

**Item 4.****Development Application: 5-19 Mary Street, Surry Hills - D/2022/1343**

File No.: D/2022/1343

**Summary****Date of Submission:** 22 December 2022

Additional information and amendments were provided on 3 May 2023 and 19 September 2023

**Applicant/Owner:** The Salvation Army (NSW) Property Trust**Architect:** Hill Thalys Architecture**Planning Consultant:** Ethos Urban**DAPRS:** 4 April 2023**Cost of Works:** \$34,156,630**Zoning:** The site is located in the MU1 Mixed Use zone.

The proposed development is composed of land uses defined as 'commercial', 'residential flat housing' and 'co-living housing'. These uses are permissible with consent in the zone.

**Proposal Summary:** The proposal seeks consent for the demolition of existing structures and subdivision of the site into two lots. One lot is proposed for the construction of a 6-storey crisis care facility, to be operated by The Salvation Army, comprising 50 self-contained accommodation units, associated communal facilities, and support services/administration space. The second lot is proposed for the construction of a 6-storey mixed-use development comprising two levels of commercial tenancy space and 10 residential units. The Salvation Army intends to sell the subdivided mixed-use site to provided funding for the redevelopment of the new crisis care facility.

The application is referred to the Local Planning Panel for determination as the proposal involves development to which State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development applies.

The proposed height of development complies with the maximum height control of 35 metres under Clause 4.3 of the Sydney Local Environmental Plan 2012.

The proposed density of development complies with the maximum floor space ratio (FSR) control of 5:1 under Clause 4.4 of the Sydney Local Environmental Plan 2012.

The application was notified between 11 January 2023 and 2 February 2023. As a result of the notification, 14 unique submissions were received by the City.

The submissions in objection raised concerns in relation to overshadowing, building separation, visual and acoustic privacy, loss of outlook, anti-social behaviour, waste collection and construction activity impacts and the overall height and scale of the development.

An assessment of the application by Council staff identified concerns relating to overshadowing of neighbouring development, compliance with the Apartment Design Guide (ADG) relating to building separation and cross ventilation, privacy impacts, flooding and stormwater management, and public art.

The issues have been largely addressed through the submission of amended plans, documentation and additional information.

The proposal is generally consistent with the applicable planning provisions, including those within the Sydney Local Environmental Plan 2012, Sydney Development Control Plan 2012, State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide.

The proposal, as amended, has an acceptable standard of architectural design, materials and detailing to satisfy design excellence under the Sydney LEP. It presents an acceptable development outcome for the site and comprises an appropriate response to the site conditions and locality.

The proposed development is generally satisfactory with regard to the objectives of the relevant planning controls, and results in a form and scale that achieves the desired future character of the area.

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

- (ii) Sydney Development Control Plan 2012 (Sydney DCP 2012)
- (iii) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG)
- (iv) State Environmental Planning Policy (Housing) 2021 (Housing SEPP)
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)
- (vi) State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)
- (vii) State Environmental Planning Policy (Industry and Employment) 2021
- (viii) State Environmental Planning Policy (Biodiversity and Conservation) 2012
- (ix) City of Sydney Interim Floodplain Management Policy
- (x) City of Sydney Guidelines for Waste Management in New Developments
- (xi) Sydney Landscape Code Volume 2: All Development Except for Single Dwellings
- (xii) Central Sydney Development Contributions Plan 2020
- (xiii) City of Sydney Affordable Housing Plan
- (xiv) City of Sydney Community Participation Plan

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings

## Recommendation

It is resolved that consent be granted to Development Application No. D/2022/1343 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 satisfies the objectives of the Environmental Planning and Assessment Act 1979, in that, subject to the imposition of conditions as recommended, it achieves the objectives of the planning controls for the site for the reasons outlines in the report to the Local Planning Panel.
- (B) The proposal generally satisfied the objectives and provisions of Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The proposal is consistent with the objectives of the MU1 - Mixed Use zone.
- (D) The proposed development appropriately responds to the site and its context, with a building that is appropriate in terms of its height, floor space and environmental impact, and achieves design excellence.
- (E) Subject to the recommended conditions of consent, the proposed development achieves acceptable amenity for the existing and future occupants of the subject site and adjoining sites.
- (F) The proposed land uses are permissible within the zone and will support the vitality of the area. Subject to the recommended conditions of consent, the proposed land uses will positively contribute to the amenity of the locality and will not result in adverse impacts.
- (G) The public interest is served by the approval of the development, as amendments to the application have generally addressed the concerns of Council staff and the community, and the recommended conditions of consent will mitigate any environmental impacts that could potentially arise from the construction and operation of the proposed development.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP520244, and is known as 5-19 Mary Street, Surry Hills. It is irregular in shape with an area of approximately 1,384sqm. It has a primary street frontage to Mary Street (east) and secondary street frontage to Hands Lane (west).
2. The site contains a four to five storey brick building and is built to the site boundaries on all frontages. The site is currently used by The Salvation Army (TSA) and is commonly known as Foster House.
3. Foster House provides crisis accommodation, associated homelessness support services, early intervention, and assertive outreach homelessness services across the City of Sydney. The existing facility provides a 90 bed dormitory style accommodation, with shared amenities, including communal kitchen and dining area. Tenure varies substantially, from an overnight stay to up to 12 months.
4. The site has two basement carparks, with two vehicular crossovers from Hands Lane and one crossover from Mary Street.
5. Five street trees exist along the Mary Street frontage.
6. The surrounding area is characterised by a mixture of land uses, primarily being:

**North:** A three to four storey vacant commercial premises, owned by TSA is located directly north of the site. This site has been recently approved for demolition and redevelopment of a seven storey commercial building (D/2022/1148). Further to the north, higher density residential properties up to seven storeys exist.

**East:** The Australian Chinese Community Association of NSW and two-storey terraces are located to the immediate east of the subject site on the opposite side of Mary Street. Residential flat buildings are located south-east of the site.

**South:** Five-storey mixed-use commercial premises with ground floor fitness businesses located to the immediate south of the subject site. Further south are 2-3 storey residential properties.

**West:** Commercial and residential properties exist to the immediate west of the subject site on the opposite side of Hands Lane. Belmore Park is located approximately 150m to the west of the site.

7. The site is not a heritage item and is not located within a heritage conservation area. However, the site is located in close proximity to the Reservoir Street and Fosterville Heritage Conservation Area and a number of heritage items.
8. The site is identified as being subject to flooding.
9. Site visits were carried out on 29 November 2022 and 1 May 2023. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Mary Street, looking south





Figure 3: Site viewed from Mary Street



Figure 4: Site viewed from Mary Street, looking north





**Figure 5:** Looking south along Mary Street towards residential developments



**Figure 6:** Site viewed from Hands Lane, looking north





**Figure 7:** Site viewed from Hands Lane, looking north

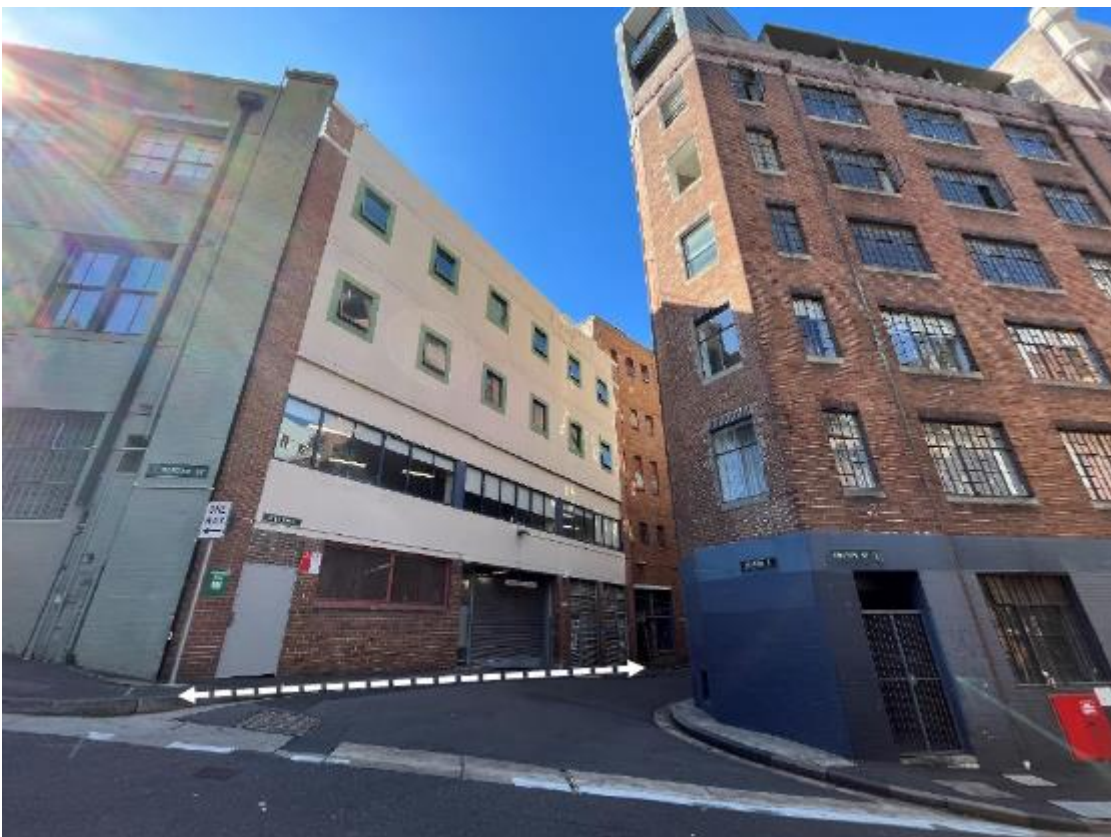


**Figure 8:** Residential development located west of the site

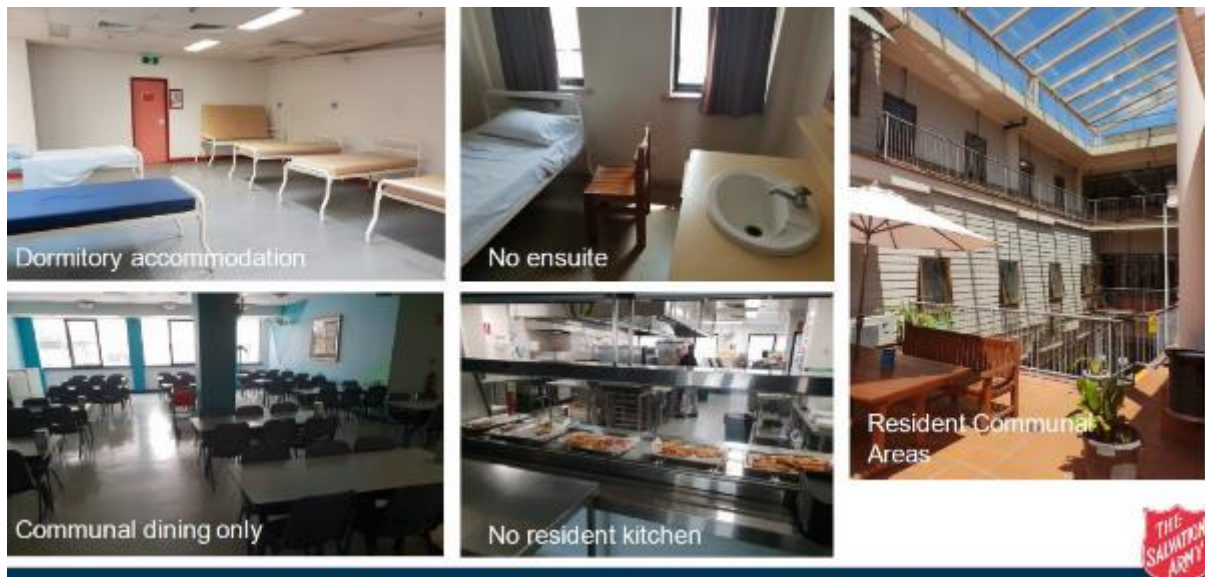




**Figure 9:** Looking south along Hands Lane



**Figure 10:** Site viewed from Foster Street and Hands Lane, looking east



**Figure 11:** Existing internal photos (supplied by applicant)

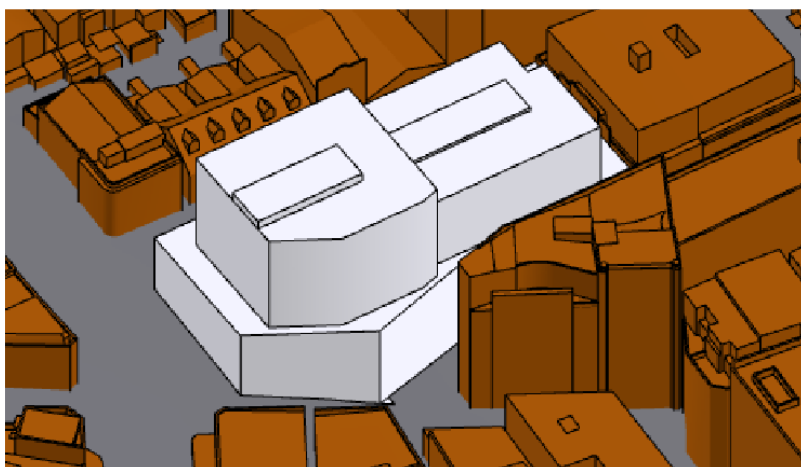
## History Relevant to the Development Application

### Development Applications

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

- D/2016/1249** – A stage 1 concept design was lodged on 6 September 2016 for 81-85 Campbell Street and 5-19 Mary Street. The design proposed demolition of existing buildings, building envelope for a new building with a basement, 9 storeys and a maximum building height of 35m. Land uses comprised commercial/retail uses, retention of crisis care and support services, and affordable housing with communal open space. The proposed building envelope is illustrated in Figure 12 below.

The application was withdrawn on 1 August 2018.



**Figure 12:** Proposed building envelope (looking in a south easterly direction) for D/2016/1249 which was withdrawn



- **PDA/2022/189** – A pre-development application meeting was held with Council staff, representatives of The Salvation Army, and Hill Thalys Architecture. The applicant presented a similar scheme to the current proposal. Discussion included consideration over the proposed land uses of the new crisis care accommodation and facilities. Initial concerns raised included non-compliance with the ADG including overshadowing, cross ventilation, and other impacts on the surrounding locality.
- **D/2022/1148 - 81-85 Campbell Street, Surry Hills (adjacent site to the north)** Development consent was granted on 18 October 2023 for demolition of existing building, part facade retention and construction of a new seven storey commercial building. Photomontages of the approved development are provided below.



**Figure 13:** Approved development D/2022/1148 - photomontage viewed from corner of Campbell St and Mary St



**Figure 14:** Approved development D/2022/1148 - photomontage viewed from Mary Street, looking north

### **Compliance Action**

11. The site is not subject to a compliance action.

### **Amendments**

12. Additional information has been provided, at the request of Council staff, following the lodgement of the application.
13. On 19 January 2023, Council staff requested a Flood Assessment Report, a Stormwater Management Plan, a Levels and Gradients Plan, a Public Art Plan, and additional solar access and overshadowing information.
14. Additional solar access and overshadowing information was provided by the applicant on 28 March 2023. A Public Art Plan was provided on 4 May 2023.
15. A Flood Assessment Report, and a Stormwater Management Plan were provided on 3 May 2023. The documents did not provide sufficient information for a full assessment and further information was requested.
16. Final information and associated amended plans were provided on 19 September 2023.

### Design Advisory Panel Residential Subcommittee

17. The application was considered by the Design Advisory Panel (Residential Subcommittee) on 4 April 2023. The application was considered in association with the adjacent Campbell Street site development proposal. The Panel generally supported the development and offered the following comments:
- The architectural response is sophisticated and responds to most contextual issues. The proposal will provide a significant upgrade to the quality and delivery of crisis care housing in the area.
  - The balcony designs have been well considered and the Panel does not object to the proposed extension beyond the boundary on Mary Street, subject to addressing the buildings footpath clearance on the north of Mary Street. However, the public domain in Hands Lane should take precedent due to the width of the lane. The Panel considers that the balconies to Hands Lane should not extend beyond the boundary.
  - The cross ventilation strategy via lightwells/courtyards appears to be acceptable for this typology, scale, proportion, and use.
  - Building separation across Hands Lane is limited. The architects have given close consideration to proximity, uses and privacy issues however more information is required to support these considerations and to enable review.
  - The communal open space and landscape design should be further reviewed for both developments.
  - Air conditioning units on balconies is not ideal, particularly if it impinges on the minimum balcony size

### Proposed Development

18. The application seeks consent for the redevelopment of the existing Foster House site to provide a new crisis care facility operated by The Salvation Army, composed of 50 self-contained units, associated common facilities, and support services/administration space. A separate mixed-use development, composed of commercial uses and 10 residential apartments is also proposed, intended to operate separately from Foster House.
19. The proposed works will consist of:
- Demolition of all existing structures;
  - Subdivision of the site into two lots, known as Lots 10 and 11. Lot 10 is proposed with a site area of 336.8sqm and Lot 11 is proposed with a site area of 1,039.8sqm.

#### **Lot 11 - The Salvation Army Site - known as 'Foster House'**

Construction of new Foster House (to be known as 5-15 Mary Street), a 6-storey building with basement for the purpose of The Salvation Army (TSA) comprising:



- Basement (Hands Lane level): carparking for TSA and visiting support service providers, bicycle parking, end of trip facilities, services, re-located substation and a 90sqm commercial tenancy to Hands Lane.
- Ground level (Mary Street level): TSA support service and administration space including consultation and meeting rooms, resident communal areas including gym, BBQ, kitchen, dining, recreational and multi-purpose spaces.
- Levels 1, 2, 3, 4, and 5: 50 units comprising:
  - 37 residential units (19 x 1 bedrooms and 16 studios); length of resident stay may vary (1+ days).
  - 13 co-living studio units; intended to be used by longer term residents (greater than 3 months stay)
- Additional resident communal areas to Level 4 including internal common room, outdoor common roof terrace and garden/vegetable path features.

#### **Lot 10 - The Mixed-Use Site**

Construction of a mixed-use development (to be known as 17-19 Mary Street), comprising:

- Basement (Hands Lane level): carparking, storage units, waste facilities and service rooms.
- Ground Level (Mary Street level): 2 commercial/retail tenancies including a 61sqm tenancy with access via Mary Street and a 100sqm overlooking Hands Lane (accessed from Mary Street). Bike parking and end of trip facilities are also provided on this level.
- Level 1: a 261sqm commercial tenancy including bathroom and service facilities.
- Level 2, 3, 4 and 5: 10 residential units comprising 4 studios, 4 x 1 bedrooms and 2 x 2 bedrooms.
- Roof top communal outdoor space located on level 5, with additional communal outdoor space located on level 2.

20. The application proposes staged development as follows:

Stage:	Works:
1	Demolition works
2	Subdivision of site into 2 lots, creating Lots 10 and 11

3a	Construction of the new Foster House (Lot 11 created via Stage 2) otherwise known as 5-15 Mary Street
3b	Construction of the mixed-use development (Lot 10 created via Stage 2) otherwise known as 17-19 Mary Street

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

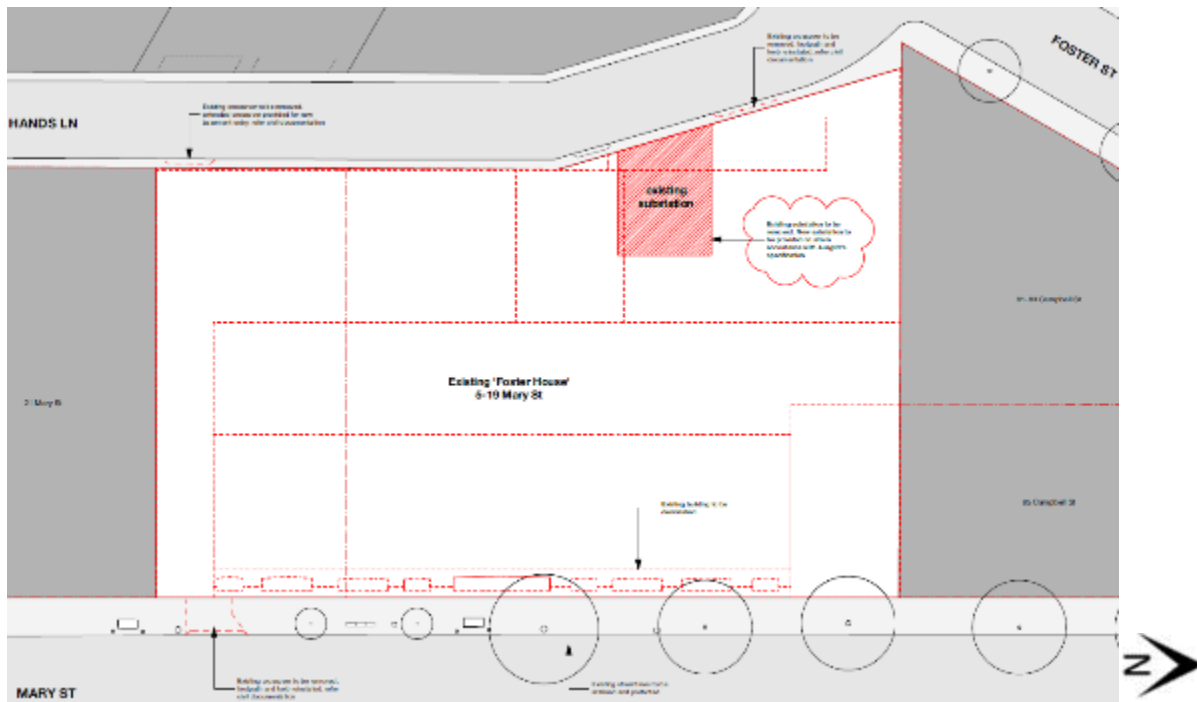


Figure 15: Proposed demolition plan







Figure 18: Proposed ground floor plan (Mary Street level)



Figure 19: Proposed level 1 floor plan





Figure 20: Proposed level 2 floor plan



Figure 21: Proposed level 3 floor plan



Figure 22: Proposed level 4 floor plan



Figure 23: Proposed level 5 floor plan



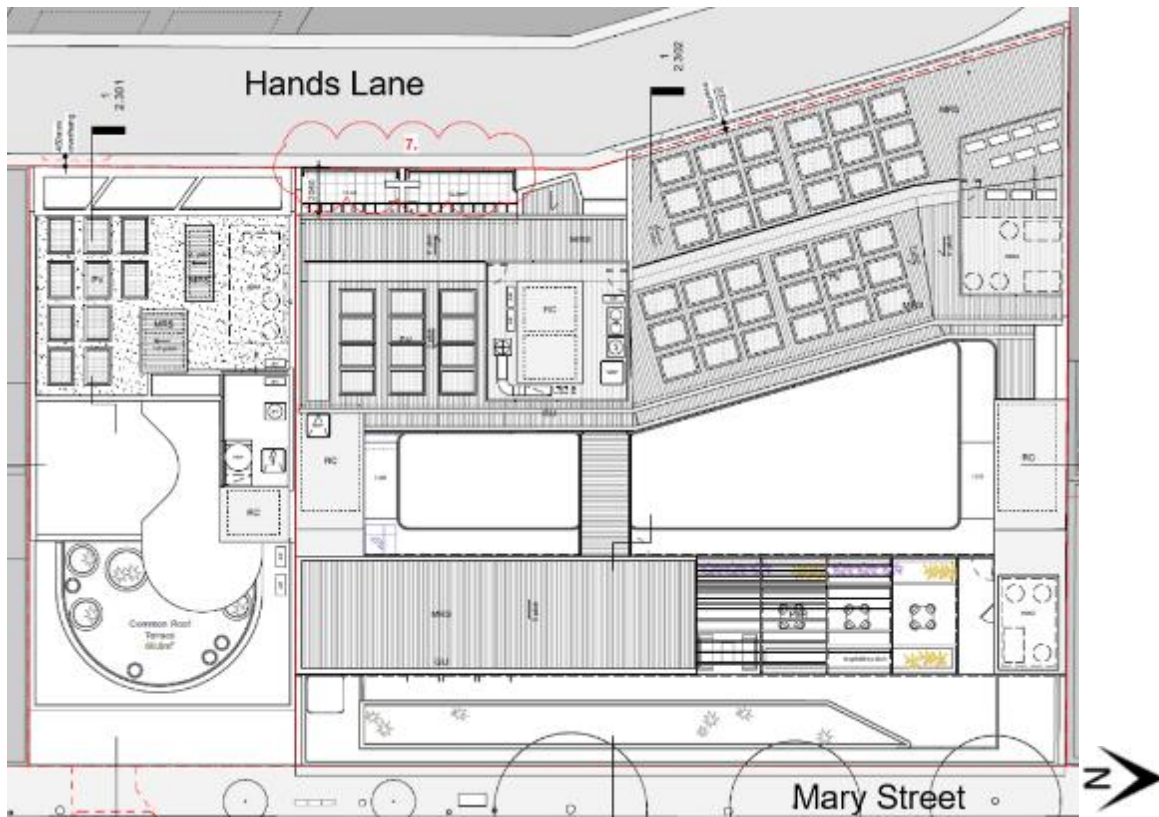


Figure 24: Proposed roof plan



Figure 25: Proposed Mary Street (east) elevation

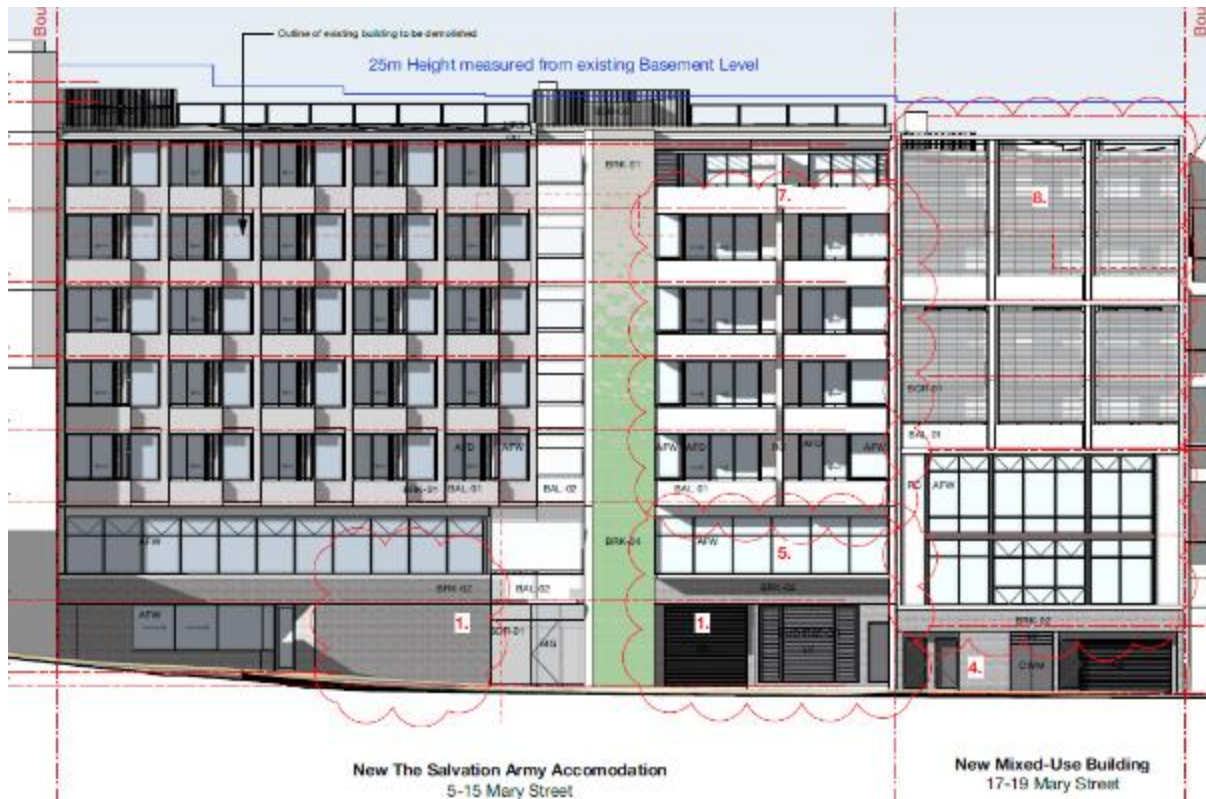


Figure 26: Proposed Hands Lane (west) elevation

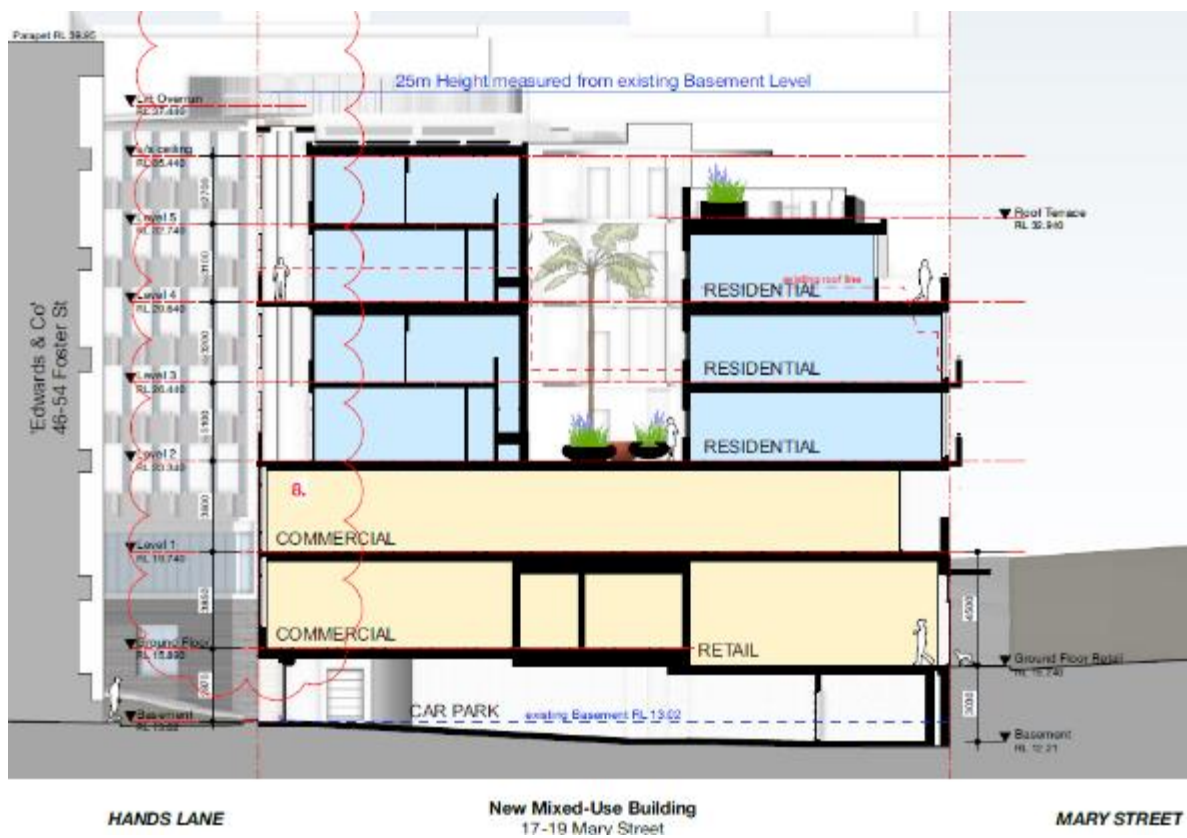


Figure 27: Proposed section plan - east west through the mixed-use site



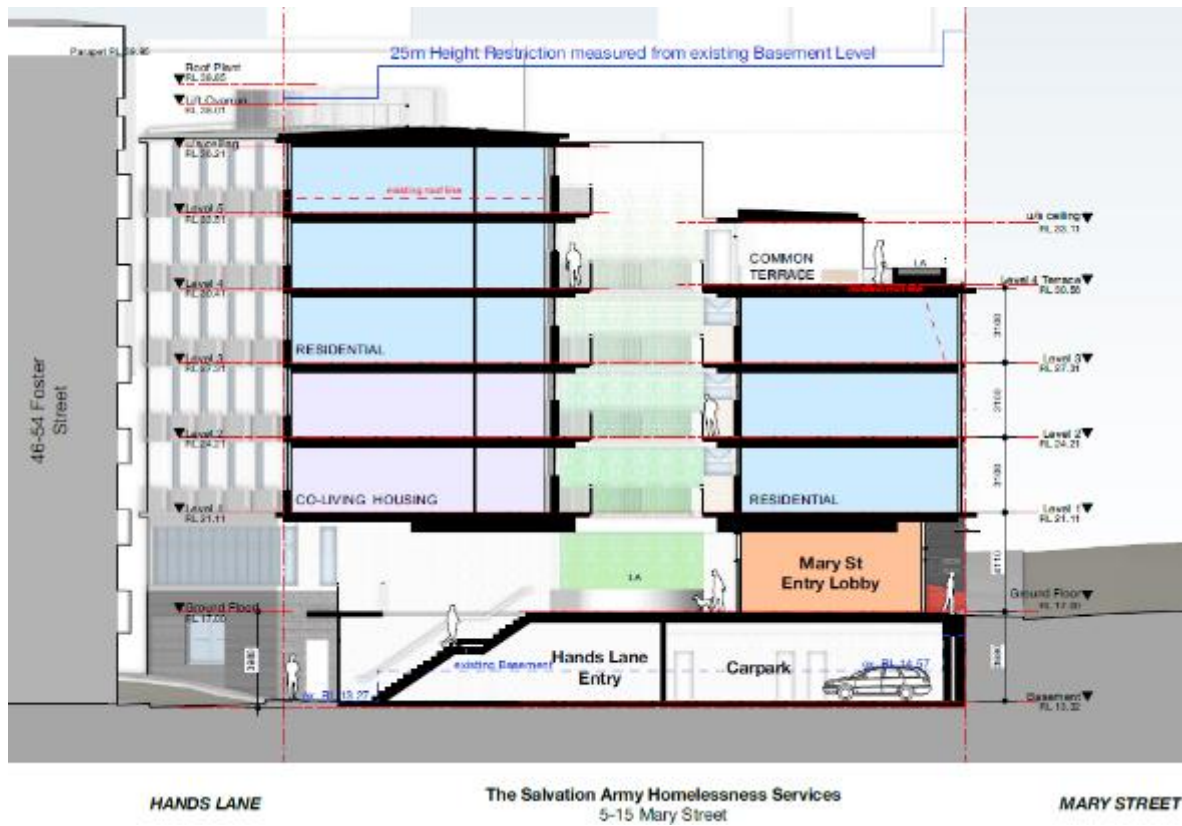


Figure 28: Proposed section plan - east west through Foster House



Figure 29: Proposed section plan - north south through internal courtyard



Figure 30: Proposed photomontage viewed from Mary Street

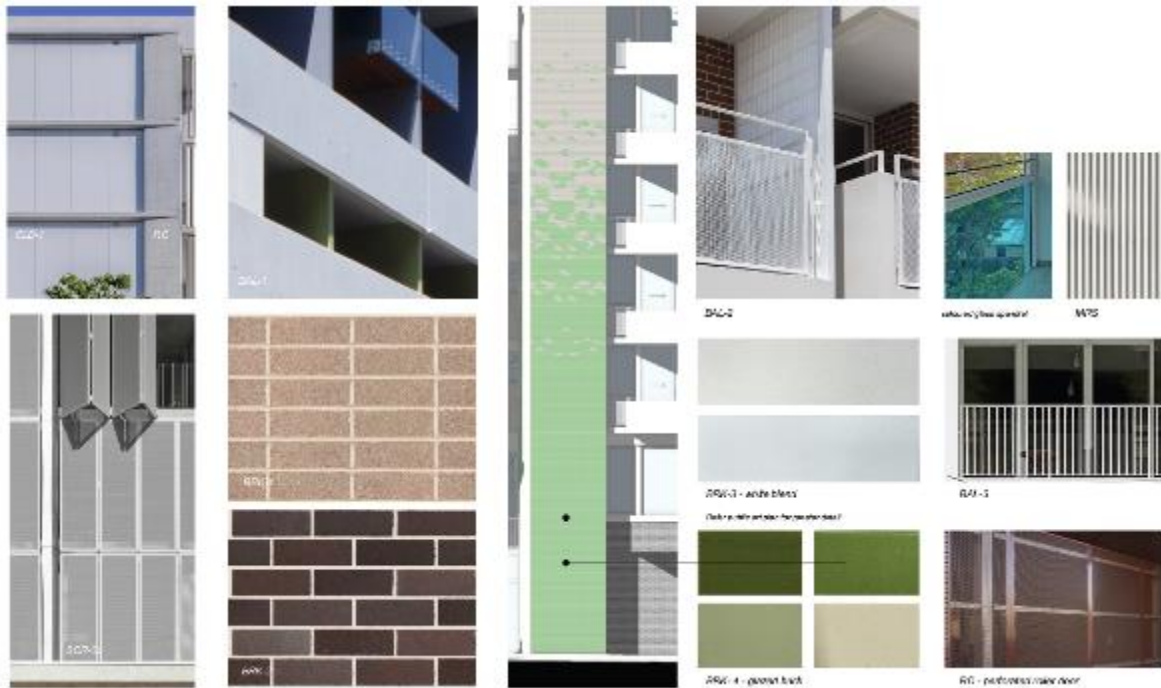


Figure 31: Proposed materials and finishes



## Assessment

22. It should be noted that the application has framed its proposal for the redevelopment of Foster House as providing 37 residential flat units and 13co-living units. Resident stays for the residential flat units will vary from a one night stay to up to 12 months in some instances. These units are subject to assessment against the Apartment Design Guide. Resident stays for the co-living units are tailored towards longer stays, with a minimum stay of 3 months. These units are subject to an assessment against the Housing SEPP. This is further discussed in the 'Discussion' section below.
23. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## Sydney Water Act 1994

24. Section 78 of the Sydney Water Act, 1994 sets out various requirements for the notification of development applications to the Sydney Water Corporation (SWC).
25. The application was referred to the SWC in accordance with the Act.
26. A response was received from the SWC, raising no objections to the proposal, subject to the recommended conditions shown at Attachment A.

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

### Remediation of Land

27. 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.
28. The main trigger for requiring information on site contamination is where there is a proposed change of use that is increasing the sensitivity of the land use and/or where the site history shows previous past contaminated uses.
29. The current proposal is not increasing the sensitivity of land use and there is no past history of contamination. Therefore, the current application is not required to be further assessed under the provisions of the Resilience and Hazards SEPP.

## State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3

### Advertising and Signage

30. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish. '
31. Seven signage zones are proposed as part of the development, with five signage types proposed.



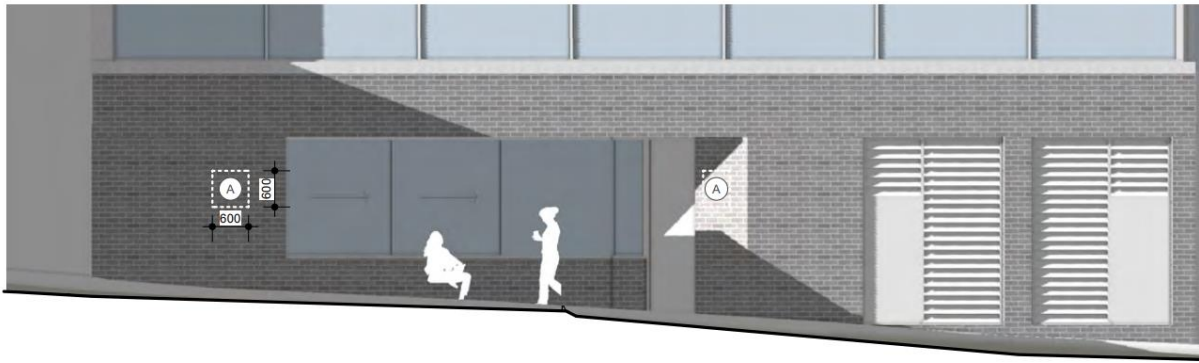
*Mary Street - Retail & Building Signage*

**Figure 32:** Proposed signage zones



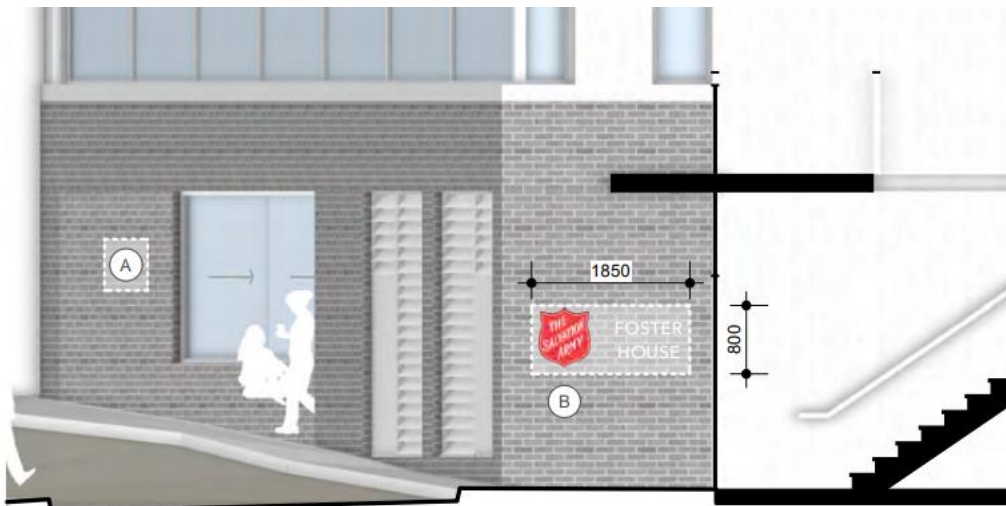
*Mary Street - Foster House Signage*

**Figure 33:** Proposed signage zones



*Hands Lane Retail Signage*

Figure 34: Proposed signage zones



*Hands Lane - Foster House Signage*

Figure 35: Proposed signage zones

**A - Retail / Commercial Signage**

Metal plate with tenant lettering and signage, face fixed to splayed brick walls where shown - 600mm x 600mm, not illuminated



**B - Foster House on Hands Lane**

The Salvation Army building signage - metal lettering paired with red shield. Font TT commons demibold, not illuminated



FOSTER HOUSE



**C - Foster House on Mary St**

The Salvation Army building signage - metal lettering paired with red shield. Font TT commons demibold, sign illuminated with warm wall washing downlight LED on sign only



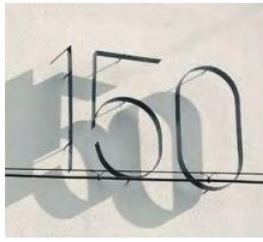
FOSTER HOUSE



Figure 36: Proposed signage types

**D - Mixed Use building street number on Mary St**

Standoff metal lettering - 500mm x 500mm, not illuminated

**E - Mixed Use building Mary St Retail**

Side mounted metal retail signage fixed to wall 200x 600, projecting 500mm from wall. Not illuminated



Figure 37: Proposed signage types

32. The proposed signage has been considered against the objectives of the policy and an assessment against the provisions within the assessment criteria set out in Schedule 1 is provided in the table below.

Provision	Compliance	Comment
1. Character of the area	Yes	The proposed signage is generally consistent with the character of the area, subject to conditions.
2. Special areas	Yes	The proposed signage does not detract from the amenity or visual quality of nearby heritage items or heritage conservation areas, subject to conditions.
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage is of an appropriate scale, proportion and form and provides a positive contribution to the streetscape and setting of the area.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable, and the materiality is compatible with the finishes and colours of the building.
6. Associated devices and logos	Yes	Not applicable.



Provision	Compliance	Comment
7. Illumination	Yes	Conditions of consent are recommended to ensure that the illumination does not result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

33. The proposed signage is consistent with the objectives of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage as set out in Clause 3.1 and satisfies the assessment criteria specified in Schedule 5.

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

34. The aim of State Environmental Planning Policy (SEPP) 65 is to improve the design quality of residential apartment development in New South Wales.
35. When determining an application for a residential flat development of three or more floors and containing four or more apartments, SEPP 65 requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 1.
36. The applicant has submitted a design verification statement and SEPP 65 design report prepared by Phillip Thalys, NSW ARB registration number #6780 with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.
37. The below assessment relates to the proposed mixed-use development, comprising 10 residential apartments, and the proposed Foster House development, including 37 units proposed as residential apartments.

#### **(a) Principle 1: Context and Neighbourhood Character**

- (i) The site is located in the heart of Surry Hills, where the locality's character is urban and its building stock is quite diverse. The scale of neighbouring buildings varies between 2 and 10 storeys in height. The design has appropriately considered the existing site conditions and is consistent with the existing and desired future character of the locality. .
- (ii) The site is located within the MU1 Mixed Use zone, and the proposal is consistent with the objectives of the Sydney LEP 2012 and Sydney DCP 2012, subject to the conditions included in Attachment A.

- (iii) The development sits comfortably within the streetscape and will make a positive contribution to the public domain. The principal address is the eastern frontage to Mary Street, which is a quiet street with a mix of uses. The secondary address is to Hands Lane to the west, which is a storey below the Mary Street level. The dimensions of the subdivided lot accord with those of many in the immediate vicinity, especially the warehouse building directly across Hands Lane.

**(b) Principle 2: Built Form and Scale**

- (i) The proposed development provides an appropriate design response to the site and is of modest scale with consideration to the height and density of surrounding buildings.
- (ii) The proposal is compliant with the maximum 35m and 10 storey height controls for the site in the Sydney LEP 2012 and Sydney DCP 2012. It is also compliant with the maximum 5:1 floor space ratio control in the Sydney LEP 2012.
- (iii) The form and scale of the proposed new building is consistent with the existing and desired future built form and scale of the streetscape at both the street and lane frontages of the site.

**(c) Principle 3: Density**

- (i) The proposed development provides a suitable mix of accommodation to support the needs of a future population and current needs for homelessness housing. The development complies with the height and floor space controls and provides a reasonable level of amenity for residents demonstrating that the project is an appropriate development of the site.
- (ii) As stated above, the proposal complies with the maximum 5:1 FSR control applicable to the site. The proposed overall density of the development is consistent with that envisaged under the relevant planning controls and is appropriate, given the context.
- (iii) The proposed density of the new building does not result in an unacceptable degree of amenity impact for neighbouring properties or future residents of the development.

**(d) Principle 4: Sustainability**

- (i) The proposed development will provide acceptable natural ventilation, cross ventilation and solar amenity into the residential apartments to reduce artificial lighting, heating and cooling, reducing future energy consumption.
- (ii) The proposal meets the minimum requirements of BASIX in terms of energy, thermal comfort and water targets. Conditions are included in Attachment A to ensure that the development complies with the commitments contained in the BASIX documentation.

**(e) Principle 5: Landscape**

- (i) The development provides generous communal courtyards that offer planting of tall palms and ferns as well as vegetable gardens and planter boxes.
- (ii) Additional design details are required to ensure that the proposed landscape component of the scheme is a success. The details of the landscaping are required in conditions included at Attachment A. The landscaping will contribute to good residential amenity and the aesthetic quality of the development.

**(f) Principle 6: Amenity**

- (i) The proposal, by adopting design measures that are generally responsive to the constraints and sensitivities of adjacent and nearby residential properties, provides a reasonable level of amenity for the residential occupants of the development and neighbouring properties.
- (ii) The proposal will not have a significant impact on the residential amenity of surrounding buildings. Further conditions are recommended at Attachment A to provide measures to safeguard surrounding residential amenity.
- (iii) The development has been designed with consideration of the adjacent properties with overlooking impacts, whilst still preserving good access to sunlight, ventilation and vistas to the proposed apartments.

**(g) Principle 7: Safety**

- (i) The safety and security of the public domain and the site itself is enhanced by increased activity within the site and casual surveillance of the surrounding streets from the residential apartments.
- (ii) Safety and security in both the street and laneway will be assisted by the outlook and the overlooking windows and balconies that provides passive surveillance from all apartments.
- (iii) The street entries are provided with secure access. Internally the clear and transparent circulation pathways and stairs provide the conditions for a safe and secure environment.
- (iv) The proposed development has generally been designed in accordance with the relevant principles of Crime Prevention through Environmental Design (CPTED).

**(h) Principle 8: Housing Diversity and Social Interaction**

- (i) The re-development of Foster House will allow The Salvation Army to update their services to better cater for today's disadvantaged, offering the future inhabitants a secure, sociable and amenable environment. In addition to the crisis accommodation, the ground floor and basement areas will continue to provide space for Salvation Army outreach services into the community.



- (ii) The mixed-use site provides a mix of studios, 1 bedroom and 2 bedroom apartments. The variety of the dwelling mix aims to cater to the demographics of the area.
- (iii) The common site facilities including courtyard and roof gardens should ensure a sense of community for the future inhabitants.
- (iv) Both sites are provided level access from both Mary Street and Hands Lane with lift access to upper levels. All apartment doors are accessible, as are all internal and external communal areas.

**(i) Principle 9: Aesthetics**

- (i) The proposed development provides for a contemporary, well-modulated and articulated development. The proposal introduces a variety of building elements, materials and finishes, which presents a visually engaging architectural language to the public domain to both Mary Street and Hands Lane.
- (ii) The overall form is punctuated and given scale by the coherent arrangement of the main distinctive elements. These include the brick-clad base, the expressed concrete frame, infill brick walls, overhanging balconies with their expressed balustrades and panels of vertical louvres to articulate the overall massing. The considered composition of these elements will give the street and lanes facades a direct and well-proportioned character.
- (iii) Public art is provided to the Hands Lane frontage with a fine vertical pillar, composed of mid-green tone glazed bricks, with 'hand' motifs to play on the name Hands Lane. The green tones extend internally throughout the courtyards, entry passages.

38. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.
39. The below assessment relates to the proposed mixed-use development, comprising 10 residential apartments, and the proposed Foster House development, including 37 units proposed as residential apartments.

3A Site Analysis	Compliance	Comment
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	Yes	Sufficient site analysis documentation and detail accompanies the application addressing the various potential opportunities and constraints of the site, documenting the site location and context, including surrounding development.

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised during mid-winter	Yes	<p>Sun's eye view diagrams and documentary analysis has been submitted with the application.</p> <p>The information has been prepares in accordance with the City's draft 'Minimising overshadowing of neighbouring apartments documentation guide'.</p> <p>These clearly indicate that the proposed building and its orientation will minimise overshadowing to neighbouring properties.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	<p>Foster House</p> <p>The minimum requirement of the ADG for communal open space for the Foster House site is 259sqm.</p> <p>The proposal provides 225sqm of common open space on the roof terrace and 155sqm of common open space at ground level, for a total communal open space of 380sqm (36% of the site).</p> <p>Mixed Use Site</p> <p>The minimum requirement of the ADG for communal open space for the Mixed Use site is 83 sqm.</p> <p>The proposal provides 60sqm of common open space on the roof terrace and 35sqm of common open space on level 2, for a total communal open space of 95sqm (28% of the site).</p>
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours	Yes	<p>Foster House</p> <p>The proposed roof terrace on level 4 receives direct sunlight to more than 50% of the principle useable part of the space for more than two hours at</p>

3D Communal and Public Open Space	Compliance	Comment
between 9am and 3pm on 21 June (midwinter).		<p>midwinter. It is noted that the solar access diagrams provided have also included future built form from the recently approved 7 storey commercial building to the north of the site.</p> <p>Mixed Use Site</p> <p>The proposed roof terrace on level 5 will receive direct sunlight to more than 50% of the principles useable part of the space for more than two hours at midwinter.</p>

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site	No, but acceptable	<p>No deep soil exists on site or is proposed to be provided in the development. The non-compliance is acceptable in this instance given the context of the proposal and the provision of landscaped courtyards, gardens and rooftop plantings.</p> <p>A condition is recommended requiring additional 1m deep planter beds along the mixed-use roof top common open space area, to improve the amenity and greening of this space.</p>

3F Visual Privacy 2F Building Separation	Compliance	Comment
<p>12m between habitable rooms / balconies</p> <p>9m between habitable and non-habitable rooms</p> <p>6m between non-habitable rooms.</p>	No, but acceptable	The development does not meet the 12m separation distance to existing development across Hands Lane. Refer to further assessment in the 'Discussion' section below.



<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	70% of the apartments within the development achieve at least 2 hours' direct sunlight to living room windows and private open spaces.  Refer to the further details and assessment provided in the 'Discussion' section below.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All apartments in the development receive some direct sunlight between 9am and 3pm at midwinter.

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	Yes	All habitable rooms within the development will be naturally ventilated.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No, but acceptable	The applicant submits that 100% of the apartments will achieve cross ventilation.  Apartments rely on openings into a common courtyard / common circulation space.  Notwithstanding, the ventilation outcome is acceptable in this instance.  See the 'Discussion' section for further details.

<b>4C Ceiling Heights</b>	<b>Compliance</b>	<b>Comment</b>
Habitable rooms: 2.7m	Yes	All habitable rooms within the development achieve the minimum floor to ceiling height of 2.7m

<b>4C Ceiling Heights</b>	<b>Compliance</b>	<b>Comment</b>
Non-habitable rooms: 2.4m	Yes	All non-habitable rooms within the development achieves the minimum floor to ceiling height of 2.4m.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	There is one two-storey apartment located within the mixed-use site. This apartment has compliant ceiling heights.

<b>4D Apartment Size and Layout</b>	<b>Compliance</b>	<b>Comment</b>
<p>Minimum unit sizes:</p> <p>Studio: 35m<sup>2</sup></p> <p>1 bed: 50m<sup>2</sup></p> <p>2 bed: 70m<sup>2</sup></p> <p>3 bed: 90m<sup>2</sup></p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p>	Yes	All proposed apartments achieve the design criteria for minimum apartments size.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	Habitable room depths are no more than 2.5 x the ceiling height.
8m maximum depth for open plan layouts.	Yes	The maximum depth of each apartment does not exceed 8m.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <p>master bedroom: 10m<sup>2</sup></p> <p>all other bedrooms: 9m<sup>2</sup></p> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	All apartments achieve the minimum areas and dimensions prescribed for bedrooms.

4D Apartment Size and Layout	Compliance	Comment
<p>Living and living/dining rooms minimum widths:</p> <p>Studio and one-bedroom: 3.6m</p> <p>Two-bedroom or more: 4m</p>	Yes	All apartments achieve the minimum areas and dimensions prescribed for living/dining rooms.

4E Private Open Space and Balconies	Compliance	Comment
<p>Studio apartments are to have a minimum balcony area of 4m<sup>2</sup> with a minimum depth of 1m.</p> <p>One bed apartments are to have a minimum balcony area of 8m<sup>2</sup> with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10m<sup>2</sup> with a minimum depth of 2m.</p> <p>Three bed apartments are to have a minimum balcony area of 12m<sup>2</sup> with a minimum depth of 2.4m.</p>	Yes	All proposed apartment balconies meet the minimum size and dimension requirements specified for the number of bedrooms per apartment.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	No, but acceptable	<p>Foster House</p> <p>The proposal includes up to 12 apartments on each floor, to be serviced off a single circulation core.</p> <p>This approach is acceptable in this instance as the building corridors have been designed with open-air corridors to all floors, achieving the ADG design guidance for daylight and natural</p>

4F Common Circulation and Spaces	Compliance	Comment
		<p>ventilation to common circulation spaces. This solution achieves a higher level of amenity when compared to a fully enclosed corridor.</p> <p>Mixed-Use Site</p> <p>A maximum of 4 units is accessed off a circulation core on a single level.</p>
<p>Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.</p>	Yes	<p>Primary living room or bedroom windows do not open directly onto common circulation spaces.</p>
<p>Daylight and natural ventilation are provided to all common circulation spaces.</p>	Yes	<p>Daylight and natural ventilation are provided to all common circulation spaces.</p>

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <p>Studio: 4m<sup>3</sup></p> <p>1 bed: 6m<sup>3</sup></p> <p>2 bed: 8m<sup>3</sup></p> <p>3 bed: 10m<sup>3</sup></p> <p>(Minimum 50% storage area located within unit)</p>	Yes	<p><b>Foster House Site</b></p> <p>Adequate storage with consideration to the intended use is provided in each room. No separate storage units are provided and is acceptable in this instance.</p> <p><b>Mixed Use Site</b></p> <p>Adequate storage units are provided within the basement level for use of residents.</p>



4J Noise and Pollution	Compliance	Comment
<p>Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?</p>	<p>Yes</p>	<p>The proposal has been designed to minimise acoustic impacts upon adjacent properties.</p> <p>The development generally maintains existing building separation distances and the communal open space areas have been set back from the Hands Lane and Mary Street frontages in order to mitigate acoustic impacts to existing residential apartments adjacent.</p> <p>An acoustic report has been submitted with the application which details noise control levels for the future selection of mechanical plant equipment at construction stage.</p> <p>The acoustic report has been reviewed by the City's Environmental Health Unit which has raised no objections to the recommendations of the report. Conditions requiring compliance with the acoustic report and other related noise management requirements are included in Attachment A</p>

4K Apartment Mix	Compliance	Comment
<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>Yes</p>	<p>The proposed development includes two apartment types with differing sizes, including accessible dwellings, distributed to different locations with the development.</p>

4M Facades	Compliance	Comment
<p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>Yes</p>	<p>The building facades appropriately respond to the context of the site with appropriate scale and proportion to the streetscape and public domain. The composition of varied building elements</p>

4M Facades	Compliance	Comment
Building functions are expressed by the facade.		is in keeping with the character of the locality.

4N Roof Design	Compliance	Comment
<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	Yes	<p>The proposed rooftop is maximised by appropriate use of common open space for use of residents. The open space has been setback from the sides and fronts of the street to obtain acceptable visual and acoustic privacy, comfort levels, safety and security considerations. Solar access to this space is maximised during winter whilst providing shade during summer.</p> <p>Services have been consolidated on the rooftop within a central enclosure. The design and integration of services therefore does not create excessive visual bulk or massing and is acceptable.</p>

4O Landscape Design	Compliance	Comment
<p>Landscape design is viable and sustainable.</p> <p>Landscape design contributes to the streetscape and amenity.</p>	Yes	<p>A detailed landscape design has been submitted with the application and is included in Attachment B.</p> <p>This has been reviewed by the City's Landscape Assessment Officer</p> <p>The advice received is generally supportive of the proposal, subject to conditions included in Attachment A requiring further design details to ensure that the proposed landscape component of the scheme is a success.</p>

4Q Universal Design	Compliance	Comment
<p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>Developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features.</p>	Yes	<p><b>Foster House</b></p> <p>Under this part, 8 out of 37 apartments are required to be designed as Liveable Housing Silver units.</p> <p>9 apartments (24%) are proposed as LHA Silver units and complies.</p> <p><b>Mixed-Use</b></p> <p>Under this part, 2 out of 10 apartments are required to be designed as Liveable Housing Silver units.</p> <p>2 apartments (20%) are proposed as LHA Silver units and complies.</p>

### State Environmental Planning Policy (Housing) 2021

40. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
41. Section 7.32 of the EP & A Act states that where the consent authority is satisfied that the development meets certain criteria, and a Local Environmental Plan authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.
42. Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 allows for circumstances where an affordable housing contribution may be levied for development of land in 'residual land'.
43. This matter is discussed in further detail under the heading Financial Contributions below.

### Chapter 3 Diverse Housing

#### Part 3 Co-living Housing

44. There is no definition of co-living housing in the SEPP. Sydney LEP 2012 states that co-living housing means a building or place that:
  - (a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and
  - (b) provides occupants with a principal place of residence for at least 3 months, and

- (c) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day,

but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

45. The following assessment relates to the proposed Foster House development, including 13 units proposed as co-living housing.
46. Under Clause 68, compliance with any of the following standards must not be used to refuse consent for co-living housing.
47. An assessment of the proposed co-living housing against each standard is provided in the table below.

### Clause 68 – Non discretionary development standards

48. If the following non-discretionary development standards are complied with the consent authority cannot require more onerous standards for the matters.

### Standards that cannot be used to refuse the development

Provision	Compliance	Comment
Density and scale expressed as floor space ratio  An FSR of up to 5:1 plus 10% is permitted.	Yes	The application proposes a floor space ratio of 2.92:1. The application does not seek a 10% bonus.
Communal living area  For co-living containing more than 6 private rooms a total of at least 30m <sup>2</sup> plus 2m <sup>2</sup> per additional room and a minimum dimension of 3m	Yes	The development is required to provide 44sqm of communal living area.  The development provides 48sqm of communal living space on level 4, 72 sqm of communal space on ground level, as well as a 45sqm cardio gym.
Communal open space  Communal open space with a total <u>area</u> of at least 20% of the site area and a minimum dimension of 3m	Yes	The proposal provides 225sqm of common open space on the roof terrace and 155sqm of common open space at ground level, for a total communal open space of 380sqm (36% of the site)
Parking	Yes	The Sydney Local Environmental Plan 2012 specifies a maximum car parking rate of 0.1 parking spaces for a studio



Provision	Compliance	Comment
Unless a relevant planning instrument specifies a lower number, 0.2 spaces per room in an accessible area and 0.5 spaces otherwise		unit. This rate is considered relevant for the purposes of this assessment.

49. The proposed development complies with the relevant provisions of clause 68.

50. Clause 69 (1) states that a consent authority must not grant development consent for the purpose of co-living unless it is satisfied of each of the following provisions.

#### **Clauses 69 (1) – Standards for co-living housing**

Provision	Compliance	Comment
1(a) No private room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m <sup>2</sup> and less than 12m <sup>2</sup> for a single occupancy or 16m <sup>2</sup> otherwise	Yes	All rooms are less than 25sqm. All co-living rooms are designated as single occupant only.
1(b) in R2 zone the minimum lot size is no less than minimum lot size for manor houses under a relevant planning instrument or 600m <sup>2</sup>  For development on other land - 800m <sup>2</sup> .	Yes	The total site area will be 1,041sqm following the subdivision of land.
1(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space	Yes	An appropriate workspace for the manager is provided on the ground floor.
(1e) for co-living in a business zone no part of the ground floor that fronts a street is to be used for residential purposes unless another environmental planning instrument permits the use	Yes	The site is located within a business mixed use zone. No part of the ground floor is proposed to be used for residential purposes.
1(f) adequate bathroom, laundry and kitchen facilities will be available within the co-	Yes	Adequate bathroom, laundry and kitchen facilities are proposed within each room.

Provision	Compliance	Comment
living housing for the use of each occupant		
1(g) each private room will be used by no more than 2 occupants	Yes	Each room is to be single occupancy only.
1(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.	Yes	The development provides one bicycle parking space per unit, plus additional spaces for visitors. The spaces provided comply with Council requirements under the SDCP 2012.  No designated motorcycle parking spaces are provided. This is acceptable in this instance as there is ample bike parking spaces and the site is well serviced by nearby public transport options.

51. Clause 69 (2) states that a consent authority must not grant development consent for the purpose of co-living unless it considers the following matters.

#### Clauses 69 (2) – Matters for consideration

Provision	Compliance	Comment
2(b) if the co-living has at least three storeys the building complies with the minimum building separation distances in the Apartment Design Guide	No	Building separation has been addressed in the 'Discussion' section below.
2(c) at least 3 hours of solar access will be provided between 9.00am and 3.00pm at mid-winter in at least 1 communal living area	Yes	The communal living area on the rooftop will receive in excess of 3 hours of direct solar access on 21 June.
2(f) the design of the building is compatible with the desirable elements of the character of the local area or for precincts undergoing transition the desired future character of the precinct	Yes	The design of the building is compatible with both the existing and desired future character of the local area.

52. Clause 70 provides that development consent must not be granted for the subdivision of the co-living housing. A condition confirming that the co-living housing cannot be sub divided is recommended.

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

53. A BASIX Certificate has been submitted with the development application.
54. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in to the proposal. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

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

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

#### **Clause 2.48 Determination of development applications – other development**

56. The application is subject to Clause 2.48 of the SEPP as the development will be carried out immediately adjacent to an electricity substation.
57. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

#### **Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 10 Sydney Harbour Catchment**

58. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
59. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.

### **Local Environmental Plans**

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

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

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

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
2.3 Zone objectives and Land Use Table	Yes	The site is located in the MU1 - Mixed Use zone. The proposed development is composed of uses defined as residential

Provision	Compliance	Comment
		<p>flat housing, co-living housing, and commercial premises.</p> <p>The proposed uses are permissible with consent in the zone. The proposal is consistent with the objectives of the zone.</p>

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	<p>The proposed development complies with the maximum height of buildings development standard.</p> <p>A maximum building height of 35m is permitted.</p> <p>A maximum height of 24.74m is proposed.</p>
4.4 Floor space ratio	Yes	<p>The proposed development complies with the maximum floor space ratio development standard.</p> <p>A maximum floor space ratio of 5:1 is permitted.</p> <p><b>Foster House</b></p> <p>5-15 Mary Street will have a subdivided site area of 1,039.8sqm.</p> <p>The proposed development will have a GFA of 3,029.4sqm.</p> <p>Therefore, a maximum FSR of 2.91:1 is proposed.</p> <p><b>Mixed Use Site</b></p> <p>17-19 Mary Street will have a subdivided site area of 336.8sqm.</p> <p>The proposed development will have a GFA of 1,1176.6sqm.</p> <p>Therefore, a maximum FSR of 3.32:1 is proposed.</p> <p>It is noted that when the site is considered as one and combined, pre-</p>



Provision	Compliance	Comment
		subdivision, the maximum FSR proposed is 3.01:1.

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is not a heritage item and is not located within a heritage conservation area.</p> <p>The site is adjacent to the Reservoir Street and Fosterville heritage conservation area and in close proximity to a number of heritage items including a terrace group opposite Mary Street and Campbell Street and the Chinese Masonic Hall.</p> <p>The proposed development will not have an adverse impact on nearby heritage items or conservation area.</p>

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

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The bulk and massing of the development is appropriate with consideration to the context of the site. The overall height of the development is well under the maximum 35m height control and the maximum of 10 storey identified for the site.</p> <p>The proposed materials include a mix of bricks and masonry. The detailing is compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</p>

Provision	Compliance	Comment
		<p>The public domain interface is improved with the proposal, providing active frontages along Mary Street and Hands Lane. Conditions are recommended to demonstrate design and detailing resolution of the proposed facade interface as well as to improve design outcomes directly adjacent to the public domain.</p> <p>The proposed development is of a scale, modulation, and facade articulation that appropriately responds to its context.</p> <p>Subject to recommended conditions, the development achieves design excellence.</p>

#### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
<p>7.5 Residential flat buildings, dual occupancies and multi dwelling housing</p> <p>7.6 Office premises and business premises</p> <p>7.7 Retail premises</p>	Yes	<p><b>Foster House</b></p> <p>A maximum of 10 residential spaces and 2 commercial car parking spaces are permitted.</p> <p>10 residential spaces and 2 commercial spaces are proposed.</p> <p><b>Mixed-Use site</b></p> <p>A maximum of 3 residential spaces and 2 commercial car parking spaces are permitted.</p> <p>2 residential spaces and 1 commercial space is proposed.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	<p>The site is located on land identified as residual lands.</p> <p>A contribution is applicable under this clause.</p> <p>Refer to the 'Financial Contributions' section of this report.</p>

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	The site is identified by Council as being flood prone.  A Flood Assessment Report has been provided with the application and the design of the building has been amended to meet Flood Planning Level requirements.
7.16 Airspace operations	Yes	The proposed development will not penetrate the Obstacle Limitation Surface as shown on the Obstacle Limitation Surface Map for Sydney Airport, which is identified as 156 AHD for the subject site.
7.26 Public art	Yes	A preliminary public art plan has been submitted with the application.  The plan proposes a pillar of glazed green brick with various architectural forms to the Hands Lane frontage.  The plan has been reviewed by Council's Public Art unit and is supported subject to confirmation of the art work details being provided prior to the commencement of construction.

## Development Control Plans

### Sydney Development Control Plan 2012

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

## Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>A preliminary public art plan has been provided in accordance with the City of Sydney Guidelines for Public Art in Private Development and the Public Art Policy.</p> <p>The plan proposes a pillar of glazed green brick with various architectural forms, such as 'hand' motifs, to the Hands Lane frontage.</p>
3.2. Defining the Public Domain	Yes	<p><i>3.2.1 Improving the public domain</i></p> <p>The proposal does not result in overshadowing to public open space, nor does it impinge on public views.</p> <p><i>3.1.2 Addressing the street and public domain</i></p> <p>Primary access to the ground floor of the development will be provided from Mary Street, with a new lobby area and entry proposed within the new building footprint. Additionally, Hands Lane will benefit from additional activation with a new retail tenancy. The new openings will allow for an improved connection of the future uses with the public domain and for the lobby and retail space to interact with the surrounding streets.</p> <p><i>3.2.3 Active frontages</i></p> <p>Mary Street is identified on the Active Frontages Map. Fine grain tenancy frontage is provided, contributing to the amenity of the streetscape and provides frequent building entries. Inactive elements are concentrated away from the nominated active frontages. The proposal achieves 70% glazing to the active frontage.</p> <p><i>3.2.4 Footpath awnings</i></p> <p>The proposal includes footpath awnings along Mary Street over the entrance to the lobby for Foster House and the lobby for the residential uses in the mixed-use site. A condition is recommended to</p>



Provision	Compliance	Comment
		provide final details of the awning to Council for approval prior to construction, including dimensions and materiality.
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.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	Council's Public Domain and Water Assets Engineer have reviewed the proposal and have recommended conditions of consent to address drainage and stormwater management for the site.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development involves subdivision of the site into 2 lots. The new allotments are regular in shape and the new allotments would not have a detrimental impact on the setting of the locality.</p> <p>The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to condition of consent.</p>
3.11 Transport and Parking	Yes	<p><i>3.11.3 Bicycle parking and associated facilities</i></p> <p><b>Foster House</b> 50 bike parking spaces (1 per dwelling) plus additional commercial/visitor spaces are provided within basement level.</p> <p><b>Mixed-Use Site</b> 10 bike parking spaces (1 per dwelling) plus additional commercial/visitor spaces are provided at ground level.</p> <p><i>3.11.6 Service vehicle parking</i></p>

Provision	Compliance	Comment
		1 service vehicle parking space per development is proposed and is acceptable.
3.12 Accessible Design	Yes	<p>The proposal provides all-ability access along Mary Street and provides internal lifts.</p> <p>An access report was submitted with the application. The report confirms that the proposed development will comply with the relevant Australian Standards in respect of accessibility.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The existing site has been operating as a Specialised Homelessness Service since the 1990s. The service is jointly funded by the Department of Communities and Justice and The Salvation Army. The Salvation Army is a registered community housing provider in NSW.</p> <p>The existing facility is not consistent with modern care models and are no longer fit for purpose and require excessive maintenance.</p> <p>The proposed works will have a significant social benefit in terms of the quality of accommodation and the services the salvation army are able to provide to people in need.</p> <p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p> <p>The application has been reviewed by Council's Safe City Unit, who raised no objection to the proposed development.</p>
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.
3.16 Signage and Advertising	Yes	The application has included a signage strategy as part of the proposal. The

Provision	Compliance	Comment
		<p>signage locations are compatible with the architecture of the building and will not create unacceptable visual clutter.</p> <p>The proposed signage is generally consistent with the general requirements for signage under this section. Conditions are recommended to ensure the illumination does not flash and the intensity will not cause nuisance to the surrounding locality.</p>

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

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	<p>The site is permitted a maximum building height of 10 storeys.</p> <p>The proposed development is 5-6 storeys in height.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	The proposed development does not achieve the minimum floor to floor heights to some commercial components of the development. Refer to further assessment in the 'Discussion' section below.
4.2.2 Building setbacks	Yes	<p>The site is not identified as requiring specific setbacks under the DCP Building setback and alignment map.</p> <p>The existing building on the site is developed boundary to boundary with no setbacks.</p> <p>The proposed development retains the existing nil setbacks to the street and is an acceptable design response in this instance.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Shadow diagrams and a shadow study has been submitted with the application illustrating overshadowing impacts resulting from the proposal between

Provision	Compliance	Comment
		<p>9am and 3pm on 21 June in accordance with this section.</p> <p>Refer to the 'Discussion' section for an assessment of solar impacts.</p>
4.2.3.3 Internal common areas	Yes	All internal common areas and corridors have access to daylight and outlook.
4.2.3.5 Landscaping	Yes	<p>The proposal includes landscaped outdoor areas throughout the development.</p> <p>Conditions of consent are recommended requiring further details of the planting schedule, soil volumes, and drainage and irrigation systems to be provided prior to construction.</p>
4.2.3.6 Deep Soil	No	<p>The existing site does not provide deep soil planting. The proposal will not provide any deep soil areas, however planters are located on the roof terrace and at ground level.</p> <p>Whilst this does not comply with the 10% requirement under the DCP, this approach is considered acceptable in this instance given that the site currently does not provide any deep soil areas and maintains site coverage as existing.</p>
4.2.3.7 Private open space and balconies	Yes	Refer to the assessment provided in relation to Part 4E of the Apartment Design Guide in the compliance table above.
4.2.3.8 Common open space	Yes	Refer to the assessment provided in relation to Part 3D of the Apartment Design Guide in the compliance table above.
4.2.3.9 Ventilation	Yes	Ventilation of apartments has been assessed in the 'Discussion' section below.
4.2.3.10 Outlook	Yes	All apartments provide adequate outlook and views, and outlook from the surrounding development has been



Provision	Compliance	Comment
		considered in the site planning and massing of the development.
4.2.3.11 Acoustic privacy	Yes	The proposed development has appropriately addressed potential acoustic implications on surrounding locality. Refer to further assessment in the 'Discussion' section below.
4.2.6 Waste and recycling Management	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.7 Heating and cooling infrastructure	Acceptable	This section recommends heating and cooling infrastructure to be located in a centralised location within the development. The proposal includes air conditioning units to the balconies of the residential units. The balconies include solid balustrades and as such will have limited visual and acoustic implications. In addition, large condenser units on the rooftop will reduce the amenity of the communal outdoor space which is an important element to a homelessness facility. The proposal is acceptable in this instance
4.2.8 Letterboxes	Yes, subject to condition	No letterboxes are indicated on the drawings submitted with the application.  A condition is included in Attachment A to recommend that they are provided within the lobby of the building and that they are installed with non-master key locks for security.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	The site is located in the MU1 Mixed Use zone (previously known as B4 Mixed Use).  The proposed commercial use complements existing Surry Hills commercial uses and will facilitate a significant update to services in the area. The site is located within an accessible location close to public

Provision	Compliance	Comment
		<p>transport and will encourage walking and cycling.</p> <p>Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties. Refer to further assessment under the 'Discussion' section below.</p>

## Discussion

### Land Uses

#### Foster House

62. The existing building is used as 'crisis accommodation' specialising in homelessness services, managed by The Salvation Army. The building currently provides crisis accommodation in the form of dormitory style bedrooms with shared amenities, including communal kitchen and dining area. The building is staffed 24/7 by social workers and support providers. The building also provides ancillary meeting rooms to provide associated homelessness support services, early intervention, and assertive outreach homelessness services across the City of Sydney.

63. The current use of the site is consistent with the Sydney LEP 2012 definition for 'hostel; use, which is defined as:

*“premises that are generally staffed by social workers or support providers and at which—*

*(a) residential accommodation is provided in dormitories, or on a single or shared basis, or by a combination of them, and*

*(b) cooking, dining, laundering, cleaning and other facilities are provided on a shared basis.”*

64. It is noted that there are no specific planning controls that relate specifically to a 'hostel'.

65. The proposed re-development of the crisis care accommodation will provide self-contained bedrooms with ensuites and kitchen facilities, in addition to communal kitchen and living facilities. The proposal therefore can be considered closely with a 'co-living' use. Under the SLEP 2012, co-living is defined as:

*“a building or place that—*

*(a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*

*(b) provides occupants with a principal place of residence for at least 3 months, and*

*(c) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day,"*

66. Although the proposal provides 50 self-contained bedrooms, as well as shared facilities, and is staffed 24/7, due to the nature of the crisis accommodation, occupants can reside in the building for less than 3 months. Therefore, the use does not strictly meet the definition of 'co-living', as the use requires residents to stay for at least 3 months.
67. It is also noted that the SLEP 2012 defines a transitional 'group home' as a dwelling that is "(a) occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and (b) that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide halfway accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people". While this definition best describes the nature of the residential accommodation provided, the use does not relate to a 'single household', and therefore does not strictly relate to the proposal.
68. The application has framed its proposal for the redevelopment of Foster House as providing 37 residential flat units and 13 co-living units. Resident stays for the residential flat units will vary from a one night stay to up to 12 months in some instances. These units are subject to assessment against the Apartment Design Guide. Resident stays for the co-living units are tailored towards longer stays, with a minimum stay of 3 months. These units are subject to an assessment against the Housing SEPP.
69. Where shortfalls to the ADG are proposed, such as building separation, the proposal is considered to offer an appropriate design response with consideration to the nature of proposed uses, surrounding locality and existing constraints of the site.
70. The proposed land uses will provide an improved outcome for the site than if considered as hostel, group home, or full co-living, as amenity standards are more stringent with the ADG.

#### *Commercial/Retail Spaces*

71. The application includes general commercial tenancies both within the mixed-use site, and 1 tenancy within the Foster House site.
72. The future fit out of these spaces is proposed to be undertaken as either a separate Development Application or as Complying Development pursuant to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. A condition to this effect is included in the consent.

#### **Overshadowing**

73. Objective 4A-1 of the Apartment Design Guidelines states that living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours' direct sunlight between 9am and 3pm at midwinter (21 June).
74. The following analysis provides an assessment of the proposals impact on neighbouring developments. It should be noted that the proposal is significantly below the maximum permitted building height.

It should be noted that the solar access diagrams provided by the applicant have also included future built form from the recently approved 7 storey commercial building to the north of the site.

#### 56-60 Foster Street

75. This neighbouring site is located immediately west of the subject site. It has primary frontage to Foster Street to the west and a secondary frontage to Hands Lane to the east. A six storey residential building is located on the site, comprising 8 units.



**Figure 38:** Aerial view illustrating location of 56-60 Foster Street (highlighted in yellow) in comparison to the subject site (outlined in red)

76. The applicant has provided detailed documentation including views from the sun illustrating existing solar access received to these apartments and overshadowing impacts resulting from the proposed development between 9am – 3pm on 21 June (mid-winter).
77. The documentation illustrates that the east facing windows on level 4 of the building will be impacted by the proposed development. Level 4 is composed of 2 studio units, known as unit 42 and unit 43. Units 42 and 43 are single aspect apartments with external windows through which natural light is received, facing Hands Lane (east). The layout of these studios consists of kitchen/living space adjacent to the east facing windows. Figures 39-42 illustrate floor plans and internal photos of these units.





Figure 39: Floor plan of Unit 42, supplied by resident



Figure 40: Internal view of Unit 42, looking east towards Hands Lane. Image supplied by resident



Figure 41: Floor plan of Unit 43. Source: realestate.com.au



Figure 42: Internal view of Unit 43, looking east towards Hands Lane. Image supplied by resident

78. The applicant's solar documentation illustrates that these units will be impacted by the proposed development at 9am and 10am at midwinter (21 June). The impact is illustrated in Figure 43 below.

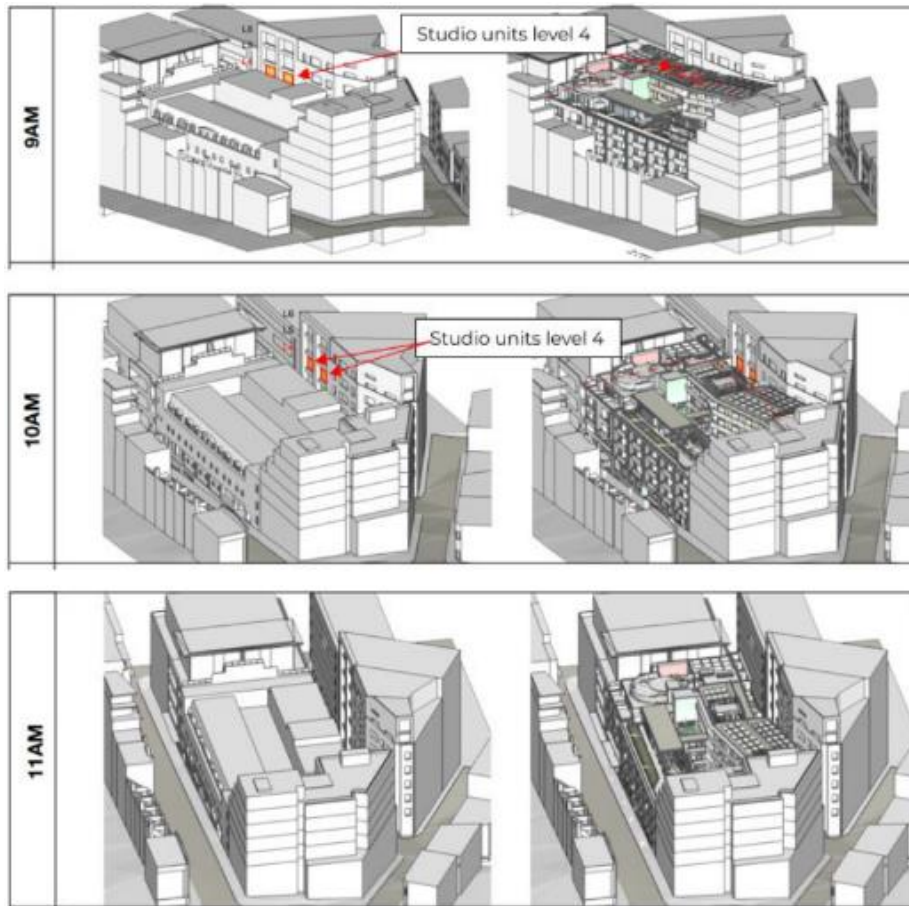


Figure 43: Applicant's overshadowing documentation illustrating solar impact to studio units located on level 4 of 56-60 Foster Street

79. Notwithstanding, unit 42 and unit 43 currently do not receive 2 hours of direct solar access to the living areas on 21 June. The windows receive between 15 minutes and 2 hours of solar access between 9am-11am, before returning to shade for the remainder of the day. The diagrams conclude that the proposal would not result in any further decrease in the number of apartments which did not receive 2 hours of solar access. Therefore, the proposal complies with the City of Sydney Draft Minimising Overshadowing of Adjoining Development Guide, as it would not result in any further decrease in the number of apartments which did not receive 2 hours of solar access.
80. It is noted that objections were raised from occupants on other levels of the building in relation to overshadowing. All other units in the building either are not impacted from the development (i.e. already shadowed by existing built form at midwinter), and/or have living room windows on the Foster Street frontage of the site and therefore would receive in excess of 2 hours of solar access from 11am at midwinter.

#### *46-54 Foster Street, Surry Hills*

81. This neighbouring site is a 6 storey mixed-use building comprising 6 units, one per level. The site is located to the west of the subject development site. Each level has windows facing both Hands Lane (east) and Foster Street (west). The windows facing Hands Lane have potential to be impacted by the proposed development.



Figure 44: Aerial view illustrating location of 46-54 Foster Street (highlighted in yellow) in comparison to the subject site (outlined in red)

- 82. The applicant has provided detailed documentation including views from the sun illustrating existing solar access received to each level and overshadowing impacts resulting from the proposed development between 9am – 3pm on 21 June (mid-winter).
- 83. The documentation illustrates that Levels 5 and 6 will be impacted by the proposed development. Level 5 is currently used as commercial offices. Level 6 is currently used as a residential unit.

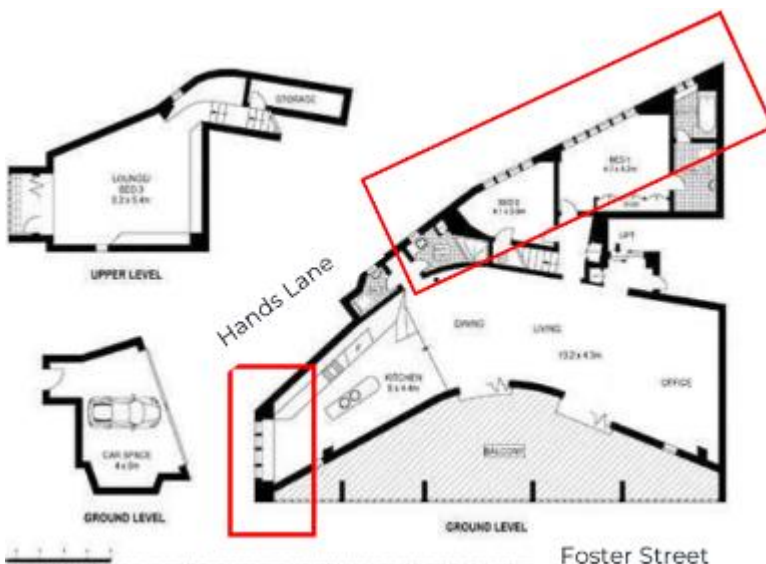


Figure 45: Floor plan of Level 6. Source: realestate.com.au

- 84. The applicant's solar documentation illustrates that Level 5 and 6 will be impacted at 9am and 10am on 21 June. The impact is illustrated in Figure 46 below.



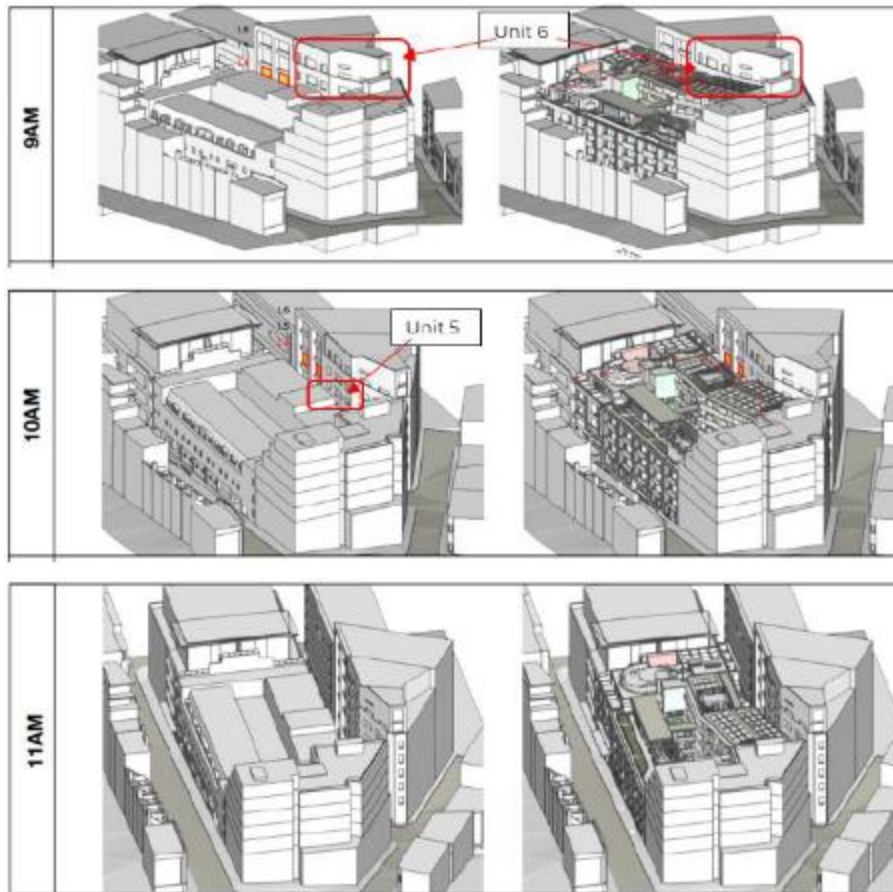


Figure 46: Applicant's overshadowing documentation illustrating solar impact to 46-54 Foster Street

85. Notwithstanding the above, the solar access requirements of the Apartment Design Guide (ADG) refer to solar impacts to living room windows and areas of open space. As demonstrated in the floor plan above, the layout of the impacted units is designed with bedroom and kitchen windows to the Hands Lane frontage of the site, with the main living areas orientated to Foster Street. Therefore, compliance with ADG is achieved.
86. It is noted that objections were raised from occupants on other levels of the building in relation to overshadowing. All other units in the building either are not impacted from the development (i.e. already shadowed by existing built form at midwinter), and/or have living room windows on the Foster Street frontage of the site and therefore would receive in excess of 2 hours of solar access from 11am at midwinter.

#### *20-22 Mary Street*

87. This neighbouring site is a seven storey building comprising 16 residential apartment units. The site is located south-east of the subject development site.
88. Currently, 5 out of 16 apartment units (31%) receive more than 2 hours' sunlight to living room windows and private open space areas. These units are located on levels 4, 5, 6 and 7 of the site. No apartments receive no direct solar access.



89. The residential units on level 1 with living room window and balcony frontage to Mary Steet will be impacted by the proposed development. These units currently rely on solar access in the afternoon at mid-winter. Between 1.15pm and 2.45pm, the proposal will result in varying minor degrees of overshadowing to the balcony areas of the two northernmost units on level 1. The impact has been minimised such that more than 1sqm of the private open space area is provided with direct solar access for more than 15 minutes.
90. The impacted units would not receive 2 hours of direct solar access to the balcony areas currently, and the proposal would not result in any reduction in the number of hours that solar access is achieved. The units that currently receive more than 2 hours of sun are not affected by the proposal.
91. With consideration to the City of Sydney Draft Minimising Overshadowing of Adjoining Development Guide, the proposal satisfies the design guidance of the ADG and appropriately minimises overshadowing of the neighbouring property.

#### *74-80 Reservoir Street*

92. This neighbouring site is a seven storey residential building. Units fronting Mary Street consist of balcony space, with setback glazing to living room space. The only windows which sit directly on the facade alignment are bedroom windows.
93. The proposed development will result in a marginal impact (15 minutes) to the units on level 1. These units currently receive sunlight from 1pm until 2.30pm. The proposed development will result in additional shadow to level 1 units at 2.15pm.
94. The proposed development will also result in a marginal impact (15 minutes) to the units on level 2. These units currently receive sunlight from 1pm until 2.45pm. The proposed development will result in additional shadow to level 2 units at 2.30pm.
95. The impacted units would not receive 2 hours of direct solar access to the balcony areas currently, and the proposal would not result in any reduction in the number of hours that solar access is achieved. The units that currently receive more than 2 hours of sun are not affected by the proposal. The proposal therefore satisfies the design guidance of the ADG.
96. It is noted that there was an objection submitted during public notification from a resident on level 3 of this building. This level will not be impacted by the proposed development between 9am - 3pm on 21 June.

#### **Solar Access**

97. Objective 4A-1 of the Apartment Design Guidelines states that living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours' direct sunlight between 9am and 3pm at midwinter (21 June).

#### *Foster House*

98. As discussed in the 'Land use' discussion of this report, the proposal has been structured as providing 37 residential flat units and 13 co-living units. As such, 37 out of 50 units are subject to the ADG.

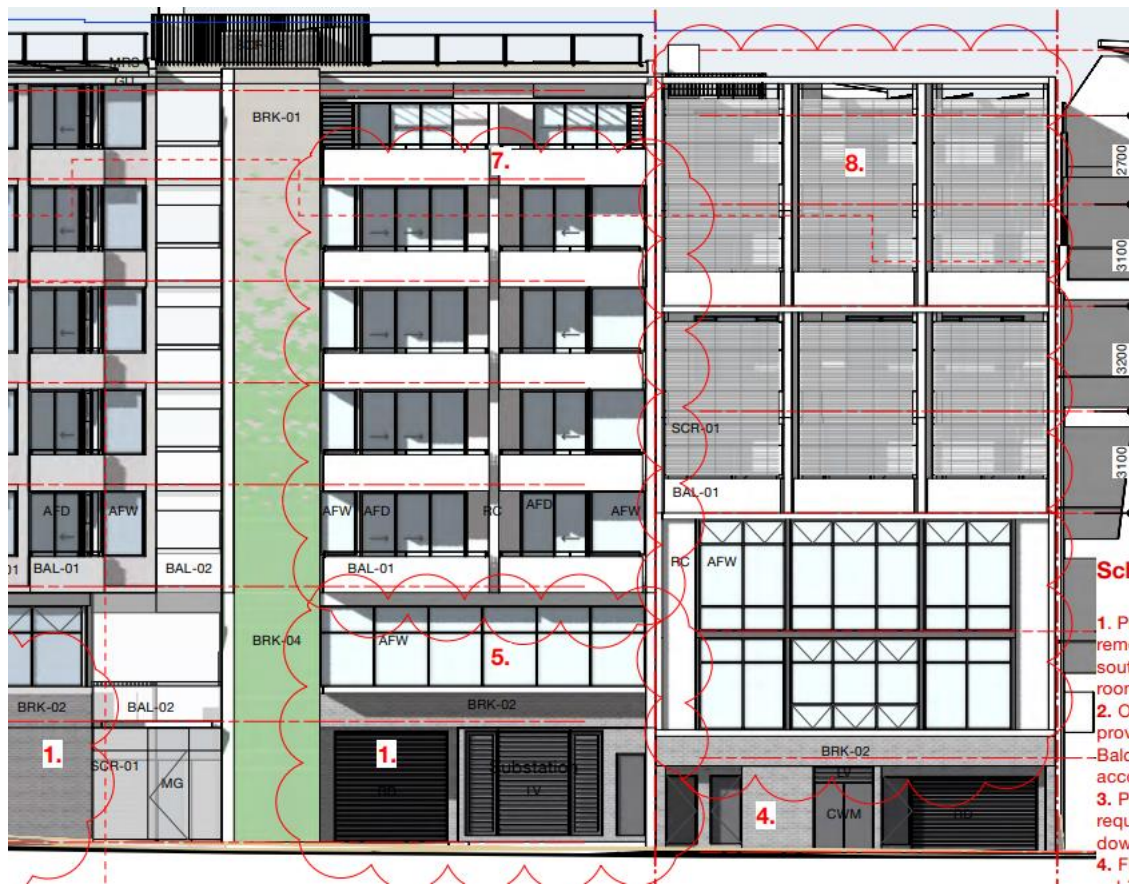
99. The applicant's solar access documentation provided with the application illustrates that the residential units fronting Mary Street will receive 2 hours of direct sunlight between 9am and 11am and the units fronting Hands Lane will receive 2 hours of solar access between 1pm and 3pm.
100. 26 out of 37 apartments will receive 2 hours of direct sunlight to living rooms and private open spaces. This results in 70% of the units. The proposal therefore satisfies Objective 4A-1 of the Apartment Design Guidelines.
101. No units, including those classified as 'co-living' will receive no direct solar access.

#### *Mixed-Use Site*

102. The applicant's solar access documentation provided with the application illustrates that the residential units fronting Mary Street will receive 2 hours of direct sunlight between 9am and 11am and the units fronting Hands Lane will receive 2 hours of solar access between 12pm and 3pm.
103. 8 out of 10 apartments will receive 2 hours of direct sunlight to living rooms and private open spaces. This results in 80% of the units. The proposal therefore satisfies Objective 4A-1 of the Apartment Design Guidelines.

#### **Building Separation and Visual Privacy**

104. The proposal is to be built to the boundaries to the immediate north and south, interfacing with blank walls of adjoining developments. The proposed development is to be built to the boundaries on both the Mary Street and Hands Lane frontages, which would not allow for a 12m separation between the subject site and adjoining residential development across Hands Lane.
105. The separation distance across Hands Lane is approximately 8.7m between windows, and 6m to the edge of the balconies, and as such does not comply with the ADG.
106. It is acknowledged that there are residential uses opposite Hands Lane. In particular, 56-60 Foster Street includes residential units with primary living spaces directly facing Hands Lane. It is noted that residential units within 46-54 Foster Street, generally have floor layouts that consist of bedroom windows facing Hands Lane, with primary living space oriented to Foster Street, or are commercial uses.
107. The mixed-use site offers full height privacy screening to the residential balconies on all levels. These balconies are directly across from 56-60 Foster Street, where potential privacy implications are worse.
108. The balconies within the Foster House do not offer privacy screening, but are generally angled away from 56-60 Foster Street, across 46-54 Foster Street. These balconies are proposed with solid concrete balustrades and offer minimal space offering limited usage. Potential privacy implications from these balconies is not considered to be out of character within a dense urban environment.
109. Given the layout and constraints of the subject site, the angle of Hands Lane and the design features proposed including angled walls and screening, the proposal will maintain reasonable visual privacy despite not strictly meeting the 12m separation distance. The design has appropriately considered uses opposite Hands Lane and provides an appropriate design response. The design and nil setback is similar to that of other residential properties in the area and would not be considered out of context with many other residential developments in the Surry Hills area.



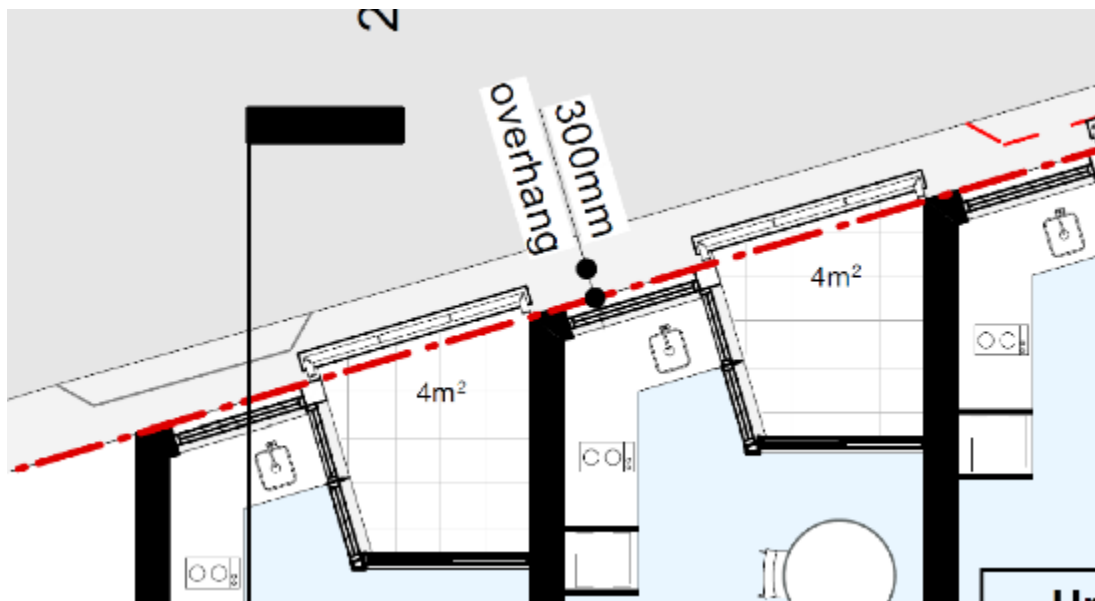
**Figure 47:** Hands Lane elevation illustrating privacy screening to residential balconies within the mixed-use site

#### *Balcony projections - Hands Lane*

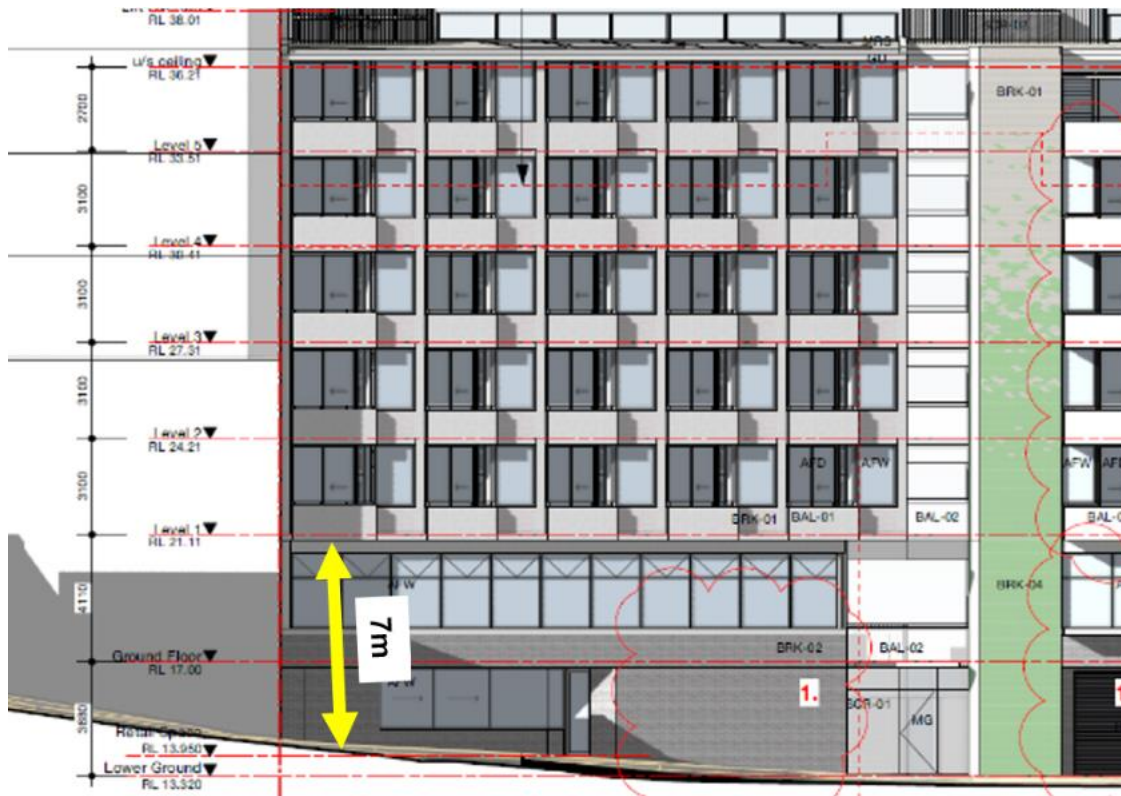
110. During the course of the assessment, the application has been amended to remove balcony projections onto Hands Lane. At the request of Council staff, balcony projections were removed for the mixed-use site and some balconies within Foster House, as illustrated in Figure 48 below. The applicant has retained a 300mm projection on Hands Lane for the co-living balconies.
111. The applicant submits that these balconies will provide facade articulation to Hands Lane, have a minimum height of 7m above ground level, and will not adversely impact loss of sky views.
112. The balcony projections are generally consistent with Schedule 4 of the SDCP 2012, which objective is to ensure projections beyond the boundary are to contribute to the amenity and character of the street and not cause obstruction or loss of safety for users of the street. In addition, the 300mm overhang with thick solid balustrades will not increase potential privacy implications, which generally look towards commercial uses.
113. With consideration to the above, the projections are acceptable in this instance.



**Figure 48:** Illustrating the removal of balcony projections opposite residential uses, and retention of balcony projections opposite 46-54 Foster Street



**Figure 49:** Illustrating proposed 300mm balcony projections onto Hands Lane



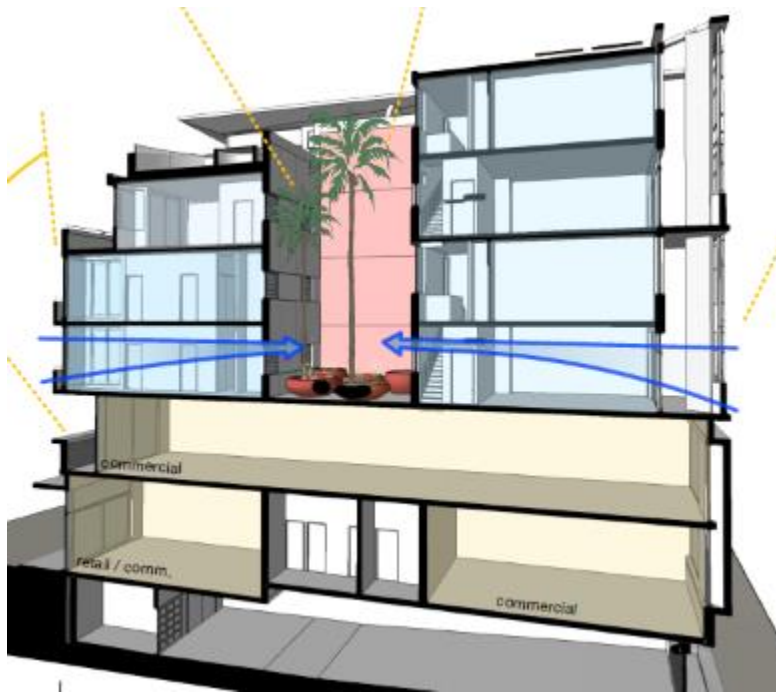
**Figure 50:** Illustrating balcony projections exceed 7m above street level

## Cross Ventilation

### *Mixed-Use Site*

114. Objective 4B-3 of the Apartment Design Guidelines states that a minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.
115. Cross ventilation is counted by the applicant as achieving 100%. However, the apartments rely on openings into a common courtyard where all surfaces are hard and will rebound noise through the courtyard into apartments. Cross ventilation is illustrated in Figure 51 below.
116. The ADG provides guidance under Objective 4A-2 that where courtyards are used, acoustic privacy and minimum privacy separation distances are achieved. Objective 3F states that minimum separation distance is 12m. The minimum distances are not achieved across the courtyard, being approximately 6m.
117. It is noted that in the two storey apartments, the windows into the courtyard are secondary windows and not primary windows for habitable rooms, offering a degree of separation and mitigates acoustic privacy impacts. However, single aspect apartments (unit 3, 5, and 9), rely on windows to habitable spaces.
118. Notwithstanding, when discounting the single aspect apartments (Unit 3, 5, and 9) the overall cross ventilation remains compliant at 62.5% and therefore complies with the ADG.





**Figure 51:** Illustrating air flow throughout the mixed-use site

#### *Foster House*

119. Similarly to the mixed-use site noted above, the applicant has counted cross ventilation as being achieved to 100% of the residential units. The residential units rely on windows adjacent to communal walkways. Separation distances across the courtyard vary between 7m-11m. Cross ventilation is illustrated in Figure 52 below.
120. However, the windows into the courtyard are secondary windows to entry ways / kitchen areas rather than more commonly used bedroom and living spaces. This approach is considered acceptable when considering the nature of the use, which is to provide housing facilities to those without permanent homes in times of crisis. Whilst the development does not technically achieve cross ventilation when considered against all aspects of the ADG, the proposal is considered acceptable in this particular instance.



**Figure 52:** Illustrating air floor throughout the Foster House site

### *Natural Ventilation*

121. Noting shortfalls with the cross ventilation requirements, it is recommended that the design of the fenestration demonstrate how the natural ventilation requirements of the Apartment Design Guide 4B-1 will be met.
122. The method of measurement must be in accordance with the definition of Effective Openable Area as defined by the Apartment Design Guide, which is: *'the minimum area of clear opening of a window that can take part in providing natural ventilation. The effective openable area of a sliding or hung sash window can be measured in elevation. Hinged windows such as casement, awning and hopper windows may measure the diagonal plane from the sash to the jamb and add the triangles at either end up to a total area of the window opening in the wall. Obstruction within 2m of a window reduce the effective openable area as measured in elevation. Fly screens and security screen will reduce the effective openable area by half.'*
123. A condition is recommended in this regard illustrating size, type and location of all operable sashes in relation to the floor area served by those sashes. This is to be submitted to and approved by Council prior to construction.

### **Floor to Floor heights**

124. The SDCP 2012 requires buildings which are proposed to contain commercial, and retail uses to provide floor to floor heights of 4.5m on the first basement floor, 4.5m on the ground floor and 3.6m on the first commercial floor and to any commercial floor above. 3.1m floor to floor heights are required for residential uses.
125. The proposal seeks to vary these controls and has been designed with varying ceiling heights, as follows:

Floor	Floor to floor height DCP control	Floor to floor height proposed - Foster House	Floor to floor height proposed - Mixed-use site
Basement/Hands Lane	4.5m	3.68m	3.85m
Ground	4.5m	4.11m	4.5m
Level 1	3.6m for commercial  3.1m for residential	3.1m (residential)	3.6m (commercial)
Level 2 - 5	3.1m	3.1m	3.1m

126. The objective of the control is to promote daylight access into building interiors and contribute to the flexible use of buildings. The proposal has been designed to maximise solar access both into the proposed building itself and to surrounding developments, noting that the floor plates have been designed to maximise access to daylight.
127. The variations sought to the floor to floor height controls for the commercial floor areas of the building (Hands Lane Commercial and 17-19 Mary Street ground floor commercial) are minor and would not be expected to result in any significant obstacle to changes of use to the building in the future.

### Acoustic Privacy

128. The site is located within close proximity to residential properties to the west, opposite Hands Lane, and to the east, opposite Mary Street.
129. The main noise sources generated by the development that may impact the local community and environment include noise emissions from operation of mechanical plant servicing and noise emanating from the use of the outdoor roof and terrace areas.
130. An Acoustic Report has been submitted with the application. The report concludes that the development is not expected to generate or be exposed to excessive noise or vibration, provided that appropriate design consideration and amelioration measures are implemented.
131. The proposed outdoor roof terraces are generally oriented towards the east of the site. Both outdoor terraces include setbacks from street in the form of 3m wide planters/landscaped area. This results in separation distances across Mary Street of approximately 14m - 16m. This is considered sufficient separation within a dense urban environment. The outdoor terraces are not forecasted to cause adverse acoustic privacy impacts.

132. It is noted that the application proposes to restrict the hours of use for the outdoor terraces to 7am - 10pm. Whilst it is not common practice to impose hours of use for residential terraces, it is acknowledged that Foster House is not a typical residential use. A condition is recommended limiting the hours of the terrace to as proposed, in addition to compliance with The Salvation Army's operational management plan, which details management practices to safeguard the surrounding locality. Subject to conditions, the proposal will not have an adverse noise impact on both existing residential uses and future occupants of the site.
133. The application was reviewed by Council's Environmental Health officers, who raised no objections to the proposal, subject to recommended conditions. A number of conditions are recommended to ensure noise emissions are limited.

## **Waste**

### *Foster House*

134. The proposal was accompanied by a Waste Management Plan, which is generally in accordance with the objectives and provisions set out under Section 3.14 of the Sydney DCP 2012.
135. The application proposes to utilise a private contractor to engage in waste collection for the entirety of the Foster House site, with collection 3 times a week. This is consistent with the existing use and waste collection operations on site.
136. Council's Waste team initially raised concern with the residential component of the building, requesting the waste storage rooms to provide sufficient waste storage area for a single weekly collection to be able to enter Council's waste collection program.
137. However, planning staff consider a waste contractor, rather than Council collection, appropriate in this instance given that the site will continue to be operated by The Salvation Army and existing waste collection operations.
138. Council's Transport team raised no objection with the proposal.
139. Conditions are recommended to ensure that the proposed development achieves compliance with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

### *Mixed Use Site*

140. The mixed-use site has provided a sufficiently sized waste room and bulky waste room for the residential component of the building. The waste rooms are in appropriate locations to facilitate easy access to Hands Lane. Waste bins will place the bins out for collection on Hands Lane on the day of collection for Council pick up.
141. The commercial units within the mixed-use site will engage in a private contractor for collection. The site has provided a sufficiently sized waste rooms in this regard.

### Construction Staging

142. The application proposes staged development as follows:

Stage:	Works:
1	Demolition works
2	Subdivision of site into 2 lots, creating Lots 10 and 11
3a	Construction of the new Foster House (Lot 11 created via Stage 2) otherwise known as 5-15 Mary Street
3b	Construction of the mixed-use development (Lot 10 created via Stage 2) otherwise known as 7-19 Mary Street

143. The applicant submits that The Salvation Army may sell the land associated with Stage 3b, to provide funding for the construction of the new Foster House (Stage 3a). Therefore, the Stage 3b works will likely be carried out by a separate developer. The applicant requests that the consent is structured in a manner to allow each stage of work to proceed sequentially in the proposed staging schedule, with the exception of Stage 3 which is to proceed in two independent stages, as noted above. It is requested that any consent granted be structured in a way which allows for the issue of separate Construction and Occupation Certificates for the Stage 3a and 3b works, to ensure that The Salvation Army has the required flexibility to proceed with the redevelopment of Foster House while a partner is sourced for the Stage 3b works.
144. It is considered acceptable for a development of this size, construction stages are established so that certain works can continue on site without being held up by administrative requirements of the consent.
145. The applicant seeks for all prior to CC conditions to be drafted to read as 'prior to the relevant CC' to enable timely satisfaction of the condition and accordingly construction of the development. However, Council considers that recommended conditions of consent that require matters to be addressed prior to a construction certificate being issued should be worded so that it is made clearer at which particular stage of construction specific requirements are to be addressed.

### Consultation

#### Internal Referrals

146. The application was discussed with Council's;

- (a) Heritage and Urban Design Unit;
- (b) Environmental Health Unit;
- (c) Public Domain Unit;



- (d) Safe City Unit;
- (e) Surveyors;
- (f) Transport and Access Unit;
- (g) Tree Management Unit; and
- (h) Waste Management Unit.

147. 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

148. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.

149. A response was received raising no objections to the proposed development.

#### Sydney Water

150. Pursuant to Section 78 of the Sydney Water Act, 1994, the application was referred to Sydney Water for comment.

151. A response was received raising no objections to the proposed development.

### Advertising and Notification

152. In accordance with the City of Sydney Community Participation Plan 2022 the proposed development was notified for a period of 21 days between 11 January 2023 and 2 February 2023. A total of 475 properties were notified and 14 submissions were received.

153. The submissions raised the following issues:

- (a) **Issue:** Height, bulk and scale

**Response:** The proposed development is significantly under the height of buildings control identified in the Sydney Local Environmental Plan 2012 and height in storeys control in the Sydney Development Control Plan 2012. The development has appropriately responded to the context of the site to reduce overshadowing impacts to neighbours. The development is considered to be suitable for the context of the site which is in a highly urbanised locality.

- (b) **Issue:** Overshadowing impacts

**Response:** A detailed assessment has been outlined in the 'Discussion' section of this report. In accordance with the NSW Apartment Design Guidelines and Sydney Development Control Plan 2012, overshadowing impacts have been assessed at midwinter (21 June), illustrating 'worst case scenario'. Whilst it is acknowledged that some neighbouring apartments will lose some sunlight during mid-winter, the development still complies with the relevant overshadowing and solar access controls. As noted earlier, the proposed development is significantly under the height of buildings and height in storeys controls.

- (c) **Issue:** Lack of building separation across Hands Lane causing visual privacy and overlooking impacts from private balconies and communal rooftop

**Response:** It is acknowledged that the proposal does not comply with the separation distances stipulated in the Apartment Design Guide. Visual privacy from private balconies will be limited by the use of privacy screening, angled walls and solid balustrading. Given the layout and constraints of the subject site, this is considered an appropriate design response. In addition, balcony encroachment has been removed along Hands Lane in areas directly across existing residential uses. Communal rooftop space is set back from Mary Street, offering approximately 14-16m separation distance to residential units opposite Mary Street. Overlooking opportunity from these spaces are not considered to be unreasonable. This issue is further explored in the 'Discussion' section of this report.

- (d) **Issue:** Loss of views from apartments

**Response:** The proposed development will not impact on any significant views, such as landmarks or water views. In dense urban environments such as this site, it is difficult to maintain sky views from all windows.

- (d) **Issue:** Noise impacts from air conditioning units, roof top services, private balconies and communal rooftop open space

**Response:** Noise impacts from the development are not considered to be adverse, subject to recommended conditions. The report has been reviewed by Council Environmental Health Officer and was found to be acceptable. Conditions of consent are recommended which will regulate noise from mechanical plant. Refer to further assessment in the 'Discussion' section.

- (e) **Issue:** The community is impacted by anti-social behaviour from users of Foster House. Additional impacts by passive smoking by both workers and residents due to their activity around the front entrance.

**Response:** The application will improve site safety through the activation of the laneway and increased passive surveillance provided by the proposed commercial and retail spaces. Additionally, an Operational Management Plan has been prepared by The Salvation Army that outline the safety and security measures of the site such as, perimeter lighting, surveillance systems, a secure building entrance and common areas.

- (f) **Issue:** Construction noise

**Response:** Conditions of consent are recommended to limit the impacts of construction activities.

- (g) **Issue:** Impacts associated with waste collection along Hands Lane.

**Response:** A waste management plan was submitted with the application in accordance with the City's Guidelines for Waste Management in New Developments 2018. The application has been reviewed by both the City's transport planner and waste officer, who have provided advice which is generally supportive of the proposed development, subject to the conditions. Waste collection must only occur during the designated zone collection times as outlined in the City's Waste Policy.

## Financial Contributions

### Levy under Section 7.12 of the Environmental Planning and Assessment Regulation 2000.

154. The cost of the development is in excess of \$250,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2020.
155. The applicant has submitted a written request for an exemption from the need to pay the levy. Section 2.2b of the Central Sydney Development Contributions Plan 2020 provides that certain development may be excluded from the need to pay a levy, which includes development which is for the sole purpose of providing affordable housing or social housing, by a social housing provider. The applicant submits that The Salvation Army is a registered community housing provider in NSW, and despite this development relating to a commercial premises, it is proposed to directly facilitate the funding of the broader program of social services which includes social housing and is therefore of critical importance to the delivery of this social infrastructure.
156. It is agreed that some elements of the construction costs can be excluded from the cost of development calculation. The exclusion from development contributions would be limited to those aspects of the development that are social housing. Any market housing on the site would not be eligible for an exemption from contributions. In addition, all commercial space will not be eligible for an exemption.

157. A condition relating to this levy 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 the Stage 1 construction certificate. Whilst it is acknowledged that majority of the contribution will only be relevant for the mixed-use site development, the Central Sydney Development Contributions Plan 2020 states that the contribution is to be paid prior to any construction certificate being issued. This includes a construction certificate for demolition. The final elements of excluded development will be determined after the condition has been imposed.

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

158. The site is located within the Residual Lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required. The applicant has provided documentation illustrating total floor area, which excludes the area of public housing, including the accommodation units and association support services/administration rooms. The calculation is consistent with the definition of total floor area in the Sydney Local Environmental Plan 2012.
159. A condition of consent is recommended requiring payment prior to the issue of the Stage 1 construction certificate.

### **Relevant Legislation**

160. Environmental Planning and Assessment Act 1979.
161. Local Government Act, 1993.
162. Roads Act, 1993.
163. Sydney Water Act, 1994

### **Conclusion**

164. The proposed development seeks consent for the redevelopment of The Salvation Army's Foster House crisis care accommodation and the construction of a new mixed-use development. The proposed development seeks to redevelop the site in two distinct parts and includes the demolition of all existing structures and the construction of one 6-storey building containing The Salvation Army administration areas, a small commercial premises and residential accommodation comprising part Residential Flat Building and part co-living rooms, and a separate 5-storey mixed-use development.
165. The project seeks to redevelop the site to contribute to a program of social mission services, aiming to improve the quality of accommodation and the services they are able to provide to people in need. The current homelessness care accommodation on the site lacks appropriate communal and support service spaces and do not meet current standards for acceptable amenity, privacy and dignity for occupants. The new Foster House will deliver significant social benefits by providing a new facility for TSA specialised homelessness services including crisis and transitional accommodation and early intervention and assertive outreach services.

166. The proposal, subject to conditions, is appropriate in its setting and is generally compliant with the relevant planning controls in the Sydney LEP 2012, Sydney DCP 2012, SEPP 65, ADG, and Housing SEPP. Proposed variations to controls in the Sydney DCP 2012 and ADG are considered generally acceptable and are identified in this assessment report.
167. The modest scale of development is exemplified by the proposal's comfortable compliance with the Height of Buildings and Floor Space Ratio development standards applying to the site under Clause 4.3 and 4.4 of the Sydney LEP 2012.
168. The new development does not pose any significant or unreasonable impacts upon the existing or likely future development surrounding the site. The proposal will improve the interface between the private and public domain and exhibits design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
169. The proposal will provide a new residential flat building land use on a site which is accessible to existing and planned employment, services, public transport infrastructure and community facilities.
170. Subject to the recommendation of this report, and the imposition of the conditions in Attachment A, the proposal responds appropriately to the site constraints and contributes positively to the existing and desired future character of the locality.

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