

**Item 3.****Development Application: 28-36 Bayswater Road, Potts Point - D/2023/71**

File No.: D/2023/71

**Summary**

**Date of Submission:** The application was lodged on 7 February 2023. Amended plans were submitted for assessment on 7 June 2024 and 13 September 2024. Further minor amendments were made to the plans between 27 September 2024 and 28 October 2024.

**Applicant:** Kristy Hodgkinson c/- Hamptons Property Services

**Architect:** Squillace Architects

**Owner/Developer:** Cantabri Pty Ltd

**Planning Consultant:** Hamptons Property Services

**Heritage Consultant:** Weir Phillips Heritage and Planning

**DAPRS:** 6 June 2023

**Cost of Works:** \$19,745,885.00

**Zoning:** The site is zoned E1 Local Centre. 'Shop top housing', including 'retail premises' (which is a type of 'commercial premises') and 'residential accommodation', is permissible in the E1 zone with consent.

**Proposal Summary:** The subject application seeks consent for a 'shop top housing' development, incorporating 22 residential units above 4 sub ground, lower ground and ground level commercial tenancies, and includes demolition of existing structures, excavation for 2 new basement levels, substantial alterations and additions to 4 existing terraces, and construction of a new building.

The proposal is referred to the Local Planning for determination as the development contravenes the height of building development standard imposed by the Sydney Local Environmental Plan 2012 (Sydney LEP) by more than 10%. The proposal is also referred given that the proposal is classified as 'sensitive development' as it is

development to which State Environmental Planning Policy (Housing) 2021 Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.

The application is accompanied by a written statement addressing the provisions of clause 4.6 of the Sydney LEP and seeking a variation to the 15m building height development standard by 33.7%.

The application is Integrated development for the purposes of the Water Management Act 2000.

The application was notified for a period of 28 days from 7 March and 5 April 2023. Eight submissions were received, including 6 in objection, 1 comment and 1 in support.

Amended plans were re-notified for 28 days between 13 June and 12 July 2024. A further 6 submissions, including 3 in objection, 2 comments and one in support, were received.

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

**Development Controls:**

- (i) Environmental Planning and Assessment Act (EPA Act) 1979
- (ii) Environmental Planning and Assessment Regulation (EPA Regs) 2021
- (iii) State Environmental Planning Policy (Resilience and Hazards) 2021
- (iv) State Environmental Planning Policy (Housing) 2021
- (v) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (vi) State Environmental Planning Policy (Transport and infrastructure) 2021
- (vii) Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021
- (viii) Sydney Local Environmental Plan 2012
- (ix) Sydney Development Control Plan 2012
- (x) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended conditions of consent
- B. Selected drawings
- C. Clause 4.6 variation request - height of buildings
- D. Submissions

## Recommendation

It is resolved that:

- (A) the variation requested to the 'height of buildings' development standard in accordance with clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld and
- (B) consent be granted to Development Application Number D/2023/71 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The development complies with the objectives of the E1 Local Centre zone pursuant to the Sydney Local Environmental Plan 2012.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney Local Environmental Plan 2012, that compliance with the 'height of buildings' development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney Local Environmental Plan 2012 and
  - (ii) the proposal is in the public interest because it is consistent with the objectives of the E1 Local Centre zone and the 'height of buildings' development standard.
- (C) Having considered the matters in Clause 6.21C(2) of the Sydney Local Environmental Plan 2012, the building displays design excellence because:
  - (i) the proposed development provides a high standard of architectural design, materials and detailing appropriate to the building type and its location
  - (ii) the proposal will have a positive impact on the subject site, the original heritage fabric, the heritage conservation area and the streetscape
  - (iii) the proposed development is compatible with the built form and density of surrounding developments and
  - (iv) the proposed development will not result in any detrimental visual privacy, overshadowing, view loss, wind or reflectivity impacts.
- (D) The development is generally consistent with the objectives of the relevant planning controls.
- (E) Appropriate conditions are recommended to ensure the development does not detrimentally impact on the heritage significance of the site.

- (F) The development will not adversely affect the character of the Kings Cross locality or the Potts Point Heritage Conservation Area.
- (G) The development will not unreasonably compromise the amenity of nearby properties.
- (H) Suitable conditions of consent are recommended and the development is in the public interest.

## Background

### The site and surrounding development

1. The site has a legal description of Lot B in DP 71866, Lot 3234 in DP 785695, Lot 24 in DP 192179 and Lot 1 in DP 616154, and is known as 28-30, 32-34 and 36 Bayswater Road, Potts Point. Numbers 28-30 and 32-34 are rectangular in shape, while number 36 is irregular. The site has a combined primary street frontage of approximately 38m to Bayswater Road, a secondary street frontage of approximately 29m to Ward Avenue, a rear lane frontage of approximately 43m to Mansion Lane and a site area of 1,393sqm. The site is located on the northern side of Bayswater Road at the intersection of Ward Avenue. Levels on the site fall by approximately 2.5m from west to east.
2. Number 28-30 Bayswater Road is a pair of mid-Victorian terraces erected in the mid-1860s. Each terrace comprises a 3-storey principal building form, a 2-storey rear wing and a single storey rear skillion. The Bayswater Road frontage has a later addition that extends to the street boundary that was built during the 1920s. The ground floor is currently used as a restaurant while the upper levels are commercial suites.
3. Number 32-34 Bayswater Road is a pair of 3-storey mid-Victorian period terraces. Number 32 has a 2-storey rear wing and a single storey rear skillion. Number 34 has a 2-storey rear wing that extends to the rear boundary. The area between the 2 wings has been infilled. The Bayswater Road front courtyards have also been infilled and the first-floor verandahs have been removed. The ground floor is currently used as a bar and the upper levels are residential.
4. Number 36 Bayswater Road is a rendered and painted masonry building comprising a 4-storey principal building form with 2 to 4 storey additions at the rear. The building is located on the corner of Ward Ave and is currently used as a commercial premises.
5. There is no existing vehicular access to the site, apart from 3 at-grade car parking spaces located at the rear of 28-30 Bayswater Road which are accessed via Mansion Lane.
6. There are 5 mature street trees located along the Bayswater Road frontage and 3 along the Ward Avenue frontage. The trees comprise both London Plane and Hills weeping fig species and have a high level of significance. There is no existing vegetation within the boundaries of the site.
7. Bayswater Road is part of the Kings Cross late night entertainment area, with the site being located within a designated 'Late Night Management Area'. Surrounding land uses are characterised by a mix of hospitality venues, nightclubs, bars, food and drink premises, commercial premises and hotels. The area also includes residential accommodation of varying scales and densities, including large terrace-style dwellings through to larger scale residential flat buildings. The Kings Cross Railway Station is located approximately 200m walking distance to the east of the site.
8. Adjoining the northern boundary is Mansion Lane. The function of the lane is predominantly for rear garage access, garbage collection and deliveries. On the opposite side of Mansion Lane, is the rear of a group of terraces which have frontage to Kellett Street and contain a mix of commercial and residential uses. A 6-storey hotel is also located to the north at 21 Kellett Street.

9. To the south, on the opposite side of Bayswater Road, is a 9-storey mixed-use building at 37 Bayswater Road. Food and drink premises and an entertainment venue are located on the lower floors of the building and residential apartments are located above.
10. Adjoining the western boundary of the site are 4 identical, 3-storey Victorian Italianate terraces known as the Mansions Terraces. The Mansions Terraces site has recently been approved for a shop-top housing development (D/2022/961) comprising 4 residential terrace apartments located above 4 ground level commercial tenancies. To the east of the site, on the opposite side of Ward Avenue, is an 8-storey residential flat building.
11. Number 28-30 is listed as a local heritage item (I1118A) and is described as a terrace group including interiors. Numbers 28-30 and 32-34 are identified as being contributing buildings, while number 36 is classified as a neutral building. The site is located within the Potts Point heritage conservation area (C51).
12. The site is located within the King Cross locality area and is not identified as being subject to flooding.

#### Site visit

13. A site visit, including an internal inspection of the terraces, was carried out on 24 April 2023. A further inspection of the site and neighbouring properties was undertaken on 27 August 2024.
14. Site maps and photos of the subject site and surrounds are provided below.

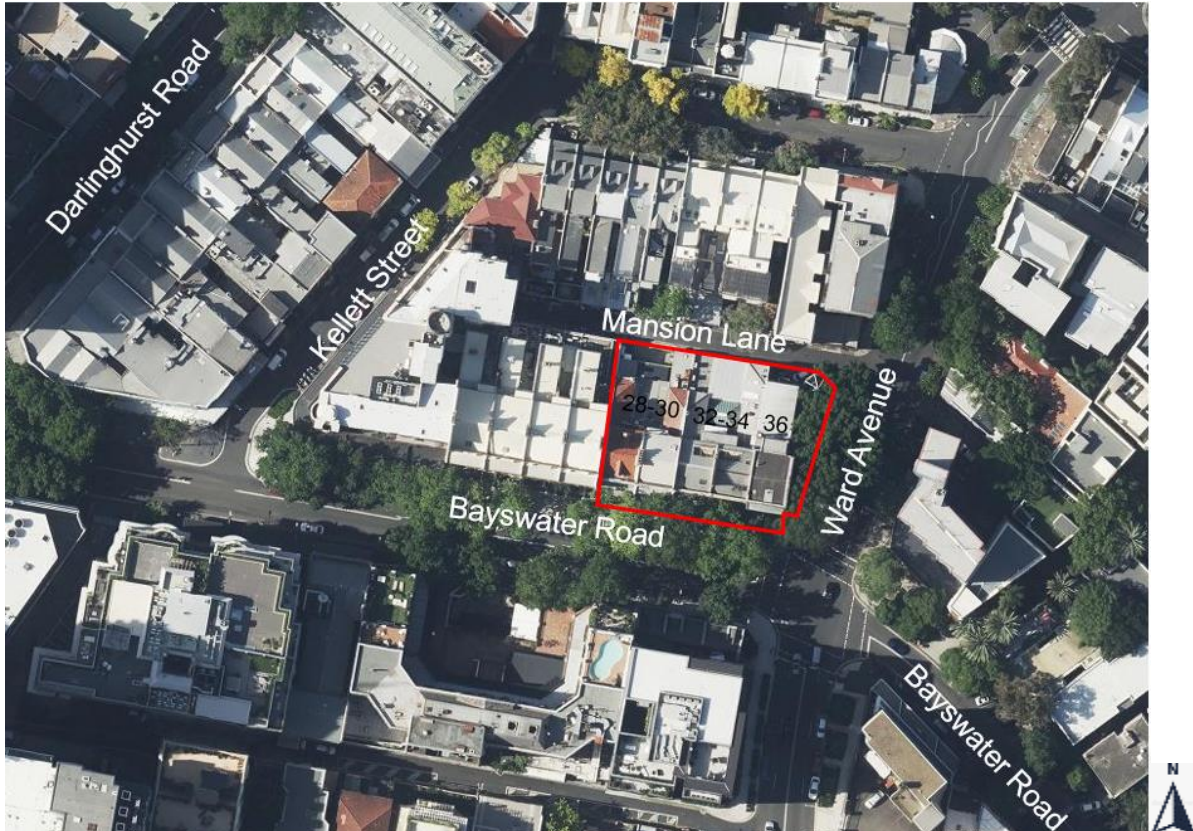


Figure 1: Aerial view of site (outlined red) and surrounds

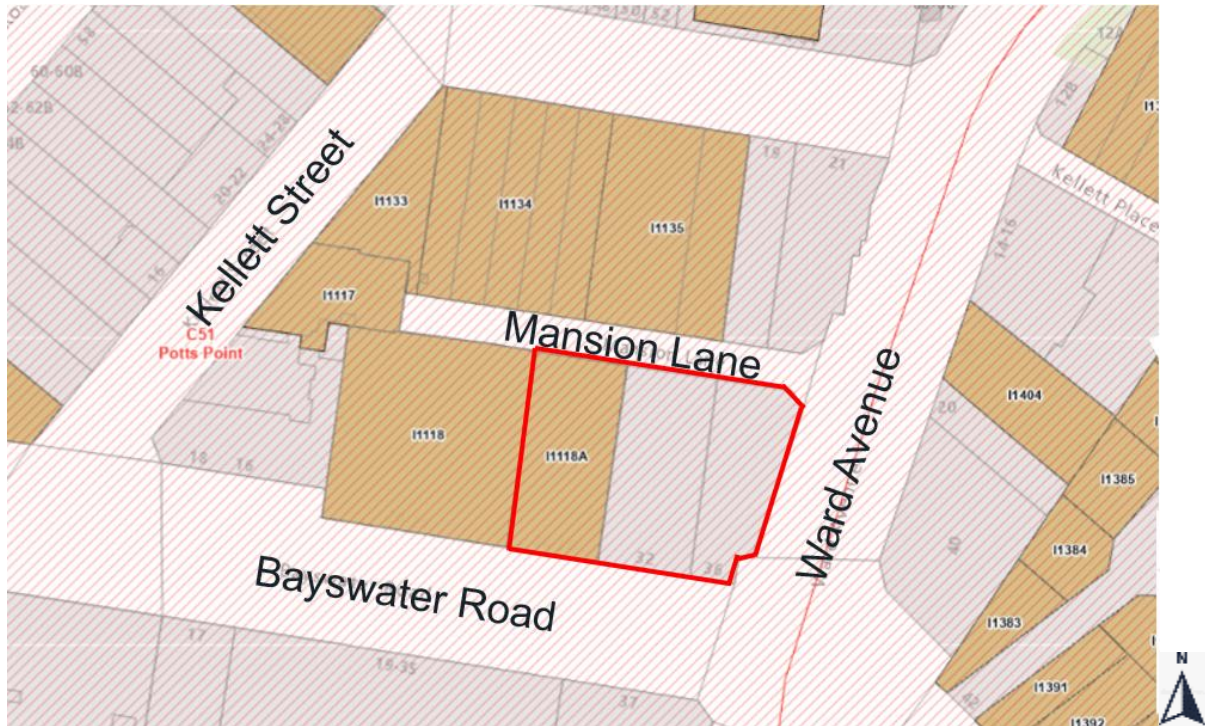


Figure 2: Extract of Sydney LEP 2012 Heritage Map - heritage items shaded brown and subject site outlined red



Figure 3: Front of site (number 28-30 being local heritage item (I1118A)) viewed from Bayswater Road





Figure 4: Front of site (numbers 28-30 and 32-34 which are contributory buildings) viewed from Bayswater Road

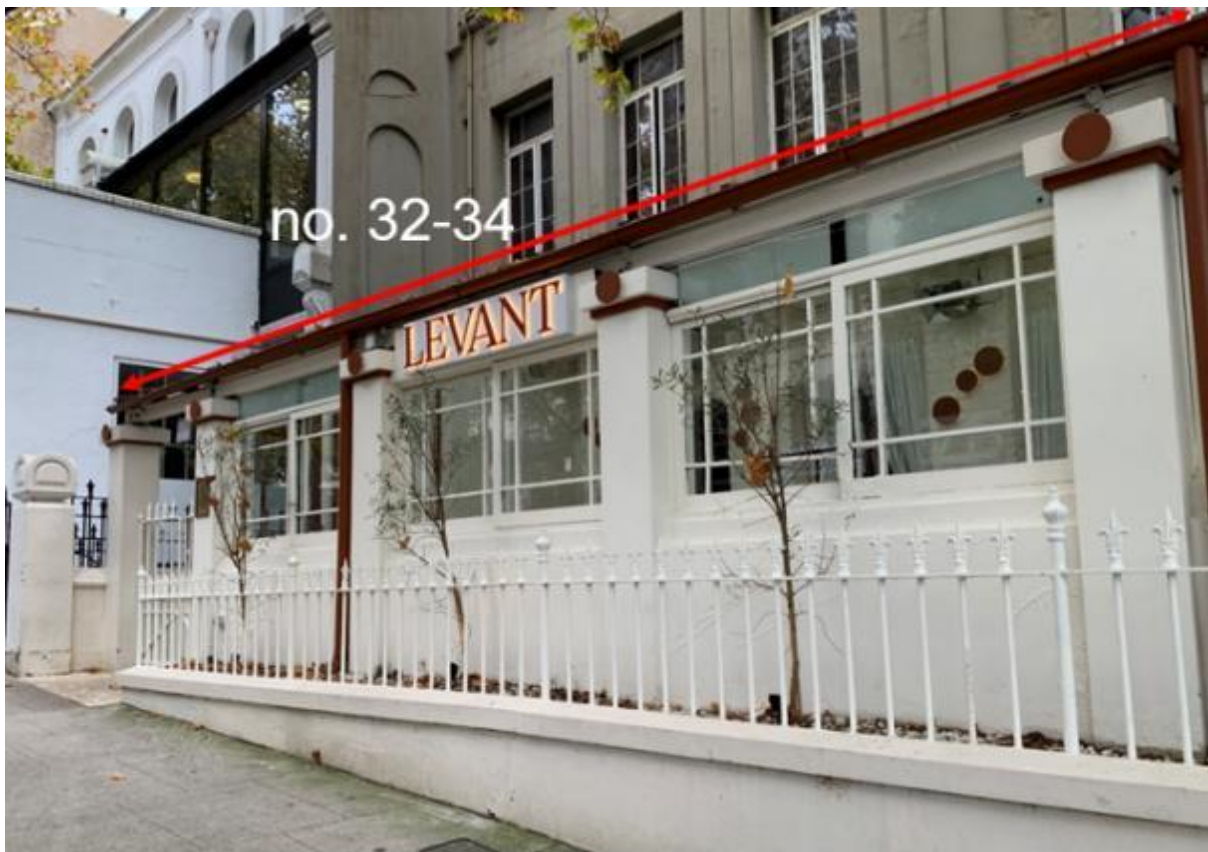


Figure 5: Front enclosed courtyard to number 32-34 as viewed from Bayswater Road



Figure 6: Portion of site (number 36) as viewed from intersection of Bayswater Road and Ward Avenue



Figure 7: Ward Avenue street trees as viewed from 36 Bayswater Road



Figure 8: Rear of subject site as viewed from Mansion Lane



Figure 9: Rear of subject site as viewed from Mansion Lane



Figure 10: Mansion Lane looking west



Figure 11: Mansion Lane looking east



Figure 12: Development on northern side of Mansion Lane opposite subject site

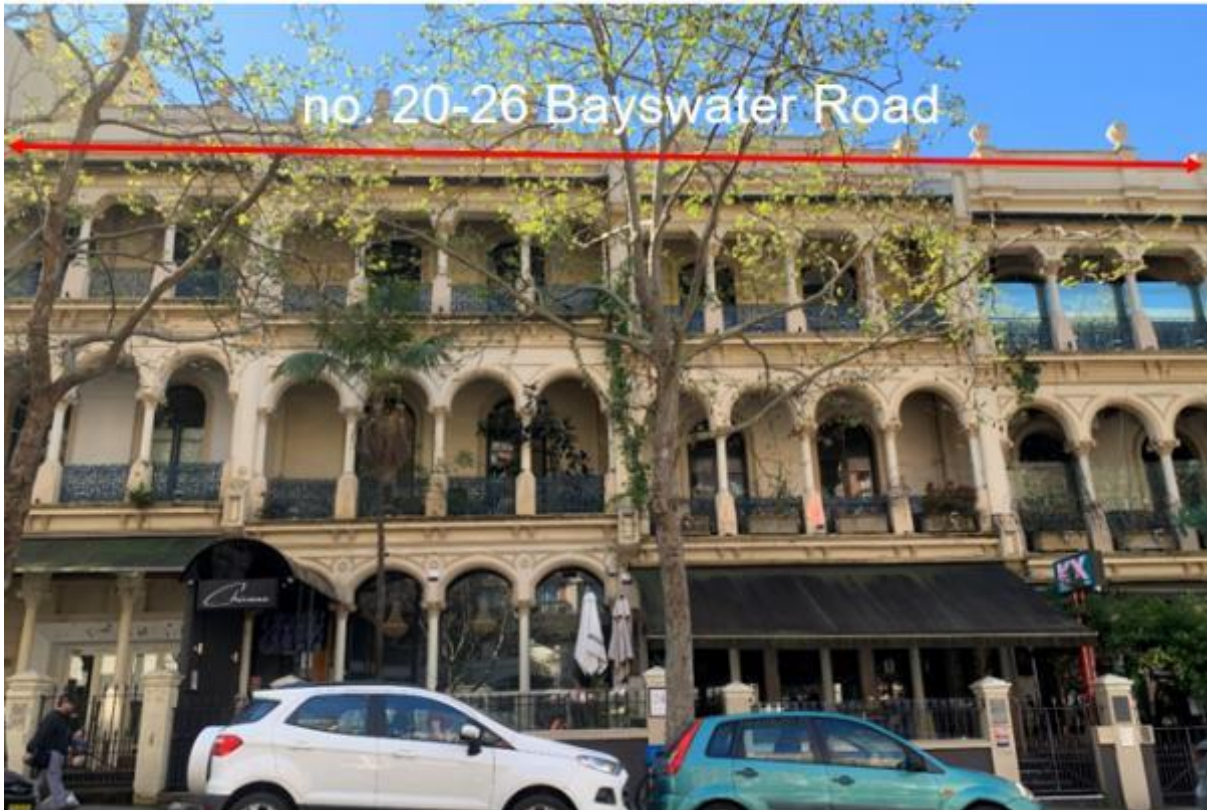


Figure 13: Adjoining site to the west at 20-26 Bayswater Road, known as Mansions Terraces group



Figure 14: 5-storey mixed use development at the western end of the street block



Figure 15: 8-storey mixed use development on the southern side of Bayswater Road



Figure 16: Bayswater Road looking west from the front of the site



Figure 17: Bayswater Road looking east from the front of the site

## History relevant to the development application

### Development applications

15. The following application is relevant to the current proposal:
  - **PDA/2022/201** – Pre-DA advice was issued on 19 December 2022 for substantial alterations and additions to the existing buildings for use as a mixed-use development. The current application is generally consistent with PDA/2022/201 and the advice given for the proposal.
16. The existing buildings have also had a variety of uses over the years, with applications being approved for uses such as restaurants, bars, nightclubs, dance/cabaret theatre, yoga studio, veterinary hospital, physiotherapy/gym and commercial offices.

### Compliance action

17. The site is not currently subject to any compliance action.



### Application chronology and amendments

18. Following a detailed assessment of the proposed development by various Council officers, various external agencies and by the Design Advisory Panel (residential subcommittee), it was recommended that the applicant withdraw the development application (DA) and meet with Council officers before submitting a new application.
19. Council officers raised concerns that various elements of the proposed development were inconsistent with the heritage significance of the buildings and unnecessarily resulted in loss of heritage fabric. Council officers identified various shortcomings with the submitted Conservation Management Plan and disagreed with the applicant's assertion that the heritage listing for 28-30 was likely a mistake. Furthermore, Council officers raised concerns that the proposal did not exhibit design excellence due to its bulk, massing and modulation, lack of architectural detailing and environmental impacts.
20. **29 August 2023** - To ensure that the proposal achieved the best development outcome for the site, a letter was sent to the applicant outlining the amended plans and additional information that would be required as part of a future DA. Prior to finalising and submitting any revised plans, the applicant was invited to meet with Council officers to discuss any amended proposal. The letter requested that the development be redesigned to better fit with the significance of the terrace group and included suggested design amendments for the applicant's investigation.
21. The key design changes requested by Council officers included a reduction in the extent of excavation and the amount of demolition, retention and reinstatement of significant heritage fabric, redesign of the front and rear dormers, deletion of unsympathetic additions to the terraces, redesign of the new corner building to address bulk and scale issues, relocation and redesign of the communal open space, increased building separation to development to the north, elimination of visual privacy impacts, increased solar access to living rooms and private open spaces, additional tree planting, and deletion of the active retail frontage to Mansion Lane.

The key additional information requested by Council officers included an updated clause 4.6 variation, updated plans to verify the existing ground level and extent of the height exceedance, additional elevation and section plans, updated GFA calculations, additional acoustic testing, details of any acoustic upgrade works or noise attenuation measures, details of all ventilation requirements and window operability, a detailed material and finishes schedule, updated BASIX and NatHERS certificates, a preliminary public art plan, servicing details, a structural engineers statement, an updated waste management plan, a tree pruning specification report and root investigation report, and a detailed site contamination report.

22. **November 2023** - While the applicant did not withdraw the DA, they did provide preliminary sketch plans to Council officers. Given that the preliminary plans demonstrated a genuine willingness by the applicant to address the concerns raised, the applicant was granted an extension of time to amend their proposal.
23. **December 2023 to February 2024** - Council staff met with the applicant and their architect a number of times to discuss draft concept designs. Following a number of iterations the applicant was advised that the draft concept plans had generally responded to Council officer's concerns and that the plans should therefore be amended and resubmitted together with the additional information outlined in Council's letter of 29 August 2023.

24. **February 2024 to June 2024** - Following months of email correspondence between Council officers and the applicant, the applicant submitted a revised proposal on 7 June 2024 with some of the requested supporting documentation. Following review of the documentation, however, Council's assessing planner found that many of the items had not been addressed. Further correspondence was sent to the applicant requesting that all outstanding information be submitted.
25. **June 2024 to October 2024** - The applicant continued to submit revised plans and supporting documentation, which was continually assessed by Council officers and ongoing feedback was provided. The final outstanding item required to complete the assessment was submitted to Council on 28 October 2024.
26. Key changes made to the proposal since lodgement of the DA include:
  - a change to the dwelling mix from 4 x 1-bedroom, 9 x 2-bedroom and 9 x 3-bedroom units to 6 x 1-bedroom, 7 x 2-bedroom and 9 x 3-bedroom units
  - redesign of the proposed basement footprint (sub ground level), including increased setbacks to the eastern boundary and reduced excavation to avoid the SRZ of the Ward Avenue existing street trees
  - redesign of the lower ground level, including deletion of the proposed restaurant and associated excavation under the principal building forms of the 4 terraces at 28-30 and 32-34 Bayswater Road
  - reconstruction, using salvaged bricks, of the rear wings and breezeways at the rear of 28-30 and 32-34 Bayswater Road, including reconstruction of crucial structural elements at the ground level
  - reconstruction of the shopfront of 28-30 Bayswater Road in accordance with an historic 1922 plan
  - deletion of the replacement enclosure within the front setback of 32-34 Bayswater Road to allow reinstatement of the open front courtyards and increased deep soil zones
  - reinstatement of the first-floor verandah of 28-30 Bayswater Road and of the ground and first-floor verandahs of 32-34 Bayswater Road as shown in 1860s photography, including the use of traditional French doors and cast-iron balcony railings
  - increased retention of interior elements, including amendments to the residential terrace lifts to retain party walls and restoration of 2 of the 4 sets of internal staircases, including the staircase that was subject to unauthorised demolition works (see the 'Compliance' section of this report for details)
  - amendments to the front dormers and rear roof additions to comply with the DCP
  - deletion of the projecting balconies at the rear of 30 and 32 Bayswater Road, including revised apartment layouts to accommodate inset balconies/ wintergarden within the building envelope
  - replacement of the apartment style dwellings at the rear of 28-30 Bayswater Road with 2-storey town houses, including new internal courtyards

- increased setbacks and revised apartment layouts to Ward Avenue, to reduce the amount of pruning required to the Ward Avenue existing street trees
  - increased setbacks and revised apartment and balcony layouts to Mansion Lane
  - reconfiguration of the apartments facing Mansion Lane to provide more north facing living rooms
  - reconfiguration of the ground floor level, including removal of the active retail frontage along Mansion Lane and provision of 2 separate entries to the townhouses
  - deletion of the private open space and swimming pool at Level 3 and provision of a larger communal open space area
  - deletion of the communal open space at Level 1 to allow retention of the rear wings, and provision of a new communal open space area at Level 4
  - redesign of the proposed new building at 36 Bayswater Road (corner of Bayswater Road and Ward Ave), including replacement of the curved form with a more regularised form, deletion of the projecting balconies to Bayswater Road, introduction of a setback at the upper 2 levels, and a decrease in height by 0.34m
  - relocation of the air conditioning condensers to allow a traditional pitched roof form to the townhouse style apartments at the rear of the heritage item
  - allowances for acoustic attenuation measures
  - revised materials and finishes, including the deletion of the charcoal and white brickwork.
27. While the drawings have been amended on several occasions during the course of the assessment process, there are matters that continue to remain outstanding or are required in response to the updated drawings. The matters not yet adequately addressed include:
- details of the operability of all windows provided with a privacy screen (i.e. W05 and W07 to Unit G02, W17 and W19 to Unit 104, and W13 and W15 to Unit 204). These windows are required to provide effective ventilation and must not conflict with the proposed screening. As such, awning windows as proposed for W07, W19 and W15 may not be appropriate
  - details of the operability of all internal facing windows, including those windows not shown on the internal elevation plans. At least one window to the internal courtyards of Townhouses 1 and 2 must be operable for cross-ventilation compliance
  - submission of an amended landscape proposal which includes:
    - provision of a bio-solar roof (i.e. green roof integrated with solar panels) to the roof level of 36 Bayswater Road (drawing DA-105)
    - relocation of the Level 3 communal open space privacy screen to the outside edge of the planter bed to allow unrestricted maintenance access

- reduction of the size of the rooftop awning (drawing DA-105) to accommodate additional tree planting within the planter box located to the north of the Level 4 fire stairs
  - widening of the Level 3 planter (drawing DA-103), in the south-western corner of the communal open space, to accommodate the proposed tree planting
  - a landscape maintenance strategy clarifying the landscaping responsibilities and maintenance access arrangements
  - repositioning of the trees within the Level 3 communal open space planter boxes
  - an updated plant schedule which includes the pot sizes for each plant species
  - details of all courtyard fencing.
- a hydraulic plan demonstrating that all works will be outside of the SRZ of the Ward Avenue existing street trees
  - an updated pruning specification report demonstrating that the Ward Avenue awnings will not impact on the canopy of the Ward Avenue existing street trees
  - amended plans or a construction methodology incorporating a cantilevered design for any proposed works or excavation that is located outside of the existing building footprint along the Ward Avenue frontage
  - amended plans which provide adjusted entries off Mansions Lane in compliance with Council's flood planning level
  - details of the air conditioning condensers for the retained terraces and the retail tenancies within the basement
  - an updated waste management plan
  - widening of the waste collection doorway fronting Mansion Lane to a minimum of 1200mm
  - redesign of the driveway gradient and submission of a vertical swept path analysis demonstrating that there will be no ground scraping by vehicles
  - a public art plan.
28. Appropriate conditions are recommended to address these outstanding matters.
29. The final development application (DA) submission, as amended by the revisions summarised above, is the subject of this assessment report.

## Proposed development

30. The application seeks consent for 'shop top housing', incorporating 22 residential units above 4 sub ground, lower ground and ground level commercial tenancies. The proposal includes demolition of existing structures, excavation for 2 new basement levels, substantial alterations and additions to 4 existing terraces, and construction of a new building.
31. While the primary building form of the heritage listed terraces (Number 28-30) and the contributory terraces (Number 32-34) fronting Bayswater Road will be retained and restored, the remaining buildings will be demolished and redeveloped with a new building to be constructed along Mansion Lane and at 36 Bayswater Road.
32. Numbers 28-30 and 32-34 Bayswater Road will include 2 to 3 levels of apartments above the ground floor Bayswater Road commercial tenancies, while 36 Bayswater Road includes 5 levels of apartments above the ground floor Ward Avenue commercial tenancies.
33. In its amended form, the application seeks consent for the following:
  - demolition of existing buildings and structures including:
    - demolition of non-original elements to the front of 28-30 and 32-34 Bayswater Road
    - demolition of the existing structures at the rear of 28-30 and 32-34 Bayswater Road, so that only the primary building form of the terraces is retained
    - full demolition of the existing building at 36 Bayswater Road
  - excavation to create new basement levels
  - new and refurbished retail tenancies including:
    - a new 307sqm retail tenancy at the sub ground level (earmarked as a future basement bar)
    - two new retail tenancies (63sqm and 66sqm) at the lower ground level of number 36 with frontage to Ward Avenue
    - a refurbished 564sqm retail tenancy at the ground level of the terraces with frontage to Bayswater Road
  - alterations and additions to the primary building form of the existing terraces including:
    - Internal demolition and restoration works
    - Reconstruction of the rear wings using salvaged bricks
    - 6 x single level terrace apartments (i.e. 4 x 3-bed units and 2 x 2-bed units)
  - construction of 16 new apartments including:

- 6 x 1-bed units
  - 5 x 2-bed units (including 2 x 2-storey townhouse style apartments at the rear of the heritage listed terraces)
  - 5 x 3-bed units
  - provision of 354sqm of landscaped communal open space
  - construction of vehicular parking at the lower ground level, accessed from Mansions Lane, comprising 13 car spaces, a service bay and 1 motorbike space
  - provision of 46 bicycle parking and end-of-trip facilities
  - new building services, including:
    - fire booster pump fronting Ward Avenue
    - substation fronting Mansion Lane
    - basement plant rooms and OSD tank
    - separate retail and residential bin storage areas
    - rooftop air conditioning condensers.
    - roof-top solar panels to 36 Bayswater Road.
34. The retail tenancy at the sub-ground level is earmarked as a bar, while the tenancies at the lower-ground and ground floor levels are anticipated to be occupied by uses such as food and drink premises or active retail premises. Separate development applications will be lodged for the use and fit-out of these retail spaces. This will include the submission of a plan of management for any late-night or licensed premises.
35. Separate applications will also be required for any signage not being exempt or complying development or any further subdivision of the site. Conditions are recommended to address these matters.
36. Select plans and elevations of the proposed development are provided below. Additional plans are available at Attachment B.

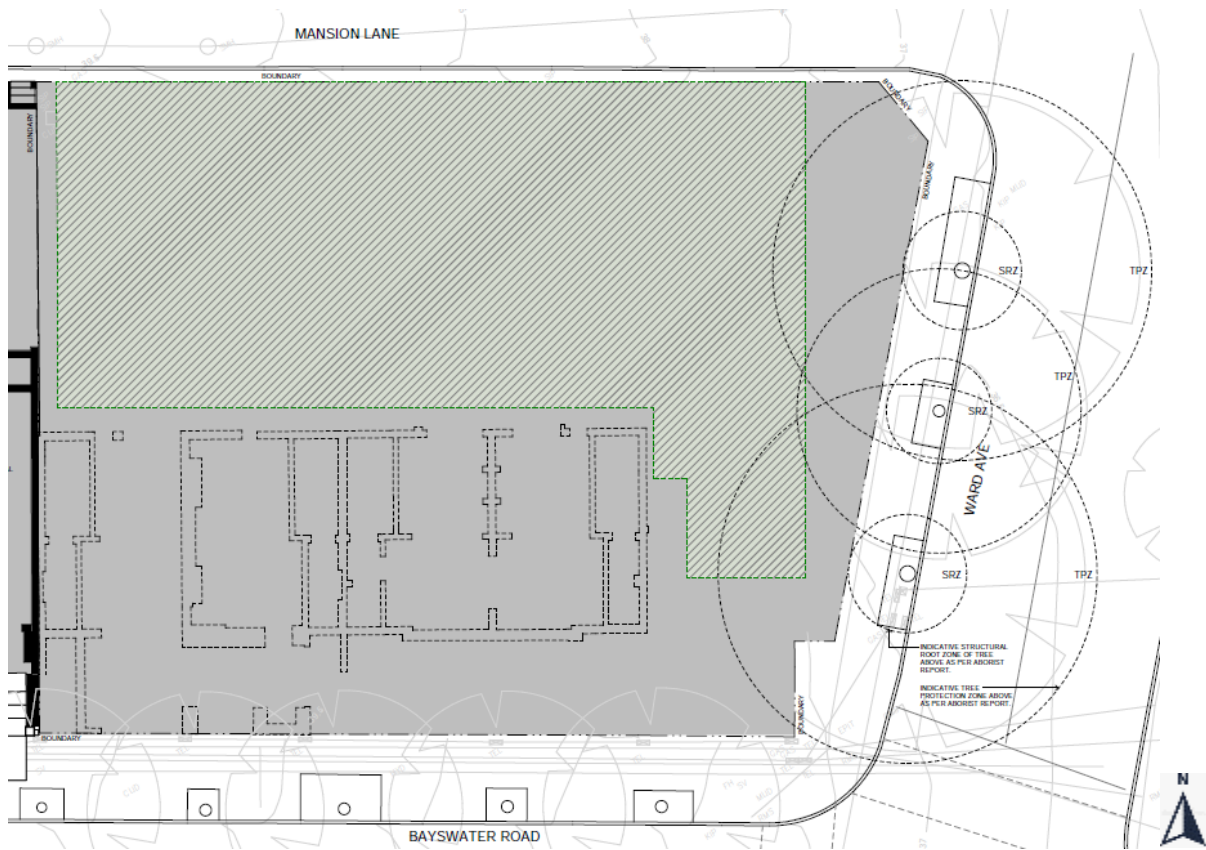


Figure 18: Excavation plan

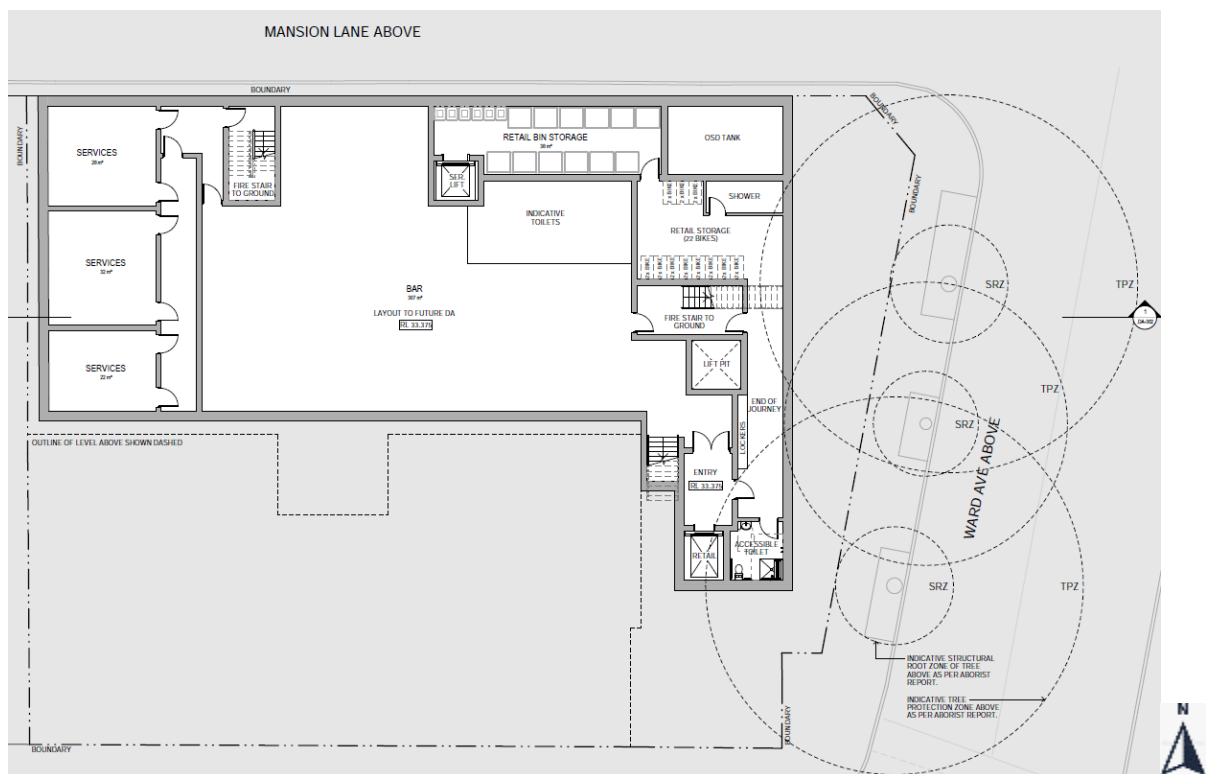


Figure 19: Sub-ground floor plan





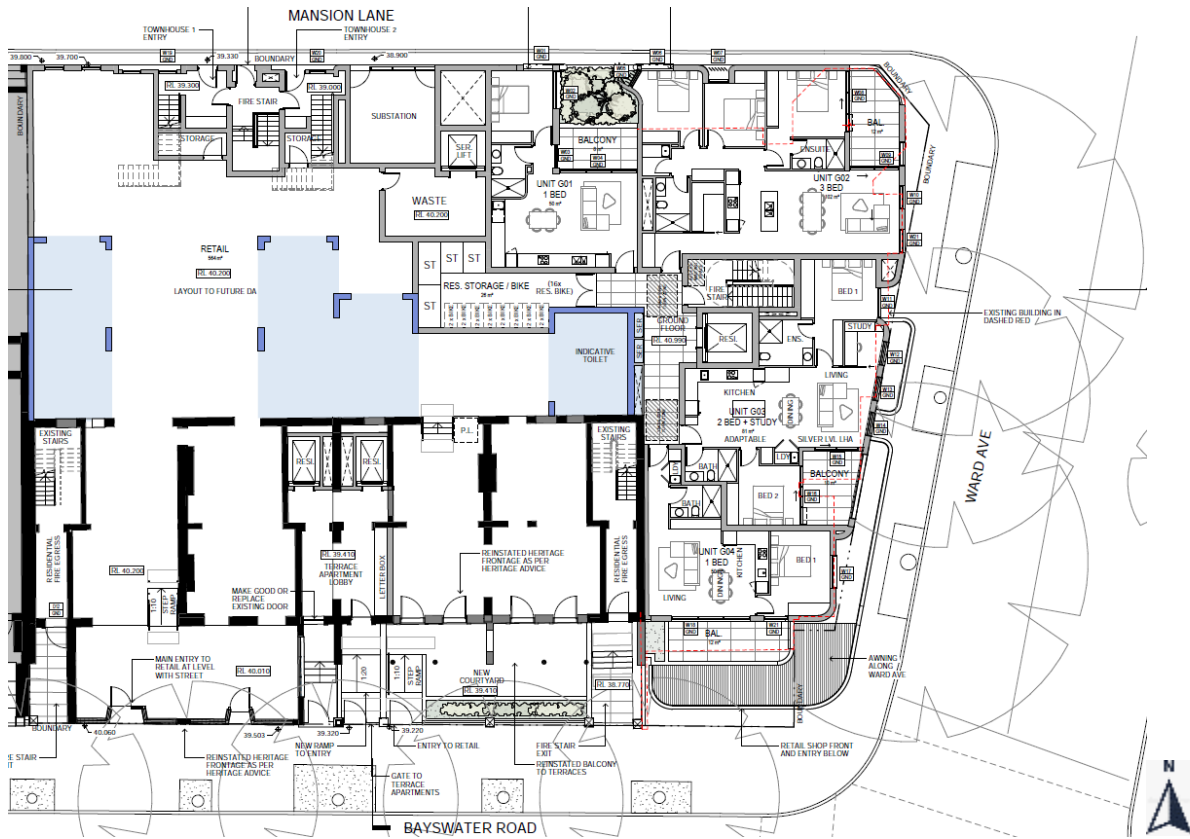


Figure 21: Ground floor plan

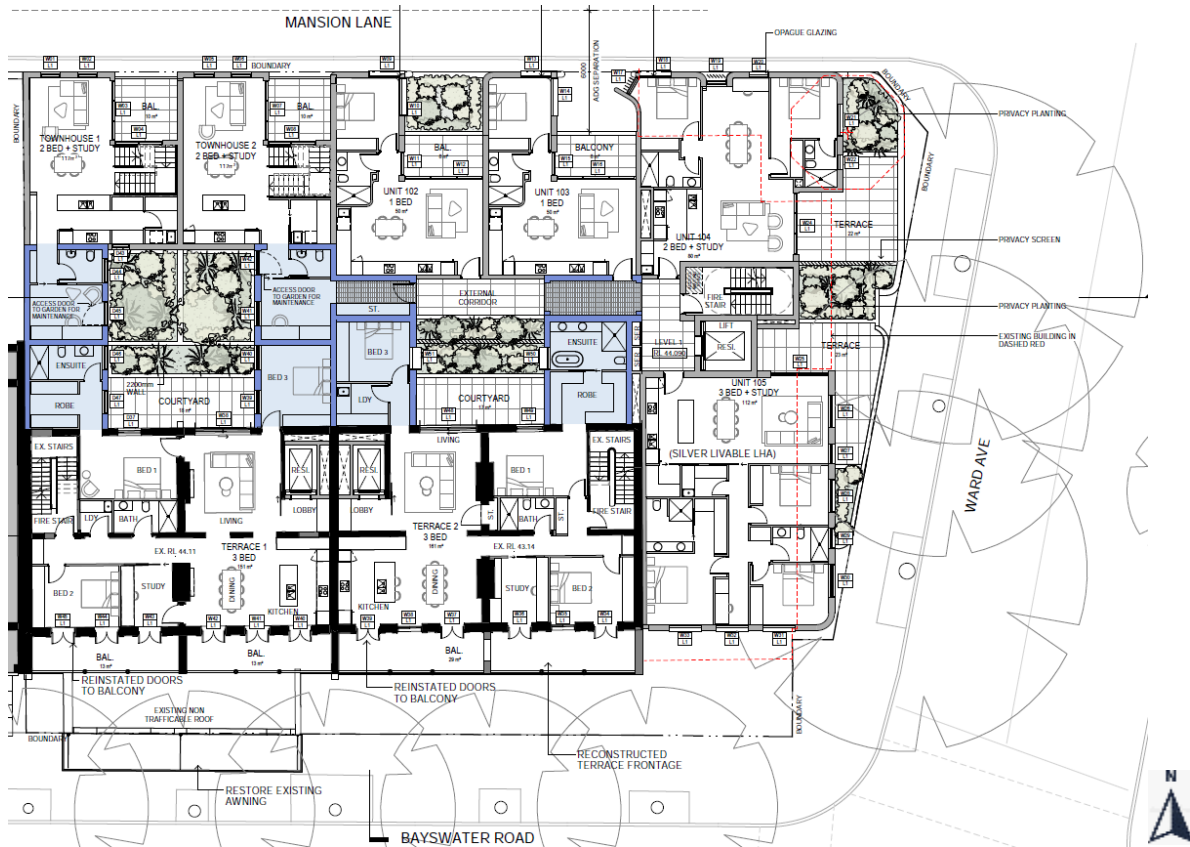


Figure 22: Level 1 floor plan



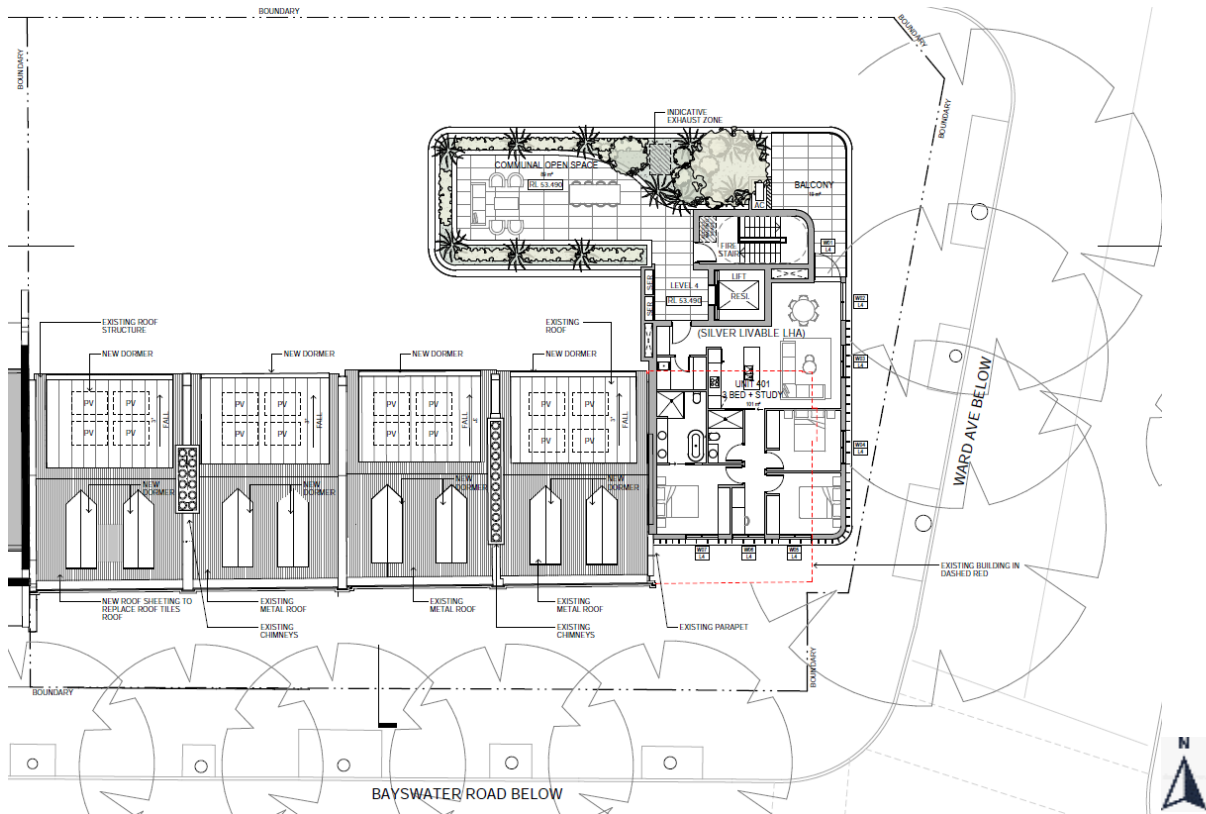


Figure 25: Level 4 floor plan

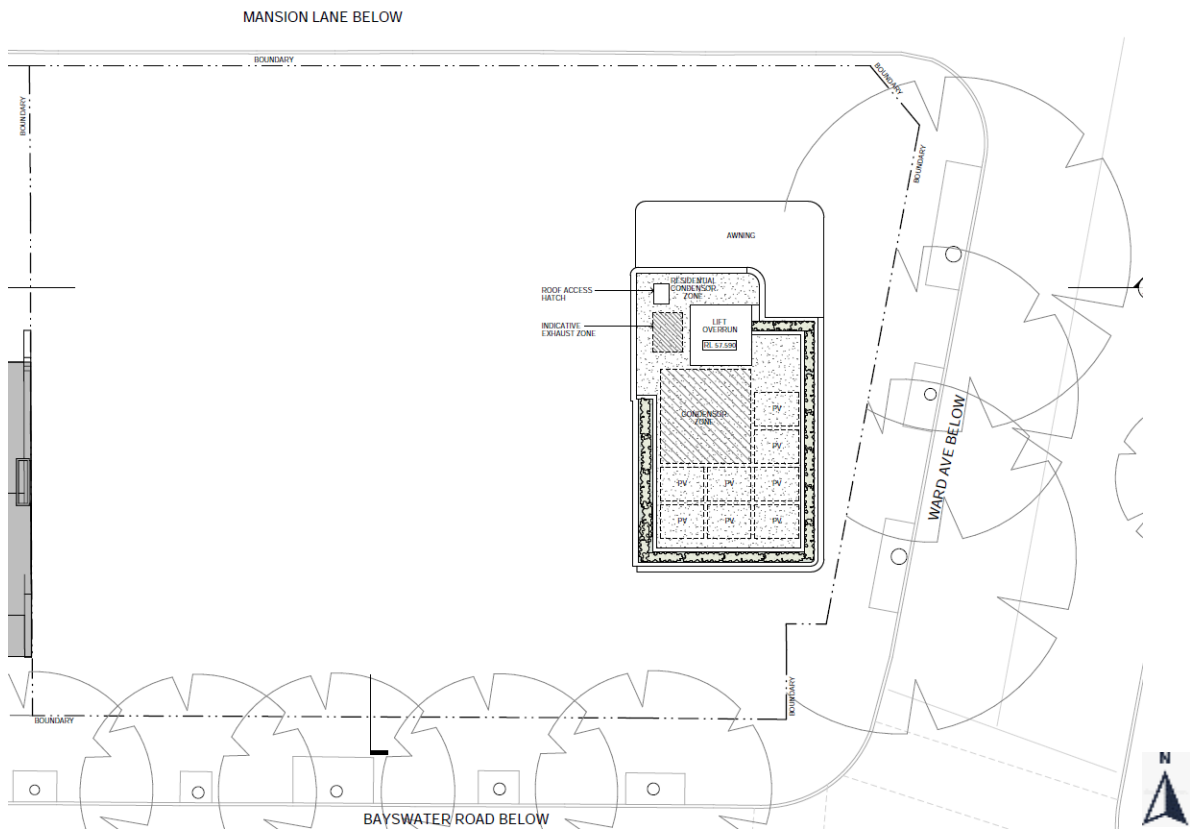


Figure 26: Roof plan



Figure 27: Bayswater Road - south elevation



Figure 28: Ward Avenue - east elevation



Figure 29: Mansion Lane - north elevation

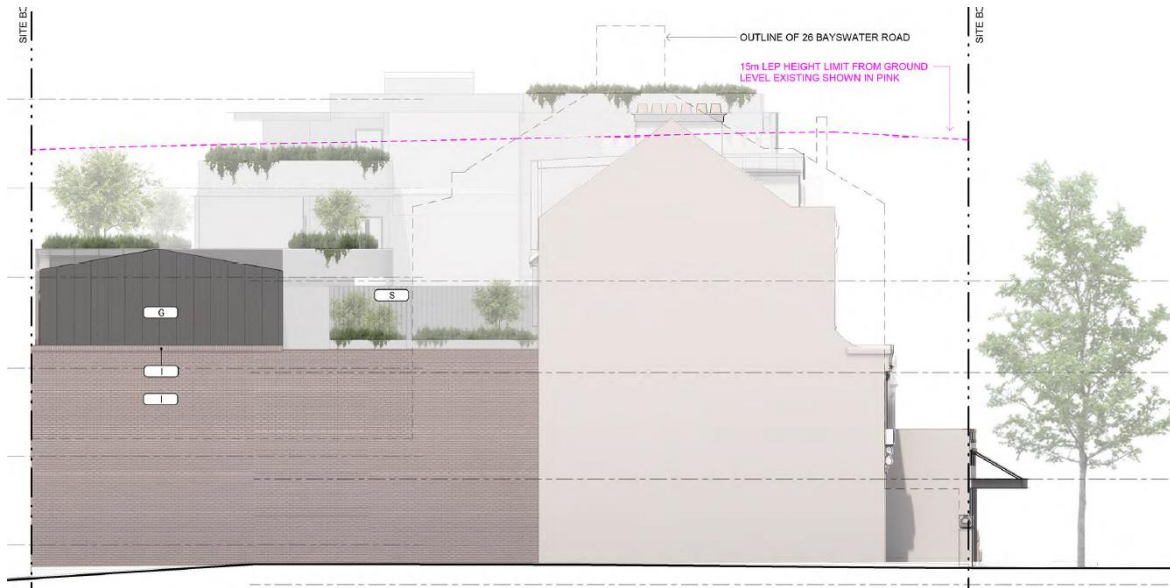


Figure 30: West elevation

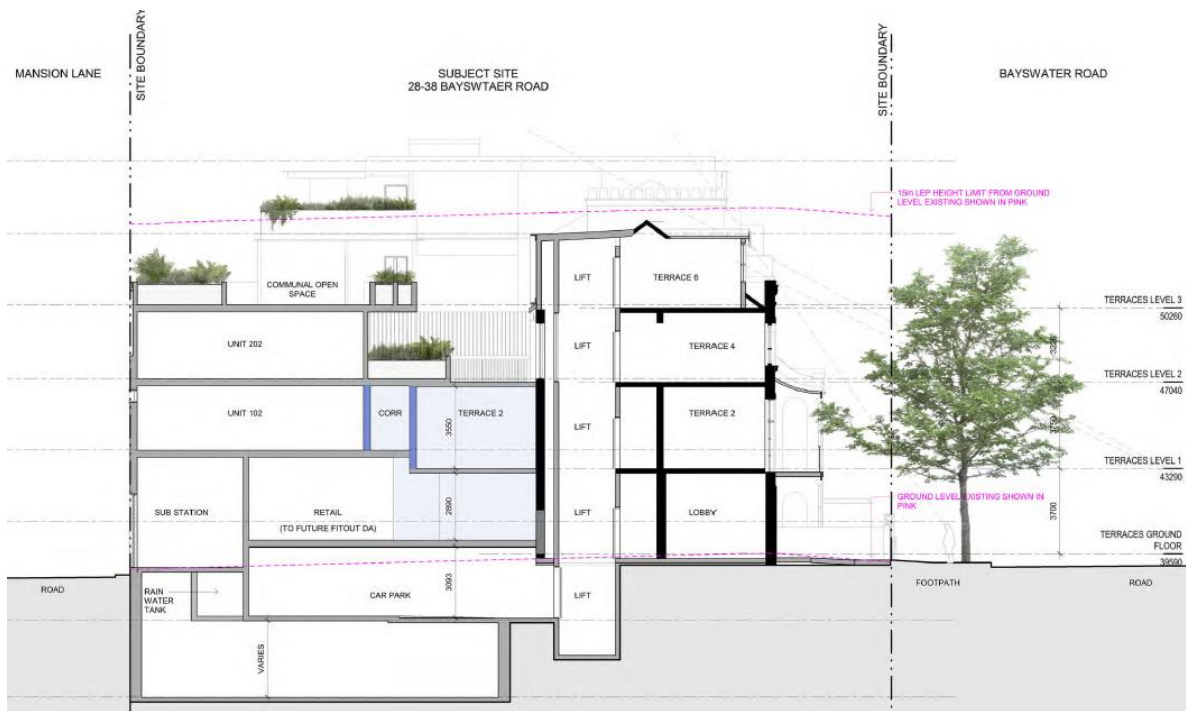


Figure 31: Section plan

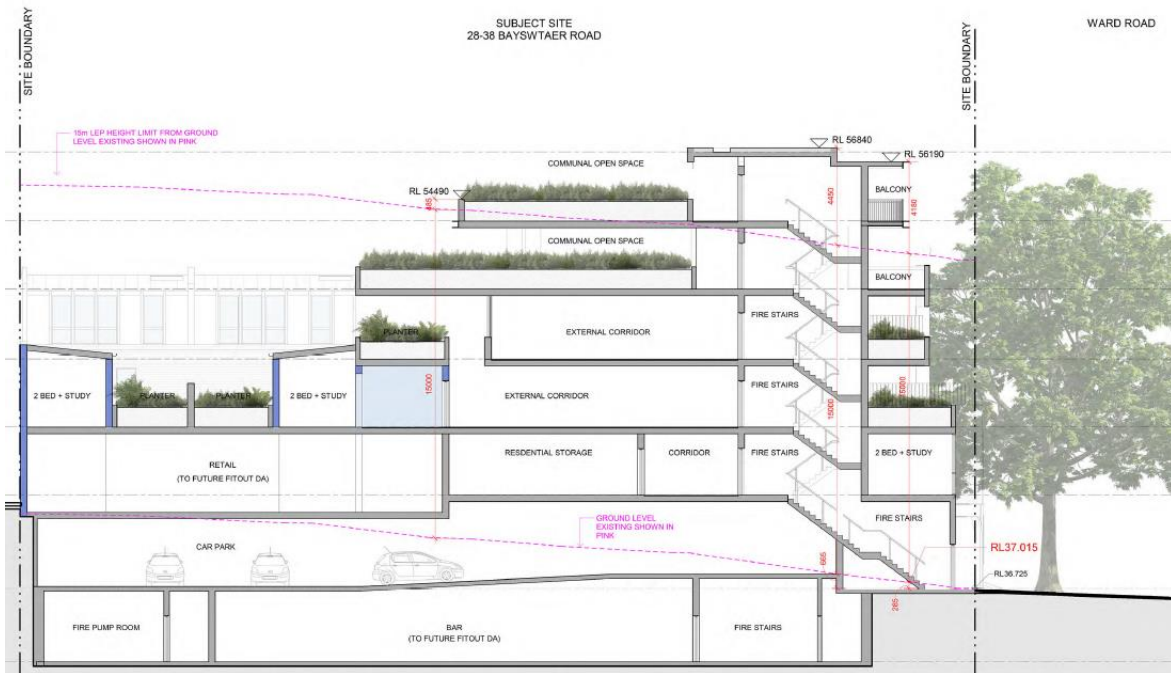


Figure 32: Section plan



Figure 33: Bayswater Road photomontage (in winter)



Figure 34: Ward Avenue photomontage

## Assessment

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

## State Environmental Planning Policies

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

38. 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.
39. A preliminary site investigation (PSI), which included borehole sampling, has been undertaken. The soil and groundwater samples revealed that elevated concentrations of contaminants were present. The PSI recommended that a detailed site contamination investigation (DSI) be undertaken.
40. The DSI has identified that the on-site fill soil material does not comply with the adopted investigation levels applicable for residential development as it contains carcinogenic polycyclic aromatic hydrocarbons, total recoverable hydrocarbons and asbestos-containing material.
41. The DSI recommends that all hazardous materials be appropriately managed during demolition, that appropriate inspections and clearances be undertaken during the demolition process, and that more intrusive sampling and analysis be undertaken post demolition. Recommendations have also been made within the DSI in relation to the exportation and importation of fill and landscaping materials.

42. The Council's Environmental Health Unit has reviewed the information and has recommended conditions to ensure that the DSI recommendations are complied with and that the site is appropriately remediated. A condition has also been recommended requiring that a site audit statement, confirming that the site has been remediated and is suitable for the proposed use, be obtained prior to the issue of any construction certificate for the built form.
43. Subject to the recommended conditions, Council's Environmental Health Unit is satisfied that the site can be made suitable for the proposed use.

#### **State Environmental Planning Policy (Housing) 2021 – Chapter 4 Design of residential apartment development**

44. The aim of chapter 4 of the Housing SEPP is to improve the design quality of residential apartment development in New South Wales. The chapter applies to the subject development as it comprises shop-top housing that is at least 3 storeys and contains a minimum of 4 dwellings.
45. Chapter 4 states that development consent must not be granted unless the consent authority has taken into consideration a number of matters relating to design quality, including the design principles for residential apartment development as set out in Schedule 9 of the SEPP, and the Apartment Design Guide (ADG).
46. A design verification statement (DVS), prepared by Vince Squillace (architect registration number: NSW 6468), has been submitted with the application. The DVS satisfies the requirements set out in clause 29(2) of the Environmental Planning and Assessment Regulation 2021. Accompanying the DVS is an assessment against the design principles in Schedule 9 of the SEPP and an assessment against the relevant provisions of the ADG.
47. An assessment of the proposal against the design principles in Schedule 9 is provided as follows:
  - (a) Principle 1: Context and neighbourhood character
    - The subject site is located within the suburb of Potts Point approximately 150 metres east of the Kings Cross Train Station. The site is part of a tree-lined block, has 3 street frontages and is adjacent to several heritage significant buildings.
    - The surrounding context comprises of a dense eclectic mix of building types, including heritage-listed mid-Victorian terraces, retail and commercial premises, nightlife/entertainment venues and a more recently constructed 9-storey mixed-use building. Fronting Mansion Lane is a series of rear courtyards and service areas for those properties fronting Bayswater Road and Kellett Street. The buildings in immediate proximity to the site are of various heights, scales and architectural languages.
    - The proposal retains and enhances the existing heritage building fabric of 28-30 and 32-34, while proposing contemporary and contextual-fitting additions to the rear of the retained buildings.



- In relation to the new building at 36, the proposal responds to the bulk and scale of the retained terraces and of the adjacent sites to the north and west, by redistributing a proportion of the site's 'permitted' building envelope to the corner of Bayswater Road and Ward Ave where it is more appropriate in the context of the higher buildings on the adjacent corners.
- The proposed development, including the alterations, additions and upgrades to the terraces and the new building, will provide a positive contribution to both the existing and future public domain.
- The site is well-suited for the proposed new and reinvigorated residential dwellings and retail tenancies. The proposal responds appropriately to its context and to the heritage constraints of the site, while contributing positively to the current and future mixed-use character of the neighbourhood.

(b) Principle 2: Built form and scale

- The DA proposes to retain, adapt and restore the primary building forms of the existing terraces and add new dormers to the front and rear of the terraces. A new building is proposed at the rear of the terraces along Mansion Lane. The new building and the existing terraces will be physically connected by the rear terrace wings, which will be reconstructed using the salvaged bricks. A new 6-storey building replaces the existing 4-storey building on the corner of Ward Avenue.
- The immediate locality has no distinct built form pattern, with the buildings varying in height, scale, mass, architectural style and land use.
- The site is subject to maximum height controls in the Sydney LEP 2012 and Sydney DCP 2012 of 15 metres and 3 storeys respectively. The proposal seeks a departure to the 15m building height control, noting the existing building already exceeds the LEP height development standard. Notwithstanding the departure to the height standard and the non-compliance with the 3-storey height control, the proposal responds appropriately to its context in terms its height.
- The design for the new apartments takes inspiration from the proportions and materiality of the existing brick buildings common throughout Potts Point. The proposed design is sympathetic to the existing built form and scale of the surrounding context, with the impact of the visual scale being reduced by applying the following key design features:
- Providing townhouse-style apartments with pitched roofs at the rear of and adjacent to the heritage items.
- Reducing the mass along the northern boundary of the site fronting Mansion Lane.
- Relocating the mass from the north-western corner of the site to the south-eastern corner of the site where the taller mass is more closely aligned with the 8-9 storey buildings at the other 3 corners of the Ward Avenue/Bayswater Road intersection.

- Providing a setback to the upper 2 levels at the corner to ensure that the new building does not compete with and provides an appropriate scale next to the retained terraces.
- Providing front and rear roof additions to the terraces that do not increase the existing height of the buildings, that complement the scale of the existing buildings and that do not significantly alter the existing bulk of the terrace buildings when viewed from Bayswater Road.
- Overall, the proposal is sympathetic to the existing heritage significant terraces and will have no detrimental visual bulk or scale impacts to the surrounding development.

(c) Principle 3: Density

- The proposal is located in a E1 'Local Centre' zone with an FSR of 2.5:1.
- The proposal complies with the maximum permitted FSR that applies to the site and provides an overall density that is consistent with that envisaged under the relevant planning controls.
- A portion of the GFA is allocated underground, which further reduces the impact of the density of the development.
- The proposal respects the existing character and scale of the site, with the densest part of the development contained to 36 Bayswater Road away from the heritage item and the more sensitive parts of the site.
- The site is located in a commercial area with good access to jobs, public transport and infrastructure. The proposal seeks to revert the existing commercial floor space on the upper floor levels to their original residential use. Given the heritage constraints of the site, the proposed density is appropriate.

(d) Principle 4: Sustainability

- The submitted BASIX and NatHERS certificates confirm that the proposed development will meet the NSW government's requirements for sustainability.
- Although the main orientation of the development is to the south along Bayswater Road, the development has a predominant northerly aspect. The layered approach further enables the apartments to receive adequate levels of solar access and natural cross ventilation.
- The proposal seeks to retain and reuse a significant part of the existing structural elements of the terraces to further strengthen the sustainability of the project. The proposal also uses energy efficient building materials and low water use plant species. Energy efficient appliances and fixtures will be installed to minimise water and electricity consumption.

(e) Principle 5: Landscape

- The inner-city urban context in which this site is located provides a challenging opportunity for the provision of landscaping across the site.

- With the exception of a small strip of deep soil planting at the front of 32-34, the proposed landscaping will all be provided on-structure. The majority of the proposed landscaping is located within the Level 3 and Level 4 communal open space areas, which also include appropriate soil depths for tree planting. The proposed on-structure planting and increased tree canopy benefit the future occupants of the development and visually benefit the outlook from adjoining properties where their view lines are directed back into the site.
  - Each unit is provided with a private open space area which immediately adjoins the internal living area and takes advantage of the site's orientation and outlook. Landscaped planters adjoin several of the private balconies for increased amenity and outlook.
  - The proposal has also been designed to ensure that the significant street trees along Bayswater Road and Ward Avenue will be retained and protected.
- (f) Principle 6: Amenity
- A high level of amenity is provided through the provision of larger than minimum unit areas and layouts, adequate access to sunlight and natural cross ventilation, high levels of visual and acoustic privacy, as well as well-designed communal open space areas. Each apartment has storage equal to, or in excess of, the ADG requirements.
  - The majority of the units have a northerly aspect to maximise solar access and are dual aspect to maximise natural cross ventilation. In addition, residents have access to large openings and generously sized balcony areas.
  - The units have been designed to maximise visual and acoustic privacy and where required, include appropriate measures, including horizontal louvres, to address potential privacy impacts.
- (g) Principle 7: Safety
- The proposal is generally consistent with the relevant principles of Crime Prevention through Environmental Design (CPTED).
  - Safety and security are promoted internally and for the public domain with clear, identifiable entry points and new retail shopfronts to Bayswater Road and Ward Avenue.
  - The main entrance to the residential lobbies is located on Bayswater Road for the terrace units and on Ward Avenue for the majority of units. The 2 townhouse apartments are provided with separate entrances from Mansion Lane.
  - A clear distinction has been made between the public and private spaces, with the residential entries being segregated from the ground level retail tenancies. Where required, the residential entries will be installed with security cameras and intercoms.

- Secure basement parking is provided, with access via direct lifts to all apartments. Casual passive surveillance of all exterior roads and the public domain is aided by apartments that overlook all 3 street frontages.

(h) Principle 8: Housing diversity and social interaction

- A range of apartment sizes and types are provided to suit the needs of the future community and to cater for a range of buyers and renters. The apartment sizes range from 1-bedroom units to large 3-bedroom units. A study room or area to facilitate working from home is included to half (11) of the apartments.
- The proposal will provide 20 additional dwellings in an area where there is a strong demand for increased dwelling yields. In addition to the well-design communal open space, the site is also in close proximity to public open space, public transport and other local facilities which provide opportunities for social interaction.

(i) Principle 9: Aesthetics

- The proposal provides high-quality buildings that provide a positive contribution to the streetscape and the broader Potts Point area. The retained Victorian terraces are being restored and adapted, with the new additions to these terraces being clearly legible, complimentary, and reversible.
- The proposed new additions at the rear of the site and the new building on the corner of Ward Avenue provide a built form that has good proportions and a balanced composition that complements the retained heritage significant elements of the site. The existing unsympathetic elements at the rear of the building will be demolished and replaced with a modern, clean aesthetic along the laneway.
- The architectural expression and materiality of the new building draws inspiration from the various materials textures and colours of the heritage conservation area and interprets these elements in a contemporary manner. The new building provides a fine grain response to the streetscape in keeping with the subdivision pattern and building proportions of Potts Point.

48. An assessment of the proposal against the relevant provisions of the ADG is provided below.

3A Site analysis	Compliance	Comment
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Yes	A site analysis, which includes the opportunities and constraints of the site and details of the surrounding development, accompanies the application.

3B Orientation	Compliance	Comment
<p>Building types and layouts respond to the streetscape and site while optimising solar access within the development.</p> <p>Overshadowing of neighbouring properties is minimised during mid-winter.</p>	Yes	<p>The layout of the apartments responds appropriately to the streetscape and to the north-south orientation of the site, while optimising solar access to the internal living areas and private open space areas.</p> <p>The proposal does not result in any unreasonable overshadowing impacts to neighbouring properties, with the majority of the additional shadows falling on Bayswater Road and Ward Road.</p>

3C Public domain interface	Compliance	Comment
<p>Transition between private and public domain is achieved without compromising safety and security.</p> <p>Amenity of the public domain is retained and enhanced.</p>	Yes	<p>Secure residential entries are proposed from each of the 3 street frontages. The residential entries are segregated from the retail activities and are well defined.</p> <p>Each streetscape, including along Mansion Lane, will be enhanced by the proposal. A new activated street frontage will also be provided to Ward Avenue which will increase the amenity of the public domain.</p>

3D Communal and public open space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	354sqm of communal open space is proposed, which is equivalent to 25.4% of the site area.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	Yes	Unrestricted solar access is provided to the Level 3 and Level 4 communal open spaces between 9am and 3pm on 21 June. See Figure 54.

3E Deep soil zones	Compliance	Comment
<p>Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m.</p>	No	<p>The proposed development does not provide any deep soil zones.</p> <p>This is acceptable given the urban context and that there is limited space for deep soil at ground level.</p> <p>See further details in the 'Discussion' section of this report.</p>

3F Visual privacy	Compliance	Comment
<p>Minimum required separation distances from windows and balconies to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys):</p> <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> <li>• Up to 25m (5-8 storeys)</li> <li>• 9m between habitable rooms / balconies</li> <li>• 4.5m between non-habitable rooms</li> <li>• No separation is required between blank walls.</li> </ul>	Yes	<p>The ADG does not specify a minimum setback to a street frontage.</p> <p>While the subject site has 3 street frontages, a combination of recessed balconies and window screening has been provided to maintain an acceptable level of visual privacy to the existing and approved residential properties at 19 and 21 Kellett Street on the northern side of the narrow Mansion Lane.</p> <p>The proposal provides a zero setback to the western site boundary to 26 Bayswater Road, which is consistent with the existing setback pattern.</p> <p>See further details in the 'Discussion' section of this report.</p>
<p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.</p>	Yes	<p>Habitable rooms are appropriately separated from common circulation spaces.</p>

3G Pedestrian access and entries	Compliance	Comment
<p>Building entries and pedestrian access connects to and addresses the public domain.</p> <p>Access, entries and pathways are accessible and easy to identify.</p>	Yes	<p>The proposal includes 2 residential lobbies, one for the new apartments along Ward Avenue and the other for the terrace apartments along Bayswater Road. The 2 townhouse style apartments are provided with individual entry points from Mansion Lane.</p> <p>The residential entries and the shared vehicular access from Mansion Lane address the public domain and are clearly identifiable.</p>

3H Vehicle access	Compliance	Comment
<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	Yes	<p>Vehicle access to the proposed basement parking spaces, the loading bay and waste collection point, is from the rear service lane.</p>

3J Bicycle and car parking	Compliance	Comment
<ul style="list-style-type: none"> <li>On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area, the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</li> </ul> <p>Parking and facilities are provided for other modes of transport.</p>	Yes	<p>No car parking spaces are required, given that the City of Sydney's planning controls do not specify a minimum requirement.</p> <p>The proposal includes 12 car spaces (including 2 adaptable), plus a service vehicle space, a car share space and a motorbike space, which complies with the maximum park requirement.</p> <p>Bicycle parking is provided for both the retail and residential uses in accordance with the DCP.</p>

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No	While the applicant's DA documentation indicates that 16 of the 22 apartments (73%) receive a minimum of 2 hours' direct sunlight during mid-winter, Council officers have assessed that 14 of the 22 apartments (63.6%) comply with the ADG requirement.  See further details in the 'Discussion' section of this report.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	3 of the 22 apartments (13.6%) receive no direct sunlight.
Design incorporates shading and glare control, particularly for warmer months.	Yes	Shading devices such as eaves, external louvres, plantings and recessed balconies will control glare to the north facing window/door openings.

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	Yes	All habitable rooms can be naturally ventilated when doors/windows are open.  The acoustic assessment includes recommendations (including the provision of awning windows) to ensure that natural ventilation can be maintained to noise impacted rooms.  See further details in the 'Discussion' section of this report.
Minimum 60% of apartments in the first 9 storeys of the building are naturally cross ventilated.	Yes	16 of the 22 apartments (73%) of the apartments are naturally cross ventilated.
Overall depth of a cross-over / cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The depth of the cross-through apartments does not exceed 18m.



4C Ceiling Heights	Compliance	Comment
Minimum ceiling heights are: <ul style="list-style-type: none"> <li>• Habitable rooms: 2.7m</li> <li>• Non-habitable rooms: 2.4m</li> </ul>	Yes	<p>The new building proposes ceiling heights of 2.7m to all habitable rooms and 2.4m to the non-habitable rooms.</p> <p>The existing ceiling heights within the terraces are approximately 3m and greater. New fire-rated ceilings are required to the proposed terrace apartments. The existing significant ceilings and architraves will be retained, while the new ceilings will be suspended underneath at a height of at least 2.7m in all habitable rooms and 2.4m in non-habitable rooms.</p>
2-storey apartments: <ul style="list-style-type: none"> <li>• 2.7m for main living area floor</li> <li>• 2.4m for second floor, where it does not exceed 50% of the apartment area.</li> </ul>	Yes	<p>The proposed townhouse-style apartments are 2-storeys and provide a minimum habitable ceiling height of 2.7m at both levels.</p>
Attic spaces – 1.8m at edge of room with a 30 degree minimum ceiling slope	Yes	<p>The upper-level terrace apartments (terrace 5 and 6) are provided within the existing roof space and provide minimum habitable ceiling heights of 2.7m.</p>

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> <li>• Studio: 35sqm</li> <li>• 1 bed: 50sqm</li> <li>• 2 bed: 70sqm</li> <li>• 3 bed: 90sqm</li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase</p>	Yes	<p>The proposed apartments comply or exceed the minimum size and layout requirements.</p>

4D Apartment Size and Layout	Compliance	Comment
<p>the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p>		
<p>Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.</p>	Yes	<p>All habitable rooms have at least 1 window in an external wall with a minimum area of 10% of the floor area of the room.</p>
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p>	Yes	<p>The depth of the habitable rooms does not exceed 2.5 x the ceiling height.</p>
<p>In open plan layouts the maximum habitable room depth is to be 8m from a window.</p>	Yes	<p>The maximum depth of the open plan apartment layouts does not exceed 8 metres from a window or door opening.</p>
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> <li>• master bedroom: 10sqm</li> <li>• all other bedrooms: 9sqm</li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	<p>The bedrooms achieve or exceed the minimum area and dimension requirements.</p>
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• 2-bedroom or more: 4m</li> </ul>	Yes	<p>The proposed apartments have living areas that exceed the minimum width requirements.</p>
<p>4m minimum width for cross over and cross through apartments.</p>	Yes	<p>The proposed terrace apartments and townhouse style apartments are cross-through and have a width that exceeds 4m.</p>

4E Private Open Space and Balconies	Compliance	Comment
<p>1 bed apartments are to have a minimum balcony area of 8sqm with a minimum depth of 2m.</p> <p>2 bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m.</p> <p>3 bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.</p> <p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15sqm and a minimum depth of 3m.</p>	Yes	All balconies meet or exceed the minimum area and depth requirements.
Primary private open space and balconies are appropriately located to enhance liveability for residents.	Yes	<p>The private open space areas are located adjacent to the living areas to extend the living space.</p> <p>The balconies are orientated with the longer side facing outwards.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is 8.	Yes	A maximum of 4 apartments are accessed off a circulation core at each level.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	<p>No windows open directly onto a common circulation space.</p> <p>The design and layout of the apartments have been designed to maximise the future occupants visual and acoustic privacy.</p>

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	The central void area provides daylight and natural ventilation to the common corridors.

<b>4G Storage</b>	<b>Compliance</b>	<b>Comment</b>
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> <li>• Studio: 4m<sup>3</sup></li> <li>• 1 bed: 6m<sup>3</sup></li> <li>• 2 bed: 8m<sup>3</sup></li> <li>• 3 bed: 10m<sup>3</sup></li> </ul> <p>(Minimum 50% storage area located within unit)</p>	Yes	Storage, in compliance with the minimum requirement, has been provided within each terrace apartment as well as within secure storage cages at the basement level.

<b>4H Acoustic privacy</b>	<b>Compliance</b>	<b>Comment</b>
<p>Noise transfer is minimised through the siting of buildings and building layout</p> <p>Noise impacts are mitigated within apartments through layout and acoustic treatments.</p>	Yes	<p>Window and door openings are orientated away from noise sources where possible.</p> <p>Noise sources such as garage doors, service areas, plant rooms, building services, mechanical equipment, and circulation areas are generally located away from bedrooms.</p>

<b>4J Noise and Pollution</b>	<b>Compliance</b>	<b>Comment</b>
In noisy or hostile environments, the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	Yes	<p>Noise attenuation measures are recommended to protect the future occupant from noise sources, including from the future ground floor retail tenancies.</p> <p>See further details in the 'Discussion' section of this report.</p>

<b>4K Apartment mix</b>	<b>Compliance</b>	<b>Comment</b>
A range of apartment types and sizes is provided to cater for different household types now and into the future.	Yes	<p>The proposal seeks to revert the existing commercial floor space back to its original residential use and to increase the number of residential units on site.</p> <p>The proposed apartment types and mix caters for existing and future housing needs and will provide additional housing choice in the area.</p>

<b>4M Facades</b>	<b>Compliance</b>	<b>Comment</b>
Building facades provide visual interest along the street while respecting the character of the local area.	Yes	<p>The architectural expression and materiality of the façades respect the heritage significance of the site and appropriately respond to the heritage conservation area.</p> <p>The building entries are clearly defined, and the external expression of the proposed apartment configuration is clear.</p> <p>The proposal will provide a positive contribution to the streetscape and the broader area of Potts Point.</p>

<b>4N Roof design</b>	<b>Compliance</b>	<b>Comment</b>
<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p> <p>Roof design incorporates sustainability features.</p>	Yes	<p>Dormers and rear roof additions have been proposed to the retained terraces to provide habitable roof space. The roof additions are integrated into the building and provide a positive contribution to the Bayswater Road streetscape.</p> <p>The proposal includes communal open space on the rooftop areas at Levels 3 and 4. The communal open space adjoins Mansion Lane and does not impact on the heritage significance of the terrace buildings.</p> <p>A bio-solar roof (i.e. green roof integrated with solar panels) is proposed to the roof level of 36 Bayswater Road.</p>

<b>40 Landscape design</b>	<b>Compliance</b>	<b>Comment</b>
<p>Landscape design is viable and sustainable.</p> <p>Landscape design contributes to the streetscape and amenity.</p>	Yes	<p>The proposed landscaping will provide appropriate endemic planting, including shading trees.</p> <p>The proposed landscaping will enhance the Bayswater Road, Ward Avenue and Mansion Lane streetscapes and will provide added privacy, outlook and amenity for residents.</p>

<b>4P Planting on structures</b>	<b>Compliance</b>	<b>Comment</b>
<p>Appropriate soil profiles are provided.</p> <p>Plant growth is optimised with appropriate selection and maintenance.</p>	Yes	<p>Landscape concept plans accompany the DA and demonstrate that suitable landscaping can be achieved on site.</p> <p>Appropriate conditions are recommended requiring the submission of a detailed landscape plans and maintenance schedule prior to the issue of construction certificate for the above-ground works.</p>

<b>4Q Universal design</b>	<b>Compliance</b>	<b>Comment</b>
<p>Universal design features are included in apartment design to promote flexible housing for all community members.</p> <p>A variety of apartments with adaptable designs are provided.</p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	Yes	<p>4 of the apartments have been nominated as complying with the Liveable Housings Guideline's silver level universal design features.</p> <p>Units 105 and 205 have also been identified as adaptable units.</p>

<b>4R Adaptive reuse</b>	<b>Compliance</b>	<b>Comment</b>
<p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place</p>	Yes	<p>The proposed alterations and additions to the existing terraces (28-30 and 32-34) complement the existing character, siting, scale, proportion, pattern, form and detailing of the heritage significant buildings. The new additions are clearly</p>

4R Adaptive reuse	Compliance	Comment
Adapted buildings provide residential amenity while not precluding future adaptive reuse.		<p>identifiable from the original buildings and replace the existing detracting structures at the rear of the terraces.</p> <p>Objective 4R-2 recognises that some proposals that adapt existing buildings may not be able to achieve all of the design criteria within the ADG and that alternatives may need to be considered.</p>

4S Mixed use	Compliance	Comment
<p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement</p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.</p>	Yes	<p>The shop top housing development is located near the Potts Point local centre, within walking distance of King Cross Station.</p> <p>The proposed development, together with the new landscaping, will enhance the Bayswater Road, Ward Avenue and Mansion Lane streetscapes.</p> <p>Retail floor space is provided at the ground floor level to provide active street frontages to Bayswater Road and Ward Avenue.</p> <p>The residential and retail components have been separated and appropriate CPTED measures have been provided.</p>

4T Awnings and signage	Compliance	Comment
<p>Awnings are well located and complement and integrate with the building design</p> <p>Signage responds to the context and desired streetscape character.</p>	Partial compliance	<p>The existing awning on Bayswater Road (28-30) is maintained and a new awning is proposed on the corner of Bayswater Road and along Ward Avenue. A condition is recommended requiring that the awning on the corner of Bayswater Road be reduced in depth so that it is less dominate in the streetscape.</p> <p>There is no existing awning to 32-34, nor is one proposed. The first-floor balconies, however, will provide all-weather protection to the commercial customers and to residents entering the building at the ground-floor level.</p>

<b>4T Awnings and signage</b>	<b>Compliance</b>	<b>Comment</b>
		Any new signage will be subject to a separate application.

<b>4U Energy efficiency</b>	<b>Compliance</b>	<b>Comment</b>
<p>Development incorporates passive environmental design</p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer</p> <p>Adequate natural ventilation minimises the need for mechanical ventilation.</p>	Yes	<p>Adequate natural light is provided to the habitable rooms and natural cross ventilation has been optimised.</p> <p>BASIX and NatHERS certificates accompany the application, confirming that the proposed development will meet the NSW government's requirements for sustainability.</p>

<b>4V Water management and conservation</b>	<b>Compliance</b>	<b>Comment</b>
<p>Potable water use is minimised.</p> <p>Urban stormwater is treated on site before being discharged to receiving waters.</p>	Yes	<p>The BASIX certificate requires the provision of water efficient fittings and appliances, and that a 5000L rainwater tank be provided for the irrigation of the common landscaped areas.</p> <p>Conditions have been recommended to ensure that appropriate water sensitive urban design (WSUD) systems are provided. An OSD tank is provided at the sub-ground level.</p>

<b>4W Waste management</b>	<b>Compliance</b>	<b>Comment</b>
<p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	Yes	<p>Adequately sized and designed waste and recycling storage areas are provided at the basement and ground floor levels. Waste will be collected from the from Mansion Lane.</p> <p>Appropriate conditions have been recommended to address waste storage and collection.</p>



49. Based on the above, the development is acceptable when assessed against the 9 design principles for residential apartment development and the associated ADG.
50. The above controls are generally replicated within the residential flat and mixed-use development controls found under the Sydney Development Control Plan 2012 (DCP). Consequently, compliance with chapter 4 of the Housing SEPP generally also implies compliance with Council's controls at section 4.2 of the DCP.

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

51. The State Environmental Planning Policy (Sustainable Buildings) 2022 contains savings and transitional provisions which state that the former provisions of a repealed instrument, in this case SEPP BASIX 2004, apply to DAs made, but not determined, before 1 October 2023. As the subject DA was made and not determined prior to this date, the SEPP BASIX 2004 applies to this application.
52. The aim of the SEPP BASIX is to encourage sustainable residential development. BASIX Certificates, a Nationwide House Energy Rating Scheme (NatHERS) Certificate and NatHERS stamped plans have been submitted with the development application.
53. The BASIX certificates list measures to satisfy BASIX requirements which have been incorporated into the proposal.
54. BASIX, however, does not replace all of the NCC Section J Energy Efficiency requirements in NSW. For Class 2 and Class 4 parts of buildings, compliance with the provisions of subsection J(A) is also required. A BASIX Report has therefore been submitted which addresses the additional requirements.
55. Conditions of consent are recommended to ensure that the measures detailed in the BASIX certificates and BASIX report are implemented.

#### **State Environmental Planning Policy (Transport and infrastructure) 2021 – Chapter 2 Infrastructure**

56. The following 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**

57. 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.
58. The application was referred to Ausgrid for a period of 21 days and no objection was raised.

#### **Division 15, Subdivision 2: Development in or adjacent to rail corridors and interim rail corridors - notification and other requirements**

##### **Clause 2.99 – Excavation in, above, below or adjacent to rail corridors**

59. The application is located adjacent to the Eastern Suburbs heavy rail corridor, between Kings Cross and Edgecliff Stations, and was referred to Transport for NSW (TfNSW) (Sydney Trains) for concurrence.

60. TfNSW (Sydney Trains) has taken the requirements at clause 2.99(4) into consideration and has granted its concurrence.

### **Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 Vegetation in non-rural areas**

61. Chapter 2 of the above SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
62. The proposed development does not involve the removal of any trees and therefore is not subject to the provisions of Chapter 2 of the SEPP.

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

63. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of Chapter 6 of the above SEPP. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the controls set out in part 6.2, Division 2.
64. While the site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour, the site is not located in the Foreshores Waterways Area or adjacent to a waterway. Therefore, with the exception of the control requiring improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.
65. To address this matter, standard conditions of consent are recommended to ensure that appropriate water sensitive urban design (WSUD) and stormwater controls are implemented.

## **Local Environmental Plans**

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

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

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

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the E1 Local Centre zone.</p> <p>The proposal is for a shop top housing development and is permissible with consent in the zone.</p> <p>The proposal generally meets the objectives of the zone as discussed as</p>

Provision	Compliance	Comment
		part of the clause 4.6 variation request in the 'Discussion' section below.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 15m is permitted.</p> <p>The existing building has a maximum height of 19.12m to the top of the parapet of the easternmost terrace (36 Bayswater Rd).</p> <p>The proposed new works have a maximum building height of 20.055m when measured to the top of the lift overrun of the new building on 36 Bayswater Rd, which does not comply with the development standard.</p> <p>A request to vary the height of buildings development standard in accordance with clause 4.6 has been submitted.</p> <p>See further details in the 'Discussion' section below.</p>
4.4 Floor space ratio	Yes	<p>Based on the site area of 1,393sqm, a maximum floor space ratio (FSR) of 2.5:1 or 3,482.5sqm is permitted.</p> <p>A floor space ratio of 2.5:1 or 3,478.5sqm is proposed. This differs from the applicant's calculation of 3,370.5sqm, given that a 37sqm corridor and the 70sqm end-of-trip facilities provided at the sub ground level have been added to the calculation.</p> <p>The proposed development complies with the maximum FSR development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the height of buildings development standard prescribed under clause 4.3 by a maximum of 33.7% (i.e. 5.055m).</p>

Provision	Compliance	Comment
		<p>A clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

#### Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is located within the Potts Point heritage conservation area (C51) and contains a local heritage item (I1118A) at 28-30 Bayswater Road.</p> <p>The site is also located adjacent to a number of heritage listed terraces on Bayswater Road and Kellett Street, including the Mansions Terrace group (I1118) at 20-26 Bayswater Road.</p> <p>A heritage impact assessment accompanies the DA. The proposed development, in its amended form, will not have detrimental impact on the heritage significance of the heritage item or the heritage conservation area.</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	N/A	<p>The proposed building will not be used only for the purposes of commercial premises and therefore is not eligible for an additional floor space bonus.</p> <p>The 70sqm end-of-trip facilities has therefore been included as part of the total GFA.</p>
Division 4 Design excellence		

Provision	Compliance	Comment
6.21 Design excellence	Yes	<p>The proposal is satisfactory with regard to the matters at clause 6.21C(2) of the LEP and is considered to exhibit design excellence.</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		
7.5 Residential flat buildings, dual occupancies and multi dwelling housing	Yes	<p>The proposal is in Category B land and is permitted a maximum of 22 (i.e. 18 resident and 4 visitor) car parking spaces.</p> <p>The proposed development includes 12 resident car parking spaces and complies with the relevant development standards.</p>
7.7 Retail premises	Yes	<p>The proposal is in Category F land and is permitted a maximum of 20 retail car parking spaces (i.e. 1 space per 50sqm of GFA).</p> <p>The proposed development does not include any retail car parking spaces and complies with the relevant development standard.</p>
Division 3 Affordable housing		
7.13	Yes	<p>The application will result in the creation of more than 200 square metres of new residential GFA and more than 60 square metres of new commercial GFA. The development is therefore subject to an affordable housing contribution.</p> <p>See further details in the 'Financial Contributions' section below.</p>

Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	<p>The site is located on land with class 5 Acid Sulfate Soils.</p> <p>While the site is within 500 metres of class 2 and 3 land, the proposed excavation for the enlargement of the existing basement will not result in the water table being lowered below 1 metre Australian Height Datum (AHD).</p> <p>An Acid Sulfate Soils Management Plan is therefore not required.</p>

## Development Control Plans

### Sydney Development Control Plan 2012

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

#### Section 2 – Locality statements

68. The site is located within the King Cross locality as identified in section 2.4.7 of the SDCP 2012. The proposed development is in keeping with the unique character and the design principles of the locality for the following reasons:
- The proposal maintains the existing ground level retail tenancies in the primary terrace form and provides new retail GFA at the sub ground, lower ground and ground floor level and a total of 22 residential apartments at the upper levels. The proposed redevelopment of the site will assist in strengthening the role of the centre.
  - The proposal provides active uses at the ground floor plane which will enhance the amenity of the public domain.
  - The proposed works to the Bayswater Road and Ward Avenue frontages will enhance the existing pedestrian network and improve pedestrian amenity.
  - The proposal does not compromise any view corridors.
  - The proposal will retain and renovate an existing heritage listed building and an existing contributory building that are currently underutilised. The proposal provides an appropriate response to the heritage significance of the property, the conservation area and the nearby heritage items.
  - The proposed alterations and additions to the retained terraces (28-30 and 32-34) have been designed to respect the original built form of the terrace group.
  - The proposed new building has been designed to complement the existing heritage buildings on the site and the heritage conservation area.

- The proposal maintains and expands the commercial space within the building providing opportunities a mix of new daytime and nighttime retail uses.
- Although the future use of the proposed retail tenancies has yet to be determined, the renovated spaces provide opportunities for the establishment of entertainment and dining venues.
- The site is located in close proximity to public transport. The limited on-site parking provision within the proposal ensures that this access is capitalised.

### Section 3 – General provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Satisfactory subject to conditions	<p>A public art plan prepared in accordance with the City of Sydney Guidelines for Public Art in Private Development and the Public Art Policy was requested during the assessment process, but does not accompany the DA.</p> <p>A condition is recommended requiring that a detailed public art plan is to be submitted prior to release of a construction certificate.</p> <p>Any public art offering must ensure that it does not alter or detrimentally impact on the front facades of the retained terrace group including the heritage item.</p>
3.2. Defining the Public Domain	Yes	<p>The proposal will contribute to the activity, safety, amenity and quality of Bayswater Road, Ward Avenue and Mansion Lane.</p> <p>Bayswater Road is mapped under the DCP as requiring an active frontage.</p> <p>The proposal retains and enhances the activation of the Bayswater Road frontage through the provision of upgraded ground level retail tenancies within the retained terraces.</p> <p>The existing corner building has minimal street activation, with the ground level commercial floor space elevated above the adjoining footpath level. The proposed new building provides retail tenancies at ground level and will increase activity at the street.</p>

Provision	Compliance	Comment
		<p>Bayswater Road is also mapped under the DCP as requiring a continuous awning over the footpath.</p> <p>While the heritage item at 28-30 Bayswater Road includes an existing awning and the new building at 36 Bayswater Road proposes a new awning, no awning is provided to 32-34.</p> <p>However, where there is no existing continuity of awnings on buildings within the same block on the same side of the street, or where there would be an adverse heritage impact (as is the case for this site), an awning is not required.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.</p> <p>Appropriate conditions are recommended to protect the existing significant street-trees at the front of the site in Bayswater Road and Ward Avenue.</p> <p>New on-structure tree planting will be provided to address the canopy coverage requirements.</p> <p>See further details in the 'Discussion' section below.</p>
3.6 Ecologically Sustainable Development	Yes	<p>A BASIX certificate, NatHERS certificate and BASIX report have been provided to demonstrate compliance with the National Construction Code (NCC) energy efficiency requirements.</p> <p>Conditions are recommended requiring compliance with the commitments within these documents.</p>
3.7 Water and Flood Management	Satisfactory subject to conditions	<p>The site is not identified as being on flood prone land. The proposal, however, must provide entries off a public road that are a minimum of 300mm above the adjacent gutter invert</p>



Provision	Compliance	Comment
		<p>levels in compliance with Council's flood planning level requirement.</p> <p>While the entries from Bayswater Road and Ward Avenue are compliant, the entries off Mansion Lane are not. A condition has been recommended to address this matter.</p> <p>The DA is also accompanied by a stormwater management plan, which includes on-site stormwater detention and a WSUD chamber. The plan will require updating to reflect the amended architectural plans.</p> <p>Council's Public Domain Section has reviewed the stormwater management details and is satisfied that, subject to conditions, stormwater can be appropriately managed.</p> <p>Given that the proposed development includes an enlarged basement, and that groundwater may be intercepted during the excavation process, conditions have also been recommended to address potential dewatering.</p>
3.9 Heritage	Yes	<p>The retained terraces are identified as being contributing buildings within the Potts Point heritage conservation area (C51), with 28-30 Bayswater Road also being a listed heritage item.</p> <p>A heritage impact assessment, conservation management plan, geotechnical report and structural details accompany the DA.</p> <p>See further details in the 'Discussion' section below.</p>
3.11 Transport and Parking	Yes	<p>A Traffic and Parking Assessment Report accompanies the DA.</p> <p>The proposal provides 12 resident basement parking spaces and complies with the maximum on-site car parking rates permitted under the LEP.</p>

Provision	Compliance	Comment
		<p>In accordance with the DCP, the proposal provides:</p> <ul style="list-style-type: none"> <li>• A ground level service vehicle space.</li> <li>• A car share space.</li> <li>• 46 bicycle parking spaces which exceeds the minimum requirement of 22 resident, 5 staff and 15 visitor on-site bicycle parking spaces.</li> <li>• Non-residential end of trip facilities.</li> </ul> <p>Vehicular access will be maintained from Mansion Lane.</p>
3.12 Accessible Design	Yes	<p>An Access Report accompanies the DA.</p> <p>In some limited instances, the ability to satisfy the accessibility criterion will require a performance solution equal or equivalent to the deemed-to-satisfy approach.</p> <p>In the event the proposed solution will impact or potentially impact on the existing heritage fabric and features of the building, a condition is recommended requiring that details of the works must be submitted to Council and separately approved prior to issue of any construction certificate.</p> <p>The proposal provides for 4 LHA (Liveable Housing Australia) Silver level dwellings. 2 of these dwellings are also adaptable.</p>
3.13 Social and Environmental Responsibilities	Yes	<p>The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
3.14 Waste	Yes	<p>Conditions are recommended to ensure the proposed development complies with the relevant provisions of the City of</p>

Provision	Compliance	Comment
		<p>Sydney Guidelines for Waste Management in New Development.</p> <p>All waste will be collected from Mansion Lane.</p>
3.15 Late Night Trading Management	Yes	<p>The premises is located in a Late-Night Management Area. It is anticipated that the retail tenancies at the ground and basement levels will be occupied by uses such as food and drink premises and other active retail premises.</p> <p>Separate development applications will be lodged for the use and fit-out of these retail spaces, at which time the patron capacity, trading hours and management practices will be assessed.</p>

## Section 4 – Development types

### 4.2 Residential flat, commercial and mixed-use developments

69. The Housing SEPP 2021 states that any DCP requirement, standard or control for residential apartment development relating to the matters listed at section 149 of the SEPP (e.g. visual privacy, solar and daylight access, private open space and balconies) has no effect if the ADG also specifies a requirement, standard or control in relation to the same matter. The following assessment therefore notes where the ADG prevails over the DCP.

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 3 storeys.</p> <p>The proposed alterations and additions to the retained terraces results in a development that is 3-storeys with an attic and complies with the height in storeys control.</p> <p>The building fronting Mansion Lane is 3 to 4-storeys and the new building on the corner of Bayswater Road and Ward Avenue is 6 storeys.</p>

Provision	Compliance	Comment
		See justification for the non-compliance in the 'Discussion' section of this report.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	See response to provision 4C of the ADG.
4.2.2 Building setbacks	Yes	<p>The 'Building setback and alignment DCP map' does not specify a minimum setback or alignment for this site.</p> <p>The proposed development maintains the existing front setbacks to Bayswater Road and Ward Avenue and respects the existing setback pattern along Mansion Lane.</p> <p>See also further details in the 'Discussion' section below.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	<p>See response to provision 4A of the ADG.</p> <p>In relation to surrounding development, the shadow analysis demonstrates that the shadows cast by the proposal largely coincide with those cast by existing development, with the majority of the additional shadows falling onto the road. There will be negligible overshadowing impacts to surrounding properties.</p> <p>See also further details in the 'Discussion' section below.</p>
4.2.3.2 Lightwells	Yes	The centrally located void/lightwells will provide daylight access to the adjoining rooms. The living rooms adjoining the void areas will also receive light and ventilation via the front façade to Bayswater Road.
4.2.3.3 Internal common areas	Yes	<p>See response to provision 4F of the ADG.</p> <p>Common circulation areas for the retail components have been designed to maximise safety and security.</p>

Provision	Compliance	Comment
4.2.3.4 Design features to manage solar access	Yes	Shading devices including eaves, external louvres and plantings will manage solar access to the north facing window/door openings.
4.2.3.5 Landscaping	Yes	A landscape concept plan accompanies the application.  A condition is recommended requiring the submission of a detailed landscape plan, which includes adequate soil depths and volumes, appropriate tree species, and achievable access and maintenance arrangements.
4.2.3.6 Deep Soil	No	See response to provision 3E of the ADG and justification for the non-compliance in the 'Discussion' section of this report.
4.2.3.7 Private open space and balconies	Yes	See response to provision 4E of the ADG.  Each dwelling is provided with an elevated courtyard or balcony which directly adjoins the internal living areas.
4.2.3.8 Common open space	Yes	See response to provision 3D of the ADG and the 'Discussion' section of this report.
4.2.3.9 Ventilation	Yes	See comment above in response to provision 4B of the ADG.
4.2.3.10 Outlook	Yes	The proposal will improve the outlook from the proposed and neighbouring apartments.  The DA, in its amended form, ensures that there are no unreasonable privacy impacts to the properties on the northern side of Mansion Lane.
4.2.3.11 Acoustic privacy	Yes	An acoustic assessment accompanies the DA.  Appropriate noise attenuation measures have been proposed and conditions are recommended to reduce the impact of

Provision	Compliance	Comment
		<p>noise from the future ground floor retail tenancies.</p> <p>See further details in the 'Discussion' section below.</p>
<p>4.2.3.12 Flexible housing and dwelling mix</p> <p>Studio: 5-10%</p> <p>1-bed: 10-30%</p> <p>2-bed: 40-75%</p> <p>3+bed: 10-100%</p>	<p>Partial compliance</p>	<p>Studio: Nil</p> <p>1-bed = 6 (27%)</p> <p>2-bed = 7 (32%)</p> <p>3+bed = 9 (41%)</p> <p>While the proposal falls slightly short of the required 2-bedroom provision and does not provide any studio apartments, the proposal provides a good mix of dwelling choices.</p>
<p>4.2.4 Fine grain, architectural diversity and articulation</p>	<p>Yes</p>	<p>The scale, modulation and façade articulation of the proposed new building and the proposed additions respond appropriately to the heritage significance of the site and its context.</p> <p>See further details in the 'Discussion' section below.</p>
<p>4.2.6 Waste and recycling Management</p>	<p>Yes</p>	<p>See response above to section 3.14 of the DCP.</p> <p>The residential and non-residential waste storage rooms are separate and self-contained.</p>
<p>4.2.7 Heating and cooling infrastructure</p>	<p>Yes</p>	<p>Concealed air conditioning condensers will be provided at the rooftop level of 36 Bayswater Road and within the basement and will not result in any negative heritage or streetscape impacts.</p>
<p>4.2.8 Letterboxes</p>	<p>Yes</p>	<p>The letterboxes are provided within the residential lobbies fronting Bayswater Road and Ward Avenue. A condition is recommended to ensure that they are installed with non-master key locks for security.</p>

## Discussion

### Clause 4.6 request to vary a development standard

70. The standard that is proposed to be varied is clause 4.3 of the LEP, which specifies that the site is subject to a maximum height of building standard of 15m.
71. The existing development has a maximum building height of 19.12m (RL56.43m) when measured from the 'established' existing ground level to top of the parapet of the eastern most building (noting that chimneys to the existing terraces are excluded from the definition of building height). The existing development therefore exceeds the height standard by a maximum of 4.12m (i.e. a 27.47% variation to the standard).
72. In relation to the proposed new building works, the upper storey (Level 4) and a minor portion of Level 3 of the new building form at 36 Bayswater Road, the perimeter planter boxes within the Level 4 communal open space, the rooftop services and the lift overrun, exceed the maximum 15m height standard and add new built form/bulk above the maximum height plane.
73. At its highest point, the proposed development has a maximum height of 20.055m when measured from the top of the lift overrun (RL57.59) to the 'established' existing ground level directly below (RL 37.54). This represents a 5.055m exceedance or 33.7% variation to the height standard.
74. Where the site is built-out, the applicant has determined the existing level ground level using the 'extrapolation approach' established in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (Bettar). This is considered an appropriate method for establishing the existing ground level in the portions of the site where there are existing buildings. In the unbuilt-upon areas of the site, the 'existing ground level' is whatever the ground level RL is at that point.
75. The elements of the existing and proposed building which exceed the height standard are shown in Figure 35 to Figure 37.

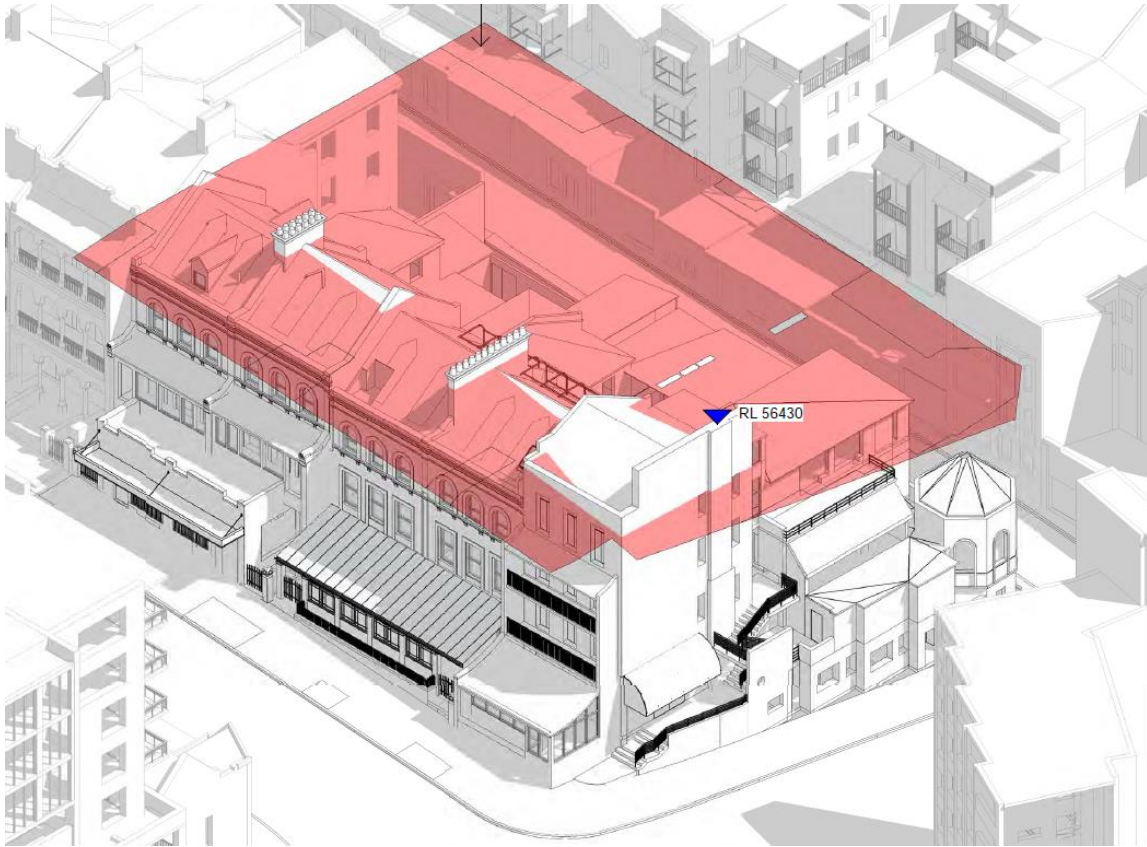


Figure 35: Height plane diagram - existing development

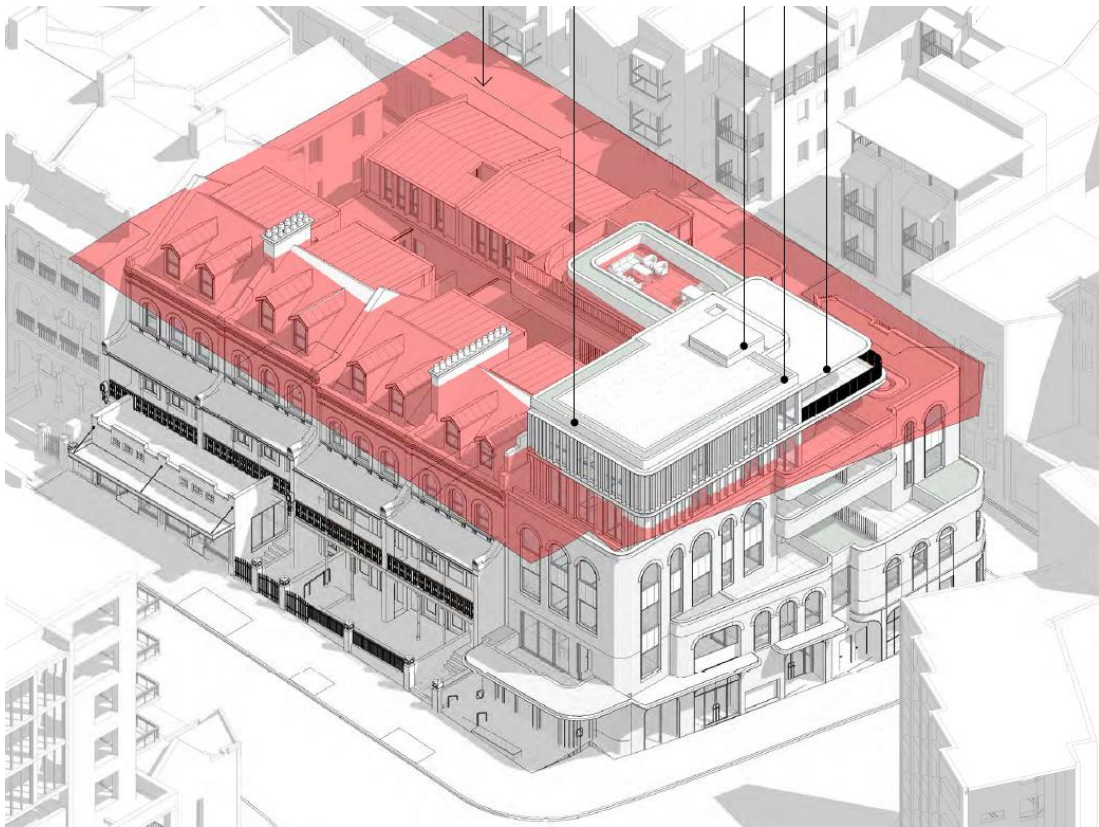


Figure 36: Height plane diagram - proposed development





Figure 37: Section plan through highest part of the site

76. The application is accompanied by a written request in accordance with clause 4.6(3)(a) and (b) of the LEP seeking to justify the contravention of the development standard by demonstrating:
- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - That there are sufficient environmental planning grounds to justify contravening the standard.

#### Applicant's Written Request - Clause 4.6(3)(a) of the Sydney LEP 2012

77. The applicant's variation request refers to the 5 tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*) and relies on Test 1 under *Wehbe* to demonstrate that compliance with the height of building development standard is unreasonable or unnecessary in the circumstances of the case.
78. Test 1 under *Wehbe* establishes that compliance is unreasonable or unnecessary if the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard. The applicant's clause 4.6 written request indicates that the objectives have been achieved for the following reasons:
- Objective (a): To ensure the height of development is appropriate to the condition of the site and its context.

- (i) The portion of the proposal that exceeds the height standard has limited frontage to Bayswater Road. The encroachments include a minor portion of Levels 3 and the full extent of Level 4, including the balcony attached to Unit 401. In addition, the planter boxes within the Level 4 communal open space area, the lift and the rooftop services also exceed the height standard.
- (ii) The amended proposal has reduced the extent of the eastern form at 36 Bayswater Road by recessing the top levels from the northern, eastern and southern facades of the building form below. The increased setback distances, as the building increases in height, allows for the compliant portion of the building to sit proud and appropriately in the context of the dense urban form surrounding the site. The amended design is more appropriately scaled with the density of the existing buildings and the planning standards to the north of the site. This results in the form being pushed towards the south-eastern corner of the site, where a greater proportion of bulk aligns with the taller buildings that encompass this end of the site despite that the existing building is higher than the existing terraces.
- (iii) The parapet height of the proposed form matches with the existing terraces, while recessing the new upper-level form to create a visual separation and ensure that the existing terraces are the dominant element in the streetscape composition.
- (iv) The amended materiality of this form to a lightweight cladding also results in the upper, non-compliant portions of the building being less visually dominant in their context.
- (v) The site sits in a complex position in relation to varying height controls and building forms, which are different along Bayswater Road, to that with Ward Avenue, providing 2 interfaces in which the building must interact, noting that there are taller buildings along the Ward Avenue frontage and, of which, are not necessarily consistent.
- (vi) The following images demonstrate that the planning controls in place do not necessarily reflect the existing built form. While one would not argue that the standard has been abandoned or destroyed, it is the objective of the standard that is more relevant having regard to the context in which the development is proposed. See Figure 38 and Figure 39.
- (vii) In determining the appropriate massing in context, the amended design provides a form whereby the lower building elements are consistent with the adjoining buildings, while the upper levels are setback to reduce their prominence in the streetscape, particularly that part of the building that is non-compliant with the height development standard. This achieves a balance in terms of the site's context. This is shown in **Error! Reference source not found.** to Figure 41.



Figure 38: Existing built form and streetscape along Ward Avenue



Figure 39: Existing built form and streetscape along Bayswater Road



Figure 40: Proposed streetscape elevation to Bayswater Road



Figure 41: Photomontage of proposed development viewed from intersection of Bayswater Road and Ward Avenue (with and without the Ward Avenue street trees)

- (viii) To the Ward Avenue frontage, the Figure 42 below shows an evident 'gap' in building form where the opportunity arises to create an appropriate addition to the built form that is not out of context in the streetscape.

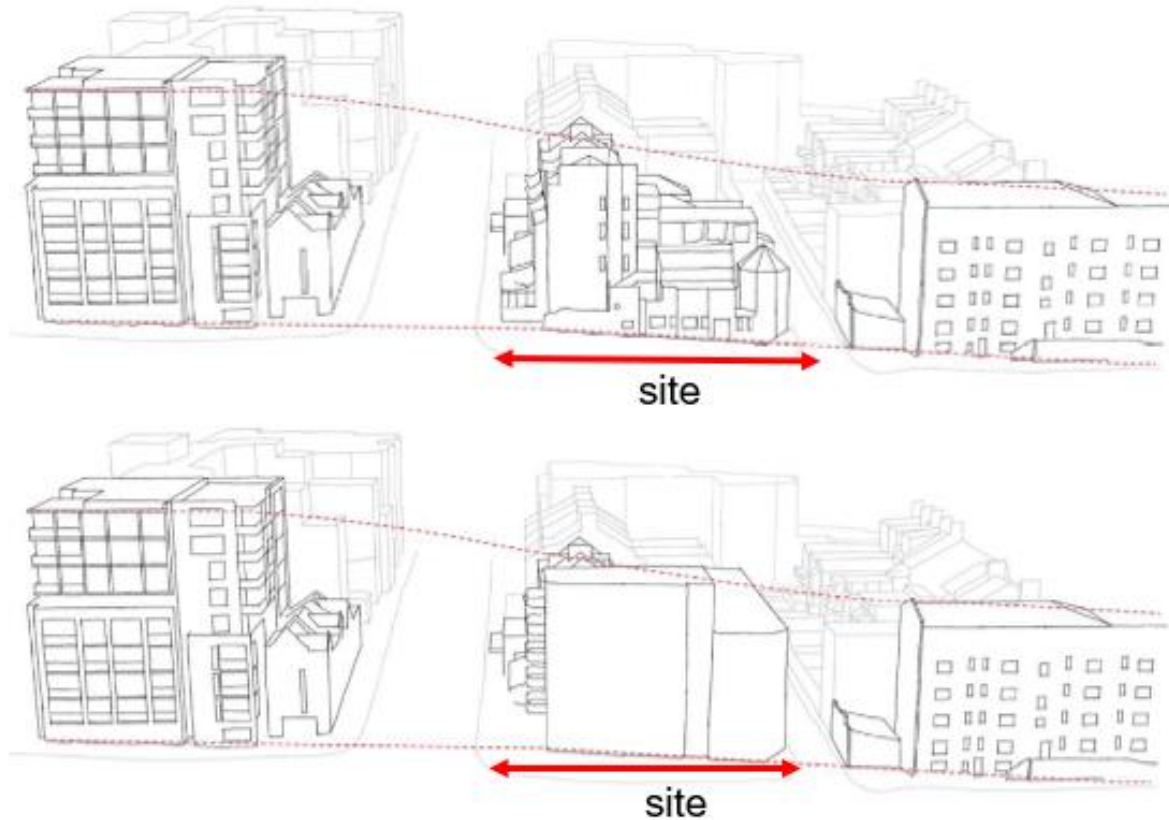


Figure 42: Diagrams showing potential infill opportunity

- (ix) By utilising this 'gap', the proposed form does not dominate the streetscape and provides for an appropriate extension that fits within the context of Ward Avenue without appearing obtrusive or out of character in the context, particularly given the setbacks that are proposed in the amended application. The expression of the terraces to the west of the site also remains visually coherent in the streetscape context due to the fall of the land and the separation provided by the upper levels of the new form at 36 Ward Avenue.
- (x) Figure 43 shows the built form at the corner of Ward Avenue and Mansion Lane with the taller form set back from the Mansion Lane frontage to respond to the immediately lower form on the northern side of Mansion Lane, while conversely relating to the southern side of Bayswater Road.



Figure 43: Photomontage of proposed development viewed from intersection of Ward Avenue and Mansion Lane (with and without the Ward Avenue street trees)

- (xi) Overall, the various images of the proposed design in context demonstrate the juxtaposition of height of buildings in the locality such that there is no one dominant height, scale nor building alignment and the site, with 3 separate frontages and appearances, responds to 3 separate contextual elements.
- (xii) In all cases, the height of the amended proposal:
  - (i) Is respectful of the form to Bayswater Road and continues the rhythm of the existing terraces, with limited visible change to the streetscape, despite the non-compliance.
  - (ii) Proposes a building height to Bayswater Road that, while non-compliant, is recessive from the street and does not visually dominate, or take over from, the adjoining terraces that form part of the site, achieved not only through setbacks, but also materiality.
  - (iii) Similarly returns along Ward Avenue and, while non-compliant with the height standard, is again recessed and subservient to that part of the building which complies with the height standard to ensure that it is appropriate in the context of varied building heights and is not overbearing in context.
  - (iv) Terminates the higher built form along the northern side to ensure that it does not dominate over the buildings to the north and allows for an appearance to Mansion Lane that is respectful of a laneway character. The recessive form does not dominate this frontage in terms of bulk and scale.
- (xiii) For these reasons, the applicant's clause 4.6 request states that the proposed height is entirely appropriate to the condition of the site and its context and achieves the objective.
- (b) Objective (b): To ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.

- (i) For similar reasons as set out in response to (a) above, the proposal, as amended, provides appropriate transitions between the heritage elements of the site, those items proximate to the site and those items within the heritage conservation area.
- (ii) The amended design ensures that the height of the replacement building does not overwhelm the contributory buildings to the immediate west. A more consistent scale is created with the remaining buildings in the group, due to the recessive design of the non-compliant areas of the building. While sitting one storey above the adjoining contributory buildings, the increased setback distances and adjusted materiality ensures that the form, despite non-compliance, has a satisfactory relationship with the immediately adjoining buildings.
- (iii) The amended design, which has reduced non-compliance along the Ward Avenue frontage by setting the form in from the eastern edge of the building below, significantly reduces the extent of impact on the tree canopy which forms part of the streetscape. This enables a more appropriate relationship in the heritage conservation area.
- (iv) These aspects are confirmed in the accompanying heritage response which states:
  - (i) The proposed new building on the corner with Ward Avenue has been setback to reduce pruning to the street trees of Ward Avenue. This will have a positive impact on the trees and will also have a positive impact on reducing the massing of the proposed new building.
  - (ii) The visual massing and scale of the building is reduced by setting back the upper 2 levels and changing the materiality of these levels to a lightweight cladding that will be recessive against the brickwork of the levels below. The brickwork now rises to the same height as the parapet of 34 Bayswater Road. It is noted that the existing building at 36 Bayswater Road is higher than the adjoining terraces. Matching the parapet height with the brickwork provides a better relationship to the adjoining terraces than the existing building at this level. The detailing of the elevations has also been refined.
  - (iii) As demonstrated by the design statement, the massing and scale of the proposal has been carefully considered against the existing intersection and character of Mansion Lane.
- (v) The non-compliant section of the built form appropriately responds to the heritage context of the site and provides responsive transitional elements to ensure that the heritage characteristics and elements of the locality are suitably preserved.
- (vi) For these reasons, the applicant's clause 4.6 request states that the non-compliant portion of the proposed development achieves this objective.

- (c) Objective (c): To promote the sharing of views outside Central Sydney.
  - (i) The site analysis nominates views from the site towards both Rushcutters Bay and Woolloomooloo. Having regard to the direction of these view corridors, the section of the building that is non-compliant with the height of building standard will not interfere with any potential or available view corridors in the direction of the views nominated. The proposal therefore has no impact in relation to this objective.

79. Objective (d) and (e) relate to development adjoining Central Sydney and adjoining/within Green Square. These objectives have therefore not been considered by the applicant.

Applicant's Written Request - Clause 4.6(3)(b) of the Sydney LEP 2012

80. The applicant's variation request provides the following environmental planning grounds to justify the contravention of the height standard:

- (a) The design of the building form, and particularly, the non-compliant section, provides a scale, form and materiality that is commensurate with the building form proximate to the site, where there are varying heights expressed in this dense urban environment.
- (b) The design of the additional building height is reflective of a classic approach to infill development, where the new form proposed is in harmony with the heritage characteristics of the site itself, while responding to the newer, more contemporary, architectural design approaches that are evident in the immediate locality, to ensure that it sits comfortably in context.
- (c) The additional building height does not compromise the amenity of adjoining properties in terms of solar access, cross ventilation, view sharing, nor adverse privacy impacts.
- (d) The configuration of the building form allows for the orderly and economic use of the land, with all other development standards being complied with, noting, that the proposed floor space ratio does not achieve that permitted, with all other controls being designed acceptably such as setbacks, landscaping, private open space, communal open space and building separation.
- (e) The additional building height provides an opportunity to increase the provision of housing in a location that is highly accessible to public transport, services and facilities. While small in provision, this will assist to provide additional housing supply in a highly accessible location.
- (f) The proposal does not lean on any other development standard or control to increase density on the site, such that there is a material benefit to the property in terms of additional habitable space, noting that the proposed floor space ratio is below that permitted on the land and the circumstance of this case is one where the density controls do not align to produce a consistent outcome.
- (g) The proposal provides a significant contribution to increasing housing supply in the area, in a location that is in close proximity to public transport and provides a diversity of dwelling sizes to respond to various demographic conditions.



- (h) The height of the form proposed assists the overall development outcome as it relates to the conservation and adaptive reuse of the existing terraces on the site.
- (i) The proposal has been sensitively designed to ensure that there are no environmental impacts to neighbouring properties as a result of non-compliance with the development standard, noting the setbacks provided to the upper building levels.
- (j) The proposal has been designed to ensure that the condition of trees within the streetscape is preserved, with the building form set back, including at the upper non-compliant level.

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

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

- (i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

- 82. The applicant has referred to the 5 tests established by Preston CJ in *Wehbe v Pittwater* (*Wehbe*) to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.
- 83. The applicant's statement has correctly referred to Test 1 of *Wehbe* and has demonstrated that the development meets the objectives of clause 4.3 of the LEP, notwithstanding non-compliance with the numerical standard.
- 84. The applicant has identified that the existing building exceeds the height standard by up to a maximum of 5.055m (i.e. a 33.7% exceedance to the height standard). The areas of non-compliance relate to the upper storey (i.e. the Level 4 apartment, including its private open space area), a minor portion of Level 3 and the rooftop services and lift overrun of the new building form at 36 Bayswater Road, and the perimeter planter boxes within the Level 4 communal open space.
- 85. While Level 4 of the building sits approximately one storey above the height standard, the applicant has satisfactorily demonstrated that this portion of the building will not have a detrimental impact on the heritage significance of the site or the surrounding HCA, is compatible with the surrounding urban context and does not impact on any views.

86. Level 4 is consistent with the built form and height of the surrounding developments. The encroaching element is contained to the corner of the site at the intersection of Bayswater Road and Ward Avenue. As shown in Figure 44, the remaining 3 corners of the intersection contain buildings with heights of 8 and 9 storeys. The proposed 6-storey corner building is therefore not inconsistent with the character of the area.
87. The applicant has demonstrated that the encroaching element has been designed to respect the form of the adjoining Bayswater Road terrace group. The upper-level setback, together with the change in building material, creates a form that is recessive from the street and is visually subservient to the compliant building form.
88. The building height has also been concentrated at the Bayswater Road and Ward Avenue intersection away from the rear laneway. This ensures that an appropriate and respectful laneway character is maintained, while also minimising any potential impacts to the residential properties on the northern side of the laneway.
89. The applicant has adequately demonstrated that the elements which exceed the height standard will not be prominent or incompatible within the streetscape or the HCA, and will be compatible with the character of the retained terraces and other heritage listed and contributory buildings in the area.
90. The exceeding portions of the building are located at the lower end of the site and given the significant street trees and heights of surrounding buildings, will not impact on any private views or views from the public domain. The encroachments proposed by the planter boxes are also minor and will provide additional amenity, privacy and tree planting opportunities to the upper communal open space area.
91. The applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Primarily, the written statement has demonstrated that the proposed development meets the objectives of the development standard notwithstanding non-compliance with the numerical standard.

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

92. The statement provides environmental planning grounds specific to the circumstances to justify the extent of non-compliance with the height of building development standard.
93. The elements that exceed the height standard will have no adverse impacts on the amenity of the locality, in terms of overshadowing, overlooking, cross ventilation or view sharing, and are contextually compatible and consistent with the Potts Point HCA.
94. While the exceedance proposed by Level 4 of the building is equivalent to one storey above the height standard, the exceedance does not contribute to any undue visual bulk and sits comfortably at the intersection of Bayswater Road and Ward Avenue which contains buildings that are taller than the proposal (i.e. 8 and 9 storeys).
95. The elements that exceed the height standard, and in particular Level 4 of the proposal, does not compete and is in harmony with the heritage characteristics of the site itself, while also responding to the more contemporary and taller buildings surrounding the site, to ensure that it sits comfortably in its context.

96. By locating the additional building height at the Bayswater Road and Ward Avenue intersection, as opposed to along the laneway and at the rear of the heritage item, ensures that the floor space is appropriately distributed across the site and that appropriate setbacks and building separation are provided to the adjoining and neighbouring developments. The proposal will also increase the mix and number of dwellings available in a location that has good access to public transport, amenity and services.
97. Council officers disagree that the proposed floor space ratio (FSR) is below that permitted on the site or that the FSR and height controls for the site do not align. The applicant's remaining points, however, adequately demonstrate that there are sufficient environmental planning grounds to support the extent of variation proposed.

Is the development in the public interest as required by clause 4.6.4(a)(ii)?

98. On 1 November 2023, the provisions of clause 4.6 were amended to delete the requirement for the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. This amendment, however, only applies to applications made on or after 1 November 2023 and therefore does not apply to this DA.
99. For the reasons already discussed above, the proposal is considered to be consistent with the objectives of the height of buildings development standard.
100. In relation to the objectives of the zone, the following justification is provided to demonstrate that the proposed development is consistent with the objectives of the E1 Local Centre zone:
  - (a) Objective: To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
    - (i) The proposal seeks to upgrade the existing ground level commercial tenancies and to provide new retail tenancies at the sub ground and lower ground levels. The use of the retail floor space will be the subject of a separate application/s. The future commercial uses will continue to serve the needs of people who live in, work in and visit the local area, as well as within the development itself.
  - (b) Objective: To encourage investment in local commercial development that generates employment opportunities and economic growth.
    - (i) The proposed upgrade of the site, including the existing and proposed commercial tenancies, may provide additional employment opportunities.

- (c) Objective: To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
  - (i) The proposal will convert the upper levels of the building back to their original residential use, while upgrading and restoring the original features of the terrace group. The proposed residential use will further support the vitality of the local centre. The use of the site for residential and retail activities is compatible with the mix of uses found within the surrounding area. The diversity of residential apartments offered will contribute to this part of the local centre and will create activated spaces within and around the site.
- (d) Objective: To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
  - (i) The proposal will upgrade and expand the existing commercial tenancies at the ground and sub ground levels of the building. The use of the tenancies will be subject to separate application/s. The amended plans have removed non-residential uses from the Mansion Lane, which is designated as a service lane.
- (e) Objective: To maximise public transport patronage and encourage walking and cycling.
  - (i) The proposal provides limited on-site residential parking. No parking is provided for visitors or staff/customers of the retail tenancies, which will encourage public transport patronage, cycling and walking to the site. The site is located within close walking distance of Kings Cross railway station and bus services operate along Bayswater Road, Darlinghurst Road and William Street. The proposal also encourages cycling by offering on-site bicycle parking for visitors, staff and customers.

#### Conclusion

101. For the reasons provided above, the requested variation to the height of building standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the LEP and the proposed development would be in the public interest because it is consistent with the objectives of the height of building standard and the objectives of the E1 Local Centre zone.

#### Design excellence

102. Development consent must not be granted to the proposed development unless, in the opinion of the consent authority, the proposed development exhibits design excellence as outlined at clause 6.21C of the Sydney LEP 2012.
103. In relation to the matters at clause 6.21C(2) of the LEP, the development is considered to demonstrate design excellence for the following reasons:
- (a) The proposed development provides a high standard of architectural design, materials and detailing appropriate to the building type and its location.
  - (b) The proposed materials and finishes complement the local heritage item at 28-30 Bayswater Road and the contributory building at 32-34 Bayswater Road.

- (c) The primary building form of the existing terrace group is being restored and will enhance the quality and amenity of the Bayswater Road public domain. The proposed new building form on the corner of Ward Avenue relates appropriately to the adjoining terraces and does not detract from the significance of the terrace group. The rear alterations and new built form at the rear of the terrace group will improve the Mansion Lane streetscape. In its amended form, the proposal will have a positive impact on the subject site and the heritage conservation area.
- (d) No significant views are currently obtained across the subject site and the development will not detrimentally impact on any view corridors.
- (e) The proposal is contextually appropriate to the site and the surrounding area. It is compatible with the built form and density of surrounding developments.
- (f) The site is appropriate for the shop-top housing use because it is in a highly accessible area and a designated 'Late Night Management Area'.
- (g) The adaptive reuse of the primary terrace form, including the reintroduction of the residential use to the commercial components of the building, provides an opportunity to restore the heritage features of the building. The Bayswater Road front elevation of the terrace group will be retained and enhanced, and the removal of the detracting fabric and replacement of the new building at the rear of the site will enhance the Mansion Lane streetscape. The proposal will result in a positive impact on the original heritage fabric and streetscape.
- (h) The proposal does not include the provision of a tower. The bulk and form of the proposed new building, however, complements the subject heritage item, contributory building and the neighbouring buildings.
- (i) The height exceedances will not be readily discernible from Bayswater Road. The upper-level setbacks together with the proposed use of lightweight cladding materials, ensures that the upper levels are recessive in the streetscape. The new building at the rear of the retained terraces complements the scale of the terraces, does not compete with the heritage significant elements and has been designed to provide an appropriate interface with the residential apartments on the northern side of the laneway.
- (j) The existing significant rear 'fingers' will be rebuilt at the rear of the terraces, while a sympathetic and appropriately scaled new building is provided along the laneway. The form of the new laneway building follows the original subdivision pattern of the 4 retained terraces.
- (k) The existing street frontage heights of the terraces will remain unchanged. While the new building on the corner of Ward Avenue is taller than the adjoining terraces, the front façade has been amended to provide a wall and parapet height which matches the adjoining terraces.
- (l) The shadow analysis demonstrates that there will be no adverse overshadowing to neighbouring and nearby properties. Good levels of solar access will be provided to the north facing living rooms and outdoor private open spaces.
- (m) The development has been designed to ensure that there will be no detrimental visual privacy impacts to future occupants or neighbouring residents. Where required, appropriate design measures including screening and landscape planters have been provided to prevent detrimental privacy impacts.

- (n) Given the proposed height of the building, the type of materials to be used, the provision of awnings to the street frontages, and the inclusion of extensive landscape planting, there will be no negative wind or reflectivity impacts.
- (o) The submitted BASIX certificate for the multi-unit dwellings indicates that the project score for both water and energy meet the required targets.
- (p) Pedestrian, cycle, vehicular and service access to the site will be improved.
- (q) The restoration and renovation of the terrace group, including the front courtyards to number 32-34 Bayswater Road, will provide an improved interface at the public domain. The proposed new building at the rear of the site will improve the amenity of Mansion Lane.
- (r) The introduction of on-site tree planting, the on-structure planting within the balconies/courtyards and communal open space areas, will further improve the streetscape.

### Height, bulk and scale

104. The proposal exceeds the 15m height in metres control by 5.055m under the SLEP 2012 and the 3 storey height in storeys control under the DCP by 3 storeys.
105. While the alterations and additions to the terraces and the western end of the new building fronting Mansion Lane both comply with the 15m height standard and the 3-storey height control, the new building fronting Ward Avenue does not comply. The majority of the non-compliance is due to Level 4 (i.e. Unit 401) of the new corner building.
106. As shown in the section plan at Figure 32, the built form in the north-western portion the site (i.e. the 2 townhouse style apartments at 28-30 Bayswater Road) sits below the height standard. While the relocation of Unit 401 from the south-eastern corner of the site to the north-west corner of the site (above the townhouse style apartments) would therefore result in a proposal that is more compliant with the applicable height standard, it is recognised that this would result in an unacceptable building form at the rear of the heritage listed terraces and unacceptable bulk along the laneway.
107. While the 'shifting' of floorspace is generally not supported by Council's assessing officers, in this instance it results in a superior design outcome for the following reasons:
  - (a) The townhouse style apartments, in the north-western corner of the site, remain a full-storey lower than the heritage listed terraces at the front of the site.
  - (b) The lower building form, in the north-western corner of the site, is respectful of the scale of the subject heritage listed terraces at the front of the site and ensures that the heritage listed buildings remain the dominant building form on the site.
  - (c) The townhouse style apartments, in the north-western corner of the site, has been provided with a traditional pitched roof (rather than a flat roof) to reflect the character of the heritage listed building.
  - (d) The townhouse style apartments, in the north-western corner of the site, results in a less bulky elevation to Mansion Lane.

- (e) The reduced bulk, in the north-western corner of the site, results in a more appropriate building mass opposite the heritage listed properties located on the northern side of Mansion Lane.
- (f) The taller mass at the corner of Bayswater Road and Ward Avenue aligns with the taller buildings on the remaining 3 corners of the intersection, including the 8-storey building on the north-east corner (40 Bayswater Road), the 9-storey building on the south-east corner (51-57 Bayswater Road) and the 9-storey building on the south-west corner (37 Bayswater Road). See Figure 44.
- (g) The taller mass at the corner of Bayswater Road and Ward Avenue creates a 'bookend' at the eastern end of the street block, noting that a taller building is also located at the western end of the block at 16-18 Bayswater Road on the corner of Kellett Street (see Figure 39 and Figure 44). The proposal reflects the height of the western corner building, defines the eastern corner site and matches the rhythm and form of the street block. This is consistent with the existing corner building being replaced, which currently also exceeds the applicable height standard applying to the site.
- (h) When viewed from Ward Avenue, the additional height sits between a 9-storey building on the southern side of Bayswater Road (37 Bayswater Road) and a 6-storey building on the northern side of Mansion Lane (21 Kellett Street) and therefore is not out of character in the streetscape (see Figure 38).

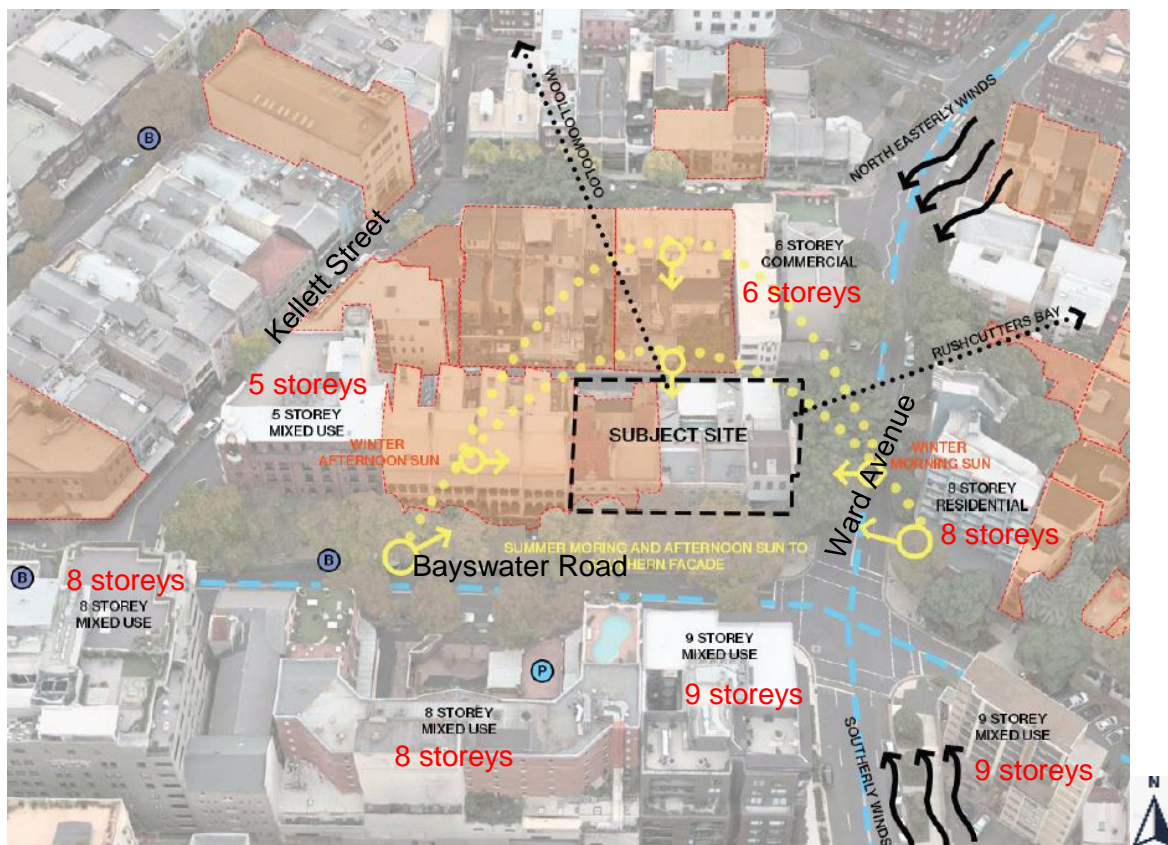


Figure 44: Site analysis plan showing the height of surrounding buildings

108. In addition to points raised above, the corner building has also been designed in a manner that maintains the heritage significance of the terraces. Since lodgement of the DA, the new corner building has been amended to ensure that it appropriately relates to and does not overwhelm the adjoining terraces (see Figure 45), noting that the first-floor awning has been deleted from the amended DA plans and that a condition is recommended requiring that the size of the ground floor awning be reduced.



Figure 45: Lodged DA proposal (left) and amended DA proposal (right)

109. While the new corner building is taller than the adjoining terraces (as is the current building), the lower portion of the building (the brick base) facing Bayswater Road has been provided with a front wall and parapet height that matches the adjoining terraces. The curved building form and projecting balconies facing Bayswater Road have also been deleted from the original design so that the base of the building matches the predominant street alignment of the terraces and appears recessive in the streetscape.
110. The upper part of the new building has been recessed back from the southern and eastern elevations to create a visual separation from the base. The upper-level setback also occurs above the parapet height of the adjoining terraces. The proposed upper-level setbacks together with the proposed use of lightweight cladding materials, ensures that the additional mass at the top of the building is not visually dominant and that the heritage terraces prevail in the streetscape. The lightweight materials and vertical blades also contrast with the face brick below. The setback of the upper levels to Bayswater Road, provides an opportunity to introduce a planter box to the southern elevation. This further softens the façade.
111. In relation to the Ward Avenue elevation, the building setbacks have been increased above Level 1. This allows for visual relief along this frontage, but also ensures that the building does not impact on the canopy of the significant street trees in Ward Avenue.



112. The upper levels of the new building have also been pulled away from the north-eastern corner site. This provides an appropriate relationship to the laneway and to the rear of the properties in Kellett Street. By stepping down at the Ward Avenue/Mansion Lane corner, the building's bulk and scale allows the streetscape to transition appropriately to the north.
113. The Mansion Lane elevation is split into several slim forms that follow the original subdivision patterns of the site. The window sizes and forms take inspiration from the window proportions and architecture of the existing terraces. The townhouse style apartments at the rear of the subject heritage site have been designed to appear as 2-storey buildings with a separate top-level form. The use of recessed balconies, contrasting materiality and increased setbacks all assist in breaking-up the building form and reducing the visual bulk along the rear lane. The inclusion of landscape planter boxes further assists to soften the building within the streetscape.
114. While the proposal does not comply with the height in storeys DCP control, the proposal does satisfy the objective of the control which is to ensure that the height reinforces the existing or future neighbourhood character. As demonstrated above, the proposed height of the new building is consistent with the scale and form of the surrounding buildings and the heights found at other street corners.
115. The proposal provides a high degree of articulation to ensure that the various built forms are broken down into smaller elements reflective of their heritage characteristics, as well as providing a contemporary, recessive response to the various street frontages. The new building uses horizontal shadow lines to create separation from the existing terraces and has been designed in such a way as to accentuate its verticality. This also assists in reducing the visual bulk of the proposal.
116. Due to the east-west slope of the site, the new corner building sits lower in the Bayswater Road streetscape than the adjoining terraces. The level difference is emphasised by the position of the ground floor awning (see Figure 45). To ensure that the lower levels of the new building relate appropriately to the adjoining terraces, a condition has been recommended requiring that the depth of the awning projection be reduced to be consistent with the awnings provided to the Ward Street elevation (i.e. reduce to approximately half its current proposed depth). This will further reduce the bulk and scale of the building when viewed from Bayswater Road.
117. As demonstrated above, the development in its amended form, has appropriately reduced the visual massing of the new building, especially at the upper levels. The amended design ensures that the proposed height on this part of the site is appropriately scaled with the density of the surrounding buildings and that, subject to the recommended condition relating to the awning projection, the architectural expression of the new building will relate appropriately to the adjoining terraces, the local heritage items at 28-30 Bayswater Road and on the northern side of Mansion Lane, and to the Potts Point HCA. In its amended form, the proposal satisfies the objectives of the height controls.

### Heritage

118. The subject site is located within the Potts Point heritage conservation area (C51). While only 28-30 Bayswater Road is listed as a local heritage item (I1118A), all 4 retained terraces have heritage significance and are identified as being 'contributing' buildings.

119. A Heritage Impact Assessment (HIA) and Conservation Management Plan (CMP), prepared by Weir Phillips Heritage and Planning, accompany the application. The reports provide the following statement for the site as a whole:

"Nos. 28-30 and Nos. 32-34 Bayswater Road, Potts Point have local historic and aesthetic significance for the contribution that they make to the Potts Point Heritage Conservation Area. Despite alteration to their front elevations, these terraces remain identifiable, when viewed from Bayswater Road, as grand c.1860s terraces constructed following the subdivision of the Kellett Estate. This was the period during which the foundations of Potts Point were laid. The history of these terraces mirrors the fortunes of the area as they changed from grand city residences to boarding houses, with shops and later restaurants and night clubs at ground floor levels. Nos. 28-34 Bayswater Road are contributory within the Potts Point Conservation Area. Number 36-38 Bayswater Road is neutral within the area. Numbers 20-38 Bayswater Road form an imposing group of mid to late Victorian period buildings, with varying degrees of integrity, fronting Bayswater Road between the former Mansions Hotel in the west and Ward Avenue in the east".

120. As described under the 'Amendments' section of this report, the development has been significantly amended since lodgement of the DA. The amendments made to the drawings, together with the submission of the updated and additional information, have addressed the heritage concerns originally raised by Council's Heritage Specialist.
121. The excavation and underpinning that was originally proposed under the principal building forms of the 4 terraces (Nos. 28-30 and 32-34) has been deleted from the proposal. The extent of excavation has been reduced and is now restricted to the area behind the principal building form and to a portion of 36 Bayswater Road only. The amended plans, together with the recommended conditions of consent, eliminate the potential risks to the stability of the retained terraces. The risk of damage to the neighbouring heritage item and to the street trees in Bayswater Road has also been eliminated by the revised excavation footprint.
122. While the building at 36 Bayswater Road is classified as a 'neutral' building under Council's DCP, the applicant was advised that the 'neutral' status of a building did not mean that complete demolition was an entitlement. The applicant was advised that all significant fabric would still need to be retained.
123. Following a detailed review of the proposal, including the accompanying HIA and CMP, however, Council's heritage specialist acknowledged that 36 Bayswater Road has undergone significant change, and that the extent of change has resulted in a significant amount of the original heritage fabric being lost. Substantial intrusive interventions have been made to the building and its 'pair' was lost a long time ago when Ward Avenue was widened. Council's heritage specialist has concluded that these changes have resulted in permanent damage to the building which cannot reasonably be reversed.
124. However, the demolition of 36 Bayswater Road, even if justified in its own right, cannot be viewed in isolation. The applicant was advised that the demolition must also be reviewed in the context of the other works being proposed as part of the DA to establish if there would be any cumulative adverse impacts.

125. In response, the application has been updated to retain significant fabric within the 4 terraces including 2 of the original internal staircases, entry hallways and various fireplaces. New suspended ceilings, which are required for acoustic and fire separation purposes, will be provided in a manner that is reversible and does not impact on the original ceilings or architraves.
126. Fabric of 'moderate' significance will also be retained which further contributes to the existing integrity and intactness of the terraces. The non-original later additions at the rear of the retained terraces and other intrusive elements will be removed.
127. The DA, as originally submitted, sought to demolish the original rear wings and breezeways of the 4 terraces and provide a central common open space at the first-floor level. In addition to the common open space being inappropriately located, the proposed demolition of the rear wings was not supported by Council officers on heritage grounds.
128. The amended DA seeks to demolish and reconstruct the rear wings using the salvaged bricks. This has resulted in significant amendments to the design of the building at the rear of the terraces. Existing crucial structural elements will also be reconstructed at the ground floor level to support the rear wings above, which also helps in the retention and interpretation of the original subdivision pattern and the fine grain layout of the buildings.
129. Finally, the acceptability of the demolition of 36 Bayswater Road is subject to an appropriate replacement building being proposed. Matters relating to the height/number of storeys, building envelope, setbacks and design of the replacement building have been discussed above. In its amended form, the replacement building on 36 Bayswater Road has been designed to complement the significance of the terrace group and will enhance the contribution of the site to the HCA and is supported by Council's heritage specialist.
130. Given that the extent of demolition has been significantly reduced, that fabric of high and moderate significance has been retained and that a suitably designed replacement building is proposed, Council officers are satisfied there are sufficient grounds to support the removal of 36 Bayswater Road.
131. In relation to the retained terraces, it is proposed that the frontages to the terraces will be restored to reflect the original details shown in c1860 historical photography. This includes full reinstatement of the frontages of the contributory items at number 32-34 (including the balconies, balustrades, columns, fretwork, iron work, verandahs, front yards, entry path and steps and front palisade and masonry fences) and reinstatement of the first-floor balcony details of the heritage items at number 28-30. The interwar addition to the shopfront of the subject heritage item will be retained as evidence of the historic layer of development. These additions are proposed to be reinstated to the original 1922 details. See Figure 46.



Figure 46: Proposed heritage conservation works to front facade of 28-30 and 32-34 Bayswater Road

132. As part of the reinstatement works to the frontages of the retained terraces, the existing enclosure within the front setback to number 32-34 will be demolished. The DA, as originally submitted, sought to add modern elements to the front of the terraces, including a replacement enclosure. This was not supported by Council officers. In its amended form, the terraces will be restored to be in keeping with the heritage character of the surrounding heritage conservation area and with the development that originally existed in this location. The open courtyard that was at the front of number 32-34 will also be recreated.
133. The proposal also seeks to add 8 new rooftop dormers to the Bayswater Road frontage (i.e. 2 to each of the retained terraces). The dormers have been designed to reflect the traditional form and are compliant with the DCP controls. Given the terraces are over 6m wide, 2 dormers for each terrace is acceptable. To reduce their visual impact, the dormers have been set back from the front parapet and will not be visible from street level. The dormer windows use a traditional double hung system.
134. The rear roof additions have been designed to be compliant with the DCP. The DA, as originally proposed, included projecting balconies off the rear roof extensions. These were not supported by Council officers on heritage (and privacy) grounds. The amended proposal includes a recessed balcony and a wintergarden at Level 3 of the retained terraces. While balconies are generally not supported in rear roof additions, in this instance the balcony and wintergarden are acceptable given that the existing development already includes 2 balconies at Level 3.
135. The DCP requires that private open space be provided to at least 75% of the proposed dwellings. The deletion of the recessed balcony and wintergarden at Level 3 would therefore still result in a development that complies with the minimum private open space requirements. The provision of a private open space area for each and every apartment, however, is considered a superior outcome and will provide the future occupants with increased amenity.

136. The proposed development, as amended, will retain, restore and enhance the principal elevations and the rear wings of the terraces, and will remove intrusive and unsympathetic fabric. The supplementary information provided with the DA has provided adequate certainty of authentic retention, restoration, reinstatement and conservation of the original heritage fabric. In its amended form, the proposal will have a positive impact on the subject site and the conservation area and is supported by Council's Heritage Specialist subject to the recommended conditions of consent.

### Solar access and overshadowing

137. The applicant has submitted sun's eye view diagrams to demonstrate that the living rooms and private open spaces of at least 70% of apartments will receive a minimum of 2 hours' direct sunlight between 9am and 3pm at midwinter in accordance with the 'design criteria' at Objective 4A-1 of the ADG.
138. The DA plans indicate that 16 out of 22 apartments (73%) comply with the 2-hour requirement. Council officers disagreed that 4 of the east-facing apartments received 2 hours of direct sunlight between 9am and 11am. To address this issue, the applicant has reconfigured 2 of the apartments on the north-eastern corner of the building (Units 104 and 204) to provide north facing living areas. With the amendments, Council officers have determined that 14 out of 22 (63.6%) of the apartments are compliant. Council officers disagree that Units 301 and 401 (circled red below) receive solar access at 11am given that the sun's angle at this time is so oblique that there will be no sun to the east facing living rooms fronting Ward Avenue at 11am (see Figure 47).



Figure 47: Sun's eye view diagram at 11am

139. While the proposal does not strictly comply with the 'design criteria' at Objective 4A-1 of the ADG, solar and daylight access to the development is considered satisfactory for the following reasons:
- (a) Units 301 and 401 receive direct sunlight to the living room windows for 1 hour and 45 minutes between 9am and 3pm at midwinter, which is a 15-minute variation to the design criteria.
  - (b) Units 301 and 401 provide north facing private open spaces which receive more than 2 hours of solar access between 9am and 3pm at midwinter.
  - (c) The proposal maximises the number of north facing apartments. While Units 301 and 401 include north facing living room windows, the cantilevered awning/communal open spaces at the Level 4 and the rooftop, limits the amount of direct solar access to the north facing living areas.
  - (d) A minimum of 1sqm of direct sunlight, measured at 1m above floor level, is achieved for more than 15 minutes within the living rooms and private open spaces of more than 70% of the apartments.
  - (e) The design criteria could potentially be achieved if the common open space was relocated to the east façade and Units 301 and 401 were relocated to the northern façade. This, however, would likely result in unacceptable heritage impacts and unsatisfactory design issues along Mansion Lane.
140. The architect has also modelled the overshadowing impacts of the development, including the additional shadows from the elements located above the 15m height limit. Extracts from the shadow impact analysis are provided below, with the additional shadow cast by the elements below the height plane shown in red and the additional shadow cast by the elements above the height plane shown in blue.

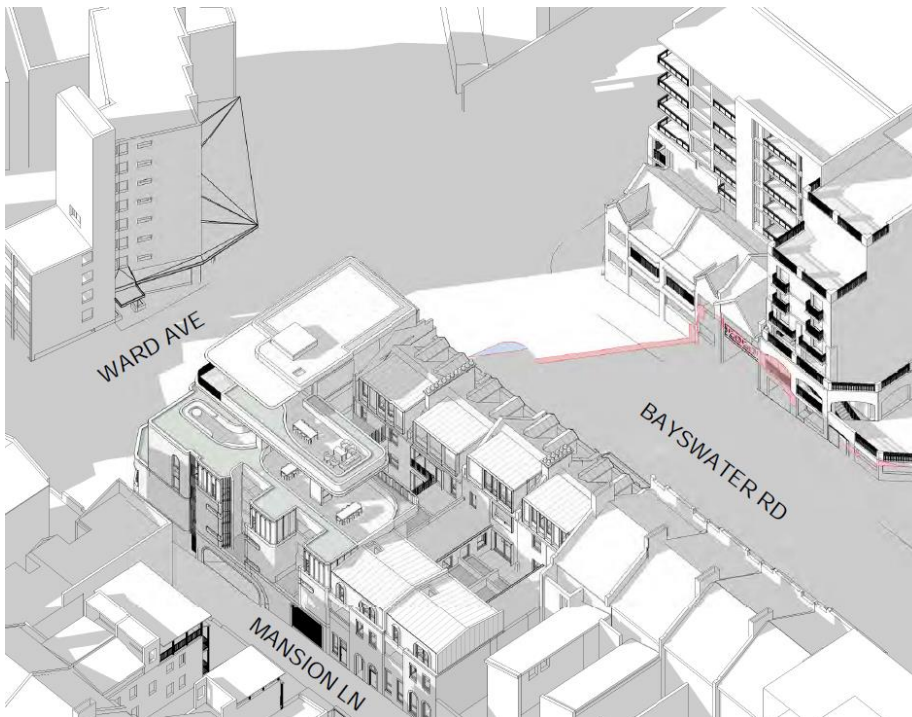


Figure 48: Shadow impacts at 9am

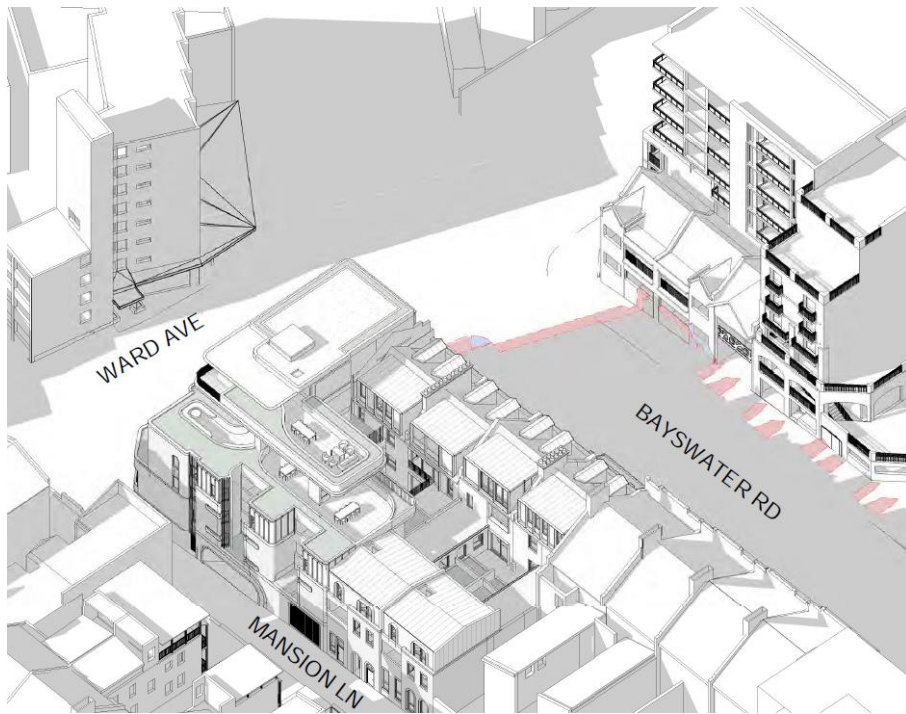


Figure 49: Shadow impacts at 10am

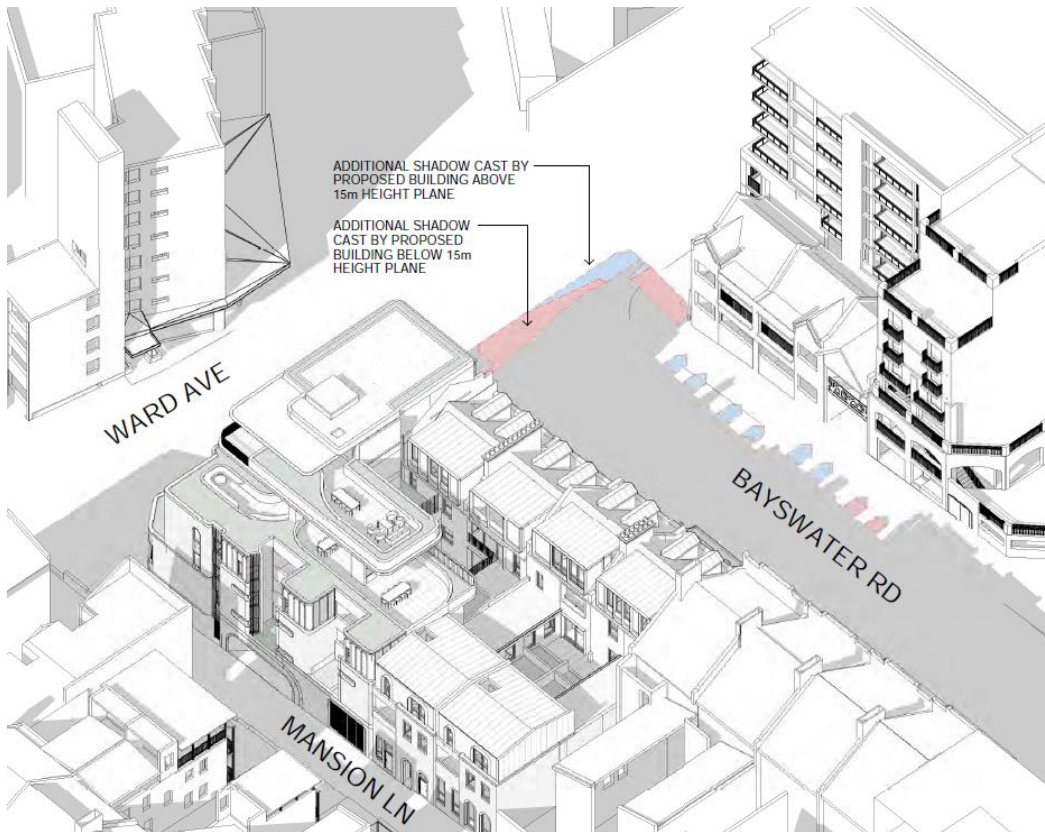


Figure 50: Shadow impacts at 12 noon

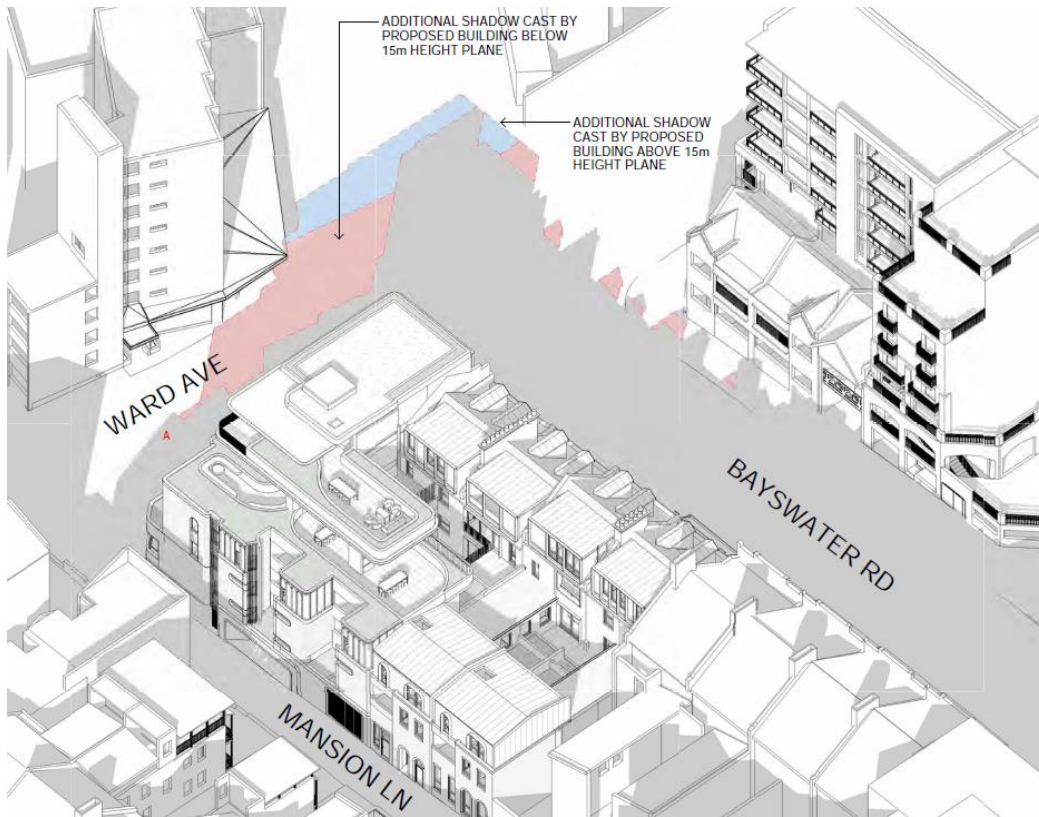


Figure 51: Shadow impacts at 2pm

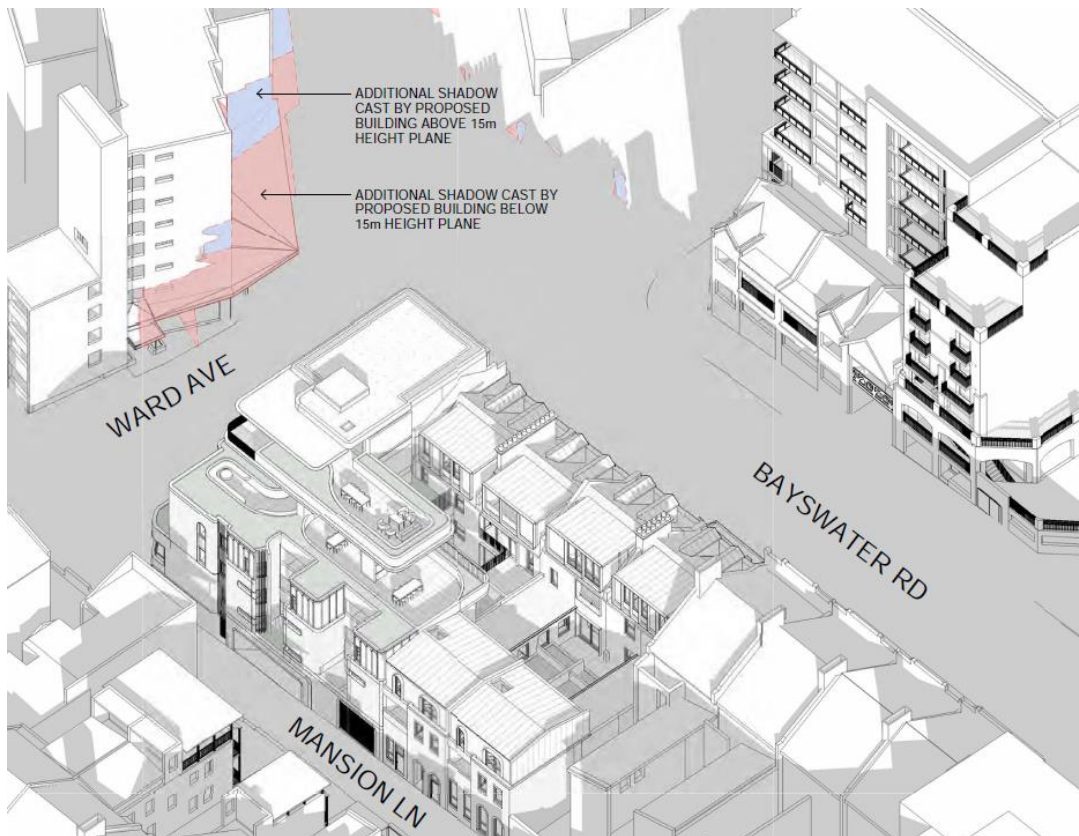


Figure 52: Shadow impacts at 3pm



141. The shadow analysis indicates that the proposal will result in some minor additional overshadowing at midwinter as follows:
- (a) Additional overshadowing, cast by the portion of the building below the 15m height standard, will occur at 9am to the front window openings of the lower levels of the building to the south at 19-35 Bayswater Road.
  - (b) Additional overshadowing, cast by the portion of the building below the 15m height standard, will occur at 10am to the front window openings of the ground floor level of the building to the south at 37 Bayswater Road.
  - (c) Additional overshadowing, cast by the portion of the building below the 15m height standard, will occur at 3pm to the awning and blank walls of the building to the east at 40 Bayswater Road.
142. The additional overshadowing will not result in any unreasonable amenity impacts, with the properties to the south (on the opposite side of Bayswater Road) and the properties to the east (on the opposite side of Ward Avenue) both maintaining at least 2 hours' direct sunlight between 9am and 3pm at midwinter.
143. The shadow analysis further confirms that the elements that encroach above the maximum height standard will cause no additional shadow impacts to the internal or outdoor spaces of the adjoining or nearby properties, with the additional overshadowing either falling on the road reserve or on portions of the building containing blank walls or awnings. The extent of overshadowing is limited in duration and will not unreasonably impact on the amenity of the public domain.

#### **Deep soil, canopy coverage and tree protection**

144. While there are no minimum landscaping requirements under the ADG or Council's DCP, Council's DCP does require that deep soil be provided in an area that is equivalent to at least 10% of the site area with minimum dimensions of 10m (noting that these requirements exceed and prevail over the ADG deep soil requirement of 7% of the site area with 3m dimensions). In addition, the DCP requires that tree planting be provided with a mature canopy coverage that is equivalent to at least 15% of the site area (i.e. 208.95sqm).
145. The proposed development does not provide any deep soil zones. The non-compliance with the DCP, however, is acceptable on this site for the following reasons:
- (a) The site currently provides no deep soil with the majority of the site being built upon.
  - (b) The site is located in a dense urban environment and provides limited space for deep soil at the ground level.
  - (c) Non-residential uses, including active street frontages, are located at the ground floor level.
  - (d) The heritage constraints of the site prevent additional deep soil planting from being provided.

146. While the DA does not comply with the minimum deep soil requirements of the DCP, the proposal does significantly increase the amount of on-site landscaping. On-structure planting, in the form of planter boxes, is proposed within the private internal courtyards at Level 1, adjoining private balconies and within the communal open spaces at Levels 2, 3 and 4. The on-structure planting will accommodate new tree planting which will achieve approximately 326sqm of canopy coverage at maturity (i.e. 23% of the site area).
147. Subject to a suitable condition being imposed requiring that an amended landscape plan be submitted which addresses the matters outlined in the 'Amendments' section of this report, satisfactory landscaping will be provided which will improve the amenity of the Bayswater Road, Ward Avenue and Mansion Lane streetscapes, while also providing increased privacy and outlook for the future occupants.
148. Suitable conditions are also recommended to ensure that the significant street trees within Bayswater Road and Ward Avenue are protected during demolition, excavation and construction works. During the assessment process, a pruning specification report was prepared and as a result, the building envelope of the new building at 36 Bayswater Road was adjusted to ensure that the tree canopies of the Ward Avenue street trees would be protected. At the sub ground level, the footprint of the basement bar has been shifted away from the eastern boundary to ensure that the excavation works will not impact on the structural root zones (SRZ) of the Ward Avenue street trees.
149. While the applicant has generally demonstrated that the tree canopies and structural root zones of the Ward Avenue trees will not be detrimentally impacted by the excavation works or the upper levels of the new corner building, Council's tree management officer has recommended that a copy of the hydraulic plan be submitted prior to release of any construction certificate to ensure that all hydraulic works will be outside of the SRZ of the trees.
150. The submitted pruning specification report must also be updated prior to release of any construction certificate, to demonstrate that the proposed Ward Avenue awnings will not impact on any lower sections of the existing street trees.
151. In the event the projecting awnings over the Ward Avenue footpath do have a detrimental impact on the street trees, then the recommended condition requires that these awnings be deleted (or reduced if appropriate). In this location, the deletion of the ground level awnings from the Ward Avenue elevation would not have a detrimental impact on the design or function of the building. Any revised design would need to reflect the detailing at the north-eastern corner of the building and would require the separate consent of Council's Area Planning Manager.
152. For any new works adjacent to the Ward Avenue frontage, which is located outside of the existing building footprint, a condition has been recommended requiring that the works be supported by a construction methodology incorporating a cantilevered design in these locations. This is to ensure that no new works (e.g. footings) will occur outside of the existing building footprint that will impact on the SRZ of the trees. Alternatively, where there are point encroachments outside of the existing building footprint (e.g. in the location of the proposed booster as shown in Figure 53) and a cantilevered design cannot be provided, the ground floor plan is to be adjusted to reflect the existing building footprint unless detailed root investigations are undertaken, and it can be demonstrated that there will be no impact to the significant street trees. Suitable conditions are recommended to address these issues.

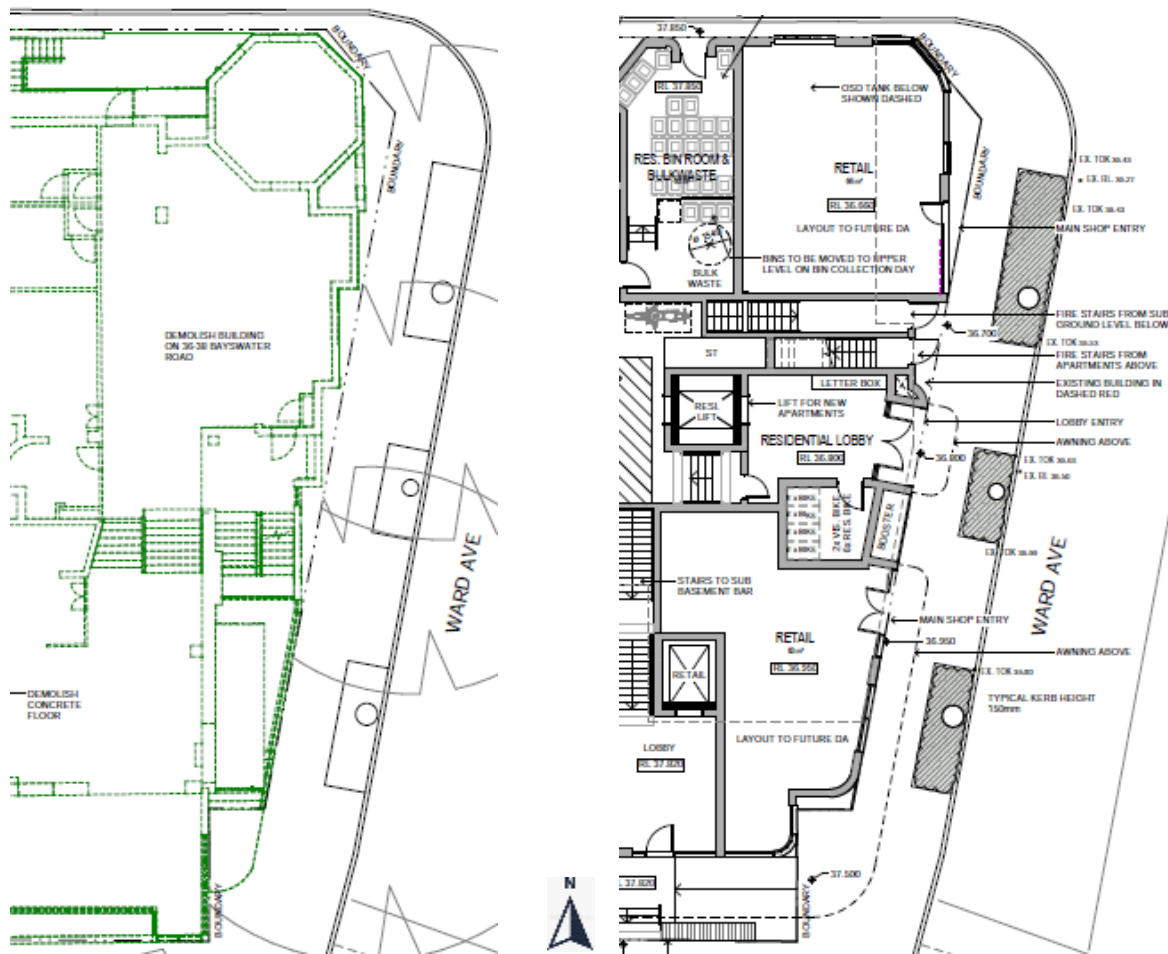


Figure 53: Existing (left) and proposed (right) building footprint of new corner building

### Communal open space

153. Objective 3D-1 of the ADG requires that an adequate area of communal open space (COS) be provided to enhance residential amenity and provide opportunities for landscaping. The 'design criteria' requires that the COS is equal to at least 25% of the site area. With a site area of 1,393sq.m this equates to 348.25sqm. Under the DCP, the COS should have minimum dimensions of 6m.
154. The proposal provides 354sqm of COS (i.e. 25.4% of the site area), including a small seating area at Level 2 (23sqm) and 2 rooftops COS areas at Level 3 (242sqm) and Level 4 (89sqm). The small seating area at Level 2 (23sqm) does not satisfy the 6m minimum dimension requirement of the DCP but does satisfy the ADG design guidance that specifies a minimum dimension of 3m.
155. The rooftop COS areas are well designed, easily identified and provide usable spaces that will be embellished with seating and barbeque facilities. Due to the heritage constraints of the site, the occupants of the terrace and townhouse-style apartments do not have internal access to the COS areas. Direct access, however, is available either via the residential lobby off Ward Avenue or via the basement car park at the lower ground level.

156. As shown in Figure 54, the rooftop COS areas have been located and designed to achieve good amenity in terms of solar access. The rooftop communal areas have a northerly aspect and exceed the minimum requirement that 50% of the principal usable part of the COS receives direct sunlight for a minimum of 2 hours between 9am and 3pm at midwinter. The upper levels and rooftop awning will also provide shade and shelter to the COS areas.

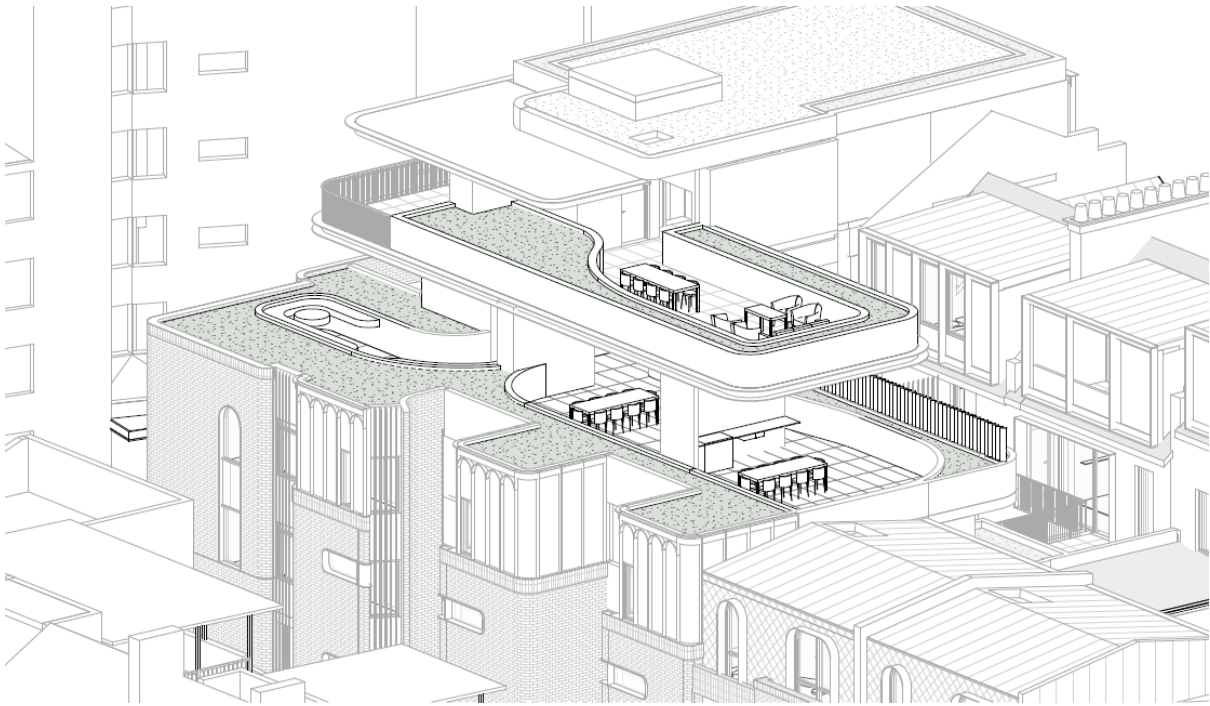


Figure 54: Sun eye view of the Level 3 and 4 communal open space areas at 3pm in midwinter

### Visual privacy

157. Objective 3F-1 of the ADG requires that adequate separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal privacy. For buildings up to 4-storeys in height, the design criteria of the ADG recommends minimum side and rear boundary setbacks of 6m for habitable rooms/balconies and 3m for non-habitable rooms; and for buildings 5-8-storeys in height, the design criteria of the ADG recommends minimum side and rear boundary setbacks of 9m for habitable rooms/balconies and 4.5m for non-habitable rooms. No separation is required between blank walls.
158. Given that the northern, eastern and southern boundaries of the site have frontage to a public road and that a blank wall is proposed to the western boundary, the design criteria at Objective 3F-1 of the ADG does not apply to the subject site.

159. While minimum setbacks to street frontages are not specified in the ADG, it is recognised that there is still the potential for privacy impacts to occur across the narrow rear laneway. As shown in Figure 55, the habitable rooms/balconies on the northern side of Mansion Lane are typically setback from the boundary. The exception, however, is 19 Kellett Street which is provided with a zero setback to the street. The building at 19 Kellett Street is a 3-storey apartment building and has a bedroom bay window that extends over the boundary.
160. A development application (D/2019/621) has also been approved at 21A Kellett Street for demolition of the existing single storey triple garage and construction of a 4-5-storey mixed use development comprising a ground floor retail tenancy, 6 boarding rooms and communal indoor/outdoor space on the top floor level. The development has not been constructed to date.
161. The properties at 19 and 21A Kellett Street were identified during the assessment process as the properties most likely to be impacted in terms of privacy. It was also recognised that the heritage properties opposite the site, at 9-17 Kellett Street, could potentially be redeveloped. As such, the elevation to Mansion Lane has been amended to provide additional building separation to the properties to the north and to incorporate appropriate privacy measures to protect the amenity of the existing and future residents.



Figure 55: Existing development on the northern side of Mansion Lane

162. The development, as amended, incorporates the following measures to eliminate any detrimental privacy impacts to the north:

- (a) A reduced built form has been provided at the rear of number 28-30, with the apartments being designed as 2-storey townhouses.
  - (b) The balconies at the rear of number 32-34 (Units G01, 102, 103, 202 and 203), within view line of 19 Kellett Street, have been setback 6m from the centreline of the laneway.
  - (c) The ground level balcony to Unit G02 is located opposite the ensuite windows of 21A Kellett Street and complies with the recommended ADG separation. The Level 1 balcony to Unit 104 is located opposite a bedroom window of 19 Kellett Street and therefore has been setback with a planter box with screen planting.
  - (d) The portion of the building located opposite 21A Kellett Street is predominantly a blank wall, with the 2 north facing living room windows (Units 104 and 204) containing opaque glazing.
  - (e) For those rooms benefitting from a dual orientation, the primary windows openings have either been provided to the east or west (instead of to the north).
  - (f) For those rooms which are provided with 2 window openings, the windows to the north are provided as high-level windows.
  - (g) For those rooms within view line of 19 and 21A Kellett Street and that only benefit from a northern orientation (i.e. W07, W15 and W19), vertical privacy screens have been provided.
  - (h) Windows provided to one of the bedrooms of Units G02, 104 and 204 have been angled to direct views along the laneway (instead of directly across the laneway) and are provided with vertical privacy screens.
163. The rooftop communal open space areas at Levels 3 and 4 also adjoin the northern Mansion Lane boundary. These areas have been designed to ensure there will be no significant impact on surrounding properties in respect to the loss of privacy. As shown in Figure 54 above, the rooftop open space areas have been setback from the northern boundary and are surrounded by landscaped edges. This will ensure that the COS areas remain separated from surrounding dwellings and achieve adequate visual and acoustic privacy. The width and design of the planter boxes will restrict occupants/visitors from accessing the edge of the open space and overlooking the properties on the northern side of Mansion Lane.
164. As shown in Figure 56 the proposed rooftop COS areas are also not at eye level with any of the existing developments on the northern side of Mansion Lane and therefore will not have a direct view line into the existing apartments.

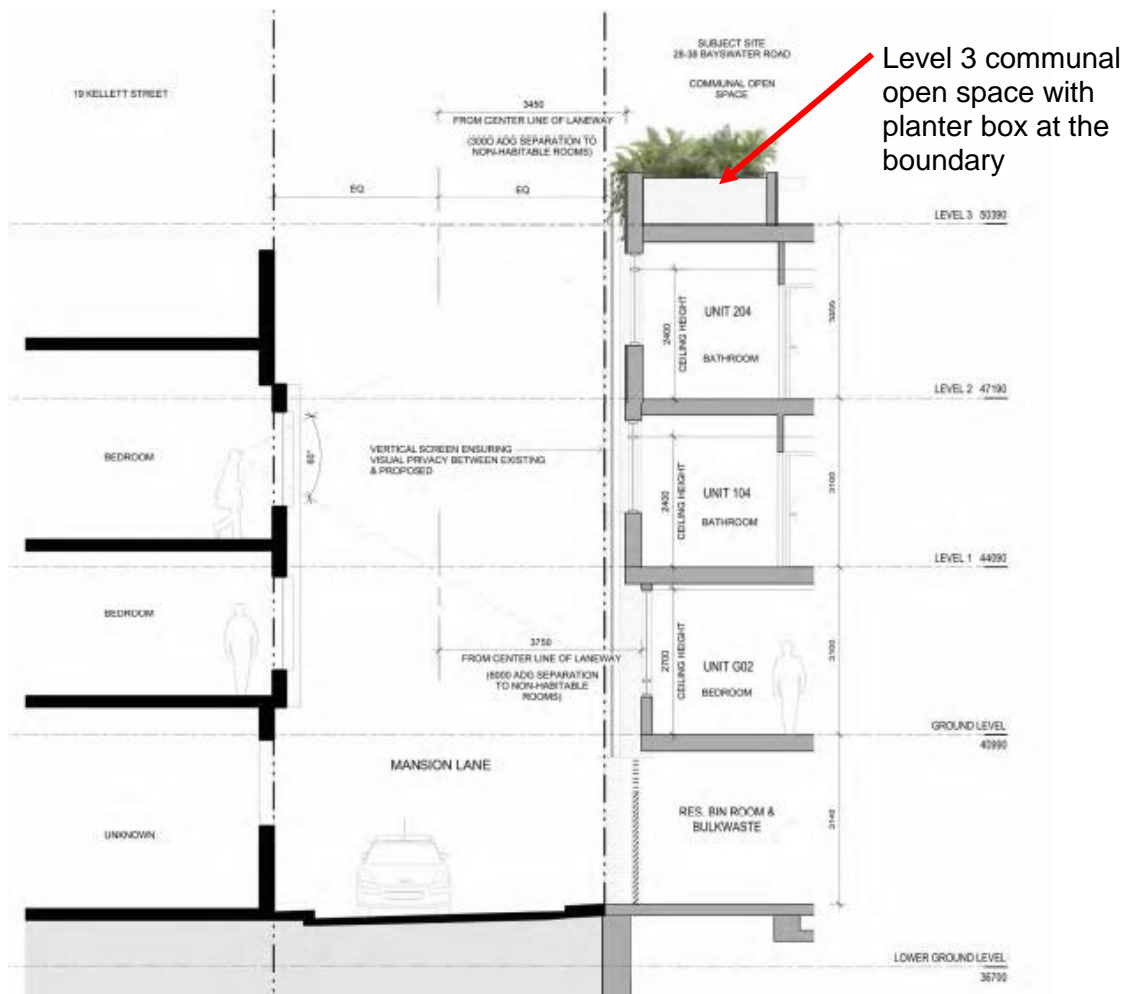


Figure 56: Section plan showing relationship between the proposed communal open space and the existing development on the northern side of Mansion Lane

165. In relation to the privacy of the dwellings within the subject site itself, the Level 3 communal open space is located directly opposite terrace apartment 6. To ensure that an adequate level of privacy is therefore maintained, a privacy screen is proposed within the landscape planter box (see Figure 57). A condition has been recommended requiring that the privacy screen be relocated to the outside edge of the planter bed to allow unrestricted maintenance access. An assessment of the proposal has established that the relocated screen would provide appropriate privacy, without impacting on the solar compliance or outlook from the terrace apartments.

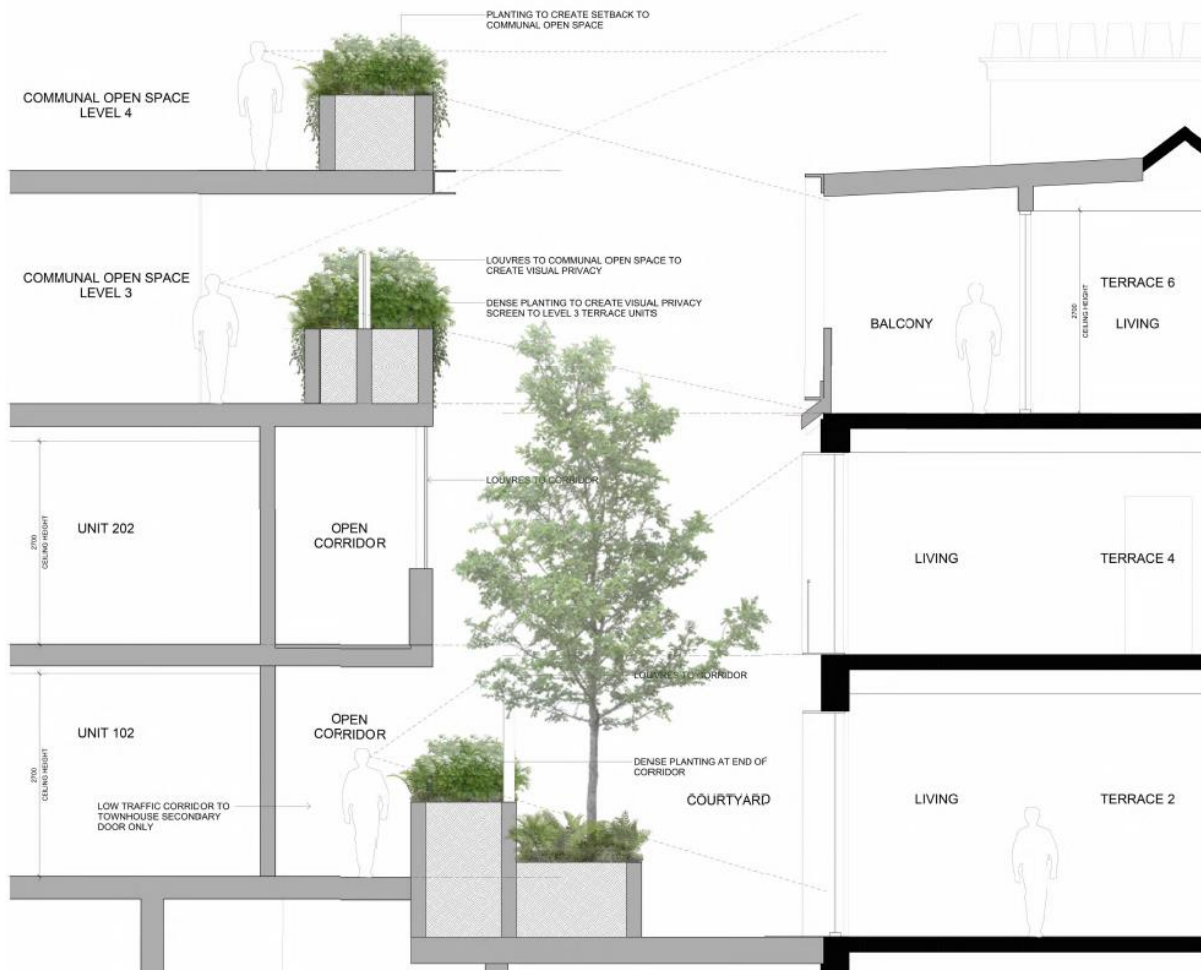


Figure 57: Section plan showing relationship between the proposed communal open space and the proposed terrace apartments

166. Conditions have also been recommended requiring that details of all fencing to the Level 1 courtyards, the external privacy screens and the internal privacy screens adjoining the 'void', be submitted for the separate approval of Council's Area Planning Manager/Coordinator prior to release of a construction certificate.

### Acoustic privacy

167. An acoustic assessment, prepared by Renzo Tonin and Associates, accompanies the DA. The assessment considers any noise impacts associated with potential vibration from the nearby rail tunnel, noise intrusion to the subject site (including from road traffic and nearby commercial operations), noise emissions from the proposed retail tenancies to nearby sensitive receivers (including to the proposed apartments within the site), and noise emissions from the required mechanical plant and development operations. Each of these noise impacts are considered below.

### Rail vibrations

168. The rail corridor adjacent to the site is located underground. As such, rail induced ground born vibration is the primary concern for the subject site. This vibration can be perceptible both as tactile vibration and ground borne noise.



169. The assessment concludes that rail vibrations, including ground-borne rail noise levels inside the habitable rooms of the development from trains passing by, will comply with the relevant criteria as stipulated in State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Development Near Rail Corridors and Busy Roads – Interim Guideline.

#### Noise intrusions from external sources

170. The primary external noise sources, that have the potential to impact on the acoustic amenity of the future occupants of the development, include road traffic noise from Bayswater Road and Ward Avenue, general activity/entertainment noise from commercial premises in the Kings Cross precinct (including noise from nearby entertainment venues), and noise emissions from plant and equipment servicing surrounding development.
171. Council's DCP provides internal noise level targets for both bedrooms and living rooms. The submitted acoustic assessment includes extensive analysis and has determined that noise attenuation measures are required to reduce the impact of noise from external sources and to meet the noise level targets specified within the DCP. The acoustic assessment recommends a range of acoustic treatments including acoustically rated windows and doors, and appropriate building materials.
172. Subject to the recommendations of the acoustic report being adopted, Council officers are satisfied that there will be no unreasonable impacts on the proposed apartments from external noise sources and that the proposal will meet the necessary acoustic requirements, when the doors and windows are closed. Council's heritage specialist has also confirmed that the specified measures will have no unreasonable impacts on the significant heritage fabric of the terraces.
173. Objective 4B-1 of the ADG, however, requires that all habitable rooms (bedrooms and living rooms) be naturally ventilated. In noisy locations, the closing of windows to meet the internal noise targets means that the natural ventilation requirements of the ADG would not be met. All noise affected apartments must therefore be designed to ensure that the relevant noise criteria can be met when windows are open or provide an alternate means of achieving natural ventilation when windows are closed.
174. The acoustic assessment indicates that the Bayswater Road and Ward Avenue facades are noise affected. To ensure compliant internal noise levels are therefore achieved under natural ventilation conditions (i.e. when doors/windows are open), alternative solutions have been incorporated into the design. This includes the type of window selections (i.e. awning/hopper windows), the window orientation, and the provision of acoustic linings and screening (i.e. balcony soffit and parapets) to the south (Bayswater Road) and east (Ward Avenue) elevations. The open portion of the windows, relied on for natural ventilation, is equivalent to at least 5% of the floor area of the room (taking into account fly screens in the event they are provided) as required by the ADG. The plans have been amended to reflect the recommendations of the acoustic assessment as shown in Figure 58 and Figure 59.

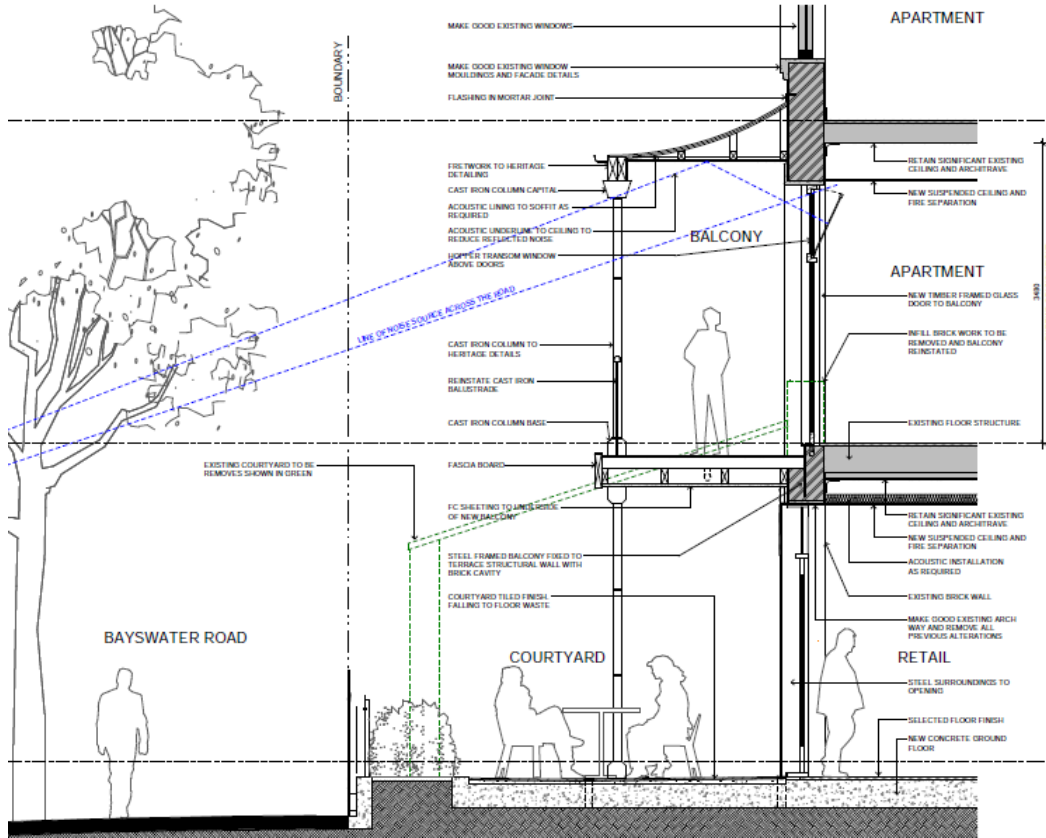


Figure 58: Section plan showing proposed acoustic attenuation to the terraces

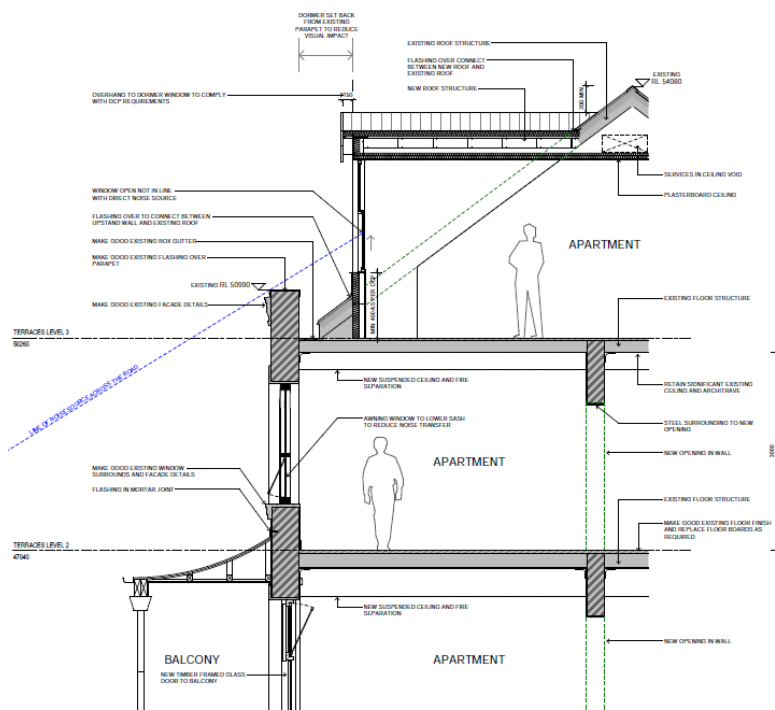


Figure 59: Section plan showing proposed acoustic attenuation to the terraces

175. The solutions proposed by the acoustic assessment will allow for satisfactory noise levels when windows are open, therefore allowing for natural ventilation.

Noise impacts from the proposed development

176. The proposal has the potential to result in additional noise emissions which, if not suitably controlled, will impact on the noise environment of both the existing surrounding residences and the proposed residences within the development itself.
177. The acoustic assessment has considered the noise emissions that will emanate from the subject site. Key noise sources associated with the proposed development include activity noise from the proposed ground, lower ground and sub ground retail tenancies, noise from the required building services plant and equipment, and noise from traffic and loading/unloading operations.
178. At this stage, the mechanical plant selection has not been finalised. Satisfactory levels, however, could be achievable through appropriate plant/equipment selection and location and, if necessary, management strategies or acoustic treatments such as absorptive acoustic linings, acoustic silencers, vibration isolation mounts and acoustic louvres/enclosures. The acoustic assessment recommends that a detailed acoustic review of the building services be undertaken by an acoustic consultant at the construction certificate stage. A condition has been recommended to address this matter, including a requirement that any required acoustic treatments be detailed and separately approved by Council's Area Planning Manager/Coordinator prior to release of a construction certificate.
179. In relation to traffic noise, the proposal includes 13 car parking spaces (including the car share space). The acoustic assessment indicates that even if all 13 vehicles associated with the development depart or arrive during a peak 1-hour period, noise generated by vehicle movements will still comply with relevant noise criteria.
180. A service vehicle loading bay is proposed in the lower ground level carpark. Given the size of the loading bay and that only a single space is provided, the loudest activity associated with on-site loading/unloading will be from cars and small delivery vans which will not result in any unreasonable noise impacts.
181. While the acoustic assessment assumes all on-site loading/unloading operations will occur during standard business hours (i.e. 9am to 5pm), it is recommended that given the site is located in a commercial area a condition be imposed limiting the use of the on-site loading bay area to between 7am and 8pm, noting that this is outside the sleep disturbance period and therefore would not result in any unreasonable noise impacts.
182. All operational waste from the development will be stored in dedicated waste and recycling storage rooms. The bins are then proposed to be serviced on Mansion Lane, as currently occurs, using a wheel in-wheel out system. Standard conditions are recommended to ensure that commercial waste and recycling collection occurs during the designated zone collection times outlined within Council's 'Local Approvals Policy for Managing Waste in Public Places' to minimise impacts to residential amenity.
183. While the use, fit-out and operational arrangements of the proposed retail tenancies have not yet been confirmed and will be subject to separate application/s, an 'in-principle' acoustic assessment has been undertaken to demonstrate that the tenancies will be capable of being used for their intended retail purpose, without excessive noise impacts.

184. Adopting a conservative approach, it has been assumed that the proposed lower ground and ground level retail tenancies facing Bayswater Road and Ward Avenue will be occupied by licensed food and drink premises. It has been assumed that the sub ground level tenancy will be occupied by a bar as indicated on the plans.
185. Potential noise emissions from any future licensed premises must comply with the acoustic requirements imposed by the NSW Office of Liquor and Gaming. These guidelines relate to noise generated by patrons and music. Notwithstanding, the acoustic report provides an assessment of the following likely noise sources:
- (a) Patron noise and background music from the internal areas at the lower ground and ground level; and
  - (b) Amplified/DJ music from the sub ground proposed basement bar area.
186. The acoustic report also considers the potential patron noise and background music impacts from an enclosed courtyard within the front setback of 32-34 Bayswater Road and recommends that any trading in this area cease operations by 10pm each night. This component of the original proposal, however, has been deleted from the drawings and therefore does not require consideration.
187. The cumulative impacts from the above noise sources have been assessed at the surrounding nearest affected receivers. A number of scenarios have been considered based on the locations of the premises and the changing noise management measures required to comply with the acoustic criteria. The noise assessment has been based on an assumption that the operating hours of the retail tenancies will be until 12 midnight, that the venues will be filled to maximum capacity, that the ground floor food and drink premises would play background music, and that windows and doors will be open during operational hours.

Based on these assumptions, the acoustic assessment recommends various noise attenuation measures for the retail tenancies including minimum glazing requirements, installation of acoustic seals, fixing of commercial windows, partition flooring requirements, installation of acoustic ceilings, use of absorptive treatments and provision of an additional airlock to the future bar. Council's heritage specialist has confirmed that these measures will have no unreasonable impacts on the significant heritage fabric of the terraces. The acoustic assessment also includes operational recommendations in relation to operating times, the opening of doors, the playing of music, and the direction and location of speakers.

188. Based on the above assumptions, the acoustic assessment indicates that the retail tenancies would be capable of complying with the relevant noise emissions goals provided the recommendations and management strategies detailed in the acoustic report are implemented. A condition of consent is recommended to address this matter.
189. It is further recommended that details of all required noise attenuation measures be submitted for the separate approval of Council's Area Planning Manager/Coordinator prior to release of a construction certificate. It should be noted that any acoustic measures that would result in a detrimental impact to the heritage fabric of the terraces, will not be supported by Council officers.

190. In relation to the operational recommendations of the acoustic report, a condition has been recommended requiring that these matters be considered as part of any future application/s for the use of the retail tenancies and that the applications be accompanied by a plan of management that is consistent with the recommendations of the acoustic report.

#### Conclusion

191. Council's Environmental Health Unit has reviewed the proposal, including the noise impact assessment, and have raised no objections subject to noise related conditions. Compliance with the recommended conditions of consent will ensure that there is no unreasonable noise impacts associated with the proposal.

### Consultation

#### Internal referrals

192. The application was discussed with Council's

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

193. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Recommended conditions of consent shown at Attachment A.

194. See the 'Discussion' section above for details regarding specific issues raised during the referral process.

#### Referral to the Design Advisory Panel (residential subcommittee)

195. The application was presented to the Design Advisory Panel (residential sub-Committee) (the Panel) on 6 June 2023. Various comments and recommendations were provided by the Panel.

196. A response to the Panel's feedback is provided below:

- (a) **Issue:** The proposal is an overdevelopment of the site, given it has significant heritage and contextual constraints, and therefore cannot be supported in its current form.

**Response:** The initial assessment of the original DA submission by Council officers, various external agencies and the Panel identified a number of significant concerns with the proposal. It was therefore recommended that the applicant withdraw the DA.

In response the applicant submitted a revised DA proposal. In its amended form, the front facades of the terraces will be reinstated, the rear wings will be reconstructed, and the new corner building will not detract from the heritage significance of the retained terraces. The revised proposal has appropriately responded to the concerns raised and is recommended for approval.

- (b) **Issue:** The extent of demolition appears to remove fabric of high significance in the heritage items and contributing buildings. The extent of original fabric does not appear to have been adequately assessed.

**Response:** The DA in its amended form will retain or reconstruct fabric of high and moderate significance. The extent of demolition has been significantly reduced and is supported by Council's Heritage Specialist.

- (c) **Issue:** Excavation impacts - there is doubt that the excavation can be carried out without damaging the heritage items and the cost benefit analysis of this is questioned. A less intrusive upgrading of the buildings would better enable the preservation of more of the heritage fabric. The risk of damage to the neighbouring heritage item is also a concern.

**Response:** The extent of excavation has been significantly reduced and no longer proposes any excavation under the primary form of the significant terrace group. The excavation footprint has also been revised to ensure that there will be no risk of damage to the subject or the adjoining heritage items. Details of the proposed structural methodology have also been submitted. In its amended form, the proposal is supported by Council's Heritage Specialist.

- (d) **Issue:** Excavation forward of the Bayswater Road façade may have an impact on the existing street trees.

**Response:** As noted above, the DA no longer proposes any excavation under the primary form of the significant terrace group and therefore has eliminated any potential risk to the Bayswater Road street trees. The basement footprint has also been setback further from the eastern boundary to protect the structural root zone of the Ward Avenue street trees.

- (e) **Issue:** The capacity of the laneway for active frontages to the boundary is doubtful. The ability to service the surrounding buildings should not be reduced by this proposal and therefore public activation to Mansion Lane is not supported.

**Response:** The active retail frontage to Mansion Lane has been deleted from the proposal given that safe pedestrian movements could not be accommodated. In its amended form, the DA will ensure that the laneway can maintain its current function as a service lane for waste collection, loading/unloading and rear lane access.

- (f) **Issue:** The screening of habitable rooms to Mansion Lane to address building separation and visual privacy across the lane from 19 Kellett Street is not supported as fixed screens reduce outlook and daylight.

**Response:** The internal layout and design of the apartments fronting Mansion Lane have been amended. The majority of the bedrooms and living rooms are provided with a second east facing window/door and therefore do not rely on the north facing Mansion Lane windows for ventilation or outlook.

The privacy screens are limited to 3 windows located opposite 19 Kellett Street and 3 angled windows looking north-west along Mansion Lane. The rooms with the angled windows are also provided with a second high-level window which will provide additional outlook and daylight. Conditions have been recommended requiring that all opaque glazed windows facing the street be replaced with patterned glass for increased amenity to the rooms, and that the proposed vertical privacy screens are appropriately spaced to maximise solar access.

- (g) **Issue:** Mansion Lane is only 6m wide. In the future, a similar proposal to the north for a 4-storey building would remove most solar access to units facing Mansion Lane and create significant privacy and acoustic issues.

**Response:** The proposed massing of the site has been amended. The apartments at the rear of 28-30 Bayswater Road have been replaced with 2-storey townhouse style apartments and the apartments at the rear of 32-34 Bayswater Road have been redesigned to provide recessed balconies. These amendments, together with the changes made to the internal layout and design of the apartments, provide increased building separation to the existing buildings on the opposite side of Mansion Lane and therefore increased solar, visual and acoustic amenity for future occupants.

While the proposed development does not strictly comply with the solar access requirements, the number of apartments with a northerly aspect have been maximised. For further details, refer to the 'Discussion' section of this report. The overshadowing impacts on any future proposal to the north would be assessed at the time of the DA. It is recognised, however, that future-proofing the site from overshadowing impacts could ultimately prevent any north-facing windows or balconies from being provided along the laneway and that this would be undesirable.

- (h) **Issue:** The original built form of extended “fingers” behind the terrace houses and toward the lane are considered a more suitable urban design outcome as they would reduce impacts on buildings to the north.

**Response:** The amended proposal seeks to reconstruct the original rear wings, using the salvaged bricks, at the rear of the heritage item (28-30 Bayswater Road) and to partially reconstruct the rear wings at the rear of the contributory item (32-34 Bayswater Road). As discussed throughout this report, the amended built form at the rear of the terraces does not detract from the significance of the heritage item or contributory item and have been designed to protect the amenity of the existing and future occupants along the lane.

- (i) **Issue:** Fire separation between residential apartments and other BCA considerations require detailed resolution. Fire separation between the apartment levels in the heritage building will cover over and impact significant fabric.

**Response:** The existing ceilings, architraves and floor structures will be retained, and a new suspended ceiling will be provided for fire separation and acoustic attenuation. The works will be reversible and will not impact on the original heritage fabric. Suitable conditions have also been recommended to ensure that all proposed works, including but not limited to the fire separation works, are carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building.

- (j) **Issue:** The increased activation along Ward Street is considered an improvement to the current built form. However, the proposed 6-storey wing at the corner greatly exceeds the height control, removes heritage fabric, and will have impacts on the existing fig tree canopies. A storey should be removed. The 'moving' of floorspace from the lane to the corner is not supported. The architectural expression is unrelated to the group of Local Heritage Item terraces and the 'Potts Point' Heritage Conservation Area. The curved language and the projecting balconies are inappropriate as they do not relate well to context or align with the predominant street alignment. The building is generally considered an unsuitable bookend to the row of townhouses.

**Response:** Following a detailed review of the proposal, Council's heritage specialist acknowledged that 36 Bayswater Road has undergone significant change and does not include any heritage fabric that is worthy of retention. The proposed 6-storey corner building has also undergone a significant redesign to ensure that the street tree canopies will be protected, and that the architectural expression appropriately relates to the terrace group and the surrounding HCA. The curved language and the projecting balconies have been deleted and the upper levels have been setback to reduce the perceived height and bulk of the building. Refer to the 'Discussion' section of this report for further details.

- (k) **Issue:** The entry to the proposed bar is constrained and has poor sight lines.

**Response:** The recessed lobby, providing access from Bayswater Road to the sub-ground bar, has been deleted and replaced with a large lobby area that aligns with the building frontage.

- (l) **Issue:** The solar access analysis supplied does not appear to show sufficient sun access to some new apartments. There also appears to be inconsistency in the documentation in relation to unit number G02.

**Response:** Additional and updated sun's eye view diagrams have been provided, including views at 15-minute intervals between 9am and 11am. The documentation has been carefully considered by Council officers who have determined that 14 out of 22 (63.6%) of the apartments are compliant with the ADG solar access requirements. Refer to the 'Discussion' section of this report for further details.

- (m) **Issue:** The central courtyard communal open space has limited amenity and sunlight access. The height of the planter box appears to adversely impact the Terrace Units 1 and 2, and the air-conditioning units on the balconies of the Terrace Units will impact the quality of the courtyard. The roof top communal open space has insufficient building separation from the balcony of Terrace Apartment 6.



**Response:** As part of the amended proposal, the central 'courtyard' communal open space has been deleted and the "fingers" behind the terraces have been reinstated. The relocated communal open space area at Level 4 provides unrestricted solar access and an area of high amenity for residents.

Privacy louvres and planter boxes have been added to protect the privacy of Terrace Apartment 6 from the communal open space at Level 3. A condition has also been recommended to ensure that no air conditioning units are provided to the facade or to any of the balconies of the building.

- (n) **Issue:** The heritage values appear to be mis-read and the proposed subdivision of the terrace houses into single level apartments across 2 terraces causes loss of heritage fabric and eliminates significant interior spatial qualities.

**Response:** As discussed throughout this report, the DA has been amended to retain or reconstruct fabric of high and moderate significance. Internal demolition has also been reduced to retain the interior spatial layout of the terraces. The amended proposal is supported by Council's Heritage Specialist.

- (o) **Issue:** The "new courtyard" to the Bayswater Road frontage is shown as internal space, as there are no doors shown at the façade line of the terraces in plan or in the detailed section. It is unclear how the entry works as there is no roof indicated over the entry. Fire egress requirements also need to be considered as doorways need to swing in the direction of egress.

**Response:** The existing 'modern' enclosure within the front setback to 32-34 Baywater Road is proposed to be demolished. The DA, as originally submitted, proposed the addition of a replacement enclosure. In its amended form, the original open courtyard at the front of 32-34 Bayswater Road will be recreated.

- (p) **Issue:** The future subdivision possibilities of the proposed retail tenancies could have further adverse impacts on the reading of the heritage fabric. The retail spaces are very deep and will have limited access to natural light and ventilation at the centre.

**Response:** The ground floor retail space, within the retained terraces, has been amended to include portions of the existing rear wing walls. The reconstructed 'nibs' will assist in interpreting the original subdivision pattern of the terraces. Any future subdivision of the retail space, to create multiple ground floor tenancies, will be required to be supported with a HIS demonstrating that the proposal does not negatively impact on the reading of the heritage fabric.

The deletion of the active frontage to Mansion Lane means that the ground floor retail space, within the retained terraces, will be accessed from Bayswater Road. The design and layout of the space will be determined as part of a separate DA for the use of the tenancy. While natural light and ventilation is desirable, it is not essential for a retail premises.

- (q) **Issue:** Some of the proposed units have poor layouts with small living areas for the 3-bedroom apartments, there are bedrooms that do not comply with minimum bedroom dimensions (Bedroom 2 for Terrace Units 1, 2, 3 and 4), and fire stairs and lifts open directly into apartments. Unit 401 directly overlooks the private open space of Unit 301.

**Response:** The dwelling mix has been changed from 4 x 1 bedroom, 9 x 2 bedroom and 9 x 3-bedroom units to 6 x 1-bedroom, 7 x 2-bedroom and 9 x 3-bedroom units. The revised building design, together with the updated dwelling mix, has allowed the apartments to be designed to address these concerns. All apartments satisfy the minimum apartment size and layout requirements at Objective-4D of the ADG.

- (r) **Issue:** There is no natural light and ventilation to the Ward Street ground floor residential lobby.

**Response:** At the upper levels, the void area at the rear of the terraces provides natural light and ventilation to the residential corridors. At the ground level, however, the retained terraces and reconstructed terrace wings prevent natural light and ventilation to the residential corridors. It is recognised that mechanical light and ventilation is required in this isolated area.

- (s) **Issue:** The access from the terrace units to the communal garden and the rooftop communal outdoor space is inequitable as it is only possible by exiting the building and entering from Ward Street.

**Response:** Due to the heritage constraints of the site, the occupants of the terrace and townhouse-style apartments do not have internal access to the communal open space areas. In addition to gaining access via the residential lobby off Ward Avenue, an alternate all-weather path of travel has been provided via the basement car park at the lower ground level.

- (t) **Issue:** The raked loft ceiling heights reduce the useful floor area for Terrace Units 5 and 6. More sections through this area, and through the proposal generally, are required to describe the building more clearly.

**Response:** Section plans have been provided demonstrating that minimum ceiling heights of 2.7m are provided to terrace apartments 5 and 6.

- (u) **Issue:** The proposed ceiling heights appear inadequate for services and amenity in the underground bar.

**Response:** The sections plans demonstrate that a ceiling height of approximately 3.3m or greater is available. The ceiling heights comply with BCA requirements and can cater for services.

- (v) **Issue:** The proposed colours and materials should also be more carefully considered with regard to the relationship with the heritage terraces.

**Response:** The materials and finishes of the new corner building have been amended. Recessive materials, comprising of charcoal vertical blades, have been provided at the upper levels and contrast with the face brick below. As discussed throughout this report, the new corner building has been redesigned to respect the heritage significance of the retained terraces.

## External Referrals

### Transport for NSW (TfNSW)

197. TfNSW (Sydney Trains) has been delegated to act as the rail authority for the Eastern Suburbs heavy rail corridor. Pursuant to section 2.99 of the SEPP (Transport and Infrastructure) 2021, the application was therefore referred to TfNSW (Sydney Trains) for concurrence.
198. Copies of public submissions made to the City of Sydney during the initial notification period were uploaded to the Planning Portal on 14 April 2023.
199. Concurrence was received on 20 April 2023.
200. The amended plans were forwarded to Sydney Trains for their reconsideration. No response was received.

### Water NSW

201. Pursuant to section 90(2) of the Water Management Act 2000, the application was referred to Water NSW for integrated approval.
202. Copies of public submissions made to the City of Sydney during the initial notification period were uploaded to the Planning Portal on 14 April 2023.
203. WaterNSW issued a request for additional information on 19 April 2023. The applicant responded to the request on 23 September 2024.
204. General Terms of Approval were issued by WaterNSW on 25 September 2024 and have been included at schedule 1 within the recommended conditions of consent.

### Sydney Water

205. Pursuant to section 78 of the Sydney Water Act 1994, the application was referred to Sydney Water for comment. Sydney Water responded on 16 March 2023.
206. While the comments received from Sydney Water will assist the developer in planning for the servicing needs of the proposal, it does not remove the need for a formal section 73 approval from Sydney Water. A standard condition has been recommended to address this matter.

### Ausgrid

207. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
208. Ausgrid responded on 14 March 2023 and raised no objection subject to compliance with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. An advisory condition has been recommended to address this matter.

### NSW Police

209. The application was referred to NSW Police for comment.
210. No response was received.

## Advertising and notification

211. In accordance with the Community Engagement Strategy and Community Participation Plan 2023, the proposed development was notified for a period of 28 days between 7 March and 5 April 2023. A total of 1,616 owners and occupiers were notified and 8 unique submissions, including 6 in objection, 1 comment and 1 in support, were received.
212. In accordance with the Community Engagement Strategy and Community Participation Plan 2024, the proposed development was renotified for a period of 28 days between 13 June and 12 July 2024. A total of 1,616 owners and occupiers were renotified and 6 submissions, including 3 in objection, 2 comments and 1 in support, were received.
213. The submissions raised the following key issues:

- (a) **Issue:** The height, bulk and scale of the proposed building on the corner of Ward Avenue and Bayswater Road is excessive. The top level exceeds the 15m height restriction and should not be approved. To enhance the harmony of the streetscape, the top floor of that part of the building should be eliminated. The corner building should be designed to be more visually in harmony with the other buildings on site and with the adjoining buildings at 20-26 Bayswater Road. The building interrupts the rhythm of the existing terraces and visually dominates the streetscape. If the corner building was amended it would add to the heritage streetscape, rather than provide a disjointed over-development.

**Response:** The proposed new corner building has been amended since lodgement of the DA (see Figure 45). While the new building is still taller than the adjoining terrace group, the curved building form and projecting balconies facing Bayswater Road have been deleted so that the front street alignment matches the adjoining terraces. The Bayswater Road façade has also been amended to provide a front wall and parapet height which matches the adjoining terraces, while the upper levels have been setback to create a visual separation. The upper-level setbacks together with the proposed use of lightweight cladding materials, ensures that the upper level of the building which exceeds the height standard is recessive and does not visually dominant the streetscape. Refer to the 'Discussion' section of this report for further details.

- (b) **Issue:** There needs to be close oversight and scrutiny of this development to ensure that none of the fragile heritage elements are damaged, or worse, demolished.

**Response:** The excavation and underpinning that was originally proposed under the principal building forms of the 4 terraces has been deleted from the DA. The amended plans, together with the recommended conditions of consent, eliminate the potential risks to the stability of the retained terraces. The risk of damage to the neighbouring heritage item and to the street trees in Bayswater Road has also been eliminated by the revised excavation footprint.

- (c) **Issue:** Generally, the DA is misconceived and reduces the significance of the heritage conservation area. The DA is dollar-driven and is contrary to heritage planning controls and does not add to the heritage values of the heritage conservation area. There will be losses of heritage material and major demolition costing. The extent of the demolition is not supported.

**Response:** Following a detailed investigation, Council's heritage specialist has concluded that the changes made to 36 Bayswater Road have resulted in permanent damage to the building which cannot reasonably be reversed. The demolition and replacement of the building is therefore supported. The DA has also been amended to retain/rebuild significant heritage fabric and to restore the front façade of the terrace group to reflect its original details. The DA, in its amended form, will enhance the contribution of the site to the HCA. Refer to the 'Discussion' section of this report for further details.

- (d) **Issue:** The proposed replacement windows to the first-floor level of the terraces are inconsistent with the overall architectural style of the old building and conflict with the aesthetic of the existing building. The use of more consistent materials/ornaments in heritage projects is crucial. Heritage style windows and doors (i.e. timber) should be used to ensure they are commensurate with the area and of the original building material. The use of industrial zinc sheeting is also not an appropriate material.

**Response:** The DA, as originally submitted, indicated that reinstatement of the original frontages of the terraces could not be undertaken due to a lack of evidence. An historic photo from c1860 which clearly demonstrates the original state of the terraces when they were newly built was sourced by Council's heritage specialist and supplied to the applicant. Using this photograph, the DA has been amended so that the terrace frontages will be restored to reflect their original details. This includes full reinstatement of the frontage of the contributory item at 32-34 Bayswater Road (including the front balconies, balustrades, columns, fretwork, windows/doors, front yards, entry path and steps, and the front palisade/masonry fences) and reinstatement of the first-floor balcony details of the heritage item at 28-30 Bayswater Road.

The DA has been reviewed by the Design Advisory Panel (residential sub-Committee). The concerns raised by the Panel have been addressed via the amended plans and the recommended conditions. The use of a lightweight cladding material for the upper levels of the new building is appropriate as it ensures these levels are recessive in the streetscape. The use of modern design elements/materials is also consistent with the Burra Charter (Australia's primary guidance on appropriate conservation approaches), which specifically encourages new work to be readily identifiable from original heritage fabric.

- (e) **Issue:** The proposal adds 8 new over-sized dormer windows to the Bayswater Road facade.

**Response:** The dormers have been designed to reflect the traditional form and are compliant with Council's DCP controls. Given the terraces are over 6m wide, the controls permit 2 dormers for each terrace. To reduce their visual impact, the dormers have been set back from the front parapet and will not be discernible from street level.

- (f) **Issue:** Potts Point is fortunate to have had previous generations leave us with beautiful buildings worth preserving, which contribute to the vibrant area we all love today. We must endeavour to do the same for future generations to come by insisting on a high standard of development.

**Response:** The DA has been amended to retain/rebuild the heritage fabric of high and moderate significance, and to demolish the detracting elements at the front and rear of the terraces. The new corner building, which also wraps around the rear of the terraces, has undergone a lengthy and considered redesign process to ensure that it will positively contribute to the HCA. The proposal, in its amended form, will enhance the Bayswater Road, Ward Avenue and Mansion Lane streetscapes. While the proposal indicates that the new building will be constructed in a combination of masonry brickwork and lightweight materials, a condition has been recommended requiring that a physical materials board be submitted for the separate consent of Council's Area Planning Manager/Coordinator prior to the issue of a construction certificate.

- (g) **Issue:** In the amended proposal, the reinstatement and retention of heritage features on the 4 terraces is a massive win for the area. The building on the corner of Ward Avenue, however, should be reinstated and redeveloped, rather than demolished. The roof design should be setback and sloped to match the adjacent properties.

**Response:** While the building at 36 Bayswater Road is classified as a 'neutral' building under Council's DCP, the applicant was advised that the 'neutral' status did not mean that demolition was an entitlement. It was only following a detailed review of the proposal and once significant changes were made to the proposal (including the architecture of the corner building), that demolition of the existing building was supported by Council's assessing officers. The upper levels of the new building have been setback and as currently designed will not be visually dominant in the streetscape. A further redesign, as recommended by the objector, is therefore unwarranted.

- (h) **Issue:** The Mansion Lane façade is ugly and includes a bizarre mix of different materials, window sizes, shapes, along with random, asymmetrical elements. The 2 townhouses have several fake setbacks and should be designed to be consistent with the Victorian architecture of the terraces they are attached to. The 'gap' below the balconies should be levelled out, the corners on the garage should be fixed, and more traditional windows should be used. This is to create a building that looks more art deco and Victorian-inspired and to help focus attention on the row of bookends. Relatively minor changes can vastly improve the aesthetics of the proposed design.

**Response:** The DA has been reviewed by the Design Advisory Panel (residential sub-Committee). The concerns raised by the Panel have been addressed via the amended plans. The use of different treatments and materials assists in breaking up the bulk of the building and will provide architectural interest in the streetscape. The 'fake setbacks' provide the appearance of a 2-storey townhouse with a separate top-level form, which assists in reducing the scale of the building. The curvature of the garage opening has been amended and addresses the objector's concern. The architecture of the new building is distinct from the retained terraces which is encouraged by the Burra Charter (Australia's primary guidance on appropriate conservation approaches).

- (i) **Issue:** The south facing living room windows will view directly into 37 Bayswater Road. Measures should be introduced to reduce privacy impacts.

**Response:** For 4-storey buildings, the ADG recommends a minimum building separation distance of 12m between habitable room/balconies and for 5-8 storey buildings, a 25m building separation is recommended. The required building separation is to be equitably shared between adjoining neighbours and applies to side and rear boundaries only. Additional privacy measures are not considered necessary in this instance, given that the south facing living rooms face Bayswater Road and number 37 is located on the opposite side of the street and is separated from the subject site by a road reservation of approximately 20m.

- (j) **Issue:** Ward Avenue is already overshadowed, windswept, and bleak. Massing more apartments on the tiny corner will create an even more dismal wind tunnel, and more miserable streetscape.

**Response:** A pedestrian wind environment statement, prepared by Windtech, accompanies the DA. The statement recommends that various strategies be adopted to ensure that potential wind impacts are ameliorated. In relation to the Ward Street pedestrian environment, the report recommends that the street trees and awning be retained. Subject to these and other recommendations (relating to the landscaping and the retention of the balustrades), the report confirms that it is expected that the wind conditions for the various trafficable outdoor areas within and around the development will be suitable for their intended use, and that the wind speeds will satisfy the applicable criteria for pedestrian comfort and safety.

- (k) **Issue:** The apartments in the Ward Ave building are too small and will provide future occupants with unsatisfactory amenity given that they receive minimal sun and cross ventilation and are orientated towards a lane.

**Response:** The proposed apartments comply or exceed the minimum size and layout requirements of the ADG. While the DA proposes a minor departure to the solar access requirements, the proposal maximises the number of north facing apartments and is compliant with the natural and cross ventilation requirements of the ADG. The apartment type and mix has been amended since lodgement of the DA and now includes 2 x 2-storey townhouse style apartments fronting Mansion Lane with an internal floor area of 117sqm. The 1-bedroom apartments fronting Mansion Lane satisfy the minimum 50sqm requirement of the ADG. While Mansion Lane is a service lane and is currently dominated by detracting rear additions, the redevelopment of the subject site and the recently approved adjoining site at 20-26 Bayswater Road (D/2022/961), will significantly improve the amenity and outlook of the street.

- (l) **Issue:** The ground level and sub ground level floor plans show large central retail areas with toilet blocks which are bigger than some of the apartments. The DA states that these areas will be "subject to future DA". The developers are obviously planning that these areas will be nightclubs and should deal with noise issues. They must show us all the details now, not down the track. If approved as is, the development will be overlaid by continual amplified bass, uncaring licensees, and even less caring patrons.

**Response:** At the sub ground level and ground floor level are retail tenancies, with the sub ground tenancy earmarked as a bar. The lower ground retail tenancy, originally proposed under the primary terrace form, has been deleted from the proposal. While the use, fit-out and operation of the retail tenancies will be subject to a separate DA (including the submission of a Plan of Management relating to the specific operation), an acoustic assessment accompanies the subject DA and has made acoustic attenuation recommendations. These recommendations have been included as recommended conditions of consent. Refer to the 'Discussion' section of this report for further details.

- (m) **Issue:** The garbage area is too small for the proposed number residents and commercial enterprises. There is no separate commercial garbage area for commercial owners.

**Response:** Commercial bin storage areas are provided at the sub ground and ground levels, while a separate residential bin storage area is provided at the lower ground level. The capacity of the bin areas has been designed in accordance with the relevant provisions of the City of Sydney 'Guidelines for Waste Management in New Development'. The building owner/tenant will be required to enter into a contract with a licensed waste service provider for the removal of all commercial waste and recycling. In relation to residential waste, the developer will be required to enter into a formal agreement with the City of Sydney Council for the utilisation of Councils Waste Collection Service.

- (n) **Issue:** We are concerned regarding the increased traffic, parking and out of hours deliveries that will result from the development. The proposal will add 15 new car spaces and will increase traffic congestion.

**Response:** A traffic and parking assessment report, prepared by CJP Consulting Engineers, accompanies the DA. The report assesses the traffic generation potential of the proposal and its impacts on the surrounding road network. Vehicular access to the site and lower ground floor parking area is proposed via a new 3.9m wide entry/exit driveway located midway along the Mansion Lane site frontage. Council's DCP controls impose a maximum off-street car parking rate rather than a minimum. The proposed development makes provision for 13 off-street car parking spaces, excluding a service bay, which is significantly less than the maximum 42 spaces permitted.

Based on a trip generation rate of 0.15 peak trips per car space (i.e. the applicable trip rate for high density residential developments in areas with good access to public transport) the development would yield a total traffic generation potential of 2 trips during the weekday morning and afternoon peak periods (entry and exit, combined). This is statistically insignificant and will have minimal impacts on the surrounding road network.

The DA does not propose any on-site commercial car parking. The customer base of the proposed future bar and retail tenancies are therefore likely to be entirely foot traffic or persons who have travelled by public transport or taxi/Uber.

The existing development does not provide any on-site loading facilities, with all deliveries undertaken from on-street parking/loading areas in the surrounding area. The DA proposes a dedicated service bay within the lower ground parking area. Deliveries to the proposed development will typically be undertaken by a variety of light commercial vehicles such as courier vans, utilities, and the like. A condition has been recommended limiting deliveries to between 7am and 8pm.



- (o) **Issue:** An ultra-quiet garage door should be provided to avoid later night noise from the entry/exit of vehicles.

**Response:** The submitted acoustic assessment recommends a detailed acoustic review of the building services be undertaken by an acoustic consultant at the construction certificate stage. A condition is recommended to address this matter, including a requirement that details of the garage door be separately approved by Council's Area Planning Manager/Coordinator.

- (p) **Issue:** In one small block, there will be 2 major developments being constructed. We are concerned regarding the levels of noise, dirt and dust which would be caused.

**Response:** Development consent (D/2022/961) was granted on 23 September 2024 for alterations and additions to the Mansions Terrace Group at 20-26 Bayswater Road for the purpose of a shop top housing development. Conditions are recommended requiring a Construction Environmental Management Plan, a site-specific noise and vibration management plan, a Construction Traffic and Pedestrian Management Plan, a Demolition Work Method Statement, an Excavation Work Method Statement and a Construction Work Method Statement be submitted. It is recommended similar conditions be imposed on the subject DA, to appropriately manage the impacts of the construction works.

- (q) **Issue:** Excavation work to provide the sub-ground car park must be carried out in a way that has no effect on neighbouring buildings on Kellett Street, Mansion Lane and Bayswater Road.

**Response:** See response above.

A condition is recommended requiring that a report/certificate, prepared by a structural and geotechnical engineer with experience in dealing with heritage buildings, be submitted to Council confirming that if the required demolition, excavation and construction methodology is adopted, there will be no damage to adjoining properties.

A further condition is recommended requiring that structural plans, prepared by the structural engineer with experience in dealing with heritage buildings, be submitted to Council demonstrating how the retained building elements are to be retained, supported and not undermined by the proposed development. The proposed development must also not rely on any adjoining building for support.

- (r) **Issue:** Two mature London Plane trees are threatened by activities to 27% of their tree protection zones. The existing trees on Bayswater Road and Ward Avenue must be retained.

**Response:** The proposed development has been amended to protect the tree canopy and structural root zone of the existing significant trees on Bayswater Road and Ward Avenue. Suitable conditions are recommended to ensure that the street trees will not be impacted by the proposal. Refer to the 'Discussion' section of this report for further details.

- (s) **Issue:** There should be consideration of the light pollution from the premises to nearby residential properties on Mansion Lane.

**Response:** To protect the amenity of the surrounding neighbours, as well as the future occupants of the site, a condition is recommended to prevent access to the rooftop communal open spaces between the hours of 10:00pm and 06:00am. All external lighting associated with the communal open spaces must comply with AS/NZS 4282:2019 'Control of the obtrusive effects of outdoor lighting' and must be mounted, screened and directed in a way that does not create a nuisance or light spill on to buildings on adjoining lots or public places.

- (t) **Issue:** The applicant seeks to rely on a planning loophole. Namely, the amended DA is not subject to the planning rules of the original DA. This is a misinterpretation of the rules. This re-lodgement amends the original DA. It is therefore subject to the applicable planning rules at the time of lodgement of the original DA. It is not exempt from those rules.

**Response:** In this instance, the subject application is a DA which is seeking development consent. The submission of amended plans during the DA assessment process is not the same as modifying an existing consent, nor does it alter the planning controls that apply to the DA.

214. The submissions in support of the proposed development raise a number of matters which are summarised and addressed below:

- (a) **Issue:** The proposal will make a significant and important contribution to the local amenity of the area. The plans represent a significant improvement on the current housing and retail stock, and a sizeable investment in the area.

The current underutilisation of this property is a blight on Bayswater Road and I believe this redevelopment will provide greater public utility, protect the heritage components and provide important housing stock in the current environment.

**Response:** The proposed level of investment is not a consideration that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

It is recognised, however, that the restoration of the terrace group and the changes proposed to the Bayswater Road, Ward Avenue and Mansion Lane streetscapes would improve the amenity of the area. The proposal also retains and renovates an existing heritage listed building and an existing contributory building that are currently underutilised and will introduce 20 additional dwellings to the area.

- (b) **Issue:** The existing lean-tos and various outbuildings at the rear of the site contain non-compliant add-ons. The proposed development will remove these.

**Response:** The proposed development will remove the detracting structures at the front and rear of the site.

- (c) **Issue:** The proposal provides internal bin storage for the residential and commercial uses. This will address current issues with public nuisance and rodents.

**Response:** A condition has been recommended requiring that prior to the commencement of demolition or excavation works, a programme of baiting and monitoring of rodent activity is put in place at the site. A licensed Pest Control Operative must carry out the pest control work and prepare a report, confirming that there is no evidence of any rodent activity at the site prior to the commencement of any works on site.

Commercial and residential bin storage rooms are provided on site and include external doors opening directly onto the laneway for easy access by the waste collection contractors. Bins will not be lined up along the street kerb for collection.

## Financial Contributions

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

215. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is subject to a section 7.11 local infrastructure contribution under this Plan.

216. This is based on:

- (a) The following uses being proposed:
  - (i) 6 x 1-bedroom dwellings resulting in an increase in 7.8 residents (i.e. 1.3 residents per dwelling);
  - (ii) 7 x 2-bedroom dwellings resulting in an increase in 13.3 residents (i.e. 1.9 residents per dwelling);
  - (iii) 9 x 3-bedroom dwellings resulting in an increase in 24.3 residents (i.e. 2.7 residents per dwelling);
  - (iv) 751sqm of commercial floor space for future food and drink premises resulting in 35.8 workers; and
  - (v) 325sqm of commercial floor space for a future small bar resulting in 10.8 workers.
- (b) The following credits being applied for the most recent past uses of the site:
  - (i) 1 x 1-bedroom dwellings (i.e. a credit of 1.3 residents);
  - (ii) 1 x 2-bedroom dwellings (i.e. a credit of 1.9 residents);
  - (iii) Office floor space with a total GFA of 743sqm (i.e. a credit of 22.5 workers);
  - (iv) Business premises floor space with a total GFA of 320sqm (i.e. a credit of 9.1 workers);
  - (v) Food and drink premises (restaurant) floor space with a total GFA of 845sqm (i.e. a credit of 40.2 workers); and

- (vi) Food and drink premises floor space (bar/nightclub) with a total GFA of 272sqm (i.e. a credit of 6 workers).

217. Based on the change in resident and worker population, the total contribution payable is \$274,536.26 and is subject to indexing at the time of payment.
218. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent. The condition requires the contribution to be paid prior to the issue of a construction certificate.

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

219. The site is located within the residual affordable housing contribution area. Given that the proposed development includes the creation of more than 200 square metres of GFA that is intended to be used for residential accommodation and the creation of more than 60 square metres of GFA that is intended to be used for non-residential purposes, clause 7.13 of the Sydney LEP applies to the proposal.
220. Section 7.32 of the Environmental Planning and Assessment Act 1979 (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.
221. The proposal is consistent with the criteria under parts (a) and (b) for the following reasons:
- (a) Given the shortfall of affordable housing options currently available in the city, the further decrease in the availability of affordable housing gives rise to an increased need for affordable housing.
  - (b) The proposed development will only be affordable to households on relatively high incomes. Without the supply of more affordable rental dwellings, existing lower income households will continue to be forced out of the area, and new lower income households may be prevented from finding housing in the LGA close to new employment opportunities.
222. 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.
223. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution in accordance with clause 7.13 of the Sydney LEP is reasonable.
224. On residual land, the contribution requirement applies to new or more intensely used floor area. The conversion of the commercial areas to residential accommodation is considered a more intense use and as such, the total floor area (TFA) includes the proposed new buildings and additions, plus the retained portions at the terraces that are being more intensely uses.
225. While the proposed development has a TFA of 4,694.5sqm, a credit of 305sqm has been applied for the retained commercial floor space at the ground floor level and a credit of 351sqm has been applied for the retained residential floor space at the ground, first, second and third floor levels of the terrace buildings. As such, the proposal has a total TFA of 4,038.5sqm.
226. Given that the development application was lodged after 1 July 2022, the contribution is to be paid at the rate of 1% x \$11,176.22 per square metre of the non-residential TFA (i.e. 1325.5sqm) and 3% x \$11,176.22 per square metre of the residential TFA (i.e. 2,713sqm). This equates to a total of \$1,057,773.55 and is to be indexed at the time of payment.
227. A condition of consent is recommended requiring the payment of the affordable housing contribution prior to the issue of a construction certificate.

### **Housing and Productivity Contribution**

228. In accordance Schedule 5, clause 11(1) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024, the 2023 Order continues to apply to any application not determined before the commencement of the 2024 Order.
229. In accordance Schedule 5, clause 2 of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023, the Order does not apply to a DA that is made, but not determined, before 1 October 2023.
230. Given that the DA was lodged on 7 February 2023, the application is not subject to a Housing and Productivity Contribution.

## Relevant Legislation

- 231. Environmental Planning and Assessment Act 1979.
- 232. Water Management Act 2000.

## Conclusion

- 233. Having regard to all of the above matters, the proposed development will not result in any adverse impacts on both the natural and built environment and the locality, is suitable for the site, and is in the public interest, subject to appropriate conditions of consent being imposed.
- 234. The proposed development generally satisfies the relevant provisions of the applicable State Environmental Planning Instruments including the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 and is acceptable.
- 235. The applicant has submitted a written request pursuant to clause 4.6 for a variation to the height of buildings standard specified under clause 4.3 of the Sydney Local Environmental Plan 2012. The request to vary the development standard is supported.
- 236. The proposal has been amended to address a number of issues identified by Council officers during the assessment of the application. Some matters, however, remain outstanding and it is recommended that these issues be included as conditions of consent.
- 237. Issues raised in all submissions have been taken into account in the assessment, and, where appropriate, conditions of consent are recommended in the Notice of Determination to address these issues.

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