

Item 5.**Development Application: 32-38 Flinders Street, Darlinghurst**

File No.: D/2017/1731

Summary**Date of Submission:** 13 December 2017

Amended plans were submitted on 19 December 2017, 2 May 2018, 31 May 2018, 20 July 2018, 24 July 2018 and 26 July 2018.

Applicant: George El Khouri**Architect:** George El Khouri**Owner:** George El Khouri**Cost of Works:** \$396,000.00**Zoning:** The site is located within the B4 (Mixed Use) zone. The proposed development is residential and is permissible with consent in the zone.**Proposal Summary:** Development application is for alterations and additions to an existing residential flat building comprising the construction of an additional storey above the existing roof level to provide 2 residential units (1 x 2 bed and 1 x studio) and the provision of a terrace above the existing store room on the rear elevation to serve unit 1.

The application is referred to Local Planning Panel for determination as the application proposes a variation to the height of buildings development standard by more than 10%. The proposal exceeds the 15m height development standard pursuant to Clause 4.3 of the Sydney LEP 2012 by 5.8m (38.7%). A written request has been provided seeking a variation to the height development standard in accordance with Clause 4.6 of the Sydney LEP 2012. The proposal is compliant with the floor space ratio control.

The preliminary assessment of the application, including consideration of the proposal by the City's Design Advisory Panel, identified issues relating to the unit layout, materials, architectural detailing and the full enclosure of the courtyard to unit 1.

Proposal Summary: The proposal has been amended during the assessment to address concerns raised in the preliminary assessment.
(continued) Amendments to the development application were submitted to Council on 19 December 2017, 2 May 2018, 31 May 2018, 20 July 2018, 24 July 2018 and 26 July 2018.

The application was notified and advertised for a period of 21 days from 19 December 2017 to 10 January 2018. No submissions were received. The amended proposal was not required to be re-notified to adjoining properties.

The proposal in its amended form, is generally compliant with relevant planning controls with the exception of the height control. It is considered to result in a built form that preserves the heritage conservation area and is consistent with the desired future character of the area.

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

Development Controls:

- (i) State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iii) Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
- (iv) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

Developer Contributions

- (i) City of Sydney Development Contributions Plan 2015

Attachments:

- A. Recommended Conditions of Consent
- B. Proposed Drawings
- C. Clause 4.6 Variation Request

Recommendation

It is resolved that:

- (A) The variation sought to Clause 4.3 (Height of Buildings) in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be supported in this instance; and
- (B) Consent be granted to Development Application No. D/2017/1731 subject to the conditions set out in Attachment A to this report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the B4 - Mixed Use zone and the relevant development controls for the site, with the exception of the height of buildings development standard.
- (B) The non-compliance with the height of buildings development standard is acceptable in this instance given the 16m setback from Flinders Street, scale and design of the proposal which minimises its visual impact. The dense urban environment that surrounds the site in Chisholm and Taylor Street only allows for glimpses or oblique views of the addition making extended setbacks from both streets unnecessary.
- (C) The proposed addition would not have a detrimental impact on the streetscape or heritage conservation area.
- (D) The proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.

Background

The Site and Surrounding Development

1. A site visit was carried out by City officers on 26 April 2018 and 20 June 2018.
2. The site has a legal description of Lot 10 DP 1142875 and is commonly known as 32-38 Flinders Street, Darlinghurst.
3. The site is rectangular in shape, with an area of approximately 607m². It has a 19.89m street frontage to Flinders Street to the west, a 6.11m street frontage to Taylor Street to the north and a 16.21m street frontage to Chisholm Street to the east. The site is located close to the intersection of Flinders Street and Taylor Street.
4. Existing on site is a five storey residential flat building which contains thirteen apartments and basement car parking accessed from Chisholm Street.
5. Adjoining the site to the north is a nine storey apartment building fronting Flinders Street with retail at the ground floor level. The adjoining property to the south is a part three/part four storey commercial building.
6. The surrounding area is characterised by a mixture of development including residential flat buildings, terraces and commercial buildings.
7. The site is not a heritage item but is located within the Paddington Urban Heritage Conservation Area (CA50).
8. Photos of the site and surrounds are provided below at Figures 1 to 11 inclusive.

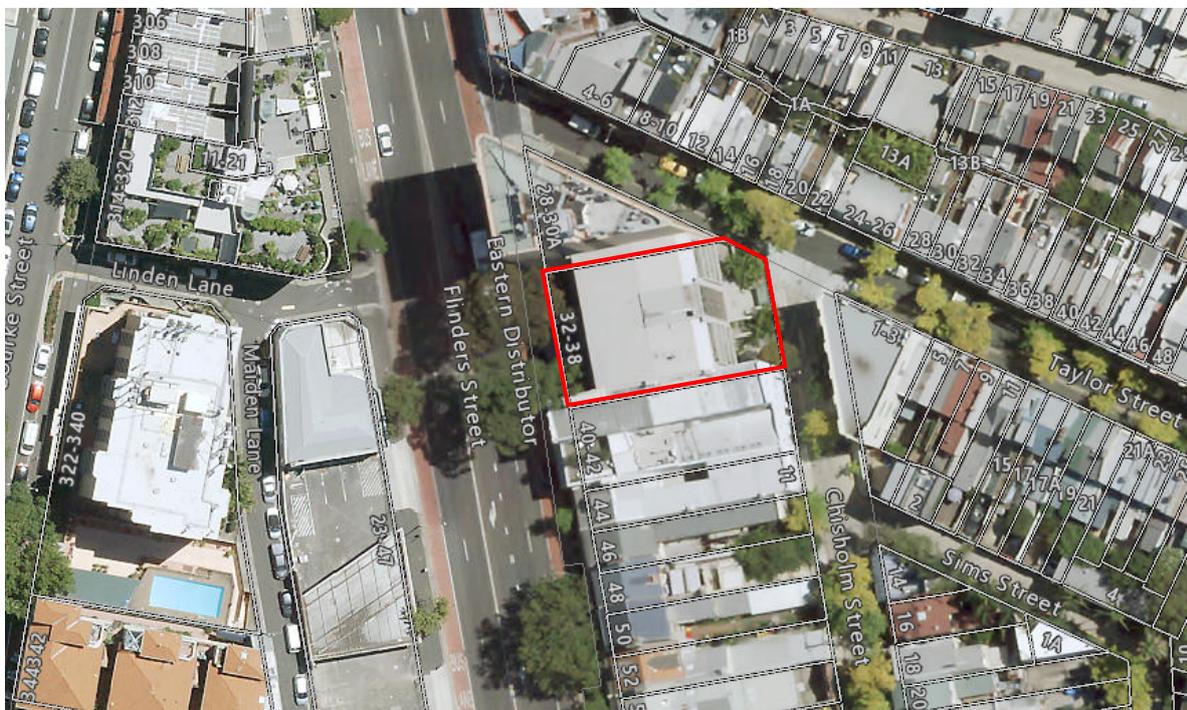


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Flinders Street looking east



Figure 3: Site viewed from Chisholm Street/Taylor Street looking west



Figure 4: Corner of site viewed from Taylor Street looking west



Figure 5: Site viewed from Linden Lane looking east across Flinders Street



Figure 6: View of neighbouring development to south of site at 40-42 Flinders Street viewed from Chisholm Street looking south west



Figure 7: View of site and neighbouring buildings from Chisholm Street looking north



Figure 8: View from roof of site looking west towards Flinders Street



Figure 9: View from roof of site looking southeast down Chisholm Street



Figure 10: View from rooftop looking east down Taylor Street



Figure 11: View of existing lift overrun on rooftop looking southwest towards Flinders Street

Proposal

9. The application seeks consent for alterations and additions to an existing residential flat building comprising the construction of an additional storey above the existing roof level to provide 2 residential units (1 x 2 bed and 1 x studio) and the provision of a terrace above the existing store room on the rear elevation to serve unit 1.
10. In detail, consent is sought for the following:
 - (a) Ground/podium level
 - (i) Provision of a terrace with rendered brick balustrade above the existing store room on the east elevation to serve unit 1;
 - (b) Sixth floor
 - (i) Construction of single storey addition to provide 2 residential units (1 x 2 bed and 1 x studio) with associated balconies. The units would be accessed from the existing stairway that forms part of the circulation core of the development.

Amendments

11. Amended solar diagrams and a roof plan were requested by City officers on 18 December 2018 and received on 19 December 2018.
12. Further information on the proposed materials and finishes were requested by City officers on 26 April 2018 and received on 2 May 2018.
13. Following a referral to the Design Advisory Panel (DAP), revised plans were submitted on 31 May 2018 which amended the proposed development in the following manner:
 - (i) The proposed enclosure of the courtyard for unit 1 was removed and replaced with a brick balustrade and open terrace;
 - (ii) A skillion roof was added to the Flinders Street elevation and rooflights were added instead of windows; and
 - (iii) The balcony balustrades facing Chisholm Street were amended to match the balconies on the existing building.
14. On 20 July 2018 amended plans were received following a request by City officers to show two units (rather than one unit with two kitchens) and to increase the floor to ceiling height to the minimum height requirement of 2.7m. Further revisions to the plans were received on 24 and 26 July to rectify errors shown on the previous sets of plans.
15. On 26 July 2018, the applicant submitted an amended Clause 4.6 and SEE. This was because the maximum height of the existing building was incorrectly stated as 15.34m in the original SEE rather than 18.5m. The original height measurement was taken from the highest above ground level measurement and lowest point on the existing building.
16. Plans of the proposed development are provided below at Figures 12 to 20, inclusive, and a full set of plans is provided in Attachment B.



Figure 12: Proposed podium level floor plan



Figure 13: Approved fifth floor plan (no changes proposed)

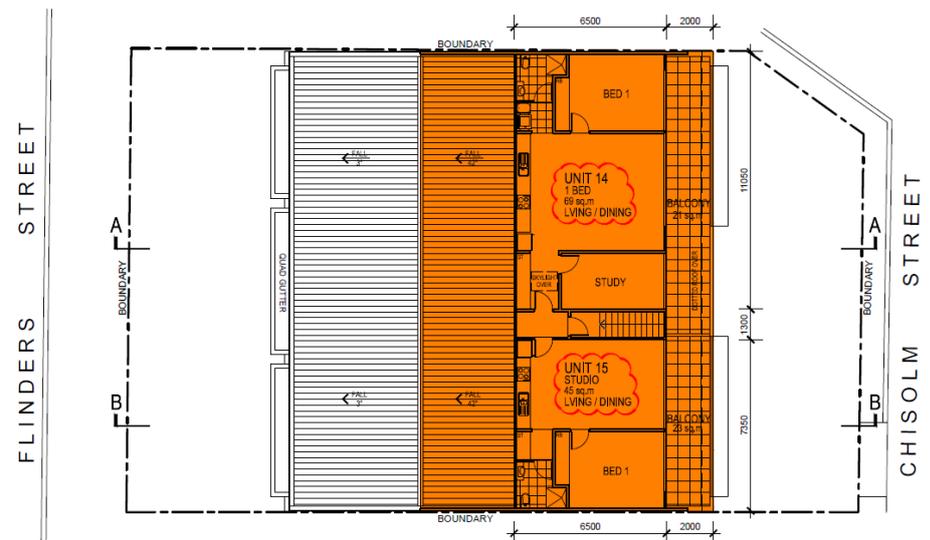


Figure 14: Proposed sixth floor plan

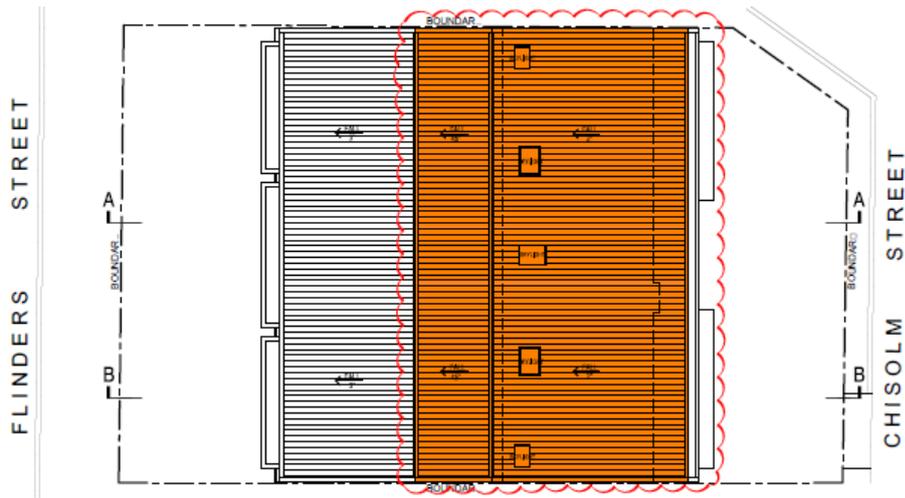


Figure 15: Proposed roof plan

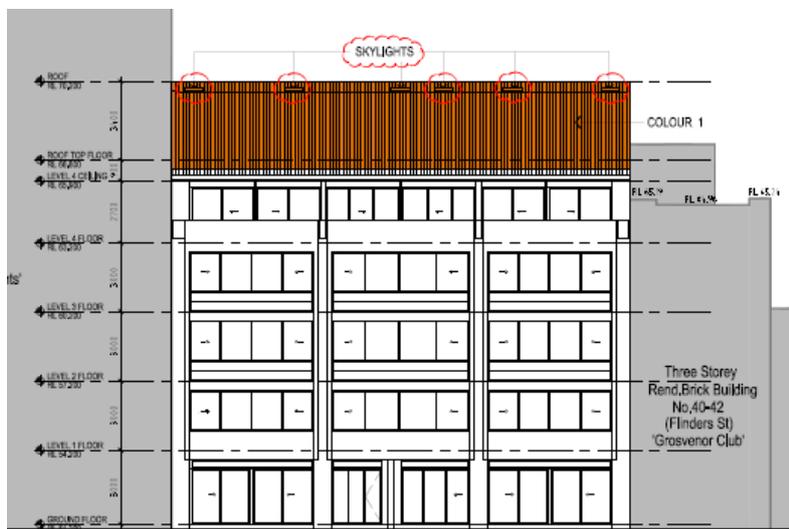


Figure 16: Proposed west elevation fronting Flinders Street

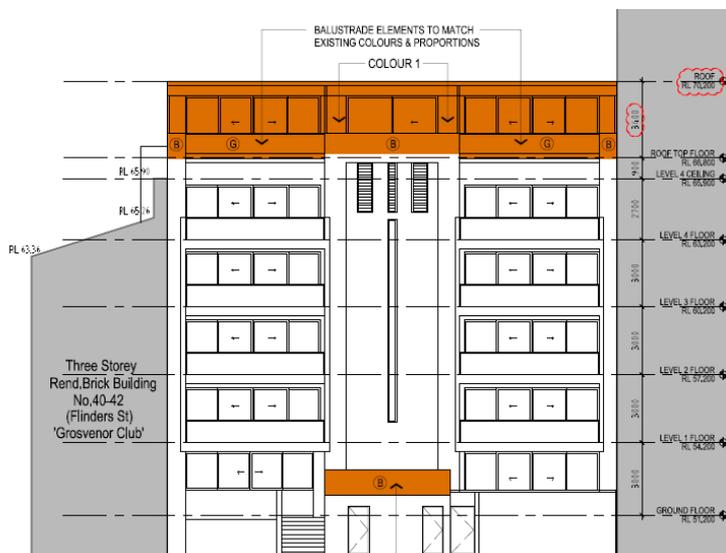


Figure 17: Proposed east elevation fronting Chisolm Street

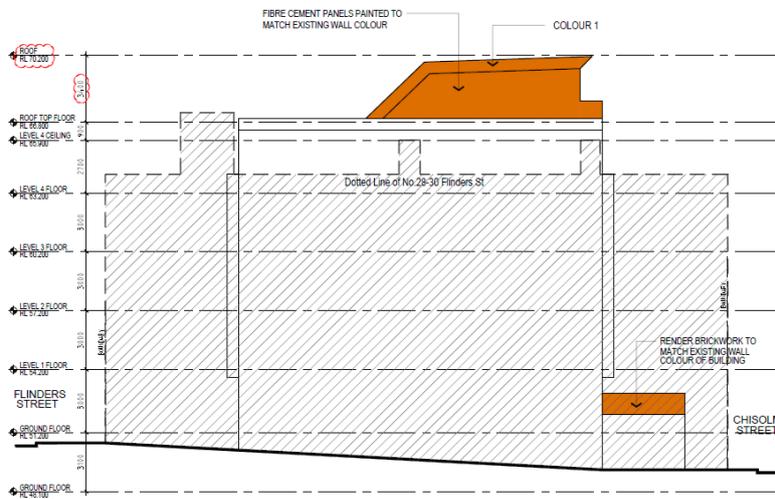


Figure 18: Proposed south elevation

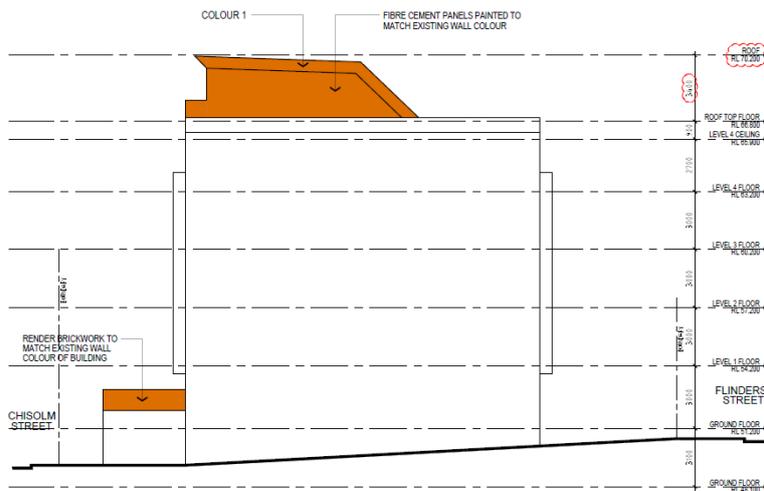


Figure 19: Proposed north elevation

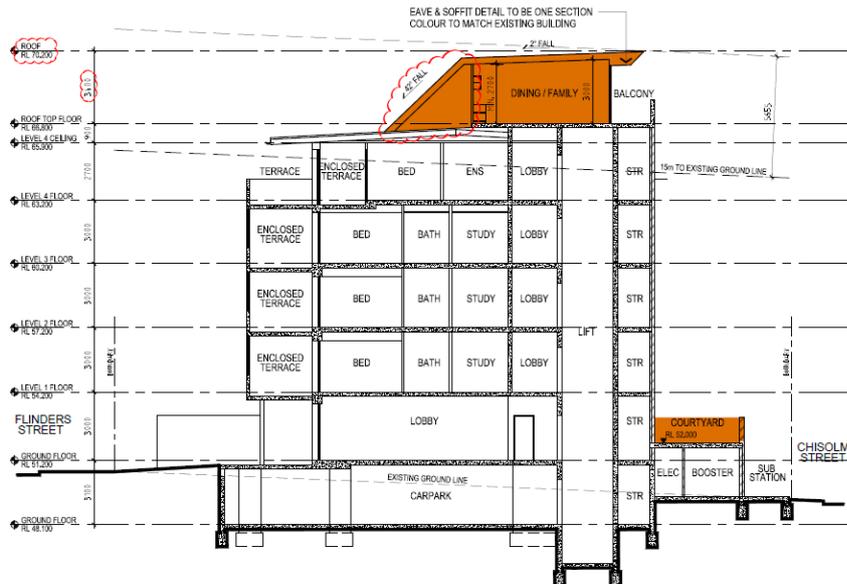


Figure 20: Proposed Section AA

History Relevant to the Development Application

Previous Development Applications

17. On 4 August 2008, development application D/2007/2137 was approved with deferred commencement for the construction of a 6 storey residential flat building comprising 13 residential units (3 x 1 bed and 10 x 2 bed) with 11 basement parking spaces. The consent became operative on 2 September 2011.
18. On 10 March 2015, development application D/2007/2137/A was refused to modify development consent D/2007/2137 to allow the continued use of an unauthorised shed constructed at roof level. The application was refused as the structure exceeded the height controls and was not considered to exhibit design excellence.
19. On 22 June 2015, development application D/2007/2137/B was approved to modify development consent D/2007/2137 to enclose the existing balconies along the western (Flinders Street) elevation.
20. On 22 August 2016, development application D/2007/2137/C was withdrawn to modify development consent D/2007/2137 to add an additional floor to accommodate 1 residential unit and alterations to the ground level courtyard. The application was withdrawn as the modifications could not be considered under a Section 4.55 (modification) application.

Current Development Application

21. The current development application was lodged on 13 December 2017.
22. The preliminary assessment of the application identified issues relating to the unit layout, architectural detailing, materials and the proposed enclosure of the ground floor courtyard.

23. The development application was presented to the Design Advisory Panel (DAP) on 10 May 2018. DAP advised that the materials should be amended to be more sympathetic to the existing building and that the architectural detailing should be improved.
24. The proposal was amended to address concerns raised in the preliminary assessment and by DAP. Amended plans were submitted on 19 December 2017, 2 May 2018, 31 May 2018, 20 July 2018, 24 July 2018 and 26 July 2018.
25. The amended plans submitted on 26 July 2018 are the subject of the assessment within this report.

Economic/Social/Environmental Impacts

26. 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.

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	The building depth of the proposed units and associated balconies is 8.5m which will result in an acceptable amenity outcome.

2F Building Separation	Compliance	Comment
Five to eight storeys (approximately 25 metres): <ul style="list-style-type: none"> • 18m between habitable rooms / balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms 	Partial compliance	There is a 16m building separation between the proposed balconies and the 3 storey commercial building to the east at 1-3 Taylor Street and a 17m - 20m building separation between the site and the 2 storey residential terraces to the north-east at 22-26 Taylor Street. This is considered to be acceptable as the proposed addition is consistent with the existing rear building line which has a setback of 6.5m from the boundary.

3F Visual Privacy	Compliance	Comment
<p>Five to eight storeys (25 metres):</p> <ul style="list-style-type: none"> • 9m between habitable rooms / balconies • 4.5m between non-habitable rooms 	Yes	<p>Over 9m separation distance is provided between the site and neighbouring site boundaries to the east/northeast.</p> <p>A privacy screen is to be installed between the balconies for the 2 units and a condition is recommended which requires details of the privacy screen to be submitted.</p>

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	The living room and private open space of the proposed units will receive a minimum of 2 hours of direct sunlight in midwinter.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	<p>The design of the addition was revised following advice from the DAP and Urban Designers to include a skillion roof on the Flinders Street (west) elevation to reduce the bulk and massing of the addition. This resulted in the removal of the windows on the west elevation and the installation of rooflights instead.</p> <p>As a result, the apartments are single aspect but will achieve natural cross ventilation via openable rooflights. Three rooflights are proposed in the 1 bedroom apartment and 2 in the studio apartment. A rooflight will also be installed above the staircase to the apartments. A condition is recommended which requires details of the rooflights to be submitted to ensure that the rooflights are openable.</p>

4B Natural Ventilation	Compliance	Comment
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	The depth of both residential units is less than 18m.

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

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	The original proposal did not comply with the minimum floor to ceiling height requirement. Amended plans were submitted which show that the floor to ceiling height of both units ranges from 2.7m to 3m throughout.
Non-habitable rooms: 2.4m	Yes	The floor to ceiling height for both apartments is a minimum of 2.7m throughout.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² 	Yes	The studio apartment has a GFA of 45sqm which is above the minimum size requirement for studios. However, it is noted that a wall between the bedroom and living area is shown on the plans. A condition of consent is recommended for the plans to be amended to remove this wall as the apartment is too small to meet the 1 bedroom apartment size. The 1 bedroom apartment has a GFA of 69sqm which is above the minimum size requirement.
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	All habitable rooms have appropriately sized windows.

4D Apartment Size and Layout	Compliance	Comment
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	All habitable rooms are less than 6.75m in depth.
8m maximum depth for open plan layouts.	Yes	The open plan living/dining areas in both units are less than 8m in depth.
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	The size of the bedroom area in the studio is 13sqm. A condition of consent is recommended for the plans to be amended to remove the wall between the bedroom and living area.
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	Both apartments achieve the minimum living/dining room widths.

4E Private Open Space and Balconies	Compliance	Comment
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.	Yes	Both apartments have balconies that have a minimum depth of 2m. The size of the 1 bedroom apartment balcony is 21sqm and the studio apartment balcony is 13sqm.

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 additional apartments will be accessed from the circulation core at level 6.

4F Common Circulation and Spaces	Compliance	Comment
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	There are no windows that open onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	The proposed common staircase to the apartments has a rooflight to provide 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>	No	<p>A storage area of 1.9m³ for the studio apartment and 4m³ for the 1 bedroom apartment is proposed which do not comply with the minimum requirement.</p> <p>Notwithstanding this, both units are above the minimum size requirement and so adequate room for storage could be achieved. A condition of consent is recommended requiring the plans to be amended to show adequate storage.</p>

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Yes	The apartments are set back 20m from Flinders Street and are orientated to the east. The location and layout of the apartments is considered to be appropriate.

State Environmental Planning Policy (Infrastructure) 2007

27. The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 101

28. The application is subject to Clause 101 of the SEPP as the site has a frontage to Flinders Street (Eastern Distributor), which is a classified road. The application is considered to satisfy Clause 101 (2) (a, b) as vehicular access to the site can be provided from Chisholm Street and no additional parking is proposed. The proposed development is considered to satisfy Clause 101 (2) (c) of the Infrastructure SEPP as it has a setback of 20m from Flinders Street and is single aspect, with all windows and balconies facing Chisholm Street. The setback location and single aspect design of the proposal is considered sufficient to mitigate against potential traffic, noise and vehicle emissions impacts from Flinders Street.

Clause 102

29. The application is subject to Clause 102 of the SEPP as the average daily traffic volume of Flinders Street is more than 40,000 vehicles. The application is considered to satisfy Clause 102 of the Infrastructure SEPP as it has a setback of 20m from Flinders Street and is single aspect, with all windows and balconies facing Chisholm Street. The setback location and single aspect design of the proposal is considered sufficient to mitigate against potential traffic, noise and vehicle emissions impacts from Flinders Street.

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

30. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
31. 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.
32. 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.
33. The development is consistent with the controls contained with the deemed SEPP.

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

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

Sydney LEP 2012

36. The site is located within the B4 (Mixed Use) zone. The proposed use is defined as residential accommodation and is permissible with consent in the zone.
37. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 15m is permitted. A maximum height of 20.8m is proposed. A Clause 4.6 request to vary the Height of Buildings development standard has been submitted. See discussion under the heading Issues.
4.4 Floor Space Ratio	Yes	A maximum FSR of 2.5:1 is permitted. An FSR of 2.29:1 is proposed.
4.6 Exceptions to development standards	Partial compliance	The proposal seeks to vary the Height of Buildings development standard prescribed under Clause 4.3. See discussion under the heading Issues.
5.10 Heritage conservation	Yes	The subject site is located within the Paddington Urban Heritage Conservation Area (C50). See discussion under the heading Issues.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence 6.21 Design excellence	Yes	The amended proposal satisfies the requirements of this provision. The design achieves a high standard of architectural design, with materials and detailing appropriate to the existing building and heritage conservation area. The site area, height and cost of work does not trigger the requirement for a competitive design process for this development.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	The existing building has 11 car parking spaces at basement level. The proposed development does not include any additional car parking spaces.
7.14 Acid Sulphate Soils	Yes	The site is identified as having Class 5 Acid Sulphate Soils. As the proposal does not involve the excavation of soils within 500m of Class 1-4 soils, no further action is required.

Sydney DCP 2012

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

2. Locality Statements – Surrey Hills North

The subject site is located in the Surrey Hills North locality. The proposal is considered to be in keeping with the unique character of the area and design principles in that it retains the scale and massing of the of the existing building when viewed from Flinders Street and responds to and complements the heritage conversation area.

3. General Provisions	Compliance	Comment
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal will not have unacceptable impacts on the environment and satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The application does not propose subdivision of the site.
3.9 Heritage	Yes	<p>The subject site is located within the Paddington Urban Heritage Conservation Area (C50) and is considered to be 'neutral' in relation to its contribution to the conservation area.</p> <p>See discussion under the heading Issues.</p>
3.11 Transport and Parking	No	<p>Bicycle parking</p> <p>The proposal does not include any bicycle parking for the new apartments and there is no bicycle parking in the basement/on site for the existing apartments. Due to the site constraints, it is not considered to be feasible to require the applicant to install bicycle parking for the additional units.</p> <p>Vehicle parking</p> <p>No vehicular parking is proposed for the additional two units.</p>
3.14 Waste	Yes	<p>A bin storage area is provided at basement level within the existing building.</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
4.2.1 Building height	No	<p>The building height in storeys control is 4 storeys.</p> <p>The existing building is 5 storeys in height (plus basement) and the proposal will add an additional floor resulting in a 6 storey building.</p> <p>See discussion under the heading Issues.</p> <p>The site is not subject to a street frontage height control.</p>
4.2.2 Building setbacks	Yes	<p>The proposed development is consistent with the existing building line on the Chisholm Street elevation which has a setback ranging from 3.7m to 6.2m to the rear boundary.</p> <p>It will have a 16.2m setback from Flinders Street and a 9.5m setback from the front façade of the existing building to reduce the visual impact from Flinders Street.</p> <p>The side boundaries match the existing building which is not set back from the boundaries with the adjoining properties.</p>
4.2.3 Amenity	Yes	<p>Solar Access</p> <p>New development must not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than 2 hours direct sunlight to habitable rooms and 50% of the private open space between 9am and 3pm on 21 June.</p> <p>The applicant has provided shadow diagrams which show that the proposal would result in minor additional overshadowing to the roof of nos. 40-42 and 48 Flinders Street and the roof of the rear wing of no. 20 Chisholm Street.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		<p>The proposed development would have a negligible impact on direct sunlight to habitable rooms and no impact on sunlight to private open space. The additional overshadowing impact of the development is minor, given that the neighbouring building to the north (no. 28-30 Flinders Street) is a 9 storey building which is considerably larger than the application site.</p> <p>For other amenity considerations, refer to assessment under SEPP and ADG elsewhere in this report.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The proposed addition includes a skillion roof on the west elevation and the detailing on the east elevation would match the existing building façade below.
4.2.5 Types of development	Yes	<p>The site is located adjacent to Flinders Street which is a classified road. Mitigation measures have been included in the proposed design of the development to reduce the impact of the road on the amenity of future occupants. The measures include the setback of 16.2m from Flinders Street and the single east facing aspect of the apartments and balconies, away from Flinders Street.</p>
4.2.6 Waste minimisation	Yes	A condition is recommended relating to the provision of adequate waste storage within the apartments.
4.2.7 Heating and Cooling Infrastructure	Yes	Provision for heating and cooling infrastructure has been provided within service areas at the basement level.

Issues

Building Height - Clause 4.6

39. The site is subject to a 15m height control under the Sydney LEP. The proposed additional storey will increase the maximum height of the building to 20.8m. This represents a 5.8m or 38.7% variation to the building height development standard. It is noted that the existing building currently exceeds the maximum LEP height control.
40. The ground level falls across the site from RL 50.76 on Flinders Street to RL 49.29 on Chisholm Street. Figure 21 below shows the 15m height limit and the elements of the existing building and proposed addition above the building height standard.

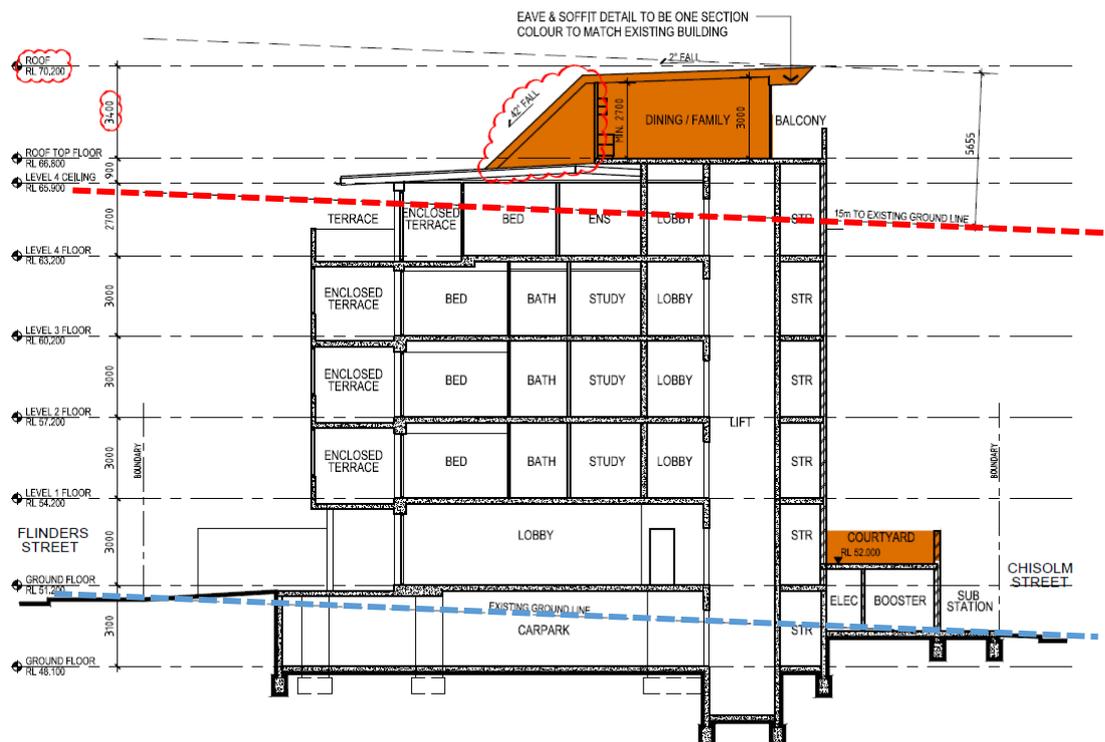


Figure 21: Section A-A through the existing building and proposed addition showing the 15m height limit.

41. The applicant has lodged a written request for an exception to the development standard submitted in accordance with Clause 4.6(3) of the LEP. Clause 4.6 allows the consent authority to vary the development standard in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. In order to demonstrate whether strict numerical compliance is unreasonable and unnecessary in this instance, the proposed exception to the height standard has been considered against the objectives and provisions of Clause 4.6.
42. The applicant contends the following when stating their case that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the standard.

- (a) The streetscape context of the development, in terms of the heights and setbacks of adjoining buildings, means that the proposed development will achieve an appropriate scale transition between the heights of adjoining buildings. It would therefore be unreasonable to restrict the height of the building.
 - (b) The proposed addition will not detract from the significance of the Paddington Urban Conservation Area because it will be stepped back from the street elevation and have a subservient appearance to the main building.
 - (c) The proposed addition would only be visible to a limited extent from Taylor and Chisholm.
 - (d) The proposed addition would not have an adverse impact on adjoining properties in relation to overshadowing, view loss or privacy.
 - (e) The proposed additional floorspace would not result in an exceedance of the floor space ratio for the site.
 - (f) The proposal will promote the social and economic welfare of the community by providing additional housing in a highly accessible location. A requirement for compliance with the height control would limit the potential of the site to contribute to achieving the social and economic welfare of the community.
43. As per clause 4.6(4)(a)(i), it is considered that the applicant has suitably addressed that compliance with the development standard is not reasonable or necessary in the circumstance. It is also considered that the applicant has suitably addressed that there are environmental planning grounds to justify the contravention of the development standard.
44. Clause 4.6(4)(ii) requires the consent authority be satisfied that the proposed development is consistent with the objectives of Clause 4.3 (Height of Buildings) and the objectives of the B4 Mixed Use zone.
45. The objectives of Clause 4.3 (Height of Buildings) are:
- (a) to ensure the height of development is appropriate to the condition of the site and its context;
 - (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas;
 - (c) to promote the sharing of views;
 - (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas;
 - (e) in respect of Green Square:
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site; and
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

46. The proposed development is considered to be consistent with the objectives of Clause 4.3 (Height of Buildings) for the following reasons:
- (a) The proposed sixth storey addition is consistent with the scale, bulk and massing of adjoining buildings and the predominant scale of the streetscape and would ensure an appropriate height transition between the site and adjoining buildings. As such, the height of the development is considered to be appropriate in the context of the site.
 - (b) The proposed addition would not have a detrimental impact on the heritage significance of the Paddington Urban Conservation Area as it has an appropriate setback from Flinders Street and Chisholm Street and would match the existing building in appearance.
 - (c) The additional height would have no significant impact on views and vistas. Additionally, it is not considered to result in any adverse privacy or amenity impacts.
47. The proposed development is considered to be consistent with the objectives of the B4 Mixed Use zone, as it provides residential land use in an accessible location which meet the needs of people who live in and work in the local area, and supports the vitality of the local centres.
48. The non-compliance with the building height development standard relates to all of the development proposal. The development provides good amenity, represents an acceptable heritage outcome, does not adversely impact on the amenity of surrounding residents and presents a good design outcome.
49. Therefore, it is considered that all the requirements of Clause 4.6 of the LEP are satisfied and the Clause 4.6 exception to the development standard is supported.

Heritage

50. The site is located within a Conservation Area and is therefore subject to the heritage provisions of the Sydney LEP and DCP. The proposal was amended following comments from Heritage Specialists and the Design Advisory Panel. A skillion roof to match the existing was added to the elevation facing Flinders Street to reduce visibility of the addition from Linden Lane and long views from Flinders Street. The rear façade of the addition and the unit 1 terrace was revised to match the modulated façade of the existing building which picks up proportions from nearby terraces.
51. The revised proposal is supported in principle by Council's Heritage Specialist and Urban Designer. The proposal is considered to preserve the heritage significance of the conservation area and is consistent with the objectives of clause 5.10 of the LEP and provision 3.9.5 of the DCP.

Access

52. The two new units are proposed to be accessed by the existing staircase that forms part of the circulation core of the existing development as it would not be feasible to introduce a new lift. Under the BCA, no lift access is required to the proposed apartments as all of the existing apartments in the building are accessible by lift.

Plans

53. It is noted that there is a discrepancy between the approved and proposed plans for the rear outdoor terrace area for unit 2. The rear terrace is shown as a larger, enclosed

terrace on the proposed plans, whereas the approved ground floor plan (D/2007/2137/B) shows it as a smaller outdoor terrace. The plans have been marked up to state that this amendment is not approved under this application and the Council's compliance team have been notified of this amendment.

Other Impacts of the Development

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

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

Internal Referrals

57. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit and Environmental Health who advised that the proposal is acceptable subject to the recommended conditions.
58. The conditions of other sections of Council have been included in the proposed conditions.

External Referrals

59. As the site is located on a Classified Road (Flinders Street), the NSW Road and Maritime Services (RMS) were notified of the proposal. RMS submitted that they had no objection to the proposed development.

Notification, Advertising and Delegation (No Submissions Received)

60. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 19 December 2017 and 10 January 2018. No submissions were received.

Public Interest

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

S7.11 Contribution

62. The development is subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

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

(a) Open Space	\$16,529.80
(b) Community Facilities	\$8,091.72
(c) Traffic and Transport	\$518.18
(d) Stormwater Drainage	\$0.00
Total	\$25,139.69

Relevant Legislation

64. The Environmental Planning and Assessment Act 1979.

Conclusion

65. The proposed development is generally consistent with the development standards and zone objectives of the Sydney LEP 2012 with the exception of the height of buildings control.
66. The amended proposal is generally compliant with the built form controls of the Sydney DCP 2012 and the design principles in SEPP 65. The proposal has been amended to address concerns raised by City officers.
67. The proposed addition would not have a detrimental impact on the streetscape or heritage conservation area due to the setbacks from Flinders Street and Chisholm Street.
68. The proposed development will have acceptable residential amenity and will not have unreasonable impacts on the residential amenity of neighbouring properties.
69. The amended proposal is suitable in the subject location, which is accessible to public transport and compatible with surrounding land uses and with future plans for the locality.
70. Whilst the proposal will result in the building exceeding the 15m height control by 5.8m (measured from the lowest ground level on Chisholm Street), the breach does not result in any unacceptable amenity impacts and the proposal is generally consistent with the objectives, standards and guidelines of the relevant planning controls. The applicant has submitted written justification seeking to vary the building height development standard pursuant to clause 4.6 variation of SLEP 2012. It is considered that compliance with the standard is unreasonable or unnecessary in the circumstances for the reasons outlined in this report.
71. Accordingly, it is considered that the proposed development is acceptable and is recommended for approval subject to conditions of consent.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Sally Shepherd, Planner