

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-191
DA Number	DA321/2020/2 (PAN-197451) – Section 4.55(2) Modification Application
LGA	Woollahra Municipal Council
Proposed Development	Existing Consent: Demolition of existing structure and construction of a shop top housing development Proposed Modification: Internal and external modifications to the approved shop top housing development with basement parking
Street Address	19-27 Cross Street DOUBLE BAY (Lot 100 of DP 617017)
Applicant/Owner	Applicant: Grand Noble Capital No 3 Pty Ltd Owner: Tri-Anta Pty Ltd
Date of DA lodgement	23 February 2022
Total number of Submissions	One (1)
Number of Unique Objections	
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Pursuant to Clause 123BA(2) of the EP&A Regulation 2000, this matter is to be determined by the SECPP, the subject Section 4.55(2) Modification Application meets the referral criteria as set out in Schedule 1 of the Instruction, as it involves a departure of development standards by more than 10%.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • List all of the relevant environmental planning instruments: s4.15(1)(a)(i) <ul style="list-style-type: none"> - SEPP 65: Design Quality Of Residential Flat Development inclusive of Apartment Design Guide; - SEPP (Biodiversity and Conservation) 2021; <ul style="list-style-type: none"> - Chapter 10 – Sydney Harbour Catchment; - SEPP (Resilience and Hazards) 2021 <ul style="list-style-type: none"> - Chapter 2 – Coastal Management; - Chapter 4 – Remediation of Land; - SEPP (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure; - SEPP (Building Sustainability Index: BASIX) 2004; - Woollahra Local Environmental Plan 2014 (WLEP 2014) • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority; s4.15(1)(a)(ii) N/A • List any relevant development control plan: s4.15(1)(a)(iii) Woollahra Development Control Plan 2015 (WDCP 2015) • Other relevant plans: <ul style="list-style-type: none"> - Woollahra Section 7.12 Contributions Plan 2021; - Woollahra Community Participation Plan 2019; • List any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iia) N/A • List any relevant regulations e.g. Regs 92, 93, 94, 94A, 288: s4.15(1)(a)(iv) <ul style="list-style-type: none"> - Demolition of Structures (Clause 92); - Fulfilment of BASIX commitments (Clause 97A); - Swimming Pools Act 1992 • List any coastal zone management plan: s4.15(1)(a)(v) (repealed)
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> 1. Architectural Drawings 2. Architectural Diagrams 3. Landscape Plans 4. Design Verification Statement 5. Referral Responses – Urban Design 6. Referral Response – TS Traffic Engineer

Clause 4.6 requests	Not applicable
Summary of key submissions	<ul style="list-style-type: none"> Excessive height in breach of Clause 4.3 of the WLEP 2014 Excessive bulk/FSR in breach of Clause 4.4 of the WLEP 2014 Breaches of envelope, setback and other controls in the WDCP 2015
Report prepared by	Mr Wilson Perdigao – Senior Assessment Officer
Report date	13 July 2022

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

No – Addressed in the body of the report

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

No – Addressed in the body of the report

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Not applicable

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

No – Refer to recommendation in the body of the report.

SYDNEY EASTERN CITY PLANNING PANEL SECTION 4.55 DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	0.0
FILE No.	PPSSEC-191 (Council Ref: DA 321/2020/2)
ADDRESS	19-27 Cross Street DOUBLE BAY (Lot 100 of DP 617017)
SITE AREA	1,334m ²
ZONING	B2 Local Centre
EXISTING CONSENT	Demolition of existing structure and construction of a shop top housing development
DATE OF CONSENT	23 July 2021
TYPE OF CONSENT	Local development (Original DA constituted Integrated Development under the Water Management Act)
CONSENT AUTHORITY	Sydney Eastern City Planning Panel
PROPOSED MODIFICATION	Internal and external modifications to the approved shop top housing development with basement parking
DATE S4.55 LODGED	23/02/2022
APPLICANT	Grand Noble Capital No 3 Pty Ltd
OWNER	Tri-Anta Pty Ltd
AUTHOR	Mr W Perdigao
TEAM LEADER	Mr T Wong
MANAGER	Mr N Economou
SUBMISSIONS	One (1)
RECOMMENDATION	Conditional Approval (Refer to Section 28)

Table of Contents

SYDNEY EASTERN CITY PLANNING PANEL	1
SECTION 4.55 DEVELOPMENT APPLICATION ASSESSMENT REPORT	1
1. REASON FOR REPORT TO SYDNEY EASTERN CITY PLANNING PANEL (SECPP)	3
2. REASONS FOR RECOMMENDATION	3
3. LOCALITY PLAN	4
4. SUMMARY OF APPROVED DEVELOPMENT	4
4.1. Relevant DA Conditions of Consent	5
5. SUMMARY OF PROPOSED MODIFICATION	8
5.1. Amended Plans	9
5.2. Comparison of Approved Development and Modification Application Plans	11
6. ISSUES	20
6.1. Primary Issues	20
6.2. Summary of Submissions	20
PROPERTY DETAILS AND REFERRALS	21
7. SITE AND LOCALITY	21
7.1. Site and Context	22

8. RELEVANT PROPERTY HISTORY	25
9. REFERRALS.....	25
ASSESSMENT UNDER SECTION 4.55	26
10. SECTION 4.55(2): OTHER MODIFICATIONS	26
ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15	27
11. ADVERTISING AND NOTIFICATION	27
11.1. Submissions	27
11.2. Amended Plans	28
11.3. Statutory Declaration	28
12. INTEGRATED DEVELOPMENT (DIVISION 4.8 of the EP&A Act 1979)	28
13. SEPP (Biodiversity and Conservation) 2021	28
13.1. Chapter 10 – Sydney Harbour Catchment	28
14. SEPP (Resilience and Hazards) 2021	28
14.1. Chapter 2 – Coastal Management	28
14.2. Chapter 4 – Remediation of Land	29
15. SEPP (Industry and Employment) 2021	30
16. SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004.....	31
17. SEPP (Transport and Infrastructure) 2021.....	31
18. SEPP 65: Design Quality Of Residential Apartment Development	31
18.1. Clause 30(1): Standards that cannot be used as grounds to refuse development consent or modification of development consent	32
18.2. Clause 30(2): Design Quality Principles.....	32
18.3. Conclusion.....	41
19. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014 (“WLEP 2014”)	41
19.1. Part 1.2: Aims of Plan.....	41
19.2. Part 2.3: Zone Objectives and Land Use Table	41
19.3. Part 4: Principal Development Standards	42
19.3.1. Compliance Table (Note: non-compliances are highlighted).....	42
19.3.2. Part 4.3: Height of Buildings	42
19.3.3. Part 4.4: Floor Space Ratio	44
19.4. Parts 5 & 6: Miscellaneous and Additional Local Provisions	44
19.4.1. Part 5.10: Heritage Conservation	44
19.4.2. Part 5.21: Flood Planning	46
19.4.3. Part 6.1: Acid Sulfate Soils	46
19.4.4. Part 6.2: Earthworks	47
20. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015 (WDCP 2015).....	48
20.1. Chapter D5: Double Bay Centre.....	48
20.2. Chapter E1: Parking and Access	50
20.2.1. Part E1.1.3: Objectives	50
20.2.2. Part E1.4-E1.5: Residential parking and Non-residential parking	51
20.2.3. Part E1.6: Bicycle parking and Part E1.7: Motorcycle parking rates	52
20.2.4. Part E1.10: Parking and Access Design Standards	52
20.2.5. Conclusion	52
20.3. Chapter E2: Stormwater and Flood Risk Management.....	52
20.4. Chapter E3: Tree Management.....	52
20.5. Chapter E4: Contaminated Land.....	53
20.6. Chapter E5: Waste Management	53
20.7. Chapter E6: Sustainability	53
20.8. Chapter E7: Signage	53
20.9. Chapter E8: Adaptable Housing.....	53
21. DRAFT AMENDMENTS TO POLICIES AND PLANS	53

22. CONTRIBUTION PLANS & FEES.....	53
23. APPLICABLE ACTS/REGULATIONS	53
23.1. Swimming Pools Act 1992.....	53
24. THE LIKELY IMPACTS OF THE PROPOSAL.....	53
25. THE PUBLIC INTEREST	54
26. CONCLUSION	54
27. DISCLOSURE STATEMENTS	54
28. RECOMMENDATION: Pursuant to Section 4.55 of the Environmental Planning and Assessment Act, 1979	54
1. Addition of the following Conditions:	54
2. Modify and Replace Conditions C.1, C.5, H.1 and I.1 of the Development Consent, with the following:.....	56

1. REASON FOR REPORT TO SYDNEY EASTERN CITY PLANNING PANEL (SECPP)

Pursuant to clause 2 of Schedule 7, of the *State Environmental Planning Policy (State and Regional Development) 2011*, the original application DA 321/2020/1 (PPSSEC-191) was considered to be regionally significant development as it is “...Development that has a capital investment value of more than \$30 million” because the total development cost is over \$40 million.

Clause 123BA(2) of the EP&A Regulation 2000 provides that the determination of an application to modify a development consent under section 4.55(2) of the Act is prescribed as a function that is not to be determined, by a Council on behalf of a regional panel, if the application is of a kind specified in the ‘*Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW planning portal on 30 June 2020*’ (‘Instruction’).

The subject Section 4.55(2) meets the referral criteria as set out in Schedule 1 of the *Instruction*, as it involves a departure of development standards by more than 10%, being a further departure from the 14.7m Height of Building control and the 2.5:1 Floor Space Ratio control clauses 4.3 and 4.4 of the Woollahra LEP 2014. Furthermore, DA 321/2020/1 (PPSSEC-191) had originally been recommended for refusal by Woollahra Council however was subsequently approved by the Sydney Eastern City Planning Panel (SECPP) on 23 July 2021.

Pursuant to Clause 123BA(2) of the EP&A Regulation 2000, this matter is to be determined by the SECPP.

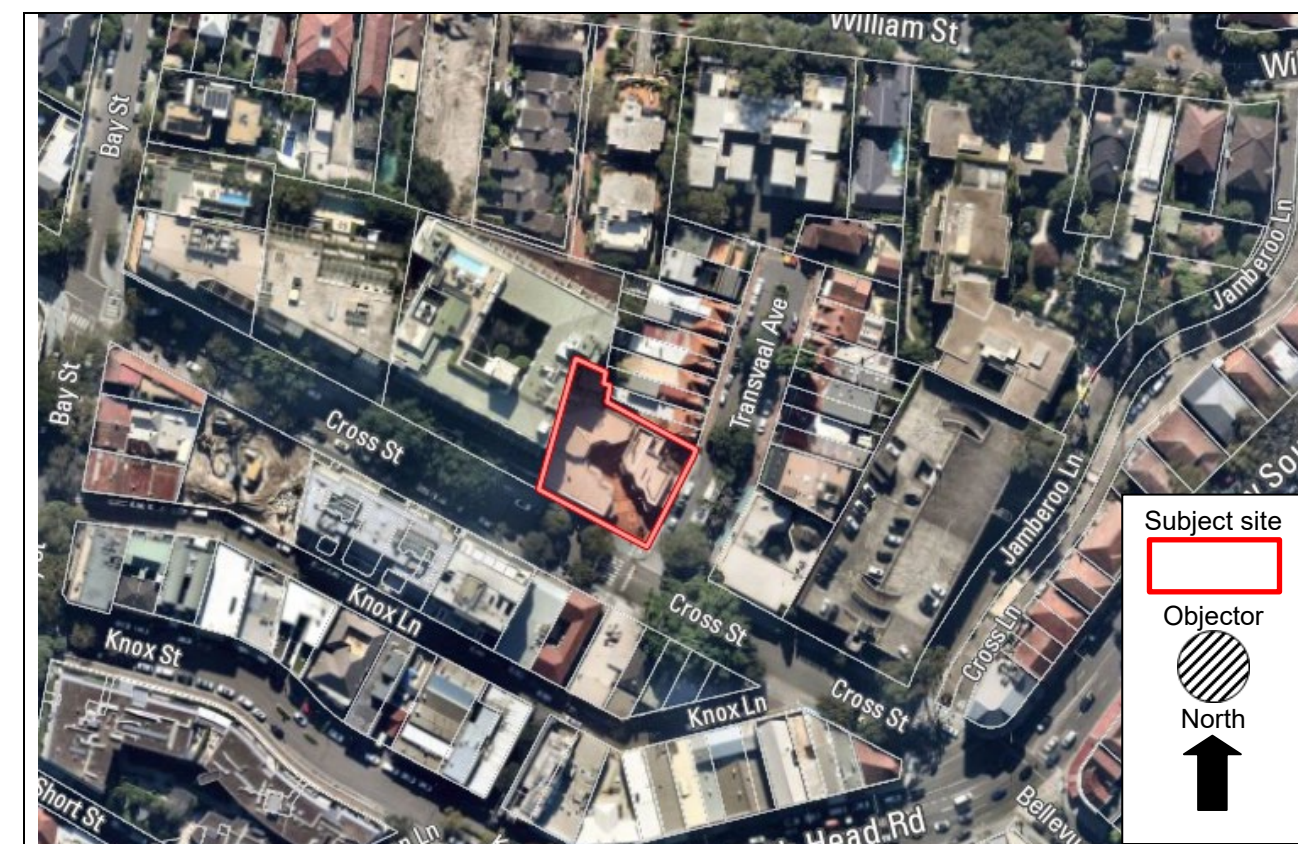
2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- The development consent as proposed to be modified, is considered to be substantially the same as the originally approved development
- The proposed modifications satisfies section 4.55 of the Environmental Planning and Assessment Act 1979 including Section 4.55(3) of the Act as the proposed modifications are acceptable with regard to the relevant matters for consideration in Section 4.15(1) and remain consistent with the reasons for the grant of consent given by the Sydney Eastern Central Planning Panel (SECPP)

- It is considered to be satisfactory with all relevant planning policies including the objectives of the WLEP 2014 and WDCP 2015
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory
- The site is suitable for the proposed development
- The proposed modifications are in the public interest

3. LOCALITY PLAN



- 1 x Objection/Submission received is located outside of the above Locality Plan being the 'Double Bay Residents Association'

4. SUMMARY OF APPROVED DEVELOPMENT

DA 321/2020/1 – A Development Application (“DA”) for the “*demolition of existing structures and construction of a new shop-top housing development*” located at 19-27 Cross Street Double Bay (Lot 100 of DP 617017) (“the Site”) was approved by the Sydney Eastern City Planning Panel (“SECPP”) on 23 July 2021.

More specifically, the proposal involved the construction of a new six (6) storey shop-top housing development located over two (2) storeys of basement parking including the following:

- Site works including demolition of the existing structures on-site and associated excavation to accommodate the construction of basement levels;
- Eighteen (18) residential units comprising, 2 x 1-Bed, 1 x 2-Bed; and 15 x 3-Bed units, located over five residential levels (Levels 1-5);

- Four (4) commercial/retail tenancies located on the Ground Floor Level (comprising a total gross floor area ("GFA") of 679m²;
- Lift overrun and service/plant rooms as part of the roof form, at Level 6 (effectively a 7th storey);
- Fifty-one (51) car parking spaces, thirty (30) bike parking spaces and six (6) motorbike parking spaces, located within the Basement Levels;
- New public plaza to the north-eastern corner of the site fronting Transvaal Avenue including a new deciduous tree in tree well;
- New public art (ceramic mural) to the northern external wall at Ground Floor Level;
- Removal of existing vehicular crossing on Transvaal Avenue;
- New vehicular crossing to Cross Street accessing a car lift.



Photomontage of the Approved Development, as viewed from Cross Street (Source: Luigi Rosselli Architects)

4.1. Relevant DA Conditions of Consent

The following DA Conditions are of relevance to the scope of proposed modifications:

C.1 Modification of Details of the Development (section 4.17(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

a) Design Changes

- The landscape plan must be amended to reflect the plans in **Condition A.3** above and the feature tree must be provided with sufficient depth into the basement parking to sustain vigorous growth.*
- The architectural plans must be amended to demonstrate that the feature specimen tree for the public plaza has sufficient depth and width cut into the basement. This may require a reduction in car parking spaces for the residential component of the development. The plans must be amended prior to the construction certificate being issued.*

Reason: to ensure the public plaza area has sustainable landscaping consistent with the intent of the project.

- b) *The submitted Landscape Plan must specify a deciduous tree located to the north-eastern corner of the site within the proposed public plaza. It must be of a minimum 100L pot size and a species that at maturity must grow to a minimum dimension of 8m (h) x 6m (w).*
- c) *The submitted Landscape Plan must specify the proposed replacement street tree to be an *Ulmus parvifolia* (Chinese Elm) and not a *Livistona* palm tree. The tree must be planted in a 100 litre container size at the time of planting. The tree pit and surface materials must match the existing materials used within the Double Bay shopping precinct and comply with all relevant specifications outlined in Council's Specifications for Roadworks, Drainage and Miscellaneous Works relating to tree planting within footpaths;*
- d) *To ensure there is sufficient deep soil to sustain the future growth of the proposed landscape plantings, all landscape areas within the property must comply with soil depths outlined within Section 4P - Table 5 of the NSW Apartment Design Guide - Minimum soil standards for plant types and sizes;*
- e) *A Hoarding Design Plan must be submitted to Council's Tree Officer. The design plan must consider the location of branches from Council street trees referenced 2 & 3. Where the branches of these trees exist within the airspace of the proposed hoarding the hoarding must be shown to be discontinuous to accommodate the branches without the need to prune.*
- f) *Acoustic treatments*
The following acoustic treatments as set out in section 5 of the Acoustic Report must be employed:
 - *Glazed Windows and Doors*
Aluminium framed/sliding glass doors and windows must meet the following criteria:
 - *All external windows and doors listed are required to be fitted with Q-Ion type acoustic seals.*
 - *Thicker glazing may be required for structural, safety or other purposes. Where it is required to use thicker glazing than scheduled, this will also be acoustically acceptable.*
 - *Recommended glazing construction as listed in Table 8*
 - *In addition to complying with the minimum scheduled glazing thickness, the R_w rating of the glazing fitted into open-able frames and fixed into the building opening will require the use of acoustic seals around the full perimeter of open-able frames and the frame will need to be sealed into the building opening using a flexible sealant.*
 - *External Roof/Ceiling*
External roof construction is to be constructed from concrete and masonry elements, this proposed structure will not require any further acoustic upgrading. In the event that any penetrations are required through the external skin, an acoustic grade sealant should be used to minimise all gaps.
 - *External Walls*
External wall construction is to be constructed from concrete and masonry elements, this proposed structure will not require any further acoustic upgrading. In the event that any penetrations are required through the external skin, an acoustic grade sealant should be used to minimise all gaps.
 - *Entry Doors*
External opening entry doors shall have glazing thicknesses equal to those recommended in section 5.4.1 Recommended Glazing Construction, and are to have Raven RP10 to the top and sides, and Raven RP38 to the underside of the door.
 - *Mechanical Ventilation*
With respect to natural ventilation of the dwellings, the NSW Department of Planning document "Development near Busy Roads and Rail Corridors - Interim Guideline" dictates that:

"If internal noise levels with windows or doors open exceed the criteria by more than 10dB(A), the design of the ventilation for these rooms should be such that occupants can leave windows closed, if they so desire, and also to meet the ventilation requirements of the Building Code of Australia."

With windows open, the allowable internal noise goal is permitted to be 10dB(A) higher than when the windows are closed (ie – allowable level in bedrooms becomes 45dB(A), and 50dB(A) in living rooms).

All facades must satisfy the requirements above with windows/doors open.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the Act.

Note: Clause 146 of the Regulation prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the Regulation prohibits the issue of any Construction Certificate that is inconsistent with this consent.
Standard Condition: C4 (Autotext CC4)

C.2 Public Art Plan

Prior to the issue of any construction certificate, a complete Public Art Plan must be submitted to Council's Public Art Coordinator for assessment and approval. It must include:

- the proposed final artwork/s for Council's Public Art Panel to assess and provide recommendation on.
- in addition to the above there must also be interpretive material to reference Transvaal Heritage Conservation Area. This is to be placed in the public plaza area
- the timeline for the public artwork;
- a detailed and itemised budget breakdown, corresponding to the Public Art Guidelines assessment criteria, including 6.5: 'Value of public art' (at least 1% of CIV);

Note: This condition has been imposed consistent with the provisions in the Woollahra Public Art Guidelines for Developers (Feb 2020) and b) above is imposed by the Panel

E.29 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a deep soil landscaped area and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
<i>Ulmus parvifolia</i> (Chinese Elm)	Council footpath on Transvaal avenue. As plotted on the submitted Landscape Plan	100 litre	8 x 6 metres
Deciduous Tree	North-eastern corner of the site. As plotted on the submitted Architectural Plans	Deciduous Tree - North-eastern corner of the site as plotted on the submitted Architectural Plans to be an advanced, healthy, rigorous specimen, selected by the Landscape Architect.	8 x 6 metres

5. SUMMARY OF PROPOSED MODIFICATION

The subject Section 4.55(2) Modification Application involves internal and external modifications to the approved shop-top housing development with basement parking. The proposed modifications will result in minor increase in height and FSR when compared to the approved development.

Specifically, the proposed modifications include the following:

Basement Level 2 (RL -3.38 AHD)

- Enclosure of the two approved car park lobbies;
- Relocation of bin storage rooms to this level;
- Reconfiguration of storage areas;
- Modified adaptable car parking/shared zone space;

Basement Level 1 (RL -0.028 AHD)

- Enclosure of the two approved car park lobbies;
- Reconfiguration of storage areas and services
- Relocation of accessible car parking space; and
- Sprinkler pump room and tank relocated to this level; and
- Minor change to floor finished floor level, from RL -0.08 AHD to RL -0.028 AHD;

Ground Floor (RL 3.25 AHD)

- Adjustment to size of lobby (enlarged compared to approved);
- Addition of concierge desk at western end of lobby;
- Rainwater tanks added;
- Reconfiguration of fire stairs to discharge directly onto the street;
- Reconfiguration of vehicular entry ramp (widened from approved);
- Modified planters within public plaza including enlarged planters.

Level 1 (RL 7.25 AHD)

- Minor internal layout adjustments including to intertenancy walls;
- New planter to Unit 1.02 terrace;

Level 2 (RL 10.35 AHD)

- Minor internal layout adjustments including to intertenancy walls;
- New planter to Unit 2.02 terrace;

Level 3 (13.45 AHD)

- Minor internal layout adjustments including to intertenancy walls;
- New planter to Unit 3.02 terrace;
- Internal reconfiguration of Unit 3.04;

Level 4 (RL 16.55 AHD)

- Minor internal layout adjustments including to intertenancy walls;
- New planter to Unit 4.02 terrace;
- Internal reconfiguration of Unit 3.04.

Level 5 (RL 19.65 AHD)

- Minor internal layout adjustments including to intertenancy walls;
- New planter to Unit 5.02 terrace;
- Internal reconfiguration of Unit 5.03 including conversion from 3-Bed to 4-Bed Unit
- Dormer window sizes adjusted;
- New west-facing window with external screening;

Level 6 Roof Terrace (RL 22.35-22.75 AHD)

- Conversion of approved external roof area into roof terraces for Units 5.01, 5.02 and 5.03 each accessible by stairs and each with lightweight pergola, a spa. The proposed roof terraces measure 103.5m² (for Unit 5.03), 59.9m² (for Unit 5.02) and 49.7m² (for Unit 5.01);
- Reconfiguration of the internal roof void area into area of AC units, Hot Water services and car park exhaust plant;
- New cabana adjacent to Unit 5.03 roof terrace;
- New planters on north, west and south edges to roof terraces.



Photomontage of Proposed Development, as viewed from Cross Street (Source: Luigi Rosselli Architects)

5.1. Amended Plans

On 22.03.2022 and 12.05.2022 the Applicant submitted amended architectural plans in response to Council issued “Stop-the-Clock” (STC) letter dated 10 March 2022 and “Request for Additional Information” (RFI) letter dated 12 May 2022. The key changes include the following:

- Approved DA setback including planters re-instated to balcony of Units 1.03, 2.03, 3.03, 4.03 and 5.03 at north-western boundary (Levels 1-5), adjacent to No. 6 Transvaal Avenue;
- External screening to Bedroom 4 window of Unit 5.03;
- Reduction in the extent of the roof terraces;
- Increased setback to the rooftop planter on the northern façade;

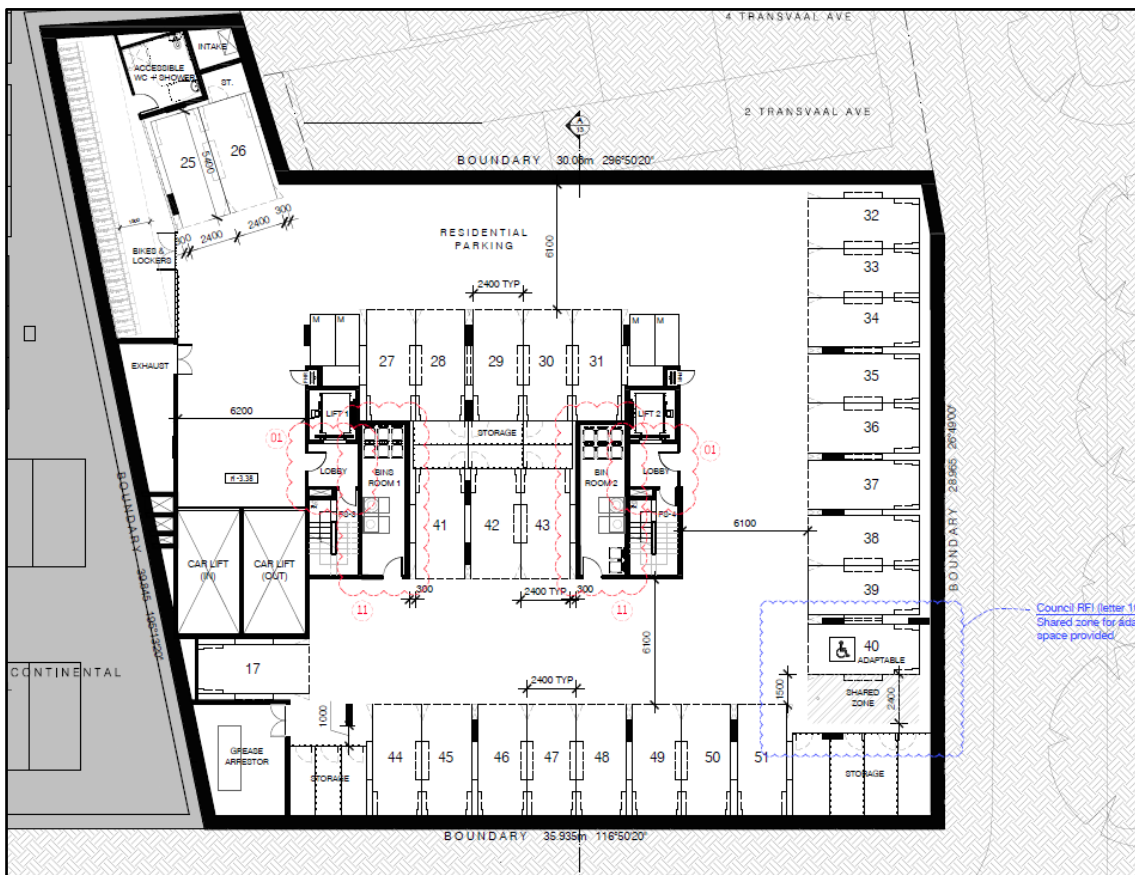
- Inclusion of tree well details; and
- Reconfigured adaptable parking spaces at Basement Level 1 and 2.

The aforementioned plans form the basis of the planning assessment of the report that follows.

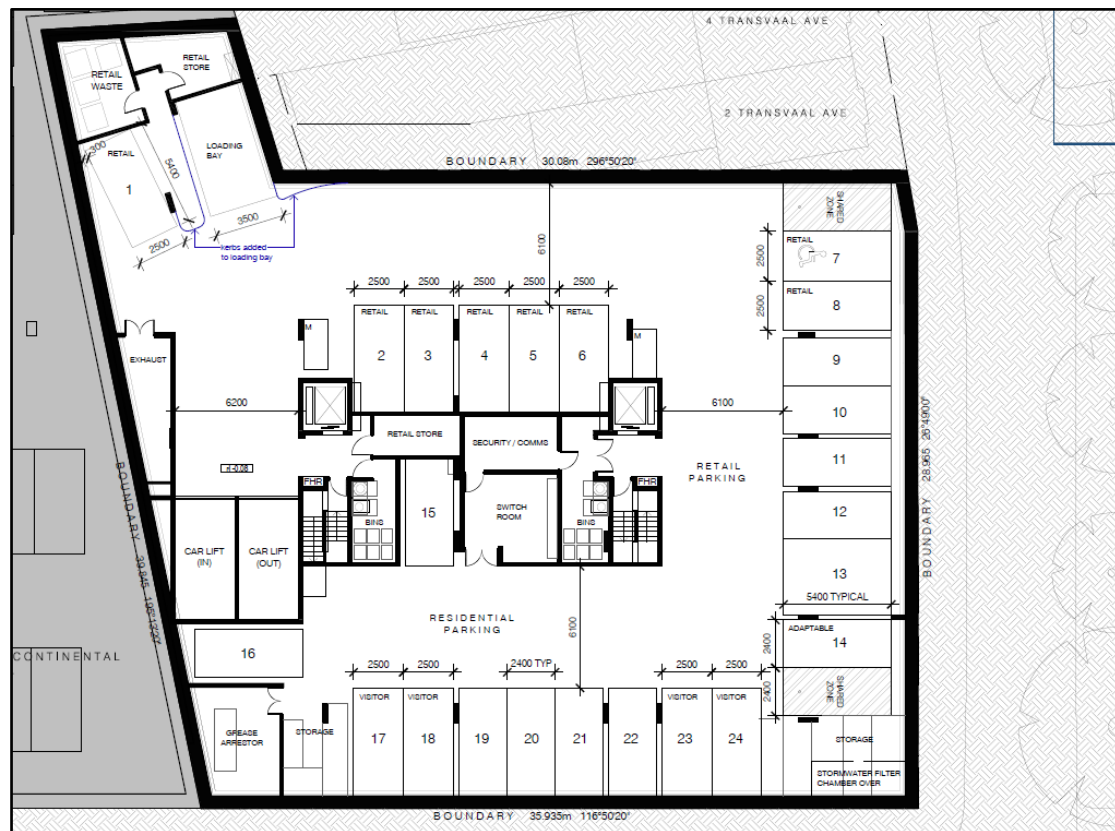
5.2. Comparison of Approved Development and Modification Application Plans



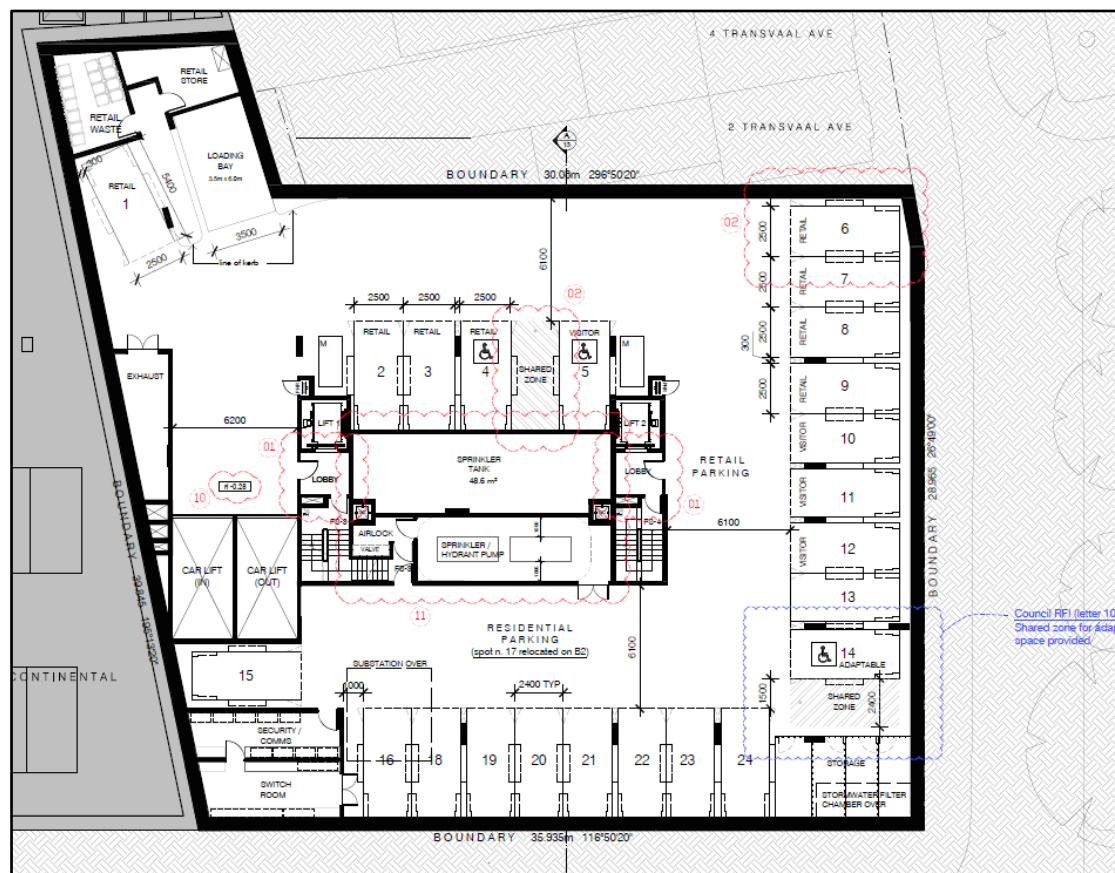
Basement Level 2 – Approved

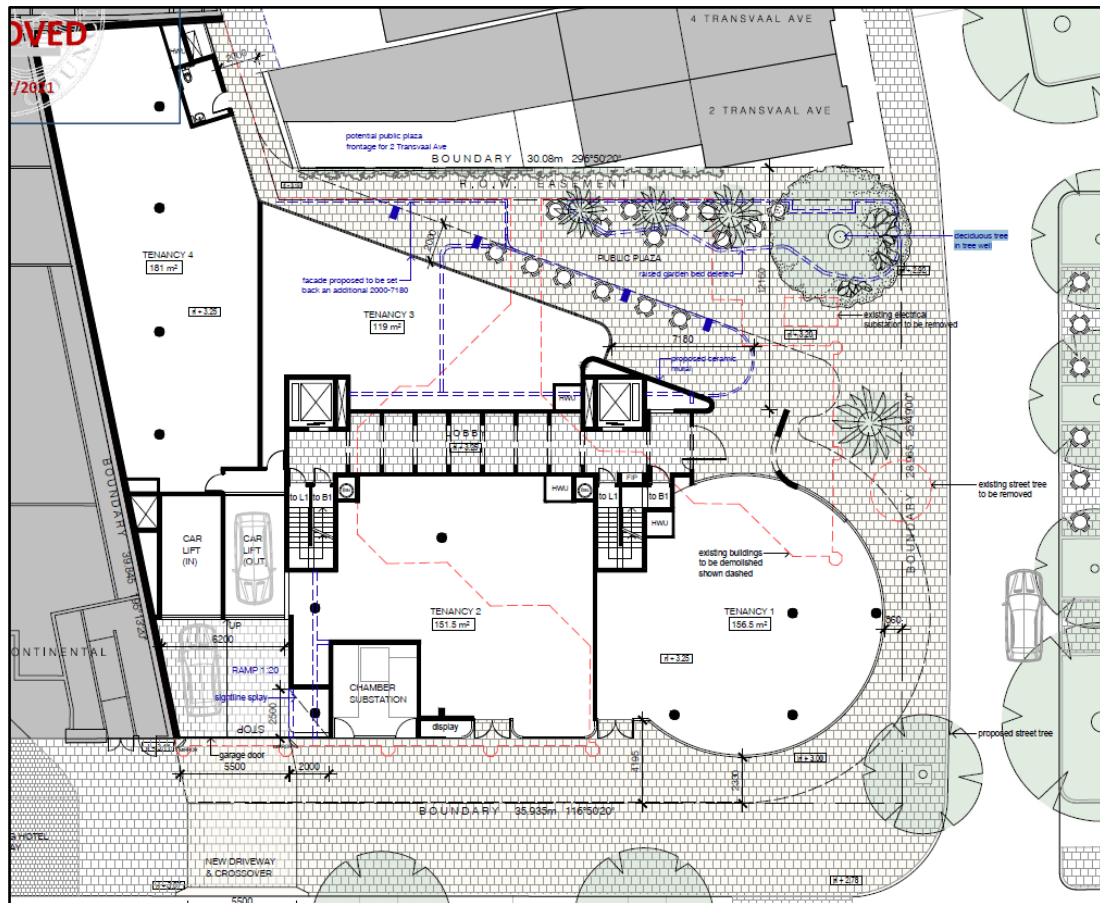


Basement Level 2 – Proposed

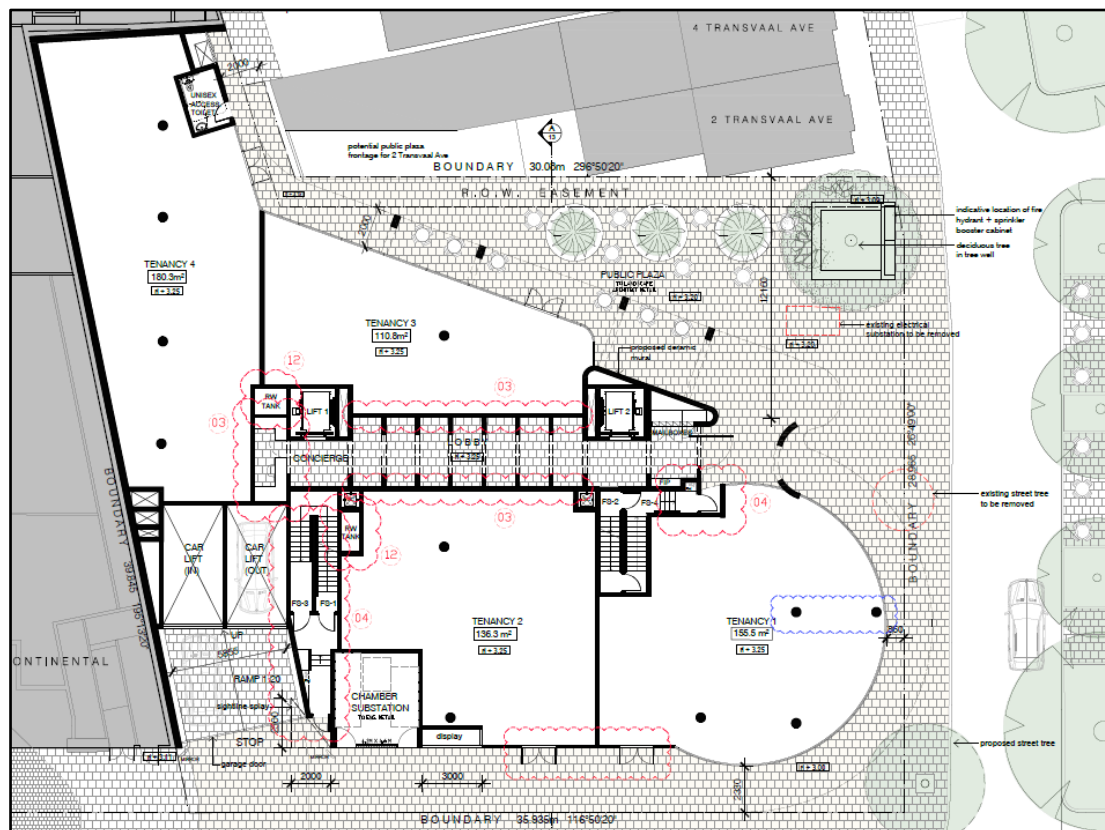


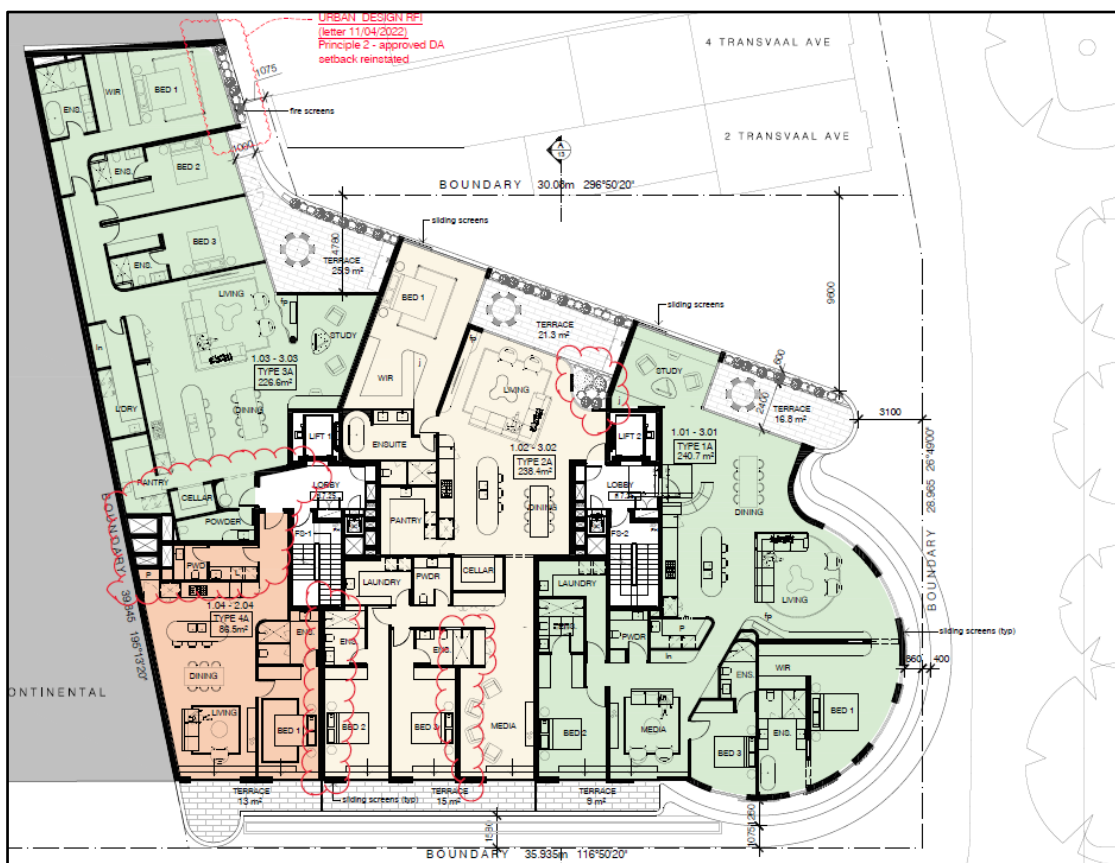
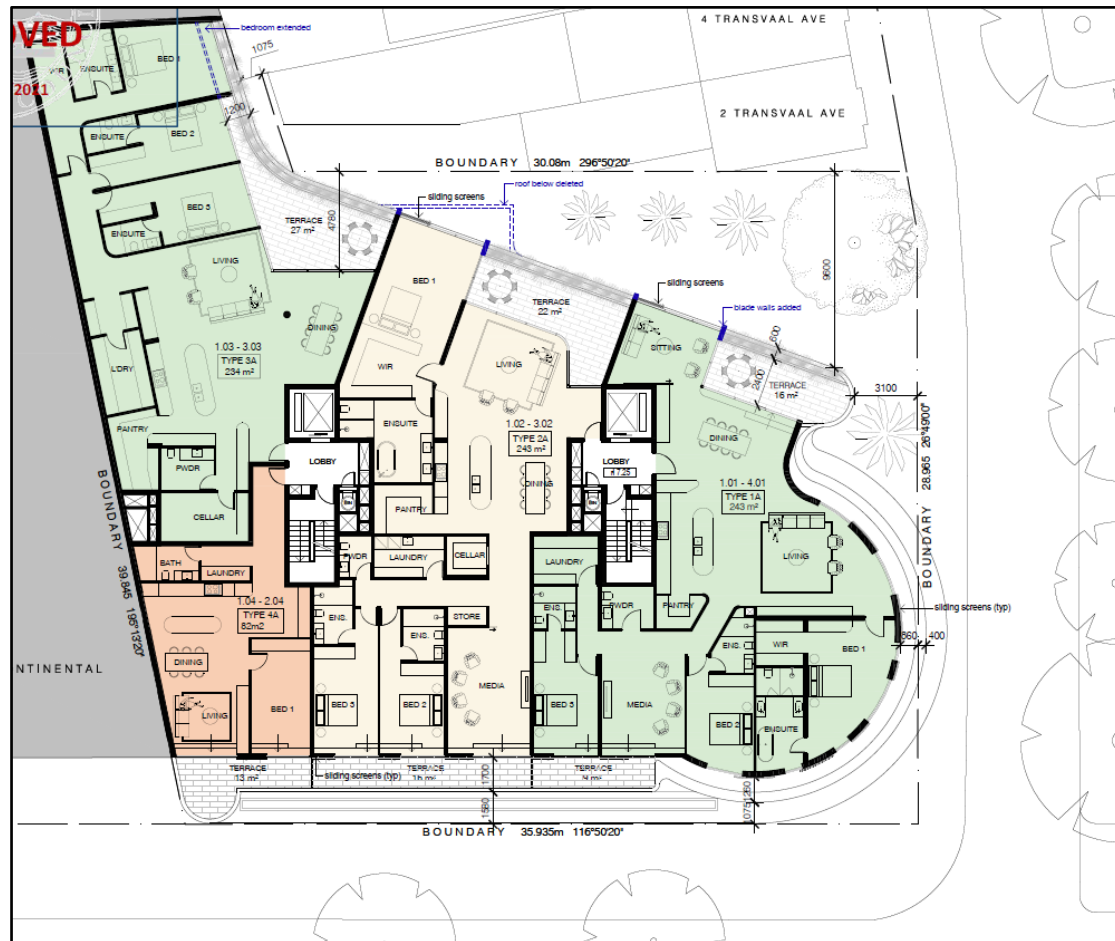
Basement Level 1 – Approved





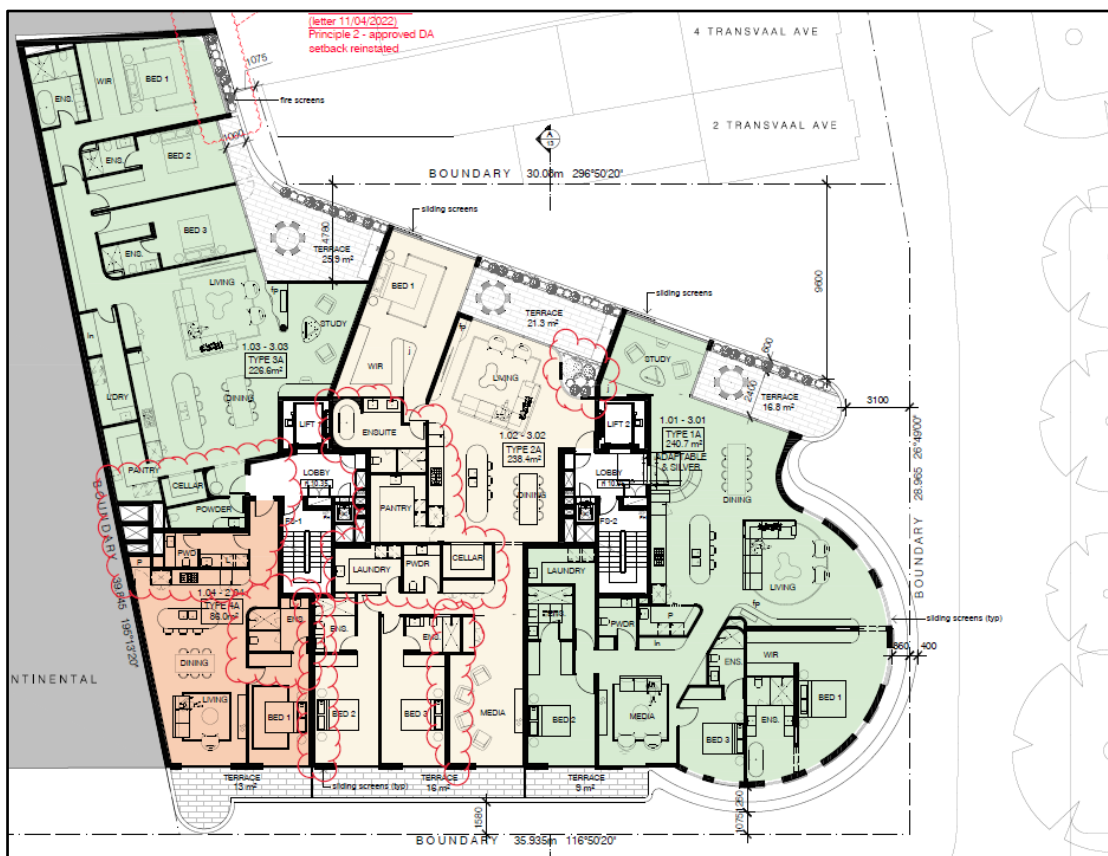
Ground Floor – Approved







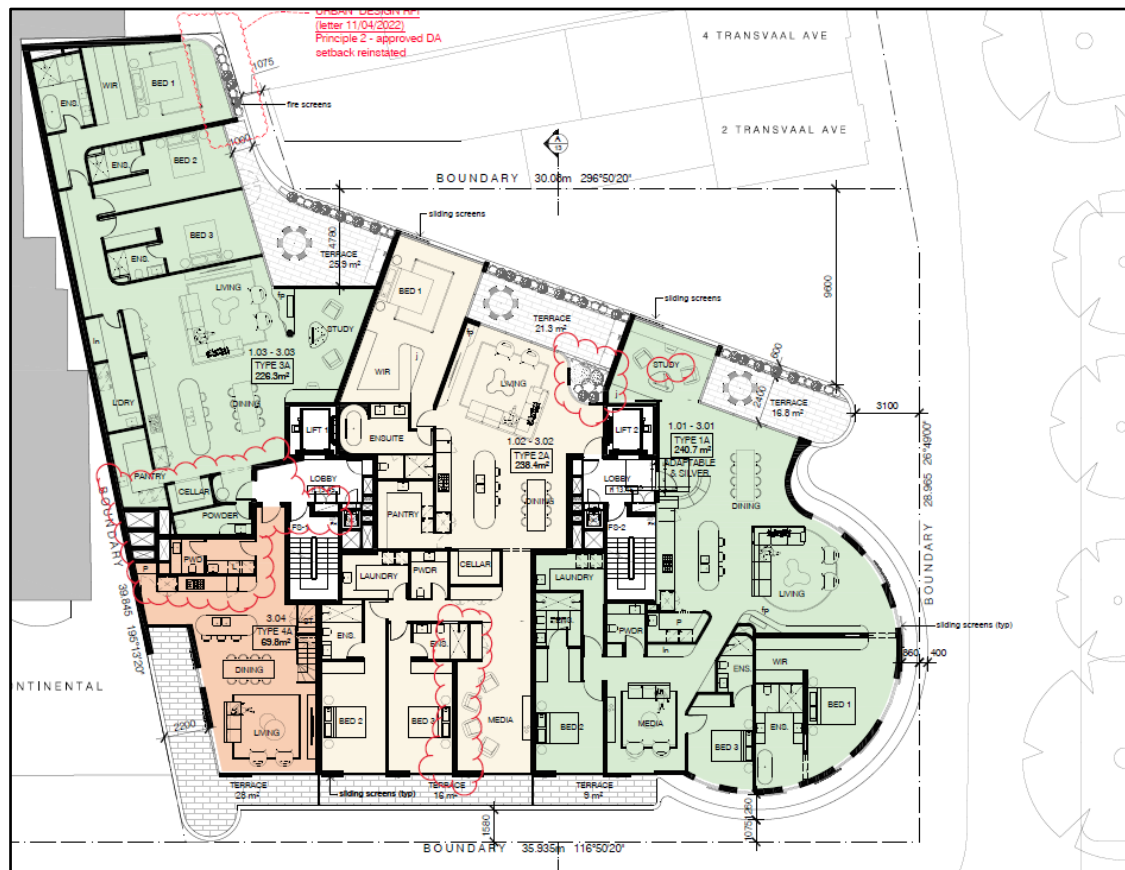
Level 2 – Approved



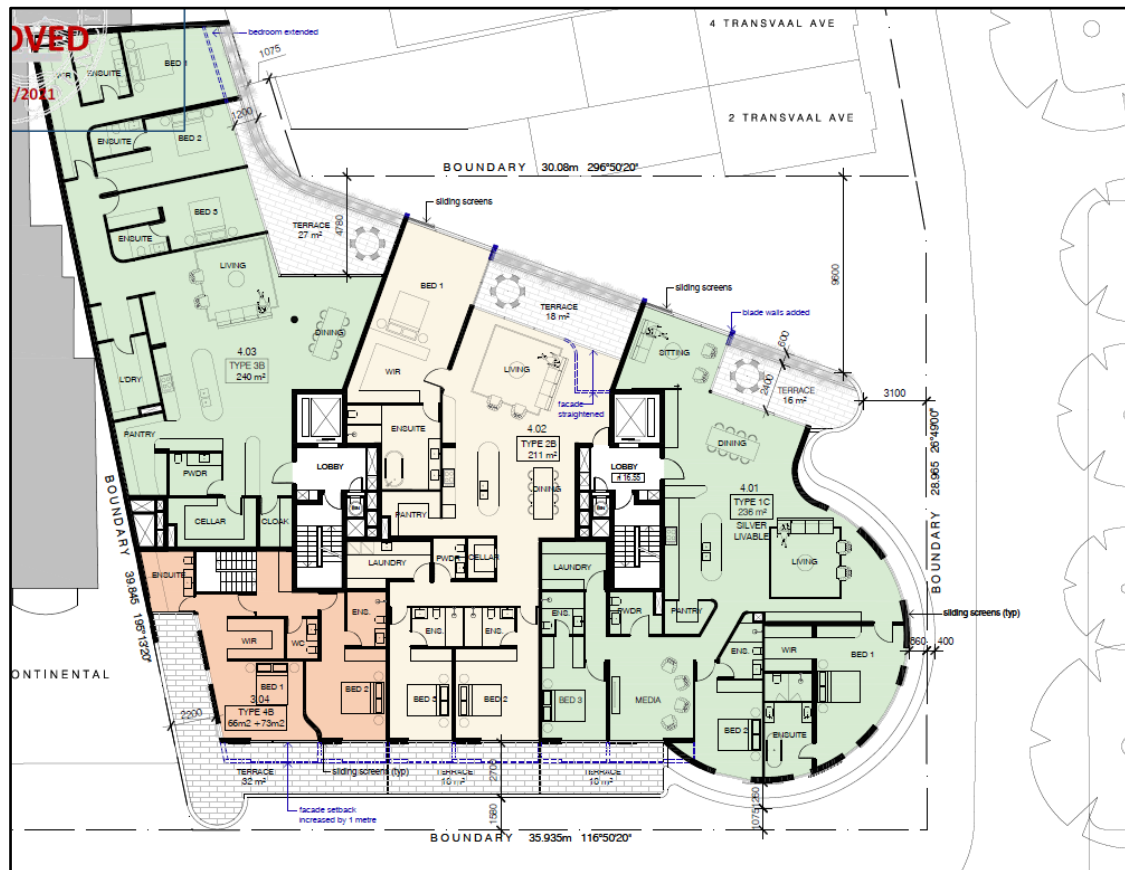
Level 2 – Proposed



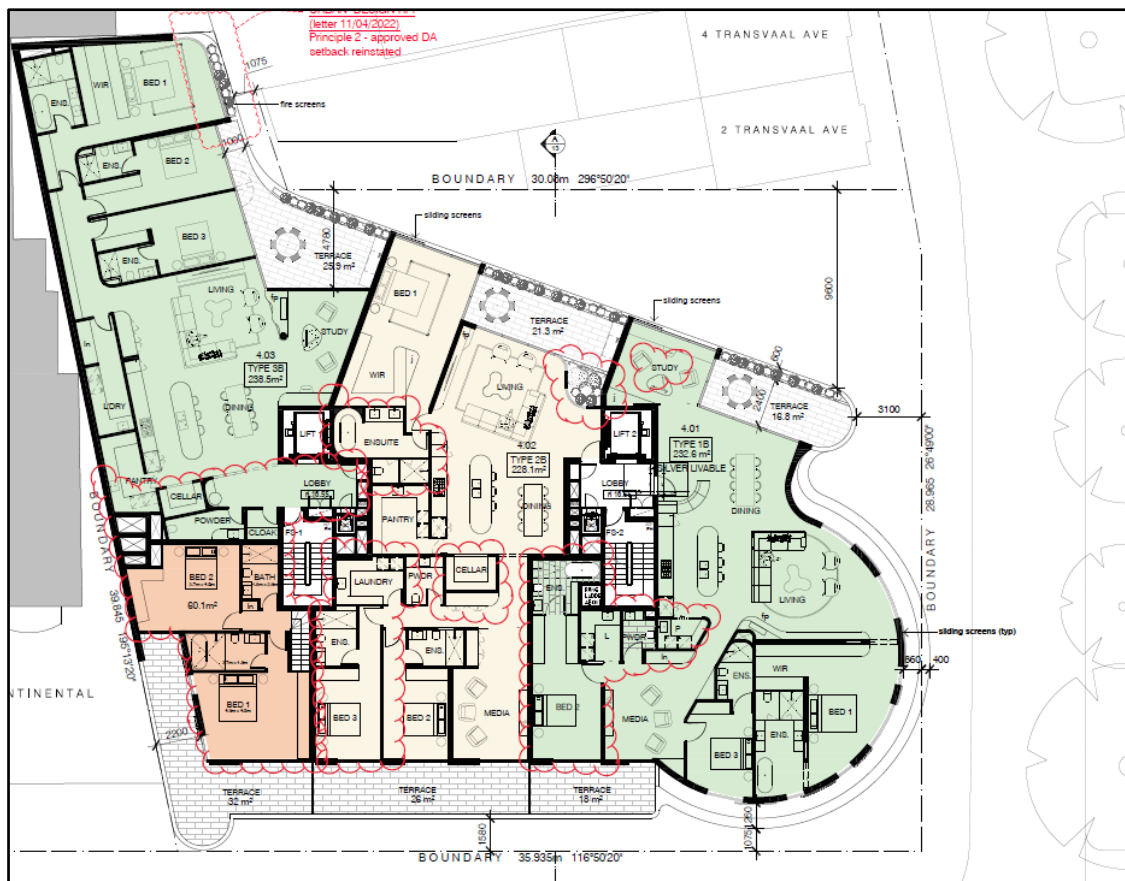
Level 3 – Approved



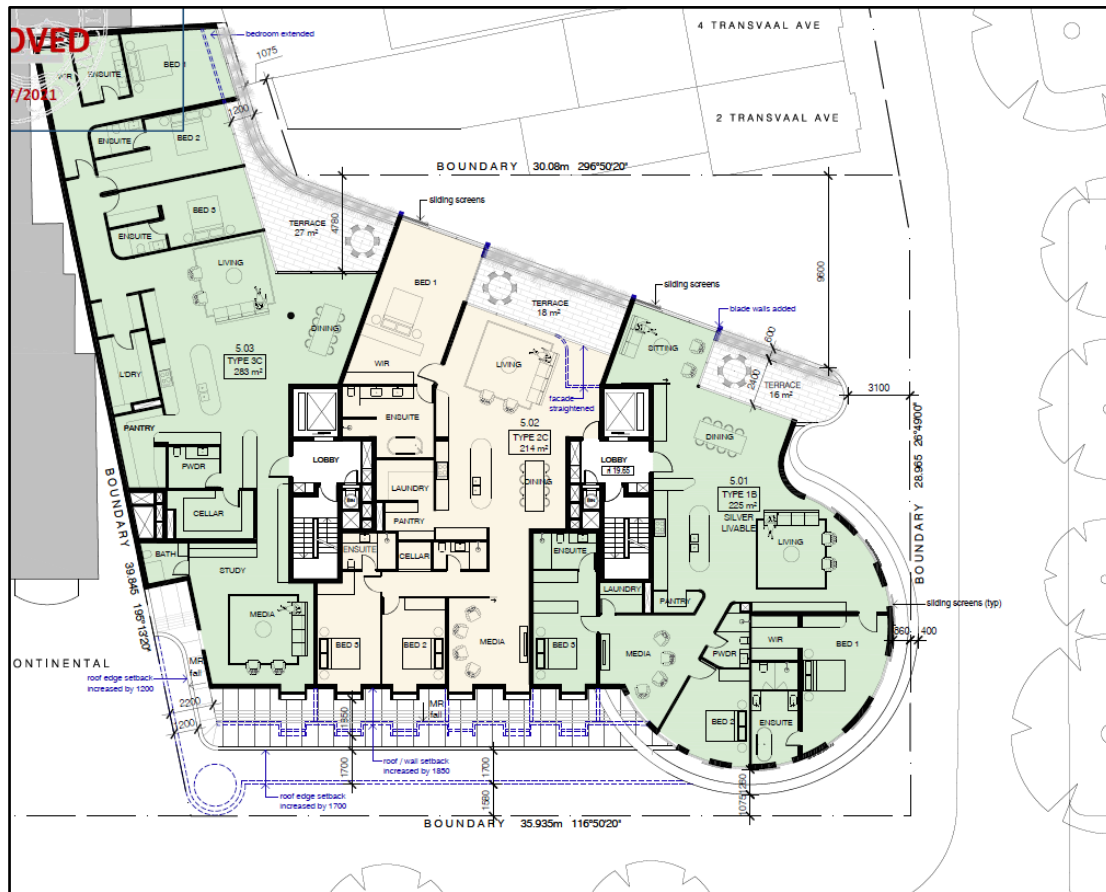
Level 3 – Proposed



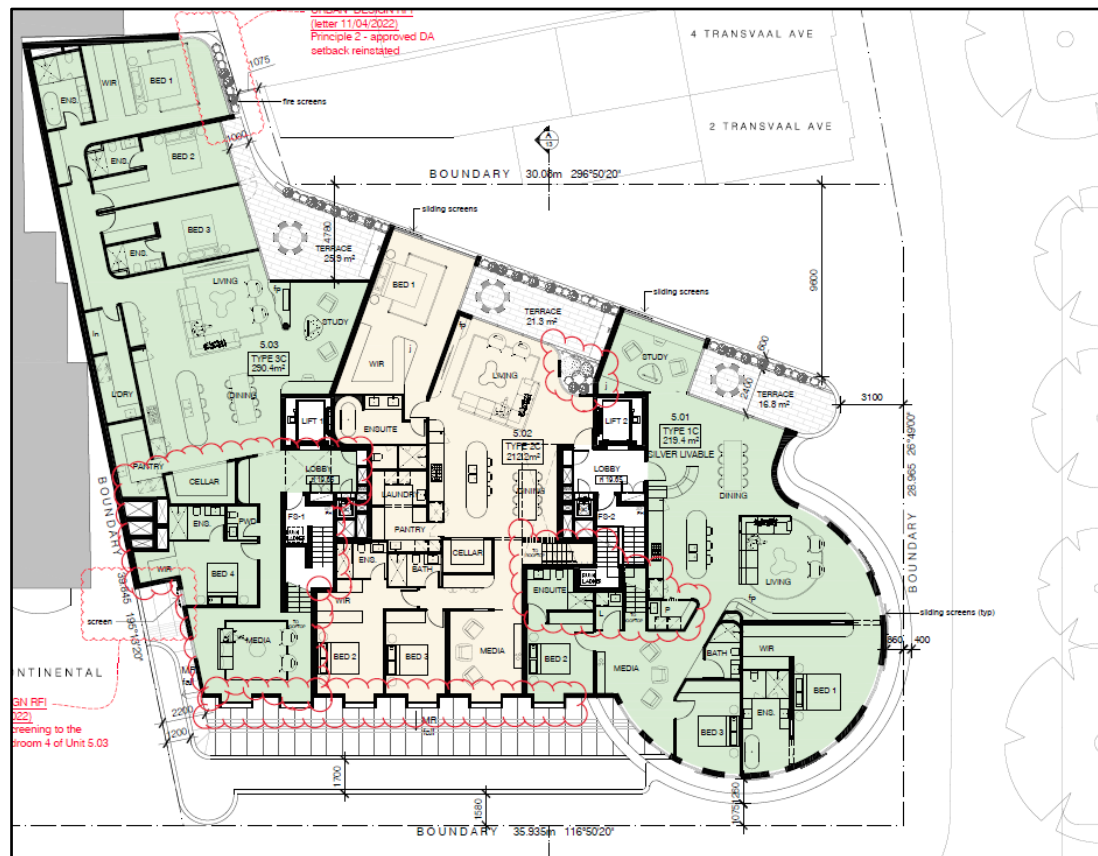
Level 4 – Approved



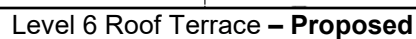
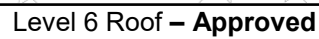
Level 4 – Proposed

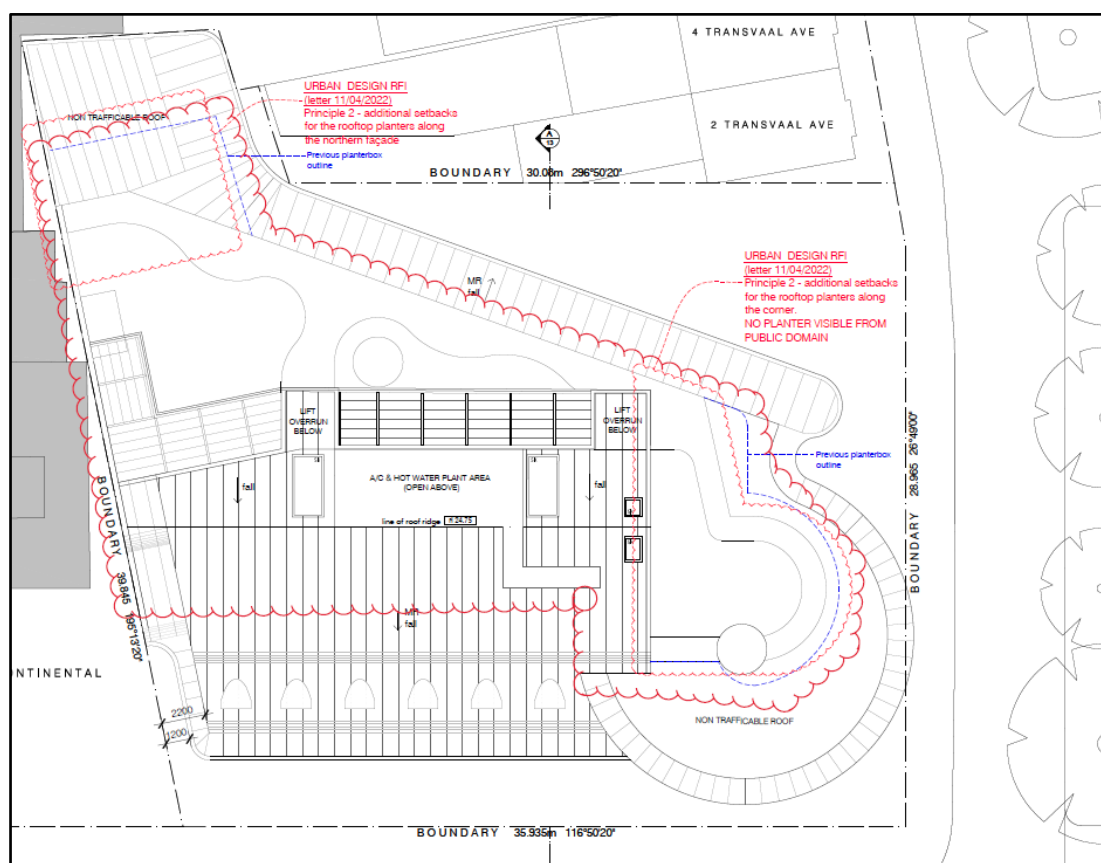


Level 5 – Approved



Level 5 – Proposed





Level 6 Roof – Proposed

6. ISSUES

6.1. Primary Issues

Issue	Conclusion	Section
Objector concerns	Satisfactory – The issues raised do no warrant refusal and/or further modification of the application.	6.2 and 11.1
Urban Design	Satisfactory, subject to minor design refinements as recommended in C.1(a)iii and C.1(g)i & ii .	18

6.2. Summary of Submissions

Issue	Conclusion	Section
Excessive height in breach of Clause 4.3 of the WLEP 2014	Satisfactory – The proposed modifications will not substantially modify the approved scheme. The issues raised do no warrant refusal and/or further modification of the application.	19.3.2
Excessive bulk/FSR in breach of Clause 4.4 of the WLEP 2014	Satisfactory – The proposed modifications will not substantially modify the approved scheme. The issues raised do no warrant refusal and/or further modification of the application.	19.3.3
Breaches of envelope, setback and other controls in the WDCP 2015	Satisfactory – The proposed modifications will not substantially modify the approved scheme. The issues raised do no warrant refusal and/or further modification of the application.	20

PROPERTY DETAILS AND REFERRALS

7. SITE AND LOCALITY

Physical features
The subject site is located at <i>19-27 Cross Street Double Bay</i> comprising of one (1) lot, legally described as Lot 100 in Deposited Plan 617017 ("Site"). The Site has a total area of 1,334m ² .
The Site is irregularly shaped comprising a primary street front boundary to Cross Street (south) of 35.935m, a secondary street front boundary to Transvaal Avenue (east) of 28.965m, a northern (side) boundary of 49.19m and a western (side) boundary of 39.845m.
Topography
The Site is relatively flat, ranging from RL 2.89 AHD at the south-eastern corner to RL 3.29 AHD at the north-western corner of the Site.
Existing Buildings and Structures
The Site is presently developed with a part one & part two storey commercial building of masonry construction with a flat roof form. It is wrapped around a centrally located and publicly accessible plaza known as "Double Bay Plaza". The Site has very limited landscaping.
While the building on the Site is not a heritage item nor located within a heritage conservation area, the Site sits immediately adjacent to the Transvaal Avenue Heritage Conservation Area listed as a locally significant item No C7 in Schedule 5 of the <i>Woollahra Local Environmental Plan 2014</i> .
Environment
The Site is located to the northern side of Cross Street within the Double Bay Local Centre (B2 Local Centre Zone of the WLEP).
It forms part of the Cross Street precinct of the Double Bay commercial centre as described in the Woollahra Development Control Plan 2015 at Section <i>D5.4.7: Cross Street</i> and <i>D5.5.7 Control Drawing 3</i> i.e. the northern side of Cross Street, between Bay Street and Transvaal Avenue. It is bound by road reserves on two of its boundaries that is Cross Street, to the south; and Transvaal Avenue, to the east.
The surrounding context of the Site includes a range of one (1) through to six (6) storey developments, including a number of single-storey contributory items within the Transvaal Avenue HCA, as identified in the WLEP.
Development that immediately surrounds the Site comprises a mixture of uses and buildings such as commercial, retail, business, hotel, office and residential, and includes:
<ul style="list-style-type: none"> Immediately to the north, is the Transvaal Avenue HCA comprising of single-storey semi-detached cottages in 'Gothic Revival style', and is a remnant of the former housing stock of the Double Bay Centre. Further to the north, along the south side of William Street are residential flat buildings, ranging between two and three-storeys located within the R3 Medium Density Residential zone. Immediately to the west, is a building known as the 'InterContinental Hotel' (33 Cross Street) which is a building that includes a two-storey street wall height with a 4-5 storey additional built from with significant setbacks above the street wall height. Further to the west, is existing established two-storey street wall height at 45-51 and 53 Cross Street; To the south, and south-east, across the road reserve are single and two storey commercial/ mixed use developments. It also includes a publicly accessible and pedestrianised thoroughfare known as Goldman Lane. To the south-west, along the southern side of Cross Street are recently constructed six (6) storey shop-top housing developments with a four-storey street wall height at No's 16-18 and 20-26 Cross Street. To the east, across Transvaal Avenue are two-three storey commercial / mixed-use developments at 15-15A Cross Street with an established two-storey street wall height; The Transvaal Avenue road reserve also contains a publicly accessible and widened median strip utilised for outdoor dining. Further to the east, is a five-storey (fifth storey is open) public carpark building known as the 'Cross Street Public Car Park'.

7.1. Site and Context



Figure 1 Existing Site, as viewed from Cross Street (Source: GMU; Overlay: WMC)

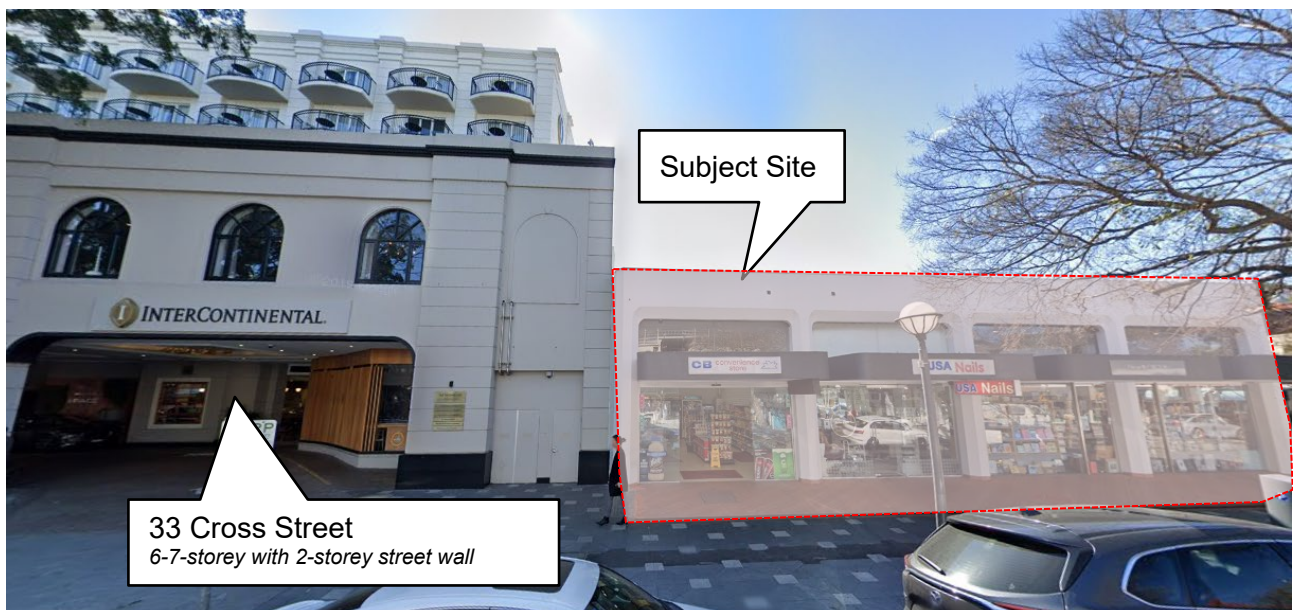


Figure 2 Existing Site, as viewed from Cross Street (Source: wmcgislive mapping)

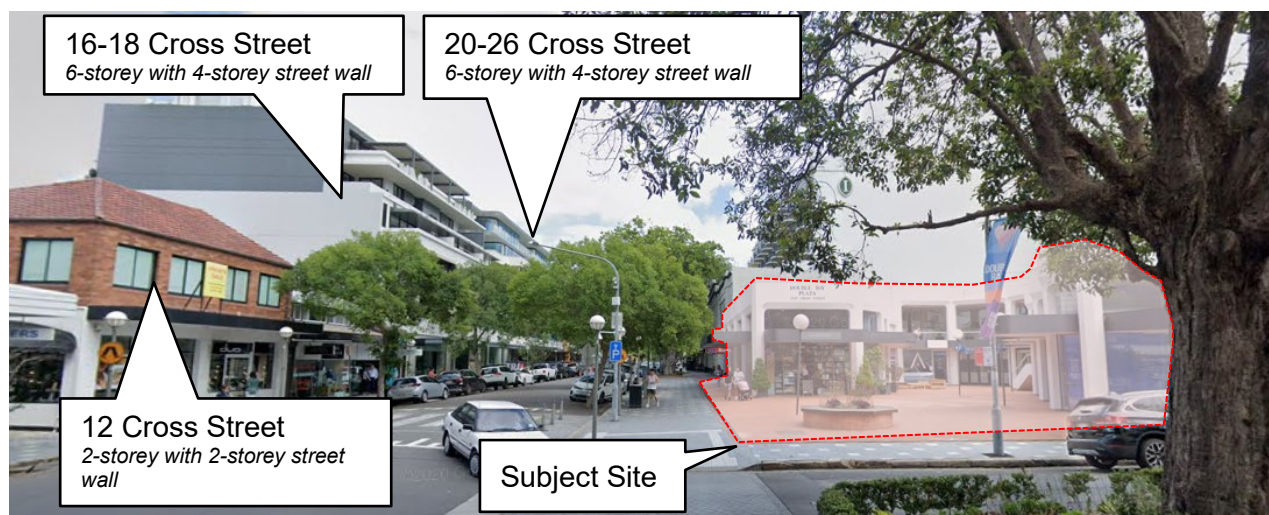


Figure 3 Existing Site, as viewed from Cross Street looking west (Source: wmcgislive mapping)



Figure 4 Existing Site as viewed from Transvaal Avenue (Source: GMU; Overlay: WMC)



Figure 5 Transvaal Avenue HCA single-storey cottages (Source: wmcgislive mapping)



Figure 6 Transvaal Avenue, looking south (Source: wmcgislive mapping)

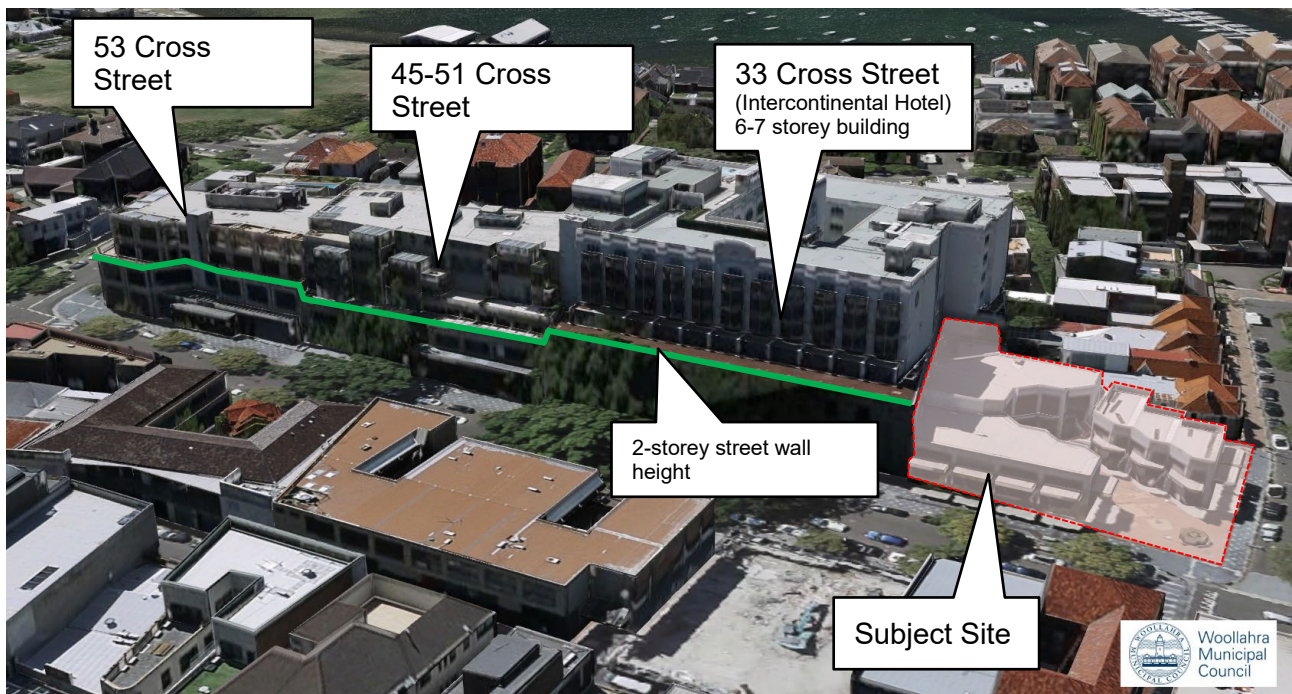


Figure 7 Aerial view of northern side of Cross Street (Source: WMC 3D Modelling Portal)

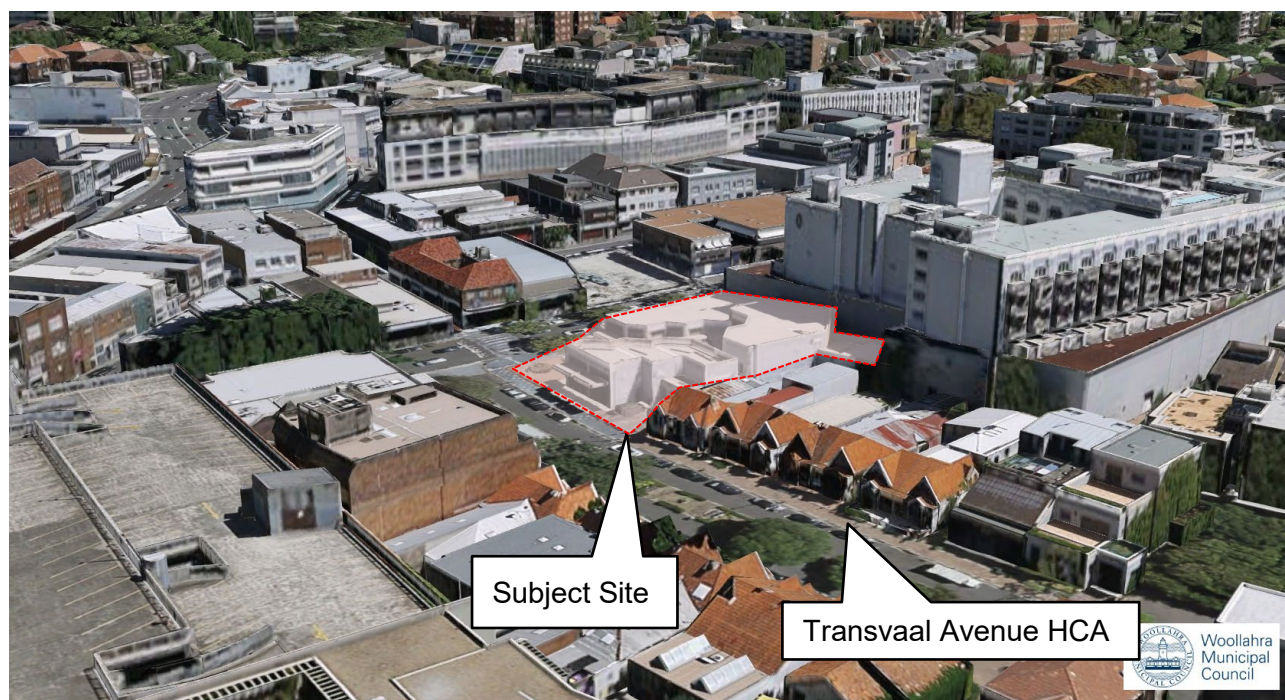


Figure 8 Aerial view of the site, looking south-west (Source: WMC 3D Modelling Portal)

8. RELEVANT PROPERTY HISTORY

Current use
Mixed-use commercial building
Relevant Application History
Refer to Section 4
Relevant Compliance History
None of relevance to the scope of proposed works.
Pre-DA
Nil.
Requests for Additional Information and Replacement Applications
10.03.2022 – A Stop the Clock letter ('STC') was sent to the applicant requesting amended adaptable spaces.
The STC request was satisfied via submission of the requested information on 22 March 2022.
11.04.2022 – A Request for Additional Information email ('RFI') was sent to the applicant requesting an amended set of architectural plans addressing design amendments as requested by Council's Urban Design Officer.
The RFI request was satisfied via submission of the requested information on 12 May 2022.
Land and Environment Court Appeal(s)
Class 1 Appeal (No. 20/351675) was filed with the Land and Environment Court (LEC) on 11 December 2020 on the grounds of deemed refusal. A Notice of Discontinuance of the proceeding was filed on 26 July 2021, upon the granting of development consent by the SECPP on 23 July 2021.

9. REFERRALS

Referral	Summary of Referral Response
Urban Design	<p>Acceptable, Council's Urban Designer concludes:</p> <p><i>"Overall the amendments are compliant with the recommendations made by the urban design review. The proposal is supported subject to the following conditions:</i></p> <ul style="list-style-type: none"> <i>The rooftop planter height should be clearly dimensioned on all drawings and be no more than 700mm high;</i>

Referral	Summary of Referral Response
	<ul style="list-style-type: none"> The spa should be relocated to sit within the rooftop terrace of Unit 5.01; and The soil area for the proposed <i>Zelkova serrata</i> (Japanese Elm) should be increased to be consistent with the minimum soil area set by the ADG (3.5m x 3.5m for a small tree)." <p>Refer to recommended DA Conditions C.1(a)iii and C.1(g)i & ii.</p>
TS Traffic Engineer	Acceptable, Council's Traffic Engineer has raised no objections to the proposed modifications nor requires any new and/or amended DA Conditions.

ASSESSMENT UNDER SECTION 4.55

The application is assessed under Section 4.55 of the Environmental Planning and Assessment Act 1979.

10. SECTION 4.55(2): OTHER MODIFICATIONS

Section 4.55(2) relates to the modification of a development consent for all other modifications. The application involves internal and external modifications to the approved development, as described in Section 5 of this report.

The considerations in Section 4.55(2) require Council to consider the following:

- a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)*
- b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent*

The proposed modifications are considered to be substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all). The proposed modifications do not raise matters requiring concurrence. Refer to Section 12 *Integrated Development* of this report.

Therefore, the proposed modifications achieve consistency with sub-clause (a) and (b) in Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- c) *It has notified the application in accordance with:*
 - i) *The regulations, if the regulations so require, or*
 - ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent*
- d) *It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be*

The proposed modification application was advertised and notified in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. The submissions made are considered in the body of the report.

Therefore, achieving consistency with sub-clauses (c) and (d) in Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The proposed modifications are acceptable with regard to the relevant matters for consideration in Section 4.15(1) and remain consistent with the reasons for the grant of consent given by the Sydney Eastern Central Planning Panel.

Thereby, achieving consistency with clause 4.55(3) in Section 4.55 of the Environmental Planning and Assessment Act 1979.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 include the following:

- (a) *the provisions of:*
- (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) *(Repealed)*

that apply to the land to which the development application relates,

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

11. ADVERTISING AND NOTIFICATION

11.1. Submissions

The application was advertised and notified from 16 March 2022 to 31 March 2022 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. A single submission was received from Michelle Palmer on behalf of the 'Double Bay Residents Association'. The submission raised the following issues:

- Excessive height in breach of Clause 4.3 of the WLEP 2014;
- Excessive bulk/FSR in breach of Clause 4.4 of the WLEP 2014;
- Breaches of envelope, setback and other controls in the WDCP 2015.

The issues above are assessed where necessary under the relevant heads of consideration in the body of the report that follows. In summary, the issues raised do no warrant refusal and/or further modification of the application.

11.2. Amended Plans

The amended plans as noted in Section 5.1 above were not renotified to surrounding residents and previous objectors in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019 because it was considered to have no greater cumulative environmental or amenity impact than the originally advertised and notified plans.

11.3. Statutory Declaration

The applicant has completed the statutory declaration dated 14 April 2022 declaring that the site notice for DA321/2020/2 was erected and maintained during the notification period in accordance with Chapter 6 of the Woollahra Community Participation Plan.

12. INTEGRATED DEVELOPMENT (DIVISION 4.8 OF THE EP&A ACT 1979)

Section 4.46 of the Act provides that development is integrated development if it requires consent and it requires one or more approvals under certain other Acts. The approved development was integrated as it required development consent under Section 90 of the *Water Management Act 2000* (WM Act).

Under the WM Act, a permit was required for the development which required a Water Supply Work approval for the dewatering of the site. Therefore, WaterNSW was the approval body under the WM Act. Section 4.47(3) provides that a consent must be consistent with the general terms of approval of an approval body.

WaterNSW provided General Terms of Approval (GTA), reference IDAS1128542 issued on 29 October 2020 under Section 90 of the WM Act, to the original DA. These GTA's were incorporated into **Condition A.7 General Terms of Approval – Water Management Act 2000 (WaterNSW)** of the development consent, which remains relevant and applicable.

STATE ENVIRONMENTAL PLANNING POLICY (“SEPP”)

13. SEPP (Biodiversity and Conservation) 2021

13.1. Chapter 10 – Sydney Harbour Catchment

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration.

The proposed modifications therefore satisfies the relevant criteria prescribed by Chapter 10 – Sydney Harbour Catchment of the Biodiversity and Conservation SEPP 2021.

14. SEPP (Resilience and Hazards) 2021

14.1. Chapter 2 – Coastal Management

Chapter 2 (Coastal Management) gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

The subject site is not located within the Coastal Environment Area (Section 2.10) and the Coastal Use Area (Section 2.11).

It is considered that the proposed modifications will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of Chapter 2 – Coastal Management of the Resilience and Hazards SEPP 2021.

14.2. Chapter 4 – Remediation of Land

The Object of this Chapter aims to *promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*

- a) *By specifying when consent is required, and when it is not required, for a remediation work*
- b) *By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular*
- c) *By requiring that a remediation work meet certain standards and notification requirements*

Under Clause 4.6(a) of Chapter 4 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

Clause 4.6(1) of Chapter 4 – Remediation of Land of the Resilience and Hazards SEPP 2021. Provides:

- (1) A consent authority **must not consent** to the carrying out of any development on land unless—
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Clause 4.6(1) is in the form of a prohibition on the grant of consent.

In the original DA assessment for the subject site and as ultimately approved by the Sydney Eastern City Planning Panel (SECPP) on 23 July 2021 (PPSSEC-86 – Woollahra – DA321/2020/1 – 19-27 Cross Street, Double Bay), the following assessment was provided:

“A search of Council’s Contaminated Land GIS mapping register does not indicate the subject site as being potentially contaminated. Notwithstanding this, the subject site is located within close proximity to potentially contaminated sites within the Double Bay Centre.

Due to existing buildings and paving on the site that limits extensive ground testing, the applicant has provided a Preliminary Site Investigation for Contamination prepared by Douglas Partners Engineers (REF: 86397.00.R.002.Rev1-PSI) and dated 10 July 2020 for the subject site which revealed that, ‘There were no visual or olfactory indicators (i.e. staining or odours) to suggest the presence of contamination within the bores.’”

The conclusions and recommendations of the report indicate that the land contained residential properties until circa 1979 after which the site was redeveloped as a commercial/retail building. The potential contamination sources and associated contaminants of concern could be deposited such as heavy metals, asbestos, lead (from lead-based paint) among other contaminants.

These contaminants and hazardous materials are not readily identifiable until demolition of site structures and pavement. The conclusion and recommendations of the report states:

*“Based on the findings of this PSI, which included only limited sampling and testing, the **potential for significant contamination to be present within the site is considered to be low**. It is considered that the site can be made suitable for the proposed commercial and high density residential development subject to the following:*

- Additional soil investigation once the site becomes more accessible (e.g., following demolition) to more broadly assess the contamination status, ASS potential and waste classification of soils;*
- If required on the basis of the information obtained from the additional soil investigation, preparation and implementation of a Remediation Action Plan (RAP); and*
- If required on the basis of the information obtained from the additional soil investigation, preparation and implementation of an acid sulfate soil management plan (ASSMP).*

As the buildings are to be demolished a pre-demolition hazardous building materials survey of the buildings must be carried out prior to the demolition.

*Based on the observations at the time of sampling and the reported analytical results, the filling within the site is preliminarily classified as **General Solid Waste (non-putrescible) (with TCLP)** and the natural material is preliminarily classified as VENM as defined in EPA (2014) apart from the area around BH3.*

Given the preliminary nature of the assigned waste and VENM classifications, which were based on limited sampling, it is recommended that the waste and VENM classifications be confirmed by a qualified environmental consultant prior to and during bulk excavation.”

Council’s Environmental Health Officer has reviewed the documentation and found the application to be acceptable with regards to the relevant heads of consideration under SEPP 55: Remediation of Land, subject to imposition of a condition on a development consent requiring a detailed investigation to be undertaken prior to issuing of a construction certificate, which shall read as follows:

- Given the limited nature of the Preliminary Investigation due to site constraints, confirmation of the contamination status of the site in the form of a Detailed Investigation will need to be undertaken. The Detailed Investigation shall be undertaken in accordance with the NSW EPA Sampling Guidelines (1995), the DECCW’s Guidelines for the NSW Site Auditor Scheme, 2nd Edition, 2006.”*

The Preliminary Site Investigation have both concluded that the site can be made suitable for the proposed development, provided that a Detailed Site Investigation is to be undertaken prior to the issuing of a construction certificate – refer to relevant original DA Condition **C.23 Land Contamination**. These conclusions remain relevant to the scope of the proposed modifications.

The proposed modifications are therefore acceptable with regard to the relevant matters for consideration in Section 4.6 of Chapter 4 – Remediation of Land of the Resilience and Hazards SEPP 2021.

15. SEPP (Industry and Employment) 2021

Chapter 3 – Advertising and Signage

There is no signage proposed under the original or the subject modification application.

16. SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The Section 4.55 application was accompanied by amended BASIX Certificate No. **1123374M_03** demonstrating compliance with the SEPP. These requirements are imposed in recommended amended **Conditions C.5, H.1 and I.1**.

17. SEPP (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Division 17: Roads and traffic of Chapter 2 – Infrastructure SEPP applies to the development based on its location in close proximity of New South Head Road, a classified road with a daily traffic volume of more than 40,000 vehicles and the proposed residential development.

The relevant considerations are *Clause 2.119 (former Clause 102): Impact of road noise or vibration on non-road development (Clause 102)*.

Clause 2.119 (former clause 102) requires that for development involving residential accommodation in close proximity to classified roads the consent authority is required to be satisfied that appropriate measures will be taken to ensure that the following noise (LAeq) levels are not exceeded:

- (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

The original DA was subject to **Conditions C.25** and **F.12** requiring incorporation of acoustic measures to ensure the proposed building complies with the above-mentioned interior noise levels criteria that remains applicable.

The above considerations are still relevant and the proposed modifications will not change the approved relationship with the road and therefore do not alter the conclusions above. Furthermore, the subject modification application was accompanied by an *Acoustic Review of S4.55 Updates*, referenced *20211584.1/2801A/R1/AW*, prepared by Acoustic Logic dated 25 January 2022 which concludes that “*the revised design and proposed modifications do not impact upon the requirements, assumptions or recommendations outlined in the original Noise Impact Assessment and remains applicable to the proposed S4.55 design.*”

The proposed modifications therefore satisfies the relevant criteria prescribed by Chapter 2 – Infrastructure of the Transport and Infrastructure SEPP 2021.

18. SEPP 65: Design Quality Of Residential Apartment Development

SEPP 65: Design Quality of Residential Flat Development (SEPP 65) applies to all new residential flat buildings (or substantial redevelopment) where it comprises three or more storeys and four or more self-contained dwellings.

SEPP 65 was applicable to the original approved development as it comprised three or more storeys and four or more self-contained dwellings. The subject modification application seeks internal and external modifications to the approved shop-top housing development and therefore SEPP applies to the proposed modifications.

A SEPP 65 Design Verification Statement (SEPP 65 DVS) has been submitted with the modification application. It has been prepared by suitably qualified professional being Luigi Rosselli of Luigi Rosselli Architects a registered architect in NSW (Reg. no 4895).

The SEPP 65 Design Verification Statement confirms that the proposed modifications to the development remains consistent with the SEPP65 and ADG design quality principles and compliance achieved by the original design approved under DA 321/2020/1.

The proposed modifications are considered to be acceptable with regard to the *Clause 2: Aims and Objectives* of the SEPP – refer to assessment below:

PART 4 APPLICATION OF DESIGN PRINCIPLES

18.1. Clause 30(1): Standards that cannot be used as grounds to refuse development consent or modification of development consent

Clause 30(2) of SEPP 65 states that a consent authority must not refuse consent to a development application on any of the following:

Total Site Area: 1,334m ²	Proposed Modification	Control	Complies
Parking (minimum) Clause 30(1)(a)	51 car spaces	Min 48 spaces (Equal to Part 3J of the ADG)	Yes
Dwelling Size (minimum) Clause 30(1)(b)	Studio: N/A 1-bed: Min 86.5m ² 2-bed: Min 129.9m ² 3-bed: 212.2-290.4m ²	Studio: 35m ² 1-bed dwelling: 50m ² 2-bed dwelling: 70m ² 3-bed dwelling: 90m ² (Equal to Part 4D of the ADG)	Yes
Ceiling heights (minimum) Clause 30(1)(c)	Min 2.7m	2.4m / 2.7m (Equal to Part 4C of the ADG)	Yes

The proposed modifications satisfies the requirements of Clause 30(1) of SEPP 65.

18.2. Clause 30(2): Design Quality Principles

Clause 30(2) of SEPP 65 requires the assessment of the application against the relevant 9 *design quality principles* in Schedule 1 and against the relevant design criteria and objectives as specified in the associated *Apartment Design Guide* (ADG).

This assessment has been undertaken by Council's Urban Design Officer and is included below:

Apartment Design Guide assessment

Standard	Required	Proposed	Complies
Part 2: Developing the controls			
2E – Building depth	<ul style="list-style-type: none"> - Ensure building depth support apartment layouts that meet the objectives, design criteria and design guidance within the apartment design guide. - Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line when precinct planning and testing development controls. 	The amendments are substantially in accordance with the approved DA with regards to the building depth. Minor internal modifications to the apartment units have no significant impact on the building depth.	YES

Standard	Required	Proposed	Complies
2F – Building separation	<p>Up to four storeys (approximately 12m):</p> <ul style="list-style-type: none"> - 12m between habitable rooms/balconies - 9m between habitable and non-habitable rooms - 6m between non-habitable rooms <p>Five to eight storeys (approximately 25m):</p> <ul style="list-style-type: none"> - 18m between habitable rooms/balconies - 12m between habitable and non-habitable rooms - 9m between non-habitable rooms 	The amendments to the approved DA include extending Bedroom 1 of the north-western unit on all levels to align with the site boundary. This is inconsistent with the minimum building separation requirements identified in the ADG.	NO, see recommendations
2G – Street Setbacks	<ul style="list-style-type: none"> - Establish the desired spatial proportions of the street and define the street edge - Provide space that can contribute to the landscape character of the street where desired - Create a threshold by providing a clear transition between the public and private realms - Assist in achieving visual privacy to apartments from the street - Create good quality entries to lobbies, foyers or individual dwellings - Promote passive surveillance and outlook to the street 	The addition of planter boxes and spa to Unit 5.01 along the perimeter of the roof generates an inadequate setback from the approved building edge along Cross St and alters the geometry of the approved built form.	NO, see recommendations
2H – Side and rear setbacks	<ul style="list-style-type: none"> - provide access to light, air and outlook for neighbouring properties and future buildings - provide for adequate privacy between neighbouring apartments - retain or create a rhythm or pattern of spaces between buildings that define and add character to the streetscape - achieve setbacks that maximise deep soil areas, retain existing landscaping and support mature vegetation consolidated across sites - manage a transition between sites or areas with different development controls 	The extension of Bedroom 1 of the north-western unit on all levels to align with the site boundary is noncompliant with the minimum requirements for building separation and side setbacks distances set under the ADG, and would result in privacy and amenity impacts for the adjacent cottages along Transvaal Avenue.	NO, see recommendations
Part 3: Siting the development			
3A – Site analysis	<ul style="list-style-type: none"> - Responsive to opportunities and constraints of site conditions and streetscape 	The proposed amendments to the approved DA do not result in a significant change with regards to the design's response to site conditions.	Substantially in accordance with approved DA
3B – Orientation	<ul style="list-style-type: none"> - Responsive to streetscape character while optimising solar access within the development - Overshadowing of neighbouring properties in minimised during mid-winter - Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20% 	The amendments are substantially in accordance with the approved DA with regards to the orientation of the apartment building and its overshadowing of neighbouring properties.	Substantially in accordance with approved DA
3C – Public domain	<ul style="list-style-type: none"> - Transition between private and public domain is achieved without compromising safety and security - Amenity of the public domain is retained and enhanced - Length of solid walls should be limited along street frontages - Terraces, balconies and courtyard 	<p>The amendments are substantially in accordance with the approved DA with regards to the interface and transition between private and public domain.</p> <p>The addition of planter boxes</p>	NO, see recommendations

Standard	Required	Proposed	Complies									
	apartments should have direct street entry, where appropriate	and habitable spaces on the roof level could have an impact on views from the street, especially on the corner of Cross Street and Transvaal Avenue. The amendments also alter the transition in height from the Intercontinental Hotel to the single-storey cottages of the HCA.										
3D - Communal and public open space	<ul style="list-style-type: none">- Minimum communal space area 25% of site area- Minimum 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter)- Communal open space should have a minimum dimension of 3m, and larger developments should consider greater dimensions	<p>The proposed amendments to the approved DA include the provision of the private rooftop terrace which has been identified as ‘communal open space’ in the design verification statement. Private rooftop terraces do not qualify as ‘communal open space’.</p> <p>However, the total ‘communal open space’ after deducing the private rooftop terrace is consistent with the approved DA.</p>	Substantially in accordance with approved DA									
3E – Deep soil zones	<ul style="list-style-type: none">- Deep soil zones that allow for and support healthy plant and tree growth <table><tr><td>Site area</td><td>Minimum dimension</td><td>Deep soil zone (% of the site area)</td></tr><tr><td>650 m² – 1,500m²</td><td>3m</td><td>7%</td></tr></table>	Site area	Minimum dimension	Deep soil zone (% of the site area)	650 m ² – 1,500m ²	3m	7%	<p>The amendments are substantially in accordance with the approved DA with regards to deep soil zones.</p> <p>Details of the proposed tree well identifying the proposed depth of the tree well into the basement have not been provided.</p>	NO for tree well - see recommendations			
Site area	Minimum dimension	Deep soil zone (% of the site area)										
650 m ² – 1,500m ²	3m	7%										
3F – Visual privacy	<ul style="list-style-type: none">- Adequate building separation between neighbours to achieve reasonable external and internal visual privacy- Minimum separation distances from buildings to side and rear boundaries: <table><tr><td>Building height</td><td>Habitable rooms and balconies</td><td>Non-habitable rooms</td></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr></table> <ul style="list-style-type: none">- Generally one step in the built form as the height increases due to building separations is desirable. Additional steps should be careful not to cause a 'ziggurat' appearance	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<p>The extension of Bedroom 1 of the north-western unit on all levels breaches the minimum requirements for building separation distances and would result in privacy impacts for cottages along Transvaal Avenue.</p> <p>A habitable room window in bedroom 4 of Unit 5.03 has been located less than 18m from the balcony of the Intercontinental Hotel (currently located approximately 6m from the balcony). This is inconsistent with the minimum requirements of the ADG and results in privacy and amenity impacts.</p>	NO, see recommendations
Building height	Habitable rooms and balconies	Non-habitable rooms										
Up to 12m (4 storeys)	6m	3m										
Up to 25m (5-8 storeys)	9m	4.5m										
3G – Pedestrian access and entries	<ul style="list-style-type: none">- Building entries and pedestrian access connects to and addresses the public domain- Access areas clearly visible from public domain	The amendments are substantially in accordance with the approved DA with regards to the pedestrian access points, and passive	Substantially in accordance with approved DA									

Standard	Required	Proposed	Complies								
	- Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge	surveillance opportunities of the development									
3H – Vehicle access	- Vehicle access points designed and located to achieve safety - Car park access should be integrated with the building’s overall facade. - The width and number of vehicle access points should be limited to the minimum - Designed to minimise conflict with pedestrians and vehicles - Create high quality streetscapes	The amendments are substantially in accordance with the approved DA with regards to the vehicular entry to the building.	Substantially in accordance with approved DA								
3J – Bicycle and car parking	- Car parking needs of the development provided off-street - Protrusion of car parks should not exceed 1m above ground level. Design solutions may include stepping car park levels or using split levels on sloping sites	The amendments are substantially in accordance with the approved DA with regards to bicycle parking.	Substantially in accordance with approved DA								
Part 4: Designing the Building											
Amenity											
4A – Solar and daylight access	- Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area - A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid -winter	The changes to apartment layout do not cause a significant change to the solar access within apartments.	YES								
4B – Natural ventilation	- At least 60% of apartments are naturally cross ventilated in the first 9 storeys - Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	The changes to apartment layout do not cause a significant change to cross ventilation through units.	YES								
4C – Ceiling heights	- Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><td>Apartment</td><td>Minimum ceiling height</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>Attic spaces</td><td>1.8m with 30° minimum ceiling slope</td></tr></table> - Minimum floor to floor height 3.1m (4C.5)	Apartment	Minimum ceiling height	Habitable rooms	2.7m	Non-habitable	2.4m	Attic spaces	1.8m with 30° minimum ceiling slope	The amendments are substantially in accordance with the approved DA with regards to the ceiling heights.	Substantially in accordance with approved DA
Apartment	Minimum ceiling height										
Habitable rooms	2.7m										
Non-habitable	2.4m										
Attic spaces	1.8m with 30° minimum ceiling slope										
4D – Apartment size and layout	- Apartments are required to have the following minimum internal areas: <table><tr><td>Apartment type</td><td>Minimum internal area</td></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr></table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	Minor modifications to the units do not result in a significant change in the approved sizes and achieves the minimum requirements for internal areas.	YES
Apartment type	Minimum internal area										
Studio	35m ²										
1 bedroom	50m ²										
2 bedroom	70m ²										

Standard	Required	Proposed	Complies												
	<p>3 bedroom 90m²</p> <p><i>Note: minimal areas include only one (1) bathroom. Additional bathrooms increase the minimum internal area by 5m².</i></p> <ul style="list-style-type: none">- Every habitable room must have a window in an external wall with a total minimum glass area of at least 10% of the floor area of the room.- Habitable room depths are limited to a maximum of 2.5 x the ceiling height- In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window- Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space)- A window should be visible from any point in a habitable room- Bedrooms have a minimum dimension of 3m (excluding wardrobe space)- Living rooms or combined living/dining rooms have a minimum width of: <table><tr><th>Apartment type</th><th>Minimum width</th></tr><tr><td>1 bedroom</td><td>3.6m</td></tr><tr><td>2 bedroom</td><td>4m</td></tr><tr><td>3 bedroom</td><td>4m</td></tr></table>	Apartment type	Minimum width	1 bedroom	3.6m	2 bedroom	4m	3 bedroom	4m						
Apartment type	Minimum width														
1 bedroom	3.6m														
2 bedroom	4m														
3 bedroom	4m														
4E – Private open space and balconies	<ul style="list-style-type: none">- All apartments are required to have primary balconies as follows: <table><tr><th>Apartment type</th><th>Minimum width</th><th>Minimum depth</th></tr><tr><td>1 bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12m²</td><td>2.4m</td></tr></table> <ul style="list-style-type: none">- For apartments at ground level, a private open space area shall be provided instead of a balcony with minimum area of 15m² and minimum depth of 3m	Apartment type	Minimum width	Minimum depth	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	<p>The amendments are substantially in accordance with the approved DA with regards to the size and quality of private open space, with additional private roof top space proposed for Units 5.01, 5.02, and 5.03.</p>	YES
Apartment type	Minimum width	Minimum depth													
1 bedroom	8m ²	2m													
2 bedroom	10m ²	2m													
3+ bedroom	12m ²	2.4m													
4F – Common circulation and spaces	<ul style="list-style-type: none">- Maximum number of apartments off a circulation core on a single level is eight (8)- Daylight and natural ventilation should be provided to all common circulation spaces that are above ground- Longer corridors greater than 12m in length from the lift core should be articulated. Design solutions may include:- a series of foyer areas with windows and spaces for seating- wider areas at apartment entry doors and varied ceiling heights	<p>The amendments are substantially in accordance with the approved DA with regards to the circulation spaces above ground level.</p> <p>On the ground level, the amendments include increasing the size of the lobby which is consistent with the ADG requirements.</p>	YES												
4G – Storage	<ul style="list-style-type: none">- In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr></table>	Dwelling type	Storage size volume	Studio	4m ³	1 bedroom	6m ³	2 bedroom	8m ³	<p>The amendments are substantially in accordance with the approved DA with regards to the size of storage.</p>	Substantially in accordance with approved DA				
Dwelling type	Storage size volume														
Studio	4m ³														
1 bedroom	6m ³														
2 bedroom	8m ³														

Standard	Required	Proposed	Complies
	<p>3+ bedrooms 10m³</p> <p><i>Note: At least 50% of the required storage is to be located within the apartment</i></p>		
4H – Acoustic Privacy	<ul style="list-style-type: none"> - Noise transfer is minimised through the siting of buildings and building layout - Noise impacts are mitigated within apartments through layout and acoustic treatments - Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses (see also section 2F Building separation and section 3F Visual privacy) 	<p>As per the submitted acoustic report, the proposed amendments and modifications do not impact the requirements, assumptions or recommendations outlined in the original Noise Impact Assessment, and the assessment in the report remains applicable to the proposed design.</p> <p>However, the extension of Bedroom 1 of the north-western unit on all levels would result in acoustic impacts to cottages along Transvaal Avenue.</p> <p>The provision of a habitable room window in bedroom 4 of Unit 5.03, which is located less than 18m from the balcony of the Intercontinental Hotel, would also have acoustic impacts</p>	NO, see recommendations
4J – Noise and Pollution	<ul style="list-style-type: none"> - The impacts of external noise and pollution are minimised through careful siting and layout of buildings - Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission 	N/A	N/A
<u>Configuration</u>			
4K – Apartment mix	<ul style="list-style-type: none"> - A range of apartment types and sizes is provided 	<p>Despite the addition of a bedroom to Unit 5.03, there is a limited mix of apartment sizes, with 2/18 1-bedroom units, with 1/18 2-bedroom unit, 1/18 4-bedroom unit, and 14/18 3-bedroom units. However, this does not have a significant change to the approved DA.</p>	Substantially in accordance with approved DA
4L – Ground floor apartments	<ul style="list-style-type: none"> - Street frontage activity is maximised where ground floor apartments are located - Apartments deliver amenity and safety for residents - Direct street access should be provided to ground floor apartments 	N/A	N/A

Standard	Required	Proposed	Complies
4M – Facades	<ul style="list-style-type: none"> - Building facades provide visual interest along the street while respecting the character of the local area - Entries are clearly defined - Building services should be integrated within the overall facade 	<p>The amendments are substantially in accordance with the approved DA with regards to the external finishes of the development.</p>	Substantially in accordance with approved DA
4N – Roof design	<ul style="list-style-type: none"> - Roof treatments are integrated into the building design and positively respond to the street 	<p>The roof design has been amended to accommodate a private roof top terrace with pergolas, cabana, spa and planter boxes. This results in an increase in the overall height of the building.</p> <p>The impact of the cabana and pergolas are shown to be minimal along.</p> <p>Close to the corner of Cross Street and Transvaal Avenue the addition of habitable spaces on the roof and provision of planter boxes along the perimeter of the roof level could alter the geometry and perceived scale of the built form.</p>	NO, see recommendations
4O – Landscape design	<ul style="list-style-type: none"> - Landscape design is viable and sustainable - Landscape design contributes to the streetscape and amenity 	<p>Removal of planters along the north-western edge of the site on each level has been offset with the provision of planters on the terraces of Units 1.02, 3.02, 3.02, 4.02, and 5.02. Additional landscaping has also been provided on the private roof top terraces.</p> <p>The proposed landscape design appears to have a high species diversity.</p>	YES
4P – Planting on structure	<ul style="list-style-type: none"> - Appropriate soil profiles are provided - Plant growth is optimised with appropriate selection and maintenance - Planting on structures contributes to the quality and amenity of communal and public open spaces 	<p>The amendments are substantially in accordance with the approved DA with regards to planting along the facades.</p> <p>Additional planting within the terraces appears to be of high quality and have a high species diversity.</p>	Substantially in accordance with approved DA
4Q – Universal design	<ul style="list-style-type: none"> - Universal design features are included in apartment design to promote flexible housing for all community members - A variety of apartments with adaptable designs are provided - Apartment layouts are flexible and accommodate a range of lifestyle needs - Developments achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features 	<p>The amendments are substantially in accordance with the approved DA with regards to the adaptable apartment units.</p> <p>The increase lobby size on the ground floor improves accessibility of the level.</p>	YES

Standard	Required	Proposed	Complies
4R – Adaptive reuse	<ul style="list-style-type: none"> - New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place - Adapted buildings provide residential amenity while not precluding future adaptive reuse 	N/A	N/A
4S – Mixed use	<ul style="list-style-type: none"> - Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement - Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents 	<p>The amendments are substantially in accordance with the approved DA with regards to the location of tenancies.</p> <p>Minor modifications to the tenancy walls and windows help provide a continuous street wall on the ground level and improve the site's active frontage.</p>	YES
4T – Awnings and signage	<ul style="list-style-type: none"> - Awnings are well located and complement and integrate with the building design - Signage responds to the context and desired streetscape character 	The amendments are substantially in accordance with the approved DA with regards to the awnings and signage.	Substantially in accordance with approved DA
4U – Energy efficiency	<ul style="list-style-type: none"> - Development incorporates passive environmental design - Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer - Adequate natural ventilation minimises the need for mechanical ventilation 	The amendments are substantially in accordance with the approved DA with regards to energy efficiency including natural ventilation and passive environmental design.	Substantially in accordance with approved DA
4V – Water management and conservation	<ul style="list-style-type: none"> - Potable water use is minimised - Urban stormwater is treated on site before being discharged to receiving waters - Flood management systems are integrated into site design 	<p>The amendments to the approved DA include the addition of rainwater tanks.</p> <p>All amendments are substantially in accordance with the approved DA with regards to flood risk management.</p>	YES
4W – Waste management	<ul style="list-style-type: none"> - Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents - Domestic waste is minimised by providing safe and convenient source separation and recycling 	The amendments are substantially in accordance with the approved DA with regards to waste management	Substantially in accordance with approved DA
4X – Building maintenance	<ul style="list-style-type: none"> - Building design detail provides protection from weathering - Systems and access enable ease of maintenance - Material selection reduces ongoing maintenance costs 	No reference to the maintenance of the rooftop planters has been made within the amending DA documents.	CANNOT BE DETERMINED

As a result of the above comments, the Applicant submitted amended plans on 12 May 2022. A further assessment of these plans were undertaken by Council's Urban Design Officer against the relevant 9 design quality principles below:

ADG Issue	Recommendation	Proponent Response	Comments
------------------	-----------------------	---------------------------	-----------------

Principle 1: Context and Neighbourhood Issue	<i>Retain the approved geometry of built form along the corner by removing the provision of rooftop terrace and planter boxes for Unit 5.01.</i>	<i>Additional setbacks have been proposed for the rooftop planters at the corner.</i> <i>As per the drawings, no planter is visible from the public domain which has been illustrated through view analysis diagrams along Transvaal Avenue and Cross St.</i>	<i>The amendments do not comply with the recommendation which was to remove the rooftop terrace and planter boxes for Unit 5.01. However, additional setbacks have been provided to this terrace which contribute to a reduction in visual bulk and the impact of the smaller terrace is now considered minor. In order to ensure the visual impact of the planters remain minor, the planter height should be dimensioned on all drawings to be no higher than 700mm.</i> <i>Additionally, to minimise the visual impact of the spa for Unit 5.01 and allow the landscape planter to be continuous, the spa should be relocated to sit within the area allocated to the rooftop terrace.</i>
Principle 2: Built Form and Scale	<i>Provide additional setbacks for the rooftop planters along the northern façade and no part of the planter or rooftop terrace should extend beyond a line extending from the southern boundary of 2 Transvaal Avenue</i>	<i>Amended architectural drawings show additional setbacks for the rooftop planters along the northern façade and no part of the planter or roof top terrace extends beyond the line extending from the southern boundary of 2 Transvaal Avenue.</i>	<i>The amendment is substantially in accordance with the recommendation.</i>
Principle 2: Built Form and Scale Principle 6: Amenity	<i>Increase setbacks of habitable rooms from the north-western boundary of the site along 6 Transvaal Avenue to comply with the approved DA.</i>	<i>Approved DA setbacks have been reinstated.</i>	<i>The amendment is substantially in accordance with the recommendation.</i>
Principle 6: Amenity	<i>Provide screening to the Bedroom 4 window of Unit 5.03.</i>	<i>Screening to the window of Bedroom 4 of Unit 5.03 has been provided.</i>	<i>The amendment is substantially in accordance with the recommendation.</i>
Principle 5: Landscape	<i>Provide details of the tree well on the ground floor public plaza identifying the depth of the planter and extent of cut into the basement.</i>	<i>The tree well details have been provided which show a soil depth of 1080mm provided for the deciduous tree and no part of the well has been shown to be cut into the basement.</i>	<i>The depth of the tree provided is sufficient to accommodate a small tree of 6-8m high with a crown spread of 4m and a soil volume of 9m³, as outlined by the ADG. The ADG also recommends a minimum soil area of 3.5m x 3.5m for a small tree, which has not been achieved (the current dimensions are 3m x 3m).</i>

Recommendation

Overall the amendments are compliant with the recommendations made by the urban design review. The proposal is supported subject to the following conditions:

- The rooftop planter height should be clearly dimensioned on all drawings and be no more than 700mm high;
- The spa should be relocated to sit within the rooftop terrace of Unit 5.01; and
- The soil area for the proposed *Zelkova serrata* (Japanese Elm) should be increased to be consistent with the minimum soil area set by the ADG (3.5m x 3.5m for a small tree).

The above recommendations have been incorporated in **Condition C.1(a)(iii)** and **C.1(g)**.

18.3. Conclusion

The proposed modifications are acceptable with regard to the relevant matters for consideration in SEPP 65.

19. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014 (“WLEP 2014”)

19.1. Part 1.2: Aims of Plan

The proposed modifications are consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

19.2. Part 2.3: Zone Objectives and Land Use Table

The proposal is defined as modifications to a shop-top housing development which is permitted and is consistent with the objectives (refer to below assessment) of the B2 Local Centre zone.

The objectives of the zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Assessment: The proposed modifications is satisfactory with regards to this objective.

- *To encourage employment opportunities in accessible locations.*

Assessment: The proposed modifications are satisfactory with regards to this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

Assessment: The proposed modifications are satisfactory with regards to this objective.

- *To attract new business and commercial opportunities.*

Assessment: The proposed modifications are satisfactory with regards to this objective.

- *To provide active ground floor uses to create vibrant centres.*

Assessment: The proposed modifications are satisfactory with regards to this objective.

- *To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.*

Assessment: The proposed modifications are consistent with the scale of the approved development. The proposed modifications to primarily include roof top terraces would not give rise to any significantly adverse visual or aural amenity impacts to surrounding residential uses. The proposed modifications are satisfactory with regards to this objective.

- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

Assessment: The proposed modifications are consistent with the height and scale of the approved development. The proposed modifications are satisfactory with regards to this objective.

19.3. Part 4: Principal Development Standards

19.3.1. Compliance Table (Note: non-compliances are highlighted)

Development Standard Site Area: 1,334m ²	Approved (DA 321/2020/1)	Proposed Modification	Controls	Departures	Complies
Maximum Building Height (Clause 4.3)	21.5m (RL 24.75) to rooftop	+0.55m or 22.05m (RL 25.30) to pergola structure	14.7m	7.35m or 50%	No
Floor Space Ratio (Clause 4.4)	3.49:1 (4,660m²)	+10m ² 3.5:1 (4,670m²)	2.5:1 (3,335m ²)	1,335m ² or 40%	No*

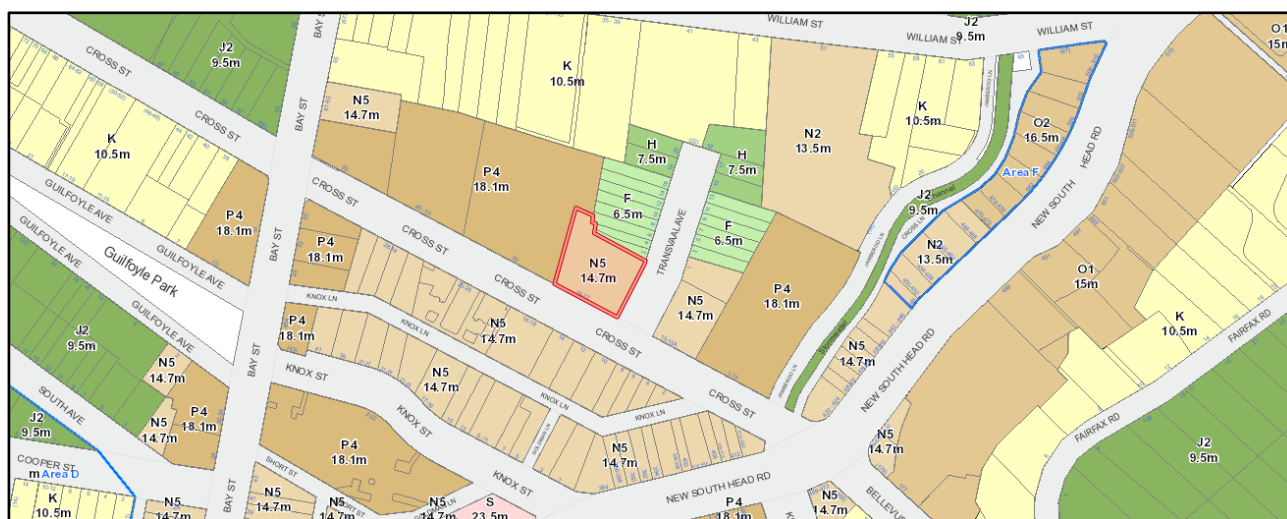
The proposal modifications involve further departures from the *Height of Buildings* and *Floor Space Ratio* development standards under Clause 4.3, Clause 4.4 of the Woollahra LEP 2014.

The Sydney Eastern City Planning Panel (SECPP) approved the original DA with a non-compliant height and FSR, stating the following in the statement of reasons for the decision:

“The majority of the Panel (‘the Panel’) determined to uphold the Clause 4.6 written requests to vary the building height and floor space ratio standards and approve the application. While the departures to the standards are significant with an increase in height from 14m to 21.5m and an increase in FSR from 2.5:1 to 3.49:1 this in itself is not the test. The Panel considers the objectives of each standard, and the objectives of the B2 zone are satisfied, and there are environmental planning grounds to justify the departures including provision of the open plaza next to the heritage conservation area, and the architectural resolution for the corner of Transvaal/ Cross Street.”

The departures are assessed below.

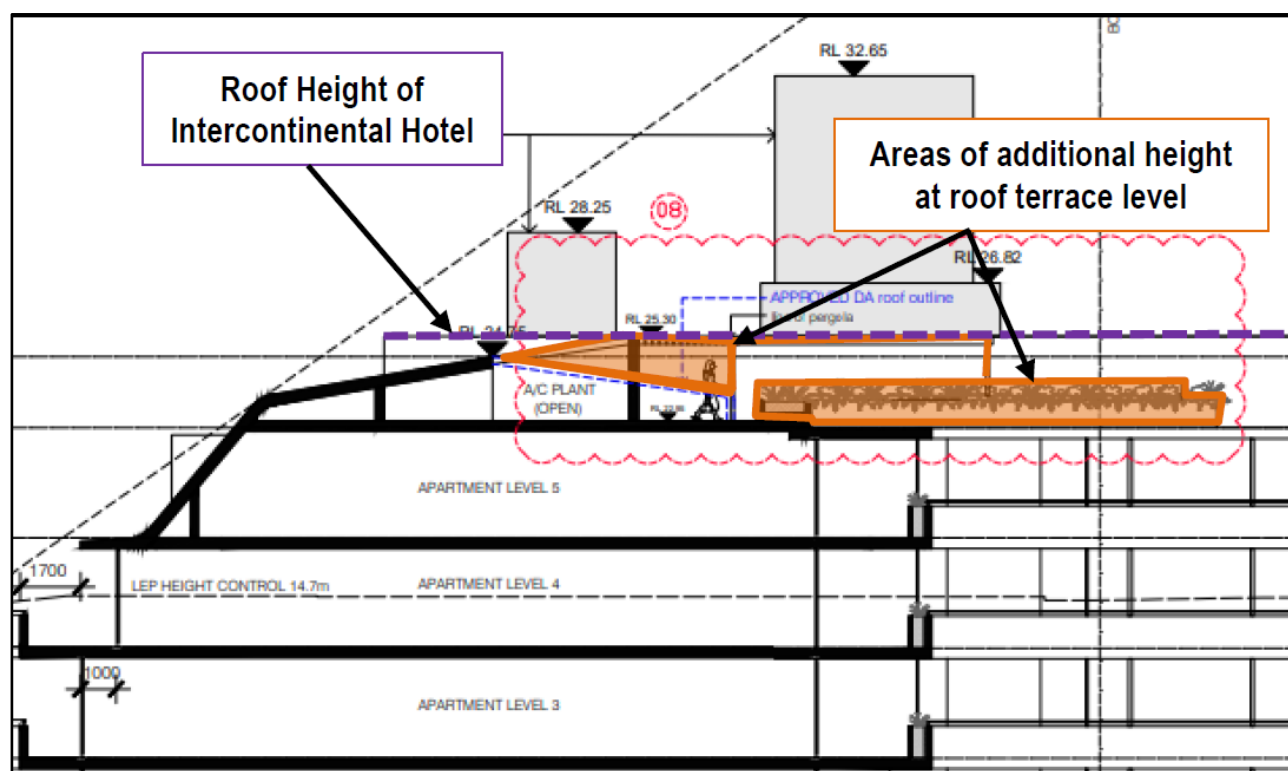
19.3.2. Part 4.3: Height of Buildings



The proposed modifications do not comply with the maximum building height prescribed by Part 4.3(2) of Woollahra LEP 2014.

Notwithstanding this, the proposed additional height remains consistent with the relevant objectives under Part 4.3(1) of Woollahra LEP 2014 in the following manner:

- (a) *To establish building heights that are consistent with the desired future character of the neighbourhood*



Section AA Excerpt Showing Additional Height (Source: GSA Planning)

Assessment: The proposed additional areas above the approved height at roof level relate to a small portion of the roof which has been extended to provide a pergola above the proposed roof terraces and roof top planters. The area of additional height is not readily visible in the immediate streetscape and aligns with the maximum roof height of the neighbouring development (Intercontinental Hotel).

Therefore, the additional height will maintain consistency with the height, bulk and scale of the approved development and other existing developments, which form the desired future character of the area. The planter at the roof terrace level will remain below the approved maximum building height, and soften the appearance of the terraces. Therefore, the works above the height standard will not have a detrimental impact on the desired future character of the Double Bay Centre.

The proposed modifications are satisfactory with regards to this objective.

(b) To establish a transition in scale between zones to protect local amenity

Assessment: The proposed modifications do not substantially alter the relationship between the approved development and the Transvaal Avenue HCA in terms of transition in scale. The proposed modifications are satisfactory with regards to this objective.

(c) To minimise the loss of solar access to existing buildings and open space

Assessment: The proposed modifications do not result in additional overshadowing of neighbouring developments nor overshadowing of the public realm, when compared to the approved built form. The proposed modifications are satisfactory with regards to this objective.

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

Assessment: The proposed modifications do not result in any adverse amenity impacts upon adjoining properties or the public domain in terms of loss of views, visual intrusion, privacy and/or overshadowing. The proposed modifications are satisfactory with regards to this objective.

- (e) *To protect the amenity of the public domain by providing public views of the harbour and surrounding areas*

Assessment: The proposed modifications are satisfactory with regards to this objective.

19.3.3. Part 4.4: Floor Space Ratio

The proposed modifications do not comply with the maximum floor space ratio prescribed by Part 4.4(2) of Woollahra LEP 2014.

Notwithstanding this, the proposed additional floor space remains consistent with the relevant objective of clause 4.4(1) which aims:

...(b) for buildings in ... Zone B2 Local Centre ... - to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

Assessment: The proposed increase in FSR will have no impact on the overall bulk and scale of the development when viewed from the surrounding public and private domain. The proposed modifications are satisfactory with regards to this objective.

19.4. Parts 5 & 6: Miscellaneous and Additional Local Provisions

19.4.1. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The subject site is not:

- A heritage item in the Woollahra Local Environment Plan 2014 nor listed on any statutory registers including State, National or Commonwealth; or
- located within a heritage conservation area;

The subject site is located adjacent to the Transvaal Avenue HCA, described in Schedule 5 of the WLEP as follows:

Part 2 Heritage conservation areas			
Suburb	Item name	Significance	Item no
Double Bay	Transvaal Avenue	Local	C7



The subject site and the adjacent Transvaal Avenue HCA (source: Councils GIS Mapping System)

The objectives of Part 5.10(1), are:

- (a) to conserve the environmental heritage of Woollahra,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Demolition of existing building on the subject site

Council's Heritage Officer in the original assessment (in DA 321/2020/1) did not raise concerns with regards to the demolition of existing building on the subject site. This conclusion remains relevant and unchanged by the proposed modifications.

Aboriginal Heritage

Council's Heritage Officer in the original assessment (in DA 321/2020/1) did not raise concerns with regards to Aboriginal Heritage. This conclusion remains relevant and unchanged by the proposed modifications.

Transvaal Avenue HCA

Council's Heritage Officer in the original assessment (in DA 321/2020/1) raised concerns with the impact upon the adjacent Transvaal Avenue HCA providing, inter alia, the following:

"...In its current form, the proposed 6-7 storey development does not provide a sympathetic transition to the single storey character of the HCA. It is considered the proposal would diminish the setting of and would dominate the contributory single storey Gothic style cottages in the vicinity and would result in an adverse impact on the conservation area. Detailed discussion of the impact of the proposal on the Transvaal Avenue HCA is provided below against the Woollahra LEP 2014 (Part 5.10) and Woollahra DCP 2015"

Notwithstanding this, the Sydney Eastern City Planning Panel (SECPP) provided the following reasons for support of the original DA:

“In the Panel’s view the development provides a well considered interface with and transition to the adjoining Transvaal Avenue Conservation Area – Heritage Conservation Area (the HCA), through the provision of a public plaza area which provides opportunities for increasing permeability through the provision of future through-site links.

The Panel accepts the development results in a better outcome and relationship with the HCA than a development that strictly complies with the indicative built form envelope and controls in the DCP for the site which would permit a 4 storey wall adjacent to the site’s northern boundary with the HCA.

In addition to the Public Art the applicant is to also provide interpretive material (in the public plaza area adjoining the HCA). This should be designed to reference the heritage context of the Transvaal Avenue HCA and the Panel has imposed a condition to this effect.”

Based on the above conclusion, the proposed modifications are not considered to substantially alter the approved development in terms of its relationship with the Transvaal Avenue HCA.

The public plaza and interpretative Public Art requirement (**Condition C.2 Public Art Plan**) is maintained and unaltered.

Conclusion

Based on the above, the proposed modifications are satisfactory in terms of the relevant heads of consideration in Part 5.10 of the Woollahra LEP 2014.

19.4.2. Part 5.21: Flood Planning

Part 5.21 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The original assessment identified the site as located in a ‘Flood Planning Area’ on the Flood Planning Map. The original proposal was considered to be acceptable with regards to the relevant heads of consideration in Part 5.21: Flood Planning of the Woollahra LEP 2014, subject to a DA Condition of consent (**C.16 Flood Protection**), and remains relevant and applicable.

The proposed modifications are therefore satisfactory in terms of Part 5.21 of the Woollahra LEP 2014.

19.4.3. Part 6.1: Acid Sulfate Soils

Part 6.1(1) requires Council to consider any potential acid sulfate soil affectation so that it does not *disturb, expose or drain acid sulfate soils and cause environmental damage*.

The subject site is within a *Class 2* area as specified in the Acid Sulfate Soils Map.

Part 6.1(2) stipulates that works to *Class 2* soils is work that requires development consent, if it involves:

- *Works below the natural ground surface. and/or;*
- *Works by which the watertable is likely to be lowered.*

The original proposal involved excavation work for the purposes of accommodating two levels of basement on the subject site that is also likely to intersect with the ground water table.

Part 6.1(3) stipulates that development consent must not be granted under this clause for the carrying out of works unless an *acid sulfate soils management plan* has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Part 6.1(4) stipulates that despite sub-clause (2), development consent is not required under this clause for the carrying out of works if:

- (a) ***a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and***
- (b) *the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

For the purposes of the original assessment of the DA the following two reports were considered:

- Geotechnical and Groundwater Investigation: Proposed Mixed Use Development 19-27 Cross Street, Double Bay, referenced Project No. 86397.00, dated 19 September 2018 (“**2018 Report**”);
- Report on Preliminary Site Investigation for Contamination, Proposed Mixed Use Development 19-27 Cross Street, Double Bay, referenced Project 86397.00, dated July 2020 (“**2020 Report**”)

In the original assessment (DA 321/2020/1) both the 2018 and 2020 report were considered and the 2018 report was taken to be as the “preliminary assessment” required by Part 6.1(4)(a) above.

It was concluded that an Acid Sulfate Soils Management Plan (ASSMP) was not required for the proposed works, as the potential for acid sulfate soil affectation is below and/or within an acceptable level consistent with the NSW Government Acid Sulfate Soils Management Advisory Committee (ASSMAC) guidelines. These conclusions remains relevant and unchanged by the proposed modifications and no further consideration is required.

Conclusion

The proposed modifications are therefore acceptable with regard to the relevant matters for consideration in Part 6.1 of the Woollahra LEP 2014.

19.4.4. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The original proposal included earthworks. The proposed modifications do not involve changes to the total extent of bulk excavated material (m³), setbacks of excavation or maximum depths than approved.

The proposed modifications are considered to be acceptable with regards to Part 6.2 Earthworks of the Woollahra LEP 2014 and/or are addressed by the originally recommended DA conditions that remain relevant and applicable.

20. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015 (WDCP 2015)

20.1. Chapter D5: Double Bay Centre

DCP Compliance Table

Site Area: 1,334m ²	Approved (DA321/2020/1)	Proposed Modification	Control	Complies
Section D5.6: Development controls				
D5.6.2 Use				
Use	Commercial / retail	unchanged	Mix of Uses	Yes
Access to Residential Uses at Ground Floor	<20% of Transvaal Ave frontage	unchanged	Max 20% of Frontage	Yes
D5.6.3 Urban character				
D5.6.3.2 - Maximum Height – Storeys & (m)	6-7 storeys (21.5m)	6-7 storeys (22.05m)	4 storeys (14.7m) above ground	No*
D5.6.3.4 - Front Setback (Cross Street)				
- G	2.33-4.2m	Unchanged	3m	No (part)*
- L 1	0-3.29m		3m	No*
- L 2	0-3.29m		3m (1.8 + 1.2)	No*
- L 3	0-3.29m		5.3m (1.8 + 3.5)	No*
- L 4	0-3.29m		n/a**	No*
- L 5	3.29-5.7m		n/a**	No*
- L 6	5.7-8m		n/a**	No*
D5.6.3.4 - Front Setback (Transvaal Ave)				
- G	0.86m	Unchanged	3m	No
- L 1	0.86m		3m	No
- L 2	0.86m		4.8m (3 + 1.8)	No
- L 3	0.86m		4.8m (3 + 1.8)	No
- L 4	0.86m		n/a**	No
- L 5	0.86m		n/a**	No
- L 6	11.7m		n/a**	No
D5.6.3.4 - Rear Setback (North) [Adjacent to Transvaal HCA]				
- G	1.6-8m	Unchanged	0m	Yes
- L 1	0-9.6m		0m	Yes
- L 2	0-9.6m		0m	Yes
- L 3	0-9.6m		0m	Yes
- L 4	0-9.6m		n/a**	No*
- L 5	0-9.6m		n/a**	No*
- L 6	8.8-9.6m		n/a**	No*
D5.6.3.4 - Side Setback (West) [Adjacent to Intercontinental Hotel]				
- G	0m	Unchanged	0m	Yes
- L 1	0m		0m	Yes
- L 2	0m		0m	Yes
- L 3	0m		0m	Yes
- L 4	0-2.2m		n/a**	No*
- L 5	0-2.2m		n/a**	No*
- L 6	0-2.2m		n/a**	No*
D5.6.3.1 Occupied Floor Area (%)				
- L G-1	<100%	Unchanged	Max 100%	Yes
- L 2-3	>50%		Max 50%	No*
- L 4-6	<100%		n/a**	No*
D5.6.3.1 – Max building depth Level 2 and above / cross ventilation				
- L 2	26.8m	unchanged	Max 15.6m	No (part)*
- L 3	26.8m			
- L 4	26.8m			
- L 5	26.8m			
- L 6	8.2m			
D5.6.3.1 - Minimum <u>floor-to-ceiling</u> heights of habitable rooms	Min 2.7m	unchanged	2.7m	Yes
D5.6.3.2 - Floor level of uppermost habitable storey below the permissible height	16.4m (RL 19.65) (Level 5 FFL)	unchanged	11.2m (3.5m below maximum permitted height)	No*
D5.6.3.2 - Minimum <u>floor-to-floor</u> heights				
- Ground (Retail)	4m	unchanged	4m	Yes
- L 1 (Residential)				

Site Area: 1,334m ²	Approved (DA321/2020/1)	Proposed Modification	Control	Complies
- L 2 (Residential) - L 3 (Residential) - L 4 (Residential) - L 5 (Residential) - L 6 (Non-habitable / plant room)	3.1m 3.1m 3.1m 3.1m 2.8m		3.1m 3.1m 3.1m 3.1m N/A**	Yes Yes Yes Yes N/A
D5.6.3.3 Building Articulation - <i>Max internal space</i> in articulation zone (%) <u>Cross Street</u> - G-1 - L 2-4	<u>Cross St</u> < 100% Max 40% / 1.2m	Unchanged	<u>Cross St</u> Max 100% Max 40% / 1.2m	Yes Yes
<u>Transvaal Ave</u> - G-1 - L 2-4	<u>Transvaal Ave</u> < 100% Max 40% / 1.8m	Unchanged	<u>Transvaal Ave</u> Max 100% Max 40% / 1.8m	Yes Yes
D5.6.3.8 - Heritage items and character buildings - New developments	Deemed compatible - refer to Part 5.10 WLEP 2014 assessment	unchanged	Must be compatible with the significance of HCA	Yes
D5.6.4 Relationship to public domain				
D5.6.4.1 - Awnings	Continuous awning provided	unchanged	Must be continuous	Yes
D5.6.4.1 - Awnings - Minimum soffit height	Min 4m	unchanged	3.2m	Yes
D5.6.4.4 - Public art	Provided	unchanged	Provided for >CIV \$15Mil	Yes
D5.6.4.4 - Public art	Visible Public Art required / provided (Refer Condition C.2)	unchanged	Readily Visible	Yes
D5.6.4.6 - Active Frontage to Lanes	N/A – no rear lanes	unchanged	75% of lane frontage	N/A
D5.6.5 Amenity				
D5.6.5.1 Minimum separation (m) - Non-habitable to non-habitable - habitable to habitable - Balcony to habitable	>6m >9m >12m	unchanged	6m 9m 12m	Yes Yes Yes
D5.6.5.4 - Minimum Private Open Space - Small dwelling (<60m ²) - Medium dwelling (60-90m ²) - Large dwelling (90m ² +) - Preferred & Minimum depth (m)	Min 8m ² Min 12m ² Min 16m ² Min 2.4m & 1.8m	Additional POS area for units 5.01, 5.02 and 5.03)	8m ² 12m ² 16m ² 2.4m & 1.8m	Yes Yes Yes Yes
D5.6.6 Solar access and natural ventilation				
D6.6.6.1 Maintain Solar Access to <u>publicly accessible spaces</u> (footpath of Cross St) between 12pm and 2pm on 21 June	Partially overshadowed between 12-2pm	Not further reduced between 12-2pm (Cross St & Goldman Ln)	Not further reduced beyond existing between 12pm and 2pm	Yes
D6.6.6.1 Hours of Solar Access to <u>adjoining properties</u> , between 9am and 3pm on 21 June - Habitable windows (north-facing) - Private open space	Min 3hrs Min 2hrs	Min 3hrs Min 2hrs	Min 3hrs Min 2hrs	Yes Yes
D6.6.6.2 Natural cross-ventilation to all buildings	Max 18m**	unchanged	Max Depth 15.6m	No*
D6.6.6.2 Cross-ventilation to dwellings	87% (11/18 units)**	unchanged	80% of Dwellings (15)	No*
D5.6.7 Geotechnology and hydrogeology				
Geotechnology and hydrogeology - Excavation Depth	Geotechnical Report provided	unchanged	Excavation >1m is accompanied by a Geotechnical & Structural Report	Yes
D5.6.8 Parking and servicing				
D5.6.8.1 - Location of Parking	Parking located within Basement Level	unchanged	Located below Ground Level	Yes

Site Area: 1,334m ²	Approved (DA321/2020/1)	Proposed Modification	Control	Complies
D5.6.8.4 - Site facilities - Air-Conditioning Units - Garbage Storage Area - Fire Hydrant and booster pumps	within dedicated internal areas / not readily visible from public domain	unchanged	Not readily visible / visually integrated	Yes Yes Yes

****Existing non-compliance that remains unaltered or exacerbated as a result of the proposed modifications***

*****No controls for this level, this level of the development extends outside the permitted envelope controls.***

The proposed modifications are considered to be acceptable with regards to Chapter D5 of the Woollahra DCP 2015. For the following reasons:

- The proposed modifications will not result in any significant external changes to the approved building envelope;
- The proposed modifications will not result in inconsistency with the desired future character of the Double Bay Centre when compared to the approved development;
- There will not be any significantly adverse amenity impacts upon adjoining properties or the public domain in terms of loss of views, visual intrusion, privacy and/or overshadowing arising from the proposed modifications;
- The proposed modifications will not substantially modify the approved scheme, apart from the conversion of approved external roof area into roof terraces for Units 5.01, 5.02 and 5.03 each accessible by stairs and each with lightweight pergola and a spa. The proposed roof terraces measure 103.5m² (for Unit 5.03), 59.9m² (for Unit 5.02) and 49.7m² (for Unit 5.01) provide greater amenity to the units without comprising visual and aural privacy of surrounding uses. The remainder of the proposed modifications are generally limited to minor internal reconfiguration which does not substantially alter the approved development;
- The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter D5 Double Bay Centre* of the Woollahra DCP 2015 as the works are primarily limited to internal works and new roof terraces, on balance the development remains generally consistent with the approval in terms of its performance against the *Street Character, Built Form Envelopes* and *Development Controls* of this chapter;
- The proposed modifications are considered to achieve consistency with regards to the objectives and controls in Chapters E1-E8 of the Woollahra DCP 2015 and/or are adequately addressed via the previously recommended DA conditions that remain applicable, new DA conditions and modified DA conditions. Refer to assessment below:

20.2. Chapter E1: Parking and Access

20.2.1. Part E1.1.3: Objectives

The objectives of this chapter are:

- O1 *To minimise the amount and impact of vehicular traffic generated due to proposed development.*
- O2 *To ensure that development generating vehicular traffic makes adequate provision off street for the car parking and servicing needs of its occupants and users, including residents, employees, visitors and deliveries.*
- O3 *To ensure the safe and efficient movement of vehicles within, entering and leaving properties.*

- O4 To minimise the environmental effects, particularly visual impact, of parked vehicles on the amenity of the municipality.
- O5 To ensure that access points to car parking areas are situated to minimise disruption of vehicle movement on the public road system.

The proposed modifications satisfy the relevant objectives in Part E1.1.3 for reasons discussed below.

20.2.2. Part E1.4-E1.5: Residential parking and Non-residential parking

Parking for residential uses is calculated using the generation rates specified in E1.4.2.

Parking for non-residential uses is calculated using the generation rates specified in E1.5.2 and applied by the multiplier rate in E1.5.3.

Use	GFA	Rate	Multiplier	Control (Spaces Required)	Complies (Y/N) (Spaces Provided)
<u>Residential Component</u> (Mixed-use)* - Maximum Parking Rates	1-Bed/Studio - 0.5 spaces/unit 2-Bed – 1 space/unit 3-Bed/3+Bed- 1.5 spaces/unit Visitors – 0.2 spaces/unit		x0.6**	Max 29 Spaces	N – 32 Spaces approved under DA 321/2020/1 (28 for residents, 4 for residential visitors)
<u>Commercial</u> (Business/Retail) - Minimum Parking Rates	582.9m ² (from 679m ²)	3.3/100m ²	x0.6***	Min 12 (11.54)	Y – 19 spaces

*Units: 18 (2 x 1Bed, 1 x 2Bed; and 15 x 3/3+ Bed units) **Note: S4.55 converts 1 x 3-Bed unit into a 4Bed unit**

** The number of parking spaces for 1-Bed or studio apartments in the Double Bay Centre are multiplied by (x0.6)

*** The number of parking spaces for non-residential uses are multiplied by the parking multiplier (x0.6) in the Double Bay Centre B2 zone.

DA 321/2020/1 approved a total of fifty-one (51) car parking spaces, thirty (30) bike parking spaces and six (6) motorbike parking spaces, within the development.

Council's Traffic Engineer in the original DA assessment did not support the oversupply of residential parking and undersupply of non-residential parking. Notwithstanding the non-compliance with the maximum residential parking rates, the proposed modifications do not substantially alter the approved unit mix or retail GFA. The original recommendation sought to allocate a greater number of parking spaces to the non-residential component and lesser number of spaces to the residential component.

The proposed modifications do not seek to alter the number of approved number of spaces and only involves from minor relocation/reconfiguration of the spaces. The original DA was subject to the following DA condition:

"1.2 Provision of Off-Street Parking

The owner and occupier, in compliance with AS2890.3:1993 Parking Facilities - Bicycle Parking Facilities, and AS/NZS 2890.1:2004: Parking Facilities - Off-Street Car Parking, must maintain unimpeded public access to off-street parking as follows:

Use	Number of spaces
Vehicle parking (residents)	28
Vehicle parking (visitors)	4
Vehicle parking (non-residential)	19
Bicycle parking	30
Motorbike parking	6

This condition has been imposed to ensure adequate on-site parking is maintained."

Condition I.2 remains relevant and applicable and ensures that on-site parking is maintained and that allocation of parking is distributed consistent with the approved development.

The proposed modifications are considered to achieve consistency with Part E1.4 of the Woollahra DCP 2015.

20.2.3. Part E1.6: Bicycle parking and Part E1.7: Motorcycle parking rates

No changes are proposed to bicycle and motorcycle parking.

20.2.4. Part E1.10: Parking and Access Design Standards

The proposed modifications involves a reconfiguration of the parking layout and vehicular access arrangements.

Council's Traffic Engineer supports the proposed modifications with regards to Parking and Access Design Standards stating:

"It is understood that the S4.55 (2) proposal does not relate to change of unit mix or retail GFA but includes a redesigned access driveway. Comparing to the original proposal, the exit side of driveway is now slightly angled however is consistent with the entry side and provides more space for vehicles to manoeuvre off the site. The sight splay along the exit side is reduced, it is however noted that the garage door is located at least 2.5m away from the boundary, which should provide enough splay area for vehicles exiting the site. The stop line pavement marking and convex mirror could also assist with visibility and reduce safety risks. This is considered acceptable.

As such, it is considered that the proposal is unlikely to generate additional adverse impact on traffic and parking. No additional traffic conditions are required."

Based on the above, previously imposed DA conditions remain relevant and applicable.

The proposed modifications are considered to achieve consistency with Part E1.10 of the Woollahra DCP 2015.

20.2.5. Conclusion

The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter E1: Parking and Access* of the Woollahra DCP 2015.

20.3. Chapter E2: Stormwater and Flood Risk Management

The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter E2: Stormwater and Flood Risk Management* of the Woollahra DCP 2015 and/or are adequately addressed via the previously recommended DA conditions that remain applicable.

20.4. Chapter E3: Tree Management

The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter E3: Tree Management* of the Woollahra DCP 2015 and/or are adequately addressed via the previously recommended DA conditions that remain applicable.

20.5. Chapter E4: Contaminated Land

The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter E4: Contaminated Land* of the Woollahra DCP 2015 and/or are is adequately addressed via the previously recommended DA conditions that remain applicable.

20.6. Chapter E5: Waste Management

The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter E5: Waste Management* of the Woollahra DCP 2015 and/or are is adequately addressed via the previously recommended DA conditions that remain applicable.

20.7. Chapter E6: Sustainability

The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter E6: Sustainability* of the Woollahra DCP 2015.

20.8. Chapter E7: Signage

There is no signage proposed under this application.

20.9. Chapter E8: Adaptable Housing

The proposed modifications are considered to achieve consistency with regards to the objectives and controls in *Chapter E8: Adaptable Housing* of the Woollahra DCP 2015.

21. DRAFT AMENDMENTS TO POLICIES AND PLANS

None relevant to the scope of modification work.

22. CONTRIBUTION PLANS & FEES

Section 7.12 contributions were applied as part of the original development application and remain applicable.

23. APPLICABLE ACTS/REGULATIONS

23.1. Swimming Pools Act 1992

A swimming pool is at all times to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations. Additional provisions relate to:

- a) The swimming pool must be registered in accordance with Section 30B of the Swimming Pools Act 1992
- b) A Certificate of Compliance issued pursuant to Section 22D of the Swimming Pools Act 1992
- c) Water recirculation and filtration systems
- d) Backwash must be discharged to the sewer

The proposed modifications includes the introduction of new spas to the roof top. **Conditions F.15, F.16 and I.15** are recommended requiring compliance with the above.

24. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

25. THE PUBLIC INTEREST

The proposed modifications are considered to be in the public interest.

26. CONCLUSION

The proposed modifications are acceptable with regards to the relevant considerations under Section 4.15 and 4.55 of the EP&A Act 1979.

27. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this application by the applicant or any person who made a submission.

28. RECOMMENDATION: PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Sydney Eastern City Planning Panel, exercising the functions of Council, as the consent authority, modify development consent to DA 321/2020/1 for demolition of existing structure and construction of a shop top housing development, on land at 19-27 Cross Street DOUBLE BAY, subject to the following:

1. Addition of the following Conditions:

A.3(a) Approved Amended (section 4.55) Plans and Supporting Documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended architectural approved plans to which is affixed a Council stamp "Approved" and supporting documents as submitted by the Applicant listed below otherwise than modified by further condition(s).

Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
Dwg. No.'s	Architectural Plans	All prepared by Luigi Rosselli Pty Ltd	
S4.55_02 Issue B	Plan – site + roof		04.05.2022
S4.55_03 Issue B	Plan – basement 2		17.03.2022
S4.55_04 Issue B	Plan – basement 1		17.03.2022
S4.55_05 Issue C	Plan – ground floor		17.03.2022
S4.55_06 Issue B	Plan – level 1		04.05.2022
S4.55_07 Issue B	Plan – level 2		
S4.55_08 Issue B	Plan – level 3		
S4.55_09 Issue B	Plan – level 4		
S4.55_10 Issue B	Plan – level 5		
S4.55_11 Issue B	Plan – roof terrace		
S4.55_12 Issue B	Plan – roof		
S4.55_13 Issue B	Section AA		
S4.55_14 Issue B	Elevation – south		
S4.55_15 Issue B	Elevation – east		
S4.55_16 Issue B	Elevation – north		
S4.55_17 Issue B	Elevation – west		
S4.55_19 Issue A	Adaptable apartment layout		31.01.2022
S4.55_22 Issue A	Exterior finishes		
S4.55_38 Issue B	Tree well section		04.05.2022
S4.55_22 Issue A	Exterior Finishes	Luigi Rosselli Pty Ltd	31.01.2022

1123374M_03	BASIX Certificate	NSW Department of Planning, Industry and Environment	16.02.2022
20211584.1/2801 A/R1/AW	Acoustic Review of S4.55 Updates	Acoustic Logic	25.01.2022
2021\210611 Rev 0	BCA Compliance Statement For S.4.55 Modification Submission	Blackett Maguire + Goldsmith	02.02.2022
Unreferenced	Design Verification Statement (S4.55)	Luigi Rosselli Pty Ltd	10.02.2022
Unreferenced	Fire Safety Letter	E-LAB Consulting	02.02.2022

Note: These plans and supporting documentation may be subject to conditions modifying the development imposed under section 4.17(1)(g) of the *Act* (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A6 (Autotext AA6)

F.15 Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters

Prior to filling any swimming pool, as defined by the *Swimming Pools Act 1992*:

- Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- The swimming pool must be registered in accordance with section 30B of the *Swimming Pools Act 1992* on the NSW Government Swimming Pool Register.
- The Principal Contractor or Owner must either obtain a certificate of compliance issued pursuant to section 22D of the *Swimming Pools Act 1992* or an appropriate Occupation Certificate authorising use of the swimming pool.
- Public pools must comply with the *NSW Health Public Swimming Pool and Spa Pool Guidelines* in force at that time and private pools are encouraged to comply with the same standards as applicable.
- Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2010: *Swimming pool safety - Water recirculation systems*.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.

Note: NSW Health guidelines and fact sheets are available at

www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx

Standard Condition: F13 (Autotext FF13)

F.16 Swimming Pool Fencing

Swimming pool fencing is to be constructed in accordance with AS1926-2012 Australian Standard Swimming Pool Safety Part 1 – *Safety Barriers for Swimming Pools*.

Note: Pools commenced or completed after May 2013 must meet Part 3.9.6 of the BCA AS1926.1-2012 and AS1926.2-2012

Standard Condition: F20 (Autotext FF20)

I.15 Swimming and Spa Pools – Maintenance

Swimming and spa pools must be maintained:

- a) in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs,
- b) in compliance with the NSW Health “Public Swimming Pools and Spa Pools Advisory Document” in force at that time. Private pools are encouraged to comply with the same standards as applicable,
- c) in compliance with AS 1926.3-2010 *Swimming pool safety - Water recirculation and filtration systems*,
- d) with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e) with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - before 8 am or after 8 pm on any Sunday or public holiday, or
 - before 7 am or after 8 pm on any other day.

Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

Note: The NSW Health public swimming pools and spa pools guidelines are available at www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx
Standard Condition: I30

I.16 Outdoor Lighting – Roof Terraces

Outdoor lighting must comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminaire and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

All lighting to be installed on the roof terrace will be recessed lights or will be surface wall/balustrade mounted lights at a maximum height of 600mm above the finished floor level of the roof terrace.

Note: This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.

Note: Council may consider, subject to an appropriate Section 4.55 Application, relaxation of this condition where it can be demonstrated, by expert report, that the level of lighting in the existing area already exceeds the above criteria, where physical shielding is present or physical shielding is reasonably possible.

Standard Condition: I51

AND

2. Modify and Replace Conditions C.1, C.5, H.1 and I.1 of the Development Consent, with the following:

C.1 Modification of Details of the Development (section 4.17(1)(g) of the Act)

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation*, must detail the following amendments:

a) Design Changes

- i. The landscape plan must be amended to reflect the plans in **Condition A.3** above and the feature tree must be provided with sufficient depth into the basement parking to sustain vigorous growth.

- ii. The architectural plans must be amended to demonstrate that the feature specimen tree for the public plaza has sufficient depth and width cut into the basement. This may require a reduction in car parking spaces for the residential component of the development. The plans must be amended prior to the construction certificate being issued.
- iii. **The soil area for the proposed *Zelkova serrata* (Japanese Elm) must be increased to be consistent with the minimum soil area set by the ADG (3.5m x 3.5m for a small tree).**

Reason: to ensure the public plaza area has sustainable landscaping consistent with the intent of the project.

- b) The submitted Landscape Plan must specify a deciduous tree located to the north-eastern corner of the site within the proposed public plaza. It must be of a minimum 100L pot size and a species that at maturity must grow to a minimum dimension of 8m (h) x 6m (w).
- c) The submitted Landscape Plan must specify the proposed replacement street tree to be an *Ulmus parvifolia* (Chinese Elm) and not a *Livistona* palm tree. The tree must be planted in a 100 litre container size at the time of planting. The tree pit and surface materials must match the existing materials used within the Double Bay shopping precinct and comply with all relevant specifications outlined in Council's Specifications for Roadworks, Drainage and Miscellaneous Works relating to tree planting within footpaths;
- d) To ensure there is sufficient deep soil to sustain the future growth of the proposed landscape plantings, all landscape areas within the property must comply with soil depths outlined within Section 4P - Table 5 of the NSW Apartment Design Guide - Minimum soil standards for plant types and sizes;
- e) A Hoarding Design Plan must be submitted to Council's Tree Officer. The design plan must consider the location of branches from Council street trees referenced 2 & 3. Where the branches of these trees exist within the airspace of the proposed hoarding the hoarding must be shown to be discontinuous to accommodate the branches without the need to prune.

f) Acoustic treatments

The following acoustic treatments as set out in section 5 of the Acoustic Report must be employed:

- Glazed Windows and Doors

Aluminium framed/sliding glass doors and windows must meet the following criteria:

- All external windows and doors listed are required to be fitted with Q-lon type acoustic seals.
- Thicker glazing may be required for structural, safety or other purposes. Where it is required to use thicker glazing than scheduled, this will also be acoustically acceptable.
- Recommended glazing construction as listed in Table 8
- In addition to complying with the minimum scheduled glazing thickness, the R_w rating of the glazing fitted into open-able frames and fixed into the building opening will require the use of acoustic seals around the full perimeter of open-able frames and the frame will need to be sealed into the building opening using a flexible sealant.

- External Roof/Ceiling

External roof construction is to be constructed from concrete and masonry elements, this proposed structure will not require any further acoustic upgrading. In

the event that any penetrations are required through the external skin, an acoustic grade sealant should be used to minimise all gaps.

- External Walls

External wall construction is to be constructed from concrete and masonry elements, this proposed structure will not require any further acoustic upgrading. In the event that any penetrations are required through the external skin, an acoustic grade sealant should be used to minimise all gaps.

- Entry Doors

External opening entry doors shall have glazing thicknesses equal to those recommended in section 5.4.1 Recommended Glazing Construction, and are to have Raven RP10 to the top and sides, and Raven RP38 to the underside of the door.

- Mechanical Ventilation

With respect to natural ventilation of the dwellings, the NSW Department of Planning document "Development near Busy Roads and Rail Corridors - Interim Guideline" dictates that:

"If internal noise levels with windows or doors open exceed the criteria by more than 10dB(A), the design of the ventilation for these rooms should be such that occupants can leave windows closed, if they so desire, and also to meet the ventilation requirements of the Building Code of Australia."

With windows open, the allowable internal noise goal is permitted to be 10dB(A) higher than when the windows are closed (ie – allowable level in bedrooms becomes 45dB(A), and 50dB(A) in living rooms).

All facades must satisfy the requirements above with windows/doors open.

g) Rooftop Design Changes

- The rooftop planter height must be clearly dimensioned on all drawings and be no more than 700mm high; and**
- The spa must be relocated to sit within the rooftop terrace of Unit 5.01.**

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the Act.

Note: Clause 146 of the *Regulation* prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

Note: Clause 145 of the *Regulation* prohibits the issue of any Construction Certificate that is inconsistent with this consent.
Standard Condition: C4 (Autotext CC4)

C.5 BASIX Commitments

The Applicant must submit to the Certifying Authority BASIX Certificate No. **1123374M_03** with any application for a Construction Certificate.

Note: Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the *Regulation*) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the Act.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

Note: Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation* 2000 provides: "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".

Standard Condition: C7

H.1 Fulfillment of BASIX Commitments – clause 154B of the *Regulation*

All BASIX commitments must be effected in accordance with the BASIX Certificate No. **1123374M_03**.

Note: Clause 154B(2) of the *Environmental Planning and Assessment Regulation 2000* provides: "A *certifying authority* must not issue a final Occupation Certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7 (Autotext HH7)

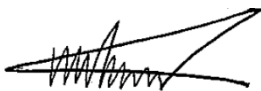
I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. **1123374M_03**.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.

Standard Condition: I24

Report prepared by:



Mr Wilson Perdigao
Senior Assessment Officer

Date: 11 July 2022

Report reviewed and agreed on behalf
of the Development Assessment department by:



Mr N Economou
Manager - Development Assessment

Date: 13 July 2022