

**Item 5.****Development Application: 19-37 Greek Street, Glebe**

File No.: D/2017/1650

**Summary**

<b>Date of Submission:</b>	28 November 2017  Amendments lodged 25 June 2018 and 10 September 2018
<b>Applicant:</b>	The Buchan Group
<b>Architect:</b>	The Buchan Group
<b>Developer:</b>	Denwol Group Pty Ltd
<b>Owner:</b>	Denwol Group Pty Ltd
<b>Cost of Works:</b>	\$4,031,379.54
<b>Permissibility:</b>	B2 Local Centre Zone. The use is defined as commercial which is permissible within this zone. No change of use is proposed.
<b>Proposal Summary:</b>	<p>Development application for alterations and additions to an existing part three, part four storey commercial building. The proposed works include:</p> <ul style="list-style-type: none"><li>• Demolition of the existing roof and construction of one additional commercial level. The new commercial level includes a south facing balcony to Greek Street;</li><li>• A new roof with plant enclosure and a lift overrun;</li><li>• Additional car, motorcycle and bicycle parking within the existing lower ground level;</li><li>• Internal works including new end of trip facilities on ground level to level 2 and garbage and substation facilities;</li><li>• Alterations to the Greek Street facade; and</li></ul>

**Proposal Summary  
(continued)**

- The insertion of glass block windows within previously bricked up north facing windows on the upper ground level.

The application is referred to the Local Planning Panel for determination as the application proposes a variation to the height and floor space ratio (FSR) development standard by more than 10%. The applicant has submitted a Clause 4.6 variation request.

The existing and proposed height exceeds the Clause 4.3 Height development standard of 15m for the site as prescribed by the Sydney Local Environmental Plan 2012 (Sydney LEP 2012). The existing height of the building (17.99m) exceeds the height development standard by 20%. The proposed new level has a height of 17.92m, with the new plant enclosure and lift overrun above result in an overall building height of 19.86m (32% breach).

The proposed FSR exceeds the Clause 4.4 FSR development standard of 2.5:1 for the site as prescribed by the Sydney LEP 2012. It is however noted that the existing FSR of the site also exceeds the development standard with a FSR of 3.27:1 (31% breach). The breach proposed in this scheme is the same as the existing breach. Although an additional floor with an area of 700sqm is proposed in this application the additional floor area is offset by an increase in car parking at the lower ground level which is excluded from the gross floor area (GFA) calculations. Therefore, the proposed FSR results in no change to the existing FSR.

The existing building presents to Greek Street as a three storey building and four storey to the north elevation however, due to the slope of the site, the building is for the most part four storeys. Therefore, the proposed new level results in five storeys which is non-compliant with the Clause 4.2.1 Building Height control of four storeys for the subject site as prescribed by the Sydney Development Control Plan 2012 (Sydney DCP 2012).

The application originally included two new levels of commercial floor space on top of the existing building and a rooftop plant room above. The extent of variation to the height and FSR planning controls was not supported and subsequently the application was amended by deleting one of the proposed additional floors.

**Proposal Summary  
(continued)**

The original application was advertised and notified for a period of 14 days from 6 March 2018 to 21 March 2018. Five submissions were received in response to the development application. The submissions raised concerns regarding overshadowing, inconsistent with streetscape, privacy impact, loss of views and outlook, additional traffic and noise and disturbance of construction works. The amended plans were not re-notified as the amended plans were not considered to result in additional environmental impacts in accordance with Schedule 1 of the Sydney DCP 2012.

The proposal is consistent with the built form and context of the neighbouring buildings, with no unreasonable amenity impacts and is consistent with the desired future character of the area.

Therefore, the variations in both height and FSR development standards are considered acceptable and meet the criteria under Clause 4.6.

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (ii) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

**Attachments:**

- A. Recommended Conditions of Consent
- B. Proposed Drawings
- C. Clause 4.6 Variation Requests

## Recommendation

It is resolved that:

- (A) The variation sought to Clause 4.3 (Building Height) in accordance with Clause 4.6 'Exceptions to Development Standards' of the Sydney Local Environmental Plan 2012 be upheld in this instance.
- (B) The variation sought to 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 in this instance.
- (C) Consent be granted to development application No. D/2017/1650 subject to the conditions set out in **Attachment A** to this report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal generally complies with the aims and objectives of the relevant policies and planning controls as outlined in further detail in this report.
- (B) The non-compliance with building height and floor space ratio development standards are acceptable as the proposal is considered to be consistent with the built form and context of the neighbouring buildings.
- (C) The non-compliance with building height and floor space ratio development standards does not significantly alter the current built form and development density.
- (D) Subject to compliance with the recommended conditions, the proposed alterations and additions to the commercial building will provide an acceptable level of amenity for the subject site and neighbouring properties and is in the public interest.
- (E) The requested variation to the height development standard is upheld because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 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 Clause 4.3 Height and the R1 General Residential zone.
- (F) The requested variation to the floor space ratio development standard is upheld because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 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 Clause 4.4 Floor Space Ratio and the R1 General Residential zone.

## Background

### The Site and Surrounding Development

1. A site visit was carried out on 4 April 2018.
2. The site is rectangular with an area of approximately 1189sqm. It has a primary street frontage to Greek Street and no secondary frontage. The site falls from west to east at approximately 2 metres. A part three, part four storey commercial building is contained within the site. A vertical projecting sign is attached to the Greek Street frontage of the site.
3. The site is accessed from two separate pedestrian entrances and a vehicle entrance on Greek Street.
4. Surrounding land uses are a mixture of residential and commercial. Directly adjacent to the site to the north is a large NSW Land and Housing Corporation site known as No. 45-51 Bay Street. This site has a frontage to Bay Street, Glebe Street and Franklyn Street. It contains multiple two and three level buildings including landscaping and car parking throughout.
5. Directly adjacent to the west is a four to five storey residential flat building at No. 39-41 Greek Street. It contains multiple apartments throughout all levels, including private balconies located looking north and on the rooftop and a communal rooftop terrace.
6. Directly adjacent to the east is a six to seven level residential flat building at No. 13 -17 Greek Street, which was converted from a warehouse/industrial use.
7. Opposite Greek Street south of the site is Broadway Shopping Centre, a multi-level regional shopping centre at No. 23-35A Bay Street. Specifically the component of the centre opposite is an eight storey plus rooftop car park for use by staff and visitors of the centre. The shopping centre almost spans the entire southern edge of Greek Street.
8. The site is not heritage listed and not located within a heritage conservation area. No adjoining sites are heritage listed.
9. Photos of the site and surrounds are provided below:



**Figure 1:** Aerial of the site and surrounding development, including housing corporation development to north, residential apartments to west and east and 'Broadway Shopping Centre' to the south.



**Figure 2:** Greek Street facade of the building looking east.



Figure 3: Looking west up Greek Street.



Figure 4: Looking east down Greek Street.



**Figure 5:** Broadway Shopping Centre car park opposite the site on Greek Street.



**Figure 6:** Rear of the site from Bay Street. No. 41-51 Bay Street is in the foreground. Only the upper level and roof form of the building is visible. It is identified with an arrow. Broadway Shopping Centre car park is in the background.



**Figure 7:** Roof of the building



**Figure 8:** Roof top terraces of the neighbouring residential building at No.39-41 Greek Street

## Proposal

10. The application seeks consent for alterations and additions to the part four, part three storey commercial building, specifically consisting of:
  - (a) Lower Ground Floor**
    - (i) New parking arrangement including 10 car spaces, 5 motorcycle spaces and 39 bicycle parking racks;
    - (ii) New waste management facilities, substation, pump rooms and house and security services; and
    - (iii) Louvres to existing north facing openings.
  - (b) Upper Ground Floor**
    - (i) Retention of existing office space and amenities;
    - (ii) New end of trip facilities;
    - (iii) Alteration to glazing along the Greek Street façade; and
    - (iv) Install glass block fire rated windows to bricked up north facing windows.
  - (c) Levels 1 & 2**
    - (i) Retention of existing office space and amenities; and
    - (ii) New end of trip facilities.
  - (d) Levels 3**
    - (i) Construction of a new level of commercial floor space;
    - (ii) Floor to ceiling glazing on the northern and southern elevations; and
    - (iii) Installation of a balcony with frameless balustrade along the southern edge to Greek Street with planter boxes.
  - (e) Roof**
    - (i) Installation of metal roof over new addition; and
    - (ii) Installation of a plant deck enclosure incorporating the lift overrun to the centre of the roof.
  - (f) Signage**
    - (i) Retain the size and location of the existing vertically projecting wall sign attached to the building and provide new acrylic cladding and illumination
11. The hours of operation for the commercial use proposed are 8.00am to 6.00pm, Monday to Friday.
12. Plans of the proposed development are provided below.



Figure 9: Proposed South Elevation - front facade of subject site

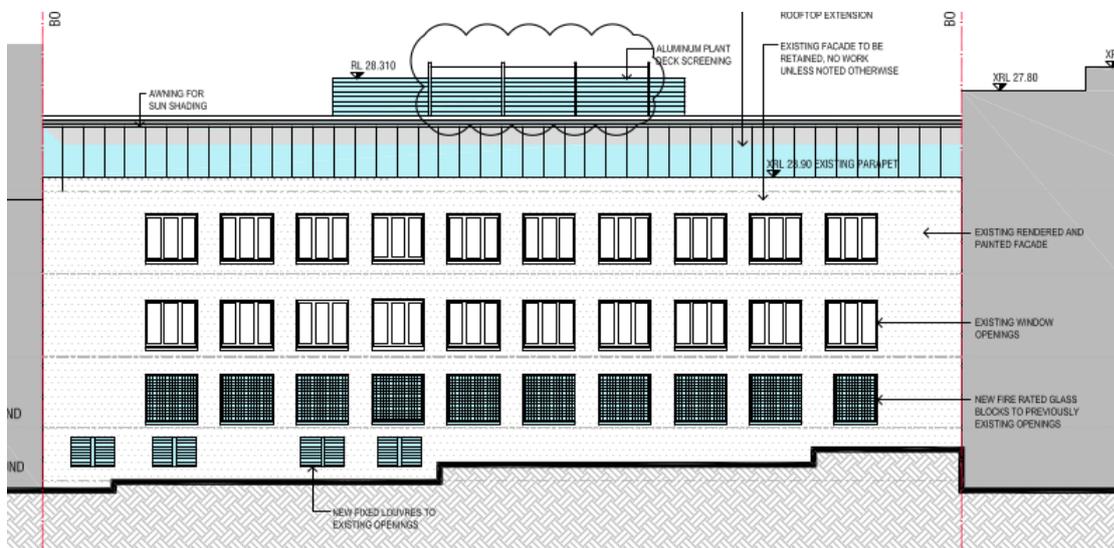


Figure 10: Proposed North Elevation - rear facade of subject site

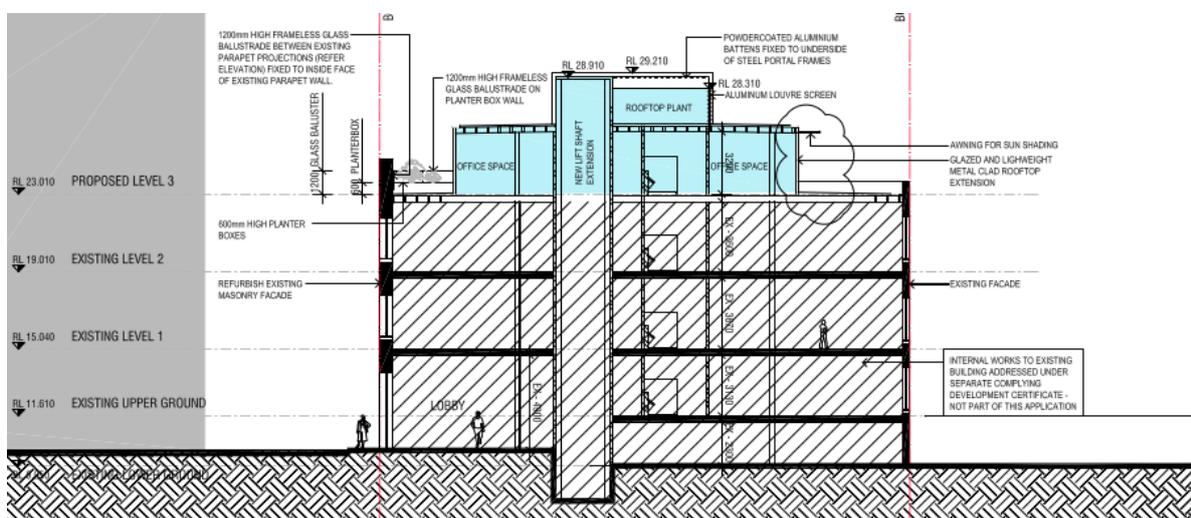


Figure 11: Proposed Section B

## History Relevant to the Development Application

### Previous Development Applications

13. On 17 May 1988, development application D/1988/258 was approved for alterations and additions to the existing building for an educational establishment (personal training courses and counselling).
14. On 17 May 1991, development application D/1991/112 was approved for erection of projecting 'Scientology' internally illuminated wall sign. The sign approved was 8m high and 1m wide and was conditioned to not extend beyond parapet.
15. On 18 October 2017, pre-DA advice (PDA/2017/140) was requested for the construction of two new levels and a roof plant enclosure above, ground floor internal works and facade works. It was advised that significant variations to the height and FSR planning controls are not supported. It was noted that the improvements at ground floor were supported as the potentially provided a positive impact / improvement to the buildings appearance. It was also recommended that the existing sign be removed
16. On 5 July 2018, a complying development certificate P/2018/1407 was approved for internal refurbishment of the existing commercial building including services upgrades, new amenities, fire stairs and lift core, renovation to the lobby and minor facade changes. Plans show 20 car spaces and storage area to the lower ground floor. Works for this approval have not commenced.
17. On 27 July 2018, a complying development certificate P/2018/1582 was issued for internal refurbishment of the existing commercial building to include showers as part of the sanitary facilities from the mezzanine level to level 2. These approved works are also illustrated in the proposal plans for this current application. Works for this approval have not commenced.

### Current Development Application

18. The application originally included two new levels of commercial floor space on top of the existing building, including a balcony overlooking Greek Street and a rooftop plant room and changes to the rear ground floor facade and lobby. The variation to the height and FSR development standards as prescribed with the Sydney LEP 2012 was 23.5m (57% breach) in height and FSR of 3.8:1 (52% breach) at a gross floor area of 4521sqm.
19. The extent of the variations and impacts of the addition were not supported by Council staff. The application was subsequently amended by the applicant to delete one of the proposed additional floors.
20. Amended plans were submitted on 25 June 2018 and 10 September 2018 reducing the overall height of the additions to 19.86m (32% breach to Sydney LEP 2012 height control) and FSR to 3.27:1 (31% breach to LEP FSR control). It is noted that the existing building breaches the FSR standard by this same amount that is the existing building has a FSR of 3.27:1. The amended plans were not re-notified as the amended plans were not considered to result in additional environmental impacts in accordance with Schedule 1 of the Sydney DCP 2012.

### Economic Social/Environmental Impacts

21. 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.

### State Environmental Planning Policy No 64—Advertising and Signage

22. The application proposes to retain the size and location of the existing vertically projecting wall sign attached to the building and provide new acrylic cladding and illumination, see figure 12. The sign measures 8.4m high, projecting from the first floor level to above the existing parapet. It projects approximately 800mm from the façade over Greek Street. The sign has a face on either side, facing east and west along Greek Street.
23. The existing projecting wall sign does not comply with some of the criteria under this SEPP 64 and the provisions under Clause 3.16 Signage and Advertising of the Sydney DCP 2012.
24. However, as the projecting wall sign has lawfully been approved under development consent D/1991/112 (with minor non-compliances) and has been in existence for over 25 years, the retention and refurbishment works to the existing projecting wall sign is considered acceptable.
25. The existing 'Scientology' wording of the sign is to be replaced with the new occupancy. As the contents of the sign are yet to be confirmed, a condition is recommended for the content of the sign to be submitted prior to Occupation Certificate.
26. See further discussion under the heading 'Issues' below.

### Sydney LEP 2012

27. The site is located within the B2 Local Centre zone. The proposed use is defined as commercial and is permissible. No change of used is proposed.
28. The relevant matters to be considered under Sydney LEP 2012 for the proposed development are outlined below.

### Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	<p>A maximum height of 15m is permitted. Existing building height is 17.99m. A height of 19.86m is proposed.</p> <p>A Clause 4.6 objection to vary the development standard is submitted with the application and is recommended for support</p> <p>Please see further discussion under the Issues heading.</p>

Development Control	Compliance	Comment
4.4 Floor Space Ratio	No	<p>A maximum FSR of 2.5:1 is permitted.</p> <p>The existing FSR is 3.27:1.</p> <p>A FSR of 3.27:1 is proposed.</p> <p>A Clause 4.6 objection to vary the development standard is submitted with the application and is recommended for support.</p> <p>Please see further discussion under the Issues heading.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the height of building and floor space ratio development standards prescribed under Clauses 4.3 and 4.4, respectively.</p> <p>The variations are supported as detailed in the 'issues' section of this report.</p>
5.9 Preservation of trees or vegetation	Yes	<p>The proposal will have no impact on any trees.</p>
5.10 Heritage conservation	Yes	<p>The site is not heritage listed and not located within a heritage conservation area.</p> <p>No heritage items are located within the immediate vicinity of the site.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	<p>While the building is generally considered to display design excellence for the reasons outlined below, there are some matters requiring further refinement through conditions of consent.</p> <p>Limited details have been provided regarding the replacement to the louvres on the Greek Street ground level facade. Given the amount of louvres to be installed to the ground level facade a high standard of design of visual interest and treatment is required.</p> <p>It is recommended that a condition requiring the louvres be replaced with artistic high quality screening treatment that creates visual interest at ground level. The signage of the services at ground level are also to be appropriately integrated into the facade treatment appropriately.</p> <p>It is also recommended that a condition of consent requiring signage details are to be submitted, specifically the details of signage contents/wording.</p> <p>Subject to the above design conditions the proposed design of the new level, roof plant enclosure and facade treatment is considered to satisfy the design excellence considerations under the LEP for the following reasons:</p> <ul style="list-style-type: none"> <li>• The materials and detailing is of a high standards and is appropriate to the building and locality.</li> <li>• The proposed works will provide a consistent built form and scale with neighbouring buildings</li> </ul>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	A maximum of 24 car parking spaces are permitted.  10 car parking spaces are proposed.
7.14 Acid Sulphate Soils	Yes	The site is identified as class 5 acid sulphate soils. As no works to the surface are proposed, the proposal does not require assessment under this clause.
7.15 Flood planning	Yes	The site is affected by flooding from the Blackwattle Bay catchment with the maximum depths of flow occurring along the south-eastern corner of the site's frontage at Greek Street.  Council's Public Domain Unit have advised that the proposed floor levels are acceptable, subject to the recommended conditions.

### Sydney DCP 2012

29. The relevant matters to be considered under Sydney DCP 2012 for the proposed development are outlined below.

#### 2.6.11 Locality Statements – Mountain Street

The subject site is located in the Mountain Street Locality. The proposal generally achieves the locality character statement and relevant principles as it adaptively reuses the early existing warehouse building by retaining the existing warehouse facade in almost its entirety with refurbishment works proposed to the glazing on the ground floor level and repainting the external walls. The new addition has been sympathetically setback from the front and rear facade. The built form and context of the proposal is considered to be consistent with the locality particularly with the neighbouring buildings along Greek Street and is consistent with the desired future character of the locality.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	<p>The proposed renovation works to the ground level facade to Greek Street have added new lighting to the building and enlarged the openings either by adding more glazing or louvres. Louvres to the Greek Street facade are provided as screening devices to the existing services located on the lower and upper ground floor level.</p> <p>Limited details have been provided regarding the replacement to the louvres. Given the amount of louvres to the ground level facade a high standard of design of visual interest and treatment. It is recommended that a condition requiring the louvres be replaced with artistic high quality screening treatment that creates visual interest at ground level. The signage of the services at ground level are also to be appropriately integrated into the facade treatment appropriately.</p>
3.5 Urban Ecology	Yes	No loss of trees is proposed, either on site or on the surrounding public domain.

3. General Provisions	Compliance	Comment
3.10 Significant Architectural Building Types	Yes	<p>The building is identified in aerial mapping dating back to 1949, meaning it is over 50 years old and requires assessment under this clause of the DCP.</p> <p>The application proposes to demolish the existing roof structure to construct a one storey addition. The part of the roof to be demolished is not considered to be an essential component of the original building form and is not visible from the public domain.</p> <p>The proposal results in largely retaining the existing built form and includes a one storey addition. The addition sits behind the decorative parapet and is simple in form. It does not dominate the original building and is sympathetic in scale and form.</p> <p>The significant fabric, decorative parapet, facade walls and windows that defines the legibility of the existing warehouse building are also retained.</p> <p>Given the above, the proposal is considered to be compliant with this clause.</p>

3. General Provisions	Compliance	Comment
3.11 Transport and Parking	Yes	<p>The application proposes 10 car parking spaces, 5 motorcycle parking spaces and 39 bicycle parking racks at the lower ground level which can be accessed via Greek Street. A traffic impact statement prepared by Traffix was submitted with the application.</p> <p>The proposed 10 car parking spaces are within the maximum 24 car parking spaces permitted as prescribed under the LEP. Given the amount of car parking provided a car share scheme is not required. The proposal does not trigger the requirement for a green travel plan.</p> <p>As prescribed under this clause, 27 bicycle parking is required for employees and 10 bicycle parking is required for visitors.</p> <p>The proposal provides 39 bicycle racks which exceeds the minimum bicycle parking requirement. However, the parking is provided in the lower ground level which would not be readily accessible for visitors and no alternative visitor bicycle parking is provided.</p> <p>Given the size of the lobby, it is considered that the lobby will be able to accommodate 10 bicycle parking racks for visitors. Therefore, a condition is recommended to include visitor parking within the lobby area.</p> <p>It is noted that each motorcycle space is located between a column and a car space and are vulnerable on one side of being hit by turning cars. However, as the car park will not be used by casual users and will not have a high turnover of general public, the layout of the parking is considered acceptable.</p> <p>Subject to the recommended conditions, the proposed transport and parking is considered acceptable</p>

3. General Provisions	Compliance	Comment
3.12 Accessible Design	Yes	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	Recommended conditions require the commercial use to be serviced by a commercial waste collection contract and that the development complies with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
3.15 Late Night Trading Management	Yes	No late night operation is proposed. The hours of operation are proposed to be between 8.00am and 6.00pm, Monday to Friday. The proposed daytime hours of operation are acceptable.
3.16 Signage and Advertising	No	Refer to the discussion under the heading 'Issues'

4.2 Commercial developments	Compliance	Comment
4.2.1 Building height	No	<p>A four storey height control applies to the site as prescribed under this clause. The proposal will create a 5 storey development, however will predominantly appear as 4 storeys to the street.</p> <p>The proposal will present as 4 storeys at street level and complies with the character intent of this control.</p> <p>The new level has a compliant floor to floor height of 3.6m. The floor to ceiling height on the new level is 3.2m. This is non-compliant with recommended floor to ceiling requirement of 3.3m under Council's DCP.</p> <p>Given it is the uppermost level and has full glazing to the north and south walls, the internal amenity is considered to be acceptable for future workers.</p>
4.2.2 Building setbacks	Yes	<p>The existing building is built to all boundaries. The new level is proposed to be set in from the facade walls and boundary and no amendments to the main buildings setbacks are proposed.</p>
4.2.3 Amenity	Yes	<p>Subject to the recommended conditions, the amenity impact to neighbouring properties and the occupants of the subject site is considered to be reasonable.</p> <p>Please see further discussion under the "Issues" heading.</p>
4.2.6 Waste minimisation	Yes	<p>Given the use proposed recommended conditions require a commercial waste collection contract.</p> <p>Conditions are to be recommended regarding the above and that the proposed development complies with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.</p>

## Issues

### Variations to development standards

The proposal includes a request to vary the height and FSR development standards. Both are discussed on their individual merits below. While the proposal creates an additional storey, it delivers a FSR that is equivalent in calculable GFA to the existing building. The additional floor space created by the new storey is off-set by the creation of additional car parking area at ground level which is not included in floor space calculations. The height variance is considered to match the surrounding context.

### Height

30. The site is subject to a maximum height control of 15m. The existing building exceeds this control with a maximum height of 17.99m. The proposed development increases the maximum height to 19.86m (refer below):

Sydney LEP 2012 Height Standard	Existing Height	Proposed Height	Non-compliance
15m	17.99m	19.86m	4.86m (32%)

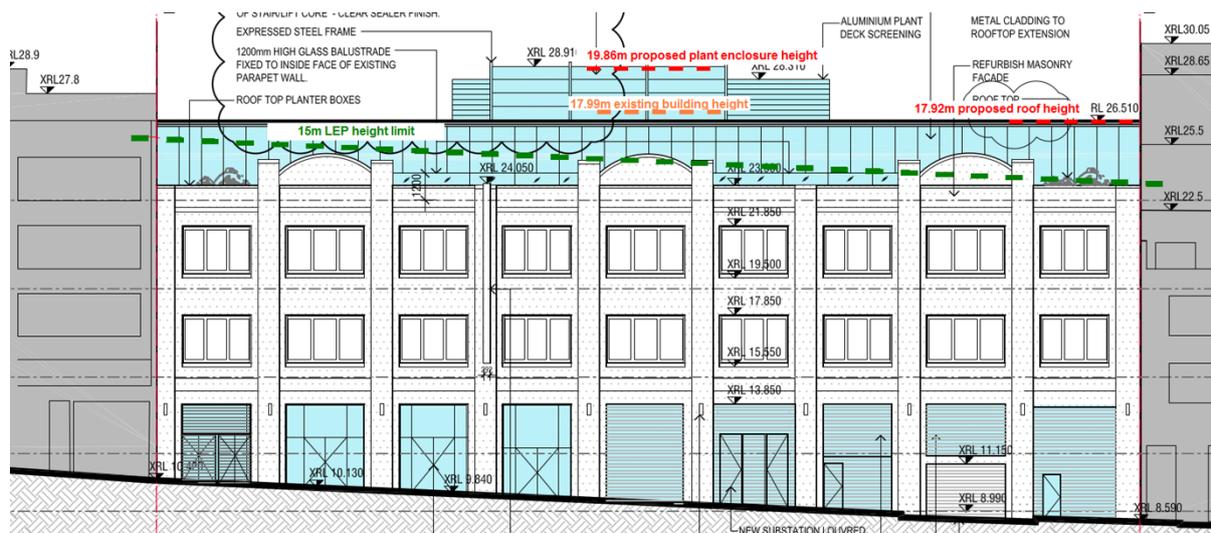
31. The proposed development has a maximum height of 19.86m to the top of the rooftop plant enclosure and 17.92m to the top of the new addition roof line. The building height results in a variation of up to 4.86m or 32% of the Sydney LEP 2012 control.
32. The building will present as part five storeys on its north side which exceeds the maximum building height control of four storeys in accordance with Clause 4.2 of the Sydney DCP 2012.
33. A written request has been submitted to Council justifying the exceedance over the height of building standard in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012.
34. The applicant specifically references the relevant clauses in their written statement, details the environmental grounds for supporting the Clause 4.6 and concludes that strict numeric compliance with the height development standard is unreasonable and unnecessary in this instance. The environmental grounds listed by the applicant include the following:
- The exceedance to the existing height of 17.99m is primarily due to the inclusion of the lift and plant enclosure which is setback from the front, side and rear boundary and is barely visible from the street.
  - The proposal results in no adverse loss of view from neighbouring properties and serves to retain outlook, skyline views and solar access to the neighbouring properties and does not give rise to any significant amenity impacts.
  - The adjoining buildings, which are recent mixed used development, significantly exceed the 15m height control including the multi-storey Broadway Shopping Centre car park directly opposite on Greek Street.

- (d) The character of the locality has been set by the redevelopment of the adjoining sites at 13-17 Greek Street and 39-41 Greek Street in terms of built form and height, given the recent approvals exceeding the Sydney LEP 2012 15m height control. The proposal provides a height between the heights of these two buildings.
- (e) The proposal provides for a better planning outcome by improving employment opportunities and a coherent streetscape as the built form and scale reflect the character and context of the area. A compliant building would be uncharacteristic of the area given the larger built form and scale of neighbouring properties

Response:

- 35. The applicant written rationale addresses the objectives associated with contravening the development standard meeting the requirements of Clause 4.6(4)(a)(i) of the Sydney LEP 2012 and meets the objectives of the height of building standards and B2 Local Centre Zone in accordance with Clause 4.6(4)(a)(ii). Therefore, the variation to the height standard is considered to be acceptable for the following reason.
- 36. The proposal is consistent with the objectives of the B2 Local Centre Zone as it will increase employment opportunities for the area and is in an accessible location.
- 37. The proposal responds to the relevant objectives of Clause 4.3 of the Sydney LEP 2012 (Building Height) as follows:
  - (a) Objective (a) – To ensure the height of development is appropriate to the condition of the site and its context.
    - (i) Directly adjacent to the west at No. 13-17 Greek Street is a six to seven level residential flat building with a height of 23.29m at the top of the plant enclosure and a height of 21.75m to the top of the roofline, shown in figure 7. Directly adjacent to the east at No. 39 - 41 Greek Street is a four to five storey residential flat building with a height of 16.4m from carpark exhaust, shown in figure 8. Given the context of the adjoining properties being over the 15m height control under the LEP and four storey control under the DCP, the proposed height, built form and scale will be an appropriate transition between the adjoining properties.
    - (ii) The height, built form and scale is characteristic of the streetscape with the rooftop plant being subject to an architectural treatment feature.
    - (iii) Given that the new level is set in 3.5m from the front facade facing Greek Street and the plant enclosure is set in a further 10m from Greek Street, the additional bulk will not be visually dominant to the existing built form and the building will largely retain a 4 storey scale within Greek Street.
    - (iv) The height exceedance of 1.87m to the existing building height of 17.99m is primarily due to the plant enclosure and lift overrun as the height to the top of the new level is similar to the height of the existing roof at 17.92m, as shown on figure 12 and 13.
  - (b) Objective (b) – To ensure appropriate height transitions between new development and heritage items and buildings in Heritage Conservation Areas or special character areas.

- (i) The site is not heritage listed and not located within a heritage conservation area. No adjoining sites are heritage listed.
- (c) Objective (c) – To promote the sharing of views.
- (i) As addressed below, when assessed against the four steps under the planning principle from the *Tenacity Consulting v Warringah* [2004] NSWLEC case, the loss of views are considered minor and reasonable in this instance. Therefore, the proposed sharing of views are considered to be reasonable.
38. The proposed development as addressed below provides a reasonable amenity impact to neighbouring properties in accordance with Clause 4.2.3 of the Sydney DCP 2012.
39. It is considered that the written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance.
40. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the height of building development standard and it is recommended that a Clause 4.6 exception be granted, pursuant to the Director-General's general concurrence of May 2008.



**Figure 12:** Greek Street south elevation of the building with the building height limit and various heights of the existing and proposed building identified



**Figure 13:** Greek Street south elevation of the building showing the height and built form of the new addition and roof plant enclosure in comparison to the existing height and built form

**Floor Space Ratio**

41. The site is subject to a maximum FSR of 2.5:1. The existing building exceeds this control with a maximum FSR of 3.27:1(31% breach). The proposed development results in a maximum FSR of 3.27:1 (31% breach) which is the same as the existing FSR, refer below.

LEP FSR Standard	Existing FSR	Proposed FSR	Non-compliance
2.5:1 (2,972.5sqm)	3.27:1 (3,891sqm)	3.27:1 (3,891sqm)	918.5sqm (31%)

42. The proposed development has a maximum FSR of 3.27:1 (3,891sqm) resulting in a variation of 918.5sqm or 31% of the Sydney LEP 2012 control. As demonstrated in the table above there is no increase of calculable GFA. Although an additional floor with an area of 700sqm is proposed this is offset by an increase in car parking at lower ground level. The car parking falls under the maximum capped amount of car parking under the Sydney LEP 2012 and as such it is not included as calculable floor area.

43. The proposed exceedance to the FSR development standard is still required to be assessed. Therefore, in order to demonstrate whether strict numeric compliance is unreasonable or unnecessary in this instance, the proposed exception to the FSR development standard has been considered against the objectives and provisions of Clause 4.6 of the Sydney LEP 2012 below.

44. A written request has been submitted to Council justifying the exceedance over the FSR standard in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012.

45. The applicant specifically references the relevant clauses in their written statement, details the environmental grounds for supporting the application to depart from the FSR standard and concludes that strict numeric compliance with the FSR development standard is unreasonable and unnecessary in this instance. The environmental planning grounds listed by the applicant include the following:
- (a) Although the proposed FSR is greater than the neighbouring buildings, the height and built form of the proposed building is lower and lesser scale than the neighbouring buildings in comparison when viewed from the public domain. This is due to the neighbouring buildings having numerous areas that are excluded from the gross floor area but had added to the neighbouring buildings bulk. Therefore, the built form and scale resulting from the non-compliant FSR is compatible with the surrounding buildings, see Figures 12 and 13.
  - (b) Although a new level of 700sqm is proposed, the proposed gross floor area is the same as the existing gross floor area due to the increase in car parking at lower ground level which is excluded from the GFA. Therefore, no increase to the existing GFA is proposed.
  - (c) The proposal has relocated the buildings facilities and services to the lower ground level and provided more parking in order to optimise on a whole new level with useable commercial floor space that will provide employment opportunities and better use of the development.
  - (d) The additional parking will adequately service the increase to the number of occupants as a result of the additional level and floor space.
  - (e) Given the larger built form and scale of the locality the proposed works to the subject site is considered to reflect the desired future character of the locality and meet anticipated needs.
  - (f) The increase of floor space is to the new addition that is within the existing roof space area. Therefore, a reasonable level of amenity to the locality is maintained.
  - (g) The breach to the control has minimal impact upon the streetscape and presentation of the building as the existing facade is largely retained and the increase to the gross floor area is to the new level which is set back at 3.5m from the front and rear facade and within the existing roof space area.

Response:

46. The applicants written rationale addresses the objectives associated with contravening the development standard meeting the requirements of Clause 4.6(4)(a)(i) of the Sydney LEP 2012 and meets the objectives of the height of building standards and B2 Local Centre zone in accordance with Clause 4.6(4)(a)(ii) and is therefore considered to be acceptable for the following reasons:
47. The proposal is consistent with the objectives of the B2 Local Centre zone as it will increase employment opportunities for the area and is in an accessible location.
48. The proposal responds to the relevant objectives of Clause 4.4 of the Sydney LEP 2012 (Building FSR) as follows:

- (a) Objective (a) – To provide sufficient floor space to meet anticipated development needs for the foreseeable future.
    - (i) The new addition will increase the useable commercial floor space to the development providing more employment opportunities that will meet the needs of people looking for work in the area.
  - (b) Objective (b) - To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.
    - (i) Additional off-street parking is proposed which will adequately service the increase to the number of occupants at the site as a result of the additional level and floor space.
  - (c) Objective (c) - To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.
    - (i) There is no change from the existing calculable floor area and the bulk and scale of the development fits within the surrounding context as discussed above under height variation.
  - (d) Objective (d) - To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.
    - (i) Given the larger built form and scale of the locality the proposed works to the subject site is considered to reflect the desired future character of the locality and meet anticipated needs. Furthermore, as addressed below under amenity, a reasonable level of amenity to the locality is maintained.
49. It is considered that the written statement provided by the applicant has sufficiently justified that strict numeric compliance with the development standard is unreasonable and unnecessary in this instance.
50. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the FSR development standard and it is recommended that a Clause 4.6 exception be granted, pursuant to the Director-General's general concurrence of May 2008.

### **Amenity**

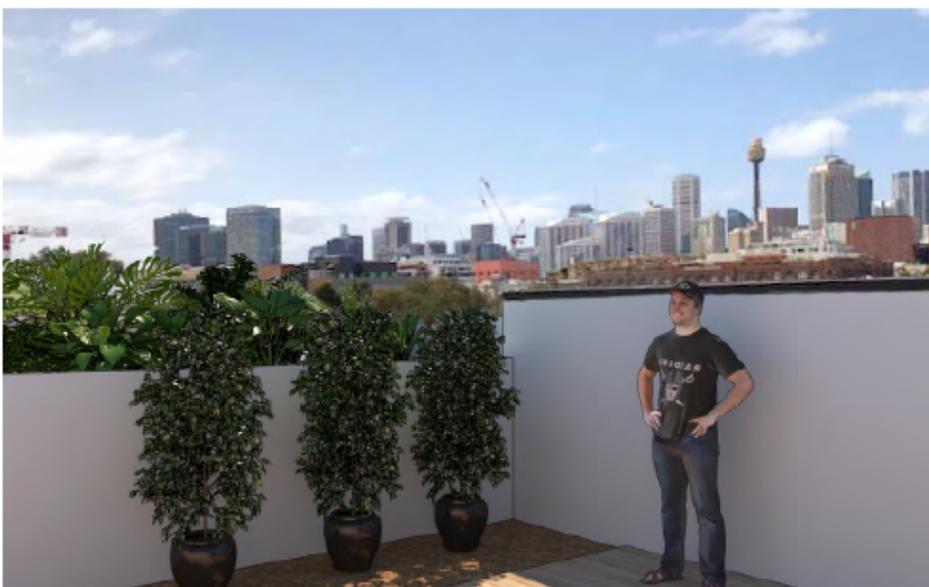
#### View Loss

51. Concerns were raised regarding the loss of views from the roof top terraces at the adjoining properties to west No. 39-41 Greek Street.
52. When assessed against the four steps under the planning principle from the *Tenacity Consulting v Warringah* [2004] NSWLEC case, the loss of views are considered minor and reasonable in this instance for the following reasons:
- (a) First Step: What are the views to be affected - The view to be affected relates to two buildings in the city skyline that are partially obstructed which is considered a small part of the city skyline.
  - (b) Second Step: What part of the property the views are obtained - These views are obtained from over a side boundary which are difficult to protect.

- (c) Third Step: Assess the extent of the impact - The obstruction of views are considered minor given that a large extent of the city skyline is maintained when looking from over a side boundary and the rear boundary.
- (d) Fourth Step: Assess the reasonableness of the proposal that is causing the impact - The views are obstructed by the proposed plant room which is non-compliant with the height LEP control. The nature of the views to be affected and the extent are considered minor as discussed in the three steps above and shown in figure 14. Furthermore, the non-compliant height is considered acceptable as the bulk and scale is within the context of the locality as discussed above under height.
53. Given the above, the proposed sharing of views are considered to be reasonable.



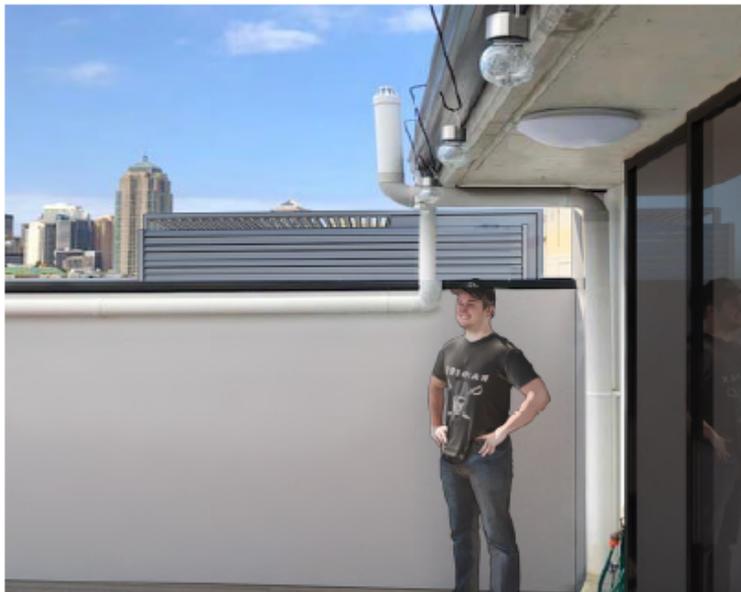
Existing View 1 - Rooftop Deck Looking North East Across 19-37 Greek Street to City Skyline



Proposed View 1 - Rooftop Deck Looking North East Towards 1 Level Addition to 19-37 Greek Street



Existing View 2 - Rooftop Deck Looking East Across 19-37 Greek Street to City Skyline



Proposed View 2 - Rooftop Deck Looking East Towards 1 Level Addition to 19-37 Greek Street

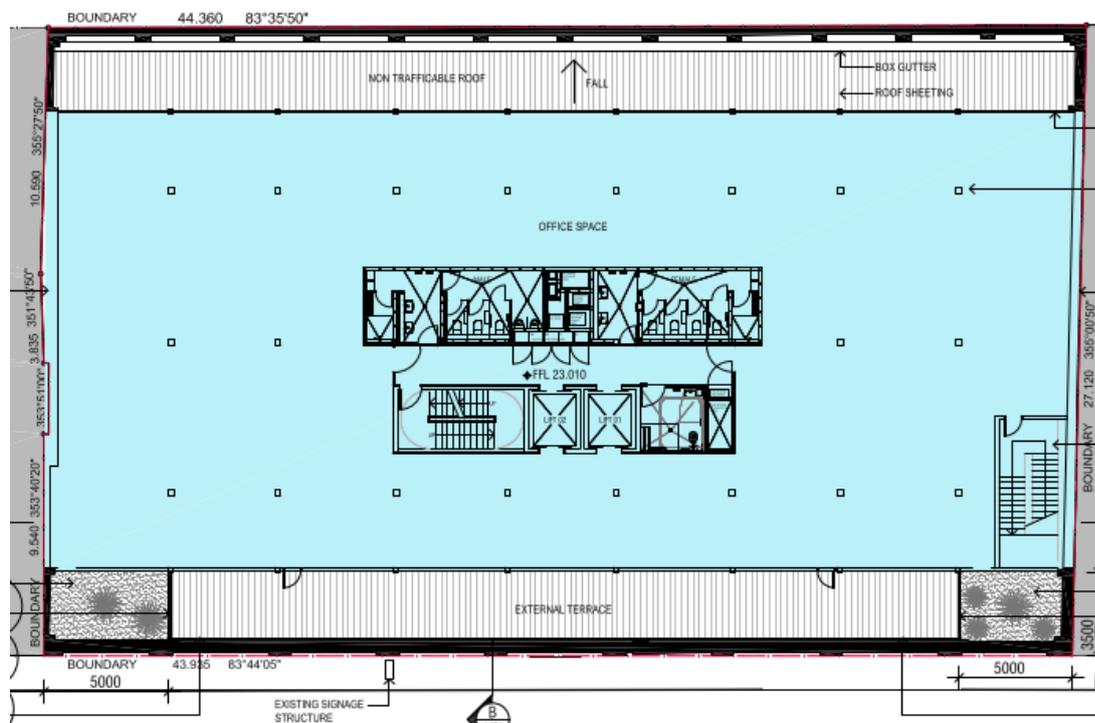
**Figure 14:** View from the roof top terrace of the adjoining property to the west at Unit 19, 39-41 Greek Street.

## Overshadowing

54. The proposed overshadowing impact to the neighbouring residential apartments is minimal and compliant with the solar access controls under the Sydney DCP 2012 and is therefore, considered acceptable. This is due to the new level mostly replacing the existing roof form at a similar height and the new level is below the height of the neighbouring residential buildings. The plant room is set in significantly from the boundaries resulting in any shadows being casted onto the roof of the subject site and not on the neighbouring properties.

## External balcony

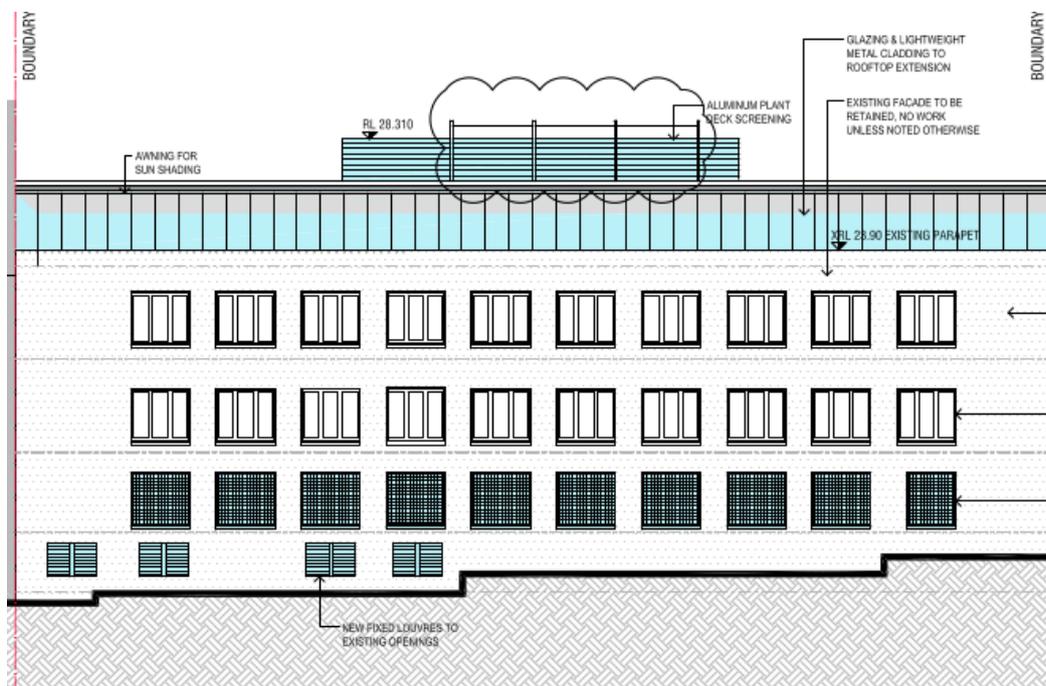
55. The application proposes a south facing external terrace to Greek Street on Level 3, as shown on figure 15. The terrace is set in from the side and neighbouring properties by 5m with planter boxes within this setback area. A condition is recommended for hours of operation of the external terrace is to be limited to 7.00am to 10.00pm, Monday to Sunday.
56. The setback area allows a reasonable amount of distance from the subject terrace to neighbouring properties to provide a reasonable level of acoustic privacy and no overlooking into the south facing balconies of No.13-17 Greek Street.
57. The roof top terraces of No. 39-41 Greek Street is at a higher height than the subject terrace resulting in no adverse visual privacy impact.
58. The application proposes a non-trafficable roof to Level 2 as shown in Figure 16. A condition is recommended that this northern roof to level 2 is to be Colorbond Spandek roof sheeting (same material to the roof). This is to ensure that this section is non-trafficable in order to maintain a reasonable level of privacy to neighbouring properties.



**Figure 15:** External terrace to level 3 facing south to Greek Street

### Glass brick openings

59. The application proposes to re-open the bricked up ground floor windows to the north elevation and install glass block fire rated windows, as shown on figure 16. As the site is built to all the boundaries, these windows are built to the north boundary. The site has existing windows built to the north boundary on the lower ground floor, level 1 and level 2.
60. The glass block fire rated windows ensures that the glazing to these windows are obscured and therefore provides privacy to the adjoining properties whilst providing sunlight to the ground floor level.
61. Given that there are existing windows built to the north boundary and the new glass brick windows are obscured windows that blocks views looking out and in through the windows providing no adverse privacy impact, the windows are acceptable.
62. The proposed louvres to the existing lower ground openings to the north facade will have no change to the existing amenity impact and is therefore, considered acceptable.

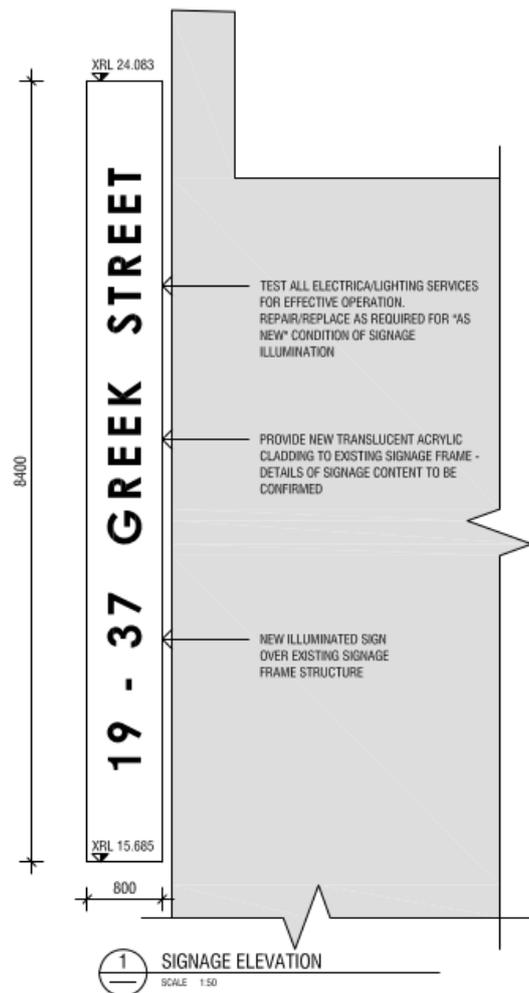


**Figure 16:** Glass brick windows to ground floor level and louvres to existing windows on the lower ground level to the northern elevation

### Signage

63. The application proposes to retain the size and location of the existing vertically projecting wall sign attached to the building and provide refurbishment works to the sign including new acrylic cladding and illumination, see Figure 17. The existing 'Scientology' wording of the sign is to be replaced with the new occupancy which is yet to be confirmed.
64. The sign measures 8.4m high, projecting from the first floor level to above the existing parapet. It projects approximately 800mm from the façade over Greek Street. The sign has a face on either side, facing east and west along Greek Street.

65. The existing projecting wall sign does not comply with some of the criteria under the SEPP 64 Advertising and Signage criteria. The criteria states that proposed signage is to be consistent and compatible with the area. Given that there is no other projecting wall sign of that size in that area, the sign is considered to be inconsistent.
66. Furthermore, the existing projecting wall sign does not meet any of the design requirements under Clause 3.16.6.4 Projecting wall signs of Signs and Advertisements of the Sydney DCP 2012. The Sydney DCP 2012 requires any projecting wall sign to be no higher than 5m above the existing ground level and have an area no larger than 0.5sqm. The proposed signage exceeds both these controls.
67. However, as the projecting wall sign has lawfully been approved under development consent D/1991/112 (with minor non-compliances) and has been in existence for over 25 years within that area, the retention and refurbishment works to the existing projecting wall sign is considered acceptable, subject to the recommended conditions.
68. The existing 'Scientology' wording of the sign is to be replaced with the new occupancy. As the contents of the sign are yet to be confirmed, a condition is recommended for the content of the sign to be submitted prior to Construction Certificate.
69. A condition is recommended that the proposed illumination to the sign is to be in accordance with the Australian Standard which ensures that the illumination does not result in any unacceptable glare and adverse amenity impacts to the public.
70. The sign is also conditioned to only be illuminated from 7.00am to 10.00pm, Monday to Sunday. This will maintain an acceptable amenity for the neighbouring properties, particularly the residential units.



**Figure 17** Elevation of the existing vertically projecting sign to be retained. Note that this elevation does not accurately reflect the height of the parapet adjoining the sign

### Other Impacts of the Development

71. The application was referred to City's Building Unit which recommended the proposed development is capable of complying with the Building Code of Australia (BCA), subject to the recommended conditions.
72. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

### Suitability of the site for the Development

73. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial and residential surrounding and amongst similar uses to that proposed.

### Internal Referrals

74. The conditions of other sections of Council have been included in the proposed conditions.

75. The application was discussed with the Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Surveyors; Transport and Access; and Waste Management who advised that the proposal is acceptable subject to the recommended conditions.
76. The internal referral comments have been incorporated into the relevant sections in the report and the recommended conditions included as condition of consent.

### **Design Advisory Panel**

77. The application was taken to the Design Advisory Panel (DAP) on 12 April 2018 for the original proposal of a two storey addition. The proposal was considered a poor outcome and too big a variation under the controls. Therefore, the development proposal was not supported. The Panel noted that the site is next to the Broadway Shopping Centre, currently subject to strategic planning work associated with a proposed Planning Proposal for that site. It was recommended that this should be considered in relation to any development proposals for this site.
78. The application was subsequently amended to delete one of the proposed additional floors reducing the variation to the height and FSR planning controls.

### **External Referrals**

#### **Notification, Advertising and Delegation (Submissions Received)**

79. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 14 days between 6 March 2018 and 21 March 2018. As a result of this notification there were five (5) submissions received.
80. It is noted that the application was notified with the original plans which sought for two new levels and has since been amended to one new level. The applicant provided amended plans which address many of the concerns raised in the submission. The amended scheme was not re-notified as it was considered to not result in additional environmental impacts in accordance with Schedule 1 of the Sydney DCP 2012.
81. The submissions raised the following concerns:
  - (a) The new terrace would be overshadowed by the Broadway Shopping Centre car park and will be full of fuel fumes.

Response - Under the City's solar access planning controls, terraces to commercial buildings are not required to meet any solar access requirements. The proposed terrace complies with the planning controls.
  - (b) The proposed plant room is a positive outcome as it would provide a greenhouse to foster the growth of plants.

Response - It is noted that the plant room is not a green house. The plant room is an enclosure for plant equipment and services to the building that require to be located on the roof.
  - (c) Addition of two new levels will exceed the height of neighbouring building which will compromise the streetscape.

Response - The proposal has been amended to one new level which is set back from the front facade and mostly within the existing roof area that is to be demolished. The height is similar to the neighbouring building providing an appropriate transition and visual impact to the streetscape that is within character and context of the street.

- (d) The address of the neighbouring property are labelled wrong on the plans.

Response - Application has since been amended to reflect the correct address.

- (e) The new terrace may overlook into neighbouring properties balcony and have an adverse privacy impact.

Response - As discussed above, the proposed new terrace will not overlook neighbouring properties balconies and provides a reasonable privacy impact.

- (f) No windows to the side elevation as it will overlook into neighbouring properties balconies.

Response - No windows to the side elevation are proposed.

- (g) Adverse overshadowing impact to neighbouring properties.

Response - As discussed above, shadow diagrams demonstrate compliance with the solar access controls as prescribed under the Sydney DCP 2012.

- (h) Additional traffic from cars will be generated and there is a lack of street parking to service the site.

Response - Council's controls does not prescribe a minimum car parking requirement however, the application proposes an increase to off-street car, motorcycle and bicycle parking which is compliant with the controls and the site is close to public transport options. These options will sufficiently service the additional occupants.

- (i) Noise disturbance and loss of privacy during construction.

Response - Conditions regarding construction noise and disturbance have been recommended.

- (j) Loss of amenity will decrease property value and rent.

Response - Although the decrease of property value and rent is not a relevant matter of consideration for the assessment of this application, it is noted that the application has since been amended to one new level which will have a reasonable amenity impact to neighbouring properties.

- (k) Loss of views and outlook.

Response - When assessed against four steps under the planning principle from the Tenacity Consulting v Warringah [2004] NSWLEC case, the loss of views are considered minor and reasonable in this instance. Therefore, the proposed sharing of views are considered to be reasonable.

**Public Interest**

82. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

**S7.11 Contribution**

83. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

84. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$6,241.15
(b) Community Facilities	\$1,606.02
(c) Traffic and Transport	\$80.30
(d) Stormwater Drainage	\$0.00
Total	\$7,927.47

**Relevant Legislation**

85. The Environmental Planning and Assessment Act 1979.

**Conclusion**

86. The proposal generally complies with the aims and objectives of the relevant policies and planning controls.
87. The non-compliance with building height and floor space ratio development standards are acceptable as the proposal is considered to be consistent with the built form and context of the neighbouring buildings.
88. Subject to compliance with the recommended conditions, the proposed alterations and additions to the commercial building will provide an acceptable level of amenity for the subject site and neighbouring properties.
89. Accordingly, it is considered that the proposed development is acceptable and is recommended for approval subject to conditions of consent.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Charise Chumroonridhi, Planner