

## **Item 2.**

**Development Application: 27 Church Street, Camperdown**

**File No.: RD/2017/1426/A**

### **Summary**

<b>Date of Submission:</b>	26 June 2018
<b>Applicant:</b>	Pcorp Developments Pty Ltd
<b>Architect:</b>	Architects Becerra
<b>Developer:</b>	Pcorp Developments Pty Ltd
<b>Owner:</b>	Pcorp Developments Pty Ltd
<b>Cost of Works:</b>	\$960,227
<b>Zoning:</b>	Residential flat building permissible in B4 Mixed Use zone
<b>Proposal Summary:</b>	<p>A request for a review of the determination of Development Application D/2017/1426 under the provisions of Section 8.2(1)(a) of the Environmental Planning and Assessment Act has been submitted.</p> <p>The original application sought consent for demolition of the existing building and construction of a four level residential flat building comprising five apartments with terraces.</p> <p>The application was subsequently refused by the Local Planning Panel on 28 March 2018.</p> <p>The original application had not been supported as its design and built form would result in adverse amenity impacts within the site itself and on neighbouring properties. These impacts included adverse noise and privacy effects; overshadowing; inadequate access to light and air; and lack of communal space, amongst others. This resulted in a poor standard of accommodation and was not considered to achieve design excellence.</p>

**Proposal Summary:**

**(continued)**

The applicant is requesting that the Panel review the refused application with amendments. The amendments include the deletion of the fourth storey, extension of the built form to the rear boundary and the provision of a communal roof terrace.

Six (6) submissions were received, objecting to the Section 8.2(1)(a) review request. Concerns raised include overshadowing, height and scale, and visual privacy.

The amendments have resulted in improvements to the design, however there are remaining design issues relating to the proposed layout and amenity for the future occupants of the site. The impact on neighbouring properties through overshadowing and privacy impacts has not been resolved. Consequently the proposal is not supported.

Design solutions could be considered as part of a future development application. These could include the deletion of the private roof top terrace, and the provision of one apartment per level as recommended by the Design Advisory Panel. A development with a reduced number of units would not require a communal roof terrace.

A Remediation Action Plan has been submitted which advises that an ongoing Environmental Management Plan (EMP) would be required. This would place an encumbrance on future owners to carry out ongoing soil vapour monitoring. This approach is not supported and an alternative remediation strategy that does not require an EMP would be required

**Summary Recommendation:** This proposal is recommended for refusal.

**Development Controls:**

- (i) State Environmental Planning Policy No 55 – Remediation of Land
- (ii) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development
- (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Development Control Plan 2012

**Attachments:**

- A. Proposed Drawings
- B. Refused Drawings
- C. Original Notice of Development Refusal
- D. Original Planners Report

## **Recommendation**

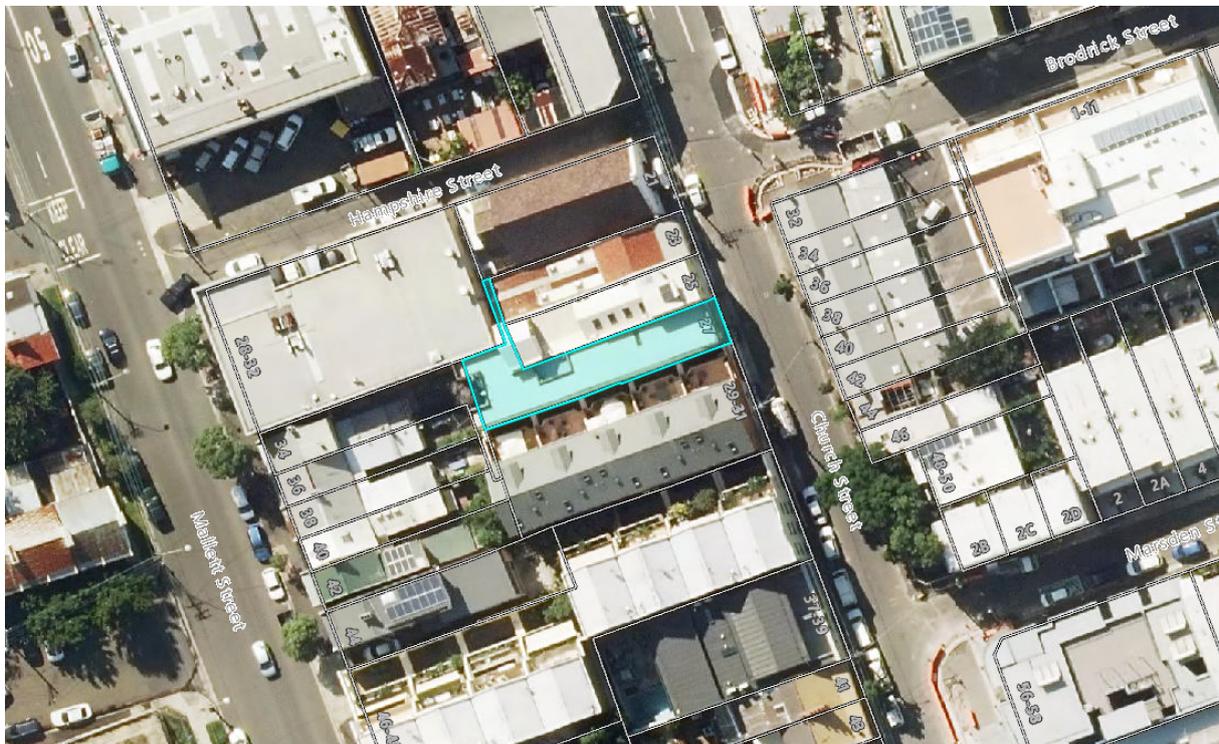
It is resolved that consent be refused for Development Application No. RD/2017/1426/A for the following reasons:

- (A) The proposal is not substantially the same development as required by section 8.3(3) of the Environmental Planning and Assessment Act 1979.
- (B) The proposal is contrary to SEPP 65, the Apartment Design Guide (ADG), the Sydney Local Environment Plan 2012 (SLEP 2012) and the Sydney Development Control Plan 2012 (SDCP 2012), as:
  - (i) only three units (60%) will receive the required amount of solar access in mid-winter;
  - (ii) one unit (20%) will not receive any solar access in mid-winter;
  - (iii) one unit is not provided a private open space area and one unit is provided an undersized private open space area;
  - (iv) the development provides undersized communal open space;
  - (v) the development will result in adverse visual and acoustic privacy impacts; and
  - (vi) the development provides inadequate floor to floor heights.
- (C) The proposal is contrary to SEPP 65, the ADG, the SLEP 2012 and the SDCP 2012, due to the proposed built form and inadequate separation which will significantly impact on the amenity of the neighbouring properties to the south and west, including:
  - (i) overlooking;
  - (ii) overshadowing impacts in mid-winter; and
  - (iii) adverse noise impacts.
- (D) The proposed development by way of its non-compliance with the amenity and built form provisions of the ADG, SLEP 2012 and SDCP 2012 and its general design quality does not achieve design excellence as required by Clause 6.21 of the SLEP 2012.
- (E) The proposed development is inconsistent with the City of Sydney Codes for Waste Minimisation in New Development 2005 as a waste storage area is not located within 10m of the waste collection point.
- (F) The submitted Remediation Action Plan has not demonstrated that the site can be made suitable for the proposed use contrary to State Environmental Planning Policy (SEPP) No 55 – Remediation of Land.
- (G) In light of the above, approval of the proposal would not be in the public interest, contrary to section 4.15 of the Environmental Planning and Assessment Act 1979.

## **Background**

### **The Site and Surrounding Development**

1. The site is irregular in shape, has an area of approximately 203.1sqm and is located on the western side of Church Street, close to the intersection with Hampshire Street to the north. The site is occupied by a two storey brick industrial warehouse building.
2. Surrounding land uses comprise a mixture of residential and commercial, including a three storey plus attic residential terrace block of five units to the south (no. 29-31) and a three storey masonry warehouse to the north (no. 25). Across Church Street to the east are single storey attached residential cottages, which are heritage listed. To the west, behind the subject site are residential dwellings, with their rear yards facing onto the rear of the subject site. To the north west of the site is a warehouse building with full site coverage.
3. The site is not a heritage item and is not located within a heritage conservation area.
4. Photos of the site and surrounds are provided below:



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



Figure 2: Site viewed from Church Street



Figure 3: Site (identified by dashed red arrows) viewed from the corner of Church and Broderick Streets looking south west



**Figure 4:** Heritage listed cottages located opposite the subject site at 32-46 Church Street



**Figure 5:** View of subject site looking west from the first floor of 29-31 Church Street, illustrating its balconies directly facing the southern boundary of the site.



**Figure 6:** Subject site (outlined) and 29-31 Church Street as viewed from attic level of a residence at 34 Mallett Street.

### **Background of Development Application D/2017/1426**

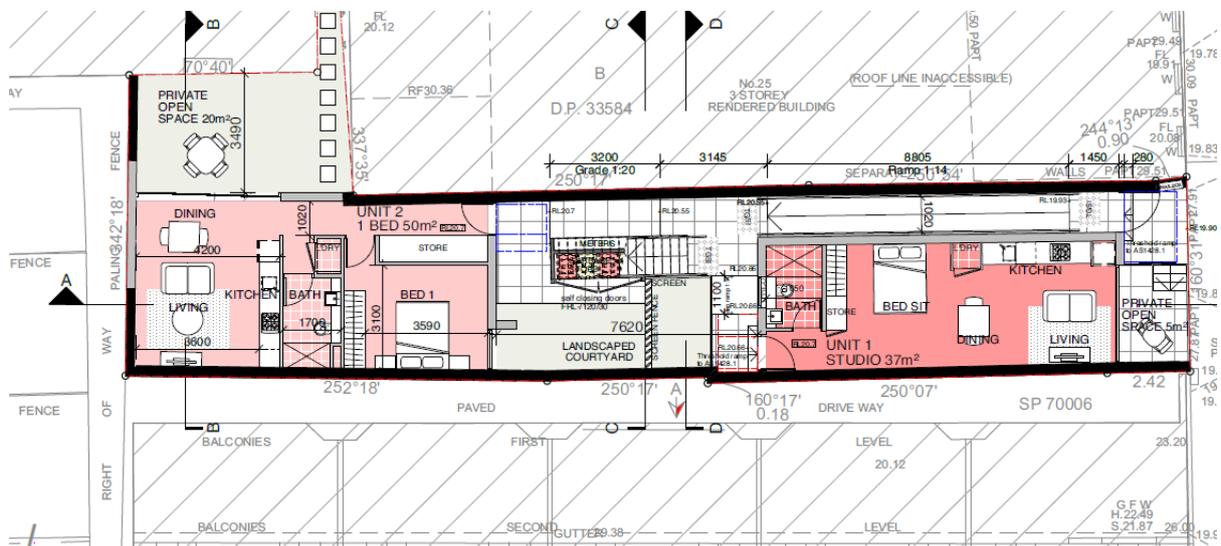
5. On 19 October 2017 Development Application D/2017/1426 was lodged with Council.
6. On 28 March 2018 Development Application D/2017/1426 was considered by the Local Planning Panel and was refused for the reasons included in Attachment C, being the original notice of refusal. The original planner's report to the Local Planning Panel is provided in Attachment D.

7. The reasons for refusal were as follows:
- (a) The proposal is contrary to SEPP 65, the Apartment Design Guide (ADG), the Sydney Local Environment Plan 2012 (SLEP 2012) and the Sydney Development Control Plan 2012 (SDCP 2012), as:
    - (i) only three units (60%) will receive the required amount of solar access in mid-winter;
    - (ii) two units (40%) will not receive any solar access in mid-winter;
    - (iii) only one unit (20%) will receive cross ventilation;
    - (iv) four of the five apartments rely on internal bedrooms borrowing their amenity, light and air across the living area;
    - (v) the development provides unacceptable habitable room depth to all of the proposed units;
    - (vi) the development provides no communal open space;
    - (vii) will result in adverse privacy impacts; and
    - (viii) provides inadequate floor to ceiling heights for the ground and first floor.
  - (b) The proposal is contrary to SEPP 65, the ADG, the SLEP 2012 and the SDCP 2012, due to the proposed built form and inadequate separation which will significantly impact on the amenity of the neighbouring properties to the south and west, including:
    - (i) overlooking;
    - (ii) overshadowing impacts in mid-winter; and
    - (iii) adverse noise impacts.
  - (c) The built form of the development presents as a four storey building contrary to the three storey built form control within the SDCP 2012.
  - (d) The proposed development by way of its non-compliance with the amenity and built form provisions of the ADG, SLEP 2012 and SDCP 2012 and its general design quality does not achieve design excellence as required by Clause 6.21 of the SLEP 2012.
  - (e) The applicant has not demonstrated that the site can be made suitable for the proposed use contrary to State Environmental Planning Policy (SEPP) No 55 – Remediation of Land.
  - (f) In light of the above, approval of the proposal would not be in the public interest, contrary to section 4.15 of the Environmental Planning and Assessment Act 1979.
8. Plans of the refused development are provided in Attachment B.

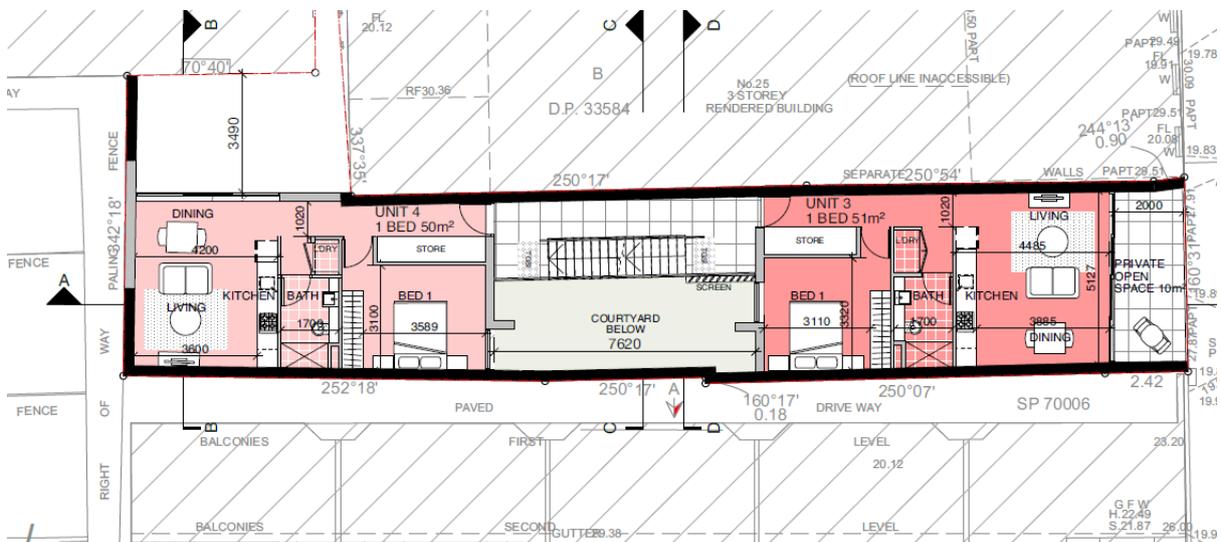
## **Proposal**

9. The applicant is seeking a review of the refusal and has submitted amended plans.
10. The proposal is for demolition of the existing building and construction of a three storey residential flat building containing five apartments and roof terraces.
11. The building is built to its southern, western and main northern boundary with a central void adjacent to the southern boundary and a setback provided in the north-western corner.
12. The proposal includes:
  - (a) Ground Floor**
    - (i) Entry corridor
    - (ii) A studio apartment (Unit 1) adjacent to the street with its private open space located within the street setback
    - (iii) A one-bedroom apartment (Unit 2) with private open space in north west corner of the site
    - (iv) Communal landscaped courtyard with garbage room in the central void
  - (b) Levels 1**
    - (i) Two one-bedroom apartments (Units 3 and 4) separated by communal stairs. Unit 3 has private open space within the front balcony and Unit 4 has no private open space.
  - (c) Levels 2**
    - (i) A one bedroom apartment (Unit 5) with private open space within front balcony.
    - (ii) Communal roof terrace
  - (d) Levels 3**
    - (i) Private roof terrace for Unit 5 with toilet and barbecue.

13. The amendments to the original plans are as follows:
  - (a) removal of the fourth storey, replaced with a private roof terrace, bbq and toilet;
  - (b) setting back the third storey from the street and designed with a splayed form;
  - (c) extension of the built form to the rear boundary;
  - (d) increased the size of the internal void;
  - (e) retaining the existing wall on the southern boundary;
  - (f) providing a communal roof terrace, rather than a private roof terrace, on Level 2;
  - (g) internal apartment re-configuration.
  
14. Plans of the proposed development are provided in Attachment A and selected drawings shown below.



**Figure 7: Ground floor plan**



**Figure 8: Level 1 floor plan**

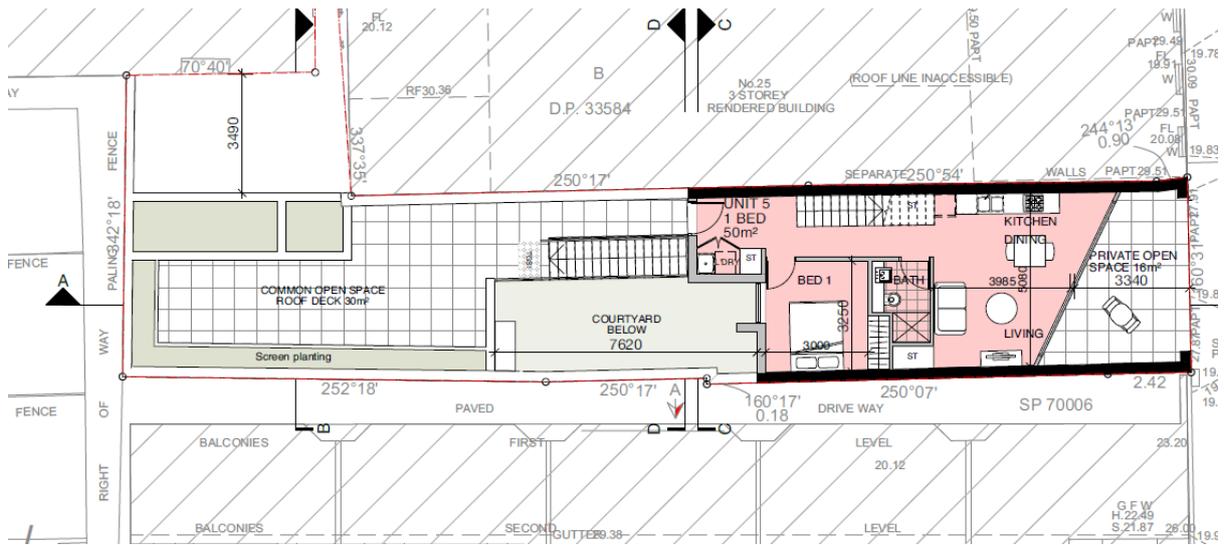


Figure 9: Level 2 floor plan

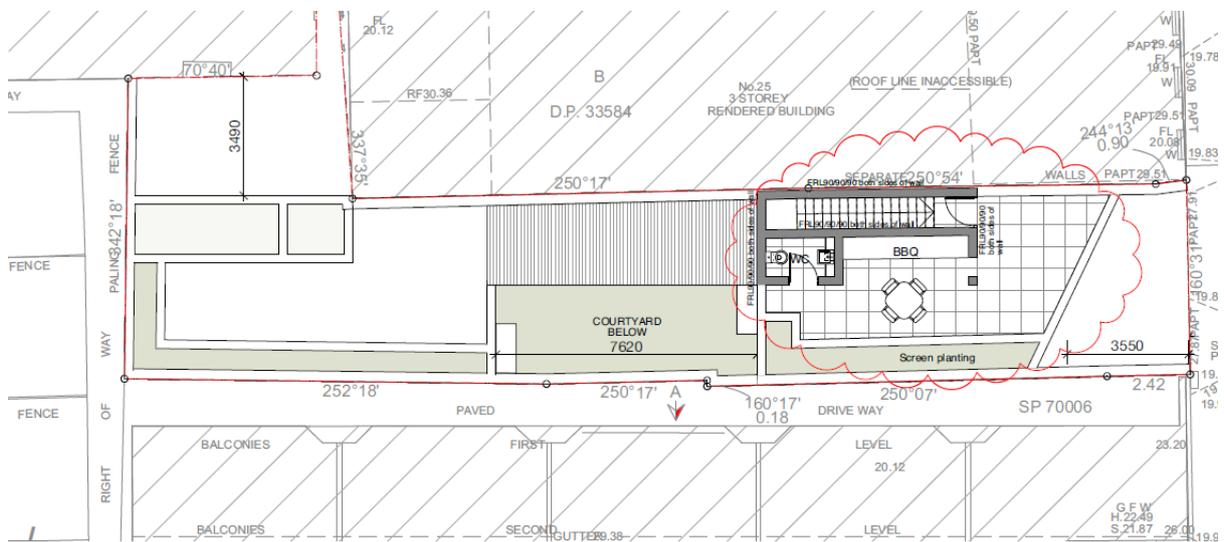


Figure 10: Level 3 floor plan



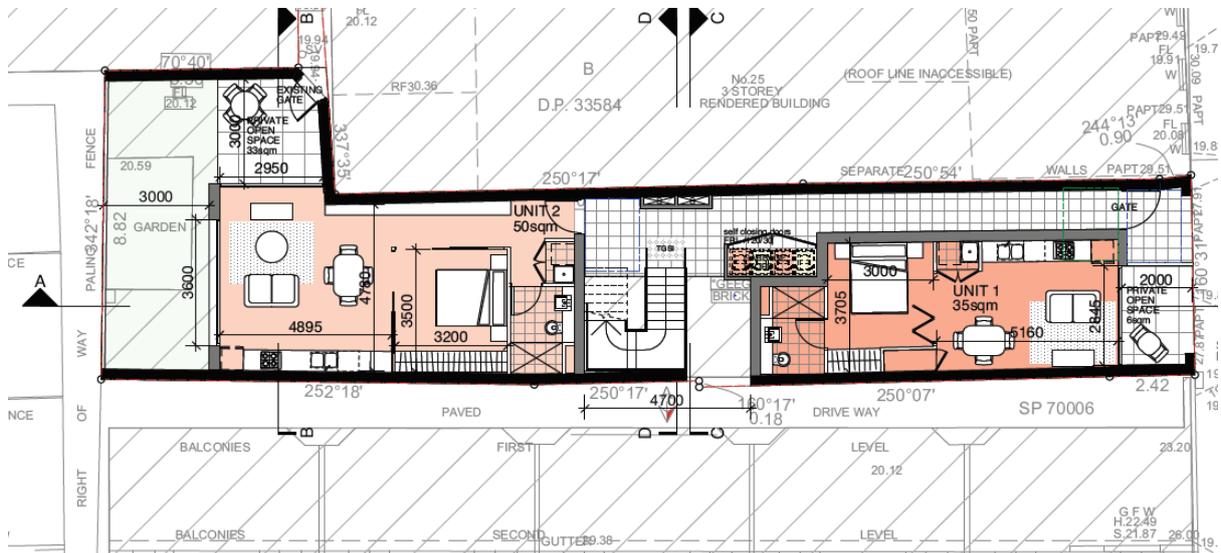
Figure 11: East elevation to Church Street

## **Implications of the Proposal**

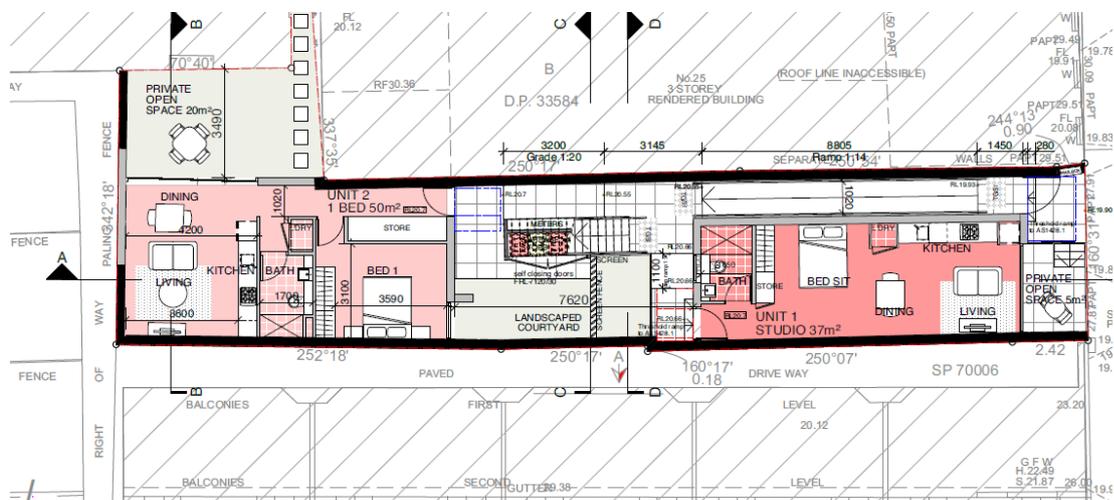
### **Division 8.2 Reviews**

15. In accordance with Section 8.2(1) the following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:
  - (a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),
  - (b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),
  - (c) the decision of a council to reject and not determine an application for development consent.
16. In accordance with Section 8.3(5) the review of a determination or decision made by a Local Planning Panel is to be conducted by the panel.
17. In accordance with Section 8.3(3), in requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.
18. The applicant has provided an amended proposal with the review application. The amendments include:
  - (a) removal of the fourth storey, replaced with a private roof terrace, barbecue and toilet;
  - (b) setting back the third storey from the street and designed with a splayed form;
  - (c) extension of the built form to the rear boundary;
  - (d) increased the size of the internal void;
  - (e) retaining the existing wall on the southern boundary;
  - (f) providing a communal roof terrace, rather than a private roof terrace, on Level 2;
  - (g) internal apartment re-configuration.
19. In considering whether or not a development is substantially the same it is appropriate to consider both quantitative and qualitative aspects of the proposal. This consideration is not a consideration of the merits of the changes.

20. It is considered that the amended proposal does not satisfy the requirement of being substantially the same. In particular the amended proposal:
- (a) results in a different built form that alters the building footprint and extends to the rear boundary;
  - (b) presents as a two storey building to the street with a third level set back as opposed to a three storey building with an attic level above;
  - (c) provides a different configuration of space between buildings;
  - (d) introduces a new roof top open space to front building; and
  - (e) has different apartment configurations and external access arrangements.
21. A comparison between the refused plans and amended review plans are provided in Figures 12 to 25 below.



**Figure 12: Refused ground floor plan**



**Figure 13: Review plans - Ground floor plan**

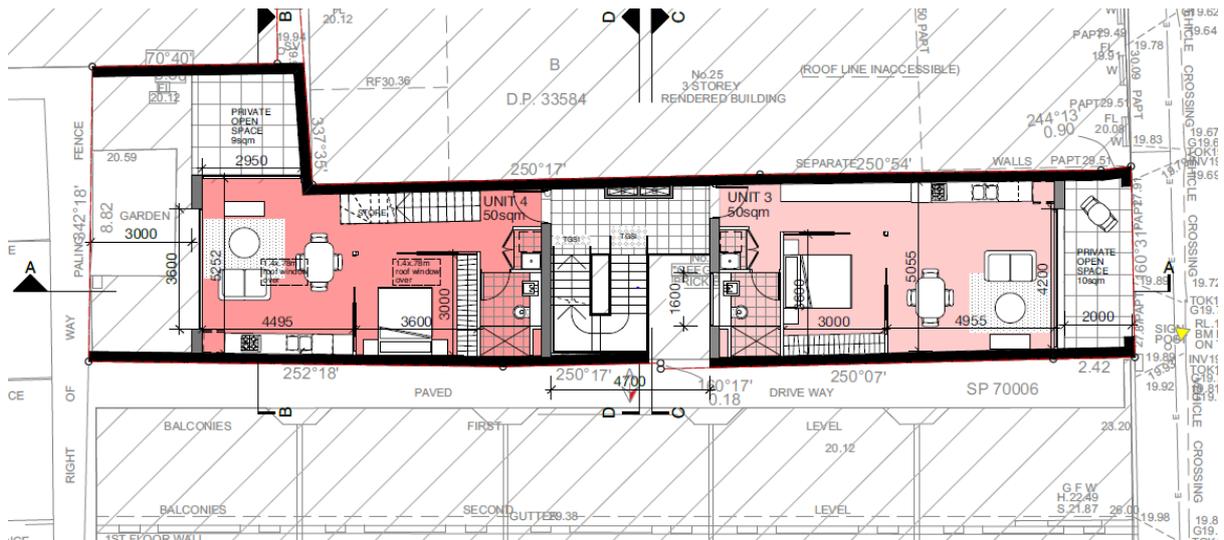


Figure 14: Refused Level 1 floor plan

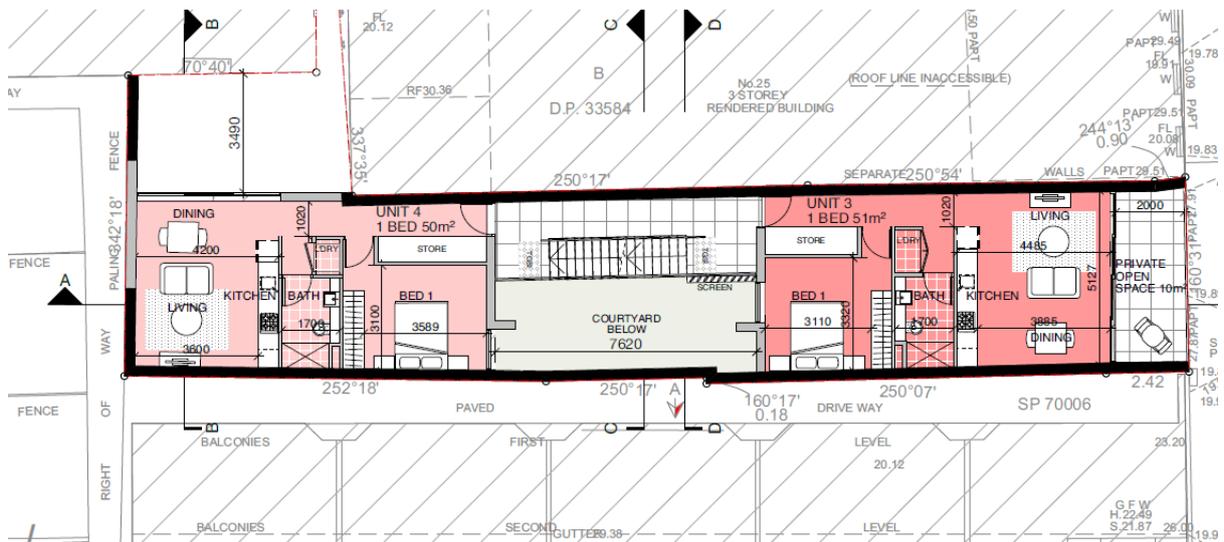


Figure 15: Review plans - Level 1 floor plan

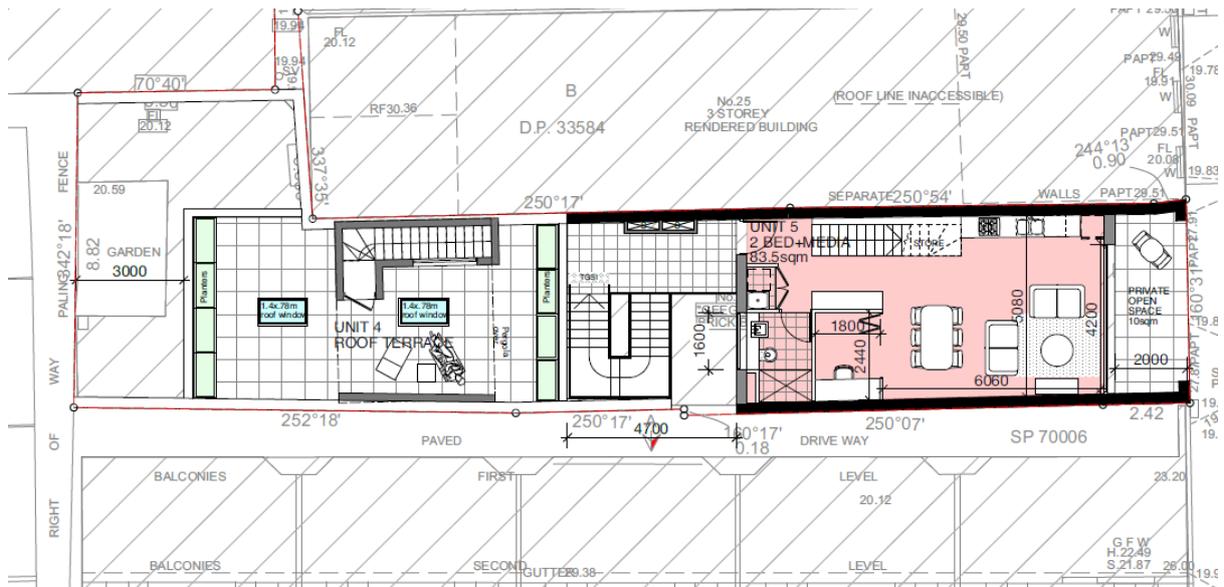


Figure 16: Refused Level 2 floor plan

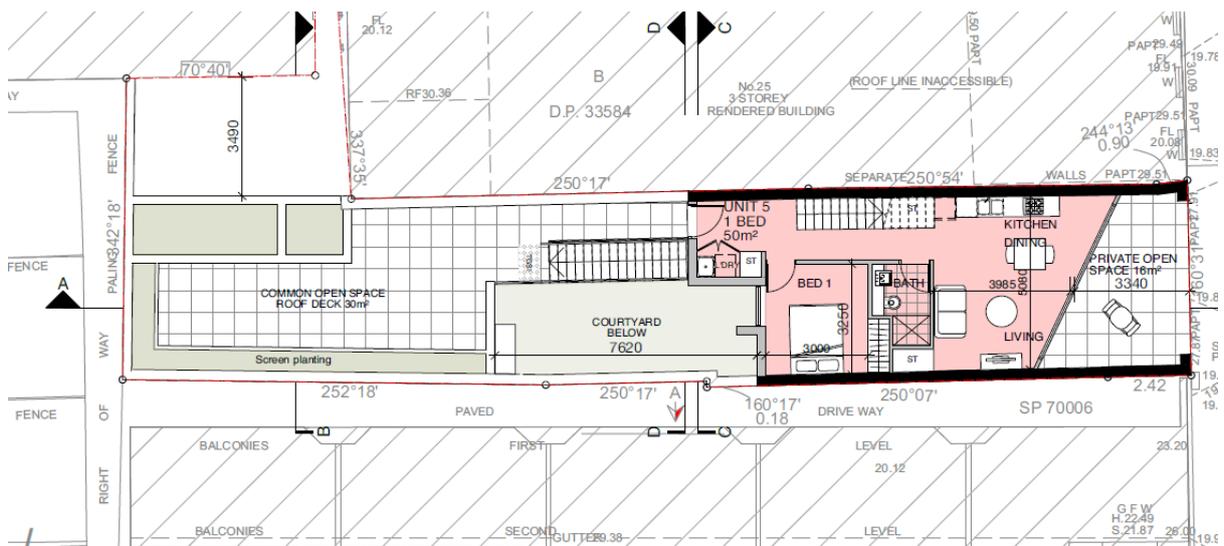


Figure 17: Review plans - Level 2 floor plan

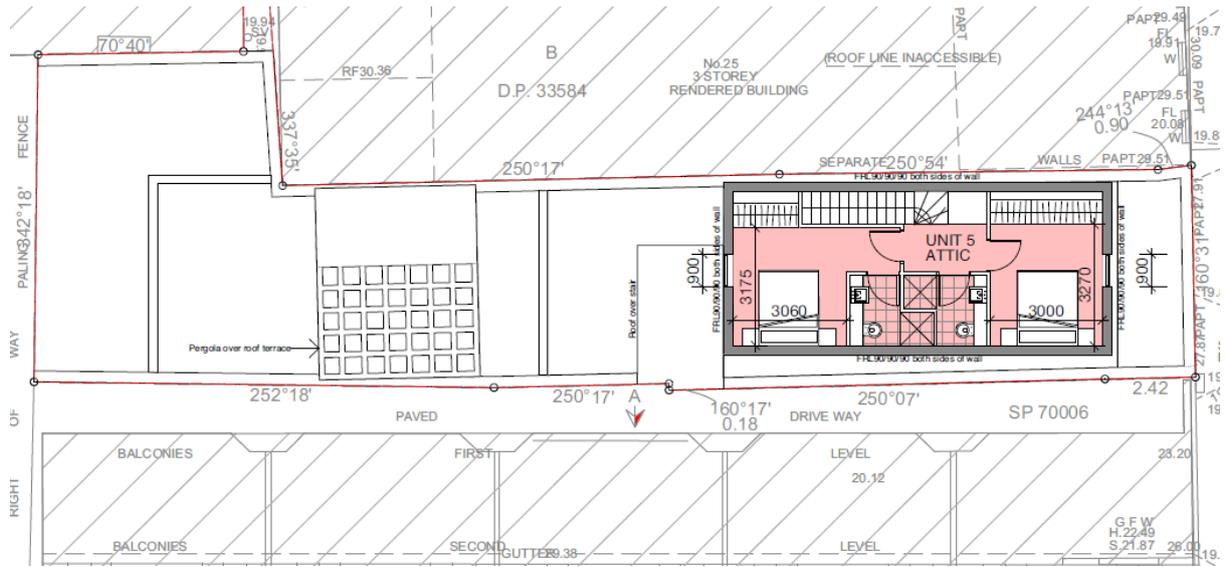


Figure 18: Refused Level 3 floor plan

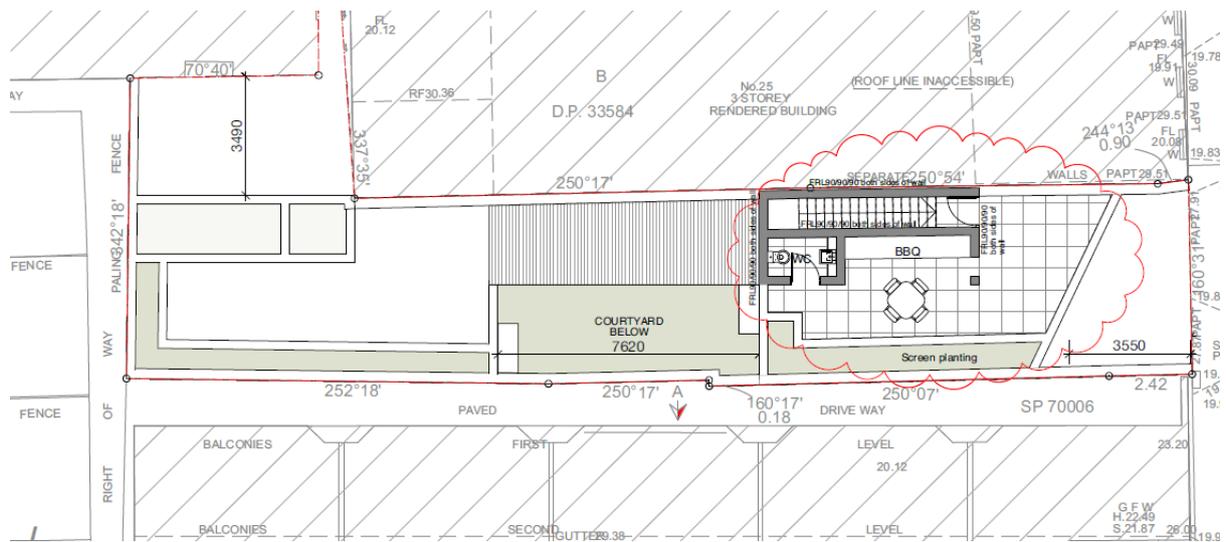


Figure 19: Review plans - Level 3 floor plan

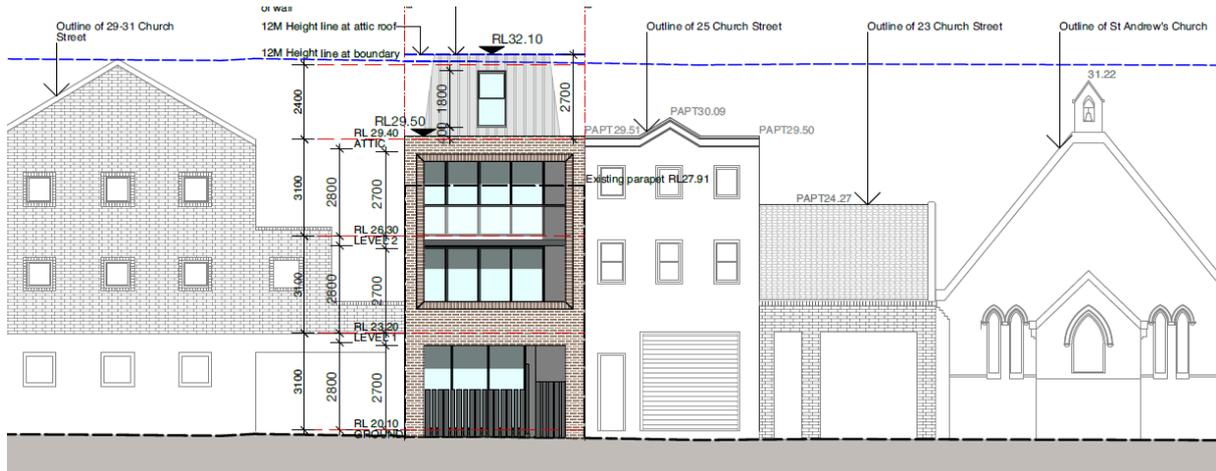


Figure 20: Refused east elevation to Church Street



Figure 21: Review plans - East elevation to Church Street

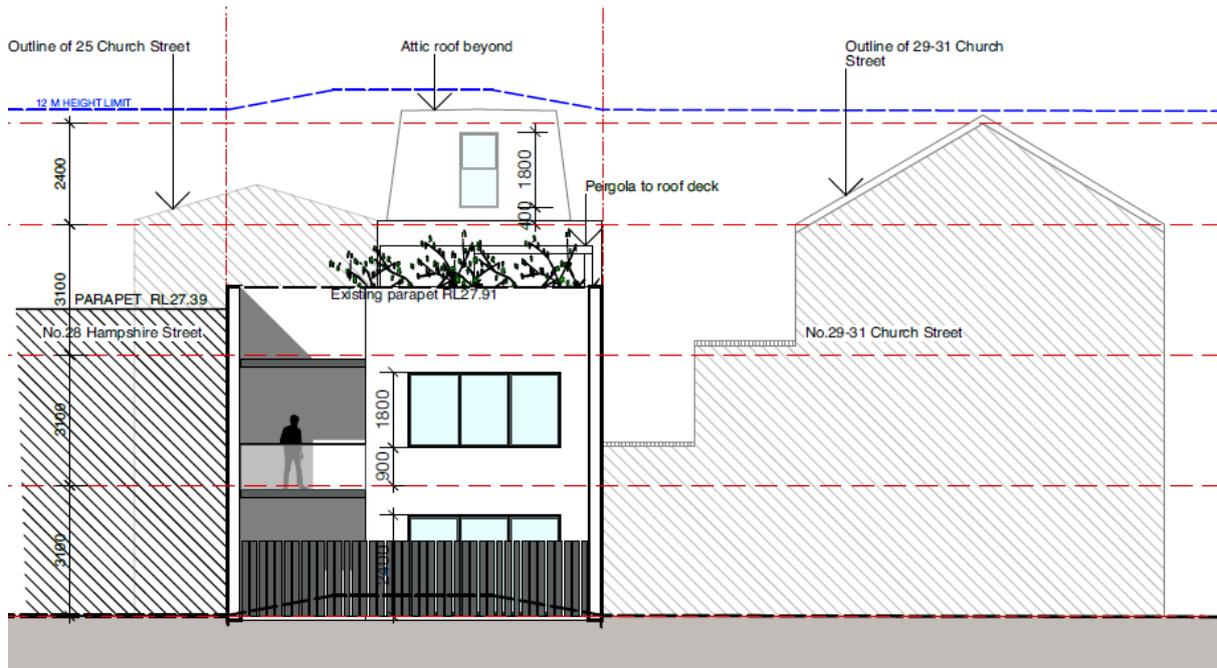


Figure 22: Refused west elevation

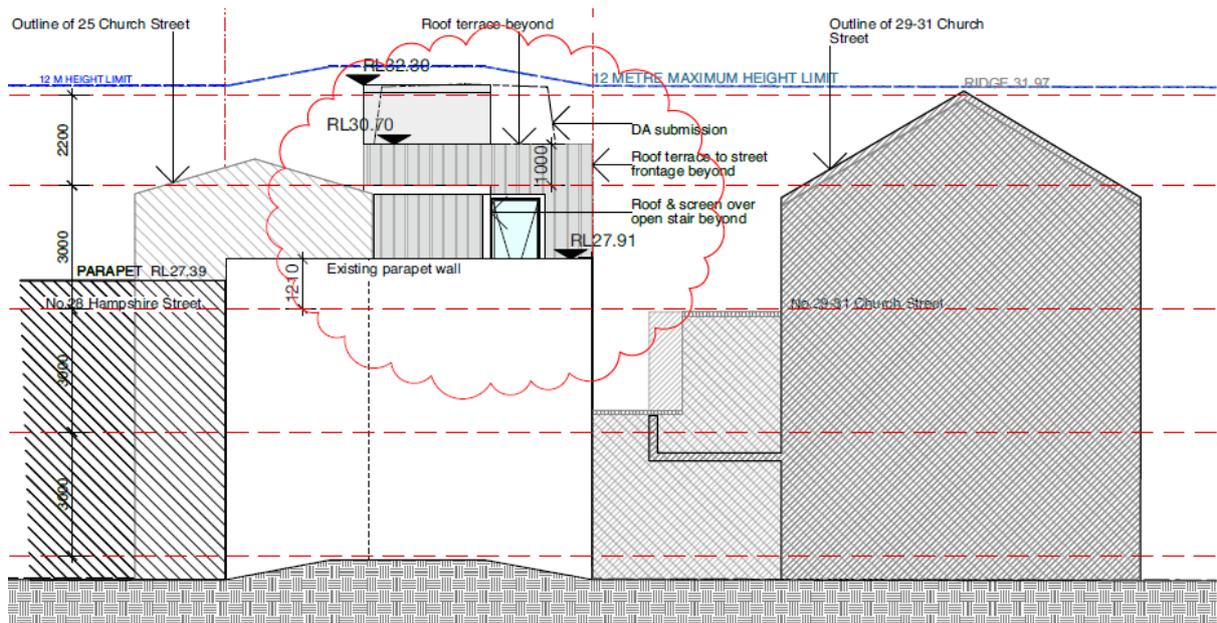


Figure 23: Review plans - West elevation

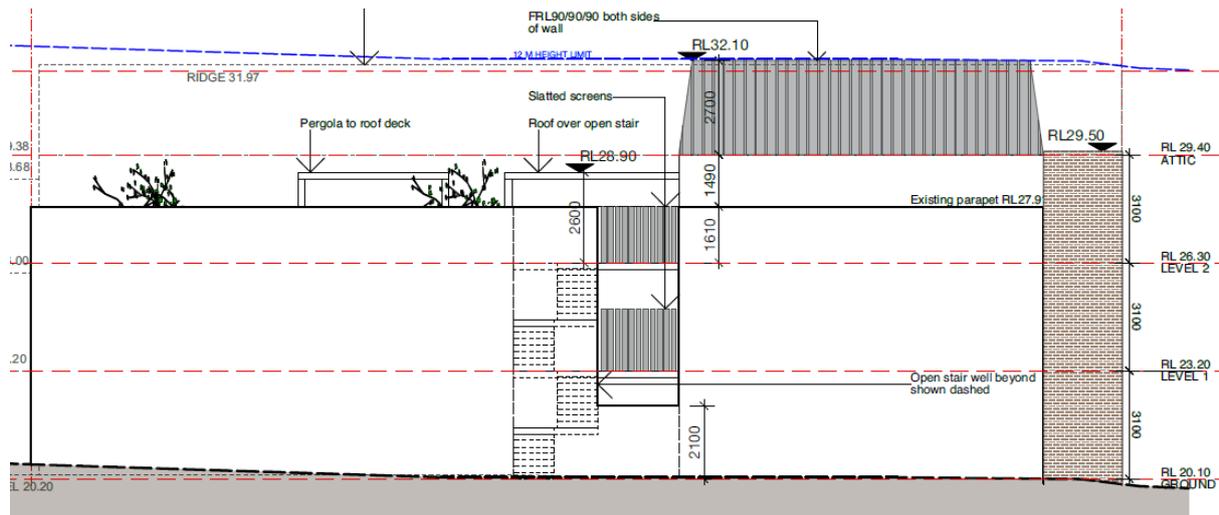


Figure 24: Refused south elevation.

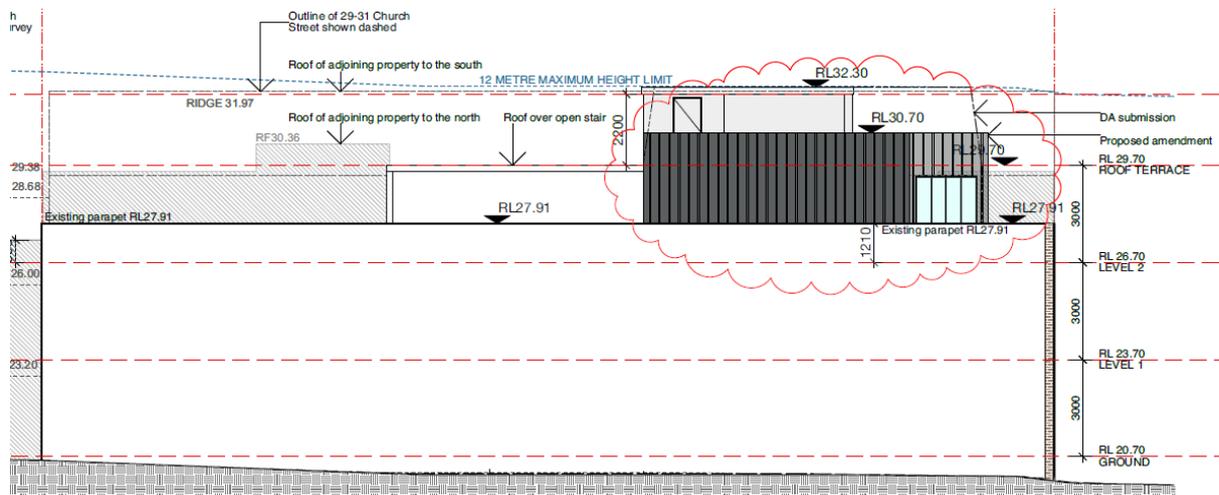


Figure 25: Review plans - South elevation

22. The amendments have resulted in new amenity impacts to neighbouring properties (refer below).

**Section 4.15 Evaluation**

23. An assessment of the original proposal has been made, and the issues not directly related to the Section 8.2(1)(a) application have been previously addressed in the original planners report.
24. The amended design results in a FSR of 1.2:1 and complies with the FSR control of 1.5:1. The height control is 12m and the proposed height is 12m, which is discussed further in the issues section below.

25. The application was originally refused as the proposal failed to provide suitable amenity for the future dwellings and would have a detrimental impact on the amenity of neighbouring properties, contrary to the requirements of SEPP 65, ADG and Sydney DCP 2012. The amended design has not satisfied these issues.
26. The application was reviewed by the Design Advisory Panel on 2 August 2018. The panel concluded:
  - (a) The Panel does not support the scheme for two apartments per floor. Taking into account site constraints, the Panel recommends that a development with one apartment per floor is a more appropriate design for the site. Each apartment would then get its own private area and there would be no requirement for a communal area.

## **Issues**

### **Building Separation**

27. The Apartment Design Guide (ADG) requires 12m building separation between habitable rooms. The application proposes 7.62m separation between the front and rear parts of the building. This is likely to result in unacceptable visual and acoustic privacy impacts to the rooms that face these voids. The provision of the garbage storage room at the bottom of the void also contributes to acoustic and odour impacts.
28. The rear apartments are oriented to the north, with 3.49m building separation to the neighbouring property at 28-32 Mallet Street, which is currently a warehouse built to the full site boundaries. This does not satisfy the ADG requirement for 9m separation between habitable and non-habitable rooms.

### **Communal Open Space**

29. The amended plans provide a new area of communal open space area replacing the private roof terrace of Unit 4. The communal roof terrace is undersized, being 28.4sqm, whilst the ADG requires 25% of the site area equating to 50.7sqm. It is located so that it results in visual and acoustic privacy impacts to neighbouring properties.

### **Private Open Space**

30. Unit 4 is not provided with any private open space, whilst Unit 1 is provided with only a small front balcony of 5sqm, which is less than 15sqm per apartment required by the ADG for ground level apartments.

### **Solar Access**

31. The ADG requires that living rooms and private open spaces of at least 70% of apartments receive 2 hours of direct sunlight at midwinter. The proposal achieves this to 60% (3/5) apartments and does not satisfy the ADG requirements. One additional apartment received direct sunlight to the living room windows, but not to its private open space.
32. The ADG requires that maximum of 15% of apartments are to receive no direct sunlight. The proposal does not comply as 20% (1/5) receives no direct sunlight.
33. These non-compliances are reflective of too many apartments being accommodated within the site without sufficient amenity.

34. The amendments to the proposal have removed the fourth storey and provided a splay to the third storey to improve the solar access to the five units of the neighbouring site at 29-31 Church Street.
35. These units currently receive over 2 hours of direct sunlight to living room windows at midwinter. The amendments have improved solar access to some units, however Unit 3 does not achieve the minimum 2 hours of direct sunlight to 1sqm of living room window at midwinter as required by the ADG. This results in adverse amenity impacts to the neighbouring development.
36. Unit 3 achieves direct sunlight for 1.5 hours between 12pm and 1.30pm, and also achieves direct sunlight at 9am however is overshadowed by 9.30am and therefore does not contribute towards the requirement for 2 hours of direct sunlight.
37. The table below provides a comparison between the levels of direct sunlight achieved.

	Existing	DA plans	Review plans
Unit 1	4 hours between 9.30am-1.30pm	1 hour between 10am-11am	3 hours between 9.30am-2.30pm
Unit 2	4.5 hours between 9am-1.30pm	0.5 hour between 9am-9.30am	2 hours between 9am-11am
Unit 3	4.5 hours between 9am-1.30pm	1 hour between 12pm-1pm	1.5 hours between 12pm-1.30pm
Unit 4	4.5 hours between 9am-1.30pm	1 hour between 12pm-1pm	3 hours between 10.30am-1.30pm
Unit 5	6 hours between 9am-3pm	5 hours between 10am-3pm	5.5 hours between 9.30am-3pm

38. The existing building currently overshadows the private open space (balconies) to these units and the proposal will not result in additional overshadowing to the balconies at midwinter.

### **Building Height**

39. The amendments to the proposal have removed the fourth storey and the proposal is compliant with the three storey height of storeys control.
40. The amendments to the application reduce the floor to floor heights from 3.1m to 3.0m. This does not achieve the 3.1m floor to floor heights required to achieve a 2.7m floor to ceiling height.
41. The site is subject to a 12m height control under the Sydney LEP 2012 and the proposal is 12m. Increasing the floor to floor heights to achieve compliance would result in a breach of the 12m height control. An increase in height would also result in additional overshadowing impacts to neighbouring properties.

### **Waste Collection**

42. The amendments to the proposal relocate the waste storage room deeper into the site. The provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005 require that a waste storage room is provided within 10m of the waste collection point to enable Council's Waste Management unit to enter the site and collect the bins. This also ensures that bins are not left on the public footpath for collection.
43. The garbage storage room is located over 18m from the front entry, and therefore the design and location of the garbage storage room is not supported.

### **Site Contamination**

44. The refused application had provided insufficient information to demonstrate that the site could be remediated and be made suitable for the proposed use in accordance with SEPP 55 (Remediation of Land).
45. A Detailed Site Investigation and Remediation Action Plan (RAP) have been provided with the review application and these have been reviewed by Council's Health Specialists.
46. Results from the sampling of the site show that it is in exceedance of the Health Investigation levels B for residential use, with contaminates of concern such as Polyromantic Hydrocarbons, Trichloroethylene and heavy metals. The reports recommend that the contaminated soil be removed and a slab installed. Due to the nature of contaminants additional soil vapour monitoring may be needed after the site is remediated. This would require an ongoing Environmental Management Plan (EMP).
47. The provision of an EMP would place an encumbrance on future owners to carry out ongoing soil vapour monitoring. The submitted RAP is not supported as it has not demonstrated that the site is suitable for the proposed use. It is recommended that the RAP be amended to provide an alternative remediation strategy that does not require an ongoing EMP.

### **Internal Referrals**

48. The application was discussed with the Urban Design Specialist; Building Services Unit; Environmental Health; Public Domain; Surveyors; Waste Management, whose comments are discussed in the body of the report where relevant.

### **External Referrals**

#### **Notification, Advertising and Delegation (Submissions Received)**

49. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified and advertised. The application was notified and advertised for a period of 21 days between 13 July 2018 and 4 August 2018. Six submissions were received.

50. The issues raised in the submissions are as follows:

- (a) The overshadowing impacts to the terraces on Mallett Street.

**Response** - The terraces to Mallett Street are able to maintain two hours of direct sunlight at midwinter.

- (b) Overshadowing impacts to 29-31 Church Street to living areas and private open space.

**Response** - As discussed above, the proposal results in overshadowing to Unit 3 of 29-31 Church Street which receives less than 2 hours of direct sunlight to living room windows and does not comply with the ADG. The remaining units maintain two hours of direct sunlight to 1sqm of living room windows at midwinter. The private open space areas/balconies are currently overshadowed by the existing building.

- (c) The shadow diagrams are only for midday.

**Response** - Shadow diagrams at half hourly intervals at midwinter have been provided.

- (d) The overshadowing impacts during the summer solstice should be considered. Only shadow diagrams during the winter solstice has been provided.

**Response** - The controls within the Sydney DCP 2012 and Apartment Design Guide (ADG) relate to solar access at the winter solstice.

- (e) Privacy impacts

(i) From the west elevation from windows and roof terraces.

(ii) To 29-31 Church Street from the roof terraces.

**Response** - It is considered that the proposal will result in unreasonable privacy impact to neighbouring properties and is not supported. The site is separated by approximately 6.7m to the dwellings on Mallett Street and by 4.5m to the second level of 29-31 Church Street.

- (f) The aesthetics of the design have gone backwards.

**Response** - The site is located within a varied streetscape. The removal of the fourth level improves the relationship with surrounding buildings. Further improvements to the facade, such as requiring amendments to the balustrade detail (ie solid material rather than an opaque glazed balustrade) could be resolved via condition of any future approval.

- (g) The height of the development exceeds the height of the neighbouring property.

**Response** - The proposed height, whilst higher than the neighbouring building at 25 Church Street, is consistent with the 12m height control and 3 storey height in storeys control. As discussed above, to achieve a compliant floor to floor height the overall height of the building would need to be increased.

- (h) The height of the northern wall, and impact to skylights of 25 Church Street.

**Response** - The proposal is consistent with the height controls for the site.

- (i) The fourth storey is not defined as an attic.

**Response** - The review proposal does not propose a fourth storey or attic. This has been replaced with a private roof terrace including bbq, bathroom and stairwell.

- (j) Fitting 5 apartments within the site is not desirable or viable. The units at the rear would have little natural light, small living spaces, and be dark and damp.

**Response** - As discussed above, the amenity of the apartments is considered to be inadequate and the application is not supported.

- (k) The building orientation including the central void area and stairwell results in privacy impacts and potential light pollution.

**Response** - The application maintains a southern boundary wall so that the void will not impact upon neighbouring properties. As discussed above, the void results in privacy impacts to the occupants of the site.

- (l) The drainage and sewer requirements for the new development may strain the capacity of the existing drains.

**Response** - Drainage requirements would be able to be resolved prior to any construction certificate for the site.

- (m) Number 23 and 25 have a right of way over the back laneway which is incorporated as private open space for Unit 2.

**Response** - There are no structures proposed over the right of way.

- (n) Entry into neighbouring properties during construction and ongoing maintenance.

**Response** - The entry into neighbouring properties during the construction process is not a matter for consideration for the assessment of the application.

- (o) Compliance with SEPP 55 - Remediation of Land.

**Response** - As discussed above, additional information has been submitted in relation to SEPP 55. This information is unsatisfactory.

### **S7.11 Contribution**

51. As the proposal is recommended for refusal, no S7.11 contribution is required.
52. The proposal would generate a S7.11 contribution of \$80,654.74 if approved.

## **Relevant Legislation**

53. The Environmental Planning and Assessment Act 1979.

## **Conclusion**

54. Amended plans have been submitted with the review application. It is considered that the amended plans are not substantially the same development.
55. The amendments have resulted in improvements to the design, however there are remaining design issues relating to the proposed layout and amenity for the future occupants of the site. The impact on neighbouring properties through overshadowing and privacy impacts has not been resolved. It is considered that the proposal remains contrary to the provisions of the Sydney LEP 2012, Sydney DCP 2012, SEPP 65 and the Apartment Design Guide and results in insufficient amenity for the occupants of the site and adverse amenity impacts to neighbouring properties. The majority of the previous reasons for refusal remain.
56. Design solutions could be considered as part of a future development application. These could include the deletion of the private roof top terrace, and the provision of one apartment per level as recommended by the Design Advisory Panel. A development with a reduced number of units would not require a communal roof terrace.
57. A Remediation Action Plan has been submitted which advises that an ongoing Environmental Management Plan (EMP) would be required. This would place an encumbrance on future owners to carry out ongoing soil vapour monitoring. This approach is not supported and an alternative remediation strategy that does not require an EMP would be required.
58. It is recommended that the Panel confirm the previous determination, and the application be refused for the reasons specified.

## **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Matthew Girvan, Specialist Planner