

Item 5.**Development Application: 38-44 Mountain Street, Ultimo - D/2020/1288****File No.:** D/2020/1288**Summary**

Date of Submission:	2 December 2020, additional information received 2 March, 21 April, 25 June and 30 July 2021
Applicant:	Stangcorp Pty Ltd
Architect:	SJB
Owner:	Stangcorp Pty Ltd
Planning Consultant:	Creative Planning Solutions
Heritage Consultant:	GBA Heritage
Cost of Works:	\$10,091,044.00
Zoning:	B4 Mixed Use Zone, proposal permissible with consent
Proposal Summary:	<p>Alterations and additions to an existing three storey commercial building including a two storey addition and rooftop terrace.</p> <p>The proposed development was notified between 7 December 2020 and 12 January 2021. No submissions were received.</p> <p>The application includes requests to vary the height of buildings and floor space ratio (FSR) development standards. The proposed variations to the standards exceeds 10% therefore the application is referred to the Local Planning Panel for determination.</p> <p>A request for additional information and amendments was made to the applicant on 27 January 2021. The application has been amended with the deletion of originally proposed sixth storey office floor space, the roof terrace area expanded with additional landscaping, and building massing has been setback from Mountain Street to express the existing building features.</p>

The proposal as amended has addressed the matters raised. The requests to vary the height and FSR development standards are supported for the application.

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

Development Controls:

- (i) State Environmental Planning Policy No. 55 - Remediation of Land
- (ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (iii) Sydney Local Environmental Plan 2012
- (iv) Sydney Development Control Plan 2012
- (v) City of Sydney Development Contributions Plan 2015

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Clause 4.6 Variation Request - Floor Space Ratio

Recommendation

It is resolved that:

- (A) the variation requested to clause 4.3 'Height of buildings' in accordance with clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld in this instance;
- (B) the variation requested to clause 4.4 'Floor space ratio' in accordance with clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld in this instance; and
- (C) consent be granted for Development Application No. D/2020/1288 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the B4 Mixed Use Zone.
- (B) The proposal satisfies the design excellence provisions of clause 6.21 of Sydney Local Environmental Plan 2012.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012;
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone and the height of buildings development standard;
 - (iii) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 of the Sydney LEP 2012; and
 - (iv) the proposal is in the public interest because it is consistent with the objectives of the B4 Mixed Use Zone and the floor space ratio development standard.

Background

The Site and Surrounding Development

1. The site is identified as Lot 28 in DP 5567 and is located at 38-44 Mountain Street, Ultimo. The site is located on the eastern side of Mountain Street at the intersection to Smail Street to the north and Smail Lane to the south of the site. The site has a frontage of 27.4m to Mountain Street, a frontage of 37.1m to Smail Street and a site area of 1,1014 square metres.
2. The site currently contains an existing three storey commercial warehouse building built to the site boundaries. Ground level retail tenancies are located to Mountain Street as well as lobby access to the commercial levels above. Vehicular entry to ground floor parking is located off Smail Street.
3. Surrounding development in the vicinity includes:
 - (a) To the east at 11 Smail Street, a five storey residential development consisting of a converted warehouse building with additional storeys above.
 - (b) To the north at 22-36 Mountain Street, a five storey commercial warehouse building with a one storey addition above the original four storey building.
 - (c) To the northwest at 35-39 Mountain Street, a six storey mixed use building with a two storey mansard addition above the original four storey warehouse building.
 - (d) To the west at 41 & 43-49 Mountain Street is a vacant site and heritage item "Electrical substation", a heritage item of state significance.
 - (e) To the south at 46-52 Mountain Street is a heritage listed five storey warehouse building "Warehouse "Wilcox Mofflin Ltd", an item of local heritage significance.
4. The surrounding locality includes a mix of uses with a predominant warehouse character along Mountain Street and in the surrounds.
5. The site is located within the Mountain Street Heritage Conservation Area.
6. A site visit was carried out on 19 January 2021. Photos of the site and surrounds are provided below.

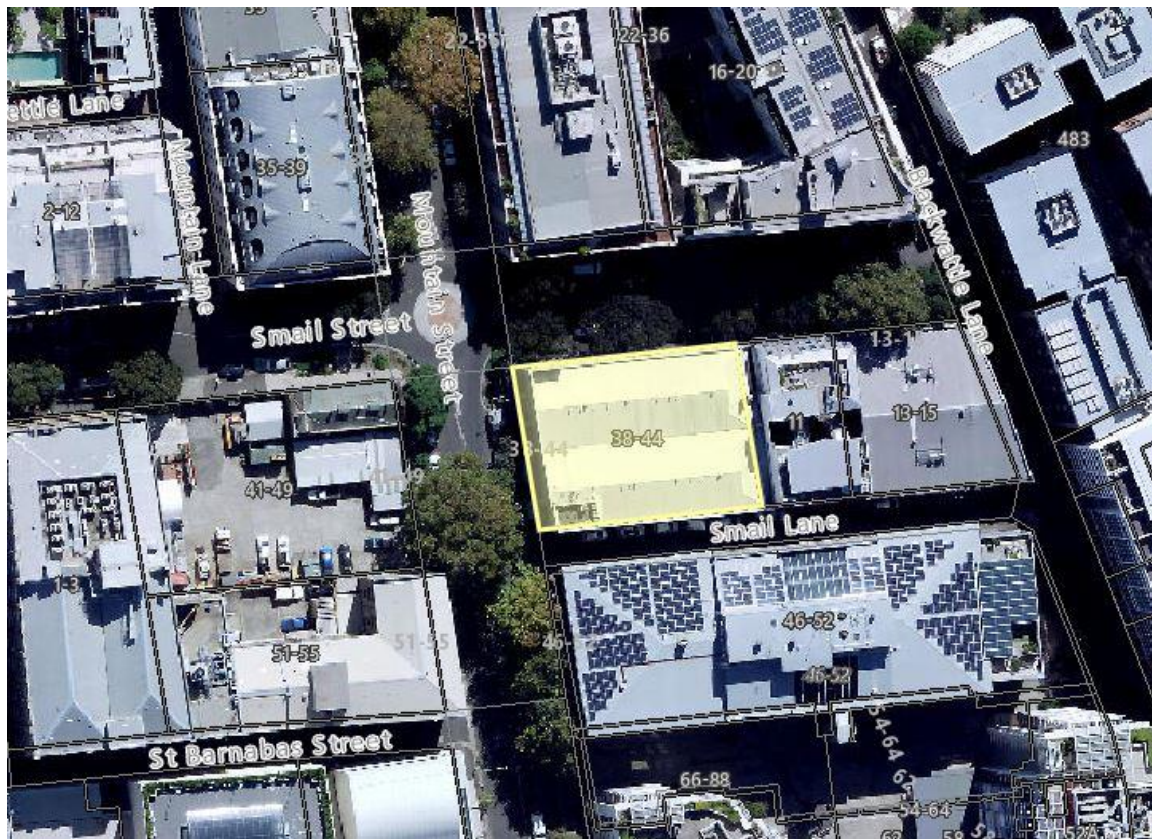


Figure 1: Aerial view of site and surrounds



Figure 2: Aerial view of site



Figure 3: Site viewed from intersection of Mountain and Smail Streets



Figure 4: Site viewed from Smail Street looking south



Figure 5: Site viewed from Mountain Street looking north



Figure 6: Site viewed from Smail Lane looking east



Figure 7: 46-52 Mountain Street, item of local heritage significance



Figure 8: 41 and 43-49 Mountain Street, item of state heritage significance



Figure 9: 35-39 Mountain Street

History Relevant to the Development Application

Compliance Action

7. The site is not subject to a compliance action.

Amendments

8. The application as lodged proposed three storeys above the existing three storey building. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 27 January 2021 including the following details:
 - (a) Height and FSR: that whilst there are a range of existing building heights and floor spaces within the area, the proposal should have regard to the height and FSR pattern of the controls which show Mountain Street between a transition between development to the east and west. The height and bulk should be reduced to better respond to the relationship within the conservation area.
 - (b) Heritage: that the existing tower corner feature should remain the most prominent part of the building as viewed within the streetscape. The enlargement of ground floor windows to the northern facade was not supported. The details of existing vertical elements should be retained.

- (c) Urban Design: that changes to the building form and design should retain a lightness to the additions, so the existing building is not overwhelmed. Building elements such as the overhanging roof to the tower should be deleted or further setback to minimise bulk.
 - (d) Public Domain: flooding report required to address compatibility with flooding levels.
 - (e) Waste: waste areas to be updated to address the Guidelines for Waste Management in New Developments 2018.
9. The applicant responded to the request on 2 March 2021, 21 April 2021, 25 June 2021 and 30 July 2021 and submitted the following information and amendments:
- (a) sixth storey office space deleted;
 - (b) roof terrace expanded with additional landscaping;
 - (c) building massing set back from Mountain Street;
 - (d) revised waste areas provided to ground floor;
 - (e) flooding report provided with ground floor openings to remain as existing;
 - (f) additional landscaping details provided;
 - (g) site Environmental Management and Acid Sulfate Soils Management Plan provided;
 - (h) FSR reduced from 4.13:1 to 3.7:1; and
 - (i) revised requests to vary development standards pursuant to clause 4.6 submitted.

Proposed Development

10. The application seeks consent for alterations and additions to the existing three storey warehouse style commercial building including:
- Ground floor: increased retail space, reduced car parking and new bicycle parking and end of trip facilities.
 - Levels 1 and 2: reconfigured office levels.
 - Level 3: new office level with terrace areas.
 - Level 4: new office level.
 - Level 5: new rooftop terrace area.

This architectural floor plan depicts a multi-story building with a complex layout of rooms and circulation paths. The plan includes the following details:

- Rooms and Areas:** Retail (299 m², 44 m², 44 m²), Entry Lobby (54 m²), Lifts (11 m²), Stair 1 (13 m²), End of Trip (78 m²), Carpark (404 m²), and various smaller utility and storage spaces.
- Elevations and Levels:** Numerous spot levels (RL) and finished floor levels (FFL) are indicated throughout the plan, such as RL 5.05, FFL 5.10, and RL 5.71.
- Annotations and Notes:**
 - "New window openings in keeping with existing building datum" (top left).
 - "Proposed window deleted existing facade detail retained" (top center).
 - "Proposed the exit door deleted to maintain existing" (bottom left).
 - "Intelligent signage to be used in Stair 1 to direct occupants" (bottom center).
- Structural and Circulation Elements:** Columns, walls, doors, stairs, ramps (e.g., Ramp 1:14), and a loading bay are shown.
- External Features:** A fire booster, motorcycle parking, and waste/recycling bins are located outside the building.
- Other Labels:** "Ramp 1:14", "End of Trip", "Stair 1", "Lifts", "Carpark", "Loading Bay", "Stair 2", "Bulk Storage", "Food Waste", "4 x 240L", "2 x 1100L Waste Bins", "2 x 1100L Recycling Bins", "Existing Vehicle Entry", "Existing Pedestrian Entry", "Existing Fire Exit", "Proposed Main Entry", "Retail Entry", "Motorcycle Parking", "Fire Booster", "New window openings in keeping with existing building datum", "Proposed window deleted existing facade detail retained", "Proposed the exit door deleted to maintain existing", "Intelligent signage to be used in Stair 1 to direct occupants".

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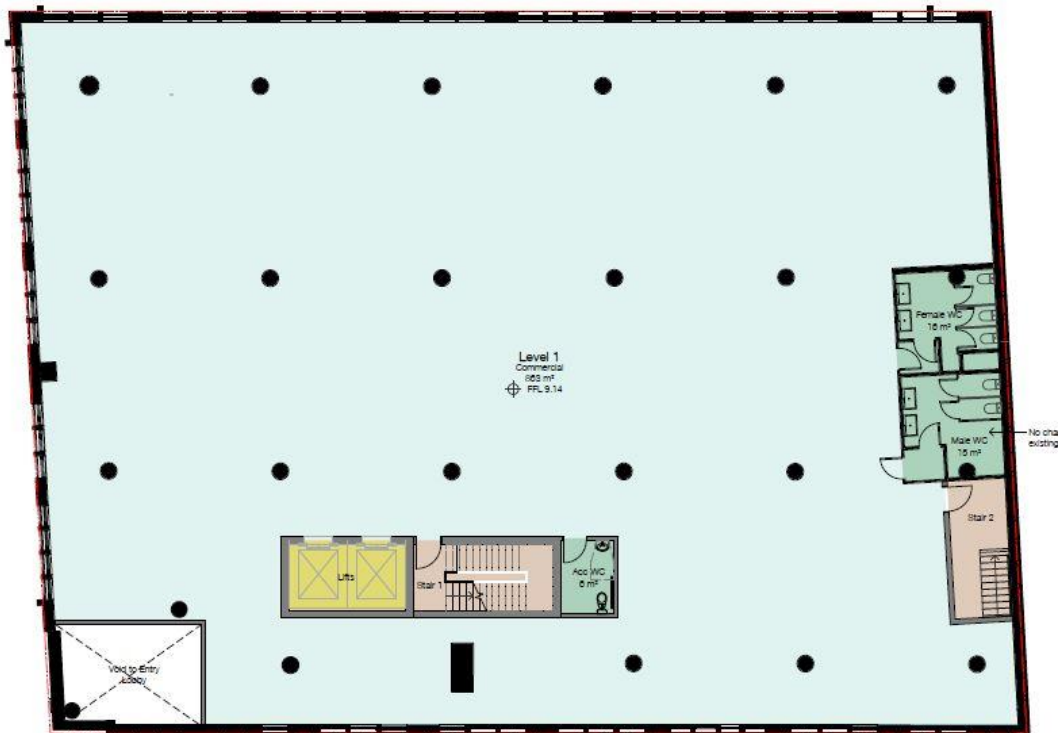


Figure 11: Level 1 plan

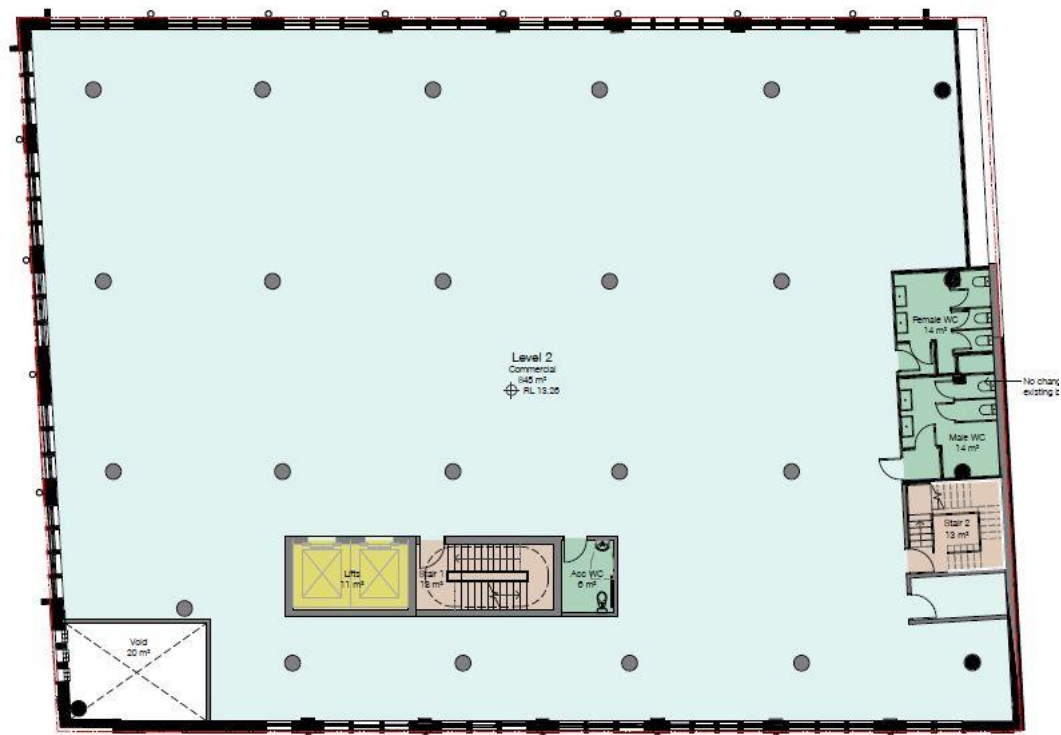


Figure 12: Level 2 plan

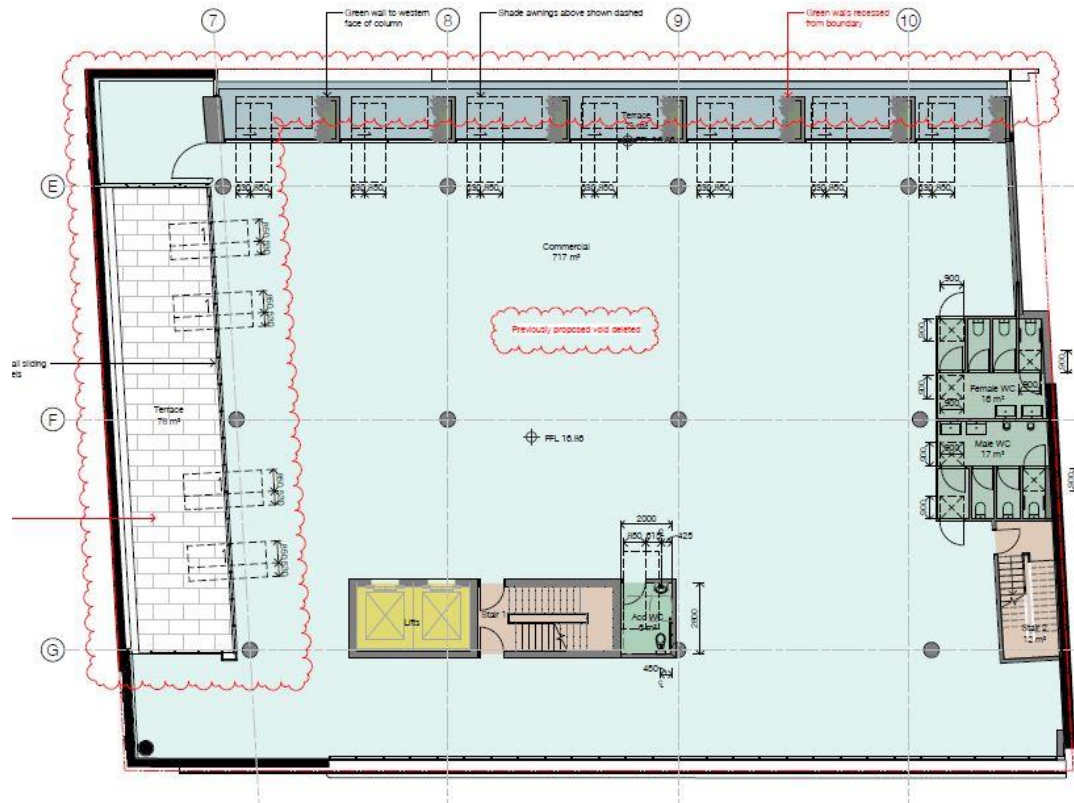


Figure 13: Level 3 plan

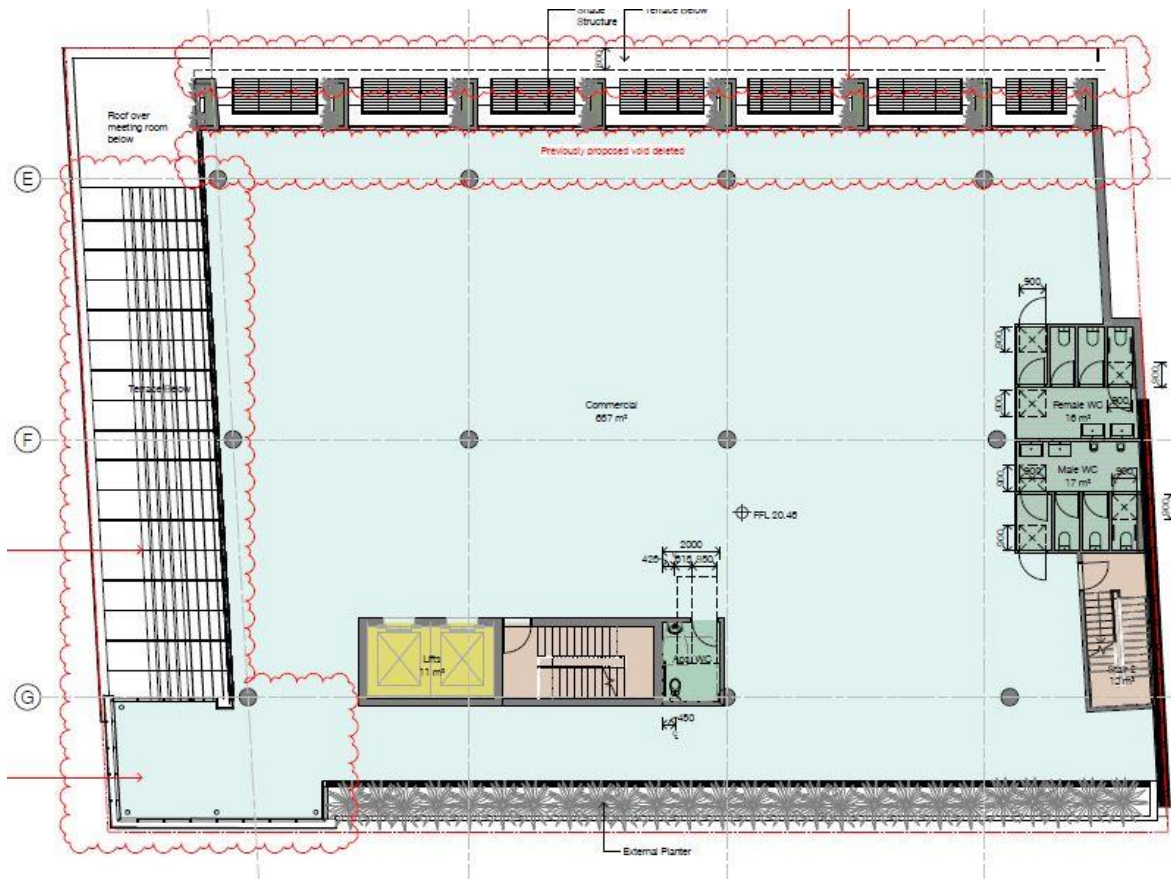


Figure 14: Level 4 plan

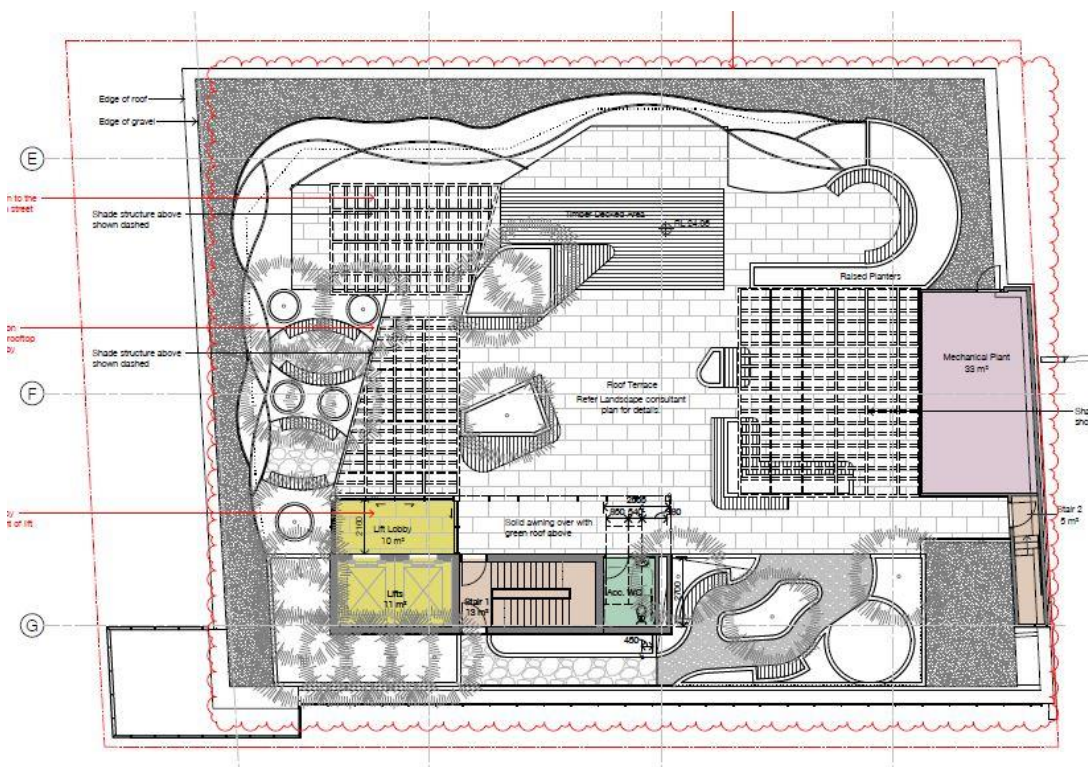


Figure 15: Roof plan



Figure 16: North elevation, Smail Street



Figure 17: West elevation, Mountain Street

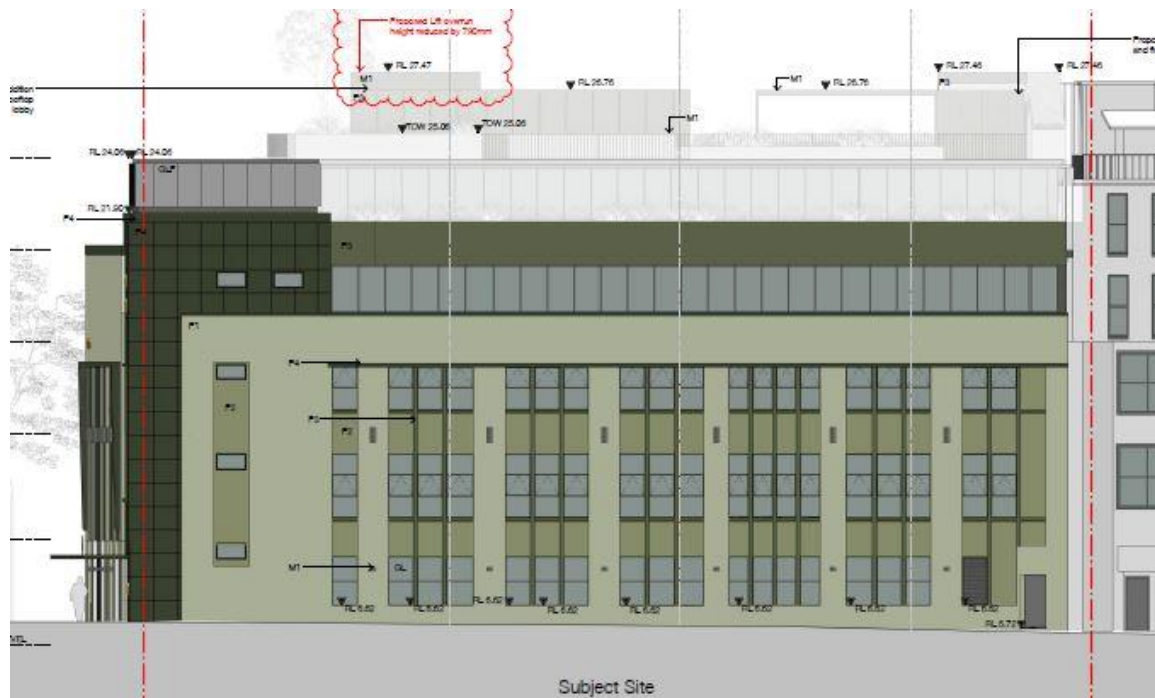


Figure 18: South elevation, Smail Lane

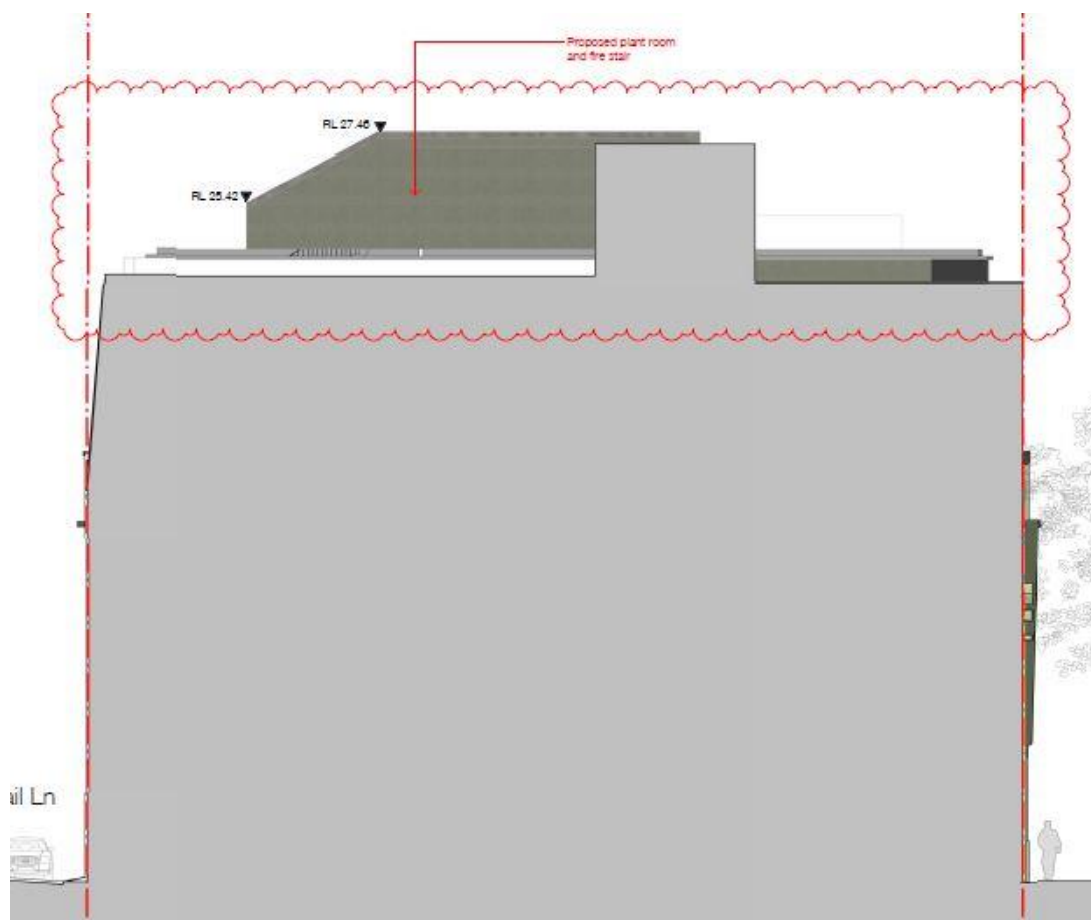


Figure 19: East elevation



Figure 20: Photomontage

Assessment

12. 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

13. 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.
14. Site investigations have identified fill material below the existing ground floor concrete floor (that is being retained) which may pose a contamination risk. An environmental management plan has been submitted which includes recommendations to ensure the risks are managed during construction and ongoing use.
15. Council's Health Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the measures outlined, and for Council to be notified should there be any changes to the strategy.

16. Subject to these measures the site is considered to be suitable for its proposed ongoing commercial use.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use Zone. The proposed development is defined as commercial premises and is permissible with consent in the zone. The proposal meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 18m is permitted.</p> <p>A maximum height of 21.3m to the lift overrun 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>

Provision	Compliance	Comment
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 2:1 is permitted (2.08:1 with end of journey floor space).</p> <p>A floor space ratio of 3.7:1 is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clauses 4.3 and 4.4. Clause 4.6 variation requests have been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Mountain Street Heritage Conservation Area.</p> <p>To the west at 41 & 43-49 Mountain Street is a vacant site and heritage item "Electrical substation" a heritage item of state significance.</p> <p>To the south at 46-52 Mountain Street is a heritage listed five storey warehouse building "Warehouse "Wilcox Mofflin Ltd" an item of local heritage significance.</p> <p>Subject to conditions regarding building finishes, the proposed development as amended will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item.</p>
5.21 Flood planning	Yes	<p>The site is located on land identified as having a flooding risk.</p>

Provision	Compliance	Comment
		<p>The proposal has maintained existing entry openings and proposed that construction materials below the 1% AEP + 500mm level be constructed from flood compatible materials.</p> <p>The proposal has been reviewed by Council's Public Domain Unit who have advised the proposal as amended is supported subject to conditions.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	The proposed development is eligible for an additional floor space ratio of up to 0.08:1 for the proposed end of journey facilities on the ground floor.
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high design standard and uses materials and detailing which are compatible with the existing development and the character of the conservation area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	A maximum of 23 car parking spaces are permitted. The proposed development includes 13 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 2 Acid Sulfate Soils. The application notes that an Acid Sulfate Soils management plan will be provided as part of pile foundation works.

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

20. 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

21. The site is located within the Mountain Street locality. The proposed development is in keeping with the warehouse character and the design principles of the locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes, subject to condition	The proposal retains the existing street address of the building. The main building entry remains from Mountain Street. The City's Public Domain Unit have recommended the footpath awnings be deleted from the approval due to the proposed heights. Awnings to a height of 2.4m to 2.9m are proposed rather than the specified 3.2m to 4.2m.

Provision	Compliance	Comment
		As the awnings cannot be readily incorporated into the existing building architecture above the shopfronts to a compliant height it is recommended that an awning only be provided to the lobby entry on Mountain Street where this can occur. A design modification condition is included to this effect.
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>The proposed roof terrace introduces new canopy coverage for the site.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal includes sustainability measures and will enter into a NABERS 5 star energy agreement.
3.7 Water and Flood Management	Yes	<p>The site is located on land identified as having a flooding risk.</p> <p>The proposal has maintained existing entry openings and proposed that construction materials below the 1% AEP + 500mm level be constructed from flood compatible materials.</p> <p>The proposal has been reviewed by Council's Public Domain Unit who have advised this approach is acceptable.</p>
3.9 Heritage	Yes	<p>The site is located within the Mountain Street Heritage Conservation Area.</p> <p>The subject building is noted as a contributory building within the conservation area.</p> <p>To the west at 41 & 43-49 Mountain Street is a vacant site and heritage item "Electrical substation", a heritage item of state significance.</p> <p>To the south at 46-52 Mountain Street is a heritage listed five storey warehouse building "Warehouse "Wilcox Mofflin Ltd", an item of local heritage significance.</p>

Provision	Compliance	Comment
		Subject to conditions regarding building finishes, the proposed development as amended will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item.
3.10 Significant Architectural Building Types	Yes	<p>A structural engineering report formed part of the submission.</p> <p>The proposal is retaining significant elements of the building with additional structural supports for the proposed additional building levels.</p> <p>The proposed addition compliments the existing building features.</p>
3.11 Transport and Parking	Yes	<p>Bicycle parking for 38 bicycles and end of journey facilities are proposed on the ground floor.</p> <p>One vehicle servicing space is provided.</p> <p>One motorcycle space is provided.</p>
3.12 Accessible Design	Yes	The proposal is accompanied by an accessibility report demonstrating equitable access.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	The proposal has been amended to provide waste storage areas for the office and potential food uses of ground floor retail areas.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The site is permitted a maximum building height of five storeys. The proposed development is five storeys in height with a roof terrace level.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Acceptable	The floor to floor heights of the existing first two levels are retained as follows: Ground - 4.07m Level 1 - 4.12m Floor levels above are 3.6m floor to floor. Given the levels are existing and will provide good amenity, the minor variation is supported.
4.2.2 Building setbacks	Yes	Existing building setbacks are retained.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Adjoining apartment dwellings retain two hours of sunlight.
4.2.3.4 Design features to manage solar access	Yes	The proposal incorporates external shading devices for the upper north and western windows.
4.2.3.5 Landscaping	Yes	The proposal includes landscaped terraces to level 4 and a landscaped roof terrace.
4.2.3.6 Deep Soil	Acceptable	The existing development covers the whole site with no ground level deep soil. The existing building is being retained with an addition above proposed. The development incorporates the provision of a landscaped roof terrace.

Provision	Compliance	Comment
4.2.3.11 Acoustic privacy	Yes	The proposal will not result in unacceptable acoustic impacts. It is recommended that the use of the roof terrace area be limited for office occupant associated use only.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The existing building form and architectural detailing is retained.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	The proposal will not result in additional unreasonable impacts to the surrounding developments. It is recommended that the use of the roof terrace area be limited in terms of hours of use and for building occupant associated use only.

Discussion

Design

22. The proposal has been amended in response to feedback regarding heritage impacts, and scale and bulk of the proposal. The proposal as lodged included a proposed three storey addition to the existing building as shown in the images below.



Figure 21: Proposal image (as lodged)



Figure 22: North elevation (as lodged)

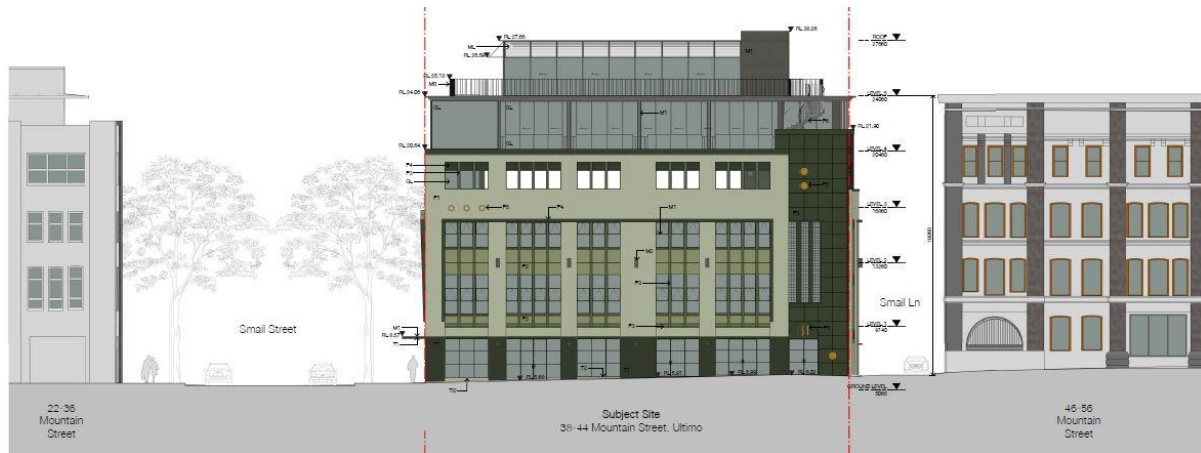


Figure 23: West elevation, Mountain Street (as lodged)

23. In response to feedback provided, the application has been amended with the deletion of the six storey office floor space, the roof terrace expanded with additional landscaping provided, and new building massing setback from Mountain Street to express the existing building features. The architectural expression and colour scheme has also been amended in response to heritage feedback. Minor amendments are further recommended as part of a design modification condition for building finishes. Accompanying view studies demonstrate the reduction in bulk to the proposal.



Figure 24: View study image from Mountain Street looking north (as lodged)



Figure 25: View study image from Mountain Street looking north (amended proposal)



Figure 26: West elevation (amended proposal)



Figure 27: North elevation, Small Street (amended proposal)



Figure 28: Proposal image

24. The proposal as amended is considered to provide a suitable contextual fit to the existing building and heritage conservation area and heritage items in the vicinity. Discussion of the proposed height and floor space ratio variations to development standards continues below.

Clause 4.6 Request to Vary a Development Standard**Height**

25. The site is subject to a maximum height development standard of 18 metres. The proposed development has a maximum height of 21.3m. This represents a variation of 18.3% to the control.
26. 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)

27. The applicant seeks to justify the contravention of the maximum 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 permitted maximum building height does not represent the existing pattern of building heights in the locality.
 - (ii) There are a number of examples of existing buildings that exceed the development standard in the vicinity. A number of these buildings were approved under former planning instruments, and the same height and FSR controls have carried over to the current planning controls for the area and the subject site.
 - (iii) The non-complying elements of the proposal relate to the lift overrun, plant room, lift lobby entrance associated with roof terrace. These are setback from the building edges by 4.9m to Mountain Street and 17m to Smail Street and 2.8m to Smail Lane. These features are appropriately screened from the public domain by their positioning and landscaping treatments.
 - (iv) The proposed development is consistent with the objectives of the height of buildings standard despite the non-compliance.
 - (v) The proposed additions are an appropriate contextual fit to the existing building and its contribution to the character of the heritage conservation area in terms of design and height.
 - (vi) The proposal is consistent with the existing and emerging character of developments of a similar scale within the locality including:

- (i) 35-39 Mountain Street, part 6 & 7 storey building
 - (ii) 11 Smail Street, part 5 & 7 storey building
 - (iii) 46-52 Mountain Street, 5 storey building
 - (iv) 23-36 Mountain Street, 5 storey building
- (vii) The proposal will not impact on any significant views from nearby properties.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposed height, bulk and scale of the proposal ensures an appropriate relationship is achieved between existing historical form and the evolving character of the area with a number of additions to buildings within the area.
 - (ii) The proposal provides an appropriate relationship to nearby heritage items and does not detract from their heritage significance.
 - (iii) The proposal does not result in a loss of important views.
 - (iv) The residential development to the east at 11 Smail Street does not feature windows to its western elevation. The additional height will not result in unreasonable amenity impacts to these apartments.
 - (v) The non-complying elements are to be screened from the streetscape and the difference between the proposal and complying building would not be discernible at the street level.
 - (vi) The proposal is consistent with similar nearby additions which feature the same height controls.
- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposal provides addition and renewed commercial floorspace within the B4 zone.
 - (ii) The proposal reduces the existing provision of car parking and introduces bicycle parking and end of journey facilities which will promote the use of public transport, walking and cycling.
 - (iii) The proposal will support the viability of nearby centres in Broadway and Central Park.
- (d) The proposed development will be consistent with the objectives of the standard
 - (i) The proposed additions are an appropriate contextual fit to the existing building and its contribution to the character of the heritage conservation area in terms of design and height.
 - (ii) The proposal is consistent with the existing and emerging character of developments of a similar scale within the locality including:
 - (i) 35-39 Mountain Street, part 6 and 7 storey building
 - (ii) 11 Smail Street, part 5 and 7 storey building

- (iii) 46-52 Mountain Street, 5 storey building
 - (iv) 23-36 Mountain Street, 5 storey building
- (iii) The proposal will not impact on any significant views from nearby properties.

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

28. 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)?

29. The written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that the objectives of the development standard are achieved despite the non-compliance. The written request has demonstrated that the objectives of the height of buildings standard are achieved despite the non-compliance.
30. The height of the proposal is appropriate to the site and existing building and its context. The design including the height of the addition respects the existing form of the building. The design and height of the building fits within the context of the streetscape of both Mountain Street and Smail Streets, presenting as a five storey building with a landscaped roof terrace in a context of other 5 to 9 storey buildings.
31. The height of the proposal provides an appropriate height transition between developments including heritage items located at 41 & 43-49 Mountain Street and 46-52 Mountain Street. The proposed additions as amended are setback from Mountain Street to a height that has an appropriate contextual fit in the streetscape and does not negatively impact on the heritage significance of the heritage items or the conservation area.
32. The proposal promotes the sharing of views. The proposal does not impact on important views from neighbouring properties or views within the public domain.

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

33. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in the circumstances of the application.
34. The proposed additions fit within the context of development to both Mountain Street and Smail Streets with existing building forms ranging from 5 to 9 storeys, with examples of other existing developments that contain building elements that exceed the height standard.

35. The design of the additions provide a differentiation between the existing building form and the new additions. The design of the additions do not overwhelm the existing building form or nearby heritage items.
36. The building form that sits above the height limit is generally setback from the building edge and consists of lift overruns, plant and amenities. The building form does not contribute to excessive bulk as viewed from the public domain. Landscaping located on the roof terrace also provides visual screening to these building forms.
37. Floor space located above height limit is minor and limited to amenities to service the roof terrace and to provide weather protection to the lift.
38. Impacts from the building form exceeding the control are minimal as compared to a compliant building form.

Is the development in the public interest?

39. The development is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
40. The written request has demonstrated that the objectives of the height of buildings standard are achieved despite the non-compliance.
41. The height of the proposal is appropriate to the site and existing building and its context. The design including the height of the addition respects the existing form of the building. The design and height of the building fits within the context of the streetscape of both Mountain Street and Smail Streets, presenting as a five storey building with a landscaped roof terrace in a context of other 5 to 9 storey buildings.
42. The height of the proposal provides an appropriate height transition between developments including heritage items located at 41 & 43-49 Mountain Street and 46-52 Mountain Street. The proposed additions as amended are setback from Mountain Street to a height that has an appropriate contextual fit in the streetscape and does not negatively impact on the heritage significance of the heritage items or the conservation area.
43. The proposal promotes the sharing of views. The proposal does not impact on important views from neighbouring properties or views within the public domain.
44. The development is consistent with the objectives of the B4 Mixed Use Zone. The proposal provides additional commercial floor space within the B4 Zone in an area that contains a mix of commercial and residential uses. The proposal is located in an accessible location in proximity to public transport. The provision of bicycle parking and end of journey facilities in a convenient location and the reduction of car parking will promote the use of public transport and encourage walking and cycling. The proposal will promote the viability of nearby centres in the locality.

Conclusion

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

Floor Space Ratio

46. The site is subject to a maximum floor space ratio (FSR) control of 2:1 with an additional 0.08:1 available for end of journey space for a total of 2.08:1. The proposed development has a FSR of 3.7:1. This represents a variation of 77.98% to the control.
47. 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)

48. The applicant seeks to justify the contravention of the FSR 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 existing building has an FSR of 2.1:1 to require strict compliance would require deletion of floorspace from the existing building within the heritage conservation area which would be a potentially adverse outcome and thwart the purpose of the control.
 - (ii) The existing building currently exceeds the FSR control and has a current maximum height of 15.9m within the height of buildings control of 18m. Any additions to the existing building within the height limit would exceed the FSR standard. Minimal floor space is located above the height standard on the roof terrace level for providing weather protection to the lift and staff amenities only.
 - (iii) The objectives of the standard are achieved notwithstanding the non-compliance with the standard.
 - (iv) The permitted FSR does not represent the existing pattern of FSR and building heights in the locality.

- (v) There are a number of examples of existing buildings that exceed the development standard in the vicinity. A number of these buildings were approved under former planning instruments, and the same height and FSR controls have carried over to the current planning controls for the area and the subject site.
- (vi) The proposal is consistent with the existing and emerging character of developments of a similar scale within the locality including:
 - (i) 35-39 Mountain Street, part 6 and 7 storey building
 - (ii) 11 Smail Street, part 5 and 7 storey building
 - (iii) 46-52 Mountain Street, 5 storey building
 - (iv) 23-36 Mountain Street, 5 storey building
- (vii) The proposal represents a contextual fit within the existing locality and does not result in adverse impacts on amenity.
- (viii) The proposal provides additional commercial floor space in the form of renewed retail floor space and new office floor space.
- (ix) The proposal includes the reduction of car parking spaces on the site and the introduction of bicycle parking and end of journey facilities.
- (x) The proposal is commensurate with the capacity of existing and planned infrastructure for the locality.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The existing building has an FSR of 2.1:1 to require strict compliance would require deletion of floorspace from the existing building within the heritage conservation area which would be a potentially adverse outcome and thwart the purpose of the control.
 - (ii) The existing building currently exceeds the FSR control and has a current maximum height of 15.9m within the height of buildings control of 18m. Any additions to the existing building within the height limit would exceed the FSR standard. Minimal floor space is located above the height standard on the roof terrace level for providing weather protection to the lift and staff amenities only. These areas are setback from view and do not result in significant additional building bulk as viewed from the public domain.
 - (iii) The additions are setback from the building edges at various points providing a clear visual differentiation for the additions.
 - (iv) The FSR compliance does not result in unacceptable amenity impacts.

- (v) The proposal is consistent with the existing and emerging character of developments of a similar scale within the locality including:

- (i) 35-39 Mountain Street, part 6 and 7 storey building
- (ii) 11 Smail Street, part 5 and 7 storey building
- (iii) 46-52 Mountain Street, 5 storey building
- (iv) 23-36 Mountain Street, 5 storey building

The buildings are also warehouse buildings which are typically built to the boundary and exceed the applicable FSR controls for the site. The proposal represents a contextual fit within this context and streetscape.

- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) The proposal provides addition and renewed commercial floorspace within the B4 zone.
 - (ii) The proposal reduces the existing provision of car parking and introduces bicycle parking and end of journey facilities which will promote the use of public transport, walking and cycling.
 - (iii) The proposal will support the viability of nearby centres in Broadway and Central Park.
- (d) The proposed development will be consistent with the objectives of the standard
 - (i) The proposal represents a contextual fit within the existing locality and does not result in adverse impacts on amenity.
 - (ii) The proposal provides additional commercial floor space in the form of renewed retail floor space and new office floor space.
 - (iii) The proposal includes the reduction of car parking spaces on the site and the introduction of bicycle parking and end of journey facilities.
 - (iv) The proposal is commensurate with the capacity of existing and planned infrastructure for the locality.

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

49. 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)?

50. The written request has demonstrated that the objectives of the FSR standard are achieved despite the non-compliance.
51. The proposal provides additional commercial space within the B4 Mixed Use Zone to meet anticipated demand for commercial floor space with good amenity in an accessible location.
52. The proposal includes a reduction in car parking on the site which will assist in controlling the generation of vehicle traffic. The proposal includes the provision of bicycle parking and end of journey facilities that will promote cycling. The site is located in an accessible area. The proposed development would require a development contribution for planned infrastructure. The proposed development is compatible with existing and desired character of the locality and heritage conservation area in which it is located.

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

53. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the FSR development standard in the circumstances of the application.
54. The existing 3 storey building form currently exceeds the FSR standard whilst sitting below the 5 storey height in storeys control and 18m height standard.
55. The proposed additions fit within the context of development to both Mountain Street and Smail Streets with existing building forms ranging from 5 to 9 storeys, with examples of other existing developments that contain building elements that exceed the height and FSR standards.
56. The design of the additions provide a differentiation between the existing building form and the new additions. The design, bulk and scale of the additions do not overwhelm the existing building form or nearby heritage items.
57. The building form that sits above the height limit is generally setback from the building edge and consists of lift overruns, plant and amenities. The building form does not contribute to excessive bulk as viewed from the public domain. Landscaping located on the roof terrace also provides visual screening to these building forms.
58. Floor space located above height limit is minor (18sqm) and limited to amenities to service the roof terrace and to provide weather protection to the lift.
59. Impacts from the building form exceeding the control are minimal as compared to a compliant building form.

Is the development in the public interest?

60. The development is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
61. The written request has demonstrated that the objectives of the FSR standard are achieved despite the non-compliance.

62. The proposal provides additional commercial space within the B4 Mixed Use Zone to meet anticipated demand for commercial floor space with good amenity in an accessible location.
63. The proposal includes a reduction in car parking on the site which will assist in controlling the generation of vehicle traffic. The proposal includes the provision of bicycle parking and end of journey facilities that will promote cycling. The site is located in an accessible area. The proposed development would require a development contribution for planned infrastructure. The proposed development is compatible with existing and desired character of the locality and heritage conservation area in which it is located.
64. The development is consistent with the objectives of the B4 Mixed Use Zone. The proposal provides additional commercial floor space within the B4 Zone in an area that contains a mix of commercial and residential uses. The proposal is located in an accessible location in proximity to public transport. The provision of bicycle parking and end of journey facilities and the reduction of car parking on site will promote the use of public transport and encourage walking and cycling. The proposal will promote the viability of nearby centres in the locality.

Conclusion

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

Consultation

Internal Referrals

66. The application was discussed with Councils Building Services Unit, Environmental Health Unit, Environmental Sustainability Unit, Heritage and Urban Design Unit, Landscaping, Public Domain Unit, Transport and Access Unit, Tree Management Unit, Waste Management Unit. Comments provided have been incorporated into the amended proposal and recommended conditions are included in Attachment A.

Advertising and Notification

67. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 7 December 2020 and 12 January 2021.
68. A total of 322 properties were notified and no submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

69. The development is subject to a Section 7.11 development contribution of \$215,657.87 under the provisions of the City of Sydney Development Contributions Plan 2015.

70. Credits have been applied for the most recent approved use of the site for existing retail and commercial uses.
71. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of an occupation certificate in accordance with Planning Circular PS 20-003.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

72. As the development is not located on specified land at Green Square, Ultimo-Pyrmont or on southern employment land, the development is not subject to a Section 7.13 contribution.

Relevant Legislation

73. Environmental Planning and Assessment Act 1979.

Conclusion

74. The proposal seeks consent for alterations and additions to an existing three storey commercial building consisting of alterations and a two storey addition and rooftop terrace. The application has been amended with the deletion of an originally proposed sixth floor office floor space, an expanded roof terrace with additional landscaping and building massing setback from Mountain Street to express the existing building features within the streetscape.
75. The application includes requests to vary the height of buildings and floor space ratio development standards. The requests to vary the standards are supported in this instance within the context of the site and the surrounding area.
76. The application is recommended for approval subject to the recommended conditions contained in Attachment A.

ANDREW THOMAS

Executive Manager Planning and Development

Shannon Rickersey, Senior Planner