

**Item 3.****Development Application: 9 Billyard Avenue, Elizabeth Bay**

File No.: D/2018/57

**Summary****Date of Submission:** 24 January 2018**Applicant:** Theodore Onisforou**Architect:** Chenchow Little Pty Ltd**Owner:** Theodore Onisforou**Cost of Works:** \$5,566,000**Zoning:** The site is zoned R1 General Residential. The proposed residential development is permissible with consent.**Proposal Summary:** Demolition of existing dwelling and construction of two x three storey plus basement semi-detached dwellings, associated landscaping and car parking, and subdivision of the site into two lots.**Summary Recommendation:** The development application is recommended for approval, subject to conditions.**Development Controls**

- (i) State Environmental Planning Policy No 55 - Remediation of Land
- (ii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iv) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (v) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

- Attachments:**
- A. Recommended Conditions of Consent
  - B. Selected Drawings
  - C. View Analysis
  - D. Shadow Diagrams
  - E. Council's Heritage Officer Memo

### **Recommendation**

It is resolved that consent be granted to Development Application No. D/2018/57, subject to the conditions set out in **Attachment A** to the subject report.

### **Community Consultation**

Twenty-eight (28) submissions were received. Issues raised in all submissions have been taken into account in the report, and where appropriate conditions of consent have been recommended to address these issues.

### **Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the R1 General Residential zone for the reasons set out in the report.
- (B) The demolition of the existing contributory building within the Heritage Conservation Area is considered appropriate in that it is located at the transitional point between a heritage conservation area and a non-heritage conservation area and the dwelling has been substantially altered.
- (C) The built form and contemporary design of the dwellings responds appropriately to the setting and character of the area.
- (D) The proposal utilises high quality materials and exhibits design excellence.

## Background

### The Site and Surrounding Development

1. A site visit was carried out on 29 March 2018.
2. The site is known as 9 Billyard Avenue, Elizabeth Bay and is legally described as Lot C in DP441786. The site is an irregular triangular shape, which has an overall site area of 536.6sqm with a frontage to Billyard Avenue of 29.35m. The site is located near the end of a cul-de-sac on the western side of Billyard Avenue.
3. The site comprises of a two-storey dwelling, built c1914. The dwelling is located approximately 2.8m above the street level, which is separated by a sandstone retaining wall. The subject dwelling faces south east to the street and there is open space to the north and west of the existing dwelling. The dwelling has been altered since its construction.
4. The site is generally surrounded by residential flat buildings of various heights and is situated within a high density location. To the north is a 9 storey residential flat building at 8 Macleay Street, which is elevated above the subject site; to the east, across Billyard Avenue, are multi-storey residential flat buildings; to the south are two x three storey residential flat buildings at 11 and 11A Billyard Avenue; and to the west are multistorey residential flat buildings at 6 and 10-12 Macleay Street, which are elevated above the subject site.
5. The site is not a heritage item but is a contributory item located within the boundary of the Elizabeth Bay and Rushcutters Bay Heritage Conservation Area (HCA 20).
6. Photos of the site and surrounds are provided below:



**Figure 1:** Aerial image of subject site and surrounding area



**Figure 2:** Subject site viewed from the end of the Billyard Avenue cul-de-sac looking south



**Figure 3:** Looking north towards the subject site, with 11 Billyard Avenue to the left



**Figure 4:** The subject site is to the left and 8 Macleay Street is to the right of the photo. 10-12 Macleay Street is located behind the subject site.



**Figure 5:** 8 Macleay Street, located to the north of the subject site, with 4A Macleay Street behind



Figure 6: Looking east from 8 Macleay Street towards 2, 4 and 6 Billyard Avenue

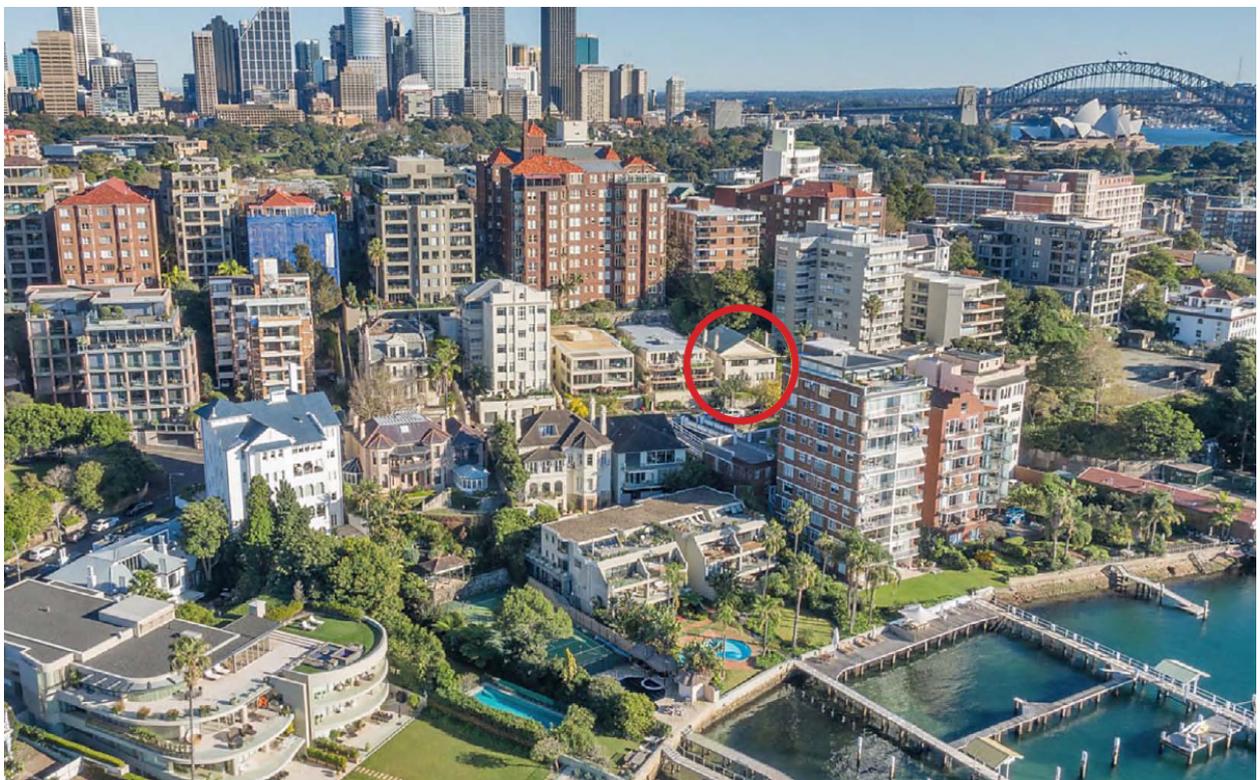


Figure 7: Subject site shown in context of Elizabeth Bay

**Proposal**

7. The application seeks consent for the demolition of the existing dwelling, excavation to accommodate a lower ground floor behind the existing sandstone wall and construction of two x three storey plus lower ground floor dwellings consisting of:
  - (a) Lower Ground**
    - (i) Two car parking spaces, storage, waste and cellar, gym (per dwelling).
    - (ii) Retention and extension of height of existing sandstone wall (materials to match existing) and insertion of two garage doors and two pedestrian entrances.
  - (b) Ground Floor**
    - (i) Kitchen, living and dining room, laundry, toilet and home cinema (per dwelling).
    - (ii) Private open space for each dwelling.
  - (c) Mezzanine**
    - (i) Study, bedroom and rumpus room (per dwelling).
  - (d) First Floor**
    - (i) Three bedrooms and three bathrooms (per dwelling).
8. It is also proposed to subdivide the site into two Torrens title lots, being Lot 100 261.2sqm and Lot 101 275.3sqm.
9. Plans, the proposed subdivision plan, a photomontage and of the proposed development are provided below.

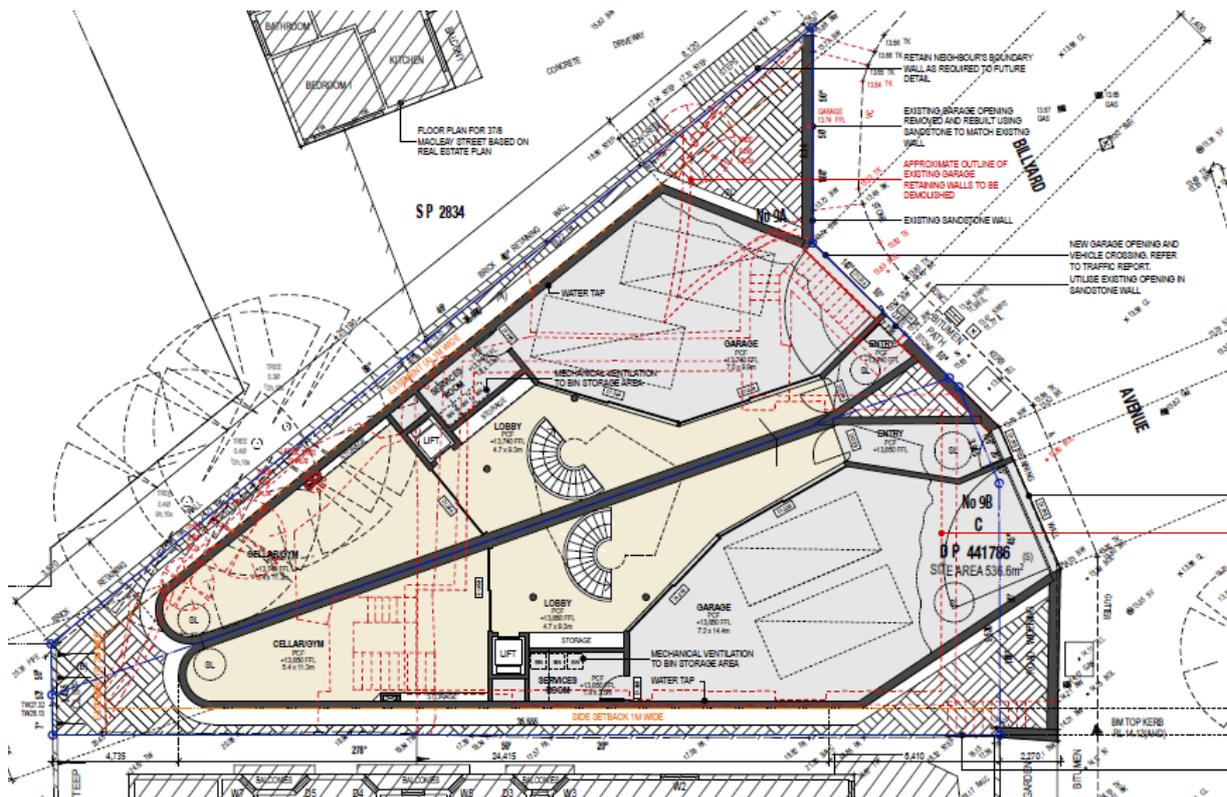


Figure 8: Proposed Lower Ground Floor Plan

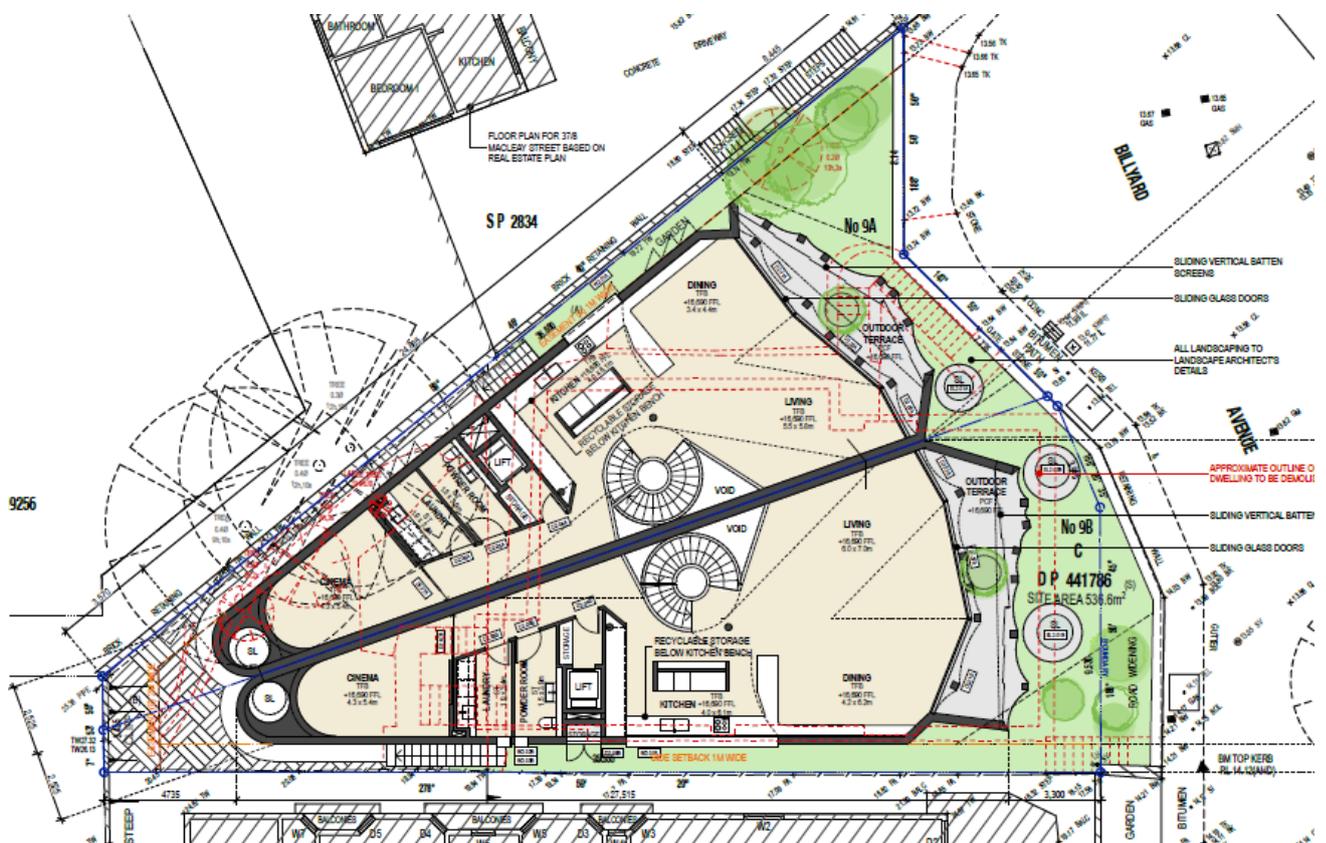


Figure 9: Proposed Ground Floor Plan

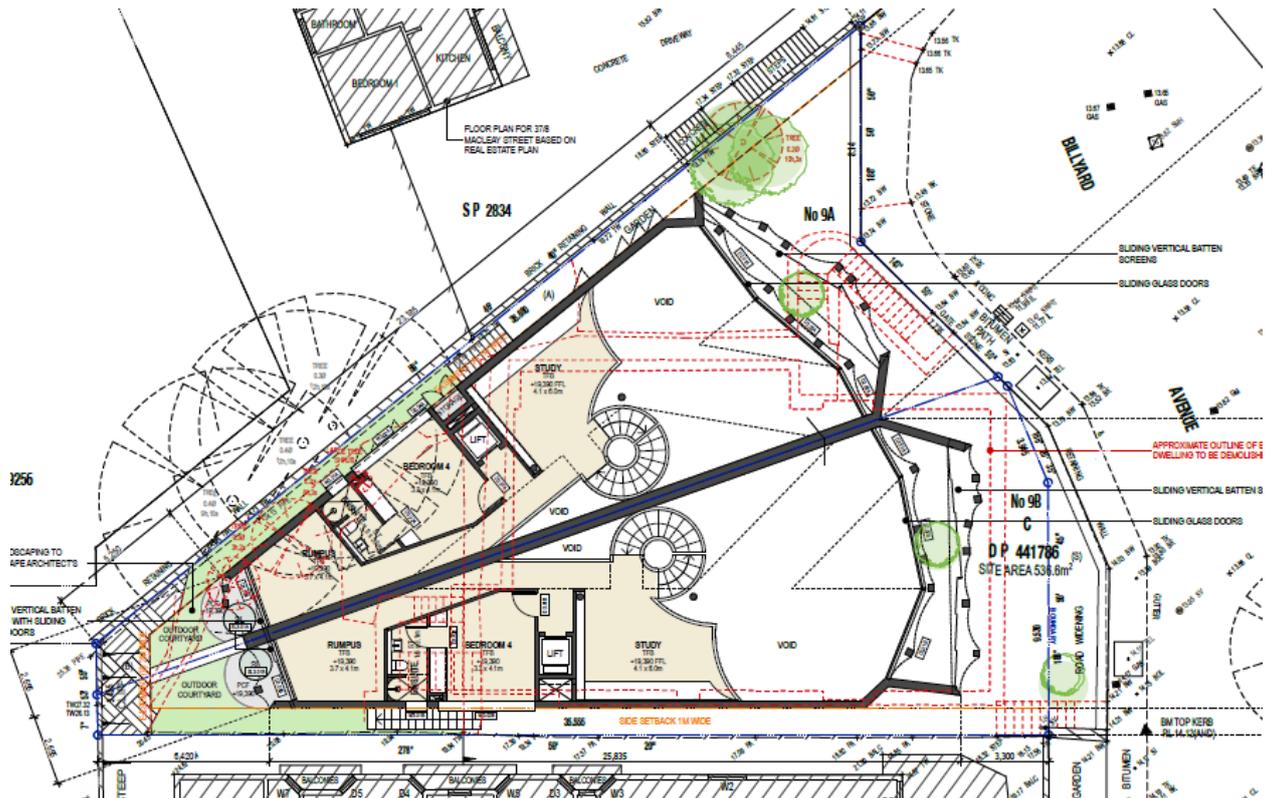


Figure 10: Proposed Mezzanine Floor Plan

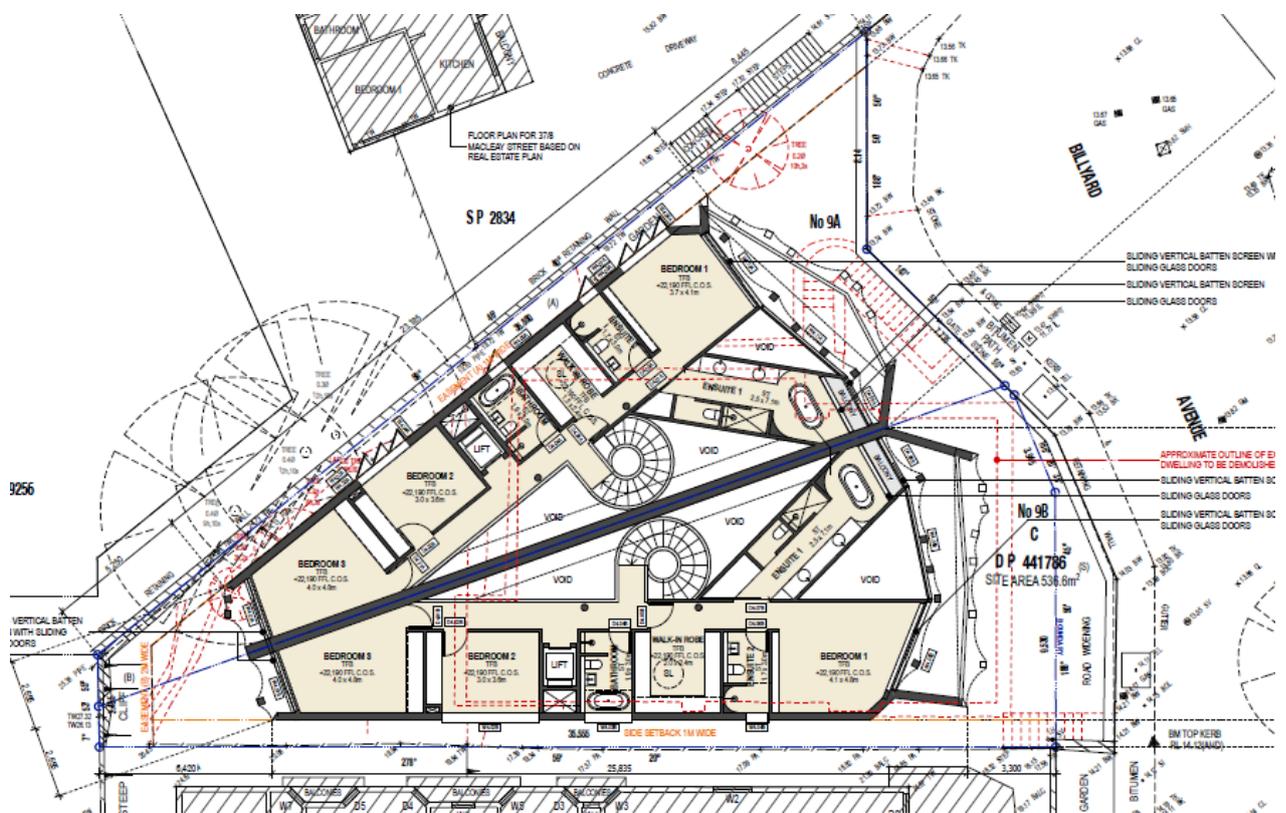


Figure 11: Proposed First Floor Plan

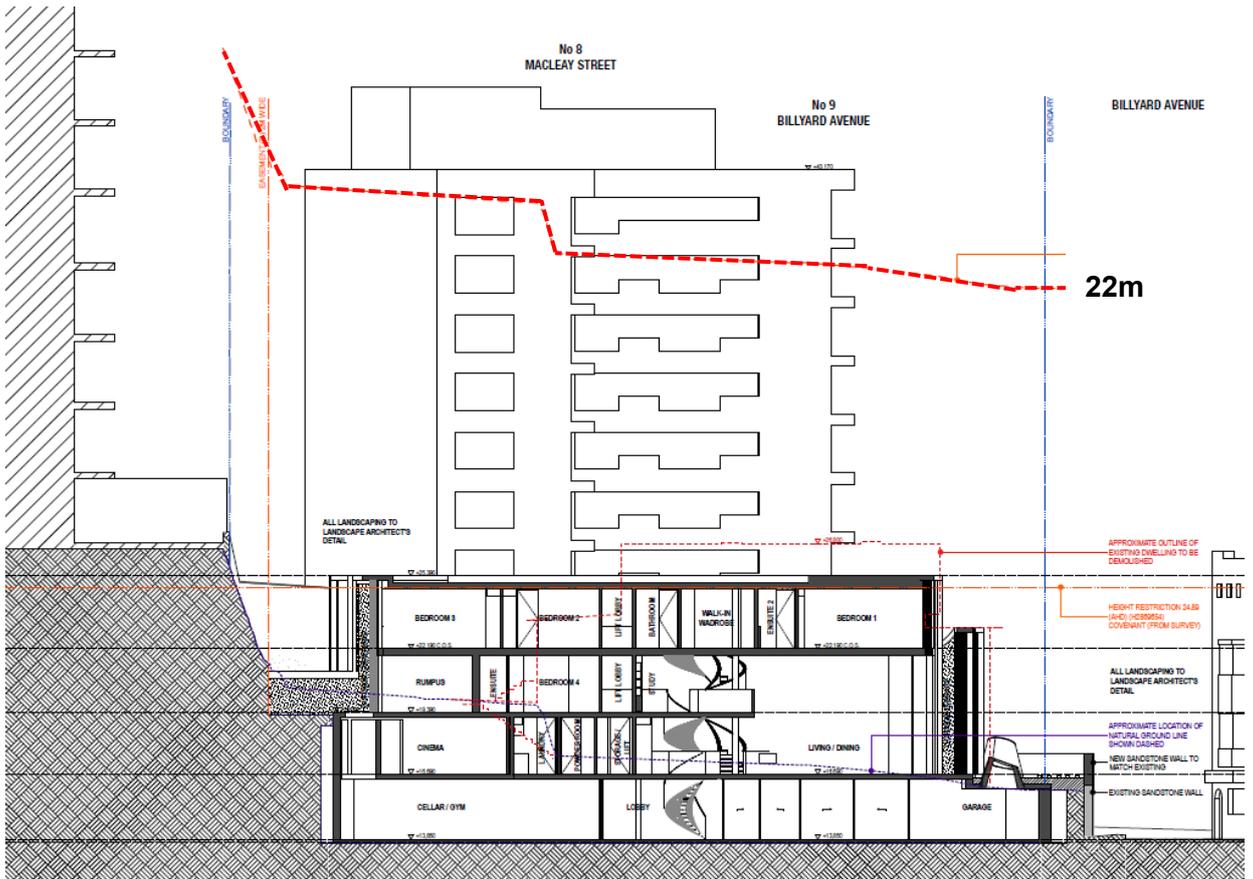


Figure 12: Proposed Section

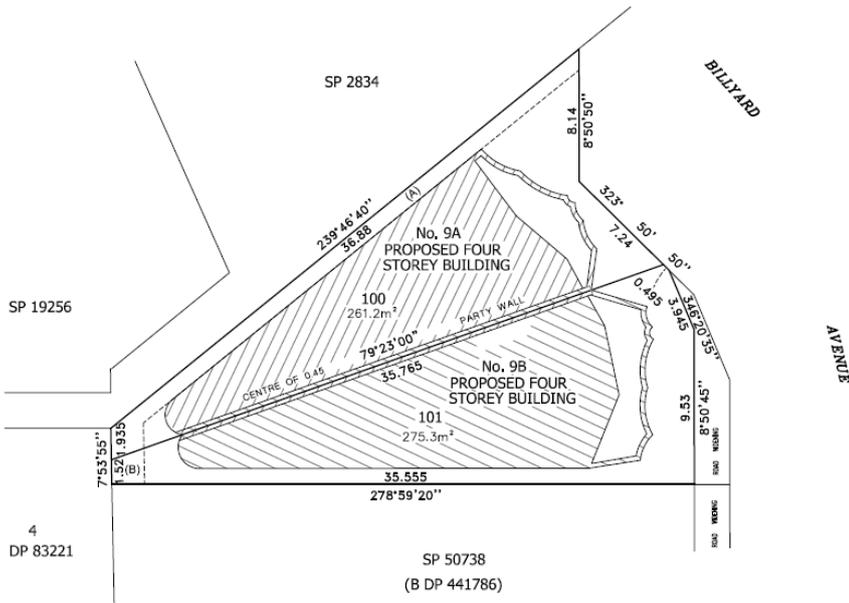


Figure 13: Proposed Subdivision Plan



**Figure 14:** Photomontage of the proposed dwellings

### **History Relevant to the Development Application**

10. The redevelopment of the site has been the subject of pre DA discussions with council officers and the Director City Planning, Development and Transport in September and November 2016 and June 2016. Various issues were raised with the applicant regarding retention of the sandstone wall and detailing of garages, compliance with controls, view sharing, design, overshadowing, car parking, consultation with neighbours and trees. The demolition of the contributory building was raised as an issue to address and that it would be considered on its merit. The applicant has sought to address these issues within the application.

### **Economic/Social/Environmental Impacts**

11. 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**

12. 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.
13. A Preliminary Site Investigation (PSI) and associated report were submitted with the application. The PSI states that there was no evidence of the land being contaminated due to past uses. The PSI concludes that the site is suitable for residential land use after undertaking works as recommended in the PSI report.

14. The submitted Geotechnical Report advises that should any potential contamination be encountered, then it needs to be addresses prior to commencement of excavation works.
15. The City's Health Unit is satisfied that subject to conditions, the site can be made suitable for the proposed use.

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

16. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
17. 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; and
  - (d) protect and rehabilitate riparian corridors and remnant vegetation.
18. 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 with the deemed SEPP.
19. The development is consistent with the controls contained with the deemed SEPP.

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

20. A BASIX Certificate has been submitted with the development application.
21. 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 Local Environmental Plan 2012**

22. The site is located within the R1 General Residential zone. The proposed use is defined as residential and is permissible with consent.
23. 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
1.9A Suspension of covenants, agreements and instruments	Yes	<p>The Certificate of Title includes a covenant (H2869654) which places a height restriction for new buildings at 24.89 (AHD) on the Site. The covenant benefits 12 Macleay Street. The existing building is at RL 26.800 (AHD) and the proposed building height is at RL 25.390 (AHD).</p> <p>This clause overrides private covenants that apply to the land. Council can grant consent to a development that exceeds the height stated in the covenant.</p> <p>See discussion under the heading Issues.</p>
4.3 Height of Buildings	Yes	<p>A maximum height of 22m is permitted.</p> <p>A height of 8.9m is proposed.</p>
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 2:1 is permitted.</p> <p>A FSR of 1.45:1 is proposed.</p>
5.9 Preservation of trees or vegetation	Yes	<p>There are seven trees within the site and three trees directly adjacent to the northern boundary within 8 Macleay Street, Potts Point.</p> <p>Council's Tree Management unit has determined that the trees are a range of species in good to fair health and condition. The majority of the trees within the site are small specimens, which provide minimal contribution to the amenity of the area and their removal is supported.</p> <p>The trees within neighbour's property are large trees, which are visible from the street frontage. These trees also partially overhang the subject site. These are unlikely to be directly impacted below ground from the proposal due to an existing retaining wall and the trees being situated on a higher level than the subject allotment.</p>

Development Control	Compliance	Comment
		<p>However, as the trees partially overhang the subject property, they may require minor pruning during construction. It is estimated that this would only result in 5-10% canopy removal from each. This amount of pruning is considered acceptable and will not have any long term impacts on the trees.</p> <p>To ensure only minimal pruning is undertaken, a suitable condition is recommended regarding pruning.</p> <p>The application has been reviewed by Council's Landscape architect, who considers it to be generally acceptable and is to be conditioned.</p>
5.10 Heritage conservation	Yes	<p>The subject site is a contributory building located within a heritage conservation area. The proposed demolition of the existing dwelling and construction of two new contemporary dwellings is acceptable. The proposal will not diminish the quality of the Heritage Conservation Area.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	<p>The objective of the clause is to deliver the highest standard of architectural, urban and landscape design. The proposed development satisfies the requirements of this provision.</p> <p>See discussion under the heading Issues.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	<p>A maximum of two car parking spaces are permitted per dwelling.</p> <p>Two car parking spaces are proposed per dwelling.</p>
7.14 Acid Sulphate Soils	Yes	<p>The subject site is located within a Class 5 Acid Sulphate Soil (ASS) zone, and is within approximately 50 metres of a Class 2 ASS zone.</p> <p>A Preliminary Acid Sulphate Soil Assessment (PASS) Report has been undertaken, which concludes that there is relatively low potential for ASS to be disturbed during the proposed development works. The PASS report also concludes that the risk of any site works lowering the water table on adjacent Class 1,2,3,4 land below 1m AHD is considered to be negligible as the excavation on the site is only anticipated to extend to 13m AHD. Council's Health unit have stated that an ASS Management Plan or Preliminary Assessment is not required as part of this development assessment.</p>
7.15 Flood planning	Yes	The site is not affected by flooding.

### Sydney Development Control Plan 2012

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

#### 2. Locality Statements – The Bays

The subject site is located in the Bays locality. The proposed demolition of the existing dwelling and construction of two unique contemporary dwellings is considered to be in keeping with the unique character of the area and design principles in that it will not impact on views of Sydney Harbour, provides a landscaped setback above the existing sandstone wall and is consistent with the alignment of the neighbouring buildings.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	The proposed development will enhance the public domain subject to appropriate conditions addressing materials, design details and landscaping. The development will maintain sun access to publicly accessible spaces and preserve public views.
3.5 Urban Ecology	Yes	<p>There are seven trees within the site and three trees directly adjacent to the northern boundary within 8 Macleay Street, Potts Point.</p> <p>It is considered reasonable for the trees to be removed. Refer above.</p>
3.6 Ecologically Sustainable Development	Yes	<p>The proposal satisfies BASIX and environmental requirements.</p> <p>ESD is achieved through passive and active design elements, including orientation, glazing, operable windows and screening on the facade. Energy efficient fixtures and appliances will assist in reducing the environmental building footprint and incorporates low water use plants in the landscape design.</p>
3.7 Water and Flood Management	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The two lots proposed have been designed to accommodate the proposed buildings and the proposed lot configuration matches the layout of each dwelling.
3.9 Heritage	Yes	<p>The existing building is a contributory building within a Heritage Conservation area.</p> <p>See discussion under the heading Issues.</p>

3. General Provisions	Compliance	Comment
3.11 Transport and Parking	Yes	There is sufficient space within the lower ground floor to accommodate bicycle parking; a suitable condition is recommended.
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.

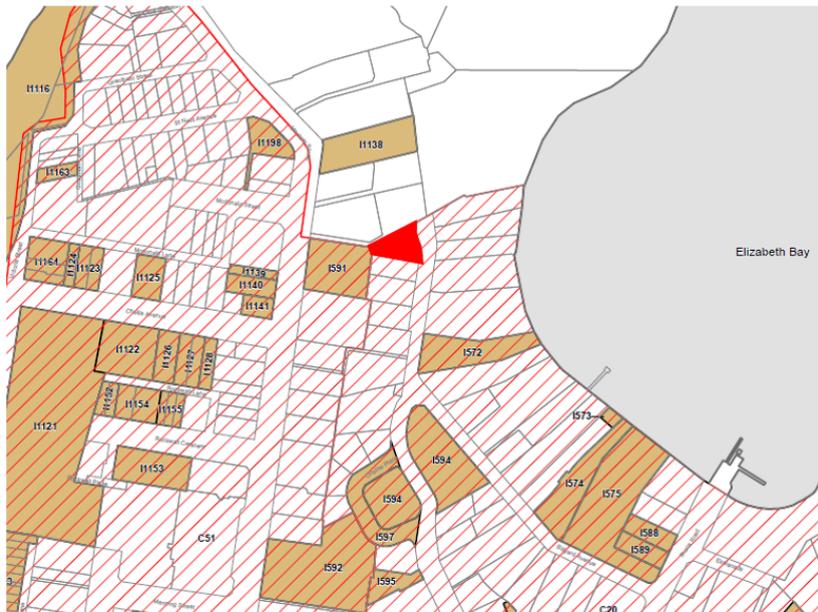
4. Development Types  4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.1 Building height	Yes	<p>A maximum of six storeys is permitted.</p> <p>The proposed development is three storeys in height above ground, four in total.</p> <p>The site is identified as having a maximum height of two storeys to Billyard Avenue. The proposal retains the existing one storey sandstone wall to Billyard Avenue and introduces two additional courses of sandstone, which is acceptable.</p>
4.1.2 Building setbacks	Yes	<p>The proposed setback of the dwellings is in alignment with the neighbouring buildings being 11 Billyard Avenue to the south and 8 Macleay Street to the north, being approximately 3.3 - 8.465m.</p> <p>A 1m side setback is proposed to the north and south (side), which is generally consistent with the established pattern within the locality.</p> <p>The proposed rear setback responds to the alignment of the cliff face and is 5.25 - 6.42m.</p>

4. Development Types  4.1 Single dwellings, terraces and dual occupancies	Compliance	Comment
4.1.3 Residential amenity	Yes	<p>The proposed development will provide high levels of amenity for the future dwellings, while improving the amenity of a number of neighbouring properties.</p> <p>The dwellings will respectively be provided with private open space of 48.92sqm and 46.78sqm and deep soil of 44.19sqm and 36.77sqm, which is the minimum requirement for dwellings.</p> <p>It is noted that the cinema room for each dwelling does not have windows and is to be mechanically ventilated. As this is considered to be a habitable room a condition is recommended to ensure that the cinemas are not to be used as bedrooms. The gym/cellar will receive some natural light from an overhead skylight.</p> <p>The applicant has undertaken significant design development to ensure privacy and overlooking impacts are ameliorated both to and from the proposed development. This has been achieved through the implementation of a combination of frosted glazing for bathroom windows, and clerestory and bay windows in the bedrooms.</p> <p>The following elements have been discussed further in the Issues section: views and solar access.</p>
4.1.9 Car parking	Partial compliance	<p>While the proposed driveway width and garage doors exceeds 2.7m, this is considered to be acceptable. The garage doors will be finished to a high standard and have been designed so that they do not detract from the streetscape.</p>

## Issues

### Heritage

25. The site contains a contributory building located within a Conservation Area and is therefore subject to the heritage provisions of the SDCP 2012.
26. Council's Heritage officer has advised that Elizabeth Bay and Rushcutters Bay has significance for its original pattern of nineteenth century marine villas and grand residences, and terraces of late nineteenth and early twentieth century.
27. The area also has significance for a second overlay of early to mid-twentieth century apartment housing. These two periods represent the largest proportion of built area and creates streetscapes of strong urban form and Victorian, Federation and Inter-War character.
28. The area provides building types that represent the last 150 years of development and co-exist in a harmonious way. Despite the intrusive nature of later high rise towers whose impact is disproportionate to their proportion of built area, the area provides a highly cohesive character although the towers visually dominate the background of low scale streetscapes.
29. The Heritage officer notes that the subject dwelling has been substantially modified since construction, including the front balconies on both ground and first floors being enclosed and various substantial internal modifications.
30. In accordance with section 3.9.7 of the SDCP 2012 which relates to demolition of contributory buildings located within heritage conservation areas, Council's Heritage officer has assessed whether the proposal warrants the existing buildings demolition.
31. They note that *'the subject site falls within the transitional period from the Federation period to the Inter-war period. Both Federation and Inter-war periods are Elizabeth Bay and Rushcutters Bay Heritage Conservation Area's significant historical periods. The existing building appears from a public place to be altered yet recognisable and reversible – clearly a Contributory building.'*
32. The existing dwelling is located next to a 'detracting building' at 11 Billyard Avenue. 11A Billyard Avenue is currently ungraded; however, as part of the *Conservation Areas Review Project 2014*, it is recommended that this will be amended to 'Neutral' because the contemporary infill does not detract from the significant character of the Elizabeth Bay and Rushcutters Bay Heritage Conservation Area.
33. Council's Heritage officer has advised that *'the context of 9 Billyard Avenue is that it is located at the transitional point between a heritage conservation area and a non-heritage conservation area. 9 Billyard Avenue is located at the northern boundary of the Elizabeth Bay and Rushcutters Bay Heritage Conservation Area (HCA 20) and a non-heritage conservation area. In this context, the proposed demolition of this Contributory building is considered justified and acceptable.'*
34. In consideration of the above, any replacement building must be sympathetic or appropriate. Council's Heritage officer considers the contemporary design, form, scale, bulk, roof scape, retention of the sandstone wall and setback of the new building to be appropriate within the heritage conservation area.
35. The full report by Council's Heritage officer is included as Attachment E.



**Figure 15:** Sydney Local Environment Plan 2012 Heritage Map, indicating Heritage Conservation Area and Heritage Items, subject site identified on the boundary

### Design and Design Excellence

36. The proposed development has been designed to be lower than the existing building on the site and is substantially lower than the permitted 22m or six storeys.
37. While the proposed building is a pair of semi-detached dwellings, it is comparable in bulk and massing to the two neighbouring apartment buildings to the south at 11 and 13 Billyard Avenue. To further assist the subject site to integrate with the streetscape, a front setback similar to that at 11 and 13 Billyard Ave is proposed.



**Figure 16:** View from the City's model, which shows the contextual relationship, demonstrating the fit (massing and scale) within the streetscape

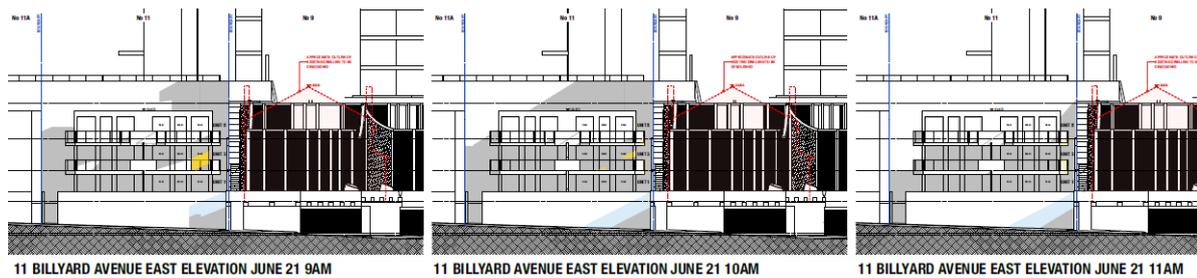
38. The proposed street facade has been designed and modulated to achieve a balance between outlook and privacy, solidity and void for its appearance within the streetscape and the heritage conservation area. The proposed pair of dwellings have a unique architectural character that is contemporary in style. The scalloped facade is highly sculpted, and is proposed to be constructed of precast concrete columns and sliding metal shutters. This outer 'skin' of the facade offers both scale and detail – being two storeys in height, with finely spaced vertical screening. Behind the screens, the horizontal floor slabs and glazing of the dwelling will be visible to varying degrees, allowing a more traditional reading of the building scale.
39. The majority of the existing stone retaining wall along the boundary has been retained. The single opening has become two, with the stone re-used to rebuild the wall where openings are relocated. The openings are minimised in size. The garage doors are bespoke, and relate to the detail of the screens proposed in the buildings, with fine, timber vertical members. New landscaping, including trees, are proposed in the front and rear setbacks.
40. While the style of architecture is modern in design to buildings in the vicinity, the scale, materials and decorativeness of the facade should ensure that the building sits comfortably within the streetscape as the architect has taken cues from the designs of buildings contained within the surrounding conservation area. The proposal is considered to achieve design excellence.
41. It is noted that there are three skylights that protrude above ground level within the front setback. It is recommended that these are conditioned to have a height that sits below the front sandstone wall.

#### **View Impacts**

42. The proposal has been carefully designed to minimise view loss and the applicant has undertaken a view analysis to determine whether the proposal results in any significant view loss from the neighbouring residential buildings with particular consideration of 6, 8 and 12 Macleay Street and 11 Billyard Avenue.
43. This view analysis demonstrates that the demolition of the existing building and the reduction in the maximum building height results in improvements or neutral impacts to a number of views.
44. It is noted that there is a 22m height control for this site, and if such a building was constructed there would be a significant view loss to surrounding buildings. It is important in this instance to recognise that the proposed height of the building is lower than the roof ridge of the existing building on site.
45. Images showing the indicative view gain are included as Attachment C, View Analysis.

#### **Solar Access**

46. The proposal is considered to improve solar access to the majority of the units at the neighbouring property to the south at 11 Billyard Avenue.
47. The applicant has undertaken a specific analysis of this building and it is noted that the proposal will increase solar to the front balcony; however, there will be some additional shadow on the north facing (side) living room between 9am and 12 noon. However, it has been demonstrated that 1h 45m of direct solar access is retained to the living room glazed doors of Unit 5 (between 9am and 11:45am) and solar access is improved to Unit 3.



**Figure 17:** Solar access diagram to east (front) elevation of 11 Billyard Avenue, with the 'yellow' indicating increase to solar access.

48. Some overshadowing will occur to side habitable and bathroom windows of 11 Billyard Avenue; however, in accordance with section 4.1.3.1(2) of the SDCP 2012, as they are side windows and not primary living spaces they are not protected. This is demonstrated within the diagrams included as Attachment D.
49. In addition, the proposal with a maximum height proposed of 8.9m is well below the permissible height of 22m control.

### Suspension of Covenants

50. The Certificate of Title includes a covenant (H2869654) that states:

*“No portion of any building to be erected on the land hereby transferred shall exceed a height given by placing a horizontal plane at a point 35’4” above the level of the existing kerb at Billyard Avenue where the intersected by the continuation of the southern boundary of the land hereby transferred and no building at present erected thereon shall be altered or reconstructed in any manner which would increase the present height of the whole building or any part thereof*

- (a) *The benefit of the covenant set forth herein is appurtenant to the land comprised in Certificate of Title registered Volume 4896 Folio 50.*
  - (b) *The burden of the covenant shall lie upon the land comprised in Lot C hereby transferred.*
  - (c) *The person by whose consent the said covenant may be released varied or modified is the owner for the time being of the land comprised in Certificate of Title registered volume 4896 Folio 50.”*
51. The above covenant places a height restriction for new buildings on the subject site at 24.89 (AHD). The covenant benefits 12 Macleay Street. 3.16 of the EP&A Act provides that certain 'regulatory instruments', including covenants on land may be set aside to enable development to occur in accordance with an LEP and a development consent. Section 28 authorises a planning authority to include in an LEP a clause that allows for a covenant to be set aside.
  52. Clause 1.9A (Suspension of covenants, agreements and instruments) of the SLEP 2012 states that *'for the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.'*

53. The subject site is outside of land identified as Central Sydney under the LEP 2012 and the covenant has been imposed by a private landowner and not a public body. Accordingly, clause 1.9A of SLEP 2012 overrides the height covenant as it applies to the land. Council can therefore grant consent to a development that exceeds the height stated in the covenant. The restrictive covenant burdening the land is of no effect.
54. Notwithstanding the above, the height of the proposed roof parapet does not extend above the ridgeline of the existing building, which is 1.91m above the height of the covenant and therefore the proposed height is reduced to 0.5m above the covenant. It is noted that the permitted SLEP 2012 maximum height is 22m.

#### **Other Impacts of the Development**

55. The proposed development is capable of complying with the BCA.
56. 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**

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

#### **Internal Referrals**

58. The conditions of other sections of Council have been included in the proposed conditions.
59. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Surveyors; Transport and Access; Tree Management; Landscaping; who advised that the proposal is acceptable subject to the recommended conditions.
60. The application was presented to the Design Advisory Panel on 12 April and 7 June 2018. The Panel were satisfied with the design, noting that *'this has the potential to be an excellent building; the treatment of the garage doors within the sandstone walls is improved from previously seen material, and the use of timber is supported.'*
61. The Panel also noted that further explanation is required regarding possible design issues, including the location of air-conditioning system and a potential chiller, which is not currently shown on the drawings.

**Response:** The air conditioning system is located within the basement and intakes air from the roof. This will not impact on the amenity of neighbouring properties.

62. The proximity of balconies attached to adjacent residential apartment buildings was also raised as a possible privacy issue and this should be addressed in the design.

**Response:** Significant design details have been provided to ensure that there are no adverse privacy and overlooking impacts from both within and outside of the subject site.

63. The proposed 'cinema room' with no windows should be amended in the design to include windows for natural light and ventilation, noting the risk that this could be converted to a bedroom at a later date. Similarly the ventilation strategy for the proposed gym was questioned.

**Response:** Advice regarding BCA is that both spaces are capable of complying with the NCC with performance solutions provided by a suitably qualified professional. It is also noted that both spaces will receive some natural light from an overhead skylight.

## External Referrals

### Notification, Advertising and Delegation (Submission(s) Received)

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 28 days between 5 February 2018 and 6 March 2018. As a result of this notification there were 28 submissions received.

- (a) The proposal will result in excessive excavation, which will impact on significant risk to property and nuisance.

**Response** - Suitable conditions regarding construction management, vibration and dilapidation reports are recommended to form part of the consent.

- (b) A 1.5m setback of the building and excavation should be required to reduce construction and amenity impacts, including impact on solar.

**Response** - The proposed 1m setback is considered to be acceptable within the site and its location and does not result in any adverse impacts on surrounding properties.

- (c) Demolition of the building to allow multi-storey residential is not supported.

**Response** - The proposal is for the demolition of the existing dwelling and construction of two residential dwellings. As discussed above the scale and built form of the proposed building is considered acceptable.

- (d) Construction Management should be thoroughly addressed, including dilapidation, hours, excavation methods, pest control, plant location resulting in adverse noise impacts, hazardous materials, dust, construction traffic management and drainage.

**Response** - Suitable conditions of consent are recommended to ensure that construction impacts are managed accordingly.

- (e) The site and dwelling have historical significance and should be preserved as a contributory building within a heritage conservation area and within the setting of Elizabeth Bay House.

**Response** - This has been discussed in detail above, with Council's Heritage officer stating that the demolition of the building is justified and acceptable, due to its location on the border of the Heritage Conservation Area

- (f) The proposed development is unattractive within the streetscape, does not relate to surrounding buildings and is out of character due to its bulk, scale, design and materials. The proposal does not exhibit design excellence.

**Response** - This has been discussed in detail above.

- (g) The proposal will result in the loss of an on-street car parking space.

**Response** - The proposal provides for four car parking spaces, which is permitted. There is no parking in front of the site.

- (h) The proposal will overshadow the front garden areas and the first two floors of 8 Macleay Street and will also lead to loss of privacy for the owners on the first two floors and amenity will be lost by occupants looking at blank walls. Views and privacy will also be lost.

**Response** - The subject site is to the south of 8 Macleay Street. Notwithstanding this and as discussed above the proposal will not result in adverse solar impacts.

- (i) The proposed removal of existing trees is not justified.

**Response** - The removal of the trees on site has been discussed above and is considered to be acceptable in this instance. Conditions addressing the landscaping of the site are recommended which require the provision of new trees.

- (j) The geotechnical report is not accurate and there will be drainage issues

**Response** - Suitable conditions are recommended regarding stormwater.

- (k) Subdivision is prohibited in the conservation area.

**Response** - The subdivision of land in a conservation area is not prohibited. The proposed subdivision is considered acceptable.

## Public Interest

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

## S7.11 Contribution

66. A new dwelling is proposed and therefore the development is subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

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

(a) Open Space	\$13,151
(b) Community Facilities	\$6,437
(c) Traffic and Transport	\$412
(d) Stormwater Drainage	\$0
Total	\$20,000

### **Relevant Legislation**

68. The Environmental Planning and Assessment Act 1979.

### **Conclusion**

69. The proposed demolition of the existing contributory building is supported having regard for the quality of the design that replaces it. The proposed development is considerably within the height and FSR controls for the site. The proposed pair of dwellings have a unique architectural character that is contemporary in style, is considered to exhibit design excellence and will sit well within the streetscape

70. The proposal provides for excellent amenity for the occupants of the developments and has been designed to minimise adverse impacts on surrounding properties, including view loss, solar and privacy.

### **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Bridget McNamara, Area Planning Coordinator