

**Item 3.****Development Application: 51 Buckingham Street, Surry Hills - D/2019/1163**

File No.: D/2019/1163

**Summary**

<b>Date of Submission:</b>	21 October 2019 Amended plans received 7 July 2020
<b>Applicant:</b>	LGS Enterprises Pty Ltd
<b>Owner</b>	LGS Enterprises Pty Ltd
<b>Architect/Designer:</b>	Jeff Madden and Associates
<b>Heritage Consultant</b>	Jeff Madden and Associates
<b>Cost of Works:</b>	\$289,152.00
<b>Zoning:</b>	The site is located in the B4 Mixed Use zone. The proposed development is defined as alterations and additions to an existing office premises and is permissible with consent in the zone.
<b>Proposal Summary:</b>	<p>Alterations and additions to State Heritage listed building known as 'Cleveland House'. Works include cellar repairs, demolition of existing WC block and construction of new WC block, extension of verandah and changes to windows, doors and internal partition walls. This application is Integrated Development requiring the approval of the Heritage Council of NSW under the Heritage Act 1977.</p> <p>This application seeks to vary a development standard by more than 10% and is therefore referred to the Local Planning Panel for determination.</p>
<b>Summary Recommendation:</b>	The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings

## Recommendation

It is resolved that consent be granted to Development Application No. D/2019/1163 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 consistent with the objectives of the B4 Mixed Use zone pursuant to the Sydney Local Environmental Plan 2012.
- (B) The proposal complies with the Floor Space Ratio development standard pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel 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 height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney Local Environmental Plan 2012.
  - (ii) The proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the height of buildings development standard.
- (D) The proposal, subject to conditions, satisfies the provisions of clause 6.21 of the Sydney Local Environmental Plan 2012.
- (E) The proposal is consistent with the objective of conserving the heritage significance of heritage items and heritage conservation areas.
- (F) The development is consistent with the objectives of the Sydney Development Control Plan 2012.
- (G) Issues raised in submissions have been considered and where appropriate addressed in the amended plans and or conditions of consent.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by staff on 5 December 2019.
2. The site has a legal description of Lot 1, DP 788696 and located at 51 Buckingham Street, Surry Hills. It is rectangular in shape with a site area of approximately 742sqm.
3. The site is located on the south western corner of Buckingham Street and Bedford Street. The site contains a two-storey building which is currently used as an office.
4. The site is a state heritage item known as 'Cleveland House Including Interior and Surrounding Grounds' (SHR 00065) and a local heritage item under the Sydney LEP 2012 (I1462). Cleveland House is of exceptional historical significance as it is a rare and surviving example of an Old Colonial Georgian style dwelling. The building was also the first substantial residential dwelling to be constructed in the Cleveland Gardens estate and one of the earliest remaining to be constructed in Surry Hills.
5. The site is located within the Cleveland Gardens heritage conservation area (C62) and is located within the Prince Alfred Park East (2.11.8) locality.
6. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial premises. Directly north of the site is the Bedford Street closure which allows for pedestrian access from Buckingham Street to Bedford Street, towards Chalmers Street.
7. North of the Bedford Street closure is a four-storey residential flat building at 47-49 Buckingham Street, which was formerly a church building.
8. South of the subject site are two residential flat buildings at 156-164 Chalmers Street, known as 'Princes Gardens'. The eastern building is eight-storeys in height and the western building is ten-storeys in height. The Princes Gardens site also contains an open lawn area west of the subject site, which forms part of the 'Cleveland House' State heritage item.
9. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of site and surrounding area with site outlined in red



Figure 2: Site viewed from the corner of Buckingham Street and Bedford Street, looking south



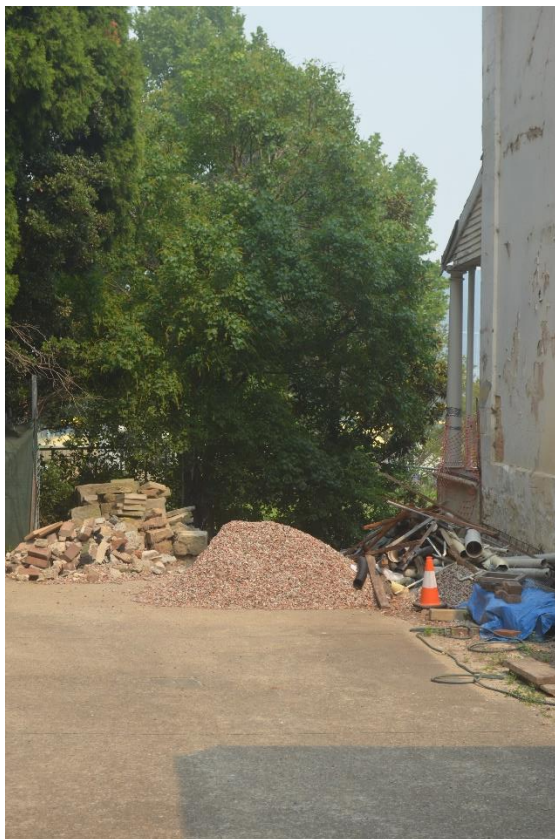
**Figure 3:** Site viewed from Buckingham Street, looking west towards Bedford Street



**Figure 4:** Rear of the site viewed from Buckingham Street, looking north-west



**Figure 5:** Neighbouring residential flat building, viewed from the subject site looking south



**Figure 6:** Proposed location of new toilet/ fire stair block adjacent to southern boundary



**Figure 7:** Existing external toilet block on first floor proposed to be demolished, viewed from southern side of site

## History Relevant to the Development Application

### Development Applications

10. The following applications are relevant to the current proposal:
  - **D/2014/381** – Development consent was granted on 26 June 2014 for alterations and repairs to existing verandah including drainage works, new concrete slab, new sandstone flagstones and glass balustrade.
  - **D/1992/706** – Development consent was granted on 5 March 1993 for alterations to the building for the purposes of restoring and conserving the heritage building and internal alterations to use as a commercial office.
  - **D/1992/600** – Development consent was granted on 29 September 1992 for storage and distribution of dental supplies.

### Amendments

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 25 October 2019. The applicant was requested to provide a Statement of Environmental Effects, Conservation Management Plan, Schedule of Materials and Finishes and updated Architectural Plans.
12. The applicant submitted the requested information on 20 November 2019.
13. On 16 December 2019, after receiving preliminary comments from Heritage NSW, the applicant was requested to provide details of any excavation works proposed on the site and a statement of potential historical archaeology.



14. The applicant responded to this request on 16 January 2020 by submitting additional information and amended plans. This was found to be insufficient by Heritage NSW and an updated submission was requested on 29 January 2020.
15. On 7 July 2020, the applicant submitted amended plans which show a reduction of the extent of excavation.
16. Heritage NSW provided Council with General Terms of Approval on 14 September 2020.

### **Proposed Development**

17. The application seeks consent for the following:
  - (a) Basement:**
    - (i) remove existing concrete slab and stair over the original cellar stairs and reinstate those stairs, with weatherproof doors over; and
    - (ii) remove existing brick piers and reinforce beams.
  - (b) Ground Floor:**
    - (i) internal modifications including changes to openings and walls;
    - (ii) make good all walls, ceiling cornices, joinery, doors, windows, doors and the like, to match the original existing in detail and materials;
    - (iii) new stone steps up to verandah on southern elevation;
    - (iv) install new kitchen in western wing;
    - (v) construct new WC block and fire stair adjoining the western wing and extend the existing verandah to the south; and
    - (vi) install new WC facilities and store room in eastern wing.
  - (c) First Floor**
    - (i) internal modifications including changes to openings and walls;
    - (ii) demolish existing WC block and reinstate original façade and verandah below; and
    - (iii) construct new WC block and fire stair adjoining the western wing including new glass roof above existing verandah.
18. Plans and elevations of the proposed development are provided below.

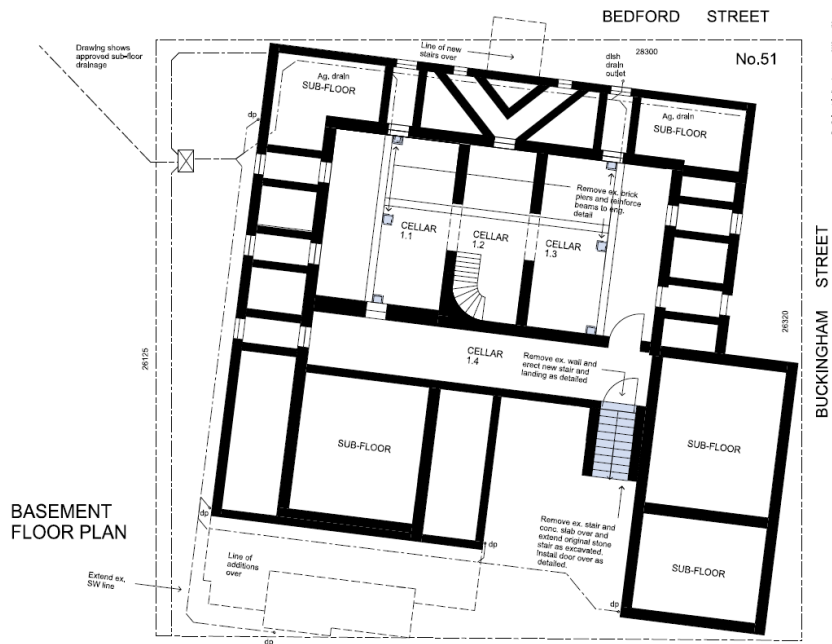


Figure 8: Proposed basement floor plan



Figure 9: Proposed ground floor plan



Figure 10: Proposed first floor plan

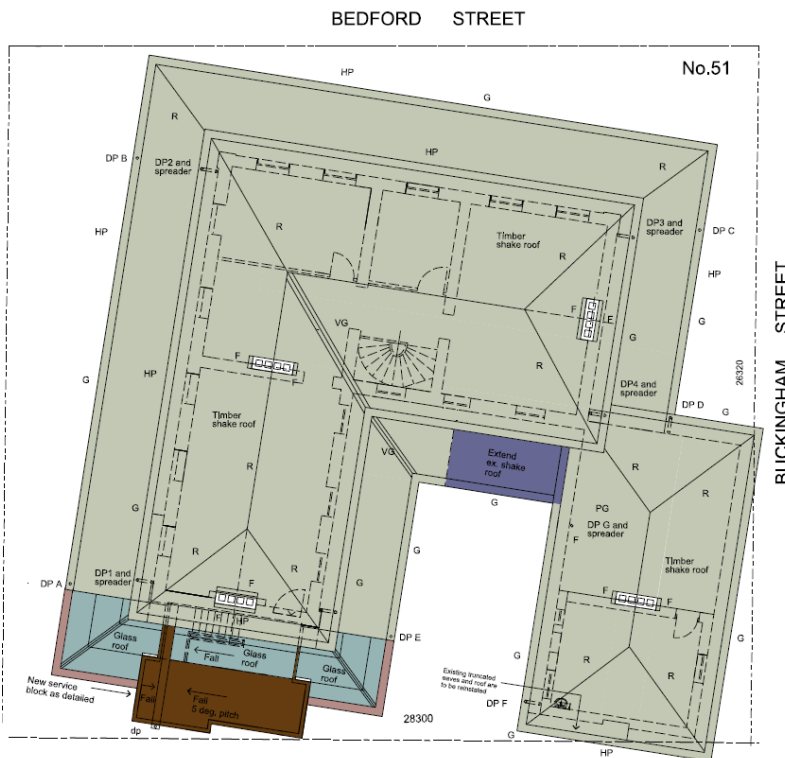


Figure 11: Proposed roof plan

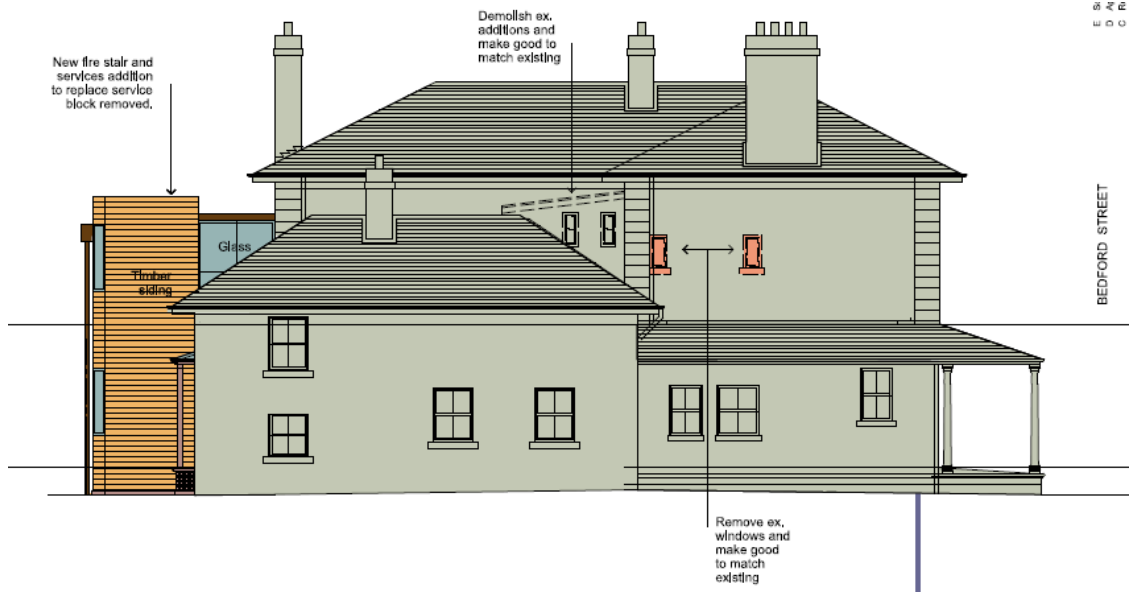
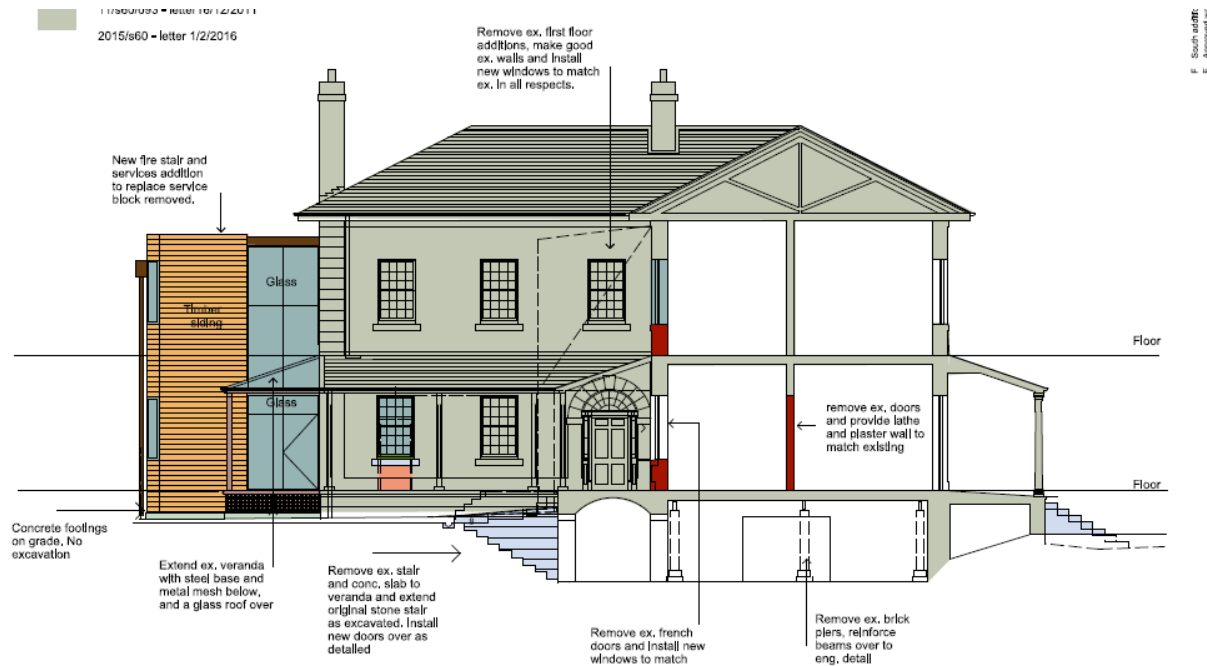


Figure 12: Proposed eastern elevation



Figure 13: Proposed western elevation



**Figure 14:** Proposed section

## Assessment

- The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## Heritage Act 1977

- The subject site is listed as an item known as 'Cleveland House Including Interior and Surrounding Grounds' on the State Heritage Register under the Heritage Act 1977 (SHR 00065). As such, the development application was lodged with Council as Integrated Development and was referred to the Heritage Council of NSW.
- As Integrated Development requiring approval under the Heritage Act 1977, a copy of the application was referred to the Heritage Council on 21 November 2019 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000.
- Copies of public submissions made to the City of Sydney during the notification period were forwarded to the NSW Heritage Council on 21 January 2020.
- On 11 September 2020, the Heritage Council of NSW issued the General Terms of Approval subject to recommended conditions which are included in the Notice of Determination. See further details under the sub-heading 'Heritage' in the 'Discussion' section below.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

24. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

#### Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is defined as alterations and additions to an existing office premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	The proposed development does not comply with the maximum height of buildings development standard.  A maximum height of 6m is permitted.  A height of 7.9m is proposed (31.6% variation).  A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details under the sub-heading 'Clause 4.6 request to vary a development standard' in the 'Discussion' section below.
4.4 Floor space ratio	Yes	The proposed development complies with the maximum floor space ratio development standard.  A maximum floor space ratio of 1:1 or 742sqm is permitted.  A floor space ratio of 0.59:1 or 438.6sqm is proposed.

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a state heritage item known as 'Cleveland House Including Interior and Surrounding Grounds' (SHR 00065) and a local heritage item under the Sydney LEP 2012 (I1462).</p> <p>The site is located within the Cleveland Gardens heritage conservation area (C62).</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item.</p> <p>See further details in the 'Discussion' section below.</p>

#### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development satisfies the requirements of this provision.

**Part 7 Local provisions – general**

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class Class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

**Development Control Plans****Sydney Development Control Plan 2012**

25. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

**Section 2 – Locality Statements**

26. The site is located within the Prince Alfred Park East locality. The proposed development including new additions is considered to be in keeping with the unique character of the area and design principles in that it responds to the heritage item on the site and its context within the heritage conservation area.

**Section 3 – General Provisions**

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposal retains the existing heritage building to Bedford Street.
3.2. Defining the Public Domain	Yes	The proposal retains the existing heritage building to Bedford Street.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.9 Heritage	Yes	The site is a state heritage item known as 'Cleveland House Including Interior and Surrounding Grounds' (SHR 00065) and a local heritage item under the Sydney LEP 2012 (I1462).  The site is located within the Cleveland Gardens heritage conservation area (C62).



Provision	Compliance	Comment
		<p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item.</p> <p>See further details in the 'Discussion' section below.</p>
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of 2 storeys.</p> <p>The proposed development is two-storeys in height and complies.</p>
4.2.2 Building setbacks	Yes	<p>Building setback alignments do not apply to the site.</p> <p>The setbacks of the existing building are retained on the east, north and west elevations.</p> <p>The proposed setback of the rear addition is considered acceptable as it maintains the setting of the heritage item.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposal has included solar diagrams demonstrating minor additional overshadowing impacts. See further details in the 'Discussion' section below.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

## Discussion

### Clause 4.6 Request to Vary a Development Standard

27. The site is subject to a maximum height of buildings control of 6 metres. The proposed development has a height of 7.9 metres, which results in a 31.6% variation to the standard. The existing building exceeds the maximum height control.
28. 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;
  - b. That there are sufficient environmental planning grounds to justify contravening the standard;
  - c. The proposed development will be consistent with the objectives of the zone; and
  - d. The proposed development will be consistent with the objectives of the standard.
29. A copy of the applicant's written request is provided at Attachment C.

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

30. The applicant seeks to justify the contravention of the 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 proposed height of the rear roof extension is below the existing height of the building, which exceeds the height development standard as existing; and
    - ii. The proposed works are only visible from the rear of the property and has minimal visibility from the public domain.
  - b. That there are sufficient environmental planning grounds to justify contravening the standard:
    - i. The proposed rear roof extension is located at the rear and has minimal visibility from the public domain;
    - ii. The proposed rear roof extension is below the existing maximum building height;
    - iii. There is no change to the front elevation of the building; and

- iv. The proposal will not result in adverse environmental impacts to surrounding properties.
- c. The proposed development will be consistent with the objectives of the zone;
  - i. The proposal allows for the continuance of a habitable, appealing and adaptable building; and
  - ii. Maintaining greater standards of thermal comfort, minimising energy use and designing out historic issues associated the relocation of the intrusive toilet block will assist the preservation of important conservation fabric.
- d. The proposed development will be consistent with the objectives of the standard
  - i. The existing building establishes and respects notions of transition in built form and land use intensity. It is part of a group with a high-quality relationship to private built form and public space void. Thus, it contributes to streetscape and character;
  - ii. The proposed works have minimal visibility from Buckingham Street and no visibility from Bedford Street;
  - iii. The proposed works are below the original height of the historic building. While the proposed works are above the height standard, it is respectful of its heritage context, being both subservient to the original roof and is in keeping with the original character. The proposed works are 200mm below the height of the 1940s amenities being replaced.

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

31. 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)?

32. The applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. The existing building, being a State Heritage Item, exceeds the 6m building height control and the proposed addition sits below the maximum height of the existing building. It is located towards the rear, will have minimal impact from the public domain and will not result in adverse environmental impacts.

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

33. The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the standard. The proposed additions sit below the existing maximum building height. The additions comply with requirements relating to solar access and overshadowing and will not result in unreasonable environmental impacts to the subject site or neighbouring properties.

Is the development in the public interest?

34. The proposed development will be in the public interest because it is consistent with both the objectives of the height development standard and the objectives for development within the B4 Mixed Use zone.
35. The relevant objectives of the height of buildings development standard are:
- (a) To ensure the height of development is appropriate to the condition of the site and its context.
  - (b) To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
  - (c) To promote the sharing of views.
36. The proposal provides an acceptable transition from the neighbouring residential developments to the subject site and sits below the maximum height of the existing building on the site. It allows an appropriate height transition to a heritage item and is of a height that is suitable for the heritage conservation area. It will not impact on any significant views or result in any adverse amenity impacts to surrounding development.
37. 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.
38. The proposal is consistent with the objectives for development in the B4 Mixed Use zone in that it is ancillary to an existing commercial land use and will not be incompatible with existing land uses.

39. 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

40. For the reasons provided above the requested variation to the height 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 development standard and the B4 Mixed Use zone.

#### Heritage

41. The site is a state heritage item known as 'Cleveland House Including Interior and Surrounding Grounds' (SHR 00065) and a local heritage item under the Sydney LEP 2012 (I1462). The site is also located within the Cleveland Gardens heritage conservation area (C62).
42. Cleveland House is a rare and exceptional example of a Victorian Regency style mansion and its architectural design has been attributed to Francis Greenway. Erected by 1824, the building's internal and external fabric remains relatively intact.
43. The proposal was reviewed by Council's Heritage Specialist who supports the proposal, subject to conditions of consent. Specifically, the rear addition to the western wing to facilitate new fire stairs and WC facilities is supported as a means to provide necessary amenities whilst avoiding internal penetrations to the existing building. The proposed location of the addition is supported as it is confined to the rear in areas of less significance. The demolition of the existing toilet on the first floor is seen as a positive impact and is supported. The extension of the verandah and its roof on the south-west corner is also supported as it completes Greenway's design and respects a classic freestanding Regency-style house.
44. As outlined in the points above, the proposed development is generally supported by Council's Heritage Specialist. Conditions of consent have been recommended to ensure the heritage significance of the building is protected.
45. It is noted that Heritage NSW have requested a number of design changes in the General Terms of Approval provided to Council. The requested design amendments are outlined in the recommended conditions.

#### Solar access

46. Shadow diagrams were submitted by the applicant which demonstrate that additional shadows will be cast to neighbouring properties to the south of the site, particularly between 12pm and 3pm.
47. At 12pm, the proposal results in additional shadows being cast to private open space at the neighbouring 8 storey residential flat building at 156-164 Chalmers Street to the south. However, this balcony will maintain adequate solar access for the remainder of the day and meets the minimum requirement of 2 hours of direct sunlight between 9am and 3pm on 21 June to 50% of the required minimum area of private open space.
48. At 3pm, the proposal results in minor overshadowing to a terrace at the same neighbouring building. However, this terrace receives adequate solar access prior to this time on 21 June.

49. Overall, the shadows resulting from the proposed addition compared to existing circumstance are considered to be minor and comply with the solar access controls outlined in the DCP.

### View impacts

50. Submissions were received raising concern over the view impacts from the balconies of the adjoining residential flat building to the south of the subject site, at 156 Chalmers Street.
51. Planning principles established by *Tenacity Consulting v Warringah Council* (2004) are relevant for assessing whether view impacts resulting from the proposed development are reasonable. The four-step assessment is outlined as follows:

**(a)** Views to be affected

- (i) The view in question is a keyhole view between the Princes Gardens Residence A building and the south-west section of Cleveland House. The view is of the lawn and gardens at Princes Gardens, Chalmers Street, Prince Alfred Park and city buildings beyond. See Figures 15 and 16 below.



**Figure 15:** View from north facing living room of apartment on second floor of Princes Gardens apartment building, looking north-west



**Figure 16:** View from balcony of apartment on second floor of Princes Gardens apartment building, looking north-west

- (ii) The abovementioned views are not water views nor iconic views (eg of the Opera House or the Harbour Bridge). It is also a partial view rather than a whole view. Therefore, the view in question has minimal value compared to water or iconic views.
- (b)** From what part of the property the views are obtained
- (i) The view is at an oblique angle and is across numerous side boundaries, which is more difficult to protect. As noted in the relevant judgement, the expectation to retain side views is often unrealistic.
- (c)** Extent of the impact
- (i) The view is obtained from a balcony and living room. It is noted that the impact on views from living areas is more significant from bedrooms or service areas.
- (d)** Reasonableness of the proposal that is causing the impact
- (i) The proposal is supported from a heritage perspective with regard to the overall impact on the State heritage item. It complies with the FSR and height in storeys control, however exceeds the 6m height control. As outlined in the discussion section above, the proposed height is supported as it is well below the height of the existing building which already exceeds the 6m height control.
52. Given the above, the proposed view impacts are considered reasonable in this instance.

## Consultation

### Internal Referrals

53. The application was discussed with Council's Heritage Specialist who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the recommended conditions of consent.

### External Referrals

#### NSW Heritage Council

54. Pursuant to the Heritage Act 1977, the application was referred to NSW Heritage Council on 21 November 2019 for concurrence.
55. Copies of public submissions made to the City of Sydney during the notification period were forwarded to the NSW Heritage Council on 21 January 2020.
56. General Terms of Approval were issued by NSW Heritage Council on 11 September 2020 and have been included in the schedules within the recommended conditions of consent.

### Advertising and Notification

57. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days. A total of 754 properties were notified and 9 submissions were received.
58. The submissions raised the following issues:

**(a) Issue: Proposal not in keeping with State Heritage listing**

Response: A number of submissions objected to the proposed development on the basis that the proposal is not in keeping with the character of Cleveland House. The proposed development is supported by both Council and Heritage NSW, subject to conditions. A discussion regarding heritage impacts is outlined in the 'Discussion' section of this report.

**(b) Issue: Estimated cost of works**

Response: One submission raised the concern that the proposed budget allowed (\$200,000) is insufficient for the total works required. The applicant submitted a Cost Summary Report which meets Council's requirements. The Cost Summary Report outlined that the total development cost predicted is \$289,151.50 which is accepted.



**(c) Issue: No timeline of construction provided**

**Response:** A timeline of development is not a DA submission requirement, nor is it a matter for consideration under Part 4.15 of the Environmental Planning and Assessment Act 1979. The development consent will lapse after five years if not activated.

**(d) Issue: Economic impacts to surrounding area**

**Response:** One submission stated that the development proposal, if extended over years, will continue to bring down neighbouring house/ apartment prices in the area. As noted above, the development consent will lapse after five years if not activated. Once the consent is activated by the substantial commencement of work on the site, there is no legislative requirement for completing the construction in a certain timeframe.

**(e) Issue: Impacts to personal enjoyment of balcony at 156 Chalmers Street**

**Response:** One submission raised concern about 'minimised personal enjoyment' as the proposed development will be visible from a neighbouring balcony at 156 Chalmers Street. As discussed in this report, the proposal is supported as it is subservient to the existing building and has been assessed as having minimal impacts to surrounding properties. Impacts to neighbouring properties are addressed under the 'Discussion' section above.

**(f) Issue: View impacts**

**Response:** Submissions were received raising concern over the view impacts from the balconies of the adjoining residential flat building to the south of the subject site, at 156 Chalmers Street. This is addressed under the 'Discussion' section above.

**(g) Issue: Current state of Cleveland House**

**Response:** A number of submissions were received objecting to the current state of Cleveland House and objected to the 'continuing decay of the property' and works being undertaken at a slow pace. The pace of upkeeping a property is not a matter for assessment under Part 4.15 of the Environmental Planning and Assessment Act 1979. However, it is acknowledged that the premises has been in a state of disrepair for an extended period. This development application is an indication of the applicant's intention to maintain the property and bring the building up to appropriate standards.

**(h) Issue: Size of new toilet block**

**Response:** Concern was raised with regard to the size of the toilet block compared to the original servant's stairs in this location. The size of the addition is considered to be subservient to the main building and is supported.

**(i) Issue: Right of carriageway along southern boundary**

Response: Concern was raised that the proposed two-storey addition would impede access to the carriageway located on the southern boundary. Council's Specialist Surveyor advised that the proposal would not impede on the Right of Carriageway on the property. A condition of consent is recommended to ensure that all new structures are contained within the property boundaries.

**(j) Issue: Materials of proposed fire stairs**

Response: Concern was raised regarding the proposed materiality of the fire stairs. The proposed fire stairs will need to comply with requirements of the Building Code of Australia which is to be addressed to the satisfaction of the Accredited Certifier prior to the issue of a Construction Certificate.

**(k) Issue: Completion of previous approvals on the site**

Response: A submission requested that Council require the owner to complete previous approvals for the site prior to applying for additional works. This is not required by the Environmental Planning and Assessment Act 1979 and it is noted that development consents will lapse after five years unless activated.

**(l) Issue: Shadow diagrams**

Response: It is noted that shadow diagrams were not submitted with the original application. An assessment against Council's solar access controls is outlined in the 'Discussion' section above. The scale of the proposed development would not reduce the provision of solar access to less than two hours to these balconies and therefore complies with Council's solar access requirements.

**(m) Issue: Demolition of existing toilet facilities**

Response: One submission objected to the demolition of the 1947 toilet block on the first floor of the building (as shown in Figure 7). The demolition of this structure is considered to be a positive heritage outcome for the building by Council's Heritage Specialist and is also supported by Heritage NSW.

**(n) Issue: Visual Privacy**

Response: One submission objected to the proposed bathroom windows that will face balconies and lounge rooms at the apartment building to the south. The applicant has confirmed that these windows are proposed to be opaque, however this is not annotated on the plans. A condition of consent will be recommended to ensure these windows are opaque.

**(o) Issue: Corrugated roof needs repair**

Response: Replacement of the existing corrugated roof has not been sought as part of this application.

## Financial Contributions

### Contribution under Section 7.11 of the EP&A Act 1979

59. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
60. Credits have been applied for the most recent approved use of the site. The existing first floor bathroom measures 14.2sqm, which is proposed to be demolished and replaced with new bathroom facilities with a combined floor area of 22.8sqm. This results in a total of 8.6sqm additional floor space.
61. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

### Relevant Legislation

62. Environmental Planning and Assessment Act 1979.
63. Heritage Act 1977.

### Conclusion

64. The proposal seeks consent for alterations and additions to State Heritage listed building known as 'Cleveland House'.
65. A written request to vary the height of buildings development standard is well founded. The request provided demonstrates that compliance with the height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation. The height variation to the development is consistent with the objectives of Clause 4.3 and the B4 - Mixed Use zone, and therefore is in the public interest.
66. The proposal exhibits design excellence, with a high standard of architectural design, materials and detailing in a built form that is appropriate for the heritage item and consistent with the existing and future desired character of the area.
67. Subject to conditions, the development is in the public interest and is recommended for approval.

## ANDREW THOMAS

Acting Director City Planning, Development and Transport

Samantha Campbell, Planner