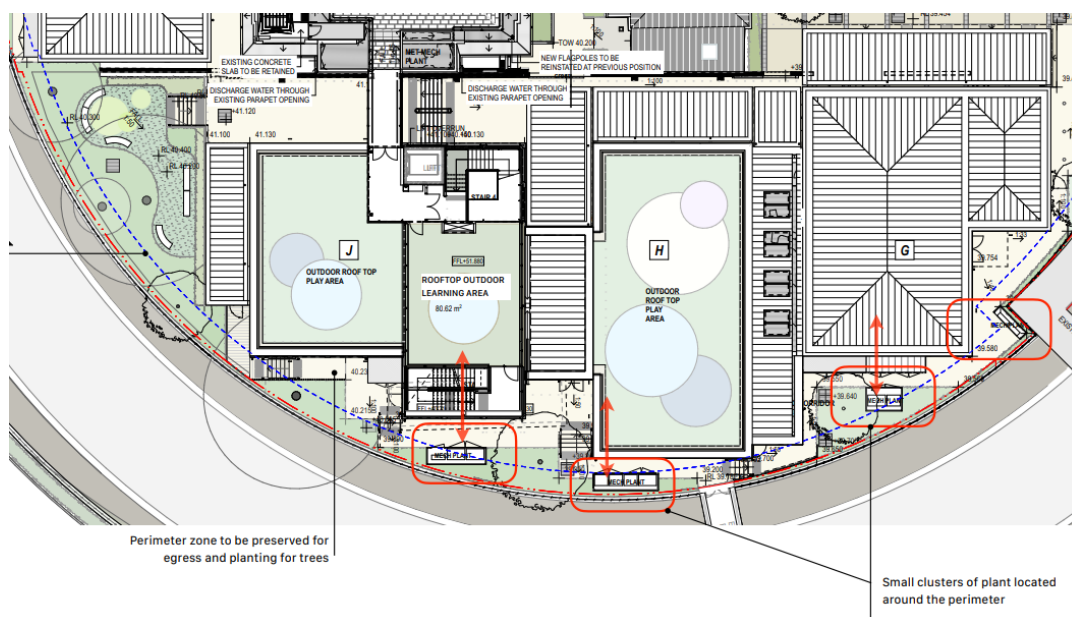


Figure 2 Building J plant relocation

Source: FJMT

Outside air and exhaust fans will be relocated from the Building J rooftop to Level 2, resulting in the loss of one WC and storeroom (one WC remains). This design has been endorsed by SI NSW and compliance with WC counts is still achieved. Revised mechanical services reticulation is proposed including exhaust duct work and reticulation through the Level 2 northern stair ceiling to the rooftop to allow the Level 3 exhaust riser to be located adjacent to the new lift overrun. This is demonstrated in **Figure 3** below.

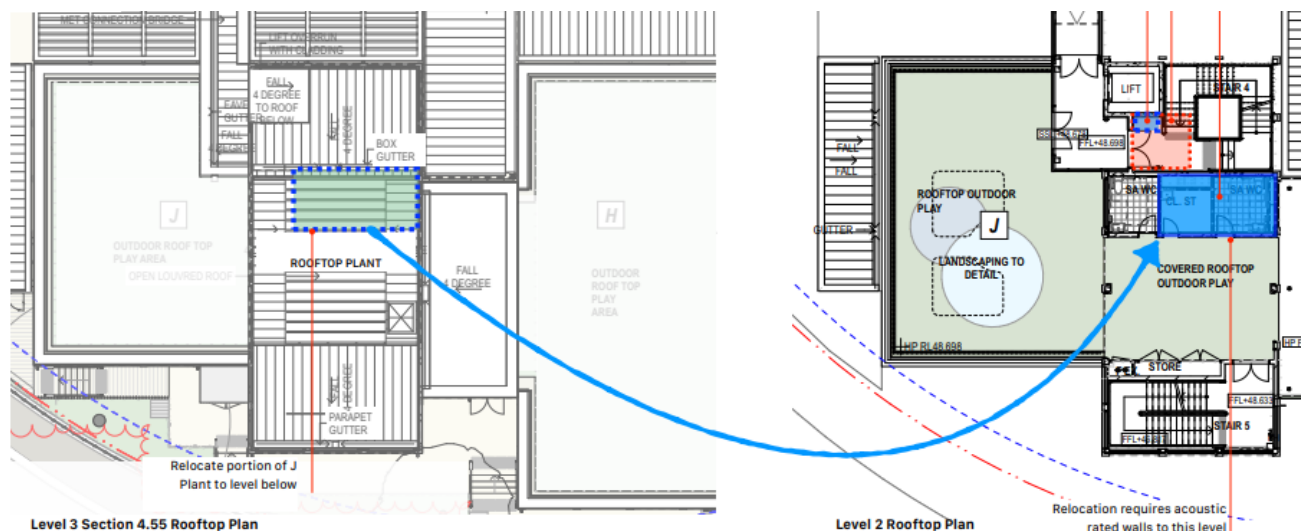


Figure 3 Relocation of Building J rooftop plant to Level 2

Source: FJMT

Southern Elevation

The amended proposal seeks to reduce visual impact, especially views from the south, through the deletion of the enclosure to the southern stair, leaving the stair open at roof level. A transparent, glazed balustrade is proposed around the western, southern and eastern perimeter of the Building J rooftop. The balustrade is 1.9m in height, and is required for BCA compliance and child safety reasons, and to ensure that the rooftop is trafficable.

The glass balustrade also extends across the bridge link to the Met Building rooftop, replacing the previously enclosed connection. These changes result in the height of the Building J masonry being consistent with that of the SSD Approval (RL51.880). When viewed from the south, the only the built form visible above this RL will be the glass balustrade. This is demonstrated in **Figure 4** below, which shows the SSD envelope (dashed in red) overlaid on the amended proposal.



Figure 4 Comparison of amended proposal with SSD envelope (dashed in red)

Source: FJMT

The amended proposal has also made refinements to the articulation of the south-facing battened façade on the southern stair, to address the perceived verticality of the built form from this elevation. A comparison image is provided at **Figure 5**.



South Elevation - SSD Approved



South Elevation – Submitted Section 4.55 Modification



South Elevation – Amended Section 4.55 Modification

Figure 5 Amendments to the southern elevation to reduce the perceived verticality

Source: FJMT

Northern Stair and Lift

While solid enclosures for the Building J rooftop plant and southern stair have been removed, a structure containing the northern stair, northern lift shaft landing and overrun is still required to provide access to the Met Building rooftop. Access to the Met rooftop is required to support the learning pedagogy, and to continue the heritage and cultural significance of the building. The visual impact of this structure has been mitigated with glazed walls providing transparency and by virtue of its location at the northern end of Building J which is less sensitive to visual impacts to the south. The height of the lift overrun has also been reduced as far as possible from RL56.230 in the submitted Section 4.55 scheme, to RL55.687.

As the northern stair and lift is the primary vertical circulation spine for the campus, FJMT has determined that a solid roof (as opposed to an open air design) is required to create a weathertight envelope for optimum safety and improved Section J performance. Further, the School is required to be air conditioned to meet end user requirements, and so the solid roof is required to retain conditioned air in the learning environments below. The glazed northern stair and lift structure also integrates a solid exhaust riser, which has been consolidated within the structure to reduce overall visual impact. A solid, fire separation wall is provided between the plant and stair for fire safety compliance.

A section comparison of the design changes to the Building J envelope, showing the reduction in bulk and scale, is provided in **Figure 6** below. The sections compare the original Section 4.55 scheme and amended proposal with the original SSA approved profile.

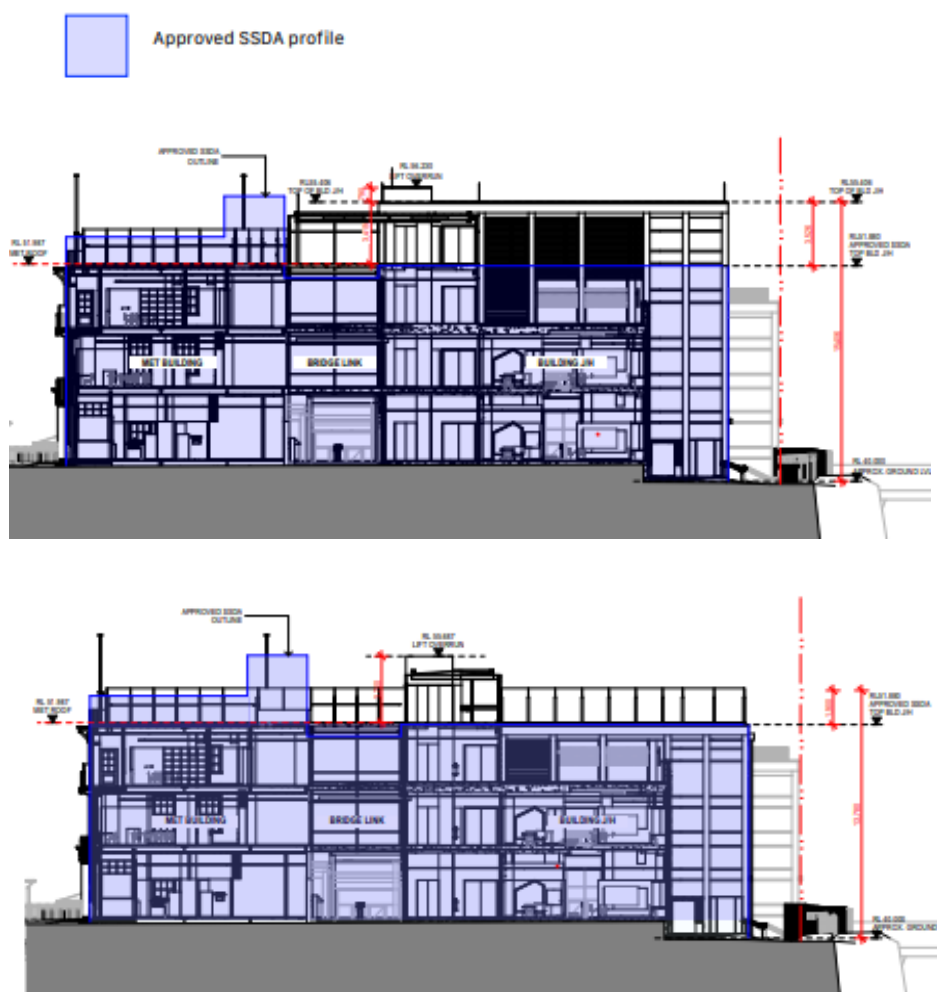


Figure 6 Section comparisons between the original Section 4.55 (top), amended proposal (below) and approved SSD (shaded blue)

Source: FJMT

Met Bridge Link

In order to further reduce visual impact in the context of the Met Building, the roof of the bridge link between the Met Building and Building J has been removed. Glazed balustrades are retained to enable the bridge to be trafficable, BCA and EFGS compliant and child safe.

Met Plant Relocation

Plant on the Met rooftop has been relocated to avoid conflicts with the existing Met stair, improving heritage outcomes. Currently, there is a riser and low-height plant proposed to be located on the south-western corner of the Met Building above the existing stair. As demonstrated in **Figure 7** below, the riser and low-height plant will be relocated to the south-eastern corner of the Met Building. This resolves the conflict between the mechanical reticulation and existing stair in the south-west corner, while also preserving the heritage fabric associated with the Met stair. A low-height mechanical plant design will be developed for construction documentation and will be screened by new and existing parapets as part of the Met roofscape. These changes also affect the location of plant on Level 2 of the Met Building.

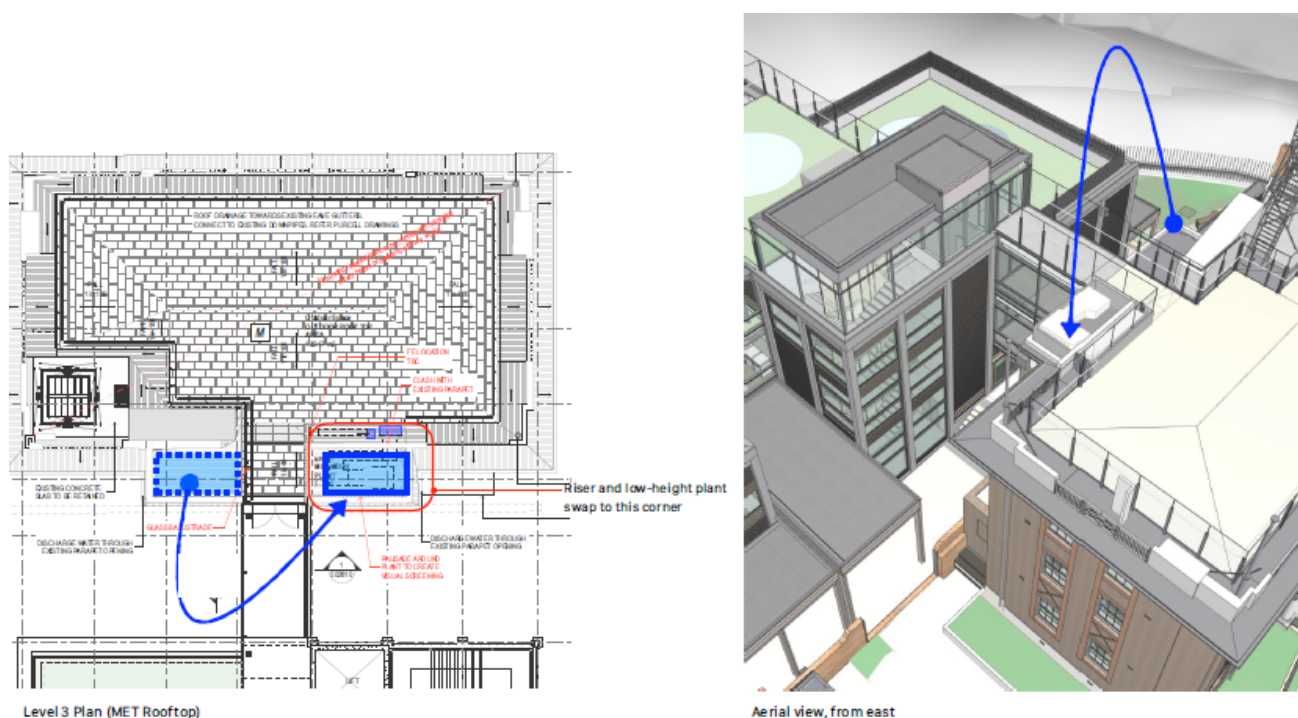


Figure 7 Met plant relocation

Source: FJMT

COLA Deletion

It is proposed that the two-storey COLA frames located between the Met and Building J, approved in the SSD, be removed. This was supported during recent consultation with the SDRP. This will contribute to the reduction of visual bulk and clutter both above and around Building J to the benefit of the Met Building.

It is noted that the one-storey COLAs adjoining the learning spaces have been retained for student amenity.

1.2.2 Assessment of Heritage Impact

Curio Projects has assessed the heritage impact of the amended proposal both on the site and the surrounding heritage context.

In relation to heritage impact on the Met Building, while the height of the Building J lift overrun extends slightly above that of the Met Building parapet, the deletion of the other rooftop features from Building J means that the new building no longer reads as having an additional storey, rather reducing the bulk and form of the rooftop such that the lift enclosure and northern stair stands as a single feature within an otherwise open rooftop. This reduces the height of the new building to be relatively consistent with the approved SSD. As such, Curio Projects has concluded that the amended design will allow for an improved visual impact to the Met Building, which is substantially consistent with the height of the SSD scheme, while also improving heritage outcomes by avoiding impacts to the Met Building heritage fabric.

Moreover, Curio Projects has concluded that the removal of the enclosure over the southern egress stair of Building J, and relocation of rooftop plant reduces visual impact when viewed from the south, thus reducing heritage impact to the adjacent National Trust buildings.

2.0 Tree Canopy

2.1 Issue

Council has continued to raise concerns regarding the proposed level of tree canopy cover, particularly in the context of the number of trees which have been removed on the site in accordance with the SSD approval and the assertion that the original Section 4.55 scheme presented a substantially degraded tree canopy provision.

2.2 Response

The strategy for the provision of trees on the site has always been to balance the delivery of adequate tree canopy with the school's end user requirements for safe and fit-for-purpose play areas and interface zones.

Firstly, the quantum of trees removed is driven by safety and visibility considerations at important interfaces such as the loop entry road, following recommendations from an independent Road Safety Audit. As such, no trees are proposed within the forecourt area. The incorporation of trees into the shared play and vehicle zones would introduce significant impediments to line-of-sight between drivers using the loop road and pedestrians. Moreover, it is not possible to provide additional trees in the forecourt area as the turning path assessment of waste vehicles and fire appliances require the whole area to complete a three-point turn.

Secondly, the quantum of trees removed and replaced is also driven by functional requirements with respect to the ability for children to play on significant areas of open space, unimpeded, and to reduce climbing risks and maintenance needs. With this in mind, the fringes and inner parts of the site retain concentrations of trees that provide some shaded relief.

Increased Tree Canopy Provision

The amended proposal incorporates three (3) new *Cupaniopsis anacardioides* trees (shown in red in **Figure 8** below), increasing tree canopy by 1% (69.92m²). Therefore, the amended proposal increases the total tree canopy cover to 20%. This represents an improvement to the existing 18% tree canopy at the school (noting that trees that were approved for removal under the SSD have now been removed), and an improvement upon the original Section 4.55 scheme (19%). As such, the tree canopy removed is not only compensated, but is increased as part of the amended proposal.

In addition, it is reiterated that the amended proposal exceeds the City of Sydney's requirement of 15% tree cover. As such, it continues to deliver best practice and high-quality canopy coverage on a heavily constrained site in a CBD setting, while also retaining meaningful open play areas, as well as structured shading and fringes of shade which strike a balance of opportunities for student relief.



Figure 8 Proposed tree planting to achieve 20% canopy cover

Source: FJMT

3.0 Rooftop Play Space

3.1 Issue

Council have continued to raise concerns regarding the design of the rooftop play space, including recommendations to provide additional shading and that soft fall is not a suitable finish.

3.2 Response

Shade Provision

The absence of rooftop shade structures has been driven by the following considerations:

- The height, bulk and scale of the rooftop areas, and requirements from various stakeholders to minimise visual and heritage impacts;
- End-user considerations to ensure rooftop play spaces maximise functionality and safety; and
- To ensure consistency with the approved SSD.

The landscape design of the rooftops has been driven by requests from various stakeholders to reduce the visual impact of Building J. As such, design factors including height, bulk and scale have been ongoing considerations during the design process. Recently, there has been significant effort by SI NSW and the design team to further reduce the bulk and scale of Building J to address these concerns. Incorporating shade structures would be conflict with these initiatives, and would reintroduce bulk and scale at roof level. This would be contrary to advice received from key stakeholders such as Heritage NSW.

The landscape design for the rooftops has also been developed in conjunction with FSPS representatives and SI NSW, and responds to end user requirements and the need for fit-for-purpose play areas. Safety in design has also been a key consideration in the rooftop design, with fixed shade structures being eliminated to keep the rooftop play space clear of fixed columns for child safety. Similarly, perimeter planting and fixed seating has not been progressed due to Safety in Design risks and the potential to create climbing hazards. This is a particularly important consideration given the site's proximity to the Cahill Cut.

Notwithstanding, one third of the rooftop is still proposed to be under a solid roof cover to provide shade and relief from the sun and rain without compromising student safety. In accordance with the approved SSD, no shading is provided on the eastern and western wings of Buildings J/H. The proposed rooftop shade provision is shown below in **Figure 9**.

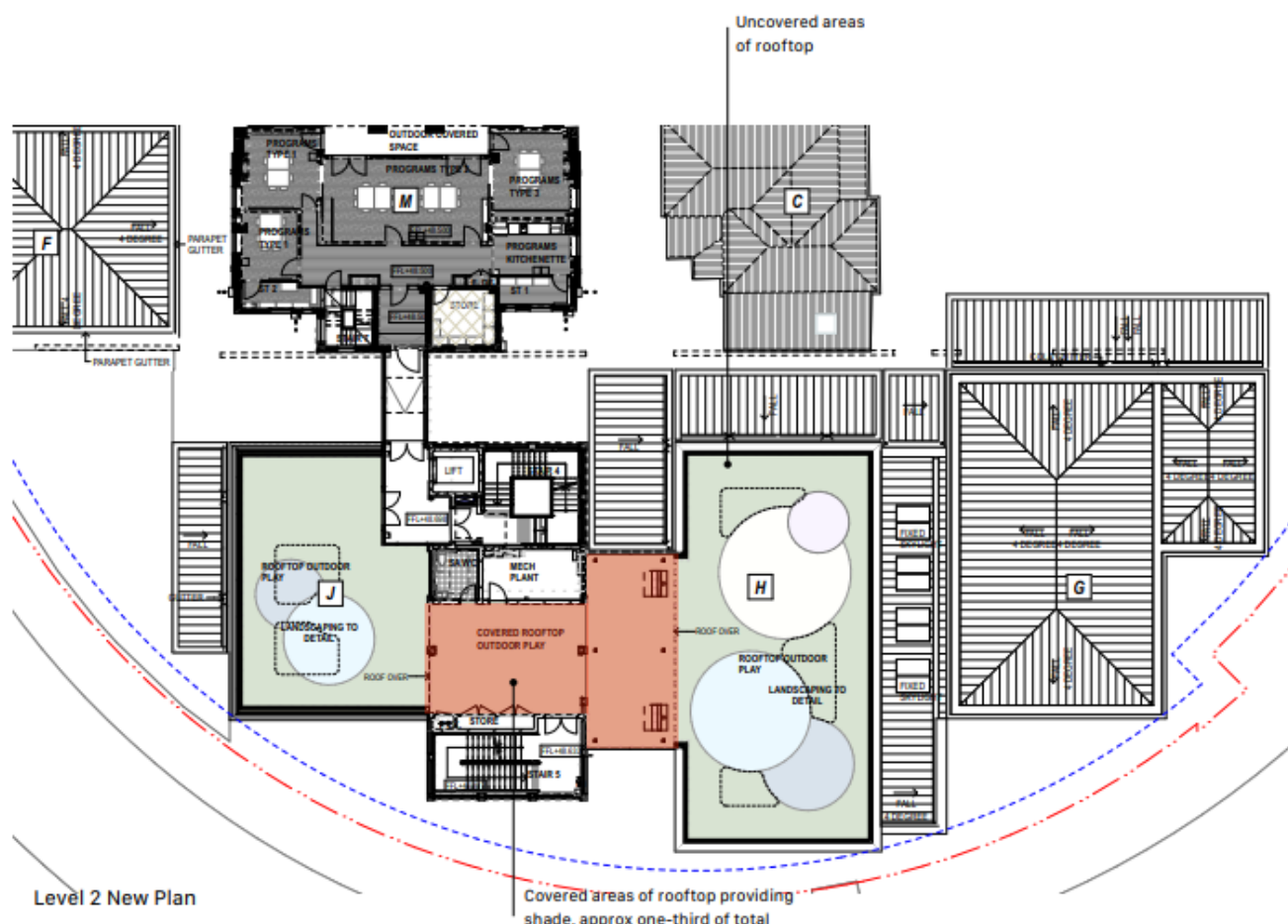


Figure 9 Proposed rooftop shade provision (Level 2 shown)

Source: FJMT

Soft Fall Finishes

The choice of soft fall finishes for the rooftop play spaces has also been developed in conjunction with FSPS representatives and SI NSW, and responds to guidance that school staff have provided regarding the envisaged use of the space. School representatives who will be responsible for this asset have confirmed their acceptance of soft fall as the surface for the play area. Input from stakeholders has also confirmed that, in terms of maintenance and longevity, soft fall is a superior surface treatment. As such, it is clear that soft fall is the most suitable finish for the intended function of the rooftops as play spaces. No astroturf is proposed.

It is imperative that the proposal is assessed within context of its use as a school by children and the associated safety and end-user requirements. The installation of soft fall finishes has significant and recent precedent in a number of state schools, most notably at Alexandria Park Community School. A large expanse of soft fall has been provided to rooftop play areas at both the junior and senior campus. The findings of this occupied campus are an important reference for FSPS as to the suitability of soft fall in this proposal, where provided with shade areas and water bubblers for student's use during hot weather, it has been referenced as a successful use of soft fall, without issues related to heat gain.

Further, replacement of soft fall areas is easier and less of an impediment to school functions. Timber decking and associated drainage infrastructure is also more complex and can be prone to blockages due to debris and incidental

rubbish entrapment, which would result in difficulties for ongoing maintenance and result in high recurrent running costs. As a result, timber decking is not used at other SINSW sites, and is excluded from the EFSG for longevity and safety reasons. Timber decking is not proposed to be used at FSPS.

4.0 View Impacts

4.1 Issue

Council has continued to raise concerns regarding the visual impact of the Building J bulk on the neighbouring National Trust Centre and public views and vistas to Observatory Hill more broadly.

In addition, two public submissions received from residents living at Level 7 of the Stamford Marque, located at 161 Kent Street, have raised concerns regarding view impacts from their apartments. These apartments were not included in the Visual Impact Assessment (VIA) that was submitted with the Modification Response to Submissions, as they were below the datum line that was taken from the top of the Met Building roof (RL 52.712m) and used as a basis for low-level views. Therefore, DPIE has requested that additional view impact assessment be undertaken for these two properties.

4.2 Response

The proposed amendments to Building J discussed in **Section 1** respond to concerns relating to view impacts and the scale of development in relation to the neighbouring National Trust Centre. The revised design also seeks to address concerns relating to public views and vistas to Observatory Hill more broadly.

The VIA that was submitted with the Modification Response to Submissions (Attachment E) found that the low-level private view impacts associated with the original Section 4.55 scheme were minor/negligible. The amended proposal and enhanced transparency of the Building J rooftop will further mitigate visual impacts from surrounding residential properties.

In response to the two public submissions, FJMT has prepared additional views from these two apartments. The additional views have been based on the proposed revised scheme. An assessment of the view impacts from these two properties is provided below. In assessing view impacts, it is important to consider the principles relating to view loss and view sharing more broadly. These are discussed at **Section 4.2.2**.

4.2.1 Additional Assessment of Stamford Marque

Assessment of views to be affected

At the affected level, foreground views are dominated by foreground vegetation and buildings, including the National Trust Centre, SH Erwin Gallery and FSPS. The arch of the Harbour Bridge and top of the southern pylons are visible above FSPS.

From what part of the property the views are obtained

Based on archival records obtained from Council, there are living rooms, balconies and bedrooms on the eastern frontage of apartments between Levels 3 and 19 (refer to **Figure 10**).

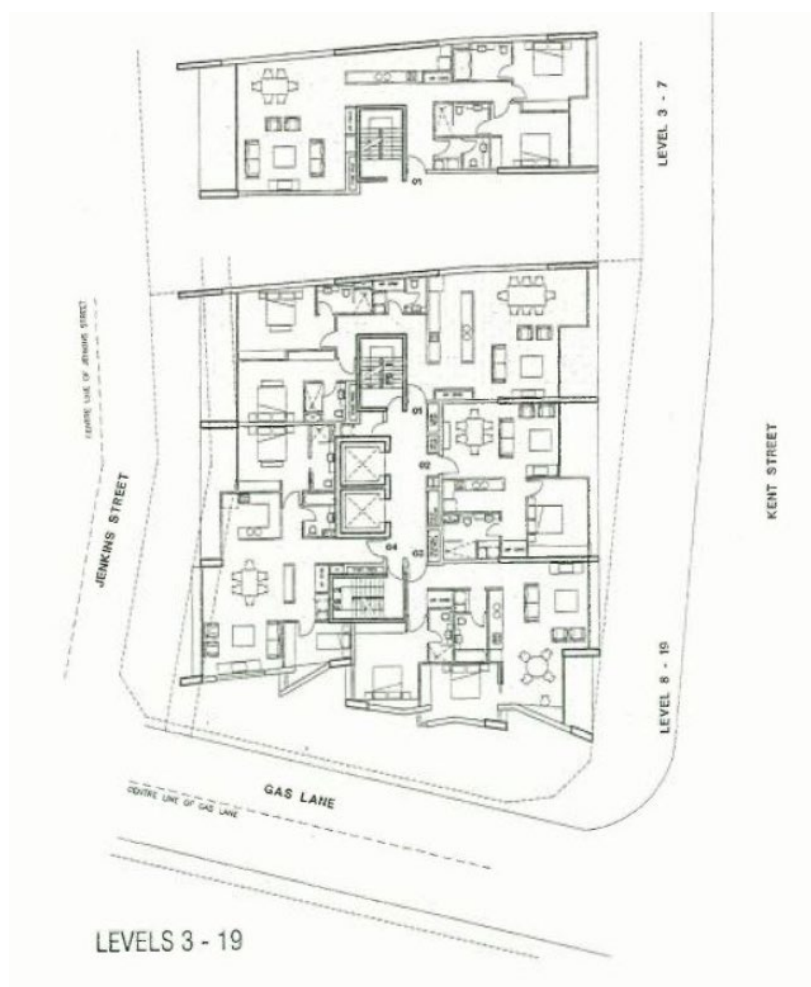


Figure 10 Stamford Marque - Existing floorplan

Source: City of Sydney Council

Extent of the impact

At the affected level, the lower part of the southern pylons and the base of the Harbour Bridge arch are already obscured by the existing school. As a result of the amended proposal, the top half of the pylons and the arch of the Sydney Harbour Bridge either remain in full view or are obscured depending on the viewing angle.

Whilst the Harbour Bridge is a significant feature, the impact is minimal when considering the view holistically and the limited and narrow view of the top of the Bridge. Further, the top of the bridge remains visible from some angles. View impacts to the affected levels of the Stamford Marque building are therefore considered to be minor/negligible.

4.2.2 Considerations in Visual Impact Assessment

It is a long-established legal principle in Australia that no one has the right to a view. Nonetheless, it is appropriate to consider views in general as part of a merit-based assessment process.

In this regard, the following documents and principles are of key relevance:

- The Central Sydney Planning Strategy (CSPS)
- Sydney Local Environmental Plan 2012 (SLEP 2012)
- *Tenacity Consulting v Warringah* [2004] NSWLEC 140 (Tenacity)

These documents and principles are considered in-turn below.

CSPS

The FSPS site is included in Central Sydney, and so it is affected by the CSPS. While not yet finalised, the CSPS has been in the public domain for several years and is considered the most recent and authoritative statement of Council's planning policy. On this basis, it is highly relevant to the proposal.

Critically, the CSPS makes a number of very relevant observations about views in Central Sydney, and the City's policy towards protecting them. The following key statements are made with regard to land in Central Sydney:

- *'Regulating for maintenance of private views is overly restrictive and complex';*
- *'The large majority of available views are considered "iconic";*
- *'The scope is often not available within the confines of planning requirements to adjust the shape of a building in Central Sydney or move its location on the site'; and*
- *'For these buildings, better design to provide a better view is rarely possible'.*

Further, the site is not subject to a key view corridor under the proposed amendments to the Sydney Development Control Plan (DCP) 2012. Whilst it is noted that the identified view corridors relate to public views, should Council have wanted to protect views from private properties, it is anticipated that this would have occurred.

Given the CSPS and proposed DCP amendments, it is reasonable to conclude that Council is not seeking to give protection to private views in this location.

Sydney Local Environmental Plan 2012

View sharing is a relevant consideration under SLEP 2012, as outlined in the height of buildings objectives, and specifically clause 4.3(1)(c) which is *'to promote the sharing of views'*.

There is no height of buildings control applying to the FSPS site. On this basis, consideration of the planning principles outlined in Tenacity is triggered, as follows:

'Planning principles assist when making a planning decision, including:

- *Where there is a void in policy*
- *Where policies expressed in qualitative terms allow for more than one interpretation*
- *Where policies lack clarity.'*

Whilst planning principles, and therefore Tenacity, have limitations *'Planning principles are not legally binding and they do not prevail over councils' plans and policies'*, the CSPS is a Council policy. The position of the CSPS with respect to the protection of private views is summarised above.

4.2.3 Tenacity Assessment

In Tenacity, Roseth states in paragraph 25:

'The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable).'

The submitters' properties enjoy existing views. While the proposal would not take the view away 'for its own enjoyment' (it is not, for example, a residential flat building seeking to maximise views) it will nonetheless impact these existing views. On this basis, it is important to establish the reasonableness of the view loss with consideration to the four steps established by Tenacity, being:

1. What are the views that would be affected?
2. Where are views obtained from?

3. What is the extent of impact?
4. How reasonable is the proposal causing the views to be lost?

Step 1 – What are the views that would be affected?

Under the first step, with consideration to the apartments at Level 7 of the Stamford Marquee:

- There are no water views;
- The upper part of an icon – in this case the Harbour Bridge – is present;
- This is not a whole view of the Harbour Bridge; and
- The Harbour Bridge appears as a small element in the background of the view.

Step 2 – Where are views obtained from?

With consideration to Step 2, it appears that the view is seen at an acute angle from the submitters' balconies. It is best to consider this a view from a front boundary, albeit noting its angle. Due to the easterly orientation of these apartments, it is considered unlikely that these views would be accessed from within the apartments.

Step 3 – What is the extent of impact?

With respect to Step 3, the amended proposal will not obscure views to the Harbour Bridge at View 26 from Level 7 (refer to **Figure 11** below) with the Bridge remaining visible to the right of Building J. At View 27 from Level 7, the amended proposal will block views to the Harbour Bridge as it is seen at a more acute angle (refer to **Figure 12** below).

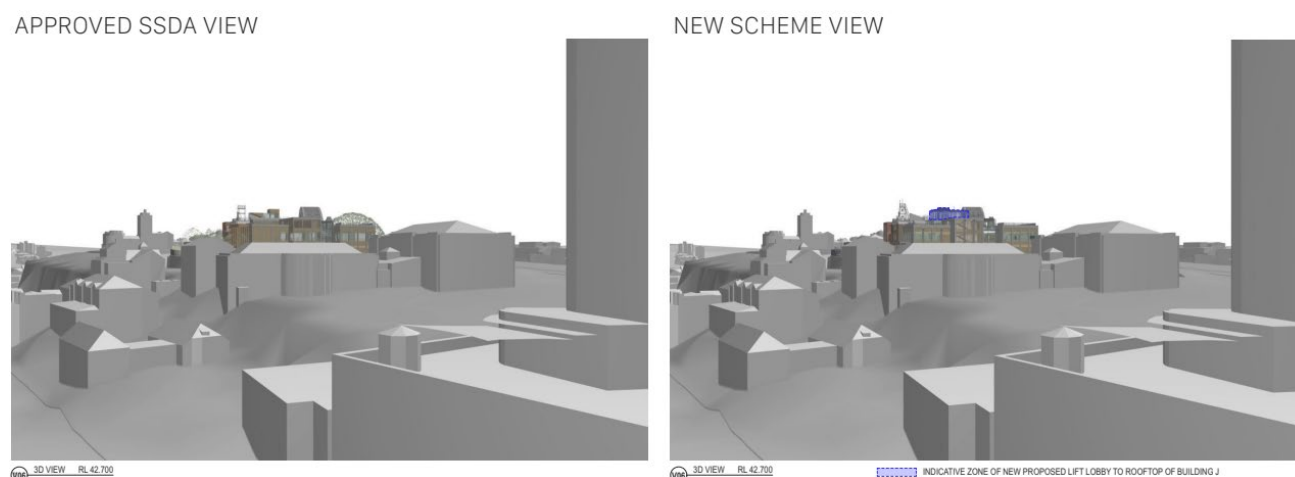


Figure 11 View 26 from Level 7 of the Stamford Marquee

Source: FJMT

APPROVED SSDA VIEW

NEW SCHEME VIEW

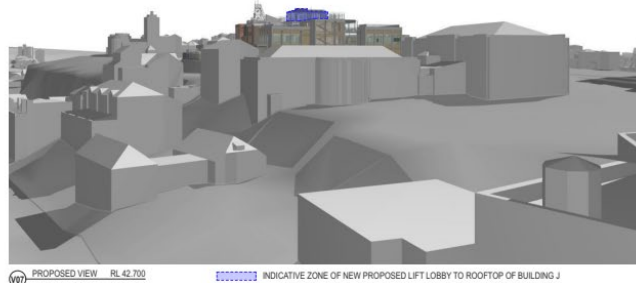
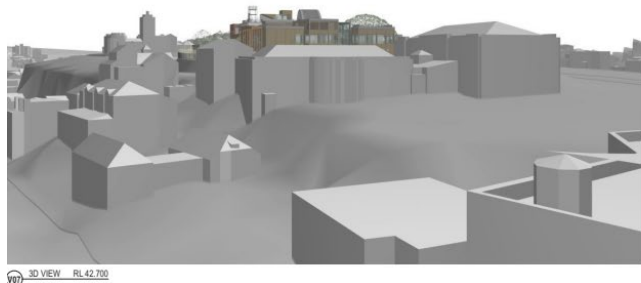


Figure 129 View 27 from Level 7 of the Stamford Marquee

Source: FJMT

It is likely that the proposal will largely be screened by existing vegetation and foreground buildings. The upper part of the proposal will likely integrate with the remainder of the view. If the view of the Harbour Bridge were extracted and considered in isolation, the view loss would be more substantial. However, this is not best practice as any assessment should consider the totality of the view in question.

In Roseth's conclusion on Tenacity, it is stated:

*'I would classify the **view to the ocean and Manly** as **highly valuable**, what most people would describe as **magnificent**. It is now **available from four levels from the rear**. **The proposal would obliterate views from the lower three levels from sitting and standing positions**. **From the fourth level it would obliterate it from sitting positions and reduce it from standing positions**. **In my opinion, the impact would be severe**'. (Our emphasis)*

Despite complete obliteration of the view, Roseth stated the impact would only be severe, as the value, magnificence and totality of the iconic view is considered. Applying an analogous logic, despite complete obliteration of a view to the Harbour Bridge in one affected view, that view to the Harbour Bridge is partial, small and distant within the background, which is far from 'magnificent' in the words of Roseth. Therefore, in totality, the extent of impact can be considered minor.

Step 4 – How reasonable is the proposal causing the views to be lost?

Under the fourth step, the first part of the test is whether the proposal complies with 'all planning controls'. The proposal complies with SLEP 2012 by virtue of the fact that there are no applicable height and FSR controls applying to the site. Under Tenacity, *'a development that complies with all planning controls would be considered more reasonable than one that breaches them'*.

The test is then:

'With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable'.

The development, including the proposed amendments, have been the subject of a rigorous design process, including review by the NSW SDRP and Heritage NSW. FJMT has very carefully considered, sited and designed the proposal to minimise visual impacts. Critically, the new massing has been sited away from the most sensitive receiver in the locality, which is the Observatory itself. Further, the high level of transparency proposed under the amended design will enable views through the structure. It is considered that the proposal represents skilful design within the meaning of Tenacity.

Further, the proposal is for a primary school. The proposal is meeting a demonstrated need for additional social infrastructure in the area. In addition, unlike other forms of development, schools have specific programming and spatial requirements that need to be accommodated. It is not possible to easily adjust the scale, massing and form. This is reflected in the CSPS, as discussed above.

Reasonableness and Planning Balance

As noted above, the appropriateness of the view impact comes down to an assessment of the 'reasonableness' of the impact.

The Harbour Bridge can be seen from many, many properties in Sydney. Many views are likely to be more 'magnificent', to use Roseth's words, than the view experienced by the submitters. In a high rise, high density setting such as this, many apartments have the potential to be affected by the proposal. Given the number of potentially affected dwellings, it would not be feasible to assess each apartment individually. On this basis, the approach that has been adopted (of extrapolating a datum line from the top of the Met Building to determine the low-level views) is considered appropriate in this instance. Views from properties at the lower levels of surrounding buildings are pleasant – and may even be considered an outlook - primarily of a street and the southern and western hillside of Observatory Hill within which trees and vegetation are visually prominent. Whilst the Harbour Bridge is highly valuable and is present in some of these low-level views, it is seen in part as a small element in the background. Whilst the Bridge will be obscured or blocked from some apartments, in our opinion, it does not fundamentally alter the nature of the view.

Finally, in the absence of controls applying to the site, the proposal has been supported by a merit assessment, which is based on consideration of impact. Whilst the proposal has an impact on the current view, it would be unreasonable to refuse or alter the proposal based on the scale and nature of impact, and would create an undesirable precedent whereby partial views of an 'icon' are to be protected, to the detriment of a well-considered development that is providing a clear social benefit.

In summary, based on the above Tenacity assessment and consideration of the view sharing considerations within the SLEP 2012 and CSPS, the proposed view impacts are considered reasonable for the following reasons:

- The amended proposal does not fundamentally alter the nature of the affected views in which the Harbour Bridge is seen as a small element in the background;
- The amended proposal represents a skilful design that sites new massing away from the most sensitive receiver in the locality, which is the Observatory itself, and has been supported by a merit assessment; and
- On balance, the provision of a well-considered school development resulting in a clear social benefit outweighs the minor/negligible impact to the affected private views.

5.0 Conclusion

This letter sets out the responses to the key issues raised by the Lord Mayor, Council, Heritage NSW, the SDRP and additional public submissions as requested by DPIE's Requests for Additional Information. It demonstrates that the amended proposal:

- Continues to comply with all relevant statutory controls;
- Reduces the bulk and visual impact of Building J without compromising the functional use of the school;
- Improves tree canopy cover;
- Provides rooftop play areas that are safe and fit-for-purpose, whilst minimising built bulk and visual impact; and
- Does not result in any unreasonable impacts to the affected private views from Level 7 of the Stamford Marquee.

On this basis, it is considered that all concerns raised in DPIE's Requests for Additional Information have been adequately addressed.

We trust that this information is sufficient to assist DPIE's assessment of the proposed modification. Should you have any queries about this matter, please do not hesitate to contact Karissa Kendall at Karissa.Kendall@det.nsw.edu.au or David Lewis at David.Lewis83@det.nsw.edu.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K. Kendall', followed by a period.

Karissa Kendall
Project Director
School Infrastructure NSW