

Item 4.**Development Application 98-106 Kippax Street, Surry Hills - D/2025/758****File Number:** D/2025/758**Summary**

Date of Submission:	18 August 2025 Final amended plans received on 16 March, 2026
Applicant:	Joshua Brandon
Architect/Designer:	DKO Architecture
Owner:	Isaac Solomon, Sara Cooper and Elizabeth Oxman
Planning Consultant:	The Planning Studio
Heritage Consultant:	NBRS and Partners
Cost of Works:	\$27,804,746.79
Zoning:	The site is located within the MU1 - Mixed Use zone. The use is defined as a "residential flat building", with "retail premises", and is permissible with consent within the zone.
Proposal Summary:	Approval is sought for the substantial demolition of the existing building, retention of some built form elements including a former horse stables, and construction of an 8-storey mixed-use development comprising retail tenancies on the lower levels, basement carparking, 42 residential apartments with affordable housing units and associated rooftop common open space and landscaping. The application is being reported to the Local Planning Panel for determination as the development is for a new residential flat building and does not comply with the minimum car space and the minimum landscaped area development standards under the State Environmental Planning Policy (Housing) 2021(Housing SEPP) by more than 10%. A minimum of 30 car spaces are required for the residential component of the development under Section 19(2)(e) and (f) of the Housing SEPP. The proposal provides a total of 20 car spaces, which represents a

shortfall of 34% below the control. The application seeks a variation to the minimum car spaces control under clause 4.6. The proposed variation to the development standard has merit and is supported.

A minimum of the lesser of 30% of the site or 35 sqm per dwelling for landscaped area is required under Section 19(2)(b) of the Housing SEPP. The proposal does not provide any landscaping which meets the definition of "landscaped area" under the SEPP, and therefore amounts to a shortfall of 100% below the control. However roof top communal open space with landscaping including trees is proposed. The application seeks a variation to the minimum landscaped area control under clause 4.6. The proposed variation to the development standard has merit and is supported.

The application also seeks a variation to the maximum building height development standard under the Sydney Local Environmental Plan 2012. A maximum building height of 28.6m is permitted under clause 4.3 of the Sydney Local Environmental Plan 2012. A maximum height of 29.04m is proposed for the development, which represents an exceedance of 1.9% over the control. The application seeks a variation to the height control under clause 4.6. The proposed variation to the development standard has merit and is supported.

The requirement under Clause 6.21D of the Sydney Local Environmental Plan 2012 requiring a competitive design process is recommended to be waived on the basis that it is unreasonable or unnecessary in the circumstances, given the proportion of the building which exceeds the 25m threshold of the control is limited to part of the upper level and roof terrace, the proposal achieves design excellence, is of a scale and form appropriate within context of the site, and that amendments to the LEP which raise the minimum threshold for requiring a site specific DCP or Competitive Design process to 35m have been endorsed by Council and received Gateway approval.

The proposal was presented to the City's Design Advisory Panel Residential Subcommittee on 7 October 2025.

Following a preliminary review of the application and comments and recommendations provided by DAPRS, the applicant amended the proposal to improve the integration of the retained stables building with the new building, redesign the upper level apartments to achieve improved amenity and cross-ventilation, increase the upper level separation distance from Sophia Street at the north-western portion of the building by deleting voids and planters, and provide additional canopy trees to the rooftop communal open space.

Amended plans and updated consultant reports were submitted 9 January 2026, with the last amendments submitted on 16 March, 2026. Amendments to the proposal include reconfiguring the layout of the upper level apartments to achieve a greater proportion of natural cross-ventilation, deleting the upper level voids and planters to the north-western apartments facing Sophia Street, redesigning the roof terrace landscaping, and retaining the existing western return wall to Sophia Street. Further amendments were made on 16 March 2026, comprising minor reconfiguration of the rooftop landscaping to address wind impacts.

The application was notified for a period of 21 days from 21 August 2025 to 11 September 2025. The amended plans submitted on 9 January 2026 were not re-notified, as the amendments to the design, which were generally requested by Council, did not result in any significant increases to the proposed building envelope, and did not result in any significant additional environmental impacts, or significantly intensify the proposed use of the site. Eleven submissions were received which raised concerns relating to the bulk and scale of the proposal, retention of the stables building, and adverse impacts to the amenity of surrounding buildings including loss of outlook and privacy impacts.

The bulk and scale of the proposal responds satisfactorily to surrounding development context, does not result in any unreasonable adverse amenity impacts, provides affordable housing helping meet the needs of the community and is consistent with the desired future character of the area. The proposal is in the public interest.

The proposal is generally consistent with the relevant objectives and provisions of the Sydney LEP 2012, as well as the Housing SEPP and Apartment Design Guide.

Subject to the recommended conditions at Attachment A, the development application is recommended for approval.

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

Development Controls:

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

- (vi) SEPP (Sustainability) 2022
- (vii) Sydney Local Environmental Plan 2012
- (viii) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request - Height of Buildings
- D. Clause 4.6 Variation Request - Minimum Landscaped Area
- E. Clause 4.6 Variation Request - Minimum Car Spaces
- F. Submissions

Recommendation

It is resolved that:

- (A) the variation requested to Clause 4.3 (Height of Buildings) in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (B) the variation requested to Section 19(2)(b) for the minimum landscaped area of the State Environmental Planning Policy (Housing) 2021, in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (C) the variation requested to Section 19(2)(e) and (f) for minimum car parking spaces of the State Environmental Planning Policy (Housing) 2021, in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld; and
- (D) the requirement under Clause 6.21 of the Sydney Local Environmental Plan 2012 requiring a competitive design process is unreasonable or unnecessary in the circumstances; and
- (E) consent be granted to Development Application Number D/2025/758 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 proposed development is consistent with the objectives of the MU1 Mixed Use zone.
- (B) The proposed development generally satisfies the relevant provisions of the State Environmental Planning Policy (Housing) 2021, notwithstanding the request to vary the minimum car space and minimum landscaped area controls , and is generally consistent with the Apartment Design Guide.
- (C) The proposed development satisfies the relevant objectives and provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (D) Having considered the matters in Clause 6.21 of the Sydney LEP 2012, the proposal displays design excellence.
- (E) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
 - (i) the applicant has demonstrated that compliance with the height of buildings development standard in clause 4.3 of the Sydney LEP 2012 is unreasonable or unnecessary in the circumstances and that there are sufficient planning grounds to justify contravention of the development standard in accordance with the requirements of clause 4.6(3) of the Sydney LEP 2012;

- (ii) the applicant has demonstrated that compliance with the minimum landscaped area, and minimum car parking spaces development standards in clauses 19(2)(b)(e) and (f) of the SEPP (Housing) 2021 are unreasonable or unnecessary in the circumstances and that there are sufficient planning grounds to justify contravention of the development standards in accordance with the requirements of clause 4.6(3) of the Sydney LEP 2012; and
- (iii) the proposal is in the public interest because it is consistent with the objectives of the MU1 Mixed Use zone and the height of buildings, and the SEPP (Housing) 2021 development standards.

Background

The Reason the Application is Reported to the Local Planning Panel

1. The application is reported to the Local Planning Panel for determination as it is identified in Schedule 3 of the Local Planning Panels Direction of 6 March 2024 as being within the following category(s):
 - (a) Departure from Development Standards; and
 - (b) Sensitive Development.
2. The development application falls within the category of Departure from Development Standard as the proposal is for purposes other than a "dwelling house", "dual occupancy" or "attached dwelling", and contravenes the "minimum car spaces" and minimum landscaping" development standards imposed by the *State Environmental Planning Policy (Housing) 2021*, by more than 10%.
3. The development application falls within the category of Sensitive Development as it is development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.

The Site and Surrounding Development

4. The site has a legal description of Lot 1 in DP 68499, and Lots 45-47 in DP 111211, known as 98-106 Kippax Street, Surry Hills. It is rectangular in shape with area of approximately 789 sqm. It has a primary street frontage of 31m to Kippax Street and secondary street frontages of 24.7m to Waterloo Street, and 33m to Sophia Street. Levels on the site fall by approximately 3.4m from the Waterloo Street frontage (east) to the western boundary.
5. The site contains several attached buildings that were constructed during different eras. At the Kippax Street frontage are three distinct buildings including a three-storey commercial warehouse building at the western end of the site, a two storey commercial building and a three storey Victorian building at the corner of Kippax Street and Waterloo Street. At the Waterloo Street frontage are two distinct buildings including a three storey Victorian building at the corner of Kippax Street and Waterloo Street and a three storey former stable building at the corner of Waterloo Street and Sophia Street. The Sophia Street frontage contains the rear elevations of the above-mentioned buildings that have frontages to Kippax Street.
6. The surrounding area is characterised by a mixture of land uses, primarily being commercial and residential. To the south of the site on the opposite side of Kippax Street are two to seven storey commercial buildings. To the east of the site on the opposite side of Waterloo Street is an eight storey commercial building at 110-120 Kippax Street. To the north of the site on the opposite side of Sophia Street are located four to six storey buildings containing commercial and residential uses, including residential apartments at 81 Foveaux Street.
7. The site is not identified as a heritage item and is not located within a heritage conservation area.
8. The site is located within the Surry Hills Central locality and is not identified as being subject to a high risk of flooding.

9. A site visit was carried out on 2 September 2025. Photos of the site and surrounds are provided below:
10. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds



Figure 2: Site viewed from Kippax Street



Figure 3: Site viewed from Waterloo Street



Figure 4: Site viewed from Sophia Street



Figure 5: Site viewed from the corner of Waterloo Street and Sophia Street



Figure 6: Internal view of the horse ramp and first floor enclosed courtyard



Figure 7: Existing loading dock



Figure 8: Existing arched vaults in the ground floor retail tenancy



Figure 9: View of the parapet of the looking south-east towards Waterloo Street

History Relevant to the Development Application

Development Applications

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

- **DI/2017/225** – Development consent was granted on 11 April 2018 by the Local Planning Panel for the demolition of all existing buildings, construction of a 6 storey mixed use building comprising with basement carparking, ground floor retail tenancies, 27 residential apartments and a communal roof top terrace. This consent was not activated and has subsequently lapsed.

Amendments

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 21 October 2025. The following additional information and amendments were requested:

- a detailed Structural Report to demonstrate that the retained structure can support the additional loads of the new building
- retention of a greater extent of the existing Waterloo Street façade and the western return wall to Sophia Street frontage
- clarification as to how the retained internal horse ramp will be interpreted
- reconsider the location of the breezeway to the upper levels to better integrate with the retained facade and provide a visual separation between the retained and new portions of the building
- clearer view from the sun diagrams to demonstrate the amount of solar access received
- amend the design so that a greater proportion of apartments receive genuine cross-ventilation without relying on the breezeway
- delete the planters and voids to the upper level apartments in the north-western corner of the building fronting Sophia Street, to lower the street frontage height to Level 2 and improve the amenity to the upper level apartments
- redesign Unit 101 to delete the snorkel bedroom
- reconsider the designation of affordable housing units so that they achieve equivalent amenity to market value units
- delete the void above the private balcony of Unit 301B to ensure privacy for that unit
- provide a CI 4.6 written variation to the minimum car parking standard of the Housing SEPP, noting that Council generally supports fewer car spaces
- redesign the basement car parking layout so that two tandem or stacked car spaces are not allocated to two bedroom, one bedroom or studio apartments, and reduce the driveway width to comply with the DCP controls

- provide a Traffic Management Strategy to address the traffic management at the car lift entry and waiting bay operation
 - minor amendments to the waste storage areas to achieve compliance with Council's Waste Management Guidelines, and clarify waste service arrangements
 - minor amendments to the submitted Flood Report, and consider incorporating a driveway layback to the vehicle entrance to achieve a higher FFL to address flood levels
 - amend the roof terrace landscaping to provide adequate canopy trees, clarify how the elevated planters will be maintained, and amend the submitted Wind Report to provide a quantitative analysis based on testing, and incorporate the recommendations of the Wind Report into the architectural plans
 - provide a pruning schedule to illustrate the extent of pruning required to the street tree on Kippax Street to facilitate the proposed awning above the building entrance
13. The applicant responded to the request on 2 February 2026, and submitted revised architectural and landscaping plans, a CI4.6 written variation to the minimum car parking space standard of the Housing SEPP, a Structural Report, and updated consultant reports including updated Flood Report, updated Waste Management Plan, Wind Report, and updated Traffic Report. The submitted amendments and additional information generally address Council's concerns. The following amendments to the design were made:
- retention of the return wall to Sophia Street, and a façade indentation has been provided along with a reduction of height of the brick podium to provide a clearer visual separation between the retained and new portions of the building
 - the concrete finish to the base facade on the corner of Kippax Street and Waterloo Street has been revised to be brick base to better tie in with adjacent brick podiums, and the height of the brick podium on Kippax Street has been increased to reduce the horizontal shadow line
 - amendments to the configuration of apartments to improve the proportion of apartments that receive natural cross-ventilation and reconfigure Unit 101 to delete the snorkel bedroom
 - redistribution of affordable housing units to provide units with improved amenity
 - reconfiguration of the basement car spaces to delete the tandem car spaces and replace them with double stacker parking spaces
 - minor reconfiguration to the waste storage areas
 - revised landscape design to the roof terrace, including six canopy trees

Proposed Development

14. The application seeks consent for the substantial demolition of the existing building and construction of an 8-storey mixed-use development comprising retail tenancies on the lower levels, basement carparking, 42 residential apartments with affordable housing units and associated rooftop common open space and landscaping. The proposed development consists of:

Basement Level

- 18 car spaces including two accessible spaces, seven double stackers, and a car lift to Sophia Street

Lower Ground Level

- Two separate retail tenancies (one fronting Sophia Street and one fronting Kippax Street)
- Residential and commercial waste storage areas, building services, and 42 bike parking spaces
- Loading dock with vehicle access from Sophia Street

Ground Level

- One retail tenancy, with entrances from Waterloo Street
- Main residential lobby to Kippax Street

Level 1

- Three residential apartments comprising 1 x one bedroom unit, and 2 x two bedroom units

Level 2

- Eight residential apartments comprising 3 x studio apartments, 3 x one bedroom units and 2 x two bedroom units

Level 3

- Eight residential apartments comprising 3 x studio apartments, 3 x one bedroom units and 2 x two bedroom units

Level 4

- Seven residential apartments comprising 2 x studio apartments, 3 x one bedroom units and 2 x two bedroom units

Level 5

- Six residential apartments comprising 1 x studio apartment, 2 x one bedroom units and 3 x two bedroom units

Level 6

- Six residential apartments comprising 1 x studio apartment, 3 x one bedroom units, 1 x two bedroom unit and 1 x three bedroom units

Level 7

- Four residential apartments comprising 1 x two bedroom unit and 3 x three bedroom units

Rooftop Level

- Outdoor communal open space with associated landscaping
- Rooftop mechanical plant

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



Figure 10: Proposed basement floor plan

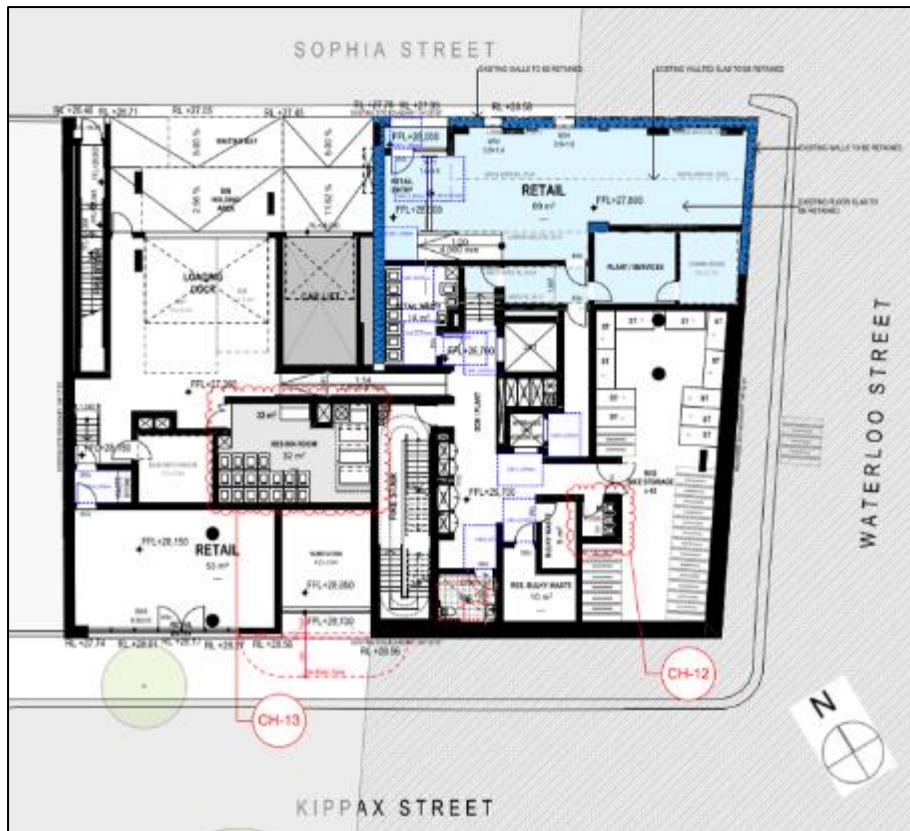


Figure 11: Proposed lower ground floor plan

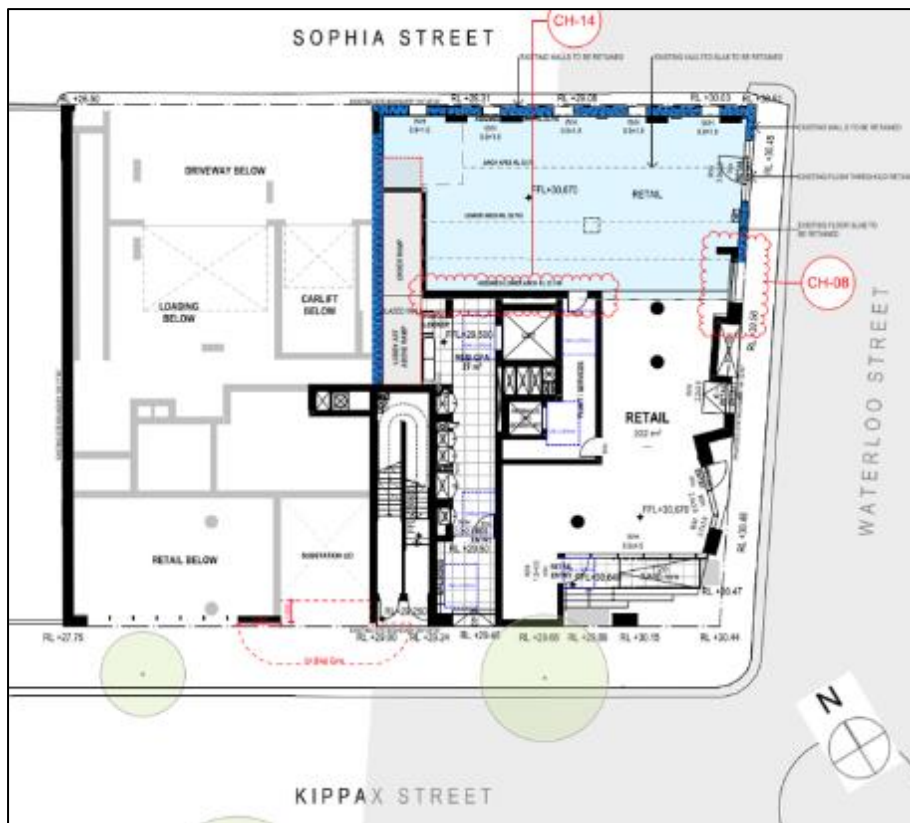


Figure 12: Proposed ground floor plan

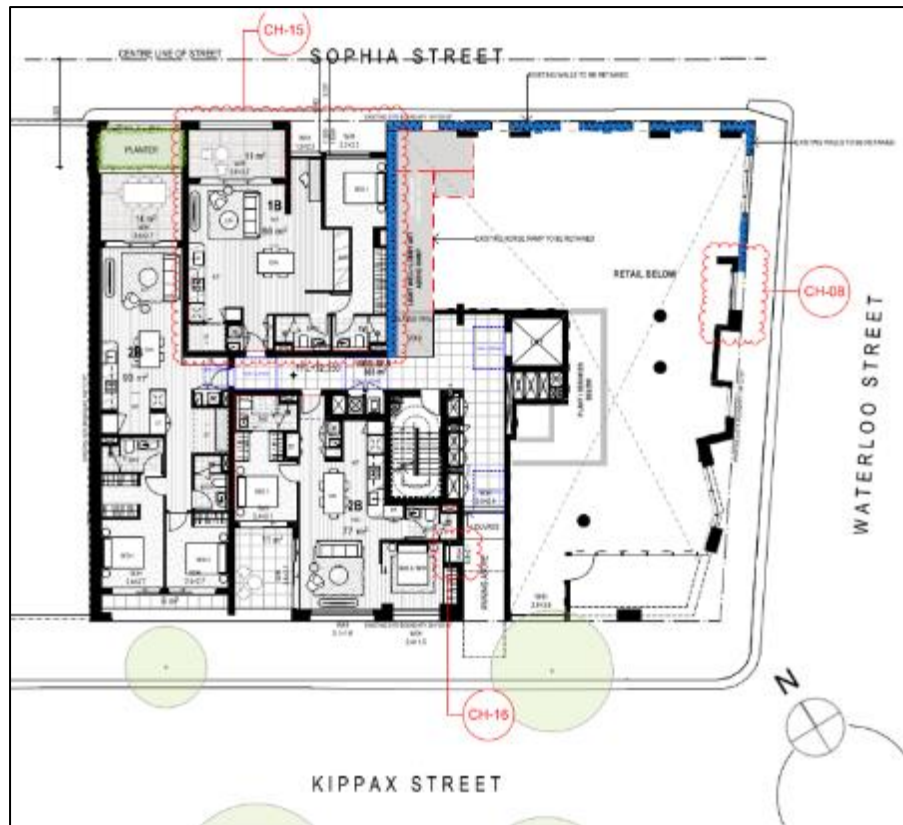


Figure 13: Proposed Level 1 floor plan

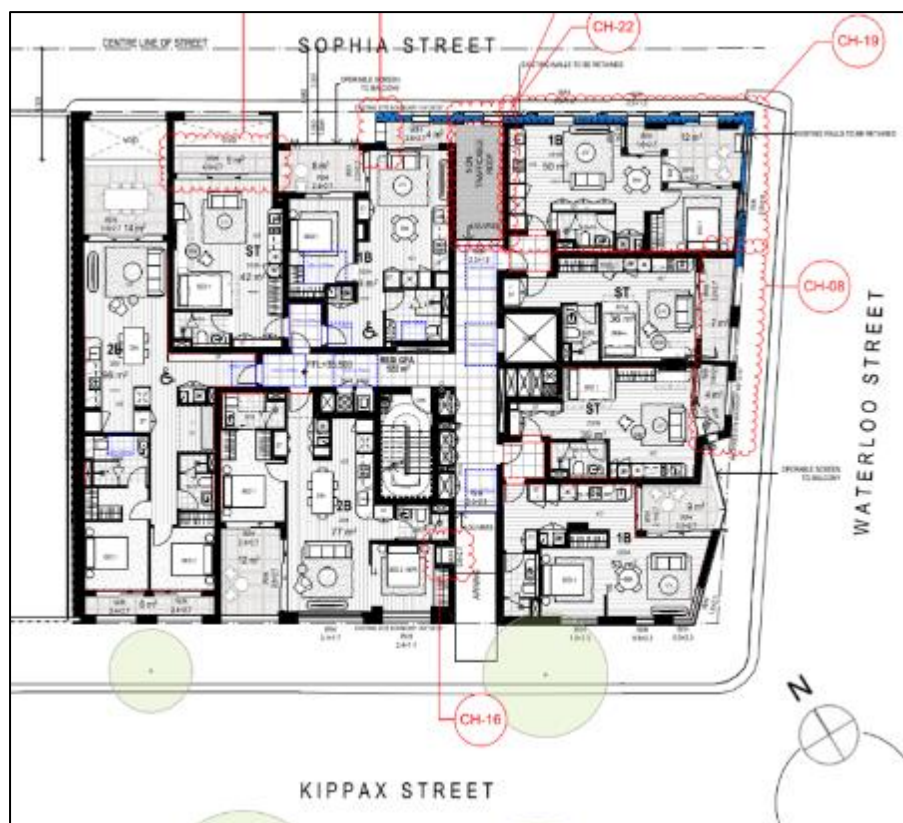


Figure 14: Proposed Level 2 floor plan

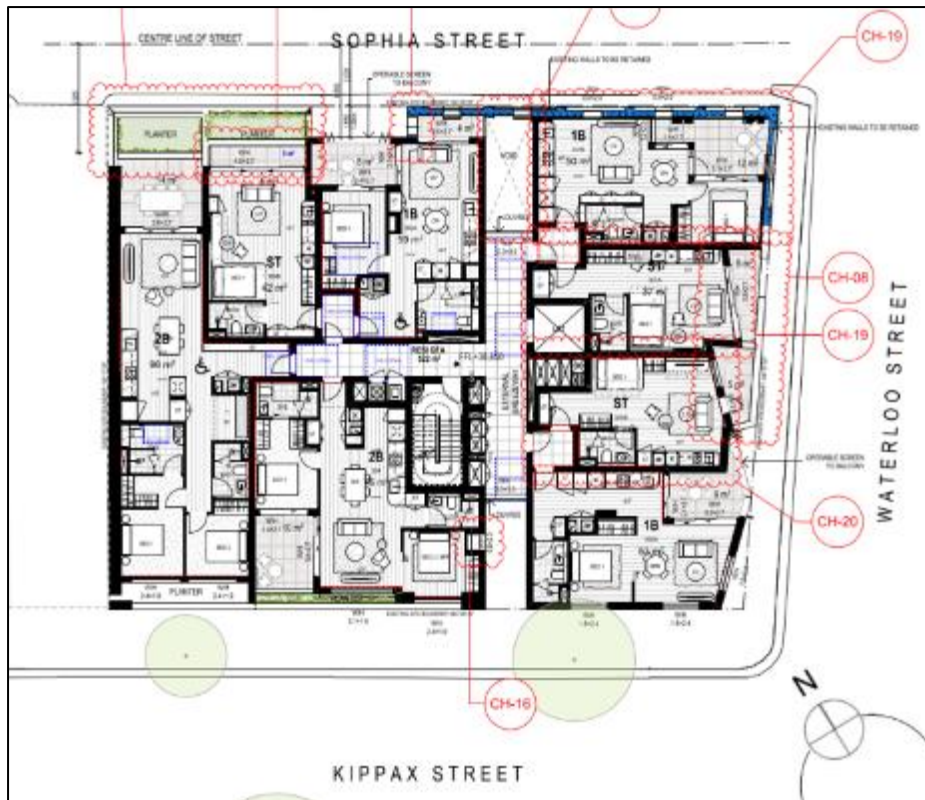
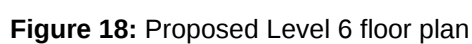
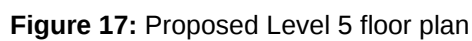


Figure 15: Proposed Level 3 floor plan



Figure 16: Proposed Level 4 floor plan



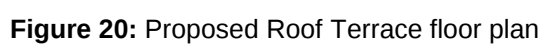
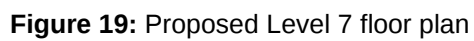




Figure 21: Proposed south (Kippax Street) elevation



Figure 22: Proposed east (Waterloo Street) elevation

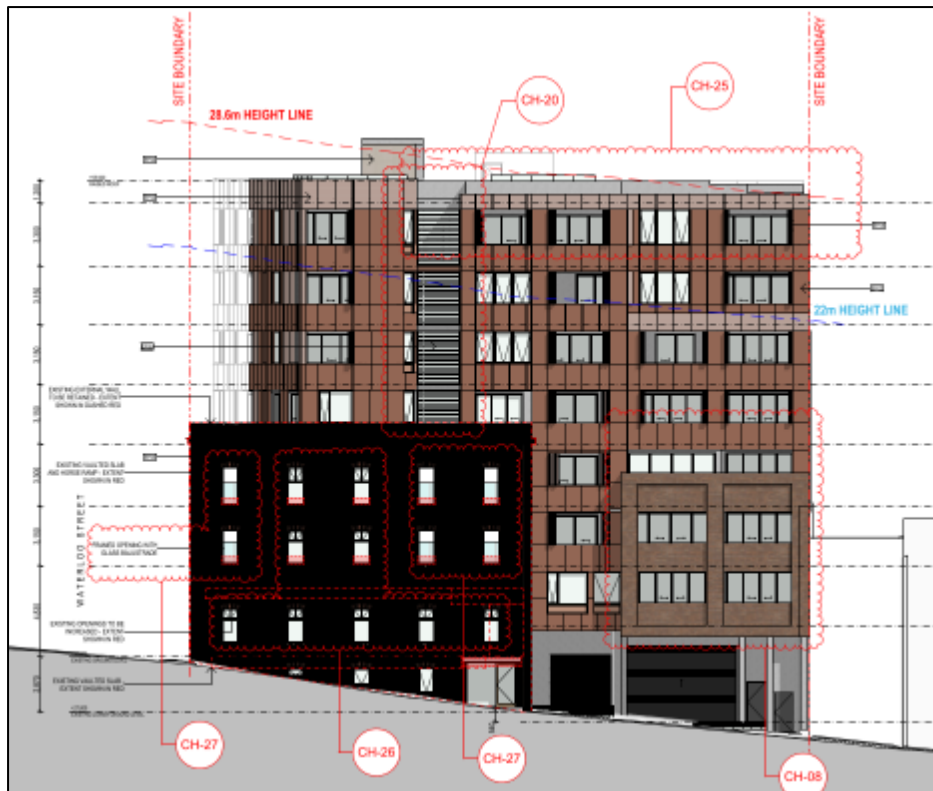


Figure 23: Proposed north (Sophia Street) elevation

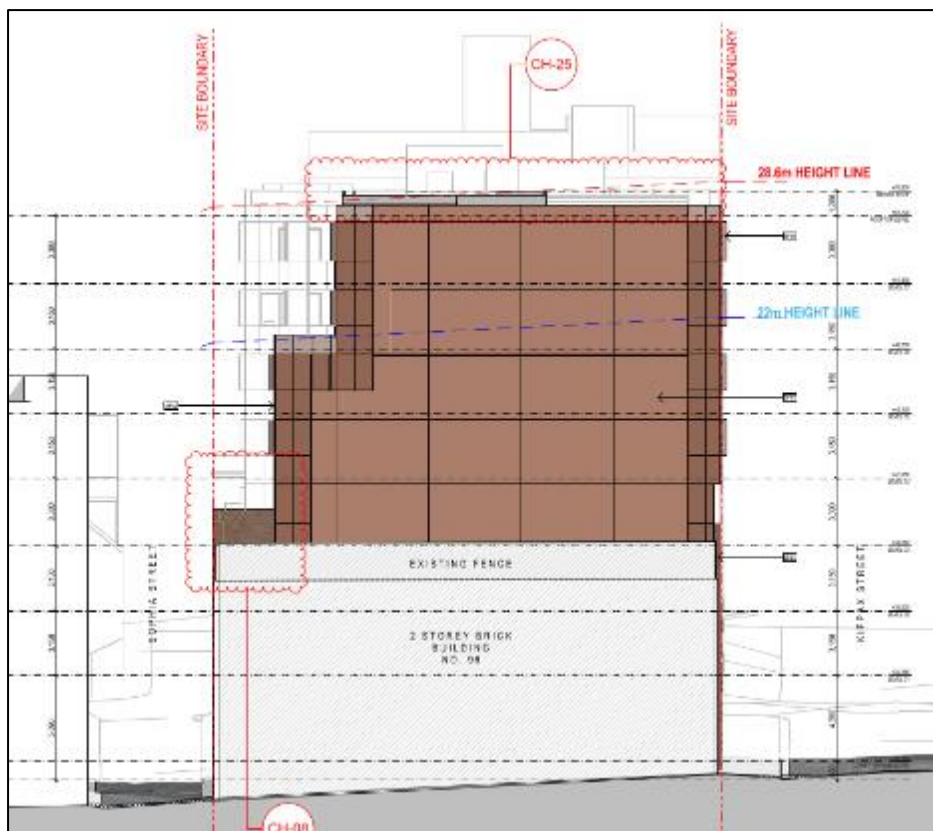


Figure 24: Proposed west elevation

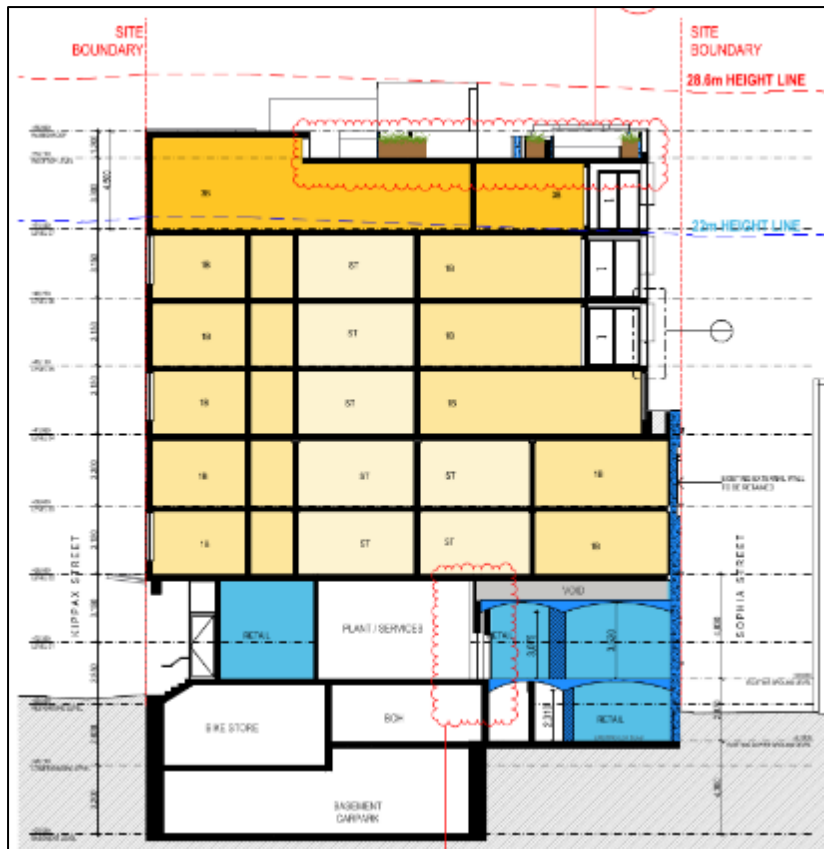


Figure 25: Proposed section plan



Figure 26: 3D perspective of the proposed development looking north from the corner of Kippax Street and Waterloo Street



Figure 27: 3D perspective of the proposed development looking south from the corner of Waterloo Street and Sophia Street

Assessment

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

Water Management Act 2000

17. The subject application has not been nominated as integrated development. The application was referred to WaterNSW, who responded, advising that the proposed development requires separate approval for dewatering under Section 60 of the Water Management Act 2000. Therefore, conditions of consent are recommended to ensure that the relevant dewatering approvals are obtained from WaterNSW prior to construction works commencing.

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. A Preliminary Site Inspection (PSI) Report has been submitted which provides a comprehensive assessment of the site's environmental condition in accordance with the requirements of the SEPP and relevant guidelines, and concludes that the site does not pose an unacceptable risk to human health without further investigations.
34. The Council's Health Unit has reviewed the information provided and is satisfied that the site can be made suitable for the proposed uses subject to recommended conditions of consent.
35. Standard conditions of consent are recommended to mitigate potential risks of contamination as a result of the proposed works, including requiring all imported fill to be validated, and for Council to be notified of any new evidence of contamination during building works.
36. The consent authority may be satisfied that, subject to conditions, that the site can be made suitable for the proposed uses.

State Environmental Planning Policy (Housing) 2021

37. The aim of SEPP (Housing) 2021 is to provide a consistent planning regime for the provision and maintenance of affordable rental housing and to facilitate the delivery of new affordable rental housing.
38. Section 7.32 of the EP&A Act and states that where the consent authority is satisfied that the development meets certain criteria, and a Local Environmental Plan authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.
39. Clause 7.13 (Contribution for purpose of affordable housing) of the Sydney Local Environmental Plan 2012 allows for circumstances where an affordable housing contribution may be levied for development of land in residual lands being land outside of the Central Sydney, Ultimo-Pyrmont, and Green Square areas where an affordable housing contribution also applies.
40. This matter is discussed in further detail under the heading Financial Contributions below.

Chapter 2 Affordable Housing

Part 2 Development for affordable housing

Part 2 Division 1: In-fill affordable housing

41. The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.
42. The proposed development seeks to utilise the full 30% affordable housing bonuses afforded by Section 16 of the SEPP for floor space ratio and height, respectively.

Additional floor space ratio and height

43. Clause 16 permits an additional floor space ratio of up to 30%, greater than the maximum permitted floor space ratio applying to the site, based on the minimum affordable housing component as a proportion of the development.

44. In this instance, as the full 30% floor space ratio bonus is sought, the minimum affordable housing component must equal 15% of gross floor area of the development.
45. The proposed development allocates a total of 10 apartments comprising four apartments on Level 2 (Units 201B, 201A, 205B and 205A), five apartments on Level 3 (Units 301A, 301B, 303, 305A and 305B), and one apartment on Level 4 (Unit 406) as affordable housing, which equates to 575.4 sqm of GFA or 16% of the development.
46. Accordingly, as per subsection 16(3) additional building height that is the same percentage as the additional floor space ratio is permitted, as outline above, in this instance an additional 30%.
47. It should be noted that the In-fill affordable housing practice states that local development standards should be applied flexibly and need to be balanced against the need to realise more affordable housing. The practice note also states that affordable housing units should achieve equivalent amenity as the market units in the same development. Out of the 10 affordable housing units, 70% (seven units) achieve compliant solar access, and 50% (five units) achieve compliant cross-ventilation in accordance with the requirements of the Apartment Design Guide (ADG). This is consistent with the proportion of apartments in the development as a whole that achieve solar access and cross-ventilation in accordance with the ADG requirements.
48. The proposed affordable housing is proposed to be operated by EchoRealty which is a Tier 2 Community Housing Provider. A letter from EchoRealty has been submitted to confirm that they have been engaged and agree to manage the affordable housing component for a period of no less than 15 years in accordance with Clause 21 of the SEPP. A condition of consent is recommended to require a restriction, under s88 E of the Conveyancing Act, to be registered on the Title of the building restricting the use of the building consistent with the affordable housing terms under the SEPP for a period of at least 15 years.
49. Section 22 of the SEPP confirms that land on which affordable housing under this division is carried out may be subdivided with development consent. The future subdivision of the land would be subject to a separate development application.

Clause 19 – Non-discretionary development standards

50. Under Clause 19, compliance with any of the following standards must not be used to refuse consent for in-fill affordable housing. If the following non-discretionary development standards are complied with the consent authority cannot require more onerous standards for the matters.
51. An assessment of the proposal house against each standard is provided in the table below.

Standards that cannot be used to refuse in-fill affordable housing

Provision	Compliance	Comment
Site area A minimum site area of 450 sqm.	Yes	The site has an area of 788.5 sqm.

Provision	Compliance	Comment
Landscaping A minimum landscaped area that is the lesser of either 35 sqm per dwelling or 30% of the site.	No	While the development provides 129.1 sqm of landscaping within the roof terrace and to private balconies, representing 16.37% of the site area, the definition for landscaped area under the Housing SEPP excludes part of the site that is occupied by a building, and therefore the proposal does not provide any landscaped area as defined by the SEPP. A request to vary the minimum landscaped area development standard in accordance with Clause 4.6 has been submitted and is supported. Refer to "discussion" section for details.
Deep soil A deep soil zone of at least 15% of the site area.	Yes	Not applicable, as Chapter 4 "Design of residential apartment development" applies.
Solar Access at least 3 hours of solar access will be provided between 9.00am and 3.00pm at mid-winter to living rooms and private open space in at least 70% of the dwellings	Yes	Not applicable, as Chapter 4 "Design of residential apartment development" applies.
Parking For dwellings used for affordable housing, the following minimum number of parking spaces is required: 0.4 parking spaces for 1 bedroom units, 0.5 parking spaces for 2 bedroom units, 1 parking space for 3 or more bedroom units, For dwellings not used for affordable housing, the	No	The proposal requires a total of 30 car spaces (4 car spaces for affordable units and 26 car spaces for non-affordable units). 18 car spaces are proposed within the basement level, with 16 of the car spaces being dedicated to the residential component of the development. This represents a shortfall of 46% to the development standard. A request to vary the minimum car parking space development standard in accordance with Clause 4.6 has been submitted and is supported. Refer to "discussion" section for details.

Provision	Compliance	Comment
following minimum number of parking spaces is required: • 0.5 parking spaces for 1 bedroom units, • 1 parking space for 2 bedroom units, • 1.5 parking spaces for 3 or more bedroom units		
Minimum internal area The minimum internal area as specified in the Apartment Design Guide	Yes	The development complies with the minimum internal area requirements for residential apartment development in the ADG. See below ADG compliance table.

Chapter 4 - Design of Residential Apartment Development

52. The aim of Chapter 4 is to improve the design quality of residential apartment development in New South Wales.
53. When determining an application for a residential flat development of 3 or more floors and containing 4 or more apartments, the SEPP requires the consent authority take into consideration a number of matters relating to design quality, including the design quality principles as set out in Schedule 9.
54. The applicant has submitted a design verification statement and design report prepared by Nicholas Byrne of DKO Architects, registration number: 7806 (NSW), with the application, addressing the design quality principles and the objectives of parts 3 and 4 of the Apartment Design Guide. The statement is deemed to satisfy Clause 29 of the Environmental Planning and Assessment Regulation 2021.
55. An assessment of the proposal against the design quality is provided as follows:

(a) Principle 1: Context and Neighbourhood Character

The proposed development is compatible with the context and neighbourhood character of the Surry Hills Central locality. In considering the context and neighbourhood character the current need for additional housing, in particular affordable housing, is relevant to context, not just within Surry Hills but more broadly. The development is largely consistent with the scale of immediately surrounding six to eight storey residential and commercial buildings.

(b) Principle 2: Built Form and Scale

The scale, bulk and height are appropriate having regard to the desired future character of the neighbourhood and context. The built form and modulation of the new building seeks to maximise internal amenity while responding to various constraints of the site, including the retention of part of the original stable building on the corner of Waterloo Street and Sophia Street.

(c) Principle 3: Density

The proposed development provides additional diverse and affordable housing options within the locality and is generally consistent with density permitted by the relevant development controls for the site. The dwelling mix provides housing options, including one, two and three bedroom apartments.

Notwithstanding the increased density, the proposed development achieves reasonable amenity and is further maximised through the provision of shared communal facilities and open space.

(d) Principle 4: Sustainability

The proposed development provides adequate internal residential amenity. Natural cross ventilation has been maximised where possible whilst natural ventilation has been achieved to all apartments. A central breezeway is provided to the upper residential levels to provide additional natural ventilation opportunities where strict cross-ventilation cannot be achieved.

The orientation of the upper levels has been designed to maximise solar access to habitable rooms and private balconies of the apartments.

The partial retention of the fabric of the original stables building provides opportunities for adaptive reuse which is central to sustainable design.

(e) Principle 5: Landscape

Opportunities for meaningful landscaping are constrained by site conditions and retention of existing structures, which limit the potential for deep soil zones and ground level planting.

Notwithstanding these limitations, the proposal provides sufficient planting on structures, including rooftop landscaping and canopy trees which contribute to urban greening, offering an improvement over the existing development on the site which provides no landscaping.

(f) Principle 6: Amenity

The proposed development provides diverse apartments typologies. The internal layouts have been designed to provide flexibility and maximise amenity having regard to the retention of original fabric of the existing stables building.

The proposed development achieves reasonable levels of residential amenity, having regard to the design guidance in the ADG and considerations for Affordable Housing in the SEPP, and is further maximised through the provision of shared rooftop communal facilities and open space.

(g) Principle 7: Safety

The development has been designed to appropriately separate residential and commercial uses. The proposed development minimises the opportunity for crime through principles of passive surveillance and active retail frontages at ground level.

Private open space, living areas and retail frontages are generally located at ground level. Separate retail and residential entrances are provided and are clearly identified along the building frontages. All apartments have secure lift access.

(h) Principle 8: Housing Diversity and Social Interaction

The development includes a mix of one, two and three bedroom apartments, and the affordable housing component contributes to housing diversity within the LGA providing much needed affordable housing opportunities. The design of the building includes roof-top common open spaces which provide a desirable environment for social interaction and would foster community.

(i) Principle 9: Aesthetics

The external appearance of the building is largely informed by the retention of original fabric of the stables building, and as a result, presents two distinct architectural forms with varying scales and heights, resulting in a visually engaging facade that offers interest and balances retention of original fabric with residential amenity.

56. The development is acceptable when assessed against the SEPP including the above stated principles and the associated Apartment Design Guide (ADG). These controls are generally replicated within the apartment design controls under the Sydney Development Control Plan 2012. Consequently, compliance with the SEPP generally implies compliance with Council's own controls. A detailed assessment of the proposal against the ADG is provided below.

3D Communal and Public Open Space	Consistency	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	The proposal provides 274.5 sqm of communal open space on the roof, which equates to 34.8% of the site area and complies.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	The development achieves over 2 hours of direct sunlight to at least 50% of the usable areas of communal open space on 21 June and complies.

3E Deep Soil Zones	Consistency	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m	No	The proposed development and existing buildings provide near full site coverage. The proposal retains part of the existing stables building and the new building occupies the entire site and therefore no deep soil zones are provided. It is noted that due to the location of the retained portion of the stables building in the north-eastern portion of the site, and required service vehicle access from the northern Sophia Street frontage, any deep soil zone would likely be required to be located in the southern portion of the site and would not be subject of adequate sunlight to facilitate new tree growth, as the deep soil zone would be entirely overshadowed by the new building envelope. To offset the lack of ground level deep soil area, sufficient landscaping and canopy trees are proposed to the communal roof terrace area, which is considered an acceptable outcome as it meets the objective of this section of the ADG, which is "allow for and support healthy plant growth" and improve residential amenity.

3F Visual Privacy	Consistency	Comment
Up to 4 storeys (12 metres): 6m between habitable rooms / balconies 3m between non-habitable rooms 5 to 8 storeys (25 metres): 9m between habitable rooms / balconies 4.5m between non-habitable rooms	Partial	The residential component of the development is up to eight storeys and provides separation distances between 3-9m to the centre of Sophia Street, between 6-12m to the centre of Waterloo Street, and approximately 8m to the centre of Kippax Street. Measures to mitigate visual privacy impacts have been incorporated into the design of the new building. Refer to "discussion" section of this report, for detailed assessment of visual privacy impacts and separation distance.

3F Visual Privacy	Consistency	Comment
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Yes	Apartment configuration provides appropriate separation between private habitable rooms and circulation spaces. Only secondary recessed windows to bedrooms are located within the external area of the upper level breezeway in the southern portion of the building, and these windows do not directly face the circulation corridors of the breezeway.

4A Solar and Daylight Access	Consistency	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	30 of 42 (71.4%) of apartments achieve the minimum 2 hours' direct sunlight at midwinter to living rooms and private open spaces.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	6 of 42 (14.3%) apartments receive no direct sunlight at mid-winter.

4B Natural Ventilation	Consistency	Comment
All habitable rooms are naturally ventilated.	Yes	All habitable rooms have a window to an external space.
Minimum 60% of apartments in the first 9 storeys of the building are naturally cross ventilated.	No	Only 21 of 42 (50%) apartments are naturally cross-ventilated. It is noted that the layout and location of dual aspect apartments is somewhat constrained by the retention of part of the stables building on the lower three storeys. The north-south breezeway on the upper levels provides additional natural ventilation to some of the single aspect apartments as a resilience measure to improve the residential amenity. Refer to "discussion" section of this report for detailed assessment of the residential amenity.

4B Natural Ventilation	Consistency	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	No dual aspect apartment exceeds 18m in depth.

4C Ceiling Heights	Consistency	Comment
Habitable rooms: 2.7m Non-habitable rooms: 2.4m	Yes	A floor-to-floor height of 3.15-3.3m is proposed which can accommodate a floor to ceiling height of 2.7m.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	Partial	The site is zoned MU1 Mixed-Use. A floor-to-floor height of 3m is provided for the ground floor retail space, and 3.52m for the first floor retail space within the stables building. The ground floor ceiling height is considered acceptable as it is informed by the retention of the existing slab and arched vaults of the stables building. The retail tenancy fronting Kippax Street has a floor to ceiling height of approximately 4.5m.

4D Apartment Size and Layout	Consistency	Comment
Minimum unit sizes: • Studio: 35sqm • 1 bed: 50sqm • 2 bed: 70sqm • 3 bed: 90sqm The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.	Yes	All apartment sizes are compliant with the minimum unit size requirements of the ADG.

4D Apartment Size and Layout	Consistency	Comment
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.		
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	All habitable rooms are naturally ventilated.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	All habitable rooms other than open plan layouts meet the minimum room depth requirement based on 3.15-3.3m ceiling heights.
8m maximum depth for open plan layouts.	Partial	It is noted that the open plan living/dining/kitchen area of the cross-through apartments (Units 03) on Levels 1-5 (5 apartments total) have depths of approximately 9m. This minor inconsistency with the ADG requirements is considered acceptable as the inconsistency with the ADG requirement is relatively minor, and due to their configuration, the subject apartments receive adequate cross ventilation and solar access and therefore meet the objective of the control which is to provide a high standard of internal amenity.
Minimum area for bedrooms (excluding wardrobes): • master bedroom: 10sqm • all other bedrooms: 9sqm Minimum dimension of any bedroom is 3m (excluding wardrobes).	Yes	All bedrooms are compliant with the minimum room size and minimum dimension requirements.
Living and living/dining rooms minimum widths:	Yes	All living room and dining room areas are compliant with the minimum room width requirements.

4D Apartment Size and Layout	Consistency	Comment
• Studio and one-bedroom: 3.6m • 2-bedroom or more: 4m		
4m minimum width for cross over and cross through apartments.	Yes	All dual aspect apartments have minimum widths greater than 4m.

4E Private Open Space and Balconies	Consistency	Comment
Studio apartments are to have a minimum balcony area of 4sqm with a minimum depth of 1m. One bed apartments are to have a minimum balcony area of 8sqm with a minimum depth of 2m. 2 bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m. 3 bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.	Yes	All apartments comply with the minimum balcony size requirements in terms of overall area and depths.

4F Common Circulation and Spaces	Consistency	Comment
The maximum number of apartments off a circulation core on a single level is 8.	Yes	No more than eight apartments are provided at each level, served by the central circulation core.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other	Yes	Appropriate separation is generally provided between bedroom and living room windows and common circulation areas. While Unit 04 on each level features bedroom windows that face the external

4F Common Circulation and Spaces	Consistency	Comment
rooms should be carefully controlled.		breezeway, these windows are secondary windows and are offset from the internal breezeway circulation corridor, and are recessed. As such, they are provided as a resilience measure to provide additional natural ventilation to these apartments which are single aspect, and are operable to mitigate any noise or visual privacy impacts.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Operable louvers are provided to the northern and southern ends of the breezeway circulation corridors to allow for natural light and ventilation.

4G Storage	Consistency	Comment
Minimum storage provision facilities: • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ (Minimum 50% storage area located within unit)	Yes	Adequate storage space is provided in each apartment, in addition to extra storage cages being provided within the basement car parking area.

4J Noise and Pollution	Consistency	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	The site is not located on a noisy road and is not significantly affected by vehicle noise and pollution. An acoustic report submitted with the application concludes that internal noise levels can be met provided acoustic treatment is provided to windows. This treatment forms part of the recommended conditions of consent.

State Environmental Planning Policy (Sustainable Buildings) 2022

57. 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 2 Standards for residential development - BASIX

58. A NatHERS Certificate (HR-RJXLEH-02) and BASIX Certificate have been submitted with the development application (1805542M_02).
59. The BASIX and NatHERS certificates lists measures to satisfy BASIX and energy efficiency requirements which have been incorporated into the proposal. The final set of architectural plans has also been stamped by the NatHERS assessor and achieves a 7.5 thermal performance star rating. A condition of consent is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Chapter 3 Standards for non-residential development

60. 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, 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.

Section 3.2 Development Consent for non-residential development

61. 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.

62. 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 the retention of existing fabric and structures, and the installation of energy efficient appliances.

63. 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.

State Environmental Planning Policy (Transport and Infrastructure) 2021

64. 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

65. 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.

66. As such, the application was referred to Ausgrid for a period of 21 days and a response was received, which noted that further detailed design information would be required to install a substation to service the site. The proposal includes spatial provision for a chamber substation fronting Kippax Street. Separate approval from Ausgrid will be required for any new substation prior to issue of a construction certificate.

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

67. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.

68. The site is within the Sydney Harbour Catchment and eventually drains into Sydney Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SEPP are not applicable to the proposed development.
69. The proposal is not anticipated to have any adverse impacts on stormwater quality and runoff from the site, subject to appropriate conditions of consent for erosion and sediment control measures to be implemented during building works, and for the stormwater drainage system to be designed in accordance with Council's Stormwater Drainage Manual.

Local Environmental Plans

Sydney Local Environmental Plan 2012

70. 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 mixed-use development comprising a "residential flat building" and "retail 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 22m plus an additional 30% for the purposes of affordable housing under CI 16(3) of the SEPP (Housing) 2021 (28.6m) is permitted. A maximum height of 29.14m is proposed to the top of the lift overrun. 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. See further details in the 'Discussion' section below.

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	A maximum floor space ratio of 3.5:1 plus an additional 30% for the purposes of affordable housing under Cl 16 of the SEPP (Housing) 2021 (4.55:1 or 3587.5 sqm) is permitted. A floor space ratio of 4.55:1 or 3580.1 sqm is proposed. The proposed development complies with the maximum floor space ratio development standard.
4.6 Exceptions to development standards	Yes	The proposed development seeks to vary the development standard prescribed under Clause 4.3 "Height of Buildings", and Clause 19(2)(b)(e) & (f) of the SEPP (Housing) 2021. A 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 not identified as a heritage item and is not located within a heritage conservation area. However, the proposal involves demolishing existing warehouse buildings older than 50 years, and retaining fabric and features of an original stables building associated with the "Former Schweppes Building" which is identified as a local heritage item (I1550), located at No.65-67 Foveaux Street. See further details in the 'Discussion' section below.
5.21 Flood planning	Yes	The site is identified as being subject to 1% Annual Exceedance Probability (AEP) flooding. The application proposes development at or below the flood planning level. A flood report accompanies the application demonstrating that the development is able to comply with the City's Interim

Provision	Compliance	Comment
		Floodplain Management Policy, satisfies the provisions of the standard and suitably address flood risk and mitigation for the site. Whilst it is recommended that the loading entrance to Sophia Street be raised to 300mm above the adjacent gutter (RL27.25), given the constraints of the site and required gradient for the loading dock ramp, the proposed entrance level being 210mm above the gutter is considered acceptable by Council's Public Domain team, subject to a recommended condition of consent requiring design verification for the entrance levels of the proposal prior to issue of a construction certificate. Pursuant to CI 5.21 of the LEP, the proposal will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood and incorporates appropriate measures to manage risk to life in the event of a flood.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	Under cl 6.21D a competitive design process is required as the proposal exceeds 25m in height and is located outside Central Sydney. The applicant has requested that the consent authority waive the requirement for a competitive design process on the grounds that this would be unreasonable or unnecessary in the circumstances. Under the circumstances, this request is supported, for the following reasons: Due to the sloping topography of the site, the proposal has a

Provision	Compliance	Comment
		maximum height of 29.14m for the lift overrun, and only the roof terrace and part of Level 7 exceed 25m in height. • The proposal is of an appropriate massing and form, responds to the constraints and conditions of the site, and provides a high level of architectural detailing whilst providing a suitable level of amenity to future occupants. • A competitive design process in this instance is not considered to add any significant value to understanding the site constraints or informing a suitable building envelope and is therefore considered unnecessary. Furthermore, The City has noted that it is unreasonable or unnecessary for developments such as this to be subject to the creation of a site specific DCP or a competitive design process, and as such an amendment to the relevant Clauses of the LEP has been endorsed by Council. This amendment involves the relevant development trigger, being development in respect of a building that had a height above ground level of 25 metres on any other land, is to be amended to 35 metres per the Policy and Housekeeping Amendments 2023 (PP-2024-709) which received Gateway approval in October 2024, pending Gazettal. 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. The proposal has been designed around the retention of part of the original stables building (external façade, vaulted arches, horse ramp and floor slabs) in the north-east portion of the

Provision	Compliance	Comment
		site, and responds to the site constraints while providing an appropriate form and massing with a high level of architectural design and detailing, that is considered to provide sufficient amenity to the proposed residential apartments whilst adequately mitigating any adverse impacts to the surrounding properties. 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.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.7 Retail premises	Yes	A maximum of two car spaces is permitted for the retail component of the development. The car parking requirements under the SEPP (Housing) 2021 prevail over the SLEP regarding car spaces for residential apartments. The proposal provides a total of 18 car spaces within the basement level, with two of those car spaces being dedicated to the retail uses. Refer to "discussion" section for detailed assessment against the car parking requirements under Section 19(2)(e)&(f) of the SEPP (Housing) 2021.
Division 3 Affordable housing		
7.13 Contribution for affordable housing	Yes	The site is identified as being on 'residual lands' under this clause. Clause 7.13(1) of the LEP advises that where there is a change of use of

Provision	Compliance	Comment
		existing floor area from other than residential accommodation to residential accommodation, or for alterations and additions to an existing building that result in the creation of more than 200 sqm of GFA for residential accommodation, a contribution is required to be made for the purpose of affordable housing. The proposal involves the creation of over 200 sqm of GFA for the purpose of residential accommodation. As such, a contribution is required under this clause. See "financial contributions" section of this report below for details as to how the contribution is calculated.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The submitted Geotechnical Report identifies that there is an extremely low probability of ASS occurrence on the site, and that proposed development would not result in lowering of groundwater levels. Therefore, the proposed works do not require the preparation of an Acid Sulfate Soils Management Plan.
7.20 Development requiring or authorising preparation of a development control plan	Yes	As the proposal results in a building that exceeds 25m in height and is located outside Central Sydney, a site specific development control plan is required under the control. In this instance the preparation of a site specific development control plan is considered unreasonable and unnecessary in the circumstances. Refer to assessment against CI 6.21 of the SLEP above.

Provision	Compliance	Comment
7.26 Public art	Yes	Refer to Section 3.1 of the SDCP compliance table below.

Development Control Plans

Sydney Development Control Plan 2012

71. 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

72. The site is located within the Surry Hills Central locality. The proposed development is in keeping with the unique character and the design principles of the Surry Hills Central locality. The proposed development reinforces the distinct retail character along Kippax Street, by continuing to provide ground level retail tenancies with active frontages, and the retention of part of the original stables building on-site assists in retaining the warehouse style character along Kippax and Foveaux Streets.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	<i>Public Art:</i> As the estimated cost of works exceeds \$10 million, public art is required to be provided in accordance with the City of Sydney Guidelines for Public Art in Private Development and the Public Art Policy. A Preliminary Public Art Plan prepared by Artscape has been submitted and identifies opportunities for public art on the Kippax Street and Waterloo Street facades of the new building, as well as the prominent retail entrance at the corner of Kippax and Waterloo Streets. The potential public art opportunities include integrated artwork into the metal panelling of the façade of the new building, bas relief designs into concrete surfaces, and applying sculptural elements. The preliminary public art plan is supported by Council's Public Art team subject to appropriate conditions requiring a detailed public art plan be submitted to and approved by Council

Provision	Compliance	Comment
		prior to issue of a construction certificate.
3.2. Defining the Public Domain	Partial compliance	The Kippax Street frontage of the site is identified as requiring an active frontage under the DCP controls. The proposal provides active retail uses to all three street frontages with sperate entrances from Kippax St, Waterloo St and Sophia St. A separate entry lobby to the residential portion of the development is provided to Kippax Street. An awning is proposed above the residential lobby, however the awning is not supported, as it is located too high above the entrance to provide adequate weather protection, would require substantial pruning of the nearby street tree, and does not comply with the DCP controls. Refer to "discussion" section of this report. The proposal is supported by Council's Public Domain team subject to recommended conditions of consent to ensure the public domain is appropriately protected and upgraded in accordance with Council's Public Domain Policies and technical specifications, to improve pedestrian and public access and remove hazards.
3.3 Design Excellence and Competitive Design Processes	Yes	Under clause 6.21D of the SLEP a competitive design process is required as the proposal exceeds 25m in height and is located outside Central Sydney. The applicant has requested that Council waive the requirement for a competitive design process, and this waiver is supported on the grounds that this would be unreasonable or unnecessary in the circumstances. Refer to assessment against Cl 6.21 of the SLEP in the SLEP compliance table above.
3.5 Urban Ecology	No	Substantial pruning of a street tree along Kippax Street is required to facilitate a proposed awning above the entrance to the residential lobby to Kippax Street.

Provision	Compliance	Comment
		Council's Tree Management team do not support the extent of tree pruning that would be required to facilitate an awning above the Kippax Street lobby entrance at a sufficient height above the footpath. Refer to "discussion" section of this report. Appropriate conditions of consent are recommended to ensure the protection and retention of the existing street trees along the Kippax Street frontage from any adverse impacts as a result of construction activities.
3.6 Ecologically Sustainable Development	Yes	A BASIX and NatHERS certificates, NABERS Embodied Emissions Materials, and Section J Report have been submitted as part of the application to demonstrate compliance with the relevant energy performance requirements of BASIX and the National Construction Code under Section J. The proposal satisfies BASIX and environmental requirements of the SEPP (Sustainable Buildings), as well as the DCP controls. In addition, the proposal includes several positive measures relating to sustainability, including the retention of existing structures, and the installation of energy efficient appliances. Council's Environmental Projects team supports the proposal, noting that the development represents a positive outcome with respect to embodied emissions. Consent conditions are recommended to ensure that the development incorporates energy and water efficient appliances, and for the final architectural drawings to be stamped by the NatHERS assessor to ensure all the stated sustainability commitments are met. Refer to SEPP (Sustainable Buildings) above.
3.7 Water and Flood Management	Yes	The site is identified as being on flood prone land. See discussion under CI 5.21 of the LEP compliance table above.

Provision	Compliance	Comment
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposal does not involve subdivision or site consolidation. A separate application is required for any future strata subdivision of the development.
3.9 Heritage	Yes	The site is not identified as a heritage item and is not located within a heritage conservation area.
3.10 Significant Architectural Building Types	Yes	Although the proposal includes the demolition of warehouse buildings older than 50 years, as the subject buildings are not heritage items on Schedule 5 of the Sydney Local Environmental Plan 2012, draft heritage items or located within a Heritage Conservation Area, the provisions of Section 3.10 of the SDCP do not strictly apply.
3.11 Transport and Parking	Partial compliance	<i>Bike parking</i> The DCP requires a minimum of 46 bike spaces for the residential component (42 spaces for residents and 4 spaces for visitors), and 7 bike spaces for the retail uses (2 spaces for employees and 5 spaces for customers) for a total of 53 bike spaces to be provided. Personal lockers are required as well as shower and change facilities. A total of 42 bike spaces are provided for the development (35 spaces for the residential component and 7 spaces for the retail component), within a consolidated space on the lower ground floor with adjacent end of trip facilities, accessed internally with lift access, from the loading dock and from the retail tenancy to Sophia Street. Two motorbike spaces are also provided within the basement car parking level and are considered acceptable. The configuration of the bike storage areas suggests that there is sufficient space to accommodate the required additional 11 bike spaces to achieve DCP compliance by converting the designated residential storage spaces into bike spaces. Additional residential

Provision	Compliance	Comment
		storage spaces are provided in the basement level which satisfy the ADG requirements for residential storage. Given that the storage spaces on the lower ground floor are in excess of what's required by the ADG, a consent condition is recommended for the lower ground storage to be converted into bike spaces. <i>Car parking and loading</i> It is noted that the DCP requires that stacked car spaces are attached to the same strata title and that there are more stackers (14 car spaces) than three-bedroom apartments. Generally allocating more than one car space to any single or two bedroom apartment is not supported. However, detailed sections have been submitted to demonstrate that each stacker car space can be accessed individually, and therefore more than one apartment can use each stacker. The proposed development provides a loading dock with access from Sophia Street, able to accommodate a Small Rigid Service vehicle (SRV) to service the retail portion of the development. Council's Transport and Access team support the proposed development subject to recommended conditions to manage the operation of the loading dock and car lift, including requiring traffic signals to be installed, a Loading Dock Management Plan to be submitted and approved by Council prior to issue of an occupation certificate.
3.12 Accessible Design	Yes	Accessible design requirements must be complied with at the certification stages. An Access Report prepared by Vista Access Architects has been submitted to demonstrate that the proposal can comply with the accessibility requirements of the Disability Discrimination Act 1992 (DDA), National Construction Code, and Australian Standards.

Provision	Compliance	Comment
		Appropriate accessible facilities are provided within the development including accessible car spaces, as well as five adaptable apartments. This satisfactorily addresses this control.
3.13 Social and Environmental Responsibilities	Yes	The proposal includes active retail uses to Kippax Street, Waterloo Street and Sophia Street frontages, which include large glazed entrance doors and shopfront windows to ensure passive surveillance to the street. The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	A Waste Management Plan (WMP) has been submitted in accordance with Council requirements. The proposal includes suitably sized separate waste storage areas for the residential and retail components of the development (including bulky waste storage), within the lower ground floor with direct back of house access to the bin holding area within the loading dock. The proposal has been reviewed by Council's Cleansing and Waste team, who generally support the proposal, noting that the proposed kerbside "wheel-out/wheel-in" collection methodology is considered acceptable given that the proposed bin storage areas and collection point exceeds 10m and onsite waste collection using a standard 10.6m Council truck would require reversing which is considered unsafe and does not meet operational requirements. Consent conditions are recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development. A condition is also recommended for the WMP to be updated to specify a Food Organics (FO) bin on each residential level as required by the <i>Protection of the Environment Legislation Amendment</i>

Provision	Compliance	Comment
		<i>(FOGO Recycling) Act 2025</i> (Part 5A.2, Section 170E).
3.15 Late Night Trading Management	Yes	No proposed trading hours are provided for the retail tenancies. The site is not located within a late-night trading area under the DCP. The DCP permits base indoor trading hours between 7am to 10pm for Category B low impact premises, and between 7am to 12am midnight for Category C (unlicensed retail) premises. As no specific use is proposed for the retail tenancies, a condition of consent is recommended to clarify that consent is not given or implied for the specific use and operation of the retail tenancies, and that separate future development applications or complying development certificates (if applicable) for the fit out and use of the retail tenancies will be required. It is noted that the standard operating hours for a commercial premises under complying development are between 7am to 10pm, Monday to Saturday, and 7am to 8pm on Sunday and public holidays.
3.16 Signage and Advertising	Yes	Signage has not been proposed as part of this application. As the proposal includes three separate commercial tenancies, a condition of consent is recommended to require a signage strategy to be submitted and approved by Council prior to issue of a construction certificate.
3.17 Contamination	Yes	The proposal is not considered to result in any significant risk of contamination subject to appropriate conditions of consent. Refer to above discussion under SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land.

Provision	Compliance	Comment
3.18 Acoustic Amenity	Yes	The proposal involves new residential accommodation, and the site is on land identified as "Sensitive receivers - Radius 2" on the Entertainment Sound Management Map. However, the site does not have uninterrupted exposure (direct line of site) to any mapped "existing live music and performance venue", the closest of which are located to the north and north-west along the northern side of Foveaux Street. Therefore, the provisions of this section of the DCP do not apply.

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.1 Building height		
4.2.1.1 Height in storeys and street frontage height in storeys	No	The site is subject of a six storey building height control. The site is not subject to a street frontage height control. The proposed development is eight storeys in height and does not comply with the height in storeys control. The height of the proposed development is generally consistent with neighbouring multi-storey buildings in the surrounding area, including 8-9 storey commercial and residential flat buildings on the opposite side of Waterloo Street to the south-east, and 7-8 storey mixed-use buildings directly to the west in the same street block and along Kippax Street. The existing mixed-use buildings to the north along Foveaux Street also range from 3-8 storeys. The proposed development also does not give rise to any unreasonable amenity impacts to surrounding

Provision	Compliance	Comment
		properties, as a result of the bulk and scale. The proposal achieves the objectives of the control, which is to reinforce the existing or future neighbourhood character, and within the context of the site the non-compliance with the height in storeys control is therefore considered acceptable. See further details under the 'Discussion' section below, relating to clause 4.6 variation to the LEP height control.
4.2.1.2 Floor to ceiling heights and floor to floor heights	Partial compliance	The proposed development achieves the minimum floor to floor height of 4.5m for the ground level retail tenancies fronting Kippax Street and Waterloo Street. Although the lower ground floor retail tenancy fronting Sophia Street provides a floor to floor of 2.87m, this is a consequence of the sloping topography of the site along the Sophia Street frontage and the retention of the existing slab and floor levels of the existing stables building, and is acceptable. Residential apartments are provided with minimum 3.15m floor to floor heights that will achieve 2.7m ceiling heights in accordance with the ADG and DCP controls. Refer to ADG compliance table under SEPP (Housing) 2021, above.
4.2.2 Building setbacks	Yes	The site is not identified as requiring specific setbacks as shown on the "Building Setbacks and alignment map" under the DCP. The DCP specifies that "(1) where no setback or alignment is shown on the map, the setback and alignment must be consistent with adjoining buildings".

Provision	Compliance	Comment
		The proposed development has a nil setbacks to all street frontages on the lower levels, which is consistent with the existing building on the site and with the existing setback pattern in the immediate surrounding area. The proposed development provides upper level setbacks (Level 4 onwards) to the Waterloo Street and Sophia Street frontages, which is consistent with objective of the control to "(b) Establish the street frontage setback of the upper levels of residential flat buildings".
4.2.3 Amenity		
4.2.3.1 Solar access	Yes	Shadow diagrams submitted with the application have been assessed against and meets the provisions of the ADG regarding achieving adequate solar access to the residential apartments and communal open space area. The proposed development does not result in any unreasonable overshadowing to neighbouring properties, noting that additional overshadowing from the proposal falls onto commercial buildings to the south along Kippax and Waterloo Streets from 9am to 3pm mid-winter. The proposal is acceptable in that adequate solar access and natural light will be provided to the subject site and adjoining sites. Refer to ADG compliance table under SEPP (Housing) 2021, above.
4.2.3.3 Internal common areas	Yes	Corridors and lift lobbies have access to natural daylight via operable glass louvers at the northern and southern ends of the circulation breezeway. The proposal achieves the minimum 2m requirement for corridor widths in front of lifts.

Provision	Compliance	Comment
4.2.3.5 Landscaping	Yes	The proposed development incorporates extensive landscaping to the communal roof terrace, including planters and canopy trees, as well as additional planters to Levels 1, 3 and 4. The landscaping elements of the proposal are generally supported by Council's Landscape team, subject to recommended conditions of consent for the recommendations of the submitted Wind Report to be incorporated into the rooftop landscaping, and additional details of the planters (including maintenance strategy, and structural and waterproofing certification) to be submitted to and approved by the Certifier prior to issue of a construction certificate.
4.2.3.6 Deep Soil	Yes	The deep soil requirements of the SEPP (Housing) 2021 and ADG prevail over the DCP controls. Due to the proposed development and retained structures occupying almost the entire site, there is no opportunity to provide genuine deep soil areas. The proposed development provides adequate canopy trees and landscaping on structures, and is considered acceptable within the context of the site. Refer to ADG compliance table under SEPP (Housing) 2021, above.
4.2.3.7 Private open space and balconies	Yes	All apartments are provided with private open space that meets the minimum requirements of the ADG. The private open spaces are directly accessible from the living areas of the dwellings. Refer to ADG compliance table under SEPP (Housing) 2021, above.
4.2.3.8 Common open space	Yes	A total area of approximately 274.5 sqm (inclusive of landscaping) of communal open space is provided on the Roof Level with a usable area of 205.6 sqm,

Provision	Compliance	Comment
		equating to 34.8% of the site area in accordance with the ADG requirements. The communal open space is orientated to the north to achieve sufficient direct solar access, and addresses visual and acoustic privacy by providing sufficient setbacks from the street frontages. A Wind Report has been submitted to demonstrate that the roof terrace can meet the standing comfort criteria with a combination of wind protection glass screens and landscaping which have been incorporated into the architectural drawings. A condition of consent is recommended to ensure that the recommendations of the Wind Report are implemented for the roof top landscaping. Refer to ADG compliance table under SEPP (Housing) 2021, above.
4.2.3.9 Ventilation	Yes	All apartments are naturally ventilated, and 50% of apartments are cross-ventilated, with a north-south breezeway provided as a resilience measure to provide additional natural ventilation. Refer to ADG compliance table under SEPP (Housing) 2021, above, and "discussion" section below.
4.2.3.10 Outlook	Yes	All apartments are provided with a reasonable outlook. The development is not considered to result in any unreasonable impacts to outlook from any of the neighbouring apartments to the north-east across Sophia Street at No.81 Foveaux Street.
4.2.3.11 Acoustic privacy	Yes	An acoustic report prepared by Pulse White Noise Acoustics has been submitted to demonstrate that the proposed development can achieve compliance with the noise criteria outlined in Section 4.2.3.11 of the DCP,

Provision	Compliance	Comment
		as well as Council's noise policy (NSW EPA Noise Policy for Industry 2017), subject to recommend acoustic treatment to glazing, and external wall specifications. The acoustic report also includes recommendations for the proposed car lift to incorporate vibration isolation to mitigate to potential noise impacts as a result of its operation. Whilst it is noted that the specifications for the rooftop mechanical plant have not been selected, it is noted that based on the proposed location of the mechanical plant area on the roof, potential noise mitigation measures including acoustic screening and treatment can be implemented to achieve compliance with the required noise criteria. It should be noted that any future acoustic screening to the rooftop plant is unlikely to be visible from the public domain or significantly contribute to the bulk and scale of the development. Whilst it is noted that the acoustic report does not include operational details of the use of the communal roof terrace, the DCP controls do not require operation restrictions on the use of communal open space associated with residential flat buildings. It also noted that the operation of the roof terrace will be managed by the Strata Corporation. The acoustic report has been peer reviewed by Council's Environmental Health Officer team, who advised that the noise assessment is generally satisfactory. Standard noise conditions are recommended to ensure compliance with Council's noise policy, and for the recommendations of the acoustic report to be implemented.

Provision	Compliance	Comment
4.2.3.12 Flexible housing and dwelling mix	Partial compliance	The development provides a range of dwelling types, comprising ten x studio apartments (24%), fifteen x 1 bedroom apartments (36%), thirteen x 2 bedroom apartments (31%), and four x 3 bedroom apartments (10%). While the proposal provides a higher proportion of studio and one bedroom apartments than the DCP stipulates, the proposed dwelling mixture is considered acceptable given that a proportion of the apartments are designated as affordable housing units, and the proposal incorporates a number of dual key apartments and five adaptable apartments to facilitate a greater mix and number of affordable housing dwellings.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The development provides appropriate articulation through the use of varying street wall heights to the brick podium, façade indentations, and the use of metal panelling, face brick and concrete to distinguish between the retained portion of the stables building, and the new building. The scale, modulation and façade articulation of the development responds suitably to its context.
4.2.6 Waste and recycling Management	Yes	All apartments have adequate space to manage waste, and residential and commercial waste storage areas are separated. A suitably sized separate bulky waste storage area is also provided. Refer to Section 3.14 above of the DCP compliance table. A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Provision	Compliance	Comment
4.2.7 Heating and cooling infrastructure	Yes	The mechanical plant and services are generally located within consolidated areas on the roof terrace level. Standard consent conditions are recommended for the operation of the mechanical plant equipment to comply with the City's Noise Policy.
4.2.8 Letterboxes	Yes	The letterboxes are provided within the residential lobby of the building and a condition has been recommended to ensure that they are installed with non-master key locks for security.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	The site is located within the MU1 Mixed Use zone, which is equivalent to the former B4 Mixed Use zone. Subject to conditions, the development will not adversely impact the amenity of neighbouring residential properties.

Discussion

Clause 4.6 Request to Vary a Development Standard - Building Height

73. The site is subject to a maximum height control of 28.6m inclusive of 30% bonus to the 22m SLEP height control, for the purpose of affordable housing under the SEPP (Housing) 2021.
74. The proposed development exceeds the height control, with a maximum height of 29.14m above existing ground level to the top of the lift overrun, resulting in a variation of 540mm or 1.9% from the development standard.



Figure 28: 3D perspective of the proposal showing the 28.6m height plane

75. Pursuant to the requirements of Regulation 35B of the Environmental Planning and Assessment Regulation 2021, the application has been accompanied by a document setting out the grounds on which the applicant seeks to demonstrate:
- (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 regulation 35B document

76. The applicant seeks to justify the contravention of the building height 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 proposal meets the objectives of the building height standard in that the only elements proposed above the building height control is the roof area of the lift overrun and stairway. These breaching elements have a substantive setback from all the property boundaries and will not be readily visible from the public domain. The development is surrounded by seven (7) and nine (9) storey forms within the immediate vicinity and it is considered that the proposed eight (8) storey form is consistent with the

height of the surrounding context, and that the minor height breach will not have any impacts on the sharing of views for the surrounding properties.

- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
 - (i) The development amounts to a minor breach due to the roof area of the lift overrun and stairway provided only for the purpose of access to a communal rooftop area. These elements have a substantive setback from all the property boundaries and will not be readily visible from the public domain. In addition will not result in any adverse environmental amenity impacts.
 - (ii) The proposal is compliant with the FSR development standard, and no portion of the height variation is attributable to gross floor area.
 - (iii) The City of Sydney Council has recently exhibited and then endorsed draft amendments to the SLEP 2012 (Housekeeping Amendment), to permit variations to building height controls where they only relate to granting access to rooftop communal and green spaces. It is anticipated that this draft LEP will be gazetted close to the determination of this application, which is a particular environmental planning ground relevant to the proposal that supports a breach to the standard.
- 77. Precondition to granting consent where a development standard has been contravened Development consent must not be granted unless the consent authority is satisfied that the applicant has demonstrated 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.
- 78. The applicant has demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard for the following reasons:
 - (a) The height of the proposal is appropriate within the context of the site and surrounding development (including the eight storey commercial building at No.110-120 Kippax Street directly to the east, and the nine storey mixed-use building at No.14 Waterloo Street directly to the south-east) which generally varies in height between 3-9 storeys as shown in the below figure.

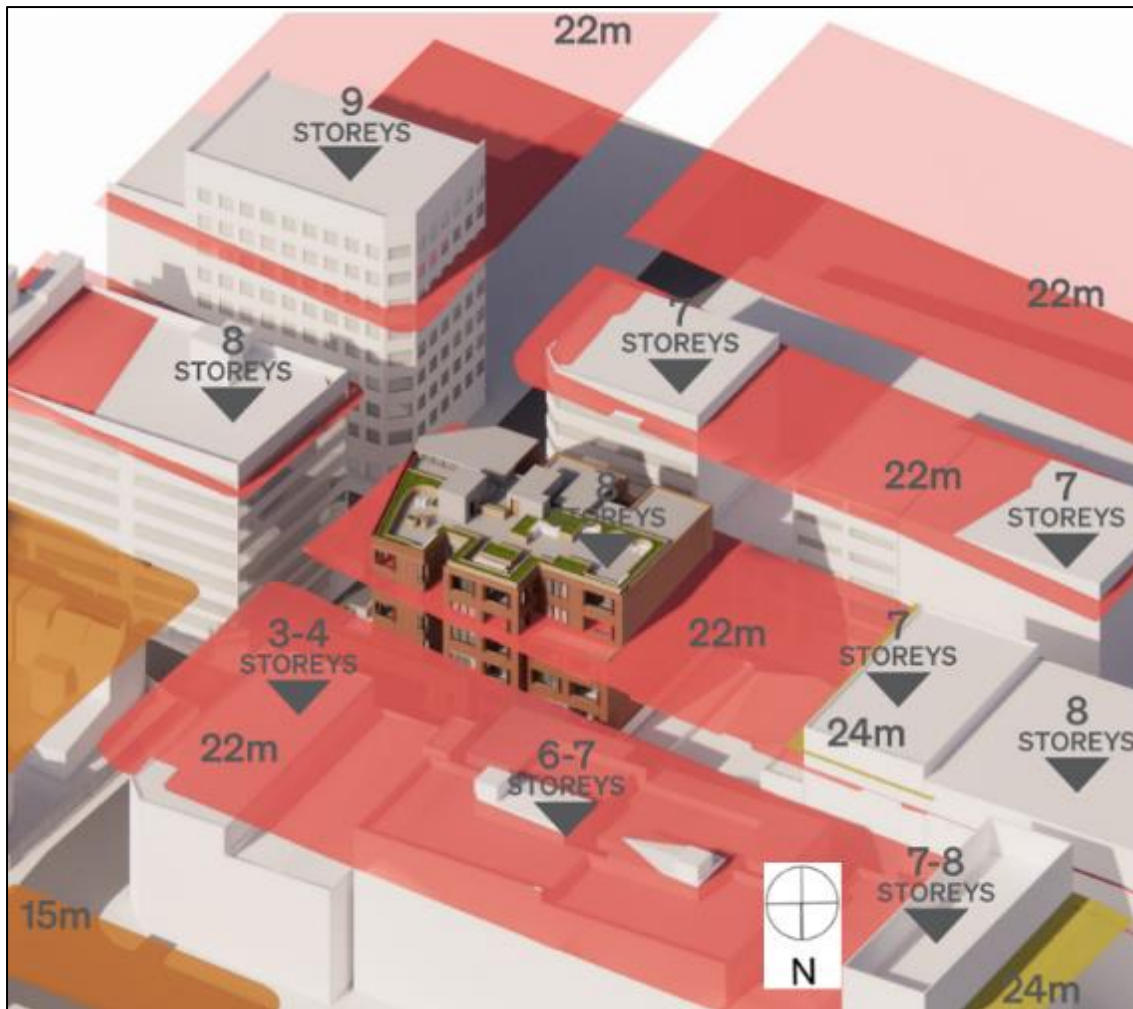


Figure 29: 3D perspective of the proposal showing a comparison with the height of surrounding development

- (b) The proposal does not obstruct any significant views. See below assessment of impact to views and outlook from surrounding properties.
- (c) The extent of the breach to the height control is relatively minor, being limited to the top of the lift overrun and fire stairs which are over the height control by less than 550mm and resulting in a breach of less than 5% to the development standard.
- (d) The portion of the development which breaches the height control does not comprise any gross floor area, will not be visible from the public domain, and does not result in any unreasonable overshadowing or visual privacy impacts to surrounding properties.
- (e) The breaches to the height control are consistent with recent proposed amendments to the SLEP 2012 (Policy and Housekeeping Amendments 2023), which have been endorsed by Council and received Gateway approval in October 2024, pending Gazettal. These amendments include a new clause in the SLEP 2012 to allow structures associated with green roofs and rooftop communal open space to exceed the building height control where these structures provide roof access, thereby removing a disincentive for green roofs.

- (f) The proposal is in keeping with the objectives of the MU1 Mixed Use Zone, as it will provide residential accommodation with ancillary retail uses within an accessible area. The proposal will also provide desired affordable housing to the area.
- (g) The proposal is of an appropriate bulk and scale within the context of the site and surrounding development and complies with maximum permitted FSR for the site.

Conclusion

79. For the reasons provided above the variation to the height of buildings development standard is supported as the applicant has demonstrated the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Clause 4.6 Request to Vary a Development Standard - Minimum Landscaped Area

80. Under Cl 19 (2)(b) of the State Environmental Planning Policy (Housing) 2021, the minimum required landscaped area is 235.66 sqm (30% of the site). The SEPP Housing defines "landscaped area" as *"part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area"*.
81. Although the proposal provides 129.1 sqm of landscaping on structures, given that definition for landscaped area under the SEPP Housing excludes the area of the site occupied by a building, none of the proposed landscaping meets the definition of landscaped area, and therefore the proposal provides nil landscaped area, which results in a variation of 100%. The majority of landscaping on site is provided within the rooftop communal terrace with additional planters provided adjacent private balconies on Levels 1, 2, 3 and 4, as shown in the below figures.

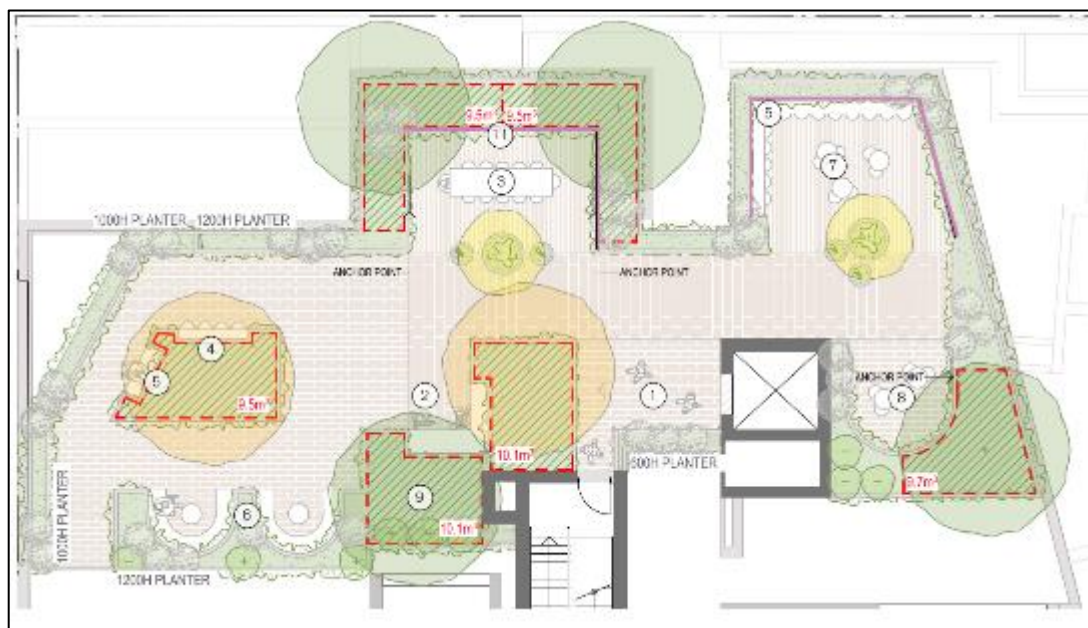


Figure 30: Rooftop landscaping as per the submitted Landscape Plans prepared by DKO Landscape



Figure 31: Proposed landscaping on Levels 1, 2, 3, and 4, as per the submitted Landscape Plans prepared by DKO Landscape

82. Pursuant to the requirements of Regulation 35B of the Environmental Planning and Assessment Regulation 2021, the application has been accompanied by a document setting out the grounds on which the applicant seeks to demonstrate:
- (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 regulation 35B document

83. The applicant seeks to justify the contravention of the minimum landscaped area 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 objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households. The proposed development will facilitate an increase in housing diversity and the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households within the Sydney City local government area. The non-compliance with the landscaped area non-discretionary development standard should not prevent the provision of affordable housing within the area.
 - (ii) Notwithstanding the strict non-compliance with the development standard, the proposal meets the objectives with the MU1 Mixed Use zone in that the retail tenancies would generate employment opportunities and provide active frontages, the scale, use and built form are compatible with both the mixed-use and commercial character of the area, the proposal will support and enhance the viability of nearby centres by delivering additional retail opportunities, increasing local patronage through new housing, and the development integrates complementary land uses in a highly accessible location, maximising public transport patronage and promoting active, sustainable modes of travel.
 - (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
 - (i) the development provides a total green planting area of 129.1m², amounting to 16.4% of the site area which includes rooftop soft landscaping, and planters on the upper floors which is considered to meet the purpose of landscaping and greenery in a highly dense urban environment. This is consistent with design guidance provided within the ADG regarding deep soil areas, which recognises that strict compliance with the deep soil requirement may not be possible on some sites located in high density areas which have a 100% site coverage and contain non-residential uses on the ground floor, which is how this site is characterised.
 - (ii) The development provides a rooftop communal open space amounting to 274.5m² (amounting to 34.8% of the site) of which 84.5m² is soft landscaping consistent with the communal open space requirements of the ADG.
 - (iii) Given the site's high-density location, and the proposal's aim to retain significant building elements of the existing building, including the stables building, it is not possible to achieve landscaped area not affected by building structures, as the SEPP 'landscaped area' definition requires. Rather, the proposed design has grasses, plants and small trees at all levels of the building, which is a particular environmental planning ground relevant to the site and its high-density location. This also achieves an improved urban heat island reduction than a development that strictly complied with the Housing SEPP definition.

- (iv) Despite the non-compliance with the SEPP landscape area definition, the development is considered to provide a high-quality outcome that will deliver much needed affordable housing for the local area with high quality living environment for residents by maximising solar amenity, visual and acoustic privacy and diverse landscaping features whilst encouraging growth of the local economy with lower ground / ground floor retail uses.
- (v) The alternative soft landscape features contribute to the overall amenity of the building, enhance the landscape setting of the existing site within the streetscape, and contribute to the overall environmental performance of the building from a sustainability perspective.

Precondition to granting consent where a development standard has been contravened

- 84. Development consent must not be granted unless the consent authority is satisfied that the applicant has demonstrated 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.
- 85. The applicant has demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard for the following reasons:
 - (a) The proposed development facilitates the delivery of new in-fill affordable housing, in that it provides a total of 10 apartments (equating 16% of the overall GFA of the development) designated as affordable housing, and evidence has been submitted to demonstrate that a registered social housing provider has been engaged to manage the affordable housing component in accordance with the requirements of the SEPP Housing.
 - (b) Within the context of the subject site, it is not considered desirable to provide 30% of the site area as landscaped area in accordance with definition of landscaped area under the SEPP Housing, as given the retention of part of the stables building and providing vehicle access from Sophia Street to the north, and deep soil landscaped area would need to be located within the southern portion of the site and would therefore not provide ideal growing conditions, as it would be overshadowed by the proposed built form.
 - (c) The full site coverage of the proposed building envelope is consistent with warehouse character of this part of Surry Hills, with building envelopes that cover entire lots.
 - (d) The development standard requiring minimum landscaped area under CI 19 (2)(b) of the SEPP Housing, is triggered by the proposal providing at least 10% affordable housing component. It is noted that the landscaped area requirement under CI 19 (2)(b) is more onerous than the ADG requirement for 7% of the site area to comprise deep soil zones. While the proposed development does not provide any genuine deep soil area, it does provide sufficient canopy trees to the roof terrace, which meets the intent of Part 3E of the ADG, which is to provide shade trees and amenity for residents that can be co-located with communal open space. In addition, the proposed development provides sufficient canopy coverage to comply with the DCP controls (15% canopy coverage of the site).

- (e) The proposed landscaping on structures, while not strictly defined as "landscaped area" under the SEPP Housing, contribute to the amenity of the rooftop communal open space area, which meets both the ADG and DCP requirements in terms of minimum area and proportion of landscaping. Furthermore, the rooftop landscaping meets the intentions of the proposed amendments to the SLEP 2012 (Policy and Housekeeping Amendments 2023), which encourages green roofs through the inclusion of a new clause in the SLEP 2012 to allow structures associated with green roofs and rooftop communal open space to exceed the building height control where these structures provide roof access, thereby removing a disincentive for green roofs.

Conclusion

- 86. For the reasons provided above the variation to the minimum landscaped area development standard is supported as the applicant has demonstrated the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Clause 4.6 Request to Vary a Development Standard - Minimum Car Spaces

- 87. Under Cl 19 (2)(e) and (f) of the State Environmental Planning Policy (Housing) 2021, a minimum of 30 car spaces are required for the residential component of the development (4 car spaces for the affordable housing dwellings and 26 car spaces for the non-affordable housing dwellings).
- 88. The proposal provides a total of 18 car spaces within the basement level, with 16 of the proposed car spaces being allocated to residential component of the development, and the other two spaces allocated to the retail component. This results in a variation of 14 car spaces or 46%.
- 89. Pursuant to the requirements of Regulation 35B of the Environmental Planning and Assessment Regulation 2021, the application has been accompanied by a document setting out the grounds on which the applicant seeks to demonstrate:
 - (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 regulation 35B document

- 90. The applicant seeks to justify the contravention of the minimum car parking 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 objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households. The proposed development will facilitate an increase in housing diversity and the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households within the Sydney City local government area. The non-compliance with the car parking non-discretionary development standard should not prevent the provision of affordable housing within the area.

- (ii) The residential component of the proposed development generates a greater demand for car parking under the non-discretionary development standards of the Housing SEPP, with the requirement of 30 car spaces. As compared to the SLEP2012 requirements which generates a demand of 19 car spaces for the residential component. In this case, the LEP car parking provisions should be applied, as it minimises the amount of traffic generated by the development.
- (b) That there are sufficient environmental planning grounds to justify contravention of the standard:
 - (i) The proposed car parking satisfies the numerical car parking requirements prescribed under SLEP.
 - (ii) The purpose of the Housing SEPP non-discretionary standard is to prevent Council requiring a more onerous standard. Given that SLEP2012 does not prescribe a more onerous standard, the LEP car parking requirements should be applied as it is more applicable to the site given its highly accessible location.
 - (iii) Given the site's high-density Surry Hills location and the proposal seeking to retain significant building elements of the stables building it is also not feasibly possible to achieve compliance with the Housing SEPP car parking non-discretionary standards. To achieve compliance, extensive excavated basement levels would be required that would compromise the current adaptive reuse outcome of the site.
 - (iv) Requiring strict compliance with the Housing SEPP provisions is also contrary to Council's Sustainable Transport Policy which focuses on creating a green, connected city by prioritising walking, cycling, and public transport over private cars. To uphold this vision, the development encourages other modes of transport with the provision of motorcycle and bicycle spaces in accordance with the requirements of SDCP 2012 along with the public transport modes available in the area.
 - (v) Despite the non-compliance with the SEPP the development is considered to provide a high-quality outcome that will deliver much needed affordable housing for the local area with high quality living environment for residents by maximising solar amenity, visual and acoustic privacy and diverse landscaping features whilst encourage growth of the local economy with ground floor retail uses.

Precondition to granting consent where a development standard has been contravened

91. 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.

92. The applicant has demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard for the following reasons:
- (a) The proposed development facilitates the delivery of new in-fill affordable housing, in that it provides a total of 10 apartments (equating 16% of the overall GFA of the development) designated as affordable housing, and evidence has been submitted to demonstrate that a registered social housing provider has been engaged to manage the affordable housing component in accordance with the requirements of the SEPP Housing.
 - (b) Given the area of the site (788.5 sqm) strict compliance with the minimum car parking standard is considered unreasonable and unnecessary as it would likely require either a second basement level, demolition of the remaining original structures of the stables building to provide additional area for car spaces, or both to accommodate an additional 14 car spaces, which would not be desirable from a planning perspective. The development standard requiring a minimum number of car spaces under Clause 19 (2)(e) and (f) of the SEPP Housing, is triggered by the proposal providing at least 10% affordable housing component. It is noted that the car parking requirements under CI 19 (2)(e) and (f) are more onerous than the car parking requirements under the ADG, which prescribes a lesser car parking requirement by Council, which would be the maximum permitted car parking requirement of 19 car spaces for the residential component under the SLEP 2012, which the proposal would comply with.
 - (c) Providing additional car spaces to meet the minimum car parking standard is contrary to the "Sustainable Sydney 2030-2050" Strategy, which outlines the need to provide alternative forms of travel to reduce car dependence, as well as the objectives of Section 3.11 of the SDCP, which include *"(a) ensure that the demand for transport generated by development is managed in a sustainable manner"*.
 - (d) The site is located within an accessible location that is well serviced by public transport, being within 600m of Central Station and light rail, and the proposal provides sufficient bike parking (42 spaces) and two motorbike spaces to meet the needs of future residents.

Conclusion

93. For the reasons provided above the variation to the minimum car parking development standard is supported as the applicant has demonstrated the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012.

Retention of the original Stables Building

94. The site is not identified as a heritage item and is not within a heritage conservation area. However, the site comprises an amalgamation of warehouse buildings from different time periods including the Former Schweppes Stables building on the north-eastern corner of the site. This building was purpose built in 1904 and features a unique multi storey design to accommodate draft horses used by Schweppes for transporting drinks, including an internal horse ramp. The associated Schweppes Buildings are located directly to the north-west of the site at No.63-67 Foveaux Street, and are identified as local heritage items (I1548 and I1550).



Figure 32: Aerial view showing the location of the heritage listed Schweppes Buildings in relation to the subject site

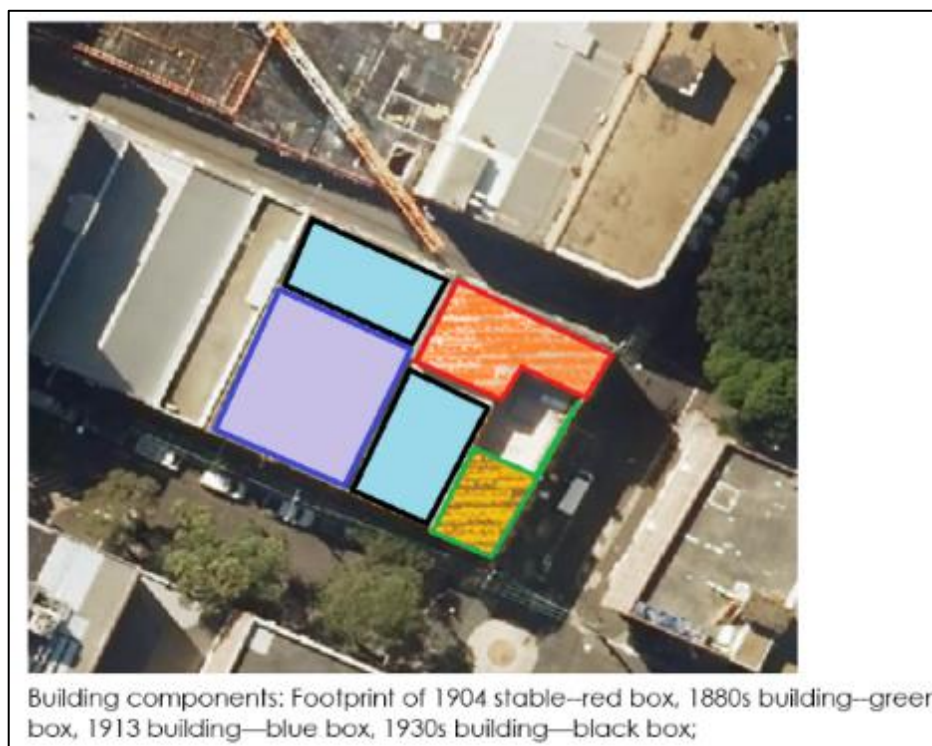


Figure 33: Mark-up showing the composition of buildings which comprise the subject site

95. It is noted that during the assessment of the previous development application for the site (D/2017/225), whilst the applicant investigated the option of retaining the former stables building at the corner of Waterloo Street and Sophia Street, the approved scheme involved the complete demolition of all existing buildings on site. This consent was not activated and has now lapsed.
96. The current scheme as part of the subject application includes the retention of original portion of the stables building, including the external facade to both Waterloo Street and Sophia Street, the original vaulted arches on the ground floor and Level 1, the floor slabs, and the internal horse ramp. The below figures outline the retained fabric.



Figure 34: 3D perspective view from the corner of Waterloo and Sophia St highlighting the retained facade of the stables building

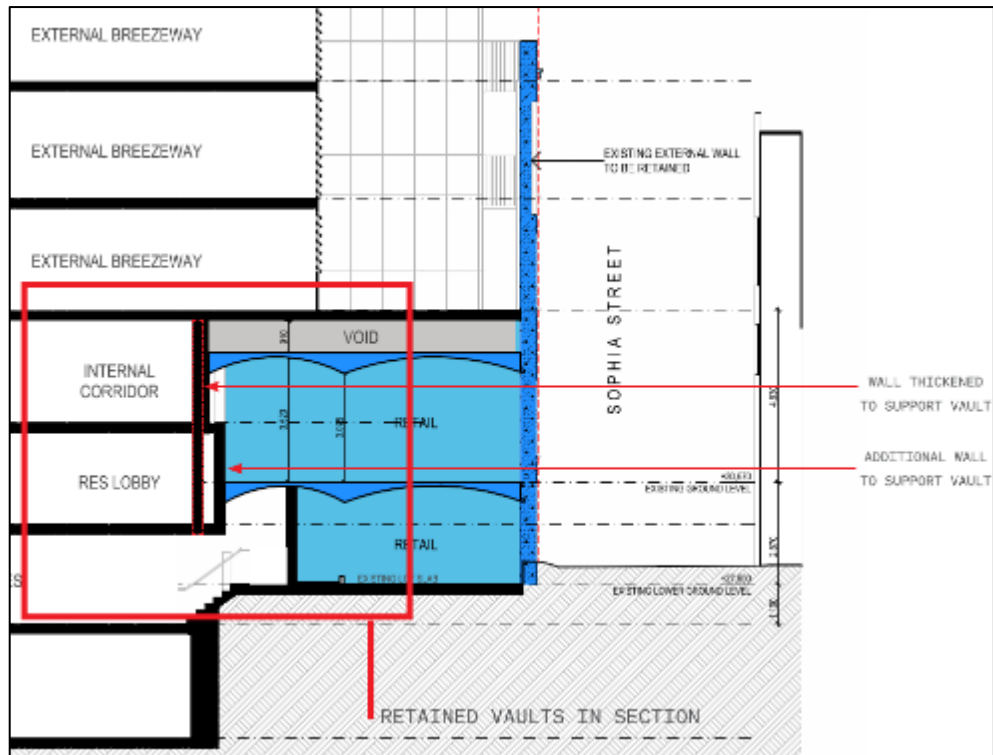


Figure 35: Proposed cross-section showing the retained arches and facade in blue

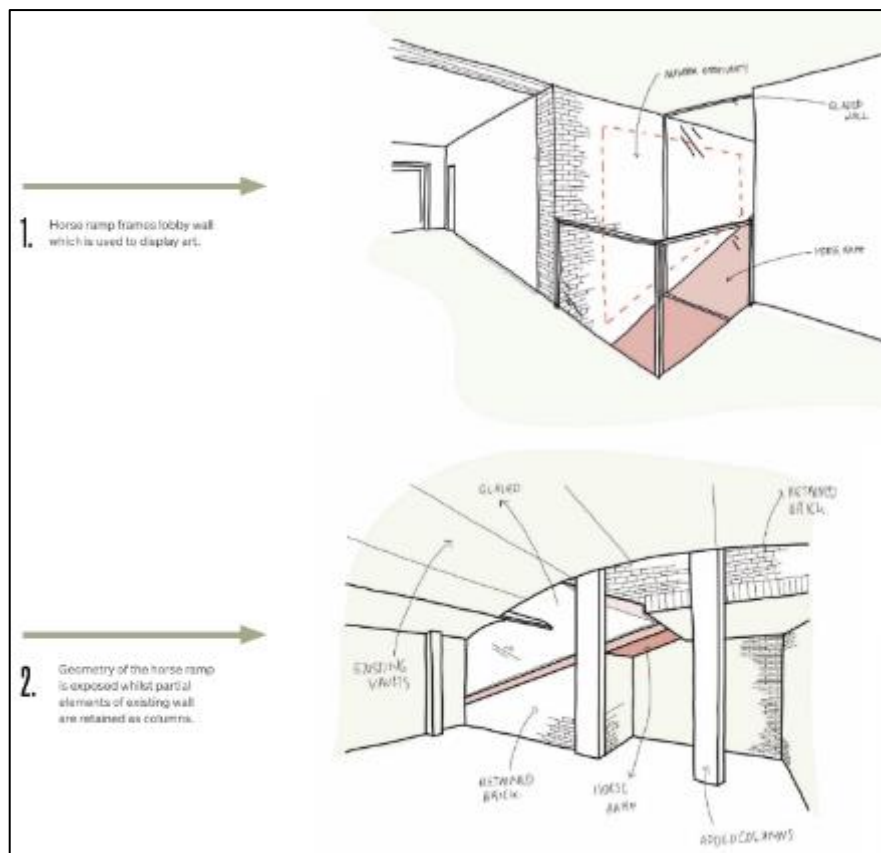


Figure 36: Design sketches showing how the retained horse ramp will be expressed internally

97. A Structural Statement from an appropriately qualified Structural Engineer has been submitted to confirm that the new building will not compromise the structural integrity of the retained elements, and additional structural support has been incorporated into the architectural drawings. A condition of consent is recommended to ensure that the recommendations of the Structural Report are adopted, including:
- Material testing to the brickwork and mortar be undertaken to determine approximate strength and identify where strengthening may be required (if any).
 - Structural engineer to develop and implement rectification/strengthening solutions with consideration of minimising visual impact (as appropriate).
 - Vibration and movement monitoring to the existing structure to be undertaken by the Contractor, with appropriate mitigation measure in place should monitoring limits be exceeded.
98. It is also noted that the datum of the brick addition to Waterloo Street is lower than the height of the retained façade in order to clearly differentiate and highlight the retained portion of the façade. The materiality of the main building entrance at the corner of Kippax and Waterloo Street has been revised from concrete to face brick in order to better suite the character of the area and improve the visual presentation.
99. Overall, the retention of original fabric of the stables building is considered to result in a positive outcome, and is appropriately expressed in the development through the use of articulation, varying street wall heights and changes in materiality to distinguish the original portion of the retained building from the new building.

Residential Amenity

Cross-Ventilation

100. The ADG requires that 100% of all habitable rooms within a development must be naturally ventilated and that at least 60% of all apartments must be naturally cross ventilated. The ADG describes natural cross ventilation as "*natural ventilation which allows air to flow between positive pressure on the windward side of the building to the negative pressure on the leeward side of the building providing a greater degree of comfort and amenity for occupants. The connection between these windows must provide a clear, unobstructed air flow path. For an apartment to be considered cross ventilated, the majority of the primary living space and n+1 bedrooms (where n is the number of bedrooms) should be on a ventilation path*".
101. The submitted drawings indicate that 50% of the apartments (21 units) are naturally cross-ventilated, noting that the single aspect Unit 703 on Level 7 incorporates an operable roof window to achieve cross ventilation. The proposal also incorporates a north-south breezeway to provide additional ventilation to five of the south facing single aspect apartments. While reliance on the breezeway for the single aspect apartment does not strictly meet the ADG definition of cross-ventilation it is considered suitable as a secondary measure to assist in providing adequate natural ventilation through the apartments. The use of the breezeway for additional ventilation is depicted in the below figure.

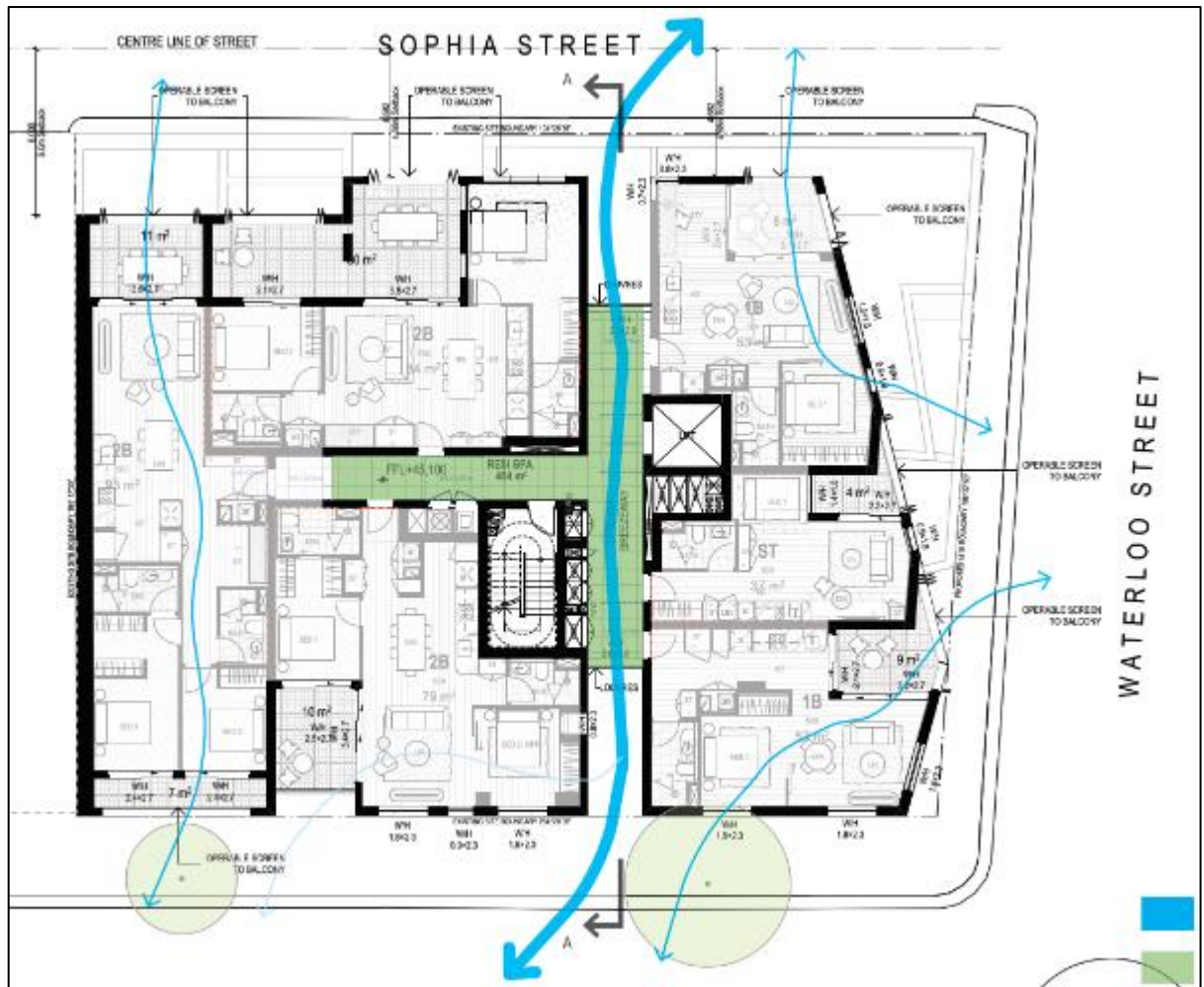


Figure 37: Cross-ventilation diagram from the submitted design report illustrating natural air flow through the breezeway

102. Given that Council is supportive of retaining original fabric and features of the stables building as well as providing an affordable housing component, achieving natural cross-ventilation to 50% of apartments with the breezeway providing cross-ventilation to an additional 5 apartments (for a total 62% of apartments receiving cross-ventilation) is considered an acceptable outcome, and is considered to meet the objective 4B-3 of the ADG, which is to maximize cross-ventilation to create a comfortable indoor environment for residents.
103. However, it is noted that the north facing Unit 602 is claimed to achieve natural cross-ventilation, however the submitted cross-ventilation diagram shows the air flow only travels through the north-western corner of the living room (less than 50% of the living area), and as such this unit does not appear to be strictly cross-ventilated as shown in the below figure.

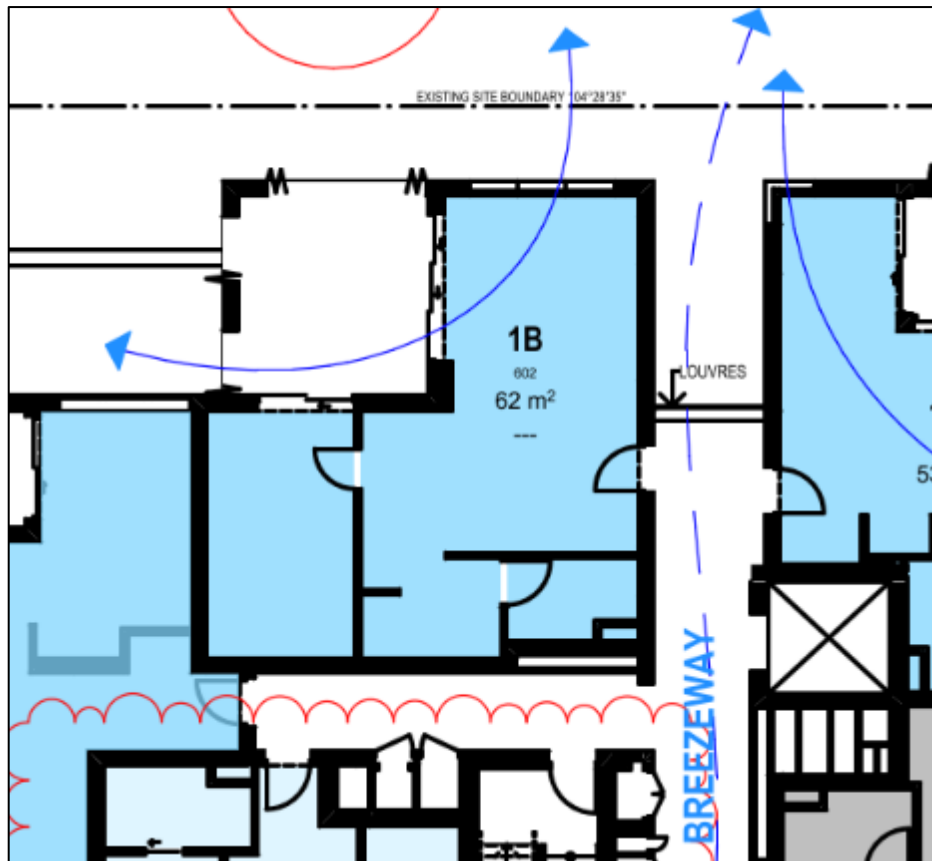


Figure 38: Claimed cross-ventilation through Unit 602

104. Therefore, a condition of consent is recommended for Unit 602 to incorporate an operable fanlight above the entrance door to provide additional cross-ventilation through the breezeway.

Building Separation

105. Parts 2F and 3F of the Apartment Design Guide (ADG) provide guidance in relation to building separation distances. Part 2F specifies building separation distances in relation to urban form, sunlight and daylight access, whereas Part 3F specifies building separation distances in relation to visual privacy. Part 3F (Visual Privacy) of the ADG specifies the following minimum separation distances:

- *"buildings up to 12m (4 storeys) - 6m to habitable rooms and balconies, and 3m to non-habitable rooms."*
- *"buildings up to 25m (5-8 storeys) - 9m to habitable rooms and balconies, and 4.5m to non-habitable rooms".*

The intent of the separation distance requirements is to ensure that visual privacy is achieved.

In addition, Part 2F (Building Separation) includes the following detailed setback requirements:

" Up to four storeys (approximately 12m):

- *12m between habitable rooms/balconies*
- *9m between habitable and non-habitable rooms*
- *6m between non-habitable rooms*

Five to eight storeys (approximately 25m):

- *18m between habitable rooms/balconies*
- *12m between habitable and non-habitable rooms*
- *9m between non-habitable rooms"*

106. The proposal provides the following minimum separation distances:

- Approximately 15m from habitable rooms and balconies of the south facing apartments to commercial development on the opposite side of Kippax Street.
- Approximately 12-16m from habitable rooms and balconies of the eastern apartments to the commercial building at No.110 Kippax Street on the opposite side of Waterloo Street as a result of a chamfered façade to address visual privacy.
- Approximately 6-9m from balconies of the northern apartments to the commercial and residential buildings on the opposite side of Sophia Street.

107. Whilst noting that the ADG provisions do not specifically address separation distances across streets or laneways, the proposed separation distances across both Kippax Street (south) and Waterloo Street (east) are consistent with ADG separation distance requirements for buildings up to four storeys. Although the proposal does not strictly meet the required 18m separation distance between habitable rooms for buildings five to eight storeys across Waterloo and Kippax St, the proposed separation distances are considered to be sufficient to appropriately mitigate potential visual privacy impacts within the context of the site.

108. For the Sophia Street (northern) frontage, the proposed development utilises a number of additional measures to mitigate visual privacy impacts, including solid balustrades and planters to balconies, and a stepped facade with increasing setbacks to upper levels along Sophia Street as illustrated in the below figure. It is also noted that the residential apartment building on the opposite side of Sophia Street (No. 81 Foveaux Street) features a nil setback to Sophia Street.

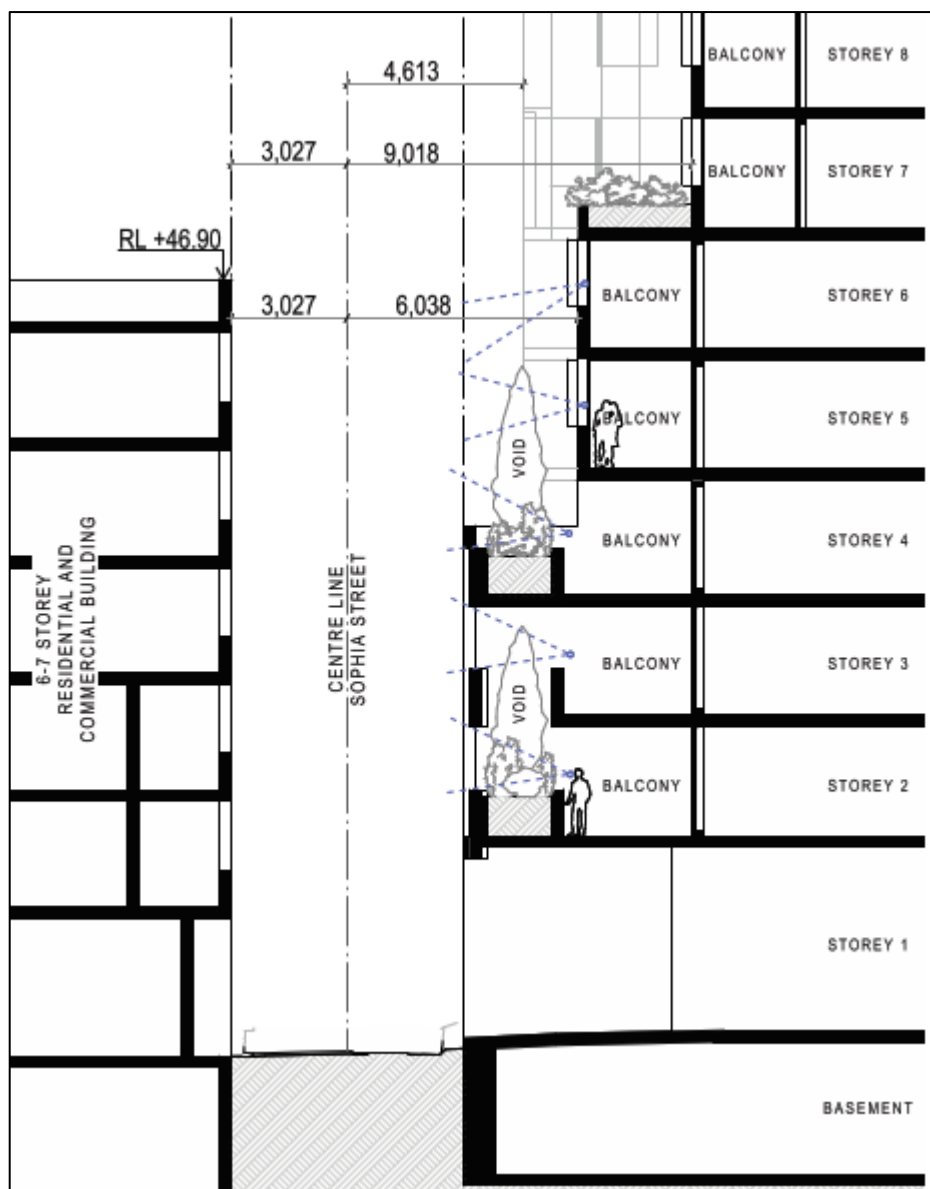


Figure 39: Cross-section through the Sophia Street interface

109. The proposed development also incorporates operable perforated screens to balconies along all three street frontages in order to mitigate visual privacy impacts as shown in the below image.



Figure 40: Close up 3D perspective of the operable privacy screens to the Sophia Street facing balconies

110. A condition of consent is recommended for a physical sample of the perforated metal demonstrating the density of the perforations and thickness to be submitted and approved by Council prior to issue of a construction certificate.
111. With the incorporation of the discussed mitigation measures, the proposed development adequately addresses visual privacy impacts as a result of the strict non-compliances with the minimum separation distances required by the ADG.

Entrance Awning

112. The proposal provides active retail uses to all three street frontages with separate entrances from Kippax St, Waterloo St and Sophia St. A separate entry lobby to the residential portion of the development is provided to Kippax Street.

113. The existing building does not feature any footpath awnings and none of the street frontages are identified as requiring footpath awnings or colonnades. The proposal includes a fixed awning over the entrance to the residential lobby along Kippax Street.
114. The architectural drawings indicate that the proposed awning is at Level 2 (RL 35.5), which due to the slope of the site along Kippax Street would place the awning at a height of between 5-6m above the footpath. This would not provide effective weather protection to the lobby entrance, and does not comply with the DCP controls which requires that footpath awnings are to be between ground and first floor levels between 3.2-4.2m above the footpath.

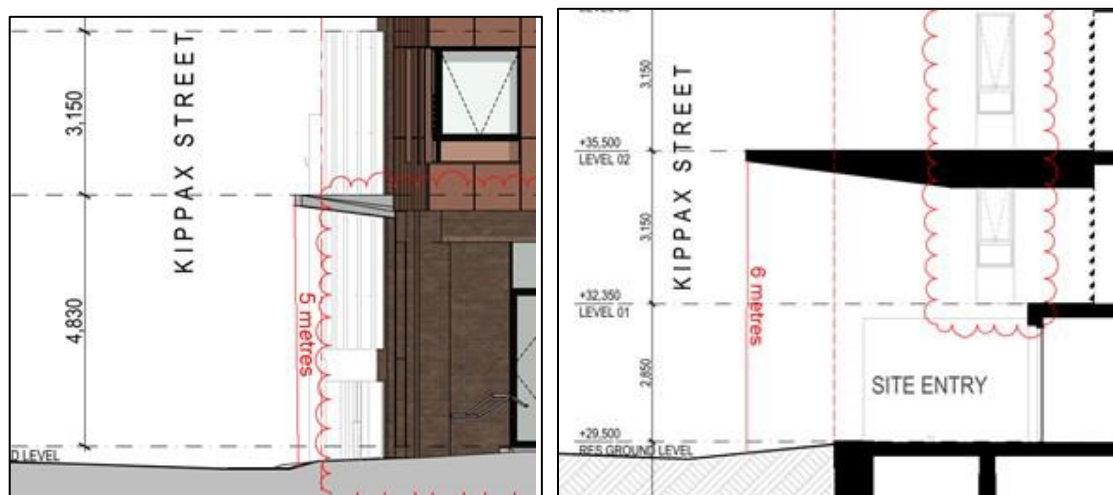


Figure 41: The proposed awning as depicted in side elevation and in cross-section

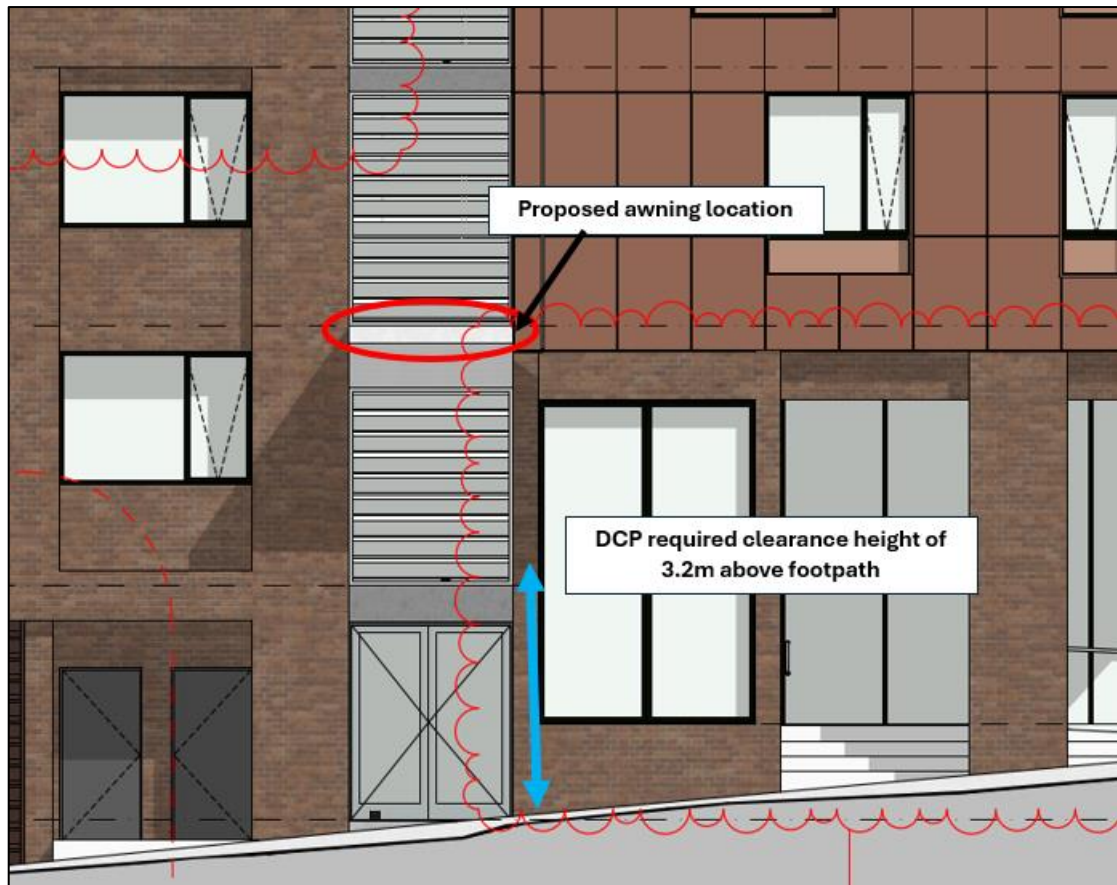


Figure 42: Location of the proposed entrance awning relative to the footpath on the Kippax St (south) elevation

115. It is also noted that lowering the awning to be comply with DCP controls (3.2-4.2m) would likely require substantial pruning of the nearby street tree, and Council's Tree Management Officer advised that based on measurements taken on-site, and the submitted pruning schedule, the extent of pruning required would result in the loss of a significant branch which would impact on the viability of the street tree.



Figure 43: The main branch of the street tree which would need to be removed to facilitate a DCP compliant awning (from the submitted pruning schedule)

116. It is also noted that the neighbouring properties along Kippax Street within the street block generally do not feature footpath awnings. Therefore, due to the likely adverse impacts to the street tree to provide an awning that provides sufficient clearance above the footpath and effective weather protection, a condition of consent is recommended for the awning to be deleted.

View Loss

117. View loss and impacts to outlook have been raised as an issue within public submissions received following the notification of the proposal to neighbouring properties. The applicant has submitted a view analysis conducted from the commercial building at No.110-201 Kippax Street directly to the east, and from Level 4 apartments at No.81 Foveaux Street directly to the north-west. The submitted view analysis has been verified by Council's Model Team against the submitted 3D model.

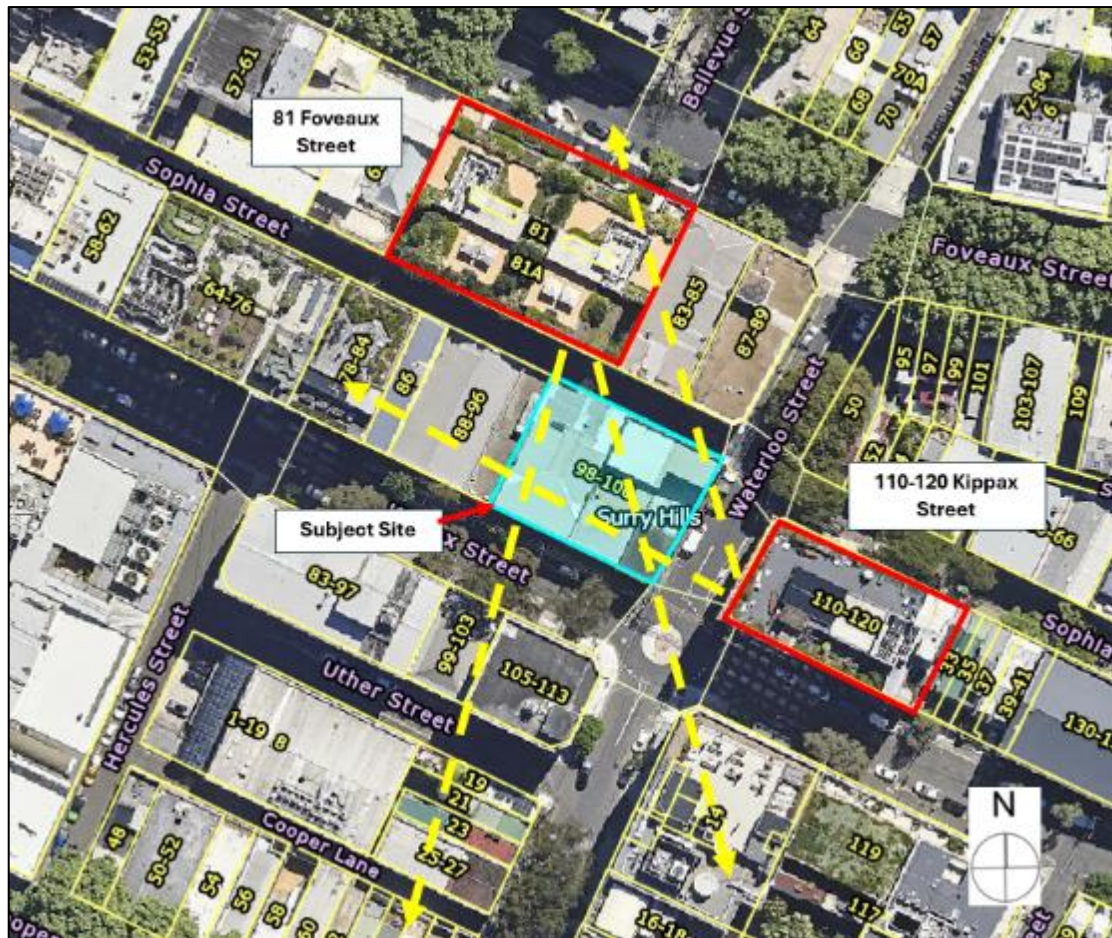


Figure 44: View lines from 110-120 Kippax Street and 81 Foveaux Street across the subject site

118. In order to assess the impact of the proposed development on existing views, an assessment has been made against the planning principles established by the Land and Environment Court decision of *Tenacity Consulting v Waringah [2004] NSWLEC 140* (Tenacity).

Views from 110-120 Kippax Street

119. The proposal's impacts upon the views from the commercial development at No.110 Kippax Street is assessed according to the four-step process established in *Tenacity* as follows:

1) What are the views to be affected?

Views from No.110-120 Kippax Street are land views of the city skyline to the north-west and include views of the Central Station Clocktower and Sydney Tower. Views of Sydney Tower are considered iconic. It should be noted that the provisions of CI 6.19 of the SLEP have the effect of protecting a view towards the Central Station Clock Tower from a location on Broadway at the corner or Regent Street. The SLEP describes this view as 'significant' (rather than iconic) and seeks to protect the view of the clock tower from public spaces only.



Figure 45: Views of the Central Station Clocktower looking north-west from the Level 7 roof terrace of 110-120 Kippax Street



Figure 46: Comparison of the existing views from the Level 7 roof terrace of 110-120 Kippax Street, and with the proposed building envelope



Figure 47: Views of the Central Station Clocktower looking north-west from the Level 6 commercial offices of 110-120 Kippax Street



Figure 48: Comparison of the existing views from the Level 6 commercial offices of 110-120 Kippax Street, and with the proposed building envelope

2) From what part of the property are the views obtained?

Existing views from 110-120 Kippax Street are from commercial offices on Levels 3-6, and from the Level 7 outdoor terrace, and are across a street facing secondary frontage.

3) What is the extent of the impact?

The extent of impacts is considered to be moderate given the views of Sydney Tower will not be obstructed as demonstrated by the above figures. Tenacity states that "*the impact of views from living areas is more significant than from bedrooms or service areas*". It should be noted that while *Tenacity* does not explicitly state that it only applies to residential uses, the wording of the principle does focus on impacts to private residential views, and is silent on views from commercial uses. Whilst *Tenacity* references residential rooms (living rooms, bedrooms, service areas and kitchens), it does not provide any similar gradations to assess commercial uses and spaces. Therefore, it can be inferred that view loss from commercial premises should be given less weight when considering the reasonableness of the impacts.

4) What is the reasonableness of the proposal causing the impact?

120. As noted elsewhere in the report, the proposal complies with the FSR development standard for the site, and is a form that is consistent with the built form controls and considered appropriate within the context of the subject site. Whilst the proposal exceeds the SLEP height in buildings development standard (inclusive of the 30% allowable uplift under the SEPP Housing), the non-compliance is limited to approximately 500mm for the top of the lift overrun and fire stairs, and the elements which breach the height control do not contribute to the view loss. It is also noted that the existing views from the lower levels of 110-120 Kippax Street would not be protected by any building that complies with the SLEP height in buildings development standard or any building that complies with the SDCP height in storeys control. Therefore, the impact on views from no.110-120 Kippax Street is considered acceptable.

Views from 81 Foveaux Street

As shown in the below figures, views from the upper level residential apartments at No.81 Foveaux Street looking south can be described as district views of the top of buildings, trees and open sky without icons or interface between land and water.



Figure 49: Views looking south from the Level 4 apartments of 81 Foveaux Street



Figure 50: Comparison view from the Level 4 apartments of 81 Foveaux Street with the proposed building envelope

According to *Tenacity*, this is an outlook rather than a view and is not rated as having a high value as it does not include icons or interface between land and water.

Existing views from No.81 Foveaux Street are from apartment balconies and bedrooms.

Applying the assessment steps in *Tenacity*, the extent of the impact is considered minor. As shown in the above figures, while the proposed development will partially obstruct the existing outlook of neighbouring buildings, there are no views as defined by this planning principle being impacted. There will still be views of the sky possible and a general district outlook of neighbouring buildings is retained. In addition, the proposed development has been amended to provide greater upper level setbacks to Sophia Street through the deletion of planters and voids from Level 4. As such, the proposed development is considered not to unreasonably obstruct the outlook of this neighbouring property.

121. Overall, it is considered that the impact of the subject development is acceptable in this instance, as per the principles set out in *Tenacity*.

Design Advisory Panel Residential Subcommittee

122. The proposed scheme was presented to the City's Design Advisory Panel Residential Subcommittee for review and comments on 7 October 2025. The panel was generally supportive of the proposed scheme and retention of historic elements of the stables building. Amendments were subsequently made to the proposed scheme which address and respond to the Panel's recommendations and comments, which are summarised as follows:

- (a) *While the Panel commends and supports the proposal to retain the historic elements (stables and horse ramps), their integration into the new design should be reviewed to achieve more meaningful interpretation. The Panel is concerned that the new structural columns may negatively affect the retained façade, potentially undermining its visual integrity.*

Response: As discussed elsewhere in this report, the retained horse ramp will be protected and expressed internally. Glazed walls will be incorporated into the retail tenancies to protect the ramp. Additional structural documentation has been submitted to confirm that the retained arched vaults and façade of the stables building will not be adversely impacted by the new structures.

- (b) *The Panel recommends that the western return wall (visible from Sophia Street) be retained as well so that the main frontage retains its three-dimensional quality and doesn't result in facadism.*

Response: The amended proposal retains the western return wall to Sophia Street, which will further provide a visual distinction between the retained and new portions of the building as shown in the below figure.



Figure 51: 3D perspective showing the retained portion of the return wall to Sophia Street

- (c) *The proposal retains glazing in some of the original façade openings and changes several windows to voids. Retaining or restoring the appropriated glazed detailing for all openings is preferred.*

Response: The amended design adequately responds to the original window detailing of the retained façade through retaining the appearance of glazing through the use of glass balustrades to the same height as the pre-existing window transoms, noting that some of the openings remain as voids in order to provide natural ventilation to the private open space of apartments.

- (d) *Resolution of the raised planter box within the stables envelope (L2) should be detailed in section to describe how it meets the opening. Maintenance for the planting will need to be considered without relying on access from the adjacent unit.*

Response: The Level 2 planter has been deleted and replaced with a non-trafficable roof. A condition of consent is recommended for additional details for the proposed landscaping, including maintenance strategies to be submitted to Council prior to issue of a construction certificate.

- (e) *Solar access appears to be less than 70%. This could be further adversely affected by future development to the north. It is noted that solar access must be received to both the living room window and the private open space. There also appears to be 21% of the lower apartments without sun.*

Response: Higher resolution view from the sun diagrams have been submitted to demonstrate that the proposed development achieves the required solar access to 70% of apartments in accordance with the ADG. A detailed table has also been submitted to quantitatively demonstrate that sufficient solar access is provided to living room windows and private open space.

- (f) *The proposed building separation on all three streets, and particularly Sophia Street, needs to be increased and should be reviewed against ADG requirements.*

Response: As discussed elsewhere in this report, the proposed staggered setbacks to Sophia Street and separation distance across Waterloo and Kippax Street in addition to incorporating operable privacy screens are considered sufficient to mitigate potential visual privacy and overlooking impacts.

- (g) *The affordable units are not achieving equivalent amenity thresholds. The affordable housing units must achieve the same degree of amenity as the market units, as outlined in the In-fill Affordable Housing Practice Note.*

Response: The designation of affordable housing units has been amended so that of the 10 units, 5 are naturally cross-ventilated (50%), and 6 receive compliant solar access (60%), which is consistent with proportion of non-affordable units that achieve compliant cross-ventilation and solar access.

- (h) *The use of metal cladding is supported however some of the perforated screens appear to impact access to light and ventilation. A detail showing the panel framing grid and its relationship to proposed graphic pattern should be provided.*

Response: Detailed cross sections through the connection of the metal cladding with the façade at a scale of 1:5 have been submitted to demonstrate that the metal cladding is appropriately integrated into the façade. A condition of consent is recommended requiring a physical sample of the metal cladding and perforated privacy screens to be submitted to Council prior to issue of a construction certificate.

- (i) *Units relying on a notched recess in the facade for natural cross ventilation are not considered to be naturally cross ventilated as this arrangement does not provide effective or functional cross ventilation.*

Response: As discussed elsewhere in this report, approximately 50% of the proposed apartments are dual aspect and considered to be naturally, while an additional five single aspect apartments (12%) receive additional natural ventilation through the breezeway, which is considered an acceptable level of amenity within context of the subject site. A Natural Ventilation Report by a qualified consultant has also been submitted to confirm that the breezeway will receive sufficient airflow.

- (j) *Snorkel bedrooms (unit 101), internal study areas and balconies deeper than they are wide are not consistent with ADG guidelines.*

Response: Unit 101 has been reconfigured from a two bedroom unit to a single bedroom unit to provide a bedroom with appropriate dimensions and external window. The depth of balconies has been reduced, and all primary private balconies are considered to have adequate widths.

- (k) *The design of the shared rooftop open space could be reviewed to reduce the amount of unprogrammed paved area. The plant selection could also be improved.*

Response: The design of the landscaped communal roof terrace has been amended to provide appropriate seating areas and plant selection which is supported by Council's Landscape Officer, subject to appropriate drainage details and maintenance strategy being submitted prior to issue of a construction certificate.

Consultation

Internal Referrals

123. The application was discussed with Council's:

- (a) Health and Building Unit
- (b) Heritage and Urban Design Unit
- (c) Public Domain Unit
- (d) Transport and Access Unit
- (e) Environmental Projects Unit
- (f) Landscaping Unit

- (g) Tree Management Unit
- (h) Cleansing and Waste Management Unit

124. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the recommendation.

External Referrals

Ausgrid

125. Pursuant to Section 2.48 of the SEPP (Transport and Infrastructure) 2021, the application was referred to Ausgrid for comment.
126. A response was received which noted that further detailed design information would be required to install a substation to service the site. The proposal includes spatial provision for a chamber substation fronting Kippax Street. Separate approval from Ausgrid will be required for any new substation prior to issue of a construction certificate.

Water NSW

127. Pursuant to Section 60 of the Water Management Act 2000, the application was referred to Water NSW for comment.
128. WaterNSW, advised that the proposed development requires separate approval for dewatering under Section 60 of the Water Management Act 2000. Therefore, conditions of consent are recommended to ensure that the relevant dewatering approvals are obtained from WaterNSW prior to construction works commencing. These advisory conditions have been included in the schedules within the recommended conditions of consent.

Advertising and Notification

129. In accordance with the City of Sydney Community Participation Plan 2024, the proposed development was notified for a period of 21 days between 21 August 2025 and 11 September 2025. A total of 146 properties were notified and eleven submissions were received including one submission which supported the provision of additional housing.
130. The submissions raised the following issues:
- (a) **Issue:** The proposed development is of an excessive bulk and scale and is out of character with the surrounding streetscape of Surry Hills.

Response: The proposed development is generally in keeping with the scale of surrounding seven to nine storey buildings, and results in only a minor exceedance (540mm) of the permitted 28.6m height control under the SLEP and SEPP Housing. Refer to assessment of the CI 4.6 variation to the height control, above.

- (b) **Issue:** The demolition of the existing warehouse buildings disregards local heritage values and is inconsistent with the heritage controls under the SLEP and SDCP.

Response: As discussed elsewhere in this report, the existing buildings on site are not identified as heritage items and are not within a heritage conservation area and are therefore not protected under the SLEP and SDCP, also noting that the demolition of all the existing structures on site was approved under the previous scheme (D/2017/225). Notwithstanding this, the proposed development retains original fabric and features of the stables building, which is considered to be a positive outcome in the locality.

- (c) **Issue:** The inclusion of basement car parking will encourage car use in a congested area, contrary to sustainable transport objectives, and create safety risks for pedestrians and cyclists.

Response: It is noted that proposed development provides far fewer car spaces than is required by the SEPP Housing (shortfall of 14 car spaces), and Council supports the provision of fewer car spaces. Furthermore, appropriate conditions of consent are recommended to ensure that appropriate measures are undertaken to mitigate traffic and pedestrian impacts from the use of the car lift to Sophia Street, including provision of traffic signals. Subject to appropriate conditions, the additional traffic generations as a result of the proposed 18 car spaces is not considered to result in any significant adverse impacts to pedestrians or neighbouring properties. Refer to assessment of the CI 4.6 variation to the minimum car parking standard of the SEPP Housing, above.

- (d) **Issue:** The proposal does not demonstrate how it will provide adequate communal open space for residents as required by the planning controls.

Response: The proposed development provides a landscaped communal open space area on the roof which is sufficiently sized and receives adequate sunlight to meet the requirements of the ADG and SDCP.

- (e) **Issue:** The proposal will result in significant overshadowing and overlooking to neighbouring properties.

Response: The submitted shadow diagrams demonstrate that additional overshadowing from the proposal will fall over commercial buildings to the south on the opposite side of Kippax Street, which are not protected under the planning controls. It is also noted that the relevant planning controls only protect loss of direct sunlight to residential properties at certain times of the year (mid-winter), and do not protect natural light. As discussed elsewhere in this report, the separation distance across all three street frontages is considered adequate within the context of the site and surrounding development which are built to boundaries, noting that a splayed setback is provided to Waterloo Street, a staggered setback is provided to the portion of Sophia Street which directly faces residential apartments at 81 Foveaux Street, and the proposal incorporates operable privacy screens to mitigate privacy impacts.

- (f) **Issue:** The proposal fails to demonstrate best practice in sustainable design, energy efficiency or green infrastructure by not prioritising adaptive reuse.

Response: The proposed development meets the requirements of the SEPP Sustainable Buildings with regard to energy efficiency, and incorporates sufficient sustainability measures, including the retention of part of the stables building, and the commitment to utilize energy efficient fixtures.

- (g) **Issue:** There is no guarantee on the tenure, delivery or management of the affordable housing units.

Response: Confirmation has been provided to demonstrate that a registered Social Housing Provider has been engaged to manage the affordable housing units. A condition of consent is recommended, requiring that a covenant be registered on title to endure that the affordable housing units remain as affordable housing for at least 15 years in accordance with the requirements of the SEPP Housing.

- (h) **Issue:** The demolition and construction works to facilitate the proposed development will result in unacceptable disruptions to the amenity of neighbouring properties.

Response: Appropriate conditions of consent are recommended to mitigate any adverse impacts as a result of construction works, including requiring an amended Construction Noise and Vibration Management Plan and Traffic Management Plan to be submitted and approved by Council prior to issue of a construction certificate, and for any construction works to be within the permitted hours permitted by the *City of Sydney Code of Practice for Construction Hours/Noise 1992*.

- (i) **Issue:** The submitted documentation does not adequately address issues such as structural impacts on retained fabric, waste collection, non-compliance with ADG and SDGP requirements.

Response: As discussed elsewhere in this report, sufficient additional information has been submitted to adequately address issues relating to structural support of the new building, waste management, and issues relating to inconsistencies with the ADG regarding building separation and cross-ventilation.

- (j) **Issue:** Potential impacts to the amenity and outlook of residential apartments at No.81 Foveaux Street, as a result of non-compliant building separations, building height and traffic conditions along Sophia Street. The objector requests appropriate conditions of consent be imposed to address construction related impacts and noise from the operation of the car lift.

Response: As discussed elsewhere in this report, adequate measures are incorporated into the design of the development (staggered setbacks, privacy screens) to mitigate potential impacts to the amenity of neighbouring apartments on the opposite side of Sophia Street. A view loss analysis has also been undertaken, and verified by Council's Model Team, which demonstrates that the proposal will not unreasonably obstruct any views from neighbouring properties. Appropriate conditions of consent are recommended to mitigate potential adverse impacts of the development, including requirements for dilapidation reports of adjoining properties to be prepared prior to construction works, and for the design of the car lift to incorporate noise mitigation measures in accordance with the recommendations of the submitted acoustic report.

- (k) **Issue:** The proposed development does not achieve design excellence, as it results in a number of departures from the ADG and DCP controls and objectives. Some of the submitted documentation is inadequate (solar diagrams and GFA plans in low resolutions).

Response: As demonstrated by the ADG and DCP compliance tables and assessment within this report, the proposed development as amended generally complies with the relevant planning controls, as discussed elsewhere in this report, the non-compliances are considered acceptable within the context of the subject site. The proposed development is of a high standard of architectural design, is of an appropriate bulk and scale, provides an appropriate mix of residential and commercial uses, and responds to environmental impacts. The submitted documentation is considered adequate to allow for a comprehensive assessment against the relevant planning controls.

- (l) **Issue:** The proposed development should consider noise impacts from the approved continued operation of the rooftop and ground level function centres at 110-120 Kippax Street.

Response: As discussed elsewhere in this report, the proposed development incorporates measures to mitigate potential noise impacts on future residents, as recommended by the submitted acoustic report (glazing and wall specifications, and operable privacy screens). Notwithstanding this, it is noted that the use of 110-120 Kippax Street is not identified as an "entertainment sound generating activity" or an "existing entertainment sound generating activity" under Section 3.18 of the DCP, which would require additional noise criteria to be addressed.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

131. 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.
132. Credits have been applied for the most recent past use of the site being retail uses of the lower ground and ground floors. It is noted that there are no recent approved uses for Levels 1 and 2, which are currently vacant.

133. 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

134. 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.
135. 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. Clause 14 of the Housing SEPP identifies that there is a need for affordable housing within each area of the State.
136. 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) any other dedication or contribution required to be made by the applicant under this section or section 7.11.
137. The site is located within the residual lands affordable housing contribution area. As the proposed development includes the creation of more than 200 sqm of additional GFA for the purpose of residential accommodation, a contribution is required.
138. For the purpose of calculating affordable housing contributions, Total Floor Area (TFA) plans have been submitted by the applicant. TFA of 4796.4 sqm has been calculated for the development based on the definition of TFA contained in Clause 7.13 of the SLEP, noting that "the floor area used to provide affordable housing" is excluded from the definition.
139. 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

140. The development is subject to a Housing and Productivity Contribution (Base component) under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2024.

141. The site is located with the Greater Sydney region, the development is a type of residential and 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.
142. A condition relating to the Housing and Productivity Contribution has been included in the recommended conditions of consent.

Relevant Legislation

143. Environmental Planning and Assessment Act 1979.

Conclusion

144. The application seeks approval for the substantial demolition of the existing building, part retention of the stables building, and construction of an 8-storey mixed-use development with retail tenancies on the lower levels, basement carparking, 42 residential apartments with affordable housing units and associated landscaping.
145. Non compliances with the building height development standard (Clause 4.3 of the Sydney LEP 2012), the minimum landscaped area and the minimum car parking development standards specified in the SEPP (Housing) 2021 are supported.
146. The proposed development is not considered to have any unreasonable adverse impact in terms of overshadowing or visual privacy and is of an appropriate bulk and scale within the context of the subject site and streetscape.
147. The proposed residential apartments are generally consistent with the Apartment Design Guide and are considered suitable within the context of the site and desired future character of the area and responds to the demand for housing.
148. The proposed development is considered to exhibit design excellence in accordance with the provisions of Clause 6.21C of the Sydney LEP 2012.
149. Subject to conditions, the development is in the public interest and recommended for approval.

ANDREW THOMAS

Executive Manager Planning and Development

Nick Reid, Specialist Planner