

**Development Application: 33-37 Sophia Street, Surry Hills - D/2020/766**

File No.: D/2020/766

**Summary**

<b>Date of Submission:</b>	11 August 2020  Amended plans were submitted on 22 December 2020, 11 February 2021 and 16 February 2021.  Additional information was submitted on 22 December 2020 and 11 February 2021.
<b>Applicant:</b>	Perica and Associates Urban Planning Pty Ltd
<b>Architect/Designer:</b>	Stanisic Architects
<b>Owner:</b>	Mr J Zuo & Ms L L Wu
<b>Planning Consultant</b>	Perica and Associates Urban Planning Pty Ltd
<b>DAPRS</b>	13 October 2020
<b>Cost of Works:</b>	\$5,638,660.00
<b>Zoning:</b>	The site is zoned B4 - Mixed Use. The proposed development is defined as mixed use, with ground floor retail and residential accommodation above. The proposed use is permissible with consent in the zone.
<b>Proposal Summary:</b>	<p>The application seeks consent for the demolition of the existing buildings and construction of a new 4-storey mixed use development comprising:</p> <ul style="list-style-type: none"><li>• excavation to create 1 basement level;</li><li>• ground floor (52sqm) and mezzanine level (60sqm) retail premises fronting Kippax Street, with vehicle access and a service vehicle loading area fronting Sophia Street; and</li><li>• 5 residential apartments on levels 1-3.</li></ul>

The application is referred to the Local Planning Panel for determination as the proposal is subject to the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development.

The proposal exceeds the 2:1 floor space ratio development standard pursuant to Clause 4.4 of the Sydney LEP 2012. The application proposes a maximum floor space ratio of 2.48:1, which exceeds the development control by 23.9%.

A written request was provided with the application, seeking a variation to the floor space ratio development standard in accordance with Clause 4.6 of the Sydney LEP 2012. 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 floor space ratio development standard. The proposed non-compliance is supported in this instance.

The application was notified and advertised for a period of 21 days between 13 August 2020 and 3 September 2020. Five submissions by way of objection were received. Issues raised in these submissions relate to the non-compliance with FSR, height and bulk, heritage and streetscape impacts, structural and construction issues and amenity impacts.

Following a preliminary assessment, including consideration by the Design Advisory Panel Residential Subcommittee on 13 October 2020, Council wrote to the applicant on 3 November 2020 requesting amended plans and additional information to be submitted.

Amended plans and additional information were submitted by the applicant on 22 December 2020 and the application was re-notified between 7 January 2021 and 25 January 2021. Three submissions by way of objection were received.

Further amendments were submitted by the applicant on 11 February 2021 and 16 February 2021 addressing minor internal waste management requirements. A Remediation Action Plan and an amended Clause 4.6 variation request were submitted by the applicant on 11 February 2021.

A Detailed Environmental Site Investigation and Remediation Action Plan that demonstrates that the site can be made suitable for the proposed development, in accordance with State Environmental Planning Policy No. 55 - Remediation of Land have been submitted with the application. A deferred commencement condition is recommended, requiring the submitted Remediation Action Plan to be reviewed by a NSW Environment Protection Authority Accredited Site Auditor and include a Section B Site Audit Statement or a letter of Interim Advice from the Site Auditor before the consent becomes operational.

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

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy No. 55 - Remediation of Land
- (iii) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (iv) State Environmental Planning Policy (Infrastructure) 2007
- (v) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (vi) State Environmental Planning Policy (Building Sustainability: BASIX) 2004
- (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 - Floor Space Ratio

## Recommendation

It is resolved that 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/2020/766 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 floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 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 floor space ratio development standard.
- (C) The proposal meets the objectives of the Apartment Design Guide and is consistent with the design quality principles under the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.
- (D) The development complies with the Height of Buildings development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012.
- (E) The development exhibits design excellence and appropriately responds 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.
- (F) The development is consistent with the objectives of the Sydney Development Control Plan 2012.
- (G) The application is supported by a Detailed Environmental Site Investigation and Remediation Action Plan that demonstrates that the site can be made suitable for the proposed development, in accordance with State Environmental Planning Policy No. 55 - Remediation of Land.
- (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 comprises three lots, being 33, 35 and 37 Sophia Street, Surry Hills, with legal descriptions of Lot 1 DP 998281, Lot 1 DP 606593 and Lot 2 DP 606593. The site is generally rectangular in shape with a combined area of 209.96sqm.
2. The site has a primary street frontage of 10.24m to Sophia Street to the north and a secondary street frontage of 11.27m to Kippax Street to the south. The site is located midway between Waterloo Street to the west and Little Riley Street to the east. Levels on the site fall by approximately 1.3m from east to west.
3. The site contains three two-storey terrace buildings fronting Sophia Street, which are currently used for commercial purposes. The terraces are of brick construction with metal roofs and first floor balconies looking onto Sophia Street. The buildings occupy the northern portion of the site, with setbacks of approximately 5.3m to Kippax Street which is used for car parking.
4. The surrounding area is characterised by a mixture of land uses, including residential and commercial uses. Immediately west of the site is a seven-storey office building with a rooftop terrace. To the east is a two-storey commercial building, followed by a three-storey commercial warehouse building.
5. South of the site, on Kippax Street, is a seven-storey residential flat building within an adaptively reused warehouse. On the opposite side of Sophia Street, to the north of the site, are predominantly two and three-storey commercial warehouse buildings. A number of these buildings have roller doors and vehicular access off Sophia Street.
6. The site is not a heritage item and is not located within a heritage conservation area. The site is within the vicinity of a local heritage item known as 'Former Ford Sherrington Truck Factory including interior' (I156A), located south of the site at 119-127 Kippax Street. The site is also located opposite the Little Riley Street heritage conservation area (C65), which is to the north of the site on Sophia Street.
7. The site is located within the Surry Hills Central locality and is not identified as being subject to flooding. There are street trees located on both Sophia Street and Kippax Street adjacent to the site.
8. A site visit was carried out on 28 September 2020. 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: Looking east along Sophia Street



Figure 4: Looking north-west along Sophia Street

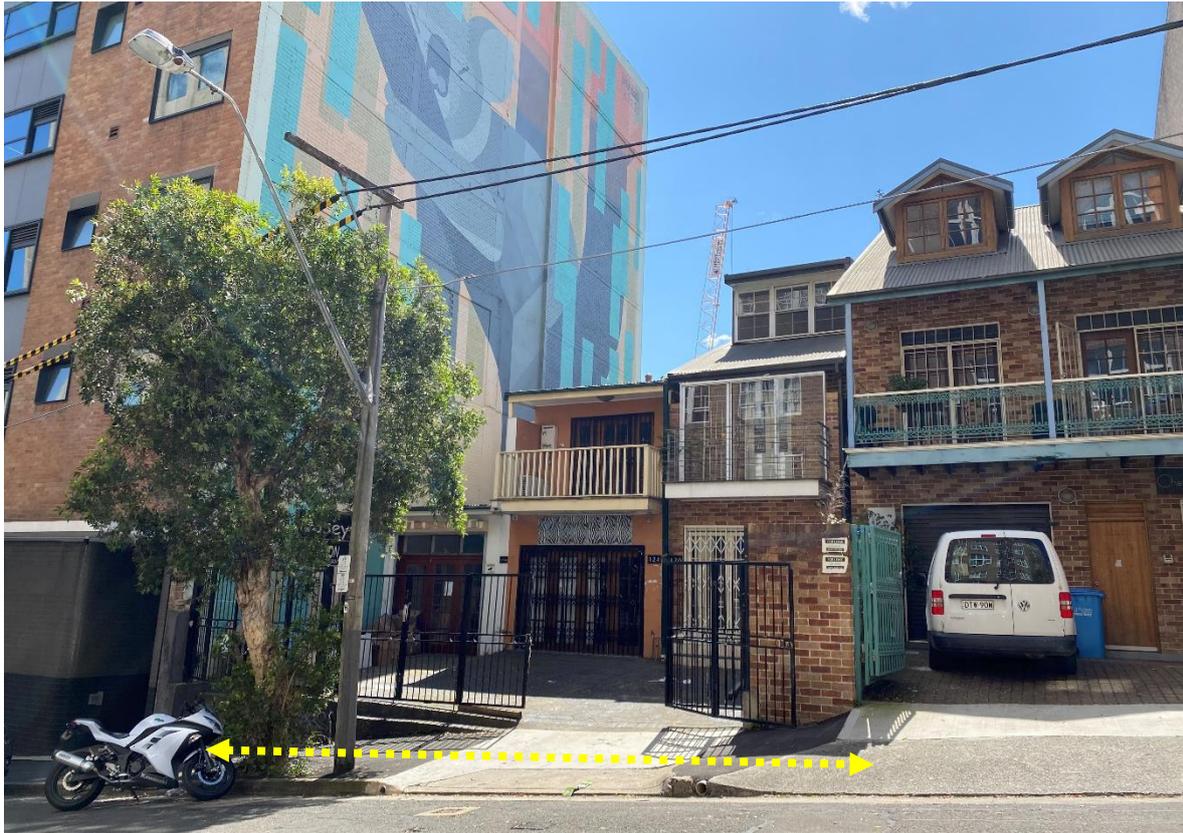


Figure 5: Site viewed from Kippax Street



Figure 6: Looking east along Kippax Street



Figure 7: Looking west along Kippax Street



Figure 8: Heritage item opposite the site on Kippax Street

## History Relevant to the Development Application

### Development Applications

9. The following applications are relevant to the current proposal:
- **D/2020/225** - A development application relating to the neighbouring site at 39-41 Sophia Street was lodged on 16 March 2020 and was approved by the Sydney Local Planning Panel on 24 February 2021. The application includes demolition of existing building and construction of a four-storey mixed use building, with ground floor commercial tenancies and 10 room boarding house.
  - **D/2004/1659** - Development consent was granted on 16 May 2005 for alterations and additions to first floor of existing terrace at 35 Sophia Street. Modification A was approved on 20 July 2006.
  - **D/2004/268** - Development consent was granted on 1 July 2004 for excavation of part of rear yard for the purpose of constructing a hard stand car space and roller shutter door access to Kippax Street at 35 Sophia Street.
  - **D/2004/85** - Development consent was granted on 14 May 2004 for erection of a carport at 37 Sophia Street.
  - **BA/1998/310** - Development consent was granted on 17 June 1998 for alterations and additions to single dwelling at 37 Sophia Street.

### Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 3 November 2020. The following amendments/ information were requested:
11. Design amendments:
- the Sophia Street frontage with roller door was not supported. It was suggested that this space could facilitate a 'front of house' shop space, to facilitate a multi-use space with vehicle access and the presentation to Sophia Street should be amended;
  - the light and ventilation slot proposed for the south-facing bedrooms was not supported and re-planning of these apartments was required;
  - separate waste storage areas were required for residential and retail uses;
  - location of A/C condensers on balconies was not supported;
  - awnings were requested to be removed from both street elevations to address impact to street trees;
  - heritage compatibility/ materials; and
  - location of external clothes drying areas was to be identified and letter boxes were to be relocated within the secure entry line.

12. Additional information:
- Detailed Environmental Site Investigation (DESI) and, if required, a Remediation Action Plan (RAP);
  - Acid Sulfate Soils Management Plan;
  - maximum building height was to be clarified; and
  - updated 4.6 variation request to address the amended plans.
13. The applicant responded to the request on 22 December 2020, and submitted the following information:
- DESI;
  - Acid Sulphate Soils Management Plan;
  - changes to Sophia Street frontage and vehicle access, including replacement of the roller door with a glass folding door and reduced width for the driveway access;
  - awnings on both frontages were removed;
  - south facing bedrooms were amended on levels 1-2 to remove light and ventilation slot;
  - waste management issues were addressed;
  - A/C condenser units were removed from the balconies and relocated to the rooftop;
  - letterboxes were relocated internally;
  - updated Clause 4.6 variation; and
  - the maximum height of buildings was clarified on the amended plans, demonstrating compliance with the height control.
14. The applicant submitted the following additional information on 11 February 2021:
- Remediation Action Plan (RAP);
  - an amended Clause 4.6 variation request was submitted after Council advised that the ground floor vehicle loading area could be excluded from the gross floor area calculation; and
  - amended floor plans were submitted to address waste issues. The plans removed the provision of a waste chute and provided separate residential bulky waste storage in the basement level.

## Proposed Development

15. The application seeks consent for the demolition of existing buildings and construction of a 4-storey mixed use development consisting of:

**(a) Basement level**

- (i) retail and residential storage rooms;
- (ii) retail and residential waste rooms including bulky waste storage;
- (iii) bicycle parking; and
- (iv) end of trip facilities including retail shower and access WC.

**(b) Ground floor**

- (i) retail tenancy fronting Kippax Street (52sqm) with a mezzanine level (60sqm);
- (ii) vehicle access from Sophia Street with turntable and service vehicle loading area; and
- (iii) residential lobby accessed from Sophia Street.

**(c) First and second floors**

2 residential apartments (1 x 2 bedroom and 1 x studio) on each floor, with balconies fronting Sophia Street.

**(d) Third floor**

- (i) 1 x 1 bedroom residential apartment with a balcony fronting Sophia Street; and
- (ii) communal open space fronting Sophia Street (43sqm) and fronting Kippax Street (24sqm).

**(e) Rooftop**

Green roof, 6 x A/C units, HW plant and 4 x photovoltaic cells.

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



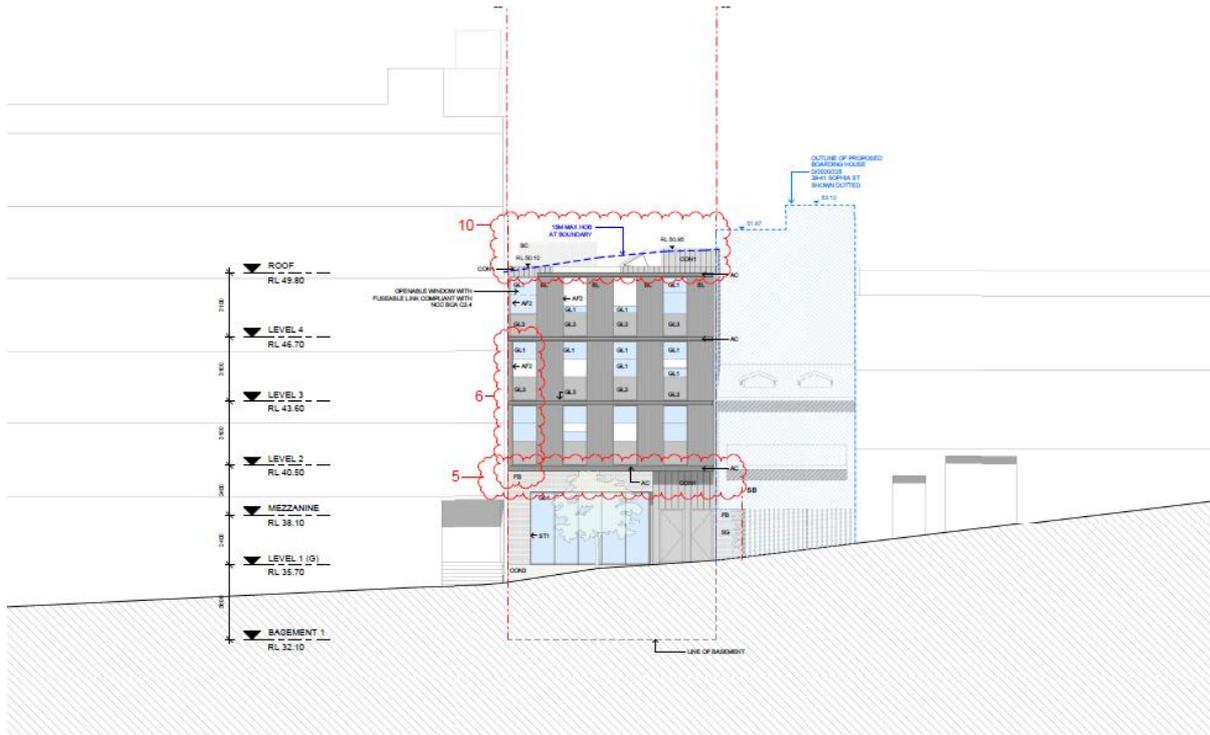


Figure 12: Proposed southern elevation (Kippax Street)

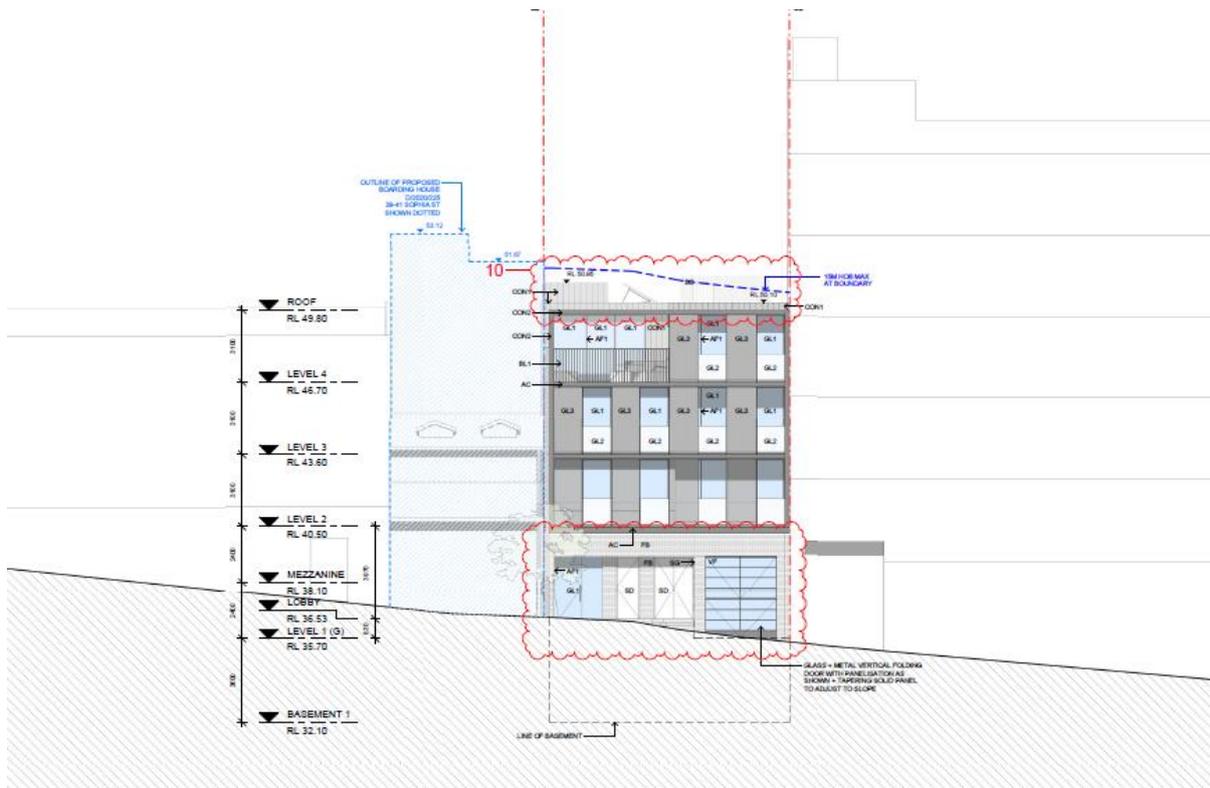


Figure 13: Proposed northern elevation (Sophia Street)

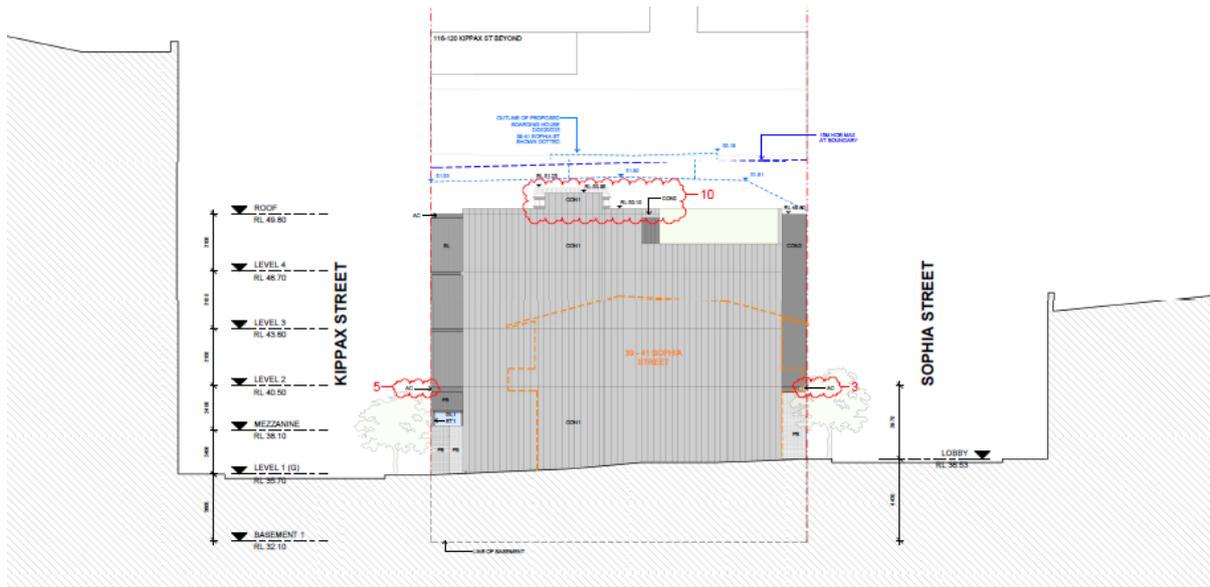


Figure 14: Proposed eastern elevation

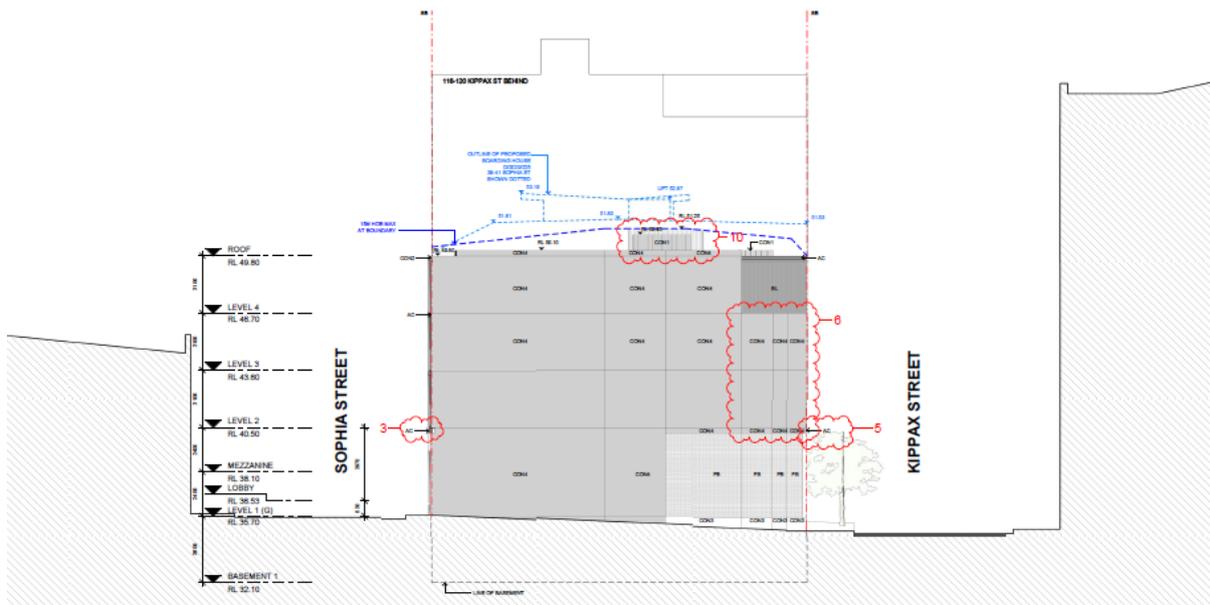


Figure 15: Proposed western elevation

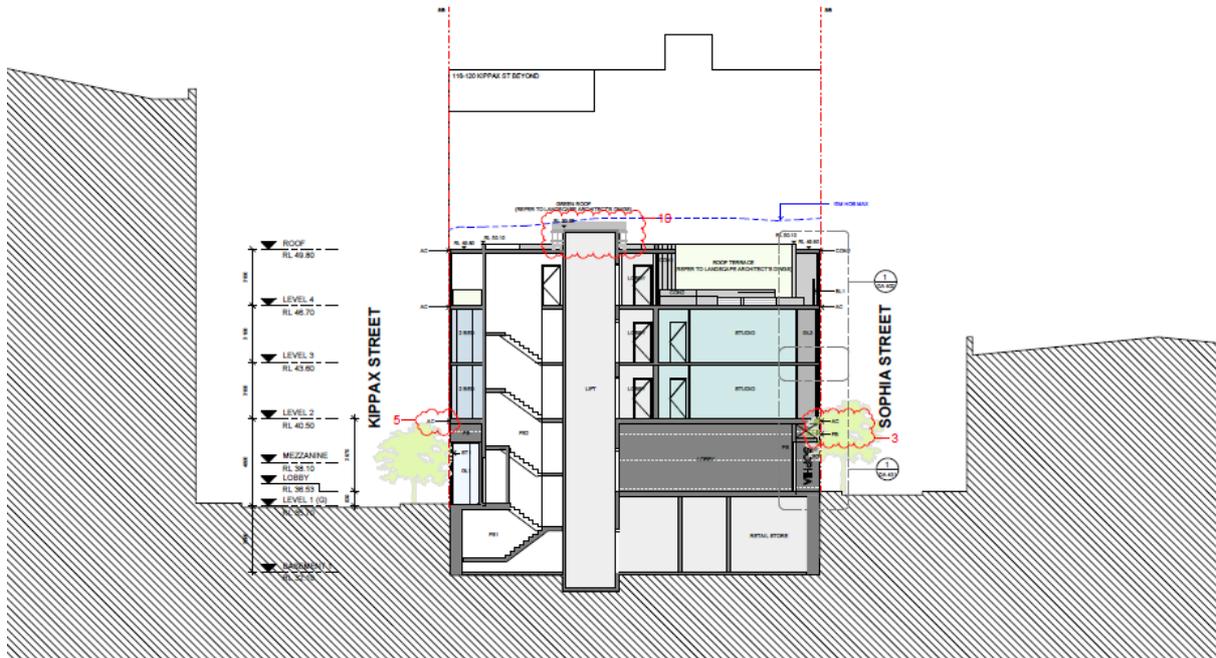


Figure 16: Proposed section

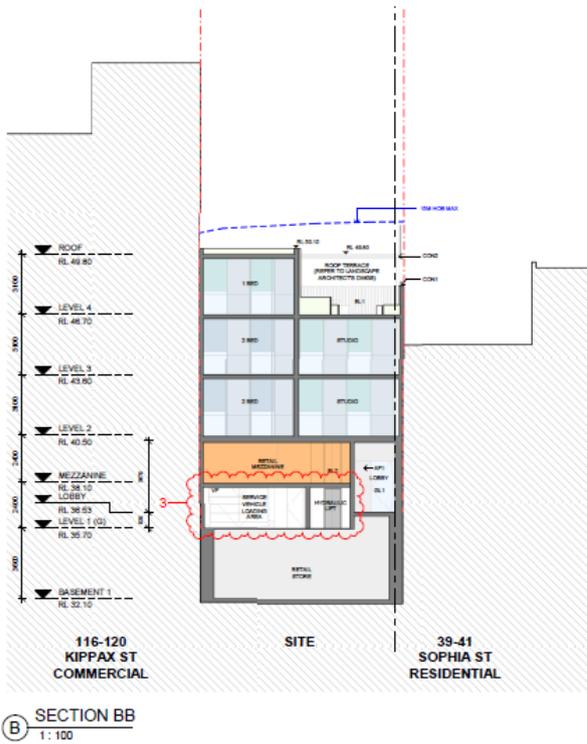


Figure 17: Proposed section



**Figure 18:** Proposed aerial view from Kippax Street



**Figure 19:** Proposed aerial view from Sophia Street



**Figure 20:** Proposed street view from Kippax Street



**Figure 21:** Proposed street view from Sophia 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 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. A Preliminary Site Investigation (PSI) was submitted with the application. The PSI notes that all three buildings within the site have been used for residential purposes from 1910 to present. A search of historical land title records did not identify any particular land uses which would have resulted in significant contamination. The PSI identified surrounding historical land uses, including motor garages, dry cleaners and engineering manufacturers within 250m and up gradient of the site, as being potential contamination sources. The report also identified fill material as a potential contamination source. On this basis, the PSI advised that there is a moderate potential for site contamination and that further investigation of the contamination conditions would be required.
20. Council advised the applicant on 3 November 2020 that a Detailed Environmental Site Investigation (DESI) and, if required, a Remediation Action Plan (RAP) would need to be submitted for assessment. Council advised the applicant that these would need to be peer reviewed by a NSW EPA Accredited Site Auditor and include a section B Site Audit Statement or a letter of Interim advice from the Site Auditor certifying that the DESI/ RAP is practical and the site will be suitable after remediation for the proposed use.
21. The applicant submitted a Detailed Environmental Site Investigation (DESI) prepared by JK Environments on 21 January 2021. The DESI included sampling of the soil from three borehole locations and groundwater from one monitoring well installed at the site. Hydrocarbons (PAHs and TRHs) and fibrous asbestos were detected in fill material at concentrations above the adopted human health-based SAC. The hydrocarbons and asbestos were assessed to pose a low risk in the context of the proposed development. However, the report concluded that remediation will be required so that risks remain low and acceptable during excavation works and a Remediation Action Plan would need to be prepared and implemented. The DESI notes that the potential for the remediation to fail is considered to be negligible and that the site can be made suitable for the proposed development via remediation.

22. A Remediation Action Plan (RAP) prepared by JK Environments was submitted on 11 February 2021. The RAP concludes that the required remediation will be straightforward and includes the excavation and off-site disposal of all fill, which will occur regardless, in order to facilitate construction of the basement. Removal of fill will remove the identified contamination and in turn will eliminate the risks posed by the contaminants. On this basis, the author of the RAP states that they are of the opinion that the site can be made suitable for the proposed development, provided the RAP is implemented accordingly.
23. The Council's Health Unit has reviewed the information provided and supports the proposal however, has recommended that the RAP be peer reviewed by a NSW Environment Protection Authority Accredited Site Auditor a Section B Site Audit Statement or letter of Interim Advice be submitted, as was originally requested. This was recommended by Council's Environmental Health Officer to be imposed as a standard operational condition of consent, to be submitted to Council prior to the issue of a Construction Certificate. For added precaution, it is recommended that this be required as a deferred commencement condition, prior to the consent becoming operational.
24. In view of the above, the requirement for the RAP to be peer-reviewed by a site auditor has been recommended as a deferred commencement condition in Attachment A, noting that the requirements of SEPP 55 in relation to site suitability have been satisfied.
25. Additional operational conditions of consent have been included in Attachment A, to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.

### **State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development**

26. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
27. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.

### ***Design Advisory Panel Residential Subcommittee***

28. The Design Advisory Panel Residential Subcommittee (DAPRS) was presented with the application, as originally lodged, on 13 October 2020. The subcommittee advised Council that the proposal was supported in principle, subject to a number of design issues being addressed. It was noted by the Panel that the general form of the building is acceptable within its context and whilst the proposal exceeds FSR, it complies with the building height in metres and building height in storeys controls. The Panel considered that there is merit in the resultant FSR exceedance and would not otherwise support the inclusion of an additional floor.

29. The design issues that were raised by DAPRS included the Sophia Street frontage, waste arrangements, location of A/C units and the light and ventilation slot for the south-facing bedrooms. These design issues have been largely resolved by the submission of amended plans.

### ***Design Quality Principles***

30. The development has been designed by Stanisic Architects and a design verification statement has been prepared and submitted by Frank Stanisic, who is the nominated architect for the project. The design verification statement verifies that the development meets the SEPP 65 design quality principles. Compliance with these principles are discussed below.

31. An assessment of the proposal against the design quality is provided as follows:

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

The proposed development is suitable for its context and surrounding neighbourhood character. The proposal meets the objectives of the B4 Mixed Use zone as it seeks to provide a mixture of land uses, being residential and commercial uses, and will integrate this mix of uses in an accessible location.

The proposal meets the desired future character as prescribed in the Sydney DCP for the Surry Hills Central locality. The proposed development will provide an active frontage to Kippax Street, which forms part of the retail centre of Surry Hills. It proposes an appropriate transition in scale and use and will sit comfortably within its context of warehouse style buildings along Sophia Street and Kippax Street.

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

The proposed development is of a suitable scale, bulk and height. It complies with the maximum height of buildings control and height in storeys control. Despite the proposed non-compliance with the floor space ratio control, the proposed bulk is acceptable with regard to the surrounding buildings and context.

The proposed built form and scale is in line with the desired future character for the Surry Hills Central locality, as the development will maintain the transition in scale and use, from large footprint warehouses to small lot retail and terrace houses. The proposed built form has been designed to align with the top of the three-storey warehouse to the east of the site and sit well below the larger warehouse building to the west of the site.

(c) **Principle 3: Density**

The proposed density is appropriate to the site and its context. Whilst the proposal exceeds the floor space ratio control, it complies with the height of buildings and height in storeys control, which presents an acceptable bulk when viewed from the street.

The proposal provides a suitable mix and variety of apartment types, with acceptable amenity for future residents. The proposed density is appropriate in the local context, given the site is located close proximity to established public transport, community and recreational facilities. The development does not result in unacceptable amenity impacts to neighbouring properties, as discussed in this report.

(d) **Principle 4: Sustainability**

The building is designed to maximise natural and cross ventilation and sunlight for the amenity and liveability of residents. The building is also designed to capture sunlight into the communal open spaces on the roof terrace throughout the day.

The development makes efficient use of natural resources, energy and water. It will meet the benchmark of 25% energy reduction and 40% water reduction set out in the BASIX. Solar panels are also provided with the amended plans.

(e) **Principle 5: Landscape**

Communal open space of 67sqm (31.9% of the site area) has been provided in the form of a roof terrace on level 3, which exceeds the 25% required by the ADG. The communal open spaces provided small gathering spaces, in-built timber benches, picnic tables, formed concrete benches, wire mesh for flowering vines, timber lazy benches and informal seating, to enhance useability and opportunities for social interaction.

(f) **Principle 6: Amenity**

The proposal achieves a good level of amenity, with all apartments meeting the minimum size and dimension requirements and the minimum requirements for solar access and natural cross ventilation. Visual and acoustic privacy is achieved through orientation, internal layouts and acoustic treatment internally and between communal open spaces. The proposal does not result in unacceptable amenity impacts to neighbouring properties.

(g) **Principle 7: Safety**

The proposal provides for clearly defined public and private spaces, with the residential entrance located on Sophia Street and retail entrance accessed from Kippax Street. A secure access point for residential units is provided.

All residential apartments face either Sophia Street or Kippax Street, which provides opportunities for surveillance of both streets.

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

The proposed development includes a range of apartment sizes and types. The development includes 5 apartments, including 2 x studio, 1 x 1 bedroom and 2 x 2 bedroom. This mix of apartment sizes provides housing choice for different demographics, living needs and household budgets.

The communal open space is appropriate for its context and will encourage social interaction within the development.

(i) **Principle 9: Aesthetics**

The architectural concept for the development is a contemporary infill, mixed use development that is built to the street alignment and engages with the street. The external expression has been designed to relate to the surrounding context and clearly distinguish between the different uses.

The building character is enhanced through the use of 'Basalt' steel fluted panels and glass technology (clear, tinted and translucent glass) that regularise the exterior appearance of the building, respond to orientation and create a strong vertical proportion of narrow solid panels and windows.

32. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently, compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.

<b>3D Communal and Public Open Space</b>	<b>Compliance</b>	<b>Comment</b>
Communal open space has a minimum area equal to 25% of the site.	Yes	A combined area of 67sqm of communal open space is provided on the site, which equates to 31.9% of the site.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	43sqm (64%) of the communal open space receives direct sunlight for a minimum of 2 hours between 9am and 3pm in mid-winter.

<b>3E Deep Soil Zones</b>	<b>Compliance</b>	<b>Comment</b>
Deep soil zones are to have a minimum area equivalent to 7% of the site.	No	<p>Deep soil zones are not provided on the site, given 100% site coverage is proposed. The existing site does not contain any trees or deep soil zones/landscaping.</p> <p>The provision of communal open space on the third storey is considered acceptable for this site and is supported by Council's landscape officer.</p>

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
Up to four storeys (12 metres): <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul>	N/A	The development has nil side setbacks and a nil setback to the street, which is acceptable in the context.

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	All 5 of the apartments comply with this requirement.

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are naturally ventilated.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	60% (3 out of 5) of the apartments are naturally cross ventilated.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The apartment depths do not exceed 18m.

<b>4C Ceiling Heights</b>	<b>Compliance</b>	<b>Comment</b>
Habitable rooms: 2.7m	Yes	Ceiling heights for habitable rooms are 2.7m.
Non-habitable rooms: 2.4m	Yes	Ceiling heights for non-habitable rooms are 2.4m.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> </ul>	Yes	The proposal includes the following unit sizes: <ul style="list-style-type: none"> <li>• Studio: 38sqm</li> <li>• 1 bed: 69sqm</li> <li>• 2 bed: 95sqm</li> </ul>
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	All habitable rooms have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	The habitable room depths comply with this requirement.
8m maximum depth for open plan layouts.	Yes	In open plan layouts, the room depths are 8m or less.
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> <li>• master bedroom: 10m<sup>2</sup></li> <li>• all other bedrooms: 9m<sup>2</sup></li> </ul> Minimum dimension of any bedroom is 3m (excluding wardrobes).	Yes	The minimum dimension of the bedrooms is 3m. The bedrooms meet the minimum area requirements.
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>	Yes	The proposed living rooms exceed the minimum widths required.
4m minimum width for cross over and cross through apartments.	Yes	The living room widths exceed 4m.

<b>4E Private Open Space and Balconies</b>	<b>Compliance</b>	<b>Comment</b>
<p>Studio apartments are to have a minimum balcony area of 4m<sup>2</sup> with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p>	Yes	<p>The proposed studio apartments have balcony areas of 5.7sqm with a depth of 1.14m.</p> <p>The 1 bedroom apartment has a balcony area of 9.2sqm with a depth of 2m.</p> <p>The 2 bedroom apartments have balcony areas of 12sqm with a depth of 2.4m.</p>

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
<p>The maximum number of apartments off a circulation core on a single level is eight (8).</p>	Yes	<p>The proposal includes a maximum of two apartments on a single level.</p>
<p>Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.</p>	Yes	<p>Primary living room or bedroom windows do not open onto common circulation spaces.</p>
<p>Daylight and natural ventilation are provided to all common circulation spaces.</p>	No but acceptable	<p>The common circulations do not have access to daylight/ natural ventilation. This is acceptable in this instance, given the constraints of the site being built boundary to boundary and the small number of apartments that each circulation space services.</p>

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> (Minimum 50% storage area located within unit)	Yes	The apartments have 50% of the required storage within the apartment and 50% within the basement level, which complies.

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	All apartments are capable of natural ventilation and provide acceptable acoustic amenity.

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

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

#### State Environmental Planning Policy (Infrastructure) 2007

35. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.
36. The application is subject to Clause 45 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
37. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

#### Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

38. 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.

39. 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

40. 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 mixed use including commercial and residential uses and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 15m is permitted. A height of 14.98m is proposed. The proposed development complies with the maximum height of buildings development standard.
4.4 Floor space ratio	No	A maximum floor space ratio of 2:1 or 419.92sqm is permitted. A floor space ratio of 2.48:1 or 520.58sqm is proposed, which results in a 23.9% variation to the development standard. The proposed development does not comply with the maximum floor space ratio development standard.

Provision	Compliance	Comment
		A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under Clause 4.4. A Clause 4.6 variation request has been submitted with the application.  See further details in the 'Discussion' section below.

### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The subject site is a not a heritage item and is not located within a heritage conservation area.  The site is located within the vicinity of a local heritage item known as 'Former Ford Sherrington Trunk Factory including interior' (I156A ) located south of the site at 119-127 Kippax Street, Surry Hills.  The site is also located opposite the Little Riley Street Heritage Conservation Area (C65).  See further details in the 'Discussion' section below.

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

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	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.

Provision	Compliance	Comment
		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.

### 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	A maximum of 3 car parking spaces are permitted for the residential apartments and 2 spaces are permitted for the retail use.  The proposal does not include the provision of car parking spaces. Given this clause relates to maximum car parking spaces, not a minimum, the proposal complies.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on class 5 land. The applicant submitted an Acid Sulfate Soils Management Plan, which is acceptable.

## Development Control Plans

### Sydney Development Control Plan 2012

41. 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

42. 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 area contributes to the retail centre of Surry Hills by providing an active retail frontage on the ground floor on Kippax Street. The built form maintains the transition in scale and use, from large footprint warehouse buildings to two-storey buildings.

## Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The proposal will not result in overshadowing to publicly accessible open space and will not impede views from the public domain.</p> <p>The building is designed to address and activate the street, with an active retail frontage provided on Kippax Street. The Sophia Street frontage has been improved in the amended plans, with the replacement of a roller door with a folding glass door to improve the interface with the public domain.</p> <p>It is noted that Provision 3.2.2(3) of the DCP states that development that exposes the blank side of an adjoining building or has a party wall to the public domain is to be designed with a visually interesting treatment of high quality design applied to that wall. A condition of consent is recommended, requiring the blank side wall on the eastern elevation to be appropriately treated to ensure a high quality design.</p>
3.5 Urban Ecology	Yes	<p>The proposed development has the potential to impact street trees on both Sophia Street and Kippax Street.</p> <p>See further details in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development involves subdivision of the consolidation of the existing three sites into one site.</p> <p>The application was referred to Council's Specialist Surveyor, who supported the consolidation of lots, subject to conditions.</p>
3.9 Heritage	Yes	The subject site is a not a heritage item and is not located within a heritage conservation area.

Provision	Compliance	Comment
		<p>The site is located within the vicinity of a local heritage item known as 'Former Ford Sherrington Trunk Factory including interior' (I156A ) 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>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Partial compliance	<p>A Traffic and Parking report was submitted with the application.</p> <p><b>Car parking</b></p> <p>No car parking spaces are provided, which complies with the maximum car parking controls.</p> <p><b>Bicycle parking</b></p> <p>1 bicycle parking space is required per dwelling, in accordance with Part 3.11.3 of the SDCP. As the number of dwellings proposed is less than 10, no visitor bike parking spaces are required. Additionally, the size of the proposed retail space does not trigger the need for on-site commercial bike parking.</p> <p>The proposal includes the provision of 7 bicycle parking spaces in the basement level. This exceeds the minimum requirement of 5 spaces as required by the DCP.</p> <p>Provision of these spaces and compliance with Australian Standards will be ensured by condition.</p> <p><b>Servicing</b></p> <p>Service vehicle parking and a turntable is provided on the ground floor, accessed from Sophia Street. The amended plans submitted to Council reduced the width of the vehicle access compared to the original scheme. The amended garage door opening is approximately 3m, which is sufficient for a B99 vehicle.</p>

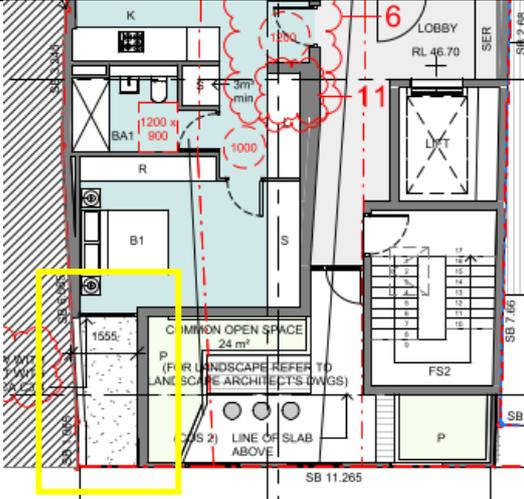
Provision	Compliance	Comment
		The proposal is supported by Council's Transport and Access unit, subject to conditions.
3.12 Accessible Design	Yes	<p>The building has been designed to meet access requirements. The proposal is supported by an Access Report, which demonstrates that the proposal is capable of compliance with the BCA.</p> <p>Adaptable housing is not required to be provided as the building proposes less than 7 units.</p>
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles. Active frontages are provided on the ground floor and windows of habitable rooms within the building are located to maximise casual surveillance.
3.14 Waste	Yes	<p>The waste arrangements, as amended, are generally supported by Council's Waste Management unit.</p> <p>Conditions of consent have been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.16 Signage and Advertising	Yes	<p>Building identification signage is proposed on the Sophia Street frontage at the residential entrance. The sign has an appropriate height and location and is in accordance with the DCP controls.</p> <p>No signage is proposed with regard to the ground floor retail tenancy. A condition is recommended requiring any future signage (other than exempt and complying signs) to be submitted as a development application for assessment.</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	<p>The site is permitted a maximum building height of 4 storeys.</p> <p>The proposed development is 4 storeys in height and complies.</p>
4.2.2 Building setbacks	Yes	<p>The proposed development has nil setbacks to Sophia Street and Kippax Street. This is consistent with the adjoining buildings and setback patterns in the surrounding streetscape.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>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.</p> <p>The proposed development will not impact solar access to private open space of neighbouring properties.</p> <p>The proposal will cast additional shadows to north facing windows at 117-119 Kippax Street. The ground floor of this building is used as commercial premises, with residential apartments above.</p> <p>Additional shadows will be cast to a portion of the living room glazing of residential apartments on the first floor between 9.00am and 10.00am. The proposal will not impact solar access to these apartments for the rest of the day on June 21, which is acceptable.</p>

Provision	Compliance	Comment
4.2.3.3 Internal common areas	No but acceptable	The internal common areas, corridors and lift lobbies do not have access to daylight, which does not comply with the DCP provisions. However, given the small scale of the site and the minimal number of units that each corridor/ lift lobby services, this is considered acceptable in this instance.
4.2.3.4 Design features to manage solar access	Yes	Fixed shading devices will not substantially restrict access to natural daylight or outlook.
4.2.3.5 Landscaping	Yes	A Landscape Plan was submitted with the application. The proposal was reviewed by Council's Landscape unit and Tree Management unit.  See further details in the 'Discussion' section below.
4.2.3.6 Deep Soil	Yes	The existing site does not have deep soil zones. The proposal includes 100% site coverage, which restricts the ability to provide deep soil areas.  Given the site constraints, conditions of consent are recommended to ensure the rooftop level has appropriate urban canopy.
4.2.3.7 Private open space and balconies	Yes	The proposal complies with the requirements for private open space and balconies.
4.2.3.8 Common open space	Yes	67sqm of communal open space (31.9% of the site) is provided, which exceeds the requirement of 25% of the site area.
4.2.3.9 Ventilation	Yes	All habitable rooms are capable of being naturally ventilated. Natural cross ventilation is achieved for 60% of units.
4.2.3.14 Apartments with setback bedrooms	No but acceptable	The south facing bedroom of the apartment on the top floor is proposed to have a setback bedroom.

Provision	Compliance	Comment
		 <p>This window does not comply with the requirements of the DCP as the orientation of the window is greater than 90 degrees either side of true north.</p> <p>The plans originally submitted to Council showed the south facing bedrooms on all levels having a setback window. The bedrooms on levels 1 and 2 were reconfigured so that setback windows were not required. A setback bedroom is now only proposed on the upper level.</p> <p>The proposed window is approximately 1.5m wide, full height and operable to provide amenity and useable space.</p> <p>In this instance, the provision of a setback window for this bedroom is acceptable given the cross-through apartment type, which will allow natural cross ventilation. Additionally, it is not desirable for the aperture to be widened in this instance, as this would reduce the size of the communal open space, which lessens the useability of this space for all residents. On balance, the setback window is supported.</p>
4.2.6 Waste and recycling Management	Yes	The City's Waste Management unit have reviewed the proposal and support the waste arrangements, subject to conditions.

Provision	Compliance	Comment
		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.
4.2.8 Letterboxes	Yes	The letterboxes are provided within the lobby of the building, which is acceptable.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the ground floor retail tenancy will not adversely impact the amenity of neighbouring residential properties.

## Discussion

### Clause 4.6 Request to Vary a Development Standard

43. The site is subject to a maximum floor space ratio control of 2:1. The proposed development has a floor space ratio of 2.48:1, which results in a 23.9% variation to the standard.
44. 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)

45. The applicant seeks to justify the contravention of the floor space ratio 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 statement refers to the first method of the five-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical development standard.
  - (ii) A summary of the applicant's assessment against the objectives of the floor space ratio development standard contained in Part 4.4(1) of the SLEP 2012 is provided below:

***Objective (a): to provide sufficient floor space to meet anticipated development needs for the foreseeable future.***

- i. The proposal helps to meet the growing needs and forecasts for growth in local and regional planning strategies. The site is also located nearby sites with smaller sites and heritage conservation area limitations, meaning that a modest additional GFA on this site may assist in meeting future needs more holistically.
- ii. The site is very well situated in terms of access to services and transport and a minor exceedance is acceptable given the location of the site and constraints to surrounding land.

***Objective (b): to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.***

- iii. The density and built form of the development are also regulated by other controls in the LEP and DCP and ought to be considered having regard to the setting and context of the site. The proposal complies with the maximum height of buildings development standard and the height in storeys control. This indicates that the overall density and built form are consistent with that envisaged by these planning controls in the LEP and DCP.

- iv. It is noted that some gross floor area could be reduced, with the same overall number of storeys and height, in order to numerically comply with the FSR control. However, this would lead to inappropriate setbacks to the streets, where the setting of the site and context favours the approach adopted. The characteristics of the area and desired future character encourage building to the street alignments and side boundaries. Combined with the height in metres and number of storeys, the resulting built form is appropriate both contextually and considering the wider planning controls.
- v. Given the large seven storey building to the immediate west and other desired character traits for the Surry Hills area regarding a transition in scale/ form and building to street alignments, a building of four storeys on this site that is built to the street and side boundaries is not only acceptable, but appropriate and desirable. These built form determinants of height and setbacks have resulted in a FSR which exceeds the numerical control.
- vi. The land use intensity is somewhat reduced by the provision of units, which tend to be a less intense form of development than employment uses, particularly relating to traffic and parking demands.
- vii. The generation of vehicular traffic is also reduced by providing residential units, not providing parking on site and facilitating bicycle use by providing on-site bike parking and end of trip facilities. The pedestrian environment will also be improved by the active uses, surveillance and building form to the street alignments.

***Objective (c): to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.***

- viii. The site and its surrounding area have the capacity to accommodate the uses and density sought by the proposal. This includes services surrounding the site, public transport availability proximate to the site and utilities available for development.
- ix. The provision of units is less intense than other land uses and the intensity of development for the site is modest, despite the FSR non-compliance.

***Objective (d): to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.***

- x. The site is located within the 'Surry Hills Central' locality as designated in the SDCP 2012.

- xi. The locality character statement prescribes that this area is to continue to constitute the retail centre of Surry Hills, with active frontage consolidated along Crown, Foveaux and Kippax Street. The future built form character is to maintain the transition in scale and use, from large footprint warehouse buildings in the west to small lot retail, shop-top and terrace housing in the east.
  - xii. The proposal is consistent with the character statement for the area. The proposal provides an active use to Kippax Street, which is not provided on the existing site and is undermined by an inappropriate street setback and parking area. The proposal also provides an appropriate transition in scale from warehouse buildings, including immediately west of the site.
  - xiii. The Sophia Street frontage has also been improved since the DA was lodged. This followed a worthwhile and constructive suggestion of the Design Advisory Panel Residential Subcommittee (DAPRS) to provide a dual function of the loading area to include active use while not in use.
  - xiv. The immediately adjoining building to the east is expected to be developed over time, and the proposal provides an appropriate form and siting for redevelopment of that site.
  - xv. The DCP also lists a number of principles relating to development in this locality area. In this regard, the scale, massing and materiality of the development is appropriate for the area, which includes a nearby heritage conservation area and heritage item. The proposal provides a transition in scale to the adjoining buildings and is not located in a low scale terrace area. An active frontage is achieved on Kippax Street which will be a significant improvement to the area and a significant positive change towards achieving the desired character of the area. The proposal is complementary to surrounding warehouse buildings and the retail and residential uses will help support the many commercial uses and workers in those warehouse buildings.
- (iii) In summary, the proposal is wholly consistent with the objectives of the development standard and using the accepted approach in *Wehbe v Pittwater Council* [2007] NSWLEC 827, compliance with the development standard can be considered unnecessary or unreasonable.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The FSR non-compliance essentially arises from building to the height limit in the LEP, number of storeys control in the DCP and adopting no setbacks to the street and side boundaries. This approach to siting, height and form is appropriate and wholly consistent with the LEP and DCP controls regulating building massing, except for the numerical FSR standard. In this instance, adopting a massing approach which considers height (and a transition in height as desired for the area), and appropriate setbacks is not just acceptable, but desirable.

- (ii) No adverse impacts are anticipated from the additional bulk, and the scale is appropriate for the site and area.
  - (iii) The site characteristics are such that additional FSR can be accommodated with acceptable outcomes, particularly due to the high blank wall to the west and terrace blank wall to the east, with public roads to the north and south. These characteristics of the site minimise the visual and amenity impacts from the additional GFA on both adjoining private and public land.
  - (iv) The additional bulk means the rooftop communal area is higher, with better outlook and sunlight access, to significantly improve amenity for the site and future occupants, yet at no significant impact to others or the streetscape.
  - (v) The landscaped area is increasing, to provide a longer-term benefit for the landscaped setting of the site, including associated with the additional bulk.
  - (vi) The density of the proposal is not excessive, and the intensity is mitigated by use as dwellings rather than more intense employment or other uses.
  - (vii) The streetscape and public domain interface will be improved by the proposal, and additional bulk, including by building to the street alignment.
- (c) The proposed development will be consistent with the objectives of the zone:
- (i) The site is located in the B4 Mixed Use zone. The objectives of this zone are:
    - ***to provide a mixture of compatible land uses;***
    - ***to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; and***
    - ***to ensure uses support the viability of centres.***
  - (ii) The proposal is consistent with the objectives of the zone. The proposal provides a diverse mix of uses on the site, which are compatible with each other and complementing the diverse nature of the area. The site is well-connected to public transport, jobs and services, to encourage use of public transport, walking and cycling. Car parking is not provided, loading is provided and bicycle storage provided in the basement (with a shower). This supports non-car based travel behaviour. The use and density on the site will support wider centres. The retail use will provide interest, vitality and vibrancy to the area, further enhancing the wider attractiveness of Surry Hills.
- (d) The proposed development will be consistent with the objectives of the standard. A summary of the applicant's assessment against the objectives of the floor space ratio development standard contained in Part 4.4(1) of the SLEP 2012 is provided under part (a)(ii) above.

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

46. 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)?

47. The applicant has correctly referred to the test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the applicant has satisfactorily demonstrated that the proposal meets the objectives of the development standard, notwithstanding the non-compliance with the standard.

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

48. The applicant has adequately demonstrated that there are sufficient environmental planning grounds that justify contravention of the floor space ratio development standard. In this instance, the proposal generally complies with other LEP and DCP controls relating to the bulk and scale of the site and does not result in adverse visual privacy, acoustic privacy or overshadowing impacts to neighbouring properties.

Is the development in the public interest?

49. With regard to varying development standards, the public interest is conceived as being protected where a development meets the objectives of the zone and the development standard sought to be varied.
50. The development is consistent with the objectives of the B4 Mixed Use zone. Notwithstanding the non-compliance with the development standard, the proposal will provide a mixture of compatible land uses, being retail and residential. The site is located in an accessible location and has been designed in a way to maximise public transport patronage, cycling and walking. The mixture of uses proposed, including ground floor active retail and residential above, will support the viability of this part of Surry Hills.
51. The development is consistent with the objectives of the floor space ratio development standard. The proposal provides an appropriate level of density for this site and provides sufficient floor space to meet anticipated development needs for the foreseeable future. The intensity of development is in keeping with the capacity of existing and planned infrastructure and is well located in terms of public transport and community infrastructure. It has been demonstrated that the development reflects the desired character of the locality and the proposal has been designed to minimise adverse impacts on surrounding amenity.

## Conclusion

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

## Heritage

53. The subject site is a not a heritage item and is not located within a heritage conservation area.
54. The site is located within the vicinity of a local heritage item known as 'Former Ford Sherrington Trunk Factory including interior' (I156A) 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).
55. Council's Heritage Specialist reviewed the proposal and advised that the proposed materiality is considered to be unsympathetic to the nearby heritage item. It was suggested that these elements could be replaced with perforated aluminium screens. The applicant was encouraged to reconsider the extent of the use of glazing in the materiality on this basis.
56. The project architect advised Council that the concept for the Sophia Street elevation is to have a dark frame sitting above the street level, using face brick, glass and steel. This simple palette is considered by the applicant to be compatible with the existing warehouses where are constructed of face-brick and glass. Two types of obscure glass are proposed, being lumina mist grey and lumina cloud, which maximise the amount of sunlight to private open spaces, ensures visual privacy is achieved and clothes drying facilities are concealed from the public domain. It is considered by the applicant that introducing a fourth material in the form of a perforated aluminium screen would result in an overworked elevation and would be inconsistent with surrounding warehouses.
57. Given the site is not located in a conservation area and is not a heritage item, and the development seeks to propose a contemporary infill building with glazing, the proposed materiality is considered to be acceptable in this instance and is supported.

## Tree management and landscaping

58. There is one semi mature watergum on the Sophia Street frontage and one Broad Leafed Paperback on the Kippax Street frontage of the property.
59. Council's Tree Management Officer originally requested that the street awnings on both frontages be removed, as these awnings would require an unacceptable level of pruning of these street trees.

60. The building awnings have been removed in the amended plans and it is therefore now likely that the City's street tree assets will remain viable. It is likely that some pruning will still be required to accommodate the building or for the installation for hoarding and scaffolding. A pruning specification prepared by an AQF5 Arborist must be submitted and approved by Tree Management prior to the issuing of a Construction Certificate. This is included as a recommended condition of consent.
61. It is noted that Council's Tree Management Officer advised that two trees with five metres canopy spreads would be required on this site to comply with Part 3.5.2(2) of the SDCP, which requires development to "provide at least 15% canopy coverage of a site within 10 years from the completion of development.". It was therefore requested by Council's Tree Management Officer that the planters on the rooftop be amended to provide sufficient soil volume and depth for two trees.
62. With regard to the above request for tree planting, it is considered onerous for this site to facilitate deep soil tree planting. It is a relatively small site and with 100% site coverage and two small (though compliant) communal open space areas on the rooftop. It is also noted that the City's Landscape Officer supports the proposal, as the design of the rooftop communal open space, despite not providing mature tree planting, will result in a good quality open space that exceeds the required 25% of the total site area.
63. Conditions of consent have been recommended to ensure that this quality of the communal open space is seen through to construction, that issues such as maintenance and the green roof have been resolved and to ensure street tree protection.

## **Consultation**

### **Internal Referrals**

64. The application was discussed with Council's Building Services Unit, Environmental Health unit, Heritage and Urban Design Specialists, Transport and Access unit, Tree Management Officer, Waste Management unit, Public Domain unit and Landscape unit. Relevant comments have been included in this report and recommended conditions are included in Attachment A, where appropriate.

### **External Referrals**

#### **Ausgrid**

65. Pursuant to Section 45 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment.
66. A response was received raising no objections to the proposed development.

## Advertising and Notification

67. 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 13 August 2020 and 3 September 2020. A total of 407 properties were notified and five submissions were received. The amended plans were renotified between 7 January 2021 and 25 January 2021, and three additional submissions were received.

68. The submissions raised the following issues:

- **Issue: The proposed new basement will undermine the neighbouring property at 110-120 Kippax Street and will compromise the structural integrity of this building.**

**Response:** Standard conditions are recommended to protect adjoining buildings during excavation and construction. Dilapidation reports are also be required to be undertaken.

- **Issue: The neighbouring property at 110-120 Kippax Street is burdened by a trespass sewer connection from 33 Sophia Street. The submitter requests that this trespass sewer connection is capped off and deleted and a new sewer connection for the proposed development is installed.**

**Response:** Wastewater is owned and operated by Sydney Water and is not a direct matter for consideration in the assessment of a development application. Conditions of consent are recommended to ensure Sydney Water assets are handled appropriately during construction.

- **Issue: The proposal is non-compliant with the FSR for no reason and this is not in the public interest. FSR exceedance should only be approved when the general public or community will benefit eg. parks, open space, public buildings.**

**Response:** As discussed in this report, a written request has been submitted to vary the floor space ratio development standard. The applicant's request is supported as it has adequately addressed the matters required to be addressed by Clause 4.6 of the SLEP 2012. As part of this assessment, Council has concluded that the proposed development would be in the public interest because it is consistent with the objectives of floor space ratio development standard and the B4 Mixed Use zone. There is no legislative requirement for FSR non-compliances to only apply to public space or buildings.

- **Issue: Demolition of existing terraces is an aggressive solution which takes away from the character of the neighbourhood. Demolition of these terraces will set a precedent for the block of terraces at 70-80 Sophia Street.**

**Response:** The site is not a heritage item and is not located in a heritage conservation area and as such, Council's Heritage Specialist raised no objection to the demolition of the existing terraces on the site. The row of terraces at 70-80 Sophia Street are contributing buildings within a heritage conservation area and therefore are subject to different heritage controls in comparison to the subject site.

- **Issue: The scheme does not present design excellence and does not demonstrate innovation in maximising the potential of the site.**

**Response:** As discussed earlier in this report, the proposal satisfies the requirements of Clause 6.21 of the SLEP 2012 relating to design excellence. Maximising the potential of the site through innovation is not a specific requirement for a development to achieve design excellence.

- **Issue: The development will build over a mural on the western façade of 110-120 Kippax Street.**

**Response:** The mural on the western façade on 110-120 Kippax Street features a painting of a koala, which commemorates the 2019 NSW bushfires. The mural appears to have been installed as exempt development in 2019. There are no applicable controls that allow Council to prevent development on the basis of protecting a mural such as this.

- **Issue: The development will impact the view corridor from the top floor western rear unit of 111 Foveaux Street towards the heritage item at 117-119 Kippax Street.**

**Response:** Planning principles established by *Tenacity Consulting v Warringah Council* (2004) are relevant for assessing whether impacts resulting from proposed development are reasonable.

- (a) Views to be affected

The view in question is of the northern façade of a heritage listed building at 117-119 Kippax Street. The view is not of water or iconic views (eg of the Opera House or Harbour Bridge) and is a partial view rather than a whole view. Therefore, the view in question has minimal value and is at best considered an outlook compared to water or iconic views or a view of a significant building.

- (b) From what part of the property the views are obtained

The view obtained from a residential apartment on Foveaux Street, across numerous boundaries and is separated by both Sophia Street and Kippax Street. As noted in the judgement, views obtained across multiple boundaries are often difficult to protect.

- (c) Extent of the impact

The view is obtained from a balcony. The proposal will partially obscure the view, which will have a minor impact.

- (d) Reasonableness of the proposal causing the impact

The proposal complies with the height in metres and height in storeys control. The impact of the development is therefore considered acceptable and the view sharing reasonable.

Given the above, the view impacts resulting from the proposed development are considered minor and is acceptable.



**Figure 22:** South-facing view from objector's apartment, with the proposed development envelope shaded yellow

- **Issue: The development does not propose carparking. The area is already congested with local street parking.**
- **Response:** The proposal complies with the City's maximum car parking requirements. A Traffic and Parking report was submitted with the application and the proposal is supported by Council's Transport and Access unit.
- **Issue: The rooftop terrace is facing existing residential properties.**
- **Response:** New residential flat buildings are required to provide communal open space as per the ADG. In this instance, communal open space is provided on the northern and southern sides of level 3. In a constrained site and location such as this, it is difficult to prevent communal open space from facing residential properties.

The communal open space fronting Sophia Street will be largely enclosed by glazing, which will help prevent overlooking to the south.

The open space fronting Kippax Street will not result in direct lines of sight to residential properties in the immediate context, as this part of Kippax Street is predominantly commercial warehouse buildings.

- **Issue: Any increase in height on this site will compromise the privacy of apartments at 117 Kippax Street and will create noise and wind issues.**

- **Response:** The proposal complies with the height in metres and height in storeys controls applying to the site. The development is not considered to result in significant privacy impacts to residential dwellings in the vicinity of the site. The windows on the southern façade of the site are located approximately 15m away from windows on the northern façade at 117-119 Kippax Street, which is acceptable and complies with the ADG.

With regard to wind impacts, the proposal is 4 storeys and 14.98m in height, which is unlikely to cause wind impacts. The SDCP 2012 requires a wind effects report to be submitted for buildings higher than 45m.

## Financial Contributions

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

69. 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 \$20,087.24.
70. The documentation submitted with the application states that all three buildings on the site are currently used for commercial/ retail purposes. However, the applicant has not provided evidence that these current uses have been approved by Council.
71. A search of Council's records found no previous consents to change the use of these sites from residential to commercial. A summary of the most recent approved use of each site is as follows:
  - **33 Sophia Street:** Council does not have any records of commercial uses being approved on this site.
  - **35 Sophia Street:** The most recent consent for this site is D/2004/1659, dated 16 May 2005, which approved alterations and additions to first floor of existing terrace. Condition 25 of D/2004/1659 states that the use of the premises shall remain as dwelling in single occupation only. Council does not have any records of consents issued after this date.
  - **37 Sophia Street:** BA/1998/310 was approved on 17 June 1998 for alterations and additions to single dwelling at 37 Sophia Street. Council does not have any records of consents approved after this date.
72. Given the above, the development contributions have been calculated on the basis of the existing buildings being residential uses. Each building is estimated as having 2 bedrooms, based on a search of Council records.
73. 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

74. Environmental Planning and Assessment Act 1979.

## Conclusion

75. Approval is sought for demolition of the existing buildings and construction of a new four storey mixed use development including one basement level, ground floor retail and five residential apartments above.
76. A written request to vary Clause 4.4 floor space ratio development standard has been submitted and is well founded. The statement demonstrates that compliance with the floor space ratio development standard is unreasonable and unnecessary in circumstances of the cause and that there are sufficient environmental planning grounds to justify the variation. The variation to the development is consistent with the objectives of Clause 4.4 and the B4 Mixed Use zone, and therefore is in the public interest.
77. The proposal complies with the height in metres and height in storeys controls and presents a building envelope that is appropriate for the site.
78. The development achieves a high standard of architectural design, materials and detailing, with an acceptable provision of landscaping on the site. The proposal provides a sympathetic contemporary infill building that incorporates materials that are appropriate for its context of predominantly warehouse buildings. The proposal is consistent with the desired future character of the area. Overall, the proposal satisfies the design excellence requirements of Clause 6.21 of the SLEP 2012.
79. The development will achieve a high level of residential amenity for future occupants of the site and is consistent with the design quality principles of SEPP 65 and the objectives of Parts 3 and 4 of the ADG.
80. A total of eight submissions were received. Issues raised include view loss, parking, impacts on the streetscape, FSR non-compliance, amenity impacts and construction impacts. These concerns have been addressed within the report.

81. A deferred commencement condition is recommended, requiring the RAP to be reviewed by a NSW Environment Protection Authority Accredited Site Auditor and include a Section B Site Audit Statement or a letter of Interim Advice from the Site Auditor, as requested by Council's Environmental Health Officer. Information has been provided to Council to confirm that the RAP is practical, and the site will be suitable for the proposed use after remediation.
  
82. The proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls and is recommended for approval, subject to conditions.

**ANDREW THOMAS**

Executive Manager Planning and Development

Samantha Kruize, Planner