

Item 6.**Development Application: 86-90 Bay Street, Ultimo - D/2023/445**

File No.: D/2023/445

Summary**Date of Submission:** 24 May 2023**Applicant:** 86 Bay Street Pty Ltd**Architect:** Fitzpatrick + Partners**Owner:** 86 Bay Street Pty Ltd**Planning Consultant:** Urbis**Heritage Consultant:** Urbis**Cost of Works:** \$16,818,972**Zoning:** MU1 - Mixed Use

Proposal Summary: Alterations and additions to an existing three storey and lower car park level commercial building including substantial demolition of the existing building, with retention of the building structure and the construction of a three storey addition.

The proposed development was notified between 6 June and 28 June 2023. No submissions were received.

The application includes requests to vary the floor space ratio (FSR) and height of buildings development standards. The proposed variations to the FSR and height of buildings standards exceed 10 per cent, therefore the application is referred to the Local Planning Panel for determination.

A request for additional information and amendments was made to the applicant on 3 July 2023. The applicant responded to the request on 1 August 2023 and submitted landscaping plans, detailed ground floor facade details and further fire engineering details.

The requests to vary the FSR and height of buildings development standards are supported in the circumstances of the application.

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

Development Controls:

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

Attachments:

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

Recommendation

It is resolved that:

- (A) the variation requested to clause 4.3 'Height of buildings' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the variation requested to clause 4.4 'Floor space ratio' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) consent be granted to Development Application Number D/2023/445 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is permissible within and consistent with the objectives of the MU1 Mixed Use Zone.
- (B) The proposal satisfies the design excellence provisions of clause 6.21C of Sydney Local Environmental Plan 2012.
- (C) 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;
 - (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;
 - (iii) 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 floor space ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.4 of the Sydney LEP 2012; and
 - (iv) the proposal is in the public interest because it is consistent with the objectives of the MU1 Mixed Use Zone and the floor space ratio development standard.

Background

The Site and Surrounding Development

1. The site is identified as SP21479 and is located at 86-90 Bay Street, Ultimo. The site is located on the eastern side of Bay Street between Smail Street to the north and Broadway to the south. The site has a primary frontage of 18.3m to Bay Street, a side secondary frontage of 18.3m to St Barnabas Street to the north and a site area of 1,011sqm. The site contains a three storey office building with a lower ground parking level with access off St Barnabas Street. Footpath levels fall from Bay Street to St Barnabas Street by approximately 3.5m.
2. Surrounding development includes a mixture of commercial uses including:
 - (a) to the north at 76 - 84 Bay Street, Ultimo: a heritage listed four storey commercial building known as the Reader's Digest Building;
 - (b) to the south and east at 185-211 Broadway, Ultimo: the heritage listed former Grace Brothers Homewares building approved for student and motel accommodation; and
 - (c) to the west, on the other side of the street at 1-21 Bay Street, Glebe: the multi storey Broadway shopping centre complex.
3. The site is located within the Mountain Street Heritage Conservation Area.
4. Heritage items within the vicinity of the site include:
 - (a) at 76-84 Bay Street, Ultimo: local heritage item "Bay House" including interior (I2003) - also known as the Reader's Digest Building;
 - (b) at 185-211 Broadway, Ultimo: local heritage item Former "Grace Bros Homewares" including interior (I2018); and
 - (c) at 213 Broadway, Ultimo: local heritage item Former commercial building "Grace Bros, Model & Moxham Store" including interior (I664).
5. The site is located within the Mountain Street Locality.
6. The site is not identified as being subject to flooding.
7. A site visit was carried out on 14 August 2023. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds

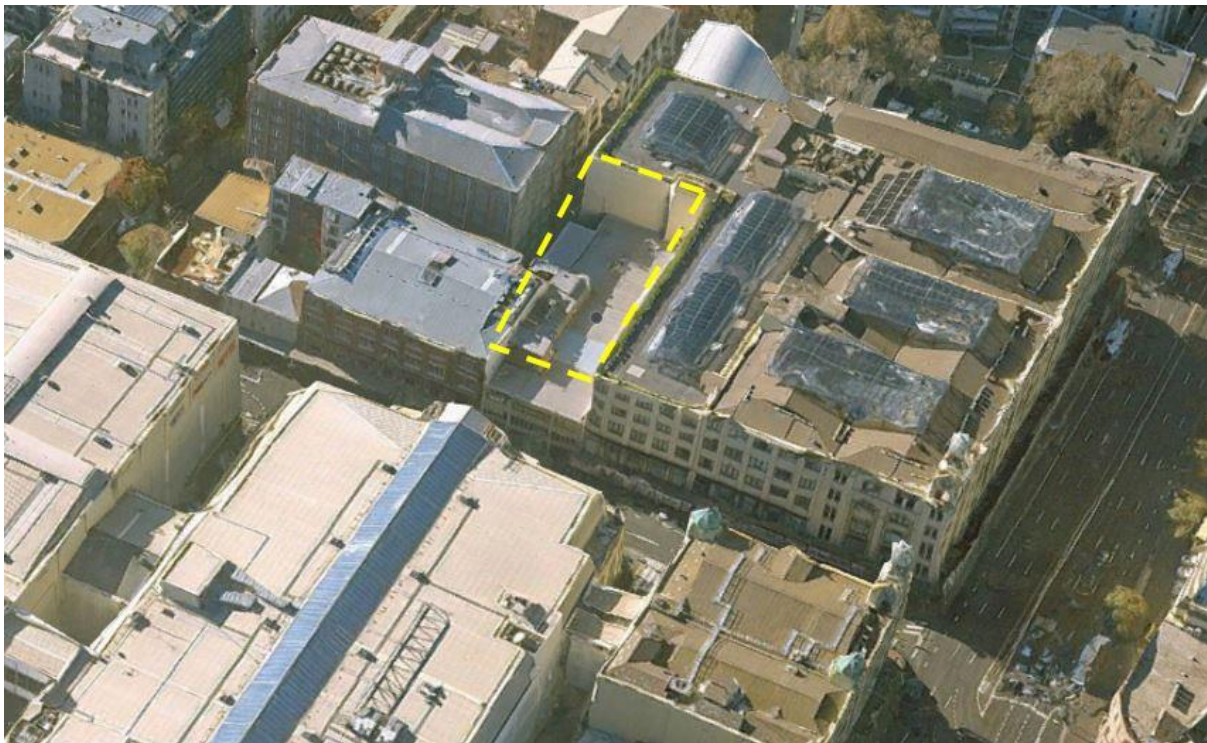


Figure 2: Aerial view of site generally looking east



Figure 3: Site viewed from Bay Street looking east



Figure 4: Site viewed from Bay Street looking north



Figure 5: Site viewed from Bay Street looking north



Figure 6: Site viewed from Kettle Lane looking south



Figure 7: Site viewed from St Barnabas Street looking west

History Relevant to the Development Application

Development Applications

8. There is no relevant recent development application history for the site.

Compliance Action

9. There is no relevant current or recent compliance action for the site.

Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 3 July 2023. The applicant responded to the request on 1 August 2023, and submitted a landscaping plan, ground floor facade details and further fire engineering details.

Proposed Development

11. The application seeks consent for the following:
 - Redevelopment of the site with substantial demolition of the existing building, with retention of building structural elements including floor slabs and columns.
 - Construction of a three storey addition for a six storey plus lower ground level building for a commercial office building with ground level retail space. Cross laminated timber structure for additions.
 - Lower ground level: nine car parking spaces, and two service bays accessed via St Barnabas Street, 46 bicycle parking spaces, end of trip facilities, waste storage areas, plant, substation and storage areas.
 - Ground level: retail, office space and commercial lobby accessed from Bay Street. Lobby features a landscaped lightwell open to the sky.
 - Levels 1 to 5: office space, with outdoor terrace spaces on Levels 3 and 5.
 - Mechanical plant located Level 5.
 - Rooftop solar panels.
12. Plans and elevations of the proposed development are provided below.

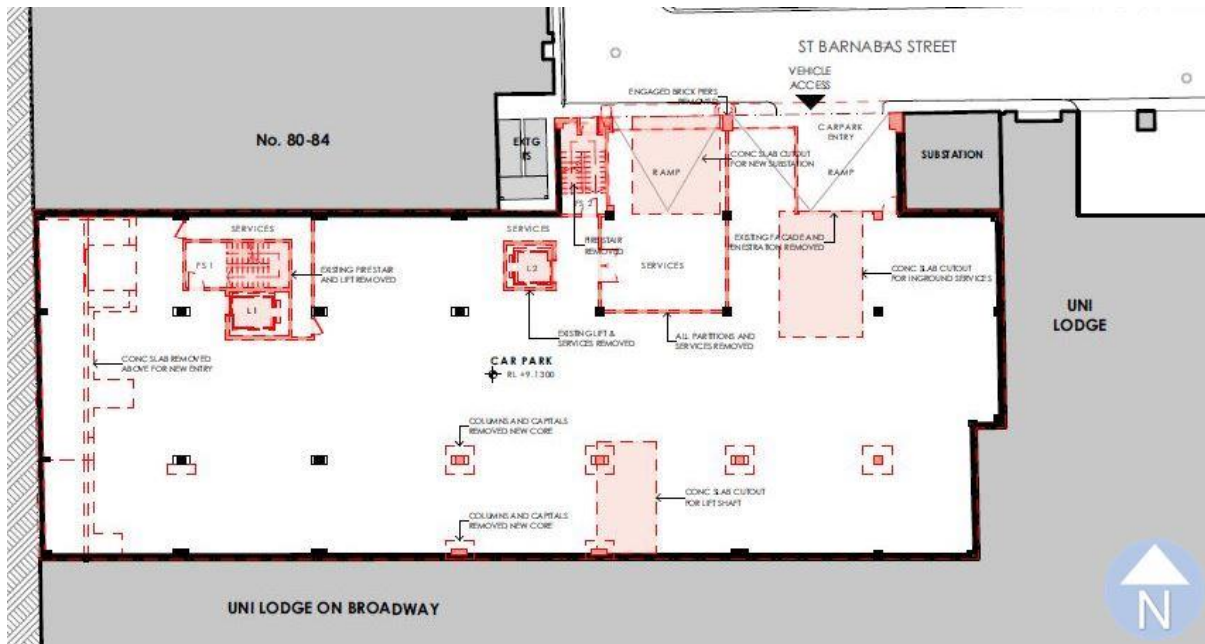


Figure 8: Demolition plan: lower ground

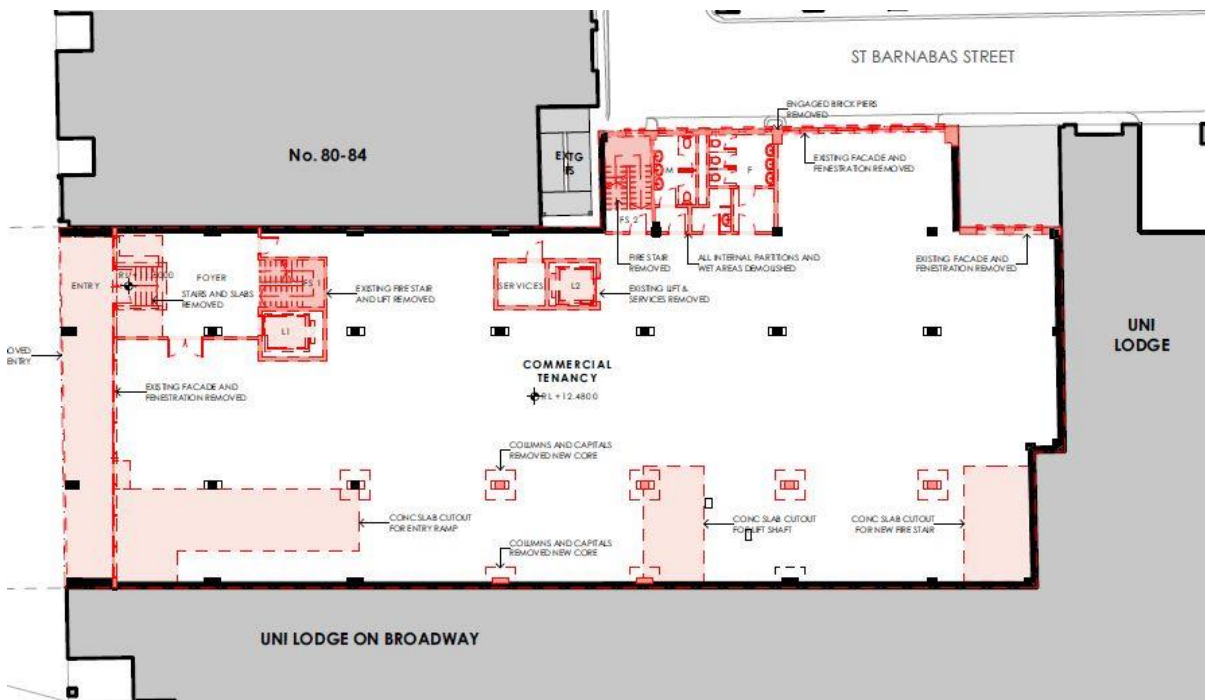


Figure 9: Demolition plan: ground

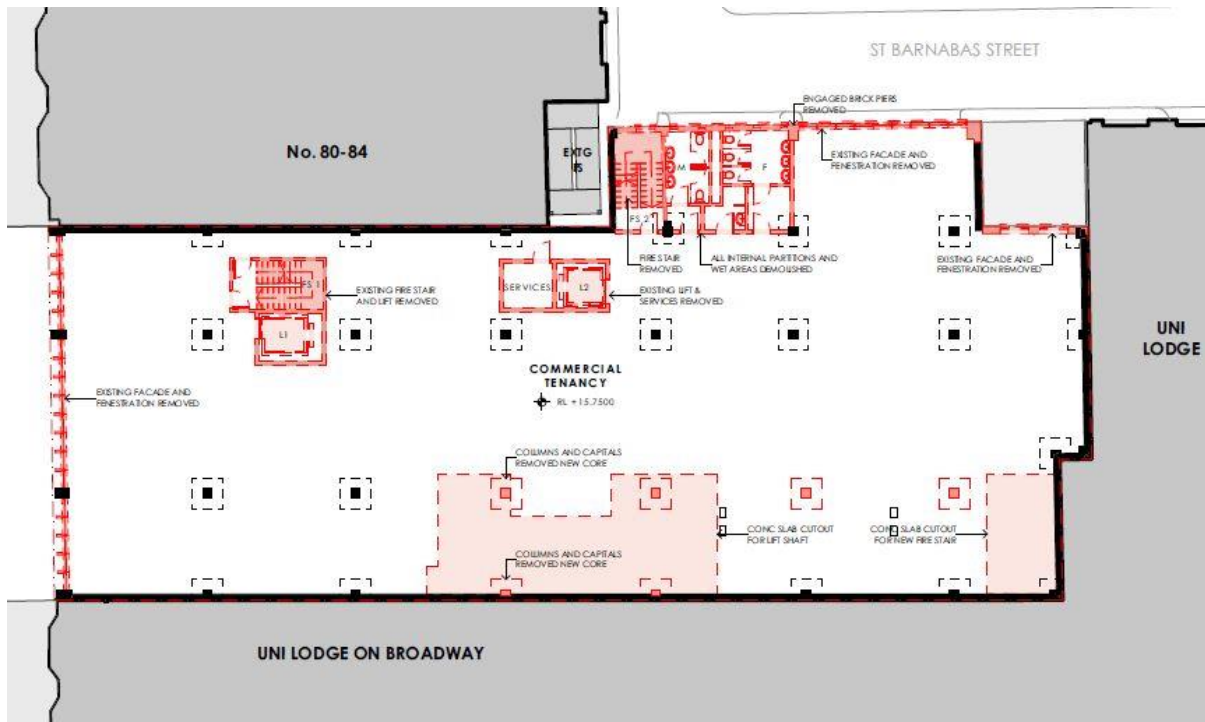


Figure 10: Demolition plan: level 1

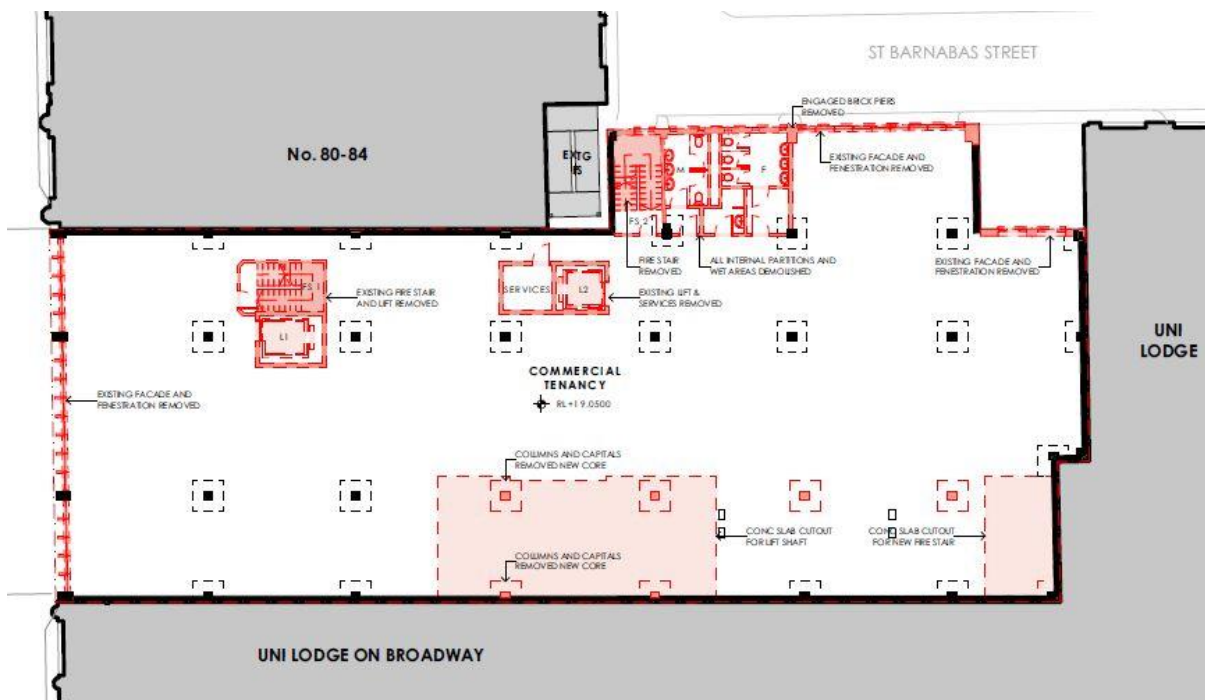


Figure 11: Demolition plan: level 2

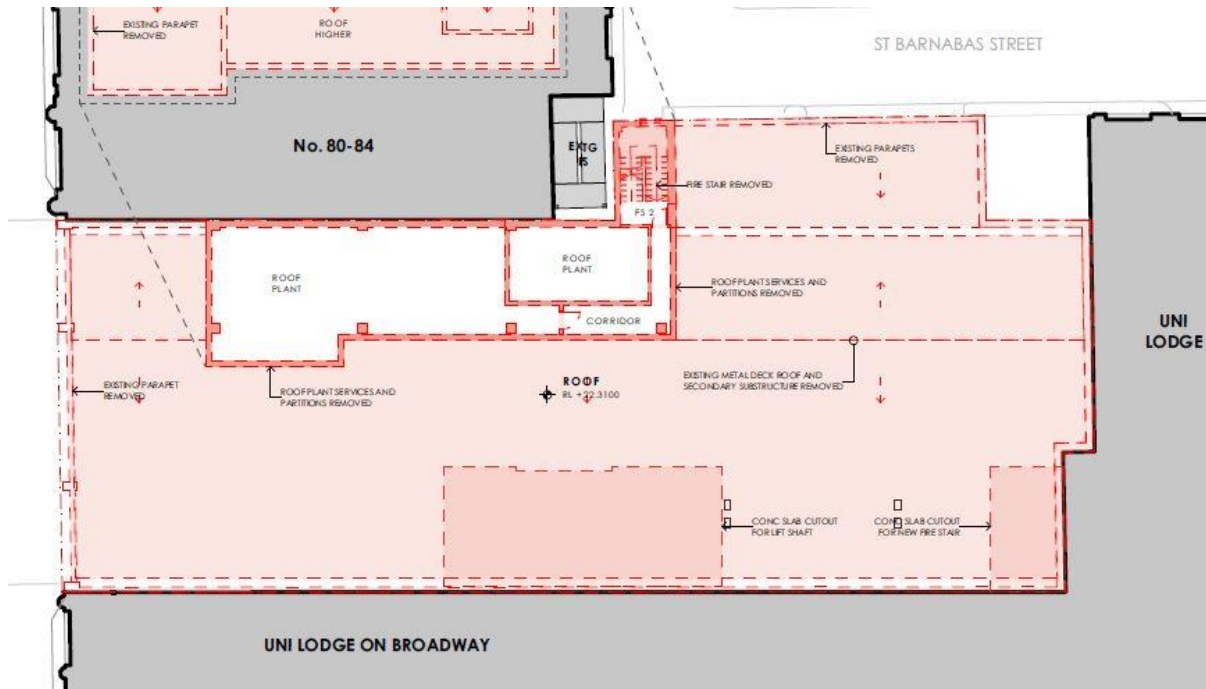


Figure 12: Demolition plan: roof level

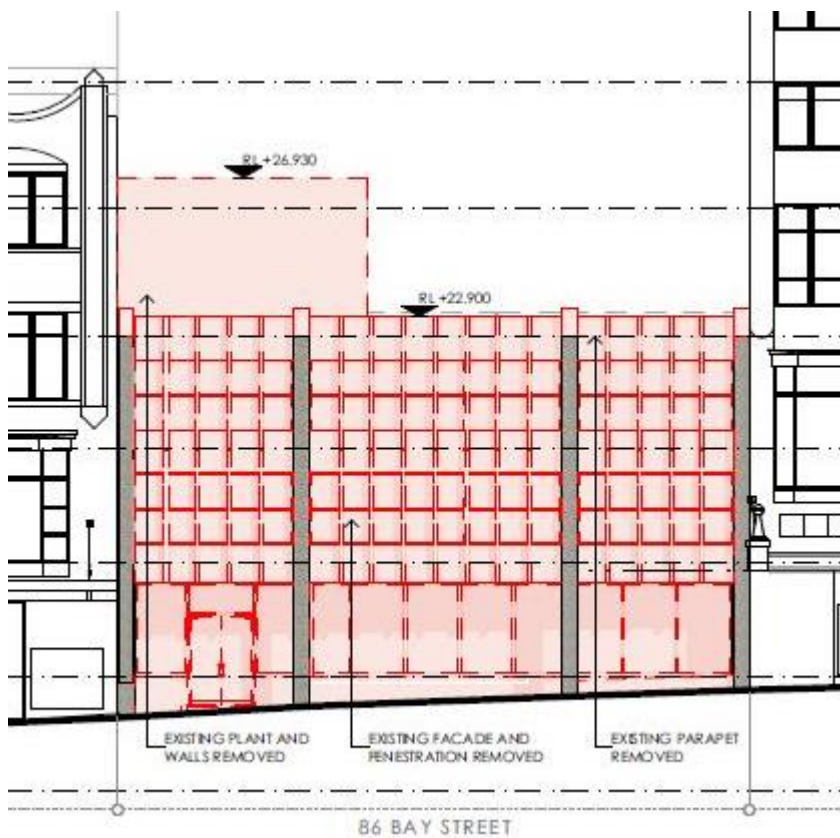


Figure 13: Demolition plan: Bay Street elevation

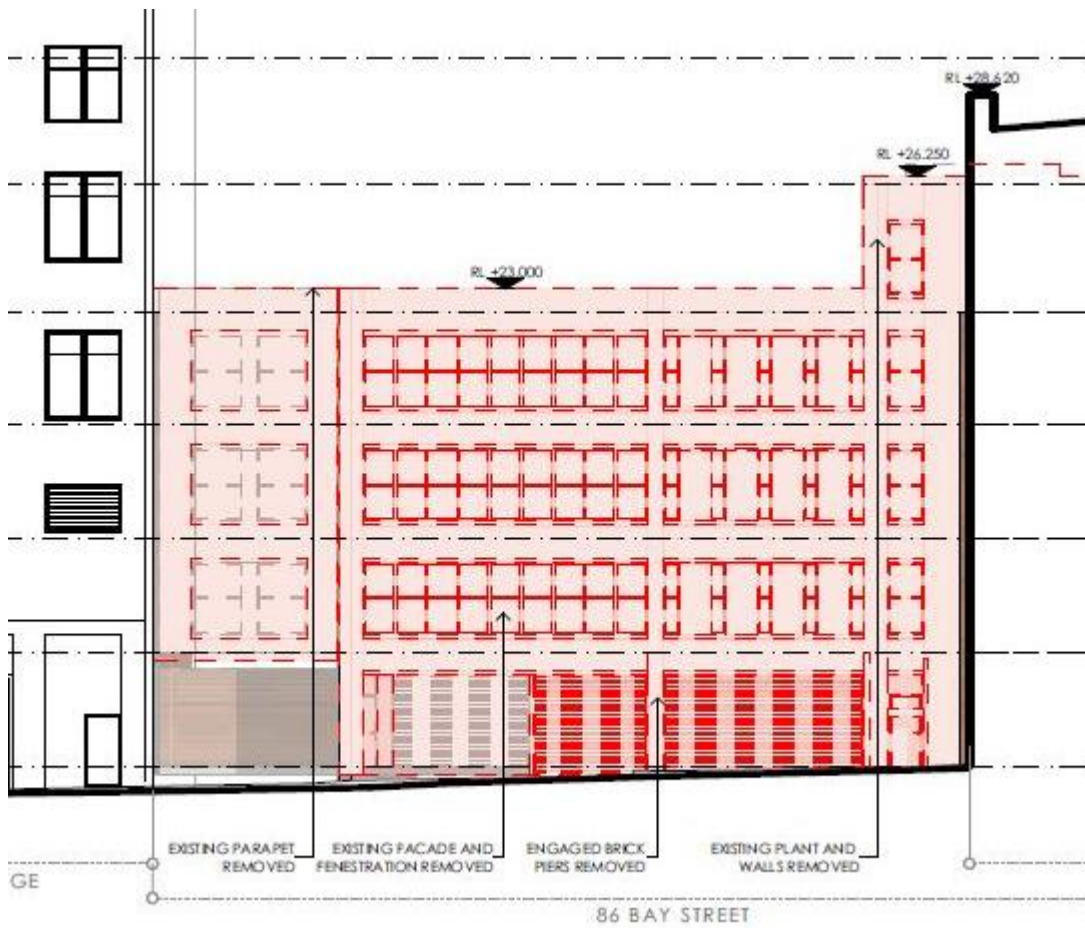


Figure 14: Demolition plan: St Barnabas Street elevation

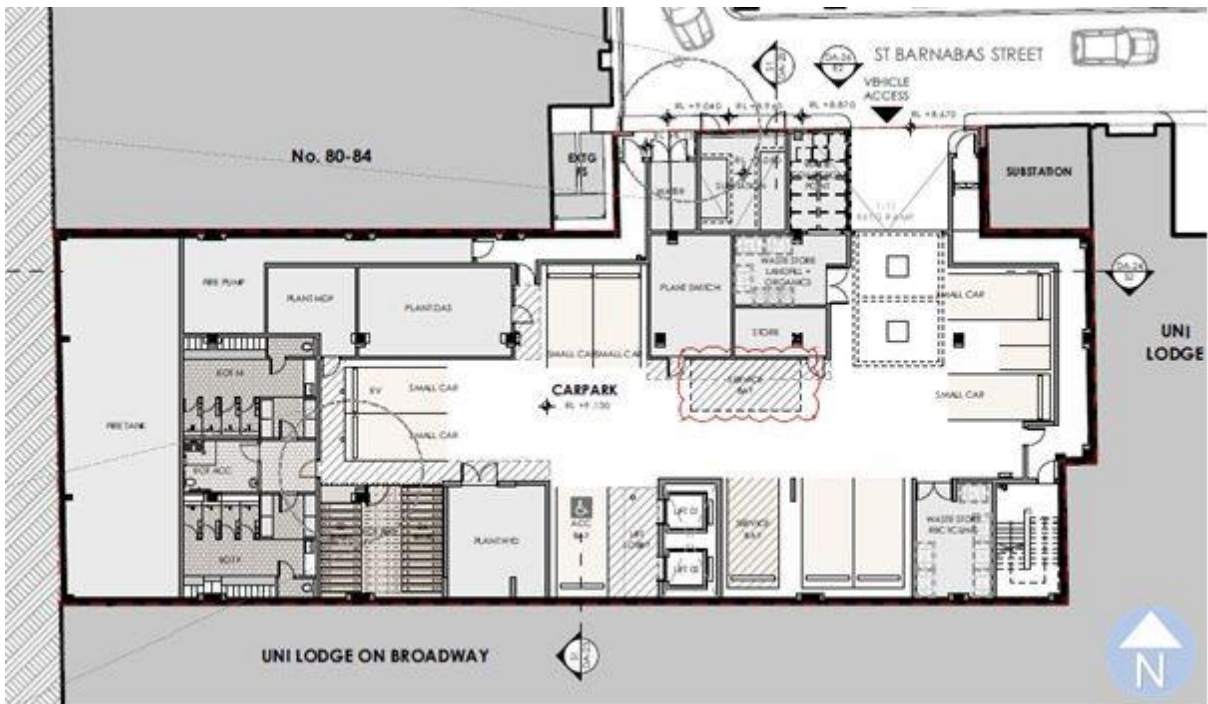


Figure 15: Lower ground floor plan

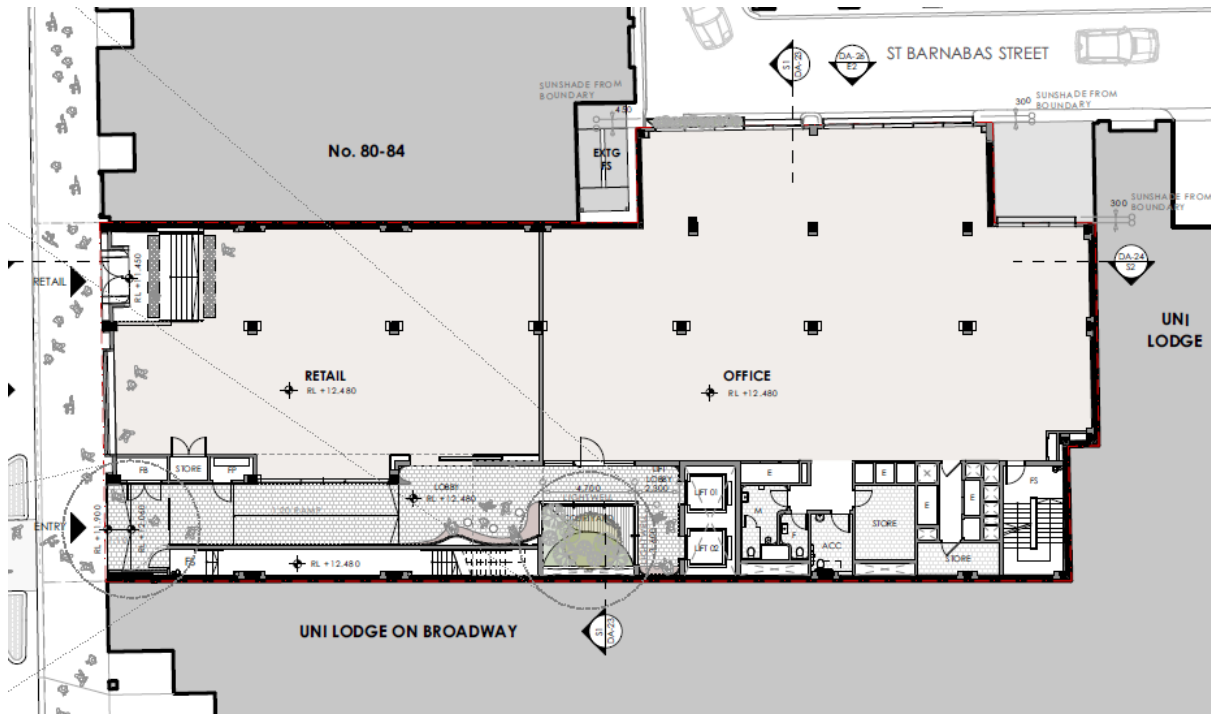


Figure 16: Ground floor plan

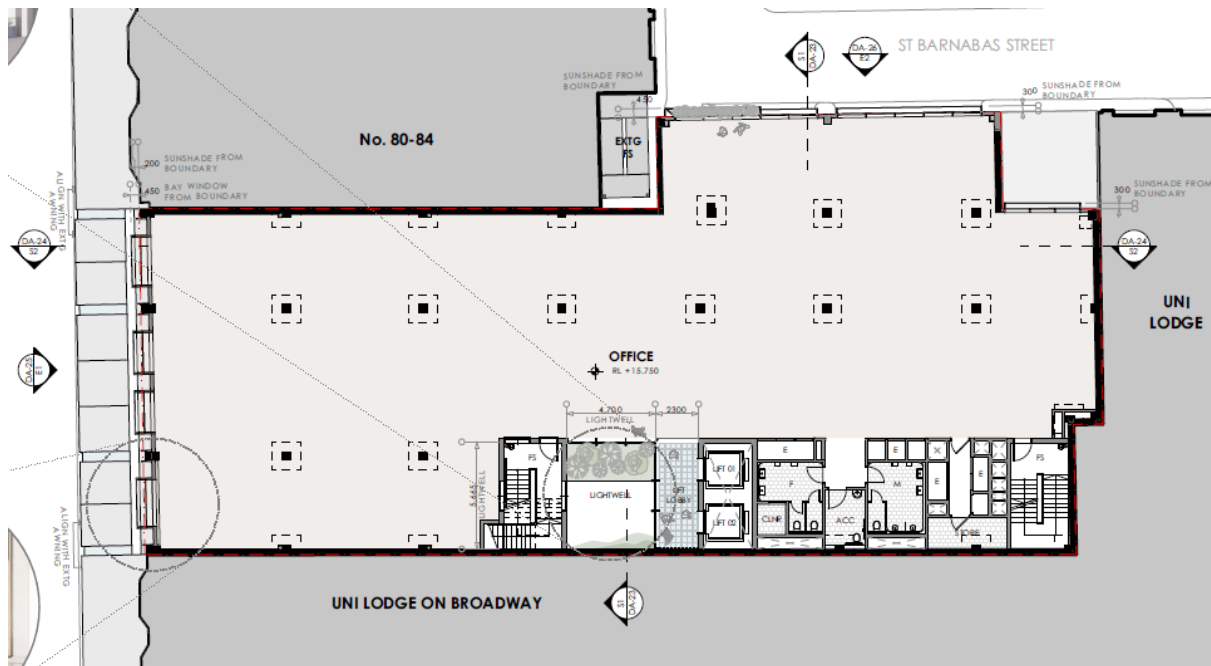


Figure 17: Level 1 Floor plan

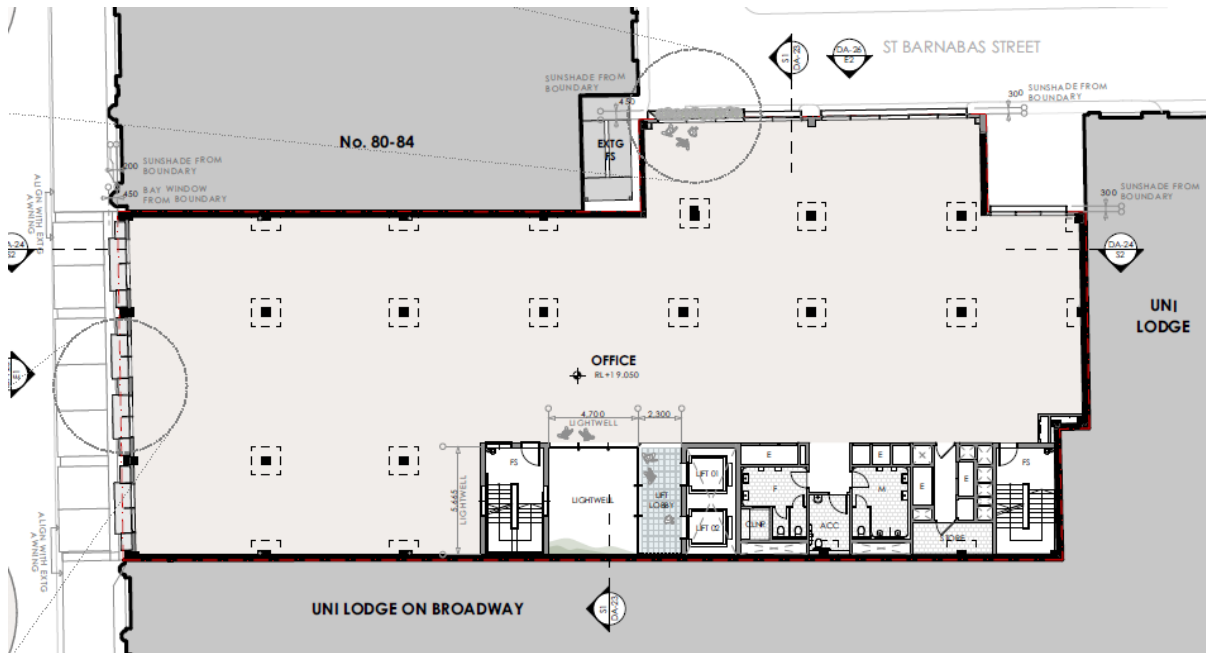


Figure 18: Level 2 Floor plan

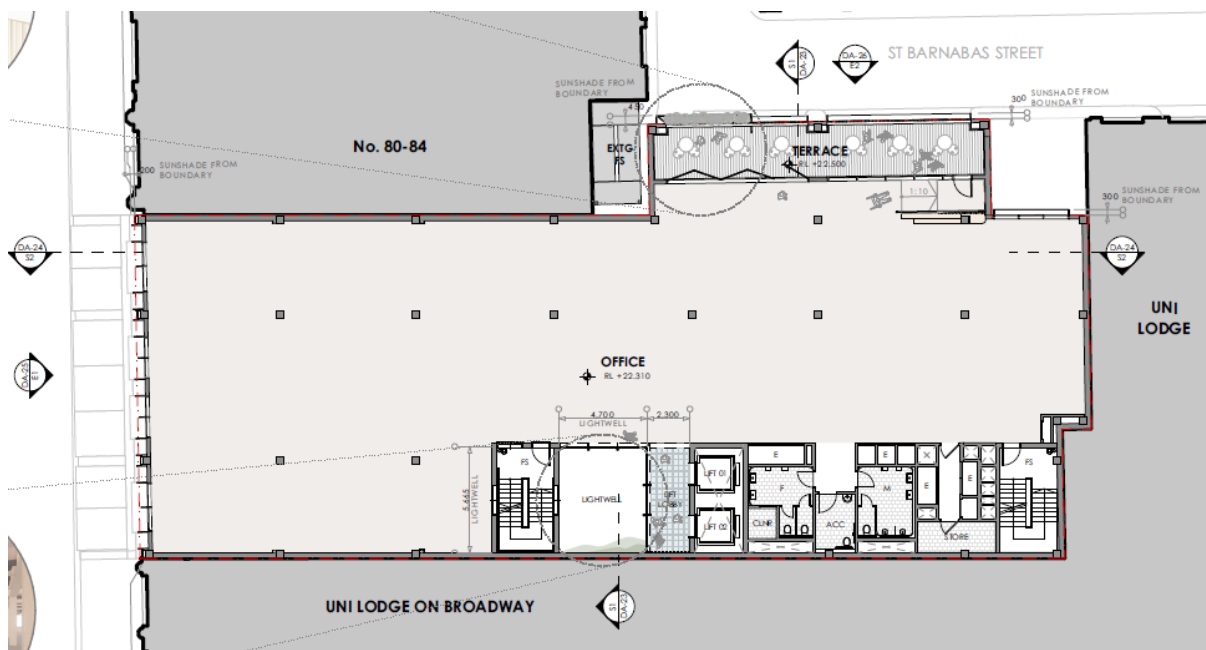


Figure 19: Level 3 Floor plan

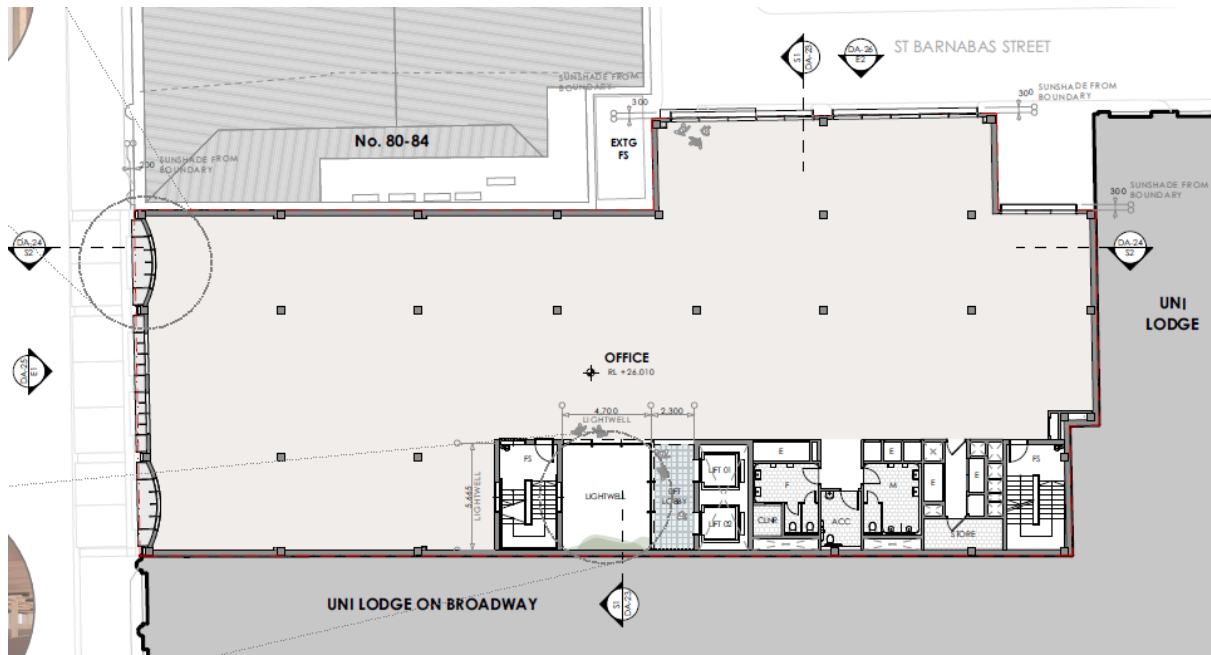


Figure 20: Level 4 Floor plan

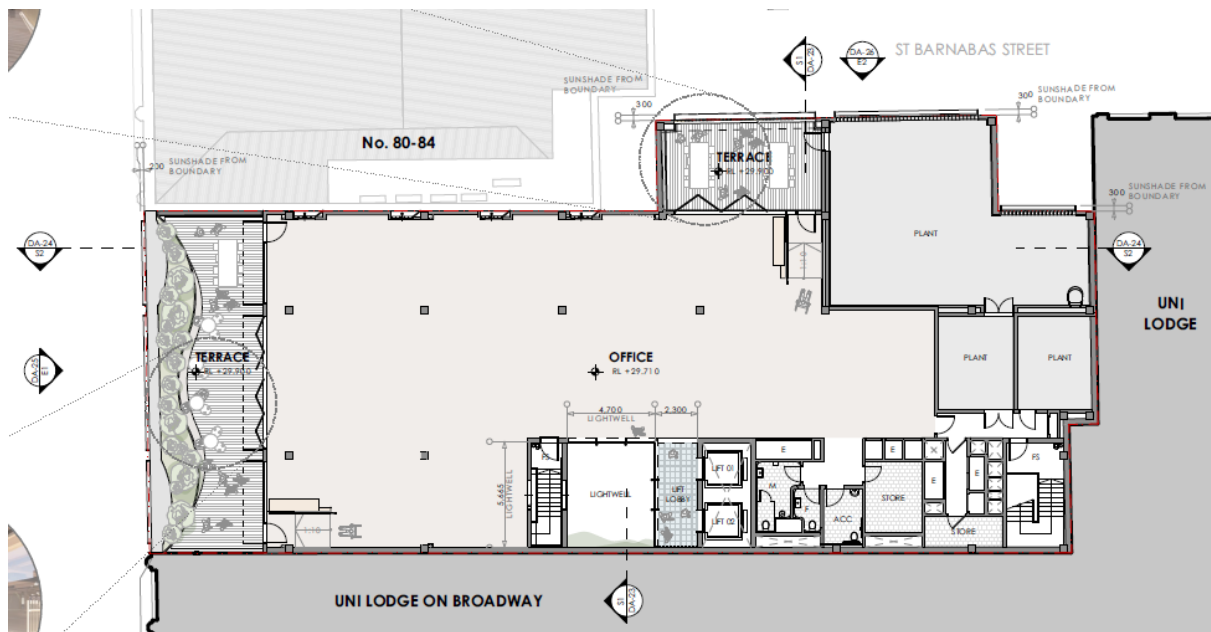


Figure 21: Level 5 Floor plan

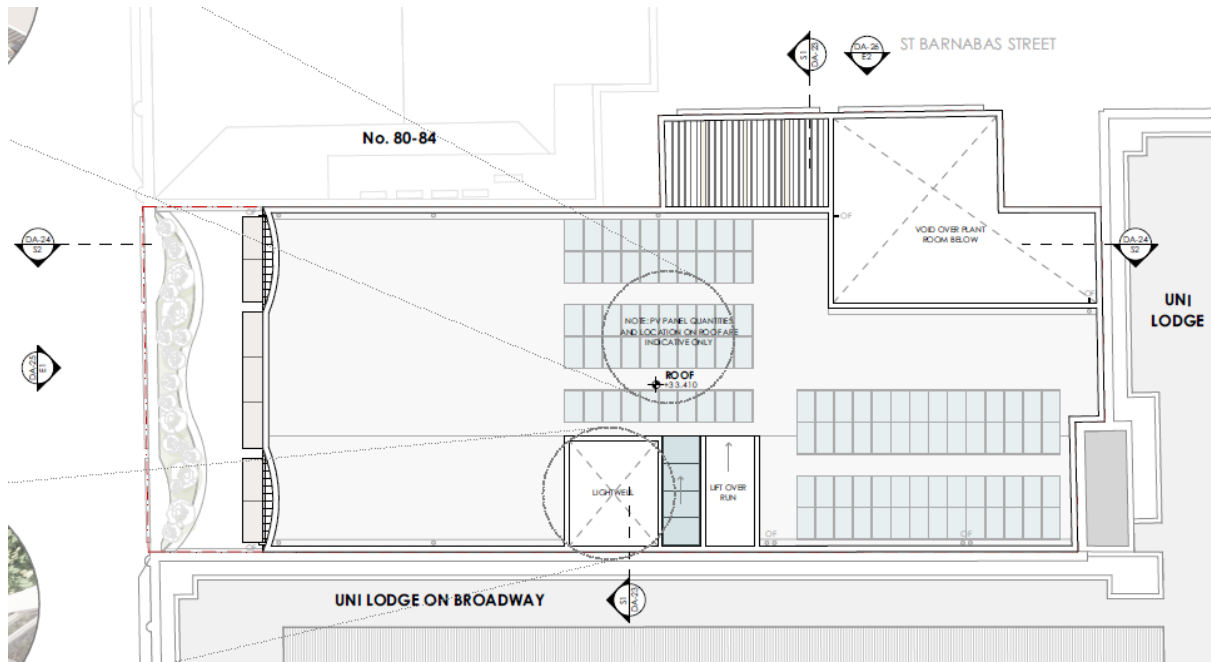


Figure 22: Roof plan



Figure 23: Bay Street (West) elevation

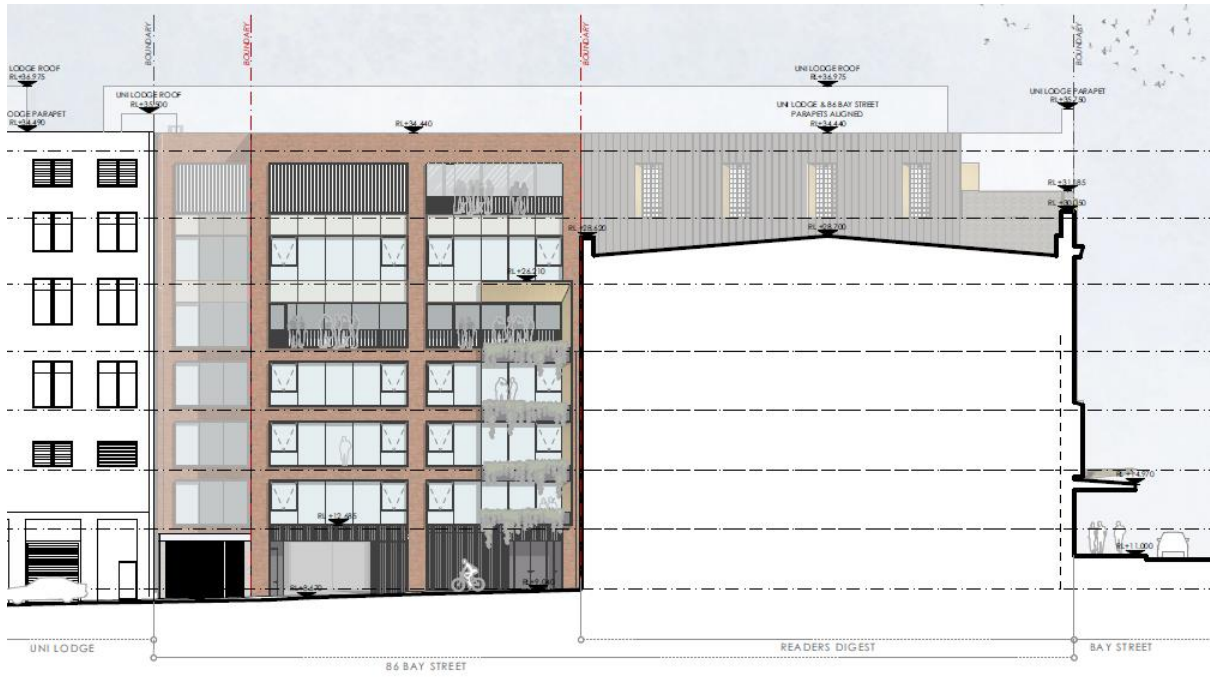


Figure 24: St Barnabas Street (North) elevation



Figure 25: Section: North - South

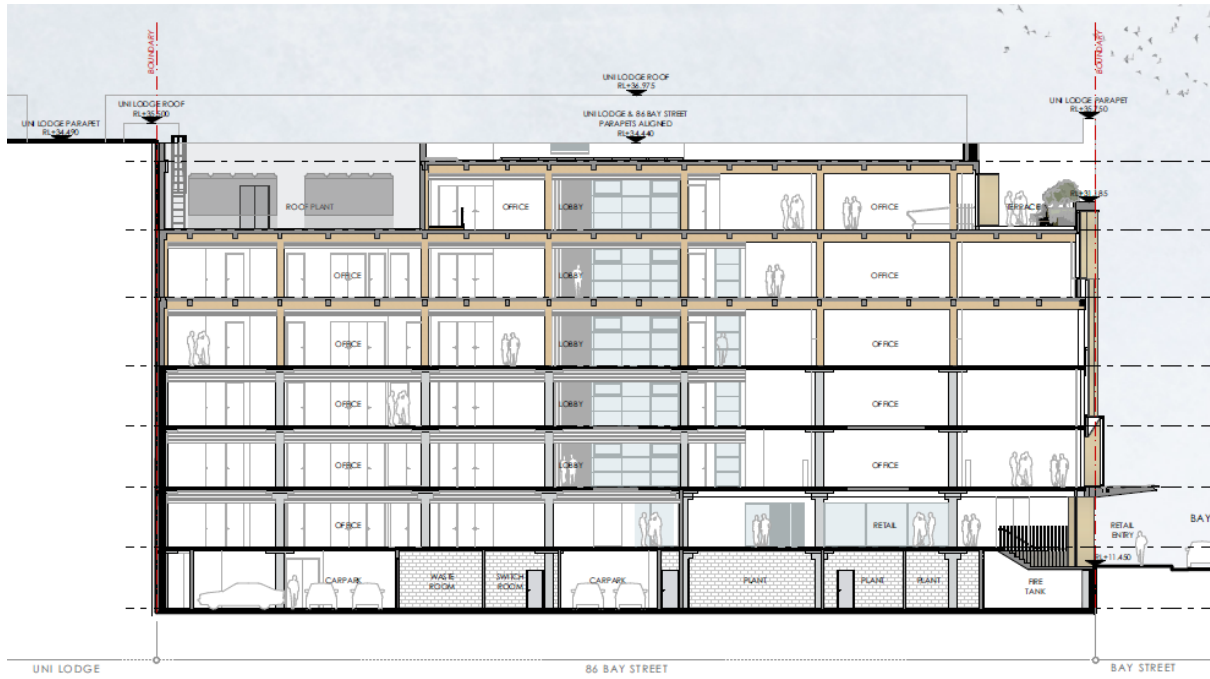


Figure 26: Section: East - West



Figure 27: Materials schedule



Figure 28: Montage image



VIEW 01 - STREET SCAPE



VIEW 02- STREET FRONTAGE



VIEW 03- FACADE DETAILING

Figure 29: Bay Street facade details



Figure 30: St Barnabas Street facade details

Assessment

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

State Environmental Planning Policies

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

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.

33. The site will be continued to be used for commercial uses with a basement.
34. Council's Health Unit has reviewed the information provided in the application and is satisfied that the site is suitable for the proposed use.

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 will be carried out immediately adjacent to an electricity substation and within 5m of overhead electricity wires.
37. As such, the application was referred to Ausgrid for a period of 21 days. Ausgrid have advised that they do not object to the proposed development.

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

38. 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.
39. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development. The proposed development has been reviewed by the City's Public Domain Unit and is considered satisfactory with regard to the relevant items.

Local Environmental Plans

Sydney Local Environmental Plan 2012

40. 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 for "commercial" use and is permissible with consent in the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 22m is permitted.</p> <p>A maximum height of 26m is proposed.</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 of 2.5:1 is permitted.</p> <p>A floor space ratio of 4.73:1 is proposed.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standards prescribed under Clause 4.3 Height of buildings and 4.4 Floor space ratio.</p> <p>Clause 4.6 variation requests have been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Mountain Street Heritage Conservation Area.</p> <p>The site is located adjacent to heritage items: at 76-84 Bay Street, Ultimo: local heritage item "Bay House" including interior (I2003); at 185-211 Broadway, Ultimo: local heritage item Former "Grace Bros Homewares" including interior (I2018).</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and adjoining heritage items.</p>

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	The proposed development is eligible for an additional floor space ratio of 0.08:1 for end of journey floor space.
Division 4 Design excellence		
6.21C 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 including adjoining heritage items 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 with regard 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 7.7 Retail premises	Yes	<p>A maximum of 20 car parking spaces are permitted.</p> <p>The proposed development includes 9 car parking spaces and complies with the relevant development standards.</p> <p>The on-site car parking has been reduced from 32 existing spaces.</p>

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.13 Contribution for purpose of affordable housing	Yes	The proposal is within the residual land area and involves alterations to an existing building that will result in the creation of more than 60sqm of GFA for a purpose other than residential accommodation, therefore a condition applies under these provisions.
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

41. 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

42. The site is located within the Mountain Street locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposal responds to the context of the locality including the adjoining heritage items. Refer to further discussion regarding heritage.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposal will provide an improved address to Bay Street. The proposed footpath awning to Bay Street is not required, however is considered a positive outcome in terms of providing continuous weather protection along the eastern side of Bay Street and aligns with adjoining awnings in terms of height and width.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.

Provision	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The proposal includes a number of sustainability measures and will enter into a NABERS 5-star energy agreement.
3.9 Heritage	Yes	<p>The site is located within the Mountain Street Heritage Conservation Area.</p> <p>The site is described as a detracting building within the heritage conservation area.</p> <p>The site is located adjacent to heritage items: at 76-84 Bay Street, Ultimo - local heritage item "Bay House" including interior (I2003); at 185-211 Broadway, Ultimo - local heritage item Former "Grace Bros Homewares" including interior (I2018).</p> <p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and adjoining heritage items.</p> <p>See further details in the 'Discussion' section below.</p>
3.10 Significant Architectural Building Types	Yes	The subject site contains a three storey 1970s commercial building. The building is noted as a detracting building within the heritage conservation area.
3.11 Transport and Parking	Yes	<p>Bicycle parking for 48 bicycles and end of journey facilities are proposed on the lower ground floor.</p> <p>Two service spaces are provided.</p>
3.12 Accessible Design	Yes	The proposal is accompanied by an accessibility report demonstrating equitable access.
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	The proposal provides sufficiently sized waste storage and collection areas within the lower ground floor.

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 acceptable	<p>The site is permitted a maximum building height of 5 storeys.</p> <p>The proposed development is 6 storeys to Bay Street, and seven storeys to St Barnabas Street.</p> <p>The acceptability of the height of the development is further discussed under the consideration of the variation to the height standard under the sub-heading 'Discussion' section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, but acceptable	<p>The floor to floor heights of the proposed development are as follows:</p> <ul style="list-style-type: none"> • Lower ground (existing) 3.35m • Ground (existing) 3.27m • Level one (existing) 3.3m • Level two (existing) 3.26m • Level three (proposed) 3.7m • Level four (proposed) 3.7m • Level five (proposed) 4.73m <p>These floor to floor heights are considered to be acceptable having regard to the retention of existing building structure and demonstrated amenity to floor plates.</p>
4.2.2 Building setbacks	Yes	The nil setbacks proposed align with adjoining developments.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposal does not result in overshadowing to any adjoining dwellings.

Provision	Compliance	Comment
4.2.3.4 Design features to manage solar access	Yes	Sufficient sun shading is provided having regard to context of site.
4.2.3.5 Landscaping	Yes	Landscaping provided along northern building facade, internal lightwell, and terrace spaces.
4.2.3.6 Deep Soil	No, but acceptable	The existing development covers the whole site with no ground level deep soil. The proposal includes the retention of the existing building structure.
4.2.3.11 Acoustic privacy	Yes	The proposal will not result in unacceptable acoustic impacts. It is recommended the use of the roof terrace area be limited for office occupant associated use only.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The design incorporates articulated elements that relate to the adjoining heritage buildings.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	The proposal will not result in additional unreasonable impacts to the surrounding developments. 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

Heritage

43. The site is located within the Mountain Street Heritage Conservation Area. The site is described as a detracting building within the heritage conservation area.
44. Heritage items within the vicinity of the site include:
 - (a) adjoining the site to the north at 76-84 Bay Street, Ultimo: local heritage item "Bay House" including interior (I2003);
 - (b) adjoining the site to the south at 185-211 Broadway, Ultimo: local heritage item Former "Grace Bros Homewares" including interior (I2018); and

- (c) at 213 Broadway, Ultimo: local heritage item Former commercial building "Grace Bros, Model & Moxham Store" including interior (I664).



Figure 31: Excerpt from Sydney LEP 2012 heritage mapping - subject site is identified in yellow

45. The application includes substantial demolition of the existing building on the site, with the retention of building structure, and the construction of new building facades and a three storey addition.
46. Through discussions with the applicant at the pre DA stage, the design of the building setbacks and articulation has been refined to respond to the streetscape context, in terms of:
- (a) a Bay Street street frontage height that aligns with building features of the heritage item to the south;
 - (b) level 5 setback 6m behind the Bay Street street frontage height to minimise visibility;
 - (c) level 1 bay windows align with the bay windows to the adjoining heritage item to the north;
 - (d) vertical and horizontal elements taking cues from adjoining heritage buildings;
 - (e) the use of materials which complement the existing heritage context; and
 - (f) a design to the rear street that responds to the warehouse character of the locality with a similar, but more subdued facade design.



Figure 32: Illustration of design cues from architectural report



Figure 33: Montage image - Bay Street



Figure 34: Montage image - St Barnabas Street

47. The proposal has been reviewed by the City's Heritage and Urban Design Unit with input at the pre-DA and assessment stages of the proposal with amendments and additional information provided to address comments.
48. The proposal is considered to provide a positive heritage outcome for the site and the heritage conservation area, and the design is supported.

Clause 4.6 Request to Vary a Development Standard

Floor Space Ratio

49. The site is subject to a maximum floor space ratio (FSR) control of 2.5:1 with an additional 0.08:1 available for end of journey floor space for a total of 2.58:1. The proposed development has a FSR of 4.73:1. This represents a variation of 83 per cent to the standard.
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;
 - c. The proposed development will be consistent with the objectives of the zone; and
 - d. The proposed development will be consistent with the objectives of the standard.

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

51. The applicant seeks to justify the contravention of the floor space ratio development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The objectives of the standard are achieved notwithstanding non-compliance of the standard.
 - (ii) The proposed design is consistent with the scale of developments in the locality, both existing and emerging.
 - (iii) The existing building on site has an FSR of 2.65:1 which currently exceeds the standard.
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) There is an absence of impacts associated with the non-compliance and positive planning benefits arising from the proposed development.
 - (ii) The existing building currently exceeds the permitted FSR of 2.5:1.
 - (iii) The prescribed FSR of 2.5:1 does not reflect the existing context of surrounding development of predominantly historical warehouse buildings, all built to boundary and three to six storeys in height.
 - (iv) There is precedent for similar styles of development within the area that have retained the existing buildings with additions, that included variations to development standards.
 - (c) The proposed development will be consistent with the objectives of the zone:
 - (i) The proposed development will provide commercial and retail uses that are compatible with adjoining and surrounding uses within the mixed use precinct.
 - (ii) The proposed development provides an enhanced and activated street frontage that complements the character of the surrounding context. The facade integrates with the surrounding heritage context.
 - (iii) The proposal integrates with adjoining uses.
 - (iv) The proposal provides the opportunity for a ground floor retail or commercial tenancy.
 - (v) The proposal will support the viability of nearby centres including Broadway Shopping Centre and Central Park.
 - (vi) The site is within close proximity of public transport and cycle links. Car parking on site is proposed to be reduced.
 - (d) The proposed development will be consistent with the objectives of the standard:

- (i) The proposal will provide additional commercial floorspace in the growing mixed use fringe of the city centre.
- (ii) The proposed building design is consistent with the prevailing and emerging character of developments within the locality. The proposed additions complement the heritage significance of the existing building and character of the heritage conservation area and adjoining heritage items.
- (iii) The proposal will reduce the current onsite parking provision with increased bicycle parking and end of journey facilities provided.
- (iv) The proposal is consistent with the capacity of existing and planned infrastructure for the locality.
- (v) The proposal is a renewal of a detracting building within the heritage conservation area and will improve the overall character of the heritage conservation area within this location.
- (vi) The proposal will not result in adverse impacts to adjoining development. The proposal will not result in overshadowing or any noise impacts.

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

52. 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)?

53. The written request has demonstrated that the objectives of the FSR standard are achieved despite the non-compliance.
54. The proposal provides additional commercial space within the MU1 Mixed Use Zone to meet anticipated demand for commercial floor space with good amenity in an accessible location.
55. The proposal includes a reduction in car parking on the site and the provision of bicycle parking and end of journey facilities that will promote cycling and reduce traffic generation. The proposal is located within an accessible location.
56. The proposed development would require development contributions for planned infrastructure.
57. The proposed development is compatible with the existing and desired character of the locality and heritage conservation area in which it is located including its context adjacent to heritage items.

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

58. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the FSR development standard in the circumstances of the application.
59. The existing three storey plus lower level building form currently exceeds the permitted FSR standard whilst sitting below the height of buildings development standard and below the adjoining heritage items four and five storeys in height.
60. The existing development is a detracting element within the heritage conservation area and the proposal would result in an improvement to the buildings' relationship to the conservation area and adjoining heritage items.



Figure 35: Montage view of proposal within heritage context

61. The proposed building form does not contribute to excessive bulk as viewed from the public domain on Bay Street and is appropriate to the context on St Barnabas Street.

Is the development in the public interest?

62. The development is in the public interest as it is consistent with the objectives of the FSR development standard and the objectives of development within the MU1 Mixed Use Zone in which the development is proposed to be carried out.
63. The proposal provides additional commercial space within the MU1 Mixed Use Zone to meet anticipated demand for commercial floor space with good amenity in an accessible location.

64. The proposal includes a reduction in car parking on the site and the provision of bicycle parking and end of journey facilities that will promote cycling and reduce traffic generation. The proposal is located within an accessible location.
65. The proposed development would require development contributions for planned infrastructure.
66. The proposed development is compatible with the existing and desired character of the locality and heritage conservation area in which it is located including its context adjacent to heritage items.
67. The proposal provides additional commercial space within the MU1 Mixed Use Zone in an area that contains a mix of uses. The proposal provides for an improved active frontage to Bay Street that will contribute to the functional use of the street and public places. The proposal will not result in conflict between land uses. The proposal provides for a retail, non-residential use on the ground floor. The proposal will support the viability of nearby centres at Broadway. The proposal is located in an accessible location in proximity to public transport. The provision of bicycle parking and end of journey facilities and the reduction of car parking on site will promote the use of public transport and encourage walking and cycling.

Conclusion

68. For the reasons provided above the requested variation to the FSR 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 FSR standard and the MU1 Mixed Use Zone.

Clause 4.6 Request to Vary a Development Standard

Height

69. The site is subject to a maximum height of buildings development standard of 22m. The proposed development has a maximum height of up to 26m. This represents a variation of 18.2 per cent to the standard. An illustration of the exceedance above the height plane is shown below.

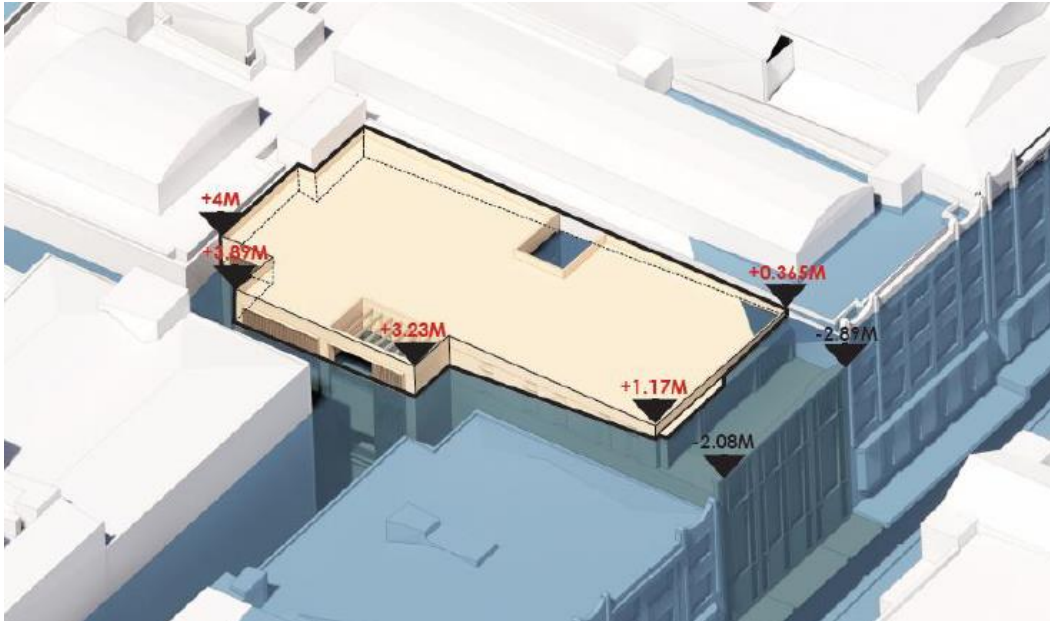


Figure 36: Illustration of 22m height plane



Figure 37: Bay Street elevation within 22m height shown blue dashed

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

- (c) The proposed development will be consistent with the objectives of the zone;
and
- (d) The proposed development will be consistent with the objectives of the standard.

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

71. 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) The objectives of the standard are achieved notwithstanding non-compliance of the standard.
 - (ii) The proposed massing of the building fits within the context of the surrounding built form.
 - (iii) The top floor of the building is set back 6m from the Bay Street boundary.
 - (iv) At St Barnabas Street, the building aligns with the height of the adjoining (now former) Uni Lodge building.
 - (v) The proposal sits between the (now former) Uni Lodge building to the south and Readers Digest building to the north. The new massing improves the Bay Street streetscape and aligns with features of buildings to both sides. The top level is setback from this elevation.
 - (vi) The building will not impact on any views or create visual impacts to the locality.
 - (vii) Strict compliance with the standard would result in the deletion of Level 5 of the proposal, without resulting in any additional benefits.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) The height exceedance of the building is located to the rear of the site with Level 5 being setback from Bay Street.
 - (ii) The height exceedance ranges from 0.34m up to 4m at the rear of the site and represents a minor portion of the building.
 - (iii) The proposed height exceedance does not result in additional overshadowing, visual or privacy impacts to neighbouring properties.
 - (iv) There are examples of other nearby buildings that exceed the height control. A contextual assessment of the proposed building height in this locality that includes a number of former warehouse buildings demonstrates that the proposal would be compatible with the surrounding buildings and an appropriate contextual fit.
- (c) The proposed development will be consistent with the objectives of the zone:

- (i) The proposed development will provide commercial and retail uses that are compatible with adjoining and surrounding uses within the mixed use precinct.
 - (ii) The proposed development provides an enhanced and activated street frontage that complements the character of the surrounding context. The facade integrates with the surrounding heritage context.
 - (iii) The proposal integrates with adjoining uses.
 - (iv) The proposal provides the opportunity for a ground floor retail or commercial tenancy.
 - (v) The proposal will support the viability of nearby centres including Broadway Shopping Centre and Central Park.
 - (vi) The site is within close proximity of public transport and cycle links. Car parking on site is proposed to be reduced.
- (d) The proposed development will be consistent with the objectives of the standard:
- (i) The proposed massing of the building fits within the context of the surrounding built form.
 - (ii) The top floor of the building is set back 6m from the Bay Street boundary. At St Barnabas Street, the building aligns with the height of the adjoining (now former) Uni Lodge building.
 - (iii) The proposal sits between the (now former) Uni Lodge building to the south and Readers Digest building to the north. The new massing improves the Bay Street streetscape and aligns with features of buildings to both sides. The top level is setback from this elevation.
 - (iv) The building will not impact on any views or create visual impacts to the locality.
 - (v) Strict compliance with the standard would result in the deletion of Level 5 of the proposal, without resulting in any additional benefits.

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

72. 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)?

73. 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 height of buildings development standard are achieved despite the non-compliance.
74. The height of the proposal is appropriate to the site and its context. The site is located between two heritage items and the proposed design takes cues from these buildings in terms of building massing, heights of building elements and points of articulation.
75. The height of the proposal provides an appropriate height transition between adjoining heritage items. The proposed development sits between the heights of the building to south at 185-211 Broadway that sits above the 22m height standard, and the building to the north at 76-84 Bay Street that sits below the height standard. The fifth storey is set back from the Bay Street frontage and is a recessive element. The Bay Street building facade is a contemporary design that takes cues from the adjoining heritage items and provides an improved contextual fit for the heritage conservation area and heritage items.
76. The proposal promotes the sharing of views. The proposal does not impact on important views from neighbouring properties or views within the public domain.

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

77. The written request has demonstrated there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in the circumstances of the application.
78. The proposed development is an appropriate contextual fit for the site in terms of its relationship with the adjoining heritage-listed buildings and the heritage conservation area in which it is located.
79. The building form that sits above the height limit is setback from the Bay Street frontage and does not contribute to excessive bulk.
80. The proposed building height to St Barnabas Street is consistent with existing building heights to this street to the north, south and east.
81. The written request and application has demonstrated that there are no unreasonable impacts associated with the building height exceedance.

Is the development in the public interest?

82. The development is in the public interest as it is consistent with the objectives of the height of buildings development standard and the MU1 Mixed Use Zone in which the development is proposed to be carried out.
83. The height of the proposal is appropriate to the site and its context. The site is located between two heritage items and the proposed design takes cues from these buildings in terms of building massing, heights of building elements and points of articulation.

84. The height of the proposal provides an appropriate height transition between adjoining heritage items. The proposed development sits between the heights of the building to the south at 185-211 Broadway that sits above the 22m height standard, and the building to the north at 76-84 Bay Street that sits below the height standard. The fifth storey is set back from the Bay Street frontage and is recessive element. The Bay Street building facade is a contemporary design that takes cues from the adjoining heritage items and provides an improved contextual fit for the heritage conservation area and heritage items.
85. The proposal promotes the sharing of views. The proposal does not impact on important views from neighbouring properties or views within the public domain.
86. The proposal provides additional commercial space within the MU1 Mixed Use Zone in an area that contains a mix of uses. The proposal provides for an improved active frontage to Bay Street that will contribute to the functional use of the street and public places. The proposal will not result in conflict between land uses. The proposal provides for a retail, non-residential use on the ground floor. The proposal will support the viability of nearby centres at Broadway. The proposal is located in an accessible location in proximity to public transport. The provision of bicycle parking and end of journey facilities and the reduction of car parking on site will promote the use of public transport and encourage walking and cycling.

Conclusion

87. For the reasons provided above the requested variation to the height of buildings 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 height of buildings standard and the MU1 Mixed Use Zone.

Consultation

Internal Referrals

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

89. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

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

Advertising and Notification

92. In accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan the proposed development was notified for a period of 21 days between 6 June 2023 and 28 June 2023. A total of 642 properties were notified and no submissions were received.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

93. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
94. Credits have been applied for the most recent approved use of the site as an office premises.
95. 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

96. 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 floor area 2,525sqm totalling \$267,941.13. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.
97. 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.
98. The proposal is consistent with the criteria.
99. 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.
100. 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

101. Environmental Planning and Assessment Act 1979.

Conclusion

102. The proposal seeks consent for alterations and additions to the existing commercial building on the site including substantial demolition of the existing building with retention of the building structure, construction of a three storey addition for a six storey plus lower level commercial building.
103. The application includes requests to vary the floor space ratio and height of buildings development standards. The requests to vary the standards are supported in this instance within the context of the site and surrounding development including adjoining heritage items.

104. The application is recommended for approval subject to the recommended conditions contained within Attachment A.

ANDREW THOMAS

Executive Manager Planning and Development

Shannon Rickersey, Senior Planner