

**Item 3.****Development Application: 22-32 Botany Road, Alexandria - D/2021/292**

File No.: D/2021/292

**Summary**

<b>Date of Submission:</b>	31 March 2021
<b>Applicant:</b>	Hergol Community Developments Pty Ltd
<b>Architect/Designer:</b>	PA Studio
<b>Developer:</b>	Platino Properties Pty Ltd
<b>Owner:</b>	Hergol Community Developments Pty Ltd
<b>Planning Consultant:</b>	Chapman Planning
<b>DAPRS:</b>	Identical DA D/2020/1462 considered by DAPRS 2 March 2021
<b>Cost of Works:</b>	\$7,619,317
<b>Zoning:</b>	B4 – Mixed Use zone and SP2 – Infrastructure zone. The development is permissible with consent.
<b>Proposal Summary:</b>	<p>The application seeks consent for the demolition of existing buildings and construction of a five (5) storey mixed use development. The development includes two (2) ground floor commercial tenancies and a 72 room boarding house on levels 1-5 to accommodate 76 lodgers and a building manager. Car, motorcycle and bicycle parking are also to be contained on site.</p> <p>The application is reported to the Local Planning Panel as the development exceeds the height of buildings development standard by 21.3% and exceeds the floor space ratio (FSR) development standard by 11.1%.</p>

The Sydney Local Environmental Plan 2012 (LEP) allows for a maximum building height of 15m and the Sydney Development Control Plan 2012 (DCP) allows 4 storeys in height. The maximum height of the development proposed is 18.2m, which represents a 21.3% exceedance of the LEP height standard. The application seeks a variation to the height control under Clause 4.6. The variation is not supported.

The LEP allows for a maximum FSR of 1.75:1. The State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) permits an additional 0.5:1 for development for the purposes of a boarding house. The maximum FSR permissible is therefore 2.25:1. The application proposes a maximum FSR of 2.5:1, which represents an 11.1% exceedance of the maximum FSR permissible under the LEP and ARH SEPP. A Clause 4.6 variation request in relation to FSR has not been submitted with the application. As there has been no written request submitted to justify the FSR breach, the Panel cannot approve the application. This matter is discussed later in the report.

The application was notified for a period of 21 days between 3 May and 25 May 2021. Twelve (12) submissions were received. Issues raised include the character of the historic buildings on site; building height and bulk; traffic impacts; safety and security risks; increased overcrowding and unacceptable density; the proliferation of the student accommodation in the locality and its impacts on the community; demolition of fine grain strip retail buildings; amenity impacts (including acoustic and visual privacy); management of the boarding house; noise impacts for future residents arising from Botany Road; quality and amenity of the proposed boarding house rooms; and proposed material selection.

The proposal is inconsistent with the requirements and objectives of the ARH SEPP, the LEP and the DCP in terms of building height, FSR, amenity, and character of the local area. The proposal will result in demolition of the existing buildings and replacement with a new building which does not appropriately respect the character and fine grain of the existing buildings and streetscape.

The proposed building does not achieve design excellence pursuant to Clause 6.21 of the LEP, due to its significant bulk and scale, arising from breaches of both the height and FSR standard and consequent environmental impacts. The unacceptable built form represents an overdevelopment of the site.

The development features a poor public domain interface resulting in a detrimental impact to the surrounds, particularly as viewed from Botany Road.

The development results in substandard amenity for future residents and results in adverse amenity impacts to surrounding properties in terms of inadequate building separation, visual and acoustic privacy, and likely adverse overshadowing.

Insufficient information has been provided with the application in regard to waste, acoustics, contamination, site servicing and loading, essential fire and electrical services, landscaping and deep soil and adequate shadow diagrams and views from sun.

The proposed development is not of a scale and nature in keeping with the character of the area. It does not achieve compliance with key development standards or design excellence provisions and is not consistent with the desired future character of the area. Without significant amendment the proposal is not considered capable of delivering design excellence under Clause 6.21 of the LEP and is recommended for refusal.

**Summary Recommendation:** This proposal is recommended for refusal.

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy No 55—Remediation of Land
- (iii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iv) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (v) State Environmental Planning Policy (Infrastructure) 2007
- (vi) Sydney Local Environmental Plan 2012
- (vii) Sydney Development Control Plan 2012
- (viii) City of Sydney Community Participation Plan 2019
- (ix) Sydney Landscape Code 2016

**Attachments:**

- A. Selected Drawings
- B. Clause 4.6 Variation Request – Building Height

## Recommendation

It is resolved that consent be refused for Development Application No. D/2021/292 for the reasons outlined below.

### Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The proposed height exceeds the maximum permitted by the height development standard by up to 21.3%. The additional height and resultant bulk of the building means that the development will overshadow neighbouring residential properties and result in a more imposing building. As such, the development does not comply with:
  - (i) Clause 4.3 of the Sydney Local Environmental Plan 2012, including objective (a)
  - (ii) Clause 4.15(1)(e) of the Environmental Planning and Assessment Act 1979
  - (iii) Clause 6.21 of the Sydney Local Environmental Plan 2012
  - (iv) Section 4.21 of the Sydney Development Control Plan 2012.
- (B) The proposal does not comply with Clause 4.6 of the Sydney Local Environmental Plan 2012 in relation to the written request for a variation to the height development standard contained in Clause 4.3 of the LEP, as it is not considered to be in the public interest.
- (C) The proposed floor space ratio exceeds the maximum permitted by the floor space ratio standard by up to 11.1%. The additional bulk and scale of the building is incongruous with the streetscape, incompatible with the character of the local area and represents an overdevelopment of the site.
- (D) There has been no written request submitted to justify the floor space ratio breach pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012.
- (E) Insufficient contamination information has been provided with the proposal. In the absence of clarity of these issues, the development has not demonstrated the site can be made suitable for the proposed uses. In this regard, the development does not comply with:
  - (i) Clause 7(1)(b) of State Environmental Planning Policy No 55 - Remediation of Land
  - (ii) Clause 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*
  - (iii) Clause 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*
  - (iv) Clause 6.21 of the *Sydney Local Environmental Plan 2012*.

- (F) The proposal does not respect the character and fine grain of the existing buildings and streetscape. It does not comply with Clause 30A of the State Environmental Planning Policy (Affordable Rental Housing) 2009 as it replaces a fine grain, low-rise street context with a single, monolithic building with bulk and scale and amenity impacts, negatively impacting the streetscape. The proposal is also inconsistent with:
- (i) Clause 29(1) of the State Environmental Planning Policy (Affordable Rental Housing) 2009, as the proposal exceeds the floor space ratio development standard set by the Sydney Local Environmental Plan 2012 and the additional floor space provided under Clause 29(1) of the SEPP
  - (ii) Clause 29(2)(a) of the State Environmental Planning Policy (Affordable Rental Housing) 2009, as the proposal exceeds the height development standard set by Clause 4.3 of the Sydney Local Environmental Plan 2012.
- (G) The proposed development fails to provide for an appropriate interface with the public domain. The proposal includes retail development with a floor level lower than the adjoining footpath, inadequate floor to ceiling heights at ground floor, convoluted residential access, an excessive vehicular crossover to Spencer Lane, and no activation of either Chapel or Spencer lanes, failing to comply with:
- (i) Clause 2.13.13 of the Sydney Development Control Plan 2012
  - (ii) Clause 3.1.1.3(2) of the Sydney Development Control Plan 2012
  - (iii) Clause 3.2.2(7) of the Sydney Development Control Plan 2012
  - (iv) Clause 3.11.11(7) of the Sydney Development Control Plan 2012
  - (v) Clause 4.2.1.2(1)(b) of the Sydney Development Control Plan 2012
  - (vi) Clause 4.4.1.6(2)(a) the Sydney Development Control Plan 2012
- (H) The proposal results in substandard amenity for future residents as it has not adequately addressed matters required including provision of facilities and amenities, visual and acoustic privacy impacts, and adequate servicing arrangements. The proposal does not comply with:
- (i) Clause 102 of the State Environmental Planning Policy (Infrastructure) 2007
  - (ii) Clause 4.2.1.2(4) of the Sydney Development Control Plan 2012
  - (iii) Clause 4.2.4(10) of the Sydney Development Control Plan 2012
  - (iv) Clause 4.4.1.6(1)(a) of the Sydney Development Control Plan 2012
  - (v) Clause 4.4.1.2(1) of the Sydney Development Control Plan 2012
  - (vi) Clause 4.4.1.4 of the Sydney Development Control Plan 2012
  - (vii) Clause 4.4.1.5(2) of the Sydney Development Control Plan 2012
  - (viii) Clause 2.5 of the City of Sydney's Guidelines for Waste Management in New Developments

- (I) The proposal results in adverse amenity impacts to surrounding properties due to inadequate building separation between the proposed boarding house and surrounding buildings (caused by insufficient setbacks), and the proposed development's bulk and scale. The proposal results in adverse visual and acoustic privacy and overshadowing impacts, and does not comply with:
  - (i) Clause 6.21 of the Sydney Local Environmental Plan 2012
  - (ii) Clause 4.4.1.6(2)(b) of the Sydney Development Control Plan 2012
  - (iii) Clause 4.2.3.1 of the Sydney Development Control Plan 2012.
- (J) The development in its current form does not demonstrate design excellence as it fails to deliver a high standard of architectural, urban and landscape design. The form and external appearance of the proposed development will detract from the quality and amenity of the public domain and the proposal provides an inappropriate contextual response to the streetscape. The development does not demonstrate whether the ecologically sustainable development targets have been implemented within the development. The access to the site does not demonstrate how pedestrian amenity will be prioritised. In this regard, the development does not meet Clause 6.21 of Sydney Local Environmental Plan 2012.
- (K) The proposed vehicular parking arrangements are contrary to Section 3.11 of the Sydney Development Control Plan 2012, in that car and motorcycle parking is not preferred, insufficient bicycle parking has been provided, and servicing of the site has not been adequately detailed. The proposal is not consistent with Clause 6.21 of the Sydney Local Environmental Plan 2012 with regard to pedestrian, cycle and service access.
- (L) The proposed development does not achieve adequate deep soil and does not demonstrate the development can achieve 15% canopy cover at 10 years post-completion. The resilience, suitability and longevity of the garden proposed has not been demonstrated. The development does not display excellence and integration of landscape design and is inconsistent with:
  - (i) Clause 6.21 of the Sydney Local Environmental Plan 2012
  - (ii) Clause 3.5.2(2) of the Sydney Development Control Plan 2012
  - (iii) Clause 4.2.3.6 of the Sydney Development Control Plan 2012
  - (iv) Sydney Landscape Code Volume 2.
- (M) The proposed development does not provide adequate waste storage areas or sufficiently detail the servicing of the site. The proposal does not comply with:
  - (i) Section 3.14 of the Sydney Development Control Plan 2012
  - (ii) The City of Sydney's Guidelines for Waste Management in New Developments 2018.

## Background

### The Site and Surrounding Development

1. The site comprises three allotments with legal descriptions of Lot 1 DP 810195 and Lot 2 DP 810195, known as 22-26 Botany Road, Lot 3 DP 810195 and Lot 4 DP 810195, known as 28-30 Botany Road, and Lot 5 DP 810195, known as 32 Botany Road. Together, the site has a total area of 851.9sqm. The site is located on the corner of Botany Road and Chapel Lane. Its primary street frontage to Botany Road to the east is 33.115m, with secondary street frontages of 23.52m to Chapel Lane to the north and 32.795m to Spencer Lane to the rear. Levels on the site fall by 3.6m from Spencer Lane to the west to Botany Road to the east. The site is located around 350m south of the southern entrance to Redfern Station.
2. The site is predominantly zoned as B4 – Mixed Use however features a wedge of land zoned as SP2 – Infrastructure at its south-eastern most edge. The parcel of land, measuring 6.3sqm, is land dedicated to road widening.
3. The site contains three late Victorian, early Federation shop-top housing buildings being No. 22, Nos 24-25, and Nos 28-32 Botany Road. No. 22 Botany Road is a two storey rendered brick Victorian commercial building with a parapet constructed in 1886. Nos 24-26 Botany Road is a two storey rendered and painted early Federation commercial building with a parapet, with No. 24 constructed c.1895 and No. 26 constructed c.1902, replacing earlier structures. Nos 28-32 Botany Road is a two storey rendered brick Victorian commercial building with a pitched roof, constructed by 1887.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential and commercial. Across Chapel Lane to the north of the site is a five storey residential apartment building (with commercial at ground), constructed in 2016. Across Spencer Lane to the west is a five storey residential apartment building (with commercial at ground), constructed in 2009.
5. Adjoining the site to the south is a group of three, two storey Victorian commercial buildings at No. 34, Nos 36-40, and No. 42 Botany Road, constructed between 1887 and 1899. Nos 34, 36, and 38 contain various commercial uses at ground floor with residential above, and in some cases located behind the ground floor commercial tenancy. A development application was recently approved at No. 40 for the fitout of a food and drinks premises at the ground floor, with ancillary offices on the first floor, replacing shop top housing.
6. The nearest heritage item is located 65m to the south at 56-58 Botany Road, known as the Cricketers Arms Hotel including interior (I4 in Schedule 5 of the LEP).
7. Across Botany Road to the east is a single storey building constructed at some point in the mid-1960s and used as a local supermarket since, and a two storey commercial building containing a medical centre, laundromat, and alterations service at ground floor, with a beautician above.
8. More widely, the immediate locality is typified by diverse uses, including but not limited to cafes and restaurants, a pub and a bar, a brewery, offices, bakeries, butcheries, a newsagent, a green grocer, tailors, furniture stores, a fitness studio, mechanic, and other business premises, along with residential uses on upper levels of buildings on Botany Road.

9. The site is located within the Regent Street/Botany Road locality and is identified as being subject to flooding. The site is not located in a heritage conservation area and is not included as a heritage item.
10. Photos of the site and surrounds are provided below:



**Figure 1:** Aerial image of subject site and surrounding area - subject site shown in red with SP2 zone shown in yellow, apartment building at 8 Boundary Street shown in blue, apartment building at 20-34 Wyndham Street shown in purple and nearest heritage item (the Cricketers Arms) shown in orange





Figure 2: Site as viewed from Botany Road, looking west



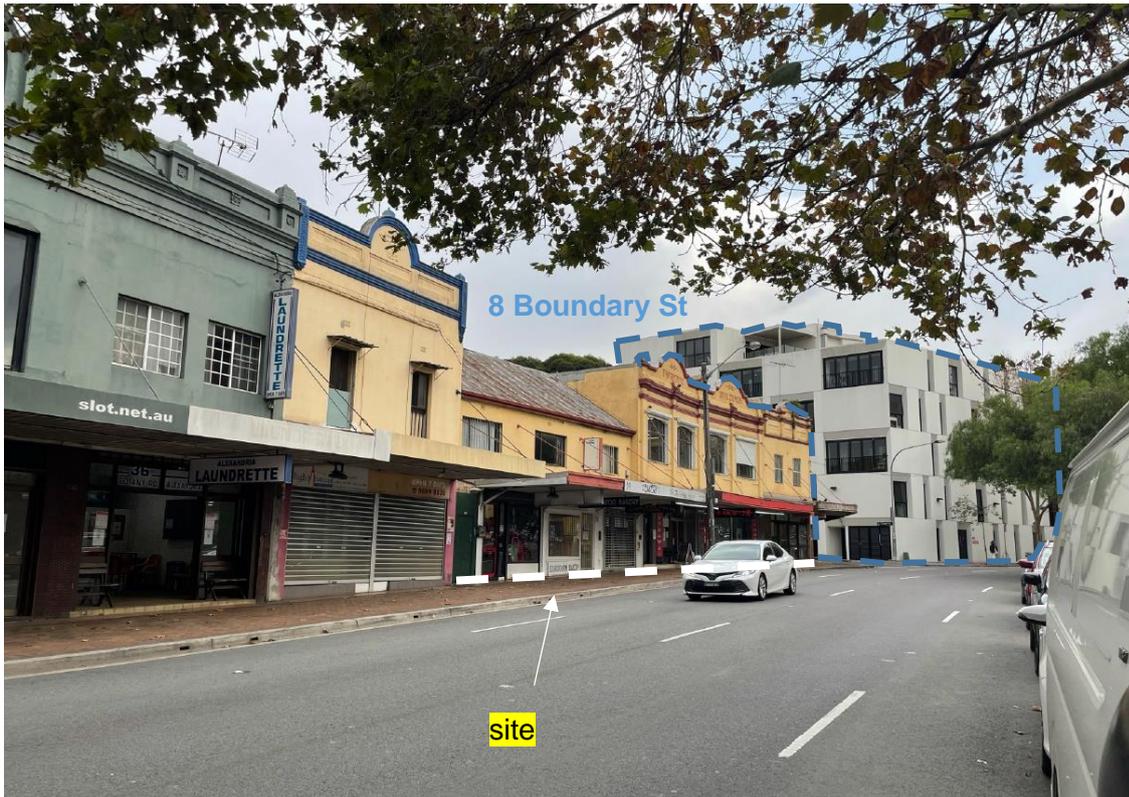
Figure 3: No. 22 and 24 Botany Road, looking west



Figure 4: No 24 and 26 Botany Road, looking west



Figure 5: Nos 28-30 and 32 Botany Road, looking west



**Figure 6:** Site viewed from Botany Road, looking north-west, existing apartment building at 8 Boundary Street to north of site



**Figure 7:** Development immediately south of the site, viewed from Botany Road, looking south-west



Figure 8: View west up Chapel Lane, 8 Boundary Street to right of image



Figure 9: View west up Chapel Lane, 8 Boundary Street to right of image



**Figure 10:** Rear of site as viewed from corner of Chapel Lane and Spencer Lane, looking south-east



**Figure 11:** View south down Spencer Lane, site to left of image and existing apartment building at 20-34 Wyndham Street to right



Figure 12: Rear of site as viewed from Spencer Lane, looking north-east



Figure 13: Rear of neighbouring sites to south (No's 34, 36, 38, 40 Botany Road), looking south-east



**Figure 14:** Looking north up Spencer Lane, site on right



**Figure 15:** Daniel Dawson Playground at 2-18 Wyndham Street to left of image, 8 Boundary Street to right



**Figure 16:** Development across from site, viewed from corner of Chapel Lane and Botany Road, looking east



**Figure 17:** Development across from site, viewed from Botany Road, looking east



**Figure 18:** Development further south along Botany Road, on opposite side from site, looking east



**Figure 19:** Development further south along Botany Road (down to intersection with Henderson Road) on opposite side from site, looking east

## History Relevant to the Development Application

### Development Applications

11. Two identical DAs have been lodged for the site, three months apart.
  - **D/2020/1462** – The first DA for the site was lodged on 4 January 2021. This application was lodged by Platino Properties Pty Ltd.
  - Council officers advised the proponent that a substantial re-design was required and requested the application be withdrawn to allow this to occur. Issues raised with the applicant match those described within this report.
  - On 6 May 2021, the applicant lodged a Class 1 appeal in the Land and Environment Court against the deemed refusal of the development application. The application is still before the court at the time of writing.
  - **D/2021/292** – the second DA was lodged on 31 March 2021 and is the subject of this report to LPP.

### Pre-DA advice

- On 22 September 2020, an email seeking pre-DA advice from Council was received for a scheme proposing the demolition of the existing buildings and the construction of a five (5) storey mixed-use development for a 72-room boarding house and commercial uses on the ground level.
- The floor and section plans that were submitted for pre-DA review are identical in concept to those submitted as part of the subject development application. Minor differences between both sets include the arrangement of the ground and first floors, minor variations in upper level setbacks, and the introduction of a building entrance and awning along Botany Road in the DA plans. No elevation drawings were provided at pre-DA stage.
- On 30 October 2020, Council officers provided pre-DA advice stating the proposal was not supported in its current form and a significant redesign and additional information were required in order for a compliant scheme to be achieved. The applicant was encouraged to amend the plans and continue pre-DA discussions. Issues identified included:
  - (i) heritage considerations;
  - (ii) building height and height standard exceedance;
  - (iii) building design and bulk;
  - (iv) site contamination;
  - (v) public domain including potential footpath dedication;
  - (vi) overshadowing and the requirement for adequate shadow diagrams;
  - (vii) communal open space and deep soil requirements;
  - (viii) noise management;

- (ix) landscaping;
- (x) equitable access;
- (xi) car and motorcycle parking; and
- (xii) loading and waste management.

### **Amendments**

12. The following issues were raised with the applicant on 18 March 2021. As per the first DA, Council officers recommended the subject DA be withdrawn to enable a substantial redesign. The issues raised are detailed below:
- (a) retention of important heritage fabric and new addition situated to rear of the site;
  - (b) building form, expression and massing to respond to fine grain character and retained portion of existing buildings;
  - (c) adequate floor to ceiling heights, including adequate ground floor level that responds to the adjoining footpath;
  - (d) building height and compliance with the permitted height standard;
  - (e) gross floor area proposed and compliance with the permitted floor space ratio standard;
  - (f) setbacks to Chapel Lane and Spencer Lane to improve pedestrian amenity and safety;
  - (g) setbacks to neighbouring building;
  - (h) the interface between development and public domain to ensure activation of street and clear/logical residential entry;
  - (i) vehicle access and removal of excessive driveway crossovers;
  - (j) natural ventilation to noise affected boarding rooms; and
  - (k) improve internal layout to remove bathroom windows from internal corridor.
13. A subsequent request to withdraw both DAs was sent to the applicant on 23 April 2021. No response has been received.

### **Proposed Development**

14. The application seeks consent for the demolition of the three existing two storey buildings on site and construction of a five (5) storey mixed use development. This includes ground floor retail with boarding house accommodation above. The development will result in a total of 72 boarding house rooms across four (4) levels, including (4) accessible rooms. 68 of the rooms are single rooms, and four (4) are double rooms, to accommodate a maximum of 76 lodgers, and a manager's room.

15. The proposed development comprises the following:
- (a) Ground floor (identified as level 1 in the plans)
    - (i) Two (2) retail tenancies fronting Botany Road. The northern tenancy measures 41sqm, the southern tenancy measures 136sqm;
    - (ii) 25 bicycle parking spaces;
    - (iii) A small landscaped courtyard at the centre of the site; and
    - (iv) A waste storage room including bulky goods area accessed from Chapel Lane.
  - (b) First floor (level 2)
    - (i) Parking accessed off Spencer Lane for three (3) cars and 14 motorcycles, and one shared zone space. One of the parking spaces is identified as accessible;
    - (ii) One (1) indoor communal area measuring 73sqm;
    - (iii) Nine (9) boarding house rooms, including one (1) accessible room. The regular rooms are identified as having an area of 16sqm and the accessible room is 18sqm (excluding kitchen and bathroom areas); and
    - (iv) A landscaped courtyard at the centre of the site measuring approximately 79sqm, featuring raised planters and bench seating. A communal laundry with one dryer, one washer and a tub, and a clothesline are located at the southern end of the courtyard.
  - (c) Second floor (level 3), third floor (level 4) and fourth floor (level 5)
    - (i) 19 boarding house rooms of which one (1) is accessible on each of the three floors. The regular rooms range in size, from 13sqm to 16sqm. The accessible room is 18sqm.
  - (d) Fifth floor (level 6)
    - (i) Six (6) boarding house rooms, measuring 16sqm each;
    - (ii) An indoor communal area measuring 46sqm with a 10sqm balcony off it to the west, and approximately 108sqm of outdoor communal open space adjacent to the indoor area to the east. The plans indicate tables and chairs for seating, a lounge, two barbeque facilities, and some planters along the northern and eastern edges of the space. The area is partially covered; and
    - (iii) Installation of solar panels on the rooftop level.
  - (e) Overall
    - (i) Demolition of the three existing buildings at 22-26, 28-30 and 32 Botany Road, Alexandria;

- (ii) The new building is proposed to be 18.2m in height with nil setbacks to the front at Botany Road, side at Chapel Lane, and a setback of approximately 1m off Spencer Lane;
- (iii) The proposal accommodates a small wedge-shaped SP2 zone that exists at the footpath to Botany Road, where the building is set back by around 1m at the south-easternmost corner. The setback tapers in to the north;
- (iv) A new awning is proposed to Botany Road;
- (v) One lift core from the ground floor (level 1) to the fifth floor (level 6);
- (vi) Two accessible building entrances – one to the east at the ground floor of Botany Road, and one on the north-western corner of the site at Chapel and Spencer Lane. Due to the fall of the land, the corner entrance is also at existing ground level, however the entrance is located on level 2;
- (vii) Two sets of fire escape stairs, both discharging to Spencer Lane to the west, and a fire escape stair to Botany Road;
- (viii) External walkways on levels 2-6 arranged around the central void above the landscaped courtyard at level 2, with communal facilities at the northern end of each such 'walkway'. Level 3 features a table tennis table, and levels 4 and 5 have lounge seating;
- (ix) Most boarding house rooms on the western side of the site feature private open space between 3-5sqm; and
- (x) The proposed materials include face brick in Bowral 76 brown, painted render, compressed fibre cement cladding, metal balustrading, powder-coated aluminium framed windows and doors, and a metal roof.

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



Figure 20: Ground floor plan



Figure 21: First floor plan (Level 2)



Figure 22: Second floor plan (Level 3)



Figure 23: Third floor plan (Level 4)



Figure 24: Fourth floor plan (Level 5)



Figure 25: Fifth floor plan (Level 6)



Figure 26: East (Botany Road) elevation



Figure 27: North (Chapel Lane) elevation



Figure 28: West (Spencer Lane) elevation

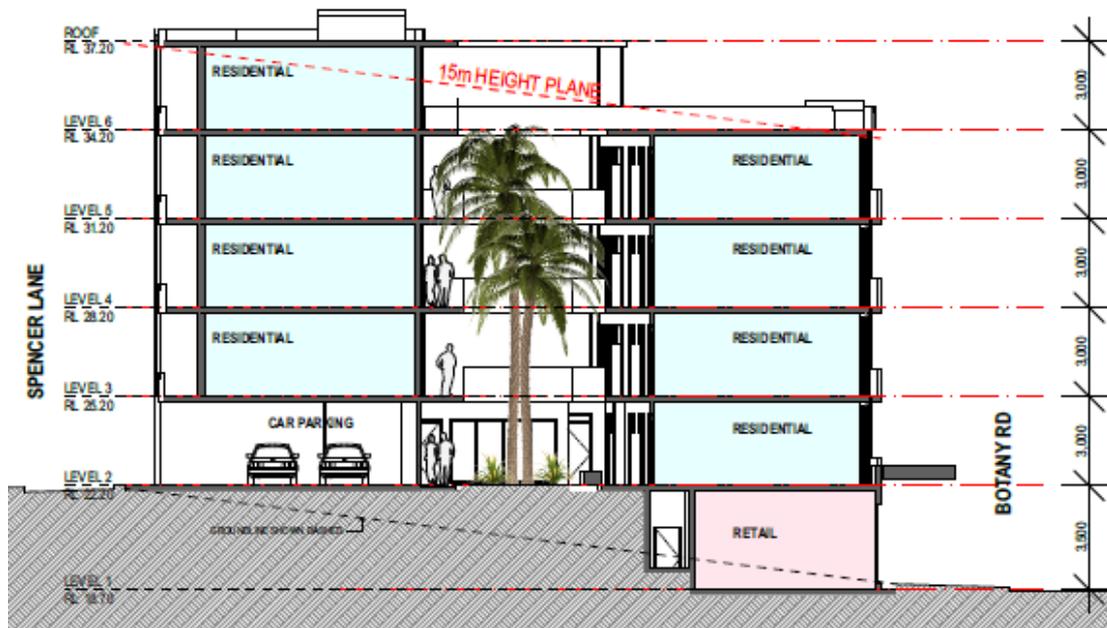


Figure 29: Section A, west-east

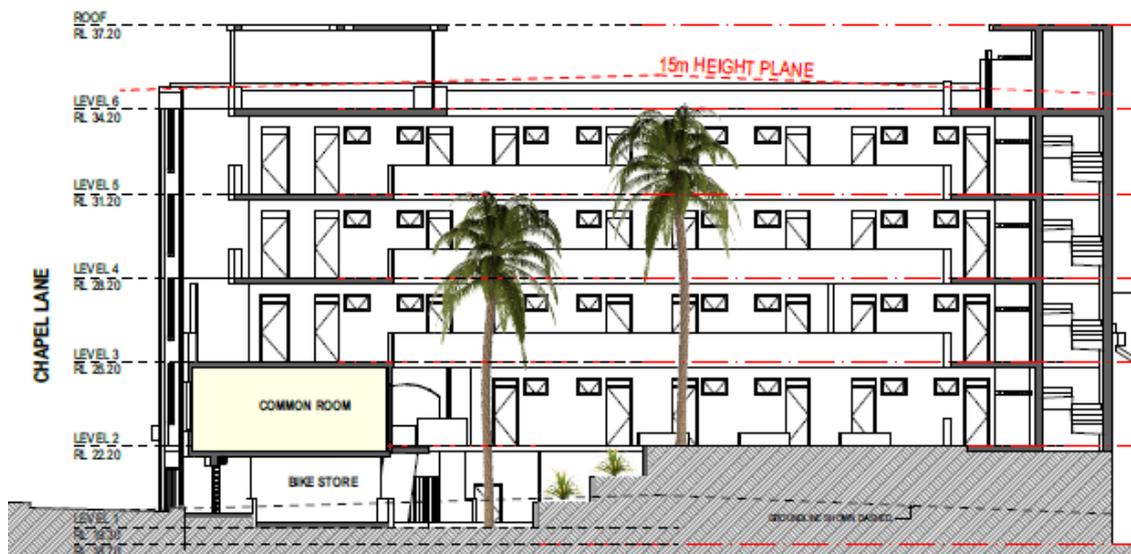


Figure 30: Section B - north-south



**Figure 31:** Photomontage of the proposal viewed from Botany Road.

## Assessment

17. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## State Environmental Planning Policies

### State Environmental Planning Policy No 55 - Remediation of Land

18. The aim of State Environmental Planning Policy (SEPP) No 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
19. A Detailed Site Investigation (DSI) was undertaken for the site.
20. Soil samples tested as part of the DSI revealed a zinc concentration exceeding the relevant criteria, as well as Benzene, toluene, ethyl benzene, xylenes and benzo(a)pyrene concentrations, of which BH2, BH5 and D1 were in exceedance of the relevant criteria. The submitted DSI advises that proposed development plans indicate the site to be covered with buildings on level one (ground floor) and therefore ESL criteria is not applicable as no direct contact with soil is available.

21. The DSI did not assess ground water quality and potential groundwater contamination as monitoring wells were not able to be installed, noting the property located directly north of the site (10-20 Botany Road) was impacted with groundwater contamination, and the assessment of groundwater quality remains a current data gap.
22. Council's Environmental Health Unit has reviewed the information provided and has determined that the proposal cannot be supported due to the limited DSI report submitted. There is a garden and landscaping proposed on Level 2, which is in connection with the ground. This presents a potential contamination issue, where contaminants may be present in soils in this common area. Crucially, groundwater must be investigated at assessment stage, and approval cannot be granted until further investigations are undertaken, information provided, and a recommendation be made as to whether the land can be remediated.
23. To address the abovementioned concerns, a supplementary Detailed Environmental Site Investigation that has carried out groundwater testing, addressing critical data gaps relating to groundwater contamination is required, and confirmation is required that the findings of BH1, BH2, BH5 and D1 will not pose a health risk to the common area garden on level 2.
24. A peer review of the submitted DSI, a supplementary investigation and an accompanying Site Audit Statement are required. The documentation must either confirm the site is suitable for the proposed use, or remediation is required. In the event the site is found to be unsuitable following the supplementary assessment, remediation will be required for which the applicant will need to provide a Remedial Action Plan (RAP) and either a Section B Site Audit Statement or Letter of Interim Advice from the Site Auditor confirming that the remediation strategy within the RAP is feasible and practicable to make the site suitable for the proposed use.
25. The applicant has not adequately demonstrated that the site is/or can be made suitable for the proposed use. Pursuant to Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55), a consent authority must not consent to the carrying out of any development on land unless it is satisfied that the land is or can be made suitable (through remediation) for the purpose for which the development is proposed to be carried out.

### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

26. 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**

27. 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**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
<p><b>1 Density and scale expressed as floor space ratio</b></p> <p>An FSR of up to 1.75:1 plus 0.5:1 is permitted.</p>	No	<p>The site has a maximum floor space ratio of 2.25:1.</p> <p>The application proposes a floor space ratio of 2.5:1. This exceeds the maximum permissible FSR by 11.1%.</p>
<p><b>2(a) Building height</b></p> <p>The proposed building height must not exceed the maximum building height of 15m permitted under the Sydney LEP 2012.</p>	No	<p>The site has a maximum height of 15m.</p> <p>The maximum height of the development proposed is 18.2m. The development exceeds the maximum building height standard by 21.3%.</p>
<p><b>2(b) Landscaped area</b></p> <p>The front setback is to be compatible with the streetscape.</p>	Yes	<p>Botany Road does not feature landscaped setbacks. No front setback or landscape treatment is proposed, except for the small triangular-shaped setback accommodating the SP2 zone for road widening at the south-eastern-most portion of the site.</p>
<p><b>2(c) Solar access</b></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>	Unclear	<p>The shadow diagrams submitted do not clearly demonstrate that the indoor communal area on level 6 receives the minimum requirement. However, given the location of the area on the rooftop and the orientation of the site (to the north), it is likely the proposal is compliant with the development standard.</p>
<p><b>2(d) Private open space</b></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>	Yes	<p>The proposal includes a ground floor courtyard and a rooftop communal area, both of which exceed 20sqm in area. The proposal complies with part (i).</p> <p>The proposal does not identify which of the 72 rooms is the manager's room, however it is noted that a double adaptable room features an 8sqm balcony. Whilst it is unclear whether the proposal complies with part (ii) of the clause, it is likely that it is capable of complying.</p>

Provision	Compliance	Comment
<p><b>2(e) Parking</b></p> <p>(iia) 0.5 parking spaces provided for each boarding room.</p>	Acceptable	The proposal includes 3 car parking spaces. Part (iia) of the clause allows up to 36 parking spaces. It is noted that the Sydney LEP 2012 does not have minimum parking requirements.
<p><b>2(f) Accommodation size</b></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>	Partial compliance	The application proposes 68 single rooms and four (4) double rooms, where currently, all rooms meet the minimum size requirements according to the ARH SEPP.

28. The proposed development does not comply with all relevant provisions of clause 29.

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

#### Clause 30 – Standards for boarding house

Provision	Compliance	Comment
1(a) At least one communal living room is to be provided.	Yes	The building contains two communal living areas, one at level 2 and another at level 6.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m <sup>2</sup>	Yes	All boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Partial compliance	The submitted Plan of Management restricts the number of lodgers to no more than 1 adult lodger per single room. The Plan of Management is silent on the number of lodgers per double room, of which four (4) are proposed. This could be addressed by condition of consent.

Provision	Compliance	Comment
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Partial compliance	Each boarding room features an ensuite and kitchenette as allowed for by the ARH SEPP; however these facilities are not provided to the standard required by Clause 4.4.1.2(1) of the Sydney DCP 2012.
(1e) A boarding room or on-site dwelling to be provided for a boarding house manager if boarding house has a capacity of 20 or more lodgers	Unclear	The boarding house is proposed to have a total of 76 lodgers. The plans do not clearly indicate a boarding room or on site dwelling for a boarding house manager. Notwithstanding, there appears to be a double-sized room with an 8sqm area of private open space on Level 2, which could be used as the manager's room. This could be addressed by condition of consent.
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 proposed boarding house is located within a B4 - Mixed Use zone. Under the LEP, boarding houses are permissible with consent in the B4 zone. The application does not propose boarding house rooms at the ground floor either to the Botany Road frontage or to the Spencer and Chapel lane frontages.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	Yes	Clause 1(h) requires a total of 14 motorcycle and 14 bicycle spaces. The application proposes 14 motorcycle and 25 bicycle parking spaces, which complies with requirements for the boarding house component of the development.

30. The proposed development does not comply with all relevant provisions of clause 30.

#### Clause 30A – Character of the local area

31. 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.

32. Clause 2.13.13. of the DCP, which contains the locality statement for the Regent Street / Botany Road area, calls for improved building presentation, a greater mix of uses and better functionality of the street and path network for pedestrians, and a mix of retail, commercial, community and residential uses to be promoted north of Raglan Street. The height of buildings (storeys) control contained in Clause 4.2.1 of the DCP is 4 storeys.

33. Principles contained in the locality statement point to encouraging traditional strip retail buildings in Regent Street to enliven the streetscape, for the street frontage height of buildings along Regent Street to maintain a pedestrian scale, and for new development to respond to the scale of existing strip retail buildings on Regent Street and retain the traditional narrow lots, small footprint 'fine grain' character of the traditional shopping area.
34. While the subject site has a street address to Botany Road, the locality statement applies to development on either side of the same road (Regent Street and Botany Road), and the subject site is located at the point where Regent Street transitions into Botany Road. The built form characteristics described in the paragraphs above are evident in the site and surrounding development at this point of the street. The three existing buildings strongly contribute to the character of this part of Botany Road. The strip retail buildings in the locality enliven the streetscape through active uses and provide a relatable pedestrian scale. While the Victorian commercial buildings (dating to between the late 1880s and early 1900s) have been significantly altered at the ground floor, the detailed historic facades, narrow lots and shopfronts, and smaller footprints of the traditional strip retail buildings on site and immediate surrounds contribute to the area's vibrancy, diversity and Botany Road's effective and successful function as a local centre.
35. The proposal responds poorly to the urban design context and constraints of the site and streetscape. The proposed development exceeds the height and floor space ratio limit; features a zero setback to Botany Road for the full five storey street frontage, a zero setback to Chapel Lane and a minimal setback to Spencer Lane; has a 5 storey street wall to Botany Road; does not respond to the curve in the streetscape unique to this section of Botany Road or to the traditional subdivision pattern; and results in insufficient building separation to the north and west. The result is that the design presents as a bulky building with minimal architectural detailing that is not integrated into the streetscape and is contrary to the design principles of the Regent Street / Botany Road locality. The design, detailing, and build quality of the existing buildings' original intact fabric is also of a higher quality than what is proposed to replace it.
36. The proposal seeks to replace the existing three smaller ground floor tenancies on site (which present as five, noting that Nos 24-26 has had three tenancies amalgamated into one) with two tenancies, one of which measures 138sqm and has a depth between 5.8m and 8m. The proposed ground floor of these tenancies is located approximately 200mm below the current footpath level. The floor to ceiling of the ground floor tenancies is 3.3m. This design serves to create sub-standard commercial tenancies with undesirable and less practical floor plates than those of the existing buildings, which may pose difficulties in the future in terms of leasing and may result in longer-term impacts to the economic performance and vitality of the street.
37. The Botany Road corridor is an area experiencing transition. The site is only 120m to the north-west of the Waterloo Metro state significant development, and the City has recently carried out its own investigations into potential changes to planning provisions for the locality. As the precinct transforms and grows, the positive elements that contribute to its character and appeal need to be protected to ensure its unique qualities are retained and enhanced.

38. The proposal does not meet the character requirements of Clause 30A of the ARH SEPP as it replaces a fine grain, low-rise street context with a single, monolithic building, with bulk and scale impacts. These impacts arise due to the quantum of floor space being sought, poor architectural articulation, and setbacks that do not align with neighbouring development. The design lacks any reference to adjacent buildings and the immediate locality and is out of character with this section of the streetscape.
39. A preferable approach would be to deliver a fine grain street front by retaining the existing buildings with the bulk of the development set behind. As discussed later in this report the form and external appearance of the proposed development does not improve the quality and amenity of the public domain and fails to satisfy design excellence provisions under the Sydney LEP 2012. The proposed development is not compatible with the character of the local area and is inconsistent with Clause 30A.

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

40. A BASIX Certificate has been submitted with the development application (1164213M).
41. For BASIX certificates to be valid, they must be lodged within 3 months of the date of issue. The certificate was issued on 17 December 2020. The subject application was lodged on 31 March 2021. The BASIX certificate submitted is not valid.

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

42. The provisions of SEPP (Infrastructure) 2007 (ISEPP) 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(2) – Determination of development applications—other development**

43. The application was referred to Ausgrid for review.
44. A response was received advising Ausgrid did not object to the proposal, subject to the design complying with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets. Were the application recommended for approval, the conditions advised by Ausgrid would have been included in the Notice of Determination.

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

##### **Clause 85 – Development adjacent to rail corridors**

45. The application is near to the Bankstown Line heavy rail corridor and was subsequently referred to Transport for NSW (TfNSW) for comment. TfNSW responded, providing conditions of consent. Were the application recommended for approval, these conditions would have been included in the Notice of Determination.

#### **Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations**

##### **Clause 101 – Development with frontage to classified road**

46. The application is subject to Clause 101 of the SEPP as the site has frontage to Botany Road which is a classified road.

47. The proposed development satisfies the provisions of Clause 101 as access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development.

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

48. The application is subject to Clause 102 of the SEPP as the site is adjacent to Botany Road which has an annual average daily traffic volume of more than 20,000 vehicles and the development is likely to be adversely affected by road noise or vibration.
49. The acoustic report submitted with the application has assessed external noise intrusions to the project site from adjacent roadways and noise emissions generated from boarding house common areas in line with noise criteria set out in Clause 4.2.5.3 of the DCP.
50. The report confirms the Botany Road frontage is subject to higher background noise levels, with noise levels recorded at 70dB(A) for daytime and 65dB(A) for night-time. With reference to meeting the DCP sleep criteria, the open windows noise criteria cannot be met without an appropriate design solution to mitigate noise. Therefore, specific building criteria has been recommended including treatment to glazed windows and doors, the external roof and ceiling, external walls and the use of mechanical ventilation.
51. The report has not assessed noise impacts using the criteria set out in Clause 102 of the ISEPP, which is required.
52. The application has not satisfied the requirements of Clause 102.

### **Local Environmental Plans**

#### **Sydney Local Environmental Plan 2012**

53. 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**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is defined as mixed use development comprising commercial and boarding house uses and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>A height of 18.2m 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	<p>A maximum floor space ratio of 1.75:1 is permitted under the LEP. An additional 0.5:1 is permissible pursuant to Clause 29(1)(c)(i) of the ARH SEPP.</p> <p>A total FSR of 2.25:1 or 1,916.7sqm is permitted.</p> <p>A floor space ratio of 2.5:1 or 2,251.6sqm is proposed. This represents an 11.1% breach of the standard.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>No request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted.</p> <p>As there has been no written request submitted to justify the FSR breach, the Panel cannot approve the application.</p>
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standards prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application for height. As stated above no 4.6 has been submitted for the FSR breach.</p> <p>See further details in the 'Discussion' section below.</p>

**Part 5 Miscellaneous provisions**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
5.1 and 5.1A Development on land intended to be acquired for public purposes	Yes	<p>An area measuring around 6sqm located at the south-eastern portion of the site is identified for road acquisition. The building is set back at this location and does not project into the land to be dedicated for road widening.</p> <p>The proposal was referred to TfNSW who did not object to the proposal, subject to compliance with recommended conditions of consent. Were the subject development application being recommended for approval, these conditions would have been included in the Notice of Determination.</p>
5.21 Flood planning	Yes	<p>The site is identified as being subject to flooding for about 7m along the northern site boundary.</p> <p>The application has been reviewed by the City's Public Domain unit, who have advised that the flooding is very minor. As there is no residential use on ground floor and there is no basement, flooding is not considered to be of major impact and a flooding report is not required for the proposed development.</p>

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

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
Division 4 Design excellence		
6.21 Design excellence	No	The proposed development does not demonstrate design excellence. See further details in the 'Discussion' section below.

**Part 7 Local provisions – general**

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing 7.6 Office and business premises	Yes	A maximum of 14 car parking spaces are permitted for the residential component of the development, and one (1) parking space for the retail use.  The proposed development includes three (3) 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 was accompanied by an Acid Sulfate Soils Management Plan which has been reviewed by the City's Health Unit. No further investigation is necessary.

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

54. 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**

55. The site is located within the Regent Street/Botany Road locality. The proposed development is not in keeping with the unique character and the design principles of the Regent Street/Botany Road locality, including encouraging traditional strip retail buildings to enliven the streetscape, requiring the street frontage height of buildings to maintain a pedestrian scale, and for new development to respond to the scale of existing strip retail buildings and retain the traditional narrow lots, small footprint 'fine grain' character of the traditional shopping area..
56. The proposal does not result in improved building presentation or a better functionality of the street and path network for pedestrians. The proposal seeks to demolish traditional strip retail buildings and replace them with a building with a street frontage height that does not maintain a more suitable pedestrian scale, such as a development with two storey street frontage height with further bulk located to the rear. While some of the aforementioned principles are labelled as applying to Regent Street, the northern portion of Botany Road is located at the point where Regent transitions into Botany, and also features traditional Victorian and Federation commercial buildings with a low-scale street frontage worth preserving.

## Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	No	The proposed development does not positively address the streetscape, does not provide fine grain tenancy frontages at ground level to Botany Road, results in safety and security issues along Spencer Lane and does not provide active uses at ground level to the side and rear lanes.  See further discussion under sub-heading 'public domain interface.'
3.5 Urban Ecology	No	The proposed development does not propose tree planting that will achieve at least 15% canopy coverage of a site within 10 years from the completion of development, inconsistent with Clause 3.5.2(2) of the DCP.  The resilience, suitability and longevity of the garden proposed has not been demonstrated. Planting proposed to be located on ground floor and level 2 is positioned at the base of a 4-5 storey cavern which receives no sunlight in winter. The development is inconsistent with the Sydney Landscape Code Volume 2 and does not display excellence and integration of landscape design, as per Clause 6.21 of the LEP.
3.6 Ecologically Sustainable Development	No	The submitted BASIX certificate is not valid. The proposal does not satisfy BASIX/relevant environmental requirements.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under section 5.21 above.
3.11 Transport and Parking	No	The application proposes three (3) car parking spaces, 14 motorcycle parking spaces and 25 bicycle parking spaces., The site's gradient issues inhibit basement parking, with the choice to locate car and motorcycle at Spencer Lane resulting in poor presentation to the laneway.

Provision	Compliance	Comment
		<p>25 bike parking spaces have been provided, which is insufficient. Pursuant to Clause 3.11.3 of the DCP, 1 space per room is required - meaning a total of 72 spaces should be provided. The proposal also neglects to provide any retail bicycle parking and end of trip facilities, which are required.</p> <p>Service vehicle parking has not been adequately detailed, as required by Clause 3.11.6 of the DCP, and site servicing and waste collection remain unresolved.</p> <p>One of the objectives of Section 3.11 of the DCP requires vehicle access to be designed in a way that maximises pedestrian safety and creates high quality ground level relationships between the building and the public domain. Clause 3.11.11(7) states vehicle access is to be a single crossing with a maximum width of 3.6m over the footpath. The proposed vehicle crossover is around 23m long. The extent of the vehicle crossover to Spencer Lane is not supported, as it results in a poor quality ground level relationship between the building and public domain and impedes the provision of active ground floor uses.</p> <p>No traffic report has been provided with the application, making cumulative impacts difficult to assess.</p> <p>The proposal is inconsistent with provisions of Section 3.11 of the DCP and is contrary to Clause 6.21 of the LEP with regard to pedestrian, cycle and service access.</p>
3.12 Accessible Design	No	<p>Clause 3.12.2(2) of the DCP stipulates adaptable dwellings are to be provided in all new developments in accordance with rates set out in the provision. For developments with 30 or more dwellings, 15% of total dwellings are to be adaptable.</p> <p>The proposed development comprises 72 rooms, which requires 11 adaptable rooms. Only four (4) adaptable rooms are proposed, which does not comply.</p>

Provision	Compliance	Comment
3.13 Social and Environmental Responsibilities	No	<p>The proposed development does not provide adequate passive surveillance and is contrary to CPTED principles.</p> <p>The configuration of the ground floor entrance area, including stepped landscaping and the location of the single lift that services the entire development creates safety and security issues with opportunities for concealment, as does the configuration of Spencer Lane.</p>
3.14 Waste	No	<p>A sufficiently detailed Waste Management Plan commensurate with the intensification of the use of the site, that complies with the criteria in City of Sydney Guidelines for Waste Management in New Developments 2018 has not been provided with the application.</p> <p>The proposal does not provide an adequately sized waste storage area for the development, nor have waste storage areas for the communal tenancies been provided. At a minimum (and depending on the size of the bins used and frequency of collection), the boarding house component of the development requires 26.2sqm of waste storage space, and the retail component will require 9.4sqm of space, for a total of 35.6sqm. At present, approximately 24sqm total is provided.</p> <p>Clause 2.5 of the Guidelines also stipulates the maximum walking distance from any entrance of a residential dwelling to the storage area should not exceed 30m. The proposed waste storage area on level 1 of the development is the only waste storage location on site. The furthest distance of travel measured is approx. 34m, which is inconsistent with the Guidelines.</p> <p>The proposal does not comply with minimum waste management requirements.</p>

## Section 4 – Development Types

## 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of 4 storeys.</p> <p>The proposed development is 5 storeys in height and does not comply. See further details under the sub-heading height in the 'Discussion' section below.</p>
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 ground floor has a floor to ceiling height of approximately 3.3m, where Clause 4.2.1.2(1)(b) calls for 4.5m to promote daylight access into building interiors and to contribute to the flexible use of buildings.</p> <p>See further details under the sub-heading height and floor to ceiling levels in the 'Discussion' section below</p>
4.2.2 Building setbacks	No	<p>The proposed development is not consistent with setbacks of surrounding development.</p> <p>The proposal features a zero setback to Chapel Lane, which results in an 8.7-9m separation from residential uses at 8 Boundary Street to the north, and a 1m setback to Spencer Lane, which results in a 6.4-6.5m separation from residential uses at 20-34 Wyndham Street to the west.</p>

Provision	Compliance	Comment
		<p>The minimal setbacks to Chapel Lane and Spencer Lane present building separation issues to 8 Boundary Street to the north and 20-34 Wyndham Street to the west and are not supported as they contribute to the building's bulk and scale. Overall, the setbacks proposed provide a poor contextual response to the site.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	No	<p>Clause 4.2.3.1(3) stipulates new development must not create additional overshadowing onto a neighbouring dwelling where the dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June.</p> <p>The proposed development overshadows glazing to habitable rooms and the private open space of apartments at 20-34 Wyndham Street between 9am and 11am on 21 June, further reducing solar access received by seven (7) apartments to below 2 hours on 21 June.</p> <p>The proposal results in adverse overshadowing impacts to neighbouring properties and is not supported.</p>
4.2.3.3 Internal common areas	Partial compliance	<p>While the external circulation spaces provide access to daylight and somewhat of an outlook, the corridors do not maximise safety and security. This circulation strategy is not supported due to amenity impacts. Entries are susceptible to inclement and extreme weather and the open end to Chapel Lane creates two-way acoustic impacts.</p>

Provision	Compliance	Comment
4.2.3.5 Landscaping	No	The resilience, suitability and longevity of the garden proposed has not been demonstrated. Planting proposed to be located on ground floor and level 2 is positioned at the base of a 4-5 storey cavern which receives no sunlight in winter. The development is inconsistent with the Sydney Landscape Code Volume 2 and does not display excellence and integration of landscape design, as per Clause 6.21 of the LEP.
4.2.3.6 Deep Soil	No	<p>Clause 4.2.3.6 requires a minimum 10% of the site to be deep soil and to feature a minimum dimension of 3m.</p> <p>The subject site requires approximately 84.5sqm of deep soil. The proposal includes approximately 23.5sqm of deep soil on the ground floor. The landscaped courtyard on Level 2 is proposed to be on slab, and as such is not genuine deep soil.</p> <p>The proposal results in an under provision of deep soil by around 61sqm, which is inconsistent with Clause 4.2.3.6 of the DCP.</p>
4.2.3.7 Private open space and balconies	Yes	As the residential component of the mixed use development is for a boarding house, private open space provision has been assessed under Clause 4.4.1.4 below.
4.2.3.8 Common open space	No, but acceptable	Clause 4.2.3.8(1) requires at least 25% of the site area to be provided as open space. This results in a DCP requirement of 211.4sqm.

Provision	Compliance	Comment
		The ARH SEPP only requires one area of at least 20sqm of private open space to be provided for lodgers. The proposal includes a rooftop communal outdoor area in excess of 100sqm, which is considered satisfactory. Paired with the landscaped courtyard at level 2, the total communal outdoor area proposed is approximately 164sqm.
4.2.3.9 Ventilation	Partial compliance	<p>The proposed boarding house rooms are generally capable of achieving natural ventilation with windows to either Botany Road or Spencer Lane, and feature fan lights over each door, as well as operable windows in the bathrooms, which open out to the internal circulation corridors.</p> <p>Whilst natural ventilation is possible, the development is located on Botany Road, which has an annual daily traffic volume of more than 20,000 vehicles, meaning the development is likely to be adversely affected by road noise or vibration. See further discussion under Section 4.2.5 below.</p>
4.2.3.10 Outlook	Yes	An acceptable outlook is provided to each boarding house room.
4.2.3.12 Flexible housing and dwelling mix	Yes	Whilst Clause 4.2.3.12(a) stipulates a range of dwelling types are to be provided within all residential development of more than 20 dwellings, the proposal is for a boarding house development. The ARH SEPP contains strict parameters about room sizes and boarding house room requirements, with which the proposal largely complies.
4.2.5 Types of development	Partial compliance	Clause 4.2.5.3 of the DCP contains provisions that apply to sensitive uses (including residential) on a site with a frontage to a busy road that carries more than 20,000 vehicles a day.

Provision	Compliance	Comment
		<p>A noise impact assessment was provided with the application as the site is located on Botany Road, which has an annual daily traffic volume of more than 20,000 vehicles, meaning the development is likely to be adversely affected by road noise or vibration.</p> <p>The acoustic report submitted with the application has assessed external noise intrusions to the project site from adjacent roadways and noise emissions generated from boarding house common areas in line with noise criteria set out in Clause 4.2.5.3 of the DCP.</p> <p>The report confirms the Botany Road frontage is subject to higher background noise levels, with noise levels recorded at 70dB(A) for daytime and 65dB(A) for night-time. With reference to meeting the DCP sleep criteria, the open windows noise criteria cannot be met without an appropriate design solution to mitigate noise. Therefore, specific building criteria has been recommended including treatment to glazed windows and doors, the external roof and ceiling, external walls and the use of mechanical ventilation.</p> <p>While the proposal has addressed relevant criteria pursuant to the DCP, the report has not assessed noise impacts using the criteria set out in Clause 102 of the ISEPP, which is required.</p> <p>Total acoustic impacts have not been accurately quantified or sufficiently mitigated by the proposal.</p>
4.2.6 Waste and recycling Management	No	As detailed above under discussion in Section 3.14 Waste, the proposal does not comply with the City of Sydney's Guidelines for Waste and Recycling Management in New Developments and an adequate Waste Management Plan has not been provided.

Provision	Compliance	Comment
		Clause 4.2.6.3(1) states the waste handling, storage and collection systems for residential and non-residential waste are to be separate and self-contained. The proposal does not include sufficient waste storage areas for either the boarding house or retail components of the development, nor are these areas separate on the plans.
4.2.7 Heating and cooling infrastructure	Partial compliance	A plant room is provided on the ground floor. The location of all required services, including essential fire and electrical services, has not been provided.

#### 4.4 Other Development Types and Uses

##### 4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	The application does not seek consent for the strata subdivision or community title subdivision of the proposed boarding house.  Were the application recommended for approval, a condition restricting any subdivision of the development would have been imposed on the consent.
4.4.1.2 Bedrooms	Partial compliance	The proposed development is partially compliant with the requirements of Clause 4.4.1.2(1). All bedrooms meet minimum size requirements (excluding the kitchenette and ensuite). Most rooms feature undersized bathrooms (68 out of 72), and all rooms have undersized kitchenettes and wardrobes.  Proposed typical room sizes are detailed in Table 1 below. As evidenced by the figures contained in Table 1, the proposed boarding house rooms do not comply with all minimum requirements pursuant to this clause.

Provision	Compliance	Comment
		The boarding houses have access to an adequate amount of natural light and ventilation, however as detailed above, the proposal has failed to adequately address the issue of acoustic impacts arising from the site's proximity to the heavily trafficked Botany Road.
4.4.1.3 Communal kitchen areas	Yes	Each of the 72 boarding house rooms proposed features a kitchenette. As such, communal kitchen areas are not required. Notwithstanding, a communal kitchen is proposed to be provided within the rooftop communal indoor area.
4.4.1.4 Communal living areas and open space	Partial compliance	See further details under the sub-heading boarding house facilities and amenity in the 'Discussion' section below.
4.4.1.5 Bathroom, laundry and drying facilities		
4.4.1.6 Amenity, safety and privacy		
4.4.1.7 Plan of Management	No	<p>The Plan of Management (POM) submitted does not detail maximum occupancy rates for double rooms, does not provide all information required concerning waste management (e.g. sharps, sanitary bins), and does not detail professional cleaning and pest control arrangements.</p> <p>The POM is particularly deficient in terms of safety and security measures such as perimeter lighting, surveillance or security camera systems, access to a landline phone for residents to ring emergency services, and internal signage. This could be addressed by conditions of consent.</p>

## Discussion

### Clause 4.6 Request to Vary a Development Standard – Height

57. The site is subject to a maximum height control of 15m. The section and elevation drawings below detail the maximum height of the new development, which is to the top of the lift overrun. The section has not been drawn through the tallest part of the building. Depending on which drawing used to measure the maximum height of the development, the height breach ranges between 17.4m and 18.2m, which comprises between a 16% and 21.3% variation to the height standard.

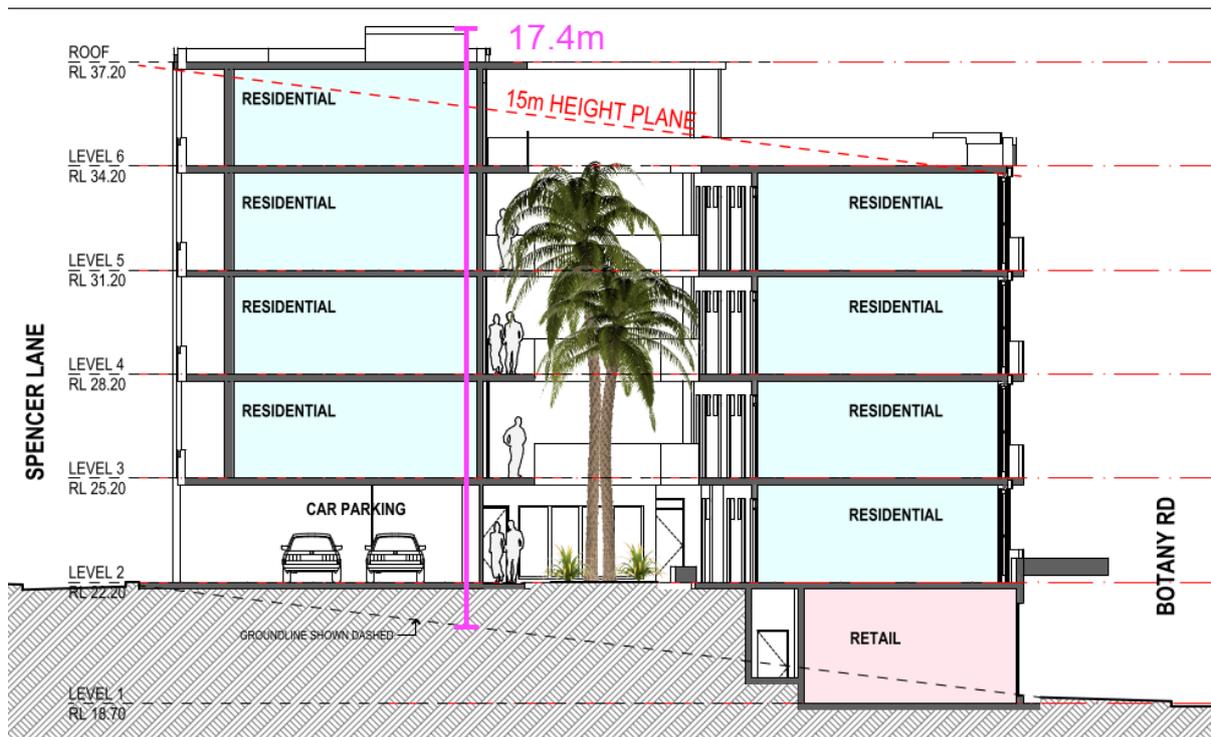


Figure 32: Section drawing demonstrating height breach

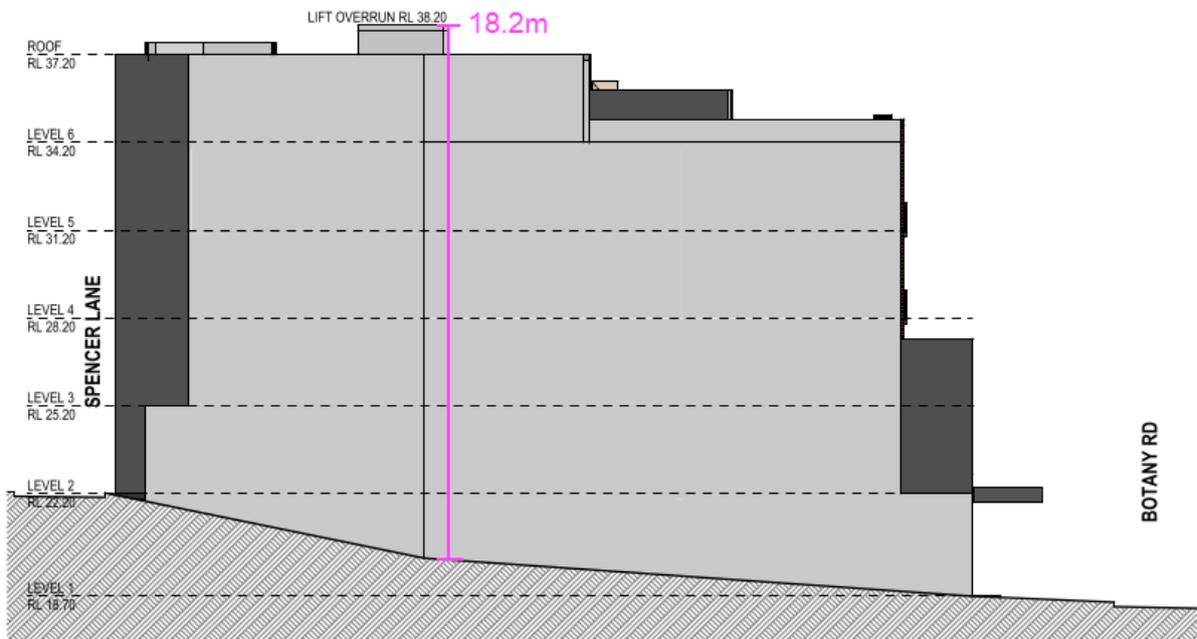


Figure 33: South elevation drawing demonstrating height breach

58. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
  - (c) The proposed development will be consistent with the objectives of the zone; and
  - (d) The proposed development will be consistent with the objectives of the standard.

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

59. 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 variation to the 15m height standard is confined to the lift overrun, rooftop pergola and portion of the upper level central to the building. These elements will not result in any significant adverse visual impacts upon adjacent properties or the public domain, with the 5-storey form being suitable within the context of the subject site.
    - (ii) The proposed building height is a result of the provision of lift access and pergola above a communal open space at the roof level, which is a suitable design outcome for a high-density development in the mixed-use zone. These elements above the height control do not contain any floor space and do not present an unreasonable increase in development density beyond that envisioned for development in the zone. These elements are not highly visible from the public domain – Botany Road.
    - (iii) The height is suitable for the subject site and compatible with the planning objectives and intended outcomes for the site and the objectives of the B4 – Mixed Use zone.
    - (iv) In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, it is clear that compliance with a development standard is unreasonable or unnecessary if the objectives are met.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The variation to the 15m height standard pursuant to the Sydney Local Environmental Plan 2012 is a result of the topography of the subject site which has a fall from the rear – Spencer Lane (RL22.20) to the front boundary – Botany Road (RL 18.70) being a fall of 3.5m across the depth of the site. The elements varying the height control are located central to the site directly above the sloping portion of the natural ground level, with the development otherwise designed so that the built form generally sits within the 15m height control at the street elevations – Botany Road and Spencer Lane.
  - (ii) The portion of the building exceeding the height standard will not be visually discernible from the public domain being central to the roof level, and in this case, the building form is suitable for the subject site and compatible with the planning objectives and intended outcomes of the objectives of the B4 – Mixed Use zone.
  - (iii) The variation to the height limit confined to the lift overrun, rooftop pergola, and portion of the upper level central to the roof level does not contribute to additional bulk and scale at the street level noting the proposed works are central to the building footprint. The additional elements will not result in unreasonable privacy impacts, overshadowing, or the loss of views/outlook from the adjoining properties.
  - (iv) The variation in height is consistent with the following relevant aims of the Sydney LEP 2012 found at clause 1.2(2):
    - (i) 2(e) – the proposed variation (lift overrun, rooftop pergola, upper portion of boarding house) will service a 72 x room boarding house development which contributes to the provision of affordable rental housing within close proximity to employment and services,
    - (ii) 2(g) – the variation will allow for a development that is located within close proximity to transport services and promotes active transportation including cycling and walking,
    - (iii) 2(h) – the variation being confined to lift overrun, rooftop pergola, and upper portion of the boarding house contributes to a high level of amenity and quality of life by providing equitable access to a rooftop communal open space area, and offers shade protection at this area.
    - (iv) 2(j) – the variation contributes to a high quality contemporary form within the streetscape that reflects the desired future character of the locality. Further, the proposed variation is consistent with the stepped built form of the adjacent property at 8 Boundary Street, Alexandria and reflects the existing character of this building, thus the variation is suitable for the locality,
    - (v) 2(k) – the variation will not have an adverse impact upon any heritage item or heritage conservation area.
    - (vi) 2(l) – the variation will not detract from the enjoyment of the natural environment with respect to overlooking, overshadowing or visual bulk and scale impacts noting the varying elements are central to the roof level.

- (v) The variation in height is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:
  - (i) 1.3(c) – the proposal is an orderly and economic use of the site and the development is largely consistent with the height standard with a contemporary built form that is compatible with the desired future character of the locality, and the variation will not result in unreasonable amenity impacts,
  - (ii) 1.3(d) – the proposed variation services a 72 x room boarding house development which contributes to the provision of affordable rental housing within close proximity to employment and services,
  - (iii) 1.3(f) – the variation is consistent with surrounding development and will not have a significant adverse impact upon any heritage items or heritage conservation areas,
  - (iv) 1.3(g) – the proposed variation and height of building presents a suitable design outcome for the subject site being a 5 storey form that sits comfortably within the streetscape, and is consistent with adjacent recent developments – 8 Boundary Street, Alexandria,
  - (v) 1.3(g) – the proposed variation allows for the provision of equitable lift access to an area of rooftop communal open space for future residents of the development, which will provide sun protection for part of the communal open space, and allows for the upper-level boarding rooms to be of the maximum allowed size (16sqm) thereby maximising their internal amenity.
- (c) The proposed development will be consistent with the objectives of the zone;
  - (i) The proposal includes ground floor retail premises providing for a compatible low-scale retail component within the development that is compatible with the boarding house proposed above.
  - (ii) The proposal integrates commercial and residential land uses and is located within close proximity to public transport being 500m walking distance from Redfern Railway Station, encouraging active transport.
  - (iii) The proposal will contribute to the viability of the Regent Street / Botany Road locality.
- (d) The proposed development will be consistent with the objectives of the standard
  - (i) Objective (a) – The development proposal presents a 5 storey built form to the public domain with the street elevations generally complying with the 15m height control.

The immediate locality contains a diversity of building forms including 2-3 storey commercial buildings and 5 storey mixed use buildings. The development proposal being a 5 storey form will reflect the form and scale of the adjacent 5 storey mixed use building at 8 Boundary Street, Alexandria, with the upper-most level being recessed from Botany Road and not visible from the street level. Further, the proposed height at the Spencer Lane frontage is consistent with the height of the mixed use development at 20-34 Wyndham Street, Alexandria west of the site.

The building form has been designed to present a compliant building height at the street elevations with the number of storeys proposed being appropriate for the subject site. The overall scale of the proposal is compatible with the built form of existing development and the form and scale of mixed use buildings in the locality, presenting a consistent building height with adjacent developments to the north and west.

- (ii) Objective (b) – The subject site is not a heritage item and does not adjoin a heritage item or heritage conservation area. The bulk, scale, and height of the proposed development is consistent with that of the neighbouring buildings, is appropriate within the Regent Street/Botany Road Locality and compatible with the 15m height standard planned for the site.
- (iii) Objective (c) – The proposal will not result in a significant adverse impact upon views/outlook from surrounding properties beyond that envisioned within the zone. The elements of the proposal which result in a variation to the height control –lift overrun, rooftop pergola and portion of the upper level central to the building will not obstruct any sightlines towards significant icons and would not impact views towards heritage items.
- (iv) Objective (d) – The 5 storey form proposed at both the Botany Road and Spencer Lane frontages is consistent with the overall scale of development in the locality and presents a suitable transition in building height along Botany Road from the high-rise developments within the vicinity of Redfern Railway Station to the north.
- (v) Objective (e) – The subject site is not located within Green Square.

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

60. 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)?

61. Pursuant to Clause 4.6(4)(a) and 4.6(3)(a), the applicant has not adequately addressed that compliance with the height standard is unreasonable and unnecessary in the circumstances of the case.

- (a) The request does not demonstrate the objectives of the development standard are achieved, notwithstanding non-compliance with the standard.
- (b) It has not been established that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

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

62. Pursuant to Clauses 4.6(4)(a)(i) and 4.6(3)(b), the written request submitted by the applicant does not adequately demonstrate that there are sufficient environmental planning grounds to justify contravention of the height standard.

Is the development in the public interest?

63. Pursuant to Clause 4.6(4)(a)(ii), the proposed development is not in the public interest because it does not meet objective 4.3(a) of the height standard, being "to ensure the height of the development is appropriate to the condition of the site and its context", as detailed below:

- The site is subject to a 15m height in metres control and a 4 storey height of buildings control. The proposal exceeds both controls. The submitted Clause 4.6 variation request identifies a maximum variation of 2.4m (for an overall height of 17.4m of 16%) however the section drawing from which the measurement is taken is not through the tallest portion of the development. Consequently, the information provided is insufficient to accurately determine the precise variation. The assessment of Council officers (refer to Figure 33 above) illustrates a height breach of up to 3.2m or a 21.3% exceedance of the height standard, taken from the top of the lift overrun. Consequently the 4.6 variation request is not considered to be accurate and is not supported.
- The portion of the development exceeding the height standard includes part of the fifth storey to Spencer Lane (which houses 6 boarding house rooms and the rooftop indoor communal area), the pergola to the outdoor communal area, the parapet of the communal area at the east (Botany Road) side of the rooftop space, the lift overrun, and the southern set of fire stairs and adjacent plant room. These elements of the development could easily be accommodated within the maximum height plane through the removal of a single storey. This would result in a development where the majority of the uppermost storey would comply with the height standard, with the added benefit that the current floor space ratio exceedance would also be reduced. This is a far more preferable and acceptable planning and urban design outcome.
- The proposed development fails to consider the two storey context immediately adjacent to the south, which comprises 3 two-storey Victorian commercial terraces, or the predominantly low-scale nature of development across Botany Road to the east. There is no transition down to the terraces, and no relative streetscape response, such as a two storey street frontage height to Botany Road. No urban design report or analysis was provided of the context, to show the relationship of the proposed built form with neighbouring buildings. The result is insufficient evidence of a contextual understanding informing the design, and insufficient reasoning as to why exceeding the height and storey controls is supportable.

- There are insufficient floor to floor and floor to ceiling heights proposed. The floor to floor level for the retail tenancies is 3.5m, not the required 4.5m, with the retail floor set 0.5m below the footpath level relative to the corner of Botany Road and Chapel Lane. Clause 4.2.1.4(4) of the Sydney Development Control Plan 2012 requires habitable rooms in mixed use developments to achieve 2.7m ceiling heights, requiring 3.1m floor to floor heights. Adjusting the development to be compliant with these controls and to positively interface with the street would result in a building height that further exceeds the height in metres standard, exacerbating the building's bulk and subsequent environmental impacts. While improving the treatment to the ground floor plane is desirable, the additional height breach would not be an acceptable outcome.
- The proposed development will overshadow apartments at 20-34 Wyndham Street, with the portion of the development exceeding the height standard likely causing this adverse amenity impact. While the shadow diagrams submitted do not sufficiently differentiate between existing shadows cast and those resulting from the proposed development, it is clear the proposed building will overshadow the private open space and glazing of habitable rooms at apartments at No. 20-34, reducing the amount of solar access received to below the minimum requirements of 2 hours on 21 June between 9am and 3pm. This is contrary to Clause 4.2.3.1(3). The proposal has not adequately addressed solar access in this regard. Given the information submitted indicates the rooftop area results in overshadowing impacts to neighbouring residential development, the height breach cannot be supported.
- In terms of surrounding street context to the north and west, while both residential flat buildings at 8 Boundary Street and 20-34 Wyndham Street are part 4, part 5 storeys, the developments predate current planning controls.

8 Boundary Street was approved in October 2012 and was assessed against the provisions of the South Sydney LEP 1998 and South Sydney DCP 1997. The original approval of 8 Boundary Street resulted in a 600mm exceedance to the current 15m height standard, which was justified as being relative to buildings surrounding Daniel Dawson reserve, and reflective of the fact that the site to be developed did not have any directly adjoining buildings. The assessment noted that Botany Road presents a wider variety of built form typologies, including buildings ranging from 2-6 storeys in height.

20-34 Wyndham Street was approved in June 2004. Due to a difference approach to calculating height under the South Sydney LEP 1998, the part 4, part 5 storey development was considered to comply with the 12m height standard at the time, noting the fifth storey comprises an attic-style level with a curved roof, meaning the uppermost storey is largely obscured when viewed from the public domain on Spencer Lane. When viewed from Wyndham Street to the west, the building presents as four storeys.

Both sites also feature a higher natural ground level, where the subject slopes by approximately 1.16m from south to north along the western boundary and by 3.69m from west to east at the southern boundary, meaning the subject site sits lower in the streetscape. Attempting to achieve a full 5 storey building comparable to its northern and western neighbours in this location, with no front setback or reduced street frontage height, results in a development that visually dominates the subject street block and does not relate to adjacent buildings.

- The proposed development fails to consider the desired future character of the area. The height exceedance exacerbates the bulk of the development, which seeks to replace a fine grain, low-rise street context with a single, monolithic building with poor architectural articulation. The design lacks reference to adjacent buildings and the immediate locality, resulting in a development that is out of character with the streetscape and is not appropriate to the condition of the site and its context. Non-compliance with the height standard is a consequence of the non-compliance with floor space, with each standard breach facilitating the other. Endorsing such a development would set a negative precedent for the area.
- The proponent has not demonstrated that compliance with the height standard is unreasonable or unnecessary, and the submitted Clause 4.6 variation request is not considered to be adequate. The development is not consistent with the objectives of the height control, therefore the development cannot be considered to be in the public interest.

### Conclusion

64. For the reasons provided above the requested variation to the height development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition, the proposed development is not in the public interest because it is inconsistent with the objectives of the height development standard, rendering it unsuitable for the B4 Mixed Use zone.

### Height and floor to ceiling levels

65. Clause 4.2.1 of the DCP permits a development 4 storeys in height. In addition to the breach of the height standard, detailed above, the building breaches the permitted height of building (storeys) control by 1 storey. The proposed fifth storey aligns with the street wall on all frontages. As proposed, this presents scale and bulk impacts to the public realm, and amenity impacts to neighbours further compounding building separation issues.
66. Additionally, the floor to ceiling level at the ground floor is approx. 3.3m where the DCP requires 4.5m. The floor to floor levels of levels 2 to 6 above is 3m, where 3.1m is required. The rooftop parapet is undersized at 0.8m. Adjusting these levels whilst continuing to pursue a 5 storey form will further increase the overall height of the development, exacerbating the height breach and further contributing to the building's dominant presentation. Adequate floor to ceiling levels could be achieved in a four storey built form that likely complies with both the height and floor space standards, with the possible exception of some rooftop elements (such as lift overrun).
67. As a result of the height non-compliance, the development is inconsistent with the existing and desired future character of the area, is likely to result in adverse overshadowing impacts to neighbouring properties and contributes to the building's unacceptable bulk and scale.

### Floor space ratio

68. Clause 4.4 of the LEP permits a maximum floor space ratio (FSR) of 1.75:1. Clause 29(1)(c)(i) of the ARH SEPP permits an additional 0.5:1 FSR for the provision of affordable housing. The total permissible maximum FSR for the proposed development is 2.25:1. The subject site has a site area of 851.9sqm, meaning the maximum gross floor area (GFA) is 1,916.7sqm.

69. Based on the Council officer's calculations of the floor plans provided, the proposed development results in a GFA of approximately 2,125.6sqm or an FSR of 2.5:1, which is a 208.9sqm or an 11.1% exceedance. The proposal represents an overdevelopment of the land and is inconsistent with Clause 30A of the ARH SEPP as it is incompatible with the character of the local area.
70. The applicant has miscalculated the FSR of the proposed development by excluding GFA including bicycle storage at the ground floor and various elements of enclosed circulation space throughout the development. Pursuant to Clause 4.6 of the LEP, there has been no written request submitted to justify the FSR breach, as the applicant states the proposal has a GFA of 1,902qm and an FSR of 2.24:1, which reflects a compliant development.

### Design excellence

71. The development in its current form does not demonstrate design excellence, as required by Clause 6.21 of the LEP. The development will fail to deliver a high standard of architectural, urban and landscape design, and therefore does not meet the objective of Clause 6.21(1).
72. Pursuant to Clause 6.21(3), the consent authority must be satisfied that the building exhibits design excellence to grant consent. As outlined throughout this report, the building is not considered to demonstrate design excellence as required by Clause 6.21. The proposal is inconsistent with the following parts of the clause:
  - (a) **Clause 6.21(4)(a)** – whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved. A high standard of architectural design, appropriate public domain interface, suitable setbacks and massing within the streetscape, and the use of complementary materials and architectural detailing is not considered to have been employed in the design of the proposal. There is no contextual response demonstrated to the immediate adjacent context to the south on Botany Road or the wider streetscape.
  - (b) **Clause 6.21(4)(b)** – whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain. The form and external appearance of the building will not improve the quality and amenity of the public domain. The design does not minimise the substantial bulk resulting from the five storey street wall to Botany Road and the zero setbacks to Botany Road and Chapel Lane. The proposal removes fine grain development on site, to be replaced with a single, overbearing, unsympathetic, and poorly modulated building with less functional ground floor tenancies, unresolved residential entries, and no active uses to Chapel and Spencer Lanes. It is also noted the continuous awning to Botany Road cannot align with its southern neighbour due to the SP2 zone, which will contribute to the incoherent appearance of the development.
  - (c) **Clause 6.21(d)(iii)** – how the proposed development addresses any heritage issues and streetscape constraints. While the subject site is not in a heritage conservation area, the surrounding streetscape of Botany Road features several intact Victorian commercial buildings that contribute to the character of the immediate locality. The design is not built to the adjusted boundary on Botany Road, proposing a straight facade on levels two to five, which does not respect the unique curve in this street frontage. The design of the building does not successfully harmonise with the existing Botany Road streetscape.

- (d) **Clause 6.21(d)(v)** – how the proposed development addresses the bulk, massing and modulation of buildings. The design of the building does not suitably mitigate its bulk. The exceedance of the height in metres and storeys controls and the five storey street wall to Botany Road, paired with insufficient setbacks and the choice to include and design around a central atrium contribute to the substantial bulk of the building. The design does not provide an appropriate transition to nearby development or allow any aspect of the development to relate well to the human scale.
- (e) **Clause 6.21(d)(vi)** – how the proposed development relates to street frontage heights. The proposal features a 5 storey street wall from Botany Road, with no upper level setbacks. The development does not relate to or reference the two-storey buildings to the south, or the low-scale developments across Botany Road.
- (f) **Clause 6.21(d)(vii)** – how the proposed development addresses environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity. Shadow diagrams that adequately detail neighbouring development and impacts to these properties have not been provided. The application has not suitably demonstrated the proposal will not result in adverse environmental impacts. The lack of building setbacks and adequate building separation is likely to result in visual and acoustic privacy impacts to neighbouring properties. Within the development, the internal walkway surrounding the central atrium will result in visual and acoustic privacy impacts between boarding house rooms and the circulation space.
- (g) **Clause 6.21(d)(ix)** – how the proposed development provides and responds to pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network. The application proposes a new 72 room boarding house. The amount of bicycle parking is considered insufficient. The zero setback to Chapel Lane and the 1m setback to Spencer Lane do not allow for adequate footpaths and result in poor pedestrian access to the site. Site and waste servicing have not been adequately detailed.
- (h) **Clause 6.21(d)(x)** – how the proposed development addresses the impact on, and any proposed improvements to, the public domain. As per discussion under the sub-heading 'public domain interface' the development does not result in improvements to the public domain.
- (i) **Clause 6.21(d)(xii)** – how the proposed development achieves appropriate interfaces at ground level between the building and the public domain. The ground level entrance area off Botany Road is unresolved. The configuration of the ground floor entrance area, including stepped landscaping and the location of the single lift that services the entire development creates safety and security issues. The second entrance located on the corner of Chapel and Spencer Lanes does not feature street setbacks for access and would be improved by a single, accessible, level opening, rather than stairs.
- (j) **Clause 6.21(d)(xiii)** – how the proposed development achieves excellence and integration of landscape design. The proposed development does not meet minimum deep soil requirements and information has not been submitted in relation to canopy cover. The proposal requires additional landscape information and some redesign, as well as sufficient deep soil, detailed above in this report under Sections 4.2.3.5 and 4.2.3.6.

*Design Advisory Panel Residential Subcommittee*

73. The application was also referred to the City of Sydney's Design Advisory Panel Residential Subcommittee (DAPRS) as part of its assessment. Comments and concerns identified by DAPRS are below:
- (a) The existing buildings on site strongly contribute to the character of this portion of Botany Road. The panel recommended the retention of the existing buildings and an alternate site strategy be explored, including:
    - (i) Retaining the existing buildings for retail use and possibly a first floor commercial use, or indoor communal area;
    - (ii) Tightening the footprint of the boarding house by removing the central courtyard and consolidating the rooms to the western side of the site, ensuring the proposal does not exceed the FSR standard;
    - (iii) Satisfying noise attenuation methods and natural ventilation requirements within the façade design;
    - (iv) Providing footpath dedications to Spencer Lane and a portion of Chapel Lane;
    - (v) Observing Apartment Design Guide (ADG) setbacks to neighbouring residential buildings;
    - (vi) Observing the height control to Spencer Lane;
    - (vii) Increasing the deep soil area provided;
    - (viii) Providing an entry to the boarding house protected from noise, rain and winter winds, as the current entry arrangement and external circulation on Chapel Lane does not have enough footpath area and may be impacted by noise intrusion into the central courtyard from Botany Road.
  - (b) The proposal is considered to have a poor urban design response to the curve in the street as well as the levels of the footpath. Retention of the existing buildings would alleviate this problem.
  - (c) The proposal does not meet the character requirements of Clause 30A of the ARH SEPP as it replaces a fine grain, low rise street context with a monolithic building. More work on the architectural character and urban context is necessary.
  - (d) Internal facing bathrooms will create acoustic issues and are not encouraged for boarding houses. Fanlights over the entry doors would be more satisfactory however, in accordance with advice above, the central courtyard / circulation space should be reduced or eliminated to increase the setback from Botany Road.
  - (e) Retail floor to ceiling height controls for any new retail spaces should be complied with.
  - (f) The room layouts have poor amenity. The size of the proposed double beds makes the single rooms too tight and inflexible for the occupants.

- (g) There is no waste reticulation / management system evident. Residents would have to take rubbish down via lift or stairs and could create odour issues
74. Based on assessment against design excellence provisions above and the comments provided by the City's expert Design Advisory Panel, the proposal cannot be considered capable of delivering design excellence under Clause 6.21 of the LEP, and as such, development consent cannot be granted to the development.

### Public domain interface

75. The proposed development fails to provide for an appropriate interface with the public domain. The proposal includes retail development with a floor level lower than the adjoining footpath, inadequate floor to ceiling heights at ground floor, convoluted residential access, an excessive vehicular crossover to Spencer Lane, and no activation of either Chapel or Spencer lanes. In particular, the development fails to comply with the following:
- (a) Clause 3.1.1.3(2) of the DCP, which requires development adjacent to lanes in mixed use zones to include active uses at ground level to encourage pedestrian activity and enhance pedestrian access. The zero lot built form to Chapel Lane and treatment of Spencer Lane are not supported as the design will not permit the development to comply with this Clause.
  - (b) Clause 4.2.1.2(1)(b), which stipulates the minimum floor to ceiling height for ground floor tenancies is 4.5m. The proposed floor to ceiling height at ground floor is approximately 3.3m, which does not comply. Combined with the lowered floor level, this affects the presentation of the ground floor to the street. Compliance with this requirement will also increase the overall height of the building, and result in a further exceedance of the permitted height standard.
  - (c) The objectives of Clause 3.2.2, which require the provision of legible and accessible entries from the street and the public domain. Clause 3.2.2(7) requires residential developments to have a street address and provide a direct line of site from a street to the principal common building entry. The principal entry is located on the north-western corner of Chapel and Spencer lanes, which does not comply. The entry off Botany Road is at a considerable distance from the single lift in the development, which is located deep on the ground floor.
  - (d) Clause 4.4.1.6(2)(a), which requires boarding houses to be designed to minimise and mitigate any impacts on the visual and acoustic privacy of neighbouring buildings by locating the main entry point at the front of the site, away from side boundary areas near adjoining properties.
  - (e) One of the objectives of Section 3.11 of the DCP, which requires vehicle access to be designed in a way that maximises pedestrian safety and creates high quality ground level relationships between the building and the public domain. Clause 3.11.11(7) states vehicle access is to be a single crossing with a maximum width of 3.6m over the footpath. The proposed vehicle crossover is around 23m long and is not supported.
  - (f) Clause 3.1.1.3(2), which requires development adjacent to lanes in mixed use zones to include active uses at ground level to encourage pedestrian activity and enhance pedestrian access. The zero lot built form to Chapel Lane and the extent of the vehicle crossover to Spencer Lane are not supported, as these elements prevent the development from complying with this clause.

- (g) Clause 2.13.13, which calls for “outdoor cafes or dining to activate an enliven the street where footpath width and amenity permits. This is particularly encouraged to corner buildings that wrap around onto side streets.” Active uses are recommended to all facades, including Chapel and Spencer Lanes.
- (h) The proposed finished floor level of the ground floor tenancies fronting Botany Road is approximately 200mm lower than the existing footpath level. This is not considered to be a good urban design outcome. It is also the City’s preference for the floor level to match that of the footpath from a public domain perspective, to prevent surface stormwater runoff from the nature strip or footpath from entering the private property.
- (i) The two retail tenancies proposed measure 41sqm and 138sqm with a relatively shallow depth, between 6m at the northern end of the Botany Road street frontage, to 8m at the south. The two tenancies seek to replace the existing six shopfronts, which contain five businesses. The existing tenancies are all currently occupied.

The tenancies proposed, in particular the 138sqm tenancy to the south, represent a poor outcome for the site. The proposal does not reflect or emulate the fine grain and subdivision pattern of the existing buildings. The proposed ground floor elevation consists of extensive glazing without modulation or articulation, or any reference to the historic smaller retail tenancies that have existed on site since the turn of the 20th century. The design of the ground floor active frontage to Botany Road should result in both aesthetic and commercial outcomes that will enhance the quality and functionality of the streetscape, rather than detract from it.

76. The proposed development does not result in improved building presentation at ground level, or a greater mix of uses and better functionality of the street for pedestrians. The public domain interface proposed results in a poor streetscape outcome.

### Boarding house facilities and amenity for future residents

#### Bedroom sizes

Room (as labelled on plans)	Bedroom (exc. kitchenette + bathroom)	Ensuite: 2.1sqm	Shower: 0.8sqm	K’nette: 2sqm	Wardrobe: 1.5sqm	Laundry: 1.1sqm
<b>18sqm (4 rooms)</b>	16.8sqm	4.3sqm	1.2sqm	1.4sqm	unclear – approx. 1sqm	n/a – communal facilities proposed
<b>16sqm (62 rooms)</b>	15.9sqm	2sqm	0.8sqm	1.4sqm		
<b>14sqm (3 rooms)</b>	13.6sqm	2.5sqm	0.8sqm	1.4sqm	unclear – approx. 0.6sqm	

Room (as labelled on plans)	Bedroom (exc. kitchenette + bathroom)	Ensuite: 2.1sqm	Shower: 0.8sqm	K'nette: 2sqm	Wardrobe: 1.5sqm	Laundry: 1.1sqm
13sqm (3 rooms)	13.2sqm	1.9sqm	0.7sqm	1.4sqm	unclear – approx. 0.5sqm	

**Table 1:** Proposed Typical room sizes - green indicates compliance, red indicates non-compliance with minimum requirements

#### *Communal indoor and outdoor areas*

77. The proposal meets DCP requirements for communal indoor and outdoor areas in terms of size. Communal open space has been located on the rooftop, which is generally north-facing and is likely to receive the minimum 2 hours of solar access required on 21 June.
78. Clause 4.4.1.4(5) stipulates private open space is to be provided in the form of a balcony or terrace area to 30% of all bedrooms in a boarding house. 31 of the 72 rooms proposed feature private balconies. This equates to 43%, which complies.

#### *Bathroom and laundry facilities*

79. Clause 4.4.1.5(2) requires 6 dryers and 6 washing machines for a boarding house of the proposed scale. Part (3) of the clause states drying facilities are to be located to maximise solar access and ensure the usability of the space is not compromised.
80. The proposal includes two dryers, eight washing machines, and four laundry tubs contained in small laundries spread across levels 2 to 6 of the development. Clotheslines are located outside these laundries, at the southern end of each gallery circulation space.
81. The number of dryers provided is inadequate, and the location of the clotheslines at the southern end of a largely enclosed void will not result in these areas receiving much sun.
82. Clause 4.4.1.6(1)(d) stipulates all appliances are to achieve an energy star rating of 3.5 or higher, unless otherwise legislated. The submitted BASIX certificate, while being invalid, advises clothes washers and taps are proposed to have a star rating of 3, which does not comply.

#### *Amenity, safety and privacy*

83. Clause 4.4.1.6 of the DCP requires boarding houses to maintain a high level of resident amenity, safety and privacy, as well as minimising impacts on the visual and acoustic privacy of neighbouring buildings.

84. The proposal results in substandard amenity for future residents as it has not adequately addressed matters required including provision of facilities and amenities, visual and acoustic privacy impacts, and adequate servicing arrangements. In particular:
- (a) The submitted acoustic report has not considered criteria contained in Clause 102 of the State Environmental Planning Policy (Infrastructure) 2007 or provided any noise attenuation measures to east-facing rooms on Botany Road, particularly with regard to enabling natural ventilation.
  - (b) Limited information has been provided as to private facilities within rooms. It appears the proposal does not comply with requirements pursuant to Section 4.4.1 of the DCP. The location of the beds makes the rooms tight and inflexible for occupants, particularly in the accessible rooms. The kitchenettes are co-located in the apartment door swing and are directly adjacent the bathroom in most cases, which is a poor amenity outcome.
  - (c) The proposal does not provide minimum floor to ceiling levels of 2.7m on levels 2 to 6 pursuant to Clause 4.2.1.2(4) of the DCP 2012. Adequate detail has not been provided concerning floor slab depth and servicing and plant requirements.
  - (d) The layout of the boarding house rooms arranged around the external walkway to the central atrium will result in cumulative visual and acoustic privacy impacts to the rooms due to the operable bathroom windows, contrary to Clause 4.4.1.6(1)(a) of the DCP. The bathroom windows to the external walkways may present a BCA issue in terms of fire rating and the path of travel to a fire exit.
  - (e) The internal courtyard at level 2 provides low amenity for residents and is not consistent with Clause 4.4.1.4 of the DCP. Level 2 is positioned at the base of a 4-5 storey cavern which receives no sunlight in winter. The communal outdoor area is poorly connected to the level 2 communal indoor area.
  - (f) The amenity of the ground floor indoor communal area is questioned, particularly due to the large expanse of glazing to Spencer Lane. This may compromise privacy and the functional use of the space. Clause 4.4.1.4(2)(d) of the DCP encourages common rooms on each floor in multi-level boarding houses, which could better manage these issues whilst encouraging social interaction more conveniently located to rooms and servicing a smaller population.
  - (g) Clause 4.2.4(10) of the DCP states for buildings up to 8 storeys high, groups of dwellings served by the same vertical circulation lift must not exceed 25 dwellings per core. The proposed development includes one lift to service 72 boarding house rooms and 76 lodgers across six levels, with 19 rooms per level serviced off this single core. The provision of only one lift on site is not supported.
  - (h) Clause 4.4.15(2) requires laundry facilities to be provided, including one 5kg capacity washing machine and one domestic dryer for every 12 residents, and at least one large laundry tub with hot and cold running water. Part (3) of the clause requires drying facilities such as clotheslines to be located in communal open space and to be located to maximise solar access. The proposal provides an insufficient amount of dryers, and the location of the clotheslines (at the south of the site, and below external walkways) are unlikely to receive solar access.

- (i) Clause 2.5 of the City of Sydney's Guidelines for Waste Management in New Developments stipulates the maximum walking distance from any entrance of a residential dwelling to the storage area should not exceed 30m. The proposed waste storage area on level 1 of the development is the only waste storage location on site. The furthest distance of travel measured is approx. 34m, which is inconsistent with the Guidelines.
- (j) The lift is located deep in the plan, away from the Botany Road entry and obscured by landscaping with places for concealment adjacent. This presents wayfinding and safety in design issues.
- (k) The entry off Chapel and Spencer lanes is convoluted, with the location of the column obscuring sightlines to Chapel Lane. This poses a safety risk for pedestrians egressing to a 600mm deep footpath on a two-way street.
- (l) The gallery access as a circulation strategy is not supported due to amenity impacts. The entries are susceptible to inclement and extreme weather and the open end to Chapel Lane creates two-way acoustic impacts, contrary to Clause 4.4.1.6(2) of the DCP.

85. Based on the above design issues and deficiencies, the proposal does not demonstrate compliance with relevant amenity provisions.

#### **Adverse amenity impacts to surrounding properties**

86. The proposed development results in inadequate building separation between the proposed boarding house and surrounding buildings. This results in unacceptable environmental impacts such as visual and acoustic privacy impacts, and potentially, adverse overshadowing. Specifically:
- (a) The proposal features a zero setback to Chapel Lane, which results in an 8.7-9m separation from residential uses at 8 Boundary Street to the north, and a 1m setback to Spencer Lane, which results in a 6.4-6.5m separation from residential uses at 20-34 Wyndham Street to the west. These setbacks are not supported as they contribute to the building's bulk and scale and will cause unacceptable amenity impacts to both boarding house and residential flat building residents due to the proximity of the buildings. The proposed setbacks of the building result in a development that does not exhibit design excellence in accordance with Clause 6.21 of the LEP.
  - (b) The proposed rooftop communal area is located only 8.7m from the neighbouring residential use at 8 Boundary Street, and the west-facing balcony off the level 6 indoor communal area is only 6.2m from private open space at 20-34 Wyndham Street. Clause 4.4.1.6(2)(b) of the DCP requires boarding houses to be designed to minimise and mitigate any impacts on the visual and acoustic privacy of neighbouring buildings by locating communal areas away from the main living area or bedroom windows of adjacent buildings. The proposed proximity of the rooftop outdoor communal area and the west-facing balcony to nearby residential development will result in adverse acoustic impacts and overlooking between both the boarding house and neighbouring residential development. The open gallery circulation space at the northern end of the site will have similar unacceptable impacts to 8 Boundary Street.

- (c) The proposal results in overshadowing to both the private open space and glazing to habitable rooms at 20-34 Wyndham Street. Insufficient information concerning existing, compliant, and proposed shadows has been submitted to demonstrate the proposal complies with Clause 4.2.3.1 of the DCP, which requires the development not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours' direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June.
87. Due to the lack of appropriate building separation and setbacks, the development will have adverse amenity impacts to neighbouring properties. As adequate shadow diagrams have not been submitted, the full extent of these negative impacts cannot be fully quantified.

### Outstanding information

88. In addition to the above-mentioned issues, the application is incomplete. The applicant has not provided:
- (a) A sufficiently detailed Waste Management Plan commensurate with the intensification of the use of the site, that complies with the criteria in City of Sydney Guidelines for Waste Management in New Developments 2018.
  - (b) An acoustic report that provides assessment against criteria contained in Clause 102 of the Infrastructure SEPP, given that the site is adjacent to a Classified Road with over 40,000 vehicles a day;
  - (c) A supplementary Detailed Environmental Site Investigation that has carried out groundwater testing, addressing critical data gaps relating to groundwater contamination;
  - (d) Peer review of the submitted Detailed Environmental Site Investigation and any supplementary investigation by a NSW EPA Accredited Site Auditor accompanied by a Section A Site Audit Statement either confirming that the site is suitable for the proposed use, or;
  - (e) In the event the site is found to be unsuitable following the above supplementary assessment, remediation will be required for which the applicant will need to provide a Remedial Action Plan (RAP) and either a Section B Site Audit Statement or Letter of Interim Advice from the Site Auditor confirming that the remediation strategy within the RAP is feasible and practicable to make the site suitable for the proposed use;
  - (f) Adequate information concerning loading and servicing;
  - (g) Plans that include the location of all required services, including essential fire and electrical services;
  - (h) Amended landscape plans that meet minimum deep soil and canopy cover requirements and adequately address Sydney Landscape Code Volume 2; and
  - (i) Adequate shadow diagrams and views from the sun that accurately depict surrounding development and quantity impacts to neighbouring properties.

## Consultation

### Internal Referrals

89. The application was discussed with Council's Environmental Health Unit; Heritage and Urban Design Unit; Public Domain Unit; Surveyors; Transport and Access Unit; Landscape Architect, and the Waste Management Unit, most of whom raised fundamental concerns with the proposed development. Issues and concerns identified are discussed above in this report.

### External Referrals

#### Ausgrid

90. The application was referred to Ausgrid for review under Clause 45 of the State Environmental Planning Policy (Infrastructure) 2007.
91. In their response, Ausgrid raised no objection to the development application, noting the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.
92. Were the subject application recommended for approval, relevant recommendations made by Ausgrid would have been included as advisory notes or conditions of consent.

#### Sydney Water

93. The application was referred to Sydney Water under Section 78 of the Sydney Water Act 1994.
94. In their response, Sydney Water provided advisory conditions concerning obtaining a Section 73 Compliance Certificate for water servicing, obtaining building plan approval from Sydney Water, trade wastewater requirements, and backflow prevention requirements.
95. Were the subject application recommended for approval, relevant recommendations made by Sydney Water would have been included as advisory notes or conditions of consent.

#### Sydney Trains

96. The application was referred to Sydney Trains for review under Clause 85(2) of the State Environmental Planning Policy (Infrastructure) 2007.
97. In their response, Sydney Trains provided four conditions relating to compliance with 'development near rail corridors and busy roads' provisions, structural details concerning the concrete slab and footings and a vapour membrane, and preventing either excess soil or any pollution from entering Transport Asset Holding Entity land.
98. Were the subject application recommended for approval, relevant recommendations made by Sydney Trains would have been included as advisory notes or conditions of consent.

### Transport for New South Wales

99. The application was referred to Transport for New South Wales (TfNSW) under Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007.
100. In their response, TfNSW raised no objection to the development subject to a series of requirements being included in the consent. These largely pertain to the land reserved for road widening at the south-eastern corner of the site, including ensuring building and structures are clear of the road reservation, detail design plans being provided to the agency, and other vehicular and traffic requirements.
101. Were the subject application recommended for approval, relevant recommendations made by TfNSW have been included as advisory notes or conditions of consent.

### NSW Police

102. The application was referred to NSW Police for comment. No response was received.

### Advertising and Notification

103. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 3 May and 25 May 2021. A total of 502 properties were notified and 12 submissions were received.
104. The submissions raised the following issues:
  - (a) **Issue:** The proposal is not sympathetic to the heritage of the existing buildings. The buildings' historic facades should be retained and conserved to maintain the heritage of the area, and the development should be designed with more consideration to the existing buildings on site.  
**Response:** Noted. As detailed above in this report, the proposed development is not supported as it is considered to have a poor contextual urban design response and is contrary to the character of the area. The proposal replaces a fine grain, low rise streetscape with a single, bulky development without sufficient architectural articulation.
  - (b) **Issue:** The proposal seeks to demolish a strip of fine grain buildings which will displace unique, small scale local businesses. New commercial tenancies will likely remain permanently empty due to unaffordable rents. This will negatively impact the community.  
**Response:** Noted. As discussed above, the shallow retail tenancies proposed are not considered to reflect the existing fine grain quality of this stretch of Botany Road.

- (c) **Issue:** The building exceeds the height limit and is proposed to be built to site boundaries. The height and lack of separation between the proposed boarding house and nearby residences will have significant amenity impacts including overshadowing, overlooking, acoustic impacts, and restriction of natural light to 8 Boundary Street.

**Response:** Noted. The proposed development is not supported for a variety of reasons, including the proposed height breach and lack of appropriate building separation, which result in adverse amenity impacts including visual and acoustic privacy impacts and overshadowing.

- (d) **Issue:** The proposal will increase noise and exacerbate traffic and congestion issues.

**Response:** Noted. While the application only proposes three (3) car parking spaces and 14 motorcycle parking spaces, the LEP does not have minimum car or motorcycle parking requirements. It is the preference of Council's transport and access officer that significantly more bicycle parking is accommodated, and pedestrian movements should be prioritised, given the site's central location.

- (e) **Issue:** The proposed boarding house use and residents pose safety and security risks to neighbouring buildings and their residents.

**Response:** The proposal is for a mixed use development comprising retail uses at ground floor and a boarding house use on the levels above. While the proposed development is not supported for a variety of reasons detailed in this report, the proposed boarding house use is a permissible use within the B4 Mixed Use zone. It provides an alternate type of accommodation and is an appropriate use for the site in principle.

Were the proposed development application supported, the City would have required the submission of a comprehensive Plan of Management. The Plan of Management and the on-site manager would ensure the boarding house operated with minimal impact on adjoining residents and maintained their safety and security, as well as the safety and security of boarding house lodgers.

- (f) **Issue:** The proposal will increase overcrowding and impact liveability in the area due to the scale of the proposed boarding house/number of lodgers.

**Response:** Noted. The proposal exceeds the floor space ratio (FSR) standard by 11.1%, which is not supported as the proposal is not appropriate in terms of density of development, built form or land use intensity, does not reflect the desired character of the locality, and will not minimise adverse impacts on the amenity of the locality.

The fact that the development exceeds the height and FSR development standards and the height of buildings (storeys) control, features inadequate setbacks and a poor public domain and streetscape outcome, results in substandard amenity for future residents and amenity impacts to surrounding properties, and does not comply with several other requirements (such as adequate deep soil and tree canopy, waste management, and natural ventilation and acoustic impact mitigation) demonstrates the proposal is an overdevelopment of the site.

- (g) **Issue:** There is no need for another boarding house development on Botany Road where they are already highly concentrated. Comparable affordable and student accommodation has been approved, is under construction, and has already been built in the area. Another boarding house will create more short-term, transient residents, negatively impacting the community.

**Response:** The proposed boarding house use is permissible within the B4 Mixed Use zone and meets the objectives of the zone, which include integrating suitable residential development in accessible locations. Furthermore, while it is acknowledged that several affordable housing developments (including ones used for the purposes of student accommodation) exist within the area, there are no planning controls to prevent the approval of further such developments within a locality.

- (h) **Issue:** The proposal results in amenity impacts due to the size and use of the rooftop communal area.

**Response:** Noted. As discussed above in this report, the location of the rooftop communal area in close proximity to residential uses at both 8 Boundary Street and 20-34 Wyndham Street is not suitable as it is likely to result in adverse visual and acoustic privacy impacts to neighbouring properties. An improved outdoor communal area could potentially be accommodated on the rooftop if it were appropriately set back, oriented away from nearby residential uses, and suitably screened.

- (i) **Issue:** The boarding house should be connected with a welfare/not-for-profit organisation and should have an on-site manager available 24 hours, 7 days a week. The manager should be trained with regard to medical conditions and mental health. The developer should provide assistance for residents when they need to move to a new house. The building should be well managed, and the proposal needs to better consider the safety and security of future occupants, and accessibility within the development.

**Response:** The development application has not been made by or on behalf of a social housing provider and the City, as the consent authority, cannot compel the applicant to run the boarding house for such purposes. The proposal does include an on-site boarding house manager to oversee the operation of the premises.

Similarly, a Plan of Management was submitted with the application however is not considered to adequately address matters required by Clause 4.4.17 of the DCP. Were the proposed development application supported, the City would have required the submission of a comprehensive Plan of Management ensuring the boarding house operates with minimal impact on adjoining residents and maintains a high level of amenity, safety and security for lodgers. It is also noted that the proposal does not provide enough adaptable rooms pursuant to Clause 3.12.2 of the DCP, which is not supported.

- (j) **Issue:** The boarding house should be appropriately designed with features to mitigate impacts from traffic from surrounding roads.

**Response:** Noted. The proposal has not adequately considered criteria contained in Clause 102 of the State Environmental Planning Policy (Infrastructure) 2007, which requires assessment of the impact of noise or vibration on sensitive development (such as residential accommodation) and is not supported.

- (k) **Issue:** The energy efficiency of proposed appliances is low.

**Response:** Noted. The issue has been considered above in this report. Were the proposed development supported, the proposal would be required to provide a valid BASIX certificate to comply with minimum energy efficiency requirements.

- (l) **Issue:** The amenity of the proposed rooms is questionable, and the rooms are small. The proposed layout with the bed against the wall will present challenges, particularly in the accessible rooms.

**Response:** Noted. This issue has been considered above in this report. The rooms are tight and inflexible in their configuration, and several facilities do not meet minimum size requirements as per Clause 4.4.1.2(1) of the DCP. Notwithstanding these deficiencies, it is noted the room sizes are compliant with minimum requirements contained in the State Environmental Planning Policy (Affordable Rental Housing) 2009.

- (m) **Issue:** The choice of brick is poor, and the building's appearance will not improve the area.

**Response:** Noted. The development overall, including the material treatment proposed, is not considered to contribute to the streetscape or exhibit design excellence.

- (n) **Issue:** The proposed development appears to be pitched as student accommodation. The COVID-19 pandemic has resulted in significant changes to how education is delivered. The building should be reconfigured at the planning stage to provide a range of low cost housing types appropriate to the future planning guidelines for the area.

**Response:** The consent authority does not have the ability to compel the developer to use the development for a specific purpose. The submitted Statement of Environmental Effects (SEE) does not specify that the proposed boarding house is intended to be used exclusively for the purpose of student accommodation. When considering the social impact of the development, the SEE states one of the impacts of the proposal will likely be to provide accommodation for key workers, students and young workers, particularly those seeking lower rental levels. A boarding house use is a type of residential accommodation permissible in a mixed use zone, and the size and quality of the rooms proposed reflects the fact the rooms are intended to be for the purposes of 'affordable' housing. Notwithstanding, the proposal is not supported by Council officers as outlined in this report.

- (o) **Issue:** The notification of D/2021/292 (the subject development application) did not make it clear to recipients that previous submissions made against D/2020/1462 would not be considered and were required to be resubmitted. The process may be corrupt and non-compliant, is misinformation and is misleading, and prevents proper consultation.
- (p) **Response:** Both D/2020/1462 and D/2021/292 were notified in accordance with the City of Sydney's Community Participation Plan 2019 (CPP), which sets out exhibition requirements.

The lodgement of two identical development applications for one site, concurrently, is unusual. Documents submitted with the second application do not state why the applicant opted to do this. Nonetheless, the City is obligated to assess the applications as made.

Council's standard notification process was followed. Submissions made against D/2020/1462 are not automatically considered in the assessment of D/2021/292, as (despite being identical) they are separate applications and need to be assessed as such. Efforts were made to clarify the process to members of the public who contacted Council, who were directed to re-lodge submissions against D/2021/292 so that they could be considered in the assessment of the subject application. Nevertheless, issues of concern are the same in respect of both proposals.

## Financial Contributions

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

105. Were the application recommended for approval, the development would be subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
106. It is noted that existing floor plans have not been provided for the development. As such, Council would have been unable to calculate and apply credits for existing uses.

### Contribution for purpose of affordable housing under Section 7.13 of the Sydney Local Environmental Plan 2012

107. The application proposes the erection of a new building with a gross floor area over 200sqm on a site identified as residual land under Clause 7.13(1)(a)(i) of the LEP, triggering the requirement for a financial contribution for the purpose of affordable housing.
108. Pursuant to Clause 1.8A(4)(b), savings provisions apply. As the application was made and not finally determined prior to 1 July 2021, the development is not subject to a Section 7.13 contribution.

## Relevant Legislation

109. Environmental Planning and Assessment Act 1979.

## Conclusion

110. The proposal seeks consent for the demolition of existing buildings on site and construction of a five (5) storey mixed use development comprising two (2) ground floor commercial tenancies and a 72 room boarding house on levels 1-5 above to accommodate 76 lodgers plus a manager, including car, motorcycle and bicycle parking.
111. The application is reported to the Local Planning Panel as the development exceeds the 15m height development standard pursuant to Clause 4.3 of the Sydney Local Environmental Plan 2012 (LEP) by 3.2m or 21.3%. A written request has been provided seeking a variation to the height development standard in accordance with Clause 4.6 of the LEP. The request to vary the development standard is not supported for reasons discussed in this report.
112. In addition to non-compliance with the height standard, the proposed development exceeds the maximum floor space ratio (FSR) permitted. The LEP allows for a maximum FSR of 1.75:1. Clause 29(1)(c)(i) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) permits an additional 0.5:1 for development for the purposes of a boarding house. The maximum FSR permissible is therefore 2.25:1. The application proposes a maximum FSR of 2.5:1, which represents an 11.1% exceedance of the maximum FSR permissible under the LEP and ARH SEPP. A Clause 4.6 variation request in relation to FSR has not been submitted with the application. As such the application cannot be supported by LPP.
113. The proposal fails to comply with relevant provisions contained in the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP), LEP, and Sydney Development Control Plan 2012 (DCP). The proposed development results in a significant exceedance of the height standard, and a contributes to an unacceptable exceedance of the floor space ratio standard, where a 0.5:1 bonus already applies under the ARH SEPP.
114. The proposal does not meet the character requirements of Clause 30A of the ARH SEPP as it replaces a fine grain, low-rise street context with a single, monolithic building, with bulk and scale impacts. These impacts arise due to poor architectural articulation and setbacks that do not align with neighbouring development. The design lacks any reference to adjacent buildings and the immediate locality and is out of character with the streetscape. The proposed development fails to provide for an appropriate interface with the public domain. The proposal is not in keeping with or compatible with the character of the immediate streetscape to the south of the site..
115. The development will result in substandard amenity for future occupants due to inadequate room and boarding house facilities, visual and acoustic privacy impacts resulting from the proposed circulation space, and compromised safety and security due to the design of the boarding house entries and the poor quality of the public domain. The application will cause adverse amenity impacts like overlooking and noise impacts to neighbouring properties as a result of insufficient setbacks and the location of communal outdoor space, and overshadowing to apartments at 20-34 Wyndham Street due to the bulk of the fifth storey - most of which exceeds the height standard.

116. Insufficient information has been provided with the application with regard to noise impacts from Botany Road, land contamination and whether the site can be made suitable for the proposed use, waste management and site servicing, and landscaping.
117. The development fails to exhibit design excellence, is not in keeping with the desired future character of the area and is not considered to be in the public interest.
118. The application is recommended for refusal.

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