

Item 5.**Development Application: 137-153 Crown Street, Darlinghurst**

File No.: D/2017/17

Summary**Date of Submission:** 9 January 2017

Amended plans were received on 31 May 2017, 5 June 2017, 17 July 2017, 24 October 2017 and 27 March 2018

Applicant: Gedshill Pty Limited**Architect:** Cottee Parker JPRA Architects**Developer:** Gedshill Pty Limited**Owner:** Gedshill Pty Limited**Cost of Works:** \$24,764,776**Proposal Summary:** Demolition of existing three storey office building, retention of existing basement level and construction of a part four and part five storey residential flat building containing 31 apartments with parking for 18 vehicles.

The application is referred to the Local Planning Panel for determination as it involves a SEPP 65 development. It is noted that an earlier version of the application was considered by the Planning and Development Committee and Council in late 2017 who deferred consideration of the application to require the submission of amended plans.

The proposal was notified and exhibited to surrounding owners and occupants between 16 January and 7 February 2017. Eight submissions were received; seven objections and one letter of support. The grounds of objection include: the bulk and scale of the development, the traffic impacts, the character of the proposed building materials and privacy and overshadowing concerns.

The proposal generally complies with the Sydney LEP 2012 and Sydney DCP 2012. A minor non-compliance with the Sydney LEP building height standard is proposed and there is a non-compliance with the Sydney DCP 2012 in regards to the number of storeys.

Proposal Summary:**(continued)**

The application has been amended on four occasions to respond to issues raised by Council Officers primarily regarding the proximity of the proposed building wings to each other, the form of the internal circulation corridors and additions proposed above the existing southern wall.

The application has most recently been amended in response to issues raised by Council at its meeting of 11 December 2017.

The proposal has acceptable residential amenity when considered under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

Summary Recommendation:

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

Development Controls:

- (i) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (ii) State Environmental Planning Policy No. 55 – Remediation of Land
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings

Recommendation

It is resolved that:

- (A) the variation sought to Clause 4.3 – Height of Buildings - in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (B) consent be granted to Development Application No. D/2017/17 subject to the conditions set out in Attachment A to this report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979 in that it satisfies the provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012 for the reasons outlined in the report to the Local Planning Panel.
- (B) Non-compliances in relation to the Sydney LEP 2012 height in metres standard and Sydney DCP height in storeys control are acceptable in this instance as the proposal is consistent with the objectives of the zone and the height controls and is in the public interest.
- (C) The built form and design of the building is considered appropriate in the context of the site and locality.
- (D) The proposal is consistent with the objectives of the R1 - General Residential Zone.
- (E) The proposal has been amended since lodgement to be more compatible to the locality and to transition to the adjoining properties and now reflects a supported built form and finish.

Background

The Site and Surrounding Development

1. Site visits were carried out by staff on 15 February 2017 and 7 June 2017.
2. The site is rectangular with an area of 1,226sqm. It has a primary street frontage to Crown Street to the east and secondary frontages to Chapel Street to the north and Burnell Place to the west.
3. Opposite the site to the north are a series of restaurants facing Stanley Street that have rear loading and parking to Chapel Street.
4. To the immediate south are two terraces, one facing Crown Street and the other facing Burnell Place. The terrace fronting Burnell Place is an original sandstone dwelling. Both terraces are built to the common boundary with the site and both have rear yard space. The site has a high brick wall at the boundary. This is to be retained to the same height with the proposed development. Further south from the site there are rows of two and three storey terrace houses.
5. To the east are terraces on the opposite side of Crown Street.
6. To the west is an old warehouse containing a gym and commercial office space.
7. The aerial photo at Figure 1 below gives a good understanding of the relative size of the site and the adjacent site to the west compared to the finer grain nature of the surrounding terrace dwellings and restaurants.
8. The existing development within the site is a three storey office building with large floor plates. The office building is built to the boundary on all four sides. Basement parking is accessed from two existing driveways, one along Burnell Place and the other at the chamfered corner of Burnell Place and Chapel Street. Portions of the top level of the existing office building are above the maximum building height standard of the Sydney LEP 2012.
9. Surrounding land uses are residential and commercial. Aside from the office building on the site, Crown Street between Liverpool Street and Stanley Street has two and three storey terraces with either brick or rendered facades.
10. The site is not a heritage item but is located within a Heritage Conservation Area.
11. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Crown Street



Figure 3: Site viewed from corner Crown Street and Chapel Street



Figure 4: Adjoining terraces to the south along Crown Street



Figure 5: Close view of adjoining terraces to the south along Crown Street

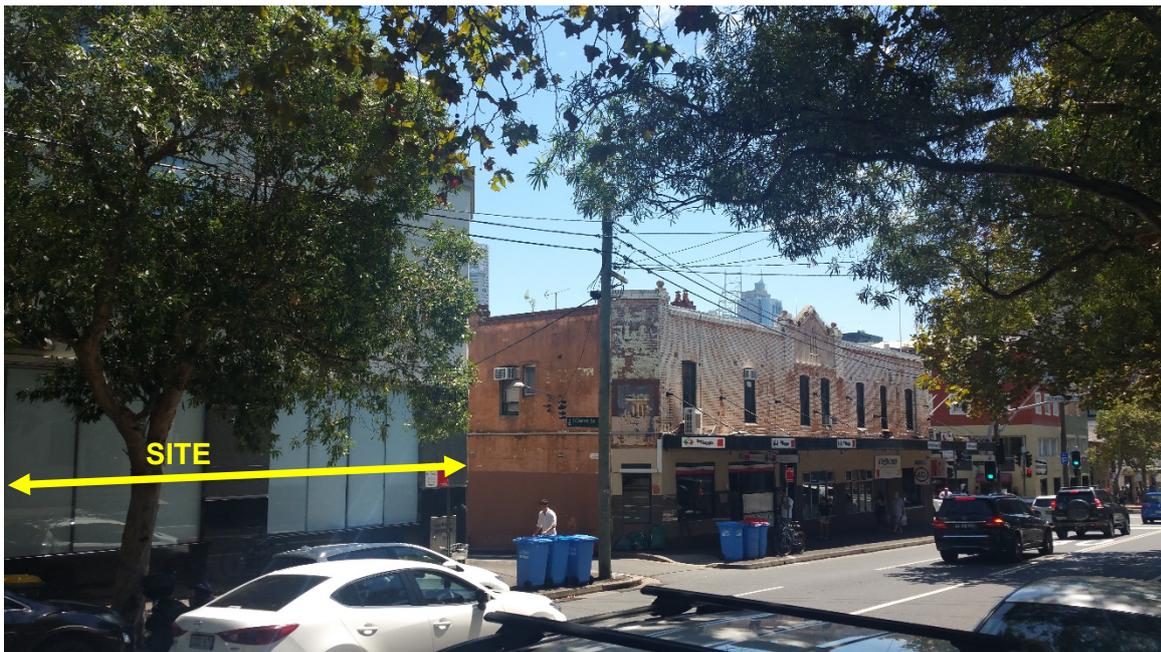


Figure 6: Site viewed from Crown Street with adjoining properties to the north



Figure 7: View to the south from corner of Chapel Street and Burnell Place



Figure 8: View to the east from corner of Chapel Street and Burnell Place



Figure 9: Site viewed from Burnell Place



Figures 10 and 11: Adjoining properties to the north - rear of Stanley Street restaurants and cafes



Figure 12: Adjacent development to the west

Proposal

12. The proposed development is the demolition of the existing office building down to the basement level, retention of the basement slab and construction of a part four and part five storey residential flat building containing 31 apartments.
13. The form of the proposed development is of two building wings that share a common basement that run in a north-south orientation containing a central staircase and landing structure.
14. The design of the development creates an internal circulation space where residents can use the stairs or a lift. The circulation space is open at the roof level and to both of the northern and southern ends.
15. Resident and visitor access to the proposal is via a main gated lobby off Crown Street or a secondary glazed lobby off Chapel Street. Vehicle access is off Burnell Place at the south-west corner of the site where there is an existing driveway.
16. Communal open space is at the roof of the western building and contains bench seating and peripheral garden beds in a position with sunlight and good outlook.
17. Plans of the proposed development are provided below. A full set of development application drawings is within Attachment B.

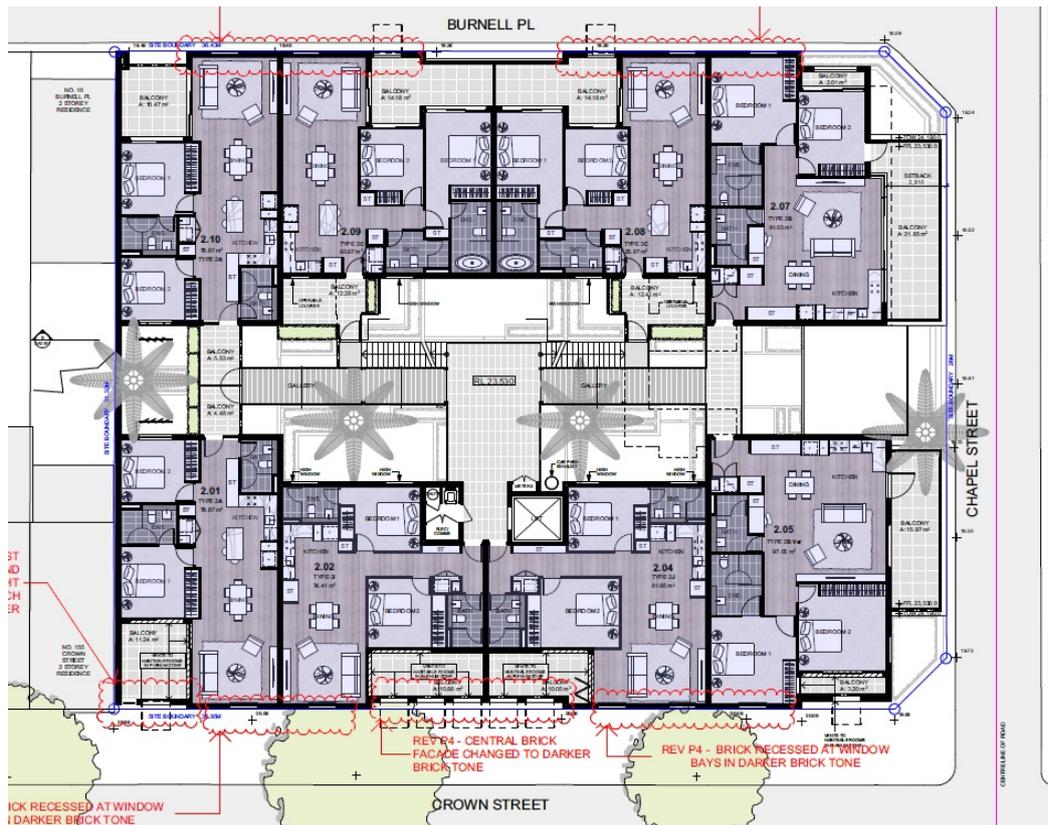


Figure 15: Level 2 Plan

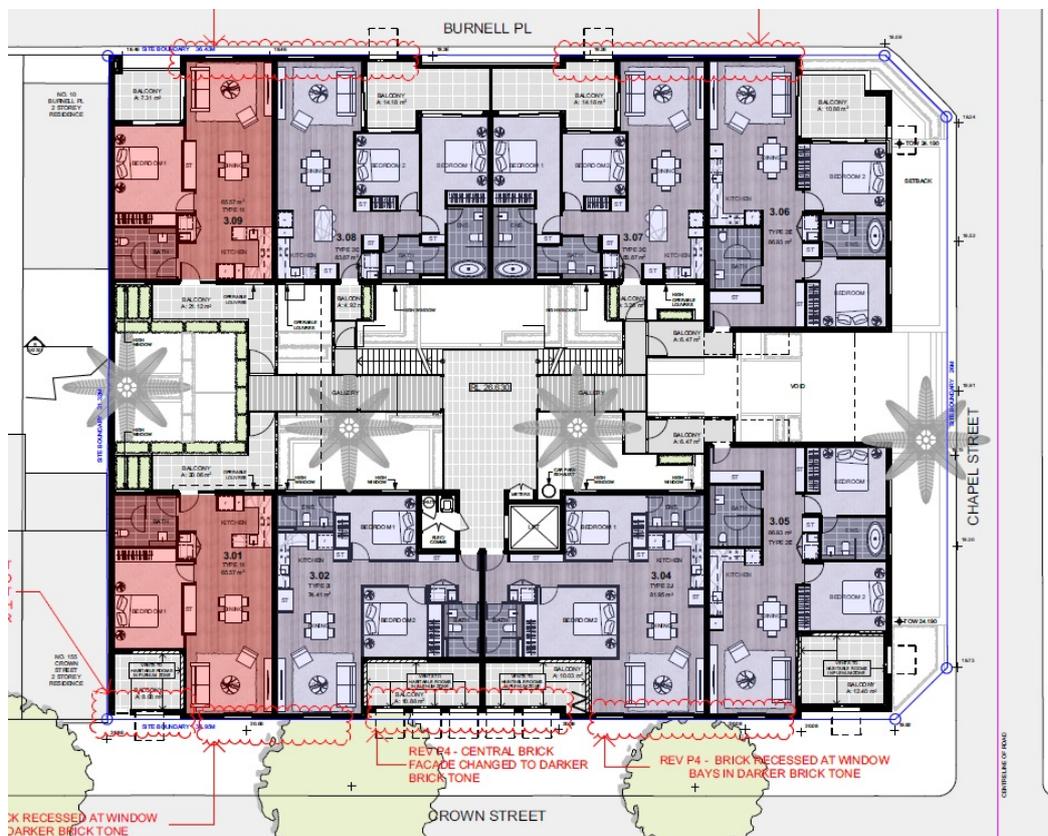


Figure 16: Level 3 Plan



Figure 17: Level 4 Plan

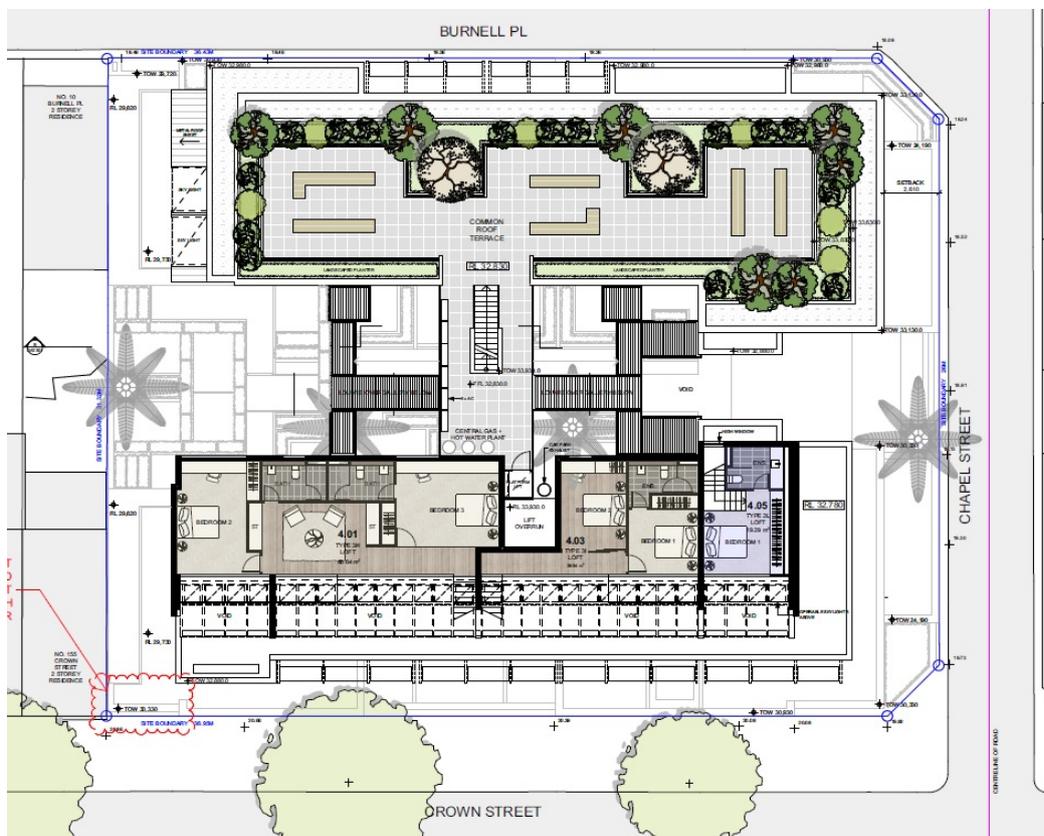


Figure 18: Level 5 Plan

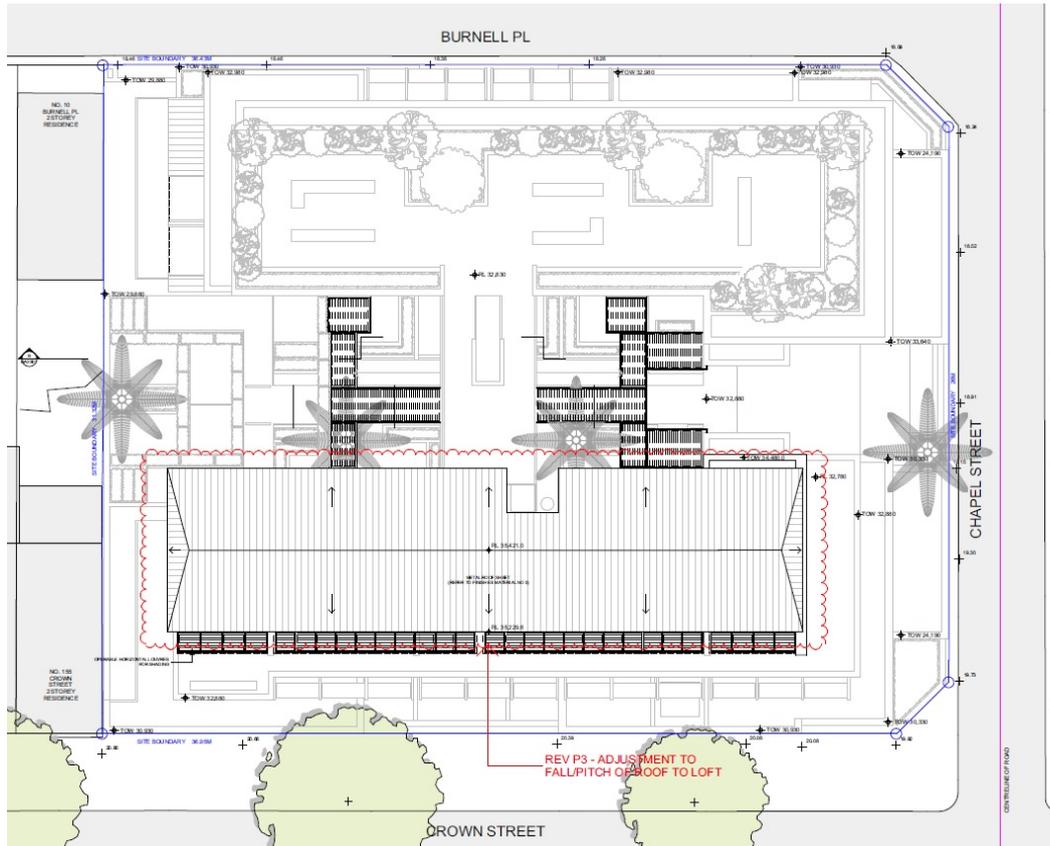


Figure 19: Roof Plan

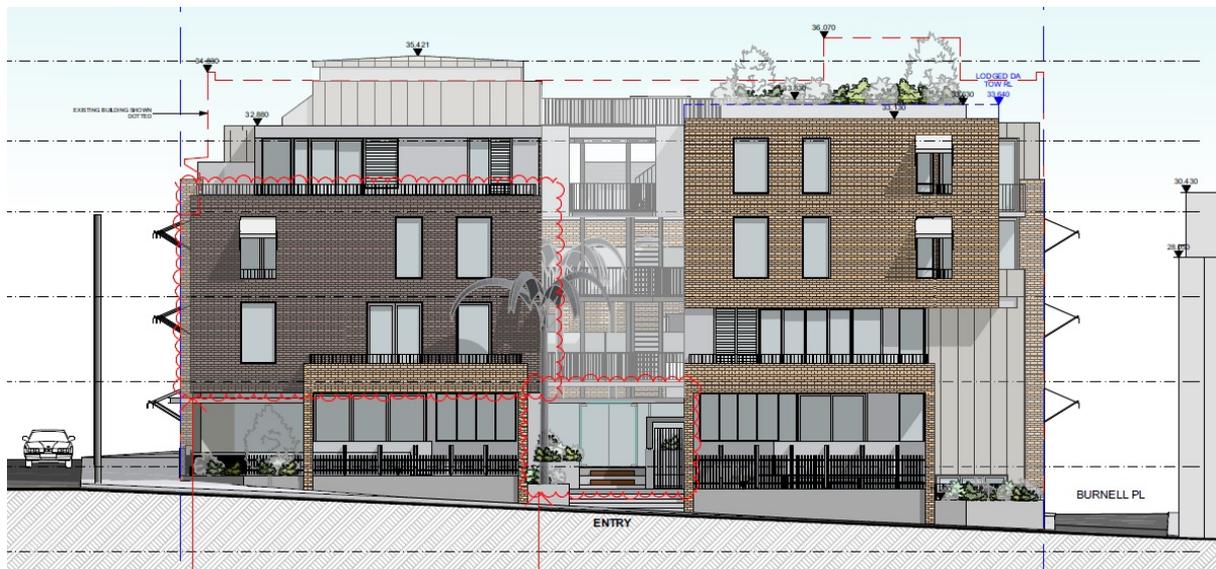


Figure 20: North Elevation (Chapel Street)

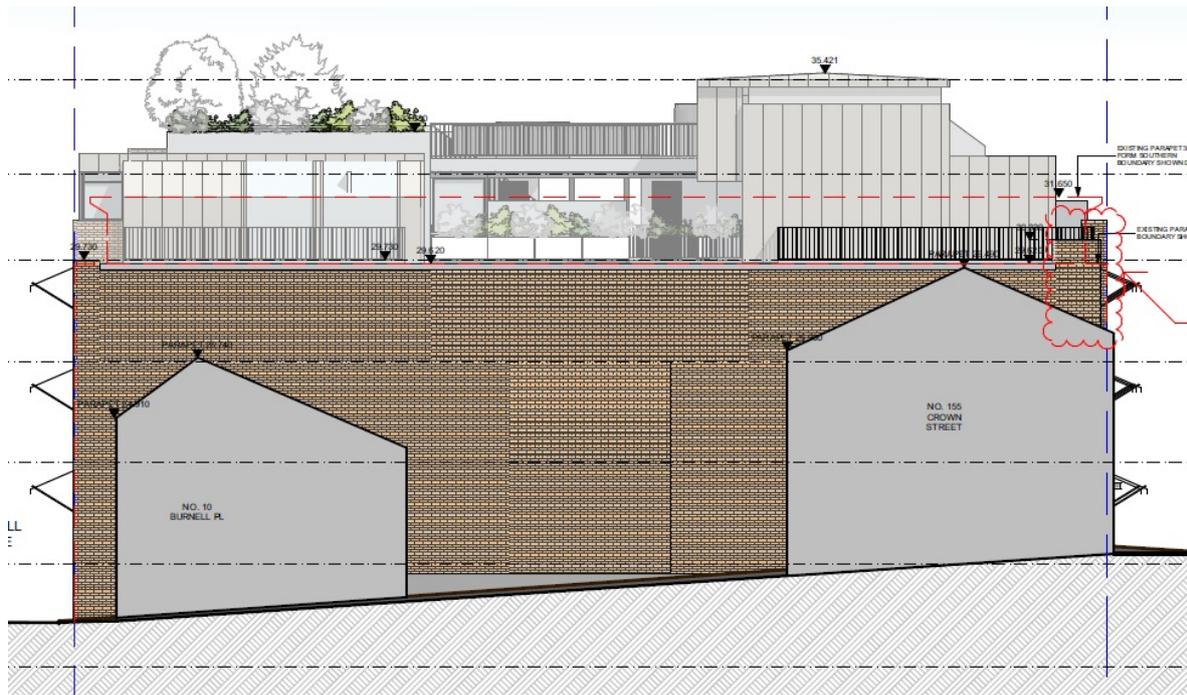


Figure 21: South Elevation (adjoining properties)



Figure 22: East Elevation (Crown Street)



Figure 23: West Elevation (Burnell Place)

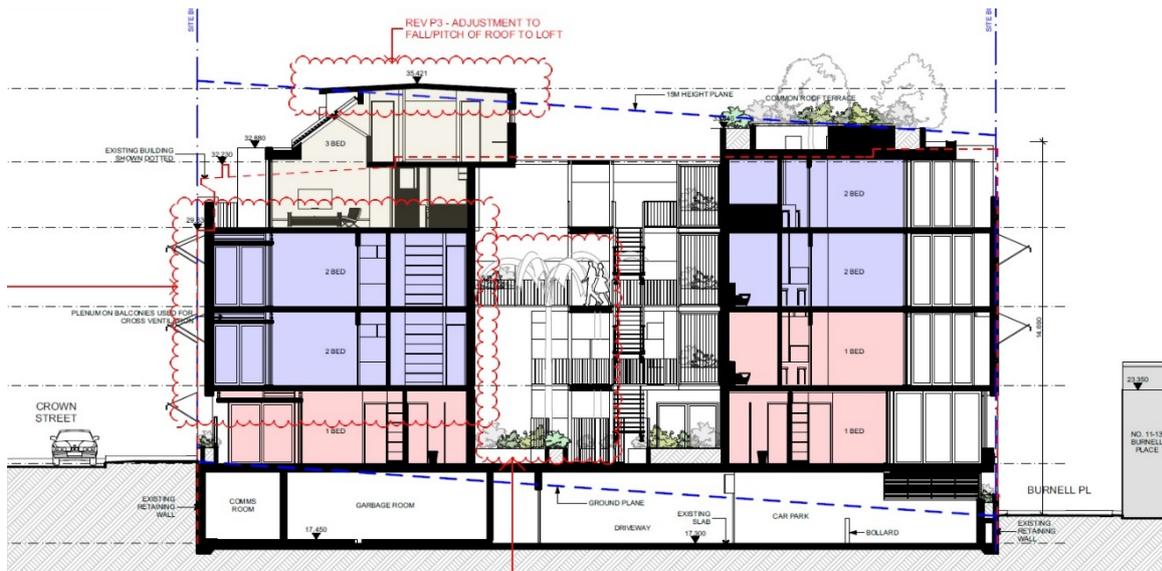


Figure 24: Section A (east-west)



Figure 25: Section B (north-south)



Figure 26: Northern perspective (Chapel Street)



Figure 27: Southern perspective (adjoining properties)



Figure 28: Eastern perspective (Crown Street)



Figure 29: Western perspective (Burnell Place)

History Relevant to the Development Application

18. Council Officers advised the Applicant in March 2017 that several amendments and further information was required. The amendments requested were as follows:
 - (a) remove additional bulk and scale above the existing height of the southern wall to the property
 - (b) provide a 12m building separation between the proposed buildings by widening the gap between the buildings, removing apartments at the northern end of the development and removing enclosing floor space at the southern end of the development
 - (c) re-orient the western group of apartments in a north-south direction and reduce their depths
 - (d) redesign the north-eastern corner by removing the below ground apartment and its bunkered courtyard
 - (e) remove the north-western semi-underground apartment

- (f) respond to the road traffic noise environment along Crown Street in terms of apartment layouts and natural ventilation
 - (g) de-clutter the internal circulation space to reduce shadowing, privacy impacts, potential noise and odour from internal terraces
 - (h) clarify the landscaping and structures proposed for the rooftop communal terrace, ground floor laneways and internal circulation space
 - (i) provide a compliant waste storage area, compliant car parking spaces and relocate and redesign the bicycle parking area.
 - (j) clarify floor-to-ceiling heights for the attic/loft level (Level 5).
19. On 19 May 2017 the Applicant made the following amendments:
- (a) a minor reduction in the height of the proposed southern wall
 - (b) the north-eastern basement apartment was converted to a home office for the apartment above
 - (c) compliant bin storage area and bike parking was included at the ground floor level
 - (d) further information was prepared regarding the residential amenity of the semi-underground apartment at the north-western corner. The apartment was retained and the Applicant sought to justify this.
20. The building separation remained the same, including the orientation of the apartments in an east-west direction. The proposal also maintained additions to the southern wall of the site and the north-western semi-underground apartment.
21. In June 2017 a second set of amended plans were received that:
- (a) retained the existing height of the southern wall alongside the adjoining terrace houses, with no additional bulk and scale
 - (b) set the southern extent of the development back from the southern boundary
 - (c) widened the separation distance at the southern end of the development at Levels 3 and 4, such that Levels 3 and 4 had a 9.6m separation distance consistent with the middle of the proposal. The northern end of the proposal, however, continued to have floor space joining the eastern and western buildings
 - (d) rationalised staircase landings and apartment terraces to open the lower levels up to a greater extent of natural light from the sky and greater ventilation from the ends
 - (e) introduced studies to two of the ground floor apartments within the circulation space
 - (f) changed the north-western semi-underground apartment from a tight 3-bedroom unit to a larger 2-bedroom unit

- (g) provided qualitative and quantitative comparisons with the Garden House development in relation to natural light levels from the sky, areas of the internal circulation corridors open to the sky and area of ground floor circulation space.
22. On 17 July 2017 a third set of amended plans were received. The amended plans incorporated the following:
- (a) removal of two apartments at Levels 2 and 3 at the northern end to open up the circulation corridor to more sunlight and natural ventilation. However, there was still a bridging structure at Level 4 between the buildings
 - (b) rearrangement of a Level 1 apartment above the proposed vehicular driveway to relocate a bedroom window above the driveway
 - (c) introduction of a ventilation plenum to the apartments facing Crown Street to provide natural ventilation and reduce road traffic noise to an acceptable level
 - (d) clarifications and further documentation regarding the proposed landscaping, overshadowing, building height non-compliance, parking space compliance and bicycle parking design.
23. On 24 October 2017 a fourth set of amended plans were received. The amended plans incorporated the following:
- (a) the north-eastern basement apartment was converted to a music practice room and common room for residents
 - (b) floor space was removed from two apartments at Level 4 to complete the opening between the buildings at the northern end of the development
 - (c) the lift and services within the internal circulation space were brought into the footprint of the eastern building, de-cluttering the internal circulation space
 - (d) a general revision to the Crown Street facade and Chapel Street facade to introduce vertical windows and vertical balcony openings and a greater extent of masonry finishes by removal of a glass facade along Crown Street
 - (e) re-orientation of apartments in the eastern building in the centre of Levels 2 and 3 due to the relocation of the lift core and services, resulting in one less apartment per floor. This also had the effect of de-cluttering the internal circulation space through less walkways and landings.
 - (f) information regarding the operation of fresh air intakes (plenums) on the Crown Street frontage regarding their design and efficacy.
24. On 27 November 2017 the application was reported to the Planning and Development Committee (Major Development Sub-Committee). The recommendation of the Officer's Report was for approval of the application based on the amended plans lodged in October 2017.
25. On 27 November 2017, the Planning and Development and Committee (Major Development Sub-Committee) deferred consideration of the application to the Council meeting on 11 December 2017.

26. On 11 December 2017, the following Resolution of Council was made:
- (A) Council express concern about this development proposal and defer consideration of Development Application No. D/2017/17 to enable the applicant to submit amended plans to address the following issues:
 - (i) the apartment at the corner of Chapel Street and Burnell Place (Apartment 0.01) is to be converted to a home office for the apartment above (Apartment 1.05) through the use of an internal staircase and re-planning the layout of the lower level to an office;
 - (ii) a glazed doorway is to be incorporated at the secondary Chapel Street entry to help manage acoustics from the operation of the restaurants along Stanley Street;
 - (iii) the loft level is to be deleted and the apartments below are to be re-planned to comply with the Apartment Design Guide;
 - (iv) the external envelope and materials of the development are to be amended as follows:
 - (a) the northern and southern top corners of the Crown Street elevation are to incorporate a darker brick finish;
 - (b) the central recessed portion of the Crown Street elevation is to have a darker brick tone;
 - (c) the ground level façade along the Crown Street elevation is to have a horizontal banding with a darker brick tone to create a 'plinth' to the building;
 - (d) the Crown Street elevation is to have a greater vertical rhythm by adding six full height recesses in the brick façade corresponding with the six window bays along the frontage; and
 - (e) the south-east top corner along the Crown Street elevation is to match the parapet height at the north-east corner by reduction in the parapet height; and
 - (B) the amended Development Application be reported back to a future meeting for determination.
27. On 27 March 2018 amended plans were lodged in response to the above Resolution of Council. The plans address all but one of the issues in the Resolution. In this regard, the amendments generally improve the materials and finishes of the proposal, making the streetscape presence appear more vertical as desired in the Council resolution, removed the semi-belowground apartment at the north-west corner and included a glazed entry at the Chapel Street frontage.

28. However, the amended plans do not remove the loft level from the development as requested in the Council Resolution. The Applicant submits that, notwithstanding the Resolution of Council, Council Officers had supported the loft component of the development as described in the Officers Assessment report to the Planning and Development Committee on 27 November 2017. The Applicant also states that they believe the loft level is justified and appropriate in the context of the site and locality. The applicant has asked that the Resolution of Council not prejudice the merit assessment of the application going forward.
29. Council Officers do not support the proposed loft level as it is not accordance with the previous recommendation of Council. Accordingly a condition is recommended to delete the mezzanine level.

Economic/Social/Environmental Impacts

30. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy No 55—Remediation of Land

31. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
32. The proposed development seeks to maintain the existing basement level including the basement concrete slab. As such, there is no excavation within the proposal and no cause for contaminated land issues.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

33. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:
 - (a) **Principle 1:** Context and Neighbourhood Character
 - (b) **Principle 2:** Built Form and Scale
 - (c) **Principle 3:** Density
 - (d) **Principle 4:** Sustainability
 - (e) **Principle 5:** Landscape
 - (f) **Principle 6:** Amenity
 - (g) **Principle 7:** Safety
 - (h) **Principle 8:** Housing Diversity and Social Interaction
 - (i) **Principle 9:** Aesthetics

34. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

35. The following detailed assessment is provided under the Apartment Design Guide:

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	Complies

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	No, but acceptable	Refer to the Issues section.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Yes	An area of 25% (307m ²) of the site area is provided.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	The communal open space is located on the roof where it will receive compliant solar access.

3E Deep Soil Zones	Compliance	Comment															
<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="204 389 644 1037"> <thead> <tr> <th data-bbox="209 396 368 539">Site area</th> <th data-bbox="373 396 555 539">Minimum Dimensions</th> <th data-bbox="560 396 639 539">% of site area</th> </tr> </thead> <tbody> <tr> <td data-bbox="209 546 368 622"><650m²</td> <td data-bbox="373 546 555 622">-</td> <td data-bbox="560 546 639 622"></td> </tr> <tr> <td data-bbox="209 629 368 741">650m² – 1,500m²</td> <td data-bbox="373 629 555 741">3m</td> <td data-bbox="560 629 639 741"></td> </tr> <tr> <td data-bbox="209 748 368 824">>1,500m²</td> <td data-bbox="373 748 555 824">6m</td> <td data-bbox="560 748 639 824">7%</td> </tr> <tr> <td data-bbox="209 831 368 1030">>1,500m² with significant existing tree cover</td> <td data-bbox="373 831 555 1030">6m</td> <td data-bbox="560 831 639 1030"></td> </tr> </tbody> </table>	Site area	Minimum Dimensions	% of site area	<650m ²	-		650m ² – 1,500m ²	3m		>1,500m ²	6m	7%	>1,500m ² with significant existing tree cover	6m		No, but acceptable	The existing building on the site has total site coverage. The ADG provides a concession to compliance with deep soil provision in circumstances where no deep soil area already exists and a building is to be retained, in this case the basement level and former building footprint is being retained.
Site area	Minimum Dimensions	% of site area															
<650m ²	-																
650m ² – 1,500m ²	3m																
>1,500m ²	6m	7%															
>1,500m ² with significant existing tree cover	6m																

Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum separation distances from buildings to the side and rear boundaries are outlined below.

Note: Gallery circulation is treated as habitable space.

3F Visual Privacy	Compliance	Comment
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	No	Refer to the Issues section.

3F Visual Privacy	Compliance	Comment
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	No, but acceptable	Bathrooms and kitchens generally front the circulation space. Living rooms and bedrooms are generally positioned away from the circulation space. The exception is on Levels 2 and 3 in the eastern building which have been re-planned as a result of the lift core and services relocated. The bedrooms are physically separated from the circulation walkways by wide voids and have high level windows for privacy.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	85% of the units receive compliant solar access.
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	5% of the apartments receive no direct sunlight.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	Complies. Along Crown Street natural ventilation is achieved by plenums from the balcony openings to allow natural ventilation while ensuring compliance with acoustic standards relating to road traffic noise.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No, but acceptable	The road traffic noise along Crown Street prevents genuine natural cross ventilation being achieved. Rather, natural ventilation is achieved via acoustically treated plenums above the balcony spaces.

4B Natural Ventilation	Compliance	Comment
		Refer to the Issues section for discussion on the relationship between the proposed building separation and natural cross ventilation.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Complies

Measured from finished floor level to finished ceiling level, minimum ceiling heights are as follows in the table below.

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Complies
Non-habitable rooms: 2.4m	Yes	Complies
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	No, but acceptable	The proposed loft apartments in the eastern building have ceiling heights ranging from 2.6m to 5.5m. However, the ADG intent for mezzanines is satisfied and ceiling height complies with the BCA.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.	Yes	Complies

4D Apartment Size and Layout	Compliance	Comment
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.		
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	Complies
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	Complies
8m maximum depth for open plan layouts.	Yes	Complies
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² Minimum dimension of any bedroom is 3m (excluding wardrobes).	Yes	Complies
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	Complies
4m minimum width for cross over and cross through apartments.	Yes	Complies

4E Private Open Space and Balconies	Compliance	Comment															
<p>All apartments required to have primary balconies as follows:</p> <table border="1" data-bbox="209 427 663 913"> <thead> <tr> <th data-bbox="209 427 371 544">Dwelling Type:</th> <th data-bbox="376 427 517 544">Min. Area</th> <th data-bbox="521 427 663 544">Min. Depth</th> </tr> </thead> <tbody> <tr> <td data-bbox="209 551 371 624">Studio</td> <td data-bbox="376 551 517 624">4m²</td> <td data-bbox="521 551 663 624">-</td> </tr> <tr> <td data-bbox="209 631 371 705">One bed</td> <td data-bbox="376 631 517 705">8m²</td> <td data-bbox="521 631 663 705">2m</td> </tr> <tr> <td data-bbox="209 712 371 786">Two bed</td> <td data-bbox="376 712 517 786">10m²</td> <td data-bbox="521 712 663 786">2m</td> </tr> <tr> <td data-bbox="209 792 371 909">Three+ bed</td> <td data-bbox="376 792 517 909">12m²</td> <td data-bbox="521 792 663 909">2.4m</td> </tr> </tbody> </table> <p>The minimum depth counting to balcony area is 1m</p>	Dwelling Type:	Min. Area	Min. Depth	Studio	4m ²	-	One bed	8m ²	2m	Two bed	10m ²	2m	Three+ bed	12m ²	2.4m	Yes	Complies
Dwelling Type:	Min. Area	Min. Depth															
Studio	4m ²	-															
One bed	8m ²	2m															
Two bed	10m ²	2m															
Three+ bed	12m ²	2.4m															
<p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m² and a minimum depth of 3m.</p>	No, but acceptable	Two apartments at the ground floor have terraces smaller than required because studies were added to areas which were formerly courtyards. The two apartments have both courtyard space and balcony space and therefore a high level of amenity.															

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	No, but acceptable	Between 6 and 9 apartments are accessed from the one core. Level 1 (ground floor) has 9 apartments, which is a minor and acceptable variation.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	Complies
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Complies. The circulation corridors in the proposal are non-standard and allow for daylight and natural ventilation from the sky and each end.

4G Storage	Compliance	Comment
Minimum storage provision facilities: <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ (Minimum 50% storage area located within unit)	Yes	Complies

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings	Yes	Refer to the Issues section in relation to discussion on the building separation proposed and its impacts on noise.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

36. A BASIX Certificate has been submitted with the development application.
37. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. A condition is recommended ensuring the measures detailed in the BASIX certificate are implemented.

Sydney LEP 2012

38. The site is located within the R1 General Residential Zone. The proposed use is defined as a residential flat building and is permissible.
39. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 15m is permitted. A height of 15.9m is proposed. Refer to the Issues section.
4.4 Floor Space Ratio	Yes	A maximum FSR of 2.5:1 is permitted. A FSR of 2.32:1 is proposed.
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the development standard prescribed under Clause 4.3 – Height of Buildings. The variation is supported in this instance. See discussion in the Issues section.
5.10 Heritage conservation	Yes	The site is located within a heritage conservation area. See discussion in the Issues section.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	The proposed development satisfies the requirements of this provision. Subject to the recommended conditions, the proposal will have a high standard of architectural design that is befitting of the locality.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	A maximum of 20 car parking spaces are permitted. 18 car parking spaces are proposed.
7.15 Flood planning	Yes	The site is identified as being flood prone. However, flood planning levels have been incorporated.

Sydney DCP 2012

40. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below

2. Locality Statements – East Sydney

The subject site is located in the East Sydney Locality. The proposed is considered to be in keeping with the unique character of the area and design principles in that it the proposal, included with the recommended conditions, will maintain the heritage streetscape character and has an acceptable impact on the Victorian heritage character of the area. As per the principles of the locality, the proposal is an infill building that reflects the desired density, street alignment and use.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	Yes	The proposal will have an acceptable interface with the surrounding footpaths and laneways. The proposed development will make a positive contribution to the public domain through a greater degree of pedestrian activation to Chapel Street, removal of a driveway to Burnell Place and greater passive surveillance of the locality compared to the existing office use.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	<p>The proposed development does not have any impacts on sun access to publicly accessible spaces or public views.</p> <p>The development addresses the street interfaces.</p> <p>The apartments adjacent to the footpaths do not have individual entries from the street because the footways are subject to flooding.</p>
3.3 Design Excellence and Competitive Design Processes	N/A	The proposed development is not required to be the subject of a design competition.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	<p>The site is identified as being on flood prone land.</p> <p>The proposed development includes rainwater tanks satisfying the requirements of BASIX.</p>
3.9 Heritage	Yes	The site is within a Heritage Conservation Area. The existing building is identified as detracting from the significance of the Conservation Area. The proposed development has an acceptable impact on the streetscape and heritage qualities of the locality.
3.11 Transport and Parking	Yes	<p>Less than the maximum car parking space have been provided. In this regard, 18 spaces are proposed where 19 is the maximum standard.</p> <p>More than the required amount of bike parking spaces are provided.</p>

3. General Provisions	Compliance	Comment
3.12 Accessible Design	Yes	A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.
3.14 Waste	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>A height in storeys control of four storeys applies.</p> <p>A height of five storeys is proposed.</p> <p>Refer to the Issues section.</p>
4.2.2 Building setbacks	No, but acceptable	<p>A three storey street frontage height control applies.</p> <p>A street frontage height of four storeys is proposed. This is the equivalent height of the existing three storey office building.</p>
4.2.3 Amenity	Yes	<p>Compliant solar access is provided to the proposed apartments.</p> <p>The overshadowing of the development on adjoining properties is compliant.</p> <p>The internal circulation space has access to light and ventilation.</p> <p>Landscaping is appropriate to each proposed space.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		<p>Deep soil area is not provided. However, this is due to the retention of the existing basement.</p> <p>Common open space meets the requirements for area and design matters.</p> <p>Adequate acoustic and visual privacy is provided in the development.</p> <p>A compliant unit mix is proposed. 1-bedroom apartments comprise 26%, 2-bedrooms comprise 64% and 3-bedrooms comprise 10%. There are no studio apartments due to the deletion of studio apartments during the assessment of the application to open up the circulation corridor.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	<p>The architectural approach to the Crown Street frontage is to break up the massing of the building into two elements at each end with a central recessed section. This reduces the appearance of bulk and scale. The proposal has acceptable materials, colours and finishes in the heritage streetscape along Crown Street.</p>
4.2.5 Types of development	Yes	<p>The proposal is on a busy road where the noise environment requires mitigation. In this case, air plenums have been incorporated to Crown Street to provide ventilation and reduce noise to a compliant level.</p> <p>Residential uses at the ground floor have floor heights above the streets due to flooding impacts. Adequate privacy and surveillance is provided. Whilst the apartments do not have individual entrances to the street, the design is nevertheless satisfactory.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.6 Waste minimisation	Yes	A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.
4.2.7 Heating and Cooling Infrastructure	Yes	Plant is consolidated to the basement level as required.
4.2.8 Letterboxes	Yes	The mailbox structure is at the entry to the building in a secure location.

Issues

Building Height

41. The proposal has a minor non-compliance with the Sydney LEP 2012 in relation to maximum height in metres and a non-compliance with the Sydney DCP in relation to the desired number of storeys control.
42. The existing building on the site is already non-compliant with the LEP height and higher than a four storey residential building in terms of the DCP control. Figure 31 below is a perspective image of the existing building showing the portions of the building which exceed the LEP height standard.

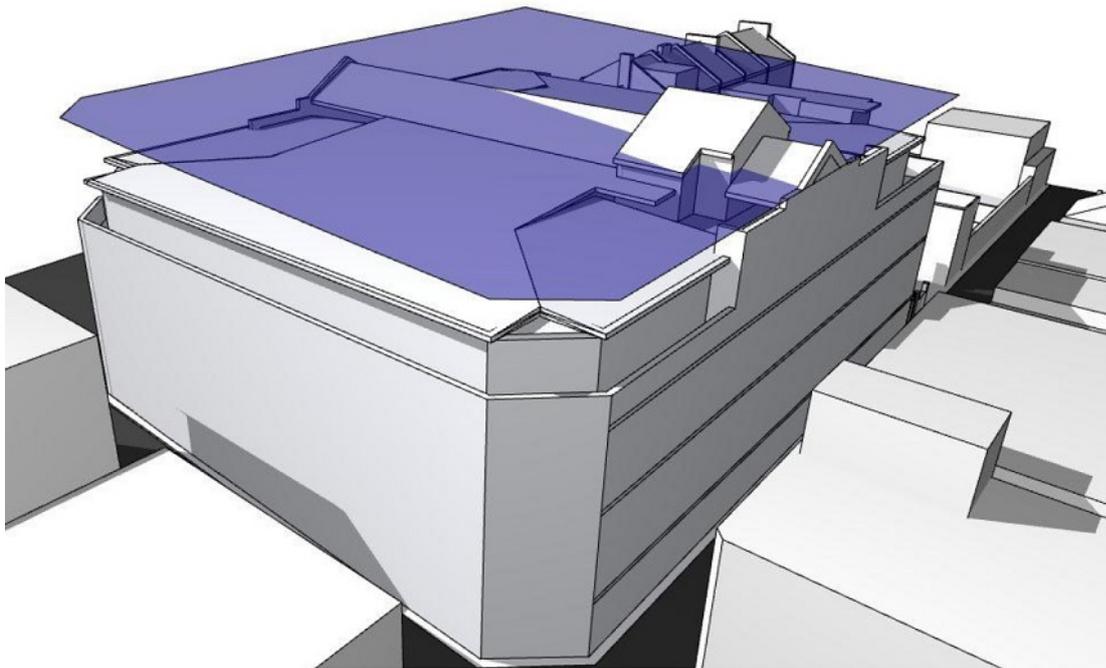


Figure 31: Perspective of existing building showing LEP height non-compliance

43. The proposed development does not comply with the height standard in relation to a portion of the roof of loft apartments at Level 5 towards Crown Street and the top of a planter box at the rooftop terrace toward Burnell Place. Refer to Figure 32 below showing the 15m height limit in red line.

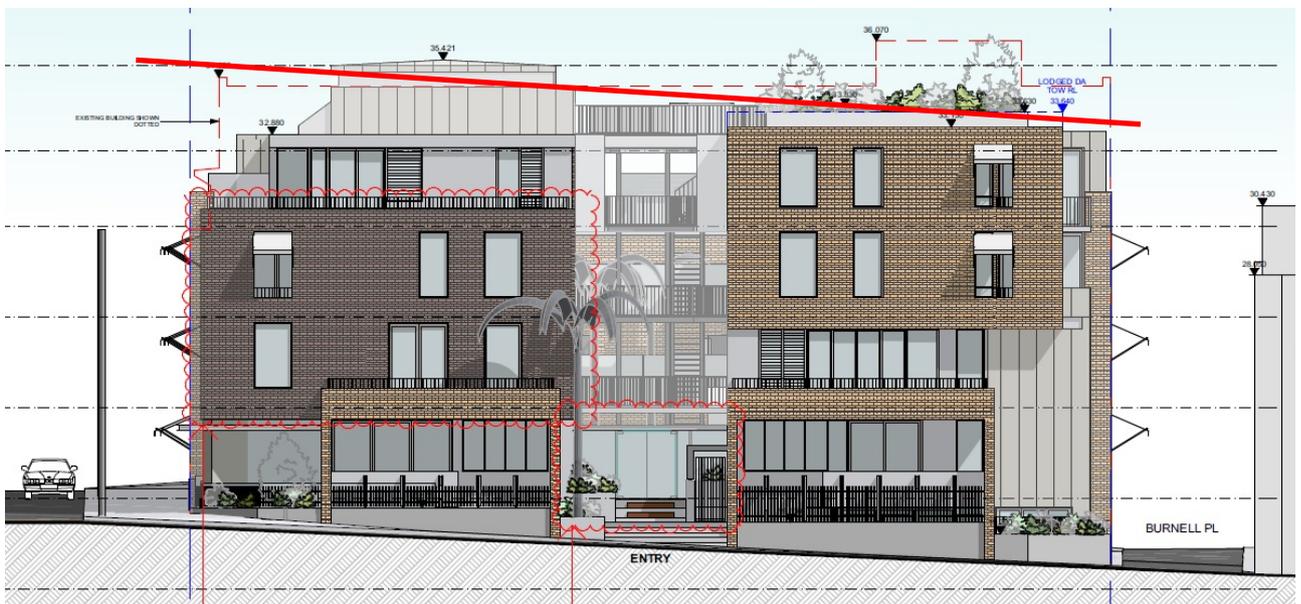


Figure 32: Northern elevation of proposal with 15m LEP height limit shown

44. The Applicant has lodged a written request under Clause 4.6 of the LEP seeking to justify the contravention of the height standard.

45. The Applicant contends the following when stating their case that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard:
- (a) the non-compliance is minor and arises from the provision of a rooftop communal open space area containing balustrade walls and a mezzanine level to the uppermost apartments behind the Crown Street facade
 - (b) the development presents as a four storey structure from the street and will sit comfortably as a transition to the adjoining development within the conservation area
 - (c) the natural ground levels create a fall in the site from east to west where the majority of the proposal is within the height standard and the walls to the rooftop open space slightly protrude above
 - (d) the non-complying elements will not be readily visible from the adjoining properties or surrounding public domain. The planter box non-compliance is inboard of the external edges of the building and will not be visible. The loft level of the uppermost apartments towards Crown Street are set back from the building edge.
 - (e) there are no unreasonable impacts arising in relation to overshadowing, views, visual privacy and acoustic privacy from the proposed non-compliance
 - (f) the existing building protrudes further above the height standard than the proposed development. Council Officers note that this is in relation to outright height rather than footprint.
 - (g) strict compliance with the standard would be an inflexible approach to the control
 - (h) there are sufficient environmental planning grounds to vary the standard as the proposed development is the result of a considered analysis of the locality, site, urban environment and heritage context.
46. Council Officers have considered the Applicant's Clause 4.6 submissions and are satisfied that the request has adequately addressed the matters required and that the proposal is in the public interest because it is consistent with the objectives of the zone and the height development standard.
47. In regards to the objectives of the height standard, the proposal, including the non-complying elements, is considered appropriate to the site and context, provides for a transition to surrounding buildings and does not interrupt any public or private views.
48. Compliance with the development standard is unreasonable and unnecessary in the circumstances and there is sufficient planning grounds as demonstrated in the Applicant's written justification. The non-compliance in this instance is not considered to compromise the objectives of the zone, undermine the height objectives or set an undesirable precedent. The height is appropriate in the context and ensures an appropriate transition within the conservation area.

Building Separation

49. The proposal has a building separation non-compliance against the Apartment Design Guide (ADG). The ADG desires a 12m building separation between the eastern and western buildings in this instance. However, a separation of 5.5m is proposed at the southern end on Levels 1 and 2, the northern end at Levels 1 to 3 and the separation is otherwise 9.6m throughout the proposal. Refer to Figures 32 and 33 below.

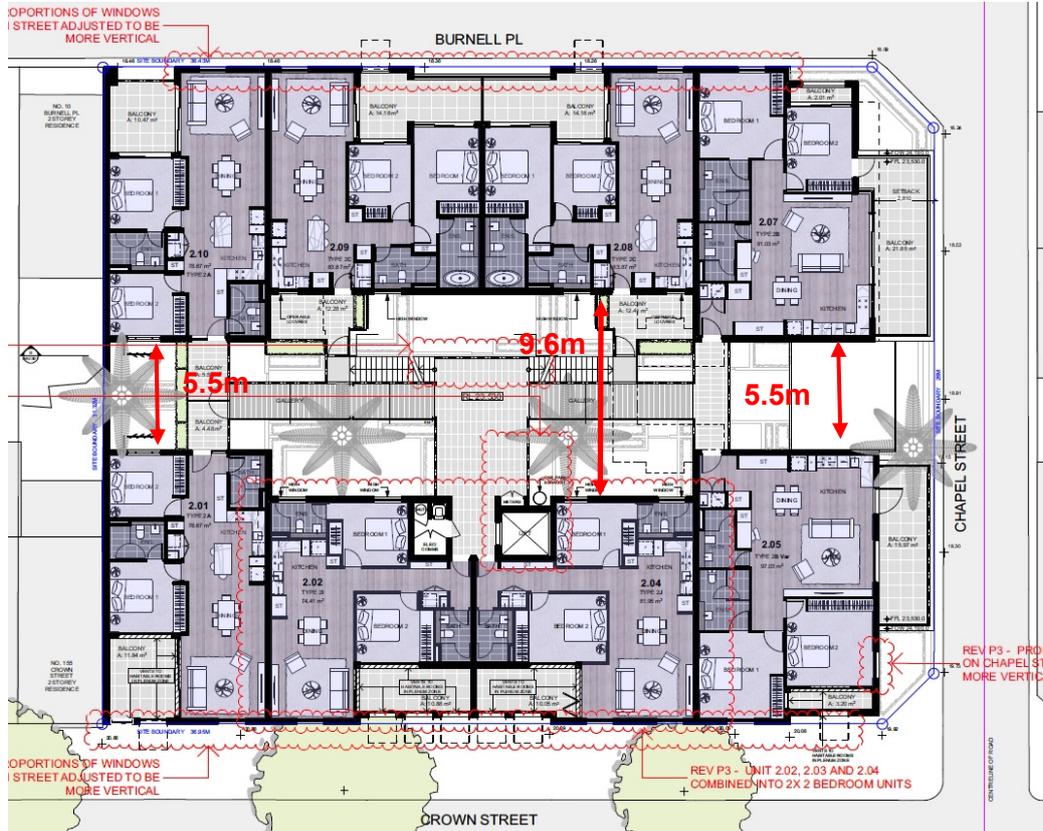


Figure 33: Proposed building separation at Levels 1 and 2

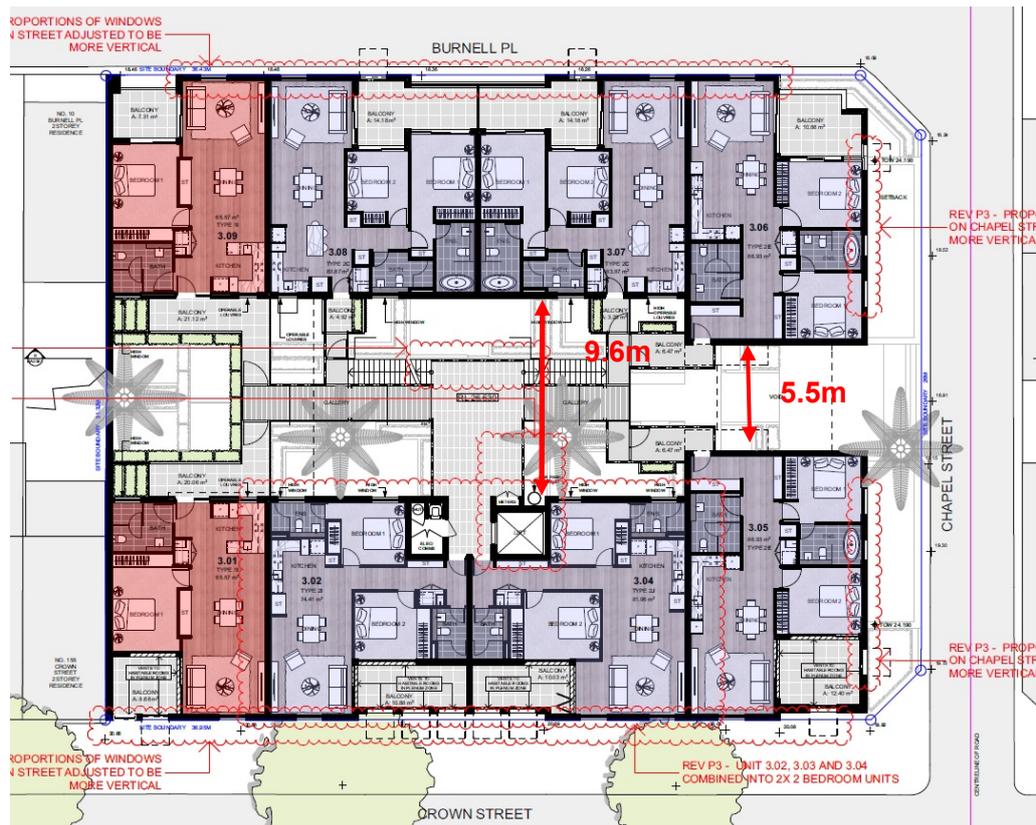


Figure 34: Proposed building separation at Levels 3 and 4

50. On balance, the proposal has merit and is supported by Council Officers. There are three key matters to consider regarding the acceptability of the proposed separation distance:
- (a) visual privacy
 - (b) acoustic privacy
 - (c) natural ventilation / natural cross ventilation
51. In relation to visual privacy, the windows facing toward the circulation corridors are generally bathrooms or kitchens rather than living rooms or bedrooms. The exception is at Level 2 where there are bedroom of opposing sides facing each other across a void. However, the bedroom windows have screening between them. As such, visual privacy is managed. The separation distance of 5.5m at the southern end of the development is considered acceptable and the separation distance of 9.6m is considered acceptable on visual privacy grounds.
52. In relation to acoustic privacy, the Applicant has obtained acoustic engineering advice that the difference between a 9.6m non-compliant separation and a compliant 12m separation is 1-2 decibels of sound which is imperceptible. Also, the same features that create visual privacy also serve to create acoustic privacy, in that living rooms and bedrooms are away from the noise source.

53. In relation to natural ventilation, the Applicant commissioned a wind engineering consultancy to measure the difference between a compliant 12m proposal and their 9.6m proposal. The conclusions of the wind engineer were that a 9.6m separation performs to an equivalent level as a 12m separation. The consultants ran 3D modelling of a compliant proposal compared to the proposed layout and provided season-by-season ventilation outputs for typical apartments at the base, middle and top of the proposal.
54. Taking into consideration all the design factors incorporated by the proposal, the proposed separation distance is considered acceptable on visual privacy, acoustic privacy and natural ventilation grounds. The amendments made to the proposal since lodgement, which include opening the northern and southern ends of the proposal, moving the lift core and services from the internal space, rationalising staircases and landings and incorporating softening landscaping, have been beneficial and are supported.
55. The recommended conditions include the requirement to delete solid walls shown between courtyards at the ground floor and replace them with 1.8m high fences to reduce the amount of solid structure within the separation distance.

Heritage

56. The site is located within a Conservation Area and is therefore subject to the heritage provisions of this DCP. The proposal generally complies with the relevant aims, objectives and controls of the DCP. The proposal will have an acceptable impact on the conservation area.

Access

57. It is recommended that disabled access be provided in accordance with the provisions of the DCP. An appropriate condition is recommended.

Other Impacts of the Development

58. The proposed development is capable of complying with the BCA.
59. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

60. The proposal is of a nature in keeping with the overall function of the site. The premises are in a commercial/residential surrounding and amongst similar uses to that proposed.

Internal Referrals

Design Advisory Panel

61. The proposal was reviewed by the Design Advisory Panel whose advice is itemised in the table below, together with a response. The comments below reflect that the Design Advisory Panel reviewed the application prior to it being amended. As such, this table identifies the ways in which the application has been modified in response.

<p>The building typology is misplaced and not appropriate for the site. The courtyard is too small (for privacy/noise) and common circulation should occur on the edges of the courtyard (i.e. internal balconies around the edge).</p>	<p>The Panel compared the development, as originally lodged, with courtyard style development in Europe and primarily in Paris, Madrid and the like. Some Panel members were in support of the building typology.</p> <p>Since the lodgement of the application, the amendments have opened up the internal circulation substantially and modified the layout such that issues around privacy, noise and circulation are considered to be addressed.</p>
<p>Ground floor apartment internal courtyards are problematic for overall building amenity (for privacy, noise and ventilation).</p>	<p>The ground floor courtyards are in addition to balconies for the relevant apartments and, as such, are over and above normal compliance with private open space requirements.</p> <p>The courtyards have fences and landscaping for privacy.</p> <p>The Applicant's Acoustic Consultants advise that the form of the development provides for acceptable noise outcomes.</p>
<p>The panel supports the City's suggestion to reconfigure apartment layouts and reduce yield to achieve a larger courtyard and improve amenity.</p>	<p>Since the original lodgement of the application, the apartment yield has been reduced from 38 units to 31 and the internal courtyard has been significantly "decluttered". Privacy and noise between units has been addressed and the proposal is considered acceptable.</p>
<p>The proposal for partial and fully underground residential live/ work spaces at the basement level is not satisfactory. The site is located in a residential zone where retail is not permitted. The corner treatment which attempts to imitate active use needs to be redesigned.</p>	<p>The north-eastern fully underground apartment has been deleted and replaced with a music practice room and meeting rooms for residents.</p> <p>The north-western semi-underground apartment has been deleted and replaced with an office use connected to the apartment above.</p>

<p>The southern wall must not create any additional adverse impacts on adjoining properties and its interface to the south. Impacts need to be investigated. The wall is architecturally overbearing in the current proposal.</p>	<p>The current height of the existing southern wall is to be maintained, with no additions proposed.</p>
<p>Additional sun-shading is required for the windows on the northern facade.</p>	<p>Additional sun shades have been added to openings.</p>
<p>The development address to the street is uniform on all three frontages. There is no attempt to respond contextually to each different street environment.</p>	<p>The treatment of the facades to the three street frontages has been reviewed and revised. The facades relate to the different street environments.</p> <p>Crown Street originally had a large format glazed section similar to the existing office building. That facade has been amended to be all brick with a vertical 'punctuated' face of windows and balconies in keeping with the rhythm of the terraces nearby.</p> <p>The Chapel Street facade terraces back from the street frontage in a manner which is sympathetic to the adjoining Stanley Street properties and the primary focus of this facade is solar access to private open space. The development is also read as two building forms since the removal of enclosing floor space as originally lodged.</p> <p>The Burnell Place facade reflects the character of the adjacent warehouse building in window and brick form and the built form steps down toward the interface with the low rise terraces adjoining. There is a distinct separation of form at the centre of the development to shift the scale from north to south.</p>
<p>The panel supports the City's proposal for reduction in bulk and increased set-backs.</p>	<p>The apartment yield has been reduced and the gross floor area of the development has been reduced to an acceptable level during the assessment of the application.</p>

Council Officers

62. The conditions of other sections of Council have been included in the proposed conditions.
63. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Safe City; Surveyors; Transport and Access; and Waste Management; who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

Notification, Advertising and Delegation

64. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 16 January 2017 and 7 February 2017. As a result of this notification there were eight submissions received. The grounds of submission are summarised below together with a response from Council Officers.
65. Subsequent amendments to the application since the original notification have not been renotified as the proposal has reduced impacts compared to the exhibited scheme. This is consistent with the notification provisions of the Sydney DCP 2012.

Bulk and Scale

- (a) The proposal is not compliant with the LEP height limit, DCP storeys limit and DCP floor-to-ceiling heights. The proposal is bulky compared to the terraces to the south. The proposal is an overdevelopment of the site which requires reduces bulk and scale.

Response – Non-compliances with the LEP and DCP are addressed in this report and the proposal is found to be acceptable. It is generally compliant with the height limits and is compliant with the floor space ratio control. The bulk and scale of the proposal is generally what is anticipated within the planning instruments and policies.

Heritage Impacts

- (b) The proposal will detract from the conservation area. The proposal is out of scale with the adjoining terraces.

Response – The proposal largely complies with the building height and floor space controls for the site and replaces the existing detracting building with a development that fits comfortably with the streetscapes and context.

Materials and finishes

- (c) The industrial character of the proposal is out of scale and form with the locality. The proposed materials are confused. The proposed materials are a mix of modern and heritage aspects. The proposal does not respond to the rhythm of the streetscape as there is limited vertical proportions.

Response – The proposal is tied to the heritage streetscape through masonry materials and the vertical proportions of window and balcony openings.

Construction Impacts

- (d) It is not clear that the existing basement being retained is structurally adequate. There is a natural watercourse under the site which results in soft soils.

Response – Structural engineers have given advice that the existing basement is capable of being strengthened to support the additional load of the proposal.

Access and Transport

- (e) There is limited car parking in the design. The basement design should allow for removalists and service vehicles. Access to the building should be limited to Crown Street.

Response – The proposal has less than the maximum car parking provision as is desirable to support active transport and public transport in the locality. The surrounding streets have loading zones for servicing of the site, which will be removalists or delivery vehicles generally as there is no commercial premises within the development. The proposal has two resident access points; one off Crown Street and one from Chapel Street. This arrangement is acceptable as it makes use of the natural Chapel Street desire line created by the space between the two buildings and creates greater pedestrian surveillance to Chapel Street.

Residential Amenity

- (f) The proposed basement apartments have poor amenity. The development will overlook adjoining and adjacent dwellings and private open spaces. The proposal is close to restaurant uses which have odours, waste areas and truck servicing. The rooftop terrace and new balconies will create noise.

Response – The north-eastern basement apartment was converted to a music practice room and common room and the north-western apartment was converted to a home office during the assessment of the DA.

Had non-residential uses been permissible in the zone, the Applicant and Council would have pursued the north-eastern and north-western corners for retail premises, business premises or other more active uses.

The proposal will not have any adverse overlooking or overshadowing impacts to adjoining or adjacent properties.

Residential flat buildings are permissible in the zone with consent and carry with them the need to provide private open space and communal open space which is functional and usable. A reasonable level of noise, of a typical residential environment, is expected from private open space and communal open space.

Support

- (g) The proposal will support local businesses, adds vibrancy to the area and replaces the existing awful building.

Response – Noted. The proposal is permissible in the zone with consent and in accordance with the zone objectives, especially to provide for a variety of housing types and densities with a scenario where the existing office building is not in keeping with the desired future character of the locality.

Public Interest

66. It is considered that the proposal is in the public interest, subject to appropriate conditions being proposed.

Financial implications**Section 94 contribution**

67. The development is subject of a S94 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

68. The following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$346,348.91
(b) Community Facilities	\$169,543.66
(c) Traffic and Transport	\$10,856.56
(d) Stormwater Drainage	\$0
Total	\$526,749.13

Relevant Legislation

69. The Environmental Planning and Assessment Act 1979.

Conclusion

70. The proposed development is for the demolition of the existing structures except for the basement level and the construction of a part four and part five residential flat building containing 31 apartments.
71. The layout of the proposal is non-conventional in that the two buildings are arranged around a central staircase and landing structure and the buildings are closer together than anticipated in the Apartment Design Guide. This assessment has closely looked at the privacy, noise and ventilation impacts of the proposed approach. The proposal is considered to have acceptable residential amenity.
72. The proposal generally complies with the Sydney LEP 2012 and Sydney DCP 2012. Non-compliance with the LEP height limit and DCP height in storeys control is acceptable in this instance for the reasons outlined in this report.
73. This assessment concludes that the proposal has merit and is supported.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Russell Hand, Senior Planner