

**Item 7.****Development Application: 12-18 Stokes Avenue, Alexandria - D/2023/388****File No.:** D/2023/388**Summary****Date of Submission:** 10 May 2023, amended documentation received on 1 September 2023, 6 October 2023 and 8 November 2023**Applicant:** The Trustee for Smart Design Property Trust**Architect/Designer:** Smart Design Studio**Owner:** The Trustee for Smart Design Property Trust**Planning Consultant:** Planning Lab**Cost of Works:** \$26,095,490**Zoning:** E3 Productivity Support. The proposal comprises an office premises and a food and drink premises which are permissible uses within the zone.**Proposal Summary:** The application seeks development consent for subdivision, the demolition of an existing warehouse building and construction of a five (5) storey commercial building comprising a commercial office and a food and drink premises. The proposal involves excavation to create a single basement level providing 15 car parking spaces, in addition to associated landscaping and earthworks.

The application was notified for a period of 21 days from 12 May 2023 until 3 June 2023. One (1) submission in support was received.

An initial assessment of the application by Council staff identified concerns relating to deep soil planting and canopy cover, the proposed height along the Balaclava Lane interface, vehicular access, servicing and waste collection, car parking and flooding.

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

these can be resolved through the recommended conditions of consent.

The proposed development exceeds the 22m height control contained in the Sydney LEP 2012 by 1.01m or 4.6%. The building elements that exceed the height control include the centrally located lift overrun, the parapet of the building and the solar panels.

A written justification for the proposed variation to the building height development standard was submitted in accordance with clause 4.6 of the LEP. The applicant has successfully demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of this case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development complies with the relevant floor space ratio control and other provisions of the LEP. It is generally consistent with the detailed provisions contained within the Sydney DCP 2012.

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

The application is referred to the Local Planning Panel for determination as the developer has offered to enter into a planning agreement.

### **Voluntary Planning Agreement**

The site is located within the Green Square urban renewal area and the application is accompanied by a public benefit offer for a monetary contribution for the provision of community infrastructure in Green Square in accordance with section 6.14 of the Sydney LEP 2012.

The draft VPA has commenced its public exhibition period, which is for a duration of 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

It is recommended that authority be delegated to the Chief Executive Officer to determine the application once the exhibition of the draft VPA has closed.

Consideration should be given to granting deferred commencement consent subject to the recommended condition requiring the execution and registration of the

VPA on the title of the land prior to the consent becoming operative.

**Summary Recommendation:** Authority be delegated to the Chief Executive Officer to determine the application after completion of the Voluntary Planning Agreement public exhibition process and considering any public submissions received in response.

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Resilience and Hazards) 2021
- (iv) SEPP (Transport and Infrastructure) 2021
- (v) Community Engagement Strategy and Participation Plan 2022

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Public Benefit Offer

## Recommendation

It is resolved that:

- (A) the variation requested to the height of buildings development standard in accordance with clause 4.6 'exceptions to development standards' of the Sydney Local Environmental Plan 2012 (SLEP 2012) be upheld;
- (B) authority be delegated to the Chief Executive Officer to determine Development Application No. D/2023/388, after the completion of the public exhibition period of the draft Voluntary Planning Agreement and after considering any public submissions received; and
- (C) if the Chief Executive Officer determines to approve Development Application No. D/2023/388, then consideration be given to granting a deferred commencement consent, pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, subject to the conditions set out in Attachment A of the subject report.

## Reasons for Recommendation

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

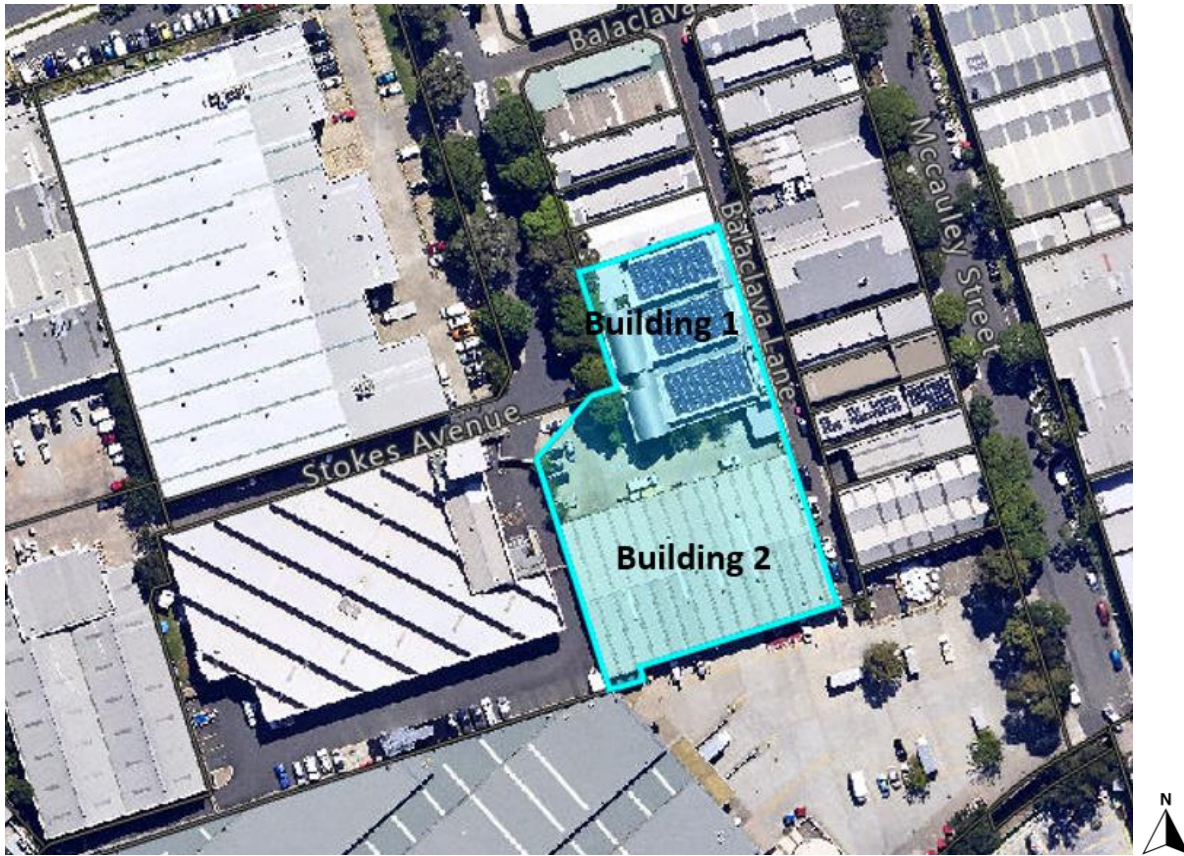
- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979, in that subject to the imposition of the recommended conditions of consent, it is generally consistent with the planning controls applicable to the site, and where variances are proposed these are acceptable for the reasons outlined in the report to the Local Planning Panel.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clauses 4.3 'Height of buildings' of the Sydney LEP 2012; and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the E3 'Productivity Support' zone and the height of buildings development standards.
- (C) The proposal satisfies the objectives and provisions of State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, the SLEP 2012, and the Sydney Development Control Plan 2012.
- (D) The proposal is consistent with the objectives of the E3 'Productivity Support' zone.
- (E) The proposed development appropriately responds to the site and its context, with a building that is appropriate in terms of its height, floorspace and architectural expression, and achieves design excellence.

- (F) The proposed office premises land use is permissible within the zone and will support the vitality of the area. Subject to the recommended conditions of consent, the proposed land use 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 design have generally addressed the concerns of Council staff 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 101 in DP 1238296, known as 12-18 Stokes Avenue, Alexandria. It is irregular in shape with area of approximately 3,600sqm. It has a primary street frontage to Stokes Avenue to the north-west and a secondary street frontage to Balaclava Lane to the east. Levels on the site fall by approximately 800m from north to south.
2. The site contains two buildings (nominated in the application as Building 1 and Building 2), with at grade parking, a loading area and vehicle access provided from Stokes Avenue. Building 1 comprises a three storey converted warehouse building used as an office premises with a caretaker's flat provided at second floor level. Building 2 comprises a single metal storey warehouse building which is currently used for the manufacturing of starch moulding machines for use in the confectionary industry.
3. The surrounding area is characterised by a mixture of land uses, primarily being commercial and industrial. The existing built environment comprises a mix of one and two storey inter-war and post-war warehouses and contemporary infill commercial and office buildings.
4. The northern extent of the site (which contains part of Building 1) is located within the North Alexandria Industrial Heritage Conservation Area (C74).
5. The site is located within the North Alexandria locality and is identified as being subject to flooding.
6. A site visit was carried out on 27 June 2023. Photos of the site and surrounds are provided below.



**Figure 1:** Aerial view of site and surrounds, Building 1 located to the north of the site and Building 2 located to the south of the site



**Figure 2:** View of site from Stokes Avenue, with Building 1 shown on left-hand side and Building 2 identified as the red warehouse building on the right-hand side



**Figure 3:** View of site from Stokes Avenue, with Building 1 shown on left-hand side and Building 2 behind



**Figure 4:** Interface between the southern extent of Building 1 and the adjacent car parking area





**Figure 5:** Existing driveway and parking area between Building 1 (right-hand side) and Building 2 (left-hand side) looking west



**Figure 6:** Development located to the west of the site known as 20 Stokes Avenue which is used as a premises by NSW Police and Bomb Disposal Unit as offices, training facilities, mechanical repairs and storage



**Figure 7:** Existing warehouse development located opposite the site, on the north-western extent of Stokes Avenue



**Figure 8:** Existing commercial development located to the immediate north of the site, located on the north-eastern extent of Stokes Avenue



**Figure 9:** Development to the south of the site known as 30-32 Bowden Street which comprises a variety of uses including a warehouse and office building for Harvey Norman, an office premises, a commercial arts studio and fitness centre



**Figure 10:** Development to the south at 30-32 Bowden Street



**Figure 11:** View looking south down Balaclava Lane, with the subject site located on the right-hand side



**Figure 12:** Adjoining development to the east of the site fronting Balaclava Lane



**Figure 13:** View looking south down Balaclava Lane, with the subject site located on the right-hand side



**Figure 14:** View looking south down Balaclava Lane, with Building 1 located on the right-hand side



**Figure 15:** View from level one of Building 1 looking south-east across to Building 2 and beyond

## History Relevant to the Development Application

### Development Applications

7. The following applications are relevant to the current proposal:
  - **D/2017/1443** - Development consent was granted on 19 March 2018 for the change of use of the warehouse at 12 Stokes Avenue to an office premises and associated alterations and additions, including demolition of front of warehouse, construction of a three storey addition to Stokes Avenue (including ancillary caretaker's flat), rooftop plant and photovoltaic panels, external bin and bike store, modifications to vehicle access and car parking at 18 Stokes Avenue and associated landscaping and public domain works.
  - **D/2017/1443/A** – A Section 4.55(1A) modification application was approved on 30 August 2018 for minor design amendments.

### Amendments

8. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 21 July 2023. Specifically, the following information was requested:
  - provision of 10% of deep soil planting;

- provision of 15% canopy coverage;
  - removal of third storey element to Balaclava Lane;
  - amendments to vehicular access, servicing and waste collection, car parking;
  - updated Flood Impact Assessment;
  - additional information relating to survey matters, including a plan of proposed subdivision; and
  - advice relating to the public benefit offer.
9. The applicant responded to the request on 1 September 2023, and submitted the following information:
- Amended Architectural Plans
  - Amended Landscape Plan
  - Updated Stormwater Management Plan
  - Updated Traffic Report
  - Updated Flood Impact Assessment
  - Plan of Proposed Subdivision
  - Titles and dealings of relevant lots
10. On 27 September 2023 the City requested additional information and amendments relating to the design of the basement. On 6 October 2023 the applicant responded with amended architectural drawings and an updated Traffic Report.
11. On 9 October 2023 the City requested the Flood Impact Assessment be amended to include a discussion on the creation of the new roadway and its associated offsite flooding impacts. On 8 November 2023, an amended Flood Impact Assessment was received.

### **Proposed Development**

12. The application, as amended, seeks consent for subdivision, the demolition of Building 2 and construct a five (5) storey commercial development comprising a ground floor food and drink premises and commercial office and excavation to provide a single basement level. More specifically:

#### **Subdivision and Transfer of Land**

- Subdivision of the site to create a separate allotment 1,270sqm in size for a future north-south road which will act as an extension of Stokes Avenue and an east-west laneway. This allotment is to be transferred to the City's ownership and will be dedicated as a road in the future when the new road network is delivered.

**Demolition**

- Demolition of the existing warehouse building known as 'Building 2'.
- Demolition of the existing bicycle shed.
- Removal of existing hardstand.

**Excavation**

- Excavation of site to a depth of RL7.60 to provide a single basement level.

**Basement Level**

- 15 car parking spaces including five small car spaces and two accessible spaces.
- Four (4) motorcycle spaces.
- 40 staff bicycle spaces and 20 visitor bicycle spaces.
- End of journey facilities including 40 lockers and four WCs and showers.
- Waste storage room.
- Plant, store rooms and services.
- Two (2) passenger lifts.

**Ground Level**

- Food and drink premises (40sqm in size) fronting Stokes Avenue.
- Lobby.
- Open plan commercial office.
- Meeting rooms.
- WCs.
- Two (2) passenger lifts.
- Fire stairs.
- Circulation stairwell.
- Vehicular access from Balaclava Lane.
- 121sqm of deep soil around the perimeter of the ground floor.



**First Floor Level**

- Lobby.
- Open plan commercial office.
- Meeting rooms.
- WCs.
- Two (2) passenger lifts.
- Fire stairs.
- Circulation stairwell.

**Second Floor Level**

- Lobby.
- Open plan commercial office.
- Meeting rooms.
- WCs.
- Two (2) passenger lifts.
- Fire stairs.
- Circulation stairwell.
- Plant and external terrace fronting Balaclava Lane.

**Third Floor Level**

- Lobby.
- Open plan commercial office.
- Meeting rooms.
- WCs.
- Two (2) passenger lifts.
- Fire stairs.
- Circulation stairwell.
- External terrace fronting Stokes Avenue.

**Fourth Floor Level**

- Lobby.
- Open plan commercial office.
- Meeting rooms.
- WCs.
- Two (2) passenger lifts.
- Fire stairs.
- Circulation stairwell.

**Roof Level**

- Lift overrun.
- Solar panels.

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

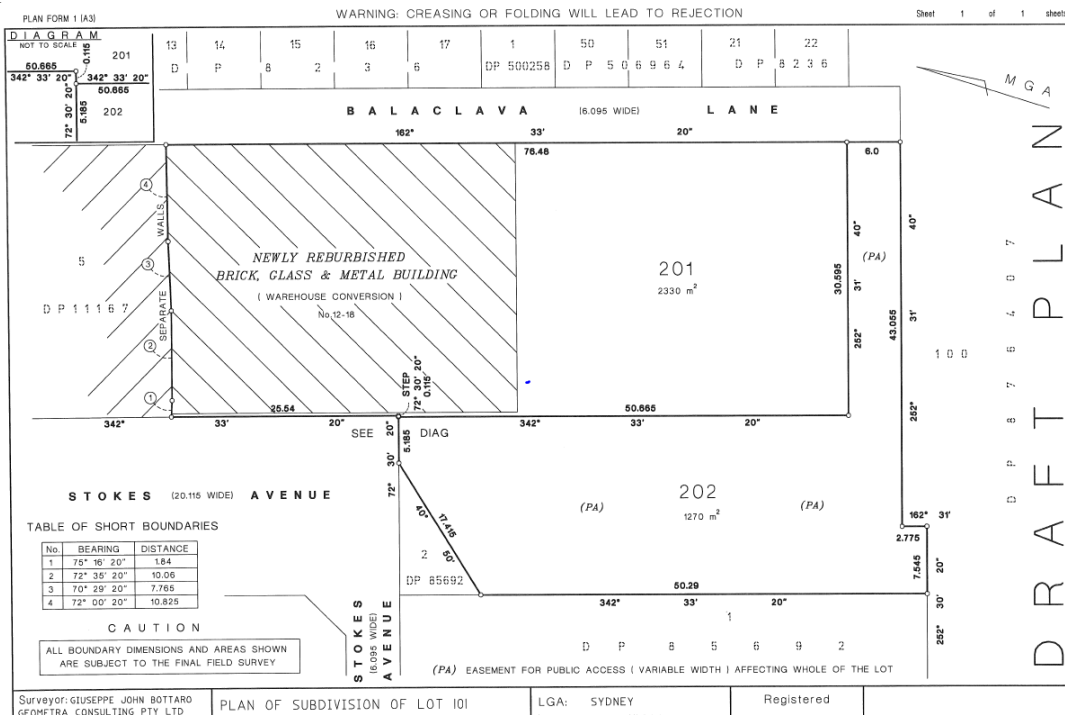
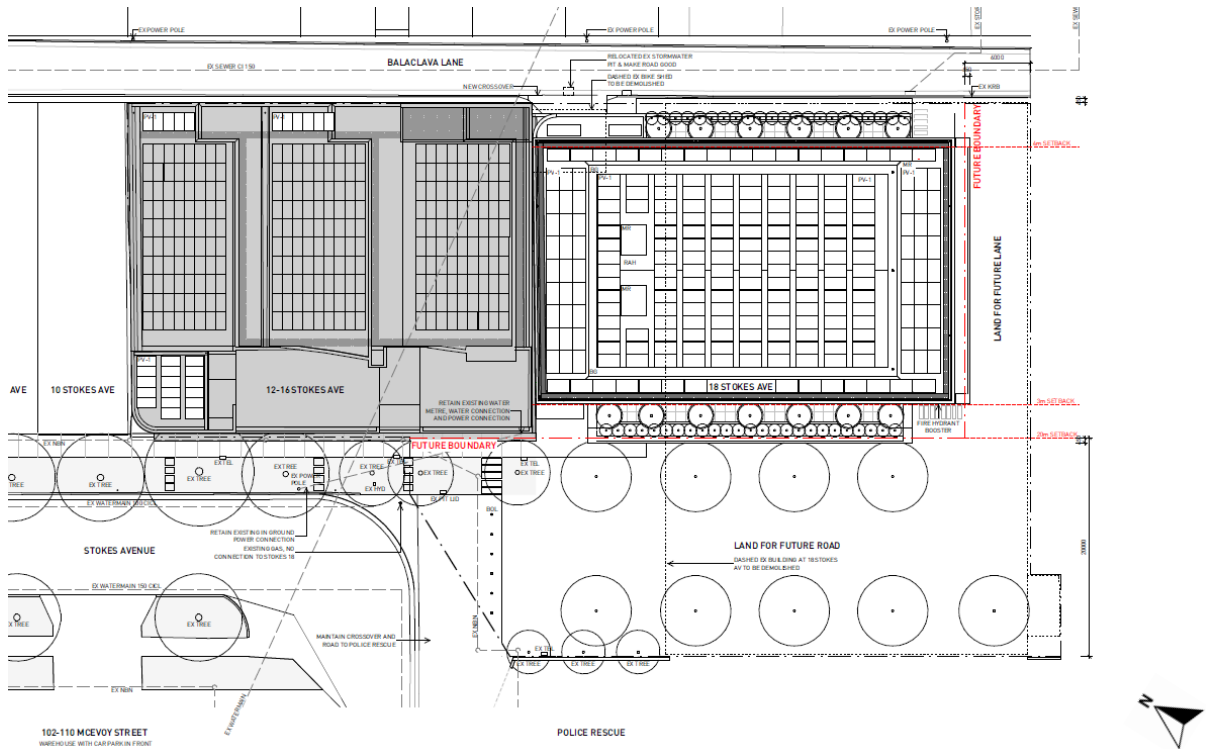
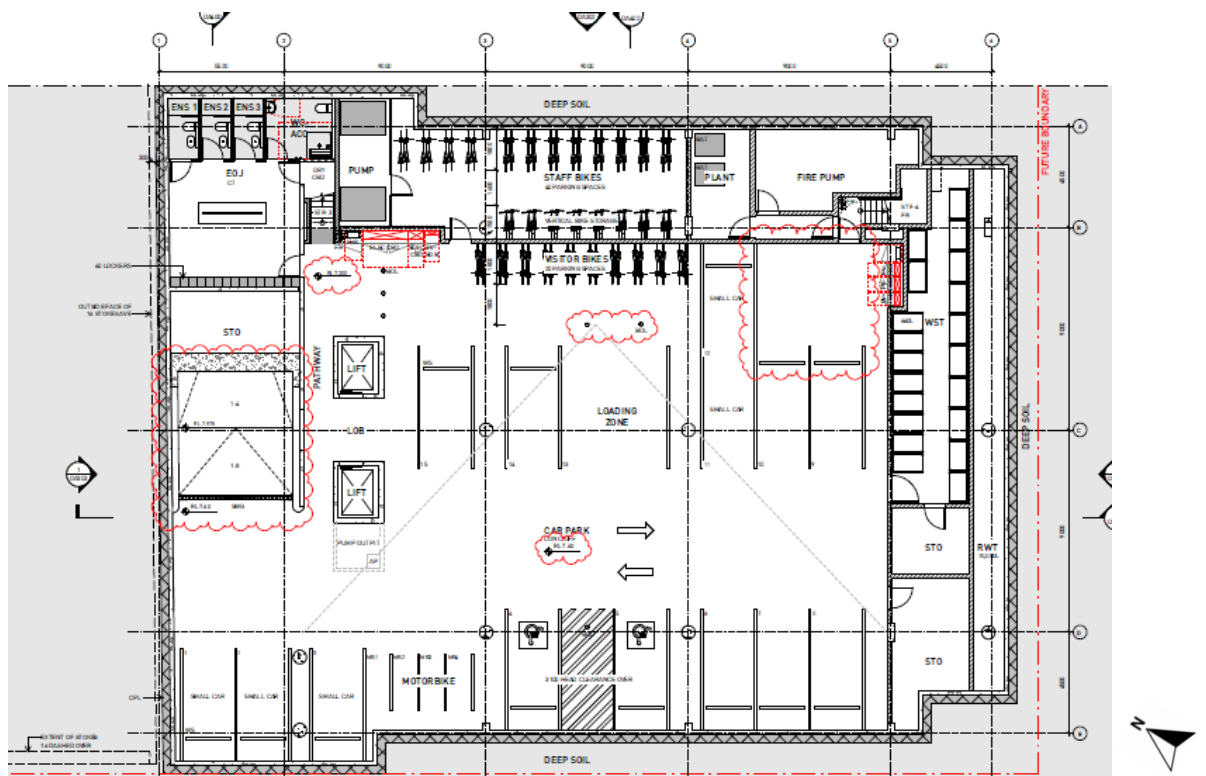


Figure 16: Plan of proposed subdivision



**Figure 17:** Site plan, note extent of land required for dedication for future road and future lane to the west and south of the proposed building



**Figure 18:** Proposed basement

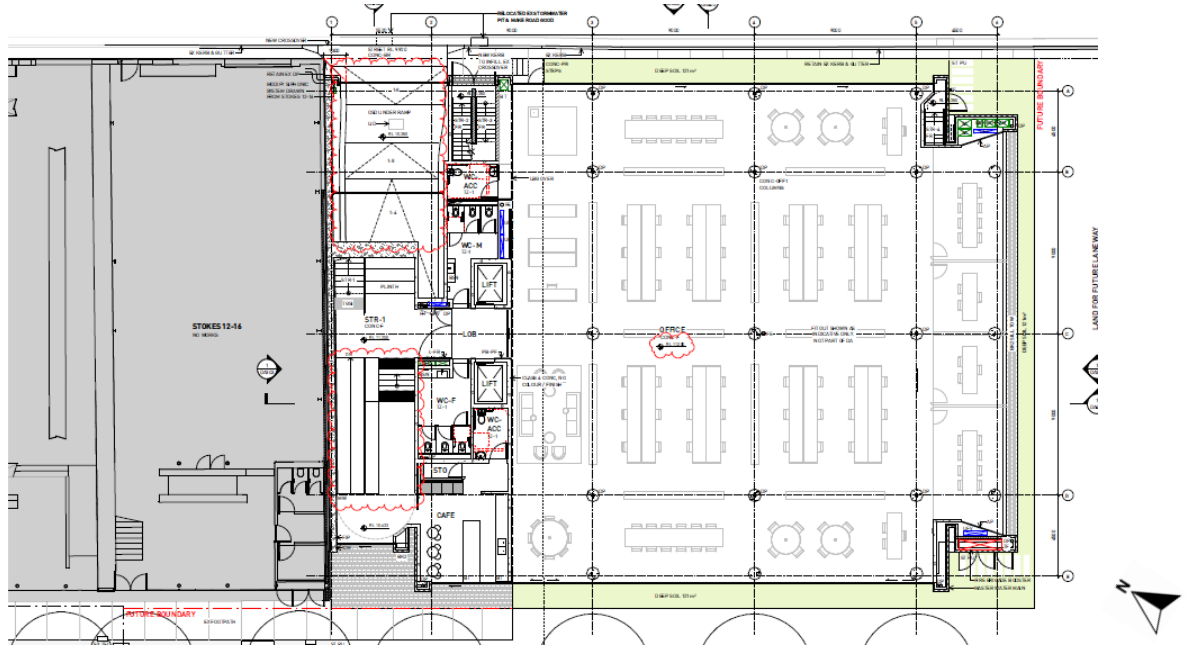


Figure 19: Proposed ground floor plan

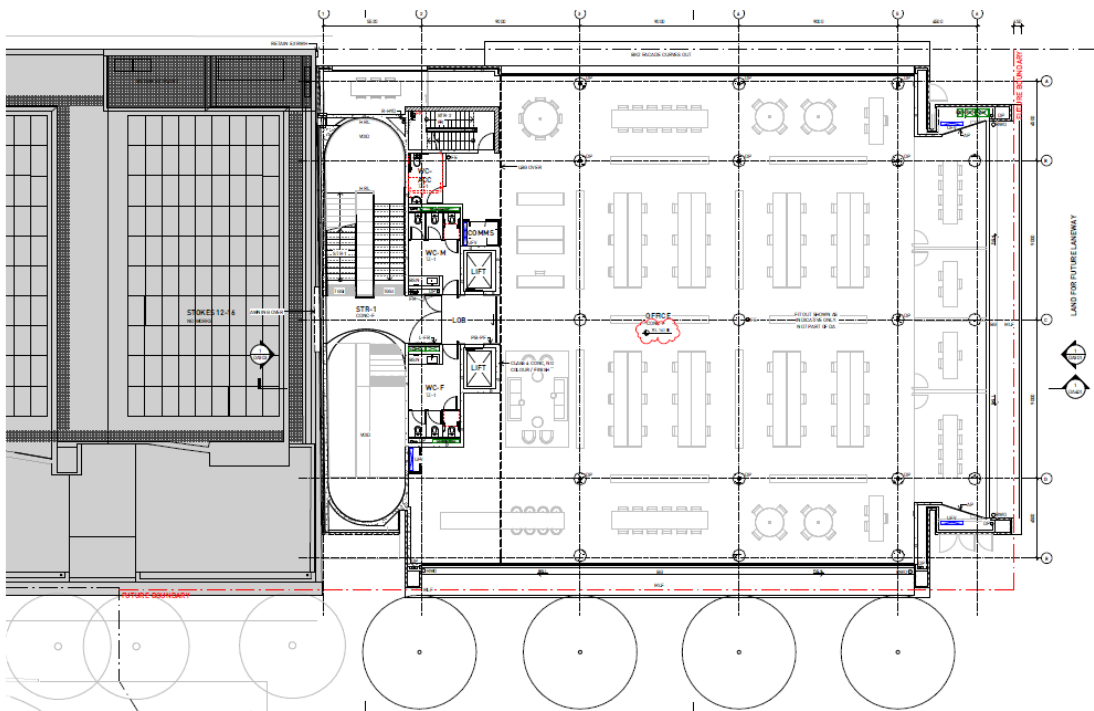


Figure 20: Proposed level one plan

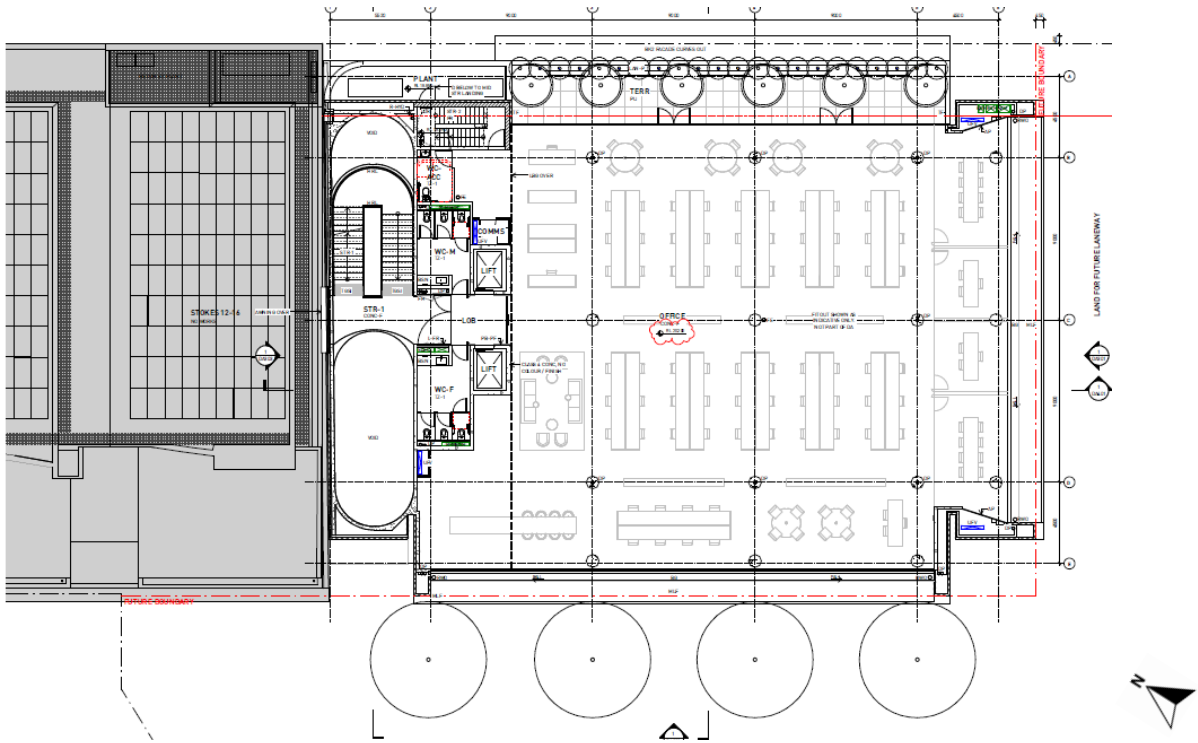


Figure 21: Proposed level two plan

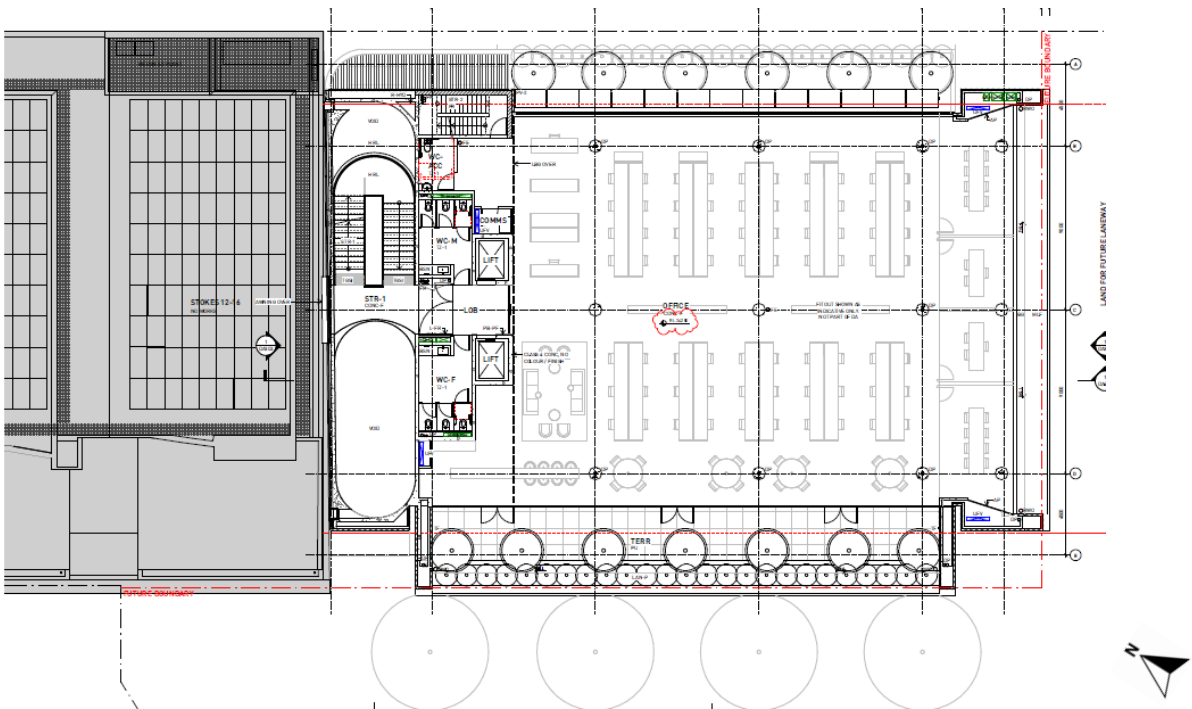


Figure 22: Proposed level three plan

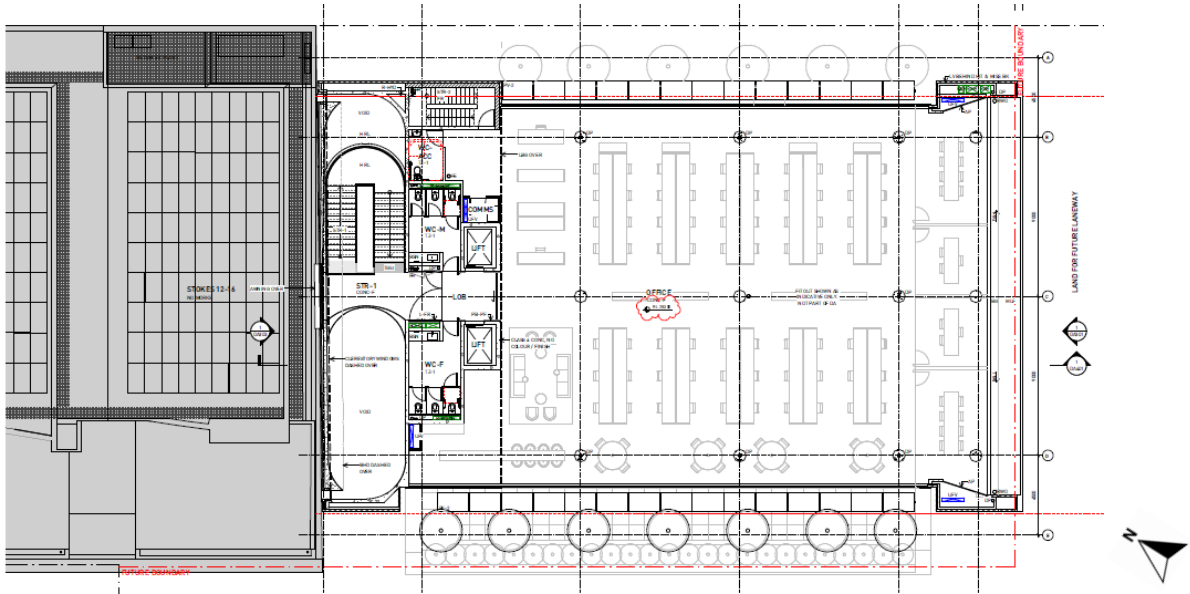


Figure 23: Proposed level four plan

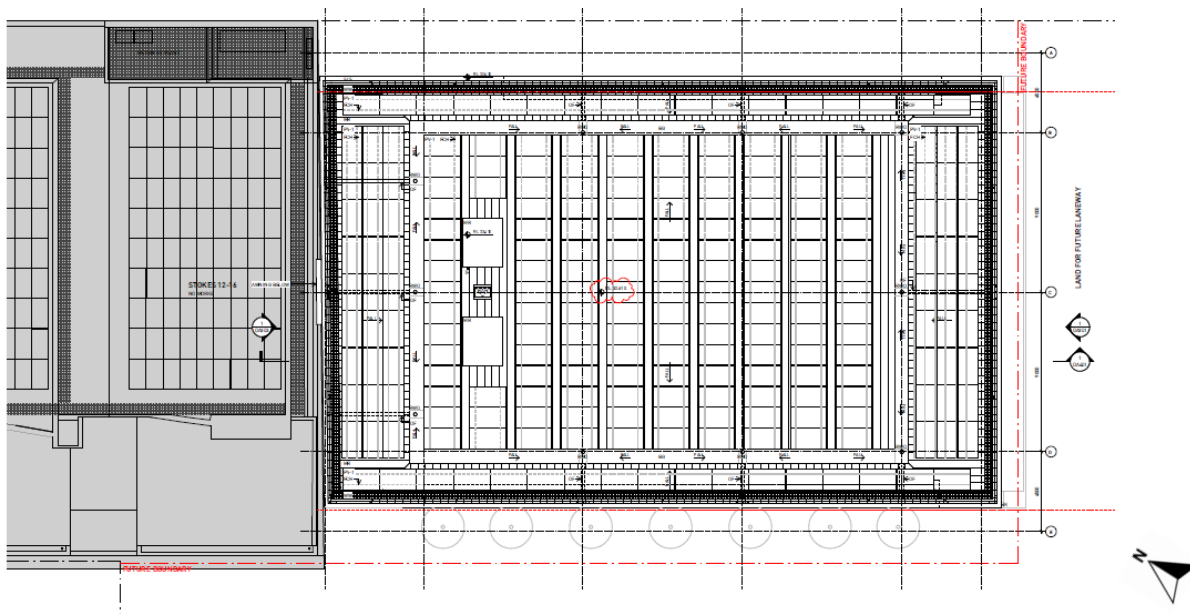


Figure 24: Proposed roof plan

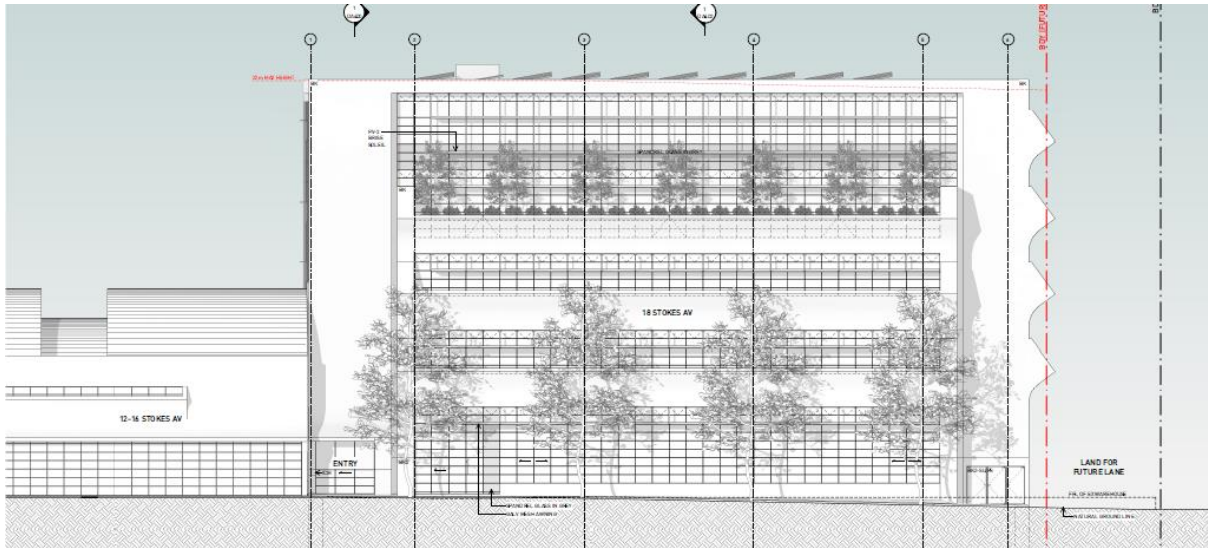


Figure 25: Proposed west elevation (Stokes Avenue)

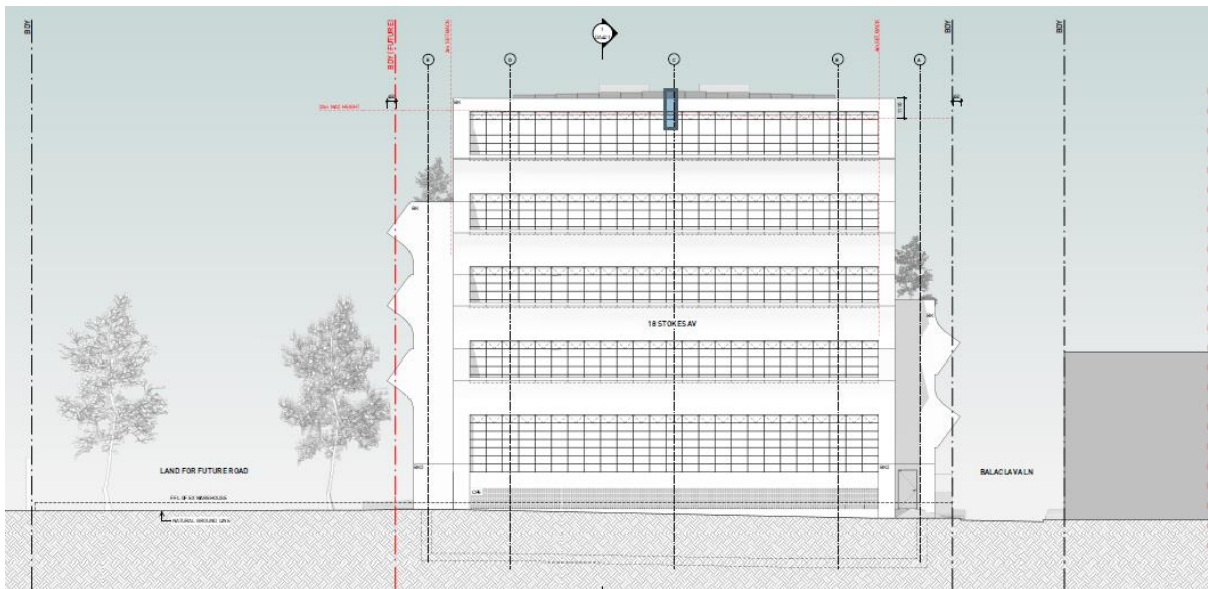


Figure 26: Proposed south elevation (future laneway)

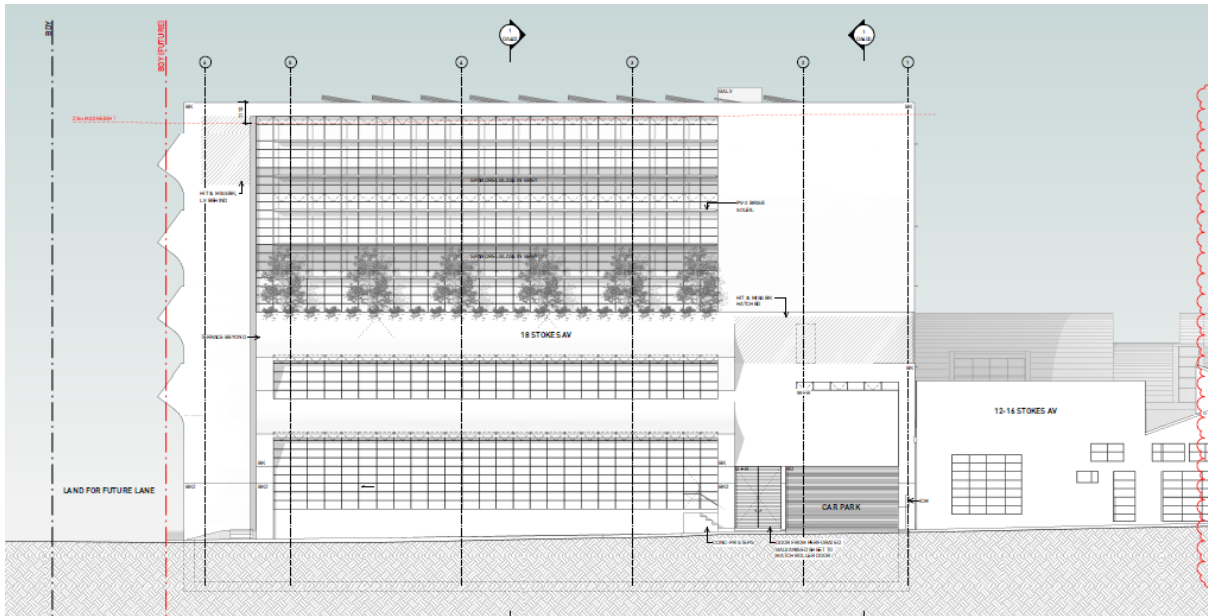


Figure 27: Proposed east elevation (Balaclava Lane)

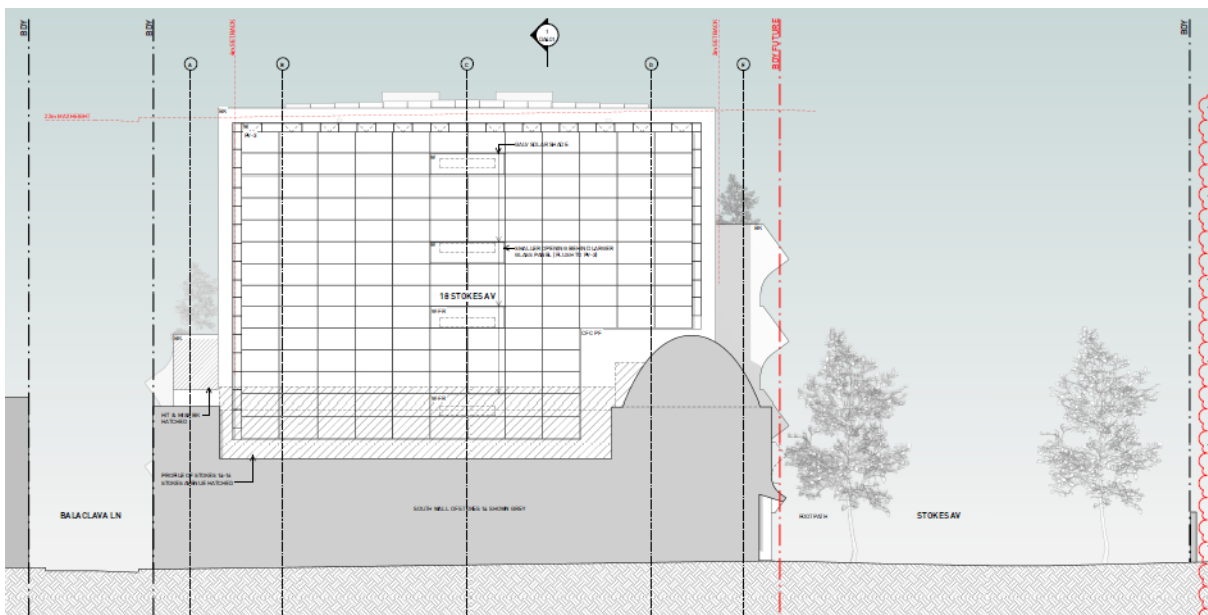


Figure 28: Proposed north elevation (abutting Building 1)



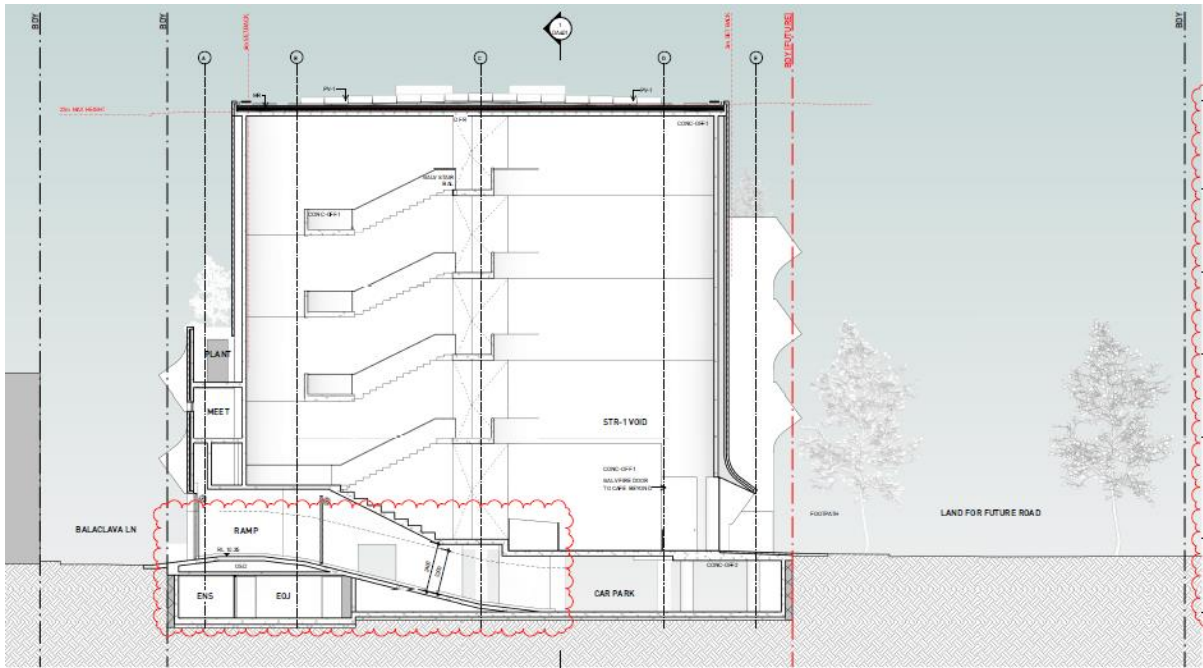


Figure 29: Proposed Section A

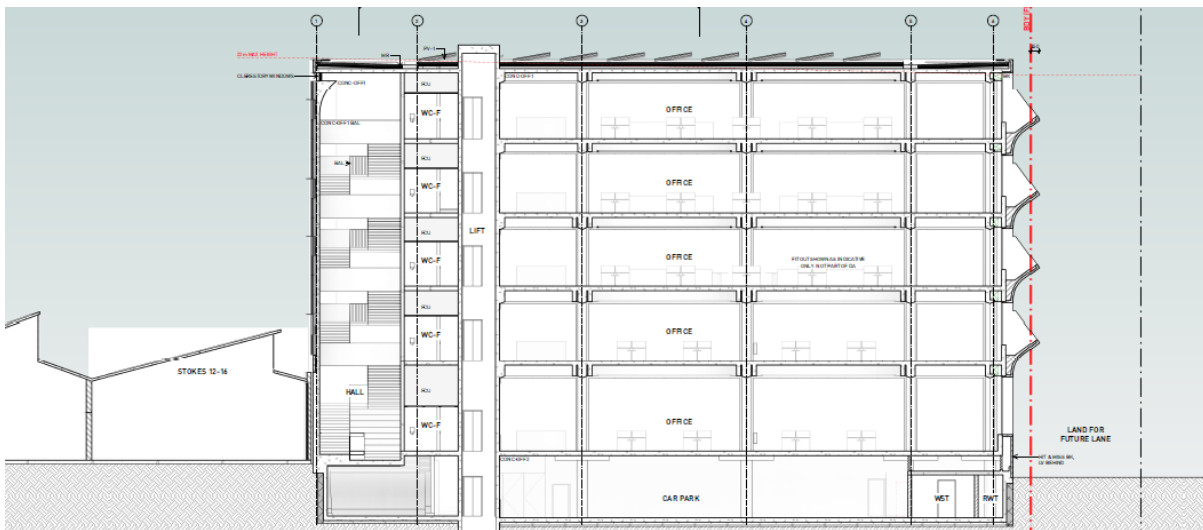


Figure 30: Proposed Section B

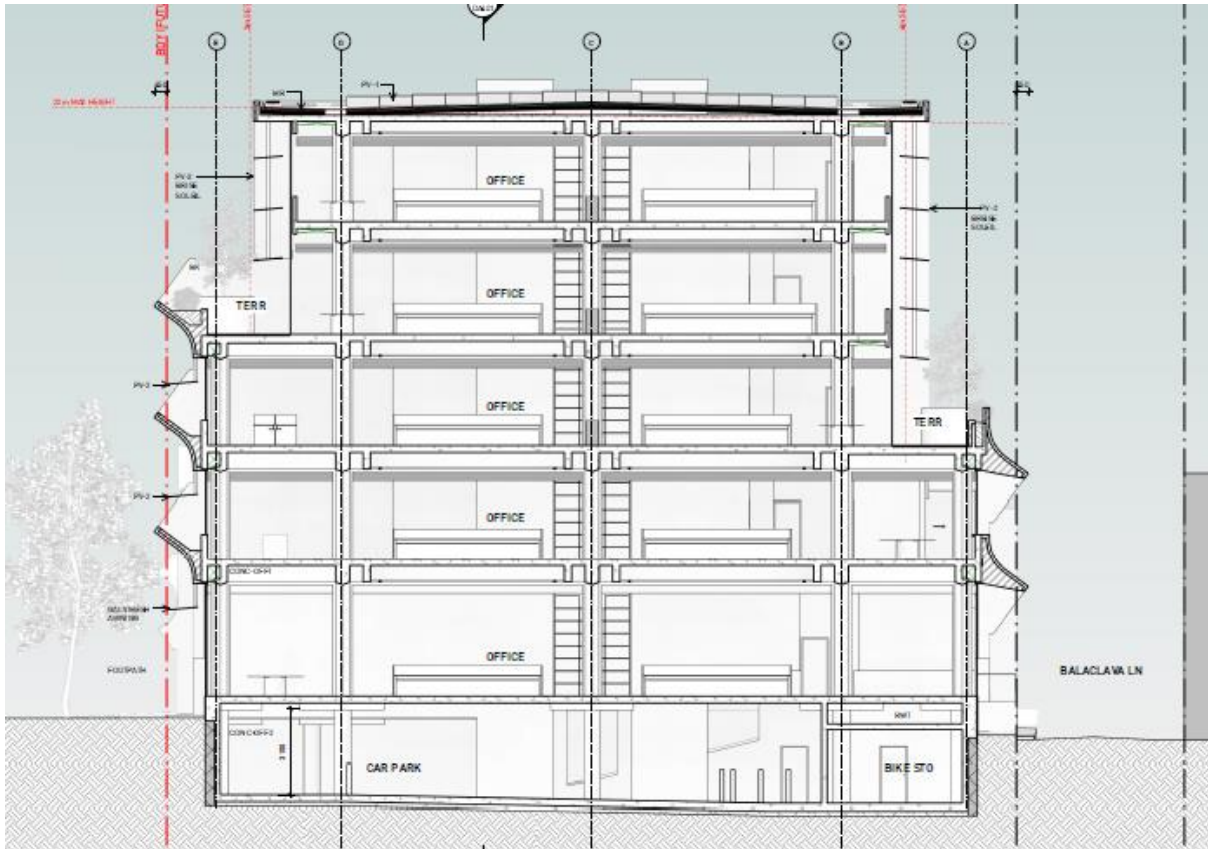


Figure 31: Proposed Section C



Figure 32: Photomontage from Stokes Avenue



**Figure 33:** Photomontage viewed above Stokes Avenue



**Figure 34:** Photomontage looking north from the site's south-western corner



Figure 35: Section through building



Figure 36: Photomontage of stair balustrades

## Assessment

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

## State Environmental Planning Policies

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

#### Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. Soil samples taken from locations across the site were analysed for a broad range of contaminants however concentrations were within the adopted criteria. A bundle of asbestos fibres was identified in one soil sample from one location however, the asbestos concentration was below the adopted criteria. The Detailed Environmental Site Investigation Report (DESI) confirms that contaminant concentrations within soils do not represent an unacceptable risk to human health with respect to the proposed future site use.
34. Groundwater samples were analysed for a broad range of potential contaminants. All chemical contaminant concentrations were below the adopted criteria apart from cadmium, copper, lead and zinc. The DESI confirms that while the concentrations of these metals were detected above the criteria, the levels detected are considered indicative of disturbed urban ecosystems such as the location of the site which is known to be impacted by metals contamination.
35. The DESI confirms there is a possible exposure route for ingestion or skin contact with groundwater for the proposed development. However, recommendations are provided to ensure this risk is managed appropriately.
36. In consideration of the above, the applicant's consultant concludes that the site is suitable for the proposed development.
37. The City's Health Unit is similarly satisfied that, subject to conditions, the site can be made suitable for the proposed use.

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

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

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

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

39. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.
40. 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 2 (Vegetation in Non Rural Areas) 2017

41. The proposal does not include the clearing of vegetation in a non-rural area and as such is not subject to this SEPP.

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

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

#### Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the E3 Productivity Support zone. The proposed development is defined as a commercial office premises and a food and drink premises which are permissible uses within the zone.  The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	The proposed development does not comply with the maximum height of buildings development standard.  A maximum building height of 22m is permitted.  A height of 23.01m is proposed.  A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.
4.4 Floor space ratio 6.14 Community infrastructure at Green Square	Yes	The proposed development complies with the maximum floor space ratio development standard.  A maximum FSR of 1.5:1 or 5,400sqm is permitted. This is inclusive of the base FSR of 1:1 permitted under clause 4.4

Provision	Compliance	Comment
		and an additional FSR of 0.5:1 permitted under clause 6.14. The proposal has a compliant FSR of 1.49:1 or 5,375sqm.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under clause 4.3. A Clause 4.6 variation request has been submitted with the application.  See further details in the 'Discussion' section below.

### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The northern extent of the site (part of Building 1) is located within the North Alexandria Industrial Heritage Conservation Area (HCA).</p> <p>The part of the site that this development application relates to does not fall within the HCA.</p> <p>The subject site is not listed as an individual heritage item, however, is in a distant proximity to two local heritage items.</p> <p>The application is supported on heritage grounds for the following reasons:</p> <ul style="list-style-type: none"> <li>• The demolition of the existing building is supported on the basis that it is a modern structure erected in the 1980s which does not contain any significant heritage elements or heritage fabric.</li> <li>• The proposed building will not affect the topography or views to and from nearby heritage items.</li> <li>• While Building 2 is larger than the existing Building 1, the new building will have an acceptable impact on the adjoining HCA. The new building complements the architectural style of Building 1 and</li> </ul>

Provision	Compliance	Comment
		<p>shares a similar character and materiality, as well as curved decorative elements.</p> <ul style="list-style-type: none"> <li>The proposed materials, finishes and colours are supported and complement and enhance the character of the HCA. Specifically, the design incorporates brick, concrete, metal and glass which directly responds to both the material and colour pallets of the area.</li> <li>The proposal is considered an acceptable infill building enhancing the site's contribution to the HCA and will create an interesting and sculptural building at the end of Stokes Avenue.</li> </ul>

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

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



## Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	<p>A maximum of 51 car parking spaces are permitted.</p> <p>The proposed development includes 15 car parking spaces and complies with the relevant development standards.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 3 Acid Sulfate Soils. A condition of consent has been recommended requiring the preparation of an Acid Sulfate Soils Management Plan.</p>
7.15 Flood planning	Yes	<p>The site is identified as being subject to flooding.</p> <p>The application proposes development at or below the flood planning level. A flood report accompanies the application demonstrating that the development can comply with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.</p> <p>The application seeks to dedicate land to the west and south of the site to the City for the creation of new road infrastructure, as required by the DCP.</p> <p>In the interim, this land will be treated with porous gravel treatment and native grasses and shrubs. Once the adjoining new road network is delivered, this land will be upgraded to a public road specification.</p> <p>The flood report has included a review of both development scenarios and the resultant overland flow paths for simulated flood events.</p> <p>The applicant's flood consultant has proposed flood mitigation measures for the interim scenario which includes a</p>

Provision	Compliance	Comment
		berm along the southern site boundary to direct the overland flow eastward towards Balaclava Lane and limit flows entering the property to the south. The City's public domain unit have advised that this berm will need to form part of the public domain works for the development during the interim scenario. Recommended conditions of consent relating to public domain works are proposed.
7.19 Demolition must not result in long term adverse visual impact	Yes	The proposal involves the demolition of a building however the site will be comprehensively redevelopment under the development consent (if granted).
7.20 Development requiring or authorising preparation of a development control plan	N/A	Pursuant to clause 7.20(2)(b) a development control plan is not required given the site area is less than 5,000sqm and the development will not result in a building with a height greater than 25m above ground level (existing).

## Development Control Plans

### Sydney Development Control Plan 2012

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

### Section 2 – Locality Statements

44. The site is located within the North Alexandria locality. The proposed development is in keeping with the unique character and the design principles in that it:

- Supports a diverse range of business uses, being predominantly commercial office use.
- Achieves an appropriate scale and responds to the fine grain character of the precinct.
- Provides a nuanced design response to maximise street activation whilst maintaining the industrial character of the area.
- Increases permeability across the precinct with the provision of the extension of Stokes Avenue to the south and the provision of a new laneway to the immediate south of the site to facilitate walking and permeability around the precinct.

## Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The proposal does not result in overshadowing to public open space, nor does it impinge on public views.</p> <p>The proposal positively addresses the street, providing multiple access points, and providing greater street activation. Basement levels do not protrude above adjoining ground level.</p>
3.5 Urban Ecology	Partial compliance	<p>The proposed development does not involve the removal of any trees.</p> <p>The SDCP 2012 requires that at least 15% canopy coverage of a site is provided within 10 years from the completion of development.</p> <p>Approximately 35% of the site area is required to be dedicated to the City for a future road network.</p> <p>Delivery of 15% canopy cover on the post-dedicated site area (i.e. remaining 65% of site area) is considered unreasonable given the adjoining future road network will include eleven mature street trees to provide shading and to increase biodiversity to the precinct.</p> <p>The voluntary planning agreement requires the applicant to plant eleven street trees on the Stokes Avenue frontage and a condition of consent has been recommended to require the applicant to submit a Tree Planting Plan which is in accordance with the City's Street Tree Master Plan.</p> <p>In addition, the application proposes landscaping to the terraces including lilly pilly trees which can achieve a 2.5m canopy spread to enhance greening and shading to the site.</p> <p>For these reasons, the non-compliance is considered acceptable.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The proposal seeks to be a largely self-sustaining building in terms of energy creation and usage.</p> <p>The building has been designed to maximize natural light and air flow</p>

Provision	Compliance	Comment
		<p>movement on all floors, through the generous floor to floor heights and large windows along three frontages of the building. The installation of a large solar panel array will generate significant energy supply for the building.</p> <p>A Building Management System (BMS) will control thermal comfort throughout the year, by considering the weather forecast to control natural ventilation, ceiling fans and hydronic heating and cooling.</p> <p>Overhead fans with a 6m diameter will provide an efficient flow of air movement, improving thermal comfort for the building's occupants. A hydronic pipe network system will provide heating and cooling to the floor slabs, enabling the office spaces to receive cooling from above and below. The proposal is not reliant on the use of AC, although there are provisions in place for its use during specific weather conditions.</p>
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under section 7.15 above.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposed development involves the subdivision of the site into two lots. One lot is 2,330sqm in size and is to contain Buildings 1 and 2. The second lot is 1,270sqm in size and is to contain the future road and laneway which is to be transferred to the City in the first instance and then dedicated as road in the future, when the new road network is delivered.</p> <p>The application was referred to Council's Specialist Surveyor, who supported the proposal, subject to conditions of consent.</p>
3.9 Heritage	Yes	Refer to discussion under clause 5.10 above.
3.11 Transport and Parking	Yes	<p><b>Bicycle Parking</b></p> <p>The proposal includes 40 bicycle parking spaces for staff and 20 bicycle parking spaces for visitors at basement level</p>

Provision	Compliance	Comment
		<p>which is compliant with the DCP. Adjacent to the bicycle parking spaces are end of journey facilities and 60 lockers which is compliant with the numerical requirements of the DCP.</p> <p>A condition has been recommended by the City's Transport Planner to require all vertical bicycle parking to be provided with 500mm spaces as per Australian Standard 2890.3.</p> <p><b>Vehicle Parking</b></p> <p>The proposal includes 15 car parking spaces including two accessible spaces, a loading space and five small car spaces. The car parking provision and design has been reviewed by the City's Transport Planner and is deemed acceptable.</p> <p><b>Service Vehicle Parking</b></p> <p>A single service vehicle space is proposed which is appropriately located near the vehicle entry point and lifts.</p> <p><b>Motorbike Parking</b></p> <p>Four (4) motorbike parking spaces are proposed. The location of these spaces is supported.</p>
3.12 Accessible Design	Yes	The proposal can achieve equitable access. Compliance with the National Construction Code is required to be demonstrated prior to the issue of a Construction Certificate.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition 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.
3.15 Late Night Trading	Yes	The site is situated within a Late Night Management Area. The food and drink premises is classified as a Category B Low Impact Premises.

Provision	Compliance	Comment
		<p>Within the Late Night Management Area, Category B premises are permitted base trading hours between 6am and 2am.</p> <p>The applicant has sought approval of the food and drink premises between 6am and 10pm.</p> <p>The proposed hours of operation are consistent with the DCP and a condition of consent has been recommended restricting the hours of operation to between 6am and 10pm, Monday to Sunday.</p>
3.16 Signage and Advertising	No	No signage is proposed. A condition of consent is recommended requiring a separate development application is submitted and approved by the City for any signage (other than exempt or complying signs).

## Section 4 – Development Types

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

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	N/A	Refer to discussion in response to Section 5.8.3.2.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	<p>The DCP requires floor to ceiling heights of 4.5m on the ground floor and 3.6m on commercial floors above ground.</p> <p>The following compliant heights are proposed:</p> <ul style="list-style-type: none"> <li>• Ground - 4.95m</li> <li>• First, second and third - 4.05m</li> <li>• Fourth - 4.31m</li> </ul>
4.2.2 Building setbacks	N/A	Refer to discussion in response to Section 5.8.3.3 below.

4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The application is accompanied by shadow diagrams which demonstrate that the proposal does not contribute to any adverse impacts with regard to overshadowing. The additional overshadowing falls primarily on the roofs of adjoining commercial buildings and within the future street area.
4.2.3.4 Design features to manage solar access	Yes	The proposal incorporates horizontal shading devices to block out summer sun while permitting winter sun into the building.
4.2.3.6 Deep Soil	N/A	Refer to discussion in response to Section 5.8.3.6.1 below.
4.2.6 Waste and recycling Management	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

## Section 5 – Specific Areas

### 5.2 Green Square

Provision	Compliance	Comment
5.2.3 Community infrastructure	Yes	<p>The proposal seeks to rely on clause 6.14 of the SLEP 2012 relating to community infrastructure floor space at Green Square.</p> <p>The DCP requires land to the west and south of the site to be dedicated to the City as a future 20m wide road (north-south) and a future 6m wide laneway (east-west).</p> <p>The proposal provides the required community infrastructure as set out in the DCP.</p> <p>The applicant has agreed to enter into a voluntary planning agreement to secure the required community infrastructure contribution.</p>

Provision	Compliance	Comment
5.2.4 Local infrastructure	Yes	<p>The proposal provides for the required community infrastructure (new street and new laneway) which is consistent with the requirements set out in the DCP.</p> <p>It is noted the site to the immediate west at 20 Stokes Avenue (currently occupied by the NSW Police and Bomb Disposal Unit) has a right of carriageway adjacent to the site's northwestern boundary to Stokes Avenue. The proposal provides for an interim landscaped treatment to Stokes Avenue prior to the new road network being delivered. Importantly, the interim landscaped treatment does not inhibit the right of carriageway and maintains access for 20 Stokes Avenue so vehicles can safely ingress and egress this site from Stokes Avenue.</p>
5.2.7 Stormwater management and waterways	Yes	The site is identified as being on flood prone land. See discussion under section 7.15 above.
5.2.9 Building design	Yes	<p>The building is aligned to Balaclava Lane to the rear and to the future street network to the south and west. A landscape buffer is provided between the building along these street frontages to provide a clear delineation between the public and private domain.</p> <p>The new building complements the architectural style of Building 1 and shares a similar character and materiality, as well as curved decorative elements. The facades incorporate curved brick facades to collect water and shade the building. The high proportion of brick in the facade will optimise the building's thermal performance whilst responding to the industrial character of the precinct.</p>
5.2.10 Setbacks	N/A	Refer to discussion in response to Section 5.8.3.3 below.



## 5.8 Southern Enterprise Area

Provision	Compliance	Comment
5.8.2.2 Land uses in North Alexandria	Yes	<p>The site is located within the north-block of the North Alexandria precinct. The proposed use comprises a commercial office premises and food and drink premises which will attract business, workers and visitors to this part of the precinct.</p> <p>The proposal provides activated and engaging street frontages to the proposed new street network, as well as to the existing Balaclava Lane to the rear.</p>
5.8.3.1 Subdivision	Yes	<p>The application includes subdivision to create a new allotment to enable the required road infrastructure to be delivered.</p>
5.8.3.2 Building height	Partial compliance	<p>The site is permitted a maximum building height of two storeys fronting Balaclava Lane, three storeys fronting Stokes Avenue and Building 1 and five storeys within the central part of the site.</p> <p>The proposed development is compliant with the height in storeys control with the exception of a five storey element along the building's northern extent, adjacent to Building 1.</p> <p>The applicant has confirmed the non-compliance has arisen due to the location of the service core at the northern extent of the site. This has resulted in additional solar panels being provided and enables the existing building to have three open elevations with active frontages and a detailed architectural expression.</p> <p>The location of the core adjacent to Building 1 is acceptable. The additional bulk and scale does not result in an adverse amenity impact on the surrounding public domain and the incorporation of additional solar panels on this elevation is supported. The location of the services adjacent to the</p>

Provision	Compliance	Comment
		existing building results in enhanced internal amenity to the office floorplan and the incorporation of additional glazing on the site's three frontages is supported.
5.8.3.3 Building alignment and setbacks	Partial compliance	<p>The DCP requires the following upper level building setbacks for the site:</p> <ul style="list-style-type: none"> <li>• 4m from Balaclava Lane</li> <li>• 2m from the northern elevation</li> <li>• 3m from Stokes Avenue</li> <li>• Nil to the future rear lane</li> </ul> <p><b>Balaclava Lane - Minor non-compliance</b></p> <p>The proposal provides a mixed setback above the street wall. A setback of 4.5m is provided to the glass line of the building. Minor components of the facade at the southern and northern end of the frontage have a setback of 3.2m from the boundary. This includes the fire stairs to the north and external wall to the south.</p> <p>The proposed setback is supported on the basis that the average weighted setback is more than 4m. The variance allows for greater architectural expression along this frontage.</p> <p><b>Northern elevation - Minor non-compliance</b></p> <p>The proposed building directly abuts Building 1 to the north and does not provide the required 2m upper level setback. The justification provided in response to Section 5.8.3.2 (building height) is relevant and similarly applies to the extent of this non-compliance.</p> <p><b>Stokes Avenue - Minor non-compliance</b></p> <p>A varying compliant setback of between 3m and 4.45m is provided from the</p>

Provision	Compliance	Comment
		<p>building to the future Stokes Avenue boundary.</p> <p>At third floor level, a terrace protrudes from the building and sits approximately 450mm over the future street boundary.</p> <p>The location and design of the terrace is supported as it has been designed with curved brick detail which adds visual interest to the street edge and public domain.</p> <p><b>Future Rear Lane - Complies</b></p> <p>As per the DCP requirements, no setback is provided to the future rear lane to the south of the site.</p> <p><b>Projections</b></p> <p>The design includes 450mm projections over the existing Balaclava Lane boundary and future boundaries to the rear laneway and Stokes Avenue. In accordance with Schedule 4 of the DCP, projections of 450mm are acceptable on the basis that they are at least 3m above the footpath and are constructed primarily of masonry material. The projections meet the requirements of the DCP and provide a decorative element to the three street frontages whilst helping to shade the building.</p>
5.8.3.4 Active frontages and street level design	Yes	<p>The site is not mapped on the active frontage map or on the footpath, awnings and colonnades map.</p> <p>The building has three street frontages. The design incorporates extensive glazing along these frontages to provide visual interest and create opportunities for interactions with pedestrians.</p>
5.8.3.5 Building layout and design	Yes	<p>The building design incorporates generous floor to ceiling heights to maximise the use of natural lighting and ventilation.</p> <p>The new building complements the architectural style of Building 1 and</p>

Provision	Compliance	Comment
		<p>shares a similar character and materiality, as well as curved decorative elements. The choice of materials, finishes and colours include brick, concrete, metal and glass directly respond to both the material and colour pallets of the area which is supported. These materials are consistent with the area's industrial history, but the form is reflective of the desired future character.</p> <p>The rooftop has been appropriately designed to conceal the two lift overruns and the solar panels.</p>
5.8.3.6.1 Landscaping	No, but considered acceptable	<p>The SDCP 2012 requires the site to provide 15% deep soil planting. Where it is demonstrated that the deep soil planting requirements cannot be met, development is to incorporate on-structure plantings and green roofs.</p> <p>Since the lodgement of this application, the quantum of deep soil has been significantly increased. The originally lodged scheme did not include any provision for deep soil planting within the proposed allotment which contains Buildings 1 and 2. The amended proposal includes 5% deep soil planting which is provided along each of Building 2's street frontages, with pockets at the corners.</p> <p>It is noted that the 5% is inclusive of Building 1 which is built boundary to boundary and does not provide any deep soil planting. In isolation, Building 2 provides 10% of its site area as deep soil planting (121sqm).</p> <p>To enhance greening of the site the proposal incorporates two elevated terraces which will provide on-structure plantings including lilly pilly trees and roof terrace planters. These spaces will act as breakout spaces for workers to socialise and recreate outdoors.</p> <p>The applicant has not proposed a green roof as approximately 514 solar panels are proposed to enable the proposed</p>

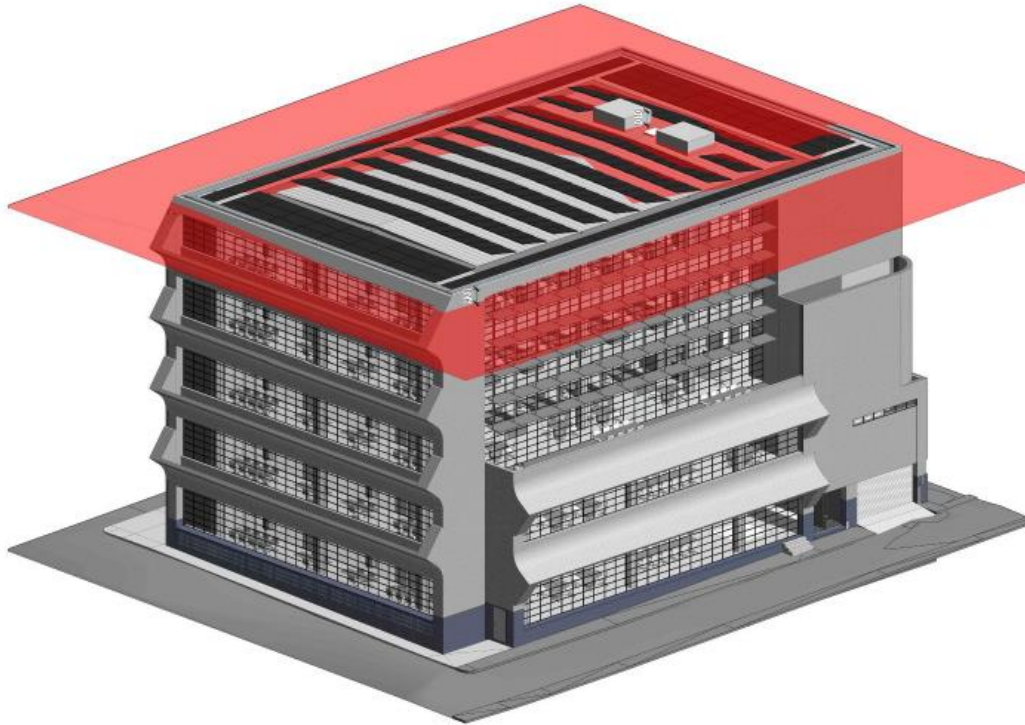
Provision	Compliance	Comment
		<p>building to generate its own energy. It is noted that the SDCP 2012 states that Council may accept the substitution of green roofs with solar panels in some instances.</p> <p>It is acknowledged that 35% of the existing site area (1270sqm) is required to be dedicated to the City for the future road network which will include some deep soil planting. This is a significant amount of land, and it is considered unreasonable in this instance to require 15% deep soil planting (equivalent to 345sqm) to be delivered by the subject development application. The provision of 121sqm of deep soil planting and the provision of additional landscaping on the terraces is considered an acceptable outcome.</p>
5.8.3.7 Parking, access and loading and servicing	Yes	<p><b>Vehicle Access</b></p> <p>Vehicular access to the basement car park is provided from Balaclava Lane which is supported. All vehicles can enter and exit the site in a forward direction.</p> <p><b>Waste Collection and Loading</b></p> <p>On-site waste collection is proposed from the basement. Swept paths demonstrate that the mini-rear loader waste collection vehicle can exit the site with vehicles parked on the opposite side of Balaclava Lane. However, this is likely to damage the kerb and clearances to the building structure.</p> <p>A condition of consent is recommended requiring a parking plan is provided for the approval of the City's Local Pedestrian, Cycling and Traffic Calming Committee. The plan is to demonstrate the removal of two on-street car parking spaces along Balaclava Lane.</p>
5.8.3.9 Storage areas	Yes	Storage areas are located within the building and are not visible from the public domain.

Provision	Compliance	Comment
5.8.4.2 Street, pedestrian and cycle network	Yes	The proposal seeks to dedicate 1,270sqm of land for the future street network which is compliant with the requirements of the DCP. The development will not impede the delivery of the proposed road network adjacent to the site.
5.8.5 Managing transport demand	Yes	The proposal will actively promote sustainable transport modes. The proposal provides limited vehicular car parking (15 spaces) and provides 60 bicycle parking spaces for workers and visitors to the site. In addition, end of trip facilities are provided at basement level to encourage active transport to the site.
5.8.6.1 Stormwater management and waterways	Yes	The site is identified as being on flood prone land. See discussion under section 7.15 above.

## Discussion

### Clause 4.6 Request to Vary a Development Standard

45. The site is subject to a maximum height of building control of 22m. The proposed development has a maximum height of 23.01m equating to a variation of 1.01m or 4.59%.
46. The elements that protrude above the height control are limited to the lift overruns, the solar panels and the parapet of the roof on the site's eastern and southern extent. Refer to the height plane diagram below.



**Figure 37:** 3D height plane diagram identifying elements that protrude above the 22m height control

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

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

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

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

- The height of the subject proposal is consistent with the height in storeys control applied to the site. A five storey building with the specified street wall heights to Stokes Avenue and Balaclava Lane has been proposed. The additional building height arises from greater floor to floor heights in the building. The resulting variance to the height control is most pronounced on the roof at the lift overrun and solar panels. These elements are within the roof plane and not visible from the public domain.
- The building's roof exceeds the maximum height but is typically setback behind a street wall, minimising the impact. Further, the extent of this variation is minor, being less than 1m.
- The height of the building reflects the desired future character of the area which includes larger developments of six to eight storeys to the south-east and south-west. The proposed building is part of a larger site which includes a reduction in height to three storeys on the northern portion of the site. The proposed development is consistent with the height of development that is envisioned in the area.

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

- The subject warehouse building at 18 Stokes Avenue is outside of the HCA boundaries. Additionally, the subject site is located in a distant proximity to the following heritage items:
  - 'Warehouse including interior', 32–42 McCauley Street, item no. I21
  - 'Former industrial building including interior', 111–117 McEvoy Street, item no. I22
- The Heritage Impact Statement by City Plan considers the proposed development's relation to the heritage conservation area and nearby heritage items stating on pages 16-17:

"The proposed development will occupy lesser space than the existing warehouse building and will be situated at the southeastern portion of the allotment, leaving a large portion of previously occupied land at the southwest part of the lot and along the south boundary for future development of a new road and future lane respectively. The proposed development will not affect the topography or views to and from the nearby heritage items due to their isolation by existing buildings between Balaclava Lane and McCauley Street. While it is larger in scale and bulk in comparison to the adjoining building at 12-16 Stokes Avenue, the new building will have an acceptable impact on known heritage values of the North Alexandria Industrial HCA as it complements the architectural style of the recently converted and modified Smart Design Studio building. The landscaping along Stokes Avenue, directly in front of the proposed development will be enhanced through pathway and landscaping upgrades improving the streetscape character of Stokes Avenue and leaving space for future infrastructural development.



The proposed design of a new 5-storey building, being larger in scale, is sympathetic to the type, siting, form, materials and details of the surrounding character of the North Alexandria Industrial HCA, which has warehouses with high floor to ceiling heights than normal buildings making two to three-storey buildings appear at least another level higher. As noted above, the new Stokes Avenue facade will complement the design of the Smart Design Studio office building located to the north of the proposed development featuring similar peeling-folding language and curved decorative elements. The proposed design combines two buildings in an ensemble which does not dominate over the existing buildings at Stokes Avenue and Balaclava Lane rather adding gradual increase in height and enhancing established streetscape and industrial nature of the area.

The proposed development is not designed as copy or replica of other buildings in the area, instead, it has been designed to complement the character of the North Alexandria Industrial HCA through its materiality, form and style, referencing the warehouse character of the surrounding buildings in a contemporary but compatible manner".

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

- The site is located within an industrial area where development is typically between one to two storeys. The proposed development does not block any views.

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

- The extent of the variation to the height control is minor, being a maximum of 4.59% at lift overruns located within the centre of the roof plane. The adjoining building on the subject site has a height substantially below the height limit and provides a transition downwards to the north.
- The development maintains an appropriate height transition away from Green Square.

**(e) in respect of Green Square—**

**(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and**

**(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.**

- The site has a split height limit of 18m and 22m. The proposed building is located wholly on the area of the site designated as having the taller 22m height limit.
- The proposal will provide strong definition to the newly created streets and lanes surrounding the building. Awnings are to be built to the site's boundary with a small setback below allowing pedestrian circulation. All frontages will be activated by large windows and entrances on the ground floor. Street wall heights and setbacks above the street wall are provided in compliance with the applicable controls. The development's minor

exceedance of the building height control does not negatively affect its ability to appropriately define the street network.

(b) That there are sufficient environmental planning grounds to justify contravening the standard:

(i) Section 4.2.1.2 of the Sydney DCP 2012 requires the following minimum floor to floor heights:

(1) Buildings with a commercial or retail use are to have a minimum floor to floor height of:

(a) 4.5m on the first basement floor to enable conversion to retail uses for all development in Central Sydney;

(b) 4.5m on the ground floor; and

(c) 3.6m on the first commercial floor and any commercial floor above

The proposed design has the following floor to floor heights and variance from the DCP minimums:

Level	DCP minimum (m)	Proposed (m)	Variance (m)
Ground	4.5	4.5	0
L1	3.6	4.5	0.9
L2	3.6	4.5	0.9
L3	3.6	4.05	0.45
L4	3.6	4.31	0.71
<b>Total</b>			<b>2.96</b>

The proposed height variation of the development is 1.01m. This height is more than accounted for in the additional floor to floor heights being proposed.

The additional floor to floor heights reinforce the sustainable design techniques of the proposed building by maximising natural light and airflow movement. The development has the goal to be highly efficient and self-sustaining in terms of energy creation and usage.

The subject site is located within an industrial area that is envisioned by Council to have a future commercial character. The proposed additional building height accordingly has no impact on residential privacy. Further, the development has minimal overshadowing impacts with additional overshadowing falling primarily on the roofs of industrial buildings and future streets. Accordingly, the proposed additional height has no significant negative environmental impacts on surrounding development.

- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The proposal is consistent with the objectives of the E3 Productivity Support zone as follows:
- The proposal provides a high quality office development.
  - The proposed building will encourage employment opportunities.
  - The proposal promotes uses with active street frontages.
  - The proposal includes a ground floor café which is intended to meet the day to day needs of workers in the area.

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

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

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

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

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

52. The applicant has satisfactorily demonstrated that there are sufficient environmental planning grounds to contravene the development standard.

53. The height variation has occurred due to the applicant's desire to provide greater floor to floor heights within the commercial building. When compared with the minimum requirements set out in the SDCP 2012, the proposal is an additional 2.96m in height. The driver for this is sustainable design and to maximise natural light and airflow movement. The applicant's desire is for the building to be highly efficient and self-sustaining in terms of energy creation and usage.
54. The additional height is limited to the parapet of the building, the centrally located lift overruns and the solar panels at roof level. The applicant has demonstrated the additional height has no impact on residential privacy, overshadowing and does not have any environmental impacts on surrounding development.

Is the development in the public interest?

55. Regarding varying development standards, the public interest is deemed to be protected where a development standard meets the objectives of the zone and those of the development standard sought to be varied. As has been discussed previously, the development is consistent with the objectives of Clause 4.3 notwithstanding the proposed variations to the numerical standards.
56. The objectives of the E3 Productivity Support zone are provided below:
  - (a) To provide a range of facilities and services, light industries, warehouses and offices.
  - (b) To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
  - (c) To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.
  - (d) To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.
  - (e) To provide opportunities for new and emerging light industries.
  - (f) To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.
  - (g) To encourage employment opportunities.
  - (h) To promote land uses with active street frontages.
  - (i) To provide for land uses that support the viability of adjoining industrial land uses.
57. The proposal satisfies the objectives in the following ways:
  - (a) The proposed use is permissible in the zone and complements the existing mix of uses in the locality.
  - (b) The proposed use incorporates a commercial office development and a food and drink premises which will not compete with land uses in the surrounding local and commercial centres.

- (c) The proposal will encourage employment opportunities, with a substantial amount of commercial office floorspace proposed.
- (d) The proposal provides activate street frontages to Stokes Avenue, Balaclava Lane and the new laneway to the south.

#### Conclusion

58. For the reasons provided above the requested variation to the height of building's development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the SLEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of building's development standard and the E3 Productivity Support zone.

### Consultation

#### Internal Referrals

59. The application was discussed with Council's:
- (a) Environmental Health Unit;
  - (b) Heritage and Urban Design Unit;
  - (c) Public Domain Unit;
  - (d) Surveyors;
  - (e) Transport and Access Unit;
  - (f) Landscape Assessment;
  - (g) Planning Agreements Unit;
  - (h) Tree Management Unit; and
  - (i) Waste Management Unit.
60. 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

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

## Advertising and Notification

63. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 12 May 2023 and 3 June 2023. A total of 79 properties were notified and one submission of support was received.

## Voluntary Planning Agreement

64. The application is accompanied by a public benefit offer to enter into a Voluntary Planning Agreement. The Agreement will secure a community infrastructure contribution available under clause 6.14 of the SLEP 2012. The additional 1,741sqm floorspace (0.48:1) generates a total contribution value of \$348,200.
65. As outlined in the public benefit offer, the applicant seeks to offset the contribution with the transfer or dedication of land for a future 20m wide road (north-south) and a future 6m wide laneway (east-west). Both of these are shown in the SDCP 2012.
66. In accordance with the City's Development Guidelines for Community Infrastructure, the transfer or dedication of land attracts an offset credit of \$200 per sqm. The draft Planning Agreement will secure the land for the future road and laneway (1,270sqm) with an attributed value of \$254,000, leaving a contribution balance of \$94,200.
67. The land cannot be dedicated as public road in its interim state. Instead, the land is to be subdivided and transferred into the City's ownership and classified as operational land. As an interim arrangement (until it can be dedicated as public road) the land will be covered by a public access easement.
68. The applicant has agreed to embellish the land and the scope of works to this land has been agreed by the City's Public Domain, Parks and Traffic Operations units. It is the City's position that the future road and laneway cannot be embellished to their full form and cannot be dedicated as 'public road' at this time. Only with the re-development of several surrounding properties and the dedication of adjoining parcels of land can the future new network be delivered in its final form.
69. As part of the public benefit offer, the applicant will construct as much of the infrastructure as possible, except for the future road pavement which will be given a temporary gravel treatment.
70. A quantity surveyor has completed an independent peer review of the costs for the interim works on this land. From this review, it is known that the value of the public benefits will consume all the community infrastructure contribution and all of the Section 7.11 contributions.
71. As such, a condition is proposed stating that the Section 7.11 contributions payable may be offset in accordance with the requirements and obligations identified in the Planning Agreement between The Council of the City of Sydney and Smart Design Property Pty Ltd.

## Financial Contributions

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

72. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
73. A credit has been applied for the most recent approved use of the site which relates to approximately 1,756sqm of general industry.
74. As discussed above, a condition relating to the development contribution has been included in the recommended conditions of consent. The condition states that this contribution amount may be offset in accordance with the requirements and obligations identified in the Planning Agreement between The Council of the City of Sydney and Smart Design Property Pty Ltd.

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

75. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$10,611.53 per square metre of the total non-residential floor area (5,059sqm) totalling \$536,837.25. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

## Relevant Legislation

76. Environmental Planning and Assessment Act 1979.

## Conclusion

77. The application seeks development consent for subdivision, the demolition of an existing warehouse building and construction of a five (5) storey commercial development comprising a commercial office and a food and drink premises. The proposal involves excavation to create a single basement level providing 15 car parking spaces, in addition to associated landscaping and earthworks.
78. The proposal comprises an office premises and a food and drink premises which are permissible uses within the E3 Productivity Support zone. The proposal generally complies with the provisions of the Sydney LEP 2012 and the Sydney DCP 2012, with the key exceptions being non-compliance with the height of building's development standard and the building setback requirements.
79. A clause 4.6 variation request has been submitted with the application and it has been adequately demonstrated that compliance with the development standard is unnecessary and unreasonable in the circumstances of the case.

- 80. Other non-compliances are acceptable for the reasons outlined elsewhere in this report. Conditions of consent are proposed to remedy outstanding issues.
- 81. The proposal is supported, subject to the recommended conditions of consent.

**ANDREW THOMAS**

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