

Item 4.**Development Application: 25-27 Dunning Avenue, Rosebery - D/2021/1491****File No.: D/2021/1491****Summary**

Date of Submission:	4 January 2022
Applicant:	Mr R Macauley
Architect/Designer:	Tzannes
Owner:	Dunning Proprietor Pty Ltd.
Planning Consultant:	Gyde Consulting
Heritage Consultant:	GBA Heritage Pty Ltd.
Cost of Works:	\$7,733,000
Zoning:	B4 Mixed Use. Commercial premises is permissible with consent within zone.
Proposal Summary:	<p>The proposal involves the conversion of a two storey heritage listed warehouse building, into a five storey commercial development. This includes internal alterations and the addition of three levels, upper level outdoor terraces and 10 at grade car parking spaces utilising an existing driveway from Cressy Street.</p> <p>The existing warehouse is a heritage listed item number I1376 'Paradise Garage' under the Sydney Local Environmental Plan (SLEP) 2012.</p> <p>The site includes a base Floor Space Ratio (FSR) of 1.5:1 with a potential bonus of 0.5:1 for the delivery of community infrastructure. Additional floor space is also allowed for the inclusion of end of trip facilities which is included in FSR. The development therefore has a potential FSR of 3.1:1.</p>

Given poor design outcomes for the heritage building, Council officers have not pursued a public benefit offer for the proposal. In this regard the Clause 4.6 variation must be made against the base FSR. The development proposes 73sqm for end of trip facilities bonus FSR. This equates to a FSR of 0.076:1 which is accepted as part of the development.

The proposed development exceeds the base FSR development standard by 107 per cent and with the inclusion of end of trip bonus FSR is adjusted to 97 per cent.

A request to vary the FSR development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The written request to vary the standard does not demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The written request fails to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal is referred to the Local Planning Panel as a result of the FSR variation and required public benefit offer.

The proposal including its massing and building intrusions would have a detrimental impact on the heritage building and is not supported.

The development was notified for 28 days between 12 January 2022 and 10 February 2022. A total of 3 submissions were received objecting to the proposal raising the following concerns:

- Loss of solar access, overlooking / privacy impacts and loss of view to neighbouring residential dwellings.
- The extent of alterations to the heritage warehouse.

Given the extent of negative impacts on the heritage item, amenity impacts to adjoining owners, non-compliance with FSR, and insufficient information provided with the application the proposal is not supported.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Regulation 2021.
- (ii) SEPP (Resilience and Hazards) 2021
- (iii) Sydney Local Environmental Plan 2012 (SLEP 2012)
- (iv) Sydney Development Control Plan 2012 (SDCP 2012)

Attachments:

- (A) Draft Architectural Plans
- (B) Clause 4.6 Variation Request - Floor Space Ratio
- (C) Heritage Inventory Report

Recommendation

It is resolved that consent be refused for Development Application No. D/2021/1491 for the following reasons:

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) The application fails to demonstrate that the land can be made suitable for the proposed commercial development. As such the application fails to satisfy the provisions of the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP), Chapter 4 - Remediation of Land.
- (B) The proposal includes a development that will dominate the appearance of the existing heritage item and includes a significant level of demolition and facade alteration. This has a significant and detrimental impact on the existing heritage fabric and the internal and external appearance of the heritage listed warehouse building known as 'Paradise Garage' (local heritage item No. I1376). Consequently, the proposal fails to comply with:
 - (i) Clause 1.3(f) under the Environmental Planning and Assessment Act 1979 as the proposal fails to promote the sustainable management of built and cultural heritage, given the level of demolition proposed.
 - (ii) Clause 1.2(2)(k) 'Aims of Plan' under the Sydney Local Environmental Plan 2012 which promotes the conservation of environmental heritage.
 - (iii) Clause 5.10(1)(b) under the Sydney Local Environmental Plan 2012 to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.
 - (iv) Clause 6.21C(4)(d)(iii) - Design Excellence under the Sydney Local Environmental Plan 2012, which requires any heritage issues and streetscape constraints, to be adequately addressed.
 - (v) Part 3.9.5 – Heritage Items under the Sydney DCP 2012 in particular provisions (1)(a) minimising the extent of changes to the fabric, (1)(c) enabling interpretation of each significant value, (1)(d) provide a use compatible with its significance and (1)(j) respect the pattern, style and dimensions of original windows and doors.
 - (vi) Part 3.10.1 of the Sydney DCP 2012 where warehouses and industrial buildings older than 50 years old are to be conserved and adaptively re-used to maintain the legibility of their historic use and alterations and additions are sympathetic in scale and style to the existing building.
- (C) The applicant has failed to satisfy Clause 4.6(4) of the Sydney Local Environmental Plan 2012. The submitted Clause 4.6 statement fails to demonstrate that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. Nor has the statement justified that there are sufficient environmental grounds to justify contravening the standards.

- (D) The proposal has a detrimental impact on the heritage item. It consequently fails to deliver the desired future character of the locality and fails to minimise adverse impacts on the amenity of the locality. As such the development is not entitled to 'additional floor space' accessed through the delivery of Green Square community infrastructure. The proposal fails to comply with:
- (i) Clause 6.14(1)(b) under the Sydney Local Environmental Plan 2012.
 - (ii) Section 5.2 - Green Square and 5.2.3 Community Infrastructure under the Sydney DCP 2012.
- (E) The proposal fails address part 3.11 Transport and Parking of the Sydney DCP 2012 in particular insufficient information was provided to address large vehicle movements on site.
- (F) The proposal fails to adequately address part 3.14 Waste requirements of the Sydney DCP 2012 as the waste management plan fails to demonstrate acceptable waste calculations and servicing.
- (G) The proposed development fails to satisfy Clause 4.15(1) - Matters for Consideration under the Environmental Planning and Assessment Act 1979 as the proposal is considered to be an overdevelopment of the site. The site is not suited to the development and the proposal will have a significant impact upon the qualities of the heritage item.
- (H) In light of the above, the proposal is not considered to be in the public interest, contrary to Clause 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 35 DP 192683, known as 25-27 Dunning Avenue, Rosebery. It is irregular in shape with area of approximately 956.10sqm. It has a primary street frontage of 17.71 metres to Dunning Avenue and a secondary street frontage of 39.595 metres to Cressy Street. The site is located on the intersection of Dunning Avenue and Cressy Street. The site has a minor fall of 0.27m from the north-east corner to the south-west corner.
2. The site contains a warehouse currently being utilised as a vehicle repair station and body repair workshop. The building is a local heritage item I1376-Warehouse 'Paradise Garage' dating from 1950 built in Post-War Functionalist style with significant features such as streamlined rendered facade, horizontal steel windows at the first floor level and high parapet wall partially concealing a saw-tooth roof and prominent curved corner entry. Many of the original details and materials are intact.
3. The site is currently accessed by pedestrians from the building's corner of Cressy Street and Dunning Avenue. The site includes two vehicle cross overs in Cressy Street.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential, commercial and industrial warehouses, and mixed-use developments. Adjoining the site to the immediate east is a residential development at number 13-21 Mentmore Avenue consisting of 65 apartments and basement parking for 65 vehicles.
5. Adjacent to the site across Cressy Street to the south is a residential development at 29-31 Dunning Avenue consisting of 26 apartments and basement parking.
6. A residential development has been approved (deferred commencement) at 23-29 Mentmore Avenue to the southeast of the site. Construction has not started.
7. To the immediate north of the site is 23 Dunning Avenue, there is a two storey warehouse currently used for commercial purposes and is attached to the subject site. Further north are residential / mixed use developments that have been approved at numbers 17-21 and 5-15 Dunning Avenue.
8. The site is located within the Green Square Urban Renewal precinct and is also located within the Beaconsfield locality. The site is not identified as being subject to flooding.
9. A site visit was carried out on 25 March 2022. Photos of the site and surrounds are provided below.

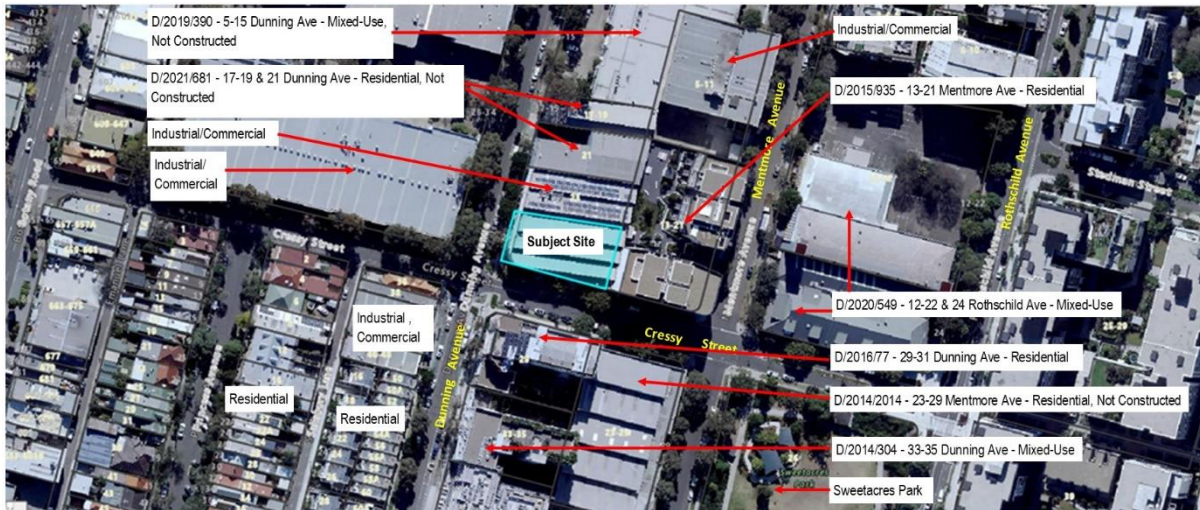


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from the corner of Dunning Avenue and Cressy Street, looking northeast

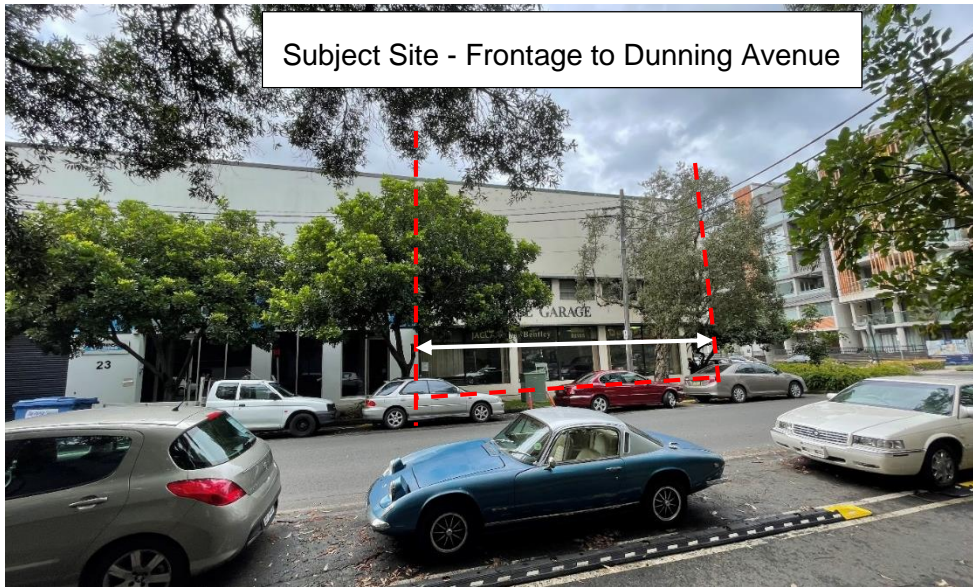
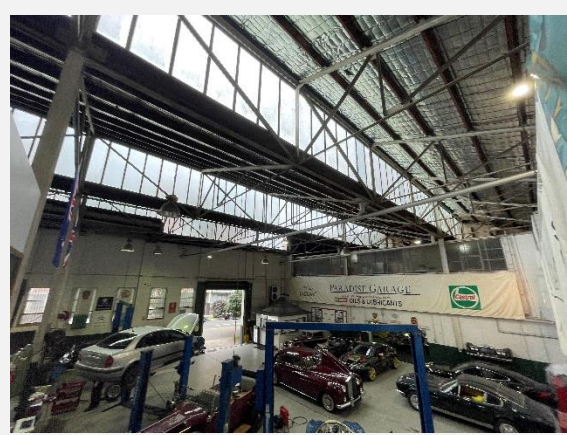
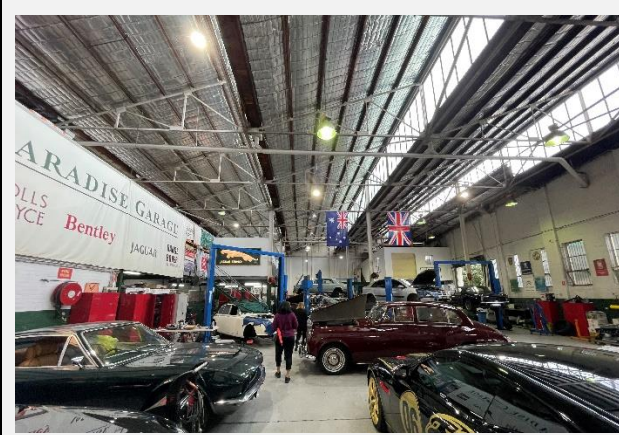


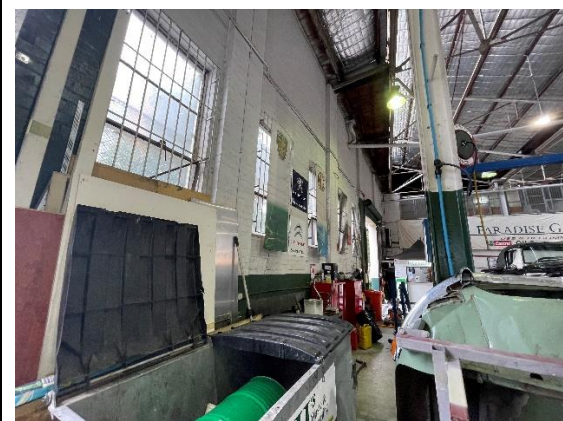
Figure 3: Site viewed from Dunning Avenue, looking east



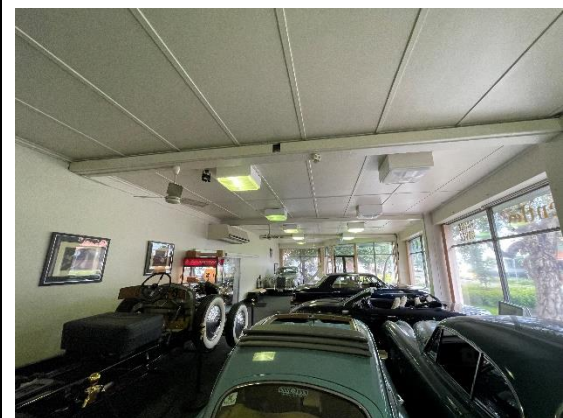
Figure 4: Site viewed from Cressy Street, looking north



Existing interior workshop showing saw-tooth roof proposed to be removed



Existing openings and vertical steel columns which are proposed to be removed and altered.



Ground floor showroom to be removed looking towards the corner entry on Dunning Avenue and Cressy Street.



First floor mezzanine level offices to be demolished.

Figure 5: Interior images of the showroom, workshop and first floor mezzanine level. All items are proposed to be demolished or altered as a result of the proposal.

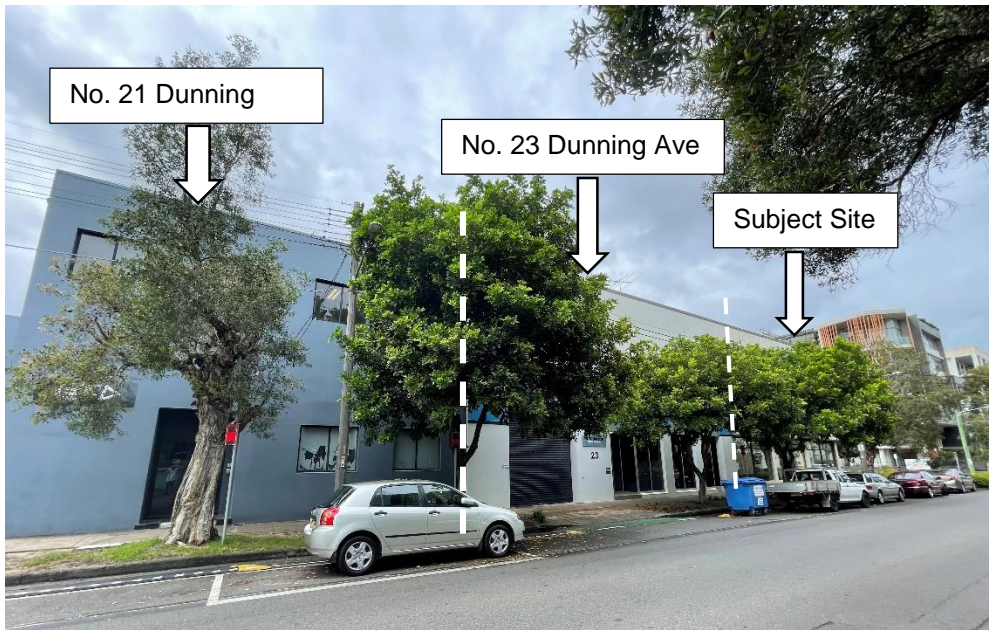


Figure 6: Number 21 and 23 Dunning Avenue frontage to the north of the subject site



Figure 7: Number 29-31 Dunning Avenue, residential development to the south of the subject site



Figure 8: Number 13-21 Mentmore Avenue, residential development to the immediate east of the subject site



Figure 9: Number 13-21 Mentmore Avenue and 23-29 Mentmore Ave, residential developments to the immediate east of the subject site



Figure 10: Low scale terrace style development fronting Dunning Avenue to the south east of the site

History Relevant to the Development Application

Development Applications

10. The following applications are relevant to the current proposal:
 - **PDA/2021/63** – Construction of a 5 storey commercial building with at grade parking. Advice was provided to the applicant on 28 April 2022 stating that the proposal was not supported due to exceedance of the with FSR control and detrimental impact to the heritage fabric of the existing 'Paradise Garage', warehouse.

The subject development application was submitted to Council without a reduction in FSR and retaining the proposed building envelope.

Neighbouring Developments

11. The site adjoins numerous developments that include compliance with existing FSR controls and utilise the bonus floor space control of 0.5:1. These include:

5-15 Dunning Avenue, Rosebery

- D/2019/390 (as amended) - Development consent was granted for demolition, remediation, tree removal and construction of 3 x 7 storey residential flat buildings containing 144 apartments, a ground floor cafe and basement parking on 13 February 2020.
- The proposal provides compliant FSR (including floor space bonus associated delivery of community infrastructure) and building height.

17-19 and 21 Dunning Avenue, Rosebery

- D/2021/681 (as amended) - Development consent was granted by the Court for demolition of existing structures and construction of a part 7 and part 5 storey residential flat building with basement parking on 7 January 2022.
 - The proposal provided compliant FSR and building height (including floor space bonus associated delivery of community infrastructure).
 - The existing buildings are not heritage listed.

29-31 Dunning Avenue, Rosebery

- D/2016/77 (as amended) – Development consent was granted as a Deferred Commencement on 17 October 2017 for Demolition, excavation and construction of a 6 storey residential flat building containing 26 dwellings, one level of basement car parking and ground level parking, rooftop private open spaces and associated ground level landscaping. The consent was activated from 20 April 2017.
 - The proposal was approved with a compliant FSR of 2:1 which includes the 0.5:1 community infrastructure additional FSR and momentary contribution which was agreed upon.
 - A variation to the 22m height limit was approved at 23.5m which was a variation of 1.5m (6.8 per cent).

13-21 Mentmore Avenue, Rosebery

- D/2015/935 (as amended) – Development consent was granted by the Court with Deferred Commencement on 5 April 2016 for the demolition of existing buildings on site and the construction of 2 x 6 storey, plus 1 basement level, residential flat buildings comprising 65 apartments with 65 car parking spaces on 5 April 2016. The consent was activated on 15 November 2016
- The development was approved with conditions of consent for design modifications to comply with FSR (condition 12) and building height limit (condition 6a and 9) for the site (including floor space bonus associated delivery of community infrastructure).

Amendments

12. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 29 April 2022 requesting a survey plan which was not submitted with the initial application.
13. The applicant responded to the request on 3 May 2022 and provided a survey and detailed plans.
14. A letter was sent requesting withdrawal of the application on 18 May 2022. The letter stated that modifications had not been made to the proposal since the pre-DA advice. The proposal was not supportable and required a significant redesign. This would include a reduced envelope that would have a lesser impact on the heritage item through the reduction in FSR.

15. The applicant responded on 30 May 2022 to the withdrawal request and advised they would not be withdrawing the development application.

Proposed Development

16. The application seeks consent for the following:

- Demolition and alteration of the majority of the sawtooth roof, and mezzanine level (with offices). It is noted that no detailed demolition plans were lodged with the application.
- Insertion of a new first floor contained within the existing building envelope (marked on plans as level 2). A new floor level (marked as level 3 on the plans) will replace the majority of the sawtooth roof.
- Roof trusses to be retained behind the front parapet within lobby area fronting Dunning Avenue and the new level 4 and 5 to overhang this area. A small number of the roof trusses are to be retained within the north east corner with a void above and overhanging terraces, and to be installed in the new roof above level 5.
- Some of the metal trusses are to be relocated, however, due to demolition plan and general lack of information on the existing floor plans, it is unclear which trusses are to be retained and which trusses are to be demolished.
- Conservation works and upgrades to the existing heritage facade including new window and door openings on Cressy Street frontage. The conservation works include the following:
 - restore and adapt the masonry heritage fabric by removing mechanical units and temporary signage;
 - repair the windows, doors, finishes and waterproofing; and
 - restore existing steel structures and sawtooth trusses.
- Construct a new three storey addition, amenities and services culminating in a five storey commercial building. The development is proposed to contain:

Ground Floor

- shared commercial, lobby and retail space area;
- two lifts, bathrooms facilities, electrical room;
- the western half of the ground floor contains at grade car parking for 11 vehicles, with one service vehicle space and one accessible space, one motorbike parking area, to be accessed from the existing crossover from Cressy Street;
- service areas, bin room, pump room, comms room, two fire stairs that accesses all levels; and

- end of journey facilities for 28 bicycles, three shower and change room facilities.

First Floor (LV2 on plans)

- 649sqm of open commercial space;
- bathrooms service facilities;
- void over the north east area of the development; and
- void over the western area fronting Dunning Avenue.

Second Floor (LV3 on plans)

- 443sqm of open commercial space;
- bathrooms service facilities;
- void over the north east area of the development;
- void over the western area fronting Dunning Avenue; and
- outdoor Terrace toward the southern end of the proposal behind the Cressy Street parapet wall within the under-croft space located beneath the overhang of the upper level addition.

Third Floor (LV4 on plans)

- 659sqm of open commercial space;
- bathrooms service facilities; and
- terrace over the north-east void area.

Fourth Floor (LV5 on plans)

- 632sqm of commercial floor space;
 - bathrooms service facilities; and
 - terrace over the north-east void area.
- It is proposed to retain the current pedestrian entrance at ground level and use the western half of the ground floor as a shared commercial lobby and retail space. Two lifts are proposed on the northern side of the building to access upper level commercial floors. Amenities adjoin the lifts.
 - The proposal aims to deliver a 5 star NABERS commercial building - that includes passive design and thermal performance.
 - The new development proposes significant changes to the façade as follows:
 - Cressy Street facade proposes demolition of windows and doors below and replace with new openings.

- New elements include new glazing above door ways, new windows over existing windows, three storey addition and terrace areas to replace saw-tooth roof and new doors and access hatched for the fire exists and services.
 - New vertical aluminium blades are proposed with glazing beyond for the new 3 levels that extrude over the existing warehouse. Refer to plans included below and Attachment A.
17. The application indicates that a public benefit offer is to be completed, in the form of a monetary contribution, to provide for Community Infrastructure in the Green Square Locality, however no formal written public benefit offer has been provided by the applicant.
 18. Council did not pursue the public benefit offer given the proposal fails to satisfy a key objective 6.14(1)(b) of SLEP 2012, which is to "ensure that such greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities".
 19. Having considered the matters under Clause 6.14(3) of SLEP 2012, the consent authority cannot be satisfied the development is consistent with objective 6.14(1)(b) . In failing to satisfy the objective of the clause, the monetary offer is not accepted, and the land is not eligible for the 0.5:1 additional floor space in accordance with Clause 6.14(4) of SLEP2012. A Voluntary Planning Agreement (VPA) has not been drafted.
 20. A set of architectural drawings is provided at Attachment A. An extract from the architectural package is provided below.

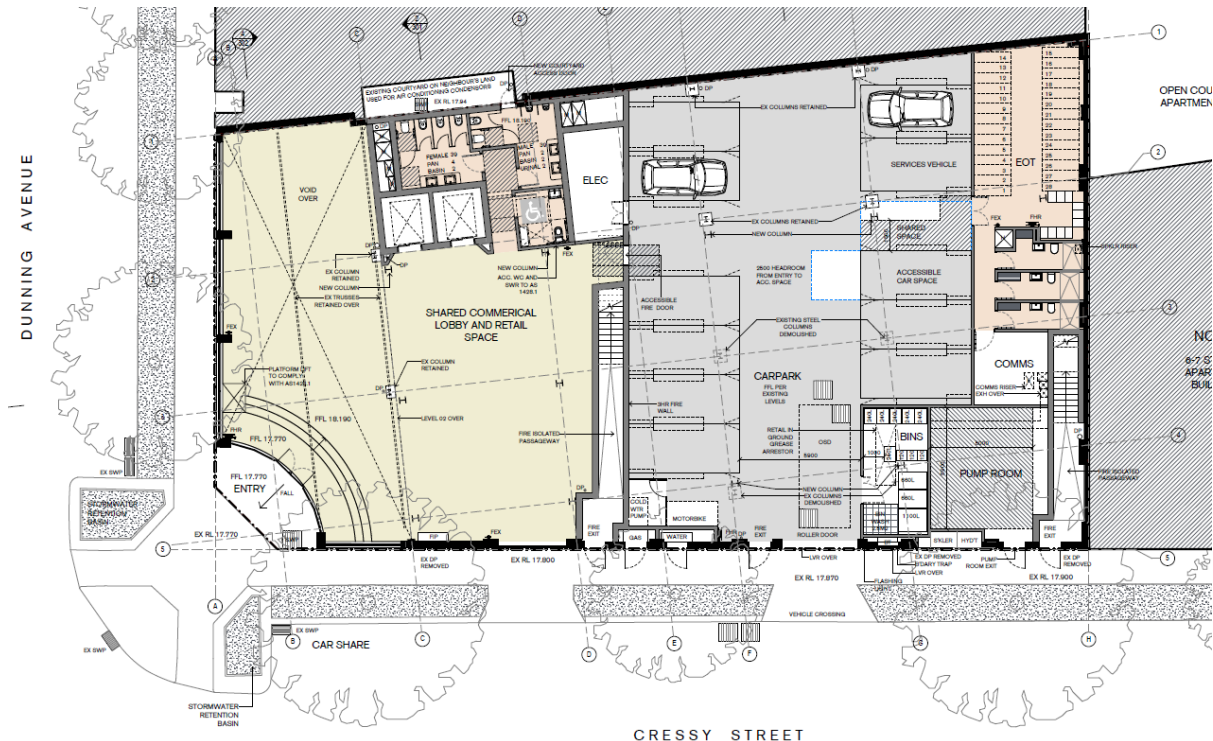


Figure 11: Proposed ground floor plan

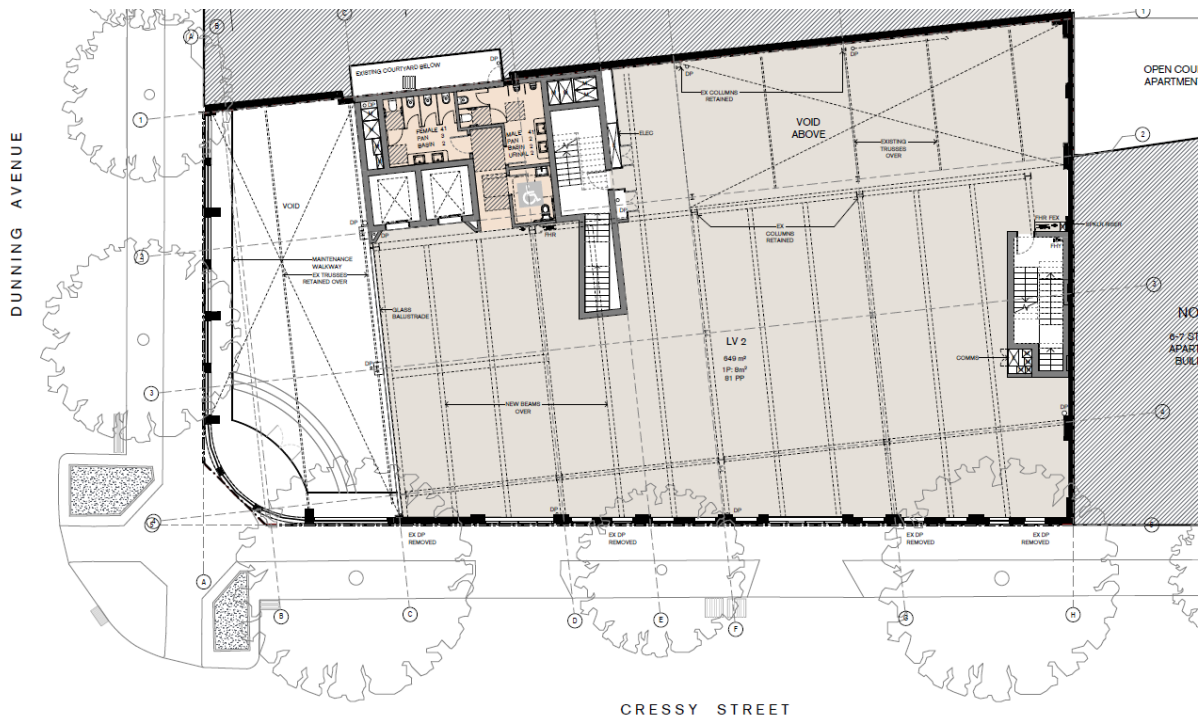


Figure 12: Proposed first floor plan

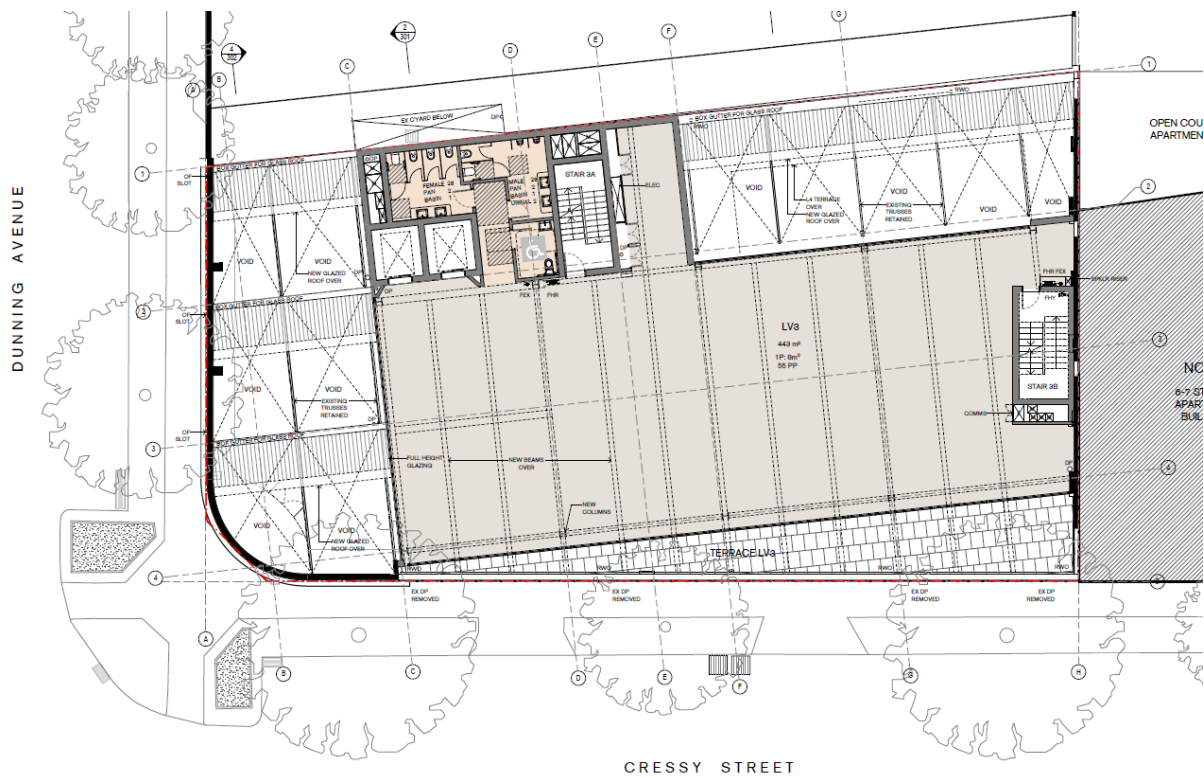


Figure 13: Proposed second floor plan

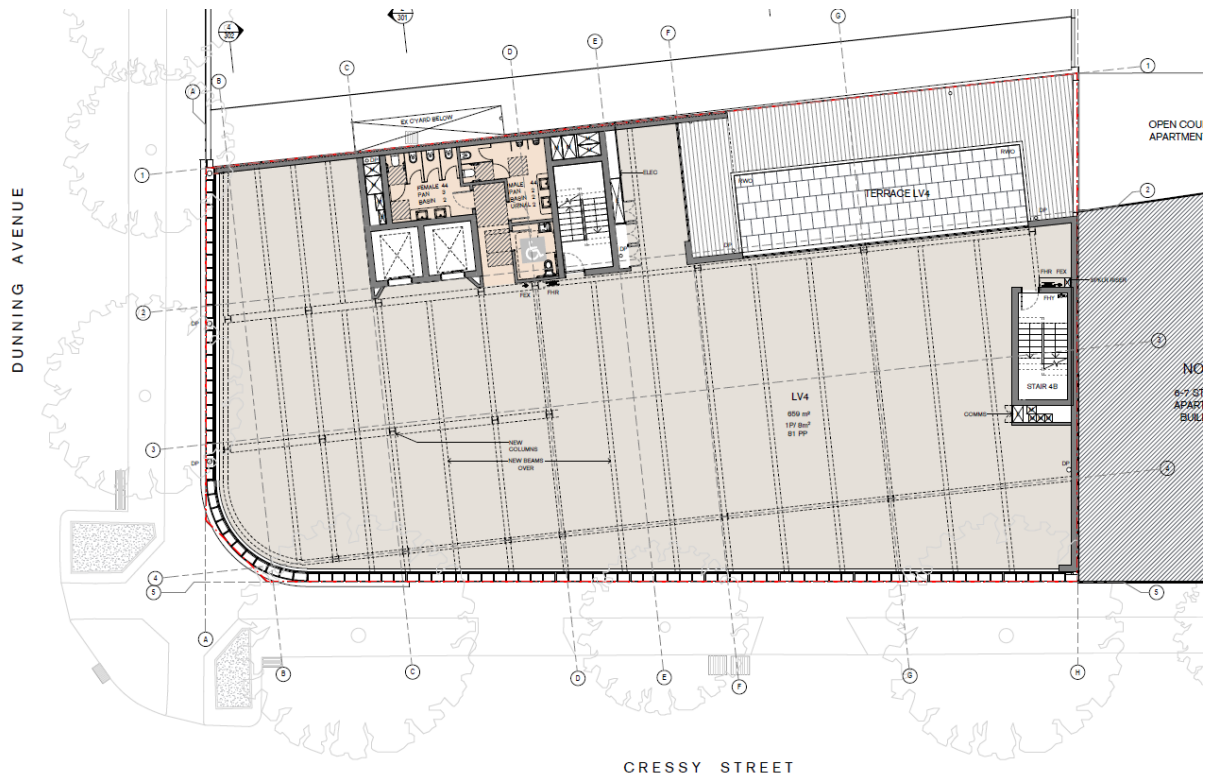


Figure 14: Proposed third floor plan

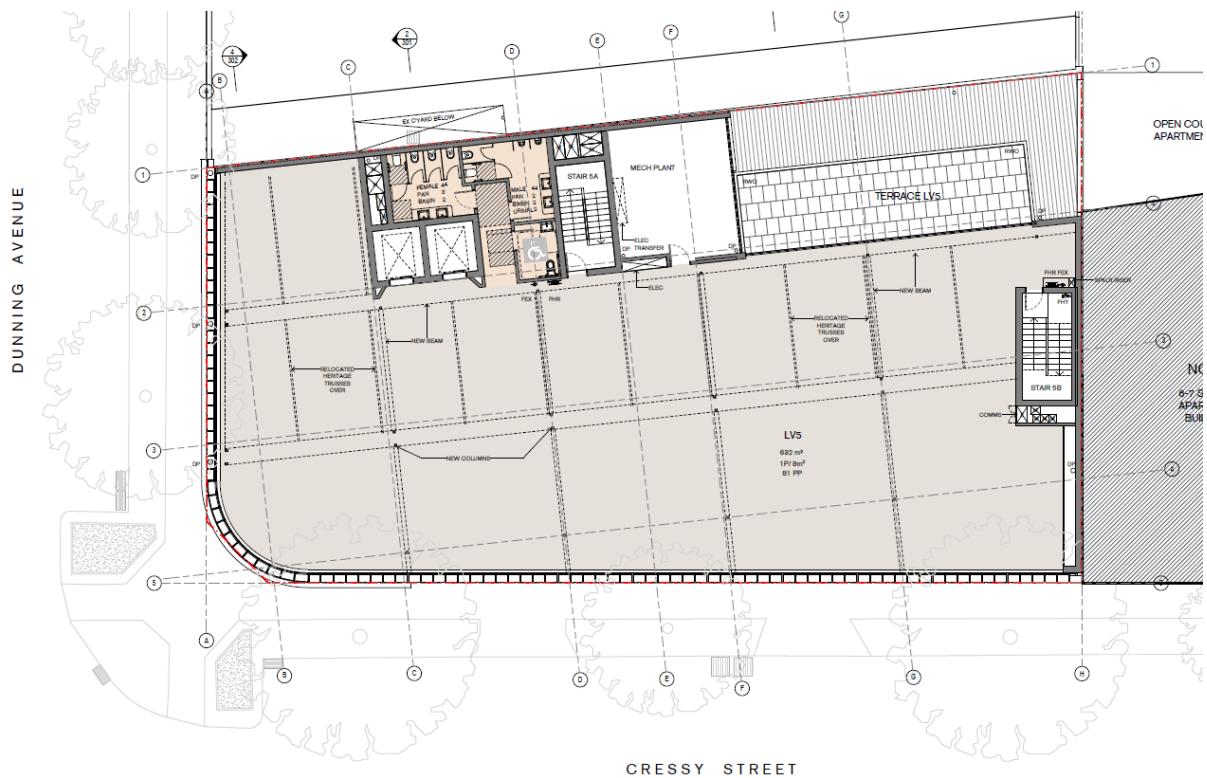


Figure 15: Proposed fourth floor plan

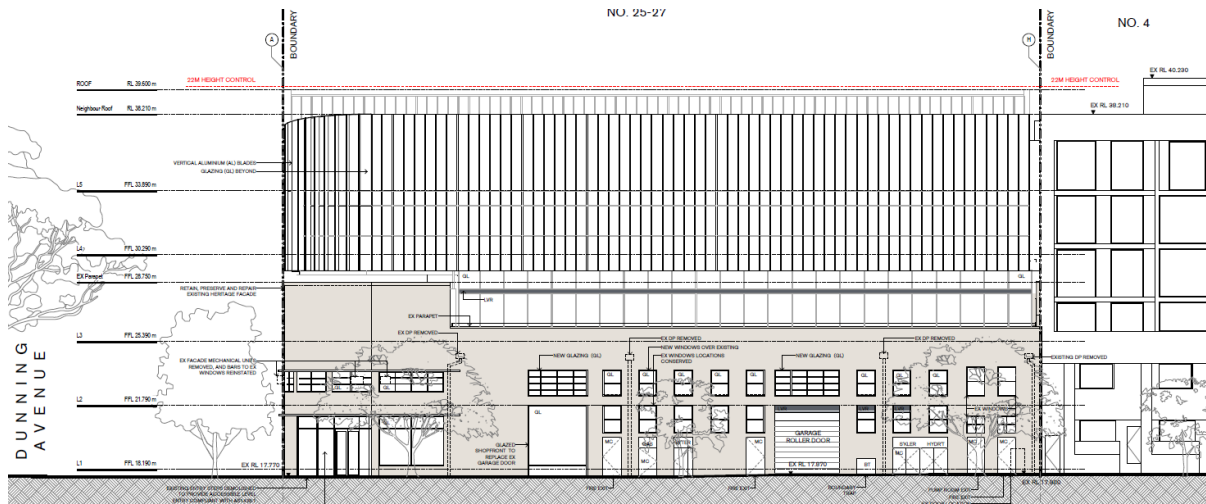


Figure 16: Proposed South Elevation (Cressy Street)

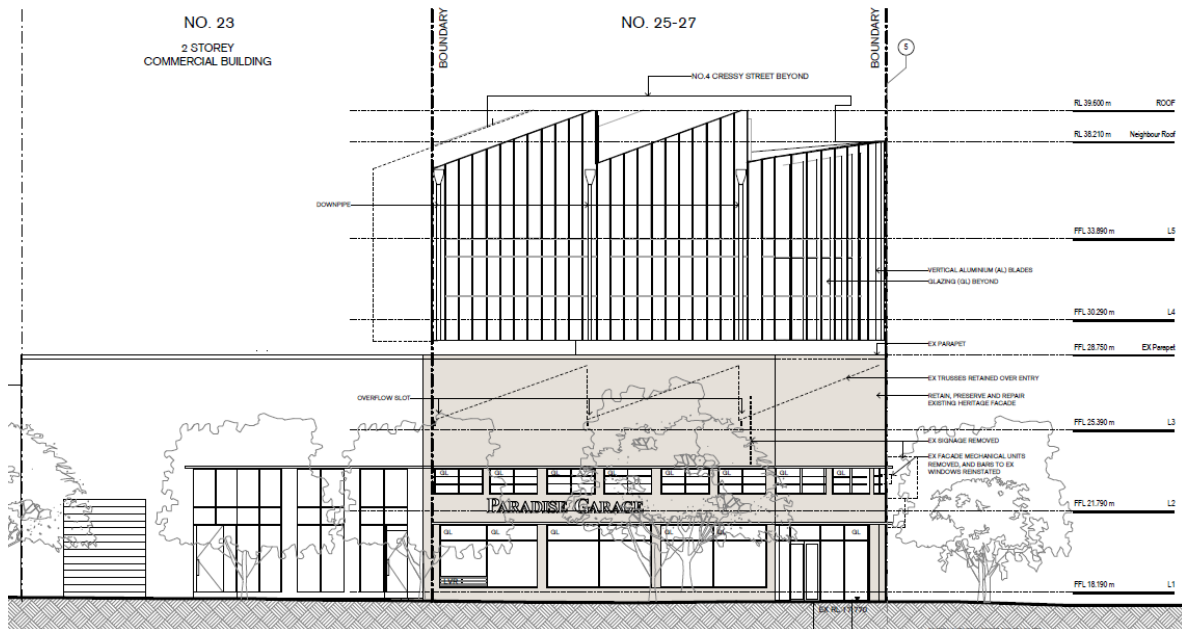


Figure 17: Proposed West Elevation (Dunning Avenue)

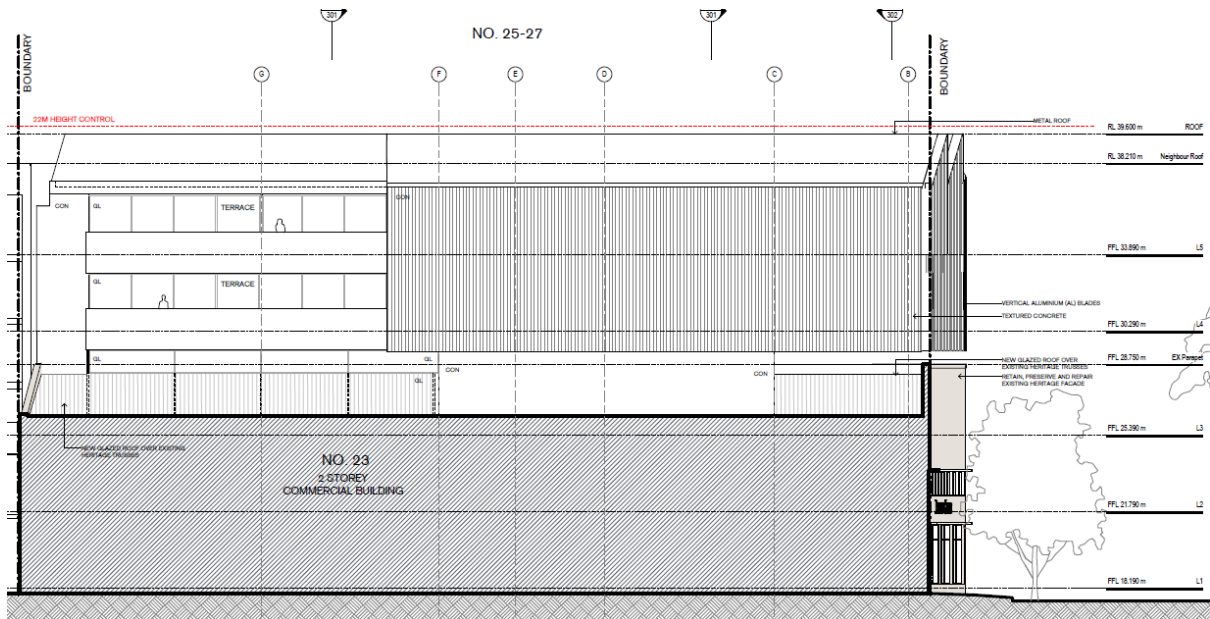


Figure 18: Proposed North Elevation

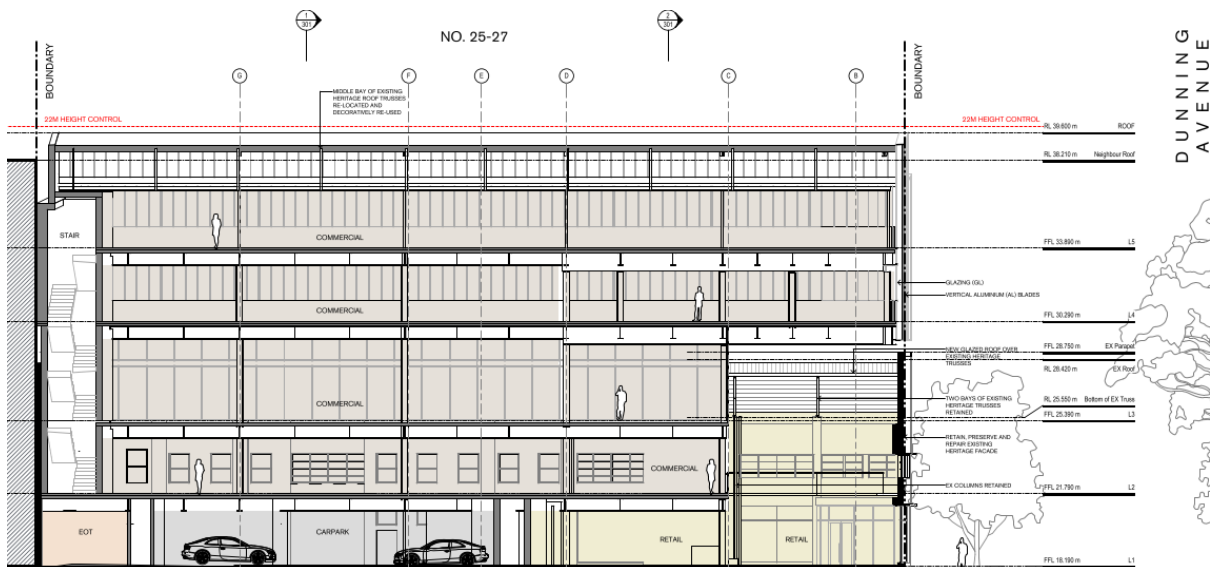


Figure 19: Proposed Section Plan 1 looking from north to south through the building

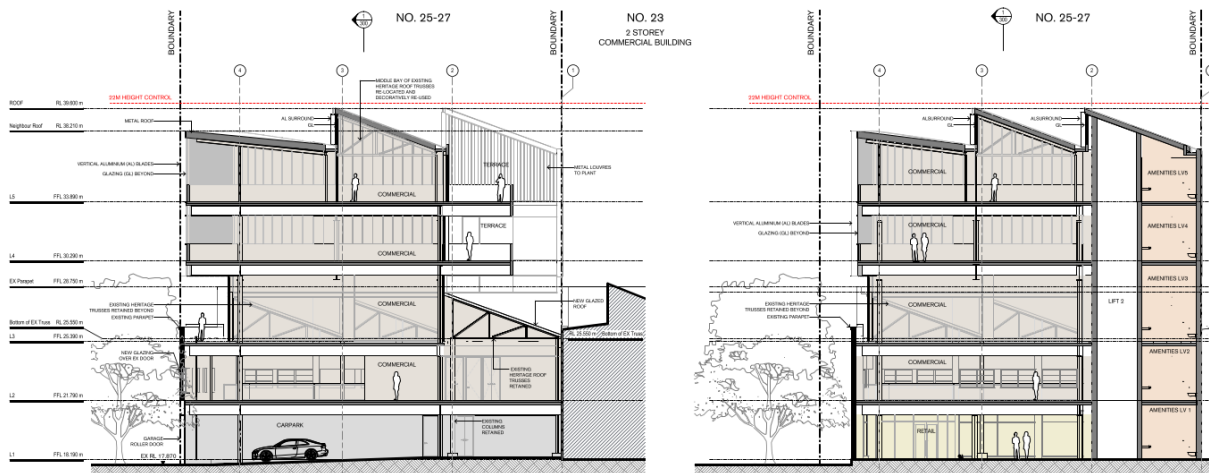


Figure 20: Proposed Section Plan 2 and 3 looking west through the building

Assessment

21. 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 (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

22. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land 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.
23. The proposal has been reviewed by Council's Health and Building specialists with regard for the provisions of the Chapter 4 — Remediation of Land. The documents lodged with the application are unsatisfactory.
24. Site investigations have identified the following contaminants present on the site:
- motor vehicle related contaminates such as metals, Polycyclic Aromatic, Hydrocarbons (PAHs), total Recoverable Hydrocarbons (TRH), Benzene, Toluene, Ethylbenzene, Xylene and Naphthalene (BTEXN), and Volatile Organic Compounds (VOCs); and
 - lead and asbestos.
25. A Phase 1 contamination assessment report was provided, and the report recommended a Phase 2 and Remediation Action Plan (RAP) to be prepared. The applicant has not provided a Phase 2 report or a RAP with the application.

26. In conjunction with Chapter 4, Clause 4.6 Contamination and remediation to be considered in determining development applications; the consent authority must be satisfied that land can be made suitable for the purpose of which that land can be carried out.
27. In the absence of a Phase 2 report or A Remediation Action Plan (RAP) insufficient information has been provided for the consent authority to be satisfied that the site can be made suitable for the development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 1 Preliminary

Provision	Compliance	Comment
1.2 Aims of the Plan	No	As a result of excessive exceedance of the FSR leading to bulk and scale issues and significant alterations to the heritage fabric of the existing building, the development fails to satisfy the aims of SLEP 2012 at 1.2(h), 1.2(j) and 1.2(k), to enhance the amenity and quality of life of local communities, to achieve a high-quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities, provide a high quality urban form and to conserve the environmental heritage of the City of Sydney.

Part 2 Permitted or prohibited development

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

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>A maximum building height of 22m is permitted.</p> <p>A height of 21.75m (max.) is proposed.</p> <p>The proposed development complies with the maximum height of buildings development standard.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 1.5:1 or 1,434.15sqm is permitted.</p> <p>In accordance with Clause 6.14 of SLEP2012, an additional FSR provision of 0.5:1 is available to allow for the provision for Green Square community infrastructure increasing the maximum FSR for the site to 2:1.</p> <p>The site is also eligible for end of journey floor space of up to 0.3:1.</p> <p>A total of 73sqm is proposed as end of trip facilities consisting of lockers and changes rooms with showers, which equates to a FSR of 0.076:1.</p> <p>A floor space ratio of 3.1:1 or 2,966sqm is proposed.</p> <p>The proposed development does not comply with the maximum floor space ratio development standard.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 was not formerly made in writing by the applicant but was indicated in the Clause 4.6 variation request. Council did not pursue the public benefit offer. See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	No	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.4. A written statement addressing the provisions of Clause 4.6 of SLEP 2012 fails to recognise the extent of the variation to the FSR standard and does not meet the requirements of the clause.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is a local heritage item warehouse 'Paradise Garage' I1376.</p> <p>The proposed development will have a detrimental impact on the significance of the heritage item.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	<p>The proposed development is eligible for end of journey additional floor space of up to 0.3:1 for showers, change rooms, lockers and bicycle storage areas.</p> <p>A total of 73sqm which equates to a FSR of 0.076:1 is proposed as end of trip facilities consisting of lockers and change rooms with showers. The additional end of journey FSR will result in a FSR of 1.576:1. Refer to 'Discussion' section below for details.</p>
6.14 Community infrastructure floor space at Green Square	No	<p>Planning controls allow access to an additional FSR of 0.5:1. The proposal does not meet the objectives of this control.</p>

Provision	Compliance	Comment
		An official public benefit offer for a monetary contribution was not submitted in accordance with Clause 6.14 of SLEP 2012. Refer to 'Discussion' section below for further details.
Division 4 Design excellence		
6.21 Design excellence	No	The proposed scheme fails to deliver the highest standard of architectural, urban and landscape design and has a detrimental impact on an existing heritage item. Consequently, the proposal fails to satisfy design excellence provisions and is recommended for refusal. See further details in the 'Discussion' section below.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	A maximum of 17 car parking spaces are permitted. The proposed development includes 11 car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The site is located within the Green Square affordable housing contribution area. In the event the proposal was supported, it would be subject to a Section 7.13 contribution.

Provision	Compliance	Comment
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.
7.23 Retail development outside of Green Square Town Centre and other planner centres	Yes	The application does not propose greater than 1000sqm of floor area for the purpose of shops or markets.
7.25 Sustainable transport of southern employment land	Yes	The development does propose parking for 11 car spaces on site with a maximum of 17 required. The proposal will rely on nearby transport modes including buses and railway services which promotes sustainable transport options.

Development Control Plans

Sydney Development Control Plan 2012

29. 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

30. The site is located within the Beaconsfield locality. The proposed development is not in keeping with the unique character and the design principles of the Beaconsfield locality as it does not respond to or complement the heritage item in which the development is proposed.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Partial compliance	No arborist advice has been submitted to detail the impact on street trees by the development and associated scaffolding. If the application were recommended for approval a public domain plan would be requested through conditions of consent.

Provision	Compliance	Comment
3.4 Hierarchy of Centres, City South	Yes	As stated under the LEP provisions the ground floor retail space is less than 1000sqm and complies with the retail area restriction within green square.
3.5 Urban Ecology	No	Given the existing building footprint no vegetation is to be removed from the site. However, as discussed in this report, no landscape plan has been submitted to take advantage of greening opportunities within the built form. In addition, the full impact of construction on existing street trees has not been detailed. No Landscape Plan was submitted with the application.
3.6 Ecologically Sustainable Development	Yes	The proposal was submitted with a NCC Section J report and does satisfy environmental requirements. A 5-star NABERS rating is proposed and has been the application was referred to Council's Environmental Projects Team and the development can meet the 5 star rating.
3.7 Water and Flood Management	Yes	The site is not identified as being on flood prone land.
3.9 Heritage	No	The site is a local heritage item I1376 "Paradise Garage" warehouse. The proposal does not comply with the relevant provisions. Refer to 'Discussion' section below.
3.10 Significant Architectural Building Types	No	The site contains a warehouse that is older than 50 years. The building was constructed circa 1950. Refer to heritage discussion below for further details.
3.11 Transport and Parking	Partial compliance	A traffic impact assessment report was submitted with the application. A total of 10 car spaces, 1 service vehicle space, a motorbike space and 28 bicycle parking spaces are proposed and fall within the requirements of the controls.

Provision	Compliance	Comment
		Despite the parking being below the maximum and bicycle parking being proposed, Council's Traffic Engineer advised that vehicle movements require further assessment in particular the allowance for larger vehicles such as B99 which is a vehicle that is a minimum 5.2m long, 1.94m wide and 1.878m wide to move within the proposed parking area. Therefore, the traffic report is considered insufficient.
3.12 Accessible Design	No	Accessible design matters have not addressed by the proposal.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles. However, the number of new openings within the building facade has a detrimental impact on the heritage item.
3.14 Waste	No	A waste management plan has been provided with the application but is not considered adequate as advised by Council's Waste Management officer. Further details regarding storage and collection are required, and additional information is to be provided on floor plans for waste area on each level.

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The site is permitted a maximum building height of 6 storeys with no maximum street frontage height control. The proposed development is 5 storeys in height.

Provision	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	The proposed development does not achieve the minimum floor to floor heights. It is preferred that the existing ground floor head height is retained through the building. The existing ceiling height is 3.75m and the proposed new ceiling in the proposal for the ground floor to first floor is being reduced to approximately 3.6m. Refer to the heritage discussion within this report.
4.2.2 Building setbacks	Partial compliance	Setbacks are generally consistent with the existing development patterns. No ground floor setback is required given the need to retain the existing heritage footprint. It is considered the new floors dominate the building and detract from its heritage significance and appearance within the streetscape.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>The development will contribute to increased overshadowing to the property to the south No. 29-31 Dunning Avenue. Predominantly, ground floor apartments will see a reduction in solar access to bedrooms positioned facing Cressy Street on the ground floor. However, living areas are located on the first and second floors of the building and will still receive at least 2 hours of solar access.</p> <p>Some of the ground floor apartments have private open space located facing Cressy Street and these will be impacted by the development and apartments toward the north-east corner of 29-31 Dunning Avenue will not receive 2 hours of solar access to at least 50 per cent of the private open space.</p>
4.2.3.11 Acoustic privacy	No	No acoustic report was provided with the application. Internal noise management and external noise impacts have not been demonstrated.

Provision	Compliance	Comment
4.2.6 Waste and recycling Management	No	The waste management proposed by the application is not considered adequate. Council's Waste Management Officer has requested further details. Refer to 'Discussion' section below.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Partial compliance	The inclusion of new window openings is a concern in regard to the retention of heritage fabric and alterations are being made to the existing warehouse with little regard to the elements such as the windows, doors, saw-tooth roof, internal steel trusses and overall appearance of the building.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.2 Green Square	No	The proposal provides a commercial building that significantly alters the heritage character of the existing warehouse. The proposal fails to comply with Green Square controls and fails to complement the desired future character of the neighbourhood and fails to respond appropriately to a heritage building. Refer to heritage and 4.6 variation 'Discussion' below for further details.
5.2.3 Community infrastructure	No	An official public benefit offer was not submitted to enable a monetary contribution towards community infrastructure within the Green Square locality, but was rather indicated in the Clause 4.6 variation request . In this regard, Council did not pursue a public benefit offer as the results in poor design outcomes which is largely a consequence of significant exceedance of the FSR and insufficient retention of the heritage item.

Provision	Compliance	Comment
		<p>The proposal fails to satisfy provision 6.14 of SLEP 2012 and provision 5.2.3(1) of SDCP 2012, which specifies that consent may be granted for development up to the maximum gross floor area achievable under Clause 6.14 of Sydney LEP 2012, but only if the development contributes to the desired character of the locality in which it is located and has little or no impacts on the amenity of that locality.</p> <p>See discussion below in the Issues section.</p>

Discussion

Heritage

31. The existing building is a local heritage listed item I1376 "Paradise Garage' Warehouse. The warehouse is described as a two storey, Post-War Functionalist warehouse with streamlined rendered facade, horizontal steel windows at first floor level and high parapet wall partially concealing a saw-tooth roof. The building includes a prominent curved corner entry with original details and materials intact.



Figure 21: Aerial of view of site circa 1950 showing the saw-tooth roof and completed warehouse

32. The proposal was accompanied by a Statement of Heritage Impact (SoHI) and Conservation Management Plan (CMP) completed by GBA Heritage.

- 33. The development proposes demolition of the majority of the sawtooth roof, demolition of the existing first floor and offices, alteration to the facade by removing original windows and doors and proposing new windows and doors, removal of the most of the internal steel trusses and construction of a new first floor within the existing warehouse envelope.
- 34. New elements include new glazing above door ways, new windows over existing windows, new cantilevered terrace to replace saw-tooth roof and new doors and access hatched for the fire exists and services (See Figure 22 below).



Significant alterations to the saw tooth roof glazing to be replaced by cantilevered terrace fronting cressy street.

Additional windows as shown are significantly different and alter the heritage façade and impacts the fabric negatively.

New glazing treatments not part of the existing façade and not consistent with any existing elements.

Windows are proposed to be altered in size and type.

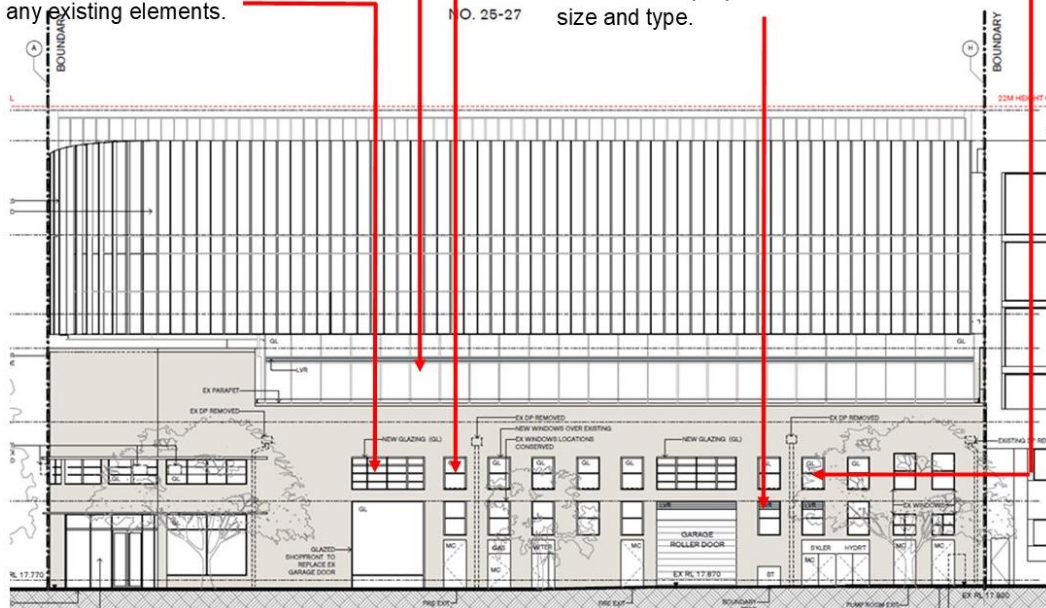


Figure 22: Cressy Street frontage amendments

35. The removal of openings is not supported as they are significant fabric. The insertion of new windows alters the heritage significance and architectural language of the post war building. The creation of new lower level first floor requires the alteration of windows, incorporates new openings for the first floor and removes almost all of the internal steel trusses. Such significant alterations substantially and unreasonably diminish the heritage significance of the building.
36. The statement of heritage impact submitted with the application acknowledges that the proposal is not in line with a “traditional heritage approach” but seeks to justify and support the proposal as it maintains most of the existing warehouse. The statement justifies the current proposal based on an “established trend in the locality”, with adaptive re-use of similar warehouses. However, this assertion is not substantiated by referring to any such examples.
37. The statement seeks to support the deconstruction of the heritage roof structure to relocate it elsewhere on the site. However, the statement does not make it clear how this will be achieved. The statement does not make any distinction between whether the heritage roof structure is to be ‘conserved and retained in original condition and location’ or if the roof structure is to be ‘conserved and retained elsewhere on site’. In this regard the statement does not give adequate consideration to the impact on physical integrity and intactness of the roof structure.
38. The statement also makes no assessment against the relevant SDCP 2012 heritage provisions where the provisions do not support the proposal. This is detailed below:
 - (a) 3.9.5(2) provides that development should enhance the heritage item by removing unsympathetic alterations and additions and reinstating missing details, building and landscape elements, where physical or documentary evidence is available.

In this regard the existing warehouse does not have any unsympathetic alterations or any missing elements to be reinstated. However, the development proposes to significantly alter physical elements which are integral to the buildings's heritage significance such as the demolition of the saw-tooth roof, trusses, steel columns, windows and doors.

- (b) 3.9.14(1) - indicates that development to a heritage item or within a heritage conservation area or special character area is to be consistent with the guidelines contained within the Heritage Inventory Assessment Report. The key guidance within the current HIR is that there should be no vertical additions and no alterations to the facade other than restoring lost elements.

The proposal does not provide a detailed assessment against the inventory guidelines.

The recommendations in the applicant's report do not include discussions around vertical additions that are prominent and visible. In addition, the proposal does not address the need to retain the facade without new intrusions and proposes significant alterations to the interior elements of the warehouse,

- (c) Section 3.10.1 details provisions for the preservation of warehouses and industrial buildings older than 50 years which is to encourage the conservation of the existing fabric and ensure alterations and additions that are sympathetic in scale and style to the existing building.
- The proposed demolition, external alteration and vertical addition, are inconsistent with a majority of the provisions in this section.
 - The SoHI fails to provide an assessment against relevant provisions stated below:
 - A proposed increase in floor space outside the existing building envelope is not permitted where it would compromise the significant fabric and building elements.
 - The provision of car parking within the existing building is not an acceptable justification for creating additional storeys above the height of the existing roof.
 - Additional storeys or roof additions must not result in the removal of the original roof structure where that roof is an essential component of the original building form.
 - The original or significant pattern of windows and openings is to be retained.
 - All original window frames, sashes and lights are to be retained on prominent elevations and on secondary elevations were considered critical to the significance of the building.
- (d) In addition to the above the proposal is considered inconsistent with the Burra Charter and its principles.

Floor Space Ratio (FSR)

39. The site is subject to a FSR control of 1.5:1. Based on the site area of 956.10sqm, the site has a permissible gross floor area of 1,434.15sqm or 1.5:1.
40. In addition, the site has a potential community infrastructure bonus of 0.5:1 in the Green Square locality. In this instance the 0.5:1 bonus for community infrastructure is not supported. Refer below.
41. The site is also eligible for a FSR bonus of up to 0.3:1 which equates to 286.83sqm for End of Journey facilities. The applicant has requested 0.076:1 or 73sqm for end of journey facilities to be included in the development which equates to a allowable FSR of 1.576:1 (1,507sqm).
42. The proposed development has a gross floor area of 2,966sqm. The FSR equates to 3.1:1, which constitutes a 97 per cent variation to the floor space ratio with the inclusion of end of journey facilities.

43. The exceedance of the FSR control is not supported, particularly where this results in a development that provides poor design outcomes and dominates the heritage item. Accordingly, the proposal is not in keeping with the desired future character of the area. Addressing issues of heritage significance, overall bulk and scale of the proposal and to a lesser degree the view loss, will likely result in a substantial decrease in floor space. Furthermore, the applicant does not address the FSR and how it complements the heritage building, but rather focuses on the economic feasibility of the development.

Clause 6.14: Community Infrastructure

In accordance with Clause 6.14 of SLEP 2012, the proposed development is eligible for a FSR bonus of 0.5:1 to provide for infrastructure within the Green Square locality. The proposal does not provide any infrastructure on the site and the proposed public benefit offer is a monetary contribution. In failing to satisfy the objective of clause 6.14, the land is not eligible for an amount of additional floor space in accordance with Clause 6.14(4) of SLEP 2012 and Council as the consent authority did not pursue a public benefit offer. Consequently, the FSR must be considered without the bonus GFA for community infrastructure but including the end of journey bonus resulting in a 97 per cent variation and the application cannot be supported.

44. The FSR bonus is contingent on the consent authority being satisfied the development is consistent with the key objectives. In particular, objective 6.14(1)(b), requires development to reflect the desired character of the locality and that minimise adverse impacts on the amenity of the locality. In this regard, the proposal fails to achieve this objective by providing a design that damages and alters a heritage item and provides an inappropriate bulk and scale within its setting.
45. Furthermore, the guidelines for community infrastructure under schedule 10 of the SDCP 2012 states that the development must be acceptable in terms of environmental capacity and compliance with development controls, must contribute to the desired character of its locality, and must have little or no impact on the amenity of the locality. As noted in this report, Council is not satisfied that the development will contribute to the locality or the desired future character as it proposes significant exceedance to the FSR above the bonus allowed by the control and as a result is resulting in detrimental impact to the heritage listed item. Therefore, it is not considered part of the future desired character and is not supported.

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

46. Clause 4.4 of SLEP2012 allows for a maximum floor space ratio for the site of 1.5:1. The applicant has offered to enter into a Planning Agreement to provide for Green Square community infrastructure. In accordance with Clause 6.14 of SLEP 2012. The contribution (if it were to be accepted) allows for an additional FSR provision of 0.5:1 and a total FSR of 2.0:1 (GFA: 1,912.20sqm). As discussed above, the FSR bonus for providing community infrastructure is not available for this proposal.
47. The site is also subject to a FSR bonus of up to 0.3:1 which equates to 286.83sqm for End of Journey facilities. The applicant has requested 0.076:1 or 73sqm for end of journey facilities to be included in the development as discussed in their FSR calculations. The end of journey facilities bonus has been included in calculations as noted in FSR section above.

48. The provision for end of journey floor space under clause 6.13 of the Sydney LEP 2012 the application requests 73sqm which equates to a FSR of 0.076:1. The purpose of the provision is to provide facilities to commercial buildings such as showers, changing rooms, lockers and bicycle facilities. The application proposes bicycle facilities with changing rooms and lockers located in the north-east corner of the building.
49. When including both the community infrastructure bonus and end of journey FSR, the proposal has approximately 2,966sqm of GFA, resulting in a floor space ratio of 3.1:1. The proposal exceeds the 1.5:1 base FSR by 1.6:1 or 107 per cent. When the end of journey facilities bonus FSR is included in calculations, the FSR exceedance is reduced to 1.576:1 which results in an exceedance of 1.524:1 or 97 per cent. Should Council have accepted the additional community infrastructure bonus, the proposal would still result in a proposal that exceeds the permissible FSR standard by 49 per cent.
50. A written request to vary the floor space ratio development standard in accordance with Clause 4.6 was submitted with the proposal. The request identifies a non-compliance of 107 per cent but does not factor in Council accepting the end of journey facilities only and justifies the extent of the non-compliance based on the development being non-feasible without it.
51. 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 standardThe proposed development will be consistent with the objectives of the zone; and
 - (c) The proposed development will be consistent with the objectives of the standard.

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

52. 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 proposed works represent a desirable and appropriate form of development on the subject site;
 - (ii) the bulk and scale of the development is compatible with surrounding existing development and is consistent with the desired future character of the area;
 - (iii) the proposal satisfies the objectives of the FSR standard; and
 - (iv) the proposal satisfies the objectives of the mixed use zone.

(b) That there are sufficient environmental planning grounds to justify contravening the standard:

(i) The built form is consistent with the desired future character of the locality as the buildings complies with the maximum 22m building height that applies to the site in addition to complaint setbacks and building height in storeys as prescribed under the SDCP.

(ii) The FSR standard is not calibrated to commercial buildings.

Commercial buildings have different physical characteristics compared to residential flat buildings and shop top housing. Due to 25 per cent communal open space requirements and minimum separation distances to provide adequate privacy between habitable rooms and balconies, residential flat buildings and shop top housing requires more land to achieve adequate amenity.

(iii) The existing heritage listed building occupies the whole site.

The site coverage of the proposal is determined by the existing heritage listed building, which occupies the whole site. The 'new floors' (levels 4 and 5) are setback from the rear and the eastern boundaries to ensure an appropriate relationship with the adjoining development and provide amenity for the commercial office floors.

(iv) The variation facilitates employment development which will help satisfy identified needs in the region.

The background report accompanying the Employment Lands Study identified that by 2030 the Green Square locality is expected to attract about 22,000 workers. The variation of the FSR standard facilitates an economically feasible development of the land and adaptive reuse of the heritage fabric that will provide employment floor space in an appropriate location nearby to public transport, services and housing. An entirely commercial development of the site is desirable as it will provide local employment opportunities reduce travel demand and support local economic activity.

(v) The variation facilitates the provision of flexible commercial floorplates suited to a wider range of enterprises.

The proposal includes commercial floorplates ranging in size from 443sqm to 659sqm. Larger commercial floorplates suit a wider range of enterprises. As a result of Covid 19, enterprises are also seeking greater space allocations per employee. An arbitrary reduction in the size of floorplates for the sake of numerical compliance only would reduce the commercial attractiveness of the building, whereas the variation promotes the orderly and economic use and development of the land.

- (vi) The variation facilitates the conservation of the heritage significance of the building.

The adaptive reuse of the building for commercial purposes promotes the conservation of the building. It is both a highly suitable use because the large open floorplates and central services minimise disturbance of the heritage fabric, and provided it is economically feasible, it ensures the long-term conservation of the fabric. From a heritage perspective, there are significant costs associated with conserving the heritage item and funding the upgrades required to the building. Development options which involve reduced floor space, such as only one additional level within the existing facade, are not financially viable. As observed by GBA, low scale alterations and additions to the building would be temporary and likely to only be viable in the short term, with the low property returns eventually leading to building decay. The proposed development, on the other hand, exhibits a very high degree of design excellence and longevity of materials and design.

- (vii) The proposed variation will not cause adverse environmental impacts.
 - (i) The proposal has been carefully designed to avoid adverse impacts on neighbouring properties by reason of visual privacy and noise impacts and the building form, which is consistent with the building form that would be expected from a complying residential flat building development, will not cause unreasonable overshadowing of neighbouring properties.
- (c) The proposed development will be consistent with the objectives of the zone;
 - (i) To provide a mixture of compatible land uses.
 - (i) The proposal seeks to provide commercial premises on the site which are compatible with the surrounding mix of land uses including residential flat buildings, other commercial uses and warehouses. The proposal includes a retail premises on the ground floor which can not only be utilised by workers on the subject site but also nearby residents and workers.
 - (ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (i) The proposal will result in an office development on the site which is located in close proximity to multiple bus services from Botany Road, Epsom Road and Rothschild Avenue. The site is also a 10 minute walk from Green Square train station and is highly accessible by public and active forms of transport. The proposal includes 28 bicycle parking spaces and EOTF to further encourage walking and cycling to and from the site.

- (iii) To ensure uses support the viability of centres.

The applicant states that the proposed commercial and retail uses on the site will support the viability of nearby centres by providing increased employment opportunities and a small scale retail premises which will not detract from nearby centres.

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

53. 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.
54. In the circumstances of the application, the applicant has failed to adequately demonstrate by way of their submitted Clause 4.6 statement that compliance with the standard is unreasonable and unnecessary and that the objectives of the development standards are achieved, notwithstanding non-compliance with the standard. In particular:
- (a) The written Clause 4.6 statement significantly understates the extent of the non-compliance with the FSR standard. The statement fails to detail the impacts of the proposal accurately and does not enable the consent authority to be satisfied that the arguments put forward in the written Clause 4.6 statement can be justified.
 - (b) The significant exceedance of FSR demonstrates that key objectives of Clause 4.4(1)(b) and (d) of SLEP 2012 are not achieved. In particular lack of consideration for the heritage significance and objectives under Clause 5.10 of the SLEP 2012 and provisions of the bonus community infrastructure at Green Square and end of journey floor space. The lack of heritage justification in the 4.6 request points to a distinct lack of consideration for the constraints of the site. As a result, the proposal fails to regulate the density of development and provide a built form and land use intensity that reflects the desired character of the locality and fails to minimise adverse impacts on the amenity of that locality.
 - (c) The exceedance of FSR in terms of the bulk and scale and its dominance and alteration it imposes on the heritage elements of the warehouse do not enable the consent authority to be satisfied that key provisions of Clause 6.14(b) and (c) of SLEP0212 can be satisfied. These provisions aim to ensure that greater densities reflect the desired character of the localities in which they are allowed and that increased densities minimise adverse impacts on the amenity of those localities.
55. With regard for clause 4.6(3)(b) of Sydney LEP 2012, the written request provided by the applicant has failed to demonstrate there are sufficient environmental planning grounds to justify contravening the development standard. In particular:

- (a) The proposed variation fails to analyse the impact FSR exceedance will have on the heritage fabric of the building. In the scope of the development the application aims to partially retain the facade but altering the windows and doors to accommodate a new floor plate. Furthermore, the additional floors have an overbearing impact on the existing envelope and detracts from the sawtooth roof. In requesting the FSR variation to such an excessive extent the applicant has failed to adequately analyse the impact to the heritage fabric within the scope of the environmental planning grounds and therefore fails to adequately justify contravening the standard.
56. The applicant's written request has significantly understated the extent of the departure from the development standard. The proposed development is 107 per cent over the base FSR, 97 per cent over the base plus end of journey facilities FSR. The applicant has failed to adequately address the matters required to be demonstrated by subclause 4.6(3) of SLEP 2012. The applicant's written request has failed to demonstrate that the proposed development will be in the public interest because it is not consistent with key objectives of the FSR development standard and with a key objective for development within the B4 Mixed Use zone in which the development is proposed to be carried out.
57. The applicant has failed to demonstrate by way of their clause 4.6 statement that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. In particular, the applicant has failed to demonstrate by way of their clause 4.6 statement that the objectives of Clause 4.4 of Sydney LEP 2012 are achieved notwithstanding non-compliance with the standard in particular the impacts the 4.6 request will have on the heritage elements.
58. The applicant has failed to demonstrate the proposal meets the objectives of Clause 5.10 of the Sydney LEP 2012 in particular to consider the heritage significance of heritage item including its associated fabric and setting with significant alterations and to demolition proposed to the 'Paradise Garage' warehouse with little regard for the bulk and scale associated with the significant variation to the FSR proposed.
59. For the reasons provided above, the requested variation to the FSR development standard is not supported. The applicant's written request has not adequately addressed the extent of the non-compliance and the matters relevant to 4.6(3) of the Sydney LEP 2012.
60. Further, the applicant's written statement has not been successful in arguing that one of the five ways established in Wehbe has been satisfied, being that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
61. The applicant's written statement does not demonstrate the proposal is satisfactory in relation to the environmental planning grounds used to justify contravening the development standard. Accordingly, the proposed development is not in the public interest as it is inconsistent with the objectives of the FSR standard that is applicable to the site.

Design Excellence

62. In an effort to maximise floor space of the development the proposal fails to retain the heritage aspects of the building evident by the amount of changes to the existing warehouse that is proposed and fails to compliment the surrounding area.

- (a) Modulation and bulk and scale
- (i) The development aims to maximise the envelope rather than adequately considering the significance of the heritage item. In this regard the proposed addition above the heritage item, has a consistent blade wall which wraps around the building from Cressy Street toward Dunning Avenue with zero lot setback and no recessed elements. As a result, the vertical extension above the heritage item will dominate the public domain rather compliment the surrounding buildings and warehouse below. Refer to figure 23 below.



Figure 23: Photomontage of the proposal and presentation to the public domain

- (b) Amenity Impacts - Adjoining development
- (i) View Loss Analysis
- A view loss assessment has been completed by the proponent as part of the submitted SEE for No. 29-31 Dunning Avenue. A review of the assessment indicates that No. 29-31 Dunning Avenue will be negatively affected by the proposal with a loss of view to the city skyline, however, the analysis was conducted up to level 5 and the neighbouring building has a roof-top access which is level 6, figure 24 below.
 - It is accepted that views to the city skyline will be interrupted by future development in the precinct located north of the apartments at 29-31 Dunning Avenue. However, given the massing and that the FSR remains significantly non-compliant view loss created by the development is considered unreasonable.

- As noted in the report, approved nearby developments to south-east and north of the subject site are provided with compliant FSR and do not contain heritage items on site. Therefore proposal with compliant FSR and greater heritage preservation in conjunction with the controls, would result in a building envelope with reduced bulk and scale and would have a reduced impact on the view loss from developments south of the subject site.

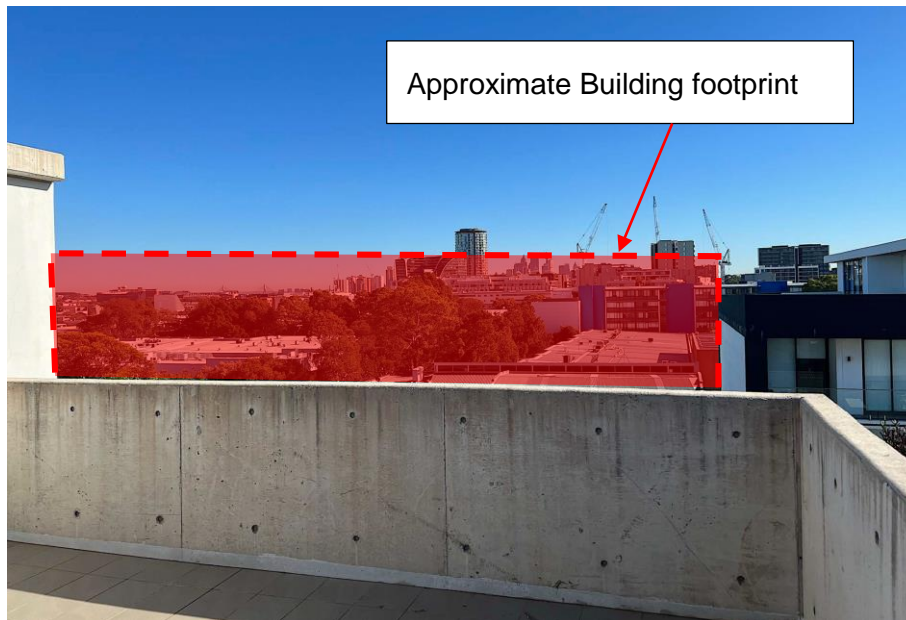


Figure 24: View from Level 6 - Roof top of adjacent residential building 29-31 Dunning Avenue (image provided by a submitter)

Consultation

Internal Referrals

Environmental Projects Unit

63. The application was accompanied by a Section J report which detailed the passive design and thermal performance and NABERS rating. The application was referred to Council's Environmental Projects Unit who advised the building can attain a 5-star NABERS rating.

Environmental Health Unit

64. A phase 1 contamination report was provided which indicated that a Phase 2 or Remediation Action Plan (RAP) was required. The Phase 2 and RAP have not been provided. In the absence of a phase 2 report or RAP, Council officers are not satisfied that the site can be made suitable.

Heritage and Urban Design Unit

65. The proposal was discussed with Council's Heritage and Urban Design Units. The proposal was not supported given the extensive amount of demolition, alteration of facades and the dominant addition. It was also advised that the Statement of Heritage Impact and Conservation Management Plan were not adequate as detailed in the discussion section of this report.

Transport and Access Unit

66. Did not support the proposal in the absence of additional information regarding larger vehicle swept path analyses.

Tree Management Unit

67. There is one semi-mature and two mature Native Hibiscus located on Cressy Road. It appears that the proposed stormwater pipe is in close proximity of Tree 2 on Cressy Street. Any excavation within the Tree Protection Zone (TPZ) of this tree or in any area known to or suspected of having street tree roots greater than 40mm diameter will require tree sensitive methods such as hand digging.

There is one mature Broad-leaved Paperbark, one mature Tuckeroo and one juvenile Tuckeroo located on Dunning Avenue. These trees are of good health and structure and contribute to the local environment, character, and street tree canopy. Some pruning of the street trees may be required for the installation of hoarding and scaffolding. A 'Pruning Specification Report' prepared by a qualified Arborist (minimum AQF Level 5) is required.

Waste Management Unit

68. The waste management plans provided is insufficient. The waste management must clearly address the following:
- (a) waste generation calculations based on GFA for the development type, (see Guidelines for Waste Management in New Developments 2018, Reference A) to support the proposed number, configuration and collection frequency of bins;
 - (b) as part of Sustainable Sydney 2030, the City is limiting truck movements to ease road congestion. As such, waste collections should ideally be limited to a maximum 3 x weekly for all waste streams;
 - (c) identify space in the commercial development dedicated for storing bulky waste and problem waste for recycling; and
 - (d) a bin for each waste stream (waste, recycling and food waste) is to be centrally located on each commercial office floor (clearly mark on the plans). Details on the changeover/servicing and maintenance of these bins is to be outlined within the waste management plan.

External Referrals

69. No External referrals were required.

Advertising and Notification

70. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified and advertised for a period of 28 days between 12 January 2022 and 10 February 2022. A total of 179 properties were notified and 3 submissions were received.

71. The submissions raised the following issues:

- (a) **Issue:** Amenity impacts and loss of view to neighbouring residential dwellings.

Response: The proposed scale of the building is exacerbated by the large variation to FSR proposed by the application resulting in loss of views to the city skyline. The bulk of the building and its impact on views is detailed in the discussion section of this report.

- (b) **Issue:** Privacy impacts into apartments from a commercial development.

Response: A view analysis was conducted by the applicant for No. 29-31 Dunning Avenue. The analysis indicates that the blade walls wrapped around the building do not provide a visual barrier to view into and from the proposed development. Behind the blade walls is large commercial windows which can be viewed directly into from a number of levels of No 29-31 Dunning Avenue. This is a matter raised in the body of the report as amenity issue of concern with the development.

- (c) **Issue:** The proposal alters the heritage warehouse.

Response: The proposal will result in extensive and excessive removal of heritage fabric and will erode the significance of the heritage item and is a reason for refusal. Refer to the 'Discussion' section in the body of the report for details.

- (d) **Issue:** Loss of solar access to apartments.

Response: A solar analysis was provided by the applicant. By the nature of its orientation and overshadowing the proposed building will have a minor impact on the ground floor of No.29-31 Dunning Avenue to the south of the subject site. However, the impacts are to bedrooms and private open space facing Cressy Street toward the north-east corner of 29-31 Dunning Avenue. Overall, the proposal will not greatly reduce the solar access to the neighbouring developments which will still comply with the apartments design guideline requirements for solar access to habitable rooms for at least 70 per cent of the building.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

72. In the event the proposal was supported, it would be subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

73. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space and if Council had supported the proposal, a 7.13 contribution would have been charged.

Relevant Legislation

74. Environmental Planning and Assessment Act 1979.

Conclusion

75. The application failed to provide a Phase 2 or Remediation Action Plan in relation to Chapter 4, Remediation of land in the State Environmental Planning Policy (Resilience and Hazards) 2021. In this regard, council is not satisfied that the site can be made safe from contaminants.
76. The application seeks a significant variation of the FSR standard. Whilst a public benefit offer to provide a monetary contribution toward community infrastructure in Green Square is intended by the applicant, a letter of offer was not submitted with the application and council has not pursued a formal public benefit offer.
77. The applicant's request for a variation to the FSR development standard fails to adequately address the requirements under clause 4.6 of SLEP 2012. The applicant fails to state the amount of the non-compliance with the standard and has not demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the application.
78. The proposal is not considered to satisfy the matters for consideration under Clause 5.10 Heritage Conservation of the SLEP 2012 due to the extent of material impact upon the significant fabric of the heritage item.
79. The proposal is not considered to exhibit design excellence in accordance with the requirements of Clause 6.21 of Sydney Local Environmental Plan 2012 as it fails to deliver the highest standard of architectural and urban design. The development proposes to significantly exceed the FSR. As a result it achieves a poor design outcome for the site.
80. The proposed development does not satisfy the matters for consideration provided by Section 4.15 of the Environmental Planning and Assessment Act 1979 in that it is not compliant with key provisions of SLEP 2012 and SDCP 2012. As such, the proposal fails to provide development that is suitable for the subject site.
81. In light of the above, the proposal is not considered to be in the public interest, contrary to Clause 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

ANDREW THOMAS

Executive Manager Planning and Development

Nabil Alaeddine, Senior Planner