

Item 7.**Development Application: 27 Queen Street, Chippendale****File No.:** D/2018/863**Summary****Date of Submission:** 27 July 2018**Applicant:** The Architecture Company Pty Ltd.**Architect:** John Hepworth**Owner:** Raymond Touma and Paul Touma**Cost of Works:** \$605,000**Zoning:** B4 Mixes Use Zone

Proposal Summary: The proposal involves the construction of two additional apartments at the roof level of an existing three storey residential apartment building. Other works involve the construction of pergolas at the roof level, facade upgrades, new security entry gates and the provision of additional basement level bicycle and apartment storage areas.

The application is required to be referred to the Local Planning Panel for determination, because it results in a four storey residential apartment building to which SEPP 65 applies and because it exceeds the height of buildings development standard by more than 10%.

The Sydney LEP 2012 allows for a maximum building height of 12m and a maximum FSR of 1.75:1. The Sydney DCP 2012 specifies a height in storeys control of three storeys.

The proposed development results in a maximum building height of 13.84m and as such, exceeds the 12m height control by 1.84m (15.3%). The proposal has a height of four storeys and therefore also exceeds the three storey SDCP2012 control. The proposal has an FSR of 1.75:1 which is compliant with the SLEP2012 control.

**Proposal Summary
(continued):**

A request to vary the height of buildings development standard has been made pursuant to Clause 4.6 of the Sydney LEP 2012. The request to vary the standards is not supported in this instance for the reasons outlined in this report.

The original proposal was considered by the Design Advisory Panel Residential Subcommittee. The Subcommittee recommended changes to the scheme, including the redistribution of bulk away from the western boundary and a flat roof form in order to be less visually intrusive. Communal open space at the roof level was also recommended to be retained, noting the original proposal included the removal of all communal open space.

The applicant responded to the above recommendations by changing the roof form, reducing the number of additional apartments from three to two apartments and retaining 64sqm of existing communal open space at the roof level. Despite these changes, the proposal is not considered to exhibit design excellence and is not supported.

The proposal results in an unacceptable non-compliance with the Apartment Design Guide controls in relation to communal open space and building separation.

Further, the proposal does not comply with the Sydney LEP 2012 height control and Sydney DCP 2012 height in storeys control. The development does not provide an appropriate transition between heritage items and is not in keeping with the character of the conservation area.

The application was notified in accordance with Council's notification policy. No submissions were received. No submissions were received following the re-notification of amended drawings.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979 and Regulation 2000;
- (ii) State Environmental Planning Policy (Infrastructure) 2007;
- (iii) State Environmental Planning Policy (BASIX) 2004;
- (iv) State Environmental Planning Policy No. 65 – Design Quality of Residential Development ('SEPP65');
- (v) Sydney Local Environmental Plan 2012 ('SLEP2012');

- (vi) Sydney Development Control Plan 2012 ('SDCP2012'); and
- (vii) City of Sydney Development Contributions Plan 2015.

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request

Recommendation

It is resolved that consent be refused for Development Application No. D/2018/863 for the following reasons:

- (A) The variation sought to the height of buildings development standard prescribed under Clause 4.3 of the Sydney LEP 2012 is inconsistent with the provisions of Clause 4.6 and is not considered to be in the public interest.
- (B) The proposal fails to comply with the provisions of the Apartment Design Guide in relation to communal open space, resulting a development that provides poor amenity for the occupants of the building.
- (C) The proposal fails to comply with the provisions of the Apartment Design Guide in relation to building separation, resulting in a development that affects the development potential of the site to the south.
- (D) The proposal results in an unsympathetic addition to a heritage item within the Chippendale Heritage Conservation Area. The proposal is therefore contrary to the provisions of Clause 5.10 of the Sydney LEP 2012 and Section 3.9 of the Sydney DCP 2012.
- (E) Having considered the matters in 6.21(4), the building fails to meet the minimum standards required to demonstrate design excellence. In particular, the proposal fails to provide a high standard of architectural design, and the development is poorly resolved in relation to heritage and streetscape issues, building massing and modulation and communal open space.
- (F) The proposal is not in keeping with the desired future character of the area and is not considered to be in the public interest.

Background

The Site and Surrounding Development

1. The site is located at the intersection of Queen and Regent Streets, Chippendale. The site is legally described as Lot 1 in DP 1102805 and has a street address of 27 Queen Street, Chippendale. The site is rectangular, with area of approximately 786.7sqm.
2. The site contains one mixed use building that has two distinct building forms. The building forms share a common basement and circulation spaces. The building is viewed from Queen and Regent Streets as follows:
 - (a) as viewed from Queen Street, the building presents as a three storey 1990s era residential apartment building containing nine residential apartments (Figures 3 and 4 below); and
 - (b) as viewed from Regent Street, the building presents as a Victorian terrace row containing four commercial tenancies at ground level with 4 x two storey apartments located above (Figures 5 and 6 below). The apartments behind the terrace row were constructed in the 1990s.
3. The shared basement level is partially below ground, and provides vehicular access from Queen Street. There is a communal open space located at the roof level of the building that is separated into two distinct areas by a low dividing wall.
4. Surrounding land uses are residential and commercial in character. Immediately to the west of the site facing Queen Street are located 6 x two storey terrace dwellings. Located opposite the site on Queen Street are two-three storey warehouse buildings.
5. Located at the southern boundary of the south are one-four storey commercial buildings that have frontages to Regent and Chippen Streets. Immediately to the southern boundary at 107-109 Regent Street is located a single storey commercial warehouse building that has been used for manufacturing. 107-109 Regent Street also contains a four storey building that is setback from Regent Street frontage. To the south-west of the site at 12-16 Chippen Street is located a three storey warehouse building that contains a food and drink premises (restaurant).
6. To the east of the site, on the opposite side of Regent Street, are located a three storey residential apartment building, a former Co-Masonic Temple and a works site associated with the construction of the Sydney Metro Rail project.
7. The site is identified as a local heritage item, consisting of 4 x two storey Victorian terraces facing Regent Street. The item is described in Schedule 5 of Sydney LEP2012 as a two storey terrace group including interiors at 99–105 Regent Street (Item number I192).
8. The site is located within the Chippendale Heritage Conservation Area (C9). The eastern end of the site containing heritage shopfronts is identified as a contributory building within the conservation area whereas the western end of the site is identified as neutral.

9. Immediately to the west of the site is located a heritage item, described in Schedule 5 of Sydney LEP2012 as a group of terrace dwellings at 23-25 Queen Street (Item number I191 - Figure 4 below). To the east of the site, on the opposite side of Regent Street is located a heritage item, described in Schedule 5 of Sydney LEP 2012 as the former Co-Masonic Temple (Item number I195).
10. A site visit was carried out by the assessing officer on 11 September 2018. Photos of the site and surrounds are provided below:



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



Figure 2: Aerial image of subject site and surrounding area, generally looking south. The approximate location of two proposed roof level apartments is shaded yellow.



Figure 3: Subject site, looking west from Regent Street along Queen Street.



Figure 4: Subject site viewed from Queen Street, looking east towards Regent Street.



Figure 5: Subject site viewed from Regent Street, looking south-west.



Figure 6: Subject site viewed from Regent Street, looking north-west.



Figure 7: Western wall of the subject site viewed Chippen Street, looking east.

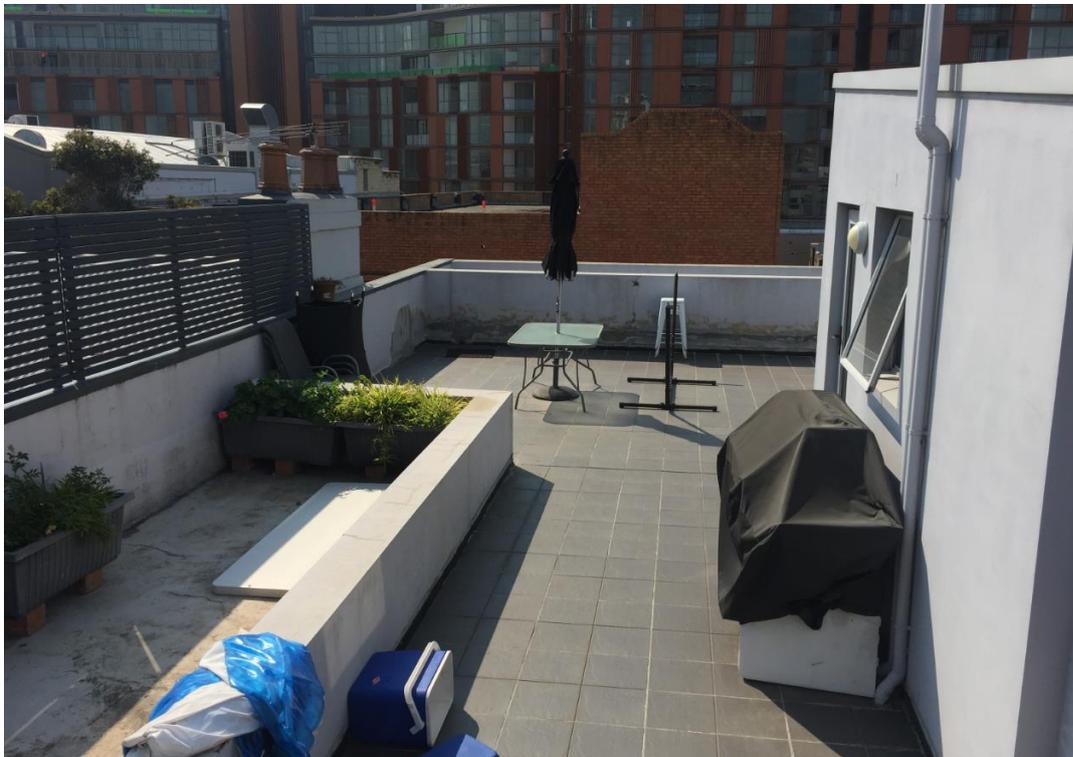


Figure 8: Part of the existing communal private open space located at the western edge of the building, looking north.



Figure 9: Communal private open space located at the central part of the building, looking south. This area is proposed to be infilled with a new apartment.

Summary of proposal

11. The application seeks consent for the construction of 2 x additional apartments at the roof level of an existing three storey apartment building. The proposal will result in a four storey building at the conclusion of the works.
12. Roof level pergolas are proposed to provide shade protection, as well as works to upgrade facades. Security gates are proposed for the existing residential apartment building.
13. Minor works are proposed to the Regent Street terraces, including repairs to render, re-painting the facades and the removal of an existing real estate sign that has been installed above the shop front awning without development consent (Figure 5 above).
14. The site is not currently strata subdivided and subdivision is not proposed.

Detailed proposal

15. Proposed works to the existing building include:

(a) Basement Level

- (i) Two new residential storage areas containing bicycle parking and additional waste bin storage areas.

(b) Ground Floor (referred to as 'Level 1' on the submitted plans)

- (i) installation of 2 x weather protection awnings over the building entrances; and
- (ii) installation of security gates to building entrances to enclose existing alcoves.

(c) Level 1 (referred to as 'Level 2' on the submitted plans)

- (i) No works are proposed to level 1.

(d) Level 2 (referred to as 'Level 3' on the submitted plans)

- (i) a new cross-over apartment numbered (unit 15) is proposed adjacent to the western edge of existing unit number 9:
 - (i) unit 15 is provided with an open plan living area, 3 x bedrooms and a study; and
 - (ii) a new pergola is proposed at the northern edge of unit 15 that is set back from the northern building line with Queen Street.
- (ii) stair access is proposed for new apartment unit 14 at level 3 above;
- (iii) existing unit number 9 is proposed to be extended below the new stair access towards the southern boundary in line with the new rear building line for proposed unit number 14 that is located at level 3 above. The existing bedroom 1 for unit 9 will be increased in area by 2.7sqm; and
- (iv) the existing communal outdoor space at the western edge of the building is to be provided with additional utilities including an integrated BBQ, sink, storage cupboard, a covered roof and an open pergola.

(e) Level 3 and roof level (referred to as 'Level 4' on the submitted plans)

- (i) a new three bedroom cross-through apartment (unit 14) is proposed above existing unit number 9:
 - (i) proposed unit 14 is shown with an open plan living area and three bedrooms at the south-eastern corner of the apartment; and
 - (ii) a new pergola is proposed at the northern edge of unit 14 that is set back from the northern building line with Queen Street.

- (ii) roof, gutter and downpipes are proposed to be finished using metallic materials that are consistent with the materials for the proposed upper level apartments.

(f) Building exterior - Queen Street building

- (i) palisade style security gates are proposed at the 2 x vestibules that provide pedestrian entry to the residential apartment building from Queen Street. The palisade gates are intended to prevent antisocial behaviour within the existing concealed entry recesses;
- (ii) new weather protection awnings are proposed above the entry vestibules at Queen Street; and
- (iii) the existing facade has deteriorated and plants are growing from the cracked rendered walls of the building. The proposal involves repairing the rendered facade and repainted using a paint colour scheme that differentiates the contemporary building from the Regent Street terraces.

(g) Building exterior - Regent Street Terraces

- (i) repainting is proposed in accordance with a submitted colour scheme;
- (ii) a real estate sign that has been installed without Council consent above one of the commercial awnings is proposed to be removed (Figure 5 above); and
- (iii) street numbering is proposed for the top hamper windows above the entries to the existing commercial tenancies facing Regent Street (Figure 12 below).

16. Images and plans of the proposed development are provided below.



Figure 10: North elevation plan (as viewed from Queen Street).

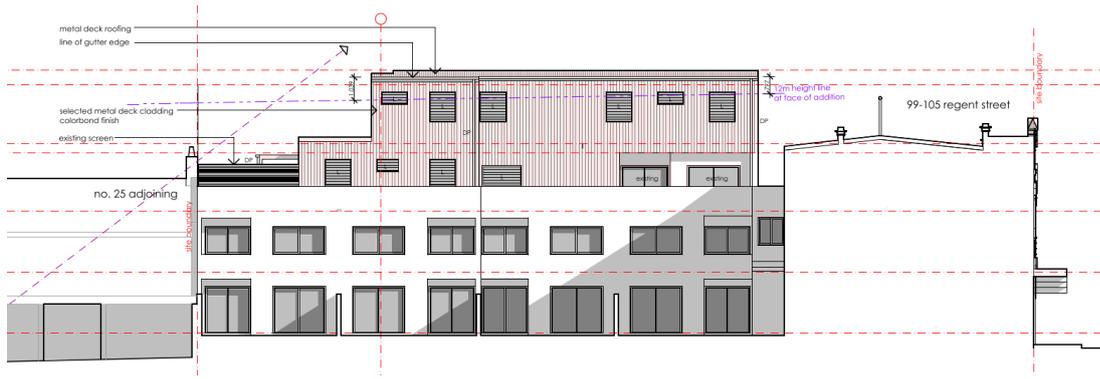


Figure 11: South elevation plan.



Figure 12: East elevation plan (as viewed from Regent Street). Shop numbers are proposed for top hamper windows above entries to existing commercial premises.

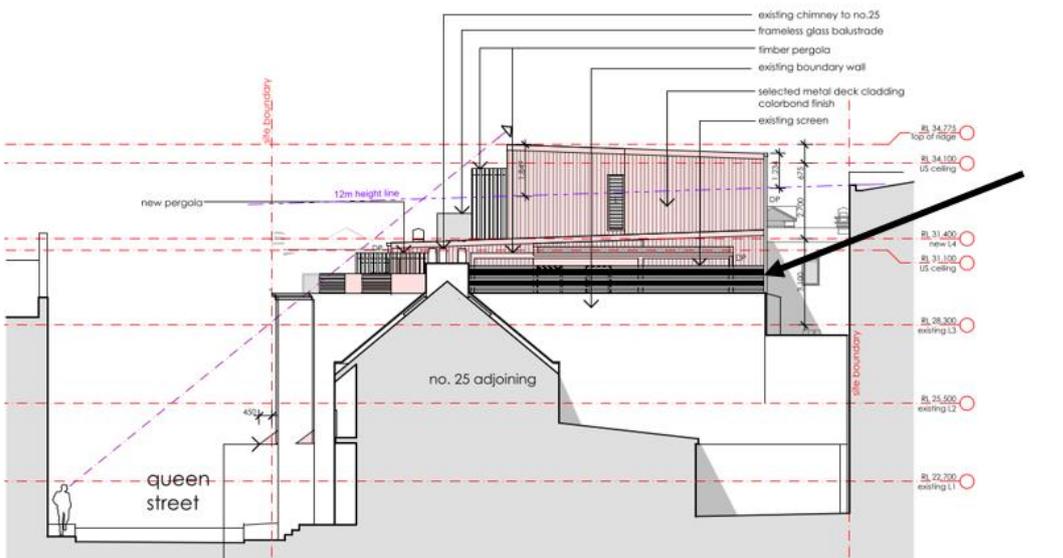


Figure 13: West elevation plan showing development as viewed from neighbouring dwellings to the west of the site fronting Queen Street. Existing privacy screens are being retained at the western boundary (black arrow).

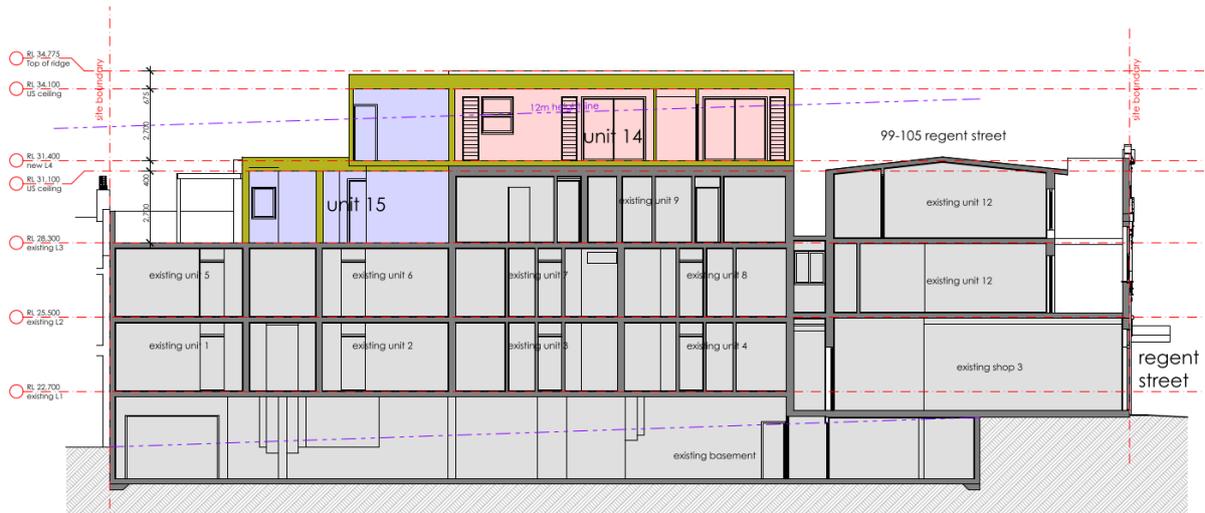


Figure 14: Long section plan.

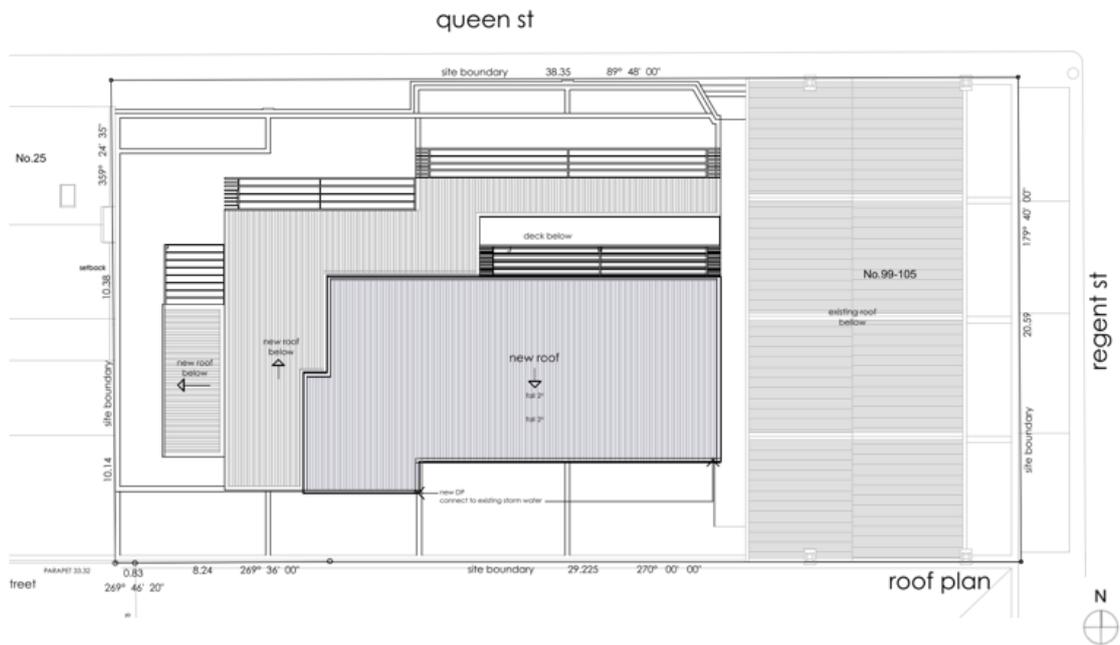


Figure 15: Roof plan.



Figure 16: Photomontage showing proposed new works at roof level (indicated by the black arrow), as viewed from the corner of Queen and Regent Streets, looking south-west.



Figure 17: Photomontage showing proposed new works at roof level (indicated by a black arrow), as viewed from Queen Street, looking north-east.

Site Application History - Residential apartment building facing Queen Street

17. D/1999/1314 was approved on 30 June 2000 to demolish an existing building with a frontage to Queen Street and to erect a three storey building containing 9 x apartments, with basement parking shared with the terrace row fronting Regent Street. The approval also related to the addition of four cross-over apartments above the Regent Street terraces.

Site Application History - mixed use building facing Regent Street

18. D/2018/538 was approved on 19 June 2018 for a new partition wall to subdivide a commercial tenancy facing Regent Street, and to change the use of the tenancy to a take away coffee shop;
19. D/2016/1110 was approved on 8 September 2016 to amend development consent number D/2015/1555 (see below), to permit the storage, distribution and retail sale of alcohol for consumption off premises;
20. D/2015/1555 was approved on 2 December 2015 for the change of use of a commercial premises to a licensed marketing/display suite;
21. D/2006/1617 was approved on 18 October 2006 for the use of shop No. 4 as a real Estate office with signage. The existing above-awning real estate sign that is proposed to be removed was not approved under this application;
22. D/1990/837 was approved on 15 February 1991 for the erection of a business identification sign; and
23. D/1990/141 was approved on 23 March 1990 for the retail sale of computers.

History relevant to the current Development Application

24. The application has been amended during the course of assessment in response to issues raised by the City's Design Advisory Panel Residential Subcommittee and in response to issues raised by Council's specialists.
25. Key amendments include:
 - (a) A proposed mansard roof form has been replaced by a flat roof that is setback from the northern boundary.
 - (b) A third apartment at the western edge of Level 3 of the building has been deleted and existing privacy screens located at the western edge of the roof level have been retained.
 - (c) 64sqm of existing communal roof terrace has been retained at the western edge of the building.
 - (d) Apartment Design Guide (ADG) controls have been addressed in relation to natural cross ventilation, shading and minimum area requirements for apartments.

- (e) An amended schedule of finishes has been provided to show the repainting of the building facades. The applicant proposes new street numbers to be provided at the location of top hamper signs for the Regent Street terraces (Figure 12 above).
- (f) An amended Clause 4.6 Statement has been submitted, requesting a variate to the height of buildings development standard set out by Clause 4.3 of SLEP 2012.

Economic/Social/Environmental Impacts

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

State Environmental Planning Policy No 64—Advertising and Signage

- 27. No signage is proposed under the subject application.
- 28. The applicant had amended the proposal to include the removal of existing real estate signage that has been installed without Council consent above one of the commercial awnings at the north-eastern corner of the site. The removal of the sign is supported, however the application is recommended for refusal for the reasons outlined in this report. The matter has been referred to Council's compliance unit for investigation.
- 29. The applicant proposes new street numbers to be provided at the location of top hamper signs for the Regent Street terraces. The street numbers are not considered to comprise signage for the purposes of assessment against SEPP 64 and SDCP2012.

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

- 30. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:
 - (a) Principle 1: Context and Neighbourhood Character
 - (i) The proposed addition provides a poor transition between the site and existing development to the east, west, north and south. As such, the proposal does not enhance the qualities and identity of the area with regard to the adjacent sites, streetscape and neighbourhood.
 - (b) Principle 2: Built Form and Scale
 - (i) The scale of the proposal presents a bulk and height that is inappropriate to the existing or desired future character of the street and surrounding buildings.

- (c) Principle 3: Density
 - (i) Whilst the proposal achieves the maximum floor space ratio for the site, it does not provide an acceptable level of amenity for residents due to the substantial reduction in communal open space, resulting in a density that is inappropriate to the site and its context.
 - (d) Principle 4: Sustainability
 - (i) The proposal is compliant with the requirements of BASIX and has been amended to ensure adequate solar access and natural cross ventilation to proposed apartments.
 - (e) Principle 5: Landscape
 - (i) The proposal significantly reduces an already insufficient area of communal open space and results in compromised privacy for unit 15. As such, the development does not optimise useability, privacy, social interaction and equitable access.
 - (f) Principle 6: Amenity
 - (i) The proposed addition reduces the quantum of already non-compliant communal open space and imposes privacy impacts on proposed unit 15. The proposal limits the development potential of the neighbouring site in consideration of amenity impacts.
 - (g) Principle 7: Safety
 - (i) The proposal increases the safety of the existing development by way of the installation of palisade gates at the entrances from Queen Street, thereby infilling existing vestibules and preventing anti-social behaviour.
 - (h) Principle 8: Housing Diversity and Social Interaction
 - (i) The proposal provides two x 3 bedroom apartments and results in a suitable mix of dwellings across the overall site. However, opportunities for social interaction are reduced by a significant reduction in the already non-compliant communal open space.
 - (i) Principle 9: Aesthetics
 - (i) The addition provides a poor height transition between heritage buildings and presents an unbalanced composition of elements. The development would result in a visually prominent and bulky addition viewed from Regent Street which does not respond appropriately to the heritage item contained within the site or to the existing or future local context.
31. The development is considered to be generally unacceptable when assessed against the above stated principles and the SEPP generally, which are replicated in large part within Council's planning controls.

Apartment Design Guide

2E Building Depth	Compliance	Comment
12-18m (glass to glass)	Yes	Proposed apartments have a maximum depth of 9.1m.

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <ul style="list-style-type: none"> • 12m between habitable rooms / balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	No	Proposed and existing apartments have habitable rooms that are set back from the southern boundary by a minimum of 3.1m. See further discussion in the Issues section below.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	Existing communal private open space is to be reduced as a result of the proposal, from approximately 118sqm (or 15% of the site area) to 64sqm (8% of the site area). See discussion below under the heading issues.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	Communal open space has a north-westerly aspect and achieves direct sunlight to its entire area on 21 June.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site and have a minimum dimension of 3m.	No	The proposal includes the construction of 2 x new apartments at the upper levels of the existing building. The development will not reduce existing deep soil areas within the site that comprise approximately 3% of the site area.

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

3F Visual Privacy	Compliance	Comment
Up to four storeys (12 metres): <ul style="list-style-type: none"> • 6m between habitable rooms / balconies • 3m between non-habitable rooms 	No	The proposal includes south-facing windows for habitable rooms in new apartments that are setback by 3.1m from the southern boundary. See discussion below in the Issues section.
Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	No	The living room of Unit 15 has a window that opens onto the access stairs for the communal open space at roof level. The window is inappropriately located as it will transmit noise into the apartment.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces.	Yes	73% of all units within the development receive a minimum of two hours of direct sunlight in midwinter to living rooms and private open spaces.

4A Solar and Daylight Access	Compliance	Comment
Maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	No	<p>Four of 15 units (27%) within the overall development do not receive the minimum solar access requirement. The non-compliant units are located within the building with a frontage to Regent Street and were constructed in the 1990s, prior to the implementation of the ADG.</p> <p>All of the proposed new units would receive a minimum of two hours of direct sunlight in midwinter.</p>

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	Drawings have been amended to address natural ventilation and natural cross ventilation requirements. Louvered windows are shown at the northern and southern elevations of the new apartments where previously awning type windows (that have reduced opening areas) were shown on plans.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	Yes	<p>73% of apartments within the overall development are naturally cross ventilated. Only those facing Regent Street are single aspect units.</p> <p>The proposed new apartments comprise 'cross through' and 'cross over' apartments that are naturally cross ventilated.</p>
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Proposed new apartments have a maximum depth of 9.1m.

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

4C Ceiling Heights	Compliance	Comment
Habitable rooms: 2.7m	Yes	Habitable rooms are provided with 2.7m ceiling heights.
Two-storey apartments: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the apartment area.	Yes	New Units 14 and 15 are provided with ceiling heights of 2.7m for both levels, providing sufficient clearance for ceiling fans.

4D Apartment Size and Layout	Compliance	Comment
<p>Minimum unit sizes:</p> <ul style="list-style-type: none"> • Three bed: 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p>	Yes	Units 14 and 15 have three bedrooms and two bathrooms and have areas of 95.8sqm and 102.7sqm respectively.
Every habitable room is to have a window in an external wall with a minimum glass area of 10% of the floor area of the room.	Yes	Rooms are provided with windows with a minimum glass area of 15% of the floor area of the room.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	<p>Unit 14 has a depth of 6.5m, which is 2.4 x the ceiling height.</p> <p>Unit 15 has a depth of 5.6m, which is 2.1 x the ceiling height.</p>
8m maximum depth for open plan layouts.	Yes	Units 14 and 15 have depths of 6.5 and 5.6m respectively.
<p>Minimum area for bedrooms (excluding wardrobes):</p> <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² <p>Minimum dimension of any bedroom is 3m (excluding wardrobes).</p>	Yes	All bedrooms in units 14 and 15 comply with the minimum areas.

4D Apartment Size and Layout	Compliance	Comment
<p>Living and living/dining rooms minimum widths:</p> <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Yes	Open plan living/dining rooms have dimensions that exceed the minimum widths specified by the ADG. Unit 14 has a width of 7.1m and unit 15 has a width of 7.6m
4m minimum width for cross over and cross through apartments.	Yes	Unit 14 has a width of 12.6m. Living areas for unit 15 have a minimum width of 7.7m. Bedroom 2 for apartment 15 has a width of 4m, widening to 4.8m at the southern end.

4E Private Open Space and Balconies	Compliance	Comment
Three bed apartments are to have a minimum balcony area of 12sqm with a minimum depth of 2.4m.	Yes	<p>Unit 14 (three bedrooms): minimum balcony area of 25.8sqm with a minimum depth of 2.6m.</p> <p>Unit 15 (four bedrooms): minimum balcony area of 28.2sqm with a minimum depth of 3.9m.</p> <p>Existing apartments within the Queen Street building have balconies ranging in size from 15sqm to 41sqm. Existing apartments within the Regent Street building have balconies with areas of 12sqm.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight.	Yes	The maximum number of apartments off a circulation core on a single level is two.

4F Common Circulation and Spaces	Compliance	Comment
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	No	The living room of Unit 15 has a window that opens onto the access stairs for the communal open space at roof level resulting in poor privacy.
Daylight and natural ventilation are provided to all common circulation spaces.	No	Existing common circulation spaces are not provided with light and ventilation. No new common circulation spaces are proposed, in that proposed stairs provide access to the new apartments only.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Three bed: 10m³ <p>(Minimum 50% storage area located within unit)</p>	Yes	<p>Amended drawings show Unit 14 being provided with 12.4m³ of internal storage and unit 15 is provided with 11.9m³ of internal storage within the apartment.</p> <p>Both of the proposed new apartments are provided with basement level storage and bicycle storage.</p>

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	No	The apartments are oriented and set back from Regent Street such that road traffic noise is minimised. However, unit 5 is considered to have compromised visual and acoustic privacy due to its siting immediately adjacent to the remaining communal open space.

State Environmental Planning Policy (Infrastructure) 2007

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

Clause 85

33. The application is subject to Clause 85 (Development adjacent to rail corridors) of the SEPP as the development involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains.
34. In accordance with the Clause, the application was referred to the relevant rail authority (Sydney Trains), who advised the proposal was acceptable subject to the imposition of recommended conditions of consent.
35. Sydney Trains, in turn, referred the application to Transport for NSW (TfNSW) and the Sydney Metro for comment due to an access route/bridge that is located on the opposite side of Regent Street to the site. A response was received from Sydney Metro that concurrence is not required and that no further issues or objections to the proposal are raised.

Clause 101

36. The application is subject to Clause 101 of the SEPP as the site has a frontage to Regent Street, which is a classified road. The application is considered capable of satisfying Clause 101 of the Infrastructure SEPP, as it does not provide access to the site from the classified road and that the proposal to paint the Regent Street terraces could be achieved without affecting the ongoing operation and function of the classified road. Notwithstanding this, the application is not supported.

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

37. An amended BASIX Certificate has been submitted with the development application.
38. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. The application is not supported, however if approval were granted, a condition would be imposed to ensure the measures detailed in the BASIX certificate were implemented.

Sydney LEP 2012

39. The site is located within the B4 Mixed Use zone. The bulk of the proposed works involve alterations to an existing residential flat building, which is a permissible land use. The remaining works to repaint the existing commercial and shop top housing facing Regent Street are also permissible within the zone.
40. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	A maximum height of 12m is permitted. A height of 13.84m is proposed. See discussion under heading Issues.
4.4 Floor Space Ratio	Yes	A maximum FSR of 1.75:1 is permitted. A FSR of 1.75:1 is proposed.

Development Control	Compliance	Comment
4.6 Exceptions to development standards	No	The proposal to vary the development standard for height prescribed under Clause 4.3 of Sydeny LEP 2012 is not supported. See discussion under the heading Issues.
5.9 Preservation of trees or vegetation	Yes	The proposal will have no impact on any trees.
5.10 Heritage conservation	No	<p>The site contains a heritage item, consisting of the two storey terrace group at 99–105 Regent Street. Immediately to the west of the site at 23-25 Queen Street is located a heritage listed group of two storey terrace dwellings. In accordance with the relevant clause, a Heritage Impact Statement was lodged with the application.</p> <p>The proposal is not supported with regard to heritage matters as it provides a poor transition between heritage items located within the subject site and to the west of the site at 23-25 Queen Street. See discussion below under the heading issues.</p>

Development Control	Compliance	Comment
<p>Division 4 Design excellence</p> <p>6.21 Design Excellence</p>	No	<p>As outlined throughout this report, the proposal does not provide a high standard of architectural design and detailing that is appropriate to the building type and special character area. Further, the proposal detrimentally impacts the development potential of the property to the south as a result of non-compliant building separation.</p> <p>The scheme responds poorly to heritage and streetscape issues and is poorly resolved in relation to the massing and modulation. Finally, by way of a substantial reduction in communal open space, the proposal fails to provide high quality landscape design.</p> <p>Having considered the matters in 6.21(4), the building fails to meet the minimum standards required to demonstrate design excellence, and as such cannot be supported.</p>

Part 7 Local Provisions - General	Compliance	Comment
<p>Division 1 Car parking ancillary to other development</p>	Yes	<p>A maximum of 10 car parking spaces are permitted, whereas there are 12 existing car parking spaces located within the basement level of the building. No additional car parking spaces are proposed under the subject application.</p> <p>Clause 7.1 of Sydney LEP 2012 specifies that 'nothing in this Division requires a reduction in the number of car parking spaces in an existing building'. As such, the proposal is permissible with regard to the Sydney LEP 2012 control.</p>

Sydney DCP 2012

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 proposal is considered to be contrary to the unique character of the area and design principles in that it fails to respond suitably to heritage items and contributory buildings within the site and the heritage conservation area generally. The proposal does not retain a low scale of development and is not consistent with the locality as it fails to respond to the height and massing of heritage and contributory items as outlined in this report.

3. General Provisions	Compliance	Comment
3.2 Defining the Public Domain	Yes	Despite contributing to the safety and quality of the public domain, the application is recommended for refusal.
3.5 Urban Ecology	Yes	The proposed development does not require the removal or pruning of any existing trees.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.7 Water and Flood Management	Yes	The site is not identified as being on flood prone land.
3.8 Subdivision, Strata Subdivision and Consolidation	Yes	The proposal does not involve strata subdivision of the site.
3.9 Heritage	No	As discussed in the Issues section, the proposal responds poorly to the key attributes of the heritage item contained within the site and adjoining the site, and to the conservation area generally.
3.11 Transport and Parking	Yes	Two bicycle parking spaces are provided for the new apartments within the basement level of the building.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	If the application were able to be supported, standard conditions would be applied in relation to waste minimisation.

3. General Provisions	Compliance	Comment
3.16 Signage and Advertising	Yes	The proposal to remove an existing real estate sign that has been installed without consent on Regent Street is supported. Installation of street numbering for Regent Street shopfronts does not constitute signage and would also be acceptable in the event that the proposal was supported.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	The proposal has a height of four storeys and exceeds the three storeys control specified by SDCP2012. The proposal is not in keeping with the objective of part 4.2.1 in that it does not reinforce the existing and future neighbourhood character. See discussion below under the heading issues - Clause 4.6 discussion.
4.2.2 Building setbacks	No	The proposal does not maintain the setting of the heritage items located within the site and neighbouring to the west. See discussion below under the heading issues.
4.2.3 Amenity	No	<p>The amended proposal will not have any significant impacts on neighbouring dwellings to the west of the site in relation to visual privacy, overshadowing and view loss.</p> <p>However, the proposal would significantly limit the amenity of residential dwellings were they to be proposed within the neighbouring site to the south. See discussion below under the heading issues.</p>

Issues

Clause 4.6 request to vary a development standard

41. The site is subject to a maximum height of buildings control of 12m. The proposed development has a maximum height of 13.84m and exceeds the development standard by 1.84m (15.3%). See Figure 18 below.



Figure 18: 12m height control and proposed maximum height (13.84m).

42. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - (b) that there are sufficient environmental planning grounds to justify contravening the standard.
43. A copy of the applicant's written request is provided at Attachment B.
44. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) the height variation is highly recessed from the front, sides and rear of the existing built form below ensuring that the height variation will not form an intrusive element when viewed from the Queen Street and Regent Street streetscape;
 - (ii) only a small portion of the addition will be visible. The development will have a 3 storey character (wall height) as viewed from Queen Street, which is consistent with SDCP2012 height in storeys control;
 - (iii) the height variation will not be out of context with the varying scales of buildings within the immediate vicinity and wider locality. Properties adjoining the subject site vary in height from two storeys to four storeys;

- (iv) the height variation will not be responsible for any unreasonable bulk or scale impacts, noting that the proposal has a compliant FSR and the recessed addition results in an articulated built form;
 - (v) the recessed nature of the upper floor addition ensures that there is a respectful transition to the adjoining heritage terraces and that the height variation will not generate any detrimental impacts on their heritage significance; and
 - (vi) the height variation will not generate any additional amenity impacts to surrounding neighbours beyond that of a compliant built form, in regard to overshadowing, privacy or view loss impacts.
- (b) Clause 4.3 - Height of Buildings.
- (i) Despite exceeding the height control, the development is consistent with objective 4.3(1)(a) of SLEP2012, which is to ensure the height of development is appropriate to the condition of the site and its context.
 - (ii) That part of the development that exceeds the control is appropriate to the condition of the site and its context on the following basis:
 - i. the part of the development that exceeds the height variation is a direct result of the existing condition of the site, which contains an existing basement that protrudes above street level by approximately 1m – 2m from east down to west. The extent that the basement protrudes above street level is more than the variation of the proposed addition above the 12m height limit;
 - ii. the proposed additional height sits comfortably in the surrounding context that is characterised by a mix of building heights, which includes numerous perimeter warehouse buildings which are equal to, or taller in height, bulk and scale that the proposal;
 - iii. the height variation associated with the proposed addition has been sensitively positioned in a central location with generous setbacks of 6.24m from the Queen Street boundary and 24.5m from the Regent Street boundary, ameliorating streetscape impacts of the proposal and maintaining the scale and massing of the existing street elevation; and
 - iv. the recessed nature of the proposed upper levels ensures that the additions are not readily visible from the Regent Street frontage.
 - (ii) Despite exceeding the height control, the development is consistent with objective 4.3(1)(b) of SLEP2012, which is to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character on the following basis:
 - i. the proposal includes significantly recessed upper floors that ensure the existing height transition between building is maintained when viewed from surrounding streetscapes; and
 - ii. the proposal is consistent with the Character Statement for the locality, which describes the area as being characterised by contrasting and irregular built forms.

- (iii) Despite exceeding the height control, the development is consistent with objective 4.3(1)(c) of SLEP2012, which is to promote the sharing views given the proposed height will not be responsible for any adverse view or loss of outlook impacts from any residential or commercial office buildings in the vicinity of the subject site.
- (c) B4 Mixed Use Zone
- (i) The proposal is consistent with the objectives of the B4 Mixed Use Zone as follows:
 - i. the proposed residential addition has been well integrated into the existing built form on the site to ensure that the presentation of the existing built form in the streetscape is largely unchanged;
 - ii. the provision of additional residential accommodation on a site that is close to shops, employment and public transport options is considered to support the viability of the area;
 - iii. the close proximity of the site to Central Station and the CBD will encourage the occupants of the proposed units to use alternative methods of transport including public transport, walking and cycling; and
 - iv. the combination of these aspects ensures that the proposed height variation does not does not hinder the proposal's ability in satisfying the zone objectives of the Mixed Use zone.
- (d) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) the height variation allows for an addition with a smaller footprint that promotes greater access to light and ventilation to the occupants of the development and retains access to improved outdoor private open space;
 - (ii) the recessed nature of the height variation ensures that it will not be visible from the public domain and will therefore not be responsible for any unreasonable streetscape impacts;
 - (iii) the recessed nature of the height variation also ensures that it will not negatively impact upon the heritage significance of the locality;
 - (iv) the recessed nature of the height variation associated with the roof of the upper level addition ensures that the height variation will not be responsible for any unreasonable overshadowing or privacy impacts to neighbouring properties; and
 - (v) the height variation will not obstruct any significant views but will facilitate access to expansive district viewed from the upper level units.
45. Clause 4.6(3) of SLEP2012 sets out that 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 at 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.
46. In the circumstances of the application, the applicant has failed to adequately demonstrate by way of their submitted Clause 4.6 statement that compliance with the standard is unreasonable and unnecessary and that the objectives of the development standard are achieved, notwithstanding non-compliance with the standard. In particular:
- (a) with regard to objective Clause 4.3(1)(a) of SLEP2012, which is to ensure the height of development is appropriate to the condition of the site and its context:
 - (i) the applicant has not demonstrated that the proposed additional bulk is an appropriate response to the condition of the site. In particular, the applicant has failed to demonstrate the addition will not comprise a visually intrusive element as viewed from the public domain at Regent Street (Figure 19 below); and
 - (ii) the proposal has a 4 storey height where the context of the locality is informed by 2-3 storey buildings. In this regard, the proposal results in unsympathetic additional bulk which will result unacceptable visual impacts on existing heritage items and the conservation area generally.



Figure 19: The site as viewed from Regent Street and an extract from the submitted CAD model, demonstrating the proposal has the capacity to result in excessive bulk as viewed from the public domain.

- (b) The proposal does not satisfy the objective of Clause 4.3(1)(b) of SLEP2012, which is to ensure an appropriate height transition between new development and heritage items and buildings in heritage conservation areas on the following basis:
 - (i) the development does not provide an appropriate height transition between the existing 2 storey heritage item within the site, with frontage to Regent Street, and the 2 storey terrace dwellings at 23-25 Queen Street to the west of the site. Instead, the development results in a 4 storey building between 2 storey heritage items (Figure 20 below);

- (ii) the proposed addition does not provide an appropriate transition between the new development and existing buildings within the conservation area to the north and south of the site that have a 1-3 storey height; and
- (iii) as above, the applicant has not provided photomontages or massing plans that would demonstrate the transition is acceptable as viewed from Regent Street (Figure 19 above).



Figure 20: North elevation plan, showing inappropriate height transition between heritage items located within the subject site and to the west of the site at 23-25 Queen Street.

47. In addition, and with regard for clause 4.6(3)(b) of Sydney LEP 2012, the written request provided by the applicant has failed to demonstrate there are sufficient environmental planning grounds to justify contravening the development standard. In particular:
- (a) the applicant has failed to demonstrate the additional visual bulk of the proposal that results from exceeding the development standard is suitable in relation to its impacts on heritage items and in relation to its impacts on the character of the conservation area;
 - (b) the applicant has failed to demonstrate the proposal will provide adequate amenity in the form of communal open space for the residents of the building (see further discussion below); and
 - (c) the applicant has failed to demonstrate the proposal will not have any significant impacts on future development to the south of the site in relation to view sharing and visual privacy (see further discussion below).
48. The applicant has failed to demonstrate by way of their clause 4.6 statement that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. In particular, the applicant has failed to demonstrate by way of their clause 4.6 statement that the objectives of Clause 4.3 of Sydney LEP 2012 are achieved notwithstanding non-compliance with the standard.
49. For the reasons provided above, the requested variation to the height of buildings development standard is not supported. The applicant's written request has not adequately addressed the matters relevant to 4.6(3) of the Sydney LEP 2012.
50. Further, the applicant's written statement has not been successful in arguing that one of the five ways established in Wehbe has been satisfied, being that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

51. The applicant's written statement is unsatisfactory in terms of demonstrating the proposal is satisfactory in relation to the environmental planning grounds used to justify contravening the development standard. The proposed development is therefore not in the public interest as it is inconsistent with the objectives of the height standard that is applicable to the site.

Building Separation

52. The proposed apartments have bedroom windows that are set back 3.1m from the southern boundary (Figure 21 below). As such, the development does not comply with guidance and design criteria provided at Parts 2F and 3F of the ADG that specify the following separation distances between residential apartment buildings and boundaries:
- (a) Part 2F specifies a 12m separation distance between buildings with opposite habitable rooms and balconies; and
 - (b) Part 3F specifies a 6m setback from side and rear boundaries for habitable rooms and balconies in order to address visual privacy.
53. By failing to provide the minimum 6m separation, the proposal unreasonably burdens the neighbouring property to the south at 107-109 Regent Street, in the event of a future residential development proposal on the site. Any future residential development at 107-109 Regent Street would be likely to provide windows to living areas and balconies with a northerly aspect which is directly adjacent to the common boundary with the subject site, and would be subject to privacy impacts as a result of the non-compliant setback of the proposed development.
54. It is unreasonable that the proposal should detrimentally impact on the development potential of the neighbouring site, which is subject to the same zoning yet reduced height controls when compared to the subject site. 107-109 Regent Street is subject to a 9m SLEP2012 height control where the subject site has a 12m height control and to a 2 storey SDCP2012 height control where the subject site has a 3m height control.
55. It is unreasonable that the proposal should detrimentally impact on the development potential of the neighbouring site in relation to visual privacy, noting the proposal would limit the amenity of future residential development on that site by impacting significantly on visual privacy by providing reduced setbacks to the southern (mutual) boundary.
56. On the basis that the applicant has failed to provide acceptable the separation distances between habitable rooms and balconies as required by the ADG, the proposal cannot be supported.

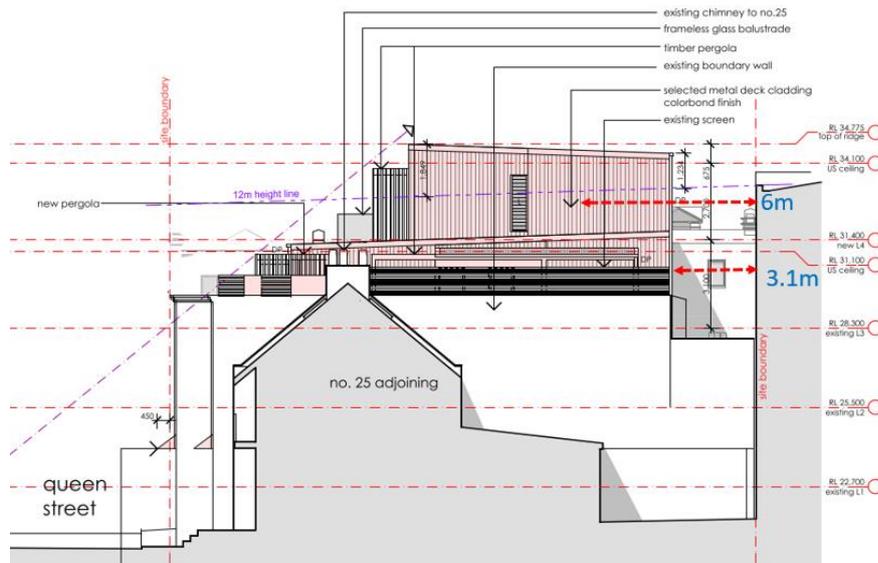


Figure 21: section plan showing 3.1m setback for rear bedroom windows to the southern boundary and a compliant 6m setback as specified by the ADG.

Communal Open Space

57. Part 3D of the ADG specifies that communal open space is to be provided with a minimum area equal to 25% of the site and with good solar access (197sqm).
58. The existing communal private open space does not meet the minimum ADG control in that it amounts to approximately 118sqm of the site area (15%). The existing communal open space is separated into 2 zones by a dividing wall and no shade devices provided.
59. The proposed development further reduces the already non-compliant communal open space at the roof level to 64sqm or 8% of the site area. Whilst the existing communal area is in a poor state of repair, the existing area could readily be upgraded to provide increased amenity for the occupants of the building.
60. The proposal is not supported in that it fails to satisfy a key objective of part 3D-1 of the ADG, which is to provide an adequate area of communal open space for the residents of the development.

Privacy

61. The proposal co-locates the communal open space for the development with an area of proposed private open space for unit 15 (Figure 22 below). The applicant has failed to address the visual and acoustic privacy impacts of the proposal in that only a frameless glass screen has been provided to mitigate privacy impacts between the two areas.

External Referrals

67. The development was referred to Sydney Trains, who in turn, referred the application to Transport for NSW (TfNSW) and the Sydney Metro for comment due to the presence of an access route/bridge that is located on the opposite side of Regent Street to the site.
68. A response was received from Sydney Metro that concurrence is not required and that no further issues or objections to the proposal are raised.
69. The development was also referred to Ausgrid who did not provide a response.

Notification, Advertising and Delegation

70. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified and advertised. As such, the application was notified and advertised for a period of 21 days between 7 August 2018 and 29 August 2018. No submissions were received.
71. Amended drawings were re-notified for a period of 14 days between 27 November 2018 and 12 December 2018. No submissions were received.

Public Interest

72. It is considered that the proposal is detrimental to the public interest. As such, the proposal is recommended for refusal.

S7.11 Contribution

73. In the event the proposal was supported, it would be subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015.

Relevant Legislation

74. Environmental Planning and Assessment Act 1979.

Conclusion

75. The applicant's request for a variation to the height of buildings control is not considered to adequately address the requirements under clause 4.6 of the Sydney Local Environmental Plan 2012 as outlined elsewhere in this report. The applicant has not demonstrated that compliance with the height of building standard is unreasonable or unnecessary in the circumstances.
76. The proposal is not considered to exhibit design excellence in accordance with the requirements of Clause 6.21 of Sydney Local Environmental Plan 2012 as it does not provide a high standard of architectural design and detailing that would be appropriate to the building type and location, and does not respond sympathetically to the heritage conservation area and streetscape.

77. The proposal does not provide a suitable transition between heritage items located within the subject site and within sites to the west of the site on Queen Street at 23-25 Queen Street, resulting in a development that is not in keeping with the character of the Chippendale Heritage Conservation Area.
78. The proposal reduces the residential amenity of the existing development for its occupants by way of significantly reducing the area of communal open space.
79. The proposed development is inconsistent with a key provision of the Apartment Design Guide in that it significantly reduces an already non-compliant area of communal open space.
80. The proposed development does not satisfy the matters for consideration provided by Section 4.15 of the Environmental Planning and Assessment Act 1979 in that it is not compliant with key provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012 and that it does not provide development that is suitable for the subject site.
81. The public interest cannot be served by the approval of an application that fails to meet the minimum amenity requirements of the relevant planning instruments and that is not in keeping with its immediate context and neighbouring development in relation to visual bulk and scale and neighbourhood character.

GRAHAM JAHN, AM

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