

**Item 4.****Development Application: 171B Botany Road, Waterloo - D/2022/79**

File No.: D/2022/79

**Summary**

<b>Date of Submission:</b>	17 February 2022
<b>Amended:</b>	Amended plans received on 11 October 2022 and 22 December 2022
<b>Applicant:</b>	RIGO Pty Ltd
<b>Architect/Designer:</b>	DKO Architecture
<b>Developer:</b>	RIGO Pty Ltd
<b>Owner:</b>	FXY Pty Ltd
<b>Planning Consultant:</b>	Sutherland and Associates Planning
<b>DAPRS:</b>	3 May 2022
<b>Cost of Works:</b>	\$20,090,929
<b>Zoning:</b>	The site is located in the B4 Mixed Use zone. The proposed development is a mixed-use development comprising retail premises and a residential flat building which is permissible with consent in the zone.
<b>Proposal Summary:</b>	<p>The Development Application (DA) seeks consent for the demolition of the existing building, excavation and remediation works and the construction of a four-storey mixed use development comprising:</p> <ul style="list-style-type: none"><li>• one basement level;</li><li>• two ground floor retail premises fronting Botany Road; and</li><li>• forty-seven (47) apartments within two buildings, one building fronting Botany Road and the other fronting Cope Street.</li></ul>

### **Notification and Exhibition**

The application was notified for a period of 21 days between 1 March 2022 and 23 March 2022. Two submissions were received.

The concerns raised in submissions include: dust and debris during construction works, dilapidation to nearby properties and the lack of information regarding sustainability commitments submitted with the application.

After the first notification and exhibition period the DA was amended in response to issues raised by council officers to address acoustic privacy and natural ventilation to apartments, provide a three-metre setback to Cope Street, increase deep soil provision, reduce car parking, improve the building entrance design and to reduce the extent of the driveway.

The amended design was renotified for a period of 14 days between 11 October 2022 and 26 October 2022. No further submissions were received.

### **Assessment**

The proposed development exceeds the 15m height control contained in the Sydney LEP 2012 (the LEP) by 1.76m or 12 per cent. The building elements that exceed the height control are located on the roof of both buildings and include plant, parapets, clerestory windows, lift overruns and the corner of the roof. The highest exceedance is the plant area of the Cope Street building.

A written justification for the proposed variation to the building height development standard was submitted in accordance with clause 4.6 of the LEP. The statement demonstrates that compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravention of the standard.

The proposed development is consistent with the objectives of the Zone B4 Mixed Use and the height of buildings development standard and is in the public interest. For these reasons the proposed variation of the building height development standard is supported.

The proposed development complies with the relevant floor space ratio controls and other provisions of the LEP. It is consistent with the design quality principles contained within State Environmental Planning Policy No 65-Design Quality of Residential Apartment Development (SEPP 65), the objectives of the Apartment Design Guide (ADG) and

the detailed provisions contained within the Sydney DCP 2012 (DCP).

The proposed development exhibits design excellence and provides an appropriate contribution that is suitable in terms of its context, scale and built form which is consistent with the desired future character of the area, as expressed in the applicable planning policies.

The development application is referred to the Local Planning Panel for determination as it is subject to the provisions of SEPP 65.

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP No 65—Design Quality of Residential Apartment Development
- (iv) SEPP (Resilience and Hazards) 2021
- (v) SEPP (Transport and Infrastructure) 2021
- (vi) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B1. Selected Drawings
- B2. Photomontages
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Submissions (Confidential)

## Recommendation

It is resolved that:

- (A) the variation requested to the Height of Buildings development standard, in accordance with clause 4.6 exceptions to development standards of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) development consent be granted to Development Application No. D/2022/79 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 site is located in the Zone B4 Mixed Use. The proposed development comprises retail and residential uses which are permitted with consent in the zone.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) the applicant's written request to contravene the Height of Buildings development standard has adequately demonstrated the matters specified under clause 4.6(3) of the Sydney Local Environmental Plan 2012, that compliance with the Height of Buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney Local Environmental Plan 2012; and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the Zone B4 Mixed Use and the Height of Buildings development standard.
- (C) The proposed development complies with the maximum floor space ratio development standard contained in clause 4.4 of the Sydney Local Environmental Plan 2012.
- (D) The proposed development provides an appropriate contribution that is suitable in terms of its context, scale and built form which is consistent with the desired future character of the area. As such, the proposed development exhibits design excellence in accordance with the requirements contained in clause 6.21C of the Sydney Local Environmental Plan 2012.
- (E) The development is consistent with the objectives of the Sydney Development Control Plan 2012.
- (F) Suitable conditions of consent are recommended and the development is considered to be in the public interest.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 2 in DP 841108, known as 171B Botany Road, Waterloo. It is irregular in shape with area of 2,349sqm. It has a primary street frontage of 50.14 metres to Botany Road to the west and a secondary street frontage of 44.54 metres to Cope Street to the east. The site is located between the intersections of Botany Road and John Street to the north and Botany Road and McEvoy Street to the south. Levels on the site fall by 2.1m from the site's north-western corner near Botany Road to the its north-eastern corner near Cope Street.
2. The site contains a single storey warehouse / commercial building that covers the majority of the site. The building is generally built to the Botany Road boundary with a staggered street alignment. A setback of 5.5m is provided to Cope Street which provides for vehicular parking and servicing. The existing building has a zero setback to the northern and southern boundaries.
3. The surrounding area is characterised by a mixture of residential and commercial uses.
4. Adjacent to the north is a four storey shop top housing development comprising 18 apartments and a retail tenancy at ground floor at 169 Botany Road.
5. On the opposite, eastern side of Cope Street is a series of three storey walk-up apartment buildings owned by Land and Housing Corporation (LAHC) and which form part of the wider Waterloo South Precinct. The LAHC land is the subject of a Planning Proposal that has been approved and the amended planning controls are in force to provide for around 3,000 dwellings within the precinct. These new controls permit a building between 27 to 33 storeys in height and buildings six to 13 storeys in height directly opposite the subject site on the eastern side of Cope Street.
6. Adjacent to the south of the site is a two storey warehouse/ commercial building with basement parking at 175-177 Botany Road.
7. To the southwest of the site, on the opposite side of Botany Road is a two storey former warehouse building which has been converted into a number of commercial tenancies at 204-218 Botany Road.
8. To the northwest of the site, on the opposite side of Botany Road is a specialised retail premises with a large forecourt area and a single storey commercial building at 186-202 Botany Road.
9. The site is not located within a heritage conservation area and does not contain a heritage item. About 15m north of the site, is a row of terrace houses fronting John Street, that are identified as a local heritage item (I2087 - known as Gordon Terrace).
10. The site is located within the Regent Street / Botany Road locality and is identified as being subject to flooding.
11. A site visit was carried out on 11 April 2022. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Botany Road



Figure 3: View of site looking north along Botany Road



Figure 4: Site and adjoining residential development to north at 169 Botany Road



**Figure 5:** View of subject and adjoining commercial development to the south at 175-177 Botany Road



**Figure 6:** Hardware and building supplies facility opposite the site at 186-202 Botany Road





Figure 7: Commercial development opposite the site at 204-218 Botany Road



Figure 8: Rear of the site viewed from Cope Street



**Figure 9:** Residential apartments at 169 Botany Road adjacent to the north of the subject site



**Figure 10:** LAHC apartments located to the east of the site within the Waterloo South precinct



**Figure 11:** View of site and adjoining commercial development at 175-177 Botany Road fronting Cope Street

## History Relevant to the Development Application

### Development Application History

12. The following applications are relevant to this development application:

- **D/2016/41** - A DA was lodged on 15 January 2016 for the construction of a part two storey, part four storey residential flat building to provide 51 dwellings on behalf of Defence Housing Australia. The application was subsequently withdrawn on 18 April 2016.

### Application Chronology

13. The below provides an overview of the application chronology:

- **1 March 2022 - 23 March 2022** - The application was notified for a period of 21 days.
- **9 March 2022** - Sydney Metro requested additional information relating to the submitted Structural Impact Assessment Report and the Electrolysis Report.
- **14 March 2022** - Transport for NSW provided concurrence in accordance with Section 138 of the Roads Act, 1993 and clause 2.118 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).
- **28 March 2022** - The applicant was issued with a request for additional information (RFI) relating to an updated acoustic report.

- **3 May 2022** - The application was referred to the City's Design Advisory Panel Residential Subcommittee (DAPRS) for comment. DAPRS made the following recommendations:
  - Performance of the residential accommodation to be analysed in the context of the Waterloo Planning Proposal.
  - Naturally cross-ventilated apartments to be re-calculated to exclude single aspect apartments.
  - Window operability to be reviewed, balancing acoustic issues with amenity levels.
  - Solar access to communal open space (COS) to be reviewed and additional 'view from sun' diagrams required.
  - Interaction between the retail frontage facing the courtyard to be reconsidered to maintain privacy and amenity for residents.
  - Acoustic report to be updated to reflect post-COVID acoustic traffic conditions along Botany Road.
  - Co-ordination required between the acoustic strategies employed to noise affected apartments and the architectural plans.
  - Provision of a 3m setback to Cope Street would protect existing street trees along Cope Street, increase privacy for residents and provide more space for landscaping for the ground floor apartments.
  - Compliant provision of 10% deep soil required.
  - Consider increasing the level difference between the apartments and footpath on Cope Street to improve privacy and defensibility.
  - Street awning to Botany Road not required and it is preferred that street trees are planted in this location.
  - Consideration be given to the provision of communal open space on the roof.
  - The proposed materiality is generally supported.
  - Landscape maintenance strategy to be developed.
  - The depth of the residential entry from Cope Street should be considered in relation to safety issues.
  - Inconsistencies in the west elevation to Botany Road and the photomontage in relation to the upper-level southern apartments should be rectified.
  - Optimisation of the solar panel array to be considered.
  - All habitable rooms to be provided with windows.

- Some west facing bedrooms appear to have internal operable screens. Information is required if they obstruct ventilation.
- **24 May 2022** - An amended acoustic report was received.
- **20 June 2022** - A second RFI was issued which raised the following concerns:
  - Updated acoustic report required and acoustic treatments and passive ventilation measures to be recommended and detailed on the architectural plans.
  - Natural ventilation report, updated architectural plans and details are to be provided demonstrating the provision of both natural ventilation and acoustic amenity.
  - Provision of a 3m setback to Cope Street required.
  - Amendments to the architectural drawings are required to correct errors and denote no works within the public domain of Botany Road.
  - Recommendation for rooftop communal open space to be provided on Building A and Building B.
  - Provision of 10% deep soil required.
  - Additional landscaping details required.
  - Amendments to the Cope Street building entry required to address security issues and provision of a fence or secure boundary recommended to separate the retail space from the central common open space.
  - Review of apartments achieving natural cross-ventilation required.
  - Improved natural ventilation required within units.
  - Additional solar access information required.
  - Physical materials and finishes board to be submitted.
  - Re-design of the service vehicle parking bay required and width of the driveway to be reduced.
  - Submission of an Arboricultural Impact Assessment required.
  - Updated Waste Management Plan required.
  - Updated NatHERS documentation required.
- **15 July 2022** - A virtual meeting was held between the Applicant's project team and City staff to discuss the RFI, specifically in relation to the issue of noise and ventilation.
- **30 August 2022** - A virtual meeting was held between the Applicant's project team and City staff to discuss the Applicant's draft response to the RFI.

- **10 October 2022** - The Applicant submitted updated documentation in response to the RFI dated 20 June 2022. The updated documentation generally responded to the issues raised in the City's second RFI dated 20 June 2022. Updated documentation included:
  - Amended architectural drawings
  - Amended SEPP 65 Design Verification Statement and Urban Design Report
  - Amended landscape plans
  - Amended BASIX and NatHERS Certificates
  - Qualitative Natural Ventilation Assessment
  - Amended Noise and Vibration Impact Assessment
  - Traffic statement
  - Updated Waste Management Plan
  - Updated civil plans
  - Arborist Report
  - Amended Clause 4.6 Report relating to Height of Buildings Development Standard
- **11 October 2022 - 26 October 2022** - The amended application was re-notified for a period of 14 days.
- **22 November 2022** - A further RFI was issued to the applicant and which raised the following concerns:
  - Clarification was sought on the proposed acoustic measures within the noise affected apartments.
  - Provision of a schedule of windows and openings to habitable rooms demonstrating that the effective openable area (EOA) of each window achieves 5% of the floor area served.
  - Co-ordination between the landscape and architectural plans in relation to deep soil provision.
  - Amended landscape plans to detail facade planting and parapet planters.
  - Reduction of driveway width required, co-ordination of bicycle parking numbers, compliance of the bicycle spaces with AS 2890.3 and reconfiguration of the car parking space adjacent to the OSD tank.
  - Additional information required in relation to waste management.

- **12 December 2022** - Sydney Metro provided concurrence in accordance with section 2.99 of the Transport and Infrastructure SEPP.
- **22 December 2022** - The Applicant submitted updated documentation in response to the RFI dated 22 November 2022. Updated documentation included:
  - Amended architectural drawings
  - Updated SEPP 65 Design Verification Statement and Urban Design Report
  - Updated landscape plans
  - Updated Waste Management Plan
- **3 March 2023** - An updated Acoustic Report was requested demonstrating that all habitable rooms fronting Botany Road comply with the noise levels stipulated in Clause 2.120(3) of the Transport and Infrastructure SEPP in a ventilated state.
- **15 March 2023** - An updated Acoustic Report was issued by the applicant.

### Proposed Development

14. The subject DA (as amended) seeks consent for the following:

- Demolition of the existing building and existing structures on the site.
- Excavation and remediation works.
- Construction of a four storey mixed use development comprising two buildings known as Building A (fronting Botany Road) and Building B (fronting Cope Street) containing two retail tenancies fronting Botany Road and 47 apartments above a shared basement accommodating 36 car parking spaces.

15. Specifically, the works comprise:

#### Basement

- 36 car parking spaces comprising 26 residential spaces including seven accessible spaces, six visitor spaces including one accessible space and four retail spaces
- Four motorcycle spaces
- 47 residential bicycle cages, 11 visitor bicycle parking spaces
- 53 storage units
- Separate waste rooms for each building (A and B) and residential bulky goods storage
- Plant and services

**Ground**

- Vehicular access from Cope Street
- 4 x 2-bedroom units and 4 x 1-bedroom units
- Two retail tenancies fronting Botany Road
- Substation fronting Botany Road
- Communal open space
- Residential entries and lobbies fronting Cope Street and Botany Road
- Waste holding room
- Landscaping

**First, Second and Third Floors**

- 2 x 3-bedroom units, 8 x 2-bedroom units and 3 x 1-bedroom units
- Communal open space adjacent to lift lobbies

**Roof**

- Lift overrun
- Plant
- Photovoltaic cells
- Clerestory windows to third floor apartments

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



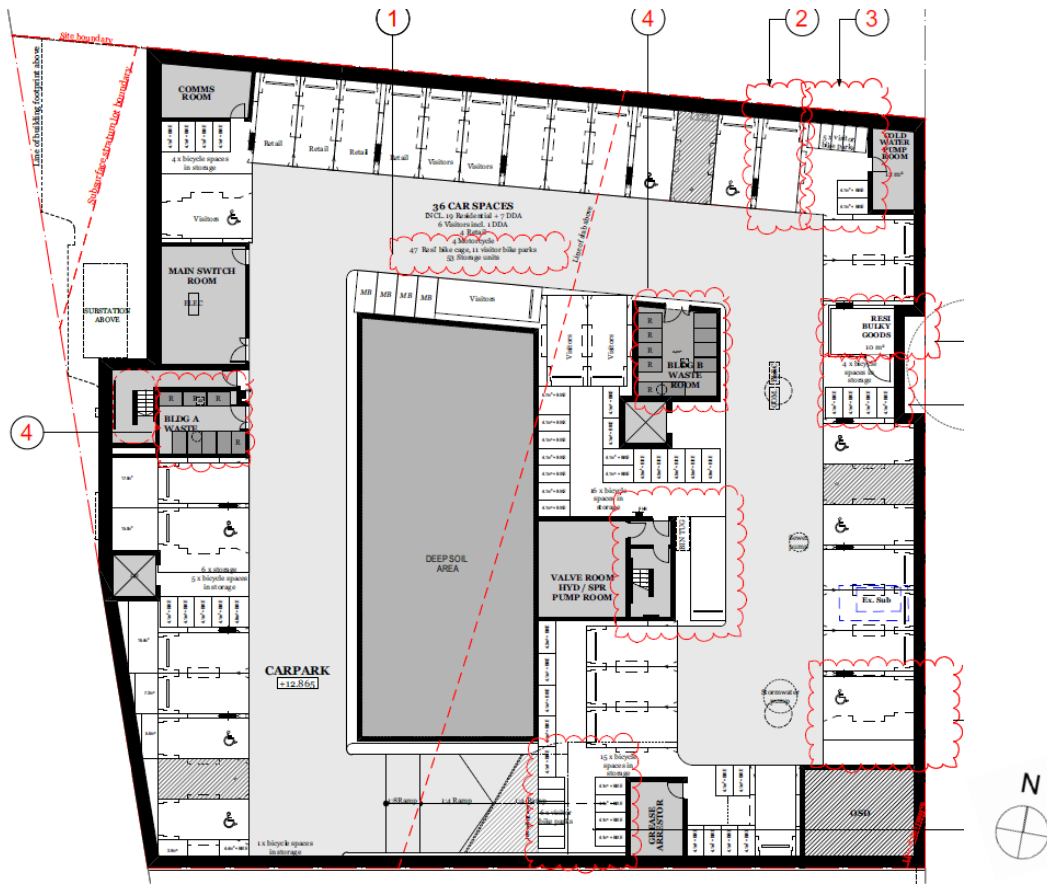


Figure 12: Proposed basement level



Figure 13: Proposed ground level



Figure 14: Proposed first floor



Figure 15: Proposed second floor



Figure 16: Proposed third floor

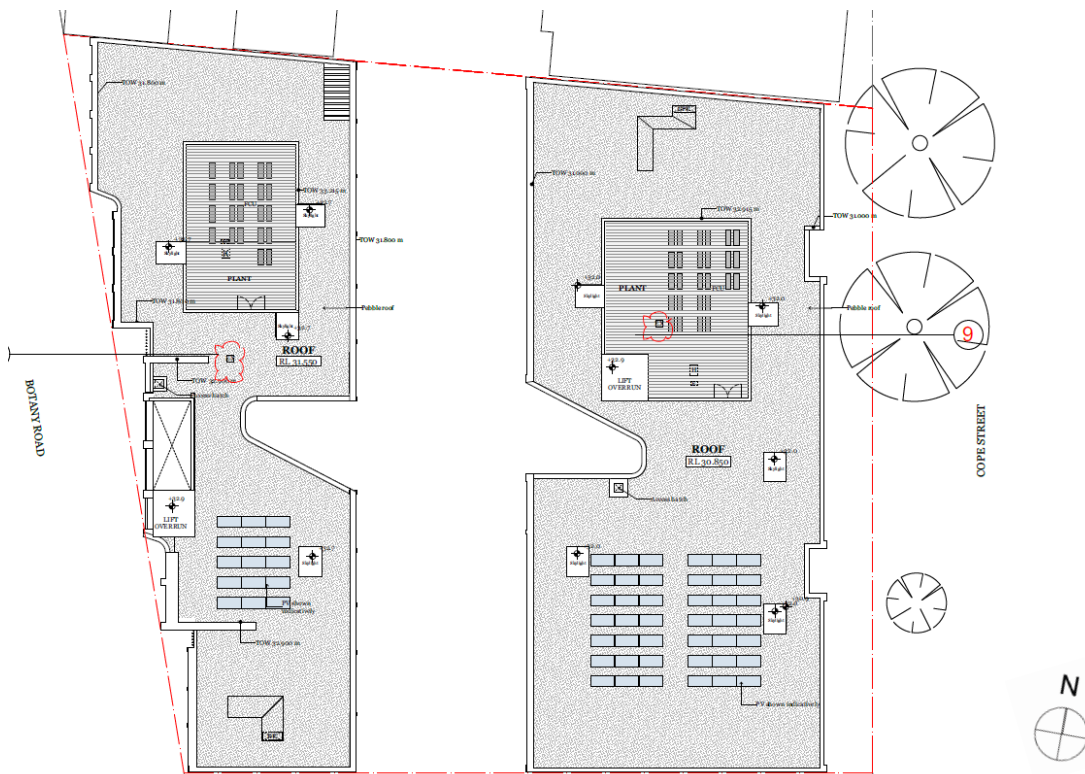


Figure 17: Proposed roof level





Figure 21: Proposed Cope Street (east) elevation

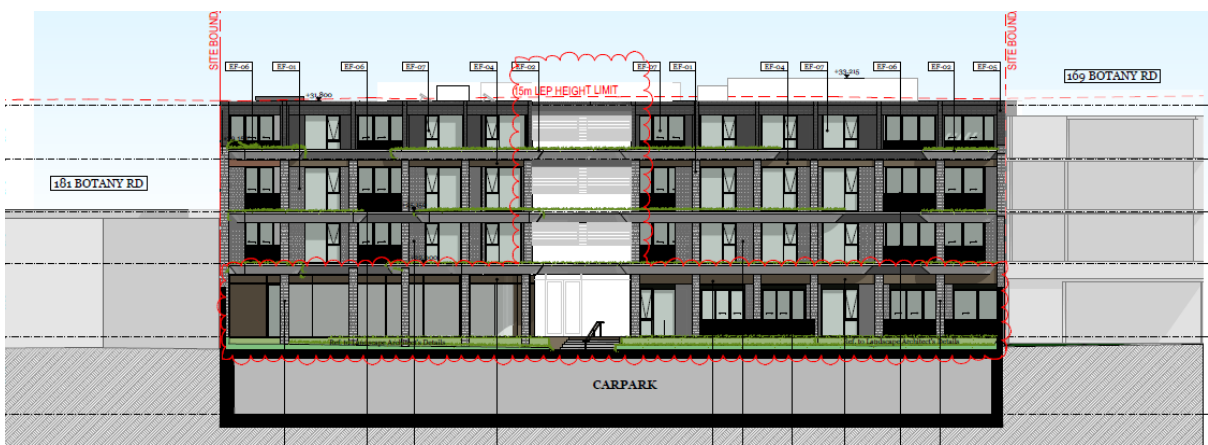


Figure 22: Proposed internal elevation looking towards Building A (fronting Botany Road)



Figure 23: Proposed internal elevation looking towards Building A (fronting Cope Street)

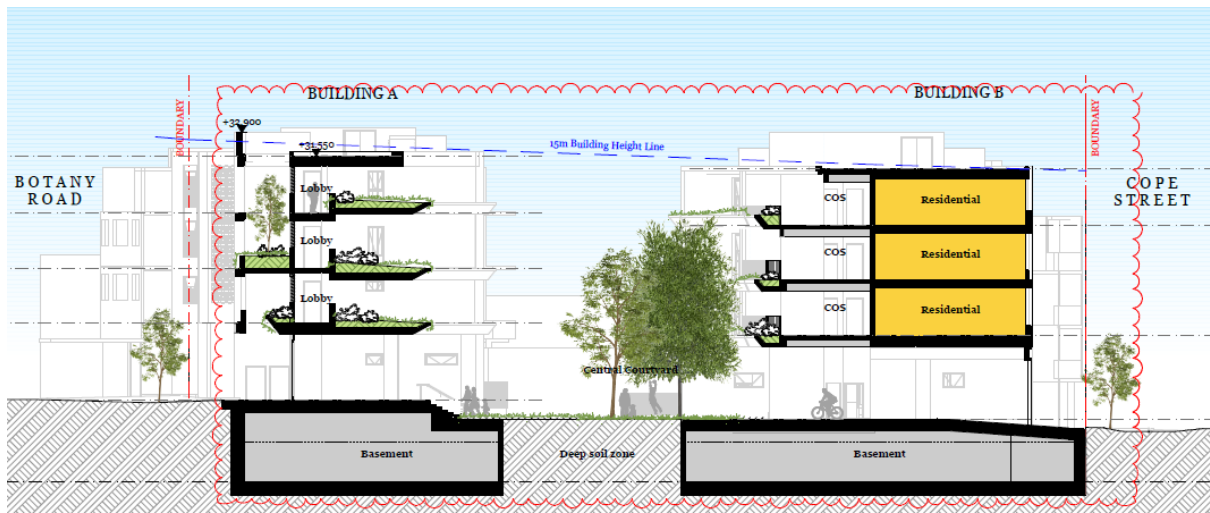
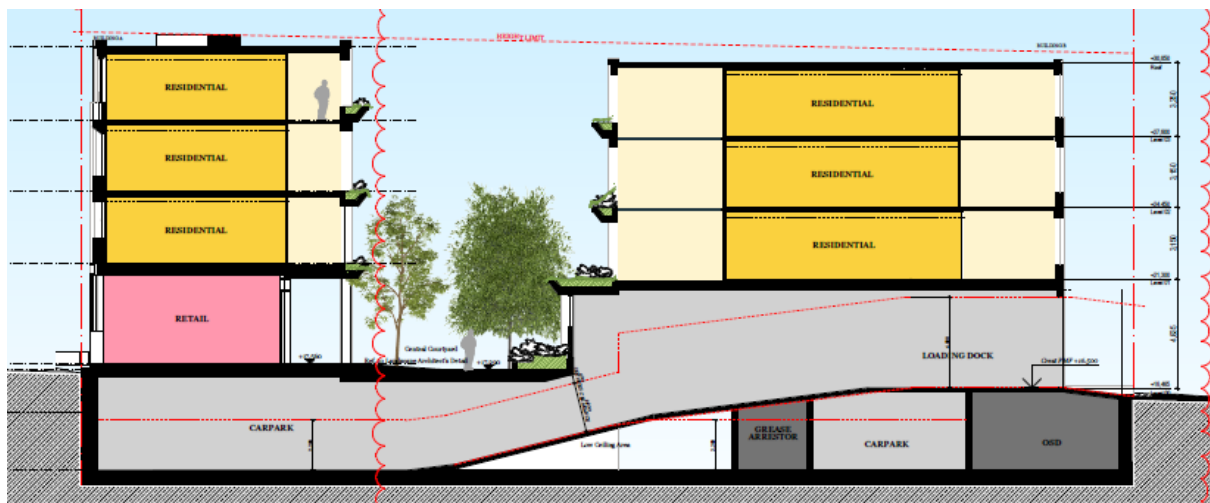


Figure 24: Section through Building A (left) and Building B (right)





**Figure 26:** Photomontage viewed from Botany Road (Building A)



**Figure 27:** Photomontage viewed from the internal courtyard looking towards Building A (which fronts Botany Road)



**Figure 28:** Photomontage viewed from Cope Street (Building B)

## Assessment

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

## State Environmental Planning Policies

### State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

32. 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.
33. Site investigations have identified the following contaminants as being present on the site:
  - Fibre cement conduit [potential asbestos containing material (ACM)]
  - Carcinogenic polycyclic aromatic hydrocarbons (PAHs)
34. A Remediation Action Plan (RAP) relating to the site, accompanied by a letter of interim advice from a NSW EPA accredited site auditor has been submitted with the development application.
35. The RAP proposes to dispose of the carcinogenic PAHs offsite as part of the basement excavation. Depending on the extent of ACM, the asbestos fill soils will either be manually treated onsite or disposed of offsite. The interim advice confirms the above approach is appropriate.



36. The Council's Health Unit has reviewed the information provided and has recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.
37. The Council's Health Unit is satisfied that, subject to conditions requiring the site to be remediated in accordance with the submitted RAP, the site can be made suitable for the proposed use.

### **State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development**

38. The aim of SEPP 65 is to improve the design quality of residential apartment development in New South Wales.
39. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority to take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.
40. The applicant has submitted a design verification statement and SEPP 65 design report prepared by Nicholas Byrne, DKO Architects (Registration Number: 7806) with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide (ADG). The statement is deemed to satisfy Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.
41. An assessment of the proposal against the design quality principles is provided as follows:
  - (a) Principles 1 and 2: Context and Neighbourhood Character and Built Form and Scale
    - (i) The development presents as four storeys in height to both Botany Road and Cope Street and is appropriate to the site and its context which is characterised by other four storey buildings along Botany Road.
    - (ii) The proposed development has a maximum height of 16.76m and which exceeds the 15m building height control contained in clause 4.3 of the Sydney LEP 2012. This non-compliance arises from rooftop structures including plant, parapets, clerestory windows, lift overruns and a small portion of the roof. The building elements that breach the height control the most are rooftop plant and plant enclosures which are centrally located on the roof to minimise impacts to neighbouring properties and the public domain.
    - (iii) The proposed development is in keeping with the design principles for the locality of Botany Road in that it provides a mixed-use development and incorporates active retail uses at its ground floor level frontage to Botany Road.
    - (iv) In all, the proposed development provides an architectural contribution that is suitable in terms of its context, character, scale and built form and that is consistent with these design quality principles.

- (b) Principle 3: Density
- (i) The maximum permitted FSR for the development is 1.75:1 or 4,110.75sqm. A floor space ratio of 1.75:1 or 4,110sqm is proposed and complies with the control.
  - (ii) The proposed density of the development is consistent with that envisaged under the relevant planning controls and is appropriate given the site context.
  - (iii) The proposal is consistent with this design quality principle.
- (c) Principle 4: Sustainability
- (i) The proposed development provides natural ventilation to all apartments. It meets the relevant standards for natural cross ventilation and solar access and provides daylight and natural ventilation to common areas.
  - (ii) In combination, these qualities will reduce demands for artificial lighting, heating and cooling.
  - (iii) Appropriate conditions are recommended to ensure sustainability measures included in the BASIX certificate are implemented at construction.
  - (iv) The proposal is consistent with this design quality principle.
- (d) Principle 5: Landscape
- (i) The proposed development provides a combined area of communal open space of approximately 587sqm, equal to 25 per cent of the site area.
  - (ii) Communal open space is provided in the form of 515sqm of ground floor communal open space and 72sqm communal open space in Building B located on the upper residential levels adjacent to the lift lobbies which are designed to be used for passive recreation.
  - (iii) The ground floor communal open space comprises residents' facilities, seating, shading, BBQ areas and greenery to provide a high level of amenity with adequate solar access.
  - (iv) The proposed development provides 235sqm of deep soil area, equal to 10% of the site area and includes a consolidated deep soil area with a minimum dimension of 10m.
  - (v) The co-location of deep soil areas with ground level communal open space provides an opportunity for large tree plantings to enhance amenity and is in accordance with the design guidance to ADG objective 3D-1.
  - (vi) Overall, the proposed landscape design provides ample, good quality outdoor amenity for residents and is consistent with this design quality principle.

- (e) Principle 6: Amenity
    - (i) Seventy per cent or 33 of 47 apartments receive a minimum of two hours of sunlight to living rooms and private open spaces in midwinter.
    - (ii) All apartments receive some direct sunlight between 9am and 3pm at midwinter.
    - (iii) Sixty two per cent or 29 of 47 apartments are naturally cross-ventilated.
    - (iv) All apartments achieve the minimum size requirements and 2.7m floor to ceiling heights to achieve sufficient natural ventilation and daylight access within apartments.
    - (v) Adequate private open space, communal open space and deep soil areas are provided which receive reasonable levels of solar access.
    - (vi) The design addresses traffic noise by incorporating winter gardens and passive attenuation measures to provide natural ventilation and suitable internal noise levels for noise affected apartments adjacent to Botany Road.
    - (vii) In combination these design outcomes are considered to provide a good level of amenity for residents and neighbours as is consistent with this design quality principle.
  - (f) Principle 7: Safety
    - (i) The proposed development is able to provide appropriate levels of safety and security within the development and the public domain.
    - (ii) The proposed development has been designed in accordance with the SEPP's safety principle and the principles of Crime Prevention through Environmental Design (CPTED).
  - (g) Principle 8: Housing Diversity and Social Interaction
    - (i) The proposed development provides a mix of dwelling types and adaptable apartments in accordance with DCP requirements.
    - (ii) The proposal is consistent with this design quality principle.
  - (h) Principle 9: Aesthetics
    - (i) The palette of materials includes a variety of materials, colours and textures. This includes a light brick base with a dark brick top level, textured brick to balconies and stair wells, bronze metal screening and panelling, solid balustrades and concrete planters.
    - (ii) The visual appearance of the building responds to the existing and desired local context of Botany Road and Cope Street.
42. The development is acceptable when assessed against the SEPP including the above stated principles and the associated ADG. A detailed assessment of the proposal against the ADG is provided below.

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	No, but acceptable	<p>The development has varying building depths, in part allowing for the provision of cross-through apartments. This results in a glass to glass line depth of up to 19.3m (Building B only) at its greatest extent.</p> <p>The proposed bulk and scale of the development is appropriate and provides an acceptable level of residential amenity.</p> <p>Despite this non-compliance with ADG design criteria the proposed design is consistent with ADG objective 2E Building depth to ensure that apartments receive adequate daylight and natural ventilation and optimise natural cross ventilation.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> <li>12m between habitable rooms / balconies</li> <li>9m between habitable and non-habitable rooms</li> <li>6m between non-habitable rooms</li> </ul>	Yes	12m between habitable rooms and balconies is achieved between Buildings A and B across the internal courtyard.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	<p>The development provides 587sqm of communal open space which represents 25% of the site area.</p> <p>The communal open space is provided in the form of a central courtyard at ground floor, as well as on levels one, two and three within Building B.</p>
Developments achieve a minimum of 50% direct sunlight	Yes	Between the hours of 11:37am and 1:37pm on 21 June, 50% of the

<b>3D Communal and Public Open Space</b>	<b>Compliance</b>	<b>Comment</b>
to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).		communal open space at ground level (approximately 204sqm) achieves direct sunlight.

<b>3E Deep Soil Zones</b>	<b>Compliance</b>	<b>Comment</b>
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 6m	Yes	A central deep soil zone is provided within the internal courtyard which has an area of 235sqm and which is equivalent to 10% of the site area. The deep soil zone has a minimum dimension of 6m.

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
Up to four storeys (12 metres): <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul>	Yes	Adequate separation for visual privacy is achieved between apartments located in Buildings A and B.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	The proposal complies.

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	70% of all units receive at least two hours of direct sunlight in midwinter to living rooms and private open spaces.
Maximum of 15% of apartments in a building receive no direct sunlight	Yes	All apartments receive direct sunlight between 9am and 3pm at midwinter.

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
between 9am and 3pm at midwinter.		

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	Yes	All habitable rooms are naturally ventilated. This includes bedrooms and living areas which front Botany Road which rely on wintergardens and passive attenuation measures.  A schedule of window openings to the habitable rooms that front Botany Road has been submitted with the application and demonstrates that the area of unobstructed window openings for these rooms achieves in excess of 5% of the floor area served. This is consistent with the design guidance stipulated in Objective 4B-1 of the ADG which requires that all habitable rooms are naturally ventilated.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	29 apartments equating to 62% of apartments are naturally cross ventilated.  The apartments on the uppermost level are reliant on clerestory windows to achieve natural cross-ventilation which is supported.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The depth of the cross-over apartments do not exceed 18m.

<b>4C Ceiling Heights</b>	<b>Compliance</b>	<b>Comment</b>
Habitable rooms: 2.7m Non-habitable rooms: 2.4m	Yes	The development provides floor to floor heights greater than 3.15m which is capable of delivering a minimum floor to ceiling height of 2.7m.
If located in mixed use areas – 3.3m for ground to promote future flexibility of use.	Yes	The ground level provides a floor to floor height of 4.44m for Building A and 4.84m for Building B which can achieve the

4C Ceiling Heights	Compliance	Comment
		minimum required floor to ceiling height of 3.3m.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• Studio: 35m<sup>2</sup></li> <li>• 1 bed: 50m<sup>2</sup></li> <li>• 2 bed: 70m<sup>2</sup></li> <li>• 3 bed: 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p>	Yes	All apartment sizes comply with the minimum area requirements.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	All habitable rooms have a window in an external wall with a minimum glass area of 10% of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	All habitable rooms are no more than 6.75m (i.e., 2.5 x 2.7m ceiling height) deep.
8m maximum depth for open plan layouts.	Yes	All open-plan apartments are not more than 8m deep.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> <li>• master bedroom: 10m<sup>2</sup></li> <li>• all other bedrooms: 9m<sup>2</sup></li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	All apartments achieve the minimum areas and dimensions prescribed for bedrooms.
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> </ul>	Yes	All apartments achieve the minimum areas and dimensions prescribed for living / dining rooms.

<b>4D Apartment Size and Layout</b>	<b>Compliance</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>Two-bedroom or more: 4m</li> </ul>		
4m minimum width for cross over and cross through apartments.	Yes	All cross through apartments achieve the minimum width specified in the design criteria for objective 4D-3.

<b>4E Private Open Space and Balconies</b>	<b>Compliance</b>	<b>Comment</b>
<p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m<sup>2</sup> with a minimum depth of 2.4m.</p>	Yes	All apartments are provided with the required area of private open space.
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	Yes	All areas of private open space at ground floor meet the minimum size requirements.

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	The maximum number of apartments off each circulation core is seven apartments.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and	Yes	No living room or bedroom windows open directly onto common circulation spaces.



<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.		
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	All common circulation spaces have access to daylight and natural ventilation.

<b>4G Storage</b>	<b>Compliance</b>	<b>Comment</b>
Minimum storage provision facilities: <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> (Minimum 50% storage area located within unit)	Yes	Adequate storage is provided within each unit and each unit benefits from a storage stage located within the basement.

<b>4J Noise and Pollution</b>	<b>Compliance</b>	<b>Comment</b>
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	Refer to discussion section below.

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

43. A BASIX Certificate has been submitted with the development application 1246328M\_03.
44. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated into the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

#### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

45. The provisions of the Transport and Infrastructure SEPP have been considered in the assessment of the development application.

**Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network****Section 2.48 Determination of development applications – other development**

46. The SEPP is applicable to the development because it is proposed to be carried out within 5m of an exposed overhead electricity power line (see section 2.48(1)(b)(iii)).
47. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

**Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors****Section 2.99 – Excavation in, above, below or adjacent to rail corridors**

48. The application involves the penetration of ground to a depth of at least 2m below ground level (existing) on land within the Sydney Metro - City and Southwest rail corridor.
49. The application was referred to Sydney Metro (as a delegate of TfNSW) for comment. Sydney Metro has granted its concurrence and recommended conditions to be imposed on any consent granted.

**Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations****Section 2.119 – Development with frontage to classified road**

50. The application is subject to Section 2.119 of the SEPP as the site has frontage to Botany Road which is a classified road.
51. The proposed development satisfies the provisions of Clause 2.119 subject to conditions of consent, as access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

**Section 2.120 – Impact of road noise or vibration on non-road development**

52. The application is subject to Clause 2.120 of the SEPP as the site is adjacent to Botany Road which has an annual average daily traffic volume of more than 20,000 vehicles and the development is likely to be adversely affected by road noise or vibration.
53. This section of the SEPP requires that where development is for the purpose of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure the stipulated sound levels will not be exceeded.
54. During the assessment of the application an updated Acoustic Report was requested by City staff to incorporate additional data and calculations to clarify that the affected habitable rooms fronting Botany Road comply with the noise levels stipulated in the SEPP and interim guidelines "Development Near Rail Corridors and Busy Roads" when in a ventilated state.

55. The updated Acoustic Report demonstrates the proposed residential apartments are able to achieve the internal noise criteria specified under the SEPP subject to conditions of consent which require noise mitigation measures recommended in the submitted Acoustic Report to be implemented at construction.

### **State Environmental Planning Policy (Precincts - Central River City) 2021**

56. The SEPP (Precincts - Central River City) 2021 (the River City SEPP) commenced on 1 March 2022. While the provisions of the SEPP (Urban Renewal) 2010 have been transferred to the River City SEPP, this does not affect the operation or meaning of the provisions.
57. Section 6.2 of the River City SEPP identifies Redfern-Waterloo as a potential precinct. The subject site is located within the Redfern-Waterloo potential precinct.
58. The proposed development has an estimated cost of works greater than \$5 million and as such is subject to the requirements of section 6.8 of the River City SEPP.
59. The proposed development is consistent with the objectives of urban renewal and addresses the matters for consideration specified at River City SEPP section 6.8(3) as follows:
- (a) The proposal comprises mixed-use development.
  - (b) The subject site does not prevent the amalgamation of the adjoining sites to the north and south. The site to the immediate north comprises a newly constructed residential flat building and the site to the immediate south comprises a large commercial building.
  - (c) The proposed development does not prevent access to, or development of, infrastructure and public domain facilities associated with existing and future public transport.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017**

60. The site is devoid of vegetation and as such, the SEPP does not apply.

## **Local Environmental Plans**

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

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

#### **Part 2 Permitted or prohibited development**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
2.3 Zone objectives and Land Use Table	Yes	The site is located in the Zone B4 Mixed Use. The proposed development is defined as a retail premises and residential flat building which are permissible with consent in the zone. The

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

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No, but acceptable	<p>A maximum building height of 15m is permitted.</p> <p>A maximum height of up to 16.76m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.</p> <p>Refer to the Discussion section in this report.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 1.75:1 or 4,110.75sqm is permitted.</p> <p>A floor space ratio of 1.75:1 or 4,110sqm is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the building height development standard prescribed under LEP clause 4.3.</p> <p>A clause 4.6 variation request has been submitted with the application and addresses the objectives of the development standard and of the zone and is supported.</p> <p>See further details in the Discussion section below.</p>

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site does not contain a heritage item and it is not located within a heritage conservation area.

Provision	Compliance	Comment
		<p>The proposal will have no adverse heritage impacts.</p> <p>The existing building located on the site is over fifty years old. Council's Heritage Specialist has reviewed the proposal and raises no objection to the demolition of the warehouse building that exists on the site subject to recommended conditions, including those requiring photographic archival documentation of the buildings.</p>
5.21 Flood Planning	Yes	<p>A site-specific flood report accompanies the application and identifies that the site is flood affected.</p> <p>The proposed floor levels and openings to the basement are above the required flood planning levels in the City's Interim Floodplain Risk Management Policy.</p>

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

Provision	Compliance	Comment
Division 4 Design excellence		
6.21C Design excellence	Yes	<p>The development is considered to demonstrate design excellence for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed development, provides a high standard of architectural design, materials and detailing appropriate to the building type and location.</li> <li>• The form and external appearance of the development will improve the quality and amenity of the public domain.</li> <li>• The proposal has been amended to address issues raised by the DAPRS to improve the amenity of the building and the presentation of the building to the streetscape.</li> <li>• The proposed development is compatible with the height, bulk,</li> </ul>

Provision	Compliance	Comment
		<p>scale, form and density of surrounding developments along Botany Road. The areas of non-compliance with the height control are centrally located on the roofs and will not be readily discernible from the street.</p> <ul style="list-style-type: none"> <li>The proposal does not result in adverse overshadowing to adjoining properties and achieves good levels of solar access to living areas and the communal open space.</li> <li>High levels of amenity are achieved within each individual unit in respect of cross-ventilation, natural ventilation, visual amenity and acoustic privacy. The provisions of winter gardens and passive attenuation measures will ensure issues of noise are resolved for those noise affected apartments fronting Botany Road.</li> <li>Legible and access principal building entries are provided from both Botany Road and Cope Street.</li> </ul>
6.21D Competitive design process	N/A	The proposed development does not trigger the requirement for a competitive design process.
6.60B Botany Road Precinct Opportunity Land	N/A	The site is identified as Botany Road Precinct Opportunity Land. However, the proposal does not seek to utilise the incentives (additional floor space or height) available under this clause.

#### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		

Provision	Compliance	Comment
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	A maximum of 41 car parking spaces are permitted.  The proposed development includes 32 car parking spaces for the residential component (including six visitor spaces) and complies with the relevant development standards.
7.7 Retail premises	Yes	A maximum of four car parking spaces are permitted.  The proposed development includes four car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The proposal comprises the erection of a new building which comprises more than 200sqm of GFA.  A condition requiring payment of an affordable housing contribution is recommended.  Refer to the Financial Contributions section in this report.
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.
7.16 Airspace operations	Yes	The Obstacle Limitation Surface (OLS) is at a height of RL 51m AHD in the location of the subject site.  The proposed development has a maximum height to RL 32.915 AHD and does not penetrate the OLS.  The other trigger that would require referral to the Civil Aviation Safety Authority (CASA), is development in the location of the site with a height greater than 45.72m above ground.

Provision	Compliance	Comment
		The proposed development has a maximum height of 16.76m above ground and does not trigger this requirement
7.17 Development in areas subject to airport noise	N/A	The subject site is not located within ANEF 20 Contour zone and is not subject to the requirements of this control.
7.20 Development requiring or authorising preparation of a development control plan	Yes	This clause does not apply because the site area is 2,349sqm (less than 5,000 square metres) and the development will not result in a building with a height greater than 25 metres above ground level (existing).

## Development Control Plans

### Sydney Development Control Plan 2012

62. An assessment of the proposed development against the relevant provisions within the Sydney DCP 2012 is provided in the following sections.

#### Section 2 – Locality Statements

63. The site is located within the Botany Road Precinct. The proposed development is in keeping with the unique character and the design principles for the locality. Specifically:
- The design of the development ensures the residential apartments are protected from noise and pollution impacts from Botany Road.
  - The development prioritises pedestrian movement on Botany Road by moving the existing driveways and parking to the Cope Street rear lane network.
  - The development contributes to a comfortable and safe pedestrian environment through visible lobbies and activating ground floor shop fronts.
  - The development provides additional housing which is not considered to conflict with or restrict the delivery of commercial and non-residential development.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain 3.2.1.1 Sunlight to publicly accessible spaces	Yes	The proposed development does not overshadow any publicly accessible open spaces such as public parks.



Provision	Compliance	Comment
3.2.2 Addressing the street and public domain	Yes	<p>The proposed development has sought to maximise the quality of its presentation to the street.</p> <p>The proposed development provides active retail uses to its ground floor interface with Botany Road.</p> <p>Residential entries to both Cope Street and Botany Road are generous and legible, with direct sightlines to the communal courtyard within. Both entrances are at grade with the public domain.</p>
3.2.3 Active frontages	N/A	The site does not require an active frontage.
3.2.4 Footpath awnings	No, but acceptable	<p>The DCP requires an awning to be provided to both Botany Road and Cope Street.</p> <p>The lack of an awning to these frontages was discussed with the DAPRS during the assessment of the application. DAPRS advised that a street awning to Botany Road was not considered necessary, with preference for the protection of existing street trees and provision of significant street tree plantings in this location.</p> <p>The proposed design incorporates a 3m setback from the site's boundary with Cope Street. The provision of this setback is integral to ensure the preservation of the existing street trees along Cope Street (Tallowwood and Brittle Gum).</p> <p>Provision of a continuous footpath awning would result in a significant amount of pruning to these trees and would likely result in their removal.</p>
3.2.7 Reflectivity	Able to comply	A condition is recommended requiring the light reflectivity of the building's facade materials to be no greater than 20%.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.

Provision	Compliance	Comment
		Conditions of consent are recommended by the City's Tree Management Unit to retain and protect the existing street trees. This includes a condition requiring a minimum 15% canopy cover across the site.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	Refer to the assessment against clause 5.21 Flood Planning in the LEP compliance table above.
3.11 Transport and Parking	Yes	<p><b>Vehicle Access</b></p> <p>The DCP restricts vehicular access from Botany Road. The proposal provides vehicular access from Cope Street which is supported. During the assessment of the application the driveway width was reduced to the minimum width (6m) required for Council's waste vehicle to exit the site. The proposed vehicular access is supported.</p> <p><b>Bicycle Parking</b></p> <p>The development provides 47 residential bicycle parking spaces and 11 visitor bicycle parking spaces which is consistent with the requirements of the DCP. All bicycle parking is provided within the basement.</p> <p><b>Vehicle Parking</b></p> <p>A total of 36 car parking spaces are proposed which is compliant with the maximum rates stipulated in the Sydney LEP 2012.</p> <p><b>Motorcycle Parking</b></p> <p>Four motorcycle spaces are provided which is supported.</p> <p><b>Service Vehicle Parking</b></p> <p>A service vehicle parking area is provided at ground level adjacent to the vehicular entry on Cope Street. This area can accommodate both a 9.24m Council waste collection vehicle and an 8.8m medium rigid vehicle (MRV). Swept path analysis indicating these vehicles can</p>

Provision	Compliance	Comment
		<p>safely access and egress the site in a forward direction has been provided.</p> <p><b>Accessible Parking</b></p> <p>Eight accessible spaces have been provided. A condition is recommended requiring that these spaces are designed in accordance with the relevant Australian Standard (AS 2890.6) – off street parking for people with disabilities.</p> <p>Appropriate conditions of consent are recommended to ensure the residential, visitor and accessible car, bicycle and motorcycle spaces are designed in accordance with the relevant Australian Standards.</p>
3.11.13 Design and location of waste collection points and loading areas	Yes	<p>Waste collection is proposed to be carried out in the ground level loading dock in Building B.</p> <p>The waste collection is at-grade and off-street within a safe vehicular circulation system where vehicles will enter and exit the site in a forward direction.</p> <p>The loading dock is able to accommodate a Council garbage truck 9.25m in length and provides sufficient clearance above and to the back and sides of the truck to allow waste to be collected.</p>
3.12 Accessible Design	Yes	<p>The development is to provide appropriate access and facilities for persons with disabilities in accordance with the BCA.</p>
3.12.2 Adaptable dwelling mix	Yes	<p>The DCP requires 15% of apartments (i.e., 7 of 47) to be adaptable for easy modification in the future for occupation and visitation by people with a disability or people who may acquire a disability as they age.</p> <p>The proposal provides seven adaptable apartments which satisfies this provision.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
3.14 Waste	Yes	<p>A condition is recommended to ensure the proposed development complies with</p>

Provision	Compliance	Comment
		the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	N/A	The subject development application proposes generic retail use of the ground floor retail tenancies, without providing any details about the proposed hours of operation.  A condition is recommended requiring a separate development application for the fit out and use of the ground level retail tenancy.
3.16 Signage and Advertising	N/A	Signage is not proposed as part of this application.  A condition is recommended requiring a separate development application for the erection of any signage.
3.17 Contamination	Yes	Suitable information has been provided over the course of the assessment to address site contamination and remediation.  Refer to the assessment against SEPP (Resilience and Hazards) 2021 elsewhere in this report.

## Section 4 – Development Types

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

64. Note: Some relevant DCP provisions that would otherwise be listed in the table below have not been addressed as they are matters to which clause (6A) of SEPP 65 applies and which renders those provisions to be of no effect.

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 four storeys.  The proposed development is four storeys in height and complies.
4.2.2 Building setbacks	Yes	The DCP setback and alignment map does not specify a setback for the site.

Provision	Compliance	Comment
		<p>The proposal provides a zero setback to Botany Road which is consistent with the adjoining properties fronting Botany Road.</p> <p>During the assessment of the application the design of Building B was amended to provide a 3m setback to the site's Cope Street boundary. The provision of this setback is supported, noting the setback contributes to the landscape character of Cope Street.</p>
4.2.3 Amenity		
4.2.3.5 Landscaping	Able to comply	<p>Several iterations of the landscape plans have been submitted over the course of the assessment.</p> <p>The proposed landscape design is supported in-principle. However, further amendments are required to coordinate with the architectural drawings and clarify how the facade planters will be maintained, among other unresolved issues.</p> <p>Conditions are recommended for detailed landscape and green wall plans to be submitted to and approved by Council Officers.</p>
4.2.3.6 Deep Soil	Yes	<p>Minimum deep soil equal to 10% of the site area is to be provided and is to include a consolidated deep soil area with a minimum dimension of 10m. All remaining deep soil areas are to have a minimum dimension of 3m.</p> <p>The proposed development provides 10% (235sqm) of site area as deep soil and which includes a consolidated deep soil area with a minimum dimension of 10m.</p>
4.2.3.8 Common open space	Yes	<p>Minimum common open space equal to 25% of the site area with a minimum dimension of 6m is required.</p>

Provision	Compliance	Comment
		<p>At least 30% of the required communal open space area (176sqm) is to receive two hours of direct sunlight between 9am and 3pm on 21 June.</p> <p>Genuine useable communal open space at ground level comprises an area equal to 22% (515sqm) of the site area. Smaller pockets of communal open space are provided in Building B adjacent to the lift lobbies which comprise collectively an area equal to 3% (72sqm) of the site area. This amounts to a total communal open space equal to 25% (587sqm of the site area).</p> <p>Adequate solar access is provided to the communal open space area at midwinter. Specifically, between the hours of 11:37am and 1:37pm on 21 June, 50% of the communal open space (approximately 204sqm) achieves direct sunlight.</p>
4.2.3.11 Acoustic privacy	Yes	<p>The submitted acoustic information provides an assessment of traffic noise impact from Botany Road and addresses the relevant internal noise criteria including those specified at section 2.120 of the SEPP (Transport and Infrastructure) 2021. Refer to the discussion section below.</p>
4.2.3.12 Flexible housing and dwelling mix	Yes	<p>The following dwelling mix is required:</p> <ul style="list-style-type: none"> <li>• Studio and 1 bedroom: 5-40%</li> <li>• 2 bedroom: 40-75%</li> <li>• 3+ bedroom: 10-100%</li> </ul> <p>The following dwelling mix is proposed:</p> <ul style="list-style-type: none"> <li>• Studio and 1 bedroom: 28% (13 apartments)</li> <li>• 2 bedroom: 60% (28 apartments)</li> <li>• 3+ bedroom: 12% (6 apartments)</li> </ul>

Provision	Compliance	Comment
		The proposed dwelling mix complies and is supported.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The maximum permitted street frontage length is 65m.  Both Buildings A and B have a street frontage length less than 65m and comply.
4.2.5.3 Development on busy roads and active frontages	Yes	The City's Health and Building Unit has reviewed the Acoustic Report and is satisfied that the noise reductions to habitable rooms facing Botany Road will be achieved by implementation of the recommended measures to meet the requirements of Clause 2.120 of the Transport and Infrastructure SEPP.
4.2.5 Types of development 4.2.5.4 Residential uses on the ground and first floor	Yes	Residential apartments are proposed on the ground and first floors and front the internal courtyard and Cope Street. The ground floor units fronting Cope Street are setback 3m from the Cope Street site boundary to help maintain privacy. Each unit is provided with an individual entry from the street to improve the activation of this frontage.
4.2.6 Waste and recycling Management	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.7 Heating and cooling infrastructure	Yes	The proposed development provides an appropriate spatial allocation in plan for heating and cooling infrastructure.
4.2.8 Letterboxes	Yes	The letterboxes are provided within the mail room of the building.
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.  The subject development application provides sufficient waste, servicing and

Provision	Compliance	Comment
		<p>staff amenities for the ground floor retail tenancy.</p> <p>The ground floor retail tenancy is able to operate without detriment to the amenity of the area.</p> <p>Conditions are recommended for a separate development application to be submitted for any fit out and use of the ground floor retail tenancy.</p>

### Section 5.10 of the Sydney DCP 2012 - Botany Road Precinct

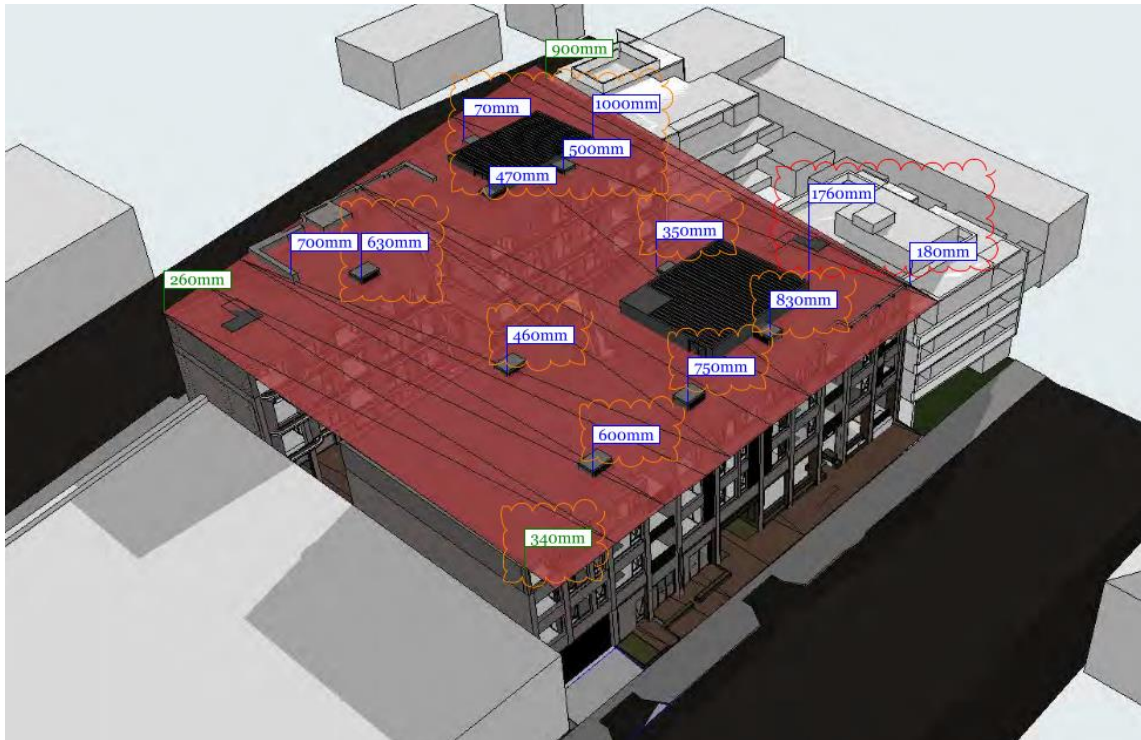
65. A Planning Proposal for the Botany Road Precinct and an amendment to the SDCP 2012 was approved by Council in June 2022, with the formal changes to the SLEP 2012 and SDCP 2012 made in November 2022.
66. The planning controls have been amended to encourage future commercial, enterprise and affordable housing space within the Botany Road Precinct. As discussed in the LEP section, the proposal does not seek to utilise the incentive provisions contained at Clause 6.60B (Botany Road Precinct Opportunity Land) of the LEP.
67. The controls set out in Section 5.10 (Botany Road Precinct) of the SDCP 2012 have been considered in the assessment of this application and the proposal has been assessed as generally achieving consistency with the objectives of these provisions.

## Discussion

### Clause 4.6 Request to Vary a Development Standard

68. The site is subject to a maximum height of buildings control of 15m. The proposed development has a maximum building height of 16.76m equating to a variation of 11.7%. The figure below shows the elements of the proposed building that breach the height limit. These elements are lift overruns, plant, building parapets and clerestory windows.





**Figure 29:** Height plane diagram with areas over the height limit identified in blue and areas under the height limit identified in green

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

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

70. The Applicant seeks to justify the contravention of the height of building development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

- (i) The Applicant's statement refers to the first and third of the five tests established in *Wehbe V Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The first test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The Applicant's justification against the objectives of the height of buildings development standard is provided in (d) below.
- (ii) The third test seeks to demonstrate that the underlying object or purpose of the development standard would be defeated or thwarted if compliance was required and would be unreasonable in this instance. The Applicant has stated that strict compliance with the height control would lead to a less satisfactory outcome as it would negatively impact on the quality of the design and require removal of the plant on the roof to elsewhere within the development where it would have a greater impact on residential amenity.
- (iii) The Applicant has stated that strict compliance with the height of buildings development standard is unreasonable and unnecessary for the following reasons:
  - (i) The proposal is for a four storey development as anticipated by the 15m height control and compliant with the Sydney DCP 2012 height in storeys control.
  - (ii) The majority of the development sits below the maximum 15m building height.
  - (iii) The components on the rooftop that exceed the 15m height control are discreetly located centrally within the roof of each building and are setback from the edges of the building and will be recessive. These components are unlikely to be clearly visible from the street or the ground floor plane of surrounding sites. Accordingly, the proposed areas of variation to the height control do not result in any adverse impact to adjacent properties.
  - (iv) The ground floor level is established by the Peak Flood Level given the flooding affectation applicable to the site and therefore the development cannot be lowered to reduce the extent of variation.
  - (v) The scale of the development in terms of its three dimensional size will not be perceived as jarring or antipathetic in a streetscape and urban design context.
  - (vi) The elements of the development which exceed a height of 15m do not result in any unreasonable impacts on the amenity of the adjoining properties in terms of loss of solar access, loss of privacy or view loss.
  - (vii) The locality is undergoing a transition in its character and other developments are likely to occur along Botany Road in the vicinity of the site. The proposed variation to the height control is minor and will not result in a building that is inconsistent with the desired future character of development in the zone and locality generally.

- (viii) Whilst the building height development standard has not been “virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard”, the Council has nonetheless consistently supported a Clause 4.6 variation to the building height standard. In particular, a similar Clause 4.6 variation for the northern adjacent site, as prepared by Sutherland and Associates Planning was supported by Council.
- (ix) Given that there is no adverse impact in relation to the proposed variation, strict compliance would not result in any benefit to the streetscape or the amenity of the adjoining properties.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The majority of the components that breach the height control will not be readily visible from the public domain. Portions of parapets that breach the control are so minor so as to not be perceptible to the casual observer. The overshadowing assessment has demonstrated that the proposed areas of height variation do not result in any additional adverse overshadowing impacts to adjacent residential properties.
- (ii) The building is required to be raised above the ground level in order to address the flooding affectation of the site. If the site was not constrained by this affection, there would be no height breaches for most of the building and the extent of variation for the plant would be greatly diminished. The Land and Environment Court matter of Adam Hughes Pty Ltd v Penrith City Council [2018] NSWLEC 1369 recognises that a height non-compliance as a result of a need to respond to a flood constraint is an environmental benefit.
- (iii) The proposed variation to the height control allows for the most efficient and effective use of the land to maximise residential amenity and architectural merit. Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.
- (iv) Strict compliance with the development standard would reduce the amenity provided for the future occupants of the development and also diminish the architectural merit of the proposal.
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The objectives of the B4 Mixed Use zone are as follows:
- To provide a mixture of compatible land uses
  - 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
  - To ensure uses support the viability of centres.

The proposed mixed use development is permissible within the zone and is compatible with the surrounding land uses. The proposed development provides a mixture of non-residential and residential uses which are compatible and complementary with one another. In particular, the proposed use replaces a commercial and industrial use and is more compatible with the emerging residential character of the area.

The site is in close proximity to Green Square train station and the forthcoming Waterloo metro station as well as numerous bus services which will maximise public transport patronage as well as encourage walking and cycling. For these reasons the proposal is considered to be consistent with the objectives of the zone.

(d) The proposed development will be consistent with the objectives of the standard

(i) The objectives of the standard and the applicant's response is provided below.

(i) To ensure the height of development is appropriate to the condition of the site and its context

The vast majority of the development sits below the maximum 15m building height control and of those elements that breach the 15m height control it is only by a very small margin. The elements that breach the control by the greatest extent are two centrally located plant areas. The development still presents as four storeys in scale to Botany Road and Cope Street and is appropriate to its context which is characterised by an emerging consistency of four storey buildings along Botany Road.

(ii) To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

The site does not contain a heritage item nor is it located within a heritage conservation area or special character area, or adjacent to any heritage items.

(iii) To promote the sharing of views outside Central Sydney,

The proposed development will not impact on any scenic or iconic views.

(iv) To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

Not applicable.

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

71. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
  - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

72. The Applicant has correctly referred to the test established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the Applicant has addressed the first part of the test by demonstrating that the development meets the objectives of Clause 4.3, notwithstanding non-compliance with the numerical standard.
73. The applicant has identified that the additional height relates to elements contained on the roof. The proposal comprises a four storey building which is consistent with the planning controls for the site and provides a built form which is compatible with the streetscape and urban design context. The components that breach the height control to the greatest extent are located centrally on the roof and are setback from the edges of the buildings. These components will not be readily visible from the street or the ground floor plane of surrounding sites.
74. The site is flood affected and the ground floor level has been established having regard to the City's flood policy. It would be unreasonable to lower the ground floor level to comply with the height of buildings control, disregarding flood risks associated with contravening the City's flood policy.

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

75. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the building height development standard. Specific reference is made to the *Initial Action Pty Ltd v Woollahra Municipal Council* case to justify contravening the standard as the development achieves a better outcome by allowing flexibility in particular circumstances.
76. The written request identifies that the majority of the components that breach the height control will not be readily visible from the public domain or the ground floor plane of the site. The submitted overshadowing studies demonstrate that the areas of non-compliance do not generate any additional overshadowing impacts to adjacent residential properties beyond shadowing that would arise from a building that complies with the height control.

77. The written request identifies that if the site was not constrained by flooding, the non-compliance with the height of buildings control would be greatly diminished. The written request cites *Adam Hughes Pty Ltd v Penrith City Council* [2018] NSWLEC 1369 in justifying the variation due to this affectation, noting the Commissioner in this case recognised that a height non-compliance as a result of a need to respond to a flood constraint is an environmental benefit.
78. The written request asserts that the proposed variation allows for the most efficient and effective use of the land to maximise residential amenity and architectural merit and will be compatible with its surrounding context.
79. The Applicant has demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest?

80. The proposal is consistent with the relevant objectives of the height of buildings development standard as follows:
  - (a) The proposal is four storeys in height which is considered appropriate given the context of the site, as well as the four storey height of building control prescribed by the Sydney DCP 2012. The elements that breach the height control relate to minor rooftop elements which do not create any additional bulk when viewed from the streets below. The building presents as four storeys in height and which is appropriate to the site and its context.
  - (b) The rooftop elements that breach the height control do not affect any view sharing.
81. The proposal is consistent with the relevant objectives of the B4 Mixed Use zone as follows:
  - (a) The proposal includes two retail tenancies at ground floor which will provide for employment opportunities within the site's highly accessible location.
  - (b) The proposal provides 58 bicycle spaces in order to maximise public transport patronage and encourage walking and cycling.
  - (c) The residential use will support the vitality of the centre and will encourage future residents to use the services and facilities provided in the locality.

Conclusion

82. For the reasons provided above the proposed variation to the height of buildings development standard is supported because:
  - (a) the Applicant's written request has adequately addressed the matters contained in clause 4.6 of the Sydney LEP 2012; and
  - (b) the proposed development is in the public interest because it is consistent with the objectives of the height of buildings development standard and the Zone B4 Mixed Use.

## Consultation

### Internal Referrals

83. The application was discussed with Council's
- (a) Environmental Health Unit;
  - (b) Heritage and Urban Design Unit
  - (c) Landscape Assessments Unit;
  - (d) Public Domain Unit;
  - (e) Surveyors;
  - (f) Transport and Access Unit;
  - (g) Tree Management Unit; and
  - (h) Waste Management Unit.
84. Referral advice provided by the City's specialist staff listed above has informed the conditions recommended for imposition on any consent granted at Attachment A.

### External Referrals

#### Ausgrid

85. Pursuant to Section 2.48 of the Transport and Infrastructure SEPP the application was referred to Ausgrid for comment.
86. No response was received.

#### Sydney Metro

87. Pursuant to Clause 2.99 of the Transport and Infrastructure SEPP the application was referred to Sydney Metro (as a delegate of TfNSW) for concurrence.
88. Concurrence was received on 12 December 2022. Conditions of consent are recommended and are included in Attachment A.

#### Transport for NSW

89. Pursuant to Clause 2.118 of the Transport and Infrastructure SEPP the application was referred to TfNSW for concurrence.
90. Concurrence was received on 14 March 2022. Conditions of consent were recommended which are included in Attachment A.

### Advertising and Notification

91. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 1 March 2022 and

23 March 2022. Following the receipt of amended plans the proposed development was re-notified for a period of 14 days between 11 October 2022 and 26 October 2022. A total of 197 properties were notified and two submissions were received.

92. The submissions raised the following issues:

- (a) **Issue:** Lack of information submitted with the development application relating to rooftop solar installation, rainwater collection and recycling, grey water recycling, electric charging stations for vehicles, double glazed windows and other insulation to reduce the building's carbon footprint and acoustic baffling.

**Response:** The application is accompanied by a BASIX Certificate, NatHERS stamped plans and a NatHERS certificate demonstrate that the development can meet the relevant sustainability requirements, as well as. The proposed development meets the water, thermal comfort and energy scores required for a development of this size. A condition is recommended requiring adherence to the commitments set out in the BASIX certificate.

- (b) **Issue:** Dust and debris during construction works.

**Response:** Conditions of consent are recommended relating to demolition, excavation and construction management, vehicle cleansing, the covering of loads and asbestos removal works.

- (c) **Issue:** Concerns about dilapidation to nearby properties.

**Response:** A condition of consent is recommended requiring the Applicant to undertake dilapidation reports of the adjoining properties by an appropriately qualified structural engineer. These reports are to be undertaken prior to commencement of demolition/ excavation works and at least one month after the completion of demolition/excavation works.

## Financial Contributions

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

93. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
94. Credits have been applied for the most recent approved use of the site which relates to a warehouse (2,115sqm of GFA). A warehouse is not a type of use that is specifically defined in the Plan. It is noted that the Plan states, where a land use is not covered in Tables 4 to 7 (inclusive), which a warehouse is not, then the consent authority will use the occupancy rate of the most similar use from the table as determined by the consent authority. It is considered that the classification of "general industry" is the most similar use in the Plan.
95. A condition relating to this development contribution is recommended and requires the contribution to be paid prior to the issue of a construction certificate.



## Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

96. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$10,611.53 per square metre of total residential floor area (5,980sqm) totalling \$916,623.87. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

## Relevant Legislation

97. Environmental Planning and Assessment Act 1979.

## Conclusion

98. The application seeks approval for the demolition of the existing building on site and for the construction of two four storey buildings, with one building fronting Cope Street and one building fronting Botany Road. The application seeks approval for two retail premises located within the building fronting Botany Road.
99. The proposed development exceeds the 15m height control contained in the SLEP 2012 by 1.76m or 12 per cent. The building elements that exceed the height control are located on the roof of both buildings and include plant, parapets, clerestory windows, lift overruns and the corner of the roof. The highest exceedance is the plant area of the Cope Street building.
100. A written justification for the proposed variation to the building height development standard has been submitted in accordance with clause 4.6 of the LEP. The statement demonstrates that compliance with the standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravention of the standard. The proposed development is consistent with the objectives of the Zone B4 Mixed Use and the height of buildings development standard and is in the public interest. For these reasons the proposed variation of the building height development standard is supported.
101. The proposal has been amended to address a number of issues raised by City staff during the assessment of the application, as well as comments raised by the DAPRS. These issues relate to the provision of a 3m setback to Cope Street, provision of additional deep soil, reduction in car parking, improvements to the building entries from Botany Road and Cope Street, resolution of cross-ventilation and solar access issues, incorporation of additional acoustic attenuation measures, reduction in the size of the driveway and resolution of the interface between the retail tenancy and the communal open space.
102. The proposed development complies with the relevant floor space ratio controls and other provisions of the LEP. It is consistent with the design quality principles contained within SEPP 65, the objectives of the ADG and the detailed provisions contained within the SDCP 2012.
103. The proposed development exhibits design excellence and provides an appropriate contribution that is suitable in terms of its context, scale and built form and which is consistent with the desired future character of the area, as expressed in the applicable planning policies.

104. Subject to conditions, the development is in the public interest and recommended for approval.

**ANDREW THOMAS**

Executive Manager Planning and Development

Lotti Wilkinson, Senior Planner