

Item 3.**Development Application: 375-387 Cleveland Street, Redfern - D/2023/682**

File No.: D/2023/682

Summary

Date of Submission:	The application was lodged on 2 August 2023, amended 22 May, 6 June, 2 and 7 August 2024
Applicant:	Aaron Sutherland
Architect:	Conrad Gargett
Owner/ Developer:	Stasia Pty Ltd
Planning Consultant:	Sutherland Planning
Cost of Works:	\$13,528,884
Zoning:	MU1 Mixed Use. The proposed development comprises a commercial building including retail, office premises and a neighbourhood supermarket which are permissible with consent in the zone.
Proposal Summary:	<p>Demolish existing buildings and structures on the site, excavate to accommodate a single level basement, and construct a three-storey commercial building with a maximum height of 14.3m (RL 48.4) comprising retail uses on the ground floor, a neighbourhood supermarket and office premises above.</p> <p>The application is referred to the Local Planning Panel for determination as the proposal will result in a development that contravenes the maximum Height of Buildings development standard by more than 10 per cent. The proposal presents a maximum 2.3m (19.1 per cent) departure to the maximum permissible height of 12m stipulated under Clause 4.3 of Sydney LEP 2012.</p> <p>A written request to vary the Height of Buildings development standard has been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012 for the proposed variation.</p>

The statement demonstrates that compliance with the standard is unreasonable and unnecessary in the specific circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard. The reasons contained in the Clause 4.6 variation request are acceptable and the variation is supported.

The proposal was amended on 11 March 2024 to address concerns raised by Council staff. These concerns related to overshadowing impacts of the James Street Reserve Community Garden, building height, bulk, and architectural expression and materiality. These concerns have been resolved in the revised scheme.

The original proposal was notified for a 21-day period between 16 August and 7 September 2023 and re-notified for a further period of 21-days between 12 September and 4 October 2023 as the on-site notice was incorrectly erected on site. A total of ten (10) submissions in objection were received during the first notification period and six (6) submissions in objection were received during the second notification period. The submissions primarily raised issues relating to the overshadowing impacts to the James Street Reserve Community Garden, building height, neighbourhood supermarket use, noise and traffic impacts.

As a result of the design modifications made during the assessment of this application, the amended proposal presents an improved outcome and a satisfactory response to the site conditions and locality. Subject to conditions, the proposed development is acceptable with regard to the relevant planning controls, and results in a form and scale that is consistent with the desired future character of the area.

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

Development Controls:

- (i) SEPP (Resilience and Hazards) 2021
- (ii) SEPP (Sustainable Buildings) 2022
- (iii) SEPP (Industry and Employment) 2021
- (iv) SEPP (Transport and Infrastructure) 2021
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) City of Sydney Development Contributions Plan 2015

(viii) City of Sydney Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Shadow Analysis and Sun Eye Diagrams
- E. Submissions

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 'Height of Buildings' development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) consent be granted to Development Application Number D/2023/682 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 development is consistent with the objectives of the MU1 Mixed Use zone of the Sydney Local Environmental Plan 2012.
- (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 Clause 4.3 of the Sydney Local Environmental Plan 2012; and
 - (ii) the proposal is in the public interest because it is consistent with the objectives of the MU1 Mixed Use zone and the 'Height of Buildings' development standard.
- (C) The proposed development complies with the maximum Floor Space Ratio development standard contained in Clause 4.4 of the Sydney Local Environmental Plan 2012.
- (D) The proposed development exhibits design excellence in accordance with the requirements contained in Clause 6.21C of the Sydney Local Environmental Plan 2012.
- (E) The proposed development, as amended, has a height, scale and form suitable for the site and its context, and is appropriate in the streetscape context and setting of the Waterloo and Redfern (Cleveland Street) Special Character Area.
- (F) The development provides an appropriate response to the significance and character of the Baptist Street heritage conservation area and does not result in any detrimental impacts on the heritage significance of contributory buildings or nearby local heritage items.
- (G) The development maintains an acceptable level of direct sunlight to the James Street Reserve Community Garden does not result in any significant adverse environmental or amenity impacts on the subject or surrounding properties, the public domain, and broader locality, subject to recommended conditions.

- (H) The proposal is generally consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 DP 1000082, known as 375-387 Cleveland Street, Redfern. It is irregular in shape with area of 996 square metres. It has a primary street frontage of 31.83 metres to Cleveland Street to the north and a secondary street frontage of 21.285 metres to Marriott Street to the east. The southern boundary of the site adjoins James Street which comprises a public reserve, known as the James Street Reserve, and the James Street Reserve Community Garden. A row of two storey terraces adjoins the site to the west. Levels on the site fall from Cleveland Street to Marriot Street.
2. The site is occupied by a single storey building with ancillary shade structures over a large hardstand area. The existing building is setback from both the primary and secondary street frontages and presents a blank wall to the James Street Reserve Community Garden and James Street Reserve. There is an existing two-storey rendered wall located along the western boundary of the site at the interface with the adjoining residential terrace at 373 Cleveland Street. The entire site is currently used as a car wash, known as 'Wax Car Wash'.
3. Existing vehicular access is provided from both Cleveland and Marriott Streets. While there is no vegetation contained within the site, there are several trees located within the immediate vicinity of the site including within the James Street Reserve and Community Garden and two street trees along the Cleveland Street frontage.
4. The site is subject to two cross easements for support over the party wall shared with a residential terrace along the western boundary at 373 Cleveland Street.
5. The existing building on the site is identified as a detracting building located within the Baptist Street heritage conservation area (C53). The site is also located within the Waterloo and Redfern (Cleveland Street) Special Character Area.
6. The site is identified as being subject to flooding and is located within the Alexandra Canal catchment, which drains down Cleveland Street and discharges south along Marriott Street.
7. The surrounding area is characterised by a mixture of land uses, primarily being commercial and residential. The Surry Hills Shopping Village is located immediately to the east of the site across Marriott Street at 2-38 Baptist Street and 397-399 Cleveland Street. The Surry Hills Shopping Village precinct (bound by Cleveland, Marriott and Baptist Streets) contains commercial, tourist and visitor accommodation, residential and retail land uses including a Coles full line supermarket and new public park.
8. Site visits were carried out on 26 September 2023, 11 November 2023, 16 and 22 August 2024. The site is identified on the aerial photograph in Figure 1. Photos of the site and surrounds are provided in Figures 2 to 15 below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Cleveland Street facing south-west (26 September 2023)



Figure 3: Existing Cleveland Street site frontage (22 August 2024)



Figure 4: Cleveland Street site frontage showing existing street trees and western interface with the row of two-storey residential terraces (26 September 2023)



Figure 5: Site viewed from Marriott Street facing north-west, showing the existing self-portrait mural by Fintan Magee (completed in 2013) at the south-eastern corner of the site (26 September 2023)

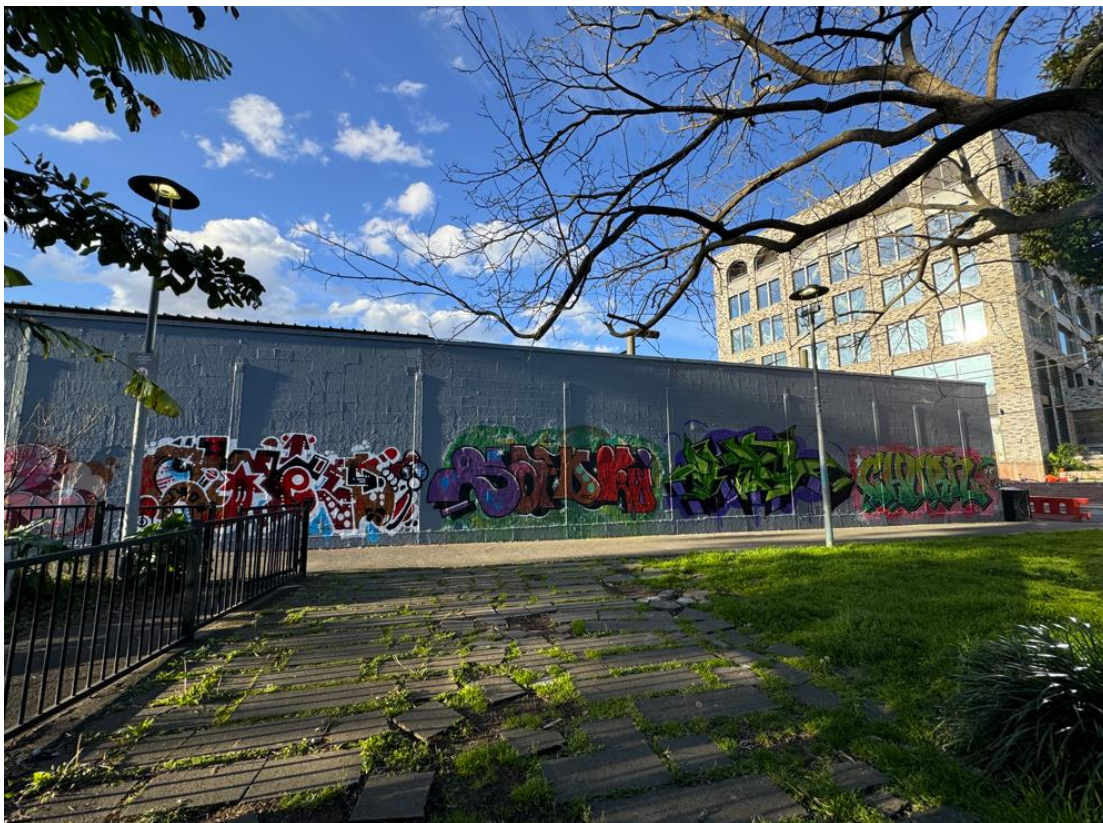


Figure 6: James Street Reserve facing north showing the existing southern boundary wall on the site (22 August 2024)



Figure 7: Site viewed from James Street facing east showing the James Street Reserve Community Garden (22 August 2024)



Figure 8: View from within the James Street Reserve Community Garden facing north towards the site (22 August 2024)



Figure 9: View from within the James Street Reserve Community Garden facing south-west to Young Lane (22 August 2024)

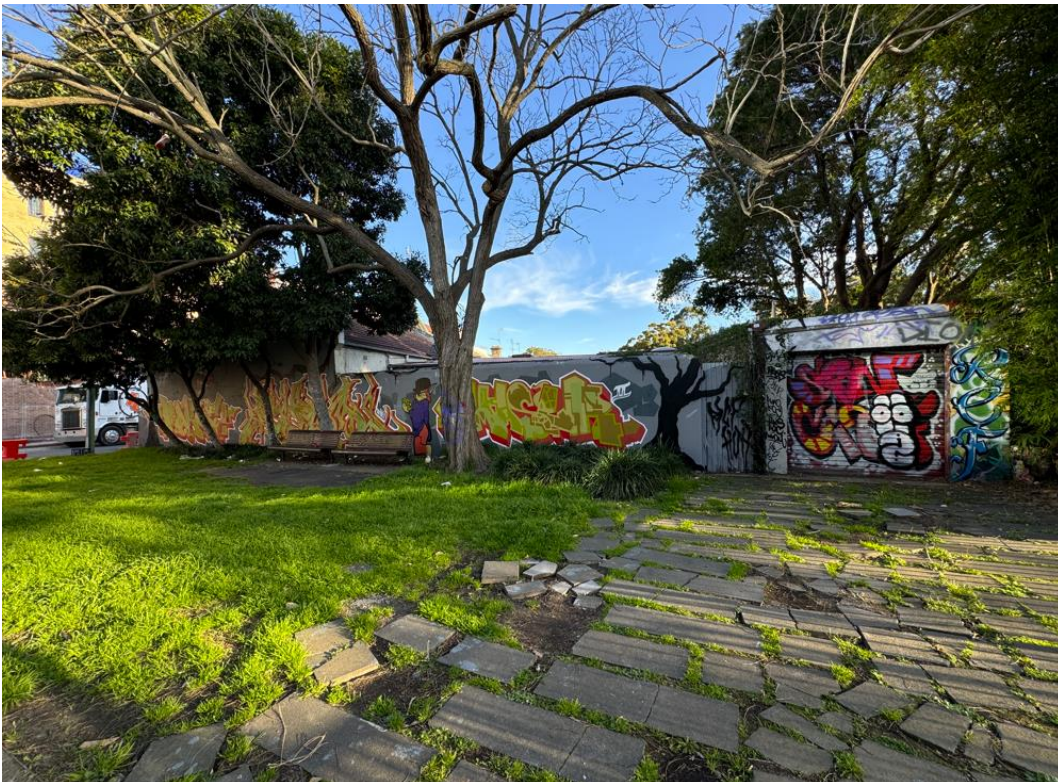


Figure 10: James Street Reserve and No. 2 Marriott Street to the south of the site (22 August 2024)



Figure 11: Site viewed from James Street showing interface with the rear of the adjoining terrace at No. 373 Cleveland Street (22 August 2024)



Figure 12: Surry Hills Village to the east of the site at 2-38 Baptist Street and 397-399 Cleveland Street viewed from Marriott Street (22 August 2024)



Figure 13: Adjoining row of two storey residential terraces adjoining the site to the west at Nos. 365-373 Cleveland Street (11 November 2023)



Figure 14: Site viewed from across Cleveland Street facing south-east showing the Surry Hills Village (left) and adjoining row of terraces (right) (22 August 2024)



Figure 15: Surry Hills Village viewed from the intersection of Cleveland and Baptist Streets (16 August 2024)

History Relevant to the Development Application

Pre-Development Application Advice

9. The following development application and pre-development application advice letters are relevant to the current proposal:

- **D/1997/1063**

Development consent was granted on 19 November 1997 for the demolition of the existing service station and construction of a single storey car wash facility with café, operating daily.

Condition 13 of this consent restricted the hours of operation to between 7.00am and 9.00pm Mondays to Fridays, 7.00am to 8.00pm on Saturdays, and 8.00am to 7.00pm on Sundays.

Condition 51 of the consent states that the storage tanks were removed in 1990 at the closure of the trading as a service station, back filled and re-surfaced.

- **PDA/2020/193**

A pre-development application (Pre-DA) request for the subject proposal was received by Council officers on 14 August 2020. The Pre-DA scheme comprised demolition of the existing structures on site, construction of a 3-storey mixed use building with a basement car park, retail on ground and two (2) commercial levels above (refer to Figures 16 to 17). The proposal included a new vehicular

driveway at the rear of the site, on the James Street bend and the community garden/ James Street Reserve.

Pre-DA advice was provided to the applicant on 28 September 2020 which raised the following key matters:

- (i) Driveway - Location of the driveway is not supported and not considered viable given constraints due to the bend in the road, and as it would result in a safety risk for pedestrians utilising the through-site link from Baptist Street to Marriott Street that forms part of the new Surry Hills Shopping Village.
- (ii) Pedestrian Awning - Requirement for an awning to be provided along Cleveland Street and Marriott Streets in keeping with Section 3.2.4 of Sydney DCP 2012.
- (iii) Building voids - Proposed voids and the potential exceedance in Floor Space Ratio (FSR) that may occur in the future following infilling of voids.
- (iv) Overshadowing impacts - Shadow diagrams to take into consideration any solar panels that are in close proximity to the development and maintain solar access to the James Street Reserve in accordance with Section 3.2.1.1 of Sydney DCP 2012.
- (v) Material finishes within the heritage conservation area - Building exteriors to be designed with a masonry character to respond to the materiality of the Baptist Street heritage conservation area (C53).

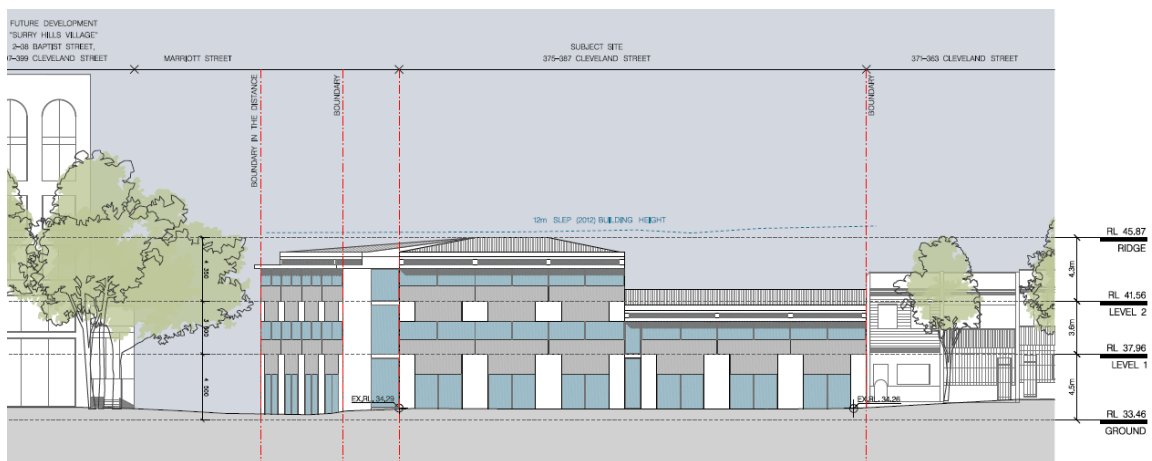


Figure 16: Pre-DA Scheme 1 - Cleveland Street Elevation

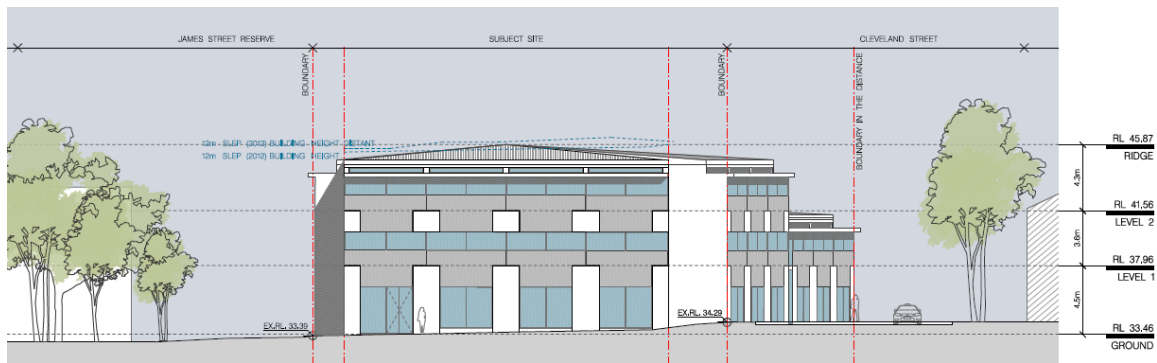


Figure 17: Pre-DA Scheme 1 - Marriott Street Elevation

- **PDA/2022/150**

A second Pre-DA request for the subject proposal was received by the City on 14 July 2022. The revised Pre-DA scheme included basement vehicular entry from Marriott Street, retail on ground, first floor supermarket, and commercial offices with an external garden on the second floor (refer to Figures 18 to 20).

The Pre-DA advice provided on 22 August 2022 raised the following summarised matters:

- (i) Building voids - The proposed multi-levelled voids are not supported as they could be infilled at a later date, which would also likely exceed the FSR development standard.
- (ii) Building height and FSR - The proposal exceeds the maximum permissible height of 12m by 2.5m. The parts of the proposal which exceed the height development standard can be integrated into the building height and envelope, given the extensive building voids that are proposed throughout the building.
- (iii) Overshadowing impacts - The proposal concentrates bulk at all edges of the site, which results in extensive overshadowing of the James Street Reserve and community garden. It is recommended that the plant is integrated into a compliant height and envelope, with minimised bulk at the western edge of the site to reduce visual bulk and overshadowing impacts.
- (iv) Ceiling heights - Low ground level ceiling heights provide poor internal amenity for Street level tenancies, and do not provide for flexible future uses of the site. Complying floor to floor heights must be provided at ground and first floor levels in keeping with Section 4.2.1.2 of Sydney DCP 2012.
- (v) Heritage impacts within the heritage conservation area - The material palette comprising extensive glazing and metal blades for articulation does not address the values of the heritage conservation area. The development should form an appropriate 'bookend' for the western corner of Marriott Street with consideration for the masonry face brick materiality of the Surry Hills Shopping Village.

- (vi) Site servicing, parking and transport - The proposal must demonstrate appropriate site servicing and bike parking, noting that Marriott Street is a one-way street and is subject to flooding. Waste must be collected on site.

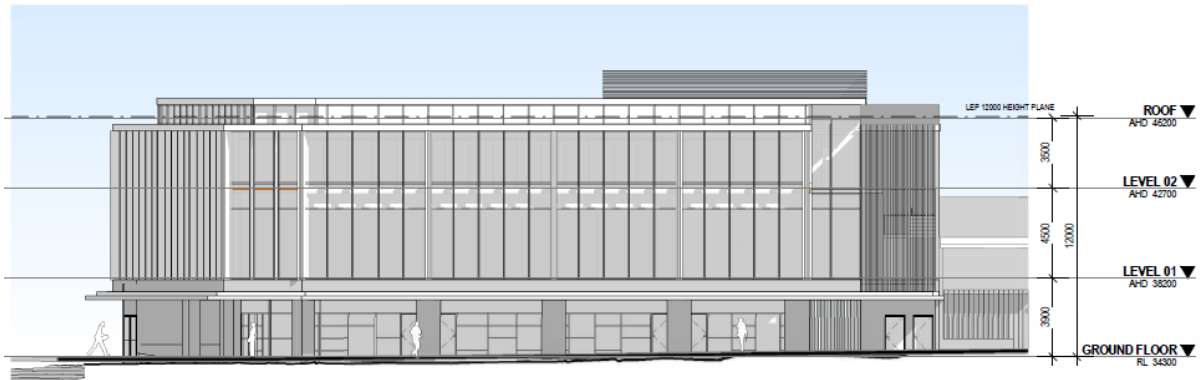


Figure 18: Pre-DA Scheme 2 - Cleveland Street Elevation

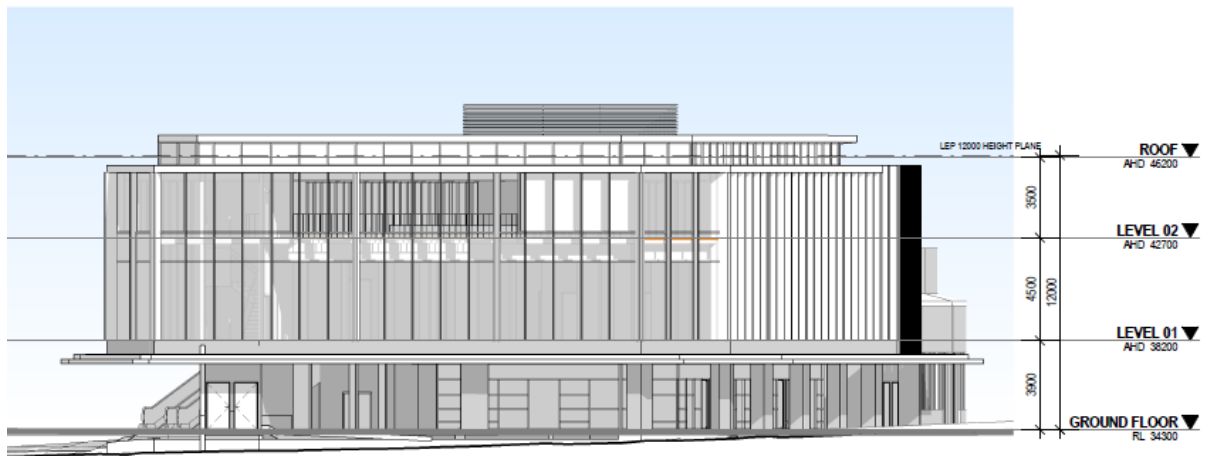


Figure 19: Pre-DA Scheme 2 - Marriott Street Elevation

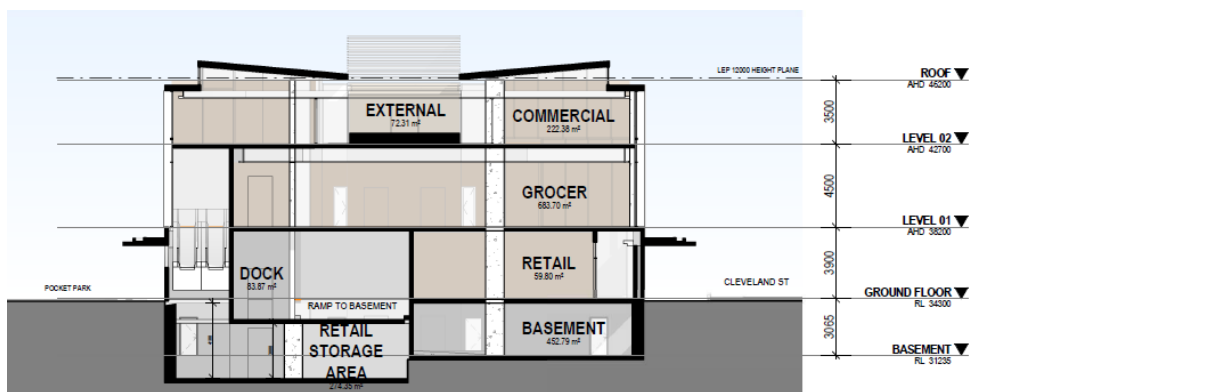


Figure 20: Pre-DA Scheme 2 - Section

10. A number of design iterations have been undertaken by the applicant to achieve an appropriate design response for the site. The proposal, as amended, has addressed the key matters that were raised at the time of the Pre-DAs as well as during the assessment of the subject application (refer to discussion under the heading 'Amendments' below).

Amendments

11. Since the lodgement of the development application, a number of amendments and packages of additional information have been received by the City throughout the period between August 2023 and May 2024. The requested additional information and amendments received are summarised below.
12. On 25 August 2023, a request for additional information was sent to the applicant seeking a revised Clause 4.6 variation statement, updated FSR calculation in accordance with the gross floor area (GFA) definition of the Sydney LEP 2012, and a letter prepared by a NSW EPA Site Auditor to comment on the validity of the submitted Site Audit Statement (SAS) prepared on 30 June 1999 in accordance with current NSW EPA guidelines for Land Contamination.
13. On 13 September 2023, the applicant responded to the request through submission of an amended Clause 4.6 and revised plans but requested that the contamination investigation be considered as a deferred commencement condition, as the minimum soil sampling requirements are unmanageable in the context of the current operations (daily operation of the car wash).
14. On 27 October 2023, a letter requesting further information and amendments was sent to the applicant raising the following matters:
 - (a) Design modifications to minimise overshadowing impacts to the James Street Reserve Community Garden and Reserve by way of reducing building bulk and scale.
 - (b) Redesign to address flooding, stormwater and public domain issues. The proposed flood gates are to be deleted and building redesigned to comply with minimum flood entry levels.
 - (c) Amend the interface between the loading dock, pedestrian and vehicle entry to resolve safety within the loading dock area. Minimise the width of the vehicular crossover to reduce conflicts with pedestrian movements along Marriott Street.
 - (d) In relation to the Surry Hills Shopping Village currently under construction; revised plans to show the widening of the existing footpath along the eastern side of Marriott Street (associated with the Voluntary Planning Agreement), as well as the new raised pedestrian crossing on Marriott Street connecting the James Street Reserve to the through site link from Marriott and Baptist Streets in an east-west direction (endorsed by the City's Local Pedestrian, Cycling and Traffic Calming Committee (LPCTCC) on 20 October 2022).
 - (e) Revised traffic impact statement including swept path analysis with justification on whether approved works in the roadway associated with the Surry Hills Shopping Village will impact the design, and rectifications of discrepancies in car and bicycle parking calculations.

- (f) Amendments to the building scale, form, bulk and materiality to provide an appropriate response to the heritage conservation area. Redesign the ground floor shopfronts to be of a higher quality design with more subdivision of the glazing, base walling and materiality.
 - (g) Design improvements to the interface between the proposal and the James Street Reserve (to the south) and residential terraces (to the west). Setback the proposed basement excavation to protect the integrity of neighbouring contributing buildings to the west. The basement design is to be based on advice provided by a qualified structural engineer, with consideration of the findings of the onsite geotechnical investigation. A structural statement is to be submitted outlining the methodology for excavation and subsequent shoring of neighbouring buildings to the west of the site, to avoid undermining of the neighbouring buildings.
 - (h) Provision of an unencumbered non-trafficable landscaped green roof.
 - (i) Design of the awning must be setback 1.5m from the kerb to ensure sufficient space is provided between the two existing street tree trunks and new structure to allow future tree growth along Cleveland Street.
 - (j) Amended drawings to resolve drafting issues and discrepancies in the lodgement package.
 - (k) Submission of a Signage Strategy for the development in accordance with Section 3.16 of the Sydney DCP 2012.
 - (l) Submission of a Preliminary Public Art Plan to address the requirements of the City's Interim Guidelines for Public Art in Private Developments.
15. On 13 November 2023, a meeting was held between Council officers and the applicant's representatives to discuss the significant design issues, overshadowing impacts, building height, flood and facade design.
16. Following this meeting, a set of preliminary draft revised architectural plans were received from the applicant on 14 November 2023. The draft plans included the below amendments:
- (a) Deletion of the blade wall along the western boundary.
 - (b) Removal of previously proposed flood barriers, deletion of a ground floor retail tenancy and adjustments to the vehicular entry ramp to the basement.
 - (c) An amended elevations showing inclusion of a masonry plinth to the ground floor shopfronts.
17. On 4 December 2023, preliminary comments on the draft revised scheme were provided to the applicant requesting:
- (a) Further design investigation and amendments to minimise overshadowing to the James Street Reserve Community Garden, in particular solar access to the northern part of the garden.
 - (b) Deletion of the proposed reliance on flood gates as a flood mitigation measure.

- (c) Inclusion of a masonry plinth to the base of windows to enhance the solid to void ratio of the facade to provide a greater level of integration into the Baptist Street heritage conservation area.
18. The applicant provided a formal response to the above requests on 11 March 2024. The revised package included amended architectural and landscape plans, structural certification, traffic report, preliminary public art plan, detailed site investigation, glazing details and an updated Clause 4.6 written request.
 19. On 26 March 2024, a further meeting was held with the applicant to discuss the previously raised design issues. The applicant was advised that the design still resulted in unacceptable overshadowing impacts to the James Street Reserve Community Garden.
 20. A final opportunity was provided to the applicant to amend the proposal:
 - (a) Reduce the bulk and scale of the building at the south-west corner to improve solar access to the community garden.
 - (b) Provide an integrated finish to the western blank wall visible from Cleveland Street.
 - (c) Incorporate passive shading to the north and eastern facades to reduce reliance on mechanical heating/ cooling.
 - (d) Revised Flood Risk Management Report, Stormwater Plans and Clause 4.6 variation statement to reflect the amended scheme.
 21. The applicant responded to the above on 22 May 2024 and submitted the above amendments including a revised Flood Risk Management Report, Stormwater Plans and Clause 4.6 written request.
 22. Given the history of chemical storage and motor vehicular repair on the site, and the findings of the Detailed Site Investigation, a Remediation Action Plan and Interim Letter of Advice prepared by a NSW EPA Accredited Site Auditor was requested on 6 June 2024.
 23. The applicant submitted the Remediation Action Plan, Interim Letter of Advice and Acid Sulfate Soils Management Plan on 2 and 7 August 2024.
 24. The assessment provided in this report is based on the amended application received on 22 May 2024 and the additional information received on 6 June, 2 and 7 August 2024 outlined above.

Proposed Development

25. The subject development application, as amended, seeks development consent for the demolition of the existing buildings and structures on the site, excavation, and erection of a new 3-storey commercial building over a single level basement.
26. The specific use, fit-out and operation of each tenancy is not sought and will be subject of separate applications.
27. Specifically, the proposal involves the following:

Basement Level

- Excavation to a depth of approximately 4.5m to accommodate a basement level.
- Basement containing parking for 12 cars, 14 bicycle parking spaces, end of trip facilities and various plant rooms.

Ground Floor

- Three retail tenancies fronting Cleveland Street, anticipated to be occupied by retail, café or restaurants (subject to future applications).
- Though site lobby at the western portion of the building connecting to the lift core, building services and communal sanitary facilities.
- Pedestrian entry to the first-floor commercial tenancy is provided via the escalators located at the south-eastern corner of the site.
- Vehicular entry via Marriott Street, a loading area with a turn table, two service vehicle spaces (for a small rigid vehicle and B99 vehicle), waste storage room and basement level access ramp.

First Floor

- Single commercial tenancy anticipated to be occupied by a neighbourhood supermarket or showroom (subject to a separate future application).

Second Floor

- Commercial office, outdoor terrace, end of trip facilities, building services and mechanical plant.

Roof

- Landscaped green roof including an array of photovoltaic panels.

Signage

- A signage strategy for the site, comprising nine illuminated signage zones as follows:
 - 4 x top hamper signs labelled 'S1' (measuring 5050 x 530mm)
 - 1x top hamper sign labelled 'S2' (measuring 4800 x 530mm)
 - 1x top hamper sign labelled 'S3' (measuring 3990 x 530mm)
 - 2 x under awning signs labelled 'S6' (measuring 1500 x 350mm); and
 - 1x top hamper sign labelled 'S7' (measuring 2500 x 900mm).
- It is noted that the installation of the above business identification signs and their detailed content will be subject to individual fit out development applications or complying development certificates once final tenants are secured.

28. Selected plans and elevations of the proposed development are provided below.

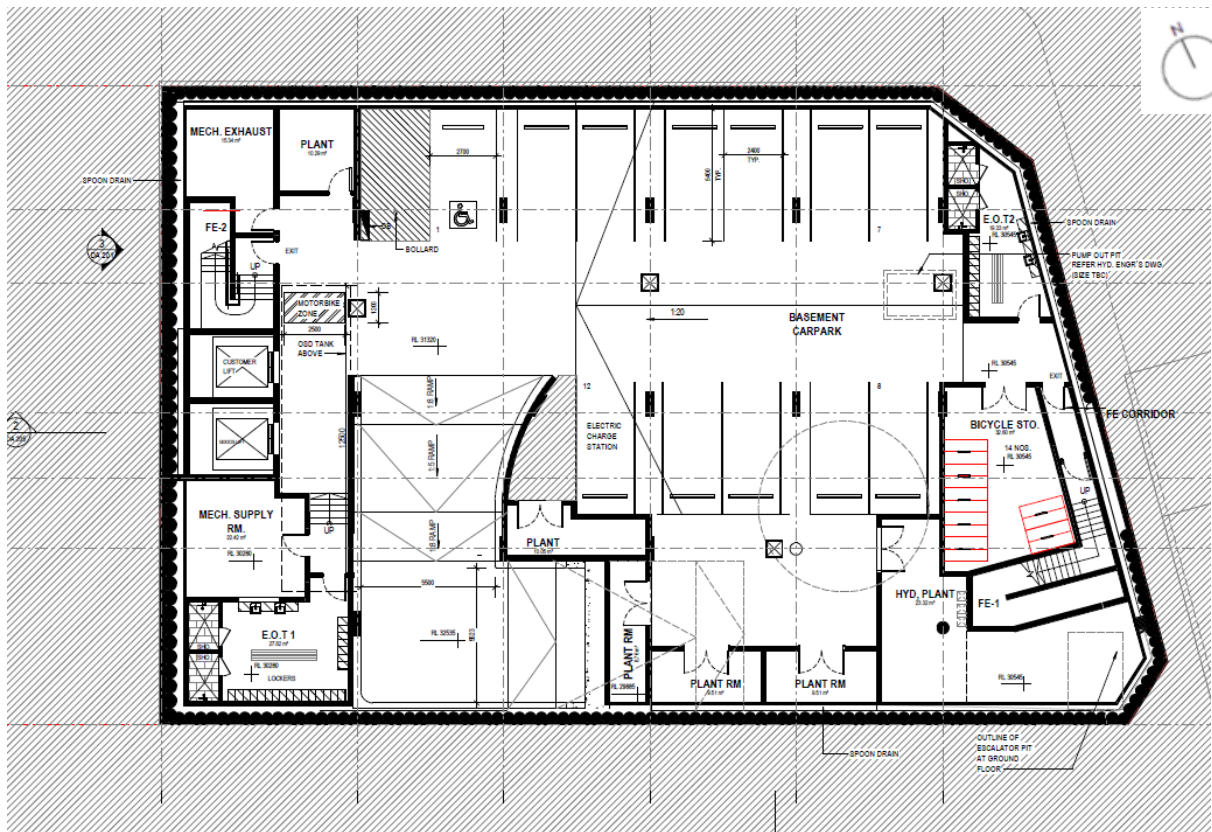


Figure 21: Proposed Basement Plan

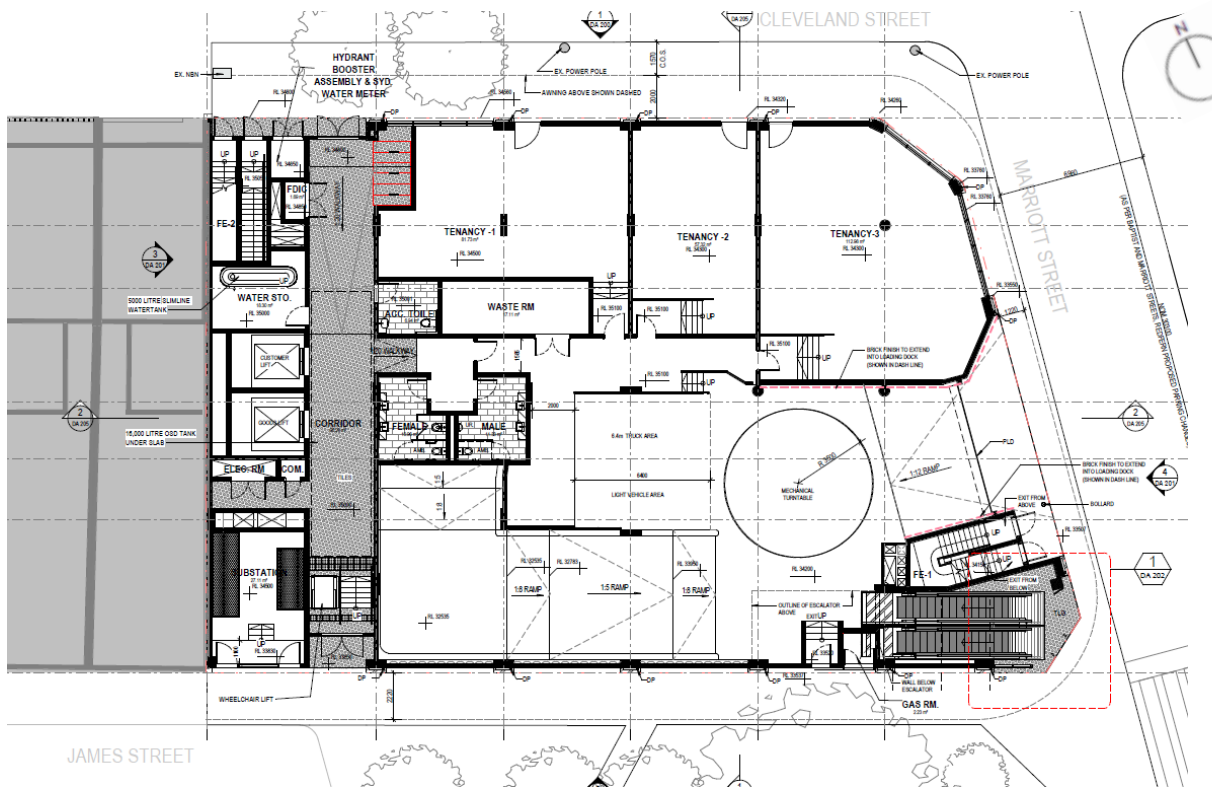


Figure 22: Proposed Ground Floor Plan

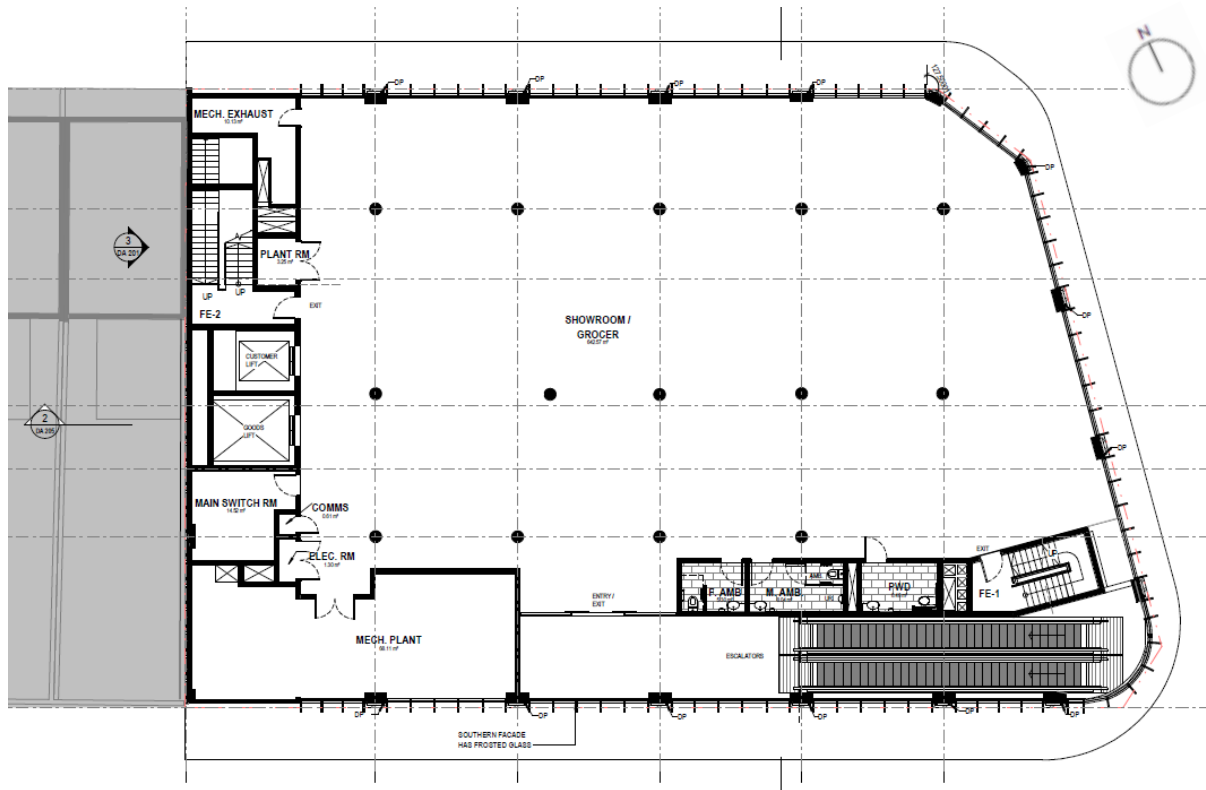


Figure 23: Proposed First Floor Plan

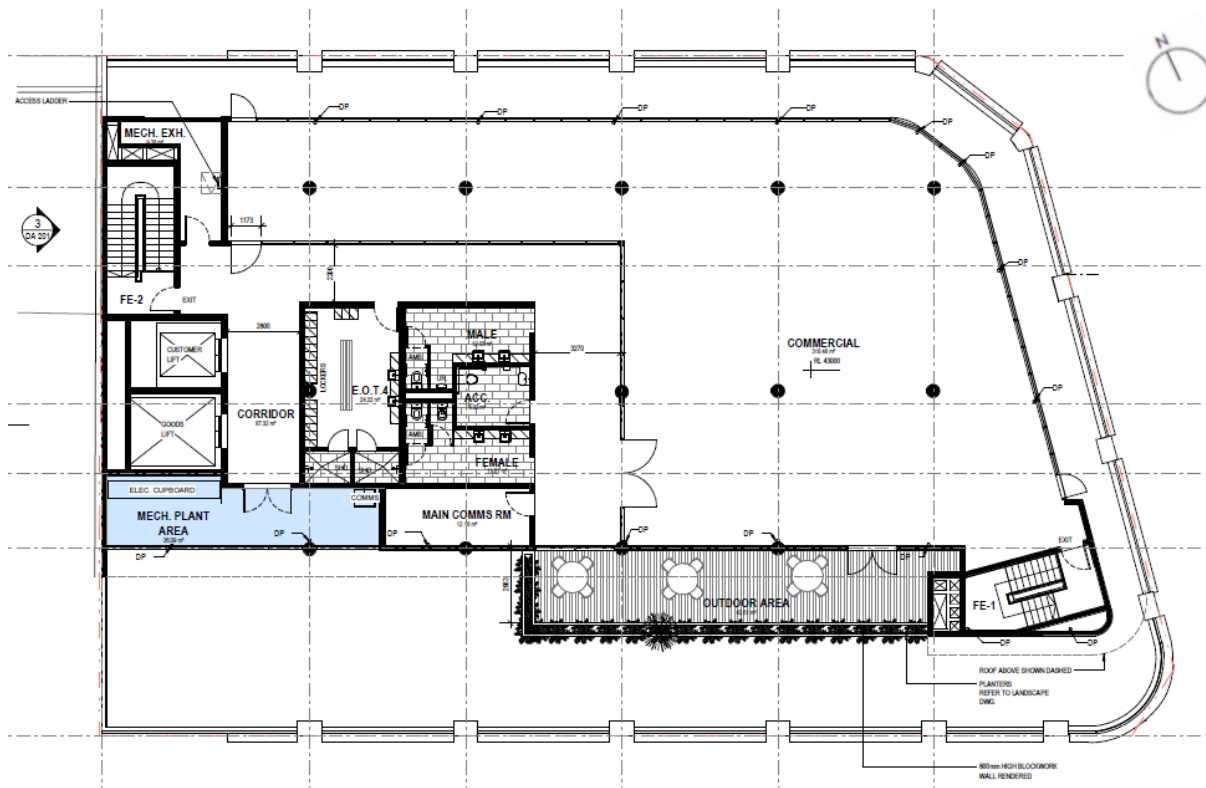


Figure 24: Proposed Second Floor Plan

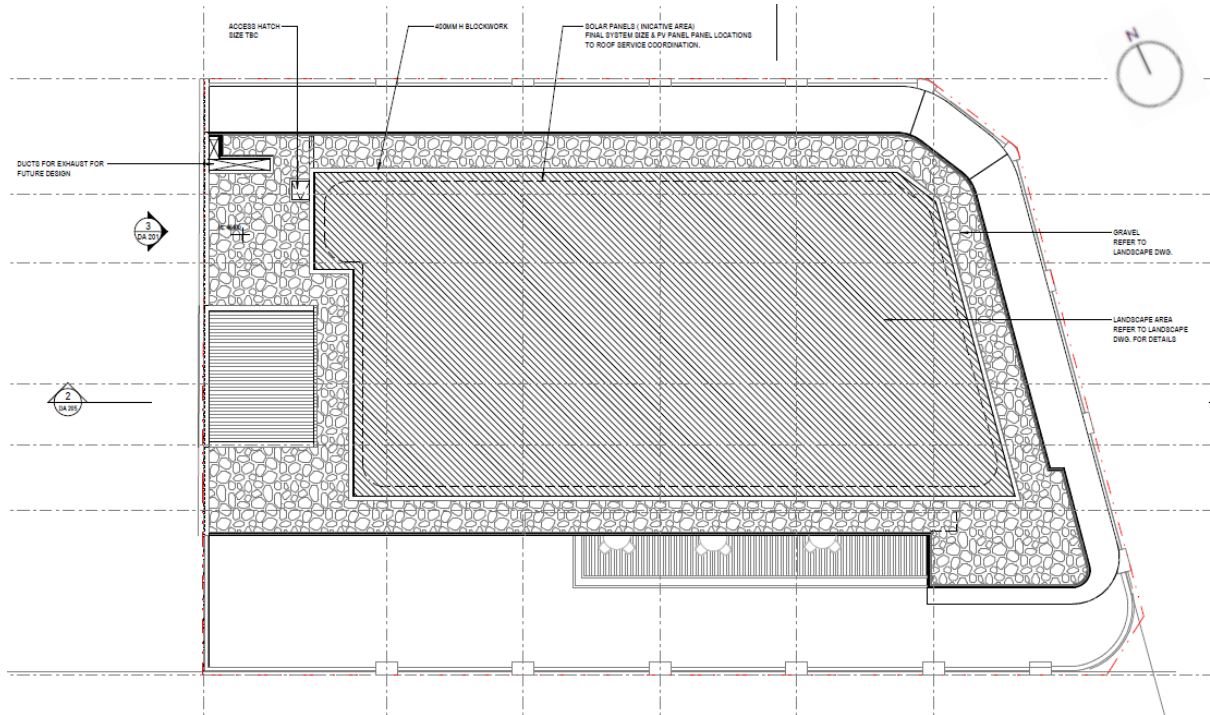


Figure 25: Proposed Roof Plan



Figure 26: Proposed North Elevation (Cleveland Street)



Figure 27: Proposed South Elevation

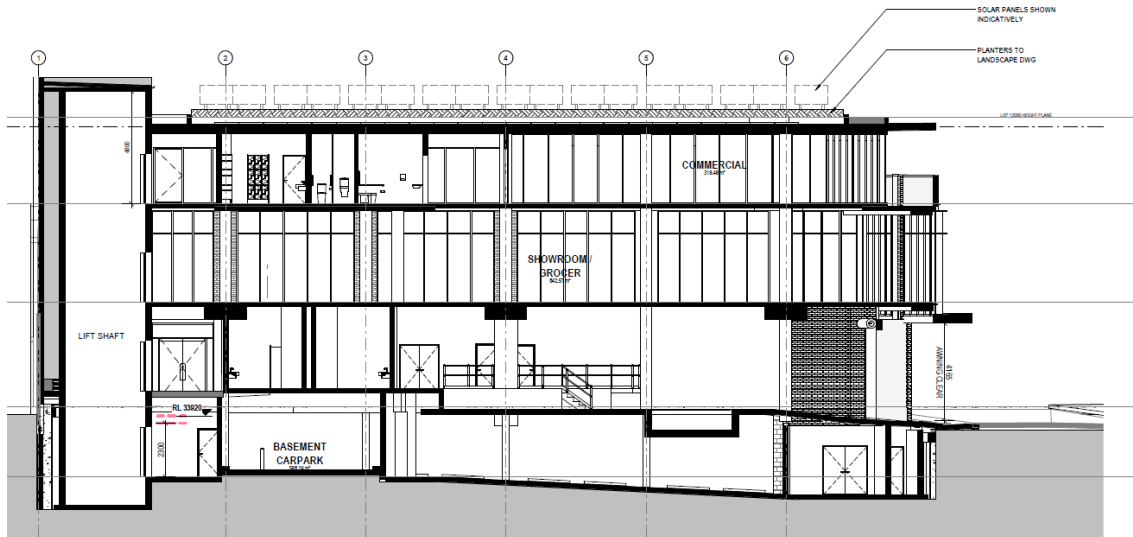


Figure 31: Proposed Section 2

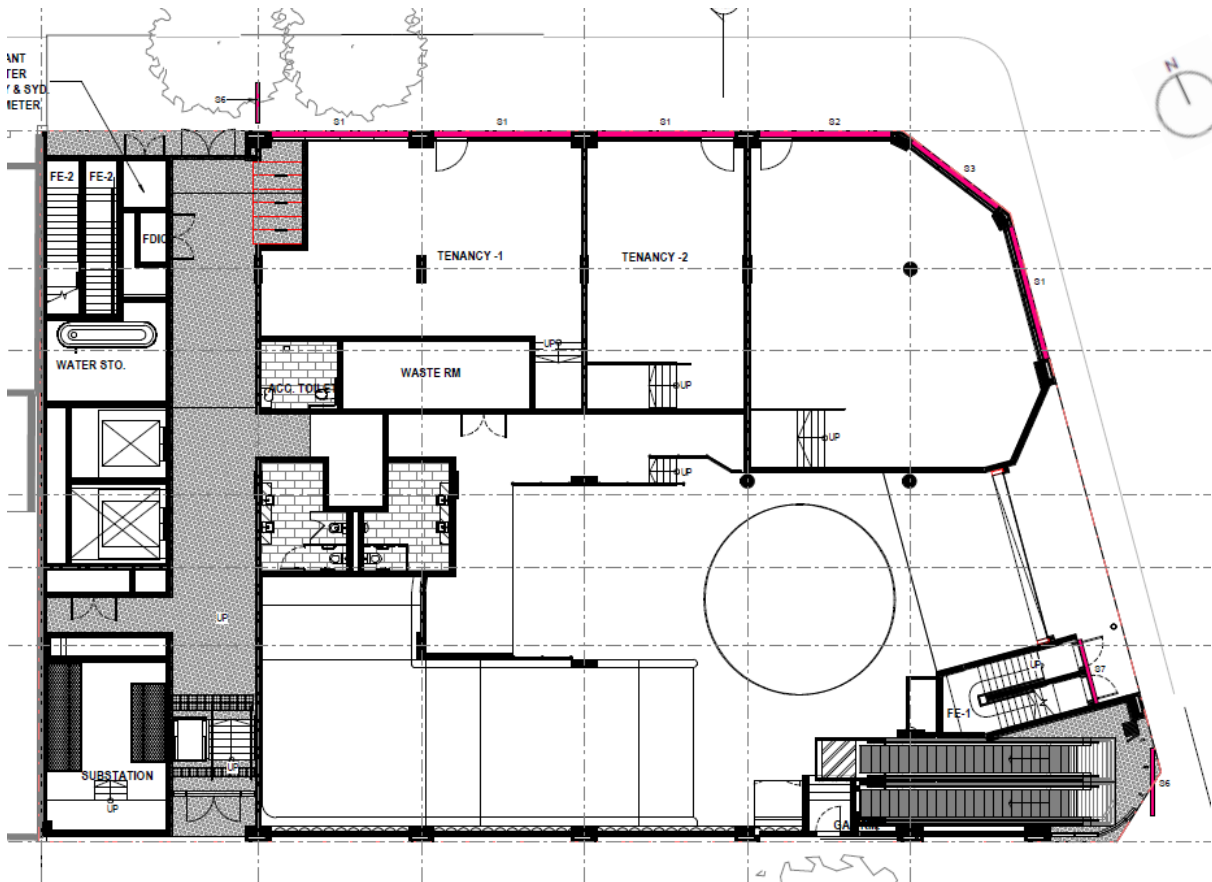


Figure 32: Proposed Signage Plan - Ground Floor

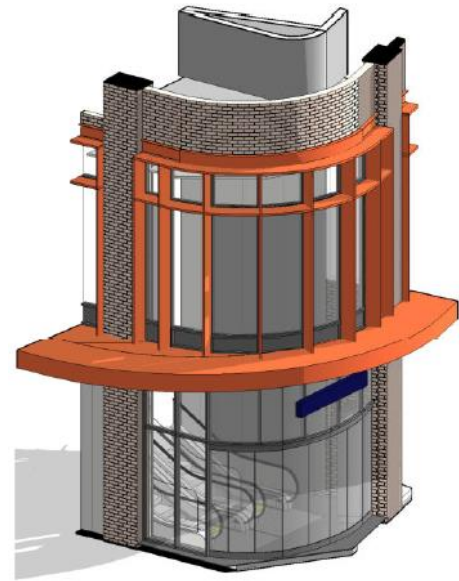
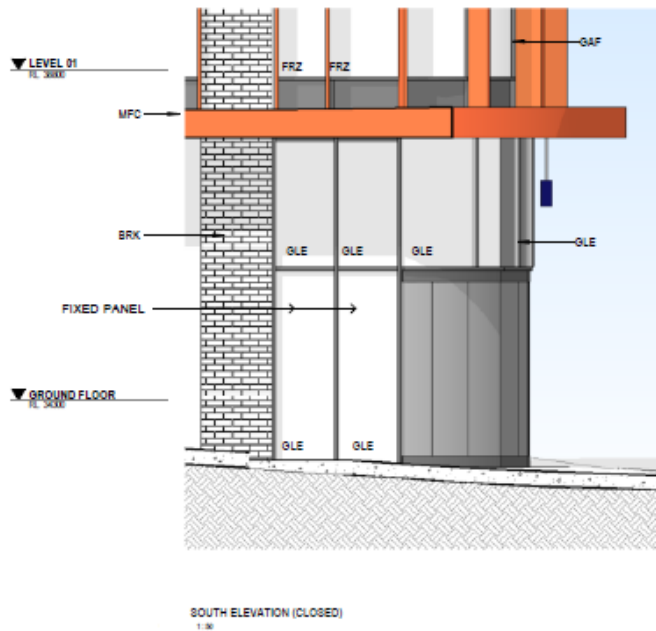


Figure 33: Proposed Escalators Entry Details (Closed)

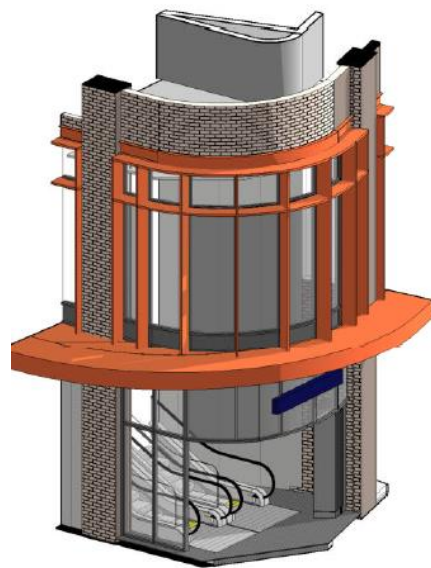
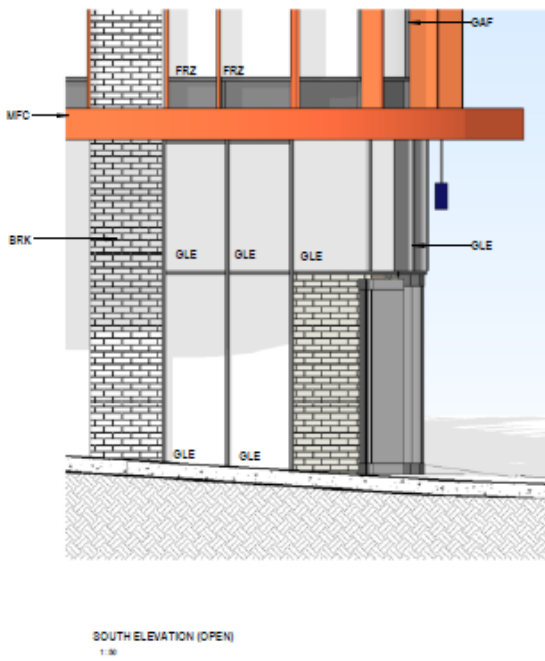


Figure 34: Proposed Escalators Entry Details (Open)



Figure 35: Photomontage of the proposed development viewed from the intersection of Cleveland and Marriott Streets

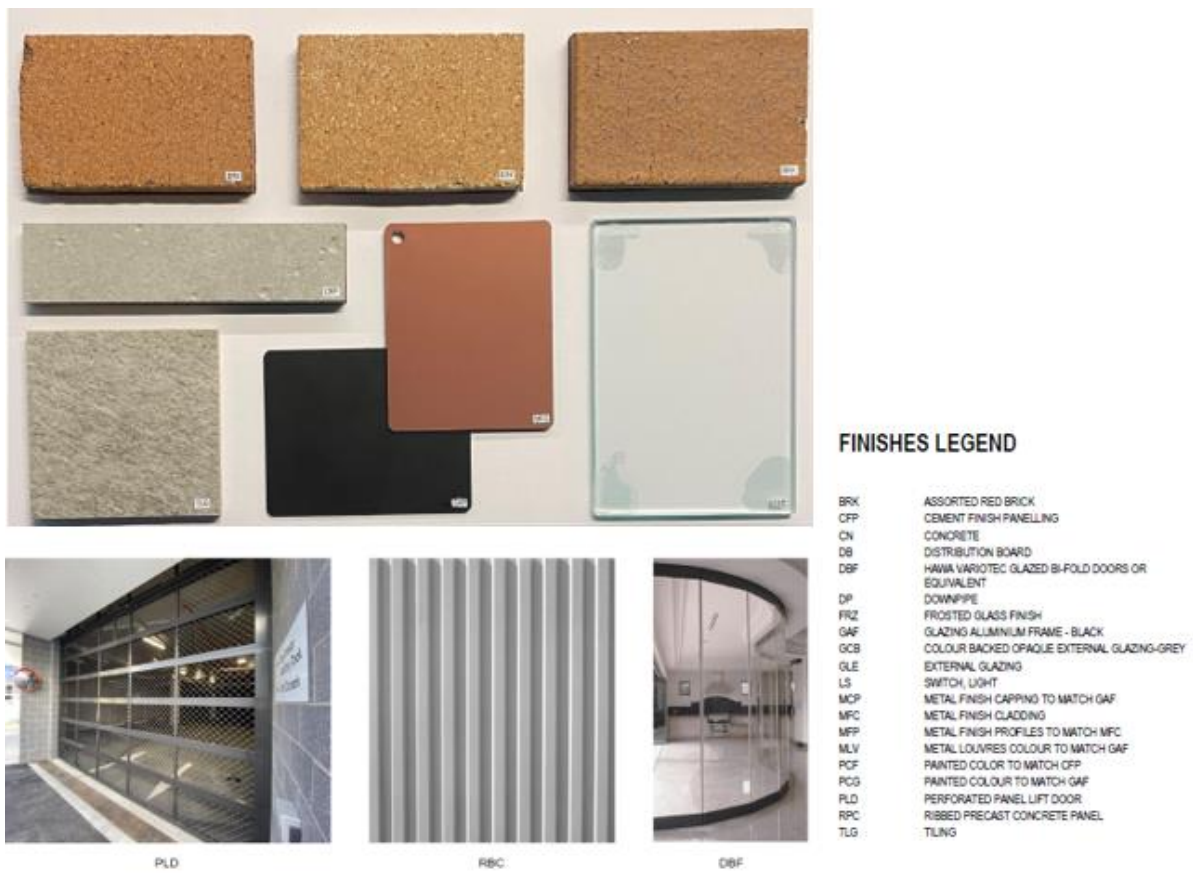


Figure 36: Proposed Materials and Finishes

Assessment

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

Water Management Act 2000

30. The submitted Geotechnical Report prepared by Aargus states that ground water seepages are likely to occur during the proposed basement bulk excavation works (to approximately RL 30.2m), subject to ground conditions and the type of shoring adopted for excavation support. Ground water levels within the site are expected to be encountered between RL 31.4m to RL 27.7m.
31. The applicant has not elected to lodge the subject development as an Integrated Development Application pursuant to Section 4.47 of the Environmental Planning and Assessment Act 1979.
32. The proposal requires separate concurrence from Water NSW pursuant to Section 90(2) of the Water Management Act 2000.

State Environmental Planning Policies

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

Remediation of Land

33. 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.
34. Clause 4.6 of the SEPP states the consent authority must not consent to the carrying out of any development on land unless it is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation). Pursuant to Section 4.6(3), the consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
35. A Site Audit Statement (SAS) dated 30 June 1999 prepared by NSW EPA Accredited Auditor Philip James Mulvey of Environmental and Earth Sciences Pty Ltd, Detailed Site Investigation (DSI) prepared by Aargus, Remediation Action Plan (RAP) prepared by Argus and Interim Letter of Advice prepared by Geosyntec Consultants accompanies this application.
36. The historic uses on the site comprised terrace-style buildings owned by separate individuals (between c.1955-1961) and a service station owned by Esso Standard Oil Corporation (c.1962/1963). In 1998 -1999 the service station was decommissioned and remediated, and has since operated as a car wash facility to the present day.
37. The key findings from the DSI for potential contamination and Acid Sulfate Soils (ASS) is summarised as follows:

- (a) No visual or olfactory indicators of contamination were observed in soil and groundwater, except for minor hydrocarbon odour in soil at one location in the vicinity of the former tankpit (located at the southern portion of the site).
 - (b) For all soil samples, contaminant concentrations were either below laboratory detection or the adopted commercial land use criteria.
 - (c) No asbestos fragments were identified in soil/fill at the site.
 - (d) No actual ASS were present, however potential ASS were identified in fill and natural soil at depths between 0.2 and 4.3m below ground level, which triggers the requirement for an Acid Sulfate Soil Management Plan (ASSMP).
 - (e) The soil profile under the concrete slab, comprised silty/clayey sandy fill and crushed sandstone to a maximum depth of 2.5m below ground level, underlain by clayey sand with sandstone bedrock at 4m below ground level.
 - (f) Perched groundwater was encountered between 3.5 and 3.8m below ground level. The groundwater results met adopted assessment criteria, with the exception of zinc in three groundwater samples (GW1 to GW3) and PAH (anthracene) in one sample (GW3). Total Petroleum Hydrocarbons (TPH) as well as Benzene, Toluene, Ethyl benzene and Xylene (BTEX) were detected in two groundwater samples (GW2 and GW3).
38. The DSI concludes that based on the results of the investigation, the risks to human health and the aquatic environment associated with soil and groundwater contamination at the site are considered low in the context of the proposal. The site can be rendered suitable for the proposed use, subject to the preparation of a RAP and further groundwater characterisation is required to confirm residual hydrocarbons do not pose a risk to the future land use.
39. Accordingly, a RAP has been prepared by Argus which sets out the following summarised remedial strategy:
- (a) Site establishment and demolition of surface structures/ pavement.
 - (b) In-situ waste classification of material for offsite disposal, prior to bulk excavation works.
 - (c) Additional groundwater characterisation (in accordance with Section 7.2 of the RAP) to confirm the extent of impact, if any, and whether remediation is required. Subject to findings, an addendum RAP may be required.
 - (d) Bulk excavation and validation sampling of the excavation, including chasing of impacted material, as required.
 - (e) Treatment (as per the ASSMP), classification and disposal of material to a licensed facility.
 - (f) Management of unexpected finds during remedial works.
40. The Interim Advice confirms that the above approach is appropriate and practical for the residual contamination identified, and the site can be made suitable for the proposed development, subject to the following requirements:

- (a) At the completion of the additional groundwater characterisation, the remedial strategy should be reviewed to confirm it is still appropriate. This report must be provided to the Auditor for review and comment.
 - (b) Implementation of the ASSMP during the excavation of the basement to ensure appropriate environmental controls are in place and soils identified as Potential ASS are treated and disposed of in accordance with the ASSMP.
41. The City's Environmental Health team has reviewed the information provided and is satisfied that the site can be made suitable for the proposed use, subject to the recommended conditions included in Attachment A. Appropriate conditions are been recommended to ensure the site is remediated and validated in accordance with above remediation measures, and to require Council to be notified should there be any changes to the above strategy.

State Environmental Planning Policy (Sustainable Buildings) 2022

42. The State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP) commenced on the 1 October 2023 and applies to development applications lodged on or after 1 October 2023.
43. The aims of the SEPP 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.
44. The proposed development was lodged prior to the commencement of the Sustainable Buildings SEPP and as such the provisions of the SEPP are not applicable. Notwithstanding, the proposal incorporates passive design measures, energy and water initiatives, as well as photovoltaic panels to deliver a sustainable building on the site. The application is accompanied by a Design for Environmental Performance Template which outlines the sustainability commitments of the development. Refer to further details under Section 3.6 of Sydney DCP 2012 below.

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

45. The aim of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage is to ensure that outdoor advertising is compatible with the desired amenity

and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish.

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

Provision	Compliance	Comment
1. Character of the area	Yes	The proposed signage is generally consistent with the character of the area, subject to conditions.
2. Special areas	Yes	The proposed signage does not detract from the amenity or visual quality of the locality or the surrounding Baptist Street heritage conservation area, subject to conditions.
3. Views and vistas	Yes	The proposed signage does not obscure or compromise any important views. It does not dominate the skyline and has no impact on the viewing rights of other advertisers.
4. Streetscape, setting or landscape	Yes	The proposed signage is of an appropriate scale, proportion and form and provides a positive contribution to the streetscape and setting of the area.
5. Site and building	Yes	The scale, proportion and positioning of the proposed signage is acceptable, and the materiality is compatible with the finishes and colours of the building.
6. Associated devices and logos	Not Applicable	Not applicable.
7. Illumination	Yes	Conditions of consent are recommended to ensure that the illumination does not result in unacceptable glare, affect safety or detract from the amenity of any residential accommodation.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

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

State Environmental Planning Policy (Transport and Infrastructure) 2021

48. 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

49. The application is subject to Clause 2.48 of the SEPP as it involves excavation nearby existing Ausgrid infrastructure.
50. On 21 March 2024, Ausgrid provided recommended conditions of consent to protect existing underground cables and overhead powerlines within proximity of the development. These conditions are included in Attachment A.

Division 17, Subdivision 2 Development in or adjacent to road corridors and road reservations

Clause 2.119 - Development with frontage to classified road

51. The application is subject to Clause 2.119 of the SEPP as the site has a frontage to Cleveland Street, which is identified as a classified road.
52. Transport for NSW reviewed the submitted documentation and raised no objection, subject to conditions of consent which are included in Attachment A.

Clause 2.122 - Traffic-generating development

53. Clause 2.122 of the SEPP applies to specific developments on sites with access to a classified road, or sites accessed via a road within 90m of a connection to a classified road.
54. Although the proposal is not a development listed in Column 1 of Schedule 3 of the SEPP a referral was still made to Transport for NSW. Transport for NSW reviewed the submitted documentation and raised no objection subject to recommended conditions included in Attachment A.

Local Environmental Plans

Sydney Local Environmental Plan 2012

55. 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	<p>The site is located in the MU1 Mixed Use zone. The proposed development is defined as commercial development, comprising retail premises, neighbourhood shop and office uses which are permissible with consent in the zone.</p> <p>The proposed development is consistent with the objectives of the zone.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 12 metres is permitted.</p> <p>A height of 14.3 metres is proposed.</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.</p> <p>Refer to further details and assessment provided in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 1.5:1 or 1,494sqm is permitted for the site pursuant to Clause 4.4 of Sydney LEP 2012.</p> <p>Pursuant to Clause 6.13, the site is also eligible for end of journey floor space equal to the floor space occupied by showers, change rooms, lockers and bicycle storage areas (not exceeding an FSR of 0.3:1 of the building). In this instance permitting an additional area of 103.97sqm (maximum FSR of 1.6:1, GFA of 1,597.97sqm).</p> <p>The proposal seeks a FSR of 1.58:1 and GFA of 1577.4sqm.</p> <p>The proposal therefore complies with the maximum floor space ratio development standard pursuant to Clause 4.4 and 6.13 of Sydney LEP 2012.</p>

Provision	Compliance	Comment
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the height of buildings development standard prescribed under Clause 4.3 of the Sydney LEP 2012. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details and assessment in the 'Discussion' section below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.4 Controls relating to miscellaneous permissible uses	Yes	<p>Subclause (7AA) of Clause 5.4 stipulates that the gross floor area of development for the purposes of a neighbourhood supermarket must not exceed 1,000 square metres.</p> <p>The gross floor area of the proposed neighbourhood supermarket use on the first floor is 705.46sqm, which complies with this control.</p>
5.6 Architectural roof features	Not Applicable	The proposal does not contain an architectural roof feature.
5.10 Heritage conservation	Yes	<p>The site is not identified as a heritage item but is located within the Baptist Street heritage conservation area (C53). The site is within the vicinity of three local heritage items along Cleveland Street, Item Nos. I1305 (Former Bank of NSW including interior at 397-399 Cleveland Street), I1479 (Terrace house including interior at 396-398 Cleveland Street) and I1478 (Former 'Matis Pharmacy' including interior at 380 Cleveland Street).</p> <p>The development is accompanied by a Heritage Impact Statement (HIS) prepared by Urbis. The proposal presents an opportunity to remove the existing detracting car wash facility and replace it with a sympathetic contemporary infill commercial development that will enhance the setting of the heritage conservation</p>

Provision	Compliance	Comment
		<p>area. The proposed building has been designed with minimal setbacks from the boundaries of the site to respond to the minimal setback pattern of the adjoining developments, which include contributory and heritage items situated along Cleveland Street. The proposed high-quality material finishes (including red brick and exposed concrete) are in keeping with the traditional materials found in the nearby contributory buildings and contributes towards the character of the locality. The proposed development enhances the significance and character of the Baptist Street heritage conservation area and will not have a detrimental impact on the heritage significance of contributory buildings or nearby local heritage items.</p> <p>The proposal is also accompanied by structural statement and methodology for excavation prepared by Dunnings Consulting Engineers. The structural statement recommends a cantilevered secant shoring retention solution for the proposed bulk excavation of the basement level and confirms that the structural integrity of the adjoining neighbouring buildings will not be adversely affected or compromised during construction of the building.</p> <p>Council's Heritage Specialist advised the proposal is acceptable and is satisfied that the proposed excavation of the basement will not undermine the footings of the adjacent terraces, subject to conditions.</p> <p>Conditions are recommended to require compliance with the construction methodologies of the Structural Statement.</p>
5.21 Flood planning	Yes	The site is identified as being subject to flooding and is located within the Alexandra Canal catchment, which

Provision	Compliance	Comment
		<p>drains down Cleveland Street and discharges south along Marriott Street.</p> <p>The proposal, as amended, has been designed to comply with the City's Interim Floodplain Management Policy which requires a minimum flood planning level of RL 34.20 for the basement entry (1% AEP plus 0.5m or the PMF, whichever is greater) and RL 34.3 for retail tenancies 2 and 3, and RL 34.4 for retail tenancy 1 (1% AEP).</p> <p>The submitted revised Site-Specific Flood Risk Management Report prepared by IGS Pty Ltd confirms that the proposed development does not impact the existing 1% AEP flood behaviour within the vicinity of the site.</p> <p>The proposal has been reviewed by the City's Public Domain Unit and is acceptable in relation to flood behaviour, safe occupation and evacuation, risk to life and impact on the environment, subject to recommended conditions in Attachment A.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
<p>6.12 Additional floor space outside Central Sydney</p> <p>6.13 End of journey floor space</p>	Yes	<p>The entirety of the site is used for commercial premises and is eligible for end of journey floor space equal to the floor space occupied by those facilities, up to a maximum FSR of 0.3:1.</p> <p>The proposed development includes 103.97sqm of end of journey floor space, or an additional FSR of 0.10:1, and complies.</p> <p>A condition is recommended to require a restrictive covenant for the area of the end of journey floor space to be registered on the Title of the</p>

Provision	Compliance	Comment
		development prior to the issue of any Occupation Certificate.
Division 4 Design excellence		
<p>6.21 Objective</p> <p>6.21B Application of Division</p> <p>6.21C Design Excellence</p>	Yes	<p>The proposal, as amended, 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 proposed development has been designed with a two-storey base to reflect the predominate scale of the street wall along Cleveland Street. The second storey is setback to minimise bulk and massing of the development and is of a complementary scale to the contributory buildings within the Baptist Street heritage conservation area. The design of the development includes the integration of landscape design on the roof top (green roof), provides visual interest and will enhance the ground level interface between the building and public domain along Cleveland Street, Marriott Street and the James Street Reserve.</p> <p>The western elevation (including the lift overrun) will be constructed in a ribbed precast concrete panel to moderate the visual impact of the building when approaching the site from the west along Cleveland Street and James Street. Such detail will ensure the blank side walls visible above the adjacent terraces has a visually interesting treatment of high-quality design and materiality and is of low maintenance.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants.</p>

Provision	Compliance	Comment
		<p>The proposed materials and finishes are supported by Council's Urban Designer, subject to conditions requiring the provision of further detail and actual specifications of materials to be submitted and approved prior to the issue of any Construction Certificate. Conditions are recommended to:</p> <ul style="list-style-type: none"> • Ensure the car park door and reveals on the Marriott Street Elevation to be finished in a high-quality and durable materials. • Require details and specifications of the external clear glazing. <p>Subject to conditions, the proposed development exhibits design excellence pursuant to Clause 6.21, 6.21B and 6.21C of Sydney LEP 2012.</p>
6.21D Competitive design process	Not Applicable	<p>A competitive design process under Clause 6.21D is not required to be undertaken as the development does not exceed a height of 25m, does not have a capital value of more than \$100,000,000, and a development control plan is not required to be prepared under Clause 7.20 of Sydney LEP 2012.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises 7.7 Retail premises	Yes	<p>A maximum of 22 car parking spaces are permitted for the commercial and retail uses.</p> <p>The proposed development includes 12 car parking spaces and complies with the relevant development standards.</p>
Division 3 Affordable housing		

Provision	Compliance	Comment
7.13 Contribution for the purpose of affordable housing	Yes	<p>The site is identified as 'residual land' and involves the erection of a new building with a gross floor area of more than 200 square metres.</p> <p>In accordance with Clause 7.13(2C)(b)(ii), an affordable housing levy contribution levy of 1% of the total floor area of the development applies. A condition of consent is recommended to reflect this.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with Class 5 Acid Sulfate Soils. The site is not within 500 metres of other soil classes.</p> <p>Notwithstanding, a ASSMP prepared by Argus accompanies the development as potential ASS were identified in fill and natural soil at depths between 0.2 and 4.3m below ground level.</p> <p>Council's Environmental Health Unit has reviewed the ASSMP and advised the recommendations and management procedures are acceptable. A condition is recommended to require compliance with the ASSMP.</p>
7.19 Demolition must not result in long term adverse visual impact	Yes	<p>While the proposal includes demolition of the existing car wash facility including ancillary structures on the site, it also includes construction of a new commercial development under the same application.</p> <p>Council staff are satisfied that the site will be comprehensively redeveloped under the subject development application.</p>
7.20 Development requiring or authorising preparation of a development control plan	Not applicable	<p>The site does not have an area of 5,000sqm or more, is not located on land in Central Sydney, in an Enterprise Area or Zone E4 General Industrial Land.</p>

Provision	Compliance	Comment
		A development control plan is not required.
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	<p>The site is located within a restricted retail development area. Clause 7.23(3) stipulates that development consent must not be granted to development on land for the purposes of shops or markets with a gross floor area greater than 1,000 square metres.</p> <p>The proposal seeks a total gross floor area of 894.6 square metres for retail purposes and complies with this provision.</p>
7.26 Public art	Yes	<p>The submitted revised Preliminary Public Art Strategy prepared by UAP identifies opportunities for the integration of public art on the southern elevation of the development.</p> <p>The Preliminary Public Art Plan has been reviewed by Council's Public Art Unit and is supported, subject to recommended conditions.</p> <p>The submitted details provide sufficient certainty to satisfy the requirements of Clause 7.26(2), as follows:</p> <ul style="list-style-type: none"> • The artwork will not involve the display of an advertisement. • It will not increase the GFA of the building. • It will not have a significant adverse impact on the heritage conservation area or nearby heritage items. • It will not have any significant adverse impacts on the amenity of the public domain, including by overshadowing, wind or noise impacts. <p>A condition of consent is recommended to ensure public art will be implemented</p>

Provision	Compliance	Comment
		<p>in accordance with the Preliminary Public Art Plan.</p> <p>Refer to further details under Section 3.1 of Sydney DCP 2012 below.</p>
7.27 Active Street Frontages	Yes	<p>The objectives of Clause 7.27 of Sydney LEP 2012 seek to promote uses that attract pedestrian traffic along certain ground floor street frontages. The Cleveland Street and Marriott Street site frontages are identified as being required to deliver active street frontages for the retail premises.</p> <p>The proposal complies with this provision. Refer to further assessment under Section 3.2 of Sydney DCP 2012 below.</p>
7.33 Sustainability requirements for certain large commercial development	Not applicable	<p>Section 7.33 of Sydney LEP 2012 applies to the development of a large commercial development, erection of a new prescribed shopping centre, or alterations to an existing prescribed shopping centre, as defined in the SEPP (Sustainable Buildings) 2022.</p> <p>A large commercial development is defined in the SEPP as the erection of a new prescribed office premises (with a net lettable area of at least 1,000sqm), prescribed motel or hotel accommodation, or prescribed serviced apartments.</p> <p>It is also noted that Section 7.33(3) only applies to the development made on or after 1 October 2023.</p> <p>This provision is not applicable to the proposal as it does not seek the erection of the above developments. The application was also made prior to 1 October 2023.</p> <p>Refer to further details under Section 3.6 of Sydney DCP 2012 below.</p>

Development Control Plans

Sydney Development Control Plan 2012

56. 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

57. The site is located within the Waterloo and Redfern (Cleveland Street) special character area. This locality includes lots fronting Cleveland Street between Chalmers Street to the west and South Dowling Street to the east. The proposed development is in keeping with the unique character and the design principles of the locality pursuant to Section 2.13 of Sydney DCP 2012, as it:

- (a) replaces the existing detracting building with a new sympathetically designed building on a prominent corner site, which responds to the existing and desired character of the area, and heritage qualities of the conservation area.
- (b) contributes to the diversity of commercial and retail uses and strengthens the east-west vista of Cleveland Street.
- (c) provides fine grain tenancies on the ground floor to encourage active uses and support a greater pedestrian focus along Cleveland and Marriotts Streets.
- (d) has regard to the fabric and materiality of the locality, and is of a complementary scale to the contributory buildings within the Baptist Street heritage conservation area.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.4 Public Open Space	Not Applicable	It is noted that the James Street Reserve and Community Garden are not identified as public open space within the Public Open Space map. Refer to discussion in Section 3.2.1.1 of Sydney DCP 2012 below.
3.1 Public Domain Elements 3.1.5 Public Art	Yes	The revised Preliminary Public Art Plan prepared by UAP is considered acceptable by the City's Public Art Unit. The proposed development will replace the existing self-portrait mural by Fintan Magee (completed in 2013) which is currently situated on the corner of Cleveland and Marriott Street. The new public artworks aim to highlight the site narrative, support a sense of place identity for the building, and celebrate the talent of local artists in response to the specific context of the

Provision	Compliance	Comment
		<p>site in Redfern. The southern elevation of the building will provide a canvas for creativity and present an opportunity to enhance visual interest on the site's interface with the James Street Reserve and Community Garden.</p> <p>The Preliminary Public Art Plan nominates the following public art opportunities:</p> <ul style="list-style-type: none"> • sculptural attachments to the southern lobby entrance. • sculptural attachment fixed to the entry column to the neighbourhood supermarket entry on Marriott Street. • graphic paint treatments to the southern elevation at the ground floor facing the James Street Reserve and Community Garden. • large-scale graphic paint treatment to the northern entry escalator wall accessed via Marriott Street (surface area of approximately 141 square metres). <p>The proposal meets the objectives of Section 3.1.5 of Sydney DCP 2012, which seeks to improve the quality, cohesion, and integration of public artworks in private developments. The proposed artworks will enhance the richness of the locality and pedestrian experience along Marriott Street and the James Street Reserve given its highly accessible location.</p> <p>Appropriate conditions are recommended to ensure public art will be implemented in accordance with the Preliminary Public Art Plan.</p>
<p>3.2. Defining the Public Domain</p> <p>3.2.1 Improving the public domain</p>	Yes	<p>The proposed development has been designed to positively address the public domain. The proposal does not impede on any significant views from the public</p>

Provision	Compliance	Comment
3.2.1.1 Sunlight to publicly accessible spaces		<p>domain to any highly utilised public places or parks.</p> <p>Section 3.2.1.1 of Sydney DCP 2012 requires overshadowing effects of new buildings on publicly accessible open space are to be minimised between the hours of 9.00am to 3.00pm at mid-winter (21 June).</p> <p>As discussed under the heading 'Amendments', the proposal has been subject to numerous amendments to minimise overshadowing to the James Street Reserve Community Garden and Reserve.</p> <p>The proposal, as amended, will maintain solar access to approximately half the area of the Community Garden for 3.5 hours between 11.30am to 3.00pm at mid-winter.</p> <p>The revised proposal provides an improved outcome compared to the original scheme which maintained approximately 2 hours of solar access to half of the Community Garden between 1.00pm to 3.00pm.</p> <p>Refer to further details and assessment under the 'Discussion' heading below.</p>
3.2.3 Active frontages	Yes	<p>The site's Cleveland Street and Marriott Street frontages are nominated as Category 1 active frontages.</p> <p>In accordance with this provision, over 80% of the Cleveland Street frontage is provided as an active frontage. The retail tenancies on the ground floor will comprise transparent glazing with a predominately unobstructed view from the adjacent footpath to contribute to the liveliness and vitality of Cleveland Street.</p> <p>The Marriott Street frontage is considered the site's secondary frontage. Activation is limited on this frontage due to the provision of the required site servicing, plant, and the vehicular access driveway. The degree of activation achieved on this frontage is by retail tenancy 3 and the entry to the</p>

Provision	Compliance	Comment
		neighbourhood supermarket at the south-east corner of the site is therefore considered acceptable.
3.2.4 Footpath awnings	Partial compliance	<p>A continuous awning is required along Cleveland and Marriott Streets as identified on the Footpath Awnings and Colonnade Map.</p> <p>The awning has a light weight form and appearance, and is generally in keeping with Section 3.2.4 of Sydney DCP 2012, as it:</p> <ul style="list-style-type: none"> • Provides a continuous awning along the extent of the site to Cleveland, Marriott and the James Street Reserve and maximises weather protection. • Has a maximum height of 3.58m above the Cleveland Street and James Street Reserve footpath. While the awning along Marriott Street exceeds the maximum awning height by approximately 1m, it is considered acceptable having regard to the slope of the site, continuous expression around three site frontages, and alignment the first-floor datum of the commercial building. • Provides a compliant width of 2m to Cleveland Street and 2.22m to the James Street Reserve. The reduced awning width of 1.22m to Marriott Street is acceptable given the narrow width of the footpath. • The awning is sufficiently setback (1.57m) from the existing light pole and existing street trees on Cleveland Street. • The submitted drawings confirm that gutters and downpipes will be concealed within the ground floor frontage of the building and will not be visible from the public domain. <p>Council's Urban Design and Heritage Specialists advised the awning is</p>

Provision	Compliance	Comment
		<p>acceptable, subject to recommended conditions.</p> <p>Appropriate conditions are recommended to ensure the provision of under awning lighting is in accordance with relevant Australian Standards.</p>
3.2.7 Reflectivity	Yes	A condition is recommended to ensure that the light reflectivity of the glazing will not exceed 20%.
3.2.8 External lighting	Yes	<p>The proposal does not include any external lighting.</p> <p>A condition is recommended to require a separate application to seek any external lighting.</p>
3.4 Hierarchy of Centres, City South	Yes	<p>Section 3.4 of Sydney DCP 2012 seeks to establish and maintain a viable and vibrant hierarchy of centres in the City South area, as well as ensure that retail development in the City South area does not have an adverse impact on one or more centres.</p> <p>The site is located at the northern extent of the Green Square Town Centre Primary Trade Area.</p> <p>The proposal will facilitate minor retail development and will not adversely impact the viability or economic role of the planned centres. The proposed retail tenancies will achieve a positive net community benefit, providing convenient shopping opportunities within walking distance of homes and workplaces.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>The proposal, as amended, includes a green roof coupled with solar panels (biosolar green roof) and improves the local urban ecology and diversity of locally indigenous flora and fauna species in accordance with Section 3.5 of Sydney DCP 2012.</p>

Provision	Compliance	Comment
		<p>Council's Landscape Specialist advises the revised landscape package prepared Black Beetle Landscape Architecture and Design is adequately detailed and acceptable but advised the spacing between the photovoltaic cells may need to be adjusted to allow adequate space for maintenance. It is noted that the layout of the array of photovoltaic cells are only indicatively shown on the landscape plans. The landscape plans (Drawing labelled Garden Profile 01) also suggests that the photovoltaic cells will be angled to be accommodate planting underneath.</p> <p>Conditions are recommended to ensure the final layout and angle of solar panels will provide sufficient space for maintenance and planting underneath.</p>
3.6 Ecologically Sustainable Development (ESD)	Yes	<p>A Section J Assessment Report and Design for Environmental Performance Report prepared by IGS Pty Ltd accompanies the application.</p> <p>The proposal, as amended, has been designed to reduce the need for active heating and cooling. The proposed development incorporates passive design measures and shading devices to the north and eastern facades of the building. The proposal meets the requirements of Section J of the BCA.</p> <p>The proposed development includes on-site renewable energy generation through the provision of photovoltaic panels on the roof (72 kilowatt peak capacity) and a heat pump systems.</p> <p>Council's Environmental Sustainability Specialist advises the proposal is acceptable subject to recommended conditions. Conditions are recommended to:</p> <ul style="list-style-type: none"> • require the installation of water efficient fittings and energy efficient lighting. • require compliance with the Design for Environmental Performance Report submitted with the application to ensure that

Provision	Compliance	Comment
		all ESD commitments are carried through to the certification and construction phases.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under Clause 5.21 of Sydney LEP above.
3.8 Subdivision, Strata Subdivision and Consolidation	Not applicable	<p>No subdivision is proposed by the subject application.</p> <p>The application was referred to Council's Specialist Surveyor, who advised the development is acceptable, subject to recommended conditions included in Attachment A.</p> <p>The applicant submits the western wall of the development will be independently supported and will not rely upon or compromise the structural integrity of the existing party wall at 373 Cleveland Street. As discussed above, appropriate conditions are included in Attachment A to protect the structural integrity of the existing party wall of the adjoining dwelling at 373 Cleveland Street.</p>
3.9 Heritage 3.9.13 Excavation in the vicinity of heritage items and in heritage conservation areas.	Yes	<p>The proposed development seeks to replace the existing detracting car wash building and replace it with a sympathetically designed commercial development.</p> <p>The development will enhance the significance and character of the Baptist Street heritage conservation area and will not have a detrimental impact on the heritage significance of contributory buildings or nearby local heritage items.</p> <p>Refer to assessment under Section 5.10 of Sydney LEP 2012 above.</p>
3.11 Transport and Parking	Yes	<p>The development includes 12 car parking spaces within the basement level for staff, which complies with Clause 7.6 and 7.7 of Sydney LEP 2012.</p> <p>The Traffic Impact Statement and addendum Traffic letter prepared by Traffix has been reviewed by the City's Transport and Access Unit and is</p>

Provision	Compliance	Comment
		<p>acceptable. The proposed loading dock will provide adequate vehicular access for a 6.4m Small Rigid Vehicle (SRV) and B99 vehicle.</p> <p>The configuration of the basement parking and waste management facilities has been reviewed by the City's Access and Transport and Cleansing and Waste Units and is considered satisfactory, subject to recommended conditions.</p> <p>Appropriate traffic related conditions are recommended in Attachment A including provision of a Transport Access Guide to promote sustainable transport options for customers, as well as appropriate management of the loading dock.</p> <p>The proposed development complies with Section 3.11 of Sydney DCP 2012.</p>
3.11.3 Bike parking and associated facilities	Acceptable	<p>Section 3.11.3 of Sydney DCP 2012 requires a minimum of 18 bicycle spaces for the proposed commercial premises (office and shops), with a breakdown of 12 visitor spaces and 6 staff spaces.</p> <p>For office premises, a rate of 1 space per 150 square metres of GFA for employees and 1 space per 400 square metres is required for visitors. For shops, a rate of 1 space per 250 square metres of GFA for employees and 2 plus 1 per 100 square metres of GFA is required for customers.</p> <p>The proposal provides total of 20 bicycle spaces (14 staff and 6 visitor spaces).</p> <p>The site is highly accessible and located within walking distance to multiple public transport options including light rail services (approximately 500 metres to the Surry Hills light rail station) and bus services along Cleveland Street (approximately 50 metres to the Cleveland Street at Marriott Street bus stop).</p> <p>Given the highly accessible location of the site and additional bicycle parking spaces provided, the proposed breakdown in visitor and staff parking spaces is considered acceptable.</p>

Provision	Compliance	Comment
3.11.6 Service vehicle parking	No but assessed as acceptable	<p>Section 3.11.6 and Schedule 7.8.1 of Sydney DCP 2012 requires 4 service vehicle parking spaces to be provided based on the proposed commercial office and ground floor retail uses.</p> <p>The proposal provides two service vehicle spaces that can accommodate vehicles up to and including a 6.4 metre SRV and a B99 vehicle.</p> <p>The proposed varied number of service vehicles is considered acceptable in this instance for the following reasons:</p> <ul style="list-style-type: none"> • given the constraints of the site, including flooding mitigation requirements and proximity to Cleveland Street which is a classified road. • the submitted swept path analysis demonstrates adequate movement of both the B99 and SRV entering and exiting the site in a forward direction which is supported by Council's Transport and Access Unit. • no objections were raised in relation to the reduced number of service parking spaces by Council's Transport and Access Unit. Subject to conditions, the proposed office and retail premises are considered capable of being adequately serviced by the proposed number of spaces. • Council's Cleansing and Waste Unit advised that the proposed servicing arrangements within the site are satisfactory. • despite the numerical non-compliance, the proposal generally satisfies Section 3.11.6 where service spaces are provided completely within the boundary of the site, clearly designated for service vehicle spaces only (not used for any other purpose such

Provision	Compliance	Comment
		<p>as the storage of goods/ equipment).</p> <ul style="list-style-type: none"> having regard to the scale of the development and provision of active ground floor retail uses, in lieu of additional service parking spaces, which contributes towards the public domain and activation of the precinct.
3.12 Accessible Design	Yes	<p>The application is accompanied with an Accessibility Report prepared by CityPlan.</p> <p>The Accessibility Report confirms the proposal can comply with accessibility requirements under the BCA, DDA and Section 3.12 of Sydney DCP 2012.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>Section 3.113 of Sydney DCP 2012 seeks to ensure a safe environment and minimise opportunities for criminal and anti-social behaviour associated with developments.</p> <p>The proposal includes ground level retail uses and provides an active street frontage to Cleveland and Marriott Streets. The development will enhance passive surveillance to the public domain and provide an improved level of safety to James Street Reserve and Community Garden, compared to the existing site condition as the development activates the southern elevation of the site to promote surveillance from the first-floor windows and second floor terrace and a new entry at the south-east corner of the development (at the intersection of Marriott Street and the Reserve). The design of the upper levels of the development will also increase opportunities for surveillance to the public domain. The development is expected to increase activity on the site during the day and evening, providing new retail uses on the ground floor and a neighbourhood supermarket at the first floor. The external areas and entry points to the building has been designed to minimise blind-corners and recesses.</p>

Provision	Compliance	Comment
		<p>The building entries are clearly visible, unobstructed, and easily identifiable from the street.</p> <p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles in keeping with Section 3.13 of Sydney DCP 2012.</p>
3.14 Waste	Yes	<p>The submitted Waste Management Plan prepared by Ratio states that waste will be collected from the loading dock by a private commercial waste contractor. The design of the loading dock accommodates a waste collection vehicle of 6.4m, and waste contractors will wheel the bins between the bin room and service space.</p> <p>Council's Waste Management Unit has reviewed the proposal and raised no objections subject to recommended conditions. The proposed waste storage area at the ground floor is of a sufficient area to accommodate waste generated by the proposed retail, neighbourhood supermarket and office uses. The waste storage room is conveniently located and within proximity to the waste collection area and is consistent with the City's Guidelines for Waste Management in New Developments.</p> <p>Appropriate conditions are recommended to require the submission of a Demolition and Construction Waste Management Plan, and 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	<p>The site is located opposite a Local Centre Area (occupied by Surry Hills Village), it is not identified as a Late Night Trading Management Area.</p> <p>The proposal seeks to deliver a retail uses at the ground floor and a new neighbourhood supermarket at the first-floor level of the building (subject to separate applications).</p>

Provision	Compliance	Comment
		<p>The indicative retail premises (food and drink uses) are considered as Category B premises. The neighbourhood supermarket is considered as a Category C premise pursuant to Section 3.15 of Sydney DCP 2012.</p> <p>Section 3.15.4 permits the following base hours of operation:</p> <ul style="list-style-type: none"> • Category B - between 7.00am to 10.00pm • Category C - between 7.00am to 12.00 midnight, subject to an assessment of the matters for consideration under Section 3.15.3. <p>The proposal is accompanied by an Acoustic Report prepared by Acoustic Logic which includes an assessment of the indicative retail, neighbourhood supermarket, office premises and plant areas. The report has been reviewed by Council's Environmental Health Unit and is considered acceptable, subject to recommended conditions.</p> <p>The application is not accompanied by a Plan of Management and there is limited information at this stage in relation to the specific trading hours and operational management of each of the premises, as their respective operators are yet to be secured.</p> <p>Conditions are recommended to:</p> <ul style="list-style-type: none"> • require compliance with the recommendations of the Acoustic Report for the indicative uses in relation to background music levels and glazing performance to the southern facade. • Provide the ground floor retail tenancies base trading hours of between 7.00am to 10.00pm. The future fit-out and specific use of

Provision	Compliance	Comment
		<p>these premises are to be subject to separate future applications.</p> <ul style="list-style-type: none"> • require the specific use, operation, hours and fit-out of the neighbourhood supermarket to be subject to a separate future development application, given the limited information does not enable a comprehensive assessment against the matters of consideration under Section 3.15.3. • ensure deliveries and waste collections will not occur between the hours of 10.00pm and 6.00am daily, to protect the surrounding residents from noise disturbance.
<p>3.16 Signage and Advertising 3.16.1 Signage Strategy 3.16.3 General requirements for signage</p>	<p>Yes, subject to conditions</p>	<p>As the proposed development contains more than four business premises and is located within a heritage conservation area, a signage strategy is required for the site in accordance with Section 3.16.1 of Sydney DCP 2012.</p> <p>A total of nine business identification signs are proposed, comprising two under awning signs and seven top hamper signs. While the location and number of signs are supported, the submitted signage plans do not include details on the proposed materiality of the signs or denote which signs are designated to each tenancy.</p> <p>A condition is recommended to require further details to be submitted to and approved by Council, prior to any Occupation Certificate being issued for the development.</p>
<p>3.16.4 Illuminated signage</p>	<p>Yes</p>	<p>The future top hamper and under awning signs will be illuminated.</p> <p>A condition is recommended to ensure the illumination of the signage does not result in unacceptable glare.</p>

Provision	Compliance	Comment
3.16.6 Business identification signs and on-premises advertisements 3.16.6.1 General requirements 3.16.6.5 Under awning signs 3.16.6.8 Window signs and top hamper signs	Yes	<p>The proposed business identification signs are located at the entry of each tenancy and are appropriately integrated with the architectural design of the building. The proposed signs do not result in visual clutter to the building elevation along Cleveland or Marriott Street in keeping with Section 3.16.6 of Sydney DCP 2012.</p> <p>The top hamper signs will not exceed a maximum height of 3.5 metres above existing ground level (3.05 metres proposed).</p> <p>The proposed height of the under awning signs measured from the footpath to the underside of the signs comply with the minimum of height of 2.6 metres measured from the footpath (2.6 metres proposed).</p> <p>The location and dimensions of the proposed under awning and top hamper signs comply with the requirements of Section 3.16.6.5 and 3.16.6.8 of Sydney DCP 2012.</p> <p>An appropriate condition is recommended to ensure the business identification signage are not erected prior to the fit-out of the tenancy to which it relates.</p>
3.17 Contamination	Yes	Refer to assessment under the SEPP (Resilience and Hazards) 2021 above.

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	Yes	<p>The site is permitted a maximum building height of 3-storeys.</p> <p>The proposed development is 3-storeys in height and complies.</p>

Provision	Compliance	Comment
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	<p>The proposal complies with the minimum floor to floor heights stipulated in Section 4.2.1.2 of Sydney DCP 2012.</p> <p>A minimum floor to floor height of 4.5 metres is provided on the ground floor, 4.2 metres on the first floor and 3.7 metres for the second floor.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>Section 4.2.3.1 of Sydney DCP 2012 requires neighbouring developments to achieve 2 hours of direct sunlight between 9.00am and 3.00pm at mid-winter to at least 1 square metre of living room windows and a minimum 50% of the required minimum area of private open space (8 square metres). New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours' direct sunlight to habitable rooms and the minimum 8 square metres of private open space.</p> <p>The amended proposal is accompanied by a shadow analysis and sun eye diagrams at half hourly intervals prepared by Conrad Gargett Architects. The diagrams illustrate a comparison of overshadowing impacts from a permissible envelope (building height of 12m determined by Clause 4.3 of Sydney LEP 2012) with that currently proposed.</p> <p>The analysis identifies that the proposal results in below overshadowing impacts:</p> <ul style="list-style-type: none"> • 1 hour between 9.00am to 10.00am to the private open space and living areas of No. 2 Marriott Street; • half an hour between 9.00am to 9.30am to the private open space areas of Nos. 371 Cleveland

Provision	Compliance	Comment
		<p>Street and 4 - 6 Marriott Street; and</p> <ul style="list-style-type: none"> 1 hour between 9.00am to 10.00am to the private open space and living area of No. 373 Cleveland Street. <p>The proposal does not create any additional overshadowing impacts to Nos. 371-373 Cleveland Street or 4-6 Marriott Street which are already overshadowed during this time due to existing vegetation, dividing fence, narrow lot width and site orientation.</p> <p>The development will maintain 2.5 hours of direct solar access to 8 square metres of the private open space area and habitable rooms of No. 2 Marriott Street between 12.30pm and 3.00pm.</p> <p>The resulting overshadowing impact to the neighbouring terraces complies with Section 4.2.3.1(2) and is acceptable.</p> <p>Refer to further assessment under the 'Discussion' and 'Clause 4.6 variations to height of building' headings below.</p>
4.2.3.4 Design features to manage solar access	Yes	<p>The proposal, as amended, includes vertical and horizontal shading mullions which are integrated into the design of the north and eastern facades. The shading devices will maximise passive solar shading performance to the glazing and reduce the building's reliance on mechanical heating/ cooling.</p>
4.2.3.5 Landscaping	Yes, subject to conditions	<p>As noted above, the proposal is accompanied by a Landscape package prepared by Black Beetle Landscape Architecture and Design which includes details on the proposed species of plants, garden profile, drainage details and soil depth. The proposal meets the requirements of Section 4.2.3.5 of Sydney DCP 2012.</p>

Provision	Compliance	Comment
		Refer to further details in Section 3.5 of Sydney DCP 2012 above.
4.2.3.6 Deep Soil	No but assessed as acceptable	<p>A minimum deep soil area of 10% of the site area is required (96 square metres).</p> <p>The proposal does not include the provision of any deep soil areas. The site is located within an urbanised precinct where the ground floor of buildings is aligned with the boundary of the site. There are limited opportunities for the provision of deep soil in this instance given the corner position of the site (fronting a classified road), relatively small site area, footprint and basement requirements for the development which occupies the entirety of the site.</p> <p>The proposal provides a biosolar green roof in lieu of the deep soil area which is considered acceptable as it provides an improved outcome than currently offered by the existing car wash facility. The green roof contributes towards the greening of the urban environment and diversity of locally indigenous flora and fauna species within the locality.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The proposed development provides an acceptable built form with fine grain architectural character. The revised scale, modulation and articulation of the building provides an appropriate response to its immediate context and locality within the Baptist Street heritage conservation area. The expression of the facade reflects the functions within the building.</p> <p>The proposal does not exceed the maximum street frontage of 65m stipulated in Section 4.2.4 of Sydney DCP 2012. The building is designed with a two-storey podium with a masonry grid that is proportioned to reflect the fine grain vertical pattern of the immediately adjoining contributory terrace row. The</p>

Provision	Compliance	Comment
		<p>top floor of the building is setback from the street wall, to achieve a recessive termination for the top of the building. The ground floor plane achieves visual and pedestrian permeability with a through site lobby linking Cleveland Street to the James Street Reserve.</p>
4.2.6 Waste and recycling Management	Yes	Refer to discussion under Section 3.14 of Sydney DCP 2012 above.
4.2.9 Non-residential development in MU1 Mixed Use zone	Yes	<p>The objectives of Section 4.2.9 of Sydney DCP 2012 stipulates that non-residential development must be compatible with, and does not detract from, the amenity of residential development, and ensure that any impacts generated by new development are adequately managed to preserve the quality of life for residents in the area.</p> <p>The outdoor terrace of the proposed office on the second floor does not result in any overlooking to the private open space areas of the surrounding residential dwellings, given its setback from the parapet of the lower levels and screening by planters.</p> <p>The proposal, as amended, will not result in any significant adverse impacts with respect to visual privacy, vibration, reflectivity or overshadowing to the nearby residential developments as assessed elsewhere in this report.</p> <p>Appropriate conditions are recommended to ensure that the development will maintain the amenity of the public domain and residential developments in relation to waste collection, traffic, noise and operation of the retail and neighbourhood supermarket uses. Refer to details in Section 3.11, 3.14 and 3.15 of Sydney DCP 2012 above.</p>

Discussion

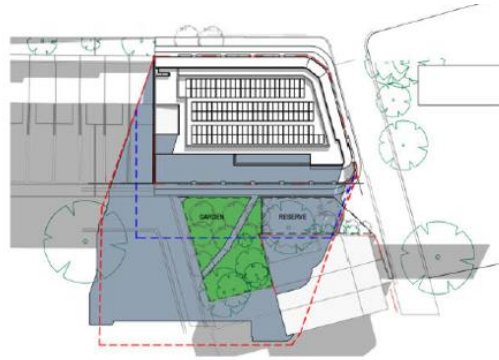
Solar Access to the James Street Reserve Community Garden

58. Section 3.2.1 of Sydney DCP 2012 stipulates new development must enhance the public domain by ensuring adequate sun access to publicly accessible spaces and protecting significant views from public places. Section 3.2.1.1 of Sydney DCP 2012 requires overshadowing effects of new buildings on publicly accessible open space to be minimised between the hours of 9.00am to 3.00pm on 21 June.
59. The existing Community Garden is dissected into two by a pedestrian walkway, as shown in Figure 37. The northern part of the garden (referred to as the northern garden hereafter) is more productive in comparison to the southern part of the garden (southern garden) due to its aspect and location of existing mature trees.

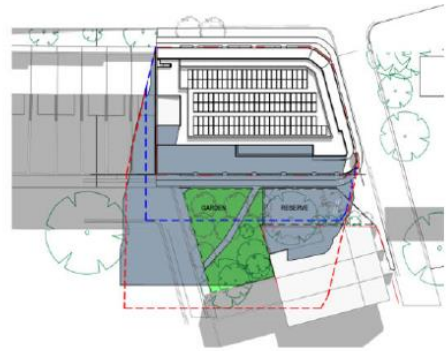


Figure 37: James Street Reserve Community Garden (11 November 2023)

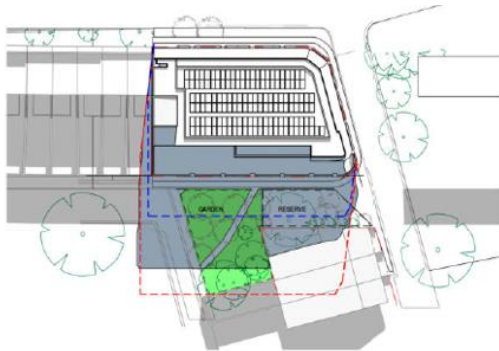
60. The overshadowing impact resulting from the proposed development, as amended (on 22 May 2024), is shown in the accompanying half hourly shadow diagrams reproduced below at Figure 38. The diagrams identify the existing shadows created by the existing car wash outlined in blue, the proposed development hatched in grey and shadows resulting from a 12m building envelope outlined in red. Half hourly sun eye diagrams are also provided at Attachment D.



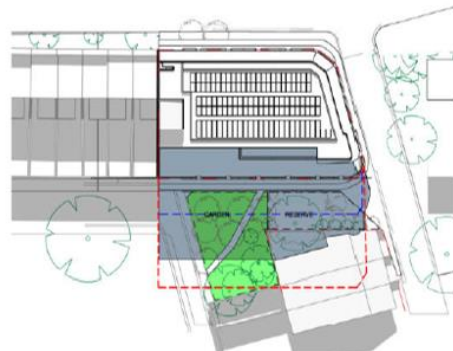
Shedbus (Winter) 23 June 9:00am
1:50



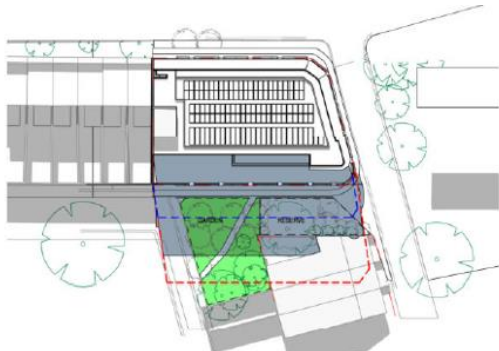
Shedbus (Winter) 23 June 9:30am
1:50



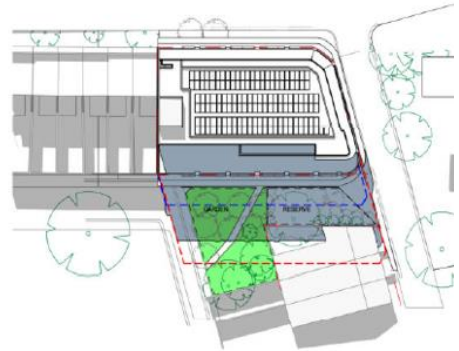
Shedbus (Winter) 23 June 10:00am
1:50



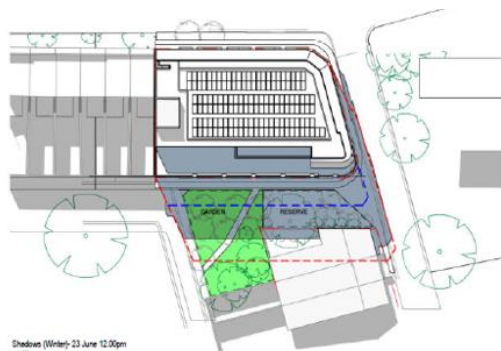
Shedbus (Winter) 23 June 10:30am
1:50



Shedbus (Winter) 23 June 11:00am
1:50



Shedbus (Winter) 23 June 11:30am
1:50



Shedbus (Winter) 23 June 12:00pm
1:50



Shedbus (Winter) 23 June 12:30pm
1:50

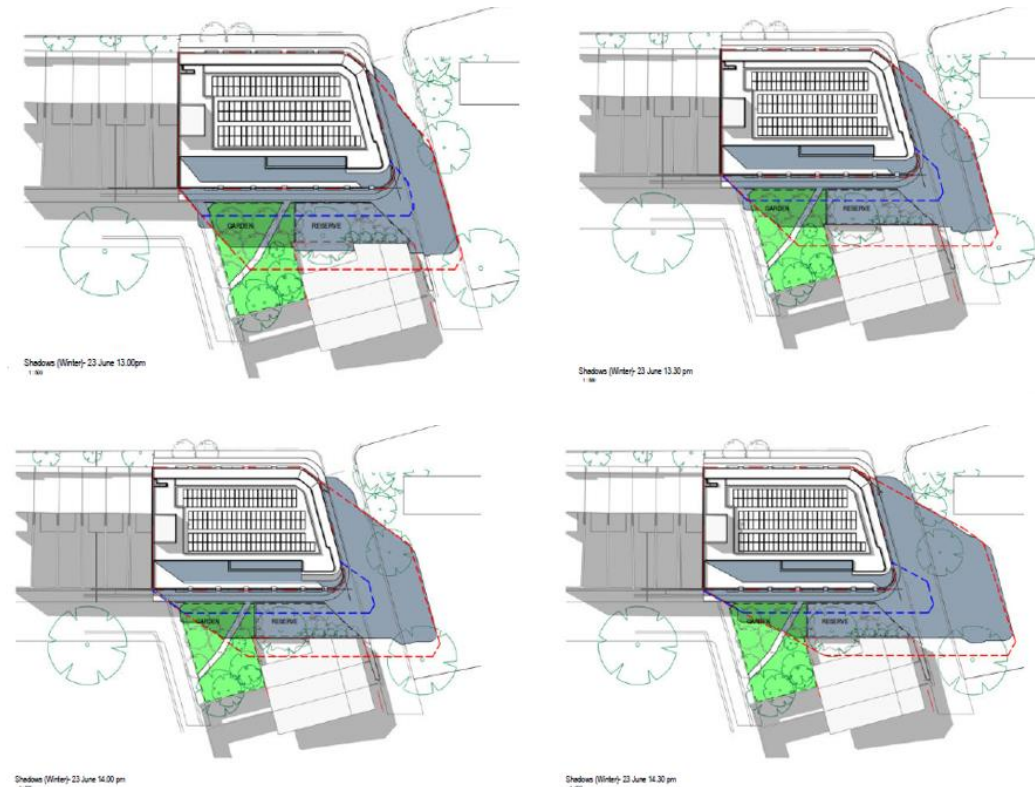


Figure 38: Shadow diagrams

61. The shadow diagrams demonstrate:
- Half of the northern garden is overshadowed by the existing car wash between 9.00am to 10.00am and a third is overshadowed between 10.00am to 12.00pm.
 - No sunlight will be received to the northern garden between 9.00am to 10.00am.
 - Approximately a quarter of the northern garden will receive solar access between 11.30am to 12.00pm. Approximately half of the northern garden will receive sunlight between 12.00pm and 1.00pm. The majority of the northern garden will receive sunlight between 1.00pm to 3.00pm.
 - The proposal will maintain 3.5 hours of solar access to approximately half of the entire community garden between 11.30am to 3.00pm at mid-winter.
 - The development provides an improved outcome when compared to a building envelope with a height of 12m (excluding articulation and setbacks).
62. It would be unreasonable to require the new development on this site (where the permissible building height is 12m) to maintain the existing level of solar access to the garden, as this would limit development to a single storey and would not achieve the objects of the Environmental Planning and Assessment Act 1979 in accordance with Clause 1.3(c) to promote the orderly and economic use and development of land.
63. The original scheme (as lodged) overshadowed the majority of the garden until 1.30pm. The elements of the original scheme which contributed to this overshadowing impact was the generous level 1 floor to floor height (4.5m), extruded parapet to the

non-trafficable roof on the southern elevation, western blade wall at level 2, and the mechanical plant (refer to Figure 39).

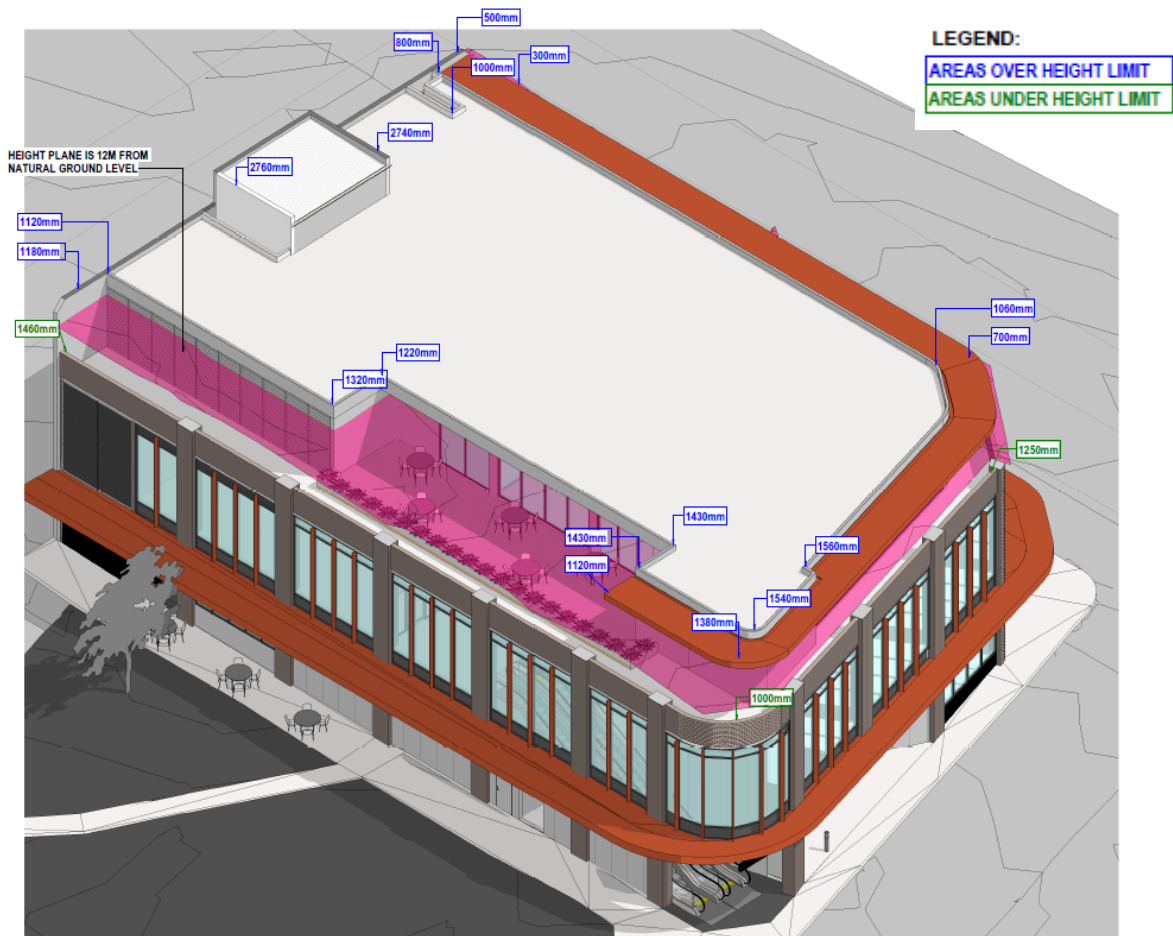


Figure 39: Original proposal dated 2 August 2023

64. The proposal has since been revised to reduce the building bulk at the south-west corner, reduce the level 1 floor to floor height by 0.3m (4.2m), and remove all of the above elements included in the original scheme (refer to Figure 42). The revised design provides an improved outcome compared to the original scheme, achieving sunlight to approximately half of the garden between 11.30am to 1.30pm.
65. The proposal, as amended, is considered to provide an acceptable level of solar access to ensure the ongoing viability of the Community Garden. The site is located immediately to the north of the garden and as such a degree of overshadowing to the south is unavoidable. The revised development maintains solar access to the approximately half of the northern garden for three hours between 12.00pm to 3.00pm. The revised scheme has minimised the overshadowing impacts to the publicly accessible open space to an acceptable level and is considered to meet the objectives of Section 3.2.1.1 of Sydney DCP 2012.

Clause 4.6 Request to Vary a Development Standard - Height of Buildings

66. The site is subject to a maximum height of buildings control of 12 metres. The proposed development has a maximum building height of 14.3 metres, which equates to a variation of 19.1% (2.3 metres). The elements that breach the height of buildings

development standard includes lift overruns, fire stairs, level 2 roof and mechanical plant.

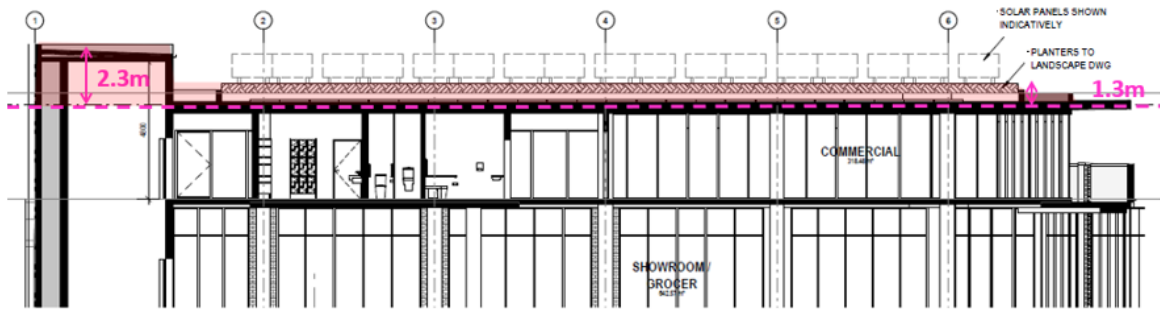


Figure 40: Section A - Area of height exceedance indicated in red

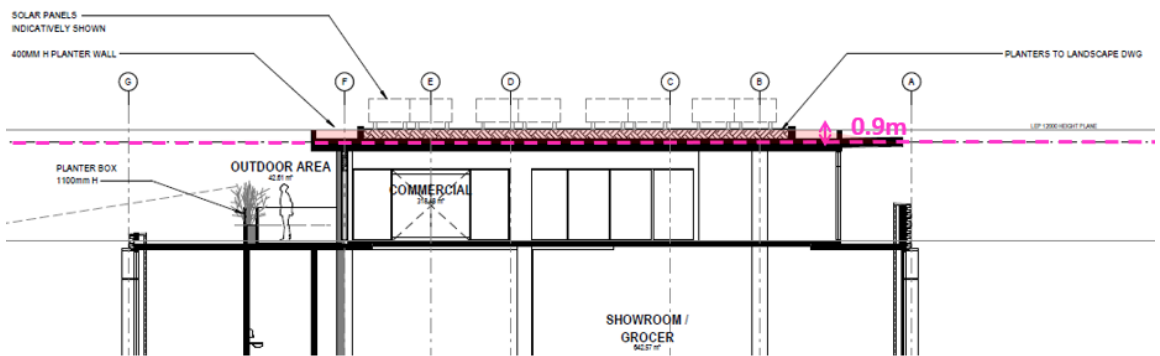


Figure 41: Section B - Area of height exceedance indicated in red

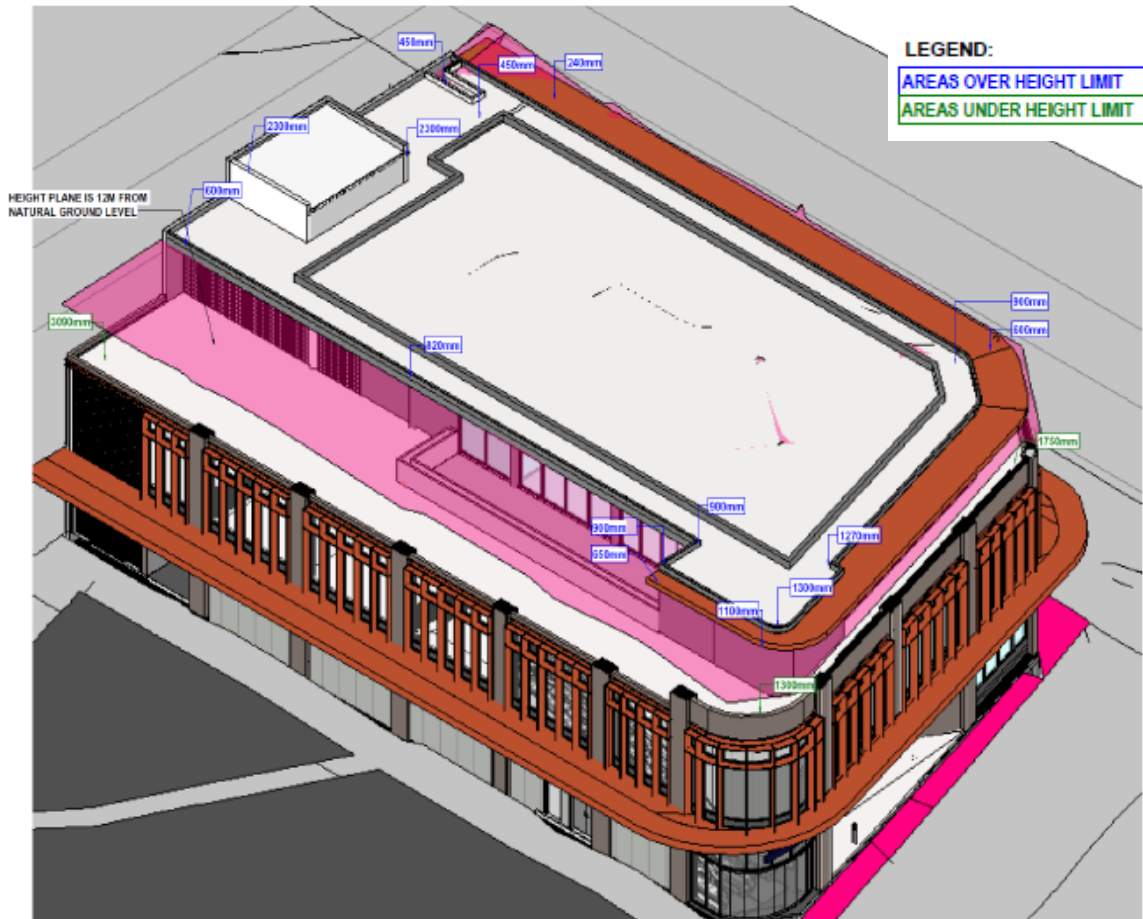


Figure 42: Height plane drawing showing areas above the height control annotated in blue and elements below annotated in green

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

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

68. 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 statement refers to the first of the five tests established in *Wehbe v Pittwater Council (2007) NSW LEC 827* to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The applicant's justification against the objectives of the height of buildings development standard is provided in (d) below.
 - (ii) The applicant's statement also refers to the fourth test to demonstrate that the development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. The applicant notes that Council has adopted a relatively flexible approach to the implementation of the height control in circumstances where the objectives of the control are achieved.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The 12m height control for the subject site under Clause 4.3 of Sydney LEP 2012 is intended to work in tandem with a 3-storey height control in the Sydney DCP 2012. However, the 12m height control in the LEP assumes a shop-top form of development which includes upper-level residential uses which have reduced floor to floor requirement when compared with commercial uses on the upper floors.
 - (ii) The site is located adjacent to a busy classified road (Cleveland Street) and residential development does not represent an optimal design outcome due to the adverse amenity outcomes for more sensitive residential use. It is preferable to provide an entirely commercial building, however, this requires higher floor to floor heights which challenges the 12m height control.
 - (iii) The proposed development has been designed to mitigate the impact of the overall height of the development. The proposal has been designed with an expressed two-storey base with masonry grid facade, and the top level is setback from all edges of the building. The expression of the top floor is detailed with glazed external walls with fine window detailing to three frontages, and a light weight projecting roof element to float above the base of the building. This achieves a recessive termination for the top of the building.
 - (iv) The setback of the top floor, which is the element that exceeds the height control, is such that the proposed development does not result in any meaningful difference in shadow when compared to the shadow cast by a compliant building envelope on the site.
 - (v) The majority of the components which breach the height control will not be dominant when viewed from the public domain, or the ground floor plane of the site.

- (vi) The lift overrun which has the greatest extent of breach is well setback within the site with essentially no impact. Accordingly, the proposed areas of variation to the height control do not result in any adverse impact to adjacent properties.
- (vii) The proposed variation allows for the most appropriate use of land, which is also the most efficient and economic use of the land without adversely impacting on the amenity of adjacent sites. Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public in the particular circumstance of this site and this proposal but would only serve to encourage the introduction of residential use on the upper levels of the building.
- (c) The proposed development will be consistent with the objectives of the zone:
- (i) The applicant has provided justification in their written statement that the proposed development will be consistent with the objectives of the MU1 Mixed Use zone:
- ***To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.***
 - (i) The development will support the ongoing use of the site for commercial premises in an ideal development which will contribute positively to the vibrancy of the location.
 - ***To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.***
 - (ii) The proposed development maximises active frontages and fine grain retail uses to Cleveland Street.
 - ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***
 - (iii) The proposal has been designed to minimise conflict with nearby residential uses by reducing shadow impacts when compared with a strictly compliant height. The development includes a greater setback at the top floor from the southern edge of the building to mitigate privacy impacts.
 - ***To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.***
 - (iv) The proposed development provides retail uses on the ground floor of the building.
 - ***To ensure land uses support the viability of nearby centres.***
 - (v) The proposal will support rather than detract from the viability of the nearby centres and will ensure the continuation of employment generating uses on the site.

- ***To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.***
- (vi) The site is well located to encourage walking and cycling. End of Journey facilities are integrated to the design of the development that will encourage users to walk and cycle.
- (d) The proposed development will be consistent with the relevant objectives of the standard:
- (a) ***With regard to objective 4.3(1)(a) to ensure the height of development is appropriate to the condition of the site and its context:***
- (i) The proposal is 3-storeys in height as anticipated by the Sydney DCP 2012. The proposal is therefore broadly appropriate to the condition of the site and its context. However, due to the commercial uses in the building instead of residential, the required floor to floor heights results in a minor variation to the height control.
 - (ii) To mitigate the impact of the height variation and to achieve a more appropriate contextual design response, the development is designed with a two-storey base with masonry grid which is proportioned as an interpretation of the fine grain vertical pattern of the immediately adjacent row of terraces. The top floor is setback from the levels below and proposed with a predominately glazed wall with fine window detailing and a lightweight projecting roof element to float above the base of the building. This achieves recessive termination for the top of the building.
 - (iii) The expressed scale of the street wall as 2 storeys is a sympathetic response to the context of the site.
- (b) ***With regard to objective 4.3(1)(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas:***
- (i) The proposal is located within a heritage conservation area and the development provides a design response which specifically acknowledges the adjacent contributory items by providing a lower two-storey street wall which achieves an appropriate transition in scale between this new development and the context of the site.
- (c) ***With regard to objective 4.3(1)(c) to promote the sharing of views outside Central Sydney:***
- (i) The proposed development will not impact on any scenic or iconic views.
- (d) ***With regard to objective 4.3(1)(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas:***
- (i) This objective is not applicable to the development as the site is not located within Central Sydney or the Green Square Town Centre.

(ii) ***With regard to objective 4.3(1)(e) in respect of Green Square:***

- (i) This objective is not applicable.

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

69. 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)?

70. The applicant has correctly referred to the test established by Preston CJ in *Wehbe v Pittwater* to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Specifically, the applicant has addressed the first part of the test by demonstrating that the development meets the objectives of Clause 4.3, notwithstanding non-compliance with the numerical standard.
71. The proposal satisfies the relevant objectives of Clause 4.3 as follows:
- "To ensure the height of development is appropriate to the condition of the site and its context.
 - To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
 - To promote the sharing of views outside Central Sydney"
72. The proposal appropriately responds to the existing and anticipated context of the area and presents a transitional building height with surrounding developments within the Baptist Street heritage conservation area as well as Waterloo and Redfern (Cleveland Street) special character area.
73. The written request outlines that the proposal achieves a more appropriate contextual design response and transition in scale between the subject development and surrounding developments. A two-storey podium is proposed with a street wall height of approximately 9.8m. The proposal complements the two-storey scale of the adjoining and nearby terraces to the west and south (fronting Marriott Street) and achieves consistency with the 9.9m street wall height of the Surry Hills Village to the east along Cleveland Street. The portion of the building that exceeds the height control is setback from the levels below to achieve a recessive termination for the top of the building and does not result in adverse impacts on any scenic or iconic views.
74. The proposal is consistent with the objectives of the MU1 Mixed Use zone and height development standard under Sydney LEP 2012 and is in the public interest. The area

of non-compliance is predominately confined to the roof, plant and services of the development and is negligible when viewed from the public domain. The proposal would facilitate the objectives of the zone that would not result in unacceptable environmental impacts to the neighbouring properties or public domain. The development will not unreasonably overshadow public accessible open space (as discussed under the heading 'Solar Access to the James Street Reserve Community Garden above).

75. Accordingly, the applicant has adequately demonstrated that strict compliance with the height development standard is considered unreasonable and unnecessary in the circumstances of the subject application. The Clause 4.6 variation request provides sufficient justification to warrant the variation to the height of building development standard.

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

76. The area breaching the 'height of buildings' development standard relates to elements contained at the roof level only, predominately confined to non-habitable structures that allow the building to function effectively and efficiently (lift overrun, mechanical plant, biosolar green roof, rooftop awning and parapet). The exceedance does not constitute a full habitable floor.
77. The applicant has noted that the site is located adjacent to a classified road and thus a sensitive land use such as residential development would not represent an optimal design outcome. A commercial development requires higher floor to floor heights (4.5m on ground and 3.6m on floors above) in comparison to residential development (minimum of 3.1m).
78. The development has been designed with a two-storey podium. The proposed second floor is setback from the Cleveland and Marriott Street frontages by approximately 2m. A greater setback of 6.8m measured to the rooftop mechanical plant and 3.5m to the outdoor terrace is provided to the south elevation to minimise overshadowing impacts to the James Street Reserve Community Garden. The setback of the second floor also reduces the visual impact of the bulk of the building and responds to the two-storey scale of the adjoining row of terraces (Nos. 363-373 Cleveland Street) within the Baptist Street heritage conservation area.
79. The proposal has been designed to minimise overshadowing impacts to publicly accessible open space in accordance with the requirements of Section 3.2.1.1 of Sydney DCP 2012 (as assessed under the heading 'Solar Access to the James Street Reserve Community Garden above). The setback of the mechanical plant, and reduced parapet height will maintain 3.5 hours of solar access to approximately half of the Community Garden between 11.30am to 3.00pm at mid-winter. The applicant's overshadowing analysis provides a comparison of shadows cast by the proposed development and that of a permissible 12m height building envelope. The proposed development delivers an improved outcome than that which would be achieved by a 12m envelope. The existing car wash overshadows approximately half of the northern part of the Community Garden between 9.00am to 10.00am, and approximately a third of the garden between 10.00am to 12.00pm. It is unreasonable for a new development to maintain the existing level of solar access as this would limit development to a single storey and would not promote the orderly development of land in accordance with the EP&A Act 1979. On balance, having regard to the constraints of the site and location of the publicly accessible space (located immediately south of the site), it is considered that the proposal will maintain an acceptable level of solar access to the Community Garden.

80. In light of the above, the proposal demonstrates that there are sufficient environmental planning grounds to justify contravention to the height development standard.

Is the development in the public interest?

81. The objectives of the height of buildings development standard relevant to the proposal include:
- (a) to ensure the height of development is appropriate to the condition of the site and its context,
 - (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
82. The proposal is consistent with the relevant objectives of the MU1 Mixed Use zone as follows:
- (a) The development provides a mix of commercial and retail land uses that generate employment opportunities, which are consistent with the desired future character of the site and surrounds. The land uses are permissible within the zone.
 - (b) The development provides diverse and active retail street frontages to Cleveland and Marriott Streets. The proposed retail tenancies located on the ground floor to Cleveland Street will attract pedestrian traffic and contribute towards the vibrancy of the special character area.
 - (c) The proposal will support the viability of the nearby centres and will ensure the continuation of employment generating uses on the site.
 - (d) The site is located in an accessible location and within walking distance to multiple public transport options including light rail services (approximately 500m to the Surry Hills light rail station providing services to Central Train Station) and bus services along Cleveland Street (50m to the Marriott Street bus stop). The proposal integrates suitable business, office and retail uses and maximises public transport patronage, walking and cycling to and from the site.

Conclusion

83. 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 Clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of Clause 4.3 and the MU1 Mixed Use zone.

Consultation

Internal Referrals

84. The application was discussed with Council's;
- (a) Environmental Health Unit;

- (b) Heritage and Urban Design Unit;
- (c) Public Domain Unit;
- (d) Landscape Specialist;
- (e) Public Art Unit;
- (f) Environmental Projects Specialist;
- (g) Safe City;
- (h) Specialist Surveyor;
- (i) City Access and Transport Unit;
- (j) Tree Management Unit; and
- (k) Cleansing and Waste Unit.

85. The above units and officers advised that the amended proposal is acceptable subject to conditions including in Attachment A of this report.

External Referrals

Ausgrid

86. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
87. A response was received on 6 September 2023 and 21 March 2024 raising no objections to the revised proposal, subject to recommended conditions. These conditions are included in Attachment A.

Transport for NSW

88. Pursuant to Section 2.119 and 2.122 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment. The amended scheme was re-referred to TfNSW for comments on 21 March 2024.
89. Comments were provided on 12 September 2023 and 11 April 2024. Conditions of consent were recommended which are included in the Notice of Determination.

NSW Police

90. The application was referred to the NSW Police for comment on 22 August 2023. No response was received.

Advertising and Notification

91. In accordance with the City of Sydney Community Participation Plan 2023, the proposed development was notified for a period of 21 days between 16 August and 7 September 2023. As the on-site notice was incorrectly erected on site, the application

was re-notified for further period of 21 days between 12 September and 4 October 2023.

92. A total 116 properties were notified, and 16 submissions were received during both notification periods. 10 submissions were received during the first notification period and 6 submissions were received during the second notification period.

93. The submissions raised the following issues summarised below:

(a) **Issue:** Unacceptable overshadowing impacts to the James Street Reserve Community Garden

Response: The proposal, as amended on 22 May 2024, has been revised to remove building bulk from the south-western corner as to minimise overshadowing impacts to the James Street Reserve Community Garden. The amended development will maintain solar access to approximately half the area of the Community Garden for 3.5 hours between 11.30am to 3.00pm at mid-winter (improved from the original scheme which provided 1-2 hours of solar access).

Refer to assessment under the headings 'Amendments', 'Section 3.2.1.1 of Sydney DCP 2012' and 'Solar Access to the James Street Reserve Community Garden.'

(b) **Issue:** Unacceptable social impacts due to the proposed overshadowing impacts which results in an unviable community garden

Response: As noted above, the proposed development has been subject to a number of amendments to preserve an acceptable level of solar access to the Community Garden. The revised overshadowing impact is assessed as acceptable and is considered to maintain the viability of the garden.

(c) **Issue:** Height and design of the building will block sunlight to the James Street Reserve Community Garden, in particular to the most productive parts of the garden

Response: Refer to discussion under the headings 'Amendments', 'Section 3.2.1.1 of Sydney DCP 2012', 'Solar Access to the James Street Reserve Community Garden' and 'Clause 4.6 Request to Vary a Development Standard - Height of Buildings'.

(d) **Issue:** Loss of amenity within the community and locality. Development is not in the public interest and inconsistent with the City's Greening Sydney Strategy, Action 7 - Grow Food Locally

Response: The proposal will preserve an acceptable level of solar access the Community Garden to enable the community to continue to grow food.

(e) **Issue:** Pedestrian walkway connecting James Street and Marriott Street should include a cycling option, given James Street is proposed to be a two-way road for cycling.

Response: The pedestrian walkway connecting James Street and Marriott Street is outside of the scope of the subject application (approved as part of the Surry Hills Village development).

- (f) **Issue:** Building height has been incorrectly measured and are not accurately shown on the plans and elevations.

Response: The site has a fall of approximately 0.82m from the north-west (RL 34.2) to the south-east corner of the site (RL 33.38). The building height plane is correctly measured and shown on the architectural plans, elevations and sections.

- (g) **Issue:** Building height is inconsistent with neighbours which are largely Victorian Terraces and exceeds planning restrictions. The Surry Hills Village is a greater height but is contained within its own block and is visually separate.

Response: A written Clause 4.6 variation request has been submitted with the application. As discussed elsewhere in this report, the request provides adequate justification for the proposed variation of the height control and is supported in this instance. The proposed two-storey podium height is considered to provide an appropriate response to the adjoining contributory row of terraces within the Baptist Street heritage conservation area.

- (h) **Issue:** No green space on site.

Response: The proposal provides a biosolar landscaped roof. Refer to Section 3.5 (Urban Ecology), Section 4.2.3.5 (Landscaping) and Section 4.2.3.6 (Deep Soil) of Sydney DCP 2012 above.

- (i) **Issue:** Rear of building is an array of ugly services and is not appropriate for the area. It should be used for street art.

Response: The proposal, as amended, proposes a large-scale public artwork on the southern facade at the ground floor. The previous tenancy included in the original scheme has been deleted.

- (j) **Issue:** Dwellings should be proposed instead of additional commercial and retail uses

Response: The proposed commercial use comprising retail premises, neighbourhood shop and office uses are permissible with consent in the MU1 Mixed Use zone. The development is consistent with the objectives of the MU1 Mixed Use zone.

- (k) **Issue:** Exceedance in Floor Space Ratio

Response: The proposed development complies with the maximum permissible Floor Space Ratio for the site. Refer to Clause 4.4 of Sydney LEP 2012 above.

- (l) **Issue:** Building services located at the western boundary of the site, resulting in adverse noise, vibrations and odour impacts

Response: Appropriate conditions are recommended to minimise noise and vibrations associated with construction. The application was reviewed by Council's Environmental Health Unit who advised the development is acceptable

subject to recommended conditions which are included in Attachment A. It is noted that the fit-out and operation of individual premises will be subject to separate future applications.

- (m) **Issue:** Neighbourhood supermarket is not required given the adjoining Surry Hills Village

Response: A neighbourhood supermarket is permissible with consent in the MU1 Mixed Use zone, and is consistent with the objectives of the zone to encourage a diversity of business, retail and employment generating opportunities.

- (n) **Issue:** Architectural integrity of the development including how it complements the design of the Surry Hills Village and sustainability and green ratings. The development is of a poor standard of design, dull, uninteresting, and unimaginative approach to street level amenity.

Response: As discussed elsewhere in this report, the amended development has been reviewed by Council's Urban Design and Heritage Unit. The proposal exhibits design excellence in accordance with Clause 6.21C of Sydney LEP 2012. The proposed development includes the use of high-quality material finishes including red brick and exposed concrete which are in keeping with the traditional materials found in the nearby contributory buildings and contributes towards the character of the locality and significance of the Baptist Street heritage conservation area.

The proposal, as revised, includes on-site renewable energy generation through the provision of photovoltaic panels on the roof and heat pump systems. The development meets Section J requirements and is in keeping with Section 3.6 of the Sydney DCP 2012. Conditions are recommended to ensure the ESD commitments are carried through to the certification and construction phases of the development.

- (o) **Issue:** Noise and traffic impacts, dust and pollution

Response: Appropriate conditions are recommended to ensure the protection of the public domain and amenity of the surrounding developments during the construction phases of the development.

The car parking spaces provided within the basement level are in accordance with the parking rates stipulated under Clause 7.6 and 7.7 of Sydney LEP 2012. The proposed development is not considered to result in any significant adverse traffic impacts, as discussed under Section 3.11 of Sydney DCP 2012.

Further conditions are recommended to require the future fit-out and specific use of each of the retail tenancies at ground floor fronting Cleveland Street to be subject to a separate application(s), and the neighbourhood supermarket to be subject of a separate development application.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

94. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
95. No credits are applied for the existing use of the site.
96. A condition relating to this development 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

97. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The Act applies with respect to a development application for consent to carry out development within an area if a State Environmental Planning Policy identifies that there is a need for affordable housing within the area and:
 - (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
 - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
 - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
 - (d) the regulations provide for this section to apply to the application.
98. The proposal is consistent with the criteria under part (c) that is, the proposed uses are permissible under the initial zoning of the site.
99. An affordable housing condition may be reasonably imposed under Section 7.32(3) of the Act subject to consideration of the following:
 - (a) the condition complies with all relevant requirements made by a State Environmental Planning Policy with respect to the imposition of conditions under this section, 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.

100. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.
101. The City of Sydney Affordable Housing Program (Affordable Housing Program) identifies the need for affordable housing in the area and identifies the appropriate contributions and therefore addresses 7.32 (3) (c) (i) above.
102. The site is located within the Residual Lands affordable housing contribution area.
103. As the proposed development includes the erection of a new building where the gross floor area is more than 200sqm, a contribution required at a rate of \$11,176.22 multiplied by 1% of the total floor area of 2,479.78sqm (being 24.79sqm), totalling \$277,145.66 is applicable.
104. A condition of consent is included in Attachment A requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

Housing and Productivity Contribution

105. The Housing and Productivity Contribution only applies to applications lodged prior to 1 October 2023.
106. The development is not subject of a Housing and Productivity Contribution under the provisions of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

Relevant Legislation

107. Environmental Planning and Assessment Act 1979.

Conclusion

108. The proposal seeks consent for the demolition of the existing car wash premise and associated ancillary structures, excavation and construction of a 3-storey commercial development with a maximum height of 14.3m (RL 48.4). The development comprises retail uses on ground floor, neighbourhood supermarket use, and office premises above.
109. The proposal, as amended, is appropriate in its setting and is generally compliant with the objectives, standards and guidelines of the relevant applicable planning controls in the SEPP, Sydney LEP 2012, and Sydney DCP 2012, with the exception of the height of buildings development standard. The proposed variations to the controls to the Sydney DCP 2012 have been assessed as acceptable and identified in the report.
110. A written request to justify the contravention to the height of buildings development standard pursuant to Clause 4.6 of Sydney LEP 2012 has been submitted and adequately justifies that compliance with the development standard is unreasonable or unnecessary in this circumstance and that there are sufficient environmental planning grounds to justify contravening the development standard. The proposal satisfies the

objectives of the 'Height of Buildings' development standard prescribed in Clause 4.3 as well as the objectives of the MU1 Mixed Use Zone in the Sydney LEP 2012.

111. The proposed development is compliant with the applicable floor space ratio control and accords with the relevant provisions of the Sydney Local Environmental Plan 2012.
112. Having regard to all of the above matters, the proposed development will not result in any adverse impacts on both the natural and built environment and the locality, is suitable for the site, and is in the public interest, subject to the appropriate conditions.
113. The proposal, as amended, satisfactorily addresses the issues raised by Council officers through the course of assessment, in particular relating to overshadowing impacts of the James Street Reserve Community Garden, building height, bulk, and architectural expression and materiality. The amended proposal is satisfactory, subject to the conditions recommended and included in Attachment A.
114. The proposed development contributes to the character of the Waterloo and Redfern (Cleveland Street) special character area and provides a sympathetic response for the Baptist Street heritage conservation area.
115. Issues raised in all submissions have been taken into account in the assessment, and, where appropriate, conditions of consent have been recommended to address these issues.
116. The development application is recommended for approval, subject to the recommended conditions.

ANDREW THOMAS

Executive Manager Planning and Development

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