

Item 4.**Development Application: 7 Franklyn Street and 49 Greek Street, Glebe - D/2021/729**

File No.: D/2021/729

Summary

Date of Submission:	1 July 2021
Applicant:	Mostaghim Architects
Architect/Designer:	Mostaghim Architects
Owner:	Denwol Home Pty Ltd
Planning Consultant:	MOD Urban
Heritage Consultant:	Weir Philips Heritage and Planning
DAPRS:	7 September 2021
Cost of Works:	\$12,470,265
Zoning:	<p>The site is located in the B2 Local Centre zone. State Environmental Planning Policy (Housing) 2021 (Housing SEPP) has amended the definition of a "boarding house" and included a new housing type referred to as "co-living". The Sydney LEP 2012 has been amended to include these definitions.</p> <p>Under the Housing SEPP, the proposed development is defined as co-living housing. However, the Housing SEPP contains savings and transitional provisions which state that the former provisions of a repealed instrument, in this case, State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP), will continue to be applied to development applications made, but not determined, before the day the Housing SEPP commenced.</p> <p>As the subject development application was made and not determined prior to 26 November 2021, the ARH SEPP applies to this application. The proposed development has therefore been assessed as a boarding house as defined by the former ARH SEPP.</p>

It is noted that both co-living housing and the formerly defined "boarding house" are permissible with consent in the B2 Local Centre zone.

The proposal includes a small commercial tenancy. Commercial premises are permissible with consent in the B2 Local Centre zone.

Proposal Summary:

The proposal involves the demolition of the two existing warehouse style buildings on the site and the construction of a part four, part five storey boarding house, including a partially submerged basement level.

The proposal provides accommodation in the form of 77 double rooms inclusive of a manager's room, for a maximum of 154 residents.

The proposal is referred to the Local Planning Panel for determination as the development is reliant on clause 4.6 variation requests in order to vary the building height development standard of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) and the motorcycle parking space development standard of the ARH SEPP by more than 10%.

The applicant has lodged written statements addressing the provisions of clause 4.6 of the Sydney LEP 2012 with regard to non-compliances with both the building height and floor space ratio development standards. The non-compliance with the building height development standard relates to an 18% variation and the non-compliance with the floor space ratio development standard relates to a 3.33% variation.

The proposed development provides three motorcycle parking spaces and therefore does not comply with clause 30(h) of the ARH SEPP. The clause states that one motorbike parking space must be provided for every five boarding rooms (16 spaces to comply). The applicant has lodged a written statement addressing the provisions of clause 4.6 of the Sydney LEP 2012 with regard to non-provision of motorbike parking.

The application was notified for a period of 21 days from 5 July 2021 to 27 July 2021. Five submissions were received. Issues raised in the submissions relate to the extent of demolition, height and bulk, amenity issues associated with the roof terrace, visual and acoustic privacy and amenity of the proposed boarding rooms.

Following a preliminary assessment of the application, including consideration by the Design Advisory Panel - Residential Subcommittee (DAPRS), the applicant was requested to amend the application. Amended plans were renotified between 1 December 2021 and 16 December 2021. Key amendments include improved internal amenity of the boarding house including relocation of bedrooms, communal living areas and stairs, increase in the number of accessible and adaptable rooms, inclusion of a small commercial tenancy on the Greek and Franklyn Street corner and amendments to the facade of the building.

Four submissions were received following the re-notification of the amended proposal. Issues raised in the submissions include noise and traffic congestion during construction works, impacts from the roof terrace, lack of parking and bulk and scale.

The proposal is generally consistent with the relevant objectives and provisions of the ARH SEPP and the Sydney LEP 2012. Subject to the recommended conditions at Attachment A, the development application is recommended for approval.

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

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (iii) State Environmental Planning Policy (Housing) 2021
- (iv) State Environmental Planning Policy No 55 Remediation of Land
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vi) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- (vii) Sydney Local Environmental Plan 2012
- (viii) Sydney Development Control Plan 2012
- (ix) City of Sydney Development Contributions Plan 2015

Attachments:

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

Recommendation

It is resolved that:

- (A) the variation requested to the Sydney LEP 2012 building height development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012 be upheld;
- (B) the variation requested to the Sydney LEP 2012 floor space ratio development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012 be upheld;
- (C) the variation requested to the ARH SEPP motorbike parking development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney LEP 2012 be upheld; and
- (D) consent be granted to Development Application No. D/2021/729 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 development complies with the objectives of the B2 Local Centre zone pursuant to the Sydney LEP 2012.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant's written requests have each 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, floor space ratio development standard and motorbike parking development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clauses 4.3 and 4.4 of the Sydney LEP 2012 and clause 30(f) of the ARH SEPP; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the B2 Local Centre zone, the objectives of the height of buildings development standard, the floor space ratio development standard and the ARH SEPP development standards.
- (C) The proposal is consistent with the aims and objectives of Division 3 of ARH SEPP.

- (D) Having considered the matters in Clause 6.21(4) of the Sydney LEP 2012, the building displays design excellence because:
 - (i) the materials and detailing are appropriate to the building type and location;
 - (ii) the works will not have any significant impacts on the quality of the public domain; and
 - (iii) the proposed bulk, massing and modulation of the subject building is acceptable.
- (E) The development is consistent with the objectives of the Sydney Development Control Plan 2012 (Sydney DCP 2012).
- (F) Suitable conditions of consent have been applied and the development is considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP78986 and Lots 3 and 4 in DP1097813, known as 7 Franklyn Street and 49 Greek Street, Glebe. It is irregular in shape with an area of approximately 908.06sqm. It has primary frontages to Greek Street (39.18m) and Franklyn Street (29.25m). The site is located on the north-eastern corner of Greek Street and Franklyn Street. Levels on the site fall by approximately 3m along Greek Street.
2. The site contains two separate buildings. The building located at 7 Franklyn Street comprises a painted face brick, two storey interwar warehouse style building. The building has two entries, with the main entry provided from Greek Street and a secondary entry provided off Franklyn Street. The building located at 49 Greek Street comprises a similar painted face brick, two storey interwar warehouse style building. The ground level includes a recessed set of entry stairs with aluminium framed fixed glazing either side of the stair and vehicle access with a steel roller door.
3. The surrounding area is characterised by a mixture of land uses. To the north of the site is residential development comprising the Franklyn Street social housing estate owned by NSW Land and Housing Corporation (LAHC) which contains 108 social housing dwellings in a series of two and three storey townhouses. It is noted that the NSW Government is proposing to redevelop this estate. The Planning Proposal to facilitate the changes to the Sydney LEP 2012 has not yet been lodged.
4. Development to the east of the site comprises a mix of residential development and commercial development in the form of four to five storey buildings fronting Greek Street. To the southeast of the site is the Broadway Shopping Centre Car Park and the Peter Forsyth Auditorium. To the southwest of the site is a two storey warehouse building. Development to the west of the site comprises single and two storey dwelling houses and the Robyn Kemmis Reserve Playground.
5. The site is not identified as a heritage item and is not located within a heritage conservation area.
6. The site is located within the Mountain Street locality and is not identified as being subject to flooding.
7. A site visit was carried out on 26 August 2021. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds, site outlined in red



Figure 2: Site viewed from corner of Franklyn and Greek Street (building shown is 7 Franklyn Street)



Figure 3: View of site looking east down Greek Street (7 Franklyn Street in foreground)



Figure 4: View of site looking west up Greek Street (49 Greek Street shown in foreground)

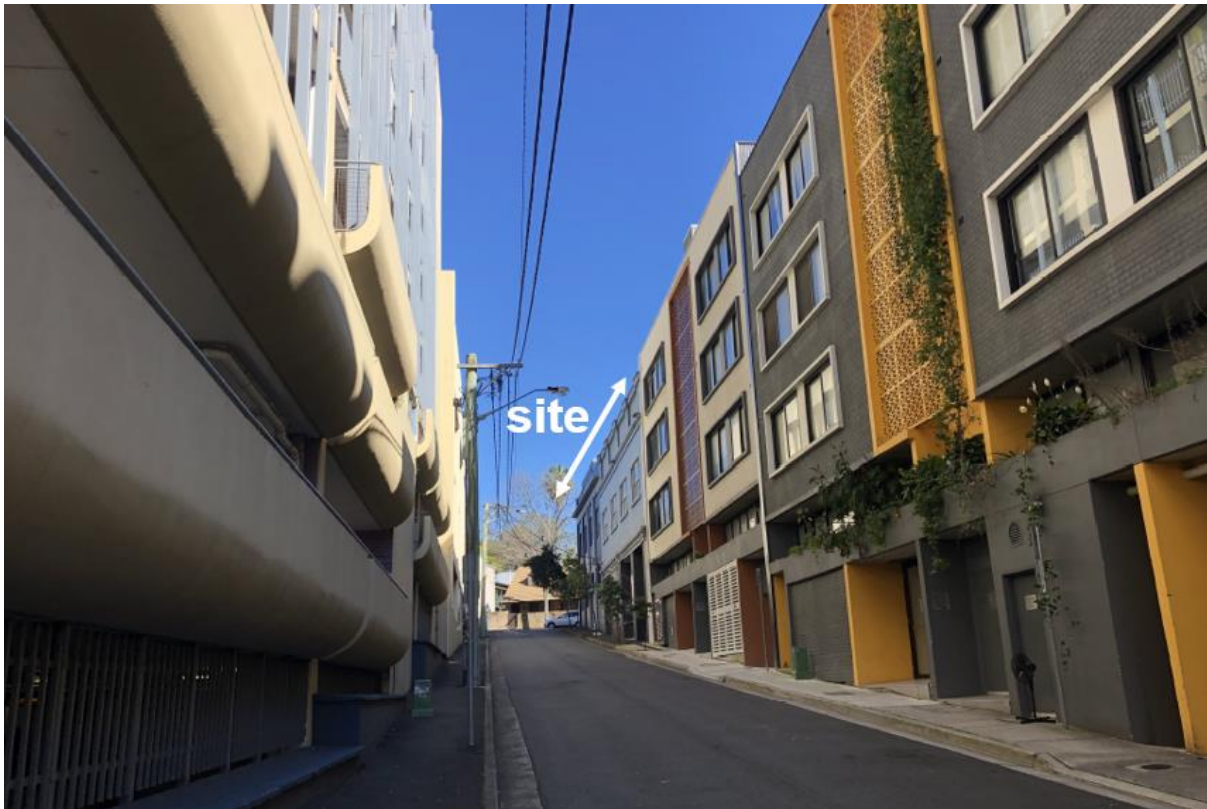


Figure 5: View of site looking west up Greek Street, viewed from outside the Broadway Shopping Centre Car Park



Figure 6: View of site looking south down Franklyn Street (building shown is 7 Franklyn Street)



Figure 7: View of site looking south down Franklyn Street from the corner of Franklyn Street and Greek Street (building shown is 7 Franklyn Street)



Figure 8: View of site looking south down Franklyn Street showing single and two storey residential development opposite the site (building shown is 7 Franklyn Street)



Figure 9: View of site looking north down Franklyn Street (building shown is 7 Franklyn Street)

History Relevant to the Development Application

Development Applications

8. The following consents have been granted in relation to the subject site:

7 Franklyn Street

- **D/2002/650** – Development consent was granted on 27 November 2002 for the fit out of the existing office building including minor alterations to the existing facade.
- **D/2008/1373** - Development consent was granted on 10 September 2008 for the construction of a new awning over the Greek Street entrance.

49 Greek Street

- **D/1999/1068** – Development consent was granted on 24 February 2000 for internal alterations, upgrade of facade and change of use of the existing industrial building.
- **D/2000/695** - Development consent was granted on 9 November 2000 for the use of the building for commercial offices for information technology.

Application Chronology

9. A chronology of key events relevant to the development application follows:
- (a) **12 July 2021:** The clock was stopped and a request for further information was issued by the City requesting:
 - (i) Heritage Impact Statement
 - (ii) A Detailed Environmental Site Investigation (DESI), and if required a Remediation Action Plan (RAP)
 - (iii) A Clause 4.6 Request to vary Clause 30(1)(h) in relation to the 'minimum motorcycle parking' of ARH SEPP
 - (b) **13 August 2021:** The applicant submitted the Clause 4.6 request.
 - (c) **27 August 2021:** The applicant submitted the Heritage Impact Statement.
 - (d) **7 September 2021:** The application was reviewed by the DAPRS. At the meeting, the Panel considered the proposal did not meet the threshold of design excellence. This primarily related to issues of the amenity of the boarding rooms, communal indoor and outdoor spaces.
 - (e) **15 September 2021:** The applicant submitted the DESI.
 - (f) **5 October 2021:** The City issued the applicant with a second request for additional information and amendments. The request identified the following:
 - (i) **Urban Design:** Principal concern relates to the general lack of amenity for future occupants of the building.

Concerns were raised in relation to the poor amenity of the lower ground floor with the location of partially submerged boarding rooms and communal open space within proximity of these rooms. The primary entry off Greek Street to this level was convoluted. It was requested the five rooms at this level be removed and replaced with uses which requires less amenity such as media rooms, study rooms etc.

In relation to the ground floor, the entry was requested to be amended to provide a greater sense of arrival. The corner indoor communal living area was identified as being "too open" and requiring redesign to address issues of privacy, security and safety. The issue of privacy to the rooms fronting Greek Street was also noted.

In relation to the upper levels, the amenity of the room modules was questioned and further information was requested.

In relation to the external appearance, amendments were requested to improve the corner treatment of the Greek and Franklyn Street corner. The glazing to the Greek Street boarding rooms was identified as offering insufficient privacy. The reliance on sliding doors for ventilation in the rooms was not supported and it was recommended an alternative window be provided.

Additional information was requested in relation to materials and finishes.

- (ii) **Public Domain:** Amended Stormwater Plans were requested which comply with the City's Technical Specifications.

Further information was requested in relation to the MUSIC-link model and the identified failing parameters.

Public domain levels and gradients were requested to be submitted for review and approval.

- (iii) **Waste:** An amended waste management plan was requested which complies with the criteria in the City of Sydney Guidelines for Waste Management in New Developments 2018
- (iv) **Additional Information:** Additional information in the form of an amended survey plan, 3D height plan diagram, view from sun diagrams and an amended GFA plan was requested.

- (g) **7 October 2021:** The applicant submitted the RAP and Notice of Category 2 Remediation of Soil.
- (h) **13 October 2021:** The applicant submitted a letter of interim advice.
- (i) **2 November 2021:** The applicant submitted draft amended architectural plans for comment.
- (j) **8 November 2021:** A meeting took place with the applicant on the draft amended plans. Written advice was issued to the applicant on 12 November 2021 identifying further areas for refinement and amendment.
- (k) **30 November 2021:** Amended documentation was provided to the City including:
 - (i) Amended architectural plans
 - (ii) Amended landscape plans
 - (iii) Amended stormwater plans
 - (iv) Public domain plan
 - (v) Revised Statement of Environmental Effects, Clause 4.6 variation request and Plan of Management
 - (vi) Amended waste management plan
- (l) **1 December - 16 December 2021:** The application was re-notified for 14 days.

- (m) **13 January 2022:** The City issued the applicant with a third request for additional information. Further information was requested which demonstrated compliance with the City's Interim Floodplain Management Policy, specifically relating to the proposed building entry levels. The City also identified the applicant's calculation of gross floor area (GFA) at lower ground floor level was erroneous. The applicant was advised that if no changes were made to this level, a Clause 4.6 variation requested would need to be submitted in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 to justify the contravention of the development standard.
- (n) **14 January 2022:** The applicant provided additional information relating to the proposed building entry levels.
- (o) **3 February 2022:** The applicant provided a Clause 4.6 variation request in relation to Clause 4.4 (FSR).
- (p) **11 February 2022:** Amended CGI perspectives were received.

Proposed Development

10. The proposal is for demolition of the existing two storey interwar warehouse style buildings and construction of a new part four, part five storey boarding house as defined in ARH SEPP. The building has a partially submerged basement level. It accommodates 77 boarding rooms (for a total of 154 occupants), 101 bicycle spaces, three (3) motorcycle spaces, indoor communal areas at lower ground and ground floor levels, outdoor communal areas at ground floor and roof levels and associated landscaping works.
11. The application seeks consent for the following:

Lower ground floor

- Motorcycle parking for three (3) vehicles and bicycle parking for 101 bicycles;
- Communal laundry and communal media room;
- Garbage rooms, services and plant rooms; and
- Separate pedestrian and motorcycle entrances from Greek Street.

Ground floor

- Retail tenancy (approximately 58sqm in size) at the Greek and Franklyn Street corner;
- Principal building entrance from Franklyn Street;
- Large indoor communal area comprising living area and kitchen fronting Franklyn Street and outdoor communal area accessed from indoor communal area located on site's north-eastern extent; and
- 15 boarding rooms.

Levels 1 & 2

- 21 boarding rooms on each level, including four accessible rooms located on each level.

Level 3

- 20 boarding rooms including a manager's room and four accessible rooms.

Roof

- Communal outdoor terrace including BBQ, pergola, seating, retractable clothes drying area and landscaping;
- Mechanical plant and lift overrun; and
- PV panels to eastern part of roof.

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

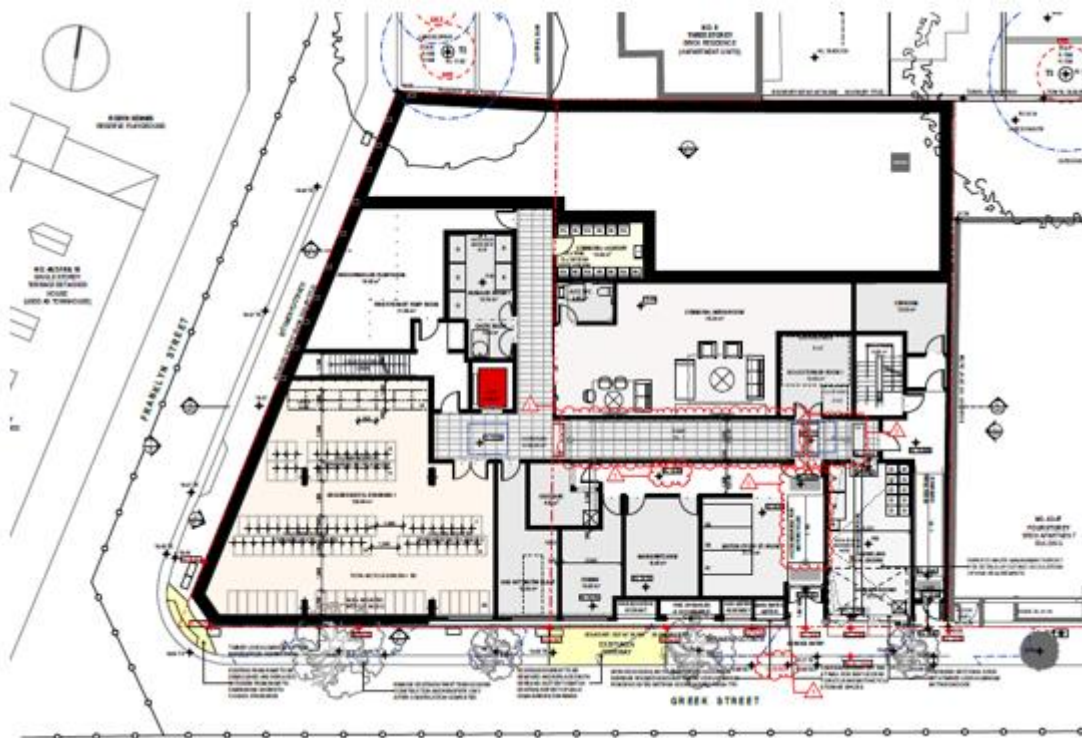


Figure 10: Proposed lower ground floor plan

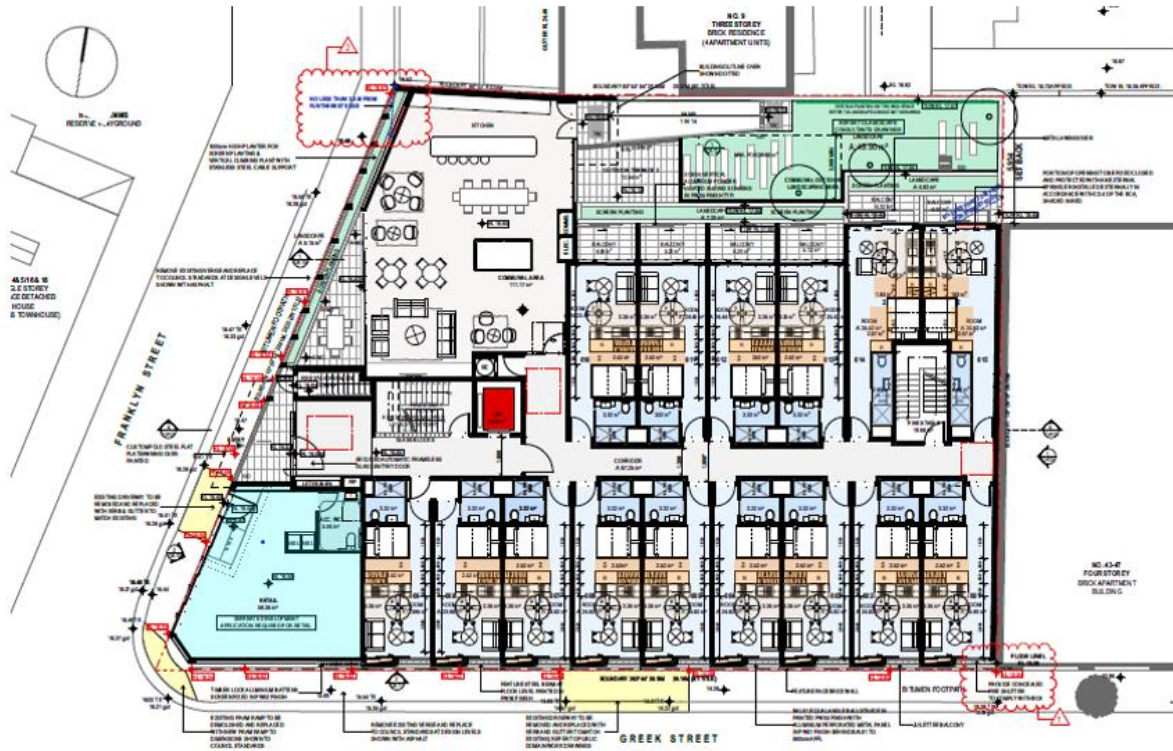


Figure 11: Ground floor plan



Figure 12: Proposed level one plan



Figure 13: Proposed level two plan

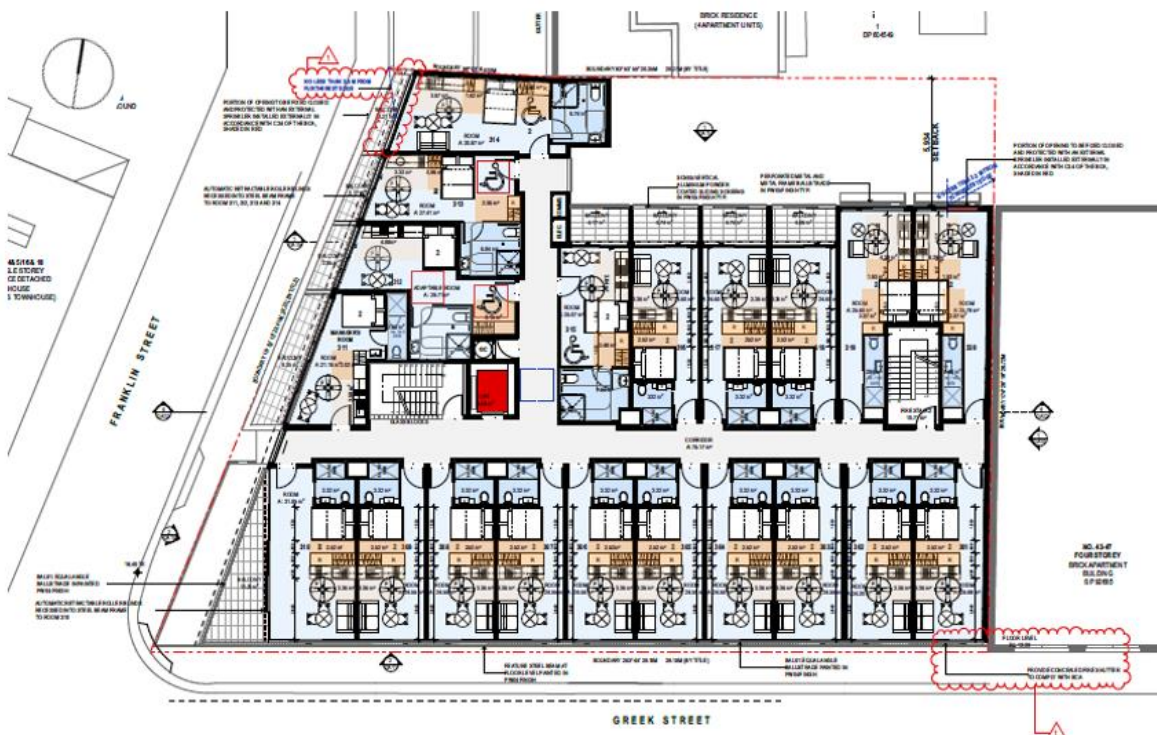


Figure 14: Proposed level three plan

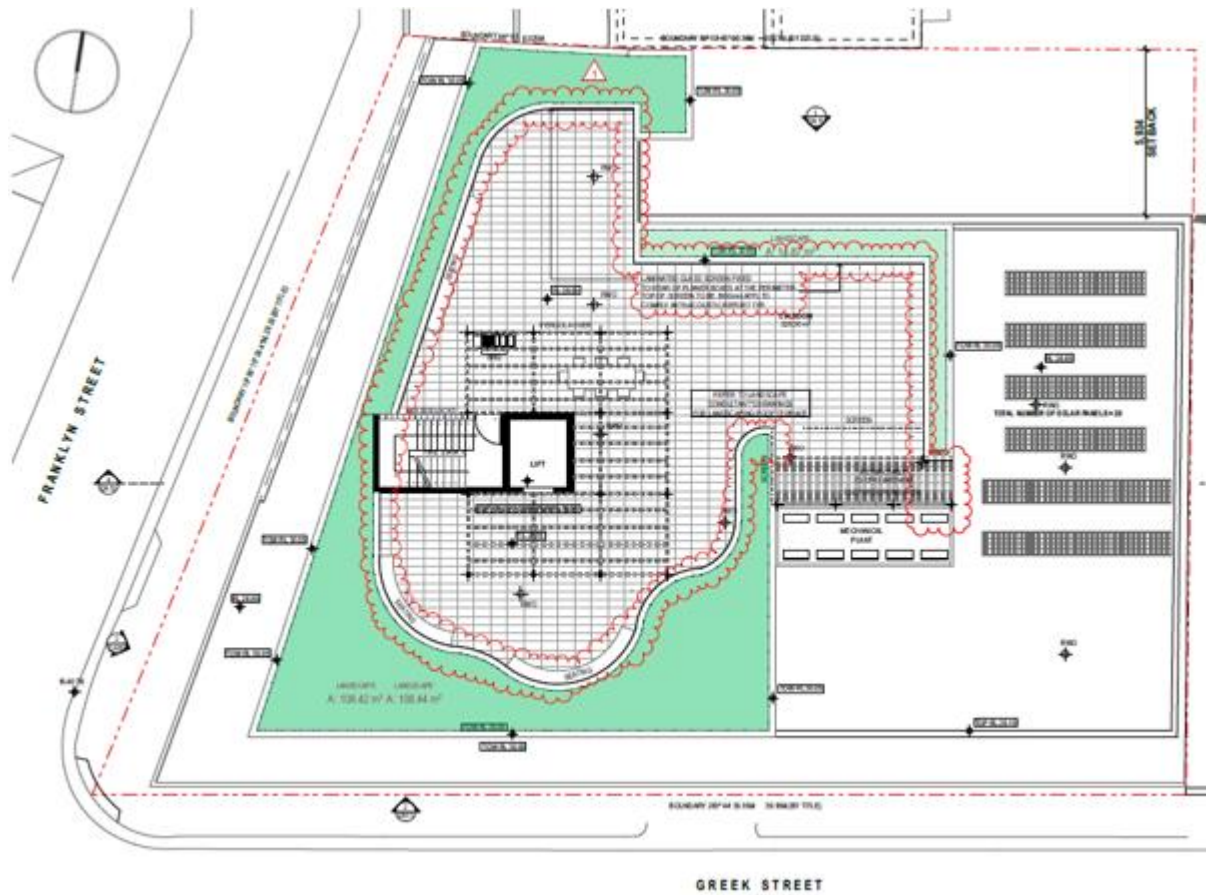


Figure 15: Proposed roof plan

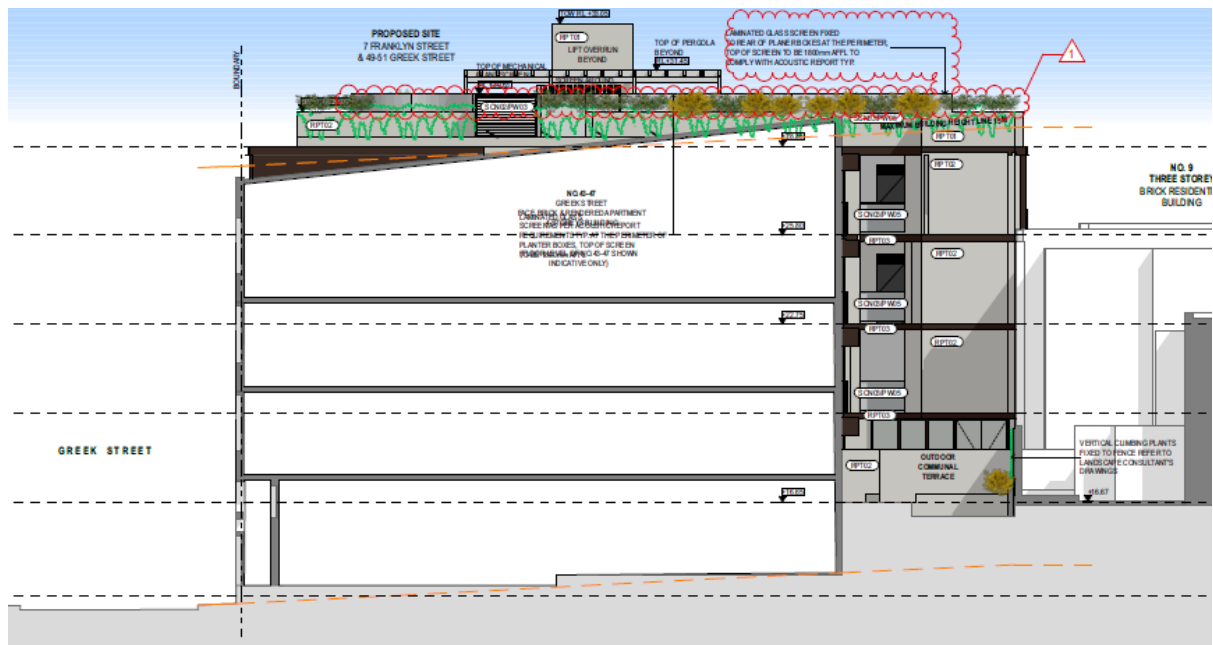


Figure 16: Proposed east elevation

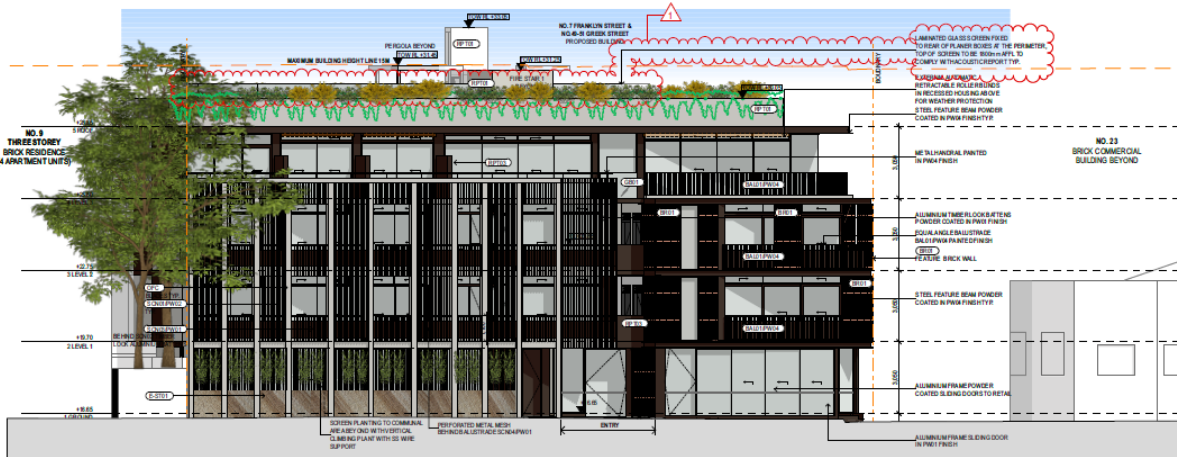


Figure17: Proposed west elevation (Franklyn Street)

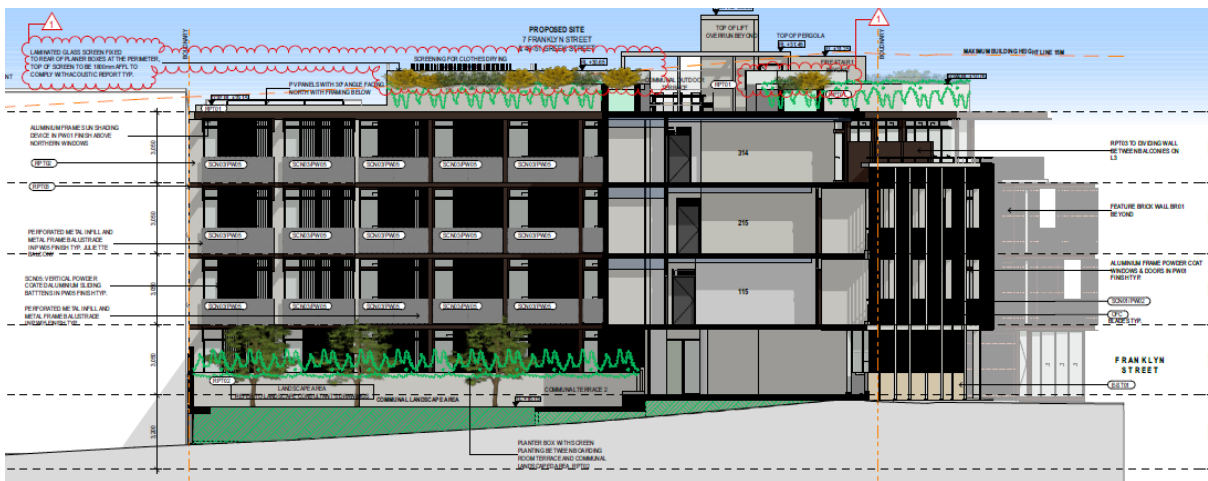


Figure 18: Proposed north elevation

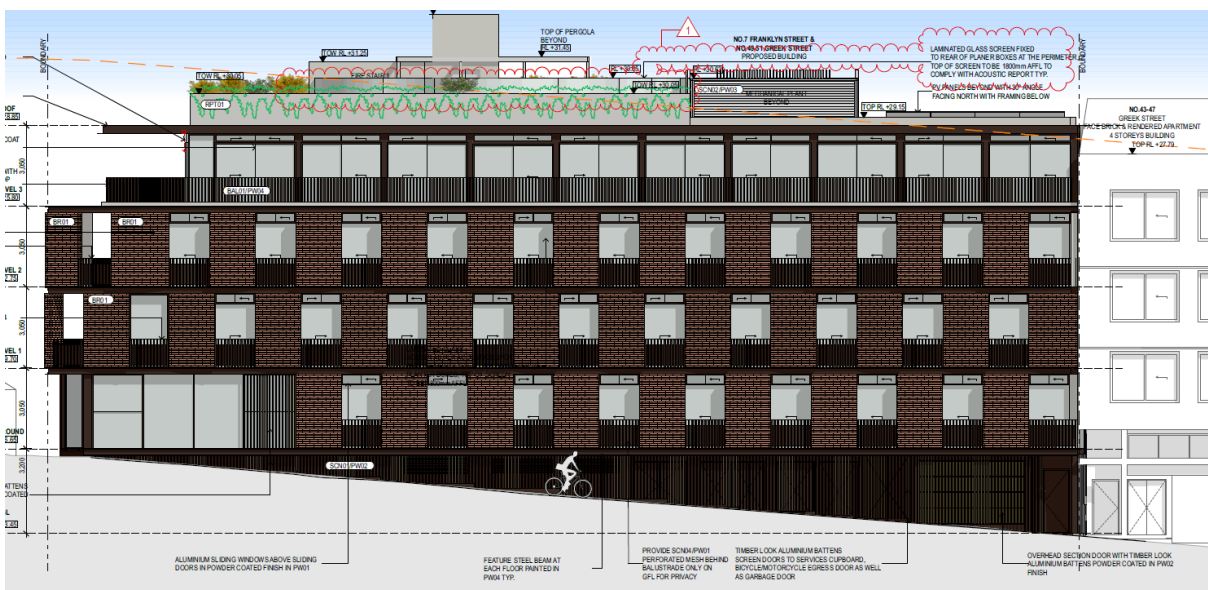


Figure19: Proposed south elevation (Greek Street)

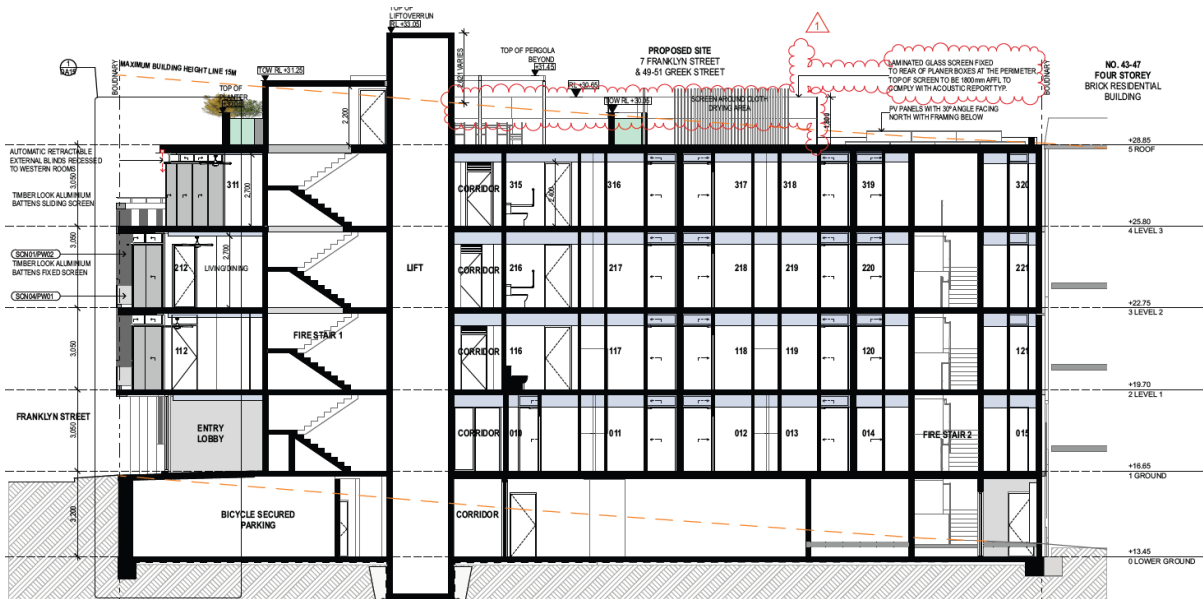


Figure 20: Section A-A (east-west)

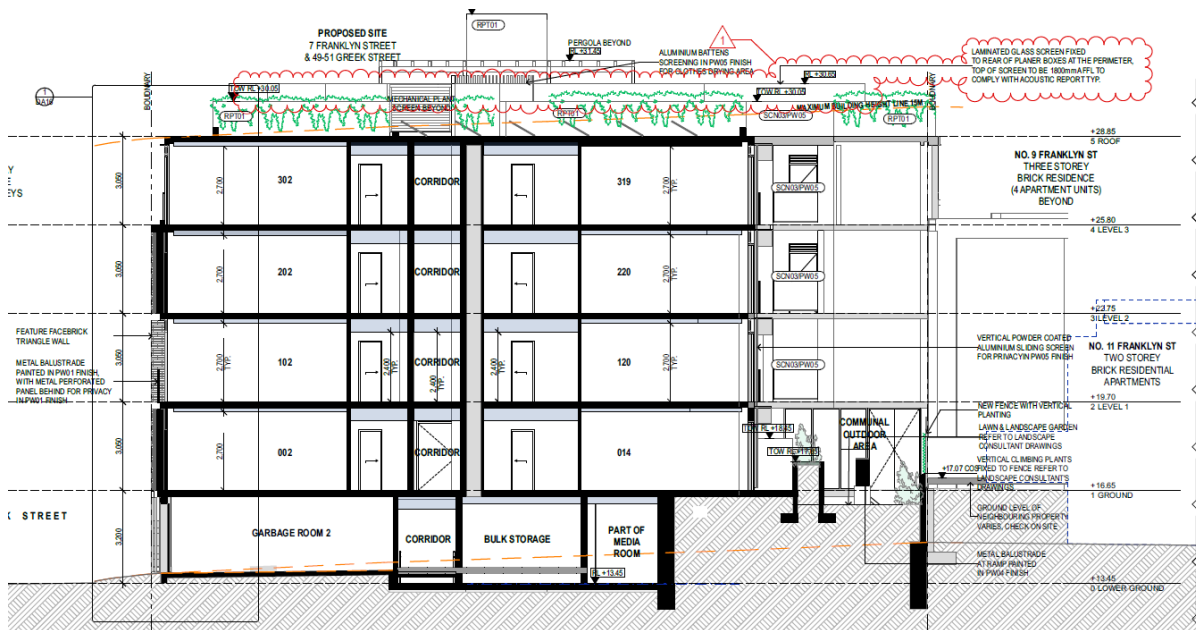


Figure 21: Section B-B (north-south)



Figure 22: Proposed landscape plan



Figure 23: Perspective view from Franklyn and Greek Street corner



Figure 24: Perspective view from Greek Street

Assessment

13. 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

14. 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.
15. Site investigations have identified the following contaminants as present on the site:
 - soil impacted with polyaromatic hydrocarbons (PAH), specifically benzo-a-pyrene and naphthalene identified in the samples taken from the two boreholes located in the Franklyn Street property; and
 - soil impacted with hydrocarbons (TRH), specifically C16-C34 oils, identified in the samples taken from borehole #1 (exceeding the criteria) and borehole #4 (marginally under criteria) within the Greek Street property.
16. A RAP relating to the site, accompanied by a letter of interim advice has been submitted with the development application.

17. The RAP proposes to remove the contaminated soil from the site. The option was chosen to remove contaminated soil from the site to reduce the hazard to an acceptable level and to negate the need for an on-going Environmental Management Plan. The interim advice confirms the above approach is appropriate.
18. The Council's Health Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.
19. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Affordable Rental Housing) 2009

20. The aim of ARH SEPP 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

21. 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 proposal against each standard is provided in the table below.

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

Provision	Compliance	Comment
<p>1 Density and scale expressed as floor space ratio</p> <p>An FSR of up to 2.5:1 plus 0.5:1 is permitted.</p>	No	<p>The application proposes a floor space ratio of 3.1:1 which is greater than the 3:1 floor space ratio permitted for the site.</p> <p>The applicant has submitted a Clause 4.6 variation request. Refer to issues section below.</p>
<p>2(a) Building height</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 development exceeds the 15m maximum height permitted under the Sydney LEP 2012.</p> <p>The applicant has submitted a Clause 4.6 variation request. Refer to issues section below.</p>
<p>2(b) Landscaped area</p> <p>The front setback is to be compatible with the streetscape.</p>	Yes	<p>No setback is proposed to the Greek Street and Franklyn Street frontages. This is considered appropriate and in keeping with the established streetscape which is generally built to the street and is therefore acceptable.</p>

Provision	Compliance	Comment
<p>2(c) Solar access</p> <p>If more than one communal living area is provided, at least one of the rooms is to receive a minimum of three hours' direct sunlight between 9:00am and 3:00pm in mid-winter.</p>	Yes	Sun's eye diagrams have been provided with the application which demonstrate the ground floor communal living area receives in excess of three hours of direct sunlight between 12:00pm and 3:00pm in mid-winter.
<p>2(d) Private open space</p> <p>(i) One area of at least 20sqm with a minimum dimension of 3m is provided for lodgers.</p> <p>(ii) If accommodation is provided for an onsite manager, one area of at least 8sqm with a minimum dimension of 2.5m, adjacent to the accommodation.</p>	Yes	<p>In excess of 278.2sqm of private open space is provided at ground and roof levels and exceeds the requirements of the SEPP.</p> <p>The manager's room provides a private balcony 8.35sqm in size.</p>
<p>2(e) Parking</p> <p>(iia) 0.5 parking spaces provided for each boarding room</p> <p>(iii) Not more than 1 parking space for the on-site manager.</p>	Yes	<p>Consistent with the provisions of the SEPP, no on-site vehicular parking is provided.</p> <p>The site is in an accessible location and supplemented by bicycle parking.</p>
<p>2(f) Accommodation size</p> <p>(i) Rooms intended to be used by a single lodger are to have a minimum GFA of 12sqm.</p> <p>(ii) Rooms intended to be used more than one person are to have a minimum GFA of 16sqm.</p> <p>(excluding any area used as a private kitchen/ bathroom)</p>	Yes	All rooms, with the exception of the manager's room, have a minimum GFA of 16sqm. The manager's room is 14.6sqm in size and a condition has been recommended that the room is occupied by a single occupant only.

Provision	Compliance	Comment
29(3) Kitchen and Bathrooms	Yes	Each room is equipped with a private kitchen and ensuite. In addition, occupants are able to utilise the additional communal kitchen facilities at ground floor and the shared laundry facilities at basement level.

22. 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 proposal provides a communal media room at lower ground floor and a communal living area including shared kitchen facilities at ground floor level.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ²	Yes	All boarding rooms are less than 25sqm.
1(c) No boarding room to be occupied by more than 2 adult lodgers	Yes	The submitted Plan of Management restricts the number of lodgers to no more than two adult lodgers per room.
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	The boarding house provides adequate bathroom and kitchen facilities for each lodger in accordance with Section 4.4.1 of the Sydney DCP 2012.
1(e) A boarding room or on-site dwelling to be provided for a boarding house manager if boarding house has a capacity of 20 or more lodgers	Yes	The development allows for one on-site boarding house manager. This room is provided on level three.

Provision	Compliance	Comment
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The site is zoned B2 Local Centre. This zone is not zoned primarily for commercial purposes and residential uses are permissible in the zone. The development includes boarding rooms on the ground floor that front Greek Street which is acceptable given the existing residential context of the locality.
1(h) At least 1 bicycle and 1 motorcycle parking space to be provided for every 5 rooms.	Yes	<p>The SEPP requires 77 bicycle spaces to be provided on-site. The proposal provides for 101 bicycle spaces at lower ground floor level.</p> <p>The SEPP requires 16 motorcycle spaces to be provided on-site. The proposal provides 3 motorcycle parking spaces at lower ground floor level.</p> <p>A Clause 4.6 variation request has been submitted to justify this non-compliance. Refer to further discussion in the issues section of this report.</p>

Clause 30A – Character of the local area

23. 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.
24. The site is located within a mixed use area. The proposal is considered to be compatible with the character of the local area, providing a mix of commercial and residential uses. Adjoining development along the northern extent of Greek Street comprises five storey residential development built to the Greek Street boundary, with windows and ground floor entries fronting Greek Street. The proposal seeks to provide a similar built form in terms of bulk, scale and height which steps with the topography of the land to provide a consistent and coherent street frontage to Greek Street.
25. Along Franklyn Street, the character is predominantly residential, with a varied type of residential buildings within the vicinity of the site which include two and three storey brick apartment buildings to the north and single and two storey brick terrace houses to the west. The proposed development will sit comfortably within the diverse streetscape and will provide a positive presentation to Franklyn Street and the wider locality.
26. As amended, the proposed design and material are compatible with the character of the surrounding area. The bulk, scale and modulation are similar to the adjoining properties and is therefore considered appropriate with the streetscape. As such the application is consistent with clause 30A of the SEPP.

Clause 52 - No subdivision of boarding houses

27. Clause 52 states that a consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.
28. The application does not propose a strata subdivision. A condition is recommended preventing the strata subdivision or community title subdivision of the boarding house development.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

29. The Housing SEPP came into effect on 26 November 2021. The Housing SEPP repeals five SEPPs including the ARH SEPP. The Housing SEPP contains savings and transitional provisions which state that the former provisions of a repealed instrument (in this case the ARH SEPP) will continue to apply to development applications made, but not yet determined, before the day the Housing SEPP commenced. As the subject development application was made and not determined prior to 26 November 2021, the ARH SEPP applies to this application as well as the Housing SEPP.
30. Pursuant to section 4.15(1)(a) (i) of the EP&A Act, a consent authority is required to take into consideration any environmental planning instrument. As such, an assessment against the relevant provisions of the Housing SEPP has been undertaken.
31. Of relevance to this assessment, the Housing SEPP has amended the definition of a "boarding house" and included a new housing type referred to as "co-living". Under the Housing SEPP, the proposed development is defined as co-living housing. This is because boarding houses are defined as a type of affordable housing which must be managed by registered community housing providers.
32. An assessment against the co-living housing provisions contained in Chapter 3 Part 3 of the Housing SEPP is provided below. It is noted that a number of provisions have been repealed from the ARH SEPP or are not relevant due to the site's zoning and size of proposed boarding house. Therefore, the assessment is limited to only the amended and relevant provisions.

Clause 68 - Non-discretionary development standards - the Act, s 4.15

33. The following non-discretionary development standards are specified under Clause 68:

Provision	Compliance	Comment
(2) (a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and	No, but assessed as acceptable	Residential flat buildings are permitted in the B2 Local Centre zone. Under the Sydney LEP 2012, the site has a maximum floor space ratio of 2.5:1. Subject to the provisions of (ii), the development could have a maximum permissible FSR of 2.75:1.

Provision	Compliance	Comment
(ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,		The proposed development has an FSR of 3.1:1 and is non-compliant with this standard. However, the proposed development benefits from a permissible FSR of 3:1 under the ARH SEPP.
(2) (c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30sqm of communal living area plus at least a further 2sqm for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	Yes	A requirement of 184sqm of communal living area is required. The proposal provides 192.11sqm comprising a communal media room at lower ground floor level and a communal living and kitchen area at ground floor level. A minimum dimension of 3m is achieved for each communal living area.
(2) (d) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	Yes	The site has a site area of 908.06sqm. A total of 181.61sqm of communal open space is required. The proposal provides 278.2sqm of communal open space at ground and roof levels. A minimum dimension of 3m is achieved within these areas.
(2) (e) unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	Yes	The Sydney LEP 2012 does not specify car parking provision for boarding houses or retail premises within this location. Based on the proposed development providing 77 rooms and given its location within an accessible area, 15 car parking spaces are permissible under the Housing SEPP. The application does not seek to provide any car parking spaces which is compliant with this provision and considered appropriate given its highly accessible inner-city location.

Clause 69 - Standards for co-living housing

Provision	Compliance	Comment
Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—		
(1) (d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and	Yes	A workspace for the manager is not shown on the plans, however the communal living areas are adequately sized and would be able to accommodate a workspace for the manager.
(1) (e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	Yes	The site is zoned B2 Local Centre. The Sydney LEP 2012 permits the use of residential accommodation on the ground floor within the B2 Local Centre zone.
Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—		
(2) (b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	No, but assessed as acceptable	<p>The Apartment Design Guide (ADG) stipulates that for buildings up to four storeys the minimum separation distances are:</p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>No building separation is necessary where building types incorporate blank party walls.</p> <p>The building incorporates blank party walls along the north-western and eastern boundaries and therefore no building separation is required.</p>

Provision	Compliance	Comment
		<p>Along the north-eastern extent, the building provides a setback of 5.93m from the external face of the balconies to 45-51 Bay Street. All balconies along this elevation include sliding battens to ensure a reasonable level of external and internal visual privacy can be achieved. The minor non-compliant building separation is considered acceptable in this instance.</p> <p>Along the principal elevations of Greek Street (south) and Franklyn Street (west), the proposal is built to the street boundaries, with habitable rooms and balconies addressing the street. In excess of 9.9m building separation is achieved from the western boundary to the properties to the west of the site, on the opposite side of Franklyn Street.</p> <p>A minimum of 9.22m is provided from the southern boundary to the commercial properties to the south of the site, on the opposite side of Greek Street. While the proposal is non-compliant with the building separation provisions of the ADG, the proposed zero-setback to Greek Street is considered suitable and contextually appropriate.</p>

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

34. A BASIX Certificate has been submitted with the amended plans (1200360M_02)
35. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

State Environmental Planning Policy (Infrastructure) 2007

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network

Clause 45 Determination of development applications – other development

37. The application is subject to Clause 45 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

39. 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.
40. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.

State Environmental Planning Policy (Vegetation in Non Rural Areas) 2017

41. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP. The proposed removal of four trees is supported as is discussed under section 3.5 of the Sydney DCP 2012 below.

Local Environmental Plans

Sydney Local Environmental Plan 2012

42. 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	<p>The site is located in the B2 Local Centre zone. As discussed above, the Housing SEPP has amended the definition of a "boarding house" and included a new housing type referred to as "co-living". The Sydney LEP 2012 has been amended to include these definitions.</p> <p>Under the Housing SEPP, the proposed development is defined as co-living housing. However, the Housing SEPP contains savings and transitional provisions which state that the former provisions of a repealed instrument, in this case, ARH SEPP, will continue to apply to development applications made, but not determined, before the day the Housing SEPP commenced. As the subject development application was made and not determined prior to 26</p>

Provision	Compliance	Comment
		<p>November 2021, the ARH SEPP applies to this application. The proposed development has therefore been assessed as a boarding house as defined by the former ARH SEPP.</p> <p>It is noted that both co-living housing and the formerly defined "boarding house" are permissible with consent in the B2 Local Centre zone.</p> <p>The proposal includes a small commercial tenancy. Commercial premises are permissible with consent in the B2 Local Centre zone.</p> <p>The proposal generally meets the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A maximum building height of 15m is permitted.</p> <p>A maximum building height of 17.7m is proposed.</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 2.5:1 or 2,270.15sqm is permitted pursuant to the Sydney LEP 2012. The provisions of the ARH SEPP allow the consent authority to approve a 'bonus' floor space ratio amount of 0.5:1, resulting in a maximum permissible floor space ratio for the site of 3:1.</p> <p>The development proposed a maximum floor space ratio of 3.1:1 and does not comply with the maximum floor space ratio development standard.</p>

Provision	Compliance	Comment
		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.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standards prescribed under Clauses 4.3 and 4.3, as well as the motorcycle parking standard prescribed under Clause 30(1)(h) of the ARH SEPP. Three Clause 4.6 variation requests have been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	N/A	The site is located outside of a heritage conservation area and is not identified as a local heritage item, or within the vicinity of a heritage item.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	See further details in the discussion section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	Yes	The parking provisions of Sydney LEP 2012 do not provide a maximum parking rate for a boarding house or commercial tenancy.

Provision	Compliance	Comment
Division 3 Affordable housing		
<p>a) development on land at Green Square or Ultimo-Pyrmont, or on southern employment land or residual land that involves—</p> <p>(i) the erection of a new building the gross floor area of which is more than 200 square metres, or</p>	Yes	<p>The site is located within the part of the LGA that is defined under this clause as 'residual lands'. The development involves the erection of a new building which has a GFA which exceeds 200sqm. A condition of consent is recommended requiring the payment of an affordable housing levy contribution.</p> <p>It is noted that the proposed development does not meet the definition of affordable housing under the Sydney Affordable Housing Program 2020.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	The City's flood mapping for the site shows a slight flood affectation in Franklyn Street. However, the City's Public Domain unit have advised that this appears to be an anomaly as the survey plan shows a crest in the road at the point of the affectation. The site is not considered to be flood affected.
7.19 Demolition must not result in long term adverse visual impact	Yes	Demolition of the building is permitted in conjunction with the proposed redevelopment and will not result in any long term adverse visual impacts with regards to the streetscape.

Development Control Plans

Sydney Development Control Plan 2012

43. 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

44. The site is located within the Mountain Street locality. The proposed development is in keeping with the unique character and the design principles of the Mountain Street locality. Specifically, the development provides a new building which has an appropriate bulk and scale to the large lots and existing urban form within the locality. The proposal provides for a small commercial tenancy at ground floor level which will support the vitality and vibrancy of the locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The footpaths immediately outside the site on Franklyn Street and Greek Street will be enhanced with the provision of additional street trees, lighting upgrades and public domain upgrade works which will be consistent with the City of Sydney's Public Domain Manual, Sydney Streets Code, Sydney Street Tree Masterplan, Sydney Lights: Public Domain Design Code and Sydney Streets Technical Specification.
3.2. Defining the Public Domain	Yes	The proposal will contribute to the activity, safety, amenity and quality of the street and public domain. The proposal provides an appropriate frontage along Franklyn Street and Greek Street in terms of its scale, finishes and architectural character. The proposal will enhance pedestrian amenity and reinforce the vitality of the public domain. Legible and accessible entries are provided to the building from the site's Franklyn Street and Greek Street frontages.
3.5 Urban Ecology	Yes	The proposal necessitates the removal of four young street trees (Blueberry Ash trees) of low to medium landscape value. The removal of these trees is supported by the City's Tree Management Unit, subject to a recommended condition requiring replacement street trees are planted following construction works. Three neighbouring trees including a Cape Ash and two mature Spotted Gum trees will require protection during construction works. Tree Management have recommended conditions relating to tree protection.

Provision	Compliance	Comment
		The proposed development provides for 224sqm of landscaping, equating to 25% of the site area. The proposed canopy trees within the site are supported and will meet the requirement for 15% canopy cover within 10 years of development completion.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	No	No subdivision, strata subdivision or lot consolidation is proposed as part of this application.
3.9 Heritage 3.10.1 Warehouses and industrial building older than 50 years	Yes	<p>The site is not located within a heritage conservation area and is not identified as a heritage building.</p> <p>As required by the DCP, a Heritage Impact Statement has been prepared as both buildings on the site are older than 50 years.</p> <p>The two buildings on the site are representative of inter-war warehouses, however are considered to be of insufficient significance in themselves to require their retention. The buildings are not listed as heritage items and are not located within a heritage conservation area as defined by the Sydney LEP 2012. The buildings present as modest, representative and unexceptional examples of their type and are typical of inter-war warehouses constructed in the inner city at this time.</p> <p>As such, the City's Heritage Specialist recommends conditions requiring that the buildings are photographically recorded prior to demolition and that traditional building materials are salvaged for re-use rather than scrapped.</p>
3.11 Transport and Parking	Yes	With the exception of three motorcycle spaces, the proposal does not provide any on-site parking, which is in accordance with the Sydney LEP2012 and Sydney DCP 2012 controls.

Provision	Compliance	Comment
		<p>The quantum of bicycle parking is compliant with the provisions of the DCP and is supported.</p> <p>Waste collection is proposed to occur from the kerbside along Greek Street which is considered appropriate given the site's location. The waste collection room is within 10m from the Greek Street frontage of the site which is consistent with Guidelines for Waste Management in New Developments 2018. Bins will be held in the holding room until collection and will not be required to be stored on the street prior to collection.</p>
3.12 Accessible Design	Yes	Part 3.12 states that 15% of all rooms must be adaptable (12 rooms). The proposal provides 12 adaptable rooms and five accessible rooms.
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	<p>A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p> <p>A condition is recommended requiring that details of how all bin rooms (including the commercial space) will be continuously vented.</p>
3.16 Signage and Advertising	Yes	No signage is proposed. A condition is recommended requiring that any future signage be subject to a separate application, where it is not classified as exempt development.
3.17 Contamination	Yes	Refer to SEPP 55 discussion above.

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, but assessed as acceptable	<p>The site is permitted a maximum building height of four storeys. Along the site's Franklyn Street elevation, the building is four storeys and complies.</p> <p>Along the site's Greek Street elevation, the building responds to the sloping topography of the site and is part four storeys, part five storeys. The non-compliance is considered acceptable given the height of the building is consistent with the adjoining development at 49 Greek Street and will provide a coherent and consistent street frontage.</p> <p>The building includes rooftop communal open space which is set back from the street frontages below and will not be readily discernible from the public domain.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, but assessed as acceptable	<p>The ground level floor to floor height is 3.05m which is less than the required 4.5m ground floor height specified in the DCP. The proposal includes a small tenancy (58sqm) at the Greek Street and Franklyn Street corner which will receive adequate daylight access despite this non-compliance.</p> <p>A condition is recommended relating to the potential for the commercial tenancy to become a food premises in the future and the requirement for mechanical ventilation to be provided.</p>

Provision	Compliance	Comment
4.2.2 Building setbacks	Yes	Consistent with the existing buildings on site, no setback is proposed along the site's eastern boundary to 43-47 Greek Street and no setback is provided to Greek Street or Franklyn Street. To the north, a 5.9m setback is provided to the properties located at 45-51 Bay Street. This is consistent with the rear setback of the adjoining building at 43-47 Greek Street.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The application includes shadow analysis at 21 June and views from the sun which demonstrate the overshadowing impact of the proposal. The proposal does not result in any solar impacts to adjoining residential properties. The proposal results in minor additional overshadowing to the commercial building at 5A Franklyn Street and the sports facility known as the Peter Forsyth Auditorium.
4.2.3.3 Internal common areas	Yes	All internal common areas have access to daylight.
4.2.3.4 Design features to manage solar access	Yes	The west facing rooms include aluminium sliding battens to assist in providing sun shading. A condition is recommended for additional measures to the west facing upper level rooms on Franklyn Street to manage solar access.
4.2.3.5 Landscaping	Yes	A landscape plan is provided. A condition is recommended requiring an amended landscape plan to be submitted to the City for approval to address issues relating to the BCA, as well as to provide more plantings within the rooftop.

Provision	Compliance	Comment
		A further design modification condition is recommended requiring that the windows within the communal living area at ground floor which are adjacent to the screen planting along Franklyn Street are to be of sufficient operability to allow access for maintenance of the ground floor landscaped area.
4.2.3.6 Deep Soil	No, but assessed as acceptable	The DCP requires 10% of the site area to be provided as deep soil. The proposal provides 6.8% deep soil. Given the site's urban location and the minimal deep soil planting currently provided on the site and within adjoining properties, the non-compliance is considered acceptable.
4.2.3.9 Ventilation	Yes	Windows to boarding rooms and common areas are operable in order to provide natural ventilation.
4.2.3.10 Outlook	Yes	Proposed boarding rooms are provided with an outlook without adversely impacting visual privacy.
4.2.3.11 Acoustic Privacy	Yes	The submitted acoustic report addresses the relevant noise controls including those within the DCP and provides recommended construction requirements in order to achieve internal noise levels. The recommended conditions include the requirement for these recommendations to be incorporated into the design documentation.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The design and form of the building has been amended to respond to the character of the streetscape and is compatible in scale with the surrounding area.

4.4 Other Development Types and Uses

4.4.1 Boarding houses and student accommodation

Provision	Compliance	Comment
4.4.1.1 Subdivision	Yes	Pursuant to Clause 52 of the ARH SEPP and clause 4.4.1.1 of Sydney DCP 2012, a condition is recommended prohibiting strata subdivision or community title subdivision.
4.4.1.2 Bedrooms	Yes	The proposal generally complies with the minimum bedroom areas: <ul style="list-style-type: none"> - double rooms exceed 16sqm (including 1.5sqm for wardrobe space). - rooms are provided with an additional area for ensuites and showers measuring between 2.84-3.32sqm. Eight ensuites are slightly undersized by 0.06sqm of the required 2.9sqm. - kitchenettes are greater than the required 2sqm, with most 3.36sqm in size which includes circulation space and are provided with sufficient area for a small fridge, cupboards, shelves and a microwave. - each bedroom has access to natural light from a window.
4.4.1.3 Communal kitchen areas	Yes	Each room contains a kitchen however a communal kitchen area is provided within the communal living area at ground floor.
4.4.1.4 Communal living areas and open space	Yes	184sqm of communal living area is required. The proposed development provides 192.11sqm comprising a communal media room at lower ground floor level and a communal living and kitchen area at ground floor level. A minimum dimension of 3m is achieved for each communal living area. To enhance the amenity of the ground floor living area, a condition is recommended requiring an accessible toilet is provided at ground floor level. The proposal provides 278.2sqm of private open space at ground and roof levels. A minimum dimension of 3m is achieved within these areas.

Provision	Compliance	Comment
		<p>The communal areas are screened from the public domain by screen planting.</p> <p>38% (29) of all bedrooms have access to private open space. 29% (27) rooms have a balcony greater than 4sqm and 9% (7) of rooms have a balcony greater than 3.17sqm. These rooms are considered to maintain high amenity for occupants as they are connected to the living areas. All rooms which front Greek Street have Juliet balconies to provide enhanced amenity.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Yes	<p>Compliant laundry facilities are provided in the form of a communal laundry at lower ground floor level which provides 13 washing machines and 13 dryers.</p> <p>In addition, a clothes drying area is provided at rooftop level which receives good levels of solar access.</p> <p>A condition is recommended requiring that details are provided to Council of how the laundry at lower ground floor level will be vented.</p>
4.4.1.6 Amenity, safety and privacy	Yes	<p><i>Accessibility and Safety</i></p> <ul style="list-style-type: none"> - Communal spaces are located in safe and accessible locations and are accessible via the shared lift and stairs. - Bedrooms at the ground level of the development are located so that they are separated from noise sources. <p><i>Visual Privacy</i></p> <ul style="list-style-type: none"> - Communal and bedroom windows are located away from the main living areas and bedrooms of adjoining properties. - The proposal provides screen planting in the form of timber battens along part of the Franklyn Street frontage to help minimise and mitigate visual and acoustic privacy impacts on neighbouring developments. - A communal rooftop terrace is centrally located on the site. The rooftop terrace is set back from the site boundaries and is supported by perimeter landscaping to limit overlooking from the roof to adjoining

Provision	Compliance	Comment
		<p>properties. The central seating area is located under a pergola, which is adjacent to the lift run and sufficiently distanced from residential properties.</p> <p><i>Acoustic Privacy</i></p> <ul style="list-style-type: none"> - An Acoustic Report has been submitted with the application which has been reviewed by Council's Environmental Health Officer and is considered acceptable, subject to recommended conditions. This includes restricted hours of operation of the indoor and outdoor communal areas, glazing construction specifications, limitations on background music within the internal spaces, limitations on the number of people occupying the external communal areas and a requirement for a continuous 1.8m glazed acoustic screen to be installed around the perimeter of each outdoor communal open space, including the rooftop. - A condition is recommended requiring that the capacity of the ground floor communal area and communal rooftop terrace is limited to a maximum of 20 occupants at any one time. - A condition is recommended restricting the hours of the communal outdoor spaces including the ground floor space and rooftop space to between 7am and 10pm Monday to Sunday to maintain acoustic privacy for nearby residential occupants.
4.4.1.7 Plan of Management	Yes	<p>The application was accompanied by a Plan of Management. The Plan of Management was reviewed by Council's Environmental Health Unit and determined that the plan sufficiently addresses the operation and maintenance of the building in accordance with the clause. A condition is recommended to comply with the provided Plan of Management.</p>

Discussion

Clause 4.6 Request to Vary a Development Standard - Height

45. The site is subject to a maximum height of buildings control of 15m. The proposed development has a maximum height of 17.7m equating to a variation of 18 per cent. The figures below show the elements of the proposed building that breach the height limit. The elements that breach the height limit are limited to the rooftop communal open space (and associated amenities), part of the glazed acoustic wall mechanical plant, and lift overrun.

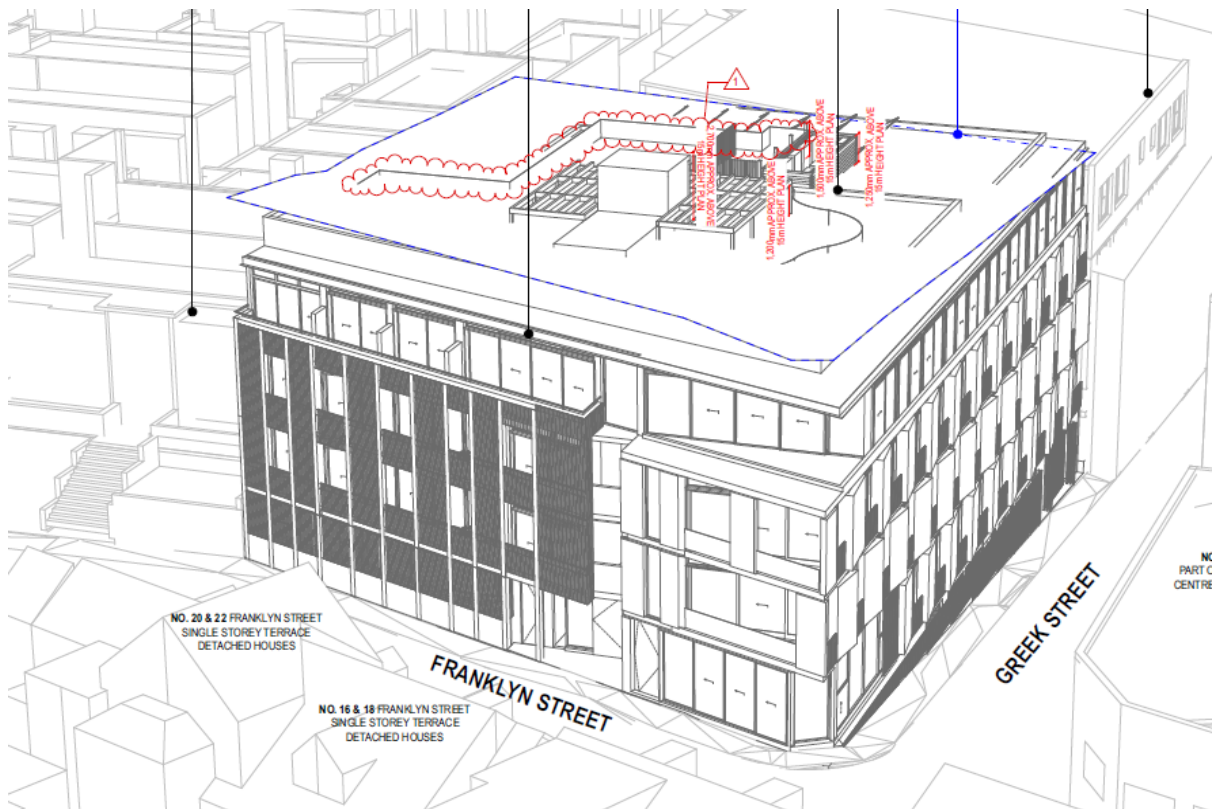


Figure 25: Height plane diagram showing elements above the 15m height limit

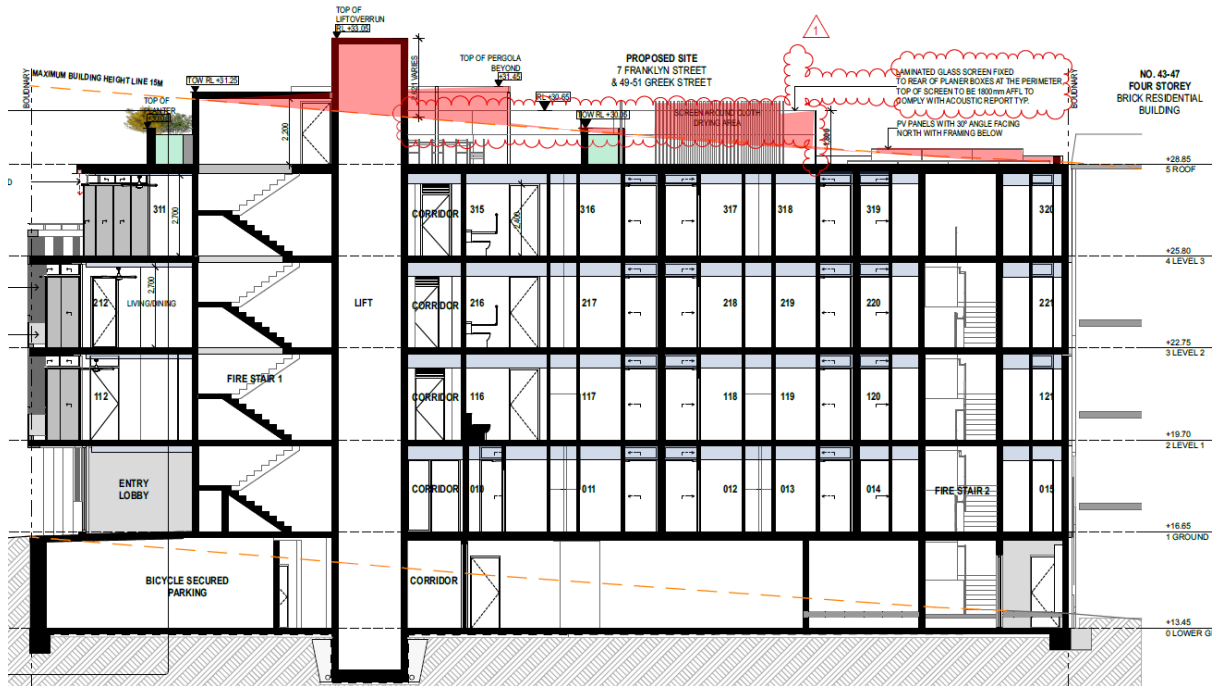


Figure 17: Section plan east-west showing the 15m height plane diagram in red, with those elements above the height limit shaded in red

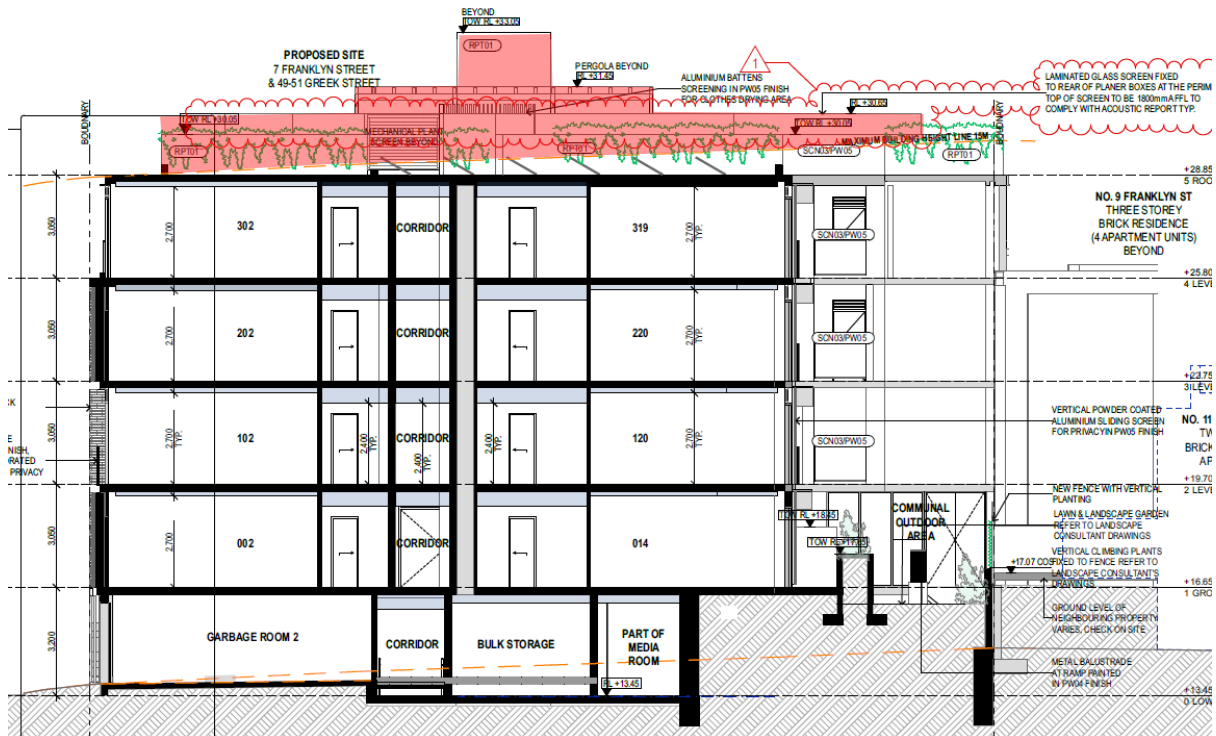


Figure 18: Section plan north-south showing the 15m height plane diagram in red, with those elements above the height limit shaded in red

46. 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)

47. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant's statement refers to the first of the five tests established in *Wehbe V Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The applicant's justification against the objectives of the height of buildings development standard is provided in (d) below.
 - (ii) Further, the applicant has cited *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at [15]) and stated that it is unreasonable to expect the community to bear adverse consequences in circumstances where there are no significant adverse impacts from allowing the height contravention. This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The portion of development which protrudes beyond the prescribed height limit comprises the lift overrun, pergola and fire stairs. The lift shaft will exceed the building height control by approximately 2.7m. Strict application of the height control would be unreasonable in the circumstances.
 - (ii) The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper level to ensure it integrates with the scale and bulk of surrounding developments.
 - (iii) The top level which comprises the encroaching element will not be readily discernible from the street by virtue of its setback from the front at Franklyn Street and Greek Street.

- (iv) The proposed massing of the development is considered acceptable with regard to the height controls and intent for the locality.
 - (v) In light of the proposal's contribution to achieving the desired future character of the area, a reduction of height would serve no material planning purpose, other than numerical compliance with a generic Council control.
 - (vi) The proposal will add to delivering a mix of well-designed low cost housing that meets the needs of Sydney's growing population and to meet the changing population needs.
 - (vii) The proposed development will not significantly impact on the amenity of adjoining occupiers.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The applicant has provided justification in their written statement that the proposed development will be consistent with the objectives of the B2 Local Centre zone:
 - (i) The site will provide boarding house accommodation which is well serviced by retail, business and community uses in the surrounding area.
 - (ii) The site use will not necessarily encourage employment opportunities, with the exception of the Managers role.
 - (iii) The site has excellent accessibility to public transport options (including frequent bus services, the existing Central Train Station accessible by pedestrian and bus connection) and access to services, education and employment.
 - (iv) The provision of 101 bicycle spaces will promote cycling.
 - (v) The proposed development will have a positive social and economic impact by providing low-cost accommodation with excellent access to public transport, retail, education, hospitals and Sydney CBD at a reasonable price point.
- (d) The proposed development will be consistent with the objectives of the standard;
- (i) With regard to objective 4.3(1)(a) of the standard, which requires the height of the development to be appropriate to the condition of the site and its context:
 - (i) The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
 - (ii) The top level which comprises the encroaching element will not be readily discernible from the street by virtue of its setback from the front at Greek Street and Franklyn Street.
 - (iii) The proposed development will be viewed as a five storey development from the streetscape and will not appear to exceed the height of the adjoining building on Greek Street or the Broadway Shopping Centre building.

- (iv) The proposed variation will not affect the overall height of the development. The lift shaft and plant, pergola and fire stair exceed the height limit by 2.7m, however the overall scale is appropriate for the area. Strict application of the height control would be unreasonable in the circumstances.
- (ii) With regard to objective 4.3(1)(b), which is to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas:
 - (i) The site is not located adjacent a heritage item and is not located within a heritage conservation area.
- (iii) With regard to objective 4.3(1)(c) which is to promote the sharing of views:
 - (i) No significant views from surrounding properties currently occur, and therefore no view sharing is required.

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

48. 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)?

49. The applicant has correctly referred to the test established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the applicant has addressed the first part of the test by demonstrating that the development meets the objectives of Clause 4.3, notwithstanding non-compliance with the numerical standard.
50. The applicant has identified that the additional height relates to elements contained within the upper level and contained within the roof. The proposed development is compatible with the built form and density of surrounding developments and is consistent with the height of the adjoining development at 43-47 Greek Street. The proposed development will be viewed as a part four, part five storey building which is considered appropriate given the context of the site and the heights of adjoining developments, particularly those located along Greek Street. The areas of non-compliance relates to rooftop elements which are not readily discernible from the street by virtue of the proposed setback from both Franklyn Street and Greek Street. These elements do not add to the apparent bulk and scale of the building given they are largely obscured from the public domain below.

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

51. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the building height development standard. Specific reference is made to the *Initial Action Pty Ltd v Woollahra Municipal Council* case to justify contravening the standard as the development achieves a better outcome by allowing flexibility in particular circumstances.
52. The written request indicates that the proposed variation is contextually appropriate and is reflective desired future character. Additionally, it does not result in an undue or adverse environmental planning impact in terms of shadow, amenity, privacy, traffic, view loss or streetscape presentation. Accordingly, it has been demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.
53. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

54. The objectives of the height of buildings development standard relevant to the proposal include:
 - (a) *to ensure the height of development is appropriate to the condition of the site and its context,*
 - (b) *to promote the sharing of views outside Central Sydney,*
55. The proposal is consistent with the relevant objectives of the height of buildings development standard as follows:
 - (a) The proposed development is a part four, part five storey building which is considered appropriate given the context of the site. Along the Franklyn Street frontage, the building presents as a four storey building which is consistent with the four storey height control prescribed in the Sydney DCP 2012. Along the Greek Street frontage, the topography of the site slopes from east to west and while the building is partly five storeys in the eastern part of Greek Street, it is consistent with the heights of adjoining development along Greek Street, including the adjacent residential development at 43-47 Greek Street.
 - (b) The height of the proposal is considered appropriate to the site given the elements that contravene the height control are centrally located on the site and are setback from the building's edge. These elements do not create any additional bulk when viewed from the streetscape below.
 - (c) The rooftop elements that breach the height control relate to providing communal open space and maximising amenity to this area, as well as providing equitable access.
 - (d) The proposed 1800mm high glazed screen at roof level is provided to comply with an Acoustic Assessment which also breaches the height limit is setback from the facades of the building, and will be laminate glass structure which will be light weight and not visible from street level. The acoustic screen will not add any discernible bulk or massing to the rooftop level as it is setback from the building edges and screened by vegetation in some places.

- (e) The rooftop elements that breach the height control do not affect any view sharing.
56. Objectives of the B2 Local Centre zone
- (a) *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
 - (b) *To encourage employment opportunities in accessible locations.*
 - (c) *To maximise public transport patronage and encourage walking and cycling.*
 - (d) *To allow appropriate residential uses so as to support the vitality of local centres.*
57. The proposed development is consistent with the relevant objectives of the B2 Local Centre zone as follows:
- (a) The proposal seeks to provide affordable housing in a locality nearby to a range of employment and education facilities and services, thereby serving the needs of people who live in, work in and visit the local area.
 - (b) The proposal includes a small commercial tenancy at ground floor which will provide for employment opportunities within the site's highly accessible location.
 - (c) The proposal provides 101 bicycle parking spaces and three motorcycle spaces in order to maximise public transport patronage and encourage walking and cycling.
 - (d) The residential use will support the vitality of the local centre and will encourage future residents to use the services and facilities provided in the locality.

Conclusion

58. 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 Clause 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 B2 Local Centre zone.

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

59. The site is subject to a maximum floor space ratio control of 3:1. Based on the site area, the site has a maximum permissible gross floor area of 2,715.1sqm. The proposed development has a maximum floor space ratio of 3.1:1, equating to 2,844sqm of gross floor area, which constitutes a 3.33 per cent variation.
60. 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)

61. The applicant seeks to justify the contravention of the floor space ratio 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 applicant's statement refers to the first of the five tests established in *Wehbe V Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The applicant's justification against the objectives of the floor space ratio development standard is provided in (d) below.
 - (ii) Further, the applicant has cited *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at [15]) and stated that it is unreasonable to expect the community to bear adverse consequences in circumstances where there are no significant adverse impacts from allowing the floor space ratio contravention. The consequence of requiring strict compliance would result in an unnecessary reduction in housing supply and housing choice. This is sufficient, by itself, to establish that requiring strict compliance is unreasonable or unnecessary in the circumstances of the case.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) All floor space is accommodated below both the maximum building heights, with compliant setbacks and more than compliant open space and landscaping.
 - (ii) The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
 - (iii) The proposal will provide for sufficient floor space to provide for low cost housing in the area where there is demonstrated demand given the proximity of the site to major educational institutions.
 - (iv) The proposed variation will not affect the overall height, scale or bulk of the development. The proposed floor space non-compliance has come about by way of having to include part of the lower ground floor area in gross floor area calculations due to the sloping topography of the site, as only part of the lower ground level is defined as a "basement". Given the minor non-compliance largely relates to having to include additional internal floor area which adds no bulk or scale to the proposal, strict application of the FSR control would be unreasonable in the circumstances.

- (v) A large proportion of the areas that are calculated as gross floor area at basement level are due to the topography of the site which falls from east to west. These areas include the garbage room 2, corridors, bulk storage room, and communal laundry which would typically be excluded as gross floor area if they were contained within a basement, hence a contributing factor for such a non-compliance. These service areas are critical to the overall functionality of the boarding house and cannot be omitted from the proposal otherwise the amenity of future occupiers will be compromised.
- (vi) Whilst the proposed garbage areas at basement level contribute to the overall GFA non-compliance by virtue of being calculated as gross floor area, there is really no other location within the proposed building that would offer the level access to the street for collection arrangements.
- (vii) The main grounds for contravening the standard are that the proposed corridors, bulk storage room, garbage room 2, and communal laundry which would typically be excluded as GFA if they were contained within a basement are included as gross floor area. These service areas do not add to the overall bulk and scale of the development and do not compromise the desired future character of the area. These service areas do not compromise the amenity of surrounding occupiers by visually intrusive, and do not result in additional noise and disturbance as they're contained within the building envelope. No loss of privacy or outlook of neighbouring occupiers will occur.
- (viii) The alternative to locating the service areas at lower ground level would be to locate boarding rooms or communal recreational areas at lower ground level, which result in a poor outcome in terms of amenity for boarding house occupiers and result in boarding rooms that would lack natural light and ventilation with a minimal outlook. Accordingly, the proposal meets the FSR standard's objectives by reasonably preserving neighbours' amenity and appearing compatible within the streetscape. It should be noted that the initial proposal submitted to Council had 5 boarding rooms at Lower Ground level, however this was modified to reflect feedback from the DAPRS.
- (ix) The Greek Street building height follows the topography of the site which falls from south western side to south eastern side. On Greek Street the proposed building height at the southeastern boundary is higher than neighbouring building as the hill is going up towards the western side.
- (x) The development of the additional floors and bulk to the buildings as a whole is intended to fit comfortably within the existing streetscape in terms of scale and function. The proposed design of the additions to the buildings will positively complement the existing character of the area.
- (xi) As per the Court judgment of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, we are of the view the desired future character should be informed by the nearby and future development and not limited by development standard. As the gross floor area that should be included in the floor space calculations is well below the maximum building height and similar in scale to other existing buildings in the locality, the proposal will appear contextually compatible within the streetscape.

- (xii) Whilst the proposal results in a minor non-compliance in terms of height of building, lift shaft and plant, pergola and fire stair that exceed the height limit by 2.7m would not constitute gross floor area, and therefore there is no-correlation between the proposed building height non-compliance and gross floor area non-compliance and therefore the proposed variations are not linked. As discussed previously, the bulk of additional floor space has come about by virtue of the proposed corridors, bulk storage room, garbage room 2 room, and laundry which would typically be excluded as GFA if they were contained within a basement.
 - (xiii) The proposed additional bulk and scale will not create any significant increase in levels of enclosure to surrounding buildings, and appropriate setbacks and separation is provided.
 - (xiv) The proposed design of the development achieves an appropriate built form in that it enhances the public domain, character of the streetscape, including views along with providing improved internal amenity and outlook.
 - (xv) The form of the new development ensures that the proposed building envelope does not dominate the setting of the site or surrounds and remains subservient to other more significant developments within the locality.
 - (xvi) In light of the proposal's contribution to achieving the desired future character of the area, a reduction of gross floor area would serve no material planning purpose, other than numerical compliance with a generic Council control.
 - (xvii) The proposal will add to delivering a mix of well-designed low cost housing that meets the needs of Sydney's growing population and to meet the changing population needs.
 - (xviii) The proposed development will not significantly impact on the amenity of adjoining occupiers.
 - (xix) The proposal results in the delivery of residential accommodation within easy access of the public transport, retail, employment and services.
 - (xx) The only way to reduce gross floor area/FSR for the proposal is by reducing the communal area at the lower ground level as the proposal provides more than the minimum required but this change would not affect the height or mass of the building, and only result in a reduction of the amenity for residents.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The applicant has provided justification in their written statement that the proposed development will be consistent with the objectives of the B2 Local Centre zone:
 - (i) The site will provide boarding house accommodation which is well serviced by retail, business and community uses in the surrounding area.

- (ii) The site use will not necessarily encourage employment opportunities, with the exception of the Managers role.
 - (iii) The site has excellent accessibility to public transport options (including frequent bus services, the existing Central Train Station accessible by pedestrian and bus connection) and access to services, education and employment.
 - (iv) The provision of 101 bicycle spaces will promote cycling.
 - (v) The proposed development will have a positive social and economic impact by providing low-cost accommodation with excellent access to public transport, retail, education, hospitals and Sydney CBD at a reasonable price point.
- (d) The proposed development will be consistent with the objectives of the standard;
- (i) With regard to objective 4.4(1)(a) of the standard, which requires that sufficient floor space is provided to meet anticipated development needs for the foreseeable future:
 - (i) The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
 - (ii) The proposal will provide for sufficient floor space to provide for low cost housing in the area where there is demonstrated demand given the proximity of the site to major educational institutions.
 - (iii) The proposed variation will not affect the overall height, scale or bulk of the development. The proposed floor space non-compliance has come about by way of having to include part of the lower ground floor area in gross floor area calculations due to the sloping topography of the site, as only part of the lower ground level is defined as a "basement". Given the minor non-compliance largely relates to having to include additional internal floor area which adds no bulk or scale to the proposal, strict application of the floor space ratio control would be unreasonable in the circumstances.
 - (iv) A large proportion of the areas that are calculated as gross floor area at basement level are due to the topography of the site which falls from east to west. These areas include the garbage room 2, corridors, bulk storage room, communal laundry which would typically be excluded as GFA if they were contained within a basement, hence a contributing factor for such a non-compliance. These service areas are critical to the overall functionality of the boarding house and cannot be omitted from the proposal otherwise the amenity of future occupiers will be compromised.
 - (v) Whilst the proposed garbage areas at basement level contribute to the overall gross floor area non-compliance by virtue of being calculated as gross floor area, there is really no other location within the proposed building that would offer the level access to the street for collection arrangements.

- (vi) The two garbage rooms provided are also the requirement of the development where they need to be within 30m of each boarding room entry door. Hence, they are within those distances. Garbage room 1 relates to a garbage chute on each floor with garbage room 2 can be only used for bin storage and for collection day as this is the only access, the proposal can have for street collection due to the slope the site on Greek Street from south western to south eastern side.
- (ii) With regard to objective 4.4(1)(b) which seeks to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic:
 - (i) The majority of boarding rooms will be occupied by students of the numerous nearby educational institutions (Sydney University, University of Technology, TAFE College etc). These students do not normally own a car and any visitors travelling by car will be able to park in the large adjacent public car park. Any occasional other parking need (e.g. service personnel, delivery) will be satisfied by the available on-street parking in the area or the public parking provided in the adjacent Broadway Shopping.
 - (ii) The scale and massing of the proposal and intensity of land use will be consistent with other types of development in the area and will not impact on significant volumes of vehicle and pedestrian traffic.
- (iii) With regard to objective 4.4(1)(c) which seeks to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure:
 - (i) There is no perceived benefit of retaining the existing building and converting it to a boarding house use, versus the proposed increase of overall gross floor area as a result of the proposal. Whilst the former use of the building for commercial purposes would also attract a good level of patronage, the proposed new boarding house use and commercial tenancies are not likely to place significant additional demand on existing and planned infrastructure.
 - (ii) Whilst utilisation of the existing building envelope would result in the provision of lesser boarding house rooms, it would compromise the delivery of low cost accommodation within Sydney for which there is a demonstrated demand. Therefore, it is inevitable that a potential increase in demand on existing and planned infrastructure to ensure that the demand for this type of residential accommodation is met.
 - (iii) Should the proposal seek to maintain a compliant gross floor area, there would be very limited decrease in the number of boarding rooms provided to the site. Despite this the proposal is subject to the Sydney DCP 2012 which would allocate contributions to improved links to public transport and associated infrastructure, the close proximity to the site to Broadway and Central Station will all contribute to minimising increased demand on the infrastructure network.

- (iv) With regard to objective 4.4(1)(d) which seeks to ensure that new development reflects the desired character of the locality in which it is located and minimise adverse impacts on the amenity of that locality:
- (i) 'Desired future character' is not defined in the Sydney LEP 2012. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area. The B2 zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The proposal will contribute to the eclectic mix of permissible uses in the B2 zone.
 - (ii) As per the Court judgment of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, we are of the view the desired future character should be informed by the nearby and future development and not limited by development standard. As the gross floor area that should be included in the floor space calculations is well below the maximum building height and similar in scale to other existing buildings in the locality, the proposal will appear contextually compatible within the streetscape.
 - (iii) The proposed corridors, bulk storage room, garbage room, and laundry which would typically be excluded as gross floor area if they were contained within a basement, do not add to the overall bulk and scale of the development and do not compromise the desired future character of the area. These service areas do not compromise the amenity of surrounding occupiers by visually intrusive, and do not result in additional noise and disturbance as they're contained within the building envelope. No loss of privacy or outlook of neighbouring occupiers will occur. The proposal also provides a separate pedestrian access from Greek Street, which is different to the motorcycle access/egress to enhance a more functional space of the proposed lower ground level. This has also been requested by Council.
 - (iv) The alternative to locating the service areas at lower ground level would be to locate boarding rooms or communal recreational areas at lower ground level, which result in a poor outcome in terms of amenity for boarding house occupiers and result in boarding rooms that would lack natural light and ventilation with a minimal outlook. Accordingly, the proposal meets the floor space ratio standard's objectives by reasonably preserving neighbours' amenity and appearing compatible within the streetscape.
 - (v) The development of the additional floors and bulk to the buildings as a whole is intended to fit comfortably within the existing streetscape in terms of scale and function. The proposed design of the additions to the buildings will positively complement the existing character of the area.

- (vi) Whilst the proposal results in a minor non-compliance in terms of height of building, lift shaft and plant, pergola and fire stair that exceed the height limit by 2.7m would not constitute gross floor area, and therefore there is no-correlation between the proposed building height non-compliance and gross floor area non-compliance and therefore the proposed variations are not linked. As discussed previously, the bulk of additional floor space has come about by virtue of the proposed corridors, bulk storage room, garbage room, and communal laundry which would typically be excluded as gross floor area if they were contained within a basement.
- (vii) All floor space is located within a largely compliant envelope and a lower floor space ratio would not necessarily reduce the density or external envelope. Given the proposal's compatibility with surrounding developments' bulk and scale, the correlation between height and density is considered appropriate.
- (viii) The proposed additional bulk and scale will not create any significant increase in levels of enclosure to surrounding buildings, and appropriate setbacks and separation is provided.
- (ix) The proposed design of the development achieves an appropriate built form in that it enhances the public domain, character of the streetscape, including views along with providing improved internal amenity and outlook.
- (x) The form of the new development ensures that the proposed building envelope does not dominate the setting of the site or surrounds and remains subservient to other more significant developments within the locality.
- (xi) The proposed massing of the development is considered acceptable with regard to the floor space ratio controls and intent for the locality as discussed previously and results in a better outcome in the provision of residential accommodation.
- (xii) The provision of a mix of facade treatments to the additions contribute to minimising the visual perception of bulk and scale of the building.

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

62. 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)?

63. The applicant has correctly referred to the test established by *Preston CJ in Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the applicant has addressed the first part of the test by demonstrating that the development meets the objectives of Clause 4.4, notwithstanding non-compliance with the numerical standard. The applicant has identified that the additional gross floor area predominantly results from the inclusion of corridors, the bulk storage room, the garbage room and the laundry at lower ground level which would ordinarily be excluded as gross floor area if these areas were contained within a basement. However, due to the sloping nature of the site, which falls from east to west by approximately three metres, the lower ground floor is not wholly identified as a basement as per the definition in the Sydney LEP 2012. While being partly subterranean, the central and eastern parts of the lower ground level are defined as being above existing ground level and therefore constitute gross floor area.
64. The location of these services areas at lower ground floor are considered to be integral to ensure the building can be adequately serviced and functions appropriately. For example, the location of the garbage areas are constrained due to adherence with Council's waste management policies which requires that the maximum walking distance from any entrance of a residential dwelling to a waste storage area should not exceed 30m, as well as the requirement for waste holding areas to be within 10m from the collection point for bins. Adherence with these controls limits the location of the garbage rooms to the eastern part of the lower ground floor level which results in these areas being identified as gross floor area.
65. With regards to the corridors at lower ground floor level, during the assessment of the application, separate entry points and corridors were requested to separate the motorcycle and residential entries to offer improved amenity. This has resulted in the addition of a further corridor which has increased the gross floor area of the building (while not causing a resultant increase in bulk and scale of the building).
66. The alternative to locating the service areas at lower ground floor would be to locate boarding rooms or communal recreational areas at lower ground level. This is not supported and would result in a poor outcome given this level is partly subterranean and lacks adequate light and ventilation to enable adequate amenity to be provided.
67. The resultant built form fits comfortably within the existing streetscape in terms of scale and function. Whilst the proposal results in a minor non-compliance with the height of buildings control, there is considered to be no correlation with the areas of non-compliance associated with the floor space ratio standard and the height of buildings standard.
68. The applicant has identified that the proposed development provides appropriate setbacks and separation to adjoining developments and does not present as an over-development of the site. The proposal will provide for sufficient floor space to provide for low cost housing in the area.

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

69. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the floor space ratio development standard. Specific reference is made to the *Initial Action Pty Ltd v Woollahra Municipal Council* case to justify contravening the standard as the development achieves a better outcome by allowing flexibility in particular circumstances.

70. The written request indicates that the proposed variation is contextually appropriate and is reflective desired future character. Additionally, it does not result in an undue or adverse environmental planning impact in terms of shadow, amenity, privacy, traffic, view loss or streetscape presentation. Accordingly, it has been demonstrated that there are sufficient environmental planning grounds to justify contravening the standard.
71. The applicant has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

72. The objectives of the floor space ratio development standard relevant to the proposal include:
- (a) *to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
 - (b) *to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
 - (c) *to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*
 - (d) *to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*
73. The proposal is consistent with the relevant objectives of the floor space ratio development standard as follows:
- (a) The proposed development is compatible with the built form and density of surrounding developments. It has been designed to incorporate a setback to the upper levels to ensure it integrates with the scale and bulk of surrounding developments.
 - (b) The proposal will provide for sufficient floor space to provide for low cost housing in the area where there is demonstrated demand given the proximity of the site to major educational institutions.
 - (c) The scale and massing of the proposal and intensity of land use will be consistent with other types of development in the area and will not impact on significant volumes of vehicle and pedestrian traffic.
 - (d) The development of the additional floors and bulk to the buildings as a whole is intended to fit comfortably within the existing streetscape in terms of scale and function. The proposed design of the additions to the buildings will positively complement the existing character of the area.
74. Objectives of the B2 Local Centre zone
- (a) *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
 - (b) *To encourage employment opportunities in accessible locations.*
 - (c) *To maximise public transport patronage and encourage walking and cycling.*

(d) *To allow appropriate residential uses so as to support the vitality of local centres.*

75. The proposed development is consistent with the relevant objectives of the B2 Local Centre zone as follows:
- (a) The proposal seeks to provide affordable housing in a locality nearby to a range of employment and education facilities and services, thereby serving the needs of people who live in, work in and visit the local area.
 - (b) The proposal includes a small commercial tenancy at ground floor which will provide for employment opportunities within the site's highly accessible location.
 - (c) The proposal provides 101 bicycle parking spaces and three motorcycle spaces in order to maximise public transport patronage and encourage walking and cycling.
 - (d) The residential use will support the vitality of the local centre and will encourage future residents to use the services and facilities provided in the locality.

Conclusion

76. For the reasons provided above the requested variation to the floor space ratio development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 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 floor space ratio development standard and the B2 Local Centre zone.

Height, Scale and Bulk/ Character of the Locality and Design Excellence

77. The proposed boarding house satisfies the character test of Clause 30A of the ARH SEPP, which requires the design of the development to be compatible with the character of the local area. Clause 6.21 of the Sydney LEP 2012 requires that new development must exhibit design excellence. Considerations for design excellence are outlined at Clause 6.21(4) and include suitability of the site, heritage and streetscape considerations, bulk and massing, environmental impacts and the like.
78. In relation to clause 6.21(4) of the Sydney LEP 2012, the development is considered to demonstrate design excellence. That is;
- (a) The proposed development, designed by Mostaghim Architects, provides a high standard of architectural design, materials and detailing appropriate to the building type and location, as required by clause 6.21(4)(a) of the Sydney LEP 2012.
 - (b) The proposed materials provide the building with character and enable improved amenity for occupants.
 - (c) The form and external appearance of the development will improve the quality and amenity of the public domain, as required by clause 6.21(4)(b) of Sydney LEP 2012.

- (d) During the assessment of the application, the proposal was amended to address a number of issues identified by the DAPRS to improve the amenity of the boarding house for future occupants and improve the presentation of the building to the streetscape. Specifically, the proposal has been amended to address the following issues:
- (i) The rooms previously proposed at lower ground floor (subterranean level) have been removed and all boarding rooms are located at ground level and above to provide good access to natural light. An additional communal living area in the form of a media room has been provided at this level.
 - (ii) The communal outdoor space has been relocated from lower ground floor level to ground floor level to improve solar access and provide a better connection with the communal facilities provided at ground floor level.
 - (iii) A stair has been located adjacent to the lift to provide residents with a convenient option to using the single lift.
 - (iv) The communal living area located at the Franklyn Street and Greek Street corner has been removed and a small commercial tenancy is proposed in this location.
 - (v) Additional privacy measures have been incorporated to the ground floor rooms fronting Greek Street including balustrades with a solid perforated mesh behind. In order to address issues of security at night, all boarding rooms incorporate a sliding hamper window.
 - (vi) Letterboxes have been provided in a secure area and not on the street.
 - (vii) A compliant number of accessible and adaptable rooms has been provided.
 - (viii) There has been an increase in the amount of boarding rooms which have a balcony.
 - (ix) The facade of the building has been amended to improve the expression of the corner balconies and improve its articulation. Along Franklyn Street, the height of the sheer screen has been reduced and an upper level setback provided. This has resulted in the building being broken down into a scale that more closely matches the finer grain of the Franklyn Street streetscape.
- (e) The amended scheme is considered to be contextually appropriate to the site and the surrounding area. The proposed development is compatible with the built form and density of surrounding developments and is consistent with the height of the adjoining development at 43-47 Greek Street. The proposed development will be viewed as a part four, part five storey building which is considered appropriate given the context of the site and the heights of adjoining developments, particularly those located along Greek Street. The areas of non-compliance relates to rooftop elements which are not readily discernible from the street by virtue of the proposed setback from both Franklyn Street and Greek Street.

- (f) The proposal does not result in adverse overshadowing to adjoining properties and achieves good levels of solar access to communal living areas and outdoor spaces.
- (g) The layout and orientation of the boarding rooms maintain visual privacy for occupants. All rooms along the Greek Street frontage (with the exception of the uppermost level) and lower levels along the Franklyn Street frontage include a balustrade with a perforated mesh behind to ensure rooms are afforded with adequate privacy. A condition is recommended requiring that the balustrade to the Greek Street upper level is to match the balustrade detail of the level below which includes a solid panel behind the balustrade.
- (h) The existing public domain surrounding the site is in poor condition. The footpaths immediately outside the site on Greek Street and Franklyn Street will be enhanced with upgrade works to the public domain including upgrades to the street lighting, replacement street tree planting, kerb and gutter reconstruction and the upgrade of the footways to concrete.
- (i) The proposal provides an appropriate frontage along Greek Street and Franklyn Street in terms of its scale, finishes and architectural character. The proposal incorporates face brick, sandstone cladding, timber-look vertical fixed aluminium battens and powder aluminium windows and door frames. A condition is recommended requiring that the timber look aluminium batten to the ground floor commercial tenancy is to be extended on the Greek Street elevation to the next mullion to provide additional flexibility to the internal layout of this tenancy and provide a back of house area.
- (j) A legible and accessible principal building entry is provided from Franklyn Street, with secondary entries provided from Greek Street.
- (k) The development will not detrimentally impact on view corridors as per clause 6.21(4)(c) of the Sydney LEP 2012.

Clause 4.6 Request to Vary a Development Standard - Motorcycle Parking

- 79. The development is required to provide 16 motorcycle spaces under ARH SEPP. The proposal provides three motorcycle spaces and therefore there is a shortfall of 13 motorcycle spaces.
- 80. The application is accompanied by a written request 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)

81. The applicant seeks to justify the contravention of the motorcycle parking development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) Requiring strict compliance with the motorcycle parking control would undermine the achievement of this objective of the legislation. This is because orderly and economic use and development of land is encouraged/supported by permitting development in accordance with the relevant development standards.
 - (ii) The severity of the burden placed on members of the community (by requiring strict compliance) would be disproportionate to the consequences attributable to the proposed non-compliant development (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 (at [15])). Specifically, compliance would result in an unnecessary reduction in housing supply and housing choice. It is unreasonable to expect the community to bear these adverse consequences in circumstances where there are no significant adverse impacts from allowing the motorcycle parking contravention.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The Site's has excellent accessibility to public transport options including
 - (i) multiple high frequency/high capacity bus services which operate along Parramatta Road/Broadway
 - (ii) bus services which operate along Glebe Point Road and City Road
 - (iii) the light rail services to the north with a stop at Glebe
 - (iv) the rail services at Central Station accessed by walking or connecting bus services
 - (v) There are also a number of "car share" pods in the area and as a consequence of these circumstances the site is regarded as highly accessible to public transport.
 - (ii) The provision of 101 bicycle spaces will promote cycling and negate the need for motorcycle parking to be compliant. It should be noted that application of the SEPP criteria for bicycles would require 16 spaces.
 - (iii) The majority of boarding rooms will be occupied by students of the numerous nearby educational institutions (Sydney University, University of Technology, TAFE College etc). These students do not normally own a motorcycle and any visitors travelling by motorcycle will be able to park in the large adjacent public car park. Any occasional other parking need (e.g. service personnel, delivery) will be satisfied by the available on-street parking in the area or the public parking provided in the adjacent Broadway Shopping Centre.
 - (iv) In light of the proposal's contribution to achieving the desired future character of the area, strict compliance with the minimum motorcycle parking provision requirements would serve no material planning purpose, other than numerical compliance with a generic development standard.

- (v) The proposal will add to delivering a mix of well-designed low-cost housing that meets the needs of Sydney's growing population and to meet the changing population needs.
 - (vi) The proposed development will not significantly impact on the amenity of adjoining occupiers.
 - (vii) The proposal results in the delivery of residential accommodation within easy access of the public transport, retail, employment and services.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The applicant has advised there are no objectives of the motorcycle parking control as listed within Clause 30 (1) (h) of the ARH SEPP. Therefore, an assessment against those objectives has not been undertaken.
- (d) The proposed development will be consistent with the objectives of the standard;
- (i) The site will provide boarding house accommodation which is well serviced by retail, business and community uses in the surrounding area.
 - (ii) The site has excellent accessibility to public transport options (including frequent bus services, the existing Central Train Station accessible by pedestrian and bus connection) and access to services, education and employment.
 - (iii) The provision of 101 bicycle spaces will promote cycling and negate the need for motorcycle parking to be compliant.
 - (iv) The majority of boarding rooms will be occupied by students of the numerous nearby educational institutions (Sydney University, University of Technology, TAFE College etc). These students do not normally own a motorcycle and any visitors travelling by motorcycle will be able to park in the large adjacent public car park.

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

82. 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)?

83. The applicant has adequately addressed that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Primarily, the written statement justified that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. Whilst there are no aims or objectives provided for Clause 30(1)(h) of ARH SEPP, it is likely the requirements for motorcycle parking spaces is intended to enable alternative forms of transport (to cars) within the development. It is considered that in this instance and given that the development provides 101 bicycle parking spaces, that strict compliance with the motorcycle parking development standard is unreasonable and unnecessary.

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

84. The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard. Although non-compliant with the ARH SEPP, the proposal is consistent with the objectives and provisions of the Sydney LEP 2012 and Sydney DCP 2012 in terms of transport and access and is located within a highly accessible area. The provision of three motorcycle parking spaces is considered acceptable given the site's accessible location and the provision of 101 bicycle spaces.

Is the development in the public interest?

85. The objectives of Clause 30 of ARH SEPP include:

- (a) *To provide a consistent planning regime for the provision of affordable rental housing,*
- (b) *To facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) *To facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) *To employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentive for the development of new affordable rental housing,*
- (e) *To facilitate an expanded role for not-for-profit providers of affordable rental housing,*
- (f) *To support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) *To facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

86. The proposal is consistent with the relevant aims of the ARH SEPP in that it achieves the delivery of new affordable housing in a form that is suitable to the subject site and provides for a new housing type encouraged by the SEPP (a boarding house) that is located close to places of works, such as within the B2 Local Centre zones.

87. Whilst the aims of the ARH SEPP are to provide consistent application of development standards across NSW, it does not consider the City's transport policies and its access to public transport and services relative to other areas of the state. In this regard, Clause 7.1 of Sydney LEP 2012 specifically seeks to minimise the amount of vehicle traffic generated by development.
88. The objectives of the B2 Local Centre zone relevant to the proposal include:
- (a) *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
 - (b) *To encourage employment opportunities in accessible locations.*
 - (c) *To maximise public transport patronage and encourage walking and cycling.*
 - (d) *To allow appropriate residential uses so as to support the vitality of local centres.*
89. The proposed development is consistent with the objectives of the B2 land use zone. The site is within close proximity to public transport, jobs and services, which encourages walking, cycling and the use of transit. In providing three motorcycle parking spaces, the development will encourage active transport and public transport. The proposal had provided more than the required amount of bicycle parking spaces.
90. The development provides for new affordable housing for students within the local area and the use will support the surrounding wider centres. The proposal is in the public interest as it is consistent with the aims of the ARH SEPP and the objectives of the B2 Local Centre zone.

Conclusion

91. For the reasons provided above the requested variation to the motorcycle parking development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the ARH SEPP and the B2 Local Centre zone.

Consultation

Internal Referrals

92. The application was discussed with the following units:
- (a) Urban Designer
 - (b) Environmental Health Officers
 - (c) Heritage Specialist
 - (d) Public Domain Unit
 - (e) Transport Planner
 - (f) Specialist Surveyor
 - (g) Waste Management Officers

- (h) Landscape Officer
- (i) Tree Management Officer

93. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

94. Pursuant to Section 45 of the SEPP (Infrastructure) 2007, the application was referred to Ausgrid for comment.
95. A response was received confirming Ausgrid does not have any objections to the proposed development.

Advertising and Notification

96. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 5 July 2021 and 27 July 2021. A total of 275 properties were notified and five submissions were received.
97. The amended plans were renotified for 14 days between 1 December 2021 and 16 December 2021. One further submission was received.
98. The submissions raised the following issues:
- (a) **Issue:** Location of the front entry door will impact residential properties on the western side of Franklyn Street

Response: The principal entry door is located within an appropriate location along Franklyn Street and provides a direct and legible building entry which is accessible off the street. Franklyn Street is the most appropriate frontage to provide the principal building entry due to its topography which is generally flat and width which is significantly wider than Greek Street. The building entry is recessed from the street frontage and its location is not expected to result in adverse amenity impacts to the nearest residential properties on the western side of Franklyn Street. The proposal incorporates two further entries along the Greek Street frontage and these entries will be used primarily for servicing the site (e.g. waste collection, motorcycle access, bicycle access). The siting of these entries along Greek Street is considered appropriate given the mixed use character of Greek Street.

- (b) **Issue:** Roof terrace and outdoor areas will create noise and disturbances to adjoining neighbours

Response: The communal rooftop terrace is centrally located on the site. The rooftop terrace is set back from the site boundaries and includes a 1.8m high acoustic fence around its perimeter to restrict noise from residents. The central seating area is located under a pergola, which is adjacent to the lift run and sufficiently distanced from residential properties.

A condition is recommended requiring that the capacity of the ground floor communal area and communal rooftop terrace is limited to a maximum of 20 occupants at any one time. The condition restricts hours of operation of these spaces to between 7am and 10pm Monday to Sunday. A further condition is recommended that no speakers or music are permitted in any of the outdoor areas.

The imposition of the recommended conditions is considered sufficient to ameliorate issues of noise and disturbances associated with the communal outdoor areas.

- (c) **Issue:** Non-compliance with the floor space ratio development standard results in micro apartments for higher yield

Response: The apartments are adequately sized and generally compliant with the controls set out for the size of boarding rooms stipulated in the ARH SEPP and Sydney DCP 2012. As discussed earlier in the report, the minor non-compliance with the floor space ratio is supported by a written request pursuant to Clause 4.6 of the Sydney LEP and is considered to be justified.

- (d) **Issue:** Height and bulk of the building and overshadowing to adjoining properties

Response: The proposal is largely compliant with the height control prescribed for the site, with the exception of some of the rooftop elements which are centrally located on the roof and not easily discernible from the streetscape below. The development provides a bulk and scale which is commensurate of adjoining development located along Greek Street. The proposed density is appropriate in the local context, particularly given the site is in proximity to established infrastructure, public transport, community and recreational facilities.

The development does not result in unacceptable amenity impacts to neighbouring properties as discussed elsewhere in this report. In relation to overshadowing, application includes shadow analysis at 21 June and views from the sun which demonstrate the overshadowing impact of the proposal. The proposal does not result in any solar impacts to adjoining residential properties. The proposal results in minor additional overshadowing to the commercial building at 5A Franklyn Street and the sports facility known as the Peter Forsyth Auditorium.

Overall, the proposed height and density is considered suitable for the site.

- (e) **Issue:** Type of development will result in transient tenants and impair the village atmosphere enjoyed by existing residents

Response: A boarding house is a type of residential accommodation which is permitted within the B2 Local Centre zone. The proposed development contributes to providing a variety of housing typologies within the locality and will meet the objectives of the zone which includes allowing appropriate residential uses to support the vitality of local centres.

- (f) **Issue:** Existing buildings on site should be retained and adaptively re-used

Response: The applicant has justified the demolition of these buildings in the heritage impact statement. The two buildings on the site are representative of inter-war warehouses however are considered to be of insufficient significance in themselves to require their retention. The buildings are not listed as heritage items and are not located within a heritage conservation area as defined by the Sydney LEP 2012. The buildings present as modest, representative and unexceptional examples of their type and are typical of inter-war warehouses constructed in the inner city at this time. The demolition of the buildings is supported, subject to conditions requiring that the buildings are photographically recorded prior to demolition and that traditional building materials are salvaged for re-use rather than scrapped.

- (g) **Issue:** Location of communal open area on the corner of Franklyn Street which will impact privacy of adjoining occupiers

Response: The amended plans have resulted in the reconfiguration of the ground floor corner and the application proposes a commercial tenancy in this location. The commercial tenancy is not considered to have an impact on privacy of adjoining occupiers.

- (h) **Issue:** Request for an independent acoustic report to be undertaken

Response: The acoustic report has been reviewed by Council's Health and Building Unit and is considered satisfactory. Conditions of consent have been recommended requiring compliance with the submitted acoustic report, including a requirement for a suitably qualified acoustic consultant to provide a written acoustic verification report that the development complies with the requirements of the acoustic report.

- (i) **Issue:** Lack of parking on the site and impacts to traffic and parking within the vicinity of the site from taxis and car share services

Response: The City adopts maximum car parking rates to encourage alternatives to private motor vehicles, such as public transport, walking and cycling. The provision of zero car parking on the site is supported. With the exception of three motorcycle spaces, the proposal does not provide any on-site parking, which is in accordance with the Sydney LEP 2012 and Sydney DCP 2012 controls.

The proposal is located within a highly accessible location and provides 101 bicycle spaces to encourage residents, visitors and workers to cycle, thereby reducing road congestion and overall demand for car parking. The proposed development is not considered to result in adverse traffic impacts as traffic generation will be limited to minor on-street pick-up and set-down and service and delivery vehicle movements.

- (j) **Issue:** Impacts from construction including dust and construction traffic

Response: This is addressed and managed by conditions on the consent. Conditions include restrictions on hours of work and noise, a requirement for a demolition, excavation and construction noise and vibration management plan to be submitted to and approved by Council and a construction traffic and pedestrian management plan to be submitted to and approved by Council.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

99. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
100. Credits have been applied for the most recent approved use of the site (office premises - three storeys or less) and have been calculated based on the applicant's submission of gross floor area plans of the existing commercial buildings on the site.
101. A condition relating to this development contribution is included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Relevant Legislation

102. Environmental Planning and Assessment Act 1979.

Conclusion

103. The application seeks approval for the demolition of the existing warehouse style buildings on site and for the construction of a part four, part five storey contemporary boarding house (as defined under the ARH SEPP).
104. The applicant has submitted three written requests pursuant to Clause 4.6 of the Sydney LEP 2012 which relate to the height of buildings development standard (Clause 4.3 of the Sydney LEP 2012), floor space ratio development standard (Clause 4.4 of the Sydney LEP 2012) and the motorcycle parking provisions specified in the ARH SEPP. The requests to vary these development standards are supported.

105. The proposal has been amended to address a number of issues identified by Council staff during the assessment of the application, as well as comments raised by DAPRS. These issues relate to the amenity of the boarding house including the relocation of sub-terranean rooms to the upper levels of the building, the relocation of the lower ground floor communal open space to ground floor level, the inclusion of a stair adjacent to the lift core, the removal of the corner communal living area and the introduction of a non-residential tenancy, additional privacy measures to rooms fronting Greek Street, addition of balconies to boarding rooms and amendments to the facade of the building.
106. The amended proposal presents a building envelope that is appropriate having regard to the site's conditions and context. The proposed development is considered to be consistent with the character test of the ARH SEPP and exhibits design excellence in accordance with the provisions of Clause 6.21 of the Sydney LEP 2012.
107. Subject to conditions, the development is in the public interest and recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

Lotti Wilkinson, Senior Planner