

**Item 7.****Development Application: 19 Ralph Street, Alexandria****File No.:** D/2018/156**Summary****Date of Submission:** 21 February 2018

Amended drawings and additional information received on 4 September 2018, 18 October 2018, 14 December 2018, 16 January 2019 and 28 February 2019.

**Applicant:** 19 Ralph St Pty Ltd**Architect:** SJB**Developer:** Milligan Group**Owner:** E J Noble Investments Pty Ltd**Cost of Works:** \$4,680,196**Zoning:** The site is zoned B4 Mixed Use. The proposed development is defined as a mixed use development and includes one ground floor retail premises and residential accommodation comprising 18 apartments. The proposed use is permissible with consent in the B4 Mixed Use zone.**Proposal Summary:** The subject development application (DA) seeks consent for the construction of a six storey mixed use development comprising 18 residential apartments, ground floor retail tenancy and ground level car parking.

The application is referred to the Local Planning Panel for determination as the proposal is subject to the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development and a Public Benefit Offer accompanies the application.

**Proposal Summary  
(continued):**

The application was notified and advertised for a period of 21 days between 1 March 2018 and 23 March 2018. One submission was received raising concerns with the number of storeys, visual privacy and traffic impacts. The issues raised in the submission have been addressed in the report, and conditions of consent are recommended to address these issues where appropriate.

The proposal exceeds the Sydney Local Environmental Plan 2012 (SLEP 2012) maximum height of building development standard by 640mm or 2.9%. A written request has been submitted under Clause 4.6 of SLEP 2012 to vary the height development standard. The proposal is consistent with the objectives of the land use zone and height of building development standard. The proposed variation to the development standard has merit and is supported in this instance.

The preliminary assessment of the DA identified a number of issues relating to acoustic privacy, natural cross ventilation, contamination, setbacks, pedestrian entries, design of communal open space, flood planning levels, stormwater management, waste management, design of parking and loading facilities, insufficient acoustic report, shadow diagrams and gross floor area calculations. The proposal was amended during the course of the assessment and additional information provided in response to these issues raised by Council staff. While there are some minor issues remaining, conditions of consent are recommended to address these issues.

The Public Benefit Offer relates to the dedication of a 1m - 1.67m wide piece of land (30.1sqm) along the Beaconsfield Lane frontage to Council for footpath widening including embellishment works. A draft Voluntary Planning Agreement (VPA) has been prepared incorporating the works proposed by the developer in the Public Benefit Offer. The draft VPA was publicly exhibited for a period of 28 days between 19 November 2018 and 18 December 2018. No submissions were received.

Subject to conditions, the proposal is largely compliant with the relevant planning provisions contained in State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development, the Apartment Design Guide (ADG), SLEP 2012 and Sydney Development Control Plan 2012 (SDCP 2012).

The application is recommended for approval subject to deferred commencement conditions requiring the execution and registration of the VPA and minor design modifications.

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

**Development Controls:**

- (i) Environmental Planning and Assessment Act, 1979
- (ii) Airports Act 1996
- (iii) State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) State Environmental Planning Policy No. 55 - Remediation of Land
- (vi) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (vii) Sydney Development Control Plan 2012 (in force on 12 December 2012, as amended)
- (viii) Apartment Design Guide
- (ix) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings - Floor Plans
- C. Selected Drawings
- D. Public Benefit Offer
- E. Draft Voluntary Planning Agreement
- F. Clause 4.6 Variation Request

## Recommendation

It is resolved:

- (A) the written request seeking variation to Clause 4.3 height of building development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (B) that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application D/2018/156 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for a deferred commencement approval as:

- (A) The proposed development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979, in that subject to the imposition of appropriate conditions as recommended, it achieves the objectives of the planning controls for the site and does not result in any unreasonable environmental impacts for the reasons outlined in the report to the Local Planning Panel.
- (B) 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 SLEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of Clause 4.3 Height of Building and the B4 Mixed Use zone.
- (C) The development, subject to conditions, will provide good amenity for future occupants and is generally compliant with SEPP No 65 - Design Quality of Residential Apartment Development and the ADG.
- (D) The development, subject to conditions, is generally consistent with the objectives and provisions contained in SLEP 2012 and SDCP 2012.
- (E) The proposed development is of a high standard and satisfies the design excellence criteria contained in Clause 6.21 of SLEP 2012.
- (F) The proposal will improve the quality of the public domain through dedication of land towards the widening of the footpath along Beaconsfield Lane as detailed in the draft VPA.
- (G) For the reasons above and as outlined in this report, the proposed development is in the public interest subject to conditions.

## Background

### The Site and Surrounding Development

1. Site visits were carried out by Council staff on 31 March 2018 and 16 October 2018.
2. The site has a legal description of Lot 1 DP 80272 and is commonly known as 19 Ralph Street, Alexandria.
3. The site is generally rectangular in shape with an area of approximately 976sqm. It has three street frontages being Ralph Street to the west, Shirley Street to the south and Beaconsfield Lane to the east. The Shirley Street frontage length is approximately 43.4m with frontage lengths of approximately 22m to both Ralph Street and Beaconsfield Lane. The site is located approximately 50m west of the intersection of Botany Road and Shirley Street.
4. The highest point of the site is in north-east corner where there is a gradual fall of approximately 200mm to the south-east corner, a fall of 600mm to the south-west corner and a fall of 580mm to the north-west corner of the site.
5. The site contains a part one, part two storey brick warehouse building built to all site boundaries. The main pedestrian entry is from Ralph Street with a vehicular access point also located on Ralph Street. There are seven existing at grade car parking spaces accessible from Beaconsfield Lane and a loading area accessible from Shirley Street.
6. Surrounding land uses are a mixture of residential, commercial and industrial.
7. Directly adjoining the site to the north at 17 Ralph Street is a single storey warehouse building. Further to the north of the site at 11-15 Ralph Street is a two storey warehouse building. Both of these sites have recent approvals (D/2016/198 and D/2017/839) for residential flat buildings. These applications also included VPA's which provide for the dedication of land to Council for the widening of the footpath along Beaconsfield Lane.
8. Directly opposite the site to the west at 10-24 Ralph Street is the Australia Post Business Hub and Distribution Centre which operates 24 hours, seven days a week.
9. Directly opposite the site to the south on the opposite side of Shirley Street is a part four, part five storey shop top housing development (1 Shirley Street). This building has apartments with habitable windows and balconies fronting Shirley Street.
10. Across Beaconsfield Lane to the east, at 576-578 Botany Road, is a two storey commercial premises which includes a gym at ground floor level. Further across the lane to the north-east of the site, at 574 Botany Road, is a four storey mixed use building containing ground floor commercial premises with residential apartments above.
11. The site is not a heritage item, is not located in close proximity to a heritage item and is not located within a heritage conservation area.
12. Photos of the site and surrounds are provided below:

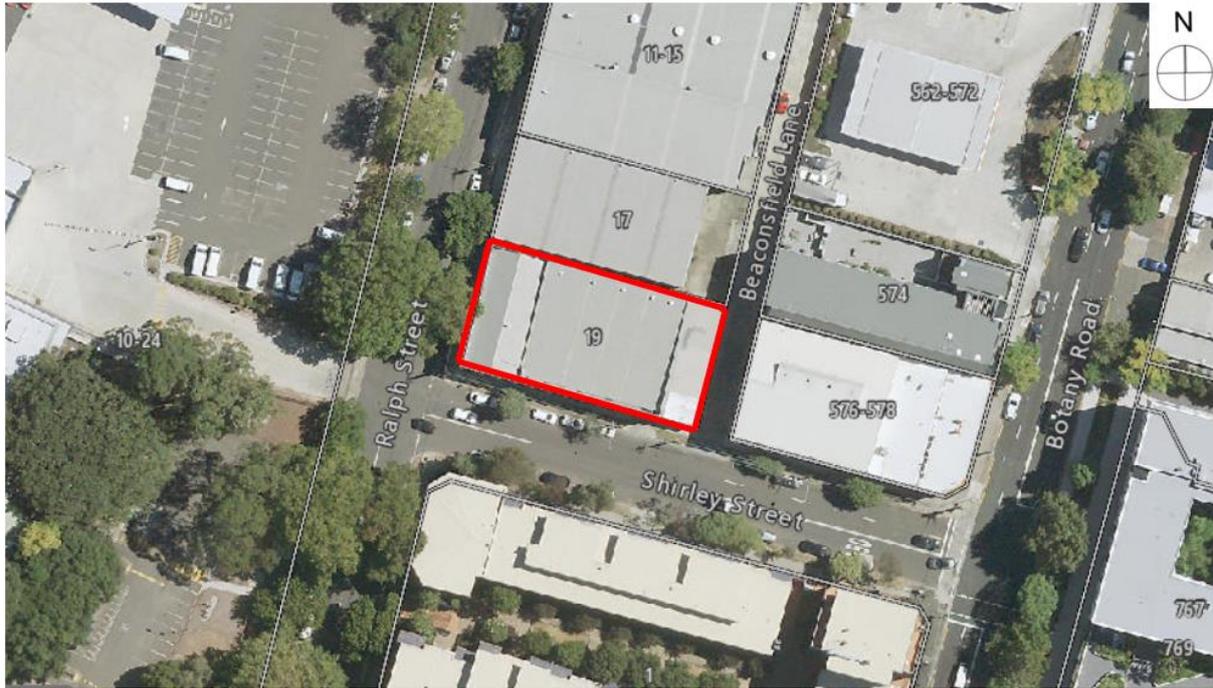


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from the corner of Ralph Street and Shirley Street, facing east



**Figure 3:** Site viewed from the corner of Ralph Street and Shirley Street, facing north



**Figure 4:** Site viewed from Shirley Street, facing north-west



Figure 5: View of Beaconsfield Lane from Shirley Street



Figure 6: Site viewed from the corner of Shirley Street and Beaconsfield Lane, facing north



**Figure 7:** Shop-top housing located opposite the site to the south at 1 Shirley Street



**Figure 8:** Looking north along Ralph Street showing 17 and 11-15 Ralph Street



**Figure 9:** Opposite the site to the west at 10-24 Ralph Street - the Australia Post Business Hub and Distribution Centre

## Proposal

13. The application seeks consent for the demolition of the existing building and construction of a mixed use building comprising a retail premises and 18 residential three bedroom apartments, as detailed below:

**(a) Ground Floor:**

- (i) one retail tenancy comprising an area of 35sqm and associated outdoor seating area;
- (ii) 23 car parking spaces;
- (iii) bicycle parking for 22 bicycles;
- (iv) waste storage rooms; and
- (v) two residential lobbies located on Ralph Street and Shirley Street.

**(b) Levels 1 - 3:**

- (i) 12 apartments.

**(c) Level 4:**

- (i) two apartments;
- (ii) lower level of two apartments (upper levels of these apartments located on level 5); and

(iii) outdoor communal open space and swimming pool.

**(d) Level 5:**

(i) two apartments; and

(ii) upper levels of two of the apartments located on level 4.

**(e) Roof level:**

(i) four private roof top terraces including landscaping.

14. Photomontages, plans and elevations of the proposed development are provided at Figures 10 - 22. The full set of architectural drawings is provided in Attachments B and C.



**Figure 10:** Photomontage from the corner of Ralph Street and Shirley Street



Figure 11: Photomontage Shirley Street

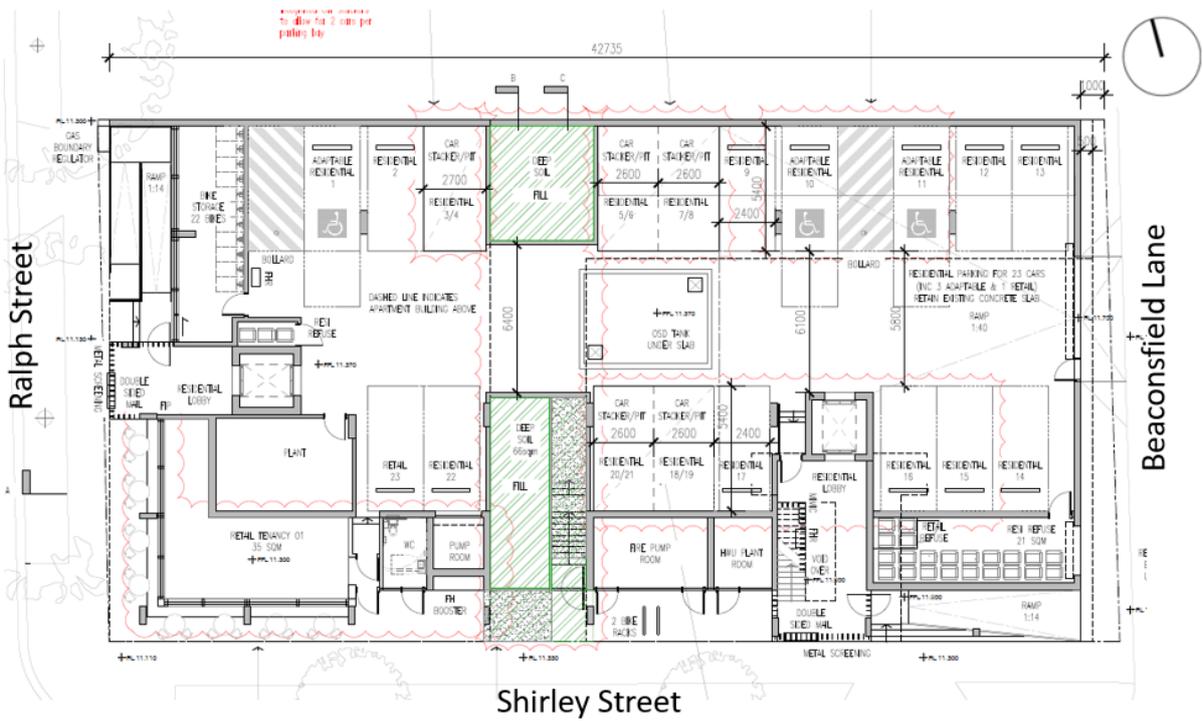


Figure 12: Ground floor plan



Figure 13: Level 1

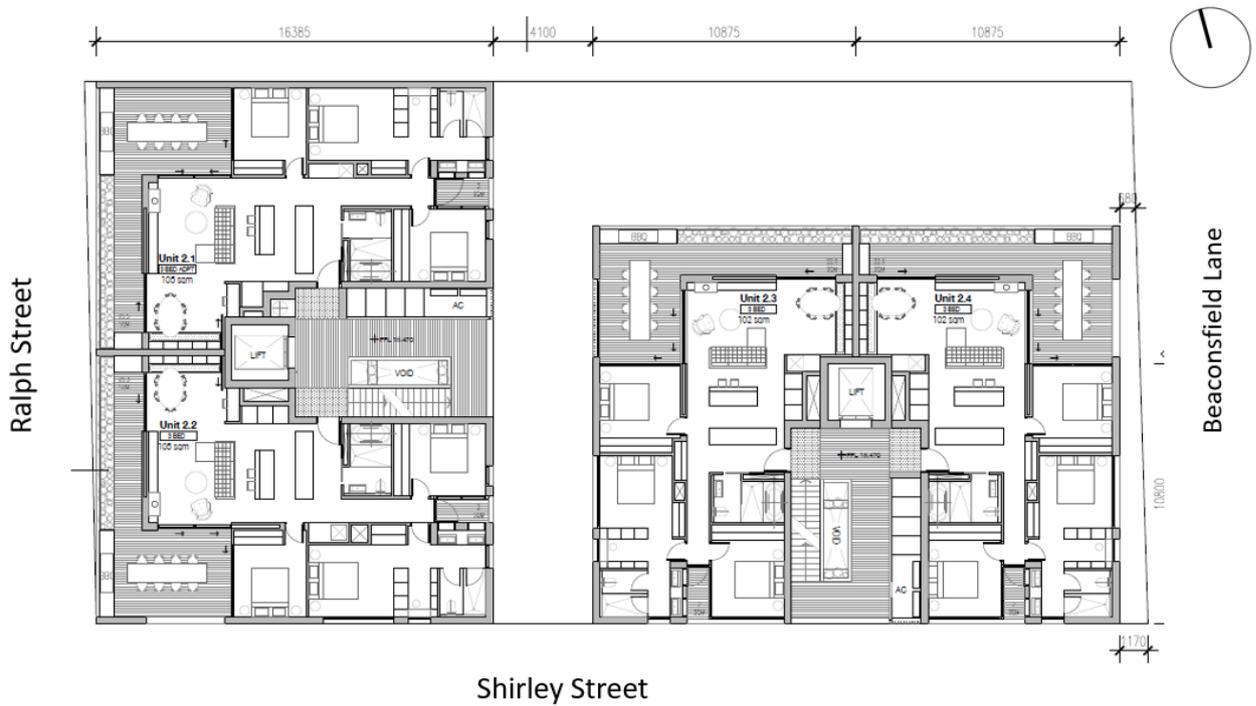


Figure 14: Level 2 (similar to level 3)

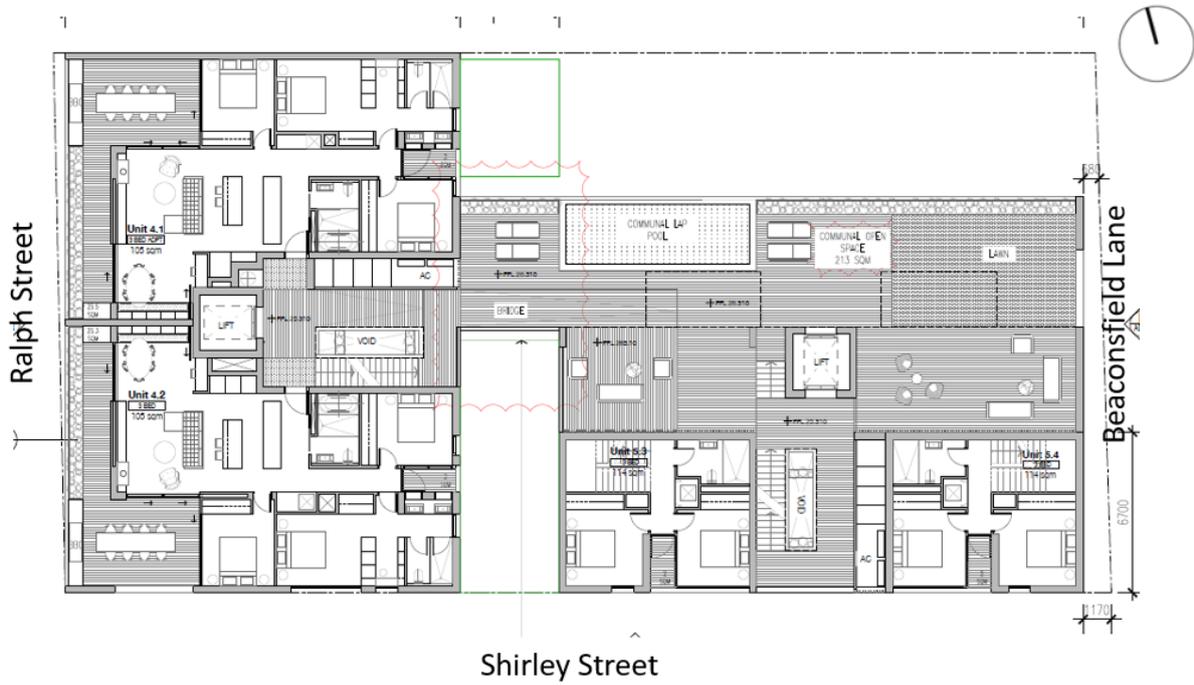


Figure 15: Level 4



Figure 16: Level 5

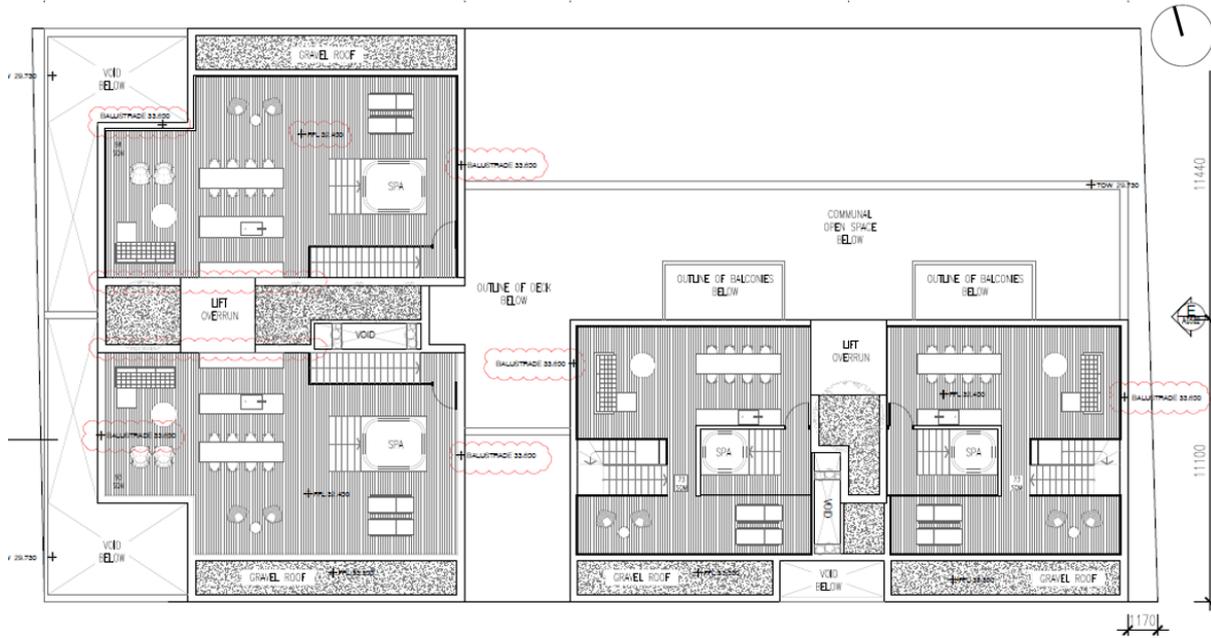


Figure 17: Level 6 rooftop



Figure 18: South (Shirley Street) elevation

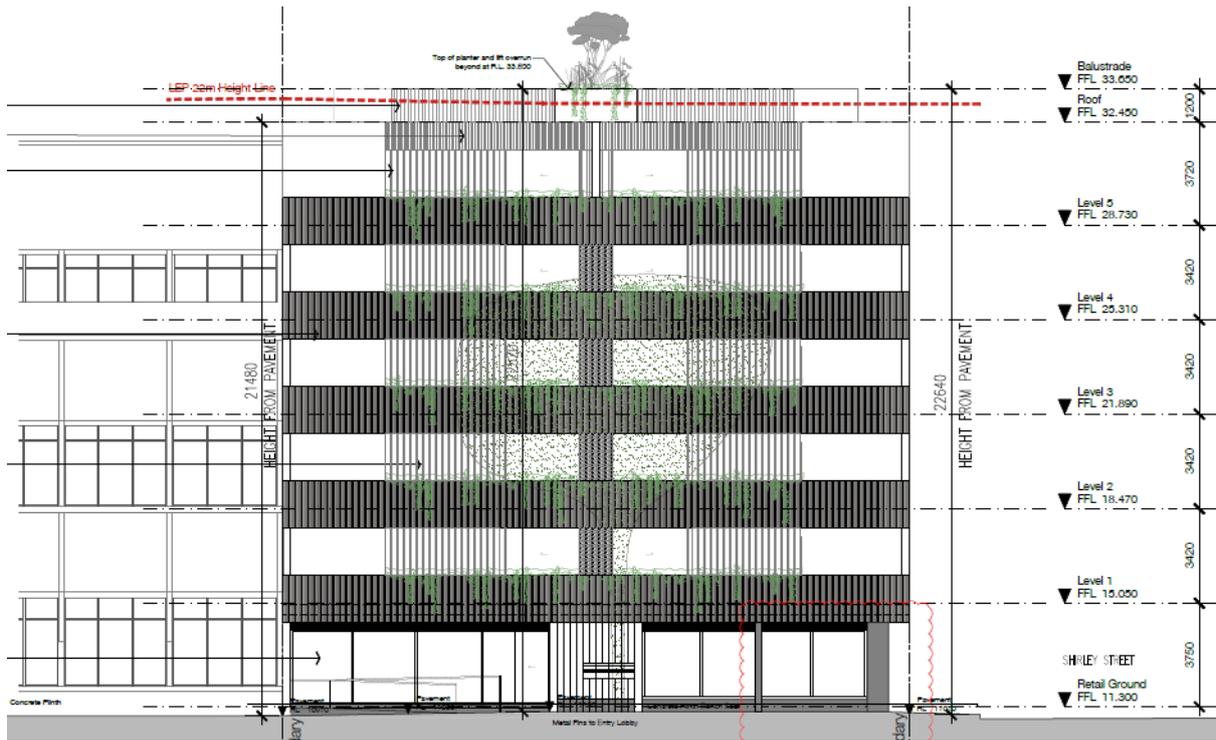


Figure 19: West (Ralph Street) elevation

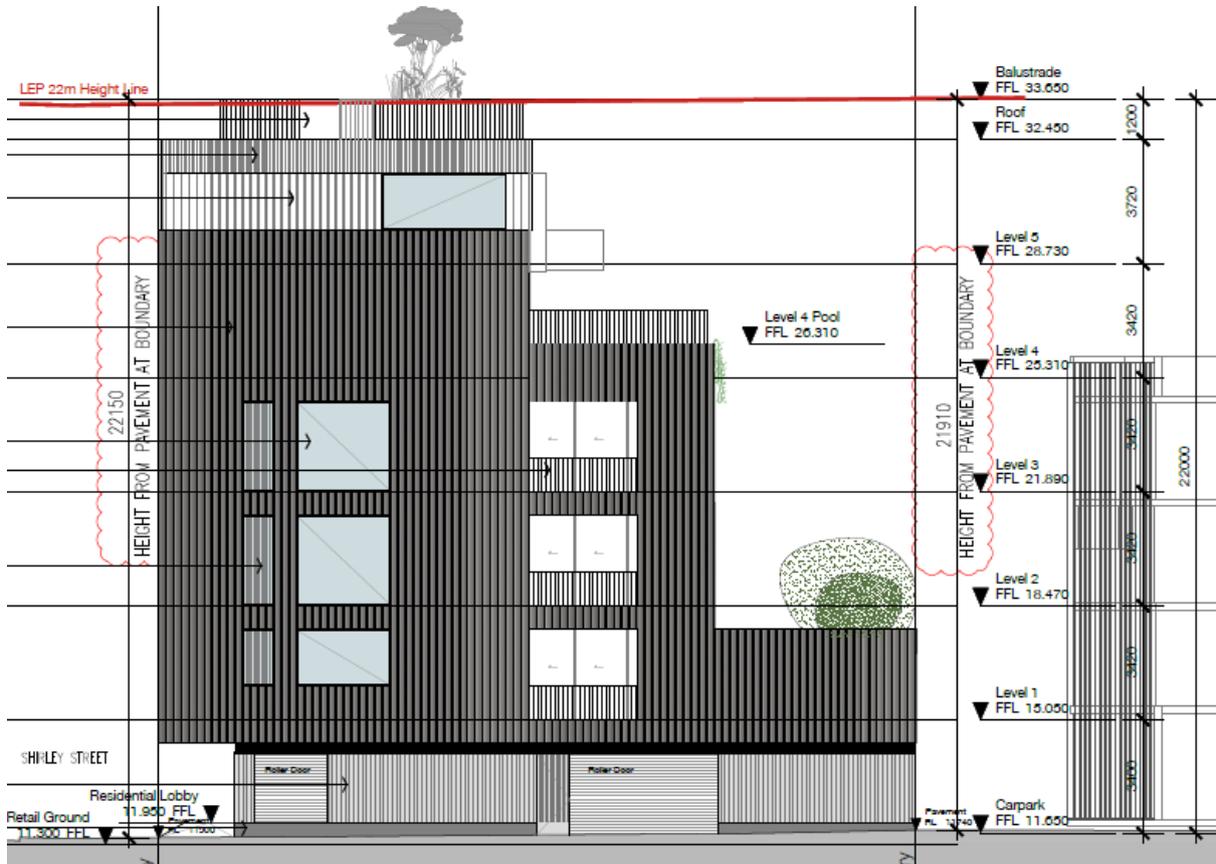


Figure 20: East (Beaconsfield Lane) elevation

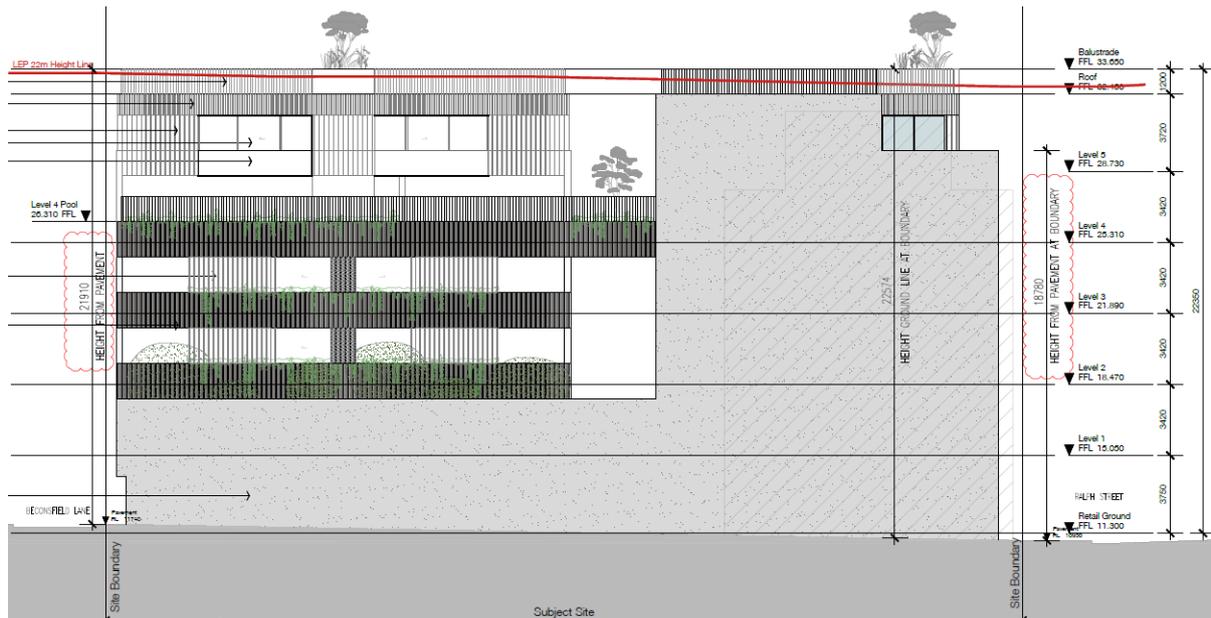


Figure 21: North elevation

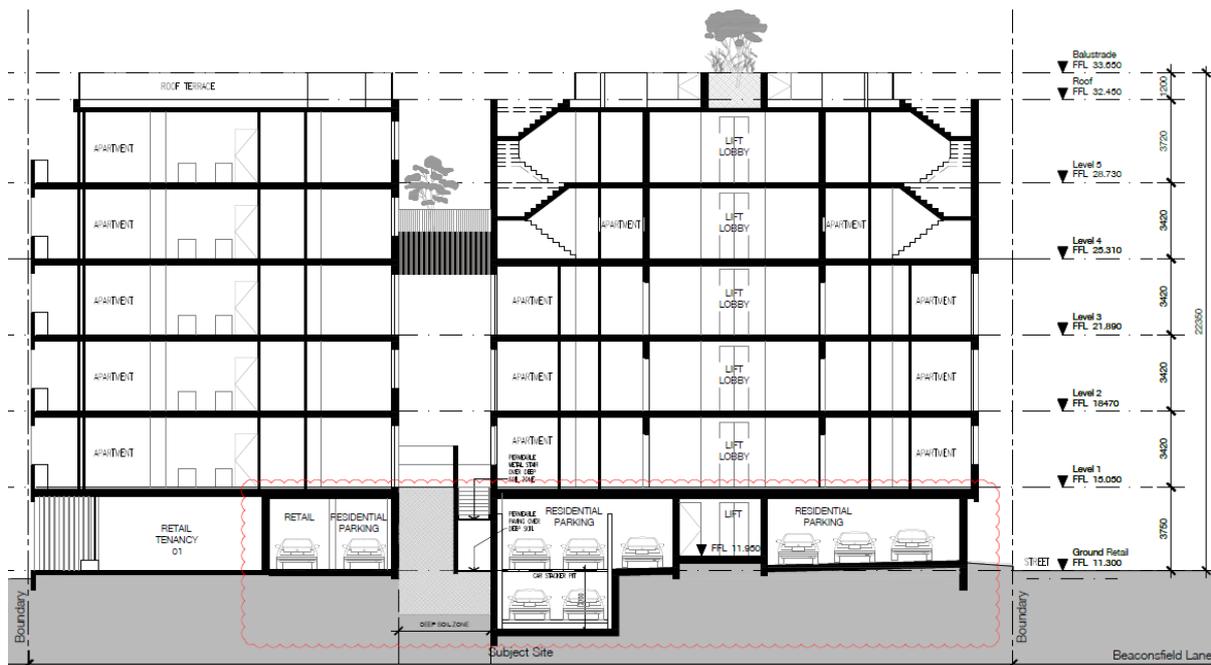


Figure 22: Section (west - east)

## History Relevant to the Development Application

### Previous Development Applications

- There have been no development applications determined on the site which are of any relevance to the subject application.

### Current Development Application

- The DA was lodged on 21 February 2018.

17. The preliminary assessment raised a number of concerns including:
  - (a) acoustic privacy;
  - (b) natural cross ventilation;
  - (c) setbacks;
  - (d) pedestrian entries;
  - (e) design and solar access to communal open space;
  - (f) flood planning levels;
  - (g) stormwater management;
  - (h) waste management;
  - (i) design of car parking, loading and bike parking facilities; and
  - (j) insufficient documentation including acoustic report, shadow diagrams and gross floor area diagrams.
18. The proposal was presented to the City's Design Advisory Panel (DAP) on 28 June 2018. The key issues discussed by DAP included the lack of setback from Beaconsfield Lane; design of the residential lobby; design of the communal open space; acoustic privacy between the two 'wings' of the building; and investigations into the provision of deep soil planting.
19. DAP was generally supportive of the design approach, materiality and proposed apartment types and mix.
20. In response to the issues raised by Council officers which incorporated the advice given by DAP, the proposal was amended and additional information provided on 4 September 2018, 18 October 2018, 14 December 2018, 16 January 2019 and 28 February 2019.
21. The amended application has sufficiently resolved the issues raised by Council staff and the Design Advisory Panel.
22. Other remaining minor issues are addressed through recommended conditions of consent.

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

23. 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.

**Sydney Airport Referral Act 1996**

24. Section 182 of the Commonwealth Airports Act 1996 specifies that, amongst other things, construction a building or other structure that intrudes into a prescribed airspace is a controlled activity.
25. Schedules 2 and 5 of the Civil Aviation (Building Control Regulations 1988 identify the site is subject to a prohibition of the construction of buildings more than 50 feet in height (15.24m) above existing ground height.
26. Section 183 of the Commonwealth Airports Acts 1996 specifies that controlled activities may not be carried out in relation to prescribed airspace unless an approval has been granted. The relevant approval body is the Civil Aviation Safety Authority (CASA).
27. The Sydney Airport Airfield Design Manager, an authorised person of CASA, provided approval for the controlled activity on 5 March 2018.

**Sydney Water Act 1994 No. 88**

28. In accordance with Clause 78 of the Sydney Water Act 1994 No 88, the application was referred to Sydney Water on 1 March 2018 as the development may increase the demand for water supplied by the Corporation.
29. Sydney Water raised no objection to the proposal subject to imposition of standard conditions requiring a Section 73 Compliance Certificate to be obtained and for the approved plans to be checked using Sydney Water's "Tap-in" in service.

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

30. 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.
31. A detailed site investigation report and Remedial Action Plan (RAP) was submitted by the applicant. The RAP has been developed to account for different results, and the site auditor has confirmed that it is practical, and that the site will be suitable for the proposed use after remediation. The RAP states that it is unlikely that a long term Environmental Management Plan (EMP) will be required for the site, however the RAP provides for this as an option. Conditions relating to the EMP are therefore recommended in case this eventuates.
32. It is noted that the land to be dedicated to Council for footpath widening must be remediated and must not be encumbered by an EMP. A condition of consent is recommended to address this.
33. The City's Health Unit is satisfied that subject to conditions, the site can be made suitable for the proposed use.

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

34. SEPP 65 provides that in determining an application for a residential flat development, that the consent authority take into consideration a number of matters relating to design quality.

35. The proposed development has been designed by SJB Architects who are registered Architects. A design verification statement has been submitted with the DA which has been prepared in accordance with SEPP 65.
36. The proposed development demonstrates an appropriate design quality that satisfies the nine design quality principles, as detailed below:

(a) **Principle 1: Context and Neighbourhood Character**

The character of development along Ralph Street has changed over time as historical warehouse and industrial uses are being replaced by residential flat buildings and mixed use buildings. The proposed mixed use development comprising 18 residential apartments with a ground floor retail tenancy is considered appropriate within the context of the site and the desired future character.

(b) **Principle 2: Built Form and Scale**

The proposed built form and scale of the proposal is considered appropriate for the site and surrounding area.

(c) **Principle 3: Density**

The proposal complies with the maximum permitted floor space ratio (FSR) for the site. The proposed density responds well to the existing and future density context of the area. The proposal does not result in any unreasonable impacts on existing or future adjoining development subject to conditions.

(d) **Principle 4: Sustainability**

The proposal is compliant with the requirements of SEPP BASIX and appropriate conditions are recommended to ensure the development complies with those requirements. The design achieves the principles of ecological sustainable development by incorporating passive solar design, thermal massing, and achieves natural cross ventilation to all of the 18 apartments.

(e) **Principle 5: Landscape**

Landscaping within the development includes two deep soil zones, the communal open space, balconies and green walls. This will add to the good level of residential amenity and positively contribute to the streetscape.

(f) **Principle 6: Amenity**

A high level of amenity is achieved by the proposed development. The residential component is well designed with regards to solar access, natural cross ventilation, visual and acoustic privacy and apartment sizes and layouts, all of which will contribute to positive living environments and resident wellbeing.

(g) **Principle 7: Safety**

The proposal has been generally designed in accordance with the CPTED principles. The development provides passive surveillance of the public domain and communal areas. Balconies and windows are provided on all three street elevations at levels 1 to 5 which will therefore provide a high level of streetscape surveillance.

(h) **Principle 8:** Housing Diversity and Social Interaction

The design of the communal open space area is centrally located and provides equal opportunities for social interaction amongst residents. While the proposal only includes three bedroom apartments, this is considered acceptable as generally a higher number of studio, one bedroom and two bedroom apartments are proposed for residential flat buildings.

(i) **Principle 9:** Aesthetics

The proposed development provides a contemporary building form which is compatible with the desired future character of the area and approved development under D/2016/198 and D/2017/839 at 17 Ralph Street and 11-15 Ralph Street, respectively. The proposed development is considered to achieve a high level of design standard with high quality materials and finishes proposed.

37. 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.

## Apartment Design Guide

| 2E Building Depth       | Compliance | Comment   |
|-------------------------|------------|---|
| 12-18m (glass to glass) | Yes        | The maximum depth of the apartments is approximately 14.5m. |

| 2F Building Separation  | Compliance                  | Comment  |
|---|-----------------------------|--|
| <p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul> <p>Five to eight storeys (approximately 25 metres):</p> <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable rooms</li> </ul> | No - assessed as acceptable | <p>Primarily due to the approved building setbacks of the adjoining development at 17 Ralph Street (D/2016/198), the proposal does not comply with the required building separation distances.</p> <p>This is discussed in the 'Issues' section.</p> |

| 3D Communal and Public Open Space  | Compliance | Comment  |
|--|------------|--|
| Communal open space has a minimum area equal to 25% of the site.   | Yes        | 25% of the site area (244sqm) is provided as communal open space. The communal open space is provided on level 4 and accessible for all residents. |
| Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9am and 3pm on 21 June (midwinter). | Yes        | More than two hours of direct sunlight to more than 50% of the minimum area of communal open space is achieved.                                    |

| 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> | Yes        | <p>Two deep soil zones with a total area of 66sqm are provided. This equates to 7% of the site area (following land dedication). The deep soil zones exceed the 3m minimum dimension.</p> <p>It is noted that there are stairs located above a portion of the deep soil zone. However these stairs are a permeable metal style to allow water infiltration and this is considered acceptable.</p> |

| 3F Visual Privacy  | Compliance                  | Comment  |
|--|-----------------------------|--|
| <p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul> <p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> <li>• 9m between habitable rooms / balconies</li> <li>• 4.5m between non-habitable rooms</li> </ul> | No - assessed as acceptable | The proposed building separation distances do not comply. This is discussed in the 'Issues' section.                                   |
| <p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.</p>  | Yes                         | The bedrooms and living areas have been designed with no windows directly opening into gallery spaces or other open circulation space. |

| 4A Solar and Daylight Access   | Compliance | Comment  |
|--|------------|--|
| <p>70% of units to receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces.</p> | Yes        | 89% (16/18) apartments receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces. |

| 4A Solar and Daylight Access  | Compliance | Comment  |
|---|------------|--|
|   |            | The proposal results in overshadowing of the mixed use building located directly south of the site at 1 Shirley Street. This building contains ground floor commercial tenancies with residential apartments above. Living room windows and balconies front Shirley Street. While the proposal results in additional overshadowing of the subject apartments fronting Shirley Street, the proposal does not result in these windows and balconies receiving less than two hours of direct sunlight in midwinter. The mixed use building at 1 Shirley Street will continue to comply with the solar and access daylight provisions contained in Objective 4A-1 of the ADG. Sun's eye diagrams are provided in Attachment C. |
| Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter. | Yes        | All apartments receive direct sunlight between 9am and 3pm in midwinter.   |

| 4B Natural Ventilation   | Compliance | Comment  |
|--|------------|--|
| All habitable rooms are naturally ventilated.  | Yes        | All habitable windows are provided with windows capable of providing adequate natural ventilation.     |
| Minimum 60% of apartments in the first nine storeys of the building are naturally cross ventilated.              | Yes        | All apartments are naturally cross ventilated.   |
| Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. | Yes        | The maximum depth of the apartments is approximately 14.5m, as measured from glass line to glass line. |

| <b>4C Ceiling Heights</b>  | <b>Compliance</b>           | <b>Comment</b>   |
|--|-----------------------------|--|
| Habitable rooms: 2.7m  | Yes                         | All habitable rooms show a finished floor to ceiling height of approximately 3.2m.   |
| Non-habitable rooms: 2.4m  | Yes                         | All non-habitable rooms exceed a minimum floor to ceiling height of 2.4m.  |
| Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area. | Yes                         | The proposal includes two-storey apartments. The floor to ceiling heights for both levels of these apartments exceed the minimum floor to ceiling heights.   |
| If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.                              | No - assessed as acceptable | The proposed ground floor retail tenancy provides a floor to ceiling height of approximately 3.4m. The first floor levels of the residential apartments have a floor to ceiling height of approximately 3.2m. This minor non-compliance is not considered to preclude possible future flexibility of use on this level. The minor non-compliance is considered acceptable. |

| <b>4D Apartment Size and Layout</b>  | <b>Compliance</b> | <b>Comment</b>  |
|--|-------------------|---|
| <p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Three bed: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> | Yes               | All of the apartments contain two bathrooms and a minimum apartment size of 95sqm is required. The proposed apartment sizes range from 102sqm - 114sqm. |
| 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               | Windows are provided to all habitable rooms and meet the 10% minimum glass area requirement.  |
| Habitable room depths are to be no more than 2.5 x the ceiling height.   | Yes               | The maximum depth of habitable rooms is approximately 8m which complies.  |

| <b>4D Apartment Size and Layout</b>  | <b>Compliance</b> | <b>Comment</b>  |
|--|-------------------|---|
| 8m maximum depth for open plan layouts.  | Yes               | The open plan living, dining and kitchen areas have depths of approximately 8m.   |
| Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> <li>• master bedroom: 10sqm</li> <li>• all other bedrooms: 9sqm</li> </ul> Minimum dimension of any bedroom is 3m (excluding wardrobes). | Yes               | The master bedrooms have a minimum area of approximately 10.3sqm.<br><br>The other bedrooms have a minimum area of approximately 9.4sqm.<br><br>All bedrooms exceed the 3m minimum dimension requirement. |
| Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> <li>• Two-bedroom or more: 4m</li> </ul>   | Yes               | All living and dining rooms have a minimum dimension of 4m.   |

| <b>4E Private Open Space and Balconies</b>   | <b>Compliance</b> | <b>Comment</b>   |
|--|-------------------|--|
| Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15sqm and a minimum depth of 3m. | Yes               | The private open space for apartments have sizes ranging from approximately 18sqm to 95sqm and exceed 3m in depth. |

| <b>4F Common Circulation and Spaces</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| The maximum number of apartments off a circulation core on a single level is eight. | Yes               | The development includes two lift cores. The maximum number of apartments from a single lift core on each level is two. |

| 4F Common Circulation and Spaces   | Compliance | Comment   |
|--|------------|---|
| <p>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.</p> | Yes        | <p>The apartments have been designed to have the entry doors from the corridors opening in to the kitchens of the apartments which is considered acceptable.</p> <p>None of the apartments include windows which open onto the common circulation spaces.</p> |
| <p>Daylight and natural ventilation are provided to all common circulation spaces.</p>   | Yes        | <p>The common circulation spaces have been designed to provide daylight and natural ventilation to these areas.</p>   |

| 4G Storage  | Compliance                 | Comment   |
|---|----------------------------|---|
| <p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> <li>• Three bed: 10m<sup>3</sup></li> </ul> <p>(Minimum 50% storage area located within unit)</p> | Yes - subject to condition | <p>It is unclear from the provided drawings whether the proposal meets the minimum storage provision. A condition of consent is recommended requiring a storage provision diagram to be provided in accordance with this provision. All apartments exceed the minimum apartment area size requirement and therefore the proposal is capable of complying with this provision.</p> |

| 4J Noise and Pollution  | Compliance | Comment  |
|---|------------|--|
| Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings? | Yes        | <p>The site is not located on a busy road, however is subject to intrusive noise from Botany Road, the 24 hour a day Australia Post facility opposite the site on Ralph Street and a martial art gym located directly opposite the site on Beaconsfield Lane.</p> <p>The amended proposal has been carefully sited and designed in response to these noise sources. Bedroom windows do not directly open to the noise sources. The proposal can achieve compliance the minimum noise levels without the need for alternative mechanical natural ventilation.</p> |

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

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

#### **Clause 45**

39. The application is subject to Clause 45 of the Infrastructure SEPP as the development is located close to an existing electricity substation and overhead and underground power lines.
40. The application was referred to Ausgrid and no response was received. It is therefore assumed that no objections are raised to the proposal.
41. The proposal does not include a substation. A condition is recommended requiring evidence from Ausgrid confirming that no substation is required prior to issue of any construction certificate. The recommended deferred commencement condition stipulates that if Ausgrid determine that a substation is required, the substation must be located within the building envelope and incorporated in to the design of the building to Council's satisfaction.

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

42. The BASIX Certificate has been submitted with the development application.
43. 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**

44. The site is zoned B4 Mixed Use under Sydney LEP 2012. The proposed development is defined as a mixed use development comprising 'residential accommodation' and 'retail premises' both of which are permissible with consent.

45. 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.<br><br>A height of 22.64m is proposed.<br><br>The applicant has submitted a written request seeking an exception to the development standard in accordance with Clause 4.6(3) of SLEP 2012. See discussion under the heading Issues. |
| 4.4 Floor Space Ratio                   | Yes        | A maximum FSR of 2:1 is permitted.<br><br>A FSR of 2:1 is proposed.  |
| 4.6 Exceptions to development standards | Yes        | The proposal seeks to vary the height of building development standard prescribed under Clause 4.3 of SLEP 2012.<br><br>See discussion under the heading Issues.   |

| Part 6 Local Provisions - Height and Floor Space | Compliance | Comment  |
|--|------------|--|
| 6.21 Design excellence                           | Yes        | Subject to conditions, the proposed development exhibits design excellence specifically regarding the matters listed in Clause 6.21(4):<br><br>The development will result in a high standard of architectural design. The building design is appropriate to the surrounding context.<br><br>The proposed development does not detrimentally impact on view corridors. The proposal is also suitability sited and designed so as to reduce acoustic privacy impacts without the need for mechanical ventilation. |

| Part 6 Local Provisions - Height and Floor Space | Compliance | Comment  |
|--|------------|--|
| 6.21 Design excellence                           |            | <p>The building will not unreasonably overshadow neighbouring developments and results in a compliant level of solar access for the subject development.</p> <p>A concept landscape plan has been provided. Landscaping is integrated in the design of the building through planters on balconies on the Ralph Street (west) elevation, within the communal terrace, roof top terraces and the central void spaces. This will contribute to the residential amenity of the development and the streetscape.</p> <p>The materiality of the facade is considered to be of high quality and consistent with the desired character of the area. The proposed external materials include scalloped precast concrete, Iron Ash hardwood wall cladding, dark metallic powder coat window frames and louvres and dark grey steel balustrades. A physical materials board has been submitted and Council officers are satisfied that the materials are of a high quality.</p> <p>The development will not result in unreasonable environmental impacts and is considered to demonstrate design excellence, subject to conditions.</p> |

| <b>Part 7 Local Provisions - General</b>  | <b>Compliance</b> | <b>Comment</b>   |
|---|-------------------|--|
| <p>Division 1 Car parking ancillary to other development</p> <p>Clause 7.5 Residential flat buildings</p> <p>Clause 7.7 Retail premises</p> | Yes               | <p>The site is identified as 'Category C' and 'Category F' on the Land Use and Transport Integration Map and Public Transport Accessibility Level Map, respectively.</p> <p>In accordance with Clause 7.5, a maximum of 22 car parking spaces are permitted for the residential apartments. 22 residential car parking spaces are proposed which complies.</p> <p>In accordance with Clause 7.7, one car parking space is permitted for the retail tenancy. One retail car parking space is proposed which complies.</p> |
| 7.13 Contributions for purpose of affordable housing  | Not applicable    | The site is not located within either Green Square or the Southern Employment Lands and as such no affordable housing contribution is applicable.  |
| 7.14 Acid Sulphate Soils  | Yes               | The site is identified as containing class 5 Acid Sulphate Soil. The site is mapped as being within a Class 5 Acid Sulphate Soils (ASS) zone. The proposal is located approximately 265m from an adjacent Class 3 ASS zone. The proposal does not involve works that are likely to lower the watertable of the adjacent Class 3 ASS zone. The proposal therefore complies with this provision.   |
| 7.15 Flood planning   | Yes               | The site is not affected during a 1% AEP flood event. The proposed development is consistent with the Interim Management Policy and the flood planning level requirements. Council's flood engineer has advised that the proposed floor levels are acceptable.   |
| 7.16 Airspace operations  | Not applicable    | The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for the Sydney Airport.  |

| <b>Part 7 Local Provisions - General</b>                    | <b>Compliance</b> | <b>Comment</b>   |
|---|-------------------|--|
| 7.23 Large retail development near Green Square Town Centre | Yes               | The proposed retail premises does not exceed 1000sqm and therefore complies with this provision. |

### Sydney DCP 2012

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

#### 2. Locality Statements – Beaconsfield

The subject site is located in the Beaconsfield locality. The proposed development is considered to be in keeping with the unique character of the area and design principles in that it will result in a high quality built form in the southern area of the neighbourhood.

| <b>3. General Provisions</b>   | <b>Compliance</b> | <b>Comment</b>   |
|--------------------------------|-------------------|--|
| 3.1 Public Domain Elements     | Yes               | The proposal will make a positive contribution to the public domain by providing a widened footpath along the site's Beaconsfield Lane frontage.         |
| 3.2 Defining the Public Domain | Yes               | The design of the development creates a building that will generally enhance the quality of public domain and provide an active ground floor retail use. |
| 3.2.7 Reflectivity             | Yes               | A condition of consent has been recommended requiring that the reflectivity from the building materials must not exceed 20%.                             |

| 3. General Provisions                                 | Compliance     | Comment  |
|---|----------------|--|
| 3.4 Hierarchy of Centres, City South                  | Yes            | The site is located outside the Green Square Town Centre major retail area. The proposed retail premises comprise a total area of 35sqm. The development is classified as 'minor retail development' under Section 3.4. Minor retail development is permissible outside retail centres provided it does not have a negative impact on the viability of the planned centres. The predominant use of the site is residential. The size of the proposed retail premises is not considered to undermine the economic strategy of the Green Square retail centre or impact its viability. |
| 3.5 Urban Ecology                                     | Yes            | The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology.   |
| 3.6 Ecologically Sustainable Development              | Yes            | The proposal satisfies BASIX and environmental requirements.   |
| 3.7 Water and Flood Management                        | Yes            | The building is above the flood planning level and stormwater can be adequately managed.   |
| 3.8 Subdivision, Strata Subdivision and Consolidation | Yes            | Conditions are recommended to be imposed on the consent requiring separate approval for strata or stratum subdivision of the building.   |
| 3.9 Heritage  | Not applicable | <p>The subject site is not identified as a heritage item, is not in close proximity to a heritage item and is not located within a heritage conservation area.</p> <p>Council's Heritage Specialist has advised that the demolition of the existing warehouse building is acceptable, subject to a condition of consent requiring a heritage archival recording being carried out prior to demolition.</p>   |

| 3. General Provisions   | Compliance | Comment  |
|---|------------|--|
| <p>3.11 Transport and Parking</p> <p>3.11.12 Tandem, stacked and mechanical parking areas</p> | Yes        | <p>Subject to conditions, the layout of the ground floor parking is capable of complying with Australian Standards.</p> <p>22 bike parking spaces are provided within the basement for the residential apartments and retail employees. This exceeds the minimum requirement of 20. Two visitor bike racks are proposed which complies with the minimum requirement of two.</p> <p>The proposal includes five mechanical car parking stackers to accommodate a total of 10 spaces (two car parking spaces in a vertical stacker). The driveway and aisle widths comply with Australian Standards and will allow for vehicle to exit while there are waiting vehicles. Therefore Council's Transport and Access Unit are satisfied that stacker system will not cause vehicles queueing on to the street. A condition of consent is recommended requiring each individual car stacker to be attached to a single apartment.</p> <p>Overall, it is considered that the proposal subject to conditions, will not result in unreasonable traffic congestion, will promote sustainable transport modes and generally complies with the objectives and provisions contained in Section 3 (Transport and Parking) of SDCP 2012.</p> |
| 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. General Provisions        | Compliance     | Comment  |
|------------------------------|----------------|--|
| 3.14 Waste                   | Yes            | <p>A Waste Management Plan (WMP) accompanied the DA. The WMP is not supported in its current form, however the proposed development is capable of complying the City's 'Policy for Waste Minimisation in New Developments'. Separate waste storage areas are provided for the retail and residential uses.</p> <p>Collection of waste on the site is considered to be difficult due to the width of the site being 16 metres. As a result, collection of waste from the kerb is considered to be acceptable in this case. This is consistent with the approved waste management for recent approvals at 17 and 11-15 Ralph Street which allow for waste collection from the kerb of Beaconsfield Lane.</p> |
| 3.16 Signage and Advertising | Not applicable | The proposed development does not include signage. A condition of consent is recommended development consent to be obtained for future signage where it is not categorised as exempt development.  |

| 4. Development Types  | Compliance | Comment   |
|---|------------|---|
| 4.2 Residential flat, commercial and mixed use developments |            |   |
| 4.2.1 Building height                                       | Yes        | <p>The building height in storeys control applicable to the site is six storeys. The proposed development is six storeys.</p> <p>The site is not subject to a street frontage height control.</p> |

| 4. Development Types<br><br>4.2 Residential flat,<br>commercial and mixed use<br>developments | Compliance | Comment  |
|---|------------|--|
| 4.2.2 Building setbacks   | Yes        | <p>The SDCP 2012 does not identify a specific setback control for the site.</p> <p>No building setback is provided to Ralph Street. This is consistent with the approved development to the adjoining site (17 Ralph Street) and is acceptable in the context of the streetscape.</p> <p>The ground floor setback from Shirley Street varies from nil - 2.2m. The outdoor seating area is considered to adequately activate this area. There is only one other building located on the northern side of Shirley Street (No.576-578 Botany Road) which has a nil setback. The proposed setback from Shirley Street is therefore considered acceptable in this context.</p> <p>A varying setback of approximately 500mm - 1170mm is provided from Beaconsfield Lane, as measured from the new property boundary after the land dedication. This is generally consistent with the approved development of the sites to the north and is acceptable.</p> |
| 4.2.3 Amenity   | Yes        | <p>The proposal will result in an acceptable level of amenity, as detailed further in the ADG compliance table.</p> <p>The proposal complies with the solar access provisions contained in Section 4.2.3.1. Solar access is detailed further in the ADG compliance table.</p>  |

| 4. Development Types<br><br>4.2 Residential flat,<br>commercial and mixed use<br>developments | Compliance | Comment  |
|---|------------|--|
| 4.2.3.11 Acoustic Privacy   | Yes        | <p>The revised acoustic assessment submitted demonstrates that the internal noise criteria can be achieved.</p> <p>The site is not located on a busy road, however is subject to intrusive noise from Botany Road, the Australia Post facility opposite the site on Ralph Street and a martial art gym located directly opposite the site on Beaconsfield Lane.</p> <p>The amended proposal has been carefully sited and designed in response to these noise sources. Bedroom windows do not directly open to the noise sources. The proposal can achieve compliance the minimum noise levels without the need for alternative mechanical natural ventilation.</p> |
| 4.2.3.12 Flexible housing and dwelling mix  | Yes        | The proposal only includes three bedroom apartments, which is consistent with the DCP provisions allowing 100% of dwellings within the development to be three bedroom apartments.   |
| 4.2.4 Fine grain, architectural diversity and articulation                                    | Yes        | The maximum street frontage length of the proposed building is 22.5m which complies. The Shirley Street (south elevation) is broken up by the internal courtyard.  |
| 4.2.6 Waste minimisation  | Yes        | This is addressed in Section 3.14 above.   |
| 4.2.7 Heating and Cooling Infrastructure  | Yes        | Services are centrally located at ground level as required by this provision.  |

| 4. Development Types<br><br>4.2 Residential flat,<br>commercial and mixed use<br>developments | Compliance                 | Comment  |
|---|----------------------------|--|
| 4.2.8 Letterboxes   | Yes - subject to condition | The letterboxes are located within each of the lobbies and are easily identifiable for Australia Post staff. However, the letter boxes are also accessible from the street which is not supported due to concerns raised by the Police with mail theft in the area. A condition of consent is recommended requiring mail boxes to be only accessible within the lobby. |
| 4.2.9 Non-residential development in the B4 Mixed Use zone                                    | Yes                        | The retail tenancy is located on the ground floor with the residential apartments above. A condition of consent is recommended restricting the hours to between 8.00am and 6.00pm Monday to Sunday to prevent any unreasonable potential amenity impacts on the future residents.  |

## Issues

### Clause 4.6 request to vary a development standard - Height of building

47. The site is subject to a maximum height control of 22m pursuant to Clause 4.3 of SLEP 2012. The proposed development has a maximum height of 22.64m resulting in an exceedance of the maximum permitted height by 640mm or 2.9%.
48. The areas of the building subject to the breach include the balustrades associated with the rooftop private terraces and the lift overruns, as shown in Figures 23 - 25.



Figure 23: South (Shirley St) elevation - 22m maximum permitted height line indicated in red

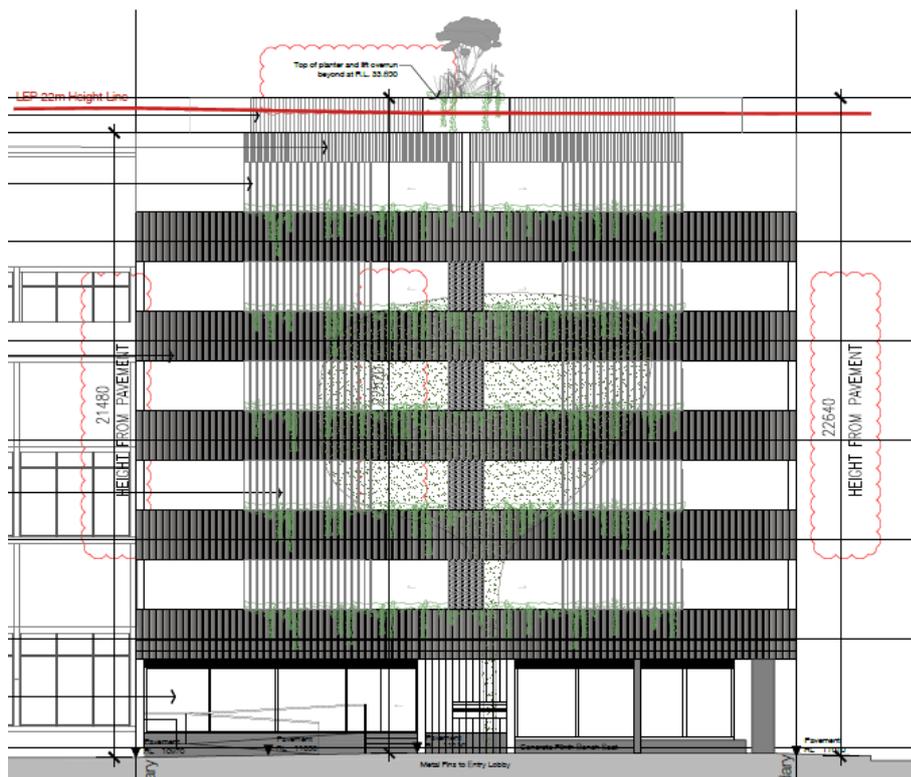
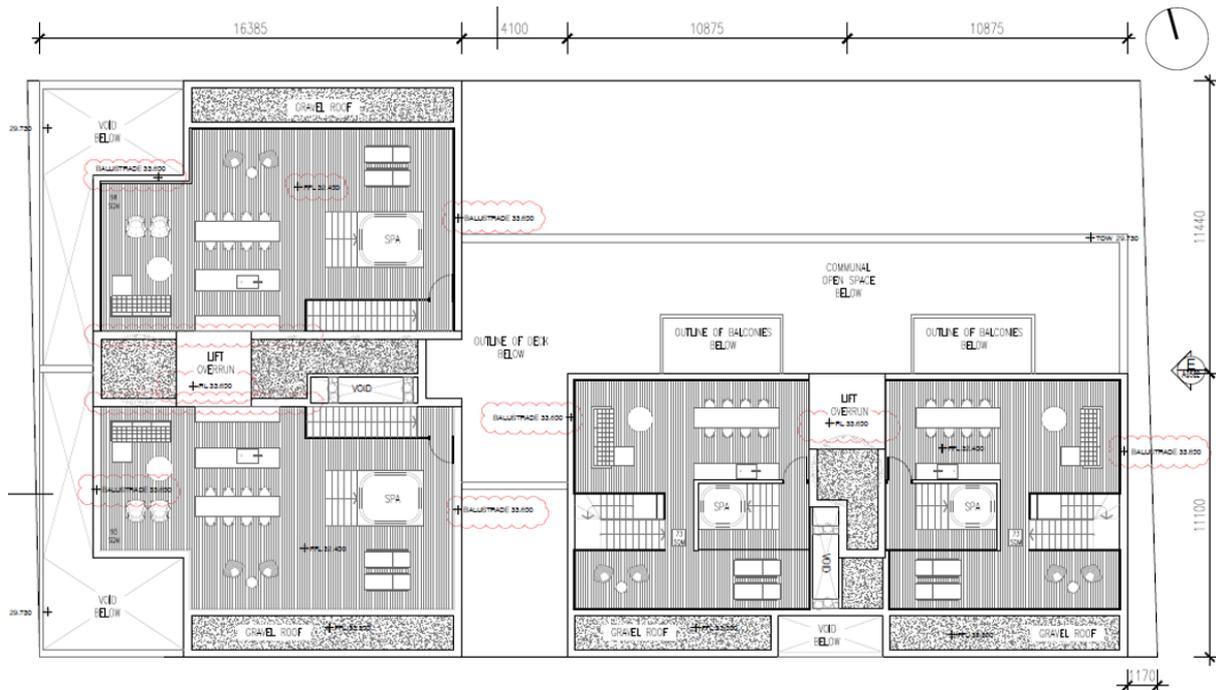


Figure 24: West (Ralph St) elevation - 22m maximum permitted height line indicated in red



**Figure 25:** Roof top plan (private terraces) subject to the breach. The maximum height of the balustrades and lift overruns is 22.64m (RL33.65).

49. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of SLEP 2012 to justify the contravention of the development standard by seeking to demonstrate:
- (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.
50. A copy of the applicant's written request is provided at Attachment F.

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

51. 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 in that the proposal satisfies the following methods established in *Wehbe v Pittwater Council [2007] NSWLEC 827*:
    - (i) the objectives of the height of building development standard are achieved notwithstanding non-compliance with the standard; and
    - (ii) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

Specifically, the applicant states that strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case in that:

- (i) *the basis for the increase in height is to provide roof top open space areas which enjoy solar access;*
  - (ii) *the elements of the development which exceed 22 metres are unlikely to be visible from the public domain because they are setback from the edges of the street wall;*
  - (iii) *a solar analysis prepared by SJB Architects accompanies the subject application and demonstrates that the proposed areas of non-compliance do not result in any meaningful difference compared to a compliant height;*
  - (iv) *there are no unreasonable impacts in terms of overshadowing, views, visual and acoustic privacy impacts to adjacent sites resulting from the proposed variation to the height development standard which would warrant strict compliance;*
  - (v) *the proposed variation allows for the most efficient and economic use of the land;*
  - (vi) *strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties of the general public; and*
  - (vii) *having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.*
- (b) That there are sufficient environmental planning grounds to justify contravening the standard due to the following:
- (i) *The proposed distribution of built form and massing of the building across the site is the result of a considered analysis of the site and surrounding context and the desire to deliver a positive urban design outcome with a high level of architectural merit and residential amenity.*
  - (ii) *The proposed development has been specifically designed as a robust architectural solution for the site which will result in a high quality development that will sit comfortably within the streetscapes of Ralph Street, Shirley Street and Beaconsfield Lane.*
  - (iii) *The scale of the proposed development does not result in any unreasonable impacts on the surrounding properties in terms of loss of solar access, loss of privacy or visual impact. The architectural package includes a solar access analysis which demonstrates that the proposed scale of the development will not unreasonably overshadow development on surrounding properties.*
  - (iv) *The scale of the building will not be perceived as jarring or antipathetic in the existing urban design context of the site and represents a scale which is reasonably contemplated by the planning controls which apply to the site, particularly given the minor nature of the non-compliance.*

- (v) *Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public and in this particular circumstance there are sufficient environmental planning grounds to warrant the proposed variation to the current height control as the proposal will achieve a superior outcome with a higher level of residential amenity within the site and without any significant adverse impact to adjacent sites.*

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

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

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

53. The applicant's written request has adequately addressed Clause 4.6(3)(a) in that they demonstrate that the objectives of the development and zone are achieved notwithstanding non-compliance with the standard, hence the standard is unreasonable or unnecessary.
54. The written request has therefore satisfied methods for establishing a development standard is unreasonable or unnecessary in the circumstance of the case as set out in *Wehbe v Pittwater Council [2007] NSWLEC 827*.

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

55. The applicant adequately addresses that there are sufficient environmental planning grounds to justify contravening the standard. They identify that the component of the building that exceeds the height standard does not result in any adverse amenity impacts to surrounding properties, and that the development meets the objectives of the land use zone and height of building development standard.

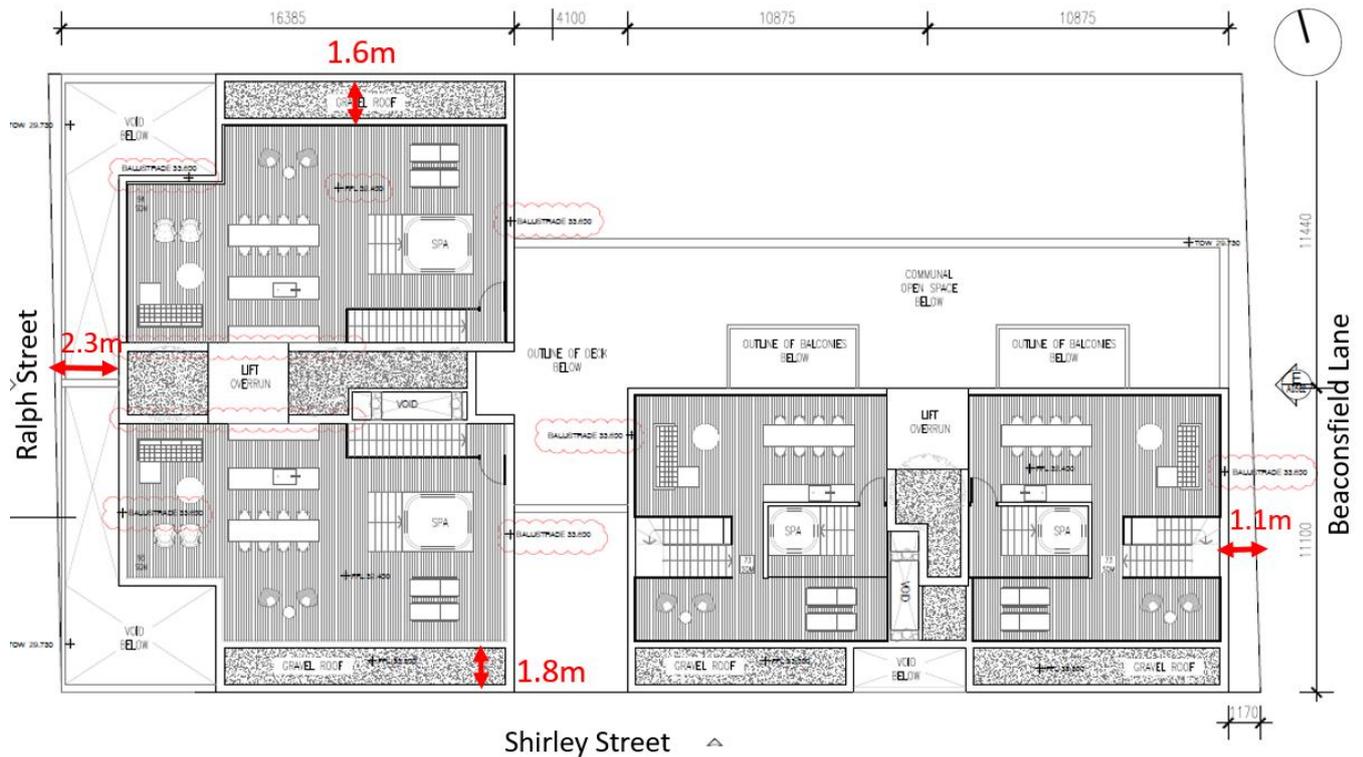
**Is the development in the public interest?**

56. The proposed development is considered to be in the public interest as it is consistent with the objectives of the height of building development standard and objectives of the B4 Mixed Use zone.
57. The objectives of Clause 4.3 (Height of Building) of SLEP 2012 are:
- (a) To ensure the height of development is appropriate to the condition of the site and its context.
  - (b) To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.

- (c) To promote the sharing of views.
  - (d) To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.
58. The proposed development is considered to be consistent with the objectives of Clause 4.3 of SLEP 2012 for the following reasons:
- (a) The proposed height of the building including the areas of non-compliance is commensurate with the built form, scale and height of buildings in the surrounding area.
  - (b) The proposed development is six storeys in height which complies with the SDCP 2012 storeys control and is consistent with the predominant six storey building character within the streetscape.
  - (c) The site is not located within the vicinity of a heritage item, heritage conservation area or special character area.
  - (d) The proposal does not result in view loss of any significant views.
59. The objectives of the B4 Mixed Use zone are:
- (a) To provide a mixture of compatible land uses.
  - (b) To integrate suitable business, office, residential and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
  - (c) To ensure uses support the viability of centres.
60. The proposed development is considered to be consistent with the objectives of the B4 Mixed Use zone for the following reasons:
- (a) The proposed development is a mixed use development comprising a ground floor retail premises and residential apartments above, both of which are compatible on the same site.
  - (b) The proposed development is in close proximity to a number of bus routes on Botany Road, and the development includes adequate bicycle parking to encourage cycling.
  - (c) The components of the building subject to the non-compliance are limited to the balustrades and lift overruns are setback from the outer building edge. Therefore these components of the building do not result adverse environmental planning impacts by way of urban design, streetscape impacts, view loss or overshadowing on surrounding properties.
61. In light of the above, the proposed development is considered to be in the public interest.

### **Conclusion**

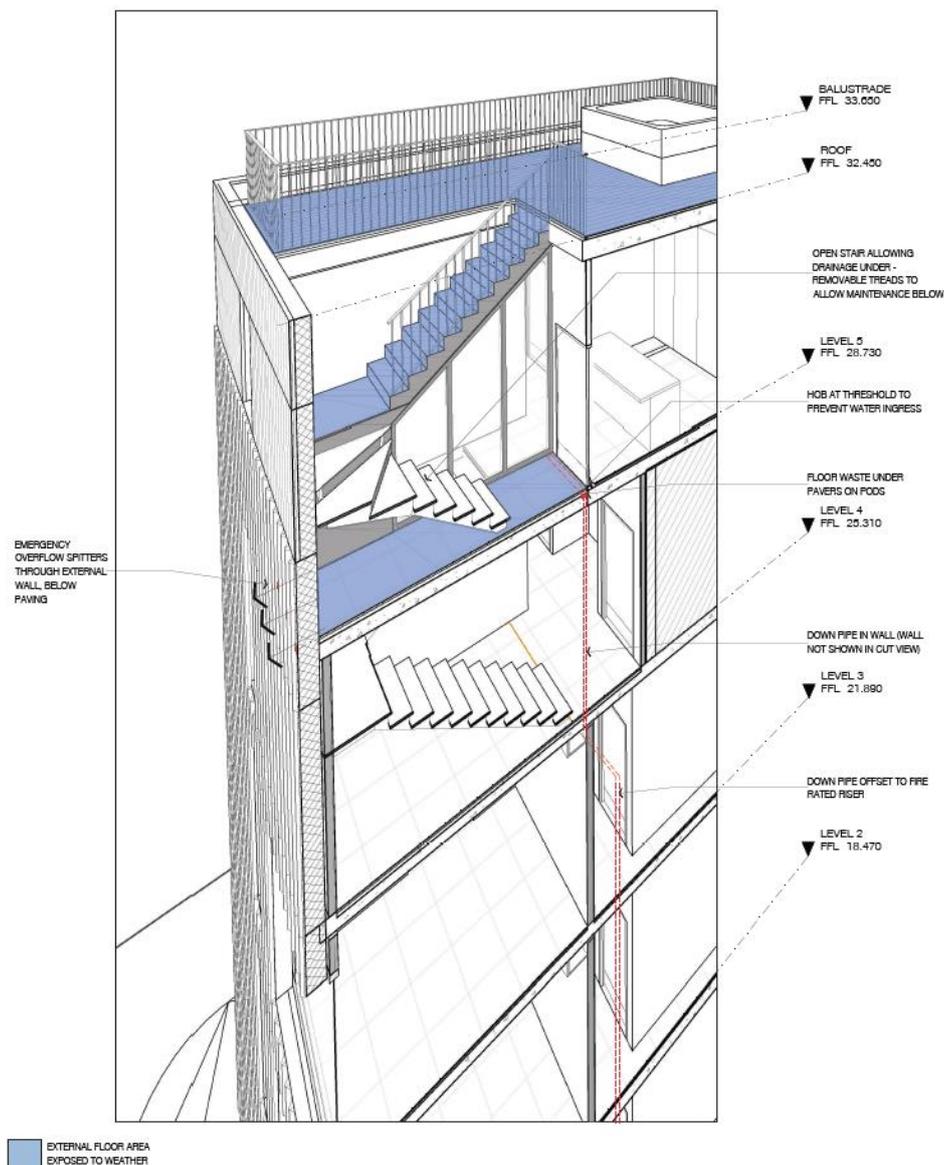
62. The areas of the building subject to the breach of height is limited to the balustrades and lift overruns. The balustrades are setback from the site's boundaries between 1.1m to 2.3m as shown in Figure 26.



**Figure 26:** Roof top plans with setbacks of balustrades from boundaries / street frontages indicated in red

63. It is considered that the balustrades and lift overruns are sufficiently setback from the street frontages so that they will not be overly perceivable from the streetscape or result in unacceptable bulk or scale of the building.
64. Notwithstanding the minor additional height, the proposed building will remain as a six storey building, which is consistent with the height in storeys control. The bulk and scale of the building is commensurate with the surrounding built form, particularly the recent development consents for 6 storey buildings directly to the north of the site.
65. The bulk of the building (parapet) is located approximately 675mm - 1130mm below the maximum permitted height. Therefore no gross floor area is located above the 22m height limit and all measurable FSR is maintained within the maximum height.
66. The areas of the building that exceed the height development standard will not result in any adverse amenity impacts to surrounding properties, particularly solar access and view impacts.
67. The rationale provided in the written request for the additional height is to achieve a very high level of amenity for future occupants through provision of 3.3m floor to ceiling heights and additional open space.
68. In consideration of the above, the proposed built form would not set an undesirable precedent for the locality.

69. For the reasons provided above, the requested variation to the height of building development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of SLEP 2012 and the proposed development would be in the public interest in because it is consistent with the objectives of the height of building development standard and the B4 Mixed Use zone.
70. In the assessment of the proposed building height, Council officers raised concern with likelihood that additional rooftop structures may be required to address privacy between the terraces and weather protection of the stairs leading up from the interior of the apartments to the private roof terraces. Such structures would be sited above the proposed maximum height shown on the plans and as detailed in the Clause 4.6 written request.
71. The applicant provided additional information demonstrating how stormwater will be managed without the need for a canopy structure (or the like) above the open stairs (see Figure 27).



**Figure 27:** Drainage diagram for level 5 apartments and rooftop terraces

72. The individual terraces are separated by planter boxes which are approximately 2.4m wide and 1.4m deep. This will enable planting of sufficient trees and shrubs of a height and density to provide adequate privacy between the rooftop terraces. Therefore, the consent authority can be satisfied that no additional rooftop structures such as privacy screens or canopy structures will be required.
73. It is noted that concern is raised with overlooking from the rooftop terraces to the apartments on the lower levels. This is discussed further at paragraph 81.

### **Building separation**

74. Objectives 2F (building separation) and 3F (visual privacy) requires the following separation distances:

#### *Up to four storeys*

- 12m between habitable rooms / balconies
- 9m between habitable and non-habitable rooms
- 6m between non-habitable rooms

#### *Five to eight storeys*

- 18m between habitable rooms / balconies
- 12m between habitable and non-habitable rooms
- 9m between non-habitable rooms

75. Ideally when assessing the building separation from adjoining development or future development, the separation distance is shared equally between adjoining development sites. Essentially, the required distance is halved and measured to the common shared boundary. Using this rationale the proposed development has been designed to comply with these building separation distances.
76. However, the approved residential flat building at 17 Ralph Street (D/2016/198) has non-compliant setbacks in accordance with the ADG and consequently 'borrows' amenity from the subject site. The building separation distances between the two sites is shown in Figure 28:

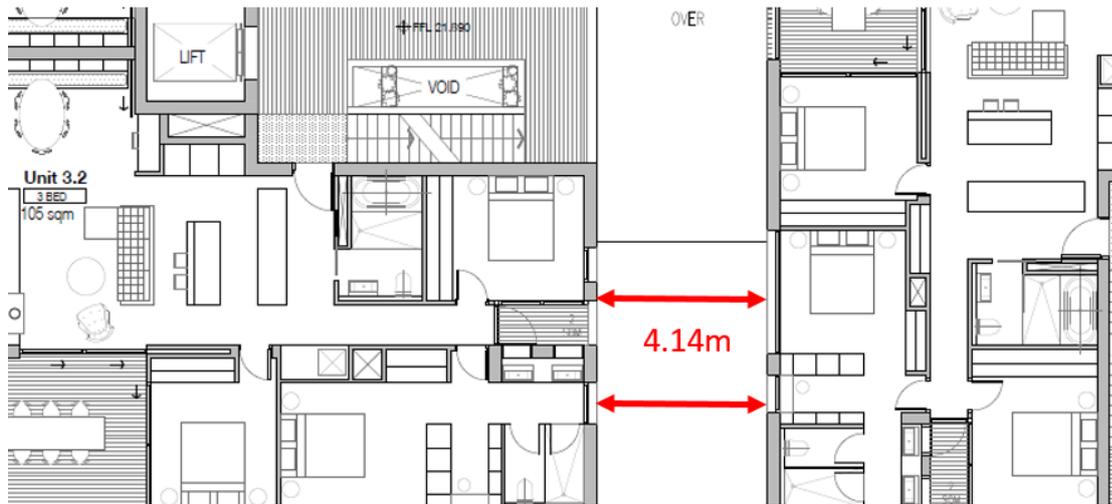


Figure 28: Level 2

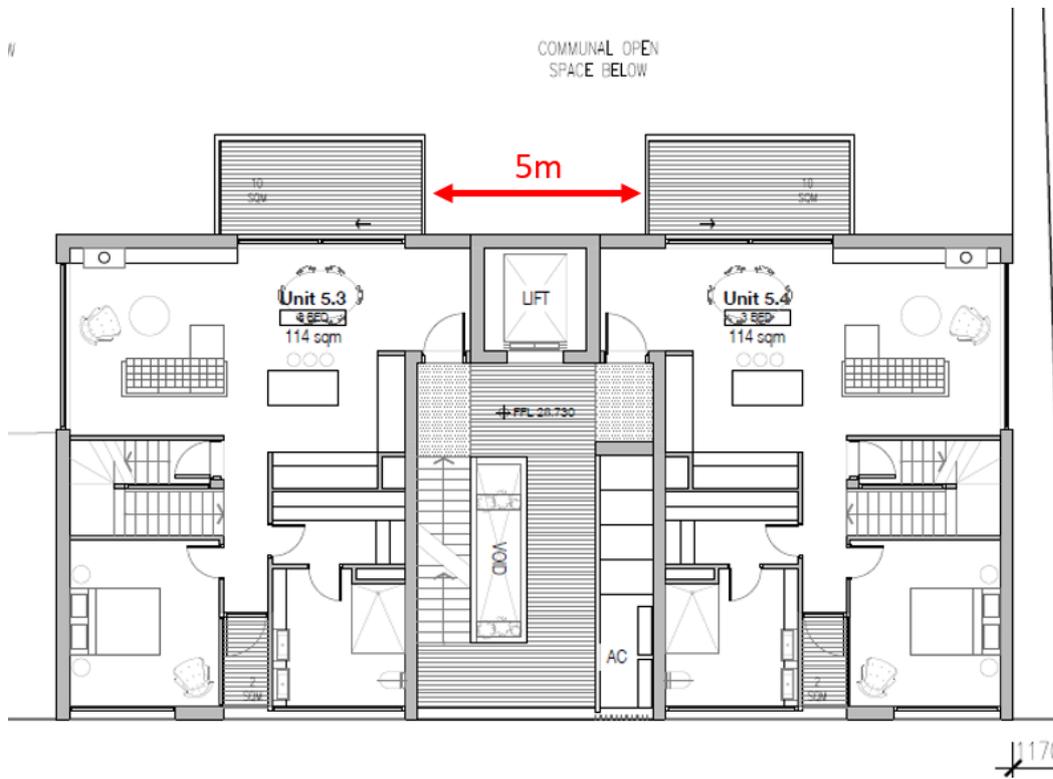
77. Notwithstanding, the proposed development is not considered to result in unreasonable privacy impacts to the approved development at 17 Ralph Street. This is due to the primary outlook of the rear wing apartments being north. There is an open communal corridor running along the south side of these apartments including their living room windows. The open corridor includes louvres which provides additional privacy between the two sites.
78. Given the above, the siting of the proposed development is considered to provide adequate privacy for future residents of the subject site and of 17 Ralph Street, and the non-compliance is supported in this instance.

**Visual Privacy within Development**

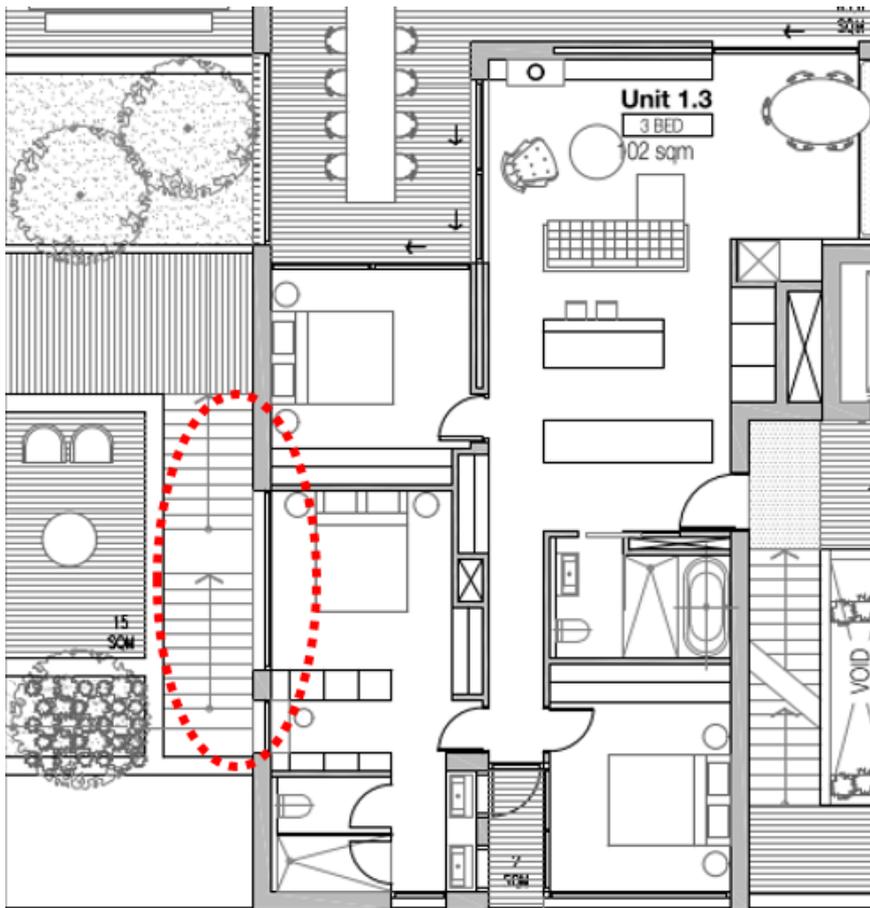
79. A number of habitable windows and balconies result in visual privacy impacts between different apartments which does not comply with Objective 3F of the ADG. These components of the building where concern is raised with privacy are identified in Figures 29 - 32:



**Figure 29:** Typical levels 2 and 3 - visual privacy impact between bedroom windows and between bathroom and walk-in-robe windows.



**Figure 30:** Level 5 - visual privacy impact between balconies. No privacy screen/s are proposed.



**Figure 31:** Level 1 - visual privacy impact from stairs to adjacent bedroom window of apartment number 1.3

80. Conditions of consent are recommended to address these visual privacy issues through provision of privacy screens, raised sill heights and/or obscured glazing where appropriate.
81. In addition, the proposed rooftop terraces will result in direct overlooking of private open space and habitable windows of the apartments on the lower levels. A condition of consent is recommended requiring the provision perimeter planter boxes to prevent direct overlooking. The perimeter planter boxes are also recommended in order to improve the level of amenity for future residents using the terraces.
82. Subject to these conditions, the proposed development is considered to provide an appropriate level of privacy within the site.
  83. The proposed development is not considered to result in unreasonable visual privacy impacts on surrounding properties. Overall, the proposal is considered to satisfy Objective 3F-2 of the ADG.

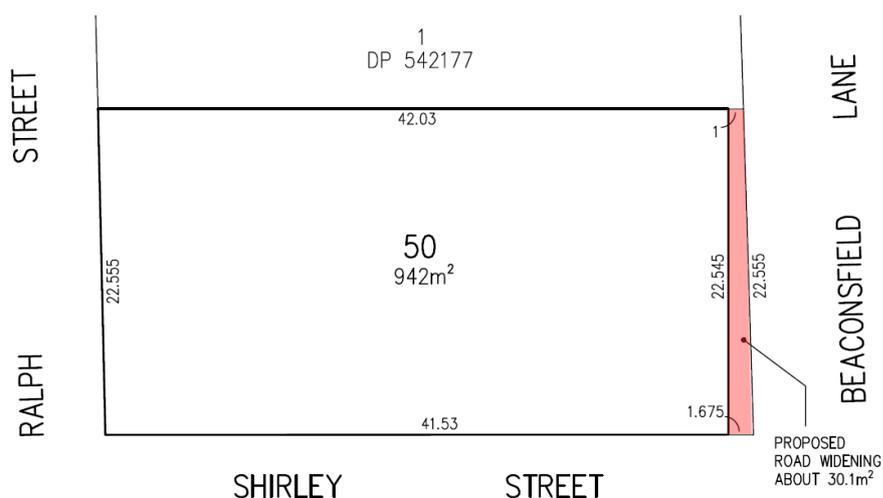
#### **Ground level car parking / Activation of Streetscape**

84. The proposal includes ground level car parking. Section 3.11.14 (parking area design) of SDCP 2012 stipulates that where parking is at ground level, it is to be:
  - (a) located to the rear or side of buildings and not visible from the street and public domain;

- (b) incorporated into the building and screened by other uses; and
  - (c) designed with materials, details, proportions and landscaping to complement the building and adjoining buildings.
85. The proposed car parking is accessible from Beaconsfield Lane, which is considered the most appropriate location for the vehicular access. The car parking is setback and screened along the Shirley Street and Ralph Street frontages. The design of the car parking is appropriately concealed by the enclosing built form.
86. The ground floor retail tenancy with outdoor seating area, and the residential lobbies provide sufficient activation of the streetscape. The ground level building services are appropriately screened with materials which complement and integrate with the facade.
87. The floor to ceiling height of the car parking area is approximately 3.1m. Therefore the proposed floor to ceiling heights will not sterilise potential adaption of this area to an alternative use should this be proposed in the future.
88. Given the above, the proposed ground floor car parking and ground level street interface is considered acceptable.

### Voluntary Planning Agreement

89. A Public Benefit Offer has been submitted to dedicate a strip of land along the Beaconsfield Lane frontage of the site to Council.
90. A draft VPA has been prepared in relation to the proposal which includes the following public benefits:
- (a) dedication to Council land comprising an area of 30.1sqm with a width of 1m - 1.675m located along the Beaconsfield frontage of the site for footpath widening (as indicated in Figure 32 below); and
  - (b) embellishment of the area of land with asphalt finish to the value of \$14,685.50.



**Figure 32:** Land to be dedicated for footpath widening along Beaconsfield Lane

91. It is noted that VPA's have also been prepared and executed for 17 Ralph Street and 11-15 Ralph Street, which are also to dedicate land along Beaconsfield Lane towards footpath widening.
92. The VPA does not result in bonus provisions such as floor space ratio or any offsets to Section 7.11 contributions.
93. The draft VPA was publically exhibited for a period of 28 days between 19 November 2018 and 18 December 2018 and no submissions were received.
94. A deferred commencement consent is recommended requiring the execution of the VPA and registration on title prior to the consent becoming operative.

#### **Other Impacts of the Development**

95. The proposed development is capable of complying with the BCA.
96. 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**

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

#### **Internal Referrals**

98. The application was discussed with the Urban Designer; Landscape Officer; Building Services Unit; Environmental Health; Acoustic Specialist; Public Domain; Surveyors; Transport and Access; Waste Management; who advised that the proposal is acceptable subject to the recommended conditions.
99. The conditions other sections of Council have been included in the recommended conditions of consent.

#### **External Referrals**

##### **Notification, Advertising and Delegation**

100. In accordance with Schedule 1 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 21 days between 1 March 2018 and 23 March 2018. As a result of this notification there was one submission received which raised the following concerns:
  - (a) The development should be five storeys in height which is consistent with the area.

**Response** - The proposed development is six storeys in height which complies with the height in storeys control in the SDCP 2012. While the proposal marginally exceeds the maximum permitted height SLEP 2012 height limit, the part of the building subject to the non-compliance relates to the balustrades and lift overruns only. These building elements are not considered to result in unreasonable impacts on the streetscape or surrounding properties. Further discussion on the height of the building is contained in the 'Issues' section.

- (b) The roof top terraces will result in visual privacy impacts to the residential apartments at 1 Shirley Street.

**Response** - The roof top terraces are located approximately 21.5m from the windows and private open space of the residential apartment at 1 Shirley Street. Objective 3F (visual privacy) of the ADG requires a minimum separation distance of 9m. The proposal therefore complies with this provision and is not considered to result in any unreasonable privacy impacts on surrounding residents, particularly in an urban context.

- (c) Traffic impacts.

**Response** - The proposed development complies with the maximum permitted number of car parking spaces. In addition, the proposal provides more than the required number of bike parking spaces. For these reasons, it is considered that the proposal, subject to conditions, will not result in unreasonable traffic congestion. The proposal generally complies with the objectives and provisions contained in Section 3 (Transport and Parking) of SDCP 2012.

## Public Interest

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

## S7.11 Contribution

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

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

|                           |              |
|---------------------------|--------------|
| (a) Open Space            | \$181,240.59 |
| (b) Community Facilities  | \$38,281.42  |
| (c) Traffic and Transport | -\$5,276.33  |
| (d) Stormwater Drainage   | -\$2,080.53  |
| Total                     | \$212,165.15 |

104. The contribution is calculated based in the proposed number of residential apartments plus the GFA of the retail premises.
105. A credit has been given against the existing use which is best defined as 'light industrial' in accordance with the uses provided in the City of Sydney Development Contributions Plan 2015.

### **Relevant Legislation**

106. Environmental Planning and Assessment Act 1979.

### **Conclusion**

107. The DA seeks consent for the construction of a six storey mixed use development comprising 18 residential apartments, ground floor retail tenancy and ground level car parking.
108. A written request has been submitted under Clause 4.6 of SLEP 2012 to vary the height of building development standard by 640mm or 2.9%. The written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives of the land use zone and height of building development standard. The proposed variation to the development standard has merit and is supported in this instance.
109. Subject to conditions, the proposed development is generally compliant with the relevant planning controls contained in SEPP 65, the ADG, SLEP 2012 and SDCP 2012.
110. A high level of amenity will be provided for future occupants and the proposal will provide a positive contribution to the public domain. The proposed design and external materials and finishes are of a high standard and consistent with the character of the area. The proposal satisfies the design excellence criteria contained in Clause 6.21 of SLEP 2012.
111. The proposed dedication of land for footpath widening of Beaconsfield Lane as detailed in the draft VPA provides the opportunity to improve the public domain and improves safety and accessibility along Beaconsfield Lane.
112. The development is recommended for deferred commencement approval, subject to the recommended conditions in Attachment A.

### **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Tahlia Alexander, Planner