

Item 3.**Development Application - 45-47 Crown Street, Woolloomooloo - D/2019/832****File No.:** D/2019/832**Summary****Date of Submission:** 2 August 2019**Applicant:** Christopher Jordan**Architect/Designer:** Christopher Jordan Architecture and Design**Owner:** Maria Parison**Cost of Works:** \$880,000.00**Zoning:** B4 - Mixed Use Zone

The proposed use is permissible with consent.

Proposal Summary: The application seeks consent for alterations and additions to 2 existing residential terraces, comprising attic additions to the existing terraces and partial demolition of the ground floor rear wings to facilitate construction of a 4-storey infill building within the existing rear private open space.

The development will provide a total of 4 residential units. Two of these will be contained within the existing terrace properties with ground floor home office space and the other 2 will be provided within the new infill building. The ground floor areas of the new structure accommodates provision for waste, bike lockers and a plant/services room. An enclosed stairway connects the new and existing structure providing access to all units.

The application is reported to the Local Planning Panel for determination as the provisions of SEPP 65 - Design Quality of Residential Apartment Development apply. The applicant submits that the development is 3-storeys with attic level above. This characterisation is not supported by Council officers.

The proposal exceeds the 2:1 floor space ratio (FSR) standard pursuant to Clause 4.4 of the Sydney LEP 2012. The proposal will result in an FSR of 2.17:1 which is 8.5% (19.2m²) above the development standard of 2:1.

A written request has been provided seeking a variation to the floor space ratio development standard in accordance with Clause 4.6 of the Sydney LEP 2012. The Clause 4.6 variation request is not supported. The proposed development is non-compliant with regard to a number of controls, resulting in part from the quantum of floorspace that is proposed to be provided on site. The applicant has provided insufficient justification to demonstrate that the application of the standard is unreasonable or unnecessary in the circumstances of the case.

The application was notified for a period of 21 days beginning 2 October 2019 and ending 24 October 2019. During this period 3 submissions were received.

The proposed development is considered incongruous to its setting and unsympathetic to the character of the heritage conservation area. The proposal offers a poor level of amenity to its occupants, does not exhibit design excellence and represents an overdevelopment of the site.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls: State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (as amended)

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

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

Sydney Local Environmental Plan 2012

Sydney Development Control Plan 2012

City of Sydney Development Contributions Plan 2015

Attachments:

Attachment A. Selected Drawings

Attachment B. Clause 4.6 Variation Request

Recommendation

It is resolved that consent be refused for Development Application No. D/2019/832 for the following reasons:

- (A) Insufficient justification has been provided to support the variation to exceed the Clause 4.4 Floor Space Ratio standard in accordance with Clause 4.6 of Sydney LEP 2012. The proposed development is considered incongruous to its setting and offers a poor level of amenity to its occupants, therefore not achieving better development outcomes.
- (B) The proposal results in excessive height, bulk and scale and fails to comply with the height in storeys provision outlined in Section 4.2.1 of Sydney DCP 2012.
- (C) The proposal results in unsympathetic alterations and additions to contributory buildings within the Woolloomooloo Conservation Area (CA71), resulting in a significant overdevelopment of the site and poor streetscape outcome. The proposal is therefore inconsistent with the requirements of Clause 5.10 of the Sydney LEP 2012 and Section 3.9 of the Sydney DCP 2012.
- (D) The proposal results in an unacceptable level of amenity for existing and proposed dwellings and does not satisfy the principles and provisions of SEPP 65 Design Quality of Residential Apartment Development and the Apartment Design Guideline with regard to common open space, private open space, solar access and natural cross ventilation.
- (E) The proposal is non-compliant with the amenity provisions outlined in Section 4.2.3 of the Sydney DCP 2012 with regard to solar access, common and private open space.
- (F) The proposal does not represent design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
- (G) The proposal is not in keeping with the existing or desired character of the area and is not in the public interest.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 17 October 2019.
2. The application proposes to develop two separate lots which together form a rectangular site, with a combined site area of approximately 113.8sqm. The site is located on the north side of the intersection of Crown Street and Broughton Street and has a primary frontage to Crown Street and a side secondary frontage to Broughton Street. Two 2-storey terraces are contained within the site.
3. The two attached terraces are freestanding. They are situated adjacent to a vacant car park to the north of the site and back on to a row of 2-storey terrace properties to the west, which run along the north side of Broughton Street. Contemporary 3-storey residential flat buildings are situated in close proximity to the south and east of the site, on the opposite sides of Broughton Street and Crown Street respectively.
4. Surrounding land uses are residential and commercial with a mix of uses prevalent along Crown Street, whilst Broughton Street is primarily residential.
5. The site is located within the Woolloomooloo Conservation Area (CA71) and the sandstone wall situated within the south east boundary of the site running along Broughton Street is listed as a heritage item (I2129A). The terraces are contributory heritage items in the conservation area.
6. Photos of the site and surrounds are provided below:

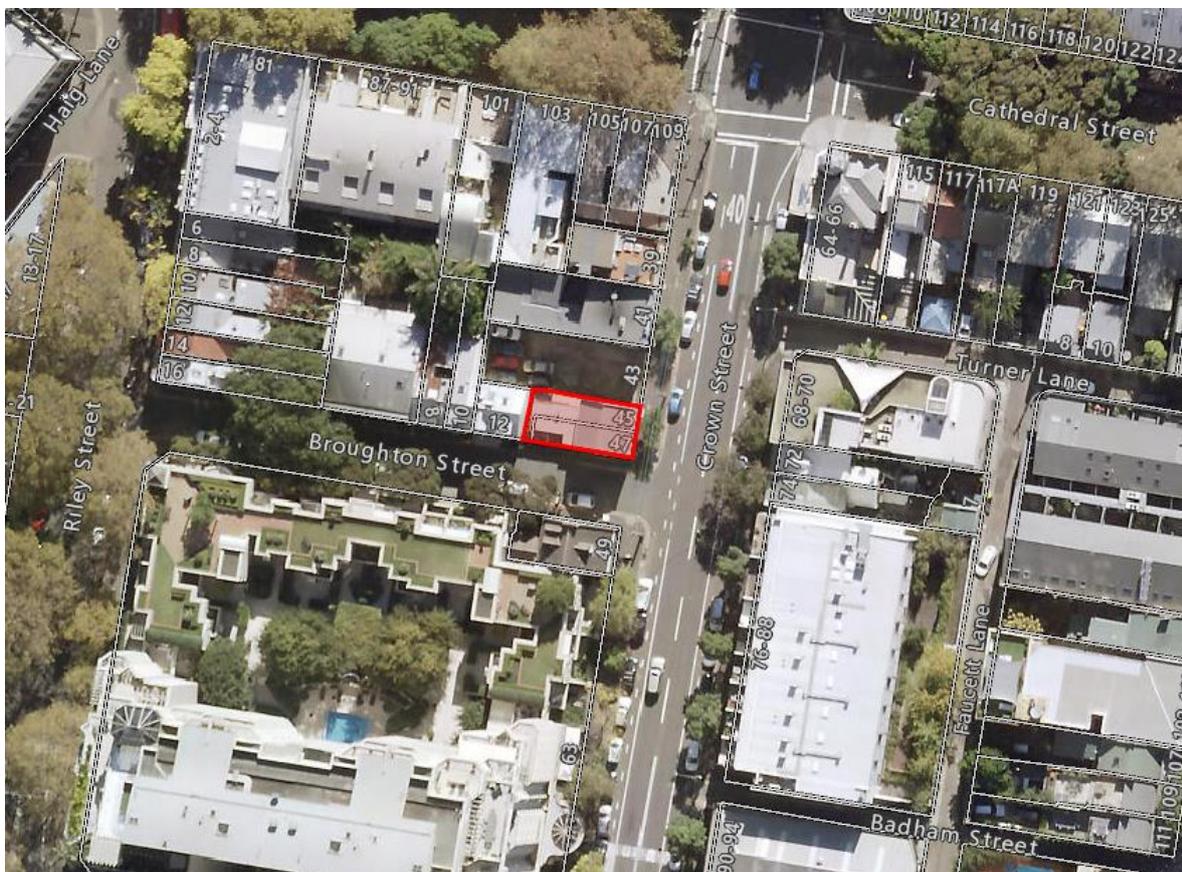


Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed looking west from the opposite side of Crown Street



Figure 3: Rear of the terraces and heritage listed sandstone wall looking east along Broughton Street



Figure 4: Two-storey profile of terraces to the rear of the site looking east along Broughton Street



Figure 5: Front and side of the property viewed looking south-west from the opposite side of Crown Street

Proposal

7. The application seeks consent for alterations and additions to 2 attached residential terraces and the construction of a 4-storey infill building within the rear setback of the existing terraces.

These two elements consist of the following:

(a) Infill building:

Demolition of the ground floor rear wings of existing terrace properties to facilitate construction of a 4-storey infill addition, delivering:

- (i) 2 x residential units - consisting of 1 x studio unit and 1 x 1-bedroom unit;
- (ii) 2 x private balcony areas;
- (iii) Central stairwell core connecting to the existing terrace properties; and
- (iv) Ground floor services and storage, comprising:
 - (i) Shared waste room;
 - (ii) Plant/services room; and
 - (iii) 4 x bike locker stores

(b) Alterations and additions to existing terraces:

- (i) 2 x 1-bedroom residential units with ground floor home office areas; and
- (ii) Attic additions with 2 x new front dormers to bedroom areas.

8. Plans of the proposed development are provided below.



Figure 6: An artist's perspective of the proposed development looking north-west across Crown Street

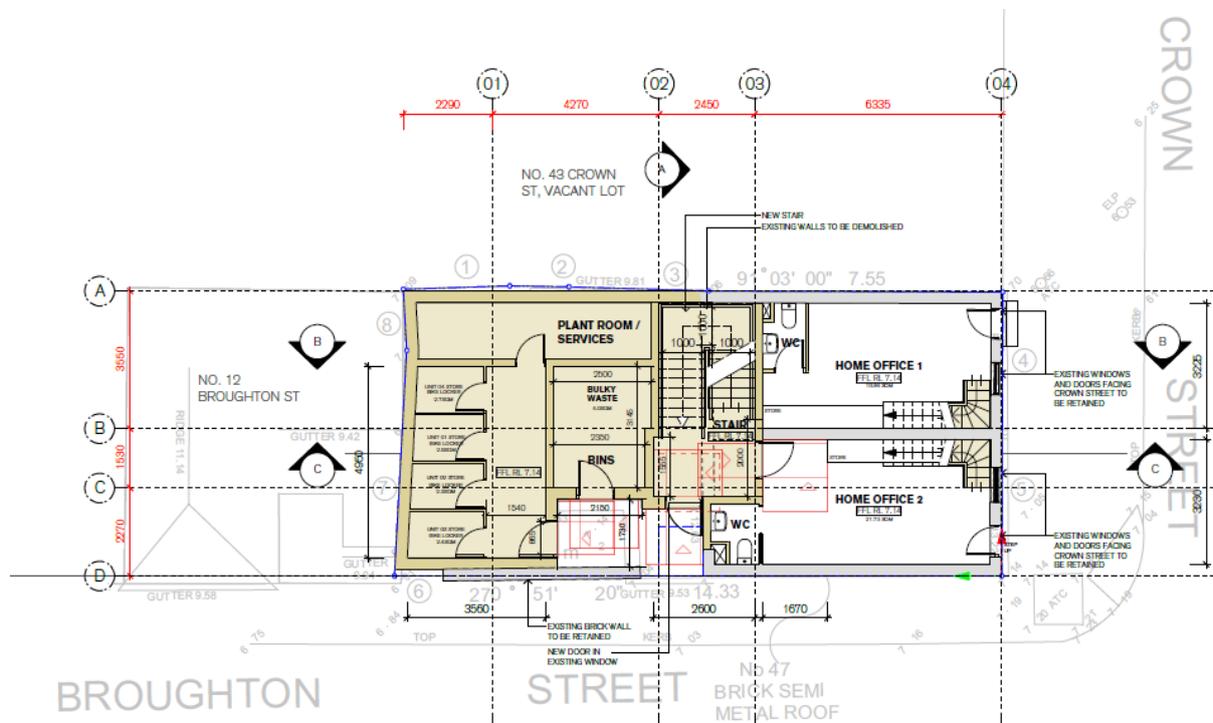


Figure 7: Proposed ground floor plan

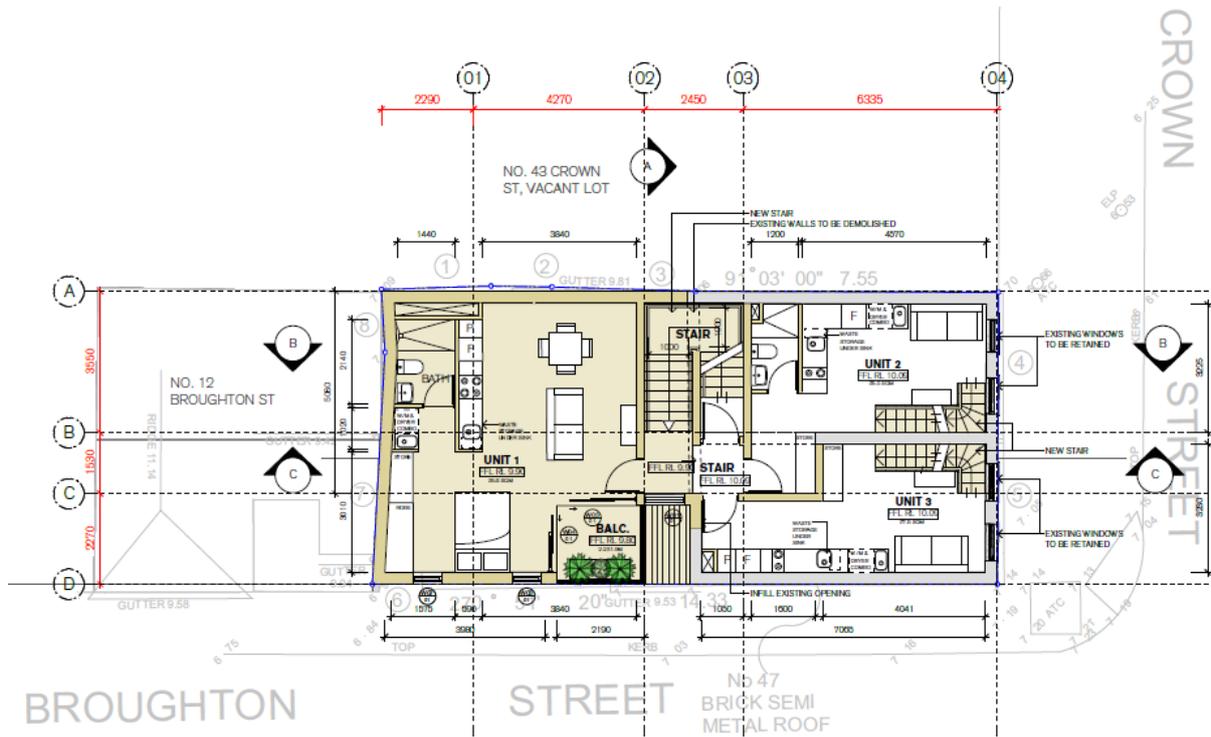


Figure 8: Proposed first floor plan

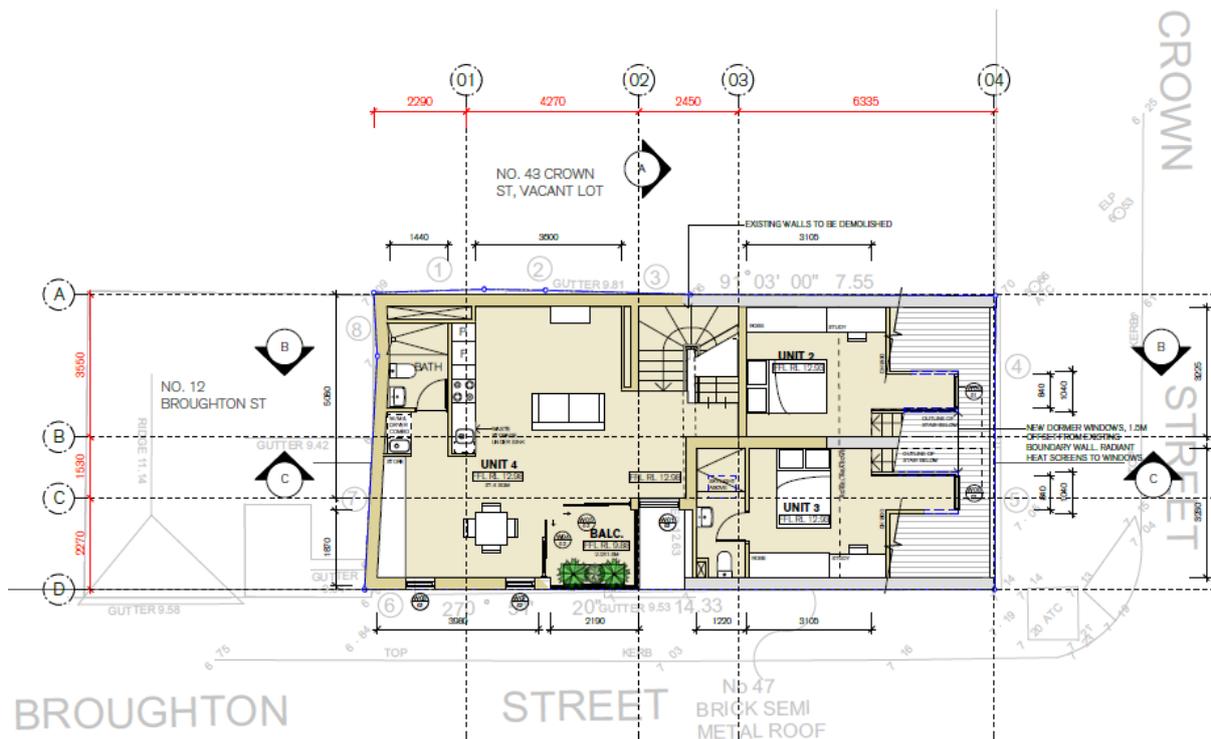


Figure 9: Proposed second floor plan

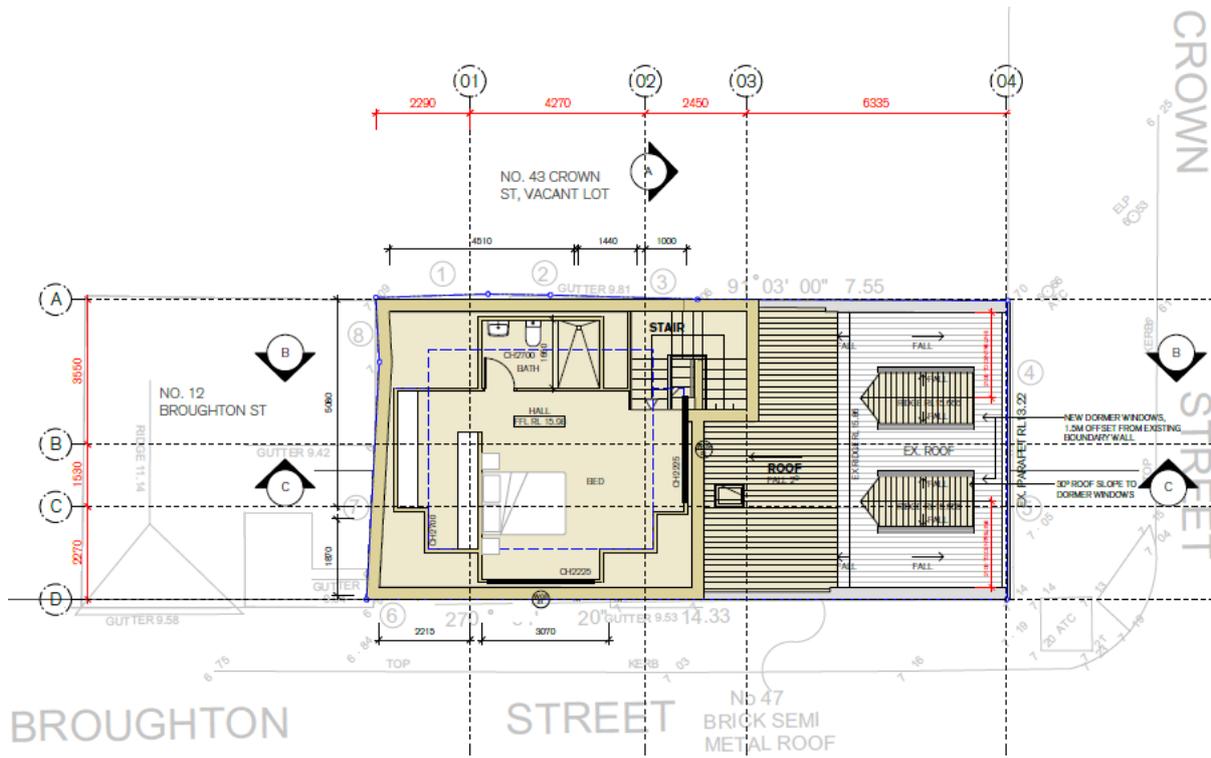


Figure 10: Proposed third floor / roof plan

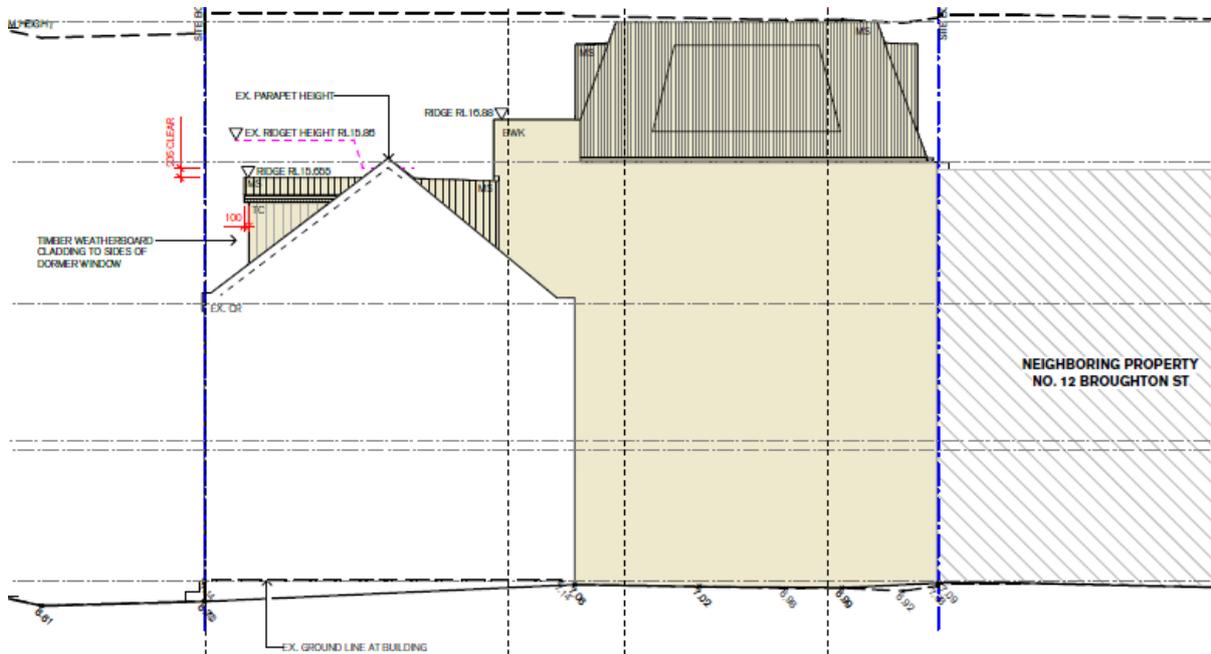


Figure 11: Proposed north elevation

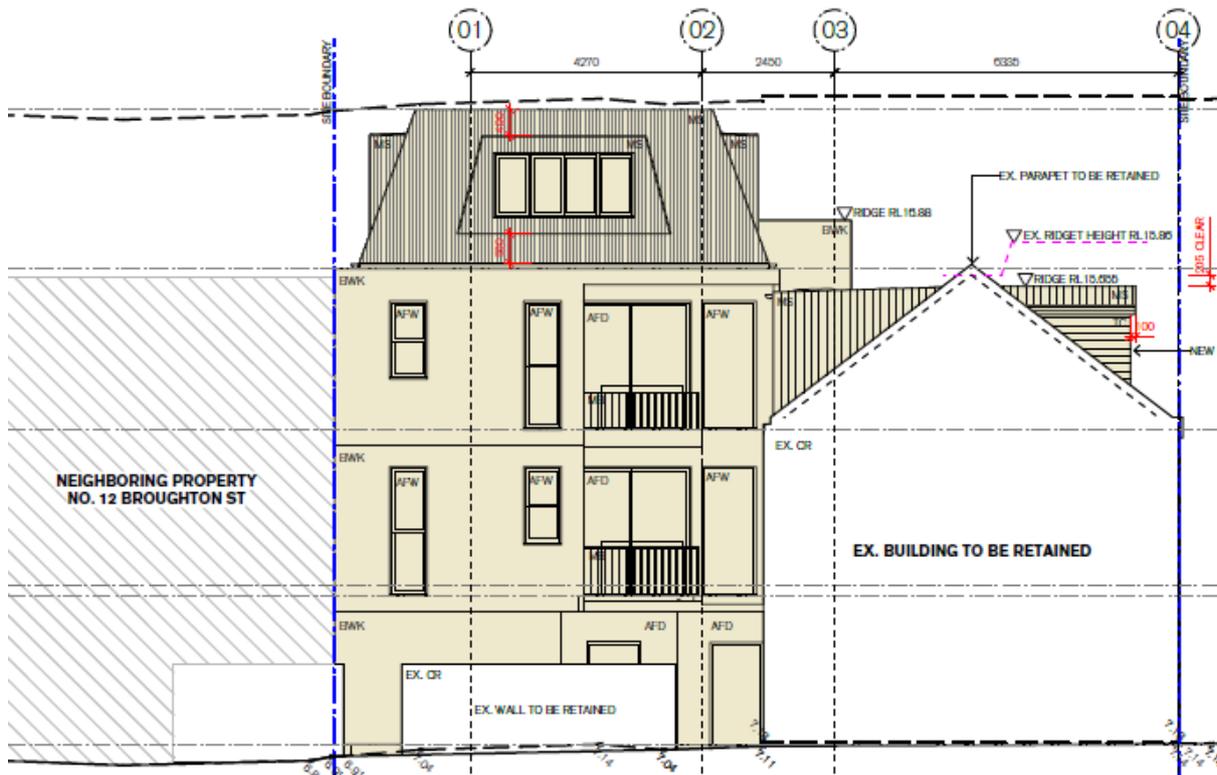


Figure 12: Proposed south elevation

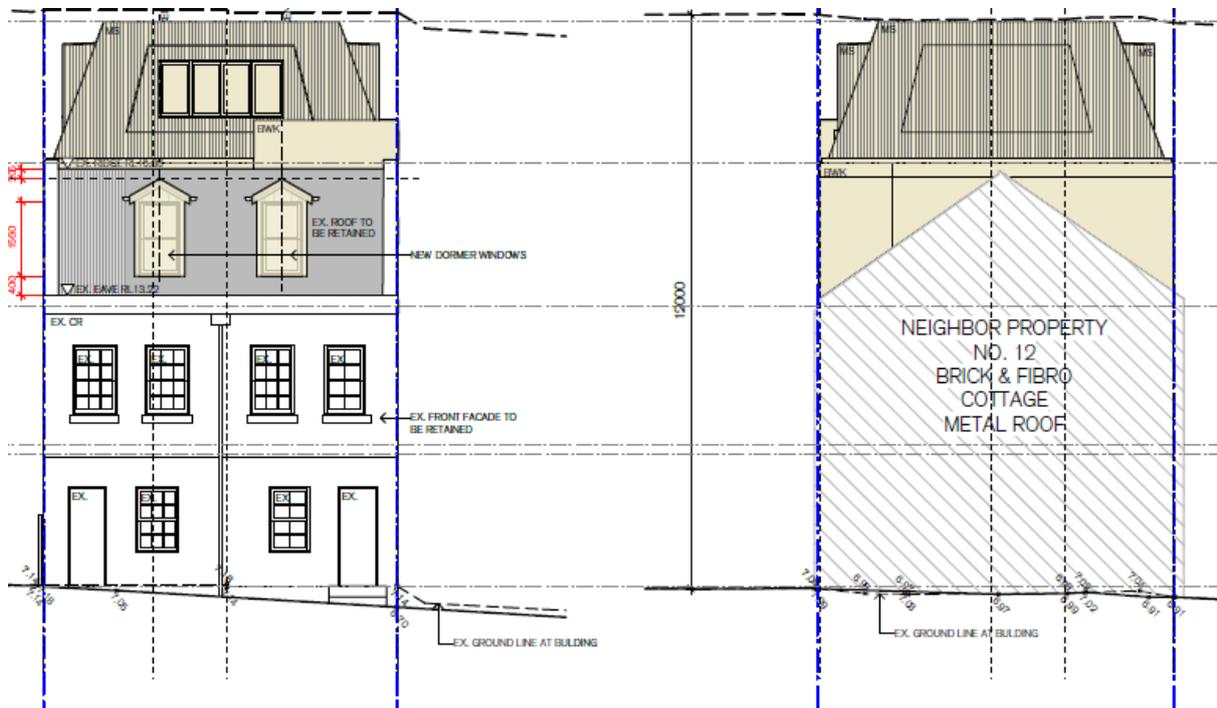


Figure 13: Proposed east and west elevations

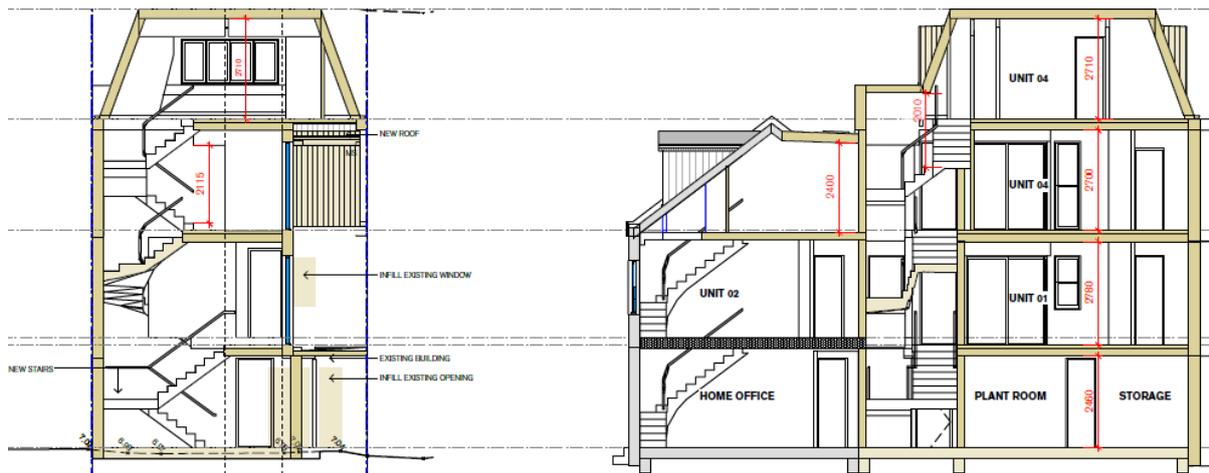


Figure 14: Proposed Section A & Section B

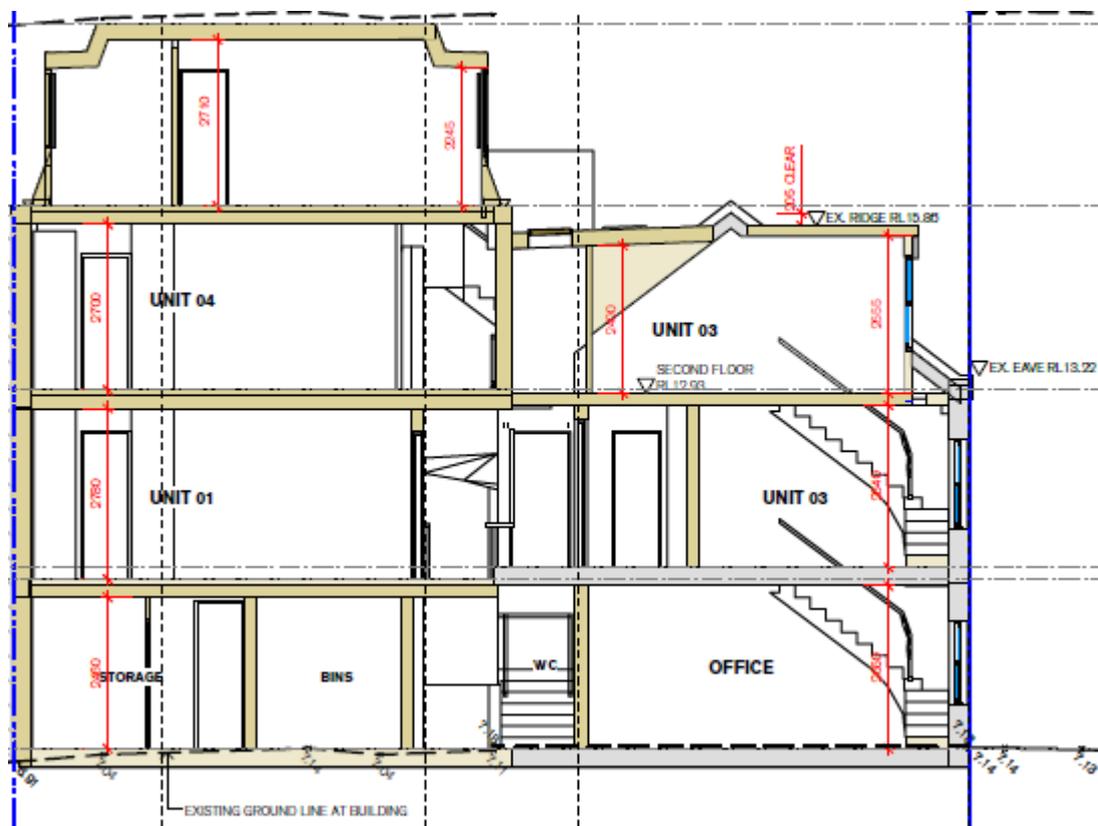


Figure 15: Proposed Section C

History Relevant to the Development Application

9. On 2 September 2019, a letter was sent to the applicant outlining Council officers' concerns with regards to the proposed development. In this correspondence the applicant was informed that the application was not supported in its current form and it was recommended that the application be withdrawn.

10. Due to the significant and substantial issues associated with the proposed development it was considered that any genuine attempt to address them would result in a significantly different development proposal. As such the applicant was invited to withdraw the application, with any unused application fees returned, and to resubmit a new application for a more appropriate proposal following pre DA discussions.
11. The applicant requested additional time to revise the application and submit amended plans, however it was considered that the substantial revisions required in order to make the proposal acceptable would result in a completely new development application. In these circumstances, a new development application should be submitted.

Economic/Social/Environmental Impacts

12. 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 65 - Design Quality of Residential Flat Development

13. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more units, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:
 - (a) **Principle 1:** Context and Neighbourhood Character
 - (b) **Principle 2:** Built Form and Scale
 - (c) **Principle 3:** Density
 - (d) **Principle 4:** Sustainability
 - (e) **Principle 5:** Landscape
 - (f) **Principle 6:** Amenity
 - (g) **Principle 7:** Safety
 - (h) **Principle 8:** Housing Diversity and Social Interaction
 - (i) **Principle 9:** Aesthetics
14. The stated principles of the SEPP are replicated in large part within Council's planning controls.
15. The development is non-compliant with a number of the stated principles and provisions of the SEPP as set out below.

Apartment Design Guide

2F Building Separation	Compliance	Comment
<p>Up to four storeys (approximately 12 metres):</p> <p>12m between habitable rooms / balconies</p> <p>9m between habitable and non-habitable rooms</p> <p>6m between non-habitable rooms</p>	Yes	<p>The proposed development provides adequate separation between the proposed building and existing properties on the opposite sides of Broughton Street and Crown Street.</p> <p>No building separation is necessary where building types incorporate blank party walls, as proposed along the proposals north and west elevations.</p>

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	<p>The development does not propose any communal open space.</p> <p>See discussion under the Issues heading.</p>
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).	No	<p>The development does not propose any communal open space.</p> <p>See discussion under the Issues heading.</p>

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	<p>The development does not propose any areas of soft landscaping which could be utilised as a deep soil zone.</p> <p>See discussion under the Issues heading.</p>

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 	Yes	The proposed balconies front on to Broughton Street and properties on the opposite side of the street are situated approximately 10m or more away from the proposed development.

4A Solar and Daylight Access	Compliance	Comment
70% of units to receive a minimum of 2 hours of direct sunlight in midwinter to living rooms and private open spaces.	No	The living room areas of Units 1 and 4 only have south facing windows and therefore will receive no direct sunlight. See discussion under the Issues heading.
Maximum of 15% of units in a building receive no direct sunlight between 9am and 3pm at midwinter.	No	Unit 1 only has south facing windows and therefore will receive no direct sunlight. This studio unit represents 25% of the units in the building. See discussion under the Issues heading.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	All habitable rooms in the proposed development are naturally ventilated by windows and/or balcony doors.
Minimum 60% of units in the first nine (9) storeys of the building are naturally cross ventilated.	No	Only 1 unit (Unit 4) is cross-ventilated. The 3 other proposed units are single aspect. See discussion under the Issues heading.

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	Partial compliance	Ceiling heights for habitable rooms in the proposed infill building are compliant with the 2.7m control. The ceiling height of the proposed attic level in the existing terraces measure between 2.4m and 2.55m and therefore does not satisfy this control due to the existing roof ridge constraint.
Non-habitable rooms: 2.4m	Yes	All rooms in the proposed development provide at least the minimum 2.4m ceiling height.
Two-storey units: 2.7m for main living area floor, 2.4m for second floor, where it does not exceed 50% of the unit area.	Yes	Both levels of the single proposed two-storey unit in the development (Unit 4) have floor to ceiling heights of 2.7m.

4D Apartment Size and Layout	Compliance	Comment
Minimum unit sizes: <ul style="list-style-type: none"> • Studio: 35m² • 1 bed: 50m² • 2 bed: 70m² • 3 bed: 90m² 	Partial compliance	Unit 1 and Unit 4 within the proposed infill building meet the minimum unit size for studio and 1-bed units. The two units proposed in the existing terraces (Unit 2 and Unit 3) each measure approximately 33-34m ² and therefore do not meet the minimum unit size for 1-bed units. The proposed home office space at ground level of the existing terraces is discounted from unit floorspace.
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	Windows provide the minimum 10% glass area for all habitable rooms within the proposed development.
Habitable room depths are to be no more than 2.5 x the ceiling height.	Yes	The proposal is compliant with the required habitable room depths.
8m maximum depth for open plan layouts.	Yes	The open plan areas of proposed units are all less than 8m in depth.

4D Apartment Size and Layout	Compliance	Comment
<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 proposed bedrooms are larger than 9m ² .
<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 	Partial compliance	<p>Proposed living areas in the infill building achieve the minimum 3.6m width.</p> <p>The living rooms of Units 2 and 3 within the existing terraces do not satisfy this control due to the existing building width of 3.23m.</p>

4E Private Open Space and Balconies	Compliance	Comment
<p>All units are required to have primary balconies as follows:</p> <p>Studio units are to have a minimum balcony area of 4m² with a minimum depth of 1m.</p> <p>One bed units are to have a minimum balcony area of 8m² with a minimum depth of 2m.</p> <p>Two bed units are to have a minimum balcony area of 10m² with a minimum depth of 2m.</p> <p>Three bed units are to have a minimum balcony area of 12m² with a minimum depth of 2.4m.</p>	No	<p>Balcony areas are only proposed for the 2 units within the proposed infill building. The two units within the existing terraces offer no provision of private open space.</p> <p>Neither of the proposed balconies measure 4m² and are therefore non-compliant with the standard requirement for the studio and 1-bed units of Unit 1 and Unit 4 respectively.</p>

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of units off a circulation core on a single level is eight (8).	Yes	No more than 2 units are proposed off the circulation core at each level of the development.
Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	Yes	None of the proposed bedroom or living room windows open onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Partial compliance	The central core stairwell would receive limited daylight from the proposed south facing windows

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; and
 - (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.
19. The development is consistent with the controls contained with the deemed SEPP.

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

20. The BASIX Certificate has been submitted with the development application.

21. The BASIX certificate lists measures to satisfy BASIX requirements which have been incorporated in the proposal. Should the application be considered for approval, a condition is recommended ensuring that the measures detailed in the BASIX certificate are implemented.

Sydney Local Environmental Plan 2012

22. The site is located within the B4 - Mixed Use zone. The proposed use is defined as residential and is permissible.
23. 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	Yes	A maximum height of 12m is permitted. A height of 12m is proposed.
4.4 Floor Space Ratio	No	A maximum FSR of 2:1 is permitted. A FSR of 2.17:1 is proposed. A Clause 4.6 variation has been submitted which is not supported. See discussion under the Issues section below.
4.6 Exceptions to development standards	No	The proposal seeks to vary the development standard prescribed under Clause 4.4 Floor Space Ratio. This Clause 4.6 variation is not supported. See discussion under the heading Issues.
5.4 Controls relating to miscellaneous permissible uses	Yes	The maximum floor area permitted for the home business use is 45sqm. The proposed floor area for the home office use in each of the existing terrace units (Unit 2 and Unit 3) is 18.96sqm and 21.73sqm respectively.

Development Control	Compliance	Comment
5.10 Heritage conservation	No	<p>The subject site is located within the Woolloomooloo heritage conservation area (C71) and a heritage item sandstone wall (ref: I2129A) is contained within the site. The terraces are contributory items in the heritage conservation area.</p> <p>The proposed development does not positively respond to the heritage significance of the site.</p> <p>See discussion under the heading Issues.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	No	<p>The proposal represents development which is unsympathetic to the character of the conservation area by disregarding the established street frontage height, massing and modulation of buildings along Broughton Street and its wider interface between the building and the public domain.</p> <p>The proposed development is considered significantly out of context with the surrounding character of the conservation area and has no relation with the sandstone wall heritage item. The mansard roof of the rear addition is uncharacteristic and its proposed scale is out of context with surroundings.</p> <p>Further, the proposal would result in an unacceptable loss of amenity to the existing terraces and a poor level of amenity proposed for residential units within the new built form of the infill building.</p> <p>The proposed development does not satisfy the requirements of this provision.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	A maximum of 4 car parking spaces is permitted. No car parking spaces are proposed.
7.14 Acid Sulphate Soils	Yes	The site is identified as containing class 2 Acid Sulphate Soil. Should the application be considered for approval, a condition would be recommended to address acid sulphate soils on site.

Sydney Development Control Plan 2012

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

2. Locality Statements – Cathedral Street

The subject site is located in the Cathedral Street locality. The proposed alterations and additions to the existing terraces and construction of an infill building in the rear setback of these properties is considered incongruous to the surroundings and character of the area. The infill building in particular would detract from the existing contributory terrace properties on site and would disrupt the small lot subdivision the two sites currently display.

3. General Provisions	Compliance	Comment
3.3 Design Excellence and Competitive Design Processes	Yes	The proposed development is not required to be subject to a design competition.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology.
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.8 Subdivision, Strata Subdivision and Consolidation	No	The consolidation of the two sites and complete development of the rear will obscure the original subdivision pattern. See discussion under the Issues heading.

3. General Provisions	Compliance	Comment
3.9 Heritage	No	<p>The subject site is located within the Woolloomooloo heritage conservation area (C71) and a heritage item sandstone wall (ref: I2129A) is contained within the site.</p> <p>The proposed development does not positively respond to the heritage significance of the site.</p> <p>See discussion under the heading Issues.</p>
3.11 Transport and Parking	Yes	<p>A maximum of 4 car parking spaces are permitted.</p> <p>No car parking spaces are proposed.</p> <p>The development proposes 4 bike spaces at a rate of 1 space per dwelling in accordance with the provisions of the DCP.</p>
3.12 Accessible Design	Yes	<p>Should the application be considered for approval, a condition would be 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 proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.</p>
3.14 Waste	Yes	<p>Should the development be considered for approval, a condition would be recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>A maximum of 3 storeys is permitted.</p> <p>The proposed development is 4 storey(s) in height.</p> <p>See discussion under the Issues heading.</p>
4.2.2 Building setbacks	Partial compliance	<p>Existing properties are built to the boundary along Broughton Street. The proposed infill building is setback at ground level but built to street alignment above to retain the sandstone wall situated at the south west boundary along Broughton Street, which is identified as a heritage item. The proposal has a considerable visual impact upon the setting of this heritage item.</p> <p>See discussion under the Issues heading.</p>
4.2.3 Amenity	No	<p>The proposed development will deliver an unsatisfactory level of amenity for future occupants of the building.</p> <p>The resulting amenity outcomes in relation to; solar access, private open space, ventilation and common open space/landscaping are discussed under the Issues section below.</p>
4.2.6 Waste and Recycling Management	Yes	<p>The proposed development appears to provide adequate space to manage waste and recycling with a centralised waste room at the ground floor of the proposed infill building, accessible off Broughton Street.</p>

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
		Should the development be considered for approval, a condition would be recommended for the proposed development to comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.7 Heating and Cooling Infrastructure	Yes	Heating and cooling infrastructure for the development could be consolidated within the proposed ground floor plant/services room of the proposed infill building.

Issues

Clause 4.6 request to vary a development standard

25. The site is subject to a maximum Floor Space Ratio (FSR) control of 2:1. The proposed development has proposed a FSR of 2.17:1.
26. 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.
27. A copy of the applicant's written request is provided at Attachment C.

Applicants Written Request - Clause 4.6(3)(a) and (b)

28. The applicant seeks to justify the contravention of the FSR 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 proposed built form presents as 3-storey with a mansard roof element to the street frontages, which is consistent with the form of development contemplated by the height controls.

- (ii) The proposal provides for two outdated low-quality residential dwellings on the site to be restored with two new high-quality home office spaces and four residential units, contributing to the amenity and revitalisation of the area.
 - (iii) Preservation of the contributory elements of the existing two-storey semi-detached terraces to the heritage conservation area, and preservation of the sandstone wall listed heritage item.
 - (iv) Lack of external impact to neighbouring properties and the streetscape in relation to visual and acoustic privacy, overshadowing, and visual bulk, whilst no view impacts are identified. The suitable siting of the development confirms the height, bulk and scale is appropriate for the site.
 - (v) The site is well serviced by public transport, being within close proximity to numerous bus routes along William Street and Crown Street, whilst the site is also within easy walking distance of shops, recreation areas and outdoor public open space.
 - (vi) The fragmented form of development, whereby the building is separated into two distinct elements being the new infill component and the retained semi-detached terraces, ensures that the built form is provided in a separate and discreet manner, whereby the additional FSR would not be discernible from any public or private vantage point.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The variation is minor in nature, being a variation of 8.5% (19.21m²) from the LEP standard.
 - (ii) No unacceptable adverse impacts on neighbouring development on Crown Street or Broughton Street, given that the proposal will not result in any overshadowing, visual or acoustic privacy impacts, visual bulk and scale impacts, or view loss, than would a compliant development.
 - (iii) The minor FSR non-compliance will not result in adverse amenity impacts to neighbouring properties in regard to overshadowing. Given the east-west orientation of the subject site and the lot being a corner lot with street frontages to the south and east, solar access is reasonably maintained to the adjoining property at No. 12 Broughton Street and at opposite the site at No. 47 Crown Street, and at Nos. 68-70, 72, and 74 Crown Street.
 - (iv) The proposed development does not result in additional privacy amenity impacts onto adjoining neighbours from the proposed FSR variation. In this regard, living rooms to units are oriented to respective street frontages, with blank party walls to adjoining neighbours. Balconies fronting Broughton Street have a limited interface with dwellings opposite, and are generously separated from openings recessed from the street frontage opposite the subject site.

- (v) The proposed minor variation to the FSR will not have any unreasonable visual bulk and scale impacts onto the Crown Street and Broughton Street streetscape. The FSR variation contributes to a compatible streetscape outcome with the existing development, with the area intermingled with residential and commercial land use, with a mix of older two and three-storey terraces with commercial and residential use, and newer mixed use commercial and residential developments of various heights, including greater than 15 storeys in height.
- (vi) The proposal maintains the character of the streetscape and contribution to the heritage conservation area, through the retention of the existing semi-detached terraces. The articulated façade, plus the recessed balconies, mansard roof element, and the separation of the built form into two distinct components, contributes to breaking down the scale and bulk of the built form on the subject site, and ensures that the FSR variation will not be responsible for any unreasonable streetscape impacts.
- (vii) Given the topography of the subject site and surrounding landscape, significant views are not affected by the bulk and scale of the proposed FSR of the development.
- (viii) The development is in the public interest given proposed FSR variation allows for the provision of a mixed-use development including commercial space comprising two home offices and four residential units, with good internal amenity, in an accessible location, being in close proximity to public transport, local services, and facilities.
- (ix) It is considered that an environmental benefit has been achieved from partial replacement of an existing RFB with poor amenity, with one that achieves high internal amenity without compromising the amenity of neighbouring properties.

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

29. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
 - (b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

30. The applicant states that the proposed infill building presents as 3 storeys with a mansard roof and therefore represents development contemplated by the height in storeys control.

31. This additional attic level provision allowed under the LEP relates to the conversion of more traditional pitched roof rooms such as those of the existing terraces. The proposed mansard is uncharacteristic of the conservation area and has a flat roof with a very limited mansard pitch which therefore presents as an additional floor.
32. Moreover, the proposed mansard roof/attic level does not meet the definition of an attic set out by the Sydney LEP, being 'a habitable space contained wholly within a roof above the ceiling line of the storey immediately below'. The proposal is non-compliant with this definition due to the central stairwell core which protrudes from the mansard roof.
33. The proposal presents as a 4-storey development which contravenes the 3-storey height control set out in the Sydney DCP.
34. The applicant's assertion that the proposal will contribute to the amenity and revitalisation of the area through the restoration of two existing terraces is not supported. The proposed development will significantly constrain the level of amenity enjoyed by the existing terraces on site by removing existing areas of private open space currently provided by the rear yard areas and blocking solar access to the rear of the property - see further discussion regarding amenity impacts under the Issues section below.
35. The proposal is unsympathetic with regards to the preservation of the two contributory terraces and its resulting impact upon the streetscape. Whilst the proposal will retain the principal form of the terraces from Crown Street, the setting and established subdivision pattern of the terraces would be significantly impacted by the dominant infill apartment element to the rear. This element would have an overbearing impact upon the streetscape by disrupting the established 2-storey form exhibited by the existing terraces on site and the row of terraces on the north side of Broughton Street.
36. The applicant submits that the fragmented form of development between the existing terraces and new infill apartment element to the rear ensures that the built form is provided in a separate and discrete manner. By contrast, Council officers consider that this fragmented form only serves to make the new built form appear incongruous in the setting and disruptive to the existing streetscape.
37. Accordingly, the applicant has not provided sufficient justification to demonstrate that compliance with the development standard is unreasonable or unnecessary for the proposal.

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

38. The applicant's assertion that the development will have no adverse impacts upon neighbouring development on Broughton Street, or have any visual bulk and scale impacts on the streetscape, is not supported.
39. The proposed infill building will have a considerable impact upon the local streetscape and is inconsistent with the established 2-storey terrace form and subdivision pattern of properties along the north side of Broughton Street and the 2 existing terraces on site. The proposal presents a built form of unsympathetic bulk and scale resulting in detrimental impacts to the streetscape and wider heritage conservation area.
40. It is accepted that the level of amenity to neighbouring properties is generally maintained and that it does not appear that the development would have a disproportionate impact upon solar access caused by overshadowing.

41. Nevertheless, by this same standard, the level of amenity experienced by the residential units in the proposed development is considered unacceptable. Only 1 of the 4 residential units proposed would be cross-ventilated and solar access to all units is heavily constrained thus delivering a poor development outcome.
42. Accordingly, the applicant has failed to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Is the development in the public interest?

43. The objectives of the floor space ratio development standard include:
 - (a) To provide sufficient floor space to meet anticipated development needs for the foreseeable future.
 - (b) To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.
 - (c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.
 - (d) To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.
44. The proposal is inconsistent with desired future character of the locality as it does not respond to or complement the contributory building or heritage conservation area and is inappropriate in height, scale, form and design.
45. The proposal would increase density on the site in a manner that delivers a poor development outcome for both the units within the proposed infill building and the existing terraces on site.
46. The proposed density is inconsistent with the lower-scale character of the heritage conservation area will consequently have an adverse impact upon the amenity of the streetscape.
47. The objectives of the B4 Mixed Use Zone are:
 - (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 proposal is for residential development with home office space within a mixed use area. Existing uses along Crown Street are characteristically mixed whilst Broughton Street is predominantly residential therefore the proposed uses are considered broadly consistent with the objectives of the B4 - Mixed Use zone.
49. The site is situated in an area with strong public transport links with multiple bus routes in close proximity and Kings Cross station within a 10 minute walk of the site.

50. Notwithstanding this, overall the proposed development is not considered to be in the public interest as it is inconsistent with the objectives of the floor space ratio development standard.

Conclusion

51. For the reasons provided above the requested variation to the FSR development standard is not supported as the applicant's written request has not adequately addressed the matters required to be addressed by Clause 4.6(3) of the Sydney Local Environmental Plan 2012. In addition the proposed development is not in the public interest because it is inconsistent with the objectives of the FSR development standard.

Height, Scale and Bulk

52. As outlined above the proposal does not comply with FSR control established by Clause 4.4 of the Sydney LEP 2012 and the Clause 4.6 variation request to exceed this control is not supported.
53. The site has a 3 storey height in storeys control pursuant to Section 4.2.1 of Sydney DCP 2012. The proposed infill building presents as four storeys.
54. The proposed infill building is considered to be overbearing and will provide a poor interface between the existing terraces and buildings to the west along Broughton Street. The infill relates poorly to the existing terraces effectively being an extension of, rather than separate to the terraces, and the heritage listed sandstone wall which is poorly integrated into the design of the development.
55. The 4-storey infill building has not been designed to respect neighbouring buildings and does not enhance the character of the heritage conservation area.
56. The proposal represents an overdevelopment of the site.
57. The site is located within a heritage conservation area. The existing terraces are contributory items and the sandstone wall along Broughton Street is a heritage item. The complete redevelopment of the rear yard as proposed results in a development that does not respect the significant characteristics, built form or subdivision pattern of the contributory buildings.
58. The proposal is inconsistent with the objectives of Section 3.9.6 and 3.9.7 of Sydney DCP 2012 which requires new infill development to complement the existing heritage significance of the area and contributory buildings.
59. Overall the excessive bulk and massing, as evidenced by the proposed breach of the Sydney DCP height in storeys control, has an overbearing impact upon the local streetscape and the contributory terraces and represents development which is unsympathetic to the character of the heritage conservation area.

Private Open Space

60. Section 4E of the Apartment Design Guide (ADG) requires all units to provide private open space in the form of primary balconies, however the proposed development offers no compensation to offset the reduction in private open space for the existing terraces with balconies only proposed for new units (Unit 1 and Unit 4) of the infill building.

61. Furthermore Section 4E of the ADG requires balconies to be a minimum area of 4sqm for studio units and a minimum area of 8sqm for 1-bed units. Neither of the two balconies proposed measure the minimum 4sqm nor are non-compliant with regards to solar access as discussed below.

Solar Access

62. Section 4A of the ADG requires that living areas of at least 70% of units should receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.
63. The predominantly south facing aspect of Units 1 and 4 will receive no sunlight to living room windows. Sunlight to units in the existing terraces is also likely to be constrained due to the proposed infill building blocking existing solar access to the rear of the terraces.
64. A maximum of 15% of units in a building are to receive no direct sunlight between 9am and 3pm. Unit 1 receives no direct sunlight and represents 25% of units in the proposed development.
65. Section 4E of the ADG requires that private open spaces and balconies should predominantly face north, east or west to maximise solar access. The two proposed balconies are south facing and therefore would have no access to sunlight.

Heritage

66. The site contains a heritage item in the form of the existing sandstone wall situated along the south west boundary of the site, and the two existing contributory terraces located within a Conservation Area and is therefore subject to the heritage provisions of this DCP.
67. The proposed development is inconsistent with the objectives of Section 5.10 of the Sydney Local Environmental Plan 2012 concerning heritage conservation. The proposal represents unsympathetic alterations to two contributory terraces which will obscure the original form and interpretation of the existing terraces, whilst proposing infill development which is inconsistent with the established scale and character of the conservation area.
68. For the reasons discussed above the proposed development is considered be unsympathetic to the character of the heritage conservation area and the setting of the two existing contributory terraces. The proposed infill building will have an overbearing visual impact upon the Broughton Street streetscape and does not respect the established subdivision pattern of the two existing terraces.
69. The design of the proposal is considered unsympathetic to the existing terraces along Broughton Street and the mansard roof is uncharacteristic and out of context with surrounding buildings.
70. While the sandstone wall heritage item has been retained, the proposal poorly integrates the wall within the design and will have a significant visual impact upon the setting of this heritage item. As such, the proposed development does not positively respond to the heritage significance of the site.

Other Impacts of the Development

71. The proposed development is capable of complying with the BCA. It is Class 2.

72. It is considered that the proposal will have a significant detrimental effect relating to environmental, social or economic impacts on the locality, and is not supported.

Suitability of the site for the Development

73. The proposed use is of a nature in keeping with the overall function of the site, notwithstanding that the proposal is considered an overdevelopment of the site as discussed under the Issues section above. The site is in a mixed use surrounding with residential uses similar to that proposed particularly prevalent along Broughton Street.

Internal Referrals

74. The conditions of other sections of Council have been included in the proposed conditions.
75. The application was discussed with the Heritage and Urban Design Specialists who advised that the proposal represents development unsympathetic to the character of the conservation area and involves unsympathetic alterations to the contributory terraces.

Notification, Advertising and Delegation (Submission(s) Received)

76. 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 2 October 2019 and 24 October 2019. As a result of this notification a total of 317 properties were notified and 1 submission was received.
77. Issues raised by the submission are outlined below.

- (a) It is requested as a condition of consent to require the owners to remove the graffiti on the south side of the property facing Broughton Street.

Response - The City's response to graffiti in the local area is covered in our graffiti management policy. The City encourages the community to report incidences of Graffiti for removal. Where possible, reported incidences will be removed within 24 hours of identification, or once Owner's Consent has been obtained.

- (b) If the site is being developed, Council should require the electrical poles along Crown Street in front of the property to be placed underground as it has for other recent developments in the close proximity to the subject site.

Response - Given that the development proposes to retain the principal form of the terraces facing Crown Street it may be unduly onerous for Council to require extensive works in front of the property along Crown Street.

- (c) The proposal fails to exhibit design excellence, as it does not achieve a high standard of architectural design, material selection or detailing appropriate to the site and surrounding area. The proposal does not result in good internal amenity and design. The amenity of the studio rooms are very poor with usability issues.

Response - The matters raised are consistent with the issues identified by Council officers and discussed under the Issues section above.

- (d) Can the council provide assurance that the proposed 'Home Office' spaces will not be used for residential purposes in the future? No provision has been made for external signage or detail of how these spaces would be leased.

Response - The definitions for 'home business' and 'home occupation' outlined in the Sydney LEP 2012 provide controls in relation to the use of home office spaces, which includes the use of the space by permanent residents of the property - home office space must not be leased privately. Should Council consider approval of the application, a condition is recommended confirming that the home office areas are not to be converted to bedrooms.

- (e) Overall quality of the design is considerably lacking, which does not appear to meet the requirements or expectations of a multiple unit dwelling, with poor amenity, layout, and cheap material selection, which is well below what would be expected for the area.

Response - The matters raised are consistent with the issues identified by Council officers and discussed under the Issues section above.

- (f) The proposed height, bulk and scale of the development is a gross over development of the site, by breaching the FSR guidelines by nearly 10%, via adding a fourth (4th) storey on top of a maximum of three (3) allowable storeys stipulated by City of Sydney's current Development Control Plan. The proposal also envisages fitting six (6) studio units into a usable floor area in a little over 200m². This is clear evidence of gross overdevelopment.

Response - The matters raised are consistent with the issues identified by Council officers and discussed under the Issues section above.

- (g) The proposal exhibits a poor integration with the surrounds and is not sympathetically designed for the sandstone heritage wall on Broughton Street.

Response - The matters raised are consistent with the issues identified by Council officers and discussed under the Issues section above.

- (h) The proposal will disrupt the 2-storey profile of surrounding properties and is inconsistent with the existing streetscape and local character. The proposal is considered unsightly and will be a blight on the existing streetscape.

Response - The matters raised are consistent with the issues identified by Council officers and discussed under the Issues section above.

Public Interest

78. For the reasons outlined above, the application is not considered to be in the public interest and therefore Council recommends refusal of the development proposal.

S7.11 Contribution

79. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated on the basis of the development's net increase in resident, worker and/or visitor populations.

80. Credits have been applied for the most recent past use(s) of the site established by the existing residential floorplans which appear to show two existing 1-bedroom terraces.

81. Should the application be considered for approval, the following monetary contribution is required towards the cost of public amenities:

(a) Open Space	\$16,864.47
(b) Community Facilities	\$8,255.55
(c) Traffic and Transport	\$528.67
(d) Stormwater Drainage	\$0.00
Total	\$25,648.68

Relevant Legislation

82. Environmental Planning and Assessment Act 1979.

Conclusion

83. The application seeks consent for alterations and additions to two existing residential terraces, comprising attic additions to the existing terrace properties and partial demolition of the ground floor rear wings to facilitate construction of a 4-storey infill building within the existing rear private open space.
84. The proposed development is considered to be an overdevelopment and is inconsistent with the development standards for the site. The applicant has submitted a Clause 4.6 variation to the FSR standard under the Sydney LEP 2012. Insufficient justification has provided to support the contravention of the FSR standard and it is not supported.
85. The development would have an overbearing impact upon the local streetscape and represents development which is unsympathetic to the character of the heritage conservation area.
86. The proposal would result in an unacceptable loss of amenity to the existing terraces and a poor level of amenity proposed for residential units within the new built form of the infill building.
87. The application is not considered in the public interest and is therefore recommended for refusal.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Daniel Stanley, Planner