

Item 6.**Development Application: 385 Wattle Street, Ultimo – D/2019/811****File No.:** D/2019/811**Summary**

Date of Submission: 30 July 2019, further information received 20 April 2020, 30 July 2020 and 15 September 2020

Applicant: H3 Architects

Architect: H3 Architects

Owner: TQK Pty Ltd

Planning Consultant Higgins Planning

DAPRS 9 June 2020

Cost of Works: \$9,503,580.00

Zoning: B4 Mixed Use Zone, proposal permitted with consent.

Proposal Summary: The application proposes demolition of the existing warehouse building and construction of a new part four / part five storey mixed use building comprising ground floor retail and student accommodation on all levels (65 boarding rooms for 91 residents total). The proposal includes excavation and remediation and the construction of one basement level.

The application includes a public benefit offer (including the offer to enter into a planning agreement) to dedicate land to the City for road widening and is therefore referred to the Local Planning Panel for determination.

The application was notified between 15 August 2019 and 6 September 2019. Two objections were received in response to the proposal. Issues raised in submissions include adaptability of building, contamination, and proximity to hazardous goods. These issues are discussed within the report and where appropriate conditions are recommended to address issues raised.

The application was considered by the Design Advisory Panel Residential Subcommittee on 9 June 2020. The proposal was amended to address issues raised by the panel and Council staff with amended plans received on 30 July 2020 and 15 September 2020. The amended plans are considered to address the key issues raised.

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

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 Height Variation Request

Recommendation

It is resolved that:

- (A) the variation requested to height of buildings standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2019/811 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.
- (B) The proposal generally satisfies the relevant controls relating to student accommodation and boarding house uses.
- (C) The proposal, subject to conditions, satisfies the provisions of clause 6.21 of Sydney LEP 2012.
- (D) 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 Sydney LEP 2012; and
 - (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.

Background

The Site and Surrounding Development

1. The site is identified as Lot 2 in DP 1077832 and is located at 385 Wattle Street, Ultimo. The site is located on the western side of Wattle Street between Macarthur Street to the north and Kelly Street to the south and has a rear frontage to Blackwattle Lane to the west. The site has a frontage to Wattle Street of 24.7m an average depth of 47.8m and an area of 1,174sqm.
2. The site currently contains a single storey warehouse building built to all boundaries. The building is currently fitted out and used as a dance studio for the Sydney Dance Company.
3. The surrounding area is characterised by a mixture of land uses. Adjoining to the north at 17-19 Macarthur Street is a six to seven storey mixed use development with retail at the ground level and residential apartments above. This building has a zero side setback to the subject site. Adjoining to the south at 387-429 Wattle Street is a service station development. Across Wattle Street to the east at 430-444 Wattle Street are a row of heritage-listed two storey terraces and at 446 to 456 a row of two storey terraces. To the west across Blackwattle Lane at 2-14 Mountain Street is a three to four storey commercial building. In the vicinity to the south at 483 Wattle Street is a five building Urbanest student accommodation development. At 435 to 443 Wattle Street a six-storey student accommodation development is currently under construction.
4. The site is not listed as a heritage item and is not located within a heritage conservation area. The site is located within the Blackwattle Bay stormwater catchment and is subject to flooding.
5. A site visit was carried out on 28 May 2020. Photos of the site and surrounds are provided below:

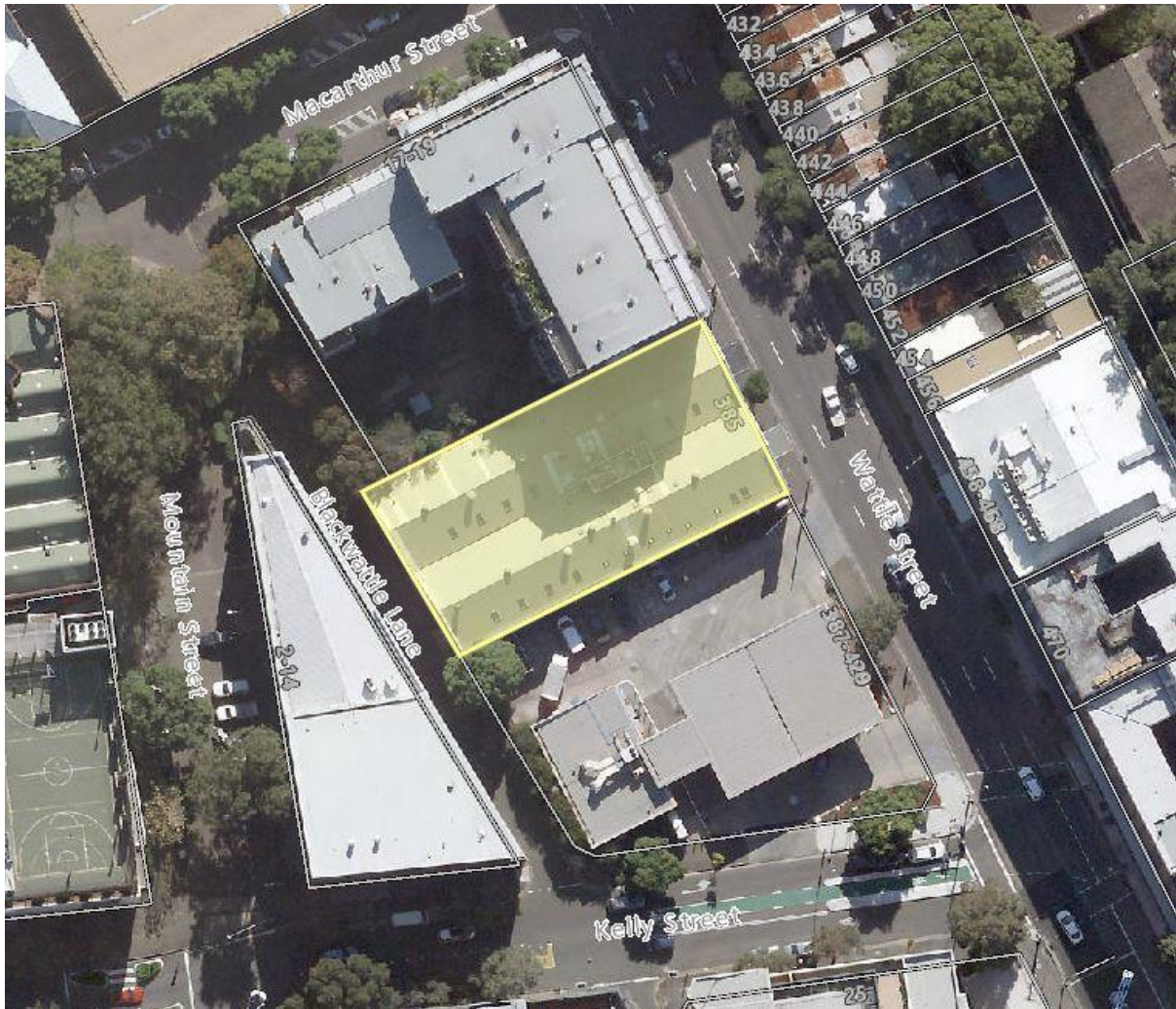


Figure 1: Aerial view of site and surrounds



Figure 2: Elevated view of site looking northwest



Figure 3: Elevated view of site looking southwest



Figure 4: Site viewed from Wattle Street looking northwest



Figure 5: Site viewed from Wattle Street looking southwest



Figure 6: Site viewed from Wattle street looking north



Figure 7: Site viewed from Blackwattle Lane looking north



Figure 8: Site viewed from Blackwattle Lane looking south



Figure 9: Adjoining building to the north 17-19 Macarthur Street



Figure 10: Commercial building opposite Blackwattle Lane at 2-14 Mountain Street



Figure 11: Heritage items at 430-444 Wattle Street



Figure 12: Development opposite Wattle Street to the east

History Relevant to the Development Application

Development Applications

6. The following details and applications are relevant to the current proposal.
7. The site was formerly part of a larger block incorporating the site to the north known as 369-385 Wattle Street.
8. U02-00575 granted a deferred commencement approval on 3 December 2020 for the construction of a five to seven storey mixed use building at 369-385 Wattle Street (now known as 17-19 Macarthur Street). This consent was activated and constructed.
9. This development 'harvested' floorspace from the subject site through a subdivision creating the subject lot and a covenant was placed on the title at that time restricting future development to a maximum FSR of 0.985:1. Under Sydney LEP 2012 the FSR control for the site increased from 2.25:1 to 2.5:1 and it has previously been agreed that the additional 'uplift' in FSR would allow for an additional 0.25:1 for the subject site (1.24:1 total plus applicable bonus provisions).

Planning Agreement

10. The application includes an offer to enter into a planning agreement (VPA) for the dedication of land for road widening and public benefit works therein. A draft VPA has been negotiated between Council and the owner and is recommended to be required to be executed as part of a deferred commencement condition for the dedication and public works to occur as part of the development. The final VPA is required to be exhibited and executed which would occur upon any approval of the development.

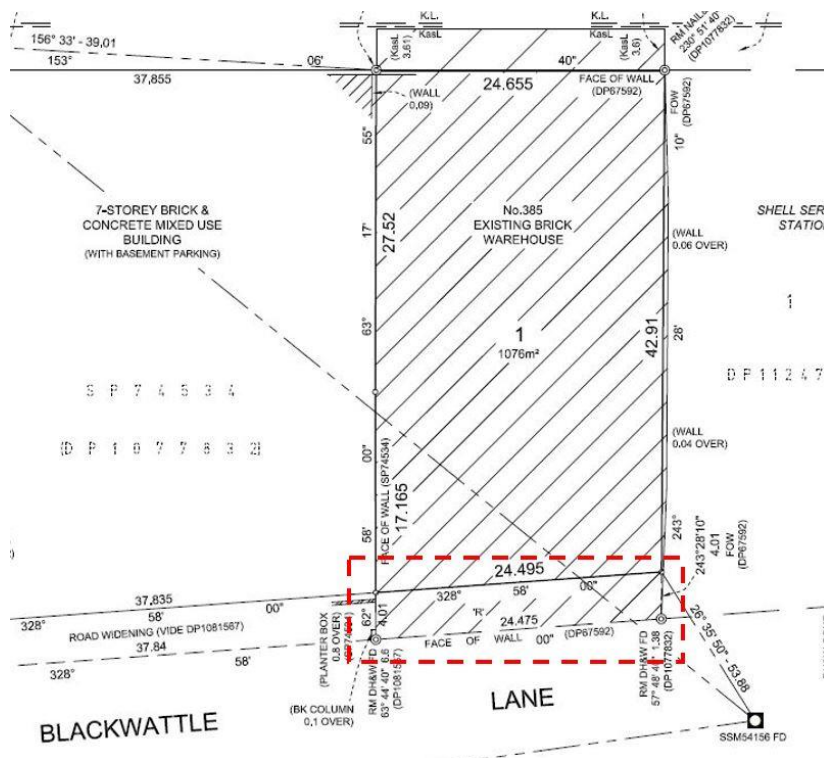


Figure 13: Plan of dedication with area of land to be dedicated outlined dashed

Compliance Action

11. There is no current compliance action in relation to the site.

Amendments

12. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on the 25 October 2019. The applicant responded to the request on 20 April 2020.
13. The application was considered by the Design Advisory Panel Residential Subcommittee (DAPRS) on 9 June 2020. The key recommendations from the panel application were:
 - a. improvements to the Blackwattle Lane interface including a reduction in the width of the driveway;

- b. improvement to the Wattle Street elevation to reinforce the warehouse character of Wattle Street, and the adoption of a setback to the upper level;
 - c. deletion of planter boxes in undercroft areas;
 - d. improvement to bedroom layouts; and
 - e. further consideration of shading, acoustics and ventilation to the central community space.
14. Further amendments to the application were received on 30 July 2020 and 15 September 2020 following further feedback from Council staff.

Proposed Development

15. The application seeks consent for the following:
- demolition of the existing warehouse building;
 - excavation for one basement level and remediation;
 - construction of a new part four / part five storey mixed use building comprising ground floor retail tenancy and student accommodation building on all levels with 65 boarding rooms (91 residents total). Basement level for 15 car parking spaces, 48 bicycle parking spaces, garbage bin and plant areas;
 - dedication of 4m wide strip of land along the western boundary for road widening to Blackwattle Lane; and
 - three advertising signs including: an under awning sign, business identification sign, and an above awning sign.
16. Plans and elevations of the proposed development are provided below.

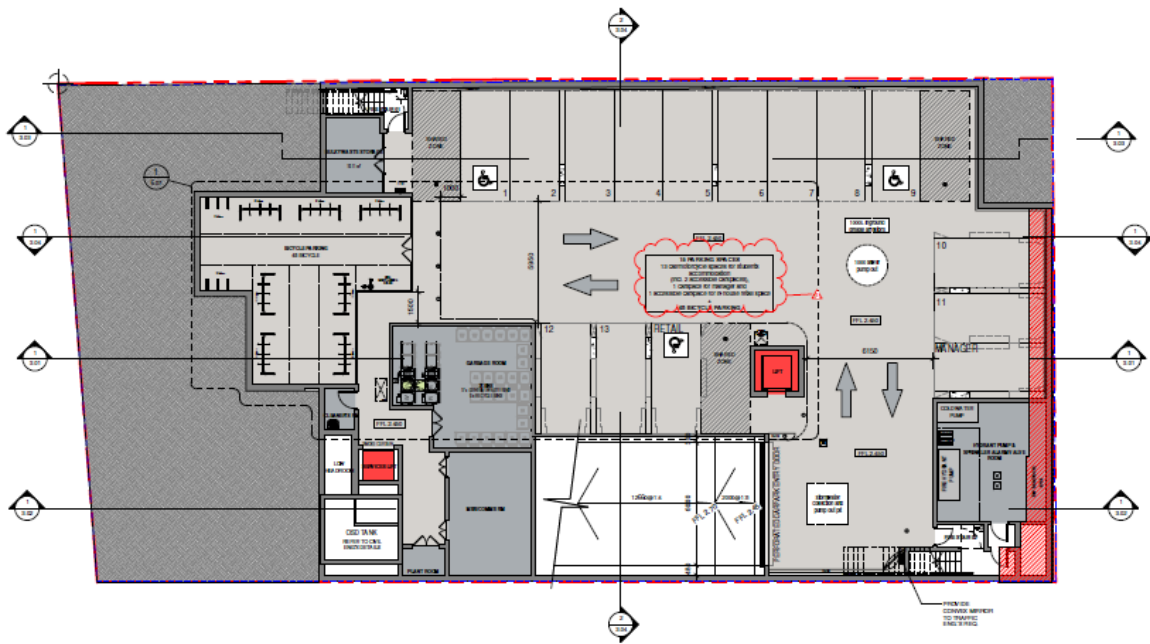


Figure 14: Basement plan

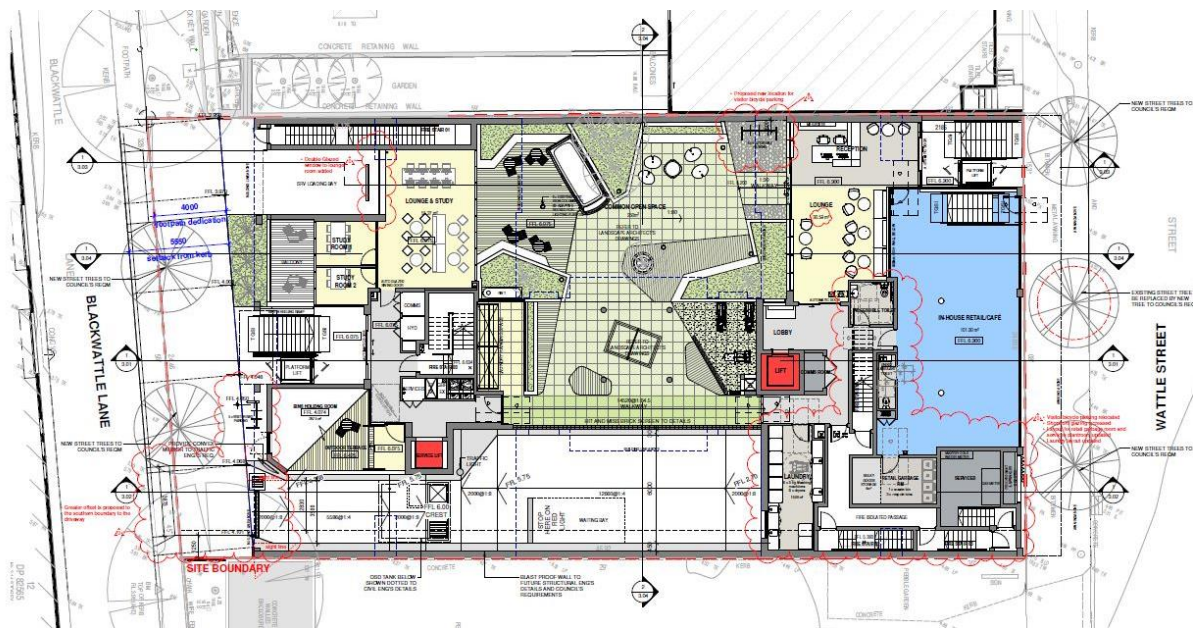


Figure 15: Ground floor plan



Figure 16: Level 1 plan

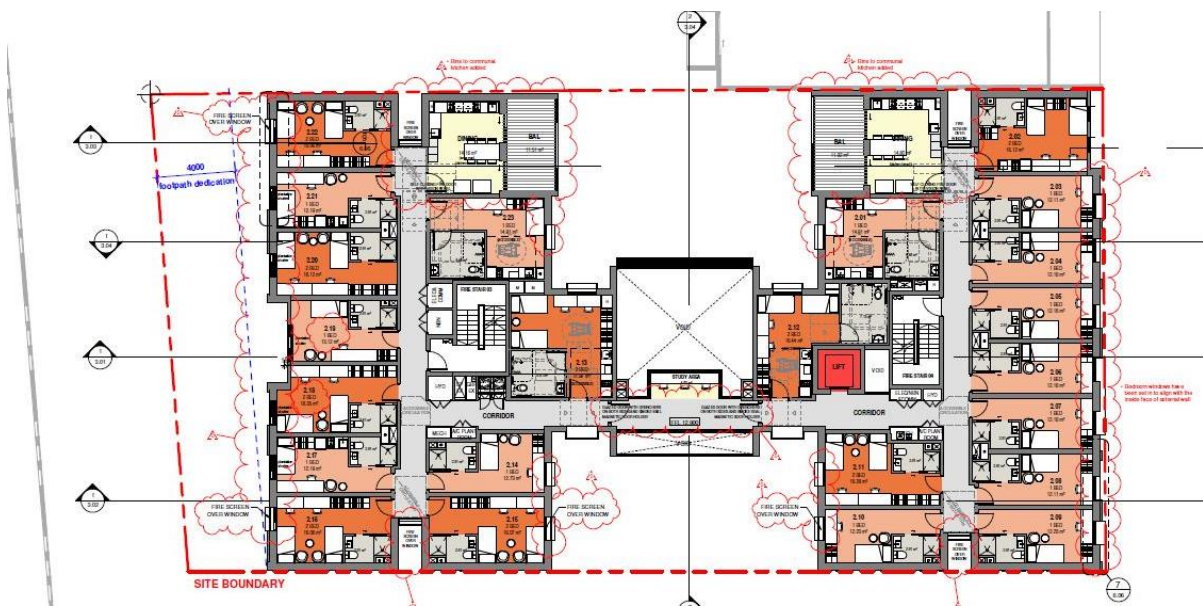
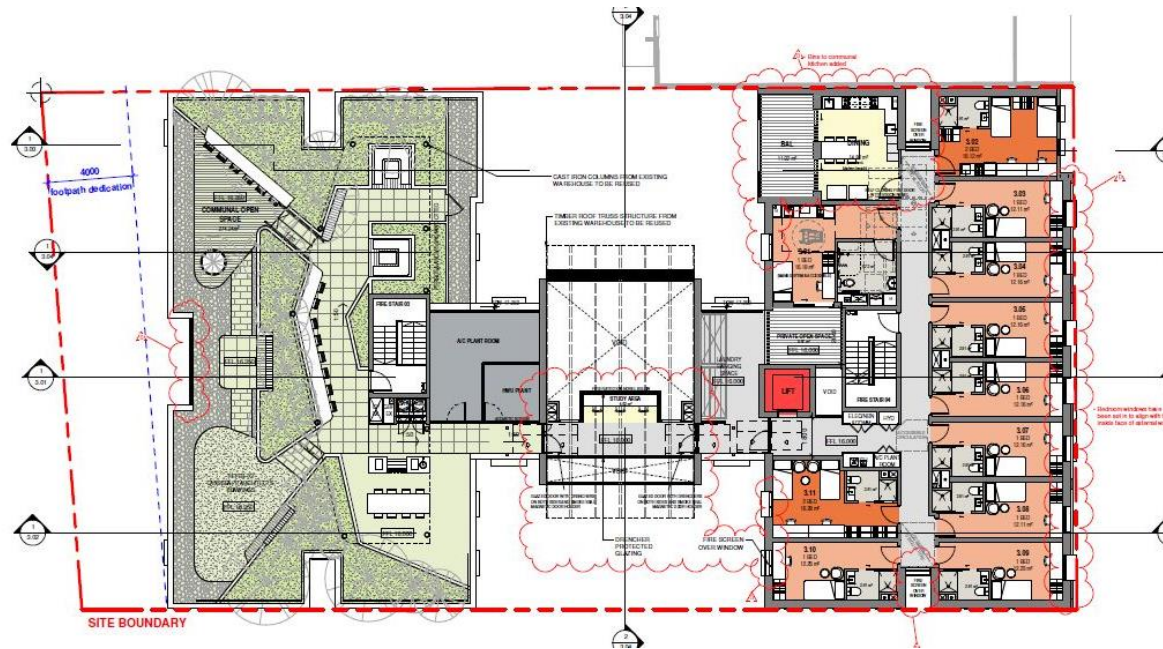


Figure 17: Level 2 plan



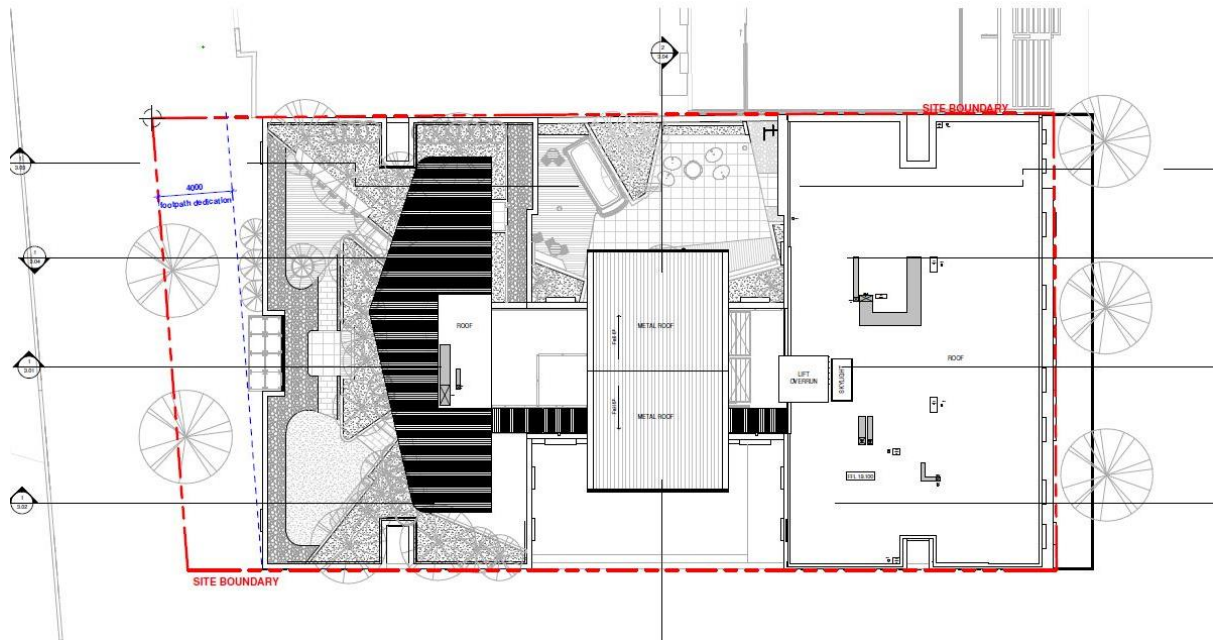


Figure 20: Roof plan



Figure 21: East elevation



Figure 22: West elevation

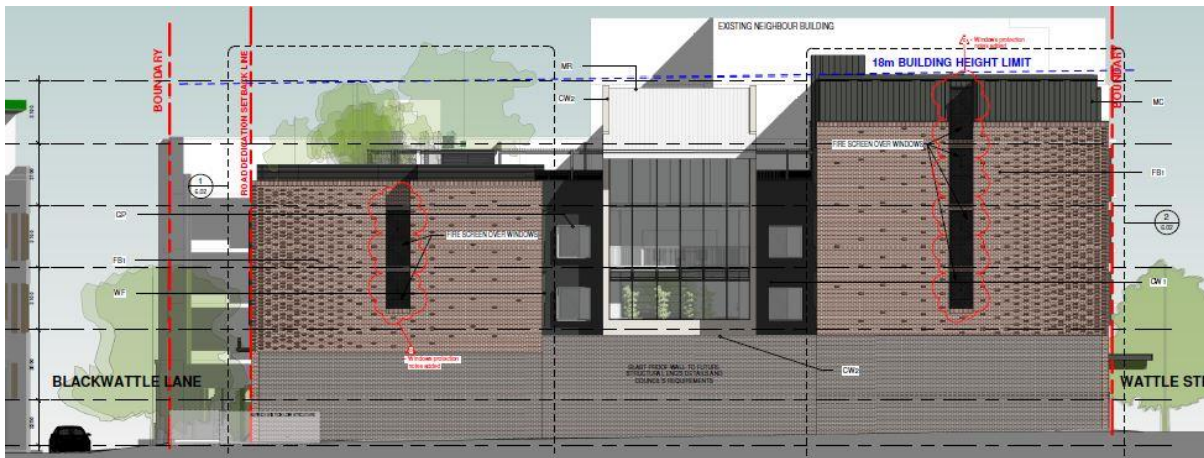


Figure 23: South elevation

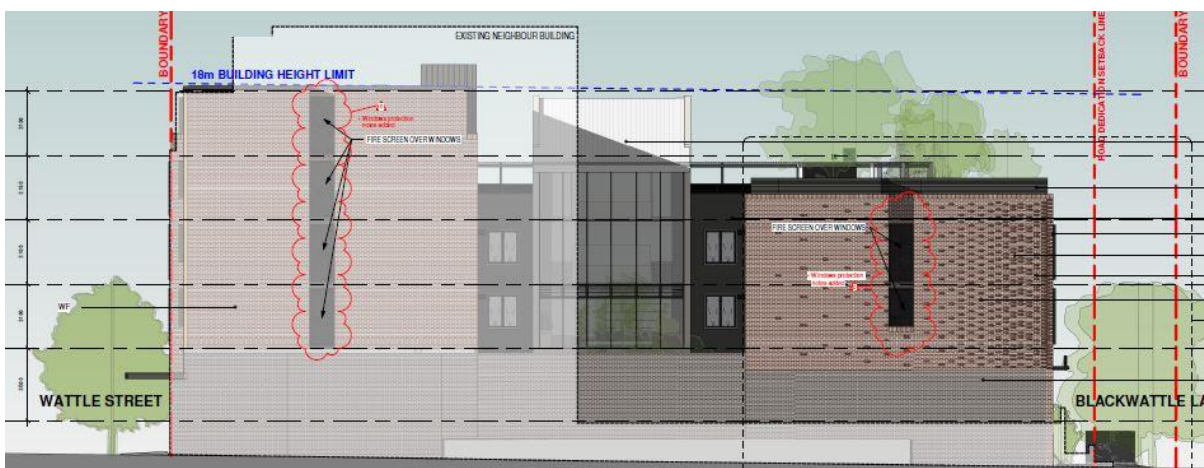


Figure 24: North elevation

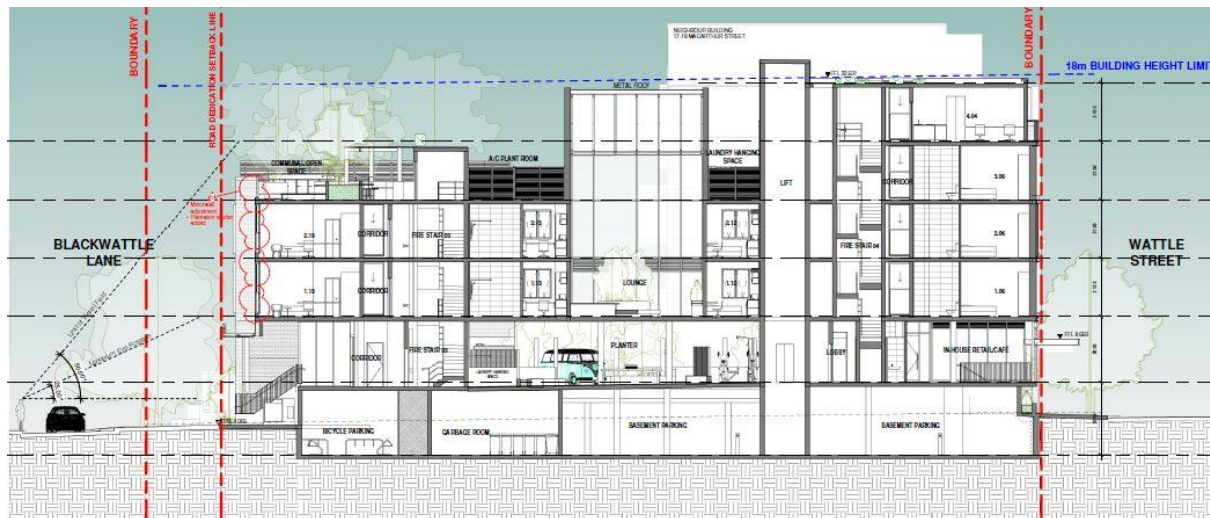


Figure 25: Section A-A



Figure 26: Perspective view of proposal viewed from Wattle Street

Assessment

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

State Environmental Planning Policies

State Environmental Planning Policy No 55 - Remediation of Land

18. The aim of State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
19. The consent authority is required to consider whether land is contaminated, and if the land is contaminated be satisfied that the land will be suitable after remediation for the purpose for which the development is proposed.
20. The application has submitted a geotechnical report and environmental investigations report as part of the application. The environmental investigations report includes an updated review of a Stage 2 Detailed Site Investigation undertaken in 2015; an acid sulfate soil management plan, groundwater monitoring investigation report and remediation action plan all prepared in 2015. The report notes that the results of the 2015 Stage 2 investigations are still relevant despite the time gap, having regard to the geological conditions.
21. The environmental report identifies that contaminant levels are above safe levels and that both a remediation action plan (RAP) and acid sulfate soil management plan are required as part of construction measures. Dewatering may not be suitable during excavation works due to hydrocarbons in groundwater.
22. The RAP previously prepared for a previous residential scheme (that was withdrawn for other reasons) recommended removal of contaminated soil and that a validation report be prepared following remediation works. This RAP was reviewed and endorsed by a NSW EPA Accredited Site Auditor at the time, and was deemed to be satisfactory at that time by Council. The current environmental report recommends that further groundwater assessment be undertaken prior to any remediation works being undertaken to confirm results against those obtained in 2015.

23. Council's Health Unit has reviewed the information provided, and recommended that groundwater investigations be undertaken now as part of the assessment of the application. The applicant responded that the 2015 investigations were undertaken at a time when the warehouse building was open plan and that the monitoring equipment was able to enter the site to undertake the groundwater sampling. The building has since been modified with the internal fitout of the dance studio for the Sydney Dance Company, including modifications to the former garage entry that preclude access for the machinery. The existing groundwater wells have been covered over and the equipment is not able to readily enter the site to undertake the sampling. It is proposed by the applicant that the required sampling be undertaken as a deferred commencement matter and sampling be undertaken after demolition works provide suitable access to the wells.
24. An inspection has confirmed that the existing building fit out and building modifications preclude access for the monitoring to occur. Demolition works are required to undertake the sampling. Given the results of the previous soil and water samples the site is considered to remain contaminated. The previous recommendations for remediation measures have demonstrated a pathway for remediation, but given the issues of groundwater contamination including presence of hydrocarbons this updated sampling is recommended to be required to be undertaken before the demolition of the ground floor slab with the preparation of an acceptable remediation strategy. The request for this to be a deferred commencement requirement is considered to be reasonable given the previously endorsed contamination and remediation strategy, and that the existing fit out and use of the site currently precludes access to the groundwater wells and would be a significant disruption to the building occupants. Conditions are recommended to specify these requirements as deferred commencement matters.

State Environmental Planning Policy No 64 - Advertising and Signage

25. The application seeks approval for three signs:
- a. an under awning sign along Wattle Street sized 1.8m x 0.5m;
 - b. a business identification signage zone to a side wall to Wattle Street sized 0.5m x 3m; and
 - c. a top of awning sign to Blackwattle Lane sized 3.2m x 0.5m.
26. The aim of State Environmental Planning Policy No. 64 is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.
27. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 1 is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	Yes	The proposed signage is generally consistent with the character of the area, subject to conditions. The proposed above awning sign is not permitted under Sydney DCP 2012.
2. Special areas	Yes	The proposal is not located within a special area. The proposed signage does not detract from the amenity of nearby heritage items.
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage is of an appropriate scale, proportion and form within the streetscape.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable in relation to the proportions of the building.
6. Associated devices and logos	N/A	Not applicable.
7. Illumination	Yes	Illumination to Wattle Street would not result in unacceptable glare.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

28. The proposed signage is consistent with the objectives of SEPP 64 as set out in Clause 3 (1) (a) and satisfies the assessment criteria specified in Schedule 1.

State Environmental Planning Policy (Affordable Rental Housing) 2009

29. The aim of State Environmental Planning Policy (SEPP) (Affordable Rental Housing) is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.

Division 3: Boarding Houses

30. Under Clause 29, compliance with any of the following standards must not be used to refuse consent for a boarding house. An assessment of the proposed boarding house against each standard is provided in the table below.

Clause 29 – Standards that cannot be used to refuse a boarding house

Provision	Compliance	Comment
1 Density and scale expressed as floor space ratio An FSR of up to 2.5:1 plus 0.5:1 is permitted.	Yes	The application proposes an FSR of 1.74:1.
2(a) Building height The proposed building height must not exceed the maximum building height of 18m permitted under the Sydney LEP 2012.	No	The application proposes a maximum height of 18.95m to the lift overrun. A request to vary the height standard pursuant to clause 4.6 has been submitted. Refer the discussion under heading Discussion below.
2(b) Landscaped area The front setback is to be compatible with the streetscape.	Yes	The predominant character of buildings along the western side of Wattle Street is nil street setbacks with no front landscaping.
2(c) Solar access If more than one communal living area is provided, at least one of the rooms is to receive a minimum of 3 hours direct sunlight between 9:00am and 3:00pm in mid-winter.	Yes	Central communal living area receives at least 3 hours sunlight.

Provision	Compliance	Comment
2(d) Private open space (i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers. (ii) If accommodation is provided for an onsite manager, one area of at least 8sqm with a minimum dimension of 2.5m, adjacent to the accommodation.	Yes	A communal roof open space area sized greater than 20sqm is proposed. On site manager room located on Level 3 with POS area 8.9sqm.
2(e) Parking (i) 0.5 parking spaces provided for each boarding house room (33 spaces) (ii) Not more than 1 parking space for the on-site manager.	No	14 parking spaces for use by either cars or motorcycles are proposed, including 1 space for the on-site manager. Clause 29(4) notes the consent authority may consent to the development whether or not the development complies with the standards in clause 29(2). The reduced provision of parking is supported.
2(f) Accommodation size (i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm. (ii) Rooms intended to be used more than one person are to have a minimum GFA of 16sqm. (excluding any area used as a private kitchen/ bathroom)	Yes	Proposed single rooms are greater than 12sqm. Double rooms are greater than 16sqm.

31. 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 provisions.

Clauses 30 – Standards for boarding house

Provision	Compliance	Comment
1(a) At least one communal living room is to be provided.	Yes	A central communal living room is provided as well as other lounge and study areas.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ²	Yes	All boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Yes	Rooms are designed as single and double rooms. The submitted Plan of Management restricts the number of lodgers to no more than 2 adult lodgers per room.
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	The boarding house provides adequate bathroom and kitchen facilities for each room.
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	An on-site manager's room is provided.
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 land is zoned mixed use and boarding rooms are permitted on the ground floor, however no bedrooms are proposed on the ground level.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms (13 parking spaces for each required).	Yes	48 bicycle parking spaces are proposed. 14 parking spaces for use by either cars or motorcycles are proposed, including 1 space for the on-site manager.

Clause 30A – Character of the local area

32. Clause 30A states that a consent authority must not consent to development 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.
33. The site is located within an area that contains a range of uses and building forms including a number of student accommodation buildings to the south on Wattle Street. The proposed boarding house is compatible with the character of the surrounding area and is consistent with clause 30A.

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

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

State Environmental Planning Policy (Infrastructure) 2007

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

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations**Clause 101 – Development with frontage to classified road**

37. The application is subject to Clause 101 of the SEPP as the site has frontage to Wattle Street which is a classified road.
38. The proposed development satisfies the provisions of Clause 101 subject to conditions of consent, as access is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions.

Clause 102 – Impact of road noise or vibration on non-road development

39. Whilst there is no current RMS volume data for Wattle Street, data from 2009 has an annual average daily traffic volume of more than 20,000 vehicles. The application has included an acoustic assessment for road noise including an assessment against the Department of Planning 'Development near Rail Corridor and Busy Roads – Interim Guideline' and Sydney DCP 2012 noise criteria.
40. The submitted acoustic report includes recommended glazing and construction requirements in order to achieve the required internal noise levels. These are included as part of the recommended conditions to be incorporated in the design documentation.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

41. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
42. The site is within the Sydney Harbour Catchment and eventually drains into Sydney 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 within the deemed SEPP.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

43. 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 a mixed use development comprised of a boarding house and a food premises both are 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	<p>A maximum building height of 18m is permitted.</p> <p>A maximum height of 18.95m to the lift overrun is proposed.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2.5:1 is permitted.</p> <p>A floor space ratio of 1.74:1 is proposed in accordance with a covenant (and 0.5:1 bonus that applies).</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the height standard prescribed under SLEP 2012 and SEPP Affordable Rental Housing 2009. A request to vary the standards has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.1 and 5.1A Development on land intended to be acquired for public purposes	N/A	Land proposed to be dedicated for road widening is required under a covenant on the land rather than as land zoned for acquisition.
5.10 Heritage conservation	Yes	<p>The site is not a heritage item or located within a heritage conservation area.</p> <p>The site is located adjacent to the Mountain Street heritage conservation area to the west.</p> <p>Heritage item "Terrace group including interiors" is located nearby at 430 to 444 Wattle Street on the eastern side of Wattle Street.</p> <p>The proposed development will not have a detrimental impact to the significance of the adjoining conservation area and nearby heritage items.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	Subject to conditions relating to specific design issues, the proposal is considered to satisfy the provisions of the clause.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	A maximum of 19 car parking spaces are permitted.
7.7 Retail premises		The proposed development includes 15 car parking spaces.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 2 & 5 acid sulfate soils.</p> <p>The application proposes works requiring the preparation of an acid sulfate soils management plan which was included as part of the contamination assessment.</p>

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

44. 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

45. The site is located within the Mountain Street locality. The proposed development is in keeping with the unique character and the design principles of the locality and responds to the warehouse character of buildings on Wattle Street.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The application proposes to dedicate a strip of land 4m in width at the rear to Blackwattle Lane for road widening required under the terms of a covenant. Public Domain works conditions are recommended for these works.
3.2. Defining the Public Domain	Yes	The proposed building addresses both Wattle Street and Blackwattle Lane, with entries taking into consideration flood level planning requirements. An awning is provided to the Wattle Street entry.
3.5 Urban Ecology	Yes	The development did not propose the removal of any trees, however Council's Tree Management Unit recommends the removal of one street tree with a suitable replacement planting. Canopy cover is proposed to the communal open space on level 3 and is subject to a landscaping condition.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The site is identified as being on flood affected land. A 1% AEP level of 5.0m AHD and PMF level of 6.0m AHD has been recommended within the submitted flood management plan. This report has been reviewed by Council's Public Domain Unit who have confirmed these flood levels are acceptable and have been incorporated into the design.
3.8 Subdivision, Strata Subdivision and Consolidation	N/A	Subdivision is not proposed as part of the subject application. No strata subdivision of boarding houses is permitted under the SEPP Affordable Housing 2009.

Provision	Compliance	Comment
3.9 Heritage	Yes	<p>The site is not a heritage item or located within a heritage conservation area.</p> <p>The application has been reviewed by Council's Heritage Specialist who recommends conditions relating to archival documentation for the existing building prior to demolition and the reuse and interpretation of building components including timber beams from the existing building as part of the proposal.</p>
3.11 Transport and Parking	Yes	Bicycle parking is provided within the basement for residents and at locations on the ground floor for visitors.
3.12 Accessible Design	Yes	Compliant access to be provided.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	<p>Separate waste areas are provided for the residential and commercial areas including bulky waste storage areas.</p> <p>A bin holding room is provided on the ground floor to the rear.</p>
3.16 Signage and Advertising	Partial compliance	<p>The application proposes three advertising signs including:</p> <ol style="list-style-type: none"> 1. An under awning sign along Wattle Street sized 1.8m x 0.5m; 2. A business identification signage zone to a side wall to Wattle Street sized 0.5 x 3m; and 3. A top of awning sign to Blackwattle Lane sized 3.2m x 0.5m. <p>The under awning sign and business identification signage zone to Wattle Street are generally in accordance with the controls. Further details are required for approval.</p>

Provision	Compliance	Comment
		The above awning sign to Blackwattle Lane is not permitted under the section and is not approved.

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	A maximum building height of 6 storeys is permitted. The proposed development is 5 storeys in height.
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	The proposed ground level floor to floor height is 3.5m rather than 4.5m. Given the required raised floor level for flooding reasons the provided floor to floor level is acceptable in the circumstances.
4.2.2 Building setbacks	Yes	Building setbacks consistent with adjoining development to the north and patterns along the street (excluding the service station which is atypical).
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Development does not overshadow neighbouring dwellings.
4.2.3.2 Lightwells	Yes	Generous lightwell areas provided for boarding room windows.
4.2.3.3 Internal common areas	Yes	Internal common areas have access to daylight.
4.2.3.4 Design features to manage solar access	Yes	Horizontal fixed louvres are provided to the central common area to reduce summer sun load to the glazing.
4.2.3.5 Landscaping	Yes	Landscaping plan provided.

Provision	Compliance	Comment
4.2.3.6 Deep Soil	No	<p>A limited deep soil area to the rear is provided.</p> <p>Given the required road dedication, existing site conditions and contamination issues, the variation to the deep soil requirement is supported in the circumstances. Additional street tree plantings are to be undertaken within the road widening to Blackwattle Lane.</p>
4.2.3.9 Ventilation	Yes	Natural ventilation is provided for all boarding rooms.
4.2.3.11 Acoustic privacy	Yes	The submitted acoustic report addresses the relevant noise controls including those within the DCP and provides recommended glazing and construction requirements in order to achieve required internal noise levels. These are included as part of the recommended conditions to be incorporated in the design documentation.
4.2.4 Fine grain, architectural diversity and articulation	Yes	Building separated into differently articulated components.
4.2.5 Types of development	Yes	<p>Submitted acoustic report addresses relevant noise controls.</p> <p>Building has solid masonry materials towards street frontage.</p>
4.2.6 Waste and recycling Management	Yes	Proposal includes separate waste areas for commercial and residential components including a bulky waste storage area and building holding room at ground level. The WMP has been reviewed by Council's Waste Management Unit who have endorsed the WMP.
4.2.7 Heating and cooling infrastructure	Yes	Centralised plant areas included.

Provision	Compliance	Comment
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the ground floor commercial development will not adversely impact the amenity of neighbouring residential properties.

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	No strata subdivision proposed or permitted.
4.4.1.2 Bedrooms	Partial compliance	<p>All en suites sized 2.9sqm.</p> <p>There are four one bedroom rooms with en suites sized 15.1sqm and two one bedrooms with en suites sized 16.25sqm (rather than 16.9sqm); nine two bedroom rooms sized 18.9sqm (rather than 20.9sqm).</p> <p>Given that the development provides communal dining areas on each bedroom level apart from level 4 the variation to the bedroom sizes is supported.</p>
4.4.1.3 Communal kitchen areas	Yes	Communal kitchen areas provided at each end of building on each bedroom level apart from level 4 (where each room has a kitchenette).
4.4.1.4 Communal living areas and open space	Yes	<p>Indoor:</p> <p>113.75sqm required.</p> <p>214sqm provided.</p> <p>Outdoor:</p> <p>20sqm required.</p> <p>550sqm provided.</p> <p>Minimum areas receive required solar access.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	<p>8 washing machines and dryers required.</p> <p>8 washing machines and dryers provided.</p> <p>Recommend that an alternative or additional clothes drying space be provided on level 3.</p>

Provision	Compliance	Comment
4.4.1.6 Amenity, safety and privacy	Yes	Building includes two secure entry points. There are a range of study, lounge, recreation and open space areas located throughout the building. The largest spaces are located on the ground floor and separate to bedrooms. Bedrooms are separated from the main common open space on level 3.
4.4.1.7 Plan of Management	Yes	An operational plan of management has been submitted. The plan addresses the required items and should be kept on site at all times to be implemented and updated as required.

Discussion

Clause 4.6 Request to Vary a Development Standard

Height

46. The site is subject to a maximum height of buildings development standard of 18m. The proposed development has a maximum height of 18.95m to the lift overrun.
47. 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.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

48. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
 - a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- i. The height breach is associated with the lift overrun structure which causes a minor breach to the height limit.
 - ii. The objectives of the height standard are achieved despite the non – compliance:
 - 1. Appropriate height transitions between adjoining development and the adjoining heritage conservation area are maintained;
 - 2. The height breach does not result in loss of views to or from adjoining properties;
 - 3. The height breach does not result in loss of privacy to or from adjoining properties;
 - 4. The height breach of the lift overrun does not result in additional overshadowing of adjoining properties.
- b. That there are sufficient environmental planning grounds to justify contravening the standard:
 - i. The ground floor level has been raised in order to address a flooding level. The raising of the ground level by approximately 1.75m contributes to the height breach;
 - ii. The height breach by the lift overrun is minor being 0.95m for the lift overrun area only and does not result in an overall increase in built form for the proposal. The resulting built form is not out of scale with the surrounding or future development;
 - iii. The additional height to the lift overrun is not visible from the streetscape;
 - iv. The breach in height does not result in additional overshadowing mid-winter;
 - v. The breach in height does not result in any privacy, noise or view impacts to adjoining sites
- c. The proposed development will be consistent with the objectives of the zone;
 - i. Student accommodation is a permissible use which is compatible with the mix of uses in the locality;
 - ii. A commercial retail use at the ground floor and residential student accommodation in an accessible location is provided and includes the provision of bicycle parking to promote both walking and cycling;
 - iii. The use will promote the viability of nearby shopping centres at Broadway and Central Park.

- d. The proposed development will be consistent with the objectives of the standard:
 - i. The height of the development is appropriate to the context of the site. The additional height of the lift overrun is not visible from within the streetscape and does not result in overshadowing or privacy impacts;
 - ii. Appropriate height transitions to adjoining development and the adjoining heritage conservation area are maintained by the development; and
 - iii. The height breach does not result in loss of views to or from adjoining properties.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

49. 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)?

50. The applicant's written request seeks to demonstrate that compliance with the height of buildings standard is unreasonable or unnecessary in the circumstances of the case by demonstrating that the objectives of the standard are achieved notwithstanding the non-compliance.
51. The applicant has provided views, plans and shadow diagrams to demonstrate that the height of the development including the non-compliant lift overrun height remains appropriate to the conditions of the site and the context including the adjoining heritage conservation area and nearby heritage items. This information and the written request demonstrate that the objectives of the height of buildings development standard are achieved. The proposal achieves a suitable building form within the context of the site. The building form is largely compliant with the height standard with the exception of a lift overrun which is setback from the building elevations and would not be visible from the streetscape. The area of non-compliance is minor in relation to the overall site and building area and does not impact on views from adjoining sites.

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

52. The applicant's written request has adequately demonstrated there are sufficient environmental planning grounds to justify contravening the development standard. The written request and accompanying view diagrams, plans, and shadow diagrams demonstrate that height of the lift overrun that exceeds the height standard does not result in additional impacts to the streetscape, does not result in additional overshadowing to adjoining sites mid-winter, and does not impact on views to adjoining properties. It is acknowledged that the height of the ground floor is required to be raised to address flooding and that the height of the building still generally complies with the height standard with the exception of part of the lift overrun structure.

Is the development in the public interest?

53. The proposal is considered to be in the public interest as it is consistent with the objectives of the height of buildings standard and the objectives of the B4 Mixed Use Zone.
54. The height of the development is appropriate to the conditions of the site, appropriate height transitions to the adjoining heritage conservation area and heritage items nearby are provided, and views are not impacted by the exceeded of the standard.
55. The proposal provides a permissible student accommodation use and commercial ground floor use which are compatible with the mix of uses in the locality and the B4 Mixed Use Zone. The site is located in an accessible location and includes the provision of bicycle parking on site to promote both walking and cycling. The uses will promote the viability of nearby shopping centres.

Conclusion

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

Design Advisory Panel Residential Subcommittee

57. The application was considered by the Design Advisory Panel Residential Subcommittee (DAPRS) on 9 June 2020. The key recommendations include:
- a. improvements to the Blackwattle Lane interface including a reduction in the width of the driveway;
 - b. improvement to the Wattle Street elevation to reinforce the warehouse character of Wattle Street, and the adoption of a setback to the upper level;
 - c. deletion of planter boxes in undercroft areas;

- d. improvements to bedroom layouts; and
 - e. further consideration of shading, acoustics and ventilation to the central community space.
58. The building design was subsequently amended to address the matters raised by the panel. A comparison between the scheme as amended 20 April 2020 and 15 September 2020 is provided in the following images.



Figure 27: Montage image from Wattle Street: April 2020



Figure 28: Perspective image from Wattle Street: September 2020



Figure 29: East elevation April 2020



Figure 30: East elevation September 2020



Figure 31: Montage image from Blackwattle Lane April 2020



Figure 32: Perspective view Blackwattle Lane September 2020



Figure 33: West elevation April 2020



Figure 34: West elevation September 2020

59. The amendments and information provided to address the comments from DAPRS are summarised as follows:
- The building expression to Wattle Street and Blackwattle Lane has been amended to better respond to the warehouse character of the area. The flat building facades have been amended to provide more articulated elements and depth;
 - Level 4 bedrooms and northern bedrooms on each level to Wattle Street setback to appear as a more recessive element with a change in material;
 - Driveway to Blackwattle Lane reduced in width;
 - Under croft planting area to Wattle Street deleted;
 - Typical room layout plans provided;
 - Additional roof shading, horizontal shading devices and operable louvres provided to central common area and acoustic and ESD analysis provided.
60. The amended plans are considered to address the issues raised by DAPRS and Council staff. The proposal responds to the context of the locality including the warehouse character. The development provides an appropriate response to the flooding conditions with elevated entries to Wattle Street. The proposal as amended provides an appropriate design within the context.

Consultation

Internal Referrals

61. The application was discussed with Council's Building Services Unit; Environmental Health Unit; Heritage and Urban Design Unit; Public Domain Unit; Safe City Unit; Surveyors; Transport and Access Unit; Tree Management Unit and the Waste Management Unit who advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the recommended conditions.

External Referrals

Ausgrid

62. The application was referred to Ausgrid for comment. No response was received in respect of the application.

Sydney Water

63. The application was referred to Sydney Water for comment. A response was received with recommended conditions included.

Water NSW

64. The application was referred to NSW Water for comment as the proposal includes excavation which may intercept groundwater. A response was received advising that if groundwater is encountered then WaterNSW should be contacted to obtain appropriate dewatering licenses. A condition in this regard is recommended in Attachment A.

Advertising and Notification

65. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified and advertised for a period of 21 days between 15 August 2019 and 6 September 2019. A total of 848 properties were notified and 2 submissions were received.

66. The issues raised in submissions are addressed as follows:

- **Issue:** Adaptability

The building ought to be capable of adaptation to other uses other than student accommodation.

Response:

The adaptability of the proposal has been considered in accordance with the mixed use controls in Sydney DCP 2012. Any future use of the building would be assessed in accordance with the relevant planning controls.

- **Issue:** Safety and proximity to hazardous goods

The proposed building is located within close proximity to hazardous good located on the adjoining service station site

Response:

Fire safety measures for the proposal have been addressed in accordance with the BCA.

- **Issue:** Contamination

The contamination considerations required under SEPP 55 have not been adequately addressed as part of the application.

Response:

An assessment against the required SEPP 55 considerations is discussed within the assessment report above. A deferred commencement consent is recommended with conditions requiring further contamination assessment be undertaken prior to the demolition of the ground floor slab and the preparation of an acceptable remediation strategy prior to the issuing of an active consent. This approach is reasonable given the previously endorsed contamination and remediation strategy, and that the existing fit out and use of the site currently precludes access to the groundwater wells and would be a significant disruption to the building occupants

- **Issue:** Construction impacts

Construction impacts (including excavation of a basement) on the adjoining service station assets including storage of hazardous good has not been taken into consideration as part of the application.

Response:

An environmental management plan is required as part of the recommended conditions wherein the applicant would be required to address all construction impacts of the proposal.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

67. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. The calculated contribution is \$630,405.47. Credits have been applied for previous use of the site.

68. 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.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

69. The subject site is not located within the Ultimo-Pyrmont Affordable Housing contribution area and is therefore not subject to a Section 7.13 contribution.

Relevant Legislation

70. Environmental Planning and Assessment Act 1979.

Conclusion

71. The application for demolition of the existing warehouse building and construction of a new part four part five storey mixed use building comprising ground floor retail and student accommodation on all levels (65 boarding rooms for 91 residents total) at 385 Wattle Street, Ultimo has been assessed against the relevant planning controls.
72. The proposal has been amended on three occasions in response to issues raised by Council staff and DAPRS. The amended proposal is considered to address the key design issues raised.
73. The application proposes a variation to the height of buildings development standard, that applies to the development. A written requests submitted pursuant to cl 4.6 of Sydney LEP 2012 has been considered and is supported in the circumstances of the application.
74. The subject site is considered to be contaminated based on the environmental testing undertaken on the site in 2015. It is recommended that updated testing be undertaken as part of deferred commencement conditions to inform the preparation of an updated remediation plan for the site. This requires minor demolition works to provide access to the site due to subsequent building alterations and additions that have occurred with a new building tenant.
75. A voluntary planning agreement is also required to be executed for the road widening dedication. The application is recommended for a deferred commencement consent, with conditions to address these two items.

ANDREW THOMAS

Acting Director City Planning, Development and Transport

Shannon Rickersey, Senior Planner