

Item 7.**Development Application: 117-119 Foveaux Street, Surry Hills****File No.:** D/2018/761**Summary**

Date of Submission:	6 July 2018 (Amended plans received 7 November 2018, 4 February 2019 and 4 June 2019)
Applicant/Architect:	Bureau SRH Pty Ltd
Developer/Owner:	Foveaux Surry Hills Pty Ltd
Cost of Works:	\$2,687,676
Zoning:	B4 - Mixed Use. The proposed mixed use residential and retail development is permissible with consent.
Proposal Summary:	<p>The application proposes partial demolition, adaptive reuse of existing terraces with accompanying alterations and additions and construction of a residential apartment building to the rear of the site. Two retail premises would be located on the ground floor of the terraces, one apartment located on the first floor and attic of the terraces and three within the apartment building to the rear.</p> <p>The development has been amended during the course of assessment including a reduction in the height of the development, reduction in the number of apartments from five to four and increase the upper level setbacks fronting Sophia Lane at the rear.</p> <p>The development exceeds the maximum 15 metre height of buildings development standard by 2.1 metres (14%). A request to vary the standard in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 has been submitted, demonstrating that compliance with the standard is unreasonable and unnecessary having regard to the objectives of the height of buildings development standard and that there are sufficient environmental planning grounds to justify the variation. The statement has adequately addressed the provisions of the clause and demonstrated that the variation is in the public interest.</p>

**Proposal Summary
(continued):**

The development as amended complies with the maximum permitted floor space ratio of 2.5:1.

The development has been assessed with regard to the design quality principles of the State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide. The development generally meets the design criteria of the relevant objectives, with the exception of the provision of deep soil and communal open space. Sufficient landscaping and private open space is provided to mitigate non-compliance and meets the design guidance of the relevant objectives.

The upper level setbacks have been introduced to the rear of the building to provide a transition in height to the adjoining terraces on Sophia Lane. The extent of overshadowing caused by the development on 70 and 72 Sophia Street is acceptable having regard to the built form controls for the sites, the modifications undertaken to those properties and the degree to which the building has been modified to reduce overshadowing and maintain solar access to habitable room windows during midwinter. Therefore while the development does not comply with Section 4.2.3.1 of the Sydney Development Control Plan 2012, it is acceptable in this context.

The development as amended achieves design excellence having regard to the form and scale of the apartment building, its relationship to the streetscape and neighbouring buildings, the provision of landscaping and consideration of neighbour's amenity.

The application was notified and advertised for 28 days and received four objections. The application was re-notified for 14 days following the first submission of amended plans and received three submissions. The submissions raised the following concerns:

- non-compliance with the height standard;
- overshadowing;
- noise;
- loss of sky views;
- privacy;
- heritage;
- water pressure; and
- the concerns are addressed within the report.

The development is therefore recommended for approval.

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

Development Controls:

- (i) State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development
- (ii) Apartment Design Guide 2015
- (iii) State Environmental Planning Policy 55 - Remediation of Land
- (iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012
- (viii) City of Sydney Development Contributions Plan 2015

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Solar Access Diagrams
- D. Clause 4.6 Variation Request

Recommendation

It is resolved that:

- (A) The written request seeking a variation to Clause 4.3 'height of buildings' development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported in this instance.
- (B) Consent be granted to Development Application No. D/2018/761 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 development is permissible in the B4 – Mixed Use zone and consistent with the zone objectives.
- (B) The requested variation to the height of buildings development standard is upheld because the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings development standard and the B4 - Mixed Use zone.
- (C) The development as amended achieves design excellence having regard to the form and scale of the apartment building, its relationship to the streetscape and neighbouring buildings, the provision of landscaping and consideration of neighbour's amenity.
- (D) The development will have an acceptable impact on the character and appearance on the Little Riley Street conservation area (C65) in accordance with Clause 5.10 of the Sydney Local Environmental Plan 2012 and Section 3.9 of the Sydney Development Control Plan 2012.
- (E) The development addresses the design quality principles of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide, providing a good standard of amenity for residents and protecting the character and amenity of the surrounding area.
- (F) The extent of overshadowing caused by the proposal has been reduced through amendments during the assessment of the application and meets Objective 3B-2 of the Apartment Design Guide. Non-compliance with overshadowing controls under Section 4.2.3.1 of the Sydney Development Control Plan 2012 are acceptable in accordance with Section 1.1.
- (G) For the reasons above, the development is in the public interest.

Background

The Site and Surrounding Development

1. Site visits were carried out by staff on 23 July and 6 August 2018.
2. The site, legally known as Lot A DP 436160, is located on the south side of Foveaux Street with a secondary frontage to Sophia Lane at the rear. The site area is 224.4sqm and slopes from Sophia Lane to Foveaux Street and from east to west.
3. Two Victorian terrace buildings fronting Foveaux Street with an attached garage to the rear occupy the site and contain two retail units at ground floor and one residential unit above. The site is not a heritage item and does not contain any significant vegetation.
4. The surrounding area, forming part of the Little Riley Street conservation area (C65), is characterised by a mix of terraces to south, apartment buildings adjoining the east and west and commercial towers opposite. Foveaux Street is a one way thoroughfare and secondary commercial strip within Surry Hills.
5. Photos of the site and surrounds are provided below:

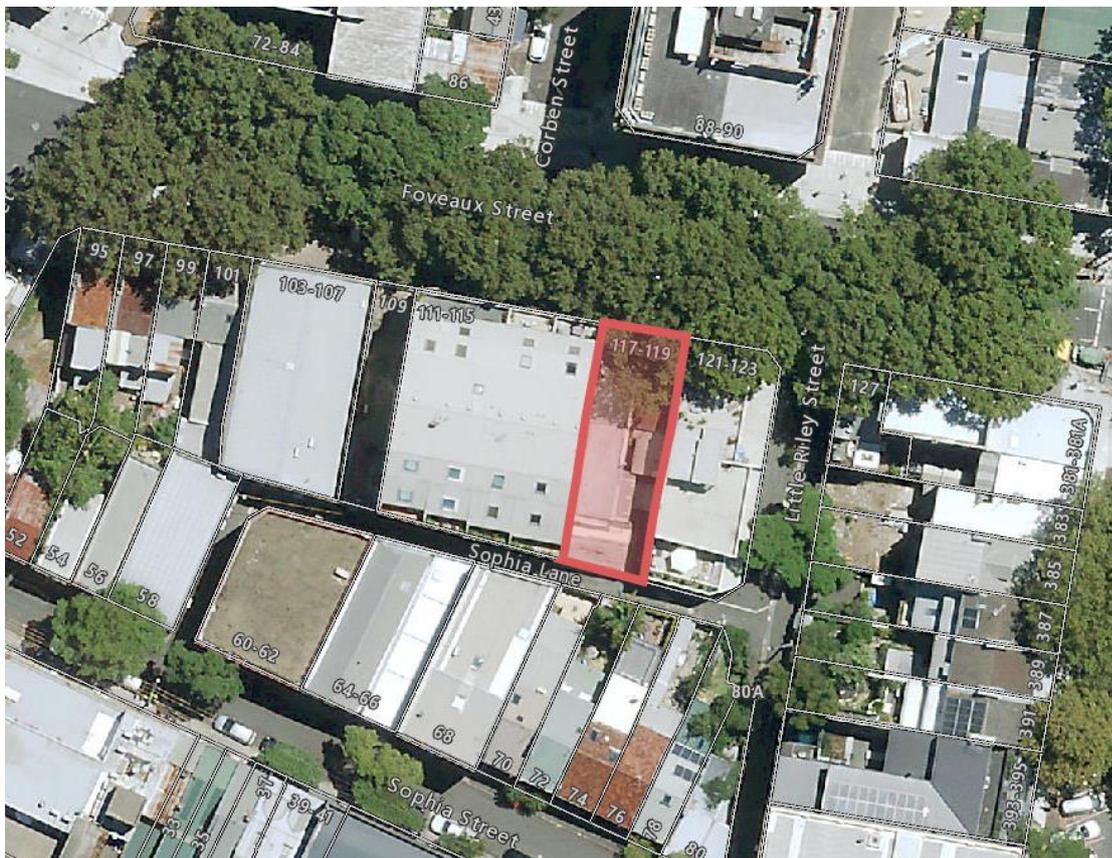


Figure 1: Aerial image of subject site in red and surrounding area



Figure 2: Site viewed from Foveaux Street



Figure 3: Site viewed from Sophia Lane



Figure 4: The rear elevation of the terrace



Figure 5: The view looking west on Sophia Lane

Proposal

6. Consent is sought for alterations and additions to the terrace buildings and construction of a four storey apartment building with basement to the rear of the site. Four apartments and two retail tenancies will occupy the site.
7. The terrace buildings will accommodate two retail tenancies and a two bedroom apartment above. Dormer windows will be constructed within the front roof plane with internal alterations to accommodate the proposed uses.
8. The apartment building at the rear will accommodate services, storage and the residential lobby (accessed from Foveaux Street through the terrace at no. 119 Foveaux Street). Three apartments will be located above, with secondary access provided from Sophia Lane.
9. The overall building height is 17.1 metres (measured to the height of the parapet of the apartment building at the northwest corner). The gross floor area of the building is 561sqm (the accompanying gross floor area plans incorrectly exclude internal, non-common stairs).
10. The materials schedule accompanying the application proposes constructing the apartment building with off-form concrete and charcoal aluminium doors, window frames and screens.



Figure 6: A photomontage of the Foveaux Street frontage



Figure 7: A photomontage of the rear elevation on Sophia Lane

History Relevant to the Development Application

11. The application was amended during the assessment of the application in response to concerns raised by Council staff. The primary modifications are highlighted below:
 - (a) the height of the apartment building has been reduced from 18.2 metres to 17.1 metres;
 - (b) the number of apartments has been reduced from five to four;
 - (c) the bulk fronting Sophia Lane has been reduced creating a stepped appearance; and
 - (d) removal of communal open space.
12. The form of the building as originally proposed is illustrated below:

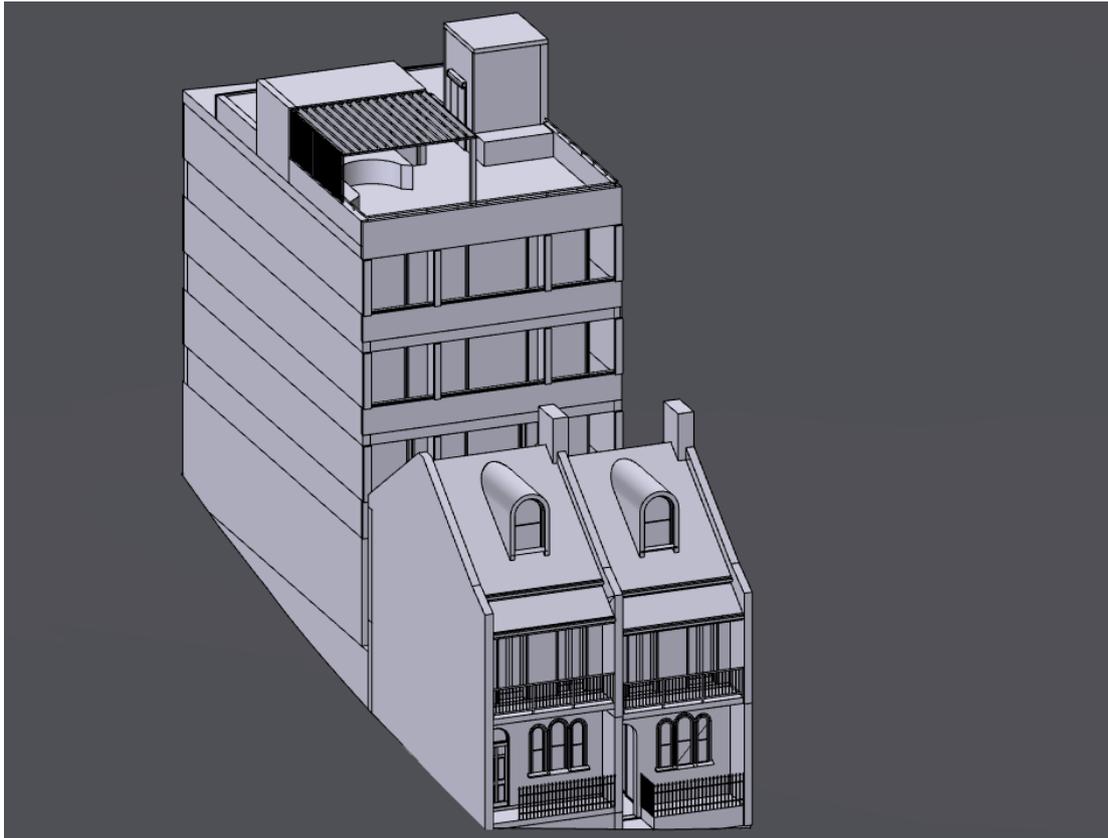


Figure 8: A front view of the development as originally proposed (an extract from the original CAD model)

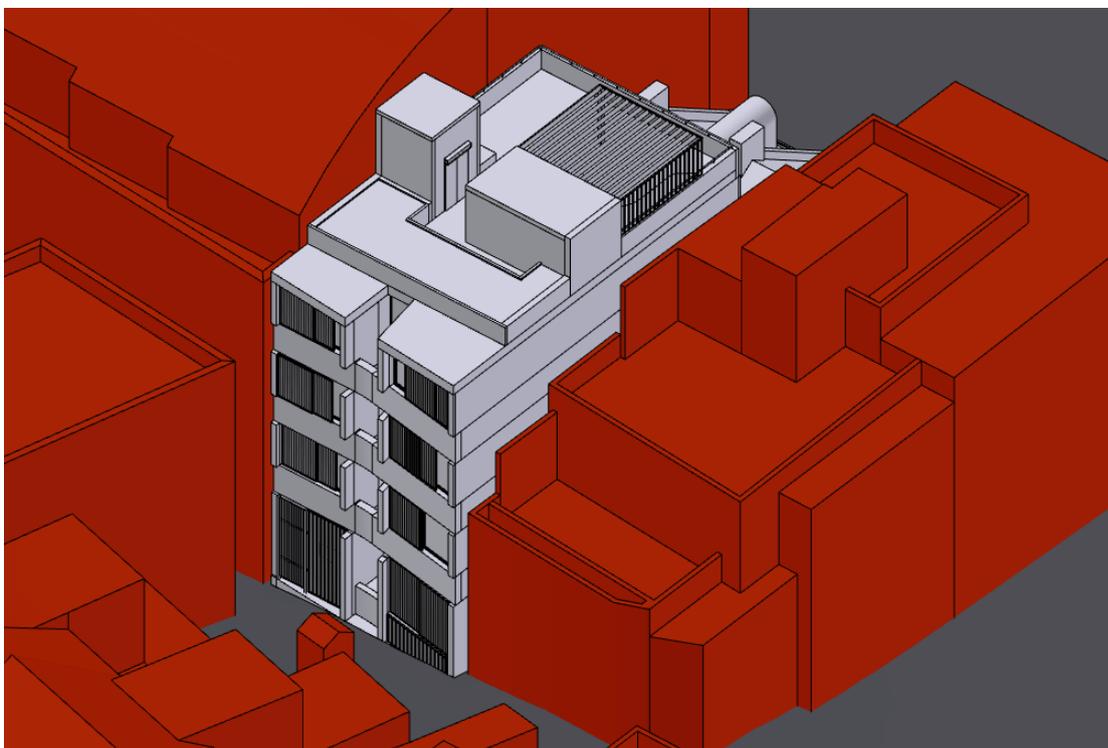


Figure 9: A view of the rear of the development as originally proposed (an extract from the original CAD model)

121-123 Foveaux Street

13. On 26 June 2002, deferred commencement consent U01/01069 was granted by South Sydney City Council for demolition of two terrace houses and the construction of a building containing six flats and two shops.

74 Sophia Street

14. On 13 March 2014, development consent D/2013/1769 was granted for alterations and additions to including the construction of a two storey rear addition.

70 Sophia Street

15. On 19 October 2009, development consent D/2009/1177 was granted for a two storey rear addition, three rear roof skylights, new front ground verandah and first floor balcony balustrade, new landscaped rear courtyard and brick boundary wall to Sophia Lane.
16. On 28 November 2017, development consent D/2017/1306 was granted for a rear roof extension to the dwelling.

Economic/Social/Environmental Impacts

17. 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 55 - Remediation of Land

18. 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.
19. An archival search of the site's history does not reveal a risk of contamination. As the existing uses on site include residential, there is no requirement for a preliminary site investigation in accordance with Clause 7.
20. Council's Environmental Health officer has raised no objections to the proposal with regard to the SEPP. As such the site is considered to be suitable for the proposed development and satisfies the provisions of the SEPP.

State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development

21. SEPP 65 provides that in determining an application for a residential apartment 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. These principles are addressed below.
22. A Design Verification Statement by registered architect Simon Hanson (#6739) has been submitted, demonstrating consideration of the design quality principles for residential development under Schedule 1 of the SEPP 65 and the objectives of Parts 3 and 4 of the Apartment Design Guide.

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

The site is located within the Little Riley Street conservation area (C65) and the Surry Hills Central locality, a description of which is provided below - see discussion under Section 2.11.7 of the Sydney DCP 2012. Foveaux Street contains an eclectic range of built forms, with terraces adjoining residential apartment buildings, pubs, warehouses and office buildings. The existing terraces are identified as contributory items to the conservation area, and their retention and adaptive reuse is supported. Immediately adjoining the site are two residential apartment buildings.

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

The development, as amended, has reduced the height and bulk of the apartment building, resulting in a stepped appearance at the rear which provides a transition to the terraces on Sophia Lane. Sufficient separation is provided between the rear of the terraces and the apartment building so as to conserve their setting and contribution to the streetscape.

The development is of an appropriate scale having regard to the controls for the site and the height and prominence of the residential apartment buildings immediately adjoining.

(c) **Principle 3: Density**

The development complies with the maximum floor space ratio for the site and provides sufficient amenity for the four apartments proposed.

(d) **Principle 4: Sustainability**

Amended BASIX certificates have been submitted demonstrating a commitment to reducing energy and water consumption. A condition of consent is recommended requiring a demolition, excavation and construction waste management plan to be submitted prior to the issue of a construction certificate.

(e) **Principle 5: Landscape**

A condition of consent is recommended requiring the landscaping to the rear to comply with the City's Landscape Code to ensure sufficient soil depth and profile is provided to support the tree and planter boxes.

(f) **Principle 6: Amenity**

As discussed in the table below, the development as amended provides a good standard of amenity with regard to the objectives of the Apartment Design Guide.

(g) **Principle 7: Safety**

The development provides passive surveillance of the public domain. Subject to conditions of consent separating the retail premises from the residential lobby and for the hit-and-miss brickwork to be designed to deter climbing, the development will provide adequate safety for residents.

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

A mix of apartment type and sizes are provided.

(i) **Principle 9: Aesthetics**

The building has a simple form to provide the best amenity possible for the apartments, with recessive materials so as not to detract from the character and appearance of the terraces.

23. 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. As shown in the table below, the development satisfactorily addresses the objectives of the Apartment Design Guide.

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	The buildings have a maximum depth of 13 metres.

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 	Partial compliance	The apartment building is setback 1.5 metres from the rear of the contributory terraces. While non-compliant, the building separation provided is a result of the retention of a contributory item and it achieves the objective of this control, resulting in an acceptable level of amenity being achieved.
No building separation is necessary where building types incorporate blank party walls	Partial compliance	

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during midwinter	Partial compliance	The development will overshadow terrace dwellings to the south on Sophia Lane. Further discussion is provided under the Issues heading.
Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%	Partial compliance	

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	Communal open space has not been provided having regard to the small lot size and constraints of adjoining development, that is, potential privacy impacts from the communal open space being located on the roof.
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).	No	

The development only accommodates four apartments and is suitably located within walking distance of public parks at Shannon Reserve and Frog Hollow Reserve. The apartments are provided private open space exceeding the minimum requirements as recommended under the design guidance where common open space is not provided. Non-compliance is therefore considered reasonable in this instance.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	No	The site is constrained by the small lot size, retention of the existing terraces to the front and location of services in the basement. Conditions of consent are recommended to manage stormwater and ensure the success of the proposed tree planting.

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
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	Partial compliance	Sufficient visual separation is provided between windows within the proposed development and neighbouring properties. An external privacy screen has been provided to the courtyard window of unit 3 to mitigate overlooking of unit 2, and privacy screens have been erected to the private open space of unit 4 to mitigate overlooking of 121-123 Foveaux Street
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Partial compliance	

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	Three of four apartments receive at least two hours solar access to living rooms and balconies during midwinter.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All apartments receive some sunlight during midwinter.
Design incorporates shading and glare control, particularly for warmer months	Partial compliance	The plans provide sun shades to the upper level apartment. A condition of consent is recommended requiring similar sun shades to the north facing windows of apartments 2 and 3.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are provided windows on external elevations.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	Three of four apartments achieve natural cross ventilation.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	All apartments are less than 18 metres deep.

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	All habitable rooms, with the exception of the attic within the terrace, are provided floor to ceiling heights of 2.7 metres.
Non-habitable rooms: 2.4m	Yes	All non-habitable rooms are provided a ceiling height of at least 2.4 metres.
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 second storey of apartment 4 is provided a floor to ceiling height of 2.7 metres.
Attic spaces – 1.8m at edge of room with a 30 degree minimum ceiling slope	Yes	The attic (unit 1) is designed with sufficient floor area and ceiling heights.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Yes	The proposed floor to ceiling height of the retail premises is 3.2 metres. This minor non-compliance is acceptable with regards to protecting the contributory status of the terraces.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	<p>Apartment 1 – Two bedrooms (two bathrooms) 95.15sqm</p> <p>Apartment 2 – One bedrooms 70.1sqm</p> <p>Apartment 3 – One bedroom 55sqm</p> <p>Apartment 4 – Two bedrooms (two bathrooms) 104sqm</p>
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	All habitable rooms are provided windows in external walls with compliant openable areas.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	Habitable room depths do not exceed more than 8 metres and comply with the recommended ratio.
8m maximum depth for open plan layouts.	Yes	
<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	Dimensions have been illustrated on the proposed plans demonstrating bedrooms and living rooms comply with the minimum recommended areas and dimensions.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	

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> <p>Two bed apartments are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	Yes	The development has been amended to provide compliant balcony sizes with good solar access for all apartments.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The development accommodates four apartments.
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	Windows are separated from the adjoining external stair by a fin wall.
Daylight and natural ventilation are provided to all common circulation spaces.	Partial compliance	A skylight is provided to the residential lobby within the basement of the apartment building, however no natural ventilation is provided (except for when people are entering and exiting the building). This minor non-compliance will not adversely impact the amenity of the apartment building and is deemed acceptable.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Studio: 4m3 • 1 bed: 6m3 • 2 bed: 8m3 • 3 bed: 10m3 <p>(Minimum 50% storage area located within unit)</p>	Yes	Storage diagrams accompany the amended plans demonstrating sufficient storage provided within the apartments and basement.

4J Noise and Pollution	Compliance	Comment
<p>Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?</p>	Yes	<p>The site is not located on a busy road (defined as having less than 40,000 vehicles a day), within close proximity to late night trading premises or industry. As such the site is not acoustically impacted.</p> <p>However, insufficient information has been provided regarding the impact of A/C units (located at various points within the development) on the acoustic privacy of apartments. As discussed with regard to Section 4.2.7, A/C units are required to be located within the basement.</p>

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

24. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
25. 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.

26. 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

27. A revised BASIX Certificate has been submitted during the assessment of the application.
28. 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 Local Environmental Plan 2012

29. The site is located within the B4 - Mixed Use zone. The mixed use development proposes retail premises and four apartments as shop top housing which is permissible with consent.
30. 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	The site is permitted a maximum building height of 15 metres.
4.6 Exceptions to development standards	Yes	<p>The amended building height will be up to 17.1 metres above ground level (existing).</p> <p>The applicant has submitted a revised request to vary Clause 4.3, the height of buildings development standard. The variation to the standard is acceptable and supported.</p> <p>Further discussion is provided under the Issues heading.</p>
4.4 Floor Space Ratio	Yes	<p>The site is permitted a maximum floor space ratio of 2.5:1.</p> <p>The proposed building as amended has a floor space ratio of 2.5:1.</p>

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site, while not a heritage item, is located within the Little Riley Street conservation area (C65). A heritage impact statement accompanied the application.</p> <p>Further discussion is provided with regard to Section 3.9 of the Sydney DCP 2012. See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.21 Design excellence	Yes	<p>The development as amended provides an appropriate transition in scale relative to the maximum height and floor space controls and the character and scale of adjoining buildings. In particular, the building transitions in scale from the taller buildings on Foveaux Street to the terrace dwellings on Sophia Street to the rear. As discussed under the issues heading, the development enhances the character and appearance of the terraces, while the apartment building has an acceptably neutral impact on the conservation area.</p> <p>Appropriate landscaping is provided on the building and at the rear, softening the building's presentation to the public domain. Sufficient consideration has been given to the amenity of the surrounding area and for occupants of the building. The development also complies with BASIX to reduce water and energy consumption.</p> <p>As such the development achieves design excellence.</p>

Part 7 Local Provisions - General	Compliance	Comment
7.15 Flood planning	Yes	<p>The site is affected by overland flows on Sophia Lane during flood events.</p> <p>An amended flood statement has been submitted and demonstrates that the flood planning levels comply with the City's Interim Floodplain Management Plan. Council's Public Domain team have recommended conditions of consent.</p>

Sydney Development Control Plan 2012

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

2.11.7 Surry Hills Central Locality

The subject site is located in the Surry Hills Central locality. The area incorporates the main retail centre of Surry Hills, with active frontages to be maintained on Foveaux Street. The heritage character, in particular late Victorian terraces and warehouse style outlets, is to be maintained, with new development to respond to their scales.

The development as amended retains the existing Victorian terraces with the form of the dormer windows and internal alterations having an acceptable heritage impact. The apartment building to the rear is of an appropriate scale having regard to the primary built form controls for the site and the relationship with surrounding development. Subject to conditions discussed further in the report, the development is compatible with the character and principles of the Surry Hills Central locality.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	<p>The Foveaux Street frontage is identified on the active frontages map. The proposed retail uses are consistent with the active frontages control.</p>

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	<p>A tree is proposed at the rear fronting Sophia Lane. Concern is raised that the southern orientation and insufficient soil depth (with regard to the City's Landscape Code) will not support a tree in this location.</p> <p>A condition of consent is recommended requiring 1000mm of soil depth to be provided to accommodate a tree, the species of which is to be determined prior to the issue of any Construction Certificate.</p>
3.6 Ecologically Sustainable Development	Yes	<p>Amended BASIX certificates have been submitted and satisfy the relevant requirements. A condition of consent is recommended requiring the Principal Certifier to ensure the measures listed in the certificates are undertaken.</p>
3.7 Water and Flood Management	Yes	<p>A condition of consent is recommended regarding connecting the site to the City's stormwater drainage system.</p> <p>The floor levels have been designed to mitigate flooding and comply with the City's Interim Floodplain Management Plan.</p>

3. General Provisions	Compliance	Comment
3.9 Heritage	Yes	<p>The site, while not a heritage item, is located within the Little Riley Street conservation area (C65). The terrace buildings are identified as contributory items within the conservation area. A heritage impact statement accompanied the application.</p> <p>The apartment building as amended is sufficiently setback from the terraces to provide adequate visual separation, with the stepped form at the rear ensuring an appropriate transition to the lane and adjacent terrace dwellings.</p> <p>The amended plans identify the location of services to the front setback and are acceptable. Further information is to be provided regarding the fire separation works to the front of the balconies. A condition is recommended requiring the front dormers to comply with the provisions of Section 4.1.5.4. A materials sample board is also required to be submitted prior to the issue of any Construction Certificate.</p>
3.11 Transport and Parking	Yes	A condition of consent is recommended requiring the provision of four class 2 bike spaces within the basement for residents.
3.12 Accessible Design	Yes	Conditions of consent are recommended requiring the development to comply with relevant DDA legislation.

3. General Provisions	Compliance	Comment
3.13 Social and Environmental Responsibilities	Yes	<p>An assessment with regard to the provisions of CPTED was submitted during the assessment of the application.</p> <p>While the development as amended improves passive surveillance of Sophia Lane, a condition of consent is recommended to address the following:</p> <ul style="list-style-type: none"> • The hit-and-miss brickwork provides a means to climb the rear of the building. A minimum two metres separation is to be provided between the top of the hit-and-miss brickwork at ground level and the bottom of the hit-and-miss brickwork at first floor level. • The ground floor retail units are to be consolidated and access restricted to the existing entrance to no. 117 Foveaux Street. Access from the retail unit into the residential lobby shall not be permitted.
3.14 Waste	Yes	<p>A condition of consent is recommended requiring the bin store and bulk waste area to be relocated to an area in front of the residential lobby. Access to the residential waste room is to be separate from the commercial waste room. The internal layout of the lobby and back of the retail tenancies will require amendments.</p>

4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	Yes	<p>The site is permitted a maximum building height of four storeys.</p> <p>The proposed apartment building to the rear is four storeys and acceptable.</p>

4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.2 Building setbacks	Yes	<p>The proposal as amended provides a 1.5 metre separation between the apartment and terrace buildings, and a stepped form at the rear compatible with the adjoining apartment building at no. 121-123 Foveaux Street.</p> <p>The setbacks are sufficient with regard to the character and significance of the Little Riley Street conservation area (C65), providing a transition in scale between the taller buildings on Foveaux Street and the terrace houses to the south.</p> <p>Furthermore the stepped form to the rear enables the retention of sufficient solar access to neighbouring properties to the south. Further discussion is provided under the Issues heading.</p>
4.2.3.1 Solar access	No	<p>The development is required to maintain a minimum two hours solar access to living rooms and private open spaces of neighbouring properties, measured between 9am and 3pm during midwinter.</p> <p>The development has been modified to reduce overshadowing impacts to neighbouring properties, however private open spaces and some living areas will not receive the minimum recommended solar access.</p> <p>Further discussion is provided under the Issues heading.</p>
4.2.3.4 Design features to manage solar access	Yes	<p>The plans provide sun shades to the upper level apartment. A condition of consent is recommended requiring similar sun shades to the north facing windows of apartments 2 and 3.</p>
4.2.3.5 Landscape	Partial compliance	<p>A landscape plan is recommended requiring details of the planters and 1000mm of soil depth to be provided to accommodate a tree, the species of which is to be determined prior to the issue of any Construction Certificate.</p>

4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.7 Heating and Cooling Infrastructure	Yes	<p>The application proposes individual A/C units to apartments, with units located on balconies and in the rear courtyard.</p> <p>While the control regards large residential developments, it is accepted that centrally located services, preferably in the basement, are more efficient than individual and dispersed systems. It also improves the presentation of the development.</p> <p>The proposed A/C units will be visible from the public domain and potentially cause acoustic impacts. A condition is recommended requiring the A/C units to be consolidated in a central area within or adjacent to the basement.</p>
4.2.8 Letterboxes	Yes	The letterboxes are located adjacent to the entrance and are acceptable.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>The application proposes to retain retail uses at the ground floor of the terraces. The existing trading hours, from 9am-7pm Monday to Friday, 9am-2pm Saturday and 9am-5pm Sunday will be retained. It is anticipated that a Complying Development application will be lodged for fit-out of the consolidated retail tenancy.</p> <p>Conditions of consent are recommended to regulate the trading hours and noise.</p>

Issues

Clause 4.6 request to vary a development standard

32. The site is subject to a maximum height control of 15 metres. The proposed development has a height of 17.1 metres (14% over) as shown in the figures below.

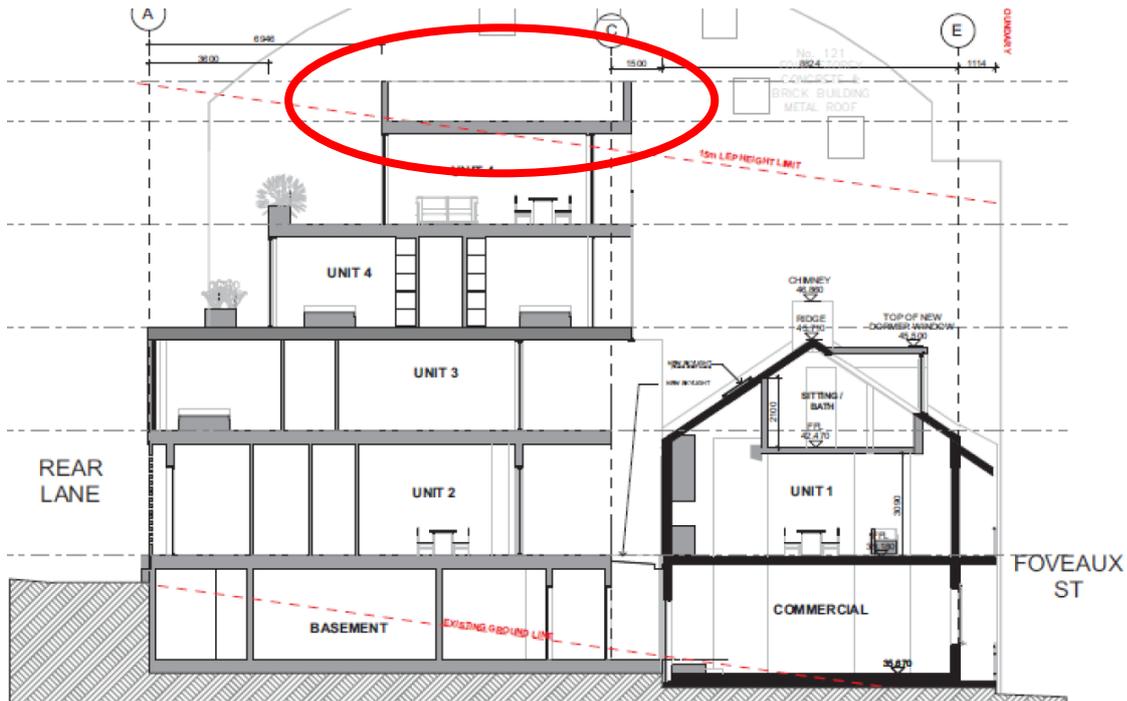


Figure 10: Section CC showing the extent of the non-compliance, circled in red

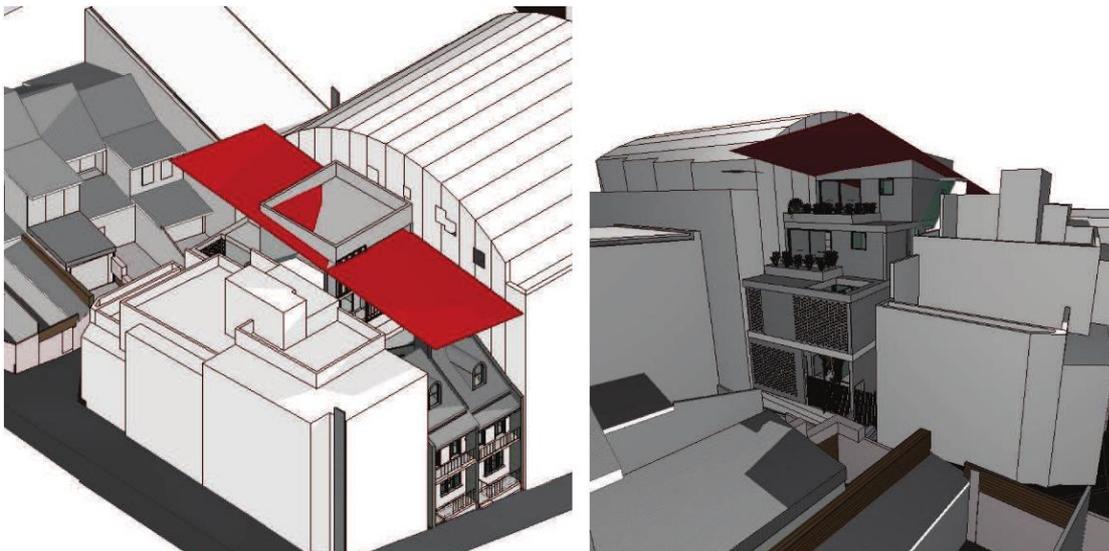


Figure 11: A revised model of the proposed development with the roof protruding beyond the height plane in red

33. By deleting the lift overrun and roof top communal open space, the overall height of the building and extent of non-compliance has been reduced from 18.2 metres (21.3% over) to 17.1 metres (14% over).
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 applicants 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 buildings 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 applicant has referred to *Wehbe v Pittwater*, whereby Preston CJ establishes the test for determining whether compliance with a standard is unreasonable or unnecessary. A summary of the applicant's request and assessment is provided below.
- (ii) The applicant states that the development is consistent with the objectives of Clause 4.3 – the height of buildings development standard, notwithstanding non-compliance with the numerical standard, and therefore satisfies the first test under *Wehbe*. The objectives of the clause are provided below:

(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,

(e) in respect of Green Square:

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

- (iii) In particular, with regard to objective (a), the non-compliant height is confined to a small portion of the building and is appropriate (that is, compatible) to the condition of the site and surrounding area with consideration of the scale of adjoining buildings. The development has been amended to step down towards Sophia Lane and the shorter terrace houses to the south. The building height is less than that of adjoining buildings and is setback from Foveaux Street. Generally the building reflects the desired future character reflected in other LEP and DCP controls.

- (iv) With regard to objective (b), the development maintains the contributory terraces to the front of the site and provides sufficient building separation so as to maintain their contribution to the streetscape and Little Riley Street conservation area. The non-compliance height of the apartment building to the rear will not overwhelm the terraces, and has been amended to transition in height at the rear towards Sophia Lane and the terraces on Sophia Street. Furthermore the building will not obstruct the curtilage and views of nearby heritage items.
 - (v) With regard to (c), the development will not impact on views.
 - (vi) With regard to (d), the development reflects the transition in scale from Foveaux Street to the surrounding street network.
 - (vii) Objective (e) is not relevant to the proposal.
 - (viii) The applicant also asserts that the extent of non-compliance is not antipathetic to the objectives of the B4 – Mixed Use zone.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The extent of non-compliance is confined to a portion of the roof of the apartment building, which is setback 10.9 metres from Foveaux Street, minimising the impact on the public domain.
 - (ii) The form of the building responds to the topography of the site (which has a steep gradient from Sophia Lane towards Foveaux Street and from east to west), the preservation and restoration of the contributory terrace buildings fronting Foveaux Street and steps the building at the rear towards the lower scale buildings on Sophia Lane to the south.
 - (iii) Having regard to these conditions, the extent of the non-compliance will be indiscernible from the public domain.
 - (iv) The applicant has made reference to the recent decision of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council*, stating that strict compliance would result in a poor outcome for the site. In particular, strict compliance with the standard would encourage redistribution of floor space and potentially have an adverse impact on the amenity and heritage conservation of the surrounding area.

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 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)?

38. In demonstrating that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, the applicant has appropriately referred to the test established by Preston CJ in *Wehbe v Pittwater*. Specifically, the applicant has addressed the first part of the test by demonstrating that, notwithstanding non-compliance with the numerical standard, the development meets the objectives of Clause 4.3.
39. A detailed discussion of the applicant's submission with regard to the objectives of the height standard has been provided and satisfies the test under Clause 4.6(3)(a), in that compliance with the height of buildings development standard, to the extent of the variation proposed, is both unreasonable and unnecessary.

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

40. The applicant has relied on the constraints of the site and surrounding area to demonstrate that there are sufficient environmental planning grounds to justify contravening the height of buildings development standard.
41. To summarise the applicant's submission, there is a nexus between the retention and restoration of the contributory heritage terraces at the front, the topography of the site (particularly the gradient), and the design providing a transition in scale between the taller buildings on Foveaux Street and the terraces on Sophia Street to the south. The development also has an acceptable environmental impact with consideration of built form and amenity impacts as discussed further within this report.
42. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of the variation proposed.

Is the development in the public interest?

43. With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied. As has been discussed already, the development is consistent with the objectives of Clause 4.3 notwithstanding the variation to the numerical standard.
44. The objectives of the B4 – Mixed Use zone are provided below:
 - 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.
45. With regard to the first objective, the development provides a mix of retail and residential land uses, consistent with the existing use of the site and adjoining properties. The land uses are permissible in the zone.

46. With regard to the second objective, the development is able to provide sufficient bike parking for residents in accordance with the minimum requirements of Section 3.11.3 of the Sydney DCP 2012. The site is located approximately 450 metres from Central Station, including the Sydney and NSW Trains networks, the CBD and South East and Inner West light rail lines, as well as city and intercity buses. The site is also within 175 metres of the retail strip on Crown Street. No onsite parking is proposed, and occupants will not be eligible to participate in the City's parking permit (on-street) scheme. The site is therefore appropriate for the proposed uses with regards to maximise public transport patronage and encourage walking and cycling.
47. With regard to the final objective, Foveaux Street is identified in the Surry Hills Central locality statement as being a retail centre in Surry Hills. An active frontage control encourages retail premises at ground floor, which is proposed and supported. The increased number of apartments on site will support the viability of the Surry Hills Central locality.
48. The application demonstrates that the extent of non-compliance with the height of buildings development standard is consistent with the objectives of Clause 4.3 and the B4 – Mixed Use zone and is therefore in the public interest.

Conclusion

49. 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 cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of building development standard and the B4 – Mixed Use zone.

Overshadowing

50. Section 4.2.3.1 of the Sydney DCP 2012 requires development to maintain a minimum two hours solar access to one sqm of living rooms and balconies of neighbouring residential properties between 9am and 3pm at midwinter. Where neighbouring properties do not currently receive the minimum two hours solar access to habitable rooms and 50% of private open space between 9am and 3pm at midwinter, no additional overshadowing is permitted.
51. Objective 3B-2 of the ADG requires "overshadowing of neighbouring properties is minimised during midwinter". A provision within the design guidance states: "Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%."
52. Views from the sun and overshadowing diagrams accompany the amended plans, illustrating the existing and proposed amount of solar access provided to neighbouring properties. The table below identifies the impact of the proposal on the provision of solar access at midwinter to affected properties at nos. 70-72 Sophia Street based on these diagrams. It is noted that no. 74 Sophia Street will continue to receive two hours solar access to their living room, and no additional overshadowing to their private open space.

Site	Area	Existing (approx.)	Proposed
No. 70 Sophia St	Living room	1hr, 45min	0
	Private open space	1hr, 45min	0
	Other habitable rooms	<2 hours	<2 hours
No. 72 Sophia St	Living room	1hr, 45min	30min
	Private open space	1hr, 45min	0
	Other habitable rooms	<2 hours	<2 hours

53. The development will therefore reduce solar access to these neighbouring properties, contrary to the provisions of the Sydney DCP control and the a provision of the design guidance of Objective 3B-2 of the ADG.
54. In effect, the affected neighbouring properties currently rely on the 'gap' provided by the application site. Importantly, at no. 70 Sophia Street, the area of private open space has been reduced and the rear building line of brought closer to the rear property boundary (see further discussion provided under the heading History Relevant to the Development Application above). This has reduced the capability of the site to retain solar access and accommodate development in the surrounding area, and is exacerbated by the narrow width of Sophia Lane (separating the subject site from the affected neighbours). Similarly, the diagrams do not include a shed located at no. 72 Sophia Street which would self-shadow that property's private open space.
55. The procedure for varying a development control is contained at Section 1.1 of the Sydney DCP 2012. In short, variations to controls are to demonstrate:
- how compliance with the objectives of the DCP is achieved,
 - how it will result in a better outcome than would otherwise be achieved through strict compliance with the control, and
 - how it will not adversely impact the amenity of neighbouring properties.
56. The DCP requires the applicant to prepare a statement to this effect where a variation is proposed, which has not strictly been undertaken. Notwithstanding, an assessment has been provided below.
57. In this densely built area, having regard to the planning controls for the subject site and the works that have been undertaken to the affected properties, it is reasonable in this instance for overshadowing to occur. Furthermore, the planning controls for these terraces envisage redevelopment, with a four storey height control applicable.
58. The development has been amended to reduce the height of the building and set the building back from Sophia Lane, thereby reducing the extent of overshadowing proposed.

59. The proposal complies with the maximum height in storeys control, whilst the area of the building that exceeds the height of buildings development standard does not in itself adversely overshadow neighbours' private open space and living rooms. The amended plans now maintain more than two hours solar access to habitable rooms (bedrooms as opposed to living rooms and private open spaces) within the affected properties at midwinter.
60. While the development will overshadow neighbouring properties, the development satisfies Objective 3B-2 of the ADG and is reasonable with regard to Section 1.1 of the Sydney DCP 2012 considering the amendments made to the building envelope, compliance with the height in storeys control, the dense character of the immediate area and the redevelopment of the affected terraces envisaged by the controls.

Heritage

61. The site is located within the Little Riley Street conservation area (C65) with the terraces identified as a contributory item within the Sydney DCP 2012. Local heritage items are located to the east of the site fronting Riley Street however they are visually separated from the site and as such their curtilage will not be impacted by the proposal. The buildings to the west and north are identified as detracting items and the terraces to the south are contributory. The apartment building to the east is identified on the maps as being contributory however this is thought to be a carryover from before the site was redeveloped. The building is therefore considered neutral. A heritage impact statement accompanied the application.
62. Section 3.9 of the Sydney DCP 2012 requires new development to respect the character and appearance of the heritage conservation area and be neutral in appearance. Works to contributory items are to respect their significant features.
63. The application has undergone three significant modifications during the assessment period, with the first modification proposing to cantilever the apartment building over the contributory terraces, which was not supported. The cantilever has been removed in the most recent set of amended plans and the separation between the apartment building and the terraces (generally 1.5 metres) is now acceptable.
64. The development proposes dormer windows to the terraces to accommodate the attic conversion. The dormers are acceptable in form and scale and generally comply with the provisions of Section 4.1.5.4 of the Sydney DCP 2012, which regards roof additions to terraces. A condition of consent is recommended requiring the dormers to be set down from the ridge and be vertically proportioned in accordance with Section 4.1.5.4.
65. The internal works to the terraces include amending the floor and ceiling height of level 1 to accommodate the proposed apartment and using the entrance of no. 119 Foveaux Street for the residential lobby. The internal layout has been significantly modified to accommodate the retail tenancies at ground level and the apartment upstairs. The works will not disrupt the legibility of the terraces as, formerly, two separate buildings.
66. The BCA report recommends works to the front verandah to provide fire separation between the retail and residential units, which may impact on the architectural integrity of the balconies. A condition of consent is therefore recommended for construction level details of these elements to be provided prior to the issue of any Construction Certificate.
67. Subject to conditions, the development is able to comply with Section 3.9 of the Sydney DCP 2012.

Other Impacts of the Development

68. The proposed development is capable of complying with the NCC.
69. 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

70. The proposal is of a nature in keeping with the overall function of the site.

Internal Referrals*Design Advisory Panel*

71. The application was presented to the Design Advisory Panel prior to any amendments being made. The Panel raised concerns regarding the height exceedance and associated overshadowing caused to the properties to the south. As such the application was not supported with amendments to improve the development's compliance with relevant controls encouraged.

Design Advisory Panel Residential Subcommittee

72. The first set of amended plans were presented to the Design Advisory Panel Residential Subcommittee. The following comments and recommendations were made:
 - (a) The committee did not support the apartment building cantilevering over the terraces, and recommended that the northern building line be brought back and the upper two apartments consolidated.
Response: The building has been brought back from over the terraces as recommended. The upper two apartments were consolidated.
 - (b) An area of landscaping having a minimum dimension of three x three metres was recommended to accommodate a tree at the rear fronting Sophia Lane. Deep soil and a consistent three metre setback along the Sophia Lane frontage was recommended.
Response: Deep soil has not been provided as discussed previously. A condition of consent is recommended requiring the landscaping area to provide a minimum 1000mm of soil depth to accommodate a tree in accordance with the City's Landscape Code.
 - (c) The panel recommended the deletion of the lift to improve internal layout and reduce the height of the building. Individual lobbies were recommended if the lift was to be retained.
Response: The lift has been retained, however the lift overrun no longer extends above the roof line following the amalgamation of the upper level apartments. Lift lobbies are provided to units.
 - (d) The need for further information was highlighted regarding fire separation between the retail and residential uses.

Response: The development is required to comply with the National Construction Code. A condition of consent is recommended requiring additional information regarding the impact to the balconies to achieve fire separation.

- (e) The walkway between the rear of the terrace and the retail bin store was recommended to be open to the sky to improve the amenity of this space.

Response: A skylight has been provided for daylight, however it will remain enclosed to prevent noise and odours affecting the residences above.

- (f) Additional information was recommended to confirm that the proposed hit-and-miss brickwork was not climbable.

Response: Insufficient information has been provided to demonstrate that the hit-and-miss brickwork is not climbable. A design modification condition is recommended accordingly.

Heritage

73. Council's Heritage officer has reviewed the amended plans and recommended further information be provided regarding the works to the balconies and the demolition of the entrance to 117 Foveaux Street for the residential lobby.

Urban Design

74. Council's Urban Designer has reviewed the amended plans and made the following recommendations (where supported, conditions of consent are recommended as noted):
- (a) The balcony overhang to apartment 4 will reduce light to lower apartments and is not supported.
- Response:** The views from the sun diagrams demonstrate that the overhang will not obstruct solar access to living rooms and balconies during midwinter.
- (b) The retail premises are to be separated from the residential lobby, and the retail premises consolidated into one tenancy. A condition of consent is recommended accordingly.
- (c) The rear building line of apartment 4 should be setback to increase the depth of the balcony to two metres in accordance with Objective 4E-1 of the ADG. A condition is recommended accordingly.
- (d) Concern is raised regarding the location of A/C units and acoustic amenity. A condition is recommended requiring the units to be centrally located within the basement.
- (e) Additional privacy measures are required to bedroom and living room windows of apartments 2 and 3 and Sophia Lane. Conditions are recommended accordingly.
- (f) Concern is raised regarding the proximity of openable windows to property boundaries, which may require separation by way of blade walls. Blade walls are not supported, and a condition is recommended requiring the windows to be either provided drenchers or to be setback from the boundary sufficiently.

- (g) Conditions are recommended requiring a materials sample board, details of the hydrant booster, privacy treatments, storage and operable window details. The conditions are supported.

Public Domain

75. Council's Public Domain team has reviewed the application and amended flood study and raised no objections subject to conditions.

Environmental Health

76. Council's Environmental Health officer raised no concerns regarding site contamination, and recommended an acoustic report be submitted with amended plans.

Landscape

77. Council's Landscape officer has reviewed the amended plans and raised concerns regarding the lack of detailed plans, soil depth to accommodate the tree at the rear and that the development does not provide any communal open space. Conditions of consent are recommended requiring plans in accordance with Council's Landscape Code.

Waste

78. Conditions of consent are recommended requiring the residential retail waste rooms to be separated, for the distance between the residential waste room and entrance to be no more than 10 metres and for demolition, excavation and construction and operational waste management plans to be submitted.
79. The conditions of other sections of Council have been included in the proposed conditions.

External Referrals

Notification, Advertising and Delegation

80. 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 28 days between 11 July 2018 and 9 August 2018. As a result of this notification a total of 584 properties were notified and there were four submissions received raising the following concerns.

- (a) Overshadowing of properties fronting Sophia Street.

Response - The development has been amended to reduce overshadowing of properties to Sophia Street with regard to the ADG and Sydney DCP 2012. Further discussion is provided under the Issues heading.

- (b) The development will overlook neighbouring properties.

Response - The development has been amended to:

- provide screening to rear windows;
- reorient living areas to the north elevation;

- remove the roof top communal open space;
- provide a physical separation and level difference between the external stair and roof terraces of no. 121-123 Foveaux Street; and
- setback the balcony of apartment 4 and provide a privacy screen to protect the roof terraces of no. 121-123 Foveaux Street.

(c) The apartments will acoustically impact neighbouring properties.

Response - The noise from the apartments is unlikely to result in any greater impact than existing residential properties and is acceptable.

(d) The development should comply with the maximum height standard.

Response - The height of the development has been reduced and the Sophia Street elevation setback. Further discussion is provided under the Issues heading.

(e) Loss of views of the sky from neighbouring properties.

Response - The bulk of the building fronting Sophia Street has been setback, reducing the sense of overbearing on the terraces to the south.

(f) The development will adversely impact the heritage significance of the terraces.

Response - The development as amended provides sufficient building separation between the terraces and the apartment building. The works to the terraces, subject to conditions, is acceptable with regard to Council's heritage conservation controls.

(g) The development will impact water mains.

Response - A condition of consent is recommended requiring a Section 73 certificate from Sydney Water.

(h) The upper level apartment will overlook the north facing roof terrace of no. 121-123 Foveaux Street.

Response - A condition of consent is recommended requiring external sun shades to these windows, which will reduce overlooking, noting that any potential overlooking between these properties would be limited to oblique angles.

81. Following the submission of amended plans on 7 November 2018, the application was re-notified for 14 days. As a result of this notification there were three submissions received raising the following concerns, in addition to those raised previously:

(a) The upper level apartment will overlook the north facing roof terrace of no. 121-123 Foveaux Street.

Response - A condition of consent is recommended requiring external sun shades to these windows, which will reduce overlooking.

(b) The modifications do not adequately improve solar access and the impact of the bulk to Sophia Lane.

Response - The matter is discussed in detail under the Issues heading.

82. Further modifications were made to the application on 7 February and 4 June 2019 however these were not notified in accordance with Schedule 1.3 of the Sydney DCP 2012 as they would not result in significant additional environmental impacts.

Public Interest

83. The proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

84. The development is subject of a section 7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the development's net increase in resident, worker and/or visitor populations.
85. Credits have been applied for the most recent past uses of the site, including the retail premises at ground floor and apartment located upstairs.
86. The following monetary contribution is required towards the cost of public amenities:
- | | |
|---------------------------|-------------|
| (a) Open Space | \$32,851.96 |
| (b) Community Facilities | \$16,081.80 |
| (c) Traffic and Transport | \$1,029.84 |
| (d) Stormwater Drainage | \$0 |
| Total | \$49,963.60 |
87. A condition relating to this development contribution has been included in the attached Decision Notice. The contribution is to be paid prior to the issue of any Construction Certificate.

Relevant Legislation

88. The Environmental Planning and Assessment Act 1979.

Conclusion

89. The development as amended proposes partial demolition, adaptive reuse of the contributory terraces with accompanying alterations and additions and construction of a residential apartment building to the rear of the site. One (consolidated) retail premises will be located on the ground floor of the terraces, one apartment located on the first floor and attic of the terraces and three within the apartment building to the rear.

90. The development exceeds the maximum 15 metre height of buildings development standard by 2.1 metres (14%). A request to vary the standard in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 has been submitted, demonstrating that compliance with the standard is unreasonable and unnecessary having regard to the objectives of the height of buildings development standard and that there are sufficient environmental planning grounds to justify the variation. The statement has adequately addressed the provisions of the clause and is in the public interest.
91. The development as amended achieves design excellence having regard to the form and scale of the apartment building, its relationship to the streetscape and neighbouring buildings, the provision of landscaping and consideration of neighbour's amenity.
92. The built form and amenity provided for residents and the surrounding area is consistent with the relevant controls of State Environmental Planning Policy 65, the accompanying Apartment Design Guide, the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
93. The application was notified and advertised for 28 days and received four objections. The application was re-notified for 14 days following the first submission of amended plans and received three submissions. The concerns are addressed within the report.
94. The development is therefore in the public interest and therefore recommended for approval.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

David Zabell, Senior Planner