Item 4.

Development Application: 25-27 Dunning Avenue, Rosebery - D/2025/46

File Number: D/2025/46

Summary

Date of Submission:	20 January 2025, amended plans received 11 April 2025
Applicant:	The Trustee for Dunning Proprietor Unit Trust
Architect/Designer:	Tzannes Architect
Owner:	Dunning Proprietor Pty Ltd
Planning Consultant:	Gyde Consulting
Heritage Consultant:	GBA Heritage
Cost of Works:	$7,733,000
Zoning:	The site is zoned MU1 Mixed Use. The proposed 'commercial premises' is permissible in the zone.
Proposal Summary:	The application seeks development consent for alterations and additions to an existing 2-storey heritage listed warehouse building. The proposal includes internal alterations and the construction of a 3-storey addition to be used as a commercial premises. The site is identified as a local heritage listed item number I1376 'Paradise Garage' under the Sydney Local Environmental Plan (SLEP) 2012. The application proposes to utilise community infrastructure floor space equivalent to a Floor Space Ratio (FSR) of 0.5:1 pursuant to Clause 6.14 of the Sydney Local Environmental Plan 2012. The applicant proposes a monetary contribution to the City of Sydney towards the provision of community infrastructure within Green Square. As the proposal involves a Voluntary Planning Agreement (VPA), the development application is referred to the Local Planning Panel. A request to vary the FSR development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012.

The permitted maximum FSR at the site is 2.067:1 or 1,976sqm gross floor area (GFA). A floor space ratio of 2.59:1 or 2,477sqm GFA is proposed and exceeds the development standard.

The submitted Clause 4.6 variation request demonstrates 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 development standard.

The development application was notified and advertised for 21 days between 5 February 2025 and 27 February 2025.

Seven submissions were received objecting to the proposal. Many of the objections received relate to impacts of the addition on the heritage significance of the existing warehouse building, traffic and parking impacts due to the intensification of the use of the site and overshadowing concerns to surrounding residential development.

This development application is recommended for deferred commencement consent, subject to the exhibition, execution and registration of the VPA on title.

Summary Recommendation: The development application is recommended for deferred commencement approval.

Development Controls:

(i) Sydney Local Environmental Plan 2012 (Sydney LEP 2012)

(ii) Sydney Development Control Plan 2012 (Sydney DCP 2012)

(iii) SEPP (Resilience and Hazards) 2021

(iv) SEPP (Transport and Infrastructure) 2021

(v) SEPP (Sustainable Buildings) 2022

Attachments:

A. Recommended Conditions of Consent

B. Selected Drawings

C. Clause 4.6 Variation Request - Floor Space Ratio

D. Draft Voluntary Planning Agreement

E. Submissions

Recommendation

It is resolved that:

(A) the variation requested to the FSR development standard in accordance with clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported; and

(B) 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/2025/46 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 the operation of the development consent.

(B) The proposed commercial premises are permitted in the MU1 Mixed Use zone and the proposal generally complies with the objectives of the zone.

(C) A written request seeking to vary the FSR development standard under Clause 4.4 of the Sydney LEP 2012 was submitted. The proposed request is well founded, and the written request demonstrates that compliance with development standard is unnecessary and unreasonable in this instance and that there are sufficient environmental planning grounds to justify the variation.

(D) The proposed works to the local heritage item 'Paradise Garage' are considered acceptable. The proposed addition has incorporated appropriate setbacks of the vertical addition from both the Cressy Street and Dunning Avenue frontages. The massing and setbacks of the addition complements the conserved warehouse and maintain its visual prominence in the streetscape. The existing sawtooth roof will be substantially retained and the external facades refurbished with key features preserved.

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

(F) The development is generally consistent with the design requirements of Section 3, Section 4.2 and Section 5 of the Sydney DCP 2012.

(G) The proposed commercial premises development will diversify the mix of land uses in the locality and enable employment generation. The retail premises and commercial lobby at the ground floor will provide activation and enhance the vibrancy of the public domain.

Background

The Site and Surrounding Development

1. The site has a legal description of Lots 35 and 36, Section A in DP 192683, known as 25-27 Dunning Avenue, Rosebery. It is rectangular in shape with an area of 956.1 sqm. The site is located on the corner of Cressy Street and Dunning Avenue. It has a primary street frontage of 39.6 metres to Cressy Street and a secondary street frontage of 17.2 metres to Dunning Avenue and a corner splay of 4.3 metres.

2. The site contains a warehouse currently being used as a vehicle repair station and body repair workshop. It is listed as a local heritage item number I1376 under the Sydney Local Environmental Plan 2012 and is known as '"Paradise Garage" warehouse including interior'. The building was constructed in 1957 as a warehouse and was designed in the Post-War Functionalist style. It contains a showroom and workshop on the ground level and offices on the mezzanine. Many of the original details and materials are intact.

3. The site is currently accessed by pedestrians from the corner of Cressy Street and Dunning Avenue. The site includes 2 vehicle cross overs on Cressy Street.

4. The surrounding area is characterised by a mixture of land uses, primarily being residential, commercial and industrial warehouses, and mixed-use developments. Adjoining the site to the immediate east is a residential development at number 13-21 Mentmore Avenue consisting of 65 apartments and basement parking for 65 vehicles.

5. Directly adjoining the site to the north is 23 Dunning Avenue, a 2-storey warehouse currently used for commercial purposes. Further north is residential and mixed use developments.

6. To the south of the site across Cressy Street is a residential development at 29-31 Dunning Avenue consisting of 26 apartments and basement parking.

7. The site is located within the Beaconsfield locality and is not identified as flood prone.

8. A site visit was carried out on 6 February 2025. Photos of the site and surrounds are provided below.

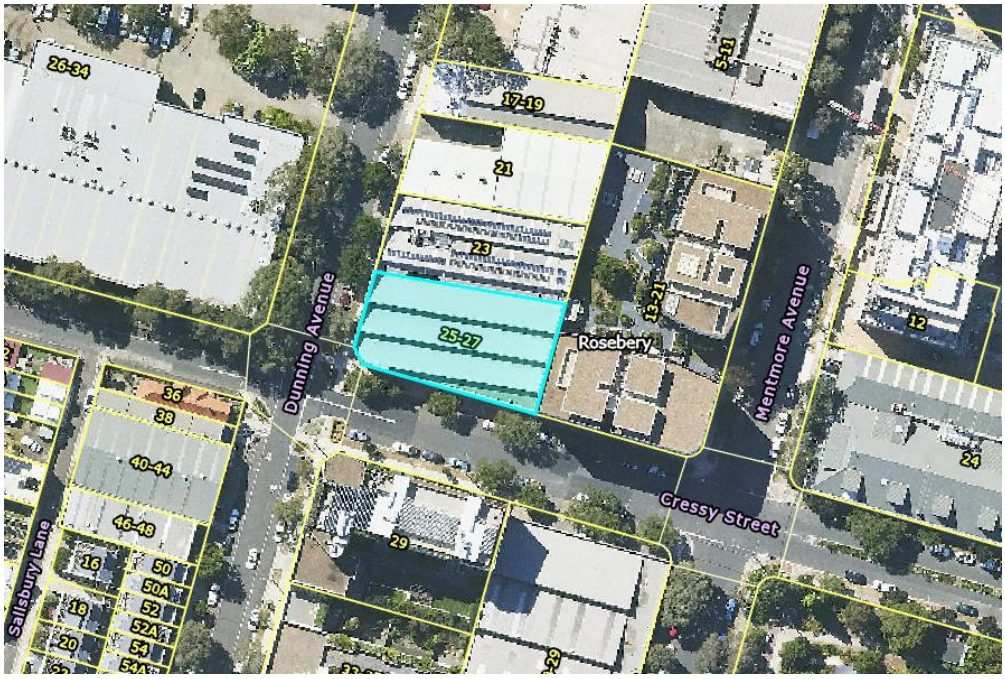

Figure 1: Aerial view of site and surrounds

Figure 2: Site viewed from the corner of Dunning Avenue and Cressy Street (west of the site)

Figure 3: Site viewed from Cressy Street

Figure 4: Site viewed from Dunning Avenue

Figure 5: Existing interior workshop

Figure 6: 29-31 Dunning Avenue (to the south of the site)

Figure 7: 13-21 Mentmore Avenue (to the east of the site)

History Relevant to the Development Application

Development Applications

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

- **D/2021/1491** – Development consent was refused by the Local Planning Panel on 10 August 2022 for the alterations and additions to the existing building. The proposal included a 3-storey addition with a total FSR of 3.1:1. The proposal was refused because the proposal would dominate the appearance of the existing heritage item and included a significant level of demolition. The submitted Clause 4.6 statement failed to demonstrate that compliance with the development standard was unreasonable and unnecessary in the circumstances of the case.

  The proposed elevations of the D/2021/1491 application are provided below.

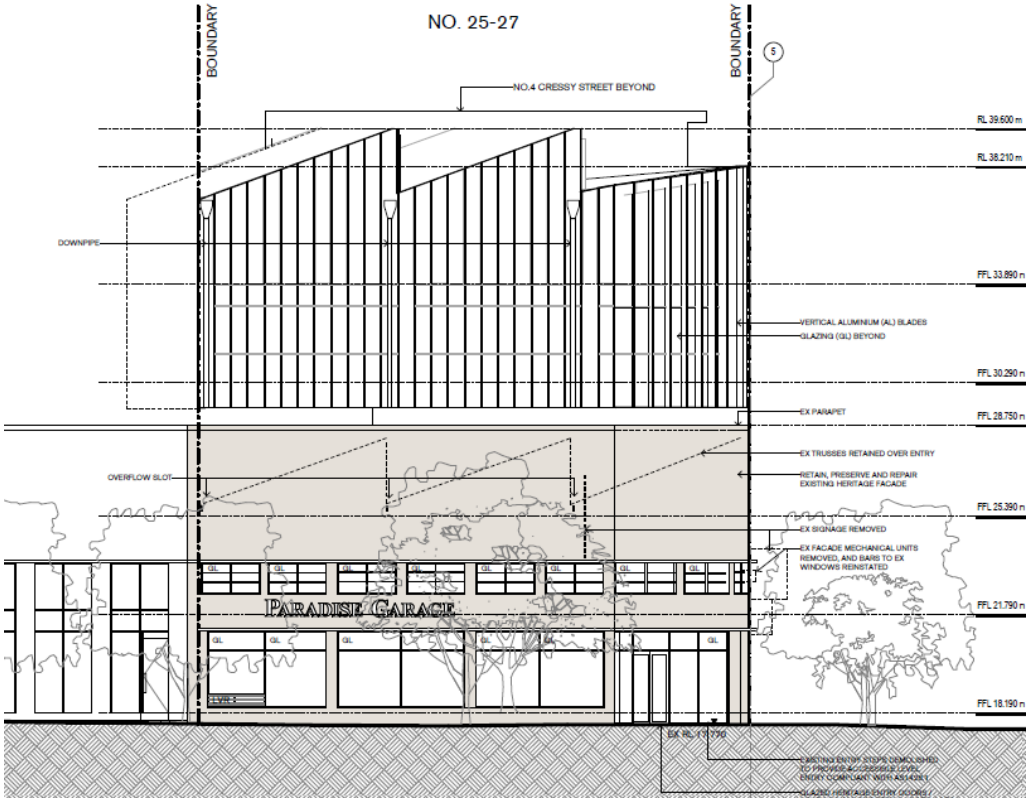

Figure 8: Proposed western (Dunning Avenue) elevation under the D/2021/1491 application

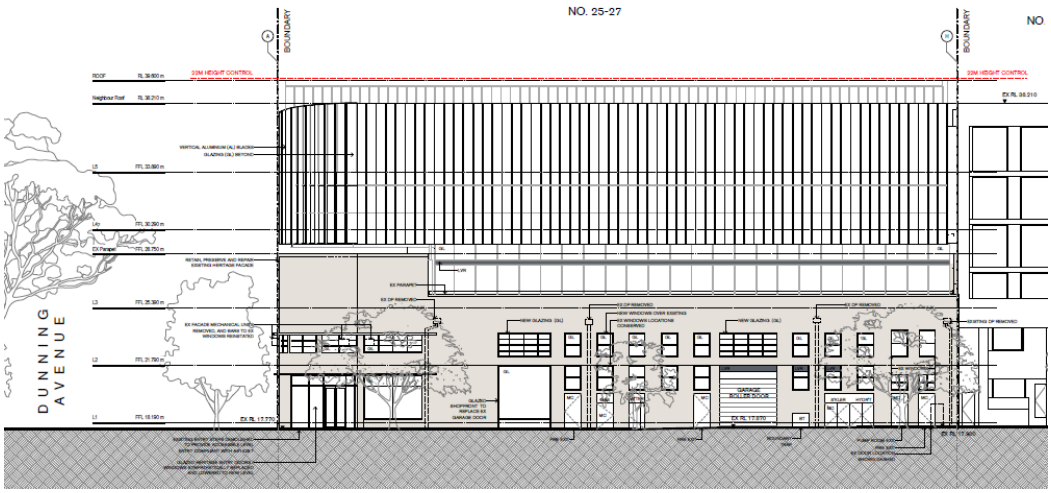

Figure 9: Proposed southern (Cressy Street) elevation under the D/2021/1491 application

- **Class 1 Appeal (NSW Land and Environment Court file no 2023/44375) -** Following determination by the Local Planning Panel, a Class 1 appeal was filed by the applicant. The judgment was made on 7 May 2024 and the appeal was dismissed. The proposal was considered to dominate and erode the prominence of the heritage item due to the inadequate setbacks for the vertical addition.

- **PDA/2024/121** – Following the conclusion of the Class 1 appeal, a preliminary amended scheme was submitted to the City of Sydney Council in June 2024 for feedback. The amended scheme involved changes to the floorplates within the vertical addition (levels 3 to 5), and the setbacks were consistent with the recommendations of Council's experts during the appeal.

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 13 March 2025.

11. The City met with the applicant on 25 March 2025 to discuss the RFI request. During this meeting, the City agreed that a variation to the **FSR** may be supported, provided the following issues were addressed:

    - The size of the level 2 void is increased to match the section B truss.
    - An updated Clause 4.6 variation request is submitted that examines the particularities of the site, including the heritage listing and the proposed heritage conservation works.
    - Additional overshadowing and solar access testing to demonstrate the impacts to the eastern neighbours.
    - Additional materials and finishes to be provided on the architectural plans.

12. The applicant responded to the request on 11 April 2025, and submitted the following information:

    - Amended architectural plans that increased the area of the level 2 void by 18 sqm.
    - Updated Clause 4.6 variation request that further assesses the particularities of the site and the heritage value and conservation works.
    - Additional overshadowing analysis, including sun eye diagrams that show solar access compliance to the eastern neighbour (13-21 Mentmore Avenue).
    - Additional materials and finishes provided on architectural plans.

Proposed Development

13. The proposed development is for alterations and additions and adaptive re-use of the former warehouse building on the site. Specifically, the following works are proposed:

    - internal works to existing warehouse building including:
        - removal of stairs, partition walls, fixtures and mezzanine floor
        - installation of new service core and fire stairs

- reconfiguration of ground floor (level 1) to provide lobby and retail floor space, car parking, end of trip, waste storage and services and plant
- retention of the majority of the sawtooth roof, with openings for new service core, fire stairs and columns

- upgrade works to the external facades and reinstatement of the existing 'Paradise Garage' sign. The existing openings will be retained; the windows and doors to be upgraded
- construction of a new level 2 with void on the southern side of the building
- construction of a 3-storey addition above the sawtooth roof, which is setback from the Dunning Avenue and Cressy Street frontages
- car parking for 5 vehicles, including one loading bay and one accessible bay. Vehicular access is via the existing access point on Cressy Street. Bicycle parking for 26 bicycles
- maximum building height of 21.66m and maximum gross floor area (GFA) of 2,477 sqm (equates to 2.59:1 FSR)

14. The owner of the site has made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) to provide a monetary contribution that is consistent with the requirements as specified in Clause 6.14 of the Sydney LEP 2012.

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

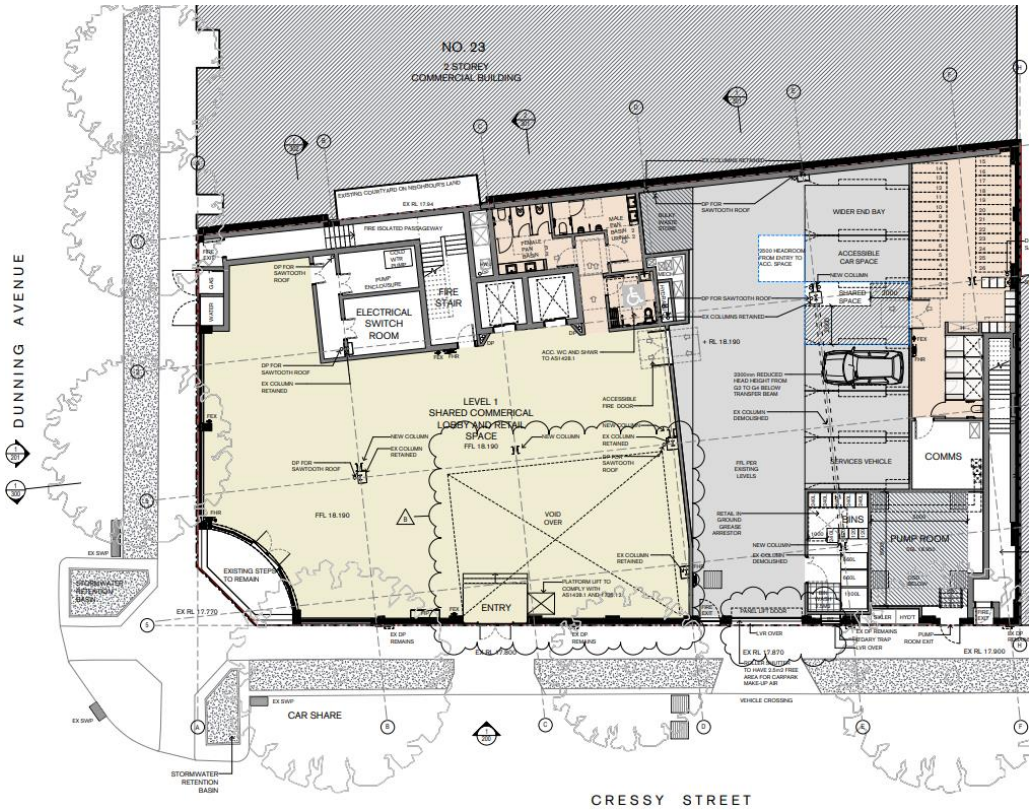

Figure 10: Level 1 plan

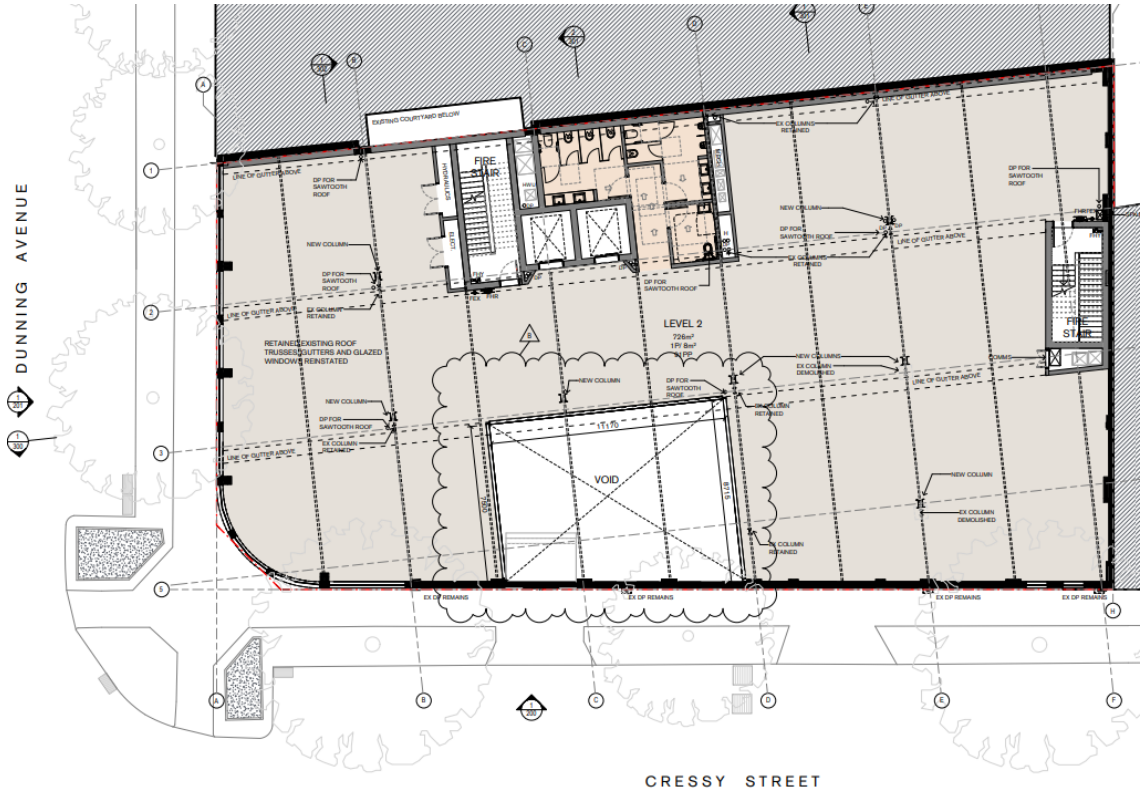

Figure 11: Level 2 plan

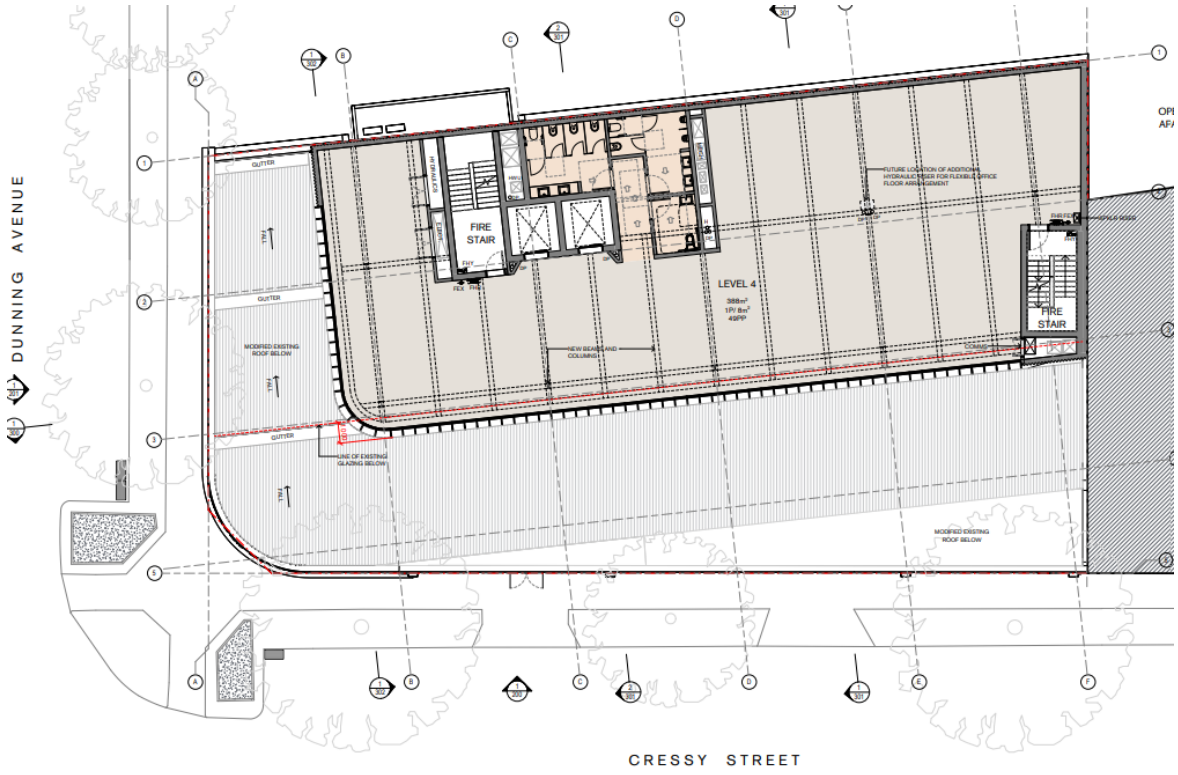

Figure 12: Level 4 plan

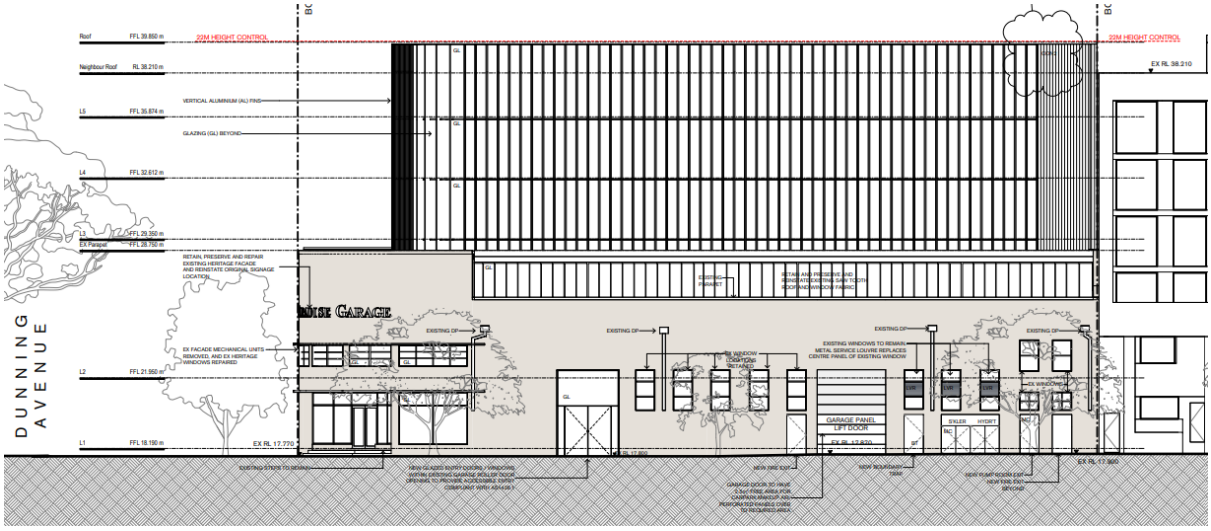

Figure 13: Southern elevation plan

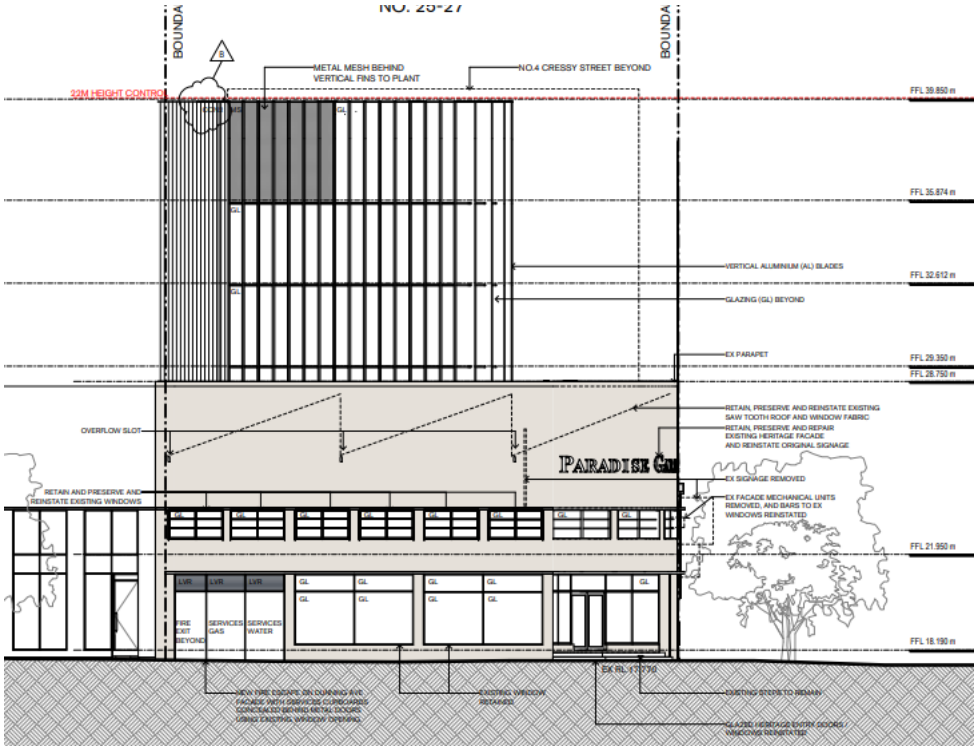

Figure 14: Western elevation plan

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. The applicant has submitted a Detailed Site Investigation (DSI). Site investigations have identified that any soil contaminants were below the health-based site assessment criteria for the proposed development (commercial) and the presence of asbestos fibres was not detected within the soil samples. The groundwater concentrations were below the Groundwater Acceptance Criteria except for chromium, copper and lead within one borehole, and concluded that the elevated metal concentrations do not pose a significant contamination issue. The DSI concluded that further remediation or validation is not warranted.

34. The Council's Health Unit has reviewed the information provided, and advised that the site is suitable for the proposed land use (commercial) and have recommended conditions including relating to unexpected finds protocol.

State Environmental Planning Policy (Sustainable Buildings) 2022

Section 3.2 Development Consent for non-residential development

35. Section 3.1(b) states that Chapter 3 of the SEPP applies to alterations, enlargement or extension of an existing building, if the development has an estimated development cost of $10 million or more.

36. The submitted cost estimate report indicates a total development cost of approximately $7.7 million (including GST).

37. As the development cost is below the threshold specified in Section 3.1(b) the matters for consideration under Section 3.2 do not apply to this application.

State Environmental Planning Policy (Transport and Infrastructure) 2021

38. 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

39. The application is subject to Clause 2.48 of the SEPP as the development will be carried out within 5m of an exposed overhead electricity power line.

40. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

Local Environmental Plans

Sydney Local Environmental Plan 2012

41. 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 'commercial premises' and is permissible with consent in the zone.

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 22m is permitted. A height of 21.6m is proposed.
4.4 Floor space ratio	No	A base floor space ratio of 1.5:1 is permitted. In accordance with Clause 6.14 of the LEP, an additional FSR provision of 0.5:1 is available to allow for the provision for Green Square community infrastructure increasing the maximum FSR for the site to 2:1. The site is eligible for additional floor space pursuant to Clause 6.13 relating to the provision of end-of-journey facilities of 0.067:1. Therefore the maximum FSR is 2.067:1 or 1,976sqm. A FSR of 2.59:1 or 2,477sqm is proposed. The proposed development does not comply with the maximum FSR development standard. A request to vary the FSR development standard in accordance with Clause 4.6 has been submitted. See further details in the ‘Discussion’ section below.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under Clause 4.4 FSR. A

Provision	Compliance	Comment
		Clause 4.6 variation request has been submitted with the application. See further details in the 'Discussion' section below.

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	The site is a local heritage item warehouse 'Paradise Garage' (I1376). The proposed development will not have detrimental impact on the heritage significance of the heritage item. See further details in the 'Discussion' section below.
5.21 Flood planning	Yes	The site is not affected by flooding and satisfies the LEP requirements relating to flood function, behaviour and risk.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 2 Additional floor space outside Central Sydney		
6.13 End of journey floor space	Yes	The proposed development is eligible for an additional floor space ratio of 0.067:1. FSR is discussed further under the 'Discussion' section below.
6.14 Community infrastructure floor space at Green Square	Yes	The proposed development is eligible for an additional FSR of 0.5:1. The applicant has submitted a public benefit offer to enter into a Voluntary Planning Agreement (VPA) for a monetary contribution towards community infrastructure. Floor space ratio is discussed further under the 'Discussion' section below.
Division 4 Design excellence		
6.21C Design excellence	Yes	The proposed development is of a high standard and uses materials and detailing which are compatible with the

Provision	Compliance	Comment
		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.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.6 Office premises and business premises	Yes	A maximum of 20 car parking spaces are permitted. The proposed development includes 4 car parking spaces and 1 service vehicle space.
Division 3 Affordable housing		
7.13 Contribution for purpose of affordable housing	Yes	The site is located within Green Square and involves alterations to an existing building that will result in the creation of more than 60 square metre of gross floor area for a purpose other than residential accommodation. The affordable housing levy contribution is 1% for non-residential Total Floor Area (TFA) applies. TFA plans were submitted calculating 3,144sqm of non-residential TFA. Accordingly, a contribution of $366,175.39 is required to be imposed. Subclause 7.13(2) satisfies Section 7.32 of the Act.
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

Provision	Compliance	Comment
		preparation of an Acid Sulfate Soils Management Plan.
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	The application does not propose greater than 1000sqm of floor area for the purpose of shops or markets.
7.33 Sustainability requirements for certain large commercial development	Yes	The applicant has submitted a design for environmental performance report which addresses environmental sustainability and efficiency through design, technology and performance rating solutions.

Development Control Plans

Sydney Development Control Plan 2012

42. 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

43. The site is located within the Beaconsfield locality. Development is to complement heritage items, and further development should contribute to built form patterns. The proposed development is in keeping with the unique character and the design principles of the Beaconsfield locality.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Yes	The building has been designed to positively address both street frontages.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	A Section J Deemed-to-Satisfy Assessment and design for environmental performance report has been submitted by the applicant. The report details the environmental sustainability and efficiency through design, technology and performance rating solutions.

Provision	Compliance	Comment
		Compliance with the Section J report, design for environmental performance report and water efficiency measures have been included in the recommended conditions of consent.
3.9.5 Heritage Items	Yes	The site is a local heritage item warehouse 'Paradise Garage' (I1376). The proposal maintains an appropriate level of significant fabric, elements and spaces. A condition of consent has been recommended that requires the proposed works to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building. The proposed envelope, proportions and materials of the new addition will not detract from the significance of the heritage item.
3.9.10 Building materials for heritage items and buildings within heritage conservation areas	Yes	The proposal retains original materials on the existing building and the new materials complement the colour and finishes of the existing materials.
3.9.14 Heritage Inventory Assessment Reports	No, but acceptable	Development to a heritage item is to be consistent with the guidelines contained within the Heritage Inventory Assessment Report. The key guidance within the current Heritage Inventory Assessment Report is that there should be no vertical additions and no alterations to the facade other than restoring lost elements. The application proposes a vertical addition to the building, and this is discussed under the 'Discussion' heading below.
3.10 Significant Architectural Building Types	Yes	The site contains a warehouse that is older than 50 years. A structural report was submitted that confirms that the proposed addition will

Provision	Compliance	Comment
		not jeopardise the structural integrity of the existing building. The removal of the fabric of the existing roof to allow for the new additional is acceptable from a heritage perspective.
3.11 Transport and Parking	Yes	26 bicycle parking spaces are proposed, and sufficient lockers and showers are provided. One service vehicle space is provided.
3.12 Accessible Design	Yes	The application proposes a platform lift at the Cressy Street entry given the level difference between the street and the ground floor level.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A condition 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.
3.16 Signage and Advertising	Yes	The proposed development includes the retention of the Paradise Garage sign.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	Yes	The site is permitted a maximum building height of 6 storeys. The proposed development is 5 storeys in height.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Partial compliance	The proposed development does not achieve the minimum floor to floor heights of 4.5m on the ground level and 3.6m above. The application retains the existing floor to floor heights of 3.76m at

Provision	Compliance	Comment
		ground floor level. The first floor level has floor to floor heights of 3.6m which complies. Levels 3 and 4 of the new addition have floor to floor heights of 3.262m. The non-compliance is acceptable as the ground level works with the existing fabric of the heritage item and due to the small floor plates, daylight access is still achieved to the new additions.
4.2.2 Building setbacks	Yes	The existing building is aligned to the street and setbacks above the street frontage are provided to both Dunning Avenue and Cressy Street.
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	The submitted overshadowing diagrams show some additional overshadowing to the northern elevation of the residential flat building at 29-31 Dunning Avenue during mid-winter as a result of the proposed addition. The shadow analysis confirms that the majority of the apartments (17 out of 26) would not be affected by the proposed development. Of the 9 apartments affected, all will retain greater than 2 hours of solar access, which complies with this provision. Overshadowing impact is further analysed in the 'Discussion' section below.
4.2.3.11 Acoustic privacy	Yes	Conditions are recommended to ensure that the proposal does not result in noise impacts to neighbouring properties.
4.2.6 Waste and recycling Management	Yes	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.

Provision	Compliance	Comment
4.2.7 Heating and cooling infrastructure	Yes	No basement is proposed so heating and cooling infrastructure is proposed at roof level, which is acceptable.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties by way of noise, hours, privacy, traffic, vibration, reflectivity, overlooking or overshadowing.

Section 5 – Specific Areas

Provision	Compliance	Comment
5.2 Green Square	Yes	The proposal is consistent with the Green Square provisions including for community infrastructure, building design and setbacks.

Discussion

Clause 4.6 Request to Vary a Development Standard - Floor Space Ratio

44. The site is subject to a maximum base FSR control of 1.5:1.

45. In accordance with Clause 6.14 of the LEP, an additional FSR provision of 0.5:1 is available to allow for the provision for Green Square community infrastructure. The applicant has made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) with the City of Sydney Council, which increases the maximum FSR for the site to 2:1.

46. The site is eligible for additional floor space in accordance with Clause 6.13 of the Sydney LEP 2012 relating to the provision of end of journey facilities. The proposal provides 64 sqm of end of journey facilities for a commercial premises. An 0.067:1 FSR can be added to the maximum permissible.

47. Therefore, a total floor space ratio of 2.067:1 (1,976 sqm GFA) is permitted on the site.

48. The proposed floor space ratio is 2.59:1 (2,477 sqm GFA) which exceeds the control by 0.523:1 or 501 sqm. This equates to a 25% variation.

49. 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)

50. The applicant seeks to justify the contravention of the floor space ratio 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 objectives of the floor space ratio development standard are achieved notwithstanding non-compliance with the standard:

- The proposal will provide floor space for a commercial premises (retail premises at the ground level and office premises at the levels above), which will generate employment opportunities. The locality is being transformed with recent developments focusing on residential apartments. The proposal would diversify the land uses and secure employment floor space to meet the needs of the community for the future.

- The scale of the proposed built form is consistent with that envisaged by the planning controls and has increased required setbacks to ensure the addition does not dominate the existing heritage item. The proposal complies with the 22m height of buildings standard under the Sydney LEP 2012 and the height in storeys control and setbacks control in the Sydney DCP 2012.

- The site has access to utilities and services, localised upgrade or adjustment to support the use could be undertaken as part of the future development. The proposal is not expected to affect the capacity of the existing and planned infrastructure in the locality. The applicant has entered into a VPA with Council for a monetary contribution towards community infrastructure within Green Square.

- The MU1 zone objectives indicate that the desired future character of the locality is to comprise a diversity of land uses to support employment generation, enable street activation, and contribute to vibrancy of public spaces. The purpose and form of the development are consistent with the desired future character of the locality.

(b) That there are sufficient environmental planning grounds to justify contravention of the standard:

(i) Desired future character of the locality: The proposed development will deliver floor space for commercial purposes which will diversify the mix of land uses in the locality and enable employment generation. The retail premises and commercial lobby at the ground floor will provide activation, and enhance the vibrancy of the public domain. The form and nature of the development are consistent with the objectives of the zone and the desired future character of the locality.

(ii) Heritage conservation: The adaptive re-use of the Post-War Functionalist warehouse for commercial purposes will promote the conservation and ongoing protection of the item. The provision of additional floor space in the vertical addition and internal re-arrangement is essential to fund the conservation works and to deliver a functional building that suits contemporary needs. That portion of the floor space exceeding the FSR standard is primarily contained within the upper floor addition. The addition has been setback from both the Dunning Avenue and Cressy Street alignments, so that the addition is recessive and subservient to the retained former warehouse. In response to Council's RFI, the amended plans have increased the size of the Level 2 void to allow greater appreciation of the sawtooth roof form.

(iii) Environmental impacts: The proposal has been designed to avoid adverse impacts on the amenity of the neighbouring properties and the heritage significance of the Paradise Garage building. The proposed upper level addition is setback from the Dunning Avenue and Cressy Street alignments to provide an appropriate architectural relationship with the retained building below. The height and scale of the proposal is consistent with recent residential development within proximity of the site (29-31 Dunning Avenue and 13-21 Mentmore Avenue). As outlined in the discussion below, the proposal will not create unreasonable amenity impacts on surrounding development in terms of overshadowing, view loss or privacy impacts.

(iv) Floor space ratio and commercial developments: For a medium scaled commercial development, larger floor plates are possible while still being able to provide good amenity to the tenancies in terms of daylight, outlook and flexibility in floor layout. A greater site coverage in conjunction with larger floor plates would inevitably increase the FSR of a development.

(v) Provision of employment floor space: The variation to the FSR control would facilitate an economically feasible development of the land and provide employment floor space in a location with convenient access to public transport and services. The proposed commercial floor space would contribute to the range of businesses and services in the Green Square-Mascot Strategic Centre and assist with achieving the State Government's jobs target.

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

51. Development consent must not be granted unless the consent authority is satisfied 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)?

52. A summary of the applicant's submission with regard to compliance with the development standard being unreasonable or unnecessary in the circumstances of the case is provided above. The written request has adequately demonstrated that the objectives of the relevant planning controls are adequately achieved notwithstanding non-compliance with the numerical control of the standard.

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

53. A summary of the applicant's submission with regard to environmental planning grounds to justify contravening the development standard is provided above. The environmental planning grounds established are specific to the circumstances of the site to justify the extent of non-compliance with the FSR development standard.

54. The non-compliance will also not result in any unacceptable environmental impacts, such as bulk and scale, overshadowing, traffic and parking or privacy impacts. In this regard, the proposed addition has been skilfully designed to be below the LEP height control and the DCP height in storeys control to minimise amenity impacts to surrounding development including privacy, overshadowing and view sharing. These amenity impacts are assessed in detail in the section below.

55. The written request has therefore demonstrated that there are sufficient environmental planning grounds to support the extent of variation proposed.

Conclusion

56. For the reasons provided above the requested variation to the FSR development standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney LEP 2012.

Built form and heritage

57. The existing building is a local heritage listed item I1376 "Paradise Garage' Warehouse. The warehouse is described as a 2-storey, Post-War Functionalist warehouse with streamlined rendered facade, horizontal steel windows at first floor level and high parapet wall partially concealing a saw-tooth roof. The building includes a prominent curved corner entry with original details and materials intact.

58. The application was accompanied by a Statement of Heritage Impact and Conservation Management Plan prepared by GBA Heritage.

59. Significant amendments have been made since the previous development application that was refused by the Local Planning Panel and the subsequent appeal that was dismissed by the Land and Environment Court. These amendments include:

    (a) Re-design of the 3-storey addition, including setbacks from the southern and western boundaries. The proposed southern setback to Cressy Street is 6.6m to 10.4m and the western setback to Dunning Avenue is 4.9m to 6m. The previously lodged scheme had a nil upper setback to Cressy Street and Dunning Avenue.

    (b) The proposed floor space ratio has been reduced from 3.1:1 (original DA scheme January 2022) to 2.59:1 (amended proposal).

    (c) Retention of the majority of the sawtooth roof, except for those parts affected by the new service core and fire stairs.

    (d) Reconfiguration of the first floor level, including relocation of the void from the western side to the southern side of the floor plate.

    (e) Reconfiguration of the ground level, with the size of the car parking area reduced from 10 spaces to 5 spaces.

    (f) Retention of the window openings on the Cressy Street elevation.

60. The current scheme seeks to retain the characteristic elements of the Post-War Functionalist warehouse, such as the curved corner facade, the high parapet, the light toned cement render, the window/door openings as well as the sawtooth roof form and structures. The new openings on the Cressy Street and Dunning Avenue façades are limited to fire egress and services.

61. The proposed addition has incorporated appropriate setbacks of the vertical addition from both the Cressy Street and Dunning Avenue frontages, generally consistent with Council's recommendation. The massing and setbacks of the addition would complement the conserved warehouse and maintain its visual prominence in the streetscape. The existing sawtooth roof will be substantially retained and the external facades refurbished with key features preserved.

62. While the heritage inventory recommends no vertical additions, any redevelopment of the site to the height and FSR controls would result in new vertical addition, and the addition has been designed sympathetically to the significance of the heritage item.

63. Council's Urban Design and Heritage team are supportive of the amended development, subject to conditions.

64. Therefore, the amended proposal is supported on heritage grounds.

Amenity impacts

65. The proposal is considered to have acceptable amenity impacts on the surrounding development, as assessed below.

Privacy

66. The proposed 3 storey addition will have acceptable privacy impacts on the adjoining development as summarised below:

    (a) Eastern adjoining site (13-21 Mentmore Avenue): the eastern elevation of the proposed addition comprises a solid wall. The western elevation of the 13-21 Mentmore Avenue also comprises of solid walls, so there will be no privacy impacts.

    (b) Northern adjoining sites (17-23 Dunning Avenue): The site is currently occupied by light industrial buildings. Consent was granted in June 2021 for a residential apartment development (D/2021/681). The proposed development has incorporated a solid wall along the northern elevation and will therefore have no privacy impacts on the future development. The approved plans at 17-23 Dunning Avenue show 7-storeys of apartments with north-south orientated apartments. The approved balconies all face north, with only bedrooms at the southern side of the development. There is also a 6m setback to the southern boundary. Therefore, the proposed development will not create adverse amenity impacts on the approved development.

    (c) Southern site (29-31 Dunning Avenue): The site and the southern property at 29-31 Dunning Avenue are separated by Cressy Road (20m separation). The proposed upper floor addition is further setback from Cressy Street by 6.6m to 10.4m. The total building separation is 26.6m to 30.4m which exceeds the ADG requirements of 12m (up to 4 storeys) to 18m (5 to 8 storeys) between habitable rooms/balconies. Therefore, it is not anticipated to have adverse overlooking impacts.

67. The proposed addition will not result in adverse privacy impacts to surrounding development.

Overshadowing

68. The submitted overshadowing diagrams show additional overshadowing to the northern elevation of the residential flat building at 29-31 Dunning Avenue during mid-winter as a result of the proposed addition.

69. The applicant has submitted an overshadowing assessment that examines the north facing units at 29-31 Dunning Avenue. The split-level units at the ground and first levels (units G01 to G04) will experience additional overshadowing during mid-winter. The north-facing windows of these 4 apartments are bedroom areas. The living areas are located on the first and second floors of the building and will receive at least 2 hours of solar access.

Figure 15: Overshadowing plan with proposed impacts on 29-31 Dunning Avenue identified in red

70. Additional shadows will be cast on the north-facing living room windows of units on the second floor. However, the shadows will gradually shift away during the day, and a minimum of 2 hours of direct sunlight will be maintained for the living areas of those units on 21 June.

71. Objective 4A-1 of the Apartment Design Guide (ADG) requires “Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours' direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area”.

72. The shadow analysis confirms that the majority of the apartments (17 out of 26) would not be affected by the proposed development. Of the 9 apartments affected, all will retain greater than 2 hours of solar access, which complies with the relevant requirements of the ADG and the Sydney DCP 2012.

73. Additional sun eye diagrams were submitted by the applicant in the RFI package in response to Council's request. The additional sun eye diagrams confirm the northern facing apartments at 13-21 Mentmore Avenue comply with the solar access requirements under Section 4.2.3.1 of the Sydney DCP 2012.

74. Therefore, the proposed development will not result in adverse overshadowing impacts.

View Sharing

75. The applicant has submitted a view study from the upper level apartments and roof terraces from the residential flat building to the south of the site (29-31 Dunning Avenue). This development benefits from distant city views, including the Sydney CBD skyline.

76. The view study has considered the potential view impacts from the balconies of units 503, 504 and 404.

77. The submitted Statement of Environmental Effects prepared by Gyde Consulting has assessed the proposal against the planning principle established by the NSW Land and Environment Court in its judgement for Tenacity Consulting v Warringah Council [2004] NSWLEC 140.

78. The overall impact on the 3 locations at 29-31 Dunning Avenue is minor to moderate in nature and is reasonable as:

- The views in question comprise distant views of the city skyline, which are already partly obscured by other buildings in the locality. The views are obtained across many properties to the north of the site. The benefits of the views are not expected to be permanent in the future as other development occurs in accordance with planning controls.

- Redevelopment of the approved 7-storey residential development to the north of the subject site (17-23 Dunning Avenue under D/2021/681) would result in view loss to 29-31 Dunning Avenue.

79. The proposal represents a skilful design and the western upper level setback to Dunning Avenue (4.9m to 6m) allows retention of the majority of the city skyline views.

80. Extracts of the view study that compare a complying built form envelope with no setbacks and the proposed envelope are provided below.

81.

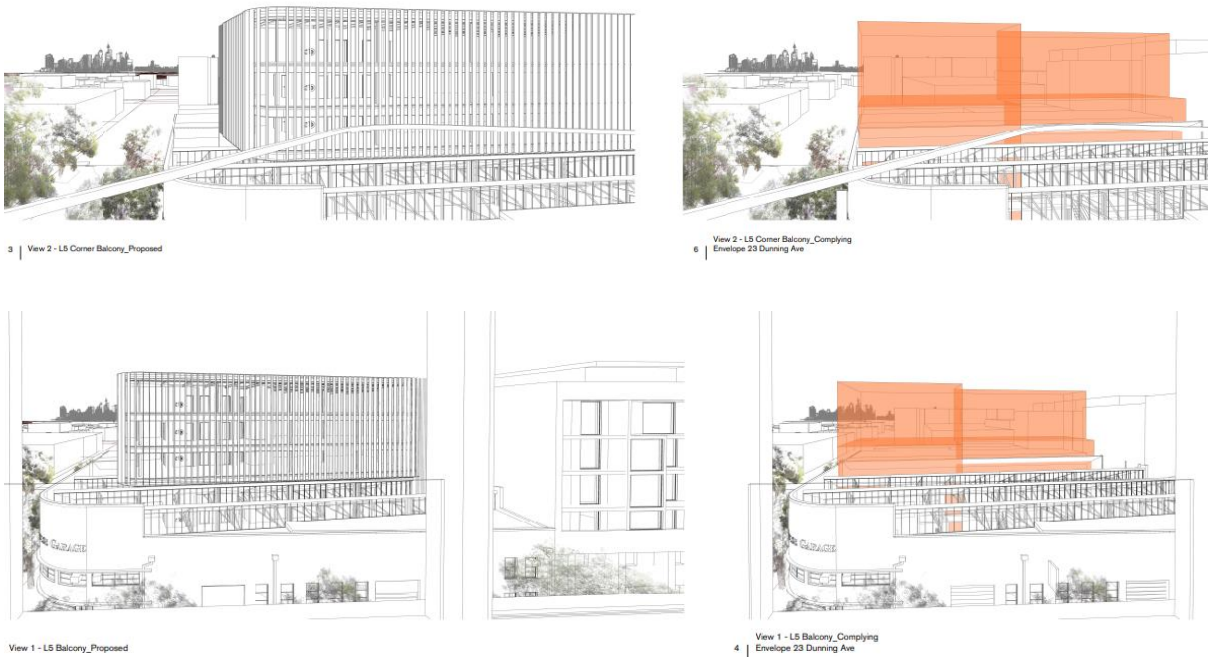

Figure 16: View sharing diagram showing proposed and compliant envelope in red

Voluntary Planning Agreement

82. The applicant has made a written offer to Council to enter into a Voluntary Planning Agreement (VPA) with the City of Sydney Council in accordance with Schedule 10 'Providing community infrastructure in Green Square' of the Sydney DCP 2012, with respect to the community infrastructure floor space.

83. The Planning Agreement is currently on exhibition until 17 June 2025. A copy of the draft VPA is provided at Attachment E. A deferred commencement condition has been included in the Notice of Determination which requires the execution of the Planning Agreement on title prior to the consent being activated.

Consultation

Internal Referrals

84. The application was discussed with Council's;

(a) Environmental Health Unit

(b) Heritage and Urban Design Unit

(c) Planning Agreements

(d) Public Domain Unit

(e) Surveyors

(f) Transport and Access Unit

(g) Sustainability Unit

(h) Modelling Unit

(i) Waste Management Unit.

85. 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

86. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.

87. A response was received, raising no objections to the proposed development.

Advertising and Notification

88. In accordance with the City of Sydney Community Participation Plan 2022, the proposed development was notified for a period of 21 days between 5 February 2025 and 27 February 2025. A total of 119 properties were notified and 7 submissions were received.

89. The submissions raised the following issues:

(a) **Issue:** The proposed addition will have detrimental impacts to the heritage significance of the building.

Response: The proposed addition has incorporated appropriate setbacks of the vertical addition from both the Cressy Street and Dunning Avenue frontages, generally consistent with Council's recommendation. The massing and setbacks of the addition would complement the conserved warehouse and maintain its visual prominence in the streetscape. The existing sawtooth roof will be substantially retained and the external facades refurbished with key features preserved. Council's Urban Design and Heritage team are supportive of the amended development, subject to conditions.

(b) **Issue:** The intensification of the site will have traffic and parking impacts.

Response: A maximum of 20 car parking spaces are permitted on the site, and 5 car parking spaces are provided which complies with the development standards. The submitted traffic modelling confirms the proposal will have a negligible impact on the existing road network. The proposal includes end of trip facilities and bicycle parking for 26 bikes to encourage users of the site to utilise active transport.

(c) **Issue:** Potential overshadowing impacts to surrounding residential development.

Response: As outlined in the discussion section above, the proposal will result in some minor overshadowing impacts to the southern residential development (29-31 Dunning Avenue) during the morning period (9am to 11am). However, the shadows will gradually shift away during the day and a minimum of 2 hours of direct sunlight will be maintained for the living areas on 21 June. The proposal complies with the relevant overshadowing and solar access provisions under the ADG and the Sydney DCP 2012.

(c) **Issue**: Privacy impacts from office windows overlooking residential development.

Response: As outlined in the discussion section, the proposal provides a blank wall to the directly adjoining northern and eastern development. The proposal is separated by 26.6m to the southern neighbour, which exceeds ADG building separation requirements. The proposal is not anticipated to have adverse overlooking impacts.

(d) **Issue**: Concerns about view loss due to the proposed addition.

Response: As outlined in the discussion section above, the residential flat building to the south of the site currently benefits from views across many properties to the north of the site. The benefits of the views are not expected to be permanent in the future as other development occurs in accordance with planning controls. Redevelopment of the approved 7-storey residential development to the north of the subject site (17-23 Dunning Avenue under D/2021/681) would result in view loss to 29-31 Dunning Avenue. The proposal represents a skilful design and the western upper level setback to Dunning Avenue (4.9m to 6m) allows retention of the majority of the city skyline views.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

90. 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.

91. 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

92. The site is located within the Green Square affordable housing contribution area. As the proposed development includes additional floor space, a contribution is required at a rate of $11,646.80 per square metre of additional commercial floor area 1,879 sqm totalling $366,175.39.

93. A condition of consent is recommended requiring payment prior to the issue of a construction certificate.

Housing and Productivity Contribution

94. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

95. 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.

96. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

Relevant Legislation

97. Environmental Planning and Assessment Act 1979.

Conclusion

98. The proposed alterations and additions to the existing heritage listed warehouse building for a commercial premises is consistent with the MU1 zone objectives contained in the Sydney LEP 2012.

99. The proposed works to the local heritage item Paradise Garage are considered acceptable. The proposed addition has incorporated appropriate setbacks of the vertical addition from both the Cressy Street and Dunning Avenue frontages. The massing and setbacks of the addition complements the conserved warehouse and maintain its visual prominence in the streetscape. The existing sawtooth roof will be substantially retained and the external facades refurbished with key features preserved.

100. A written request seeking to vary the FSR development standard under Clause 4.4 of the Sydney LEP 2012 was submitted. The proposed request is well founded, and the written request demonstrates that compliance with development standard is unnecessary and unreasonable in this instance and that there are sufficient environmental planning grounds to justify the variation.

101. The proposed non-compliance will not result in any unacceptable environmental impacts, such as bulk and scale, overshadowing, traffic and parking or privacy impacts.

102. The proposal, as amended, achieves an acceptable standard of architectural design, materials, and detailing and achieves design excellence.

103. The development is generally consistent with the design requirements of Section 3, Section 4.2 and Section 5 of the Sydney DCP 2012.

104. The proposed development will deliver floor space for commercial purposes which will diversify the mix of land uses in the locality and enable employment generation. The retail premises and commercial lobby at the ground floor will provide activation and enhance the vibrancy of the public domain.

105. The proposed development is therefore considered to be in the public interest and is recommended for approval subject to the recommended conditions of consent.

NATASHA RIDLER

Acting Executive Manager Planning and Development

Georgia McKenzie, Senior Planner