

Item 4.**Development Application: 502-514 Elizabeth Street and 272-276 Cleveland Street, Surry Hills - D/2022/600**

File No.: D/2022/600

Summary**Date of Submission:** 20 June 2022 (amended plans received 24 November 2022, further amended plans received 22 March 2023)**Applicant:** The Trustee for Aidop No 7 Unit Trust**Architect:** SJB**Developer:** Podia**Owner:** X Let Investments Pty Ltd**Planning Consultant:** Ethos Urban**Heritage Consultant:** Weir Phillips**Cost of Works:** \$19,135,093**Zoning:** MU1 'Mixed Use'

SP2 'Infrastructure' - Classified Road

The proposal is a mixed-use development including retail premises on the ground floor and office premises on the levels above. All proposed uses are permissible with consent in the MU1 'Mixed Use' zone. The proposed land uses are not located within the portion of the site zoned SP2 'Infrastructure'.

Proposal Summary: The application seeks development consent for substantial demolition of the existing buildings on site and construction of a four (4) storey commercial development, comprising ground level retail and commercial office above. The proposal involves excavation to create a two-level basement providing 29 car parking spaces and services, in addition to associated landscaping and earthworks.

The application is referred to the Local Planning Panel for determination as the proposed development contravenes the maximum height of buildings and floor space ratio development standards permitted under the Sydney Local Environmental Plan by more than 10%.

Specifically, a maximum height of 15m is permitted, and a height of 20.1m is proposed. The proposed variation is 34%. The exceedance of the maximum floor space ratio applies to the southern land parcel only. A maximum floor space ratio of 2:1 is permitted and 2.21 is proposed. The proposed variation is 10.5%.

Written requests to vary both the height of buildings and floor space ratio development standards have been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012.

The applicant has successfully demonstrated that compliance with the standards is unreasonable and unnecessary in the circumstances of this case, and that there are sufficient environmental planning grounds to justify contravening the development standards.

The application was placed on public exhibition for a period of 28 days between 2 August and 31 August 2022 in accordance with the City of Sydney Community Consultation Plan. The application was re-notified for a period of 28 days between 17 May and 15 June 2023 due to an error in the original notification letter which resulted in the northern land parcel not being identified as part of the development site.

As a result of the notification of the application there were four (4) individual submissions received, with a fifth submission received in response to the re-notification being a duplicate of a submission in response to the first notification period.

All submissions objected to the proposal and raised concerns in relation to land use, height, built form, design, landscaping, heritage, construction activities, parking, public domain, view loss, overshadowing, visual privacy, and noise.

An initial assessment of the application by Council staff identified concerns relating to urban design, architectural expression, built form, heritage interpretation, landscaping, traffic, flooding, contamination, acoustic amenity and public art.

These issues have substantially been resolved through the submission on amended architectural drawings and additional information. Where issues are outstanding,

these can be resolved through the recommended conditions of consent.

The site is subject to a road widening order on the Elizabeth Street frontage and seeks to substantially develop within the designated road widening area. The road widening order was made in 1950. The road widening order does not prevent the granting of development consent; however, physical commencement of development of the reserved land prior to the revocation of the road widening order would result in a breach of Section 26 'No constructions on land affected by road widening order' of the Roads Act 1993.

A deferred commencement consent is recommended, requiring the road widening order to be revoked prior to the consent becoming operational.

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

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Resilience and Hazards) 2021
- (iv) SEPP (Transport and Infrastructure) 2021

Attachments:

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

Recommendation

It is resolved that:

- (A) the variation requested to 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) the variation requested to the floor space ratio development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2022/600 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for deferred commencement approval the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979, in that subject to the imposition of the recommended conditions of consent, it is generally consistent with the planning controls applicable to the site, and where variances are proposed these are acceptable for the reasons outlined in the report to the Local Planning Panel.
- (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 has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings and floor space ratio development standards is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clauses 4.3 'Height of buildings and 4.4 'Floor space ratio' of the Sydney LEP 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the MU1 'Mixed Use' zone and the height of buildings and floor space ratio development standards.
- (C) The proposal otherwise satisfies the objectives and provisions of State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, the Sydney Local Environmental Plan 2012, and the Sydney Development Control Plan 2012.
- (D) The proposal is consistent with the objectives of the MU1 'Mixed Use' zone and the SP2 'Infrastructure' zone.
- (E) The proposal will contribute to the conservation of the Goodlet Street heritage conservation area (C63) through the retention and enhancement of part of 502-508 Elizabeth Street.

- (F) The proposed development appropriately responds to the site and its context, with a building that is appropriate in terms of its height, floorspace and architectural expression, and achieves design excellence.
- (G) The proposed land uses are permissible within the zone and will support the vitality of the area. Subject to the recommended conditions of consent, the proposed land uses will positively contribute to the amenity of the locality and will not result in adverse impacts.
- (H) The public interest is served by the approval of the development, as amendments to the design have generally addressed the concerns of Council staff and the community, and the recommended conditions of consent will mitigate any environmental impacts that could potentially arise from the construction and operation of the proposed development.

Background

Site and Surrounding Development

1. The site is comprised of two land parcels. The northern land parcel has a legal description of Lot 1 in DP 100535 and is known as 502-514 Elizabeth Street, Surry Hills. The southern land parcel has a legal description of Lot 3 in DP 575329 and is known as 272-276 Cleveland Street, Surry Hills.
2. The overall site is irregular in shape with a combined area of 1,368 sqm. The northern land parcel is 1,064 sqm in area, while the southern land parcel is 304 sqm in area. The overall site has a primary street frontage of 41.72m to Elizabeth Street and secondary street frontages of 29.99m to Cleveland Street, 51.78m to Perry Street and 30m to Goodlet Street. The site is located on the north-eastern corner of the intersection of Elizabeth and Cleveland Streets. Levels on the site fall by approximately 2.65m in a north-westerly direction.
3. 502-514 Elizabeth Street contains a two-storey late Victorian commercial building constructed in the Free Classical Style. The parapet has an inscription, indicating the building name is the 'Smarts Building' and was completed in 1889. The building contains three (3) restaurant tenancies (two of which occupy both floors). The upper level of the building above the largest restaurant tenancy, which is in the northern portion of the building, was last in use as tourist and visitor accommodation. The largest restaurant tenancy and the hotel are both vacant.
4. 272-276 Cleveland Street contains a two-storey late Victorian commercial building. The building contains four (4) restaurant tenancies (three of which occupy both floors). The upper level of the building above the restaurant tenancy located on the corner of Elizabeth and Cleveland Streets, which is in the western portion of the building, contains a vacant commercial tenancy, which occupies part of both buildings.
5. The surrounding area is characterised by a mixture of land uses.
6. To the west, on the opposite side of Cleveland Street at 557-565 Elizabeth Street is a three-storey mixed-use development containing ground floor restaurant/cafe uses with a boarding house above. The site contains a separate building at the rear that is in use as retail storage and a theatre. To the north of this, also directly west of the subject site at 553-555 Elizabeth Street, is a five (5) storey mixed-use development containing ground floor commercial uses and 11 apartments above.
7. To the north-west of the site, also on the opposite side of Cleveland Street at 543-551 Elizabeth Street, is a six (6) storey mixed-use development containing ground floor commercial uses with 71 apartments above.
8. To the north and north-east of the site, on the opposite side of Goodlet Street at 492-500 Elizabeth Street and 2-4 Goodlet Street, is a mixed-use development containing commercial tenancies fronting Elizabeth Street and 191 apartments. All parts of the complex visible from the subject site are three (3) storeys in height.
9. To the east, on the opposite side of Perry Street and to the north of Goodlet Lane at 1-25 Goodlet Lane is a row of 13 dwelling houses of two and three storeys.

10. To the east on the opposite side of Perry Street and to the south of Goodlet Lane at 278-284 Cleveland Street is a two (2) storey commercial building in use as a sex services premises.
11. To the south, on the opposite side of Cleveland Street at 275-281 Cleveland Street is a group of four buildings in commercial use. Adjacent to this at 283 Cleveland Street is a two (2) storey building containing ground floor commercial uses with two (2) apartments above. Developments further to the east within the row are predominantly residential.
12. To the south-west, on the opposing corner of the intersection at 273 Cleveland Street is a three (3) storey pub known as the Surrey Hotel.
13. The site is not a heritage item. It is located within the Goodlet Street heritage conservation area (C63). Both buildings are identified as contributing buildings. Several buildings in the vicinity are heritage items of local significance, including but not limited to:
 - (a) 557-565 Elizabeth Street directly to the west "Terrace Group including interiors" (I1538).
 - (b) 273 Cleveland Street directly to the southwest "Surrey Club Hotel" including interior (I1297).
 - (c) 567-571 Elizabeth Street, also to the southwest "Terrace Group including interiors" (I1311).
 - (d) 285-289 Cleveland Street, located to the southeast "Land shipping house (289 Cleveland Street) including interior" (I1298).
 - (e) 291 Cleveland Street, located to the southeast "Terrace House "Saxtonia" including interior" (I1299).
14. The site is located within the Cleveland Street locality and is identified as being subject to flooding.
15. Site visits were carried out on 27 April and 18 May 2023. Photos of the site and surrounds are provided below:

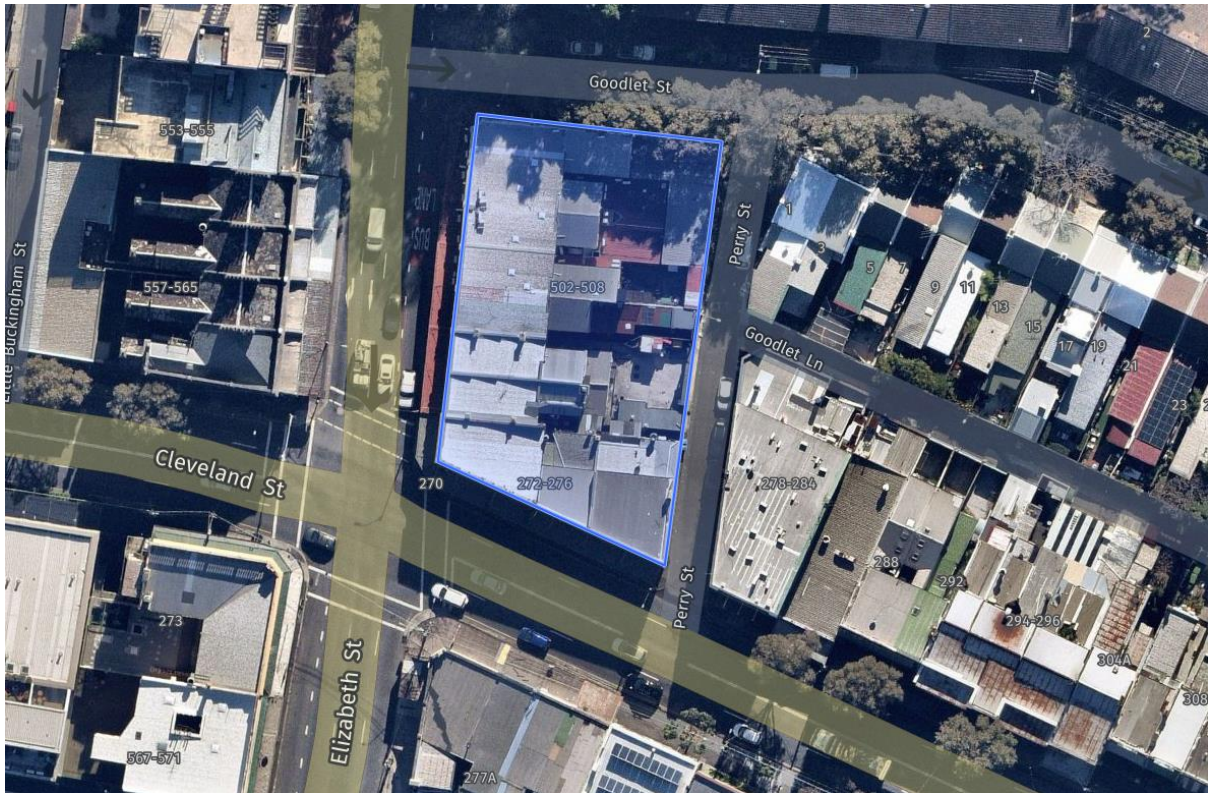


Figure 1: Aerial view of site and surrounds (Source: Nearmap)



Figure 2: Site viewed from the opposite side of Cleveland Street looking north



Figure 3: Site viewed from the opposite side of Elizabeth Street, looking east



Figure 4: Site viewed from the intersection of Goodlet and Elizabeth Streets, looking south



Figure 5: Site viewed from the intersection of Goodlet and Perry Streets, looking south



Figure 6: Site viewed from Perry Street, looking south-west



Figure 7: Site viewed from the intersection of Cleveland and Perry Streets, looking north-west



Figure 8: Neighbouring development at 557-565 Elizabeth Street, viewed from the site looking west



Figure 9: Neighbouring development at 535-555 Elizabeth Street, viewed from the site looking west



Figure 10: Neighbouring development at 543-551 Elizabeth Street, from the site looking north-west



Figure 11: Neighbouring development at 492-500 Elizabeth Street, from the site looking north-east



Figure 12: Neighbouring residential development on Goodlet Street, looking south-east



Figure 13: Neighbouring sex services premises at 278-284 Cleveland Street, looking north-east



Figure 14: Neighbouring development on the opposite side of Cleveland Street, looking south



Figure 15: Neighbouring development on the opposite side of Cleveland Street, looking south-east

Compliance Action

16. The site has previously been subject to compliance action which is now closed. It is not relevant to the subject application.

Amendments

17. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 7 October 2022.
18. The design recommendations and requests for further information are summarised as follows:
 - Delete the re-entrant corner at the intersection of Cleveland and Elizabeth Streets.
 - Retain additional fabric of the Elizabeth Street building, including the shopfront that retains the 'in-go'.
 - Modify the form of the upper levels to better relate to the surrounding context.
 - Amend levels to better relate to the topography of the site.
 - Reinforce the alignment of Perry Street, particularly the northern corner.

- Provide an updated landscape plan and demonstrate compliance with deep soil and urban canopy requirements.
 - Reduce the Floor Space Ratio (FSR) proposed for the Cleveland Street land parcel.
 - Provide further justification for the proposed exceedance of the height of buildings development standard.
 - Provide updated swept vehicle paths to demonstrate the utility of the basement.
 - Provide additional details regarding the design of the proposed car lift.
 - Consider reducing basement car parking and ensure all bicycle parking is provided on-site.
 - Provide additional details regarding flood analysis, stormwater, and public domain elements.
 - Provide an amended Detailed Site Investigation to address contamination.
 - Provide an amended acoustic report to address noise from the proposed terraces.
 - Provide a revised Public Art Plan.
19. The applicant responded to the request on 14 November 2022, and submitted the following information:
- Amended Architectural Plans.
 - Amended Design Report.
 - Amended Landscape Design Report and Plans.
 - Amended Civil Drawings and Stormwater Plans.
 - Amended Acoustic Report.
 - Amended Public Art Plan.
 - Amended Waste Management Plan.
 - An addendum to the Detailed Site Investigation Report.
 - Additional flooding information.
 - Additional traffic analysis.
 - Correspondence from the proposed waste contractor.
 - Additional Architectural Design Statement.

20. Design amendments included:
- The inclusion of a two-storey element on Cleveland Street, infilling the re-entrant corner.
 - An awning provided to the Cleveland Street frontage.
 - The openings in the Cleveland Street facade reduced and broken up in reference to surrounding buildings.
 - Additional shopfront entries introduced.
 - Shop walls retained to a depth of 4m on Level 1.
 - Existing 'in-go' shopfront retained.
 - Cornices added to Cleveland Street two storey element and to the top of the new building to better relate to the retained Elizabeth Street facade.
 - Finished floor levels of the Cleveland Street frontage raised to better align with street level.
 - Perry Street frontage adjusted to reinforce street alignment.
 - Deep soil area relocated to the south-eastern corner.
 - New balustrades added to roof level as required.
 - SRV zone and waste room relocated.
 - Car parking reduced to 28 spaces.
 - All visitor bicycle parking moved to within the building.
 - Amendments to building openings and finished floor levels to address flooding concerns.
 - Electrical substation setback further to allow swing doors to open without encroaching upon the public domain, and awning above deleted.
21. Following a detailed assessment of the amended plans and the additional information provided, a further request for additional information and amendments was sent to the applicant on 3 March 2023.
22. The design recommendations and requests for further information are summarised as follows:
- Provide 3D perspectives from street views.
 - Increase the prominence of window mullions on the western facade to better relate to the retained facade below.
 - Improve consistency in balustrade language.

- Remove all structures and associated changes or work within the SP2 'Infrastructure' zone.
 - Provide an Asbestos Management Plan.
 - Provide additional details regarding flood analysis, stormwater, and public domain elements.
 - Provide additional landscape information and demonstrate compliance with deep soil and urban canopy requirements.
23. The applicant responded to the request on 21 March 2023, and submitted the following information:
- Amended Architectural Plans.
 - Architectural Design Revisions Report.
 - Asbestos Management Plan.
 - Arboricultural Impact Statement.
 - Flooding Response.
 - Amended Civil and Stormwater Plans.
 - Amended Landscape Plans.
 - Soil Depth and Tree Root Analysis.
24. Key design amendments included:
- The facade grid, glazing dimensions and mullions of the Elizabeth Street facade on levels 2-3 modified to match the grid of the contributing building party walls and spacing of the retained windows on Level 1 of the Elizabeth Street frontage.
 - Glass balustrades removed and replaced with metal.
 - All works within the SP2 zone removed (except for the awning).
 - Basement extent reduced along Goodlet Street in response to tree protection zones.
 - Car parking reduced to 26 spaces.
 - Shop walls retained in full on Level 1.
 - Basement floor to ceiling height increased to provide adequate clearance for servicing.
 - Additional air intake grilles added.
 - Revised finished floor levels in tenancies on the Cleveland Street frontage.
 - Recess to main entry doors on Goodlet Street added.

- Amendments to Elizabeth Street shopfront glazing.
 - Provision of a shadow gap between the retained facade and new two storey element on Cleveland Street to allow the side wall and cornice return of the retained facade to be partially exposed.
 - Planter layout of the southern terrace on Level 2 revised.
 - Level 4 landscaping layout revised to suit revised structural column layout.
 - Level 4 Planter and parapet heights revised (some increased, some decreased).
 - Perimeter balustrade added to Level 4 rooftop terrace.
 - Layout of rooftop planters and solar panels revised, and a skylight/access hatch added.
 - Rooftop planter and parapet heights reduced.
25. The amendments and additional information provided have largely addressed the concerns of Council officers. Any outstanding issues can be dealt with by way of conditions of consent and are addressed in further detail in the relevant sections of this report.

Proposed Development

26. The application, as amended, seeks consent for the substantial demolition of existing buildings on site, partial retention of the building at 502-514 Elizabeth Street, and construction of a four (4) storey commercial development comprising ground floor retail and commercial office above, and excavation to provide two levels of basement parking. More specifically:

Demolition

- Demolition of the building at 272-276 Cleveland Street in its entirety.
- Substantial demolition of the building at 502-514 Elizabeth Street, including rear sections, sheds, roofs, outbuildings and fences. Original internal party walls, original shopfront section, minor ground floor facade elements, the entirety of Elizabeth Street first floor facade and the corner of the first floor facade on Goodlet Street are to be retained.

Excavation

- Excavation of site to a depth of approximately RL 29.59 to provide two basement levels.

Basement Level 2

- Construction of basement shell to a depth of approximately RL 29.59 and provision of basement level commencing at RL 31.35 containing:

- 17 standard car parking spaces.
- Five (5) storage cage areas.
- Diesel tank room.
- Services room.
- Two (2) fire stairs.
- One (1) goods passenger lift.
- Two (2) passenger lifts.
- One (1) truck lift
- One (1) vehicle lift
- Vehicle circulation space.

Basement Level 1

- Provision of basement level commencing at RL 34.35 containing:
 - Seven (7) standard car parking spaces.
 - Two (2) accessible car parking spaces.
 - Three (3) motorcycle parking spaces.
 - Semi Rigid Vehicle (SRV) loading zone.
 - Four (4) storage cage areas.
 - Services room.
 - Fire hydrant pump room.
 - Cold water pump room.
 - Grease arrestor.
 - Waste room.
 - Main Switch room.
 - Waste room with OSD tank above.
 - Two (2) fire stairs.
 - One (1) goods passenger lift.
 - Two (2) passenger lifts.

- One (1) truck lift.
- One (1) vehicle lift.
- Vehicle circulation space.

Ground Floor

- Six (6) commercial tenancies principally fronting Cleveland and Elizabeth Streets with secondary entrances fronting Goodlet and Perry Streets.
- Lobby area with pedestrian access from Goodlet Street.
- Comms room.
- One (1) accessible WC.
- 20 double stacked employee bicycle parking spaces.
- 12 double stacked visitor bicycle parking spaces.
- End of trip facilities including two (2) changing rooms, two (2) showers and 20 lockers with direct entry from Perry Street.
- Electrical substation fronting Goodlet Street.
- Fire Hydrant booster fronting Perry Street.
- Fire stairs and corridors with egress to Perry Street.
- One (1) goods passenger lift.
- Two (2) passenger lifts.
- One (1) truck lift.
- One (1) vehicle lift.
- Vehicular access from Perry Street.
- Landscaped deep soil zone on the corner of Cleveland and Perry Streets.
- Awning to the corner of Cleveland and Elizabeth Streets.
- Reinstatement of an awning to Elizabeth Street.
- Awning above Goodlet Street lobby entry (contained within site).

First Floor

- Open plan commercial office.
- Two (2) service rooms.
- One (1) fire stair.

- One (1) goods passenger lift.
- Two (2) passenger lifts.
- Male, female and accessible WCs.

Second Floor

- Open plan commercial office.
- Four (4) service rooms.
- One (1) fire stair.
- One (1) goods passenger lift.
- Two (2) passenger lifts.
- Male, female and accessible WCs.
- Wrap around outdoor terrace to Elizabeth Street and corner of Goodlet Street.
- Planter to Cleveland Street frontage.

Third Floor

- Open plan commercial office.
- Four (4) service rooms.
- One (1) fire stair.
- One (1) goods passenger lift.
- Two (2) passenger lifts.
- Male, female and accessible WCs.
- Terrace to corner of Elizabeth and Goodlet Streets.

Roof terrace

- Roof terrace, enclosure and landscaping.
- Perimeter balustrade.
- One (1) fire stair.
- One (1) goods passenger lift.
- Two (2) passenger lifts.
- Plant.

Roof

- Lift overrun.
- Roof exhaust and cowls.
- Access hatch.
- Photovoltaic array.

Materials and Finishes

- Green terazzo finish to Ground Floor on Goodlet and Perry Street frontages, and corner of Cleveland Street and Perry Street.
- Green and white tiles to ground floor of Elizabeth Street frontage.
- Remainder of retained facades on Elizabeth Street painted grey with white trim.
- White tiles to ground floor and first floor of Cleveland Street frontage (except corner of Perry Street).
- Green stained concrete to all new structure first floor and above.
- Clear glazing used throughout.

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

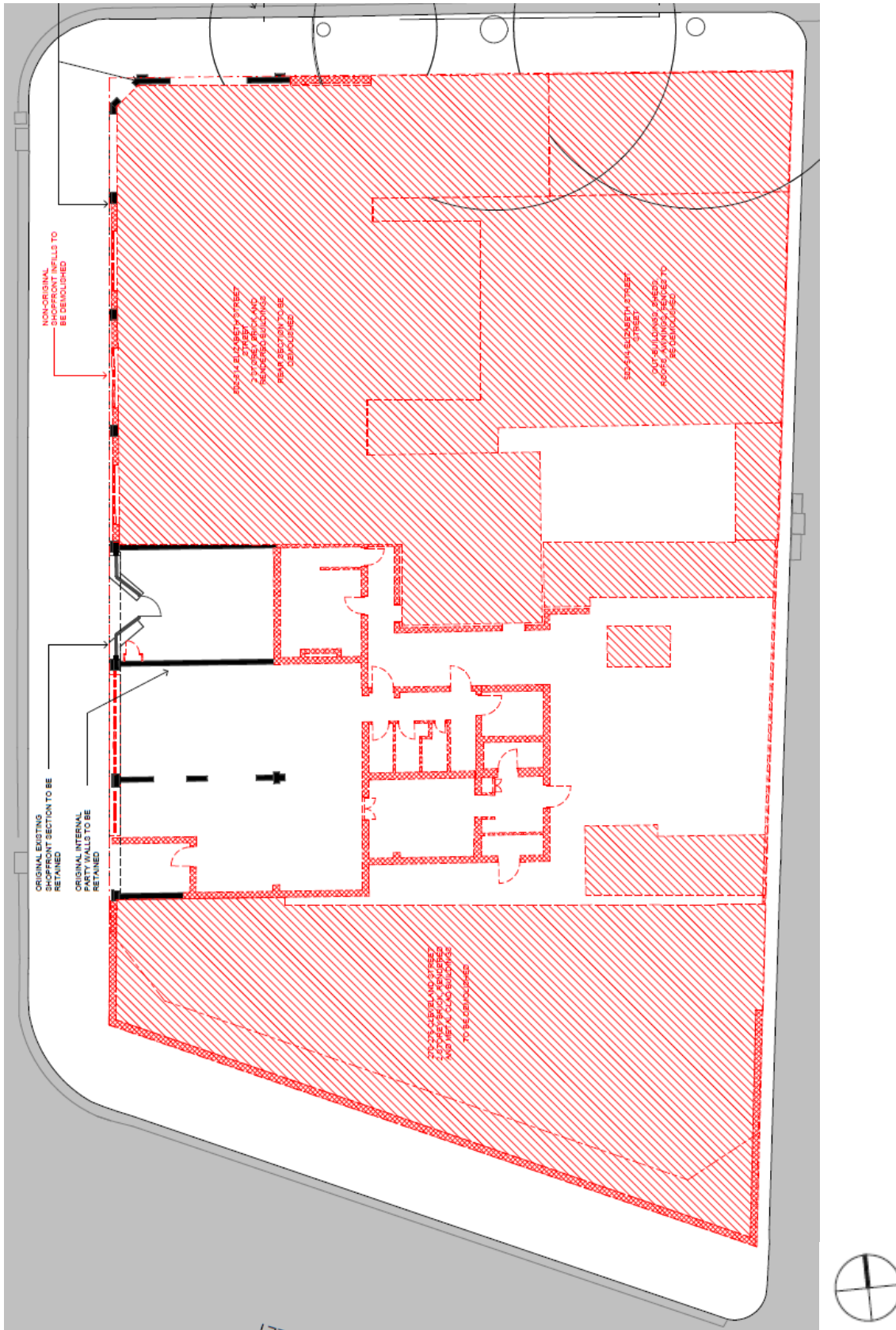


Figure 16: Ground floor demolition plan

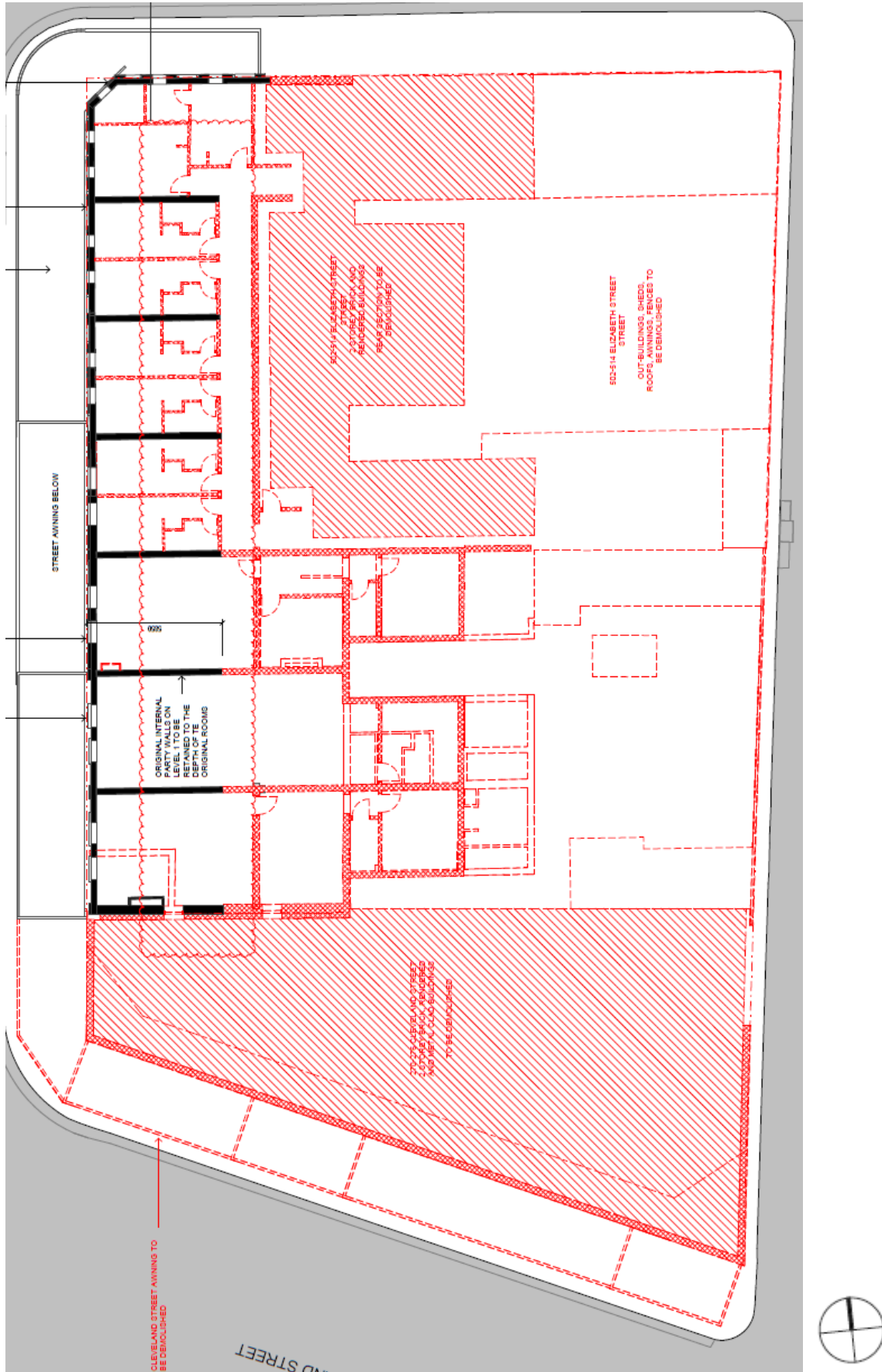


Figure 17: First floor demolition plan

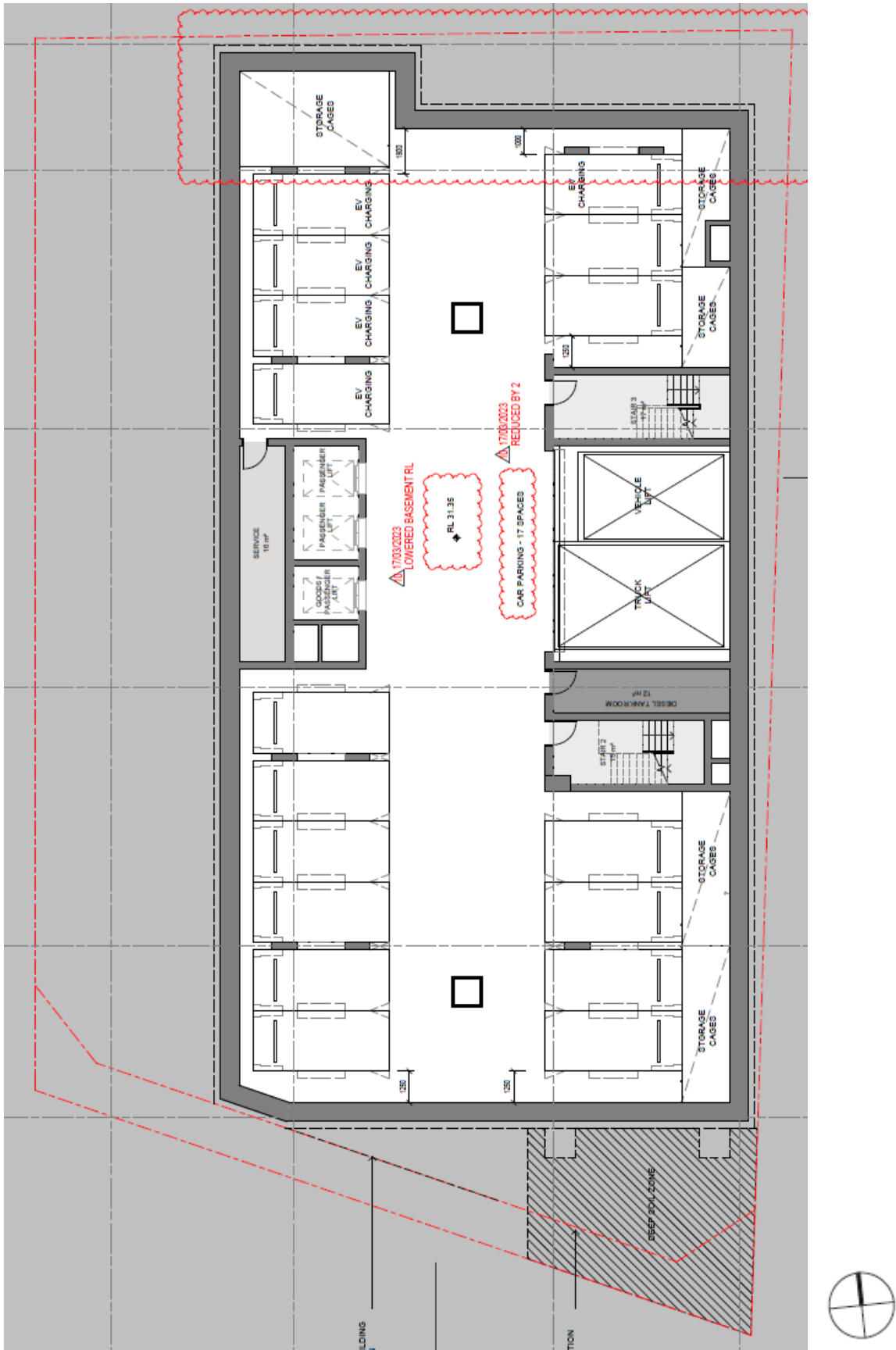


Figure 18: Basement Level 2 Plan

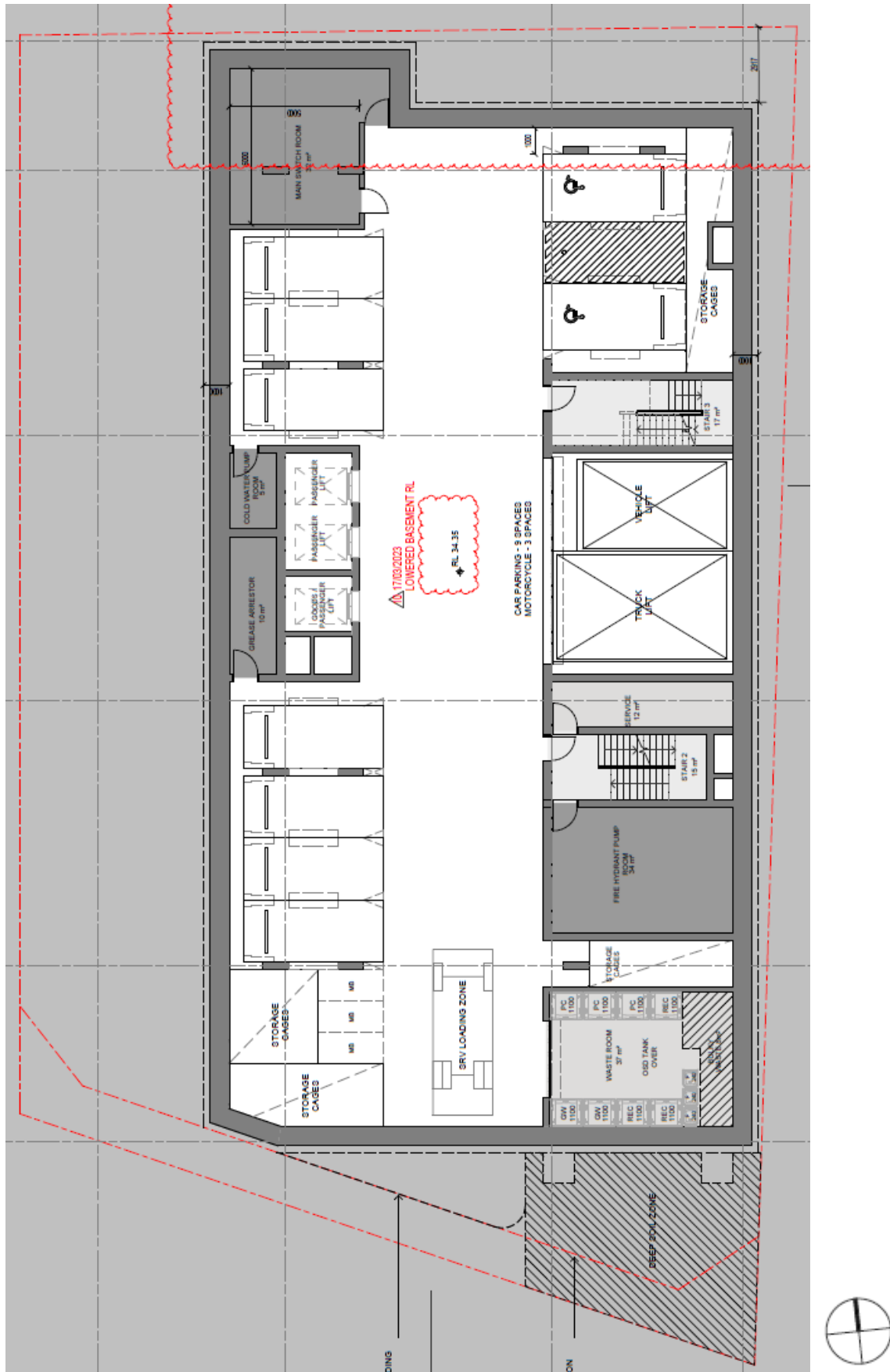


Figure 19: Basement Level 1 Plan

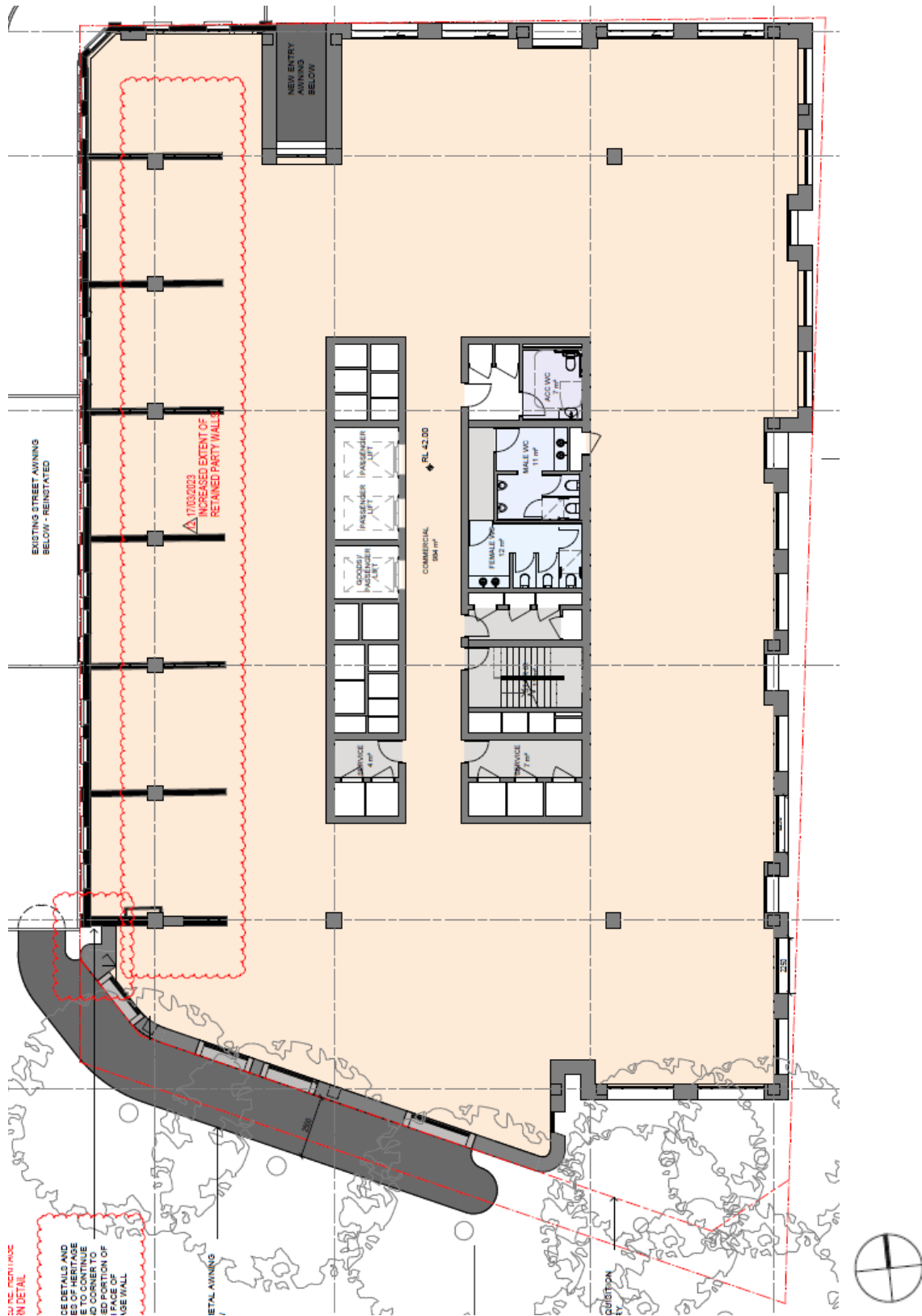


Figure 21: First floor plan

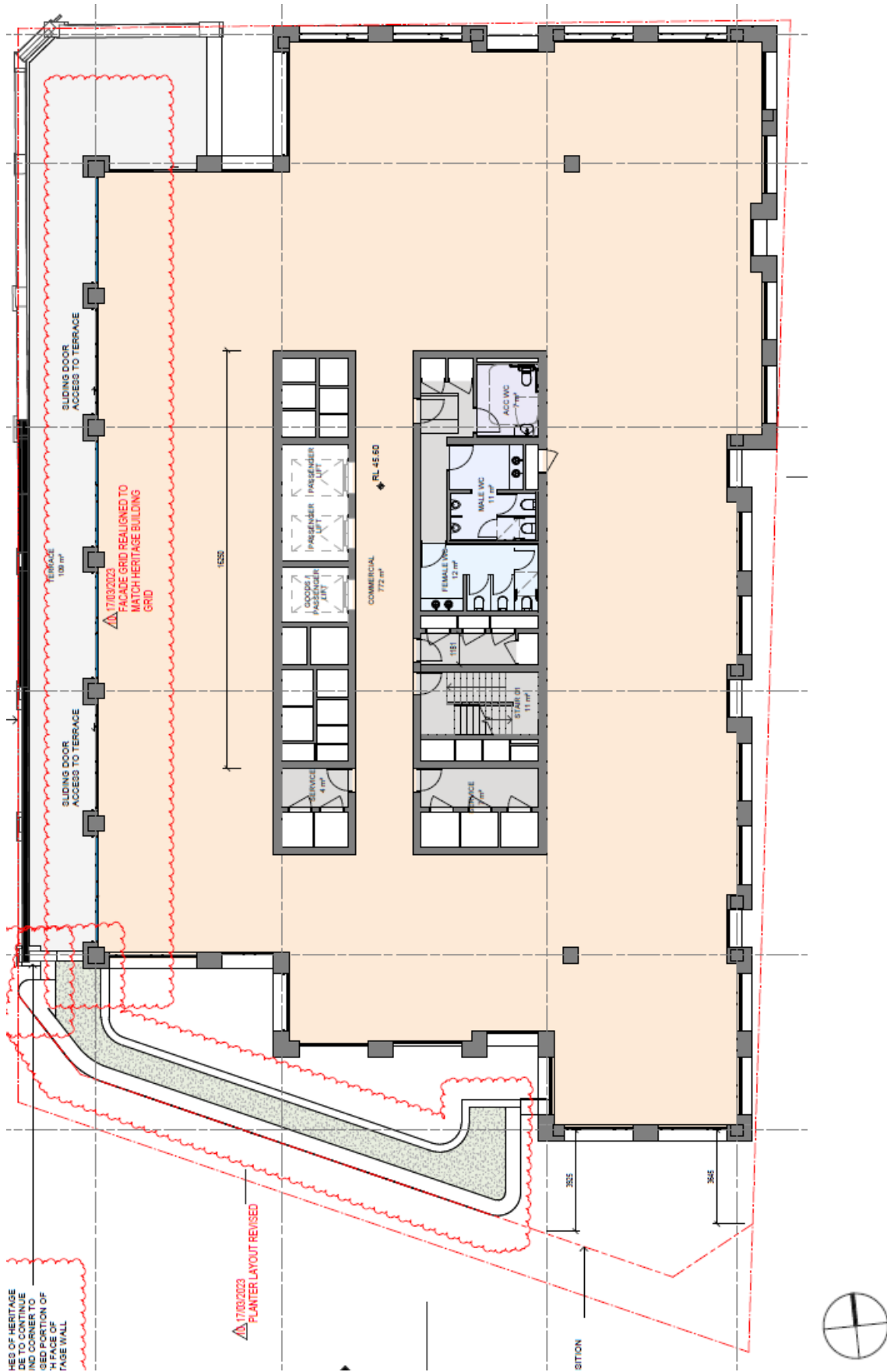


Figure 22: Second floor plan

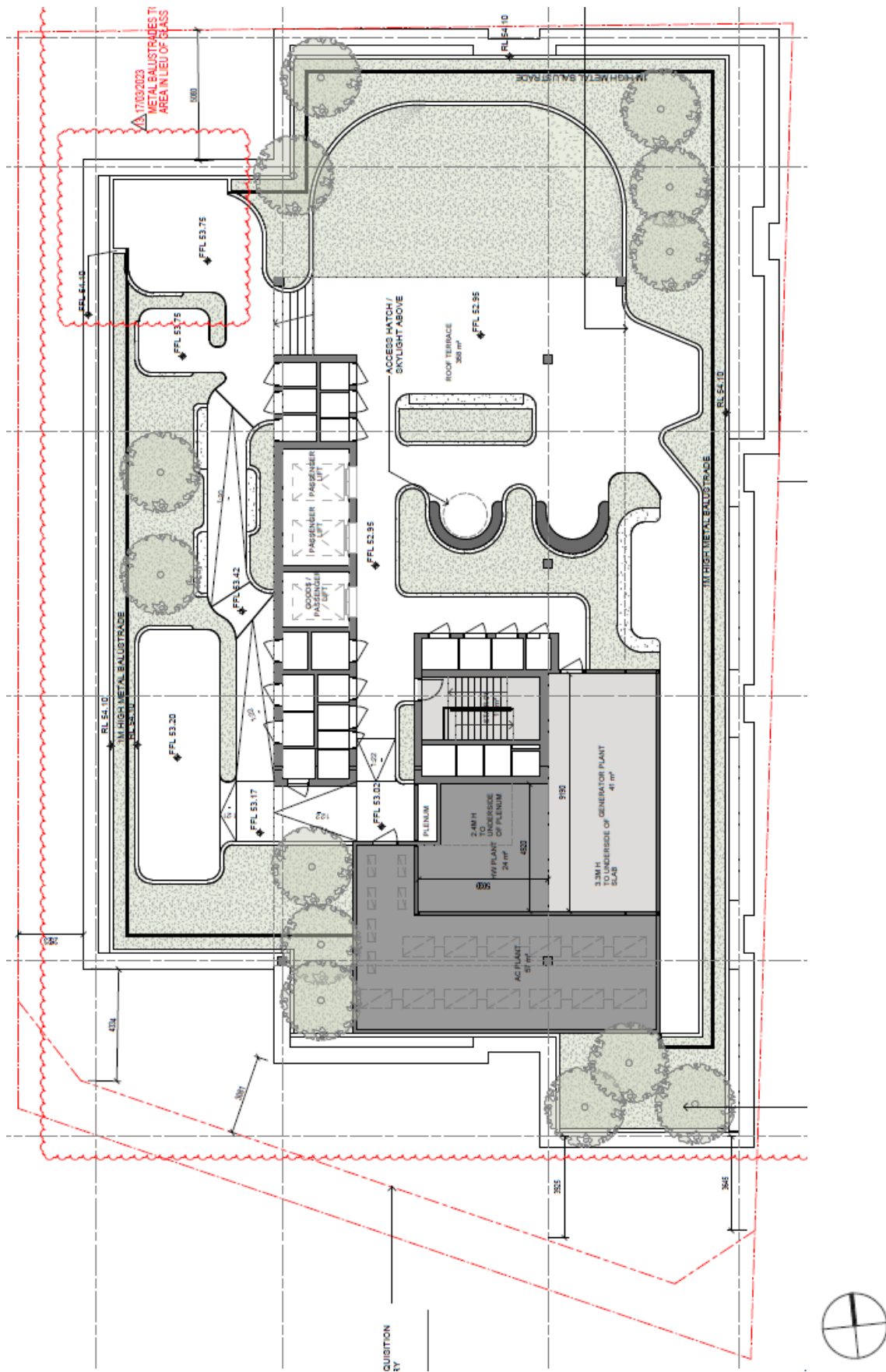


Figure 24: Fourth floor plan (roof terrace)

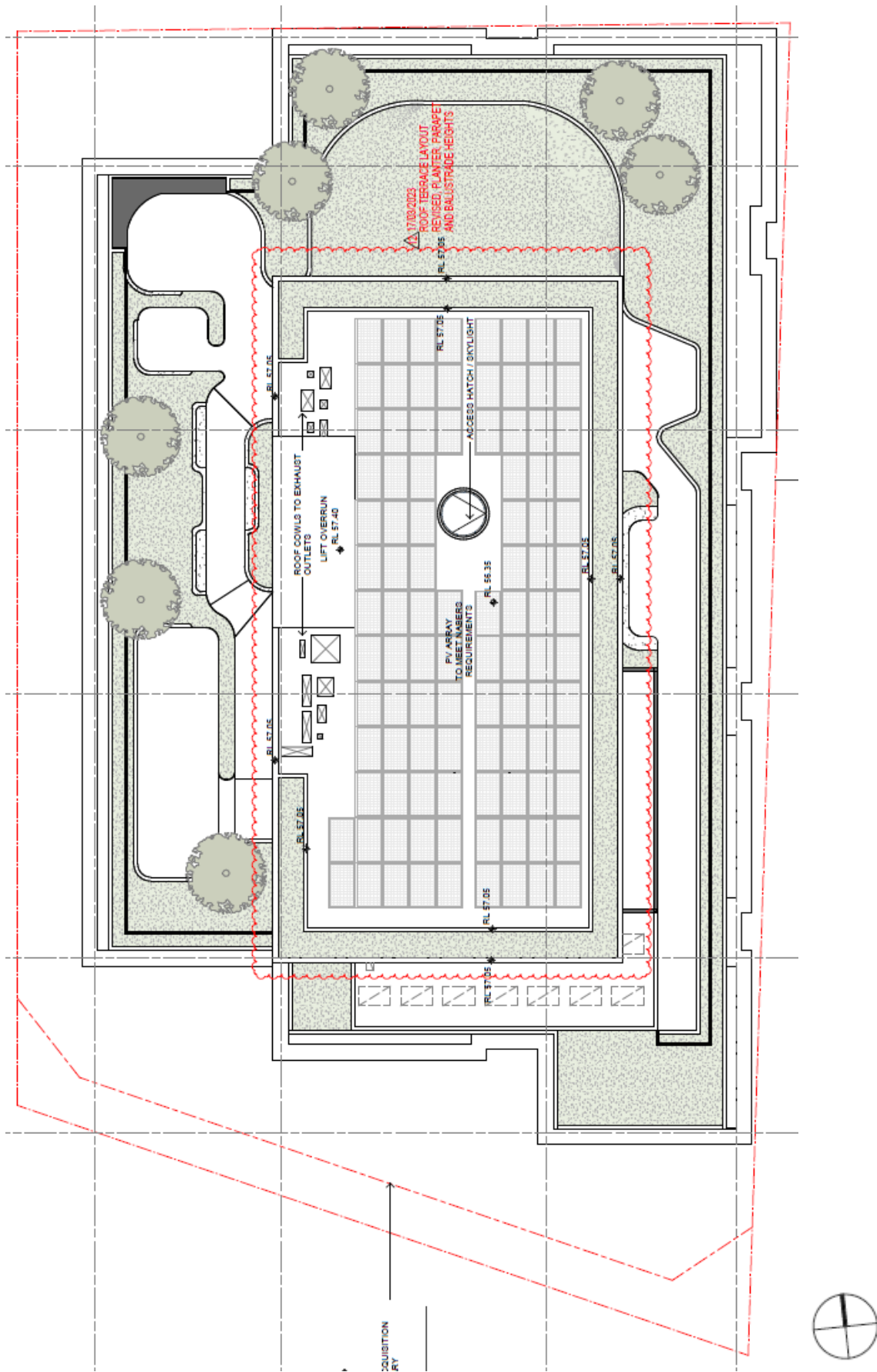


Figure 25: Roof plan

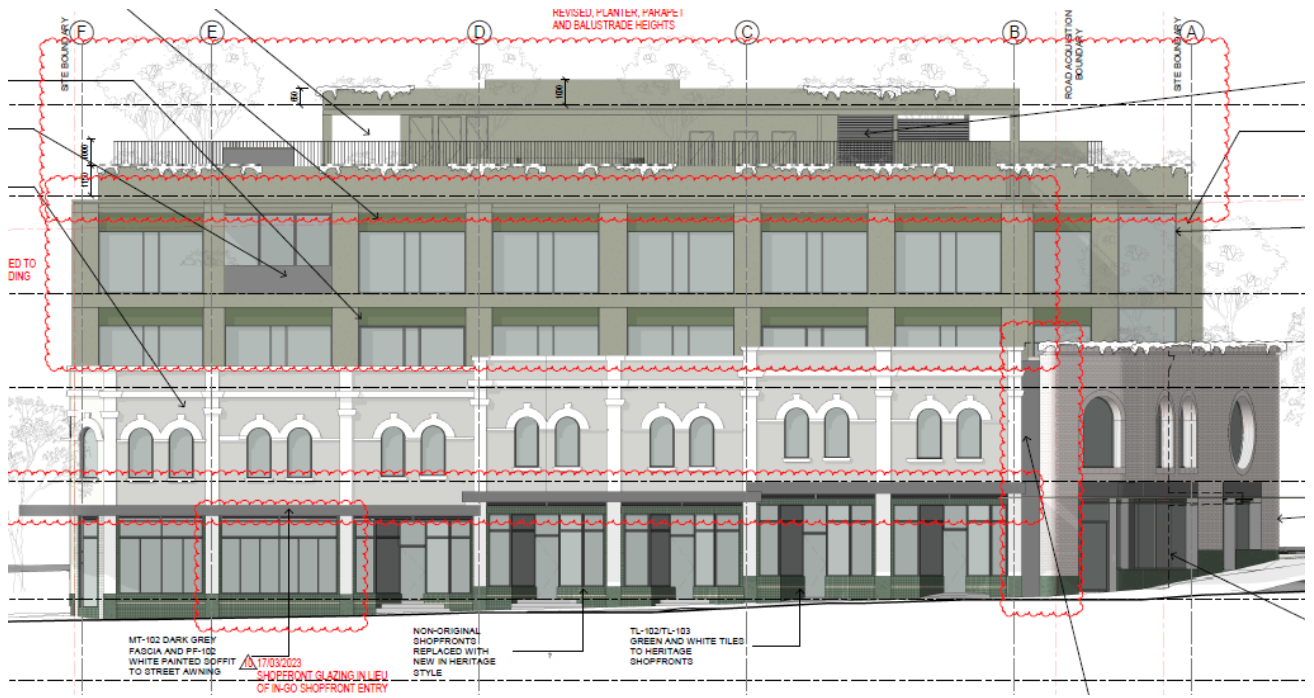


Figure 26: Western Elevation (Elizabeth Street)

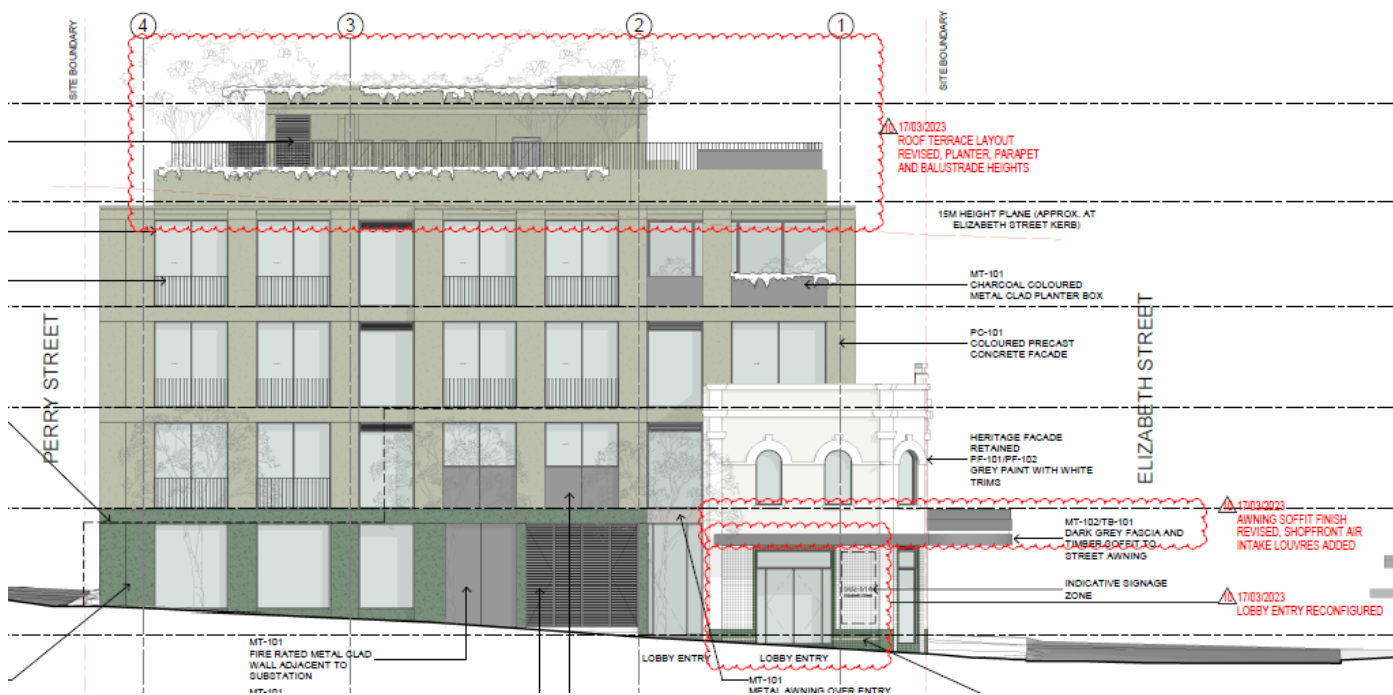


Figure 27: Northern elevation (Goodlet Street)



Figure 28: Eastern elevation (Perry Street)



Figure 29: Southern elevation (Cleveland Street)

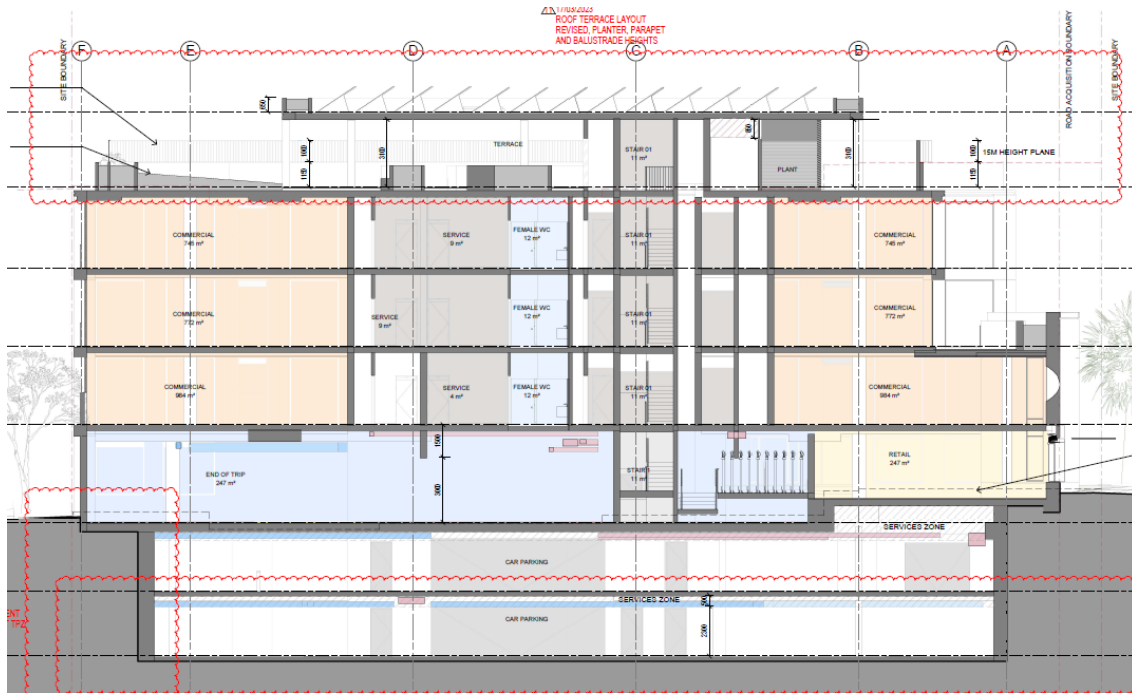


Figure 30: Longitudinal section

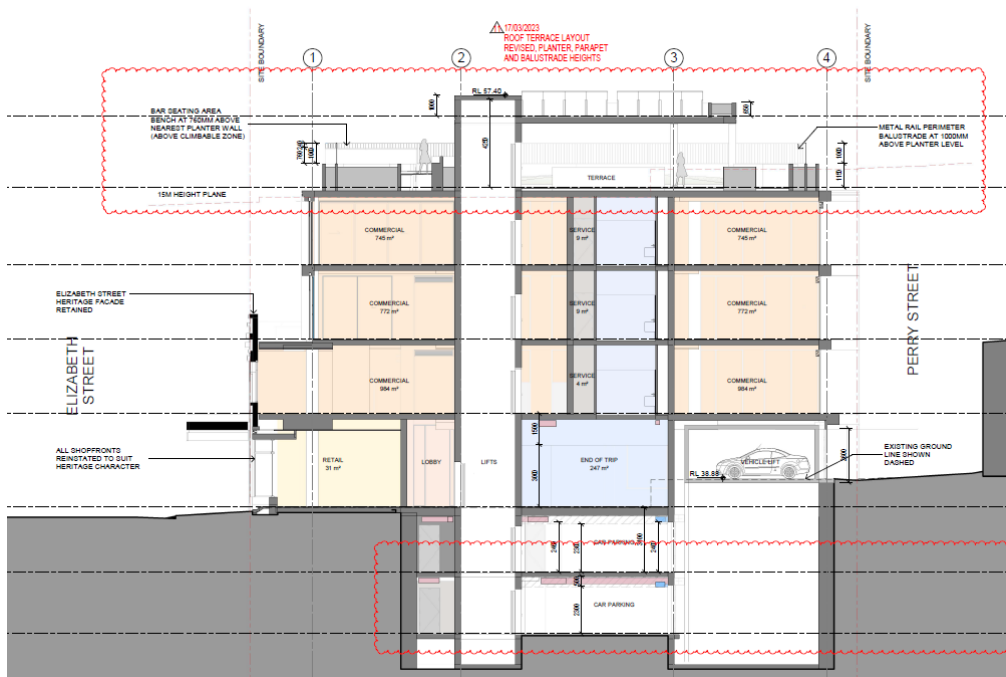


Figure 31: Latitudinal Section



Figure 32: Photomontage of proposed development, viewed from intersection of Cleveland Street and Elizabeth Street, looking northwest



Figure 33: Photomontage of proposed development, viewed from intersection of Goodlet Street and Elizabeth Street, looking southeast

Assessment

28. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act). Section 26 of the Roads Act 1993 is also relevant to the proposed development.

Roads Act 1993

29. A road widening order affects most properties on the western side of Elizabeth Street, Surry Hills between Randle Lane in the north and Cleveland Street in the south, and all properties on the eastern side between Belvoir Street in the north and Cleveland Street in the south. It came into effect by way of Government Gazette on 30 June 1950 (Folio 2078).
30. City Services have confirmed the reserved land is not required for traffic purposes. A deferred commencement consent is recommended, requiring the road reservation order to be revoked prior to the consent becoming operational.
31. See further details in the 'Discussion' section below.

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. A Preliminary Site Investigation was prepared which identified potential contaminating sources and the potential for exposure during the development of the site. Consequently, a Detailed Environmental Site Investigation was undertaken that concluded that the site could be made suitable for the proposed development provided the recommendations in the report are implemented and an Asbestos Management Plan for the removal of the asbestos affected soils on the site was prepared.
34. An Asbestos Management Plan has been prepared to the satisfaction of Council's Environmental Health Officer, and it is determined the site can be made suitable for the proposed use subject to the imposition of the recommended conditions of consent.

State Environmental Planning Policy (Transport and Infrastructure) 2021

35. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.

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

Clause 2.48 Determination of development applications – other development

36. The application is subject to Clause 2.48 of the SEPP as the development involves the penetration of ground within 2m of an underground electricity power line, involves the penetration of ground within 2m of an electricity distribution pole and will be carried out within 5m of an exposed overhead electricity power line.
37. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations

Clause 2.119 – Development with frontage to classified road

38. The application is subject to Clause 2.119 of the SEPP as the site has frontage to Cleveland Street which is a classified road.
39. The proposed development satisfies the provisions of Clause 2.119 subject to conditions of consent, as vehicular 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.

Clause 2.122 – Traffic-generating development

40. The application is subject to Clause 2.122 of the SEPP as proposed vehicular access to the site is via Perry Street within 90m of its connection to a classified road (Cleveland Street).
41. The requirements of Clause 2.122 have been met as the application was referred to Transport for New South Wales (TfNSW) and the requirements of TfNSW have been included in the recommended conditions of consent. This includes requirements to prepare a Loading and Servicing Management Plan and a Construction Traffic Management Plan for TfNSW endorsement prior to the issue of a Construction Certificate.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments

42. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in Division 2.
43. 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, apart from the control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

Local Environmental Plans**Sydney Local Environmental Plan 2012**

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The proposed development is located predominantly in the MU1 'Mixed Use' Zone. The proposed development is defined as a commercial premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.</p> <p>The southern part of the site adjacent to Cleveland Street is zoned SP2 'Infrastructure', and the purpose shown on the Land Zoning Map is 'Classified Road'.</p>

Provision	Compliance	Comment
		<p>The purpose of the SP2 zoning is to reserve the land for a future road widening proposal affecting Cleveland Street (separate to the road widening order affecting Elizabeth Street discussed elsewhere in this report).</p> <p>The proposed building is contained within the boundaries of the MU1 'Mixed Use' zone, except for the proposed awning. TfNSW do not object to the construction of the awning, which can be classed as ordinarily incidental to the purpose of a road and is therefore permissible within the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>A height of 20.1m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio (FSR) of 2.5:1 or 2,660 sqm of Gross Floor Area (GFA) is permitted on the northern land parcel.</p> <p>An FSR of 2.41:1 or 2, 595 sqm of GFA is proposed.</p> <p>The proposed development complies with the maximum FSR development standard on the northern land parcel.</p> <p>A maximum FSR of 2:1 or 484 sqm of GFA is permitted on the southern land parcel.</p> <p>An FSR of 2:21 or 536 sqm of GFA is proposed.</p> <p>The proposed development does not comply with the maximum FSR</p>

Provision	Compliance	Comment
		<p>development standard on the southern land parcel.</p> <p>A request to vary the FSR development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.5 Calculation of floor space area and site area	Yes	<p>Land on which the proposed development is prohibited must be excluded from the site area for the purposes of calculating FSR.</p> <p>Accordingly, the portion of the southern land parcel that is zoned SP2 'Infrastructure' - Classified Road, which is 62 sqm in area, is excluded from the site area in the discussion of FSR in this table and within the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the Height of buildings and FSR development standards prescribed under Clauses 4.3 and 4.4 respectively. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.1 and 5.1A Development on land intended to be acquired for public purposes	Yes	<p>The southern portion of the southern land parcel is identified for acquisition for a future road widening on Cleveland Street. The Authority of the State is TfNSW. The land has not yet been acquired.</p> <p>Clause 5.1A specifies that only earthworks and roads may be carried out on land zoned SP2 Infrastructure and marked 'Classified Road'. The proposed awning is situated within the SP2 'zone' but is permissible as development that is ordinarily incidental to a road, in line with the uses specified as being permissible with consent in the land use table.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
5.10 Heritage conservation	Partial compliance	<p>The site is located within the Goodlet Street heritage conservation area (C63). Both buildings are identified as contributing items within the heritage conservation area.</p> <p>The proposed development will result in a detrimental impact to the heritage significance of the heritage conservation area, as the southern building is proposed to be demolished in full. This is acceptable in the context of the site being identified for acquisition for the purpose of a road. Accordingly, the demolition of the contributing item is not a determinative factor that would warrant refusal of the application.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	A maximum of 21.088 car parking spaces are permitted.

Provision	Compliance	Comment
7.7 Retail premises	Yes	A maximum of 8.25 car parking spaces are permitted.
Total	Yes	A maximum of 29 car parking spaces are permitted (rounded to the nearest whole number). The proposed development includes 26 car parking spaces and complies with the relevant development standards.
Division 3 Affordable housing		
7.13 Contribution for the purpose of affordable housing	Yes	<p>The proposal is situated on residual land and the development involves the demolition of existing floor area and the subsequent creation of more than 200 sqm of GFA.</p> <p>The development application was lodged before 1 July 2022. Residential uses are not proposed. Accordingly, an affordable housing levy of 0.5% of the total area of the development is required.</p> <p>The equivalent monetary contribution amount effective from 1 March 2023 to 29 February 2024 is \$10,611.53.</p> <p>The total floor area proposed is 4,406 sqm, and all floorspace is considered new, given all existing slabs are to be demolished. As a result, the equivalent monetary contribution applies to 22.03 sqm. Accordingly, the applicable affordable housing contribution payable is \$233,772.01.</p> <p>A condition of consent is recommended accordingly.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class Class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Provision	Compliance	Comment
7.15 Flood planning	Yes	<p>The site is identified as being subject to minor flooding around the intersection of Goodlet and Elizabeth Streets.</p> <p>The application proposes development at or below the flood planning level. A flood report accompanies the application which includes performance criteria responses regarding non-compliances with the floor planning level along Cleveland and Goodlet Streets. The City's Water Assets team has reviewed the report and finds the proposal acceptable.</p>

Development Control Plans

Sydney Development Control Plan 2012

45. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

46. The site is located within the Cleveland Street locality. The proposed development is in keeping with the unique character and the design principles of the Cleveland Street locality, in part.
47. The proposed development retains original fabric of the Elizabeth Street building's facade, and the new development responds appropriately to those retained elements. The proposal strengthens the east-west vista through the demolition of the building on the southern lot and the provision of an increased setback to Cleveland Street. The proposal provides an appropriate height transition between taller buildings to the north-west on the opposite side of Elizabeth Street and lower scale residential and commercial buildings to the east. The proposed stepped form, and chamfered edge on the corner of Elizabeth and Cleveland Street enhances the diversity of building forms and massing in the direct vicinity of the site. The proposal also provides active edges to enliven the street and includes the provision of active uses on the ground floor.
48. The proposal is, however, partly inconsistent with the locality statement in that it involves the demolition of an older corner commercial building (272-276 Cleveland Street), which would ordinarily be required to be retained and restored. This is acceptable given the southern lot is identified in Sydney LEP 2012 for partial acquisition for the purpose of road widening of Cleveland Street. As a result, the building will face demolition in the future regardless of the outcome of this development application, and it is appropriate to redevelop the site in a manner consistent with this. Accordingly, while this is a significant inconsistency with the locality statement, it is not a determinative factor that would warrant the refusal of the application.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Partial compliance	<p>The proposal does not result in overshadowing to public open space, nor does it impinge on public views.</p> <p>The proposal positively addresses the street, providing multiple access points, and providing greater street activation. Basement levels do not protrude above adjoining ground level.</p> <p>The Elizabeth and Cleveland Street frontages are identified on the Active Frontages Map. Fine grain tenancy frontages are provided, contributing to the amenity of the streetscape and providing frequent building entries. Inactive elements are concentrated away from the nominated active frontages. The proposal achieves 70% glazing to the active frontages (considered collectively).</p> <p>Fixed awnings are provided in accordance with the Footpath Awnings and Colonnades map. See further details in the 'Discussion' section below.</p> <p>Given the site's location on a major road, a condition of consent is recommended requiring light reflectivity from building materials not to exceed 20%.</p> <p>A preliminary Public Art Plan has been provided which identifies opportunities for public art on the corner of Cleveland and Perry Streets, and on the Elizabeth Street awning. The Preliminary Plan is acceptable subject to conditions.</p>
3.5 Urban Ecology	Partial compliance	<p>The proposed development does not involve the removal of any trees. Notwithstanding this, the construction of the basement shell has the potential to impinge on the structural root zone (SRZ) of street trees on Goodlet Street.</p> <p>A condition of consent is recommended requiring the basement shell to be setback further from the site boundary.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	<p>A Sustainability Report has been submitted with the application which makes the following commitments:</p> <ul style="list-style-type: none"> • Design to achieve 5.5 Star NABERS Energy for Offices • Incorporation of renewable energy systems and rainwater reuse systems. • Compliance with Section J of the BCA. <p>Conditions of consent are recommended accordingly.</p>
3.7 Water and Flood Management	Yes	<p>The site is identified as being on flood prone land. See discussion under section 7.15 above.</p> <p>Stormwater Quality has been addressed through the submission of a MUSIC-link report, which was reviewed by the City's Water Assets Unit and found to be acceptable.</p>
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development does not involve subdivision or lot consolidation.</p> <p>The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to conditions of consent. These conditions include a requirement to consolidate the sites.</p>
3.9 Heritage	Partial compliance	<p>The site is located within the Goodlet Street Heritage Conservation Area C63. Both buildings are identified as contributing items within the heritage conservation area.</p> <p>The proposed development involves the complete demolition of the building on the southern lot, which is a contributing item within the heritage conservation area. This is acceptable in the context of the site being identified in Sydney LEP 2012 for acquisition for the purpose of a road.</p>

Provision	Compliance	Comment
		The proposal is generally acceptable from a heritage perspective, subject to the recommended conditions of consent.
3.10 Significant Architectural Building Types	Yes	The building at 502-514 Elizabeth Street has one original shopfront, which may be considered a significant shopfront for the purpose of Section 3.10.4 'significant shopfronts'. The proposal retains and enhances this shopfront.
3.11 Transport and Parking	Partial compliance	<p>The proposal complies with the SLEP 2012 development standards for car parking.</p> <p>Given the proposed access to the car park is via a vehicle lift, the site is not considered appropriate for the provision of a car share scheme parking space.</p> <p>The proposal generates a requirement for 20 worker bicycle spaces, and 13 visitor spaces (33 total). The proposal provides for 32 spaces, based on an erroneous calculation of retail visitor spaces of 1 per 100sqm. The rate is 2 spaces plus 1 space per 100 sqm of GFA above 100sqm, where the number of spaces is rounded up to the nearest whole number. In this case 495sqm generates a requirement for 6 spaces, rather than 5 calculated by the applicant. A condition of consent is recommended requiring one extra space.</p> <p>The proposal complies with the minimum service vehicle parking requirements.</p> <p>Three (3) motorcycle parking spaces are provided in accordance with the specified minimum requirements.</p> <p>Two (2) car spaces are accessible in accordance with the specified minimum requirements.</p> <p>The proposal does not comply with the DCP requirement to limit vehicle crossovers to 3.6m, providing a crossover of approximately 10m. This is acceptable given there is no defined footpath on Perry Street, which operates more like a laneway than a street.</p>

Provision	Compliance	Comment
		<p>The City's Transport planners raise no objection to the proposed vehicle lift.</p> <p>The waste collection point is located within the basement and servicing it will be no encumbrance to the operations of the basement.</p> <p>The design of the car park is acceptable.</p>
3.12 Accessible Design	Yes	The proposal can achieve equitable access. Compliance with the National Construction Code is required to be demonstrated prior to the issue of a Construction Certificate.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	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.
3.15 Late Night Trading Management	Yes	<p>The proposal includes retail premises on the ground floor and outdoor terraces associated with the office uses on the upper levels.</p> <p>Hours of operation are not specified.</p> <p>The retail premises will be the subject of a future Development Applications or Complying Development Certificates and hours of operation will be considered at that time.</p> <p>The rooftop terraces associated with the office premises use may allow the consumption of alcohol, without requiring a license, so is treated as a Category B low impact premises.</p> <p>The site is within a Local Centre Area. The SDCP 2012 permits Category B premises to trade outdoors between 7am and 8pm, with 10pm permissible subject to a trial. As the outdoor terraces have the potential to result in neighbourhood disturbance if not properly regulated, a condition of consent is recommended</p>

Provision	Compliance	Comment
		limiting their use to the base hours of 7am to 8pm.
3.16 Signage and Advertising	No	<p>The proposed development includes an indicative signage zone on the Goodlet Street frontage at the corner with Elizabeth Street.</p> <p>A signage strategy is required for the building, given it involves multiple tenancies and is located within a heritage conservation area.</p> <p>A condition of consent is recommended to ensure the signage zone is not approved. A further condition of consent is recommended for a separate development application for signage, which will involve the preparation of a strategy.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed-Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of four (4) storeys. There is no requirement for a maximum street frontage height.</p> <p>While the structure on the roof terrace may have the appearance of an additional storey, it cannot be defined as such because it is open on all sides and therefore does not constitute space within the building.</p> <p>Accordingly, the proposed development is four (4) storeys in height and complies.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	Partial compliance	The proposed development achieves the minimum floor to floor height of 4.5m at the ground level (within the retail

Provision	Compliance	Comment
		<p>tenancies fronting Elizabeth Street) and 3.6m at the levels above.</p> <p>The minimum floor to floor height of 4.5m at ground level is not achieved within the proposed retail tenancy fronting Cleveland Street, achieving around 3.4m.</p> <p>The Cleveland Street tenancy is situated on the highest part of the site topographically. The tenancies on Elizabeth Street are important in terms of their contribution to the streetscape, and the floor level of the office level above is set at their first-floor datum line. For the floor-to-floor heights in the Cleveland Street tenancy to comply, the floor level of the first-floor office would need to be raised in a manner that would be incongruous with this datum line. Alternatively, the first-floor office and all levels above would need to be stepped. Neither of these outcomes would be desirable.</p> <p>The tenancy provides a floor to ceiling height of around 3.1m which will be suitable for many retail uses. The proposed non-compliance is acceptable in the circumstances of the case.</p>
4.2.2 Building setbacks	Yes	The proposal is located on an island site, occupying an entire block. The proposal is largely built to the boundary, which is acceptable.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Solar access diagrams submitted with the application demonstrate there is no additional overshadowing to living room windows or private open spaces of surrounding residential spaces.
4.2.3.10 Outlook	Yes	The proposal will not result in any adverse impacts to outlook from apartments on the opposite side of

Provision	Compliance	Comment
		Goodlet Street and Elizabeth Street. The proposal is situated in a medium density highly urbanised environment.
4.2.3.11 Acoustic privacy	Yes	An acoustic report has been prepared and submitted to the satisfaction of Council's Environmental Health Unit.
4.2.4 Fine grain, architectural diversity and articulation	No	The proposal generally complies; however, the building length is 43m on the Perry Street frontage, where the DCP requires no more than 40m. The DCP requires non-compliant buildings to be visually 'broken up' to appear as different buildings. Perry Street does not have defined footpaths and operates as a lane, rather than a street. The non-compliance is minor and given the character of Perry Street it is acceptable.
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.
4.2.8 Letterboxes	Partial compliance	The letterboxes are not provided within the lobby of the building which presents a security risk. A condition is recommended to ensure that they are installed within the lobby area, with non-master key locks for security.
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

Clause 4.6 Request to Vary a Development Standard

Height of Buildings

49. The site is subject to a maximum height of buildings control of 15m. The proposed development has a maximum building height of 20.1m (34% variance proposed).

50. 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;

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

51. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) Because the objectives of the standard are achieved notwithstanding the non-compliance. Specifically:

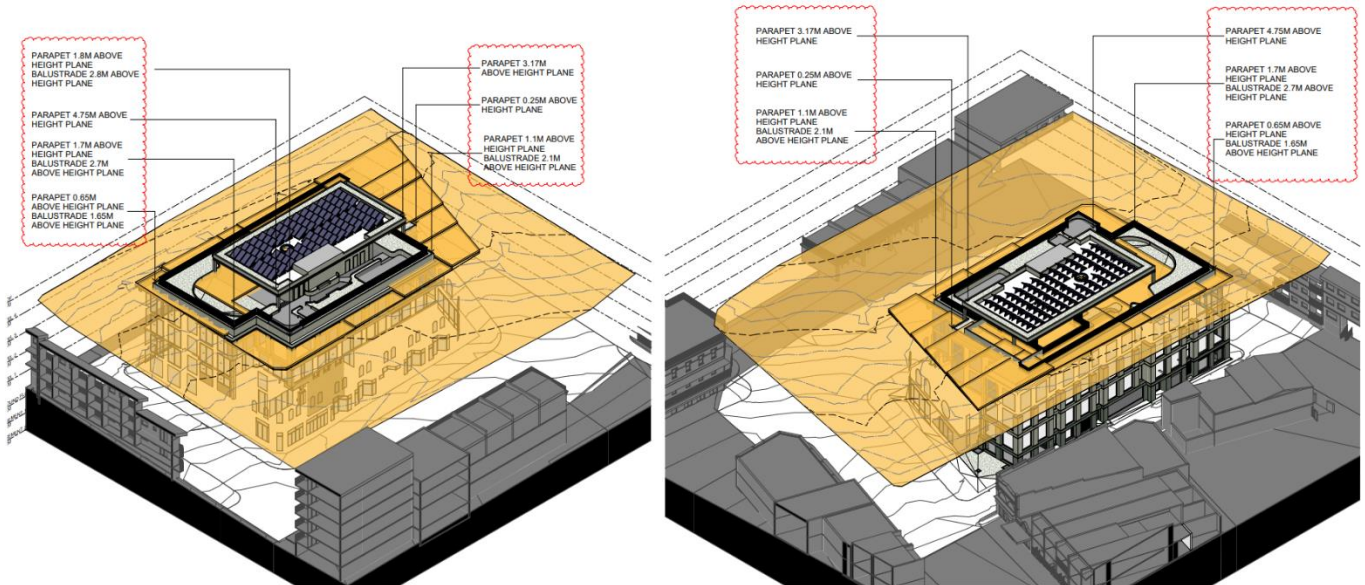
(a) To ensure the height of development is appropriate to the condition of the site and its context:

The proposal has been designed in accordance with the four (4) storey height limit prescribed under the Sydney DCP 2012.

The proposed height is in keeping with development to the north along Elizabeth Street and acts as a transition to the lower scale buildings to the south.

The overall built form has taken contextual cues from surrounding development that corners the intersection of Cleveland and Elizabeth Streets. The new building is setback behind the retained facade to reduce the perceived bulk of the building. The roof is further setback again, so as not to be visible from the public domain.

A compliant building would not be capable of delivering four storeys across the entire site, whilst achieving compliant floor to floor heights. Accordingly, the proposal results in a building height that is more appropriate to the site context.



Figures 34 and 35: Three dimensional axonometric drawings depicting the 15m height plane (yellow) and non-compliant building elements

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas:

Surrounding heritage items are greater in height than the existing developments on the site. The areas of non-compliance are largely localised to the centre of the building and are not readily perceivable from the public domain. The visible parts of the new building are of a similar height to surrounding heritage items.

The site is located on the western boundary of the Goodlet Street heritage conservation area and presents a different urban context to other buildings in the area. The site is an island site with no directly adjoining neighbours, and the site is a corner building on a prominent intersection. The urban context of the site is more compatible with buildings on the opposite side of Elizabeth Street.

A Heritage Impact Statement has been submitted with the application that confirms that when viewed from Cleveland Street the proposed building provides an appropriate transition in scale as the roof structure, which involves the greatest areas of variation, is small and well set back. It also states the area of non-compliance is not easily perceived from Elizabeth Street and presents a compatible form and scale to the surrounding locality.

(c) to promote the sharing of views outside Central Sydney:

The site is located outside of Central Sydney as defined in Sydney LEP 2012. Due to the site's location and the height and scale of surrounding buildings, the proposal does not impact on views to the Sydney CBD.

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas:

The site is positioned along the Elizabeth Street corridor which includes taller buildings and higher densities towards Central Station that decrease in height from 10-12 storeys to four (4) storeys when travelling south. From the public domain, the proposal will be perceived as a four-storey building which is compatible in scale to the adjacent buildings on Elizabeth Street. This provides an appropriate transition building in its context, especially from the seven-storey building at 554-551 Elizabeth Street to the lower scale residential buildings on the southern side of Cleveland Street.

Objective (e), which relates to Green Square, is not applicable.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The additional height supports the use of the roof as a terrace landscaped garden, which will provide high quality spaces and amenity to the commercial office building and is an essential aspect of being able to lease a building of this nature post COVID-19.
 - (ii) The additional height will not result in adverse environmental impacts including overlooking, privacy, and view loss.
 - (iii) The proposal is consistent with the Objects of the EP&A Act.

Floor Space Ratio

- 52. A maximum FSR of 2.5:1 or 2,660 sqm of GFA is permitted on the northern land parcel. An FSR of 2.41:1 or 2,595 sqm GFA is proposed, therefore the FSR as it relates to that portion of the site is compliant.
- 53. The southern land parcel is subject to a maximum FSR control of 2:1. In accordance with Subclause (4) of Clause 4.5 'Calculation of floor space ratio and site area', land on which the proposed development is prohibited must be excluded from the site area for the purposes of calculating FSR. Accordingly, the portion of the southern land parcel that is zoned SP2 'Infrastructure' - Classified Road, which is 62 sqm in area, is excluded. Therefore the maximum 2:1 FSR control equates to a maximum GFA of 484sqm. The proposed development, as it relates to the southern land parcel, has an FSR of 2.21:1, which equates to a GFA of 536sqm (10.5% variance proposed).
- 54. 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; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.

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

- 55. The applicant seeks to justify the contravention of the FSR development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
- (i) Because the objectives of the standard are achieved notwithstanding the non-compliance. Specifically:

(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future.

The request to vary the development standard arises from a technical non-compliance with the development standard on the Cleveland Street portion of the site. The northern land parcel provides a quantum of GFA less than the permitted maximum and, overall, the proposed development will deliver the quantum of floor space intended for the consolidated site consistent with the intent of the existing planning controls across the site. These controls have been established to meet the anticipated development needs for the site and surrounding locality.

(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.

The proposal presents a density intended by the applicable floor space controls. As an island site, the proposal responds appropriately to the site's context, providing a cohesive built form across the whole parcel of land. Should the proposal be designed to comply with the two separate FSR controls applicable to the site, it would remove opportunities for innovation in building design and result in a disjointed building form that does not fully achieve the potential of the site. The proposal has rationalised the allowable floor space across the site, which has resulted in a regular and appropriate built form.

(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

The proposal does not exceed the permissible floor space allowed across the site. Wholistically, the proposal provides a compliant quantum of floor space, which has been prescribed under the Sydney LEP 2012 with consideration to the existing and planned infrastructure.

It is also relevant that the site is strategically located on the fringe of the Sydney CBD, approximately 700 metres from Central Railway Station, providing access to the comprehensive train network that traverses NSW. The site is also approximately 400m from the Surry Hills light rail stop on Devonshire Street. Further, the closest bus stop is located only 20m away along Elizabeth Street, which provides connections across Sydney. Accordingly, the proposed development adopts a scale that is consistent with strategic expectations for the site which is suitably located to benefit from existing and planned infrastructure.

(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The proposed built form has been designed to accommodate a compliant quantum of GFA across the site. This has resulted in a building that is appropriate and consistent in scale to surrounding buildings.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The proposal will wholistically provide a compliant quantum of GFA distributed across the site.
 - (ii) The built form will not cause significant additional environmental impacts to the surrounding locality regarding overshadowing, privacy and views.
 - (iii) The proposal is consistent with the Objects of the EP&A Act.

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

56. 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)?

57. In demonstrating that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, the applicant has appropriately referred to the test established by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Specifically, the applicant has addressed the first part of the test by demonstrating that notwithstanding non-compliance with the numerical standard, the development meets the objectives of Clauses 4.3 and 4.4.
58. A detailed discussion regarding the objectives of the Height of Buildings and Floor Space Ratio development standards has been provided and satisfies the test under Clause 4.6(3)(a), in that compliance with the standard is both unreasonable and unnecessary, to the extent of the variations proposed.

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

59. The applicant has satisfactorily demonstrated that there are sufficient environmental planning grounds to contravene the development standard.
60. With regards to height, the non-compliant elements are principally associated with the rooftop terrace and associated embellishments, which will provide significant amenity benefits to the future occupants of the building and improve the sustainability performance of the building. The applicant has demonstrated that these elements can be provided without unacceptable impacts to surrounding properties, including overshadowing.

61. With regards to floor space ratio, the proposal will wholistically provide a compliant quantum of GFA distributed across the site. Further, any built form accommodating the additional GFA is consistent with the height in storeys control provided in the Sydney DCP 2012 and will not cause significant additional environmental impacts to the surrounding locality regarding overshadowing, privacy, and views.

Is the development in the public interest?

62. Regarding varying development standards, the public interest is deemed to be protected where a development standard meets the objectives of the zone and those of the development standard sought to be varied. As has been discussed previously, the development is consistent with the objectives of Clause 4.3 and 4.4 notwithstanding the proposed variations to the numerical standards.
63. The objectives of the MU1 'Mixed Use' Zone are provided below:
- (a) To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
 - (b) To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
 - (c) To minimise conflict between land uses within this zone and land uses within adjoining zones.
 - (d) To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
 - (e) To ensure land uses support the viability of nearby centres.
 - (f) To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.
64. The proposal satisfies the objectives in the following ways:
- (a) The proposed uses are permissible in the zone and complement the existing mix of uses in the locality.
 - (b) The proposal provides activation to Elizabeth and Cleveland Streets, with traditional shopfronts provided along Elizabeth Street and a contemporary larger showroom format provided on Cleveland Street.
 - (c) The proposal does not result in adverse impacts to the amenity of the adjoining R1 'General Residential' zone located on Goodlet Street to the northeast, including overshadowing and overlooking. An acoustic report has demonstrated that, subject to the recommended conditions of consent, the rooftop can be operated without unacceptable noise impacts.
 - (d) The proposal provides opportunities for future business and retail uses on the ground floor.

- (e) The proposal will provide an office worker population to support the viability of nearby businesses, particularly on Cleveland and Chalmers Streets which are identified activity streets within the Crown and Baptist Streets village (Local Strategic Planning Statement - City Plan 2036).
- (f) The proposal provides office and retail uses in a highly accessible location that is well served by public transport and is accessible using active modes of transport.

Conclusion

65. For the reasons provided above the requested variations to the height of buildings and FSR development standards are supported as the applicant's written requests have adequately addressed the matters required to be addressed by cl 4.6 of the Sydney LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings and FSR development standards and the MU1 'Mixed Use' zone.

Elizabeth Street road widening order

66. A road widening order affects most properties on the western side of Elizabeth Street, Surry Hills between Randle Lane in the north and Cleveland Street in the south, and all properties on the eastern side between Belvoir Street in the north and Cleveland Street in the south. It came into effect by way of Government Gazette on 30 June 1950 (Folio 2078).
67. The Elizabeth Street road widening order is not identified on the land reservation acquisition map of the Sydney Local Environmental Plan 2012, and as such is not required for any planning purpose.
68. The road widening order described above is not a future intention, but an actual and existing road reservation made under section 262 of the now repealed Local Government Act 1919 and the repealed Public Roads Act 1902. Under the savings provisions to the Roads Act 1993, a reservation under section 262 of the now repealed Local Government Act 1919 and the Public Roads Act 1902 is deemed to be a road widening order for the purposes of section 25 'Making of a road widening order' of the Roads Act 1993. Accordingly, section 26 'No constructions on land affected by road widening order' also applies. The consequence of this is that any beneficiary of a development consent associated with this application would be prevented from any development of the part of the building or work within the reserve other than minor repairs to enable the reasonable preservation of the building for temporary use.
69. While the road widening order does not prevent the granting of development consent under the Environmental Planning and Assessment Act 1979, if the proponent were to proceed with the development without the road widening order being revoked, they would be in breach of Section of the Roads Act 1993.
70. Considering this, a deferred commencement consent is recommended, requiring the road reservation order to be extinguished prior to the consent becoming operational. It is noted that in this location Elizabeth Street is an unclassified Regional Road and therefore the concurrence of TfNSW in relation to this matter is not required.

Trees

71. The proposal has the potential to impact three (3) Broad Leaf Paperbark trees on Goodlet Street. Specifically, the proposed basement levels may encroach the Tree Protection Zone of these trees, one of which by up to 40%, which is considered a major encroachment. To remedy this, a condition of consent is recommended, requiring the basement levels to be setback a minimum of 5.5m from the northern boundary, and for the drawings to be updated accordingly prior to the issue of a construction certificate.
72. Following demolition, it will be possible to undertake root mapping, which may reveal that a reduced setback is possible. Consideration could be given to an application to modify the consent if a detailed root investigation report (using non-destructive methods) is submitted that:
 - (a) is undertaken by a qualified Arborist (minimum AQF Level 5).
 - (b) is carried out to a minimum depth of 600mm below the existing grade.
 - (c) includes an assessment of tree roots size, number and condition (including photos).
 - (d) demonstrates that the excavation and location of the basement carpark and any associated development will not have an adverse impact on the health or structural stability of the street trees.
73. The applicant is aware of this issue and that the condition may be reviewed in the future subject to additional information resulting from the root investigation coming to light.
74. The proposal is otherwise acceptable from a tree management perspective.

Awnings

75. Fixed awnings are proposed in accordance with the Footpath Awnings and Colonnades map, except for the corner of Perry Street and Cleveland Street. This is acceptable given the building is setback further from the street in this location to provide an area of deep soil. The width of the proposed awning allows for sufficient clearance from the future kerb line of Cleveland Street following acquisition of the land for the purpose of widening Cleveland Street, subject to the future footpath being built in accordance with the Sydney Streets Design Code. The awnings are generally compliant with the requirement to be between 3.2m and 4.2m above the footpath, with the exception of the eastern end of the Cleveland Street awning, which has a minimum clearance of around 2.4m. A condition of consent is recommended to require the design of the awning to be amended to comply with the DCP, prior to the issue of a construction certificate.

76. The awning proposed on Cleveland Street is within the portion of the site to be acquired for future widening of the classified road. It should be noted that Section 2.118 'Development on proposed classified road' of State Environmental Planning Policy (Transport and Infrastructure) 2021 does not apply, as the proposal does not involve subdivision, the awning does not have a capital investment value greater than \$185,000, and the proposal does not involve strata subdivision. Accordingly, the concurrence of TfNSW is not required. Nevertheless, TfNSW has provided commentary, confirming they have no objection to the awning in recognition of the public benefit in providing weather protection. The awning is permitted with consent in the SP2 'Infrastructure' zone, as development that is ordinarily incidental or ancillary to the purpose shown on the Land Zoning Map. The identified purpose is a classified road.

Deep Soil

77. The Sydney Development Control Plan 2012 requires that 10% of the site area be provided as deep soil. The proposal does not comply with this requirement, providing 36 sqm which is equivalent to 2.6%.
78. The principal aim of the deep soil provision is to provide an area suitable for tree planting to contribute to the attainment of the City's urban forest canopy targets. The concept landscape scheme submitted with the application can achieve 15% canopy coverage on the site through planting within the deep soil area and on the rooftop, subject to the recommended conditions of consent. It is also notable that 62 sqm (equivalent to 4.5%) of the site is required to be acquired for the purpose of widening Cleveland Street. Given the constraints on the site, and that the 15% canopy target is able to be achieved notwithstanding non-compliance; strict compliance with the DCP requirements is not considered necessary in the specific circumstances of the case.

Consultation

Internal Referrals

79. The application was discussed with Council's:
- (a) Building Services Unit;
 - (b) Environmental Health Unit;
 - (c) Heritage and Urban Design Unit'
 - (d) Sustainability and Resilience Unit;
 - (e) Public Domain Unit;
 - (f) Surveyors;
 - (g) Transport and Access Unit;
 - (h) Tree Management Unit; and
 - (i) Waste Management Unit.

80. The above advised that the proposal, as amended, is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.
81. Where other units raised issues or concerns with the proposed development, these matters can be resolved through conditions of consent and have been addressed in the relevant sections of this report.

External Referrals

Ausgrid

82. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
83. A response was received raising no objections to the proposed development.

Transport for NSW

84. Pursuant to Section 2.119 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
85. Comments were received on 31 August 2022. Conditions of consent were recommended which are included in the Notice of Determination.

Advertising and Notification

86. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 2 August and 31 August 2022. A total of 379 properties were notified and four (4) submissions were received.
87. The application was re-notified for a period of 28 days between 17 May and 15 June 2023 due to an error in the original notification letter which resulted in the northern land parcel not being identified as part of the development site. A total of 402 properties were notified and one (1) submission was received, which was a duplicate of a previous submission.
88. The submissions raised the following issues:
 - (a) **Issue:** The commercial use is not supported. Affordable housing should be provided.
Response: The proposed use is permissible with consent in the zone. The proponent is required to pay an Affordable Housing contribution and a condition of consent is recommended accordingly. This will assist in the provision of affordable housing elsewhere within the Local Government Area.
 - (b) **Issue:** The commercial premises should be made suitable for an acoustically treated live music venue.

Response: Live music venues are permissible with consent under the current zoning provisions, however a specific proposal for such a venue does not form part of this application. If a future development application were submitted to use one of the tenancies as a live music venue, an acoustic assessment would be required to demonstrate the tenancy would be suitable for the intended use.

- (c) **Issue:** The proposed commercial use may not eventuate. The proposal may end up as apartments or a brothel.

Response: The proposal currently under consideration is for a commercial office development. Any change of use post determination would be subject to a separate development application.

- (d) **Issue:** The proposal should comply with the 12m height of buildings development standard. 20.1m is not supported.

Response: NSW planning law permits development standards to be varied and requires the consent authority to be flexible in its application of those standards if it can be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds, and the development is in the public interest. As outlined in the relevant section of this report, these prerequisites are met and the proposal is recommended for approval.

- (e) **Issue:** The built form on the corner of Elizabeth Street and Cleveland Street should not be eroded, as this is an important feature of the built environment.

Response: The building on the corner of Elizabeth and Cleveland Streets is identified for acquisition for the purposes of widening Cleveland Street, which is a classified State Road. While Council officers would prefer its retention for the reasons outlined in the submission, the road widening order prevails which will result in the building being demolished.

- (f) **Issue:** The building line on Cleveland Street is a continuous feature along the street and should be maintained.

Response: Noted, however for the reasons outlined above the building cannot be retained.

- (g) **Issue:** The proposed green space on Cleveland Street is not in character, will be in shade, and will not be a pleasant place to sit.

Response: The proposed seating area has been deleted from the plans. The Landscape scheme has been reviewed by Council's Landscape officer and was found to be acceptable, subject to the recommended conditions of consent.

- (h) **Issue:** The large glass panes are not supported, appear overly corporate, and at ground level will not activate the street.

Response: The proposal has been amended to better relate to the fenestration of the retained building.

- (i) **Issue:** Palm trees are not supported - trees should be planted.

Response: The planting of Palm trees no longer forms part of the application.

- (j) **Issue:** The rooftop area should provide habitat for insects and birds and be used to grow food.
- Response:** The provision of rooftop habitat is not required under the planning controls applicable to the site.
- (k) **Issue:** The historic site of the Strawberry Hills Post Office could be acknowledged on the site.
- Response:** The site is not a heritage item; therefore, former uses are not a matter for consideration.
- (l) **Issue:** The preservation of the facades on Elizabeth Street is supported.
- Response:** Noted.
- (m) **Issue:** Excavation for the basement levels and general construction activities may damage nearby buildings and result in pollution.
- Response:** Conditions of consent are recommended to limit the impacts of construction activities. A condition requiring the preparation of dilapidation reports for neighbouring properties, subject to access being granted, is also recommended.
- (n) **Issue:** Construction will disrupt traffic in the local area.
- Response:** Construction activities may result in some unavoidable disruptions to traffic, however a condition of consent is recommended requiring the preparation of a Construction Traffic Management Plan to ensure traffic is managed as efficiently as possible while demolition and construction is underway.
- (o) **Issue:** The number of car parking spaces is excessive given nearby public transport options.
- Response:** The City of Sydney has maximum car parking provisions, rather than minimums, which seek to reduce the overall quantum of car parking in the City. The proposal generates an allowance of 29 car parking spaces, however 26 are proposed. As the number of spaces proposed is less than the maximum permissible, this is acceptable.
- (p) **Issue:** Perry Street should be widened to two lanes and provided with a bigger footpath with greening.
- Response:** The City has no plans for the widening of Perry Street.
- (q) **Issue:** The development will have direct views over, results in privacy impacts to, and overshadows, the rooftop of a building currently in use as a sex services premises that intends to redevelop in the future as a childcare centre with a rooftop playground.

Response: The neighbouring site has an inaccessible rooftop and there is no application under consideration for a childcare centre. The proposed separation across Perry Street is sufficient, noting there are no planning controls that regulate this issue when concerning two commercial developments and all of the existing windows of the sex services premises are bricked in or painted over. A hypothetical potential future use is not a matter for consideration.

- (r) **Issue:** The proposed rooftop should be further setback to prevent overlooking to the sex services premises at 278-284 Cleveland Street. Trafficable areas should be contained to the centre of the roof.

Response: As outlined above, the proposal does not unreasonably overlook the sex services premises.

- (s) **Issue:** The proposed rooftop plant raises concerns about acoustic amenity.

Response: The mechanical ventilation noise is addressed in the submitted acoustic report. The report has been reviewed by Council Environmental Health Officer and was found to be acceptable. Conditions of consent are recommended which will regulate noise from mechanical plant.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

89. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
90. Credits have been applied for the most recent approved use of the site. This includes 17 hotel rooms, 1,601 sqm of food and drink premises floor space, and 157sqm of office floor space (3 storeys or less).
91. A condition relating to this development contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

92. The site is located within the residual lands 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 applicable to 0.5% of the total floor area..
93. The total floor area proposed is 4,406 sqm, and all floorspace is considered new given all existing slabs are to be demolished. As a result, the equivalent monetary contribution applies to 22.03 sqm and the applicable affordable housing contribution payable is \$233,772.01.
94. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Relevant Legislation

95. Environmental Planning and Assessment Act 1979.
96. Roads Act 1993.

Conclusion

97. The application seeks development consent for substantial demolition of the existing buildings and construction of a four (4) storey commercial development, comprising ground level retail and commercial office above. The proposal involves excavation to create a two-level basement providing 29 car parking spaces and services, in addition to associated landscaping and earthworks.
98. All proposed uses are permissible with development consent, and the proposal generally complies with the provisions of the Sydney LEP 2012 and the Sydney DCP 2012, with the key exceptions being non-compliance with the height of buildings and FSR development standards.
99. Clause 4.6 variation requests have been submitted with the application, and it has been adequately demonstrated that compliance with the development standards is unnecessary and unreasonable in the circumstances of the case.
100. Other non-compliances are acceptable for the reasons outlined elsewhere in this report. Conditions of consent are proposed to remedy outstanding issues.
101. The proposal is supported, subject to the recommended conditions of consent.

ANDREW THOMAS

Executive Manager Planning and Development

Christopher Ashworth, Area Planning Coordinator