

Item 3.**Development Application: 1-5 Flinders Street, Surry Hills - D/2023/119**

File No.: D/2023/119

Summary

Date of Submission:	21 February 2023 (amended plans received 19 July 2024 and 24 October 2024)
Applicant:	Archon Property Pty Ltd
Architect:	David Mitchell Architects
Developer:	Archon Property Pty Ltd
Owner:	Archon Property Pty Ltd
Planning Consultant:	Ethos Urban
Heritage Consultant:	Heritage 21
Design Advisory Panel:	The application was considered by the Design Advisory Panel on 4 May 2023, 26 October 2023, and 23 November 2023.
Cost of Works:	\$5,472,000
Zoning:	E1 Local Centre. The proposed development is permissible with development consent.
Proposal Summary:	<p>The application seeks development consent for internal demolition and alterations and additions to the existing building, including a new three storey plus rooftop addition, to accommodate commercial uses.</p> <p>The application is referred to the Local Planning Panel for determination as contentious development, as it is the subject of 25 or more submissions by way of objection.</p> <p>The application was first placed on public exhibition for a period of 28 days between 16 March and 14 April 2023 in accordance with the Community Participation Plan 2019. The application was amended and required re-notification. The amended application was notified for</p>

a period of 28 days between 25 July and 23 August 2024 in accordance with the Community Engagement Strategy and Community Participation Plan 2024.

As a result of the notification of the application there were 48 submissions (47 objections and one in support) received from 40 individual submitters.

The key issues raised in the submissions are summarised as follows:

- Amenity
- Built form
- Design
- Heritage
- Land use
- Traffic and parking
- Creative and cultural floorspace
- LGBTQIA+ Community
- Noise
- Housing affordability
- Cost of works

An initial assessment of the application by Council staff identified numerous concerns, but of highest significance were those relating to architectural expression, built form and heritage interpretation. These concerns were shared by the Design Advisory Panel.

These issues have substantially been resolved through the submission of amended architectural drawings and additional information. Where issues are outstanding, these can be resolved through the recommended conditions of consent. These include deferred commencement conditions relating to contamination and heritage.

Summary Recommendation:

The development application is recommended for deferred commencement approval.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012

- (iii) SEPP (Resilience and Hazards) 2021
- (iv) SEPP (Industry and Employment) 2021
- (v) SEPP (Transport and Infrastructure) 2021
- (vi) SEPP (Biodiversity and Conservation) 2021

Attachments:

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

Recommendation

It is resolved that pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2023/119 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act, 1979 in that subject to the imposition of the recommended conditions of consent, the proposal is generally consistent with the planning controls applicable to the site, and where variances are proposed these are acceptable for the reasons outlined in the report to the Local Planning Panel.
- (B) The proposal satisfies the objectives and provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Industry and Employment) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (C) The proposal is consistent with the objectives of the E1 'Local Centre' zone.
- (D) Subject to the recommended conditions of consent, the proposal will contribute to the ongoing conservation of the heritage item on site "Former Commonwealth Bank including Interior" (I1541), and the conservation of the Oxford Street Heritage Conservation Area (C17) through conservation measures to the retained building.
- (E) The proposed development appropriately responds to the site and its context, with additions to the building that are compliant with the statutory height and floorspace controls, appropriate in terms of architectural expression and achieves design excellence.
- (F) The proposed land uses are permissible with consent in the zone and will support the vitality of the area. Subject to the recommended conditions of consent, land uses envisaged under the Oxford Street Cultural and Creative Precinct controls will be assured in perpetuity to ensure the character of the precinct is preserved.
- (G) The public interest is served by the approval of the development, as amendments to the design have generally addressed the concerns of Council staff, the Design Advisory Panel, and the community. The recommended conditions of consent will mitigate any environmental impacts that could potentially arise from the construction and operational phases of the proposed development.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in DP 1289077, and is known as 1-5 Flinders Street, Surry Hills. It is irregular in shape with an area of 350.9 sqm. It has a primary street frontage to Flinders Street and secondary street frontages to Taylor Square, Bourke Street and Patterson Lane. The site is located at the southern end of Taylor Square, to the south of the intersection of Oxford and Flinders Streets. Levels on the site fall by 1.17m in an easterly direction.
2. The site contains a three-storey commercial building constructed in the Federation Free Style for the purpose of a bank in 1911. It is composed of a split-level floor plate, with basement, ground and mezzanine levels on the Flinders Street side of the building, and lower ground and upper ground levels on the Bourke Street side. Level One of the building, separately accessed via Bourke Street, is not split level.
3. The building was used for the purpose of shops and a bank until 1982. It's most recent use, between 1988 and 2008, was as a licensed hotel. While not explicitly approved as a nightclub, the premises was permitted to operate 24 hours per day, had an entertainment license until February 2006, had a dancefloor and DJ booth, and operated as a nightclub until 2008. The building has been vacant since 2008.
4. The site is located within the Oxford Street precinct, the focal point of Sydney's LGBTQIA+ community. The surrounding area is characterised by a mixture of land uses, including:
 - To the south of the site, on the opposite side of Patterson Lane and fronting Bourke Street, is a three-storey building subdivided into five lots, is mixed use with ground floor retail and residential uses above. Fronting Flinders Street is a two-storey commercial building.
 - To the east, on the opposite side of Flinders Street at 10-24 Flinders Street is a mixed-use development containing a boarding house, a nightclub, and ground floor retail. Further to the north at 4-6 Flinders Street is a two-storey building containing ground floor retail with a gym above.
 - Directly to the north is the southern portion of Taylor Square, including the Rainbow Crossing, Progress Pride flag, Gilligan's Island, and a water feature.
 - To the north-west is a three-storey pub known as Kinselas.
 - To the west, on the opposite side of Bourke Street, is a 10-storey mixed use building known as the Belgenny Apartments. The building contains ground floor retail with apartments above.
 - Further to the south-west is a three-storey building containing a medical centre.
5. The site is a local heritage item "Former Commonwealth Bank including Interior" (I1541). It is located within the Oxford Street heritage conservation area (C17). The site is identified as a contributing building.
6. The site is located within the Oxford Street, Darlinghurst locality and is identified as being subject to flooding.

- 7. Site visits were carried out on 1 March 2023, 30 May 2024 and 20 August 2024.
- 8. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Taylor Square, looking south

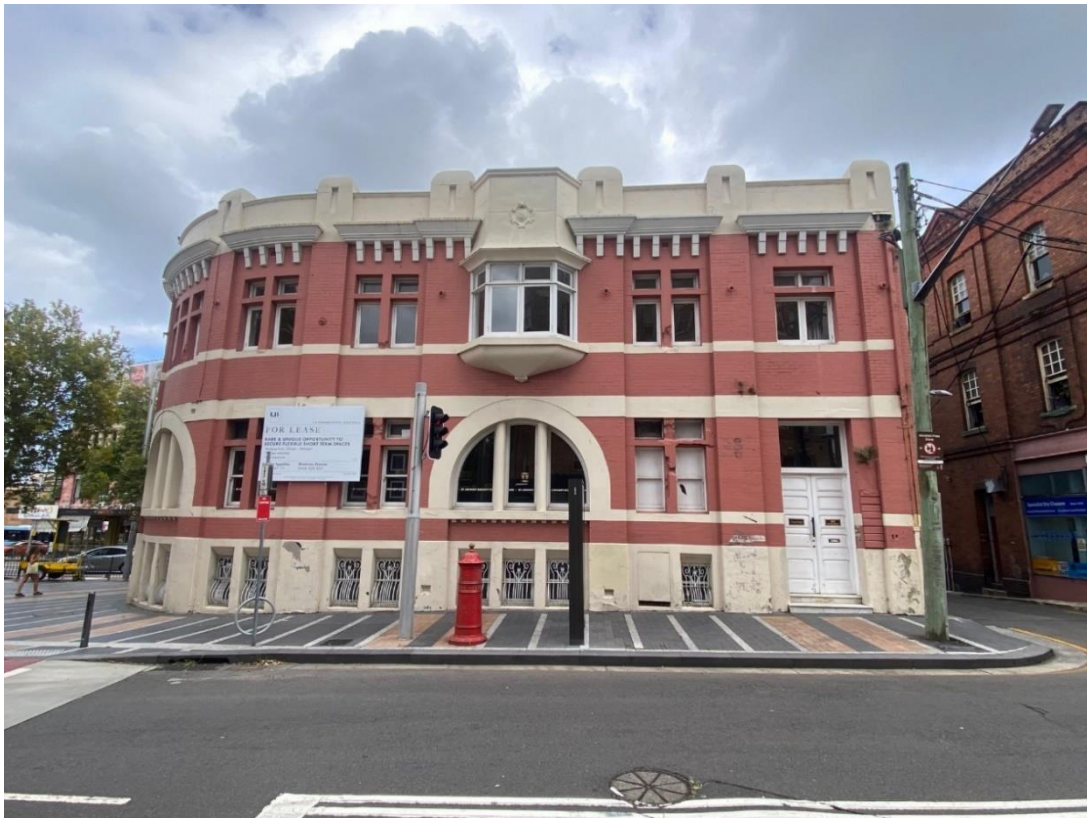


Figure 3: Site viewed from the opposite side of Bourke Street, looking east



Figure 4: Site viewed from the opposite side of Patterson Lane, looking north east



Figure 5: Site viewed from the opposite side of Patterson Lane, looking north west



Figure 6: Site viewed from the opposite side of Flinders Street, looking west



Figure 7: Interior, basement level



Figure 8: Interior, lower ground level (basement)



Figure 9: Interior, ground floor level



Figure 10: Interior, upper ground floor level



Figure 11: Interior, mezzanine



Figure 12: Interior, first floor level



Figure 13: Taylor Square, adjoining the site, looking north (Gilligan's Island centre of frame)



Figure 14: 'Kinselas' located on the opposite side of Taylor Square, looking north west



Figure 15: Development located on the opposite side of Bourke Street, looking west



Figure 16: Development on opposite side of Patterson Ln (Bourke St frontage), looking southwest



Figure 17: Development on opposite side of Patterson Ln (Flinders St frontage), looking southeast



Figure 18: Development located on the opposite side of Flinders Street, looking east

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:
- **D/2021/1363** - Development consent was granted on 8 April 2022 for alterations to commercial development including a new awning along Flinders Street and Bourke Street and external paint works. The consent has not been acted upon.
 - **D/2021/612** – Development consent was granted on 17 August 2021 for alterations to commercial development. The approval permitted the basement fit out to be removed. The works have been completed.
 - **D/2014/660** - Development consent was granted on 23 February 2015 for alterations and additions, and use of existing commercial building as a bike hub comprising bicycle retail related shop, a café and offices, and external works. The consent has not been acted upon and has lapsed.

Compliance Action

10. The site has previously been subject to compliance action which is now closed. It is not relevant to the subject application.

Amendments

11. The application was considered by the Design Advisory Panel (DAP) on 4 May 2023, 26 October 2023, and 23 November 2023. The application, as originally proposed, is illustrated in Figure 19 below.



Figure 19: Photomontage of development, as originally proposed

12. The DAP held significant concerns with the scheme as originally proposed. Primarily, it was considered that the upper-level additions were not sympathetic to the retained heritage building, and that the new components were overwhelming the heritage architecture below. This is discussed in detail elsewhere in this report.
13. A request for additional information and amendments was sent to the applicant on 25 May 2023.
14. Draft amended plans were submitted for further consideration by the DAP at meetings on 26 October and 23 November 2023.
15. The applicant formally responded to the request on 19 July 2024, and submitted the amended architectural plans currently under consideration.
16. Primary design amendments included:
 - changes to the materiality, with the new levels changing from a primarily concrete external structure to a glass curtain wall with a coreten frame
 - regularisation of the shape of the floor plates on the new levels

- deletion of the fifth-floor restaurant tenancy, replaced with a communal landscaped rooftop.
17. The concerns of the Design Advisory Panel have largely been addressed.
 18. A condition of consent is recommended to amend the sine curve profile of the Coreten frame, to be more undulated, to align with the comments of the panel. Refer to the Internal Referrals section of this report.
 19. The Basement and Ground Floor plans were further amended on 24 October 2024 to ensure the basement level is eligible for the additional floorspace available under clause 6.60E 'Flinders Street and Oxford Street' of the Sydney Local Environmental Plan 2012 (SLEP 2012).
 20. Changes included annotations to make it clear the basement would be a standalone tenancy, and not ancillary to the ground floor tenancy above. Access to the basement toilets was amended so that they are available for the sole use of the basement tenancy.

Proposed Development

21. The application seeks development consent for internal demolition and alterations and additions to the existing building, including a new three storey plus rooftop addition, to accommodate commercial uses. More specifically the application proposes:

Basement / Lower Ground Floor

- demolition of some existing partitions, stairs, floor, and steel columns
- construction of:
 - concrete slab floor
 - column structures to support existing columns
 - unisex bathrooms composed of 5 cubicles and a urinal trough
 - 15 bicycle parking spaces
 - storeroom
 - electrical services plant room
 - diesel pump room
 - a bar including indicative stage and service areas
 - lift
 - fire stair.

Ground Floor / Upper Ground Floor

- demolition of internal stairs, partitions, steel columns, and doors to Taylor Square, Flinders Street and Patterson Lane
- construction of:
 - concrete slab floor
 - column structures to support existing columns
 - commercial office entry (via Flinders Street) lobby and lift
 - fire stair
 - accessible WC (x 2)
 - ground level of restaurant/cafe including kitchen area.

Mezzanine

- demolition of the mezzanine floor in its entirety.

Level 1

- demolition of existing flooring, stairs, partitions and roof
- construction of:
 - column structures to support existing columns
 - lift
 - fire stair
 - accessible WC
 - kitchen.

Level 2

- construction of new level, comprising:
 - new slab and flooring for a single tenancy
 - lift
 - fire stair
 - accessible WC (x 2)
 - planter around perimeter (except Patterson Lane frontage).

Level 3

- construction of new level, comprising:
 - new slab and flooring and partition walls for two tenancies
 - lift
 - fire stair
 - accessible WC (x 3)
 - kitchen (x 2).

Level 4

- construction of new level, comprising:
 - new slab and flooring and partition walls for two tenancies
 - lift
 - fire stair
 - accessible WC (x 3)
 - kitchen (x 2).

Level 5

- construction of new communal rooftop space, comprising:
 - new slab and flooring
 - lift
 - fire stair
 - accessible WC
 - barbecue area
 - seating areas
 - raised planters
 - mechanical plant zone.

Roof

- construction of:
 - lightweight stainless-steel awning
 - lift overrun
 - mechanical exhaust
 - photovoltaic panels.

External

- repair works to the heritage facade
- removal of external mechanical plant from the Patterson Lane facade
- new roller door on the Patterson Lane facade to access the bin store
- reinstatement of awning to Flinders Street (contemporary awning proposed)
- construction of new levels composed of off form concrete, aluminium framed glazing, with a Coreten steel external frame at levels 3 and 4.

Signage

22. A signage strategy has been submitted seeking consent for signage zones, including awning signs, under awning signs, wall signs and projecting wall signs.

Road closure

23. The submitted architectural drawings also propose a road closure of Patterson Lane. The proposal does not include a public benefit offer, nor are any public works to Patterson Lane. Accordingly, the proposed road closure is beyond the scope of what can be dealt with under this Development Application, and it is not considered further.
24. Plans and elevations of the proposed development are provided below.

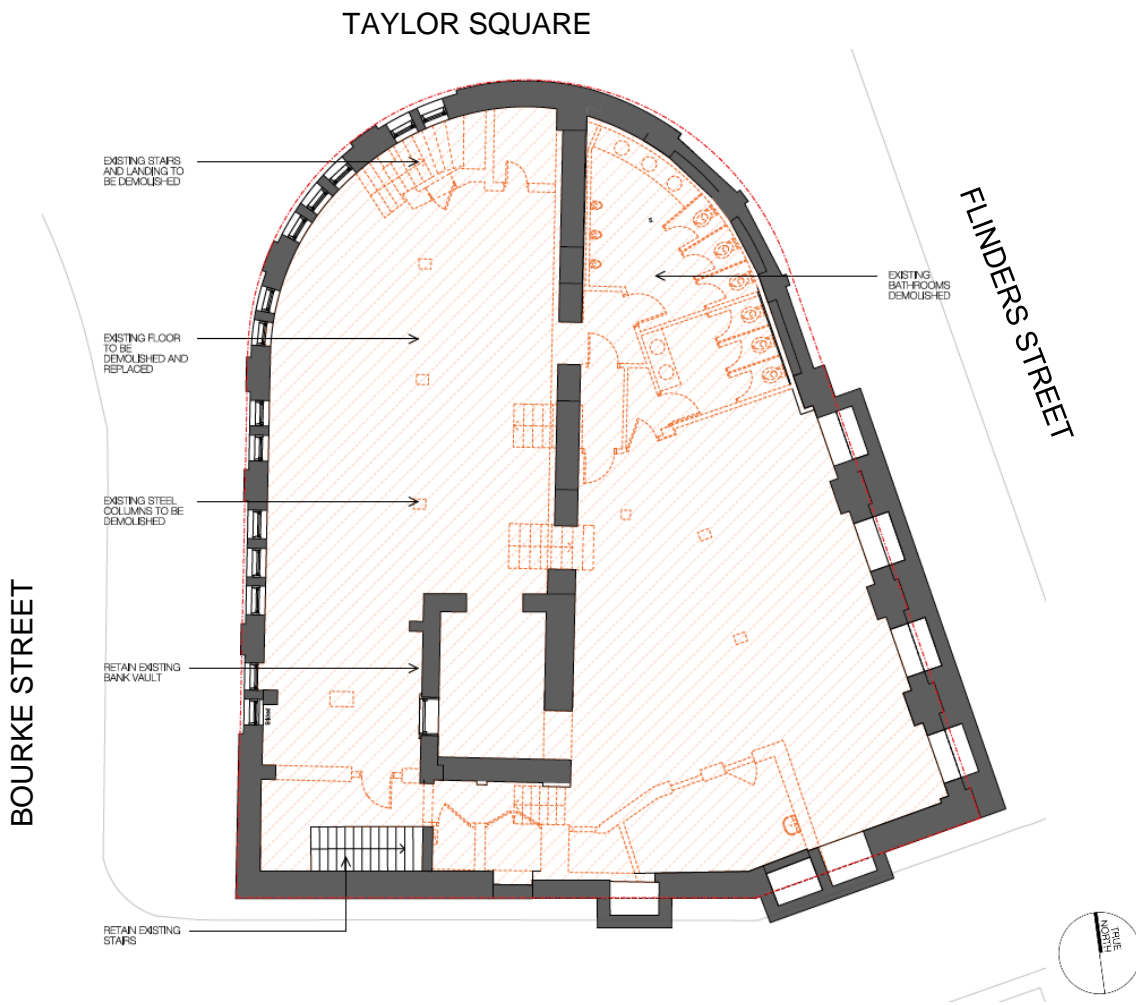


Figure 20: Basement (right of frame) and lower ground (left of frame) demolition plan

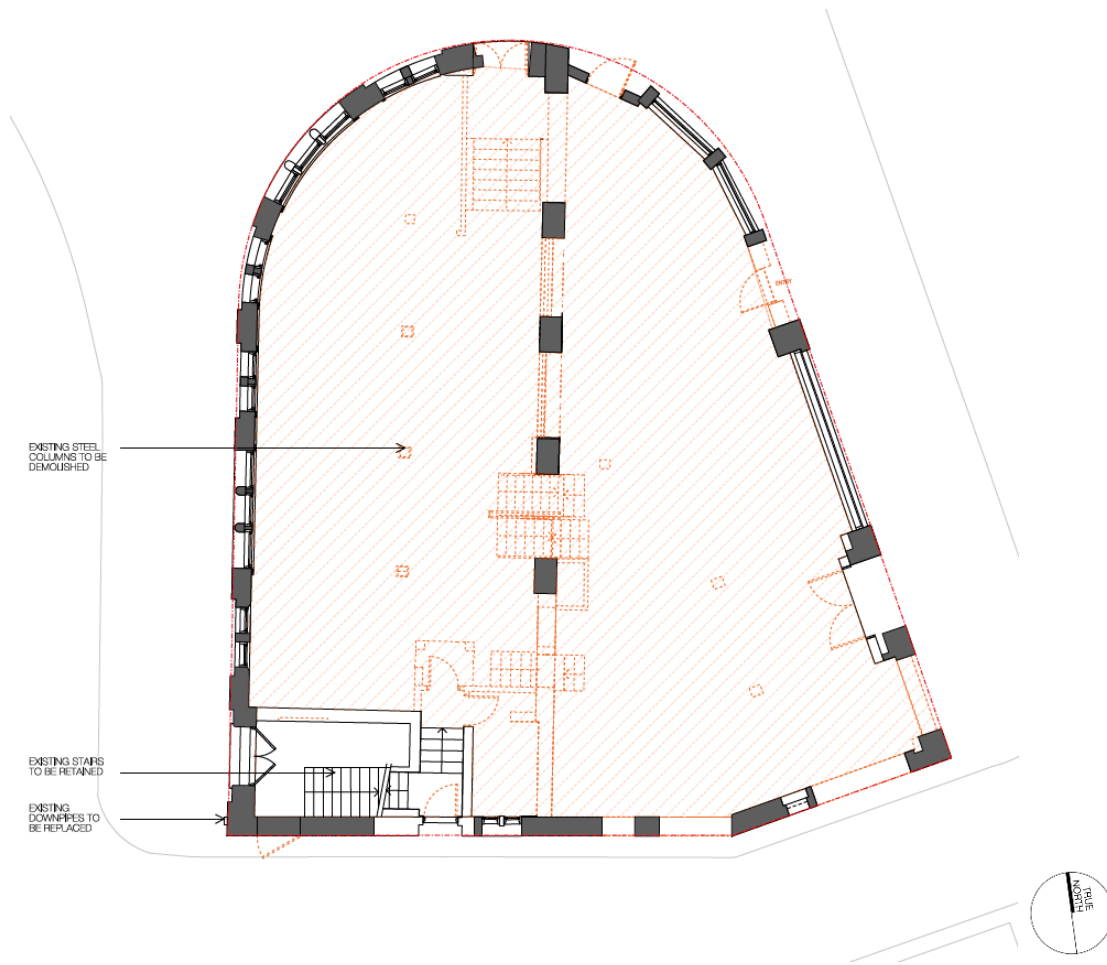


Figure 21: Ground (right of frame) and upper ground (left of frame) demolition plan

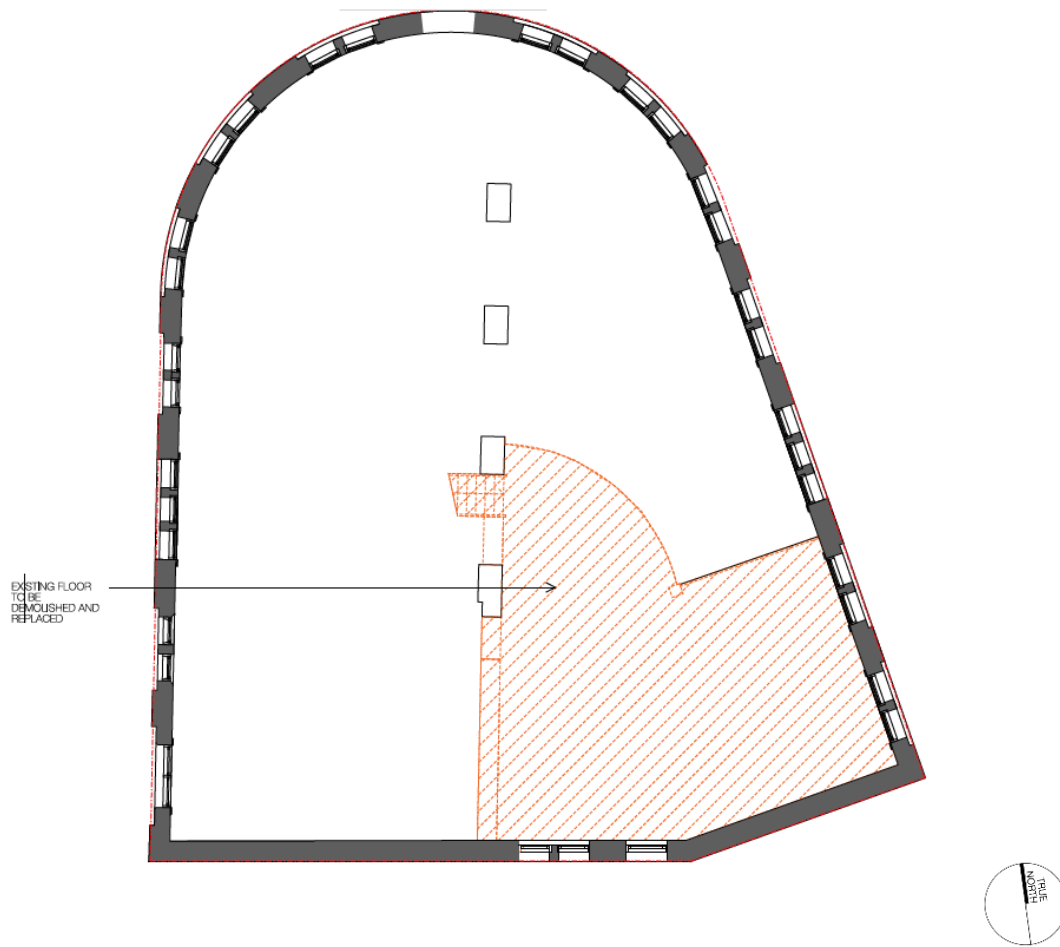


Figure 22: Mezzanine demolition plan

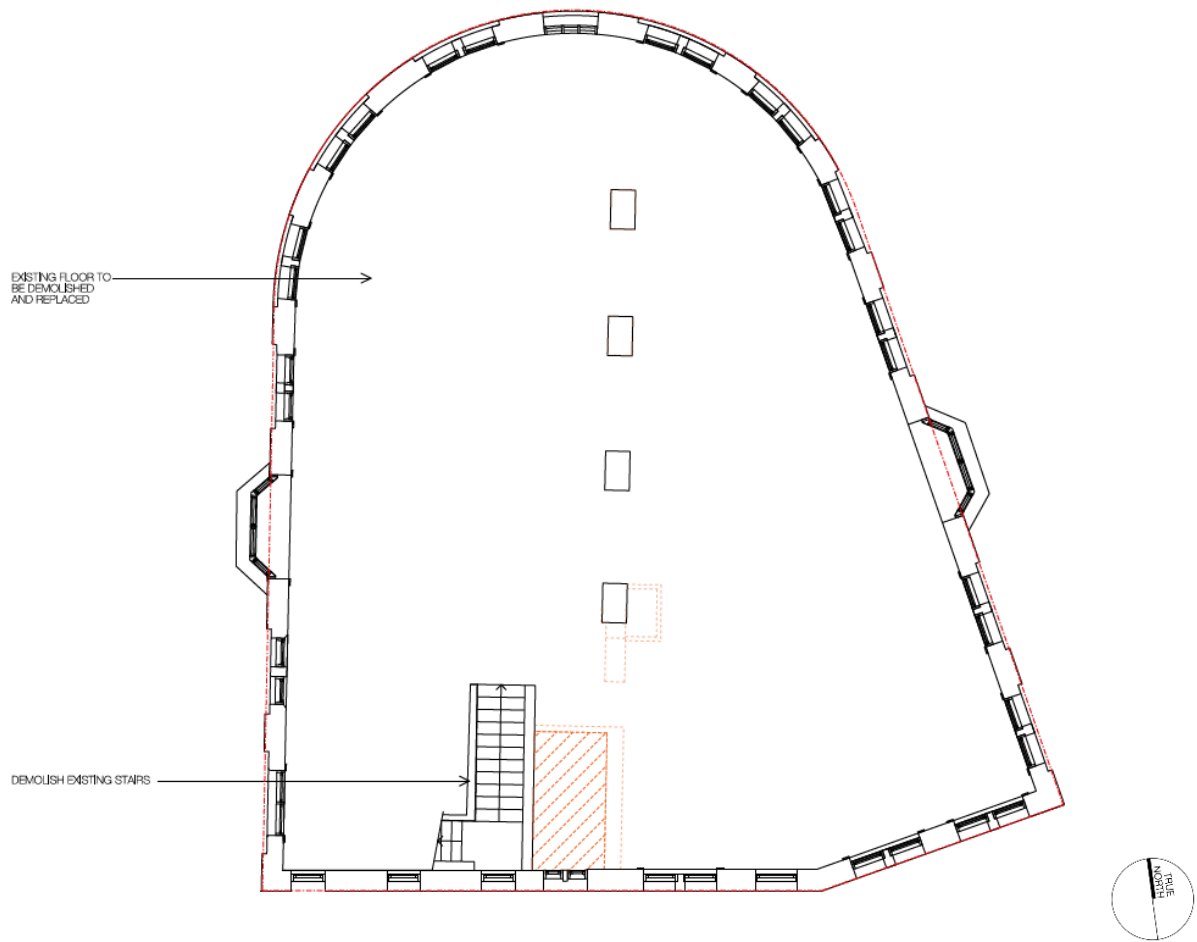


Figure 23: Level 1 demolition plan

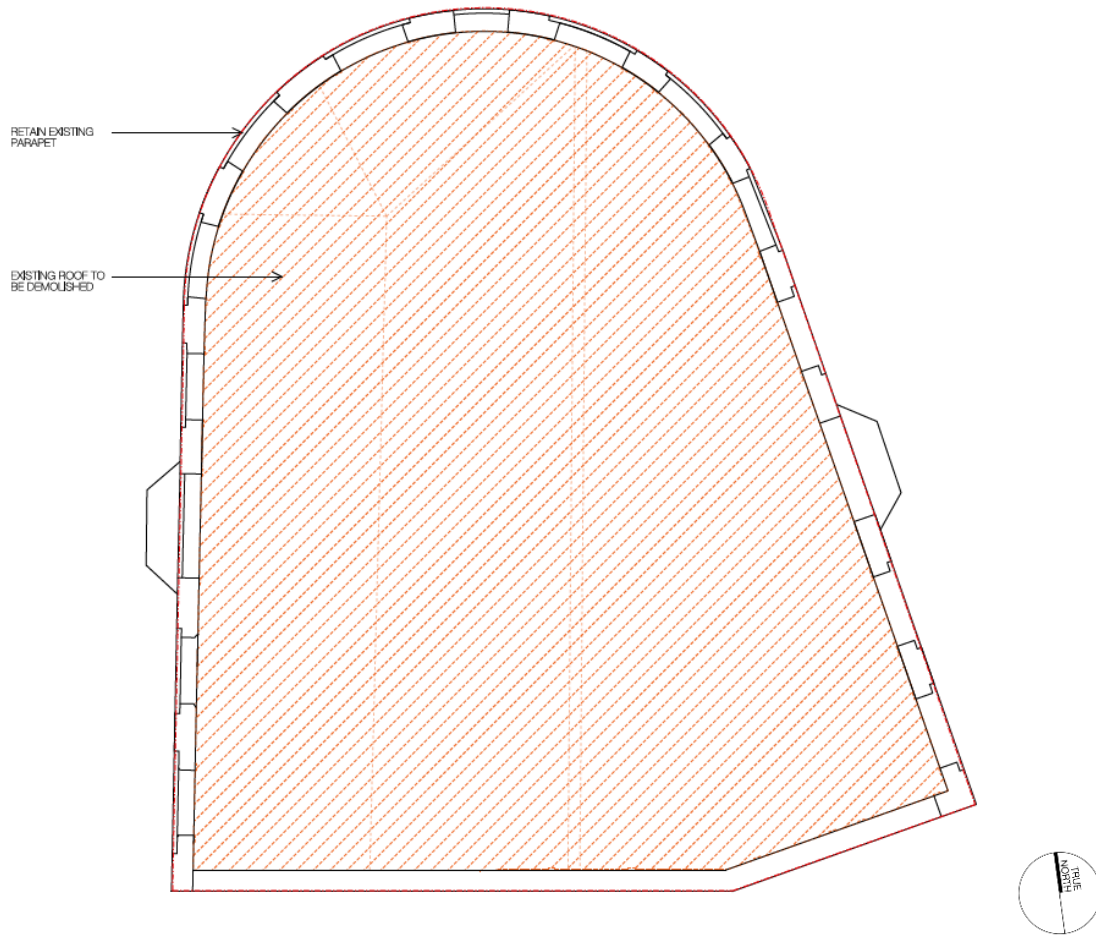


Figure 24: Existing roof demolition plan



Figure 25: Taylor Square (north) elevation demolition plan



Figure 26: Bourke Street (west) elevation demolition plan



Figure 27: Flinders Street (east) elevation demolition plan



Figure 28: Patterson Lane (south) elevation demolition plan

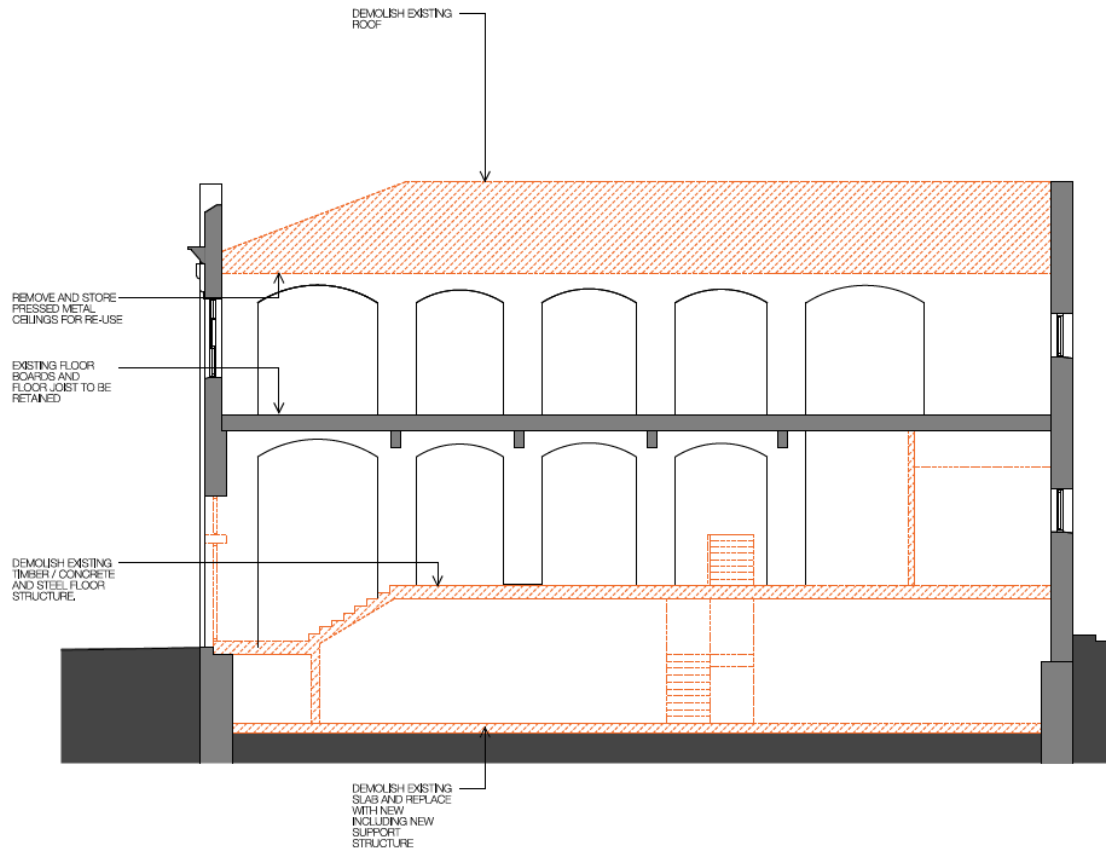


Figure 29: Section demolition plan

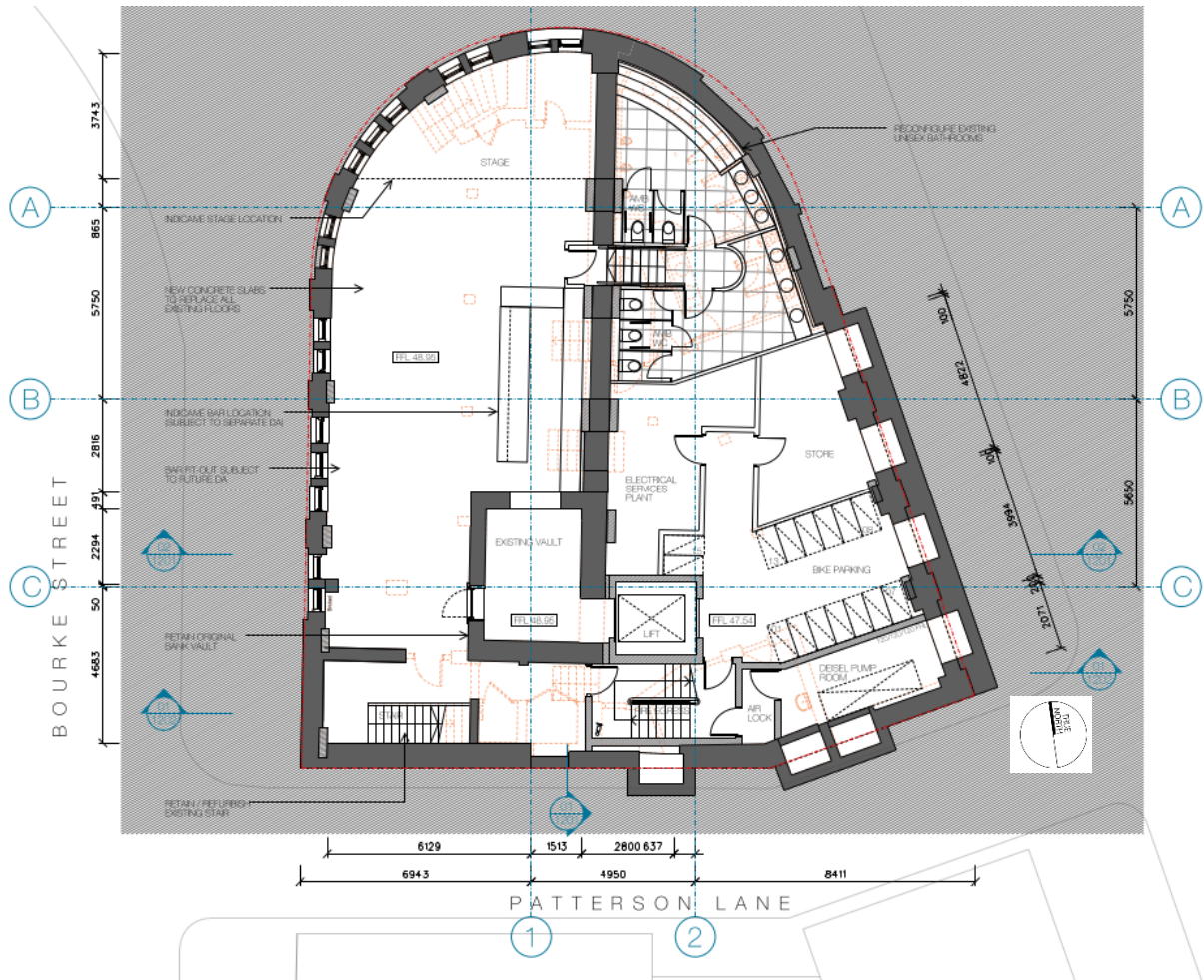


Figure 30: Proposed basement and lower ground floor plan

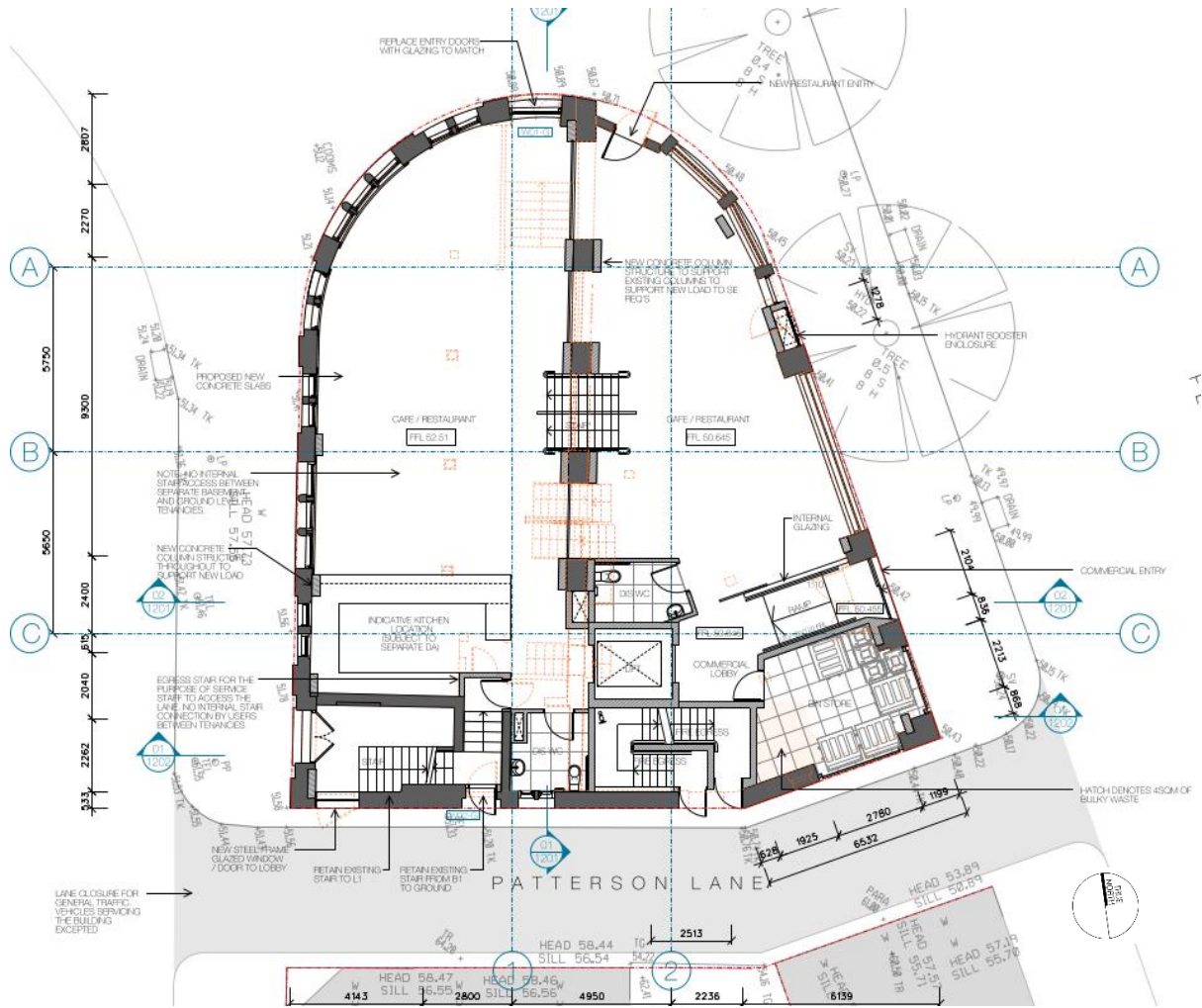


Figure 31: Proposed ground and upper ground floor plan

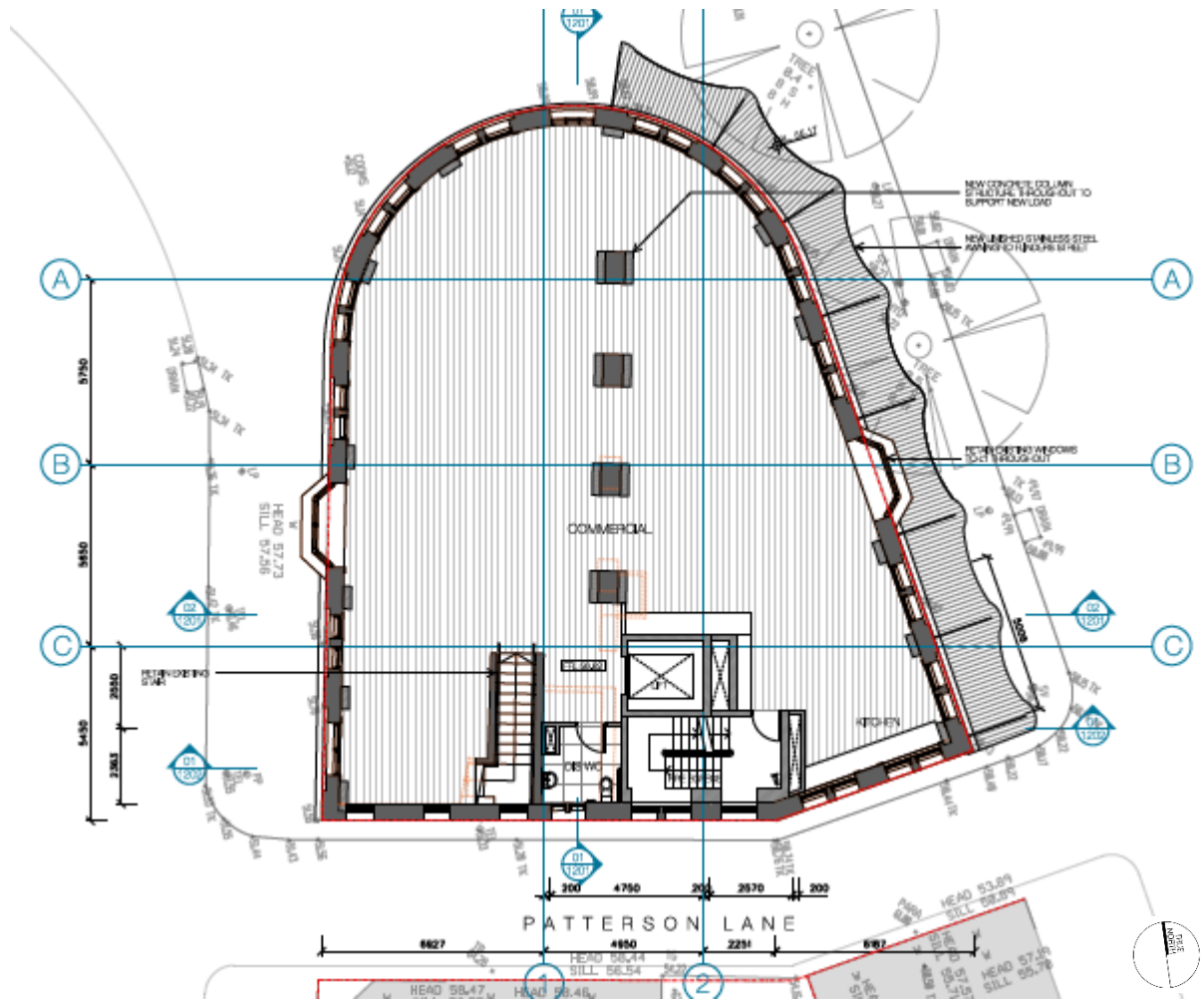


Figure 32: Proposed Level 1 plan

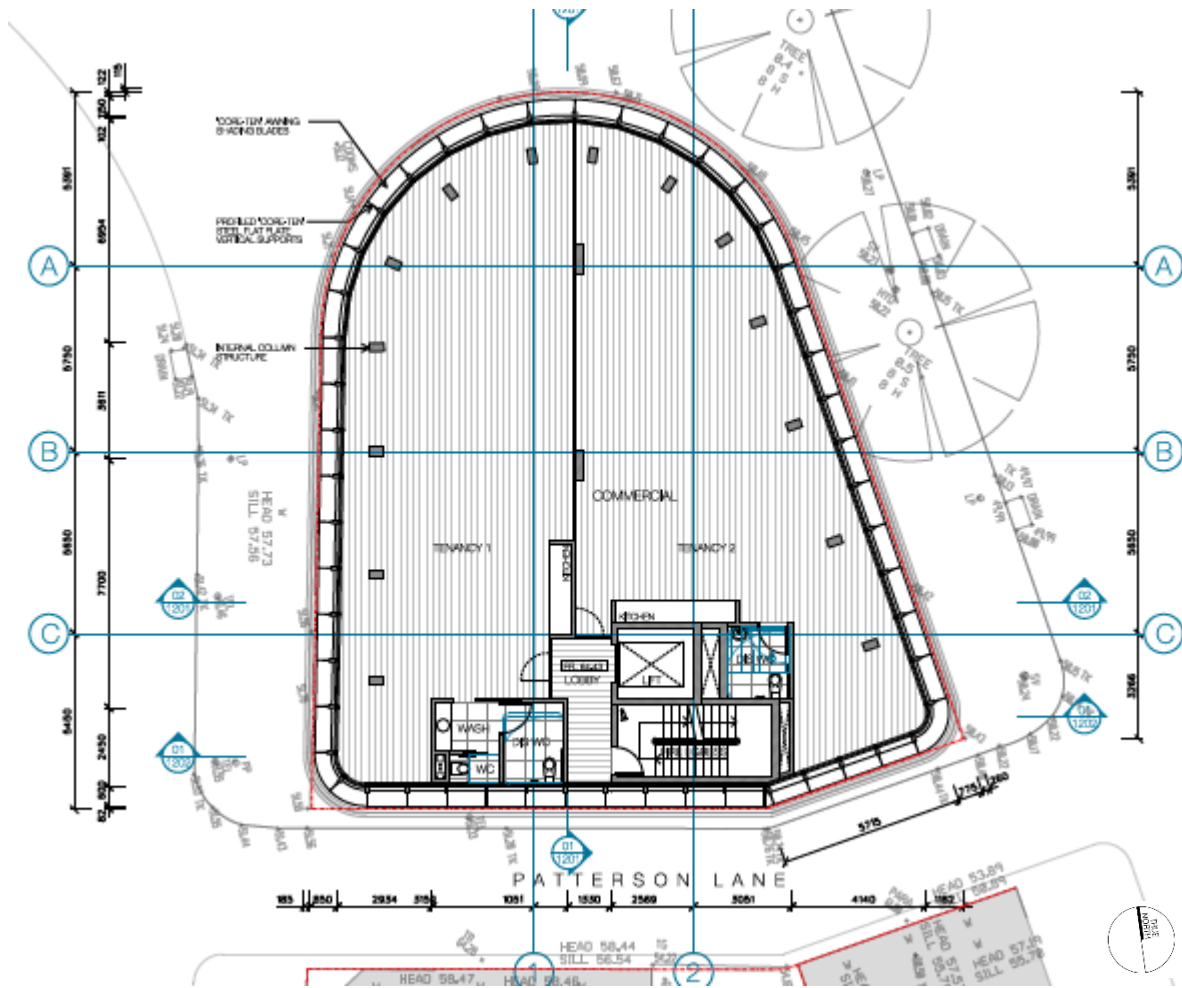


Figure 34: Proposed Level 3 plan

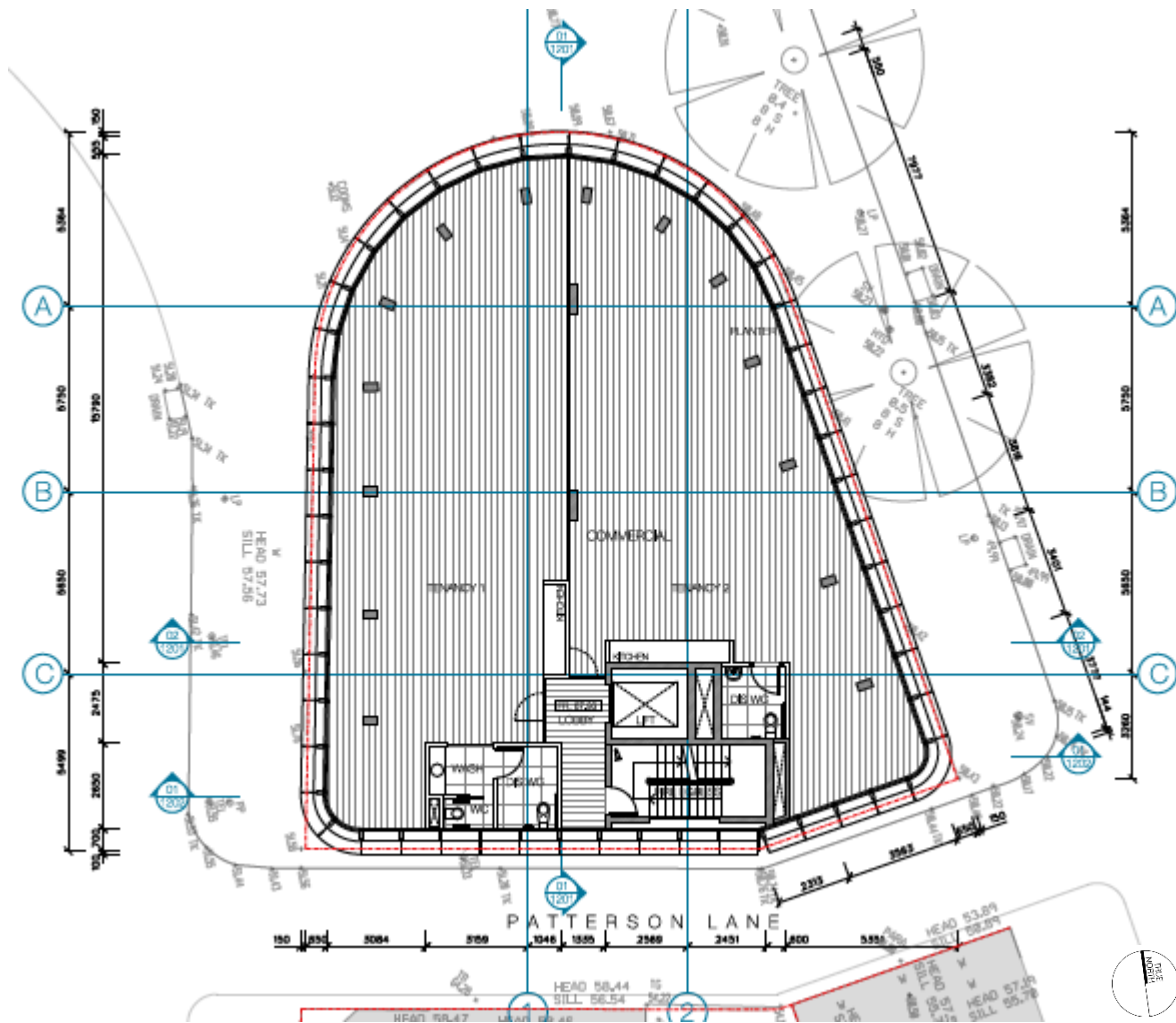


Figure 35: Proposed Level 4 plan



Figure 36: Proposed Level 5 communal rooftop plan

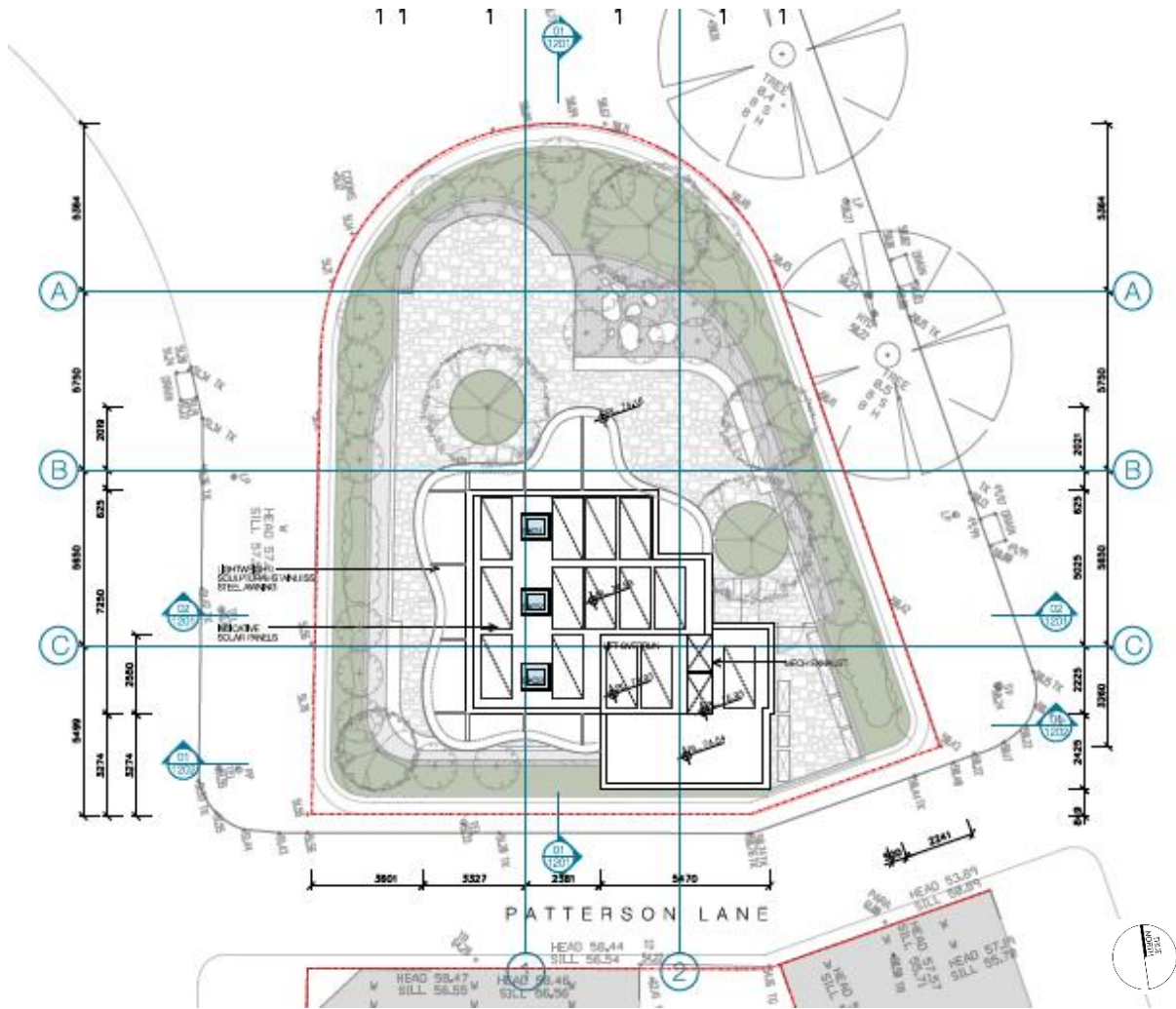


Figure 37: Proposed roof plan

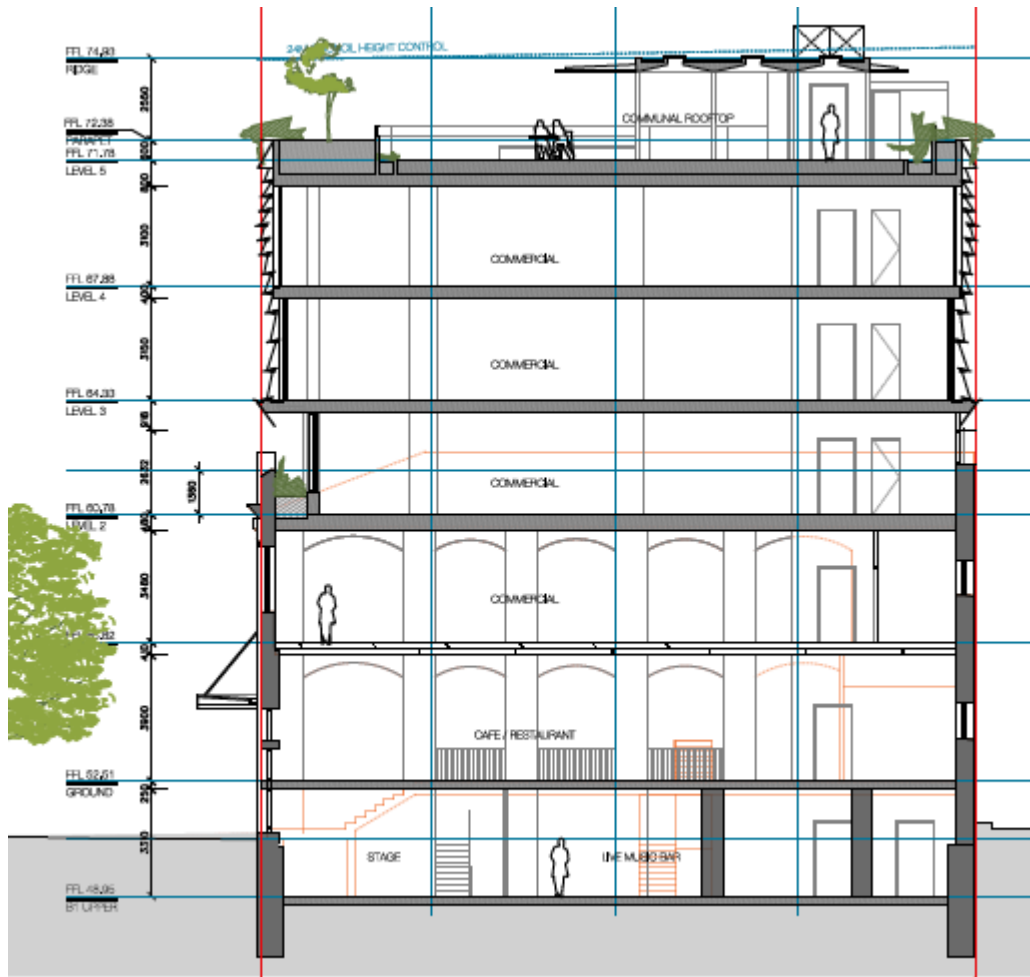


Figure 38: Proposed long section

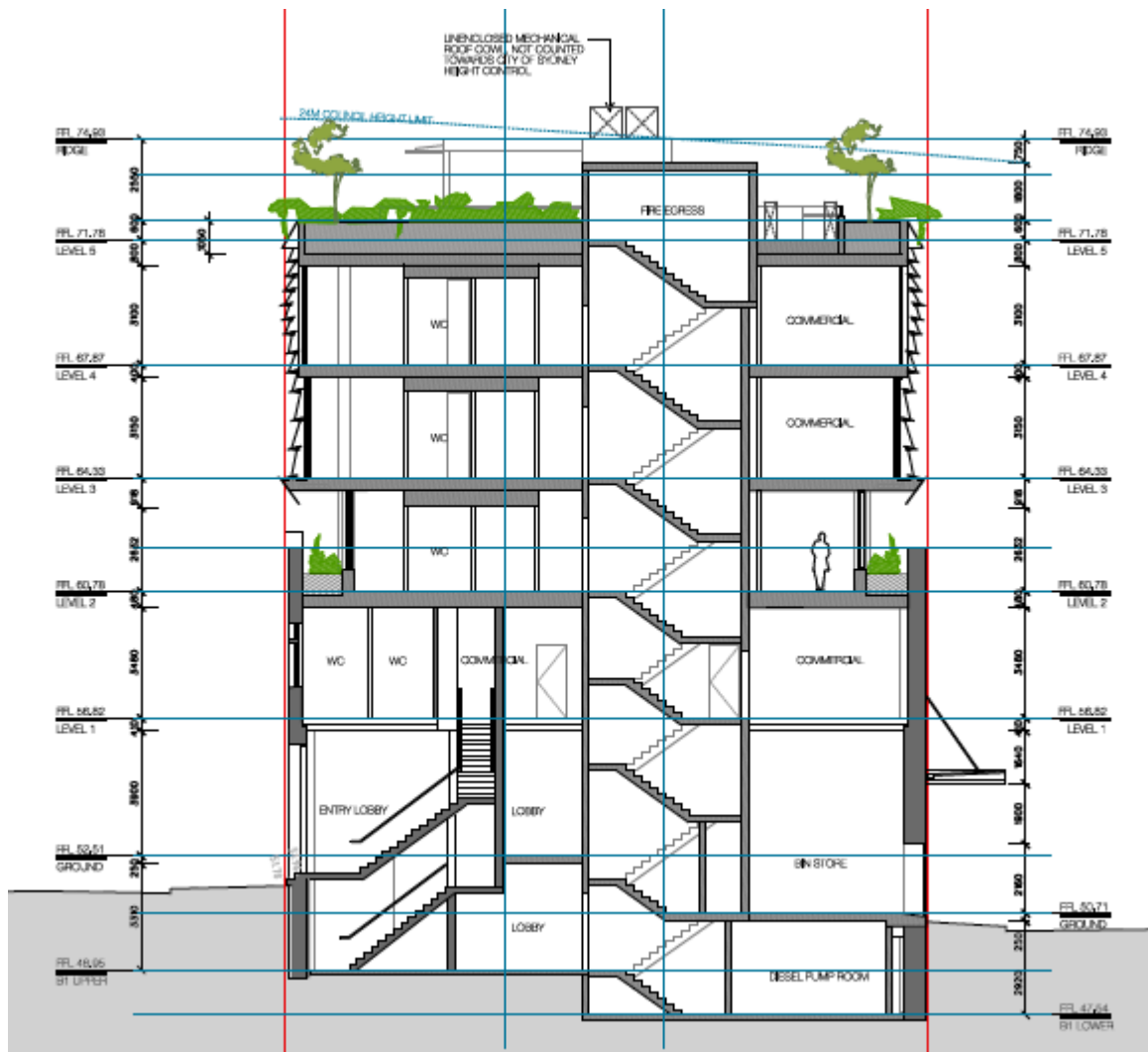


Figure 39: Proposed short section

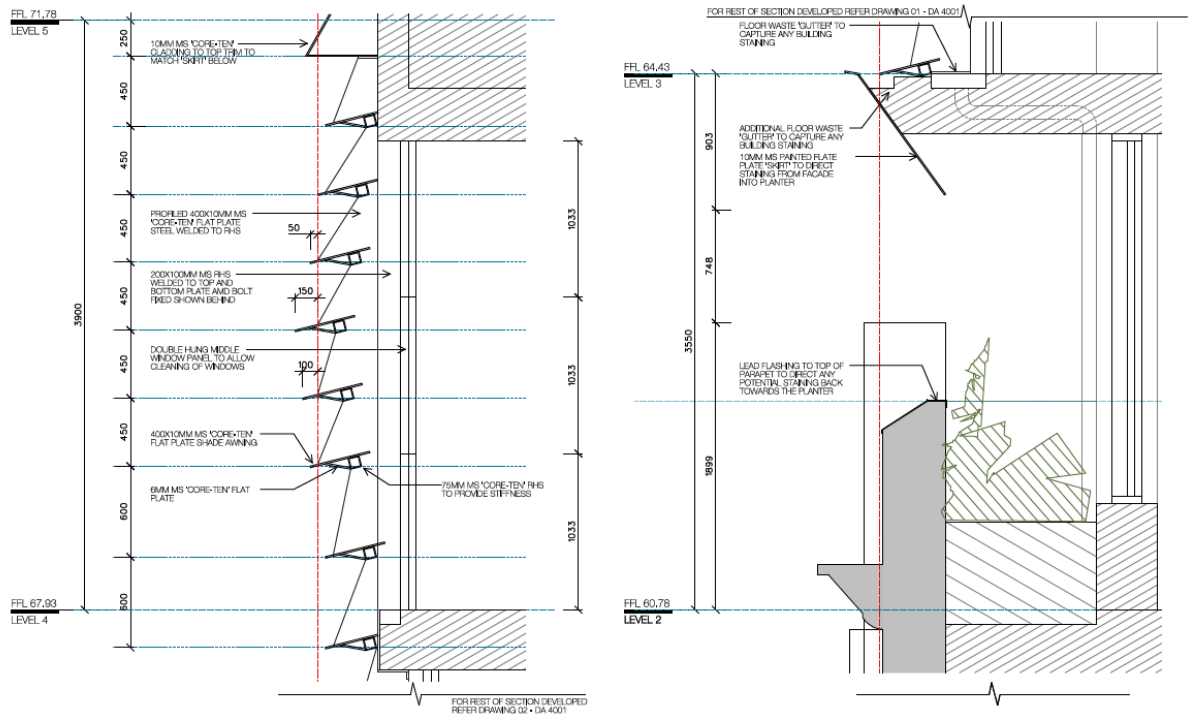


Figure 40: Proposed detailed section illustrating Coreten frame



Figure 41: Proposed eastern elevation (Flinders Street)

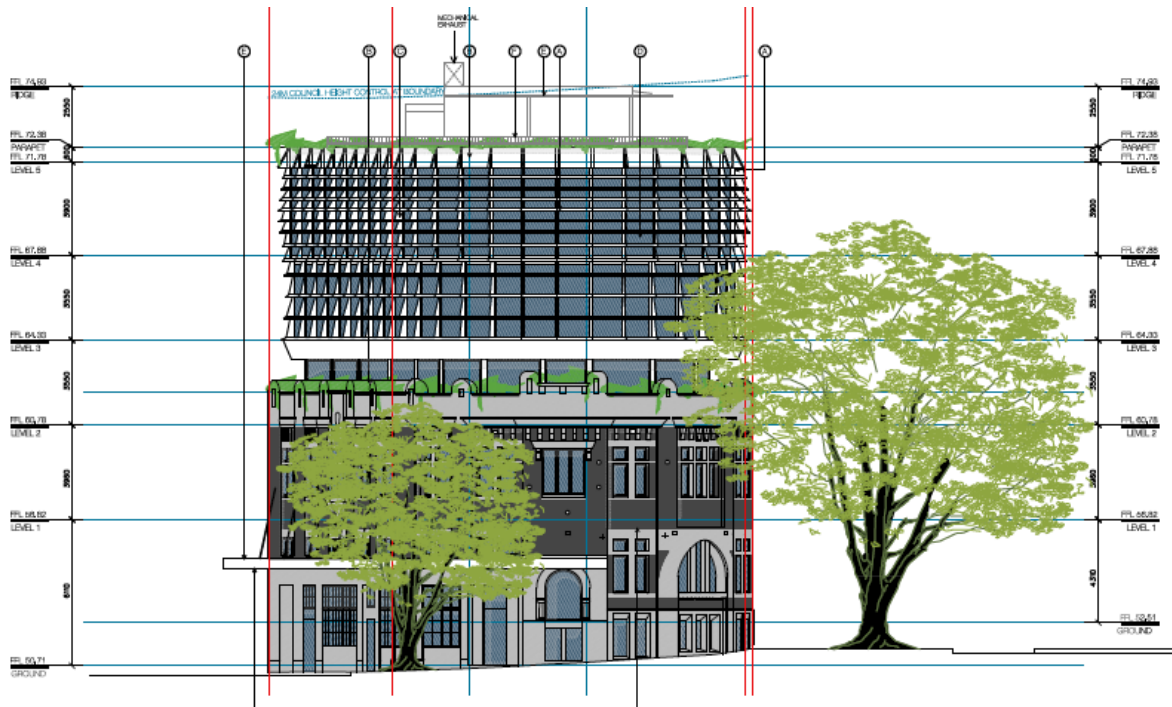


Figure 42: Proposed northern elevation (Taylor Square)



Figure 43: Proposed western elevation (Bourke Street)

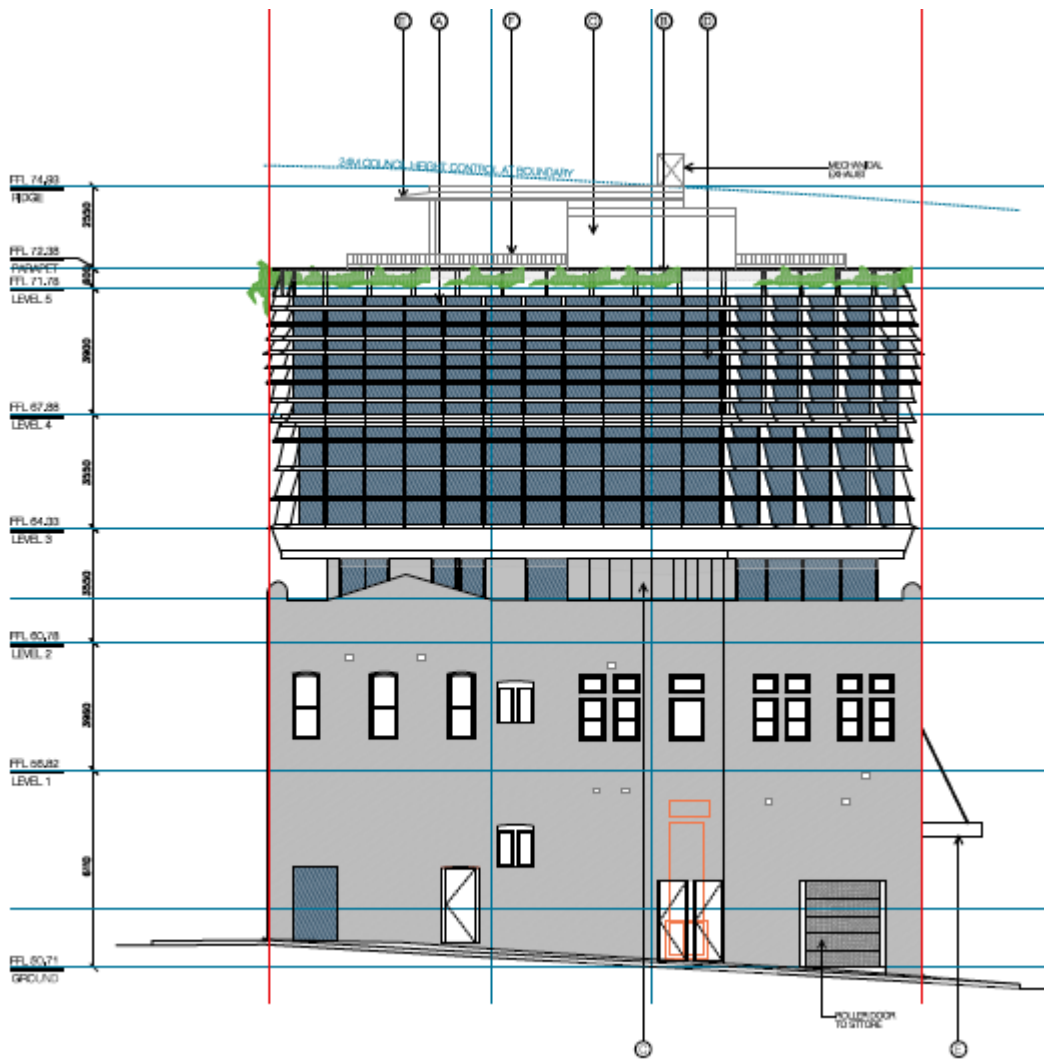


Figure 44: Proposed southern elevation (Patterson Lane)



Figure 45: Proposed photomontage, viewed from Flinders Street, looking south-east

Assessment

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

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

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. Site investigations in the form of a Preliminary Environmental Site Investigation (PESI) have been undertaken. The PESI found there is a possibility of exposure to contaminants during construction when the basement slab is removed. The PESI also records that there is a dry cleaners located next to this site which has the potential to be a source of soil/groundwater contamination which has not been assessed.
34. A Detailed Environmental Site Investigation (DESI) will be required. By its nature, sampling required for the DESI cannot be completed until after minor demolition works to the floor slab have been carried out. Given the heritage constraints of the site, it is acceptable to allow the testing to occur prior to the consent becoming operational. For these reasons Council's Manager, Health and Building, has recommended a deferred commencement condition.

35. Given the site history, it is unlikely that any contamination of the site would be of a nature that could not be remedied to make the site suitable for the proposed use. Specifically:
- the use proposed is not more sensitive than that which was existing (licensed pub and office to entertainment facility, retail [likely food and drinks premises], and office), and
 - the potential contamination is not from a previous use; rather, it relates to potential migration from an adjoining site.

The risk is very low. Council's Area Manager, Health and Building, is satisfied that subject to the recommended conditions of consent, the land can be made suitable for the purpose for which the development is proposed to be carried out. Accordingly, a deferred commencement consent is acceptable in this instance.

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

36. 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.
37. A signage strategy has been submitted with the application, and extracts are provided below.

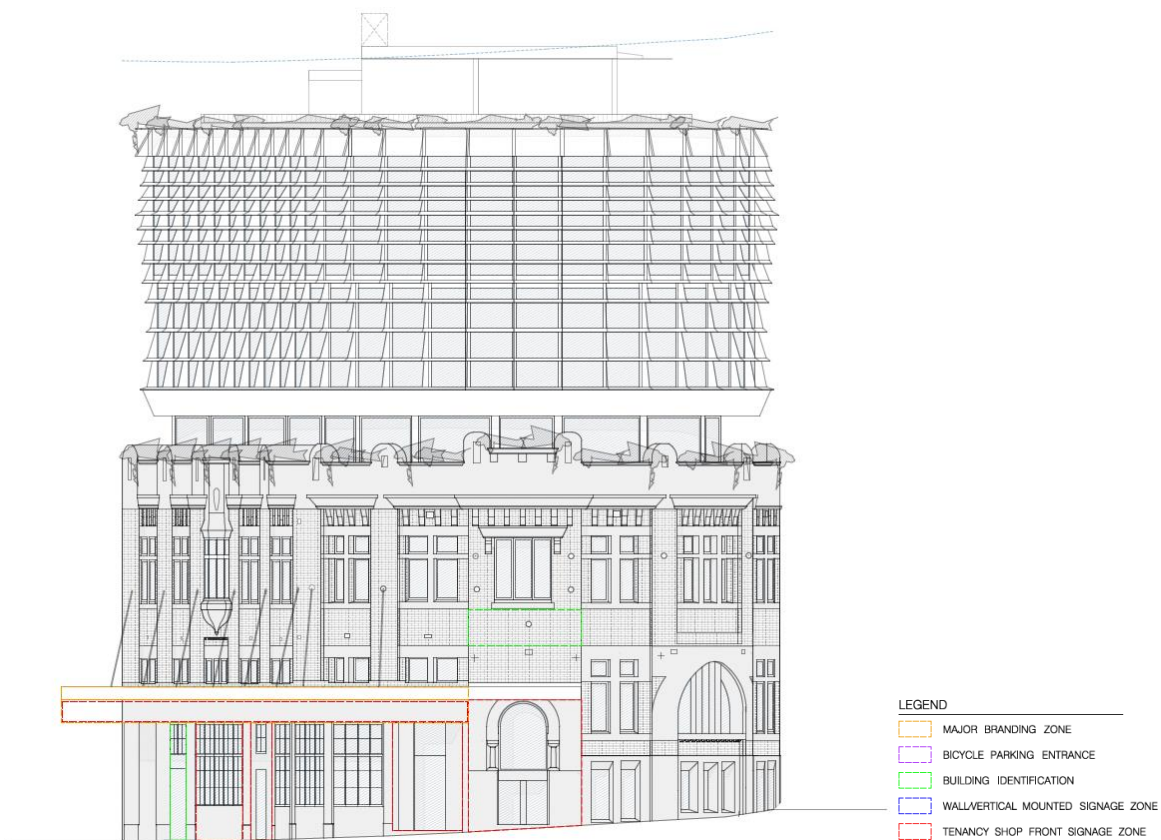


Figure 46: Proposed signage strategy, Taylor Square (north) elevation



Figure 47: Proposed signage strategy, (Bourke Street) west elevation



Figure 48: Proposed signage strategy, Patterson Lane (south) elevation

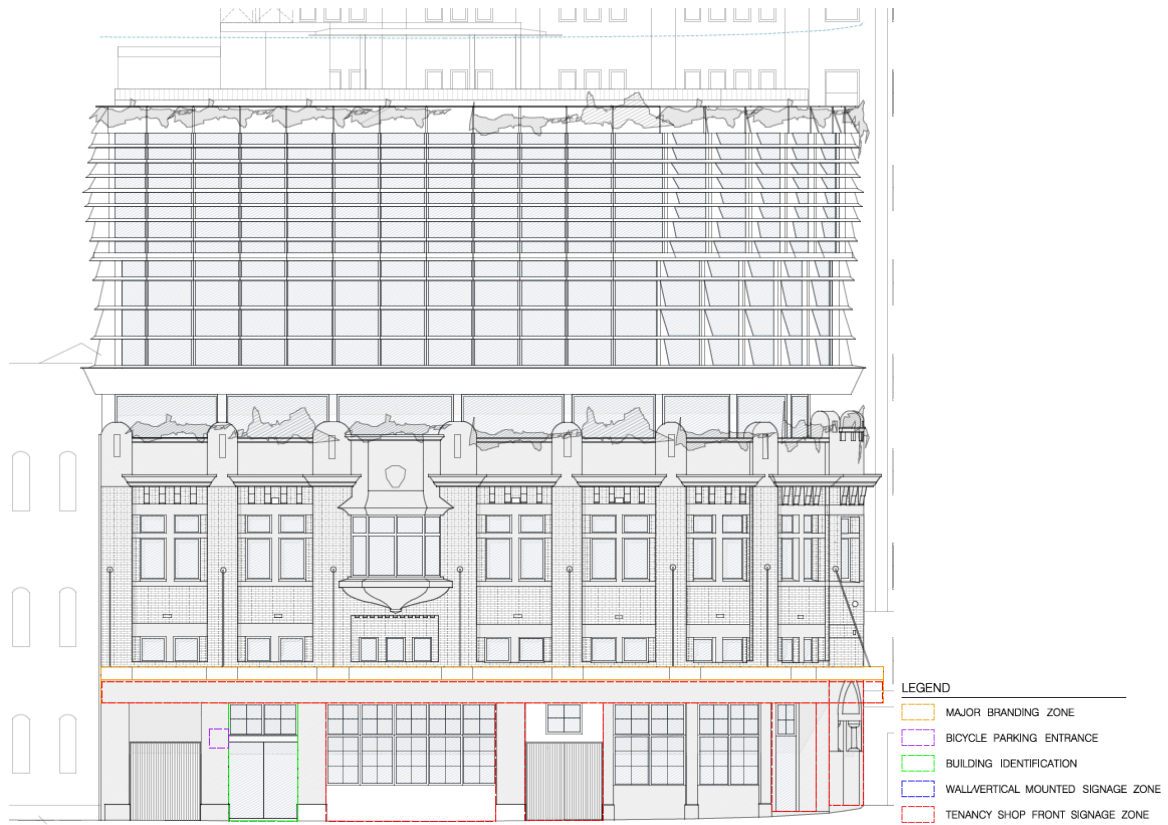


Figure 49: Proposed signage strategy, Flinders Street (east) elevation

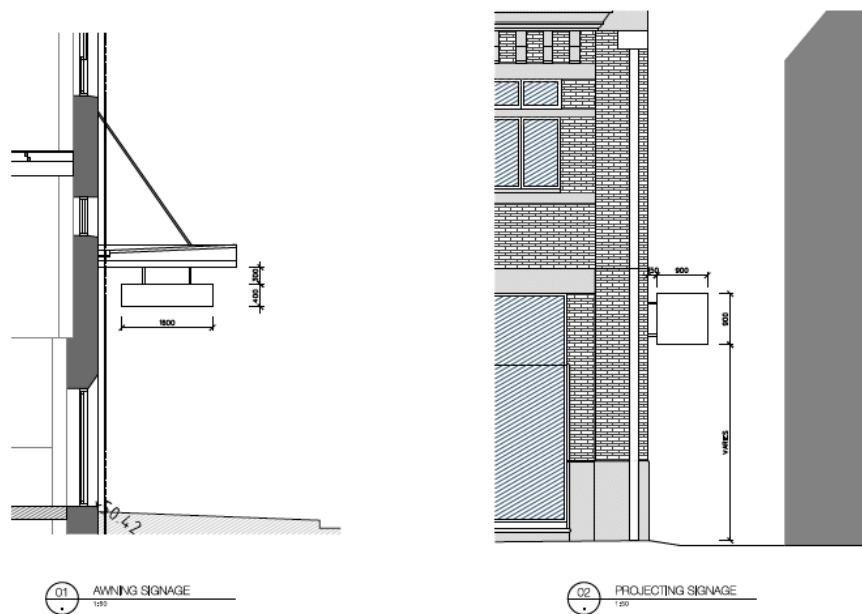


Figure 50: Proposed signage detail, under awning signs and projecting signage



Figure 51: Proposed signage detail, projecting signage and wall sign

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

Provision	Compliance	Comment
1. Character of the area	No	<p>The proposed signage is generally inconsistent with the character of the area.</p> <p>Some proposed signs are of a type that are not permitted under the Sydney DCP 2012. Refer to the relevant section below.</p> <p>Moreover, the number of signs proposed is excessive and incongruent with the heritage characteristics of the site, and the heritage conservation area.</p>
2. Special areas	No	<p>The number of signs proposed is excessive and incongruent with the heritage characteristics of the site, and the heritage conservation area.</p>

Provision	Compliance	Comment
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	No	The proposed signage is excessive and is not of an appropriate scale, proportion and form. It does not provide a positive contribution to the streetscape and setting of the area and dominates the heritage item.
5. Site and building	No	The scale, and proportion of the proposed signage is excessive. The positioning of some of the signs is unclear as the drawings are inconsistent and, in some cases, show the same sign drawn at different sizes. The proposed materiality is unclear; therefore, it cannot be determined if the signs are compatible with the finishes and colours of the building.
6. Associated devices and logos	Yes	Not applicable.
7. Illumination	Yes	Not applicable.
8. Safety	Yes	The proposed signage will not reduce the safety for pedestrians, cyclists or vehicles on public roads or areas.

39. The proposed signage is not consistent with the objectives of SEPP (Industry and Employment) 2021 – Chapter 3 Advertising and Signage as set out in Clause 3.1 and does not satisfy the assessment criteria specified in Schedule 5.
40. It is recommended that the signage strategy is not approved. A condition of consent is recommended requiring a new signage strategy to be submitted and approved prior to the issue of a Construction Certificate.
41. Further details are provided in the 'Discussion' section below.

State Environmental Planning Policy (Sustainable Buildings) 2022

42. In accordance with Section 4.2 'Savings and transitional provisions', as the application was lodged prior to 1 October 2023 the SEPP does not apply.

State Environmental Planning Policy (Transport and Infrastructure) 2021

43. 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**

44. The application is subject to Clause 2.48 of the SEPP as the development potentially involves the penetration of ground within 2m of an underground electricity power line.
45. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

Division 17, Subdivision 2: Development in or adjacent to road corridors and road reservations**Clause 2.119 – Development with frontage to classified road**

46. The application is subject to Clause 2.119 of the SEPP as the site has frontage to Flinders Street which is a classified road.
47. The proposed development satisfies the provisions of Clause 2.119 subject to conditions of consent, as access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

Clause 2.122 – Traffic Generating Development

48. Noting the site is located on Flinders Street, which is a classified road, the application has not been referred to Transport for NSW at this time. While the indicative ground floor and basement uses are food and drink premises, and combined their GFA will be more than 300sqm, the uses are indicative only and are not to be approved. A condition of consent is recommended, which specifies that the fit-out and use of the ground floor and basement spaces are to be the subject of a future separate development application.

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

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

Local Environmental Plans

Sydney Local Environmental Plan 2012

51. 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 in the E1 Local Centre zone. The proposed development is defined as office premises and food and drink premises. These land uses are permissible with consent in the zone. The proposal generally meets the objectives of the zone.</p> <p>Notwithstanding this, it is recommended that the fit-out and use of the ground floor and basement premises be subject to future, separate development applications, and a condition of consent is recommended accordingly.</p> <p>See further details in the 'Discussion' section below.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>A height of 24m is proposed.</p> <p>The proposal seeks to rely on the alternative Height of Building development standard available under Clause 6.60D 'Oxford Street Cultural and Creative Precinct' of the Sydney LEP 2012.</p> <p>Refer to the discussion in the relevant section below.</p>
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 3:1 or 1,052.7sqm is permitted.</p> <p>A floor space ratio of 4.35:1 or 1,527.5 sqm is proposed.</p> <p>The proposal seeks to rely on the alternative Floor Space Ratio development standard available under Clause 6.60D 'Oxford Street Cultural</p>

Provision	Compliance	Comment
		<p>and Creative Precinct' of the Sydney LEP 2012.</p> <p>It also seeks to rely on the provisions of Clause 6.60E 'Flinders Street and Oxford Street' of the Sydney LEP 2012.</p> <p>Refer to the discussion in the relevant sections below.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a local heritage item 'Former Commonwealth Bank including Interior' (I1541).</p> <p>The site is located within the Oxford Street Heritage Conservation Area (C17) and is a contributing item.</p> <p>The site is directly adjacent to two state heritage items being SHR #01700 'Taylor Square Substation No.6 and Underground Public Conveniences' and SHR #02068 'Sydney Mardi Gras Parade Route'.</p> <p>The proposed development will not have a detrimental impact on the heritage significance of the heritage conservation area and the heritage items, subject to the recommended conditions of consent.</p> <p>See further details in the 'Discussion' section below.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	The proposed development is eligible for an additional floor space ratio of 0.3:1, however, does not seek to utilise this additional floorspace.
Division 4 Design excellence		

Provision	Compliance	Comment
6.21 Design excellence	Yes	<p>The proposed development is of a high standard of design and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact regarding the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>
Division 5 Site specific provisions		
6.60D Oxford Street Cultural and Creative Precinct	Yes	<p>The building is located within the Oxford Street Cultural and Creative Precinct and therefore the maximum height shown on the Alternative Height of Buildings Map and the maximum FSR shown on the Alternative Floor Space Ratio Map is available.</p> <p>The alternative height of buildings development standard is 24m and the alternative floor space ratio development standard is 3.8:1 (1,333 sqm of GFA).</p> <p>The proposal seeks development consent for a maximum height of 24m and a base FSR of 3.8 (1,333 sqm of GFA).</p> <p>Approval is also sought for an additional FSR of 0.55:1 (194.5 sqm of GFA) to be used as an entertainment facility, under Clause 6.60E 'Flinders Street and Oxford Street'. This is addressed below.</p> <p>Conditions of consent are recommended requiring the floorspace to be used as creative and cultural floorspace and entertainment facility floorspace, to be identified on a plan, and for that floorspace to be used as such in perpetuity.</p>

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.
6.60E Flinders Street and Oxford Street	Yes	<p>The building is located within the Oxford Street Cultural and Creative Precinct and has frontage to Flinders Street. Accordingly, the building is permitted to have a floor space ratio exceeding the maximum permissible FSR by up to 0.8:1 if the additional GFA is in a basement and used for the purpose of entertainment facilities.</p> <p>Floorspace equivalent to an FSR of 0.55:1 (194.5 sqm of GFA) is to be provided in the basement for the purpose of an entertainment facility.</p> <p>The proposal complies.</p> <p>Conditions of consent are recommended which require the basement premises to be operated as an entertainment facility in perpetuity.</p> <p>See further details in the 'Discussion' section below.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	<p>A maximum of 3.83 car parking spaces are permitted, based on 1,052.1 sqm of office gross floor area being provided on levels 1-4.</p> <p>The proposed development does not include any car parking spaces and complies with the relevant development standards.</p>
7.7 Retail premises	Yes	<p>A maximum of 7.84 car parking spaces are permitted, based on 470.4sqm retail gross floor area being provided on the basement and ground floor levels.</p> <p>The proposed development does not include any car parking spaces and</p>

Provision	Compliance	Comment
		complies with the relevant development standards.
Total	Yes	<p>A maximum of 12 car parking spaces are permitted (rounded to the nearest whole number).</p> <p>The proposed development does not provide car parking and complies with the relevant development standards.</p>
Division 3 Affordable housing		
7.13 Contribution for the purpose of affordable housing	Yes	<p>The proposal is situated on residual land and the development involves the demolition of existing floor area and the subsequent creation of more than 200 sqm of GFA.</p> <p>A condition of consent requiring the payment of an affordable housing contribution is recommended accordingly.</p>
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Partial compliance	<p>The site is identified as being subject to flooding on Patterson Lane, Flinders Street, and Taylor Square.</p> <p>The application proposes development at or below the flood planning level. In accordance with the City's Interim Floodplain Management Policy a finished floor level of 0.3m above the surrounding ground is required. The proposed development does not comply with this requirement and a condition of consent is recommended requiring the internal level to be raised to comply with the recommended flood planning levels.</p>

Development Control Plans

Sydney Development Control Plan 2012

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

Section 2 – Locality Statements

53. The site is located within the Oxford Street, Darlinghurst locality. The proposed development is in keeping with the unique character and the design principles of the locality. More specifically:

(a) the development is broadly in keeping with the character statement, in that:

- the development ensures the site will continue to provide uses that reflect the regionally significant retail and entertainment character,
- the proposal is in accordance with the relevant strategy for the precinct (as discussed elsewhere in this report); and
- the new elements of the building conserve and complement the retained heritage building.

(b) The development is in line with the relevant design principles, given it:

- appropriately responds to the heritage significance of the building on site, the adjoining state heritage items, and the heritage conservation area (as discussed elsewhere in this report)
- maintains a mix of uses that contribute to Oxford Street as an entertainment, tourism and retail precinct; and
- assists in maintaining Oxford Streets retail commercial, entertainment and tourism uses, providing entertainment, retail and commercial uses throughout the development.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	<p>The proposal does not result in overshadowing to public open space (Taylor Square is located to the north), nor does it impinge on public views.</p> <p>The proposal positively addresses the street, providing multiple access points, and street activation. While the basement level (existing) does protrude more than 1m above the level of the adjoining public domain (1.35m), this is an existing situation and is acceptable given the heritage status of the building.</p>

Provision	Compliance	Comment
		<p>The existing entry from Patterson Lane is retained and enhanced, providing additional activation to the laneway.</p> <p>All frontages except for Patterson Lane are identified on the Active Frontages Map. The existing entries to the heritage building are retained. While the quantum of glazing is insufficient in terms of DCP requirements, it is acceptable in the heritage context.</p> <p>The site is not identified on the Footpath Awnings and Colonnades Map, however the DCP requires fixed awnings on all active frontages. An awning is proposed only for the Flinders Street frontage. Historically, the building has only had an awning to Flinders Street, therefore the proposal is acceptable in the heritage context. A condition of consent is recommended to provide an additional awning above the commercial entry at the corner of Bourke Street and Patterson Lane, which is discussed elsewhere in this report.</p> <p>The proposed awing on Flinders Street is between 3.8m and 4.3m above the footpath. A condition of consent is recommended requiring a detailed drawings of the awning to be submitted that demonstrates compliance with the DCP.</p>
3.5 Urban Ecology	Yes	<p>The proposal does not involve the removal of any trees. Notwithstanding this, construction activities have the potential to impact the two (2) street trees on the Flinders Street frontage.</p> <p>A condition of consent is recommended requiring a pruning specification plan to be submitted if it is determined pruning will be required.</p> <p>A condition of consent is also recommended requiring detailed drawings of the awning prior to the issue of a construction certificate, demonstrating compliance with the DCP requirements in terms of width and</p>

Provision	Compliance	Comment
		<p>setback, to minimise the potential impact to the trees.</p> <p>The proposal provides tree canopy of 17.4%, exceeding the minimum requirement of 15%.</p>
3.6 Ecologically Sustainable Development	Yes	<p>In accordance with Section 4.2 'Savings and transitional provisions', of State Environmental Planning Policy (Sustainable Buildings) 2022, as the application was lodged prior to 1 October 2023 the SEPP does not apply.</p> <p>The proposal has been reviewed by the City's Environmental Projects team, and subject to the recommended conditions of consent, the proposal is satisfactory from a sustainability perspective.</p>
3.7 Water and Flood Management	Partial compliance	<p>The site is identified as being on flood prone land. See discussion under section 7.15 above.</p>
3.9 Heritage	Yes	<p>The site is a local heritage item 'Former Commonwealth Bank including Interior' (I1541).</p> <p>The site is located within the Oxford Street Heritage Conservation Area (C17), and the building is a contributing item.</p> <p>The site is directly adjacent to two state heritage items being SHR #01700 'Taylor Square Substation No.6 and Underground Public Conveniences' and SHR #02068 'Sydney Mardi Gras Parade Route'.</p> <p>Subject to the recommended conditions of consent, the proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage items.</p> <p>See further details in the 'Discussion' section below.</p>

Provision	Compliance	Comment
3.10 Significant Architectural Building Types 3.10.4 Significant Shopfronts	Yes	The proposal does not alter the existing shopfronts of the building, other than to carry out maintenance works. The proposal is acceptable.
3.11 Transport and Parking	Yes	<p>A maximum of 12 car parking spaces are permitted (rounded to the nearest whole number).</p> <p>The proposed development does not provide car parking and complies with the relevant development standards.</p> <p>The proposal generates a requirement for 19 bicycle parking spaces (9 worker and 10 visitor). 15 spaces are provided. The non-compliance is minor, and the City's Transport Planner has advised the proposed parking is acceptable.</p> <p>The City's Transport Planner has recommended that two (2) showers with a change area and 15 personal lockers be provided in line with DCP requirements.</p>
3.12 Accessible Design	Yes	The proposal can achieve equitable access. Compliance with the National Construction Code is required to be demonstrated prior to the issue of a Construction Certificate.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	N/A	While the premises includes ground floor retail (which will likely be used as a restaurant/café/bar), and the basement must be used for the purpose of an entertainment facility, hours of operation are not proposed.

Provision	Compliance	Comment
		<p>A condition of consent is recommended, requiring the fit-out and use of the ground floor retail and basement entertainment facility to be the subject of a separate Development Application.</p> <p>Hours of operation for those tenancies are therefore deferred, and a matter for consideration when assessing the relevant future DA.</p> <p>The communal open space for the office tenancies, located on the rooftop, may allow the consumption of alcohol, without requiring a licence, so should be considered as a potential Category B premises.</p> <p>Category B premises located in a local centre are permitted base trading hours of 7am to 8pm, Monday to Sunday, with respect to outdoor areas. A condition of consent is recommended accordingly.</p>
3.16 Signage and Advertising	No	<p>The application seeks approval for a signage strategy submitted with the application.</p> <p>The proposed signage is generally inconsistent with the character of the area.</p> <p>The number of signs proposed is excessive and incongruent with the heritage characteristics of the site, and the heritage conservation area.</p> <p>Some proposed signs are of a type that are not permitted under the Sydney DCP 2012. Refer to the relevant section below.</p> <p>It is recommended that the signage strategy is not approved. A condition of consent is recommended, requiring a revised signage strategy to be submitted and approved prior to the issue of a construction certificate.</p> <p>See further details in the 'Discussion' section below.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	<p>The site is permitted a maximum building height of three (3) storeys.</p> <p>The proposed development is five storeys in height.</p> <p>The proposal is relying on the Alternative Height in Storeys available under Section 5.11.5.1 of the Sydney Development Control Plan 2012.</p> <p>Refer to the relevant section below.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No	<p>The proposed development achieves the following floor to floor heights:</p> <ul style="list-style-type: none"> • Basement: 2.6m - 2.8m • Lower Ground: 3.2m • Ground: 5.6m • Upper Ground: 3.8m • Level 1: 3.4m • Level 2: 3.1m • Level 3: 3.1m • Level 4: 3.1m <p>This is not in accordance with the DCP that, for this development, requires 4.5m for the basement and ground floors and 3.6m on the levels above.</p> <p>The existing floor levels are located within the heritage building which has a unique split-level arrangement. Changing the floor levels to achieve compliance would not be a positive heritage outcome.</p> <p>An alternative five (5) storey height of buildings control applies which would not</p>

Provision	Compliance	Comment
		<p>be achievable (in terms of complying with the LEP height of buildings development standard) with compliant floor to ceiling heights.</p> <p>Notwithstanding the above, the floorplates are relatively small, therefore the floors will receive adequate daylight, and a sufficient level of amenity will be provided to the occupants.</p> <p>Considering all the above, the proposed floor to ceiling heights are acceptable in this instance.</p>
4.2.2 Building setbacks	N/A	The building is subject to an alternative building street frontage height, as per the DCP maps. Accordingly, the relevant provisions are found in Section 5.11 'Oxford Steet Cultural and Creative Precinct'.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Sun's eye view diagrams have been submitted with the application. The proposal is in accordance with the solar access provisions of the DCP, which require two hours of solar access to be preserved to 1sqm of neighbouring living room windows between 9am and 3pm at the winter solstice.
4.2.3.3 Internal common areas	Partial compliance	<p>The internal common areas on the new floors have access to diffuse daylight and an outlook via a window on the southern elevation. Internal common areas within the retained heritage building do not receive this benefit, however this is acceptable in the heritage context.</p> <p>Common corridors outside lifts generally comply with the requirement to be at least 2m wide, however levels 3 and 4 do not comply, providing a minimum dimension of 1.85m. A condition of consent is recommended to ensure the proposal complies, to improve conditions</p>

Provision	Compliance	Comment
		for the transport of furniture and bulky good through the building.
4.2.3.4 Design features to manage solar access	Yes	<p>Sufficient horizontal and vertical shading on northern, eastern and western facades helps minimising peak heating, ventilation and air conditioning loads whilst allowing winter daylight penetration.</p> <p>More specifically, glazing on levels 3 and 4 is protected from the effects of the sun by the coreten steel frame, which allows for sufficient outlook from within the building. Glazing on level 2 is recessed, which will provide sun protection.</p>
4.2.3.5 Landscaping	Yes	A landscape plan for the rooftop has been submitted to the satisfaction of Council's landscape officers.
4.2.3.6 Deep Soil	No	The DCP requires 10% of the site area to be provided as deep soil. In this instance, the site is occupied by a heritage item with full site coverage, and it is not possible to provide deep soil without significant heritage impacts. The proposal is acceptable.
4.2.3.11 Acoustic privacy	Yes	An acoustic report has been prepared and submitted to the satisfaction of Council's Environmental Health Unit.
4.2.6 Waste and recycling Management	Yes	A condition of consent has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.8 Letterboxes	No	Letterboxes are not shown on the architectural drawings. A condition of consent is recommended, requiring the letterboxes be provided within the ground floor lobby of the building. The condition requires that they are installed with non-master key locks for security.

Section 5 – Specific Areas 5.11 Oxford Street Cultural and Creative Precinct

Provision	Compliance	Comment
5.11.1 Locality statement	Yes	<p>The proposal is consistent with the locality statement in that it is redeveloping a long vacant site within the precinct, will provide entertainment facility floorspace within the basement, and will contribute to the revitalisation of the locality.</p> <p>It is consistent with the relevant principles, in particular:</p> <ul style="list-style-type: none"> • It reinforces the role of Oxford Street and a local centre by bringing back into use a prominent heritage building on Taylor Square. • Retains and conserves significant heritage fabric (subject to the recommended conditions of consent). • Provides for cultural and creative floorspace. • Provides an appropriate vertical addition to this prominent heritage item that is consistent with the stated objectives of the principle.
5.11.2 Cultural and creative spaces	Yes	<p>The required quantum of cultural and creative floorspace has been calculated in accordance with the LEP and DCP.</p> <p>See further details in the 'Discussion' section below.</p> <p>Final details of end uses are not known at this stage; however, conditions of consent have been recommended to ensure the intent of the DCP controls is realised.</p>
5.11.3 Built form and high-quality design on Taylor Square and other public spaces on Oxford Street	Yes	<p>Despite any other provision of the DCP, a reduced upper-level setback, which may result in a nil upper-level setback on heritage listed and contributory buildings facing Taylor Square may be considered where the consent authority is satisfied that the design outcome will be of the highest standard in the following areas:</p>

Provision	Compliance	Comment
		<p>(a) the relationship between the architectural language of the existing building and the addition, which is to enhance and emphasise the qualities of both the existing and new parts of the building; and</p> <p>(b) the design and construction quality of the facades, including exposed side walls and expression of the roof.</p> <p>The proposed development achieves a design outcome of the highest standard. The amended scheme has been redesigned to respond positively to the concerns of the Design Advisory Panel, resulting in a sympathetic addition that is delicate and recessive, and not overpowering to the heritage architecture below. All facades of the new addition are exposed and positively address all site frontages.</p> <p>Accordingly, a nil setback, as proposed, is permitted.</p>
5.11.4 Heritage conservation	Partial Compliance	<p>The site is a local heritage item 'Former Commonwealth Bank including Interior' (I1541).</p> <p>The site is located within the Oxford Street Heritage Conservation Area (C17), and the building is a contributing item.</p> <p>The site is directly adjacent to two state heritage items being SHR #01700 'Taylor Square Substation No.6 and Underground Public Conveniences' and SHR #02068 'Sydney Mardi Gras Parade Route'.</p> <p>Subject to the recommended conditions of consent, the proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage items.</p>

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.
5.11.5 Built form and design	No (but acceptable)	<p>Several of the provisions contained within this section of the DCP appear to be inconsistent with the LEP, apply more readily to the fine grain medium density typology of Oxford Street rather than this island site, or are based on incorrect assumptions about the building.</p> <p>Section 3.14 of the EP&A Act 1979 provides the Local Planning Panel with flexibility in applying SDCP 2012 controls where alternative solutions give effect to the statutory provisions of the SLEP 2012.</p> <p>Strict application of the DCP controls would render the proposal impermissible; however, for the reasons set out below in the discussion section (relevant to this part of the DCP), the intent of the controls is met, and non-compliance should not be a determinative factor that would warrant refusal of the application.</p>
5.11.6 Active frontages and street level tenancy design	Yes	<p>The proposal relates to a heritage item. No new openings are proposed; however, the proposal improves street activation by bringing a vacant building back into use.</p> <p>The ground floor tenancy is to be the subject of a future application; however, it is suitable for use as a food and drinks premises and may provide outdoor dining to assist in activating Taylor Square.</p> <p>The ground floor tenancy does not exceed 300 sqm.</p> <p>The basement tenancy is self-contained and has separate and direct access from Bourke Street.</p>

Provision	Compliance	Comment
5.11.7 Development fronting laneways	Yes	<p>The proposal provides new opportunities for passive surveillance of Patterson Lane.</p> <p>The proposal relies on servicing from Patterson Lane in line with the DCP provisions.</p>
5.11.8 Servicing and access	Able to comply	A condition of consent is recommended requiring a Loading Service Management Plan to be submitted prior to the issue of an Occupation Certificate.

Discussion

Alternative Height of Buildings and Floor Space Ratio Development Standards

54. The site is subject to a base Height of Buildings development standard of 15m and a base FSR development standard of 3:1.
55. The building is located within the Oxford Street Cultural and Creative Precinct and therefore the maximum height shown on the Alternative Height of Buildings Map (24m) and the maximum FSR shown on the Alternative Floor Space Ratio Map (3.8:1) is available. In accordance with the provisions of Clause 6.60D 'Oxford Street Cultural and Creative Precinct' of SLEP 2012, this is subject to:
- (a) the building will be used for the purposes of one or more of the following—
 - (i) commercial premises
 - (ii) community facilities
 - (iii) entertainment facilities
 - (iv) health services facilities
 - (v) hotel or motel accommodation
 - (vi) information and education facilities
 - (vii) light industries
 - (b) for the erection of a new building or the rebuilding or alteration of an existing building that is not used for cultural or creative purposes—at least 10% of the gross floor area of the building resulting from the development will be used for cultural or creative purposes, and
 - (c) for the rebuilding or alteration of an existing building used for cultural or creative purposes—the amount of floor space used for cultural or creative purposes will be at least the sum of the following—

- (i) the amount of floor space used for cultural or creative purposes immediately before the development is carried out,
 - (ii) 10% of the gross floor area of the building resulting from the development.
- 56. In relation to (a) the building is proposed to be used for retail uses (food and drinks premises) on the ground floor, and office uses on the levels above. These both fall under the hierarchy of commercial premises.
- 57. The basement is shown as an entertainment facility, however this floorspace is awarded separately under the provisions of Clause 6.60E 'Flinders Street and Oxford Street' of the SLEP 2012.
- 58. In relation to (b), it is noted that the last approved use of the building included cultural and creative purposes as the Taylor Square Hotel occupied the site until it became vacant in 2008. Notwithstanding this, it is recommended that subclause (b), rather than (c), applies on the following basis:
 - (a) Part (c) of Clause 6.60D specifies that the amount of creative and cultural floorspace to be provided in developments involving the rebuilding or alteration of an existing building used for cultural or creative purposes is the sum of the amount of floor space used for cultural or creative purposes **immediately before** the development is carried out plus 10% of the gross floor area of the building resulting from the development.
 - (b) The site has been vacant since 2008 and was therefore not used for cultural or creative purposes **immediately before** the development is to be carried out. It is acknowledged that the wording of this clause could be ambiguous in certain scenarios, however in this instance the site has been vacant for a period of 16 years, pre-dating the drafting of the controls.
 - (c) Section 5.11.2 'Cultural and creative spaces' of the SDCP 2012, provides an interpretation of what **immediately before** the development is to be carried out means in practical terms, inferring that the existing use on 10 September 2021 is relevant. Specifically, under Section (1) and (2):

- (1) As required by clause 6.60D of Sydney LEP 2012, all development in the precinct is to maintain or increase the quantum of floor space used for a cultural and creative purpose that existed on a single or amalgamated site on 10 September 2021. Existing floor space used for a cultural and creative purpose is calculated excluding spaces that are ancillary to or needed to service the cultural and creative purpose, such as service areas, corridors, offices, retail and sanitary facilities.
 - (2) Development accessing the alternative floor space and height permitted by clause 6.60D of Sydney LEP 2012 is to provide a minimum of 10% of the total proposed GFA on the site for a cultural and creative purpose and retain the quantum of cultural and creative floor space that existed on a single or amalgamated site on 10 September 2021.
- (d) Furthermore, under part (9), SDCP 2012 identifies 11 sites within the Oxford Street Cultural and Creative Precinct that contain existing floorspace used for a cultural and creative purpose. 1-5 Flinders Street is not an identified site.
- (e) In summary, despite the existing approved land use and operational consent applicable to the site being of a type that would ordinarily be considered cultural and creative floorspace, the use cannot be said to have been actually in use immediately before the development is to be carried out (as per the SLEP 2012 requirement). Nor was it in use on 10 September 2021 as per the threshold set out in the SDCP 2012. For this assessment, the existing development consent is therefore not relevant.
59. As per the above, (c) is not relevant.
60. The development is therefore required to provide 10% of GFA resulting from the development as cultural and creative floorspace. The quantum of floorspace arising from the development is 1,527.5 sqm, resulting in a requirement to provide at least 152.7 sqm as cultural and creative floorspace.
61. The definition of cultural or creative purpose is as follows:
- cultural or creative purpose** means a purpose involving live entertainment, music, performing arts, film or television, media, advertising, fine arts and craft, photography, publishing, fashion, industrial or graphic design, and includes museums or archives related to a cultural or creative purpose.
62. In this instance, it could be satisfied through the provision of live music within the ground floor food and drink premises, or through creative purposes occupying the office floors above. Conditions of consent are recommended, requiring 152.7 of floorspace to be identified and used for a cultural and creative purpose.
63. The conditions require this to be separate to any such purpose provided in the basement, to ensure that the development qualifies for the alternative development standards under Clause 6.60D 'Oxford Street Cultural and Creative Precinct' and to ensure there is no 'double dipping' with respect to the entertainment facility floor space bonus of up to 0.8:1 available under Clause 6.60E 'Flinders Street and Oxford Street'.

Oxford Street Cultural and Creative Precinct Specific Built Form and Design DCP provisions

A detailed assessment against the site-specific Built Form and Design provisions of the SDCP 2012 is provided below.

5.11.5.1 'Additional building height'

64. Subclause (2) of Section 5.11.5.1 contains an apparent drafting error that states "On sites which are awarded additional floor space under Clause 6.60D of Sydney LEP 2012, that floor space is to be accommodated within the maximum number of storeys shown in the Building Height in Storeys maps".
65. The Building Height in Storeys map limits the maximum height of the site to three (3) storeys.
66. It is understood that this should refer to the Alternative Building Height in Storeys map, which allows for a maximum of five (5) storeys. The alternative floor space ratio development standard available under Clause 6.60D of Sydney LEP 2012 would not be achievable otherwise. Furthermore, without a reference to it in the DCP provisions, the alternative map would have no work to do.
67. Subclause (3) also states "Additions of more than two storeys are not permitted except for buildings in Block X, as defined in the Alternative Building Height in Storeys maps, which are to be in accordance with those figures". The subject site is located outside Block X.
68. A three-storey addition is proposed, in accordance with the alternative map, however this provision disallows this, requiring one less storey. The alternative height of buildings development standard available under Clause 6.60D of Sydney LEP 2012 would not be achievable if the site was limited to only two additional storeys. It is noted that the controls appear to have been drafted under the assumption that the subject building is already three (3) storeys in height, when it is more accurately described at two (2) storeys, with a basement that is partially above ground.
69. The proposal is acceptable in terms of additional building height.

5.11.5.2 'Architectural detail and materials'

70. The proposal does not comply with the requirement for additions above existing buildings to have vertical proportions. This control appears to have been drafted in consideration of buildings on Oxford Street, that form a contiguous fine-grain pattern, rather than this island site with a prominent curved facade to Taylor Square. The additions do not have vertical proportions; however, this is appropriate to this unique island site. Vertical additions would likely result in a deleterious outcome in this instance.
71. The proposal is generally compliant with the remaining provisions relating to architectural detail and materials.

5.11.5.3 Building alignment, setbacks and street frontage heights

72. The DCP generally requires a 3m setback for additions, however subclause (3) of Section 5.11.5.3 'Building alignment, setbacks and street frontage heights' of the Sydney DCP 2012 allows for a nil setback for a heritage item fronting Taylor Square where the Consent Authority is satisfied that the design outcome will be of the highest standard in the following areas:

- (a) the relationship between the architectural language of the existing building and the addition, which is to be complementary and enhance and emphasise the qualities of both the existing and new parts of the building; and
 - (b) the design and construction quality of the facades, including exposed side walls and expression of the roof.
73. The proposal, as amended in response to the comments of the DAP, satisfies these prerequisites. Council's Urban Designer has raised no objection to the proposed nil setback.

5.11.5.4 Awnings

74. The DCP requires continuous awnings to be provided above retail uses and over entries for commercial uses, and that contributory buildings must reinstate awnings which are associated with contributory buildings.
75. Members of the DAP were of the view that awnings had existed at one point on both the Flinders and Bouke Street frontages, with a step between the two on the Taylor Square frontage. A suggestion was made that both awnings should be reinstated.
76. Documentary evidence, as well as evidence on the building itself, implies that there has not been an awning on the Bourke Street frontage since at least 1959. There is a photograph that implies an awning above the entry on Bourke Street (at the intersection with Patterson Lane) in 1916, but there is no evidence to demonstrate it extended further along the street.
77. Given there is evidence there was an awning above the commercial entry on Bourke Street in 1916, a condition of consent is recommended requiring an awning to be installed in this location. An amended plan depicting this is required to be submitted and approved prior to the issue of a Construction Certificate.

5.11.5.5 Specific Sites

78. The DCP requires development utilising the alternative controls under Clause 6.60D of the SLEP 2012 to include a 3m front setback at "level 3" above the existing street wall on Flinders Street, Taylor Square and Bourke Street. It also states that development could achieve a nil setback at levels 4 and 5 in accordance with section 5.11.5.3(3) of this DCP.
79. The control, which requires the setback at Level 3, appears to be drafted based on a misunderstanding of the existing building, which is a two-storey building, with a split-level basement that protrudes above street level height on Bourke Street. The existing building is not three (3) storeys. Accordingly, the required setback is provided at Level 2, above the existing building parapet. A nil setback is provided on levels 3 and 4 above.
80. The proposal is deemed to comply with the intent of the DCP.

Conclusion

81. As outlined above, it is clear the DCP provisions for the Cultural and Creative Precinct appear to include several drafting inconsistencies. If the DCP controls (as written) were strictly applied, it would render the proposed development, which is compliant with the alternative height of building and FSR development standards, impermissible. The proposal achieves the objectives of the DCP provisions and is compliant with the alternative height of buildings and FSR development standards available under Clause

6.60D of the SLEP 2012. Accordingly, non-compliances with these erroneous DCP controls are not a determinative factor that would warrant refusal of the application.

Heritage

82. The site is a local heritage item 'Former Commonwealth Bank including Interior' (I1541).
83. The site is located within the Oxford Street Heritage Conservation Area (C17) and is a contributing item.
84. The site is directly adjacent to two state heritage items being SHR #01700 'Taylor Square Substation No.6 and Underground Public Conveniences' and SHR #02068 'Sydney Mardi Gras Parade Route'.
85. The DAP raised concerns with the extent of internal demolition that was contemplated as part of the original proposal, which was considered facadism.
86. The amended proposal is an improvement upon the original; however, the City's Manager Urban Design and Heritage has concluded that more internal fabric can be retained to improve the heritage outcome on the site. It is proposed to remedy this through conditions of consent.
87. Firstly, a deferred commencement condition is recommended, requiring a final structural design to be submitted prior to the consent becoming operational. The design is to minimise impact on significant fabric, conserve significant ceilings, structure and other fabric to retain the heritage character of the interiors.
88. Secondly, a heritage design modification condition is recommended that details precisely the fabric that is to be retained to ensure the ongoing heritage significance of the building. The condition considers both the interior and exterior parts of the building.
89. Subject to the above conditions, the proposal will result in an acceptable heritage outcome.

View Loss

90. The submissions include concerns about view loss. It is noted that this appears to have been considered during the strategic planning phase, as subclause (5) of Section 5.11.5.1 'Additional building height' of the SDCP 2012 states 'the cumulative impacts on views from additional storeys in accordance with the Alternative Height of Buildings control in Sydney LEP 2012 is acceptable'. Nonetheless, further consideration is provided below.
91. The first view to be considered is that from 200 Campbell Street, Darlinghurst. The submitter states they enjoy a district view to Paddington Town Hall over the subject site. The apartment in question fronts Campbell Street, and therefore the view is an oblique view to the south-east over the subject site. Figure 53 below is obtained from a real estate website and is taken from the subject balcony and in the direction of Paddington Town Hall.



Figure 53: View from 200 Campbell Street, Darlinghurst (source: realestate.com.au)

92. Paddington Town Hall is located over 1km away from 200 Campbell Street. The preservation of oblique district views obtained from a distance over the top of many properties would be unreasonable.
93. The second view to be considered is that from east facing apartments in the Belgenny Apartment Building. Figure 54 below is an example image extracted from one of the submissions.



Figure 54: Typical outlook from an east facing apartment at 389-393 Bourke Street, Surry Hills

94. The Belgenny Apartment Building is located directly to the west of the subject site, on the opposite side of Bourke Street at 389-393 Bourke Street, Surry Hills. While the submissions refer to view loss, the impact is to district views and outlook. While the impact is acknowledged to be significant, in the context of a development that is compliant with the relevant development standards, this is acceptable. No further assessment is required regarding view loss from these apartments.
95. The third view to be considered is that from north and east facing apartments at 417-419 Bourke Street, Surry Hills. Two submitters state that they enjoy a view to the Darlinghurst Courthouse over the subject site, as illustrated in Figure 55 below. This view warrants further consideration.



Figure 55: View to the Darlinghurst Courthouse from 417-419 Bourke Street, Surry Hills

96. The case of *Tenacity Consulting Pty Ltd v Warringah Council* in the Land and Environment Court of NSW established a planning principle for views and view sharing. Senior Commissioner Roseth established a four (4) step assessment process to determine whether view sharing is reasonable.

1. Assessment of views to be affected

97. The properties likely to be impacted in terms of view loss are north and east facing apartments located approximately from the second floor and above at 417-419 Bourke Street, Surry Hills. These apartments benefit from views across the rooftops of the subject site, and others, towards the Darlinghurst Courthouse.
98. In addition to views to the Darlinghurst Courthouse, the affected apartments benefit from panoramic views to the northwest, providing expansive views to the CBD. Many of the affected apartments also benefit from partial views to the Sydney Opera House, Sydney Harbour Bridge, and some have glimpses to Sydney Harbour. Figures 56 to 64 below are extracts from the Strata Plan, each apartment type is annotated with a green arrow indicating a view to the Sydney CBD skyline and a blue arrow indicating a view to the Darlinghurst Courthouse.

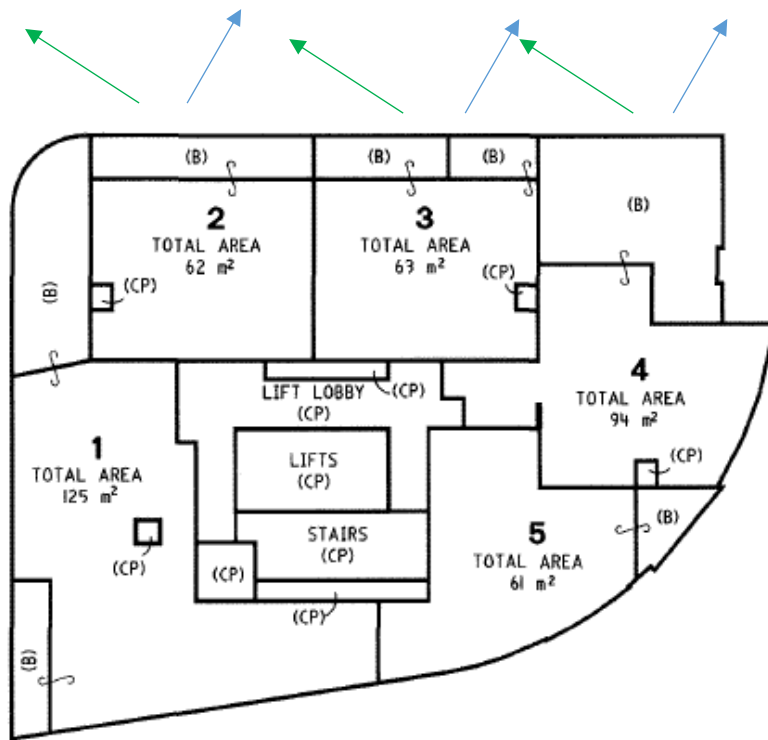


Figure 56: Strata Plan layout of Level 2, at 417-419 Bourke Street, Surry Hills

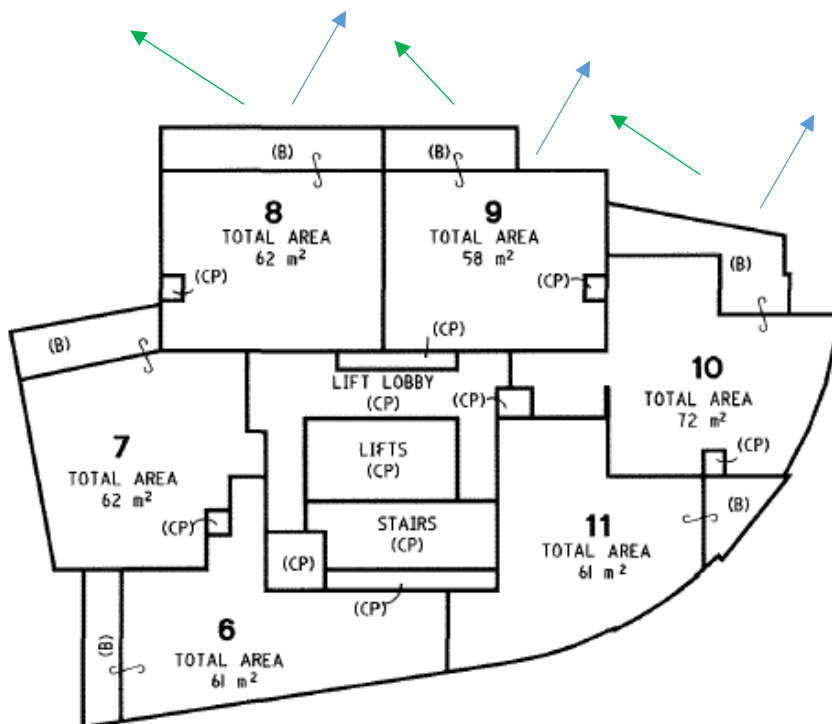


Figure 57: Strata Plan layout (typical) of Level 3-8, at 417-419 Bourke Street, Surry Hills

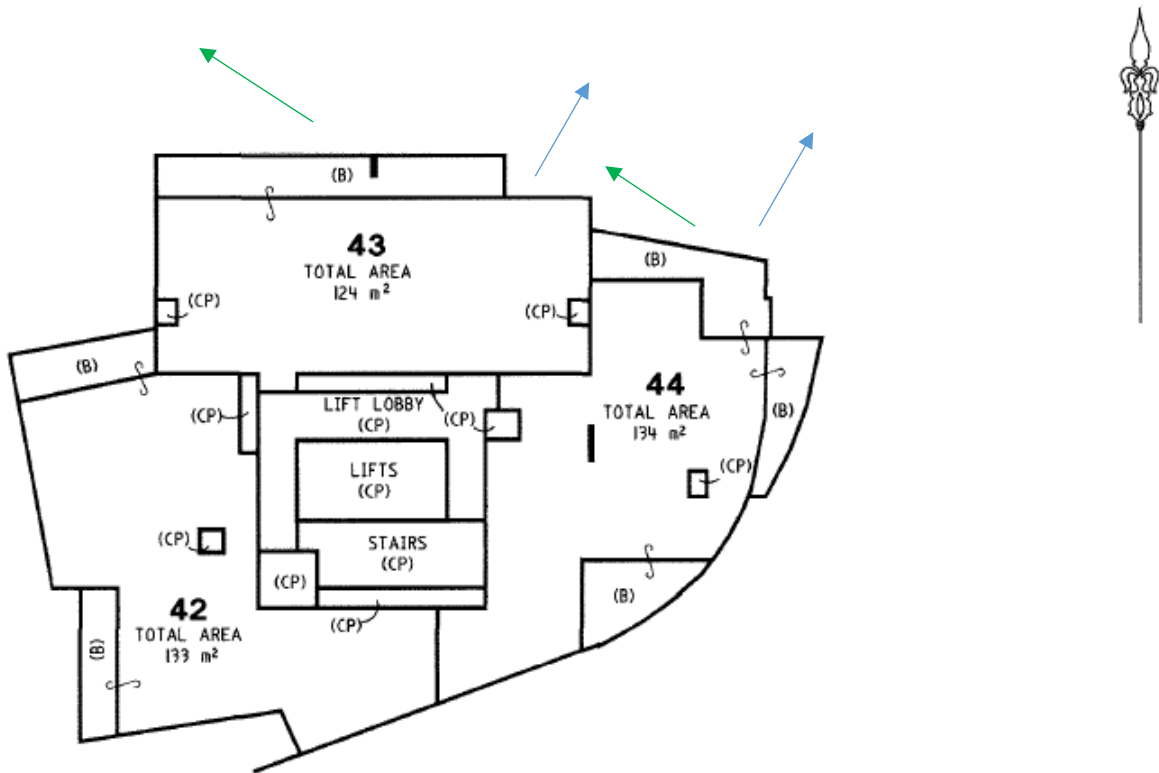


Figure 58: Strata Plan layout of Level 9, at 417-419 Bourke Street, Surry Hills

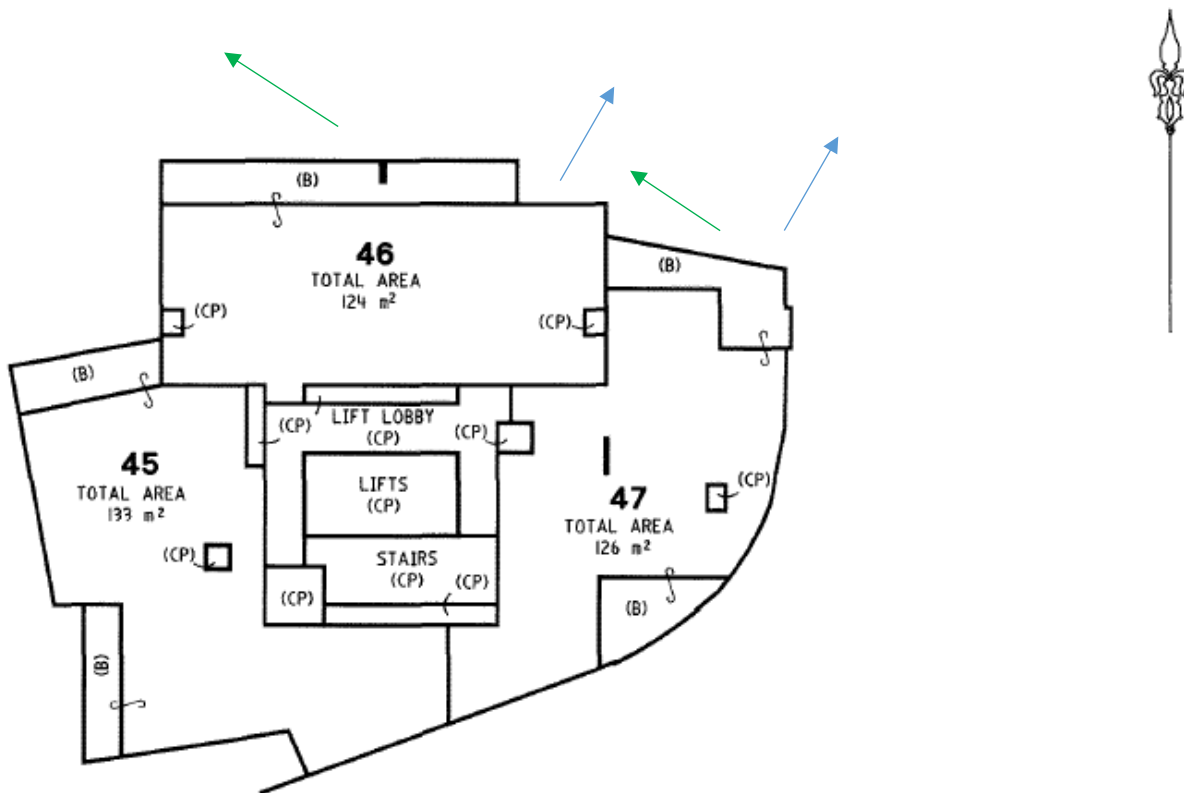


Figure 59: Strata Plan layout (typical) of Levels 10 and 11, at 417-419 Bourke Street, Surry Hills

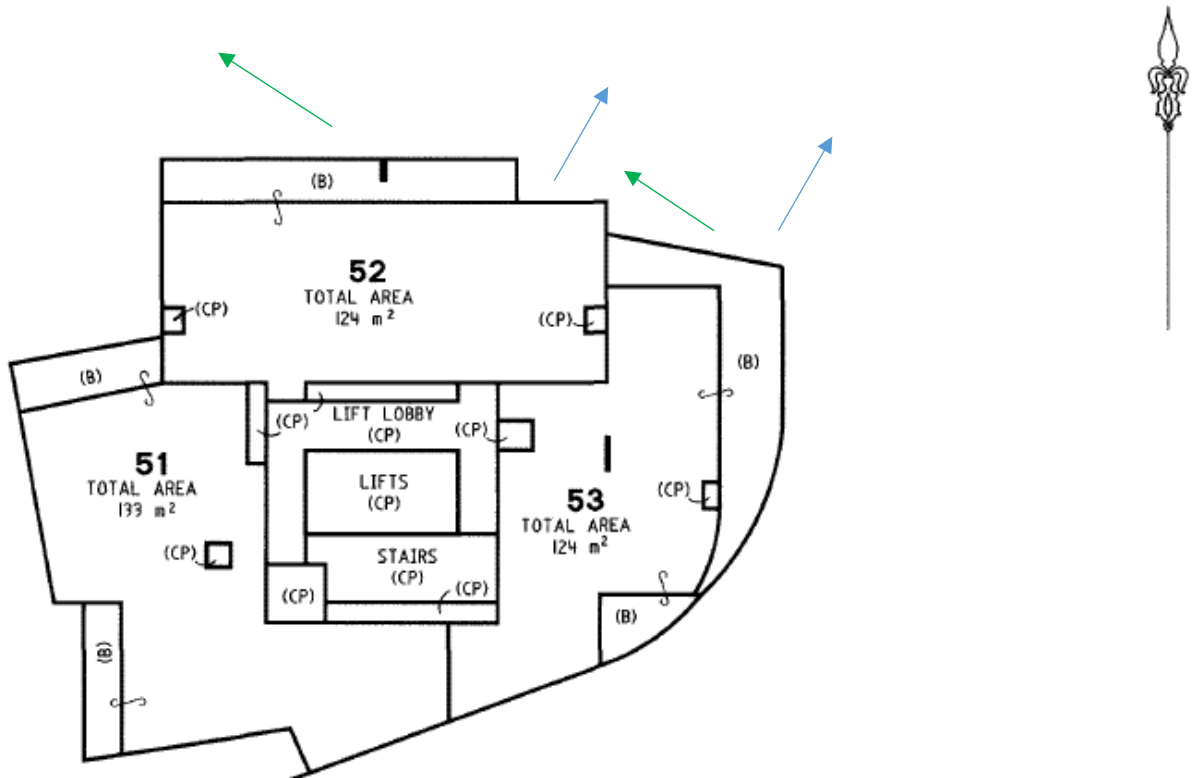


Figure 60: Strata Plan layout of Level 12, at 417-419 Bourke Street, Surry Hills

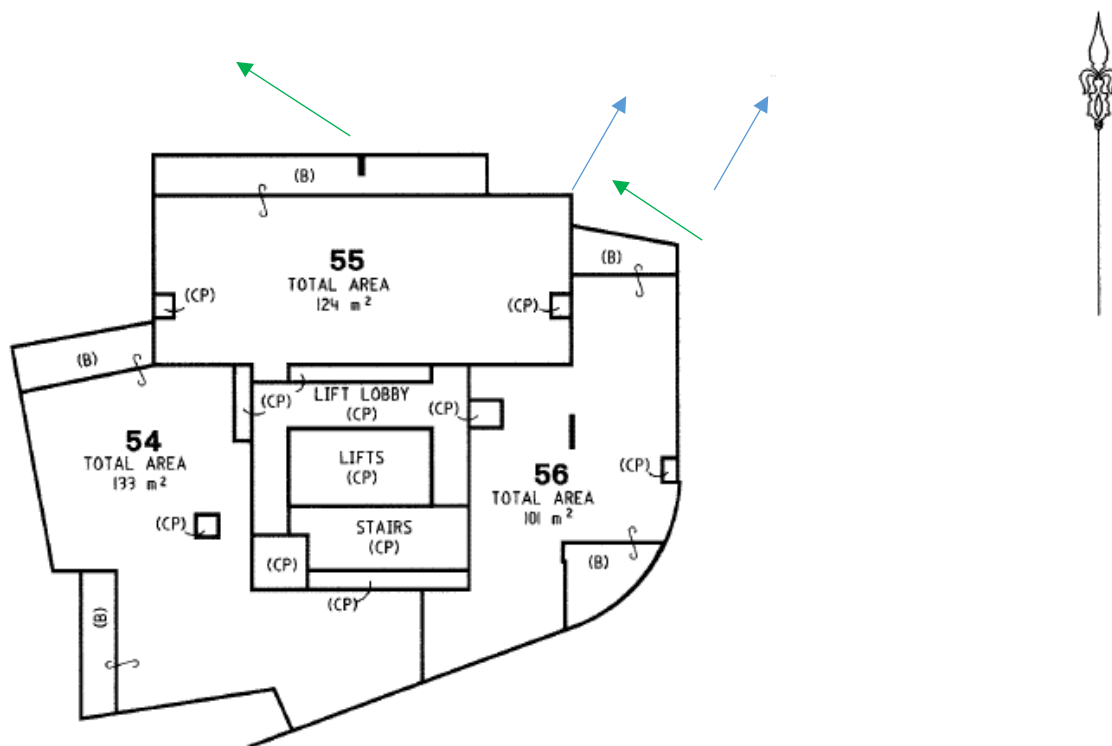


Figure 61: Strata Plan layout (typical) of Levels 13 and 14, at 417-419 Bourke Street, Surry Hills

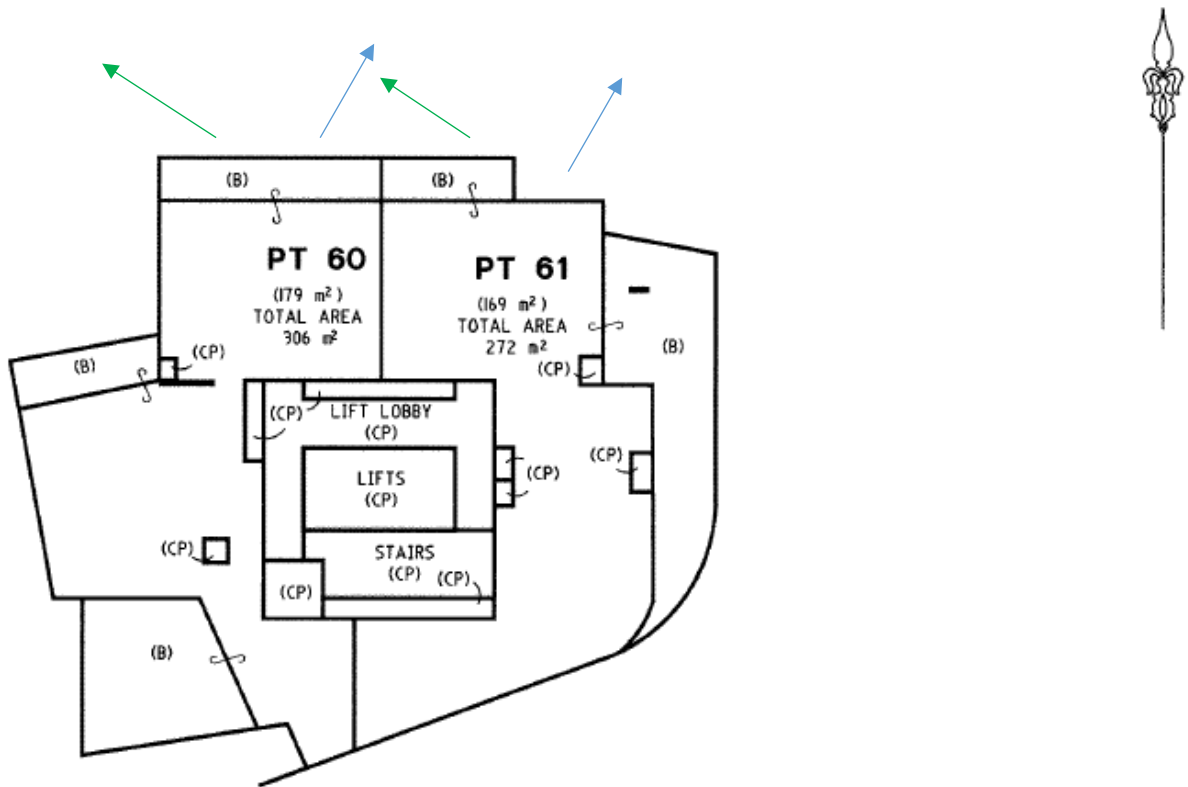


Figure 62: Strata Plan layout of Level 15, at 417-419 Bourke Street, Surry Hills

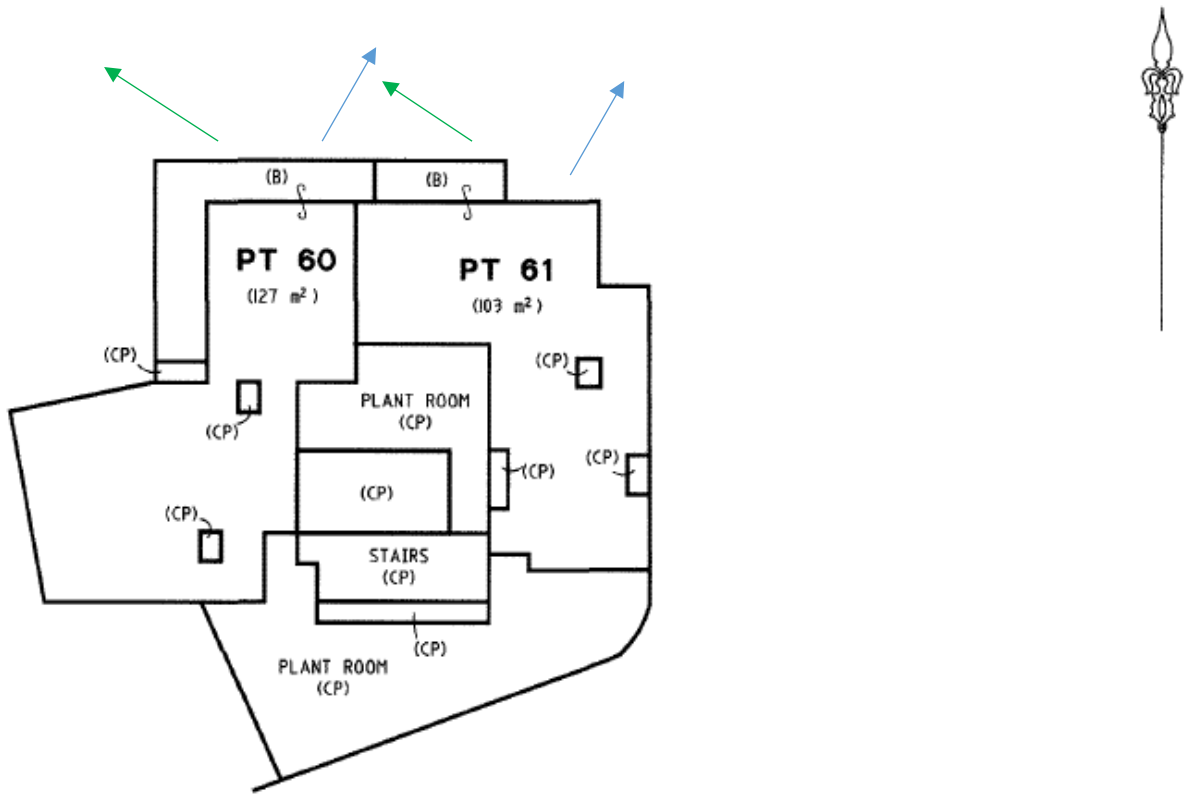


Figure 63: Strata Plan layout of Level 16, at 417-419 Bourke Street, Surry Hills

99. The view affected by this proposal is of Darlinghurst Courthouse. The view is not considered to be iconic. All affected properties benefit from a view to the CBD skyline, which is iconic. Figure 64 below is obtained from a real estate website and is indicative of the types of CBD views obtained from the subject building.



Figure 64: Real estate photograph demonstrating the types of views to the Sydney CBD obtained from the affected apartment building (Source: domain.com.au).

100. Research undertaken by planning staff indicates that the authors of both submissions in relation to this particular view loss benefit from panoramic views to the Sydney CBD, and partial views to the Sydney Harbour Bridge and Opera House.

2. What part of the property the views are obtained

101. Views to the Darlinghurst Courthouse are obtained from a mix of living rooms, bedrooms and balconies.

3. Extent of the impact

102. Figure 65 illustrates the approximate view corridor (hatched in blue) from the affected site (yellow) to the Darlinghurst Courthouse (orange). Views to the Darlinghurst Courthouse that will be unaffected by the proposal are shown in green. The subject development site and its intrusion into the existing view corridor is illustrated in red.



Figure 66: Aerial photograph illustrating view cone (blue dashes) from 417-419 Bourke Street, Surry Hills (yellow) to the Darlinghurst Courthouse (orange). The subject development site and its intrusion (red) into the existing view (green) is illustrated.

103. Notwithstanding the above, the view to the Darlinghurst Courthouse is considered secondary given the site context, as all affected apartments benefit from iconic views to the Sydney CBD skyline.
104. Given the other more iconic views benefitting the site, the impact arising from the partial view loss to the Darlinghurst Courthouse from apartments at 417-419 Bourke Street, Surry Hills is considered minor.

4. Reasonableness of the proposal that is causing the impact

105. The proposal complies with the Alternative Height of Buildings and Floor Space Ratio development standards provided in the Sydney LEP 2012. The impacts of the resulting view loss have been assessed above and are considered to be minor in the circumstances of the case.

Conclusion

106. Given the medium density context of the site, compliance with the key height and FSR development standards, and in consideration of the other iconic views afforded to the affected building, the impact of the proposal and the resultant partial view loss is considered reasonable and not of a nature that would warrant refusal of the application.

Drawing Inconsistencies / deficiencies

107. The drawings include some inconsistencies, for example the section demolition drawing shows the first floor is to be retained, however the Level 1 demolition plan is annotated to say the floor is to be demolished.
108. A condition of consent is recommended, requiring the plans to be updated following the satisfaction of Deferred Commencement Condition 1 'Final Structural Design within Existing Heritage Building'. In conjunction with Condition 4 'Heritage Design Modifications', this will ensure the plans are clear in terms of the heritage fabric to be retained and incorporated into the design.
109. It is also noted that the section drawings do not demonstrate the extent of any excavation required for lift pits, support columns and the like. A condition of consent is recommended accordingly.

Signage Strategy

110. A signage strategy has been submitted with the application; however, it is not suitable for approval due to the following:
- It includes signs that are not permissible, including projecting wall signs at the first floor level.
 - It includes inconsistencies, for example the projecting wall sign to Patterson Lane is shown as having a height of 900mm on one drawing, and 3.96m on a different drawing.
 - The volume of signage proposed is unacceptable from an urban design perspective, and moreover, if approved, would have a significant and detrimental heritage impact.
111. A condition of consent is recommended, requiring an amended signage strategy to be submitted and approved prior to the issue of a construction certificate. The amended strategy is to be more sensitive to the heritage characteristics of the site and the heritage conservation area and is to comply with the requirements of the SDCP 2012.

Consultation

Internal Referrals

112. The application was discussed with Council's:

- (a) Culture Strategy and Urban Analytics Unit
- (b) Environmental Projects
- (c) Building Services Unit
- (d) Environmental Health Unit
- (e) Licenced Premises Unit
- (f) Heritage and Urban Design Unit
- (g) Public Domain Unit
- (h) Surveyors
- (i) Transport and Access Unit
- (j) Tree Management Unit
- (k) Landscaping
- (l) Waste Management Unit.

113. The above advised that the proposal, as amended, is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination. Where conditions are recommended to mitigate outstanding issues identified in internal referrals, these are discussed in detail in the relevant sections of the report.

Design Advisory Panel

114. The original scheme was presented to the City's Design Advisory Panel (DAP) on 4 May 2023. A photomontage of the original scheme is provided earlier in this report at Figure 19). The DAP had serious concerns with the original scheme, as outlined below. Key issues raised by the DAP, and the way they have been addressed, are summarised below.

115. It should be noted that prior to the lodgement of the amended plans for which development consent is now sought, two iterations were presented to the DAP on 26 October 2023 and 23 November 2023. The comments of the DAP in response to these draft schemes, which were never formally lodged, are not detailed here.

DAP Recommendation

116. The proposal is out of scale with the heritage architecture below. The massing of the proposed addition is in three parts, where a more singular form responding to the original plan would be more successful.

Response

117. The scheme has been amended to provide a more singular form. Level 5 has been deleted from the plans, and the floorplate on Levels 3 and 4 essentially replicates existing Level 1 below. Level 2 provides a recess behind the parapet of the existing heritage building to provide a visual marker to differentiate between the heritage and contemporary components. The design amendments successfully address the concerns of the DAP.

DAP Recommendation

118. The addition's balconies are far too exaggerated and the 'pinching in' of the floorplate on Bourke and Flinders Street sides, behind the balconies, exaggerates them further. The result is that the new additions dominate the old building. The panel believes the additions need to be more visually recessive.

Response

119. The 'pinching in' of the floor plates has been deleted, as discussed above, and the only remaining balconies are on Level 2, located behind the parapet of the heritage building.

DAP Recommendation

120. The proposal is not consistent with the Conservation Management Plan (CMP).

Response

121. The alternative development standards more generally are inconsistent with the CMP, which discourages vertical additions, amongst other things. A condition of consent is recommended, requiring a revision to the CMP, reflective of the alternative development standards and the approved development, to be submitted and approved prior to the issue of any Occupation Certificate.
122. It is not considered that non-compliance with the CMP, which is itself now inconsistent with the planning controls applicable to the site, should be a determinative factor that would warrant refusal of the application.

DAP Recommendation

123. The scheme guts the building and only retains the facade, which is expressly discouraged under the new Oxford Street planning precinct controls. There are elements within the building with heritage value such as stairs and the upper floors and these should be protected.

Response

124. This has not been fully addressed by the amended scheme; however, is able to be mitigated through conditions of consent. Council's Urban Design and Heritage Manager has recommended a condition which details precisely how the scheme is to be amended, prior to the issue of a Construction Certificate, to preserve internal heritage fabric. Subject to compliance with the condition, sufficient internal fabric will be retained to preserve the heritage significance of the site.

DAP Recommendation

125. The proponent needs to carefully consider the lift location, so it doesn't adversely impact internal heritage fabric, such as the former safe room.

Response

126. The lift location has been amended to better respond to the heritage fabric. The former safe room now remains intact.

DAP Recommendation

127. Awnings used to flank the existing building on Bourke Street, then step down and run along Flinders Street. The panel recommends investigating reinstatement of those awnings.

Response

128. Photographic evidence suggests only the Flinders Street awning was original, and that a smaller awning likely existed above the entry on Bouke Street adjacent to Patterson Lane.
129. The amended proposal seeks to reinstate an awning on the Flinders Street frontage. This is supported, however a condition of consent is recommended, requiring further details to be submitted prior to the issue of Construction Certificate, to ensure the proposal complies with the requirements of the SDCP 2012.
130. A further condition is recommended requiring the installation of an awning above the entry adjacent to Patterson Lane.
131. During the design iteration process, the DAP responded positively to the sketches reproduced below at Figures 66 and 67, when the Coreten steel frame design was first presented. The DAP was strongly supportive of the undulating sine curve profile; however, this has been 'flattened' to some degree in the formally submitted plans. A condition of consent is recommended, requiring the sine curve profile to be more undulating to be more in line with the comments of the DAP.

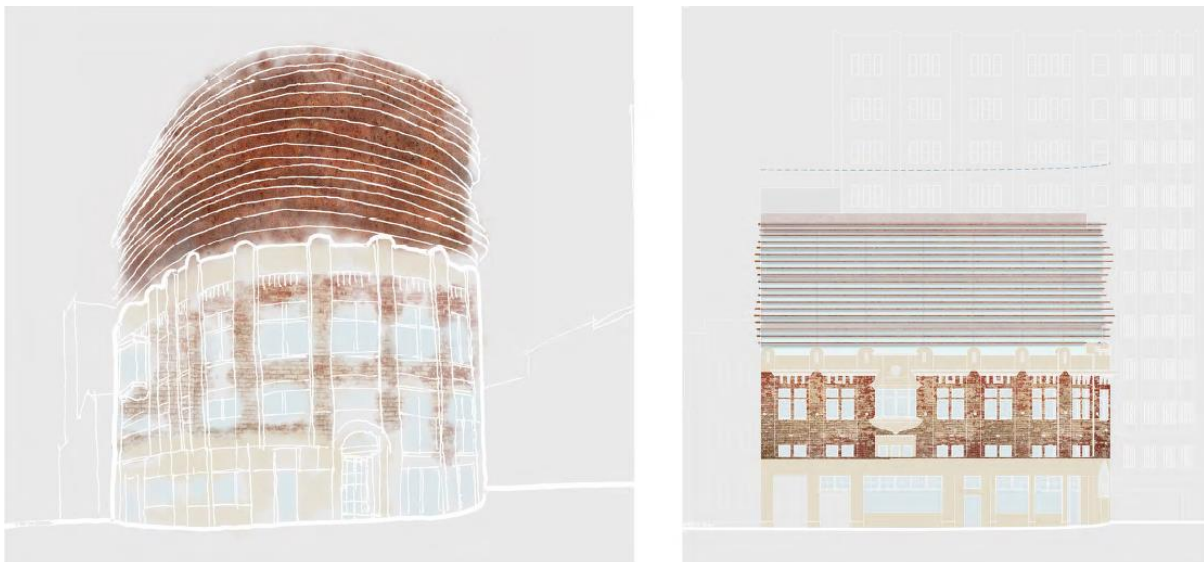


Figure 66: Preliminary sketch of the now formally proposed Coreten steel frame

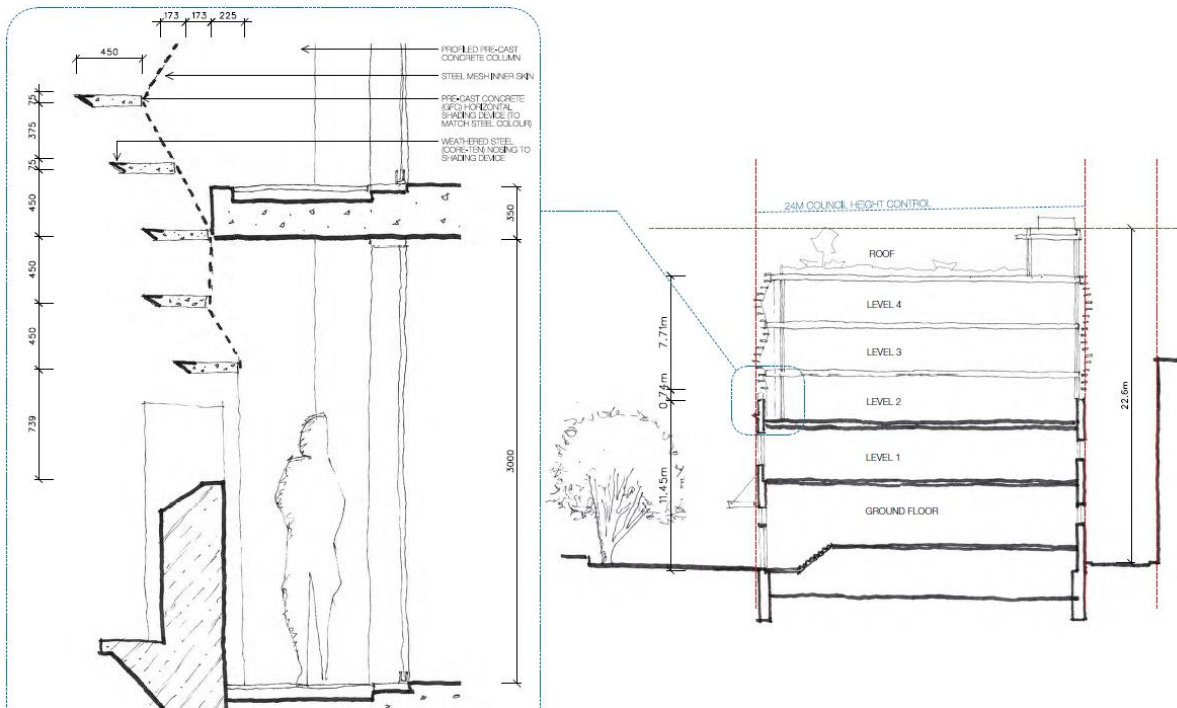


Figure 67: Preliminary detailed section illustrating a more undulated sine curve profile

External Referrals

Ausgrid

132. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
133. A response was received raising no objections to the proposed development was received on 27 February 2023.
134. The amended proposal was referred to Ausgrid in accordance with Section 38 of the Environmental Planning and Assessment Regulation 2021, and a response was received on 23 July 2024 confirming no change to the original comments.
135. Conditions of consent were recommended which are included in the Notice of Determination.

Transport for NSW

136. Pursuant to Section 2.119 of the SEPP (Transport and infrastructure) 2021, the application was referred to Transport for NSW (TfNSW) for comment.
137. Comments were received on 23 February 2023.
138. The amended proposal was referred to TfNSW in accordance with Section 38 of the Environmental Planning and Assessment Regulation 2021, and a response was received on 22 July 2024 confirming no change to the original comments.
139. Conditions of consent were recommended which are included in the Notice of Determination.

Advertising and Notification

140. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 16 March 2023 and 14 April 2023.
141. In accordance with Community Engagement Strategy and Community Participation Plan 2024, the proposed development (as modified) was renotified for a period of 28 days between 25 July 2024 and 23 August 2024.
142. A total of 780 properties were notified and there were 48 unique submissions (47 objections and one in support) received from 40 individual submitters.
143. The submissions raised the following issues:

Amenity

- (a) **Issue:** The proposal will result in loss of sunlight to a neighbouring commercial property.
 - **Response:** Solar access to commercial properties is not protected under the applicable planning controls.
- (b) **Issue:** The proposal will overshadow Campbell Street.
 - **Response:** The shadow diagrams submitted with the application demonstrate that Campbell Street will not be overshadowed during mid winter.
- (c) **Issue:** The proposal will dominate the outlook, views to the sky, and solar access for apartments facing the site at 383-393 Bourke Street.
 - **Response:** The proposal is consistent with the alternative planning controls applicable to the site. The preservation of direct outlook and views to the sky would be unreasonable in this instance. Oblique views to the sky will still be available, particularly across Taylor Square. 383-393 Bourke Street is not affected by shadows cast by the proposal between 9am and 3pm at midwinter.
- (d) **Issue:** The proposal will result in overshadowing to public spaces.
 - **Response:** The proposal does not overshadow key public spaces. Taylor Square is located to the north, and the rainbow crossing is situated to the north-west.
- (e) **Issue:** The proposal will result in a localised wind tunnel effect.
 - **Response:** The proposed building is not of a height that is likely to result in unacceptable wind effects. Council does not typically consider wind effects for buildings less than 45m. In any case, the Coreten steel frame, and the recess at level 2 are all features that would typically quell the impacts of wind, minimising downwash to the street below.
- (f) **Issue:** The proposal will block district views to the Darlinghurst Courthouse from 417-419 Bourke Street, Surry Hills.

- **Response:** A structured four step assessment using the principle established in Tenacity Consulting v Warringah NSWLEC 140 is provided elsewhere in this report, which concludes that the view loss is acceptable.
- (g) **Issue:** The proposal will block district views to Paddington Town Hall from 200 Campbell Street, Darlinghurst.
- **Response:** Paddington Town Hall is located over 1km away from 200 Campbell Street. The preservation of oblique district views obtained from a distance over the top of many properties would be unreasonable.
- (h) **Issue:** The proposal will reduce sunlight to 200 Campbell Street, Darlinghurst.
- **Response:** The proposal does not overshadow 200 Campbell Street, which is located to the north-west of the subject site.
- (i) **Issue:** The community should be consulted with regard to construction activities.
- **Response:** A condition of consent is recommended requiring a Demolition, Excavation and Construction Noise and Vibration Management Plan (DECNVMP) to be submitted and approved prior to the issue of a construction certificate. The DECNVMP is required to mitigate construction impacts.

Built form

- (j) **Issue:** The three-storey addition is inappropriate.
Response: The site was the subject of a planning proposal, which, amongst other things, sought to allow an alternative height in storeys control of five (5) storeys for the subject site. Community consultation began in 2020, and the draft controls were formally exhibited in 2021. The alternative controls were approved by the Central Sydney Planning Committee (CSPC) in April 2022 and came into force on 2 December 2022. The proposed five storey form is consistent with the planning controls that were put to the community and approved by the CSPC. The proposal is acceptable.
- (k) **Issue:** The proposal will set a precedent for large buildings on small sites.
Response: The proposal is for a mid-rise building at five storeys and is consistent with the alternative planning controls applicable to the site.
- (l) **Issue:** The proposal does not comply with the planning controls.
Response: The proposal complies with the alternative statutory planning controls, as outlined elsewhere in this report.
- (m) **Issue:** The proposal should be a level or two taller.
Response: Additional storeys would exceed the maximum permitted under the alternative planning controls and are not permitted.

Design

- (n) **Issue:** The design of the three-storey addition is jarring and large.

Response: The proposal is in accordance with the alternative planning controls applicable to the site, as described above. The design has been amended to respond to the issues raised by the DAP, to the satisfaction of Council officers.

- (o) **Issue:** The design of the three-storey addition (prior to amendments) is inappropriate/not in keeping with the area.

Response: The previous design was not supported and has been amended to be more sympathetic to the heritage building and the locality.

- (p) **Issue:** The design of the three-storey addition (following amendments) is inappropriate/not in keeping with the area.

Response: The design has been amended to better complement the heritage building, and in line with the comments of the DAP. The glass curtain wall and Coreten steel frame is lighter and more delicate in its appearance when compared to the previous design, which strongly emphasised a contemporary concrete form.

Heritage

- (q) **Issue:** The proposal has an unacceptable heritage impact.

Response: The building has been vacant since 2008 and is in a state of disrepair. The proposal (as amended) has been reviewed by Council's heritage specialists and was found to be acceptable. The proposal includes works that will conserve heritage fabric and will ensure the building's longevity into the future. Further, conditions of consent have been recommended to further ensure that significant fabric is retained.

- (r) **Issue:** The site is located within a heritage conservation area, and the proposal with its contemporary addition will change the look and feel of the area.

Response: It is acknowledged that the proposal will result in a localised change, however, this is acceptable. The proposed addition is in accordance with the relevant statutory planning controls and is consistent with the heritage principle of new additions being sympathetic, but not imitating the architectural detail of the historic building to which it is attached. The new addition is contemporary, yet recessive, and is acceptable.

- (s) **Issue:** The development should have a setback above the heritage item, as other heritage additions do in the City.

Response: The alternative controls for the Oxford Street Cultural and Creative Precinct allow for a nil setback on this site. As outlined elsewhere in this report, the required prerequisites that allow for the nil setback have been met.

- (t) **Issue:** The extent of internal demolition should not be supported.

Response: The extent of internal demolition is not supported, and a condition of consent is recommended specifying significant fabric that must be retained.

Land Use

- (u) **Issue:** Another bar or nightclub is not required in the area.

Response: It is noted the site is located within a well-established late-night trading area. The precise land uses for the ground and basement floors are not yet established, however, the planning controls (as utilised by the proposed development) require the basement to be used for the purpose of an entertainment facility. This is to preserve the creative and cultural character of the Oxford Street precinct. A condition of consent is recommended accordingly.

- (v) **Issue:** There isn't demand for so much commercial floor space.

Response: The proposed land use is permissible with consent in the zone, and the proposed quantum of floorspace is consistent with the FSR development standard. Demand for land uses changes over time, and this development consent, once activated, will be valid for a period of five (5) years.

- (w) **Issue:** Residential uses are not supported.

Response: Residential uses are not proposed.

- (x) **Issue:** A large quantum of outdoor dining on Taylor Square should be permitted to activate the space.

Response: The fit-out and use of the ground floor retail use is to be the subject of a separate future Development Application. Any outdoor dining would be a matter for consideration at that time.

Traffic and Parking

- (y) **Issue:** The increased floor space without additional car parking will exacerbate existing parking issues.

Response: The City has maximum, rather than minimum parking provisions in the Sydney LEP 2012. It is permissible to provide no parking, as proposed in this development. The site is centrally located and is well served by public transport and active transport options. Parking for bicycles is provided within the basement of the building.

- (z) **Issue:** The proposal will increase foot traffic in the area making the area less liveable.

Response: The City supports street activation to improve the viability of centres.

- (aa) **Issue:** The proposal to close Patterson Lane is not supported.

Response: The proposal to close Patterson Lane has not been considered. Patterson Lane is not owned by the proponent, nor is the application accompanied by a public benefit offer to undertake any works in Patterson Lane. Furthermore, the proposed road closure requires a decision under the Roads Act 1993, rather than the Environmental Planning and Assessment Act 1979, and is therefore beyond the scope of this development application.

- (bb) **Issue:** The impact of construction traffic is unclear.

- **Response:** A condition of consent is recommended requiring a Construction Traffic Management Plan to be prepared and approved prior to the issue of a construction certificate.

Creative and Cultural Floor Space

- (cc) **Issue:** The proposed use of the building is not in line with the area or the intention of the creative and cultural precinct controls. The quantum of creative and cultural floorspace should be increased significantly.

Response: The quantum of creative and cultural floorspace proposed is in line with the planning controls, as outlined elsewhere in this report.

LGBTQIA+ Community

- (dd) **Issue:** The redevelopment will result in the loss of LGBTQIA+ heritage.

Response: The site's history and importance to the LGBTQIA+ community is acknowledged; however, this history is not included in the site's statement of significance as a reason for its heritage status.

- (ee) **Issue:** The site should be returned to the community or used as an LGBTQIA+ museum.

Response: The site is in private ownership and the proposed land uses are consistent with the permissible uses identified in the land use table. Council could not compel the site owner to provide an alternative use when a lawful one is proposed. It is noted there is an LGBTQIA+ museum known as Qtopia Sydney, at the northern end of Taylor Square.

Noise

- (ff) **Issue:** The rooftop terrace will result in patron noise that will disturb the amenity of the locality.

Response: The proposed rooftop is to be utilised by the office tenants of the site. It is not proposed for use as a standalone entertainment venue. The site is located on the fringe of the Oxford Street entertainment precinct, within a Local Centre Late Night Trading Area. It is near several pubs and nightclubs that trade well into the early morning hours. The rooftop terrace is not expected to be a concern in terms of noise in that context. Nonetheless, a condition of consent is recommended, approving the rooftop to operate between the hours of 7am to 8pm in line with the DCP controls for Category B outdoor areas.

Housing affordability.

- (gg) **Issue:** The development will make housing less affordable in the area.

Response: The proposal does not include residential uses. Notwithstanding this, a condition has been recommended requiring the proponent to make an affordable housing contribution, to increase the availability of affordable housing within the Local Government Area.

Cost of works

- (hh) **Issue:** The estimated development cost seems low.

Response: The original application was supported by a cost summary report. While the design has been amended, an amended cost summary has not been

requested as the cost summary is well below the threshold of reporting to the Central Sydney Planning Committee.

General

- (ii) **Issue:** The building should not have been allowed to remain vacant for so long.

Response: Council was the owner of the building for much of the time it has been vacant. There is no planning mechanism to compel a landowner to bring a vacant building back into use.

- (jj) **Issue:** The rooftop should be owned as public space by the City of Sydney, accessible 24/7.

Response: Council has no commercial interest in the proposed development.

- (kk) **Issue:** Taylor Square needs to be redesigned.

Response: This is beyond the scope of this application.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

144. The development is subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015.
145. Credits have been applied for the most recent approved use of Level 1. As outlined elsewhere in this report, the previously approved licensed hotel is not considered active for the purpose of this assessment, therefore credits have not been applied for that use and the remainder of the site is considered vacant.
146. 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

147. 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.
148. The proposal is consistent with the criteria under part (c) that is, the proposed uses are permissible under the initial zoning of the site.
149. 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.
150. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable.
151. The site is located within the residual lands affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of \$11,176.22 per square metre applicable to 1% of the total floor area.
152. The total floor area is 2,093.3sqm, and all floorspace is considered new given all existing slabs are to be demolished. As a result, the equivalent monetary contribution applies to 20.933 sqm and the applicable affordable housing contribution payable is \$233,951.86.
153. A condition of consent is recommended requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

Housing and Productivity Contribution

154. The Housing and Productivity Contribution does not apply to applications lodged prior to 1 October 2023.
155. 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

156. Environmental Planning and Assessment Act 1979.

157. Heritage Act 1977.

Conclusion

158. The application seeks development consent for internal demolition and alterations and additions to the existing building, including a new three storey plus rooftop addition, to accommodate commercial uses.

159. All proposed uses are permissible with development consent in the E1 'Local Centre' zone, and the proposal generally complies with the provisions of the SLEP 2012 and SDCP 2012.

160. Non-compliances are acceptable for the reasons outlined in the relevant sections of this report. Conditions of consent are proposed to remedy outstanding issues.

161. The proposal is supported, subject to the recommended conditions of consent.

ANDREW THOMAS

Executive Manager Planning and Development

Christopher Ashworth, Area Planning Coordinator