

**Item 3.****Development Application: 278 Palmer Street, Darlinghurst**

File No.: D/2017/1332

**Summary**

**Date of Submission:** 27 September 2017. Amended plans were received on 21 November 2017, 22 December 2017 and 25 June 2018.

**Applicant:** Tania Palmer c/o Urban Strategies

**Architect:** Alexander (Zander) Ricketson

**Developer:** N/A

**Owner:** 278 Palmer Street Pty Ltd

**Cost of Works:** \$2,887,786

**Zoning:** Residential flat building - permissible with consent in R1 General Residential Zone

**Proposal Summary:** The proposal is for the retention of the existing facades and floors, a part one and part two storey addition, and adaptive re-use for a residential flat building containing 10 apartments, and a rooftop terrace.

The scale of the proposal is three storeys toward Palmer Street and four storeys toward Sherbrooke Street.

Additional information and suggested amendments were provided to the applicant on 20 October 2017, 22 November 2017 and 24 April 2018. A meeting with council staff and the applicant was also held at the City of Sydney on 22 March 2018 to discuss the application.

The proposal was presented to Design Advisory Panel on 15 February 2018.

**Proposal Summary  
(continued):**

The proposal numerically complies with the Sydney Local Environment Plan 2012 (LEP) with regards to FSR as the proposed FSR is 2.17:1 proposed (3.5:1 permitted), however the maximum height control of 12m is not complied with as a height of 12.04m is proposed. The proposal does not comply with the Sydney Development Control Plan 2012 (DCP) with regards to height in storeys (four proposed, three permitted).

The application has been amended during the course of the assessment, including a reduction in the FSR from 2.31:1 to 2.17:1, a reduction in the number of proposed apartments from 12 to 10, and alterations to the internal layout and external facade treatments.

However, the amendments do not satisfactorily address all of the issues that have been raised by staff during the assessment of the application and proposal is recommended for refusal.

Outstanding issues include a non-compliance with the height in storeys controls, amenity impacts on neighbouring properties, and inadequate internal amenity for future occupiers with regards to private open space, separation distance, visual and acoustic privacy and common open space. The proposal also results in visual impacts to the streetscape and surrounding Heritage Conservation Area, and inadequate landscaping and deep soil considerations.

On balance, the application does not comply with the LEP, the DCP, the State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development (SEPP 65) and the Apartment Design Guide (ADG).

The application is referred to the Local Planning Panel for determination as SEPP 65 applies to the development and more than 25 submissions have been received.

**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 (Gazetted 14 December 2012, as amended)

(v) Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)

(vi) Apartment Design Guide

**Attachments:**

A. Proposed Drawings

B. Overshadowing Diagrams

## Recommendation

It is resolved that consent be refused for Development Application No. D/2017/1332 for the following reasons:

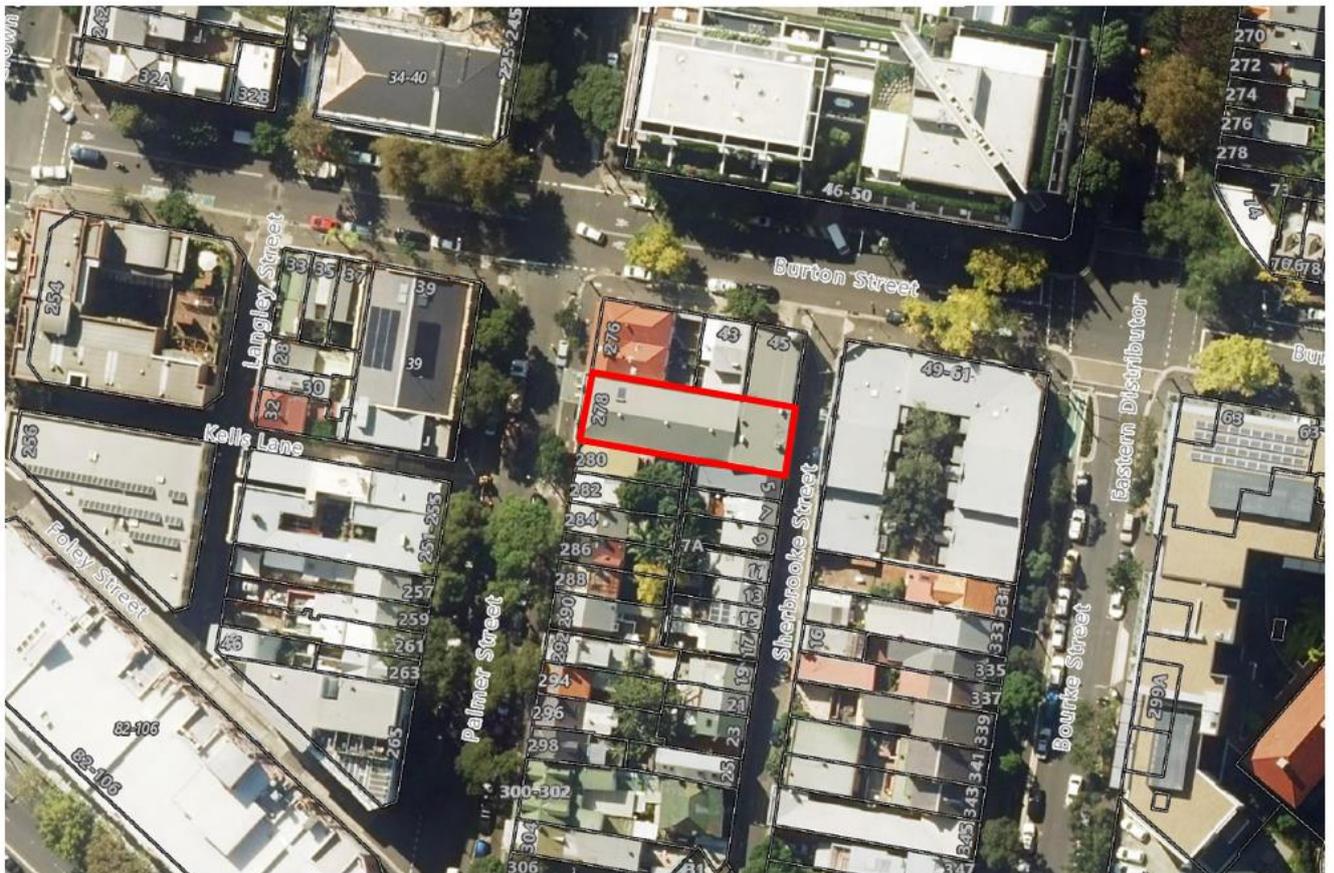
- (A) The proposal exceeds the height in metres development standard and therefore fails to comply with Clause 4.3 and Clause 4.6 of the Sydney Local Environmental Plan 2012 (LEP) as a Clause 4.6 request to vary a development standard has not been provided. The consent authority is unable to be satisfied that the variations are acceptable and therefore consent cannot be granted in this instance;
- (B) The proposal exceeds the maximum height in storeys control as per the Sydney Development Control Plan 2012 (DCP) and as such presents an inappropriate built form in relation to adjoining development and to the Heritage Conservation Area and East Sydney Locality in which it is situated. The proposal fails to comply with Principle 1 of SEPP 65;
- (C) The proposal does not provide the required minimum internal areas for Units 3, 6, and 7 (50sqm), and therefore does not comply with Objective 4D-1 of the ADG and Principle 6 of SEPP 65. As a Clause 4.6 request to vary a development standard has not been provided the consent authority is unable to be satisfied that the variations are acceptable and therefore consent cannot be granted in this instance;
- (D) The proposal does not provide adequate deep soil or communal open space required as per Objectives 3D-1 and 3E-1 of the ADG and Principles 5 and 6 of SEPP 65;
- (E) The proposal does not provide adequate solar access with 60% of the proposed units receiving adequate sunlight to habitable rooms, primary windows and private open space, in contradiction to Objective 4A-1 of the ADG and Principle 6 of SEPP65;
- (F) The proposal does not provide adequate amenity for future occupiers as it fails to comply with Part 4.2.3.2 of the DCP and Objective 4B-1 of the ADG which requires lightwells to not be the only source of daylight to a habitable room;
- (G) The proposal does not provide adequate private open space as it fails to comply with Objective 4E-1 of the ADG and Principle 6 of SEPP 65;
- (H) The proposal does not provide adequate amenity for future occupiers as it fails to comply with Part 4.2.3.3 of the DCP which requires common corridors to be at least 2m wide in front of the lifts;
- (I) The proposal does not provide adequate ventilation in contradiction to Objective 4B-1 of the ADG and Principle 6 of SEPP 65 as there are windows to the light well which are provided as the only air source to habitable rooms.
- (J) The proposal does not provide adequate separation distance between the units on the site and to existing residential properties in contradiction to Objective 3F-1 of the ADG and as such would likely have adverse visual privacy impacts to surrounding residents;
- (K) The proposal results in adverse outlook impacts to surrounding properties and therefore does not comply with Part 4.2.3.10 of the DCP;

- (L) The proposal results in adverse acoustic privacy impacts with regards to the proposed roof terrace, and an inadequate Demolition, Excavation, Construction Noise Management Plan has been submitted. Therefore the proposal does not comply with Part 4.2.3.11 of the DCP:
- (M) The proposal results in additional overshadowing of the neighbouring dwellings to the south and east of the site, where these dwellings already receive less than 2 hours solar access on 21 June to habitable room windows and private open space. Shadow diagrams in elevation have not been provided to include shadows on all affected window openings therefore the applicant has failed to demonstrate the proposal will comply with the minimum requirements of Part 4.2.3.7 of the DCP in relation to solar access for the neighbouring properties;
- (N) The proposal does not comply with the provisions of Parts 3.9.6 and 3.9.7 of the DCP which requires new development to respect neighbouring buildings and the character of the area and alterations and additions to contributory buildings to be designed so as to respect significant original or characteristic built form. The proposal does not adequately satisfy Clause 5.10 of the LEP which is to conserve the heritage significance of Heritage Conservation Area;
- (O) The proposal fails to adequately satisfy the objectives of the R1 General Residential zone as outlined in the Land Use Table of the LEP as it does not maintain the existing land use pattern of predominantly residential uses;
- (P) Overall the proposed development is inconsistent with the provisions, objectives and aims of Council's planning controls, and, if approved, would provide new dwellings that are poorly modulated in relation to surrounding development and that would provide low amenity for their occupants and the occupants of neighbouring dwellings. The proposal does not enhance the amenity and quality of life of the local community, does not achieve a high quality urban form, does not exhibit design excellence and does not conserve the environmental heritage of the City of Sydney and as such, does not satisfy the provisions of Clauses 1.2(2)(h), 1.2(2)(j) and 1.2(2)(k) of the LEP;
- (Q) The proposal does not comply with Clause 6.21 of the LEP or Principle 9 of SEPP 65 as design excellence and a good design has not been achieved. The proposal fails to respond to the existing or future local context;
- (R) Therefore, as a matter for consideration pursuant to Clause 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 (the Act), the proposed development is not in the public interest and is inconsistent with key objects of the Act that are to promote good design and amenity of the built environment and to promote the property construction of buildings, including the protection of the health and safety of their occupants.

## Background

### The Site and Surrounding Development

1. A site visit was carried out on 4 October 2017.
2. The site is rectangular in shape with an area of approximately 318.5sqm. The site has a primary street frontage of 10.4m to Palmer Street and a secondary street frontage of 10.3m to Sherbrooke Street.
3. The existing built form is a two storey former warehouse building. The Palmer Street frontage (circa 1884) has original elements including sash windows, arches, parapet, architraves and urn features above the parapet. The Sherbrooke Street frontage (circa 1908) has arched windows, architraves, first floor loading hoist and a first floor former loading door.
4. There are no trees or significant vegetation on the site.
5. The site is not a heritage item but is located within the East Sydney Heritage Conservation Area (C13). The existing building is categorised as a Contributory Item under the Sydney Development Control Plan 2012.
6. Photos of the site and surrounds are provided below:



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



Figure 2: Site viewed from Palmer Street



Figure 3: Site viewed from Burton Street looking south towards Palmer Street



**Figure 4:** Locally listed heritage item at 39 Burton St opposite the subject site



**Figure 5:** Context of Palmer Street opposite subject site



Figure 6: Burton Street facing east



Figure 7: Second street frontage of site viewed from Burton Street facing Sherbrooke Street



**Figure 8:** Site viewed from Sherbrooke Street



**Figure 9:** Site viewed from Sherbrooke Street from balcony at 49-61 Burton Street



Figure 10: Site viewed facing south towards Sherbrooke St



Figure 11: 49-61 Burton Street, opposite the subject site on Burton Street



**Figure 12:** Burton Street context



**Figure 13:** The nearby 46-50 Burton Street, also known as the 'Republic' building

## Proposal

7. The application seeks consent for adaptive re-use of the existing buildings and a part one, part two storey addition to result in a residential flat building comprising a total of 10 x apartments (7 x one bedroom and 3 x two bedroom units).

**(a) Basement Level**

- (i) Excavation to provide basement level with storage, garbage room, lift and fire stair.

**(b) Ground Floor Level**

- (i) Demolition of internal staircases, part of the northern boundary wall and part of the front facade facing Palmer Street;
- (ii) Internal alterations and additions to provide 3 x one bedroom apartments and courtyards, bin storage, lobby and lift access;
- (iii) External alterations to existing facade including new aluminium framed windows to Palmer Street shopfront and balustrade screen.

**(c) First Level**

- (i) Partial demolition of southern boundary wall;
- (ii) Demolition of internal bathrooms and staircases;
- (iii) Internal works to facilitate 4 x one bedroom apartments and associated lobby, lift and stairs for access.

**(d) Second Level**

- (i) Construct new level above existing terraces comprising 1 x two bedroom apartment facing Palmer St and first level of 2 x two storey apartments facing Sherbrooke Street, and associated lobby and balconies.

**(e) Third Level**

- (i) Construct second level of two storey apartments facing Sherbrooke Street comprising 2 x bedrooms;
- (ii) Lift and roof light;
- (iii) Construct roof top garden and external staircase to Palmer Street.

8. Plans of the proposed development are provided below:

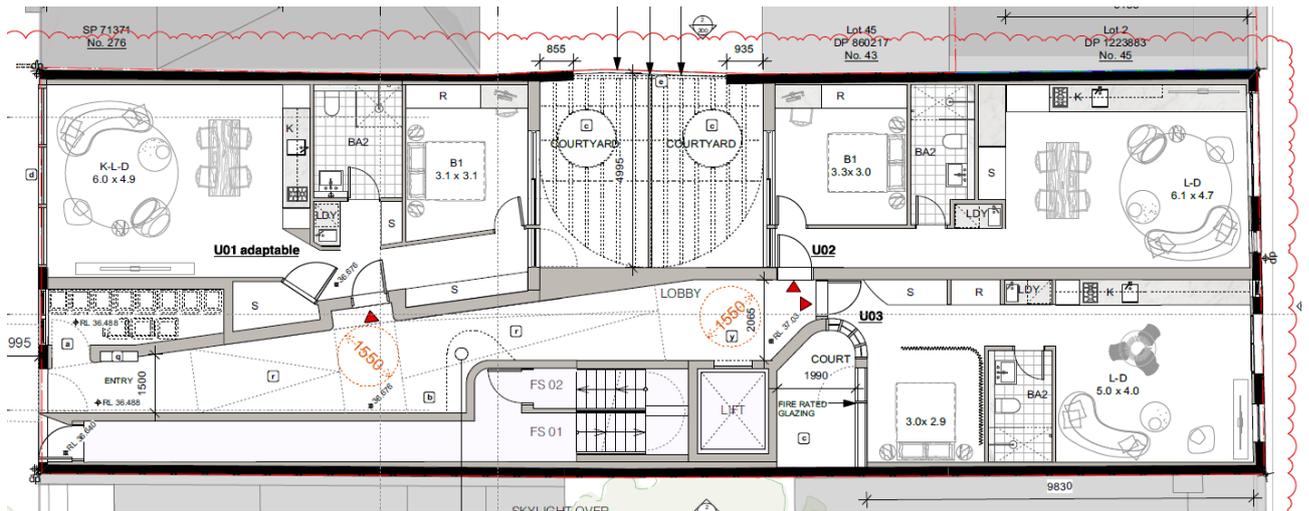


Figure 14: Proposed ground floor plan

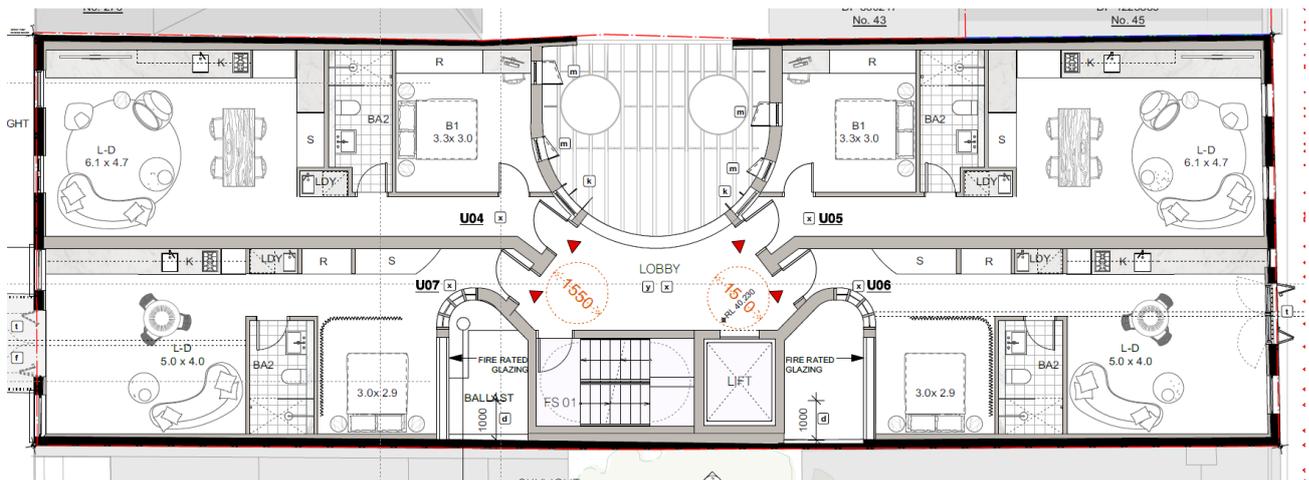


Figure 15: Proposed first level plan

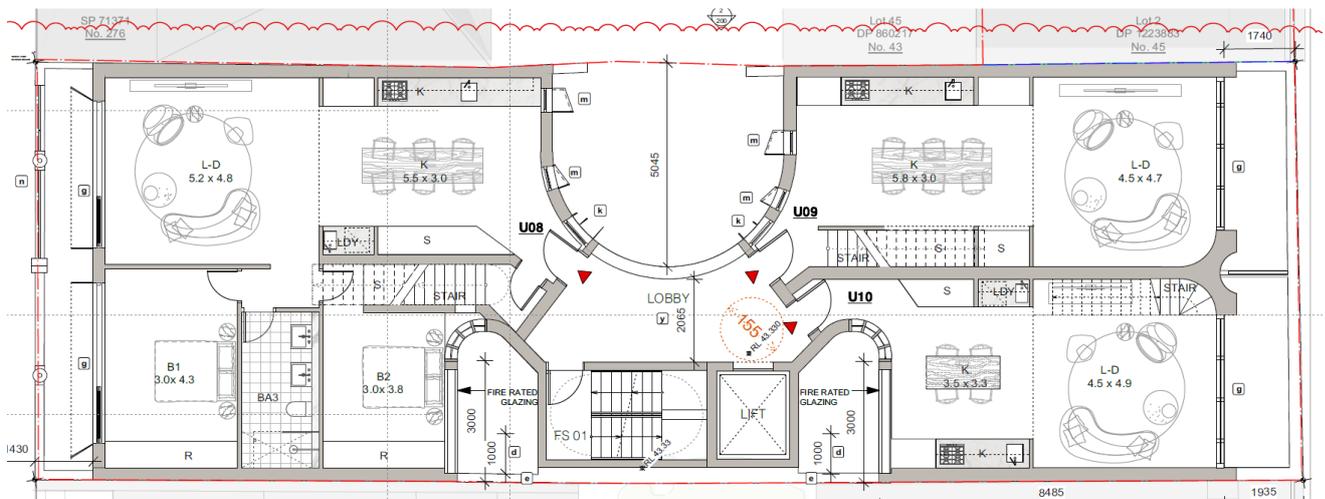


Figure 16: Proposed second level plan

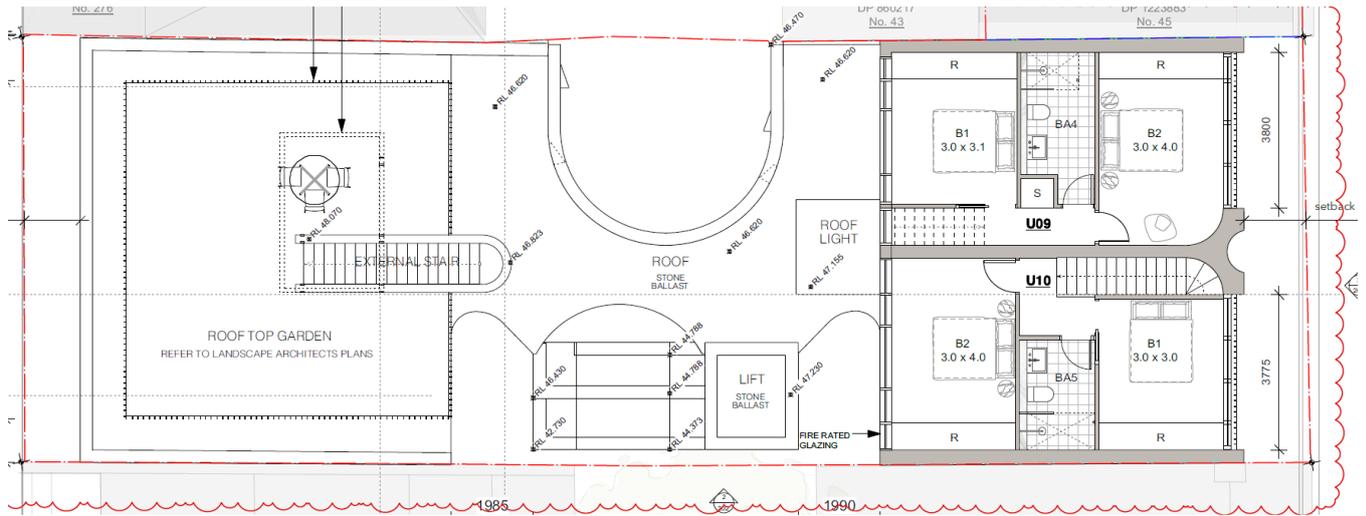


Figure 17: Proposed third level plan



Figure 18: Proposed elevation to Palmer Street



Figure 19: Proposed elevation to Sherbrooke Street

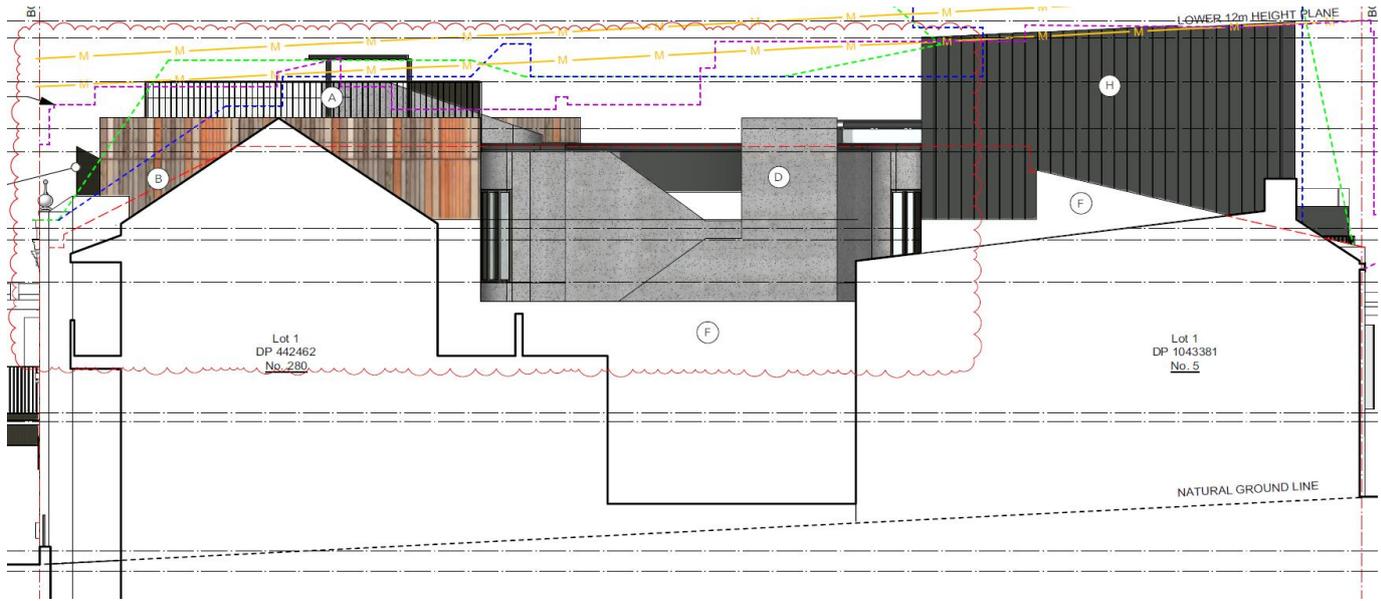


Figure 20: Proposed south elevation

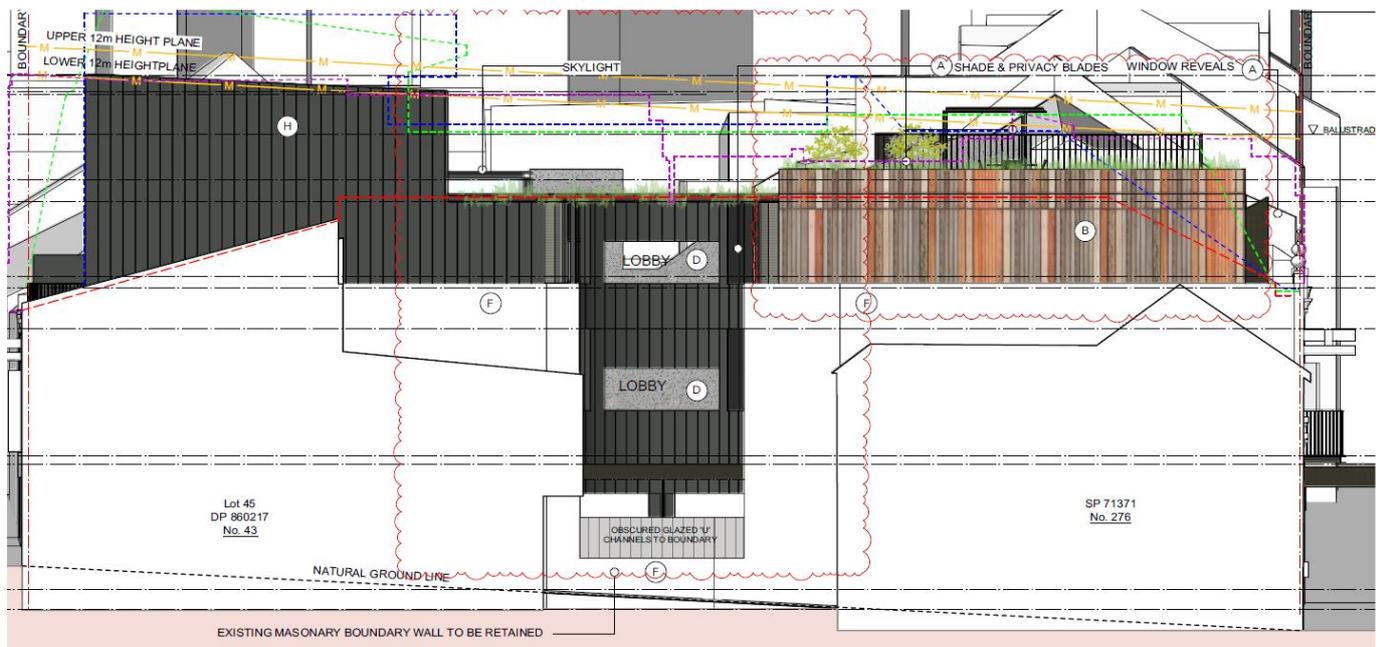


Figure 21: Proposed north elevation

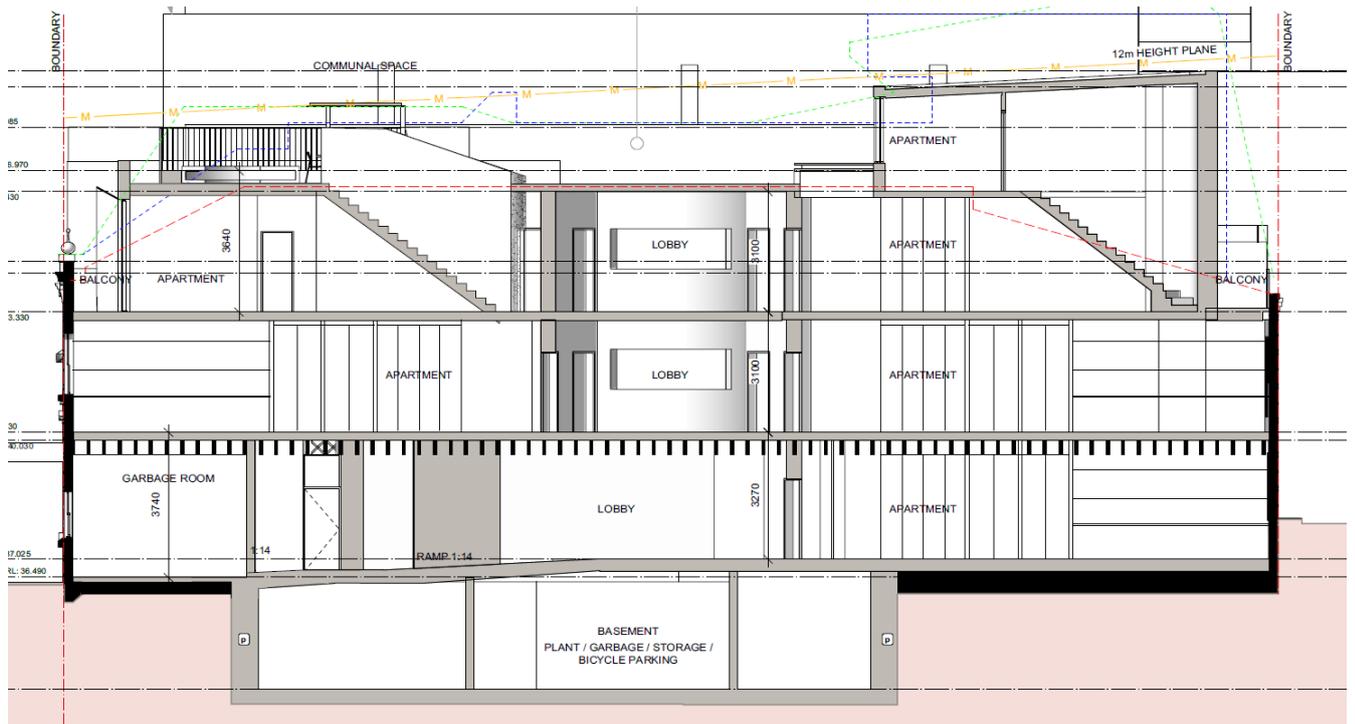


Figure 22: Proposed section



Figure 23: Proposed photomontage of Palmer Street elevation

## History Relevant to the Development Application

9. The following applications are relevant to the current proposal:
  - (a) **D/2015/1710** – approval was granted under delegation of Council for the subdivision of the site into two lots. This created No. 278 Palmer Street as it is configured today and a separate lot now known as No. 45 Burton Street with a corner frontage to Burton Street and Sherbrooke Street.
  - (b) **D/2015/248** – approval on 28 October 2015 by the NSW Land and Environment Court of a five lot subdivision of the site and alterations and additions to the building (Appeal No. 10376 of 2015). The proposal lapses on 28 October 2020 and has not yet been carried out.
  - (c) **D/2009/1123** – approval was granted under delegation of Council for alterations and additions to what is now known as No's 278 Palmer Street and No's 43 and 45 Burton Street and use of the site as a three storey residential flat building.
  - (d) **D/2007/2435** – refusal by the NSW Land and Environment Court of a proposal to create one large dwelling on what is now known as No's 278 Palmer Street and No's 43 and 45 Burton Street.
10. The subject development application **D/2017/1332** was received on 27 September 2017 and originally proposed 9 units.
11. A preliminary assessment was undertaken upon receipt and issues identified with the proposal were conveyed to the applicant via a letter dated 20 October 2017. The assessment clock was 'stopped' in accordance with the relevant provisions of the Environmental Planning and Assessment Act from 20 October 2017 to 22 December 2017. Issues that required attention included: landowner's consent, bulk and scale, private open space, active street frontage, ground floor apartments, adaptable dwelling, letterboxes, and deep soil provisions.
12. The applicant provided amended plans in response on 21 November 2017. Further advice and concerns with the proposal was provided to the applicant via a letter dated 22 November 2017. The applicant was invited to meet with the City of Sydney to discuss. It was noted that positive changes to the application were made with regards to:
  - (a) active street frontage achieved along Palmer Street in lieu of the waste storage areas previously shown;
  - (b) incorporation of private open space to all apartments;
  - (c) private open space is generally available from living rooms;
  - (d) deep soil area and communal open space areas increase; and
  - (e) an adaptable unit has been included.
13. Outstanding matters were requested to be addressed in relation to building height, apartment areas, and design matters (setbacks, curved windows, skylight in awning to Palmer Street). Some of these items have been addressed in further amended plans.

14. Further amended plans were provided on 22 December 2017 and the application was amended to propose 12 units. The amended proposal was notified between 16 January 2018 and 14 February 2018. Key issues identified by the assessing officers relating to the amended application included building height non-compliance, impacts on heritage conservation area, overshadowing, and the Sherbrooke Street interface to the opposite building where inadequate separation distance between balconies and windows is proposed.
15. The application was presented to the Design Advisory Panel (DAP) on 15 February 2018.
16. The DAP advised the following:
  - (a) the proposed height could be managed with improved floorplan planning and increased setbacks;
  - (b) privacy and overshadowing concerns/issues on neighbouring properties need to be resolved;
  - (c) apartment solar and cross-ventilation amenity needs to be improved;
  - (d) the proposal's entry/foyer sequence is not acceptable in its current form;
  - (e) applicant should rethink the courtyard's configuration and location - with potential for greater exposure to the north. This would allow for overall planning improvements and the creation of spaces with better amenity; and
  - (f) two storey apartments could potentially provide better planning and design outcomes with increased amenity to habitable rooms.
17. Relevant officers met with the applicant on 22 March 2018 to discuss the DAP's comments and other issues with the proposal. The applicant provided amended drawings on 19 April 2018 for preliminary feedback, which was provided to the applicant on 24 April 2018 via email.
18. A further full set of amended drawings and solar access diagrams were submitted on 25 June 2018 and are the subject of this assessment.
19. The final amendments include:
  - (a) reduction in the number of units from 12 to 10 and introduction of 2 x two storey units in accordance with DAP's comments;
  - (b) internal reconfigurations and reduction of bulk from the centre of the site, increased courtyard size; and
  - (c) revisions to rooftop open space area.
20. Outstanding matters have been requested from the applicant over the course of the assessment and are not reflected in the amended drawings. These include building setbacks, non-compliance with the height in storeys control, overshadowing impacts, and internal amenity levels with regards to ventilation and privacy.
21. The applicant was requested on 14 September 2018 via email to withdraw the application.

22. On 24 September 2018 the applicant advised via email that they did not wish to withdraw the application and to proceed with a determination.
23. 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**

24. 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.
25. A Preliminary Environmental Site Investigation (PESI) was submitted with the development application, which outlined that there were potential sources of subsurface contamination.
26. On 25 June 2018, the City of Sydney requested a Detailed Environmental Site Investigation (DESI) to be provided following advice received from the City's internal Environmental Health officers.
27. A DESI was received by the City on 27 August 2018. The City's Environmental Health officers following a review of this document are satisfied that subject to conditions, the site can be made suitable for the proposed use.

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

28. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:
  - (a) **Principle 1:** Context and Neighbourhood Character
  - (b) **Principle 2:** Built Form and Scale
  - (c) **Principle 3:** Density
  - (d) **Principle 4:** Sustainability
  - (e) **Principle 5:** Landscape
  - (f) **Principle 6:** Amenity
  - (g) **Principle 7:** Safety
  - (h) **Principle 8:** Housing Diversity and Social Interaction
  - (i) **Principle 9:** Aesthetics
29. A Design Verification Statement has been provided with the application as prepared by Alexander Ricketson, the registered architect for the application, which outlines the proposal's compliance with the design quality principles above.

30. However, it is considered that the development is not acceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

## Apartment Design Guide

| <b>2E Building Depth</b> | <b>Compliance</b> | <b>Comment</b>                                       |
|--------------------------|-------------------|--|
| 12-18m (glass to glass)  | Yes               | The proposed apartment depths range from 10m to 12m. |

| <b>3D Communal and Public Open Space</b>   | <b>Compliance</b> | <b>Comment</b>   |
|--|-------------------|--|
| Communal open space has a minimum area equal to 25% of the site.   | No                | The amended plans propose a 37.36sqm rooftop area (11.7% of the site area). This area is noted as 'communal open space' on Plan DA 005 'Summary & SEPP 65 Compliance' however is only accessible by internal stairs in Unit 08. In addition, the cover letter associated with the most recent set of amended plans notes that this rooftop area is to be private. On this basis no communal open space is provided.<br><br>Due to the discrepancies in the documentation provided it is considered that the proposal fails to demonstrate that adequate residential amenity is achieved. |
| Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two hours between 9am and 3pm on 21 June (midwinter). | No                | As stated above it appears that no communal open space is to be provided. Notwithstanding the solar diagrams provided do not demonstrate whether the rooftop open space is provided with two hours direct sunlight between 9am and 3pm on 21 June.   |

| 3E Deep Soil Zones  | Compliance | Comment   |
|---|------------|---|
| Deep soil zones are to have a minimum area equivalent to 7% of the site | No         | The proposal fails to provide adequate deep soil areas. The proposed deep soil areas at ground floor have existing joists as privacy/shading elements and therefore it is considered that only 2.7% deep soil area is provided to the site. |

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

| 3F Visual Privacy   | Compliance | Comment  |
|---|------------|--|
| <p>Up to four storeys (12m):</p> <ul style="list-style-type: none"> <li>• 6m between habitable rooms / balconies</li> <li>• 3m between non-habitable rooms</li> </ul> | No         | <p>The distance between the eastern and western apartments of 5.68m is considered inadequate in providing an acceptable level of building separation to mitigate amenity and privacy for building occupants. The applicant has addressed this issue through the use of hoods and aluminium screens. This is not considered an acceptable solution as it would inhibit ventilation and solar access, on balance reducing the internal amenity for occupants.</p> <p>Further, it was requested that the applicant provide detailed design of these windows. This was not provided.</p> <p>As stated above the proposal is built to the southern boundary with a nil setback and will result in adverse solar and outlook impacts to the residents of the terraces at Palmer St and Sherbrooke Street to the south.</p> <p>Inadequate separation distance is provided between the windows to habitable rooms of Units 9 and 10 and to the balconies and windows of the studio units at 49-61 Burton St. The habitable rooms are setback from the balconies by 7m.</p> |

| <b>3F Visual Privacy</b>   | <b>Compliance</b> | <b>Comment</b>  |
|--|-------------------|---|
| Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas. | No                | The lobby is external and therefore the windows to U04, 05, 08 and 09 are not separated in accordance with the ADG. |

| <b>4A Solar and Daylight Access</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| 70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces. | No                | The applicant has provided a Summary and SEPP65 Compliance Table which states that 60% of units receive adequate solar access to living rooms.<br><br>Further, as only 40% of the units are provided with adequate private open space, 70% of the units do not receive two hours direct sunlight to the private open space. |
| Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.               | Yes               | All apartments receive at least 15 minutes of direct sunlight.  |

| <b>4B Natural Ventilation</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| All habitable rooms are naturally ventilated.<br><br><i>Lightwells are not the primary air source for habitable rooms</i> | No                | Windows to bedrooms facing the internal lightwell have external hoods and screening to mitigate privacy, and therefore are not considered to be unobstructed and do not provide for secondary air sources.<br><br>The proposal does not provide adequate levels of natural ventilation. |

| 4B Natural Ventilation   | Compliance | Comment  |
|--|------------|--|
| <p>Minimum 60% of apartments in the first nine storeys of the building are naturally cross ventilated.</p> <p><i>Courtyards or building indentations have a width to depth ratio of 2:1 or 3:1 to ensure effective air circulation and avoid trapped smells.</i></p> | Yes        | <p>All the units proposed are dual aspect, however the proposal relies on an internal lightwell to provide for cross ventilation to each apartment.</p> <p>The width to depth ratio of the internal lightwell to the northern boundary, servicing U04, U05, U08 and U09, is 1:1.1 which is considered insufficient to provide effective air circulation.</p> <p>Further, the windows to the lightwell on the northern boundary have screenings and hoods for privacy that will inhibit the flow of air.</p> <p>On balance it is considered that 6/10 apartments provide adequate cross ventilation (U03, U06, U07, U08, U09, U10).</p> |
| Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.   | Yes        | All apartments no deeper than 18m.   |

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

| <b>4C Ceiling Heights</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| Habitable rooms: 2.7m   | Yes               | 3.1m floor to floor and 2.7m floor to ceiling for all habitable rooms.  |
| Non-habitable rooms: 2.4m   | Yes               | 2.4m for all non-habitable rooms.   |
| Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.  | Yes               | 2.4m provided for part of the second floor of the two storey units which is acceptable as the area does not exceed 50% of the apartment area.   |
| If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.   | Yes               | 3.3m at ground floor provided (adaptive re-use).  |
| <b>4D Apartment Size and Layout</b>   | <b>Compliance</b> | <b>Comment</b>  |
| Minimum unit sizes: <ul style="list-style-type: none"> <li>• One bed: 50sqm</li> <li>• Two bed: 70sqm</li> </ul>  | No                | It is noted that U03, U06, U07 ('studio' units) are considered to be one bedroom units as the bedroom is separated from the living room by a bathroom, and could be closed off. As the units are 47sqm and 48sqm in area they do not numerically comply and therefore be less than the required one-bedroom 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 windows.   |
| Habitable room depths are to be no more than 2.5 x the ceiling height.<br><br>In open plan layouts (where the living, dining, and kitchen are combined) the maximum habitable room depth is 8m from a window. | Yes               | Complies.   |

| 4D Apartment Size and Layout   | Compliance | Comment  |
|--|------------|--|
| <p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> <li>• master bedroom: 10sqm</li> <li>• all other bedrooms: 9sqm</li> </ul> <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p> | No         | Bedrooms to U01, U02, U03, U05, U06 not compliant.   |
| <p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> <li>• Studio and one-bedroom: 3.6m</li> <li>• Two-bedroom or more: 4m</li> </ul>  | Yes        | All living and dining rooms meet minimum standards.  |
| <p>4m minimum width for cross over and cross through apartments.</p>   | Yes        | All apartments are minimum 4m in width.  |
| 4E Private Open Space and Balconies  | Compliance | Comment  |
| <p>One bed apartments are to have a minimum balcony area of 8sqm with a minimum depth of 2m.</p> <p>Two bed apartments are to have a minimum balcony area of 10sqm with a minimum depth of 2m.</p>   | No         | <p>U01, U02 and U08 (3 out of 10 or 30%) comply numerically with the private open space provisions. Four of the units (U03, U07, U09, and U10) are provided with less than required amounts of private open space. Three out of 10 (30%) of the proposed units (U04, U05, U06) propose no private open space.</p> <p>U01 and U02 provide a numerically compliant area of private open space however this area is proposed to be deep soil which is considered to be generally unusable for future residents. The area does not comply with the requirement under Objective 4E-1 for a minimum area of 15sqm/depth of 3m, however given the site is an adaptive re-use the variation in this instance to the size is acceptable. It is also considered that concessions</p> |

| 4E Private Open Space and Balconies   | Compliance | Comment  |
|---|------------|--|
|   |            | <p>may be granted to other adaptive re-use units (U03, U04, U05, and U06).</p> <p>On balance however, given the concessions above and lack of private open space provided to units 9 and 10 which are within the new additions to the building, the proposal does not comply with the requirements of the ADG with regards to private open space and balconies and therefore an inadequate level of residential amenity is provided for occupiers.</p> |
| <p>Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15sqm and a minimum depth of 3m.</p> | <p>No</p>  | <p>U01 and U02 comply with area requirements, but are proposed to be deep soil areas therefore not able to be effectively used.</p> <p>U03 - 7sqm provided and does not comply.</p>  |

| <b>4F Common Circulation and Spaces</b>   | <b>Compliance</b> | <b>Comment</b>  |
|---|-------------------|---|
| The maximum number of apartments off a circulation core on a single level is eight.   | Yes               | Complies  |
| Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled. | Yes               | Complies  |
| Daylight and natural ventilation are provided to all common circulation spaces.   | No                | Complies except for entry lobby. Lobby at first and second level not considered to be safe, does not provide an area that is more open than closed above the balustrade along their length. |

| <b>4G Storage</b>   | <b>Compliance</b> | <b>Comment</b>   |
|---|-------------------|--|
| <p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> <li>• One bed: 6m<sup>3</sup></li> <li>• Two bed: 8m<sup>3</sup></li> <li>• Three bed: 10m<sup>3</sup></li> </ul> <p>(Minimum 50% storage area located within unit)</p> | No                | 6/10 comply with required storage noting studio apartments are considered as one bed in accordance with the above. |

| <b>4H Acoustic Privacy</b>   | <b>Compliance</b> | <b>Comment</b>   |
|--|-------------------|--|
| Has noise transfer been considered in the siting of buildings and building layout? | No                | Adequate building separation has not been provided within the development and it is not clear how noise impacts will be mitigated given windows and doors are not suitably setback from each other. Rooms are not stacked effectively to minimise noise impacts. |

| 4R Adaptive Reuse   | Compliance         | Comment   |
|---|--------------------|---|
| Adapted buildings provide residential amenity while not precluding future adaptive reuse. | Partial compliance | The proposal may be granted certain concessions, should it be recommended for approval, in the following areas - deep soil, common circulation, private open space - where the existing building has been converted for use as residential. However, the compliance in the current application is unacceptable in its current form and further alternatives should be explored to provide a suitable level of amenity of residents. |

#### **State Environmental Planning Policy (Infrastructure) 2007**

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

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

32. The BASIX Certificate has been submitted with the development application.
33. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal.

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

34. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.
35. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment.
36. 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.
37. 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.
38. The development is consistent with the controls contained with the deemed SREP.

**Sydney LEP 2012**

39. The site is located within the R1 General Residential zone. The proposed use is defined as a residential flat building and is permissible with consent.
40. 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         | <p>A maximum height of 12m is permitted.</p> <p>A height of 12m is proposed to the top of the building, however the proposal includes a shading device to the roof terrace, which reaches a height of 12.04m.</p> <p>The proposal therefore does not comply with this provision of the LEP.</p> <p>Further discussion under Issues.</p>   |
| 4.4 Floor Space Ratio                   | Yes        | <p>A maximum FSR of 3.5:1 is permitted.</p> <p>A FSR of 2.17:1 is proposed.</p>   |
| 4.6 Exceptions to development standards | No         | <p>A Clause 4.6 statement to address the non-compliance with Clause 4.3 height of buildings development standard, and non-compliances with SEPP 65 with regards to minimum internal area above have not been provided with the application.</p>   |
| 5.10 Heritage conservation              | No         | <p>The subject site is identified as a contributory building located within a heritage conservation area. The proposal does not comply with the provisions of Clause 5.10 of the LEP as it does not sympathetically relate to the heritage conservation area.</p> <p>The scale of the two storey addition when viewed from Sherbrooke Street, will have a detrimental impact as viewed from 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                     | No         | <p>The proposed development, by way of its non-compliance with the amenity and built form provisions of the ADG, LEP and DCP, and its general design quality, fails to adequately satisfy the requirements of Clause 6.21 of the LEP.</p> <p>The proposal does not adequately address the existing streetscape and will result in adverse overshadowing and privacy impacts to the neighbouring properties.</p> <p>The two storey addition to Sherbrook Street is out of character with the streetscape and will have adverse visual impacts. Overall the proposal fails to demonstrate design excellence in accordance with Clause 6.21.</p> |

| Part 7 Local Provisions - General                     | Compliance | Comment  |
|---|------------|--|
| Division 1 Car parking ancillary to other development | Yes        | No car parking spaces are proposed. The proposal is compliant with this provision.   |
| 7.14 Acid Sulphate Soils                              | Yes        | The site is identified as containing class 5 Acid Sulphate Soil but is over 500m from an adjoining class.  |
| 7.15 Flood planning                                   | Yes        | The site is not identified as being flood affected, however the development must comply with the City's Floodplain management policy to set the finished floor levels for the building entries at or above 0.3m. If the application was recommended for approval this could be included by way of condition. |

### Sydney DCP 2012

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

**2. Locality Statements – East Sydney**

The subject site is located in the East Sydney locality. The proposed residential flat building is not considered to be in keeping with the unique character of the area and design principles in that it does not achieve and satisfy the outcomes expressed in the character statement and supporting principles. The proposal fails to respond to and complement heritage items and contributory buildings in the heritage conservation area. The proposal does not maintain the predominant street frontage height, setbacks and street alignment.

| 3. General Provisions                    | Compliance | Comment  |
|--|------------|--|
| 3.2 Defining the Public Domain           | No         | <p>The proposed development includes works to the Palmer Street frontage of the existing warehouse building.</p> <p>The proposal has been modified on Council's recommendation to delete originally proposed waste storage areas to the Palmer Street façade. However, the replacement façade to U01 is entirely obscure glazed, which would reduce the visibility into the building, thereby limiting direct surveillance of the adjacent street.</p> <p>Opaque glazing to the main entry off Palmer St is also proposed with balusters angled to prevent oblique views from the street.</p> <p>As no transparent glass is proposed to this entry, which is nominated as an 'Active Street Frontage' as per the DCP, it is considered that further articulation would be required to provide an active visual engagement between those in the street and those on the ground floors of the buildings.</p> <p>No legible or accessible entry to the street from Sherbrooke Street is proposed.</p> <p>As an adaptive re-use, concessions to the ground floor frontages may be able to be granted, however, in its current form the proposal is not considered to adequately address the street and public domain.</p> <p>However, for reasons stated elsewhere in the report, the proposal is recommended for refusal.</p> |
| 3.5 Urban Ecology                        | Yes        | There are no street trees proposed for removal and no existing trees on site.  |
| 3.6 Ecologically Sustainable Development | Yes        | The proposal satisfies BASIX and environmental requirements.   |

| 3. General Provisions                                 | Compliance         | Comment  |
|---|--------------------|--|
| 3.7 Water and Flood Management                        | Yes                | As discussed above, the proposal is not identified as being on flood prone land.   |
| 3.8 Subdivision, Strata Subdivision and Consolidation | Partial compliance | <p>The proposal includes strata subdivision and was referred to the City's Surveyor who advised the subdivision was acceptable subject to conditions. Should the proposal be recommended for approval these would be included on the conditions of consent.</p> <p><b>Schedule 4 - Projections over or into public roads</b></p> <p>The proposal includes reinstatement to Sherbrooke Street of a timber and steel hoist which is less than 3.2m above the footpath (2.3m) required by Schedule 4 of the DCP.</p> <p>As such, the projection onto the footpath is not compliant with the DCP and would likely result in safety and obstruction issues.</p> |
| 3.9 Heritage  | No                 | The existing building is in a heritage conservation area and 'contributory', see discussion under the heading Issues.  |
| 3.10 Significant Architectural Building Types         | Partial compliance | <p>The proposal includes the retention of warehouse buildings older than 50 years.</p> <p>The reuse of the buildings, is considered acceptable, however the proposal overall results in an unsympathetic addition to the existing buildings and therefore fails to retain the essential geometric form of the existing building when viewed from the public domain.</p>  |

| 3. General Provisions                          | Compliance         | Comment  |
|--|--------------------|--|
| 3.11 Transport and Parking                     | Partial compliance | <p>The proposal provides 10 onsite bicycle parking spaces in the basement, which is consistent with the DCP requirement which is a minimum of 1 per dwelling.</p> <p>The access width to this area from Palmer Street is not compliant with the DCP, but given the constraints of the site and the adaptive re-use proposed, the variation would likely be acceptable should the proposal be recommended for approval.</p> |
| 3.12 Accessible Design                         | Yes                | If the proposal was recommended for approval a condition would be included on the relevant Notice of Determination for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.   |
| 3.13 Social and Environmental Responsibilities | Yes                | The proposed development, as an adaptive re-use, generally provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.   |
| 3.14 Waste                                     | Yes                | If the proposal was recommended for approval a condition would be included on the relevant Notice of Determination for the proposal to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments 2005.   |

| 4. Development Types  | Compliance | Comment   |
|---|------------|---|
| 4.2 Residential flat, commercial and mixed use developments |            |   |
| 4.2.1 Building height                                       | No         | <p>The proposed development has a height of 4 storeys. The DCP requires a maximum number of storeys of 3 and a maximum street frontage height of 3 storeys.</p> <p>Further discussion under Issues.</p> |

| 4. Development Types<br><br>4.2 Residential flat,<br>commercial and mixed use<br>developments | Compliance | Comment   |
|---|------------|---|
| 4.2.2 Building setbacks   | No         | <p>The proposed development includes a one storey addition to Palmer Street, setback from the boundary by 1.43m, with a protruding screen to each window, reducing this setback to 0.8m.</p> <p>The proposed development includes a two storey addition to Sherbrooke Street, setback from the existing frontage by 1.495m. Similarly to the above, a greater setback was requested (2m) to reduce the impacts to the street scape of Sherbrooke Street, and to match the current DA at adjoining site (45 Burton Street). The requests were not reflected in the amended drawings.</p> <p>The fourth storey is not set back a minimum of 3m as per Part 4.2.2.2 of the DCP. In this regard, the proposal fails to adequately address the existing, adjacent patterns of building setbacks on the street and heritage conservation area, in contradiction to the DCP.</p> |
| 4.2.3 Amenity   | No         | <p>The proposal will result in adverse amenity impacts on the site itself and neighbouring properties.</p> <p>The proposal fails to comply with the provisions of Part 4.2.3 in particular with regards to private open space, natural and cross ventilation, outlook, visual and acoustic privacy, common open space, landscaping, and deep soil.</p> <p>The proposal will significantly impact on the outlook of surrounding residential properties, particularly for those at 49-61 Burton Street, where the only outlook is to the subject site.</p> <p>Further discussion under Issues.</p>  |

| 4. Development Types<br><br>4.2 Residential flat,<br>commercial and mixed use<br>developments | Compliance         | Comment   |
|---|--------------------|---|
| 4.2.5 Types of development  | No                 | The ground floor dwellings do not have individual entries to the street, however, as an adaptive re-use concessions to this provision may be granted, should other areas of non-compliance identified in this report be adequately addressed.   |
| 4.2.6 Waste minimisation  | Partial compliance | <p>The proposal has a communal bin storage area at ground floor level off Palmer Street and at basement level.</p> <p>Insufficient information is provided with regards to waste and recycling storage, noise impacts, and recyclables. Further, the DCP requires that buildings more than three storeys provide a waste and recycling chute on each floor such that total travel distance from any dwelling to a waste chute does not exceed 40m which was not demonstrated on the plans.</p> <p>Should the proposal be recommended for approval a condition to require the application to comply with the <i>City of Sydney Policy for Waste Minimisation in New Developments 2005</i> would be recommended for inclusion on the Notice of Determination.</p> |
| 4.2.8 Letterboxes   | Yes                | Mailboxes are provided in the lobby at the entrance to Palmer Street.   |

## Issues

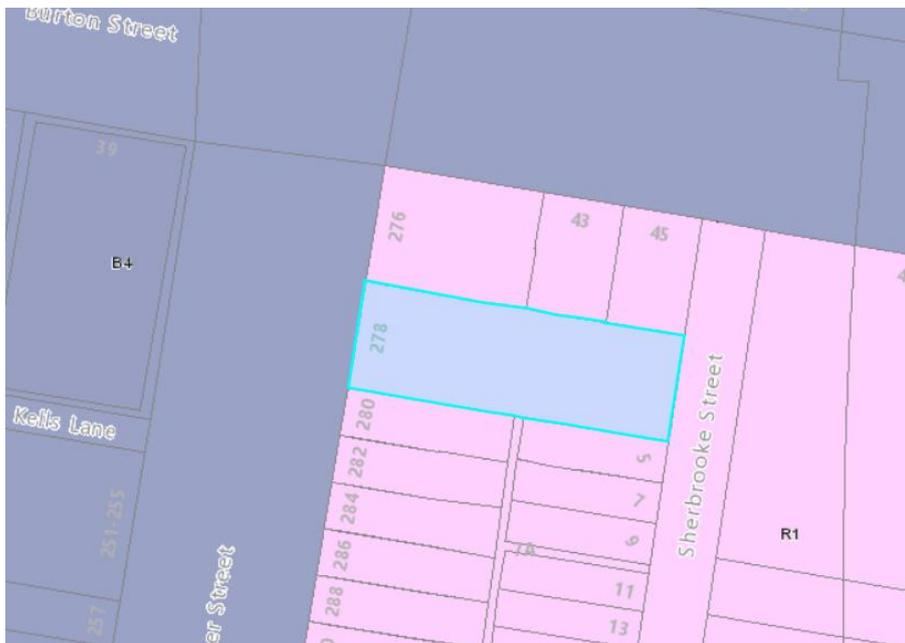
### Height in metres and Clause 4.6 request

42. The site is subject to a maximum height in metres control of 12m as per Clause 4.3 of the LEP. The development proposes a rooftop pergola which has a maximum height of 12.04m.
43. The applicant submits the proposal has a height of 12m and accordingly no Clause 4.6 variation was submitted with the application. The proposal does not comply with Clause 4.6(3) of the LEP whereby a justification to contravene the development standard has not been provided.

44. The proposed development is therefore not in the public interest as demonstration with the relevant objectives of Clause 4.3 of the LEP has not been provided.

### Height

45. The site has a maximum height in storeys and street frontage height control of 3 as per the DCP and a maximum height in metres control of 12m as per the LEP.
46. Part 4.2.1 of the DCP requires the height in storeys of developments to reinforce the existing or future neighbourhood character. Further, Clause 4.2.1.1(1) specifies 'development must not exceed the maximum number of storeys as shown in the building height in storeys map and (5) Height of buildings and street frontage height in storeys should not match anomalous tall neighbouring buildings that are inconsistent with the neighbourhood.'
47. To the north of the site, 276 Palmer Street, and 43 and 45 Burton Street, are permitted a three storey maximum height control. North of Burton Street, an eight storey control is applied to the 'Republic II' building. It is noted that this area is within the 'B4 Mixed Use' zone whilst the subject site is within an 'R1 General Residential' zone (see Figure 23).



**Figure 24:** Zoning of site in context of LEP 2012 controls for land use

48. Whilst the proposal generally maintains a 12m height limit, a four storey built form is proposed to the Sherbrooke Street frontage, with both storeys of the addition setback by 1.495m from the existing building frontage. To the south of the site most of the built form comprises predominately uniform two storey terraces. The fourth storey appears overbearing on the heritage street scape and Heritage Conservation Area.
49. Part 4.2.2.2 of the DCP requires a setback above the street frontage height to be a minimum of 3m for residential above residential. This is not proposed. A setback to Sherbrooke St of 1.495m for both third and fourth storey additions is proposed which is considered to insufficiently address the street scape requirements and cause visual impact (and privacy issues) to surrounding neighbouring properties.

50. It is also noted the rooftop terrace proposes a shading device that exceeds the height limit of 12m by 0.4m therefore representing a non-compliance with the LEP height development standard. No Clause 4.6 variation was submitted with the application.
51. The proposal was discussed with the City's Heritage and Urban Design Specialists who advised that the fourth storey of the proposal fails to maintain or satisfactorily address the Sherbrooke St built form and is not supported in this context, and given overshadowing impacts to dwellings to the south. They advised that a third storey may be supported if setback in the order of 2m consistent with the proposal currently under assessment at 45 Burton Street (D/2018/126).
52. On balance, the fourth storey component to Sherbrooke Street is not supported and does not satisfy the provisions of Part 4.2.1 of the DCP. Further, the proposal does not comply with the maximum height in metres standards of Clause 4.3 of the LEP, and no Clause 4.6 variation was provided.
53. Overall, the non-complying fourth floor was advised during the course of the assessment to be deleted from the proposal, due to its bulk and scale in the context of a strong two storey horizontal plane along Sherbrooke Street. In addition, the non-complying fourth floor has adverse and non-complying overshadowing impacts on adjoining properties to the south and east resulting from the non-compliance with the height in storeys control. Part 4.2.3.10 of the DCP requires that views and outlooks from existing residential development should be considered in the site planning and massing of new development. The proposed non-compliant fourth storey results in poor amenity and is not considered to adequately address this provision. Outlook from the row of terraces to the south on Palmer and Sherbrooke St, and from the units at 49-61 Burton Street, would be impacted by the bulk of the proposal.

### **Amenity**

54. The proposal fails to provide suitable amenity for the future dwellings and will have a detrimental impact on the amenity of neighbouring properties, contrary to the requirements of SEPP 65, the ADG and DCP, which are discussed under the headings below.

### **Solar Access**

55. The application documents contain a SEPP65 Summary Table which states that the percentage of solar access compliance achieved for the new units is 60%, which does not comply with the ADG. The proposal therefore fails to provide adequate internal amenity for future occupiers with regards to solar access.
56. To the south of the site exists the rear gardens of single dwellings facing both Palmer Street and Sherbrooke Street. The shadow diagrams provided show that the rear gardens at 280 - 290 Palmer Street and 5 - 17 Sherbrooke Street are predominantly in shadow between 9am and 3pm on June 21.
57. Of these properties, only 288 Palmer Street and 9 Sherbrooke Street receive some solar access to their rear gardens between 11am and 2pm on June 21.
58. The DCP Part 4.2.3.1 requires that '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.'

59. The applicant has provided amended shadow diagrams demonstrating additional overshadowing from the development to skylights, tops of fences and roofs, and the rear private open space of 9 Sherbrooke Street, between 11am and midday.
60. The rear bedroom door to 7 Sherbrooke Street 9 Sherbrooke Street is also impacted as shown in elevation plans, reduced to less than 2 hours per day between 9am and 3pm on June 21.
61. No overshadowing diagrams in elevation have been provided therefore it is not clear as to the impacts to the northern facing rear windows of any wing additions of the terraces to the south. It is likely due to the orientation of the site and the height of the proposal, that there would be additional overshadowing impacts to northern facing windows.
62. Whilst the overshadowing impacts are not shown in elevation, overshadowing impacts in plan are shown to occur to the units at 49-61 Burton Street, to the east, which has windows and balconies facing the subject site. The units are studio units, therefore the impacts to the windows are considered to be to habitable rooms. These units benefit from an internal courtyard however due to the orientation of the site, this courtyard would likely receive little to no direct sunlight.
63. Overshadowing diagrams for this property have been provided for an adjacent DA at 45 Burton Street which is currently under assessment (reference D/2018/126). These diagrams show that the ground floor western facing units at 49-61 Burton Street only receive direct sunlight between 12pm and sometime between 1pm and 2pm (therefore currently receive less than the required two hours).
64. As such, preservation to the openings of the western façade is considered necessary to ensure no additional amenity impacts occur. Any additional overshadowing to these windows would result in non-compliance with the DCP.
65. In the context of the neighbouring sites which currently experience significantly poor levels of amenity, the overshadowing impacts of the non-compliant fourth storey are considered to be inconsistent with the provisions of the DCP.



**Figure 25:** 49-61 Burton St - Studio units with balconies and openings facing subject site

### **Lapsed consent - D/2009/1123**

66. A previous application for the site (reference D/2009/1123) was issued deferred commencement approval at the site on 16 August 2010 by Council for alterations, additions, and conversion into a three storey residential dwelling including excavation for a basement level containing car parking, retention and conservation of the facade of the terrace, an additional floor to the existing warehouse building and an upper level deck with lap pool. The approval lapsed on 16 August 2015 and was not commenced.
67. The approval included conditions to be satisfied prior to consent operating including a re-design of the lift, stair and cabana structure, to be amended to ensure the proposal does not result in any additional overshadowing to the rear private open spaces of adjoining properties, particularly properties that currently receive less than two hours of sunlight to a minimum 50% of private open space between 9.00am and 3.00pm at the winter solstice (21 June) as outlined in Figure 26 and 27 below.

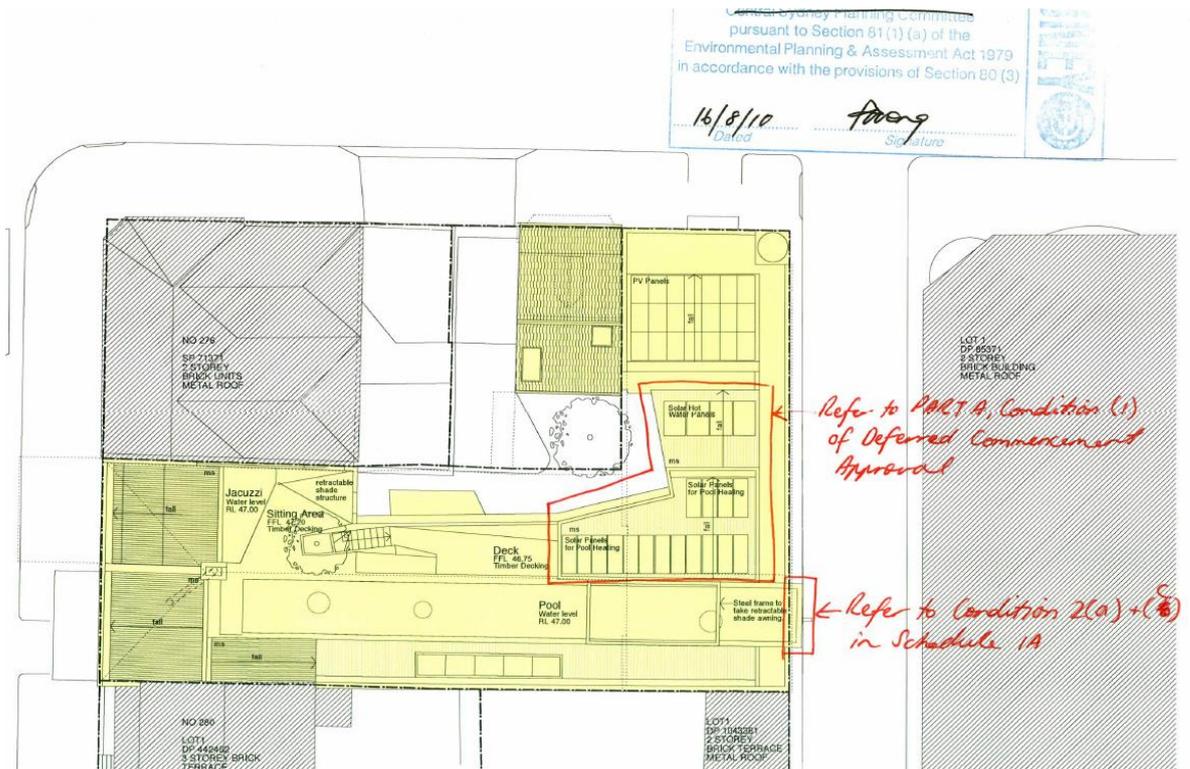


Figure 26: Extract from stamped plans - D/2009/1123 - showing area to be redesigned to minimise overshadowing

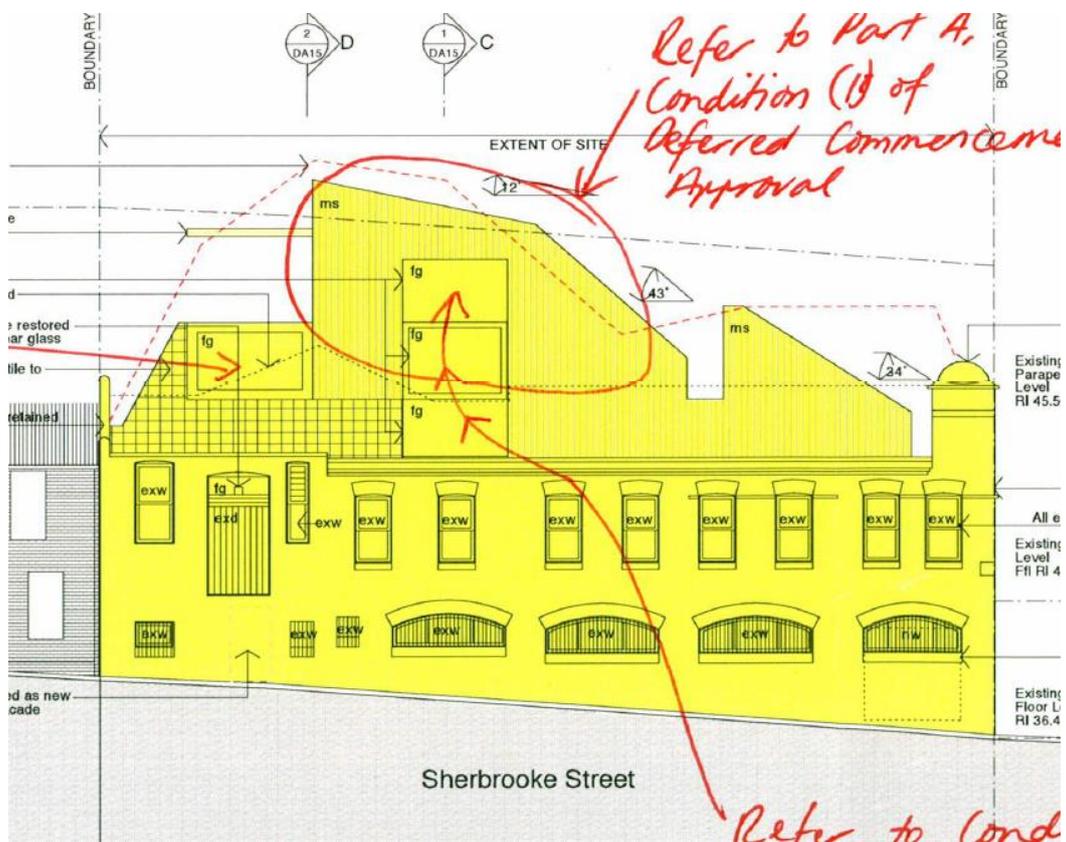


Figure 27: Extract from stamped plans - D/2009/1123 - showing area to be redesigned to minimise overshadowing

68. Council records show that the imposition of the deferred commencement condition is a result of concerns in relation to the loss of solar access, indicating that impacts to the properties experiencing less than two hours of sunshine in midwinter could be reduced if the access to level 3 and the 'cabana design' with solar panels above was redesigned. Studies were undertaken using computer analysis during the assessment and it was determined that the lift and its roof (the eastern end of the structure) is more responsible for the minor shadow impact rather than the western end of the cabana.
69. The deferred commencement condition was applied to further minimise or eliminate completely overshadowing impacts to all properties in Palmer Street and Sherbrooke Street between 9.00am and 3.00pm on 21 June.
70. Whilst this was considered appropriate to the DA at the time, the use of a similarly applied deferred commencement condition is not considered appropriate for the subject DA, given the scope of internal layout changes that would likely result with the recommended deletion of the fourth storey, which in the subject DA, covers a much larger area than that proposed under D/2009/1123.

### **Private and Communal Open Space**

71. The proposal includes compliant private open space for three out of 10 or 30% of the units however as noted above for two of these units the area is proposed to be a deep soil zone, which would result in a relatively unusable area for occupiers.
72. Three units or 30% are not provided with any private open space.
73. Given the proposal includes an adaptive re-use some concession to the requirement for all units to be provided with private open space may be considered as acceptable, subject to compliance with other amenity provisions within the controls. It is not considered that this has been demonstrated therefore concessions to the required private open space are not considered to be acceptable in this instance.
74. An area of open space is provided at the rooftop level. It is not clear whether this area is communal or private due to discrepancies in the documentation noted above.
75. Regardless, the area does not provide adequate shading devices, with the location on the western edge of the building likely to result in heat during summer.
76. In addition, the proposed roof terrace, due to the proximity to a number of residential receivers, may result in adverse noise impacts on the neighbouring properties.
77. Overall, the proposal fails to provide suitable private and communal open space in contradiction to the ADG, SEPP65, and the DCP.

### **Privacy and Noise**

78. Sherbrooke Street and Palmer Street properties currently experience mutual overlooking of rear private open spaces and window openings. However, the proposed roof terrace and second storey of Units 9 and 10, which have large windows facing to the west, would result in direct overlooking to the rear gardens of these terraces as well as potential adverse noise impacts from the roof terrace. As discussed above, it is not clear if this area is communal or for private use.

79. Additionally, Sherbrooke Street is narrow (5.4m in width) and the studio units and private balconies facing the subject site at 49-61 Burton Street are built to the boundary with a nil setback. Objective 3F-1 of the ADG requires a setback of at least 6m from the boundary however during assessment it was determined that a setback of at least 2m could be adequate, subject to further provision of privacy screening, to suitably mitigate visual privacy from the new units at the additions on Sherbrooke Street. A setback of 1.495m is proposed for both third and fourth storey additions which is not considered adequate in maintaining an acceptable level of visual privacy for nearby residents.
80. Given the inadequate setbacks there is likely to be visual privacy impacts towards Sherbrooke Street.
81. Further, the internal courtyard provides a setback of 5.68m between the northern units at each level. The proposed method of screening would inhibit ventilation and solar access. Overall, the proposed design is inadequate in providing suitable privacy mitigation between units.
82. The proposal includes an open air lobby at the upper levels, which is likely to cause noise impacts for neighbouring properties and internally to the proposed units.

#### **Lightwells, Common Corridors, and Outlook**

83. Part 4.2.3.2 of the DCP requires lightwells to not be the only source of daylight to a habitable room.
84. All the proposed units rely on both northern and southern lightwells to provide a single source of daylight to bedrooms. The proposal therefore does not comply with this provision, and further, will potentially restrict future development on neighbouring sites.
85. Part 4.2.3.3 of the DCP requires common corridors to be at least 2m wide in front of the lifts. A lobby is provided for entrance to the units, with access from Palmer Street. The width to the lift from the lobby is between 0.8m and 1.55m. The proposal fails to comply with this provision. The lobby to the upper levels is partially unenclosed, which would likely result in safety and/or noise impacts, further, is not considered to provide acceptable outlook and the applicant has not demonstrated whether the lobby receives adequate solar access.
86. Part 4.2.3.10 of the DCP requires that new development should consider views and outlook from existing residential development. As insufficient setbacks from both Palmer Street and Sherbrooke Street have been provided, the proposal is likely to result in adverse outlook impacts for surrounding residents.

#### **Deep Soil and Landscaping**

87. Part 4.2.3.5 of the DCP requires new development to be accompanied by a landscaping plan that suitably addresses the requirements.
88. The submitted landscape plans were referred to the City's Landscape Officer who did not support the proposal, given the substantial non-compliance with the deep soil and common open space requirements. It was also noted that there was insufficient information provided to demonstrate the design of landscaping, possible green walls, and roof terraces.

89. Objective 3E of the ADG requires a deep soil zone of 7% of the site for sites less than 650sqm. The site has a deep soil zone of 2.7%. However, it is noted these areas are impeded by existing joists as privacy/shading elements over. Further the areas of deep soil are not likely to be deep soil given they are an internal private courtyard that would not be usable if deep soil.

### **Heritage**

90. The site is located within a Conservation Area (C13) and is therefore subject to the heritage provisions of the DCP. The proposal retains the existing warehouse buildings fronting Palmer Street, which were constructed circa 1884.
91. The proposal was discussed with the City's Heritage and Urban Design Specialists who supported the retention of the existing warehouse building. The City's Heritage and Urban Design Specialists noted that non-compliance with some ADG provisions could be acceptable due to adaptive re-use, but these should be limited to the re-use areas only. They also noted that lightwells should not be relied upon as the sole access to light and air for a bedroom.
92. They advised that the additional non-compliant fourth storey was contrary to the controls and would impact the surrounding character of the area, particularly to the two storey terraces on the western side of Sherbrooke Street. It was also noted by the City's Heritage and Urban Design Specialists that the additions are not sufficiently setback from the façade of the existing building, in particular, the setback at the third floor to Palmer Street is inadequate. 1.67m without any protrusions was requested and has not been provided.
93. The applicant was requested on 24 April 2018 to provide a minimum setback of 1.67m without any protrusions such as awnings or external sun control devices to the top floor that faces Palmer Street (second level). The amended plans have a setback of 0.8m to a proposed awning from Palmer Street.
94. It is also required that a suitable setback from Sherbrooke Street of 2m minimum is provided to maintain the streetscape presentation and mitigate visual impacts. The amended plans propose a setback from Sherbrooke Street of 1.495m.
95. Overall the proposal does not comply with the relevant aims, objectives and controls of the DCP with regards to heritage matters.

### **Access**

96. If the proposal was recommended for approval, an appropriate condition relating to disabled access would be included on the Notice of Determination.

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

97. The proposed development is capable of complying with the BCA.
98. It is considered that the proposal will have significant detrimental effect relating to environmental, social or economic impacts on the locality and as such is recommended for refusal.

### Suitability of the site for the Development

99. The proposal is not 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. However, for reasons stated elsewhere in this report, the proposal is not recommended for approval owing to internal amenity of apartments, non compliance with the height in storeys control which in turn creates amenity impacts to surrounding properties.

### Internal Referrals

100. The application was discussed with the Design Advisory Panel and the Heritage and Urban Design Specialists who advised they did not support the proposal, as discussed above.
101. The application was also discussed with the Building Services Unit; Public Domain; Surveyors; who advised that the proposal is acceptable subject to the recommended conditions.
102. The application was not supported by the City's Landscape officer who advised the proposal was not acceptable due to non-compliance with communal open space and deep soil requirements, as discussed above. The Landscape Officer assumed the rooftop area is communal, however due to discrepancies in the plans it is noted that this area is not clear as to whether it is private or communal.
103. Either way the proposal fails to comply with the required 25% communal open space coverage as discussed above.
104. The application was discussed with the City's Environmental Health officers who requested amendments to the Demolition, Excavation, and Construction Noise Management Plan (CVNMP), in particular, to the noise impact methodology, community consultation proposed and proposed course of actions following complaints.
105. The amendments were requested to the applicant on 25 June 2018. An amended CVNMP was not provided to the City following this request.

### External Referrals

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

106. In accordance with Schedule 1 the DCP, 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 16 January 2018 and 14 February 2018. As a result of this notification there were 35 unique submissions received.
107. A summary of the grounds of submission, together with a response by Council Officers, is below:
- (a) *Height of building - 4 storeys /5m addition is inconsistent with surrounding area and adjoining 2 storey buildings, impact on Heritage Conservation Area, outlook, increased sense of enclosure due to narrow width of Sherbrooke St (4m). Height should be maintained at the same as the existing Tap Gallery.*

**Response** - The variation to the height in storeys required as per the DCP is not supported for reasons outlined in the report. The proposal is recommended for refusal.

- (b) *Privacy concerns - into the 'Republic II' building.*

**Response** - The proposal includes screening devices to minimise privacy however is recommended for refusal.

- (c) *Inaccuracies in the development application 'Elevations' plan - Dominion Building is to the west, and is 7 storeys*

**Response** - Noted, however as discussed above the proposal is not recommended for approval. The inaccuracies are not considered significant to require amendments for the purposes of the assessment.

- (d) *Overshadowing concerns - to 8 studio units at 49-61 Burton St (balconies) and windows which have poor amenity already internally, and internal courtyard is in shade. Overshadowing impacts to Sherbrooke St terraces which have poor amenity already. The proposal reduces 50% of solar access to 284 Palmer St and 7 Sherbrooke St.*

**Response** - Overshadowing impacts are discussed above under Issues. It is agreed that any additional overshadowing to surrounding properties, that already have poor amenity, would be adverse and not in the public interest.

- (e) *Noise impacts from proposal and communal rooftop deck. Additional height from landscaping on rooftop.*

**Response** - For reasons stated elsewhere the proposal is recommended for refusal, however, a condition restricting the use of the rooftop between certain hours could be included on the conditions of consent should the proposal was recommended for approval. As discussed above, the proposed rooftop structures exceed the maximum height in metres control.

- (f) *Parking constraints. Not enough car/bike parking provided.*

**Response** - There are no minimum car parking requirements and adequate bike storage is provided for future occupiers. Traffic impacts on the streets with regards to parking constraints is not considered to be significant so much as a reason for refusal. For other reasons, the proposal is not supported

- (g) *Anti-social impacts - Lack of engagement with Sherbrooke St community due to no access from this side to the new units. Most units will be rented out or first time buyers demographic and will become Airbnb due to location. Character of area and community will be lost.*

**Response** - There are no planning controls to require new residents to engage with the existing community or be of similar demographics to the surroundings. It is also not orderly or proper planning to require a condition to restrict renting of the units once built. However it is agreed that the proposal is unacceptable for other reasons as discussed elsewhere in this report.

- (h) *Overdevelopment of site in context of 10 x 2 storey terraces.*

**Response** - The proposal has been reduced to 10 apartments from the original proposal which was for 12 apartments. The proposal complies with FSR requirements however, for other reasons discussed above, the proposal is recommended for refusal.

*Structural impacts as a result of the basement to neighbouring sites.*

**Response** -The proposal is recommended for refusal, however should the application be recommended for approval, a condition requiring dilapidation reports for neighbouring properties would be recommended for inclusion on the Notice of Determination to be prepared by a qualified structural engineer.

- (i) *View impacts on sky and city skyline;*

**Response** - It is not considered that there are any significant distant views from surrounding properties that would be adversely impacted by the proposal.

- (j) *In 2010 the City of Sydney advised that no sunlight would be lost if these warehouses were developed. This proposal is worse than previous DAs.*

**Response** - The previous DA at the site D/2009/1123 does not have relevance to this assessment, except that it is noted that a condition of the deferred commencement approval related to a redesign to minimise overshadowing. This condition is not considered appropriate to this development application. As such the proposal is recommended for refusal.

- (k) *Heritage impacts to front façade;*

**Response** - Generally, the works to the front façade of the existing buildings are considered acceptable and amendments have been made to address concerns raised by the City's Heritage Specialist during the course of the assessment.

- (l) *Waste management is not appropriately addressed;*

**Response** - The proposal is recommended for Refusal. Should the proposal be recommended for approval, a condition requiring the development to comply with the City of Sydney Waste Management policy would be included on the Notice of Determination.

- (m) *The proposal does not comply with deep soil and communal open space provisions;*

**Response** - Agreed. This is discussed above under Issues.

- (n) *Anomalies in shadow diagrams including statements that no impacts to 282 Palmer St and no impacts to 11 Sherbrooke St will occur. Comparisons to D/2009/1123 not relevant. Council required modifications to prevent loss of solar access;*

**Response** - The applicant has provided overshadowing diagrams as discussed above, which have been verified by the City's Modelling team. The relevance of D/2009/1123 is discussed above.

- (o) *The proposal should be assessed against 'Project Venture Developments Pty Ltd v Pittwater Council (2005) NSW LEC 191'; Veloshin v Randwick Council [2007] NSWLEC 428; and PDE Investments No 8 Pty Ltd v Manly Council [2004] NSWLEC 355'.*

**Response** - The proposal was assessed against the relevant legislation and for reasons above, considered unacceptable.

- (p) *Public consultation process not comprehensive as some residents thought there would be no development to Sherbrooke St.*

**Response** - The notification of the application was in accordance with the City's procedures to use the address of the subject site, which is 278 Palmer Street.

- (q) *Visual impact of 12m high concrete and metal walls adjacent to 2 storey terraces. The 3 storey height controls are incongruous.*

**Response** - The proposal is being refused for reasons above. The three storey control was considered acceptable during the preparation of the DCP. A development application lodged with a height of three storeys would be acceptable subject to an assessment and compliance with the relevant controls.

- (r) *Developer did not receive permission to fly a drone over the properties.*

**Response** - This is a civil matter and not relevant to the planning assessment.

## Public Interest

108. It is considered that the proposal is not in the public interest for the reasons specified in this report and is recommended for refusal.

## S7.11 Contribution

109. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. If it was recommended for approval a condition for a monetary contribution would be included on the Notice of Determination.

## Relevant Legislation

110. The Environmental Planning and Assessment Act 1979.

## Conclusion

111. The proposal for the alterations and additions to the existing building to facilitate a change of use to a residential flat building comprising 10 apartments, will result in detrimental impacts on the amenity of adjoining development with regards to privacy, noise and overshadowing.

112. The proposal exceeds the height in metres and height in storeys controls prescribed by the LEP and DCP. A Clause 4.6 request to vary a development standard has not been provided for the exceedance in the height in metres proposed.
113. The proposal fails to provide adequate internal area for units and as per SEPP65, a Clause 4.6 request to vary a development standard has also not been provided for the variation to the required minimum area.
114. The proposed development does not comply with the DCP which requires that residential amenity is enhanced with landscaping, private and common open space, sun access, ventilation and acoustic privacy. In particular the proposal will detrimentally impact on the solar access, privacy, and outlook of the neighbouring properties to the south and east.
115. The proposal is likely to result in a generally low level of amenity for future occupiers with regards to solar access, private and common open space, privacy, and ventilation. The proposal relies on the use of internal courtyards and lightwells for ventilation and amenity which does not comply with Part 4.2.3.9 of the DCP and the ADG and does not reflect a high standard of design in contradiction to Clause 6.21 of the LEP.
116. Privacy and noise impacts may arise due to the rooftop level terrace and open air lobby and insufficient details with regards to noise mitigation measures have accompanied the application.
117. Many of the issues identified in terms of non-compliance with the controls and the impacts on adjacent development may be managed with a yield of less units on the relatively constrained site. The proposal exceeds the DCP height in storeys control of three with four storeys proposed to Sherbrooke Street.
118. The proposed development appears out of context with height in storeys to the south which comprises a predominately two storey terrace form. The proposed setbacks to both Palmer Street and Sherbrooke Street are not adequate in minimising the impacts to the public domain and the surrounding Heritage Conservation Area.
119. The proposal does not comply with the provisions of Parts 3.9.6 and 3.9.7 of the DCP which requires new development to respect neighbouring buildings and the character of the area and alterations and additions to contributory buildings to be designed so as to respect significant original or characteristic built form.
120. On balance, the proposal does not comply with the ADG, SEPP 65, the LEP or the DCP, and is recommended for refusal.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Amy-Grace Douglas, Specialist Planner