

Item 6.

**Development Application: 413-415 Sussex Street and 82-84 Dixon Street,
Haymarket - D/2020/1386**

File No.: D/2020/1386

Summary

Date of Submission:	21 December 2020
Applicant:	Mr. Zirong Zhao
Architect/Designer:	PTW Ltd
Developer:	Mecone Ltd
Owner:	Mr. Zirong Zhao
Planning Consultant	Mecone Ltd
Heritage Consultant	Weir Phillips Heritage and Planning Ltd
DAP	11 March and 17 June 2021
Cost of Works:	\$51,914,999
Zoning:	B8 Metropolitan Zone. Proposal permitted with consent.
Proposal Summary:	<p>The application includes the demolition of the existing building at 413-415 Sussex Street and the construction of a 17- storey mixed use development with two basement levels and a communal rooftop garden. The proposal includes 306 student boarding rooms and four levels of retail provision together with conservation works to the existing locally listed heritage buildings at 82-84 Dixon Street. Levels 2 and 3 of number 84 Dixon Street are proposed as a public purpose (museum) to be secured through a voluntary planning agreement that recognise the buildings heritage significance and connections with the Chinese migrant community.</p> <p>The application is referred to Central Sydney Planning Committee as the cost of the development exceeds \$50 million.</p>

The application was notified between 5 January 2021 and 8 February 2021. Eleven (11) submissions were received. Issues raised in submissions include concerns about the protection of the heritage items together with their contents at 82-84 Dixon Street.

The application has been considered by the Design Advisory Panel on two occasions - 11 March 2021 and 17 June 2021.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)
- (iv) State Environmental Planning Policy No 55 - Remediation of Land
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vi) State Environmental Planning Policy (Infrastructure) 2009

Attachments:

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

Recommendation

It is resolved that:

- (A) the requirement of Section 51N of the City of Sydney Act 1988 to consult with the Central Sydney Traffic and Transport Committee not apply in this instance as the proposal does not require, nor might reasonably be expected to require, the carrying out of road works or traffic control works that are likely to have a significant impact on traffic and transport in the Sydney CBD;
- (B) the variation requested to the height of buildings standard and motorcycle parking standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (C) the requirement under Clause 6.21 of the Sydney Local Environmental Plan 2012 requiring a competitive design process is considered unreasonable or unnecessary in the circumstances;
- (D) the requirement under Clause 7.20 of the Sydney Local Environmental Plan 2012 requiring a preparation of a development control plan is considered unreasonable or unnecessary in the circumstances; and
- (E) 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/2020/1386 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the B8 Metropolitan Zone.
- (B) The proposal generally satisfies the relevant controls relating to student accommodation and boarding house uses.
- (C) The development conserves two traditional shops and conserves in perpetuity an existing space and chattels of historic significance, with public access, held in high regard by the Chinese community.
- (D) The proposal, subject to conditions, satisfies the provisions of clause 6.21 of the Sydney LEP 2012.
- (E) Based upon the material available to the Committee at the time of determining this application, the Committee 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;

- (ii) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 29 of the ARHSEPP, that compliance with motorcycle provision standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify no motorcycle provision: and
- (iii) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 29 of the ARHSEPP, that floor space bonus applies to the site; and
- (iv) the proposal is in the public interest because it is consistent with the objectives of the B8 Metropolitan zone.

Background

The Site and Surrounding Development

1. The site includes two sites: 413-415 Sussex Street and 82-84 Dixon Street, Haymarket. The site has a legal description of Lot 1 DP 61997/Lot 1 DP 68556/Lot 1 DP 66034, known as 413-415 Sussex Street and 82-84 Dixon Street Haymarket. It is irregular in shape with a combined area of approximately 1,236.5sqm. It has a primary street frontage of 37m to Dixon Street, a primary street frontage of 13m to Sussex Street and a secondary frontage to Little Hay Street of 54m. The site is located close to the intersection of Little Hay Street and Dixon Street, Haymarket and is relatively flat.
2. 413-415 Sussex Street is the former Anthony Hordern and Co warehouse which is currently being used as a four-storey commercial/retail building with one level of basement containing a food court. 82-84 Dixon Street comprises two three-storey heritage listed buildings (I2293) which are currently vacant. The listing reads: 'Former Kwong War Chong and Co building, including interiors and contents of 84 Dixon Street'.
3. 82-84 Dixon Street is historically significant as a highly intact early 20th century Chinese Australian shop, associated store and accommodation – the 'Kwong War Chong' building. It is one of the earliest Chinese-owned buildings in Dixon Street, which developed into a Chinese precinct and is now the centre of Sydney's Chinatown. The building is highly significant for its strong social association with the Chinese diaspora communities of Sydney and New South Wales in the early 20th century. The Kwong War Chong company, which commissioned and was headquartered in the building, formed part of an extensive network of business industrial and social relations among Chinese Australians in this period. This significance is embodied in the facade of the building, and in the interior of 84 Dixon Street – including shop front, partitions, doors, stairs, and hand-operated goods lift and the historic ephemera contained within the building which includes packing-crate furniture, washing machines, bathtubs, calendars, crockery, merchandise, and personal effects.
4. The subject site is located in the Sydney CBD within the B8 Metropolitan Zone. Surrounding buildings are low to high-rise buildings containing a mix of different uses including retail, commercial and residential.
5. The site is not located in a Heritage Conservation Area but is located within Haymarket and Chinatown Special Character Area. The site is identified as being subject to flooding.
6. A site visit was carried out on 11 January 2021. Photos of the site and surrounds are provided below:

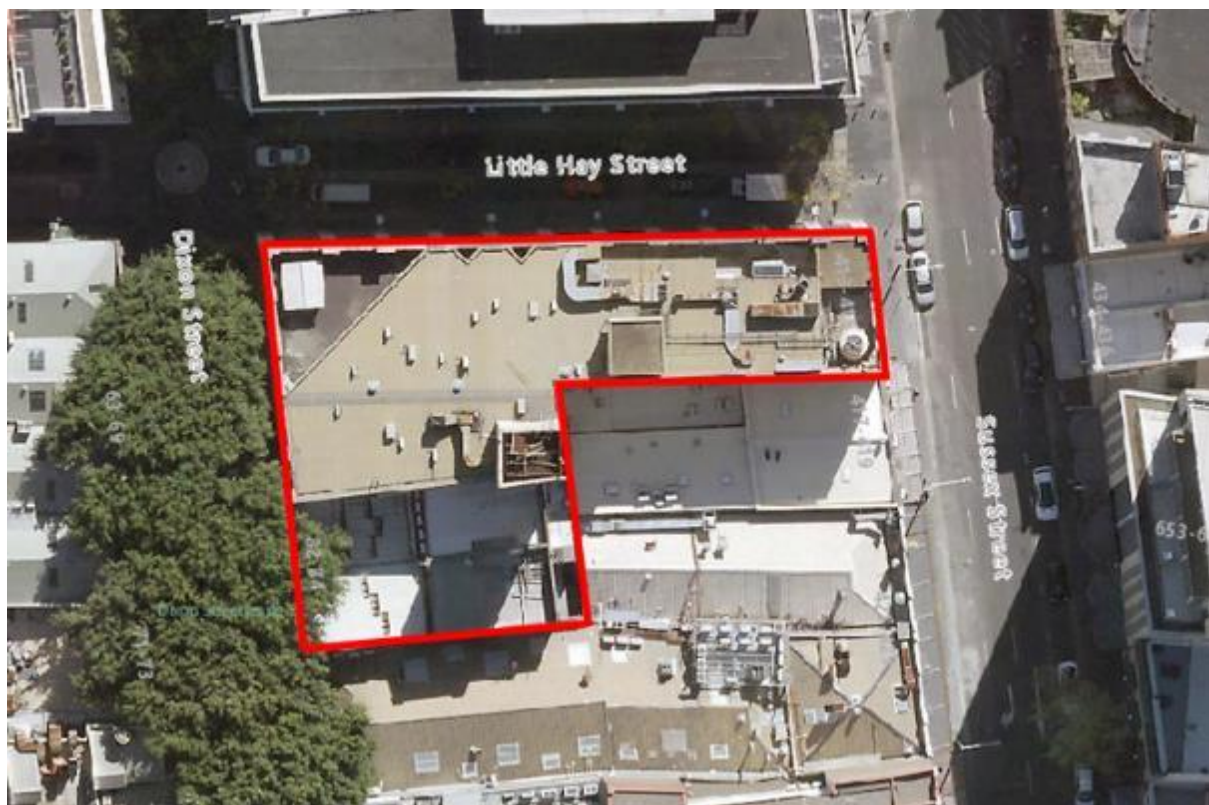


Figure 1: Aerial view of site and surrounds

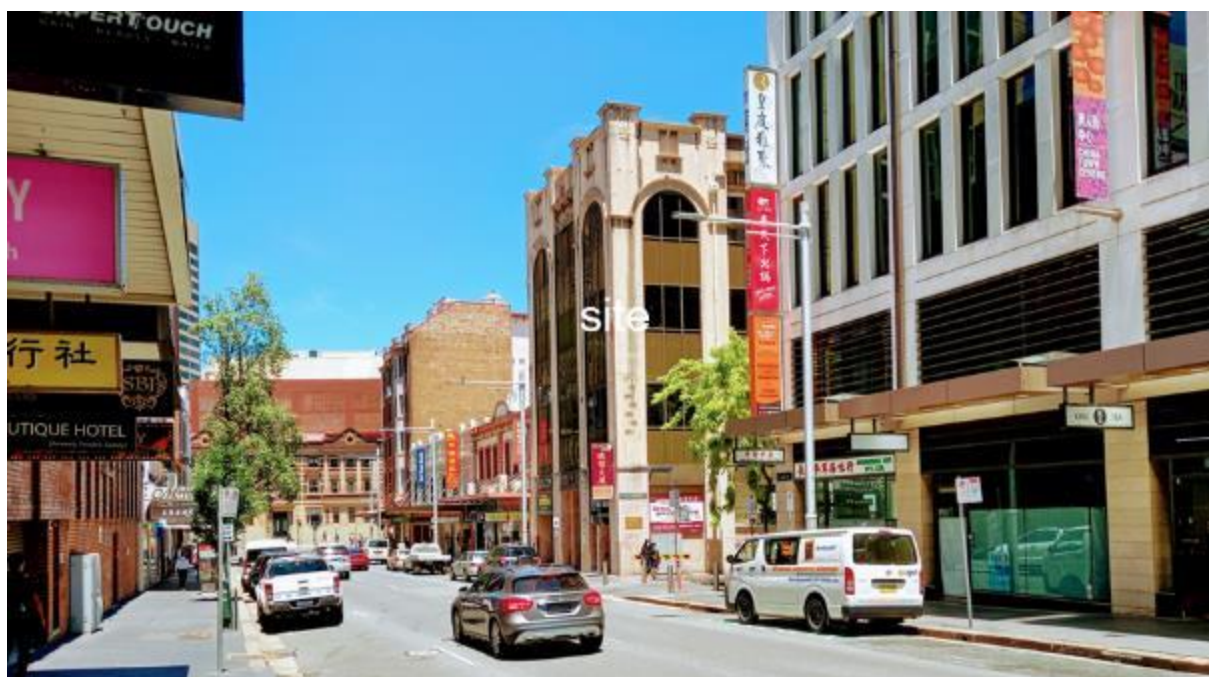


Figure 2: Existing former Anthony Hordern and Co warehouse building at 413-415 Sussex Street



Figure 3: 413-415 Sussex Street at intersection of Sussex Street and Hay Street



Figure 4: Existing building at 413-415 Sussex Street at Little Hay Street



Figure 5: 413-415 Sussex Street at intersection of Dixon Street and Little Hay Street



Figure 6: View of position of site near southern entrance to Chinatown



Figure 7: View of existing 'Former Kwong War Chong and Co' heritage listed buildings at 82-84 Dixon Street

Amendments

7. The application was considered by the Design Advisory Panel (DAP) on 11 March 2021 and again on 17 June 2021. The key recommendations from the panel were:
 - (a) The Panel commended the efforts to retain and conserve the heritage buildings and their contents.
 - (b) The Panel noted that the development of this site would have a significant impact on the character of Dixon Street and Chinatown.
 - (c) When first viewed prior to amendments, the Panel did not support the proposed full height glazing at the ground floor. The street elevations were considered weak and did not respond to the urban context which needs to be respected. As with the rest of the streetscape character of Chinatown / Haymarket the shopfronts should incorporate substantial masonry elements. This would help bring definition to the shopfronts. The ground floor should have a fine grain rhythm that respects its context and maintains the diversity of the experience of the street.
 - (d) The Panel recommended that the public areas and lobbies be redesigned to accommodate universal access, noting before redesign, they lacked generosity and legibility. The proposed historic space on Level 1 needs to be legible and have a more civic street entry.
 - (e) The blank faced wall on Sussex Street needs design articulation.

- (f) The amenity of several of the rooms was poor and needed to be thoroughly reviewed.
 - (g) The Panel noted that Peter McGregor's artwork 'Heaven and Earth' should be included in the photomontages for the proposal. If affected by the proposal, they are required to be reinstalled as part of the consent.
 - (h) Prior to amendments, the Panel questioned the articulation of brick at the top levels, the detailing of the precast/ brick panels, and the design of the solid brick elements which appear to be suspended in space.
8. The request for additional information and amendments was sent to the applicant on 23 March 2021. The applicant responded to the request on 3 June 2021 and submitted an amended scheme which the Design Advisory Panel reviewed at the meeting on 17 June 2021. Panel members acknowledged that the amended scheme as detailed below was a significant improvement and adequately addressed the following improvements:
9. Facade/Podium
- (a) reduction in the level of glazing at podium level
 - (b) incorporation of substantial masonry elements to achieve fine grain rhythm that respects its context
 - (c) facade amended to be a modern interpretation of the fine grain original lot subdivision pattern of the Haymarket/Chinatown Special character area
 - (d) alignment of facade columns with internal walls at ground level
 - (e) the facades respect the proportions with high quality materials proposed, including a high degree of modelling in three dimensions on the ground plane
 - (f) relocation of the H/SBV to Little Hay Street frontage to improve the amount of active frontage to Sussex Street
 - (g) layout of retail and student lobby fronting Little Hay Street mirrored
 - (h) 2 x roller doors replaced with double swing metal doors
 - (i) access and service doors made equivalent in design and quality to the ground level façade system.
10. Entry Experience / Lobbies / Interface with 82-84 Dixon Street
- (a) lift 5 provided for access to 82-84 Dixon Street with only DDA access to new building;
 - (b) fire stair alcove fronting Little Hay Street changed to a single width egress
 - (c) reductions in retail area have been made overall which improves circulation
 - (d) inadequate sized retail areas behind lift 5 replaced with storage areas
 - (e) services relocated at basement level 1 away from the stair entrance

- (f) no level change to 82-84 Dixon Street and removal ramp introduced to allow access
 - (g) consistent floor to floor heights throughout levels 1 and 2 of the new building removing the requirements for chairlifts and stairs.
11. Southern/ Light Well Blank Walls
- (a) The revised design is precast concrete and incorporates an integral colour into the concrete which matches the predominant facade material and provides design articulation to the facade.
12. Room Amenity / Communal Internal Living Space / Boarding Manager
- (a) boarding house manager's room has been relocated to level 3 (room 301)
 - (b) rooms 301 and 401 have been replaced as communal indoor space
 - (c) removal of non-compliant rooms at rear relying on lightwells
 - (d) reduction of rooms from 336 to 306.
13. Peter McGregor's artwork 'Heaven and Earth'
- (a) Structural support for the re-instatement of the existing public art is indicated on the plans and elevations together with photomontages and relevant conditions for storage during construction and re-instatement in accordance with conditions from the Council's Public Art and Public Domain units.
14. Materiality and Detailing
- (a) Brick tile has been replaced by real brick construction to the podium and brick inlay precast to the tower.
 - (b) All external materials including manufacturer's detail, material type, finish and colour are accurately specified on the materials and finishes board. All elevations/sections include material keys.
 - (c) Careful detailing of the brick inlay precast is proposed for the tower together with consideration of panel layout to avoid awkward panel relationships.
15. Windows are to be recessed to the back face of all external walls
- (a) Brick inlay is to wrap into window reveals and around all corners.
 - (b) The details reflect the above brick system comments and addresses how the acute angles proposed in the tower design will be achieved.
16. Ventilation
- (a) Details of how the horizontal exhaust from each room will integrate into the brick façade has been provided demonstrating BCA compliance and design excellence with a small bulkhead at window head and bulkhead depth illustrated.

Additional DAP comments following June DAP meeting with responses

17. The Panel noted that only four units have private open space, which does not comply with the 30% requirement for the total development. However, the communal open space provision far exceeds the required amount.

Response: Officers deem this is a satisfactory outcome. The justification for shortfall in units with individual areas of private open space is because of the type of student accommodation being provided not requiring individual private open space and offset by 478sqm of high quality communal open space which is more suitable for students.

18. Noting that the proposal has worked more masonry into the design and podium floors now match the site's retained heritage building's floor levels, the Panel recommended that, given some ambiguity in the presentation material, ensuring differentiation in the scheme's two proposed brick types would result in a better aesthetic outcome.

Response: Full specifications of materials have been provided and indicated on the plans in accordance with DAP requirements. Notwithstanding, full details of materials are required by condition.

19. The floor-to-floor dimensions, while compliant, are tight. Particularly in relation to studio living areas with bulkheads above windows. Bulkheads have been provided for bathroom exhausts. The Panel suggested that the proponent investigate vertical grills to remove the bulkhead and improve internal unit amenity.

Response: The suggested bulkheads meet the urban design specialist requirements and are BCA compliant. Vertical grills will affect the floor area of the rooms. The room type indicated with bulkheads is on floors 6-16 which have a slightly less floor to floor height of 2.95m. To increase this would further increase the height of the building.

20. Window operations, sun shading and outlook all need to be carefully analysed. Use of performance glazing to generally achieve thermal comfort is not ideal. Passive controls would be a better option. However, the Panel understood that use of the performance glazing has resulted in a better overall design outcome.

Response: Proposed glazing with mechanical ventilation meets the requirement for student housing provision and is BCA compliant. Therefore, there is no justification to request further changes.

21. Given the proposal's height, the Panel questioned why the scheme did not go through the competitive design excellence process. The Panel noted that it was a trade-off. Council supported listing of the heritage item on the site and its use as a Chinese cultural centre. Council supported an additional level in exchange for this, and consequently did not insist on a competitive design process.

Response: The justification for the increase in height is to absorb permissible FSR from 82-84 Dixon Street which cannot be developed as a result of their heritage listing. The height above 55m, being the height above which a competitive process is required, is limited to an integrated architectural roof feature and parapet wall.

Proposed Development

22. The application seeks consent for the following:

- (a) demolition of existing building at 413-415 Sussex St and construction of a 17 storey mixed use development including:
- (b) four levels of retail with student accommodation (306 rooms)
- (c) two basement levels
- (d) communal roof top
- (e) conservation works to existing heritage buildings at numbers 82-84 Dixon Street
- (f) dedication of Level 1 and 2 of 84 Dixon Street as a public purpose to be secured through a voluntary planning agreement that recognise the buildings heritage significance and connections with the Chinese migrant community.

23. Plans and elevations of the proposed development are provided below:

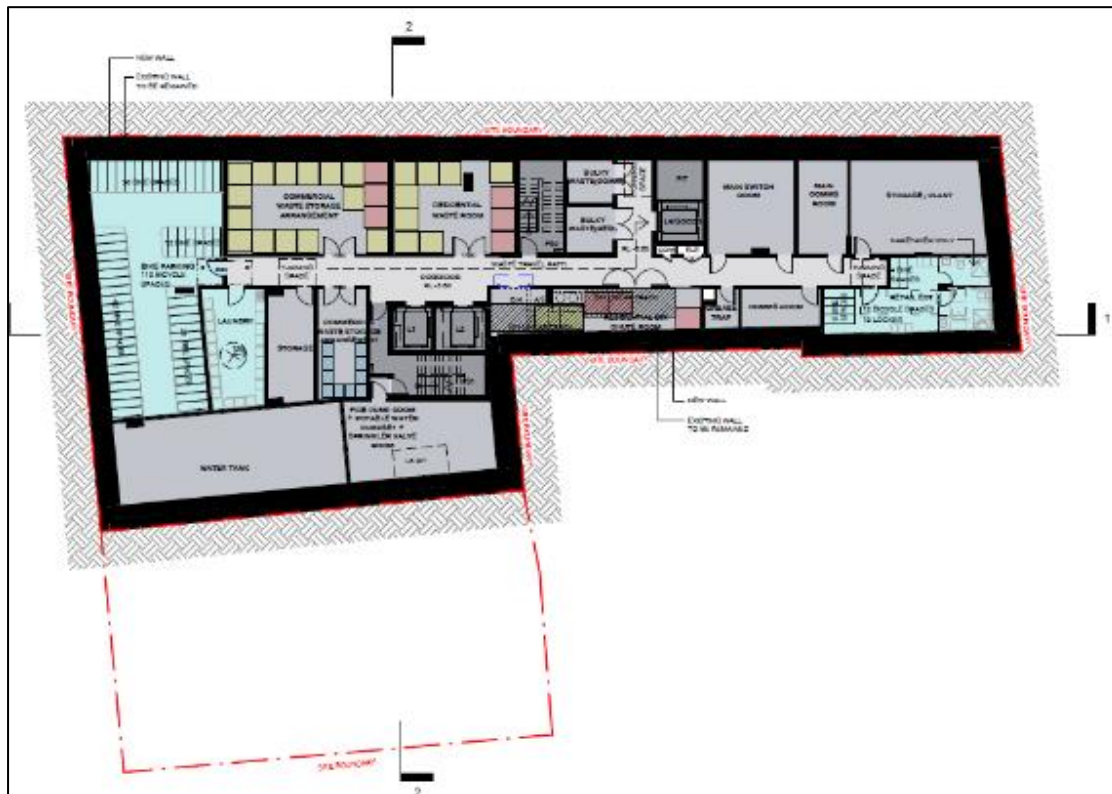


Figure 8: Proposed basement level 2

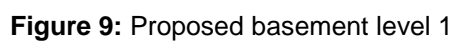




Figure 11: Proposed level 1

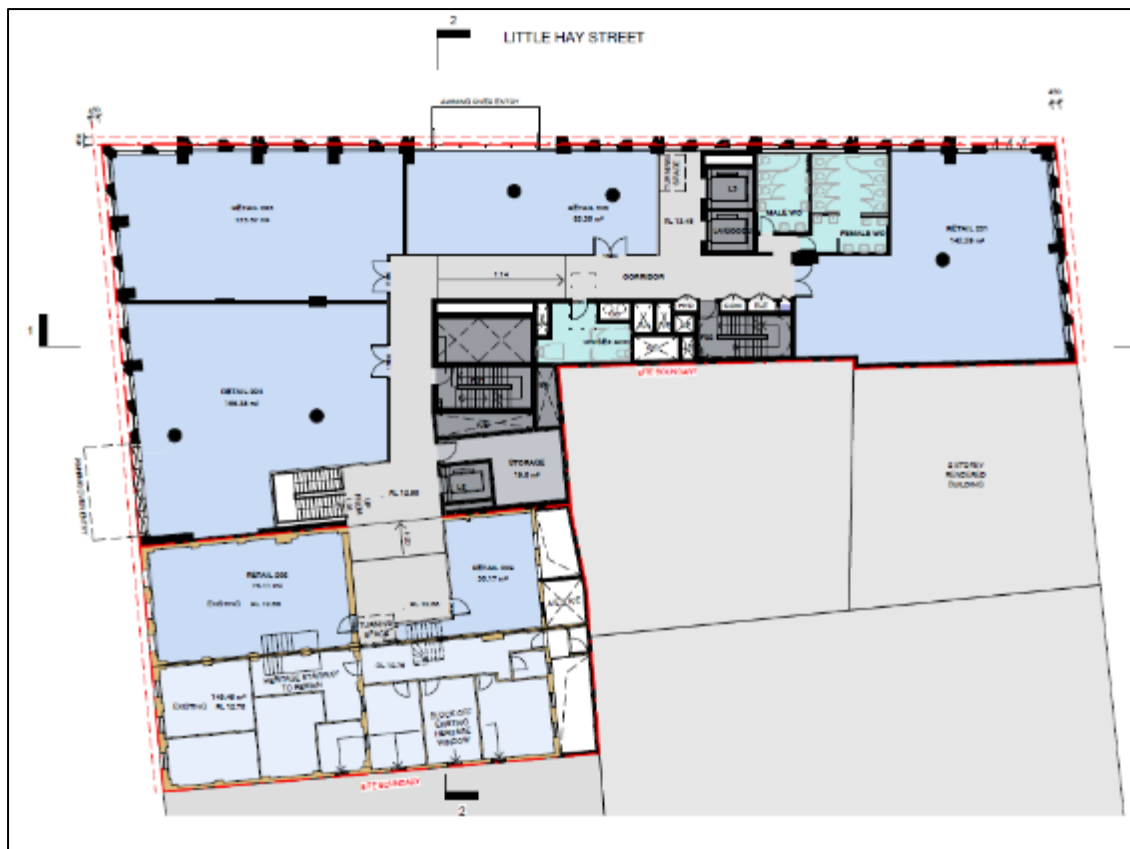


Figure 12: Proposed level 2





Figure 15: Proposed level 5



Figure 16: Proposed level 6-16



Figure 17: Proposed level 17



Figure 18: Proposed roof plan

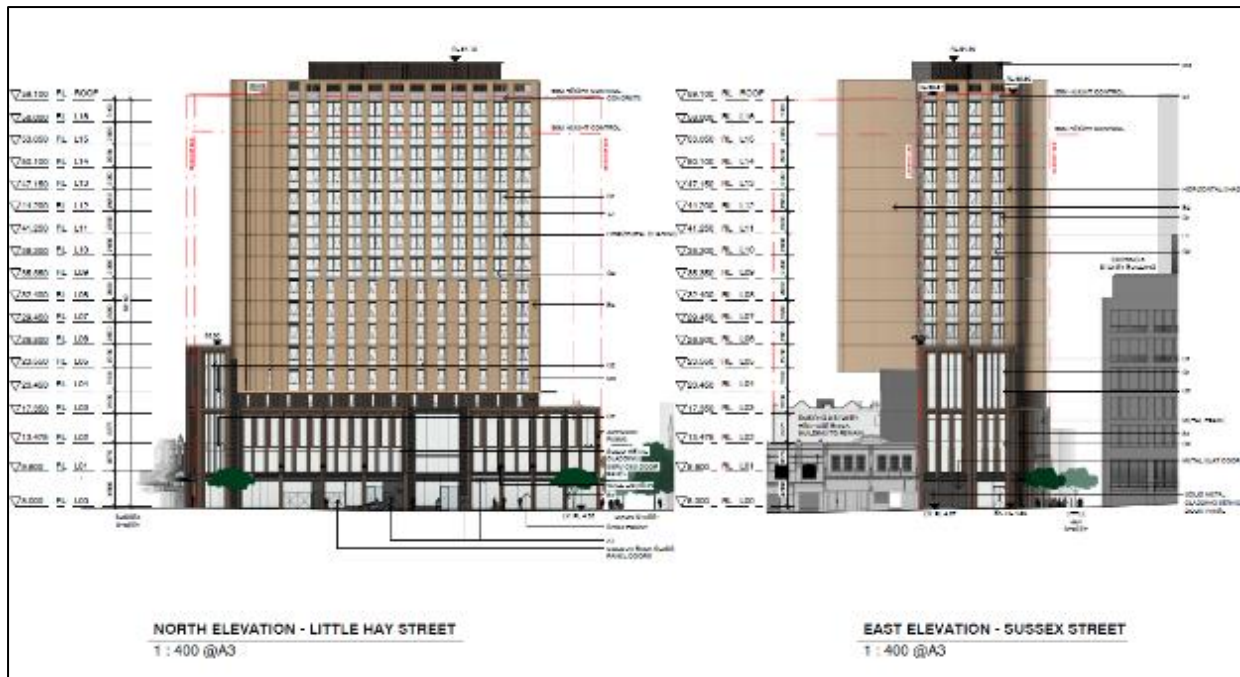


Figure 19: Proposed north-east elevations

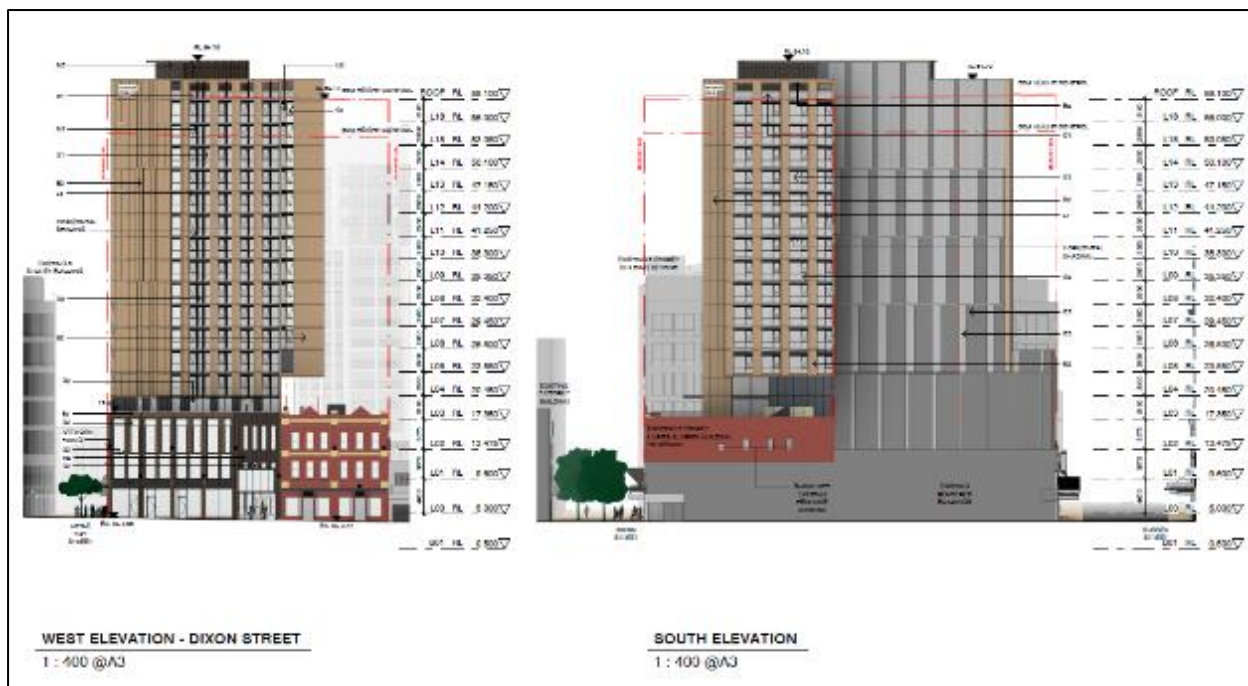


Figure 20: Proposed west/south elevations

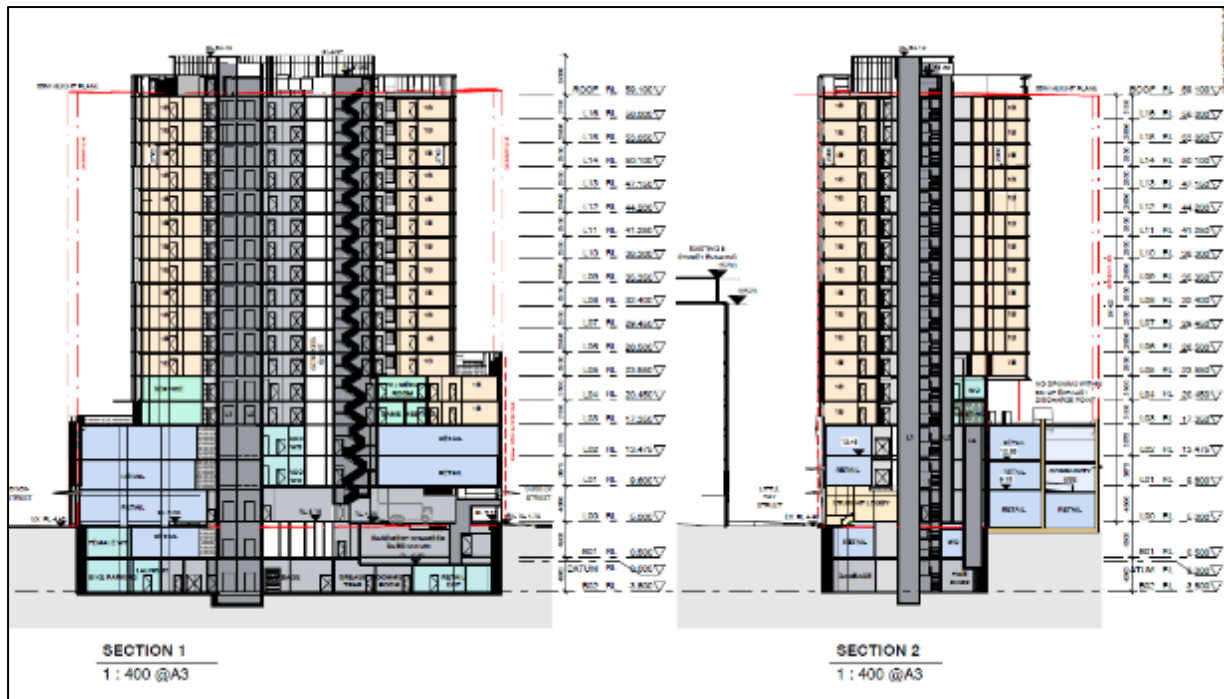


Figure 21: Proposed Sections



Figure 22: Proposed elevations of 82-84 Dixon Street



Figure 23: Proposed Dixon Street perspective



Figure 24: Amended perspectives Dixon Street



Figure 25: Amended perspectives Little Hay Street



Figure 26: Amended perspective Sussex Street

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. A Preliminary Site Investigation (PSI) and a Detailed Environmental Site Investigation (DESI) have been undertaken. The reports conclude that the risk of contamination is low and that the site is suitable for the proposed development.
27. Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Affordable Rental Housing) 2009

28. 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

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

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

Provision	Compliance	Comment
<p>1 Density and scale expressed as floor space ratio</p> <p>The site is subject to a 7.5:1 FSR control with up to an additional 1:5:1 for accommodation floor space under the Sydney LEP 2012. The accommodation floorspace is to be reduced proportionally depended on the mix of uses within the development giving a maximum floor space of 8.565:1.</p> <p>Under the ARHSEPP a 20% bonus is allowed on sites that do not contain a heritage item. The development site consists of three components. The two Dixon Street buildings which are heritage items and the Sussex Street building which is not. The 20% bonus can therefore arguably be applied to the Sussex Street building component of the site which would have the effect of increasing the permissible floor space.</p>	Yes	<p>The application proposes a floor space ratio of 9.27:1.</p> <p>For the avoidance of doubt the applicant has submitted a request to vary the FSR standard pursuant to clause 4.6.</p> <p>Notwithstanding the above Clause 29(4) of the SEPP allows the CSPC to consent to the development whether or not the development complies with the relevant standard.</p> <p>See further details in the 'discussion' section below.</p>

Provision	Compliance	Comment
<p>2(a) Building height</p> <p>The proposed building height must not exceed the maximum building height of 50m permitted under the Sydney LEP 2012.</p>	No	<p>The site is subject of a 50m height control. The development proposes a maximum height of 59.75m</p> <p>The height above 55m is limited to an architectural roof feature, pergola, lift overrun, plant, stairs and parapet wall with no additional GFA. A request to vary the height standard pursuant to clause 4.6 has been submitted. See further details in the 'discussion' section below.</p>
<p>2(b) Landscaped area</p> <p>The front setback is to be compatible with the streetscape.</p>	Yes	The proposed development is built to the street alignment on all frontages.
<p>2(c) Solar access</p> <p>If more than one communal living area is provided, at least one of the rooms is to receive a minimum of 3 hours direct sunlight between 9:00am and 3:00pm in mid-winter.</p>	No	Communal areas on levels 3 and 4 do not receive at least 3 hours sunlight given the CBD location surrounded by built form. Notwithstanding, the area of indoor space has been significantly increased following the removal of non-compliant rooms and is of a high quality including a gym and yoga room for students.
<p>2(d) Private open space</p> <p>(i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers.</p> <p>(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.</p>	Partial compliance	<p>A communal open area sized of 478sqm is proposed at roof and podium level which meets the solar standard requirement</p> <p>An on-site manager room is located on level 3 which does not include private open space Notwithstanding, it is adjacent to 147sqm of communal open space which is considered acceptable in this instance.</p>
<p>2(e) Parking</p> <p>(i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area.</p>	No	No parking spaces for use by either cars or motorcycles are proposed.

Provision	Compliance	Comment
<p>(ii) 0.4 parking spaces provided for each boarding house room for sites not in an accessible area.</p> <p>(iii) Not more than 1 parking space for the on-site manager.</p>		<p>Clause 29(4) notes the consent authority may consent to the development whether or not the development complies with the standards in clause 29(2).</p> <p>A request to vary the motorcycle parking requirement (required under Clause 30(h)) pursuant to clause 4.6 has been submitted. Refer to the discussion under heading Discussion below.</p>
<p>2(f) Accommodation size</p> <p>(i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm.</p> <p>(ii) Rooms intended to be used more than one person are to have a minimum GFA of 16sqm.</p> <p>(excluding any area used as a private kitchen/ bathroom)</p>	Yes	Proposed single rooms are greater than 12sqm. Double rooms are greater than 16sqm.

30. The proposed development is considered satisfactory when assessed against the requirements of clause 29.

31. Clause 30 states that a consent authority must not grant development consent to which Division 3 applies unless it is satisfied of each of the following provisions.

Clause 30 – Standards for boarding house

Provision	Compliance	Comment
1(a) At least one communal living room is to be provided.	Yes	Indoor communal rooms are provided at levels 3 and 4.
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.

Provision	Compliance	Comment
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 room.
(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	An on-site manager's room is provided.
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The land is zoned B8 Metropolitan Zone. No residential units are located at ground floor.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	Partial compliance	<p>61 bicycle spaces and 61 motorcycle spaces are required.</p> <p>122 bicycle spaces are provided at basement level in accordance with the required standard for retail/residential provision.</p> <p>No car parking or motorcycle parking is proposed.</p> <p>A request to vary the motorcycle parking requirement pursuant to clause 4.6 has been submitted. Refer to the discussion under heading Discussion below.</p>

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

Clause 30A – Character of the local area

33. 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.
34. The site is located within an area that contains a range of uses and building forms. The proposed development is compatible with the character of the surrounding area and is consistent with clause 30A.

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

35. A BASIX Certificate has been submitted with the development application - 1156647M_02.
36. 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

37. 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

38. The application is subject to Clause 45 of the SEPP as the development involves excavation works in close proximity to electricity infrastructure.
39. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised subject to conditions.

Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors

Clause 88 – Development within or adjacent to interim rail corridor

40. The application is adjacent to the future CBD rail link corridor and was subsequently referred to Transport for NSW (TfNSW) for comment. TfNSW have recommended conditions which are included in the Notice of Determination.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

Local Environmental Plans

Sydney Local Environmental Plan 2012

43. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B8 Metropolitan Centre zone. The proposed development is a mixed-use development comprised of a boarding house and retail and is permissible with consent in the zone. The proposed development is consistent with 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 50m is permitted.</p> <p>A height of 59.75m 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. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	Refer to discussion below.
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development height standard prescribed under SLEP 2012. 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
5.6 Architectural roof features	No	<p>The control allows architectural roof features above the height control subject to satisfying a number of requirements.</p> <p>The height limit is 50m. The proposal has a maximum height of 59.75m.</p> <p>The height of the development above 55m predominantly includes an architectural roof feature comprising a decorative parapet and lift/stairs providing roof top access, plant and pergola fully integrated with the design of the building.</p> <p>See further details in the 'Discussion' section below.</p>
5.10 Heritage conservation	Yes	<p>82-84 Dixon Street is a local heritage item (I2293) and is not located in a Heritage Conservation Area.</p> <p>The proposal includes conservation works to the heritage buildings including a new shopfront at number 82 Dixon Street to match the shopfront at 84 Dixon Street which are supported by the Council's Heritage Specialist.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 1 Additional floor space in Central Sydney		
Subdivision 2 Types of additional floor space 6.4 Accommodation floor space	Yes	<p>The proposed development is eligible for an additional floor space ratio of 1.5:1 for the residential component being located in area 4 of Central Sydney.</p>
Division 3 Height of buildings and overshadowing See details in the 'Discussion' section below.		

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>6.21(5)(a) requires that development must not be granted for buildings over 55m unless a competitive process has been held. The proposed development exceeds 55m by 4.75m.</p> <p>The proposed development was submitted following three pre-development application meetings where it was considered that the need for a competitive process may be unreasonable/unnecessary.</p> <p>The part of the building above 55m predominantly includes an architectural roof feature comprising decorative parapet and lift/stair providing roof top access, plant and pergola fully integrated with the design of the building.</p> <ul style="list-style-type: none"> • Architectural roof features are allowed above the height limit subject to: • Not being an advertising structure • Not including floor space area and not reasonably capable of modification to include floor space area • Does not create overshadowing <p>In addition, the proposed development is of a high standard of design 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>

Provision	Compliance	Comment
		<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.</p> <p>See further details in the 'discussion' section below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
<p>7.3 Carparking not to exceed maximum</p> <p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p> <p>7.7 Retails premises</p> <p>Other land uses</p>	Yes	<p>These clauses stipulate maximum car parking provision for certain development.</p> <p>The controls do not identify car parking requirements for boarding houses.</p> <p>The proposal provides no car parking or motorcycle parking.</p> <p>A clause 4.6 variation request to vary the motorcycle parking requirement under the Affordable Housing SEPP has been submitted. See further details in the 'Discussion' section below.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>Acid soil testing was conducted as part of the Preliminary Site Investigation. The site is located in an acid sulphate soil area 5. The Preliminary Site Investigation stated that the proposal will not be lowering the water table of an adjoining class 1,2,3 or 4 acid soil prone land. Acid sulphate soil risk is negligible and therefore further detail was not required. Under SEPP 55, the Detailed Site Investigation concluded that the site is suitable for the proposed development.</p>

Provision	Compliance	Comment
7.15 Flood planning	Yes	<p>The site is identified as being flood affected.</p> <p>The application proposes development at or below the flood planning level. The proposal has been amended to provide the appropriate levels. In addition, an amended flood report has been submitted demonstrating that the development is able to comply with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard and meets the flood risk provisions. Council's Public Domain unit support the proposal subject to conditions.</p>
7.20 Preparation of a Development Control Plan	No	<p>Clause 7.20(2) of the LEP requires the preparation of a development control plan for various types of development, including those with a height greater than 55 metres above ground level.</p> <p>The proposal has a maximum height of 59.75m. The height above 55m is primarily made up of an architectural roof feature with lift overrun, stairs and plant together with a parapet wall.</p> <p>The proposed development was submitted following three pre-development application meetings where it was considered that the need for a development control plan (Concept DA) process may be unreasonable/unnecessary.</p> <p>The height of the development above 55m predominantly includes an architectural roof feature comprising decorative parapet and lift/stair providing roof top access, plant and pergola fully integrated with the design of the building.</p>

Provision	Compliance	Comment
		<p>In this regard, architectural roof features are allowed above the height limit subject to:</p> <ul style="list-style-type: none"> • Not being an advertising structure • Not including floor space area and not reasonably capable of modification to include floor space area • Does not create overshadowing <p>See further details in the 'discussion' section below.</p>

Development Control Plans

Sydney Development Control Plan 2012

44. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 - Locality Statements

DCP 2.1.3 Haymarket/Chinatown Special Character Area

45. The proposal is considered to comply with the requirements for the Special Character of the Area in that:
- The amended design exhibits fine grain architecture characteristic of the area.
 - Is built to street alignment and has appropriate setbacks above that level.
 - The mixed-use development enhances the diversity and uses of the area
 - The existing lanes and street pattern are retained
 - The proposed height is similar in scale to more recent developments in Haymarket.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposal involves the re-instatement of the existing public art 'Heaven and Earth' which is located in the Public Domain at the intersection between Little Hay Street and Dixon Street. The 'Earth' element is at ground level with the 'Heaven' element suspended above. A condition has been added requiring details of the storage and re-instatement in accordance with the request of the Council's Public Art unit.
3.2. Defining the Public Domain	Yes	The proposal addresses the three road frontages - Sussex Street, Little Hay Street and Dixon Street, with entries taking into consideration flood level planning requirements and street activation.
3.3 Design Excellence and Competitive Design Processes	Yes	<p>The proposal is considered to achieve a high quality of design. The requirement to undertake a competitive design process under Clause 6.21 of the LEP 2021 is considered unreasonable or unnecessary in this instance because the part of the building above 55m predominantly includes an architectural roof features comprising decorative parapet and lift/stair providing roof top access, plant and pergola fully integrated with the design of the building.</p> <p>See further details in the 'Discussion' section below.</p>
3.5 Urban Ecology	Yes	The proposal does not involve the removal of any trees. Appropriate conditions have been placed on consent to ensure that existing street trees are protected during construction.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.

Provision	Compliance	Comment
3.7 Water and Flood Management	Yes	<p>The site is identified as being on flood prone land.</p> <p>Stormwater plans have been submitted and reviewed by the Council's Public Domain unit and are supported subject to conditions.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The application was referred to Council's Specialist Surveyor. The consolidation of the site is supported subject to conditions.</p>
3.9 Heritage	Yes	<p>82-84 Dixon Street is a local heritage item (I2293) but is not located in a Heritage Conservation Area.</p> <p>The Heritage Specialist supports the proposed shopfront at number 82 Dixon Street to match number 84 Dixon Street together with the proposed conservation works subject to no change in floor levels as proposed.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	<p>Bicycle parking is provided within the basement for residents and retail users. 122 bicycle spaces are provided - 28 for retail/93 for student accommodation.</p>
3.12 Accessible Design	Yes	<p>BCA compliant access is provided on all street frontages - Dixon, Little Hay Street and Sussex Street</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	Separate waste areas are provided for the residential and commercial areas at basement level together with a bin holding room. Servicing would be from Sussex Street in accordance with pre-application advice. The Council's Waste Management and Transport unit support the proposal subject to conditions.
3.15 Late Night Trading Management	Yes	The proposal does not include late night trading.
3.2.4 Footpath Awnings	Partial compliance	Awnings surround the building on all three frontages at a height of 4.2m. The height rises to between 6-9m at the entrances on Dixon Street and Sussex Street to provide an entrance feature. The proposed awnings are conditioned to be a maximum of two metres from the building facade to ensure the viability of the City's street trees.

Section 4 – Development Types

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	No strata subdivision is proposed.
4.4.1.2 Bedrooms	Yes	All bedrooms have adequate kitchen/toilet facilities - 2.9sqm for ensuite/2sqm for kitchenette.
4.4.1.3 Communal kitchen areas	Yes	All rooms are self-contained without requiring communal kitchen areas.
4.4.1.4 Communal living areas and open space	Partial compliance	478sqm of communal outdoor space is provided at roof and podium level which substantially exceeds the minimum requirement.

Provision	Compliance	Comment
		<p>303sqm of communal indoor areas are provided at levels 3 and 4. Indoor communal areas have been increased following the removal of non-complying units.</p> <p>Four units have access to private open space on level 5 which does not comply with the 30% requirement. This is considered acceptable given the type of student accommodation being provided and is offset by the generous areas of communal space provision.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	28 washers/dryers are provided which meets the required standard.
4.4.1.6 Amenity, safety and privacy	Yes	<p>A Building Manager will be on site 24 hours per day to monitor safety and amenity.</p> <p>The use of the roof top open space will be restricted to between 7am and 10pm.</p>
4.4.1.7 Plan of Management	Yes	An operational Plan of Management has been submitted to ensure that the boarding house operates with minimal impact on adjoining owners and maintains a high level of amenity for residents. The Plan of Management adequately addresses the necessary requirements identified in the DCP.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.1 Central Sydney Street Frontage Heights	Partial compliance	<p>The site is located in the Special Character Area of Haymarket Chinatown. The DCP requires a street frontage height of 15m or the nearest heritage item on the same side of the street block. The proposal includes a 3-storey street frontage on Dixon Street which is consistent with the adjoining heritage building at 82-84 Dixon St. A 5-storey street frontage height has been proposed on Sussex Street, which aligns with the heritage building at 431-439 Sussex St, a short distance south in the same block.</p> <p>Furthermore, Section 5.1.2 requires a minimum weighted averaged of 8m above the street frontage height, and a further side or rear setbacks above the 45m height. The proposal includes an 8m setback to Dixon Street which complies with the control. However, the proposal includes reduced above podium setback on Sussex Street of 6m, which is within the permitted range of weighted average setbacks.</p> <p>While Section 5.1.2 of the DCP requires an additional setback above 45m, this is generally applicable to podium and tower arrangements. As the proposed façade only extends to 55 metres, and in order to accommodate the loss of GFA arising from the conservation of 82-84 Dixon Street, an additional setback above 45 metres is not proposed. This is considered acceptable as it will sit comfortably within the existing and planned built form context and will result in minimal environmental effects.</p>

Provision	Compliance	Comment
		Little Hay Street is identified as a lane under the Lanes Map of the LEP. Clause 5.1.2.3 of the DCP therefore requires a 6m setback measured from the centre line of the lane. While the proposed development provides nil setback to Little Hay Street, this building alignment is 6 metres from the centre line of Little Hay Street, and therefore complies.
6.11 Allocation of Heritage Floor Area	Yes	<p>Clause 6.11(1)(b) of the LEP requires that in FSR Area 4 an amount of heritage floor space (HFS) equal to 50% of any accommodation floor space utilised is to be allocated to development which will exceed 55 metres in height, but only if the accommodation floor space causes the floor space ratio of the building to be greater than 8:1.</p> <p>As detailed in the SEE, the proposed development includes a GFA of 11,466.09sqm and an FSR of 9:27:1, equating to an FSR of 1.27:1 greater than 8:1. A condition of consent is therefore requested requiring an amount of HFS equivalent to 0.635:1 (1236sqm Gross Floor Area).</p>

Discussion

Competitive Design Process and DCP

46. Clause 6.21(5) of the LEP requires a competitive design process to be held in various circumstances, including in relation to development with a height above ground level (existing) greater than 55 metres in Central Sydney.
47. Clause 7.20(2) of the LEP requires the preparation of a development control plan for various types of development, including those with a height greater than 55 metres above ground level.
48. The proposed development has a maximum roof height of 59.75m. Notwithstanding, the height of the development above 55m predominantly includes an architectural roof feature comprising decorative parapet and lift/stair providing roof top access, plant and pergola fully integrated with the design of the building.

49. The proposal has been submitted following three pre-development applications at which it was considered that the need for a competitive design process under Clause 6.21 and a DCP under Clause 7.20 may be considered to be unreasonable/unnecessary in the circumstances.
50. Clause 5.6 of the LEP provides for Council to consent to architectural roof features that exceed 'the height limits set by the Plan' if the architectural roof feature as detailed in Figure 27 conforms to the following conditions:
- (a) comprises a decorative element on the uppermost portion of a building, and
 - (b) is not an advertising structure, and
 - (c) does not include floor space area and is not reasonably capable of modification to include floor space area, and
 - (d) will cause minimal overshadowing -

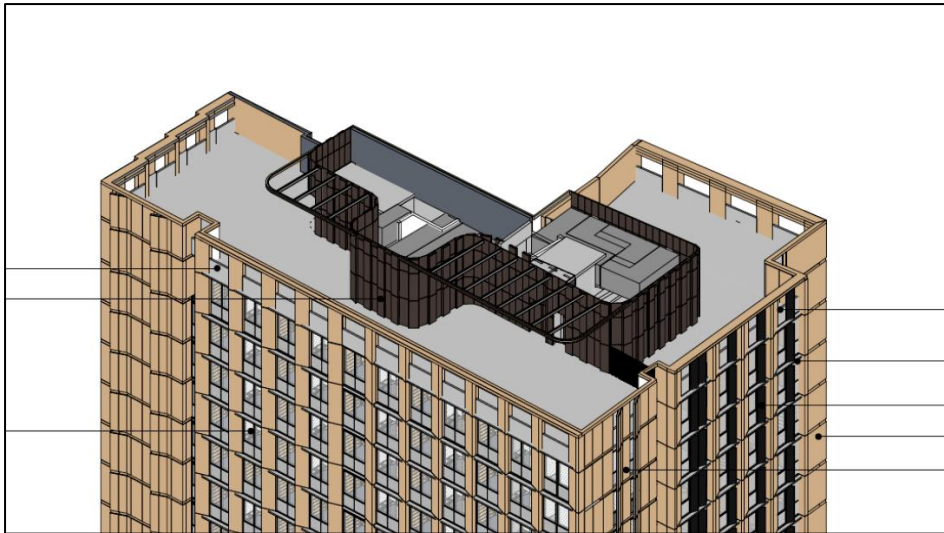


Figure 27: Proposed architectural roof feature

51. The proposal meets the requirements of clause 5.6 of the LEP outlined above including the requirements of clause 5.6(1)(b) in that servicing including plant, lift motor rooms and fire stairs are fully integrated into the design of the roof feature.

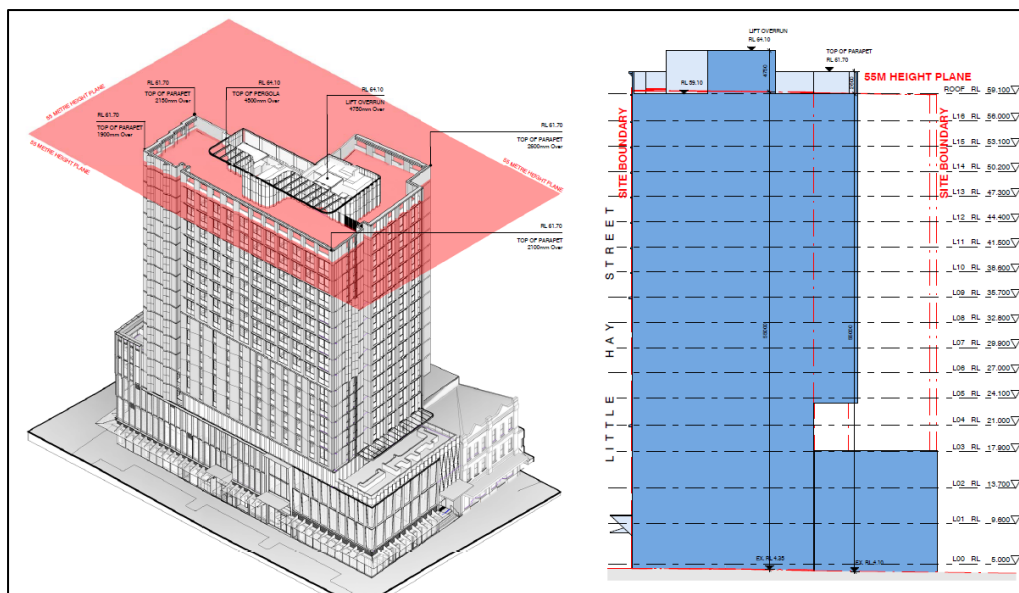


Figure 28: Cross section and 3D image detailing proposed height above 55m

52. A clause 4.6 variation request has been submitted to justify the height exceedance above the 50m height standard. Refer below.

Voluntary Planning Agreement

53. The heritage items at number 82-84 Dixon Street are to be protected with only conservation works being carried out as part of the development including mirroring the shopfront at number 82 with the existing traditional shopfront at number 84 Dixon Street. In addition, the City has received a public benefit offer to enter into a planning agreement in relation to the use of the buildings.
54. The recommended Deferred Commencement Consent requires a legal agreement to be agreed within 12 months of consent to ensure the operation of the public benefit use and will ensure the preservation of the existing heritage buildings and heritage items in perpetuity. A Plan of Management will be required by the VPA which invites input from historic bodies including the National Trust and the Museum of Chinese in Australia.
55. The public benefit offer is for the landowner to:
- Register a positive covenant on title providing Levels 1 and 2 of the building at 84 Dixon Street, Haymarket will be used in perpetuity for a public purpose that recognises its heritage significance and connections with the Chinese migrant community.
 - Prepare a Plan of Management for the ongoing use of the two levels for a public purpose and the display of heritage-listed contents in-situ.
 - Prepare an inventory of the existing heritage-listed contents within 84 Dixon Street to be annexed to the Plan of Management.

- (d) Create an easement for public access to the two levels through the adjoining properties (413-415 Sussex Street and 82 Dixon Street) including lift and stairs.
 - (e) Conduct public consultation and consult with interested historical bodies including the Museum of Chinese in Australia, and the Chinese Australian Society.
56. These requirements are considered to address the submissions received on the application and ensures that the buildings together with their contents are secured in perpetuity.

Clause 4.6 Request to Vary a Development Standard - Height

57. The site is subject to a maximum height control of 50m.
58. The proposed development has a maximum height of 59.75m, exceeding the Height of Buildings development standard by a total of 9.75m and resulting in a 19.75% variation from the development standard.

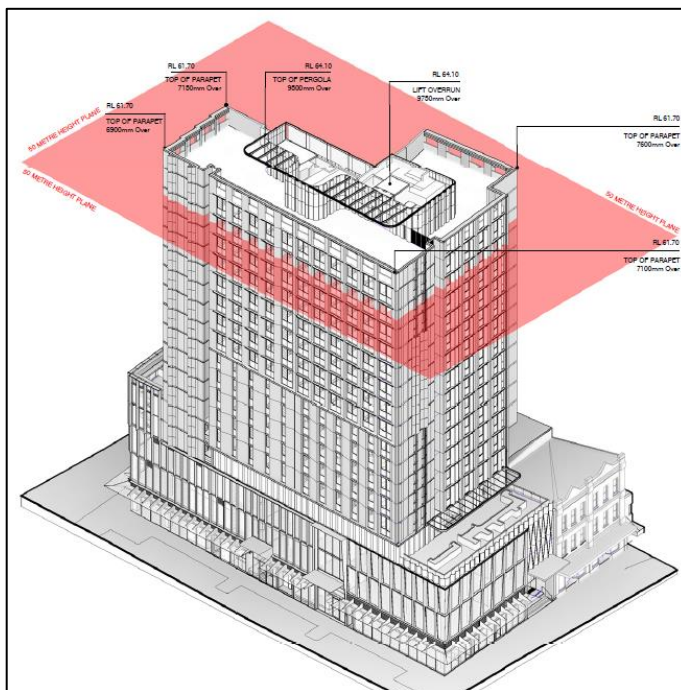


Figure 29: Height above 50m

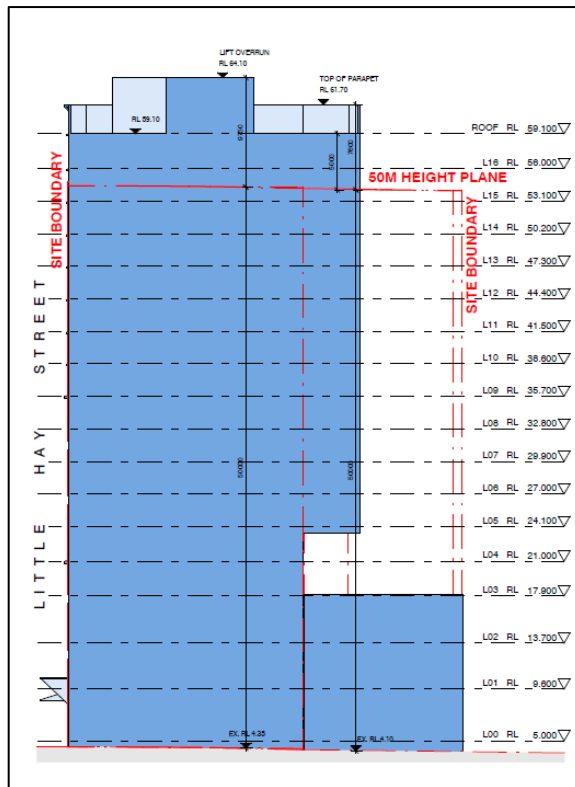


Figure 30: Cross section detailing proposed height above 50m

59. 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
 - (d) The proposed development will be consistent with the objectives of the standard.

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

60. The applicant seeks to justify the contravention of the height development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The proposed height exceedance above 55m is limited to an architectural roof feature and parapet wall only.

- (ii) The height to 55m absorbs permissible FSR from 82-84 Dixon Street which is not proposed for development as they are protected listed buildings. Therefore, strict application of the height standard would be unreasonable in the circumstances of the case.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The height exceedance partially results from the lack of any additional floor space proposed at the heritage listed buildings 82-84 Dixon Street which cannot be developed. To offset this the development seeks to redistribute some of the allowable FSR into the additional height of the new building.
 - (ii) The additional height above 55m is limited to an architectural roof feature/pergola which is permitted to exceed the height limit and results in no additional GFA.
 - (iii) The communal rooftop area will provide a high quality outdoor communal space for the students of the proposed building.
 - (iv) The additional height does not create any additional overshadowing of neighbouring residential properties or public open space.
 - (v) The variation will not result in overlooking or impact on the visual privacy of adjoining properties.
 - (vi) The additional height would be in keeping with recent additions to Haymarket of a similar height.
- (c) The proposed development will be consistent with the objectives of the zone:
 - (i) The proposal includes large retail floor space which contributes to Sydney's global status. In addition, the proposed student accommodation will assist in providing a diverse range of residents to the area as well as supporting the Australian Education market.
 - (ii) The proposal includes a mixed-use development which is an appropriate intensification of the land use within the B8 metropolitan zone.
 - (iii) The proposal encourages sustainable transport with no car parking and adequate cycle provision provided for the retail and residential use in accordance with the standard.
 - (iv) The proposal will include a variety of retail uses which activate frontages on all three street frontages including Sussex Street, Dixon Street and Little Hay Street.
- (d) The proposed development will be consistent with the objectives of the standard
 - (i) No GFA is proposed over 55m. The architectural roof feature provides access to the communal roof top and forms and contributes to the amenity of the outdoor communal space.

- (ii) The proposed building form is in keeping with contemporary multi-storey buildings on the north western and north eastern corners of the Dixon Street and Little Hay Street intersection.
- (iii) The proposed building is contemporary in form which helps break up the massing and additional height.
- (iv) The marginal additional height would have a negligible impact which does not adversely impact residential or visual amenities.
- (v) The proposed design will ensure appropriate transitioning between the new building and adjoining buildings.

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

61. 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)?

62. 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 which are

- (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,
- (c) to promote the sharing of views,
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

63. 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)?

64. The applicant has satisfactorily demonstrated that there are sufficient environmental planning grounds to contravene the development standard. In particular, the proposal allows for the new build to accommodate transfer from the listed buildings at 82-84 Dixon Street and the height above 55m is predominantly limited to an architectural roof feature and does not include GFA.

Is the development in the public interest?

65. 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 the zone and those of the development standard and therefore the proposal is in the public interest.

Conclusion

66. For the reasons provided above the requested variation to the Height of Buildings 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 standard and the B8 Metropolitan Centre zone.

Non-compliance with FSR

67. The site comprises three land holdings: 413-415 Sussex Street, Haymarket (also known as 80 Dixon Street, Haymarket) and 82-84 Dixon Street, Haymarket (two three storey heritage listed building which is currently vacant).
68. The site is subject to a 7.5:1 FSR control with up to an additional 1.5:1 for accommodation floor space under the Sydney LEP 2012. The accommodation floorspace is to be reduced proportionally dependent on the mix of uses within the development giving a maximum floor space ratio of 8.565:1.
69. Under the ARHSEPP a 20% bonus is allowed on sites that do not contain a heritage item. The development site consists of three components. The two Dixon Street buildings which are heritage items and the Sussex Street building which is not. The 20% bonus can therefore arguably be applied to the Sussex Street building component of the site which would have the effect of increasing the permissible floor space up to 9.85:1. The development has an FSR of 9.27:1.
70. For the avoidance of doubt the applicant has submitted a written request in accordance with Clause 4.6(3) of the Sydney LEP 2012 seeking to justify the contravention. A copy of the applicant's written request is provided at Attachment E for the information of CSPC.
71. Notwithstanding the above Clause 29(4) of the SEPP allows the CSPC to consent to the development whether or not the development complies with the relevant standard (and with or without a Clause 4.6 variation request).

72. The quantum of floor space proposed is consistent with the objectives of the floor space ratio standard controls and appropriate within the B8 Metropolitan zone. The built form in which the floor space is contained is appropriate for the context of the site with no adverse impacts on the character of the area.

Clause 4.6 Request to Vary a Development Standard - Motorcycle Parking

73. The site is subject to a minimum motorcycle parking provision control in accordance with Clause 30(1)(h), the 'minimum motorcycle parking' of the State Environmental Planning Policy (Affordable Rental Housing) 2009. The control requires the provision of 61 spaces. The proposed development provides no motorcycle parking spaces.

74. 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
- (d) the proposed development will be consistent with the objectives of the standard.

75. A copy of the applicant's written request is provided at Attachment D.

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

76. 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 site is located within a highly accessible location. Motorcycle parking is not considered necessary to promote sustainable forms of transport including maximising public transport patronage and encouraging walking and cycling.
- (ii) The proposal supports the objectives of the Part 7 local provisions of SLEP 2012, which seek to minimise the amount of vehicular traffic generated by proposed developments by imposing maximum car parking space requirements. Despite motorcycle parking not forming part of the requirements of the SLEP 2012, the objective to minimise vehicular traffic is relevant and satisfied by the proposal.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) Contravention of the development standard by the proposal does not give rise to any adverse environmental impact. Rather, the reliance on active modes of transport including walking and use of bicycles as an alternative mode of transport is considered more sustainable and a better outcome for the environment.
 - (ii) To ensure a desirable environmental outcome is achieved, 122 bicycle spaces have been provided to support the development, in accordance with Clause 30(1)(h) of ARH SEPP, to promote walking and cycling as the desirable modes of transport for this development given the site's immediate proximity and connectivity to the CBD.
- (c) The proposed development will be consistent with the objectives of the zone:
- (i) The proposed boarding house provides additional diversity in the rental market and often absorbs more than 30% of lower income renters. This development provides affordable housing accommodation to meet an important need and demand in the inner city and ease pressure on the wider market.
 - (ii) Adaptive reuse of existing buildings and infill additions for residential accommodation is a permissible use within the residential zone and results in the removal of a former prohibited intrusive land use.
 - (iii) The objectives of the B8 Metropolitan zone are satisfied by the proposed development. The proposed variation to the prescribed minimum motorcycle parking requirement will not cause any disruption to nearby residents and the development will continue provide for the housing needs of the community.
- (d) The proposed development will be consistent with the objectives of the standard:
- (i) The proposal provides new affordable rental housing in the form of a new boarding house which complies with the relevant non-discretionary development standards with the exception of motorcycle parking provision. As detailed above, bicycle parking is proposed in favour of motorcycle parking in order to maximise public transport patronage and encourage walking and cycling which is a key objective of Council's sustainable transport vision and is consistent with the City of Sydney Cycling Strategy and Action Plan.
 - (ii) The proposal seeks to improve the existing accommodation via adaptive reuse and infill development, with a contemporary boarding house development providing affordable rental housing accommodation for 331 residents with modern facilities.
 - (iii) The proposed development will assist in renewing the existing affordable housing stock and gentrification of the area in line with the scale of development expected for the area.
 - (iv) The proposed boarding house would allow for additional housing options.

77. 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)?

78. 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 ARHSEPP notwithstanding the noncompliance. The development is consistent with the aims of the ARHSEPP, in particular, facilitates the effective delivery of new affordable rental housing by providing flexibility in application of development standards.
79. The site is constrained and does not provide a desired location for motorcycle parking spaces. 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)?

80. The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.
81. Although non-compliant with the ARHSEPP, the proposal is consistent with the objectives and provisions of the Sydney LEP 2012 and Sydney DCP 2012 in terms of transport and access and is located within a highly accessible area.
82. The reliance on active modes of transport including walking and use of bicycles as an alternative mode of transport is considered more sustainable and a better outcome for the environment, rather than the use of motorcycles. To ensure a desirable environmental outcome is achieved, 122 bicycle spaces have been provided to support the development, in accordance with Clause 30(1)(h) of ARH SEPP, to promote walking and cycling as the more desirable and sustainable modes of transport for this development.
83. Is the development in the public interest? Clause 30 (h) which requires motorcycle parking does not have any specified objectives. Notwithstanding non-compliance, the development is consistent with the aims of the policy in that the site is within close proximity to public transport, jobs and services and therefore, walking, cycling and the use of transit is to be encouraged. In not providing motorcycle parking, the development will encourage active transport and public transport, as will the provision of bicycle parking. The proposal has provided more than the required amount of bicycle parking spaces to meet the resident's needs.

84. The proposal is consistent with the relevant aims of the ARHSEPP in that it achieves the delivery of new affordable housing in a form that is suitable to the subject site. The development provides for a new housing type encouraged by the ARHSEPP (a boarding house).
85. Whilst the aims of the ARHSEPP include to provide consistent application of development standards across NSW, it does not consider the City's transport policies and its access to public transport and services relative to other areas of the state. In this regard, Clause 7.1 of Sydney LEP 2012 specifically seeks to minimise the amount of vehicle traffic generated by development.
86. The objectives of the B8 Metropolitan zone relevant to the proposal include:
- (a) to recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy
 - (b) to provide opportunities for an intensity of land uses commensurate with Sydney's global status
 - (c) to permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community
 - (d) to maintain the existing land use pattern of predominantly residential uses
 - (e) to encourage the use of alternatives to private motor vehicles, such as public transport, walking or cycling
 - (f) to promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.
87. The proposed development is consistent with the objectives of the land use zone. The development provides a new affordable rental housing (boarding house) option that will meet the housing needs of the community.
88. The proposal is in the public interest as it is consistent with the aims of the ARHSEPP and the objectives of the B8 Metropolitan zone.

Conclusion

89. 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 ARHSEPP and the B8 Metropolitan zone.

Bulk and Massing

90. The proposal has been submitted following three pre-development application meetings in which an appropriate form for the building was considered. The listing of the buildings at numbers 82-84 Dixon Street which are part of the same site restrict the development of the upper levels of the heritage buildings to the permissible standards. Consequently, the proposed new build at 413-415 Sussex Street accommodates the transfer of permissible FSR from 82-84 Dixon Street. This was achieved by providing a degree of flexibility to provide a better outcome for the development. The form proposed reflects pre-development application discussions and incorporates:
- (a) A cantilever above number 82 Dixon Street
 - (b) A 6m setback fronting Sussex Street
 - (c) No setback to Little Hay Street, except on the Sussex Street and Dixon Street corners
 - (d) No set back above 45m
 - (e) An increase in height above the 50m height limit
91. These are considered appropriate as:
- (a) the proposed cantilever is located a sufficient distance above the heritage item 5.5m and setback from the street 11.1m to create no significant adverse visual or heritage impacts.
 - (b) Sussex Street is a wider more open street frontage than the Dixon Street frontage and therefore a reduced setback of 6m can be tolerated.
92. While Section 5.1.2 of the DCP requires an additional setback above 45m, this is generally applicable to higher tower arrangements. As the proposed facade only extends to 57.6m, and in order to accommodate the loss of GFA arising from the conservation of 82-84 Dixon Street, an additional setback above 45 metres is not proposed.
93. A clause 4.6 has been submitted to justify the increase in height (discussed above) noting that there is no additional floor space above 55m with the additional height being limited to an architectural roof feature and parapet wall.

Design

94. The proposal has gone through a number of internal and external alterations to meet the requirements of the Design and Advisory Panel and to achieve design excellence. These include:

Internal

95. These can be summarised as:
- (a) the reduction in retail space provision to improve the circulation space and lead to a better retail experience for customers.
 - (b) the replacement of non-complying residential units with either indoor communal space or service areas.

- (c) the removal of the inadequate sized retail areas behind lift 5 and replacement with storage space

External

96. The main external changes are summarised below and are considered to achieve the right balance between brickwork, glazing and appropriate materials including:
- (a) Reduction in the level of glazing at podium level.
 - (b) Incorporation of substantial masonry elements to achieve fine grain rhythm that respects its context.
 - (c) Facade amended to be a modern interpretation of the fine grain original lot subdivision pattern of the Haymarket/Chinatown Special character area.
 - (d) Alignment of facade columns with internal walls at ground level.
 - (e) The facades respect the proportions with high quality materials proposed, including a high degree of modelling in three dimensions on the ground plane.
 - (f) 2 x roller service doors replaced with double swing metal doors.
 - (g) Access and service doors made equivalent in design and quality to the ground level facade system.
 - (h) The incorporation of pre-cast concrete in the blank south facing wall on Sussex Street to provide design articulation.
 - (i) Brick tile has been replaced by real brick construction to the podium and brick inlay precast to the tower.
97. All external materials including manufacturer's detail, material type, finish and colour are accurately specified on the materials and finishes board. All elevations/sections include material keys.
98. Structural support for the re-instatement of the existing public art is indicated on the plans and elevations together with relevant conditions for storage and re-instatement.
99. Details of the horizontal exhaust from each room have been provided demonstrating appropriate integration into the facade design.



Figure 31: Dixon Street - original scheme on the left with the amended scheme on the right



Figure 32: Little Hay Street - The original scheme on left with the amended scheme on the right



Figure 33: Sussex Street - The original on left with the amended scheme on the right



Figure 34: Dixon Street perspective

Amenity

100. Shadow diagrams have been submitted and reviewed by the Council's modelling unit which indicate that the proposed new build would only lead to partial overshadowing of commercial properties to the south. No additional overshadowing of residential properties will occur.
101. In addition, an acoustic report has been submitted to the requirements of the Council's Health specialist which demonstrates that the proposal will not create unreasonable levels of noise impacts.
102. The proposed student accommodation will be required to operate in accordance with a Plan of Management to ensure the effective operation of the premises, this includes requirements for CCTV, no loitering by students at the entrance. A recommended condition of consent also requires that the use of the outdoor communal area is restricted to between 7.00am and 10.00pm



Figure 35: Shadow Diagrams - morning and afternoon

Heritage

103. The heritage items at number 82-84 Dixon Street are to be protected with only conservation works being carried out as part of the development including mirroring the shopfront at number 82 with the existing traditional shopfront at number 84 Dixon Street. The City has received a public benefit offer to enter into a planning agreement in relation to the use of the buildings
104. The offer is for the landowner to:
 - (a) Register a positive covenant on title providing Levels 1 and 2 of the building at 84 Dixon Street, Haymarket to be used in perpetuity for a public purpose that recognises its heritage significance and connections with the Chinese migrant community.
 - (b) Prepare a Plan of Management for the ongoing use of the two levels for a public purpose and the display of heritage-listed contents in-situ.
 - (c) Prepare an inventory of the existing heritage-listed contents within 84 Dixon Street to be annexed to the Plan of Management.

- (d) Create an easement for public access to the two levels through the adjoining properties (413-415 Sussex Street and 82 Dixon Street) including lift and stairs.
- (e) Conduct public consultation and invite all interested historical bodies including the Museum of Chinese in Australia, and the Chinese Australian Historical Society to actively partake and contribute to the management of the premises.

105. These measures to be secured by planning agreement are considered to address the submissions received relating to the protection of the Heritage Items and their contents and recognises the historical significance of the site. It also ensures the preservation of the buildings which are currently vacant and falling into a state of disrepair.



Figure 36: Proposed Heritage Buildings 82-84 Dixon street with perspective on left



Figure 37: Images of the interior of 84 Dixon Street including goods lift and large cabinet, which are to remain

Heaven and Earth Public Art

106. The developer is required to ensure that the existing artwork 'Heaven', suspended above the intersection of Dixon and Little Hay Streets, is carefully removed, restored and reinstated. The scheme has been amended to indicate anchor points and the City will allow storage of the artwork Heaven at their Public Art storage facility.
107. In addition, the developer is required to ensure that the artwork 'Earth', embedded in the pavement at the intersection of Dixon and Little Hay Streets, is carefully removed, redesigned and reinstated with the works to be included in the public domain plan by condition.
108. Furthermore, the developer is required to ensure that the affected elements of the artwork including the Hay Street Lanterns, attached to the existing building along Little Hay Street, are carefully removed, restored and reinstated. A Deferred Commencement Condition requiring a Public Art Plan specifying the requirements is required.



Figure 38: Perspective of re-instated Heaven and Earth Public Art with existing image

Consultation

Internal Referrals

109. The application was referred to Council's:

- (a) Building Services Unit
- (b) Environmental Health Unit
- (c) Licenced Premises Unit
- (d) Heritage and Urban Design Unit
- (e) Public Domain Unit
- (f) Safe City Unit; Surveyors
- (g) Transport and Access Unit
- (h) Public Art Unit
- (i) Tree Management Unit
- (j) Waste Management Unit.

110. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the recommendation.

External Referrals

Ausgrid

111. Pursuant to Section 44 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment.

112. A response was received raising no objections to the proposed development.

NSW Heritage Council

113. Although not triggered by the Heritage Act 1977, the application was referred to NSW Heritage Council for comment.

114. Comments and recommendations were issued by NSW Heritage Council on 9 March 2021 and have been included in recommended conditions of consent.

NSW Police

115. The application was referred to NSW Police for comment.

116. A response was received raising no objections to the proposed development subject to the Plan of Management being revised to incorporate their requirements including CCTV surveillance and no loitering at entrances

Transport for NSW

117. Pursuant to Clause 88 of the SEPP (Infrastructure) 2007, the application was referred to Transport for NSW (TfNSW) for concurrence.
118. Concurrence was received on 1 June 2021. Conditions of consent were recommended which are included in the recommended conditions of consent.

Advertising and Notification

119. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 5 January 2021 and 8 February 2021. A total of 964 properties were notified and 11 submissions were received.

120. The submissions raised the following issues:

- (a) **Issue:** Inadequate preservation of Heritage Listed Buildings at 82-84 Dixon Street. Items of heritage value not adequately protected in perpetuity.

Response: Response: The recommended Deferred Commencement Consent requires a legal agreement to be agreed within 12 months of consent to ensure the operation of the public benefit use and will ensure the preservation of the existing heritage buildings and heritage items in perpetuity. A Plan of Management will be required by the VPA which invites input from all interested historic bodies including the National Trust and the Museum of Chinese in Australia. These requirements as detailed in the discussion section together with the conditions of consent are considered to address the concerns raised in the submissions and ensure that the buildings together with their contents are secured and maintained in perpetuity.

- (b) **Issue:** The demolition of former Anthony Hordern & Co warehouse at 413-415 would be a substantial heritage loss

Response: Whilst it is acknowledged that the Anthony Hordern and Co warehouse is of some historic value the building is not afforded listed building status and is not protected from demolition. In addition, the proposed development incorporates fine urban grain which is characteristic of the Haymarket and Chinatown Special Character Area and as such will make a positive contribution to area.

- (c) **Issue:** A submission has been received which advises the use of shared docking facilities in the proposed development

Response: The Transport unit have confirmed that use of shared dock facilities is not applicable to the application site.

Financial Contributions

Levy under Section 61 of the City of Sydney Act 1988

- 121. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013.
- 122. A condition relating to this development contribution has been included in the recommended conditions of consent. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Relevant Legislation

- 123. Environmental Planning and Assessment Act 1979.

Conclusion

- 124. The application which includes both retail provision and boarding house accommodation has been assessed against the relevant planning controls.
- 125. The application proposes a variation to the height of buildings development standard, floor space ratio development standard and motorcycle parking standard that applies to the development. These variations are supported.
- 126. The design has been amended in response to issues raised by Council staff and the Design Advisory Panel and the amended proposal is considered to address the key design issues raised.
- 127. The proposal is of a high quality design and incorporates fine grain architecture which is considered to be in keeping and complementary to the Haymarket and Chinatown Special Character.
- 128. The public benefit offer at 84 Dixon Street recognises the historic value of the site and ensures that the buildings together with their contents are secured in perpetuity.
- 129. Overall' the development meets the aims and objectives of the controls and is recommended for deferred commencement approval.

GRAHAM JAHN, AM

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