

**Item 3.****D/2023/997: 422-424 Cleveland Street, Surry Hills****File No.: D/2023/997****Summary**

<b>Date of Submission:</b>	2 November 2023 Amended plans received 15 May 2024
<b>Applicant:</b>	The trustee for Cirillo Planning Trust
<b>Architect/Designer:</b>	EM BE CE
<b>Developer:</b>	Toga Development and Construction
<b>Owner:</b>	Toga Development No. 38 Pty Ltd
<b>Planning Consultant:</b>	Planning Lab
<b>Heritage Consultant:</b>	Curio Projects
<b>Cost of Works:</b>	\$5,201,515.00
<b>Zoning:</b>	MU1 Mixed Use Zone

The proposal is for a mixed use commercial development providing a restaurant at ground and part of the first floor, with commercial offices on Levels 1 to 4.

The proposed development is permissible with consent in the zone.

**Proposal Summary:** The application seeks consent for alterations and additions to the existing 'Kirk' church building to deliver a commercial development with a five storey rear addition and excavation to create a single level basement.

Proposed uses comprise a 200 patron capacity licensed restaurant housed within the existing church building extending to the ground floor and part of the first floor of the proposed rear addition, with commercial office tenancies within Levels 1 to 4 of the proposed rear addition. The proposed basement level is designed to accommodate building services, end of trip facilities, waste

room and a basement kitchen to support the proposed restaurant use.

The site has existing development consent for alterations and additions to the Kirk building to deliver a mixed use development comprising a boarding house, cafe, and cultural entertainment venue (D/2020/993). This scheme was granted approval for a five storey rear addition by the Local Planning Panel on 16 March 2022.

The principal building envelope of the rear addition proposed under the current application is similar to the consented scheme with a reconfigured gable rooftop design and pitched open roof portal architectural roof features. The uses have changed throughout however, with the groundfloor café and community hall uses now changed to a licensed restaurant proposed across the ground floor, and the previously approved boarding house accommodation approved across the upper levels of the rear addition in the consented scheme now proposed as commercial office tenancies.

Consequently, whilst the proposed maximum height of the principal building envelope is marginally higher than the approved scheme and thus represents a further variation of the Height of Buildings development standard, the reconfigured and chamfered rooftop design actually results in less overshadowing compared to the approved scheme (D/2020/993) and improved solar access to neighbouring properties.

The proposed design of the rear addition is sympathetic and integrates well with the historic character of the existing church whilst being clearly distinguished as a contemporary rear addition in accordance with the provisions of the Burra Charter.

The proposed development was notified for a period of 28 days between 15 November 2023 and 14 December 2023 and 13 submissions were received. Amendments submitted during assessment do not give rise to any significant or additional environmental impacts therefore the amended proposal was not required to be renotified in accordance with the provisions of the City of Sydney Community Engagement Strategy and Community Participation Plan 2023.

Issues raised in submissions included visual privacy concerns, parking and servicing, acoustic impacts of the proposed use and concerns associated with construction. These matters are addressed within this report and conditions are recommended where relevant to address concerns raised.

A number of submissions also expressed support for the application and a preference for the current proposal compared to the previously approved scheme (D/2020/933).

The application is reported to the Local Planning Panel for determination as it proposes an over 10% departure from the 15m LEP Height of Buildings development standard applying to the site pursuant to Clause 4.3 of the Sydney LEP.

The proposed development proposes to vary the Height of Buildings standard by 10.66% to the top of the lift overrun above Level 4 of the main building envelope of the proposed rear addition and by 30% to the open pitched portal architectural roof features.

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

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Resilience and Hazards) 2021
- (iv) SEPP (Transport and Infrastructure) 2021
- (v) SEPP (Biodiversity and Conservation) 2021
- (vi) SEPP (Sustainable Buildings) 2022

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. 3D Renders Photomontage
- D. Clause 4.6 Variation Request - Height of Buildings
- E. Submissions

## Recommendation

It is resolved that consent be granted to Development Application Number D/2023/997 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the MU1 Mixed Use Zone.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Height of Buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney LEP 2012.
- (C) The proposed development represents sympathetic alterations and additions to a contributory building which will enhance the site's contribution to the heritage conservation area pursuant to Section 3.9.7 of the Sydney DCP.
- (D) The design of the proposed rear addition is sympathetic to the historic character and form of the existing church building, whilst being clearly distinguishable as a contemporary rear addition in accordance with the provisions of the Burra Charter.
- (E) The proposed design of development respects and integrates with the sites historic character whilst simultaneously mitigating environmental impacts of overshadowing and overlooking of neighbouring properties pursuant to the Design Excellence provisions of Clause 6.21C of the Sydney LEP.
- (F) The proposed development and subject to recommended conditions of consent adequately addresses and safeguards the visual and acoustic privacy of neighbouring residential properties pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP.
- (G) The proposed development and subject to recommended conditions of consent exhibits excellence in landscape integration and will enhance the urban greening of the site pursuant to Clause 6.21C(2)(d)(xiii) of the Sydney LEP.
- (H) The proposed development is appropriate to its site and setting, by delivering a high quality design and suitable use to enhance the vitality of the locality and promote the orderly and economic use and development of the land pursuant to Object (c) of the Environmental Planning and Assessment Act 1979 (Clause 1.3(c)).

## Background

### The Site and Surrounding Development

1. The site is identified as Lot 1 in DP 724157 and is located at 422-424 Cleveland Street, Surry Hills. The site is located on the north western side of the intersection of Cleveland Street and High Holborn Street. The site has a frontage of 15.4 metres to Cleveland Street, a frontage of 36.5 metres to High Holborn Street, a small frontage 3.2 metres to Goodlet Lane and a site area of 579.8 square metres. High Holborn Street is pedestrianised for a length of approximately 13 metres from the intersection to Cleveland Street adjacent to the subject building.
2. The site currently contains a building known as 'The Kirk', a former church building which occupies approximately half of the site area. Former outbuilding structures to the rear have been cleared. The church building was built circa 1879 and functioned as a church until the early 1970s. The church building has since been used for a variety of artistic and cultural activities and functions. The building is currently not in regular use.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential on the northern side of Cleveland Street in this location.
4. To the east of the site across High Holborn Street at 426 Cleveland Street is a 4 to 5 storey warehouse building converted to mixed use development with ground floor retail on the Cleveland Street frontage and residential apartments occupying the rest of the building above and at the rear. Further to the east along Cleveland Street are a variety of 2 to 3 storey shop top housing and commercial buildings.
5. To the north at 73 High Holborn Street is a single storey terrace building. Development further to the north consists of one and two storey terrace dwellings.
6. To the west of the site at 418-420 Cleveland Street is a two-storey terrace building with a ground floor shopfront. Development further to the west consists of two storey terrace dwellings.
7. To the south of the site across Cleveland Street is the Surry Hills village shopping centre mixed use redevelopment site which is currently under construction.
8. The site is located within the High Holborn Street Heritage Conservation Area (CA64). Heritage items in the vicinity include 'Terrace group including interiors' at 32-52 High Holborn Street (I556), an item of local significance; 'Former Bank of NSW including interior' (I3505) at 397-399 Cleveland Street an item of local significance; and 'Terrace house including interior' at 396-398 Cleveland Street (I1479) an item of local significance.
9. The subject site is not identified as a heritage item but is identified as a contributory building within the High Holborn Street Heritage Conservation Area (CA64).
10. The site is not flood affected.
11. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds





Figure 2: Front of site viewed from Cleveland Street looking north



Figure 3: Front of site looking north-west along Cleveland Street





**Figure 4:** Front of site from the intersection of Cleveland Street and Marriott Street looking north-east



**Figure 5:** Side (East) of site viewed from High Holborn Street looking north-west





**Figure 6:** Rear of existing building and existing rear setback viewed from High Holborn Street looking south-west



**Figure 7:** Rear of existing building viewed from rear setback looking south





**Figure 8:** Looking south along High Holborn Street with site on right hand side, and residential apartments within No.426 Cleveland Street on left hand side



**Figure 9:** No.73 High Holborn Street adjacent to the (north) rear boundary of the site





**Figure 10:** Rear of existing terraces backing on to the south side of Goodlet Lane, viewed from the mezzanine level of the existing church building looking west



Figure 11: Internal of existing church hall



**Figure 12:** Internal of existing church hall





Figure 13: Internal of mezzanine level within existing church building

## History Relevant to the Development Application

### Development Applications

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

- **D/2008/628** – Development consent was granted on 14 October 2008 for "Use of 'The Kirk' as an arts and entertainment venue with trading hours ceasing at 10pm, with a trial period of one year until 11.30pm with all patrons off the site by 12am midnight. Alterations and additions to the existing building including demolition of rear extension, metal garage and brick toilet; construction of new kitchen, stage facilities, first floor toilets, office and storage; construction of new rear garage; new sandstone base and cast-iron picket front fence".

The approved building additions under this consent have not been constructed.

- **D/2020/993** – Development consent was granted by the Local Planning Panel on 22 March 2022 for construction of mixed-use development comprising a boarding house, cafe, and cultural entertainment venue.

This approved a 5-storey rear addition behind the existing church building to accommodate the boarding house accommodation with café and service areas at the ground floor of the new addition. A single level basement was approved beneath the rear addition to accommodate a back of house / co-working / workshop space and sanitary facilities.

The existing church building was approved as a community hall cultural entertainment venue.

This development consent has not been activated at the time of writing.

An image of the approved scheme is provided below - a deferred commencement design modification condition imposed upon the consent required the portion of the rear addition overhanging the existing church building to be deleted:



**Figure 14:** Image of consented scheme (D/2020/993) - portion of rear addition overhanging existing church building required to be deleted by condition

- **PDA/2023/121** - Pre-DA advice was issued on 4 July 2023 in relation to the concept proposal for the current application.

The applicant was advised any variation to the LEP height standard would be subject to review and would be based on the merits of a Clause 4.6 request. The applicant was also advised to provide sufficient information to facilitate the acoustic impacts of the proposal, provide further information in relation to waste and servicing arrangements, and encouraged to engage in early community consultation prior to lodgement.

### Amendments

13. Following a preliminary assessment of the proposed development by Council officers, a request for additional information and amendments was sent to the applicant on 11 March 2024.

14. The applicant responded to Council's request on 15 May 2024 and submitted additional information and amendments to address the following:
- (a) Details of ceramic tile or textured precast concrete materiality in order to mitigate the blank expression of the northern facade at the rear of the site and details of construction methodology confirming that this facade can be constructed wholly within the subject site.
  - (b) Further information regarding the finish and weatherproofing of proposed kitchen exhausts on the building's western elevation to ensure they are a high-quality finish and well-integrated with the design of the proposed new addition. Applicant has confirmed the exhausts are to be finished in bronze cladding.
  - (c) Further information regarding proposed exposed service zones and resulting implications upon commercial amenity and floor to ceiling heights of proposed commercial spaces.
  - (d) Details of proposed PV cells on rooftop.
  - (e) Details of privacy measures to mitigate overlooking to neighbouring properties and reduction in the extent of glazing on the eastern elevation of the proposed rear addition by increasing the sill height and raising the height of planters on the external facade.
  - (f) Further detail of planters and landscaping.
  - (g) General heritage details to inform a future conservation works schedule which the applicant request's to be provided by a condition of consent if the development is approved.
  - (h) Structural Report prepared by a qualified structural engineer in relation to proposed excavation works.
  - (i) Updated Arborist Report detailing construction methodologies and retention of existing street trees at the front of the building along Cleveland Street and the side of the building along High Holborn Street.
  - (j) Further detail of stormwater drainage and floor levels - On-Site Detention requirements incorporated into the proposal.
  - (k) Updated Acoustic Report assessing operational and construction noise impacts and acoustic attenuation measures.
  - (l) Submission of 3D model of proposed development.
  - (m) Further detail of waste and servicing arrangements.

### **Proposed Development**

15. The application seeks consent for alterations and additions to the existing 'Kirk' church building to deliver a commercial development with a 5-storey rear addition and excavation to create a single level basement.



16. Proposed uses comprise a licensed restaurant housed within the existing church building and extending to the ground floor and part of the first floor of the proposed rear addition, with commercial office tenancies within Levels 1 to 4 of the proposed rear addition.
17. The proposed scope of works consist of the following:
  - Demolition of lean-to addition and northern rear wall of existing Kirk building.
  - Demolition of existing structures within rear setback.
  - Alterations and additions for a commercial development including:
    - Alterations and restoration works to The Kirk building for use as a 200 patron capacity licensed restaurant with entries off Cleveland Street and High Holborn Street. Proposed hours of operation:
      - Tuesday to Sunday, 7am to 10pm,
      - Extended trading hours proposed Thursday to Saturday, 10pm to midnight
    - New five storey rear addition to accommodate:
      - Ground Floor - kitchen, bar and dining area associated with restaurant use, and a shared lobby/loading dock;
      - Level 1 - two private dining rooms and servery associated with restaurant use, and commercial office space;
      - Levels 2 to 4 - commercial office space;
    - Excavation to create a single level basement beneath the rear addition and the existing Kirk church building to provide a cool room, dry store and kitchen associated with restaurant use, sanitary facilities, end of trip facilities, waste and plant, pump and service areas.
  - Existing road regraded to paved shared zone along part of High Holborn Street;
  - Landscaping works within front setback to Cleveland Street, including new planters and transplanting of existing palm trees;
  - New planter for community garden within site boundary at the end of Goodlet Lane and accessible to residents from Goodlet Lane.
18. Plans and elevations of the proposed development are provided below.

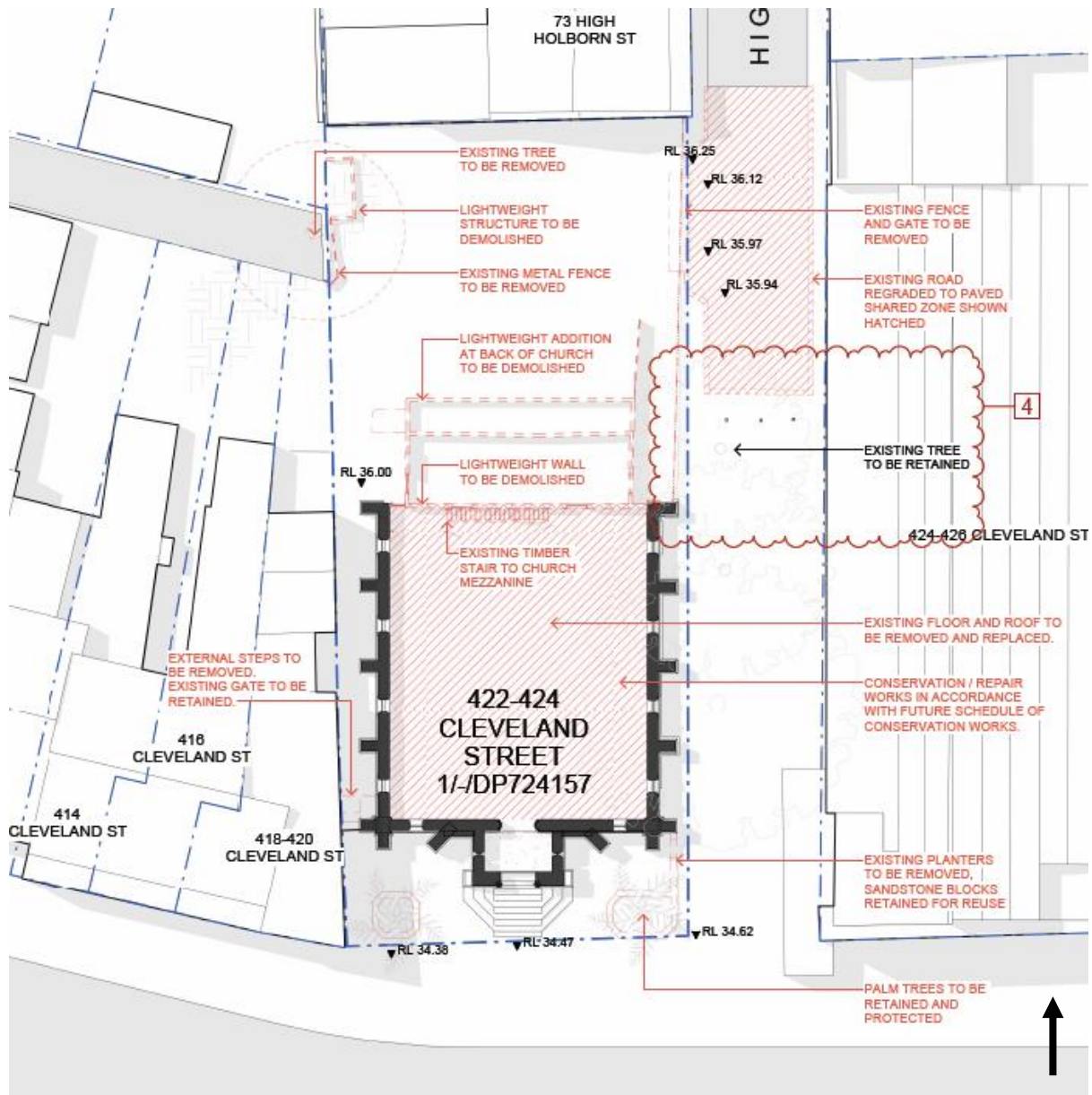


Figure 15: Site Demolition Plan

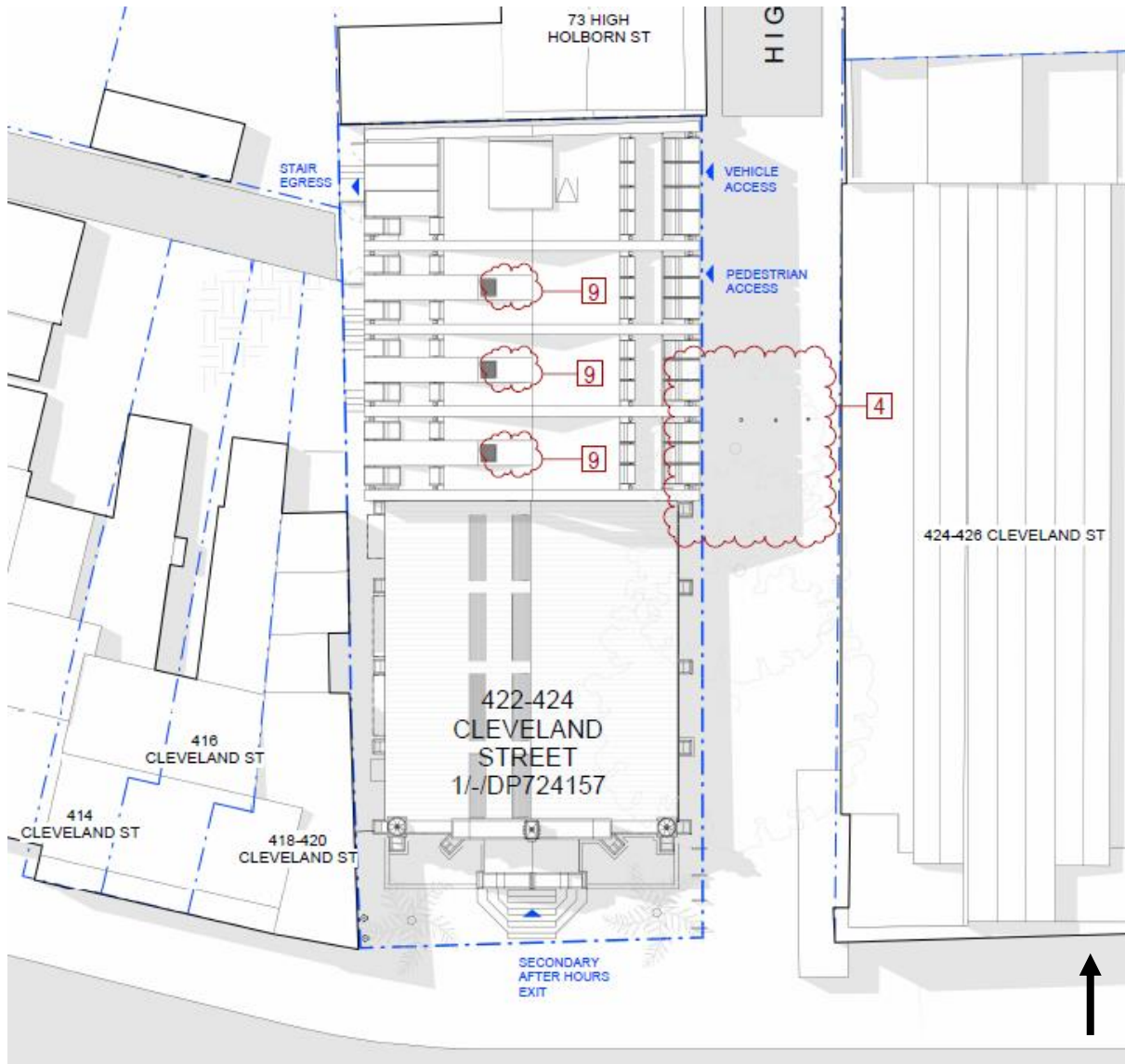


Figure 16: Proposed Site Plan

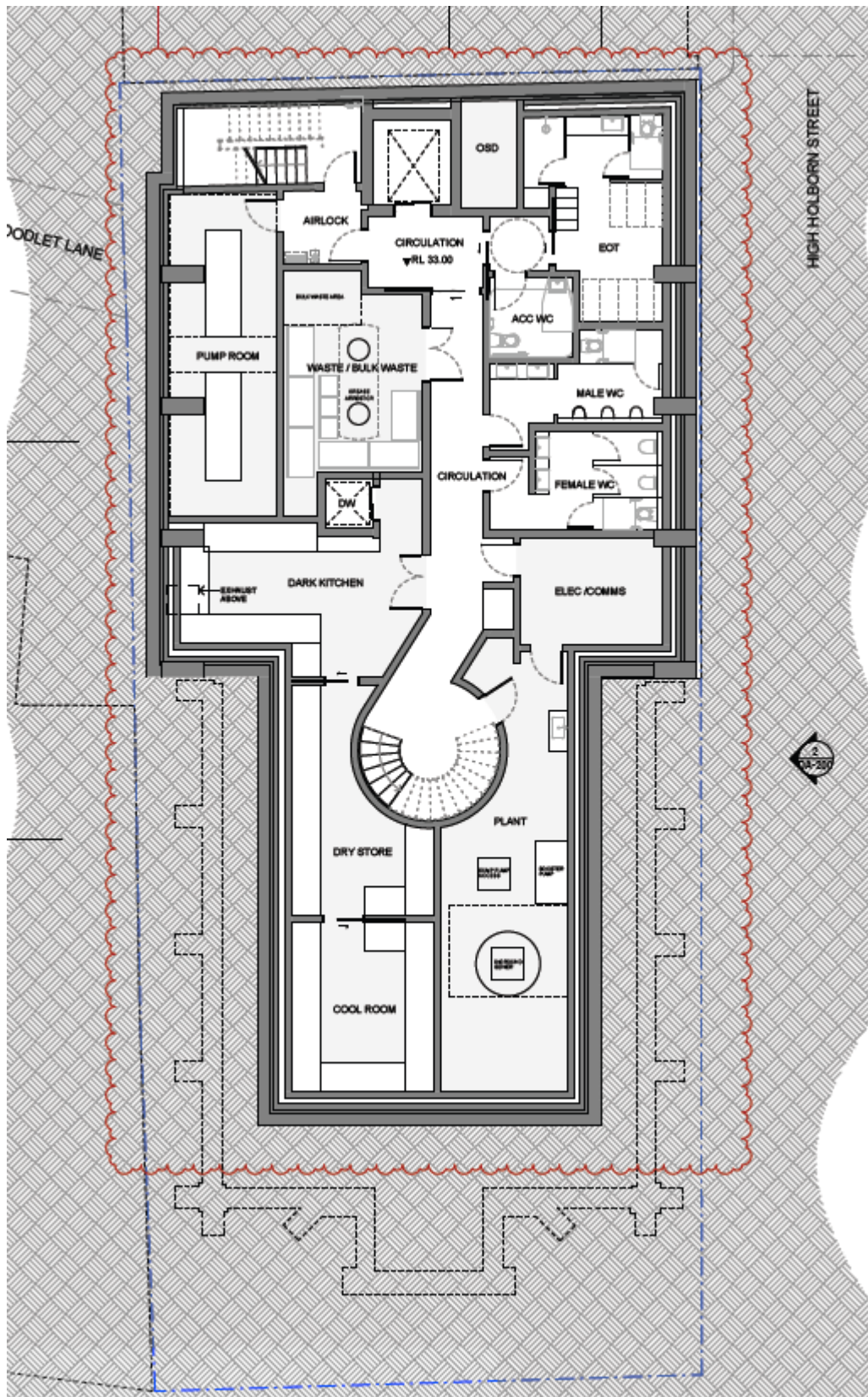


Figure 17: Proposed Basement Plan



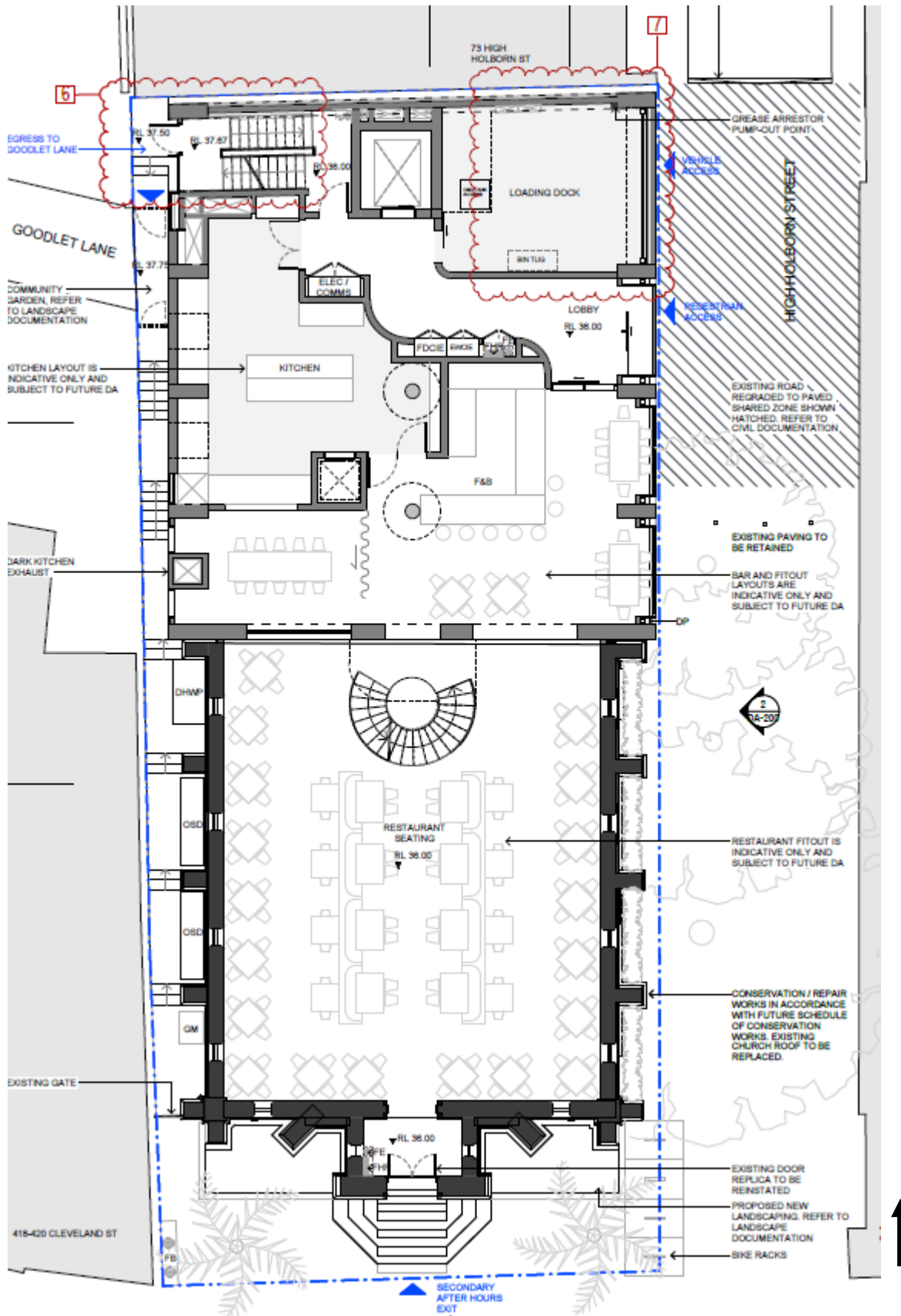


Figure 18: Proposed Ground Floor Plan

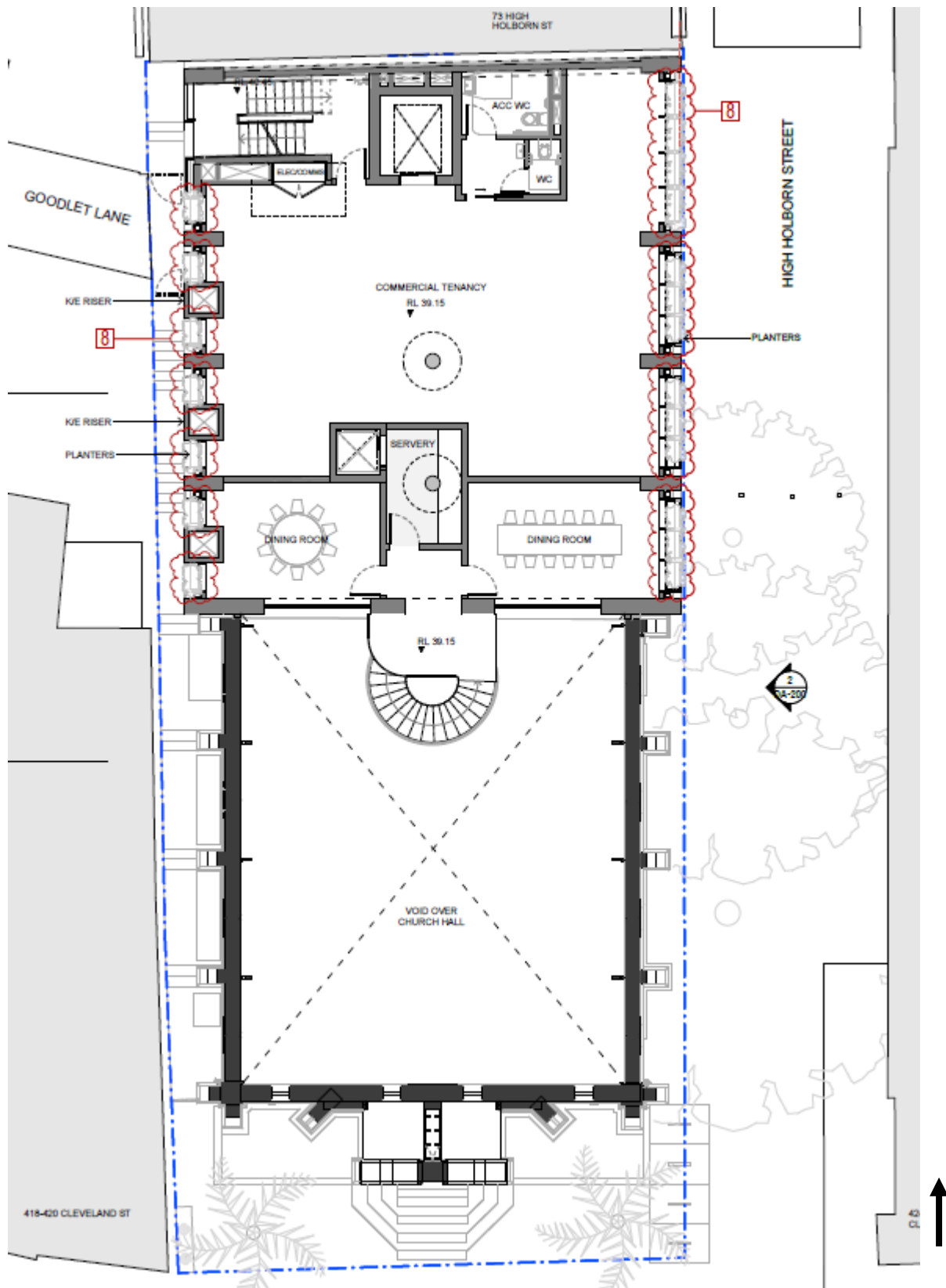


Figure 19: Proposed Level 1 Floor Plan



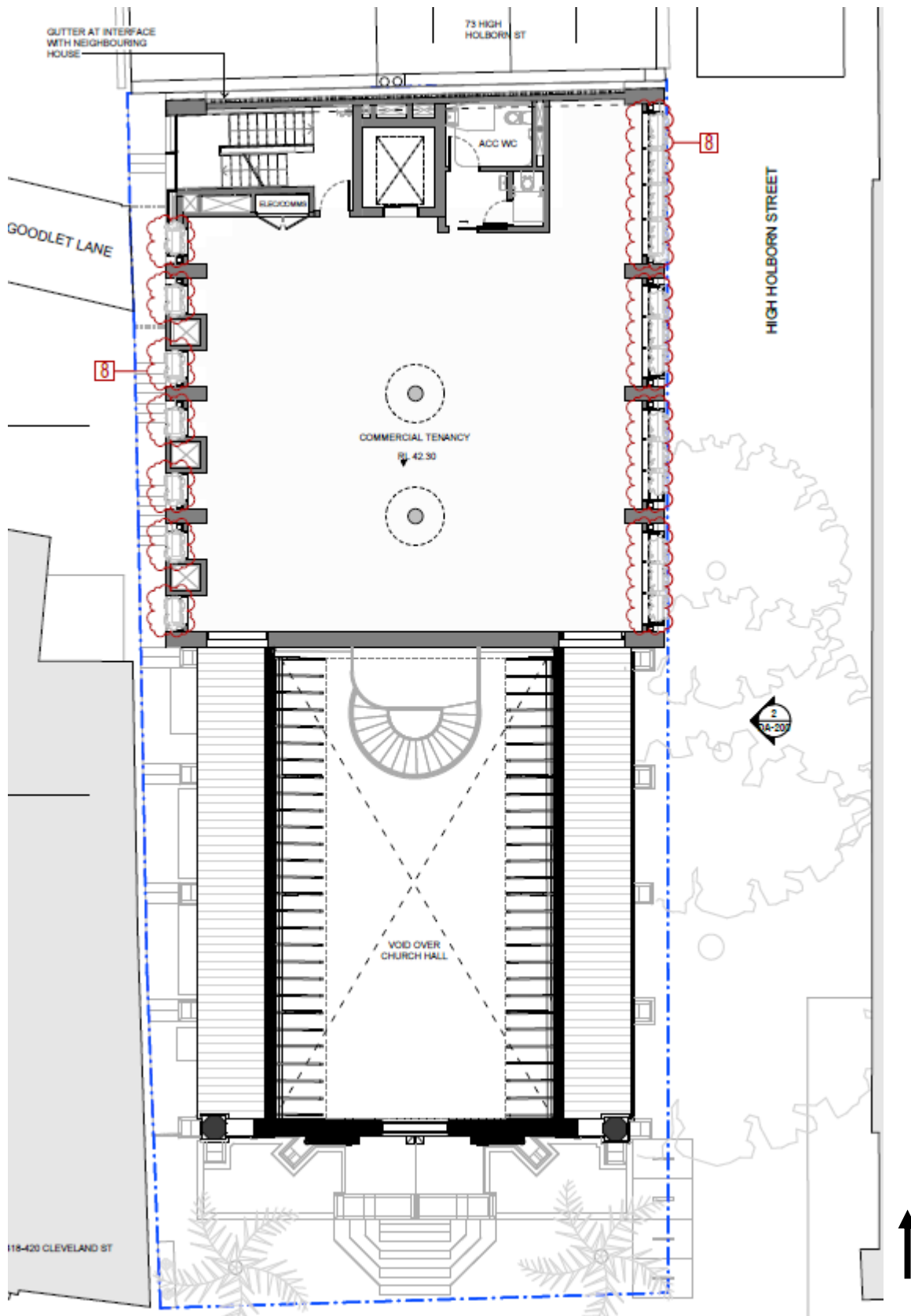


Figure 20: Proposed Level 2 Floor Plan

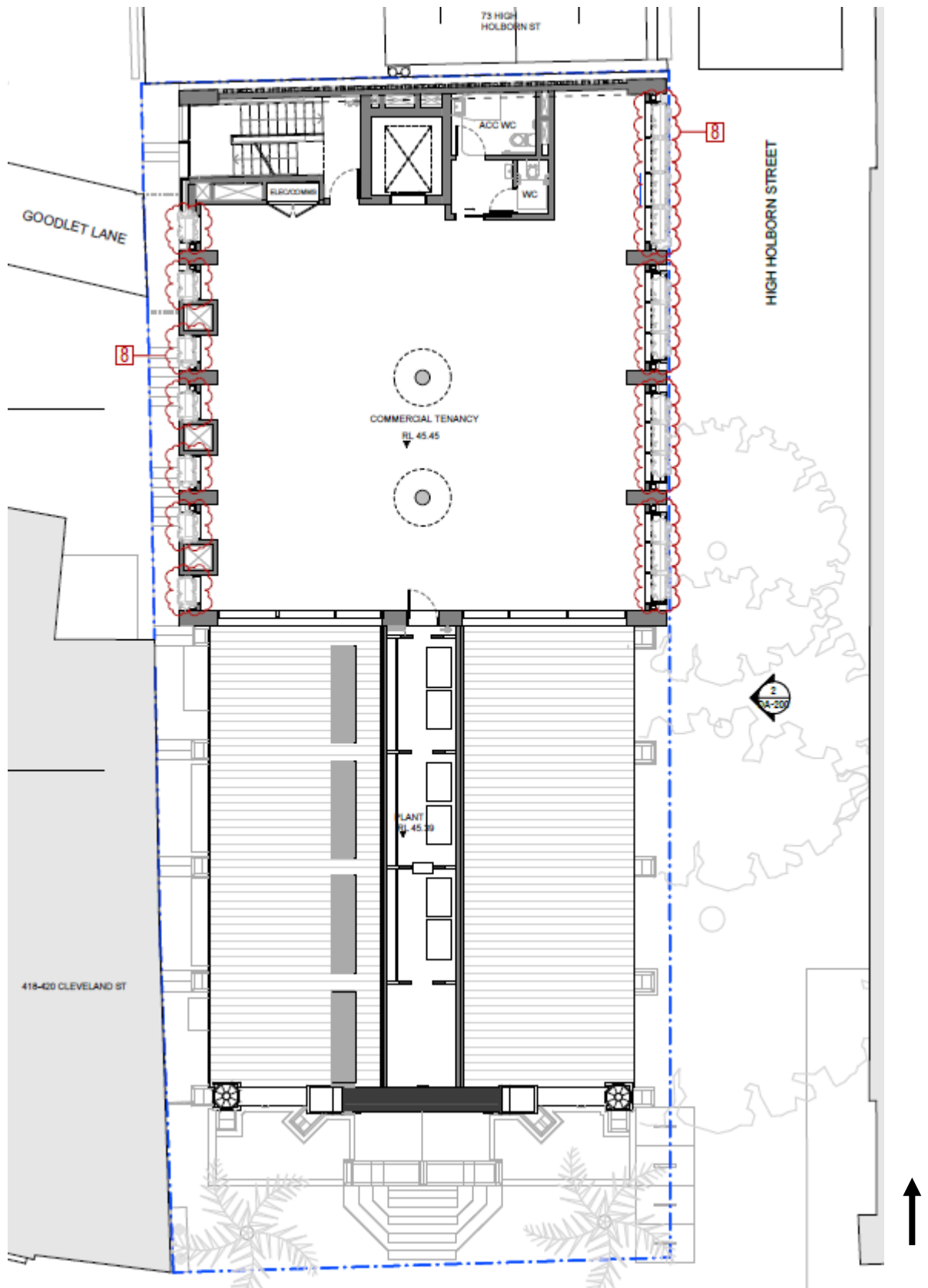


Figure 21: Proposed Level 3 Floor Plan

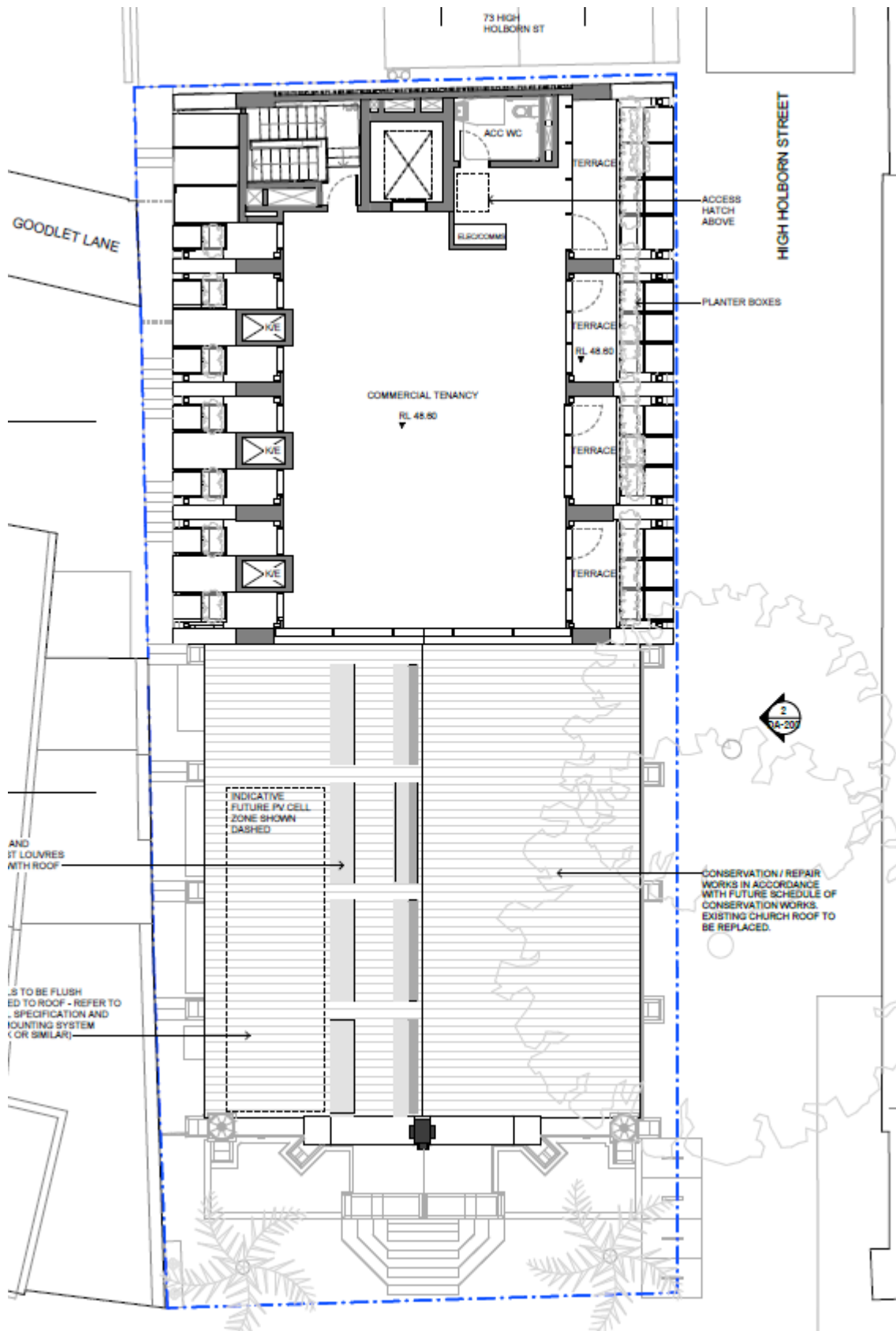


Figure 22: Proposed Level 4 Floor Plan

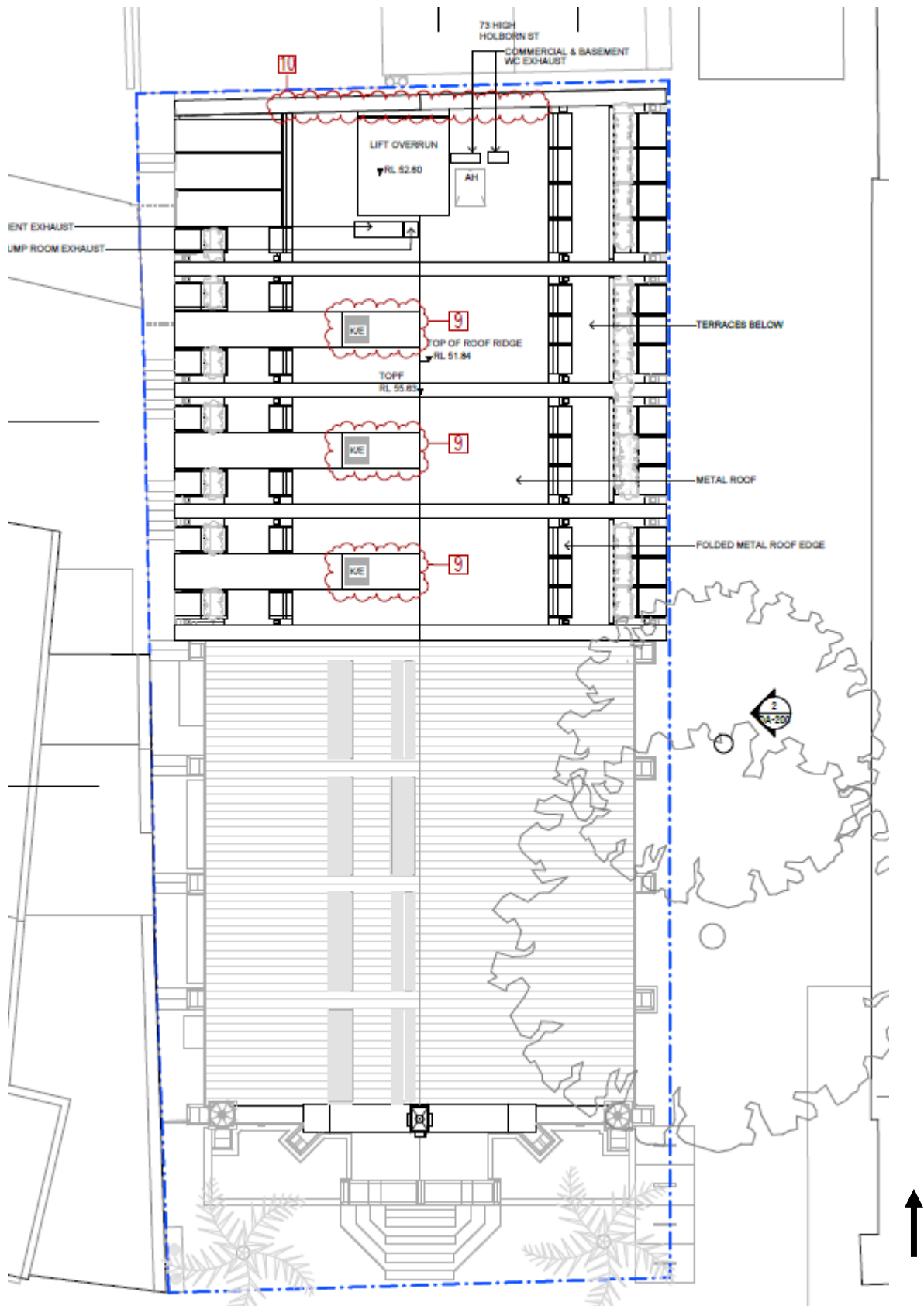


Figure 23: Proposed Roof Plan

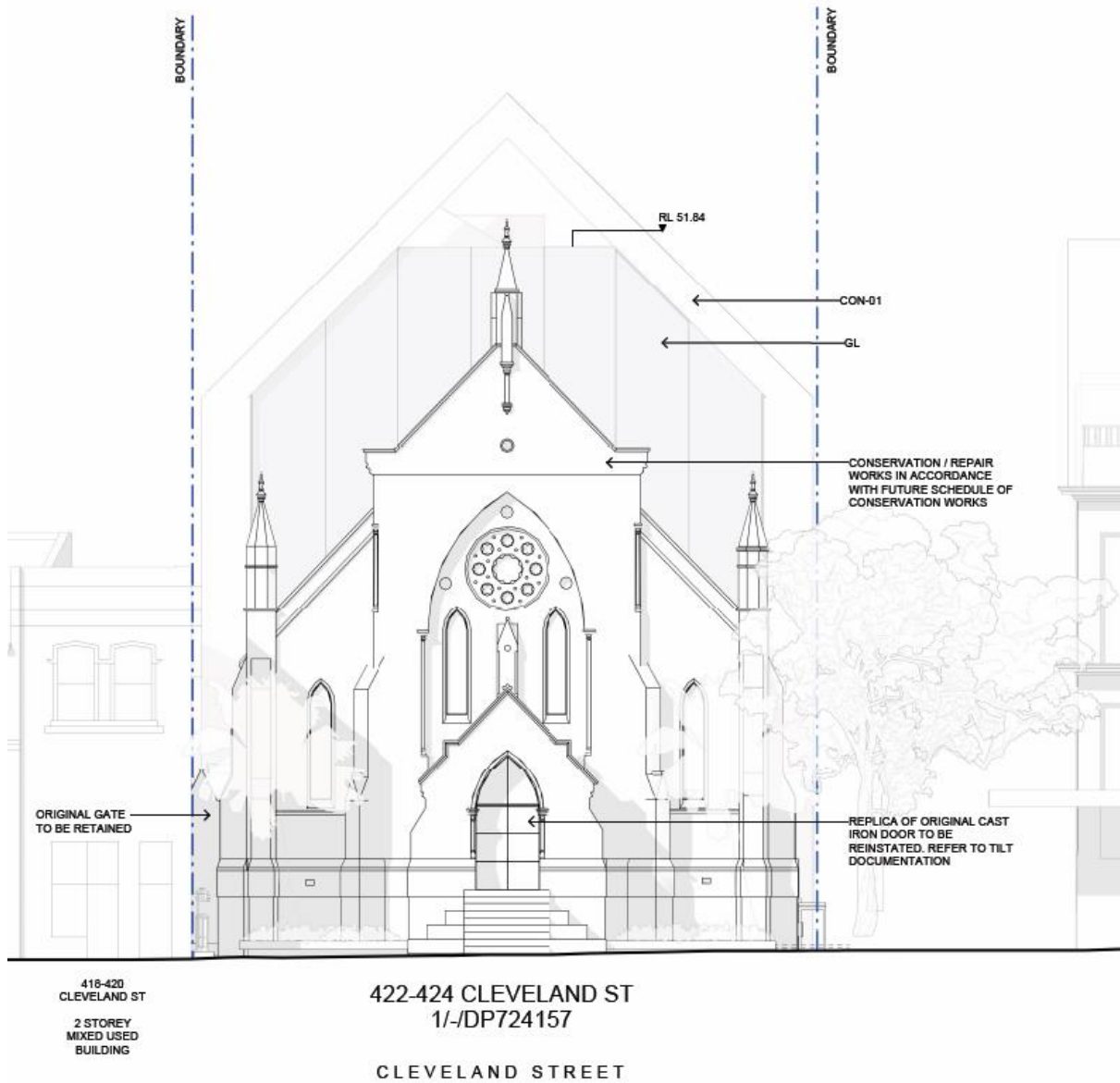


Figure 24: Proposed South Front Elevation (Cleveland Street)

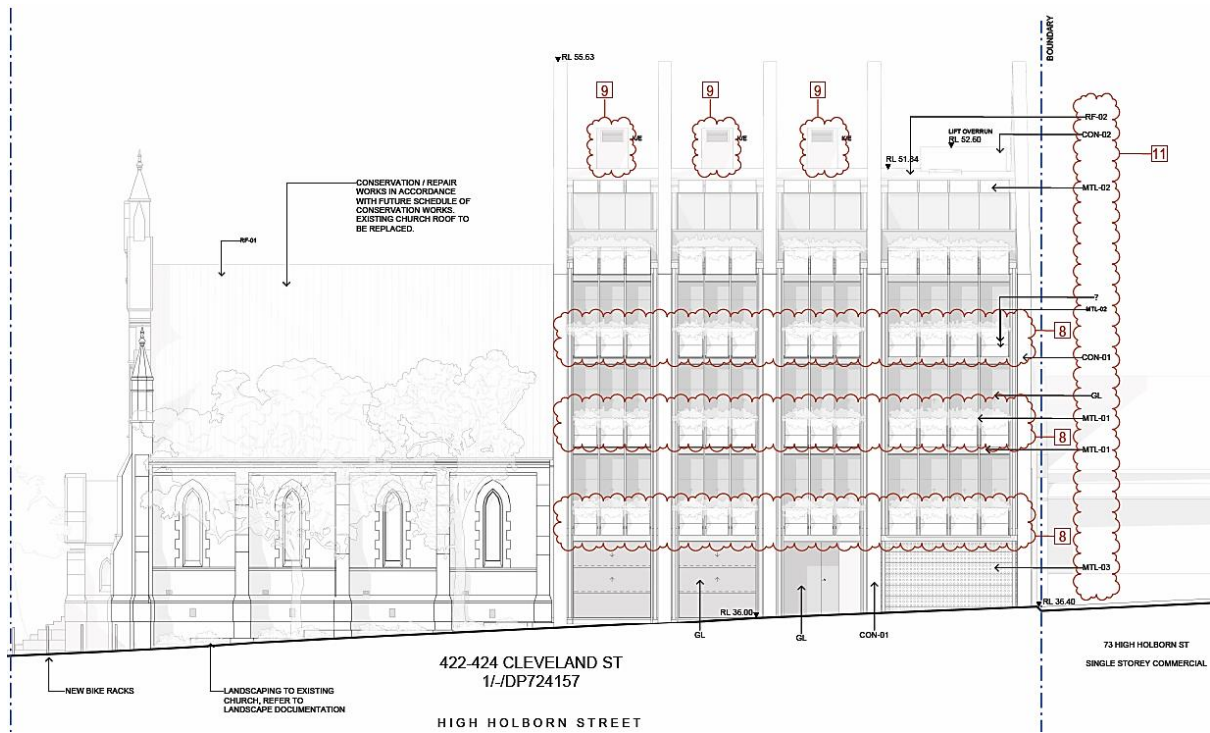


Figure 25: Proposed East Side Elevation (High Holborn Street)

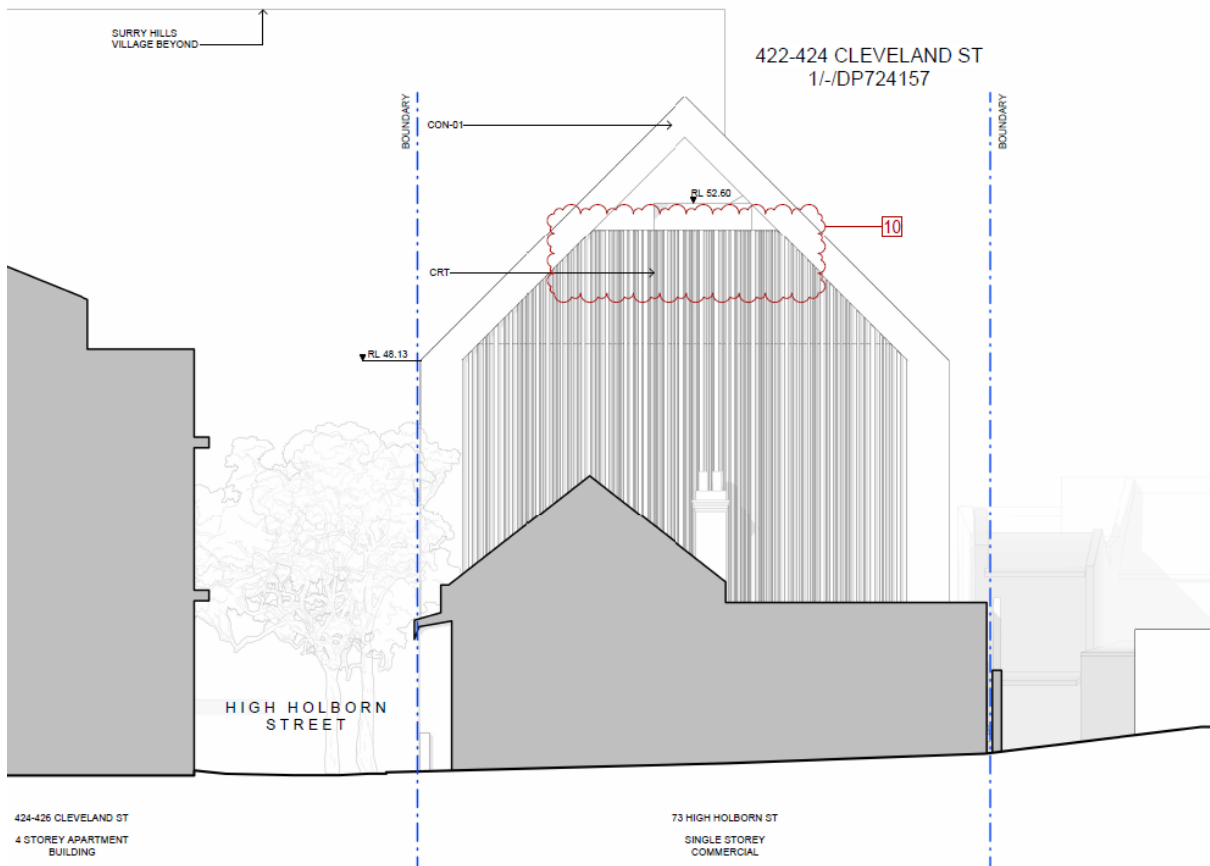


Figure 26: Proposed North Rear Elevation



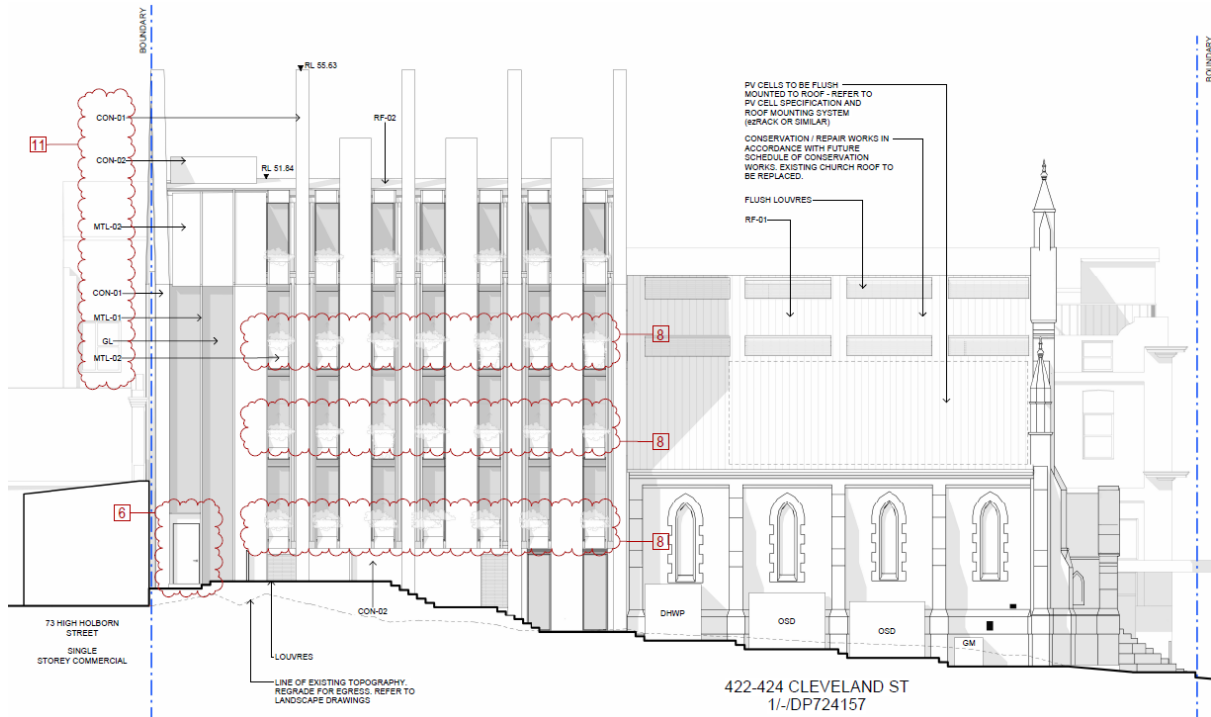


Figure 27: Proposed West Side Elevation

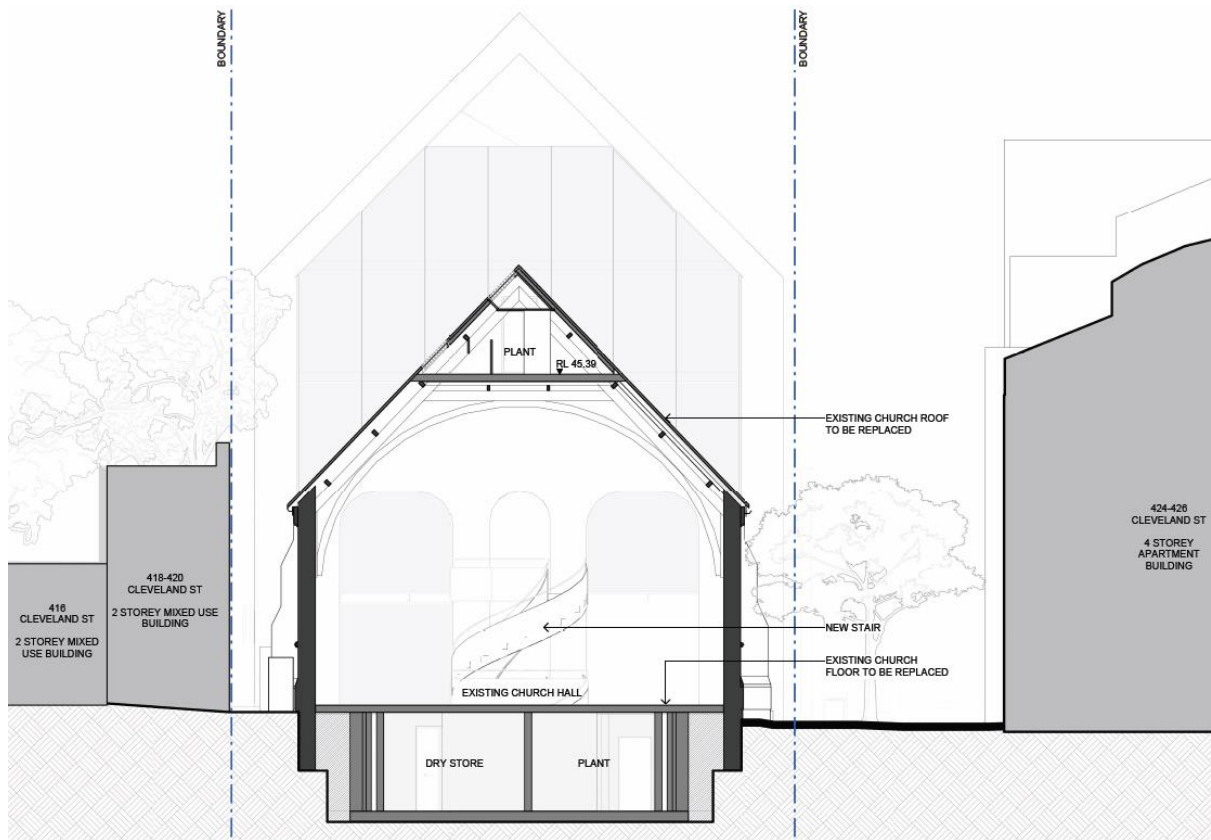


Figure 28: Short Section (Existing Church Building)

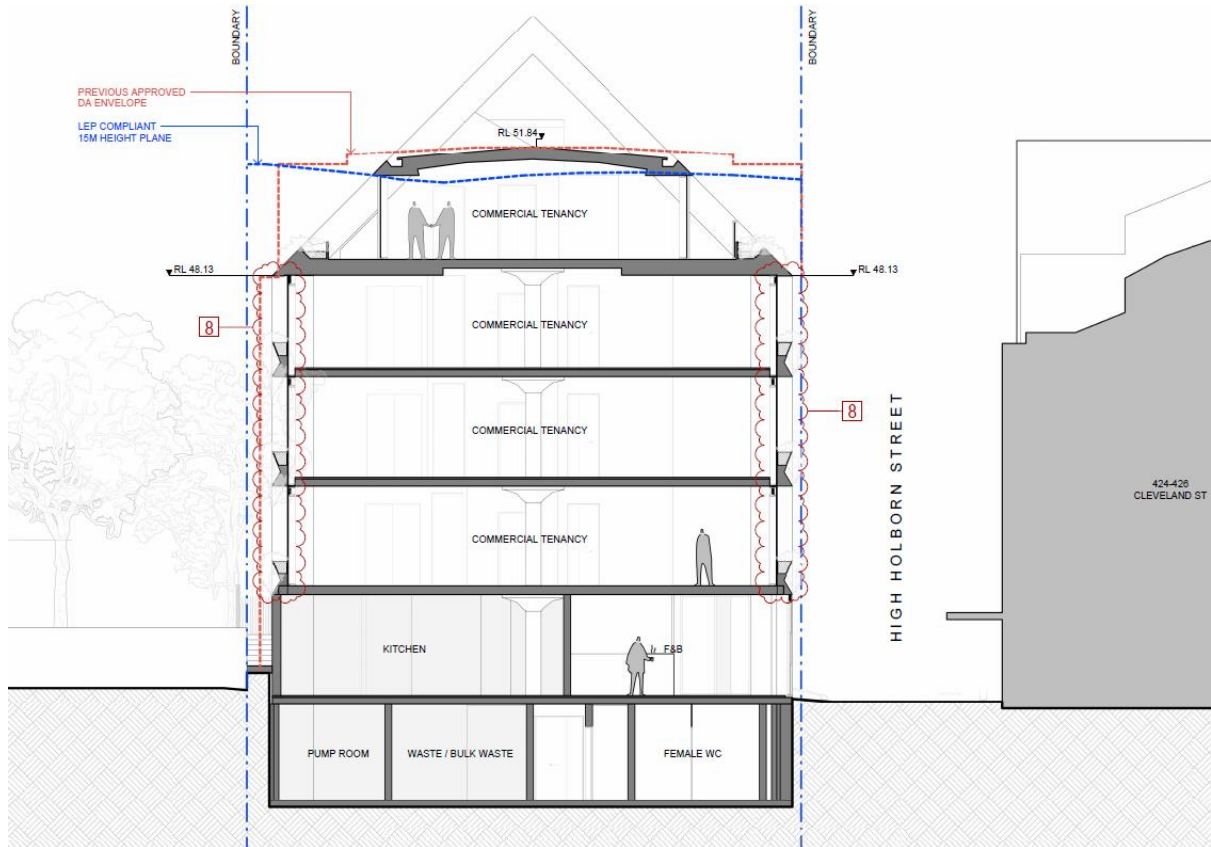


Figure 29: Short Section (New Rear Addition)

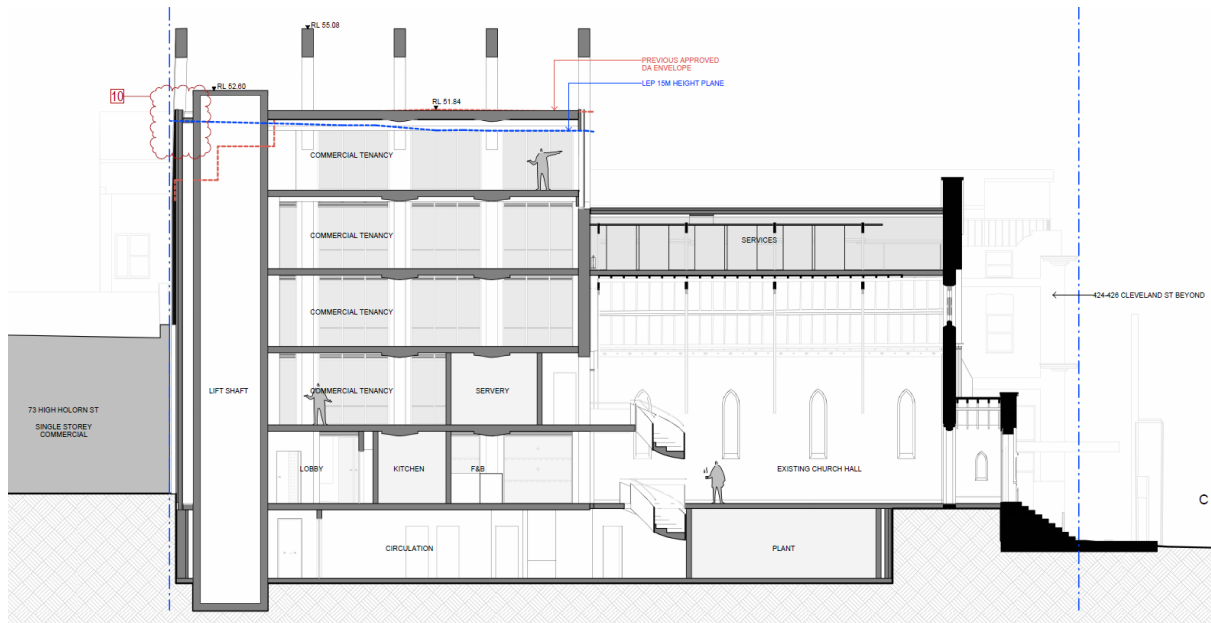


Figure 30: Long Section 1

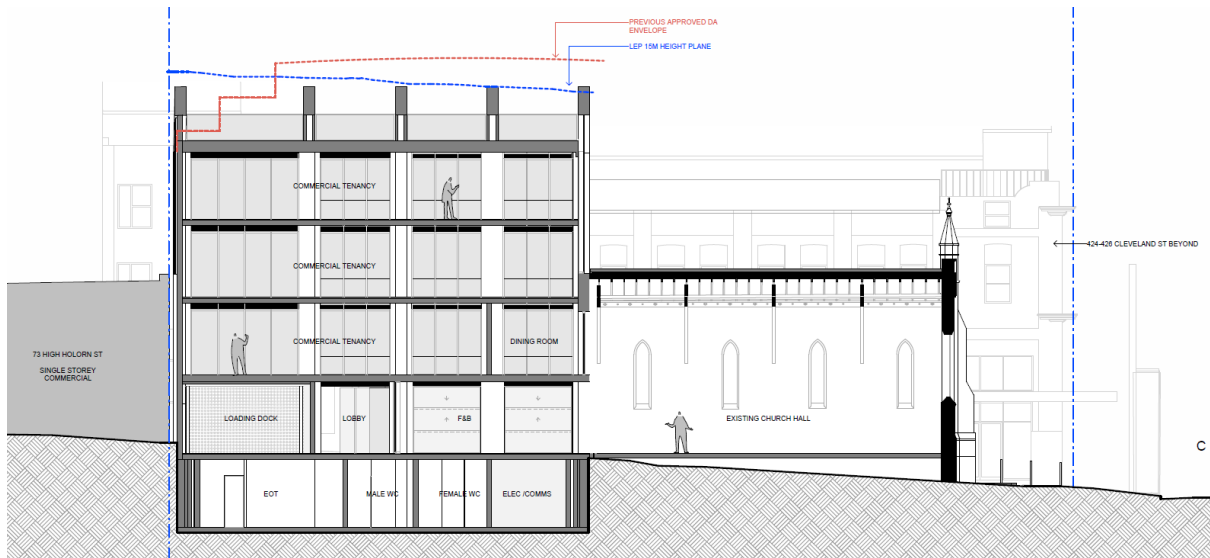


Figure 31: Long Section 2



Figure 32: Cleveland Street Render





Figure 33: High Holborn Street Render (North)



Figure 34: High Holborn Street Render (South)



Figure 35: Materials and Finishes

## Assessment

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

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

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. A Preliminary Site Investigation was submitted as part of the application prepared by EBG Environmental and soil samples were taken as part of the assessment and were assessed against the National Environment Protection Measures (NEPM) 2013 Health Investigation Levels (HIL) D criteria for commercial/industrial development.
34. While soil sample analysis did confirm that some heavy metals were present, they did not exceed the HIL D criteria and the report concludes that a Detailed Site Investigation is not required and the proposal is suitable provided the recommendations in the report are carried out.
35. The Council's Health Unit is satisfied that, subject to conditions requiring the recommendations of the report are carried out, the site can be made suitable for the proposed use.

### **State Environmental Planning Policy (Sustainable Buildings) 2022**

36. The aims of this Policy are as follows—
- (a) to encourage the design and delivery of sustainable buildings,
  - (b) to ensure consistent assessment of the sustainability of buildings,
  - (c) to record accurate data about the sustainability of buildings, to enable improvements to be monitored,
  - (d) to monitor the embodied emissions of materials used in construction of buildings,
  - (e) to minimise the consumption of energy,
  - (f) to reduce greenhouse gas emissions,
  - (g) to minimise the consumption of mains-supplied potable water,
  - (h) to ensure good thermal performance of buildings.

### **Chapter 3 Standards for non-residential development**

37. Chapter 3 of the SEPP applies to development, other than development for the purposes of residential accommodation, that involves:-
- (a) The erection of a new building, or
  - (b) Alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.



38. The proposed development involves alterations and additions to an existing building with a capital investment value of less than \$10 million, therefore the provisions of Chapter 3 do not apply.

### **Section 3.3 Other Considerations for Large Commercial Development**

39. Section 3.3 Other considerations for large commercial development applies to development defined as prescribed office premises, prescribed service apartments and prescribed hotel or motel accommodation.
40. A prescribed office premises is defined as an office premises with a net lettable area of at least 1,000 square metres.
41. The proposed development has a net lettable office area of less than 1,000 square metres, therefore the provisions of Section 3.3 do not apply.

### **Summary**

42. Whilst the development falls below cost and area requirements that trigger the provisions of the Sustainable Buildings SEPP, the proposal has still highlighted a number of positive energy, water and material ESD initiatives.
43. The applicant has filled out the *City of Sydney: Design for Environmental Performance Form* and conditions are recommended to ensure sustainability commitments are fulfilled.
44. The application has highlighted a number of positive energy, water and material ESD initiatives, including outlining a target for a NABERS 5.5 Star energy rating.
45. These measures have been reviewed and are generally supported by Council's Environmental Projects Unit, however the information reserves some specific measures to be captured in detailed design.
46. A condition is recommended to require an updated and detailed Design for Environmental Performance form to be submitted and approved by Council prior to the issue of a Construction Certificate.

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

47. 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**

48. 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.
49. 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**

50. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
51. The SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
52. The application involves the removal of non-significant vegetation within the rear setback and amendments have been submitted to ensure the retention of the existing street tree on High Holborn Street which was originally proposed to be removed when the DA was lodged.
53. The proposal will enhance the urban greening through landscape planters situated at each level across the eastern and western facades of the rear addition, landscape enhancements within the front setback and the provision of landscape planter at the end of Goodlet Lane for use as a community garden.
54. The proposal therefore will improve the urban ecology of the site and satisfies the provisions of the SEPP.

### **Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments**

55. 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.
56. 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**

57. 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 defined as a commercial development, comprising a restaurant (food and drink premises) and office premises, and is permissible with consent in the zone.

Provision	Compliance	Comment
		The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>The proposed development has a maximum height of 19.53m to the top of the open pitched portal architectural roof features and a maximum building height of 16.6m to the top of the lift overrun.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 2:1 or 1,159sqm is permitted.</p> <p>A floor space ratio of 1.99:1 or 1,157sqm is proposed.</p> <p>The proposed development is also permitted an additional 23sqm additional bonus floorspace due to the proposed end of trip facilities within the basement.</p> <p>Notwithstanding the above, the development is not reliant upon this bonus floorspace to achieve FSR compliance.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3 - Height of Buildings.</p> <p>A Clause 4.6 variation request has been submitted with the application and is supported.</p>

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

### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.6 Architectural roof features	Yes	<p>The maximum height limit is exceeded by the open pitched portal architectural roof features above the proposed new rear addition. These portals exceed the height limit by a maximum of 4.53m.</p> <p>The features are acceptable as they are decorative and fully integrated with the design of the building and the historic character of the original church building.</p> <p>The features are not advertising structures and do not contribute to floorspace, nor are they capable of modification to provide additional floorspace in the future.</p> <p>The proposal will not adversely impact upon significant views and the revised design and reconfigured form represents a marked improvement upon the current development consent for the site (D/2020/993) with regards to solar access and outlook from neighbouring residential properties.</p>
5.10 Heritage conservation	Yes	<p>The site is located within the High Holborn Street Heritage Conservation Area.</p> <p>The proposed development as amended will not have a detrimental impact on the heritage significance of the heritage conservation area.</p>

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

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	The proposed development is eligible for an additional 23sqm additional floorspace due to the proposed end of

Provision	Compliance	Comment
		<p>journey facilities situated within the basement.</p> <p>Notwithstanding the above, the development is not reliant upon this bonus floorspace to achieve FSR compliance.</p>
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 9 car parking spaces are permitted.</p> <p>The proposed development includes no car parking spaces and therefore complies with the maximum parking standard.</p>
Division 3 Affordable housing		
7.13 Affordable Housing Contribution	Yes	<p>The DA involves alterations to an existing building within the <i>residual land</i> area that will result in the creation of more than 60 square metres of gross floor area that is intended to be used for a purpose other than residential accommodation.</p>



Provision	Compliance	Comment
		<p>The development is therefore subject to an affordable housing levy contribution, which is to be imposed as a recommended condition.</p> <p>See further details under 'Financial Contributions' section below.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.</p>
7.15 Flood planning	Yes	<p>The site is not flood affected.</p> <p>The City's Interim Floodplain Management Policy requires floor levels for new buildings outside the floodplain to be a minimum of 300mm above the adjacent gutter invert.</p> <p>The applicant has proposed retaining the floor levels and providing new extended kerb inlet pits upstream and a heel safe trench grate at the High Holborn Street entries. Modelling has been provided to justify the proposal.</p> <p>In addition, the fire exit off Goodlet Lane has been provided with a 170mm step up prior to the stairs to the basement.</p> <p>These proposals have been reviewed and accepted by Council's Water Assets Unit.</p>
7.33 Sustainability requirements for certain large commercial development	Not applicable	<p>The specific sustainability requirements for large commercial development do not apply as the development is not a prescribed office premises, meaning an office premises with a net lettable area of at least 1,000sqm.</p> <p>Notwithstanding the above, the application has highlighted a number of positive energy, water and material ESD</p>

Provision	Compliance	Comment
		<p>initiatives, including outlining a target for a NABERS 5.5 Star energy rating.</p> <p>See further details under assessment of 'Sustainable Buildings SEPP' above.</p>

## Development Control Plans

### Sydney Development Control Plan 2012

58. 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

59. The site is located within the Cleveland Street locality. The proposed development is in keeping with the unique character and the design principles of the locality. The proposal retains the existing church building within the setting and will enable an active ground floor use of the building and site.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<p>The proposed development involves public domain upgrade works along High Holborn Street by creating a shared zone and repaving of roadway.</p> <p>The proposals are supported by Council's Public Domain Unit. Further public domain detailing required by condition.</p>
3.2. Defining the Public Domain	Yes	<p>The development retains the building address to Cleveland Street. The new building to the rear addresses High Holborn Street with the building lobby entry for the restaurant and commercial levels above.</p>
3.5 Urban Ecology	Partial compliance	<p>The proposed development as amended does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>Notwithstanding the above, the proposed development involves near full site coverage and does not propose any additional tree planting and therefore the development will not achieve 15% tree</p>

Provision	Compliance	Comment
		<p>canopy coverage across the site within 10 years of completion.</p> <p>See further details in the 'Discussion' section under subheading 'Landscaping' below.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The application has highlighted a number of positive energy, water and material ESD initiatives, including outlining a target for a NABERS 5.5 Star energy rating.</p> <p>These measures have been reviewed and are generally supported by Council's Environmental Projects Unit.</p> <p>The applicant has submitted the City's Design for Environmental Performance (DEP) form to capture the proposed sustainability measures, however the submission is lacking detail in places, with some specifics to be captured in detailed design.</p> <p>A condition is recommended to require an updated and detailed DEP form to be submitted and approved by Council prior to the issue of a Construction Certificate.</p>
3.7 Water and Flood Management	Yes	<p>The site is not flood affected.</p> <p>The proposed development incorporates appropriate stormwater management measures, including on-site detention.</p> <p>Conditions are recommended requiring the detailed stormwater drainage design to be approved by Council's Public Domain Unit prior to issue of a Construction Certificate.</p>
3.9 Heritage	Yes	<p>The site is not a heritage item but is identified as a contributory building within the High Holborn Street Heritage Conservation Area (CA64).</p> <p>The proposal secures the adaptive reuse of the existing contributory building and preserves its contribution to the streetscape. The applicant has provided sufficient information to demonstrate that the proposed development will not have any</p>

Provision	Compliance	Comment
		<p>significant or adverse impacts upon the structural integrity of the existing building or its visual presentation to the street.</p> <p>The design and form of the new rear addition is sympathetic to the historic character of the existing church building and will make a positive contribution to the heritage conservation area.</p> <p>The proposal has been reviewed by Council's Heritage Specialist who confirmed that the proposed development as amended will not have a detrimental impact on the heritage significance of the heritage conservation area and raised no objection to approval.</p> <p>Appropriate conditions are recommended to secure the heritage significance of the existing building, including requiring the submission of a detailed conservation works schedule prior to the issue of a Construction Certificate.</p> <p>Conservation works include replica of the original doors reinstated to the front of the church.</p>
3.10 Significant Architectural Building Types	Yes	<p>The proposal includes the retention and repurposing of a former church building older than 50 years.</p> <p>The proposal includes conservation works and retention of the significant external and internal building fabric and internal space. The use of the site will enable ongoing maintenance of the building.</p>
3.11.3 Bike Parking and Associated Facilities	Yes	<p>The proposal provides seven staff bicycle parking spaces within the basement and eight visitor bicycle parking spaces at street level on High Holborn Street.</p> <p>The proposed bike parking provision complies with the provisions of the DCP.</p>



Provision	Compliance	Comment
		<p>Placing the bicycle parking at street level along High Holborn Street offers convenience, however the bike racks straddle the property boundary and encroach into the public domain.</p> <p>There is sufficient space to accommodate the visitor bike parking within the front setback of the site boundary to Cleveland Street. A design modification is recommended requiring the visitor bicycle parking to be relocated so they sit wholly within the property boundary.</p> <p>Further conditions are recommended confirming the design and quantum requirements for bicycle parking within the development.</p>
3.12 Accessible Design	Yes	The proposed development is capable of achieving DDA compliance and provide equitable access for all.
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	<p>The Operational Waste Management Plan has been amended to confirm a waste contractor will collect waste from Cleveland Street as the nominated collection point.</p> <p>This arrangement provides for wheel-in wheel-out overnight kerbside collection outside of peak hours, thereby minimising noise and amenity impacts to residential properties along High Holborn Street.</p> <p>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.</p>
3.15 Late Night Trading Management	Yes	The premises is located in a Local Centre Area and the proposed licensed

Provision	Compliance	Comment
		<p>restaurant use is defined as a category B premises.</p> <p>The proposed permanent trading hours are between 7am and 10pm Tuesday to Sunday, and the restaurant has a proposed maximum capacity of 200 patrons.</p> <p>The application also seeks extended trial trading hours between 10pm and midnight, Thursday to Saturday.</p> <p>The proposed trading hours are consistent with the late night trading provisions of the Sydney DCP which allows for base indoor hours between 7am and 11pm for Category B premises within the Local Centre Area. The DCP also permits extended trading hours to midnight for Category B uses within the Local Centre Area.</p> <p>The proposal is permitted the extended trading hours up to midnight Thursday to Saturday for a 1-year trial period as a first initial trial to allow the City to monitor any impacts and the operator's compliance with the submitted Plan of Management.</p> <p>Conditions are recommended to confirm the proposed trading and trial trading hours, in addition to compliance with the submitted Plan of Management, which has been reviewed and is supported by Council's Licensed Premises Unit.</p>
3.15.5 Plans of Management Requirements	Yes	<p>The submitted Plan of Management outlines appropriate crowd control, noise minimisation and waste management procedures to ensure the premises will be responsibly managed and will not cause significant adverse impacts upon the amenity of surrounding residential properties.</p> <p>Waste from the premises will be collected from the adjacent loading zones along Cleveland Street, whilst the</p>

Provision	Compliance	Comment
		<p>restaurant functions of the Premises will be serviced by small delivery vans off a driveway and loading zone from High Holborn Street in order to minimise impact upon the local road network and residential character of High Holborn Street.</p> <p><b><i>Proposed Basement Kitchen</i></b></p> <p>The application proposes a kitchen within the basement which the Plan of Management states is to support the restaurant usage.</p> <p>See further details under 'Discussion' section below.</p> <p><b><i>Outdoor Dining</i></b></p> <p>Further, the submitted Plan of Management makes reference to outdoor dining, subject to Council approval. This outdoor dining proposal does not form part of the current application and is required to be subject to separate application for assessment.</p> <p>For clarity a condition is recommended to confirm outdoor dining is not approved under the current application.</p> <p><b><i>Goodlet Lane egress</i></b></p> <p>The submitted Plan of Management provides no information regarding the egress to Goodlet Lane identified on the submitted drawings. It is assumed that this egress is for fire and emergency only.</p> <p>For clarity a condition is recommended to confirm Goodlet Lane egress is only to be used in the event of a fire or emergency. This is to ensure that Goodlet Lane is not utilised as a secondary patron or service access.</p> <p><b><i>Commercial Office Premises</i></b></p> <p>The submitted Plan of Management does not address the commercial office</p>

Provision	Compliance	Comment
		<p>premises on the upper levels of the development.</p> <p>The waste and servicing arrangements of these premises are captured within the submitted Plan of Management which is recommended for approval and given the low impact nature of the proposed usage, a separate Plan of Management is not considered necessary.</p> <p>Notwithstanding the above, a condition is recommended to be imposed requiring the hours of operation of the east facing terraces of the commercial tenancy on the upper level (Level 4) are to be restricted to between 7am and 8pm. This is to ensure that late night usage of these terraces will not adversely impact upon the acoustic amenity of neighbouring residential properties and is consistent with the recommendations of the applicant's Acoustic Report which is also recommended for approval.</p>

## Section 4 – Development Types

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

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No, but acceptable	<p>The site is permitted a maximum building height of two storeys (although it is subject to a 15m LEP height limit).</p> <p>The proposed development retains the existing church building which is higher than two storeys, with the new building five storeys in height.</p> <p>Although the proposed development is non-compliant with the two storey height control of the DCP, it is consistent with the existing approval for the site (D/2020/993) which also granted consent to a five storey rear addition.</p>



Provision	Compliance	Comment
		See further details in relation to the height, bulk and massing of the development in the 'Discussion' section below.
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, but acceptable	<p>The proposed ground level floor to floor height is 3.15m rather than 4.5m required by the DCP.</p> <p>The existing ceiling heights of the church building are retained.</p> <p>Given the unique nature of the proposal the non-compliance is acceptable in the circumstances.</p> <p>The floor to floor heights of the proposed upper level commercial tenancies of the office premises measure 3.15m and do not achieve the 3.6m requirement of the DCP.</p> <p>Notwithstanding the above, the applicant has submitted details of the bespoke nature of the proposal which includes exposed lighting and service zones.</p> <p>The applicant's submission demonstrates that the commercial levels generally achieve a clear internal height of 2.7m with a floor to soffit height of 2.9m above the exposed services.</p> <p>The proposed arrangement has been reviewed by Council's Urban Design Unit who are satisfied that the proposal provides adequate commercial amenity.</p>
4.2.2 Building setbacks	Yes	<p>The existing church building is being retained.</p> <p>The built to boundary proposed form of the rear addition is consistent with the warehouse buildings to the east of the site.</p>
4.2.3 Amenity		

Provision	Compliance	Comment
4.2.3.1 Solar access	No, but acceptable	<p>The proposed development will cause additional mid winter overshadowing to the living room windows and private open space areas of west facing apartments within the converted warehouse building of No.426 Cleveland Street to the east of the site.</p> <p>Of these impacted apartments, all upper level apartments will receive over 2 hours direct sunlight to living room windows and their private open space areas.</p> <p>The development will cause additional overshadowing to the living room windows of ground floor west facing apartments within No.426 Cleveland Street during the afternoon hours between midday and 3pm on 21 June.</p> <p>Several of these lower level apartments will not receive sunlight 2 hours direct sunlight to living room windows as a result of the proposed development.</p> <p>Notwithstanding the above, it is noted that these apartments are particularly vulnerable to any increase in development on the site due to their lower level.</p> <p>Further the reconfigured geometry of the proposed development will result in reduced overshadowing and solar impacts compared to the existing consent for the site (D/2020/993).</p> <p>For these reasons, the proposed development will improve solar access to apartments within No.426 Cleveland Street compared to the existing consent and therefore the impact is acceptable.</p>
4.2.3.3 Internal common areas	Yes	Above ground internal common areas have access to daylight.
4.2.3.4 Design features to manage solar access	Yes	Vertical shading panels are incorporated on the eastern and western facades,

Provision	Compliance	Comment
		minimising peak Heating, Ventilation and Air Conditioning (HVAC) loads.
4.2.3.5 Landscaping	Yes	<p>The applicant has submitted a landscape package which details proposed planting and urban greening measures across the development.</p> <p>These details have been reviewed and are generally supported by Council's Landscape Unit subject to recommended conditions of consent.</p> <p>See further details under subheading 'Landscaping' of 'Discussion' section below.</p>
4.2.3.6 Deep Soil	No	<p>The DCP requires development sites outside Central Sydney to provide a minimum of 10% of the site area as deep soil, which equates to a requirement of 57.9sqm on the subject site. All deep soil areas are to have a minimum dimension of 3m.</p> <p>The proposed deep soil provision of the proposed development has been measured to be approximately 34sqm and none of these deep soil areas achieve the minimum dimension of 3m.</p> <p>See further assessment of the non-compliance under subheading 'Landscaping' of 'Discussion' section below.</p>
4.2.3.11 Acoustic privacy	Yes	<p>The applicant has submitted an Acoustic Report which assesses the noise impacts of the proposed development upon the acoustic privacy of neighbouring residential uses and recommends appropriate noise attenuation measures to achieve compliance with relevant noise criteria.</p> <p>The Acoustic Report has been reviewed by Council's Environmental Health Unit who have raised no objection to approval subject to the</p>

Provision	Compliance	Comment
		<p>recommendations of the Acoustic Report being implemented.</p> <p>Conditions are recommended confirming compliance with the provisions of the submitted Acoustic Report, including its relevant parameters and recommendations.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The development has fine grain built form with two distinct building forms between the existing church building which is to be retained and the proposed rear addition.
4.2.6 Waste and recycling Management	Yes	<p>The Operational Waste Management Plan has been amended to confirm a waste contractor will collect waste from Cleveland Street as the nominated collection point.</p> <p>This arrangement provides for wheel-in wheel-out overnight kerbside collection outside of peak hours, thereby minimising noise and amenity impacts to residential properties along High Holborn Street.</p> <p>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.</p>
4.2.9 Non-residential development in the MU1 Mixed Uses Zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

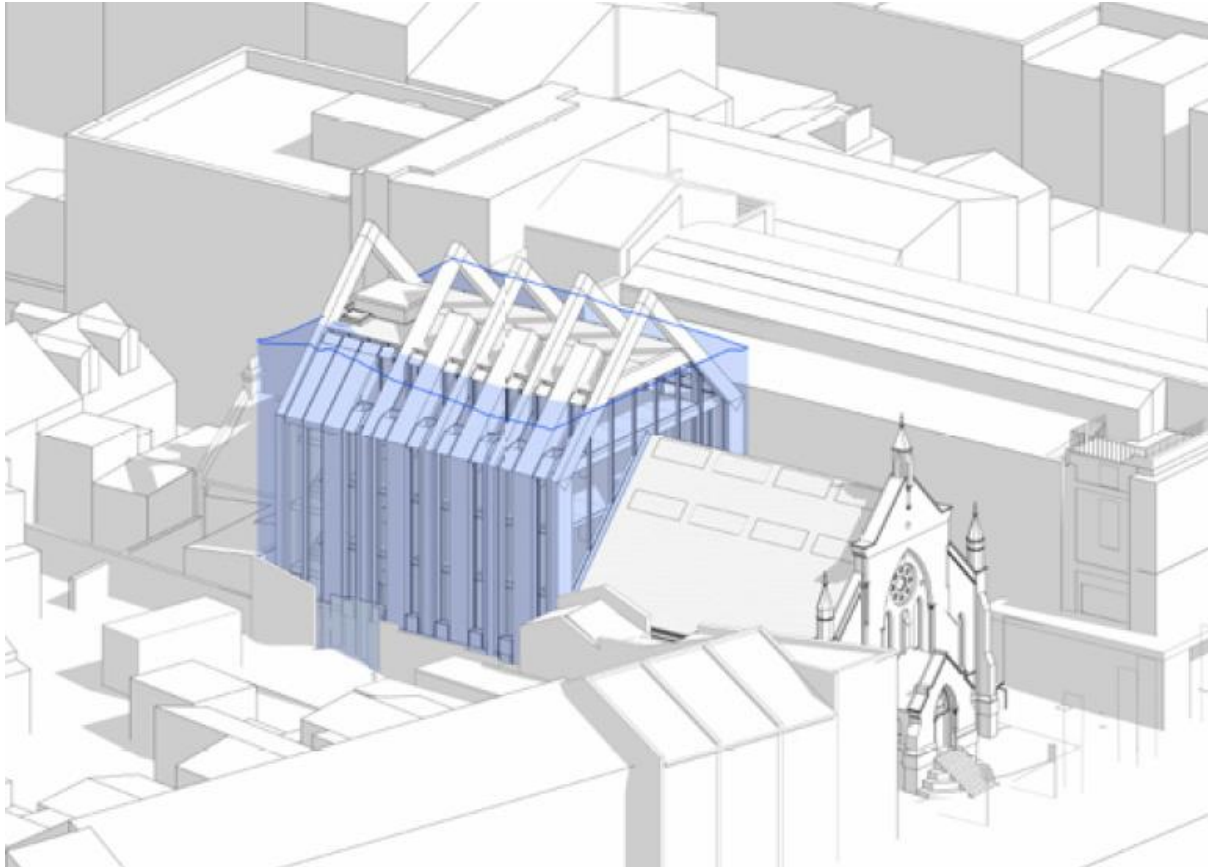
## Discussion

### Clause 4.6 Request to Vary Height of Buildings Development Standard

60. The site is subject to a maximum Height of Buildings development standard of 15 metres pursuant to Clause 4.3 of the Sydney LEP.
61. The proposed development has a maximum height of 19.53 metres to the top of the open pitched portal architectural roof features and a maximum building height of 16.6 metres to the top of the lift overrun.



62. It should be noted that for the purpose of calculating the maximum building height, the top points of the vertical kitchen exhaust risers were not included as they are considered to be “flues”, which are excluded in the LEP building height definition.
63. The diagram below illustrates the LEP 15 metre height plane across the site and highlights the parts of the development in breach of the development standard.



**Figure 36:** Diagram showing LEP 15m height plane and proposed development's areas of non-compliance with the Height of Buildings development standard

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

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

65. The applicant seeks to justify the contravention of the Height of Buildings development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
  - (i) The applicant's submission seeks to demonstrate that the compliance with the standard is unreasonable or unnecessary in the circumstances of the case by applying Test 1 of the judgement established by *Wehbe v Pittwater Council* (2007).
  - (ii) This test requires applicants to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The applicant's assessment of the proposed non-compliance against the objectives of the Clause 4.3 Height of Buildings development standard of the Sydney LEP are provided below.

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

- The applicant submits that both the existing LEP and DCP height and FSR controls and the scale, bulk and height of the immediately surrounding context to the subject site identify a transition of an expected built-up, 3-4+ storey, mixed commercial/residential buildings along Cleveland Street with active street frontages, grading down to a lower, 1, 2 and 3 storey scale to the residential zoned areas to the north and north-west.
- The upper-level design features on the existing Kirk building already exceeds the 15 metre height of building development standard by 2.6 metres along its Cleveland Street frontage. This form is consistent with the variety of building scales along Cleveland Street, in particular the mixed use buildings located further to the east, which have similar heights, including: 426 Cleveland Street (3-4 storeys), 5 Cleveland Avenue (3 Storeys), and the Crown Hotel, 591 Crown Street (3-4 storeys).
- The subject site therefore provides the capacity for a new, compact infill building to the rear at a height exceeding the 15 metre LEP and 2 storey DCP maximums.
- A sympathetic design transition is created through the new rear building's open pitched portals above the habitable levels, its corresponding 3 storey building wall heights on the east and west elevations, and more sensitive and visually interesting design along its southern and northern (rear) elevations.
- This results in a more consistent, proportionate and visually interesting streetscape along the site's Cleveland Street frontage, and a less impacting scale, bulk and massing at the rear.

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

- The applicant submits that the subject site is located within the southern edge of the High Holborn Street Heritage Conservation Area. The existing Kirk Building is not listed as a local or State heritage item, but it is identified as being a contributory building. Several heritage items of local significance are located nearby, including the 'Terrace group including interiors' located at 32-52 High Holborn Street, the 'Former Bank of NSW including interior' at 397-399 Cleveland Street, and the 'Terrace house including interior' at 396-398 Cleveland Street.
- An important design element of the subject proposal has been to sensitively manage the transition of height, scale and bulk of the new rear building from the more built-up scale of the site's Cleveland Street frontage, in order to complement the contributory streetscape features and setting of the existing Kirk building, and its relationship with the lower scale, residential character and amenity of adjoining residential properties to the north.
- This approach is supported by the Heritage Impact Statement accompanying the DA which highlights the strong architectural link between the form and design of The Kirk church building and the proposed new rear addition which breaches the development standard.
- The architectural roof features provide a design response to the form, scale and roof pitch of The Kirk that embodies the Burra Charter principles for new infill or adjacent design that neither competes nor detracts from the existing historic building.
- It also responds to the predominant pitched roof form of the surrounding houses at the rear of the site. The new building can clearly be ready as a contemporary and sympathetic addition to the church.

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

- The applicant submits that given the relatively limited site area and scale of the new rear commercial building, and the site's topographical setting and orientation, there will be no significant view loss from surrounding properties across the site.
- Views across the site are limited short distance views which are not significant, or iconic, and generally consist of views of the existing building or trees beyond. The proposed building height limit exceedance will have no significant impact on views.

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

- Not applicable.
- (iii) The applicant's submission also applies Test 3 of the judgement established by *Wehbe v Pittwater Council* (2007) by seeking to demonstrate the underlying object of purpose would be defeated, thwarted or undermined if compliance was required and therefore compliance is unreasonable.

- (iv) For the reasons describe above under Test 1 of *Wehbe v Pittwater Council* (2007), the applicant submits that a compliant development would:
- Undermine objective 1(a) of the Height of Buildings Standard as a compliant development would be less adapted to the condition of the site and its context than the proposed development; and
  - Undermine objective 1(b) in that the compliant development would have a less appropriate height transitions between new development and the existing heritage fabric on the site than the proposed development.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) The applicant submits that the proposed variation should be supported on environmental planning grounds by providing a comparative assessment of the environmental impacts of the height variation between the subject proposal, the previously approved D/2020/993, and the 15 metre LEP Maximum Height envelope.
- (ii) The applicant submits that, in comparison to the existing consent for the site (D/2020/993) and the 15 metre maximum height envelope of the LEP across the site, the design concept and pitched portals of the proposed development will deliver a number of environmental planning benefits, including:
- Reduced overshadowing and improved solar access to neighbouring properties;
  - No windows proposed to the northern facade which ameliorates overlooking to the rear garden of No.73 High Holborn Street;
  - The proposed form reduces the bulk and massing of development at the rear where it is built to the northern boundary adjacent to No.73 High Holborn Street;
  - The proposed development mitigates overlooking and provides improved privacy to the east and west;
  - The proposed pitch form of the rooftop will improve outlook and sky views from apartments within No.424 Cleveland Street;
  - The upper levels and entire rear building have a superior architectural and aesthetic appearance than the bulky overhang connection to The Kirk building that raised concerns for the City of Sydney Council in their deferred commencement approval of D/2020/993; and
  - The pitched roof form, reduced massing and greening elements incorporated into the design of the new rear building provide a more sensitive interrelationship with the Kirk building, and a scale and character more reflective of the Cleveland Street streetscape and the surrounding, lower scale character buildings of residential properties to the north, west and east.

Consideration of Applicant's Written Request - Clause 4.6 (3)

66. Development consent must not be granted unless the consent authority is satisfied that 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.

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

67. The applicant's written request adequately demonstrates that compliance with the standard is unreasonable and unnecessary in the circumstances of case as the development is consistent with the objectives of the Height of Buildings development standard, notwithstanding the numerical non-compliance.
68. Council officers agree that the proposed development height is appropriate to the site and its context, in addition to providing an appropriate height transition between the new development and neighbouring properties within the heritage conservation area.
69. The proposed development is consistent with the current and future urban form of development within this area which supports a higher scale of development along this section of Cleveland Street, transitioning to lower densities of residential terraces.
70. The pitched roof form of the rear addition integrates with the historic character of the retained church building and provides an appropriate height transition to distinguish between the original and contemporary building fabric.
71. The proposal promotes the sharing of views. The proposal does not impact on important views from neighbouring properties or views within the public domain.

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

72. The application has demonstrated there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in the circumstances of the application.
73. The building form that exceeds the height control is setback from the building edge and consists of lift overrun and sculpted roof form that integrated into the building design.
74. Impacts of the building elements exceeding the control are minimal and the pitched design of the upper level mitigates overshadowing and bulk and massing impacts of the proposal compared to a compliant height envelope across the site and the existing consented scheme (D/2020/993).
75. The pitched roof design allows for the upper-level east and west facing windows of the proposed rear addition to be pulled from the side boundaries which assists in mitigating overlooking of neighbouring properties from the associated commercial tenancy.
76. Accordingly, there are sufficient environmental planning grounds to justify contravening the development standard.



## Conclusion

77. For the reasons provided above the requested variation to the Height of Buildings development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

## Design

78. The application proposes a development of a similar scale and envelope to the recent development consent for the site (D/2020/993), but with varying land uses and building design.
79. Whilst the existing consent approved a 5-storey rear addition with a comparable maximum building height of the principal building form, the current development proposal introduces pitched roof portals which chamfer the upper level of the proposed rear addition thus reducing the overall bulk and massing of the development compared with the previous consent (D/2020/993).
80. A comparison of the proposed building form with the consented scheme is provided below:



**Figure 37:** Render of proposed development from Cleveland Street with the approved form of the consented scheme (D/2020/993) dotted in blue

81. The architecture provides a contemporary response to the historic character of The Kirk church building and is appropriate within the context, whilst the reconfigured pitched roof form successfully addresses environmental impacts of overshadowing and solar access pursuant to the Design Excellence provisions outlined within Clause 6.21C of the Sydney LEP.

82. The proposed gable form of the roof is most appreciable to the High Holborn Street eastern interface which results in increased solar access to the neighbouring residential flat building to the east at No.424 Cleveland Street, reduced overshadowing generally, and a more generous streetscape experience with increase views to the sky, all of which are significant positive improvements from an amenity and streetscape perspective.
83. The proposed design of the rear addition is sympathetic to the historic character of The Kirk church building, whilst incorporating a number of measures to manage solar and visual privacy - these visual privacy measures are explored in further detail below.
84. Overall, the proposed design of the development is high-quality and includes materials and detailing appropriate to the building type and location, pursuant to Clause 6.21C(2)(a) of the Sydney LEP.
85. The applicant has provided a digital materials and finishes sample board which is generally supported in principle, however a condition is recommended requiring a detailed physical samples board to be approved by Council prior to the issue of a Construction Certificate to ensure that all proposed elements are detailed and high quality.
86. The proposal has been reviewed by Council's Heritage and Urban Design Specialists who raised no objection to approval of the proposed development as amended subject to recommended conditions of consent.

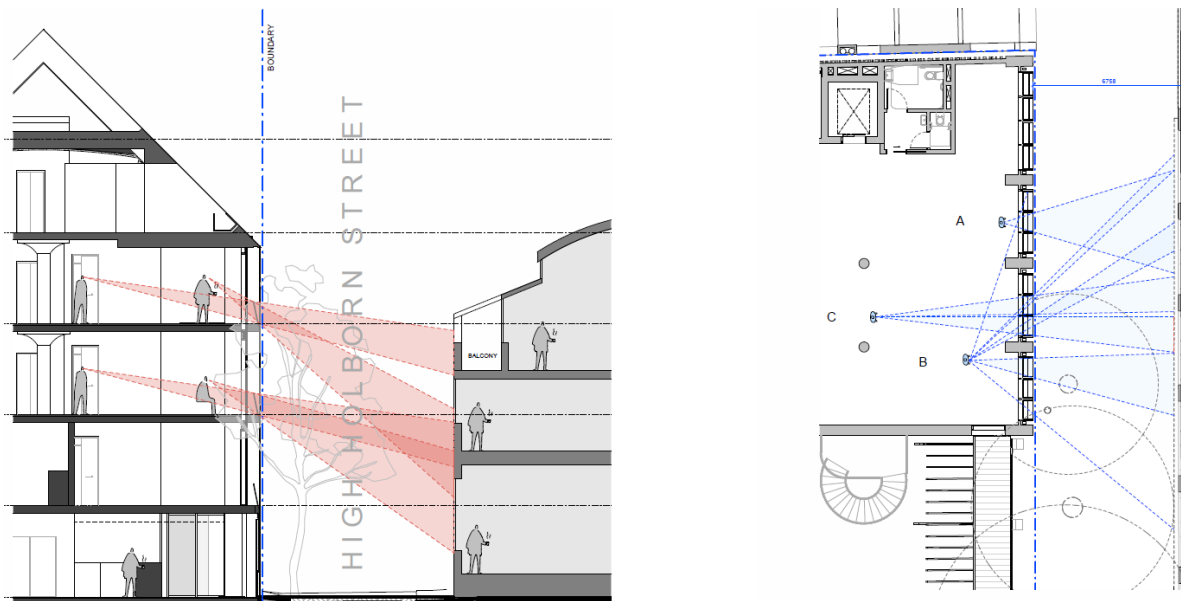
### **Visual Privacy**

87. The proposed development has incorporated a number of design measures to mitigate overlooking of neighbouring residential properties to the east and west.
88. This includes raised horizontal planters on each level to assist with screening and a setback glazing line on the east and west elevations, in addition to 1.2 metre column depths breaking up the windows and 450 millimetre vertical fins which assist with shading and breaking up the extent of glazing.
89. The proposed design concept for the three kitchen exhausts on the west elevation also provides a greater solid to void ratio which limits the amount of glazing on this elevation whilst integrating with the pitched roof design, as illustrated below:

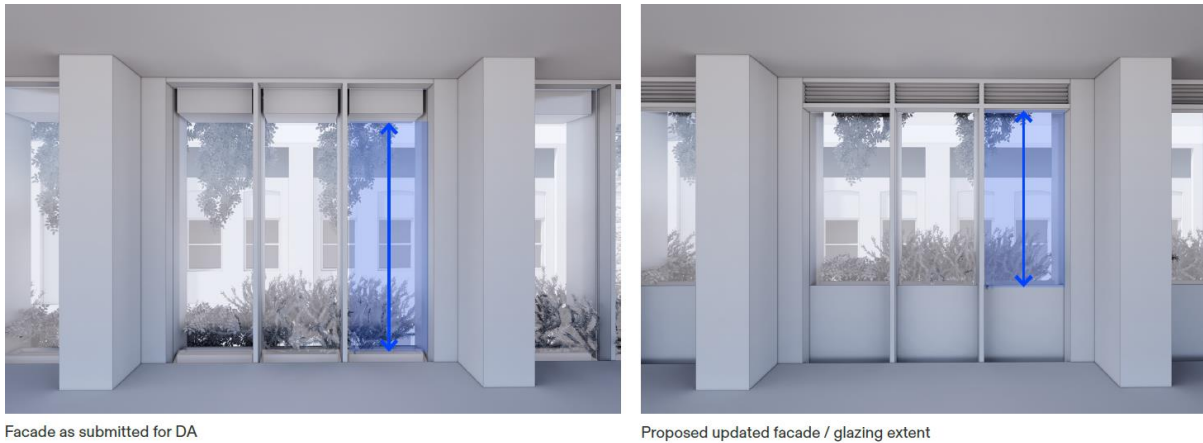


**Figure 38:** 3D perspective of west elevation illustrating columns and vertical exhausts integrated into the design and providing a greater solid to void ratio along this elevation to mitigate overlooking of residential properties to the west

90. The applicant has made further amendments during the assessment to increase the height of planters along these elevations in order to reduce the extent of glazing and restrict viewing angles across the eastern and western boundaries from the proposed commercial office tenancies.
91. The effect of these measures and amendments in mitigating visual privacy impacts towards neighbouring residential properties is illustrated below:



**Figure 39:** Diagrams illustrating mitigation of overlooking by raising horizontal planters/sill heights of window openings and providing vertical fins and columns to break up extent of glazing and sightlines



**Figure 40:** Comparison of efficacy of amendments and raising of sill heights in mitigating overlooking of residential windows of No.426 Cleveland Street from commercial tenancies

92. Notwithstanding the above, it is noted that the consented scheme (D/2020/993) approved far less visual impacts from direct views to neighbours than proposed under the current application. All windows on the east elevation of the approved rear addition in the consented scheme were required to be fitted with fixed frosted glass external louvres.
93. It is accepted that the commercial office use of the rear addition proposed under the current application will generally have less of an impact upon the visual privacy of neighbouring residential properties than the previously consented boarding house use (D/2020/993).
94. Notwithstanding the above, further privacy treatments are recommended to the eastern elevation as these large windows currently provide direct and largely unfettered views towards the residential windows and private open spaces of west facing apartments within No.426 Cleveland Street.
95. A condition is recommended requiring well integrated external privacy treatments are to be provided to the large picture windows on Levels 1-3 of the proposed rear addition facing the eastern neighbour to ensure increased privacy to this sensitive interface is maintained at all times.
96. The condition confirms the amount of glazing providing direct unfettered views across the eastern boundary at Levels 1 to 3 of the rear addition to be reduced by 50 per cent. This represents a balanced outcome which maintains a degree of outlook from the tenancies for commercial amenity whilst mitigating overlooking of residential windows and private open spaces of west facing apartments within No.426 Cleveland Street.
97. The proposed upper level is setback from the east and west side boundaries which provides approximately 13 metre separation between from the upper-level windows of apartments within No.426 Cleveland Street measured glass line to glass line.
98. Accordingly, the interface between these windows is less problematic compared with the lower levels, which are only separated by approximately 6.6 metre glass line to glass line.

99. It is therefore considered that the upper-level windows of the rear addition do not require additional privacy treatment, however a condition is recommended to restrict the use of the upper-level terrace to between 7am and 8pm in order to safeguard the acoustic amenity of neighbouring residential properties. The 8pm closure of the upper level terraces is consistent with the recommendations of the applicant's Acoustic Report which is also recommended for approval.
100. A further condition is recommended requiring high quality, well integrated external privacy treatments are to be provided to the large picture windows on levels 2-4 of the south elevation with oblique views to the eastern neighbour (No.426 Cleveland Street) to ensure increased privacy to this sensitive interface is maintained at all times. This could include fixed deep blades to proposed mullion locations, fixed external vertical or horizontal louvres or equivalent external treatments.
101. Amendments made by the applicant during assessment involving increasing the height of horizontal planters and associated raising of window sill heights are effective in mitigating downward views from the west elevation of the commercial tenancies at Levels 1 to 3 towards the rear yards and residential windows of terraces to the west.
102. Views across the western boundary are partially restricted by the three vertical kitchen exhausts which break up the extent of glazing across this elevation. Two of these exhausts serve the main restaurant kitchen, whilst one serves the proposed basement kitchen.
103. See further discussion in relation to permissibility of the proposed basement kitchen below.

### **Proposed Basement Kitchen**

104. The application's description as the proposed kitchen space within the basement as a 'dark kitchen' is somewhat ambiguous, however it is noted that the submitted Plan of Management states this kitchen is designed to support the ground floor kitchen.
105. The principal matters of concern with this aspect of the proposal are the potential impacts upon the residential amenity and servicing along High Holborn Street if the kitchen provides for an intensification of the use by supporting other nearby restaurant uses.

For clarity a condition is recommended confirming the proposed basement kitchen is for the exclusive use of the ground floor restaurant.

### **Landscaping**

106. The application proposes a number of measures to enhance the urban greening of the site, including additional planting along side boundaries and raised horizontal planters at Levels 1 to 3 of the proposed rear addition to provide cascade planting along the east and west elevations.
107. The application also proposes a new large planter at ground level at the end of Goodlet Lane for use as a community garden accessible to the local community. The submitted Plan of Management confirms that this community garden is to be maintained by the building owners.



108. These urban greening initiatives are supported by Council's Landscape Unit and appropriate conditions are recommended to ensure the success of these landscaping proposals.
109. It is noted however that the proposed development will not achieve 15 per cent canopy coverage within 10 years of completion pursuant to Section 3.5.2 of the Sydney DCP and currently offers no deep soil areas compliant with the provisions Section 4.2.3.6 of the DCP.
110. Whilst it is recognised that the proposal represents near full site coverage as approved under the consented scheme for the site (D/2020/993) which restricts opportunities for additional tree planting, it is noted that the proposed repaving of the front setback will remove the little deep soil that was retained under the previous consent.
111. Further, Condition 32 of D/2020/993 required additional permeable landscaped area to be provided within the front setback to Cleveland Street in order to improve deep soil provision.
112. Accordingly, a design modification is recommended requiring the design of the front landscaping to be revised to provide deep soil areas with permeable paving a maximum of 1.2 metre wide within the front setback to Cleveland Street in accordance with the provisions of the City's Landscape Code. The condition confirms that paving wider than 1.2 metres is permitted around the proposed fire booster on the Cleveland Street frontage as required.
113. Council's Landscape Unit have also noted that the proposed planters on the upper level of the rear addition are problematic as they provide insufficient soil depths for successful planting and cannot be accessed for maintenance.
114. A further landscape design modification is recommended requiring the western planters along Level 4 are to be deleted as these cannot be accessed from any operable window. The planters along the eastern elevation of Level 4 are to be increased in height to provide a minimum soil depth of 400 millimetres for successful planting and can be maintained by someone standing within the east facing terraces.

## Consultation

### Internal Referrals

115. The application was discussed with Council's:
  - (a) Construction and Building Unit;
  - (b) Environmental Health Unit;
  - (c) Environmental Projects Unit;
  - (d) Landscaping Unit;
  - (e) Late Night Trading and Licensed Premises Unit;
  - (f) Heritage and Urban Design Unit;
  - (g) Public Art Unit;

- (h) Public Domain Unit;
- (i) Safe City Unit;
- (j) Transport and Access Unit; and
- (k) Waste Management Unit.

116. 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**

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

### **Water NSW**

119. Pursuant to Section 90(2) of the Water Management Act 2000, the application was referred to Water NSW for concurrence.
120. Following review of the works approval application, Water NSW advised that the applicant had provided insufficient information to facilitate assessment of the drained basement originally proposed at lodgement.
121. In order to prevent delaying determination, Water NSW provided the applicant the option of providing General Terms of Approval to instead provide for a tanked basement i.e. no basement drainage/dewatering post construction phase.
122. On 9 April 2024, the applicant confirmed through the Planning Portal the request for a tanked basement instead of the drained basement originally proposed.
123. General Terms of Approval for a tanked basement were issued by Water NSW on 17 June 2024 and have been included in the schedules within the recommended conditions of consent.

## **Advertising and Notification**

124. In accordance with the City of Sydney Community Engagement Strategy and Participation Plan 2023, the proposed development was notified for a period of 28 days between 15 November 2023 and 14 December 2023. A total of 299 properties were notified and 13 submissions were received.
125. The submissions raised the following issues:

Issue	Response
<p>Concern that the building will have access via Goodlet Lane.</p>	<p>A condition is recommended to confirm that the Goodlet Lane egress is only to be used in the event of a fire or emergency.</p>
<p>Concerns related to impacts upon parking and servicing.</p> <p>Request for development to provide its own on-street car parking.</p> <p>Additional traffic generation due to proposed development.</p>	<p>The site is located in an accessible location with strong public transport links. The proposal provides a total of 15 bicycle parking spaces across the development for the use of visitors and workers to promote sustainable transport modes.</p> <p>Waste and delivery service arrangements of the development have been considered to mitigate the development's impact upon the local road network and High Holborn Street.</p> <p>Wheel-in wheel-out waste is to be collected outside of peak hours from the loading zone at the front of the site on Cleveland Street and delivery vehicles utilising the loading dock off High Holborn Street are restricted to B99 small vans to minimise disruption along High Holborn Street.</p> <p>The proposed loading dock requires the removal of 2 street parking spaces on High Holborn Street in order to provide vehicle access. This requires approval from the City's Local Pedestrian Cycling and Traffic Calming Committee (LPCTCC) under separate submission.</p> <p>The proposed loading dock arrangement is supported by Council's Transport and Access Unit and is consistent with the loading dock arrangement approved under the existing consent applying to the site (D/2020/993).</p>

Issue	Response
	The loading dock allows for delivery vehicles to service the development without obstructing or blocking vehicles on High Holborn Street during delivery times and is supported.
Concerns related to noise impacts associated with the proposed restaurant use.	<p>The applicant has submitted an Acoustic Report which assesses noise impacts associated with the restaurant use upon nearby sensitive residential receivers. The report includes noise parameters and recommended attenuation measures to achieve compliance with relevant noise criteria.</p> <p>The Acoustic Report and its recommendations have been reviewed and are supported by Council's Environment Health Unit. A condition is recommended to ensure compliance with the submitted Acoustic Report and its recommendations in order to protect acoustic amenity of nearby sensitive receivers.</p>
Concerns related to height and associated overshadowing caused by the proposed development, particularly towards apartments within 426 Cleveland Street.	<p>Although in breach of the LEP height limit, the design and revised form of the proposed development reduces overshadowing and improves solar access to residential properties adjacent, including apartments within No.426 Cleveland Street.</p> <p>See further details under subheading 'Design' of 'Discussion' section above.</p>
Concerns that the proposed development will adversely impact upon the visual privacy of neighbouring properties, particularly towards apartments within 426 Cleveland Street.	Amendments have been made over the course of the assessment period to reduce the amount of glazing and further conditions are recommended to mitigate direct views of neighbouring properties.

Issue	Response
	See further details under subheading 'Visual Privacy' of 'Discussion' section above.
Query in relation to the need for a commercial development.	A commercial development is being proposed by the applicant and the proposed usage is permissible with consent within the zone.
Landscaping - support for cascading planting on building facades and query in relation to the permanence of these urban greening initiatives.	The applicant has submitted additional landscape details during assessment to ensure the success and long-term maintenance of proposed landscaping planting across the site.
Concerns that the proposed additional height and non-compliance with the LEP height control will lead to additional floorspace at this level in the future.	<p>The rooftop elements in breach of the LEP Height of Buildings development standards are architectural roof features.</p> <p>The architectural roof feature is a decorative element which ties in with the heritage character of the original Kirk building. These features provide no precedent or justification for the provision of floorspace above the height standard in the future.</p>
Concerns related to structural impacts as a result of proposed excavation.	<p>The applicant has submitted a Structural Report and Geotechnical Report which assesses potential impacts of excavation.</p> <p>The Structural Report show a realistic separation between the adjacent building, and the type of supports proposed are appropriate to ensure the development will not adversely impact the structural integrity of neighbouring properties.</p> <p>Conditions are recommended to control construction management and require the preparation of dilapidation</p>



Issue	Response
	reports prior to any works commencing.

## Financial Contributions

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

126. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.
127. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent. The condition requires the contribution to be paid prior to the issue of a construction certificate.

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

128. The site is located within the Residual Lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of 1 per cent of the total proposed commercial floor space, being 16.51 square metres multiplied by the equivalent monetary contribution amount effective from 1 March 2024 to 28 February 2025, which is \$11,176.22.
129. This result in calculated affordable housing contribution totalling \$184,519.39. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.
130. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The Act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:
- (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
  - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
  - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
  - (d) the regulations provide for this section to apply to the application.

131. The proposal is consistent with the criteria under parts (a) and (b) as it involves the redevelopment of the site for a purpose other than the provision of affordable housing thereby placing additional pressures on the availability of floorspace for affordable housing purposes, including the existing boarding house consent for the site (D/2020/993).
132. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to consideration of the following:
- (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
  - (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and
  - (c) the condition requires a reasonable dedication or contribution, having regard to the following -
    - (i) the extent of the need in the area for affordable housing,
    - (ii) the scale of the proposed development,
    - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.
133. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable. A condition of consent is recommended requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

### **Housing and Productivity Contribution**

134. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
135. The site is located with the Greater Sydney region, the development is a type of commercial development to which the Housing and Productivity Contribution applies, and the development is not of a type that is exempt from paying a contribution.
136. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

### **Relevant Legislation**

137. Environmental Planning and Assessment Act 1979.

## Conclusion

138. The proposed development represents sympathetic alterations and additions to a contributory building which will enhance the site's contribution to the heritage conservation area.
139. The proposed design of development respects and integrates with the sites historic character whilst simultaneously mitigating environmental impacts of overshadowing and overlooking of neighbouring properties pursuant to the Design Excellence provisions of the Sydney LEP.
140. Further design measures are recommended by condition to further enhance the site's landscape amenity and safeguard visual privacy across side boundaries where relevant.
141. The application has been assessed against the relevant planning controls and considered against the existing mixed use boarding house-led development consent for the site (D/2020/993).
142. Overall, it is considered that the revised design, form and mix of uses proposed under the current application will secure improved development outcomes and deliver a development which is appropriate for the site and its context.
143. Whilst the proposed maximum height of the principal building envelope is marginally higher than the consented scheme and thus represents a further variation of the Height of Buildings development standard, the reconfigured and chamfered rooftop design results in less overshadowing compared to the approved scheme (D/2020/993) and improved solar access to neighbouring properties and is therefore supported.
144. The proposed design of the rear addition is sympathetic and integrates well with the historic character of the existing church whilst being clearly distinguished as a contemporary rear addition in accordance with the provisions of the Burra Charter.
145. Appropriate restrictions and measures are recommended by condition to ensure that the proposed development remains compatible with its surroundings and does not adversely impact upon the amenity of surrounding properties.
146. The proposed development is therefore recommended for approval subject to the recommended conditions of consent.

## ANDREW THOMAS

Executive Manager Planning and Development

Daniel Stanley, Senior Planner