

Item 6.**Development Application 486-490 Elizabeth Street, Surry Hills - D/2023/852**

File No.: D/2023/852

Summary

Date of Submission:	25 September 2023 Amended plans received 7 February 2024
Applicant:	Edward Green
Architect/Designer:	TKD Architects
Developer:	Belvoir St Theatre Limited
Owner:	Belvoir St Theatre Limited
Planning Consultant:	Urbis
Heritage Consultant:	Urbis
Cost of Works:	\$14,355,000
Zoning:	The site is located within the MU1 - Mixed Use zone. The use is defined as "creative industry", and "office premises", and is permissible with consent within the zone.
Proposal Summary:	<p>Approval is sought for alterations and additions to an existing warehouse building known as the Belvoir Street Theatre Company Warehouse Building, comprising internal fitout and reconfiguration of the ground floor, level 1 and level 2 for use as rehearsal space and offices and amenities associated with the Belvoir Street Theatre Company, fitout of level 3 and level 4 addition for use as commercial office space, works to the Elizabeth St shopfront and new signage.</p> <p>The application is being reported to the Local Planning Panel for determination as the development exceeds the height of buildings and floor space ratio development standards.</p>

A maximum building height of 15m is permitted under clause 4.3 of the Sydney Local Environmental Plan 2012. A maximum height of 17.62m is proposed for the new works, which represents an exceedance of 17.5%. The application seeks a variation to the height control under clause 4.6. The proposed variation to the development standard has merit and is supported in this instance.

A floor space ratio (FSR) of 3:1 is permitted under clause 4.4 of the Sydney Local Environmental Plan 2012. The proposal represents a significant reconfiguration of the existing gross floor area of the building while retaining the existing overall floor space ratio of 3.4:1, which represents an exceedance of 13.6%. The application seeks a variation to the floor space ratio control under clause 4.6. The proposed variation to the development standard has merit and is supported in this instance.

Following a preliminary review of the application, the applicant was requested to provide a preliminary public art plan, amend the proposal to setback the level 4 addition from the western parapet by 1m, provide additional details of the ground floor sliding screens to Elizabeth St and additional details of the interface between new walls and the existing timber columns and beams, and provide additional details and measurements of the proposed protruding window casings facing Belvoir St.

Amended plans and additional information including a public art plan was submitted on 7 February 2024. Only minor amendments were made to the proposal.

Based on a subsequent request from Council, an amended preliminary public art plan was submitted on 21 March 2024.

The application was notified for a period of 21 days from 27 September 2023 to 18 October 2023. The amended plans submitted on 7 February 2024 were not re-notified, as the amendments to the design were relatively minor changes requested by Council and did not result in any additional environmental impacts. One submission was received. Issues raised in the submission include potential overshadowing impacts to residential apartments to the south, and potential impacts from additional traffic generated as a result of the proposal. The public submission has been addressed within this report.

The proposal is generally consistent with the relevant objectives and provisions of the Sydney LEP 2012. Subject to the recommended conditions at Attachment A, the development application is recommended for approval.

The proposed alterations and additions to the existing warehouse building responds satisfactorily to surrounding development in terms of bulk and scale, does not result in any significantly adverse amenity impacts and is consistent with the desired future character of the area. The proposal is considered to be in the public interest.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Resilience and Hazards) 2021
- (iv) SEPP (Industry and Employment) 2021
- (v) SEPP (Transport and Infrastructure) 2021
- (vi) SEPP (Biodiversity and Conservation) 2021
- (vii) SEPP (Planning Systems) 2021

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Clause 4.6 Variation Request - Floor Space Ratio
- E. Submissions

Recommendation

It is resolved that:

- (A) the variations requested to clause 4.3 Height of Buildings and clause 4.4 Floor Space Ratio in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2023/852 subject to the conditions set out in Attachment A to the subject report:

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with the objectives of the MU1 Mixed Use zone.
- (B) The proposed development satisfies the relevant objectives and provisions of the Sydney Development Control Plan 2012.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings and floor space ratio development standards are unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 and clause 4.4 of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the MU1 Mixed Use zone and the height of buildings and floor space ratio development standards.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP 738508, and is known as 486-490 Elizabeth Street, Surry Hills. It is rectangular in shape with an area of approximately 668 sqm. It has a primary street frontage of 21.96m to Elizabeth Street and a secondary street frontage of 30.49m to Belvoir Street. The site is located on the north-eastern corner of the intersection of Elizabeth St and Belvoir St. Levels on the site fall by approximately 3.7m from east to west (Elizabeth St).
2. The site contains a four storey warehouse building known as the Belvoir Street Theatre Warehouse Building. The existing uses of the building comprise a furniture retail tenancy on the ground and first floor, and office space and rehearsal space associated with Belvoir Theatre Company on levels 2 and 3. The main pedestrian entrance to the retail tenancy is via Elizabeth St, while the main pedestrian entrance to the Belvoir Theatre Company office and rehearsal spaces on the upper levels is via Belvoir St.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. A row of two storey terraces is located directly east of the site along Belvoir St. A residential apartment/townhouse block is located directly south of the site on the opposite side of Belvoir St (492-500 Elizabeth St). Multi-storey residential apartment and commercial buildings are located to the west along Elizabeth St. Directly adjoining the subject site to the north is a local heritage item (I2265) known as the "Former WC Penfold & Co factory" at 470-484 Elizabeth St and is owned and managed by Opera Australia. The main "Belvoir Street Theatre Building" is located approximately 50m to the east at 25 Belvoir Street.
4. The site is not heritage listed and is not located within a heritage conservation area.
5. The site is located within the Prince Alfred Park East locality and is not identified as being subject to flooding.
6. A site visit was carried out on 17 October 2023. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Elizabeth Street



Figure 3: Site viewed from Belvoir Street



Figure 4: Site viewed from near the corner of Elizabeth St and Belvoir St looking north-east.



Figure 5: Site viewed from Elizabeth St looking south-east

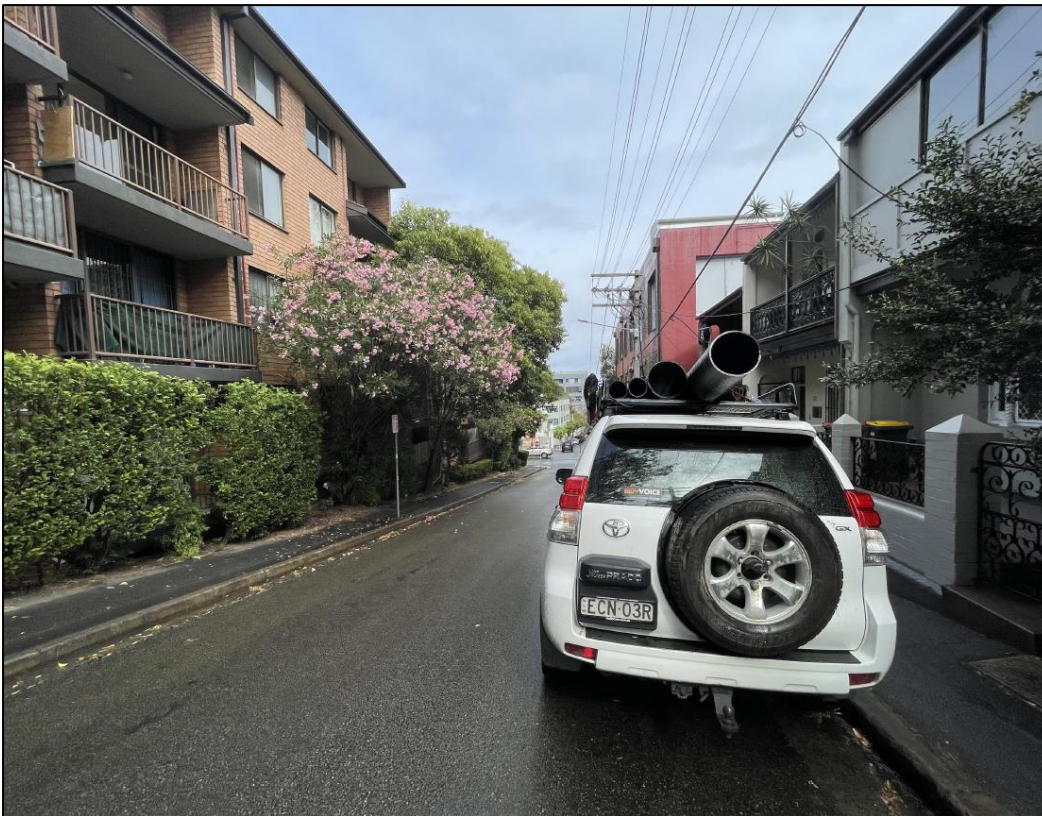


Figure 6: View looking west along Belvoir St towards the subject site



Figure 7: Internal view of the Belvoir Theatre company office space on Level 2



Figure 8: Internal view of the Belvoir Theatre company rehearsal space on Level 3



Figure 9: Existing south facing windows on Level 3



Figure 10: View from level 2 looking south towards 492-500 Elizabeth St

History Relevant to the Development Application

Development Applications

7. The following applications are relevant to the current proposal:

- **D/2005/1643** – Development consent was granted on 10 October 2005 for a change of use, alterations and internal fitout to the two upper levels and loading dock for use by the Belvoir Street Theatre, specifically offices on level 2 and rehearsal space on level 3. A raised roof and air conditioning plant was also approved.
- **PDA/2022/46** – Pre-development application advice was given on 21 June 2022 for alterations and additions to the existing building. The current proposal is based on the pre-DA scheme.

The key matters for consideration raised in the pre-DA advice were:

Heritage:

- The existing timber structural support must be retained. Engineering drawings and statements should be included as part of the DA information to demonstrate the feasibility of the additions and impact to the existing building.
- New walls should avoid abutting directly to columns and be offset with glass or metal strips, or different sensitive elements.
- New walls on the first floor should be shifted to align with the timber structural grid, centred under horizontal beams instead of abutting the ceilings.
- The pressed metal ceiling on the first floor should be left exposed with minimal pinning for lighting or mechanicals.
- The reinstatement of removed columns should be documented in plans.

Urban Design:

- Any new signage should fit within the proportions of the warehouse elevations. A simple vertical sign on the corner may be appropriate.
- The new upper level addition should be a simple form, have strong horizontal line eaves, appear "seated" on the warehouse, and be integrated into an overall balanced composition of the warehouse.

Compliance Action

8. The site is not subject to any ongoing compliance action that is relevant to the application.

Amendments

9. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 5 December 2023 requesting:
 - The level 4 addition be setback 1m from the western parapet to reduce the perceived bulk when viewed from Elizabeth St.
 - Details of the proposed sliding screens to the ground floor Elizabeth St frontage.
 - Details showing connections of new walls to the existing timber columns and beams, and ceiling plans showing the areas where pressed metal ceiling is proposed to be removed.
 - Landscaping be considered for the level 4 outdoor terraces.
 - A detailed materials and finishes schedule.
 - Engineering details and clarification to demonstrate that the level 4 addition can be supported by the existing structure.
 - A "Design for Environmental Performance" (DEP) template submitted as a separate document through the City portal, rather than as an appendix to the Sustainability report, and a Section J DTS (deemed to satisfy) assessment is to provide a better understanding of the building fabric.
 - Amended plans which show the dimensions of the protruding window casings to Belvoir St, including the width of encroachment into the public domain, height of the hood and height of the sides above the footpath.
 - Waste storage areas, including bins drawn to scale, identified in the submitted Waste Management Plan to be clearly identified on the architectural plans.
 - A detailed Public Art Plan in accordance with Section 3.1.5 of the SDCP.
 - Total floor area (TFA) plans in accordance with the definition of TFA under CI 7.13 (6) of the SLEP, to assist in calculating any applicable affordable housing contributions.
10. The applicant responded to the request on 7 February 2024, and submitted amended architectural plans, structural engineering details, landscaping plans, and a public art plan. While additional design details were provided, no significant alterations were made to the design.
11. On 23 February 2024 Council requested amendments to the submitted preliminary public art plan, including information be included regarding the installation, life span and maintenance of the public art proposal, and a methodology for the selection and commissioning of artists.
12. An amended preliminary public art plan was submitted on 21 March 2024.

Proposed Development

13. The application seeks consent for the following:
 - Demolition of internal walls and stairs, and demolition of the existing roof structure.
 - Alterations to the ground floor Elizabeth St facade, to provide new pedestrian entrance and openings.
 - Installation of new access lift to all floors.
 - Reconfiguration of the ground floor, level 1, and level 2 to provide:
 - entrance lobby, and performance/rehearsal space on the ground floor;
 - Belvoir Theatre Company staff amenities on level 1;
 - Office space and amenities associated with the Belvoir Theatre Company on level 2;
 - Separate commercial office tenancy on level 3.
 - Level 4 additions for a separate commercial office tenancy, and mechanical plant.
 - New building identification vertical projecting wall signage to the corner of the Elizabeth St/ Belvoir St facade.
14. Plans and elevations of the proposed development are provided below.

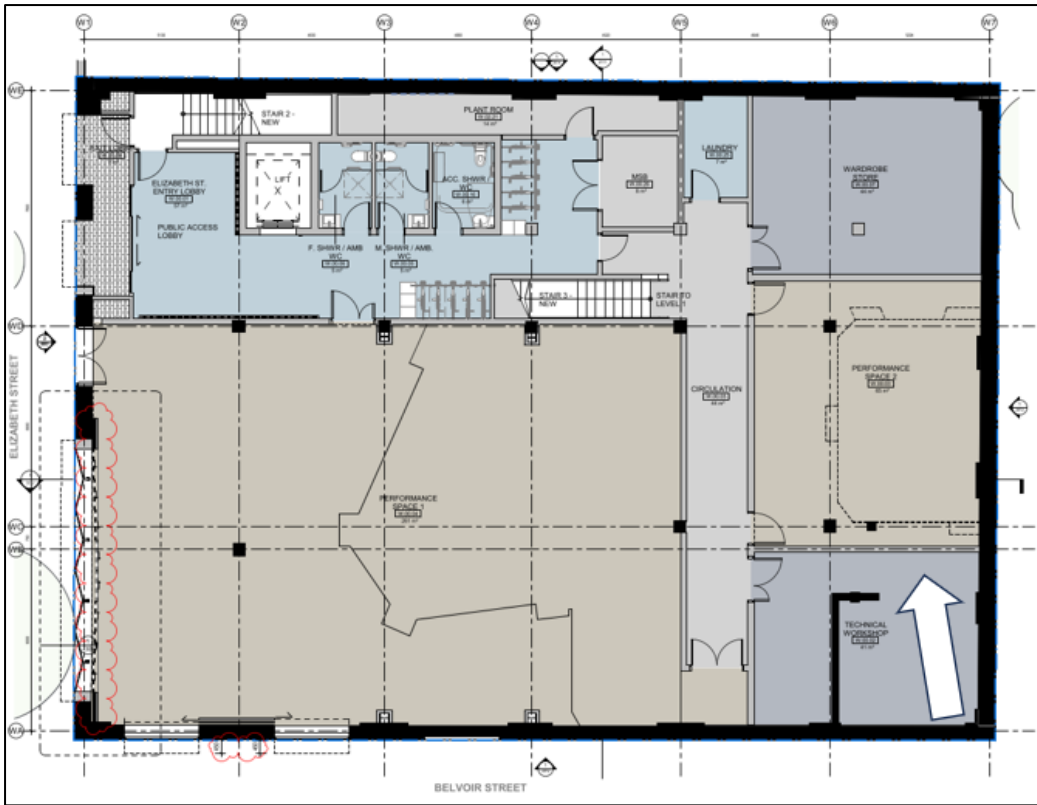


Figure 11: Proposed ground floor plan

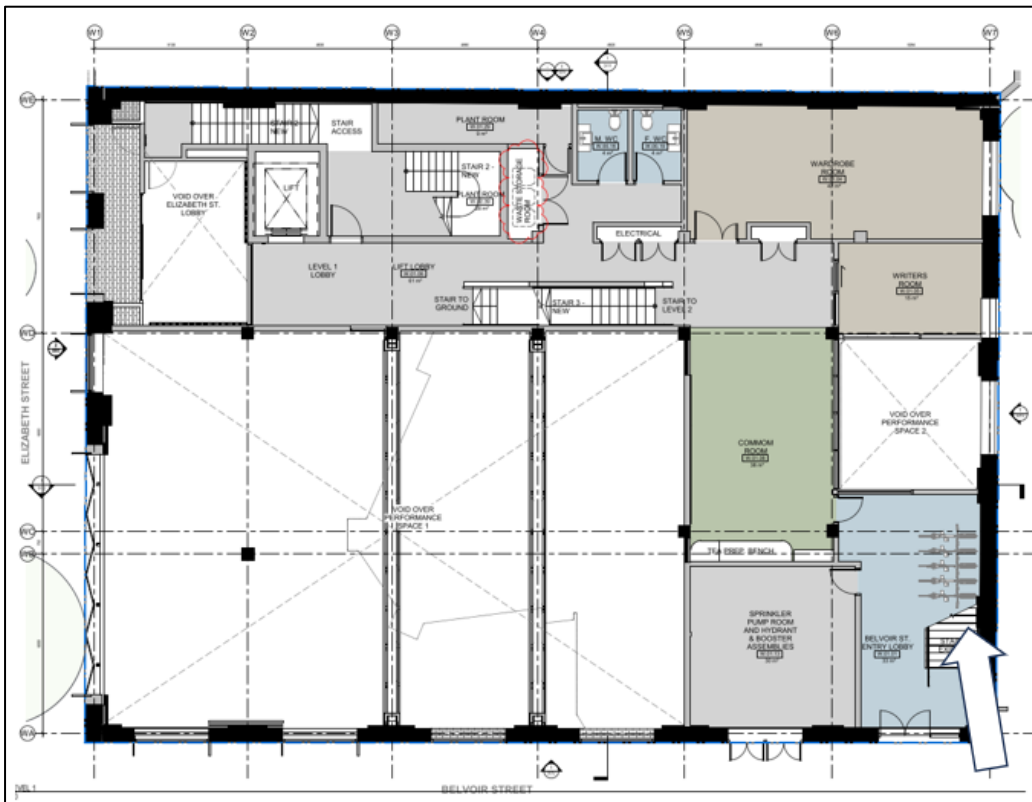


Figure 12: Proposed level 1 plan



Figure 13: Proposed level 2 plan

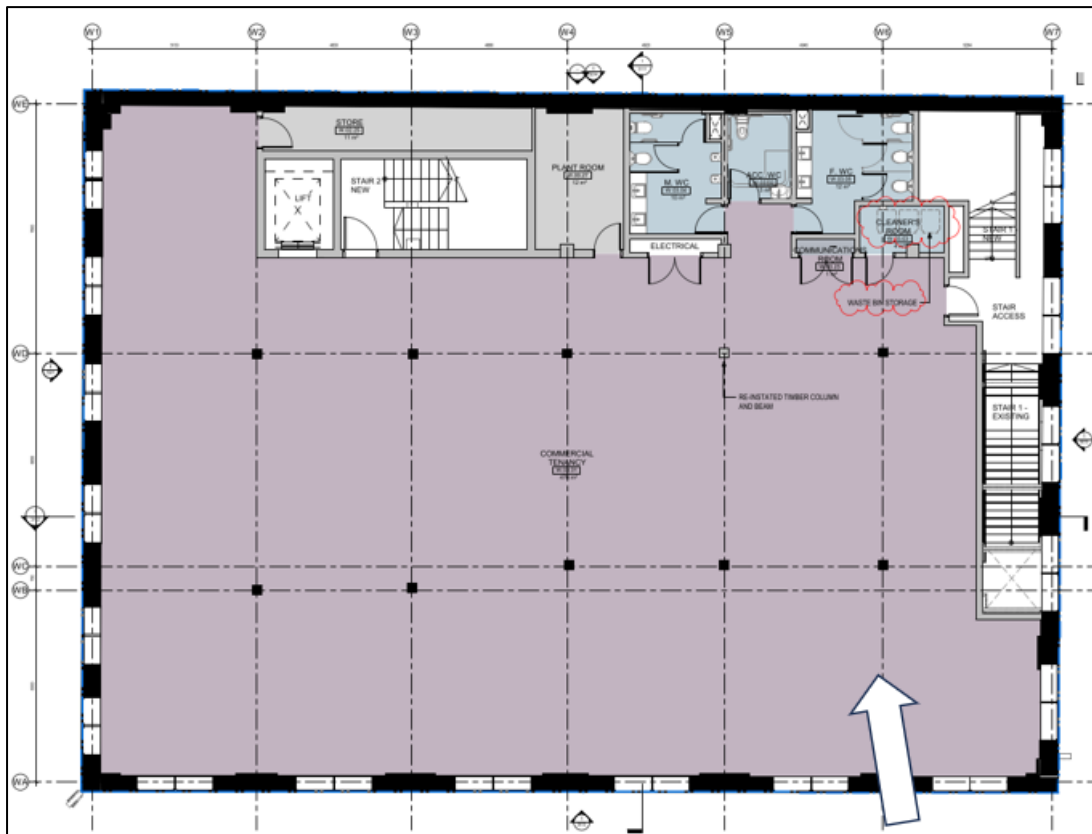


Figure 14: Proposed level 3 plan

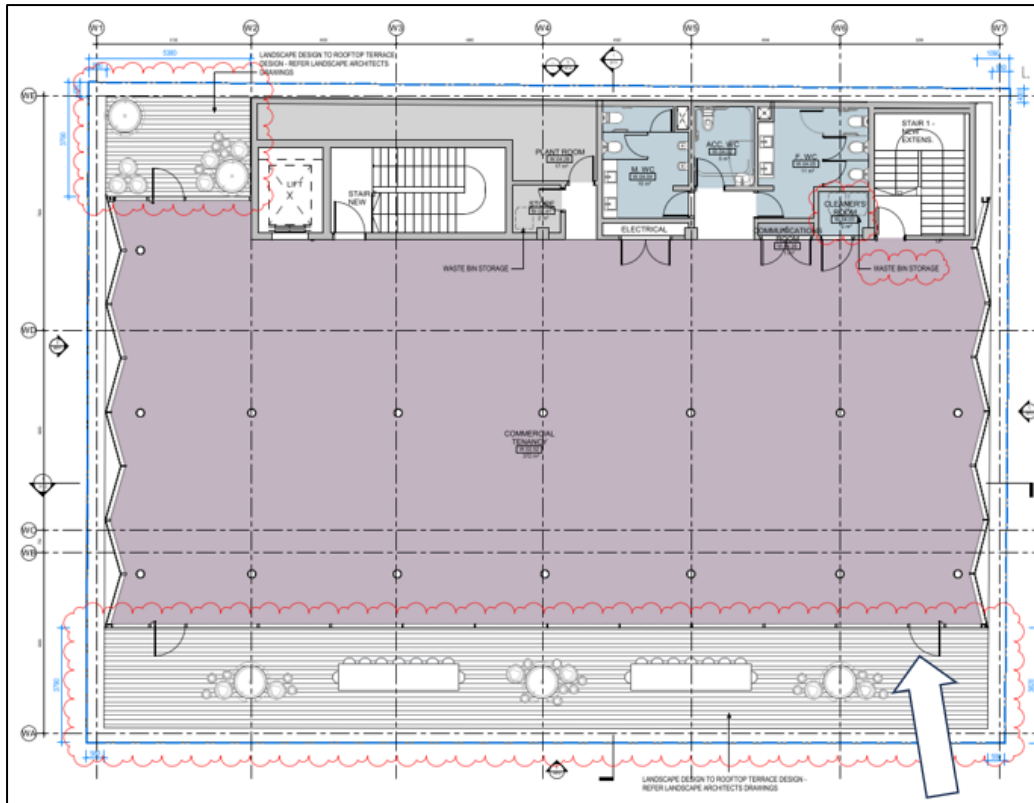


Figure 15: Proposed level 4 plan

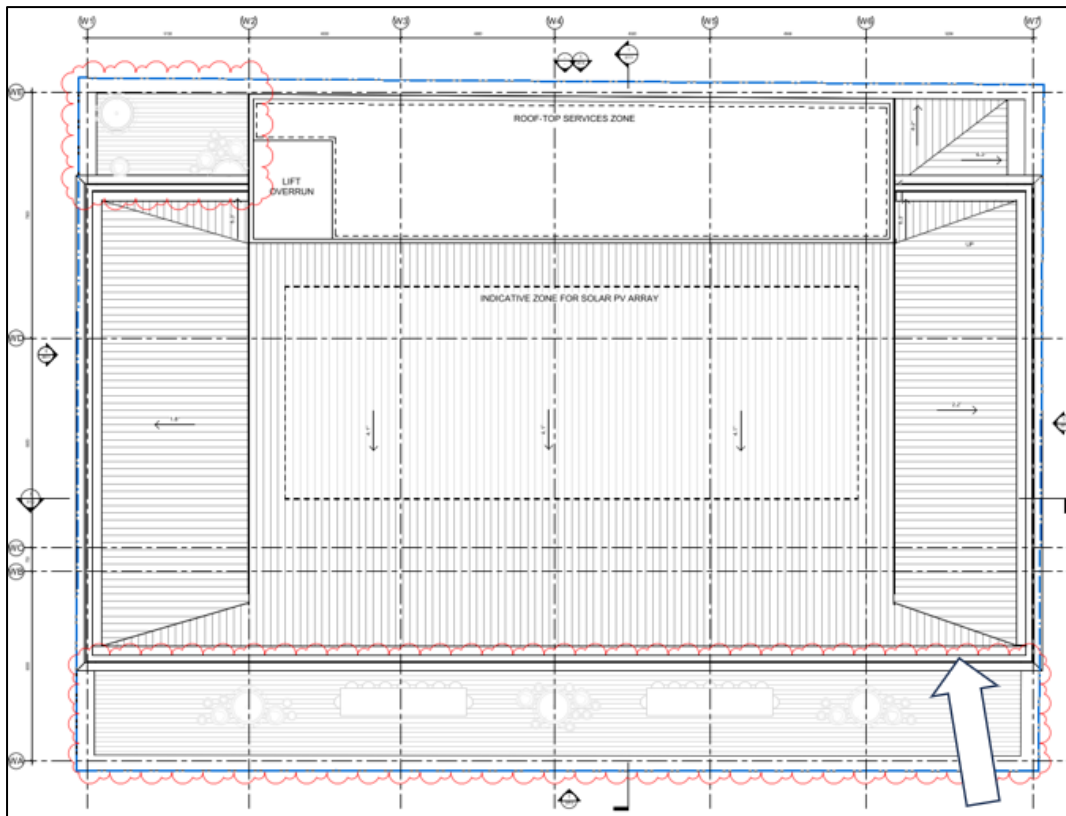


Figure 16: Proposed roof plan



Figure 17: Proposed west (Elizabeth St) elevation



Figure 18: Proposed south (Belvoir St) elevation



Figure 19: Proposed east elevation

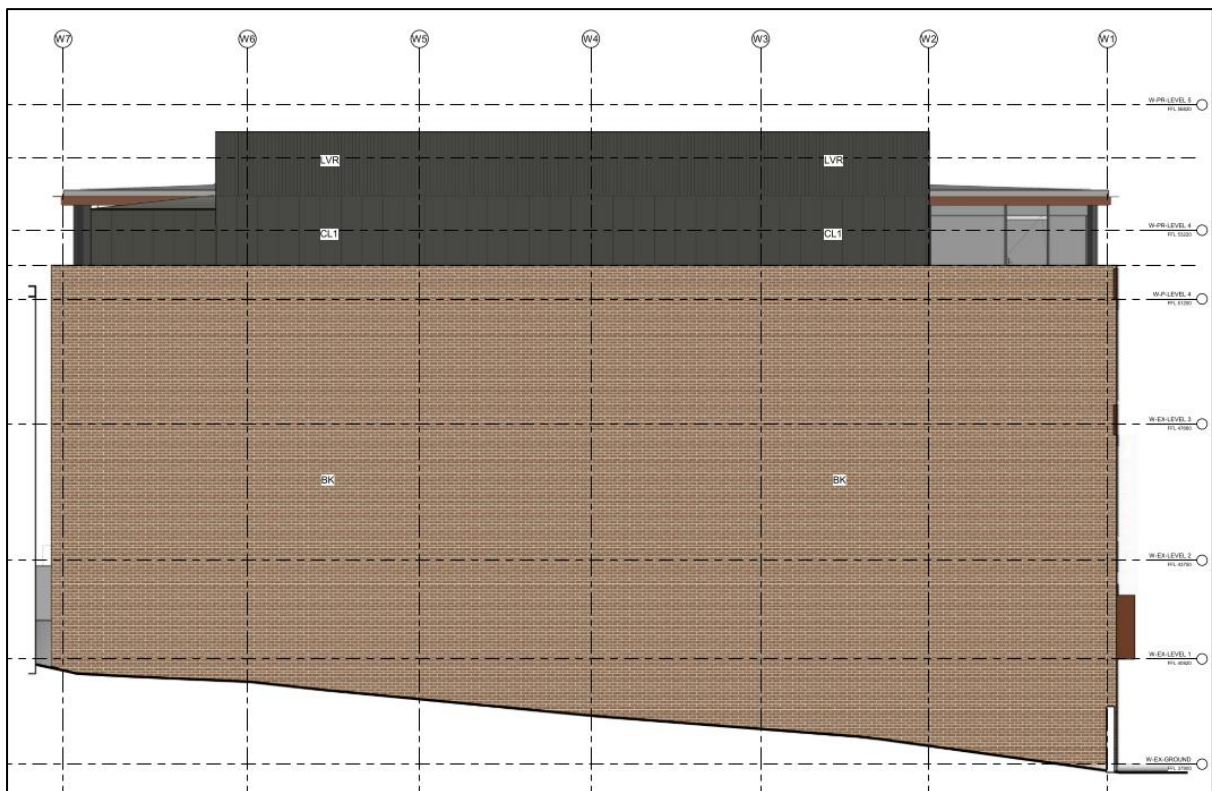


Figure 20: Proposed north elevation



Figure 21: Proposed perspective viewed from Elizabeth St looking north-east



Figure 22: Proposed perspective (night) viewed from Elizabeth St looking north-east

Assessment

15. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4

Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. Although the proposal involves excavation for the new lift shaft, Council's Health and Building team have reviewed the application and advised that as the proposed excavation is relatively minor (to a depth of approximately 600mm), and the proposal does not involve a change of use to a more sensitive land use, a preliminary site investigation is not considered necessary.
34. Standard conditions of consent are recommended to mitigate potential risks of contamination as a result of the proposed works, including requiring a hazardous materials survey to be submitted to Council prior to works commencing, for Council to be notified of any new evidence of contamination during building works, and for contaminated groundwater to not be discharged into the City's stormwater drainage system.

State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3

Advertising and Signage

35. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
36. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 1 is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	Yes	<p>The proposal includes a new vertical projecting wall signage to the Elizabeth St/ Belvoir St facade.</p> <p>The proposed signage is generally consistent with the character of the area.</p> <p>The site is not located within a signage precinct under the Sydney DCP 2012, and is not located within a heritage</p>

Provision	Compliance	Comment
		conservation area under the Sydney LEP 2012.
2. Special areas	Yes	The proposed signage does not detract from the amenity or visual quality of the locality.
3. Views and vistas	Yes	The proposed signage is below the height of the building, only projects 600mm from the facade of the building, does not obscure or compromise any important views and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage is of an appropriate scale, proportion and form within the context of the proposed future use of the building as a creative industry associated with the Belvoir Theatre Company, and provides a positive contribution to the streetscape and setting of the area.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable within the context of the existing building and future use of the site. The materiality is compatible with the finishes, colours and architectural detailing of the building.
6. Associated devices and logos	Yes	Not applicable.
7. Illumination	Yes	The signage is proposed to be internally illuminated. Conditions of consent are recommended to ensure that the illumination does not result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation.
8. Safety	Yes	The proposed signage is at a minimum height of 4.8m above the footpath, and will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

37. The proposed signage is consistent with the objectives of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage as set out in Clause 3.1 and satisfies the assessment criteria specified in Schedule 5.

State Environmental Planning Policy (Sustainable Buildings) 2022

38. The subject application was lodged prior to the SEPP (Sustainable Buildings) coming into force on 1 October 2023. The provisions of this SEPP therefore do not apply. Refer to Section 3.6 of the DCP compliance table below for further discussion on sustainability.

State Environmental Planning Policy (Transport and Infrastructure) 2021

39. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 2.48 Determination of development applications – other development

40. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
41. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised. Ausgrid submitted standard recommendations for safework practices regarding underground cables and overhead powerlines.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment

42. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
43. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

44. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the MU1 mixed use zone. The proposed ground floor, level 1 and level 2 uses associated with the Belvoir Theatre Company (performance space, workshops, wardrobe, ancillary offices) fall under the definition of "creative industry", which is a type of light industry under the LEP. The proposed use of level 3 and 4 is as separate commercial offices.</p> <p>The uses are permissible with consent in the zone. The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>A height of 17.62m is proposed for the level 4 addition.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 3:1 or 2000 sqm is permitted.</p> <p>A floor space ratio of 3.4:1 or 2,272 sqm is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 - Height of</p>

Provision	Compliance	Comment
		Buildings, and Clause 4.4 - Floor Space Ratio. A Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not identified as a local heritage item and is not within a heritage conservation area.</p> <p>The site is adjacent to a local heritage item (I2265) "Former WC Penfold & Co factory" directly to the north at 470-484 Elizabeth St.</p> <p>The proposed additions are well integrated into the architectural style of the existing warehouse building and will not detract from the heritage significance or siting of the neighbouring heritage item, noting that the subject building is visually separated from the neighbouring heritage building by the open car park of the adjoining property.</p>
5.21 Flood planning	Yes	The site is not identified as being subject to flooding.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The proposed development exhibits design excellence having regard to all the mandatory matters for consideration listed at clause 6.21C(2).</p> <p>Of particular note, the proposed development is of a high standard and uses materials and detailing which are compatible with the existing building and will contribute positively to the character of the area.</p>

Provision	Compliance	Comment
		<p>The proposed removal and replacement of the ground floor openings to the Elizabeth St frontage are considered appropriate within the context of the existing building, and the change of use of the ground and first floor from a retail use to a rehearsal space and associated office space and workshops associated with the Belvoir Theatre Company, as well as the main lobby entrance to the building. The new openings are appropriately proportioned and detailed to complement the architectural style of the existing warehouse building.</p> <p>The design of the level 4 addition is well proportioned, integrated into the design of the existing building, sits comfortable behind the Elizabeth St parapet, and is setback from the Belvoir St boundary to reduce the perceived bulk and scale of the upper level when viewed along Elizabeth St and Belvoir St. The additional bulk from the level 4 addition does not result in any unreasonable amenity impacts to neighbouring residential properties.</p> <p>The development is considered to be of an appropriate bulk and scale within the context of the subject site and streetscape and has an acceptable environmental impact with regard to the amenity of the surrounding area. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	<p>There are no minimum car parking requirements under the LEP controls.</p> <p>The site does not feature any existing vehicle access or car parking spaces,</p>

Provision	Compliance	Comment
7.8 Industry and warehouse or distribution centres		and none are proposed as part of the subject application.
Division 3 Affordable housing		
7.13 Contribution for affordable housing	Yes	<p>The site is identified as being on 'residual lands' under this clause.</p> <p>Clause 7.13(1)(a) of the LEP advises that where there is alterations to an existing building that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation, or the demolition of existing floor area and the subsequent creation, whether for the same or a different purpose, of more than 200 square metres of gross floor area, a contribution is required to be made for the purpose of affordable housing.</p> <p>The proposal involves the reconfiguration of the existing floor space of the building, as well as the creation of a level 4 addition for commercial use that comprises 372 sqm of gross floor area. As such, a contribution is required under this clause.</p> <p>See "financial contributions" section of this report below for details as to how the contribution is calculated.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils and is not in close proximity to any other classes of soil, and only minor excavation is proposed for the lift shaft that does not lower the water table. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>

Provision	Compliance	Comment
7.26 Public art	Yes	Refer to Section 3.1 of the SDCP compliance table below.

Development Control Plans

Sydney Development Control Plan 2012

45. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

46. The site is located within the Prince Alfred Park East locality. The proposed development is in keeping with the unique character and the design principles of the Prince Alfred Park East locality. The proposed level 4 addition is appropriately proportioned and located and does not impact any view corridors to significant parklands. The proposal does not alter the existing street setback pattern. The proposal will provide supporting commercial uses that are compatible with the primary use of the building as creative industry for the Belvoir Theatre Company.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p><i>Public Art:</i></p> <p>As the estimated cost of works exceeds \$10 million, public art is required to be provided in accordance with the <i>City of Sydney Guidelines for Public Art in Private Development and the Public Art Policy</i>.</p> <p>A Preliminary Public Art Plan prepared by UAP has been submitted and identifies opportunities for public art comprising potential sculptural attachments and light fittings to the Elizabeth St and Belvoir St corner facade, treatment to the glass windows along Elizabeth St and Belvoir St, and a roof sculpture to the Elizabeth and Belvoir St roof corner. The plan also identifies a number of local artists which would be considered to provide the final public art proposal.</p> <p>Although one of the proposed public art locations includes the large ground floor windows to Elizabeth St, obstructing some of the street level</p>

Provision	Compliance	Comment
		<p>glazing to provide public art can be considered acceptable given that the nature of the proposed ground floor use as a rehearsal and performance space for the Belvoir Theatre Company, that will not be accessible by the public, and the emphasis on visual privacy for performance rehearsals. Therefore, maintaining an active street frontage is not considered appropriate based on the proposed use of the ground floor.</p> <p>The other potential public art locations on the façade and roof corner are considered acceptable subject to a detailed public art plan being submitted.</p> <p>The preliminary public art plan is supported by Council's Public Art team subject to appropriate conditions requiring a detailed public art plan be submitted to and approved by Council prior to issue of a construction certificate.</p>
3.2. Defining the Public Domain	Partial compliance	<p>The Elizabeth St frontage of the site is identified as requiring an active frontage under the DCP controls.</p> <p>The existing building provides an active retail use on the ground floor with creative industry uses on the upper two levels. The proposal reconfigures the land uses of the building to provide creative industry uses on the ground floor (Belvoir Theatre Company rehearsal space) and commercial offices on the upper levels. While the proposal provides new glazed external openings to the Elizabeth St shopfront, sliding privacy screens behind the glass line will be utilised to provide visual privacy when the rehearsal space is being used.</p> <p>Given that the primary use of the building will remain as creative industry managed by the Belvoir Theatre Company, in this instance the proposal to provide a creative industry use on</p>

Provision	Compliance	Comment
		<p>the ground floor that does not directly activate the street can be supported.</p> <p>The proposal provides a new main pedestrian entrance to Elizabeth St. Although the existing building does not feature fixed awnings to the Elizabeth St frontage, and none are proposed to comply with the DCP requirements, protruding window hoods and casings are proposed to the top of the ground/first floor windows and openings along the Elizabeth St and part of the Belvoir St frontages. The window casings/hoods are considered compatible with the architectural design and detailing of the existing building. The window casings are a minimum of 3m above the footpath, and protrude 450mm over the public domain, which is considered acceptable by Council' Public Domain team, noting that a separate approval is required under Section 68 of the Local Government Act 1993.</p> <p>Given the proposed scope of works, the City's Public Domain team have also recommended conditions of consent requiring the removal of the redundant vehicle crossover along the Elizabeth St frontage and reinstatement of the footpath as well as the kerb ramp. Standard conditions are also recommended to protect and retain the public domain along Belvoir St during construction works.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>The proposal was referred to Council's Tree Management team, who recommend appropriate conditions of consent to ensure the protection and retention of the existing street tree (<i>Melaleuca quinquenervia</i>) along the Elizabeth St frontage from any adverse impacts as a result of construction activities.</p>

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	<p>A Sustainability Report prepared by Introba, as well as the City's Design for Environmental Performance (DEP) form have been submitted to demonstrate compliance with the minimum energy performance requirements of the National Construction Code under Section J.</p> <p>It is noted that the submitted Sustainability Report has highlighted a target commitment to a NABERS 5.0 Star rating, however this is to be reviewed during detailed design stage. A condition is recommended to ensure this commitment is met.</p> <p>Council's Environmental Projects team supports the proposal, noting that given the proposals retention of existing fabric, Section J of the NCC will be met via a JV3 performance solution, which is standard in this situation.</p> <p>Standard conditions are recommended to ensure that energy and water efficient appliances are installed within the building.</p>
3.7 Water and Flood Management	Yes	The site is not identified as being on flood prone land.
3.9 Heritage	Yes	<p>The site is not identified as a local heritage item and is not within a heritage conservation area.</p> <p>Refer to discussion under CI 5.10 of the LEP compliance table above.</p>
3.10 Significant Architectural Building Types	Yes	<p>Although the subject building is not heritage listed or within a heritage conservation area, it is a warehouse building over 50 years.</p> <p>The existing original timber support columns and beams, and pressed metal ceilings are generally retained and re-used.</p> <p>An initial Structural Engineering report has been submitted to demonstrate that the level 5 addition can be</p>

Provision	Compliance	Comment
		<p>structurally supported subject to strengthening works to the existing foundations, columns, walls and floors.</p> <p>Detailed drawings have also been submitted to demonstrate that the new level 3 ceilings will not abut and be offset from the top of the existing windows.</p> <p>The proposal retains the overall appearance and geometry of the existing warehouse building, with the new level 4 addition designed to appropriately relate to the form of the existing building.</p> <p>The extent of existing significant fabric and features to be retained is considered acceptable given that the site is not heritage listed or within a conservation area.</p>
3.11 Transport and Parking	Yes	<p>The DCP requires 11 bike spaces for employees and 4 bike spaces for visitors, (1 spaces for the creative industry use, and 14 spaces for the commercial offices) for a total of 15 bike spaces.</p> <p>One personal locker for each bike space (15) is required as well as a shower and change facility.</p> <p>The proposal provides end of trip facilities on the ground floor with 10 bike spaces and lockers in a consolidated location accessed via the main Elizabeth St lobby entrance. The remaining 5 bike spaces are located on level 1 adjacent to the Belvoir St pedestrian entrance.</p> <p>It is noted that the site does not contain any on-site loading areas, and relies on kerbside loading zones along Elizabeth St. No on-site loading areas or vehicle access is proposed as part of this application. While Council's Traffic and Access team have raised concerns with relying on kerbside loading zones that could change over time, given this is an existing arrangement and there is no capacity to accommodate an on-site loading area without significant</p>

Provision	Compliance	Comment
		alterations to the existing building, this arrangement is considered acceptable.
3.12 Accessible Design	Yes	<p>An Access Report prepared by Design Confidence, dated 20 April 2023 has been submitted to demonstrate that the proposal is capable of complying with the accessibility requirements of the Federal Disability Discrimination Act 1992 (DDA), National Construction Code, and Australian Standards.</p> <p>Appropriate accessible facilities will be provided, and the accessibility of the premises is maintained.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p> <p>A Social Impact Assessment prepared by Urbis has been submitted as part of this application, to address potential social impacts.</p> <p>The proposed refurbishment and redevelopment of the existing building for continued use by the Belvoir Theatre Company is considered to result in positive social benefits to the local community and is aligned with the City's policies and strategies to encourage creative industry and cultural uses.</p>
3.14 Waste	Yes	<p>A Waste Management Plan has been submitted with the proposal in accordance with Council requirements.</p> <p>The proposal includes a waste storage area for the Belvoir Theatre Company uses on level 1, and waste storage areas for the commercial tenancies on levels 3 and 4.</p> <p>The proposal has been reviewed by Council's Cleansing and Waste team, who support the proposal, noting that there is no on-site waste collection for the existing building, and that bins will continue to be collected from the street.</p>

Provision	Compliance	Comment
		A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	The premises is not licensed, and public performances and events are not proposed for the creative industry use on this site.
3.16 Signage and Advertising	Yes	<p>The proposal includes a new business identification vertical projecting wall sign to the corner of the Elizabeth St and Belvoir St elevations.</p> <p>The site is not located within a heritage conservation area, or within a signage precinct.</p>
3.16.1 Signage strategy	Yes	A waiver to the signage strategy is supported as the site is not heritage listed or within a heritage conservation area, it is considered the proposal is minor in nature, involving one new sign and generally satisfies the objectives of the DCP in relation to signage.
3.16.3 General requirements for signage	Yes	<p>The proposed vertical projecting wall sign is compatible with the architecture, materials and colour scheme of the existing building. While the sign is large in proportions (4.6m x 0.6m) and will be highly visible, it is not considered to overly dominate the building facade.</p> <p>The signage is considered acceptable in the context of the existing and future use and management of the building by the Belvoir Theatre Company.</p> <p>Standard conditions are recommended to ensure the signage is installed in accordance with the relevant Australian Standards and does not damage any significant fabric or features.</p>
3.16.4 Illuminated signage	Yes	The proposed projecting wall sign is to be internally illuminated between the

Provision	Compliance	Comment
		<p>hours of 5:30pm to 10:30pm, seven days a week.</p> <p>The signage is not within 25m of the nearest R1 - residential zone and is not considered to result in unreasonable amenity impacts, subject to standard conditions of consent to control the illumination of the signage.</p>
3.16.5 Building identification signs	Yes	<p>The proposed signage is considered a building identification sign, as the building is known as the Belvoir Theatre Warehouse Building, and is owned and managed by the Belvoir Theatre Company, as well as being the significant tenant of the building.</p> <p>The proposed signage does not exceed 15m in height or the top of the parapet and is located close to the main pedestrian entrance of the building along Elizabeth Street in accordance with the DCP controls.</p> <p>The design of the signage is considered appropriate and complements the architectural style and proposed colour scheme of the building façade. The proportions of the signage are considered acceptable within the context of the existing building.</p>
3.17 Contamination	Yes	<p>The proposal is not considered to result in any risk of contamination subject to appropriate conditions of consent.</p> <p>Refer to above discussion under SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of four storeys.</p> <p>The proposed development is five storeys in height and does not comply.</p> <p>See further details under the 'Discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Partial compliance	<p>The proposed development retains the existing floor to floor height of 3m for the ground floor lobby and workshop / wardrobe areas. Due to the removal of part of the first floor to create a void, the main ground floor performance space achieves a floor to floor height of 5.8m.</p> <p>The retained portions of the first floor maintain the existing 2.8m floor to floor height.</p> <p>The second floor achieves a floor to floor height of 3.62m, while the new third floor achieves a floor to ceiling height of approximately 2.7m.</p> <p>The proposed floor to floor heights of the ground and first floor are considered acceptable given the proposal retains the existing floor levels of the building, and the ground and first floor uses are for creative industry associated with the Belvoir Theatre Company.</p> <p>The Level 3 commercial office space achieves a DCP compliant floor to ceiling height of 3.3m for commercial uses. Although the floor to ceiling height of the new Level 4 addition does not meet the required DCP floor to ceiling height of 3.3m for commercial uses, the proposed 2.7m floor to ceiling height is considered acceptable to achieve sufficient internal amenity. Increasing</p>

Provision	Compliance	Comment
		the ceiling height would likely intensify the breach of the SLEP 15m height control.
4.2.2 Building setbacks	Yes	<p>The existing building has a nil setback to all side boundaries on all four levels.</p> <p>The proposal retains the nil setback to the first four levels, with the new fifth storey setback directly behind the parapet to Elizabeth St (west) and to the east, with a setback of 3.8m to Belvoir St (south) and to the north-west corner of the site.</p> <p>The subject building is a corner building and is not part of a group or row of buildings and is separated from the adjoining buildings to the east and north.</p> <p>The site is not identified as requiring specific setbacks as shown on the "Building Setbacks and alignment map" under the DCP.</p> <p>The DCP specifies that <i>"(1) where no setback or alignment is shown on the map, the setback and alignment must be consistent with adjoining buildings", and "(4) In areas where corner buildings are typically built to the street boundary on one or more frontages, new development on a corner may also build to the street boundary"</i>.</p> <p>The fifth storey is considered to be appropriately setback from Belvoir St and behind the Elizabeth St parapet to reduce the perceived bulk and scale of the fifth storey viewed from the public domain. The setbacks of the fifth storey are not considered to result in any adverse impacts on the amenity of neighbouring properties as discussed elsewhere in this report.</p>

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The submitted shadow diagrams indicate that the proposal will create additional overshadowing to some of the north facing private balconies of the residential apartment development directly south of the site at 492-500 Elizabeth St from 12pm to 3pm mid-winter.</p> <p>See further details under the "Discussion" section below.</p>
4.2.3.5 Landscaping	Yes	<p>The DCP requires 15% tree canopy coverage for development sites.</p> <p>The existing building fully covers the site, and there is no existing landscaping.</p> <p>The proposal incorporates additional soft landscaping in the form of planters to the Level 4 accessible terrace along the southern boundary.</p> <p>Council's Landscaping Officer has reviewed the proposal and has not raised any objections or concerns with the proposed soft landscaping.</p> <p>While the proposal does not meet the required 15% tree canopy coverage, given that the site is constrained by the existing built form, and that the proposal represents an improved landscaping outcome over the existing conditions, the proposed level 4 landscaping is supported.</p>
4.2.3.6 Deep Soil	No	<p>The DCP requires 10% (66.8 sqm) of the site to be dedicated deep soil area.</p> <p>The proposed planters on level 4 do not meet the definition of deep soil under Council's Landscape Code, which specifies that deep soil zones must not be located above a structure. The objective of the control is to ensure</p>

Provision	Compliance	Comment
		<p>adequate drainage, and soil depths are provided for tree planting.</p> <p>Given the site constraints and existing built form, the non-compliance with minimum deep soil area is considered acceptable.</p>
4.2.3.10 Outlook	Yes	The additional bulk from the level 4 additions are not considered to result in any unreasonable impacts to outlook or views from nearby residential properties.
4.2.3.11 Acoustic privacy	Yes	<p>The proposal is not anticipated to result in any unreasonable noise impacts to the nearby residential uses along Elizabeth St and Belvoir St.</p> <p>An acoustic report prepared by Resonate Consultants, has been submitted to demonstrate that the proposal can comply with Council's noise policy (NSW EPA Noise Policy for Industry 2017), and has been peer reviewed by Council's Health and Building team.</p> <p>It is noted in the acoustic report that the details and specifications of the required rooftop mechanical plant have yet to be finalised, and that an acoustic barrier may be required to mitigate noise impacts, depending on the final mechanical plant specifications. The acoustic report mentions that predicted noise levels were based on an acoustic barrier or screening extending to a height of 500mm above the mechanical plant, subject to further recommendations from an acoustic consultant based on the final plant selection.</p> <p>It is noted that the roof services zone is located along the northern portion of the roof and features 1.5m high perimeter walls. It is not anticipated that any future</p>

Provision	Compliance	Comment
		<p>acoustic screening will significantly add to the visible bulk of the new roof.</p> <p>The acoustic report also includes the recommendations that amplified music and speech for the ground floor rehearsal/performance space is not used after midnight, and that windows and doors remain closed during periods of high noise levels.</p> <p>It is also noted that public performances and events are not proposed for the ground floor performance spaces.</p> <p>The proposal is not considered to significantly intensify the ongoing creative industry (Belvoir Theatre Company) use of the building. The use of the upper-level commercial offices and associated outdoor terrace are not anticipated to result in unreasonable noise impacts to the nearby residential uses, noting that the level 4 terrace is not proposed to be accessible to the public.</p> <p>Standard noise conditions are recommended to ensure compliance with Council's noise policy, and for the recommendations of the acoustic report to be implemented.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The proposal retains the overall appearance of the existing warehouse building. The proposed Level 4 addition is setback behind the existing parapets and presents as a modern addition integrated into the existing building. It does not detrimentally disrupt the fine grain architectural detailing of the existing building.</p>
4.2.6 Waste and recycling Management	Yes	<p>Refer to Section 3.14 above of the DCP compliance table.</p> <p>A condition has been recommended to ensure the proposed development complies with the relevant provisions of</p>

Provision	Compliance	Comment
		the City of Sydney Guidelines for Waste Management in New Development.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>The site is located within the MU1 Mixed Use zone, which is equivalent to the former B4 Mixed Use zone.</p> <p>Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Building Height

- 47. The site is subject to a maximum height control of 15m.
- 48. The existing building has a maximum height of 14.3m measured from the top of the parapet along the western boundary of the site. The proposed development includes the demolition of the existing roof, and construction of a fifth storey, part of which exceeds the height control, with a maximum height of 17.62m (north-western corner of the new roof) above existing ground level, resulting in a variation of 2.62m or 17.4% from the development standard.



Figure 23: Southern (Belvoir St) elevation showing the 15m height control dashed



Figure 24: West (Elizabeth St) elevation showing the 15m height control dashed

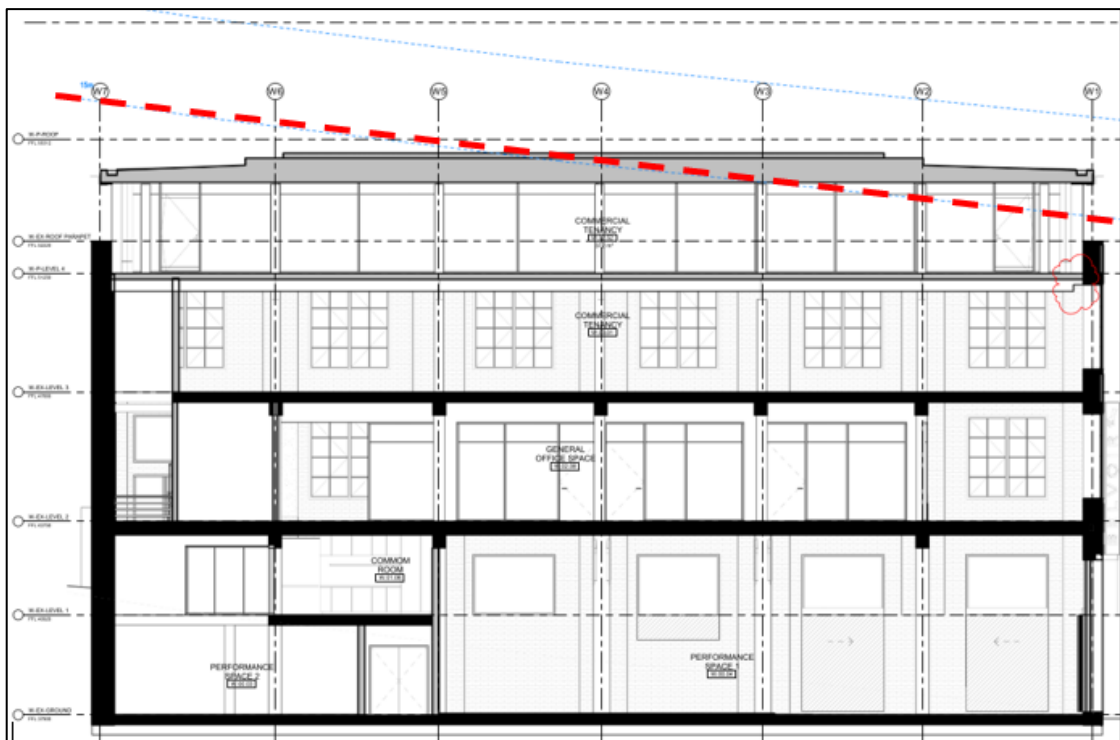


Figure 25: Section showing the 15m height control dashed

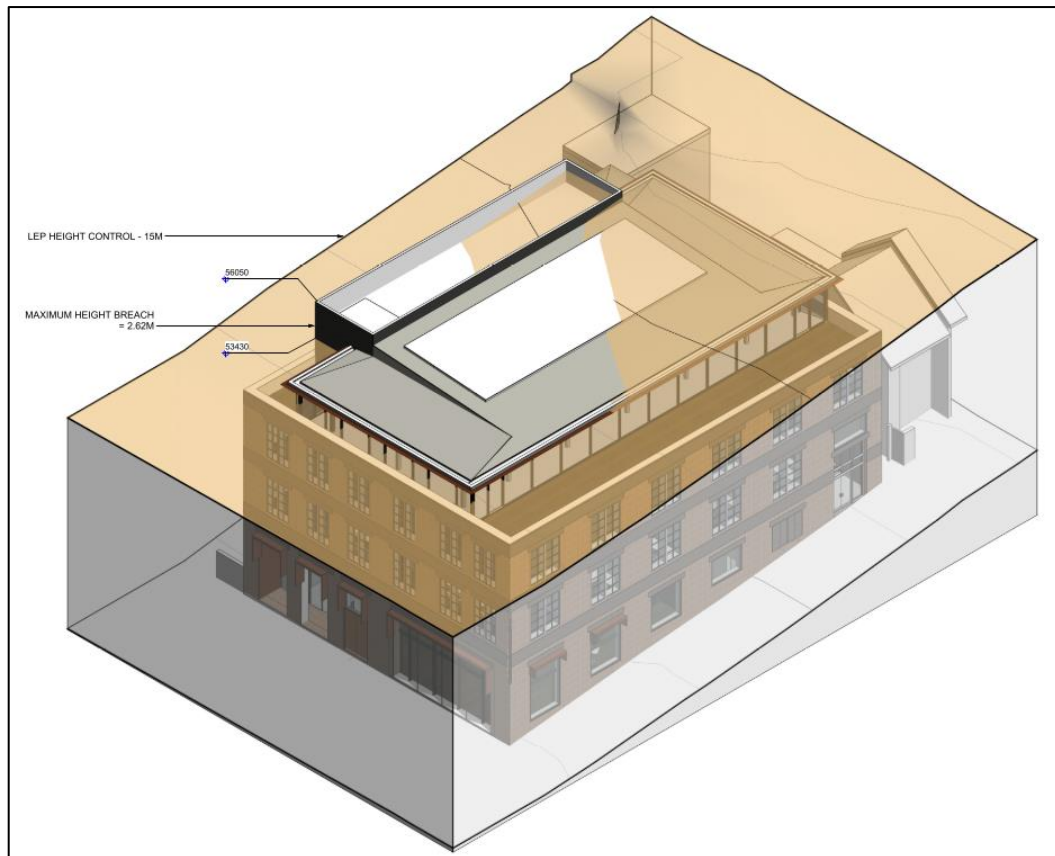


Figure 26: Height plane diagram showing the portion of the proposal that exceeds the 15m height control

49. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - b. That there are sufficient environmental planning grounds to justify contravening the standard;
 - c. The proposed development will be consistent with the objectives of the zone; and
 - d. The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

50. The applicant seeks to justify the contravention of the building height development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- (i) The proposal meets the objectives of the building height standard in that the additions which breach the height control are designed and located to minimise visibility from the street frontages, mitigate adverse overshadowing to neighbouring properties and maintain the legibility of the existing warehouse form.
 - (ii) The contravention to the 15m HOB is largely a result of the sloped nature of the site (which falls approximately 3.7m).
 - (iii) The proposed building height is appropriate within the Elizabeth Street area which features many taller, multi-storey buildings.
 - (iv) The proposed vertical addition will not result in the loss of any significant views from the surrounding public domain or private properties.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposal (notwithstanding the LEP HOB contravention) is consistent with the objectives of the development standard as provided in clause 4.3 of the SLEP 2012.
 - (ii) The proposal maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
 - (iii) The portion of height non-compliance has largely resulted from the natural fall of the site (of approximately 3.7m) from the eastern extent of the building envelope to the Elizabeth Street footpath level.
 - (iv) Having regard to the built form in the locality, the proposal represents an appropriate addition to the streetscape.
 - (v) The footprint of the top floor vertical addition has been designed to minimize visibility from the public domain, comply with the DCP solar access controls, and give regard to the scale of surrounding buildings.
 - (vi) The proposal will provide the renewal of an existing building and deliver a positive social and economic contribution to the city through the delivery of additional floor space for the performing arts industry and includes various green travel / sustainability initiatives – consistent with the objectives of the MU1 (Mixed Use) zone.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposal will maintain the existing Belvoir Street Theatre use on-site, and the proposed vertical addition will allow for their rearrangement to make the space more functional and activate the Elizabeth Street frontage.
 - (ii) The proposed vertical addition is intended to be leased as new commercial office space to a tenant allied in the cultural and creative industry, creating a mixture of compatible employment generating land uses.

- (iii) The proposal maintains the existing 'creative industry' use and introduces a new 'office premises' use. These uses are permitted with consent and are highly suitable for the site.
- (iv) The proposal seeks to locate a non-residential use on the ground floor of the building, consistent with this zone objective.
- (v) The proposed commercial space facilitated by the vertical addition will support the viability of the Surry Hills area, including its role within the 'Eastern Creative Precinct,' as outlined in the Sydney LSPS.
- (vi) The proposed vertical addition will allow for the facilitation of additional office space in this accessible location.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

51. Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

52. The applicant's written request has adequately addressed Clause 4.6(3) in that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case, and that there are sufficient environmental planning grounds to justify contravening the standard.

- (a) The request demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and
- (b) It has been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Does the written request adequately address those issues at clause 4.6(3)(b)?

53. The applicant has demonstrated that there are sufficient environmental planning grounds for justifying the variation of the standard in that the proposed new fifth storey is appropriately setback behind the Elizabeth St parapet and away from the Belvoir St frontage to reduce the perceived bulk and scale of the addition, provides an appropriate building height within the context of the surrounding buildings, and does not result in any unreasonable amenity impacts to neighbouring properties.

Is the development in the public interest?

54. Pursuant to Clause 4.6 (4) (a) (ii), the proposed development is in the public interest because it is consistent with both the objectives of the height standard and the objectives for development within the MU1 - Mixed Use zone, in that:
- (a) The objectives of the development standard (cl 4.3) are achieved notwithstanding the non-compliance as the new fifth storey generally aligns with the height of the neighbouring heritage building at 480 Elizabeth Street, as well as the multi-storey residential apartment building on the opposite side of Elizabeth Street (533-567 Elizabeth Street) and the Chinese Consulate Building (539-541 Elizabeth Street), and provides an appropriate height transition from the taller buildings to the west to the smaller two storey residential terraces to the east.
 - (b) The design of the new fifth storey is designed to reduce the perceived bulk and scale, through a 3.8m setback from the Belvoir St (southern) boundary and north-western corner of the site, locating the addition behind the existing parapet along the perimeter of the building, and designing the new addition so that the highest point is setback 5.1m from Elizabeth St and towards the centre of the site.
 - (c) The portion of the fifth storey which breaches the height control is not considered to result in unreasonable visual privacy impacts, as the use of the fifth storey is a commercial office, and only the top of the windows to the western portion of the addition breach the height control and are separated from adjoining properties by the open carpark of 470-484 Elizabeth St to the north, Elizabeth St to the west, and Belvoir St to the south.
 - (d) The additional bulk of the portion of the fifth storey which breaches the height control does not result in any unreasonable overshadowing impacts to the neighbouring terraces to the east, or residential apartments to the south as due to the sloping topography of the site, the portion of the building which breaches the control is limited to the western portion of the fifth storey which is sufficiently setback from the southern boundary.
 - (e) The proposal is in keeping with the objectives of the MU1 Mixed Use Zone, as it will provide compatible commercial and creative industry uses within an accessible area.
 - (f) The proposal is of an appropriate bulk and scale for the site and retains the overall FSR for the site.

Conclusion

55. For the reasons provided above the requested variation to the height of buildings is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings development standard and the MU1 Mixed Use zone.

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

56. The site is subject to a maximum floor space ratio control of 3:1.

57. The existing FSR for the site is 3.4:1 (2,272 sqm of gross floor area). The proposed development reconfigures the existing GFA while retaining the overall FSR of 3.4:1 (2,272 sqm), which represents a variation of 271.9 sqm or 13.6%.
58. Although the proposal does not result in a net increase in GFA on the site, it results in an increase to the existing building envelope in the form of an additional fifth storey (418 sqm of GFA). This is due to the proposal reconfiguring the existing floor areas of the building to provide a substantial void on Level 1 and convert existing floor space to service areas and vertical circulation, which are excluded from the LEP definition of GFA.
59. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (c) The proposed development will be consistent with the objectives of the zone; and
 - (d) The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

60. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The proposed development meets the objectives of the development standard in that the proposal results in the same amount of floor space as the existing building. However, the floor space is reconfigured to revitalise and better activate the streetscape, while providing more functional space for the Belvoir Street Theatre's operational requirements. The commercial office component is intended to be leased to a tenant allied in the cultural and creative industry, providing a mixture of compatible employment generating land uses in accordance with the MU1 zone objectives.
 - (ii) The neutral GFA balance means the 'density' of the development has not increased from the existing condition. The proposal maintains the existing parking provision (of zero spaces) and loading / servicing arrangements.
 - (iii) The proposal provides the same amount of floor space as the existing building. On this basis, the proposal will not place any undue burden on the capacity of existing or planned infrastructure.
 - (iv) The proposed works are in keeping with the desired future character of the Prince Alfred Park East locality as identified under the Sydney DCP 2012, as they will have no adverse impact on the view corridors along Elizabeth Street; retain the existing warehouse building; activate the Elizabeth Street streetscape; and complement the mixed-use character of the locality.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposal maintains the same amount of GFA compared with the existing building (2,272sqm). Therefore, the FSR variation does not seek to provide any additional density or gross floor area (GFA).
 - (ii) The reconfiguration of floor space (resulting in a neutral GFA balance) is required to improve the long-term viability of the building.
 - (iii) The footprint of the top floor vertical addition has been placed toward the northern end of the site, away from the sensitive residential / southern interface (setback 3.79m), in order to address the visual and overshadowing impacts of the addition.
 - (iv) The proposed 5-storey building height resulting from the GFA reconfiguration (vertical addition) is appropriate within the Elizabeth Street area which features many taller, multi-storey buildings.
 - (v) The proposal will provide the renewal of a warehouse building and deliver a positive social and economic contribution to the city through the delivery of additional (and more functional / appropriate) floor space for the performing arts industry and includes various green travel / sustainability initiatives – consistent with the objectives of the MU1 (Mixed Use) zone.
- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposal will maintain the existing Belvoir Street Theatre use on-site, and the proposed vertical addition will allow for their rearrangement to make the space more functional and activate the Elizabeth Street frontage.
 - (ii) The proposal maintains the existing 'creative industry' use and introduces a new 'office premises' use. These uses are permitted with consent and are highly suitable for the site. The proposal will not have any adverse impacts on the adjoining land, including the residential uses on the southern side of Belvoir Street.
 - (iii) The proposal seeks to locate a non-residential use on the ground floor of the building, consistent with this zone objective.
 - (iv) The proposed commercial space facilitated by the vertical addition will support the viability of the Surry Hills area, including its role within the 'Eastern Creative Precinct,' as outlined in the Sydney LSPS.
 - (v) The site is close to Central Station, Chalmers Street / Elizabeth Street buses and the Surry Hills Light Rail stop. It is well connected to public transport.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

61. Development consent must not be granted unless the consent authority is satisfied that:

- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of

the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and

- (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

62. The applicant's written request has adequately addressed Clause 4.6(3) in that compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of this case, and that there are sufficient environmental planning grounds to justify contravening the standard.

- (a) The request demonstrates the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and
- (b) It has been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Does the written request adequately address those issues at clause 4.6(3)(b)?

63. The applicant has demonstrated that there are sufficient environmental planning grounds for justifying the variation of the standard in that the additional bulk and scale as a result of the reconfigured GFA to the level 4 addition is appropriately setback behind the Elizabeth St parapet and away from the Belvoir St frontage to reduce the visibility of the additions from the public domain, and does not result in any unreasonable amenity impacts to neighbouring properties.

Is the development in the public interest?

64. Pursuant to Clause 4.6 (4) (a) (ii), the proposed development is in the public interest because it is consistent with both the objectives of the floor space ratio standard and the objectives for development within the MU1 - Mixed Use zone, in that:

- (a) The objectives of the development standard (cl 4.4) are achieved notwithstanding the non-compliance as the existing building exceeds the floor space ratio development standard and the proposal does not result in a net increase in GFA, and is not considered to intensify the use of the site beyond the capacity of existing and planned infrastructure. The bulk and scale of the proposal is consistent with the character of the area and will meet the anticipated development needs for the site.
- (b) The proposal will improve the internal amenity to support the continuing creative industry use of the site, as well as provide two commercial tenancies with the intent of providing compatible commercial office uses to complement the Belvoir Theatre Company.
- (c) The design of the new fifth storey is designed to reduce the perceived bulk and scale, through a 3.8m setback from the Belvoir St (southern) boundary and north-western corner of the site, locating the addition behind the existing parapet along the perimeter of the building, and designing the new addition so that the highest point is setback 5.1m from Elizabeth St and towards the centre of the site.

- (d) The fifth storey is not considered to result in unreasonable visual privacy impacts, as the use of the fifth storey is a commercial office, is sufficiently setback from residential apartments to the south and features tinted glazing.
- (e) The additional bulk of the fifth storey does not result in any unreasonable overshadowing impacts to the neighbouring terraces to the east, or residential apartments to the south as it is appropriately setback from the southern boundary by 3.8m.
- (f) The tallest portion of the additions along the northern boundary of the site, contain mainly service areas and vertical circulation which do not comprise GFA.
- (g) The proposal is in keeping with the objectives of the MU1 Mixed Use Zone, as it will provide compatible commercial and creative industry uses within an accessible area.

Conclusion

65. For the reasons provided above the requested variation to the floor space ratio development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of floor space ratio development standard and the MU1 Mixed Use zone.

Height in Storeys

66. The site is subject to a 15m height control under Cl 4.3 of the Sydney LEP 2012, and a four storey height control under Section 4.2.1 of the Sydney DCP 2012. The proposal includes level 4 additions which have a maximum height of 17.62m. Due to the topography of the site sloping towards Elizabeth Street, the Level 4 addition presents as a fourth storey when viewed from Belvoir St to the east, and as a fifth storey when viewed from Elizabeth St and the corner of Elizabeth and Belvoir St. The objective of Section 4.2.1 of the DCP is "(a) Ensure the height in storeys and street frontage height in storeys reinforces the existing or future neighbourhood character".
67. The site is not subject to a street frontage height control.
68. An analysis of the surrounding built form demonstrates that the site is within an established mixed-use zone, and nearby buildings generally range from two storey terraces to the east, to three and four storey residential apartment buildings to the south, four storey Opera Australia building to the north and six to eight storey commercial and residential flat buildings to the west along the opposite side of Elizabeth St. The maximum height of the proposed Level 4 addition (max RL 56.05m) is lower than the height of the neighbouring heritage building at 480 Elizabeth Street (RL 57.2m), as well as the multi-storey residential apartment building on the opposite side of Elizabeth Street (533-567 Elizabeth Street – RL 62.69m) and the Chinese Consulate Building (539-541 Elizabeth Street – RL 58.69m). This is illustrated in the below figures.



Figure 27: 3D aerial view showing height of surrounding buildings



Figure 28: 3D aerial view showing height of surrounding buildings

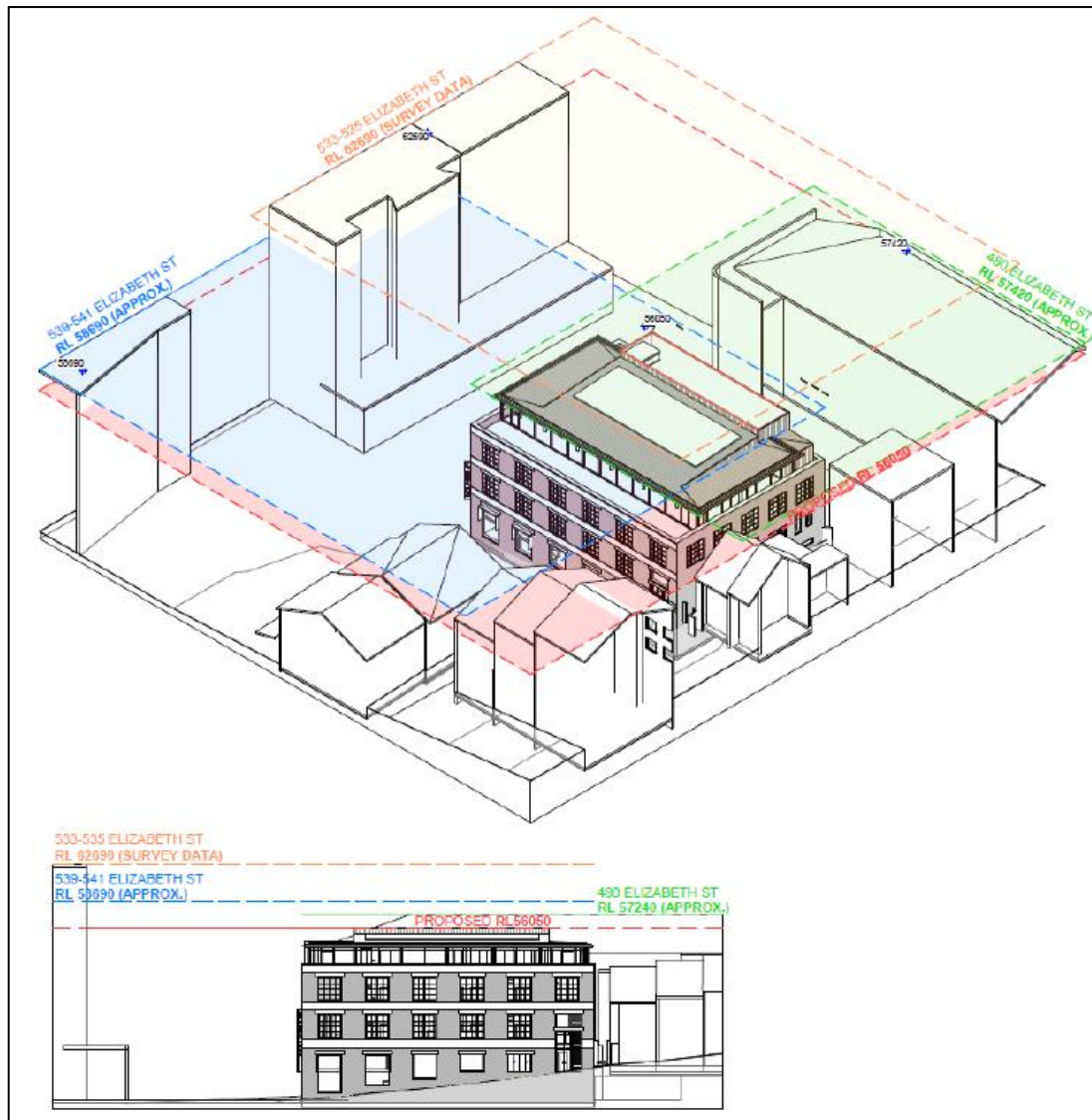


Figure 29: Height comparison of surrounding buildings

69. It is noted that the surrounding two storey buildings are generally residential terrace houses, and the majority of the surrounding commercial and mixed-use buildings range from four to eight storeys in height.
70. It is also noted that the proposed fifth storey is recessed behind the existing parapet and setback 3.8m from the southern (Belvoir St) frontage in order to reduce the perceived bulk and scale of the addition and mitigate potential overshadowing impacts to the residential apartment building to the south. It is also noted that the level 4 additions will be most prominent viewed from the public domain directly fronting the site along Elizabeth St, as the four storey Opera Australia building to the north will partly obstruct views along Elizabeth St looking south, and the southern setback of Level 4 will reduce the visibility of the fifth storey when viewed from Elizabeth St looking north, as demonstrated by the below figures.



Figure 30: 3D perspective view from the corner of Elizabeth St and Belvoir St looking north-east

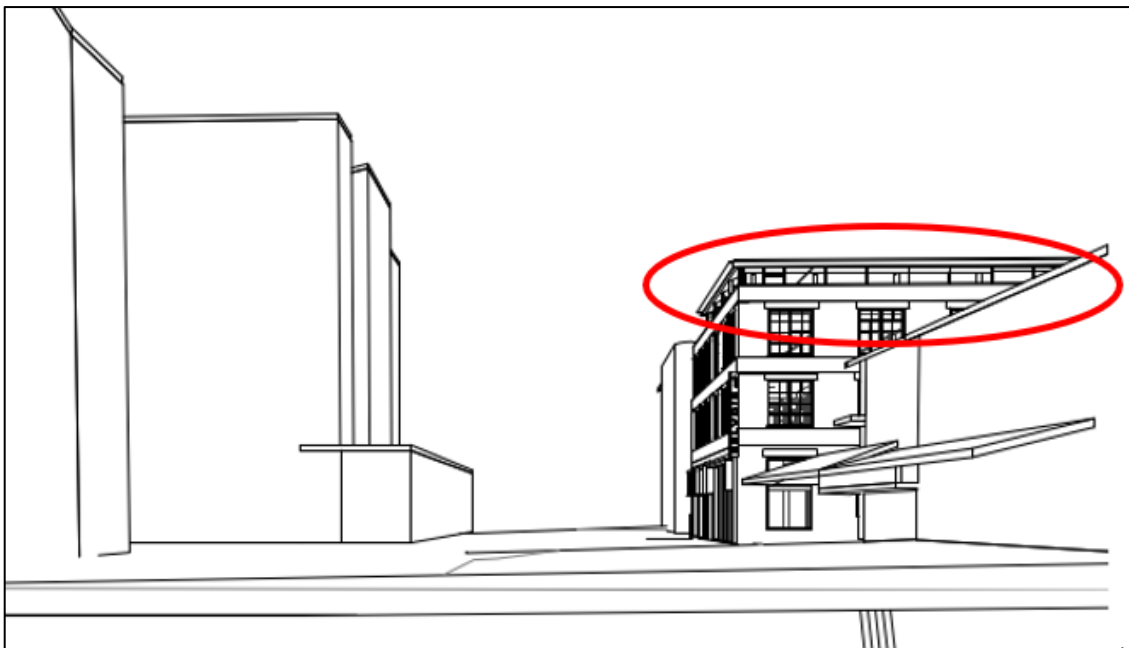


Figure 31: 3D perspective view from Elizabeth St looking north

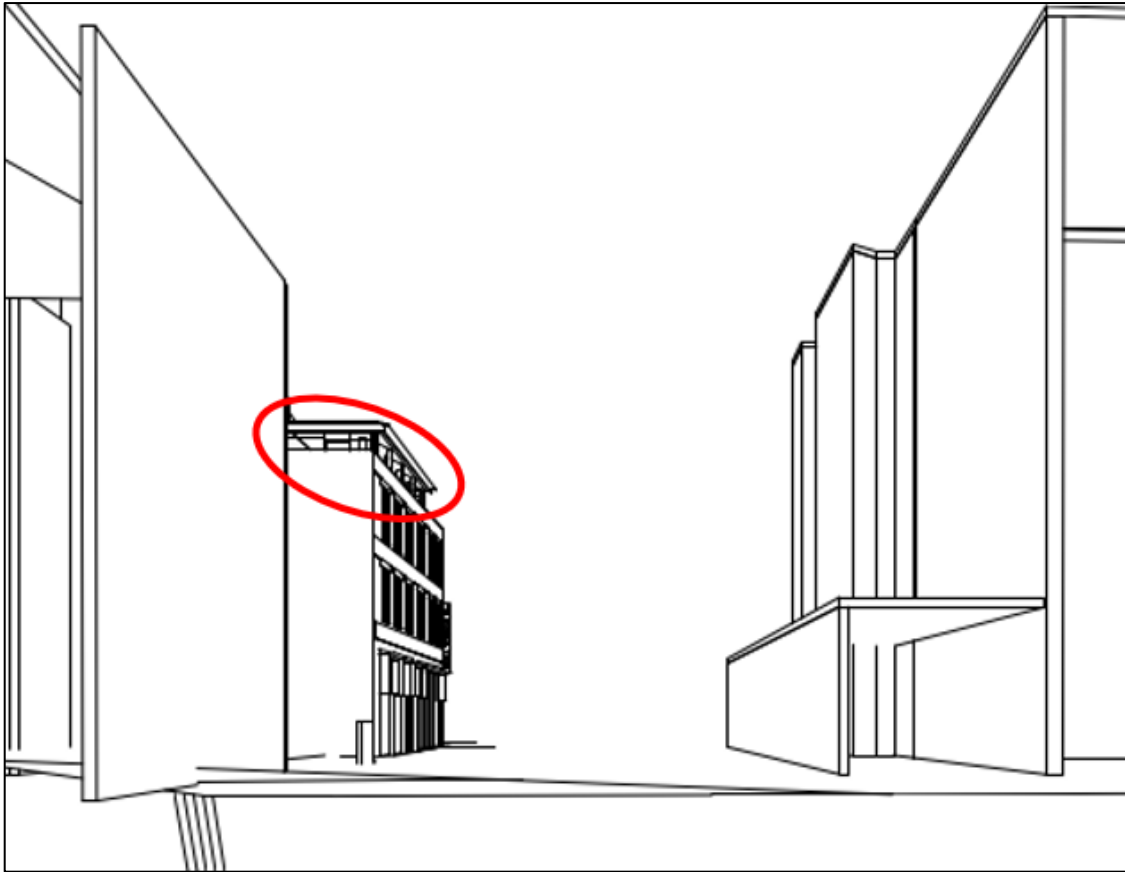


Figure 32: 3D perspective view from Elizabeth St looking south

71. Within the context of the subject site, the non-compliance with DCP height in storeys control is considered acceptable given that:
- (a) The proposed use of the building is for creative industry and commercial offices and is consistent with the desired character of the area.
 - (b) The non-compliance is mainly a result of the topography of the site, as the Level 4 addition presents as a fifth storey when viewed from the west, and as a fourth storey when viewed from the east.
 - (c) The addition is designed and sited to reduce the visible bulk and scale.
 - (d) The Level 4 addition does not give rise to any unreasonable amenity impacts to surrounding residential properties.
 - (e) The height of the addition is consistent with surrounding commercial and residential apartments buildings along Elizabeth St.

72. Section 1.1 of the DCP allows for non-compliances with the controls to be considered, provided that *"the proposed variation results in a better outcome and meets all objectives of this DCP"*. It is therefore considered that the proposal meets the objectives of the control by reinforcing the existing and desired neighbourhood character with an appropriate building height, and the variation to the building height control is considered to result in a better outcome for the site in accordance with Section 1.1 of the DCP, as the Level 4 addition will provide additional commercial office space which will contribute to the ongoing use and management of the site by the Belvoir Theatre Company and ensure the viability of the proposed development.

Solar Access

73. Section 4.2.3.1 of the DCP requires that *"(2) neighbouring developments must achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space area" and "(3) New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June"*.
74. The submitted shadow diagrams indicate that the additional bulk from the Level 4 addition will create additional overshadowing to some of the north facing private balconies of the residential apartment development directly south of the site at 492-500 Elizabeth St from 12pm to 3pm mid-winter. As demonstrated in the below figures, the extent of additional overshadowing to the neighbouring apartments is relatively minor.

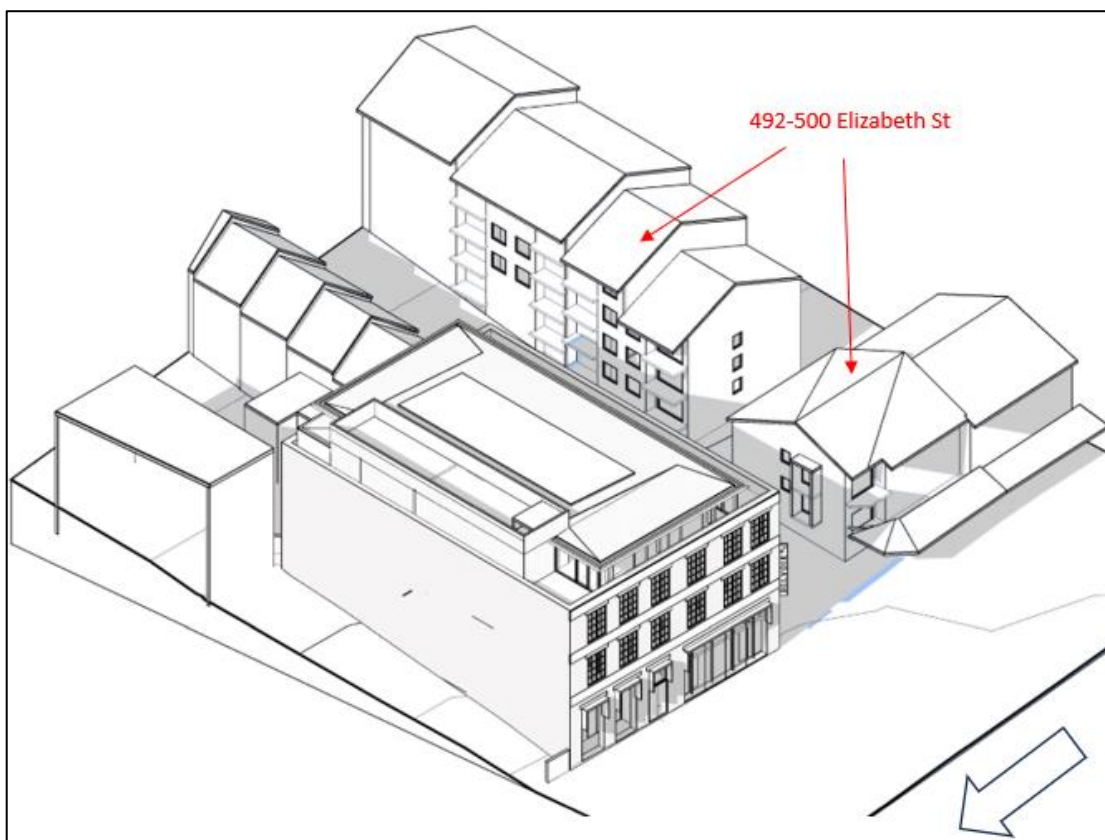


Figure 33: Shadow analysis at 12pm mid-winter showing additional shadows in blue

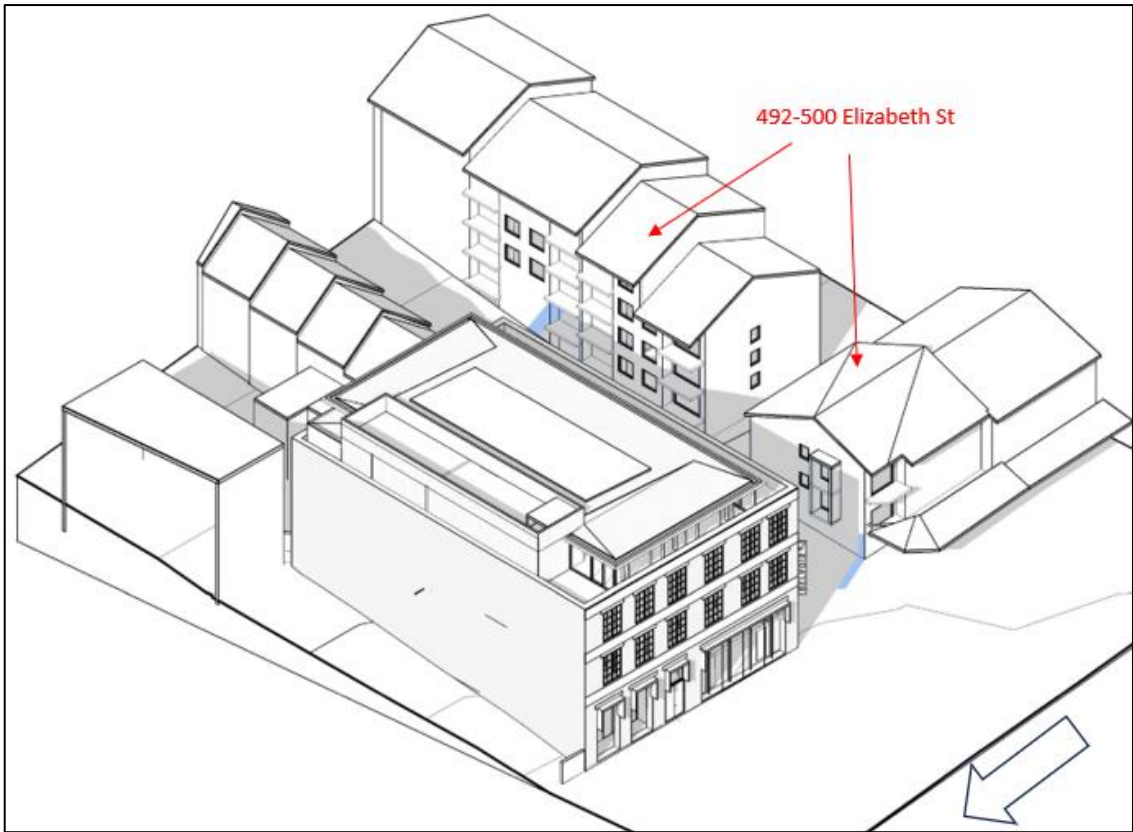


Figure 34: Shadow analysis at 1pm mid-winter showing additional shadows in blue

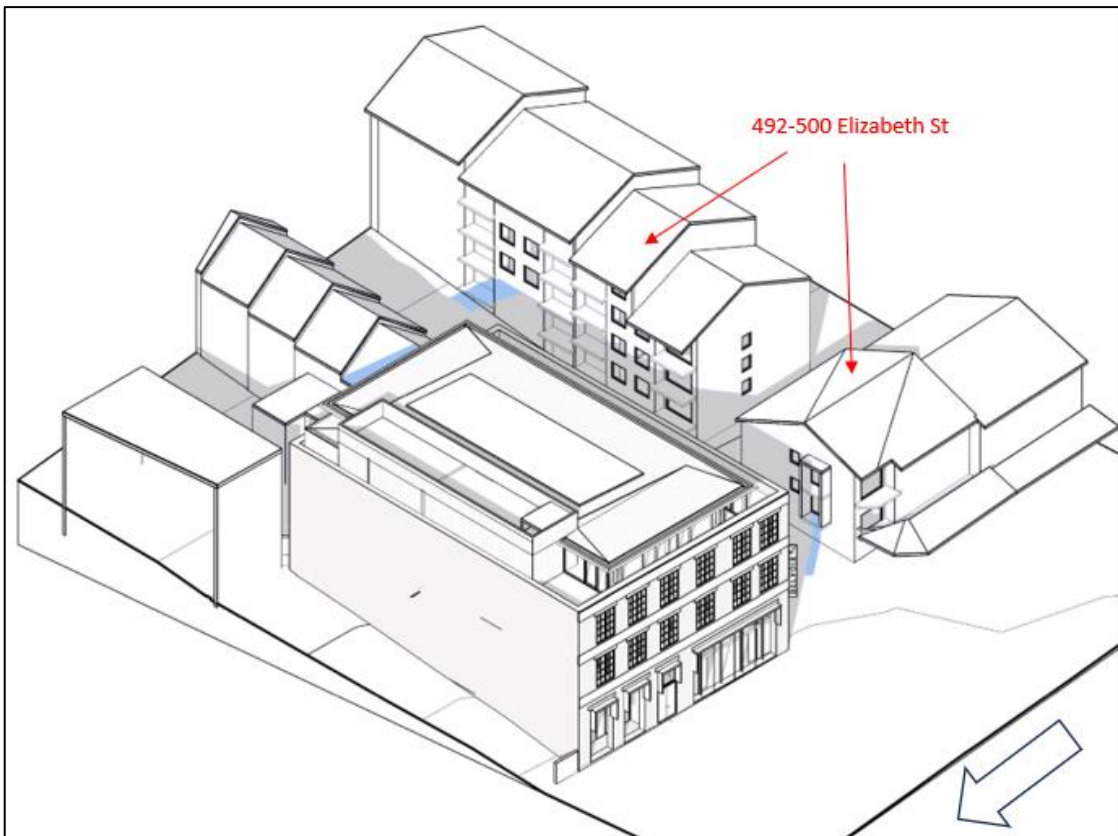


Figure 35: Shadow analysis at 2pm mid-winter showing additional shadows in blue

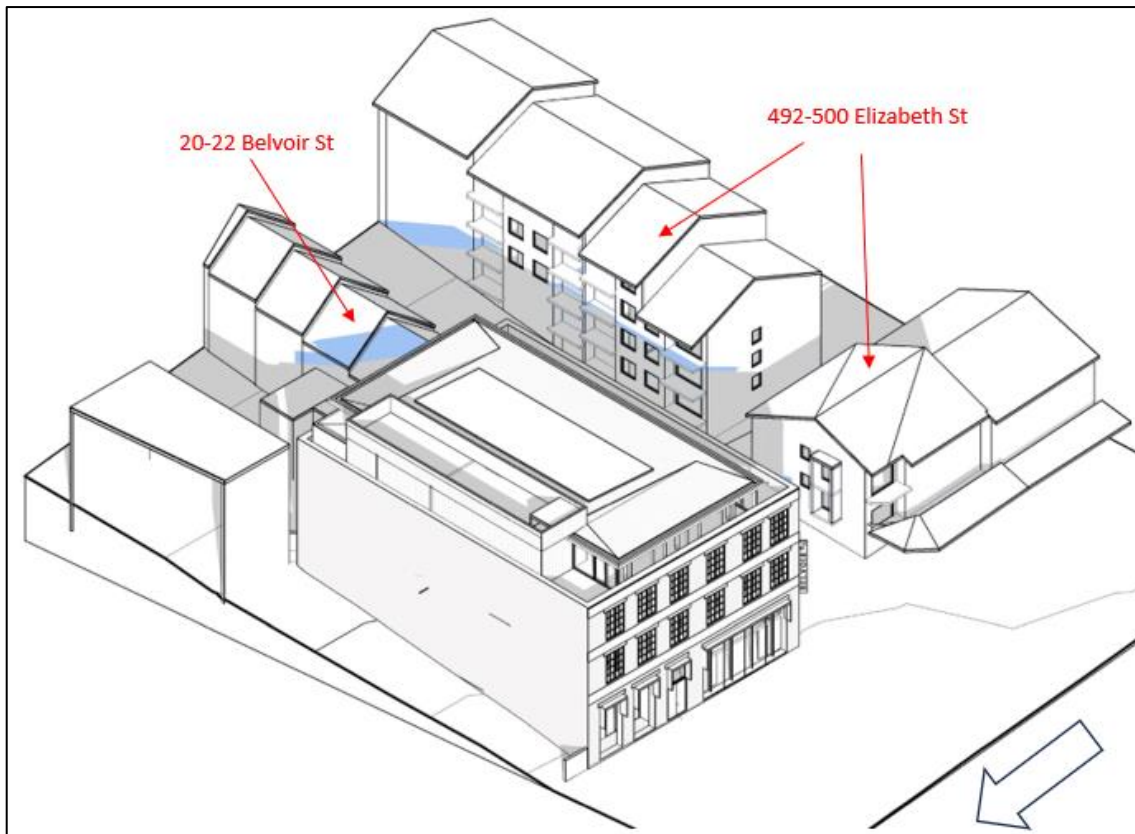


Figure 36: Shadow analysis at 3pm mid-winter showing additional shadows in blue

75. The additional overshadowing impacts are considered acceptable, given that the additional shadows as a result of the bulk of the fifth storey fall mainly over the roofs and northern facade of the residential apartment buildings to the south, with the quantum of additional shadows being minimal and that the majority of north facing apartment balconies retain solar access from 9am to 2pm mid-winter. Additional shadows to 20-22 Belvoir St only fall over the roofs of the properties between 2pm-3pm, and not over the private open space or living room windows of those properties.
76. As the proposed fifth storey is considered to be appropriately setback from Belvoir St (3.8m) to reduce potential overshadowing impacts to the south, the additional overshadowing is not considered unreasonable.

Consultation

Internal Referrals

77. The application was discussed with Council's:
 - (a) Building Services Unit;
 - (b) Environmental Health Unit;
 - (c) Heritage and Urban Design Unit;
 - (d) Public Domain Unit;

- (e) Surveyors;
- (f) Transport and Access Unit;
- (g) Environmental Projects Unit;
- (h) Landscaping Unit;
- (i) Tree Management Unit; and
- (j) Waste Management Unit.

78. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

79. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
80. A response was received raising no objections to the proposed development and recommending standard safework conditions regarding underground and overhead power cables.

Advertising and Notification

81. In accordance with the City of Sydney Community Participation Plan 2023, the proposed development was notified for a period of 21 days between 27 September 2023 and 18 October 2023. The amended plans were not re-notified as the amendments to the design are relatively minor and are not considered to intensify or create additional amenity impacts to neighbouring properties. A total of 359 properties were notified and one submission was received.

82. The submission raised the following issues:

- (a) **Issue:** The Level 4 addition will create additional shadowing to the neighbouring apartment block to the south.

Response: As discussed elsewhere in this report, the quantum of additional overshadowing to the neighbouring apartments to the south at 492-500 Elizabeth St between 9am to 3pm mid-winter is relatively minor and not considered unreasonable within the context of the site.

- (b) **Issue:** The proposal will generate additional traffic impacts for the area, and intensify on-street parking demands, and result in potential safety issues as a result of the additional foot traffic around the site due to the poor condition of the footpath.

Response: The proposal is supported by Council's Transport and Access team, noting that there are no requirements to provide a minimum number of on-site car spaces, and that the proposal provides sufficient bike parking facilities and is within an accessible location close to public transport. Standard conditions of consent are recommended for the public domain directly adjacent to the subject site to be appropriately upgraded and protected during the proposed construction works.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

83. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015, as it involves alterations and additions to an existing building which includes change of land uses and reconfiguration of floor space for creative industry (Belvoir Theatre Company) and commercial offices. It is noted that although the Belvoir Theatre Company is a not-for-profit organization, only "Places of public worship and child care centres by or on behalf of a charity or not-for-profit organisation" are excluded from the need to pay contributions under the City of Sydney Development Contributions Plan 2015.
84. Credits have been applied for the existing floor area of the most recent approved uses of the site as retail shop and creative industry (defined under the SLEP 2012 as a form of light industry).
85. A condition relating to this development contribution has been included in the recommended conditions of consent. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

86. The site is located within the residual lands affordable housing contribution area. As the proposed development includes the demolition of existing floor area and the subsequent creation, whether for the same or a different purpose, of more than 200 sqm of gross floor area, a contribution is required.
87. For the purpose of calculating affordable housing contributions, Total Floor Area (TFA) plans have been submitted by the applicant. The applicant has requested that an exemption be granted from an affordable housing contribution as the Belvoir Theatre Company are a not-for-profit organization, and the proposal is in the public benefit.

88. It is noted that under CI 7.13 (6) of the SLEP, "*the floor area of a building (iii) used for the purpose of community facilities*" is excluded from the definition of TFA. The SLEP defines "community facility" as "*a building or place— (a) owned or controlled by a public authority or **non-profit community organisation**, and (b) **used for the physical, social, cultural or intellectual development or welfare of the community**, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation*". Although the Belvoir Theatre use meets part (a) of the definition, it is not considered to meet part (b), as the areas of the building to be used and operated by the Belvoir Theatre Company are for rehearsals and associated office and administration, that are not open to the public and no public performances are proposed. Therefore, it will not be directly used for the physical, social, cultural or intellectual development or welfare of the community. It is also noted that the use is described as "creative industry" in the submitted Statement of Environmental Effects, which is a separate land use from "community facility" as defined in the SLEP. Therefore, the floor area of the building used by the Belvoir Theatre Company is not excluded from TFA. As the commercial office uses on Levels 3 and 4 are to be leased to separate tenants, they are not considered to meet the definition of a community facility and are included in TFA calculations.
89. A Total Floor Area (TFA) of 2,846.00 sqm has been calculated for the development based on the definition of TFA contained in Clause 7.13 of the SLEP 2012.
90. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Housing and Productivity Contribution

91. The development is not subject to a Housing and Productivity Contribution under the provisions of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023, as it was lodged prior to 1 October 2023.

Relevant Legislation

92. Environmental Planning and Assessment Act 1979.

Conclusion

93. The application seeks approval for alterations and additions and an existing warehouse building owned and managed by the Belvoir Theatre Company, and change of use of the ground floor, level 1 and 2 to creative industry associated with Belvoir Theatre Company, and separate commercial offices on level 3 and 4.
94. The applicant has submitted written requests pursuant to Clause 4.6 of the Sydney LEP 2012 which relates to the building height development standard (Clause 4.3 of the Sydney LEP 2012) and floor space ratio development standard (Clause 4.4 of the Sydney LEP 2012). The requests to vary the development standards are supported.
95. The proposal is not considered to have any unreasonable adverse impact in terms of overshadowing or visual privacy and is of an appropriate bulk and scale within the context of the existing building and streetscape.

96. The proposed development is considered to exhibit design excellence in accordance with the provisions of Clause 6.21C of the Sydney LEP 2012.
97. Subject to conditions, the development is in the public interest and recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

Nick Reid, Specialist Planner