Item 6.

Development Application: 723 Botany Road, Rosebery - D/2024/1201

File Number: D/2024/1201

Summary

Date of Submission:	20 December 2024 Amended plans received 22 April 2025 and Public Benefit Offer received 29 April 2025.
Applicant:	Mr Arthur Velliss
Architect/Designer:	Arthur Velliss Architects
Owner:	George Minas
Planning Consultant:	Planning Lab
Cost of Works:	$1,866,622.00
Zoning:	MU1 Mixed Use
Proposal Summary:	Demolition of the existing building and construction of a new 3-storey commercial building with basement. The site is subject to the Sydney Local Environmental Plan 2012 Section 6.14 Green Square Community Infrastructure, permitting an additional 0.25:1 of Floor Space Ratio (FSR). The proposed development seeks to benefit from the additional 0.25:1 FSR and has submitted a Public Benefit Offer (PBO), to enter into a Voluntary Planning Agreement (VPA) for the dedication of land. The area of land measures 1.4m in width by 4.57m in length, at the Botany Road frontage for footpath widening. As the proposal involves a VPA, the development application is referred to the City of Sydney Local Planning Panel (SLPP) pursuant to Schedule 3 Item 4(f) of the Minister of Planning and Public Spaces LLP direction letter. This development application is recommended for a deferred commencement consent, subject to the exhibition of the VPA and consideration of any submissions.

Summary Recommendation:	The development application is recommended for deferred commencement approval.
Development Controls:	1. SEPP Resilience and Hazards) 2021 2. Sydney Local Environmental Plan 2012 3. Sydney Development Control Plan 2012
Attachments:	A. Recommended Conditions of Consent B. Selected Drawings C. Public Benefit Offer D. Draft Voluntary Planning Agreement E. Submission

Recommendation

It is resolved that:

(A) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application Number D/2024 /1201 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 deferred commencement condition is recommended to ensure that the VPA is executed and registered on title prior to an active development consent being issued.

(B) The development complies with the objectives of the MU1 Mixed Used zone within the Sydney Local Environmental Plan 2012.

(C) The development complies with the relevant objectives and provisions contained within the Sydney Development Control Plan 2012.

(D) The development subject to the recommended conditions and the registration of the VPA on title, satisfies the provisions of the Sydney Local Environmental Plan 2012 Section 6.14 Community Infrastructure floor space at Green Square.

(E) The development exhibits design excellence in accordance with the Sydney Local Environmental Plan 2012 Section 6.21C.

(F) The development is in the public interest.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 40 in Deposited Plan 135333 and is known at 723 Botany Road, Rosebery.

2. The site has a primary western frontage to Botany Road that is 4.57m in width, rear lane eastern frontage to Emanuel Lane that is 4.57m in width and side northern and southern boundaries that are 26.52m in length.

3. Existing at the site is a single storey brick building with a shop frontage to Botany Road and rear lane vehicular access from Emanuel Lane.

4. The adjoining development to the north is a two-storey brick building occupied by "Club Lime" - an indoor recreation facility (gymnasium). The adjoining development to the south is a two-storey brick building occupied by "Adamo's Pasta" - a takeaway food and drink premises.

5. Located opposite the site off the western side of Botany Road is a three-storey mixed used development with a commercial ground floor and two levels of residential above. Located at rear of the site and off the eastern side of Emanuel Lane are 2-3 storey warehouses and numerous garage roller doors associated with residential dwellings that front Princess Avenue.

6. The subject site is not listed as a heritage item, nor is it within proximity to any heritage-listed items and it is not located within a Heritage Conservation Area (HCA).

7. The site is located within the Green Square area for the purpose of Chapter 5 of the Sydney Development Control Plan 2012 and the Beaconsfield locality purpose of Chapter 2 of the Sydney Development Control Plan 2012.

8. A site visit was carried out on 29 January 2025. Photos of the site and surrounds are provided below.

Figure 1: Aerial view of site and surrounds with colour coded suburb identification and subject site identified by red bordering

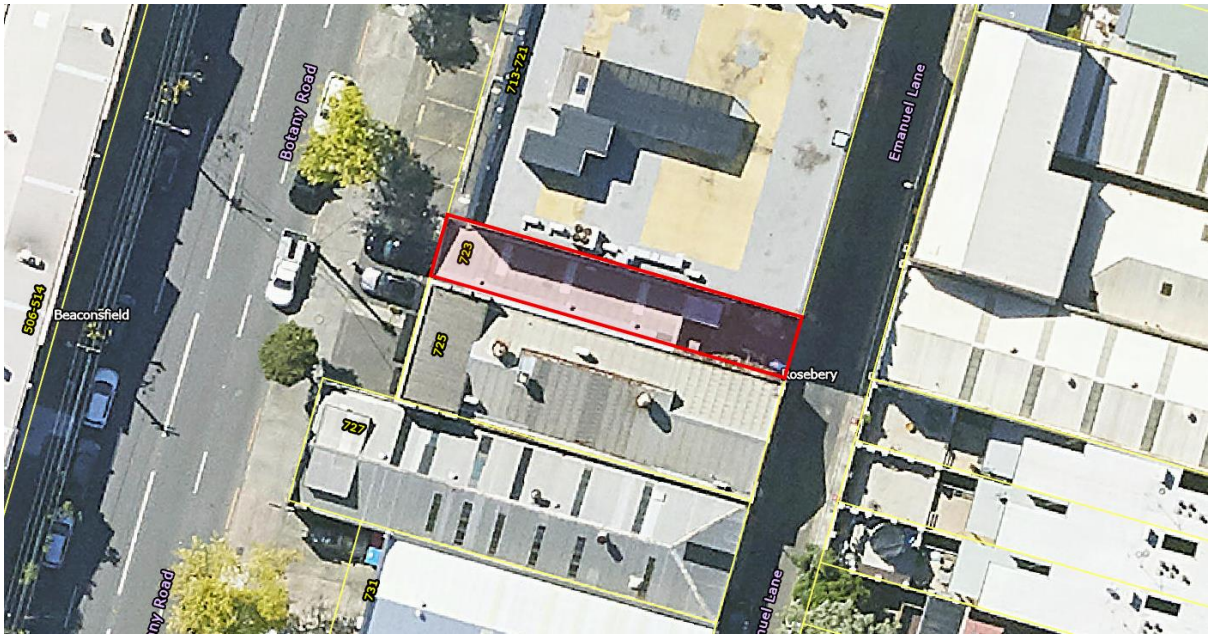

Figure 2: Aerial view of the subject site identified by red bordering

Figure 3: Oblique aerial view looking east, with subject site identified by red pin

Figure 4: Site photo Botany Road shop frontage of the subject site and adjoining two-storey buildings

Figure 5: Site photo of the Botany Road frontage and varying building setbacks

Figure 6: Existing building located opposite the subject site off the western side of Botany Road - no.512-514 Botany Road

Figure 7: Site photo of the rear Emanuel Lane frontage with the subject site timber and brick fencing and northern two-storey neighbouring property

Figure 8: Site photo of the rear Emanuel Lane frontage with the subject site timber and brick fencing and southern part single-storey neighbouring property

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the site:

    - **D/2012/327** – Development consent was granted on 21 May 2012 for 'use and fitout as a café, including minor building alterations'.

    - **PDA/2024/74** – a pre-development application was lodged with the City on 12 April 2024 for 'replace existing single-storey brick building with a 3-storey commercial building'. PDA/2024/74 was finalised on 13 May 2024 and the City's advice letter included comments relating to; public domain setback requirements, building design and egress, and vehicular access.

Compliance Action

10. The site is not subject to any previous compliance action.

Amendments

11. The subject application was lodged with the City on 20 December 2024.

12. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information and amendments was sent to the applicant on 25 February 2025, relating to landscaping design, public domain setbacks and the requirement for a VPA, vehicular access design, thermal comfort for the building and materials and finishes.

13. The applicant responded to the request on 17 March 2025 and 20 March 2025 by the submission of revised architectural plans, stormwater drainage plans and a Public Benefit Offer.

14. Council made a request for changes to the proposed gross floor area on 15 April 2025 and the applicant submitted revised plans on 22 April 2025 and an amended Public Benefit Offer was submitted on 29 April 2025 which reflected the amended proposed gross floor area.

Proposed Development

15. The application seeks consent for the following:

    - demolition of the existing single storey brick building

    - construction of a 3-storey commercial building consisting of the following:

        - basement level - storage and stormwater pump out tank

        - ground floor level - commercial tenancy 1, separated accessible bathroom, lift and lobby, fire stairs, waste and plant room, two bicycle parking bays, and vehicular parking for one car accessed via Emanuel Lane

- a mezzanine level is located within commercial tenancy 1. The commercial tenancy 1 achieves a 2.7m floor to ceiling height and the mezzanine achieves a 2.4m floor to ceiling height. Access to the mezzanine level is via the fire stairs

- first floor level - commercial tenancy 2 with a western facing balcony, separated male and female bathrooms, and common lift and fire stair access

- second floor level - commercial tenancy 3 with a western and eastern facing balcony and uni-sex bathroom. The eastern facing balcony includes the provision of a 1.6m high privacy screen

- roof level - 12 solar panels

- The development proposes a height of 14.65m (RL.28.65mAHD measured to the top of lift shaft).

- The development proposes an FSR of 1.637:1 (199.99sqm) and relies on bonus floor space permitted by SLEP 2012 Section 6.14 Community Infrastructure floor space at Green Square.

16. Plans and elevations of the proposed development as submitted on 22 April 2025 are provided below.

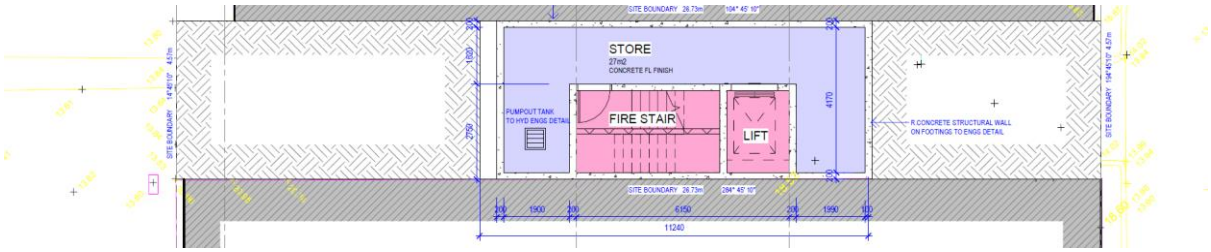

Figure 9: Basement floor plan

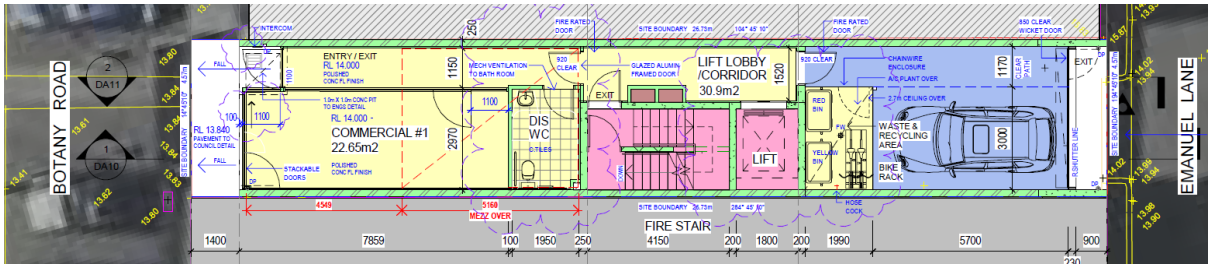

Figure 10: Ground floor plan

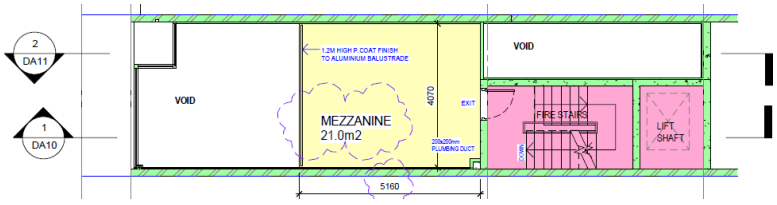

Figure 11: Ground floor mezzanine floor plan

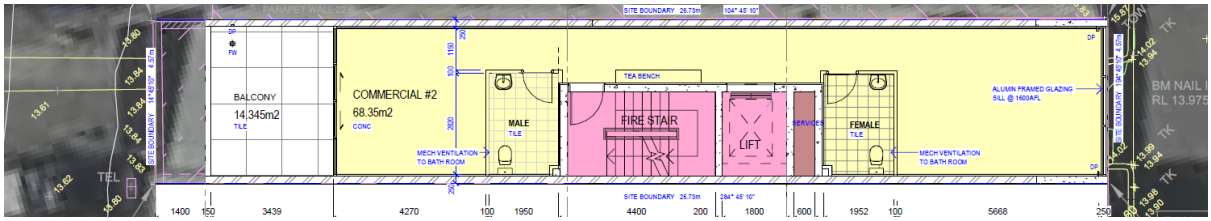

Figure 12: First floor plan

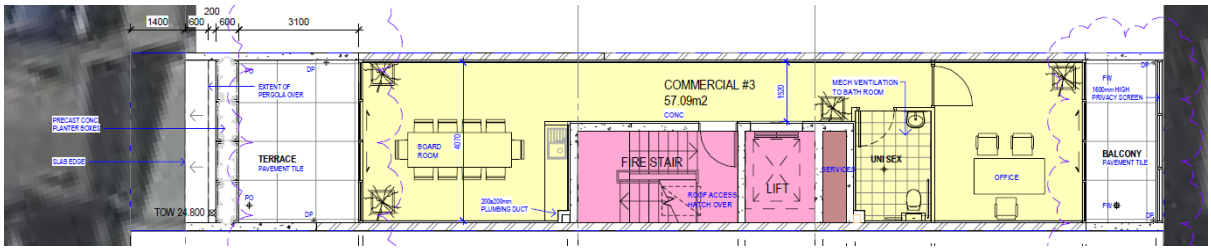

Figure 13: Second floor plan

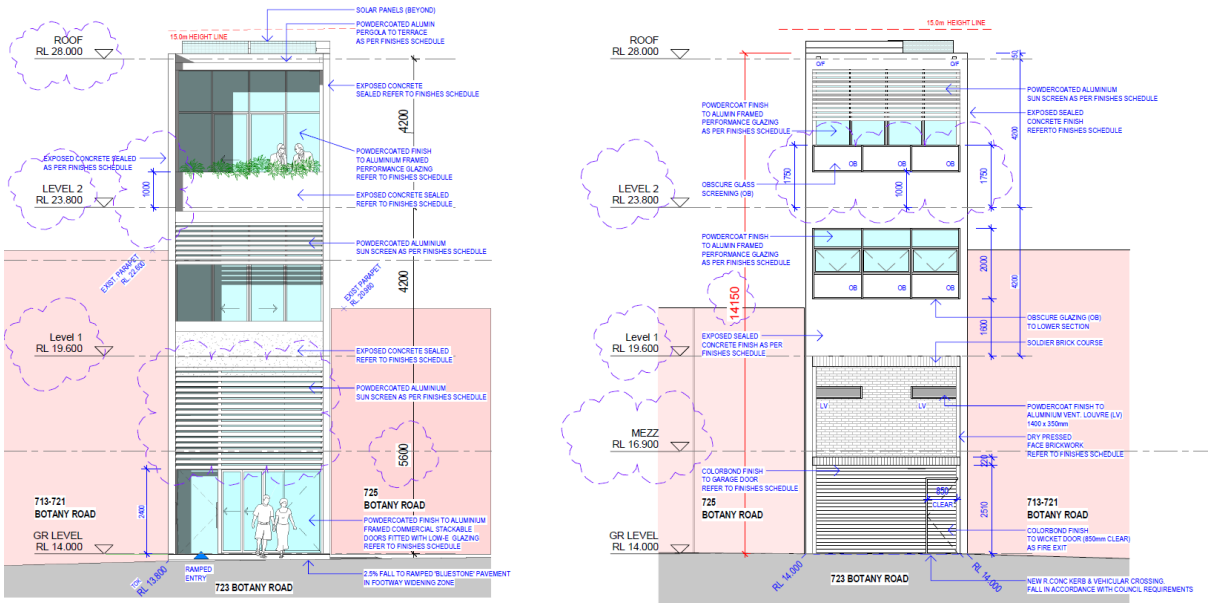

Figure 14: Eastern and western elevation plans

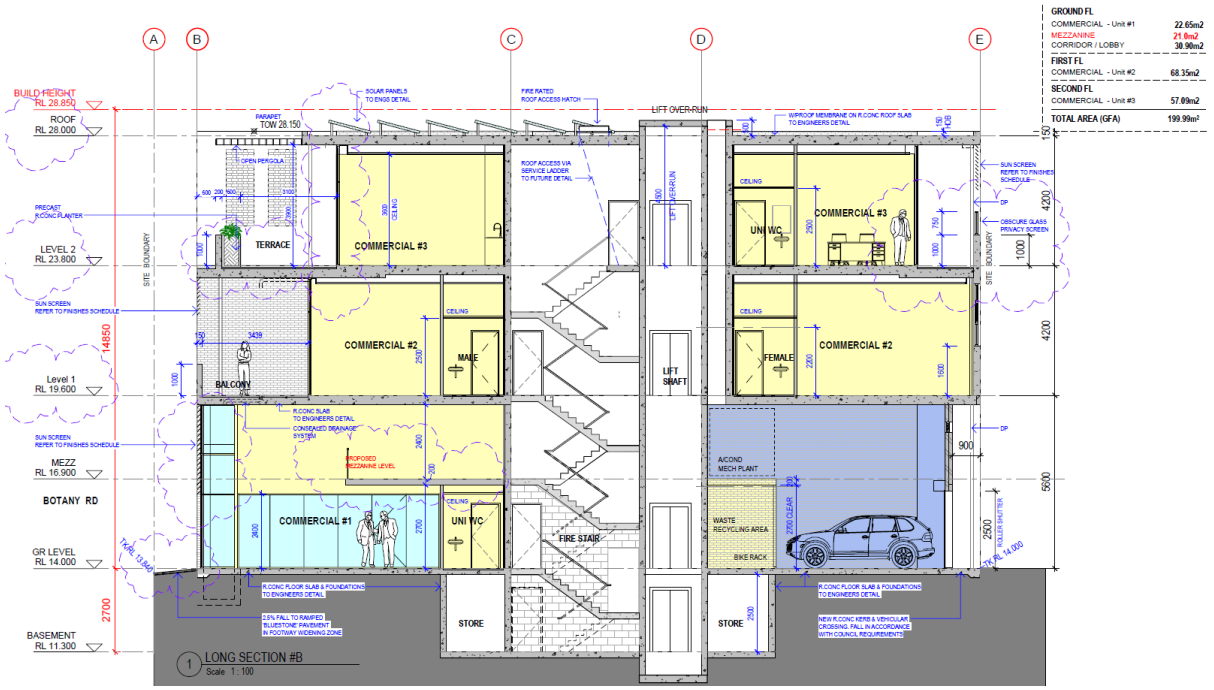

Figure 15: Section plan

Assessment

17. 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

18. 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.

19. A Remedial Action Plan (RAP) titled “723 Botany Road, Rosebery NSW 2018” dated 02 December 2024, has been submitted with this development application which concludes the site is contaminated, most notably from Benzo(a)pyrene.

20. The RAP identifies that the site can be made suitable for the proposed development by excavated of contaminated soils and off-site disposal by at an EPA approved licenced landfill facility.

21. The Council’s Health Unit has reviewed the information provided, and has recommended conditions of consent to ensure compliance with the remediation measures outlined, and for Council to be notified should there be any changes to the strategy for remediation.

22. 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

23. 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

24. Chapter 3 of the SEPP applies to development, other than development for the purposes of residential accommodation. Section 3.1 outlines the application of Chapter 3 by specifying non-residential development that involves:

    (a) the erection of a new building, if the development has an estimated development cost of $5 million or more or

    (b) alterations, enlargement or extension of an existing building, if the development has an estimated development cost of $10 million or more

25. As the proposed development is for the purpose of non-residential development, being a new commercial building and the estimated cost of works is less than $5 million, Chapter 3 is not applicable.

State Environmental Planning Policy (Transport and Infrastructure) 2021

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

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

Clause 2.119 – Development with frontage to classified road

27. The application is subject to Clause 2.119 of the SEPP as the site has frontage to Botany Road which is a classified road.

28. The proposed development satisfies the provisions of Clause 2.119 subject to conditions of consent, as access to the site is not provided from the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, subject to the recommended conditions of consent.

Clause 2.120 – Impact of road noise or vibration on non-road development

29. The site is subject to Clause 2.120 of the SEPP as the site is adjacent to Botany Road which based on the TfNSW traffic volume data**,** has an annual average daily traffic volume of more than 20,000 vehicles.

30. Clause 2.120 (1) specifies the types of development that the consent authority is required to consider for the purpose of road noise and vibration impacts. The types of development include; residential accommodation, places of public worship, hospitals, educational facilities and child care facilities. The proposed commercial building is not a type of development listed under Clause 2.120 and therefore, the requirements of the Clause are not applicable.

Local Environmental Plans

Sydney Local Environmental Plan 2012

31. 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 a commercial building 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	Yes	The proposed development complies with the maximum height of buildings development standard. A maximum building height of 15m is permitted. A height of 14.65m (RL.28.65mAHD measured to the top of lift shaft) is proposed.
4.4 Floor space ratio	Yes	The proposed development complies with the maximum FSR development standard.

Provision	Compliance	Comment
		The site is 122.1sqm in area and is subject of a base FSR of 1.5:1. As the site is located within Area 5 of the Green Square Community Infrastructure (Clause 6.14 of SLEP 2012) it is eligible for an additional 0.25:1 FSR where community infrastructure is proposed for the purpose of; recreation areas, recreation facilities (indoor), recreation facilities (outdoor), public roads, drainage or flood mitigation works. The site is therefore subject to a maximum FSR of 1.75:1, equating to 213.675sqm of GFA. The proposed development has an FSR of 1.637:1 (199.99sqm) and includes the dedication of land along the Botany Road frontage of the site.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.14 Community infrastructure floor space at Green Square	Yes	Refer above - the site is located within Area 5 and eligible for additional FSR, which this development application is reliant on. A strip of land (1.4m x 4.57m) at the Botany Road frontage is proposed to be dedicated to Council via a VPA.
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development is uses materials and detailing which are compatible with the existing development along the street and will contribute positively to the character of the area. 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.

Provision	Compliance	Comment
		The development therefore achieves design excellence.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	The site is located on Category C of the Land Use and Transport Integration Map and Category F of the Public Transport Accessibility Level map. Two car spaces are permitted. The proposed development includes the provision of one car parking space and therefore complies.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.
7.15 Flood planning	Yes	The development complies with the flood planning requirements. The site is identified as being subject to the Probable Maximum Flood (PMF) event (RL.14.32mAHD), however is not affected by the 1%AEP event. The City's Interim Floodplain Management Policy requires that a business premises comply with the 1%AEP level. The development complies with this requirement as the site is located above the 1%AEP level and all proposed finished floor levels from the ground level up are above the 1%AEP level.

Development Control Plans

Sydney Development Control Plan 2012

32. 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

33. The site is located within the Beaconsfield locality. The proposed development is in keeping with the unique character and the design principles of the Beaconsfield locality, namely to encourage active ground floor uses, public domain improvements, and continue to provide commercial uses without causing residential amenity impacts.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The proposed development provides an active frontage to the street and improves the public domain by providing a 1.4m setback land dedication.
3.5 Urban Ecology	No	The proposed development does not involve the removal of any trees and there is no scope to include new tree planting on site to achieve the 15% tree canopy coverage. Whilst this is non-compliant, this is acceptable given the building envelope proposed and the established building envelope character for the commercial buildings along Botany Road.
3.6 Ecologically Sustainable Development	Yes	The proposed development has been designed to incorporate renewable energy resources for ongoing operation - provision of solar panels on the rooftop, and thermal comfort glazing and/or sun shading on the western elevation.
3.7 Water and Flood Management	Yes	The proposed development complies with the Interim Floodplain Management Policy and the stormwater drainage design is suitable.
3.11 Transport and Parking	Yes	The proposed development complies with the maximum car parking rate for the development. 1 employee and 1 visitor bicycle parking space is required. The development complies with this requirement providing 2 bicycle parking bays within the garage area.

Provision	Compliance	Comment
3.12 Accessible Design	Yes	A BCA report prepared by 'ARC Building Consulting' was submitted with the application. The proposed development is capable of complying with the relevant provisions of the NCC.
3.14 Waste	Yes	Waste storage is provided adjacent to the garage. A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	The site is located within the 'Local Centre Area' of the late night trading areas map. The proposed development does not seek approval for operating hours for each of the commercial tenancies. A condition of consent is recommended that stipulates each of the three tenancies is permitted to operate as a commercial use between the hours of 7.00am to 10.00pm Monday to Sunday which is within the base hours for the area. Should the tenancies seek to operate for a different purpose or within different hours of operation, development consent or a Complying Development Certificate approval must be obtained. Refer to discussion section below.

Section 4 – Development Types

4. 4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		

Provision	Compliance	Comment
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The site is permitted a maximum building height of 4-storeys. The proposed development is 3-storeys in height.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Yes	The ground floor is required to have a minimum 4.5m floor to floor height. The proposed development has a 5.6m floor to floor height and the Level 1 and Level 2 floor to ceiling heights are 3.6m.
4.2.2 Building setbacks	Yes	The proposed building envelope is consistent with the character of the area for the commercial buildings along Botany Road.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The proposed development will not adversely impact on the eastern residential dwellings solar access until the afternoon period of 2.00pm - 3.00pm. Those residential dwellings will still achieve the minimum 2 hours' solar access throughout the day.
4.2.3.4 Design features to manage solar access	Yes	Powder coated aluminium screening is proposed to the western elevation to assist with thermal comfort.
4.2.3.5 Landscaping	Yes	Suitable plant species are proposed.
4.2.3.6 Deep Soil	No	The provision of deep soil on site is not practical given the narrow nature of the site with vehicle access off the laneway to the rear, and the established built form character (buildings built boundary to boundary) of the area.
4.2.3.9 Ventilation	Yes	All commercial units have dual aspect and will benefit from cross ventilation.
4.2.3.11 Acoustic privacy	Yes	No acoustic report has been submitted, however a condition is recommended that requires the development to comply

Provision	Compliance	Comment
		with the relevant noise criteria under the Department's guidelines for road noise.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	The 'B4 zone' has been retitled as the 'MU1 zone' and this Section is applicable. Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.2 Green Square	Yes	The site is located at the southern edge of the Green Square area. The key objectives of the area are as relevant to the proposed development are to; • Ensure development contributes to the Green Square Urban Strategy, • Create a hierarchy of centres throughout Green Square to support the function of the centre, • Allowing sustainable in-fill development, • Ensure the development complements the desired future character, • Provide new public street network to improve amenity and encourage travel by foot, • Encourage mixed land uses. The proposed development is generally in accordance with the objectives and provisions within Section 5.2 of the SDCP 2012.

Discussion

Voluntary Planning Agreement

34. Following Council's request for additional information on 25 February 2025, the applicant submitted a Public Benefit Offer dated 20 March 2025.

35. Following a discussion with the application on 15 April 2025 regarding the proposed gross floor area, the applicant sought to amend the development by reducing the proposed GFA from 212.05sqm to 199.99sqm. As a result in the change to the proposed gross floor area, the Public Benefit Offer was required to be amended. The applicant submitted the amended Public Benefit Offer on 29 April 2025.

36. The City has prepared a draft Voluntary Planning Agreement and a copy of the draft VPA was provided to the applicant on 2 May 2025 for their agreement on the terms. On 6 May 2025 the applicant confirmed that the VPA is acceptable.

Use of Commercial Tenancies and Operation

37. The proposed development does not seek approval for operational hours for each of the 3 commercial tenancies. The majority of fit out works for each of the tenancies, such as the bathrooms and the kitchenettes, are detailed on the plans.

38. A condition of consent is recommended that specifies that each commercial tenancy is permitted to operate as a commercial use within the base hours of operation permitted by the SDCP 2012. 'Category C' premises located within the Local Centre Area are permitted to operate from 7.00am to 2.00am. These hours are not anticipated for a commercial office use, therefore the condition will restrict the operational hours to 7.00am to 10.00pm Monday to Sunday.

39. Should any of the tenancies seek a different use or hours of operation, the tenancy must obtain the relevant approval, via a development consent or complying development certificate.

Consultation

Internal Referrals

40. The application was discussed with Council’s:

    (a) Cleansing and Waste Unit

    (b) Environmental Health Unit - contamination

    (c) Landscaping Unit

    (d) Public Domain Unit

    (e) Planning Agreements Unit

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

External Referrals

42. No external referrals were required.

Advertising and Notification

43. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 6 January 2025 and 4 February 2025.

44. One submission was received from an undisclosed property. The submission was a comment and not exclusively in objection to the development. It raised the following matters

    (a) **Issue:** Height of building on the narrow allotment and relationship to the two adjoining developments either side.

    Response: The subject site is 4.57m in width and is narrow compared to the two adjoining allotments which are approximately 9.15m (No.725 Botany Road) and 11.08m (No.713-721 Botany Road).

    The proposed building is 3-storey in height with floor to floor levels anticipated for a commercial building, being a minimum of 4.5m for the ground floor and a minimum of 3.6m for above ground. The proposed building is 14.65m in height, with a maximum ridge level of RL.28.65mAHD as measured to the top of lift shaft. The western elevation due to the material selected may appear as a 4-storey building, which is permitted at the site.

    Based on the submitted survey plan, the northern building at no.713-721 Botany Road has an existing top of wall height of RL.22.6mAHD and the southern building at no.725 Botany Road has an existing top of wall height of 20.96mAHD and roof ridge level of RL.21.0mAHD. The proposed building will then be up to 7.65m above the existing building heights as viewed from the Botany Road frontage.

    The height of the proposed building is recognised to be higher than the two adjoining developments, however, the adjoining buildings have occupied the sites since approximately 1975 and their existing built forms are not reflective of the desired future character and built form that is permitted by the current planning controls. The proposed development is terms of height and streetscape relation is acceptable as it fits within the desired future character for the Botany Road area and the development does not result in any significant adverse amenity impacts to either the residential dwellings to the east or the commercial developments to the north and south.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

45. 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.

46. A condition relating to this local infrastructure contribution has been included in the recommended conditions of consent. The condition requires the contribution to be paid prior to the issue of a construction certificate.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

47. The site is located within the Green Square affordable housing contribution area. The development includes the demolition of the existing building and the construction of a new (commercial) building that is less than 200sqm in area. Therefore, the proposed development is not subject to Section 7.13 contributions.

Relevant Legislation

48. Environmental Planning and Assessment Act 1979

49. Sydney Local Environmental Plan 2012

50. Sydney Development Control Plan 2012

Conclusion

51. The proposed development has been designed to fit within the locality and minimise impacts to the surrounding commercial tenancies and those residential dwellings to the east of the site.

52. The additional GFA proposed as permitted by Clause 6.14 Green Square Community Infrastructure is satisfactory subject to the VPA being exhibited, executed and registered on title. As the exhibition, execution and registration on title has not been complete at the time of preparing this assessment report, a deferred commencement consent is recommended.

ANDREW THOMAS

Executive Manager Planning and Development

Gavin Ho, Senior Planner