

**Item 3.****Development Application: 21 Kellett Street, Potts Point - D/2019/621**

File No.: D/2019/621

**Summary**

**Date of Submission:** 16 June 2019. Amended plans were submitted on 1 October 2019, 13 February and 25 February 2020.

**Applicant:** Najava Pty Ltd

**Architect/Designer:** DesignInc

**Owner:** Najava Pty Ltd

**Cost of Works:** \$783,651.00

**Zoning:** B4 Mixed Use. Boarding houses and retail uses are permissible with consent.

**Proposal Summary:** Approval is sought for the demolition of an existing single storey triple garage and construction of a part four part five storey mixed use development. The proposal includes a six room boarding house, basement services, ground floor retail space and communal indoor/outdoor space on the top floor.

The application is reported to the Local Planning Panel as it seeks to vary the motorcycle parking standards under State Environmental Planning Policy (Affordable Rental Housing) 2009 by more than 10%.

The proposal will not provide any motorcycle parking spaces. The Affordable Rental Housing SEPP 2009 requires one motorcycle space to be provided. A request to vary the standard has been made pursuant to Clause 4.6 of Sydney LEP 2012. This request is supported.

The proposal has a maximum height of 16.4m (to the lift overrun). Sydney LEP 2012 allows for a height of 15m. The applicant has submitted a request to vary the height standard under Clause 4.6 of Sydney LEP 2012. This request is supported.

The application has been amended to address a number of issues identified by Council during assessment of the application and in response to consultation with the City's Design Advisory Panel - Residential Subcommittee. These issues relate to height, floor space ratio, amenity impacts on adjoining properties, general amenity of proposed building, equitable access, architectural expression and materials and finishes.

Six individual submissions were received objecting to the proposal. Issues raised include height, overshadowing and solar access, operational noise, BCA implications for adjoining building, removal of existing service access for adjoining building, waste management, parking and traffic.

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan
- (iii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (v) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Motorcycle Parking
- D. Clause 4.6 Variation Request - Building Height

## Recommendation

It is resolved that:

- (A) the variation sought to the minimum motorcycle parking spaces required under Clause 30(1)(h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 in accordance with Clause 4.6 Exceptions to Development Standards of Sydney Local Environmental Plan 2012 be supported in this instance;
- (B) the variation sought to Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 Exceptions to Development Standards of Sydney Local Environmental Plan 2012 be supported in this instance;
- (C) consent be granted to Development Application No. D/2019/621 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 proposal is generally consistent with the relevant objectives and controls of the State Environmental Planning Policy (Affordable Rental Housing) 2009, Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (B) Based upon the material available to the Committee at the time of determining this application, the Committee is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Sydney LEP 2012, that compliance with the motorcycle parking standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 30(1)(h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009; and
  - (ii) the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Sydney LEP 2012, that compliance with the building height development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney LEP 2012.
  - (iii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the motorcycle parking development standard and the building height development standard.
- (C) The proposal exhibits a suitable built form, design and materiality in the context of the heritage conservation area and is appropriate within the streetscape.
- (D) The proposal provides an appropriate level of amenity for future occupants and subject to conditions, will not result in unreasonable impacts on neighbourhood amenity.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by staff on 9 August 2019. Site visits to adjoining properties were carried out by staff on 28 November and 11 December 2019.
2. The site is irregular, with area of approximately 63.2sqm. It is a corner block with frontages to Ward Avenue (east) and Mansion Lane (south). A single storey triple garage is contained within the site.
3. The site is on a separate lot (Lot 2 DP 547344) and located to the immediate south of the site known as 21 Kellett Street (Lot 1 DP 547344). The site does not have frontage to Kellett Street. A separate application for a street number has been made to Council, which has lead to the provisional allocation of 15 Ward Avenue to the site. Lot 1 and Lot 2 are currently in the same ownership.
4. Surrounding land uses are a mix of commercial and residential. To the immediate north of the site is a 6 storey boarding house known as Eastend Lodge. That building is built to the boundaries, is oriented to Kellett Street and Ward Avenue, with a large blank wall facing the subject site. The subject site contains a corridor that runs between the existing triple garage and Eastend Lodge. This corridor provides fire egress from Eastend Lodge.
5. To the immediate west is a 3 storey building known as 19 Kellett Street, being a strata titled residential flat building with 15 units. That building has a blank wall with ventilation vents to the subject site and light wells on its eastern boundary.
6. To the south across Mansion Lane is a 2 storey commercial terrace containing a vet and the rear of mixed-use terraces fronting Bayswater Road.
7. The site is not a heritage item but is located within the Potts Point Conservation Area (C51).

8. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Ward Avenue



**Figure 3:** View of Mansion Lane from Ward Avenue



**Figure 4:** Adjoining building to the north known as Eastend Lodge, fronting Kellett Street



**Figure 5:** View north east across Ward Avenue from the site



**Figure 6:** View south east across Ward Avenue from the site



**Figure 7:** North western corner of Ward Avenue and Bayswater Road



**Figure 8:** South western corner of Ward Avenue and Bayswater Road



**Figure 9:** View along Ward Avenue towards the site from Roslyn Street

## Proposal

9. Approval is sought for the demolition of an existing single storey triple garage and construction of a part four part five storey mixed use development consisting of:

**(a) Basement Level:**

- (i) commercial and residential garbage rooms including bulky waste storage;
- (ii) residential laundry;
- (iii) building services;
- (iv) staff toilet for ground floor retail component.

**(b) Ground Floor:**

- (i) retail space fronting Ward Avenue;
- (ii) residential lobby fronting Mansion Lane;
- (iii) four bicycle parking spaces;
- (iv) fire egress for Lot 1.

**(c) Levels 1 - 3**

- (i) six single occupancy boarding rooms (two per floor), each with ensuite and kitchen.

**(d) Level 4 (top floor)**

- (i) communal living room and kitchen;
- (ii) landscaped communal open space.

10. A photomontage and elevations of the proposed development are provided below. A full set of architectural plans are provided at Attachment B.



**Figure 10:** Photomontage of proposal, excluding footpath amendments for equitable access.





Figure 13: Proposed section

## History Relevant to the Development Application

11. The application was amended on two separate occasions to address a number of issues. Following a detailed preliminary assessment of the original application, the applicant was advised that the proposal could not be supported in its current form. Primary issues included:
  - (a) non-compliance with height in metres, height in storeys and FSR controls;
  - (b) inadequate waste facilities;
  - (c) general amenity of the building; and
  - (d) streetscape, heritage and architectural expression.
12. Amended plans were submitted on 30 September 2019. The amended proposal:
  - (a) reduced the height of the building by 1 storey;
  - (b) reduced the number of boarding rooms from 8 to 6;
  - (c) introduced a basement level to accommodate required waste storage and servicing;
  - (d) modified the architectural expression of the building; and
  - (e) created a ground floor retail space fronting Ward Avenue.

13. Following an assessment of the amended plans, including review by the City's Design Advisory Panel - Residential Subcommittee, as well as site visits to adjoining units at 19 Kellett Street, the applicant was requested to further amend the proposal to address the following detailed design issues:
  - (a) increase the setback to the existing light well at 19 Kellett Street on the ground floor and level 1;
  - (b) relocate the residential entry on Mansion Lane to Ward Avenue to improve the amenity of the residential lobby;
  - (c) refine the building expression, materials and finishes and improve the ground floor detailed design to Mansion Lane and Ward Avenue;
  - (d) raise the finished floor level of the residential lobby to 300mm above the gutter invert level to provide flood protection to the basement.
14. Amended plans were submitted on 13 February 2020. Following a review of the amended plans by the City's Public Domain Unit the applicant was required to amend the building design to increase the width of the Mansion Lane footpath to provide equitable access to the residential lobby. A final revision of amended plans were received on 25 February 2020. The amended plans are the subject of this report.

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

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

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

16. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
17. 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.
18. 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 No 55 - Remediation of Land**

19. 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.
20. The existing use of the land is residential and the classification of the site is not changing as part of this proposal.
21. The proposal was reviewed by Council's Environmental Health Unit, who advised that a search of the City's archives returned no contamination results for the site. No further action is required in relation to contamination and the site is suitable for the proposed use. As the proposal includes excavation, a condition regarding unexpected discovery of contamination has been recommended.

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

22. A BASIX Certificate has been submitted with the development application.
23. 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.

**State Environmental Planning Policy (Affordable Rental Housing) 2009**

24. The SEPP aims to provide a consistent planning regime for the provision of affordable rental housing and to facilitate the delivery of new affordable rental housing by providing incentives by way of identifying non-discretionary development standards.
25. The proposal is defined as a boarding house and is located in the B4 Mixed Use zone. As such, Division 3 - Boarding houses of the SEPP applies.
26. Under Clause 29, compliance with any of the following standard must not be used to refuse consent (i.e. if the development complies with the following standards, this cannot be used as part of any recommended refusal).

<b>Clause 29 - Standards that cannot be used to refuse a boarding house</b>		
<b>Standard</b>	<b>Compliance</b>	<b>Comment</b>
1(c)(i) - Density and scale expressed as FSR  Cannot be refused with FSR of 1.5:1 plus 0.5:1	Yes	The allowable FSR is 3:1.  The proposed FSR is 3:1.

<b>Clause 29 - Standards that cannot be used to refuse a boarding house</b>		
<p>2(a) Building height</p> <p>The proposed building height must not exceed the maximum permitted under an EPI</p>	No, acceptable	<p>Sydney LEP 2012 specifies a maximum height of 15m.</p> <p>The proposal exceeds the height in metres by 1.4m. A Clause 4.6 variation has been submitted and is acceptable.</p> <p>See discussion under the heading Issues.</p>
<p>2(b) Landscaped area</p> <p>Front setback to be consistent with streetscape</p>	Yes	<p>The proposal has a zero setback to Ward Avenue and Mansion Lane, which is consistent with surrounding development.</p>
<p>2(c) Solar Access</p> <p>Minimum 1 communal living area to receive minimum 3 hours direct sunlight between 9:00am and 3:00pm midwinter</p>	No, acceptable	<p>The site is constrained by the existing 6 storey building immediately to the north. As such, the communal living area at level 5 does not receive direct solar access in mid-winter.</p> <p>See discussion under the heading issues.</p>
<p>2(d) Private open space</p> <p>(i) Minimum 20sqm with minimum 3m width</p>	Yes	<p>The proposal provides 21sqm of communal open space on the rooftop.</p>
<p>2(e) Parking</p> <p>(i) 0.5 parking spaces provided for each boarding house room</p> <p>(iii) Not more than 1 parking space for the on-site manager</p>	No, acceptable	<p>No onsite vehicular parking is provided for residents.</p> <p>The site is in an accessible location and supplemented by bicycle parking.</p> <p>The applicant has submitted a request to vary the motorcycle parking standard pursuant to Clause 4.6.</p> <p>See discussion under the heading issues.</p>

<b>Clause 29 - Standards that cannot be used to refuse a boarding house</b>		
2(f) Accommodation size  (i) Minimum 12sqm for single lodger rooms  (ii) Minimum 16sqm for double lodgers rooms  (excluding any area used as a private kitchen/bathroom)	No, acceptable	With the exception of the one accessible room on level 1, each boarding room exceeds the minimum recommended room size.  See discussion under the heading issues.

27. Subject to conditions, the proposed development will generally comply with the relevant provisions of Clause 29.
28. Clause 30 states that a consent authority must not grant development consent to which Division 3 applies unless it is satisfied of each of the following:

<b>Clause 30 - Standards for boarding house</b>		
<b>Standard</b>	<b>Compliance</b>	<b>Comment</b>
1(a) At least one communal living room is to be provided	Yes	One communal living room is provided on the top floor. The living room is located next to the communal kitchen and within close proximity to the roof top communal open space.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m <sup>2</sup>	Yes	All of the boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Yes	Each room has been designed as single occupancy. A condition of consent is recommended limiting occupancy to one adult lodger per room, as proposed in the application.
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	Each room is provided with a private kitchen and bathroom. A communal laundry is located at basement level and a communal kitchen is located within the communal living room on the top floor.

<b>Clause 30 - Standards for boarding house</b>		
1(e) A boarding room or on-site dwelling to be provided for a boarding house manager if boarding house has a capacity of 20 or more lodgers	Yes	The proposal has six boarding rooms and does not trigger this requirement.
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The site is located within the B4 Mixed Use zone. Whilst residential uses are permitted at ground floor, the proposal has been designed to incorporate a retail space to Ward Avenue to activate the street.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	No, acceptable	<p>The proposal is required to provide a minimum of 2 bicycle spaces and 1 motorcycle space.</p> <p>Note: the SEPP rate specifies 1.2 bicycle spaces and 1.2 motorcycle spaces. As per Council policy, bicycle parking is rounded up to 2 spaces and vehicle parking is rounded down to 1 space.</p> <p>The development provides 4 bicycle parking spaces, which exceeds this requirement.</p> <p>A Clause 4.6 variation to the motorcycle parking standard has been submitted and is supported.</p> <p>See discussion under the heading issues.</p>

### **Clause 30A - Character of the local area**

29. Clause 30A states that a consent authority must not consent to development consent for a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
30. The site is located within a mixed-use area. As amended, the proposed design and use are compatible with the character of the surrounding area. The bulk and scale are similar to the adjoining properties and appropriately fits the streetscape. Proposed colours, finishes and materials are sympathetic to the character of the area and will not detract from the heritage conservation area. As such the application is consistent with Clause 30A of the SEPP.

**Sydney Local Environmental Plan 2012**

31. The site is located within the B4 Mixed Use zone. The proposed use is defined as a boarding house and retail and is permissible.
32. The relevant matters under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

<b>Development Control</b>	<b>Compliance</b>	<b>Comment</b>
4.3 Height of Buildings	No	A maximum height of 15m is permitted.  A maximum height of 16.4m is proposed.  See discussion under the heading Issues.
4.4 Floor Space Ratio	Yes	A maximum FSR of 3:1 is permitted.  A FSR of 3:1 is proposed.
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the development standard prescribed under Clause 4.3.  See discussion under the heading Issues.
5.10 Heritage conservation	Yes	The subject site is located within a heritage conservation area.  See discussion under the heading Issues.

<b>Part 6 Local Provisions - Height and Floor Space</b>	<b>Compliance</b>	<b>Comment</b>
Division 4 Design excellence	Yes	The proposed development satisfies the requirements of this provision.

<b>Part 7 Local Provisions - General</b>	<b>Compliance</b>	<b>Comment</b>
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 5 Acid Sulphate Soil. The proposal does not represent a significant risk to the exposure of acid sulphate soils.
7.15 Flood planning	Yes	In accordance with Council's Interim Floodplain Management Policy, basements of developments outside the floodplain must be protected by a finished floor level of 300mm above the gutter invert level. The proposal has been amended to achieve the required flood planning level and complies with the Interim Floodplain Management Policy.

### Sydney Development Control Plan 2012

33. The relevant matters under Sydney Development Control Plan 2012 for the proposed development are outlined below.

#### 2. Locality Statements – Kings Cross

The subject site is located in the Kings Cross. The proposed mixed use development is in keeping with the unique character of the area and design principles in that it complements existing heritage items and contributory buildings and responds to the streetscape of the conservation area.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.2 Defining the Public Domain	Yes	The proposed development will enhance the public domain by providing an active frontage to Ward Avenue in the form of a retail space.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees however a large street tree exists on the footpath of Ward Avenue immediately adjacent to the site.

3. General Provisions	Compliance	Comment
		An Arboricultural Impact Assessment and Arboricultural Root Mapping Report was submitted and assessed by Council's Tree Management Unit, who concluded that the street tree will not be unduly impacted by the proposed works, subject to appropriate tree protection measures.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The proposal has been designed to provide a flood planning level that complies with Councils Interim Floodplain Management Policy.
3.9 Heritage	Yes	The proposal involves the demolition of a contributory building, being the triple garage, within a conservation area.  See discussion under the heading Issues.
3.11 Transport and Parking	Yes	A total of 4 bicycle parking spaces are provided. A condition has been recommended requiring the provision of Class B facilities.  The site is within close proximity to public transport options including rail and bus services.
3.12 Accessible Design	Yes	The proposal includes one accessible boarding room, located on Level 1. The basement laundry, communal living room/kitchen and rooftop open space area all provide accessible access, as does the ground floor retail space.  Equitable access for disabled persons can be provided to the ground floor residential lobby and the retail space.
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	The proposal was amended to address inadequate waste storage areas. A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	The site is subject to a four storey height control. The proposed building is part four part five storeys in height.  See discussion under heading Issues.
4.2.2 Building setbacks	No	The site is subject to a three storey street frontage height control to Ward Avenue. The proposed building is part four part five storeys in height.  See discussion under heading Issues.
4.2.3.1 Solar access	Yes	The proposal will not adversely overshadow adjoining properties.  See discussion under heading Issues.
4.2.3.3 Internal common areas	Yes	The internal stairwell has been provided with windows on level 1 and above to allow natural light to circulation spaces.
4.2.3.5 Landscaping	Yes	A landscape plan has been submitted with the application which details planting on the roof top common open space and ground floor lobby.
4.2.3.6 Deep soil planting	No, but acceptable	The proposal has not been provided with any deep soil areas. This is acceptable given the location and constrained nature of the site.

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.2 Residential flat, commercial and mixed use developments</b>		
4.2.3.9 Ventilation	Yes	Windows to boarding rooms and common areas are operable in order to provide natural ventilation.
4.2.3.10 Outlook	Yes	Proposed boarding rooms are provided with a pleasant outlook without adversely impacting visual privacy.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The design and form of the building has been amended to respond to the character of the streetscape and is compatible in scale with the surrounding area.
4.2.6 Waste minimisation	Yes	A waste management plan has been submitted with the application and is acceptable. Adequate waste storage areas are provided at basement level to accommodate residential and commercial waste.
4.2.7 Heating and Cooling Infrastructure	Yes	Condenser units are located on the roof, below the parapet height to screen the units from view.

<b>4. Development Types</b>	<b>Compliance</b>	<b>Comment</b>
<b>4.4 Other development types and uses</b>		
<b>4.4.1 Boarding houses</b>		
4.4.1.1 Subdivision	Yes	The application does not include subdivision.
4.4.1.2 Bedrooms	Partial compliance	The majority of rooms comply with the minimum 12sqm room size for single rooms, with the exception of the accessible room, which is 9.25sqm (excluding kitchen and ensuite). See discussion under the heading Issues.

4. Development Types  4.4 Other development types and uses  4.4.1 Boarding houses	Compliance	Comment
		<p>Each room includes an ensuite with shower with a minimum area of 2.9sqm and a kitchen with a minimum area of 2sqm.</p> <p>Each bedroom has access to natural light and ventilation via an operable window.</p> <p>Ceiling heights of 2.7 are proposed.</p>
4.4.1.3 Communal kitchen areas	Yes	The communal living area is provided with a kitchen, in addition to the individual kitchens in each room.
4.4.1.4 Communal living areas and open space	Partial compliance	<p><i>Communal living area</i></p> <p>The communal living room, located on the top floor, is provided with a minimum of 13sqm (in addition to the communal kitchen area of 4sqm). The communal living space is located adjacent to the communal open space.</p> <p>Due to the orientation of the site and the existing 6 storey building immediately to the north, the minimum solar access requirements are not achieved to the internal living spaces.</p> <p><i>Common open space</i></p> <p>A communal open space area with a minimum area of 20sqm is provided on the top floor. The space is provided with seating, landscaping and BBQ facilities.</p>

4. Development Types  4.4 Other development types and uses  4.4.1 Boarding houses	Compliance	Comment
		<p>The roof top communal area has been positioned to achieve available solar access, however the minimum DCP is not achieved. The solar access provision is acceptable, given the sites constraints including the adjoining six storey building located immediately to the north. Given the small size of the site, there is no alternative location for the communal open space and communal living area that would improve solar access.</p> <p><i>Private open space</i></p> <p>No boarding rooms have been provided with private open space, which is contrary to the minimum 30% requirement. A variation to the control is acceptable as private balconies cannot be readily accommodated without having adverse streetscape and heritage outcomes (see discussion under the heading issues). A communal open space is provided at level 5 that complies with the minimum area requirements and provides good amenity for future occupants.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	<p>An ensuite is provided in each boarding room.</p> <p>A communal laundry is provided within the basement and a drying line is provided at the top floor common open space area. The applicant was advised to relocate the laundry to the top floor common living room within the kitchen facility to provide better amenity for users and closer proximity to the outdoor drying area. However following investigation, it was found that the laundry and kitchen could not be collocated and still meet accessibility requirements. In this context, the basement laundry is acceptable.</p>

4. Development Types  4.4 Other development types and uses  4.4.1 Boarding houses	Compliance	Comment
4.4.1.6 Amenity, safety and privacy		<p>The proposal has been designed to address safety, security and privacy of proposed and adjoining residents.</p> <p>Windows on the eastern elevation of the light well will be provided with translucent glazing and 2m sill heights to address overlooking to 19 Kellett Street. Views from windows on the northern elevation of the light well do not have direct line of sight to 19 Kellett Street and are acceptable.</p> <p>The proposed communal roof terrace includes a planter to the edge of the light well and 1.8m privacy screen to protect visual privacy. The hours of use are restricted to 7.00am to 10.00pm Monday to Sunday.</p> <p>An acoustic report has been submitted to assess potential acoustic privacy impacts. The report has been reviewed by the City's Environmental Health Unit, who are supportive of the proposal subject to recommended conditions.</p> <p>The proposal includes one adaptable room in accordance with the DCP requirement.</p>
4.4.1.7 Plan of Management	Yes	<p>The application includes a Plan of Management that sufficiently addresses the operation and maintenance of the building. A condition is recommended to comply with the provided Plan of Management.</p>

## Issues

### Clause 4.6 request to vary a development standard - motorcycle parking

34. Clause 30(1)(h) of the Affordable Rental Housing SEPP 2009 requires the provision of one motorcycle space every five boarding rooms. The development includes six boarding rooms and as such one (rounded down) motorcycle space is required.

35. The proposal provides for zero motorcycle spaces, when one is required, representing a 100% departure from the standard.
36. 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 motorcycle 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.
37. A copy of the applicants written request is provided at Attachment C.

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

38. The applicant justifies the contravention of the motorcycle parking 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 applicants statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard.
    - (ii) As the Affordable Rental Housing SEPP 2009 does not list specific planning objectives for the motorcycle development standard in question, the applicants statement provides an assessment against the overall aims of the SEPP pursuant to Clause 3. A summary of the applicants assessment against the aims of the SEPP are below:
      - (i) *Aim (a) - to provide a consistent planning regime for the provision of affordable rental housing,*
        - A consistent approach is not necessarily thwarted despite non-compliance with a standard. The SEPP provides a consistent regime, which may be varied as appropriate to achieve sound planning outcomes.
      - (ii) *Aim (b) - to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
        - The proposal will achieve the delivery of new affordable and appropriate rental housing, suited to the particular site.
      - (iii) *Aim (c) - to facilitate the retention and mitigate the loss of existing affordable rental housing,*
        - The objective relating to retaining existing affordable housing is not applicable to the proposal.

- (iv) *Aim (d) - to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*

  - The proposal involves the development of new housing encouraged by the SEPP (a boarding house).
- (v) *Aim (e) - to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*

  - The proposed use is not one for which a community housing provider or not-for-profit organisation will be involved. This objective is not tailored for boarding house development.
- (vi) *Aim (f) - to support local business centres by providing affordable rental housing for workers close to places of work,*

  - This objective is achieved, by providing additional rental housing close to places of work (such in the adjoining B2 Local Centre zoning and along Darlinghurst Road, as encouraged by the Council's DCP). The site is located close to places of work.
- (vii) *Aim (g) - to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

  - The proposal does not cater for homeless or those requiring support services (such as may occur in group homes facilitated by the SEPP). Despite this, the objective is not thwarted by the proposal.
- (iii) The applicants statement maintains that where objectives of the SEPP are relevant to the type of housing provided, the proposal is consistent with these objectives. Where the objectives are not relevant or tailored to the type of housing proposed (i.e. other housing facilitated by the SEPP), the proposal does not thwart or hinder the attainment of these objectives.
- (iv) The statement also considers the objectives relating to parking pursuant to Clause 7.1(1) of Sydney Local Environmental Plan 2012

  - (i) *Objective (a) - to identify the maximum number of car parking spaces that may be provided to service particular uses of land, and*
  - (ii) *Objective (b) - to minimise the amount of vehicular traffic generated because of proposed development.*
  - The proposal is consistent with these objectives being below the maximum, and as the non-provision of motorcycle parking (together with Council's policy not to allow resident parking scheme access) means that vehicular traffic will be minimised and use of public transport and cycling encouraged.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:

- (i) The site is small and on a corner location. The provision of motorcycle parking would entail a driveway crossing which is not appropriate for the site, would compromise pedestrian and vehicular safety and would compromise the ground level interface and integration with the public domain, which is discouraged by Council.
- (ii) An alternative form of parking is provided, being bicycle parking. This is provided at a rate that is greater than both the combined motorcycle parking rate (1.2 spaces) and bicycle parking rate (1.2 spaces) within the same development standard in question. This is an appropriate form of travel for the building occupants, especially noting the inner city location of the site.
- (iii) The site has very good access to services, jobs and public transport, reducing the need for motorcycle parking, compared to sites further removed from such core assets.
- (iv) The site is located within the City of Sydney Local Government Area where the provision of parking rates are maxima and Council often approves development with less than the maximum parking being provided (or none at all) as an effective way of encouraging alternative forms of travel, such as public transport, cycling and walking. This is appropriate for the most urbanised LGA in the State and a high density area like Potts Point.

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

39. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request adequately addresses 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)?

40. The applicants written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the aims of the SEPP notwithstanding the noncompliance. The development is consistent with the aims of the SEPP in particular, facilitating the effective delivery of new affordable rental housing by providing flexibility in apply development standards and supporting local centres by providing affordable rental housing.

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

41. The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.

42. Although non-compliant with the SEPP, the proposal is consistent with the objectives and provisions of the LEP and DCP in terms of transport and access, and is located within a highly accessible area. The site is highly constrained and does not provide feasible locations for motorcycle parking spaces given the location of the retail space to Ward Avenue and the relatively small frontage to Mansion Lane. The provision of zero motorcycle parking spaces results in a more desirable streetscape, heritage and amenity outcome.

Is the development in the public interest?

43. As outlined in the applicants Clause 4.6 statement, there are no specific objectives pertaining to the motorcycle parking development standard. However the aims of the SEPP are relevant to the standard.
44. The proposal is consistent with the relevant aims of the SEPP in that it achieves the delivery of new affordable housing in a form that is suitable to the subject site and provides for a new housing type encouraged by the SEPP (a boarding house) that is located close to places of work, such as the adjacent B2 Local Centre zoning immediately to the south and west of the site.
45. Whilst the aims of the SEPP are to provide for consistent application of development standards across NSW, it does not consider the City's transport policies and its access to public transport and services relative to other areas of the state. In this regard, Clause 7.1 of Sydney LEP 2012 specifically seeks to minimise the amount of vehicle traffic generated by development.
46. The provision of no motorcycle parking aligns with the objectives of Clause 7.1 of the LEP in that it will reduce the amount of traffic generated by the proposed development.
47. 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, retail 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.
48. The site is within close proximity to public transport, jobs and services, which encourages walking, cycling and the use of transit. In not providing motorcycle parking, the development will encourage active transport and public transport, as will the provision of bicycle parking.
49. The development provides for new affordable housing for workers within the local area and the use will support the surrounding and wider centres.
50. The proposal is in the public interest as it is consistent with the aims of the SEPP and the objectives of the B4 Mixed Use zone.

## Conclusion

51. For the reasons provided above the requested variation to the motorcycle parking standard is supported as the applicant's written request adequately addresses the matters required 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 the SEPP and the B4 Mixed Use zone.

### Clause 4.6 request to vary a development standard - building height

52. The site is subject to a maximum building height control of 15m. The proposed development has a maximum building height of 16.4 to the lift overrun and 16.07m to the roof parapet to Ward Avenue.
53. The variation to the height control results in an exceedance to the development standard by 1.4m (or a 9% variation) for the lift overrun. The extent of this variation is shown in Figure 14.



**Figure 14:** Section with the 15m height limit plan indicated in red

54. 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 building height development standard by demonstrating:
- 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.
55. A copy of the applicants written request is provided at Attachment C.

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

56. The applicant seeks to justify the contravention of the building height 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 applicants statement refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard. A summary of the applicants assessment against the objectives of the control are provided below:

(i) *Objective (a) - to ensure the height of development is appropriate to the condition of the site and its context,*

- The condition of the site and the context favours a higher building form on this corner site, which appropriately mediates the forms of both adjoining buildings, while helping shield the adjoining blank walls, and provide an appropriate built form to the streetscape.
- The condition of the site is unique, in that there are blank walls to both adjoining private boundaries and an adjoining building to the north being over the height limit.
- The Heritage Impact Statement by Weir Phillips also outlines the condition of the site and context, and finds the proposal to be appropriate for the site. The proposal has been revised and has reduced by one level, with updated advice from Weir Phillips since DA lodgement.
- More recently, the plan has been revised to address potential flooding issues and to ensure an appropriate habitable floor level, as depicted in plans by DesignInc, following engagement with the Council.

(ii) *Objective (b) - to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*

- The appropriate height transition is a key reason to support the proposal and height sought, which is actively sought by the objectives of the standard itself.
- A lower building at the site (e.g. 3-4 storeys and lower than the adjoining buildings), not providing a transition in height would not be appropriate for the site, particularly where an appropriate height transition is sought within the objectives for that standard. This is especially the case for a corner site, where building forms often anchor a street block and are typically slightly larger than their neighbours, being a key feature in Victorian architecture and areas with Victorian influences, such as Potts Point.

- The massing and context of the site and the response by the proposal is also supported by the submission of a Heritage Impact Statement, which states that the proposal will 'fit' within the conservation area and will not detract from the setting of nearby heritage items.
- (iii) *Objective (c)* - to promote the sharing of views,
- The proposal achieves view sharing. The windows to 19 Kellett Street are not expected to provide views, but some outlook to trees and sky, with no views to iconic features or water expected. While the proposal will impact on the outlook from these units, this would occur with a complying proposal and retaining of outlook over a side boundary should not be assumed.
- (iv) *Objective (d)* - to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,
- This objective is not relevant to the subject site.
- (v) *Objective (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.
- This objective is not relevant to the subject site.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The height non-compliance results in an appropriate height transition between neighbouring buildings. The building to the west is three storeys, although with a form equivalent to around 4.5 storeys due to a high parapet and high floor-ceiling heights. The building to the north is 6 storeys high, at the interface with the subject site. It is common for corner buildings in areas with a high influence from the Victoria era, such as this area, to be higher than neighbours, or at least equivalent in height to neighbours and the adjoining forms, The proposed height is below the height of the neighbouring building to the north and mediates its form down to the building to the west, essentially matching the parapet of that building form.
  - (ii) The site has adjoining blank walls to its northern and western boundaries. These vary from around 4-6 storeys in height. The proposed building visually blocks these blank walls, which is desirable in this instance for visual amenity to the area, and noting the characteristics of the Conservation Area.
  - (iii) The proposed building is found to be appropriate by the Heritage Impact Statement by Weir Phillips, while the revised proposal reduces the height and scale since DA lodgement.

- (iv) Around half of the height limit non-compliance arises from planning for potential flooding, necessitating the raising of the ground floor level and consequent impacts on the overall building height. Despite this, the building height remains contextually appropriate.
- (v) The additional height above the height limit will not have environmental impacts upon neighbours, of any significance. This is aided by the unique aspects of the site including its corner location, being surrounded on two boundaries by public roads, high adjoining buildings and blank walls to the two adjoining private property boundaries to the north and west.

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

57. 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 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)?

58. The applicants written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the objectives of the building control notwithstanding the noncompliance.
59. The area of noncompliance is limited to the lift overrun and a small portion of the top floor fronting Ward Avenue. The lift overrun will not be overly visible from the public domain. The height noncompliance of the top floor fronting Ward Avenue is increased due to its location on the eastern portion of the site. While a western location of the top floor would largely remove the height noncompliance, this would result in an undesirable outcome as the top floor has been located appropriately on the eastern half of the site to reduce potential impacts on adjoining properties as well as provide a more suitable height transition between buildings.

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

60. The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.
61. The proposal provides an appropriate height transition between adjoining buildings and the scale and design of the building is appropriate for the sites context and constrained nature, resulting in an acceptable built form within the streetscape.
62. The proposal will not create unacceptable impacts on the amenity of surrounding properties with regard to views, solar access and visual privacy.

Is the development in the public interest?

63. The relevant objectives of the height development standard include:
- (a) To ensure the height of the development is appropriate to the condition of the site and its context.
  - (b) To ensure appropriate height transitions between new development and heritage items.
  - (c) To promote the sharing of views.
64. The design and form of the new addition is appropriate to the site and its context. It provides an appropriate transition between the building at 19 Kellett Street to the west and sits below the height of the six storey building to the north. The area of noncompliance is largely confined to the lift overrun, which will not be visible from the public domain. The proposal will not obstruct important views from adjoining properties or the public domain.
65. 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, retail 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.
66. The mixed use development proposes new affordable housing in a highly accessible area close to public transport, employment opportunities and services, while integrating a compatible new retail space. The introduction of new affordable accommodation will also assist in supporting the viability of the adjacent B2 Local Centre zone.
67. The proposal is in the public interest because it is consistent with both the objectives of the height development standard and the objectives of the B4 Mixed Use zone.

#### Conclusion

68. For the reasons provided above the requested variation to the building height development standard is supported as the applicants 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 the height development standard and the B4 Mixed Use zone.

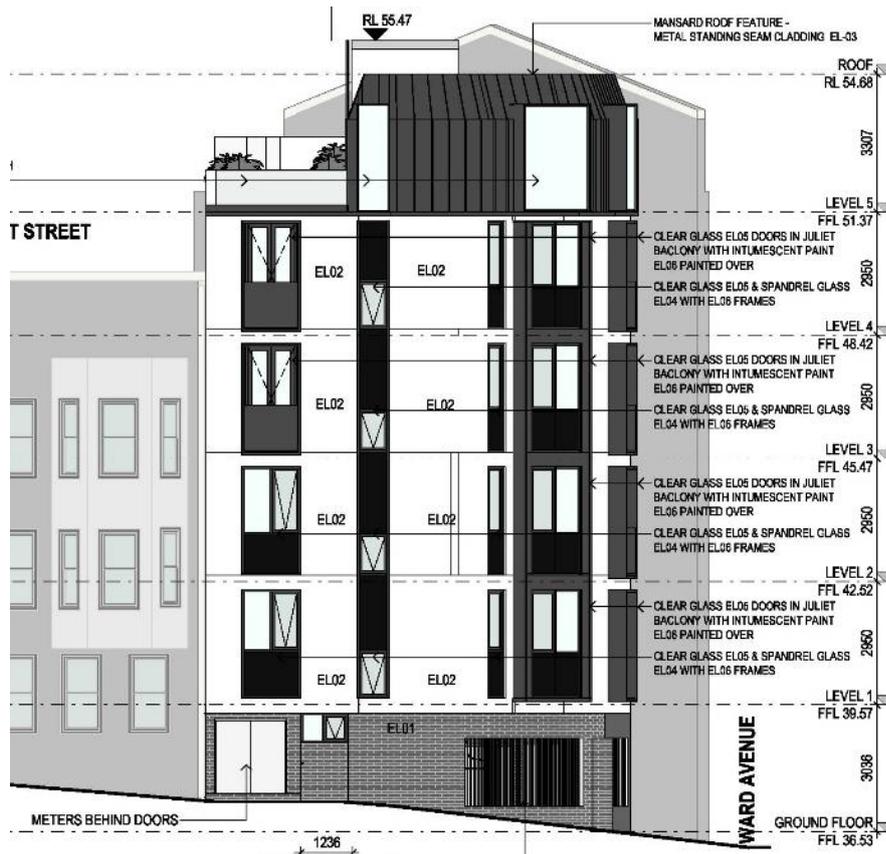
#### Demolition of contributory item

69. The site contains a building that is over 50 years old and is therefore subject to the heritage provisions of this DCP. The entire site, being Lots 1 and 2 is listed as contributory and contains:
- (a) Lot 1 - a six storey Inter-War era building (Eastend Lodge);
  - (b) Lot 2 - a single storey red brick garage containing three single car garages.

70. The proposal involves the demolition of the existing triple garage. The garage previously comprised of four garages, however one of the garages was demolished in the 1970s to allow for the widening of Ward Avenue.
71. The Heritage Impact Statement submitted with the application concludes that the existing garage has no significant architectural merit and is significantly degraded from its original form due to the partial demolition which only retains three of the four original garages.
72. The demolition of the garages, being a contributory item is supported in this instance. The garages will be replaced with a new infill building that is acceptable within the conservation area, as discussed further below.

#### Height, bulk and scale

73. The site is subject to a four storey height control and a three storey street frontage height control to Ward Avenue. The proposed building is part four part five storeys in height.
74. The proposal was originally designed as a six storey building, as shown in Figure 15. The original proposal was not supported due to the following:
  - (a) the proposal did not reinforce the existing and desired neighbourhood character and was not consistent with the character, scale and form of surrounding buildings in the Potts Point heritage conservation area;
  - (b) the development was contrary to the Kings Cross Locality Statement that requires development to respond to and complement heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes;
  - (c) the proposal was not designed to respect the neighbouring contributory building at 19 Kellett Street as it did not provide a sympathetic transition of height between buildings. It proposed an awkward junction between the proposed building and the contributory neighbouring building. The proposed building also did not relate to the building directly across Mansion Lane (rear of 36 Bayswater Road).



**Figure 15:** Original six storey proposal (southern Mansion Lane elevation)

75. The applicant was required to amend the proposal to address the above issues. Amended plans were received showing a reduction in one storey, as shown in Figure 16.
76. While still non-compliant with the height in storeys control, the revised proposal is acceptable from a heritage and streetscape point of view as follows:
  - (a) it provides an appropriate response to the adjoining building at 19 Kellett Street, with the parapets of both buildings aligning at the top floor;
  - (b) provides an appropriate height transition between the existing building at 19 Kellett Street and Eastend Lodge to the north;
  - (c) the proposed will not result in unacceptable overshadowing or privacy impacts as a result of the additional height.



**Figure 16:** Amended proposal (southern Mansion Lane elevation)

77. The proposal does not comply with the three storey street frontage height control to Ward Avenue. The revised proposal is acceptable from a heritage and streetscape point of view as follows:
- street frontage heights are usually expressed by an upper storey setback in the order of 3m to the top floor;
  - due to the constrained nature of the site, it is acknowledged that provision of a 3m upper storey setback is difficult;
  - the top floor built form is limited to half of the top floor, being the eastern portion of the site. This is preferred over the western portion of the site as it provides an appropriate transition from the existing building at 19 Kellett Street and Eastend Lodge to the north. It also reduces the bulk and scale of the building when viewed from units within 19 Kellett Street;
  - the proposed height is consistent with heights of surrounding buildings in the area, including the building immediately to the north and does not result in an unacceptable streetscape;
  - the upper level to Ward Avenue is expressed as a recessive curved form with different materials to the level below.

### Materials and architectural expression

78. The proposal as originally designed raised a number of concerns about materials and architectural expression from the City's Urban Design Specialist, Heritage Specialist and Design Advisory Panel. A photomontage of the original proposal is shown in Figure 17.
79. In particular, the design of the building elevations, including the proportions of solid to void and the proportions of some of the windows and Juliette balconies (tall and thin) did not respect the traditional proportions visible in the neighbourhood. The proposed materials were also out of character with the conservation area.



**Figure 17:** Photomontage of the original proposal

80. Revisions were required to the proposal to address these issues and refine the number and type of material changes, window types and proportions generally to deliver a more unified architectural expression. The amended photomontage is shown the Figure 18.
81. The revised proposal is acceptable. The proposal presents a more simplified and consistent approach regarding window sizes, types and locations. Materials colours and finishes have also been refined to warmer, earthy tones that are more suitable within the heritage conservation area. These changes, combined with the reduction in bulk and scale result in a building that is not inconsistent with the streetscape and will not detract from the heritage conservation area.



**Figure 18:** Photomontage of amended proposal excluding footpath amendments for equitable access.

#### Ground floor design

82. The ground floor design has been through a number of iterations. As originally proposed, the ground floor design (Figure 19) was unacceptable and the ground floor presented a poor level of architectural expression. The fire egress, utility areas and garbage bin storage areas left limited room for sufficient residential amenity. Insufficient space for waste storage and bicycle parking was also an issue, along with inappropriate materials and detailing of the elevations.
83. The applicant amended the proposal to address the above issues. Amended plans were received showing the following:
  - (a) the introduction of a basement level and relocation of waste storage, residential laundry and services from the ground floor to the basement;
  - (b) the relocation of the residential lobby to Mansion Lane, to co-locate with the fire egress required by Lot 1;
  - (c) the introduction of a retail 'coffee corner' fronting Ward Avenue.

84. Following a review of the amended plans by the City's Urban Design Specialist, Public Domain Unit and the Design Advisory Panel, a further amended plans were submitted to addressing flooding and amenity concerns as follows:
- (a) provide a finished floor level of the ground floor (adjacent to the lift and stairwell) 300mm above the gutter invert level, to protect the basement from flooding;
  - (b) relocate the primary residential foyer to the Ward Avenue frontage, reduce the coffee corner is size and incorporate it into the foyer;
  - (c) retain the foyer area to Mansion Lane as fire egress for Lot 1. Redesign this entry to raise the floor to ceiling height from 2000mm and reduce the size of the alcove and potential for concealment.
85. Amended plans were received that partially address the above issues. Due to the required flood planning level to protect the basement, a Ward Avenue primary residential lobby is not achievable while still providing compliant and equitable DDA access. The level difference between the flood planning level at the lift/stairwell and the Ward Avenue footpath would require considerable internal ramping, and inadequate space exists within the coffee corner to achieve this, even if the retail component were deleted. The provision of internal stairs would also take up a considerable space while failing to achieve equitable access for the primary building entry.
86. Given the sites flood constraints and equitable access requirements, the proposed ground floor arrangement is acceptable in this instance. The proposal has been amended to improve the amenity of the Mansion Lane lobby by raising the floor to ceiling height to 2700mm, and incorporating landscaping and refining materials to improve the appearance of the entry. The building has also been modified to provide a minimum 1100mm clearance on the Mansion Lane footpath to ensure equitable access from the public domain to the residential lobby. Further, the separation of the residential lobby and coffee corner will allow the retail component to operate independently of the residential use onsite.

#### Fire Egress

87. The subject site contains a fire egress in the form of a corridor that runs between the existing triple garage and the six storey building immediately to the north known as Eastend Lodge.
88. The fire egress services the Eastend Lodge (on Lot 1), however the Title for Lot 2 (the subject site) does not show any easements benefitting or burdening the site. As such, there appear to be no formal rights for Lot 1 to pass through Lot 2, should they eventually be in separate ownership.
89. The fire egress has been incorporated into the design of the ground floor. A condition has been recommended requiring an easement for access be created burdening Lot 2 and benefitting Lot 1, to ensure ongoing fire egress for the Eastend Lodge remains.
90. While the overall design of the ground floor has been acceptably resolved, resolution of all appropriate materiality and finishes is still to be achieved. The submitted material and sample board does not include details of the feature screen door to the Mansion Lane lobby. A suitable condition has been recommended regarding the detailed design of this screen.

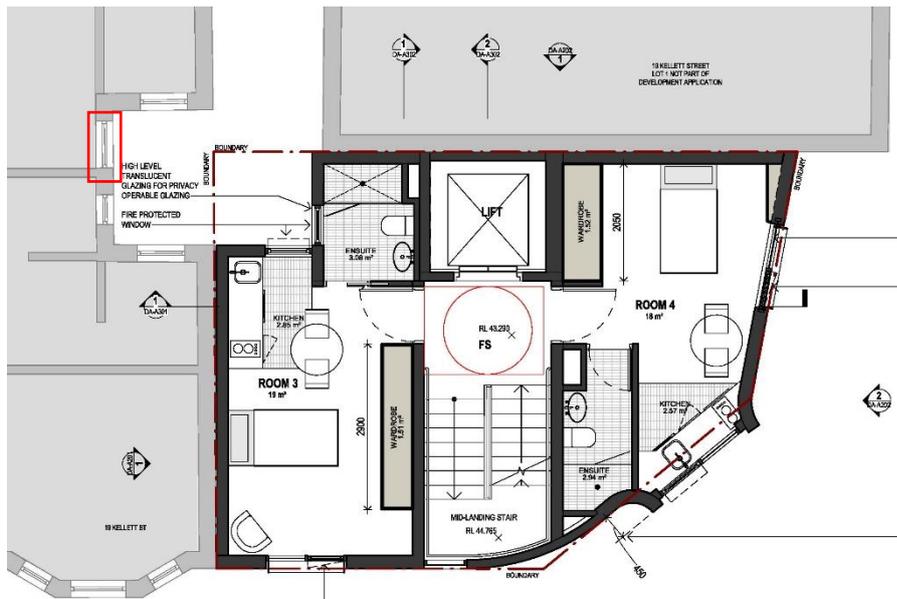
## Overshadowing and solar access

### Overshadowing to adjoining properties

91. Section 4.2.3 of Sydney DCP 2012 outlines the provision for solar access to adjoining properties. The DCP specifies that neighbouring developments must receive a minimum of 2 hours direct sunlight to at least 1sqm of living room windows on the 21 June.
92. The adjoining property at 19 Kellett Street contains units with windows that face onto the internal light well. The majority of these windows are to bathrooms and kitchens and are not protected under the DCP control. A number of these windows however, are to living rooms, as shown with the red line in Figures 19 and 20.



**Figure 19:** Adjoining living room windows to 19 Kellett Street identified in red



**Figure 20:** Adjoining windows to 19 Kellett Street identified in red

93. Shadow diagrams submitted with the application show that the light well is entirely in shadow on the 21 June. This is as a result of the existing six storey building to the north of the subject site, as well as overshadowing caused by the 19 Kellett Street building itself. The location of the proposed building to the east and south of the living room windows at 19 Kellett Street, and the setback to the internal light well results in no additional overshadowing to this adjoining property.
94. The proposal will not result in any additional overshadowing of living room windows to units at 19 Kellett Street between the hours of 9am and 3pm on the 21 June and is acceptable with regard to overshadowing.

### Minimum Room Size

95. The Affordable Housing SEPP 2009 and Sydney LEP 2012 require minimum rooms size of 12sqm, excluding kitchen and ensuite.
96. The proposed boarding rooms comply with the minimum room sizes, with the exception of the accessible room on level 1.
97. The proposal was originally designed with a reduced setback to the shared light well to 19 Kellett Street at the ground floor and level 1. This allowed a compliant room size to the accessible room, as shown in Figure 21.
98. Following an assessment of the proposal, including review by the City's Design Advisory Panel, concerns were raised regarding the potential impact of the proposal on the amenity of ground and level 1 units at 19 Kellett Street. The applicant was requested to amend the layout of the ground and first floor to increase the setback of these levels to align with the floors above (see Figure 22).
99. The amendments resulted in the reduction in size of the level 1 accessible room. While compliance with the numerical room size requirement is not achieved, the accessible room is able to provide a functional layout that still achieves a basic level of internal amenity, while protecting the amenity of the adjoining property.

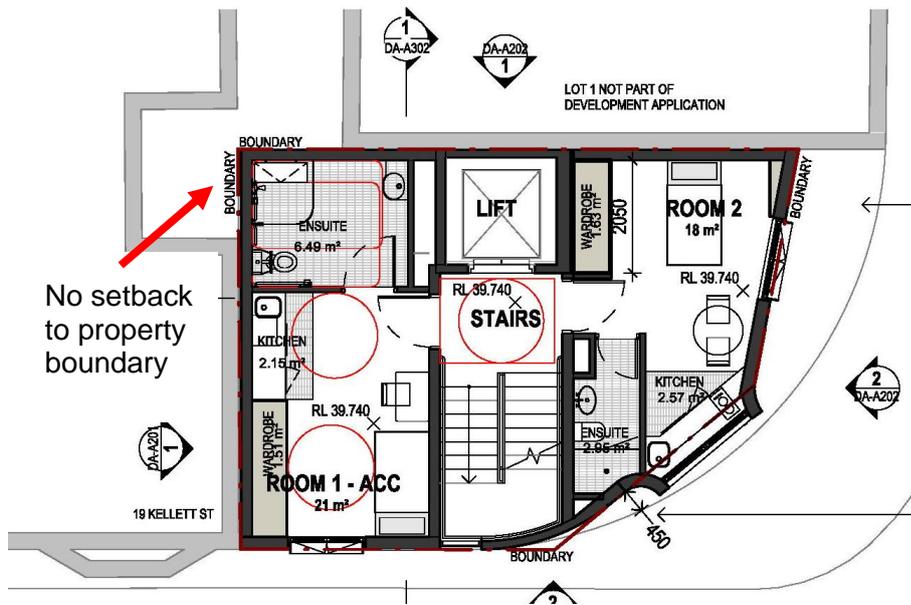


Figure 21: Original level 1 floor plan built to the boundary of the internal light well

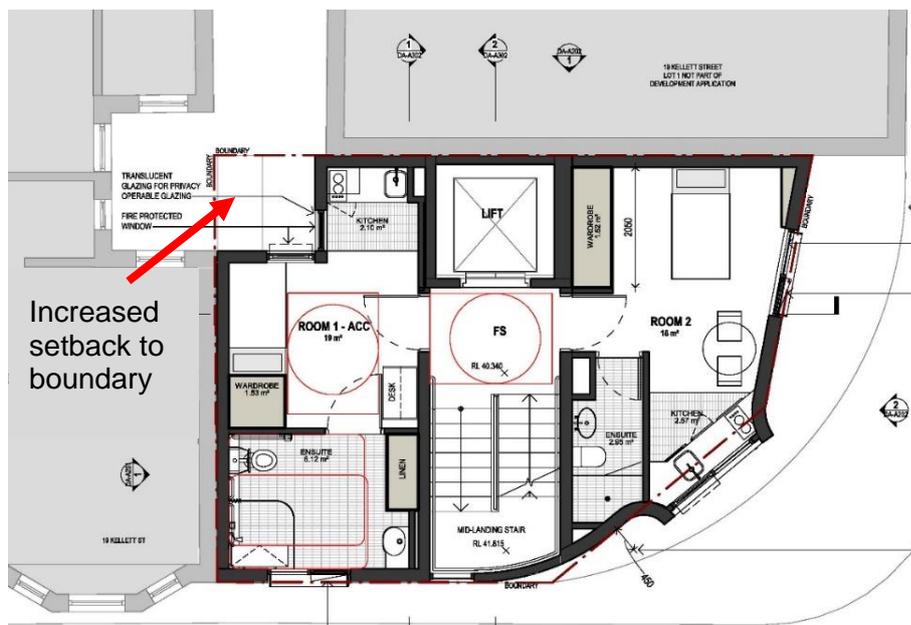


Figure 22: Amended level 1 floor plan with setback to the internal light well

**Other Impacts of the Development**

- 100. The proposed development is capable of complying with the BCA. It is Class 3.
- 101. The proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to recommended conditions.

### Suitability of the site for the Development

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

### Internal Referrals

103. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Safe City; Surveyors; Transport and Access; Tree Management and Waste Management; who advised that the proposal is generally acceptable subject to the recommended conditions.

### External Referrals

104. The application was referred to Ausgrid to assess whether a substation or additional infrastructure would be required to service the proposal. On the 29 July 2019 advice was received that Ausgrid has no objection to the development application.

### Notification, Advertising and Delegation (Submission(s) Received)

105. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 21 June 2019 and 13 July 2019. As a result of this notification a total of 382 properties were notified and there were six submission(s) received.

- (a) The proposal is excessive in height and exceeds the allowable height controls.

**Response** - The proposal has been amended to reduce the height of the building by one storey. The amended proposal exceeds the height control by 1.4m. This departure to the height control has been assessed in detail above and is acceptable.

- (b) The proposal will result in unacceptable overshadowing to adjoining properties. Inadequate shadow diagrams have been submitted.

**Response** - The potential impacts of overshadowing have been discussed in detail above. The proposal will not result in unacceptable overshadowing impacts to adjoining properties. Adequate information has been submitted to assess overshadowing impacts.

- (c) There will be loss of light to the light well to 19 Kellett Street, which is the only source of light to kitchen and living rooms. There will be loss of fresh air flow to the light well. Loss and light and airflow will create a damp environment leading to mould and mildew.

**Response** - The proposal has been amended to show a setback of 1.7m to the property boundary and light well, which is consistent with the setback of the building to the north. It is noted that the building at 19 Kellett Street is built to the boundary and does not provide a setback aside from the light well, and that other units within this building have a similar existing arrangement to what is proposed. The building setback is acceptable with regard to the site constraints and the controls of the site.

- (d) The proposal will generate unacceptable noise impacts due to noise from apartments to the internal light well, noise from mechanical plant and noise from the use of the rooftop common space.

**Response** - The acoustic report submitted with the application has been assessed by the City's Environmental Health Unit and is acceptable. The report assessed potential noise impacts from future occupants as well as mechanical ventilation. Appropriate conditions have been recommended regarding compliance with the recommendations of the acoustic report. An acceptable Plan of Management has been submitted to manage the communal areas of the site, including the rooftop. Conditions have also been recommended limiting the use of the rooftop to between 7am and 10pm.

- (e) The successful operation of the premises requires compliance by the property owner and residents with an impractical Plan of Management to achieve noise attenuation. The existing boarding house at 21 Kellett is not managed appropriately and there are existing noise, passive smoking and illegal dumping issues.

**Response** - Compliance with the Plan of Management is a condition of consent. Any noncompliance with consent conditions, such as playing of music outside or use of the common open space outside allowed hours should be reported to Council's Rangers to allow non-compliance's to be properly investigated.

- (f) An insufficient waste management plan has been provided.

**Response** - The proposal has been amended to address inadequate waste facilities and a satisfactory waste management plan has been subsequently submitted.

- (g) The proposal includes various fire safety elements that present non-compliances with the Building Code of Australia.

**Response** - A BCA Assessment Report and Fire Engineers Assessment has been submitted with the application. The proposal has been reviewed by Council's Building Surveyors and is satisfactory. The proposal is capable of complying with the BCA and all BCA compliance matters will be resolved at the construction certificate stage.

- (h) The proposal will obstruct wall vents to the eastern wall of 19 Kellett Street, leading to degradation of the internal structure of the wall. The proposal fails to address how the eastern wall of 19 Kellett Street will be treated to ensure integrity of the wall remains as there is potential for moisture to appear in this wall if not treated during construction.

**Response** - Building boundary to boundary is a typical form of development in this area and the site is not subject to setback requirements that prevent this type of construction. The existing vents on 19 Kellett Street site overhang the property boundary and encroach into the subject site. While the vents provide additional ventilation to the building, it is not a BCA requirement to retain the existing air vents. Proper construction methods, for instance, capping and flashing over the existing and proposed walls should ensure that the building at 19 Kellett Street is adequately protected during construction and beyond. Detailed construction methods will be assessed at the construction certificate stage.

- (i) The building will initiate the requirement for drencher protection to the windows of 19 Kellett Street along Mansion Lane. BCA upgrades of 19 Kellett Street should be addressed by the proposal.

**Response** - The potential upgrading of adjoining buildings is beyond the scope of this development application. The subject proposal is required to comply with all of the relevant provisions of the BCA, which may include the installation of fire protected windows as appropriate. Likewise, existing buildings are responsible for compliance with relevant section of the BCA, regardless of adjoining development proposals.

- (j) The proposal removes critical service access to 19 Kellett Street by removing the one entrance path currently available for services such as fire/plumbing etc.

**Response** - The fire egress from Lot 1 remains as part of this proposal and is integrated into the ground floor design. The Title for Lot 2 (the subject site) does not show any easements benefitting 19 Kellett Street as such, there appear to be no formal rights for 19 Kellett Street to access the site. Ongoing access through the site by 19 Kellett Street is a private matter to be resolved between property owners.

- (k) Access to street parking will be further limited due to additional residents.

**Response** - The proposal provides affordable accommodation for a maximum of six residents. The site is in a highly accessible area close to public transport, employment and services and bicycle parking has been provided above the required rate. The proposal will not have unacceptable impacts on local street parking.

- (l) The development will cause traffic issues for residents who rely on these roads to get to Elizabeth Bay and Potts Point.

**Response** - The development does not propose any off street parking and will not generate unacceptable traffic. A condition has been recommended requiring the submission of a Construction Traffic Management Plan in order to ensure that construction traffic is managed appropriately.

## Public Interest

106. The proposal will have no detrimental effect on the public interest, subject to recommended conditions.

## S7.11 Contribution

107. The development is subject of a S7.11 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 and worker populations.

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

(a) Open Space	\$40,381.81
(b) Community Facilities	\$20,248.11
(c) Traffic and Transport	\$1,398.94
(d) Stormwater Drainage	\$0.00
Total	\$62,028.86

## Relevant Legislation

109. Environmental Planning and Assessment Act 1979.

## Conclusion

110. The application, as amended, proposes the demolition of an existing single storey triple garage and construction of a part four part five storey mixed use development comprising of a six room boarding house, basement services, ground floor retail space and communal indoor/outdoor space on the top floor
111. The proposal has been amended to generally address a number of issues identified by Council during the assessment of the application. These issues relate to height, floor space ratio, amenity impacts on adjoining properties, general amenity, architectural expression and materials and finishes.
112. The applicant has submitted a request to vary the motorcycle parking and building height controls under Clause 4.6 of Sydney LEP 2012. These requests are supported.
113. The proposed development satisfies the relevant design excellence requirements of Clause 6.21 of Sydney LEP 2012 by providing a suitable built form, design and materiality in the context of the heritage conservation area and is appropriate within the streetscape.

114. Subject to compliance with the recommended conditions, the proposal will provide an acceptable level of amenity for the subject site and neighbouring properties.
115. The amended proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls and is recommended for approval, subject to conditions.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Natasha Ridler, Area Coordinator