

**Item 9.****Development Application: 15 Bourke Road, Alexandria****File No.: D/2018/56****Summary****Date of Submission:** 24 January 2018**Applicant:** ABC Planning Pty Ltd**Architect:** BKA Architecture**Developer:** AMC Properties Pty Ltd**Owner:** AMC Properties Pty Ltd**Cost of Works:** \$9,365,000

**Proposal Summary:** The proposal seeks consent for demolition of the existing warehouse building and construction of a four storey commercial building with ground floor retail and basement parking.

The application is referred to the Local Planning Panel for determination as the application proposes a variation to a development standard by more than 10%.

The proposal is integrated development requiring approval under the Water Management Act 2000.

The proposal was notified for 30 days between 15 February 2018 and 17 March 2018. Two submissions have been received.

A letter was sent to the applicant on 19 March 2018 raising a number of issues with the application and requesting for the application to be withdrawn. A pre DA meeting was also offered to the applicant to go through the issues raised and assist in the lodgement of a new application.

On 23 March 2018, the applicant advised that the application would not be withdrawn and to proceed with the assessment of the application.

**Proposal Summary:**  
**(continued)**

The applicant submitted a written request under clause 4.6 of Sydney Local Environmental Plan 2012 (Sydney LEP 2012), seeking to vary the floor space ratio standard under clause 4.4 of Sydney LEP 2012.

As part of the written request, the applicant submitted that the FSR for the site was 2:1. However the permitted base FSR for the site under clause 4.4 of Sydney LEP 2012 is 1.5:1.

An additional 0.5:1 FSR is available under clause 6.14 of Sydney LEP 2012; however, this is only available if community infrastructure is provided and can only be accessed by submitting a public benefit offer. No public benefit offer accompanied this development application, and, therefore, the 0.5:1 floor space under clause 6.14 of Sydney LEP 2012 is not available.

As such, the permitted floor space ratio for this site is 1.5:1. The current application proposes an FSR of 2.64:1, which represents a 76% or 877m<sup>2</sup> exceedance of the development standard.

The clause 4.6 variation is not supported as the request has not demonstrated that compliance with the FSR standard is unreasonable or unnecessary in the circumstance.

The application proposes a retail use on the ground floor (however, the plans annotate this space as a café). Retail premises are prohibited in the B7 business park zone.

The submitted preliminary environmental site investigation does not adequately demonstrate that the site is suitable for the new proposed use. It is also not clear whether there will be adverse impacts as a result of excavation on the water table or on the class 3 acid sulphate soils.

The proposed development does not propose to dedicate the required setbacks to Council as required to facilitate the delivery of the footpath widening to Bourke Road and the liveable green network.

There are a number of other issues with the proposal including flooding, public domain interface, urban form, basement access, internal layout and deep soil which warrant refusal of the application.

Based on the cumulative impacts and non-compliances with the relevant planning controls, the proposed development cannot be supported and is recommended for refusal.

**Summary Recommendation:** This proposal is recommended for refusal.

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
  - (ii) Water Management Act 2000
  - (iii) Sydney Airport Referral Act 1996
  - (iv) Sydney Water Act 1994 No 88
  - (v) State Environmental Planning Policy No 55 - Remediation of land
  - (vi) State Environmental Planning Policy (Infrastructure) 2007
  - (vii) Sydney Local Environmental Plan 2012
  - (viii) Sydney Development Control Plan 2012
  - (ix) City of Sydney development contributions plan 2015
  - (x) Green Square affordable housing program

- Attachments:**
- A. Proposed Drawings
  - B. Clause 4.6 Variation Request

## Recommendation

It is resolved that consent be refused for Development Application No. D/2018/56 for the following reasons:

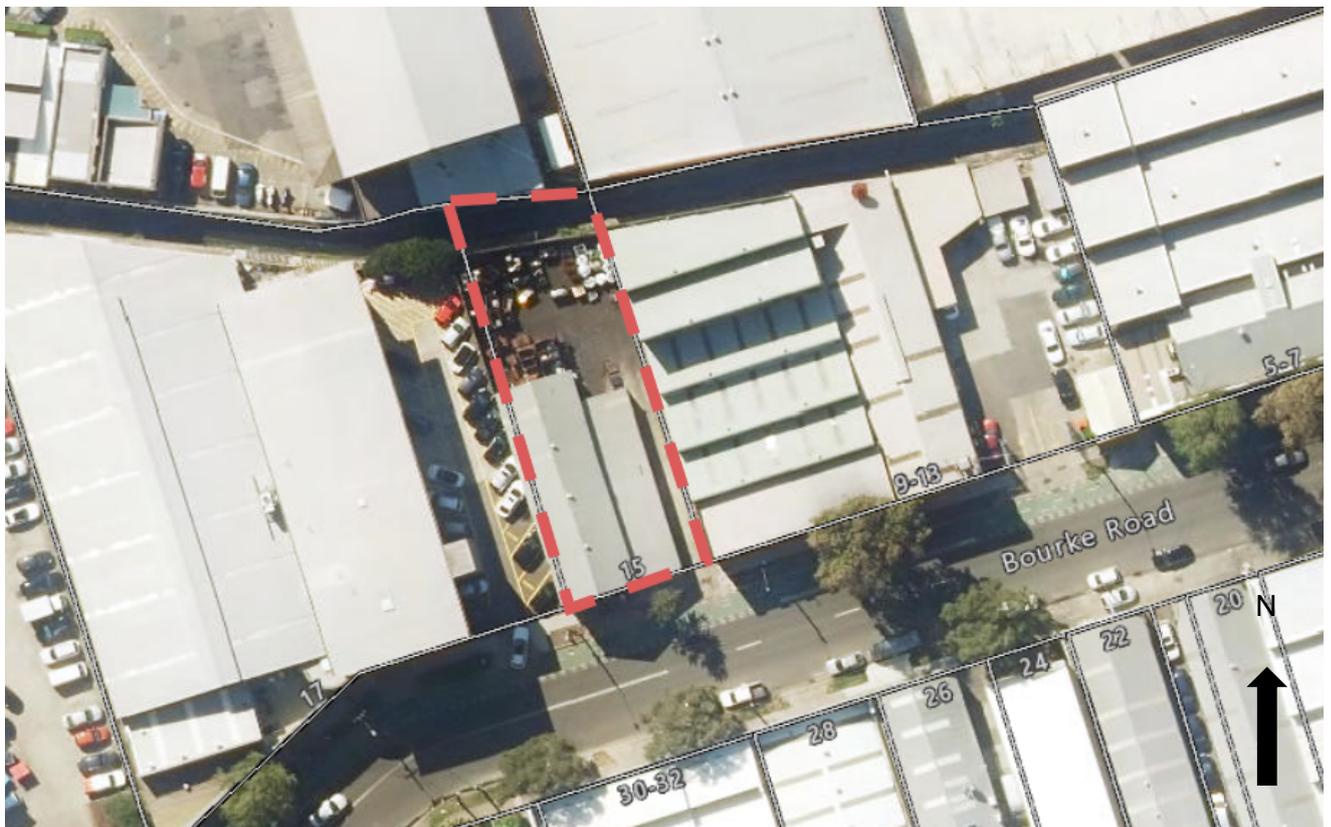
1. The development proposes an excessive amount of floor space which will result in an overdevelopment of the site. The development will result in a significant breach of Clause 4.4 floor space ratio under Sydney Local Environmental Plan 2012. While a Clause 4.6 variation to development standard under Sydney Local Environmental Plan 2012 was submitted, it does not demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstance. In this regard, the development does not comply with;
  - (a) Clause 4.4 floor space ratio of Sydney Local Environmental Plan 2012; and
  - (b) Clause 4.6 Exception to development standards under Sydney Local Environmental Plan 2012.
2. The development proposes a retail premises within the site. This use is prohibited in the B7 business park zone. In this regard, the development does not comply with B7 business park land use in Sydney Local Environmental Plan 2012.
3. The proposal does not demonstrate how the site can be made suitable for the proposed use as required by State Environmental Planning Policy No 55 - Remediation of land.
4. The proposal does not illustrate that there will be no unreasonable environmental impacts of the proposed development. It fails to assess the condition of the groundwater within the site, it does not include any details of investigation for underground service tanks or other potential contaminants including hydrocarbons. It also fails to address the potential for offsite migration of contaminants onto neighbouring sites. In this regard, the development fails to comply with:
  - (a) State Environmental Planning Policy No 55 - Remediation of land;
  - (b) Clause 7.14 Acid Sulphate Soils of Sydney Local Environmental Plan 2012;
  - (c) Section 3.17 and 5.8.7.3 of Sydney Development Control Plan 2012.
5. The proposal results in an overdevelopment of the site and results in poor public domain outcomes. The proposal will not result in a high standard of architectural, urban or landscape design, and as such is not considered to represent design excellence. In this regard, the development fails to comply with Sydney Local Environmental Plan 2012.

6. The proposal does not adequately address flooding or stormwater management. The application also proposes to protrude into the one metre clearance zone adjacent to the canal, which is not supported by Sydney Water. In this regard, the development does not comply with:
  - (a) Clause 7.15 of Sydney Local Environmental Plan 2012; and
  - (b) Section 3.7, 5.2.7 and 5.8.7.1 of Sydney Development Control Plan 2012.
7. The size of the basement opening is not sufficient to enable onsite loading and waste collection. In this regard, the development does not comply with:
  - (a) Section 3.11, 3.14 and 4.2.6 of Sydney Development Control Plan 2012.
8. The proposed development will result in a poor interface with the public domain. The development has not been designed to the correct flood levels and no provision for accessible access into the building has been provided. No public benefit offer has been provided to facilitate the dedication of the front and rear setbacks to Council. In addition to this, building elements are proposed to overhang into the front and rear setbacks which is inconsistent with the need to provide setbacks clear to the sky. In this regard, the development fails to comply with:
  - (a) Clause 6.21 of Sydney Local Environmental Plan 2012;
  - (b) Section 3.1, 3.2, 3.12, 4.2.2, 4.2.4 and 5.2.9 of Sydney Development Control Plan 2012.
9. The building has not been designed to consider the interface of the eastern façade with the future proposed street. In doing so, the development is not considered to recognise the local planned infrastructure, or the desired future character of the site and surrounding locality. In this regard, the development does not comply with;
  - (a) Section 3.1, 3.2, 5.2.1, 5.2.3 and 5.2.4 of Sydney Development Control Plan 2012.
10. The building has not been designed to accommodate deep soil, or maximise access to natural light and ventilation. In this regard, it fails to comply with section 5.8.2.5.1 and 5.8.2.4 of Sydney Development Control Plan 2012.
11. The development is not considered to be in the public interest as it is contrary to the provisions of relevant planning instruments, development control plans and has raised concern from adjoining landowners. In this regard, the development fails to satisfy section 4.15 of the Environmental Planning and Assessment Act 1979.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by Council staff on 1 May 2018.
2. The site is legally identified as Lot X in DP 164972. It is rectangular in shape, with an area of approximately 826.9m<sup>2</sup>. It has a primary street frontage to Bourke Street. The rear of the site adjoins Sheas Creek, which drains into Alexandra Canal. The site is located between Bowden Street and Wyndham Street.
3. A one (1) and two (2) storey warehouse building is contained within the site, and a separated cycleway is located in front of the site, along Bourke Road.
4. Surrounding land uses are a mix of commercial and industrial. To the east, south, north and west of the site are low scale, older industrial developments.
5. The site is not a heritage item and is not located in a heritage conservation area.
6. Photos of the site and surrounds are provided below at Figures 1 to 7:



**Figure 1:** Aerial image of subject site and surrounding area



Figure 2: Site viewed from Bourke Road



Figure 3: Looking east along Bourke Road. Site boundary highlighted.



Figure 4: Looking west along Bourke Road. Site boundary highlighted.



Sheas Creek

Figure 5: Rear of site. Sheas creek located behind masonry wall



Figure 6: Rear of site. Sheas Creek located behind masonry wall



Figure 7: Opposite side of Bourke Road, looking east

## Proposal

7. The application seeks consent for the demolition of the existing building and construction of a four storey commercial building with two levels of basement. The development is proposed to consist of:

**(a) Basement Levels 1 and 2**

- (i) parking for 16 cars, 4 motorbikes and 1 service vehicle
- (ii) garbage room
- (iii) storage for bicycles

**(b) Ground Floor**

- (i) retail space fronting Bourke Road
- (ii) office space

**(c) Levels 1 - 3**

- (i) office space and balconies
- (ii) plant on the level 3 mezzanine

8. Plans of the proposed development are provided below.

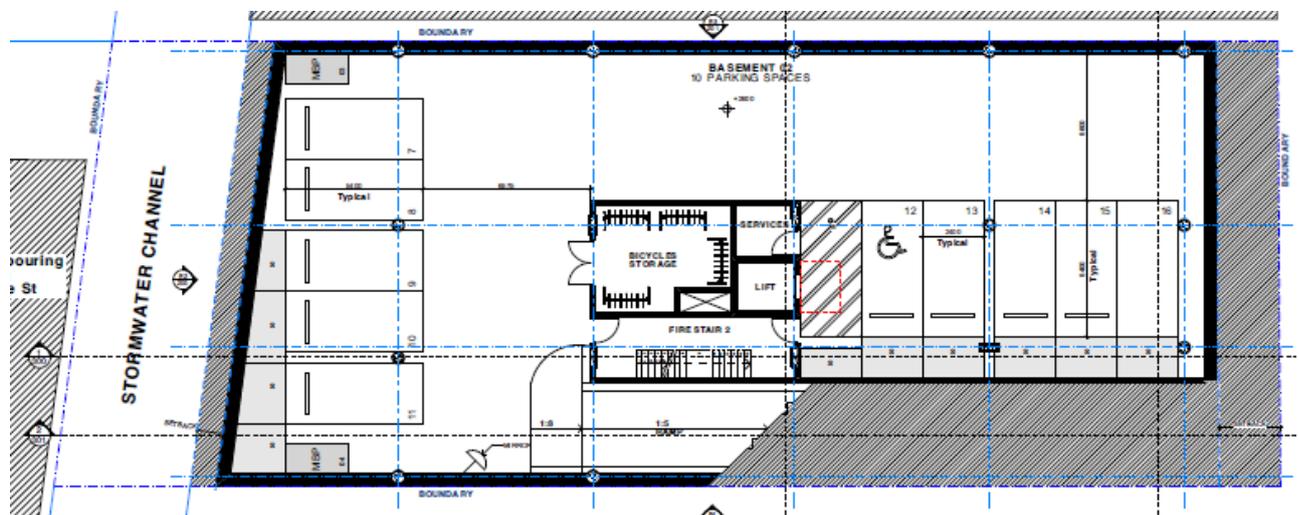


Figure 8: Proposed basement level 2

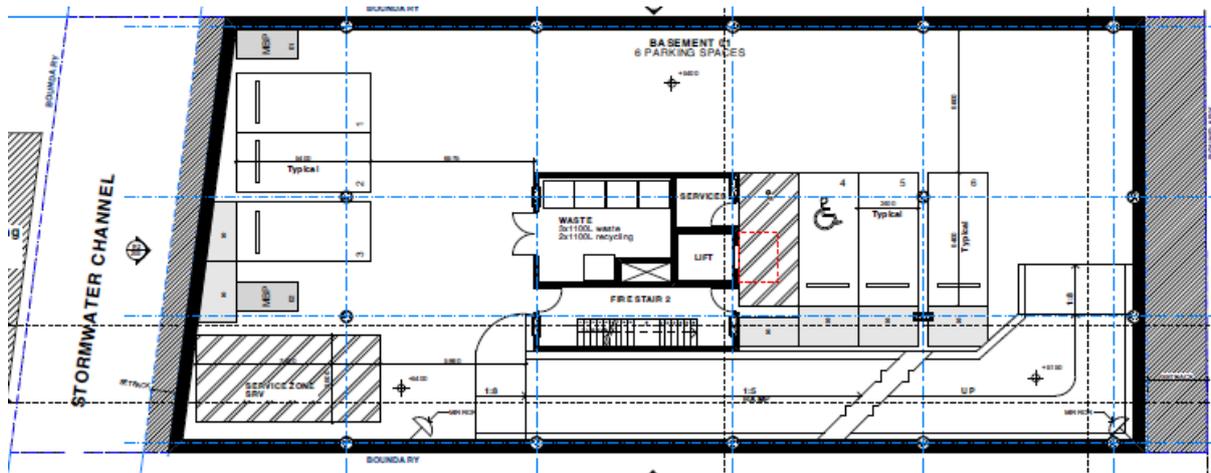


Figure 9: Proposed basement level 1

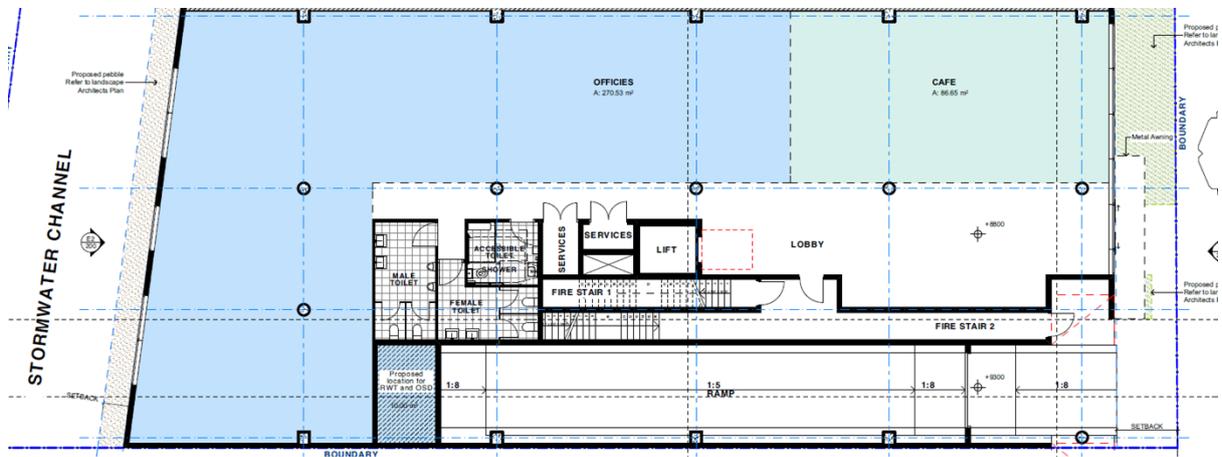


Figure 10: Proposed ground floor

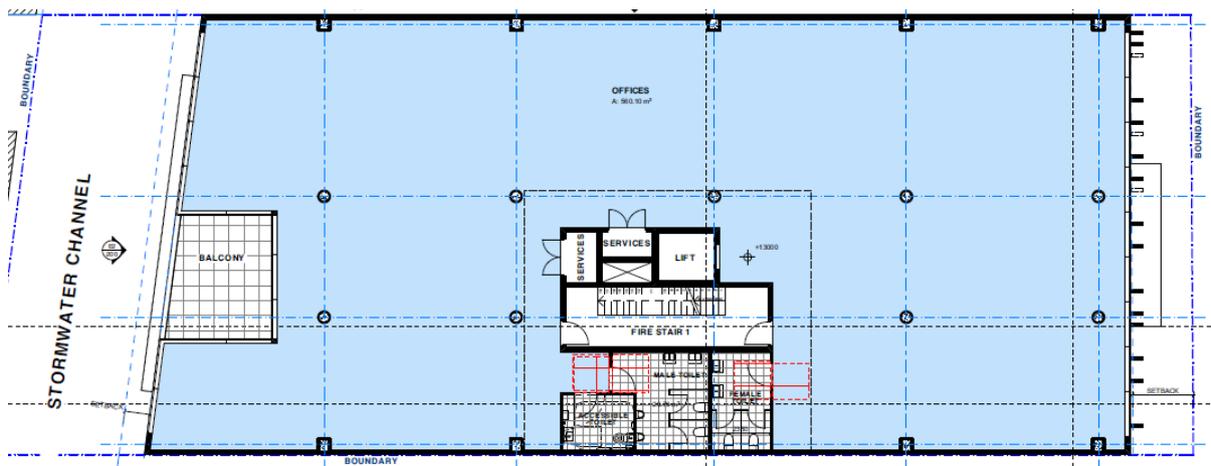


Figure 11: Proposed level 1

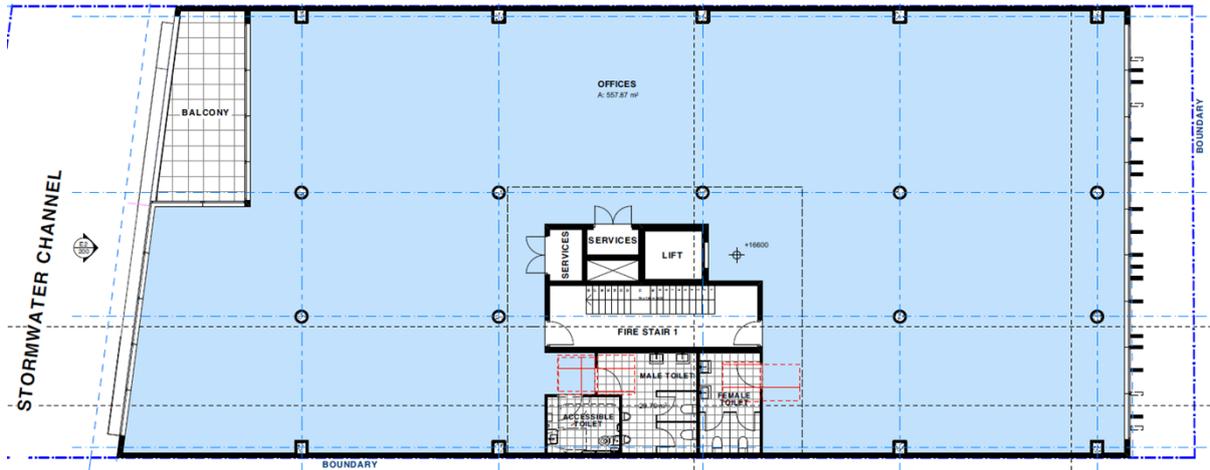


Figure 12: Proposed level 2

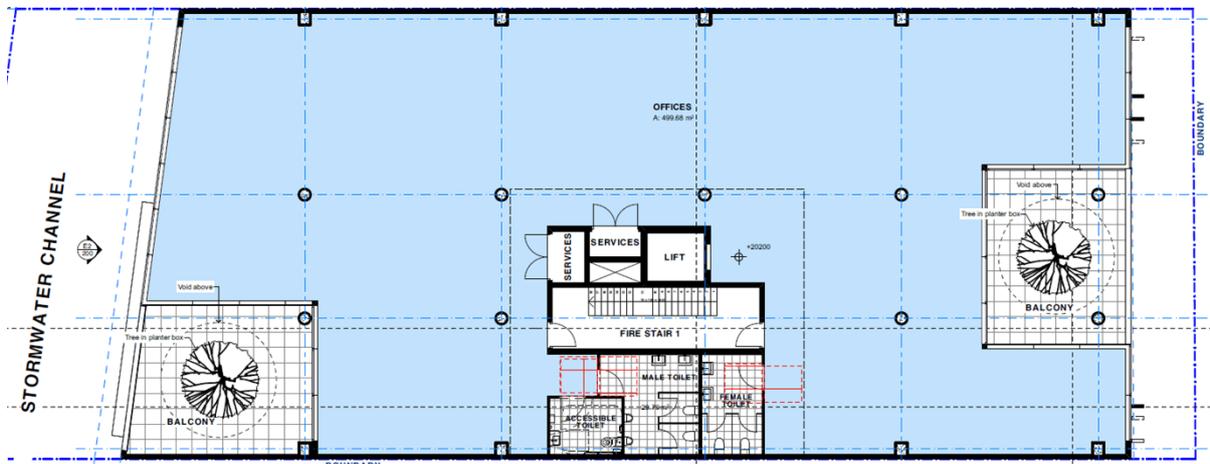


Figure 13: Proposed level 3

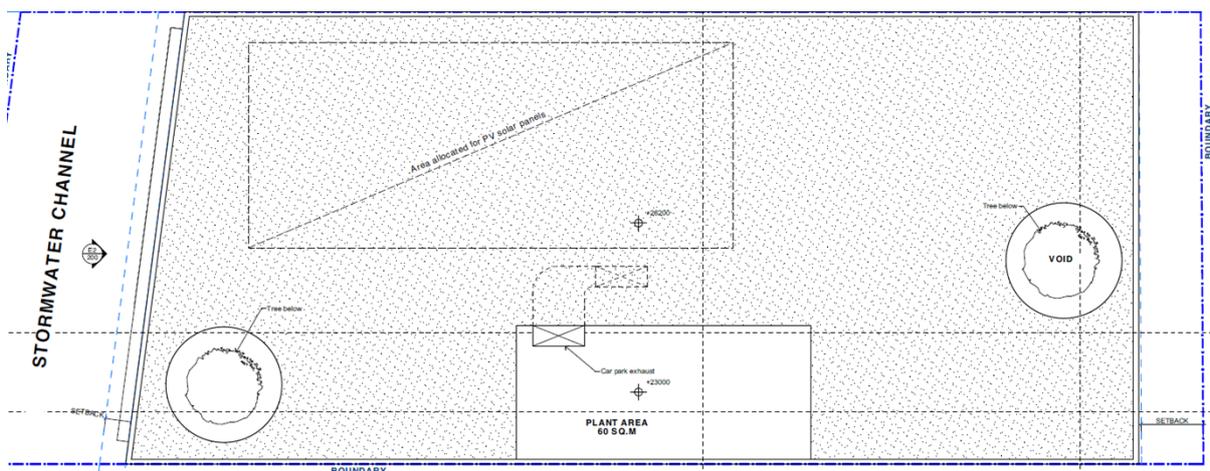


Figure 14: Roof plan

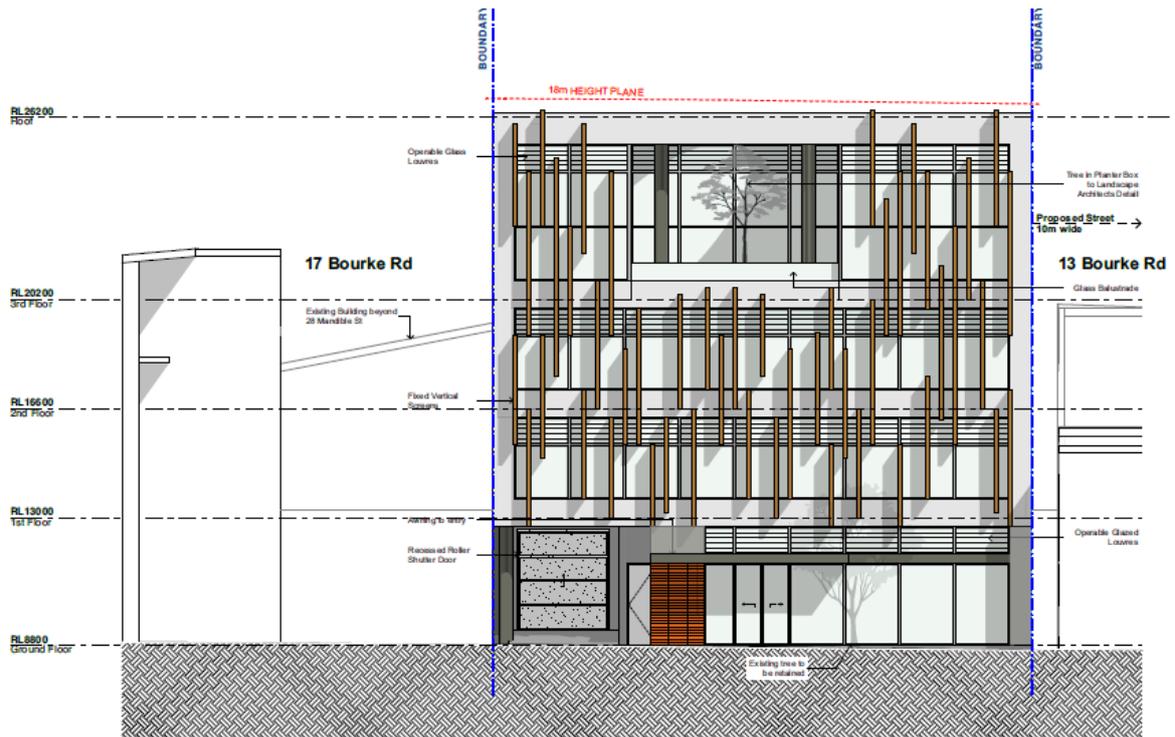


Figure 15: Proposed south (Bourke Street) elevation

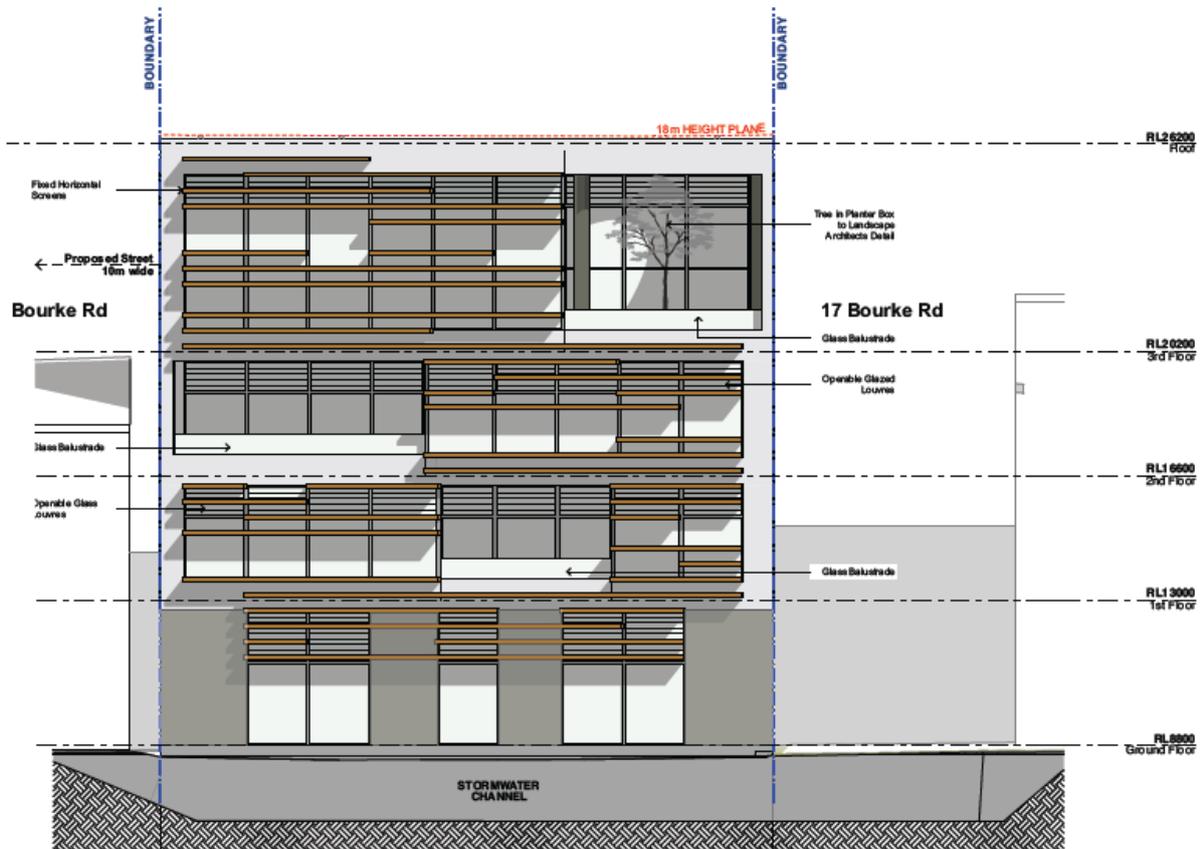


Figure 16: Proposed north (rear) elevation

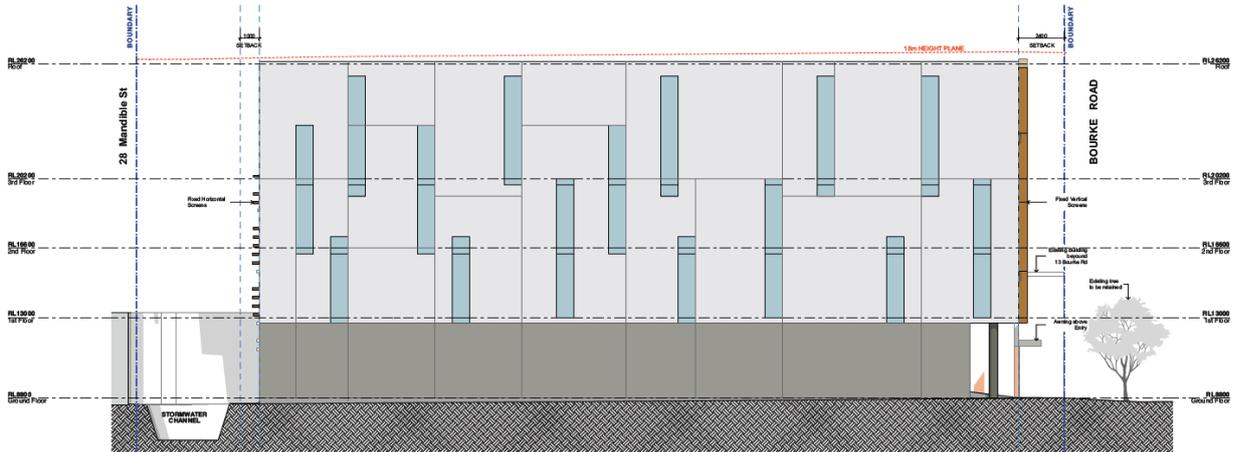


Figure 17: Proposed west elevation

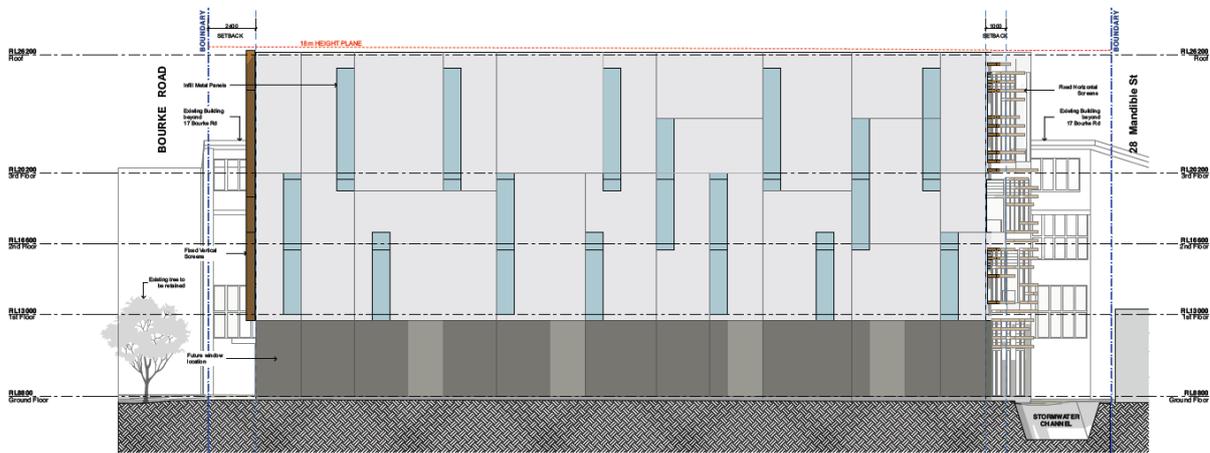


Figure 18: Proposed east elevation (fronting future Road)

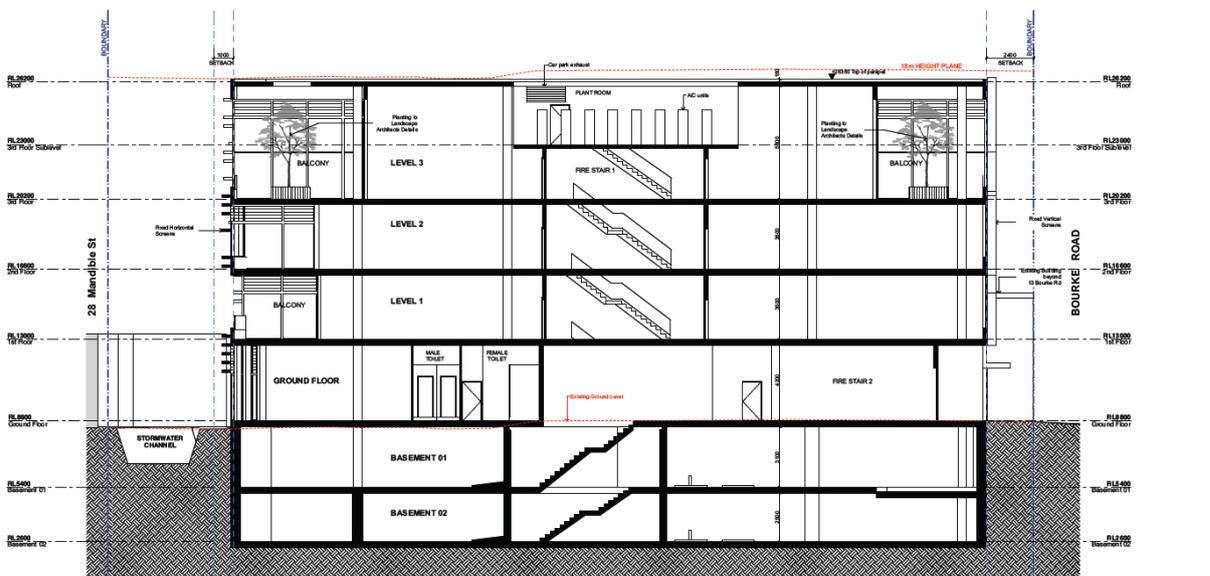


Figure 19: Proposed section 1-1

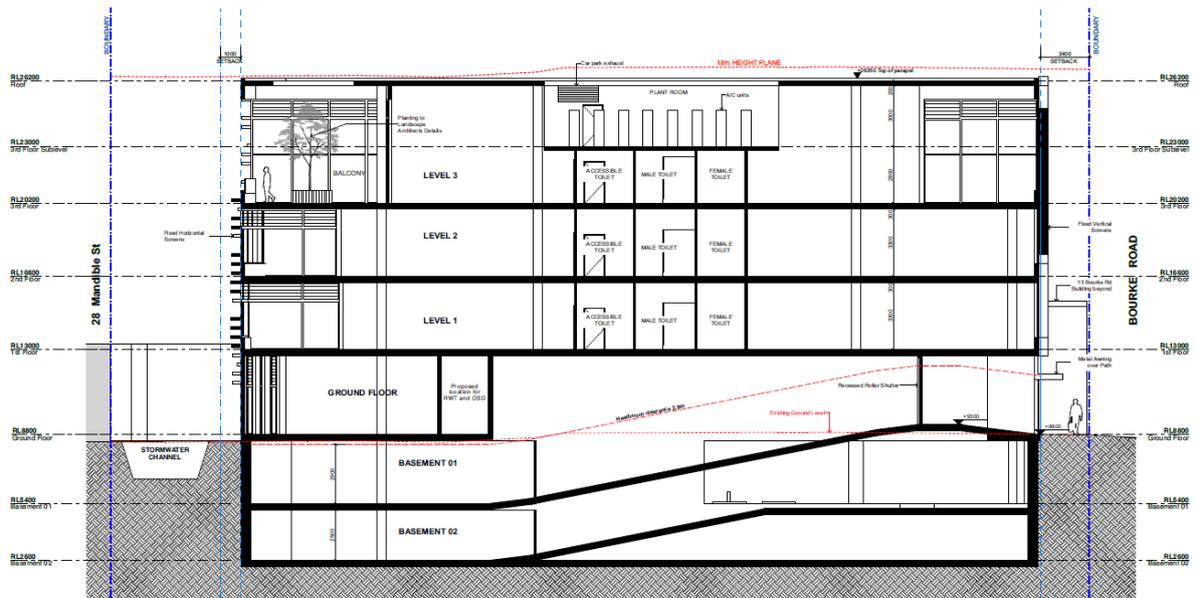


Figure 20: Proposed section 2-2

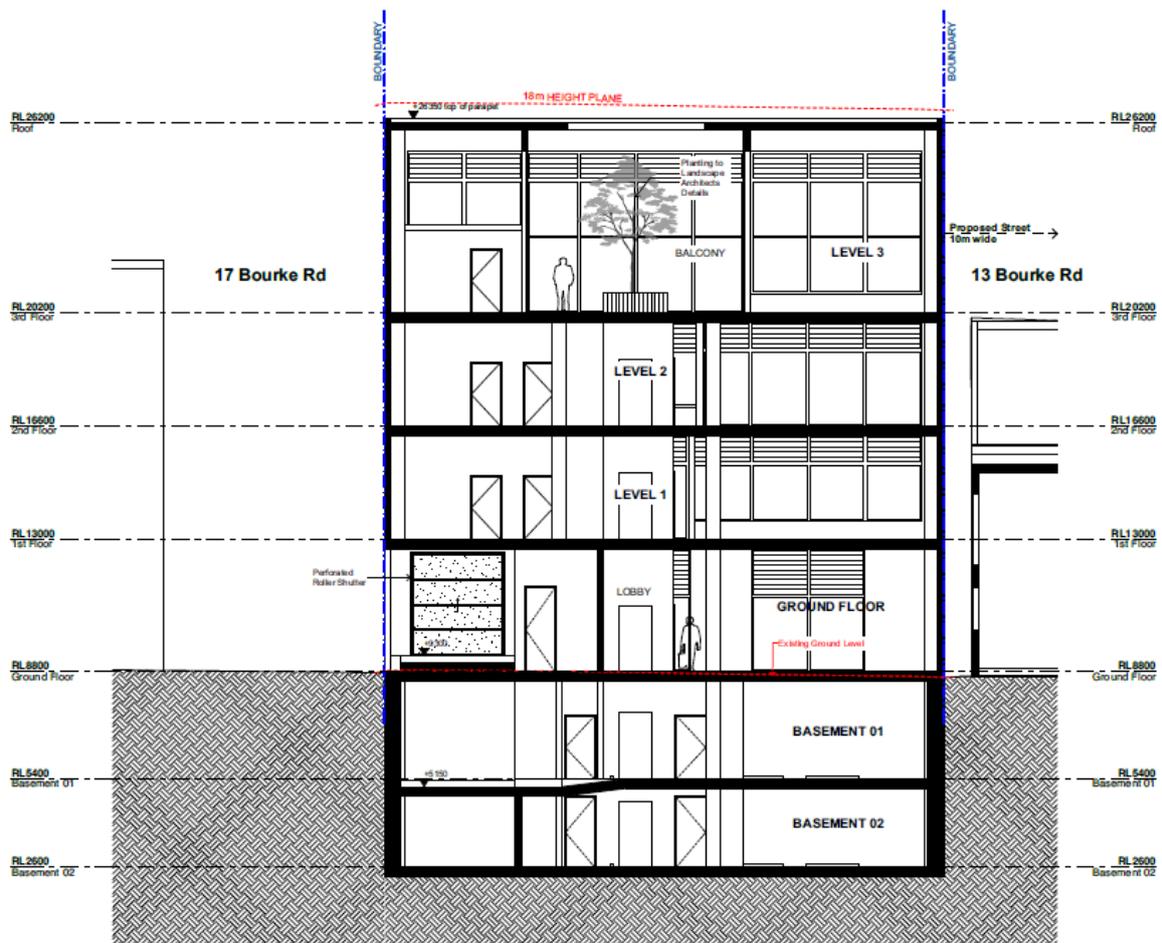


Figure 21: Proposed section A-A

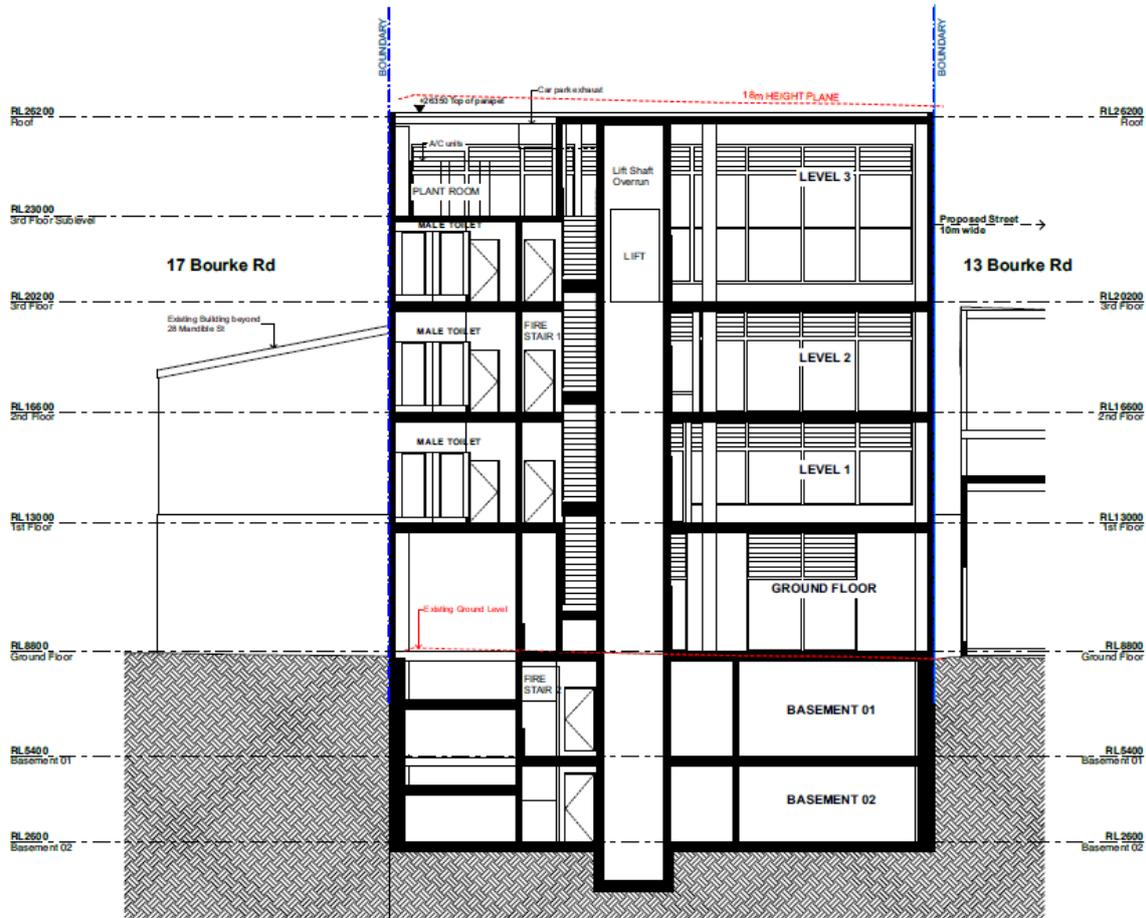


Figure 22: Proposed section B-B

### History Relevant to the Development Application

9. On 19 March 2018, a letter identifying a number of issues and a request to withdraw the application was sent to the applicant. The issues included the following:
  - (a) breach of the FSR control
  - (b) setbacks and lack of public benefit offer to facilitate land dedication
  - (c) future street to the north and design response
  - (d) poor internal layout
  - (e) no deep soil
  - (f) size of loading and servicing area
  - (g) materiality
  - (h) requirements for a preliminary environmental site investigation and acid sulphate soils management plan.

10. On 23 March 2018, the applicant confirmed that the application would not be withdrawn and should be assessed in its current form.
11. On 18 April 2018, the applicant submitted sketch amended plans and a response to the other issues raised. However, no further documentation was submitted other than sketch drawings.
12. On 24 April 2018, the applicant was informed that the sketch drawings were not sufficient to be considered as DA drawings and that the development application could not be held in abeyance any longer. The applicant was again requested to withdraw the application.
13. On 1 May 2018, the applicant wrote to the City expressing their commitment to resolve the design to the satisfaction of all parties. However, the letter was not accompanied by any updated drawings or documentation. Upon receipt of this, the City informed the applicant that the application could not be held in abeyance any longer and that the application would be determined accordingly.
14. On 10 May, the applicant sent updated plans to the City. However, the plans were not accompanied by any updated or necessary documentation. Upon receipt of this, the City informed the applicant that the amended plans would not be accepted as per clause 55 of the Environmental Planning and Assessment Regulation 2000.

### **Economic/Social/Environmental Impacts**

15. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
  - (a) Environmental Planning Instruments and DCPs.

### **Water Management Act 2000**

16. The application constitutes integrated development. It requires separate approval from the Office of Water under the Water Management Act 2000. This is because the proposed development requires dewatering.
17. General terms of approval were received from the Office of Water on 28 February 2018.
18. The application was also referred to the Department of Primary Industries (DPI) under the Water Management Act as the site has a frontage to Shea's Creek. The DPI did not respond to the proposed development. It is not clear whether the proposed works constitute a controlled activity under the Water Management Act 2000. In any event, submissions were sent to DPI in accordance with clause 69 of the Environmental Planning and Assessment Regulations. The application was also notified as integrated development under the Water Management Act 2000. However, it is noted that section 4.47(2) of the Environmental Planning and Assessment Act 1979, states that nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.

**Sydney Airport Referral Act 1996**

19. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, constructing a building or other structure that intrudes into a prescribed airspace is a controlled activity.
20. Schedules 2 and 5 of the Civil Aviation (Building Control) Regulations 1988 identify the subject site is subject to a prohibition of the construction of buildings more than 15.24m above existing ground height.
21. Section 183 of the Commonwealth Airports Act 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
22. The Sydney Airport Airfield Design Manager, as an authorised person of the CASA, provided approval for the controlled activity on 12 February 2018.

**Sydney Water Act 1994 No 88**

23. The application was referred to Sydney Water under clause 78 of the Sydney Water Act 1994 No 88 as the development was likely to increase the demand for water supply and because the subject site adjoins a Sydney Water asset.
24. Sydney Water objected to the proposal on the basis that the building/permanent structure is within one metre from the outside wall of the stormwater asset (water channel). Permanent structures include, but are not limited to, basement car parks, hanging balcony, roof eaves, hanging stairs, stormwater pits, stormwater pipes, elevated driveway, basement access or similar structures. The one metre clearance requirement applies for unlimited depth and height. As per the submitted details, it appears all the hanging balconies and associated structures adjacent to the stormwater channel encroach into the Sydney Water's one metre clearance zone.

**State Environmental Planning Policy No 55—Remediation of Land**

25. The aim of SEPP 55 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.
26. The subject site is required to dedicate a 2.4 metre strip of land to Council for footpath widening, and a 1 metre strip of land at the rear of the site for the Liveable Green network (refer public domain discussions further below). Given this land will be considered public open space, there will be a change in health investigation levels for land contamination.
27. The submitted preliminary environmental site investigation (PESI) does not assess the condition of the groundwater within the site. It also does not include any details of investigation for underground service tanks (USTs), contain any work cover records relating to USTs, or other potential contaminants including hydrocarbons.
28. There is the potential for offsite migration of contaminants onto neighbouring sites. In addition, there is also a potential pathway to impact the future occupants on the site.
29. As such, the application cannot be supported in the absence of this information.

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

30. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

## Clause 45

31. The application is subject to clause 45 (Subdivision 2 Development likely to affect an electricity transmission or distribution network) of the SEPP as the development:

- (a) involves the penetration of ground within two metres of an electricity distribution pole
- (b) will be carried out within five metres of an exposed overhead electricity power line.

32. In accordance with the clause, the application was referred to Ausgrid.

33. A response was received from Ausgrid in which conditions were provided. These conditions relate to the method of electricity connection, supply of electricity, conduit installation, street lighting and the proximity to overhead power lines.

## Clause 86

34. The development is located near to the rail corridor and, as such, the development was referred to Sydney trains in accordance with clause 86. In the response, Sydney Trains stated that as the proposed development is roughly 100m from the train tunnel/corridor, it would not trigger concurrence. No further comment was provided.

**Sydney LEP 2012**

35. The site is located within the B7 business park zone. The proposed use is defined as office premises, and office premises are permitted with consent in the zone.
36. The proposed use is also defined as retail premises. However, there is inconsistency between the annotations on the plans, which says 'café', and the submitted documentation which states the use as 'retail premises'. While food and drink premises are permitted with consent in the zone, retail premises are prohibited in the B7 business park zone. In the absence of clarification of the use, it is not clear what the proposed use is and whether this use is permissible in the B7 zone.
37. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	Yes	A maximum height of 18m is permitted.  A height of 17.8m is proposed.
4.4 Floor Space Ratio	No	Clause 4.4 permits a maximum base FSR of 1.5:1.  An additional 0.5:1 FSR above the base FSR is available through the provisions of clause 6.14 where community infrastructure is provided.  In this instance, no public benefit offer has been submitted with the application, and therefore, the additional 0.5:1 FSR is not available.  On this basis, the maximum permissible FSR for this development is 1.5:1  A FSR of 2.64:1 is proposed.
4.6 Exceptions to development standards	No	The proposal seeks to vary the FSR development standard prescribed under clause 4.4 by 76% or 877m <sup>2</sup> .  This is not supported, see discussion under the heading 'Issues' below.

<b>Part 6 Local Provisions - Height and Floor Space</b>	<b>Compliance</b>	<b>Comment</b>
6.21 Design excellence	No	The application represents an overdevelopment of the site. The proposed floor space is significantly over the permitted amount, the setbacks proposed are not able to be dedicated to the City which removes their public benefit. The form of the development fails to address the future street to the east. The proposed layout does not provide adequate access to daylight or natural ventilation, there is no usable deep soil area provided and insufficient space for loading and servicing onsite. As such, the development does not represent design excellence.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.14 Community infrastructure floor at Green Square	No	The application seeks to rely on the additional 0.5:1 floor space available under this clause, however the development does not propose any community infrastructure or public benefit offer.

Part 7 Local Provisions - General	Compliance	Comment
7.6 Office and business premises	Capable of compliance No	<p>There are 16 car spaces proposed. It is not clear whether these spaces are for the retail or office premises.</p> <p>On the basis of a compliant FSR of 1.5:1, the maximum car spaces allowed for office use would be 1 space for every 75 metres of gross floor area.</p> <p>Assuming all permissible gross floor area for the site was used for office, the maximum permitted car spaces would be 17 car spaces.</p>
7.7 Retail premises	Capable of compliance	<p>There are 16 car spaces proposed. It is not clear whether these spaces are for the retail or office premises.</p> <p>On the basis that 86m<sup>2</sup> of the allowable 1.5:1 floor space ratio was used as a café, the maximum number of retail spaces allowed would be 1 space for every 50m<sup>2</sup>, therefore 2 spaces would be permitted.</p>
7.13 Affordable housing	Yes	In the event that this development were recommended for approval, it would be subject to an affordable housing contribution in accordance with clause 7.13 of Sydney LEP 2012.
7.14 Acid Sulphate Soils	No	The site is within a class 3 acid sulphate zone. The impact of the proposal has not been properly considered and is discussed further under the heading, 'Issues' below.

<b>Part 7 Local Provisions - General</b>	<b>Compliance</b>	<b>Comment</b>
7.15 Flood planning	No	The site is identified by Council as being flood prone. See discussion under the heading, 'Issues' below.
7.16 Airspace operations	Yes	The development seeks consent for a maximum building height of 17.8m above existing ground level, or a height of RL 26.350. This will penetrate the CASA layer (15.24m above ground level) and is discussed above. It will not penetrate the OLS height (51m AHD). This is discussed further under the heading, 'Sydney Airport Referral Act 1996' above.
7.19 Demolition must not result in long term adverse visual impact	Yes	Although demolition is proposed, the development also seeks consent for substantive redevelopment of an office building. Although the application is not recommended for approval, it is considered that if approval were granted it would not result in long term adverse visual impact as a consequence of there being no substantive development.

### Sydney DCP 2012

38. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

#### 2. Locality Statements – East Alexandria

The subject site is located in the East Alexandria locality. The proposed development is in keeping with the evolving employment neighbourhood notion as it proposes to transform from industrial land uses to a higher density commercial use. However, the form and character of the proposed development is not considered acceptable for the reasons discussed in the issues section below.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.1 Public Domain Elements	No	The proposed development does not propose adequate setbacks or a mechanism by which the land is able to be dedicated to Council. This is discussed in the Issues section below.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	No	The proposed development does not suitably define the public domain. See discussion in the Issues section below.
3.5 Urban Ecology	Yes	The proposal involves works close to a street tree. In the event that approval were granted, tree protection measures would be required for this street tree.
3.6 Ecologically Sustainable Development	No	The design of the building could be improved to encourage greater natural ventilation, vegetation and rain water tanks in accordance in clause 3.6 of the Sydney DCP 2012.
3.7 Water and Flood Management	No	The site is identified as being on flood prone land. Flooding is not adequately addressed by the submitted design and this is discussed in the Issues section below. In addition to this, the drawings need to demonstrate compliance with clauses 3.7.2 drainage and stormwater management and 3.7.3 stormwater quality in Sydney DCP 2012.
3.11 Transport and Parking	No	The entry to the basement is not suitably designed to allow vehicles (including waste trucks) to enter the basement to load and unload. This is discussed in the Issues section below.
3.12 Accessible Design	No	Given that the appropriate flooding levels haven't been used for the lobby, it is not clear whether the interface between the public domain and lobby is capable of being accessible. As is currently proposed, there is a 300mm increase from the footpath into the lobby, but there is no accessible access options included.
3.13 Social and Environmental Responsibilities	No	The proposed development does not adequately consider the new interface with the planned road to the east, on the neighbouring site. This is will result in poor passive surveillance of the public domain. This is further discussed in the 'Issues' section below.

3. General Provisions	Compliance	Comment
3.14 Waste	No	<p>The amount of space allocated to the waste rooms appears to be acceptable and will be reliant on the building private operations manager.</p> <p>However, the development is proposing waste collection from inside the basement. This is unlikely to work given the size of the basement entry. This is further discussed in the 'Issues' section below.</p>
3.17 Contamination	No	See SEPP 55 discussion above.

4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height and 5.8.2.3 building height	No	<p>The DCP allows a 4 storey building. The subject application proposes a 4 storey building with a mezzanine level on the top.</p> <p>However, the section propose undersized floor to floor heights. That is, the floor to floor height for the ground proposed is 4.2m, however the DCP requires 4.5m for the ground floor. Further to this, concern is also raised about the proposed thickness of the roof slab and its ability to accommodate the necessary insulation and drainage given its thickness.</p> <p>Given these issues, and the use of the incorrect flood levels, it is not clear whether the proposed number of levels can be contained within the maximum permitted building height contained in the Sydney LEP 2012.</p>
4.2.2 Building setbacks	No	The building setbacks proposed are inconsistent with the DCP controls. This is discussed in the Issues section below

<b>4.2 Residential flat, commercial and mixed use developments</b>	<b>Compliance</b>	<b>Comment</b>
4.2.4 Fine grain, architectural diversity and articulation	No	The proposed length of the building frontage to the proposed road is 37m. This is not acceptable and is discussed in the Issues section below.
4.2.6 Waste minimisation	No	Waste is discussed in section 3.14.

<b>5.2 Specific Areas - Green Square</b>	<b>Compliance</b>	<b>Comment</b>
5.2.1 Green Square Urban Strategy	No	The proposal development, in its current form, does not complement the desired future character of the Green Square area as it does not create an appropriate interface with the public domain and does not respect the permitted floor space ratio standard for the site.
5.2.3 Community infrastructure	No	Although the application seeks to utilise the additional floor space under clause 6.14 of Sydney LEP 2012, there is no proposed accompanying community infrastructure proposed via a public benefit offer.
5.2.4 Local infrastructure	No	A future street is proposed to the eastern side of the site on the adjoining site. This is further discussed in the Issues section below.
5.2.7 Stormwater management and waterways	No	See clause 3.7 above.
5.2.9 Building design	No	The proposed building entry will not provide a clear transition from the street as required by this control. The lobby is formed as a 16m narrow and deep passageway with no daylight or visual relief and no transition from Bourke Road. A better sense of arrival should be provided. The entry is not clearly legible or differentiated from the café tenancy.

<b>5.2 Specific Areas - Green Square</b>	<b>Compliance</b>	<b>Comment</b>
5.2.10 setbacks and 5.8.2.2 Building Setbacks	No	The required setbacks are not provided. See discussion in the Issues section below.

<b>5.8 Specific Areas - Southern Employment Lands</b>	<b>Compliance</b>	<b>Comment</b>
5.8.2.4 Building layout and design	No	The building design does not provide an adequate interface with the public domain. It also does not maximise the use of natural lighting or ventilation. This is further discussed in the Issues section below.
5.8.2.5.1 Landscaping	No	A minimum of 10% of the site area for deep soil planting is required, however no deep soil has been provided.
5.8.2.6 Parking, access, loading and servicing	No	The development should minimise the visual impact of parking and loading areas on the public domain. The current roller shutter doors proposed are not considered to provide a high quality finish or detail to the front facade.
5.8.3.3 Liveable Green Network	No	While the proposed development is setback by 1m, building elements protrude into this setback. In addition to this, there is no mechanism by which this setback can be dedicated to Council.
5.8.7.1 Stormwater management and waterways	No	See clause 3.7 above.
5.8.7.3 Contamination	No	See discussion under SEPP 55 above.

## Issues

### Floor space ratio

39. Pursuant to clause 4.4 of Sydney LEP 2012, the permitted floor space ratio (FSR) for the site is 1.5:1. The application proposes a FSR of 2.64:1. This represents a 76% or 877m<sup>2</sup> exceedance of the FSR for the site under clause 4.4 of Sydney LEP.

40. The applicant has submitted a clause 4.6 variation to development standard request to justify the breach. However, the applicant asserts in the clause 4.6 request that the permitted FSR for the site is 2:1. The applicant asserts that the available FSR under clause 4.4 of Sydney LEP 2012 is 1.5:1 and under clause 6.14 of Sydney LEP 2012 is 0.5:1. Therefore the total FSR available is 2:1.
41. However, the 0.5:1 FSR under clause 6.14 of Sydney LEP 2012 is only available if community infrastructure is provided. The only mechanism by which community infrastructure can be offered, is through a public benefit offer. Given that the applicant has not made any public benefit offer, the 0.5:1 floor space under clause 6.14 of the Sydney LEP 2012, cannot be used for this development.
42. Therefore, the exceedance of the permitted FSR is 76% or 877m<sup>2</sup>. The accompanying clause 4.6 variation request does not adequately explain why compliance with the development standard is unreasonable or unnecessary, or why there are environmental planning grounds which support the breach. The reasons for this are outlined below.

### **Applicant's submission**

43. As required by clause 4.6(3)(a) and (b) of Sydney LEP 2012, the applicant has submitted a written request that seeks to justify the contravention of the FSR standard.
44. The applicant submits that there is a breach of 0.6:1 of the FSR standard. This is because the applicant incorrectly assumes that the permitted FSR for the site is 2:1. As identified above, the permitted FSR for the site, in the absence of a public benefit offer to access the 0.5:1 additional floor space, is 1.5:1 in accordance with clause 4.4 of Sydney LEP 2012.
45. Notwithstanding the incorrect FSR for the site, the applicant states that compliance with the FSR standard is unreasonable and unnecessary for the following reasons listed below.
  - (a) The applicant submits that the breach in the FSR provides for a better planning outcome. As discussed above and below, there are a number of issues with the proposed design. The poor interface with the proposed street and public domain, and lack of natural light and ventilation in the building by virtue of its large floor plates, indicate that the breach of the FSR standard does not result in a better planning outcome for the site.
  - (b) The applicant submits that the variation allows for the orderly and economic use of the land in an appropriate manner. This justification does not demonstrate that compliance with the FSR standard is unreasonable or unnecessary as a compliant FSR would also allow for the orderly and economic development of the land.
  - (c) The applicant submits that the variation allows for a better urban design outcome. This is not agreed with for the reasons discussed above and below. The design, as it currently is proposed, is not considered to represent a good urban design outcome.

- (d) The applicant submits that compliance with the building envelope controls provides a height, bulk and scale outcome that is consistent with and anticipated by the controls. While the proposal may comply with the height controls, concern is raised about the proposed floor to ceiling heights, the flood levels and the thickness of the roof slab. Given these issues, it is likely that the resulting development would also result in an increase in height beyond the development standard.
  - (e) The applicant submits that the proposed FSR provides increased floor space on the subject site for employment opportunities which meets the objectives of the B7 business park zone. While the provision of office space meets the objectives of the B7 zone, the application also proposes retail premises which is prohibited in the B7 zone.
46. As per clause 4.6(4)(a)(ii), it is considered for the reasons stated above that the exception request does not demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstance.

### **Suitability**

47. Clause 4.6(4)(iii) requires the consent authority to be satisfied that the proposed development is consistent with the objectives of clause 4.4 FSR and the objectives of the B7 business park zone.
48. The proposed development is considered to be inconsistent with the objectives of clause 4.4 FSR for the reasons outlined below.
- (a) The development exceeds the density of the development envisaged for the site. The generation of additional vehicle traffic alone from the site as a result of the exceedance of the floor space ratio will impact on the existing network.
  - (b) The development itself does not reflect the desired character of the locality. That is, it does not provide the required public domain setbacks which are to be clear to the sky and dedicated to Council. Further to this, there will be a poor public domain interface between the proposed building and the future street to the east of the site.
49. The proposed development is considered to be inconsistent with the objectives of the B7 business park zone. This is because the development proposes a retail premises, which is prohibited in the B7 business park zone. While it is acknowledged that the plans indicate a 'café', all accompanying documentation (including the clause 4.6 variation request) refers to the use as a retail premises.

### **Flooding**

50. The site is identified as being flood prone. The minimum flood planning level for the access ramp to the basement, fire stair and lobby is to be 10.25m AHD. The minimum flood planning level for the café and office spaces is to be a minimum of 8.86m AHD.
51. The existing drawings show the ramp to the basement as being 9.3m AHD and the lobby being 8.8m AHD, as opposed to being at 10.25m AHD. In addition, the retail/café are shown as being 8.8m AHD, as opposed to the required 8.86m AHD. These levels do not comply with the City's interim flood policy (section 5 - minimum flood planning level).

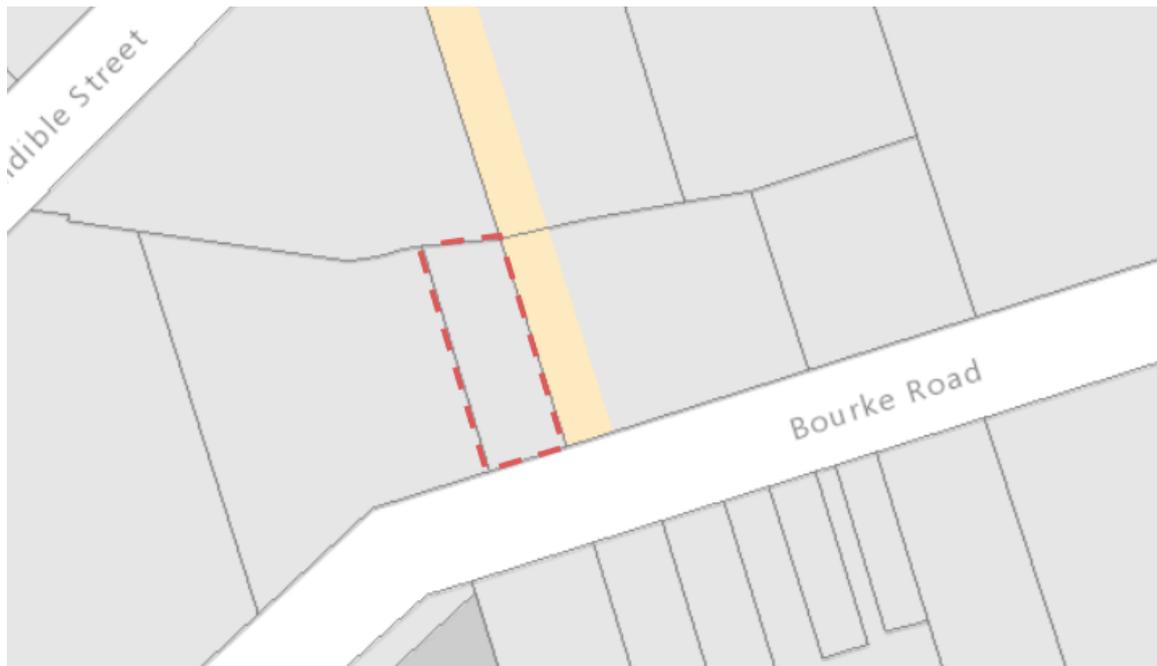
52. In the event that approval was recommended, the floor levels of the proposed development would need to be updated to reflect the appropriate flood levels. This will also likely have implications on the building design, as the increased floor levels may result in a breach of the height limit under clause 4.3 of Sydney LEP 2012, and implications on the provision of compliant access from the existing footpath

### **Acid Sulphate Soils**

53. The site is within a class 3 acid sulphate soil zone. The application involves significant amounts of excavation approximately 4m below the water table for which dewatering will be required. This has potential for acid sulphate soils to be distributed and for neighbouring sites to be affected from changes in the water table.
54. Preliminary investigations have been carried out and described within the submitted geotechnical report including indicator tests of soil samples where additional testing was found to be required to determine the presence of acid sulphate soils. However, the results of these additional tests are yet to be received and the status of the report is described as interim.
55. No information has been provided about the potential impact to other sites within the class 3 zone. This information is needed to determine whether an acid sulphate management plan is required for the proposed development.

### **Interaction with the public domain**

56. The site includes a 2.4 metre public domain setback for the front facade for footpath widening. In accordance with table 5.13 in section 5.8.2.2 of the Sydney DCP 2012, the land is to be dedicated to Council for the purpose of footpath widening. In addition, it is to be provided clear to the sky. While a setback is provided, it is not proposed to be dedicated to Council and is not provided clear to the sky. That is, the building facade overhangs the proposed 2.4 metre setback. This is not acceptable.
57. Further to this, the proposed development does not provide any additional setback to the new property boundary, as is required by section 5.2.10(2) in the Sydney DCP 2012. That is, where land is dedicated to the City, the building is required to be setback by a minimum of one metre from the new property boundary.
58. The site also includes a one metre landscape setback requirement to the liveable green network in accordance with section 5.8.3.3 of the Sydney DCP 2012. The liveable green network (LGN) is part of the City's broader initiative to create pedestrian and cycle networks which connect people with the City, village centres, public transport, parks and open spaces. Part of the LGN is proposed to run along Shea's Creek Canal, and is included in section 5 of the Sydney DCP 2012. There is a six metre setback shown to the north side of Shea's Creek between Mandible Street and Bourke Street, meaning that the subject site is required to provide a one metre setback, as measured from the edge of the open channel.
59. In accordance with section 5.8.3.3(3), this land is also required to be dedicated to Council and would need to include both the stormwater channel plus the one metre setback from the edge of the channel. While a setback is provided, it is not proposed to be dedicated to Council and is not provided clear to the sky. This is not considered acceptable.
60. The site is located adjacent to a future proposed street, as identified in figure 5.35 in section 5.2.4.1 of Sydney DCP 2012 and figure 1.84 in section 5.8.3.2 of Sydney DCP 2012. This is shown in the figure below.



**Figure 23:** Proposed future road in accordance with Sydney DCP 2012

61. The eastern side of the proposed design will present a 37 metre flat and solid 4 storey frontage with metal infill panels and precast concrete to the future street. The concept for conversion elevation, DA202, revision 1, provides for future glazing. However, this option does not form part of the approval. It also does not maximise opportunities to provide articulation and facade modulation. These would allow for a more active and landscaped edge condition and future surveillance of the street. Given the FSR exceedance, a better engagement with the future public domain should be provided.
62. In addition to this, given this side boundary is proposed to become a new street, this side of the building should provide a minimum landscaped setback of one metre in accordance with section 5.2.10(2) in the Sydney DCP 2012. This is to ensure that the development provides a high quality frontage and appropriate presentation to the public domain.

#### **Basement access**

63. The proposed elevations show a vehicle door height of approximately 3.6 to 3.7 metres. The traffic report acknowledges occasional large service/delivery vehicles will use the street parking. There is a separated cycleway outside the site and the on-road separator has a large gap because of a number of consecutive driveways. This commonly results in large trucks stopping in the cycleway.
64. Given this, the development should be designed to allow for loading and collection within the basement. As this is a new building, a greater vehicle door height of approximately 4.5 metres should be provided. This will enable a greater number of vehicle types to load and unload within the site, as opposed to on the street.

### Other Impacts of the Development

65. A BCA report has been submitted in respect of this development application. The location of the cores results in long fire egress. There are also a number of elements of the development which do not comply with the BCA, as per the submitted report. Although not warranting a reason for refusal as there could be deemed to satisfy provisions which allow these non-compliances, consideration should be given to improved compliance with the BCA, particularly given this is a new building.

### Suitability of the site for the Development

66. Given the issues raised, the site is not suitable for the development, as currently proposed.

### Internal Referrals

67. The application was discussed with other sections of Council including urban design, transport, public domain, environmental health, trees and waste management. Comments have been included in the issues section above.

### External Referrals

68. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 14 February 2018 and 17 March 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification, two (2) submissions were received.
69. In accordance with the Environmental Planning and Assessment Regulations, the Office of Water was informed by email that there were two (2) submissions received.
70. The issues raised in the submissions are as follows:

- (a) Non-compliances with the proposed structure which are identified in the BCA assessment report.

**Response** - This is discussed in the paragraph titled, 'Other impacts of development'.

- (b) The construction management plan and potential to interfere with vehicular movements of neighbouring sites.

**Response** - No construction management plan would be approved as part of this application. In the event that the application were approved, the management of vehicular movements would be the subject of conditions to be complied with prior to and during construction.

- (c) Request for a dilapidation report

**Response** - If approval were recommended, dilapidation reports would be a required by conditions of consent.

- (d) Impact of balconies on visual and acoustic privacy.

**Response** - Given the proposed use and the provision of blade walls, in the absence of the other issues, the balconies would likely to be considered acceptable.

- (e) Flood analysis is inadequate.

**Response** - This is discussed in the issues section above.

- (f) Inconsistencies in architectural plans and request to be notified of changes

**Response** - The application is recommended for refusal. Any additional changes to the proposal would be notified in accordance with the Sydney DCP 2012.

- (g) Traffic and driveway location

**Response** - The driveway location is generally considered acceptable, however further refinement of the levels and height are required.

- (h) Floor space ratio and setbacks

**Response** - The breach of the FSR and the non-compliance with setbacks are discussed above. Please note though, in accordance with table 5.15 in DCP clause 5.8.3.3 a one metre setback from the stormwater channel is required, as opposed to a six metre setback referred to the submission.

- (i) Landscaping/open space

**Response** - The lack of deep soil is discussed above and is not considered acceptable.

- (j) Bike parking and associated facilities

**Response - In the event that the application were recommended for approval, facilities would likely be required to be provided in accordance with clause 3.11.3(8) of Sydney DCP 2012. Public Interest**

71. The form of building proposed and lack of public benefit offer mean that the development is not considered to be in the public interest.

### **S7.11 Contribution**

72. If the development were recommended for approval, it would be subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

### **Affordable Housing Contribution**

73. If the development were recommended for approval, it would be subject to an affordable housing contribution in accordance with clause 7.13 of Sydney LEP 2012 and the Green Square affordable housing program.

### **Relevant Legislation**

74. The Environmental Planning and Assessment Act 1979.
75. The Water Management Act 2000.
76. The Sydney Airport Referral Act 1996.

### **Conclusion**

77. The proposed development is recommended to be refused. The development represents an overdevelopment of the site, seeking to exceed the permitted floor space ratio by 76% or 877m<sup>2</sup>. A clause 4.6 variation request has been submitted, but it does not adequately demonstrate why compliance with the development standard is unreasonable or unnecessary in the circumstances.
78. The proposed development does not provide a suitable interface with the public domain. While setbacks to the front and rear boundary are proposed, these setbacks are required to be clear to the sky and dedicated to Council. The eastern facade adjoins a future proposed road, however will present as a 37 metre long blank facade. The proposed development has not used the appropriate flood levels and the proposed entry will result in a poor urban design outcome.
79. The proposed development provides inadequate basement access, such that loading/unloading and waste collection will likely need to occur from the street. This is a poor planning outcome, particularly given there is a separated cycle path located in front of the site along Bourke Road.
80. The proposal has not adequately considered potential contamination or the impact of the proposal on the water table or acid sulphate soils.
81. The internal floor planning of the building results in large floor plates with poor access to natural lighting and ventilation and no deep soil.
82. Based on the cumulative impacts of all of the above matters, the proposed development is not consistent with the desired future character of Green Square or the Southern Employment Lands. As such, the application is recommended for refusal.

### **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

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