

Item 6.**Development Application: 56-62 Bettington Street & 44-48 Merriman Street, Millers Point**

File No.: D/2017/1399

Summary

Date of Submission: 12 October 2017

Applicant: Mr S Guy

Architect: Studio Dot

Developer: WSD Properties Pty Ltd

Owner: WSD Properties Pty Ltd

Cost of Works: \$1,331,000

Proposal Summary: Demolition of a two storey building on the corner of Bettington Street and Rodens Lane (known as No. 62 Bettington Street) and construction a part three, part four storey residential flat building containing six apartments. The proposal also includes construction of a lift, stairs and works to an existing area of communal open space within the western adjoining site (No's 56-60 Bettington Street) which both properties will have the benefit of using.

In addition to these works, the proposal involves strata subdivision of the new residential flat building along with the western adjoining apartments at No's 56-60 Bettington Street and No's 44 - 48 Merriman Street. These existing apartments were the subject of a separate development consent (D/2017/1250) to convert them from affordable accommodation provided by Housing NSW to privately owned residential apartments.

The application is referred to the Local Planning Panel for determination as State Environmental Planning Policy No.65 applies to the development.

The proposal will have a Floor Space Ratio (FSR) of 1.57:1 which complies with the maximum FSR control of 2:1. The proposed topmost floor exceeds the height of the existing building to be demolished, however, it complies with the maximum building height control of nine metres.

Proposal Summary:
(continued)

The site is a State listed Heritage item and as such the proposal is Integrated Development under the provisions of the Heritage Act 1977. It should be noted that the two storey building on the corner of Bettington Street and Rodens Lane (No. 62 Bettington Street) to be demolished and replaced with a part three, part four storey residential flat building is a 1989 infill and non-significant part of the site.

As such, the NSW Heritage Council has raised no objection to the proposal, subject to design modifications to retain the existing front roof and chimneys at No. 56-60 Bettington Street and contain the new residential flat building within the existing building footprint. General Terms of Approval have been issued by the NSW Heritage Office for the proposal with design modifications required to be submitted with a Section 60 Application.

The new six unit residential flat building is generally compliant with the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings, with the exception of numerical compliance with building separation distances with existing properties to the west and north, and the size of communal open space and amount of solar access during the winter solstice. These non-compliances are largely derived from the need to retain the State listed heritage items and on balance found to be acceptable from a merit perspective.

The application was exhibited for a period of 30 days. Eight (8) submissions were received raising the following concerns:

- Excessive bulk and scale
- Unsympathetic articulation and building bulk will adversely affect the significance of the heritage conservation area
- Acoustic and visual privacy impacts on adjacent properties
- Loss of sunlight to adjacent properties
- Excavation for a basement is out of character with the heritage conservation area and will set an undesirable precedent
- Impact on servicing of adjacent sites

The concerns raised are addressed within the body of the report.

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

- Development Controls:**
- (i) Heritage Act 1977
 - (ii) State Environmental Planning Policy No. 55 - Remediation of Land
 - (iii) State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings
 - (iv) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
 - (v) State Environmental Planning Policy (BASIX) 2004
 - (vi) State Environmental Planning Policy (Affordable Rental Housing) 2009
 - (vii) Sydney Local Environmental Plan 2012
 - (viii) Sydney Development Control Plan 2012

- Attachments:**
- A. Recommended Conditions of Consent
 - B. Selected Drawings
 - C. Photomontages

Recommendation

It is resolved that:

- (A) Demolition of the existing two storey terrace building at 62 Bettington Street satisfies the provisions in Clause 5.10 of the Sydney Local Environmental Plan 2012 and is supported in this instance; and
- (B) Consent be granted to Development Application No. D/2017/1399 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The reasons for the recommendation are as follows:

- (A) The subject building is a 1989 infill building of low heritage significance and is not listed as a heritage item under the State Heritage Register. The demolition of the subject building will not have any adverse impacts on the significance of adjoining heritage items or the conservation area and is also supported by the NSW Heritage Council.
- (B) The proposed development generally satisfies the matters for consideration under State Environmental Planning Policy (Affordable Rental Housing) 2009 and will not have an adverse impact on the loss of low rental accommodation in the locality as NSW Housing will provide appropriate housing to meet existing and future demands.
- (C) The proposed development is consistent with the provisions of the Apartment Design Guide (ADG) and achieves satisfactory internal amenity for residents in relation to solar access, cross ventilation, private open space and privacy, having regard to heritage constraints outlined in the report submitted to the Local Planning Panel.
- (D) The proposed development is contained within the existing building envelope and is consistent with floor space ratio and building height provisions under the Sydney Local Environmental Plan 2012;
- (E) The proposed development comprises a part 3 and part 4 storey form that is consistent with the scale of adjoining heritage items and will not have any adverse impacts on the significance of the heritage items, streetscape or conservation area.
- (F) The proposed development is a residential use that is consistent with the predominant character of the area and will not have any additional amenity impacts on adjacent properties subject to imposition of conditions as recommended in Attachment A relating to privacy treatments to private open space and waste management.

Background

The Site and Surrounding Development

1. A site visit was carried out by Council staff on 24 October 2017 and 10 April 2018.
2. The site is irregular in shape, with an area of approximately 531.5m² and comprises No's 44-48 Merriman Street and No's 56-62 Bettington Street (also known as Lot 119 in DP 1222643). The site has a primary street frontage to Merriman Street and secondary frontages to Bettington Street to the south and Rodens Lane to the east.
3. A group of three x two storey terrace style buildings are contained within the site. The site currently comprises 12 x one bedroom apartments. There is a central communal courtyard that provides access to Rodens Lane.
4. The site is a heritage item under the State Heritage Register and a local heritage item under Sydney LEP 2012 and is known as the 'Parle's Terrace'. The site is also located within the Millers Point Conservation Area (C35).
5. The terraces located at No. 44-48 Merriman Street and No. 56-60 Bettington Street are identified as items of heritage significance. No. 62 Bettington Street is located at the intersection of Bettington Street and Rodens Lane and is not identified as a building with heritage significance.
6. Surrounding land uses are a mix of residential and commercial. The properties immediately to the north, north-east and east of the site are residential terraces. The Palisade Hotel is located to the south of the site at No's 35-37 Bettington Street. To the west of the site between Merriman Street and the harbour is Stargazer Lawn, Barangaroo.
7. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from intersection of Bettington Street and Rodens Lane (building subject to demolition outlined in red)



Figure 3: Western elevation of No's 44-48 Merriman Street terraces looking south (to be retained)



Figure 4: Looking south along Rodens Lane (Palisade Hotel in background)



Figure 5: Existing access to site from Rodens Lane, looking west

Proposal

8. The application seeks consent for demolition of the existing two storey building at the south-eastern corner of the site (also known as No. 62 Bettington Street) and the construction of a part three, part four storey residential flat building comprising six apartments. The proposal includes excavation to provide a lower ground level consisting of two apartments and improved access and communal areas via Rodens Lane.
9. The proposal also includes construction of a lift, stairs and works to existing communal open space within the western adjoining site (No's 56-60 Bettington Street) which both properties will have the benefit of using.
10. The proposal also includes the removal of one Cocas Palm tree located at the centre of the site and Strata subdivision of the site into 14 lots. Details of the proposed works include:

(a) Lower Ground Floor

- (i) 1 x studio apartment with private courtyard
- (ii) 1 x 1 bedroom apartment with private courtyard
- (iii) Garbage bin storage / plant area in communal area
- (iv) New lift and foyer area and stairs from/to apartments on upper floors
- (v) New ramp and landscape works in communal area

(b) Ground Floor

- (i) 1 x studio apartment
- (ii) 1 x 1 bedroom apartment
- (iii) Landscape works

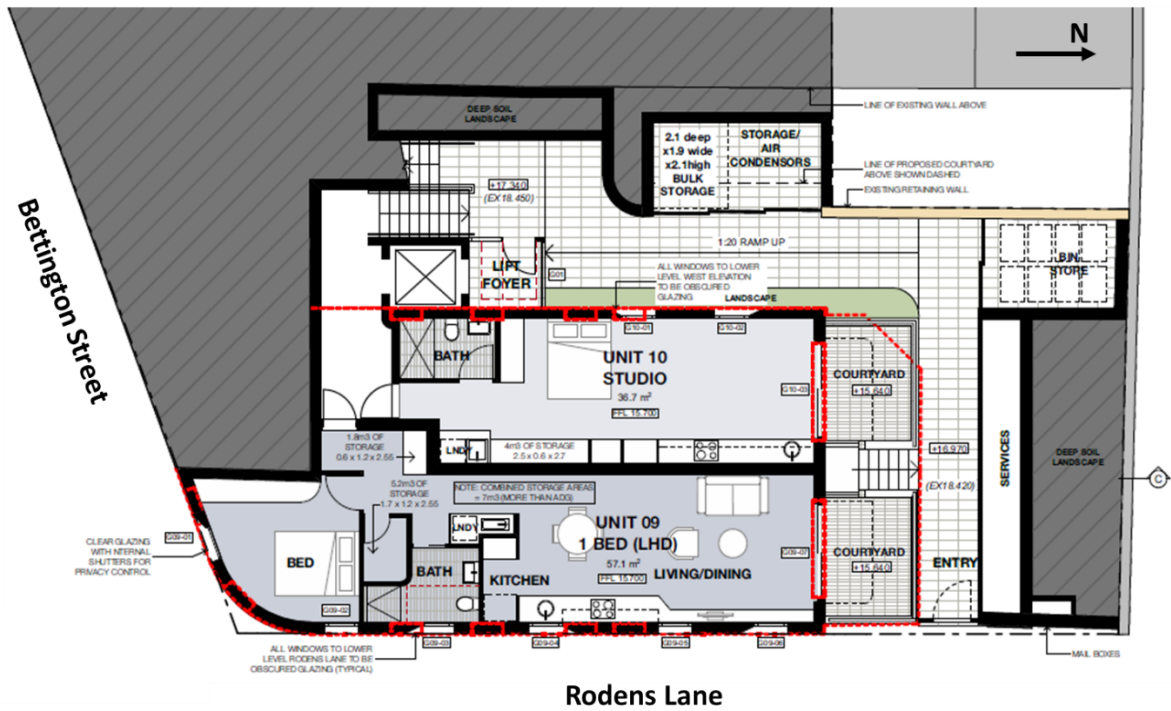
(c) First Floor

- (i) 2 x 2 bedroom apartments including 1 two storey apartment

(d) Second Floor

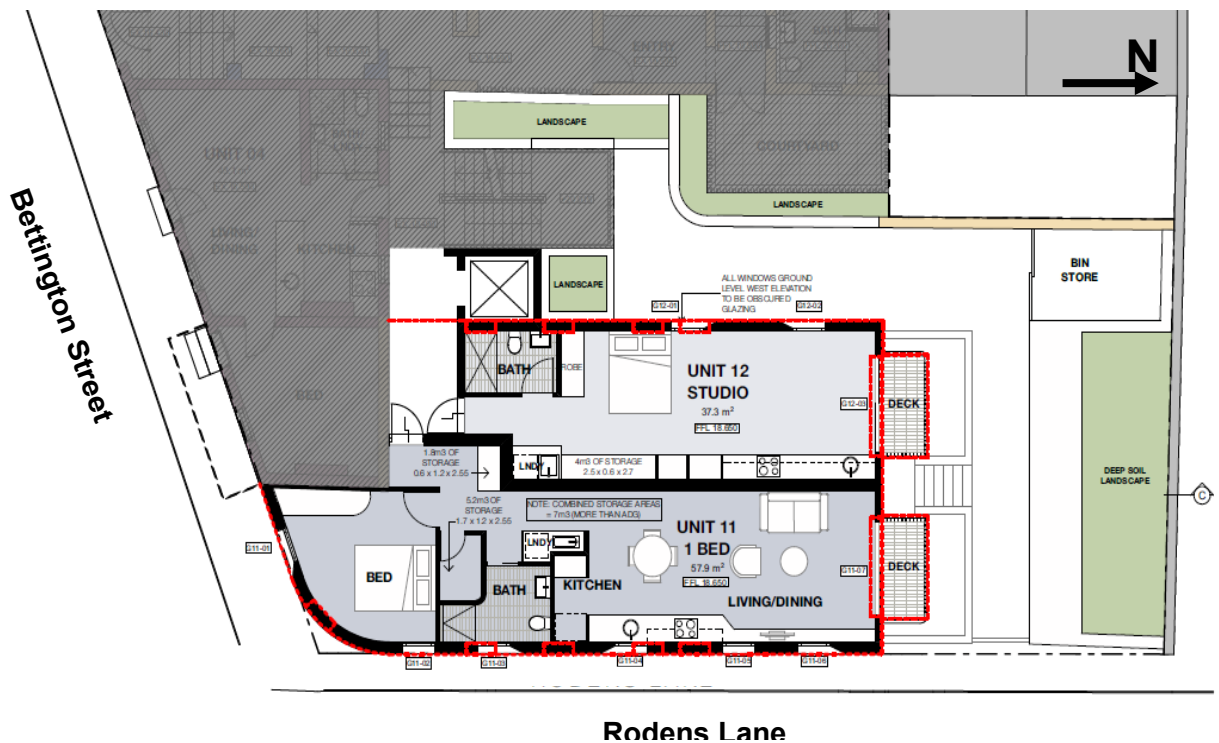
- (i) Upper level of 2 bedroom apartment (Unit No. 14)
- (ii) Landscaping adjacent to private open space

11. Plans of the proposed development are provided below.



Rodens Lane

Figure 6: Lower ground floor plan



Rodens Lane

Figure 7: Ground floor plan

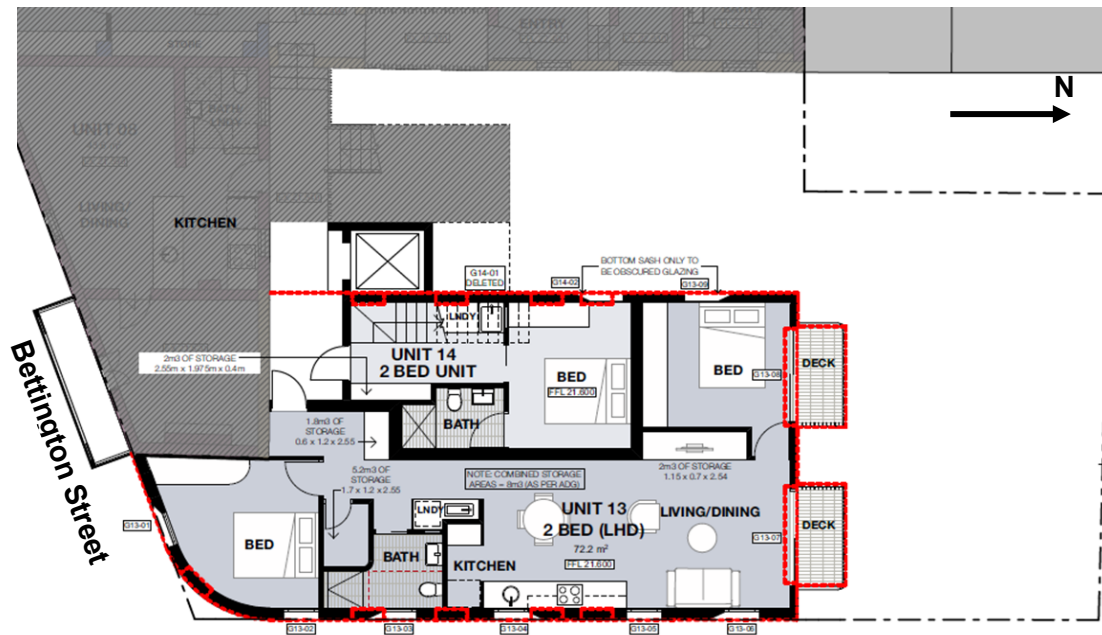


Figure 8: First floor plan

Rodens Lane

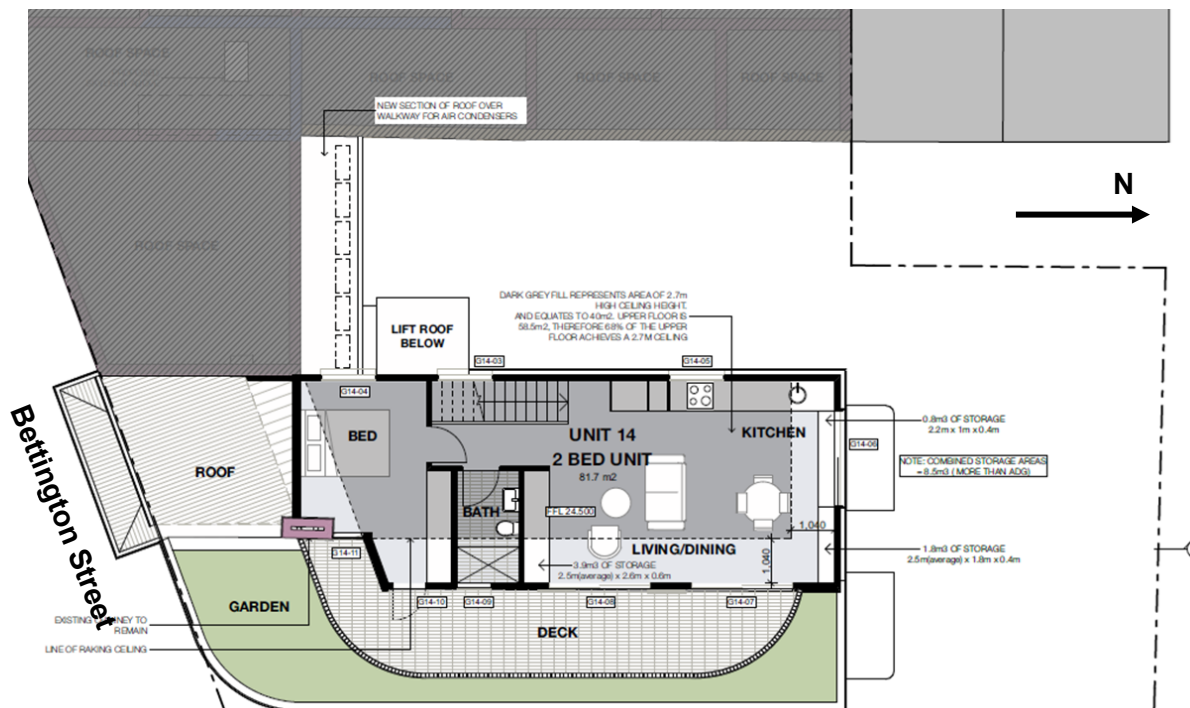


Figure 9: Second floor plan

Rodens Lane



Figure 10: Southern (Bettington Street) elevation



Figure 11: Eastern (Rodens Lane) elevation

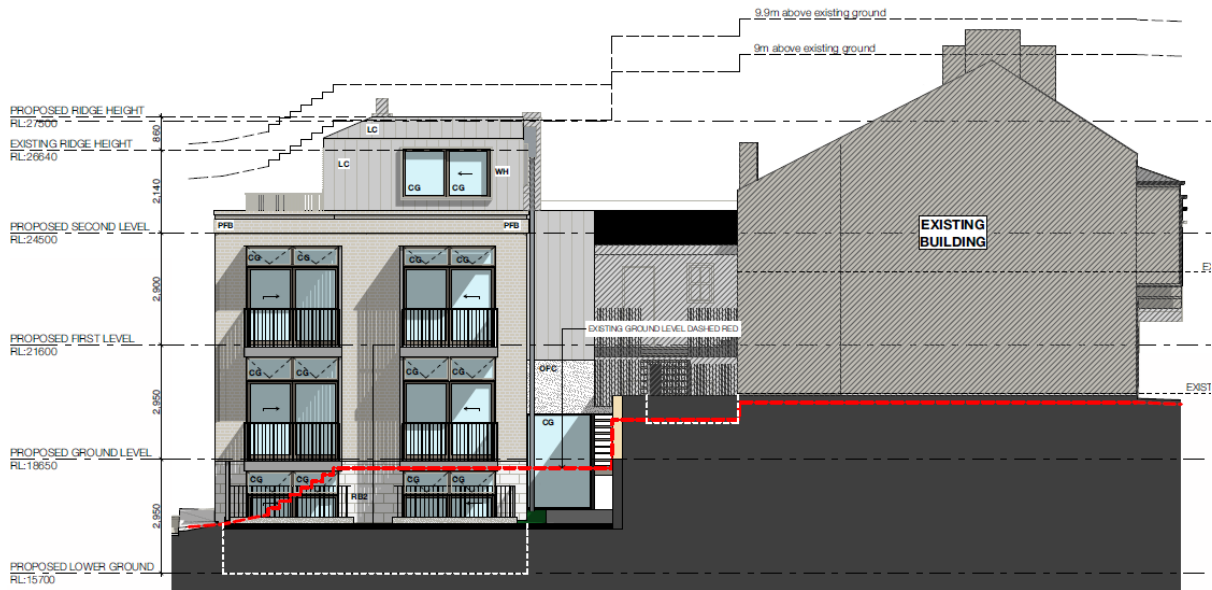


Figure 12: Northern elevation



Figure 13: Western elevation



Figure 14: Photomontage viewed from intersection of Bettington Street and Rodens Lane



Figure 15: Photomontage of eastern elevation (Rodens Lane)

History Relevant to the Development Application

12. Development Application (DA) D/2017/1250 was approved on 28 February 2018 for alterations and additions to eight existing apartments (at No. 44-48 Merriman Street and No. 56-60 Bettington Street). The proposal included change of use of the apartments from low cost rental housing to private residential apartments. The DA also granted consent for Strata subdivision of the apartments into eight lots.

Economic/Social/Environmental Impacts

13. 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.

Heritage Act 1977

14. The subject site comprises a 'wrap-around' row of terraces with a curved facade fronting Merriman Street and Bettington Street. No. 44-48 Merriman Street and No. 56-60 Bettington Street terraces are heritage items on the State Heritage Register (SHR Item No. 00903 and No. 00922, respectively). The whole site including No. 62 Bettington Street is known as the 'Parle's Terrace'. The site is located within the Millers Point and Dawes Point Village Precinct (SHR Item No. 01682).
15. The site contains a group of Georgian style terrace houses fronting Merriman Street and a Victorian terrace at No. 56-60 Bettington Street. No. 62 Bettington Street was constructed in 1989 to match the curved facade and architectural details of the heritage items on the site.
16. A Conservation Management Plan (CMP) for the site was prepared by AECOM dated October 2016 and endorsed by the NSW Heritage Council on 15 October 2016.
17. The CMP identified the architectural significance of the terraces at No. 44-48 Merriman Street and No. 56-60 Bettington Street. The terraces contribute to the streetscape, the village character of the area and the scale of development in the area. No. 62 Bettington Street is identified as a building with little significance.
18. The proposal is Integrated Development and requires approval under the Heritage Act 1977. The development application was referred to the NSW Heritage Office on 12 October 2017 in accordance with Clause 66 of the Environmental Planning and Assessment Regulation 2000.
19. The NSW Heritage Council requested additional information from the applicant on 31 October 2017 regarding excavation of the premises. On 2 November 2017, details of the excavation was submitted to the NSW Heritage Office for consideration.
20. On 9 March 2018, General Terms of Approval (GTA) were provided by the NSW Heritage Council. The NSW Heritage Office raised no objection to the proposal subject to design modifications and submission of further information with a Section 60 application. In particular, the NSW Heritage Council did not support the removal of the existing chimney at No. 56-60 Bettington Street, removal of the existing roof at No. 58-60 Bettington Street and construction of a new building that extends beyond the existing building footprint and envelope of the balconies at No. 62 Bettington Street.
21. The NSW Heritage Council also requested the submission of a detailed external materials and finishes schedule with a Section 60 application.

22. Council officers support the issues raised by the NSW Heritage Council and discussed the recommendations with the applicant. Subsequently, the applicant amended the proposal to address the issues raised by the NSW Heritage Council. Specifically, the amended proposal retains both existing chimneys at No. 56-60 Bettington Street and reconfigured the upper level apartment to enable a reduced new roof form that minimises visual impact when viewed from the public domain. The northern elevation has been amended to reduce the footprint of the balconies on the ground and first floors to match the dimensions of existing balconies. The amended proposal is considered consistent with the recommendations in the GTA provided by the NSW Heritage Council and is considered acceptable.

State Environmental Planning Policy No 55—Remediation of Land

23. 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.
24. A Statement of Environmental Effects was submitted with the development application stating that the previous use of the site was for social housing. The City's Health Unit is satisfied that no uses listed in Table 1 of the Contaminated Land Planning Guidelines have been carried out on the subject site and the proposal raises no elevated risk of contamination and subject to conditions, the site can be made suitable for the proposed use.

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

25. 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
26. The development is considered generally acceptable when assessed against the above stated principles and the SEPP generally.

27. A Design Verification Statement, dated 20 September 2017, addressing the nine design quality principles under SEPP 65 was prepared by Studio Dot Architecture & Interiors and registered architect Steele Olney. The Design Verification Statement satisfies the provision under Clause 50(1A) of Environmental Planning and Assessment Regulations 2000.
28. The following addresses the proposal's compliance with the relevant sections of the Apartment Design Guide (used in conjunction with SEPP 65):

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	Lower ground floor - 15.1m Ground floor - 15.22m First floor - 15.1m Second floor - 12.7m

2F Building Separation	Compliance	Comment
Up to four storeys (approximately 12 metres): <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	Partial compliance	The building separation between the new building and the existing apartments to the west fronting Merriman Street is 5.45m. The new windows are adjacent to bathroom windows of two apartments with primary frontages to Merriman Street. This non-compliance is addressed further in the Issues section of the report.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	Partial compliance	<p>The communal area is located at ground level with access via Bettington Street and Rodens Lane. The total area measures approximately 27.72m² (approximately 5.2% of the site area). Landscaping will be provided in planters adjacent to communal pathways.</p> <p>This non-compliance is addressed further in the issues section of the report.</p>
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).	Partial compliance	<p>The communal space within the central area of the site, comprises of access paths and landscaping, receives partial sunlight between 10am and 1pm on 21 June. Due to the overshadowing cast by adjoining heritage terraces and the subject building envelope, direct sunlight to a minimum 50% of communal open space for 2 hours cannot be achieved. Direct sunlight to 27.7m² (39%) of the communal open space is achieved between 11.00am and 1.00pm. Between 12.00 noon and 2.00pm, the landscaped planter (8.1m²) on the western side of the communal open space receives direct sunlight.</p> <p>This issue is addressed further in the Issues section of the report.</p>

3E Deep Soil Zones	Compliance	Comment
<p>Deep soil zones are to have a minimum area equivalent to 7% of the site.</p>	<p>Partial compliance</p>	<p>A deep soil zone of approximately 3% (16.32m²) of the site area is provided adjacent to the northern boundary of the site. As the site is less than 650m², there are no requirements of minimum dimensions for deep soil zones.</p> <p>Having regard to the constraints of the site, the retention of the existing deep soil planting area is considered suitable.</p>

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

3F Visual Privacy	Compliance	Comment
<p>Up to four storeys (12 metres):</p> <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	<p>Partial compliance</p>	<p>The north facing balconies on the ground level and first floor are setback 6.4m from the northern boundary. The solid 6m high boundary wall to the north adequately maintains privacy between future occupants and adjoining properties.</p> <p>The balconies and courtyards are in close proximity and highly visible from the Rodens Lane. Visual privacy would be enhanced with additional privacy screening and planting.</p> <p>The north facing kitchen window on the second floor level is setback 8m from the northern boundary. The setback complies with the minimum separation between habitable room and private open space.</p>

3F Visual Privacy	Compliance	Comment
		<p>The western windows on the ground floor are separated from the courtyard and window of the existing apartment to the west by approximately 3.4m and 5.8m, respectively, and does not achieve 6m separation distance. However, the proposed privacy treatment to the window glazing will maintain adequate privacy for residents.</p> <p>The western windows on the first floor are separated from the habitable rooms of the adjacent apartments by 6m and complies with the separation distance.</p> <p>The eastern windows fronting Rodens Lane are approximately 6m from the adjacent properties boundaries. Existing window openings of dwellings immediately to the east are setback greater than 6m and complies with minimum separation requirements.</p>
<p>Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.</p>	<p>Partial compliance</p>	<p>The western windows of the studio apartment on the lower ground floor are adjacent to the proposed access ramp which provides access to the communal lift. The window are secondary in nature and comprise double hung awning windows with sill heights between 200mm to 280mm from the level of the ramp.</p> <p>The amended proposal incorporates obscured glazing to all windows on the western elevation to minimise loss of privacy and overlooking for future occupants and is acceptable.</p>
4A Solar and Daylight Access	Compliance	Comment
<p>70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.</p>	<p>Yes</p>	<p>Five apartments (83.33%) receive more than 2 hours of direct sunlight to living rooms and private open space.</p>

4A Solar and Daylight Access	Compliance	Comment
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	All apartments receive direct sunlight between 9am and 3pm at midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	All rooms have access to natural ventilation.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	All apartments are naturally cross ventilated.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Cross through apartments have a depth of 15m.

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	Partial compliance	<p>All floors achieve a floor to ceiling height of 2.7m for habitable rooms, except for the first floor which has a floor to ceiling height of 2.55m.</p> <p>The proposed floor to ceiling height enables the horizontal proportions of the development to respond appropriately to the proportions of immediately adjoining heritage items and maintain consistency within the streetscape. Having regard to the heritage constraints for the site, the floor to ceiling height on the first floor is acceptable. The proposal will not have any adverse internal amenity impacts on future occupants as the corner apartment has window openings to three elevations, a north facing balcony and direct solar access between 9am and 3pm at midwinter.</p>

4C Ceiling Heights	Compliance	Comment
		A two storey, 2 bedroom apartment occupies part of the first floor and topmost floor. The principal living space of the apartment is located on the second floor with 68% of the area achieving a floor to ceiling height of 2.7m. The apartment achieves the minimum floor to ceiling height across the two levels.
Non-habitable rooms: 2.4m	Yes	Non habitable rooms have floor to ceiling heights of greater than 2.4m.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes	<p>All proposed apartment sizes exceed the minimum sizes prescribed under Part 4D, as follows:</p> <ul style="list-style-type: none"> • Studio: 36.7m² - 37.3m² • 1 bed: 57.1m² - 57.9m² • 2 bed: 72.2m² - 81.7m²
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	Habitable rooms all have windows to an external wall with appropriate dimensions.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	All habitable rooms have depths no greater than 6.25m.

4D Apartment Size and Layout	Compliance	Comment
8m maximum depth for open plan layouts.	Partial compliance	Three apartments have open plan living spaces greater than 8m in depth. However, the habitable rooms have a width of 3.6m with multiple window openings. The amenity of the apartments are acceptable.
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	Master bedrooms have minimum areas of 10m ² . Other bedrooms have areas of 9m ² or greater. All bedrooms have dimensions 3m or greater.
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	Living room width in studio or 1 bedroom apartments are 3.6m. Living room width in 2 bedroom apartments are 4.5m.
4m minimum width for cross over and cross through apartments.	Yes	Cross over apartment has a width of 4.5m.

4E Private Open Space and Balconies	Compliance	Comment
Studio apartments are to have a minimum balcony area of 4m ² with a minimum depth of 1m. One bed apartments are to have a minimum balcony area of 8m ² with a minimum depth of 2m. Two bed apartments are to have a minimum balcony area of 10m ² with a minimum depth of 2m.	Partial compliance	The private open space provided to each apartment, except for Unit 14, does not achieve the minimum dimension or areas suggested under the ADG due to heritage constraints requiring the proposed building and balconies to be contained within the existing building envelope.

4E Private Open Space and Balconies	Compliance	Comment
Three bed apartments are to have a minimum balcony area of 12m ² with a minimum depth of 2.4m.		The private open space provided to the apartment on the topmost floor is approximately 22.57m ² and has a minimum depth of 2m. The private open space satisfies the minimum requirement of 10m ² for a 2 bedroom apartment.
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m ² and a minimum depth of 3m.	No	<p>The private open space provided to each apartment does not achieve the minimum dimension or areas required under the ADG due to heritage constraints requiring the proposed building and private open spaces be contained within the existing building envelope.</p> <p>The lower ground floor apartments have courtyards measuring approximately 6.8m². The minimum depth of the courtyards are 2.2m with a width of 3m.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	Two apartments are provided per floor within the new building. A total of 6 apartments are provided per floor across the whole site (including existing apartments at No. 44-48 Merriman Street and No. 56-60 Bettington Street).
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.	Partial compliance	The window openings of the western apartment on the lower ground floor are immediately adjacent to the access ramp leading to the lift and stair access. The proposal comprises of obscured glazing and a landscaped setback of 500mm to mitigate visual privacy.

4F Common Circulation and Spaces	Compliance	Comment
		<p>The principal living area to the lower ground floor apartments is orientated to the north and opens to a private courtyard. Given the proximity of the courtyard to the common access path and Rodens Lane additional privacy screening and landscape planting to the courtyards will provide occupants with visual and acoustic privacy measures to maintain amenity.</p> <p>The access ramp is a secondary access point to the site and will be used to transfer garbage and recycling bins for collection on Rodens Lane. Additional privacy screening to the courtyards and balconies will provide visual privacy for future occupants.</p>
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	Common circulation spaces have access to natural light and ventilation.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ • 3 bed: 10m³ <p>(Minimum 50% storage area located within unit)</p>	Yes	<p>Each apartment comprises storage facilities as follows:</p> <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 7m³ • 2 bed: 8.5m³ - 9m³

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

29. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.

30. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:
 - (a) protect and improve hydrological, ecological and geomorphologic processes;
 - (b) consider cumulative impacts of development within the catchment;
 - (c) improve water quality of urban runoff and reduce quantity and frequency of urban run-off;
 - (d) protect and rehabilitate riparian corridors and remnant vegetation.
31. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained within the deemed SEPP.
32. The development is consistent with the controls contained within the deemed SEPP.

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

33. The BASIX Certificate has been submitted with the development application.
34. 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.

State Environmental Planning Policy (Affordable Rental Housing) 2009

35. The site has been historically occupied as social housing provided by Housing NSW until the cease of use in 2016 when the site was sold to the private sector. Social housing is identified as low rental residential buildings under the SEPP. The proposal reduces the availability of low cost rental accommodation and the impacts of the reduction is required to be considered under the provisions of the SEPP.
36. Clause 50(2) of the SEPP requires the consideration of the impacts of the proposed reduction in affordable housing as follows:
 - “(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates,
 - (b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,
 - (c) whether the development is likely to cause adverse social and economic effects on the general community,
 - (d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,
 - (e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area,

(f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements,

(g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development,

(h) in the case of a boarding house, the financial viability of the continued use of the boarding house.”

37. The reduction of low cost housing on the site was considered by Housing NSW as part of the sale of the property and other properties within Millers Point. The loss of available low cost housing was offset by Housing NSW by relocating existing tenants in comparable accommodation.
38. The imposition of monetary contributions to address the reduction in affordable housing as a result of the proposal is not warranted in this instance as the supply of affordable housing has been considered and facilitated by Housing NSW.
39. The proposal will not result in any adverse social or economic impacts on the general community as the existing apartments are of poor quality. The construction of new apartments will enhance the supply of residential development in the locality.
40. The relevant matters for consideration under Clause 50(2) of the SEPP for the reduction of low cost rental accommodation are outlined below.

Matters for consideration	Comment
(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates	<p>Yes.</p> <p>The proposal is for private residential apartments and does not seek continuation of use for low cost rental accommodation.</p> <p>The sale of the site by NSW Housing to private ownership ceased the use of low cost rental accommodation on the site. The site has not been occupied since tenants vacated in 2016.</p>
(b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation	<p>No. However, previous tenants have been provided with comparable accommodation by NSW Housing.</p> <p>The proposal provides a mix of apartment types and sizes including 2 x studios, 2 x 1 bedroom and 2 x 2 bedroom apartments.</p>

Matters for consideration	Comment
(c) whether the development is likely to cause adverse social and economic effects on the general community	The proposal will not result in adverse social or economic impacts as the sale of the site to private ownership is consistent with the change occurring in the locality as part of the initiative by NSW Housing to relocate affordable housing to other localities.
(d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation	There are no existing residents on the site. The tenants vacated the site and were re-housed by NSW Housing prior to the sale of the property.
(e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area	The proposal replaces 4 low rental apartments with 6 market rental apartments on the site. The proposal does contribute significantly to the cumulative loss of apartments in the locality.
(f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements	The existing building is structurally sound however, the construction of a new infill building will achieve apartments with improved internal amenity and SEPP 65 compliance. The proposal also includes new access paths and lift for persons with disabilities. The proposal will be able to comply with relevant fire safety requirements.
(g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development	NSW Housing has committed proceeds from the sale of properties in the locality to meet demands on affordable housing in the area.
(h) in the case of a boarding house, the financial viability of the continued use of the boarding house	The existing building was not occupied as a boarding house.

Sydney LEP 2012

41. The site is located within the R1 - General Residential zone. The proposed use is defined as residential and is permissible.
42. 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	Yes	<p>A maximum height of 9m is permitted.</p> <p>A maximum height of 9m is proposed. The street wall height is approximately 7.7m.</p>
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 2:1 is permitted.</p> <p>A FSR of 1.57:1 is proposed.</p>
5.9 Preservation of trees or vegetation	Yes	<p>One Cocas Palm tree is proposed to be removed. The tree is located within the centre of the site and will be replaced with improved communal access for future occupants and visitors.</p> <p>The proposal is acceptable and unlikely to have adverse impacts as landscaping is proposed throughout the site.</p>
5.10 Heritage conservation	Yes	<p>The terraces on the site are heritage items identified under the State Heritage Register and the Sydney LEP. The site is also located in the Millers Point Conservation Area.</p> <p>It is noted that No. 62 Bettington Street is considered to be of no heritage significance as it was constructed in 1989 as an infill building.</p> <p>The amended proposal will not have any detrimental impact on the significance of the heritage items or the conservation area and is supported by the NSW Heritage Office and Council's heritage specialist, subject to conditions.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	The proposed development, as conditioned, satisfactorily demonstrates design excellence as the new building bulk and scale is generally consistent with existing heritage items on the site, will not result in any adverse amenity impacts on surrounding properties and will achieve satisfactory amenity in accordance with the provisions of SEPP 65 and BASIX.

Part 7 Local Provisions - General	Compliance	Comment
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 5 Acid Sulphate Soil. The site is not located within low lying coastal areas where acid sulphate soils form.
7.19 Demolition must not result in long term adverse visual impact	Yes	See discussion under the heading Issues.

Sydney DCP 2012

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

2. Locality Statements – Millers Point

The subject site is located in the Millers Point locality. The proposed demolition and construction of a new 4 storey residential apartment building will not detract from the unique character of the area and is generally in keeping with the design principles such as form and scale. It is noted that the proposal is generally consistent with the existing building. The proposed second floor level is setback from the property boundaries and comprises recessive materials and finishes to minimise visual impact when viewed from the public domain.

The proposed use maintains the residential character of the site and the immediate surrounds. The proposal will not detract from the character of the conservation area.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development involves the removal of one Cocas Palm tree centrally located within the site. Conditions have been imposed requiring the retention and protection of existing trees along the northern boundary. These trees are visible from the public domain and contributes to the local urban ecology.
3.6 Ecologically Sustainable Development & Water / Flood Management	Yes	The proposal satisfies BASIX and environmental requirements, with respect to ESD and water saving initiatives. The site is not identified as flood prone.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Strata subdivision of the 6 apartments and existing 8 apartments at Nos. 44-48 Merriman Street and No. 58-60 Bettington Street are acceptable, subject to conditions.
3.9 Heritage	Yes	The subject building at No. 62 Bettington Street is not identified as a building of high heritage significance. The form of the new building complements the scale of the adjoining terraces within the site.
3.11 Transport and Parking	Yes	The site does not presently contain on-site parking. The proposal does not include provision of any on-site parking.
3.12 Accessible Design	Yes	A new ramp and lift are proposed to provide access for persons with disabilities in accordance with the DCP and the BCA.
3.14 Waste	Yes	A garbage, recycling and bulky waste storage area is incorporated into the communal area adjacent to the new access paths and landscaping.

3. General Provisions	Compliance	Comment
		<p>The provision of additional privacy screening and landscaping to north facing balconies and courtyards will minimise amenity impacts on future occupants during the transfer of bins for collection.</p> <p>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.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.6 Waste minimisation	Yes	A garbage and recycling bin storage room is provided within the common area of the site. A bulky waste storage area is also provided. The proposal generally satisfies waste storage provisions in accordance with the Policy for Waste Minimisation in New Developments 2005.
4.2.7 Heating and Cooling Infrastructure	Yes	Air conditioning units to service the apartments are located on the rear roof slope and accessible from the communal area. The air conditioning units are not visible from the public domain and will not have any visual impacts.
4.2.8 Letterboxes	Yes	Letterboxes are located adjacent to the entrance on Rodens Lane. The design of the letterboxes are capable of complying with relevant Australia Post requirements. A condition has been included in the recommendation to address design details for the letterboxes.

Draft Millers Point Heritage Conservation Area Planning Proposal and DCP

44. On 6 February 2017, the planning proposal and draft DCP for the Millers Point Heritage Conservation Area were exhibited for a period of 28 days.

45. On 30 November 2017, a report was prepared for the Central Sydney Planning Committee to consider recommendations post exhibition. The recommendations to the planning proposal included:
- (a) Delete FSR control for heritage items within the conservation area.
 - (b) Conservation Management Plans are to be considered for proposed additions to existing buildings. Where no CMPs are endorsed, proposed development are to be considered against LEP and DCP heritage controls.
 - (c) Endorsed CMPs that have expired are still to be considered provided that the CMP is relevant having regard to any changes that have occurred to the heritage item.
46. At the time of preparing this assessment report, the planning proposal has not been gazetted and the draft DCP has not come into effect, however draft policies that have been exhibited are required to be considered under Section 4.15 of the Environmental Planning and Assessment Act 1979. Due consideration has been given to the draft planning proposal and DCP as part of the assessment of the subject proposal.
47. The draft planning proposal seeks a maximum building height control for sites within the conservation area to be restricted to the existing building height with no maximum floor space ratio control. The subject proposal does not exceed the height of the existing terraces on the site, does not exceed the maximum building height control or FSR control under the Sydney LEP 2012 and is generally consistent with the provisions of the endorsed CMP. The proposal is generally consistent with the provisions under the draft planning proposal and DCP.

Issues

Internal Amenity of Lower Ground Floor Apartments

48. The lower ground floor contains 2 apartments consisting of a studio apartment to the west and a 1 bedroom apartment to the east. Both apartments have principal living spaces and courtyards with a northern aspect and receives direct solar access to living areas and private open space.
49. The apartment with a north-east orientation and fronting Bettington Street and Rodens Lane receives 2 hours of direct sunlight between 9.00am and 11.00am at midwinter and complies with the requirements for solar access under Part 4A of the ADG.
50. The apartment with a north-west orientation does not have a frontage to the public domain, however provides window openings to both the north and west elevations and a private courtyard which receives a minimum of 1 hour of direct sunlight between 9.00am and 10.00am at midwinter (refer to figure 16 Photomontage of the north and western elevation).
51. Having regard to the heritage constraints of the site which requires the new infill building to be contained within the existing building footprint, the proposal achieves an acceptable level of internal amenity for the studio apartment and generally satisfies the objectives under Part 4A of the ADG.



Figure 16. Photomontage of the north and western elevation

52. Upon receiving the comments and recommendations provided by the City's Design Advisory Panel, the applicant considered the reconfiguration of the lower ground floor and submitted an alternative layout showing 2 apartments with an east west orientation and window openings to Bettington Street and Rodens Lane (refer to figure 17).
53. Although the alternative layout provided both apartments with window openings to Rodens Lane, the scheme does not achieve compliance with amenity requirements under the ADG. In particular, the alternative scheme does not maximise north facing apartments or achieve natural cross ventilation to all apartments within the building. In addition, the studio apartment on the south-eastern corner does not have access to private open space or direct sunlight between 9.00am and 3.00pm at midwinter.
54. Having regard to the heritage constraints of the site including the existing orientation of the building footprint, the proposed configuration of the lower ground level generally satisfies the objectives for internal amenity under the ADG and is considered to be acceptable.

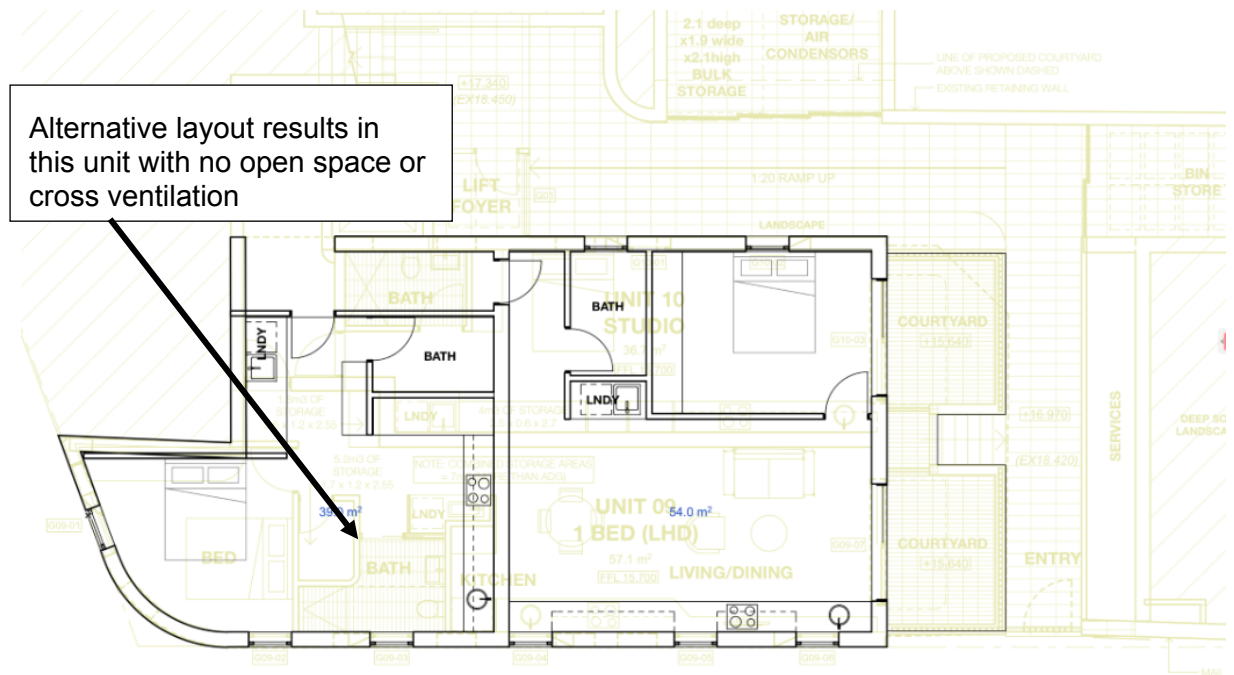


Figure 17. Alternative lower ground floor plan. The unit on the left hand side would not have private open space or cross flow ventilation.

Private Open Space/ Communal Open Space

55. In accordance with Part 4E, Objective 4E-1 of the Apartment Design Guide (ADG), private open spaces are required to be provided to all apartments with minimum areas of 4m² for studio apartments, 8m² for 1 bedroom apartments and 10m² for 2 bedroom apartments. Apartments located at ground level are required to have private open spaces measuring a minimum 15m² with a minimum depth of 3m.
56. The lower ground floor courtyards have areas of approximately 6.6m² and 6.8m² for the studio apartment and 1 bedroom apartment, respectively. The courtyards have a depth of approximately 2.2m and are contained within the existing building footprint to minimise impacts on the adjacent heritage listed buildings.
57. It is noted that the area and dimensions of the courtyards do not achieve the minimum requirements under Objective 4E-1 of the ADG. However on balance, with the heritage constraints for the site requiring the new building to be contained within the existing building envelope and provision of appropriate equitable access for persons with disabilities, the private open space to the lower ground floor apartments is considered acceptable. The courtyards are north facing, adjacent to principal living areas and have views to the sky and generally satisfies the amenity provisions under Objective 4E-2 of the ADG.

58. The original proposal provided balconies on the upper ground and first floors that achieved the minimum dimensions and areas required for studio, 1 bedroom and 2 bedroom apartments. However, issues raised by the NSW Heritage Office in regard to building bulk on the northern elevation required the proposed balconies to be amended and contained wholly within the existing building envelope. As such, the amended proposal provides balconies to apartments on the upper ground and first floor levels with depths of 1 metre and areas of approximately 2.6m². Whilst the balconies do not achieve the minimum requirements under Objective 4E-1 of the ADG, the balconies are north facing, have access to adequate sunlight and will contribute to the amenity for future occupants. As such, the proposed balconies are considered to generally satisfy the amenity requirements under Objective 4E-2 of the ADG and are acceptable in this instance.
59. The proposal provides communal space with landscaped areas within the centre of the site measuring approximately 71.4m² (13.4% of the site area). This area is largely contained within the existing communal open space for the site. The proposed communal space predominantly provides improved access from Rodens Lane to a new lift and stairs that service existing and proposed apartments. New landscaped areas, waste storage and plant/service areas are also proposed adjacent to the communal area.
60. The proposal does not achieve the minimum communal open space of 25% of the site or a minimum of 2 hours of direct sunlight to 50% of the communal area as required under Part 3D of the ADG. The non-compliance is a result of heritage constraints, given the requirement to contain the infill building within the existing building footprint. However, some direct sunlight is provided to parts of the communal space, particularly the access paths and new landscaped plant between 10.00am and 1.00pm at midwinter.
61. The site does not have sufficient space to provide alternative communal open space that would have minimal impacts on the significance of existing heritage items on the site and the surrounding area. The proposed communal open space generally satisfy the provisions under Objective 3D-1 of the ADG and will not result in any adverse amenity impacts for occupants as the site is immediately adjacent to large public open space to the west, also known as Stargazer Lawn, Barangaroo.

Separation / Privacy

62. The minimum required separation distances between window openings of habitable and non-habitable rooms and balconies for buildings up to 12 metres (4 storeys) is 6 metres and 3 metres, respectively, under Part 3, Objective 3F-1 of the ADG.
63. The proposed balconies on the northern elevation are setback 6.4m from the northern boundary and 3.4m from the western boundary. Although the setbacks do not achieve the minimum building separation required under the ADG, the setbacks match the existing building envelope, as required by the NSW Heritage Office to minimise impacts on the heritage significance of the site.

64. The proposed location and dimensions of the northern balconies are consistent with the location and form of existing balconies. Notwithstanding this, there is an opportunity to enhance privacy for future occupants and adjoining properties from direct overlooking from the public domain and within the site by installing additional privacy screening and louvres to the western and northern sides of the balconies. The addition of louvres and privacy screens will enable occupants to control privacy and solar access to the balconies and internal living areas. A condition requiring design modifications to the north facing balconies on the ground and first floors has been included in the recommendation.



Figure 18. Photomontage of proposal and adjoining properties as viewed from Rodens Lane

65. The lower ground floor courtyards are immediately adjacent to the new common access path via Rodens Lane to the new lift and garbage storage area. The difference in finished floor levels between the courtyards and the pathway will enable direct sightlines from the pathway into the private open space and internal living areas. Additional full height privacy screening to the boundaries of the courtyards, as conditioned, will provide adequate visual separation between the common pathway and private open space. To provide visual relief for occupants, it is recommended that new landscape planters be installed along the boundaries of the courtyards.

66. The separation distance of the kitchen window openings on the topmost level (identified on the plans as 'second floor' level) are 6 metres to the northern boundary and 3 metres to the eastern boundary. To compensate for this numerical non-compliance a large planter box with landscaping is proposed around the perimeter to restrict overlooking in an easterly direction into surrounding dwellings. The 6m separation in a northerly direction complies with the ADG. Diagram of proposed sightlines from the upper level are provided as follows:

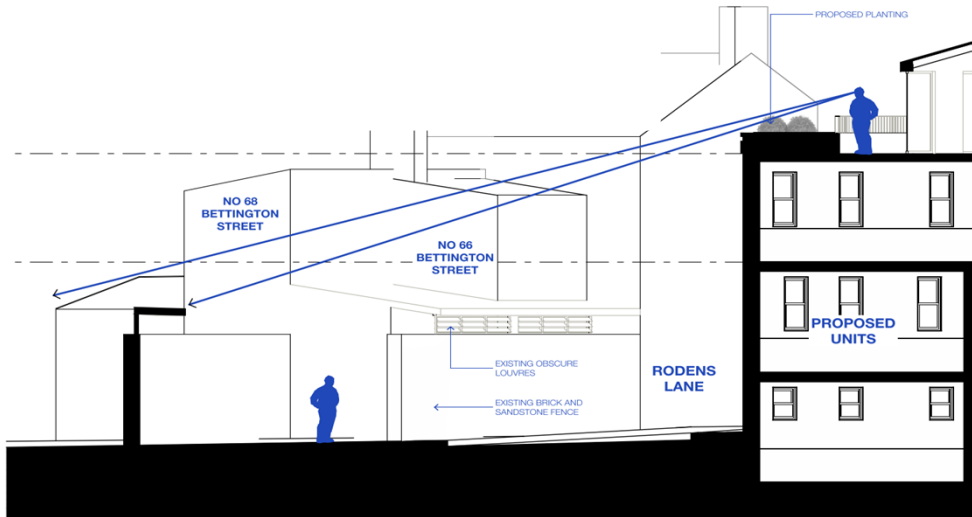


Figure 19. Sightlines from topmost level private open space to properties to the east

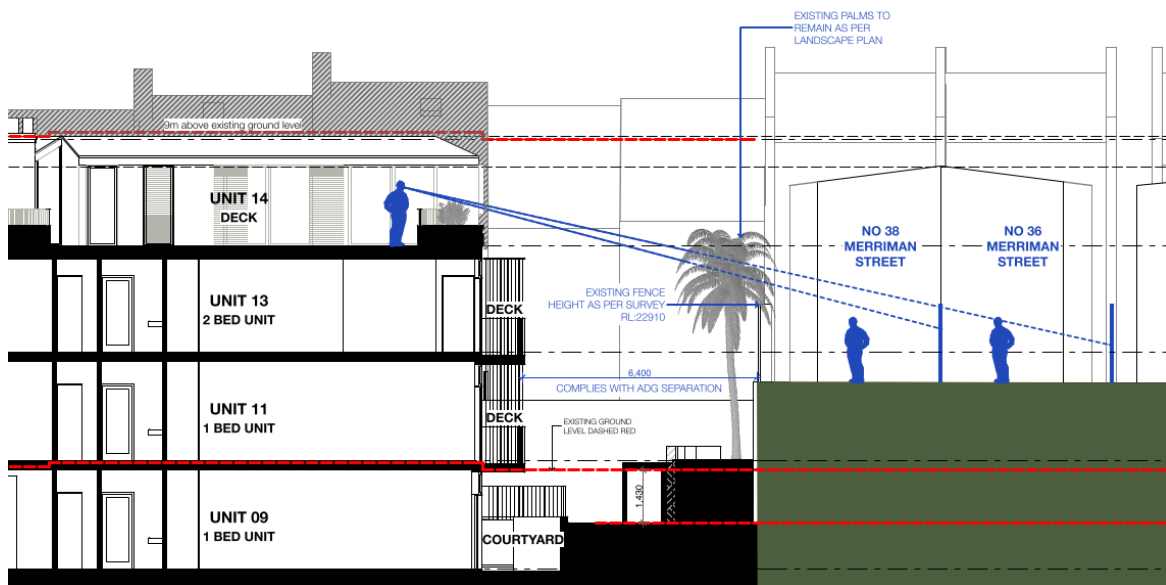


Figure 20: Proposed sightline from private open space on upper level towards properties to the north

67. The proposal introduces window openings to habitable rooms on the western elevation. At lower ground the window openings are setback 500mm from the access ramp within the common circulation area. The proposed windows are 1500mm above the finished floor level of the western apartment however the difference in floor level between the lower ground floor apartment and the common circulation space locates the window sills between 100mm and 200mm above the level of the ramp. To maintain adequate privacy and security for future occupants, the two window openings on the western elevation will comprise obscured glazing with a fixed lower window pane. It is also noted that the subject windows are secondary in nature with the studio apartment having its primary orientation to the north over its private courtyard.
68. The proposed ground floor window openings on the western elevation are separated from the rear of terraces fronting Merriman Street by 3.2 metres to the courtyard fence and 5.5 metres to a blank wall. The applicant proposes to install double hung awning windows with obscure glazing to mitigate loss of visual privacy for occupants of the western apartment and the adjacent apartment. The proposed window treatment is considered acceptable in this instance to minimise loss of privacy between apartments within the site. The internal amenity of the subject apartment will not be adversely affected as the apartment has a primary orientation to the north.
69. The proposed first floor window openings on the western elevation are separated by 6 metres to three window openings located to the west. The three windows service the entry/hallway to the adjacent apartment and a bathroom. The separation distance between the proposed first floor level window openings and existing window openings to the apartment to the west do not achieve the minimum required 9 metres under Objective 3F-1 of the ADG. However, given the heritage constraints of the site requiring the retention of existing building envelopes, the provision of new windows on the western elevation to improve natural light and ventilation into apartments is considered acceptable. In particular, double hung awning windows with obscured glazing are proposed to be installed to minimise any direct overlooking and loss of privacy.

Height, Scale and Bulk

70. The site has a maximum FSR control of 2:1 under the Sydney LEP 2012. The proposal has a gross floor area of approximately 379.4m² and FSR of 1.57:1 and complies with the FSR control under the Sydney LEP 2012.
71. The site has a maximum building height control of 9 metres under the Sydney LEP 2012. The proposal has a building height of 9 metres and complies with the maximum building height limit under the Sydney LEP 2012.
72. The proposal maintains an appropriate scale to the adjoining heritage listed terraces along Bettington Street and Merriman Street. In particular, the proposed floor levels on the ground and first floors responds to the predominant proportions of adjoining terraces within the streetscape.
73. The proposed increase of the ridge line of No. 58-60 Bettington Street does not exceed the height of the two original chimneys and does not exceed the height of the existing ridge to terraces adjoining the site with primary frontages to Merriman Street and Bettington Street. The heritage impact of alterations to the existing roof at No. 58-60 Bettington Street is discussed further below.



Figure 21: Horizontal articulation of facade to match adjoining heritage items (Bettington Street)



Figure 22: Horizontal articulation of facade to match adjoining heritage items (Rodens Lane)

74. The proposal to erect an additional floor level does not contribute to significant additional building bulk when viewed from the public domain as the new floor level is setback from the property boundaries fronting Bettington Street and Rodens Lane and external materials are visually recessive. The bulk of the upper level is situated to the north-west of the new building and predominantly contained within the envelope of the existing roof form. View of the upper level will not be visually prominent from Bettington Street as the bulk of the upper level is located behind the existing terrace at No. 58-60 Bettington Street.
75. The proposed upper level will not be visually prominent when viewed from Rodens Lane, which measures approximately 6 metres in width, as the upper level is setback 3 metres from the eastern boundary. In addition, the proposed external materials and finishes on the upper level are recessive in comparison to the materials and finishes of the lower ground, ground and first floors of the building.

76. It is noted that the NSW Heritage Council raises no objection to the proposed second floor level, subject to retention of the original front roof slope of the terrace at No. 56-60 Bettington Street and appropriate external materials and finishes, which are subject to approval with a Section 60 Application under the Heritage Act, 1977. a heritage item

Other Impacts of the Development

77. The proposed development is capable of complying with the BCA. It is Class 2.
78. 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.
79. Access for disabled persons can be provided to the premises.

Suitability of the site for the Development

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

Internal Referrals

Design Advisory Panel

81. The proposal was presented to the City's Design Advisory Panel at its meeting on 12 April 2018. The panel recommendations were as follows:
- (a) Reconfiguration of lower ground floor apartments should be considered to improve internal amenity
 - (b) Sandstone tiling at the base of the building is not supported. Solid sandstone blocks consistent with existing surrounding sandstone in the conservation area is preferred
 - (c) Louvres should be incorporated into necessary facades to enhance sun shading and privacy for occupants.
82. Following the recommendations provided by DAP, the applicant submitted an alternative floor plan for the lower ground floor apartments including two apartments with an east west orientation. As discussed in the report above, the alternative layout does not achieve compliance with amenity provisions under the ADG and is not considered to result in a better design outcome than the proposal with conditions.
83. The amended proposal has replaced the originally proposed sandstone tiling with rough cut sandstone which is consistent with existing sandstone in the conservation area.
84. The applicant has amended the glazed sliding door openings on the northern elevation to incorporate fanlights to provide natural ventilation and security for occupants.

85. Privacy screening and louvres to the northern balconies and courtyards to provide sun shading and privacy that can be controlled by future occupants have been included in the recommendation. The use of additional privacy screening and louvres is acceptable on the balance of minimising adverse impacts on the heritage significance of the site and the conservation area and enhancing privacy and amenity of the apartments.

Other internal referrals

86. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Surveyors; Tree Management; Waste Management. The comments provided are discussed below:
- (a) The City's Heritage Specialist raises no objection to the amended proposal and supports the amended materials and finishes
 - (b) The City's Urban Designer raises no objection to the amended proposal as the proposal generally satisfies the provisions under the ADG, subject to conditions for further details on external materials and finishes.
 - (c) The City's Landscape Officer, Environmental Health and Building Unit raises no objection to the proposal subject to recommended conditions.
 - (d) The City's Public Domain Unit advises that the proposal is acceptable subject to conditions requiring public domain improvement works to be undertaken on the adjacent footpaths.
 - (e) The City's Specialist Surveyor reviewed the proposed Strata subdivision plan advises that the proposal is acceptable subject to the recommended conditions. In particular, the approved Strata subdivision approved under Development Consent D/2017/1250 for the existing 8 apartments at No. 44-48 Merriman Street and No. 56-60 Bettington Street is superseded by the subject application.
 - (f) The City's Tree Management Officer advised that the proposed removal of the Cocos palm is acceptable and the proposal is generally supported subject to recommended conditions.
 - (g) The City's Waste Management Officer raised no objection to the amended proposal comprising garbage and recycling waste storage and bulky waste storage areas adjacent to the common access path within the site.

External Referrals

Notification, Advertising and Delegation (Submissions Received)

87. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 15 December 2017 and 24 January 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification eight submission(s) were received.

88. The proposal was amended following recommendations from the NSW Heritage Council and the City's Design Advisory Panel. The modifications included simplification of the roof form, reduction in the footprint of the balconies and revised materials and finishes. The amended plans were not re-notified to surrounding property owners and occupiers as the modifications are minor and will not have any additional adverse amenity or environmental impacts on surrounding properties in accordance with Schedule 1.3 of the Sydney DCP 2012

- (a) The proposed second floor level and balcony are visually prominent and out of character with built form of surrounding terraces.

Response - The second floor level does not exceed the maximum height control of 9 metres and is setback from the property boundaries. As discussed in the body of the report, the topmost floor is not considered to be visually prominent or detracting when viewed from the public domain as the building bulk is setback and the proposed materials and finishes are visually recessive.

- (b) The proposed increase in building height and change in roof form contributes to inappropriate built form and sense of overbearing for adjoining properties.

Response - The proposal does not exceed the ridge height of the existing heritage listed terraces on the site and does not exceed the maximum nine metre building height specified under the Sydney LEP 2012. The amended proposal retains the existing roof slope of the terrace at No. 56-60 Bettington Street with the roof form of the new addition simplified and setback from the property boundary. New roof materials are recessive in colour to minimise visual prominence when viewed from the public domain.

- (c) The proposed 4 storey building is out of character with predominately 2 storey dwellings in the surrounding area.

Response - Whilst surrounding terrace houses are predominantly 2 storeys in height, the subject site contains a group of buildings that differ in form and style to typical 2 storey terrace houses. The proposal is also predominantly contained within the existing building footprint and envelope and will not adversely impact the built form character in the conservation area as the additional levels are not visually prominent and will not dominate the streetscape.

- (d) Proposed balconies are significantly larger than existing balconies and will have visual and privacy impacts on adjacent properties.

Response - The proposal has been amended to reduce the dimensions of the balconies on the northern elevation and the private open space on the second floor level. In particular, the amended ground and first floor balconies are contained within the existing balcony envelopes.

The private open space on the second floor level has been reconfigured with increased setbacks from the northern, eastern and southern boundaries to minimise direct overlooking to adjacent properties. The proposed setback of the balustrades will also reduce visual impact when viewed from the public domain.

- (e) The proposed articulation of the new facades and skillion roof are aesthetically inappropriate and do not contribute to the character of the heritage item or streetscape. The proposal will be clearly visible from surrounding areas.

Response - The proposal to replicate the curved facade is considered an appropriate response given the prominence of the existing curved facades when viewed from the public domain. The proposed articulation of the Bettington Street and Rodens Lane facades responds to the architectural style of the adjoining heritage items and is supported by the NSW Heritage Council.

The originally proposed skillion roof has been replaced with a low scale pitched roof. The second floor level comprises lightweight and recessive materials that will not detract from the significance of the heritage items or the conservation area.

- (f) The proposed additional floor space is inconsistent with the draft planning controls under the planning proposal for the Millers Point Conservation Area.

Response - The draft planning controls for the Millers Point Conservation Area does not contain maximum Floor Space Ratio controls. The proposal does not exceed the maximum height of buildings within the whole site and complies with the maximum building height and floor space controls under current planning controls.

- (g) The proposal will have adverse privacy impacts on immediately adjacent properties.

Response - The proposal is unlikely to result in adverse privacy impacts on surrounding properties as the windows on the eastern elevation fronting Rodens Lane are adjacent to the blank wall of No. 66 Bettington Street. The window openings and private open space on the second floor level are sufficiently setback to minimise direct overlooking of private open space and window openings of adjoining properties. This has been discussed and demonstrated in the report above.

- (h) The proposal will reduce sunlight to the private open space of adjacent property to the east.

Response - The submitted shadow diagrams indicate that the proposal will not have any additional overshadowing impacts to the rear private open space of adjacent properties to the east of the site.

- (i) The proposed lower ground level may have negative impacts on the structural stability of surrounding properties.

Response - The proposed excavation has been considered by the NSW Heritage Council who raise no objections to the proposed lower ground floor level, subject to imposition of conditions relating to excavation works.

- (j) The new entrance via Rodens Lane will change the character of the lane which is used as a service laneway.

Response - The site currently has pedestrian access via Rodens Lane. The proposed will provide access for persons with disabilities and an alternative entrance to the site. The modified entrance via Rodens Lane will not impact on the use of the lane by surrounding properties.

- (k) The proposal will remove access for occupants of Nos. 40 to 42 Merriman Street to take garbage bins through the site to Rodens Lane for collection.

Response - There are no rights of access across the subject site for the occupants of Nos. 40 and 42 Merriman Street for garbage disposal. Council's Waste Management Unit have confirmed that waste collection for No. 40 and 42 Merriman Street is from Merriman Street and not Rodens Lane.

- (l) The location of the bin storage area will have odour impacts on the adjoining property to the west.

Response - The bin storage area is at the lower ground level of the subject site. The floor level of the bin storage area is below the natural ground level of the adjacent property to the west and is unlikely to result in direct amenity impacts on the use of the private open space. Conditions of consent have been recommended to require the waste storage facilities on the subject site comply with Council's waste policy.

- (m) The proposed boundary fences along the northern boundary will restrict through site access from No. 40 Merriman Street. In case of emergency, there will only be one point of exit from the property (via the front door).

Response - The erection of boundary fences between the subject site and properties to the west provide privacy and security and is acceptable. There are no right of way easements on title that require access to be provided or maintained across the subject site.

Public Interest

89. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

S61 Contribution

90. The cost of the development is in excess of \$200,000 and is therefore subject to a development levy pursuant to the Central Sydney (Section 61) Contributions Plan 2013. An appropriate condition has been included in the recommendation of this report.

Relevant Legislation

91. The Environmental Planning and Assessment Act 1979.

92. The Heritage Act 1977.

Conclusion

93. The proposal complies with the maximum building height control of nine metres and maximum FSR control of 2:1 under the Sydney LEP 2012.
94. The proposal generally satisfies the considerations under SEPP 65, the Apartment Design Guide, and the planning controls under Sydney LEP 2012 and Sydney DCP 2012.
95. The proposal has been amended to be contained within the existing building footprint and envelope at the request of the NSW Heritage Council. The amended proposal also retained the existing front roof slope of the heritage listed terrace at No. 56-60 Bettington Street with increased setbacks on the second floor level to minimise building bulk when viewed from the public domain. The NSW Heritage Office raises no objection to the proposal and has issued General Terms of Approval which has been included in the recommendation in Attachment A.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Peggy Wong, Specialist Planner