

Item 4.**Development Application: 7-9 Knox Street, Chippendale**

File No.: D/2018/748

Summary**Date of Submission:** 5 July 2018

Amended plans submitted 12 February 2019

Applicant: Environa Studio**Architect:** Environa Studio**Owner:** Samuel Margetic**Cost of Works:** \$2,909,762**Zoning:** Permissible in the B4 - Mixed Use Zone

Proposal Summary: The application proposes the partial demolition of the existing buildings and construction of a five storey boarding house, containing 16 boarding rooms and one manager's room. The proposal includes the addition of a roof terrace, communal room and laundry, waste room, ground floor landscaping and tree removal.

The application is referred to the Local Planning Panel for determination as the proposed development seeks to vary the motorbike parking standard under State Environmental Planning Policy (Affordable Rental Housing) 2009 by more than 10%.

The proposed development will not provide any motorbike spaces. The State Environmental Planning Policy (Affordable Rental Housing) 2009 requires four motorbike spaces to be provided. A request to vary the standard has been made pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012. The variation to the standard is considered to be in the public interest and is supported in this instance.

**Proposal Summary
(continued) :**

The proposed development is 15.7m in height to accommodate the lift overrun, which is 0.7m (+4.5%) above the maximum 15m height permitted under Clause 4.3 of the Sydney Local Environmental Plan 2012. A request to vary the standard has been made pursuant to Clause 4.6. The variation to the standard is considered to be in the public interest and is supported in this instance.

The proposal has been considered by the City of Sydney Design Advisory Panel who recommended that the applicant amend the design to reduce its height, bulk and scale, incorporate the contributory building into the development, retain the trees, and address fire egress, CPTED and waste issues.

The application was amended on 12 February 2019 following feedback from City staff. The amendments have partially addressed the concerns raised.

The application was notified between 9 July 2018 and 31 July 2018 in accordance with Council's notification policy. 23 submissions were received relating to height, bulk and scale, heritage impacts, parking and traffic, access, construction impacts, visual and acoustic privacy, safety, overshadowing and amenity.

The amended application was re-notified between 27 February 2019 and 21 March 2019 in accordance with Council's notification policy. In response 11 additional submissions were received from nine of the original submitters and two new submitters, raising similar issues to those identified above.

The issues raised in submissions are addressed further in the report.

The application is recommended for approval, subject to design modification conditions addressing privacy, heritage and internal amenity.

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

Development Controls:

- (i) State Environmental Planning Policy (Affordable Rental Housing) 2009
- (ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)

- (iv) Sydney Local Environmental Plan 2012 (Gazetted 12 December 2012, as amended)
- (v) Sydney Development Control Plan 2012 (in force on 12 December 2012, as amended)
- (vi) City of Sydney Development Contributions Plan 2015

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Requests

Recommendation

It is resolved that:

- (A) the Local Planning Panel support the variation sought to the minimum motorbike parking spaces required under Clause 30(1)(h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 in accordance with Clause 4.6 in the Sydney Local Environmental Plan 2012 in the circumstances of this application;
- (B) the Local Planning Panel support the variation sought to the height standard under Clause 4.4 of the Sydney Local Environmental Plan 2012 in accordance with Clause 4.6 in the Sydney Local Environmental Plan 2012 in the circumstances of this application; and
- (C) consent be granted to Development Application No. D/2018/748, subject to 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 relevant objectives and controls outlined in the State Environmental Planning Policy (Affordable Rental Housing) 2009, Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (B) The exception to Clause 30(1)(h) regarding the minimum motorbike parking standard in the State Environmental Planning Policy (Affordable Rental Housing) 2009 pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012 is well founded as the applicant has demonstrated that the development is consistent with the aims of the SEPP and objectives of the B4 Mixed Use zone in regards to the site's proximity to public transport, services, employment, education and leisure facilities.
- (C) The exception to Clause 4.3 regarding the height of buildings development standard in the Sydney Local Environmental Plan 2012 pursuant to Clause 4.6 is well founded as the applicant has demonstrated that the development is consistent with the objectives of the standard and the B4 Mixed Use zone.
- (D) The proposal is considered to exhibit design excellence as required by Clause 6.21 of the Sydney Development Control Plan 2012 through its high standard of architectural design.
- (E) The proposal is sympathetic to the contributory building within the site, the adjacent heritage items, and the wider heritage conservation area.
- (F) The proposal, subject to conditions, will not result in unreasonable impacts on neighbourhood amenity.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 10 July 2018.
2. The site is irregular, with an area of approximately 219.3sqm. It has a primary street frontage to Knox Street and a secondary street frontage to Shepherd Lane. The site is located on the southern side of Knox Street, between City Road and Shepherd Street. Two double storey multi-unit dwelling buildings are located on the site.
3. The first multi-unit dwelling building fronts Knox Street and presents to the street with a blank wall featuring a painted mural. The building is accessible to pedestrians via Council-owned steps with a raised landing. These elements were built in circa 1930 when Knox Street was levelled. The second multi-unit dwelling building fronts Shepherd Lane. The buildings are connected by a covered walkway that extends across a central courtyard. The central courtyard contains six trees, communal open space and landscaping. There are no records to suggest that the multi-unit dwellings have been previously rented or used as affordable rental housing. Therefore, the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 do not apply to this development.
4. Surrounding land uses are residential and commercial. Adjoining the site to the south and east are rows of terraces, which are all identified as heritage items (items I200, I205, I206 and I207) under the Sydney LEP 2012. Adjoining the site to the west is a four storey residential flat building. Opposite Knox Street to the north is a six storey commercial building occupied by the Telstra Exchange.
5. The site is not a heritage item, but is identified as a contributory building within the Chippendale Conservation Area (C9). The building fronting Shepherd Lane is considered to be the contributory element of the site.
6. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Knox Street



Figure 3: Site viewed from Shepherd Lane



Figure 4: The neighbouring properties to the south (1-9 Rose Street)



Figure 5: Knox Street looking west, with the subject site on the left

Proposal

7. The application seeks consent for tree removal and the demolition of the existing buildings on the site, with the exception of their facades, and construction of a five storey boarding house, with attic, containing 16 boarding rooms and one manager's room.
8. The proposal includes the demolition of the front building fronting Knox Street and the partial demolition of the rear building fronting Shepherd Lane. The south, east and west facades of the rear building will be retained and incorporated into the new building.
9. The works specific to each level include:
 - (a) **Ground Floor (Level 1):**
 - (i) addition of three double boarding rooms;
 - (ii) addition of communal living room and communal laundry;
 - (iii) addition of a secondary building entrance from Knox Street and a primary building entrance from Shepherd Lane;
 - (iv) addition of waste room and three vertical bicycle racks;
 - (v) removal of the Lemon Scented Gum tree and five small Palm trees; and

- (vi) landscaping and tree replacement.
- (b) First Floor (Level 2):**
- (i) addition of five double boarding rooms.
- (c) Second Floor (Level 3):**
- (i) addition of four double boarding rooms.
- (d) Third Floor (Level 4):**
- (i) Addition of four double boarding rooms.
- (e) Fourth Floor (Level 5):**
- (i) addition of manager's room within a mansard roof form with private balcony to Knox Street; and
 - (ii) addition of a 51sqm communal roof terrace towards the rear of the site with associated landscaping.
10. Following preliminary assessment of the application by City staff and a presentation to the City of Sydney Design Advisory Panel, a request for amended plans was sent to the applicant on 21 September 2018. The applicant was required to address a number of issues, including:
- (i) Request to delete the fifth storey and include roof plant within the height plane.
 - (ii) Request to retain the contributory building at the rear of the site (fronting Shepherd Lane).
 - (iii) Request to retain the tree in the central courtyard and address solar access to the courtyard.
 - (iv) Request to enlarge waste storage room.
 - (v) Request to consider privacy impacts into the ground floor rooms.
 - (vi) Request to quantify solar impacts on the terrace row to the south.
 - (vii) Request to consider entry requirements.
 - (viii) Request for an updated Plan of Management.
11. The amended application to address the above was received on 11 February 2019 and forms the basis of this assessment.
12. Plans of the amended proposal are provided below.



Figure 6: Photomontage of Knox Street frontage

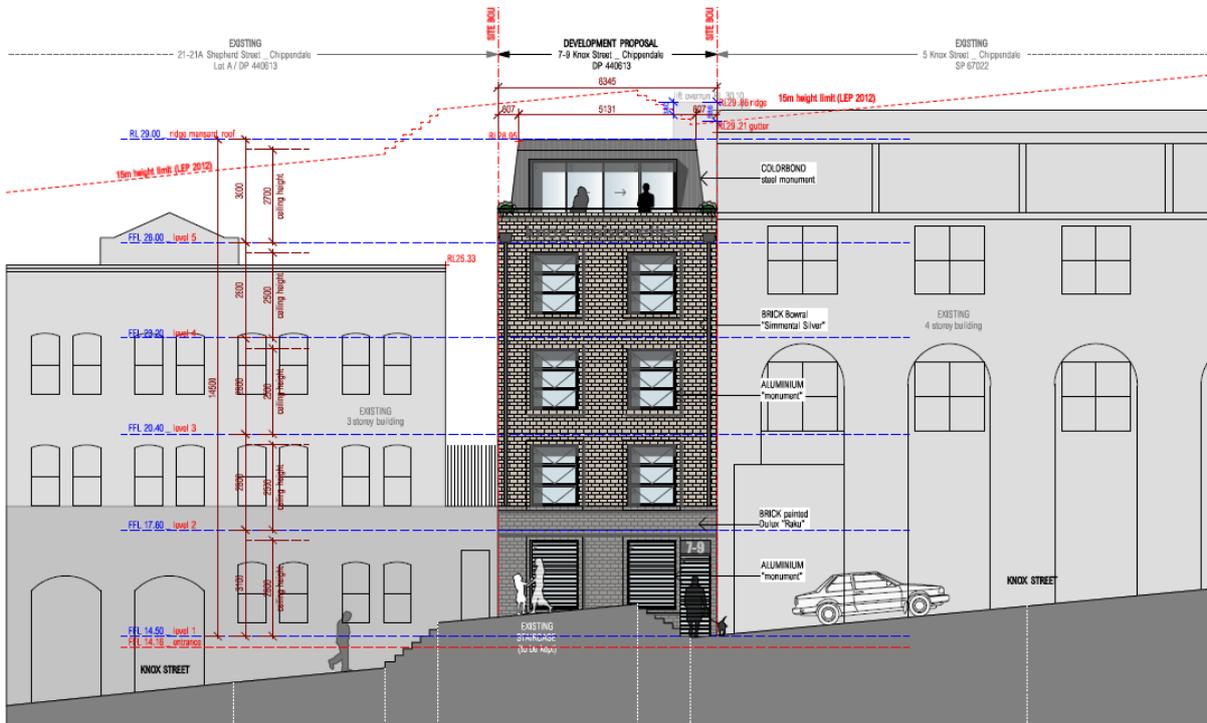


Figure 7: North elevation



Figure 8: South elevation

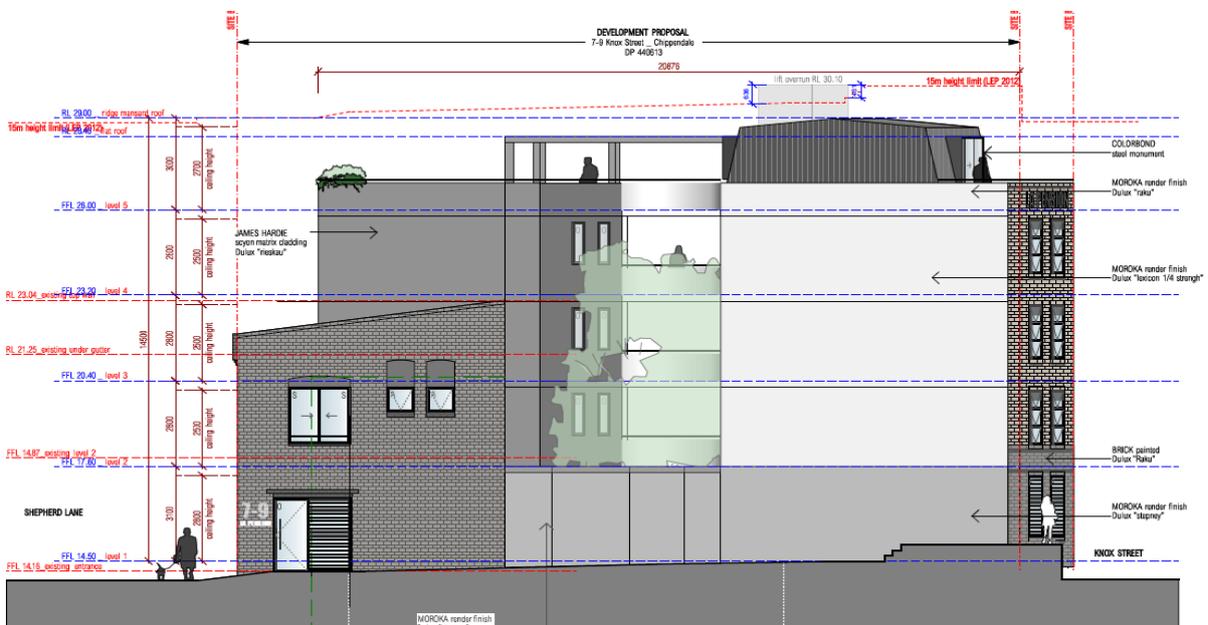


Figure 9: East elevation

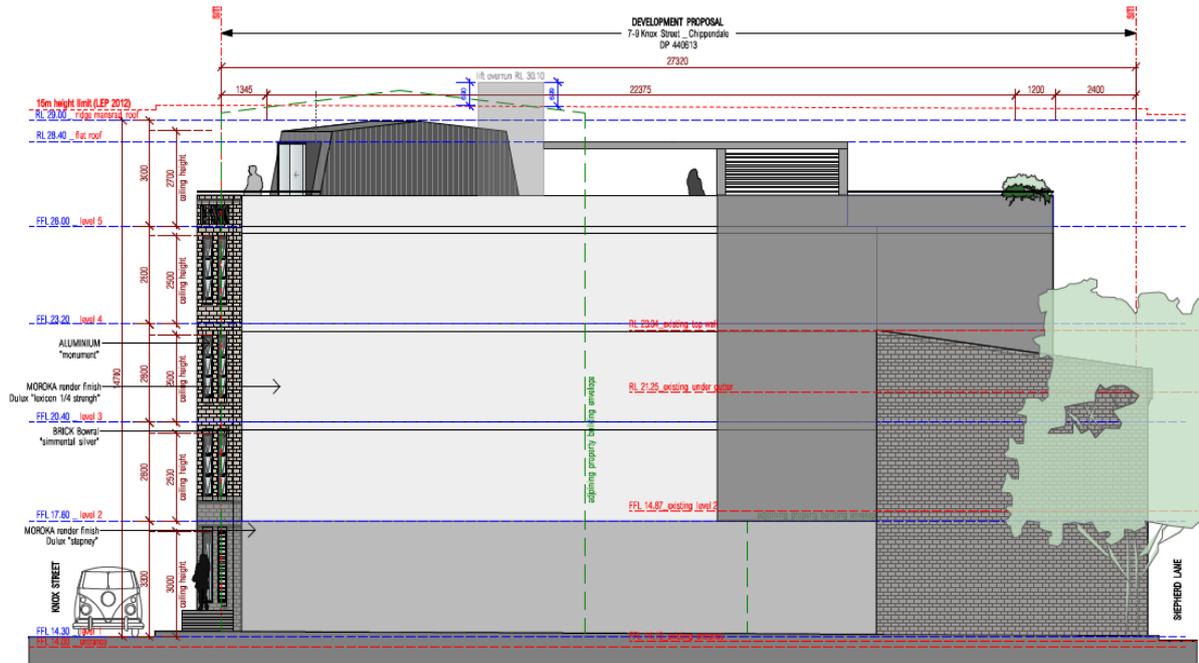


Figure 10: West elevation

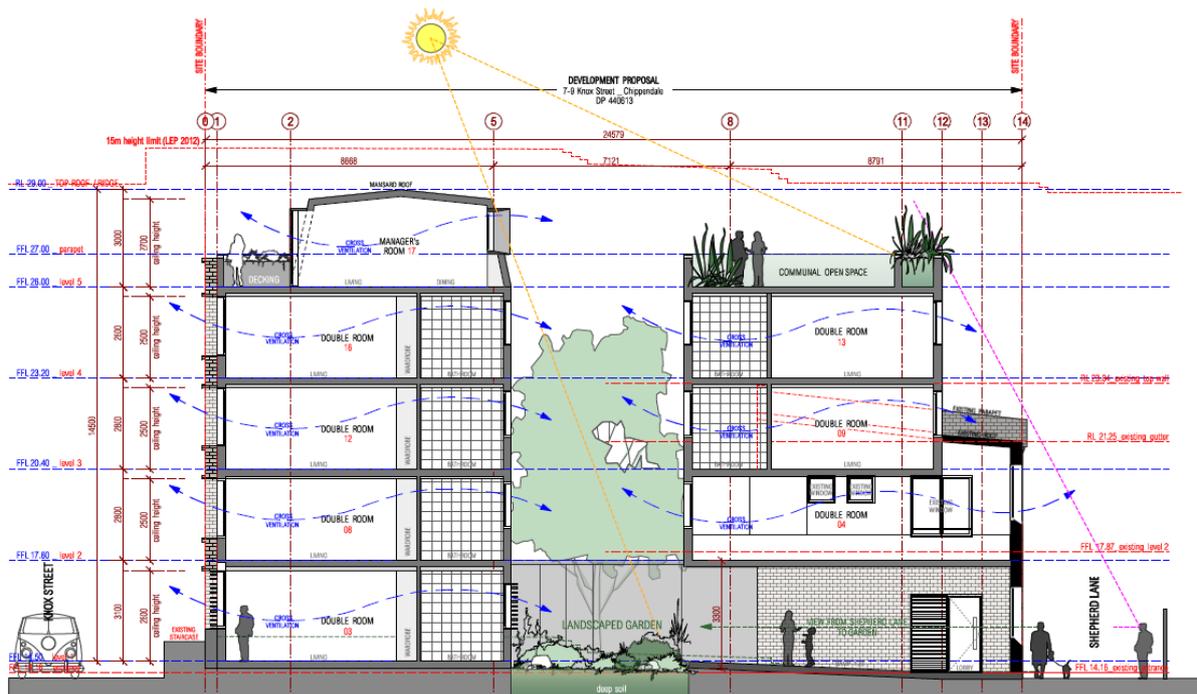


Figure 11: Section

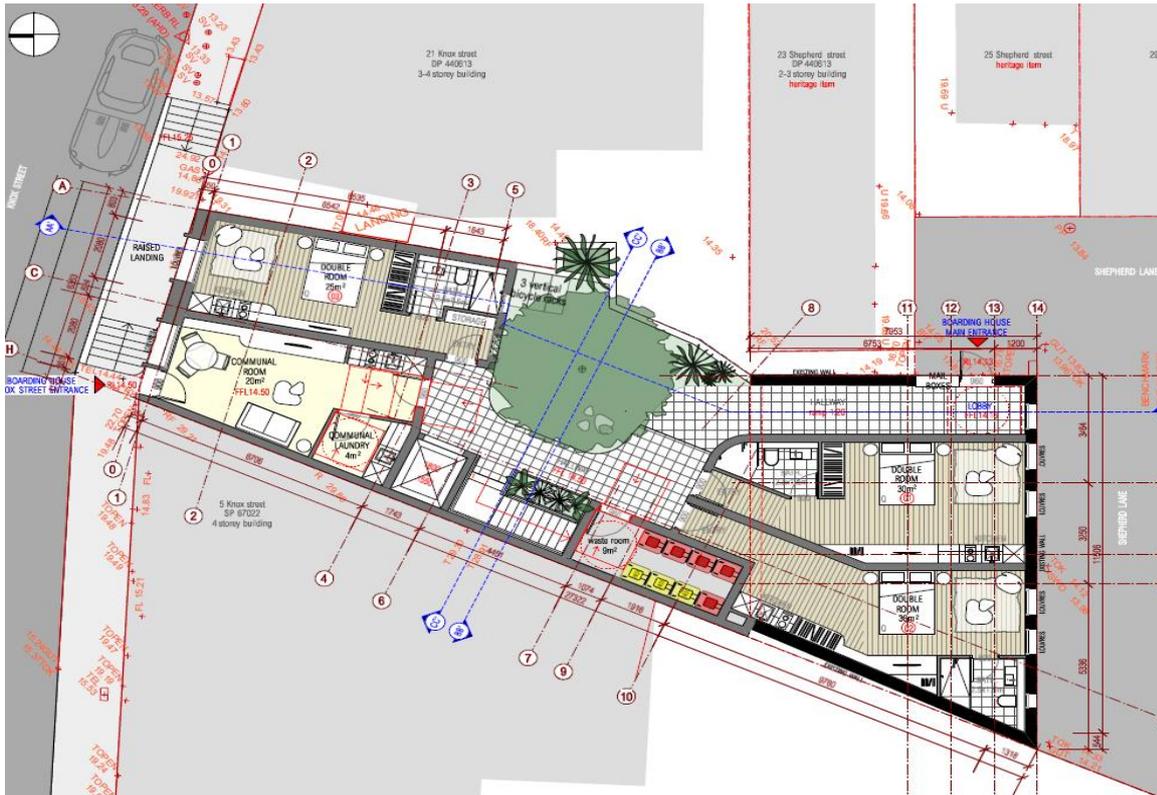


Figure 12: Ground floor plan

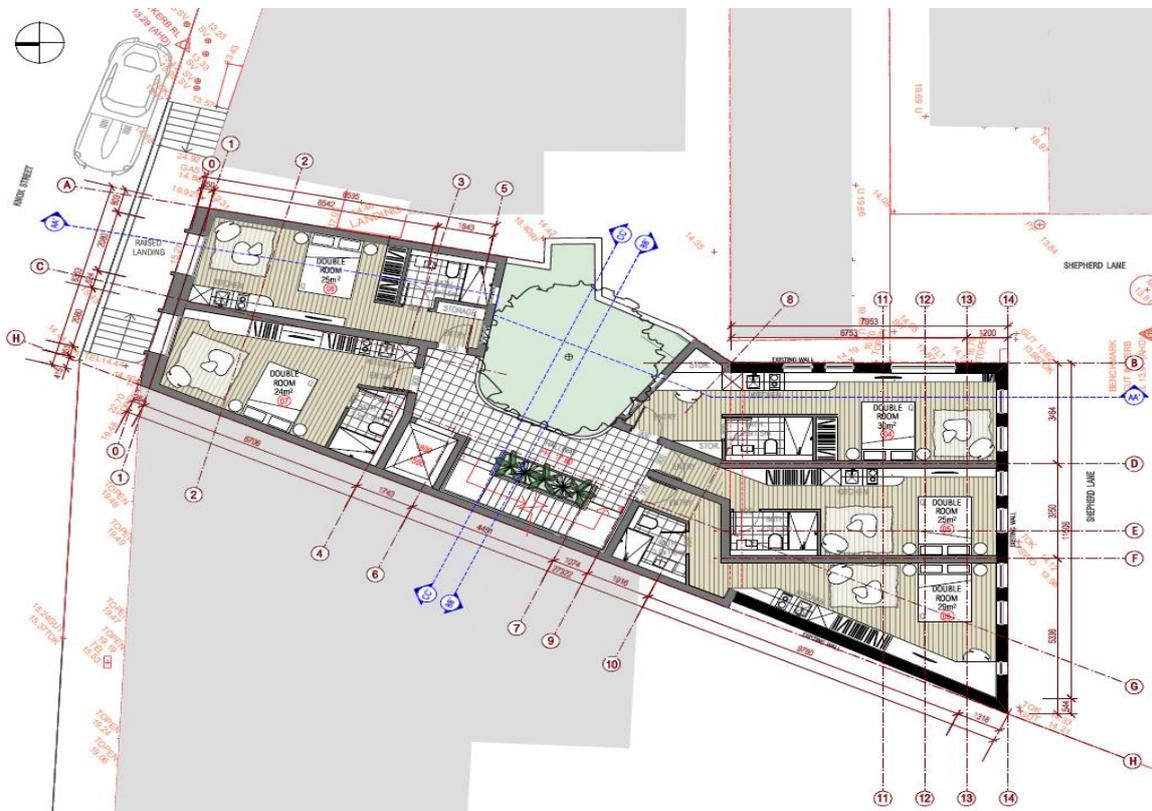


Figure 13: First floor plan

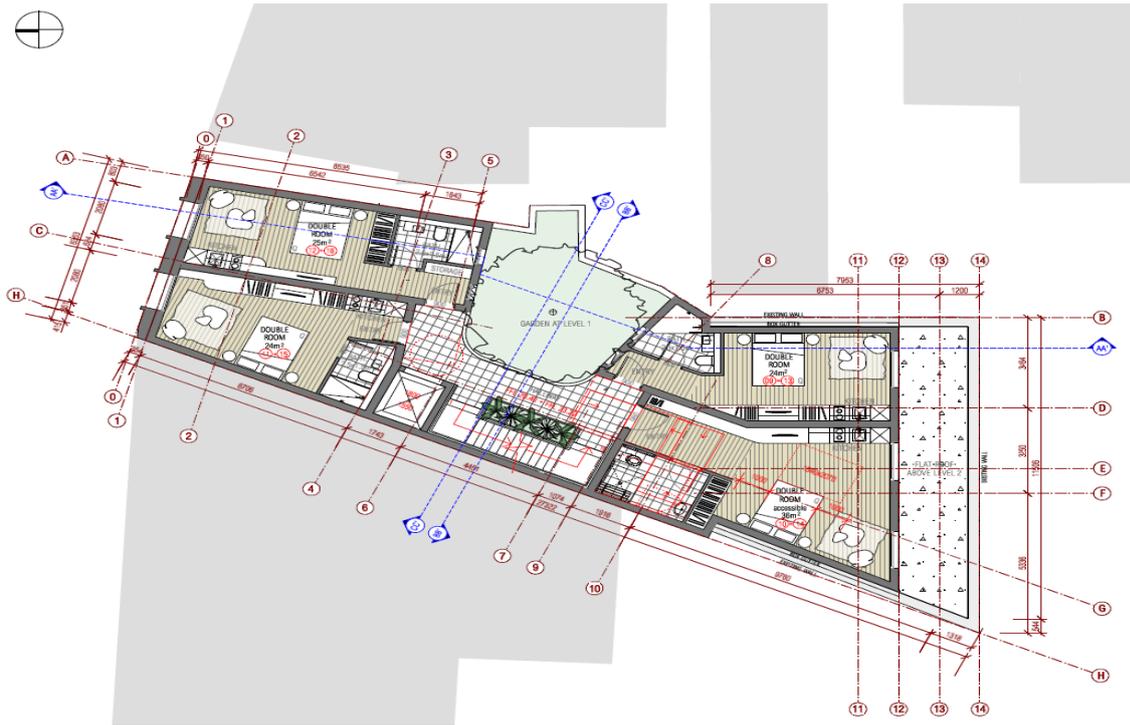


Figure 14: Second and third floor plan

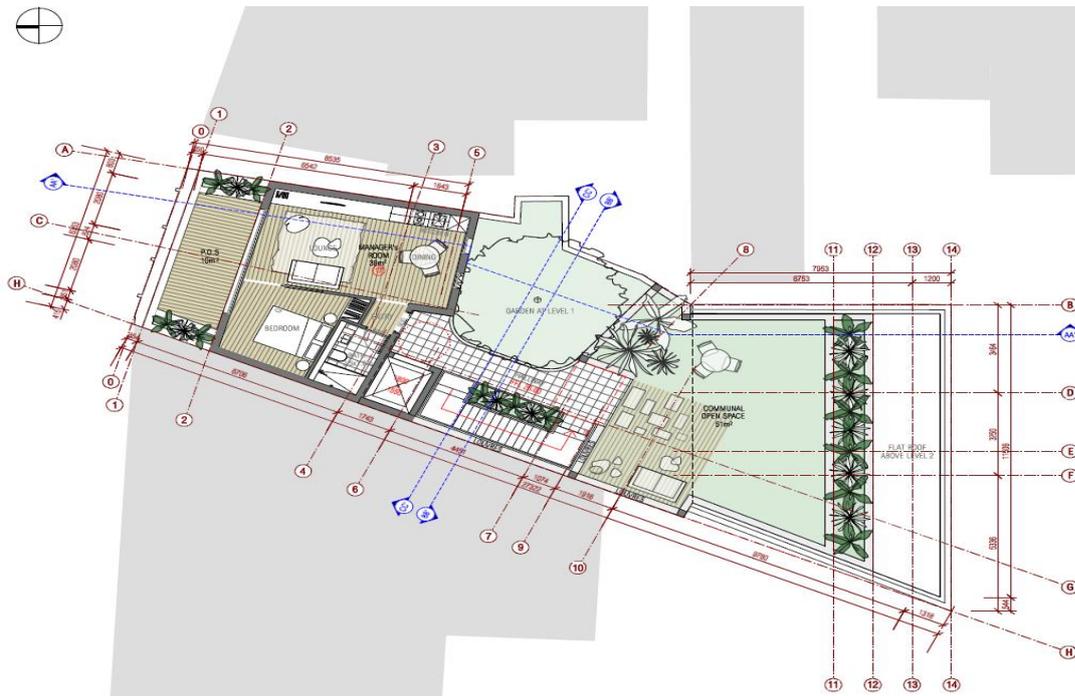


Figure 15: Fourth floor plan

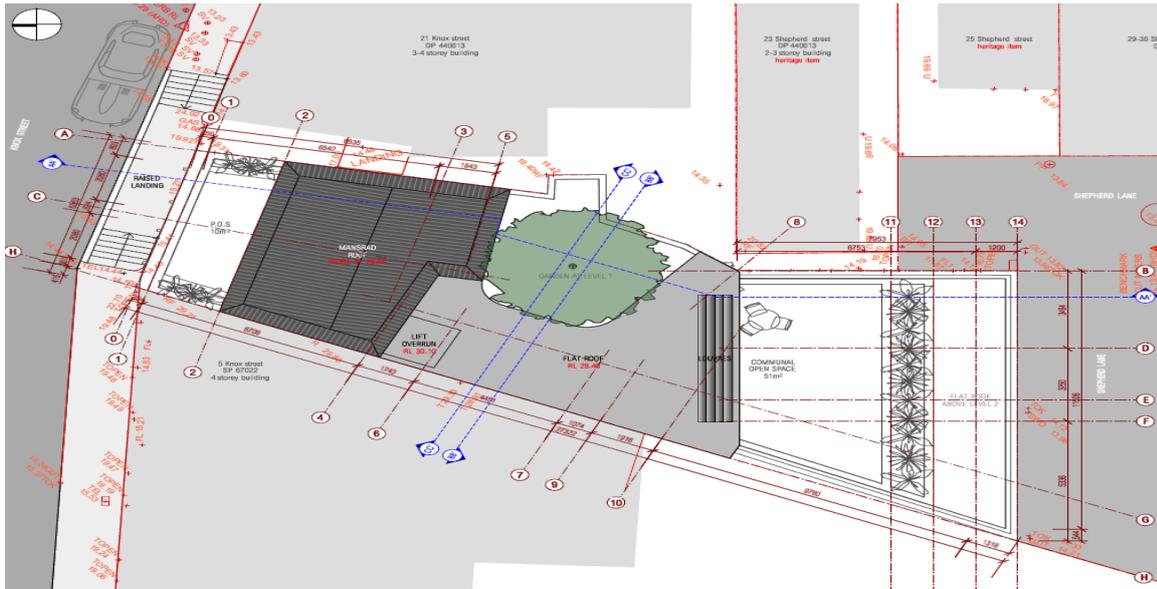


Figure 16: Roof plan



Figure 17: 3D perspective of the proposal viewed from the rear of the site looking west

History Relevant to the Development Application

13. Council's records do not show any previous development approvals on the site.

14. Council's records indicate that the Compliance Unit have investigated reports of unauthorised use of the site as a boarding house in March 2019 and could not find any evidence of the use of the site for short-term accommodation. The action is now closed.

Economic/Social/Environmental Impacts

15. 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.

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

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

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

19. A BASIX Certificate has been submitted with the development application.
20. 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.

State Environmental Planning Policy (Affordable Rental Housing) 2009

21. Of relevance to the subject application, the SEPP aims to:
 - (a) provide a consistent planning regime for the provision of affordable rental housing;
 - (b) facilitate the delivery of new affordable housing;
 - (c) mitigate the loss of existing affordable rental housing;

- (d) facilitate an expanded role for not-for-profit providers; and
- (e) facilitate the development of housing and services for the homeless and other disadvantaged people.

22. Under Clause 29, compliance with any of the following standards must not be used to refuse consent.

Clause 29 – Standards that cannot be used to refuse a boarding house		
Standard	Complies	Comment
1(c)(i) – The maximum permitted FSR is 2:1 + 0.5:1	Yes	The proposed FSR is 2.23:1.
2(a) Building height, if the development complies with the maximum permitted building height	No	With the exception of the lift overrun, the proposal complies with the height limit of 15m. The lift overrun breaches the height control by 0.7m. The applicant has submitted a request to vary the height of buildings development standard pursuant to Clause 4.6. See discussion under heading Issues.
2(b) Landscaped area, if the landscape treatment to the front setback area is compatible with the streetscape	Yes	The proposal maintains the existing building's nil setback to Knox Street, which is consistent with surrounding development. Sufficient landscaping is provided within the development.
2(c) Solar access, where the development provides 3 hours of solar access to one living area from 9am to 3pm during midwinter	No	The site is constrained by the overshadowing caused by the Telstra exchange building to the north. As such, the communal living area at ground level does not receive direct solar access during midwinter. See discussion under heading Issues.

Clause 29 – Standards that cannot be used to refuse a boarding house		
Standard	Complies	Comment
<p>2(d)</p> <p>(i) One area of 20sqm with a minimum dimension of 3 metres is provided for residents</p> <p>(ii) One area of 8sqm with a minimum dimension of 2.5sqm for the manager's unit</p>	Partial compliance	<p>The proposal provides 51sqm of communal open space on the roof and 20sqm communal open space on the ground floor.</p> <p>The manager's unit is provided with 10sqm of private open space, with a dimension of approximately 2m. This minor non-compliance is acceptable as good internal and external amenity is provided for the manger's unit.</p> <p>See discussion under heading Issues</p>
<p>2(e) Parking, if</p> <p>(i) 0.2 parking spaces provided for each boarding house room for sites in an accessible area</p> <p>(iii) not more than one parking space for staff residing on the site</p>	No	<p>No onsite vehicular parking is provided for residents.</p> <p>The site is in an accessible location and supplemented by bike parking. The applicant will be required to provide three additional bike parking spaces as a condition of consent. The spaces will need to be provided internally to the site. The provision of no car parking spaces is consistent with Council's parking controls and is therefore acceptable.</p> <p>The applicant has submitted a request to vary the motorbike parking standard pursuant to Clause 4.6.</p> <p>See discussion under heading Issues.</p>
<p>2(f) Accommodation size</p> <p>(i) Minimum 12sqm for single lodger rooms</p> <p>(excluding any area used as a private kitchen/ bathroom)</p>	Yes	<p>Excluding kitchens and bathrooms, the boarding rooms exceed the minimum recommended room sizes. A condition of consent is recommended limiting occupancy to two adult lodgers per room as proposed in the application.</p>

23. Clause 30 states that a consent authority must not grant development consent to which Division 3 applies unless it is satisfied of each of the following:

Clause 30 – Standards for boarding house		
Standard	Complies	Comment
1(a) At least one communal living room is to be provided	Yes	One communal living room is provided at ground floor level. The living room is located adjacent to the secondary area of communal open space. A condition of consent is recommended to require the reconfiguration and enlargement of the internal common living room.
1(b) No boarding room is to have a gross floor area (excluding private kitchen or bathroom facilities) of more than 25m ²	Yes	Each of the boarding rooms are less than 25sqm (excluding private kitchen or bathroom facilities).
1(c) No boarding room to be occupied by more than 2 adult lodgers	Yes	Each boarding room can accommodate a maximum of two adult lodgers.
1(d) Adequate bathroom and kitchen facilities available for use of each lodger	Yes	Each boarding room is provided a private kitchen and bathroom. A communal living room and laundry are provided at ground floor level.
(1e) A boarding room or on-site dwelling to be provided for a boarding house manager if boarding house has a capacity of 20 or more lodgers	Yes	A boarding room on the top floor is dedicated to the onsite manager.
1(g) If the boarding house is zoned primarily for commercial purposes, no part of the ground floor that fronts a street will be used for residential purposes except where permitted under an EPI.	Yes	The site is located within the B4 Mixed Use zone, which permits residential uses on the ground floor. Due to the positioning of the raised landing on the Knox Street frontage, an active frontage was not sought. The proposed building contains boarding rooms only, and is considered acceptable in this instance.

Clause 30 – Standards for boarding house		
Standard	Complies	Comment
1(h) At least one bicycle and one motorcycle parking space to be provided for every five rooms.	Partial compliance	<p>The proposed building is required to provide a minimum of three bike parking spaces and three motorbike parking spaces.</p> <p>The development provides three bike parking spaces and therefore satisfies the requirements.</p> <p>The development provides no motorbike parking spaces. In response, it is recommended that the applicant provide three additional bike parking spaces as a condition of consent. The spaces will need to be provided internally to the site.</p> <p>A Clause 4.6 variation to the motorbike parking standard is proposed and is supported in the circumstances.</p> <p>See discussion under heading Issues.</p>

Clause 30A – Character of the local area

24. Clause 30A states that a consent authority must not consent to development consent for a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.
25. The development proposes a face brick facade to Knox Street with a lightweight Colorbond mansard addition on the upper level. The upper levels at the rear include Scyon Matrix cladding, which is considered appropriate.
26. During the assessment of the application, the applicant was requested to delete the fifth storey and pergola to the northern roof terrace, and increase the setbacks at the upper levels. These changes ensure the adverse impacts of excessive bulk and scale were minimised and an appropriate height transition between the four storey residential building to the west and the three storey terrace buildings to the east. Following the amendments, the form and materiality of the new building are consistent with the local character of the area.
27. The proposal includes the demolition of the northern wall, first floor and part of the roof of the rear building. This demolition allows for the floor levels to remain consistent throughout the development, which provides functionality and accessibility. Conditions of consent are recommended for the rear roof to be retained or reconstructed to match the existing and for the existing timber elements to be reused as heritage features.

28. The development includes a minor exceedance to the height development standard, which is considered appropriate within the context of the site as it is confined to the lift overrun, will not be visually discernible from the streetscape, and will not result in adverse impacts to the amenity of the neighbouring properties.
29. Subject to conditions, the development is compatible with the character of the local area and satisfies clause 30A of the SEPP.

Sydney LEP 2012

30. The site is located within the B4 Mixed Use zone. The proposed use is defined as a boarding house and is permissible.
31. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 15m is permitted. A height of 15.7m is proposed to the lift overrun. See discussion under the heading Issues.
4.4 Floor Space Ratio	Yes	The site is permitted a maximum FSR of 2:1. The boarding house is permitted a bonus 0.5:1 FSR above the maximum standard under the LEP pursuant to Clause 1(c) of the SEPP (Affordable Rental Housing) 2009. The proposal includes a GFA of 489.74sqm and an FSR of 2.23:1.
4.6 Exceptions to development standards	Yes	The proposal seeks to vary the height development standards prescribed under Clause 4.3 and the motorbike parking standard under Clause 30 of the ARH SEPP. See discussion under the heading Issues.

Development Control	Compliance	Comment
5.10 Heritage conservation	No	<p>The site is not a heritage item, but is identified as a contributory building within the Chippendale Conservation Area (C9).</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	<p>The application proposes to utilise high quality materials on the new addition, including a mix of exposed brick, rendered brick, timber and cladding.</p> <p>The proposal conserves the rear form and facades of the contributory building at the rear of the site fronting Shepherd Lane. Conditions of consent are recommended for the rear roof to be retained or reconstructed as existing and for the timber elements to be reused as heritage features.</p> <p>During the assessment of the application, the design was amended to reduce the bulk and scale of the proposal. The changes provide a more appropriate height transition between the four storey residential flat building to the west and two to three storey terrace buildings to the south and east.</p> <p>The proposed development satisfies the requirements of this provision as it provides a high standard of architectural design, materials and detailing appropriate to the building type and location.</p>

Sydney DCP 2012

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

2. Locality Statements – Chippendale

The subject site is located in the Chippendale locality. The proposed boarding house is considered to be in keeping with the unique character of the area and design principles in that it responds to and complements the contributory building on the site and the nearby heritage items and responds to the height and massing of the neighbouring buildings.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	The proposal will make a positive contribution to the public domain through excellence in design and high quality materials. The proposal presents an appropriate frontage to both Knox Street and Shepherd Lane in terms of scale, finishes and architectural character.
3.5 Urban Ecology	No	The proposal includes the removal of one large Lemon Scented Gum tree and five small Palm trees located within the central courtyard. The application was referred to the City's Tree Management Officer who did not support the removal of the trees. See discussion under heading Issues.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	Strata subdivision is not proposed. Conditions are recommended prohibiting strata and community title subdivision.
3.9 Heritage	No	The site is not a heritage item, but is identified as a contributory building within the Chippendale Conservation Area (C9). See discussion under the heading Issues.

3. General Provisions	Compliance	Comment
3.11 Transport and Parking	Yes	<p>The proposal does not include car or motorbike parking. The DCP does not require car or motorbike parking to be provided.</p> <p>The proposal provides three bike parking spaces on the ground floor, which meets the minimum requirements under the ARH SEPP.</p> <p>Notwithstanding the above, as the proposal is not including motorbike parking, it is considered appropriate for the applicant to supplement the loss with an additional three bike parking spaces. This will be required as a condition of consent.</p> <p>See discussion under heading Issues.</p>
3.12 Accessible Design	Yes	<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>
3.13 Social and Environmental Responsibilities	Yes	<p>The boarding house will be staffed 24/7 and is designed to promote passive surveillance of the street and communal areas.</p>
3.14 Waste	Yes	<p>A waste management plan accompanies the application and is generally acceptable. A 9sqm waste storage room is located at ground floor level.</p> <p>The applicant will be required to engage a licensed waste contractor for waste collection and store the bins inside at all times.</p> <p>See discussion under heading Issues.</p>

3. General Provisions	Compliance	Comment
3.16 Signs	No	The amended elevations and photomontages include a sign that reads 'Knox Maisonettes'. The original elevations and photomontages included a sign that read 'La Pension'. The applicant has advised that a signage scheme was not finalised and could be considered artistic license on the part of the designer. Given detail is lacking, the sign is not approved. The provision of a sign, if sought, will need to be the subject of a future application.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	The site is subject to a four storey height control. The proposed boarding house is five storeys in height. See discussion under heading Issues.
4.2.2 Building setbacks	Yes	A street frontage height is not prescribed for this site under the DCP. The existing front, rear and side setback alignments are maintained.
4.2.3.1 Solar access	Yes	The proposal will not adversely overshadow the neighbouring properties to the rear. See discussion under heading Issues.
4.2.3.3 Internal common areas	Yes	The internal common areas, corridors and lift lobbies have access to daylight and an outlook.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3.5 Landscaping	Yes	A landscape plan has been submitted with the application which details a deep soil area at the ground floor and planter boxes on each level. The application was referred to the City's Landscape Assessment Officer, and is supported, subject to the recommended conditions. See discussion under heading Issues.
4.2.3.6 Deep soil planting	Yes	The proposal includes 23.6sqm of deep soil area at the ground floor, which equates to 10.76% of the site area. This exceeds the minimum requirement of 7%.
4.2.3.9 Ventilation	Yes	Windows to boarding rooms and common areas are able to be opened to provide natural ventilation.
4.2.3.10 Outlook	Yes	All boarding rooms are provided with a good outlook without adversely impacting visual privacy.
4.2.4 Fine grain, architectural diversity and articulation	Yes	The design and form of the building has been amended to respond to the character of the streetscape and is compatible in scale with the surrounding area.
4.2.5.2 Courtyard buildings	Yes	The proposal includes a communal open space area at the ground floor. Although it does not facilitate a publicly accessible through-site link, the space has a visual connection to the adjoining sites and public domain to Shepherd Lane.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.6 Waste minimisation	Yes	<p>A waste management plan accompanies the application and is generally acceptable. A 9sqm waste storage room is located at ground floor level.</p> <p>The applicant will be required to engage a licensed waste contractor for waste collection and store the bins inside at all times.</p> <p>See discussion under heading Issues.</p>
4.2.7 Heating and Cooling Infrastructure	Yes	<p>The applicant has advised that the building will rely on natural ventilation for heating and cooling. Any air conditioning unit will need to be installed in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or be subject of a future development application.</p>

4.4.1 Boarding Houses	Compliance	Comment
4.4.1.1 Subdivision	Yes	<p>Conditions are recommended prohibiting strata and community title subdivision.</p>
4.4.1.2 Bedrooms	Yes	<p>All boarding rooms exceed 12sqm.</p> <p>Sufficient area is provided for storage, kitchens and bathrooms in accordance with the DCP.</p>
4.4.1.3 Communal kitchen areas	Partial compliance	<p>Each boarding room is provided a private kitchenette with cooking and cleaning facilities.</p> <p>The communal living room on the ground floor also contains a kitchen with cooking and cleaning facilities. The communal kitchen is approximately 4.5sqm, below the 6.5sqm minimum requirement.</p> <p>See discussion under heading Issues.</p>

4.4.1 Boarding Houses	Compliance	Comment
4.4.1.4 Communal living areas and open space	Partial compliance	<p>The proposal includes internal and external common areas, which meet the minimum requirements. The internal communal living area is located adjacent to the secondary area of communal open space at the ground floor level. A condition of consent is recommended for the deletion of the front ground floor boarding room and for the communal living room to be expanded into it. This will improve access, amenity, functionality and facilities. See discussion under the heading Issues.</p> <p>No boarding rooms are provided with private open space contrary to the minimum 30% of boarding rooms recommended. Variation to the control is acceptable as private balconies cannot be readily accommodated without having adverse streetscape, heritage and amenity outcomes, and generous communal open space is provided at the ground floor and roof level, in excess of the minimum communal open space requirements.</p> <p>The internal communal living room does not receive the minimum requirement of 2 hours of direct solar access on 21 June. See discussion under the heading Issues.</p>
4.4.1.5 Bathroom, laundry and drying facilities	Partial compliance	<p>Private bathrooms are provided within each boarding room.</p> <p>A communal laundry is provided on the ground floor. A condition of consent is recommended requiring an external drying area.</p>

4.4.1 Boarding Houses	Compliance	Comment
4.4.1.6 Amenity, safety and privacy	Yes	<p>The building has been designed with regard to safety, security and privacy of residents within the building.</p> <p>The upper level windows at the rear of the building are considered an adequate distance from the rear of the terrace row opposite the lane to protect visual privacy. Notwithstanding, the windows will be required to have a minimum sill height of 1.4m as a condition of consent.</p> <p>The internal stair and walkways will result in privacy impacts to the eastern neighbours. A privacy treatment consisting of fixed vertical, angled blades to the east facing section of the balustrade will be required as a condition of consent.</p> <p>The proposed communal roof terrace includes a planter on its southern edge to protect privacy and will be required to include a planter on its eastern edge to protect privacy as a condition of consent. The hours of use are restricted to 7.00am to 10.00pm Monday to Sunday.</p> <p>The application was referred to the City's Environmental Health Unit, who are supportive of the proposal in regards to visual and acoustic privacy, subject to the recommended conditions. An acoustic report was not required from the applicant as the potential acoustic impacts are considered to be commensurate with a residential context.</p>
4.4.1.7 Plan of Management	Yes	A Plan of Management accompanies the application and adequately addresses DCP provisions.

Issues

Clause 4.6 Variation to the Motorbike Parking Standard

33. Clause 30(1)(h) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 requires the provision of one bicycle space and one motorbike space for every five boarding rooms. The development includes 17 boarding rooms and as such three bicycle spaces and three motorbike spaces are required.
34. The proposal provides for three bicycle spaces and zero motorbike spaces, representing a 100% departure from the standard. As the development is providing 17 boarding rooms, it is considered appropriate for three additional bicycle spaces to be provided to supplement the lack of motorbike spaces. This will be required as a condition of consent.
35. 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 motorbike parking 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.
36. A copy of the applicant's written request is provided at Attachment C.
37. Applicant's Written Request - Clause 4.6(3)(a) and (b)
38. The applicant seeks to justify the contravention of the motorbike parking standard by providing nil parking spaces on the following basis:
 - (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) It is not possible to provide vehicular access to the site from Knox Street due to existing stairs and raised footpath in the road reserve of the site.
 - (ii) Providing no motorcycle parking improves the relationship of the building with the public domain. In order to retain the existing walls and minimise the number of new openings to the rear building, access to the site from Shepherd Lane is only proposed for pedestrians. By not providing access to the site for motorcycles the facade of the existing building can be retained and the character of the lane can be maintained.
 - (iii) If compliance was required, the development would provide more onsite parking than is required for other developments in the City of Sydney. The provision of onsite motorcycle parking would therefore reduce the use of more sustainable forms of transport or walking and result in a greater impact on the road network.
 - (iv) Pedestrian safety is improved by the laneway by not providing motorcycle parking on the site.

- (v) A complying number of bicycle parking spaces are proposed and the site is within walking distance of a range of services, shops, employment opportunities and public transport options such as bus stops on Broadway and Central Station. In this regard, the development promotes the use of sustainable transport and walking.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposal is consistent with the LEP and DCP requirements for car and motorbike parking.
 - (ii) Residents of the boarding house will have access to other forms of transport and therefore not reliant on the provision of on-site parking.
 - (iii) The non-provision of motorbike parking will not result in any adverse impacts on the amenity of the surrounding properties.
 - (iv) The provision of on-site parking would compromise the southern façade of the building as the walls of the existing building with frontage to Shepherd Lane have been deliberately retained as they provide a positive contribution to the significance of the heritage conservation area.
 - (v) If compliance was required the development would provide more on-site parking than is required for other developments in the City of Sydney. The provision of on-site motorbike parking would therefore reduce the use of more sustainable forms of transport or walking and result in a greater impact on the road network.

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

39. 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.
40. Does the written request adequately address those issues at Clause 4.6(3)(a)?
41. The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development satisfies the aims of the SEPP notwithstanding the non-compliance. The development is consistent with the aims of the SEPP in particular, facilitating the effective delivery of new affordable rental housing by providing flexibility in apply development standards and supporting local centres by providing affordable rental housing.

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

42. Although non-compliant with the SEPP, the proposal is consistent with the objectives and provisions of the LEP and DCP in terms of transport and access, and is located within a highly accessible area. The site does not provide practicable locations for motorbike parking spaces given the stairs and landing on the Knox Street frontage and the contributory building on the Shepherd Lane frontage, which each contain heritage significance. The provision of zero motorbike parking spaces results in a more desirable streetscape, heritage and amenity outcome.
43. Accordingly, it is considered that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.

Is the development in the public interest?

44. As identified in the applicant's Clause 4.6 statement, there are no specific objectives pertaining to the standard. However, the aims of the SEPP relevant to the standard include:
 - (a) to provide a consistent planning regime for the provision of affordable rental housing;
 - (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards;
 - (c) to facilitate an expanded role for not-for-profit providers of affordable rental housing;
 - (d) to support local business centres by providing affordable rental housing for workers close to places of work; and
 - (e) to facilitate the development of housing for homeless and other disadvantaged people who may require support services, including group homes and supportive.
45. Although an aim of the SEPP is to provide consistency in applying its development standards across NSW, the SEPP does not consider the City's transport policies and its access to public transport and services relative to other areas of the state. For example, Clause 7.1 of the LEP encourages minimising the amount of vehicular traffic generated from proposed development.
46. Providing flexibility in applying the motorbike standard facilitates the effective delivery of new affordable housing for students and workers within the local area. The site is arguably an appropriate location in the City for new affordable housing given its location near to the University of Sydney, University of Technology Sydney, University of Notre Dame and TAFE NSW, as well as the commercial areas of Ultimo and Haymarket.
47. The objectives of the B4 Mixed Use zone include:
 - (a) To provide a mixture of compatible land uses.

- (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (c) To ensure uses support the viability of centres.
48. The site is located within Category A of the Land Use and Transport Integration map, the highest category identified in the LEP with regard to a site's accessibility to services and transport infrastructure. As the applicant states, the site is proximate to Central Station and various bus routes, employment, educational and leisure facilities. In not providing motorbike parking, the development will encourage active transport and public transport. The development provides for new affordable housing for students and workers within the local area.
49. To adequately supplement the lack of motorbike spaces, it is proposed that the applicant be required to provide three additional bike parking spaces as a condition of consent. These spaces will need to be provided within the expanded internal communal area.
50. The proposal is in the public interest because it is consistent with both the aims of the SEPP and the objectives of the B4 Mixed Use zone.

Conclusion

51. For the reasons provided above the requested variation to the motorbike parking 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 LEP 2012 and the proposed development would be in the public interest because it does not conflict with the aims of the SEPP and is consistent with the objectives of the B4 Mixed Use zone.

Clause 4.6 Variation to Height Development Standard

52. The site is subject to a maximum height control of 15m. The proposed development has a height of 15.7m to the lift overrun
53. The variation to the height control results in an exceedance to the development standard by 0.7m (or a 4.5% variation) for the lift overrun. The red arrow in Figure 18 and Figure 19 indicates the 15m height control on the original proposal and amended proposal respectively.
54. During the assessment of the application, concern was raised with the applicant regarding excessive height, bulk and scale, resulting in a built form that is unsympathetic to the heritage conservation area, and will have unreasonable amenity impacts on the neighbouring properties. In response to these concerns, the applicant submitted amended plans detailing the deletion of the fifth storey, deletion of the northern pergola, replaced with smaller attic-like mansard addition accommodating the manager's room. The amended proposal results in all building elements, excepting the lift overrun, sitting within the 15m height plane.

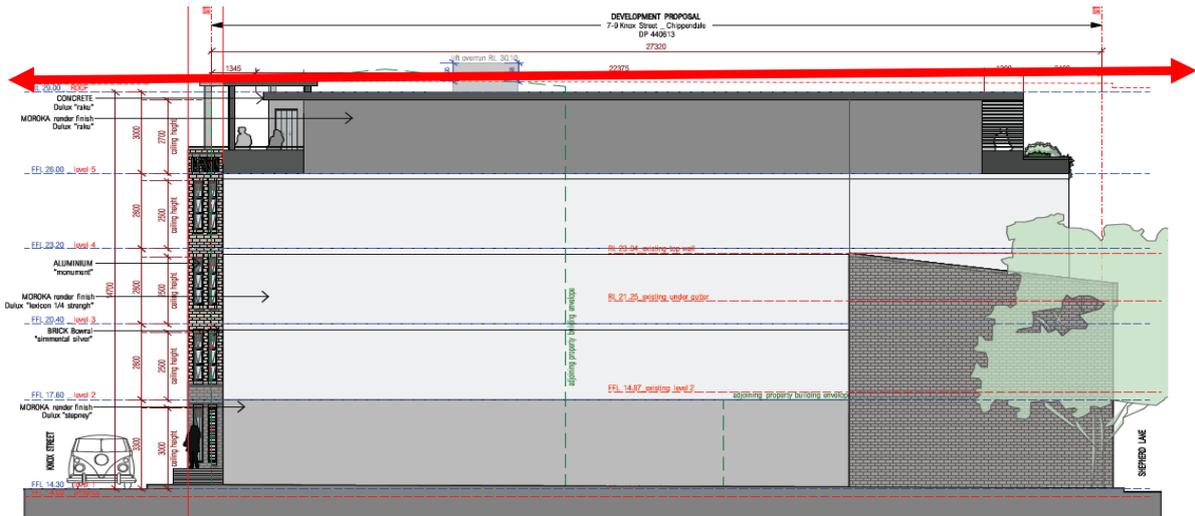


Figure 18: Originally proposed west elevation with the 15m height limit plane indicated by the red arrow

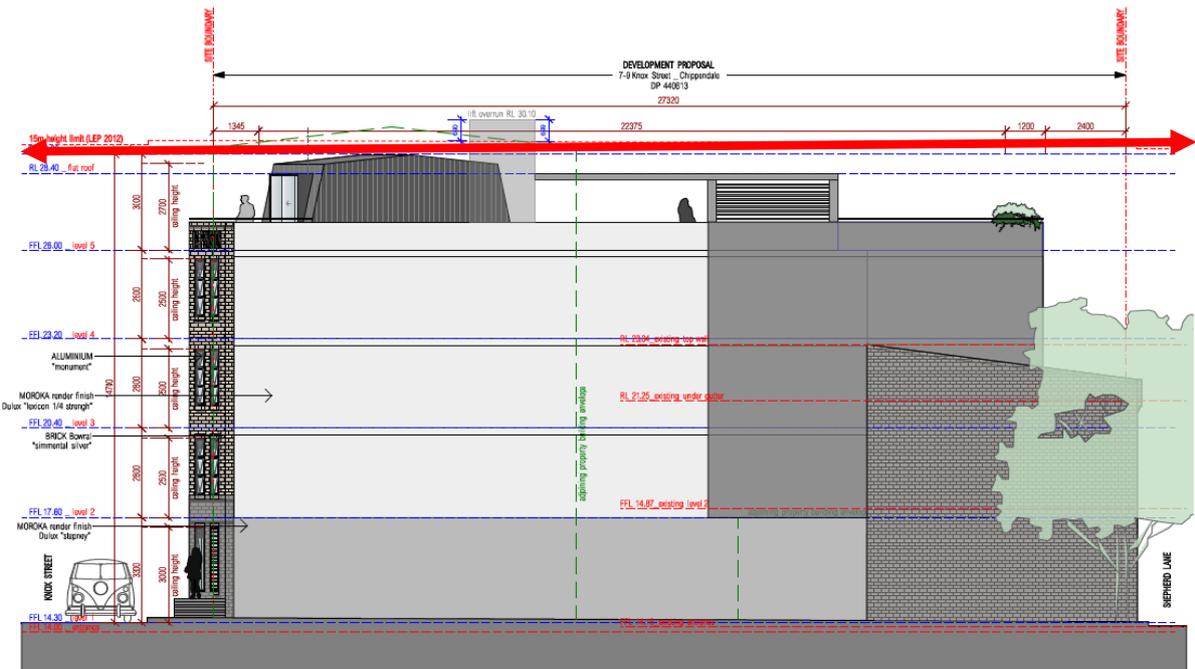


Figure 19: West elevation with the 15m height limit plane indicated by the red arrow

55. 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 height of buildings 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.
56. A copy of the applicant's written request is provided at Attachment C.

57. Applicant's Written Request - Clause 4.6(3)(a) and (b)
58. The applicant seeks to justify the contravention of the height development standard to permit a maximum height of 15.7m to the top of the lift overrun on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
- (i) The statement has referred to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard. A summary of the applicant's assessment against the objectives of the control are provided below:
- a. *Objective (a): To ensure the height of development is appropriate to the condition of the site and its context*
- b. The majority of the development complies with the 15m height limit with the variation to the standard only required for the lift overrun on the north-west side of the building. The non-complying element is set back from the northern boundary approximately 7m to minimise the visual impact of the structure when viewed from Knox Street. The lift overrun is also located on the western side of the site to maximise the distance of the non-complying element of the building from the adjoining heritage items to the east.
- c. Careful consideration has been given to the massing and height of the proposal to ensure that a high-quality outcome will be achieved which will sit comfortably within the streetscape of Knox Street and Shepherd Lane. To provide visual continuity in the streetscape, the street wall height and overall height of the development is consistent with the height of the adjoining building at 5 Knox Street. On the Shepherd Lane side of the building, the external walls of the existing building are to be retained where possible to maintain the scale and character of the streetscape. The upper levels are proposed to be setback 1.2m to maintain the scale of development adjoining the lane and to reduce the visual impact of the 15m height which is permitted on the site.
- d. *Objective (b): To ensure appropriate height transitions between new development heritage items and buildings in conservation areas or special character areas*
- e. The site is not identified as a heritage item however the site adjoins a heritage item and is in close proximity of several items. The site is identified as a contributory item in the heritage conservation area. The Statement of Heritage Impact prepared by Graham Hall and Partners. The SOHI concludes that the proposal will have a small positive impact on the heritage significance of the Chippendale Conservation Area and the setting of the houses at 21-27 Shepherd Street. It will greatly enhance the streetscape of Knox Street, and will ensure the long-term conservation of the contributory building on Shepherd Lane.

- f. *Objective (c): To promote the sharing of views*
 - g. The proposed development will not impact on any scenic or iconic views.
 - h. *Objective (d): To ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas*
 - i. The proposed variation does not result in any adverse impacts on the surrounding heritage items.
 - j. *Objective (e): In respect of Green Square:*
 - (i) To ensure the built form contributes to the physical definition of the street network and public spaces*
 - (ii) To ensure the amenity of the public domain by restricting taller buildings to only part of a site*
 - k. This objective is irrelevant to the subject proposal as it is not located within Green Square.
- (ii) The statement has referred to the second of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary. A summary of the applicant's assessment against the objectives of the control are provided below:
- a. The underlying objectives and purpose of the height control are relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that the proposed heights are compatible with the existing scale of development within the visual catchment of the site and will sit comfortably with the context of the site with no significant adverse impacts to adjacent properties.
- (iii) The statement has referred to the third of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable. A summary of the applicant's assessment against the objectives of the control are provided below:

- a. The underlying objective of the height control is to achieve an appropriate height on the site which is compatible with the context of the site, provides an appropriate height transition between new developments and heritage items and maintains scenic or iconic views. Due to the design, location and configuration of the proposed building envelope, the proposal successfully achieves these objectives. Strict compliance with the height control would not deliver any notable improvement to the streetscape of Knox Street. Strict compliance would require an amended internal layout to provide the same GFA within a similar envelope without lift access to level 5. This modification is likely to compromise the internal amenity of the development for occupants without any notable improvement to the streetscape or the amenity of the adjoining properties. Accordingly, it is considered that strict compliance would likely result in the defeat of the underlying object and purpose of the height control because it would encourage a less desirable outcome for the site.
- (iv) The statement has referred to the fourth of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable and unnecessary. A summary of the applicant's assessment against the objectives of the control are provided below:
- a. Council has historically adopted a relatively flexible approach to the implementation of the height control in circumstances where the objectives of the control are achieved, particularly where the variation is minor.
- (v) The statement has referred to the fifth of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard. A summary of the applicant's assessment against the objectives of the control are provided below:
- a. Strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case in that:
 - b. The height of the development is consistent with the height of the adjoining development at 5 Knox Street. The ridge of the building at 5 Knox Street has an RL of 29.86 and a wall height along the western boundary of the site of approximately RL29.30. The roof of the proposed development is at RL29 and the lift over run goes to RL30.10.
 - c. The street wall of the development does not exceed 15 metres in height and the element of the development which do exceed 15 metres is unlikely to be visible from the public domain because it is setback 7 metres from the northern boundary and is located on the western side of the building.

- d. Shadow diagrams prepared by Environa Studio demonstrate that the proposed non-compliance does not result in any excessive or unreasonable shadow impacts on the adjoining development.
 - e. The proposed variation does not result in any adverse impacts on the surrounding heritage items.
 - f. There are no unreasonable impacts in terms of overshadowing, views, visual and acoustic privacy impacts to adjacent sites resulting from the proposed variation to the height development standard which would warrant strict compliance.
 - g. Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposed built form and distribution of the massing of the building is the result of a considered analysis of the site and surrounding context and the desire to deliver a positive urban design outcome with a high level of architectural merit and residential amenity.
 - (ii) The scale of the proposal does not result in any unreasonable impacts on the surrounding properties in terms of solar access, loss of privacy or visual impact. The solar access analysis demonstrates that the proposed scale of the development will not unreasonably overshadow development on surrounding properties.
 - (iii) The scale of the building will not be perceived as jarring or antipathetic in the existing urban design context of the site and represents a scale which is unreasonable contemplated by the planning controls which apply to the site, particularly given the minor nature of the non-compliance.
 - (iv) Strict compliance with the standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public and in this particular circumstance there are sufficient environmental planning grounds to warrant the proposed variation to the current height control as the proposal will achieve a superior outcome with a higher level of residential amenity within the site and without any significant adverse impact to adjacent sites.
59. Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)
60. 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.
61. Does the written request adequately address those issues at Clause 4.6(3)(a)?
62. The applicant's written request has addressed all five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to adequately demonstrate that compliance with the development standard is unreasonable and unnecessary. It is considered that the justifications provided in the first test that the objectives of the standard are achieved notwithstanding non-compliance with the standard, are the most adequate.
63. The area of non-compliance is confined to the lift overrun, which is located on the western side of the building and will not be visible from the public domain. The lift overrun will not impact on the amenity of the neighbouring properties and will have no adverse impacts on the neighbouring heritage items. The proposal will not impact on views to and from the site.
64. The form and facades of the contributory building at the rear of the site will be partially retained to ensure the scale and character of the streetscape is maintained.
65. The height, bulk and scale of the proposal provides for an appropriate height transition between the four storey residential flat building to the west and two to three storey heritage-listed terrace buildings to the east and south.
66. Does the written request adequately address those issues at Clause 4.6(3)(b)?
67. The proposal, as amended, provides an appropriate height transition between the four storey residential flat building to the west and the two to three storey terrace buildings to the east and south. The design and scale of the built form is appropriate for the site and its context and effectively integrates with the streetscape and character of the area.
68. The development will not impact on the amenity of surrounding development or the public domain, in terms of solar access, visual privacy and acoustic privacy.
69. Accordingly, it is considered that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention of the standard.
70. Is the development in the public interest?
71. The objectives of the height development standard include:
- (a) To ensure the height of the development is appropriate to the condition of the site and its context.
 - (b) To ensure appropriate height transitions between new development and heritage items.
 - (c) To promote the sharing of views.

72. The design and form of the new addition is appropriate to the site and its context and provides an appropriate transition between the four storey residential flat building to the west and the two-three storey buildings to the south and east. The area of non-compliance is confined to the lift overrun, which is located 7m from the front of the building, on its western side, ensuring it is not visible from the public domain or the neighbouring properties. The proposal will not obstruct views from or to highly utilised areas of the public domain.
73. The objectives of the B4 Mixed Use zone include:
- (a) To provide a mixture of compatible land uses.
 - (b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - (c) To ensure uses support the viability of centres.
74. The application proposes new affordable housing within a highly accessible area nearby to public transport, services, and employment, education and leisure facilities. The proposal will likely accommodate workers and students who will work and study in the local area. The Chippendale area is characterised by a diversity of housing options, including comparable boarding house developments.
75. The proposal is in the public interest because it is consistent with both the objectives of the height development standard and the objectives of the B4 Mixed Use zone.
76. Conclusion
77. For the reasons provided above the requested variation to the height 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 LEP 2012 and the proposed development would be in the public interest because it is consistent with the objectives of the height development standard and the B4 Mixed Use zone.

Bulk and Scale

78. As discussed above, the site is subject to a 15m height control in the LEP and a four storey height in storeys control in the DCP. The original proposal at five storeys in height was considered to result in an excessive and unsympathetic bulk and height that overwhelmed the two storey scale of development on the south side of Shepherd Lane and resulted in unacceptable overshadowing to the neighbouring properties.
79. In response to these concerns, the applicant submitted amended plans detailing the deletion of the fifth storey, increasing the rear setback of the upper two levels to 2.4m, deleting the bulky pergola structure, and retaining the manager's office at the fifth floor level but incorporating it in an attic-like mansard form. The exceedance of the 15m height control it is limited only to the lift overrun, which is required for accessibility purposes to the roof level communal open space, and is considered acceptable in the context of the proposed development. See further discussion under Clause 4.6.
80. The amended proposal provides an appropriate height transition between the four storey residential flat building to the west and the two to three storey terraces to the east and south. The increased upper level setbacks at the rear and addition of an open courtyard to the east minimise visual bulk. The bulk and scale of the proposal is consistent with the neighbouring properties.

81. The amended plans were accompanied by updated shadow diagrams, which demonstrate compliance with the minimum requirements for solar access outlined in the DCP. See further discussion below.

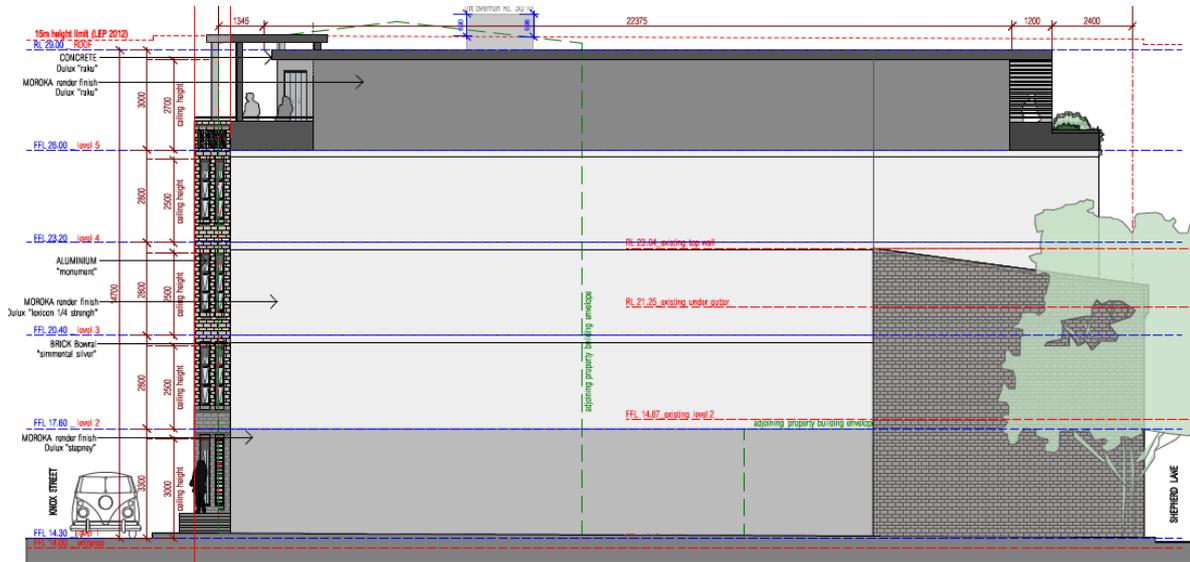


Figure 20: West elevation as originally proposed

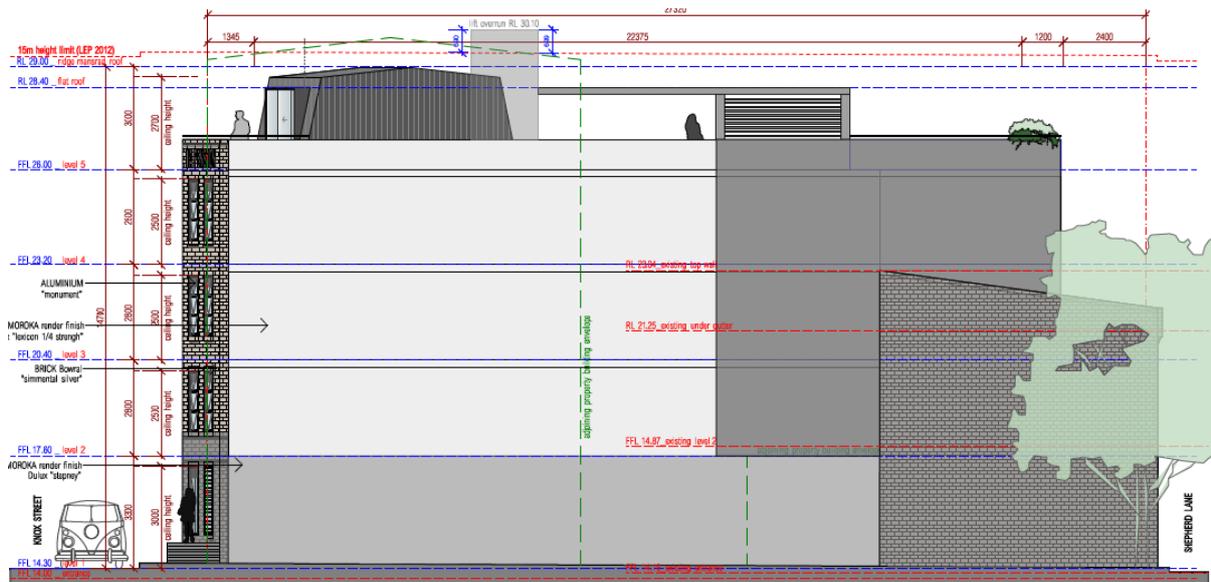


Figure 21: West elevation as amended

Heritage

82. The site is not a heritage item, but is identified as a contributory building within the Chippendale Conservation Area (C9).
83. The application was referred to the City's Heritage Specialist who identified the building fronting Shepherd Lane as the contributory element of the site. The building fronting Knox Street presents to the streetscape as a blank elevation and is not considered to contain significant heritage value.

84. The original proposal included the demolition of the front building fronting Knox Street and facade retention of the rear building fronting Shepherd Lane. The proposal included three new storeys above the rear building with a 1.2m setback. The scale of the development was considered excessive and overwhelmed the integrity of the rear building. Section 3.9.7 of the DCP requires contributory buildings to be retained and only support alterations and additions if they do not significantly alter the appearance of principal and significant facades.
85. In response to the concerns raised by City staff, the applicant amended the design to delete the fifth storey and increase the rear setback of the upper two levels to 2.4m. The upper levels sit behind the parapet on the eastern side of the rear building.
86. The amended proposal includes the demolition of the northern wall, first floor and part of the roof of the rear building. This demolition allows for the floor levels to remain consistent throughout the development, which provides functionality and accessibility. The City's Urban Design and Heritage Manager is supportive of the changes to the rear building as it allows the form of the original building to be discerned from Shepherd Lane. A condition of consent is recommended for the existing roof on the southern side of the rear building to be retained or reconstructed to match the existing. A condition of consent is also recommended for the removed timber floor, joists and roof trusses to be used as heritage features.
87. The reduction in bulk at the rear of the building provides an appropriate height transition between the site and the two storey scale of development to the south and east of the site. As illustrated in Figure 22, the buildings to the south and east are identified as heritage items (items I200, I205, I206, I207) in Schedule 5 of the Sydney LEP 2012. The amended design provides a more sympathetic response to the surrounding heritage items.

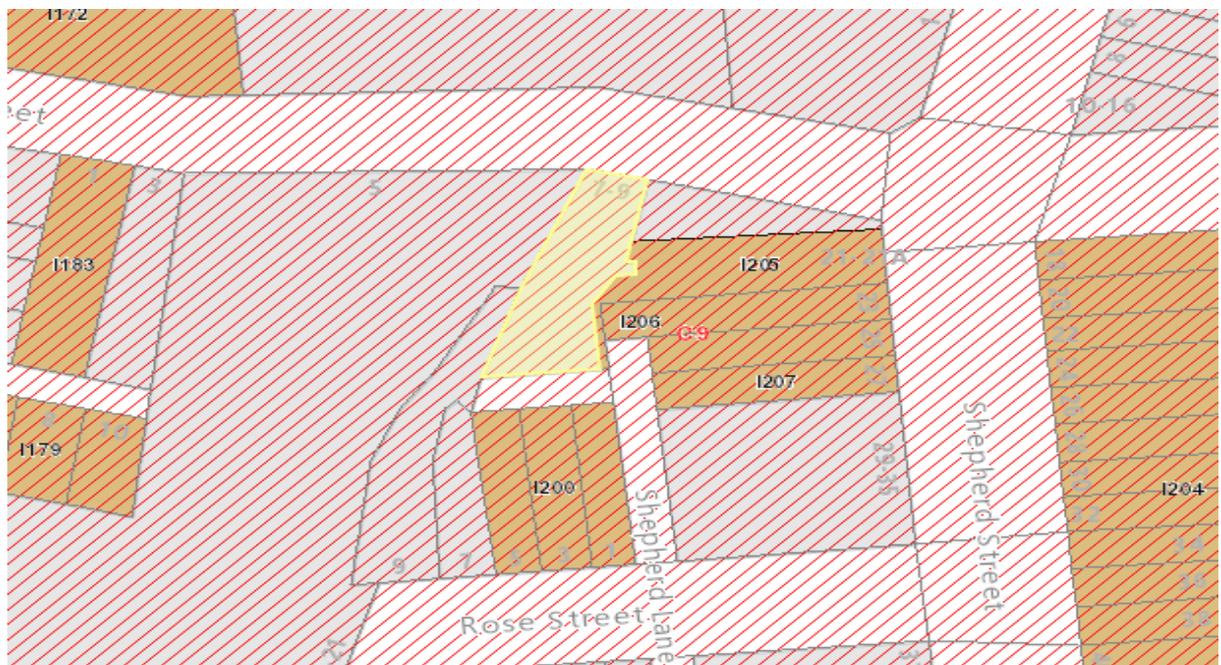


Figure 22: Extract from the Sydney LEP 2012 heritage map showing the relationship between the site and the neighbouring heritage items.

Overshadowing

88. Section 4.2.3 of the DCP requires new development to not create any additional overshadowing onto a neighbouring dwelling where that dwelling currently receives less than two hours direct sunlight in mid-winter to habitable rooms or private open space.
89. As discussed above, the design has been amended to reduce the overall bulk and scale of the development by removing the fifth storey and increasing setbacks at the upper levels from 1.2m to 2.4m. These amendments have reduced the extent of overshadowing to the neighbouring properties to the south and east.
90. The shadow diagrams submitted with the amended application show that the private open space and ground floor windows of 1-9 Rose Street are in shadow throughout the day between 9.00am and 3.00pm on 21 June. Direct solar access is provided throughout the morning on 22 September.
91. The shadow diagrams show additional overshadowing to the first floors and roofs of each of the five properties between 1 and 9 Rose Street on 21 June.
92. Additional overshadowing will result to the first floor rear window of 1 Rose Street between 1.00pm and 3.00pm, but solar access will be maintained between 9.00am and 12.00 noon.
93. Additional overshadowing will result to the first floor rear window of 3 Rose Street overshadowed between 11.00am and 1.00pm, but solar access will be maintained between 9.00am and 11.00am and at 2.00pm.
94. Additional overshadowing will result to the first floor rear window of 5 Rose Street between 10.00am and 11.00am, but solar access will be maintained at 9.00am and between 12.00 noon and 1.00pm.
95. Additional overshadowing will result to 7 Rose Street between 9.00am and 10.00am, but solar access will be maintained between 11.00am and 1.00pm.
96. Additional overshadowing will result to parts of 9 Rose Street at 9.00am and 10.00am, but will not impact on habitable room windows or private open space. Given the existing building overshadows 9 Rose Street throughout the day, the additional impacts will be negligible.
97. The shadow diagrams show additional overshadowing to the rear of 21-22A, 23 and 25 Shepherd Street at 3.00pm, however, solar access is maintained between 9.00am and 12.00 noon. The shadow diagrams show the west-facing windows of the site at 21-22A Shepherd Street are overshadowed throughout the day.
98. The amended proposal has adequately demonstrated compliance with DCP provisions. The proposal is acceptable in regard to solar access.

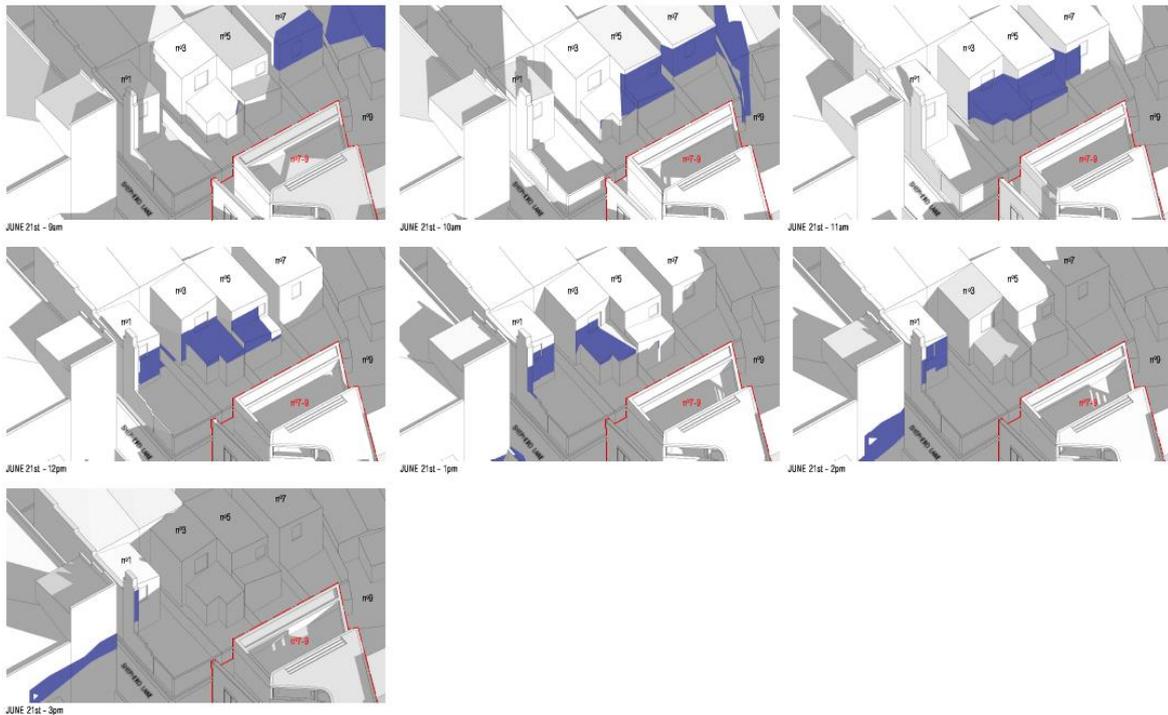


Figure 23: Shadow diagrams submitted with the application showing the extent of additional overshadowing on the terrace row to the south

Solar Access

99. Section 4.4.1.4 of the DCP requires indoor communal areas to receive a minimum two hours of direct sunlight in midwinter and outdoor communal areas to receive a minimum two hours of direct sunlight to 50% of its area in midwinter. Each area fails to receive the minimum required sunlight due to the four storey residential flat building to the west and the Telstra Exchange building to the north.
100. Figure 24 shows the solar access achieved to the communal open space on the roof. It shows that direct sunlight is achieved throughout the day, but for less than 50% of its area (except in the morning). Figure 25 shows that no direct sunlight is provided to the communal living room or the outdoor communal courtyard at ground level. The non-compliances are considered acceptable in this instance given the site constraints and the communal areas being in the most appropriate locations.
101. The original proposal relied upon the site's existing central courtyard for the provision of communal open space at the ground floor. Concern was raised with the applicant that the communal open space did not meet solar access requirements, and in response, the primary communal open space was relocated to the roof. This is considered an improved design and amenity outcome.

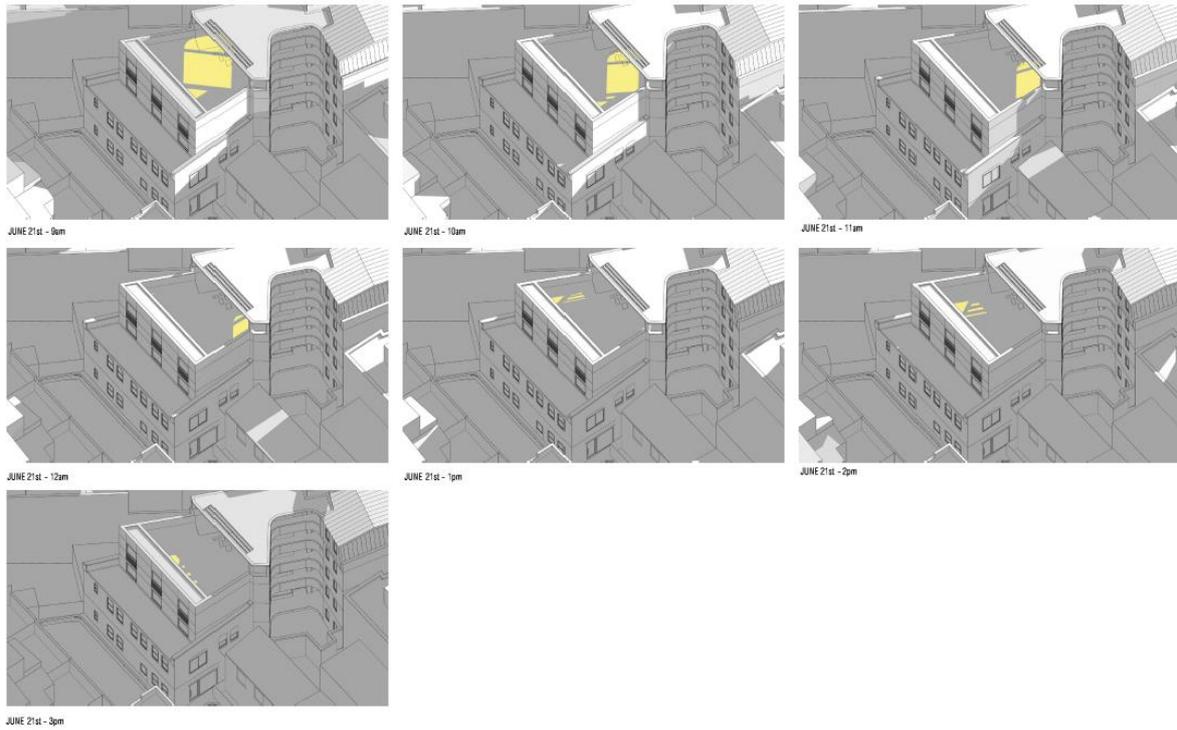


Figure 24: Sun diagrams illustrating solar access to communal open space

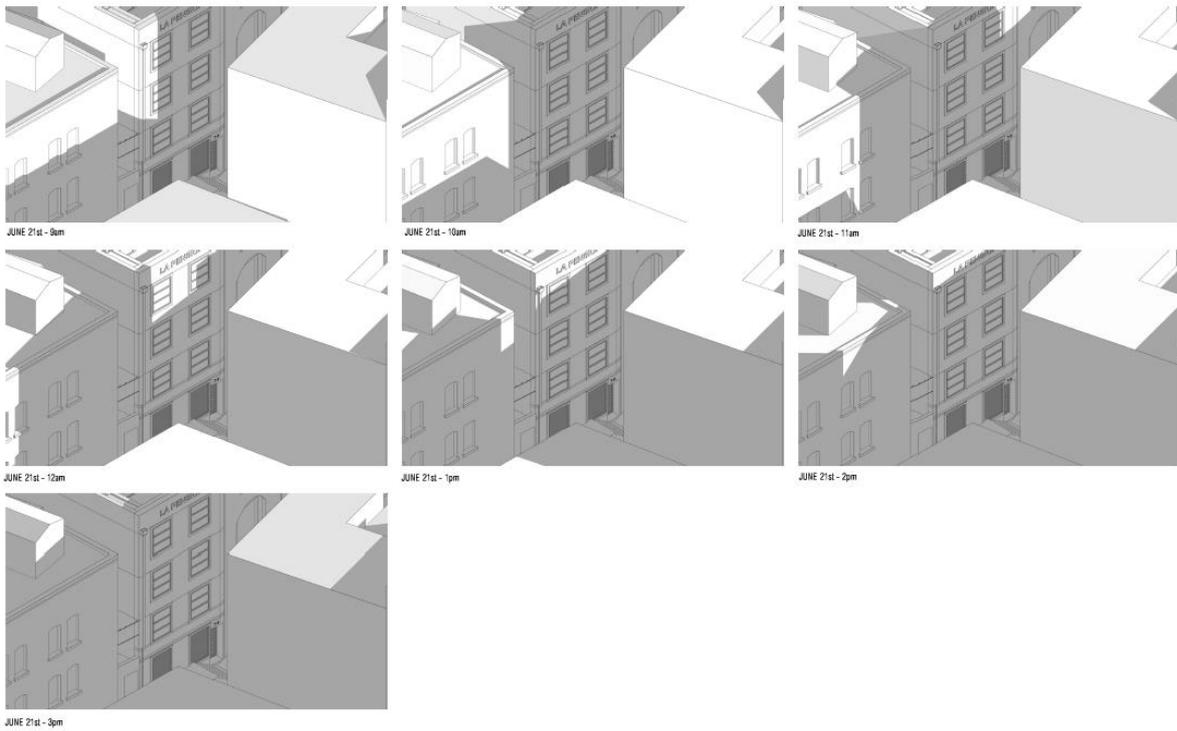


Figure 25: Sun diagrams illustrating solar access to communal living room

Internal Amenity

102. The proposal includes a 20sqm communal living room on the ground floor. Although it meets the minimum requirements of Clause 30 of the ARH SEPP, poor internal amenity is provided as the room acts as a thoroughfare for residents entering the premises from Knox Street. It is also noted that a small kitchenette is provided in the corner of the room, which does not meet the minimum 6.5sqm requirement of Section 4.4.1.3 of the DCP.
103. It is also considered that poor internal amenity is provided to the front ground floor boarding room adjacent to the communal living room. The room relies on a window that sits above the raised landing, which may result in privacy impacts arising from direct sightlines from the public domain. The addition of the louvres to ameliorate privacy impacts would block ambient light from entering the room.
104. In response to the above concerns, a condition of consent is recommended for the deletion of the front ground floor boarding room and the extension of the communal living room and kitchen into it. The additional space must also allow for an unencumbered, dedicated entry, bulky items storage and bicycle parking spaces.
105. As discussed earlier in the report, each of the boarding room meets the minimum size requirements and provides adequate facilities such as bathrooms and kitchens. No boarding rooms are provided with private open space, which is contrary to the minimum 30% of boarding rooms recommended by Clause 4.4.1.4 of the DCP. Variation to this control is acceptable as the provision of balconies would result in a poor heritage and amenity outcome and sufficient communal open space is provided within the site.
106. The proposal, as conditioned, provides acceptable internal and external amenity.

Privacy

107. As discussed above, in response to issues raised regarding solar access to the ground floor communal open space, the applicant has amended the design to include communal open space on the roof. To maintain privacy to the neighbouring properties to the south, the applicant has included a planter on the southern side of the communal open space, which is considered appropriate. The trafficable edge of the communal open space at the rooftop is approximately 12m from the rear of the terrace row to the south. To allow for privacy to be maintained to the neighbouring properties to the east, the applicant will be required to extend the planter along the eastern side as a condition of consent. The roof terrace will not provide any direct sightlines to habitable room windows or private open space to the residential flat building to the west.
108. The internal stair and walkways directly overlook the private open space and rear windows of the neighbouring residential properties at 21, 21A and 23 Shepherd Street. In order to protect the privacy of these properties, additional privacy measures will need to be added in the form of fixed vertical, angled blades to the east facing section of the balustrade as a condition of consent.
109. The upper level windows at the rear of the site directly overlook the private open space and rear windows of the neighbouring properties at 1-9 Rose Street. In order to protect the privacy of these properties, the windows will be required to have a minimum sill height of 1.4m as a condition of consent.

110. The Plan of Management submitted with the amended application states that the use of the communal open space will be restricted to between 7.00am and 10.00pm Monday to Sunday. The application was referred to the City's Environmental Health Unit, who raised no objection, and recommended conditions relating to noise mitigation. The manager's room is located at the same level as the communal open space, which will allow resident behaviour to be monitored.

Tree Removal

111. The proposal includes the removal of the Lemon Scented Gum tree and five small palm trees from the existing courtyard. The application was referred to the City's Tree Management Officer, who does not support the removal of the trees and recommended that the trees be retained, protected and incorporated into the development.

112. In response to the above concerns, the applicant provided an approved tree permit application from August 2012 (2012/241899) which was purportedly for the removal of the Gum tree citing inappropriate location as the reason for its removal. It is not clear if the tree that was approved to be removed is the Gum tree in question as there have reportedly been similar trees on the site previously.

113. Notwithstanding the Tree Management Officer's concerns, a tree replacement condition is recommended in the event of an approval. As a result, the applicant will be required to provide a minimum of 15% canopy coverage, to be provided by a tree species that will reach a minimum of 10m in height upon maturity. The removal of the small palm trees will also be permitted as they are located within the development footprint.

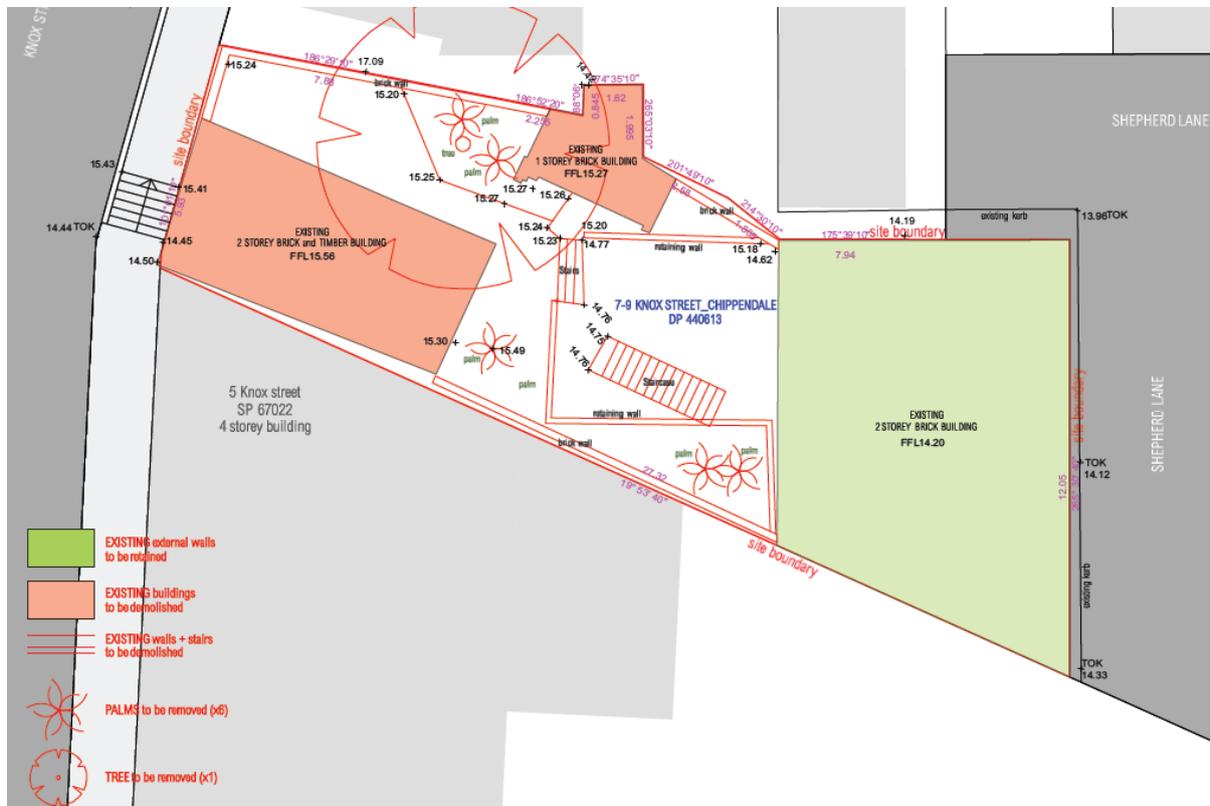


Figure 26: The proposed demolition plan showing the location of the trees to be removed

Landscaping

114. Section 4.2.3.6 of the DCP requires at least 10% of the site area to be deep soil area. The proposal includes 23.6sqm of deep soil area at the ground floor, which equates to 10.76% of the site area.
115. As discussed earlier in the report, the design has been amended to provide a primary area of communal open space on the roof of the building. The communal open space has incorporated planters on the roof to provide green space and to protect privacy. Other planters were located adjacent to the stair at each level and on the manager's balcony.
116. The application was discussed with the City's Landscape Assessment Officer, who recommended minor design modifications and additional information to be provided prior to the issue of a Construction Certificate. The applicant will be required to relocate the bike racks from the landscaped area, provide fixed amenities on the roof level communal open space, and provide details on plant species, soil depths, maintenance and drainage.

Access

117. The main entry to the proposed boarding house is provided from Shepherd Lane. The original proposal included a secondary entry from Knox Street from the existing raised landing. Concern was raised with the applicant that the location of the entries may have implications for disabled access, emergency access, wayfinding, BCA compliance and CPTED. The potential for increased pedestrian activity in Shepherd Lane was a point of contention in various neighbour submissions.
118. In response, the applicant amended the design to provide a new secondary entry from Knox Street with an at-grade connection to the street at the bottom of the stairs. It is considered that the Knox Street entry will likely be used more frequently given it is closer to Broadway and City Road than the Shepherd Lane entry. A condition of consent is recommended for the rear door to not open the property boundary.
119. Concern was raised that poor internal amenity is provided within the communal living room as it acts as a thoroughfare for residents entering the premises from Knox Street. In response, the applicant will be required to delete the front ground floor boarding room and extend the communal living room into it as a condition of consent. Unencumbered pedestrian access and more space for kitchen facilities, bicycle parking and bulky items storage will also be required.
120. The amended plans with the secondary entry point have shown the removal of part of the bottom step on the Knox Street entry. As insufficient detail has been provided and landowner's consent from Council has not been provided, this aspect of the proposal is not approved.

Waste

121. The original proposal was referred to the City's Waste Management Unit, who raised concern that insufficient space has been allocated to waste, recycling and bulky item storage, the waste room could result in odour impacts to the boarding rooms, and to seek clarification on waste collection arrangements.

122. In response, the applicant reconfigured the waste storage room to provide 9sqm, but did not make allowances for bulky items storage. This is not acceptable and the applicant will be required to provide bulky items storage in the area vacated by the front ground floor boarding room as a condition of consent. The reconfiguration of the boarding rooms adjacent to the waste storage room is considered appropriate to mitigate issues with odours.
123. Concern was raised that waste collection vehicles could have difficulty accessing Shepherd Lane for waste collection and there are no practicable locations in the lane for kerbside collection. The Waste Management Unit recommended a condition of consent requiring all waste and recycling and bulky waste to be stored inside the premises at all times and must not be placed on the kerbside for collection. Further, the applicant will be required to ensure there is a contract with a licensed contractor for the removal of all waste. It is noted that licensed contractors include fleets of small trucks that operate walk-in, walk-out waste collection services.

Other Impacts of the Development

124. The proposed development is capable of complying with the BCA.
125. 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

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

Internal Referrals

127. The conditions of other sections of Council have been included in the proposed conditions.

The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Safe City; Surveyors; Transport and Access; Tree Management; Waste Management; Landscaping; who advised that the proposal is acceptable subject to the recommended conditions.

External Referrals

128. The application was referred to NSW Police, who raised no objection to the proposal subject to conditions relating to surveillance, lighting, barriers, space activity management, territorial enforcement and access. These requirements are included as conditions of consent.

Notification, Advertising and Delegation

129. In accordance with Schedule 1 the Sydney DCP 2012, the proposed development is required to be notified. As such the application was notified for a period of 21 days between 9 July 2018 and 31 July 2018. As a result of this notification there were 23 submissions received, including one submission of support and 22 submissions of objection.

130. The amended application was notified between 27 February 2019 and 21 March 2019. As a result of this notification there were 11 submissions received from nine original submitters and two new submitters.

131. The issues raised in the submissions from each notification are summarised below.

- (a) The new entry from Shepherd Lane will increase vehicle and pedestrian activity, has poor wayfinding and does not consider safety and security.

Response - The amended design provides for a new at-grade secondary entry from Knox Street. In practice, this entry may be used more frequently as it is located closer to Broadway and City Road than the rear entry. It is noted that the existing buildings include entry from both frontage.

- (b) Concerns rear lane could not accommodate waste collection vehicles or construction vehicles.

Response - The application was referred to the City's Waste Management Unit, who will require the bins to be stored inside the premises at all times and operate as a walk-in walk-out service for waste collection with a licensed contractor. Smaller waste collection vehicles will be able to service the lane. The applicant will be required to submit a Construction Traffic and Pedestrian Management Plan to Council for approval prior to the issue of a Construction Certificate.

- (c) The proposal does not comply with the height and FSR standards in the LEP or the height in storeys control in the DCP, represents an overdevelopment of the site, provides a minimal setback to each boundary, and will have an overbearing impact.

Response - The proposal has been amended to reduce the height, bulk and scale. The amended proposal generally complies with the LEP height standard (excepting the lift overrun), the LEP FSR standard and the DCP height in storeys control (excepting the attic-like mansard addition). The rear setback to the upper levels has been increased from 1.2m to 2.4m to provide a better height transition to the two storey terrace row at the rear. The amended proposal is considered to be of an acceptable bulk and scale.

- (d) The proposal is unsympathetic to the contributory building on the site, the nearby heritage items, the wider heritage conservation area, and is not compatible with the character of the local area.

Response - The proposal, as amended, provides an appropriate height transition between the four storey residential flat building to the west and the two to three storey heritage terraces to the south and east. The design, form and materiality of the building is sympathetic to the heritage conservation area. The City's Urban Design and Heritage Manager and Heritage Specialist are supportive of the proposal.

- (e) The proposal will increase the density of the area and put a strain on resources.

Response - The site is located within Category A on the Land Use and Transport Integration Map, which is identified as the highest category in the LEP in terms of access to transport and services. The use is considered appropriate for Chippendale given there are comparable developments nearby and will service the local worker and student population. The proposal complies with the FSR control, which indicates the site can support the density proposed. The development is subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2012 which will go towards the cost of public amenities.

- (f) The proposal will result in overshadowing to the neighbouring properties.

Response - The proposal has been amended to reduce the extent of overshadowing. The shadow diagrams submitted with the amended application demonstrate compliance with the DCP solar access controls.

- (g) The proposal will have an unacceptable visual and acoustic privacy impact from open walkways, communal roof terrace and bedroom windows.

Response - Conditions of consent have been included in the recommendation to address privacy, including the requirement to install privacy screens to the hallways at each level, extend the planter along the eastern side of the roof terrace, and provide a minimum sill height of 1.4m onto the rear upper level windows. The use of the communal roof terrace will be restricted to 7.00am to 10.00pm Monday to Sunday to ensure there are no unreasonable adverse impacts to the neighbouring properties.

- (h) The proposal results in tree removal.

Response - As discussed above, the tree removal is supported in this instance. The applicant will be required to provide for tree replacement as a condition of consent.

- (i) Objection to works on the shared boundary with 9 Rose Street.

Response - Only works within the site boundaries are approved. A condition of consent is recommended to this effect.

- (j) A right of carriageway exists at 21-21A Shepherd Street.

Response - The plans indicate the right of carriageway will be maintained. A condition of consent is recommended for the rear door to not open past the property boundary.

- (k) Request for projecting screen on upper level to prevent people climbing from the manager's room into the upper level apartment to the west.

Response - This is unlikely to be an issue. A projecting screen is not proposed to be required.

- (l) The lack of car, motorbike and bike parking on the site will increase demand for on-street parking.

Response - The site is located within Category A on the Land Use and Transport Integration Map, which is identified as the highest category in the LEP in terms of access to transport and services. Notwithstanding the non-compliance with the motorbike standard, the proposal is consistent with the objectives of the City's transport controls.

- (m) Concerns relating to the nature of the use e.g. providing low cost accommodation in the area will reduce real estate values, overstock of affordable housing in the area, transient residents and anti-social behaviour, scepticism that the units will be offered to the market as affordable housing, developer not being a registered affordable housing provider, etc.

Response - Property values are not a planning consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The provision of new affordable housing and a variety of housing types is considered a positive for the City. The provision of affordable housing in Chippendale is appropriate given its close proximity to several tertiary institutions. The tenants will be required to stay for a minimum of three months. Under the ARH SEPP the developer is not required to be an affordable housing provider.

- (n) Inadequacies with the application including inaccurate Heritage Impact Statement and Plan of Management and lack of Contamination Report and Acoustic Report.

Response - The information provided is considered sufficient in undertaking an accurate assessment. It is at Council's discretion whether specialist reports are required to be provided. The City's Environmental Health Unit have reviewed the proposal and consider it acceptable in regards to contamination and noise, subject to the recommended conditions of consent.

- (o) Failure to meet standards of the ARH SEPP, including building height, landscaped area, solar access and parking.

Response - An assessment against the objectives of the SEPP has been undertaken in this report and assessed as acceptable.

- (p) Objection to Knox Street Bar due to drunken patrons.

Response - Knox Street Bar is located at 21 Shepherd Street. The subject application proposes a new boarding house at 7-9 Knox Street, which is an adjacent site and not associated with the bar.

- (q) Concerns raised that the boarding house is poorly designed with poor solar access and poor internal and external amenity. The amended proposal increased all rooms from single to double which will increase the resident population.

Response - The site is considered capable of accommodating the proposed resident population. The amended design is appropriate to the site and its context and will not have unreasonable impacts on the neighbouring properties. Adequate facilities are provided for residents.

- (r) Development is inconsistent with the 2015 and 2018 Wellbeing Survey in terms of oversupply of boarding houses and lack of permanent residents.

Response - The application has been assessed against the relevant objectives and provisions of the ARH SEPP 2009, Sydney LEP 2012 and Sydney DCP 2012 in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979, and found to be acceptable.

- (s) The site is currently being used as an unauthorised boarding house and the residents are poorly managed.

Response - Council's records indicate that the Compliance Unit have investigated the use of the unauthorised use of the site as a boarding house. At the date of this report, no evidence of the use of the site as short-term accommodation has been found. The approval of this application will allow the site to be monitored as a boarding house with the applicant required to adhere to the Plan of Management and conditions of consent.

- (t) The development does not comply with the BCA.

Response - Conditions of consent are recommended for all aspects of the development to comply with the BCA. A condition of consent is recommended for the front door to Shepherd Lane to not extend over the property boundary.

- (u) Clothes line not provided as per DCP requirements.

Response - A condition of consent is recommended for an external clothes drying area to be provided.

- (v) Request to remove the front steps as part of the development.

Response - The front steps date back to c.1930 and their removal is not considered appropriate.

- (w) Impact on sewerage.

Response - These are issues for the construction stage. It is noted the extent of excavation is minimal.

- (x) Model was unable to be viewed online.

Response - The 3D model and photomontages were included in the set of architectural plans on each notification.

Public Interest

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

S7.11 Contribution

133. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. Credits have been applied for two one-bedroom dwellings.

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

(a) Open Space	\$108,063.49
(b) Community Facilities	\$21,518.70
(c) Traffic and Transport	\$27,443.11
(d) Stormwater Drainage	\$10,851.92
Total	\$167,877.23

Relevant Legislation

135. Environmental Planning and Assessment Act 1979.

Conclusion

136. The application, as amended, proposes the retention of the facades of the existing buildings on the site, tree removal and construction of a five storey boarding house (with attic-like mansard addition) containing 17 boarding rooms.

137. During the assessment of the application, the design has been amended to delete the fifth storey, delete the front pergola, increase upper level setbacks, include an attic-like mansard addition for the manager's unit and provide communal open space at the upper level. These amendments have resulted in increased internal amenity for occupants, reduced the impacts on neighbourhood amenity, and improved the streetscape.

138. The amenity of the boarding rooms and communal areas is acceptable with regard to the site constraints.

139. The provision of affordable housing is a positive contribution to the City and subject to design modifications and conditions of consent will not adversely impact the character and amenity of the neighbouring properties.

140. The development is therefore in the public interest and recommended for approval, subject to design modification conditions requiring internal changes, installation of privacy treatments, and re-use of original timber elements.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Zeb McInnes, Planner