

Item 6.**Development Application: 54-56 Riley Street and 1 Crown Lane, Darlinghurst****File No.:** D/2018/355**Summary****Date of Submission:** 12 April 2018 with amended plans submitted on 10 July and 11 October 2018**Applicant:** Milina Investments Pty Ltd & Scarlis Projects Pty Ltd**Architect/Designer:** Project Tourism International Architecture Pty Ltd**Developer:** Milina Investments Pty Ltd & Scarlis Projects Pty Ltd**Owner:** Milina Investments Pty Ltd & Scarlis Projects Pty Ltd**Cost of Works:** \$3,900,794**Zoning:** The site is within the B4 Mixed Use zone and the proposed mixed use development is permissible with consent.**Proposal Summary:** The development application seeks partial demolition of the warehouse building at 1 Crown Lane and demolition of all other structures on the site; construction of a mixed use development on the site, comprising ground floor retail, 16 residential apartments over five levels, a commercial office suite, rooftop landscaping and communal open space, and servicing facilities.

The application is reported to the Local Planning Panel as the development is subject to State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.

The proposed development exceeds the 22m building height development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012 (SLEP) by 0.3m, or 0.01%. A written request has been provided seeking a variation to the height development standard in accordance with Clause 4.6 of the SLEP. The request to vary the development standard is supported.

**Proposal Summary
(continued)**

The proposal has been amended during the assessment to address the concerns raised by Council officers and the City's Design Advisory Panel in relation to amenity of apartments, design and flooding. Amended plans were submitted to Council on 11 October 2018, to address the abovementioned concerns.

The application was advertised and notified for a period of 28 days between 24 April and 23 May 2018. No submissions were received. Following receipt of the amended plans, the application was renotified for 14 days between 19 October and 3 November 2018. No submissions relating to the amended plans were received.

The design amendments made to the proposal during assessment have resulted in a proposal that has reduced the flood risk by deleting the basement and improving the amenity for future residents. The revised proposal is generally compliant with relevant planning controls, with the exception of the minor breach of the building height development standard, and results in a built form that is reflective of the desired future character of the area.

The application is recommended for approval, subject to the imposition of deferred commencement conditions requiring the retail mezzanine level to be increased in size to ensure that the majority of the area is above the flood level.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

- (i) State Environmental Planning Policy 65 - Design Quality of Residential Flat Development
- (ii) State Environmental Planning Policy No 55 - Remediation of Land
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (v) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (vi) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings
 - C. Clause 4.6 Variation Request

Recommendation

It is resolved that:

- (A) pursuant to the provisions of Clause 4.6 of the Sydney Local Environmental Plan (LEP) 2012, the variation sought to Clause 4.3 Height of Buildings contained in the Sydney LEP 2012 be upheld in this instance; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2018/355, subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with the objectives of the B4 - Mixed Use zone for the reasons set out in the report to the Local Planning Panel.
- (B) The requested variation to Clause 4.3 of the Sydney Local Environmental Plan 2012 "Height of Buildings" is consistent with the provisions of Clause 4.6 "Exceptions to development standards" is supported and is in the public interest.
- (C) Minor non-compliance with the design criteria of objective 3F-1 (Visual privacy) of the Apartment Design Guide 2015 (ADG) is acceptable. The development achieves the broad objectives of the ADG and the design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development. Suitable measures have been provided to ensure adequate visual privacy, and through the provision of the large communal rooftop open space, residents will be ensured of an acceptable level of amenity.
- (D) The built form and design of the proposed development responds appropriately to the site and the scale of surrounding buildings, utilises high quality materials, and is compatible with the character and appearance of the East Sydney heritage conservation area. The development is considered to achieve design excellence under clause 6.21 of the Sydney LEP 2012.
- (E) The proposal provides appropriate level of activation to Riley Street at the ground floor.
- (F) As conditioned, the proposal is generally consistent with the objectives of the relevant controls for the site and will not adversely impact the amenity of neighbouring properties.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 30 October 2018.
2. The sites, being 54-56 Riley Street and 1 Crown Lane is rectangular, with a combined area of approximately 357.8sqm. The sites form a corner allotment, with a primary street frontage to Riley Street and secondary street frontages to Yurong Lane to the north, and Crown Lane to the east.
3. A two storey brick warehouse building is located at the eastern portion of the site with a single storey steel lean-to structure adjoined to the west of the building; the remainder of the site is a hard-stand car parking area, surrounded by a wire fence.
4. Surrounding land uses are a mix of residential and commercial. To the north of the site, across Yurong Lane, fronting William Street is a four storey commercial building. Adjoining the site to the south, is a six storey commercial building. Across Crown Lane is a six storey boarding house under construction and two and three storey mixed use buildings, including residential at 10 Crown Lane.
5. The site is in close proximity to William Street (north), which is an arterial transport route into the city and is well serviced by public transport.
6. The site is not a heritage item but it is classified as a 'neutral' building located within the East Sydney Heritage Conservation Area (CA13).
7. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Subject site looking east as viewed from Riley Street



Figure 3: Subject site looking west from the corner of Yurong and Crown Lanes



Figure 4: Looking north along Crown Lane, with the subject site at the end on the left



Figure 5: Looking west along Yurong Lane



Figure 6: Looking north, with the subject site on the right



Figure 7: Looking across Riley Street from the subject site to the west

Proposal

8. The application seeks consent for the partial demolition of the warehouse building at 1 Crown Lane and demolition of all other structures on the site and construction of a six storey plus roof top mixed use development with 16 residential units in total, consisting of:

(a) Ground Floor

- (i) Retail space with mezzanine level
- (ii) Residential entrance
- (iii) Bicycle storage for 16 x residential, 3 x staff, 3 x retail visitors and 2 x residential visitors
- (iv) Retail/commercial accessible w/c with shower
- (v) Separate commercial and residential garbage room
- (vi) Pedestrian loading from Yurong Lane

(b) Level 1

- (i) Private commercial office
- (ii) Two x 1 bed apartments
- (iii) 51sqm communal open space

(c) Levels 2 - 5

- (i) 14 residential apartments (five x studio and nine x 1 bed)

(d) Roof top

- (i) 117sqm communal open space
- (ii) Roof top plant and lift access

9. Plans of the proposed development are provided below and in Attachment B.

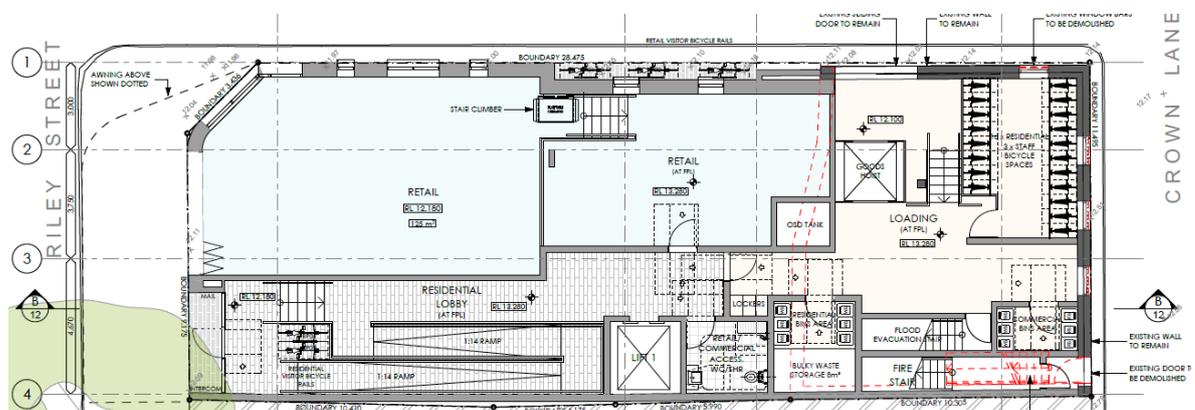


Figure 8: Ground floor plan

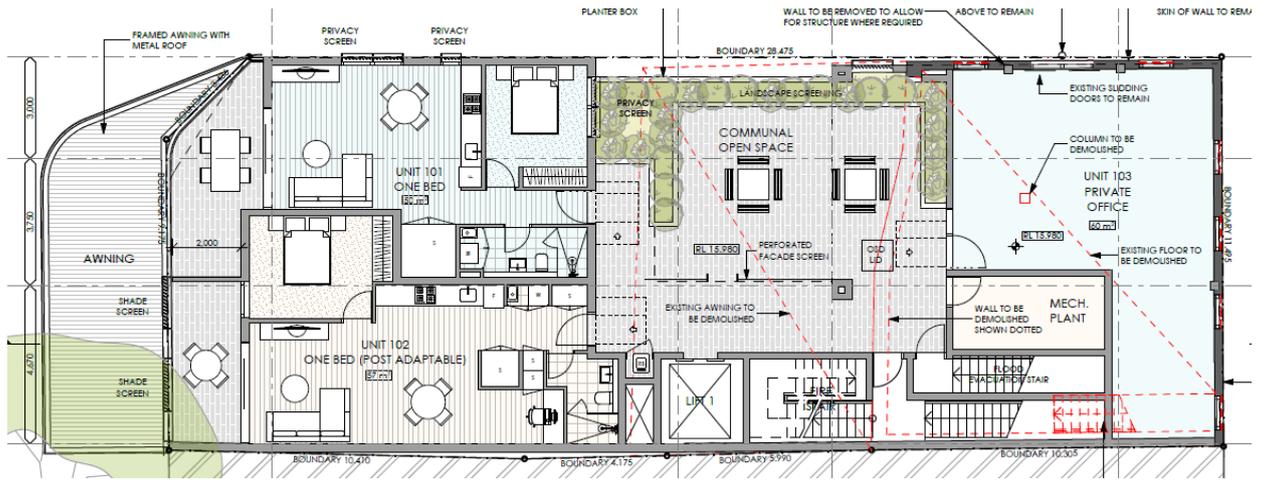


Figure 9: Level 1 plan

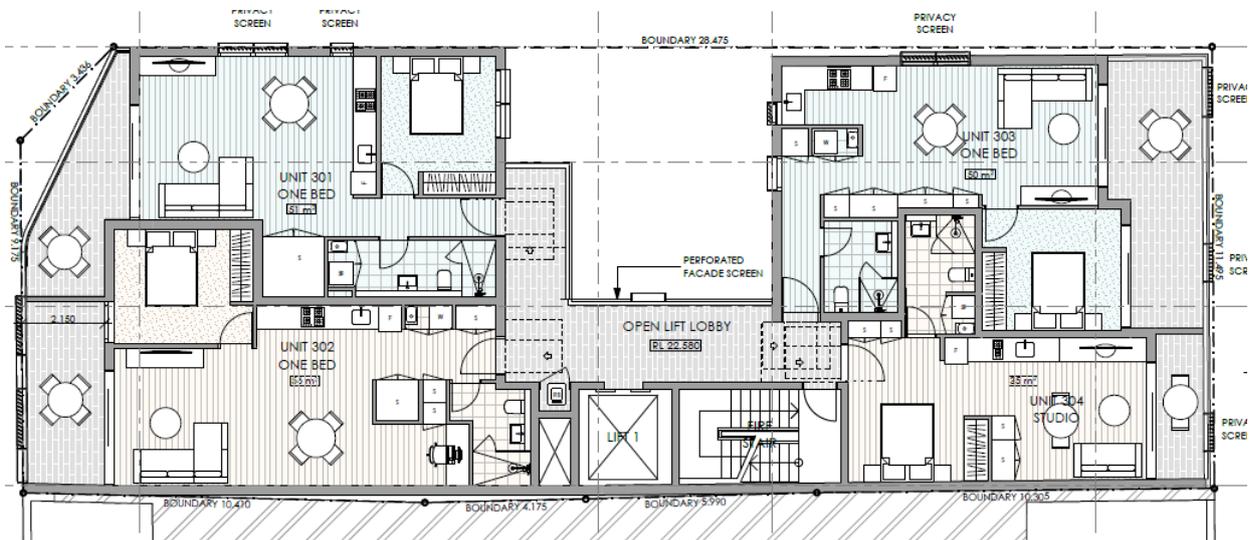


Figure 10: Level 3 plan

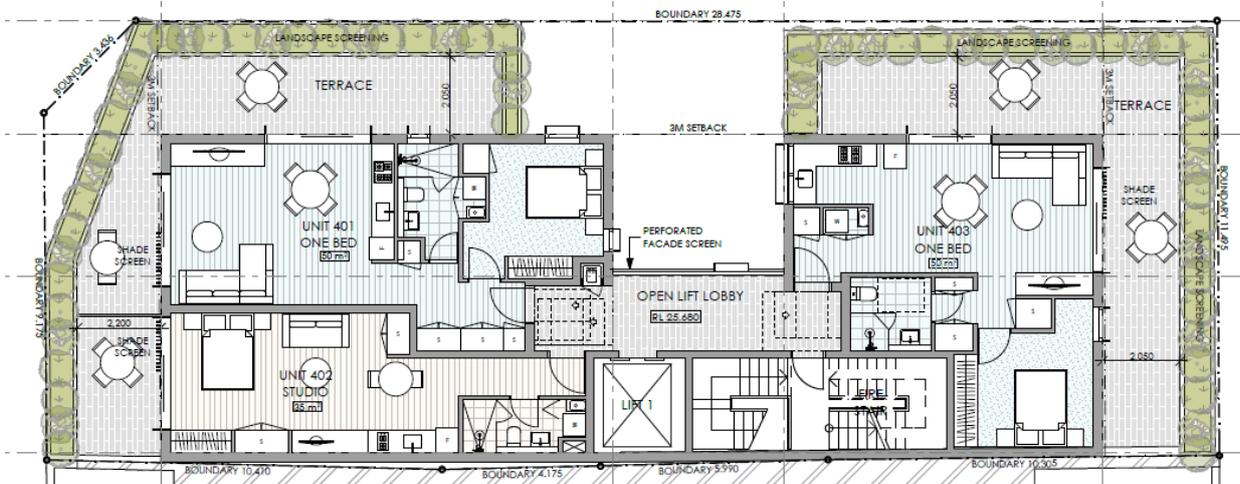


Figure 11: Level 4 plan

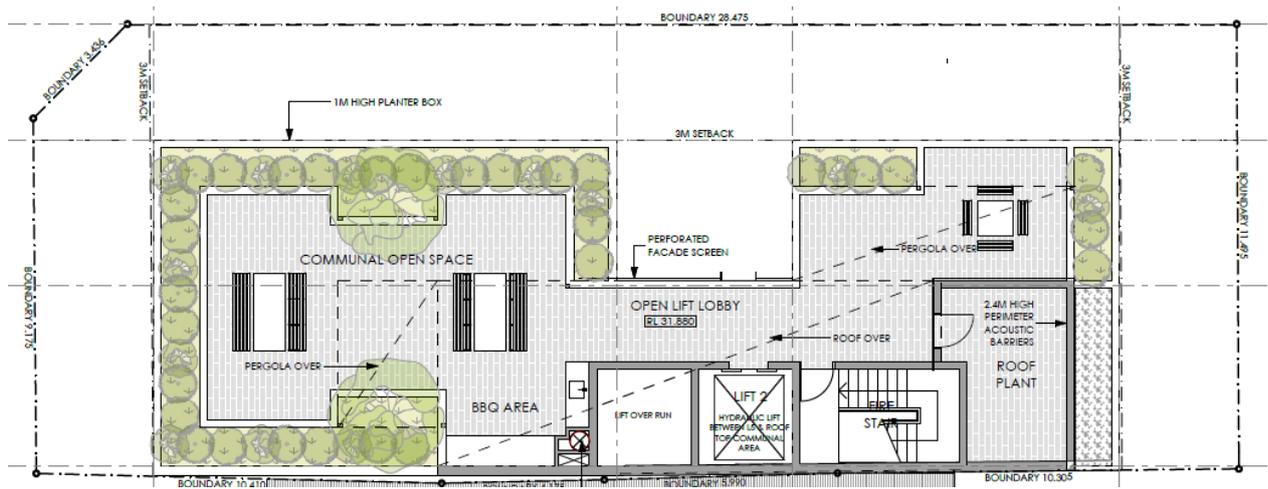


Figure 12: Roof terrace plan



Figure 13: Riley Street (west) photomontage

History Relevant to the Development Application

10. D/2017/650 was approved under delegation of Council on 3 July 2017 for alterations to the site, including the removal of an underground storage tank (UST). A RAP was commissioned for the removal of the UST and it has since been removed and the excavated area validated and backfilled.

11. The current application has been amended since lodgement; the original application sought consent for the construction of a basement storage area. Concerns were raised by Council officers regarding flooding and the basement was subsequently deleted and modifications made to ensure that the proposal was generally flooding compliant. Raising the floor levels has resulted in a minor non-compliance with the height control, which at the time of the lodgement of the application was compliant.
12. The original application was also reviewed by the Design Advisory Panel (DAP) and subsequent amendments made, following DAP comments regarding materials and design. This is discussed further below.

Economic/Social/Environmental Impacts

13. 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 55—Remediation of Land

14. 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.
15. A RAP was commissioned for the removal of the UST and it has since been removed and the excavated area validated and backfilled.
16. Some soil staining was identified beneath the UST which was excavated and stockpiled separately to the other material. This stained material was chemically analysed and classified as Restricted Solid Waste (Non-Putrescible) and was disposed offsite.
17. The proposal no longer includes excavation of the basement and Council's Health unit is satisfied that based on the current remediation strategies in the RAP, it would be expected that no long-term environmental management would be required and that the site is suitable for the proposed residential use.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

18. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:
 - (a) **Principle 1:** Context and Neighbourhood Character
 - (b) **Principle 2:** Built Form and Scale
 - (c) **Principle 3:** Density
 - (d) **Principle 4:** Sustainability
 - (e) **Principle 5:** Landscape
 - (f) **Principle 6:** Amenity

- (g) **Principle 7: Safety**
- (h) **Principle 8: Housing Diversity and Social Interaction**
- (i) **Principle 9: Aesthetics**

19. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.
20. A SEPP 65 Design Verification statement was submitted with the application, which was prepared by the architect and is acceptable.

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	The units do not exceed 11.5m in depth.

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	No	<p>The building from ground to level 3 has full site coverage and is therefore located 4.7m (the width of Crown Lane) from the boarding house under construction at 89 Crown Street. The northern facade is located 6.1m from the southern facade of the commercial buildings at 73-75 and 77-83 William Street.</p> <p>The subject site is bound by streets on three sides, and it is considered that the orientation and built form of the proposal are compatible with the character of the surrounding area.</p>

2F Building Separation	Compliance	Comment
<p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	Partial compliance	<p>Level 4 apartments have a terrace on the eastern and northern elevations, which is located 5.7m from the edge of the balconies of the boarding house under construction at 89 Crown Street.</p> <p>Levels 4 and 5 are then set back 3.05m from the eastern and northern site boundaries, to provide a separation distance of 10.05m from the edge of the common room and common open space of the boarding house under construction at 89 Crown Street and 9.15m from the southern elevation of 73-75 and 77-83 William Street.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	51sqm of communal open space is provided on Level 1 and 117sqm on the roof top. This equates to 46.95%. These spaces are to be provided with landscaping and seating and a pergola is proposed on the rooftop for shading for residents.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	<p>Over 50% of the roof top communal open space receives more than two hours solar access from 11am in mid-winter.</p> <p>The Level 1 communal open space will not receive any solar access, due to the existing commercial buildings to the north.</p>

3E Deep Soil Zones	Compliance	Comment
<p>Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m</p>	No	<p>No deep soil is provided on site. The site currently has no deep soil and the proposal includes a building that is built to the street edge.</p> <p>Planting is proposed to the communal areas and the private terraces of Level 4. The lack of deep soil is considered acceptable in this instance.</p>

Separation between windows and balconies is required to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.

3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	No	<p>The balconies proposed on the eastern elevation of levels 1-3 are located 4.7m (the width of Crown Lane) from the proposed balconies of the boarding house, currently under construction at 89 Crown Street. Sliding privacy screens are proposed to protect privacy of future residents.</p> <p>Within the development and on to Yurong Lane, privacy screens are proposed where necessary to ensure that privacy impacts are reduced where required.</p>
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	No	<p>The terrace on the eastern elevation of Level 4 is located 5.7m from the balconies of the boarding house under construction at 89 Crown Street; however, landscape screening is proposed.</p> <p>The habitable room windows of the unit on Level 5 on the eastern elevation is 10.05m from the common room and common open space of the boarding house under construction at 89 Crown Street. Screens are proposed to the eastern windows of this unit.</p>

3F Visual Privacy	Compliance	Comment
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	Habitable rooms are generally separated from common circulation spaces and the lift.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces.	Partial compliance	12 of the 16 apartments or 75% receive two hours of solar access to the living room in mid-winter. Ten of the 16 apartments or 63% (a shortfall of one apartment) receive two hours of solar access to the private open space in mid-winter. Solar access is discussed further in Issues below.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	No	Three of the 16 units or 19% do not receive two hours of solar access in mid-winter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are provided with a window.
Minimum 60% of apartments in the first nine storeys of the building are naturally cross ventilated.	Yes	Ten of the 16 units are provided with natural cross ventilation, which is 62.5%. It is noted that unit 502 relies on a vent to the roof, this is to be suitably conditioned to ensure that ventilation is achieved. It is noted that due to the high level of background noise, a Passive Acoustic Wall Ventilator is proposed to provide ventilation to the apartments when required. A condition is recommended to ensure the ventilators are adequate and are to be designed into the building.

4B Natural Ventilation	Compliance	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The maximum apartment depth is 11.9m.

Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows in the table below.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	2.7m floor to ceiling heights are proposed for units on levels 2 to 5.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Yes	3.3m floor to ceiling heights are proposed for the ground and first floor levels

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p>	Yes	The proposed studios are between 35 and 40sqm and the one bedroom units are between 50 and 60sqm.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	Every habitable room is provided with a window in an external wall with a minimum glass area of 10% of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Partial compliance	A number of open plan living areas exceed 6.75m.
8m maximum depth for open plan layouts.	Partial compliance	The depths of the open plan living rooms of the western facing units on levels 1 to 3 exceed 8m in depth from the window.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	The bedrooms meet the minimum size requirements.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m 	Yes	The minimum width of the units is 3.6m.

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p>	Partial compliance	<p>All studios are provided with a balcony of a minimum of 4sqm.</p> <p>With the exception of one apartment (503), all apartments are provided with a balcony or terrace of between 4 and 27sqm. Unit 503, is not provided with any private open space. However, is provided with a large opening for a Juliet balcony and is located in close proximity to the roof top communal open space. It also has windows to the north, west and east elevations, which will provide suitable amenity and is considered acceptable.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight.	Yes	Each floor is limited to a maximum of four units.

4F Common Circulation and Spaces	Compliance	Comment
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	Habitable spaces do not open directly on to common circulation space.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	A perforated metal screen is proposed to the circulation space, which has 50% opacity.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ (Minimum 50% storage area located within unit)	Yes	All storage meets the minimum size requirements and is to be located within the units.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	As discussed above, apartments will be provided with Passive Acoustic Wall Ventilators, to enable residents to control the high level of background noise. A suitable condition is recommended.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

21. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
22. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;

- (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off; and
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
23. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

24. The BASIX Certificate has been submitted with the development application.
25. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Sydney LEP 2012

26. The site is located within the B4 Mixed Use zone. The proposed uses are defined as retail, residential accommodation and office premises and are permissible.
27. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 22m is permitted. A height of 22.3m is proposed, which is limited to the rooftop plant, lift overrun and pergola for the communal open space. A Clause 4.6 has been submitted with the application and is discussed further below.
4.4 Floor Space Ratio	Yes	A maximum FSR of 3:1 is permitted. A FSR of 3:1 is proposed.
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the development standard prescribed under Clause 4.3, Height of Buildings. See discussion under the heading Issues.

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	The subject site is located within a heritage conservation area. See discussion under the heading Issues.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	<p>The proposal has been amended during assessment in response to issues raised by the Design Advisory Panel, and Council's specialists. Proposed works will achieve an acceptable standard of architectural design and internal amenity.</p> <p>The proposed materials and detailing are considered appropriate in relation to the building type and location. The works will have a positive impact on the quality of the public domain by activation the streetscape, retaining the facade of the existing building and provision of an awning. The proposal is also considered to be suitable within the heritage conservation area. The proposed bulk, massing and modulation of the subject building is considered acceptable in the context of the streetscape and locality.</p> <p>The proposed development satisfies the requirements of this provision and exhibits design excellence.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	No car parking is proposed.
7.14 Acid Sulphate Soils	Yes	The site is identified as containing Class 5 Acid Sulfate Soil. There is no major excavation proposed.

Part 7 Local Provisions - General	Compliance	Comment
7.15 Flood planning	No	The site is identified as being on flood prone land. The application has been amended since lodgement to address the flooding of the area. Three areas still remain below the required level; this is discussed further below in the Issues section.

Sydney DCP 2012

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

2. Locality Statements – East Sydney

The subject site is located in the East Sydney. The proposed partial demolition of the structures on site and construction of a mixed use building, is considered to be in keeping with the unique character of the area and design principles. It responds to and complements buildings within the heritage conservation area through the retention of the existing two storey warehouse facade; encourages retail use at the ground level along Riley Street; and provides a residential use above to ensure surveillance of the streetscape. The proposal is compatible with the desired future character of the area and therefore, is consistent with the locality statement.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	<p>The proposed development will enhance the public domain as it contributes to the activity and amenity of the locality, presents appropriate frontages to the street with legible entrances, and has been designed with a visible internal use.</p> <p>Riley Street is identified as requiring an active frontage, which has been provided through the provision of a retail tenancy.</p> <p>An awning is also provided to Riley Street, which is compatible with the scale of the proposed building and its architectural features. A condition is recommended requiring the awning to be setback 1m from the face of the kerb to ensure that waste trucks are not obstructed.</p>

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	There is a street tree in front of the neighbouring site at 58 Riley Street. Conditions are recommended to ensure that this tree is protected during construction.
3.6 Ecologically Sustainable Development	Yes	The application is accompanied by a BASIX certificate, demonstrating compliance with requirements to improve energy and water efficiency.
3.7 Water and Flood Management	Partial compliance	The site is identified as being on flood prone land. The application has been amended since lodgement to address the flooding of the area. Three areas still remain below this is discussed further below in the Issues section.
3.9 Heritage	Yes	The site is located within a heritage conservation area and is discussed further in the Issues section.
3.10 Significant Architectural Building Types	Yes	The site contains a two storey brick warehouse over 50 years. The facade of the warehouse is to be retained and is incorporated within the development. This is discussed further in the Issues section.
3.11 Transport and Parking	Yes	<p>The application proposes 16 bicycle parking spaces for residents and three bicycle spaces for commercial provided on ground floor (accessed from Yurong Lane). Three retail visitor spaces are also proposed within the boundary on Yurong Lane and two residential visitor spaces within the residential entrance lobby. A commercial shower and change area and six lockers are also proposed.</p> <p>This complies with the requirements of Clause 3.11 of the DCP. A condition of consent is recommended requiring the bike parking to comply with relevant Australian Standards for security and access.</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	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
3.16.1 Signage Strategy	Yes	The application does not propose any signage; however, the subject site is located within a heritage conservation area. Pursuant to Clause 3.16.1 of the Sydney DCP 2012, all buildings within a heritage conservation area are required to prepare a signage strategy. A suitable condition is recommended.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.1 Building height	Yes	<p>The site is identified as having a maximum storey height of six storeys.</p> <p>Six storeys are proposed, with a roof top communal area with the lift access set back from the street frontages.</p> <p>Floor to ceiling heights have been discussed within the ADG discussion, which overrides these provisions.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.2 Building setbacks	Yes	The proposed building is built to the street frontages, which is in consistent with the neighbouring property and the surrounding buildings. The fifth floor (Level 4) is setback between 3.05 and 3.2m from all frontages and is considered appropriate.
4.2.3 Amenity	Partial compliance	<p>A landscaping plan was submitted with the application, which provides landscaping for both communal areas. This has been reviewed by Council's Landscape officer and is acceptable subject to conditions.</p> <p>No deep soil is proposed; however, as discussed above, the building is built to the street frontages and landscaping is proposed within the communal areas, which is considered acceptable.</p> <p>Each apartment is provided with windows and an appropriate outlook within its location.</p> <p>As discussed above, the apartments are to be provided with Passive Acoustic Wall Ventilators, which will reduce the impact of noise from the surrounding area. An appropriate condition is recommended to ensure that these are suitably designed within the building.</p> <p>Five studios (31%) and 11 one-bedroom (69%) apartments are proposed, which is considered to be an appropriate mix within this central location.</p> <p>Solar, private open space and balconies, common circulation and spaces, and ventilation have all been discussed within the ADG discussion, which overrides these provisions.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.4 Fine grain, architectural diversity and articulation	Yes	The proposed development has been designed with appropriate massing and articulation through the provision of an awning, balconies, planters and varied materials.
4.2.5 Types of development	Yes	Two residential apartments are proposed on the first floor. These apartments are setback from Riley Street by a 2m deep balcony; they also are situated above the proposed awning to ensure separation from the street below.
4.2.6 Waste minimisation	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
4.2.8 Letterboxes	Yes	Mailboxes are proposed at the residential lobby entrance.

Issues

Height

29. The site is permitted to have a maximum height of 22m under Clause 4.3 of SLEP 2012. The proposed development seeks a maximum height of 22.3m. This exceeds the maximum permitted height by 0.3 or 0.01%.
30. The additional height is limited to the lift overrun, plant and pergola for shade of the communal open space.
31. Clause 6.21 of SLEP 2012 permits the consent authority to grant up to an additional 10% Height for a building that demonstrates design excellence, which the proposal is considered to achieve.
32. In accordance with Clause 4.6 of SLEP, the applicant has submitted a written justification seeking exception to the Height development standard

Clause 4.6 request to vary a development standard

33. The site is subject to a maximum height control of 22m. The proposed development has a height of 22.3m, a 0.01% variation.

34. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.
35. A copy of the applicant's written request is provided at Attachment C.

Applicants Written Request - Clause 4.6(3)(a) and (b)

36. The applicant seeks to justify the contravention of the Height of Building development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The numeric height limit exceedance will have no impact on the streetscape of transition of the built form.
 - (ii) The minor additional height will not have any visual privacy impacts on neighbouring developments.
 - (iii) The additional height sought will facilitate a better planning and urban design outcome at the ground level/street frontage whilst achieving the flood planning level to minimise flood risk.
 - (iv) The additional height will not result in overshadowing impacts or adverse amenity impacts on neighbouring sites given the development to the south and east are predominantly commercial buildings.
 - (v) No significant views are impacted and an appropriate transition is achieved between the high density area to heritage conservation area.
 - (vi) The proposed building remains compliant with the FSR control and DCP height control.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The marginal variation to the height limit (0.01%) is needed to accommodate the flood planning level required by City of Sydney Council;
 - (ii) Reducing the height would result in poorer outcomes such as removing the roof top communal space, both in terms of residential amenity and built form; and
 - (iii) The additional height results in little to no additional impact to surrounding areas, in terms of overshadowing, site isolation or view loss and is imperceptible from the public domain.

Consideration of Applicants Written Request - Clause 4.6(4) (a) (i) and (ii)

37. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the Height standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

38. The applicant's written request has adequately demonstrated that compliance with the development standard for Height is unreasonable and unnecessary in the circumstances of this case as the proposed development satisfies the objectives for Height, notwithstanding non-compliance with the standard.
39. The proposed development is consistent with the objectives for the B4 Mixed Use zone under SLEP 2012 and is in the public interest as the building has been designed to generally be above the flood levels and also provides an opportunity for street activation. The additional height does not result in any adverse environmental impacts to surrounding properties and as such, compliance with the development standard is considered unreasonable and unnecessary.

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

40. The applicant's written request has adequately addressed that there are sufficient environmental planning grounds to justify contravening the Height standard as the proposed development responds appropriately to the bulk and scale of the surrounding area.
41. The site is located in a flood prone area, and the additional height is to raise the development above the required flood level. The exceedance in height is limited to the lift overrun, plant and pergola for shading purposes for residents and is considered to result in a better outcome.

Is the development in the public interest?

42. The proposed development is in the public interest as it is consistent with objectives of the Height development standard and the B4 Mixed Use zone. The proposed development achieves a height that does not result in any adverse amenity impacts on surrounding properties or the streetscape, and will contribute to the supply and quality of residential development within Sydney.
43. The proposed development achieves the objectives for the B4 Mixed Use zone by providing compatible uses in an accessible location, which will support the viability of the area. In particular, the proposal is consistent with the objectives of the zone as follows:
- *To provide a mixture of compatible land uses.*

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
 - *To ensure uses support the viability of centres.*
44. The proposed development will provide additional residential units within the area, while providing commercial office and retail space, which will activate Riley Street. In addition, the site is 25m to William Street, a major arterial route with public transport.

Conclusion

45. For the reasons provided above the requested variation to the Height standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the Height standard within the B4 Mixed Use zone.

Built Form

46. The proposed development has been designed to include the facade of the existing two storey warehouse and to respond to the established block pattern. The building has been designed for entire site coverage and has been designed to include the corner splay at Riley Street and Crown Lane. The building splays along the boundary at ground level and then tapers into the site at the upper levels.
47. The proposal complies with the FSR control for the site; however, the height exceeds the height control by 0.3m and is generally compliant with the six storey limit. The fifth and sixth floors are setback from the boundaries by terraces for the individual apartments. A communal open space at Level 1 also provides for space and separation within the development itself.
48. The western portion of the building has been designed to respond to the buildings along Riley Street, with a strong articulated four storey base, awning and upper level setbacks to emphasise the built form of the streetscape (refer to street view at Figure 10 and 11). The eastern counterpart building above the warehouse has been designed sympathetically to achieve a balanced form as well as to create a 'courtyard' in the centre for communal open space on Level 1, while bringing daylight access into the centre of the building.

Solar Access

49. The site is heavily overshadowed in mid-winter, due to the commercial buildings across Yurong Lane to the north and the taller building across William Street. Notwithstanding this, 12 of the 16 apartments or 75% receive two hours or more of solar access to the living room in mid-winter. However, only ten of the 16 apartments or 63% (a shortfall of one apartment) receive two hours of solar access to the private open space.
50. Three apartments (19%) receive no direct sunlight in mid-winter; a maximum of 15% is permitted under the ADG. Notwithstanding this, 4% equates to 0.6 of an apartment and considering rounding would be acceptable. These three dwellings, which receive no solar in mid-winter, are located on the lower eastern facade of the building and are completely overshadowed by the buildings across Yurong Lane and the tower located across William Street.

51. The minor variation is considered acceptable given the location of the site and the solar provided to the roof top open space providing acceptable level of amenity for the apartments.

Flooding

52. The site is affected by overland flows from the Woolloomooloo catchment as determined by flood models as part of the Woolloomooloo Flood Study. The DA as originally lodged, proposed a basement for storage and in a flood event, both the basement and ground floor area would flood. Council officer's requested that the application be amended to address the flooding issues. As a result, the basement was deleted and the building raised, which resulted in the development being 0.3m above the height control for the site, in order to ensure that as much of the ground floor as possible is above the flood level.
53. The amended design incorporates a split floor level for the ground level retail, with a portion at RL 12.18 m AHD (approximately 82sqm) which sits below flood level, and a portion at RL 13.28 m AHD (43sqm) which sits above flood level. This design solution has enabled the activation of the Riley Street and Yurong Lane.
54. Notwithstanding this, it is considered that the area to be flooded is too large, due to the high hazard area. Therefore deferred commencement consent is recommended, requiring that the mezzanine area be increased and is to be setback 4m from the Riley Street boundary. This setback will allow some tables to be located at street level, if a café is proposed. A door is to be provided into the residential lobby to enable accessible entry.
55. A small portion of the goods loading area on Yurong Lane is also located below the required flood level; however, nothing is proposed to be stored here and there are stairs and a goods hoist provided. It is also noted that this entrance is existing as it is part of the facade to be retained.
56. The residential lobby is provided with a ramp and stair to enable the lift to be at a higher level, this is still 0.5m below the required flood floor level (which is higher than that required for the commercial areas); however, is considered acceptable as there is no basement and the area is not habitable.
57. Notwithstanding all of the above, a dedicated Flood Evacuation Stair within the loading area of the building has been provided to allow the ground floor retail space access to level 1 in the event of a major flood event.
58. The areas of the ground floor, which remain in potential flood areas are demonstrated in Figure 14 below. The areas identified in blue are above the required flood level for the use. The areas that will be subject to flood are the residential lobby entrance, the pedestrian loading area and a portion of the retail.

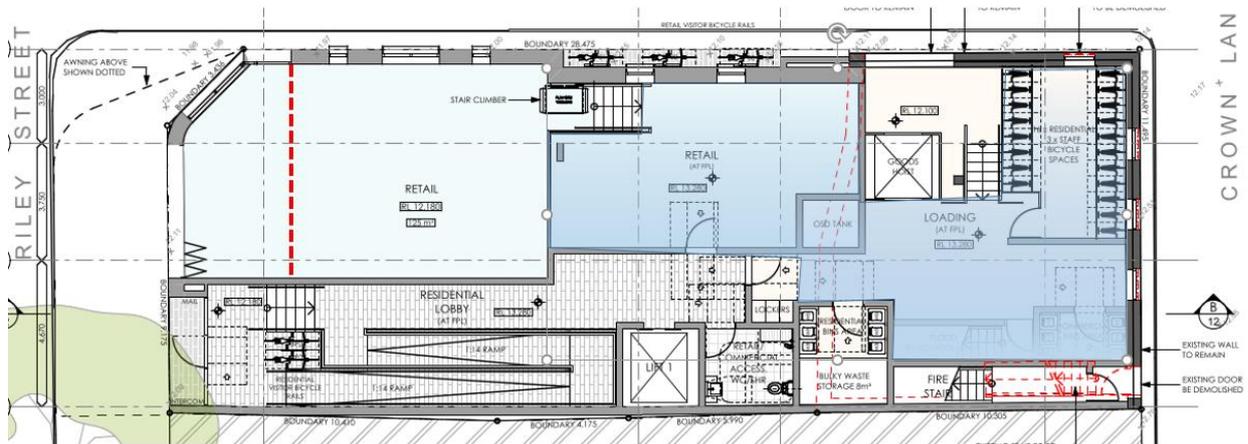


Figure 14: Ground floor plan, the shaded blue areas are above the required flood level for the use. The red line indicates where mezzanine is to be increased to.

59. On a merit based approach, considering that the retail is activating the street and the warehouse facade is being retained and that all habitable spaces are above the flood level, the application is considered to be acceptable. Suitable conditions are recommended regarding flood risk management.

Privacy

60. The development is located within a central Sydney location and surrounded by development in close proximity to the site. There is a six storey boarding house being constructed across Crown Lane to the east, within 4.7m of the site. This boarding house has a number of balconies and a communal open space to be constructed that will overlook the site.
61. Potential privacy impacts have been considered through design measures, including setbacks, batten screening and planting on the terrace area of Level 4.
62. Internal to the development, privacy screens are provided and windows offset to those rooms that overlook the level 1 communal open space.

Heritage

63. The site is located within the East Sydney Heritage Conservation Area and is therefore subject to the heritage provisions of the SDCP 2012. The proposal generally complies with the relevant aims, objectives and controls of the DCP.
64. The existing building on site is identified as a “Neutral Item” under the SDCP 2012; however, it is a warehouse building older than 50 years for which Section 3.10.1 of the SDCP 2012 requires retention and adaptive re-use.
65. Two external brick walls (the north wall to Yurong Lane and the east wall to Crown Lane) and an internal timber post are to be retained.
66. Council's heritage officer has reviewed the proposal and notes that the proposed external glazing to the original goods loading door opening on the first floor (facing Yurong Lane) will materially and visually conceal the original timber sliding doors. A condition is therefore recommended that the external glazing be deleted, to ensure the visual heritage interest at this level is retained.

67. A Facade and Structural Condition Report was submitted with the original DA, which stated that the existing ground level timber column and beams were proposed for temporary removal, salvaged and then reinstated for aesthetic reasons. However, through the design amendments, now only the timber post is shown retained. A suitable condition is recommended requiring both the timber post and beams salvaged and reinstated.
68. In addition, as the development will sit on the retained walls, a condition regarding structural certification and methodology from a practising certified structural engineer is recommended as a consent condition.

Access

69. Access for disabled persons can be provided to the premises. An appropriate condition is recommended.

Other Impacts of the Development

70. The proposed development is capable of complying with the BCA.
71. 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

72. 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

73. The conditions of other sections of Council have been included in the proposed conditions.
74. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Licenced Premises; Surveyors; Transport and Access; Tree Management; Public Domain; and Waste Management; who advised that the proposal is acceptable subject to the recommended conditions.
75. The original application was presented to the Design Advisory Panel on 7 June 2018. The Panels concerns relating to the design of the building are outlined below:
 - (a) In the absence of a clear rationale supporting the stepping back of balconies on the western facade and diagonal enclosure, this approach is not supported. The purpose of winter gardens is questioned.

Response: The applicant advised that the stepping back of the balconies was designed to respond to the splay in the north east corner boundary. The building splays along with the boundary at ground level and then further tapers into the site at the upper levels, utilising the splay in the boundary as an emphasised design feature on the building. This is also a response to addressing the site being located on the corner and visually opens the corner into the narrow laneway.

The two winter gardens have been deleted and the diagonal enclosure revised, with additional sun shading added.

- (b) The internal planning and circulation was questioned, and the Panel suggested that this could be improved. In particular, the space allocated to circulation could be planned more efficiently to reduce the bulk of the building and overshadowing to the courtyard space.

Response: The overshadowing to the Level 1 courtyard is due to the existing building to the north. The primary communal open space is located on the rooftop, and is provided with sufficient solar access. The circulation corridors have been amended to reduce the bulk.

- (c) Window placements on the northern facade do not relate to the internal uses, and should be reviewed and relocated accordingly.

Response: The windows on the northern facade have been amended to relate to the internal uses.

- (d) The glazed awning is not supported.

Response: The glazed awning has been revised to a solid framed awning with metal roof sheeting and fibre cement soffit. The metallic edge treatment has been retained.

- (e) The communal open space on the first floor is facing north and could be made larger to take advantage of that aspect, and overshadowing from upper levels should be avoided by reducing the size of the upper levels of the building.

Response: The overshadowing to the communal open space at Level 1 is entirely due to the building to the north. Therefore, the primary communal open space that has solar access is located on the rooftop.

- (f) Proposed materials palette, including tiles, is not supported. Materials should be reconsidered to be more simple, robust and relevant to the local context. Bricks may be a more appropriate alternative.

Response: The vertical glazed tiles have now been replaced with horizontally stacked glazed bricks, which would be more relevant to the existing context. In addition, the removal of the diagonal enclosure on the western facade and replacing it with vertical shading devices as used on the northern facade simplifies the Riley St elevation.

External Referrals

Notification, Advertising and Delegation (No Submissions Received)

76. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 28 days between 24 April 2018 and 23 May 2018, no submissions were received.
77. Following receipt of the amended plans, the application was renotified for 14 days between 19 October and 3 November 2018. No submissions were received. A query was raised regarding car parking and responded to; however, no further written response was received.

Public Interest

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

S7.11 Contribution

79. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015, as it for the construction of a new mixed use development.

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

(a) Open Space	\$131,691.68
(b) Community Facilities	\$63,638.93
(c) Traffic and Transport	\$3,899.11
(d) Stormwater Drainage	\$0
Total	\$199,229.72

Relevant Legislation

81. The Environmental Planning and Assessment Act 1979.

Conclusion

82. The application proposes the partial demolition of the existing structure on the site, with the retention of the façade, and the construction of a six storey mixed use development, comprising ground floor retail, one commercial office space and 16 residential apartments, with 24 bicycle spaces, and a level 1 and roof top communal open space.
83. The application seeks to vary Clause 4.3 "Height of buildings" development standard in accordance with Clause 4.6 "Exceptions to development standards" under the Sydney LEP 2012. The exception to the height of building standard is acceptable as the exceedance of the control, by 0.3m or 0.01% due to the requirement to raise the floor levels due to flooding, will not adversely impact the character, amenity and appearance of the surrounding area. Strict compliance with the standards is unreasonable and unnecessary in this instance as sufficient environmental planning grounds have been established to support the exception. The exception is in the public interest and is supported.

84. The development does not comply with the visual privacy and separation provisions of 2F and objective 3D within the ADG. A variation to the objectives is acceptable in this instance due to the location of the site surrounded by narrow laneways and through design, the provision of privacy features such as screens and the offset of windows.
85. The development does not comply with the solar provisions of objective 4A within the ADG. A variation of the objective is acceptable due to the level of amenity provided to units, with terraces, large windows and access to communal spaces.
86. The development achieves the broad objectives of the ADG and the design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development. Suitable measures have been provided to ensure adequate visual privacy and amenity within units and through the provision of the large communal rooftop open space, residents will be ensured of an acceptable level of amenity. As the site is located in a flood zone, suitable conditions are recommended regarding flood management.
87. On balance, the proposed development is considered to achieve a suitable level of amenity. The floor area and floor to ceiling heights of all apartments meet those recommended by the ADG, providing daylight access and a sense of space within the apartments due to layout.
88. The development is in the public interest and recommended for deferred commencement approval, subject to conditions regarding an increase in area to the mezzanine retail space, which is situated above the flood level.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Bridget McNamara, Area Planning Coordinator