

**Item 5.****Development Application: 118A Darlinghurst Road, Darlinghurst - D/2022/425****File No.: D/2022/425****Summary****Date of Submission:** Lodged 12 May 2022 and amended 18 August 2022**Applicant:** HammondCare**Architect/Designer:** Integrated Design Group**Developer:** HammondCare**Owner:** Anglican Church property Trust - St John's Church**Planning Consultant:** Ethos Urban**Cost of Works:** \$136,490.00**Zoning:** The site is located in the B4 Mixed Use zone.

The proposed development is defined as a community facility and is permissible with development consent in the zone.

**Proposal Summary:** Change of use from retail tenancy to a community facility, for the purpose of providing a space for social interactions, for persons in disadvantaged and vulnerable situations. This is proposed through a referral-based system managed by the aged care facility provider HammondCare in collaboration with other service providers. The subject tenancy is situated at ground level fronting Victoria Street within the existing aged care facility premise.

Works proposed include internal fit out works, some facade changes and signage. Proposed operating hours are between 6:00am to 10:00pm, Monday to Sunday.

The application is being referred to the Local Planning Panel for determination as it represents contentious development, with receipt of 25 or more unique submissions by way of objection. Objections relate predominantly to concerns about lack of activation or improvement to the streetscape and vibrancy, increase of anti-social or inappropriate behaviour in the area, too many existing similar services, and lack of community consultation from the applicant.

The prior consent (D/2016/476) included conditions for a detailed survey of building height, heritage conservation management plan, and schedule of works to be undertaken prior to obtaining a final occupation certificate for the site and whole building (including subject tenancy). Any consent issued for the subject tenancy may prevail the need to satisfy the conditions of consent for obtaining the final occupation certificate for the prior consent so a preferred commencement approval is recommended.

The proposal complies with the planning controls and, subject to deferred commencement pertaining to the final occupation certificate conditions of consent for D/2016/476 and conditions pertaining to window glazing, signage consistency, and operation management; the application is recommended for deferred commencement approval.

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

**Development Controls:**

- (i) Heritage Act 1977 (Standard Exemptions - Section 57)
- (ii) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)
- (iii) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (iv) State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP)
- (v) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)
- (vi) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
- (vii) City of Sydney Guidelines for Waste Management in New Developments

- (viii) City of Sydney Community Participation Plan
- (ix) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Revised Plan of Management

## Recommendation

It is resolved that deferred commencement consent be granted to Development Application No. D/2022/425 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, subject to a deferred commencement consent, will align with the requirements of the whole of site consent, D/2016/476.
- (B) The development, subject to conditions, is consistent with the objectives of the B4 Mixed Use zone.
- (C) The development will not adversely affect the character of the Darlinghurst West locality.
- (D) The development is compatible with and will not adversely impact the State Heritage item (00461) 'St John's Church and Rectory', or the 'Oxford Street and Victoria Street' (C12) Heritage Conservation Area.
- (E) The proposed signage, subject to conditions, is in keeping with the existing signage strategy of the premise and is compatible with the built form and locality.
- (F) The development, subject to conditions, will maintain orderly operations, safety and management of the premise.
- (G) The development, subject to conditions, is identified as an in demand community service for at-risk persons, which is complementary to existing service providers in the local area.
- (H) The development, subject to conditions, satisfies the requirements of design excellence.
- (I) The development will not unreasonably compromise the amenity of the nearby properties; and
- (J) The development accords with objectives of relevant planning controls.

## Background

### The Site and Surrounding Development

1. The wider site has a legal description of Lot 1 in Deposited Plan 225418, and is commonly known as 118A Darlinghurst Road, Darlinghurst.
2. The site has street frontages to Darlinghurst Road and Victoria Street and contains a publicly accessible pedestrian link between the two.
3. The site contains a five storey mixed-use development with two levels of basement parking, residential aged care facilities, associated communal areas and staff facilities, and a single unoccupied retail tenancy fronting Victoria Street. Vehicle access to basement is from Darlinghurst Road.
4. The application relates to the vacant tenancy within the site which is commonly known as 231B Victoria Street, Darlinghurst. The tenancy is rectangular in shape and has an area of approximately 135 square metres.
5. The site building received an interim Occupation Certificate on 5 February 2020 for all of the building excluding the roof top plant, retail area and tenancy awning. It is noted that the tenancy awnings (retractable) are currently installed fronting Victoria Street, and the remaining Final Occupation Certificate for the site is pending the Heritage Conservation Management Plan, Schedule of Works, and a Detailed Survey for building height in accordance with the consent conditions previously issued under D/2016/476.
6. The surrounding area is characterised by a mixture of land uses, primarily accommodation and entertainment, shop top housing, health and community facilities, and nearby single dwelling residential premises and commercial offices.
7. The site is located within the curtilage of, and forming part of the, State significant heritage item listed on the State Heritage Register as the 'St John's Church and Rectory' (SHR Item Number 00461). The built form associated with the State item is separated from the subject tenancy within the site by a pedestrian link and open grass landscaping.
8. The site is located within the Oxford Street and Victoria Street heritage conservation area (Reference number C12). The site is identified as a neutral building on the Building Contributions Map in the Sydney Development Control Plan 2012.
9. The site is not identified as being subject to flooding.
10. A site inspection visit was carried out on 8 June 2022 and photographs of the subject site and surroundings are reproduced in the figures provided below.



Figure 1: Aerial view of site and surrounds

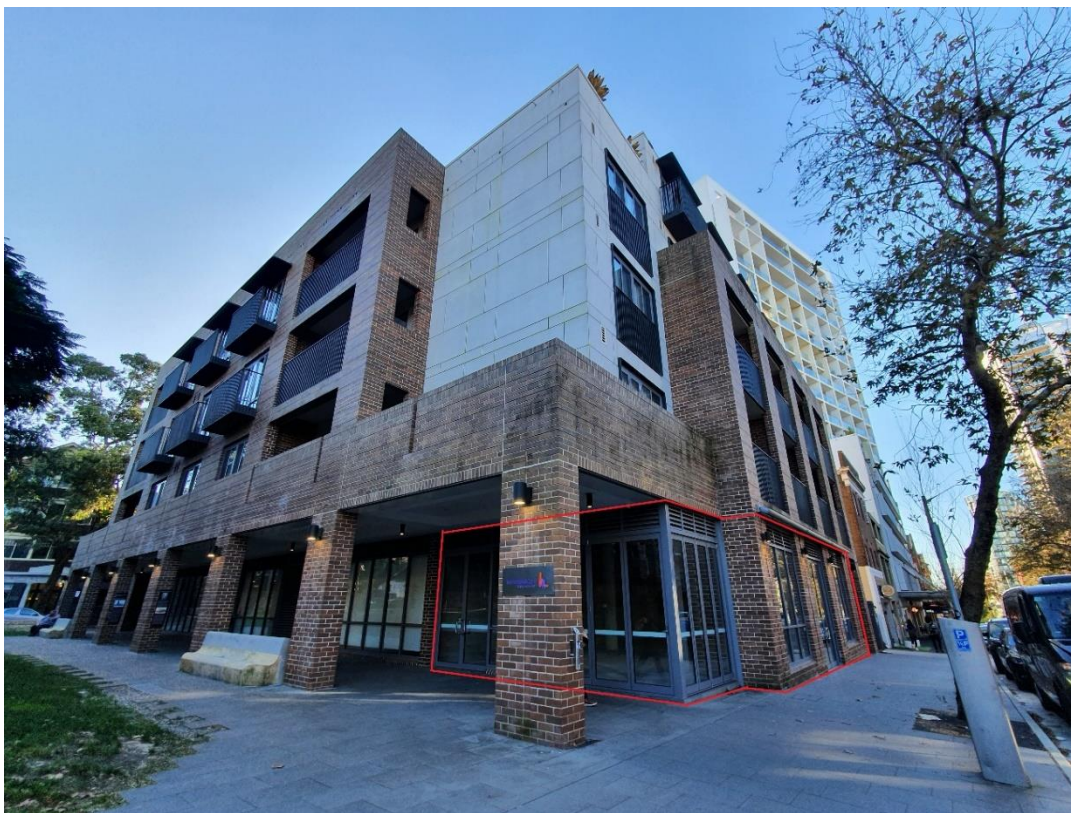


Figure 2: Whole of site and tenancy (boxed in red) viewed from Victoria Street, looking north-west



**Figure 3:** Subject tenancy viewed from St Johns Church pedestrian link looking north-west



**Figure 4:** Site viewed internally looking north (accessible toilet in north-western corner)



Figure 5: Site viewed internally looking south

## History Relevant to the Development Application

### Development Applications

11. The following applications are relevant to the current proposal:

- (a) **D/2016/476** – Determined by the Planning Committee and consent granted by Council on 27 February 2017 for the demolition of existing structures and construction of a five storey mixed use development. This included a residential aged care facility with associated communal areas and staff facilities, a separate tenancy facing Victoria Street, two level basement parking facility accessible from Darlinghurst Road, ancillary works and landscaping, and a public pedestrian through site link adjacent to the Church. This development includes 120 Darlinghurst Road and 118A Darlinghurst Road, Darlinghurst.

The approved conditions of consent required:

- (i) The separate tenancy to be occupied by an active use consistent with surrounding development and limited to hours of operation between 8:00am and 7:00pm, Monday to Sunday.
- (ii) The separate tenancy to be provided access to the basement via internal lift for the purposes of waste collection. A marked holding zone for temporary bin storage was to be established.



- (iii) A separate development application for approval of a signage strategy. Refer to the discussion provided above in relation to development consent D/2018/426
  - (iv) A Plan of Management for the operation of the site was required to be approved prior to the issue of a Construction Certificate. The current application seeks an integration of the aged-care facility Plan of Management with the proposed referral-based community facility.
- (b) **D/2016/476/A** – A modification application was approved by Council under delegation on 14 September 2017 for amendments to conditions requiring a conservation management plan and conservation works to clarify timing of approved urgent heritage conservation works.
- (c) **D/2016/476/B** – A modification application was approved by Council under delegation on 20 April 2018 to delay the submission of a site audit statement until prior to the issue of an Occupation Certificate to allow for basement construction works to occur, which were integral to remediation works.

The following matters are noted:

- (i) A new condition was imposed to separate basement works and the site audit statement from the above ground remaining works, through staged construction certificates. The site audit statement has been endorsed and received by the City.
  - (ii) Conditions were amended to reflect the construction staging and submission of the statement prior to issue of an Occupation Certificate.
  - (iii) Other conditions were updated in the consent to reflect the applicable construction stage.
- (d) **D/2016/476/C** – A modification application was approved by Council under delegation on 17 September 2019 to allow for an interim occupation certificate for the residential aged care facility, prior to the completion of urgent conservation works as defined by the conservation management plan for the St John's Anglican Church which the finalising of has been delayed.
- (i) An interim occupation certificate OC-20032 was issued 05 February 2020 for all of the building excluding the "roof top plant, retail area and the tenancy awning".
  - (ii) The tenancy awnings have been completed and the retail area (the tenancy) is the subject of this application.
  - (iii) Condition 5 is yet to be satisfied, and is to ensure the building, including rooftop plant and equipment, is in accordance with the approved height maximum.
  - (iv) Condition 121 (a), (b), (c) seeking an Interpretation Plan has not yet been satisfied as part of the s60 and s65a lodgements with Heritage NSW. This condition is to be completed before issue of an Occupation Certificate.

- (v) The completion of urgent conservation works and a conservation management plan reflect condition of consent 119 (a), which was amended to reflect prior to a 'final occupation certificate'.
- (vi) However, the status of conditions 5, 119 and 121 being the conservation management plan including defining urgent works and schedule of works, interpretation plan, and detailed survey, are unknown.

The applicant has advised that up to February 2021 discussions with Heritage NSW regarding obtaining endorsement of a conservation management plan including definition of urgent works and the schedule of works have been ongoing, but not yet resolved. The applicant advised the conditions above to be outstanding and not yet satisfied.

- (vii) The current application for the tenancy will require an Occupation Certificate prior to commencing operations as a community facility. This may prevail the need to obtain the 'final occupation certificate' which the conditions 5, 119 and 121 must be fulfilled in accordance with consent D/2016/476 (as modified).
- (e) **D/2016/476/D** – A modification application was approved by Council under delegation on 23 March 2020 for an increase in building height by 240mm, including condenser units and acoustic screening on the western side of the building roof and on its eastern side with two steel posts.
  - (f) **D/2018/426** – Development consent was granted by Council under delegation on 1 June 2018 for the installation of external lighting and signage strategy for the approved mixed-use development residential aged care facility and tenancy (D/2016/476).

The following matters are noted:

- (i) The approved signage included pin fixed to brick column flat mounted stainless steel building identification signs, individual letter signs, vinyl adhesive sign attached to glass, reflective 'slow down give way to pedestrians' vinyl wall mounted sign, and pin fixed to brickwork aluminium plate flat mounted premises sign.
- (ii) Signage was required to be secured in a manner to ensure safety and not involve measures that would cause irreversible damage to the building.
- (iii) Signage was required to not contain reflective materials, colours and finishes, or incorporate sound, vibration, odour and other emissions.

### Compliance

- 12. The site is not subject to any current compliance actions or investigations which are of relevance to the subject application.

### Amendments

- 13. Following a preliminary assessment of the proposed development by Council officers, a request for additional information and amendments was sent to the applicant on 10 June 2022.
- 14. The request was for the following information:

- (a) additional assessment relating to active frontages and non-residential development in the B4 mixed use zone;
  - (b) details of consultation undertaken;
  - (c) clarification of the intended use;
  - (d) details of security;
  - (e) waste management details;
  - (f) an acoustic statement;
  - (g) an amended Plan of Management; and
  - (h) a revised Statement of Heritage Impact.
15. The applicant responded to the request on 18 August 2022, and submitted the following information:
- (a) a revised Heritage Impact Statement;
  - (b) a revised Plan of Management;
  - (c) a revised acoustic statement; and
  - (d) aAmended architectural drawings addressing active street frontage and non-residential development in the B4 mixed use zone considerations.
16. The applicant also provided a general letter of response to each part of the requested information and addressed the primary concerns raised in submissions made by the public.
17. Further clarification area was requested from the applicant during September 2022 on whether:
- (a) data counts of people in crisis would impact the viability of the proposal; and
  - (b) consultation was held with existing service providers regarding the need for a specialised service in the locality.
18. The applicant responded on 16 September 2022 confirming that:
- (a) the data count did not diminish the need for the service within the local area; and
  - (b) consultation occurred across providers who would act as the referring body for the use of the specialised service, including HammondCare residential, local boarding houses (Rushcutters Bay and Tierney House), Outreach Services and Community Centres, local churches, St Vincent's Homeless Health, South-East Sydney RAS and ACAT teams.
19. The applicant also provided advice that government funding for the subject not-for-profit organisation's services had been approved by Commonwealth Department of Health and Ageing.

## Proposed Development

20. The application seeks consent for the following:
- (a) change of use for the ground floor commercial tenancy to a community facility in the form of a referral-based community service for persons at-risk of or experiencing homelessness and other crisis situations, associated with HammondCare Darlinghurst;
  - (b) internal fit-out works, including installation of a new domestic (small) kitchenette, reception desk, meeting room and office space, lounge area, activity space and display area, stud partition walls, carpet, tiles and timber flooring, plasterboard bulkhead ceilings, walls to existing window mullions;
  - (c) new internal and external fixed balustrades associated with the bi-fold door on the south-east corner of the premises providing an optional indoor/outdoor defined space;
  - (d) use of existing basement car parking for waste storage in accordance with existing Waste Management Plans;
  - (e) privacy film (opaque glazing) along part of the Victoria Street windows;
  - (f) wayfinding window decal sign for the community facility entrance containing the text "Please enter via other doors" and an arrow along Victoria Street and dual decal window signs with a 'HammondCare' logo and an entry arrow along the colonnade;
  - (g) the entrance to the community facility is via the colonnade, providing appropriate accessibility and improved security management measures. A permanent display area will be situated where the existing entrance and steps to Victoria Street are located;
  - (h) revised Plan of Management incorporating the proposed community facility into the existing residential aged care facility operations; and
  - (i) operating hours between 6:00am to 10:00pm Monday to Sunday.
21. Plan, section and elevation drawing extracts of the proposed development are produced in the figures provided below.

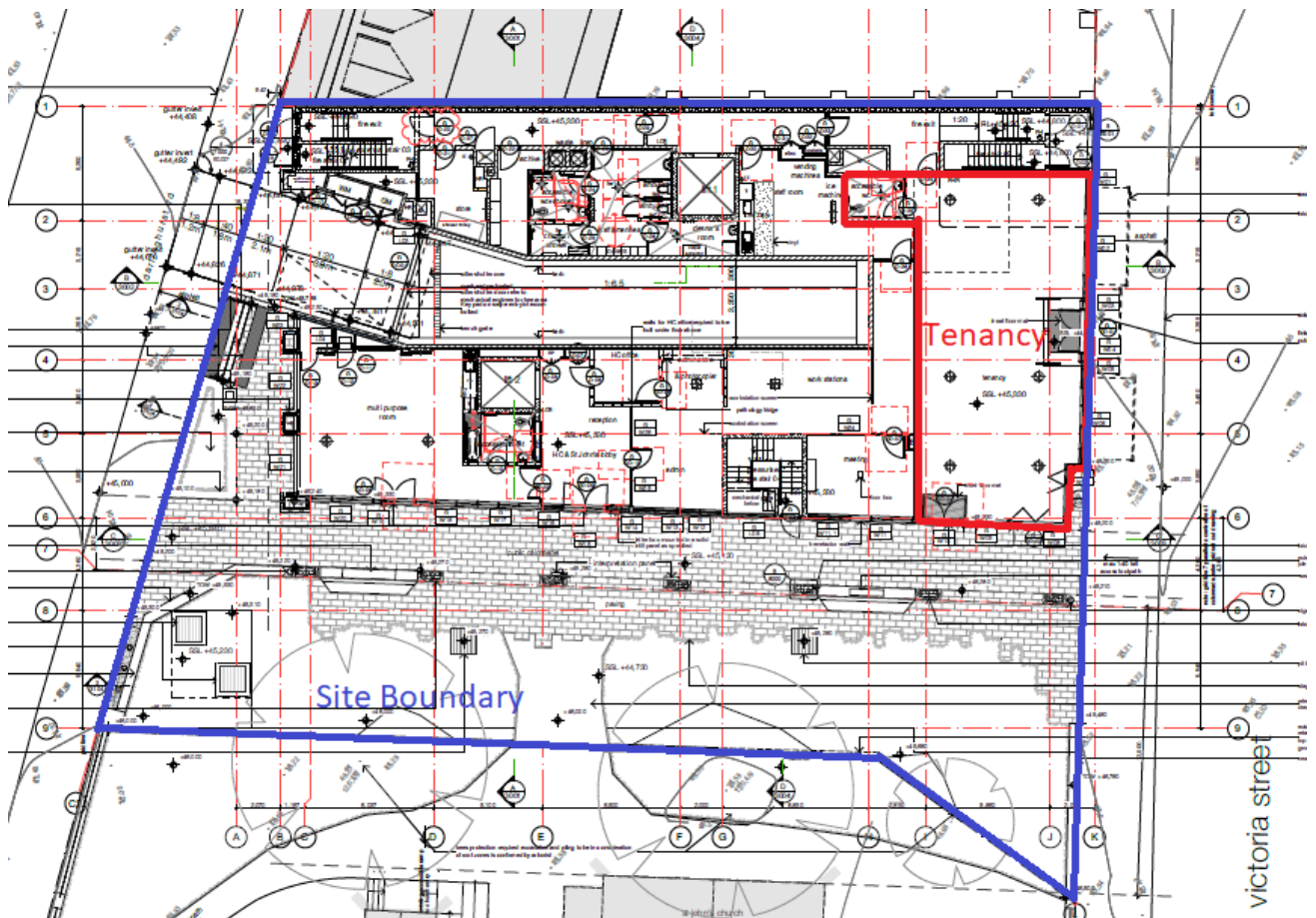


Figure 6: Existing ground floor showing position of the existing tenancy

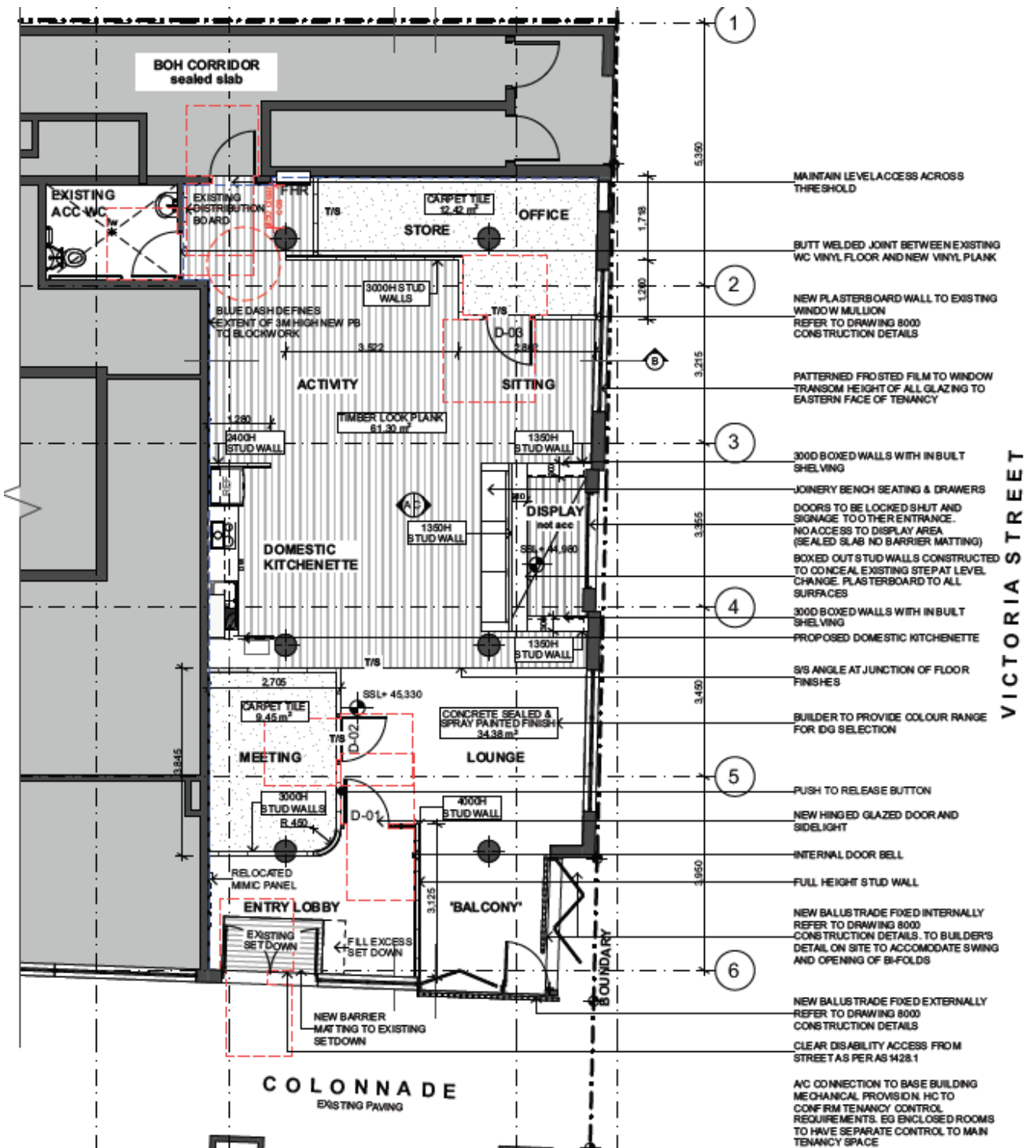


Figure 7: Proposed ground floor plan drawing extract



Figure 8: Proposed section drawing extracts

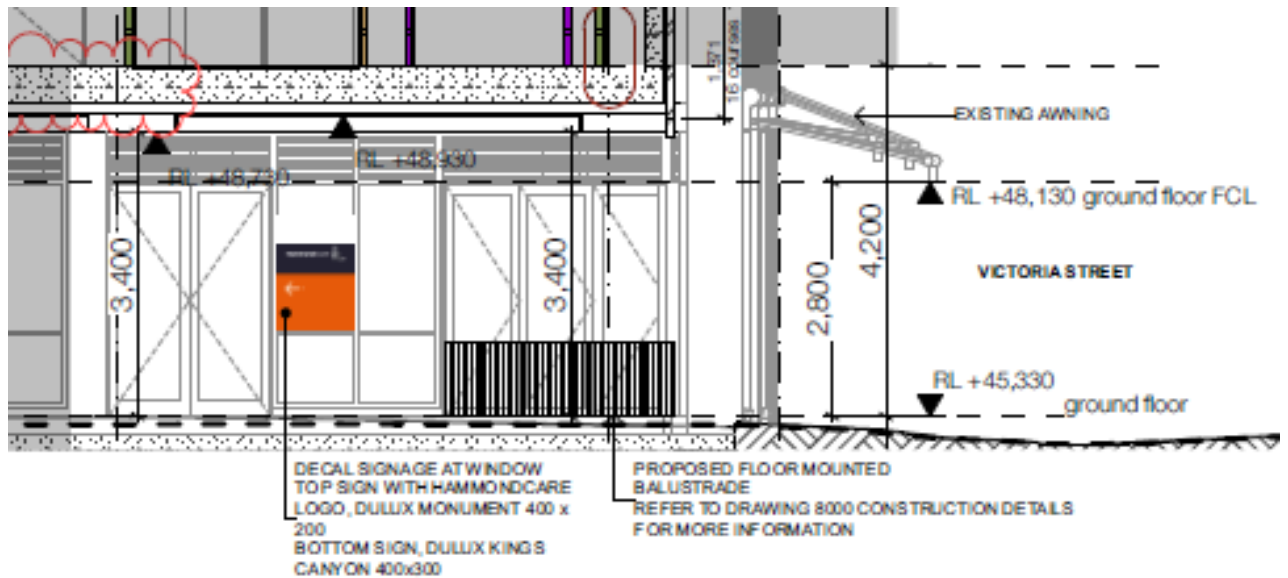


Figure 9: Proposed signage section drawing extract fronting the colonnade

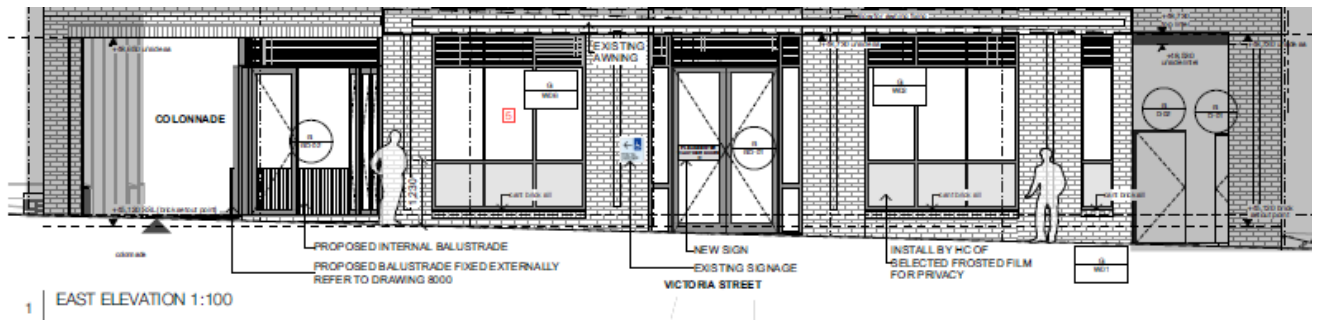


Figure 10: Proposed elevation drawing extract of existing signage and amended glazing (frosted) fronting Victoria Street limited to the lower window panel (as shaded)

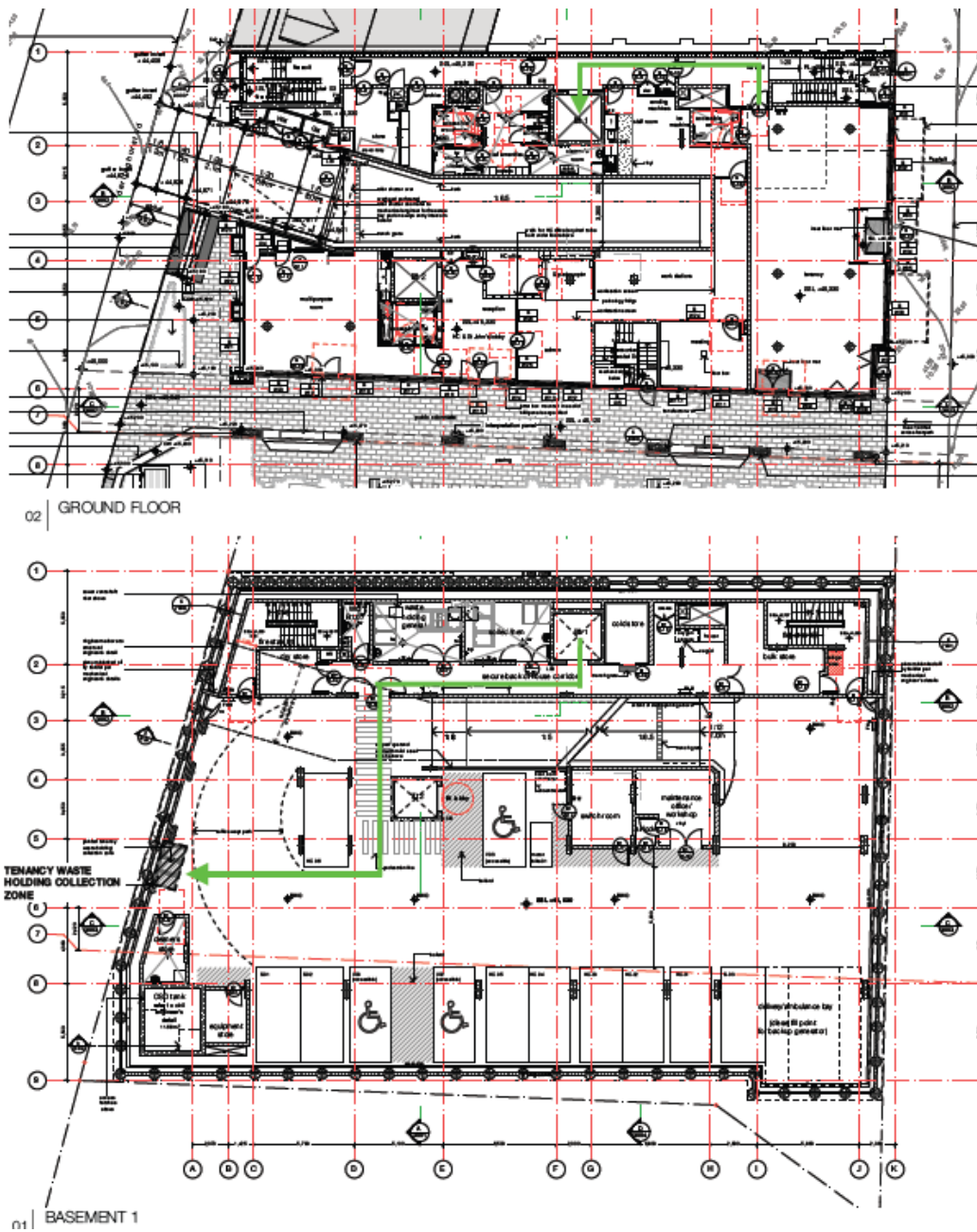


Figure 11: Existing ground floor and basement access route for waste storage area





**Figure 12:** Proposed photomontage drawing extract, including tenancy entrance from colonnade and open terrace area with bi-fold doors on corner

### Assessment

22. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

### Heritage Act 1977

23. The subject site is listed as an item known as 'St John's Church and Rectory' on the State Heritage Register under the Heritage Act, 1977, item number 00461.
24. The Applicant submitted a Heritage Impact Statement identifying that as the proposed works are internal alterations with external signage and a change use, it is identified as being in accordance with the Standard Exemptions 'Exemption 3: alteration to non-significant fabric' under Section 57 of the Heritage Act, 1977.
25. This is considered satisfactory and in accordance with listed exemptions and is therefore not integrated development on this basis.

### State Environmental Planning Policies

#### State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience Hazards SEPP)

26. The aim of Chapter 4 of the Resilience and Hazards SEPP 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.
27. The proposal involves internal alterations and change of use from retail to a community facility. No ground works are proposed and the premise which the tenancy resides within is a recently constructed modern building for an aged care facility.

28. The site was previously identified as a contaminated site due to the historical use as a vehicle service station.
29. The substantive development consent D/2016/476 for the aged care facility required an endorsed Final Site Audit Statement post remediation and registered Environmental Management Plan (which manages the basement parking ventilation) prior to issue of an Occupation Certificate.
30. Both were required to be received and accepted by Council. This was completed on 24 January 2023.

**State Environmental Planning Policy (Industry and Employment) 2021 Advertising and Signage (Industry and Employment SEPP)**

31. The aim of Chapter 3 of the Industry and Employment SEPP is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish.
32. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 1 is provided in the table below.
33. The proposed signage consists of a Victoria Street wayfinding window decal sign and façade mounted accessible entry sign directing towards the community facility entrance which contains the text "Please enter via other doors", "Entry via colonnade" and a directional arrow; and signage adjacent to the colonnade subject tenancy entrance depicting dual (immediately adjacent to one another) decal window signs with a 'HammondCare' logo and an entry arrow.

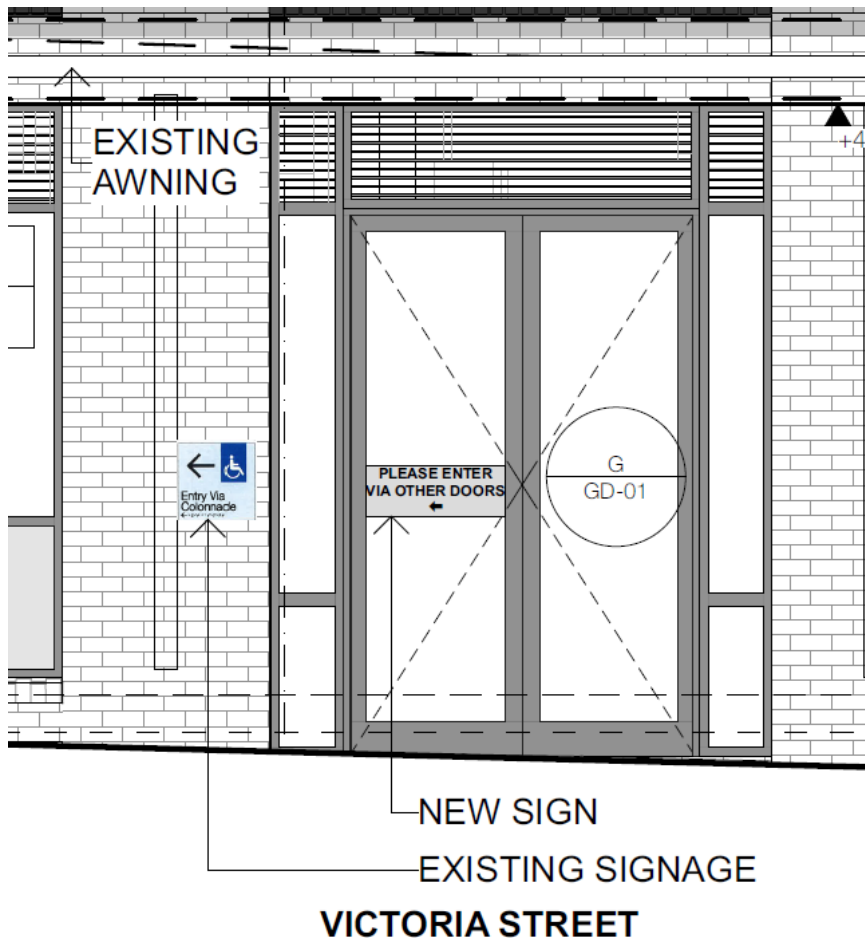
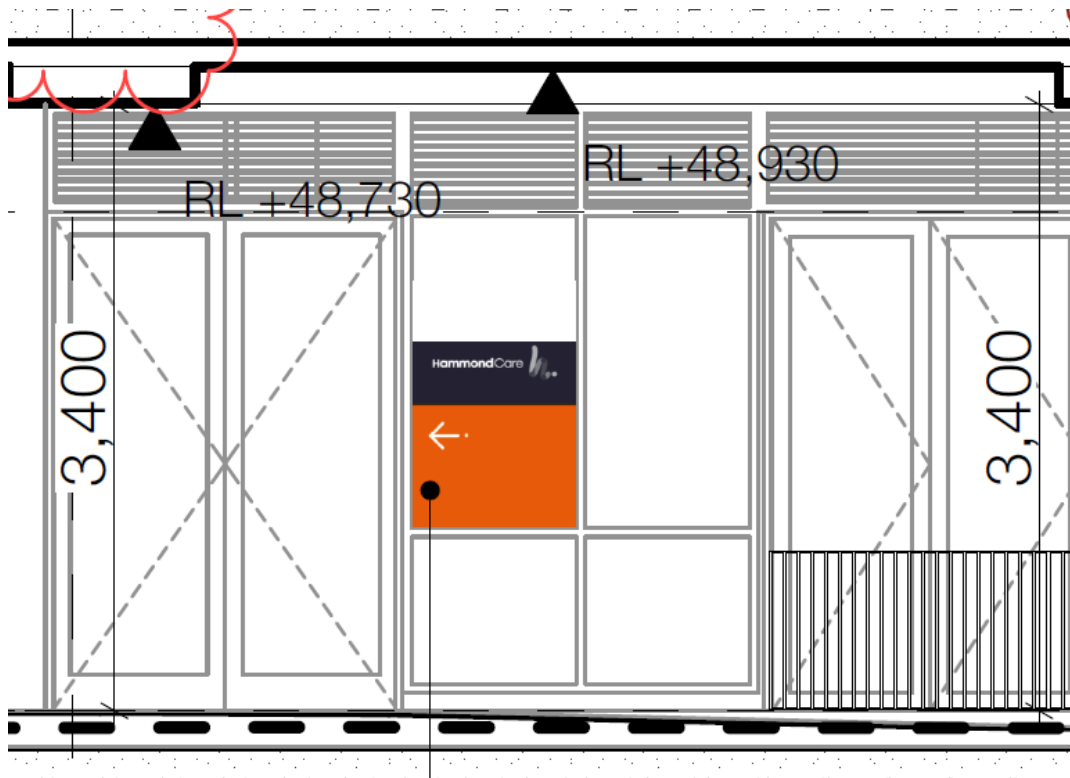


Figure 13: Image of proposed signage on Victoria Street



DECAL SIGNAGE AT WINDOW  
TOP SIGN WITH HAMMONDCARE  
LOGO, DULUX MONUMENT 400 x  
200  
BOTTOM SIGN, DULUX KINGS  
CANYON 400x300

Figure 14: Image of proposed signage at the colonnade entrance

Provision	Compliance	Comment
1. Character of the area	Yes	The proposed signage is generally consistent with the strategy approved under development consent D/2018/426.  The subject site is not located within a signage precinct.
2. Special areas	Yes	The proposed signage does not detract from the amenity or visual quality of the locality adjoining State heritage item or heritage conservation area, due to the placement, colours and finishes, and dimensions.
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage is of an appropriate scale, proportion and form and provides a positive contribution to the streetscape and setting of the area through wayfinding and identification.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable and the materiality is compatible with the finishes and colours of the building.
6. Associated devices and logos	Yes	The business logo has been designed as an integral part of the signage on which it is to be displayed and is not obtrusive.
7. Illumination	Yes	Not applicable.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas given the dimensions, location, colours and finishes.

34. The proposed signage is consistent with the objectives of Chapter 3 of the Industry and Employment SEPP as set out in Clause 3.1 and satisfies the assessment criteria specified in Schedule 5.

### Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)

35. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the Biodiversity and Conservation SEPP. The Biodiversity and Conservation SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
36. 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 Biodiversity and Conservation SEPP are not applicable to the proposed development.

### Local Environmental Plans

#### Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

37. An assessment of the proposed development against the relevant provisions of the Sydney LEP 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 in the B4 Mixed Use zone.</p> <p>A Community Facility is defined under the Sydney LEP 2012 as a building or place:</p> <p>(a) owned or controlled by a public authority or a non-profit community organisation, and</p> <p>(b) used for the physical, social, cultural or intellectual development or welfare of the community.</p> <p>The proposed development falls within the above definition as the service provider, HammondCare, is a registered charity (non-profit community organisation), and the use of the subject tenancy is a related service provided for the welfare of the community.</p> <p>The proposed development is defined as alterations and additions with change of use to a community facility and is permissible with consent in the zone.</p>

Provision	Compliance	Comment
		The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	<p>A maximum FSR of 2:1 is permitted under Clause 4.4 of the Sydney LEP 2012.</p> <p>The residential aged care facility has a permissible FSR of 2.5:1 (an additional 0.5:1).</p> <p>This is available under Section 87, Part 5, Chapter 3 of the State Environmental Planning Policy (Housing) 2021. A total gross floor area (GFA) of 3240 square metres is permitted.</p> <p>The total site area is approximately 1296 square metres, consisting of the residential aged care facility and tenancy, colonnade and pedestrian through link including the grass landscaping.</p> <p>The existing site has an approved FSR of 1.96:1 or GFA of 2275.5 square metres.</p> <p>A minor increase of 4 square metres of GFA is proposed due to the conversion of the existing internal entry stairs from Victoria Street to a display area. The additional GFA is negligible and does not result in any non-compliance with FSR.</p> <p>The proposed development complies with the maximum FSR development standard.</p>

**Part 5 Miscellaneous provisions**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
5.10 Heritage conservation	Yes, subject to deferred commencement and conditions	<p>The site is within the curtilage of a state heritage item (00461) and is located within a heritage conservation area (C12).</p> <p>The proposed development is identified as being in accordance with the standard exemptions available under the Heritage Act, 1977 by the applicant. This has been deemed to be acceptable by the City's heritage specialist.</p> <p>As the works occur within a recently constructed modern building without external alterations, the proposal is minor and will not adversely impact the heritage significance of the site or conservation area.</p> <p>The subject tenancy Occupation Certificate may prevail over the requirement for obtaining a Final Occupation Certificate in relate to the substantive development consent D/2016/476, impacting the completion of the heritage conservation management plan and schedule of works. Deferred commencement and conditions are recommended in Attachment A to remedy the discrepancy between the two development applications.</p> <p>Refer to the further assessment details provided in the 'Discussion' section below.</p>

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

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development uses materials and detailing, that are compatible with the existing development and signage strategy.



Provision	Compliance	Comment
		The development satisfies design excellence provisions.

#### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils.</p> <p>The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>

### Development Control Plans

#### Sydney Development Control Plan 2012 (Sydney DCP 2012)

38. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided in the following headings and table sections.

#### Section 2 – Locality Statements

39. The site is located within the Darlinghurst West locality. The proposed development is in keeping with the unique character and the design principles of the Darlinghurst West locality, in that the proposal:
- (a) does not detract from the State and Conservation Area heritage values of the site and local area;
  - (b) utilises the existing subject tenancy premises without significant alterations to the site building;
  - (c) provides a referral-based community service facility focusing on health improvements;
  - (d) improves the St Johns Church pedestrian link through additional passive surveillance, security and activity; and
  - (e) improves Victoria Street active frontage for the premise through visual displays and active use of the premises, with minimal privacy opaque glazing to the full length windows.

## Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The subject site fronts Victoria Street and the proposed use provides activity and improved visual interest to and from the street.</p> <p>The proposed signage will ensure legible access points and identification to the premise, the reduced window glazing will not impede visual connectivity between the subject site and the street, and the proposal will not impact on heritage values of the area.</p> <p>Conditions are included in the attached Notice of Determination requiring the provision of CCTV for improved safety and security outcomes for the subject locality.</p> <p>Refer to the further assessment provided in the 'Discussion' section below.</p>
3.9 Heritage	Yes, subject to deferred commencement and conditions	<p>The site is within the curtilage of a state heritage item (00461) and is located in a heritage conservation area (C12).</p> <p>The proposed development is identified as being in accordance with the Heritage Act s57 Standard Exemptions. As the works occur within a recently constructed modern building without external alterations and identified as a neutral building on the City's <i>building contributions map</i>, the proposal is minor, respects the existing pattern and built form, and will not adversely impact the heritage significance of the site or conservation area.</p> <p>The subject tenancy Occupation Certificate may prevail over the requirement for obtaining a Final Occupation Certificate in relate to the substantive development consent D/2016/476, impacting the completion of the heritage conservation management plan and schedule of works.</p>

Provision	Compliance	Comment
		<p>Deferred commencement and conditions are recommended in Attachment A to remedy the discrepancy between the two development applications.</p> <p>Refer to the further assessment provided in the 'Discussion' section below.</p>
3.14 Waste	Yes, subject to conditions	<p>Conditions are recommended at Attachment A to ensure that the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development, and for consistency with the previous approval requiring separate waste management and access.</p>
3.16 Signage and Advertising	Yes, subject to conditions	<p>The proposed development includes the provision of wayfinding signage, comprising a window decal with the text 'please enter via other doors' and an arrow facing Victoria Street, and dual decal window signs with the HammondCare logo and an arrow facing the colonnade.</p> <p>The site is not located within a signage precinct.</p> <p>The proposed signage is in accordance with the requirements of the Industry and Employment SEPP and the objectives and provisions of Section 3.16 of the Sydney DCP 2012.</p> <p>The proposed signage is not illuminated or detracting from the heritage curtilage, does not prevent active street views, and provides appropriate wayfinding complimentary to existing signage.</p> <p>The proposal is generally consistent with the signage strategy approved for the site by the City on 1 June 2018, which was a conditioned requirement of the original site re-development</p>

Provision	Compliance	Comment
		plans approved on 27 February 2017 for the residential aged care facility.

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The proposal to change the use to a community facility maintains the existing floor to ceiling height which complies with the planning controls.
4.2.3 Amenity		
4.2.3.11 Acoustic privacy	Yes, subject to conditions	<p>An acoustic statement was submitted with the application by JHA Senior Acoustic Engineer confirming the proposed use of equipment within the community facility would not impact on the aged-care residential use above, given the existing slab, construction details and facade treatments.</p> <p>The proposed use of bi-fold doors in the south-east corner providing for outdoor seating did not raise any concerns for noise travel, as the community facility will not be installing speakers or any amplified music on site. In addition, the internal kitchenette and activity area are separated from the outdoor seating space by the lounge area and internal walls, and the colonnade extends adjacent/above the outdoor seating area.</p> <p>Conditions are recommended at Attachment A, to reduce the potential for externally generated noise to the above use, given the kitchenette facility and noting the acoustic statement refers generally to 'standard tenancy operations', and TV use.</p>

Provision	Compliance	Comment
4.2.6 Waste and recycling Management	Yes, subject to conditions	Conditions are recommended at Attachment A, to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development, and for consistency with the previous approval requiring separate waste management and access.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

## Discussion

### Management and Security

40. Collaborating with outreach services to identify persons at risk, the community facility provides consultation, assistance and tailored care to improve transitions to permanent residential care or permanent place of residence, and mitigation measures to reduce potential return to at-risk situations.
41. The facility works with Local Aged Care Assessment (ACAT - NSW Health).
42. The community facility operations do not provide a walk-in option. The referral-based system requires personal details and a referral on assessment provided by the outreach services, HammondCare, and Regional Assessment Service (RAS) assessors. This is to ensure controlled access, security and personal safety is maintained for those utilising or providing the service and the local community.
43. HammondCare has an existing Plan of Management (PoM) associated with the Residential Aged Care residency of the premise. The PoM has been revised to incorporate the community facility, providing focus on individual care management with suitably trained staff including specialised trauma-informed care, mental health and building resilience training.
44. An approximate ratio of one staff to every four residents is indicated in the PoM. However, the PoM does not separately detail the differences required in care and operations applicable to the residential and community facility, including steps during emergency or security breach situations. Furthermore, the Statement of Environmental Effects specifies information not identified in the PoM, and that the community facility will have generally two (2) staff on site whilst in operation but the overall staff on the premise (being both the aged care facility and the community facility) will not change as a result.

45. As part of consultation with NSW Police it was recommended that a minimum of two (2) staff are available at all times during operation of the community facility. In addition, while the use of the premise will provide passive surveillance for Victoria Street and the colonnade, HD CCTV should be installed at the entrance to assist in managing any potential situations.
46. Conditions are included in the recommended conditions of consent to ensure adequate CCTV surveillance, and that the Plan of Management is revised in accordance with the requirements in Schedule 3 of the Sydney DCP 2012 to ensure adequate staff on site and all operations and procedures are adequately detailed.

#### **Heritage conservation - standard exemptions and conservation management**

47. The site is within the curtilage of a state heritage item and is in a heritage conservation area.
48. The heritage item is the 'St John's Church and Rectory', classified on the State Heritage Register (Register) as significant due to being part of the few unaltered Edmund Blakett buildings within Australia. The church, with its rectory, grounds, and fence, form the most intact 19th century group of church buildings in Sydney, with the tower and spire providing a major contribution to the Darlinghurst Streetscape.
49. While the map for the item includes both 120 and 118A Darlinghurst Road within the curtilage boundary, the State Heritage Register specifically indicates that the listing relates only to 120 Darlinghurst Road, Darlinghurst.
50. 118A Darlinghurst Road, Darlinghurst, in which the recently constructed modern building is located, is separated from the church by a pedestrian through-link. The building is identified on the Building Contributions Map as being 'neutral' in the heritage conservation, neither detracting from nor contributing to the area's heritage values. Historically, the subject lot was a car wash facility. The subject tenancy is located on the ground floor level of this building.
51. With consideration of the curtilage of the heritage item, the proposed development is identified as being exempt under Section 57 the Heritage Act, 1977 and no concerns were raised by the City's Heritage Specialist on this basis.
52. Development consent D/2016/476 (as modified) was granted for the whole of site being 118A and 120 Darlinghurst Road, Darlinghurst. This included, and sat within the curtilage of, the state heritage item. The consent included the requirement for endorsement from Heritage NSW for the revision of a heritage conservation management plan, defining urgent works, and a works schedule under condition 119, in relation the state heritage item.
53. As part of subsequent modifications, the consent was amended to permit an interim occupation certificate allowing for the operation of the residential aged care facility, prior to the completion of urgent conservation works.
54. The urgent conservation works and works schedule were subject to obtaining an endorsed heritage conservation management plan from Heritage NSW, for the St John's Anglican Church.
55. Condition 119 has not yet been endorsed by Heritage NSW as part of the relevant s60 and s65A lodgements, and the applicant has advised that discussions with Heritage NSW regarding the conservation management plan and schedule of works were on-going as of February 2021.

56. To date, no confirmation has been received from the applicant that the condition has been satisfied; the conservation management plan, schedule of works and defined urgent works are not confirmed as endorsed.
57. The current application for the tenancy will require an Occupation Certificate prior to commencing operations as a community facility. Issuing of an Occupation Certificate may prevail the need to obtain the 'final occupation certificate' under D/2016/476 which condition 119 must be satisfied.
58. To ensure consistency across the two applications for issuing an occupation certificate which covers the whole of site in respect of both developments, deferred commencement and conditions of consent are recommended to ensure the outstanding conditions under D/2016/476 are either satisfied or otherwise resolved.

#### **Public domain - active use and frontages**

59. Development consent D/2016/476 was granted for the built form of the subject premises and included an undefined 'retail tenancy on ground floor fronting Victoria Street'.
60. The consent included a condition for the separate tenancy to be occupied by a 'active use consistent with surrounding development' and limited to the hours of operation to between 8:00am and 7:00pm, Monday to Sunday.
61. The intention of the condition is to ensure that any use for the space is designed to activate the area in a manner which integrates with the surrounding locality and benefits the community.
62. The provision of a services for at-risk persons by a not-for-profit organisation constitutes a community facility is a permissible use in the zone. The use, which is intended to operate between 6:00am and 10:00pm, is consistent with the surrounding development, given the current community services, facilities, and retail premises in the local area, and need for specialised community services for people in vulnerable positions or situations, as identified by the City's Social Strategy and Safe Cities units, and NSW Health.
63. The community facility is provided on a referral-based system in collaboration with other health and well-being related services primarily located within area and Sydney local government area. There is no walk-in option to ensure management of the premises and safety for individual needs.
64. While the primary entrance will be situated near the corner of the colonnade, the tall windows fronting Victoria Street are conditioned to have a reduced opaque frosting, limited to no more than 30 per cent in accordance with the Sydney DCP 2012 section 3.2.3 'active frontages', providing a balance between privacy for the occupants of the premises and views of internal activity from the street.
65. In addition, the corner bi-fold glass doors provide for an indoor/outdoor seating area residing within the tenancy building outline and consisting of balustrades to define the specific space when the bi-fold doors are open. A display area will be utilised in the central area of the premises fronting Victoria Street, promoting activity and providing visual interest.
66. Retractable footpath awnings in accordance with Section 3.2.4 are already fixed to the premises along Victoria Street, providing for enhanced pedestrian amenity and attractiveness in the immediate locality of the subject tenancy.

67. It is considered that the proposal delivers a reasonable balance of street activation while affording a level of privacy to users of the community facility.

## Consultation

### Internal Referrals

68. The application was discussed with Council's:
- (a) Building Services Unit;
  - (b) Environmental Health Unit;
  - (c) Heritage and Urban Design Unit;
  - (d) Public Domain Unit;
  - (e) Safe City Unit;
  - (f) Social Strategy Unit;
  - (g) Waste management Unit.
69. The above advised that the proposal is acceptable subject to conditions.
70. Where appropriate the conditions are included in the recommended conditions of consent at Attachment A.

### External Referrals

#### NSW Police

71. The application was referred to NSW Police for comment.
72. A response was received raising no objections to the proposed development subject to recommendations.

### Advertising and Notification

73. In accordance with the City of Sydney Community Participation Plan, the proposed development was notified for a period of 21 days between 6 June 2022 and 28 June 2022.
74. The amended application submitted on 18 August 2022 were not required to be notified under the City of Sydney Community Participation Plan, given the amendments do not result in significant additional environmental impacts.
75. A total of 378 properties were notified and 28 submissions were received by the City in response to the public exhibition of the application.
76. The submissions comprise 1 submission being in comment, 1 submission being in support, and 26 submissions being in objection to the proposed development.



77. The submissions made in objection to the proposal raised the following issues of concern, which are summarised and addressed below:

- (a) **Issue:** There is community support for the approved retail tenancy, as its provision was 'promised'. The space has been vacant since it was approved and should be used for retail to improve street activation and vibrancy including the green park space and colonnade.

**Response:** The proposal is assessed against the applicable planning controls. The consent for the redevelopment of the subject site has been considered in the assessment. The proposal comprises a permissible use which meets the intent of the substantive approval, benefitting the community and improving activation and vibrancy of the local area.

- (b) **Issue:** There are already too many similar facilities in the area and providing another will impact the amenity of the local area. Similar facilities include needle exchanges, Rough Edges drop-in centre, Mental Health adjacent to Green Park Hotel, injection room and the HammondCare residential offering.

**Response:** The proposed use is a permissible use providing services to the community with no unreasonable impacts.

- (c) **Issue:** A 'social club' will attract further gatherings and anti-social behaviour, loitering and residents drinking in excess in front of the premise; increased night-time noise, begging, rubbish and smoking, and rough sleepers on the street in the vicinity.

**Response:** The proposed use referred to by the applicant as a "social club" is appropriately characterised as a community facility - refer to the Discussion section of the report. Concerns relating to gatherings and antisocial behaviour etc. can appropriately be managed through a Management Plan. Recommended conditions of consent address the need for an updated Plan of Management.

- (d) **Issue:** Concern that the all-frosted glass windows will close off the space and reduce street activation and vibrancy, further diminishing the character in Darlinghurst. The space should be used for alternative options for all-of-community activity which doesn't require extensive privacy measures.

**Response:** The community facility is conditioned to have reduced window frosting in accordance with the Sydney DCP 2012 provision; has window displays adjacent to the non-glazed Victoria Street doors, and the corner bi-folding doors for an external active space which provides a balance of privacy for those utilising the service and for visual interaction with passing pedestrians.

- (e) **Issue:** Adequate social areas for residents are already provided in the existing building. Many residents spend time outside the building frontage, so there's no need to create an enclosed and screened area for privacy. Internal space should be used for this purpose or the existing community hall.

**Response:** The community facility is a permissible use. The proposed development is a referral-based system for vulnerable people, located within a dedicated safe place and with skilled staff available from both within the HammondCare aged care facility, and from external health and wellbeing related support services.

- (f) **Issue:** The building has blocked sunlight which created a less appealing street.
- Response:** The existing building was granted development consent in 2016. No changes are proposed to be existing built form, with all proposed works being internal to the building. There is no impact to sunlight access resulting from the proposal.
- (g) **Issue:** Lack of display on site and not receiving public exhibition notice as an adjoining owner. No consultation between HammondCare and the community.
- Response:** The application was notified between 6 June and 28 June 2022 in accordance with the City's Community Participation Plan, with site notices facing both the footway on Victoria Street and on Darlinghurst Road, and with notification letters issued to a total of 378 properties within a 50-metre radius of the site.
- (h) **Issue:** Considered to be financially wasteful and neglectful use of grants and funding by HammondCare.
- Response:** Any grants provided by other government agencies and how these are utilised by the receiver are not relevant to the assessment of the subject development application.
- (i) **Issue:** Impact on Victoria Street 'High Street' vibrancy, sense of community and active street frontages..
- Response:** Victoria Street is not identified in the City's planning controls as a 'High Street' in the surrounding locality. William and Oxford Streets are the identified 'High Streets'. Active street frontages and the vibrancy of the area has been considered for Victoria Street in accordance with the City's planning controls.

## Financial Contributions

### Contribution under Section 7.11 of the Environmental Planning and Assessment Act, 1979

78. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
79. Credits have been applied for the most recent approved use of the site.
80. The tenancy within 118A Darlinghurst Road was previously approved as retail premises with a gross floor area of 131 square metres.
81. The proposal slightly increases the GFA and includes a use which falls under 'Health Services Facility (excluding hospitals)', increasing the working population of the site. The calculated population increased by 0.8, requiring a contribution to be paid.
82. A condition relating to this development contribution has been included in the recommended conditions of consent, Attachment A. The condition requires the contribution to be paid prior to the issue of a construction certificate.

**Contribution under Section 7.13 of the Sydney LEP 2012**

83. As the development is for a community facility, the development is not subject to a Section 7.13 affordable housing contribution.

**Relevant Legislation**

84. Environmental Planning and Assessment Act 1979.
85. Heritage Act 1977.
86. Sydney LEP 2012.
87. Sydney DCP 2012.

**Conclusion**

88. Having regard to all of the above matters, the proposed development will not result in any significantly adverse impacts on either the natural and built environment, the adjacent State heritage item and conservation area heritage values, or the locality in general.
89. The proposed development generally satisfies the relevant provisions of the applicable environmental planning instruments and policies, including the Sydney LEP 2012 and Sydney DCP 2012, and is acceptable on this basis.
90. The development is suitable for the site, and is in the public interest, subject to the deferred commencement approval.
91. Issues raised in all submissions have been considered in the assessment and, where appropriate, conditions are recommended at Attachment A to address these issues.

**ANDREW THOMAS**

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