

**Item 5.****Development Application 19-21 Buckland Street, Chippendale - D/2022/1359**

File No: D/2022/1359

**Summary****Date of Submission:** 3 January 2023 (as further amended on 7 August 2023)**Applicant:** George Hay Pty Ltd**Architect/Designer:** AJC**Developer:** George Hay Pty Ltd**Owner:** George Hay Pty Ltd**Planning Consultant:** GYDE**Heritage Consultant:** URBIS**Cost of Works:** \$6,668,057.00**Zoning:** MU1 Mixed Use

**Proposal Summary:** Alterations and additions to a former warehouse building including demolition of existing floors, facade retention and construction of an additional three storeys, and use of the site as an office premises.

The application was notified and advertised between 24 January 2023 and 15 February 2023. Two submissions were received which question how traffic, noise and dust will be managed during the construction process.

The application is referred to the Local Planning Panel as the application proposes to exceed the 'Height of building's' development standard by more than 10%. The application proposes a 24.9% variation to the 15m height control.

A request for additional information and amendments was made to the applicant on 24 March 2023 and 23 June 2023. The application has been amended to introduce a 2.4m setback to the proposed level 4 addition from the Grafton Street (southern) boundary. The setback area will

be trafficable and used by the adjacent office space. Landscaping will be provided to both the rooftop and Level 4 terrace. The revised plans were not renotified as the amended proposal did not present any additional adverse amenity impacts. Notwithstanding this, conditions regarding use of the proposed terrace are recommended.

The applicant lodged an appeal on 9 August 2023 against non-determination of the application. The proposal as amended has addressed the matters raised. The request to vary the height development standard is supported in this instance.

**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 (Resilience and Hazards) 2021
- (iv) SEPP (Biodiversity and Conservation) 2021

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request

## Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 'Height of buildings standard' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2022/1359 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) 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' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 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' development standard
- (B) The proposal satisfies the design excellence provisions of clause 6.21C of the Sydney Local Environment Plan 2012;
- (C) The design of the development responds appropriately to the scale of surrounding buildings; and
- (D) The development, subject to conditions, will not adversely affect the character of the (C9) Chippendale Heritage Conservation Area, and is compatible with the character of the (2.3.1) Chippendale locality.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP 789207, and is known as 19-21 Buckland Street, Chippendale. It is rectangular in shape with an area of approximately 702.9sqm. It has a primary street frontage of 23.77m to Buckland Street and a secondary street frontage of 29.53m to Grafton Street, and another secondary frontage of 29.74m to Grafton Lane. The site is located on the intersection of Buckland Street with both Grafton Street and Grafton Lane. The site is predominately flat.
2. The site contains a former warehouse building which is two storeys in height. Pedestrian access to the building is from Buckland Street, while vehicular access is from Grafton Street. The site is benefitted by an easement which enables emergency egress through a fire exit within the adjoining lot at 1 Grafton Street, Chippendale. While there are limited records to verify the current approved use, a site visit indicates that the building is currently used as an office.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential, educational and commercial. Adjoining sites include multi-storey educational establishments, food and drinks premises and a residential flat building.
4. Surrounding development in the vicinity includes:
  - (a) On the opposite side of Grafton Lane to the north at 128 Broadway, Chippendale, is 'Pioneer House' a 6-storey educational facility of local heritage status, which forms part of the University of Notre Dame campus.
  - (b) On the opposite side of Grafton Lane to the northwest at 142-152 Broadway, Chippendale, is a single storey building forming part of the University of Notre Dame.
  - (c) Immediately west of the subject site at 1 Grafton Street, Chippendale, is a 2-storey educational facility forming part of the University of Notre Dame campus. This building is of a neutral contributory status to the Chippendale Heritage Conservation Area and shares architectural details with the subject site, such as brick cornices on the Grafton Street facade.
  - (d) On the opposite side of Grafton Street to the south at 23-35 Buckland Street, Chippendale is a 4-storey residential flat building.
  - (e) To the east (on the opposite side of Buckland Street) is the University of Technology Sydney - Blackfriars Campus, located at 4-12 Buckland Street, Chippendale.
5. The site is adjacent to local heritage item 'Former Bank, retail and warehouse building "Pioneer House" including interiors' (item no. I166). This heritage item is located on the opposite side of Grafton Lane. Across Buckland Street, to the east of the site is the local heritage item 'Former Blackfriars Public School and Headmaster Residence including interiors, fence, grounds and archaeology' (item no. I170).
6. The site is located within the (C9) Chippendale heritage conservation area (HCA) and is identified as being of neutral status within the HCA.
7. The site is located within the (2.3.1) Chippendale locality under the Sydney DCP 2012.

8. The site is subject to flooding.
9. A site visit was carried out on 22 January 2023. Photos of the site and surrounds are provided below.



**Figure 1:** Aerial view of site (blue) and surrounds



**Figure 2:** Site viewed facing north across the intersection of Buckland Street and Grafton Street. Local heritage item 'Pioneer House' (128 Broadway) can be seen in the background.



Figure 3: Site viewed from across Buckland Street, facing southwest



Figure 4: Buckland street frontage of site



**Figure 5:** Looking west along Grafton Street. Neighbouring 4 storey apartment building - 23-35 Buckland Street seen on the left, and the subject site on the right.



**Figure 6:** Looking east along Grafton Street. University of Notre Dame facility on the left, and apartment building on the right. The Central Park precinct is seen in the background.



**Figure 7:** Looking west along Grafton Lane to the rear of the site with the heritage item 'Pioneer House' (128 Broadway) on the right





**Figure 8:** A fire exit to Grafton Lane which is accessed from the subject site and is located within the adjoining lot (1 Grafton Street, Chippendale)



**Figure 9:** The fire exit located in the adjoining lot, which is accessible from the subject site and which exits on Grafton Lane. The fire exit is a registered easement for which the subject site benefits.



Figure 10: Interior with an example of a steel column to be retained



**Figure 11:** Interior with an example of the steel beams (upper beam) proposed to be retained, and a hoist beam (lower beam) to be removed

### History Relevant to the Development Application

10. The following application is relevant to the current proposal:
  - **PDA/2021/354** – Pre-development advice was issued on 10 January 2022. The applicant submitted several conceptual designs to Council. Council's response recommended the retention of the building's brick facade.
11. The applicant lodged an appeal on 9 August 2023 (Land and Environment Court Proceedings No. 2023/252636) against non-determination of the application. The first court return date is yet to occur.

### Compliance Action

12. The site is not subject to any compliance action.

## Amendments

13. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 24 March 2023. The correspondence requested additional shadow diagrams demonstrating the overshadowing impact to the neighbouring apartment building. In line with DCP Control 4.2.3.1, the applicant was requested to provide a study of solar access across the entire apartment building. The correspondence also requested clarification on the proposed demolition of the ground floor, the level one floor, and the vertical I-beams. The letter also requested verification by a structural engineer that the proposed facade retention was feasible. A section of the proposed shadow line between the facade and the newly proposed facade elements was also requested.
14. The applicant responded to the request on 12 April 2023 and provided a revised demolition plan and a solar analysis of each apartment within the RFB at 23-35 Buckland Street, Chippendale. The response also included a letter from a structural engineer verifying that the facade could be retained during demolition and construction process and included the requested shadow line section.
15. Following further assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 23 June 2023. A meeting was held with the applicant prior to the issue of the letter to discuss the requirements. The letter requested the following information and amendments:
  - (a) Noting the proposed height non-compliance, the applicant was requested to resolve overshadowing issues generated by the proposed variation to the LEP height development standard. The reduction of the height of the proposal, or the introduction of a setback to the uppermost storey was suggested.
  - (b) A revised Clause 4.6 Variation Statement which accurately referenced the recently changed site zoning (i.e. B4 Mixed Use to MU1 Mixed Use) and address the additional zone objectives associated with the change.
  - (c) In order to improve the rhythm of the windows which are proposed to be introduced into the original facade on level one, the applicant was requested to incorporate wider mullions in each window by retaining more of the brick facade.
  - (d) Sections which demonstrated the relationship between the retained steel beams and the mechanical services to be introduced.
  - (e) Revised finished floor levels of the ground floor to reduce flood impacts, or due to heritage constraints, strategically located bunding or steps on the ground floor.
  - (f) The inclusion of landscaping in the proposal and a suitable Landscape Plan. The applicant was requested to give regard to the provision of trees, and the inclusion of landscaping within a terrace level if proposed as part of the revised plans.
  - (g) The inclusion of an improved driveway crossover to the vehicle entrances from Grafton Street, and relevant engineering drawings to demonstrate the proposed works.
  - (h) Various additional details to be specified on the architectural plans.

16. Additionally, on 4 July 2023 the applicant was requested to provide a Detailed Site Investigation to describe the presence of contaminants.
17. The applicant responded to the request on 4 August 2023, and submitted the following information:
  - (a) revised architectural plans which introduced a terrace to the south elevation of level 4 and wider window mullions to level 2. The plans also included various changes demonstrating revised parking, demolition, basement access, on-site detention, glazing and shading. The architectural plans also included additional sections as requested;
  - (b) a revised Clause 4.6 Variation Statement;
  - (c) landscape plans providing non-accessible rooftop landscaping comprising of low-lying shrubs, and planters on the Level 4 terrace;
  - (d) engineering drawings to demonstrate the proposed driveway crossovers from Grafton Lane to the existing car spaces on the ground floor; and
  - (e) a Detailed Site Investigation Report.

### **Proposed Development**

18. The application seeks consent for alterations and additions to a two-storey commercial building to create a five-storey commercial building. The proposal includes the following:
  - partial ground floor demolition and the demolition of the first floor and roof, with retention of the existing structural steel beams and the brick facade;
  - partial ground floor reconstruction, and the construction of four additional floors including a two-storey steel clad contemporary addition above the existing brick facade;
  - excavation for and construction of a basement level;
  - alterations to the retained brick facade including the removal of existing render, making good, introduction of windows at the second storey, and pedestrian and vehicle entrances;
  - reduction of six car parking spaces to five;
  - rooftop landscaping (non-trafficable); and
  - a rooftop photovoltaic array.
19. Plans and elevations of the proposed development are provided below.

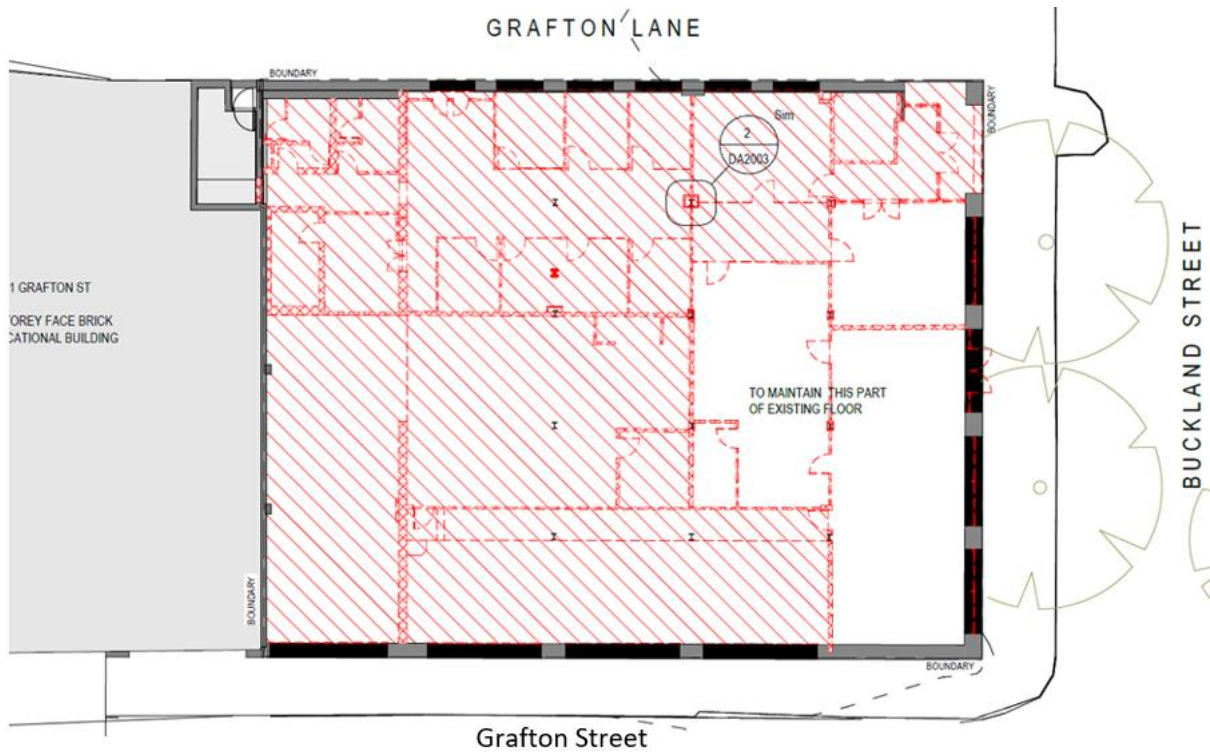


Figure 12: Proposed ground floor demolition

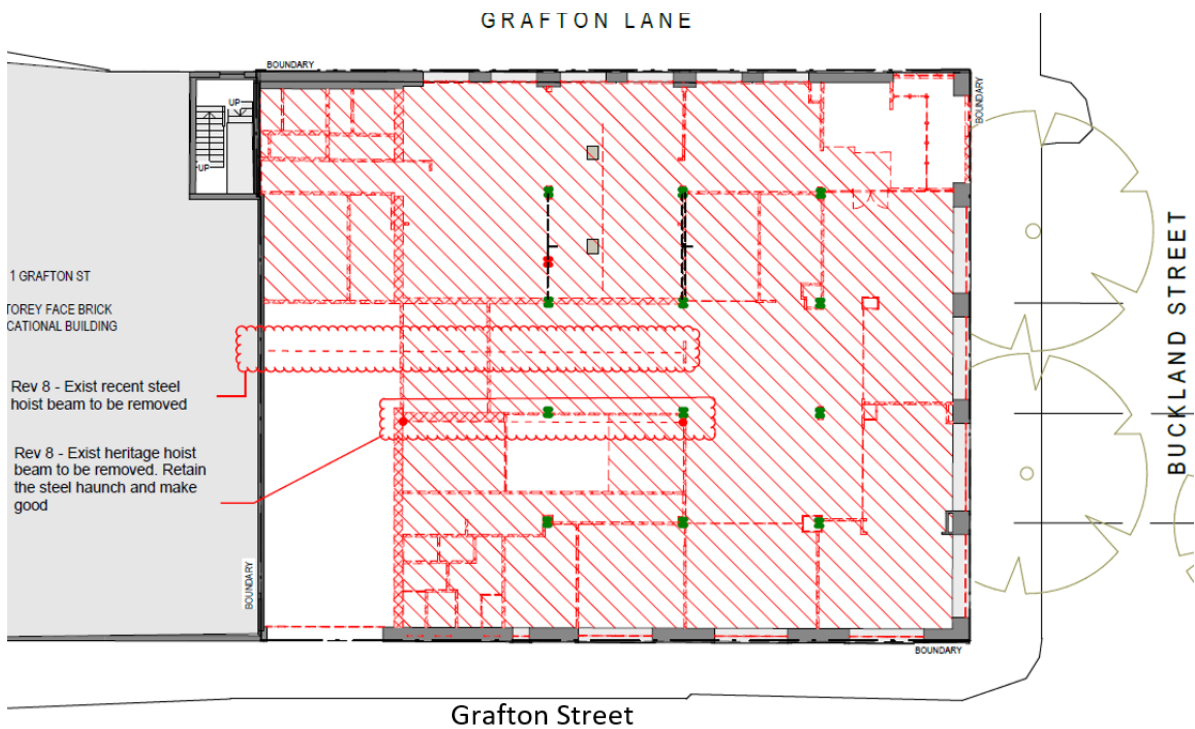


Figure 13: Proposed first floor demolition

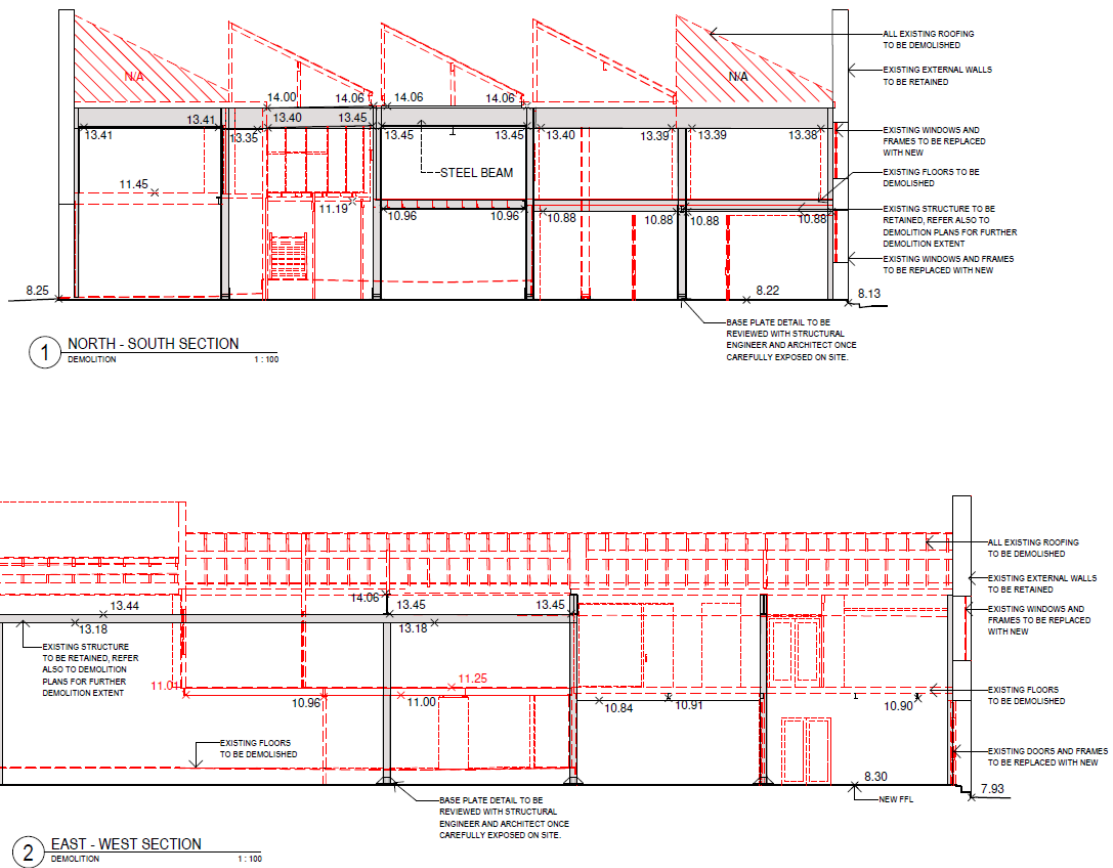


Figure 14: Sections demonstrating proposed demolition





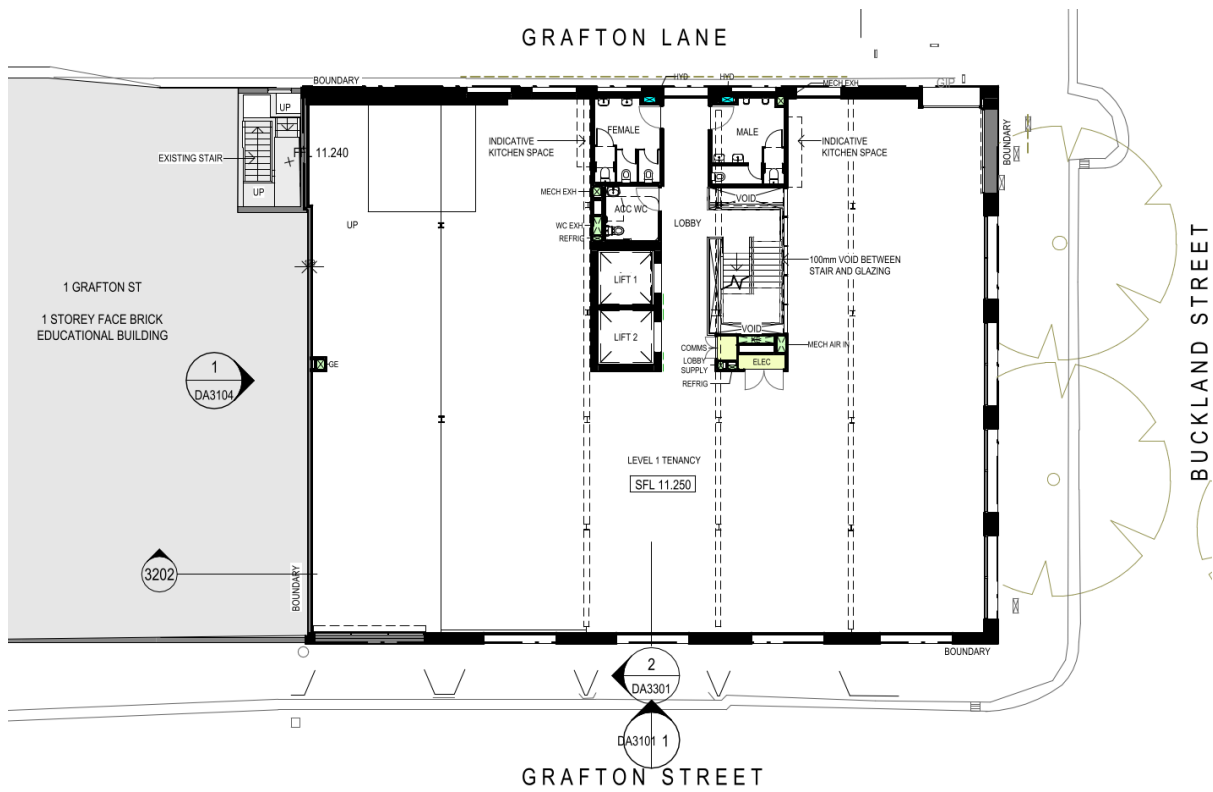


Figure 17: Proposed level 1

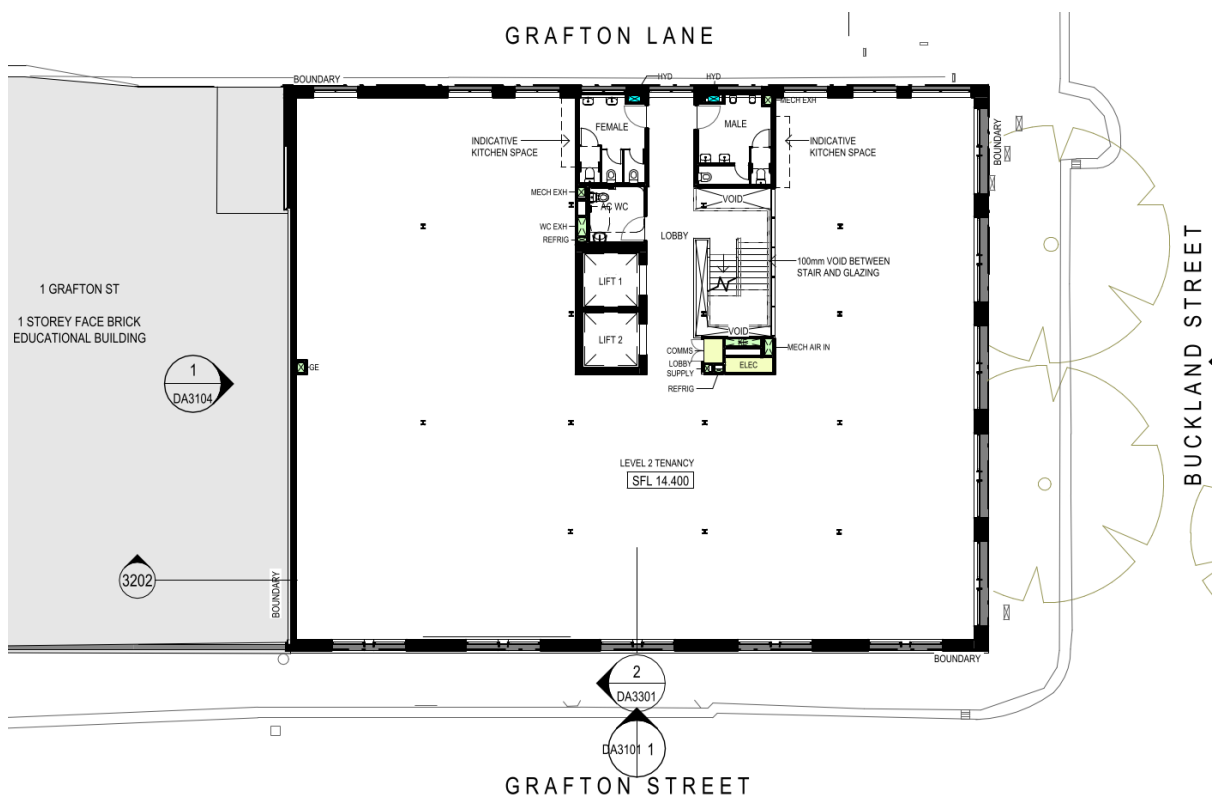


Figure 18: Proposed level 2

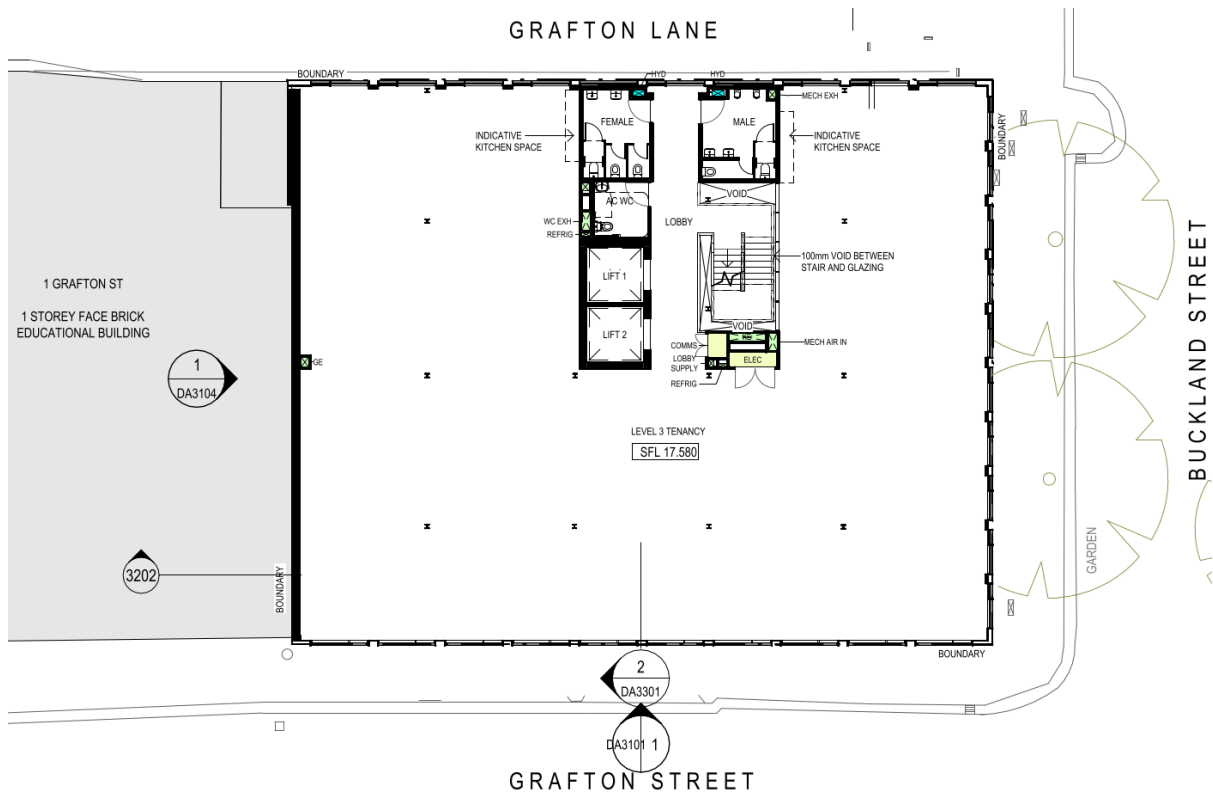


Figure 19: Proposed level 3 (above the retained facade)

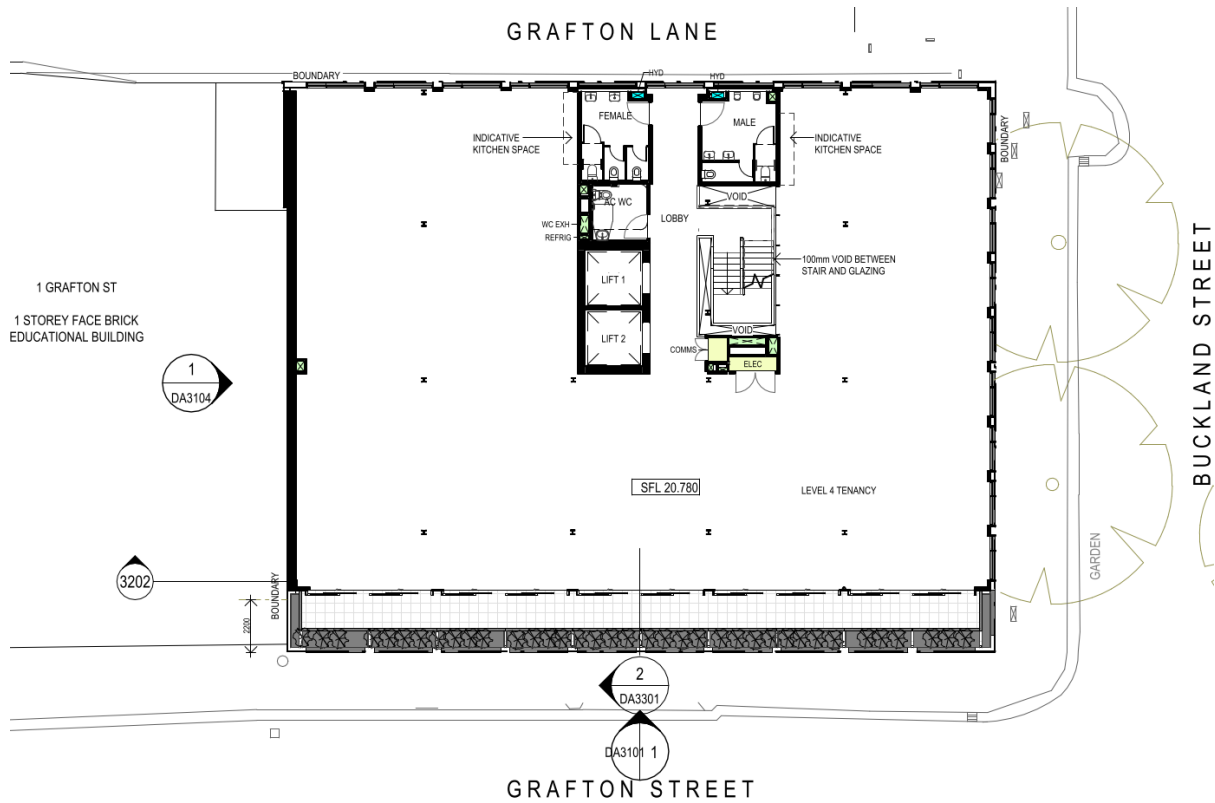


Figure 20: Proposed level 4 (above the retained facade)

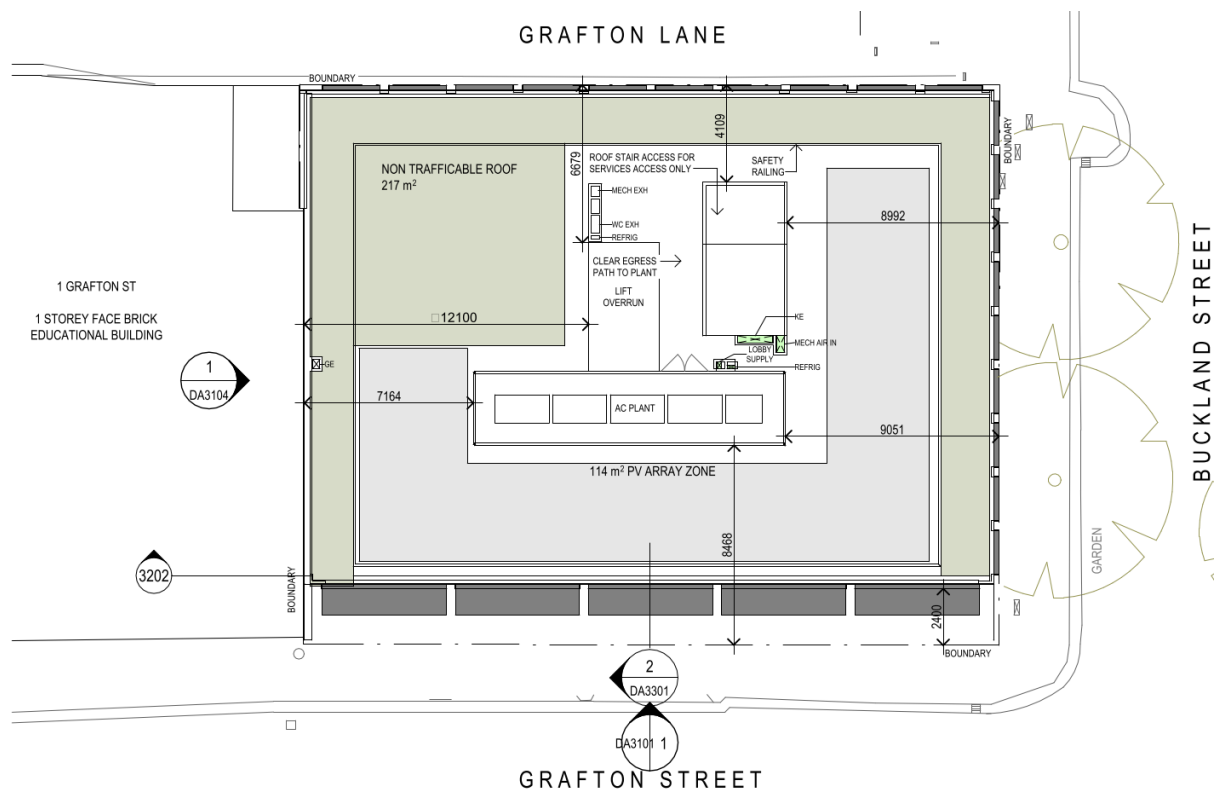


Figure 21: Proposed roof

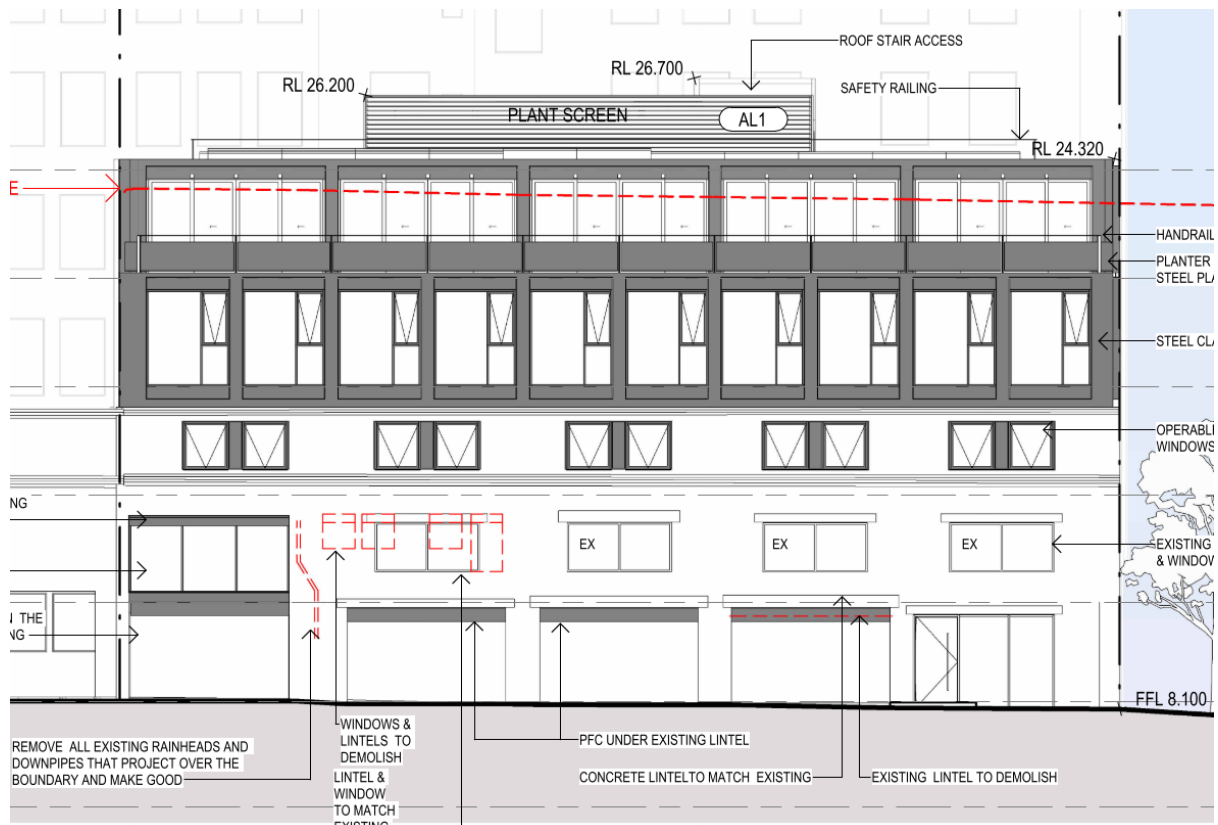


Figure 22: Proposed Grafton Street (south) elevation



Figure 23: Proposed Buckland Street (east) elevation

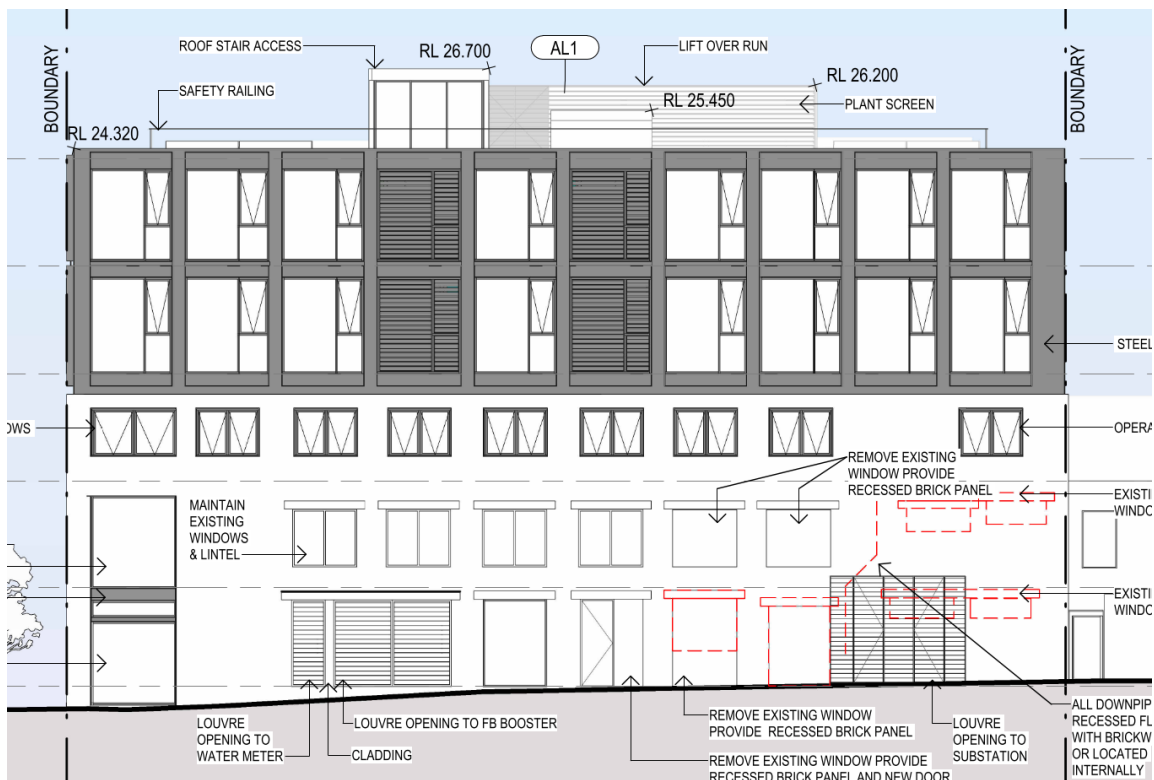


Figure 24: Proposed Grafton Lane (north) elevation

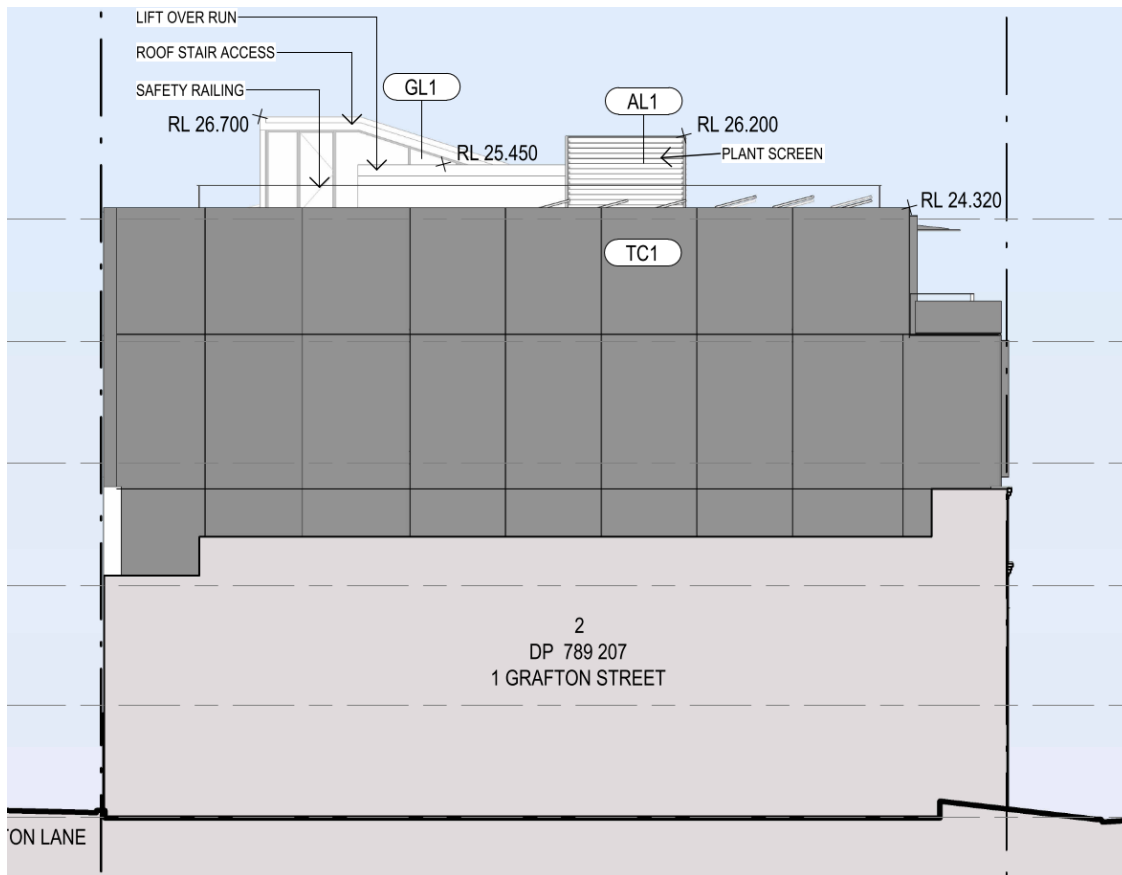


Figure 25: Proposed west elevation

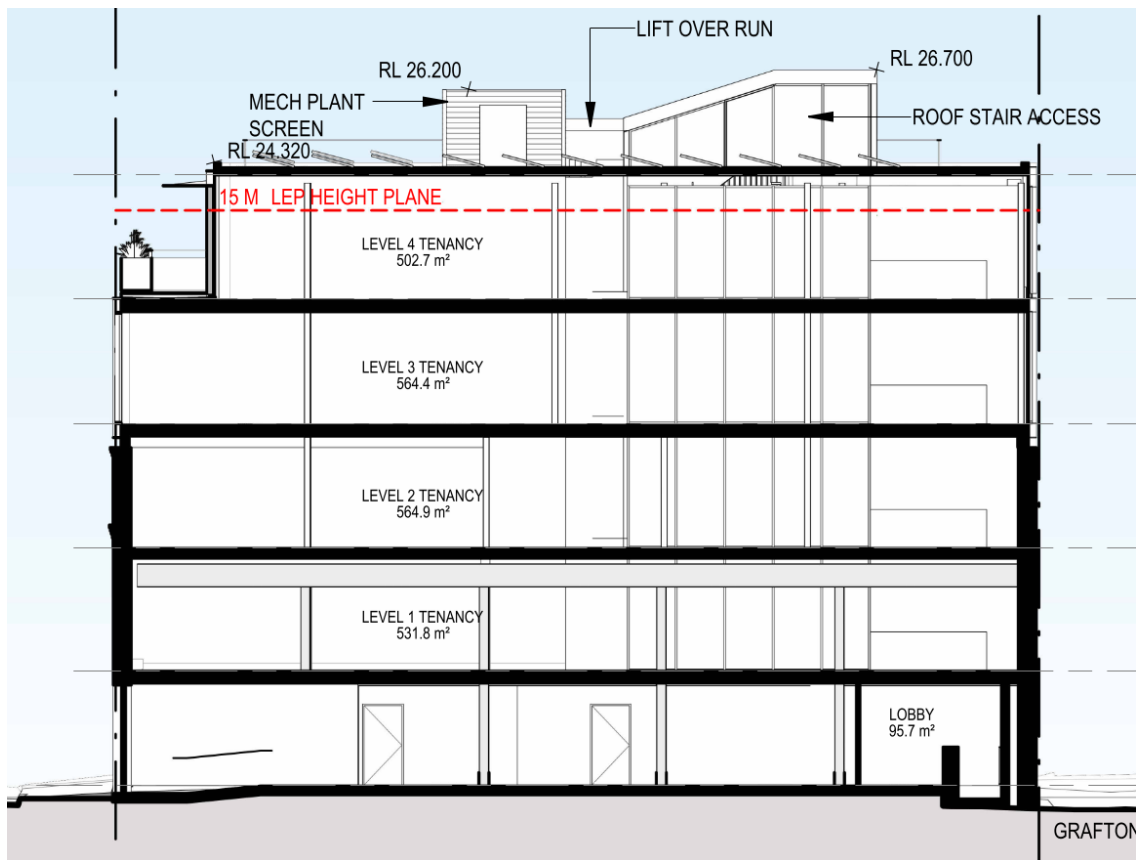


Figure 26: Proposed Buckland Street section



Figure 27: Proposed Grafton Street section





Figure 28: Proposed Materials and Colours Schedule

## Assessment

20. 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. It is also noted that the proposal includes removal of the existing ground floor slab, and additional excavation for a small basement level.
33. A Detailed Site Investigation (DSI) was submitted with the application and has identified detectable concentrations of metals (notably lead), in addition to polycyclic aromatic hydrocarbons (as benzo(a)pyrene) and low levels of total recoverable hydrocarbons. Concentrations of organochlorine pesticides (as aldrin and dieldrin) were also detected.
34. The DSI recommends that a Hazardous Material Assessment is carried out for the site.
35. The Council's Health Unit has reviewed the information provided and has recommended conditions of consent requiring the submission of a Hazardous Materials Survey Report to Council prior to the issue of a Construction Certificate, and in-situ waste classification during works, and for Council to be notified should there be any new contamination evidence identified.
36. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

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

37. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions 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 Part 6.2, Division 2, of the above SEPP.
38. While the proposal is within the Sydney Harbour Catchment, the proposal is considered to be consistent with the provisions of Part 6.2 of the SEPP, subject to recommended conditions of consent.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

39. 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	The site is located 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.

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 15m is permitted. A height of 18.74m is proposed. The proposed development does not comply with the maximum height of buildings development standard. 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.
4.4 Floor space ratio	Yes	A maximum floor space ratio of 4:1 or 2,811.6sqm is permitted. A total floor space ratio of 3.93:1 or 2759.2sqm is proposed. The proposed development complies with the maximum floor space ratio development standard.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the 'Height of buildings' development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

## Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the (C9) Chippendale Heritage Conservation Area and is identified as a 'neutral' building.</p> <p>The site is adjacent to two local heritage items Pioneer House (I166) and Former Blackfriars Public School and Headmaster Residence including interiors, fence, grounds and archaeology (I170). These heritage items are located on the other side of Grafton Lane and Buckland Street.</p> <p>The application proposes to retain and expose an existing brick facade and proposes to retain structural steel columns and beams.</p> <p>The application has been reviewed by Council's Heritage Specialist and is supported.</p> <p>Subject to recommended conditions of consent, the proposed development will not have detrimental impact on the heritage significance of the heritage conservation area or neighbouring heritage items.</p>
5.21 Flood planning	Yes	<p>The application has been reviewed by Council's Public Domain Unit. The proposal is capable of complying with the requirements of Clause 5.21(2) subject to the recommended conditions of consent being imposed.</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 principles of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</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	<p>A maximum of 14 car parking spaces are permitted.</p> <p>The proposed development includes 5 car parking spaces and complies with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>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.</p>

**Development Control Plans****Sydney Development Control Plan 2012**

40. 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

41. The site is located within the Chippendale (2.3.1) locality. The proposed development is in keeping with the unique character and the design principles of the locality as the proposal maintains the mixed-use neighbourhood via the adaptive reuse of a former warehouse building.

## Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	Council's Public Domain Unit have recommended a condition requiring a separate application for any proposed vehicle footway crossing.
3.2. Defining the Public Domain	Yes	<p>The proposal retains the existing street address of the building.</p> <p>The proposal introduces an additional building entrance along Buckland Street and a new entrance along Grafton Street.</p> <p>The retention of large glazing panels along Buckland Street will retain visibility of internal ground floor uses.</p> <p>The proposed blank wall on the west facade will be rendered and grooved.</p> <p>Council's Public Domain Unit recommended a condition required the upgrade of Public Domain Lighting within the vicinity of the site.</p>
3.5 Urban Ecology	Partial compliance	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>Conditions of consent are recommended to protect existing street trees during the construction phase.</p> <p>The site does not provide 15% canopy coverage as required by Control 3.5.2. See 'Discussion.'</p>
3.6 Ecologically Sustainable Development	Yes	Conditions of consent are recommended which require the proposal to achieve a 5-star NABERS Rating and provide water efficient taps and toilets.
3.7 Water and Flood Management	Yes	The site is identified as being subject to flooding. The ground level is predominantly proposed at an RL of

Provision	Compliance	Comment
		<p>8.30 (AHD) which is 90mm below the 1% AEP flood level of RL 8.39. The ground floor level is predominantly above the 5% AEP flood level. However, entrances to the site are located below the 5% AEP flood level and step or ramp up to RL 8.30.</p> <p>In accordance with the City's Interim Floodplain Management Policy a finished floor level of 0.3m above the surrounding ground is required. The proposed development does not comply with this requirement.</p> <p>The applicant notes that the proposed ground floor RL of 8.30 matches the existing ground floor RL and that a higher ground floor level is not feasible due to heritage constraints, including a floor to floor height of 2.95m, required due to the retention of steel beams and existing window openings in the retained brick facade. Entrances are also constrained by accessible design requirements.</p> <p>Council's Public Domain Unit have reviewed the application and support the proposal subject to conditions requiring flood compatible materials below the 1% AEP flood level, flood sensitive devices being installed above an RL of 8.39, and implementation of a Flood Response Management Plan.</p>
3.9 Heritage	Yes	<p>The site is located within the Chippendale Heritage Conservation Area (C9). The building is identified as a neutral building.</p> <p>The site is adjacent to two local heritage items Pioneer House (I166) and Former Blackfriars Public School and Headmaster Residence including interiors, fence, grounds and archaeology (I170).</p> <p>The proposed alterations and additions are consistent with development controls regarding neutral buildings. The retention of the facade respects the form of the original building, while the</p>

Provision	Compliance	Comment
		<p>proposed addition uses materials and colours that do not detract from the HCA. The proposal does introduce additional bulk, scale and height to the original warehouse building, however, the contemporary addition is a distinct, yet non-detracting element to the original building, and appropriate in scale to surrounding sites and neighbouring heritage items.</p> <p>The proposal has been reviewed by Council's Heritage Specialist and is supported.</p> <p>Subject to recommended conditions of consent, the proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area or neighbouring heritage items.</p>
3.10 Significant Architectural Building Types	Yes	<p>The building is a former warehouse which is over 50 years old. The proposal includes the retention of the existing building facade. A structural engineering letter has been provided verifying feasibility of the proposed facade retention.</p> <p>The proposal also includes the retention of existing vertical and horizontal steel beams. A Structural Engineering report is recommended to be required prior to the issue of a Construction Certificate, to verify that the existing steel structure can be retained and is capable of supporting the additional floors.</p>
3.11 Transport and Parking	Yes	<p>A Traffic and Parking Assessment has been provided with the application.</p> <p>Council's City Access and Transport Unit support the proposal subject to conditions.</p>
3.12 Accessible Design	Yes	<p>The proposal is accompanied by an accessibility report demonstrating equitable access.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is</p>



Provision	Compliance	Comment
		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.
3.14 Late Night Trading Management	Yes	The application includes an outdoor terrace located across from an apartment building. Conditions restricting the use of the terrace between 7.00am to 8.00pm are recommended in line with the base hours requirements for the outdoor areas of a category B premises.

## Section 4 – Development Types

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

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No, but supported	The site is permitted a maximum building height of 4 storeys.  The proposed development is 5-storeys in height and does not comply.  See 'Discussion.'
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, but supported	The proposed development does not achieve the minimum floor to floor heights.  See 'Discussion.'
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposal complies with Solar Access Controls.  See 'Discussion.'
4.2.3.4 Design features to manage solar access	Yes	Proposed glazing is recessed within the window frames to achieve additional shading. Upper level glazing is also

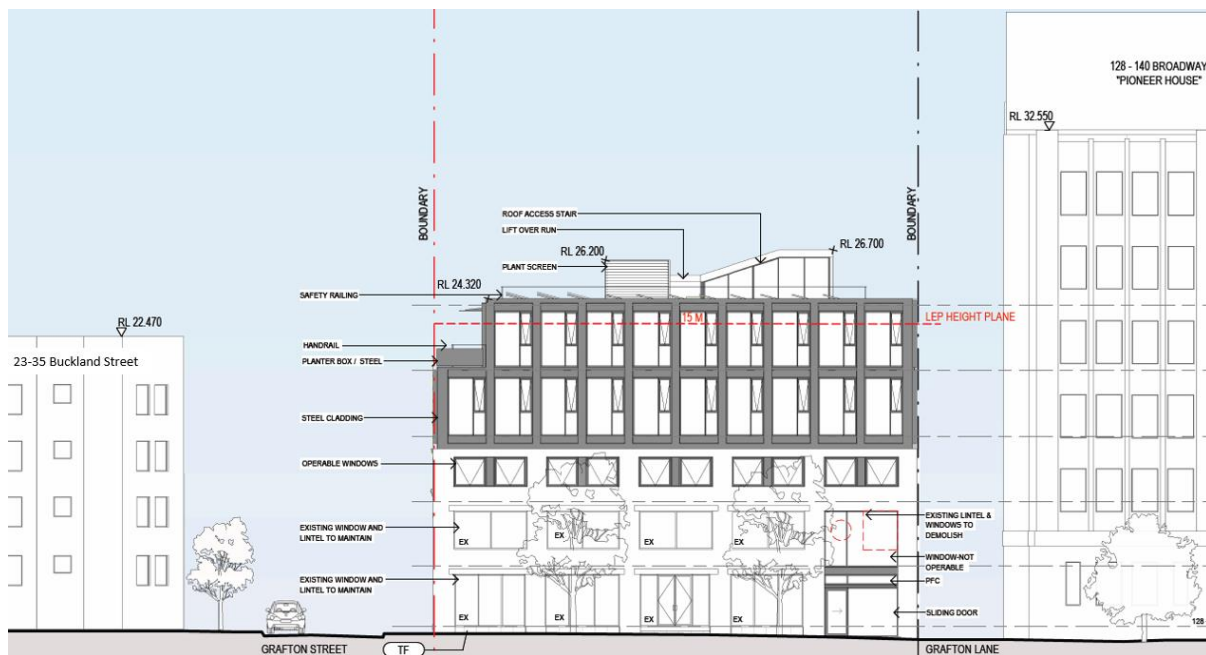
Provision	Compliance	Comment
		<p>supported by the inclusion of steel fins and window hoods.</p> <p>Council's Urban Design Specialist has advised that the proposed glazing and fins on the east facade is not likely to be adequate in summer and note that a higher performance glazing will be required. A neutral colour is also recommended. A condition of consent is recommended which requires the submission of glazing samples and an associated schedule to Council, to ensure appropriate glazing with a neutrality of colour is achieved.</p>
4.2.3.5 Landscaping	Yes	<p>A landscape plan was provided with the application which demonstrates inaccessible rooftop landscaping comprised of shrubs and groundcover plants. Planters are also incorporated on the proposed level 4 terrace.</p> <p>The proposal has been reviewed by Council's Landscape Specialist and is supported subject to conditions.</p>
4.2.3.6 Deep Soil	No but supported	<p>As the proposal is for alterations and additions to a totally developed site, the application does not include deep soil landscaping. However, rooftop landscaping is proposed. Recognising the constraints of the existing site and the proposed landscaping, the application is supported.</p>
4.2.3.11 Acoustic privacy	Yes	<p>The application is accompanied by an Acoustic Report. Council's Environmental Health Unit have reviewed the proposal and support the proposed use of the site subject to conditions of consent.</p> <p>It is recommended that the use of the Level 4 terrace area be limited in terms of hours of use and for building occupant associated use only.</p>

Provision	Compliance	Comment
4.2.4 Fine grain, architectural diversity and articulation	Yes	The existing building form and architectural detailing is consistent with this control.
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.
4.2.9 Non-residential development in the MU1 Mixed Use zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.  It is recommended that the use of the roof terrace area be limited in terms of hours of use and for building occupant associated use only.

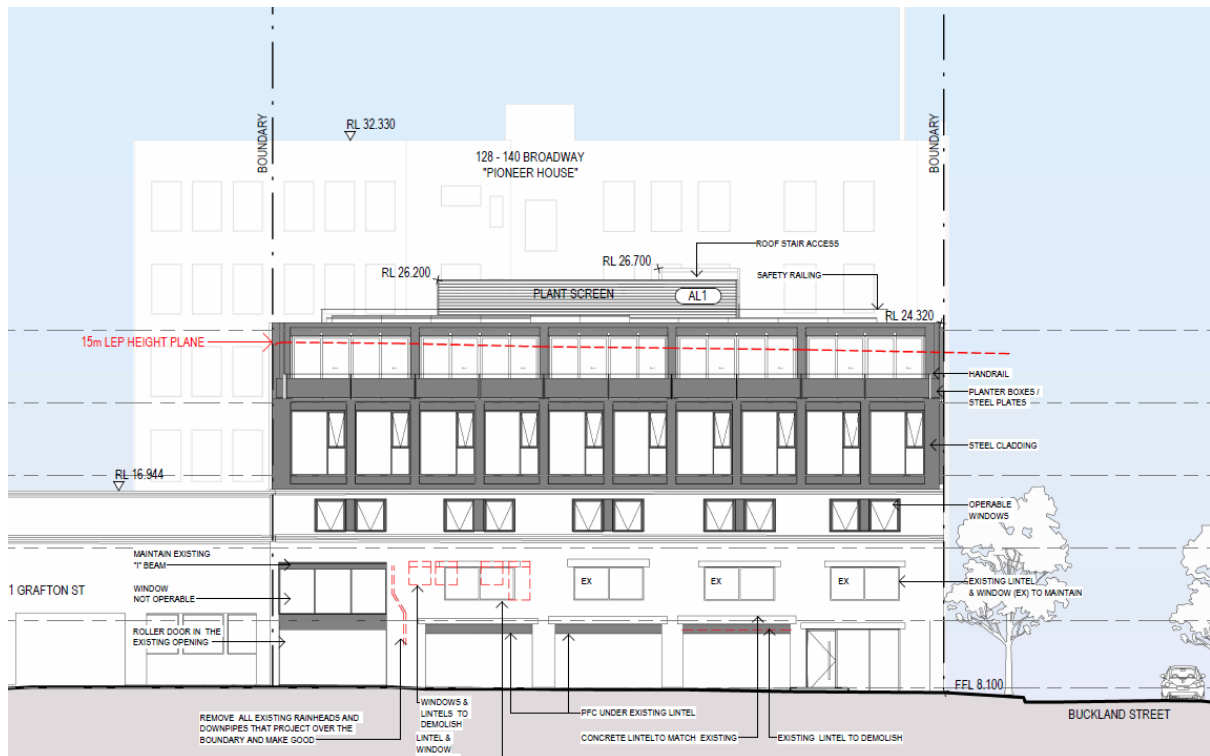
## Discussion

### Clause 4.6 Request to Vary a Development Standard

42. The site is subject to a maximum height control of 15m. The proposed development has a height of 18.74m. The proposed height is demonstrated in the below figures.



**Figure 29:** East (Buckland Street) Elevation demonstrating building height in context of the RFB and Pioneer House



**Figure 30:** South (Grafton Street) Elevation demonstrating building height in context of the 1 Grafton Street Chippendale (adjoining building) and Pioneer House in the background

43. 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:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
  - That there are sufficient environmental planning grounds to justify contravening the standard;
  - The proposed development will be consistent with the objectives of the zone; and
  - The proposed development will be consistent with the objectives of the standard.

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

44. The applicant seeks to justify the contravention of the 'Height of buildings' development standard on the following basis:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by demonstrating that the objectives of the development standard under Clause 4.3 are achieved notwithstanding the non-compliance with the standard.

- (i) In relation to Clause 4.3(1)(a) the applicant submits that the majority of the building is located below the maximum 15m building height with the contraventions relating only to a small section of the upper level (exceeding standard by 0.87m to 1.32m) and the roof and associated roof structures (up to a maximum of 3.74m above the standard). As the facade and internal structure is proposed to be retained, limited excavation is proposed or possible with only a small part basement included in the proposal. Therefore, structures such as the AC and plant generally are required to be located on the roof above the maximum height limit.
  - (ii) In relation to Clause 4.3(1)(b) the applicant submits that the height of the building, notwithstanding the proposed variation, provides an appropriate transition in height between adjacent sites. Pioneer House to the north of the site is six storeys with a large billboard located on top of the building. The proposed building is five levels with the roof structures setback from the building edge. To the south of the site is the four storey RFB at 2-4 Grafton Street. The proposal results in a consistent step down in storeys from north to south. Opposite Buckland Street to the east is a UTS site with approval for the UTS Blackfriars Industry Hub. The Hub building is approved as five storeys facing Buckland Street. This is consistent with the number of storeys proposed on the site which then steps down to three storeys at 1 Grafton Street to the west adjoining the proposed building.
  - (iii) Regarding Clause 4.3.(1)(c) the applicant submits that consideration has been given to views from the upper level of 2-4 Grafton Street (RFB) looking north towards Pioneer House. It is noted that the remaining adjacent buildings to the proposal are used for tertiary education purposes. It is estimated that the proposed built form will block views of Pioneer House, with only an oblique view of the advertising billboard on the roof remaining visible. The view that would be affected is not of high scenic quality or value in Tenacity terms as assessed by Urbis. The additional height sought within the clause 4.6 variation application does not generate any significant additional view loss from what is permissible within the LEP height control and would block only a minor additional horizontal section of the 'Pioneer House' parapet.
  - (iv) Regarding Clause 4.3.(1)(d) the applicant submits that the site is not located near the Green Square Town Centre however it is located approximately 500m west of the southern end of Central Sydney. The site is generally separated from Central Sydney by the Central Park development which is higher scale than the immediately surrounding area. The site is then located further west in an area characterised by buildings ranging from two storeys up to six with the increased storeys closer to Broadway. As such the proposal, notwithstanding the proposed height contravention, ensures an appropriate height transition with the adjoining area.
  - (v) The applicant submits that Clause 4.3(1)(e) in respect of Green Square is not applicable to the proposal.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard. The applicant submits the following comments:

- (i) The majority of the building is located below the maximum 15m building height with the contravention variations relating only to a small section of the upper level, roof and associated roof structures. The structures on the roof are proposed to be setback from the building edge to ensure they are not discernible from the public domain which assists in minimising the overall bulk and scale of the height variation.
  - (ii) The roof structures including the plant, lift overrun and stair structure will not be discernible from the public domain and as such do not impact on the transition in height between buildings
  - (iii) It is also noted that the roof is non trafficable with the only access directly from the stairs to the AC plant for maintenance purposes. This minimises the opportunity for any privacy impacts associated with the height variation.
- (c) The proposed development will be consistent with the objectives of the MU1 Mixed Use zone as;
- (i) The proposal seeks to provide commercial premises on the site that will deliver opportunity for employment to the locality.
  - (ii) The proposed design will provide active street frontages through commercial tenancies occupying the building's ground floor. These tenancies will be activated at street level by a series of generous window and door openings that extend along the primary frontage (Buckland Street).
  - (iii) This proposed land use is compatible with the surrounding mix of land uses including residential, other commercial uses, retail and tertiary education. Within 25m of the site is Broadway which is in an area zoned SP2 Classified Road and within 60m is an area zoned R1 General Residential. The proposed commercial use for this site provides an appropriate land use transition from the intensity of an infrastructure zone to an area of predominantly residential uses.
  - (iv) The proposal will provide commercial premises on the ground floor of the building, creating an active and occupied land use adjacent to the street.
  - (v) The proposed commercial uses on the site will support the viability of nearby centres by providing increased employment opportunities.
  - (vi) The proposal will result in an office development on the site which is located in close proximity to multiple bus services from Broadway. The site is also a 13 minute walk from Central train station and is therefore highly accessible by public and active forms of transport. The proposal includes 28 bicycle parking spaces and end of trip facilities to further encourage walking and cycling.
- (d) The proposed development will be consistent with the objectives of the standard.
- (i) As discussed above, the applicant has demonstrated consistency with the 'Height of building's control and demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case.

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

45. 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)?

46. The written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that the objectives of the development standard are achieved despite the non-compliance. The written request has demonstrated that the objectives of the height of buildings standard are achieved despite the non-compliance.

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

47. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in the circumstances of the application. The applicant has identified that the height exceedances predominantly relate to centralised roof service structures and will not be visible from the public domain and has noted that the height exceedance will not generate unreasonable privacy impacts. The applicant has noted overall that the proposed building creates an appropriate height transition between adjacent buildings.

## Is the development in the public interest?

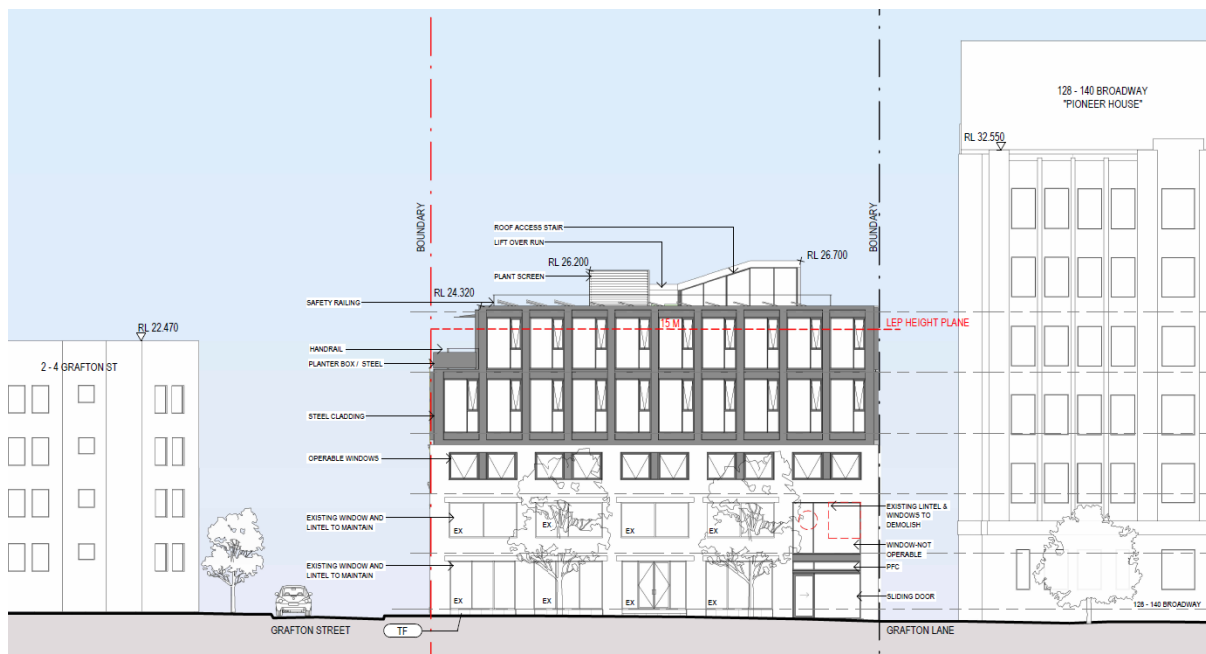
48. The development is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
49. The written request has demonstrated that the objectives of the 'Height of buildings' standard is achieved despite the non-compliance.
50. The development is consistent with the objectives of the MU1 Mixed Use Zone. The proposal provides additional commercial floor space within the MU1 Zone in an area that contains a mix of commercial and residential uses. The proposal is located in an accessible location in proximity to public transport. The provision of bicycle parking and end of journey facilities in a convenient location and the reduction of car parking will promote the use of public transport and encourage walking and cycling. The proposal will promote the viability of nearby centres in the locality.

## Conclusion

51. For the reasons provided above the requested variation to the 'Height of buildings' development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the 'Height of Buildings' development standard and the MU1 Mixed Use zone.

## Height in Storeys

52. DCP Control 4.2.1.1 specifies building height in storeys. The proposed development is five storeys in height, which exceeds the four storey height control for this site. It is noted that the proposal is below the maximum Floor Space Ratio permitted for the site. The applicant has also demonstrated that the proposal presents a gradual transition between the neighbouring six-storey Pioneer House site to the north at 128 Broadway, Chippendale and the neighbouring four-storey RFB to the south at 23-35 Buckland Street, Chippendale. This transition is demonstrated in the below figure.



**Figure 31:** Proposed east elevation with the four-storey RFB seen to the left and the six storey Pioneer House seen on the right. Pioneer House also includes a rooftop billboard.

53. The proposed level 4 setback from the southern (Grafton Street) boundary minimises overshadowing impacts to neighbouring apartment (refer to further discussion below).
54. The proposed built form is appropriate in context of the site's surrounding environment and is supported.

## Overshadowing

55. The proposal generates an overshadowing impact to the neighbouring apartment building at 23-25 Buckland Street, which is located on the opposite side of Grafton Street, to the immediate south of the site.



56. Sydney DCP Control 4.2.3.1(2) requires that neighbouring development must achieve 2 hours' direct sun access on 21 June to at least 1sqm of living room windows and a minimum 50% of the required minimum of private open space. This control applies to at least 70% of the apartments in a development.
57. The applicant has provided an analysis of solar access to each apartment within the entire neighbouring apartment building and has demonstrated that 77% of apartments currently achieve compliant solar access. The proposal will reduce the number of apartments achieving a compliant solar access from 71 apartments to 65 this equates to 71% of apartments in line with the above control. The applicant's solar analysis has been reviewed and is accurate.
58. It is noted that there are no apartments which currently achieve less than 2 hours' direct solar access which will be further reduced, as required by Control 4.2.3.1.(3).
59. It is also noted that the apartments which will lose solar access are located on the ground floor and first floor. The overshadowing impacts from the proposal are generated by the first four floors and within the first 15m of the proposal's height, which are the relevant statutory and non-statutory controls regulating the height of the proposal. The elements of the building which exceed four storeys or 15m in height do not generate an overshadowing impact as measured against the DCP control. This is due to the introduced setback (terrace) on the upper floor, and the centralisation of rooftop structures.
60. While the proposed development will result in six neighbouring apartments losing all solar access during mid-winter, the proposal is considered to be reasonable having regard to the position of the proposal directly north of the site, and as the proposal complies with the solar access amenity requirements of the DCP. Building elements which exceed the height controls do not contribute to the loss of solar access to these six apartments, and in relation to other apartments, complies with the solar access controls. As such, the proposal's overshadowing impact is considered to be reasonable, and the proposed built form is supported.



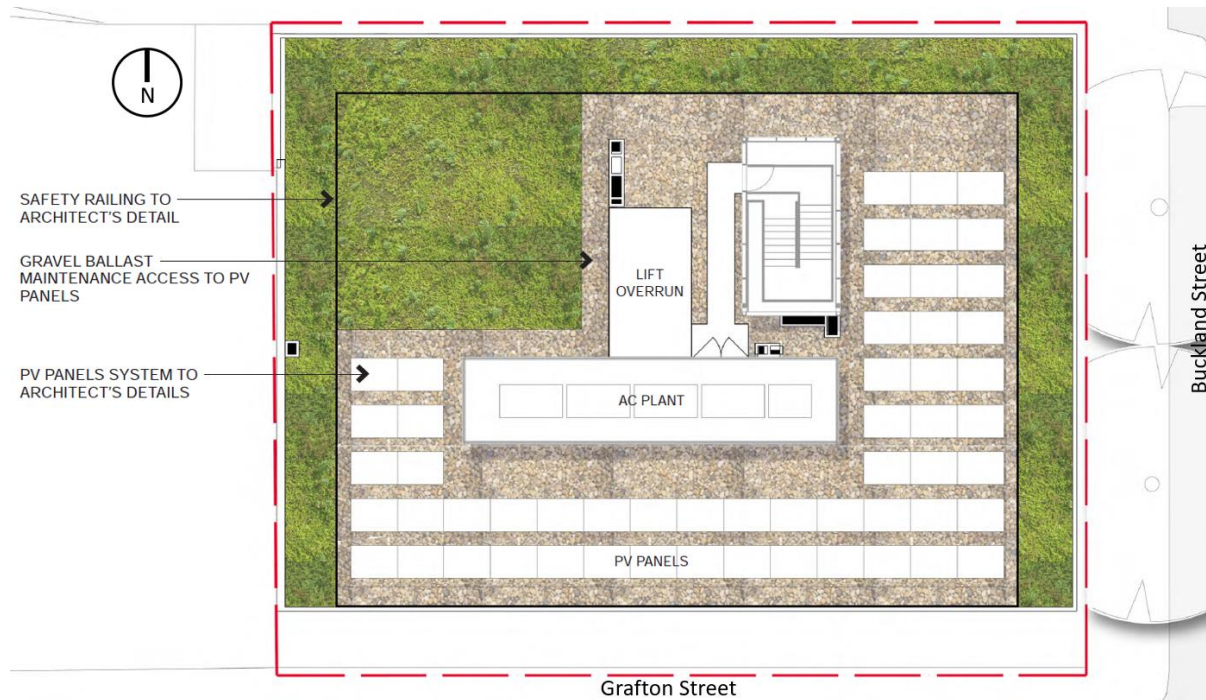
**Figure 32:** The north facade of the neighbouring RFB (23-35 Buckland Street), which faces the subject site. The apartments on the lower left will lose solar access during mid-winter.

### Ceiling heights

61. For commercial buildings, DCP Control 4.2.1.2 requires minimum floor to floor heights of 4.5m on the ground floor and 3.6m on subsequent floors, with the objective to promote daylight access into the building's interior and contribute to the flexible use of buildings.
62. Due to the retention of the ground level and the first floor level, the ground floor achieves a floor to floor height of 2950mm, while the first floor achieves a floor to floor height of 3150mm. Levels 2 through 4 achieve a floor to floor height 3200mm.
63. The proposal is constrained by the retention of the existing ground and first floor levels and existing windows in the retained facade windows. On upper levels which are not constrained by the existing facade, the floor levels increase to 3.2m.
64. Due to the substantial fenestration proposed, the proposal is considered to be consistent with the control's objectives and is supported.

### Canopy Cover

65. DCP Control 3.5.2 requires that a site achieve 15% tree canopy coverage within 10 years. As the proposal is for alterations and additions to a commercial building which currently includes total site coverage there are no existing trees on site. The application does not propose any additional tree planting. However, as the roof is proposed to be inaccessible the submitted landscape plans propose a substantial amount of rooftop planting consisting of low-lying shrubs. This alternative has been reviewed by Council's Tree Management and Landscape Units and is supported subject to conditions.



**Figure 33:** Proposed rooftop landscaping

### Heritage

The application proposes the bricking-in of two existing windows to Level 1, along Grafton Lane. The applicant submits that the windows will not receive significant solar access and the bricking in of the windows is proposed for aesthetic purposes. Council's Heritage Specialist recommends that the windows be glazed, in-line with the remaining windows along Grafton Lane on Level 1, in order to reduce visual clutter, preserve the facade, and increase amenity within the building. The Heritage Specialist has also recommended the repointing of the brick facade. Conditions are recommended requiring the submission of these design changes to Council prior to the issue of a Construction Certificate.

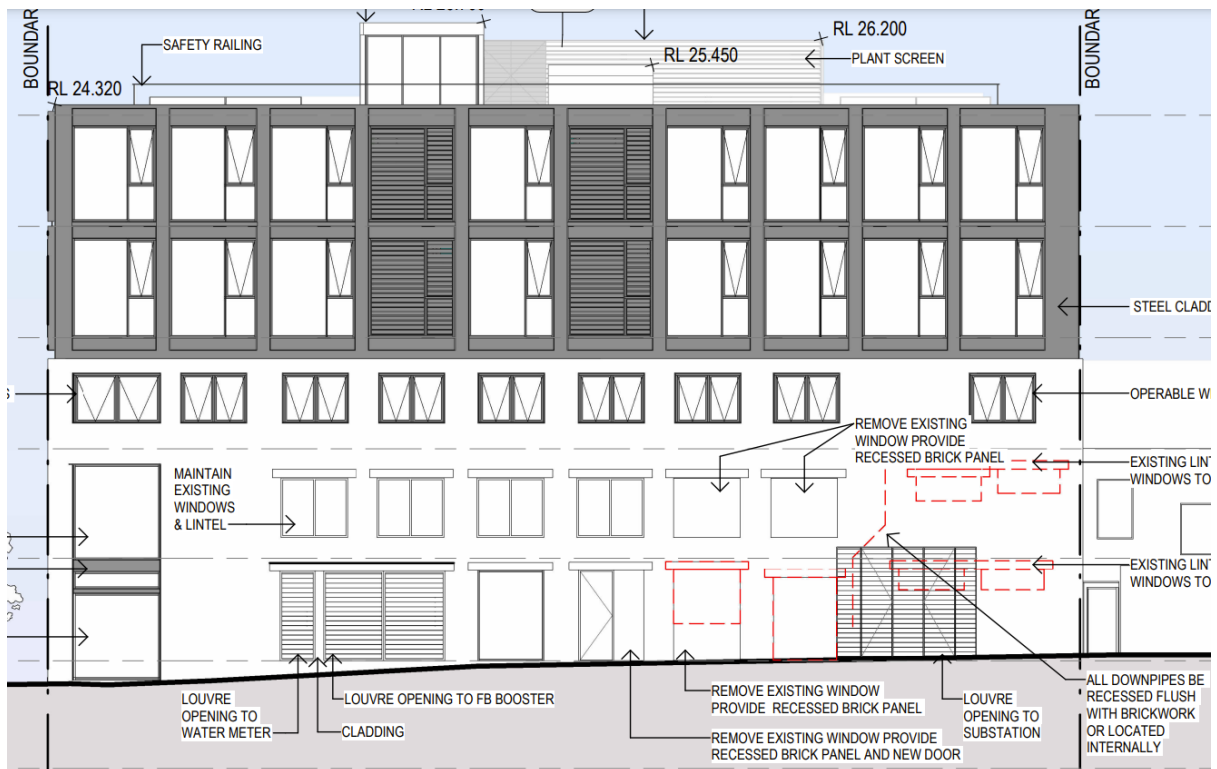


Figure 34: North (Grafton Lane) facade, with proposed bricked-in windows

## Consultation

### Internal Referrals

66. The application was discussed with Council's;
- (a) City Access and Transport Unit;
  - (b) Cleaning and Waste Unit;
  - (c) Construction and Building Unit;
  - (d) Environmental Health Unit - Contaminated Land;
  - (e) Environmental Health Unit - Noise;
  - (f) Heritage Unit;
  - (g) Landscaping Unit
  - (h) Public Domain Unit;
  - (i) Tree Management Unit; and
  - (j) Urban Design Unit.
67. The referral units advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

## Advertising and Notification

68. In accordance with the City of Sydney Community Participation Plan 2022, the proposed development was notified and advertised for a period of 21 days between 24 January 2023 and 15 February 2023. A total of 147 properties were notified and 2 submissions were received.
69. The revised plans were not renotified as the amended proposal did not present any additional adverse amenity impacts. Notwithstanding this, conditions regarding use of the proposed Level 4 terrace are recommended.
70. The submissions raised the following issues:
  - (a) **Issue:** The submissions request that acoustic, traffic and dust impacts are mitigated during the demolition and construction process to ensure the minimisation of amenity impacts to the surrounding University of Notre Dame facilities and neighbouring residences.

**Response:** In order to minimise acoustic impacts during the demolition and construction processes, a condition of consent is recommended which requires the submission of a Demolition, Excavation and Construction Noise and Vibration Management Plan to Council prior to the issue of a Construction Certificate.

To ensure construction traffic is appropriately managed, a Construction Traffic Management Plan is required to be submitted to Council prior to the issue of a Construction Certificate. A Construction Management Plan and an Erosion and Sediment Control Plan are also required to be submitted to the Principal Certifier to ensure appropriate site management during demolition, excavation and construction processes are appropriately managed.

## Financial Contributions

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

71. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
72. Credits have been applied for the most recent approved use of the site. The current use of the site is recognised as an office premises. GFA calculations of the existing premises were utilised to apply credits for the contribution.
73. 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**

74. 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 of total non-residential floor area of 3321.8 x 0.01 totalling \$352,493.80. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.
75. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The Act applies with respect to a development application for consent to carry out development within an area if a State Environmental Planning Policy identifies that there is a need for affordable housing within the area and:
- (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area; or
  - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area; or
  - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site; or
  - (d) the regulations provide for this section to apply to the application.
76. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to consideration of the following:
- (a) the condition complies with all relevant requirements made by a State Environmental Planning Policy with respect to the imposition of conditions under this section;
  - (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan; and
  - (c) the condition requires a reasonable dedication or contribution, having regard to the following:
    - (i) the extent of the need in the area for affordable housing;
    - (ii) the scale of the proposed development; and
    - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.
77. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable. A condition of consent is recommended requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

## Relevant Legislation

78. Environmental Planning and Assessment Act 1979.

## Conclusion

79. The proposal seeks consent for alterations and additions to an existing two storey former warehouse building consisting of alterations and a three storey addition. The application has been amended to include a terrace on level 4 and inaccessible rooftop landscaping.
80. The application includes a request to vary the 'Height of buildings' development standard. The request to vary the standard is supported in this instance in consideration of the context of the site and the surrounding area.
81. The application is recommended for approval subject to the recommended conditions contained in Attachment A.

## ANDREW THOMAS

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Thomas Walters, Planner