

Item 4.**Development Application: 39-41 Sophia Street, Surry Hills**

File No.: D/2020/225

Summary

Date of Submission:	The application was lodged on 16 March 2020. Amended drawings were submitted on 17 July 2020, 9 October 2020 and 12 October 2020 and 7 January 2021. Additional information was submitted on 7 January 2021.
Applicant:	Mrs Y H Zhou
Architect/Designer:	Peak Architects
Owner:	Mrs Y H Zhou
DAPRS	18 August 2020
Cost of Works:	\$2,083,496
Zoning:	The site is located within the B4 - Mixed Use zone. The proposes uses are a boarding house and commercial premises, which are permissible with consent in the zone.
Proposal Summary:	<p>The application seeks consent for the demolition of the existing building and construction of a new 4-storey mixed use building, with ground floor commercial tenancies and a 10 room boarding house.</p> <p>The proposal is referred to the Local Planning Panel for determination as the development is reliant on a Clause 4.6 variation request to vary the motorcycle parking space development standard of the Affordable Rental Housing SEPP 2009 (AHRSEPP).</p>

The development provides no motorcycle parking and is required to provide 2 motorcycle parking spaces in accordance with the ARHSEPP. The applicant has lodged a written statement addressing the provisions of Clause 4.6 of the Sydney Local Environmental Plan 2012 with regard to the non-provision of motorcycle parking. The statement demonstrates that compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives the B4 Mixed Use zone and the ARHSEPP, and the proposed departure to the motorcycle parking requirement is supported in this instance.

The development is also referred to the Local Planning Panel for determination as the development is reliant on a Clause 4.6 variation request to vary the height of buildings standard contained in the Sydney LEP 2012.

The proposal has a maximum height of 16.69m and exceeds the 15m height of buildings development standard by 1.69m (a variation of 11%). The proposed height exceedance relates to the lift overrun and awning. The majority of the building form remains under the 15m height limit. The applicant has lodged a written statement addressing the provisions of Clause 4.6 of the Sydney Local Environmental Plan 2012 with regard to the exceedance of the Height of Buildings control. The statement demonstrates that compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the standard. The proposal is consistent with the objectives of the B4 Mixed Use zone and the height of buildings development standard. The proposed departure to the building height standard is supported in this instance.

The application was notified for a period of 21 days between 24 March 2020 and 15 April 2020. A total of 8 submissions were received during the notification period. Issues raised in these submissions relate to the proposed use, height, floor space ratio, bulk and scale, amenity impacts, trees, heritage and construction. Issues raised have been addressed within this report.

Following a preliminary assessment, the applicant was requested to amend the application to address issues related to height, amenity, heritage, bulk and form, landscaping and trees. Additional information was requested addressing solar access and overshadowing, FSR calculations, site contamination, waste storage and transport.

The proposal was amended in July to address the matters above.

The proposal was considered by the Design Advisory Panel - Residential Subcommittee on the 18 August 2020. The applicant was requested to amend the application further to address issues related to exceedance of height and FSR, the Sophia and Kippax Street interfaces, amenity, architectural details and materials and waste. Additional information was requested addressing site contamination, waste and fire engineering.

The proposal was amended to address the issues above in October 2020.

The proposal was re-notified following receipt of amended plans for a period of 14 days between the dates of 21 October 2020 and 5 November 2020. One additional submission was received. This submission included issues related to use, height, FSR, bulk, parking, heritage and privacy.

Additional information regarding site contamination, landscaping, fire safety, urban design and an amended BASIX statement were requested in November and December. The additional information and amended plans were submitted in January 2021. A number of design modification conditions are recommended to further improve the proposal.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)
- (iii) State Environmental Planning Policy No 55— Remediation of Land
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vi) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (vii) Sydney Local Environmental Plan 2012 (SLEP)
- (viii) Sydney Development Control Plan 2012 (SDCP)
- (ix) City of Sydney Development Contributions Plan 2015

Attachments:

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

Recommendation

It is resolved that:

- (A) the Local Planning Panel support the variation sought to the Height of Buildings development standard under Clause 4.3 of the Sydney Local Environmental Plan 2012, in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 in the circumstance of this application;
- (B) the Local Planning Panel support the variation sought to the minimum motorbike 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 the Sydney Local Environmental Plan 2012 in the circumstances of this application; and
- (C) consent be granted to Development Application No. D/2020/225 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development complies with the objectives of the B4 Mixed Use zone pursuant to the Sydney Local Environmental Plan 2012.
- (B) 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 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.
- (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 motorcycle parking development 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 and Rental Housing) 2009; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use zone and the State Environmental Planning Policy (Affordable and Rental Housing) 2009 development standards.

- (D) The proposal is consistent with the aims and objectives of Division 3 of State Environmental Planning Policy (Affordable and Rental Housing) 2009.
- (E) The development complies with the permitted Floor Space Ratio pursuant to Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (F) The development subject to conditions, generally demonstrates design excellence, appropriately responding to the context of the site. The development is consistent with the desired future character of the area as per Clause 6.21 of the Sydney Local Environmental Plan 2012.
- (G) The development is consistent with the objectives of the Sydney Development Control Plan 2012.
- (H) Suitable conditions of consent have been applied and the development is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 827519, known as 39-41 Sophia Street, Surry Hills. It is irregular in shape with area of approximately 131.3sqm. It has a primary street frontage of 6.77m to Sophia Street and a secondary street frontage of 5.43m to Kippax Street. The site is located approximately mid-way in the block between Waterloo Street and Little Riley Street. Levels on the site fall by 0.48m.
2. The site contains a two-storey brick terrace building, with dormers and first floor balconies on both street frontages. The site is setback approximately 4m from the Kippax Street, providing a hardstand area with vehicular access to a garage.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential, commercial and converted warehouse buildings. Adjacent to the site to the north west are three commercial terraces, followed by an eight-storey commercial building with rooftop terrace. To the south east is a three-storey commercial warehouse building.
4. Various commercial warehouse buildings are located opposite the site on Sophia Street, with a small row of residential terraces to the east. A nine-storey mixed-use residential apartment building with commercial uses on the ground floor, contained within an adaptively reused warehouse is located opposite the site on Kippax Street.
5. The site is a not a heritage item nor is it located within a heritage conservation area. However, the site is within the vicinity of a local heritage item known as I156A 'Former Ford Sherrington Trunk Factory including interior' located opposite the site at 119-127 Kippax Street, Surry Hills. The site is also located opposite the Little Riley Street Heritage Conservation Area (C65).
6. The site is located within the Surry Hills Central locality and is not identified as being subject to flooding. A street tree is located in front of the site on Sophia Street.
7. A site visit was carried out on 15 April 2020. Photos of the site and surrounds are provided below:

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



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Sophia Street



Figure 3: Site viewed from Sophia Street looking east



Figure 4: Terraces opposite the site on Sophia Street

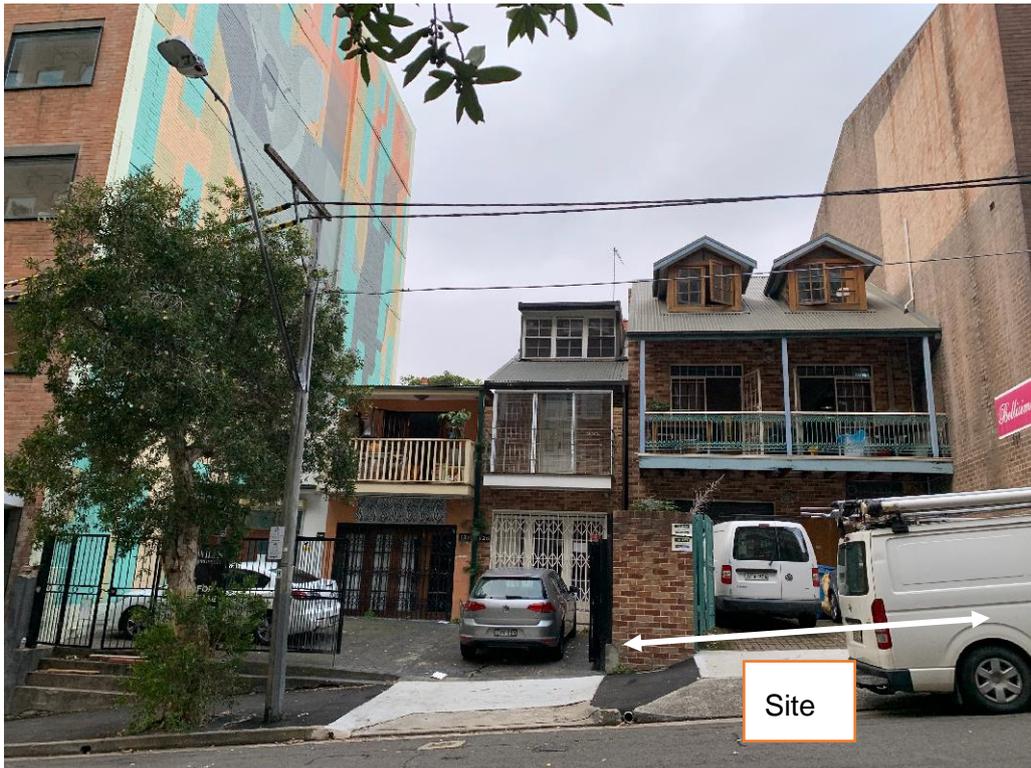


Figure 5: Site viewed from Kippax Street



Figure 6: Site viewed from Kippax Street looking south east



Figure 7: Adjoining sites looking north east along Kippax Street



Figure 8: Heritage Item located opposite the site at 117-119 Kippax Street

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:
 - **U00-01074** – Development consent was granted on 9 November 2000 for alterations to an existing commercial premises (office). The alterations included partition walls and timber walls to close an atrium. The consent granted a gross floor area of 223.5sqm.
 - **D/2020/766** – A development application for the construction of a mixed use development including ground floor retail and residential above was lodged with Council on 11 August 2020. This application is for the adjacent site at 33 - 37 Sophia Street. This application is currently under assessment.
10. On 16 March 2020, the subject application was lodged with Council.
11. The original design comprised a part four/five storey mixed use building, with 14 boarding rooms and a takeaway food and drink premises at ground level fronting Kippax street.

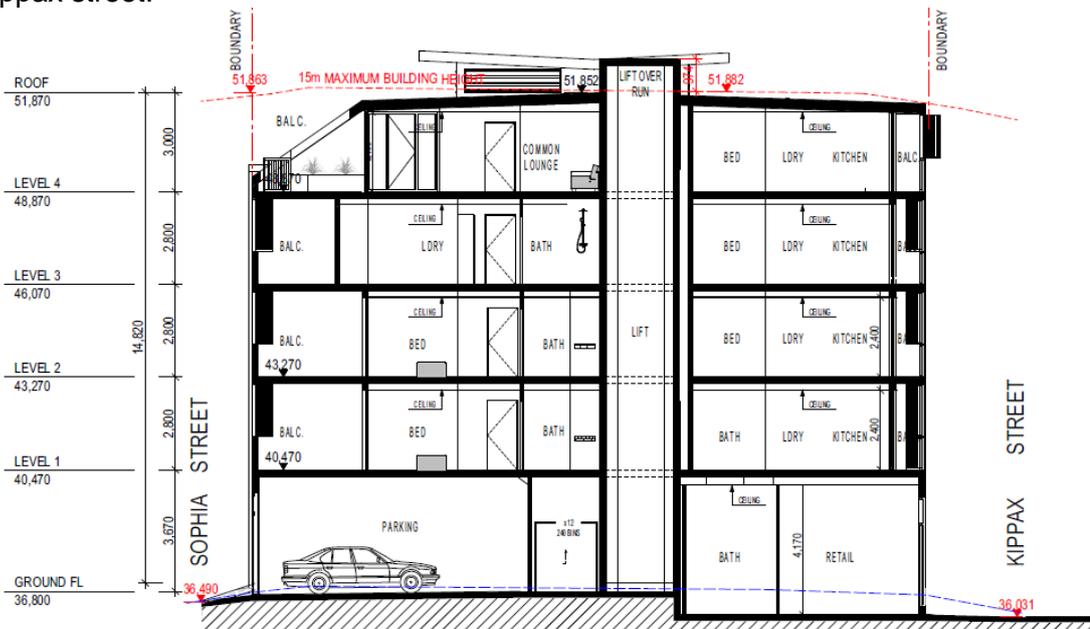


Figure 9: Originally proposed section plan

Amendments

12. A request for additional information was sent to the applicant on 9 April 2020. A Clause 4.6 written request to vary the Height of Buildings development standard and a site survey were requested.
13. The applicant responded to the request on 17 April 2020, and submitted the required statement and site survey.
14. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 5 June 2021. The following was requested:

15. Design Amendments
 - (a) Building height/building height in storeys
 - (b) Building bulk and form
 - (c) Internal amenity impacts
 - (d) Heritage compatibility/materials
 - (e) Waste storage areas - boarding house and takeaway food and drink premises
 - (f) Transport - driveway and onsite parking
 - (g) Trees Impact
 - (h) Landscaping
16. Additional Information
 - (a) Detailed solar access diagrams
 - (b) Accurate floor space ratio calculations and a corresponding Clause 4.6 Statement
 - (c) A Preliminary Environmental Site Investigation
 - (d) Waste Management Plan
 - (e) Amended Plan of Management
17. A meeting was held on 28 June 2020 with the applicant's team and Council's staff to discuss the additional information and amendments requested by Council.
18. The applicant responded to the request on 17 July 2020 and submitted additional information and amended plans. The following amendments were made:
 - (a) Reduction in the number of boarding rooms from 14 to 13
 - (b) Reconfiguration of boarding room layout to achieve minimum boarding room sizes in accordance with the ARHSEPP and DCP2012
 - (c) Removal of motorcycle parking, with corresponding increase in bicycle parking
 - (d) Reconfigured common lounge and communal open space on level 4
 - (e) Reconfiguration of commercial premises layout and boarding house entry
 - (f) Changes to fire stairs
 - (g) Change to masonry as predominant material
19. On 18 August 2020, the application was considered by the Design Advisory Panel (Residential Sub-Committee)

20. Council staff requested additional information and amended plans to address the comments of the panel and issues arising from the amended plans. The request was sent on 7 September 2020 and included the following:
 - (a) Exceedance of the maximum Building Height and Floor Space Ratio
 - (b) The Sophia Street building interface and façade.
 - (c) The Kippax Street building interface and façade
 - (d) Internal amenity
 - (e) Horizontal shading and weather protection
 - (f) Private open space
 - (g) Architectural details and materials
 - (h) Waste management, storage and collection
 - (i) A Detailed Environmental Site Investigation (DESI)
 - (j) Updated Fire Engineering/BCA Report corresponding to the amended plans
21. The applicant responded to the request on 17 October 2020 and provided additional information and amended plans. The following amendments were made:
 - (a) The number of boarding rooms was reduced from 13 to 10
 - (b) A storey was deleted. As a result, the building height and FRS were reduced
 - (c) A basement level was added containing bike parking and waste rooms
 - (d) An additional commercial tenancy with frontage to Sophia Street was provided
 - (f) a new roof top communal open space, with landscaping was included
22. The application was re-notified for a period of 14 days between 21 October 2020 and 5 November 2020.
23. On 23 November 2020, the applicant provided the Detailed Environmental Site Investigation.
24. On 11 January 2021, the applicant provided amended plans which addressed public domain issues, landscaping and fire engineering.

Proposed Development

25. The application seeks consent for the demolition of the existing building and construction of a four-storey mixed use building, comprising a 10 room boarding house with two commercial tenancies on the ground floor.

26. In detail, the proposed development accommodates the following on each level:

(a) Basement

- Waste storage room (boarding house)
- Waste storage room (commercial premises)
- 3 bicycle parking spaces

(b) Ground Floor

- 1 x 34.02sqm commercial/retail tenancy with accessible bathroom and lift to basement waste room.
- 1 x 23.24sqm commercial tenancy (identified on the plans as a laundromat) with commercial waste room.
- Entry lobby to boarding house
- Servicing rooms, one internal lift and one internal stairwell

(c) Level 1 & 2

- 3 x single occupancy boarding rooms, containing an ensuite, kitchenette and balcony
- 1 x single occupancy accessible boarding room, containing an ensuite, kitchenette and balcony

(d) Level 3

- 2 x single occupancy boarding rooms containing an ensuite, kitchenette, and balcony
- Communal open space (34.79sqm) lounge area with kitchenette and laundry
- Communal open space (20.02sqm)

(e) Roof Level

- Common open space, with landscaping, retractable clothesline and awning

27. Plans and elevations of the proposed development are provided below.

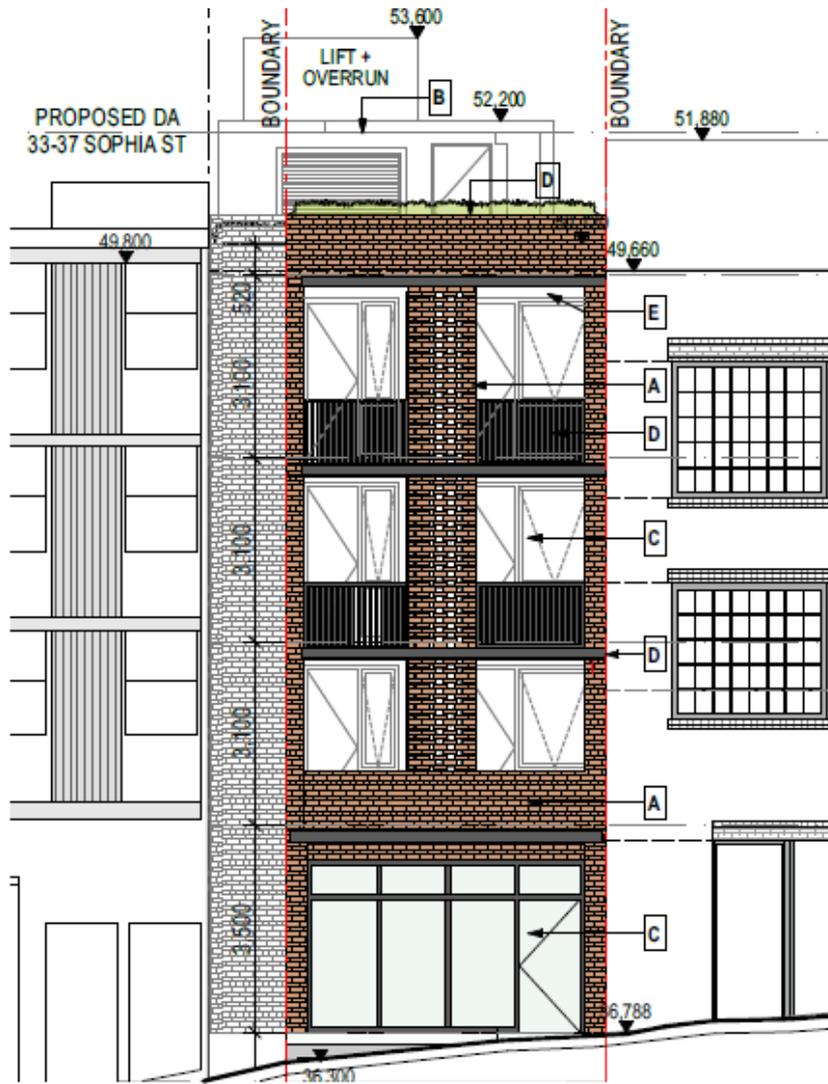


Figure 10: Proposed Kippax Street (southern) elevation

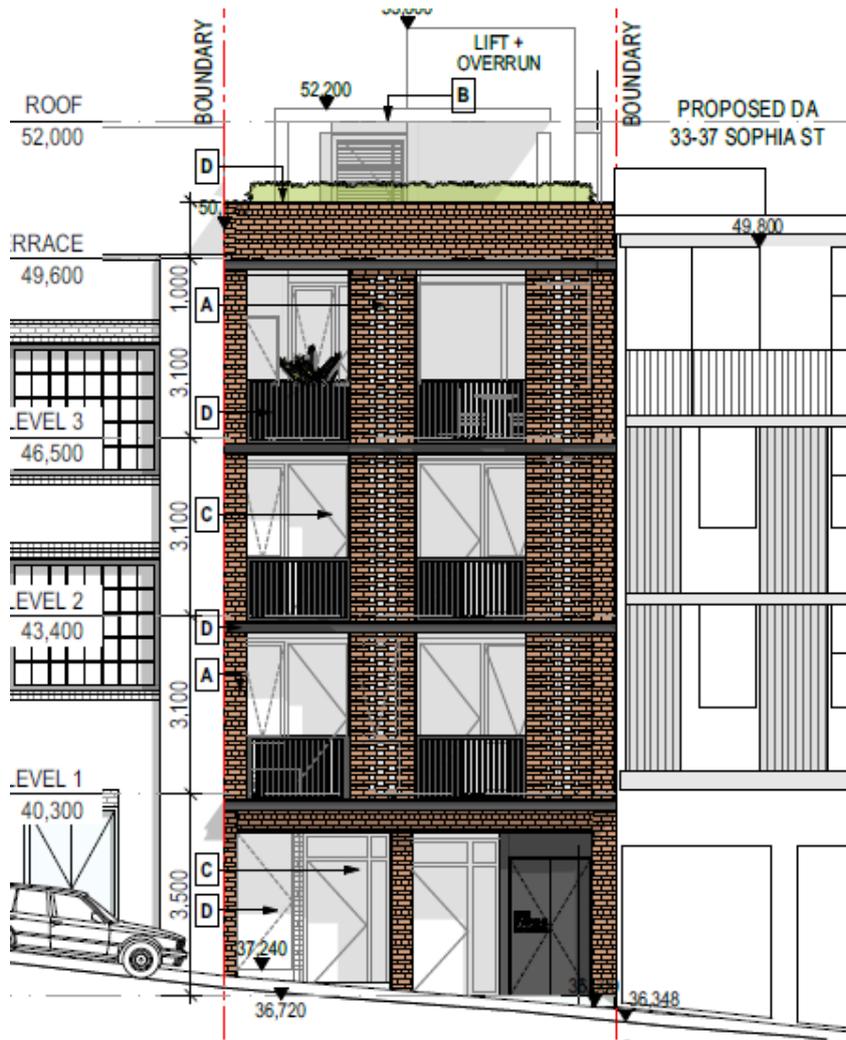


Figure 11: Proposed Sophia Street (northern) elevation

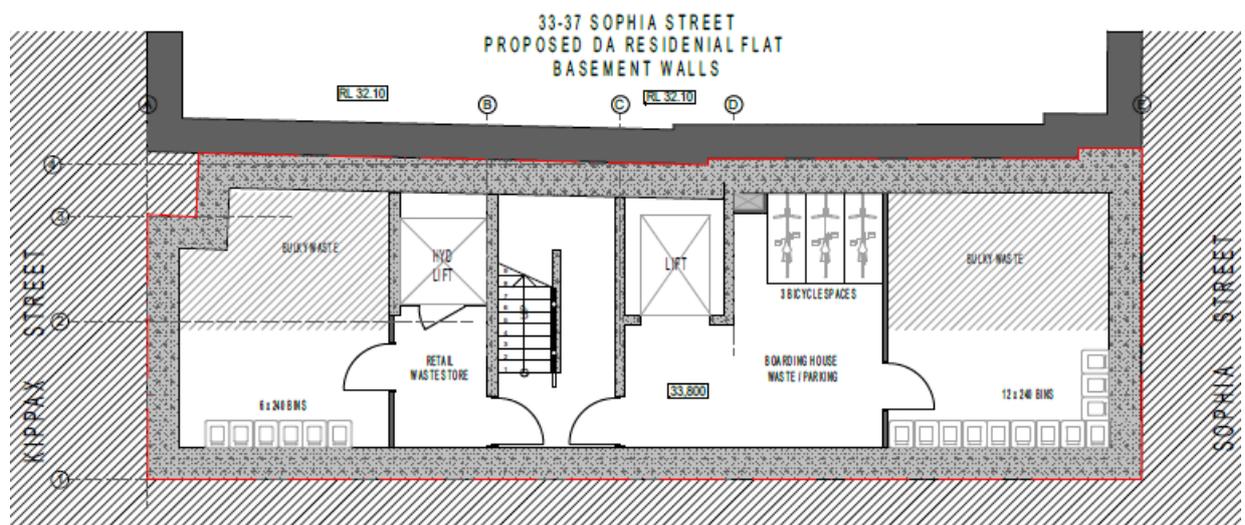


Figure 12: Proposed basement plan

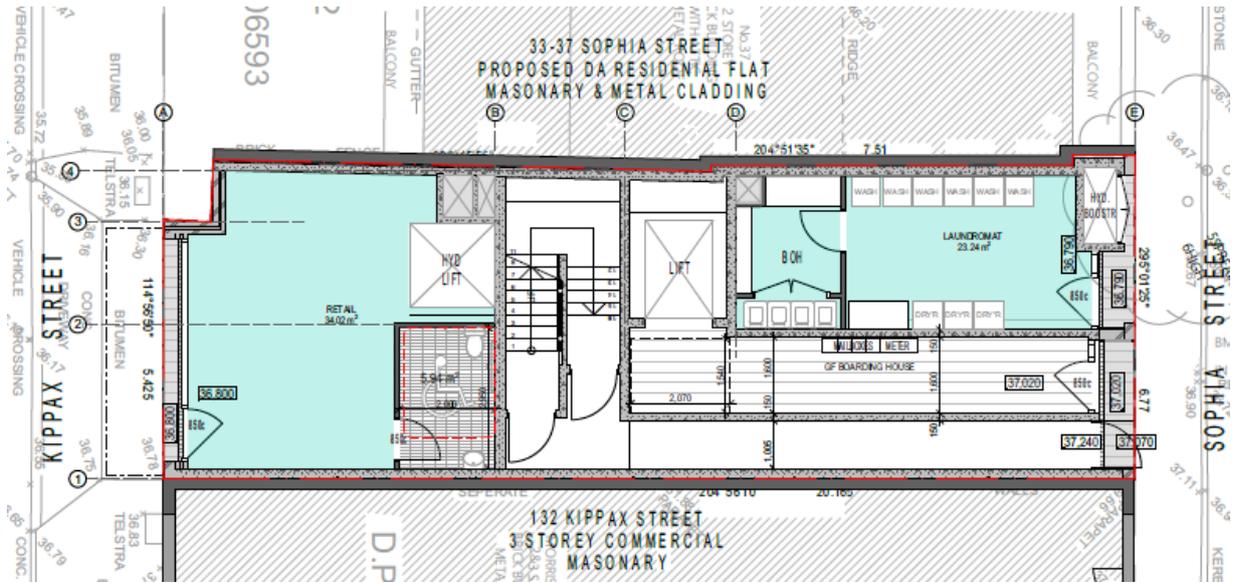


Figure 13: Proposed ground floor plan

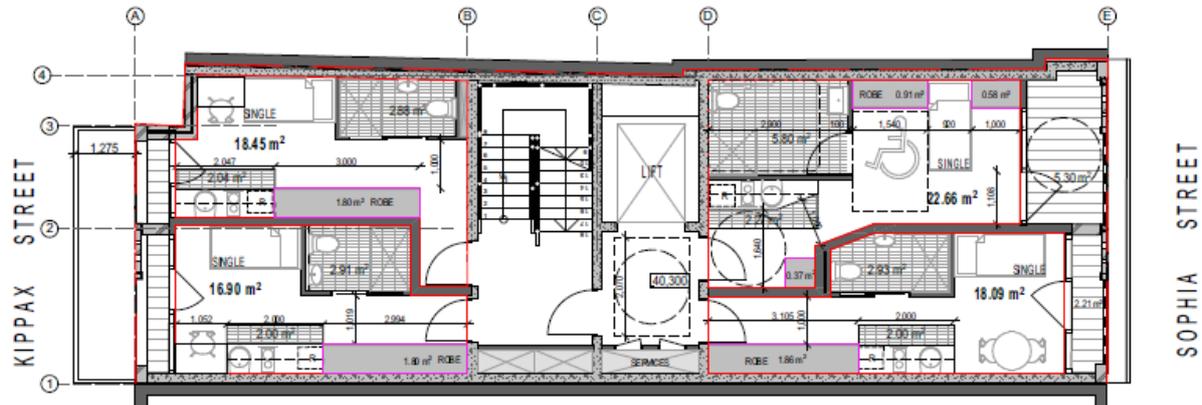


Figure 14: Level 1 & 2 floor plan

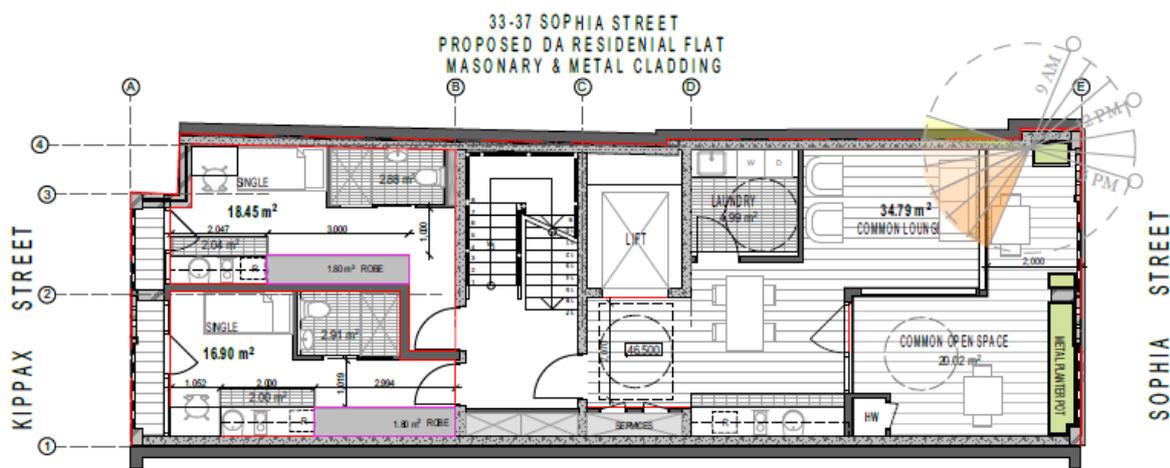


Figure 15: Level 3 floor plan

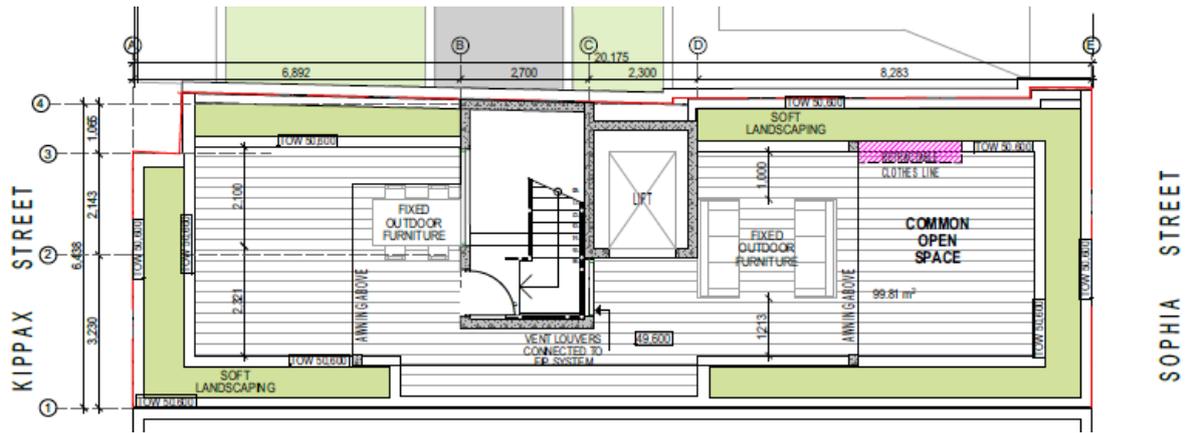


Figure 16: Roof Plan

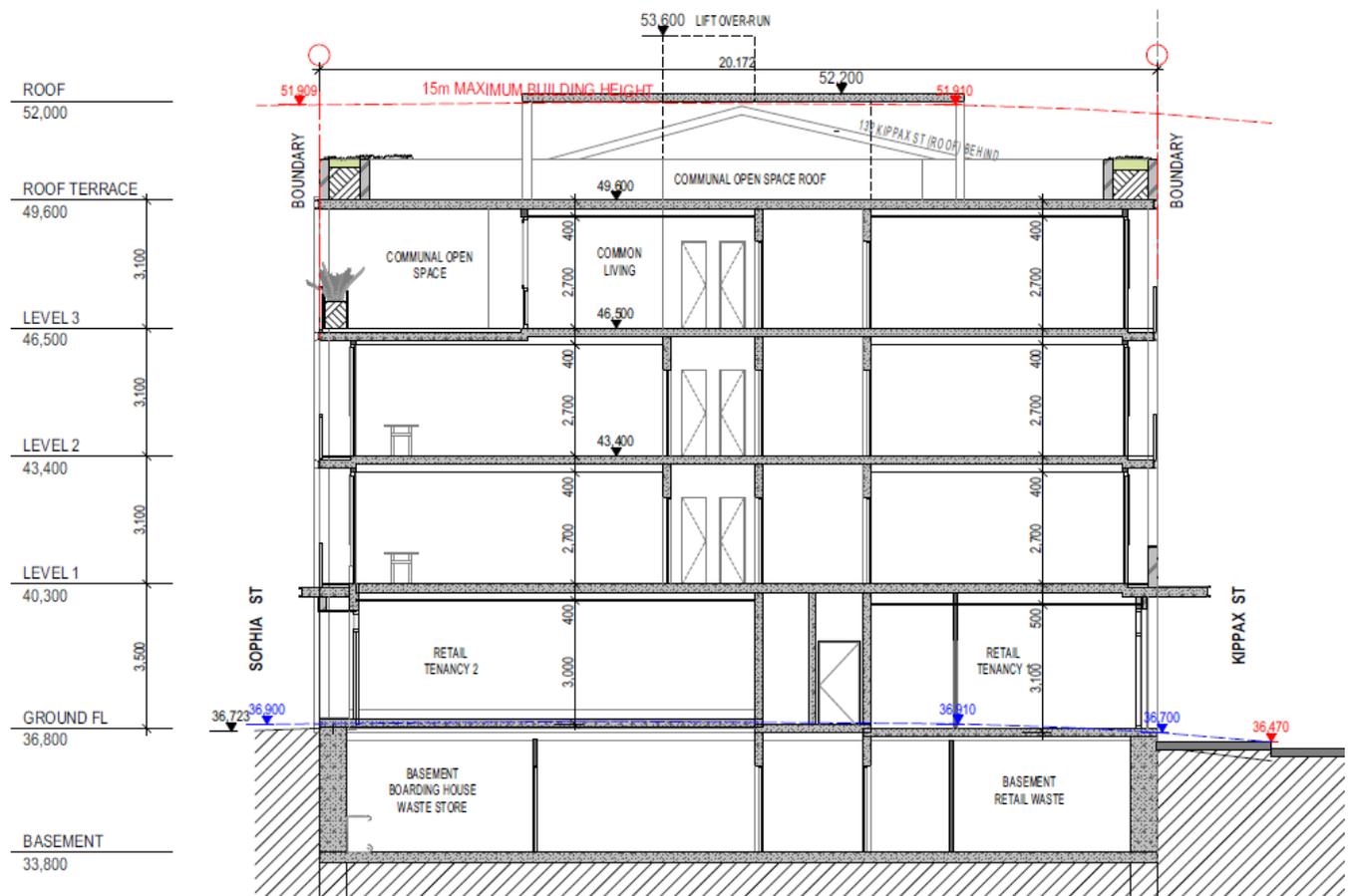


Figure 17: Proposed section

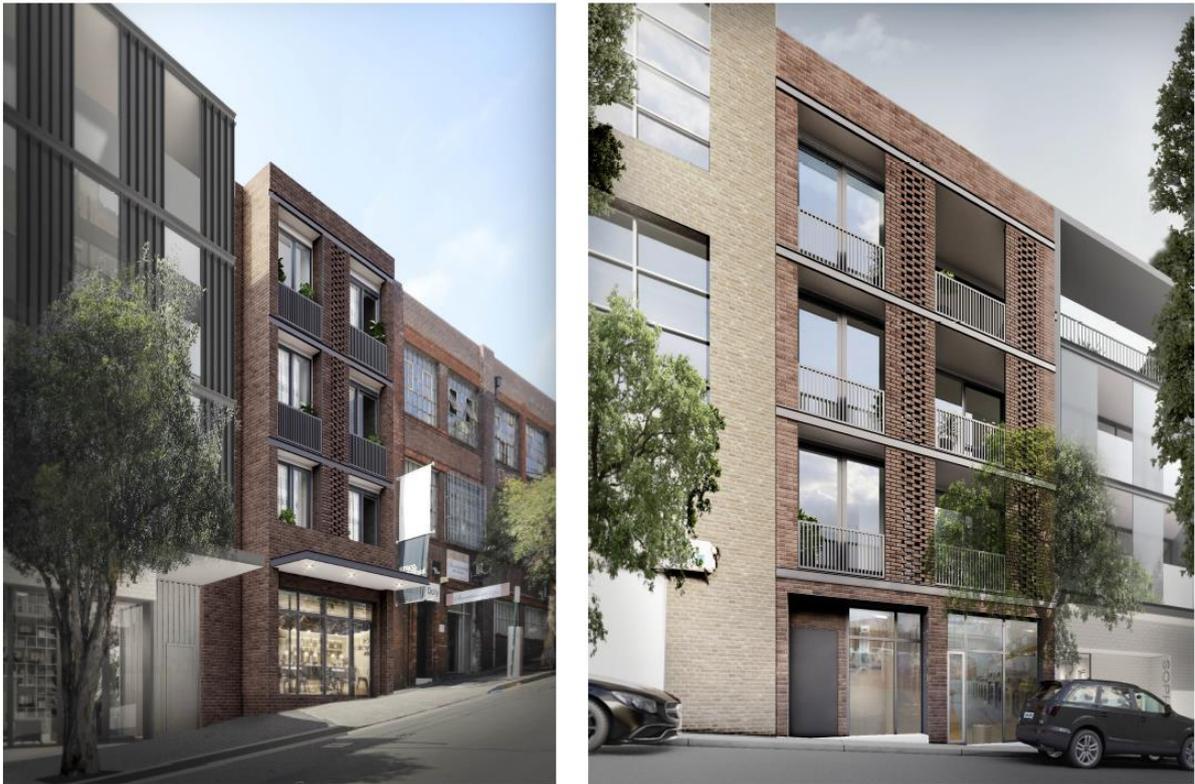


Figure 18: Proposed photomontage - Kippax Street (left), Sophia Street (right)

Assessment

28. 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

29. The aim of State Environmental Planning Policy (SEPP) No 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.
30. The site has been used for mixed use developments, including commercial and residential uses since approximately the 1940s. The site is currently being used for commercial purposes. Given, the history of the site, the applicant submitted a Detailed Environmental Site Investigation (DESI) prepared by Hayes Environmental Consulting. The DESI was reviewed and endorsed by a NSW EPA accredited Site Auditor.

31. Based on the findings of the investigations, the site was deemed suitable for the proposed use by the Environmental Consultant, subject to the following:
- All waste materials designated for off-site disposal must be removed to appropriate landfill/recycling facilities by a suitably qualified contractor in accordance with the EPA (2014a) Waste Classification Guidelines.
 - Should any signs of contamination be identified post existing building/pavement demolition, appropriate investigations must be carried out in accordance with EPA assessment guidelines.
 - Any soils to be imported onto the site for the purpose of landscaping and/or back-filling excavated areas will require some form of validation which confirms their suitability for the proposed land use.
32. Council's Health Unit has reviewed the information provided and concurs with the findings of the Environmental Consultant. The site is suitable for the proposed use, subject to conditions which ensure compliance with the recommendations above. These conditions are included in Attachment A.

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

33. An amended BASIX Certificate has been submitted with the development application.
34. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended, and included in Attachment A, ensuring the measures detailed in the BASIX certificate are implemented.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

35. 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.
36. 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. Therefore, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.

State Environmental Planning Policy (Infrastructure) 2007

37. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.
38. The application is subject to Clause 45 of the SEPP (Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network) as the development will be carried out within 5m of an exposed overhead electricity power line.

39. As such, the application was referred to Ausgrid for a period of 21 days. Ausgrid responded on 14 April 2020 and requested additional information. Due to the proximity of the open balconies to overhead powerlines on both Sophia Street and Kippax Street, Ausgrid requested detailed plans of all floors with balconies, showing the clearances from the overhead powerlines.
40. The applicant undertook a powerline assessment prepared by AA Powerline Engineering and provided amended plans in accordance with the Ausgrid requirements, which was provided to Ausgrid for comment.
41. A response to the amended plans was received on 18 June 2020. Ausgrid has recommended conditions to be included in the consent. These conditions are included in Attachment A.

State Environmental Planning Policy (Affordable Rental Housing) 2009

42. 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

43. 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
<p>1 Density and scale expressed as floor space ratio</p> <p>An FSR of up to 2:1 plus 0.5:1 is permitted.</p>	Yes	<p>The proposal has a permitted FSR of 2.5:1.</p> <p>The site has an area of 131.3sqm</p> <p>The application proposes a floor space ratio of 2.41:1.</p>
<p>2(a) Building height</p> <p>The proposed building height must not exceed the maximum building height of 15m permitted under the Sydney LEP 2012.</p>	No	<p>The majority of the building and roof form is compliant with the maximum building height of 15m. However, the lift overrun and awning at roof level exceed the building height by 1.69m or 11%.</p> <p>A request to vary the development standard in accordance with Clause 4.6 has been submitted to Council and is supported. Refer to the issues section below.</p>
<p>2(b) Landscaped area</p>	Yes	<p>The predominant built form in the immediate context is warehouse buildings with zero setback to the street.</p>

Provision	Compliance	Comment
The front setback is to be compatible with the streetscape.		Therefore, the proposed zero setback is considered acceptable and a landscaped area is not required.
<p>2(c) Solar access</p> <p>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.</p>	Yes	<p>The communal living area is located on level 3 and benefits from a northern aspect.</p> <p>The applicant has provided solar access diagrams demonstrating that adequate solar access will be achieved to this communal living area from 9.00am - 1.00pm in midwinter.</p>
<p>2(d) Private open space</p> <p>(i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers.</p>	Yes	<p>The development provides a communal open space which is accessed off the communal living room with an area of 20.02sqm. The whole of this area does not achieve the 3m minimum dimension.</p> <p>The development also provides a substantial roof terrace which exceeds both the minimum size and dimension.</p>
<p>2(e) Parking</p> <p>(i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area.</p>	No - assessed as acceptable	<p>No onsite car parking spaces are to be provided.</p> <p>This is acceptable in this instance as the SLEP2012 does not require a minimum car parking provision.</p> <p>The site is readily accessible to various forms of public transport and is approximately 600m from Central Station.</p> <p>Furthermore, bicycle parking is provided at basement level.</p>
<p>2(f) Accommodation size</p> <p>(i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm.</p>	Yes	All rooms are proposed as single rooms and are 12sqm (excluding any area used for bathroom/kitchen). The room sizes range from 12.3sqm - 15.1sqm.

Provision	Compliance	Comment
(excluding any area used as a private kitchen/ bathroom)		

44. The proposed development complies with the relevant provisions of clause 29.
45. 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	The building contains a communal living room on the level 3. The location of the communal living room will receive direct natural sunlight and ventilation. The living room will achieve acceptable amenity for the occupants of the development.
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	All boarding rooms are for single occupancy. The submitted Plan of Management restricts the number of lodgers to no more than 1 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 lodger in accordance with Section 4.4.1 of the Sydney DCP 2012.
(1e) 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 boarding house will have fewer than 20 lodgers. Therefore, a boarding room for a house manager is not required. No boarding house manager room has been provided in the development.
1(g) If the boarding house is zoned primarily for commercial	Yes	The site is located in the B4 Mixed Use zone. Commercial uses are proposed on

Provision	Compliance	Comment
purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.		both street frontages to activate the streetscape.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	No - assessed as acceptable	<p>The proposed development is required to provide a minimum of 2 bicycle parking spaces. The development provides 3 bicycle parking spaces.</p> <p>The development provides no motorcycle parking.</p> <p>A Clause 4.6 written request seeking to vary the motorcycle parking development standard has been submitted and is supported in this instance.</p> <p>See discussion under the heading Issues.</p>

Clause 30A – Character of the local area

46. 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.
47. The site is located within a mixed-use area. As amended, the proposed boarding house is compatible with the character of the surrounding area and is consistent with clause 30A. The bulk and scale are appropriate to the adjoining warehouse building to the east. The architectural detailing, in particular the use of masonry, is compatible with the warehouse buildings located in the surrounding locality and provides an appropriate frontage to the terraces opposite the site on Sophia Street.

Clause 52 - No subdivision of boarding houses

48. Clause 52 states that a consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.
49. The application does not propose a strata subdivision. A suitable condition is recommended preventing the strata subdivision or community title subdivision of the boarding house development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

50. 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 a boarding house and commercial premises, both of which 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 15m is permitted.</p> <p>A height of 16.69m is proposed. This represents an 11% variation to the control.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</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>
4.4 Floor space ratio	Yes	Refer to AHRSEPP compliance table above.
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 subject site is a not a heritage item and is not located within a heritage conservation area.</p> <p>The site is located within the vicinity of a local heritage item known as I156A 'Former Ford Sherrington Trunk Factory including interior' located opposite the site at 119-127 Kippax Street, Surry Hills.</p> <p>The site is also located opposite the Little Riley Street Heritage Conservation Area (C65).</p> <p>The proposal has been amended to use face brick as the predominant material. Council's Heritage Specialist supports the use of this material, due to its compatibility with the heritage item above and other warehouse buildings within the vicinity of the site.</p> <p>The proposed development is acceptable and will not have detrimental impacts on the heritage significance of heritage items, or the heritage conservation area located in the vicinity of the site.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

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 7.7 Retail Premises	Yes	<p>The parking provisions of the SLEP 2012 do not provide a maximum parking rate for a boarding house.</p> <p>Furthermore, the SLEP2012 encourages the provision of minimal or no parking in new developments. The proposal is consistent with the intent of the SLEP2012 in this regard.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils. The site is not located within 500m of adjacent class 1, 2, 3 or 4 land.</p> <p>The applicant provided a Detailed Environmental Site Investigation which included an assessment of the potential for Acid Sulphate Soils.</p>

Provision	Compliance	Comment
		Following the findings of the Environmental Consultant, which were reviewed by the City's Environmental Health Officer, the preparation of an Acid Sulfate Soils Management Plan was not required.

Development Control Plans

Sydney Development Control Plan 2012

51. 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

52. The site is located within the Surry Hills Central locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposal provides an active frontage to Kippax Street and is compatible with the warehouse buildings in the surrounding locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>An active frontage is provided to Kippax Street, including a retail use and awning.</p> <p>The proposed development presents an appropriate frontage to both Kippax Street and Sophia Street. The entry to the boarding house and commercial tenancies have legible and accessible entries from the street.</p> <p>The existing vehicle access and crossover is proposed to be removed from Kippax Street. Appropriate conditions are recommended to reinstate the kerb and gutter, along with the protection of stone kerbs, footpath and public domain.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees.</p> <p>The proposed basement is specified to be to the edge of the property boundary. To ensure the structural root zone of the street tree on Sophia Street is protected, the basement must be amended to be an</p>

Provision	Compliance	Comment
		<p>additional 60cm from the boundary line and the soil grade in this area maintained.</p> <p>An appropriate design modification condition is recommended in Attachment A.</p> <p>The development will not have an adverse impact on the local urban ecology, subject to the recommended conditions, which ensure the Street tree on Sophia Street is protected during the construction process.</p>
3.6 Ecologically Sustainable Development	Yes	An amended Basix Certificate has been provided for the plans. The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The site is not identified as being on flood prone land.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>Subdivision is not proposed as part of the subject application.</p> <p>No strata subdivision of boarding houses is permitted under the ARHSEPP 2009.</p> <p>The application was referred to Council's Specialist Surveyor, who provided appropriate conditions of consent.</p>
3.9 Heritage	Yes	<p>The site is not a heritage item or located within a heritage conservation area.</p> <p>The proposal has been amended to use face brick as the predominant material. Council's Heritage Specialist supports the use of this material, due to its compatibility with the heritage item above and other warehouse buildings within the vicinity of the site.</p> <p>The application has been reviewed by Council's Heritage Specialist who advised that the proposal is acceptable.</p>
3.11 Transport and Parking	Yes	In accordance with this clause, a minimum amount of bicycle parking, motorcycle parking and car parking is not specified for this development.

Provision	Compliance	Comment
		<p>However, due to the number of boarding rooms provided in the proposal (10 the ARHSEPP 2009 requires 2 bicycle parking spaces. The proposal includes 3 bicycle parking spaces at basement level.</p> <p>The proposed development is required to provide a minimum of 2 bicycle parking spaces. The development provides 3 bicycle parking spaces. Appropriate conditions are recommended for the design of these spaces which are included in Attachment A.</p> <p>No motorcycle parking spaces are provided. A Clause 4.6 Statement to vary the development standard has been provided. Refer to further discussion in the issues section of this report.</p>
3.12 Accessible Design	Yes	<p>The proposal provides two accessible boarding rooms. Access is provided by a lift. The proposal has been amended to provide an accessible rooftop communal open space.</p> <p>A condition is recommended to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and BCA.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
3.14 Waste	Yes	<p>Separate waste areas are provided for the residential and commercial uses of the building, including bulky waste storage areas.</p> <p>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.</p>

Provision	Compliance	Comment
3.15 Late Night Trading Management	Yes	<p>The application does not propose hours of operation for the commercial tenancies.</p> <p>A condition is recommended that the hours of operation be restricted to 7.00am - 10.00pm, which is consistent with the permitted hours of operation under a Complying Development Certificate for any use.</p>
3.16 Signage and Advertising	Yes	<p>The proposed development includes the provision of a building identification sign on Sophia Street. The building identification sign (street number) is considered generally acceptable in accordance with the controls.</p> <p>No signage is proposed with regard to the commercial tenancies. A condition is recommended requiring any future signage (other than exempt and complying signs) to be submitted as a development application for assessment.</p> <p>The site does not require a signage strategy as it is not located within a heritage conservation area, does not involve a heritage item, is not strata titled and does not contain more than four business premises.</p>

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	The site is permitted a maximum building height of 4 storeys. The proposed development is 4 storeys in height with and complies.
4.2.1.2 Floor to ceiling heights and floor to floor heights	No - assessed as acceptable.	Section 4.3.1.1 of the Sydney DCP 2012 states that buildings with a commercial use on the ground floor are to have a minimum floor to floor height of 4.5m. The proposed floor to floor height on the ground floor level is 3.5m. The floors above contain boarding rooms with a floor to ceiling height of 2.7m which is a good amenity outcome for future occupants. Reducing the floor to ceiling heights of the boarding rooms above to accommodate a 4.5m floor to floor height at ground level is not considered necessary, given the scale of the development is generally consistent with the height envisioned by the current controls for this precinct and the proposal is compatible with the streetscape.
4.2.2 Building setbacks	Yes	The proposal has zero front setback to both Kippax Street and Sophia Street. This is consistent with the adjoining buildings and setback patterns in the surrounding streetscape.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	This provision requires neighbouring developments to achieve a minimum of two hours of direct sunlight between 9.00am and 3.00pm on June 21 onto at least 1sqm of living room windows and 8sqm of private open space.

Provision	Compliance	Comment
		<p>The proposed development will not impact solar access to private open space in neighbouring developments.</p> <p>The proposal will generate some additional overshadowing to the building located at 117-119 Kippax Street. The ground floor of this building has commercial/retail uses with residential apartments on the floors above.</p> <p>The apartments on the first floor of the Kippax Street façade will experience additional over shadowing to living room windows at 9.00am - 10.00am. However, they will retain in excess of the required 1sqm of first sunlight from 10.00am onwards, satisfying the requirements of this clause.</p>
4.2.3.4 Design features to manage solar access	Yes	A fixed concrete awning is proposed to provide shade to the rooftop open space. Council's Urban Designer recommends that the concrete awning is amended to be a lightweight shade pergola. This has been addressed by condition in Attachment A.
4.2.3.5 Landscaping	Yes	The proposal includes landscaping on the rooftop level. A condition is recommended requiring a landscape plan prior to construction commencement.
4.2.3.6 Deep Soil	No - accessed as acceptable	<p>The existing site does not have any deep soil areas. The proposal includes full site coverage, therefore opportunities for deep soil areas are limited.</p> <p>Given the existing site conditions and constraints, Council's Tree Management Officer recommends that a suitable tree is planted at rooftop level in an appropriate planter. This is included in the conditions contained in Attachment A.</p>

Provision	Compliance	Comment
4.2.3.9 Ventilation	Yes	Each bedroom and common area is provided with operable doors/windows in order to provide natural ventilation.
4.2.6 Waste and recycling Management	Yes	A waste management plan has been submitted with the application and which has been endorsed by the Council's Waste Management Unit. Adequate waste storage areas are provided at ground and basement level to accommodate residential and commercial waste.
4.2.8 Letterboxes	Yes	Letterboxes are provided within the boarding house lobby, accessed from Sophia Street.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the ground floor commercial tenancies 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 is proposed or permitted.
4.4.1.2 Bedrooms	Yes	<p>The minimum boarding room size for single rooms is 12sqm.</p> <p>All rooms are single occupancy and meet the minimum boarding room size. The rooms range in size from 16.9sqm - 22.66sqm.</p> <p>Each room includes an ensuite with a shower with a minimum area of 2.9sqm, 1.5sqm of wardrobe space and a kitchenette with a minimum size of 2sqm in accordance with the requirements of this clause.</p> <p>Each room has access to natural light via a window or door and a floor to ceiling height of 2.7m.</p>

Provision	Compliance	Comment
		The proposal is considered to provide adequate amenity for the boarding rooms in accordance with this Clause.
4.4.1.3 Communal kitchen areas	Yes	A communal kitchen is not required as every room has a kitchenette. However, a small communal kitchen is also provided in the communal living area.
4.4.1.4 Communal living areas and open space	Partial compliance	<p>Indoor Communal Living Area:</p> <p>The indoor communal living area has an approximate area of 21sqm, exceeding the required 12.5sqm. The communal living area is located adjacent to communal open space and will receive the required solar access.</p> <p>Common Open Space</p> <p>Two areas of common open space are provided, exceeding the required 20sqm area and minimum 3m dimension.</p> <p>Private Open Space</p> <p>This clause requires 30% of all bedrooms to have access to private open space in the form of balconies or terraces with a minimum area of 4sqm. Whilst all rooms have access to balconies, only two rooms achieve the minimum area. This is considered acceptable, given the substantial quantum of common open space provided by the development.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	<p>Ensuites are provided in each boarding room.</p> <p>Laundry facilities are provided on level 3 including a laundry basin, washing machine and dryer.</p> <p>A retractable clothesline is provided in the common open space at roof level.</p>
4.4.1.6 Amenity, safety and privacy	Yes	<p>The communal open spaces are in safe and accessible locations within the building.</p> <p>The bedrooms on level 3 are appropriately separated from the main common space.</p>

Provision	Compliance	Comment
		<p>An acoustic report was provided with the application. The report was reviewed by Council's Health Officer and is considered acceptable, subject to the recommended conditions.</p> <p>The boarding house proposes an external roof top terrace area. It is recommended that the use of this area be restricted to between 7.00am --10.00pm Mondays to Sundays inclusive in order to minimise any noise disturbance to nearby residents.</p> <p>Subject to the recommended conditions, the proposal provides a reasonable amenity impact to the occupants and neighbouring properties.</p>
4.4.1.7 Plan of Management	Partial compliance	<p>An operational plan of management was submitted with the application.</p> <p>Further amendments are required such as reference to the reduced number of boarding rooms and CCTV arrangements. The submission of an amended Plan of Management will be addressed by Condition.</p>

Discussion

Urban Design

53. A fire hydrant booster cupboard is required on the Sophia Street frontage. To ensure that the booster cupboard complies with the relevant Australian Standards and is appropriately integrated into the design of the Sophia Street façade, further detail drawings at 1:20 are required. A suitable condition is recommended in Attachment A.
54. A development application for the adjacent site at 33-37 Sophia Street is currently under assessment (D/2020/766). This proposal includes the construction of a mixed use development which is four storeys in height and will share a common boundary with the subject site (western boundary). Given that this application is yet to be approved and the possibility that the development if approved may not be constructed, it is recommended that a condition be included which requires further design consideration of the western façade to achieve a high level of finish and detailing. An appropriate condition is included in Attachment A requiring amended drawings which show the proposed pre-cast concrete panel layout and sizes, including details of the panel joints at 1:10 scale.

Clause 4.6 Request to Vary a Development Standard - Height of Buildings

55. The site is subject to a maximum height control of 15m. The proposed development has a height of 16.69m exceeding the Height of Buildings development standard by 1.69m resulting in a 11% variation from the development standard. The elements which exceed 15m are limited to the lift overrun and part of the awning on the rooftop communal space as shown in figure 19 below:

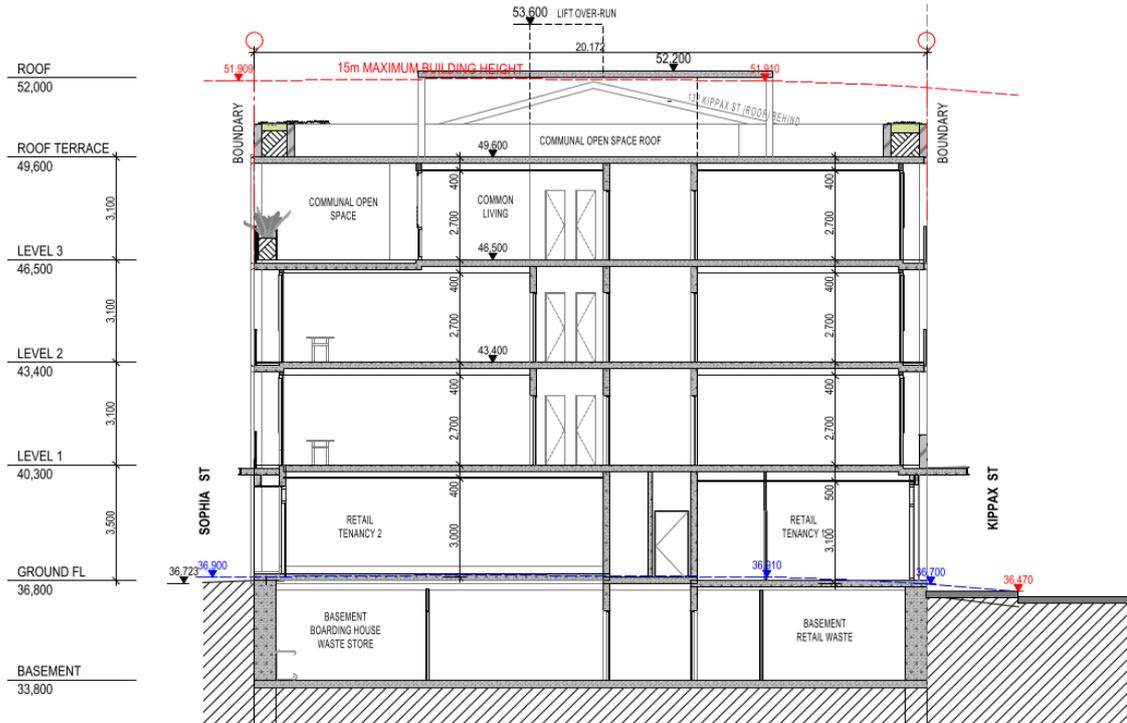


Figure 19: Originally proposed section drawing

56. 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:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
 - That there are sufficient environmental planning grounds to justify contravening the standard;
 - The proposed development will be consistent with the objectives of the zone; and
 - The proposed development will be consistent with the objectives of the standard.
57. A copy of the applicant's written request is provided in Attachment C.

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

58. 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 development proposal presents a 4 storey form to the streetscape and the proposed built form will not present unreasonable bulk and scale impacts to the public domain or adjoining properties.
 - ii. The building is an articulated/contemporary built form that is a suitable built form. The height for this site is consistent with the context and scale of the other development in the locality including the adjoining 3 storey warehouse building and 7 storey commercial building at 110-120 Kippax Street to the west.
 - iii. The majority of the development is within the 15m height standard being a suitable form and scale of development on both Sophia Street and Kippax Street that is consistent with the envisioned character of development within the B4 - Mixed Use zone.
 - iv. The variation to the height standard is a result of providing lift access/equitable access to the communal open space on the roof level of the building. Further, the proposal has been designed to comply with the 15m height control at the street elevations to ensure the proposal is consistent with the building height standard as viewed from Sophia Street and Kippax Street.
 - v. The objectives of the height of buildings standard are achieved despite the non-compliance.
 - b. That there are sufficient environmental planning grounds to justify contravening the standard:
 - vi. The upper level of the building complies with the 15m height control. The height variation being the lift overrun is a result of providing lift access to the communal open space on the roof of the development contributing to residential amenity. The variation (lift overrun) is not visible from the public domain being located central to the building.
 - vii. The proposed development is a 4 storey built form and the provision of a lift allows for equitable access to communal open space on the roof of the building. Strict compliance with the height control would require deletion of the lift to the upper level that would not achieve a better environmental planning outcome as the lift overrun contributes to residential amenity and accessibility of the mixed-use building and the building height is consistent with surrounding development.

- viii. The variation to the height control will not result in unreasonable amenity impacts to adjoining properties noting the lift overrun that exceeds the height control will not result in unreasonable overshadowing of the adjoining properties or a loss of outlook-views being located central to the site. Further, the height variation will not affect view corridors to and from nearby heritage items and conservation areas within the vicinity of the site.
- ix. The proposed development meets the relevant objects of the Environmental Planning and Assessment Act 1979 as follows:
 - i. 1.3(c) - the proposal is an orderly and economic use of the site and the development is largely consistent with the height standard with a contemporary built form that is compatible with the desired future character of the locality and the variation will not result in unreasonable amenity impacts.
 - ii. 1.3(d) - the proposed mixed-use development includes a 10 x room boarding house development which contributes to the provision of affordable rental housing within close proximity to employment and services.
 - iii. 1.3(f) - the proposal has been designed to be consistent with surrounding development and will not have a significant adverse impact upon the nearby heritage items and heritage conservation area.
 - iv. 1.3(g) - the proposed mixed-use development and height of building presents a suitable design outcome for the subject site being a 4 storey form that sits comfortably within the streetscape.
- x. The proposed development meets the relevant aims of the Sydney LEP 2012 as follows:
 - v. 2(e) - the proposed mixed-use development includes a 10 x room boarding house development which contributes to the provision of affordable rental housing within close proximity to employment and services.
 - vi. 2(g) - the proposed mixed-use development is located within close proximity to transport services and promotes active transportation including cycling and walking.
 - vii. 2(i) - the proposal includes a commercial premises at ground floor level contributing to a range of uses within the mixed-use zone
 - viii. 2(j) - the proposed development presents a high quality contemporary form within the streetscape that reflects the desired future character of the locality and is suitable for the site.

- ix. 2(k) - the proposal will not have an adverse impact upon the nearby heritage item and conservation area within the vicinity of the site.
- xi. The elements of the proposal above the height limit ensures that despite the development's variation to the height control, the proposed mixed-use development will achieve suitable residential amenity that is:
 - x. Within an appropriate built form for the site; and
 - xi. Maintaining a bulk, scale and streetscape consistent with established building heights within the locality.
- c. The proposed development will be consistent with the objectives of the zone;
 - xii. The proposal includes a ground floor commercial premises providing for a compatible low-scale retail component within the development that is compatible with the boarding house proposed.
 - xiii. The proposal integrates commercial and residential land uses and is located within close proximity to public transport being 450m walking distance from Central Railway Station, encouraging active transport.
 - xiv. The proposal will contribute to the viability of the Surry Hills Central locality.
- d. The proposed development will be consistent with the objectives of the standard
 - xv. Objective (a) - the development proposal presents a 4 storey built form to the public domain with the street elevations complying with the 15, height control. The immediate locality contains a diversity of building forms including 2-3 storey warehouse and 7 storey commercial buildings within the vicinity of the site. The development proposal being a 4 storey form will reflect the form that is compatible with the overall scale of locality and presents a contemporary architectural form that is compatible with the overall scale of development within the streetscape.
 - xvi. The building form has been designed to present a compliant building height at the street elevations with the number of storeys proposed being appropriate for the subject site. The overall scale of the proposal is compatible with the built form of existing development and the form and scale of warehouse and commercial buildings within the locality, presenting a consistent building height with the existing 3 storey warehouse development adjoining the site to the east.
 - xvii. Objective (b) - The bulk, scale and height of the proposed development is consistent with the neighbouring buildings and will not visually overwhelm the neighbouring heritage item or conservation area.

- xviii. Objective (c) - The proposal will not result in a significant adverse impact upon the views/outlook from surrounding properties beyond that envisioned within the zone. The elements of the proposal which result in a variation to the height control awning roof element and lift overrun will not obstruct any sightlines towards significant icons and would not impact view towards heritage items.
- xix. Objective (d) - The proposed 4 storey form is consistent with the overall form and scale of development within the streetscape and presents a suitable transition in building height from the 7 storey commercial development at 110-120 Kippax Street towards the east.
- xx. Objective (e) - The subject site is not located in Green Square.

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

59. 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)?

60. The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfied the objectives of the height of buildings control notwithstanding the non-compliance.
61. The area of non-compliance is limited to the lift overrun and the concrete awning at roof level. The lift overrun will not be visible from the public domain and will not add unreasonable bulk and scale to the building envelope.
62. The non-compliance arising from the lift overrun is acceptable as it allows for accessible and equitable access to be provided to the rooftop communal space. The awning at this level allows for meaningful shade for the future occupants of the site.
63. The building height is appropriate for the site's context, resulting in an acceptable built form within the locality.

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

64. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravention of the standard.

65. It is agreed that the area of non-compliance is relatively minor as it is confined to elements which will have minimal views from the streetscape and will not adversely impact its surrounds. The additional height will not create unacceptable impacts on the amenity of surrounding properties, instead providing equitable access to the rooftop communal space.

Is the development in the public interest?

66. The objectives of the Height of Building development standard relevant to the proposal include:
- (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; and
 - (c) To promote the sharing of views.
67. The height of the development is appropriate to the to the conditions of the site. The height exceedance will not impact on any significant views or result in any adverse amenity impacts to surrounding development. Appropriate height transitions are maintained to heritage items within the vicinity of the site.
68. 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. The objectives of the B4 Mixed Use zone are as follows:
- (d) To provide a mixture of compatible land uses;
 - (e) To integrate suitable business, office, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; and
 - (f) To ensure uses support the viability of centres.
69. The mixed-use development proposes new affordable housing in a highly accessible area close to public transport and integrates two new commercial spaces.
70. The height of the development is appropriate to the to the conditions of the site. The height exceedance will not impact on any significant views or result in any adverse amenity impacts to surrounding development.

Conclusion

71. 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.

Clause 4.6 Request to Vary a Development Standard - Motorcycle Parking

72. The site is subject to a minimum motorcycle parking control of 2 spaces in accordance with Clause 30(1)(h), the 'minimum motorcycle parking' of State Environmental Planning Policy (Affordable and Rental Housing) 2009. The proposed development provides no motorcycle parking spaces.
73. 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;
 - (a) That there are sufficient environmental planning grounds to justify contravening the standard;
 - (b) The proposed development will be consistent with the objectives of the zone; and
 - (c) The proposed development will be consistent with the objectives of the standard.

A copy of the applicant's written request is provided in Attachment D

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

74. The applicant seeks to justify 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 proposed mixed use development is consistent with the aims of the SEPP ARH 2009 notwithstanding the variation to the control contained in Clause 30(1)(h)
 - (ii) The public benefit of maintaining the development standard is not considered significant because the site is within the catchment of public transport ensuring the proposal will not result in unreasonable demand on public transport without motorcycle parking.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The site is well serviced by public transport being 450m walking distance from Central Railway Station, the Light Rail and bus services operating on Elizabeth Street. The development promotes the use of public transport.
 - (ii) The development proposal promotes the use of bicycles with the provision of 3 on-site bicycle spaces in accordance with Clause 30(1)(h) of SEPP ARH 2009.
 - (iii) The ground floor of the development, without the allocation of motorcycle parking, can be designed with an active street frontage to Kippax Street and Sophia Street, with a residential entry from Sophia Street.
 - (iv) The proposed development meets the relevant objects of the Environmental Planning and Assessment Act 1979 as follows:
 - (i) 1.3(c) - the proposal is an orderly and economic use of the site with a contemporary built form that is compatible with the desired future character of the locality.
 - (ii) 1.3(d) - the proposed mixed use development includes a 10 x room boarding house development which contributes to the provision of affordable rental housing within close proximity to employment and services.
 - (iii) 1.3(f) - the proposal has been designed in a contemporary form that is consistent with surrounding development and will not have a significant adverse impact upon nearby heritage items and heritage conservation area.
 - (iv) 1.3(g) - the proposed mixed-use development presents a suitable design outcome for the subject site being a 3 storey form that sits comfortably within the streetscape.
 - (v) 1.3 (g) - the proposed boarding rooms have been designed to achieve good residential amenity including natural light and ventilation.
 - (v) The proposed development meets the relevant aims of the Sydney LEP 2012 as follows:
 - (i) 2(e) - the proposed mixed-use development includes a 10 x room boarding house development which contributes to the provision of affordable rental housing within close proximity to employment and services.
 - (ii) 2(g) - the proposed mixed-use development is located within close proximity to transport services and promotes active transportation including cycling and walking.

- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposal includes a ground floor commercial premises providing for a compatible low-scale retail component within the development that is compatible with the boarding house proposed.
 - (ii) The proposal integrates commercial and residential land uses and is located within close proximity to public transport being 450m walking distance from Central Railway Station, encouraging active transport.
 - (iii) The proposal will contribute to the viability of the Surry Hills Central locality.
- (d) The proposed development will be consistent with the objectives of the standard
 - (i) 3(a) - The boarding house development contributes to the provision of affordable rental housing.
 - (ii) 3(b) - The development application contributes to the delivery of affordable housing with the application of an FSR bonus pursuant to Clause 29(1)(c) of SEPP ARH 2009.
 - (iii) 3(c) - The development proposal does not result in a loss of existing affordable rental housing.
 - (iv) 3(d) - The development proposal does not result in the loss of existing affordable housing and contributes to the provision of new affordable rental housing.
 - (v) 3(f) - The proposed boarding house contributes to the provision of housing choice and housing affordability within the B4 Mixed Use zone that is within the catchment of existing services and transport.

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

75. 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)?

76. 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 ARH 2009 notwithstanding the non-compliance. In particular, the development facilitates the delivery of new affordable rental housing by providing flexibility in the application of development standards and supporting local centres by providing affordable housing.

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

77. The applicants written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.
78. The site is located in a highly accessible area, with a range of public transport options available. Although non-compliant with the SEPP ARH 2009, the proposal is consistent with the objectives and provisions of the Sydney LEP 2012 and the Sydney DCP 2012 in terms of transport and access.
79. The provision of motorcycle parking would require an access driveway to be constructed, which would inhibit the ability to provide an active street frontage to both Sophia Street and Kippax Street. The provision of zero motorcycle parking spaces results in a more desirable streetscape outcome.

Is the development in the public interest?

80. The objectives of the SEPP ARH 2009 include the following:
 - (a) To provide a consistent planning regime for the provision of affordable rental housing;
 - (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;
 - (c) To facilitate the retention and mitigate the loss of existing affordable rental housing;
 - (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;
 - (e) To facilitate an expanded role for non-profit providers of affordable rental housing;
 - (f) To support local business centres by providing affordable rental housing for workers close to places of work; and
 - (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.
81. The proposal is consistent with the relevant aims of the SEPP ARH 2009 as it provides new affordable housing in a form that suitable to the subject site. The boarding house will be located close to places of work, such the Surry Hills Central locality and the broader Central Sydney area.
82. Whilst the aims of the SEPP are to provide 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 the Sydney LEP 2012 specifically seeks to minimise the amount of vehicle traffic generated by development.

83. The proposal is considered to be in the public interest as it is consistent with the objectives of the SEPP ARH 2009 and the objectives of the B4 Mixed Use zone. The objectives of the B4 Mixed Use zone are as follows:
- (g) To provide a mixture of compatible land uses;
 - (h) To integrate suitable business, office, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; and
 - (i) To ensure uses support the viability of centres.
84. The mixed-use development proposes new affordable housing in a highly accessible area close to public transport and integrates two new commercial spaces. The development is located within close proximity to public transport, jobs and services which encourages the use of public transport, walking and cycling. In addition, the development additional bicycle parking spaces which exceed the requirement.
85. The proposal is consistent with the aims of the SEPP ARH 2009 and the objectives of the B4 Mixed Use zone.

Conclusion

86. For the reasons provided above the requested variation to the motorcycle parking 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 SEPP ARH 2009 and the B4 Mixed Use zone.

Consultation

Internal Referrals

87. 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 Waste Management Unit, who advised that the amended proposal is acceptable subject to conditions. These conditions are included in the draft conditions of consent in Attachment A.

External Referrals

Ausgrid

88. Pursuant to Section 45 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment.
89. A response was received requesting further information on 14 April 2020.

90. Following the receipt of amended plans and further information, Ausgrid responded on 18 June 2020 raising no objections to the proposed development, subject to the conditions provided. These conditions are included in the draft conditions of consent in Attachment A.

Sydney Water

91. The application was referred to Sydney Water for comment. A response was received with advisory comments to assist in planning the servicing needs of the proposed development.

Advertising and Notification

92. 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 24 March 2020 and 15 April 2020. A total of 8 submissions were received.

93. Following receipt of amended plans, the application was re-notified for a period of 14 days between the dates of 21 October 2020 and 5 November 2020. One additional submission was received.

94. The submissions raised the following issues:

- **Issue:** Use
 - (a) Is a boarding house use consistent with the local area?
 - (b) The area already has a challenging issue with drug use in Sophia Lane.
 - (c) Query if the development will help with affordable housing. Noting the minimum requirement of a 3-month lease and the expense of rent in Surry Hills.
 - (d) Concern the boarding house will be a source of parties, disturbances and noise.

Response:

- (i) Boarding houses are a type of residential development which are permissible within the B4 Mixed Use zone.
- (ii) The boarding house will be required to operate in accordance with an approved Plan of Management, which addresses issues regarding the management, occupation of the building, noise, behaviour of residents and the residential amenity of surrounding properties.
- (iii) The proposal has been assessed in accordance with State Environmental Planning Policy (Affordable and Rental Housing) 2009. A condition is imposed ensuring that the building is to be used for a boarding house which is considered a more affordable form of housing.

- **Issue:** Height
 - (a) The maximum height should not be exceeded to protect sight lines and solar access to the properties on Kippax Street
 - (b) A five storey development is not compatible with the bulk and scale of nearby buildings.
 - (c) The variation to the building height is not justified and allows for precedent creep.
 - (d) The building will impact the view corridor to the heritage building on Kippax Street.
 - (e) The proposal is not in character with the bulk and scale of nearby property adjoining on the eastern side.

Response:

- (i) The height, bulk and scale of the proposed development, as amended are considered acceptable and appropriate to the nearby properties and the surrounding locality.
- (ii) The proposal has been amended to be 4 storeys in height.
- (iii) The applicant as submitted a written request to vary the LEP height of buildings development standard. The written request is supported, as outlined in the Issues section above.
- (iv) As discussed in the sections above, adequate solar access will remain for the properties on Kippax Street.
- (v) The proposal will not obstruct any significant views, such as landmarks or city views, as outlined by Tenacity Consulting v Warringah Council (2004) NSWLC 140. Whilst part of the outlook to the heritage item will be reduced, this is considered minor and acceptable. The impact of the proposal is shown below, with the massing of the proposed development illustrated in green.



Figure 20: View from objector apartment. Proposed development envelope indicated in green

- **Issue:** FSR and overdevelopment
 - (a) The proposed FSR is within the margin for error as it is 0.15sqm below what is permissible.
 - (b) The application should consider the objectives of the FSR Clause.
 - (c) The application exceeds the permissible FSR and should not be allowed the bonus.

Response:

- (i) The proposal as amended is below the permissible FSR. The FSR calculation has been confirmed as accurate by Council officers.
 - (ii) The application is of an appropriate form and scale and is consistent with the objectives of the Floor Space Ratio development control.
 - (iii) The bonus FSR is permissible under the provisions of State Environmental Planning Policy (Affordable and Rental Housing) 2009.
- **Issue:** Building Form
 - (a) Consideration should be given to the proposed built form relative to neighbouring properties and shape of the subject site.
 - (b) The design brings the garage door and wall of the building closer to Sophia Street. Sophia Street will become more enclosed and darkened, and garbage ridden.

- (c) The development is not compatible with the surrounding buildings and immediate locality.
- (d) The site should be setback from Sophia Street.

Response:

- (i) The proposal has been significantly amended and is considered acceptable and commensurate to development in the surrounding locality as discussed in the report above.
- (ii) The predominant built form in the immediate context is warehouse buildings with zero setback to the street. It is noted that the garage door has been removed from the proposal, with an active frontage provided to Sophia Street.

- **Issue:** Commercial Tenancies

- (a) What type of tenancies are expected and are there restrictions on the proposed hours of operation?

- **Response:**

- (i) The commercial tenancies will be subject to a new Development Application or Complying Development Certificate for the use and fitout as appropriate. It is noted that a condition has been included on in the recommended conditions of consent which limits hours of operation to between 7.00am --10.00pm, which is consistent with the permitted hours of operation under a Complying Development Certificate for any use.

- **Issue:** Covid-19 and handling of the application

- (a) The application is being pushed through at a time when we are in lockdown due to Covid-19.
- (b) I am unable to converse with the people in my building and the neighbourhood about the development proposal.
- (c) The development should be handled in a professional and legal way. The application should not be negotiated secretly without the resident's knowledge.

- **Response:**

- (i) The application has been conducted and assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulations 2000 and other relevant legislation.
- (ii) The application was notified and renotified in accordance with the City of Sydney Community Participation Plan 2019.

- **Issue:** Privacy
 - (a) The balconies on both sides of the building look to into many apartments causing a privacy concern.
- **Response:**
 - (i) The development is not considered to cause significant privacy impacts to residential dwellings and provides a reasonable level of visual privacy for the occupants.
 - (ii) There is a significant distance (approximately 14m) from the subject development and surrounding residential development, resulting in minimal privacy implications.
- **Issue:** Heritage
 - (a) The building does not fit in the historic nature of the area.
 - (b) Ensure the Sophia Street façade stays as is. If you allow this development to go through other adjacent terraces will also soon be removed.
 - (c) The original terrace facades facing Sophia Street should be kept. Terraces across the street have been required to maintain their facades.
- **Response:**
 - (i) The application has been reviewed by Council's Heritage Specialist who advised that the amended plans, including the change to masonry to be compatible the surrounding warehouse buildings and locality is acceptable.
 - (ii) The site is not located within a heritage conservation area and is not identified as a heritage item. Therefore, the demolition of the subject commercial terraces is acceptable. It is noted that the terraces located opposite the site on Sophia Street are located within the 'Little Riley Street' heritage conservation area and are identified as contributory buildings.
- **Issue:** Parking
 - (a) There will be a reduction in off-street parking for residents
 - (b) The proposal does not provide the required car parking for boarding houses or commercial tenancies
 - (c) The development will cause parking issues in the surrounding area which is already busy
 - (d) The development application proposes to make the Sophia Street entry of the subject site a 4.65m driveway which reduces the already limited number of parking on the street.
 - (e) Increase in congestion, noise and traffic in the neighbouring streets.

- **Response:**
 - (i) The City's planning controls support development with no car parking provision, in locations where alternative means of transport are available and practical, such as walking, cycling and the use of public transportation. Bicycle parking above the minimum requirements is to be provided.
 - (ii) The site is located in an area highly accessible to public transport.
 - (iii) The proposal has been amended to remove the driveway on Sophia Street and will not result in the removal of any street parking.
 - (iv) The proposal is considered unlikely to increase congestion, vehicular noise or traffic in the surrounding streets.
- **Issue: Rooftop Terrace**
 - (a) Concern about the installation of a rooftop terrace for a building with so many temporary residents.
- **Response:**
 - (i) 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. Appropriate conditions are recommendation regarding compliance with the acoustic report.
 - (ii) The use of the rooftop area is recommended to be restricted to between 7.00am -10.00pm Mondays to Sundays inclusive in order to minimise any noise disturbance to nearby residents
- **Issue: Trees**
 - (a) Street trees should not be removed. Native species should be planted.
 - (b) A condition should be included for four new street trees (minimum three metres height at the time of planting) to be planted on each of the two street frontages.
 - (c) The streetscape should be upgraded through an improvement of the urban forest as it is a residential area.
- **Response:**
 - (i) No street trees will be removed as part of this proposal.
 - (ii) The proposal has been reviewed by Council's Tree Management Team who have recommended appropriate conditions regarding retention of street trees and the planting of new trees at roof level.
 - (iii) The planting of new street trees is not a requirement of this proposal.

- **Issue:** Construction Impacts
 - (a) Concern about the amount of time, dust and noise
- **Response:**
 - (i) A number of conditions are recommended restricting construction hours and noise to protect surrounding amenity.
 - (ii) Council cannot control when owners choose to commence works. Once a consent is issued, the applicant has a 5-year period to commence works.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

95. 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 \$80,873.72.
96. Credits have been applied for the most recent approved use of the site being commercial office premises (3 storeys or less).
97. 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

98. Environmental Planning and Assessment Act 1979.

Conclusion

99. The application seeks consent for the demolition of existing structures and construction of a four-storey boarding house with a basement, comprising 10 boarding rooms and 2 ground floor commercial tenancies.
100. The proposal has been amended to address a number of issues identified by Council officers during the assessment of the application relating to height, FSR, design and residential amenity.
101. A written request seeking to vary Clause 4.3 'Height of Buildings' development standard has been submitted. The variation relates to the lift overrun and an awning provided for the shade in the rooftop communal space. The development exceeds the 15m height control by 1.69m (11% variation).

102. The proposed request to vary the height standard is well founded. The statement provided demonstrates that compliance with the 'Height of Buildings' development standard is unreasonable and unnecessary in circumstances of the cause 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.
103. A written request seeking to vary Clause 30(1)(h), the 'minimum motorcycle parking' of the State Environmental Planning Policy (Affordable and Rental Housing) 2009, has been submitted. The development provides zero motorcycle parking spaces, where 2 spaces are required.
104. The proposed request to vary the motorcycle parking standard is well founded. The statement provided demonstrates that compliance with the 'minimum motorcycle parking' development standard is unreasonable and unnecessary in circumstances of the cause and that there are sufficient environmental planning grounds to justify the variation. The motorcycle parking variation is consistent with the objectives of State Environmental Planning Policy (Affordable and Rental Housing) 2009 and the B4 Mixed Use zone, and therefore is in the public interest.
105. The proposal has been amended over the course of the assessment to reduce the overall bulk and scale of the development. The proposal as amended, presents a building envelope that is appropriate and materials which are consistent with the warehouse buildings in the surrounding streetscape. The proposed development is considered to be consistent with the character test of the State Environmental Planning Policy (Affordable and Rental Housing) 2009 and will have acceptable amenity impacts for both future occupants and their neighbours.
106. The proposal generally complies with the requirements of the State Environmental Planning Policy (Affordable and Rental Housing) 2009, Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
107. The development satisfied the relevant provisions for design excellence, is in keeping with the desired future character of the area and is considered to be in the public interest.
108. Subject to conditions, the development is in the public interest and is recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

Georgia Nicol, Planner