

Item 5.**Development Application: 117-119 Flinders Street, Surry Hills - D/2020/1178****File No.: D/2020/1178****Summary****Date of Submission:** 6 November 2020**Applicant:** Stasia Holdings Pty Ltd**Architect/Designer:** SJB**Developer:** Stasia Holdings Pty Ltd**Owner:** Stasia Holdings Pty Ltd**Planning Consultant:** Planning Lab**Heritage Consultant:** Urbis**Cost of Works:** \$14,702,566**Zoning:** The site is in the B4 Mixed Use Zone. The proposed development is defined as a commercial premises (office and retail) and is permissible with consent in the zone.**Proposal Summary:** Construction of a five-storey commercial office building, including lower ground floor retail fronting Hutchinson Place. The proposal includes excavation to provide basement parking for 14 vehicles and end of journey facilities, with vehicular access proposed from Hutchinson Place. The proposal also includes landscaped outdoor break-out areas on Levels 3 and 4.

The lower ground floor retail is proposed to trade between 8.00am and 10.00pm daily.

The application seeks to exceed the height of buildings development standard by more than 10% and is therefore referred to the Local Planning Panel for determination.

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

- Development Controls:**
- (i) State Environmental Planning Policy (Infrastructure) 2007
 - (ii) Sydney Local Environmental Plan 2012
 - (iii) Sydney Development Control Plan 2012

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

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 'Height of Buildings' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application No. D/2020/1178 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 proposed commercial uses are permissible with consent within the B4 Mixed Use zone.
- (B) Subject to conditions the proposal will have no impact to the significance of the Heritage Conservation Area.
- (C) Subject to the conditions of consent, the development will not adversely impact the amenity of the locality.
- (D) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Height of Buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 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.

Background

The Site and Surrounding Development

1. The site has a legal description of Lots 3, 4, 5 and 6 in DP 1090185, and is commonly known as 117-119 Flinders Street, Surry Hills. It is irregular in shape with area of 973.3sqm. It has a primary street frontage of 35.12m to Flinders Street and a secondary street frontage of 26.75m to South Dowling Street. The site also has two rear frontages to Hutchinson Place. The southern part of the rear of the site has a frontage of 5.31m, and the northern part of the site has a frontage of 9.07m. The Eastern Distributor (ED) ventilation stack and facility is located between these two frontages. Levels on the site fall by 2.5m in a westerly direction.
2. The site is located on the western side of the Flinders Street and South Dowling Street intersection. Flinders Street is a six to seven lane classified road. South Dowling Street is a six lane classified road. Located directly beneath the site is the Eastern Distributor northbound tunnel, containing two lanes of traffic.
3. The site is currently vacant. It is characterised by a broken concrete surface with unplanned vegetation. There are remnants of two terrace houses on the South Dowling Street frontage, demolished at some point between 1955 and 1975, and a warehouse on the Flinders Street frontage demolished in the late 1990s to make way for the Eastern Distributor ventilation stack. There are also remnants of an indistinguishable steel structure in the south eastern portion of the site.
4. The surrounding area is characterised by a mixture of land uses. The scale of surrounding development generally ranges from two to six storeys in height.
5. The western part of the site wraps around 10 Hutchinson Place. This site accommodates the Eastern Distributor ventilation stack and facility, which comprises a part two and three storey building on its northern side and large ventilation stack rising to a maximum height of RL 78.04 on its southern side.
6. To the west of the site, on the opposite side of Hutchinson Place, are a mix of residential and commercial uses. From south to north they are as follows:
 - (a) There are four, two storey bald face terrace houses at 7-13 Hutchinson Street;
 - (b) The building at 36-38 Hutchinson Street is the former "Electrical Trades Union Hall", listed in Schedule 5 of the Sydney Local Environmental Plan 2012 (SLEP 2012) as a heritage item of local significance (I1562). It has been converted to a residential flat building;
 - (c) The building at 26-34 Hutchinson Street is a former warehouse converted to a five-storey residential flat building;
 - (d) The building at 22-24 Hutchinson Street is a former warehouse converted to office use. There is development consent in place for its conversion to a five-storey residential flat building (D/2017/1292) however this is yet to be acted upon; and
 - (e) The building at 20 Hutchinson Street is a three-storey commercial building.

7. Directly adjoining the site to the north-west, at 99-115 Flinders Street, is a part four and part five storey mixed use building with commercial uses on the lower three levels and residential apartments above.
8. The 'Taphouse Pub' is located to the north, on the opposite side of Flinders Street on the northern side of the Flinders Street and South Dowling Street intersection. It is a heritage item of local significance (I297).
9. On the opposite side of South Dowling Street, on the north eastern side of the intersection, are a group of terraces and an antiques store. These are listed as heritage items of local significance (I1109 and I1110).
10. Further to the south, fronting Flinders Street, is a long row of terrace houses. The vast majority are listed as heritage items of local significance (I1050 to I1059)
11. To the south east of the site, on the opposite side of South Dowling Street, is the northern gateway to the Centennial Parklands. This site comprises the sunken entry to the Eastern Distributor, a paved area above the tunnel entry which is trafficable to pedestrians, and landscaped areas on both sides of the Eastern Distributor carriageway.
12. Directly to the south of the site at 457 and 459 South Dowling Street are a pair of three storey Victorian-era terrace houses.
13. Further to the south at 471 South Dowling Street is the Former Salvation Army Women's Hostel, a seven-storey residential flat building listed as a heritage item of local significance (I1635).
14. The site is not a heritage item and is identified as a detracting item within the Bourke Street North Heritage Conservation Area (C59).
15. A site visit was carried out on 25 November 2020. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds (site outlined in blue)



Figure 2: Site viewed from the opposite side of Flinders Street, looking south-west



Figure 3: Site viewed from the opposite side of South Dowling Street, looking north-west



Figure 4: Northern portion of the rear of the site, viewed from Hutchinson Place

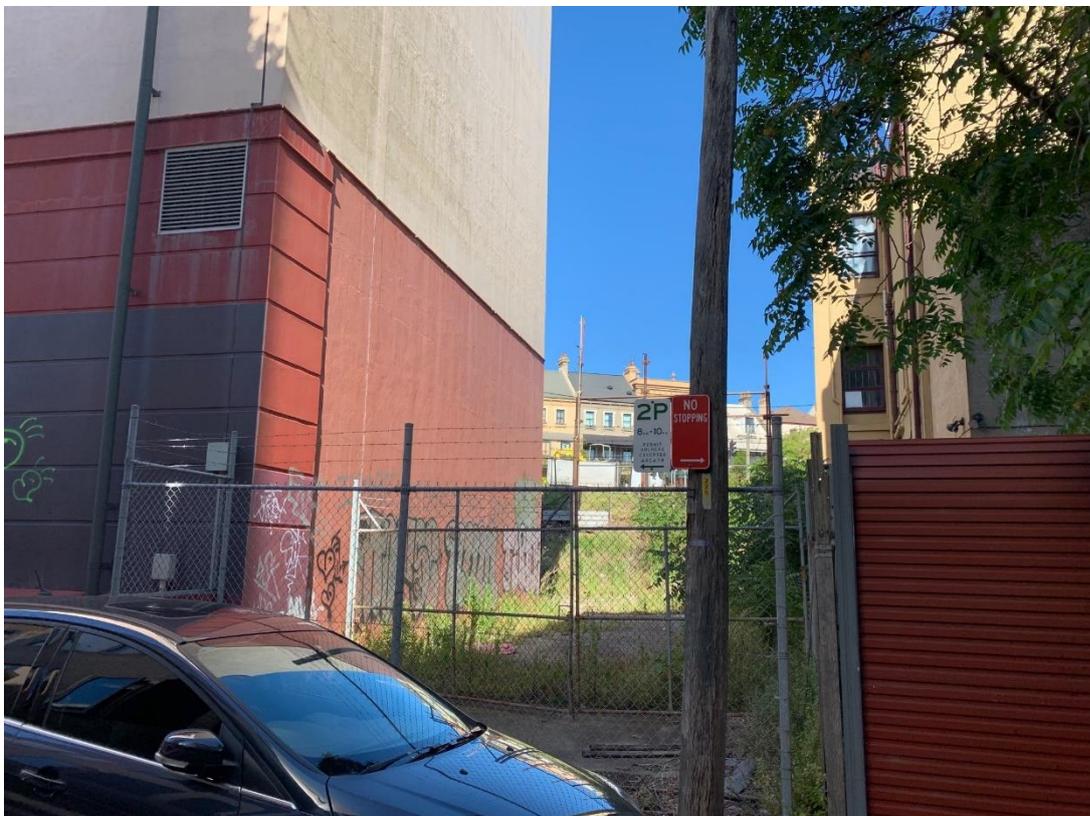


Figure 5: Southern portion of the rear of the site, viewed from Hutchinson Place



Figure 6: Interior of the site, viewed from Flinders Street, looking south-west



Figure 7: Eastern Distributor ventilation stack at 10 Hutchinson Place



Figure 8: Terrace houses at 7-13 Hutchinson Place, located to the south west of the site



Figure 9: Rear of residential flat building at 36-38 Hutchinson Street, located south-west of the site



Figure 10: Rear of residential flat building at 26-34 Hutchinson Street, located west of the site



Figure 11: Rear of office premises at 22-24 Hutchinson Street, located west of the site



Figure 12: Rear of commercial premises at 20 Hutchinson Street, located west of the site



Figure 13: Mixed use commercial and residential building at 99-115 Flinders Street, adjoining directly north-west of the site



Figure 14: Taphouse Pub located on the opposite side of Flinders Street, to the north of the site



Figure 15: Terrace houses located on the opposite side of South Dowling Street, to the north-east of the site



Figure 16: Terrace houses located on the opposite side of Flinders Street, to the east of the site



Figure 17: Northern gateway to Centennial Parklands located on the opposite side of South Dowling Street, to the south east of the site



Figure 18: Terrace houses at 457-459 South Dowling Street, directly adjoining the site to the south

History Relevant to the Development Application

Development Applications

16. The following applications are relevant to the current proposal:

- **D/2015/747** – Development consent was granted on 5 May 2017 by the Land and Environment Court of New South Wales for the construction of a five-storey mixed use building providing basement parking, one ground floor retail tenancy and 25 apartments. The consent will lapse on 5 May 2024.

It is important to note that the approved residential scheme also breached the height of buildings development standard to an extent similar to that proposed in this application.

Amendments

17. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 16 February 2021.

18. The following issues with were raised with the design:
 - The proposed awnings were incompatible with existing street trees and the requirements of the Sydney Development Control Plan 2012 (SDCP 2012).
 - The hydrant booster had doors opening outward to the footpath.
 - The substation kiosk was in a prominent location on the South Dowling Street frontage.
 - Insufficient detail was provided regarding non-complaint floor to floor heights.
 - The proposed terraces could result in potential amenity impacts to surrounding properties.
 - The relationship with the terraces at 457 and 459 South Dowling Street required improvement.
19. The following additional documentation was requested:
 - further details regarding proposed materials, finishes and glazing;
 - further information regarding levels and gradients;
 - flood assessment;
 - updated arborist's report;
 - updated Waste Management Plan;
 - additional information to support excavation within the Heritage Conservation Area;
 - revised Clause 4.6 variation request as the proposed height had been calculated incorrectly;
 - further overshadowing analysis;
 - further information regarding landscaping; and
 - further information regarding the rooftop photovoltaic panels.
20. The applicant responded to the request on 16 March 2021 and submitted revised architectural drawings and additional information addressing the abovementioned concerns.
21. Following discussions with the applicant's architect regarding the height of the rooftop parapet wall, amended plans were submitted on 23 April 2021. The amended plans lower the parapet wall, reducing the volume of built form above the maximum height plane and improving solar access for 13 Hutchinson Place.

Proposed Development

22. The application, as amended, seeks consent for the construction of a five-storey commercial office building, including lower ground floor retail fronting Hutchinson Place. More specifically, the proposal includes the following:

(a) Each Commercial Level

- (i) Lift core providing two lifts;
- (ii) Bathroom facilities; and
- (iii) Fire stair.

(b) Basement

- (i) One service vehicle parking space;
- (ii) One accessible car parking space;
- (iii) 12 standard car parking spaces;
- (iv) Three motorcycle parking spaces;
- (v) Refuse room and bulky goods area;
- (vi) Pump room; and
- (vii) Fire egress

(c) Lower Ground Floor

- (i) 80.4sqm retail tenancy fronting Hutchinson Place;
- (ii) 171.4sqm end of trip facilities, comprising 32 bicycle parking spaces, three shower rooms and bathroom facilities;
- (iii) Plant;
- (iv) On-site detention;
- (v) Rainwater tank; and
- (vi) Fire egress.

(d) Ground Floor

- (i) 119.1sqm lobby;
- (ii) 281.6sqm commercial office tenancy;
- (iii) 275.8sqm commercial office tenancy;
- (iv) Awnings, including six on the Flinders Street frontage and three on the South Dowling Street frontage;

- (v) Fire hydrant booster on the Flinders Street frontage; and
 - (vi) Elevated electricity substation on the Hutchinson Place frontage, with access corridor to the South Dowling Street frontage.
- (e) Level 1**
- (i) 633.6sqm commercial office tenancy; and
 - (ii) Rooftop planter above substation below.
- (f) Level 2**
- (i) 681.8sqm commercial office tenancy; and
 - (ii) Planter to South Dowling Street frontage.
- (g) Level 3**
- (i) 499.9sqm commercial office tenancy;
 - (ii) Terrace with 39.3sqm trafficable area and in-built planter boxes on the Flinders Street frontage directly accessible from the office tenancy;
 - (iii) Terrace with 32.7sqm trafficable area and in-built planter boxes on the southern boundary, directly accessible from the office tenancy; and
 - (iv) Terrace with 173.6sqm trafficable area and in-built planter boxes on the Hutchinson Place frontage located at the northern frontage.
- (h) Level 4**
- (i) 162.5sqm commercial office tenancy;
 - (ii) Wrap around terrace with 133.7sqm trafficable area, steel pergola structure, and in-built planter boxes;
 - (iii) Plant zones; and
 - (iv) Ballast roof zone.
- (i) Roof**
- (i) Lift overrun to RL71.15;
 - (ii) 27 photovoltaic panels; and
 - (iii) Plant zone.

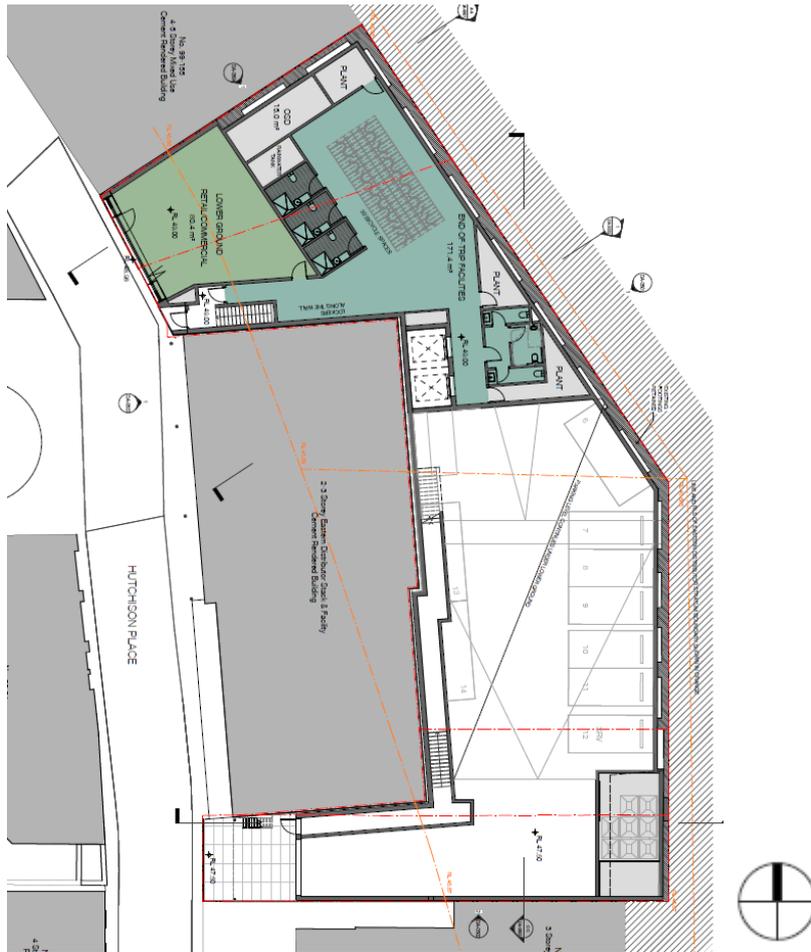


Figure 20: Proposed Lower Ground Floorplan

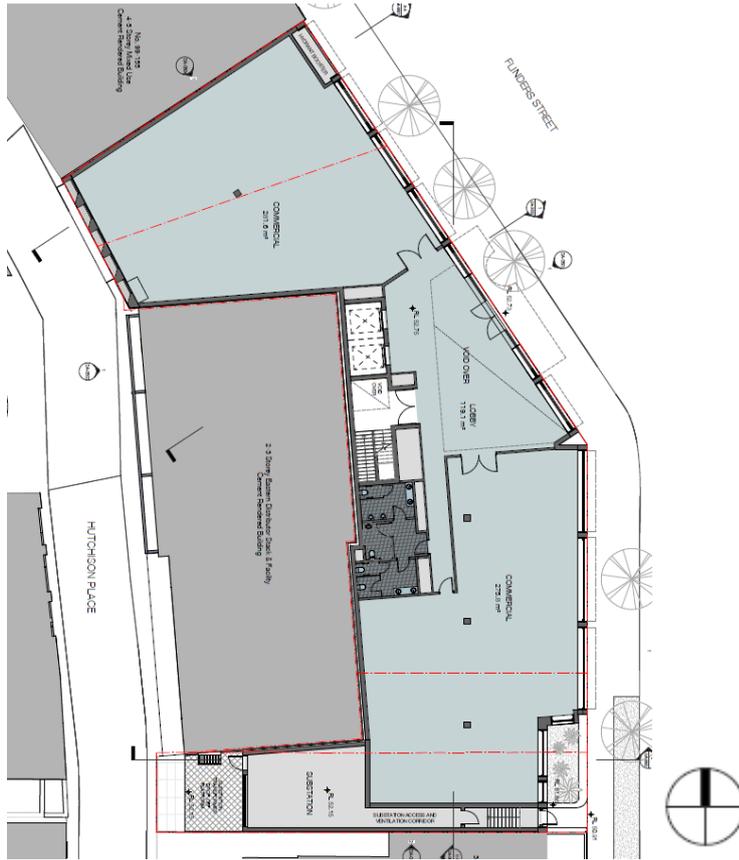


Figure 21: Proposed Ground Floor Plan

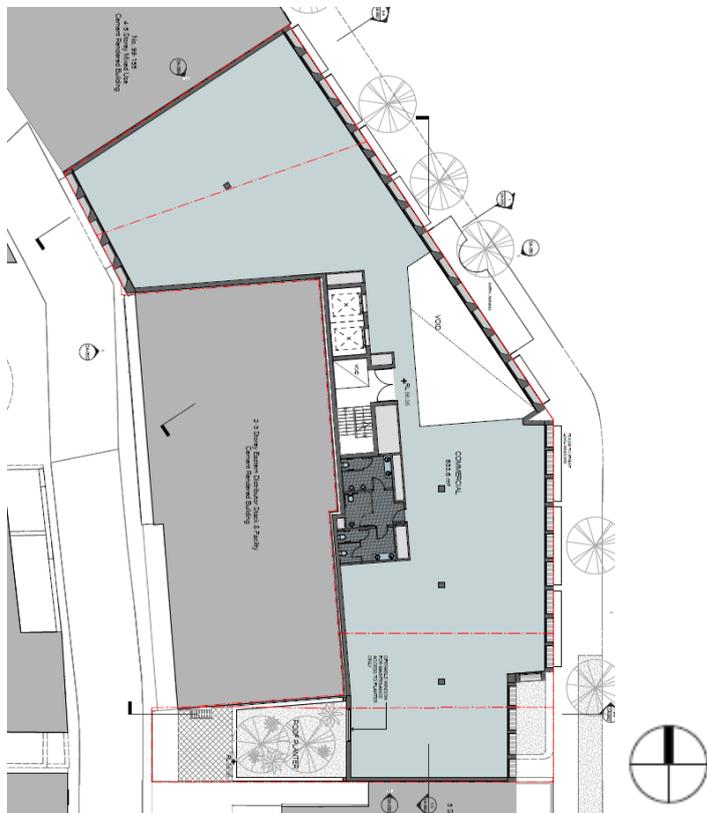


Figure 22: Proposed Level 1 Plan

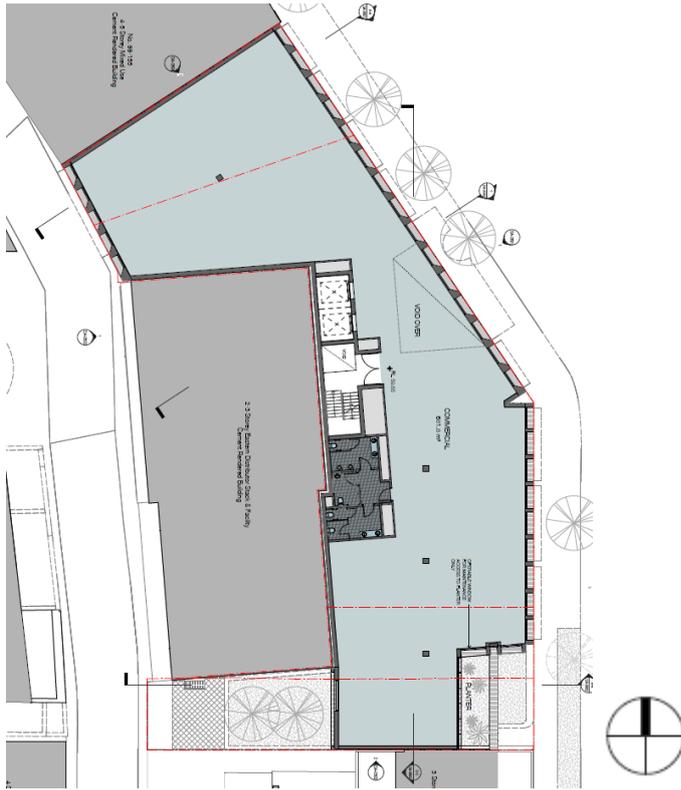


Figure 23: Proposed Level 2 Plan

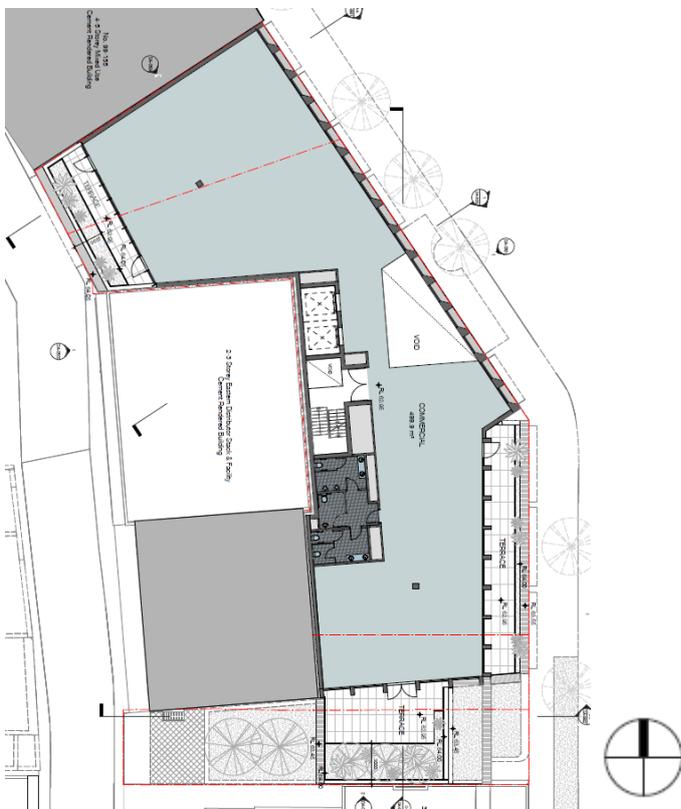


Figure 24: Proposed Level 3 Plan

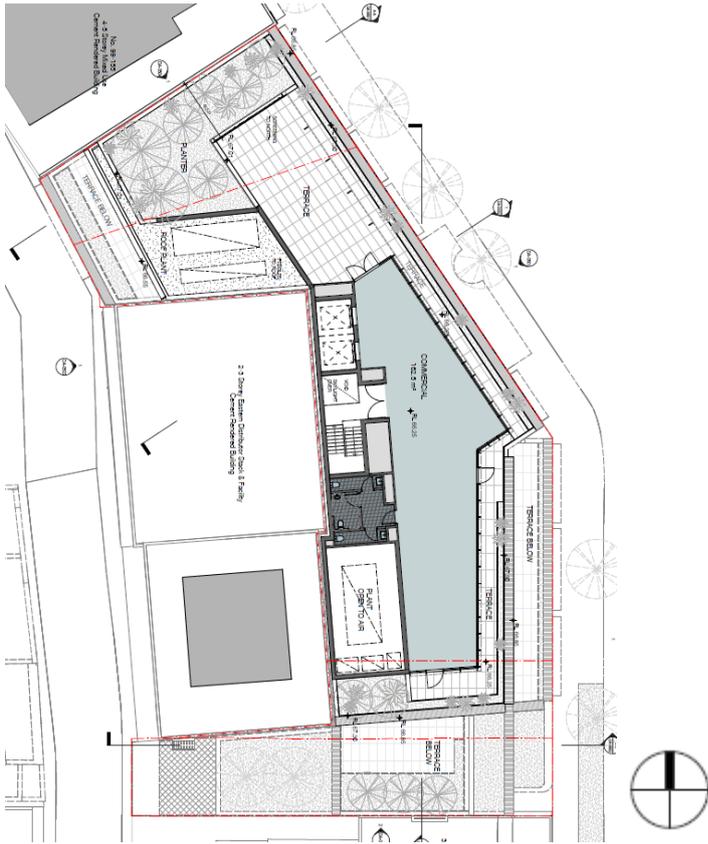


Figure 25: Proposed Level 4 Plan

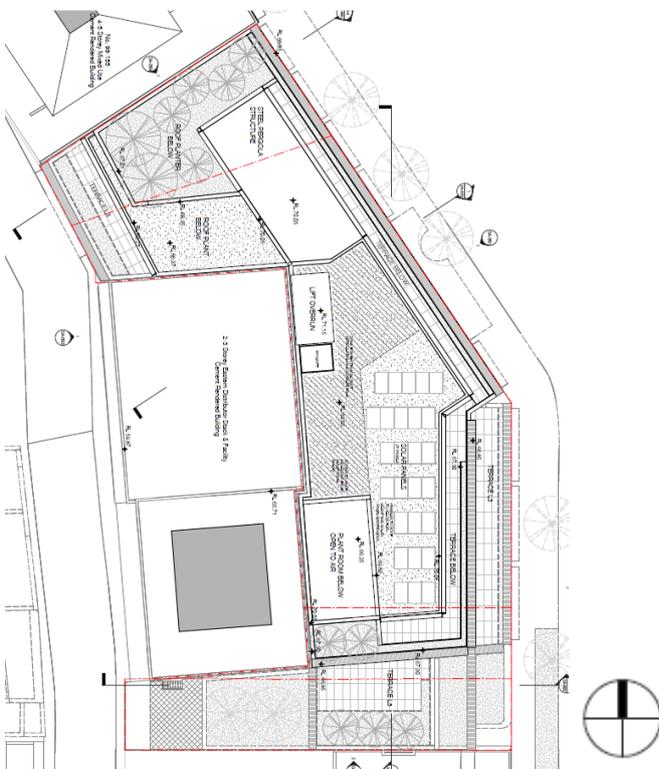


Figure 26: Proposed Roof Plan

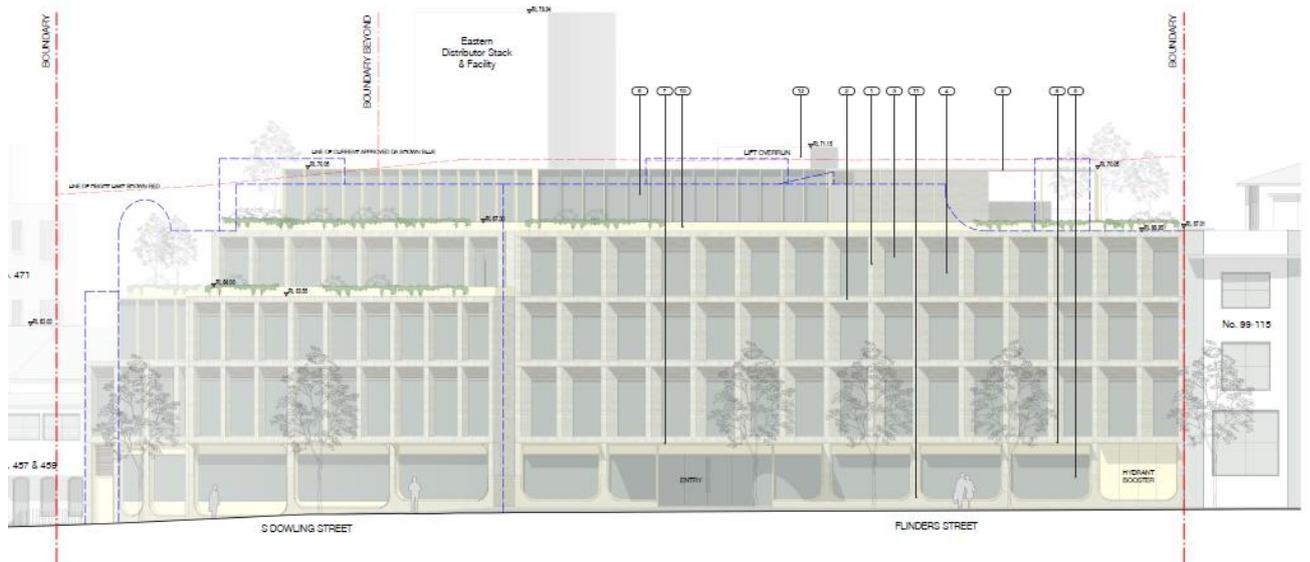


Figure 27: Proposed Eastern Elevation (South Dowling and Flinders Streets)

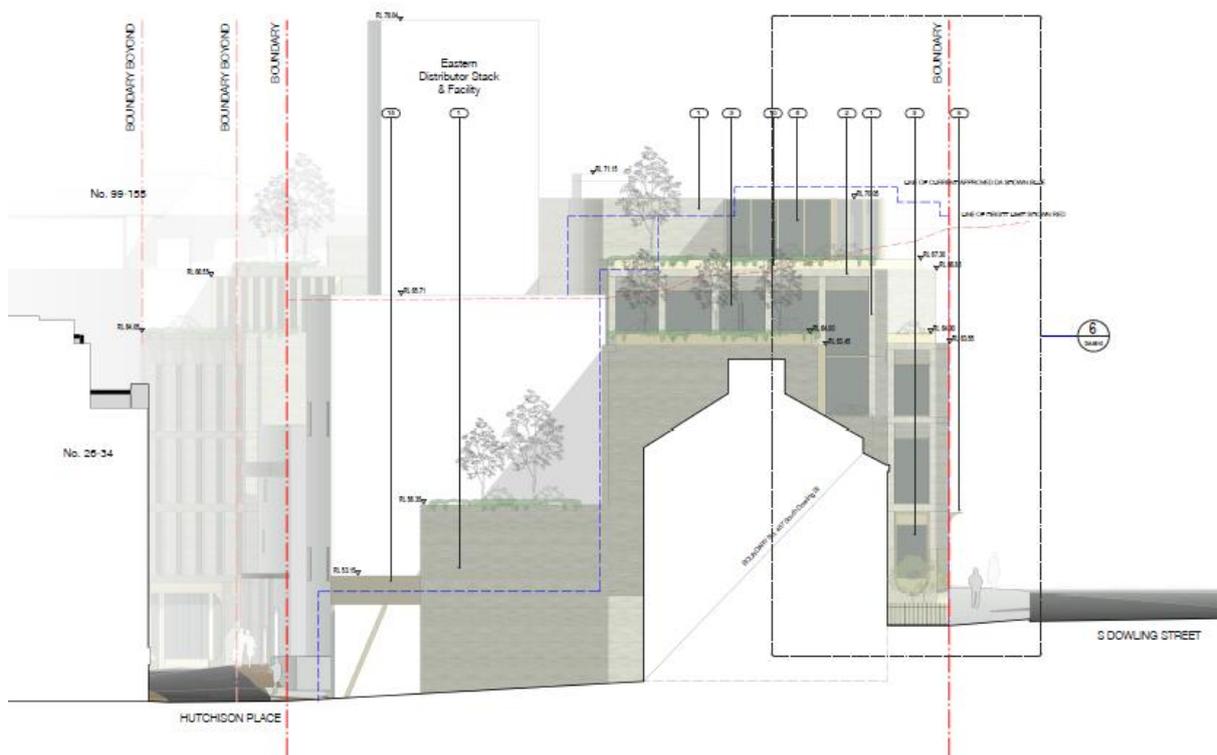


Figure 28: Proposed Southern Elevation

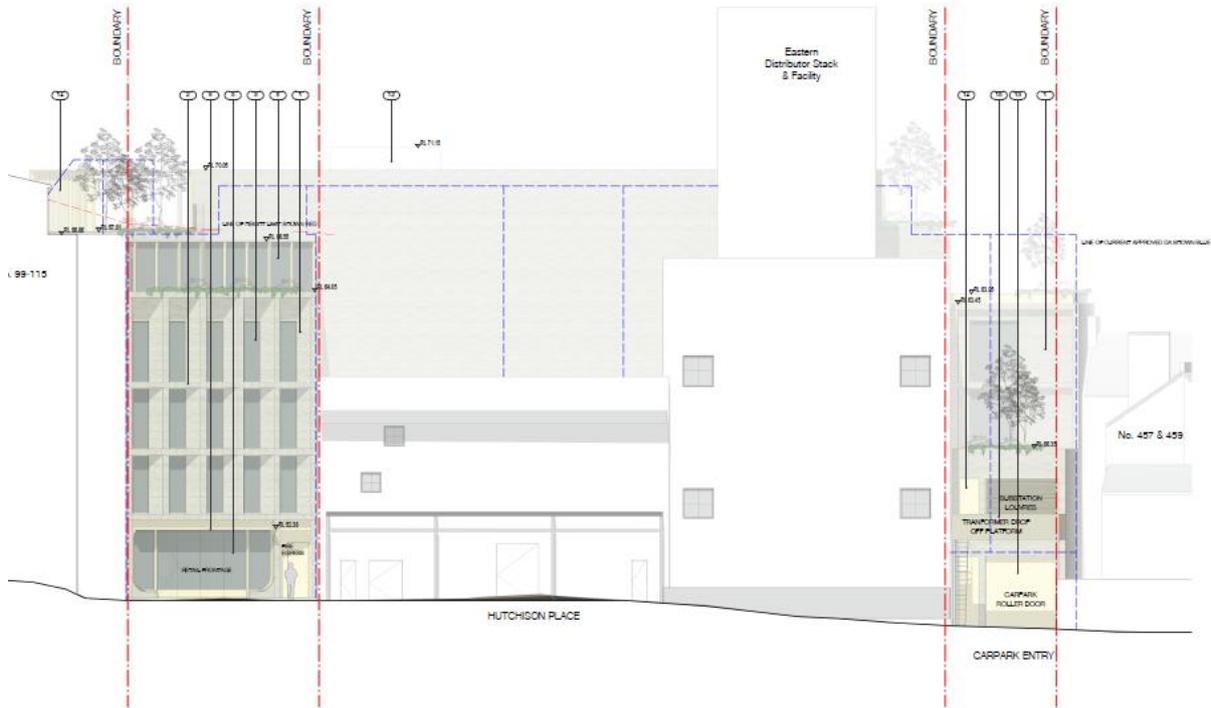


Figure 29: Proposed Western Elevation

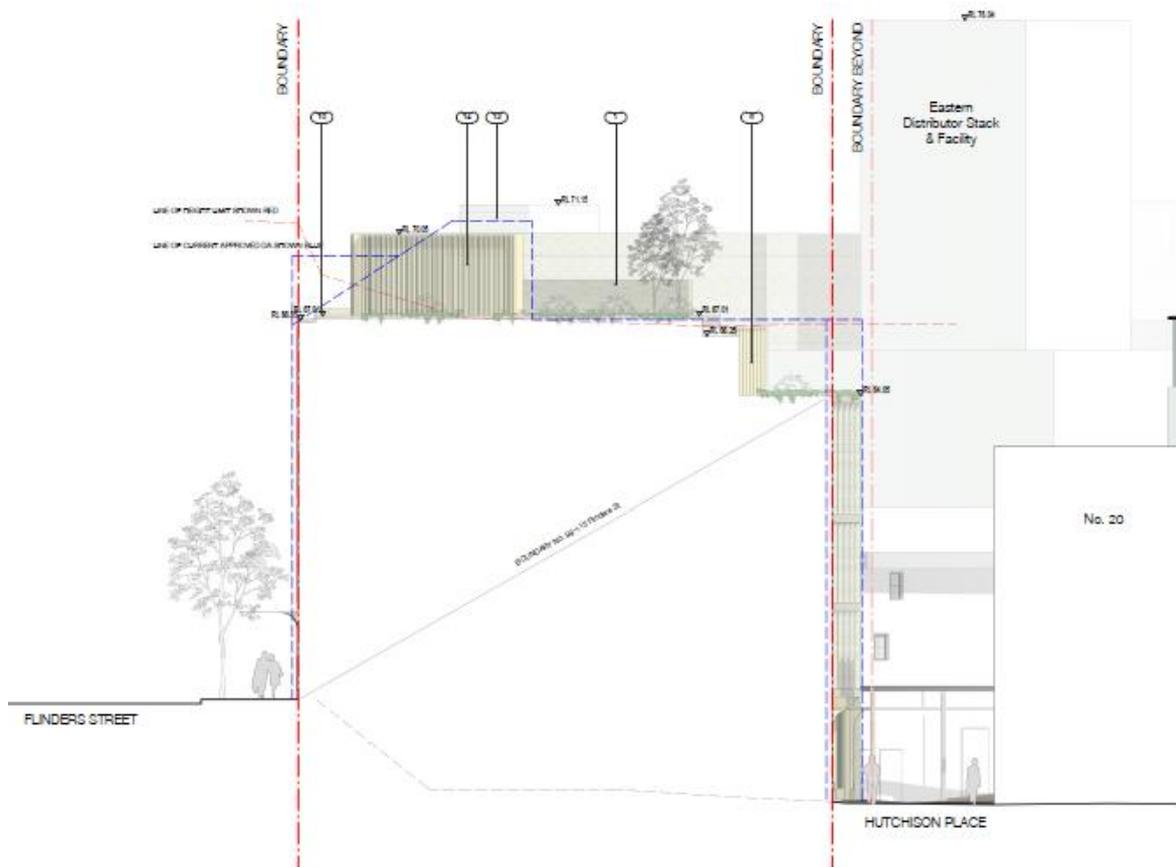


Figure 30: Proposed Northern Elevation

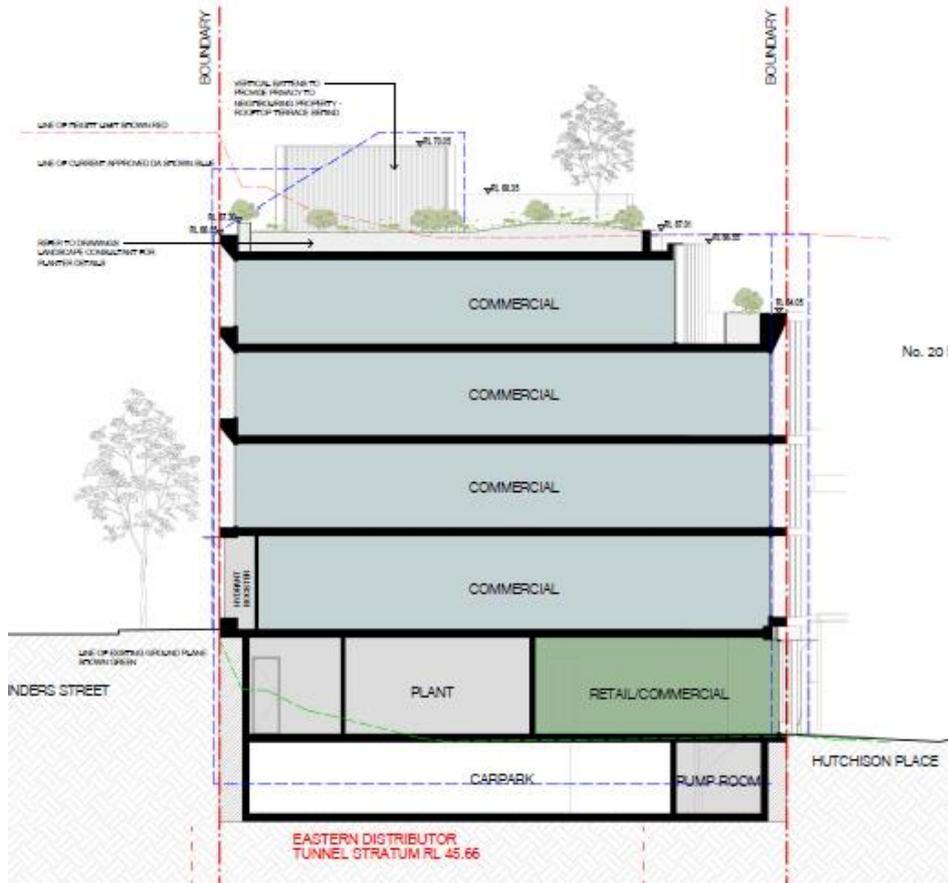


Figure 31: Proposed elevation

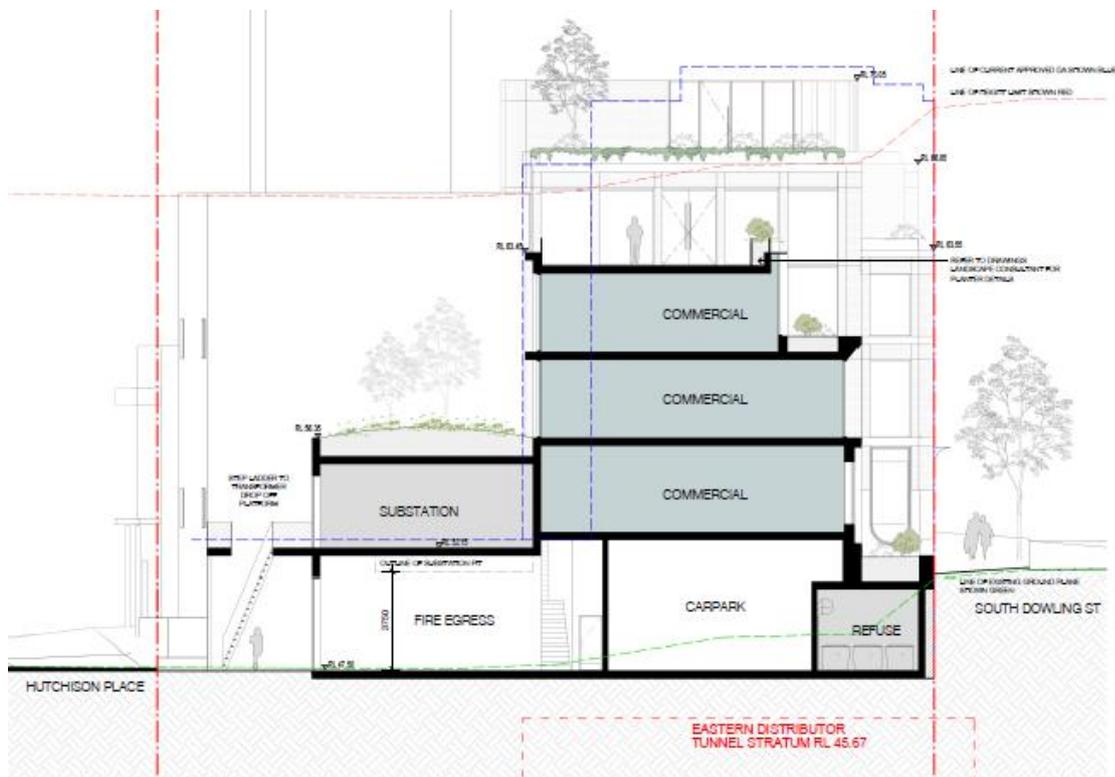


Figure 32: Proposed elevation

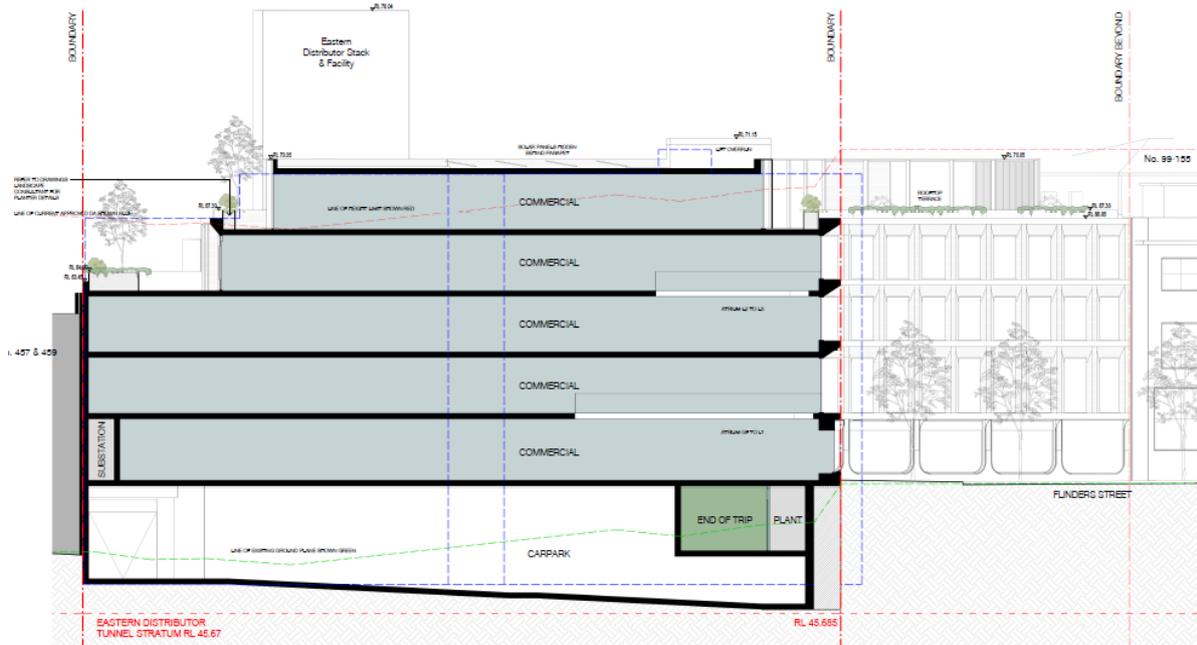


Figure 33: Proposed elevation



Figure 34: Photomontage, as viewed from the east



Figure 35: Photomontage, as viewed from the north east

Assessment

24. 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

25. 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.
26. Site investigations have identified that all concentrations of tested soil samples were below the adopted human health criteria.
27. The Council's Health Unit is satisfied that, subject to conditions, the site is suitable for the proposed use.

State Environmental Planning Policy (Infrastructure) 2007

28. 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

29. The application is subject to Clause 45 of the SEPP as the development potentially will be carried out within 5m of an exposed overhead electricity power line. A power pole will also have to be relocated to accommodate the proposed vehicular access.
30. 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

31. The application is subject to Clause 101 of the SEPP as the site has frontage to Flinders Street and South Dowling Street, which are classified roads.
32. The proposed development satisfies the provisions of Clause 101 subject to conditions of consent, as access is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development.

Clause 103 – Excavation in or Immediately Adjacent to Corridors

33. The application is subject to Clause 103 of the SEPP as the site is directly above the Eastern Distributor, and excavation greater than 3m below ground level (existing) is proposed.
34. Transport for NSW has reviewed the application and raise no objection subject to the recommended conditions of consent.

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

35. 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 office premises and retail premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 18m is permitted.</p> <p>A maximum height of 22.15m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 3:1 or 2934.9sqm is permitted.</p> <p>A floor space ratio of 3:1 or 2,934.9sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the Height of Buildings development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not a heritage item and is identified as a detracting item within the Bourke Street North Heritage Conservation Area (C59).</p> <p>A Heritage Impact Statement has been submitted with the application.</p> <p>Subject to the recommended conditions, the proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	<p>The proposed development is eligible for an additional floor space ratio of 0.3:1 (293.49sqm).</p> <p>The proposal includes 173.9sqm end of journey floor space, which equates to 0.18:1 and complies.</p>
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact regarding the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises 7.7 Retail premises	Yes	A maximum of 19 car parking spaces are permitted. The proposed development includes 14 car parking spaces and complies with the relevant development standards.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Partial compliance	The site is identified as being subject to flooding. A Flood Assessment Report was submitted in response to Council officers request for further information. The report advises the site is not flood affected. It was resolved that, as there was no evidence of flooding in the surrounding roadways, and the building will be constructed up to the boundary, the proposal is acceptable from a flooding perspective. Notwithstanding this, it is noted that the basement entry does not comply with the City's Interim Floodplain Management Policy which requires a finished floor level of 0.3m above the surrounding ground. A condition of consent is recommended requiring amendments to address the issue.

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

36. 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

37. The site is located within the Surry Hills North locality. The proposed development is in keeping with the unique character and the design principles of the Surry Hills North locality. More specifically, it responds to and respects the heritage character of nearby items of local significance, provides commercial floor space to encourage surveillance of the streetscape, and complements existing retail uses on Flinders Street.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	Public Art is to be provided in accordance with the City of Sydney Guidelines for Public Art in Private Development and the Public Art Policy. A condition of consent is recommended accordingly.
3.2. Defining the Public Domain	Partial compliance	<p>The site is identified as requiring an active frontage to South Dowling and Flinders Street. The proposal achieves partial compliance; see further details in the 'Discussion' section below.</p> <p>The proposal does not result in overshadowing to publicly accessible open space and does not impinge on public views.</p> <p>Exposed blank walls are to be constructed using brickwork of the same type used on the principal facades, resulting in a high-quality finish.</p> <p>Ground floor levels align with the adjoining public domain and provide opportunities for street surveillance.</p> <p>Given the site's location at a busy intersection, a condition of consent is recommended to ensure light reflectivity from building materials used on facades does not exceed 20%.</p> <p>Conflicting provisions relating to awnings apply and this is addressed in the 'Discussion' section below.</p>

Provision	Compliance	Comment
3.5 Urban Ecology	Yes	<p>The proposed development will have an impact on the street trees as pruning is required to facilitate the development. The City's Tree Management Unit has reviewed the proposal, and found it to be acceptable, with the trees losing approximately 5% of their canopy and likely remaining viable after completion. Conditions are recommended to protect street trees during the construction phase.</p> <p>Landscape plans submitted with the application demonstrate that 15% canopy cover will be provided on site within 10 years of the development's completion.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The proposal achieves sustainability objectives. A Section J 'Deemed to Satisfy' compliance report has been submitted with the application to the satisfaction of Council officers.</p> <p>A condition of consent is recommended to ensure the design of the building and its services achieves a rating of 5 stars under the National Australian Built Environment Rating System (NABERS Energy).</p>
3.7 Water and Flood Management	Partial compliance	<p>The site is identified as being on flood prone land. See discussion under section 7.15 above.</p> <p>The stormwater plans show that on-site detention and water quality are proposed as part of the works. Sydney Water have confirmed the OSD requirements are satisfactory. A condition of consent is recommended requiring connection to Council's stormwater drainage system.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development involves several lots. The application was referred to the City's Specialist Surveyor, who supported the proposal, subject to conditions of consent, including a condition requiring lot consolidation.</p>

Provision	Compliance	Comment
3.9 Heritage	Yes	<p>The site is not a heritage item and is identified as a detracting item within the Bourke Street North Heritage Conservation Area (C59).</p> <p>Subject to the recommended conditions, the proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Partial compliance	<p>A maximum of 19 car parking spaces are permitted.</p> <p>The proposed development includes 14 car parking spaces and complies.</p> <p>While the DCP requires one space to be provided for car share schemes, Council's transport planners have not deemed it necessary in this instance.</p> <p>The development is required to provide 27 bicycle parking spots, and 32 are provided. While the DCP's provisions relating to the location of bike parking is not complied with, the City's transport planners advise this is supportable in this instance. Conditions are recommended to ensure adequate shower and locker facilities are provided.</p> <p>The minimum parking requirements for service vehicles, motorcycles, and accessible spaces are met.</p> <p>The driveway width complies with DCP requirements.</p>
3.12 Accessible Design	Yes	<p>The building can achieve equitable access. Conditions of consent are recommended accordingly.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>

Provision	Compliance	Comment
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>This includes a design modification condition to ensure the waste storage area meets DCP requirements.</p>
3.15 Late Night Trading Management	Yes	<p>The site is not located within a late night trading area. The end use of the lower ground floor tenancy is not yet known but could potentially be a category B premises.</p> <p>The proposed trading hours are between 8am and 10pm.</p> <p>The proposed hours of operation are consistent with the DCP and are supported.</p> <p>See further details in the 'Discussion' section below.</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 five storeys with a maximum street frontage height of four storeys to Flinders Street and South Dowling Street.</p> <p>The proposed development presents as five storeys, with a street frontage height of four storeys, to all frontages. The proposal complies.</p>

Provision	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	<p>The proposed development does not achieve the minimum floor to floor heights.</p> <p>The proposed non-complaint floor to floor heights are acceptable in this instance.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.2 Building setbacks	Yes	<p>The building proposes a zero setback to Hutchinson Place and Flinders Street, consistent with adjoining development.</p> <p>A stepped setback is provided on South Dowling Street, aligning with the blade boundary wall of the adjoining terraces at 457 and 459 South Dowling Street, before stepping forward to the boundary further north.</p> <p>An upper level setback for the fifth storey is provided to the Flinders Street and South Dowling Street frontages. The DCP is silent with regards to the upper level setback requirements for commercial buildings. 2m is provided and this is acceptable.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Partial compliance	<p>When compared with the Court approved scheme mentioned earlier in this report, the proposal improves the solar access of four properties, and does not result in any properties that are non-compliant with the DCP's solar access requirements being more adversely affected.</p> <p>The proposed level of solar access to surrounding properties is acceptable.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.2.3.3 Internal common areas	Yes	The proposal complies with the DCP requirements for internal common areas.
4.2.3.4 Design features to manage solar access	Partial compliance	<p>The proposal includes extensive glazing to north facing facades. Sun protection is not proposed on Levels 1-4.</p> <p>The Section J Report submitted with the original application stated that glazing on Level 4 did not meet the deemed to satisfy provisions.</p> <p>An updated report has been submitted with the amended application, which finds that all glazing can now meet the deemed to satisfy provisions, however a high-performance tinted solution may be required on Level 4.</p> <p>The DCP discourages this in order to avoid heavily tinted glazing. However, there are products available that can achieve the aim of reducing heat load without a heavily tinted finish.</p> <p>A condition of consent is recommended, requiring all glazing to be clear, and for detailed information regarding the glazing to be submitted prior to the issue of a Construction Certificate. This is acceptable.</p>
4.2.3.5 Landscaping	Yes	<p>An updated Landscape Plan has been submitted with the amended application, which is generally acceptable. Conditions of consent are recommended requiring Green Roof Plans to be submitted prior to the issue of a Construction Certificate.</p> <p>The proposal has been reviewed by the City's Tree Management Unit, and will have an acceptable impact on street trees, subject to the recommended conditions of consent.</p>

Provision	Compliance	Comment
4.2.3.6 Deep Soil	No	<p>It is not possible to provide deep soil on the site, given the site's location immediately above the Eastern Distributor tunnel and associated services.</p> <p>To offset this, a condition of consent is recommended requiring the design of the rooftop to be amended to provide an integrated inaccessible and extensive green roof, comprising not less than 25% of the rooftop area.</p>
4.2.3.10 Outlook	Yes	<p>The proposal has no detrimental impact on outlook from surrounding residential properties. The site is currently vacant and in poor condition, and the construction of the proposed building will substantially improve the appearance of the site when viewed upon from surrounding buildings.</p>
4.2.3.11 Acoustic privacy	Yes	<p>An acoustic report has been submitted with the application. The report has been reviewed by Council's Environmental health officers and was found to be acceptable.</p> <p>The proposal includes several terraces which have the potential to impact upon residential amenity by way of noise transmission.</p> <p>Conditions of consent are recommended requiring two of the trafficable terraces to be deleted and replaced with landscaping. Conditions relating to the use of the remaining terraces are also recommended.</p> <p>See further details in the 'Discussion' section below.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The maximum street frontage is 35.115m (Flinders Street). The proposal complies.</p>

Provision	Compliance	Comment
4.2.6 Waste and recycling Management	Partial compliance	<p>The Waste Management Plan has been reviewed by City staff and found to be generally acceptable, however the submitted architectural drawings do not accurately illustrate the Waste Storage Area. A condition of consent is recommended requiring amended drawings to be issued to and reviewed by Council officers prior to the issue of a Construction Certificate.</p> <p>Furthermore, a condition has 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>
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

Discussion

Clause 4.6 Request to Vary a Development Standard

38. The site is subject to a maximum height control of 18m. The proposed development has a maximum height of 22.15m.
39. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the SLEP 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)

40. 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) because the objectives of the standard are achieved notwithstanding the non-compliance. Specifically:

(a) to ensure the height of development is appropriate to the condition of the site and its context:

The proposed number of storeys, being five in total, is consistent with Clause 4.2.1 Building Height in SDCP 2012.

The proposed height aligns with the street frontage height and overall building height of the adjoining building at 99-115 Flinders Street.

The proposal steps down in height to the terraces at 457-459 Flinders Street, providing an appropriate height transition between these and the taller development at 99-115 Flinders Street.

All non-compliant elements sit well below the adjacent Eastern Distributor ventilation stack.

Where the proposal varies from the height in metres in the SLEP 2012 it remains consistent with the height in storeys control of the SDCP 2012, being a maximum of five storeys, and doing so achieves a scale which was envisaged by the planning controls.

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas:

The proposal is five stories along Flinders Street with an additional lower ground level along Hutchinson Place. The facades are stepped to relate to adjacent buildings. On the northern edge Level 4 has been set back allowing the top volume and parapet to align with 99-115 South Dowling Street. The southern end steps back in height along South Dowling Street to match the scale of the existing adjacent terraced houses.

(c) to promote the sharing of views:

There will be no adverse amenity impacts to the properties located in the surrounding area in terms of views as a result of the breach of the height standard.

Objectives d and e, which relate to Central Sydney and Green Square, do not apply.

- b. That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The site has been significantly altered as the result of the earth works and excavation conducted in preparation of the construction of the ventilation shaft for the ED tunnel running under the site. As a result, it is not possible to clearly determine ground level (existing), as defined in the SLEP 2012. The ground level has therefore been extrapolated as per the method endorsed by the Land and Environment Court in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. However, as the site formerly included the Eastern Distributor ventilation stack site, the boundary edges of the subject site must be used, rather than the footpath. This results in an exaggerated slope in the central part of the site, and much more of the building form being located above the 18m extrapolated height plane, than what would have been had it been possible to measure from the public domain at Hutchinson Place. This is illustrated in the Figures below.

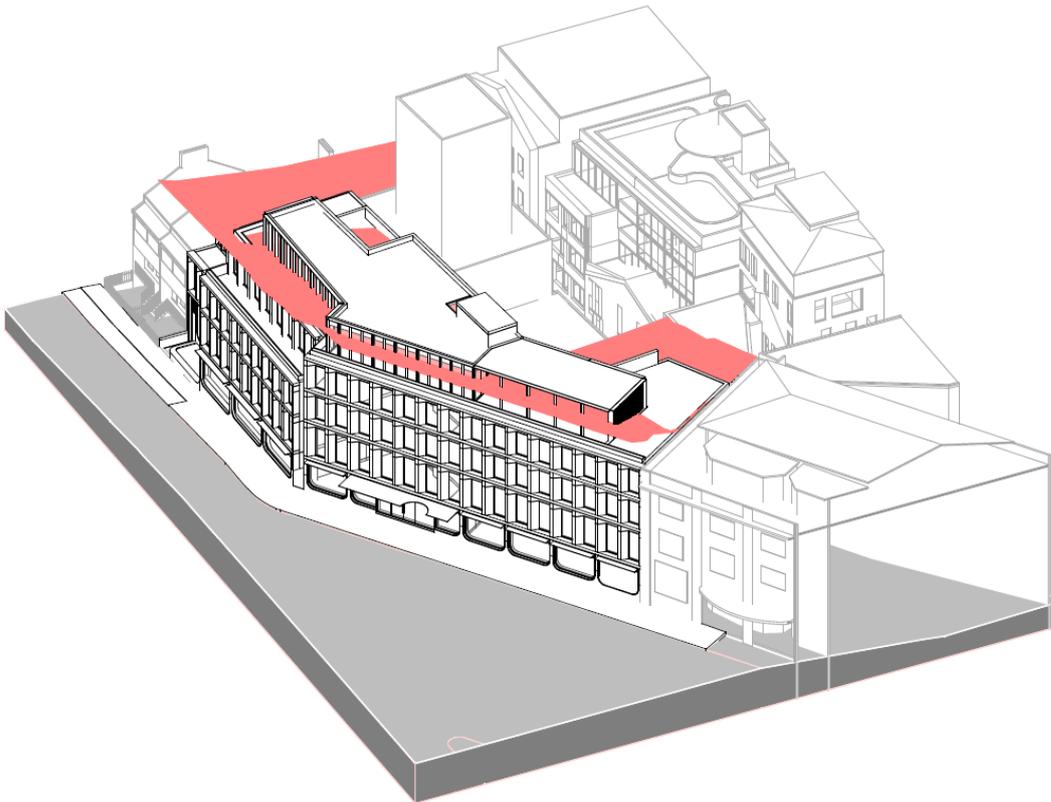


Figure 36: Axonometric drawing with extrapolated height plane calculated using site boundaries.

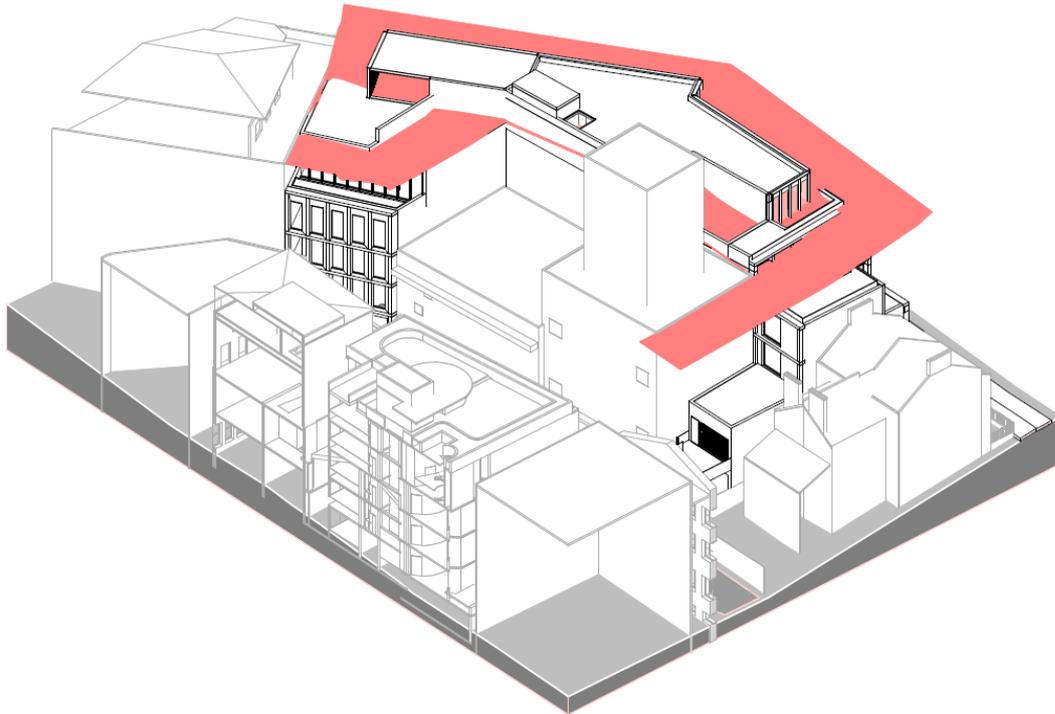


Figure 37: Axonometric drawing with extrapolated height plane calculated using site boundaries.

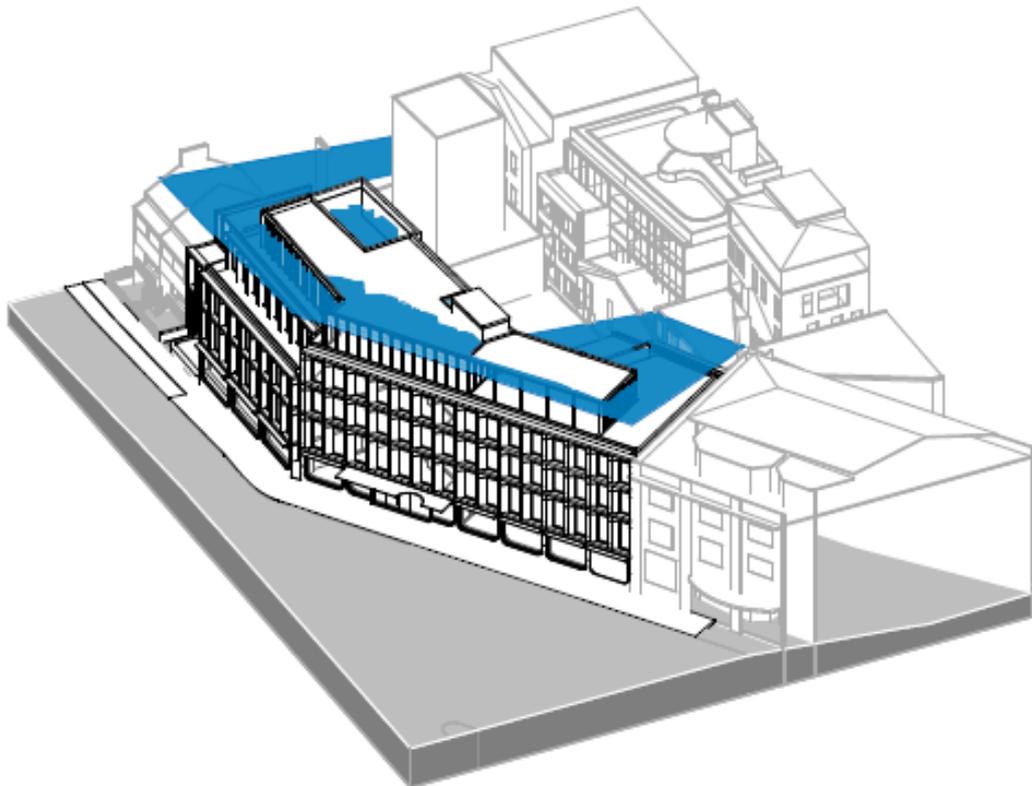


Figure 38: Axonometric drawing with extrapolated height plane calculated using public domain levels.

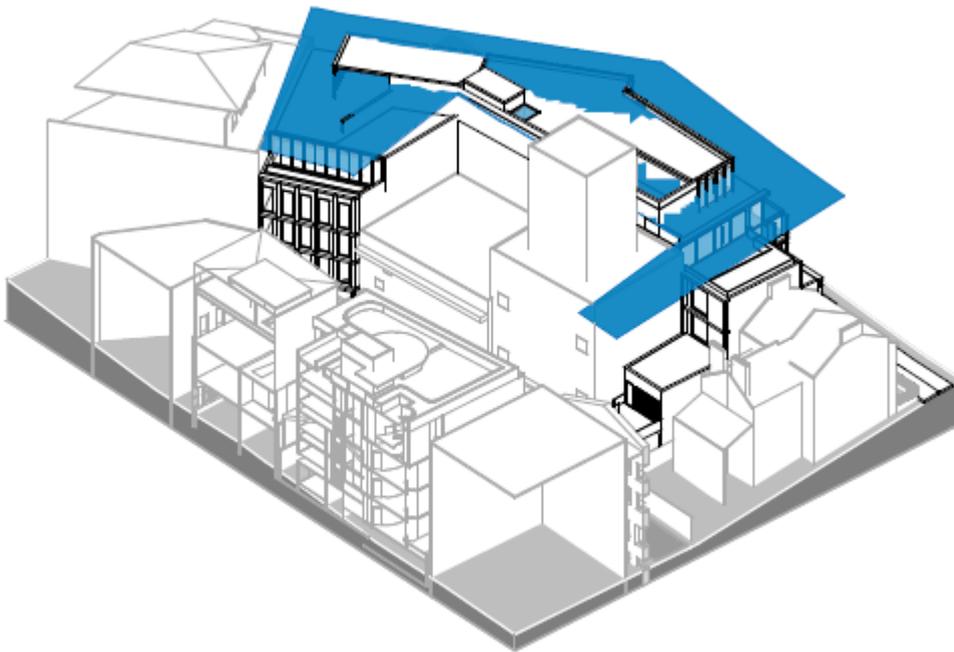


Figure 39: Axonometric drawing with extrapolated height plane calculated using public domain levels.

- (ii) If the site was in its undisturbed state, the height of the proposed building would be calculated very differently and result in a more compliant scheme where only parts of the roof structure and the lift overrun would extend above the 18m height limit. The maximum variance to the height of buildings development standard would be in the region of 10.5% (rather than 23.06% as is proposed).
- (iii) The building has been carefully sculpted at the upper levels where the non-compliance is situated in order to improve solar access when compared to the previously approved residential scheme. This is achieved, six properties negatively impacted by the previously approved residential scheme now achieving an improved outcome, and none being any more detrimentally affected.
- (iv) By providing a generous setback to the top level along the building's alignments to both Flinders Street and Hutchinson Place, the proposed elements above the maximum height plane will not result in any adverse visual impact to the surrounding area. It is considered that the top floor of the building will be visible from the surrounding public domain, but it will present as a recessive element which will not dominate the streetscape.

- c. The proposed development will be consistent with the objectives of the zone;
 - (i) The proposed development includes commercial and retail premises which are all permissible uses within a B4 Mixed Use zone. The site has excellent access to public transport being located within 600 m of the Surry Hills stop (Stop ID 2010109) of the CBD and South East Light Rail. The subject site is also within optimal walking distance of several bus services operating in the locality with the closest bus stop situated approximately 50m of the site on Flinders Street.
 - (ii) The proposed mixed-use development will assist in activating both Hutchinson Place and Flinders Street and will positively contribute to the vitality of the area, producing positive social and economic impacts.
 - (iii) For the reasons given the proposal is consistent with the objectives of the B4 zone.
- d. The proposed development will be consistent with the objectives of the standard
 - (i) The consistency of the proposed development with the specific objectives of the height of buildings development standard is addressed above.

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

41. 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)?

42. In demonstrating that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, the applicant has appropriately referred to the test established by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Specifically, the applicant has addressed the first part of the test by demonstrating that, notwithstanding non-compliance with the numerical standard, the development meets the objectives of Clause 4.3.

43. A detailed discussion with regard to the objectives of the height of buildings development standard has been provided and satisfies the test under Clause 4.6(3)(a), in that compliance with the standard is both unreasonable and unnecessary, to the extent of the variations proposed.

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

44. The applicant has satisfactorily demonstrated that there are sufficient environmental planning grounds to contravene the development standard. In particular, the existing site conditions, unique to this site, result in a steep height plane which would not easily accommodate a five-storey building as envisaged under the SDCP 2012 height in storeys control. Moreover, the upper levels of the building have been sculpted in a manner to improve solar access to surrounding properties when compared to the residential scheme previously approved by the Land and Environment Court.

Is the development in the public interest?

45. With regard to varying development standards, the public interest is deemed to be protected where a development standard meets the objectives of the zone and those of the development standard sought to be varied. As has been discussed previously, the development is consistent with the objectives of Clause 4.3 notwithstanding the variation to the numerical standard.
46. The objectives of the B4 - Mixed Use zone are provided below:
- (a) To provide a mixture of compatible land uses.
 - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (c) To ensure uses support the viability of centres.
47. The proposal satisfies these objectives in the following ways:
- (a) The proposed uses are permissible in the zone and complement the existing mix of uses on the surrounding sites.
 - (b) The site is well served by public transport, and end of journey facilities are provided to encourage active modes of transport.
 - (c) The proposal will activate a vacant site, bringing workers into the area, which will support existing local centres.
48. The development, as amended, demonstrates that the extent of non-compliance with the height of buildings development standard is consistent with the objectives of Clause 4.3 and the B4 - Mixed Use zone and is therefore in the public interest.

Conclusion

49. 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 SLEP 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.

Solar Access

50. The SDCP 2012 requires two hours of solar access to living room windows and private open spaces of surrounding residences. Where less than two hours is currently achieved, the proposal should not result in further reductions.
51. Shadow diagrams have been submitted that show levels of solar access under the existing conditions (noting the site is vacant and undeveloped), under the Court approved residential scheme, under the DCP envelope, and under the proposed development.
52. As the site is currently undeveloped, it is appropriate to analyse solar access in comparison with the approved residential scheme and the DCP envelope, rather than the existing condition. The figures below compare the form of the proposed scheme with the form of the previously approved residential scheme.

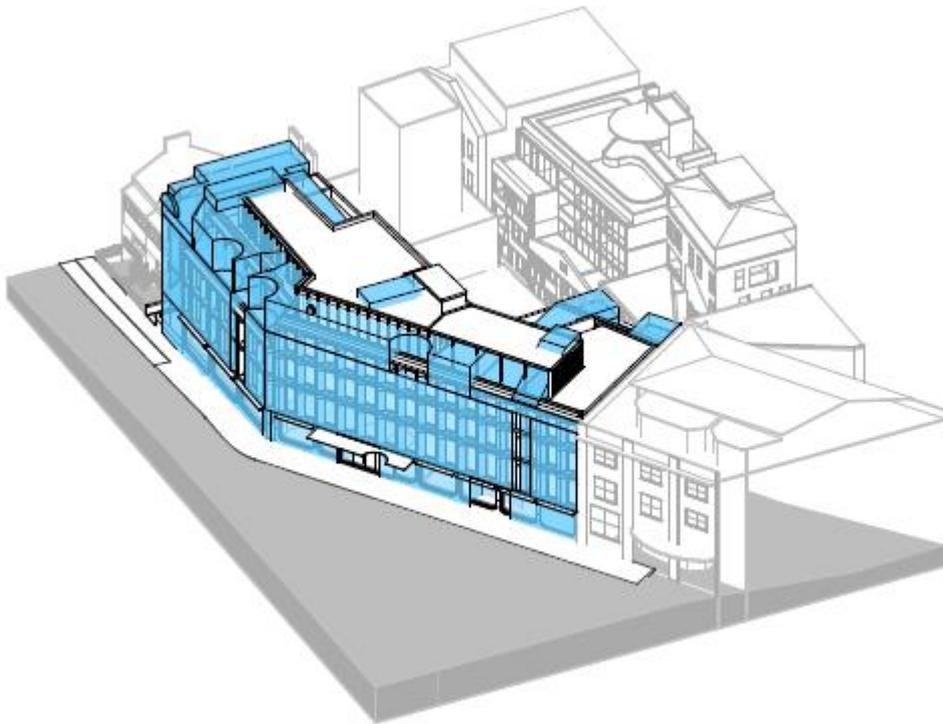


Figure 40: Axonometric drawing comparing the proposed scheme with the previously approved scheme (shown in blue)

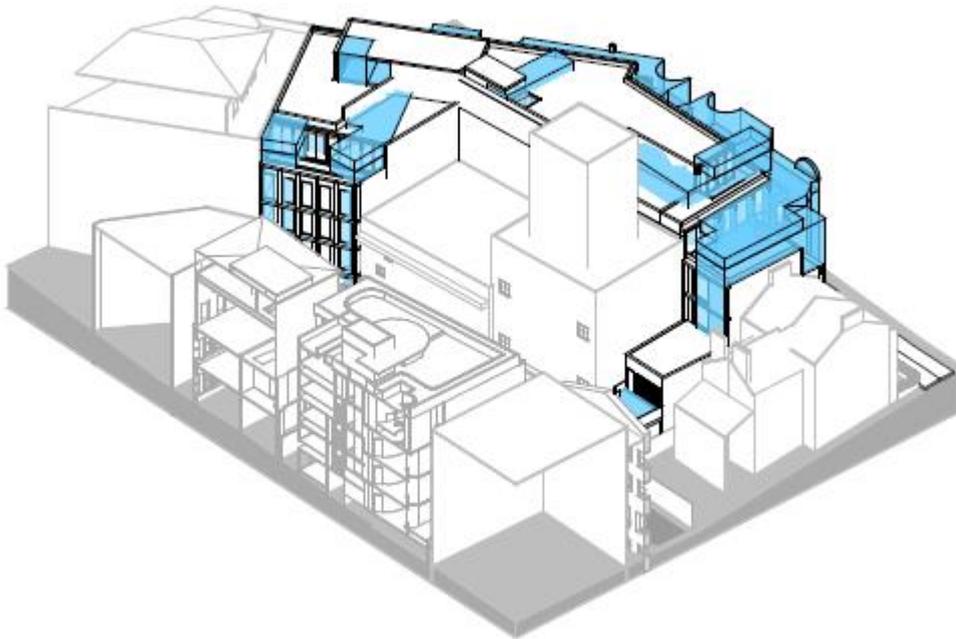


Figure 41: Axonometric drawing comparing the proposed scheme with the previously approved scheme (shown in blue)

53. The proposal changes the solar access to the living room windows of four properties, as relevant to compliance with the DCP provisions, when compared to the approved scheme at midwinter. For all these properties, solar access is improved:
- The ground floor living room window of 457 South Dowling Street, which received, which received 30 minutes under the approved scheme will now receive 1 hour and 15 minutes. The DCP envelope results in no solar access.
 - A living room on Level 2 of 26-34 Hutchinson Street, which received 45 minutes under the approved scheme will now receive one hour. The DCP envelope results in 15 minutes of solar access.
 - A living room on Level 2 of the approved yet unbuilt development at 22-24 Hutchinson Street, which received 30 minutes under the approved scheme will now receive 45 minutes. The DCP envelope results in no solar access.
 - A living room on Level 2 of the approved yet unbuilt development at 22-24 Hutchinson Street, which received no solar access under the approved scheme will now receive 15 minutes. The DCP envelope results in no solar access.
54. Levels of solar access to the private open space of the adjoining terraces at 457 and 459 Flinders Street are unchanged when compared to the approved residential scheme.

55. In summary, the proposal improves the solar access of four properties when compared to the approved scheme. While the proposal does result in some properties having solar access reduced to levels that are non-compliant with the DCP requirements, specifically properties on low levels fronting Hutchinson Place, this has come about because the site is presently vacant. This is unavoidable without the site remaining in its current undeveloped condition. The proposal improves solar access when compared to the previously approved residential scheme, and as such is acceptable despite the non-compliances with the DCP solar access provisions.

Visual and Acoustic Privacy

56. The proposal includes two terraces which have the potential to result in visual and acoustic privacy impacts. These are both situated on Level 3. One is located on the southern boundary adjacent to the adjoining terrace houses at 457-459 South Dowling Street and the other on the western boundary to Hutchinson Place. This is situated approximately 8m from bedroom windows from the approved but as yet to be constructed residential development at 22-24 Hutchinson Street. Both terraces are identified in Figure 42 below.

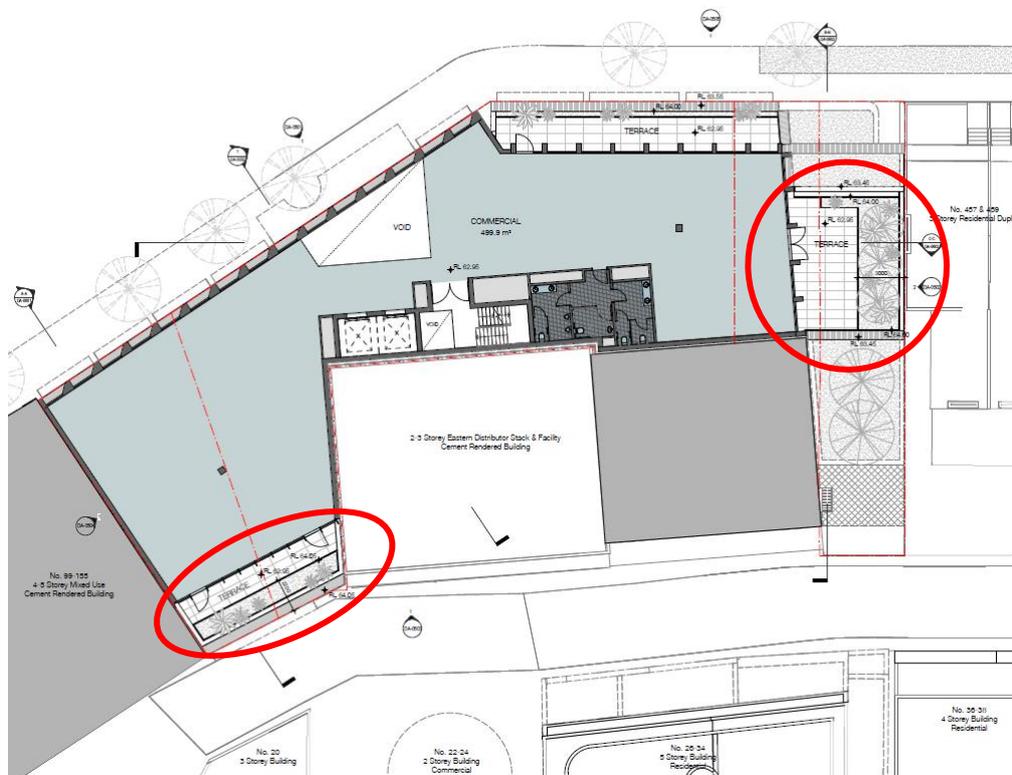


Figure 42: Proposed Level 3 terraces referred to above

57. The southern terrace may result in noise transfer and overlooking to the private open space of the adjoining terrace houses. The western terrace will facilitate overlooking into bedrooms and living spaces, and results in acoustic privacy issues. A condition of consent is recommended requiring these terraces to be deleted and replaced with non-trafficable landscaping.

Floor to Floor Heights

58. The proposed development does not achieve the minimum floor to floor heights. 4.5m is required on the lower ground floor and ground floor (as these are both 'ground level' on their respective frontages), however 3.75m and 3.6m is achieved respectively. 3.6m is required on all other floors, however 3.3m is achieved.
59. Detailed drawings have been provided to demonstrate that a 2.98m floor to ceiling height is achieved for most of the office floor plate on the upper levels. The exception is small areas under concrete beams where 2.81m is achieved and under exposed services where 2.58m is achieved. This is shown in Section in Figure 43 below. 95% of the largest office floor plate is within 9m of a source of daylight, and this is shown in Figure 44. An artist's impression of a typical office space is provided at Figure 45.

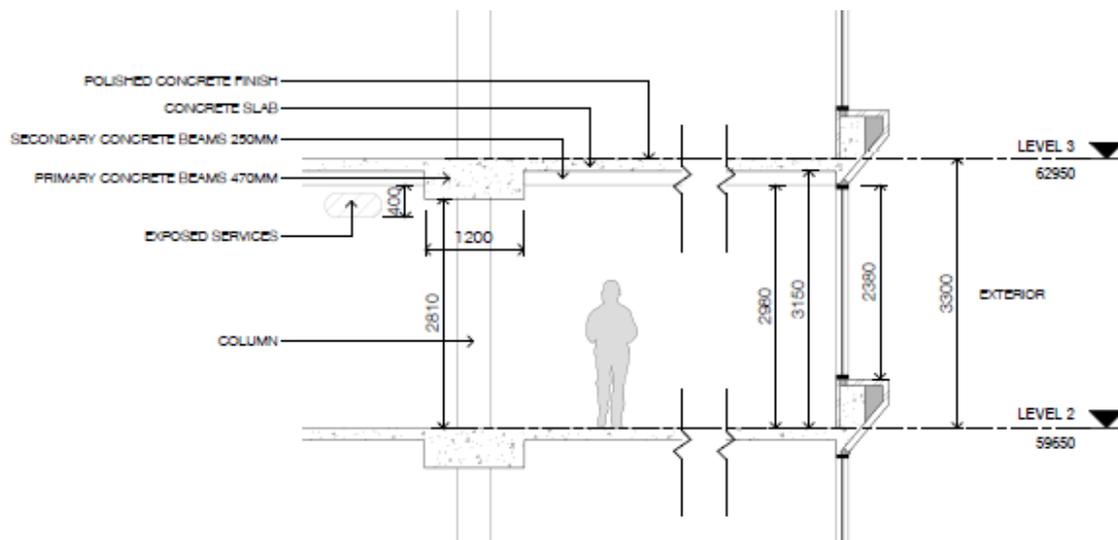


Figure 43: Indicative floor to ceiling heights with structure and services



Figure 44: Distance to light sources within the largest floor plate



Figure 45: Photomontage of indicative fit-out

60. Requiring strict compliance would increase the height of the building, further exacerbating the proposed non-compliance with the Height of Buildings development standard. Alternatively, the floor to floor heights could be increased and the top floor deleted, however this would be incongruent with the height in storeys control and would result in a considerable loss of floor space. As an acceptable level of amenity has been demonstrated, the proposed non-compliance is acceptable in the circumstances of this case.

Public Domain Interface

Active frontage

61. The proposal does not comply with the requirement to provide 70% of the ground floor frontage, with transparent glazing, providing 49.5%. Notwithstanding, the objective of on-street surveillance is achieved, and the applicant has taken steps to remove inactive elements away from the active street front. The wording of the control allows for flexibility, and strict compliance is not considered necessary in the circumstances.
62. The proposal does not comply with the requirement to provide no more than 8m of the frontage as lobby space. The lobby comprises 12m of the Flinders Street frontage. If the control was strictly enforced an irrational ground floor commercial space would eventuate, given the narrow floorplate in the centre of the site. The wording of the provision allows for flexibility and non-compliance is acceptable in this instance.

Awnings

63. The SDCP 2012 states that fixed awnings are to be provided for sites with required active frontages, however this site is not identified on the Footpath Awnings and Colonnades map. Furthermore, in accordance with Section 3.2.4 (6) of the SDCP 2012, awnings are not permitted where there is no existing continuity of awnings.
64. The original application provided fixed awnings; however, these were found to be incompatible with the existing street trees and new street trees on Flinders Street and would be required to be further setback on South Dowling Street.
65. The applicant amended the application to delete the awnings over the length of the Flinders St and South Dowling St facades, however a feature awning remains over the entrance, with a cut-out to allow for the existing tree to be retained. Minimal metal hood details are maintained at the top of the ground floor windows to provide shading and accentuate the architectural character of the building.
66. While the feature awnings are considered acceptable, cut outs (as proposed for the lobby entry awning) are not permitted. A condition of consent is recommended requiring this awning to be set back to be in line with the other feature awnings.

Heritage

67. The site is not a heritage item and is identified as a detracting item within the Bourke Street North Heritage Conservation Area (C59).
68. There are a number of heritage items in the vicinity however none are directly adjoining. The adjoining terraces at 457-459 South Dowling Street are contributing items.

69. The proposal includes excavation to an estimated depth of RL 46.66, which is a depth of between 3.84 and 1.44m across the site. As per Section 3.9.13 of SDCP 2012, excavation buildings in heritage conservation areas will only be permitted if it is supported by both a Geotechnical Engineering Report and a Structural Engineering Report. These reports were submitted with the amended application. The reports find that there may be some minor excavation within the zone of influence of the footings of the adjoining buildings, and that the existing footings of the adjoining buildings may need to be underpinned. These works can potentially be carried out solely within the boundaries of the subject site. A condition of consent is recommended requiring dilapidation reports of potentially affected properties to be carried out prior to the issue of a construction certificate.
70. Council's heritage officer recommended that the facade of the proposed building, where it is adjacent to the terraces at 457-459 South Dowling Street, be set back a further 300-400mm at each level to align with the face of the terraces. Currently it aligns with the extent of the boundary blade walls and infilled first floor balcony, before stepping out to the boundary further north (refer to Figure 46 below). Planning officers have elected not to require this increased setback because the current alignment provides a transition between the terraces and the principal alignment of the building, which is to the street boundary, without stepping forward of the maximum alignment of the terraces. It also serves to obscure the northern face of the blade wall, which is currently unfinished. It is therefore acceptable.

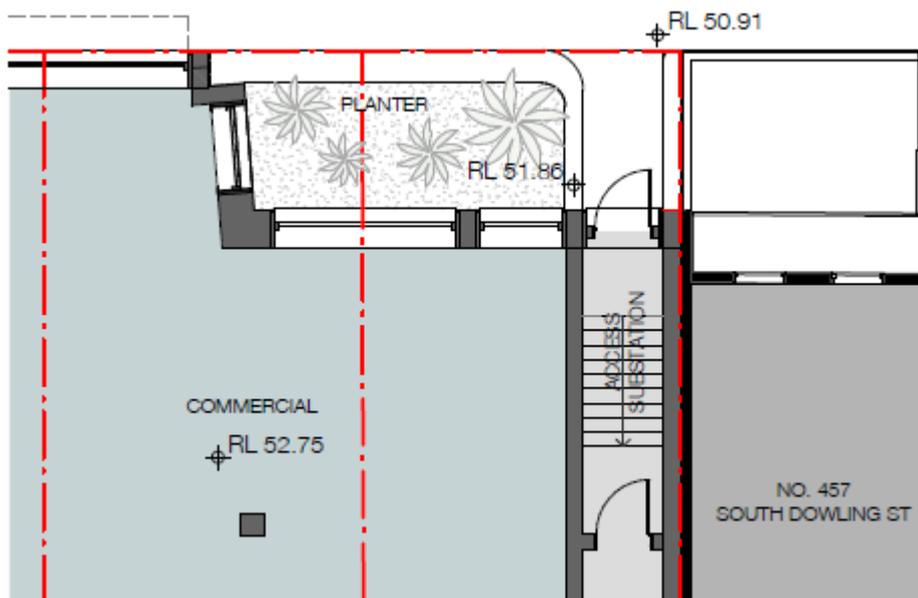


Figure 46: Building alignment (ground level), adjacent to 457 South Dowling Street

71. Council's Heritage officer has also identified that the flashing required between the proposed building and 457 South Dowling Street has the potential to be highly visible. Accordingly, a condition of consent is recommended requiring details to be submitted to Council for approval prior to the issue of a Construction Certificate to ensure this element is not detracting.
72. There are historic pavement lights on the Flinders Street footpath. A condition of consent is recommended requiring their retention.

73. In summary, the proposal is capable of being carried out without undue impact to the Heritage Conservation Area, and is supported from a heritage perspective subject to the recommended conditions of consent.

Hours of Operation

74. The proposal includes a retail premises on the lower ground level with frontage to Hutchinson Place, and outdoor terraces associated with the office uses on the upper levels.
75. The proposed hours of operation of the lower ground floor retail is proposed to be between 8.00am and 10.00pm daily. Hours of operation for the outdoor terraces are not specified.
76. While the final use for the lower ground retail premises is not yet known, it may potentially be a Category B low impact premises. The office premises may also allow the consumption of alcohol, without requiring a licence, so it too is a potential Category B premises.
77. The site is not within a Late-Night Trading Area. The SDCP 2012 permits Category B premises to trade indoors between 7am to 10pm. The proposed hours of the retail premises are consistent with this and are therefore recommended for approval.
78. The DCP permits outdoor areas to trade between 7am and 8pm, with 10pm permissible subject to a trial. As the outdoor terraces have the potential to result in neighbourhood disturbance if not appropriately regulated, a condition of consent is recommended limiting their use to the base outdoor hours of 7am to 8pm.

Consultation

Internal Referrals

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

External Referrals

Ausgrid

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

Transport for NSW

82. Pursuant to Clause 103 of the SEPP (Infrastructure) 2007, the application was referred to Transport for NSW (TfNSW) for comment.
83. Comments were received on 17 December 2020. Conditions of consent were recommended which are included in the recommended conditions of consent.

Advertising and Notification

84. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 19 November 2020 and 11 December 2020. A total of 382 owners/occupiers were notified and three submissions were received.
85. The submissions raised the following issues:
- **Issue:** The proposed building should be taller to obscure views to the Eastern Distributor Ventilation Stack.
 - **Response:** The proposed height exceeds the maximum permissible. While the proposed height is considered acceptable for the reasons outlined elsewhere in this report, additional height would result in negative impacts including overshadowing. It would also result in a built form that is incongruent with other neighbouring developments.
 - **Issue:** Care should be taken during construction not to damage the waterproof membrane applied to the southern wall of 99-115 Flinders Street. Any damage, including damage from resulting water ingress, should be fully remediated by the developer. The interface should be constructed in a manner to prevent water from entering the interface between the buildings.
 - **Response:** A condition of consent is recommended requiring flashing between adjoining properties. A further condition is recommended requiring dilapidation reports to be prepared is also recommended. Any issue arising as a result of the construction is a civil matter between the relevant parties and is not a matter for consideration in the assessment of this application.
 - **Issue:** The only stormwater drain for one of the balconies at 99-115 Flinders Street is a water spitter through the southern wall, which will need to retain its functionality during and after the construction. The developer should be responsible for the execution and cost for all required works required to retain the stormwater drain functionality currently provided by the water spitter.
 - **Response:** It is not lawful to discharge stormwater on to an adjoining site without an easement. If the functionality of the water spitter is impacted during or after construction, this is a civil matter to be resolved between the two parties.
 - **Issue:** A dilapidation survey should be carried out and any damage that occurs as a result of the construction should be remediated in full by the developer at their cost.
 - **Response:** A condition of consent is recommended requiring dilapidation reports to be carried out. Any issues that arise as a result of damage construction activities are a civil matter between the relevant parties.

- **Issue:** Vehicular access to 99-115 Flinders Street should be maintained throughout construction.
- **Response:** A condition of consent is recommended requiring a Construction Traffic Management Plan (CTMP) to be prepared and endorsed prior to the issue of a Construction Certificate. It may not be feasible for access to be maintained at all times, however the purpose of the CTMP is to ensure that any disruptions, if required, are minimised.
- **Issue:** During the period between the granting of development consent and completion of the construction, an open communication line between adjoining owners and the developers should be established to address and resolve any issues that may come up.
- **Response:** A condition of consent is recommended requiring the establishment of a construction liaison committee.
- **Issue:** Balconies on the southern boundary have the potential to result in adverse impacts to the occupants of the terraces at 457-459 Flinders Street.
- **Response:** Agreed. A condition of consent is recommended requiring the southern balcony to be deleted and replaced with non-trafficable landscaping.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

86. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
87. A condition relating to this development contribution has been included in the recommended conditions of consent. As the development cost exceeds \$10m, the condition requires the contribution to be paid prior to the issue of an occupation certificate.

Relevant Legislation

88. Environmental Planning and Assessment Act 1979.

Conclusion

89. The application seeks development consent for the construction of a commercial office building with lower ground floor retail. The proposal generally complies with the provisions of the SLEP 2012 and SDCP 2012, with the notable exception being non-compliance with the Height of Buildings development standard.
90. A Clause 4.6 variation request has been submitted with the application, and it has been adequately demonstrated that compliance with the development standard is unnecessary and unreasonable in the circumstances of the case.
91. Other non-compliances are demonstrably acceptable for the reasons outlined elsewhere in this report. Conditions of consent are proposed to remedy outstanding issues.
92. The proposal is supported, subject to the recommended conditions of consent.

ANDREW THOMAS

Executive Manager Planning and Development

Christopher Ashworth, Area Coordinator