

**Item 5.****Development Application: 30-42 Lower Fort Street, Dawes Point****File No.:** D/2018/903**Summary****Date of Submission:** 8 August 2018

Amended drawings/additional information submitted 30 November 2018, and 21 February 2019.

**Applicant:** LFTMP Pty Ltd C/O Neeson Murcutt Architects Pty Ltd**Architect:** Neeson Murcutt Architects Pty Ltd**Owner:** LFTMP Pty Ltd**Cost of Works:** \$9,010,000**Zoning:** The site is located within the R1 - General Residential zone. The existing and proposed use is defined as a residential flat building and is permissible with consent.**Proposal Summary:** The application seeks consent for alterations and additions to the existing residential flat building including rear extensions and new lifts, landscaping, and strata subdivision resulting in 6 x one bedroom units and 24 x two bedroom units, with three of the two bedroom units being accessible.

The application was advertised and notified for 30 days between 23 August 2018 and 23 September 2018. Two submissions were received concerned about the lack of street parking if parking permits are issued to residents or visitors to the premises.

The proposal has been amended and additional information has been supplied during the assessment of the application to address preliminary concerns relating to the Clause 4.6 submissions, heritage impacts, acoustic impacts, ventilation, visual privacy, potential flooding, proposed work to the footway, landscaping, waste management, bicycle parking and clothes washing/drying facilities.

**Proposal Summary  
(continued):**

The application proposes works at a height of 11.45m (which is a 2.45m or a 27.3% exceedance of the 9m height standard). The elements which will exceed the height limit are the proposed air conditioning louvre enclosure to the roof of No. 4 Trinity Avenue (11.45m); the maximum height of the proposed rear additions (11.34m); and the maximum height of the proposed lift structures (10.17m). All the proposed work is below the existing building height of 13.34m.

The application seeks a variation to the height of building development standard under Clause 4.6 of the LEP. The written request is supported and it is considered that strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances.

The application seeks a variation to the minimum apartment size development standard under Clause 4.6 of the Sydney LEP 2012 (LEP). The written request is supported and it is considered that strict compliance with the minimum apartment size development standard is unreasonable and unnecessary in the circumstances.

The application is referred to the Local Planning Panel for determination as the proposal exceeds the height of building development standard by 27.3%; is under the minimum apartment size development standard by 15.2%; and as State Environmental Planning Policy No. 65 applies.

The application proposes an FSR of 1.7:1, which is below the maximum 2:1 permitted.

Although the development does not comply with several built form and amenity controls in Sydney DCP 2012 and the State Environmental Planning Policy SEPP 65 and related Apartment Design Guide, the development represents a reasonable balance between maintaining the heritage fabric of a State heritage listed item being the first government built residential flat building, and improving the amenity of an existing substandard residential flat building to a standard compatible with modern requirements.

**Summary Recommendation:**

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

**Development Controls:**

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

- (ii) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (iv) Apartment Design Guide 2015
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012
- (vii) City of Sydney Development Contributions Plan 2015

**Attachments:**

- A. Recommended Conditions of Consent
- B1. Selected Drawings
- B2. Selected Drawings
- C. Clause 4.6 Variation Request - Building Height
- D. Clause 4.6 Variation Request - Apartment Size

## Recommendation

It is resolved that:

- (A) the variation sought to the development standard under Clause 4.3 Height of Buildings in accordance with Clause 4.6 'Exceptions to development standards' in Sydney Local Environmental Plan 2012 be supported in the circumstances;
- (B) the variation sought to the development standard under Part 4D of the Apartment Design Guide and clause 30 of the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development be supported in this circumstance; and
- (C) consent be granted to Development Application No. D/2018/903 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal is consistent with the objectives of the R1 - General Residential zone for the reasons set out in the report to the Local Planning Panel.
- (B) The variation to Clause 4.3 of the Sydney Local Environmental Plan 2012 Height of buildings is consistent with the provisions of Clause 4.6 'Exceptions to development standards' and is in the public interest.
- (C) The variation to the size of the 1 bedroom apartments in the Design Criteria of Objective 4D-1 of the Apartment Design Guide under SEPP 65 is consistent with the provisions of Clause 4.6 'Exceptions to development standards' and is in the public interest.
- (D) Non-compliance with several controls in Sydney DCP 2012 and the SEPP 65 Apartment Design Guide, is considered acceptable with regard to the constraints of the site and the surrounding area. The development represents a reasonable balance between maintaining the heritage fabric of a State heritage listed item being the first government built residential flat building, and improving the amenity of an existing substandard residential flat building to a standard compatible with modern requirements.
- (E) The proposal exhibits design excellence as required under Clause 6.21 Design Excellence of Sydney Development Control Plan 2012 as the external appearance of the existing building will generally be retained, and the retention of heritage fabric balanced with reasonable amenity upgrades throughout the rest of the development.
- (F) The adaptive re-use and additions to the building are compatible with the character and appearance of the Millers Point Conservation Area (SHR: 00884); the Millers Point and Dawes Point Village Precinct (SHR: 01682); and the Millers Point heritage conservation area (HCA C35) under Sydney LEP 2012.

- (G) As conditioned, it is generally consistent with the objectives of the relevant controls for the site and will not adversely impact the amenity of neighbouring properties and is in the public interest.

## Background

### The Site and Surrounding Development

1. A site visit was carried out by staff on 12 September 2018.
2. The site is legally known as lot 2, DP 1221025. It is irregular in shape following the street front alignment of Lower Fort Street and Trinity Avenue, with an area of approximately 1437.2sqm. It includes 2-4B Trinity Avenue. The site has a street (west) frontage to Lower Fort Street and Trinity Avenue. The rear (east) of the site faces land which is located substantially below the Sydney Harbour Bridge approach (Bradfield Highway) and land reserved for railways use. The site slopes from north to south and south to north across the frontage and also from east to west from the rear to the street front. It is located near the intersection of Lower Fort Street with Cumberland Street.
3. The site contains a group of nine inter-connected three storey buildings built as a group in c. 1910 as "workmen's dwellings" which are currently vacant. The seven blocks facing Lower Fort Street are arranged with a single block at the northern end (No. 30 Lower Fort Street) followed by three paired blocks (No's. 32 and 34, No's. 36 and 38 and No's. 40 and 42 Lower Fort Street), with each block joined to the next via common stairs and landings. A further paired block is situated around the corner where Lower Fort Street turns into Trinity Avenue (No's. 2 and 4 Trinity Avenue). No. 4 Trinity Avenue has its own stair. Each building has a small back yard to the rear abutting a cliff face with brick wall above, which are approximately 7 metres in total height above the rear yard levels.
4. For the majority of the buildings, each level contains a single three bedroom flat, although the individual flats at each level of No's. 32 and 42 Lower Fort Street have subsequently been subdivided internally and a rear addition constructed, and adapted to provide 2 x one bedroom flats per level (a total of six flats per building as opposed to the original three flats per building). There are currently a total 33 units within the site.
5. The site is listed on the State Heritage Register as item No's 00894 (30-42 Lower Fort Street) and 00869 (2-4 Trinity Avenue). It is also located within the State Heritage Conservation Area known as Millers Point Conservation Area (SHR: 00884); and within the Millers Point and Dawes Point Village Precinct (SHR: 01682). The site is also listed as heritage items (no. I547, 30-42 Lower Fort Street and I548, 2-4B Trinity Avenue); and is within the Millers Point heritage conservation area (HCA C35) under Sydney LEP 2012.
6. The Conservation Management Plan for the site states that:

*The group of residential flat buildings at Nos. 30-42 Lower Fort Street and Nos.2-4 Trinity Avenue is of exceptional significance as the first government built residential flat building, designed by the Government Architects Branch under the direction of Walter Liberty Vernon and built as a tenement building to provide affordable housing for waterside and maritime workers and their families in Millers Point (close to their places of work), making the building very rare and of State level significance.*

7. Surrounding land uses are residential. To the north of the site is 26-28 Lower Fort Street which is a contemporary terrace (No. 26) amalgamated with a State Heritage Listed terrace (No. 28 - I546 and listed on the State Heritage Register as No. 00881) for use as a boarding house containing 7 dwellings. To the south of the site is the State heritage listed two storey house at No's. 8-12 Trinity Avenue "Darling House" (I549 and listed on the State Heritage Register as no. 00842) which is currently being refurbished for aged care purposes. To the west across Lower Fort Street are two-three storey terraces.
8. Photos of the site and surrounds are provided below:



**Figure 1:** Aerial image of subject site (in blue) and surrounding area



**Figure 2:** Looking north-east towards subject site



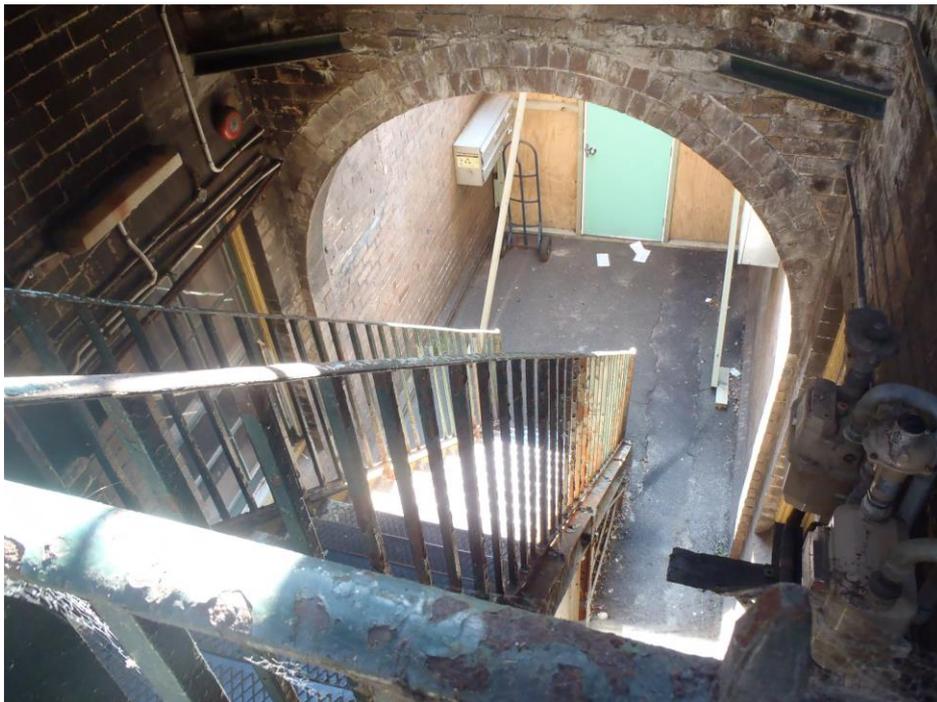
Figure 3: Subject site viewed from across Lower Fort Street



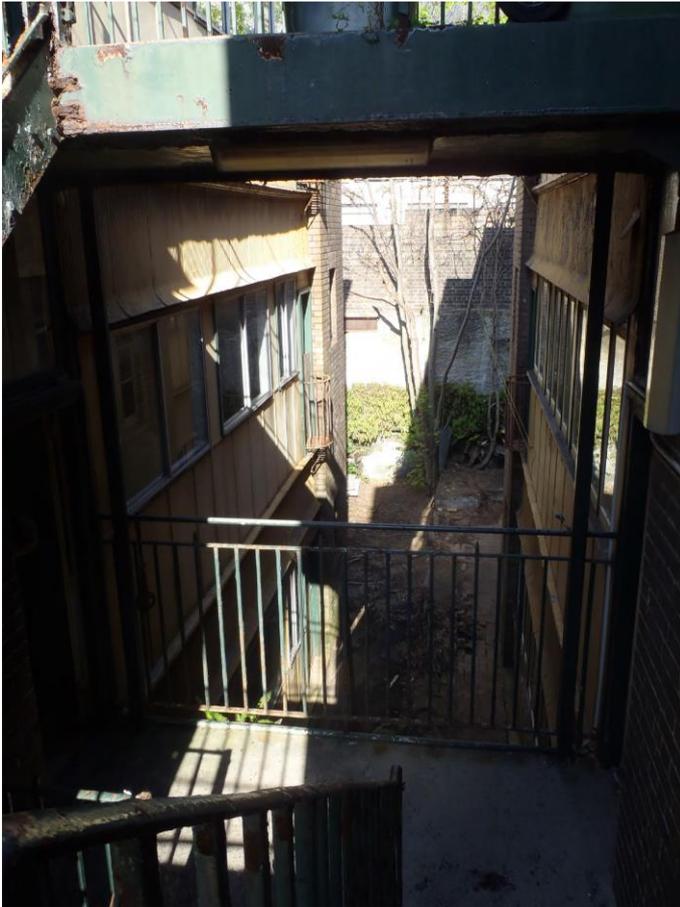
Figure 4: Looking south-east towards subject site



**Figure 5:** Looking south-west towards rear of site



**Figure 6:** Looking towards Lower Fort Street from first floor stair landing to entry stairs and walkway between No.30 and No.32 Lower Fort Street



**Figure 7:** Looking east from stairs between No.30 and No.32 Lower Fort Street towards rear yards



**Figure 8:** View from first floor of No.30 (ie. No.30A) towards No.32(A)



**Figure 9:** Kitchen inside No.30 at ground level



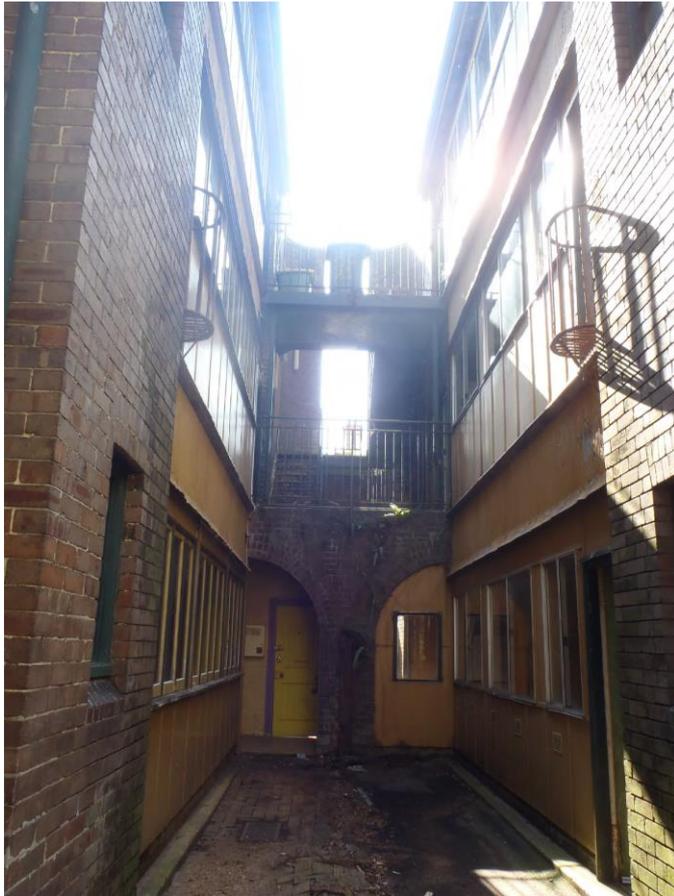
**Figure 10:** Living room and front bedroom inside No.30 at ground level



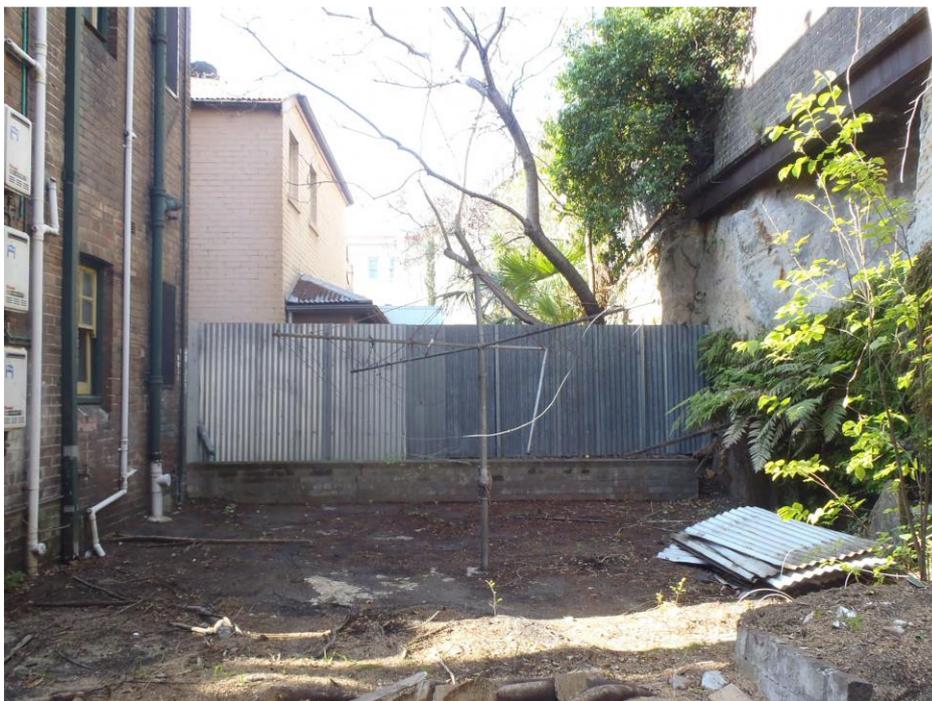
**Figure 11:** Ground level corridor in No.30 viewed from living room



**Figure 12:** Inside rear extension at No. 32



**Figure 13:** Looking north-west at common area between No.30 and No.32 Lower Fort Street



**Figure 14:** Looking north from rear yard of No's. 30/32 towards rear of No's. 26-28 Lower Fort Street



Figure 15: Rear of No. 30 Lower Fort Street

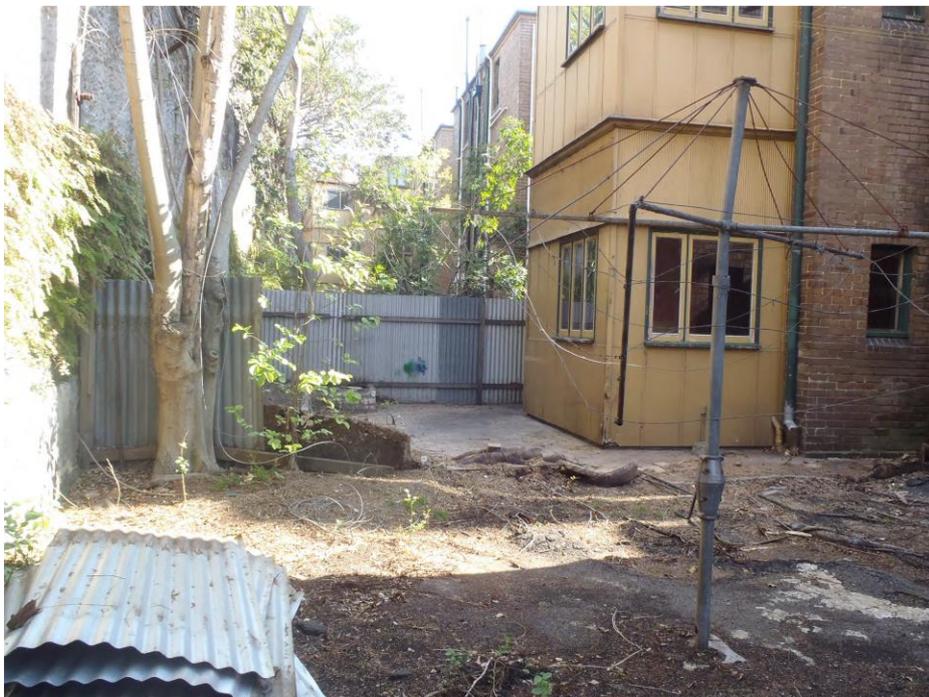


Figure 16: Looking south towards rear of other buildings on-site



**Figure 17:** Looking east from top of stairs between No.40 and No.42 Lower Fort Street towards Harbour Bridge approach



**Figure 18:** Roof to be repaired



**Figure 19:** Wider hallway inside No.2 Trinity Avenue - accessible units to be located in this building



**Figure 20:** Kitchen and corridor inside No.4 Trinity Avenue

## Proposal

9. Approval is sought for alterations and additions to the existing residential flat building including rear extensions and new lifts, landscaping, and strata subdivision resulting in 6 x one bedroom units and 24 x two bedroom units, with three of the two bedroom units being accessible. The proposal will reduce the number of units on-site from 33 to 30.
10. In detail, the application proposes demolition of the existing rear additions to No.32 and No.42 Lower Fort Street and the following works:
  - (a) **Ground Floor:**
    - (i) new entry gates;
    - (ii) new ramped entries to ground floor units;
    - (iii) common stairs to upper level units adapted to meet BCA requirements;
    - (iv) open up entry vestibules and relocate unit entry doors;
    - (v) new lifts (DDA access lift to No.2 Trinity Avenue) behind modified entry vestibules;
    - (vi) new enclosures under stairs for rubbish bins, letter boxes, electrical and water meters;
    - (vii) alterations and additions to apartment layouts including new openings, new room uses, kitchen and bathroom fitouts, new flooring;
    - (viii) retention or reinstatement of heritage fabric;
    - (ix) new rear additions, each to contain a bedroom;
    - (x) fire protection works;
    - (xi) installation of air conditioning, lighting, plumbing, electrical, hot water, gas services;
    - (xii) new hallway enclosures;
    - (xiii) private courtyards to rear with decking and fencing;
    - (xiv) tree removal;
    - (xv) common gardens between buildings;
    - (xvi) bicycle parking;
    - (xvii) one adaptable apartment; and
    - (xviii) remedial works including damp proofing, landing replacement, some flooring, sewer and stormwater system upgrading.

**(b) First Floor:**

- (i) common stairs adapted to meet BCA requirements;
- (ii) new lifts (DDA access lift to No.2 Trinity Avenue) behind modified entry vestibules;
- (iii) alterations and additions to apartment layouts including new openings, new walls, new room uses, kitchen and bathroom fitouts, new flooring;
- (iv) retention or reinstatement of heritage fabric;
- (v) new rear additions, each to contain a bedroom;
- (vi) fire protection works;
- (vii) installation of air conditioning, lighting, plumbing, electrical, hot water, gas services;
- (viii) new hallway enclosures;
- (ix) front facade awning repairs;
- (x) one adaptable apartment; and
- (xi) remedial works including damp proofing, landing replacement, some flooring, sewer system upgrading.

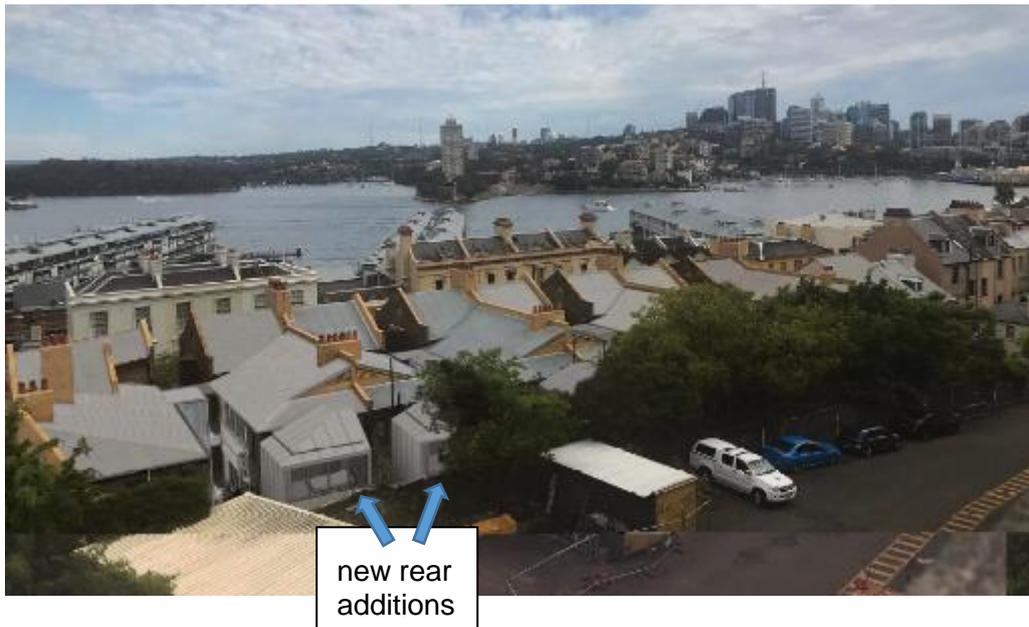
**(c) Second Floor:**

- (i) common stairs adapted to meet BCA requirements;
- (ii) new lifts (DDA access lift to No.2 Trinity Avenue) behind modified entry vestibules;
- (iii) alterations and additions to apartment layouts including new openings, new walls, new room uses, kitchen and bathroom fitouts, new flooring;
- (iv) retention or reinstatement of heritage fabric;
- (v) new rear additions, each to contain a bedroom;
- (vi) fire protection works;
- (vii) installation of air conditioning, lighting, plumbing, electrical, hot water, gas services;
- (viii) new hallway enclosures;
- (ix) roof repairs;
- (x) one adaptable apartment; and
- (xi) remedial works including damp proofing, landing replacement, some flooring, sewer system upgrading.

(d) Roof:

- (i) roof repairs; and
- (ii) louvres screening air conditioning units.

11. The development will alter the gross floor area of the buildings from 2,290.13sqm to 2,539.71sqm, and the FSR from 1.59:1 to 1.7:1. The existing height of the buildings is 13.34m. The rear additions will be a maximum of 11.34m in height. As this is over the 9m height development standard, a Clause 4.6 submission has been made.
12. Drawings and photomontages of the proposed development are provided below.



**Figure 21:** A photomontage of the rear of the proposed development



Figure 22: A photomontage of the Lower Fort Street elevation of the development

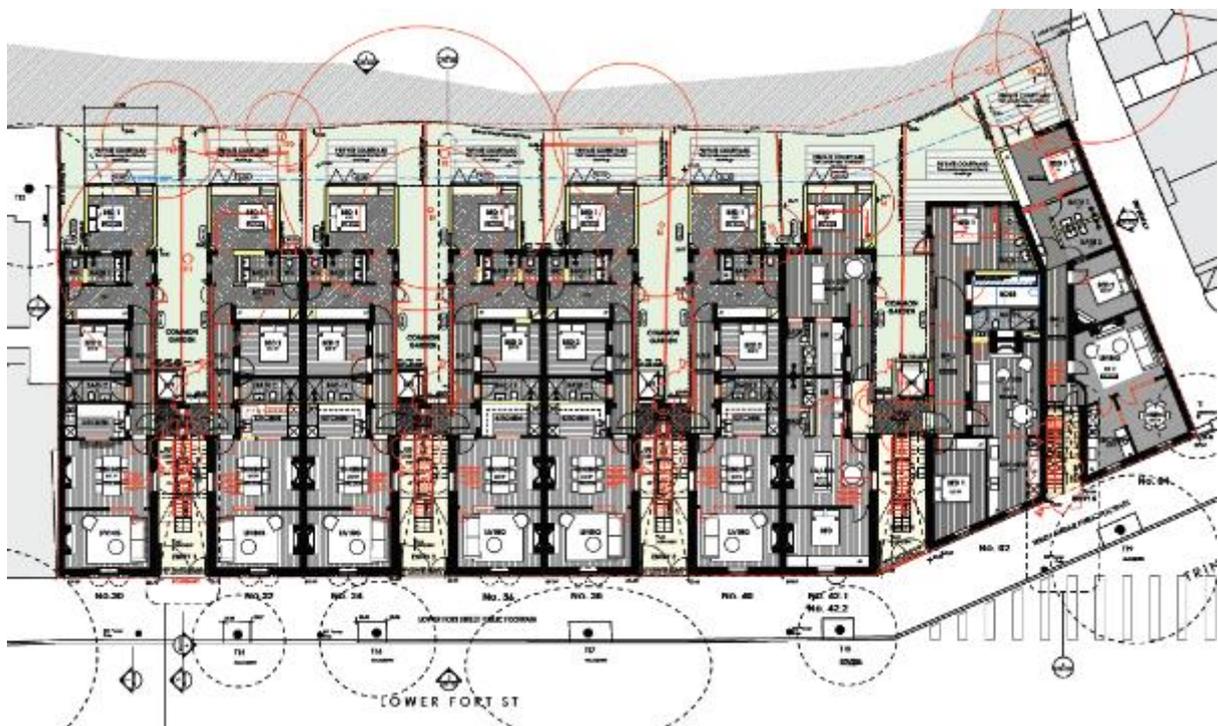


Figure 23: Proposed ground floor



Figure 24: Proposed first floor



Figure 25: Proposed second floor

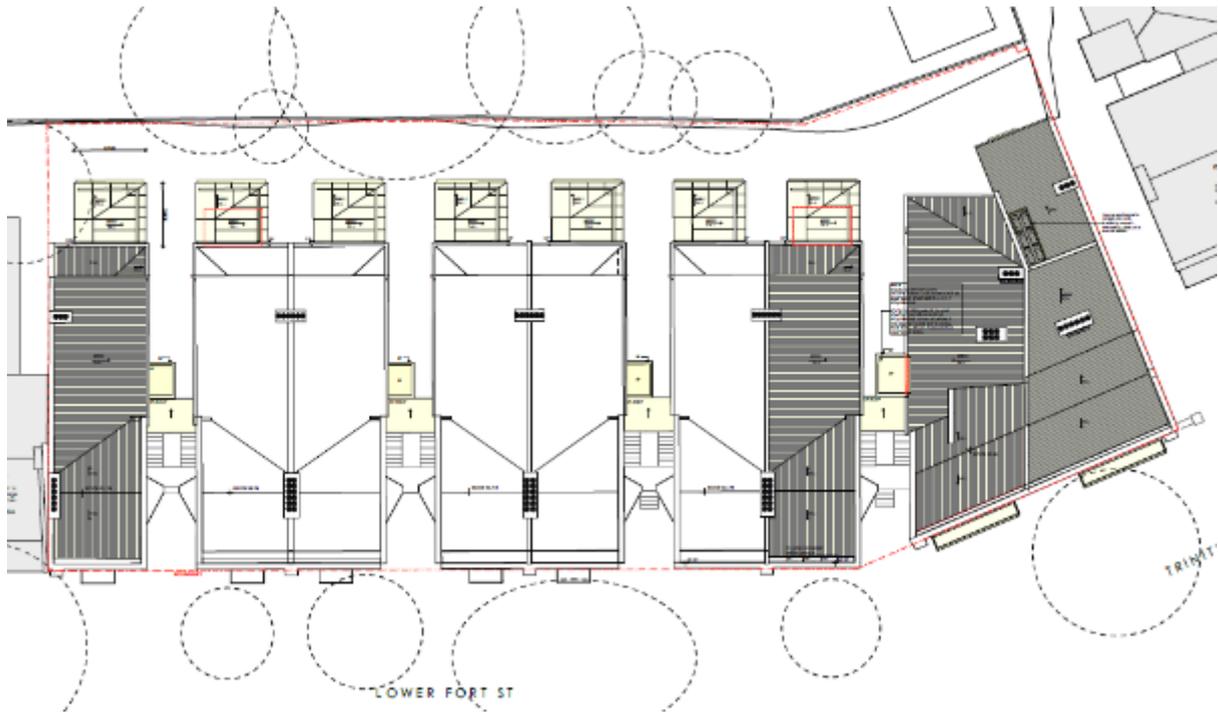


Figure 26: Proposed roof plan

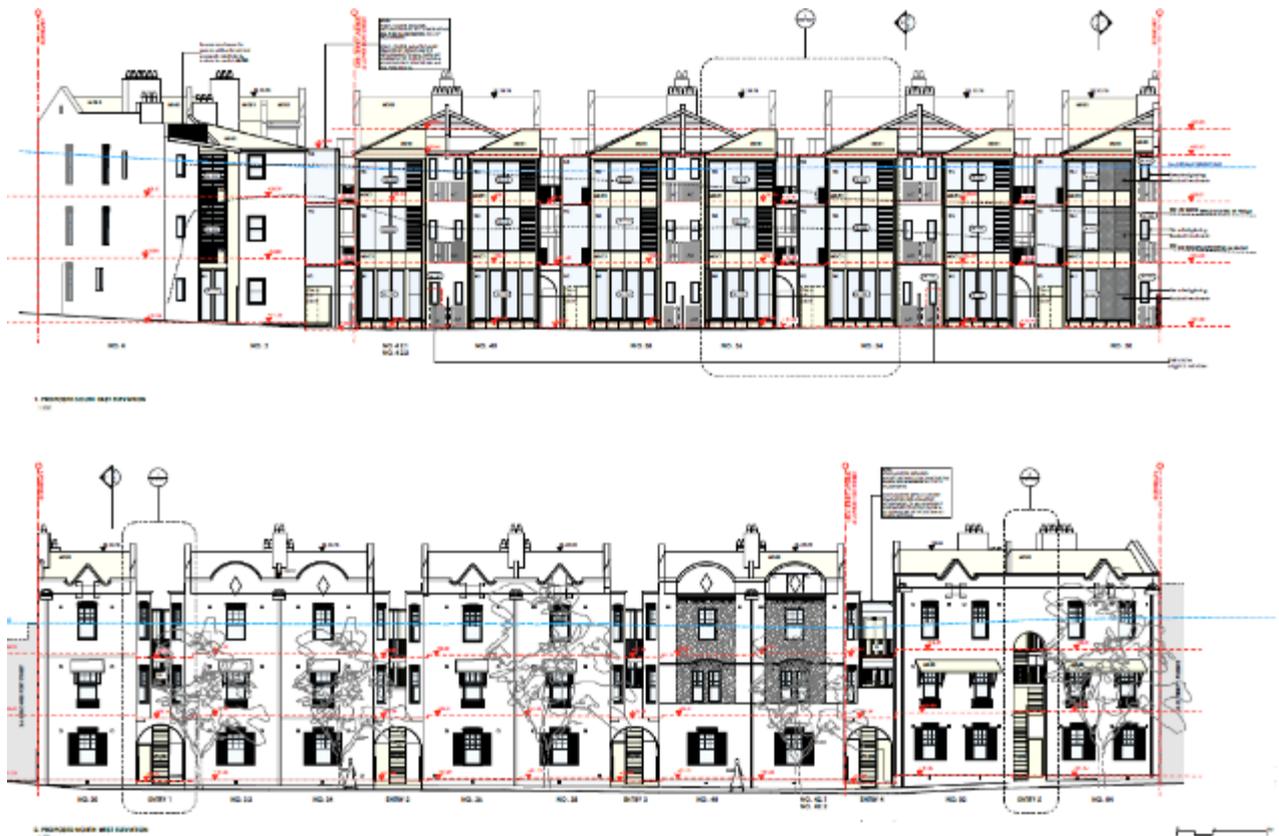


Figure 27: Proposed rear (south-east) and Lower Fort Street (north-west) elevations



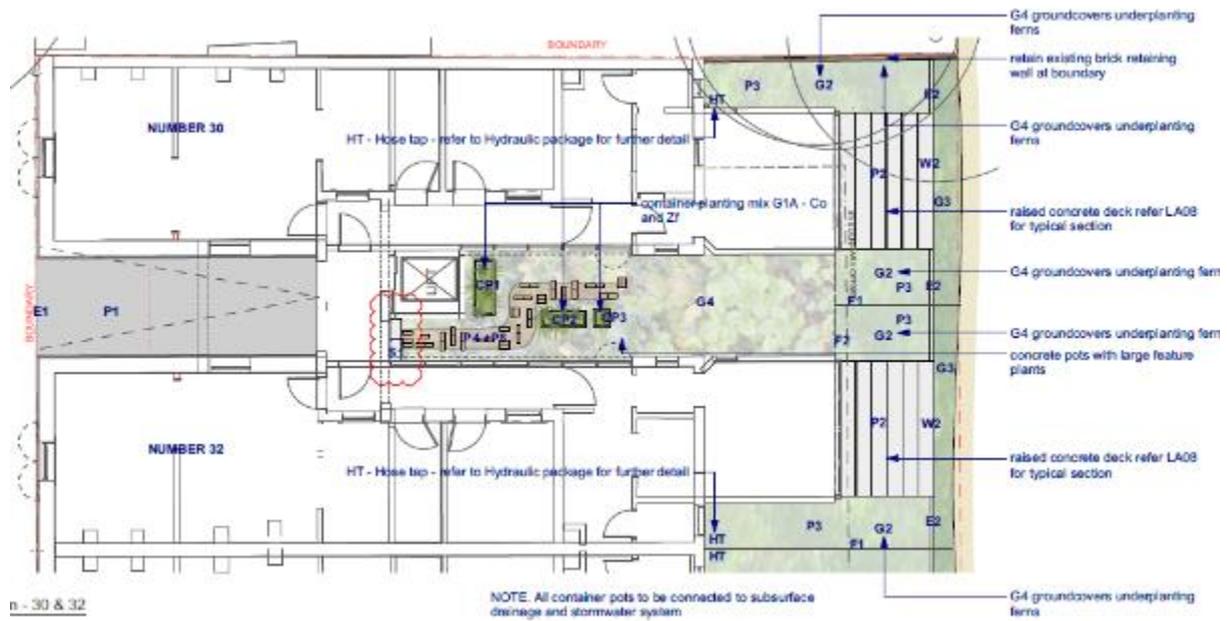


Figure 30: Typical landscape plan (for No.30 and No.32 Lower Fort Street)

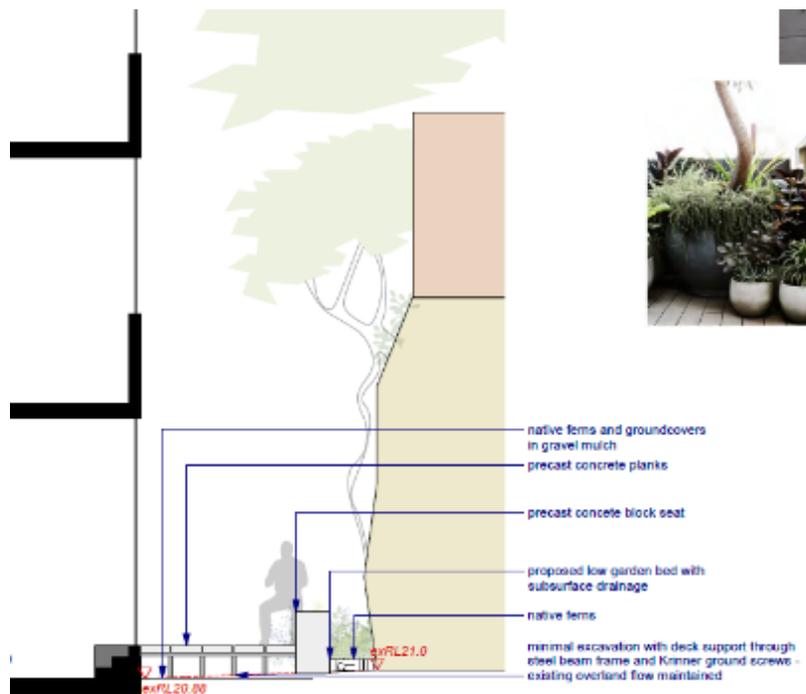


Figure 31: Typical courtyard section

### History Relevant to the Development Application

13. A Conservation Management Plan for No's. 30-42 Lower Fort Street and No's. 2-4 Trinity Avenue, Millers Point was endorsed by the Heritage Council on 18 May 2017.

14. On 12 April 2018, a pre-DA (PDA/2018/31) meeting was held to discuss preliminary plans of the proposal. This meeting was attended by Council Staff, the applicant and delegates from NSW Heritage.
15. On 9 May 2018, the Heritage Council provided its resolution regarding pre-DA advice and a presentation considered at its meeting of 2 May 2018. The Heritage Council provided the following advice to the applicant:
  - (a) The rear additions should have a simplified and consistent roof form with a general preference for the pitched roof option.
  - (b) The externally located lift overruns should be reduced in height as much as possible to be below the gutter line of the existing roofs.
  - (c) The adaptation of the exceptionally significant common stairs and landings is supported.
  - (d) Creation of openings between rooms should be limited to minimum required in size and numbers.
  - (e) Conversion of existing bedrooms into kitchen and bathrooms should ensure that the room's integrity and spatial character is retained.
16. As Integrated Development, the proposal was referred to the Heritage Council on 8 August 2018.
17. On 25 October 2018, the two submissions received in response to the exhibition of the proposal were forwarded to the Heritage Council.
18. On 5 November 2018, a letter was sent to the applicant requesting clarification of a range of matters (see subsequent amendments below).
19. On 15 November 2018, the Heritage Council of NSW provided General Terms of Approval (dated 14 November 2018) to the application.
20. On 30 November 2018, additional/amended information supplied by the applicant in response to Council's request of 5 November 2018 was forwarded to the Heritage Council.
21. On 21 February 2019, the applicant was requested to lower the level of the common gardens, address stormwater collection and summarise any heritage impacts resulting from earlier amendments. This information was received on 21 February 2019, and forwarded to the Heritage Council on 22 February 2019.
22. On 28 February 2019, the Heritage Council of NSW provided Revised General Terms of Approval (dated 27 February 2019) to reflect amendments made to the proposal during the assessment process.
23. The application has been amended as follows:
  - (a) Lowering the ground level of the common garden by 300mm below the existing concrete/apartment entries in case of flooding.
  - (b) Deleting proposed footpath works to the entry of No's 2 and 4 Trinity Avenue.

- (c) Re-routing proposed sewer and sub soil drainage connecting into the stormwater system.
  - (d) Deleting the cliff face and courtyard lighting.
  - (e) Revised landscape details provided.
  - (f) Provision of one bicycle space behind each common entry stair.
  - (g) Addition of laundry facility in kitchen.
24. On 19 June 2018, development consent D/2018/1648 (subsequently amended) was granted for alterations and additions to two existing terraces containing seven units for use as a boarding house. The site adjoins the proposed development to the north.
25. On 7 November 2016, development consent D/2016/913 (subsequently amended) was granted for alterations and additions to the existing residential care facility within 'Darling House', including additions to the roof, southern side elevation and eastern rear elevation, internal alterations, modifications to windows, conservation works and external alterations. The site adjoins the proposed development to the south.

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

26. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
- (a) Environmental Planning Instruments and DCPs.

### **State Environmental Planning Policy No 55—Remediation of Land**

27. 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.
28. The site has been used for residential purposes since its construction in c.1910 as "workmen's dwellings". It was built on the site of two earlier stone houses and an outbuilding dating from the 1850s or earlier. Therefore, the likelihood of contamination is low.

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

29. 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**

The surrounding area is characterised by medium density residential buildings of varying forms. The proposal retains the use and character of the existing buildings. The only changes visible from the street are the updated building entry points with new security gates with intercoms and a new lift in the background of each, allowing a visual link to the rear of each pair of buildings with newly landscaped areas. Some window louvres, canopies and roof materials are also replaced.

(b) **Principle 2: Built Form and Scale**

Notwithstanding the non-compliance with the height of buildings standard (the lift, rear bedroom additions, and air conditioning louvre enclosure to the roof of 4 Trinity Avenue are below the height of the existing buildings), the proposal generally retains the built form and scale of the existing buildings.

(c) **Principle 3: Density**

The development is consistent with the maximum floor space control. The number of apartment proposed is appropriate within the context of the site.

(d) **Principle 4: Sustainability**

A BASIX Certificate has been submitted for each apartment demonstrating compliance with standards for reducing energy and water consumption.

(e) **Principle 5: Landscape**

Eleven trees on-site appear to have been self-seeded and are either in poor health, poor condition or in an unsuitable location. Therefore, their removal is supported.

The site consists of shallow soil over a rock layer, and does not allow for deep soil zones. Planters and mounding are proposed to maximise planting opportunities.

A common garden is proposed between each pair of buildings with the exception of 4 Trinity Avenue. Private open space is proposed to each ground level unit facing the cliff face and will include a raised concrete deck and bench.

(f) **Principle 6: Amenity**

It is considered that the development represents a reasonable balance between maintaining the heritage fabric of a State heritage listed item being the first government built residential flat building, and improving the amenity of an existing substandard residential flat building to a standard compatible with modern requirements.

(g) **Principle 7: Safety**

New lockable entry gates are proposed to the existing entry point to each pair of buildings.

(h) **Principle 8: Housing Diversity and Social Interaction**

The proposal will result in 6 x 1 bedroom units and 24 x 2 bedroom units, with 3 of the 2 bedroom units being accessible, in an area with limited availability of this type of housing form.

(i) **Principle 9: Aesthetics**

The appearance of the existing State heritage listed building is generally being maintained as viewed from Lower Fort Street and Trinity Avenue.

30. The development is considered generally 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

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Partial compliance	<p>The existing building depth of No's 30, 34, 36, 38 and 40 Lower Fort Street is 17.5m.</p> <p>The existing building depth of No's 32 and 42 Lower Fort Street is 19.75m.</p> <p>The proposed building depth of No's. 30-42 Lower Fort Street is 21.3m.</p> <p>The existing and proposed building depth of No. 2 Trinity Avenue is 18m.</p> <p>The existing and proposed building depth of No. 4 Trinity Avenue is 18.5m.</p> <p>This is considered acceptable given the proposal is improving the amenity of a State heritage listed building.</p>

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul>	No	<p>The existing separation between each building is 2.75 - 3m. There are proposed to be living and dining rooms at the front of the buildings and internal corridors at the rear of the buildings facing each other at these distances. The operable, obscure glazed louvres to the internal corridors will allow some control over privacy, although this will need to be balanced with the need for natural ventilation.</p> <p>This is considered acceptable given the proposal is improving the amenity of a State heritage listed building.</p>

3B Orientation	Compliance	Comment
Overshadowing of neighbouring properties is minimised	Yes	<p>Aside from a small area of additional overshadowing from the proposal inside the boundary of No's. 8-12 Trinity Avenue at 12 midday on 21 June, the only other additional overshadowing from the proposal on 21 June is at 3.00pm on the land reserved for railways use (see figure 5 above).</p> <p>This is considered acceptable.</p>

3C Public Domain Interface	Compliance	Comment
Front fences and walls along street frontages should use visually permeable materials and treatments.	Yes	<p>The existing Lower Fort Street building facade is located on the boundary with the footway. This configuration will be retained with new security gates added to each building entry point. The new gates will be galvanised steel. A condition of consent specifies that the gate is to be of an open construction allowing views into the premise and not to open over Council's footway.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	<p>Given the existing building footprint, a common garden is proposed in the existing strip of land between each pair of buildings (with the exception of No. 4 Trinity Avenue). The common garden between No's. 30/32, 34/36 and 38/40 Lower Fort Street will each be 30sqm in area. The common garden between No. 42 Lower Fort Street and No. 2 Trinity Avenue will be 17sqm in area. This is a total of 107sqm of common garden within the development which represents a total of 7.4% of the site area.</p>

<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.		Planting pots are proposed to the common areas.  Given site orientation and configuration, solar access to open space on-site is limited.  Privacy impacts between the ground level units and adjacent common gardens is addressed by the use of obscure, glazed, operable louvres along the interface.  Considering site constraints, this is considered acceptable.
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	Given site orientation and configuration, solar access to open space on-site is limited.  Considering site constraints, this is considered acceptable.

<b>3E Deep Soil Zones</b>	<b>Compliance</b>	<b>Comment</b>
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m3m.	No	The site consists of shallow soil over a rock layer, and does not allow for deep soil zones. Planters and mounding are proposed to maximise planting opportunities.  Considering site constraints, this is considered acceptable.

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.

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
Up to four storeys (12m): <ul style="list-style-type: none"> <li>6m between habitable rooms / balconies</li> </ul>	No	The existing configuration of the buildings means that separating rooms by these distances is not possible.

<b>3F Visual Privacy</b>	<b>Compliance</b>	<b>Comment</b>
<ul style="list-style-type: none"> <li>3m between non-habitable rooms</li> </ul>		Further discussion is provided under the Issues heading.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	Partial compliance	<p>The existing configuration of the buildings means that this is not possible.</p> <p>Further discussion is provided under the Issues heading.</p>

<b>3G Pedestrian Access and Entries</b>	<b>Compliance</b>	<b>Comment</b>
<p>Building entries and pedestrian access connect to and address the public domain.</p> <p>Access, entries and pathways are equitable and easy to identify</p>	Yes	<p>There is an existing shared entry between each pair of buildings. Each set of stairs is being upgraded to meet BCA requirements with a lift added behind each vestibule. A new security entry gate is proposed to each shared entry. The entry points will be easy to identify.</p> <p>Wheelchair access will be provided to the unit at each level of No. 4 Trinity Avenue.</p>

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
70% of units to receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces.	Partial compliance	<p>This is not possible due to site constraints, including orientation.</p> <p>18 out of the proposed 30 (60%) units will receive a minimum of two hours of direct sunlight to their living rooms on 21 June.</p> <p>Nine out of the proposed 30 (30%) units will have private open space. One out of these nine (11%) private open spaces receives a minimum of two hours of direct sunlight on 21 June.</p> <p>This is considered acceptable given site constraints.</p>

<b>4A Solar and Daylight Access</b>	<b>Compliance</b>	<b>Comment</b>
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	Yes	Three apartments (10%) receive no direct sunlight access between 9am and 3pm on 21 June.

<b>4B Natural Ventilation</b>	<b>Compliance</b>	<b>Comment</b>
All habitable rooms are naturally ventilated.	No	This is not possible due to the existing configuration of the buildings on-site.  Further discussion is provided under the Issues heading.
Minimum 60% of apartments in the first nine storeys of the building are naturally cross ventilated.	No	This is not possible due to the existing configuration of the buildings on-site.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No	This is not possible due to the existing configuration of the buildings on-site.

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	Existing internal floor to ceiling heights are between approximately 2.6m - 3m.  The height of the sloping ceiling to the top of the new rear additions is over 2.4m for 2/3 of the room as required by the BCA.
Non-habitable rooms: 2.4m	Yes	Existing internal floor to ceiling heights are between approximately 2.6m - 3m.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> <li>• One bed: 50m<sup>2</sup></li> <li>• Two bed: 70m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p>	<p>Partial compliance</p>	<p>There are 24 x two bedroom/two bathroom units and 6 x one bedroom units proposed.</p> <p>The two bedroom apartments are 86-99sqm in area, with the majority of two bedroom apartments having an area of 96sqm.</p> <p>The one bedroom apartments are 42.4-45.2sqm in area.</p> <p>All the two bedroom apartments comply with the minimum unit size.</p> <p>The 6 x one bedroom apartments are smaller than the minimum area.</p> <p>A Clause 4.6 submission has been made seeking to vary the minimum one bedroom apartment size. The variation is consistent with the provisions of the standard and will not adversely impact the character and amenity of the surrounding area. The variation is supported. Further discussion is provided under the Issues heading.</p>
<p>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.</p>	<p>No</p>	<p>The existing building configuration means that what will be bedroom two to most of the units has a window to an internal corridor which in turn will have operable, glazed louvres to the outside. Light and ventilation will be borrowed through these glazed operable louvres.</p>
<p>Habitable room depths are to be no more than 2.5 x the ceiling height.</p>	<p>Partial compliance</p>	<p>The depth of combined living/dining/kitchen areas is determined by the existing room configuration with some partial wall removal.</p>

4D Apartment Size and Layout	Compliance	Comment
<p>8m maximum depth for open plan layouts.</p>	<p>Partial compliance</p>	<p>Maximum room depths facilitate daylight access and natural ventilation.</p> <p>The maximum combined living/dining/kitchen depth of the apartments in No's. 30-40 Lower Fort Street is 9m, however, there is an external window to each dining room approximately half way along this distance.</p> <p>The maximum combined living/dining/kitchen depth distance in No. 42 Lower Fort Street is 7m.</p> <p>The maximum combined living/dining/kitchen depth of the apartments in No. 2 Trinity Avenue is 9.6m, however, there is a "window" to the internal corridor in the living/dining area.</p> <p>The maximum combined living/dining/kitchen depth of the apartments in No. 2 Trinity Avenue will be 9.5m.</p> <p>The maximum combined living/dining/kitchen depth of the apartments in No. 4 Trinity Avenue will be 7.2m.</p> <p>The depth of combined living/dining/kitchen areas is determined by the existing room configuration with some partial wall removal. Given heritage constraints, the proposed configurations are considered acceptable.</p>
<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>Partial compliance</p>	<p>All bedrooms comply with the minimum recommended room sizes, however in the case of some of the bedrooms, the minimum room area is just met including, rather than excluding wardrobe space.</p>

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>		<p>The new bedrooms to the rear of No's. 30-42 Lower Fort Street have a minimum dimension of 3.4m.</p> <p>Existing bedroom 2 in No's. 30-40 Lower Fort Street has a minimum dimensions of 2.8m.</p> <p>Existing bedroom 1 in No. 2 Trinity Avenue has a minimum dimension of 2.8m.</p> <p>Existing bedroom 2 in No. 4 Trinity Avenue has a minimum dimension of 2.4m</p> <p>Given the existing room configurations, this is considered acceptable.</p>
<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>	<p>Partial compliance</p>	<p>The living/dining areas in the apartments in No's. 2 and 4 Trinity Avenue have a width under 4m.</p> <p>Given the existing room configuration, this is considered acceptable.</p>

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>	<p>No</p>	<p>No balconies are proposed.</p> <p>The only possible location of balconies would be facing the cliff face at the rear of the existing buildings. Balconies in this location would be off a bedroom and would overlook adjacent apartments. Further, they would reduce the openness to the ground level private open space provided to most of the ground level apartments.</p> <p>This is considered acceptable given site constraints.</p>

<b>4E Private Open Space and Balconies</b>	<b>Compliance</b>	<b>Comment</b>
<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>Partial compliance</p>	<p>The ground level apartments in No's. 30-40 Lower Fort Street, and the ground level, one bedroom apartment in No. 42 Lower Fort Street closest to the cliff face will have private open space (off a bedroom) ranging in area between 21-25sqm. The majority of this is to be planted with ground cover plants. The useable area will be approximately 9sqm consisting of a raised concrete deck with bench with a minimum dimension of 2.4m. The distance from these units to the cliff face ranges between 2.5-3.2m.</p> <p>The ground level unit at No. 2 Trinity Avenue will have a raised concrete deck approximately 16sqm in area with a minimum dimension of 2.8m with surrounding ground cover planting. The distance from this unit to the cliff face ranges between 4.5 - 6m. The total private open space will be approximately 28.6sqm.</p> <p>The ground level unit at No. 4 Trinity Avenue will have a raised concrete deck approximately 9.5sqm in area with a minimum dimension of 2.6m with surrounding ground cover planting. The distance from this unit to the cliff face is approximately 3.5m. The total private open space will be approximately 14.5sqm.</p>

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
<p>The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>Yes</p>	<p>A maximum of three units per level are proposed.</p>

<b>4F Common Circulation and Spaces</b>	<b>Compliance</b>	<b>Comment</b>
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Partial compliance	The dining room windows of the units in No's. 30-40 Lower Fort Street and the living/dining window of the units facing No. 42 Lower Fort Street are existing and face the common building entry points. This is the existing building configuration.
Daylight and natural ventilation are provided to all common circulation spaces.	Yes	The reconfigured entry vestibules and common staircases will be partially open.

<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> </ul> <p>(Minimum 50% storage area located within unit)</p>	No	The existing configuration and heritage fabric do not allow for additional built in storage.

<b>4H Acoustic Privacy</b>	<b>Compliance</b>	<b>Comment</b>
<p>Noise transfer is minimised through the siting of buildings and building layout.</p> <p>Noise impacts are mitigated within apartments through layout and acoustic treatments.</p>	No	<p>The building siting and layout is existing.</p> <p>Acoustic treatment is not supported due to its impact on heritage impact.</p> <p>This is discussed in the Issues section below.</p>

4J Noise and Pollution	Compliance	Comment
<p>Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?</p>	<p>Partial compliance</p>	<p>The site is affected by noise from traffic on the Sydney Harbour Bridge approach (Bradfield Highway) located to the east above the site. A statement from an acoustic consultant has been submitted demonstrating that east and west facing windows in the proposal will need to be closed both day time and night time to ensure that internal noise criteria can be satisfied.</p> <p>The applicant proposes to take natural ventilation from the corridors through louvres.</p> <p>This is discussed in the Issues section below.</p>
<p>4O Landscape Design</p>	<p>Yes</p>	<p>The proposal includes the removal of 11 trees on-site. All these trees appear to have been self-seeded and are either in poor health, poor condition or in an unsuitable location. The removal of these trees is supported.</p> <p>The site consists of shallow soil over a rock layer, and does not allow for deep soil zones. Lack of deep soil and solar access to the site restricts the planting/growth of replacement trees.</p> <p>Planters and mounding are proposed to maximise planting opportunities.</p>
<p>4W Waste Management</p>	<p>Partial compliance</p>	<p>Due to the existing building footprint and heritage fabric, the only space available for rubbish and recycling bin storage is in a compartment underneath the common stairs at each entry point.</p>

		<p>Each compartment will only be able to store 2 x 240L and 1 x 120L. The applicant advises that this will require 3 x weekly Council collections for general waste and 2 x weekly Council collections for recycling.</p> <p>Council's Waste Management Officer advises that the submitted Waste Management Plan is lacking in detail and that the bin configuration/ number of bins required have not been calculated to meet Council's actual service.</p> <p>For this size of development, there should be a weekly garbage and weekly recycling collection service. Given that there are heritage considerations, Council could possibly consider a twice a week collection for garbage, but for recycling, Council only provides a weekly service.</p> <p>It is also noted that a bulky waste storage area has not been provided, however this is not possible given the existing building configuration.</p> <p>Given site constraints, it is considered that the bicycle parking space proposed under each communal entry stair, adjacent the proposed waste storage area, should be deleted in order to allow an increase in the size of the waste storage area in this location. This is addressed by a condition of consent.</p> <p>A further condition specifies that should there still be excess waste due to limited storage area, commercial collection of domestic waste at the site will need to be arranged in addition to Council collections.</p> <p>A condition of consent requires the submission of an amended Waste Management Plan.</p>
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**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)**

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

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

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

**Sydney LEP 2012**

36. The site is located within the R1 - General Residential zone. The proposed use is defined as a residential flat building and is permissible.
37. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	<p>A maximum height of 9m is permitted. The existing height of the building is 13.34m. The height of the proposed air conditioning louvre enclosure to the roof of No. 4 Trinity Avenue is 11.45m; the maximum height of the proposed rear additions is 11.34m; and the maximum height of the proposed lift structures is 10.17m. The air conditioning louvre enclosure therefore exceeds the maximum building height by 2.45 metres or 27.3 %.</p> <p>Further discussion is provided under the Issues heading.</p>
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 2:1 is permitted.</p> <p>A FSR of 1.7:1 is proposed.</p>
4.6 Exceptions to development standards	Yes	<p>The applicant has prepared a statement seeking to vary the maximum building height permitted under clause 4.3. The variation is consistent with the provisions of the standard and will not adversely impact the character and amenity of the surrounding area. The variation is supported. Further discussion is provided under the Issues heading.</p> <p>The applicant has also prepared a statement seeking to vary the minimum one bedroom apartment size permitted in the Design Criteria of Objective 4D-1 of the Apartment Design Guide under SEPP 65. The variation is consistent with the provisions of the standard and will not adversely impact the character and amenity of the surrounding area. The variation is supported. Further discussion is provided under the Issues heading.</p>

Development Control	Compliance	Comment
5.9 Preservation of trees or vegetation	Yes	The proposal includes the removal of 11 trees on-site. All these trees appear to have been self-seeded and are either in poor health, poor condition or in an unsuitable location. The removal of these trees is supported. Lack of deep soil (the rear of the site sits on rock) and solar access to the site restricts the planting/growth of replacement trees. An existing retaining wall on the boundary with No. 28 Lower Fort Street will protect the roots of the Jacaranda tree located on that property. A condition of consent addresses protection of existing street trees.
5.10 Heritage conservation	Yes	The site is listed on the State Heritage Register as item No. 00894 (No's. 30-42 Lower Fort Street) and No. 00869 (No's 2-4 Trinity Avenue). It is also located within the State Heritage Conservation Area known as Millers Point Conservation Area (SHR: 00884); and within the Millers Point and Dawes Point Village Precinct (SHR: 01682). The site is also listed as heritage items (No. I547, No's 30-42 Lower Fort Street and I548, No's. 2-4B Trinity Avenue); and is within the Millers Point heritage conservation area (HCA C35) under Sydney LEP 2012.  See discussion under the heading Issues.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	The proposed development satisfies the requirements of this provision.

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	<p>A maximum of 21 car parking spaces are permitted.</p> <p>No car parking spaces are proposed or possible due to site constraints.</p>
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing class 5 Acid Sulphate Soil and is within 500m of class 2 Acid Sulphate Soil. The proposed works consist of minor excavation which are not likely to lower the water table. Further, the subject site is located at a higher level than the class 2 soil. Therefore, an acid sulphate soils management plan is not required.</p>
7.15 Flood planning	Yes	<p>A flood assessment report has been submitted for the site as requested by Council's Public Domain Officer. The site is now classified as "Outside Floodplain".</p> <p>Floor levels of "Outside Floodplain" classification are required to be 300mm above the surrounding ground.</p> <p>The adjacent road levels are in excess of 300mm below the existing floor levels and are compliant. The plans have been amended to show that the garden areas on-site will be 300mm below the floor levels.</p> <p>This is considered satisfactory. Conditions of consent require the submission and approval of detailed alignment levels and a Public Domain Plan.</p>

### Sydney DCP 2012

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

## 2. Locality Statements – Millers Point

The subject site is located in the Millers Point locality. The proposal is considered to be in keeping with the unique character of the area and design principles in that it conserves the heritage significance of the buildings and retains the streetscape of the heritage conservation area.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	The development maintains the existing Lower Fort Street elevation and general entrance arrangement. The common entry to each pair of buildings will be clearly defined.
3.5 Urban Ecology	Yes	<p>Conditions of consent are recommended requiring street tree protection during construction.</p> <p>As discussed above, removal of trees from the site is supported.</p> <p>Landscaping of the site has been proposed. A condition of consent requires the submission and approval of a detailed landscape plan for the site.</p>
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements. Conditions of consent are recommended requiring energy and water efficient facilities to be provided within the apartments.
3.7 Water and Flood Management	Yes	As discussed above, the site is not identified as being flood prone.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposal includes strata subdivision into 30 lots and common property. The proposed strata subdivision will not compromise the setting of the heritage item on its site or the relationship between the heritage item and surrounding features. Council's Heritage Officer supports the subdivision subject to a cyclical maintenance plan and the Conservation Management Plan for the site being tied to the strata plan. This is addressed by conditions of consent.

3. General Provisions	Compliance	Comment
3.9 Heritage	Yes	See discussion under the heading Issues.
3.11 Transport and Parking	No	<p>30 resident and three visitor bicycle parking spaces are required for the development. One bicycle parking space is proposed between each pair of buildings behind the entry stairs.</p> <p>Given site constraints, it is considered that the bicycle parking space proposed under each communal entry stair, adjacent the proposed waste storage area, should be deleted in order to allow an increase in the size of the waste storage area in this location.</p> <p>This is addressed by a condition of consent. As a result, the development will not provide any bicycle parking. This is considered acceptable in circumstances where there is no other option for the provision of waste storage given the heritage constraints on the site.</p>
3.12 Accessible Design	Yes	<p>The three units in No. 2 Trinity Avenue are proposed to be accessible apartments as the existing internal corridors are wider than in the other buildings. Lift access is proposed to all three floors/units of the building.</p> <p>A condition has been recommended for the proposed development to provide appropriate access and facilities for persons with disabilities in accordance with the DCP and the BCA.</p>

3. General Provisions	Compliance	Comment
3.14 Waste	Yes	<p>Due to the existing building footprint and heritage fabric, the only space available for rubbish and recycling bin storage is in a compartment underneath the common stairs at each entry point. This has been discussed above.</p> <p>A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development, including requiring removal of bicycle parking underneath stairs to provide additional waste storage facilities.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	Yes	<p>Existing internal floor to ceiling heights are between approximately 2.6m - 3m.</p> <p>The height of the sloping ceiling to the top of the new rear additions is over 2.4m for 2/3 of the room as required by the BCA.</p>
4.2.2 Building setbacks	Yes	<p>There is no change proposed to the existing front and side setbacks. The new rear additions will be set back in the range of 2.5-3.2m from the cliff face.</p>

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3 Amenity	Partial compliance	<p>The outlook from the new rear bedrooms will be onto private open space and the cliff face. Otherwise, the outlook from each unit is already determined by site constraints.</p> <p>Solar access, landscaping, deep soil, private open space and balconies, common open space, and dwelling mix are discussed above.</p> <p>Ventilation, and visual and acoustic privacy are discussed below under the heading Issues.</p>
4.2.4 Fine grain, architectural diversity and articulation	Yes	The existing building which reflects the diverse, fine grain character of the area will be retained.
4.2.6 Waste minimisation	Partial compliance	<p>Due to site constraints for the provision of bin storage, the proposal suggests 3 x weekly Council collections for general waste and 2 x weekly Council collections for recycling. There is limited space for storage in compartments below the entry stairwells.</p> <p>Council's Waste Management Officer advises that for this size of development, there should be a weekly garbage and weekly recycling collection service. Given that there are heritage considerations, Council could possibly consider a twice a week collection for garbage, but for recycling, Council only provides a weekly service.</p> <p>This has been discussed above.</p> <p>A condition has been recommended for the proposed development to comply with the relevant provisions of the City of Sydney Code for Waste Minimisation in New Developments.</p>

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.7 Heating and Cooling Infrastructure	Yes	<p>Air conditioning units will be concealed in wardrobes and joinery or free standing on the floors. Pipes will be hidden behind false walls and run between floor joists in roof cavities.</p> <p>Air conditioning condensers are proposed to be located at the rear of the buildings between the new additions. No's. 2 and 4 Trinity Avenue will have six units located on the roof concealed by the existing parapet.</p> <p>This is considered acceptable.</p>
4.2.8 Letterboxes	Yes	Letter boxes are proposed under the common stairs behind the new entry gates.

## Issues

### Clause 4.6 request to vary a development standard (height)

39. The site is subject to a maximum height control of 9m. The existing height of the building is 13.34m. The height of the proposed air conditioning louvre enclosure to the roof of 4 Trinity Avenue is 11.45m; the maximum height of the proposed rear additions is 11.34m; and the maximum height of the proposed lift structures is 10.17m. The air conditioning louvre enclosure therefore exceeds the maximum building height by 2.45 metres or 27.3 %.
40. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (b) that there are sufficient environmental planning grounds to justify contravening the standard.
41. A copy of the applicant's written request is provided at Attachment C.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

42. The applicant seeks to justify the contravention of the height development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - (i) The height of the proposal is consistent with and appropriate to the condition of the site and its context.
    - (ii) Surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight.
    - (iii) The proposal provides an appropriate built form and land use intensity.
    - (iv) The proposal maintains the height transition between the heritage item and new development.
    - (v) The proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties.
    - (vi) The proposed external works to the building are at the rear of the site and located to minimise any view impacts.
    - (vii) The proposal does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
    - (i) The proposal makes efficient use of the existing building envelope and restricts the footprint of the proposed extension with a proposed FSR of 1.7:1 whereas up to 2:1 is permitted.
    - (ii) No significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal.
    - (iii) All of the proposed works are considered complimentary to the heritage status of the building. The external works above 9m are benign and the internal works have no environmental or amenity impact.
    - (iv) The proposed works above the 9m height limit have no view impact and cause no overshadowing, nor bulk or scale changes to the existing dwelling.
    - (v) By allowing a variation to the height of buildings development standard in this instance, an opportunity is presented for the proposed development to achieve the benefits of the adaptive reuse of the heritage item and improve the existing building's relationship with the surrounding development, and the relevant ADG and DCP controls.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

43. Development consent must not be granted unless the consent authority is satisfied that:

- (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

44. The applicant has adequately addressed the issues raised within Clause 4.6(3)(a) by outlining how the proposal complies with the relevant objectives of the R1 - General Residential zone and the Height of Buildings development standard:

Relevant R1 - General Residential zone objectives;

- *To provide for the housing needs of the community.*

The proposal will provide 24 x two and 6 x one bedroom units with improved amenity over the existing units on the site.

- *To provide for a variety of housing types and densities.*

The proposal provides the option of apartment living in an area with limited stock of this type of development.

- *To maintain the existing land use pattern of predominantly residential uses.*

The site will continue to be used for residential purposes.

Relevant Height of Buildings development standards;

- (a) *to ensure the height of development is appropriate to the condition of the site and its context,*

As noted above, the proposed air conditioning louvre enclosure to the roof of No. 4 Trinity Avenue, the proposed rear additions and the proposed lift structures exceed the maximum height of buildings development standard. The air conditioning louvre enclosure will be the highest of these at 11.45m. As shown in figures 27 and 28 above, the modifications will not be readily visible from the ground as the lift structures are set back behind the entry points to the building from Lower Fort Street, the rear additions sit below the taller cliff face, and the louvre enclosure is hidden by the building parapet.

Shadow diagrams have been provided illustrating that aside from a small area of additional overshadowing from the proposal inside the boundary of No's. 8-12 Trinity Avenue at 12 midday on 21 June, the only other additional overshadowing from the proposal on 21 June is at 3.00pm on the land reserved for railways use (see figure 5 above).

Therefore, the proposed exceedances of the maximum height of building development standard is considered appropriate to the conditions and context of the site.

- (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*

Although the Conservation Management Plan for the site does not support increasing the building envelope, the Heritage Council provided pre-DA advice including that the rear additions should have a simplified and consistent roof form with a general preference for the pitched roof option, and the externally located lift overruns should be reduced in height as much as possible to be below the gutter line of the existing roofs. The proposal as lodged with Council satisfactorily addresses these requirements, and is therefore considered sympathetic to the heritage items and heritage conservation areas.

The proposed modifications will not be readily visible from ground level.

The proposed development improves the amenity of the buildings which although originally designed as a residential flat building currently provide substandard amenity. The rear addition allows for a "master bedroom" configuration including walk-in robes and ensuites. The lifts allow for easier access to all of the dwellings, and in particular for the provision of three accessible dwellings at No. 2 Trinity Avenue.

The rear of the development can only be viewed from the cycleway of the Sydney Harbour Bridge and from Observatory Hill (see photomontage at figure 21 above).

- (c) *to promote the sharing of views,*

The proposed development will not increase the overall height of the existing building, and the proposed external works are not readily viewed from the surrounding ground level. The sightlines to and from the site will not be impacted as the external works sit below the level of the existing building and adjacent cliff face.

Does the written request adequately address those issues at clause 4.6(3)(b)?

45. The applicant has provided adequate justification that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Is the development in the public interest?

46. The proposal will be in the public interest because it is consistent with the relevant objectives of the development standard as follows:

- (a) *to ensure the height of development is appropriate to the condition of the site and its context,*

- (i) The proposal is in keeping with the existing height of the building, with the external additions above the 9m height limit not readily visible from ground level. The lifts are set back behind existing building entries and the additions and air conditioning louvre structure are positioned towards the rear of the site near the higher cliff face.
  - (ii) The additions are not out of context with development in the surrounding area.
  - (iii) The proposal will have no adverse impacts on surrounding development of different forms. The proposed additions are positioned within the "envelope" created by the existing development and the cliff face behind it.
  - (iv) The elements that exceed the height of building development standard do not adversely overshadow adjoining properties.
- (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*

The proposal will have no adverse impact on the adjacent State Heritage listed buildings at 26-28 Lower Fort Street and 8-12 Trinity Avenue and will continue to read as a residential flat building.

- (c) *to promote the sharing of views,*

The proposal does not result in the loss of any significant views or sightlines.

47. The proposal is also in the public interest as it meets the relevant objectives of the R1 - General Residential zone, and in particular it provide the option of apartment living with reasonable amenity in an area with limited stock of this type of development.

#### Conclusion

48. For the reasons provided above, the requested variation to the height of building development standard is supported, as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan 2012, and the proposed development would be in the public interest because it is consistent with the objectives of Clause 4.3 Height of Buildings and the R1 - General Residential zone.

#### Clause 4.6 request to vary the minimum apartment size

49. Objective 4D-1 of the Apartment Design Guide under SEPP 65 specifies that:

*The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.*

50. The design criteria under Objective 4D-1 include that one bedroom apartments are to have a minimum internal area of 50 sqm.
51. The area of each of the 6 x one bedroom apartments (proposed at No. 42 Lower Fort Street) is as follows:

Unit 42.1	44.1sqm
Unit 42.2	42.4sqm
Unit 42.1B	44.5sqm
Unit 42.2B	45.2sqm
Unit 42.1C	44.6sqm
Unit 42.2C	45.1sqm

52. The area of the smallest of these units (42.4sqm) is 15.2% below the 50sqm development standard.
53. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (b) that there are sufficient environmental planning grounds to justify contravening the standard.
54. A copy of the applicant's written request is provided at Attachment D.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

55. The applicant seeks to justify the contravention of the minimum apartment size on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - (i) Six of the 30 apartments comprise one bedroom units which are adapted from the previous layout. These are considered worthy of retention in this form as evidence of the historic layers of change to the building.
    - (ii) As the existing building is a State listed heritage item, retaining the configuration is desirable.
    - (iii) Each of the proposed units is slightly below the contemporary unit size for a one bedroom unit under the Apartment Design Guide being between 42sqm and 46sqm respectively.
    - (iv) The existing building comprises three generous storeys with 3.3m ceiling heights. The internal spaces have been planned to achieve the requisite functionality, organisation and high standard of amenity by taking advantage of the additional height and room proportions.
    - (v) The unit layouts minimise circulation spaces and make efficient use of the existing building envelope and footprint to achieve this.

- (vi) The unit size is consistent with and appropriate to the condition of the site and its context. The proposal provides an appropriate built form and land use intensity.
- (vii) The proposal minimises amenity impacts on neighbouring properties.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
  - (i) Six of the 30 apartments comprise one bedroom units which are adapted from the previous layout. These are considered worthy of retention in this form as evidence of the historic layers of change to the building.
  - (ii) As the existing building is a State listed heritage item, retaining the configuration is desirable.
  - (iii) Each of the proposed units is slightly below the contemporary unit size for a one bedroom unit under the Apartment Design Guide being between 42sqm and 46sqm respectively.
  - (iv) The existing building comprises three generous storeys with 3.3m ceiling heights. The internal spaces have been planned to achieve the requisite functionality, organisation and high standard of amenity by taking advantage of the additional height and room proportions.
  - (v) Upgrading a property of significant heritage value while retaining evidence of the historic layers of change is considered a better planning outcome encouraged by the provisions of clause 4.6.
  - (vi) All of the works are considered complimentary to the heritage status of the building.
  - (vii) The proposed works cause no amenity impacts.
  - (viii) By allowing a variation to the minimum unit size development standard, the proposed development achieves the benefits of the adaptive re-use of the heritage item and improves the existing building's relationship with surrounding development and relevant ADG and DCP controls.
  - (ix) The proposed unit size better allows the built form on the site to achieve the desired future character of the locality.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

56. Development consent must not be granted unless the consent authority is satisfied that:

- (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
- (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

57. The applicant has adequately addressed the issues raised within Clause 4.6(3)(a) by outlining how the proposal complies with the relevant objectives of the R1 - General Residential zone and Objective 4D-1 of the Apartment Design Guide under SEPP 65:
58. Relevant R1 - General Residential zone objectives;
- (a) To provide for the housing needs of the community.
  - (b) To provide for a variety of housing types and densities.
  - (c) To maintain the existing land use pattern of predominantly residential uses.
    - (i) The proposed development improves the provision of housing for the needs of the community without compromising the amenity of the surrounding area.
    - (ii) The proposal is consistent with the desired patterns of land use and density, and achieves a reasonably high level of residential amenity.
    - (iii) The proposal provides the option of apartment living in an area with limited stock of this type of development.
    - (iv) The proposal maintains the pattern of predominantly residential uses in the area.

Objective 4D-1 of the Apartment Design Guide;

*The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.*

The proposed one bedroom units generally retain the existing footprint of these existing units and thereby the associated heritage fabric. Bathroom and kitchen configurations are made more practical as much as possible within the existing heritage shell.

Does the written request adequately address those issues at clause 4.6(3)(b)?

59. The applicant has provided adequate justification that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Is the development in the public interest?

60. The proposal will be in the public interest because it is consistent with the relevant objectives of the development standard as follows:
61. Objective 4D-1 of the Apartment Design Guide under SEPP 65 specifies that:

*The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.*

62. The retention and reconfiguration of six of the 12 existing one bedroom units generally maintains their historic footprint while improving the functionality of these units. The three units closest to the cliff face will also increase in size as a result of the rear additions.

## Conclusion

63. For the reasons provided above, the requested variation to the minimum apartment size development standard is supported, as the applicant's written request has adequately addressed the matters required to be addressed by Clause 4.6 of the Sydney Local Environmental Plan 2012, and the proposed development would be in the public interest because it is consistent with Objective 4D-1 of the Apartment Design Guide and the relevant objectives of the R1 - General Residential zone.

## Heritage

64. The site is listed on the State Heritage Register as item No. 00894 (No's. 30-42 Lower Fort Street) and No. 00869 (No's 2-4 Trinity Avenue). It is also located within the State Heritage Conservation Area known as Millers Point Conservation Area (SHR: 00884); and within the Millers Point and Dawes Point Village Precinct (SHR: 01682). The site is also listed as heritage items (No. I547, No's 30-42 Lower Fort Street and I548, No's. 2-4B Trinity Avenue); and is within the Millers Point heritage conservation area (HCA C35) under Sydney LEP 2012.
65. The application is Integrated Development under the Heritage Act 1977, requiring approval of the NSW Heritage Council.
66. A Conservation Management Plan (CMP) for No's. 30-42 Lower Fort Street and No's. 2-4 Trinity Avenue, Millers Point was endorsed by the Heritage Council on 18 May 2017.
67. The CMP states that:

*The group of residential flat buildings at No's. 30-42 Lower Fort Street and Nos.2-4 Trinity Avenue is of exceptional significance as the first government built residential flat building, designed by the Government Architects Branch under the direction of Walter Liberty Vernon and built as a tenement building to provide affordable housing for waterside and maritime workers and their families in Millers Point (close to their places of work), making the building very rare and of State level significance.*

68. On 9 May 2018, the Heritage Council provided its resolution regarding pre-DA advice and a presentation considered at its meeting of 2 May 2018 for the subject proposal. The Heritage Council provided the following advice to the applicant:
- (a) The rear additions should have a simplified and consistent roof form with a general preference for the pitched roof option.
  - (b) The externally located lift overruns should be reduced in height as much as possible to be below the gutter line of the existing roofs.
  - (c) The adaptation of the exceptionally significant common stairs and landings is supported.
  - (d) Creation of openings between rooms should be limited to minimum required in size and numbers.
  - (e) Conversion of existing bedrooms into kitchen and bathrooms should ensure that the room's integrity and spatial character is retained.

69. Council's Heritage Officer advises that the proposed rear additions will increase the building envelope contrary to CMP Policy 59.
70. It is noted however that the Heritage Council did not raise any issues about having additions at the pre-DA stage, only their roof form and that they have provided Revised General Terms of Approval to the proposal. The Revised General Terms of Approval specify that the pitch and slope of the new roof to each rear extension should follow the pitch and slope of the existing roof to the main building behind it; that the height of new openings to walls between proposed kitchen and dining and living spaces should be limited to the minimum required to match existing door dimensions; that the creation of openings to walls between buildings at the entry should retain sufficient nibs; and that service risers to the rear of the buildings should be relocated to areas of lesser significance or new additions.
71. The advantage of the additions is that they will be consistently carried out and will help resolve BCA fire rating issues, as well as improve solar access and liveability of the units.
72. Council's Heritage Officer also notes that whilst the lifts will not be visually prominent being located behind the existing stairs, and will facilitate equitable access, they are contrary to Policy 124 of the CMP. *Policy 124 - Lifts and External Stairs* specifies that the addition of external lift structures or additional external stairs to the rear, side or front of any building in the group, is not appropriate. It is noted that the Heritage Council did not raise any issue with the provision of external lifts.
73. There will be some heritage impact particularly with the upgrade of services and access, relocation of wet areas, widening of openings, external lifts and new rear additions. Careful consideration has however been given in the design to treat the group in a consistent manner, and to minimise adverse impacts whilst allowing for the buildings to be upgraded for BCA compliance and for contemporary living.
74. The strata subdivision is supported subject to a cyclical maintenance plan being tied to the strata plan.
75. The balance of the proposed works are considered acceptable from a heritage perspective subject to conditions of consent.

### **Further discussion on Variations to the Apartment Design Guidelines and Related Controls**

#### *Natural ventilation*

76. Objective 4B-1 of the Apartment Design Guide specifies that all habitable rooms are to be naturally ventilated. The window to proposed bedroom 2 in No's. 30-40 Lower Fort Street faces an internal corridor. This room was originally constructed as a bedroom, however, the corridor was originally open to the elements. It was subsequently enclosed with a wall with windows (see figures 7, 8, 11, 13, 15, 17 and 19 above). To improve ventilation to bedroom 2 and other rooms adjacent the internal hallway, obscure glazed operable horizontal louvres are proposed to the majority of the external wall. This increases the openable area of external glazing compared to the current situation whilst maintaining the historical configuration of the buildings. The glazed louvres will also replace access to the small, semi-circular "Juliet" balconies.
77. This is considered a reasonable improvement given site constraints.

*Acoustic Privacy*

78. Objective 4H Acoustic Privacy and 4J Noise and Pollution of the Apartment Design Guide specify minimising noise transfer from outside and within a building through building siting, layout and acoustic treatment.
79. The building siting and layout is existing and is to be maintained due to its heritage value.
80. The site is affected by noise from traffic on the Sydney Harbour Bridge approach (Bradfield Highway) located to the east above the site. A statement from an acoustic consultant has been submitted demonstrating that east and west facing windows in the proposal will need to be closed both day time and night time to ensure that internal noise criteria can be satisfied.
81. The applicant proposes to take natural ventilation from the corridor louvres as described above under 'Natural Ventilation'. Council's Health Officer advises that this arrangement complies with clause 102 of the Infrastructure SEPP and the NSW Department of Planning (DoP) Development Near Rail Corridors and Busy Roads – Interim Guideline. However, the proposal does not comply with The City of Sydney Council's DCP Acoustic Privacy criteria which are more stringent than the State Environmental Planning Policy (SEPP). The exceedance is 3dB in bedroom 1 and 2 which is considered 'just perceptible'. In order to achieve compliance with the noise criteria, the acoustic review recommends the use of 'internally lined ducting or mechanically ventilated systems'.
82. It is considered that the preservation of heritage fabric takes priority over the installation of 'internally lined ducting or mechanically ventilated systems' in the case of the subject site. A condition of consent specifies that internally lined ducting or a mechanically ventilated system is not supported and is not to be installed.

*Visual privacy*

83. Objective 3F Visual Privacy of the Apartment Design Guide specifies that bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas. The existing configuration of the buildings means that this is not possible in order to retain heritage fabric.
84. For No's. 30/32, 34/36 and 38/40 Lower Fort Street, there will be a separation of 3.2m between facing ground level, dining room windows. The space between these windows contains the communal accessway, communal stairs, bins storage and letter boxes.
85. The existing angled windows to the dining room to the first and second levels are separated by 1.5m - 2.5m. There is no change proposed here.

86. Due to the unusual historical configuration of these units, the bedroom 2 windows in No's. 30-40 Lower Fort Street do not connect directly to the outside, but are separated by a glazed corridor. The obscure, glazed louvred external corridor wall will provide some privacy to the bedroom and other rooms facing this corridor from the common open space immediately adjacent the louvres and also from the corridor (3.1m distance) and rooms of the facing units at each level. However, there may at times be a conflict between maintaining visual and/or acoustic privacy by closing these louvres and maintaining natural ventilation by opening these louvres, particularly given the restriction on natural ventilation described above as a response to acoustic privacy.
87. The bi-fold windows to the new rear bedroom 1 will face the rear cliff face. As these windows only serve a bedroom, privacy screening to the ends of these windows is not considered necessary.
88. The window to the walk through area between the proposed rear addition containing bedroom 1 and the area containing the proposed robe/bath/WC to bedroom 1 is existing and currently supports either the living area or laundry of the units in No's. 30-40 Lower Fort Street.
89. Each new rear bedroom 1 will have a north facing highlight window with no privacy impact as it faces a blank wall of the new rear addition to the north.
90. With regard to the relationship between No. 42 Lower Fort Street and No's. 2 and 4 Trinity Avenue, potential privacy issues do not exist around the entry areas, but are confined to the rear, side facing elevations of the buildings at each level. For No. 42 and No. 2, the same obscure, glazed operable louvres will provide a balance of visual and acoustic privacy and ventilation between the living/dining areas in the facing units in these buildings. Due to the different building footprint, a rear extension is not proposed to No's 2 and 4 Trinity Avenue and the same privacy issues do not exist.

### **Access**

91. Access for disabled persons can be provided to the premises and appropriate conditions of consent have been imposed.

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

92. The BCA report submitted with the application identifies a number of non-compliances with the existing buildings and recommends a number of performance solutions be developed at Construction Certificate stage. A condition of consent requires upgrading of the whole building into partial conformity with the BCA in matters integral to fire safety and egress.
93. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

### **Suitability of the site for the Development**

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

## Internal Referrals

### Design Advisory Panel

95. The application was not reviewed by the Design Advisory Panel Residential Subcommittee as the Heritage Council previously provided Pre-DA advice on the proposal which the applicant has incorporated into the design.

### Heritage

96. Council's Heritage officer has provided comments and conditions which are summarised under the Issues heading above.

### Waste Management

97. Council's Waste Management Officer advises that the submitted Waste Management Plan is lacking in detail and that the bin configuration/ number of bins required have not been calculated to meet Council's actual service which for this size of development should be a weekly garbage and weekly recycling collection service. Given that there are heritage considerations, Council could possibly consider a twice a week collection for garbage, but for recycling, Council only provides a weekly service.
98. As discussed above, it is considered that the bicycle parking space proposed under each communal entry stair, adjacent the proposed waste storage area, should be deleted in order to allow an increase in the size of the waste storage area in this location.

### Health

99. Council's Health Officer notes that the submitted acoustic review recommends the use of 'internally lined ducting or mechanically ventilated systems' to address the need to keep the east and west facing windows closed as discussed above under Acoustic Privacy, but that this may have other planning implications.

### Public Domain

100. Following deletion of the originally proposed re-grading of the Council footway between No's. 2 and 4 Trinity Avenue, submission of a Flood Assessment Report, lowering of the garden level to a minimum of 300mm below ground floor level, and submission of additional information regarding the collection and disposal of stormwater, the application is supported with conditions.

### Landscaping

101. The eight rear courtyards are currently characterised by trees, tree ferns, weeds and gardens in poor condition, bitumen and brick paving, low brick retaining walls, garden beds, concrete edges and planters, service lids (sewer), corrugated iron fences and a single timber paling fence between each courtyard, shallow soil profile, and hills hoist.
102. The site consists of shallow soil over a rock layer, and does not allow for deep soil zones. Planters and mounding are proposed to maximise planting opportunities. The private open space to each ground level unit facing the cliff face will include a raised concrete deck and bench.

103. Additional information was requested and received regarding seating, fences, planting design, and irrigation and drainage. Council's Landscape Officer advises that sufficient information has now been submitted and the proposal is supported in principle subject to a condition of consent requiring a detailed landscape plan to be submitted and approved prior to the issue of a Construction Certificate.

### **Tree Management**

104. Council's Tree Management Officer advises that the proposal includes the removal of 11 trees on-site. All these trees appear to have been self-seeded and are either in poor health, poor condition or in an unsuitable location. The removal of these trees is supported. Lack of deep soil (the rear of the site sits on rock) and solar access to the site restricts the planting/growth of replacement trees. An existing retaining wall on the boundary with No. 28 Lower Fort Street will protect the roots of the Jacaranda tree located on that property. A condition of consent addresses protection of existing street trees.

### **Transport and Access**

105. Council's Transport Officer advised that Sydney DCP 2012 specifies 30 residential bicycle parking spaces for the proposal, but given site constraints three bicycle spaces in total on-site would be considered acceptable.
106. The applicant subsequently proposed one bicycle space under each shared entry stair. However, given site constraints and the insufficient space available for rubbish/recycling storage, a condition of consent requires the deletion of the proposed bicycle storage space under each stair and an extension in size of the adjacent proposed rubbish/recycling storage area instead.
107. The provision of bicycle parking within the common garden areas is not considered suitable as it will require the navigation of a step down into the common garden; and will likely be positioned somewhere between the glazed operable louvres of the ground level units which are only 3m apart, thereby creating privacy issues. It is noted that a condition of consent already requires a clothes drying line to be installed to the south-eastern end of each common space (ie: space that is not adjacent glazing) between the buildings, thereby rendering this area unavailable.

### **Building**

108. The BCA report submitted with the application identifies a number of non-compliances with the existing buildings and recommends a number of Performance Solutions be developed at Construction Certificate stage.
109. Considering the provisions of Clause 94 of the Environmental Planning and Assessment Regulation 2000, it is recommended that a condition be included in the consent that requires upgrading of the whole building into partial conformity with the BCA, specifically in relation to fire safety and egress. This will ensure that compliance for the entire building will be examined at Construction Certificate stage, rather than just isolating those parts subject to proposed works.
110. A further condition of consent specifies that if any BCA upgrading works will impact or potentially impact existing heritage fabric or features, details of the work are to be submitted and approved by Council's Area Planning Manager prior to issue of any Construction Certificate.

111. Amended drawings are also required to be submitted for assessment and approval by the Heritage Council of NSW (or its delegate) with the s60 application.

### Surveying

112. Council's Surveyor advises that whilst the submitted strata plan is lacking in some respects, it can be approved subject to conditions of consent including the requirement for separate approval of a strata plan and issue of a strata certificate. A condition is also required for a documentary Positive Covenant to be created burdening all lots and common property in the strata plan regarding compliance with the obligations and requirements of an approved Cyclical Maintenance Plan for the building.

### External Referrals

113. The application was referred to Sydney Trains and the RMS on 22 August 2018 due to its proximity to the Harbour Bridge approach.
114. The RMS advises that the proposal does not trigger clause 103 of the Infrastructure SEPP, and therefore further response will not be required from the RMS.
115. A response has not been received from Sydney Trains.

### Notification, Advertising and Delegation (No Notification)

116. The application constitutes integrated development and as such the application was notified and advertised for 30 days between 23 August 2018 and 23 September 2018 in accordance with the provisions of Environmental Planning and Assessment Regulations 2000. As a result of this notification, two submissions were received raising the following issue:
- (a) Concern about the lack of on-street parking if parking permits are issued to residents or visitors to the premises.

**Response** - An advisory condition of consent specifies that all owners, tenants and occupiers of this building are ineligible to participate in any existing or proposed Council on-street resident parking schemes.

### Public Interest

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

### S61 Contribution

118. The cost of the development is in excess of \$200,000. The development is therefore subject to a levy under the Central Sydney Development Contributions Plan 2013. A condition relating to this levy has been included in the recommended conditions of consent. The levy is to be paid prior to the issue of a Construction Certificate.

## Relevant Legislation

119. Environmental Planning and Assessment Act 1979.
120. Heritage Act 1977.

## Conclusion

121. The application seeks consent for alterations and additions to the existing connected residential flat buildings including internal changes, external changes including rear extensions and new lifts, landscaping, and strata subdivision resulting in 6 x one bedroom units and 24 x two bedroom units, with three of the two bedroom units being accessible.
122. The proposal has been amended and additional information has been supplied during the assessment of the application to address preliminary concerns relating to the Clause 4.6 submission, heritage impacts, acoustic impacts, ventilation, visual privacy, potential flooding, proposed work to the footway, landscaping, waste management, bicycle parking and clothes washing/drying facilities.
123. The application proposes works at a height of 11.45m (which is a 2.45m or a 27.3% exceedance of the 9m height standard). The elements which will exceed the height limit are the proposed air conditioning louvre enclosure to the roof of 4 Trinity Avenue (11.45m); the maximum height of the proposed rear additions (11.34m); and the maximum height of the proposed lift structures (10.17m). All the proposed work is below the existing building height of 13.34m.
124. The application seeks a variation to the height of building development standard under Clause 4.6 of the LEP. The written request is supported and it is considered that strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances.
125. The application seeks a variation to the size of the one bedroom minimum apartment size development standard under Clause 4.6 of the LEP. The written request is supported and it is considered that strict compliance with the minimum apartment size development standard is unreasonable and unnecessary in the circumstances.
126. Although the development does not comply with several built form and amenity controls in Sydney DCP 2012 and the SEPP 65 Apartment Design Guide, it is a unique case. It is considered that the development represents a reasonable balance between maintaining the heritage fabric of a State heritage listed item, with particular significance arising from it being the first government built residential flat building, and improving the amenity of an existing substandard residential flat building to a standard compatible with modern requirements.

## GRAHAM JAHN, AM

Director City Planning, Development and Transport

Claire Elek, Specialist Planner