

Item 5.**Development Application: 18 City Road, Chippendale - D/2020/873****File No.:** D/2020/873**Summary**

Date of Submission:	The application was lodged on 7 September 2020. Amended plans were received on 11 February and 5 March 2021.
Applicant:	CITY18 Holdings Pty Ltd
Architect	Team2 Architects
Owner:	CITY18 Holdings Pty Ltd
Planning Consultant:	Weir Phillips Heritage and Planning
Heritage Consultant:	Weir Phillips Heritage and Planning
DAPRS:	13 October 2020
Cost of Works:	\$3,021,298
Zoning:	The site is located within the B4 - Mixed Use zone. The proposed uses are a boarding house and commercial premises (café), which are permissible with consent in the zone.
Proposal Summary:	<p>The application seeks consent for significant alterations and additions to the existing commercial building and its change of use to a boarding house. The boarding house will consist of 21 rooms (accommodating 25 occupants), a basement level with 24 bicycle parking spaces. The development also incorporates a small ground floor café.</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. The ARHSEPP requires the provision of 4 motorcycle parking spaces. 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 in the circumstances of the case 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 site is subject of a 9m height of buildings development standard. The proposal has a maximum height of 10.94m exceeding the standard by 1.94m (a variation of 21.6%). The existing building already exceeds the 9m height control having a maximum height of 10.1m. 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 in the circumstances of the case 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 9 September 2020 and 1 October 2020. No submissions were received.

Following a preliminary assessment of the application, including consideration by the Design Advisory Panel - Residential Subcommittee, the applicant was requested to provide additional information related to contamination and solar access and amend the application to address issues related to height, amenity, heritage and adaptive reuse, the bulk of the addition and the provision of an active frontage.

The application was re-notified following receipt of amended plans for a period of 14 days between 23 February 2021 and 10 March 2021. No submissions were received.

Further additional information was received on 5 and 9 March 2021 addressing contamination issues and urban design issues.

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 (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 Building
- (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 circumstances 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) 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/2020/873 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement 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 131551, known as 18 City Road, Chippendale. It is irregular in shape with area of approximately 255.4sqm. The site is a corner site with primary street frontage of 12.4m to City Road and a secondary street frontage of 20m to Elim Place. The site is located approximately 95m from the intersection of Broadway, City Road and Paramatta Road. The site is relatively level, with a fall of approximately 0.36m from south to north along City Road, and 0.45m from east to west along Elim Place.
2. The site contains a two storey masonry building which has full site coverage. The building was designed by Spencer and Spencer Architects and is predominantly face brick with timber windows and rendered string courses at first floor, roof level and at the top of the parapet. A flat corrugated metal roof is located behind the parapet. The building has heritage significance but is not a listed heritage item. A later masonry addition with no heritage significance is located to the rear of the site on Elim Place.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial premises, residential, tourist and visitor accommodation and boarding houses/student accommodation. A two storey commercial building is located across from the site on the northern side of Elim Place, fronting City Road. To the south on City Road is backpackers' accommodation with a food and drink premises on the ground floor. Three residential dwellings are located to the east on Elim Place.
4. The site is located within the Chippendale heritage conservation area (C9) and is identified as a contributory building. Various heritage items are located within the vicinity. A local heritage item is adjacent to the site to east at 6-10 Elim Place and is identified as I179 'Terrace Group "Coopers terrace" including interiors.' Another local heritage item identified as I173 'Remnant wall "Coopers Cottages"' is adjacent to the south, however, it is noted that the subject wall fronts an unnamed laneway to the south.
5. Victoria Park is located opposite the site on City Road which forms part of a State Heritage Listing identified as 01974 'The University of Sydney, University Colleges and Victoria Park.'
6. The site is located within the Chippendale locality and is not identified as being subject to flooding.
7. A site visit was carried out on 23 September 2020. Photos of the site and surrounds are provided below:

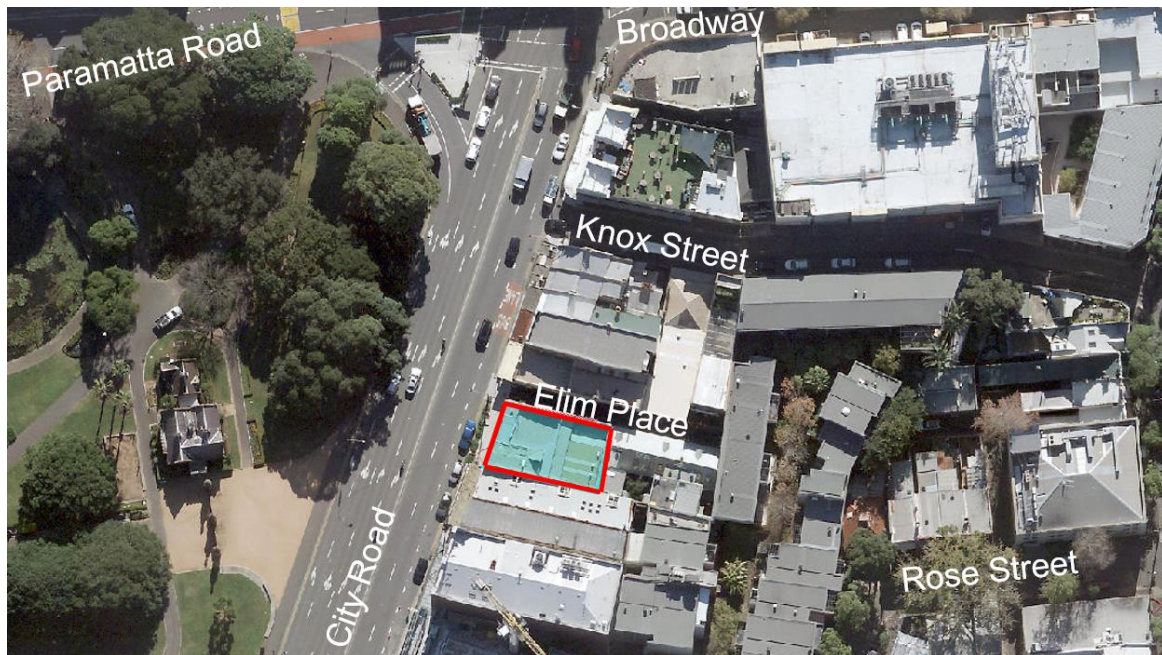


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from City Road



Figure 3: Site viewed from City Road



Figure 4: Site viewed from Elim Place



Figure 5: Elim Place looking west towards City Road - local heritage listed cottages on the left



Figure 6: Adjoining sites to the north on City Road



Figure 7: Adjoining sites to the south on City Road



Figure 8: Victoria Park - opposite the site on City Road.



Figure 9: Ground floor interior



Figure 10: First floor interior



Figure 11: Roof

History Relevant to the Development Application

Development Applications

8. The following applications relate to the site :

- **DA 512/174** – Development consent was granted on 10 January 1975 for use of the premises as a dance studio and the erection of an additional storey above the single storey section of the premises at the rear of the building.
- **U93-00915** – Development consent was granted on 15 November 1993 to infill two openings on the ground floor façade with glass blocks and demolition of the existing office wall (brickwork and glazing) adjacent to the entry.
- **U97-00592** – Development consent was granted on 26 September 1997 for change of use of the first floor from a dance studio to a residential dwelling.
- **PDA/2019/237** – Pre-development application advice was issued for the proposal for the adaptive reuse of the existing building for student accommodation over three levels, ground floor retail tenancy and rooftop communal open space (see section figure 12). The applicant was advised that the extent of demolition leaving two street wall facades for aesthetics was not supported, along with the height variation and the amenity of rooms with light and ventilation access only from a void.

- PDA/2019/335** – Pre-development application advice was sought for a 14 bedroom, 20 person boarding housing, behind the retained facades to City Road and Elim Place (see figure 13 and 14 showing elevations of the proposal). The applicant was advised that changes to the facade including additional windows, enlargement of windows and the additional storey which intersects the parapet were not supported. In addition, it was advised that the floor levels of the existing building should be retained and the steel staircase, communal space at basement level, ground floor bedrooms fronting City Road, FSR and height variations were not supported.

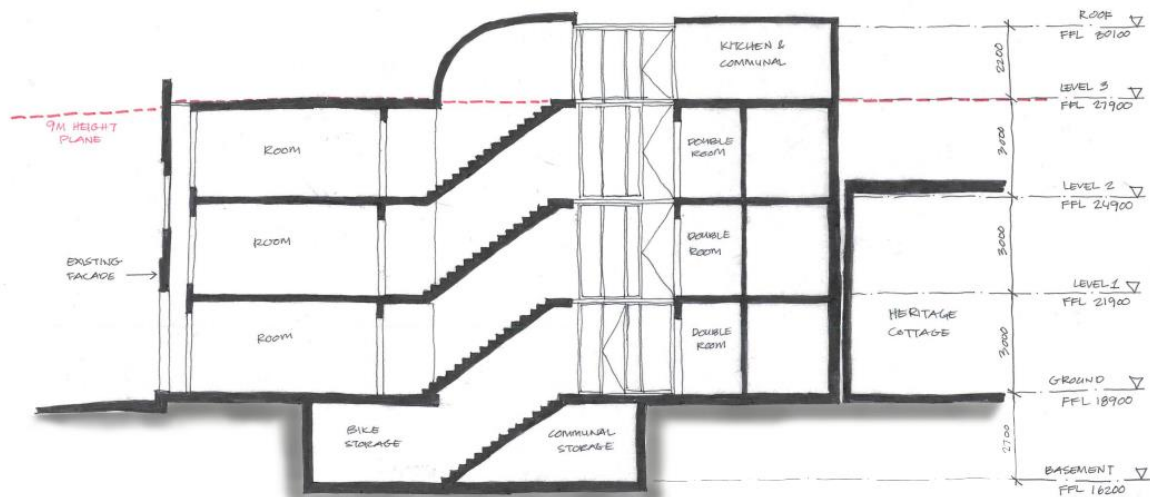


Figure 12: Section - PDA/2019/237



Figure 13: City Road Elevation - PDA/2019/335



Figure 14: Elim Place Elevation - PDA/2019/335

Amendments

9. The application was lodged on 7 September 2020.
10. A request for a Preliminary Site Investigation was sent to the applicant on 2 October 2020. The Preliminary Site Investigation was provided to Council on 11 November 2020.
11. Following a preliminary assessment of the proposed development by Council Officers, and consideration by the Design Advisory Panel (Residential Sub-Committee) a request for additional information and amended plans was sent on 11 November 2020. The following issues were requested to be addressed:
 - (a) Heritage and adaptive re-use
 - The substantial demolition of the contributory building, including the internal floors leaving only the facades standing was not supported;
 - Insertion of the additional floor removes the three dimensional spatial relationships between floor and ceiling level, window sill and head heights;
 - Increase in the size of the windows on the northern elevation has an adverse impact on the heritage fabric; and
 - Visibility of the addition from the public domain.
 - Bulk - 2-3 storey form at the north-eastern corner of the site does not provide an appropriate transition to the single storey heritage listed cottages.
 - (b) Active frontage and CPTED - active frontage not provided in accordance with DCP.

- (c) Amenity
 - Communal open space requirements of ARHSEPP not met;
 - Ground floor bedroom fronting City Road - privacy, acoustics, non-active use;
 - Inadequate communal indoor space;
 - Shading and weather protection of rooms and communal space;
 - No drying space provided; and
 - Internal amenity - rooms measuring undersize, floor to ceiling heights;
 - (d) Height - exceedance of height limit and height in storeys
 - (e) Solar access and overshadowing - insufficient information
 - (f) Materials - insufficient information
 - (g) BCA/Services - details on integration of required services including mechanical ventilation, enlargement of windows, fire hydrant and egress stairs.
12. A meeting was held on 23 November 2020 with the applicant and Council staff to discuss the additional information and amendments requested by Council.
13. The applicant requested an extension of time until 19th February 2021 due to the Christmas and New Year period to submit a revised scheme and additional information.
14. A Detailed Environmental Site Investigation was requested on 5 February 2021.
15. The applicant responded to the request and provided amended plans and additional information between 11 February 2021 - 22 February 2021. The following amendments were made:
- (a) number of boarding rooms decreased from 22 to 21. Boarding room removed from ground floor fronting City Road, with corresponding increase in indoor communal space and a small new café (active uses);
 - (b) retention of floor to ceiling heights within the contributory building, resulting in an increase in height of 0.57m;
 - (c) plant rooms and mechanical ventilation shown on plans; and
 - (d) reconfiguration of rooftop communal space and minor changes to internal floor plans.
16. The application was renotified for a period of 14 days between 23 February 2021 and 10 March 2021. No submissions were received.

17. The applicant provided further amended plans on 5 March 2021. These plans included an accurate/updated demolition plan, plans showing retention of existing floors and windows, fire hydrant booster cupboard and correction of minor graphical errors. These plans were not required to be notified.
18. The applicant provided a Detailed Site Investigation, Remediation Action Plan and Site Audit Letter on 9 March 2021.

Proposed Development

19. The amended application seeks consent for change of use to a boarding house with associated alterations and additions. The alterations and additions include demolition of the rear addition on Elim Place, internal walls within the original building and construction of a new roof top style addition set behind the parapet of the existing building. The boarding house will consist of 21 rooms (accommodating 25 occupants), basement level with 24 bicycle parking spaces and ground floor level café.
20. In detail, the proposed development accommodates the following on each level:
 - (a) Basement
 - Waste storage and bulky waste storage area (boarding house use);
 - 24 bicycle parking spaces;
 - Plant room; and
 - Storage.
 - (b) Ground Floor
 - 1 x commercial tenancy (Café 9sqm);
 - 5 x single occupancy boarding rooms (including one accessible);
 - 1 x double occupancy boarding rooms;
 - Communal indoor space (40sqm);
 - Internal lift and staircase; and
 - New glazed awning over footpath.
 - (c) Level 1
 - 2 x double occupancy boarding rooms
 - 6 x single occupancy boarding rooms (including one accessible); and
 - Internal lift and staircase.

(d) Level 2

- 1 x double occupancy boarding room;
- 5 x single occupancy boarding rooms;
- 1 x managers room (accessible) including balcony;
- Rooftop communal space (22sqm);
- Rooftop plant space; and
- Internal lift and staircase.

21. It is noted that the small café is recommended to be deleted due to inadequate information regarding waste, with a corresponding increase to the area of communal indoor space on the ground floor. The rooftop communal space is also proposed to be increased by condition. Further details are provided in the discussion section.

22. Plans and elevations are provided below:

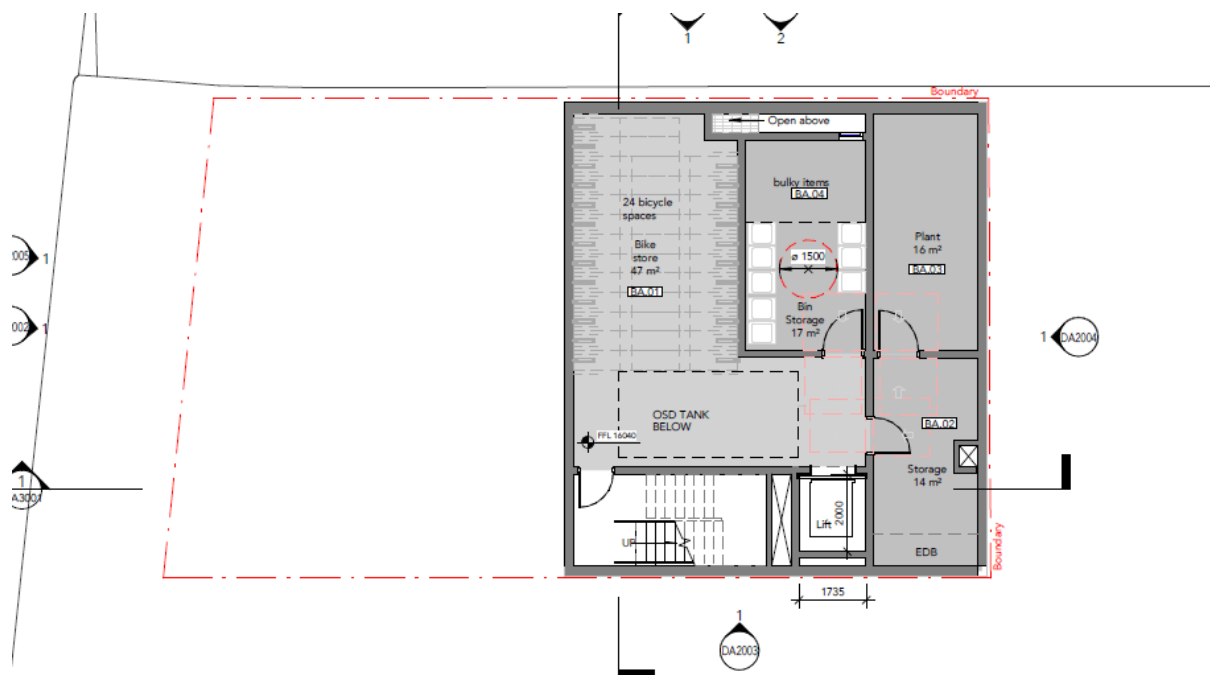


Figure 15: Basement Plan

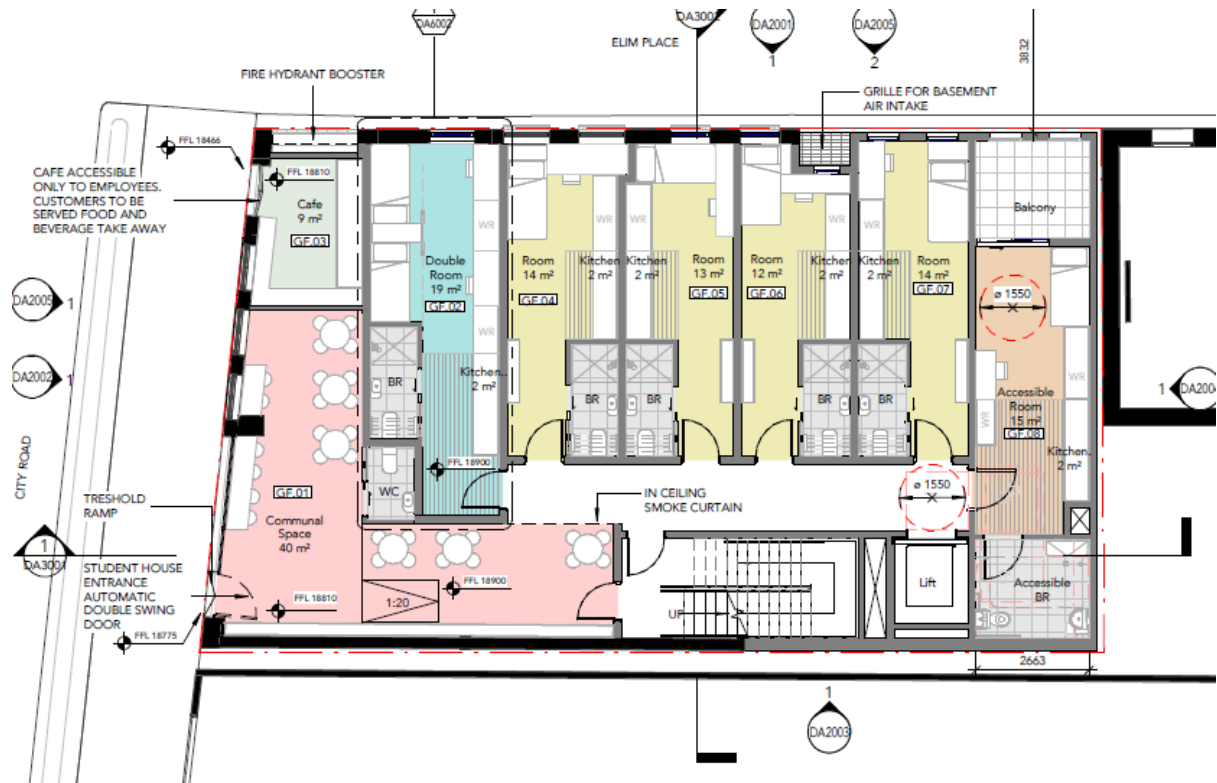


Figure 16: Ground Floor Plan

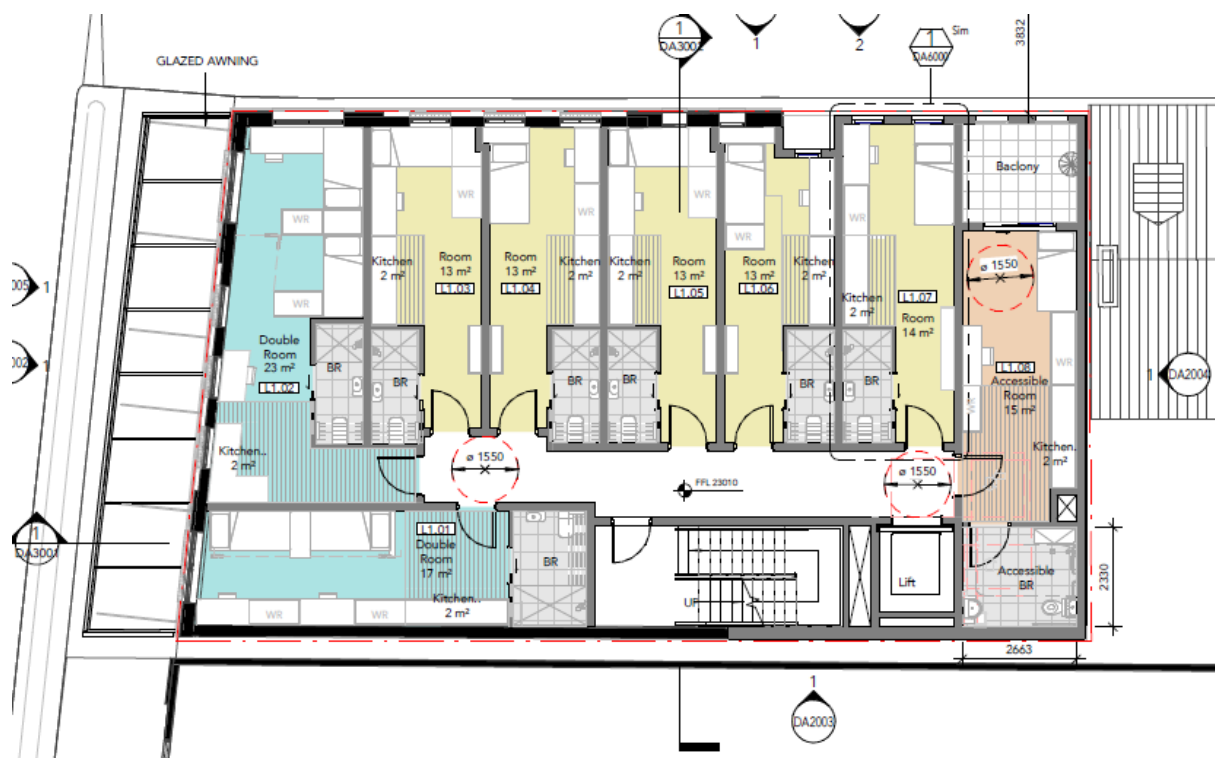


Figure 17: First Floor Plan

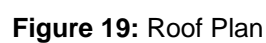
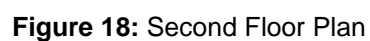




Figure 20: West Elevation (City Road)



Figure 21: North Elevation (Elim Place)

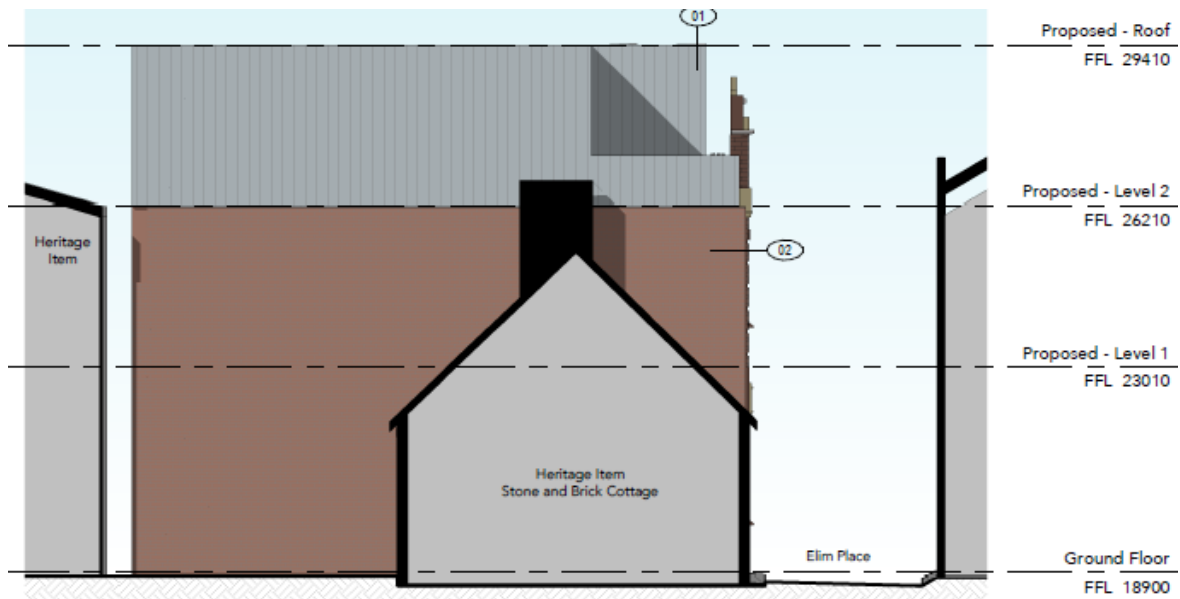


Figure 22: East Elevation

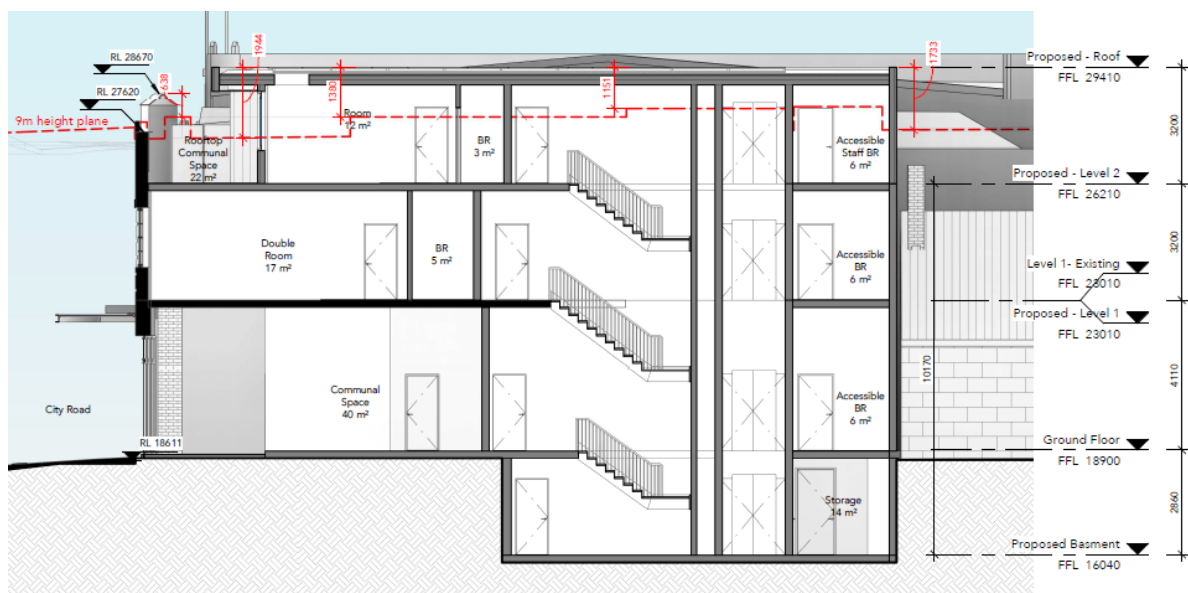


Figure 23: Section

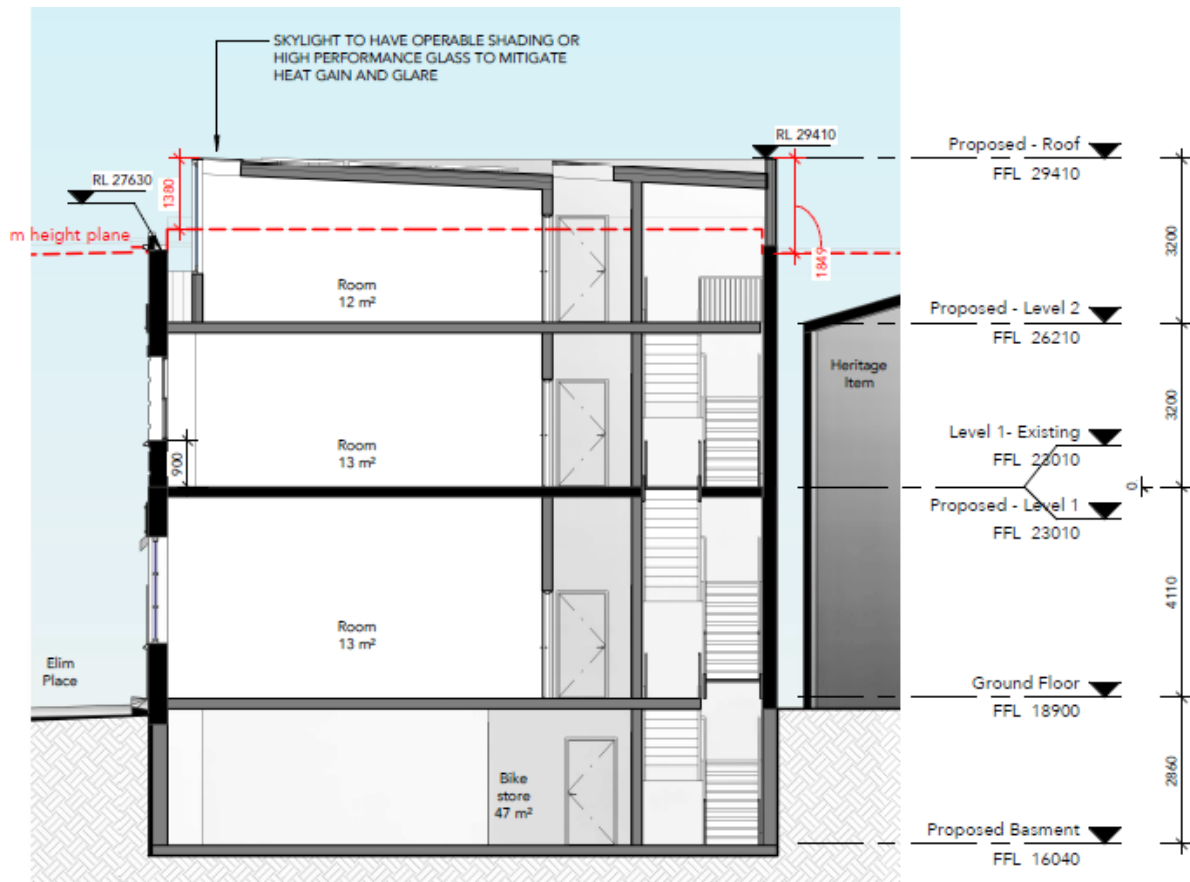


Figure 24: Section



Figure 25: Photomontage



Figure 26: Photomontage

Assessment

23. 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

24. 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.

25. The site has been used for light commercial (retail) purposes since 1930. The activities included food and drink premises, a dance studio, finance agent and residential accommodation. The site has full site coverage and is currently being used as a dance studio with a two bedroom dwelling on the first floor. Given the history of the site, the applicant submitted a Preliminary Environmental Site Investigation, followed by a Detailed Environmental Site Investigation (DESI) prepared by Ei Australia. The report concluded that remediation works would be required.
26. Site investigations have identified the following contaminants:
 - Lead was found at an elevated concentration that exceeded the adopted land use criterion in shallow fill at one of the borehole locations.
27. A Remediation Action Plan (RAP), accompanied by a letter of interim advice has been submitted with the development application.
28. The RAP concludes that the required remediation will be straight forward and includes the excavation and off-site disposal of shallow impacted fill materials, which will occur regardless in order to facilitate the construction of the basement. Material management procedures are provided to characterise soil for offsite disposal, and contingency measures are provided for any unexpected finds. 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,
29. The interim advice from the Site Auditor confirms the above approach is appropriate.
30. Council's Health Unit has reviewed the information provided and recommends standard conditions including compliance with the RAP, classification of waste, a Hazardous Materials Survey and the submission of a Section A Site Audit Statement to ensure compliance with the remediation measures outlined. A condition is also included which requires Council to be notified should there be any changes to the strategy for remediation.
31. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

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

32. A BASIX Certificate has been submitted with the development application 1124449M_02.
33. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Infrastructure) 2007

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network**Clause 45 Determination of development applications – other development**

35. 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.
36. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

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

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

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

39. The application is subject to Clause 102 of the SEPP as the site is adjacent to City Road which has an annual average daily traffic volume of more than 20,000 vehicles and the development is likely to be adversely affected by road noise or vibration. An Acoustic Report (prepared by Stantec, 10 February 2021) was provided to support the application.
40. The submitted acoustic report outlines that all boarding rooms are noise affected and recommends glazing and construction requirements in order to achieve the required internal noise levels. These are included as part of the recommended conditions to be incorporated in the design documentation. Mechanical ventilation is provided to rooms to mitigate noise and pollution from City Road. The application satisfies Clause 102 subject to conditions of consent including compliance with the submitted Acoustic Report.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

41. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The SREP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
42. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.

State Environmental Planning Policy (Affordable Rental Housing) 2009

43. 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

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

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

Provision	Compliance	Comment
1 Density and scale expressed as floor space ratio An FSR of up to 1.75:1 plus 0.5:1 is permitted.	Yes	The application has a permitted FSR of 2.25:1. The site has an area of 269.58sqm. The application proposes a floor space ratio of 2.23:1.
2(a) Building height The proposed building height must not exceed the maximum building height of 9m permitted under the Sydney LEP 2012.	No - assessed as acceptable	The existing building has a height of 10.1m (to the top of the parapet) and currently exceeds the maximum building height limit which represents an exceedance of 12.2%. The proposed development has a height of 10.94m (to the top of the roof) which represents a variation of 21.6%. 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.
2(b) Landscaped area The front setback is to be compatible with the streetscape.	Yes	The existing building does not have a setback to City Road. The predominant built form in the immediate context is buildings with no setback to the street. The retention of the contributory building with no landscaped setback area is appropriate and maintains the streetscape character.

Provision	Compliance	Comment
2(c) Solar access If more than one communal living area is provided, at least one of the rooms is to receive a minimum of 3 hours' direct sunlight between 9:00am and 3:00pm in mid-winter.	Yes	The communal living area is located on the ground floor of the building, fronting City Road. The applicant has provided sun access diagrams demonstrating that direct sunlight will be received to the common living room from 1.00pm - 3.00pm in midwinter.
2(d) Private open space (i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers. (ii) If accommodation is provided for an onsite manager, one area of at least 8sqm with a minimum dimension of 2.5m, adjacent to the accommodation.	Yes	The development provides a communal open space on level 2 (rooftop space behind the existing parapet). This area is 22.4sqm and achieves the 3m minimum dimension. Accommodation is provided for an onsite manager. Private open space in the form of a balcony/terrace is provided adjacent to the manager's room with an area of 8.2sqm and a minimum dimension of 2.8m, satisfying the requirements of this Clause.
2(e) Parking (i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area. (ii) 0.4 parking spaces provided for each boarding house room for sites not in an accessible area. (iii) Not more than 1 parking space for the on-site manager.	No - assessed as acceptable	No onsite car parking spaces are provided. This is acceptable in this instance as the SLEP2012 does not require a minimum car parking provision. The site is readily accessible to various forms of public transport including frequent bus services along City Road and Broadway. In addition, the site is located 900m from Railway Square and Central Station. Furthermore, bicycle parking is provided at basement level.

Provision	Compliance	Comment
2(f) Accommodation size (i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm. (ii) Rooms intended to be used more than one person are to have a minimum GFA of 16sqm. (excluding any area used as a private kitchen/ bathroom)	Yes	The application proposes 17 single occupancy rooms and 4 double occupancy rooms. All rooms meet the minimum boarding room area requirements. Single occupancy rooms range from 12.5sqm - 16sqm in size Double occupancy rooms range from 16.5sqm - 23sqm in size.

45. The proposed development generally complies with the relevant provisions of clause 29.

46. 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.

Clause 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 at ground level. The location of the communal living room will receive direct natural sunlight. The living room will achieve acceptable amenity for the occupants of the development. The communal space is proposed to be enlarged by condition.
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	The submitted Plan of Management restricts the number of lodgers to no more than 2 adult lodgers per room.
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	The boarding house provides adequate bathroom and kitchen facilities for each lodger in accordance with Section 4.4.1 of the Sydney DCP 2012.

Provision	Compliance	Comment
(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	One room on level 2 is provided for a boarding house manager.
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The site is located in the B4 Mixed Use zone. The application has been amended to remove the bedroom on the ground floor fronting City Road. A small commercial use (café) and the communal living room are proposed for the ground floor to help 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 4 bicycle parking spaces. The development provides 24 bicycle parking spaces.</p> <p>The proposed development is required to provide a minimum of 4 motorcycle parking spaces. 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>

47. The proposed development generally complies with the relevant provisions of clause 30.

Clause 30A – Character of the local area

48. 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.

49. The surrounding area has a varied character and built form, with a mix of 1-6 storey residential, commercial and tourist and visitor accommodation buildings.

50. 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 of the development will be reduced by condition to relate to the subject contributory building and other surrounding built form. The architectural detailing, including the use of zinc panels for the addition is compatible with the character of the Chippendale locality.
51. The proposed boarding house is compatible with the character of the surrounding area and is consistent with clause 30A.

Clause 52 - No subdivision of boarding houses

52. Clause 52 states that a consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.
53. 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

54. 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	A maximum building height of 9m is permitted. The existing building has a height of 10.1m (to the top of the parapet) and currently exceeds the maximum building height limit which represents an exceedance of 12.2%.

Provision	Compliance	Comment
		<p>The proposed development has a height of 10.94m (to the top of the roof) which represents a variation of 21.6%.</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>
4.4 Floor space ratio	Yes	Refer to ARHSEPP 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. In addition, the development seeks to not comply with the motorcycle parking development standard under the ARHSEPP.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Chippendale heritage conservation area (C9) and is identified as a contributory building.</p> <p>Various heritage items are located within the vicinity of the site. A local heritage item is adjacent to the east at 6-10 Elim Place and is identified as I179 'Terrace Group "Coopers terrace" including interiors.' Another local heritage item identified as I173 'Remnant wall "Coopers Cottages" is adjacent to the south, however, it is noted that the subject wall fronts an unnamed laneway to the south and does not directly adjoin the subject site.</p>

Provision	Compliance	Comment
		<p>The proposed adaptive reuse of the contributory building as a boarding house is supported, subject to conditions.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development as amended and subject to conditions, is of an appropriate standard and uses materials and detailing which are compatible with contributory building and the existing development along the street. The proposal 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		
<p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p> <p>7.7 Retail Premises</p>	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>

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with Class 5 acid sulfate soils and is within 500m of adjacent Class 2 acid sulfate soils. The site is located at a relatively high elevation (18-20m AHD).</p> <p>The Detailed Environmental Site Investigation provided with the application identifies that there is no known occurrence of acid sulfate soils on the site. Further, ground water was determined to occur at depths greater than 3m below ground level and therefore the proposed works are not likely to affect the water table on adjacent class 2 land. The submission of an Acid Sulfate Soils Management Plan was therefore not required.</p> <p>The City's Health Specialist reviewed the application and concurred with the conclusions of the reports provided.</p>

Development Control Plans

Sydney Development Control Plan 2012

55. 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

56. The site is located within the Chippendale locality which is characterised by a mix of warehouses, commercial buildings and residential terrace typologies. The proposed development is in keeping with the unique character and the design principles of the Chippendale locality. The development as amended is consistent with the locality statement in that the building responds positively to the adjoining heritage items and surrounding heritage conservation area. Subject to design modifications, the development will provide the adaptive re-use of a contributory building which is consistent with the scale of the surrounding area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>City Road is identified on the active frontage map and as such is subject to the provisions of Section 3.2.3</p> <p>The proposal provides active uses to the street frontage through the communal indoor space on the ground floor. The communal indoor space will provide good visibility and surveillance of the footway providing visual interest and safety to the street. The café is proposed to be deleted by condition - see further details in the discussion section.</p> <p>The site is identified as a specified site for an awning. A new awning is proposed which is based on historic evidence. A condition is recommended in Attachment A, which requires further details including the use of existing anchor points, to be submitted and approved by Council.</p> <p>The street frontage does not meet the 70% requirement for transparent glazing, achieving approximately 48%. However, given that the site is a contributory building in the Chippendale heritage conservation area and existing openings are being retained/reinstated this is considered acceptable.</p>
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 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>

Provision	Compliance	Comment
		The application was referred to Council's Specialist Surveyor, who provided appropriate conditions of consent.
3.9 Heritage	Yes	<p>The site is located within the Chippendale heritage conservation area (C9) and is identified as a contributory building.</p> <p>Various heritage items are located within the vicinity of the site. A local heritage item is adjacent to the site to east at 6-10 Elim Place and is identified as I179 'Terrace Group "Coopers terrace" including interiors.' Another local heritage item identified as I173 'Remnant wall "Coopers Cottages" is adjacent to the site to the south, however, it is noted that the subject wall fronts an unnamed laneway to the south of the site.</p> <p>The proposed adaptive reuse of the contributory building as a boarding house is supported, subject to conditions.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	<p>In accordance with this clause, a minimum amount of bicycle parking, motorcycle parking and car parking is not specified for this development.</p> <p>However, due to the number of boarding rooms provided in the proposal the ARHSEPP 2009 requires 4 bicycle parking spaces and 4 motorcycle parking spaces.</p> <p>The proposal includes 24 bicycle parking spaces at basement level.</p> <p>Appropriate conditions are recommended for the design of these spaces which are included in Attachment A.</p>

Provision	Compliance	Comment
		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.
3.12 Accessible Design	Yes	<p>The proposal provides 3 accessible boarding rooms. Access is provided by a lift. The proposal has been amended to remove an elevated part of communal open space which was not universally accessible.</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	The proposed development as amended will provide adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	<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> <p>No details regarding waste have been provided for the ground floor commercial tenancy (café).</p> <p>See further details regarding the ground floor café in the 'Discussion' section below.</p>
3.15 Late Night Trading Management	Yes	<p>The application does not propose hours of operation for the commercial tenancy (café) on the ground floor.</p> <p>See further details in the 'Discussion' section below regarding the recommended deletion of the ground floor café.</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	No - assessed as acceptable.	<p>The site is subject of a maximum building height of 2 storeys. No street frontage height is specified.</p> <p>The proposed development is 3 storeys in height. A variation to the control is acceptable subject to design modifications requiring an additional setback of the third storey (level 2). See further details in the 'Discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No - assessed as acceptable.	<p>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.</p> <p>The ground floor, floor to floor height as proposed is 4.1m and is acceptable, given that the retention of the existing floor to floor heights allows for the retention of heritage fabric and is a positive heritage outcome.</p> <p>The floors above contain boarding rooms with a floor to ceiling height of 3m on level 1 and 2.6m on level 2 which is a good amenity outcome for future occupants.</p> <p>The scale of development is considered compatible with the streetscape. See further details in the 'Discussion' section below.</p>
4.2.2 Building setbacks	Yes	<p>The proposal has zero setback to both City Road and Elim Place. This is consistent with adjoining buildings and setback patterns in the surrounding streetscape.</p> <p>An additional setback is recommended for the third storey (level 2) See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.1 Solar access	No - assessed as acceptable.	<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>Three dwellings are located adjacent to the site to the east. These lots are significantly overshadowed by existing buildings, such that no solar access is provided to the rear yards or rear windows during midwinter. Non-compliance with this control is therefore established and acceptable in this instance.</p> <p>Additional overshadowing created by the development falls on surrounding roofs.</p> <p>The adjacent site to the south is approved as tourist and visitor accommodation (backpackers) and as such is not subject to the requirements of this clause.</p>
4.2.3.4 Design features to manage solar access	Yes	Operable shading devices are to be provided to all roof lights. Council's Urban Designer has recommended that details of these shading devices are submitted to Council for approval. An appropriate condition is included in attachment A.
4.2.3.6 Deep Soil	No - assessed as acceptable.	No deep soil areas are provided. Given that the site is a contributory building and the existing site has full site coverage, the variation to the deep soil requirement is considered acceptable in this instance.
4.2.5.3 Development on busy roads and active frontages	Partial Compliance	The acoustic report provided demonstrates that the acoustic privacy of boarding rooms can be protected and is acceptable.

Provision	Compliance	Comment
		<p>The application was referred to TfNSW, who recommended conditions regarding acoustics and materials.</p> <p>Mechanical ventilation is provided to rooms to mitigate noise and pollution from City Road.</p>
4.2.6 Waste and recycling Management	Partial compliance	<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> <p>No details regarding waste have been provided for the ground floor commercial tenancy (café).</p> <p>See further details regarding the ground floor café in the 'Discussion' section below.</p>
4.2.8 Letterboxes	No	<p>No letterboxes have been shown on the plans. A condition is recommended to ensure that letterboxes are installed within the boarding house lobby/communal space adjacent to City Road.</p>
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.</p>

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	<p>No strata subdivision is proposed or permitted.</p>
4.4.1.2 Bedrooms	Partial compliance	<p>The DCP requires bedroom sizes to be a minimum of 18sqm for single occupants and 22sqm for double occupants for rooms with an ensuite, kitchenette and laundry. All rooms are provided with a wardrobe. .</p>

Provision	Compliance	Comment
		<p>There are four single occupancy rooms sized 17.3sqm (rather than 18sqm) and one double occupancy room sized 21.73sqm (rather than 22sqm).</p> <p>The variation to the room sizes is considered a minor non-compliance and is acceptable in this instance given that the required quantum of communal indoor space and outdoor communal space is exceeded.</p> <p>All other boarding rooms meet or exceed the requirements of this clause.</p>
4.4.1.3 Communal kitchen areas	Yes	A communal kitchen is not required as every room has a kitchenette.
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 40sqm, exceeding the required 31.25sqm. The communal living area has an average width of 2.8m, which is considered acceptable.</p> <p>It is noted that this area is proposed to be increased through the deletion of the cafe. See further details in the 'Discussion' section below.</p> <p>Common Open Space</p> <p>An area of common open space is provided on level 2 and is 22sqm, exceeding the required 20sqm area and minimum 3m dimension. Adequate solar access will be received to the area of common open space between 10.00am -12.30pm.</p> <p>It is noted that this area is proposed to be increased. See further details in the 'Discussion' section below.</p> <p>Private Open Space</p> <p>This clause requires 30% of all bedrooms (6 rooms) to have access to private open space in the form of balconies or terraces with a minimum area of 4sqm.</p>

Provision	Compliance	Comment
		Three (3) rooms have access to a terraced area, which falls short of the requirement. This is considered acceptable, given the inclusion of additional balconies or terraces would likely require modification to the facade of the contributory building, which is not a desirable outcome.
4.4.1.5 Bathroom, laundry and drying facilities	Partial compliance	<p>Ensuites are provided in each boarding room, with an additional toilet provided in the ground floor communal space.</p> <p>Laundry facilities are provided in each boarding room.</p> <p>An outdoor drying area has not been provided. An appropriate condition is included in Attachment A.</p>
4.4.1.6 Amenity, safety and privacy	Yes	<p>The communal indoor and open spaces are in safe and accessible locations within the building.</p> <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 on level 2. 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>

Provision	Compliance	Comment
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

Height, Scale and Bulk

57. The site is subject to a 2 storey height in storeys control under the Sydney DCP 2012. The site is not identified on the street height in storeys control map. The existing building exceeds the 9m building height control with a building height of 10.1m. The proposal is 3 storeys with a proposed height of 10.94m. The additional floor is designed as a roof top style addition set behind the parapet of the existing building.
58. The surrounding area has a varied character and built form, with a mix of commercial, residential and tourist and visitor accommodation buildings ranging from 1-6 storeys. A six storey heritage item is located at 22-24 City Road to the south, a 5 storey boarding house development (currently under construction) is located at 26-30 City Road to the south and a three storey building is located at 12 City Road to the north. Buildings on City Road generally increase in height on the approach to Broadway shopping centre.

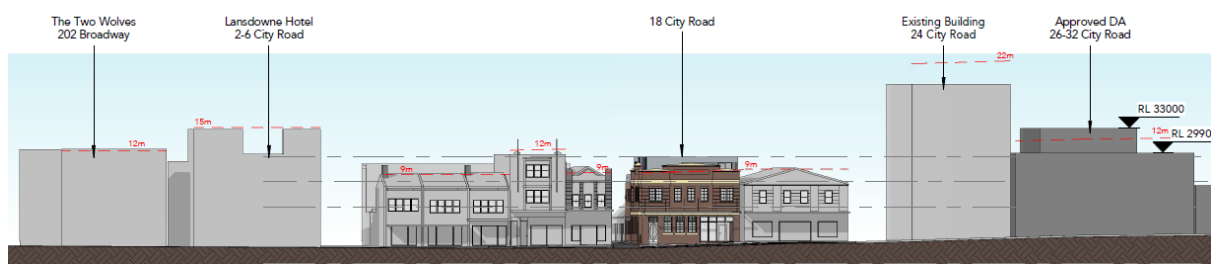


Figure 27: Streetscape analysis

59. The application as originally proposed, included the demolition of all internal fabric, including internal floors, and the insertion of 3 storeys within the existing building, disrupting internal relationships to windows. During the assessment of the application, it was recommended that it would be a better heritage outcome to retain the existing floors within the contributory building and provide a slightly higher addition which exceeded the height limit and was appropriately setback from the parapet and City Road.

- [illegible]

Heritage

- 43

64. The building is a two-storey masonry construction which has full site coverage. It was designed by Spencer and Spencer Architects and is predominantly face brick with timber windows and rendered string courses at first floor, roof level and at the top of the parapet. A flat corrugated metal roof is located behind the parapet. A later masonry addition with no heritage significance is located to the rear of the site on Elim Place.
65. The proposal has been significantly amended to allow for the retention of contributory fabric for it to be adaptively reused. The proposal as amended will retain building fabric, including the existing windows, internal first floor level and frontages to Elim Place and City Road which is a positive heritage outcome. The proposal as amended will retain the existing internal three-dimensional relationship with windowsill heights and allow for increased surety of the structural stability of the contributory building.
66. Council's Heritage Specialist has reviewed the amended application and supports the adaptive reuse of the contributory building subject to conditions. These conditions along with standard heritage conditions are included in Attachment A.
- (a) It is recommended that the additional storey has a consistent 3m setback, with no steps, which will decrease the visibility of the addition from the public domain and reduce the impact on the contributory building as discussed above.
 - (b) The new glazed entry on City Road is supported as it will reinstate the entry from the original design for the building (see figure 29 below). It is recommended that patterned timber detailing at the top of the windows should be reconstructed on the new glazed doors.
 - (c) The mechanical plant including all structure is to be hidden behind the parapet and not visible from the public domain.
 - (d) The original building had an awning, as shown in figure 29 below and confirmed through awning anchor points on the existing building. The reinstatement of the awning is a positive heritage outcome. It is recommended that details of the awning are submitted for approval, including use of existing anchor points and a design based on historic research.



Figure 29: Original Plans (extract from the Heritage Impact Statement, prepared by Weir Phillips)

Ground Floor Cafe

67. The amended proposal included the provision of a small commercial tenancy on the ground floor (café). The café is proposed to be 9sqm and accessible only to staff, serving takeaway food and drink only. Customers of the café would be served through the window or café doors fronting City Road.
68. An amended Waste Management Plan was not provided to support the additional commercial use. No details regarding waste management for the café have been provided or shown on the plans.
69. The Sydney DCP 2012 requires that a waste management plan is provided in accordance with the Guidelines for Waste Management in New Developments. These guidelines require waste and recycling handling systems for residential and non-residential waste to be separate. A café which is 9sqm according to the guidelines would require a minimum area of 6sqm to accommodate bins and bulky waste storage.
70. The submitted Waste Management Plan has been assessed by the City's Waste Unit and is acceptable with regard to the boarding house use.
71. As no details have been provided regarding waste storage or management for the commercial space. It is recommended that the commercial tenancy (café) is deleted from the proposal and the area incorporated into the ground level communal area. This amendment would also serve to further improve the amenity of the intended residents of the boarding house. It is noted that this modification is supported by Council's Urban Designer, who has raised an issue regarding the level change on City Road (height of takeaway service window) presenting a physical barrier to safely serving queuing customers.

Urban Design

72. Council's Urban Designer has recommended deferred commencement conditions to address unresolved design issues.
73. As the site is a contributory building, modifications to satisfy the Building Code of Australia and Deemed-to-Satisfy provisions of the National Construction Code, such as the protection of openings to windows on Elim Place by screening could have a detrimental heritage impact.
74. The proposal has been amended during the application to include the retention of the windows on Elim Place - in particular the first floor windows which have decorative brick detailing surrounding them. Further modification to the windows of the contributory building is not supported.
75. Construction details for the fire hydrant booster cabinet including its' integration into the Elim Place facade are required, to ensure it has an appropriate visual and heritage impact.

76. Insufficient details have been provided to demonstrate that the method of stormwater disposal is acceptable and will not create additional design or heritage impacts. A condition requiring the submission of construction details and plans showing the positions of the proposed box gutter/drainage and internal downpipes is required.
77. Deferred commencement conditions addressing the issues discussed above are included in Attachment A.

Design Advisory Panel - Residential Subcommittee

78. The application was referred to the Design Advisory Panel - Residential Subcommittee on 13 October 2020. The panel members provided several design recommendations which included the following:
- retention of only the façade resulting in significant loss of fabric;
 - non-compliance with the ARHSEPP including inadequate communal open space;
 - recommendation to use the full street frontage to City Road for common indoor space or alternative non-residential uses;
 - amenity of the boarding rooms, including the detrimental amenity impacts to the ground floor bedroom fronting City Road, privacy to the communal open space and heat gain in rooms due to skylights;
 - non-provision of an active street frontage;
 - recommendation to consider further exceeding the height control on the eastern portion of the site, with a setback from City Road;
 - support for the provision of no car parking;
 - recommendation that additional balconies are provided and drying areas;
 - resolution of service requirements;
 - fire stair feasibility; and
 - accessibility to the ground floor and part of the communal outdoor space.
79. The proposal has been amended to address the majority of the panel's recommendations. The amended plans include the retention of the internal first floor, to allow for increased retention of fabric and structural stability of the contributory building. The bedroom on the ground floor fronting City Road has been removed, and communal indoor space reconfigured to provide an active frontage (it is noted this will be further increased to the full City Road frontage). The fire stair feasibility has been clarified through details of a performance solution. The communal open space has been reconfigured to satisfy minimum dimensions, mechanical service requirements have largely been clarified and the portion of non-accessible communal outdoor space has been removed. The boarding room sizes meet the requirement of the ARH SEPP 2009.

80. Recommendations regarding an increased setback for the third storey, shading and retention of key heritage features have been addressed through the inclusion of appropriate conditions of consent as discussed above in this report.

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

81. The site is subject to a maximum building height control of 9m. The existing building has a height of 10.1m (to the top of the parapet) and currently exceeds the maximum building height limit. The proposed development has a height of 10.94m (to the top of roof), exceeding the height of buildings development standard by 1.94m. This represents a variation of 21.6%. The roof elements which exceed the height limit are shown in figure 30 below:



Figure 30: Elevation showing 9m height limit (red dashed line)

82. 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.

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

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

83. 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) compliance with the development standard is unreasonable given that it would enforce a height for any new work less than that of the existing building on the site;
 - (ii) it would prevent any work being undertaken to the non-compliant elements of this contributory building; and
 - (iii) the objectives of the height of buildings control are achieved, notwithstanding the non-compliance.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) the contravention would allow additions consistent in height with the existing building on the site;
 - (ii) allow conservation works to the elements of the building already exceeding the height limit;
 - (iii) facilitate the adaptive re-use of an otherwise underutilised building for a use which is sought after in the locality and serves a useful social purpose;
 - (iv) allow appropriate conservation of the façade of a contributory building in a heritage conservation area without modification of the original windows fronting City Road;
 - (v) retain original ground floor ceilings and first floor structural elements which constitute original fabric of a contributory building in a conservation area;
 - (vi) provide surety of the structural stability of the contributory facades during the construction process;
 - (vii) retain the original relationships between the floor levels and window sills;
 - (viii) provide of an intensity of development envisaged by Sydney LEP2012 for the site;
 - (ix) provide affordable rental housing in an area of high demand; and
 - (x) provide an intensity of development envisaged by Sydney LEP2012 for the site.

- (c) The proposed development will be consistent with the objectives of the zone:
 - (i) The proposal would provide affordable rental accommodation in close proximity to major retail areas and a major educational institution.
 - (ii) The proposal would provide affordable residential accommodation on a major public transport thoroughfare and within walking distance to the University of Sydney, Broadway Shopping Centre and the King Street retail strip.
 - (iii) The provision of additional affordable rental accommodation in this location would support the viability of the nearby commercial land uses but not threaten the viability of the Central Business District.
- (d) The proposed development will be consistent with the objectives of the standard:
 - (i) The height would be generally consistent with the height of the existing building on the site and any exceedance would generally not be visible outside the site from most nearby vantage points (eg City Road). The height would also be consistent with that of surrounding development including the adjacent and nearby buildings along City Road, many of which have a greater height than the proposed work.
 - (ii) The proposal is moderated in scale to less than the height limit where it can be viewed adjacent the heritage item to the east at 6 Elim Place. The height is comparable to the adjacent heritage item at 20 City Road. The additional height would generally not be visible from the heritage listed University of Sydney or Victoria Park opposite the site on City Road.
 - (iii) The site is not located in the path of any significant view corridors and as such would not impact upon any significant views.
 - (iv) The site is not in the vicinity of Central Sydney or Green Square Town Centre.

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

84. 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)?

85. 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.
86. The existing building already exceeds the maximum building height limit. The additional non-compliance relates to the roof of the new storey. This is a result of the retention of the existing first floor level and floor to ceiling heights within the building. This is a positive heritage outcome as it allows for retention of fabric and the relationship between the windowsill heights and the contributory building to be maintained.
87. In addition, the portion of the roof of the new storey will generally not be visible from the public domain and does not create additional overshadowing or impact any views. The addition is stepped down to allow for an appropriate transition to the heritage items on Elim Place.
88. 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)?

89. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravention of the standard.
90. It is agreed that exceedance of the height limit by the roof of the additional storey, subject to conditions is generally consistent with surrounding development, 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 allowing for the adaptive reuse of a contributory building and the retention of heritage fabric.

Is the development in the public interest?

91. 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.
92. The height of the development is appropriate 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.

93. 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:
- (a) to provide a mixture of compatible land uses;
 - (b) 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
 - (c) to ensure uses support the viability of centres.
94. The mixed-use development proposes new affordable housing in a highly accessible area close to public transport, retail areas and educational institutions. The development will support the viability of nearby commercial land uses.
95. 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

96. 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

97. The site is subject to a minimum motorcycle parking control of 4 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.
98. 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.
99. A copy of the applicant's written request is provided in Attachment D.

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

100. 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 building is listed as a contributory building in a heritage conservation area. The contravention would permit an improved façade treatment to both City Road and Elim Place. The conservation of the façade of a contributory building in a heritage conservation area without intrusive modification of either the City Road or Elim Place facades;
 - (ii) The consequent necessity to conserve both the City Road and Elim Place facades without any material change and to avoid any new openings;
 - (iii) The negative streetscape impacts of providing motorcycle access to the site on either the City Road or Elim Place facades; and
 - (iv) The technical difficulty of configuring motorcycle access to the basement bicycle parking area.
 - (v) The proposal would provide affordable rental accommodation in close proximity to major retail areas, a major educational institution and numerous public transport links.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) appropriate conservation of the façade of a contributory building in a heritage conservation area without intrusive modification of either the City Road or Elim Place facades;
 - (ii) greater provision of active frontage to both City Road and Elim Place;
 - (iii) improved architectural treatment of the ground level facades facing City Road and Elim Place;
 - (iv) less impact from motorcycle noise and traffic upon Elim Place and adjacent residents;
 - (v) the increased use of public transport, bicycles and walking and the decreased use of fossil fuel dependant transport;
 - (vi) avoidance of the pedestrian safety issues associated with motorcycle egress directly onto the footpath of City Road or the narrow thoroughfare of Elim Place;
 - (vii) greater compatibility with clause 30A of SEPP ARH 2009 and the character of the local area;
 - (viii) affordable rental housing in an area of high demand;
 - (ix) an intensity of development on the site envisaged by the Sydney LEP 2012;

- (x) the liberal provision of liberal bicycle parking but no motorcycle parking would specifically serve to maximise use of public transport and active transport (cycling, walking), consistent the objectives of Sustainable Sydney 2030; and
 - (xi) more compensatory bicycle spaces are provided and the lack of motorcycle parking would enforce use of bicycles, public transport or walking, all of which are preferable to motorcycle use in terms of greenhouse gas emissions and traffic generation.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposal would provide affordable rental accommodation in close proximity to major retail areas, a major educational institution and numerous public transport links.
 - (ii) The provision of liberal bicycle parking but no motorcycle parking would specifically serve to maximise use of public transport. The proposal would provide affordable residential accommodation on a major public transport thoroughfare and within walking distance to the University of Sydney, Broadway Shopping Centre and the King Street retail strip.
 - (iii) The provision of additional affordable rental accommodation in this location would support the viability of the nearby commercial land uses but not threaten the viability of the Central Business District
- (d) The proposed development will be consistent with the objectives of the standard:
- (i) 3(a) The proposal is consistent with the regime for the provision of affordable rental housing.
 - (ii) 3(b) The proposal would provide effective delivery of affordable rental housing of high amenity notwithstanding the lack of motorcycle parking.
 - (iii) 3(c,d) The proposal would increase the supply of affordable rental housing.
 - (iv) 3(f) The proposal would provide affordable rental accommodation in close proximity to employment centres including a major retail centre, various business centres as well as a major educational institution.
 - (v) 3(g) The proposal is not intended specifically as emergency housing for the homeless or other disadvantaged people, however its provision would free up other similar housing at the lower end of the market to become available for the less advantaged.

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

101. 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)?

102. 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 satisfies the aims of the SEPP ARH 2009 notwithstanding the non-compliance. In particular, the provision of motorcycle parking within the development would require a new opening in the façade of a contributory building on City Road or Elim Place, which would have a detrimental heritage impact. The provision of zero motorcycle parking spaces results in a more desirable streetscape and heritage outcome.

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

103. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.
104. 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.
105. The provision of motorcycle parking would require an access driveway to be constructed, which would detrimentally impact the facades of the contributory building. The provision of zero motorcycle parking spaces results in a more desirable streetscape outcome.

Is the development in the public interest?

106. 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.
107. The proposal is consistent with the relevant aims of the SEPP ARH 2009 as it provides new affordable housing in a form that is suitable to the subject site. The boarding house will be located close to places of work, such the Chippendale locality, including the Broadway Shopping Centre precinct and the broader Central Sydney area.
108. Whilst the aims of the SEPP are to provide a 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.
109. 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:
- (a) to provide a mixture of compatible land uses;
 - (b) 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
 - (c) to ensure uses support the viability of centres.
110. The mixed-use development proposes new affordable housing in a highly accessible area close to public transport, major retail areas and educational institutions such as the University of Sydney. 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 provides additional bicycle parking spaces which exceed the requirements of the SEPP ARH 2009.
111. The proposal is consistent with the aims of the SEPP ARH 2009 and the objectives of the B4 Mixed Use zone.

Conclusion

112. 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

113. The application was discussed with Council's Building Services Unit; Environmental Health Unit; Heritage Unit; Public Domain Unit; Safe City Unit; Surveyors; Transport and Access 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.
114. The application was discussed with Council's Urban Designer who raised concerns with the proposed development. These concerns are addressed in the discussion section above.

External Referrals

Ausgrid

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

Transport for NSW

117. Pursuant to Section 101 and 102 of the SEPP (Infrastructure) 2007, the application was referred to Transport for NSW (TfNSW) for comment. Concurrence from TfNSW is not required by these Clauses.
118. Comments were received on 15 September 2020. Conditions of consent were recommended which are included in the Notice of Determination.
119. The recommended conditions include a requirement that the proposed development should be designed so that all buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited height or depth).
120. The application includes the provision of a new awning over the footway on City Road. City Road is a classified road and is zoned SP2 Infrastructure (including the footway) extending to the property boundary.
121. The site is identified as a specified site for an awning in the Sydney DCP 2012 and the original building previously had an awning which has been removed. The proposed awning is based on historic evidence including original plans and visible anchor points on the building. It is considered that the inclusion of the awning would be a good heritage outcome and provide valuable amenity for pedestrians on City Road.
122. Given the above, the condition provided by TfNSW regarding buildings and structures to be wholly within the property boundary has been modified to allow for the construction of the awning. The modified condition is included in Attachment A.

Sydney Water

123. 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

124. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 9 September 2020 and 1 October 2020. No submissions were received.
125. Following receipt of amended plans, the application was re-notified for a period of 14 days between the dates of 23 February 2021 and 10 March 2021. No submissions were received.

Financial Contributions**Contribution under Section 7.11 of the EP&A Act 1979**

126. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. The contribution has been calculated on the assumption of 20 rooms (a reduction of one room to what was proposed) due to the upper level setback condition which will result in the deletion of a double occupancy boarding room.
127. Credits have been applied for the most recent approved use of the site, being a dance studio (204sqm) and residential accommodation (2 bedroom dwelling).
128. The calculated contribution is \$204,464.55. 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

129. Environmental Planning and Assessment Act 1979.

Conclusion

130. The application seeks consent for change of use to a boarding house, with associated alterations and additions. The boarding house proposal includes 21 boarding rooms (accommodating 25 occupants), basement level with 24 bicycle parking spaces and ground floor level café.

131. The proposal has been amended to address a number of issues identified by Council officers during the assessment of the application relating to height, heritage, design and residential amenity.
132. A written request seeking to vary Clause 4.3 'Height of Buildings' development standard has been submitted. The variation relates to the roof of the third storey. The development exceeds the 9m height control by 1.94m (21.6% variation).
133. 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.
134. 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 4 spaces are required.
135. 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.
136. The proposal has been amended over the course of the assessment to allow for the retention of the heritage fabric of the contributory building. The proposal as amended and subject to conditions, presents a building envelope that is appropriate and materials which are compatible with the contributory building and 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.

137. 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.
138. The development satisfies 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.
139. 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