

Item 4.**Development Application: 141-155 Commonwealth Street, Surry Hills - D/2024/122**

File No.: D/2024/122

Summary

Date of Submission:	23 February 2024
Applicant:	The SJB Architecture NSW Unit Trust
Architect:	SJB
Owner:	Mohammed Tariq
Planning Consultant:	ABC Planning
Heritage Consultant:	Urbis
Cost of Works:	\$15,062,164
Zoning:	MU1 - Mixed Use

The proposal is a mixed-use development including retail premises on the ground floor and lower ground floor, and office premises proposed on ground floor and above. All proposed uses are permissible with consent in the MU1 'Mixed Use' zone.

Proposal Summary: The application seeks development consent for the demolition of the existing structures (excluding substation), excavation, and construction of a Part 5 - Part 6 storey commercial building with basement and landscaped rooftop terrace.

The application is referred to the Local Planning Panel for determination as the proposed development contravenes the maximum height of buildings development standard permitted under the Sydney Local Environmental Plan by more than 10%.

Specifically, a maximum height of 18m is permitted, and a height of 20.58m is proposed. The proposed variation is 14.3%.

A written request to vary the height of buildings development standard has been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012. The applicant has successfully demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The application also seeks to vary the Floor Space Ratio development standard by 2.4% (48sqm).

A written request to vary the floor space ratio development standard has been submitted with the application in accordance with Clause 4.6 of the Sydney Local Environmental Plan 2012. The applicant has successfully demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The application was placed on public exhibition for 21 days between 7 and 28 March 2024. The applicant submitted amended plans and updated supplementary documentation on 11 March 2024. As a result, notification of the original application was terminated, and the application was re-notified for 21 days between 19 March and 10 April 2024.

As a result of the notification of the application, 21 submissions were received from 16 individual submitters. Two (2) of the submitters were in support of the application, with 14 submitters including an objection.

The submissions raised concerns in relation to overshadowing, visual privacy, height and bulk, noise and construction impacts.

An initial assessment of the application by Council staff identified concerns relating to visual privacy, acoustic impact of the outdoor terraces and urban greening initiatives of the proposal.

These issues have been addressed by way of amended plans detailing additional privacy screening and changes to landscaping to enhance the site's tree canopy coverage and urban greening. The applicant has also provided a Plan of Management to guide the use of the outdoor terraces, including restrictions on hours of use and restrictions on noise.

The applicant has also provided additional information to facilitate detailed assessment of the proposal, including shadow impacts, architectural detailing and servicing details. The applicant's submission has demonstrated environmental impacts have been appropriately addressed and that the proposal will deliver a high-quality development which achieves design excellence.

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

Development Controls:

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

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Clause 4.6 Variation Request - Floor Space Ratio
- E. Submissions

Recommendation

It is resolved that

- (A) the variation requested to Clause 4.3 Height of Buildings development standard in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld;
- (B) the variation requested to Clause 4.4 Floor Space Ratio development standard in accordance with Clause 4.6 'Exceptions to development Standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) consent be granted to Development Application Number D/2024/122 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the MU1 Mixed Use Zone.
- (B) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the Height of Buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.3 of the Sydney LEP 2012.

The Clause 4.6 variation request is therefore upheld and approval to vary the Height of Buildings development standard is granted.

- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Sydney LEP 2012, that compliance with the Floor Space Ratio development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening Clause 4.4 of the Sydney LEP 2012.

The Clause 4.6 variation request is therefore upheld and approval to vary the Floor Space Ratio development standard is granted.

- (D) The proposed design of the development respects the historic character of the heritage conservation area and its surroundings, whilst simultaneously mitigating environmental impacts of overshadowing and overlooking of neighbouring properties pursuant to the design excellence provisions of Clause 6.21C of the Sydney LEP 2012.
- (E) The proposed development, subject to the recommended conditions of consent, adequately addresses and safeguards the visual and acoustic privacy of neighbouring residential properties pursuant to Clause 6.21C(2)(d)(vii) of the Sydney LEP 2012.

- (F) The proposed development, subject to recommended conditions of consent, exhibits excellence in landscape integration and will enhance the urban greening of the site pursuant to Clause 6.21C(2)(d)(xiii) of the Sydney LEP 2012.
- (G) The proposed development is appropriate to its site and setting, by delivering a high-quality design and suitable use to enhance the vitality of the locality and promote the orderly and economic use and development of the land pursuant to Object (c) of the Environmental Planning and Assessment Act 1979 (Clause 1.3(c)).

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 1 in Deposited Plan 592716, and is known as 141-155 Commonwealth Street, Surry Hills. It is rectangular in shape with an area of approximately 913sqm. It has a primary street frontage of 36.91m to Commonwealth Street and secondary street frontages of 34.6m to Beauchamp Lane and 22.42m to Reservoir Street. There is a splay corner of 3.44m on the corner of Reservoir Street and Beauchamp Lane. The site is located on the north western corner of the intersection of Commonwealth and Reservoir Streets. Levels on the site fall by 5.67m in a south-westerly direction.
2. The site contains a two-storey mission hall building facing Beauchamp Lane, a group of one to three storey buildings surrounding the hall to Commonwealth Street and a courtyard along Reservoir Street. The site has most recently been in use as backpacker accommodation.
3. The surrounding area is characterised by a mixture of land uses, including:
 - (i) Directly to the north of the site is a row of 13, two-storey residential terrace houses (115-139 Commonwealth Street), with principal frontages to Commonwealth Street and secondary frontages to Beauchamp Lane.
 - (ii) To the northwest of the site, on the opposite side of Beauchamp Lane is an eight-storey mixed use building containing ground floor retail with 16 apartments located above.
 - (iii) Directly to the west, on the opposite side of Beauchamp Lane is a seven-storey warehouse building converted to residential use, providing 51 apartments with two ground floor retail tenancies.
 - (iv) To the southwest of the site, on the southwestern corner of the intersection of Reservoir Street and Beauchamp Lane, is 51-55 Reservoir Street. The site contains a row of three two-storey terraces. The terraces have had their internal and partition walls and floors removed and the building is unoccupied.
 - (v) Directly to the south, on the opposite side of Reservoir Street, is a row of five bald faced terraces, with a commercial premises in use as a dry cleaner on the eastern corner.
 - (vi) To the southeast of the site, on the southeastern corner of the intersection of Reservoir Street and Commonwealth Street, is 69-75 Reservoir Street. The site contains a part seven part eight-storey commercial office building.
 - (vii) To the east of the site, on the opposite side of Commonwealth Street, is a row of seven terrace houses. The Royal Albert Hotel is a two-storey pub located on the northeastern corner of the intersection of Reservoir Street and Commonwealth Street.
 - (viii) To the northeast of the site, on the opposite side of Commonwealth Street is a two-storey multi-dwelling housing development containing six apartments.
4. The site is not a heritage item. It is located within the Reservoir Street and Fosterville Heritage Conservation Area (C66). The site is identified as a neutral building.

5. The site is located within the Riley locality and is not identified as being subject to flooding.
6. A site visit was carried out on 11 April 2024. Photos of the site and surrounds are provided below:
7. Photos of the site and surrounds are provided below.

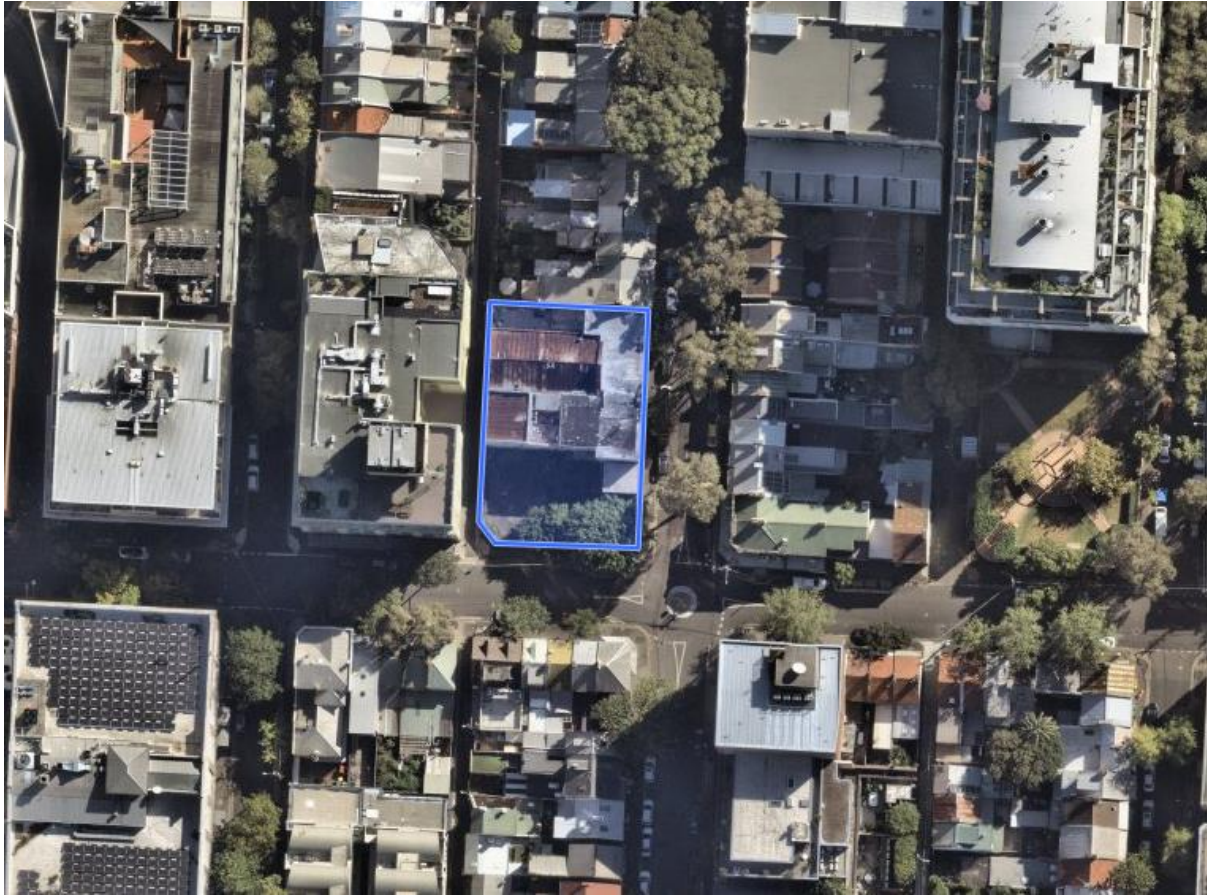


Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Commonwealth Street, looking south-west



Figure 3: Existing substation proposed to be retained on Commonwealth Street frontage



Figure 4: Site viewed from Reservoir Street, looking north-east



Figure 5: Site viewed from Beauchamp Lane, looking north-east



Figure 6: Site viewed from Beauchamp Lane looking south-east



Figure 7: Adjoining site to the north, viewed from Beauchamp Lane looking east



Figure 8: Neighbouring site to the west, viewed from Reservoir Street looking north-west



Figure 9: Existing development on Reservoir Street diagonally opposite to the south-west



Figure 10: Existing development directly opposite on Reservoir Street, located to the south



Figure 11: Existing development on Reservoir Street diagonally opposite to the south-east



Figure 12: Existing development directly opposite on Commonwealth Street, located to the east



Figure 13: Adjoining sites to the north, viewed from Commonwealth Street looking west

History Relevant to the Development Application

Development Applications

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

- **D/2014/1060** – Deferred commencement development consent was granted on 8 December 2014 for demolition of the existing buildings on the site and construction of a part five, part six-storey building (with one partial lower ground level) to provide student accommodation (affordable housing/boarding house development) and one retail space accessed from Reservoir Street. The development consent was modified twice (Mods A and B) to amend conditions of consent.

The consent became operational following the satisfaction of all deferred commencement conditions on 25 February 2016, with an identified lapse date of 25 February 2021, extended to 25 February 2023 by the COVID-19 Legislation (Emergency Measures – Miscellaneous) Act 2020 (the Covid Act). The consent is now lapsed.

- **D/2015/436** – Development consent was granted on 23 June 2015 for demolition of part of the existing boundary wall, erection of a surface chamber substation and removal of a street tree to the Commonwealth Street elevation of the site.
- **D/2017/1283** – Deferred commencement development consent was granted on 28 March 2018 for demolition of the existing building and construction of a part 5, part 6-storey mixed use building comprising a hotel, an ancillary retail space fronting Reservoir Street, and basement parking with associated motorcycle and bicycle parking with access from Beauchamp Lane.
- **PDA/2023/123** – Pre-lodgement advice relating to the application that is the subject of this report was issued on 7 August 2023. Issues raised in the letter include building height, floor to floor heights, on-site servicing, traffic and parking and the use of the terraces.

Compliance Action

9. The site has previously been subject to compliance action which is not relevant to the subject application.

Amendments

10. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 28 May 2024.
11. The applicant responded to the request on 20 August 2024 and subsequent follow up requests and submissions have been made prior to reporting the application to the Local Planning Panel for determination.
12. Design amendments submitted over the course of the assessment have resulted in the following changes:

- Provision of palisade privacy screening across west facing windows of commercial tenancies above ground level to mitigate overlooking impacts toward 74-80 Reservoir Street
- Increased setback of lower terrace at Level 1 to provide a wider planter
- Changes to façade expression and window detailing
- New awning above entrance to retail tenancy along Reservoir Street
- Modified screening to substation on Commonwealth Street to achieve compliance with Ausgrid standards.

13. The applicant has also provided additional information in relation to the following:

- Landscape details and tree planting
- Shadow analysis
- Acoustic assessment
- Plan of Management for outdoor areas
- Waste management and servicing arrangements
- Flood modelling and management
- Public domain and driveway levels and gradients
- Sustainability commitments
- Structural report.

Proposed Development

14. The application seeks development consent for the demolition of the existing structures (excluding substation), excavation, and construction of a Part 5 - Part 6 commercial building with basement and landscaped rooftop terrace. More specifically:

Demolition and Excavation

- Demolition of the existing two storey building situated in the northern part of the site and associated timber pergola.
- Demolition of the perimeter walls to Beachamp Lane, Reservoir Street and Commonwealth Street.
- Removal of incidental vegetation.
- Excavation to a depth of approximately RL 11.

Basement

- Construction of basement shell;

- Fit-out of basement, including:
 - 12 standard car parking spaces;
 - Two (2) accessible car parking spaces;
 - One (1) small car parking space;
 - One (1) service vehicle parking space;
 - Two (2) fire stairs;
 - Two (2) lifts;
 - Pump room;
 - Plant room;
 - Switch and Communications room;
 - Ramp between basement and lower ground levels; and
 - End of trip facilities, including:
 - 18 bicycle parking spaces;
 - 29 lockers
 - Two (2) single showers; and
 - Two (2) shower rooms with toilet and sink (including one accessible room).

Lower Ground Level

- Construction of basement entry and ramp, and fit-out of upper-level car park including:
 - Vehicular access/egress via Beauchamp Lane;
 - One (1) standard car parking space;
 - One (1) small car parking space;
 - Ten (10) visitor bicycle parking spaces;
 - Store room;
 - Bin room;
 - Two (2) lifts;
 - Pedestrian access/egress via Beauchamp Lane
 - Ramp between basement and lower ground levels
- Four (4) fire stairs; and

- Retail tenancy (195.6sqm) with direct pedestrian access via Reservoir Street; and
- WCs.

Ground Level

- Retail tenancy (245.8sqm) with direct pedestrian access via stair at Commonwealth Street;
- Lobby with direct pedestrian access via Commonwealth Street; and
- Commercial tenancy (308.9sqm) with direct pedestrian access via Commonwealth Street.
- Two (2) WC rooms each with three (3) stalls with sinks.
- Two (2) fire stairs;
- Two (2) lifts;
- Vertical circulation space;
- Plant room;
- Booster fronting Commonwealth Street;
- Water meter; and
- Retention of existing substation fronting Commonwealth Street.

Level 1

- Commercial office tenancy (611.5sqm); including:
 - Two (2) WC rooms each with three (3) stalls with sinks.
 - Two (2) fire stairs;
 - Two (2) lifts;
- Outdoor terrace (50.6sqm) fronting Beachamp Lane with trafficable area and planters and awning above.

Level 2

- Commercial office tenancy (611.5sqm); including:
 - Two (2) WC rooms each with three (3) stalls with sinks.
 - Two (2) fire stairs;
 - Two (2) lifts;

Level 3

- Commercial office tenancy (513.5sqm); including:

- Two (2) WC rooms each with three (3) stalls with sinks.
- Two (2) fire stairs;
- Two (2) lifts;

Rooftop

- Trafficable communal rooftop area (252.5sqm); including:
 - One (1) WC room;
 - Two (2) fire stairs;
 - Two (2) lifts and lift overrun;
- Plant room (28.5sqm); and
- Landscaping and tree planting

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

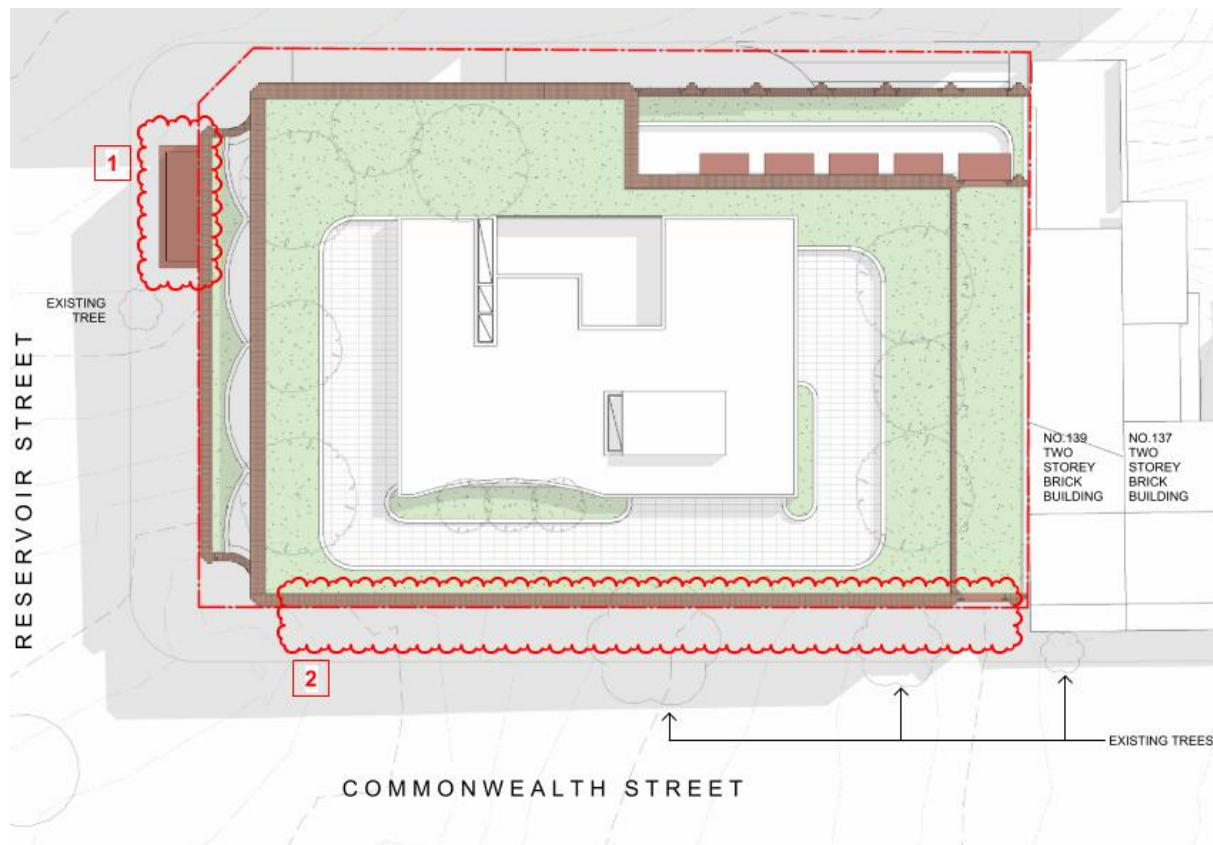


Figure 14: Site Plan

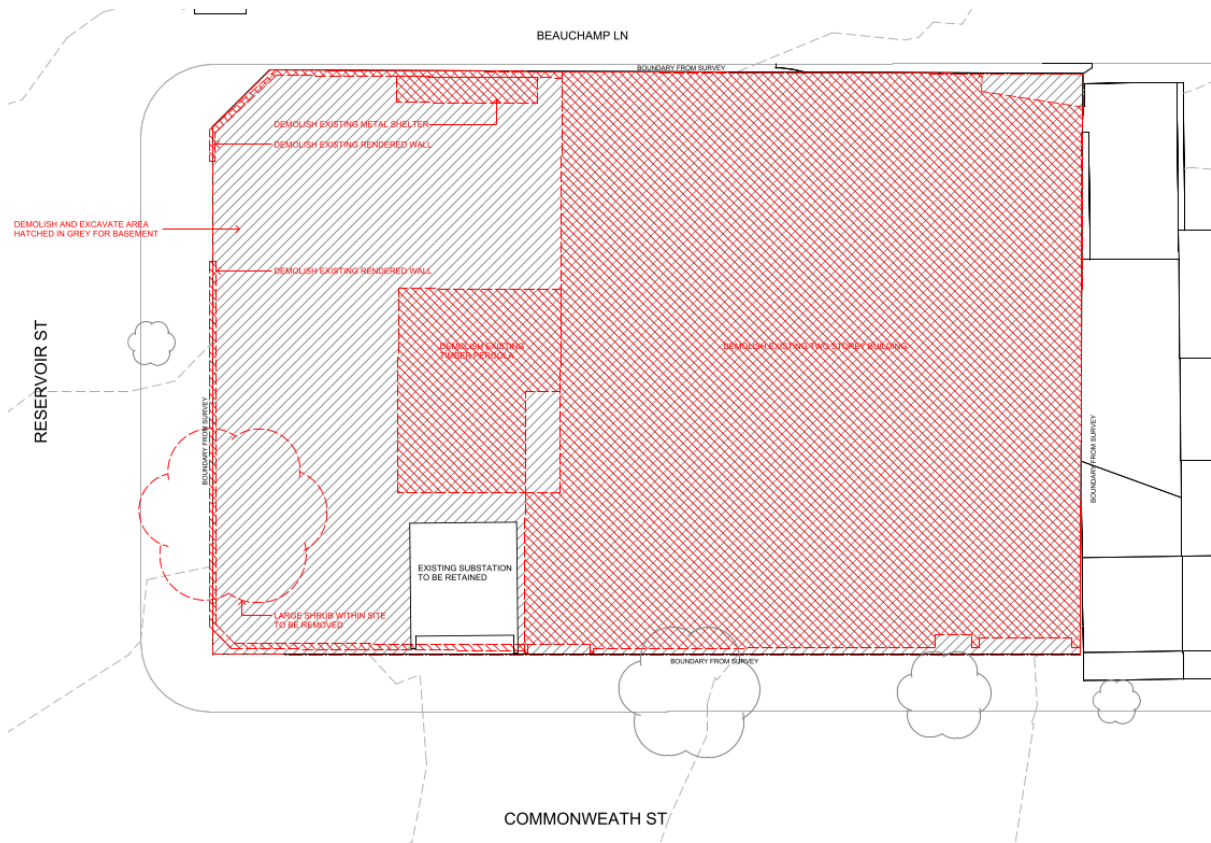


Figure 15: Demolition Plan

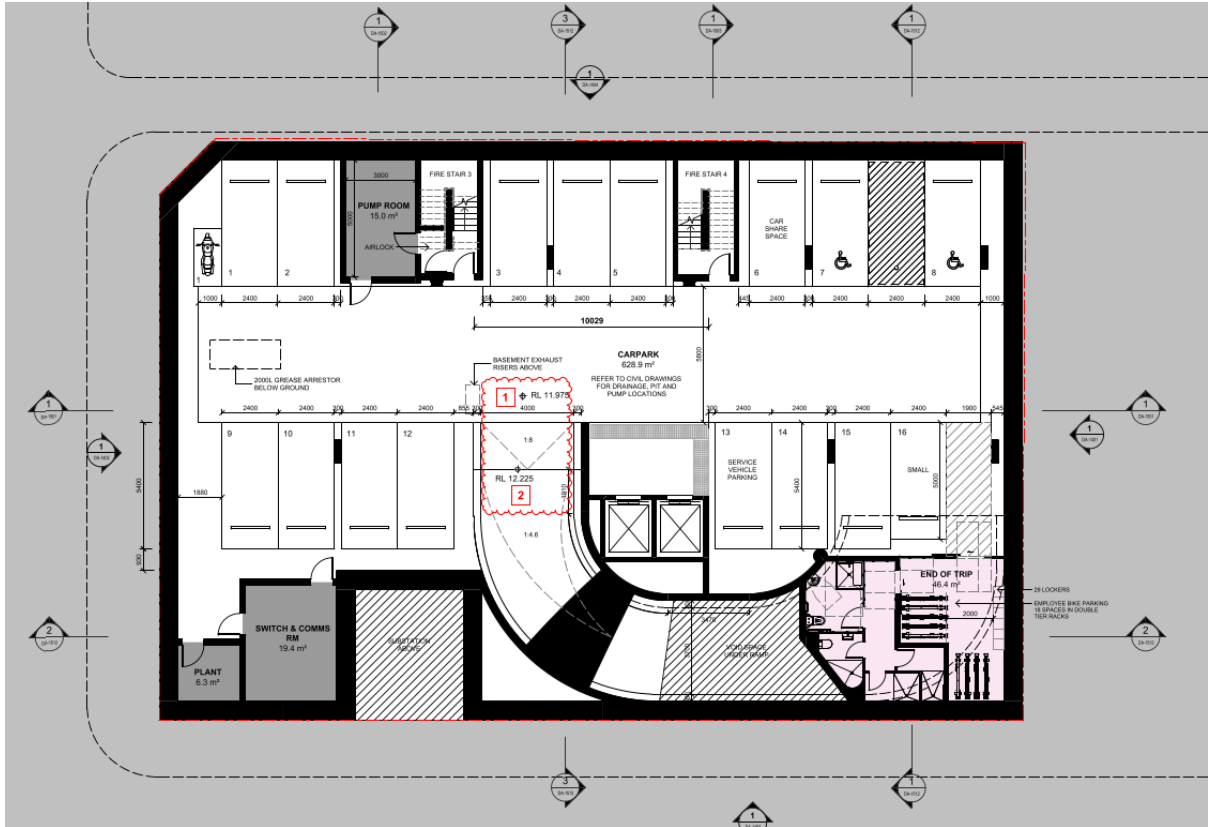


Figure 16: Basement Plan

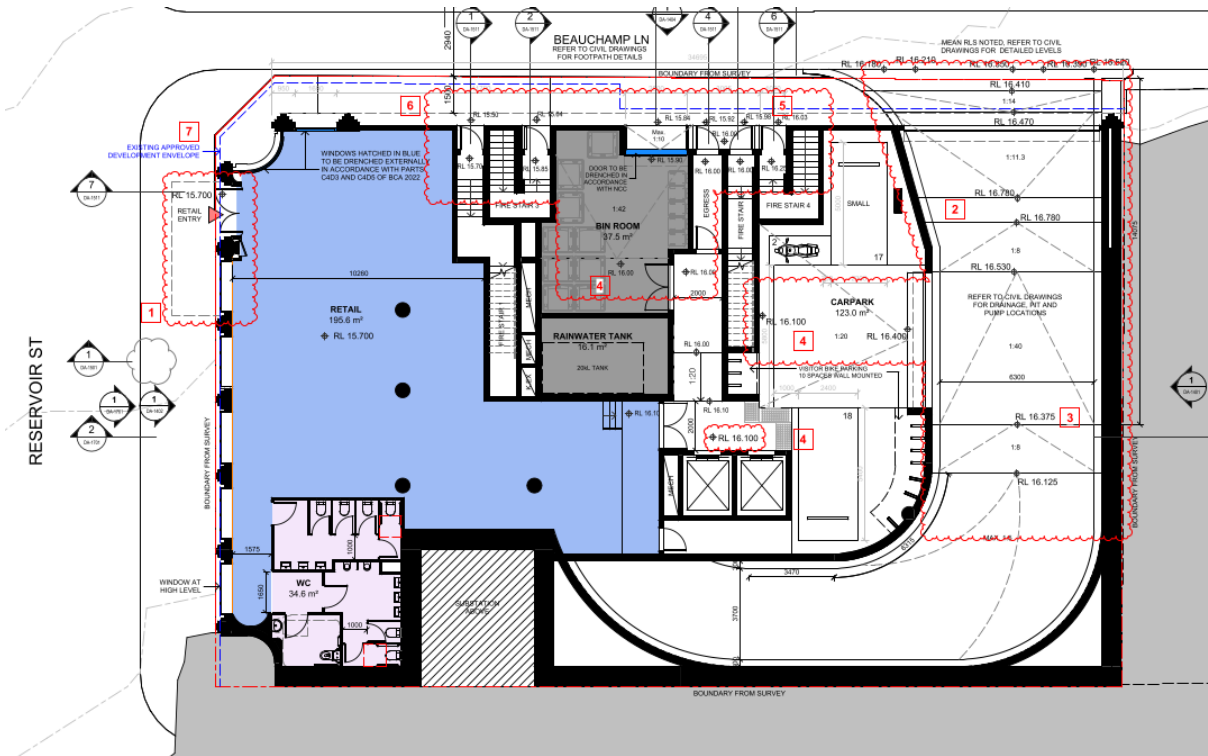


Figure 17: Lower Ground Plan

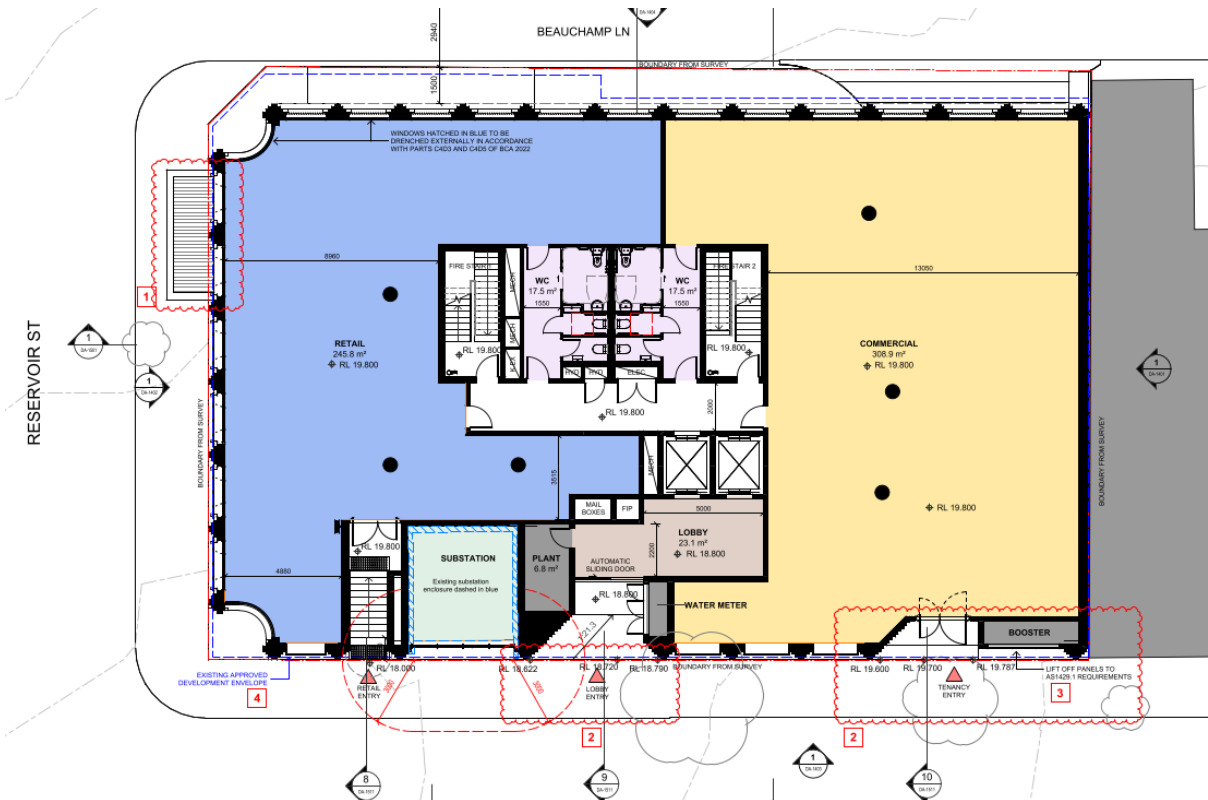


Figure 18: Upper Ground Plan

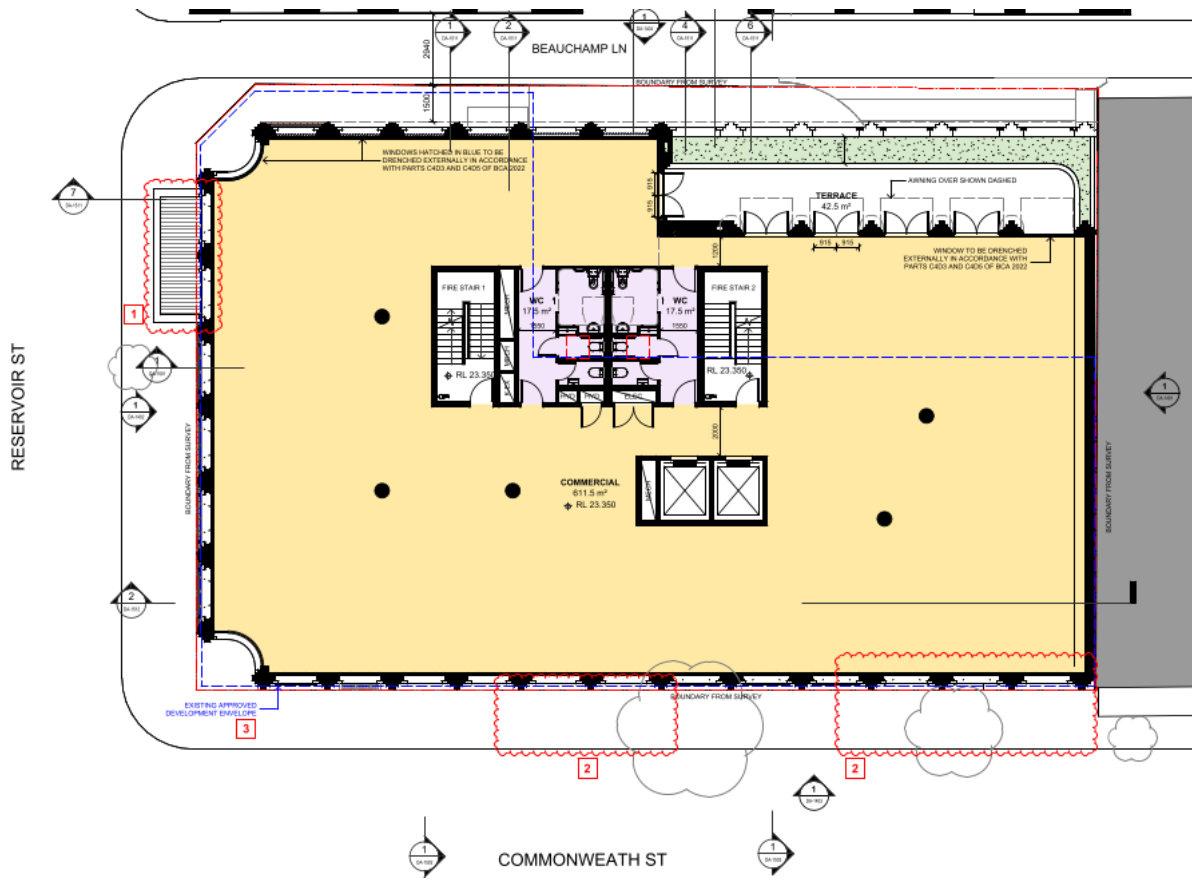


Figure 19: Level 1 Plan

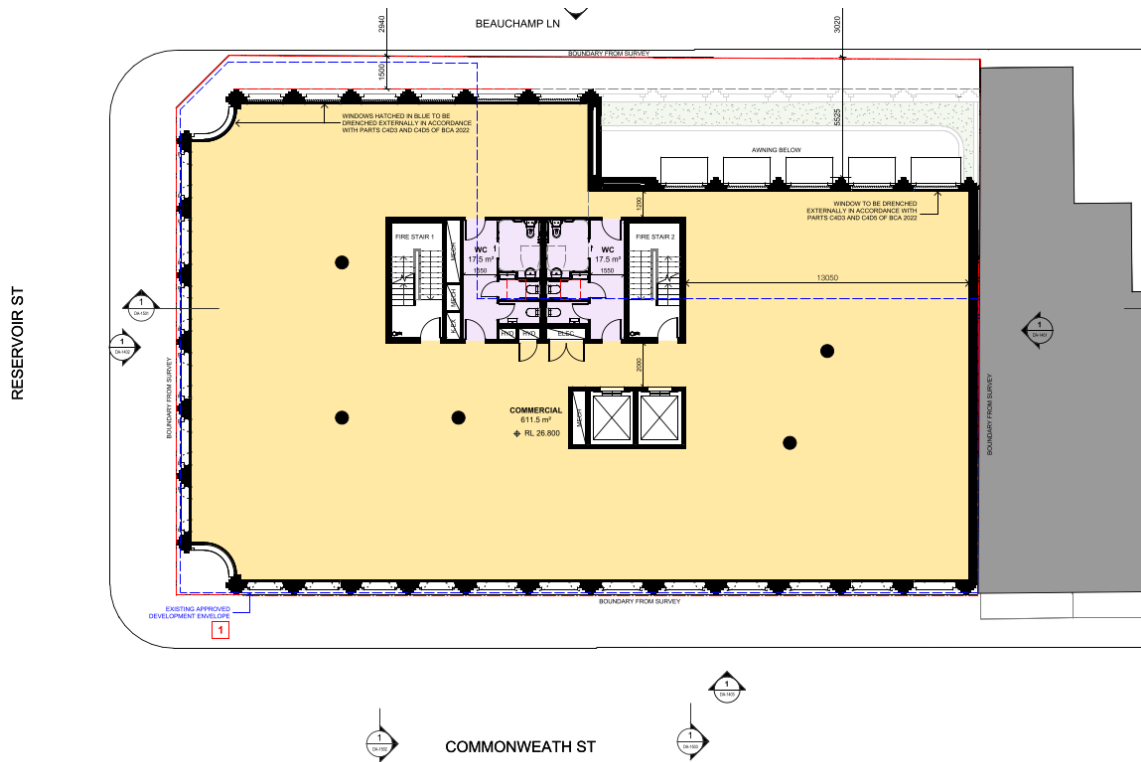


Figure 20: Level 2 Plan

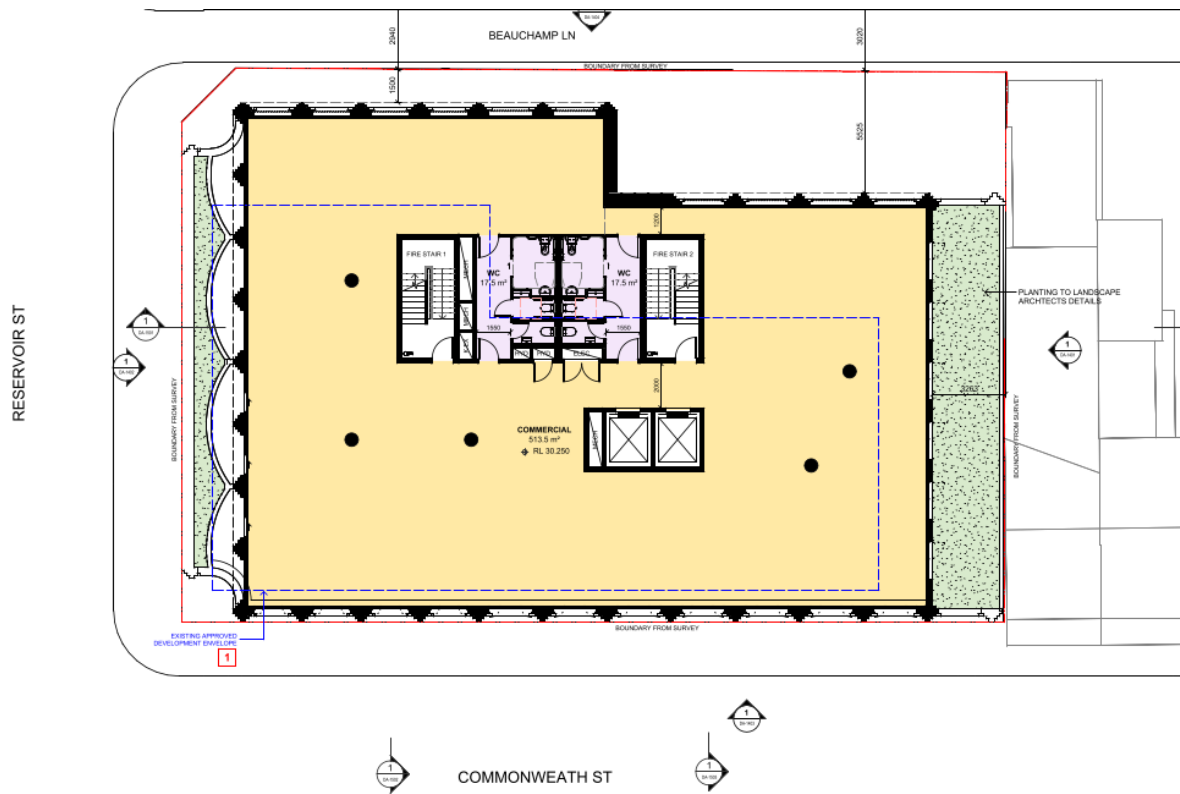


Figure 21: Level 3 Plan

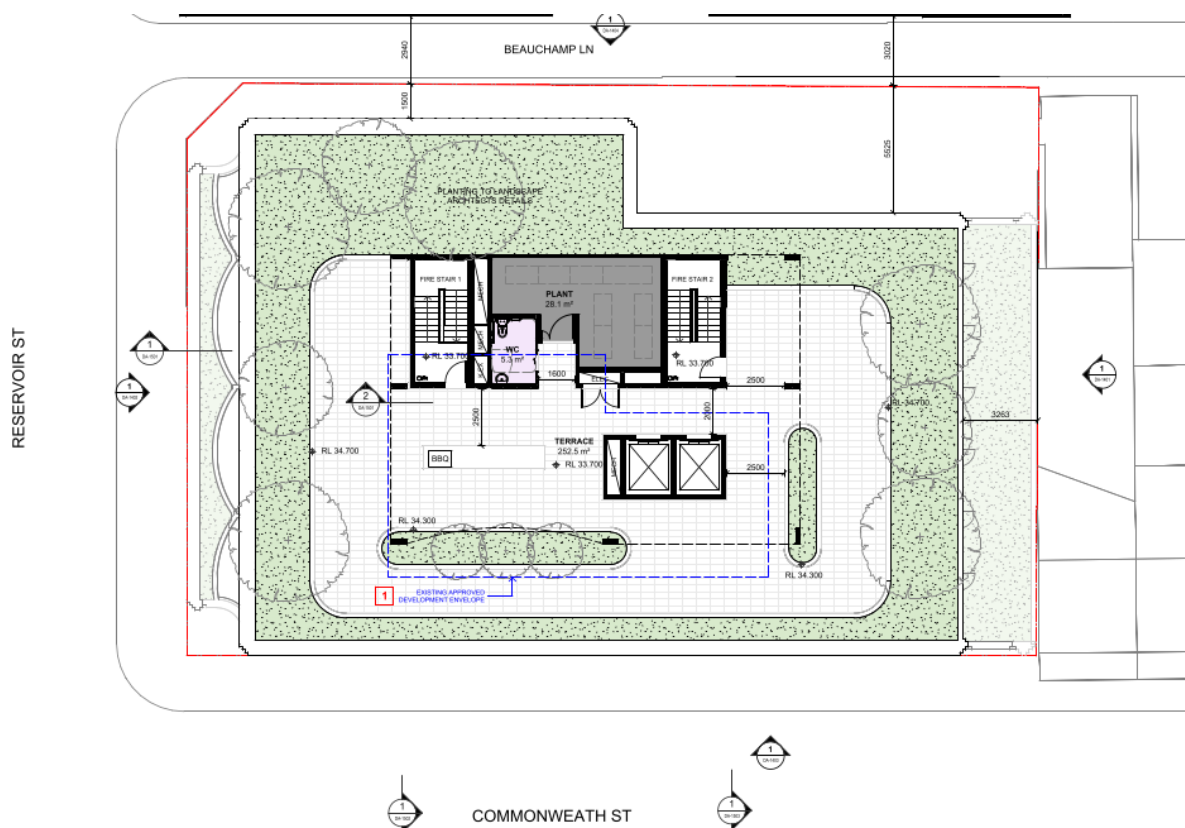


Figure 22: Roof Terrace Plan

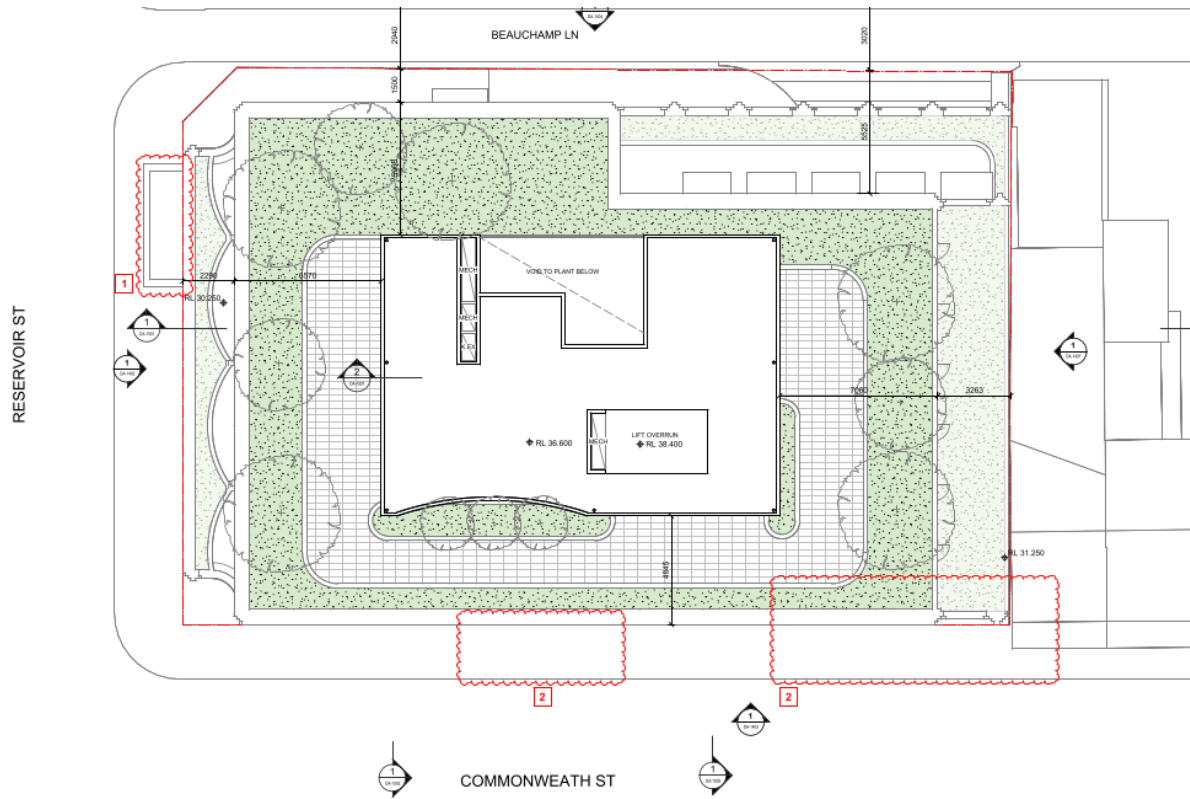


Figure 23: Roof Plan

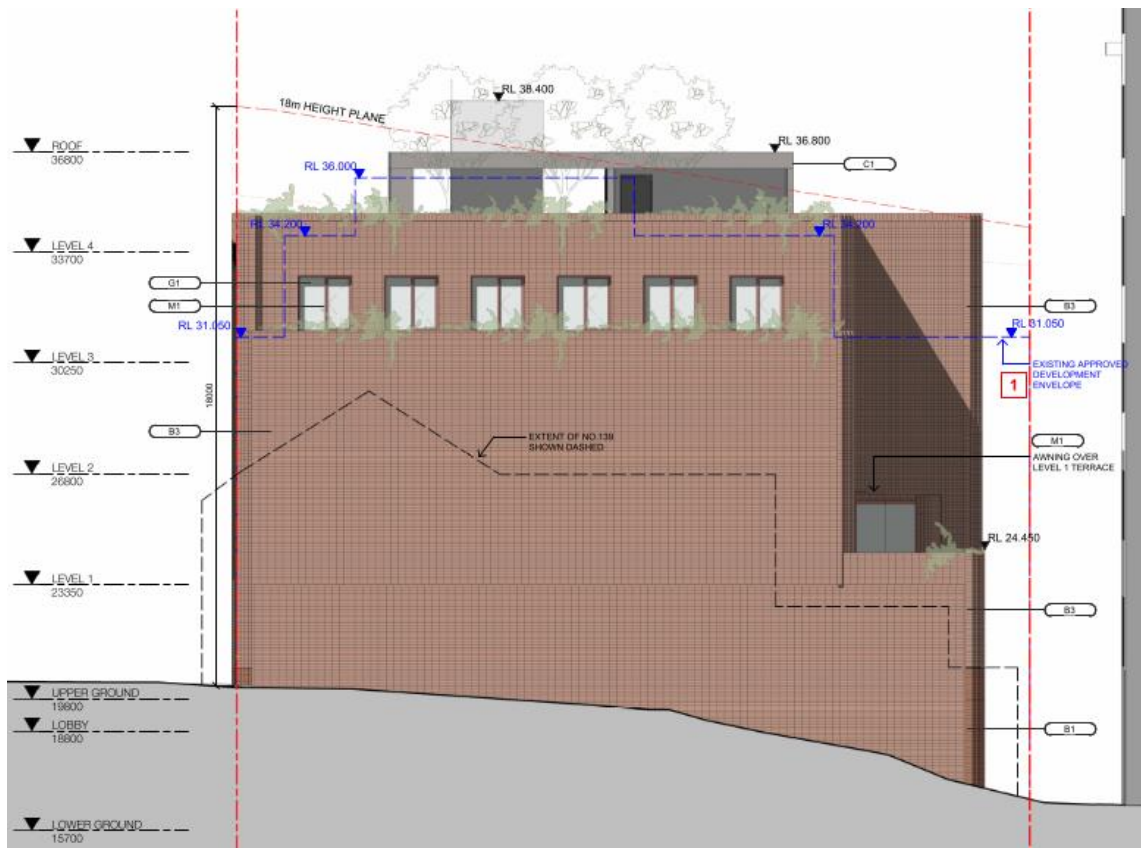


Figure 24: North Elevation



Figure 25: South Elevation



Figure 26: East Elevation



Figure 27: West Elevation



Figure 28: Long Section

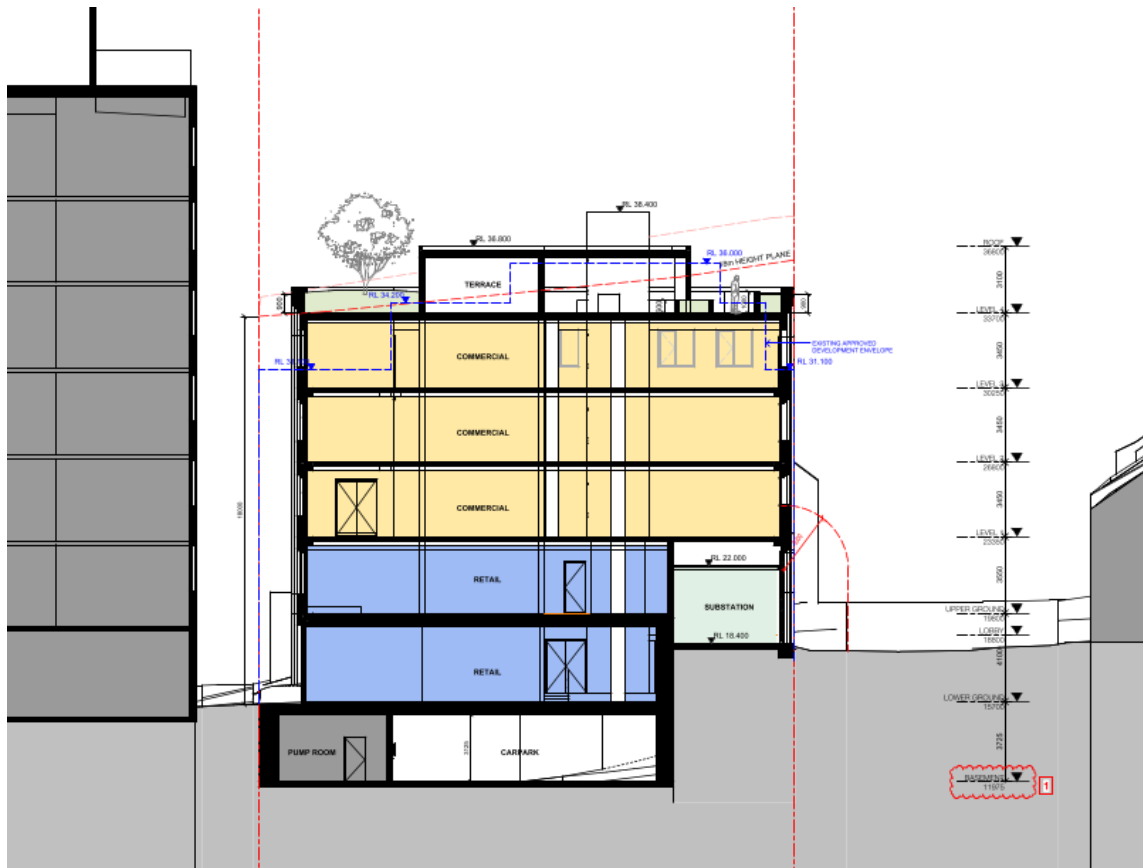


Figure 29: Short Section



Figure 30: 3D Perspective

Assessment

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

State Environmental Planning Policies

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

Remediation of Land

32. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
33. Site investigations have identified potential environmental concern, those being the potential importation of uncontrolled fill that may contain various contaminants; potential use for pesticides, metal degradation, leaks from vehicles and the substation, and current / former asbestos based building materials.
34. The contaminants that may be present in some of these areas were considered to be low in terms of risk to the human and environmental receptors identified.
35. Due to the low risk of harmful contaminants and the historical site uses, a Detailed Site Investigation is not required. The site is also proposed to be a commercial/ retail space that is considered to be a less sensitive land use from a contamination perspective.
36. The Council's Health Unit has reviewed the information provided, and has recommended conditions of consent to ensure exportation and classification of waste is appropriately addressed during site preparation.
37. Conditions also confirm that Council must be notified of any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination.
38. The Council's Health Unit is satisfied that, subject to conditions, the site can be made suitable for the proposed use.

State Environmental Planning Policy (Sustainable Buildings) 2022

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

- (g) to minimise the consumption of mains-supplied potable water,
- (h) to ensure good thermal performance of buildings.

Chapter 3 Standards for non-residential development

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

Section 3.2 Development Consent for non-residential development

41. Section 3.2 Development consent for non-residential development provides that:
- (1) In deciding whether to grant development consent to non-residential development, the consent authority must consider whether the development is designed to enable the following -
- (a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials,
 - (b) a reduction in peak demand for electricity, including through the use of energy efficient technology,
 - (c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design,
 - (d) the generation and storage of renewable energy,
 - (e) the metering and monitoring of energy consumption,
 - (f) the minimisation of the consumption of potable water.
- (2) Development consent must not be granted to non-residential development unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified.
42. With regard to the above matters the applicant has submitted a City of Sydney Design for Environmental Performance report template to address the above. The template identifies design and technology responses for environmental performance that the applicant proposes to be incorporated in the development. This includes electrification of building services and alignment with the Sustainable Buildings SEPP requirement for minimisation of fossil fuels in onsite operation.
43. With regard to section (2) above the applicant has adequately quantified the embodied emissions attributable to the development. Section 35B of the Environmental Planning and Assessment Regulation determines the form in which embodied emissions are to be quantified. The embodied emissions attributable to the development have been appropriately quantified using the NABERS embodied energy form published on the NSW Planning Portal and certified by an appropriately qualified person as required by the regulations.

44. The applicant's submission has been reviewed and accepted by the City's Environmental Sustainability Advisor who has advised that the documentation provided is generally accepted and complies with the requirements of the Sustainability SEPP.
45. Prior to the issue of a Construction Certificate, as per requirements under the Sustainable Buildings SEPP, embodied emissions reporting is to be updated to reflect finalised material specifications and increased design detail. A condition is recommended to address this requirement
46. Conditions have been recommended to ensure sustainability commitments are carried through during detailed design and construction. These conditions include a requirement to enter into a NABERS Commitment Agreement to allow for ongoing monitoring of sustainability commitments and mandatory embodied emissions reporting to accurately capture the development's environmental impact.
47. These conditions have been included within the recommended conditions of consent.

Section 3.3 Other Considerations for Large Commercial Development

48. Section 3.3 Other considerations for large commercial development applies to development defined as prescribed office premises, prescribed serviced apartments and prescribed hotel or motel accommodation.
49. Section 3.3 provides that:
 - (1) In deciding whether to grant development consent to large commercial development, the consent authority must consider whether the development minimises the use of on-site fossil fuels, as part of the goal of achieving net zero emissions in New South Wales by 2050.
 - (2) Development consent must not be granted to large commercial development unless the consent authority is satisfied the development is capable of achieving the standards for water use specified in Schedule 3.
 - (3) For the purposes of subsection (2), development is capable of achieving a standard specified in Schedule 3 if there is a NABERS commitment agreement in place to achieve the standard.
50. The above, to the extent it relates to energy use, does not apply to large commercial development on land to which the Sydney Local Environmental Plan applies, therefore the Schedule 3 standards of the SEPP for energy use do not apply to the development. Notwithstanding the above, the energy performance standards for office buildings prescribed by Section 3.6 of the Sydney DCP is 5.5 star NABERS rating +25% and the development achieves this.
51. The proposal satisfies the SEPP standards for water use being subject of a 3 star NABERS water rating.
52. Conditions of consent are recommended to ensure that the development achieves the required energy and water use standards.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network**Clause 2.48 Determination of development applications – other development**

54. The application is subject to Clause 2.48 of the SEPP as the development will be carried out immediately adjacent to an electricity substation situated on site along the Commonwealth Street boundary.
55. As such, the application was referred to Ausgrid for a period of 21 days and an objection to the development was raised as the development as originally lodged involved deep excavation immediately adjacent to the existing substation and the proposed design showed the inclusion of louvres impeding access to the substation.
56. The applicant has consulted with Ausgrid during assessment and has subsequently modified the substation screening to achieve compliance with Ausgrid standards.
57. The applicant has also provided Ausgrid with the retention system and excavation methods to minimise the impact on the substation structure and electrical infrastructure.
58. At the time of writing this report Ausgrid raised no objection to approval of the development application, subject to a condition requiring a detailed design for the excavation and shoring works, in addition to structural certification of temporary and permanent works, to be approved by Ausgrid prior to the issue of a Construction Certificate.
59. The condition is imposed to ensure the integrity of the Ausgrid substation and supply to the local network is maintained. Ausgrid have confirmed they will issue a letter to the proponent to confirm that the engineering assessment and review is completed once Ausgrid is satisfied with the information provided.
60. This condition is included in the recommended conditions of consent requiring the proponent to provide evidence of Ausgrid's concurrence prior to the issue of a construction certificate.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 2 (Vegetation in Non Rural Areas) 2017

61. The proposal includes the clearing of vegetation in a non-rural area and as such is subject to this SEPP.
62. The SEPP states that the Council must not grant consent for the removal of vegetation within heritage sites or heritage conservation areas unless Council is satisfied that the activity is minor in nature and would not impact the heritage significance of the site.
63. The application proposes the removal of 3 existing trees on the southern side of the site along the Reservoir Street and Commonwealth Street boundaries.
64. The proposed tree removal has been reviewed by the City's Tree Management Unit who have confirmed that the tree removal is acceptable as the tree species (Narrow Leaf Fig) are considered an inappropriate species for the location and have a low retention value.

65. These trees do not contribute to any heritage significance of the site and the ecological impacts resulting from their removal are offset by the provision of new tree planting on the rooftop of the proposed development.
66. The applicant has provided a landscape plan demonstrating that the development will exceed the DCP requirement of providing 15% tree canopy coverage within 10 years of completion by providing 22.24% coverage, enhancing the site's biodiversity and natural amenity.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water catchments

67. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the control of improved water quality and quantity, the controls set out in Division 2 of the SEPP are not applicable to the proposed development.

Local Environmental Plans

Sydney Local Environmental Plan 2012

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

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the MU1 'Mixed Use' zone. The proposed development is defined as retail premises and office premises and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 18m is permitted. A height of 20.58m is proposed. The proposed development does not comply with the maximum height of buildings development standard. A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted.

Provision	Compliance	Comment
		See further details in the 'Discussion' section below.
4.4 Floor space ratio	No	<p>A maximum floor space ratio of 3:1 or 2,739sqm is permitted.</p> <p>A floor space ratio of 3.12:1 or 2,852sqm is proposed.</p> <p>The development is permitted an additional 48sqm of end of journey floorspace pursuant to the provisions of Clause 6.13 of the LEP.</p> <p>Even with the additional end of journey floorspace, the proposed development is in breach of the maximum floor space ratio development standard by 65sqm.</p> <p>A request to vary the floor space ratio development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</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 and the Floor Space Ratio development standard prescribed under Clause 4.4 of the Sydney LEP.</p> <p>Clause 4.6 variation requests have been submitted with the application that seek approval to vary these development standards.</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 not a heritage item but is located within the Reservoir Street and Fosterville Heritage Conservation Area (CA66).</p> <p>The site is adjacent to a local heritage item known as 'Warehouse including interior' (I1585) at 74-80 Reservoir Street to the west of the site.</p>

Provision	Compliance	Comment
		<p>The proposed development will not have detrimental impact on the heritage significance of the heritage conservation area and the heritage item.</p> <p>See further details in the 'Discussion' section below.</p>
5.21 Flood planning	Yes	<p>The site is identified as being subject to flooding within the 1% AEP and PMF flood zones.</p> <p>The application proposes development at or below the flood planning level. The applicant has provided a flood report demonstrating that the development is able to comply with the City's Interim Floodplain Management Policy and satisfies the provisions of the standard.</p> <p>The applicant has provided an amended Flood Report during assessment following consultation with the City's Public Domain Unit and the updated report defines appropriate flood planning levels (FPLs). Amended architectural plans have been submitted reflective of the updated FPLs.</p> <p>For completeness, a condition is recommended confirming that the development is to be constructed to comply with the relevant flood planning levels identified in the updated Flood Report. Details demonstrating compliance must be submitted to the Registered Certifier prior to the issue of any Construction Certificate.</p>

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	<p>The proposed development is eligible for a maximum additional floor space ratio of 0.3:1 or 274sqm for additional floorspace based upon the amount of floorspace in the development allocated to end of journey facilities.</p>

Provision	Compliance	Comment
		The proposed development provides 48sqm of end of journey facilities within the basement.
Division 4 Design excellence		
6.21 Design excellence	Yes	<p>The proposed development is of a high standard and uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area.</p> <p>The development achieves the principle of ecologically sustainable development and has an acceptable environmental impact with regard to the amenity of the surrounding area and future occupants. The development therefore achieves design excellence.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises 7.7 Retail premises	Yes	<p>A maximum of 13 car parking spaces are permitted for the commercial premises.</p> <p>A maximum of 6 car parking spaces are permitted for the retail premises.</p> <p>A total of 19 car parking spaces are permitted within the development.</p> <p>The proposed development includes 18 car parking spaces and complies with the relevant development standards.</p>
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	<p>The proposed development is situated on Residual Lands as identified on the Locality and Site Identification Map of the Sydney LEP.</p> <p>The proposed development involves the erection of a new building the gross floor area of which is more than 200 square</p>

Provision	Compliance	Comment
		metres and is therefore subject to an affordable housing contribution. See further details under 'Financial Contributions' section below.
Division 5 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.26 Public art	Yes	The applicant has provided a Preliminary Public Art Plan which satisfies the requirements of the City's Interim Guidelines for Public Art in Private Development. The applicant's submission has been reviewed and approved by the City's Public Art Unit, subject to a recommended condition requiring the submission of a detailed public art plan to be approved by Council prior to CC and for the public artwork to be installed prior to OC. This condition is included within the recommended conditions of consent for the development.
7.33 Sustainability requirements for certain large commercial development	Yes	The development satisfies the requirements of the sustainability requirements for large commercial development. Refer to SEPP (Sustainable Buildings) and discussion section.

Development Control Plans

Sydney Development Control Plan 2012

69. 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

70. The site is located within the Riley locality. The proposed development is in keeping with the unique character and the design principles of the Riley locality.
71. The proposal will deliver a commercial office and retail development which contributes to the mixed-use character of the precinct and appropriately responds to the surrounding scale of development.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1.5 Public Art	Yes	<p>The applicant has provided a Preliminary Public Art Plan which satisfies the requirements of the City's Interim Guidelines for Public Art in Private Development.</p> <p>The applicant's submission has been reviewed and approved by the City's Public Art Unit, subject to a recommended condition requiring the submission of a detailed public art plan to be approved by Council prior to CC and for the public artwork to be installed prior to OC.</p> <p>This condition is included within the recommended conditions of consent for the development.</p>
3.2.3 Addressing the street and public domain	Yes	<p>The proposed development provides appropriate frontages to the street with legible and accessible entries to the building.</p>
3.2.3 Active Frontages	Yes	<p>Active frontages are to be provided along the Commonwealth Street and Reservoir Street frontages of the building, as identified by the Active Frontages map of the Sydney DCP.</p> <p>The proposed development ensures compliance with the active frontage requirements set out in the Sydney DCP, particularly along Commonwealth Street and Reservoir Street. The design of the Reservoir Street frontage includes large glazed openings that allow clear visibility into the ground-floor retail space, effectively addressing both the active frontage provisions and the challenges posed by the site's sloping</p>

Provision	Compliance	Comment
		<p>topography. The retail space entry is appropriately located at the base of the slope.</p> <p>While the activation of the Commonwealth Street frontage is constrained by the existing Ausgrid substation, which must be retained, the design still provides significant activation. Large windows into the retail and commercial spaces offer transparency, and separate entries are provided for both the lift lobby and the ground-floor commercial space.</p> <p>Overall, the development achieves a thoughtful balance of activation, taking into account the site's topographical and physical constraints, and appropriately addresses the active frontage requirements of the DCP.</p>
3.2.4 Footpath awnings	Acceptable	<p>The active frontage provisions of the Sydney DCP (Section 4.2.3) require the inclusion of fixed awnings for identified active frontages outside Central Sydney. During the assessment process, the applicant explored the feasibility of providing fixed awnings along the Commonwealth Street and Reservoir Street frontages. However, it was identified that installing awnings in these locations could negatively affect the existing street trees along both streets.</p> <p>As a result, a reduced-length awning has been proposed for the Reservoir Street frontage to offer weather protection at the retail entry, while avoiding interference with an existing street tree. Similarly, awnings along Commonwealth Street are not included in the proposal, due to the potential impact on the established street trees.</p> <p>This selective approach to awning provision is deemed acceptable, given that one of the primary objectives of the DCP's footpath awning provision is to provide weather protection at building entries. The proposed awning along</p>

Provision	Compliance	Comment
		<p>Reservoir Street effectively serves this purpose.</p> <p>Additionally, the design of the recessed entries along Commonwealth Street offer weather protection without the need for awnings. Given that awnings are neither prevalent nor characteristic of the area, the absence of awnings on this frontage is considered an appropriate response.</p>
3.5 Urban Ecology	Yes	<p>The application proposes the removal of 3 existing trees on the southern side of the site along the Reservoir Street and Commonwealth Street boundaries.</p> <p>The proposed tree removal has been reviewed by the City's Tree Management Unit who have confirmed that the tree removal is acceptable as the tree species (Narrow Leaf Fig) are considered an inappropriate species for the location and have a low retention value.</p> <p>These trees do not contribute to the site's heritage significance and the ecological impacts resulting from their removal are offset by the provision of new tree planting on the rooftop of the proposed development.</p> <p>The applicant has provided a landscape plan demonstrating that the development will achieve 15% tree canopy coverage within 10 years of completion to enhance the site's biodiversity and natural amenity.</p> <p>The City's Tree Management Unit have recommended conditions regarding the provision of new tree planting requirements.</p> <p>These conditions are included in the recommended conditions of consent.</p>
3.5.3 Tree Management	Yes	<p>The application has been referred to Council's Tree Management Unit who raised no objection to the proposal, subject to recommended conditions</p>

Provision	Compliance	Comment
		<p>concerning tree planting and ensuring appropriate protection of existing street trees during construction of the development.</p> <p>These conditions are included in the recommended conditions of consent.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The energy performance standards for office buildings prescribed by Section 3.6 of the Sydney DCP is 5.5 star NABERS rating +25% and the development achieves this.</p> <p>The standard for water use in large commercial developments is prescribed by Schedule 3 of the Sustainability SEPP as being a 3 star NABERS water rating and the development achieves this.</p> <p>The proposal therefore satisfies NABERS and environmental requirements.</p> <p>Refer to SEPP (Sustainable Buildings) section of report above and Discussion section below.</p>
3.7 Water and Flood Management	Yes	<p>The site is identified as being flood affected within the 1% AEP and PMF flood zones.</p> <p>A site-specific flood study has been undertaken and the applicant has submitted a flood report to define appropriate Flood Planning Levels (FPLs). The flood report and FPLs have been reviewed and are supported by the City's Public Domain Unit.</p> <p>Conditions are included within the recommended conditions of consent confirming that the development is to comply with the recommended FPLs.</p> <p>See further discussion under Section 5.21 of LEP assessment above.</p>

Provision	Compliance	Comment
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	<p>The proposal does not involve lot consolidation or subdivision.</p> <p>A condition has been included within the recommended conditions of consent confirming any proposal for strata subdivision will require separate development consent for certainty and completeness.</p>
3.9 Heritage	Yes	<p>The subject building is located within the Reservoir Street and Fosterville conservation area and identified as a 'neutral' building. Additionally, the subject site is located in close proximity to the heritage item 74-80 Reservoir Street (Warehouse including Interiors – I1585).</p> <p>The removal of the current building will not negatively impact the significance of the conservation area, nor will it detrimentally affect the streetscape. The existing building is located on a site that has been developed over time and replaced former terraced houses and warehouse structures.</p> <p>The proposed new building design is sympathetic and will not detract from the significance of the nearby heritage item. The design does not aim to imitate previous characteristics and features that exist in the conservation area, but includes subtle architectural gestures, such as the vertically proportioned windows and the blind brick arches above, to reference nearby contributing buildings. Additionally, the proposal will be in keeping with the existing streetscape and conservation area and will further contribute to the existing contemporary building stock that is located within the conservation area and across Surry Hills.</p>
3.11 Transport and Parking	Yes	<p>The proposal complies with the maximum parking rates specified in the Sydney LEP 2012, as outlined in</p>

Provision	Compliance	Comment
		<p>Sections 7.6 and 7.7 of the LEP discussion above.</p> <p>Two accessible car spaces are provided, in accordance with the DCP requirements. Additionally, the development includes designated bicycle parking areas on the ground floor for visitors and in the basement for staff. The staff bicycle parking is strategically located near the end-of-trip facilities, ensuring convenient access.</p> <p>The City's Transport and Access Unit has reviewed the application and confirmed that the development includes an adequate allocation of spaces to accommodate these facilities.</p> <p>Conditions are recommended to ensure that car parking spaces are appropriately assigned to the various uses within the development and that the required number of bicycle parking spaces and end-of-trip facilities are provided and fully comply with DCP requirements.</p>
3.12 Accessible Design	Yes	<p>The applicant has submitted an Access Report that details how the development design complies with the Building Code of Australia (BCA) requirements related to accessibility for people with a disability. In instances where the design does not fully comply, the report outlines proposed design solutions to be implemented prior to the Construction Certificate stage.</p> <p>The report concludes that, with the incorporation of the recommended additional details, the design will be fully capable of meeting the accessibility provisions of the BCA prior to the issuance of the Construction Certificate.</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>

Provision	Compliance	Comment
		<p>The chamfered design of the recessed openings on Commonwealth Street ensures good visibility and sightlines to building entries to restrict potential for concealment or entrapment.</p>
3.14 Waste	Yes	<p>The applicant has submitted a Waste Management Plan and has demonstrated that waste collection can be serviced via a small waste collection vehicle and that bins will be collected directly from the waste room fronting Beauchamp Lane and not be left in the lane way overnight awaiting collection.</p> <p>The proposal has been reviewed by the City's Cleansing and Waste Unit who raised no objection subject to recommended conditions of consent.</p> <p>These conditions are included within the recommended conditions of consent to ensure that the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	Yes	<p>The proposal is for a mixed-use commercial office and retail development but includes outdoor terrace and rooftop spaces, the use of which have the potential to impact upon surrounding residential properties.</p> <p>As such the use of these areas have been assessed against the late night trading management provisions of the Sydney DCP.</p> <p>The premises is not located within a late night trading area, however the use is considered a category B premises as commercial premises, other than Category C premises, which in the opinion of the Council may impact on the amenity and safety of a neighbourhood resulting from its operation at night.</p> <p>A Plan of Management has been provided to guide the use of these outdoor areas, recommending operational hours between 7am and</p>

Provision	Compliance	Comment
		<p>10pm daily, with a trial period allowing extended hours (8pm-10pm) for one year.</p> <p>The proposed hours align with those permitted for Category B premises outside Late Night Trading areas, as outlined in Section 3.15.4 of the Sydney DCP.</p> <p>Conditions are recommended to ensure the terraces operate in accordance with the Plan of Management and restrict their use to the hours of 7am to 8pm, with extended hours of 8pm to 10pm permitted during the one-year trial period to monitor any potential adverse impacts.</p> <p>See further details of assessment under 'Visual and Acoustic Privacy' subheading of Discussion section below.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Partial compliance	<p>The site is permitted a maximum building height of five storeys.</p> <p>The proposed development is considered part five-storey and part six-storey in height due to the sloping site topography.</p> <p>The partial non-compliance can be attributed to the plant room and WC located on the rooftop which make this a partial storey, as per the Sydney LEP definition of a 'storey'.</p> <p>Whilst technically non-compliant with the control, the rooftop structures are strategically located in the centre of the rooftop and setback from the site boundary to minimise their visual impact.</p>

Provision	Compliance	Comment
		<p>The recessed rooftop level will not be highly perceptible from the public domain and the proposal is consistent with the objective of the height in storeys control which seeks to ensure the height in storeys reinforces the existing or future neighbourhood character.</p> <p>The proposal presents as a part-four and part-five storey development at street level making it visually compliant with the height in storeys control. The proposal is commensurate with the scale of surrounding development and is appropriate within the context.</p> <p>The proposed height in storeys of the development is therefore considered acceptable notwithstanding the technical partial non-compliance with the control.</p>
4.2.1.2 Floor to ceiling heights and floor to floor heights	No, acceptable	<p>The application proposes the following floor to floor heights:</p> <ul style="list-style-type: none"> - 4.1m at lower ground - 3.65m at upper ground - 3.45m at the commercial levels above <p>The proposal is therefore non-compliant with the DCP floor to floor metrics, which require a 4.5m on the ground floor and 3.6m on commercial levels above.</p> <p>Notwithstanding the numerical non-compliance, the proposed floor to floor heights are considered acceptable in the circumstances of case due to constraints presented by the sloping site topography and design responses to this non-compliance.</p> <p>See further details under Discussion section below.</p>
4.2.2 Building setbacks	Yes	<p>The proposal is generally consistent existing, adjacent patterns of building setbacks within the immediate context which are principally built to the boundary.</p>

Provision	Compliance	Comment
		<p>The development provides a 1.5m setback to the western boundary which alleviates pressures upon the narrow width of Beauchamp Lane and provides a greater setback to the heritage item of 74-80 Reservoir Street than the existing building.</p> <p>The building is setback 1.5m to Beauchamp Lane for all of ground level and upper ground level and the front (southern) half of levels 1-3. The rear (northern) half of levels 1 – 3 are setback 5.53m. These setbacks will improve solar access and outlook for the residential apartments within 74-80 Reservoir Street across Beauchamp Lane.</p> <p>The proposed re-entrant curved corners on the southern side of the development, situated between Commonwealth Street, Beauchamp Lane, and Reservoir Street, are atypical of the area's character, where buildings are generally constructed to the corner. However, despite this departure, these design elements are considered compatible with the surrounding context. The corners feature a tight radius, and the inclusion of curved glass above the spandrels enhances the overall design, offering a high-quality architectural expression that complements the area.</p>
4.2.3 Amenity		
4.2.3.1 Solar access	Partial compliance	<p>New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours' direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June.</p> <p>The proposal results in overshadowing to existing properties to the east, south and to the west, impacting solar access to terrace dwellings on Commonwealth Street to the east and Reservoir Street to the south, in addition to three east-</p>

Provision	Compliance	Comment
		<p>facing apartments at levels 1-3 of 74-80 Reservoir Street to the west.</p> <p>See further details under the sub-heading 'Solar Access' of the Discussion section below.</p>
4.2.3.3 Internal common areas	Partial compliance	<p>The proposal provides adequate dimensions for common corridors, ensuring easy circulation throughout the building. Principal circulation corridors are designed with generous 2-metre widths, and ample space is provided in front of the lifts to facilitate free movement.</p> <p>The stairwell and lift core are centrally located within the building, meaning they will not benefit from natural light or ventilation. Notwithstanding this, the central positioning of these elements ensures that the stairwell core and lift overrun are set back from the building's edge at rooftop level, minimising their visibility from the public domain.</p> <p>Overall, the proposal offers adequate common amenity, particularly given the relatively compact floorplate of the building. The design strategically minimises any adverse impacts on neighbouring properties and the public domain.</p>
4.2.3.4 Design features to manage solar access	Yes	<p>The proposal incorporates an appropriate solid-to-void ratio along the building facades, reducing extensive glazing to mitigate the impacts of midsummer sun.</p> <p>The northern elevation features a blank expression up to level 3, with the windows partially protected by landscaping.</p> <p>Additionally, the proposed façade depth allows for recessed windows, which provide shading and further minimise solar exposure.</p>

Provision	Compliance	Comment
4.2.3.5 Landscaping	Yes	<p>The proposed commercial development includes landscaped areas on structure at Levels 1, 3, and the rooftop. The applicant has submitted landscape plans detailing the proposed planting for these terrace and rooftop spaces.</p> <p>These plans have been reviewed by the City's Landscape Unit, who provided feedback during the assessment process. They have confirmed that the submission includes sufficient detail to demonstrate that the planter beds on the rooftop provide adequate soil volume for the proposed trees and that the planting areas are accessible for maintenance.</p> <p>Concerns regarding the absence of deep soil planting areas are addressed below.</p>
4.2.3.6 Deep Soil	No, but acceptable	<p>The proposal offers no provision of deep soil areas and is therefore non-compliant with the deep soil requirements of the DCP.</p> <p>The non-compliance is considered acceptable in this instance given the existing site coverage and the urban greening initiatives presented by the proposal.</p> <p>See further details under 'Deep Soil and Urban Greening Initiatives' of Discussion section below.</p>
4.2.3.10 Outlook	Yes	<p>The short-range outlook of east-facing apartments within No. 74-80 Reservoir Street, which face west across Beauchamp Lane, have been carefully considered during the assessment process.</p> <p>The proposal incorporates several design measures to create a desirable outlook from these units, including:</p> <ul style="list-style-type: none"> • A highly articulated façade with a continuation of brick detailing.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> • Palisade screening to commercial windows to safeguard residential amenity. • Various setbacks and recesses in the western facade. • Landscaping on terraces and the roof to introduce greenery, screening, and visual interest. • A mix of materials and colour palettes on the facade and roof terrace. <p>These design measures ensure that a pleasant outlook from these apartments will be maintained within the context of the relatively tight building separation that is characteristic of the area.</p> <p>The street widths of Commonwealth Street and Reservoir Street provide adequate separation from other adjoining properties, ensuring that outlook from other properties is not adversely or disproportionately impacted.</p>
4.2.3.11 Acoustic privacy	Yes	<p>A Noise Impact Assessment accompanies the application and assess the noise impact of exterior noise on the internal amenity and criteria for noise emission from the development.</p> <p>The Noise Impact Assessment has been reviewed by Council's Environmental Health Unit and the applicant has made updates to the report during assessment in response to Council feedback.</p> <p>The updated Acoustic Report has adequately addressed previous matters raised and demonstrates that the premises is able to comply with relevant noise criteria if the recommendations from the report are implemented. These recommendations include glazing requirements.</p>

Provision	Compliance	Comment
		<p>Conditions are recommended to ensure that the Acoustic Report recommendations are implemented and to ensure the development complies with the identified relevant noise criteria.</p> <p>A Plan of Management has been submitted to guide the use of the outdoor rooftop and terrace areas and contain appropriate measures to mitigate acoustic impacts upon sensitive residential receivers. See further details under subheading 'Visual and Acoustic Amenity' of Discussion section below.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The frontage widths of the development comply with the fine grain controls of the Sydney DCP.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.</p> <p>These conditions include management of rooftop and outdoor terrace areas, compliance with noise criteria and coordination of the waste and servicing requirements of the development.</p>

Discussion

Clause 4.6 Request to Vary the Height of Buildings Development Standard

72. The site is subject to a maximum Height of Buildings control of 18m. The proposed development has a maximum building height of 20.58m, representing a 14.3% variation of the standard.
73. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard.

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

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

(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:

(i) The applicant's points of justification references the judgement of *Wehbe v Pittwater Council* [2007] and outlines the five tests established by the judgement to establish that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.

(ii) The applicant's request adopts Test 1 from this judgement and seeks to demonstrate compliance is unreasonable or unnecessary as the objectives of the standard are achieved notwithstanding non-compliance with the standard.

(iii) The applicant's points of justification against the objectives of the Height of Buildings development standard are provided below:

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

(iv) The applicant submits that the height variation is generated by the sloping site topography, which drops 4.41m from the high point in the northeastern corner (RL20.21) to the low point in the southwestern corner (RL15.80).

(v) The applicant submits that the proposal largely complies with the Sydney DCP 2012 control for height in storeys control and is of a scale compatible with the area's current and desired future character despite the minor height variation.

(vi) The applicant submits that the proposed height provides an appropriate transition between the varying building heights in the locality, including between the 7-storey residential flat building to the west (74-80 Reservoir Street) and the two storey terraces along Reservoir Street and Commonwealth Street to the north and east.

(vii) The applicant submits that setbacks to the southern and western facades mitigate amenity impacts related to overshadowing while maintaining the building's overall design coherence.

(viii) The applicant submits that non-compliance with the height control is minor in nature, and height variations have been permitted in this locality, including D/2017/1283, which has a similar height and massing to the proposal.

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

(ix) The applicant submits that the site is located in a mixed-use area with various commercial and residential uses of varying character and scale.

- (x) The applicant submits that the proposed height of the development are supported by the applicant's heritage impact statement and will not adversely impact upon the setting of neighbouring properties. The subject site will not adversely impact the heritage conservation area and is of an appropriate height to the heritage item located directly west of the subject site.
- (xi) The applicant submits that Council's height controls step down from 35m, 22m, and 18m to 12m along the northern side of Reservoir Street and travelling in an eastern direction, from Hands Lane to the eastern side of Commonwealth Street. The proposal will create an appropriate height transition along the Reservoir Street frontage.

Objective (c) - to promote the sharing of views

- (xii) The applicant submits that the proposed building height will not affect views from surrounding properties.

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

- (xiii) The applicant submits that the built form will be compatible with surrounding built forms, including the 7 and 8-storey buildings within the site's direct visual catchment.
 - (xiv) Objective (e) of the standard relates to Green Square and is not applicable to the proposal.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) The applicant submits that the site has a fall of approximately 4.41m from the northeastern corner to the southwestern corner. This level change results in the parapets on the southwestern parts of the building exceeding the height control. The parapet and architectural detail have been designed to respond to the surrounding heritage context and align with the compliant level of the Commonwealth Street frontage. This level significantly influences the degree of non-compliance with the rooftop awning. The sloping nature of the site is considered to constitute an environmental planning ground.
 - (ii) The applicant submits that the LEP height limit is inconsistent with the minimum floor to floor heights and height of storeys provisions of the Sydney DCP which require a greater height limit than the LEP standard and therefore some flexibility to the height limit should be justified.
 - (iii) The applicant submits that the recessed nature of the components that breach the height limit ensures that they will not be responsible for any discernible streetscape impacts from any of the street frontages. The main built form as it presents to the respective frontages to Commonwealth and Reservoir Streets and Beauchamp Lane ensures that the height variation will be generally indiscernible when viewed from the surrounding streets.

- (iv) The applicant further submits that surrounding built forms to the west and southeast, which are significantly greater in height and scale than that proposed, also ensure that the height variation will not generate any incompatibility with the surrounding built environment.
- (v) The applicant submits that the height variation allows for provision of a rooftop garden terrace to provide a high amenity space with extensive landscaping that will add visual interest to the building when viewed from the public domain. The height variation thereby facilitates a higher level of amenity than a building that would be otherwise compliant.
- (vi) The applicant submits that proposed height variation has no adverse or unreasonable environmental impacts in regard to loss of views, shadowing or visual bulk, as the components over the height are minor and recessed from the perimeter of the building.
- (vii) The applicant submits that the components of the development over the height limit are not responsible for any greater shadow impacts than that of a building with a compliant height.

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

75. Development consent must not be granted unless the consent authority is satisfied that that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.

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

76. The applicant's request has adequately demonstrated that compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances as the proposal is compliant with the relevant objectives of the standard, notwithstanding the numerical non-compliance.

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

77. The applicant has demonstrated sufficient environmental planning grounds to justify the contravention of the height standard.
78. The site's topography, with a significant slope, contributes to the height exceedance, particularly in the southwestern section, and aligns with the heritage context. The recessed nature of the height breach ensures no adverse streetscape impacts, and the surrounding taller built forms further support the variation.
79. Additionally, the rooftop garden enhances amenity and visual interest. There are no significant environmental impacts, including loss of views or excessive visual bulk.
80. Notwithstanding the above, the applicant's assertion that there is an inconsistency between the LEP and DCP height controls is not supported. These controls should be considered in conjunction with one another to inform the form and massing of the development.
81. Similarly, the applicant's assertion that the proposed variation results in no additional shadow impacts is not supported. Notwithstanding this, it is agreed that the variation does not result in any significant or disproportionate adverse impacts upon neighbouring residential properties, as further discussed under 'Solar Access' subheading below.

82. Overall, whilst not all the points raised in the applicant's request are supported, the applicant has overall demonstrated sufficient environmental planning grounds to justify contravention of the standard.

Conclusion

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

Clause 4.6 Request to Vary the Floor Space Ratio Development Standard

84. The site is subject to a maximum Floor Space Ratio of 3:1 or 2,739sqm gross floor area of floorspace. A floor space ratio of 3.12:1 or 2,852sqm is proposed.
85. The development is permitted an additional 48sqm of end of journey floorspace pursuant to the provisions of Clause 6.13 of the LEP.
86. Even with the additional end of journey floorspace, the proposed development is in breach of the maximum floor space ratio development standard by 65sqm, representing a 2.4% variation of the standard.
87. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) That there are sufficient environmental planning grounds to justify contravening the standard;

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

88. The applicant seeks to justify the contravention of the Height of Buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant's points of justification references the judgement of *Wehbe v Pittwater Council* [2007] and outlines the five tests established by the judgement to establish that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.
 - (ii) The applicant's request adopts Test 1 from this judgement and seeks to demonstrate compliance is unreasonable or unnecessary as the objectives of the standard are achieved notwithstanding non-compliance with the standard.
 - (iii) The applicant's points of justification against the objectives of the Floor Space Ratio development standard are provided below:

Objective (a) - to provide sufficient floor space to meet anticipated development needs for the foreseeable future

- (iv) The applicant submits that the proposed FSR variation facilitates the provision of high-quality commercial and retail floor space.
- (v) The retail floor space supports the surrounding mixed-use area, while the commercial space will provide economic growth and employment opportunities in a well-serviced location.
- (vi) On this basis, the FSR variation does not generate any inconsistency with the objective.

Objective (b) - to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic

- (vii) The applicant submits that the minor nature of the departure would not generate any discernible impacts on land use intensity beyond that of a compliant development.
- (viii) The subject site and its surroundings are well-serviced by public transport, including Central Station. The major bus terminus at Eddy Avenue is also within walking distance.
- (ix) There is also sufficient capacity along surrounding streets for pedestrian traffic generated by the proposal and the associated FSR variation. The FSR variation can be attributed to non-habitable service areas, which do not contribute to the intensity of development on the site.
- (x) On this basis, the FSR variation does not generate any inconsistency with the objective.

Objective (c) - to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure

- (xi) The applicant submits that the proposed minor FSR variation will not generate any discernible demands beyond that of development with a compliant FSR.
- (xii) The site would be considered one of the most well-serviced in the Council area due to its proximity to established services (Central Station) that have recently undergone major upgrades.
- (xiii) The proximity of the site to the bus interchange and light rail services also ensures that the intensity of development is commensurate with the capacity of existing and planned infrastructure.
- (xiv) On this basis, the FSR variation does not generate any inconsistency with the objective.

Objective (d) - to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality

- (xv) The applicant submits that the FSR variation will be associated with the presentation of a 5-storey commercial building that is consistent with the desired future character of the site (5-storeys).
 - (xvi) The uppermost communal level is recessed behind substantial canopy tree planting areas on the rooftop. The FSR variation is contained within an attractive and articulated built form, which is consistent with the scale of the built form anticipated by the controls. On this basis, the desired future character is achieved despite the minor FSR variation.
 - (xvii) As also outlined above, the FSR variation will not be responsible for any adverse impacts in relation to the streetscape, heritage, visual bulk, privacy view loss, or shadow impacts.
 - (xviii) The provision of effective setbacks of 1.5-5.5m along the western side reasonably minimises impacts to the most vulnerable neighbouring buildings, such as the converted warehouse building to the west.
 - (xix) There are no other adverse impacts to the north, south, or east of the site, noting that the majority are commercial buildings separated by the width of Commonwealth and Reservoir Streets.
 - (xx) On this basis, the FSR variation does not generate any inconsistency with the objective.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
- (i) The applicant submits that the FSR variation is not responsible for any adverse or unreasonable external impacts on the surrounding neighbours to the north, east, south or west.
 - (ii) The built form (including the FSR variation) has been appropriately designed to provide effective setbacks to the most vulnerable of these neighbours, the converted warehouse building to the west.
 - (iii) The provision of setbacks of 1.5-5.5m is beyond the typical nil setbacks prevalent in the surrounding context for commercial buildings and shop-top housing developments.
 - (iv) The provision of such setbacks thereby represents a sympathetic design response that has suitably distributed the FSR and built form on the site to minimise impacts.
 - (v) The minor nature of the FSR variation embedded in the articulated built form ensures that such GFA beyond the built form is not responsible for any adverse or unreasonable impacts.
 - (vi) The proposal presents as a 5-storey building, which is consistent with the scale of the built form anticipated by the LEP and DCP height controls.

- (vii) The built form sympathetically responds to the sloping nature of the site as well as the flood requirements.
- (viii) The built form sensitively transitions from the terraces to the north along Commonwealth Street down to the corner of Reservoir Street.
- (ix) The 4-storey built form is well below the height limit at the northern end, adjoining the terraces, whilst the roof components are substantially recessed to be imperceptible from Commonwealth Street.
- (x) The 5-storey presentation to Reservoir Street is also consistent with the scale of built form anticipated by the controls whilst being subservient to the established taller buildings to the west and southwest along Reservoir Street.
- (xi) The built form is also subservient to the 8-storey commercial building directly to the southeast.
- (xii) The appropriate nature of the built form as it presents to the respective street and lane frontages ensures that the FSR variation is associated with a built form that is consistent with the desired future character despite the minor numeric variation.

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

89. Development consent must not be granted unless the consent authority is satisfied that that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard.

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

90. The applicant's request has adequately demonstrated that compliance with the Floor Space Ratio development standard is unreasonable or unnecessary in the circumstances as the proposal is compliant with the relevant objectives of the standard, notwithstanding the numerical non-compliance.

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

91. The applicant has demonstrated sufficient environmental planning grounds to justify the contravention of the height standard by illustrating that the proposed scale of the development is compatible with its surroundings and will not generate any disproportionate or adverse impacts upon surrounding properties.

Conclusion

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

Solar Access

93. Section 4.2.3.1 of the Sydney DCP stipulates that new development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours' direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June.

94. The applicant has submitted view from the sun diagrams which illustrate that the proposed development will cause additional overshadowing to terrace dwellings on Commonwealth Street to the east and Reservoir Street to the south, in addition to three east-facing apartments at levels 1-3 of 74-80 Reservoir Street to the west.
95. Overshadowing to the impacted residential properties and compliance with the solar access provisions of the Sydney DCP is assessed below:

Residential Apartments within 74-80 Reservoir Street

96. The proposed development will result in additional overshadowing of the residential building at 74-80 Reservoir Street to the west of the site during the morning hours, between 9am and 11am on 21 June.
97. However, the development will also improve solar access to several apartments on the north-east side of 74-80 Reservoir Street due to the demolition of the existing buildings on the subject site.
98. The apartments most significantly affected by the additional overshadowing are located on the south-east side of the building, specifically Unit 2 on the first floor, Unit 10 on the second floor, and Unit 18 on the third floor.
99. Whilst the majority of the overshadowing impacts are to bedroom windows, the proposed development will also restrict solar access to east-facing balcony openings on the south-east corner of the building to less than 2 hours on 21 June.
100. Typical floorplans of these apartments and the affected balcony openings are shown in Figures 31 and 32 below.

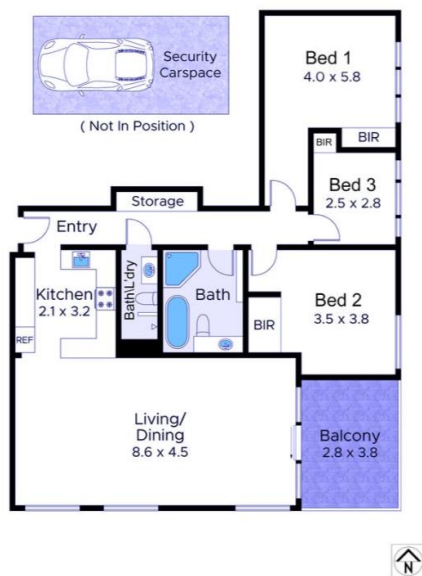


Figure 31: Typical floorplan of units on south-east side of 74-80 Reservoir Street



Figure 32: Balcony openings situated at Levels 1 to 3 on east elevation of 74-80 Reservoir Street impacted by the proposed development

101. Units 2 and 10 are particularly vulnerable to overshadowing due to their lower level and the narrow width of Beauchamp Lane, which provides only approximately 2.94m of separation between 74-80 Reservoir Street and the subject site.
102. Strict numerical compliance with controls to protect these openings would significantly limit the development potential of the site, noting that the proposed development's exceedance of the LEP height control does not further impact solar access to these openings.
103. It is acknowledged that solar access to the balcony of Unit 18 at Level 3 of 74-80 Reservoir Street is partially affected by the rooftop parapet at the south-west side of the site. This aspect of the development breaches the LEP height control, as illustrated in Figure 33 below.

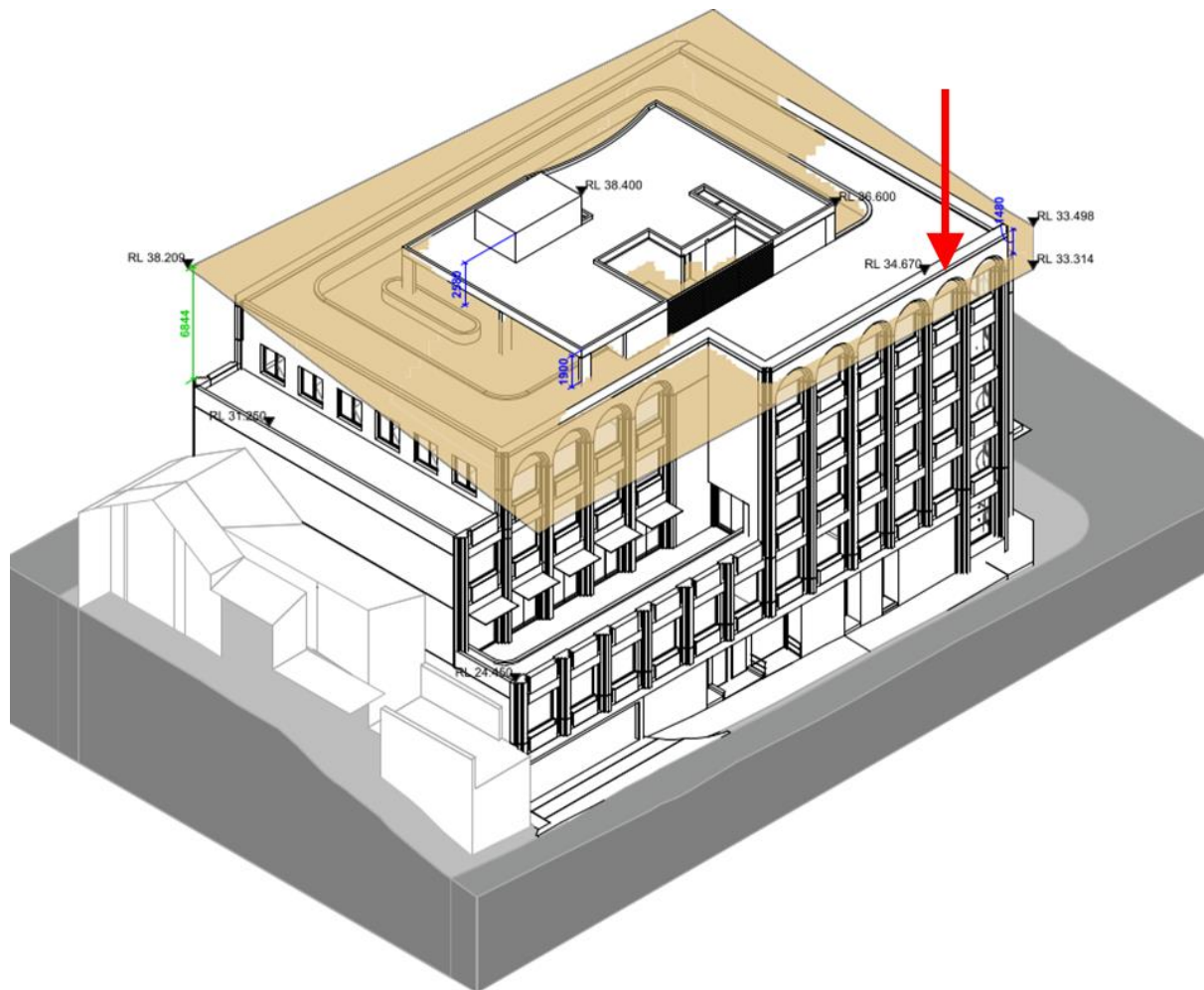


Figure 33: 18m LEP height plane with portion of rooftop parapet causing overshadowing to balcony opening of 74-80 Reservoir Street indicated

104. The section of the parapet that exceeds the permitted height limit marginally reduces solar access to the balcony of Unit 18, constraining direct sunlight for an approximately 30 minute period on 21 June and the minor breach of the LEP height restriction will not have a significant impact upon residential amenity.
105. The balconies of 74-80 Reservoir Street are semi-enclosed, featuring solid balustrades and columns that reflect the building's original warehouse character. Due to their recessed design and the angle of the sun, only a constrained portion of each balcony receives direct sunlight.
106. As such, it is concluded that the proposed development will not significantly impact the residential amenity of the balconies at 74-80 Reservoir Street. Despite not fully meeting the strict numerical solar access requirements of the Sydney DCP, each balcony will continue to receive some direct sunlight during the morning hours of 21 June.
107. The design and orientation of the balconies limit the extent of the impact, ensuring any effects on residential amenity remain minimal.

108. Moreover, the wider planning merits of the proposal should be given consideration in the assessment to determine the acceptability of the development's impact upon solar access.
109. In this regard, the design of the proposed development positively addresses the corner of Reservoir Street and Beauchamp Lane, with a five-storey frontage that aligns with the height provisions set out in Section 4.2.1 of the Sydney DCP. This section emphasises the importance of ensuring that development reinforces the existing or anticipated neighbourhood character.
110. The immediate context of the site already demonstrates a pattern of development with buildings of five storeys or greater at street corners, and the existing built form at 74-80 Reservoir Street is seven storeys in height.
111. Therefore, the proposed scale of the development is considered appropriate within this context and contributes positively to the prevailing neighbourhood character.
112. Moreover, the proposed rooftop parapet height allows for sufficient soil depth to support meaningful planting of the green roof, enhancing the urban greening and ecological sustainability of the development.
113. On balance, while the proposed development does result in some overshadowing impacts on the residential building at 74-80 Reservoir Street, these impacts are considered minimal and are outweighed by the wider planning merits of the proposal.
114. In addition to the overshadowing, the development will improve solar access to several apartments on the north-east side of 74-80 Reservoir Street due to the demolition of the existing buildings on the subject site.
115. In light of these considerations, the impacts on residential amenity are deemed minimal, and the overall benefits of the development, including its positive contribution to the neighbourhood character and sustainability, are considered to outweigh the overshadowing effects.

Reservoir Street Terraces

116. Terrace dwellings located on the south side of Reservoir Street, being No's 51-55, and 61-65, are affected by the proposal. Specifically, the proposal results in additional overshadowing to the Reservoir Street (front) elevation of the two-storey residential and mixed-use terraces between 9.00am and 12 midday on 21 June.
117. Strict numeric compliance with the solar access control would severely inhibit development on the subject site, and could potentially require the development to be reduced to a two storey street frontage height. Whilst the proposal results in overshadowing impacts to the terrace dwellings, it is noted the proposal does not affect solar access to the private open space of these terraces which are located at the rear.

Commonwealth Street Terraces

118. Terrace dwellings located on the east side of Commonwealth Street, being No's 132-138, are affected by the proposal. Specifically, the proposal results in additional overshadowing to the Commonwealth Street (front) elevation of the two-storey residential terraces along the row at various times between approximately 1.45pm and 3.00pm on 21 June.

119. The shadow diagrams submitted with the application demonstrate that the fronts of these terraces begin receiving direct sunlight at 12 midday on 21 June and by 2pm, only No.138 Commonwealth Street is impacted by overshadowing.
120. The living room windows of No.138 Commonwealth Street are situated at the rear of the property. Overshadowing impacts to the front of the property relate to bedroom windows and therefore do not represent a non-compliance with the provisions of Section 4.2.3.1 of the Sydney DCP.
121. All other affected properties within the row (being Nos. 134, 136 and 138 Commonwealth Street) maintain a minimum of 2 hours' direct sunlight to the front of the property between 12 midday and 2pm on 21 June and therefore remain compliant with the provisions of Section 4.2.3.1 of the Sydney DCP.
122. The proposal has no impact upon solar access to the private open spaces of these terraces, which are situated at the rear.

Visual and Acoustic Privacy

123. The narrow width of Beachamp Lane and the close proximity of bedroom windows on the east elevation of 74-80 Reservoir Street create a sensitive interface between the building and the western boundary of the subject site.
124. The proposed development includes west-facing windows near the site boundary, along with a lower-level terrace at Level 1 and a trafficable rooftop terrace. Each of these features presents potential concerns regarding visual and acoustic privacy, particularly for the adjoining residential windows at 74-80 Reservoir Street.
125. To address these concerns, the proposed development includes a 1.5m setback from the western side boundary, with a 5.5m setback on the northern side of the western elevation at Level 1 and above.
126. Additionally, the design incorporates angled visual privacy screening across the west-facing windows, mitigating overlooking from the commercial office spaces to the residential openings at 74-80 Reservoir Street. This screening strikes a balance between maintaining privacy and allowing natural light and amenity for the commercial spaces.
127. The trafficable rooftop terrace is set back approximately 7.4m from the western side boundary and about 10.4m from the residential windows of 74-80 Reservoir Street. Landscaping and tree planting on the rooftop edge will provide natural screening. The lower-level terrace is set back approximately 3.4m from the western side boundary and 6.4m from the residential windows at 74-80 Reservoir Street.
128. A Plan of Management has been provided to guide the use of these outdoor areas, recommending operational hours between 7am and 10pm daily, with a trial period allowing extended hours (8pm-10pm) for one year. These proposed hours align with those permitted for Category B premises outside Late Night Trading areas, as outlined in Section 3.15.4 of the Sydney DCP.
129. The Plan of Management also outlines measures to mitigate amenity impacts on surrounding residential properties, such as restricting the playing of amplified music and detailing the building manager's responsibilities, including maintaining a complaints register. These measures are considered sufficient to safeguard surrounding amenity while allowing the use of the outdoor terraces.

130. Although the lower terrace has a shorter setback, landscaping along its edge will provide some screening. The terrace's narrow width of approximately 2.6m will also limit its capacity for large gatherings.
131. Conditions are recommended to ensure the terraces operate in accordance with the Plan of Management and restrict their use to the hours of 7am to 8pm, with extended hours of 8pm to 10pm permitted during the one-year trial period to monitor any potential adverse impacts.
132. The road widths of Reservoir Street and Commonwealth Street provides adequate visual separation from residential properties to the south and east, whilst measures outlined above will similarly safeguard acoustic amenity of these properties.

Heritage

133. The subject site is identified as neutral in its contribution to the heritage conservation area, however the building has historical significance having housed various charitable services, including the Sydney Rescue Work Society's Gospel Union Hall since around 1914.
134. Much of the internal and external fabric of the existing buildings have been modified over time and/or present limited architectural features worthy of heritage conservation. It is further noted that demolition of all existing buildings on site has been previously approved under development consent D/2017/1283.
135. As a result of the limitations described above, the social significance of the Mission Hall and the site's association with Sydney Rescue Work Society can be appropriately conveyed by proper heritage interpretation within the new development. A condition is recommended requiring the submission of a Heritage Interpretation Plan to be approved by Council prior to the issue of a construction certificate.
136. The proposed built form of the new development is marginally larger in scale than the development approved under D/2017/1283, however the stepped down setbacks from the upper storeys and from Beauchamp Lane lessen the impact on adjacent buildings. The proposed new building will have no detrimental visual impact on the neighbouring heritage listed building to the west at 74-80 Reservoir Street due to the large scale of the former warehouse building.
137. The fine grain details of the proposed building responds to the surrounding context of warehouse buildings and the proposed tone of brick appears in keeping with the surrounding character of development.
138. The application was referred to Council's Heritage Specialist who raised no objection subject to a condition requiring the submission of a Heritage Interpretation Plan and the submission of a physical samples boards to be approved by Council prior to the issue of a construction certificate.
139. These conditions are included in the recommended conditions of consent.

Floor to Floor Heights

140. The proposed development does not achieve the minimum floor to floor heights prescribed by Section 4.2.1.2 of the Sydney DCP, however the numerical non-compliance is considered justified in the circumstances of case.

141. It is recognised that the steep slope of the site topography makes building massing challenging. The FFL for the lower ground is at the same height as entrance footpath level on Reservoir Street is at, whilst on Commonwealth Street the FFL for the upper ground sits 100mm above footpath level at the entrance and 1.8m above the footpath level at the entrance to the retail tenancy.
142. If the proposal was to meet the DCP requirement of 4.5m floor to floor height at ground level, upper ground floor tenancies on Commonwealth would be sit 400mm higher and become detached from the street level. Whilst if the lower ground floor FFL sat lower, then there would be elements that sit below the footpath level thus constraining activation of the street frontage.
143. The applicant submits that the 4.1m provided in the retail spaces on the lower ground floor are considered appropriate for most retail uses with and allows the best balance between the relationship of the ground floors and adjacent street. The upper ground level floor to floor heights of 3.65m are considered an appropriate balance for a floor that will have both retail and commercial uses. From the street, this floor will be read as a ground floor on Commonwealth Street and a 1st floor on Reservoir Street. This height is considerable suitable for smaller retail tenancies.
144. The applicant further submits that the upper ground floor and Level 1 – 3 have windows on 3 frontages and relatively shallow floor plates. This ensures that they provide suitable amenity to building users and will receive ample daylight throughout the day.
145. Council officers accept the justification provided by the applicant above and overall the proposal is a considered design response to the site topography that appropriately balances the relationship of the ground floor levels with the public domain and the daylight access to all floors.

Deep Soil and Urban Greening Initiatives

146. The proposed development involves full site coverage and, as such, does not comply with the deep soil provisions outlined in the Sydney DCP. These provisions stipulate that a minimum of 10% of the site area must consist of deep soil for developments outside Central Sydney, in accordance with Section 4.2.3.6 of the DCP.
147. The applicant has sought to address this non-compliance by incorporating deep soil planters on structure on the rooftop area and implementing measures to capture stormwater runoff. This includes the reconfiguration of the basement to accommodate a rainwater tank, which will be used to irrigate the planter areas within the development.
148. The proposed measures serve a similar function to deep soil areas by aiding in stormwater management to minimise flooding and mitigate the impact of stormwater pollution on receiving waterways. These measures are consistent with Section 3.7 of the Sydney DCP, which concerns water and flood management.
149. Additionally, the proposed planting of rooftop areas will provide significant tree canopy coverage. The applicant has submitted landscape plans demonstrating that the proposal will exceed the DCP requirement of achieving 15% canopy coverage within 10 years of completion, as set out in Section 3.5.2 of the Sydney DCP.
150. The development provides 22.34% canopy coverage within 10 years of completion, exceeding the DCP requirement and offsetting the impacts of the lack of deep soil provision.

151. Therefore, while the development does not meet the numerical requirements of the deep soil provisions in the DCP, the proposed urban greening initiatives will contribute positively to the ecological sustainability of the project.
152. Further, provision of deep soil areas at ground level would likely redistribute floorspace elsewhere within the development resulting in additional bulk and massing which could adversely impact upon the residential amenity of adjoining properties.
153. The application as proposed provides an appropriate response to these considerations by delivering landscape enhancements which will contribute to the residential amenity of the locality in accordance with the objectives of Section 4.2.3 of the Sydney DCP.
154. Accordingly, the proposal is considered broadly consistent with the residential amenity objectives of the DCP, notwithstanding the numerical non-compliance with the deep soil provisions, and is therefore acceptable.

Sustainable Buildings

155. The development comprises a large commercial development, consisting of a prescribed office premises and retail premises, and is subject to the sustainable buildings provisions of:
 - (a) SEPP (Sustainable Buildings) 2022
 - (b) Sydney Local Environmental Plan 2012
 - (c) Section 3.6.1 Energy Efficiency in non-residential buildings of Sydney Development Control Plan 2012
156. The development complies with the requirements of these provisions.
157. The SEPP requires the development to be subject of a 3 star NABERS Water Rating.
158. The Sydney DCP requires the development satisfy the following energy performance standards:
 - (a) a maximum 45 kWh/yr/m² of Gross Floor Area; or
 - (b) a 5.5 star NABERS energy commitment agreement + 25%; or
 - (c) a certified Green Star Building rating with a "credit achievement" in Credit 22: Energy Use; or
 - (d) an "equivalent" approach to achieving the required energy performance standards.
159. In this regard the applicant has demonstrated the development can achieve :
 - (a) a 3 star NABERS Water Rating.
 - (b) a 5.5 star NABERS energy commitment agreement + 25%.
160. Conditions of consent are recommended to ensure that development will achieve the relevant water and energy use standards.

Design Excellence

161. The application proposes a development of a similar scale to the recent development consent for the site (D/2017/1283), but with varying land uses and building design.
162. The architecture provides a contemporary response to the site which is compatible with its surroundings, whilst the articulated form and detailing acceptably addresses environmental impacts of overshadowing, solar access and visual privacy pursuant to the Design Excellence provisions outlined within Clause 6.21C of the Sydney LEP.
163. Overall, the proposed design of the development is high-quality and includes materials and detailing appropriate to the building type and location, pursuant to Clause 6.21C(2)(a) of the Sydney LEP.
164. The proposed development is broadly consistent with the scale of development anticipated by the controls with the exception of relatively minor variations in relation to the Height and Floor Space Ratio controls of the Sydney LEP. These variations do not result in any significant adverse impacts upon neighbouring properties and the bulk, massing and modulation of the building sits comfortably within its surroundings.
165. The applicant has provided a digital materials and finishes sample board which is generally supported in principle, however a condition is recommended requiring a detailed physical samples board to be approved by Council prior to the issue of a Construction Certificate to ensure that all proposed elements are detailed and high quality.
166. The proposal has been reviewed by Council's Heritage and Urban Design Specialists who raised no objection to approval of the proposed development as amended subject to recommended conditions of consent.

Consultation

Internal Referrals

167. The application was discussed with Council's
 - (a) Environmental Health Unit;
 - (b) Environmental Projects;
 - (c) Landscaping Unit;
 - (d) Late Night Trading Unit;
 - (e) Heritage and Urban Design Unit;
 - (f) Public Domain Unit;
 - (g) Public Art Unit;
 - (h) Surveyors;
 - (i) Transport and Access Unit;
 - (j) Tree Management Unit; and

(k) Waste Management Unit.

168. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

External Referrals

Ausgrid

169. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
170. A response was received raising objections to the proposed development in relation to proposed louvres impeding access to the Ausgrid substation on Commonwealth Street and concerns related to excavation impacts on the substation.
171. The applicant has responded to Ausgrid's concerns amending the proposed substation louvres to comply with Ausgrid standards and providing further information in relation to construction methodologies during excavation.
172. Ausgrid raised no objection to approval of the development application, subject to a condition requiring a detailed design for the excavation and shoring works, in addition to structural certification of temporary and permanent works, to be approved by Ausgrid prior to the issue of a Construction Certificate.
173. The condition is imposed to ensure the integrity of the Ausgrid substation and supply to the local network is maintained. Ausgrid have confirmed they will issue a letter to the proponent to confirm that the engineering assessment and review is completed once Ausgrid is satisfied with the information providing.
174. This condition is included in the recommended conditions of consent requiring the proponent to provide evidence of Ausgrid's concurrence prior to the issue of a construction certificate.

Water NSW

175. The application was referred to Water NSW as the development involves potential dewatering. The applicant has not elected to apply for consent under the integrated development pathway, therefore the application was referred to Water NSW for comment only.
176. Water NSW responded providing advice in relation to separate approvals to be obtained from Water NSW by the proponent prior to undertaking any construction dewatering.
177. The advice also outlined the minimum requirements for building site groundwater investigations and reporting, and details of dewatering requirements to accompany any future application for water supply work, water access license or water use approvals.

Advertising and Notification

178. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for 21 days between 19 March 2024 and 10 April 2024.
179. The applicant submitted amended plans and updated supplementary documentation on 11 March 2024. As a result, notification of the original application was terminated, and the application was re-notified for 21 days between 19 March and 10 April 2024.
180. A total of 523 properties were notified and 21 submissions were received from 16 individual submitters. Two (2) of the submitters were in support of the application, with 14 submitters including an objection.
181. The submissions raised the following issues:

- (a) **Issue:** Concerns related to overshadowing of neighbouring properties and concerns that the overshadowing impacts are generated as a result of poor design.

Response: The applicant has provided view from the sun diagrams demonstrating overshadowing impacts caused by the proposed between 9am and 3pm at the time of the winter solstice on 21 June, to facilitate assessment against the solar access provisions of the Sydney DCP (Section 4.2.3.1).

A detailed assessment of overshadowing impacts is provided under the subheading 'Solar Access' in the discussion section above. It is not considered that the overshadowing impacts will cause any significant or disproportionate impacts upon surrounding residential amenity.

Council officers disagree that overshadowing impacts are generated as a result of poor design. The proposed development is appropriately scaled and presents as a part-4 and part-5 storey development at street level, broadly consistent with the height in storeys provisions of the Sydney DCP.

The partial non-compliance with the height in storeys provisions is due to the centrally located rooftop structures which will not be highly visible from the public domain and do not contribute to overshadowing of neighbouring properties.

The only part of the building which is in breach of the LEP height standard and causes minor overshadowing impact is the south-western parapet and this minor breach in the height standard can be attributed to the sloping site topography. Providing a consistent height datum across the Commonwealth Street and Beauchamp Lane frontages in this location is considered an appropriate design response to positively address the corner, whilst the development has been setback 1.5m from the western boundary in this location to alleviate overshadowing impacts and provide greater separation to 74-80 Reservoir Street than the existing building on site.

The proposed development is therefore considered broadly consistent with the scale of development anticipated by the controls and provides a strong design response to the site.

- (b) **Issue:** Concerns related to visual privacy impacts to residential apartments within 74-80 Reservoir Street across Beauchamp Lane.

Response: The applicant has provided details of palisade privacy screening to be installed to the west facing windows of the proposal to mitigate overlooking impacts across Beauchamp Lane towards residential windows and openings of 74-80 Reservoir Street.

See further details under subheading 'Visual and Acoustic Privacy' of Discussion section above.

- (c) **Issue:** Concerns related to the development's impact upon outlook from east facing residential apartments within 74-80 Reservoir Street.

Response: The proposed development is appropriately scaled and the proposed bulk and massing of the proposal as it presents at street level is broadly consistent with the envisaged built form that the controls provide for. The design of the development incorporates various setbacks on the western elevation to alleviate impacts upon the east facing residential windows of apartments within 74-80 Reservoir Street.

The proposal has incorporated privacy measures and appropriate architectural detailing and landscaping to ensure the development will not have a significantly adverse effect on outlook from residential apartments within 74-80 Reservoir Street.

- (d) **Issue:** Concerns related to noise impacts generated by use of the outdoor terraces on the rooftop and at Level 1.

Response: The applicant has submitted a Plan of Management to guide the use of the outdoor terraces and includes noise control measures, including restriction of hours of operation and the playing of amplified music.

Compliance with the Plan of Management will ensure appropriate controls are in place to safeguard surrounding residential amenity.

See further details under sub-heading 'Visual and Acoustic Privacy' of Discussion section below.

- (e) **Issue:** Concerns related to pressures on street parking.

Response: The proposed development is appropriately located with strong public transport links and includes bicycle parking for staff and workers to encourage sustainable modes of transport.

The proposal involves no changes to existing street parking and will not have significant impact upon traffic generation.

- (f) **Issue:** Concerns related to the proposed scale and height of development which exceeds the LEP height limits.

Response: The proposed scale of the development is considered appropriate within the context. The applicant's request to vary the Height of Buildings development standard is justified and supported, as outlined in the Discussion section above.

- (g) **Issue:** Concerns related to intensification of Beauchamp Lane for servicing of the new development.

Response: The proposal relates to a commercial office and retail development which is not anticipated to generate significant waste or servicing requirements.

The proposed development provides a 1.5m setback along the frontage of Beauchamp Lane providing greater clearance for service vehicles and pedestrians to navigate the lane. Due to the volumes of waste generated by the development, large bins with weekly collections have been selected for the development. Collection will be directly from the waste room on Beauchamp Lane and no bins are to be left in the lane.

These servicing requirements are not anticipated to lead to significant intensification of Beauchamp Lane.

- (h) **Issue:** Concerns related to heritage impact of new building and demolition of existing chapel building at the rear of the site.

Response: The proposed new development is considered high quality and compatible with the surrounding character of the heritage conservation area. Conditions are recommended requiring heritage interpretation strategy as record and recognition of the historic use of the site.

See further details under sub-heading 'Heritage' of Discussion section above.

- (i) **Issue:** Concerns related to trees being planted on the rooftop which will exceed the LEP height limit and generate additional overshadowing.

Response: The planting of trees does not constitute a physical structure and, therefore, is not governed by the Height of Buildings development standard outlined in Clause 4.3 of the Sydney Local Environmental Plan (LEP).

The proposed trees represent significant urban greening initiatives, contributing to the enhancement of the development's ecological sustainability. Additionally, they address critical climate emergency challenges, supporting the city's environmental goals.

- (j) **Issue:** Objection to proposed car parking on site due to traffic generation and inconsistency with sustainability initiatives.

Response: The proposed car parking complies with the maximum LEP parking rates and the development provides measures to encourage sustainable transportation modes, including the provision of staff and worker bicycle parking and end of trip facilities.

- (k) **Issue:** Concerns related to retail space lying vacant and unutilised.

Response: The property is situated within the MU1 Mixed Use zone and retail uses are permitted with consent within the zone.

- (l) **Issue:** Concerns related to construction impacts and impacts on the local road network during construction.

Response: Conditions are recommended to ensure that construction impacts are appropriately managed through construction, including the requirement for a Construction Traffic Management Plan to be submitted and approved by Council prior to the issue of a construction certificate.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

182. 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.
183. Credits have been applied for the most recent past use of the site, being a 31-key backpackers accommodation, as approved under D/2000/996.
184. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent in the Notice of Determination. The condition requires the contributions to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

185. The site is located within the Residual Lands affordable housing contribution area. As the proposed development involves the erection of a new building the gross floor area of which is more than 200sqm, a contribution is required at a rate of 1% per square metre of non-residential floor area totalling \$440,231.39 based upon the equivalent monetary contribution amount effective from 1 March 2024 to 28 February 2025.
186. A condition of consent is recommended requiring payment prior to the issue of a construction certificate based upon the indexed rate at the time of payment.
187. Section 7.32 of the Act outlines that the consent authority may grant consent to a development application subject to a condition requiring dedication of part of the land for the purpose of providing affordable housing, or payment of a monetary contribution to be used for the purpose of providing affordable housing where the section of the Act applies. The Act applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:
- (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
 - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
 - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or

- (d) the regulations provide for this section to apply to the application.
188. The proposal is consistent with criteria (a) and (b) because the proposed development will contribute to the general growth of the inner city, which in turn will place additional pressures on house prices and rents.
189. Investment in public infrastructure, increased amenity and the wider cultural shift towards a preference for inner-city living has resulted in the gentrification in the LGA. This has placed, and will continue to place, pressure on housing prices and rents. Likewise, the increase in the number of jobs in the LGA, many offering relatively high salaries, increases the demand for housing and pushes up housing costs.
190. As the desirability of living and working in the local area increases, the demand for an ever-shrinking supply of lower cost housing increases, in-turn decreasing the overall availability of lower cost housing and pushing lower income households out to more affordable areas.
191. Given the shortfall of affordable housing options currently available in the city, any further decrease in the availability of affordable housing gives rise to an increased need for affordable housing.
192. The proposed development will deliver additional employment floorspace, thus further attracting people to work in the inner city whilst placing further pressures on existing housing stock.
193. An affordable housing contribution allows for the delivery of more affordable housing stock to counterbalance these impacts and ensure the city continues to grow and provide for the needs of all.
194. 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.
195. Having regard to the provisions of Section 7.32 of the Act, the imposition of an affordable housing contribution is reasonable. A condition of consent is recommended requiring the payment of an affordable housing contribution prior to the issue of a construction certificate.

Housing and Productivity Contribution

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

Relevant Legislation

199. Environmental Planning and Assessment Act 1979.
200. Heritage Act 1977.

Conclusion

201. The application seeks development consent for the demolition of the existing structures (excluding substation), excavation, and construction of a Part 5 - Part 6 storey commercial building with basement and landscaped rooftop terrace.
202. The proposal has been amended to address concerns raised by Council staff relating to the architectural articulation and expression of the building, safeguarding of visual privacy, enhancement of landscaping opportunities and flood management issues.
203. The applicant has submitted Clause 4.6 variation requests seeking approval to vary the Height of Buildings and Floor Space Ratio development standards under the Sydney LEP 2012. The applicant has adequately demonstrated that these breaches will not result on any unacceptable or disproportionate impacts upon the streetscape, heritage conservation area or surrounding properties.
204. Accordingly, the applicant's requests to vary the Height of Buildings and Floor Space Ratio development standards are supported and the applicant's submissions have adequately addressed the provisions of Clause 4.6(3) of the Sydney LEP 2012.
205. The proposed design of development is compatible with the surrounding scale and character of development, whilst simultaneously mitigating environmental impacts of overshadowing and overlooking of neighbouring properties pursuant to the design excellence provisions of the Sydney LEP 2012.
206. Overall, it is considered that the design, form and mix of uses proposed will deliver a high-quality development which is appropriate for the site and its context.

207. The amended proposal is generally consistent with the objectives, standards, and guidelines of the relevant planning controls.
208. The proposed development is therefore recommended for approval subject to the recommended conditions of consent.

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