

**NSLPP MEETING HELD ON 01/02/2023****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement

ADDRESS/WARD: 131-133 Alexander Street, Crows Nest**APPLICATION No:** DA212/22

PROPOSAL: Demolition of existing structures and construction of a four storey commercial building and a two level basement for parking and other ancillary uses, vehicular access from Alexander Lane, a rooftop seating area, landscaping and associated works.

PLANS REF:

Plan No.	Rev No.	Description	Prepared by	Dated
DA001	B	Site Plan	Nettleton Tribe	15/12/22
DA003	A	Existing Survey & Demolition	Nettleton Tribe	12/05/22
DA100	B	Basement 2 Floor Plan	Nettleton Tribe	15/12/22
DA101	B	Basement 1 Floor Plan	Nettleton Tribe	15/12/22
DA102	B	Lower Ground Floor Plan	Nettleton Tribe	15/12/22
DA103	B	Ground Floor Plan	Nettleton Tribe	15/12/22
DA104	B	Level 1 Floor Plan	Nettleton Tribe	15/12/22
DA105	B	Level 2 Floor Plan	Nettleton Tribe	15/12/22
DA106	B	Roof Plan	Nettleton Tribe	15/12/22
DA121	B	Alexander Street Elevation	Nettleton Tribe	15/12/22
DA122	B	Alexander Lane Elevation	Nettleton Tribe	15/12/22
DA123	B	South Elevation	Nettleton Tribe	15/12/22
DA124	B	North Elevation	Nettleton Tribe	15/12/22
DA125	B	Materials and Finishes Sheet 1	Nettleton Tribe	15/12/22
DA126	B	Materials and Finishes Sheet 2	Nettleton Tribe	15/12/22
DA131	B	Section A	Nettleton Tribe	15/12/22
DA132	B	Section B	Nettleton Tribe	15/12/22
000	A	Landscape Coversheet	Site Image	07/12/2022
101	A	Landscape Ground Floor Plan	Site Image	07/12/2022
102	A	Landscape Level 1 Plan	Site Image	07/12/2022
103	A	Landscape Level 2 Plan	Site Image	07/12/2022
104	A	Landscape Roof Top Plan	Site Image	07/12/2022
501	A	Landscape Details	Site Image	07/12/2022
DA01	A	Stormwater Drainage General Notes	NB Consulting Engineers	05/05/2022
DA02	A	Basement 2 Drainage Plan	NB Consulting Engineers	05/05/2022
DA03	A	Basement 1 Drainage Plan	NB Consulting Engineers	05/05/2022
DA04	A	Lower Ground Floor Drainage Plan	NB Consulting Engineers	05/05/2022
DA045	A	Ground Floor Drainage Plan	NB Consulting Engineers	05/05/2022
DA06	A	Level 1 Drainage Plan	NB Consulting Engineers	05/05/2022
DA07	A	Level 2 Drainage Plan	NB Consulting Engineers	05/05/2022
DA08	A	Roof Drainage Plan	NB Consulting Engineers	05/05/2022
DA09	A	Stormwater Drainage Details	NB Consulting Engineers	05/05/2022

OWNER: Central Services of Sydney Pty Ltd**APPLICANT:** Central Services of Sydney Pty Ltd**AUTHOR:** Jim Davies, Executive Planner**DATE OF REPORT:** 18 January 2023**DATE LODGED:** 19 July 2022**RECOMMENDATION:** Approval (Deferred Commencement)

EXECUTIVE SUMMARY

This development application seeks approval for the demolition of existing structures and construction of a four storey commercial building and a two level basement for parking and other ancillary uses, vehicular access from Alexander Lane, landscaping and associated works.

One of two buildings on the site has partially collapsed, allegedly resulting from earthworks and development occurring on land adjoining the site's northern boundary.

The application is reported to the North Sydney Local Planning Panel for determination as the applicant makes a request to contravene the building height development standard of 10m, prescribed by cl. 4.3 North Sydney Local Environmental Plan 2013 (the LEP) by more than 10%.

The request to breach the prescribed height maximum is examined by this report. According to the request to contravene the standard, the maximum height breach is mainly caused by the lift over-run protruding above the roof plane to a level of 14.45m above existing ground level. The maximum height standard is 10m and the greatest degree of the breach (44.5%) is satisfactory, having satisfied the requirements of cl. 4.6 of the LEP. The applicant's request demonstrates that compliance is unreasonable in the circumstances of the case, and that there are environmental planning grounds to justify the non-compliance. The breach is also in the public interest, being consistent with objectives of the development standard and the B4 Mixed Use zone affecting the subject land.

Notification of the proposal attracted two submissions. One objected on grounds the proposed building exceeds the height standard by over 7m (original proposal). The other was from the applicant, requesting the application be expedited due the building collapsing and this resulting in loss of income and business. The assessment has considered these concerns, as well as the performance of the application against Council's planning requirements.

Key issues considered in this assessment are:

- The proposed height breach,
- Large areas of the lower ground floor that appear not to have adequate lighting and natural ventilation,
- The development's relationship with neighbouring development, and
- The position, scale and bulk of the building in relation to the adjacent residential development, which is in a Heritage Conservation Area.

Building height is satisfactory, as the lift and stairs to the roof which cause the breach are positioned to have no significant impact on nearby buildings and their occupants and not be seen from the public domain.

The height and number of storeys of the building, on the western, Alexander Street side, are consistent with the height and scale of other buildings in the street.

On the eastern side adjacent to a low density residential conservation area, the setback of all levels of the building proposed is 1.5m. This setback was increased from 0.0m during the assessment process, to comply with the requirement of the DCP.

At the highest level of the building this does not provide an adequate reduction in scale in relation to the smaller and lower built form of the adjacent conservation area. Neither does it complement the upper-level setback (of about 7.0m) of the new building under construction on the site's northern boundary. A recent approval for the building on the site's southern side's top level includes a setback of about 1.6m. However, this approval was for alterations and additions, not a new build.

The applicant of the subject proposal was requested to re-consider the suitability of the 1.5m setback and re-submitted that the proposal is reasonable.

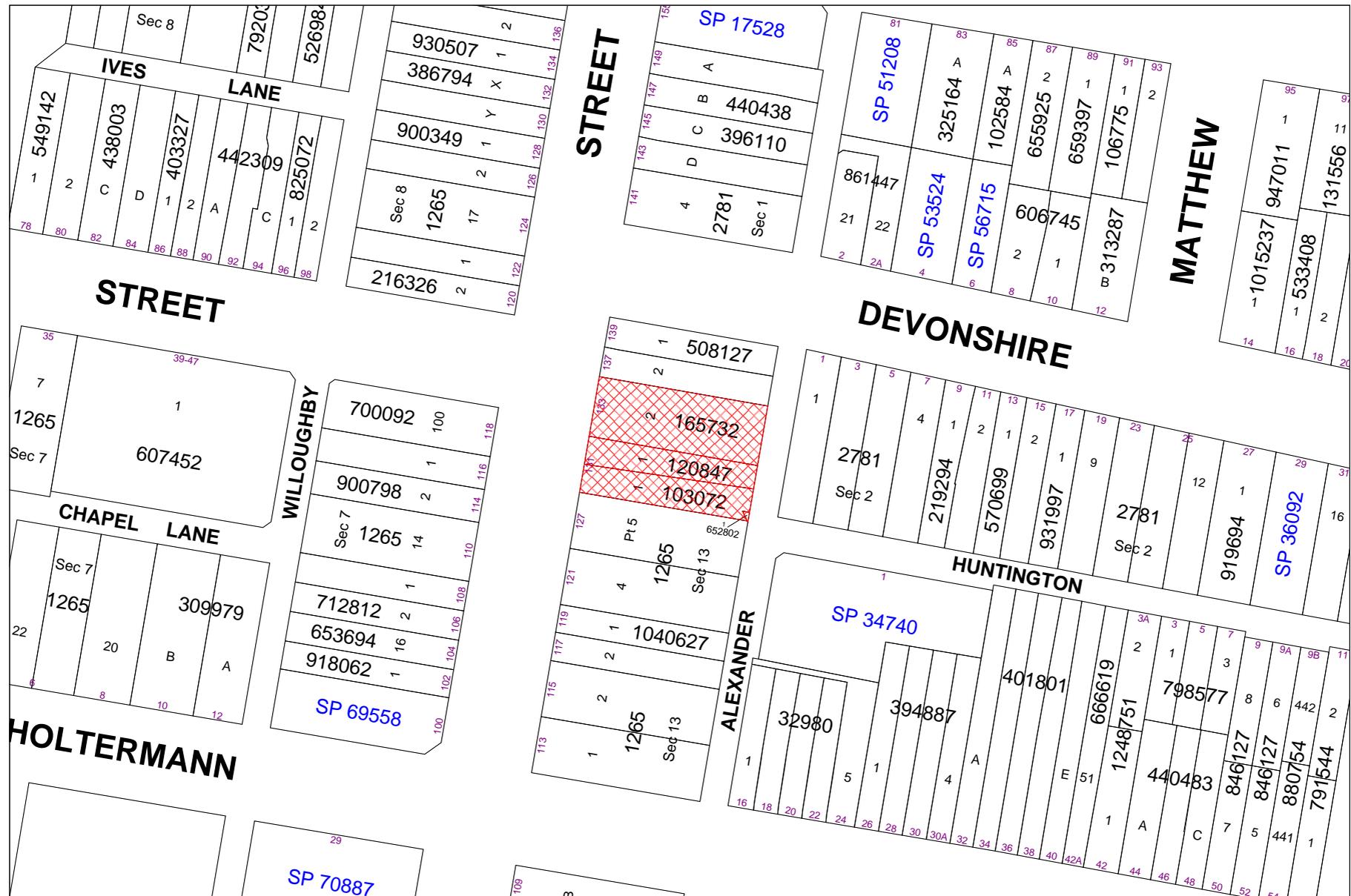
Having considered the advice of the North Sydney Design Excellence Panel, heritage and urban design/planning assessments, this view is not concurred with. As a consequence, a deferred commencement consent is recommended, for the development to be amended to increase the eastern setback of the top level to 4.5m from the eastern site boundary. This amendment will acceptably improve built-form compatibility with the adjoining building to the north and affect an enhanced transition to the adjacent low density residential heritage conservation area.

Additionally, to approve the development as proposed would be inconsistent with site and context specific conditions, while also taking into consideration the provisions of the LEP and DCP. Approval of a smaller setback of the top level, as proposed, would undermine the local planning framework and result in poor urban design and heritage outcomes.

The applicant has requested an expedited processing of this application. This has been hampered by the proponent, for a new building, seeking a larger envelope and floor area than what had existed prior to the damage occurring and exceeding key height and setback controls. Submission of a compliant development would have had a much greater probability of achieving an accelerated processing time.

Provided recommended amendments are made, the proposed development will be satisfactory and an operational consent would be issued, subject to conditions.

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The application seeks consent for the following:

- Demolition of existing structures on the site;
- Excavation of the site, for two basement levels, mainly for vehicle parking;
- Construction of a four (4) storey commercial development including:
 - Lower Ground level with car park entry, end of trip facilities, conference, meeting and breakout rooms;
 - Ground level reception area, workplace areas, meeting rooms and bathrooms, lift and fire stairs, landscape planters; and
 - Level 1 and 2 including workplace areas, meeting rooms and bathrooms, lift and fire stairs and storage rooms, plus landscape planters on structure on the front facade.
- Roof level with a 1.2m balustrade behind the parapet, stair access, solar panels, mechanical plant, lift overrun and motor room plus a small roof top terrace (seating area) and landscaping.

STATUTORY CONTROLS

North Sydney LEP 2013 (the LEP)

- Zoning – B4 Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area – Adjacent to the Holtermann Estate A conservation area
- Local Development
- SEPP (Biodiversity and Conservation) 2021 Chapter 6 Water catchments
- SEPP (Resilience and Hazards) Chapter 4 Remediation of Land

POLICY CONTROLS

- North Sydney Development Control Plan (the DCP)
- North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF SITE & LOCALITY

The subject site 131-133 Alexander Street Crows Nest (lot 1 DP 103072, lot 1 DP 120847 and Lot 2 DP 165732) is located on the eastern side of Alexander Street between Holtermann Street and Devonshire Street.

On-site is a 3-storey commercial building which has been partially demolished due to the building having collapsed, allegedly caused by demolition and construction on land adjacent to the site's northern boundary (DA 430/17, 137-139 Alexander Street). A 2-storey commercial building occupies the southern portion of the site, which is undamaged. The site has rear vehicular access via Alexander Lane on the eastern boundary. The 916.6m² site is rectangular in shape, with the site's topography sloping down to the north by about 1.0m to 1.5m on each frontage.

The site is on the edge of the Crows Nest Town Centre. Across Alexander Lane to the east is the Holtermann A Heritage Conservation Area, which is characterised by low density residential buildings including dwelling houses, semi-detached dwellings and townhouses, of one and two storeys.

Part C of the DCP (cl. 3.2.2.1, P3) generally describes the type of development sought in the town centre:

Predominantly medium rise mixed use development built boundary to boundary, with setbacks to laneways, and above the podium, with shops at ground level, non-residential/residential on first floor and residential above.



Figure 1: Site location, site outlined in yellow (Urbis).



Figure 2. NSLEP Site (outlined in red) is zoned B4 Mixed Use (lilac). Adjacent land (pink) is in the R2 Low Density Residential zone (Urbis).

Neighbouring Development

Development has been approved on the northern and southern sites adjoining the subject land.

127 Alexander Street (DA 224/20)

To site's immediate south, alterations to the existing building were granted consent on 2 December 2020. The approval allows a small height breach and addition of another level, with a 1.6m setback to Alexander Lane, from ground level to roof. The approved building if constructed would present 3.5 levels above the lane (similar to the subject proposal).

137-Alexander Street (DA 430/17)

A part three and part four storey mixed use development was approved on this site, on 1 August 2018. Of relevance to the subject proposal, a height exceedance was approved, with a 7.0m setback from Alexander Lane. As noted, this development is under construction.

The photomontage below, provided by the applicant, shows the relationship of the proposal (clouded in red) with these two neighbouring, approved, buildings.

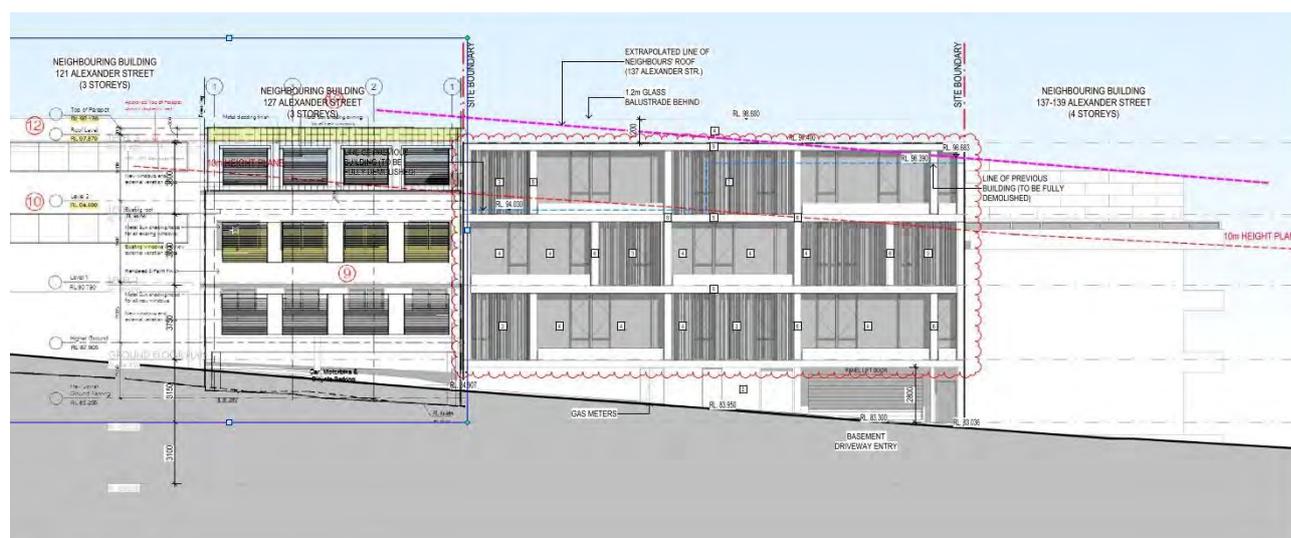


Figure 3: Photomontage of proposal (red cloud) and approved development either side.

RELEVANT HISTORY

Current Application

Date	Action
19/07/22	DA lodged
05/08/22	DA notified, for 14 days (until 19/08/22)
13/09/22	DA considered by North Sydney Design Excellence Panel
27/10/22	Request for information sent to applicant
12/10/22	Site meeting with applicant and team
10/11/22	Application amended
31/10/22	Follow-up meeting with applicant and planner
22/11/22	Further advice to applicant regarding design amendments
28/11/22	Another meeting with applicant
5 & 16/12/22	Further amendments submitted

INTERNAL REFERRALS

Building

The works the subject of this application have been assessed in accordance with the Building Code of Australia. A condition is recommended to ensure compliance. Should this application be granted consent and significant changes be required to achieve compliance, a Section 4.55 application would be necessary.

HERITAGE

Council's Conservation Planner's report follows:

1. Heritage status and significance

The site at 131-133 Alexander Street is not identified as an item of environmental heritage and is not situated within a heritage conservation area. The site is however, located adjacent to the western boundary of the *Holtermann Estate A* and *B* Conservation Areas (CA07 and CA 08).

- Section 3.4.3 of *Part C North Sydney DCP 2013* states that the *Holtermann Estate A* Conservation Area is significant:
 - (a) *as a late 19th century subdivision for speculative housing.*
 - (b) *For its regular grid of streets, rear lanes and cross lanes.*
 - (c) *For its consistent late 19th and early 20th century residential character and the unity of its low scale built form that derives from its regular grid subdivision pattern and its single storey, detached and attached dwelling houses in a mixture of late Victorian and early Federation styles.*
- Section 3.5.3 of *Part C North Sydney DCP 2013* states that the *Holtermann Estate B* Conservation Area is significant:
 - (a) *As a late 19th century subdivision for speculative housing.*
 - (b) *For its regular grid of streets, rear lanes and cross lanes.*
 - (c) *For its consistent late 19th and early 20th century residential character and the unity of its low scale built form that derives from its regular grid subdivision pattern and its single storey, detached and attached dwelling houses in a mixture of late Victorian and early Federation styles.*

The subject site sits on the outside boundary of *Holtermann A* and *B* conservation areas that defines the western boundary of conservation areas. As such, Alexander Lane is characterised by two and three storey developments on the western side and one and two storeys on the eastern side of the lane. There are no relevant heritage items in the vicinity of the site. Historically, the setbacks along Alexander Lane present staggered setbacks that provide spatial relief supporting a transitional separation between the differing scales of the urban and residential zones.



2. Heritage Assessment and Recommendations Proposal

An assessment of the proposed development to demolish the two buildings at 131 and 133 Alexander Street and erect a new development over the existing sites has been undertaken in relation to NSLEP 2013 Clause 5.10 Heritage conservation with regard to NSDCP 2013 Part B: Section 13.6 Heritage and Conservation, noting that the location of the subject site is adjacent to the Holtermann Estate A and B conservation areas.

The rear of the site abuts Alexander Lane. Within this site context, the proposed rear elevation is an especially important element for the role it plays in defining the western edge of the Holtermann Estate A and B conservation areas and in creating an appropriate transitional edge between the urban character along Alexander Street and the low scale residential character of the two heritage conservation areas behind it.

The buildings to be demolished have two different scales - one has a two storey scale and is setback from Alexander Lane and the other has a three storey scale built to the property boundary. The new development will sit across the two sites in one single plane and has been revised to reflect the 1.5m setback established for this part of Alexander Lane. The site sits mid-block between 127 Alexander Street and the corner site at 137 Alexander Street. Both sites have had recent development approval for new buildings as per DA 224/20 and DA 430/17 respectively. It is recommended that the new development retain a consistent scale/height and setback with these recently approved DAs. Any subsequent levels should be set back similar to DA224/20. Proposed elevations prepared as a photomontage indicating the relationship between the proposed development and the approved developments at either side for assessment of best fit purposes would be helpful.



The contemporary design approach is supported. However, the proposed floor plate is too wide for its street context. It is recommended that the development consider stepping the building mass to reflect the sloping topography of the site and to retain reference to the predominant street subdivision pattern of the street-block between Holtermann Street and Devonshire Street. [See the 1943 aerial images]

The potential to introduce landscaping opportunities as an ongoing initiative to improve the amenity in Alexander Lane and integrate the transition between the characteristically different land uses along Alexander Street and those of the conservation areas, should also be considered.

3. Conclusions and Recommendations

With reference to the above and in conclusion, it is recommended that:

- a height reduction and upper-level setbacks above three storeys be compatible with the approved DAs either side of the subject development site
- Investigate the potential to introduce landscaping at street level and for the building itself (e.g. vertical gardens)
- Ensure a high solid to void ratio in the eastern building elevation facing the *Holtermann A* and *B* conservation areas by restricting extensive use of glass to complement their materiality complementary and character.

Planner's comment

The above report was provided based on the originally submitted design. Comments on the amended application received in December 2022 were requested. The Conservation Planner's recommendations did not alter as a result of the amendments made.

The above recommendations are addressed as follows:

1. A partial height reduction will be affected by increasing the eastern setback of the top level and the roof, to the extent necessary to adequately improve the built form relationship between the building and adjacent heritage conservation area east of Alexander Lane, which consists mainly of low density residential development.
2. The submitted landscape plan includes a small planter at the pedestrian entry from Alexander Street, planters are provided on levels 1 and 2 fronting this street and landscaping of the roof will provide screening and softening of rooftop structures (stairs, lift, solar panels, mechanical vents, et. al.). A shade structure over the seating area is also recommended, provided it does not exceed 14.45m in height, so as not to exceed the already non-compliant lift structure on the roof. Landscaping is considered satisfactory.
3. 'Timber-look' aluminium vertical shutters are proposed to a proportion greater than 50% of windows on the eastern façade. While this partially addresses this concern, these shutters would be complemented by judicious and generous inclusion of planters to the eastern facade in a similar fashion as proposed for the western façade. This is also recommended.

TRAFFIC

No comments were received from Council' traffic engineers. Notwithstanding, the traffic report submitted with the application notes the parking and access arrangements for vehicles and bicycles (including end of trip facilities) are satisfactory and compliant with relevant standards, given the site will enjoy an improved level of access upon completion of the Metro line and opening of the Crows Nest Metro station, which is within walking distance of the site.

No loading facilities are included in the basement, which is acceptable for a small office building. Small vehicles will be able to use parking in the basement (required by the deferred commencement condition). Larger vehicles will have to load and unload in the lane, as is presently the case.

Conditions are recommended to ensure compliance with relevant DCP requirements – no more than 33 vehicle parking spaces are to be provided (as proposed), with a suitable number to be set aside for deliveries (one is proposed), a minimum 26 bicycle spaces (19 staff and 7 visitor spaces) with end-of-trip facilities that comply with cl. 10.5 Bicycle Parking and Associated Facilities, Section 10 North Sydney DCP 2013, are to be provided.

DEVELOPMENT ENGINEERING

No objection was raised by Council's development engineers and conditions are recommended in the event the application is approved.

LANDSCAPING

Council's landscape development officer provided the following report:

The landscaping plan submitted is considered to be generally acceptable.

The following conditions are recommended:

- 1xPlatanus sp. (6x7m pruned under wires), 1 x Callistemon sp. (7x8m), 1 x Platanus sp. (13x10m) and underplanted Murraya paniculata hedge located across the frontage of 131-133 Alexander St shall be protected in accordance with AS4970,
- Trunk and branch protection shall be installed to trees, tree protection fencing to Murraya hedge, unless protected by hoarding.
- A collective tree bond of \$36,000 shall be applied.
- Scaffolding and hoarding shall be designed to minimise/negate the need for any canopy pruning. No pruning will be permitted unless a marked-up diagram/plan (prepared by a qualified AQ5 arborist) showing exactly where proposed pruning cuts are to be made is submitted to Council's Landscape Development Officer for prior approval.
- Should any pruning be permitted, it shall be carried out by an AQ3 arborist in accordance with AS4373.
- Awning cut-outs to allow for future canopy growth shall be required should any awning be proposed.

DESIGN EXCELLENCE PANEL

Set out below are excerpts from the panel's report, germane to this assessment. They are based on the originally submitted application, not the amendments received subsequent to the panel's consideration of the proposal.

Principle 1: Context and local character

a) Current & future context

- On the site is a damaged building, the damage is understood to have been caused by demolition and/or construction activities on adjacent land.
- Current context is partly shaped by the site's location at the interface between commercial and residential areas.
- Future context is being transformed by Government investment in public transport with construction of a new Metro Station in Crows Nest, part of the line being extended from Chatswood to the City and on to Bankstown. The new station (under construction) is about a 500m walk from the site.

b) Local character

- Facing Alexander Street, local character derives from the site being part of the Crows Nest town centre. Alexander Street to the south (northwards, development is residential) is characterised by mainly two and three storey commercial buildings accommodating a variety of office space and showrooms/bulky goods retailers, mostly without awnings over the footpath.
- Awnings become more common another block away, south of Holtermann Street, when land use and activity intensify.

c) Heritage

- To the rear, east of Alexander Lane is a low-density residential area of mainly single and 2-storey dwellings. This residential locality is also in the Holtermann Estate A Heritage Conservation Area (North Sydney LEP 2013).

Principle 2: Built form, scale and public domain/ urban design response

a) Height, bulk and scale

- The applicant made the argument that the proposed building is acceptable given the height, bulk and scale of the existing building on the site which is being removed. This argument is not supported, the proposal exceeds the height of the current building on the site, the proposal also extends the proposed maximum height across the entirety of the site (as compared to the existing buildings on the site which do not).
- The applicant made the argument that appropriate floor-to-floor heights are required for a commercial development, and that these floor-to-floor heights required additional height to be accommodated. This argument is also not supported, whilst appropriate floor to floor heights should be provided, this is not a rationale to exceed an appropriate maximum height relative to the controls and context.
- The building's height in relation to neighbouring development was discussed. The panel concluded that the design should be amended to address this relationship.
- The building's height is not supported. It exceeds the LEP height control, as well as having negative impacts, particularly on the residential area to the east.
- Comparatively, proposed height to the adjacent heritage residential area is of greater concern than the building's height to Alexander Street, due the bulk of the building and potential impacts on residential amenity.
- The building could be stepped with local topography to be more closely aligned with the fall of the street.

b) Street, side and rear setbacks

- The setback of the top level from both street frontages should be increased to match the top level of neighbouring, approved (and under construction) building at 137-139 Alexander Street.
- The laneway setback at the lower levels should be a minimum of 1.5m to align with existing and future context to the north and south.
- The side setbacks abutting the boundary were considered acceptable, although again the top level could be setback further from the northern boundary.

c) Public domain interface

- The rear interface with the public domain is not supported, a setback to Alexander Lane needs to be adhered to and the building should not protrude into the lane interrupting the meagre footpath. (See rear setbacks, this has been addressed by amended plans including a 1.5m setback to Alexander Lane, as required by the DCP)

- The façade as it overlooks the lane has an overly glazed appearance and would result in a lack of privacy to the user as well as showcasing office detritus (mess under desks etc.) to the public. We suggest high quality brick or masonry façade at least to desk level for each floor be integrated. Additional masonry should also be considered. This is not a high rise building and the residential context should be considered in terms of materials and details chosen. Diagrams should be provided to demonstrate that adjacent residential development is not overlooked.
 - The connections at grade to Alexander Street could be improved, most particularly with an integrated canopy providing protection over the footpath.
 - A more active frontage could be provided.
- d) Excavation and existing ground levels
- Ground levels and access to the building were considered acceptable at the front of the building.
 - To the rear, the finished levels, noting the challenge posed by the fall from south to north, was not well-resolved. The partly underground lettable space in the basement with small windows facing the lane should be improved, and the 'breakout space' and meeting rooms on the 'lower ground' level without windows should be removed (see later comments). (The windows to these spaces on the lower ground flood have been removed – see Drawing DA 102 Rev C).

Principle 3: Density

- a) Proximity to transport, employment, services
- As noted, the site is in a very accessible location.
 - End of trip facilities and bike storage are disjointed (on separate levels of the basement), requiring adjustment for the convenience of users. It is also noted the end of trip amenities are non-gender specific.
 - These and other measures should be considered to encourage active transport.
- b) Adjacent low/high density development
- The proposal is currently an overdevelopment. The building's bulk and height does not provide an effective transition to the lower density heritage conservation area east of the site, over Alexander Lane.
 - The greatest impact is to the residential streets and lane to the east. Stepping back or removal of the upper storey is recommended.
- c) Site coverage, deep soil and landscape area
- No deep soil is available given the ability to develop to 100% site coverage in the B4 zone.
 - A landscape concept plan should be submitted. (A plan was submitted and is acceptable.)

Principle 5: Landscape Integration

- a) Public domain (refer to public domain comments above also)
 - The rear interface with the public domain is not supported. Setbacks to Alexander Lane should be adhered to and the building should not protrude into the lane interrupting the meagre footpath. (The scheme was amended to provide a 1.5m setback, as required by the DCP. See Drawing Nos DA 102-106 Rev C).
 - The connections at grade to Alexander Street could be improved, most particularly with an integrated canopy providing protection over the footpath.
 - A more active frontage would be welcome.

- b) Communal open spaces
 - Proposed roof terrace use could be provided across some of the roof space in a similar way to the development to the north, provided there are no impacts on privacy from overlooking. (A small seating area is provided on the roof. See Drawing No DA 106 Rev C).

Principle 6: Building configuration, planning, and amenity

1. Configuration and planning:
 - The building should have a similar sectional profile to the neighbouring building to the north. Drawing No. DA 124 does not appear to show the section profile of the approved building (to the site's immediate north) accurately, particularly the setback to Alexander Street.

2. Pedestrian access and entries
 - Pedestrian access to and activation of the lane should be restored and promoted respectively, to be consistent with applicable provisions of the DCP.

3. Awnings
 - An awning over the footpath on Alexander Street should be provided, noting both existing buildings have (or had) awnings. An awning was not proposed or required over Alexander Street for the neighbouring development (137-139 Alexander Street).

4. Subterranean spaces and excavation
 - The below natural ground level commercial facilities fronting Alexander Street are not supported and should be removed. It is suggested the proposed void fronting Alexander Street (above the subterranean commercial space) could be removed and on grade commercial space be provided in lieu.

5. Roof design
 - The need for stair and lift access to the roof was questioned, A small, enclosed space could be also included to provide rooftop amenity for tenants. (The lift and stairwell to the roof have been repositioned to be both on the southern boundary.

6. Natural cross ventilation and natural ventilation
 - The building depth does not allow for natural ventilation, see discussion about possible alternate core location. (The lift and stair have been relocated to the southern side as recommended, to improve ventilation.)

7. Shadow impacts

- Overshadowing is caused to the rear and backyard of the dwelling at 1 Devonshire Street and to the front of a town house at 1 Huntington Street, between 1pm and 3pm on the winter solstice. This is accepted but should be slightly reduced by setting back (or removing) the top level as recommended above.

Principle 7: Safety

a) Entry and security

- Satisfactory subject to provision of an awning as recommended. (The provision of the DCP to provide awnings over the footpath has not been applied consistently along Alexander Street, no recommendation is made to satisfy the requirement).

Principle 9: Architectural expression and materiality

a) Material palette

- Use of timber-look aluminium should be reconsidered.

Recommendations to Achieve Design Excellence

Whilst the design is generally of good quality, it cannot be supported because of excessive height and stepping into the lane at the rear. Other issues raised could readily be resolved.

Planner's comment

Having considered the panel's advice conditions are recommended to address matters such as location of bicycle storage and cyclist facilities.

Three key issues remain unresolved and require alteration to the building, necessitating the recommended deferred commencement consent.

1. Large areas on the lower ground floor offer poor amenity and could be deemed uninhabitable. They would have little or no natural light or ventilation. They need to be removed (made into voids and/or blocked off) or put to other purposes, such as storage, plant or other facilities. Bicycle storage and user-amenities could be all located conveniently adjacent to each other on this level.
2. The top level of the building should be removed or its setback increased. Removal is not necessary to reduce bulk and scale, to improve amenity and the built form relationship with adjacent residential development in the conservation area. Increasing the setback of the proposed top level and roof above to at least 4.5m from the Alexander Lane boundary will achieve these outcomes and is recommended.
3. Recent publication of new DCP provisions for St Leonards and Crows Nest have maintained requirements for footpath awnings. To be consistent with this decision, provision of an awning over the Alexander Street footpath extending for the entire site frontage to this street, is recommended.

EXTERNAL REFERRALS

No external referrals were necessary.

SUBMISSIONS

Original proposal

On 27 July 2022, Council notified adjoining properties and the Holtermann Precinct of the proposed development seeking comment between 5 August 2022 and 19 August 2022. Council received two (2) submissions. The matters raised in the submissions are listed below:

The issues have been addressed elsewhere in this report. Original submissions may be viewed by way of DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

Basis of Submissions

- Exceeds the maximum building height.
- Supports the application and requests expedited processing.

Amended Proposal

Being of a similar scope and scale to the original proposal, with some relatively minor improvements having been made, renotification was considered unnecessary in accordance with the provisions of Council's Community Engagement Protocol.

CONSIDERATION

Relevant matters of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended) are considered below.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 Water catchments

Part 6.2 Development in regulated catchments

The SEPP defines the Sydney Harbour Catchment as a "regulated catchment", meaning relevant provisions of Chapter 6 apply to land and development in the catchment.

Water quality and quantity

The proposed development will have acceptable impacts on water quality and quantity in the catchment, provided suitable regimes are adopted for water management during construction and operation of the development, as proposed and required by recommended conditions.

SEPP (Resilience and Hazards) 2021

The provisions of this policy require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. As no change in use is proposed and the site having only previously been used for commercial purposes, there is a low probability of the site having been contaminated. Council can be satisfied the policy can be complied with and consent accordingly granted.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed development is for the purposes of “commercial premises” as defined by the LEP, which is a permissible use in the zone, with development consent.

2. Objectives of the zone

Clause 2.3 of NSLEP 2013 specifies that the consent authority must have regard to the objectives for the development in a zone when determining a development application.

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

The proposed commercial development is generally consistent with the objectives of the B4 Mixed Use zone, subject to design amendments being made as recommended, deemed necessary having regard to the third objective (in addition to other LEP and DCP controls). Consistency with these objectives is also considered below, regarding the applicant’s request to breach to building height control.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - #m²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	14.45m	10m	NO – A request to contravene the standard was submitted
Clause 4.4a – Non-residential FSR	3.06:1	0.5:1	YES

3. Height of Building

Objectives for the development standard are quoted from clause 4.3 in NSLP 2013 below:

- to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- to promote the retention and, if appropriate, sharing of existing views,*
- to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed works would have a height of 14.45m that fails to comply with the permissible height limit of 10m in accordance with clause 4.3 in NSLEP 2013.

Request to vary development standard

As mentioned, the applicant has submitted a written request pursuant to Clause 4.6 of NSLEP 2013 (Attachment 3). The written request has adequately addressed cl 4.6 3, for these reasons:

- The written request adequately demonstrates that compliance is unreasonable and that there are sufficient environmental planning grounds to breach the standard,
- The proposal is in the public interest because it is consistent with the relevant objectives of the development standard and of the applicable zone.
- Departure from the standard does not raise matters of regional or state planning significance.
- There is no public benefit in maintaining compliance with the development standard.

Compliance is unnecessary or unreasonable

The applicant submits:

1. *“...the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).*

Comment: Noted.

2. *The breach of the standard is linked to the topography of the site which slopes in both directions; south to north and west to east and the relationship of the site to the neighbouring properties at 127 and 137 Alexander Street.*
3. *The proposed development reflects the landform and is generally consistent with the anticipated built form of the site. It presents as a three-storey development to the Alexander Street frontage and a part three and part four storey development to the Alexander Lane frontage, following the slope of the land and therefore meeting this objective.*

Comment: Both the DEP and Council’s assessment staff are of the opinion the building could be stepped to align with and respond better to the site’s characteristics, albeit likely at the cost of compromising the size and function of the floorplate.

The fall of the land on the Alexander Street is gentle, at less than 5%. At the kerb adjacent to the site’s Alexander Lane boundary the fall is about 0.9m over about 25m, or around 3.6%. Across the site’s centre from east to west, the fall is about 1.5m over some 37m an average fall of around 4%. The validity of this argument is questionable.

4. *The building components that exceed the height of buildings development standard are restricted to the upper half of the top level. The lift overrun and stair access (which have been reduced in height in the amended proposal), which rise above the proposed roof level, are relatively small in scale, located centrally on the roof and well setback from street frontages ensuring they are not readily visible from the public domain.*

Comment: It is more-so the rooftop infrastructure which exceeds the height limit, to a greater proportion than that arguably caused by topography and the large floorplate achieved by replacing existing buildings with a single building.

5. *The proposal does not significantly affect view from nearby properties.*

Comment: Agreed.

6. *The proposal does not significantly impact solar access.*

Comment: Shadow diagrams indicate the open space of a nearby residence may have its winter sun reduced, although not to a significant degree. No doubt a compliant building envelope would have a lesser impact. (That this overshadowing is not caused by the stairs or lift overrun, is noted.)

7. *Privacy between users of the proposed building and surrounding development is generally protected by the separation afforded by the width of Alexander Street and Alexander Lane (6m), plus the complying 1.5m rear setback.*

Comment: Agreed.

8. *As detailed in the request submitted, the applicant contends the proposed built form is sufficient to provide a suitable transition between development in the B4 Mixed Use zone and the adjacent R2 Low Density Residential zone.*

As discussed earlier, this assessment, having considered the advice of the Design Excellence Panel, concludes that the top level of the proposed building should be setback 3.0m further from the building's present eastern edge, which is presently proposed at 1.5m from the site boundary with Alexander Lane.

To place the proposal in its local statutory context, height controls in Crows Nest affect a transition from the middle of the commercial centre (east of Willoughby Road) to its edges, as shown below.



Figure 4: Excerpt of LEP Height Ma0, site partly outlined in yellow. (ePlanning Spatial Viewer)

With the height proposed (and of buildings approved north and south of the site) the decreasing height and scale sought by the LEP could be considered partly compromised, as shown in the applicant's plans and request to vary the standard, and the approval south of the site, for alterations to the extant building.

This would likely be exacerbated by the building as proposed, as the height of the eastern façade, the leading edge of the building's transition to opposite residential development, is a maximum of 3.9m over the height limit and is effectively a fourth storey, where three storeys are envisaged by the LEP and DCP.

The height controls support an argument to remove the top level altogether. The modest additional setback of 3.0m for the fourth level is reasonable, noting the setback of the fourth storey of the adjoining mixed-use building to the north of the site exceeds 7.0m. The recommended increased setback of the top level would achieve a more acceptable, compatible and subtle transition to the one and two storey residential development across the lane, than the design proposed.

Conclusion: Although the written submission is not entirely agreed with, there is sufficient weight of argument to support the request, in that the applicant's submission demonstrates that strict compliance with the standard would be unreasonable, provided recommended amendments are made to the development.

Sufficient environmental planning grounds

The applicant submits the following to justify the breach:

1. The proposal is consistent with the aims of the EP & A Act, creating employment and improving the public domain interface promoting 'village vibrancy'.

Comment: Noted.

2. The objectives of the B4 zone are achieved.

Comment: Agreed, as discussed below.

3. A high quality fit-out and floor to ceiling heights of 3.2m contribute quality commercial floor space in Crows Nest.

Comment: Noted.

4. The building responds to the “steep topography” of the site.

Comment: The topography is gentle to moderate. As discussed, this point is contestable.

5. The presentation to Alexander Street is acceptable being consistent with existing built form.

Comment: This is agreed with, in relation to the Alexander Street frontage, despite the potential to reduce or eliminate non-compliance by stepping the building more closely with the fall of the street. However, the height breach to the rear, to the Alexander Lane façade is not acceptable without amendment, as discussed above.

6. The proposal’s overshadowing is acceptable.

Comment: Agreed.

7. Privacy of adjacent residential development’s occupants is reasonably maintained, there being no material change when compared to existing conditions.

Comment: Agreed.

Conclusion: The foregoing indicates the proposal is sufficiently supported by environmental planning grounds to breach the height limit.

The development must be in the public interest, by being consistent with the aims of the development standard and the zoning of the site

Objectives of the development standard

As discussed above the proposal is consistent with applicable objectives of the building height standard, despite the breach proposed.

Objectives of the zoning of the land

As quoted from the applicant’s submission, the development is consistent with relevant B4 zone objectives:

- *To provide a mixture of compatible land uses.*

Applicant: *The proposal provides a commercial development which is a permissible use in the B4 mixed use zone and therefore is a compatible land use.*

- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

Applicant: *The proposal provides a commercial development in a location that has excellent access to public transport through express busses to the Sydney CBD for example and will be within 400m of the future Crows Nest metro station.*

- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.

Applicant: *The proposal reflects the desired character of the locality as it provides a new commercial office building that will contribute positively to the diverse mix of built form in the surrounding area.*

- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

Applicant: *The proposal replaces two existing commercial buildings with a new commercial building. The proposal complies and exceeds with the non-residential floor space development standard (0.5:1) as specified under the NSLEP 2013.*

4. Non-Residential floor space ratios

The objectives of this clause are as follows:

- to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
- to encourage an appropriate mix of residential and non-residential uses,*
- to provide a level of flexibility in the mix of land uses to cater for market demands,*
- to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

Being a 100% commercial building all proposed floor area is non-residential. This standard is of greater relevance when a mixed-use building is proposed and includes residential development. The proposal is held to be consistent with these objectives.

5. Heritage Conservation

The subject site is adjacent to a Conservation Area. Heritage has been considered above.

- to conserve the environmental heritage of North Sydney,*
- to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- to conserve archaeological sites,*
- to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The Conservation Planner's recommendations have been suitably addressed in conditions, so the proposal will have acceptable impacts in respect of relevant objectives.

Part 6 – Additional local Provisions

6. Earthworks

A geotechnical report has been submitted which indicates the proposed either complies with or is capable of complying with relevant provisions of cl 6.10 (3) of the LEP:

- (a) *the likely disruption of, or any detrimental effect on—*
 - (i) *drainage patterns and soil stability in the locality of the development, and*
 - (ii) *natural features of, and vegetation on, the site and adjoining land,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing Aboriginal objects or relics,*
- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

This report's recommendation includes conditions to ensure the recommendations of the submitted geotechnical report are complied with.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment in accordance with requirements of the DCP relevant to the Crows Nest Town Centre, including the recently updated section 3.2 – of Part C – Area Character Statements – St Leonards/ Crows Nest Planning Area.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed-Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
Diversity of Activities	Yes	The proposal would complement the diversity of activities in Crows Nest.
Maximise Use of Public Transport	Yes	The site is close to public transport facilities with regular bus services along Alexander Street, Pacific Highway, Falcon Street and Willoughby Road. The site is also within 500m of the metro station (under construction).
Mixed Residential Population	N/A	No residential development is proposed.

2.3 Environmental Criteria		
Noise	Yes	The proposed development is unlikely to generate excessive noise, beyond that expected for a small commercial development.
Reflectivity	Yes	Satisfactory.
Awnings	No	No awning is proposed. The requirement for awnings on this street-block of Alexander Lane has been applied inconsistently. Despite this, recent publication of new DCP provisions for St Leonards and Crows Nest have maintained requirements for footpath awnings. To be consistent with this decision, provision of an awning over the Alexander Street footpath extending for the entire site frontage to this street, is recommended.
Solar Access	Yes	Solar and sunlight access performance of the building is satisfactory.
Views	Yes	The proposal would not cause significant view loss from nearby properties.
Acoustic Privacy	Yes	There being adjacent residential development, conditions are recommended to manage potentially unacceptable sounds levels being emitted from the development.
Visual Privacy	Yes	No significant impacts are anticipated, the seating area on the roof will be suitably screened by landscaping. A condition requiring screening and a shading of this area is recommended.
2.4 Quality built form		
Context	No	The design of the proposed mixed-use building is generally in context with surrounding development, subject to the alterations required, as discussed.
Site Consolidation	Yes	The site is in excess of the minimum required, being about 25m wide at the Alexander Street frontage.
Setbacks – Side & Rear	No	The site is subject to the setback provisions under the Crows Nest Town Centre under Part C Section 3.2 of the DCP. A setback of 1.5m is proposed to Alexander Lane for the lower ground and ground floor levels, and for level 1. A setback of 4.5m of level 2 (the highest level), is recommended, as discussed.
Podiums	N/A	The proposed building does not have a podium/tower form.
Building Design	Yes	Floor to floor heights are consistent with DCP requirements.
Skyline	Yes	Satisfactory, the positioning of lift and stair access will be not visible from nearby development, except from upper levels of adjacent commercial development west of the site.
Streetscape	Yes	Commercial activities at ground level are consistent with the character of land use on this part of Alexander Street, at the northern edge of the Crowns Nest Centre. The design of the building and the treatment of the building façades are acceptable and would make an acceptable contribution to the streetscape. Stepping the building would offer a more nuanced and subtle outcome. And as noted by the DEP, the eastern façade would be improved by using quality brickwork to reduce glazing and screen lower sections of the ground level and levels 1 and 2.

Entrances and Exits	Yes	Entrances and exits to the building are directly visible and clearly identifiable from the public domain and have clear sight lines. They are unobscured by landscaping or other obstructions.
Nighttime appearance	Yes	The commercial use and the building entrances are consistent with that of neighbouring development. A food and drink premises on the ground floor may improve its appearance and activity at night.
2.5 Quality Urban Environment		
Accessibility	Yes	An access report was provided with the application, which indicates the development is capable of compliance with relevant accessibility statutes.
Safety and Security Illumination	Yes	The design of the proposal has considered personal safety and security with secured access and lighting for the building entrance.
Vehicular Access	Yes	Vehicle access to the site will be provided via Alexander Lane. Conditions are recommended for compliance with relevant Australian Standards.
Car Parking	Yes	As discussed above, the proposal complies with relevant DCP provisions for car and bicycle parking.
Waste Management	Yes	A condition is recommended requiring a waste management plan to be submitted with a construction certificate application.
Site Facilities	Yes	There are ample non-habitable areas on the lower ground floor for storage and other appreciate uses.
2.6 Efficient Use of Resources		
Stormwater Management	Yes	The existing building has almost full site coverage and Council's Development Engineer has raised no objection to the proposal subject to the imposition appropriate conditions for stormwater management.
Building Materials	Yes	The proposed finishes and materials as submitted with the plans are acceptable, from a sustainability perspective.

St Leonards/Crows Nest Planning Area (Crows Nest Town Centre)

The proposal is generally consistent with the desired character for Crows Nest, as expressed by the DCP. Provisions of relevance to this application, with which the proposal is inconsistent, are considered below.

Cl. 3.2.3.1 Subdivision

P2 requires a 10m – 15m frontage to be maintained.

The proposed consolidation of two existing lots creates a site with an approximate width of 25m. The design is not strictly consistent with the outcomes desired by this provision, namely buildings that maintain the rhythm and form of the street and avoiding or reducing blank façade-sections caused by floor levels above or below the footpath. Despite the small area of blank façade (partly occupied by access to plant and equipment) the proposal is sufficiently articulated in its street presentation to conform with other development on Alexander Street.

Cl. 3.2.3.2 Form, massing and scale

P1 states that buildings should transition in height down from the Metro Station and the Pacific Highway.

The proposal's impact on this desired height transition has been addressed. Amendment to the design is necessary to be consistent with this requirement.

3.2.3.8 Awnings

Awnings are required to be provided to all street frontages.

Although applied inconsistently in the past, as mentioned the newly adopted DCP provisions for Crows Nest should be enforced whenever practical. Accordingly, part of the deferred commencement requirements makes provision for an awning along the Alexander Street frontage.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of a contribution towards provision of local infrastructure. The contribution payable has been calculated in accordance with Council's Contributions Plan, to be \$109,750.00.

A condition requiring the payment of contributions at the appropriate time are included in the attached conditions.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant s. 4.15 (1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Holtermann Precinct. Council received two submissions. Issues raised by them have been considered in other parts of this report.

PUBLIC INTEREST

The proposal is in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The site is in a B4 Mixed Use zone where commercial premises are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

CONCLUSION + REASONS

The proposal has been considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and has been found to be satisfactory.

Deferred commencement consent is recommended for these reasons:

1. The proposed development is permissible with consent.
2. The Clause 4.6 written request from the applicant is acceptable as it has demonstrated compliance to be unreasonable and that there are sufficient environmental planning grounds to contravene the standard, subject to recommended alterations to the development being made.
3. Subject to design amendments being made, the applied-for development is consistent with the local planning framework, chiefly applicable provisions of the North Sydney LEP and DCP.
4. The development, as recommended to be amended, will have acceptable impacts on built and natural environments, including the relationship of the building with the adjacent low density residential conservation area.
5. Matters raised by public submissions have been considered.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Holtermann Precinct for 14 days. Two issues were raised, addressed in this report.

RECOMMENDATION

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 (1) and grant consent to Development Application No. 212/22 for Demolition of existing structures and construction of a four storey commercial building and a two level basement for parking and other ancillary uses, vehicular access from Alexander Lane, a rooftop seating area, landscaping and associated works on land at 131-133 Alexander Street Crows Nest, subject to the following condition and those attached to this report:-

AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement condition has been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 6 months of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement conditions within 6 months from the date of this consent. It will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

Design Amendments

- AA1 Within six months of the date of this consent, plans are to be submitted to Council for the approval of the Manager Development Services, to make the following amendments to the proposed development:
- a) For clarity, in relation to condition I2 and to ensure compliance, revised plans shall clearly mark areas of the building to be used for “office premises”, as defined by the Dictionary of the North Sydney Local Environmental Plan 2013.
 - b) Level 2 and the roof above are to be setback a minimum of 4.5m from the Alexander Lane site boundary.
 - c) The seating area proposed on the roof is to be adequately screened and roofed to afford suitable weather protection and privacy. The height of additional structures must not exceed 14.45m, and be located so as not to be readily visible from the public domain.
 - d) The building’s eastern façade is to be amended by inclusion of planter boxes and screening in a manner similar to the western façade.
 - e) An awning is to be provided over the footpath on Alexander Street across the full width of the site in accordance with clause 2.3.6 Awnings Part B Section 2 North Sydney Development Control Plan 2013, with any allowances in the design made as required, for the healthy growth and maintenance of street trees.
 - f) Relocation of bicycle parking/storage and end-of-trip facilities onto the lower ground floor level, positioned to be readily accessible to each other (parking and end-of-trip facilities).
 - g) A maximum of 33 vehicle parking spaces and a minimum of 26 bicycle parking spaces (19 staff and 7 visitor spaces) are to be provided on-site.
 - h) A suitable number of vehicle parking spaces shall be set aside and maintained for the use of couriers and other delivery vehicles, on level 1 of the basement.
 - i) The office is to be deleted from the Lower Ground Floor. This level shall be amended to restrict access to this level, except to those areas used for non-habitable purposes only. Alternatively, the lower ground floor is to be reconfigured and/or be made suitable for habitable use, or deleted.

(Reason: To ensure compliance and an acceptable impact on local character, heritage and the built environment.)

This consent shall not operate until such time as the written approval stating that the requirements of this condition have been satisfied.

Subject to the above deferred commencement condition being satisfied within 6 months of the date of this determination, the consent shall operate in accordance with the attached standard conditions.

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
131-133 ALEXANDER STREET, CROWS NEST
DEVELOPMENT APPLICATION NO. 212/22

AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement condition has been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 6 months of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement condition within 6 months from the date of this consent, this consent will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

NOTE: Consideration should be given to providing the evidence to Council to allow sufficient time to consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. You are also advised of your appeal rights under clause 95(6) of the Environmental Planning and Assessment Regulation 2000, which provides that: *If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 8.7 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.*

Design Amendments

- AA1 Within six months of the date of this consent, plans are to be submitted to Council for the approval of the Manager Development Services, to make the following amendments to the proposed development:
- a) For clarity, in relation to condition I2 and to ensure compliance, revised plans shall clearly mark areas of the building to be used for "office premises", as defined by the Dictionary of the North Sydney Local Environmental Plan 2013.
 - b) Level 2 and the roof above are to be setback a minimum of 4.5m from the Alexander Lane site boundary.
 - c) The seating area proposed on the roof is to be adequately screened and roofed to afford suitable weather protection and privacy. The height of additional structures must not exceed 14.45m, and be located so as not to be readily visible from the public domain.
 - d) The building's eastern façade is to be amended by inclusion of planter boxes and screening in a manner similar to the western façade.

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- e) An awning is to be provided over the footpath on Alexander Street across the full width of the site in accordance with clause 2.3.6 Awnings Part B Section 2 North Sydney Development Control Plan 2013, with any allowances in the design made as required, for the healthy growth and maintenance of street trees.
- f) Relocation of bicycle parking/storage and end-of-trip facilities onto the lower ground floor level, positioned to be readily accessible to each other (parking and end-of-trip facilities).
- g) A maximum of 33 vehicle parking spaces and a minimum of 26 bicycle parking spaces (19 staff and 7 visitor spaces) are to be provided on-site.
- h) A suitable number of vehicle parking spaces shall be set aside and maintained for the use of couriers and other delivery vehicles, on level 1 of the basement.
- i) The office is to be deleted from the Lower Ground Floor. This level shall be amended to restrict access to this level, except to those areas used for non-habitable purposes only. Alternatively, the lower ground floor is to be reconfigured and/or be made suitable for habitable use, or deleted.

(Reason: To ensure compliance and an acceptable impact on local character, heritage and the built environment.)

This consent shall not operate until such time as the written approval stating that the requirements of this condition have been satisfied.

Subject to the above deferred commencement conditions being satisfied within 6 months of the date of this determination, the consent shall operate in accordance with the attached conditions including the following site specific and standard conditions:

A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Rev No.	Description	Prepared by	Dated
DA001	B	Site Plan	Nettleton Tribe	15/12/22
DA003	A	Existing Survey & Demolition	Nettleton Tribe	12/05/22
DA100	B	Basement 2 Floor Plan	Nettleton Tribe	15/12/22
DA101	B	Basement 1 Floor Plan	Nettleton Tribe	15/12/22
DA102	B	Lower Ground Floor Plan	Nettleton Tribe	15/12/22
DA103	B	Ground Floor Plan	Nettleton Tribe	15/12/22
DA104	B	Level 1 Floor Plan	Nettleton Tribe	15/12/22
DA105	B	Level 2 Floor Plan	Nettleton Tribe	15/12/22
DA106	B	Roof Plan	Nettleton Tribe	15/12/22
DA121	B	Alexander Street Elevation	Nettleton Tribe	15/12/22
DA122	B	Alexander Lane Elevation	Nettleton Tribe	15/12/22
DA123	B	South Elevation	Nettleton Tribe	15/12/22
DA124	B	North Elevation	Nettleton Tribe	15/12/22
DA125	B	Materials and Finishes Sheet 1	Nettleton Tribe	15/12/22
DA126	B	Materials and Finishes Sheet 2	Nettleton Tribe	15/12/22
DA131	B	Section A	Nettleton Tribe	15/12/22
DA132	B	Section B	Nettleton Tribe	15/12/22
000	A	Landscape Coversheet	Site Image	07/12/2022

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Plan No.	Rev No.	Description	Prepared by	Dated
101	A	Landscape Ground Floor Plan	Site Image	07/12/2022
102	A	Landscape Level 1 Plan	Site Image	07/12/2022
103	A	Landscape Level 2 Plan	Site Image	07/12/2022
104	A	Landscape Roof Top Plan	Site Image	07/12/2022
501	A	Landscape Details	Site Image	07/12/2022
DA01	A	Stormwater Drainage General Notes	NB Consulting Engineers	05/05/2022
DA02	A	Basement 2 Drainage Plan	NB Consulting Engineers	05/05/2022
DA03	A	Basement 1 Drainage Plan	NB Consulting Engineers	05/05/2022
DA04	A	Lower Ground Floor Drainage Plan	NB Consulting Engineers	05/05/2022
DA045	A	Ground Floor Drainage Plan	NB Consulting Engineers	05/05/2022
DA06	A	Level 1 Drainage Plan	NB Consulting Engineers	05/05/2022
DA07	A	Level 2 Drainage Plan	NB Consulting Engineers	05/05/2022
DA08	A	Roof Drainage Plan	NB Consulting Engineers	05/05/2022
DA09	A	Stormwater Drainage Details	NB Consulting Engineers	05/05/2022

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

B. *Matters to be Completed before the lodgement of an Application for a Construction Certificate*

Construction and Traffic Management Plan (Major DAs and sites with difficult access)

- B1. Prior to issue of any Construction Certificate, a Construction and Traffic Management Plan must be prepared. The following matters must be specifically addressed in this Plan:
- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - i. Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;
 - ii. Signage type and location to manage pedestrians in the vicinity;
 - iii. The locations of any proposed Work Zones in the frontage roadways;
 - iv. Locations and type of any hoardings proposed;
 - v. Area of site sheds and the like;

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- vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A Traffic Control Plan(s) for the site incorporating the following:
- i. Traffic control measures proposed in the road reserve that are in accordance with the RMS publication "Traffic Control Worksite Manual" and designed by a person licensed to do so (minimum RMS 'red card' qualification).
 - ii. The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
- c) A detailed description and map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided detailing light traffic roads and those subject to a load or height limit must be avoided at all times.
- A copy of this route is to be made available to all contractors and must be clearly depicted at a location within the site.
- d) A Waste Management Plan in accordance with the provisions of Part B Section 19 of the North Sydney DCP 2013 must be provided. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process
- (e) Evidence of RMS concurrence where construction access is provided directly or within 20 m of an Arterial and/or Classified Road;
- (f) A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements; and
- (g) For those construction personnel that drive to the site, the Site Manager shall attempt to provide on-site parking so that their personnel's vehicles do not impact on the current parking demand in the area.

A suitably qualified and experienced traffic engineer or consultant must prepare the Construction and Traffic Management Plan.

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As this plan has a direct impact on the local road network, it must be submitted to and reviewed by Council prior to the issue of any Construction Certificate. A certificate of compliance with this condition from Council's Development Engineers as to the result of this review must be obtained and must be submitted as part of the supporting documentation lodged with the Certifying Authority for approval of the application for a Construction Certificate.

The construction management measures contained in the approved Construction and Traffic Management Plan must be implemented prior to the commencement of, and during, works on-site.

All works must be undertaken in accordance with the approved Construction and Traffic Management Plan.

A copy of the approved Construction and Traffic Management Plan must be kept on the site at all times and be made available to any officer of the Council on request.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition must be paid upon lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction and Traffic Management Plan be lodged with Council as early as possible.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed in the condition above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition and construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

C. Prior to the Issue of a Construction Certificate (and ongoing, where indicated)

Dilapidation Report Damage to Public Infrastructure

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Dilapidation Report Private Property (Excavation)

- C2. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C3. A photographic survey and dilapidation report of adjoining properties Nos. (127 Alexander Street Crows Nest and 137-139 Alexander Street Crows Nest) detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Shoring for Adjoining Property

- C4. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Certifying Authority does not authorise a trespass on private or public land. All relevant permissions/legal rights must be obtained to undertake any works on adjoining land.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

Structural Adequacy of Adjoining Properties - Excavation Works

- C5. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining property Nos. (127 Alexander Street Crows Nest and 137-139 Alexander Street Crows Nest), which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

Geotechnical Report

- C6. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
 - b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
 - c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
 - d) the existing groundwater levels in relation to the basement structure, where influenced;
 - e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and

- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

Sediment Control

C7. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Waste Management Plan

- C8. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and
 - c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

Reflectivity Index of Glazing

- C9. The reflectivity index (expressed as a per centum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

Roofing Materials - Reflectivity

- C10. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

No External Service Ducts

- C11. Service ducts must be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of the development)

Work Zone

- C12. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Maintain Property Boundary Alignment Levels

- C13. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure interface between property and public land remains uniform)

Parking Meter Relocation

- C14. All costs associated with relocating the metered parking including all sign changes, parking bay line markings must be paid in full to North Sydney Council prior to issue of any Construction Certificate.

The Certifying Authority must ensure that the specifications submitted, accompanying the issued Construction Certificate, fully satisfy this condition.

(Reason: To ensure the proper management of public land and funds)

Bicycle Storage and Parking

- C15. The bicycle storage area must accommodate a minimum of 26 bicycles, 19 for building occupants and 7 for visitors. The bicycle storage lockers and bicycle rail shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

Staff Shower and Change Facilities (Commercial and Mixed-use)

- C16. Shower and change facilities shall be provided and made accessible without charge to staff who work in the building. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

Accessible Parking Spaces to be Provided

- C17. A total of (1) one accessible parking spaces shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

Basement Car Park to Comply with Relevant Standards

- C18. The basement layout must comply with all requirements of Australian Standard AS2890.1. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Certifying Authority for approval prior to issue of any Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

Required Infrastructure Works - Roads Act 1993

- C19. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. An application must be made to Council on the "To Satisfy DA Consent Condition" application form with payment of the adopted assessment/inspection fees. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Road Works

- a) reconstruction of the carriageway shoulder will be required, extending out 1200mm from the gutter lip in AC10 - 50mm thick, adjacent to all new kerb/gutter and layback works
- b) construction of a fully new kerb and gutter is required across the site frontage in Alexander Lane. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- c) cross sections at a scale of 1:50 along the centreline of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

Drainage Works

Connection of the site stormwater system must be made directly from the grated pit inside the boundary fronting Alexander Lane to a newly constructed junction pit (with gatic, Class D, cast in situ lid), to Council's stormwater pipe located in Alexander Lane (as shown in the concept drainage plan by NB Consulting Engineers). To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicants expense: -

- a) construction of a cast in-situ junction pit in Alexander Lane. The pit must be constructed in accordance with Councils "Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works".

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- b) construction of a new in-ground drainage line to connect the on-site pit to the existing Council stormwater pipeline located in the pavement in Alexander Lane via the junction pit. The pipes within the road reserve are to be reinforced concrete class 2 with a minimum 375mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RMS Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

Note: *A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.*

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Splay Corners

- C20. For the purposes of improving sight distance, the vehicular access must have sight lines for pedestrian safety in accordance with figure 3.2 of AS 2890.1 at the intersection of the vehicular access with the property boundary. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Public amenity and safety and appropriate sight distance)

Obtain Driveway Crossing Permit under S.138 Roads Act 1993

C21. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum: -

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor,
- b) the redundant layback crossing must be reinstated as kerb gutter and footpath,
- c) the width of the vehicular layback must be (6) metres (including the wings),
- d) the vehicular crossover must be set square to the kerb,
- e) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback,
- f) the gutter levels must match the existing levels and shall not be altered,
- g) any twisting of driveway access must occur entirely within the subject property,
- h) all inspection openings, utility services must be adjusted to match the proposed driveway levels,
- i) sections along centreline and extremities are required at a scale of 1:50 to be taken from the centreline of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed,
- j) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter,
- k) a longitudinal section along the footpath property boundary at a scale of 1:50 is required,
- l) the sections must show the calculated clearance to the underside of any overhead structure,
- m) all details of internal ramps between parking levels, and
- n) a swept path analysis is required demonstrating that an 85th percentile vehicle can manoeuvre in and out of the basement parking spaces in accordance with AS 2890.1 2004 "Off Street Parking".

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The permit must be granted by Council prior to the issue of any Construction Certificate. All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by Council will be required as specified. The Certifying Authority issuing the Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

Stormwater Disposal - Drainage Plan

C22. Prior to the issue of any Construction Certificate, site drainage plans must be prepared by a drainage engineer. The site drainage plans must –be designed in accordance with the following criteria:

- a) compliance with BCA drainage requirements and current Australian Standards and guidelines,
- b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to Alexander Lane.
- c) new pipelines within council land shall be of minimum 375mm diameter reinforced concrete Class 2 and have bedding in accordance with Australian Standard AS 3725 (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow gravity connection.
- d) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.
- e) the grated boundary pit and stormwater trench (as shown on the stormwater plans) must be relocated away from the 1.5 m setback (to avoid accidents with pedestrian traffic).

Drainage plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Proper disposal of stormwater)

Pump-out System Design for Stormwater Disposal

C23. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- a) the pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the one-in-twenty-year storm;

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- b) the pump system shall be regularly maintained and serviced, every six (6) months; and
- c) any drainage disposal to the street gutter from a pump system, must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria and certified by an appropriately qualified and practising civil engineer shall be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C24. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$[82,750] to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
- c) remedying any defects in any such public work that arise within 6 months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security bond will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following: -

- where the damage constitutes a hazard in which case Council may make use of the security immediately,
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works,

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- works in the public road associated with the development are to an unacceptable quality, and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Tree Bond for Public Trees

- C25. Prior to the issue of any construction certificate, security in the sum of \$36,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

Tree Protection Measures to be shown on Construction Drawings

- C26. The tree protection measures contained in condition C27, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

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Protection of Trees

- C27. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree No /Species	Location	Dimensions (m)
1 x Callistemon sp.	On Alexander Street opposite the site, 131-133 Alexander Street Crows Nest	7x8
1 x Platanus sp.	As above	13x10
Murraya paniculata hedge	As above	Not specified

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Pruning of Trees

- C28. No pruning is permitted unless a marked up image (prepared by a qualified AQS arborist) showing exactly where proposed pruning cuts are to be made is submitted to Council's Landscape Development Officer for approval beforehand. Any approved pruning shall be carried out by an AQ3 arborist in accordance with AS4373:

(Reason: To ensure the protection and longevity of existing significant trees)

Garbage and Recycling Facilities

- C29. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

Asbestos Material Survey

- C30. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Noise from Plant and Equipment

- C31. The use of all plant and equipment installed on the premises must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- (b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

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Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Vibration from Plant and Equipment

- C32. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in "Assessing Vibration: a technical guideline" issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and commercial premises and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected residence.

"contemporaneously" means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Noise and Vibration Compliance Certification Prior to Issue of Construction Certificate

- C33. A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that suitable measures have been incorporated into the development and that the noise criteria contained in the conditions herein have been satisfied, must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Principal Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Mechanical Exhaust Ventilation

C34. A statement from an appropriately qualified and practising Mechanical Engineer is required detailing how the exhaust ventilation system will be installed in accordance with AS1668. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Provision of Accessible Paths of Travel

C35. The building must be designed and constructed to provide access and facilities in accordance with the Building Code of Australia and Disability (Access to Premises - Buildings) Standards 2010. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council's power to set aside National legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an "unjustifiable hardship exemption" under the accessibility standards can be found in the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>.

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

Underground Electricity and Other Services

- C36. (a) All electricity and telecommunication provision to the site is to be designed in conjunction with Energy Australia and any other relevant authority so that it can be easily connected underground when the street supply is relocated underground. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

7.12 Contributions

- C37. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$109,750.00.

Indexation

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of Payment

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

Security Deposit/Guarantee Schedule

- C38. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

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Security deposit/ guarantee	Amount (\$)
Infrastructure Damage Bond	\$5,000
Drainage Construction Bond	\$9,975
Engineering Construction Bond	\$67,775
Others	
TOTAL BONDS	\$82,750

Note: The following fees applicable

Fees	
Section 7.11 Contributions	\$109,750.00
TOTAL FEES	\$109,750.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

Under Awning Lighting

C39. Under awning lighting must be provided to the Alexander Street frontage of the site. Such lighting is to be designed to P1 standard in accordance with AS/NZS 1158.3.1. The luminaries must be:

- a) weatherproof and vandal proof;
- b) designed in conjunction with Energy Australia so that the system can easily be connected to a public lighting system when available; and
- c) the location and type of the said luminaries shall be to the satisfaction of Council's Director of Engineering and Property Services.

Plans and specifications complying with this condition must be submitted to the Certifying Authority and the Council's Director of Engineering and Property Services for approval prior to the issue of any Construction Certificate. A construction certificate must not be issued without the approval of the Council's Director of Engineering and Property Services. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To enhance the amenity and safety of the footpath adjacent to the premises)

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Outdoor Lighting

C40. All outdoor lighting must comply with, where relevant AS/NZ1158.3:1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To maintain the amenity of adjoining land uses)

Remediation

C41. Prior to the release of the Construction Certificate the site must be remediated in accordance with:

- (a) an approved Remedial Action Plan; and
- (b) North Sydney Development Control Plan 2013 - Section 14 - Contamination and Hazardous Building Materials; and
- (c) state Environmental Planning Policy No. 55 - Remediation of Land; and,
- (d) the guidelines in force under the Contaminated Land Management Act.

Within thirty (30) days after the completion of the remediation works, and prior to the issue of any construction certificate, a notice of completion, including validation and/or monitoring report is to be provided to Council. This notice must be consistent with State Environmental Planning Policy No. 55 - Remediation of Land.

Prior to the issue of any Construction Certificate, the validation and/or monitoring report is to be independently audited and a Site Audit Statement issued. A copy of the Site Audit Statement is to be provided to the Certifying Authority and Council (if Council is not the Certifying Authority). The audit is to be carried out by an independent auditor accredited by the Environment Protection Authority. Any conditions recorded on the Site Audit Statement must be complied with at all times.

(Reason: To ensure the land is suitable for its intended purpose)

Telecommunication Infrastructure provision

C42. Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for;

- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose, and

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- (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

All such facilities shall be underground if within or visible from a current or future public place.

Note: Real estate development project has the meanings given in section 372Q of the Telecommunications Act.

(Reason: To ensure that modern telecommunications infrastructure is provided in respect of all premises to be constructed in developments)

Installation of Cooling Water Systems

- C43. Any cooling water system must be designed to comply with the prescribed requirements of the Public Health Act 2010, Public Health Regulation 2012 and the relevant Australian Standards.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain public health; statutory requirement)

D. *Prior to the Commencement of any Works (and continuing where indicated)*

Protection of Trees

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Notice of Proposed Work (Remediation Work)

- D2. Notice of proposed work must be given to the Council in accordance with Clause 16 of State Environmental Planning Policy No 55 - Remediation of Land.

The following additional information must be submitted with the notice to the Council:

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- a) Copies of any preliminary investigation, detailed investigation and remediation action plan for the site; and
- b) Contact details for the remediation contractor and any other party responsible for ensuring compliance of remediation work with regulatory requirements.

Note: Thirty (30) days' notice is required for any remediation work. In the case of work required to be carried out immediately under the terms of a remediation order a minimum of two days' notice is required.

(Reason: Protection of the environment, SEPP 55 compliance)

Public Liability Insurance - Works on Public Land

- D3. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Sydney Water Approvals

- D4. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Certifying Authority must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

Asbestos Material Survey

- D5. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Commencement of Works' Notice

- D6. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. *During Demolition and Building Work***Cigarette Butt Receptacle**

- E1. A cigarette butt receptacle is to be provided on the site for the duration of excavation/demolition/construction process, for convenient use of site workers.

(Reason: To ensure adequate provision is made for builders' waste)

Parking Restrictions

- E2. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E3. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

- E4. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

Geotechnical Stability during Works

- E5. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the geotechnical report prepared by JK Geotechnics, dated 22 April 2022 and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Council Inspection of Public Infrastructure Works

- E6. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points: -

- Formwork for layback, kerb/gutter, footpath, etc.
- Formwork and reinforcement for in-situ stormwater pits,
- Pipe connections prior to back filling.

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

Dust Emission and Air Quality

- E7. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.

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- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Noise and Vibration

- E8. The works must be undertaken in accordance with the "Interim Construction Noise Guideline," published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Developer's Cost of Work on Council Property

- E9. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

- E10. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Protection of Trees

- E11. All Trees required to be retained by Condition C27 as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009/.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.

- b. An application to modify this consent pursuant to Section 4.55 of *the Environmental Planning and Assessment Act 1979* will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

- E12. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours (Commercial Core and Mixed-use Zones)

E13. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
B3 Commercial Core Zone B4 Mixed-use Zone	Monday - Friday	7.00 am - 7.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Out-of-hours' Work Permits

E14. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act 1979.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.

- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include;
 - extended concrete pours
 - works which are solely to convenience the developer or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Installation and Maintenance of Sediment Control

- E15. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Sediment and Erosion Control Signage

- E16. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Remedial Action Plan (Contaminated Land)

- E17. The remediation work must be carried out in accordance with the Remedial Action Plan approved under this consent and all relevant guidelines issued under the Contaminated Land Management Act.

(Reason: To ensure the proper management of contaminated land)

Site Amenities and Facilities

- E18. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E19. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E20. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant and Equipment Kept Within Site

- E21. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Imported Fill Material

E22. The only waste derived fill material that may be received at the development site is:

- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
- b) Any other waste-derived material the subject of a resource recovery exemption under cl. 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Certifying Authority on request.

(Reason: To ensure that imported fill is of an acceptable standard for environmental protection purposes)

Waste Disposal

E23. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Asbestos Removal

E24. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**National Construction Code**

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F2. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Construction Certificate

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Occupation Certificate

- F4. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

- F5. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Commencement of Works

F6. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two (2) days' notice to North Sydney Council of the person's intention to commence the erection of the building.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Excavation/Demolition

- F7. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Protection of Public Places

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

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Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Site Sign

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

Line Marking

- G2. A certificate prepared by an appropriately qualified and practising Traffic Engineer certifying the construction, paving, line marking and signposting of all off-street car-parking spaces, together with access driveways, in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate must be submitted to, and approved by, the Certifying Authority prior to issue of any Occupation Certificate.

(Reason: To ensure ongoing compliance with this development consent and Australian Standards relating to manoeuvring and access of vehicles)

Access to Premises

- G3. Prior to the issue of any Occupation Certificate, a certificate must be prepared an appropriately qualified and practising Civil Engineer certifying that access and facilities for persons with a disability in accordance with the Building Code of Australia and AS Disability (Access to Premises - buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Certifying Authority prior to issue of the Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

Noise Certification

- G4. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent herein.

(Reason: To ensure acoustic amenity)

Certification - Civil Works

- G5. a) An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.

- b) An appropriately qualified and practicing Civil Engineer must certify to the Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Works as Executed Drawings and Video

- G6. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E survey drawing must be reviewed by a qualified and practising civil engineer and certification provided to the Certifying Authority that the as-built system achieves the design intent of the plans approved with the Construction Certificate. Certification must be provided with the W.A.E survey drawing to the Certifying Authority prior to the issue of an Occupation Certificate.

CCTV inspection of conduits, that revert to the care and control of Council, shall be conducted in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2013.

The camera, transportation unit, distance measuring devices, illumination systems and ancillary equipment shall be used suitable for the conduit size, material and conditions under which the inspection is undertaken.

The camera shall be steerable and be able to negotiate bends within the drainage pipe.

The use of a pushrod camera may only be acceptable for pipe diameters less than 150mm or where a steerable camera cannot navigate.

A colour camera shall be used which has remotely operated automatic and/or manual adjustment of the focus and iris to allow optimum picture quality to be achieved.

The camera lens shall be capable of viewing the extremities of the conduit and panning and or tilting to view the lateral connections and defects or features at and position around the conduit regardless of the direction of travel of the camera in the main conduit.

The adjustment of focus and iris shall provide a focal range from 15 mm to infinity. The distance along the conduit in focus from the initial point of observation shall be a minimum of four times the vertical height of the conduit.

Where required, specialised instruments, apparatus and/or software shall be used to facilitate measurement of parameters to determine acceptance. Hardware and software used in measuring the parameters shall be correctly calibrated for each application using the manufacturer's methods.

For circular or regular shaped conduits, the camera shall be positioned centrally, $\pm 10\%$ of the vertical and horizontal diameter, within the conduit.

A copy of the WAE survey drawing, certification and CCTV inspection footage must be submitted to the Council if it is not the Certifying Authority.

(Reason: Compliance with the Consent)

Validation for Remediation

G7. A validation and site monitoring report prepared in accordance with relevant guidelines issued under the *Contaminated Land Management Act 1997* must be submitted to the Council within one month of completion of the remediation work, and prior to the issuing of any Occupation Certificate.

(Reason: To ensure environmental amenity is maintained)

Certification for Mechanical Exhaust Ventilation

G8. Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the Building Code of Australia, must be submitted to, and approved by, the Certifying Authority.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Damage to Adjoining Properties

G9. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Utility Services

G10. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Covenant and Restriction (Stormwater Control Systems)

G11. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act 1919* and one copy must be submitted to Council in registrable form, providing for:

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- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 131-133 Alexander Street Crows Nest, requiring the ongoing retention, maintenance and operation of the stormwater facility (pump-out, charged lines),
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument,
- c. the wording on the Instrument making reference to the Council file/s which hold;
 - (a) the Construction plans, and
 - (b) the "Work-as-Executed" (as built) plans.

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the NSW Land Registry Services for registration.

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

Basement Pump-out Maintenance

- G12. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the basement stormwater pump-out system and submitted to the Principal Certifying Authority for approval with the Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The basement stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

Notification of New Address Developments

- G13. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following:

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- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website (www.auspost.com.au) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

Asbestos Clearance Certificate

- G14. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au.

(Reason: To ensure that building works involving asbestos-based products are safe for occupation and will pose no health risks to occupants)

Certification of Tree Condition

- G15. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated by condition C7.

(Reason: To ensure compliance with the terms of this consent)

Vehicle Egress Signs

- G16. Prior to the issue of an Occupation Certificate, appropriate sign(s) must be provided and maintained within the site at the point(s) of vehicular egress to ensure all vehicles stop before proceeding onto the public way.

(Reason: To ensure pedestrian safety)

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Signal System

G17. Prior to the issue of an Occupation Certificate, a signal system must be installed at the street alignment and within the building to indicate traffic movement on the single lane ramp, and so designed that the signal indication at the point of ingress shall remain green except when an exiting vehicle is detected upon the ramp or driveway.

(Reason: To properly manage vehicle entry to, and exit from, the subject site)

Disposal Information

G18. Upon completion of works and prior to occupation, a report including the following information must be provided to Council's Open Space and Environmental Services Department:

- (a) the total tonnage of all waste and excavated material disposed of from the site (including any tipping docket); and
- (b) the disposal points and methods used.

(Reason: To ensure appropriate disposal methods are undertaken for auditing and inspection purposes)

Sydney Water

G19. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The final Section 73 Certificate must be submitted to the Certifying Authority prior to release of any linen plan for subdivision or prior to occupation of the development, whichever is the earlier.

Notes: Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index, or telephone 13 20 92.

Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

Landscaping

G20. The landscaping shown in the approved landscape plan referred to in condition A1 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Damage to Adjoining Properties

- G21. On completion of the development the subject of this consent and prior to the issue of the Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Certifying Authority (and a copy to Council if it is not the Certifying Authority) certifying:
- a) whether any damage to adjoining properties has occurred as a result of the development;
 - b) the nature and extent of any damage caused to the adjoining property as a result of the development;
 - c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
 - d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
 - e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Certifying Authority in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of an Occupation Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

Verification Statement (External Finishes and Materials)

- G22. Prior to the issue of any Occupation Certificate, a verification statement from a qualified designer or architect (preferably the original designer), must be submitted to Council and the Certifying Authority certifying that the external finishes and materials are in accordance with the approved schedule of finishes and materials identified in this consent.

"qualified designer" means a person registered as an architect in accordance with the Architects Act 2003 cf 50(1A) EP&A Regs 2000.

(Reason: To ensure the design quality and finishes for residential flat development)

Installation of Cooling Water Systems

- G23. A Risk Management Plan (RMP) must be completed before any cooling water system becomes operational. The RMP needs to be documented on the approved form (www.health.nsw.gov.au/environment/legionellacontrol/Pages/legionella-protocols) and submitted to Council no later than seven (7) days after the RMP has been completed.

Contact must be made with Council to obtain unique identification numbers (UID) for all cooling towers. The UIDs are to be displayed on a sign affixed to each cooling tower on the site within 30 days after receipt of the UIDs. The signs must have:

- A minimum size of 148 mm by 210 mm (A5 size);
- Be clearly visible to a person examining or inspecting the cooling water system; and
- Be made of a durable material.

Council must receive notification of the installation of a cooling water system, in the approved form, within one (1) month of installation. The approved Notification of Installation Form can be downloaded from the above link.

(Reason: To ensure public health is maintained; statutory requirement)

I. Ongoing/Operational Conditions

First Use of Premise - Further Consent Required

- I1. A separate development application for the fit out and use of any part of the building for any purpose must be submitted to and approved by Council prior to that fit out or use commencing, except for areas to be used for the purposes of “office premises”, as defined by the Dictionary of the North Sydney Local Environmental Plan 2013.

(Reason: To ensure development consent is obtained prior to uses commencing)

Trade Waste

- I2. Trade wastewater must be disposed of in accordance with the permit requirements of Sydney Water Corporation Ltd, Wastewater Source Control Branch.

(Reason: To ensure compliance with Sydney Water’s requirements and protect the environment)

Connection to Sewers of Sydney Water Corporation

- I3. In the event a Trade Waste licence is required, wastewater arising from the use must be directed to the sewers of the Sydney Water Corporation (SWC) under a Trade Waste License Agreement. Details of the Corporation's requirements should be obtained prior to the commencement of any work.

(Reason: To ensure compliance with Sydney Water’s requirements and protect the environment)

Noise and Vibration Impact

14. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Parking Station

15. The off-street carparking area must not be used as a public car parking station whether operated for gain or not.

(Reason: Consistency with of the terms of this consent)

Visitors' Parking Sign

16. A sign, legible from the street, must be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces must be clearly marked as such.

(Reason: To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors)

Use of Car Parking Spaces

17. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development. Visitor parking facilities must be designated as common property on any strata plan. Visitor parking facilities must not at any time be allocated, sold, licensed or leased for the exclusive use of any owner or occupier or third party and must be retained as Common Property by the owner's corporation for use by building visitors.

(Reason: To ensure that visitor parking is not allocated to building occupants and remains available on an ongoing basis)

Minimum Headroom for Car Parking

18. Minimum headroom of 2.2 m must be provided over all car-parking areas.

(Reason: To ensure compliance with relevant standards and provide appropriate headroom)

No Illumination

19. No consent is given or implied for any form of illumination or floodlighting to the building or any sign. A separate development application must be lodged and approved prior to any external floodlighting or illumination of the building, approved sign or site landscaping.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

Daily Cleaning

110. The proprietor/operator is to ensure that at all times when the premises are open and at the end of each day after the premises have closed, all rubbish including loose papers, cigarette butts, bottles etc which may be left on the subject premises, site or immediately adjacent area is picked up and placed in the proprietor's/operator's rubbish bins.

(Reason: To ensure waste generated by the approved use or activity is properly managed by the person acting upon this consent, to prevent unsightly build-up of waste material)

Commercial Waste and Recycling Storage

111. Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

(Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed)

Waste Collection

112. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the amenity of surrounding properties)

Trade Waste Collection (Crows Nest Trade Waste Policy)

113. All trade waste and recycling generated from the premises must be managed and disposed of in accordance with the Crows Nest Trade Waste Policy available on Council's website at www.northsydney.nsw.gov.au.

Arrangements for the collection and storage of trade waste bins must comply with the following:

- (a) Bins must be placed out for collection no earlier than 5.00 pm and no later than 10.00 pm on the day before collection.
- (b) All trade waste must be collected between the hours of 6.00 am and 10.00 am.

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- (c) Waste and recycling bins are not to be stored permanently in streets and laneways unless specifically prescribed by Council in writing.

(Reason: To ensure compliance with Council's waste controls for the Crows Nest commercial area)

Delivery Hours

114. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the acoustic amenity of surrounding properties)

Roof Top Lighting

115. Lighting on rooftop or podium level areas must not be illuminated between 11:00 pm and 7:00 am. The design and placement of the lighting must:

- (a) be directed away from any residential dwelling;
- (b) not create a nuisance or negatively affect the amenity of the surrounding neighbourhood; and
- (c) comply with AS4282-1997 control of obtrusive effects of outdoor lighting.

(Reason: To ensure residential premises are not affected by inappropriate or excessive illumination)

Maintenance of Structures on Public Land

116. The owner of the premises at 131-133 Alexander Street Crows Nest is to maintain the awning approved by this consent and located over Council's footpath, directly adjacent to the property. This awning must be maintained at all times to a structurally sound condition in order to provide an acceptable level of public safety.

(Reason: To ensure pedestrian and public safety and ensure that structures located on public land for private benefit are maintained to an acceptable standard)

Maintenance of Approved Landscaping

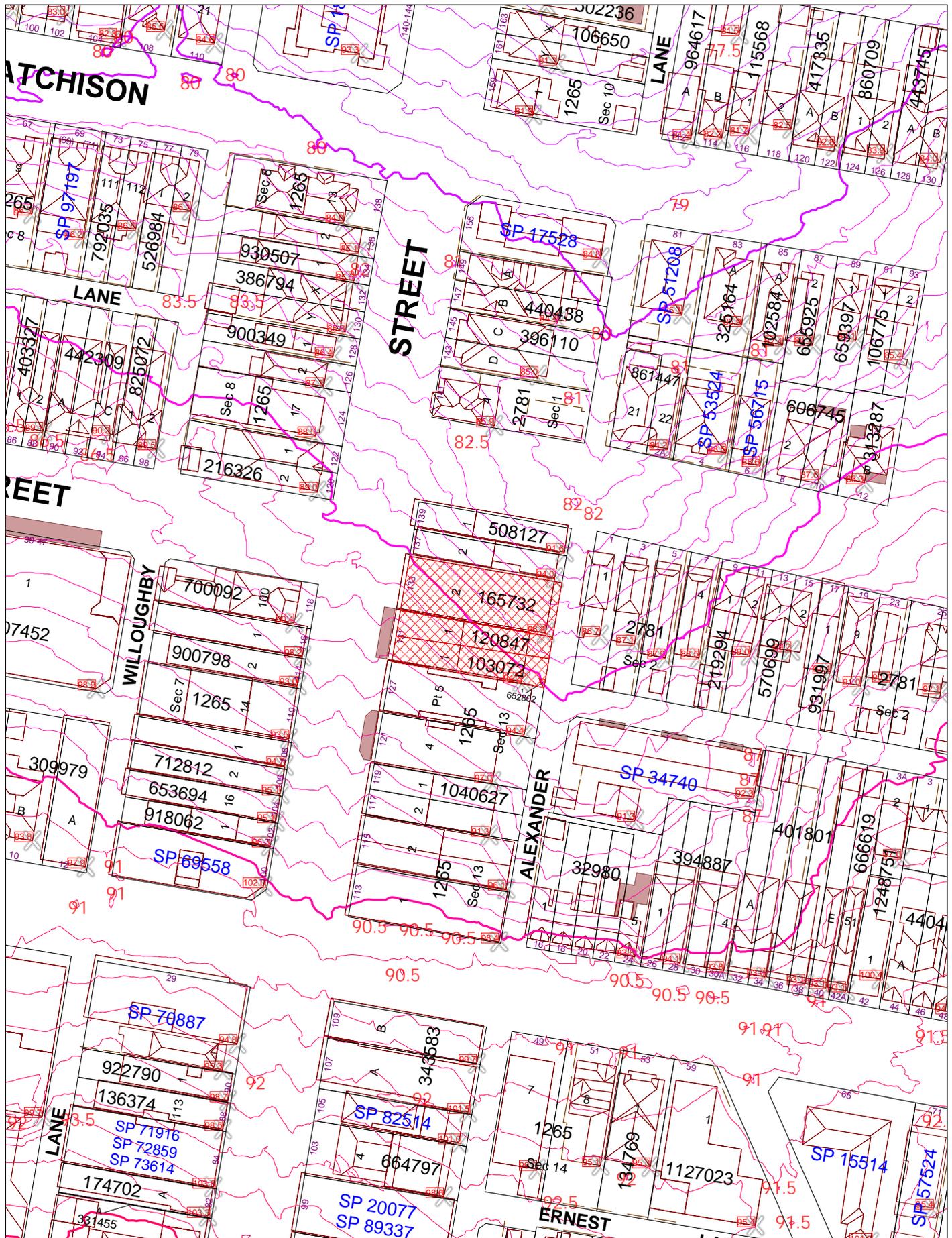
117. The owner of the premises at 131-133 Alexander Street Crows Nest is to maintain the landscaping approved by this consent generally in accordance with drawing numbered 000, 101, 102, 103, 104 and 501, dated 07/12/2022, and where modified by other conditions of this consent.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

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Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for nondeciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)



North Sydney Council

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Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.

nettletontribe

DRAWING LIST (DA)

No.:	SHEET NAME
DA000	COVER
DA001	SITE PLAN
DA002	LOCALITY PLAN
DA003	EXISTING SURVEY & DEMOLITION
DA100	BASEMENT 2 FLOOR PLAN
DA101	BASEMENT 1 FLOOR PLAN
DA102	LOWER GROUND FLOOR PLAN
DA103	GROUND FLOOR PLAN
DA104	LEVEL 1 FLOOR PLAN
DA105	LEVEL 2 FLOOR PLAN
DA106	ROOF PLAN
DA121	ALEXANDER STREET ELEVATION
DA122	ALEXANDER LANE ELEVATION
DA123	SOUTH ELEVATION
DA124	NORTH ELEVATION
DA125	MATERIALS AND FINISHES SHEET 1
DA126	MATERIALS AND FINISHES SHEET 2
DA131	SECTION A
DA132	SECTION B
DA135	HEIGHT PLANE ANALYSIS
DA201	GFA DIAGRAMS
DA202	SHADOW ANALYSIS - 21 JUNE
DA203	SHADOW ANALYSIS - 21 MARCH
DA204	SHADOW DIAGRAMS - 21 JUNE
DA205	SHADOW DIAGRAMS - 21 MARCH
DA206	SHADOW DIAGRAMS - ELEVATIONS
DA207	SHADOW DIAGRAMS - ELEVATIONS

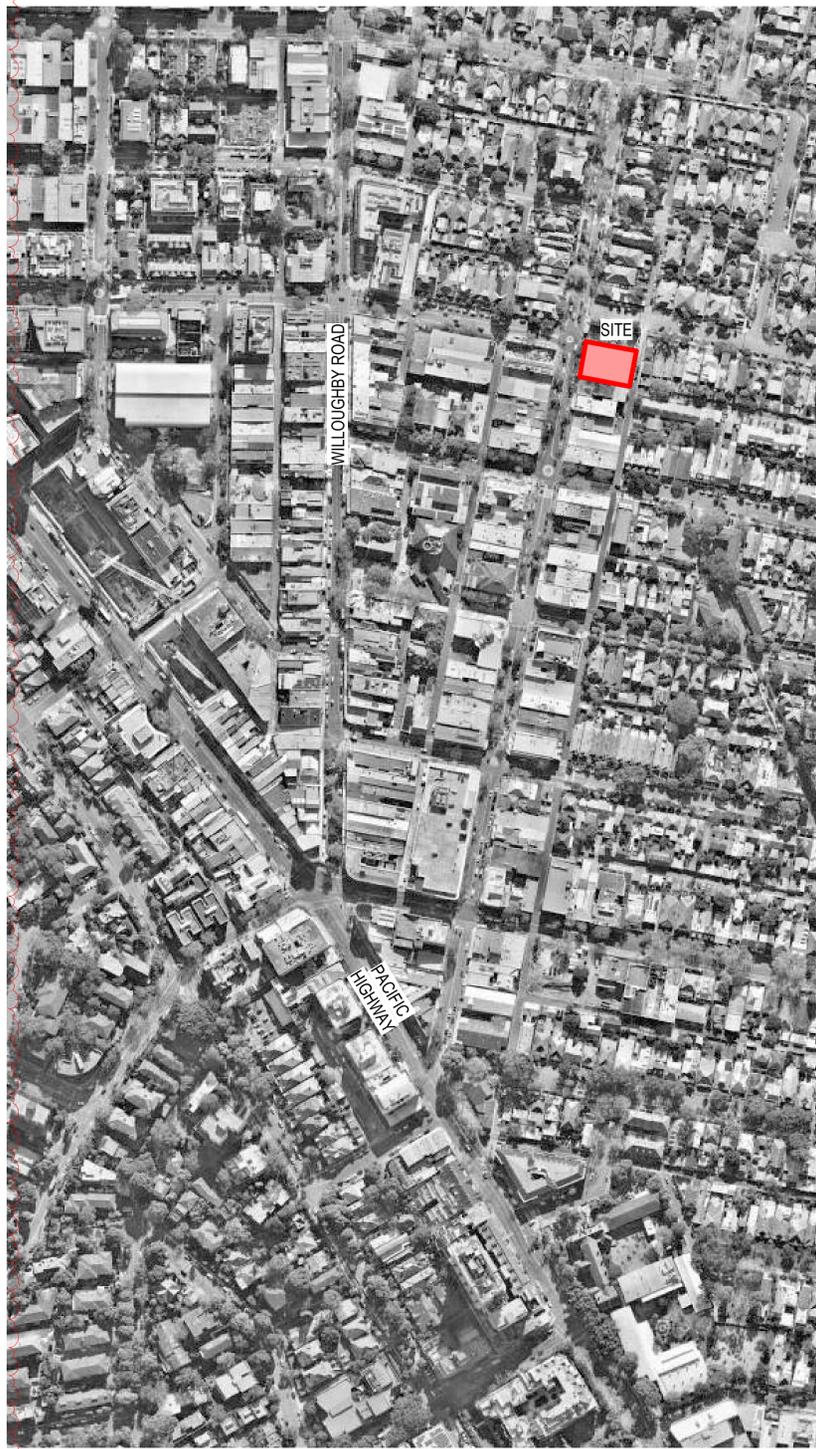
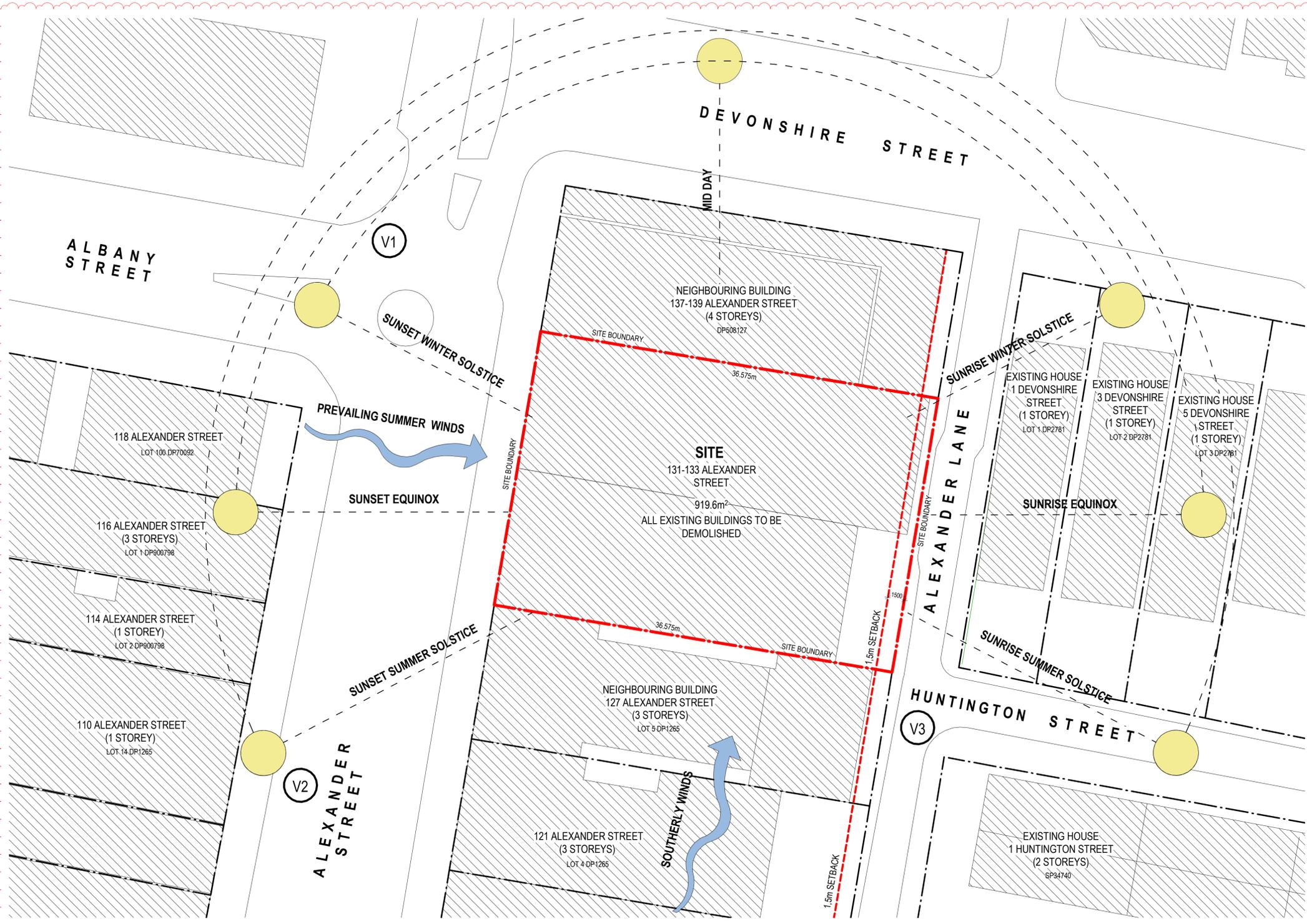


131-133 ALEXANDER ST, CROWS NEST

12415

DA SUBMISSION

15/12/22

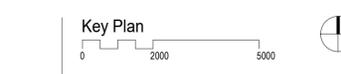


Issue	Description	Date
B	DA REV C SUBMISSION	15/12/22
A	DA SUBMISSION	12/05/22

Disclaimer:
 - Minor changes to building form and configuration may be required when drawings are subsequently prepared for construction purposes after the grant of development consent.

Project Name
 131-133 ALEXANDER ST, CROWS NEST

Project Address
 131-133 ALEXANDER STREET, CROWS NEST



Drawing Title:
 LOCALITY PLAN

Author: PB
Checker: JB
Sheet Size: A1
Scale: 1:200
Issue: B

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12/15/2022 4:48:19 PM C:\NETTLETON\12415_DA\131-133_ALEXANDER_ST_CROWS_NEST\131-133_ALEXANDER_ST_CROWS_NEST.dwg

PARKING REQUIREMENTS
ZONE B4 - ALLOWED

CAR
 COMMERCIAL (1 per 60m² GFA) = 46

MOTORBIKE (1 per 10 cars) = 5

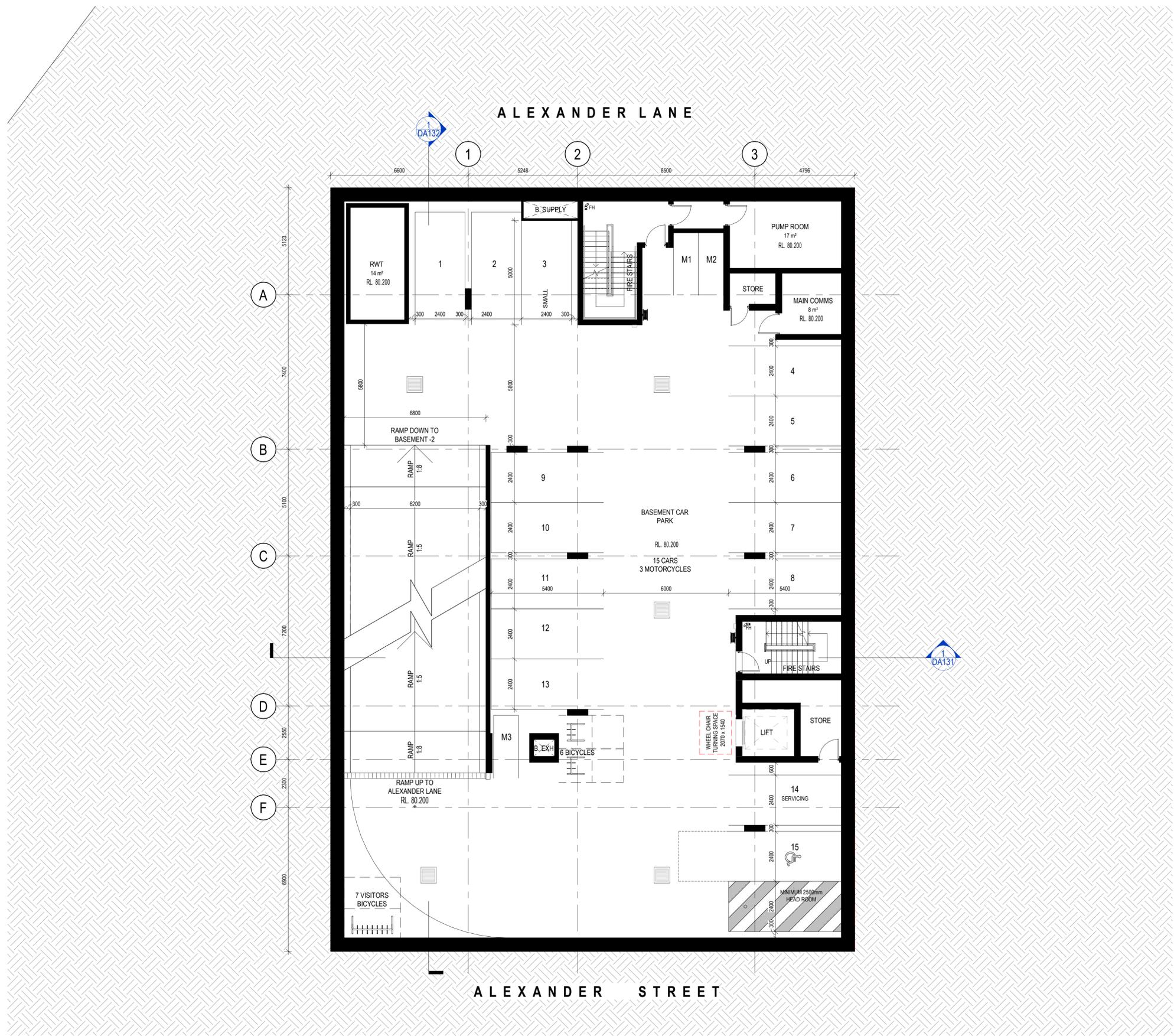
BICYCLE
 COMMERCIAL (1 per 150m² GFA) = 19

PROVISIONS

CAR
 COMMERCIAL: 33 (INCL. 1 ACCESSIBLE)
 EV CHARGE POINTS: 2

MOTORBIKE
 COMMERCIAL: 5

BICYCLE
 COMMERCIAL: 19
 VISITORS: 7



1 DA BASEMENT 1 PLAN
 DA121 1:100

Client

Issue	Description	Date
C	DA REV C SUBMISSION	15/12/22
B	DA REV B SUBMISSION	01/11/22
A	DA SUBMISSION	12/05/22

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EXCEN
 WORKSPACE

Project Name
131-133 ALEXANDER ST, CROWS NEST

Project Address
131-133 ALEXANDER STREET, CROWS NEST



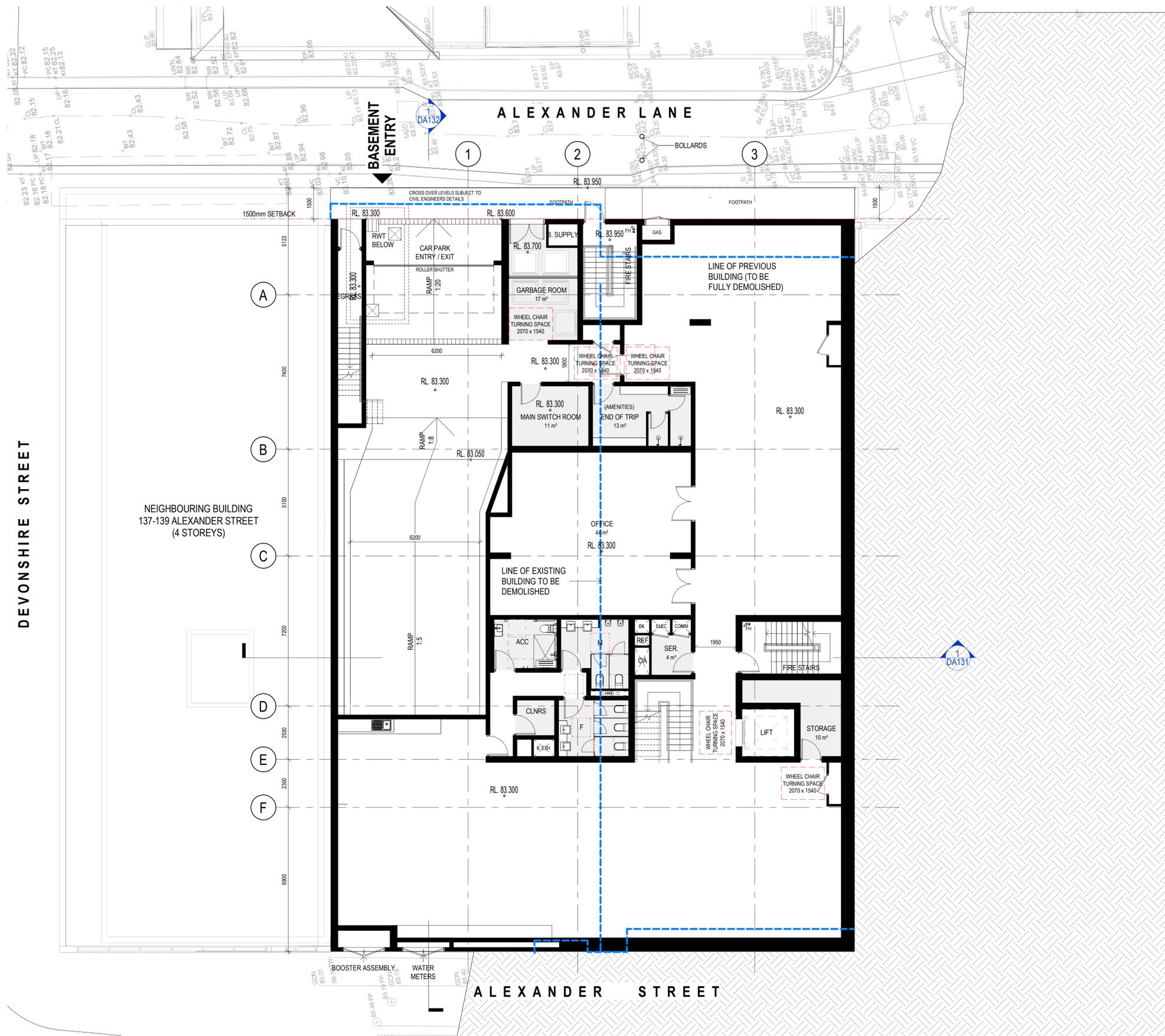
Drawing Title:
BASEMENT 1 FLOOR PLAN

Author: **PB** Checker: **JB** Sheet Size: **A1** Scale: **1:100**

Drawing Number:
12415_DA101 Issue: **C**

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1 DA LOWER GROUND PLAN
DA121 1:100



Issue	Description	Date
C	DA REV C SUBMISSION	15/12/22
B	DA REV B SUBMISSION	01/11/22
A	DA SUBMISSION	12/05/22

Disclaimer:
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Project Name
131-133 ALEXANDER ST, CROWS NEST

Project Address
131-133 ALEXANDER STREET, CROWS NEST



Drawing Title:
LOWER GROUND FLOOR PLAN

Author: PB **Checker:** JB **Sheet Size:** A1

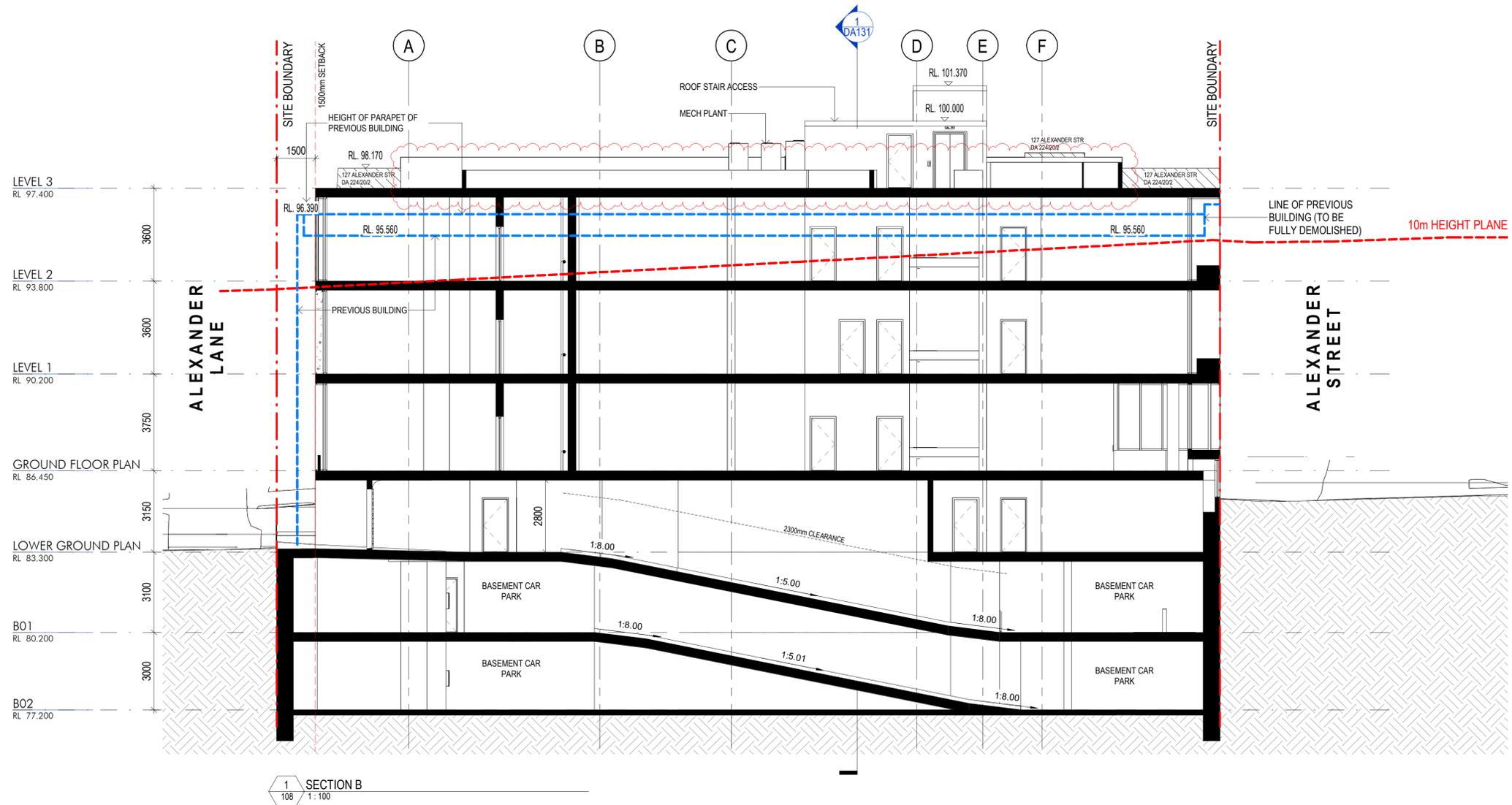
Drawing Number: 12415_DA102 **Scale:** 1:100

Issue: C

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Client: 12/10/2022 4:48:49 PM C:\NET\LOCAL\2022\12415_131 ALEXANDER ST_A1_A01_D121.dwg C:\NET\LOCAL\2022\12415_131 ALEXANDER ST_A1_A01_D121.dwg



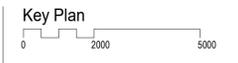
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Issue	Description	Date
C	DA REV C SUBMISSION	15/12/22
B	DA REV B SUBMISSION	01/11/22
A	DA SUBMISSION	12/05/22

Disclaimer:
 - Minor changes to building form and configuration may be required when drawings are subsequently prepared for construction purposes after the grant of development consent.

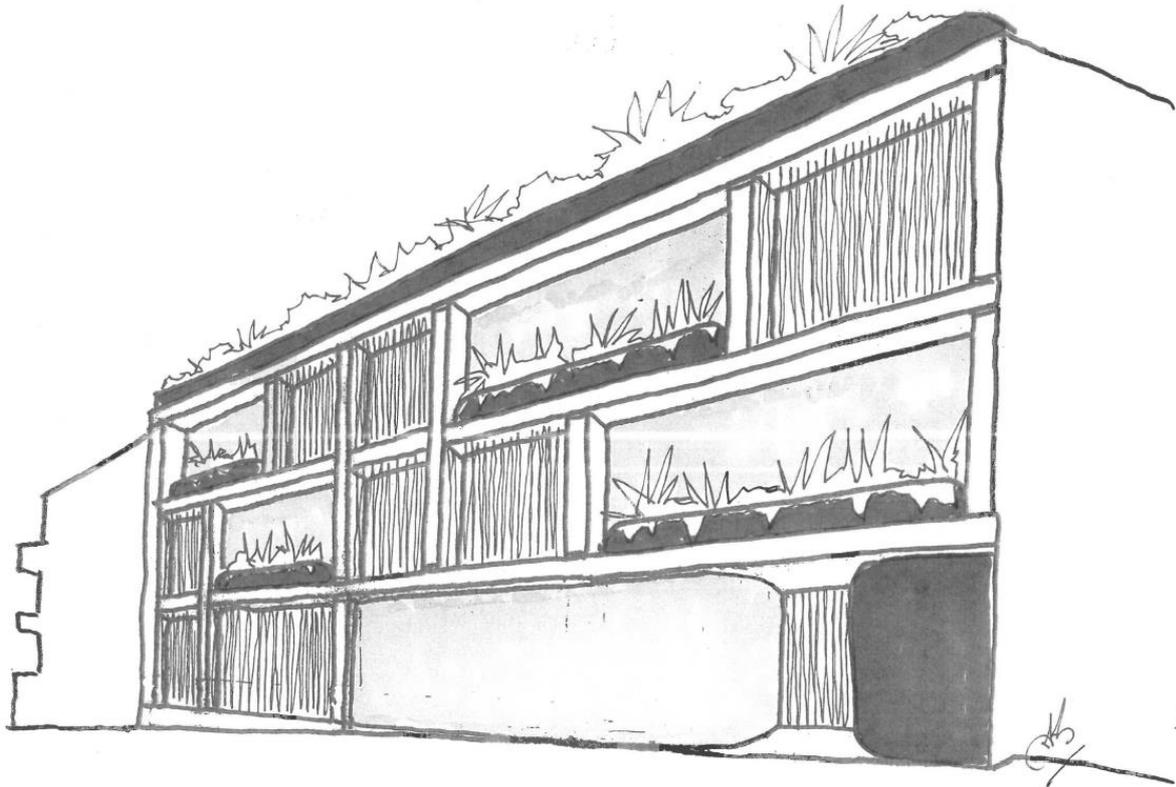
Project Name
 131-133 ALEXANDER ST, CROWS NEST
Project Address
 131-133 ALEXANDER STREET, CROWS NEST



Drawing Title: SECTION B			
Author: PB	Checker: JB	Sheet Size: A1	Scale: 1:100
Drawing Number: 12415_DA132			Issue: C

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ADDENDUM CLAUSE 4.6 VARIATION REQUEST

131-133 Alexander Street,
Crows Nest

Prepared for
CENTRAL SERVICES OF SYDNEY PTY LIMITED
November 2022

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	John Wynne
Associate Director	Belinda Thomas
Project Code	P0039133
Report Number	1

Urbis acknowledges the important contribution that Aboriginal and Torres Strait Islander people make in creating a strong and vibrant Australian society.

We acknowledge, in each of our offices, the Traditional Owners on whose land we stand.

All information supplied to Urbis in order to conduct this research has been treated in the strictest confidence. It shall only be used in this context and shall not be made available to third parties without client authorisation. Confidential information has been stored securely and data provided by respondents, as well as their identity, has been treated in the strictest confidence and all assurance given to respondents have been and shall be fulfilled.

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You must read the important disclaimer appearing within the body of this report.

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1. INTRODUCTION

This Clause 4.6 Variation Addendum Request (the Request) has been prepared on behalf of Central Services of Sydney Pty Ltd (the applicant) and accompanies a Development Application (DA) for the redevelopment of 131-133 Alexander Street, Crows Nest (the site).

The Request seeks an exception from the height of buildings development standard prescribed for the site under clause 4.3 of North Sydney Local Environmental Plan 2013 (NSLEP 2013). The variation request is made pursuant to clause 4.6 of NSLEP 2013. The Request has been prepared to respond to the Request for Information letter (**RFI**) issued by North Sydney Council (**Council**) on 27 October 2022, which sought reduction to the height bulk and scale of the proposal. The applicant responded to the RFI and made amendments to the proposal as outlined below in relation to the reduction in height bulk and scale. This Request addresses the amended plans.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated May 2022.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

AMENDMENTS TO DA 212/22

The following amendments to the design are proposed:

- Reduction in height from RL 98.00 to RL97.4 on front elevation (Alexander Street) by removal of parapet.
- Reduction in height of lift overrun from RL 102.1 to RL101.37, a decrease in height from 17.338m to 14.450m (2.88m) and stair access RL100.4 to RL 100.
- Relocation of lift overrun and stair access to be combined in the centre of roof adjacent to southern boundary.
- Reconfiguration of basement levels, lower ground, ground and first floor levels to accommodate new fire stairs and lift location. No change to proposed parking requirements.
- Existing 1.2m masonry balustrade on roof replaced with glazing.
- Increase rear setback of building from 0.6m to 1.5m from rear boundary at Alexander Lane
- Infill the void on the ground floor.
- New footpath installed adjacent to Alexander Lane.
- Modification in FSR from 3.05:1 to 3.07:1

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site is known as 131-133 Alexander Street, Crows Nest and is legally described as Lot 1 in Deposited Plan 103072, Lot 1 in Deposited Plan 120847 and Lot 2 in Deposited Plan 165732.

Key characteristics of the site include the following:

- The site has two street frontages: to Alexander Street and Alexander Lane.
- The site dimensions are 25.2m north to south and 36m east to west.
- The site is rectangular in shape and has a total area of 916.6m².
- The site has a fall from south to north of approximately 1.37 - 1.87m.
- The site has a fall from west to east of approximately 1.5m - 2m.
- The site currently accommodates:
 - 133 Alexander Street: a partially demolished 3 storey concrete and brick commercial building, due to the building collapsing due to the adjacent site at 137 Alexander Street; and
 - 131 Alexander Street: a two-storey concrete commercial building. A concrete undercroft carpark and driveway is located at the rear adjacent to Alexander Lane.
- The existing building at 131 Alexander Street is a compliant building height.
- The existing building at 133 Alexander Street, has a height of 11.65m at the Alexander Street frontage and 13.2m at the Alexander Lane frontage which currently exceeds the 10m height of buildings development standard in the LEP.

An aerial photograph of the site is provided at **Figure 1** and photographs of the site are provided at **Figure 2**.

Figure 1 Aerial Photograph



Source: Urbis

Figure 2 Site Photos



Picture 1 Front façade of 133 Alexander Street

Source: Urbis



Picture 2 Front façade of 131 Alexander Street

Source: Urbis



Picture 3 Rear façade of 133 Alexander Street

Source: Urbis



Picture 4 Rear façade of 131 Alexander Street

Source: Urbis

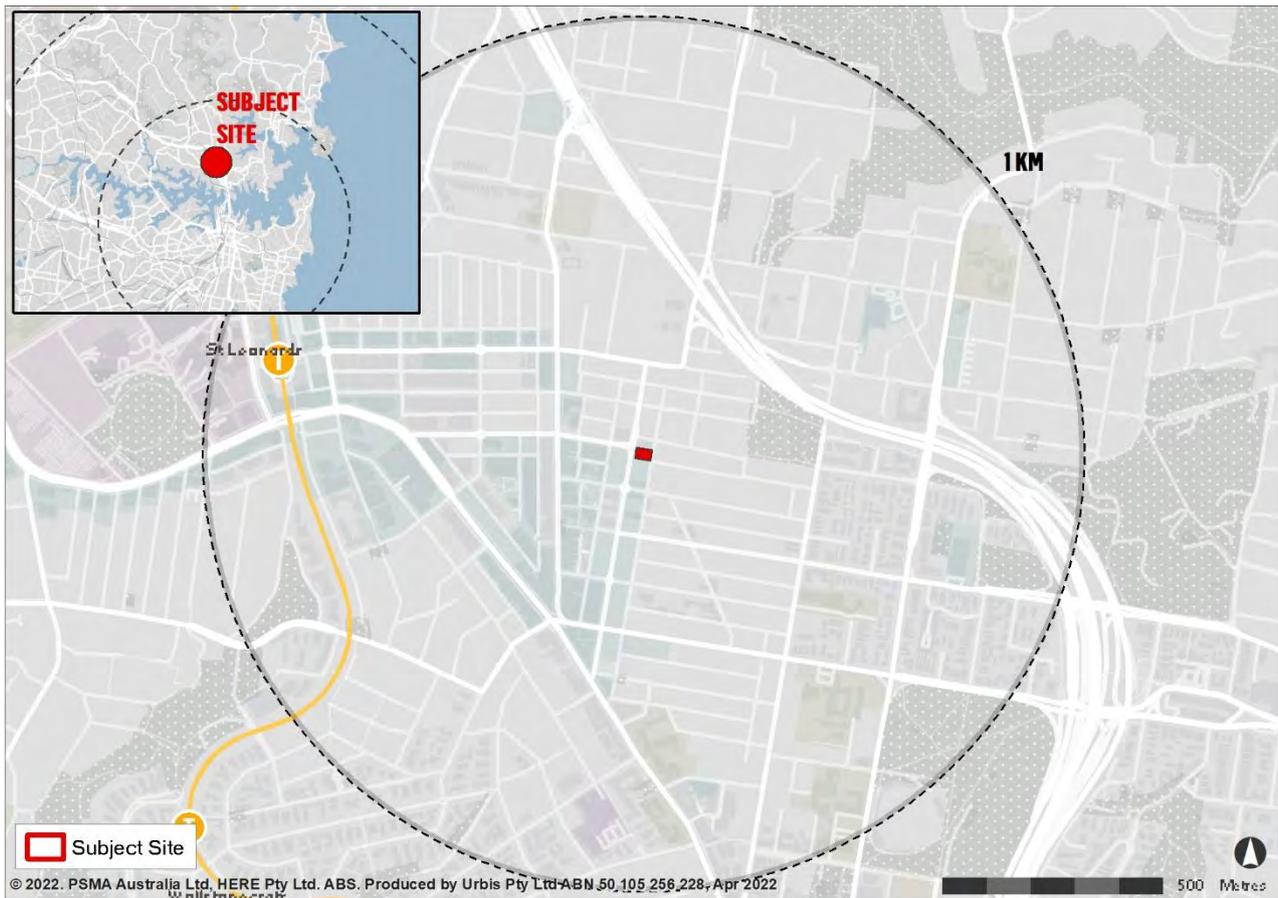
2.2. LOCALITY CONTEXT

The site is located within the North Sydney Local Government Area. The site is approximately 5km north from Sydney CBD. The site is located in the well-established town centre of Crows Nest which is characterised by a mix of medium rise commercial, residential and community uses, as shown in the Site Context Plan (refer to Figure3).

There is an extensive network of bus routes servicing the surrounding area. Buses connect the local area to the Sydney CBD (no. M20 bus), Chatswood CBD (no. 200 bus), Epping (no. 290 bus), Lane Cove (no. 200 bus), and surrounding suburbs. Bus services are frequent throughout the day, with express services operating during the peak periods.

A new metro station will be provided at Crows Nest within 400m of the subject site – significantly improving the already strong public transport accessibility.

Figure 3 Regional Context



The surrounding development includes the following:

- North: the site immediately adjoins a construction site. A four (4) storey shop-top housing development at 137-139 Alexander Street known as The Alexander is currently being built (under DA 430/17).
- East: the site immediately adjoins Alexander Lane. On the opposite side of Alexander Lane is a one storey residential dwelling house at 1 Devonshire Street. Further east is a low-medium density residential strata development at 1 Huntington Street.
- South: the site immediately adjoins a three-storey commercial building at 127 Alexander Street. Further south are predominately two to three storey commercial buildings. Note 224/20 was approved for a 3 storey building plus basement parking, but has not commenced.
- West: the site immediately adjoins Alexander Street. On the opposite side of Alexander Street are a mix of one to three storey commercial buildings.

Refer to Figure 4 for photos of the surrounding development.

Figure 4 Surrounding Development Photos



To the north is a construction site at 137 Alexander St.
Source: Urbis



To the east a dwelling house No. 1 Devonshire St.
Source: Nettleton Tribe



To the south are 2-3 storey commercial buildings.
Source: Urbis



To the west are 2-3 storey commercial buildings.
Source: Urbis

3. PROPOSED DEVELOPMENT

This Request has been prepared to accompany a DA to demolish the existing structures on site and construct a new four (4) storey commercial development, comprising two levels of basement car parking and four levels of commercial office space at 131-133, Alexander Street, Crows Nest .

A detailed description of the proposed development is provided in the SEE prepared by Urbis and dated May 2022. The response to the RFI letter dated 9 November 2022 prepared by Urbis, also outlines the key changes to the proposal. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.

Key details of the amended proposal are summarised in **Table 1** and a photomontage of the proposed building is provided in **Figure 4**.

Table 1 Proposal Details

Element	Proposed Development
Site Area	916.6m ²
Proposed GFA	2815sqm
Proposed FSR (note only non-residential FSR applicable)	3.07:1
Height of Building	<ul style="list-style-type: none"> ▪ Alexander Street Frontage – range from 10.95m to 12.29m ▪ Alexander Lane Frontage – range from 12.5m to 14.3m ▪ Lift overrun (located in centre of roof) - 14.45m

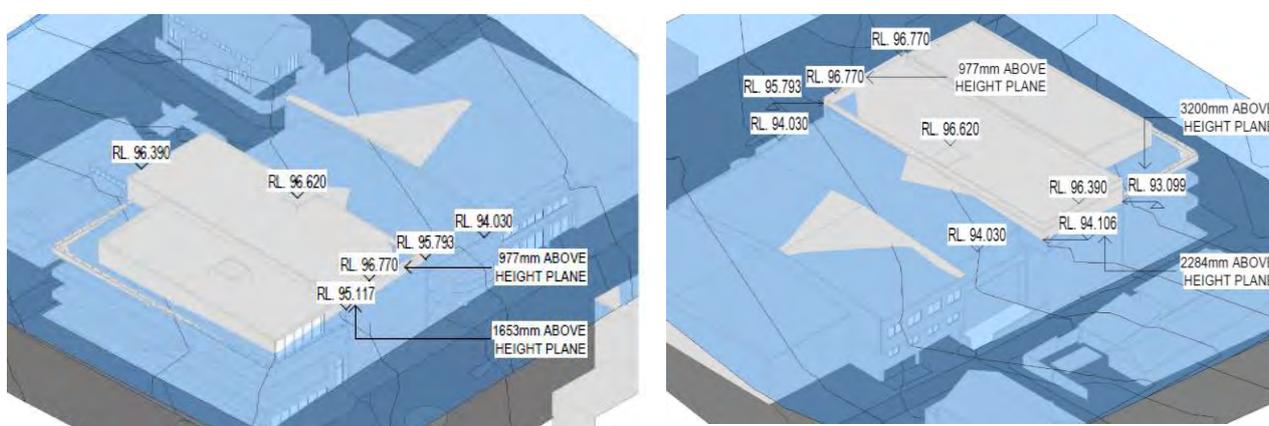
4. VARIATION OF THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

This section of the report identifies the development standard proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. EXISTING HEIGHT OF BUILDINGS CONTRAVENTION

The site is currently occupied by a two-storey and a three-storey commercial building. The two-storey building at 131 Alexander Street complies with the 10m height of buildings development standard. The three-storey building at 133 Alexander Street, has a height range of 10.977m to 11.653m on the Alexander Street frontage and a height range of 12.284m to 13.2m on the Alexander Lane frontage which currently exceeds the 10m height of buildings development standard under the LEP, refer to **Figure 4**.

Figure 5 Existing height contravention



Source: Nettleton Tribe Architects

4.2. PROPOSED VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

This Request seeks a variation to the height of buildings development standard contained within clause 4.3 of NSLEP 2013 which identifies the site as having a maximum height of 10m as illustrated in the NSLEP 2013 height map in **Figure 6**.

Figure 6 NSLEP 2013 height map extract



Source: NSLEP 2013 and Urbis

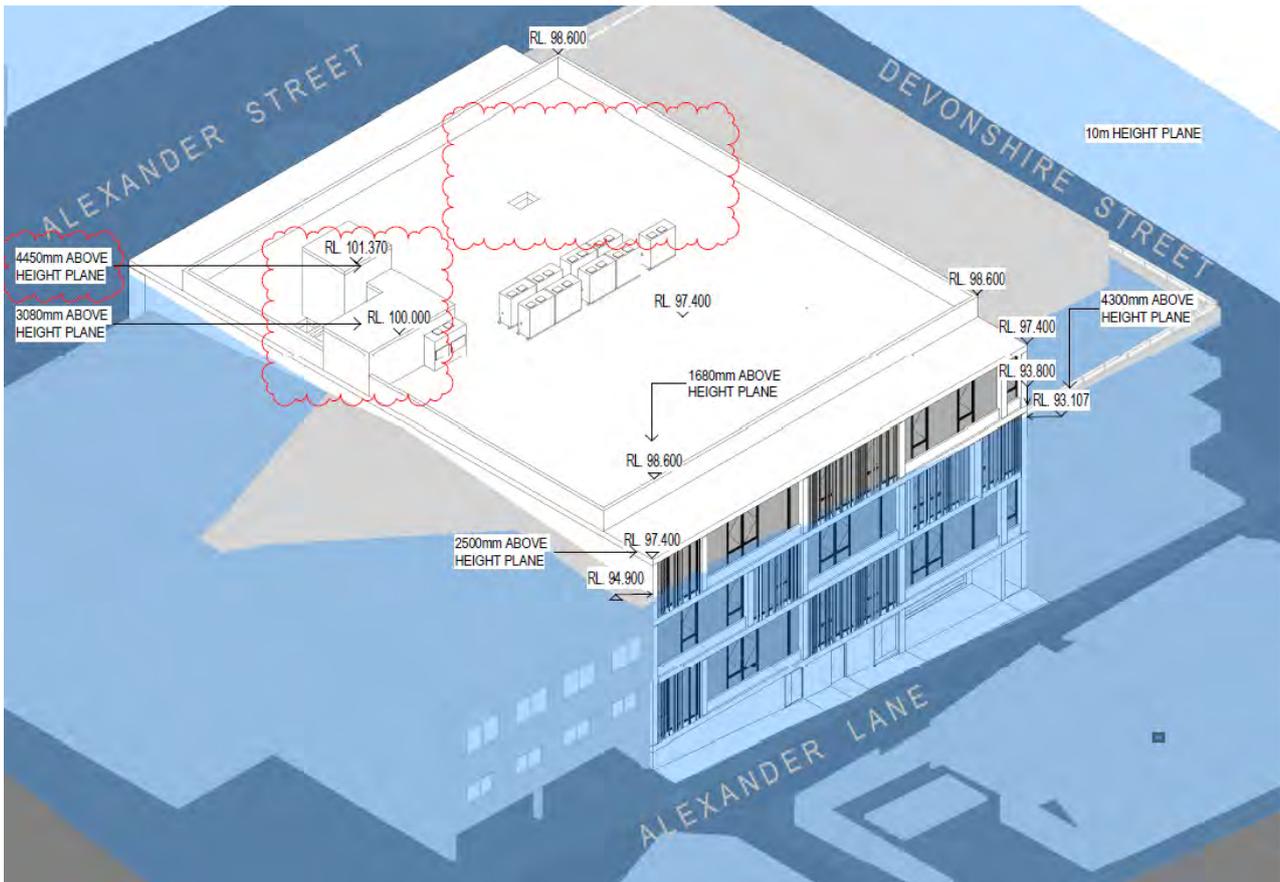
Table 2 Proposed Height

	Height of Buildings Development Standard	Proposed Development (Highest Point)	Difference
Height	10m	14.45m Lift overrun (located in centre of roof)	4.450m

Figures 7-10 illustrate the extent of the height of buildings development standard non-compliance.

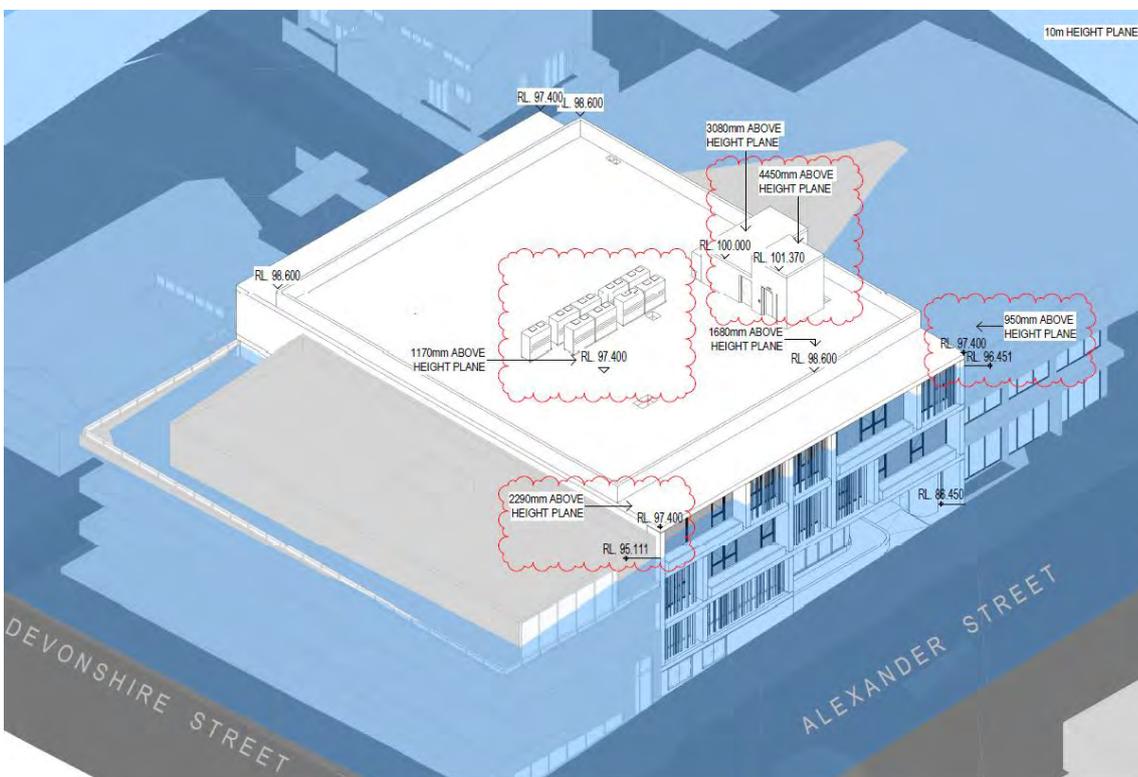
It is important to note that the redevelopment is replacing the existing buildings at 131 and 133 Alexander Street with a new building that generally matches the existing height of 133 Alexander Street to the Alexander Street frontage.

Figure 7 Height Plane Section Alexander Lane



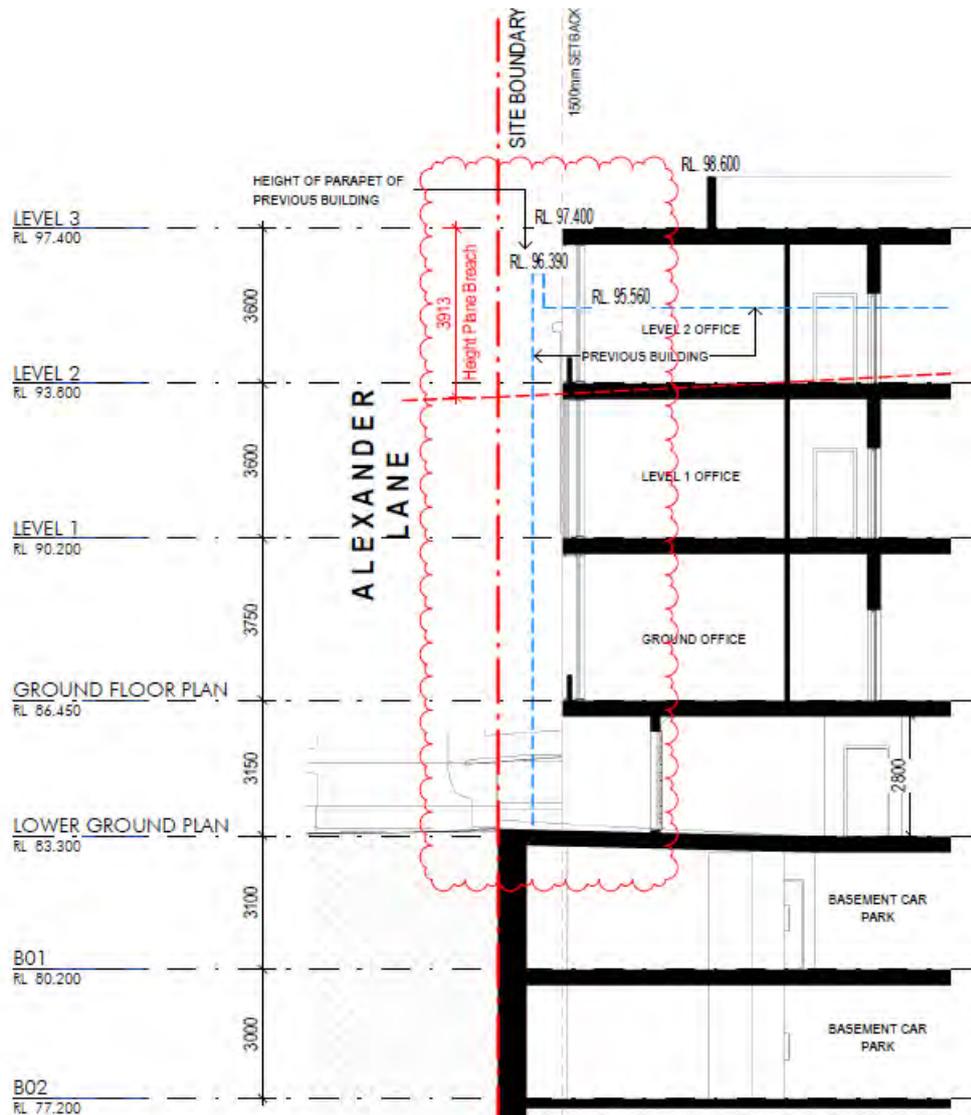
Source: Nettleton Tribe Architects

Figure 8 Height Plane Section Alexander Street



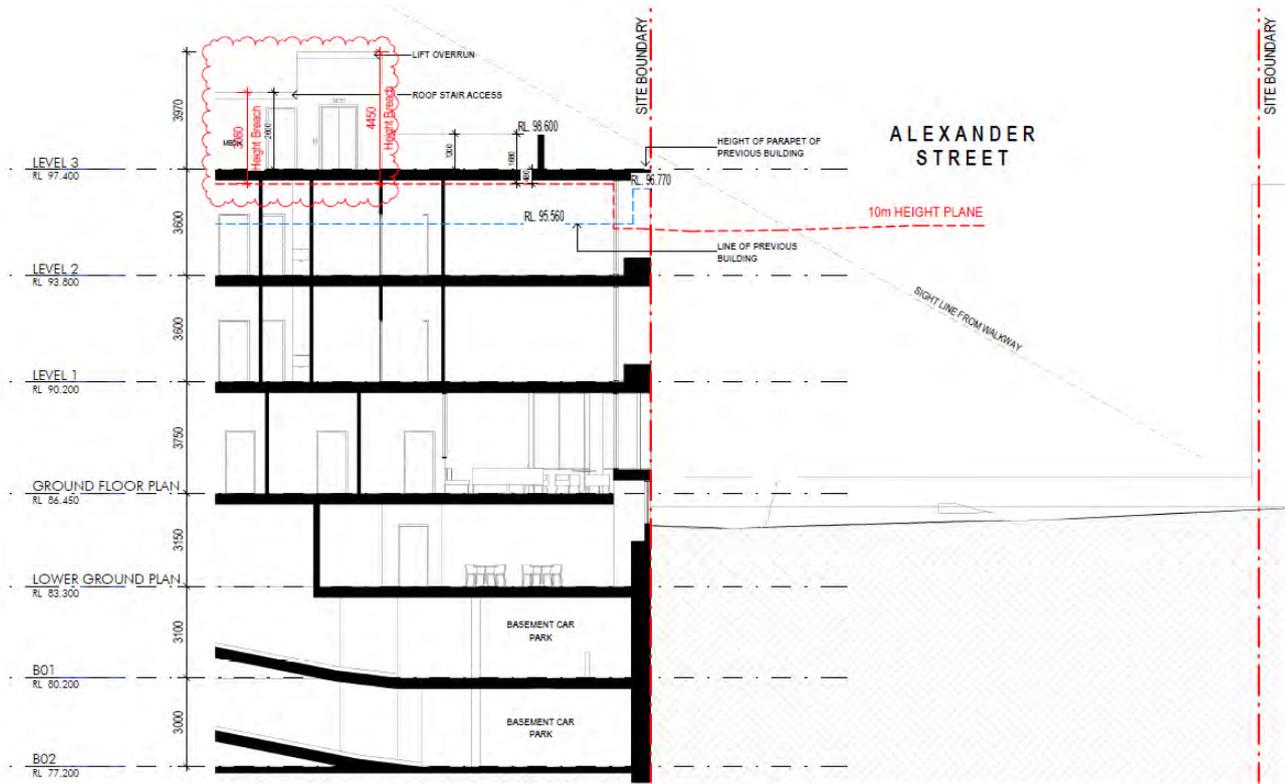
Source: Nettleton Tribe Architects

Figure 9 Height Plane Section Alexander Lane



Source: Nettleton Tribe Architects

Figure 10 Height Plane Section Alexander Street



Source: Nettleton Tribe Architects

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of NSLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of NSLEP 2013 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary is assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

This clause 4.6 request demonstrates that compliance with the height of buildings development standard prescribed for the site in clause 4.3 of NSLEP 2013 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives, refer to **Section 6** for assessment.

In accordance with clause 4.6(3), the applicant requests that the height of buildings development standard be varied.

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of buildings development standard in accordance with clause 4.3 of NSLEP 2013.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of buildings development standard prescribed by clause 4.3 of NSLEP 2013 is a development standard capable of being varied under clause 4.6(2) of NSLEP 2013.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of NSLEP 2013

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard is unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard to be achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that, “*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary*”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standard as specified in clause 4.3 of NSLEP 2013 are detailed in **Table 3** below. An assessment of the consistency of the proposed development with each of the objectives is provided.

Table 3 Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
<p>(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient</p>	<ul style="list-style-type: none"> ▪ The site has a fall of approximately 1.37m - 1.87m south to north and 1.5m to 2m from west to east. ▪ The breach of the standard is linked to the topography of the site which slopes in both directions; south to north and west to east and the relationship of the site to the neighbouring properties at 127 and 137 Alexander Street. ▪ The proposed development reflects the landform and is generally consistent with the anticipated built form of the site. It presents as a three-storey development to the Alexander Street frontage and a part three and part four storey development to the Alexander Lane frontage, following the slope of the land and therefore meeting this objective. ▪ The building components that exceed the height of buildings development standard are restricted to the upper half of the top level. The lift overrun and stair access (which have been reduced in height in the amended proposal), which rise above the proposed roof level, are relatively small in scale, located centrally on the roof and well setback from street frontages ensuring they are not readily visible from the public domain. ▪ Whilst the proposed development exceeds the height of building development standard for the land, this breach primarily arises from the required design response to the sloping site in both directions.
<p>(b) to promote the retention and, if appropriate, sharing of existing view</p>	<ul style="list-style-type: none"> ▪ The North Sydney Development Control Plan 2013 (DCP) does not identify any specific views that are required to be retained to and from the site or water views or iconic views, but it identifies district views from the upper levels of taller buildings. The DCP defines tall buildings as 18 storeys or higher and therefore the objective is not relevant in this case. However, a review of surrounding potential view impacts is outlined below: <ul style="list-style-type: none"> - The building to the north (137 Alexander Street) and building to the south (129 Alexander Street) do not have any views across the site as these properties are built boundary to boundary, and therefore no view will be affected from these sites. - Residential dwellings located to the rear (east) of the site are low scale development and do not benefit from existing views. 1 Devonshire Street orientates its outlook from north to south. 1 Huntington Street comprises a large tree adjacent to Alexander Lane which mitigates any views towards the subject site and also orientates its main outlook to the north. - Commercial buildings located on the opposite site of Alexander Street to the west are two to three storey buildings and are not considered to be tall buildings nor benefit from existing views. The proposed built form would replace existing commercial buildings and would not adversely impact on the views from these buildings.

Objectives	Assessment
	<ul style="list-style-type: none"> ▪ The proposed breach of the standard will not result in the loss of any significant views that would otherwise be expected of a compliant building envelope.
<p>(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development</p>	<ul style="list-style-type: none"> ▪ The proposed development has been accompanied by Shadow Diagrams (Appendix B) prepared by Nettleton Tribe. ▪ The overshadowing impacts to the residential dwellings to the west are limited in duration and only marginally exceed the overshadowing cast by the existing development. The residential dwellings to the west will maintain their current levels of solar access between the hours of 9am and 2 pm. ▪ Refer to Section 6.3 of this request for shadow analysis. The shadow analysis confirms the proposal does not result in any unacceptable shadow impacts to surrounding residential properties or to the public domain and will not restrict any future redevelopment of surrounding land.
<p>(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings</p>	<ul style="list-style-type: none"> ▪ Refer to Section 6.3 for privacy analysis, which confirms the proposed development is designed appropriately to maintain privacy to the existing dwellings adjacent to the site. ▪ Privacy between users of the proposed building and surrounding development is generally protected by the separation afforded by the width of Alexander Street and Alexander Lane (6m), plus the complying 1.5m rear setback. ▪ The existing development on the opposite side of Alexander Lane has a height of between one and two storeys and is generally orientated north/south. The area of height exceedance does not present any significant concerns with regard to loss of privacy as the facades of those buildings facing the site are largely blanked/ screened so that there are minimal vantage points for potential overlooking. ▪ Development to the west of the site fronting Alexander Street is commercial in nature and therefore represents a lesser privacy concern, given there is a 20m separation distance.
<p>(e) to ensure compatibility between development, particularly at zone boundaries</p>	<ul style="list-style-type: none"> ▪ The site is located within the B4 Mixed Use zone and opposite an R2 Low Density Zone. ▪ The R2 zone comprises low density residential housing and is separated from the site by a 6m laneway, which provides a clear break between the commercial/mixed use buildings on the western side of the lane compared to the residential dwellings on the eastern side of the lane. ▪ The built form and scale is changing in the immediate context with recently approved development applications to the south and north of the site with a three storey commercial building plus basement approved at 127 Alexander Street (DA224/20) (12.25metres in height) and a four storey shop top housing development approved at 137-139 Alexander Street

Objectives	Assessment
	<p>(DA430/17) (13.45m in height), both development approvals exceeded the 10m height limit.</p> <ul style="list-style-type: none"> ▪ To ensure compatibility between the development and surrounding development, particularly in the R2 zone, the proposal has reduced the height by removing the parapet on the Alexander Street frontage, relocated the lift overrun and stair to the centre of the roof and decreased its height and provided a 1.5m complying rear setback to Alexander Lane. ▪ With these amendments, the height and bulk of the proposed development responds well to and is commensurate with the surrounding urban context, particularly with the 1,5m rear setback which is consistent with approved plans at 127 and 137 Alexander Street and helps transition to the R2 zone. ▪ The non-compliant elements are largely setback from the street edges elements of the building that exceed the height limit have no detrimental impact in terms of view loss, privacy or overshadowing to the R2 Low Density zone.
<p>(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area</p>	<ul style="list-style-type: none"> ▪ Council's DCP notes that the Crows Nest Town Centre is an established, mixed-use area which is smaller in scale in comparison to St Leonards. The Centre comprises medium rise, mixed use development, boundary to boundary, with setbacks at laneway, public spaces and above podium - shops at ground level, non-residential/residential on first floor, residential above. ▪ As noted above, the built form and scale is changing in the immediate context with recently approved development applications to the south and north of the site with a three storey commercial building plus basement approved at 127 Alexander Street (DA224/20) (12.25metres in height) and a four storey shop top housing development approved at 137-139 Alexander Street (DA430/17) (13.45m in height), both development approvals exceed the 10m height limit. ▪ The built form strategy for the site has been thoroughly planned to ensure it provides a holistic approach to the redevelopment and fits in with the scale and density of neighbouring properties at 127 and 137 Alexander Street and provides appropriate transition to the residential dwellings to the rear with the 1.5m rear setback. ▪ The proposal draws on elements that contribute to the existing streetscapes that surround the site, including the prevalent setbacks at the rear boundary of 1.5m, but also utilises the size of the site to locate taller components in the centre of the roof, set back from the street frontages, minimising the scale of the development as viewed from the public domain. ▪ The proposed development promotes the desired character of the locality as it will provide a contemporary, three to four storey building contributing positively to the diverse mix of built form in the surrounding area. It also provides a better response to the objectives of the DCP by addressing the

Objectives	Assessment
	<p>street with a 1.5m rear setback and articulated façade to both frontages whilst creating a greater level of engagement with surrounding sites.</p> <ul style="list-style-type: none"> ▪ Having regard to the above, the proposed development is consistent with the bulk and scale of the desired future character of the locality.
(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.	<ul style="list-style-type: none"> ▪ Not relevant as the site is located in the B4 Mixed use zone.

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

- **The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (*Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Not relied upon.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

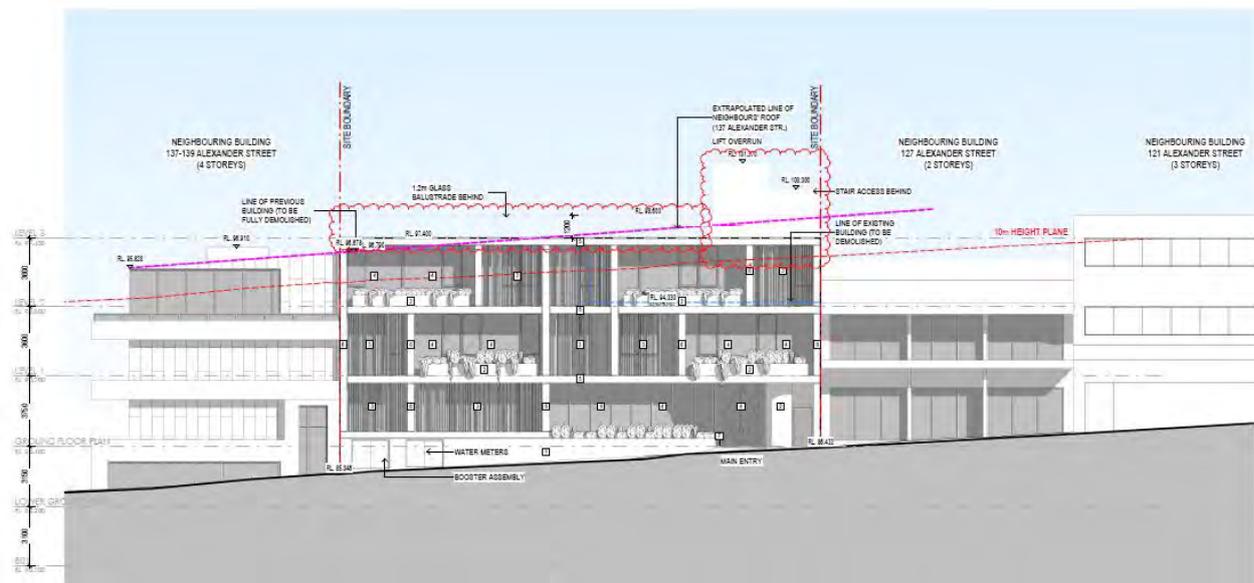
There are sufficient environmental planning grounds to justify the proposed variation to the development standard, including the following:

- The development is consistent with the objects of the Environmental Planning and Assessment Act 1979 by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity. This is achieved through the delivery a commercial development that will support significant new employment in the Crows Nest local centre. The proposal will also greatly

improve the public domain interface at the heart of the local centre on Alexander Street, and in doing so will facilitate a more vibrant village atmosphere to revitalise the local economy.

- The proposed development achieves the objectives of the development standard prescribed in clause 4.3 of the LEP, as described in Table 3 above and achieves the objectives of the B4 Mixed Use zone as described within Table 5 below. The proposal seeks to reinvigorate the operation of site and adjacent foreshore by creating a new commercial space with a high-quality fitout. The proposed floor to ceiling height of 3.2m is consistent with the floor to ceiling height for commercial buildings as shown in the new DCP, which will also help provide high quality office space in Crows Nest. The additional building height being sought will increase the opportunity for these objectives to be met.
- There are unique circumstances at the site which warrant the provision of increased building height, including the site slope and topography. The proposal results in a built form that responds positively to the constraints of the site and in particular, the steep topography between Alexander Street and Alexander Lane. As shown in **Figure 11**, the development is a similar height and scale to the surrounding built form and will sit comfortably as infill development in its immediate context. The development presents as a three-storey building to Alexander Street (excluding lower ground level) and as highlighted previously, is compatible with the desired future character outlined in the DCP for Crows Nest.

Figure 11 Alexander Street Elevation



Source: Nettleton Tribe

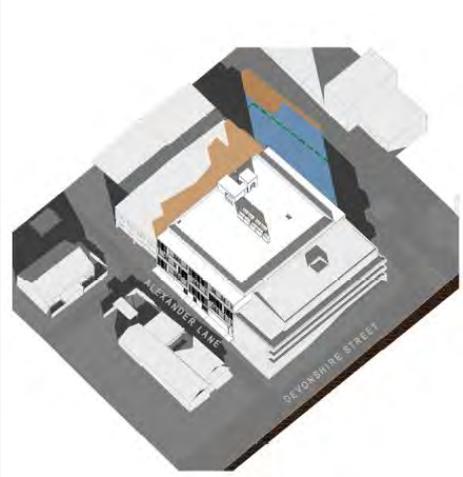
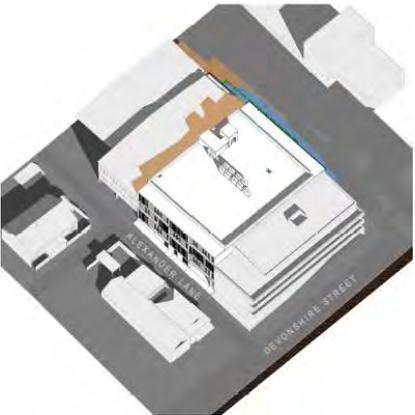
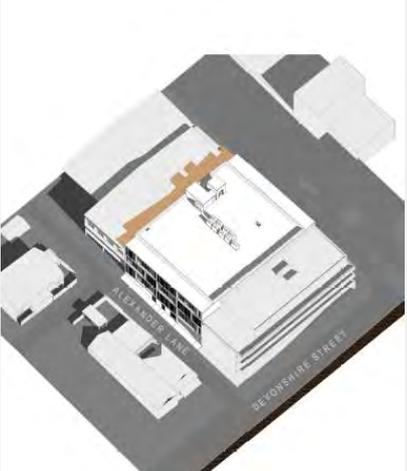
- The visible height breach relates to the upper portion of the top floor when viewed from Alexander Street and a full storey when viewed from Alexander Lane. The building will present as an effectively conforming height to the Alexander Street elevation given its consistency with the approved development at 137 Alexander Street (DA 430/17). The roof top level is set back from the public domain and the servicing elements are positioned centrally to ensure any possible visual impacts are minimal.

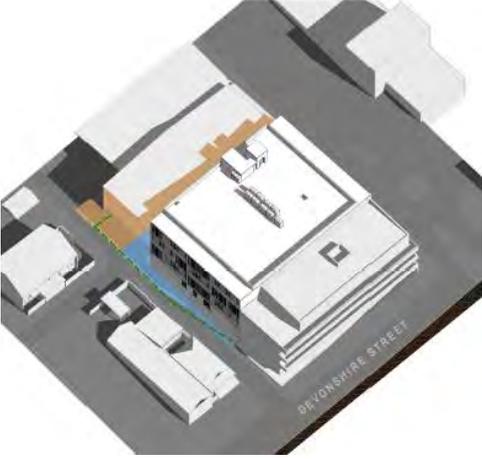
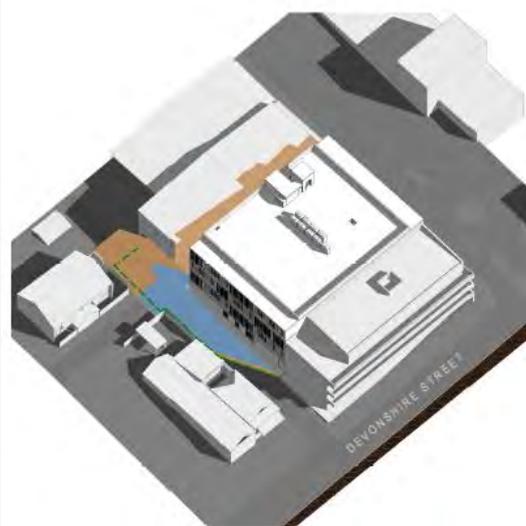
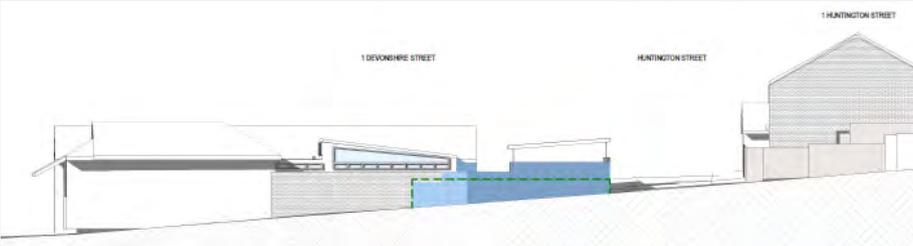
Overshadowing

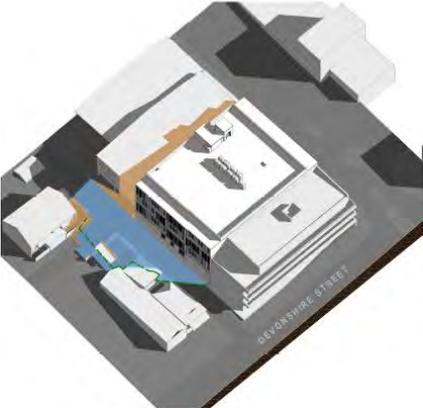
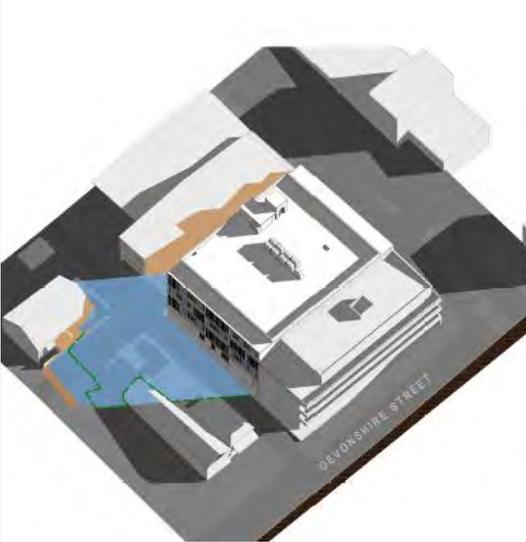
Section 2.3.11 of the DCP outlines solar access controls. Provision 2 requires that developments located outside of the North Sydney Centre should be designed and sited such that solar access at the winter solstice (21st June) provides a minimum of 3 hours between the hours of 9.00am and 3.00pm to any solar panels, the windows of main internal living areas, principal private open space areas, and any communal open space areas, located on the subject property and any adjoining residential properties.

The proposal is accompanied by Shadow Diagrams prepared by Nettleton Tribe attached at **Appendix B**. The shadow diagrams indicate there is a marginal increase in shadows cast beyond a fully complying building. A summary of the solar impacts is provided in Table 4.

Table 4 Solar Analysis

Time on June 21	Shadow Impact	Shadow Diagram
9am	<p>The proposal results in minor additional overshadowing to Alexander Street.</p> <p>A portion of the rear northern windows of 127 Alexander Street would be in shadow.</p>	 <div data-bbox="991 707 1337 864"> <p>SHADOW OF PREVIOUS BUILDING</p> <p>LINE OF COMPLIANT HEIGHT</p> <p>SHADOW OF PROPOSED</p> </div>
10am	<p>The proposal results in minor additional overshadowing to Alexander Street.</p> <p>A portion of the rear northern windows of 127 Alexander Street would be in shadow.</p>	
11am	<p>The proposal results in minor additional overshadowing to the roof of 127 Alexander Street.</p> <p>Some of the rear windows of 127 Alexander Street would be in shadow.</p>	

Time on June 21	Shadow Impact	Shadow Diagram
12pm	<p>The proposal results in minor additional overshadowing to the roof of 127 Alexander Street.</p> <p>Some of the rear windows of 127 Alexander Street would be in shadow.</p>	
1pm	<p>The proposal results in minor additional overshadowing to Alexander Lane.</p> <p>A portion of the rear northern windows of 127 Alexander Street would be in shadow.</p> <p>A portion of the private open space and one window on the side elevation of 1 Devonshire Street would be in shadow.</p> <p>A portion of the fence and side garden space of 1 Huntington Street would be in shadow. Noting there is significant vegetation located on site.</p>	   <p>Photo of western elevation of 1 Huntington St</p>

Time on June 21	Shadow Impact	Shadow Diagram
<p>2pm</p> <p>The proposal results in minor additional overshadowing to Alexander Lane and Huntington Street.</p> <p>A portion of the rear northern windows of 129 Alexander Street would be in shadow.</p> <p>A portion of the private open space and the side elevation of 1 Devonshire Street would be in shadow.</p> <p>A portion of the private open space 1 Huntington Street would be in shadow.</p>		  <p>Photo of rear of 1 Devonshire St</p>
<p>3pm</p> <p>The proposal results in overshadowing to Alexander Lane and minor additional overshadowing to Huntington Street.</p> <p>A portion of the roof and private rear open space of 1 and 3 Devonshire Street</p>		

Time on June 21	Shadow Impact	Shadow Diagram
	<p>would be in shadow.</p> <p>The ground and first floor northern windows on the western section of the front façade of 2/1 Huntington Street would be in shadow. Half of the eastern top window would receive solar access.</p> <p>The windows on the first floor and three on the ground floor on the eastern section of the front façade would not be in shadow for 3/1 Huntington Street.</p>	  <p>Photo of northern elevation of 1 Huntington St</p>

The proposal is considered acceptable for the following reasons:

- The proposal does not impact on solar access to 1 Devonshire Street for 3 hours between 9am-12pm on June 21.
- The proposal does not impact on solar access to 1 Huntington Street for 3 hours between 9am-1pm on June 21.
- The proposal does not impact on solar access to 3 Devonshire Street for 3 hours between 9am-1pm on June 21.
- Some of the rear windows of 127 Alexander Street, particularly at the northern end of the rear façade would be in shadow throughout the day, however this is the nature of site orientation being located to the south of the site. This property is a commercial building.
- In the March and September equinox there would be no shadow to 1 Huntington Street and shadow would only begin to partially impact 1 Devonshire Street from 2-3pm
- The proposal will ensure that all dwellings have reasonable access to sunlight and daylight and compared to a compliant scheme the additional shadow impact is minimal.
- The proposal will not result in the overshadowing of any public reserves.

- The shadows that are cast onto the streets are shadows that are cast predominantly by elements of the building that are within the height limit of the site.

The proposal does not result in any unacceptable shadow impacts to surrounding residential properties or to the public domain and will not restrict any future redevelopment of surrounding land.

Privacy

Section 2.3.11 of the DCP aims to ensure that existing and future residents are provided with a reasonable level of visual privacy. Provision 1 requires windows to be located to avoid direct or close views into the windows, balconies, or private open space of adjoining dwellings. Provision 2 outlines where windows are located with a direct outlook to windows of an adjacent dwelling, the windows must be provided with a minimum sill height of 1.5m or use fixed obscure glazing or other privacy devices.

As outlined above, the proposed will be setback 1.5m from the rear boundary, compliant with Council's DCP.

The surrounding dwellings include:

- 1 Devonshire Street - which has high level windows on the side elevation on the ground floor which appear to be permanently covered/frosted and a carport covering part of the rear open space. It is located on the opposite side of Alexander Lane.
- 3 Devonshire Street - is setback approximately 14m from the site to the side boundary.
- 1 Huntington Street - there are no windows at first floor level on the western elevation and the windows on the front northern façade would be offset from the site.

Whilst it is acknowledged there is some potential for overlooking into the rear garden of No1 Devonshire Street, this is consistent with the existing built form relationship. The proposal complies with the 1.5m rear setback which is an increased setback of a further 0.5m than the existing building at 133 Alexander Street, there are considered to be no adverse privacy impacts from the proposal.

It is noted reduced rear setback at 131 Alexander Street to Alexander Lane of 1.5m which is compliant with the DCP, however it is considered it achieves an overall similar interface with the rear dwellings at No.1 Devonshire Street and No. 1 Huntington Street as existing and therefore is considered acceptable.

Having regard to the above, the proposal will result in a better planning outcome compared to a compliant building envelope despite the minor non-compliance with the height control.

- The additional building height will not result in detrimental environmental impacts in terms of built form, overshadowing, privacy, view or heritage impacts as:
 - The holistic approach to the redevelopment of the site results in an improved relationship between built form on the site and the setting of the heritage conservation area to the rear.
 - The proposed development maintains solar access to the surrounding public domain and neighbouring residential properties.
 - The proposed rear setback preserves the integrity of the streetscapes, and has been designed to respond sensitively to the scale, form and materiality of the desired future character
 - The placement of built form in the areas of existing taller elements within the site results in limited view sharing impacts. Whilst the proposal will not result in any significant view loss to neighbouring properties, it also benefits others.

On balance this is considered to be acceptable given the significant public benefits and urban design improvements that would be delivered by the development. In summary, there are sufficient environmental planning grounds to justify contravening the development standard.

Having regard to the above, the proposal will result in a better planning outcome compared to a compliant building envelope despite the minor non-compliance with the height control.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in Table 3 above. The proposal is also consistent with the land use objectives that apply to the site under NSLEP 2013. The site is located within the B4 mixed use zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 4 below.

Table 5 Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
To provide a mixture of compatible land uses.	<p>The proposal provides a commercial development which is a permissible use in the B4 mixed use zone and therefore is a compatible land use.</p> <p>The proposal is consistent with this B4 zone objective.</p>
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	<p>The proposal provides a commercial development in a location that has excellent access to public transport through express busses to the Sydney CBD for example and will be within 400m of the future Crows Nest metro station. The proposed commercial use is permissible in the B4 zone and supported and anticipated use in the DCP.</p> <p>The proposal consistent with this B4 zone objective.</p>
To create interesting and vibrant mixed-use centres with safe, high quality urban environments with residential amenity.	<p>The proposal reflects the desired character of the locality as it provides a new commercial office building that will contribute positively to the diverse mix of built form in the surrounding area. It will also address the street and public domain, provide clear entrances to the site and engage with surrounding sites and ensure safe high quality urban environment.</p>

Objective	Assessment
	The proposal is consistent with this B4 zone objective.
To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.	<p>The proposal replaces two existing commercial buildings with a new commercial building. The proposal complies and exceeds with the non-residential floor space development standard (0.5:1) as specified under the NSLEP 2013.</p> <p>The proposed development is consistent with this B4 zone objective.</p>

The proposal is in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

Concurrence of the Secretary to the variation is assumed in accordance with Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height development standard does not raise any matter of significance for State or regional environmental planning. It is demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and will not result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height development standard and the land use zone objectives despite the technical non-compliance.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence is assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of NSLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The development as proposed (in particular, with the proposed contravention) facilitates construction of new high quality commercial office building appropriate to the site's existing condition, location and the surrounding buildings.
- The development is effectively replacing the existing buildings at 131 and 133 Alexander Street with a new building that matches the existing height of 133 Alexander Street to the Alexander Street frontage.
- The development as proposed (in particular, with the proposed contravention) improves the pedestrian environment and increase activation of the two street frontages.
- Compliance with the development standard is both unreasonable and unnecessary in the instance because the development is able to fully satisfy the objectives of the height of buildings development standard.
- The proposed variation of the height of buildings development standard does not result in an over development of the site or significant adverse impacts on the public domain or neighbouring properties. The proposed building envelope is compatible with surrounding developments and the built form that characterises the locality. It is also consistent with the design approach applied to other new commercial buildings within the immediate vicinity.
- The proposal provides environmental benefits particular to the site through the provision of improved amenity for future tenants of the commercial premises and provision of commercial services for surrounding residents and pedestrians.
- A departure from the height of buildings development standard is considered appropriate in these circumstances.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

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