

Item 4.**Development Application: 21C Billyard Avenue, Elizabeth Bay - D/2019/665****File No.:** D/2019/665**Summary**

Date of Submission:	26 June 2019. Amended plans received on 23 October 2019 and 15 January 2020
Applicant:	Cracknell & Lonergan Architects
Architect/Designer:	Cracknell & Lonergan Architects
Owner:	Patrick Lane
Cost of Works:	\$385,000
Zoning:	R1 General Residential. The proposed residential use is permissible with consent.
Proposal Summary:	<p>Approval is sought for alterations and additions to an existing residential flat building comprising an additional storey containing a new living space and outdoor terrace to Unit No. 11.</p> <p>A total of 33 individual submissions were received following public exhibition of the application. Issues raised include view loss, detrimental impacts on the streetscape and character of the heritage conservation area, solar access, owner's consent, structural capacity of the existing building and reduced access to the roof top.</p> <p>The application is referred to the Local Planning Panel for determination as it is contentious development, being a development receiving 25 or more unique submissions by way of objection.</p> <p>The application was amended to address a number of issues identified by Council during assessment. These issues relate to owners consent, solar access, detailed design and materiality.</p>

However, and critically, the applicant has not provided an adequate view impact assessment with the development application, nor has the applicant provided a 3D digital model to allow the City to carry out a view impact assessment.

Council officers requested the submission of the view impact assessment on the 10 September 2019 and the 3D digital model on the 26 September 2019. Subsequent requests for the submission of an adequate 3D model were made on the 13 November, 13 December and 15 January. On the 7 February Council requested the application be withdrawn and resubmitted when all outstanding information was prepared. At the time of writing the report, the view impact assessment and 3D digital model had not been received.

As a full and proper view impact assessment cannot be undertaken, the application cannot be supported as it fails to demonstrate compliance with the objectives of Sydney Local Environmental Plan 2012, including Clause 4.3(c) Height of buildings and Clause 6.21(4)(c) Design excellence in relation to view sharing and potential detrimental impacts on view corridors.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Attachments:

- A. Selected Drawings
- B. Assessment of View Sharing
- C. Shadow Study
- D. Shadow Diagrams

Recommendation

It is resolved that consent be refused for Development Application No. D/2019/665 for the following reasons:

- (A) The proposal does not meet the requirements of Clause 50(1)(a) and Schedule 1 Part 1 (2)(4) of the Environmental Planning and Assessment Regulation 2000 as inadequate information has been submitted to assess all potential impacts of the proposal.
- (B) The proposal fails to demonstrate compliance with the objectives of Sydney Local Environmental Plan 2012, including Clause 4.3(c) Height of buildings and Clause 6.21(4)(c) Design excellence, as inadequate information has been submitted in order to assess whether the proposal promotes the sharing of views and whether the proposal detrimentally impacts on view corridors.
- (C) The proposal fails to meet Clause 1.2(j) of Sydney Local Environmental Plan, 2012, as the proposal does not achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of the locality.
- (D) The proposal is not in the public interest as it fails to address potential impacts of the proposal on view loss, view sharing and potential detrimental impacts on view corridors.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 21 August 2019.
2. The site is rectangular, with area of approximately 1,464sqm. It has a primary street frontage to Billyard Avenue and a secondary street frontage to Onslow Avenue. The site has a substantial slope from Onslow Avenue to Billyard Avenue. Two brick residential flat buildings are contained within the site. One fronts Billyard Avenue, and the other Onslow Avenue.
3. The subject building is orientated towards Onslow Avenue and has an address of 10 Onslow Avenue. This building presents as five storeys to Onslow Avenue. Due to the slope of the site the subject building is seven storeys at its highest point.
4. Surrounding land uses are residential, primarily in the form of residential flat buildings in a diversity of styles. To the north west is the building known as 21 Billyard Avenue, which is on the same site as the subject building and is of the same construction. This building is separated from the subject building by approximately 4.5m and is orientated towards Billyard Avenue.
5. To the immediate north is a residential flat building known as 8 Onslow Avenue. This building is red brick and presents as three storeys to Onslow Avenue.
6. To the immediate south is a residential flat building at 12 Onslow Avenue known as Darnley Hall. This building presents as five storeys to Onslow Avenue.
7. To the west across Onslow Avenue is an eight storey heritage listed building at 13 Onslow Avenue known as Meudon. To the south west at 15-19 Onslow Avenue is a 16 storey contemporary residential flat building known as Elizabeth Bay Gardens.
8. The site is within close proximity to a number of State and local heritage listed items, including Elizabeth Bay House, Onslow Place and Arthur McElhone Reserve located to the north and north-west of the site.
9. The site is not a heritage item but is located within the Elizabeth and Rushcutters Bay Conservation Area (C20).

10. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Onslow Avenue looking north



Figure 3: Site viewed from Onslow Avenue



Figure 4: Site viewed from Onslow Avenue looking west



Figure 5: View looking south from top of Arthur McElhone Reserve towards the Meudon and Elizabeth Bay Gardens buildings



Figure 6: View looking south east from Elizabeth Bay House



Figure 7: View of subject site from Billyard Avenue

Proposal

11. Approval is sought for alterations and additions to Unit 11 consisting of:
 - (a) the construction of a new storey on the southern portion of the building containing a living space, bathroom and outdoor terrace area;
 - (b) installation of an internal circular stairwell connecting the new storey to the existing Unit 11;
 - (c) enclosure of northern terrace on the existing level Unit 11 for a wintergarden.
12. The application was amended to delete a green roof that was originally proposed on the rooftop fronting Onslow Avenue. The amended plans and documents are the subject of this report.
13. Plans of the proposed development are provided below.

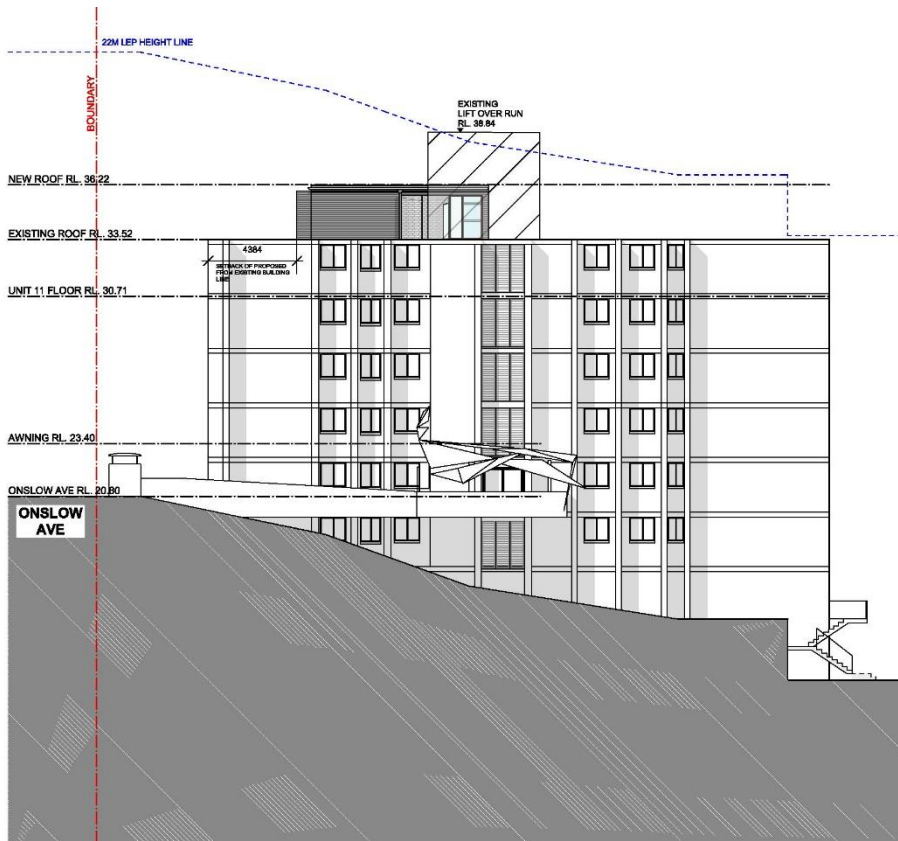


Figure 8: Proposed southern elevation

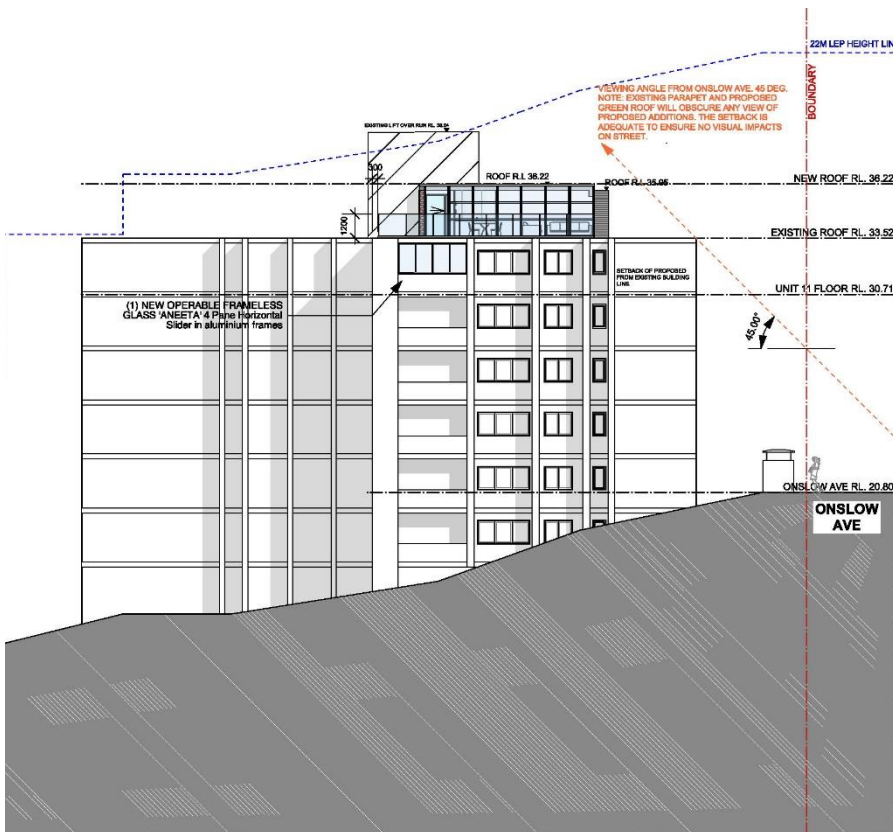


Figure 9: Proposed northern elevation

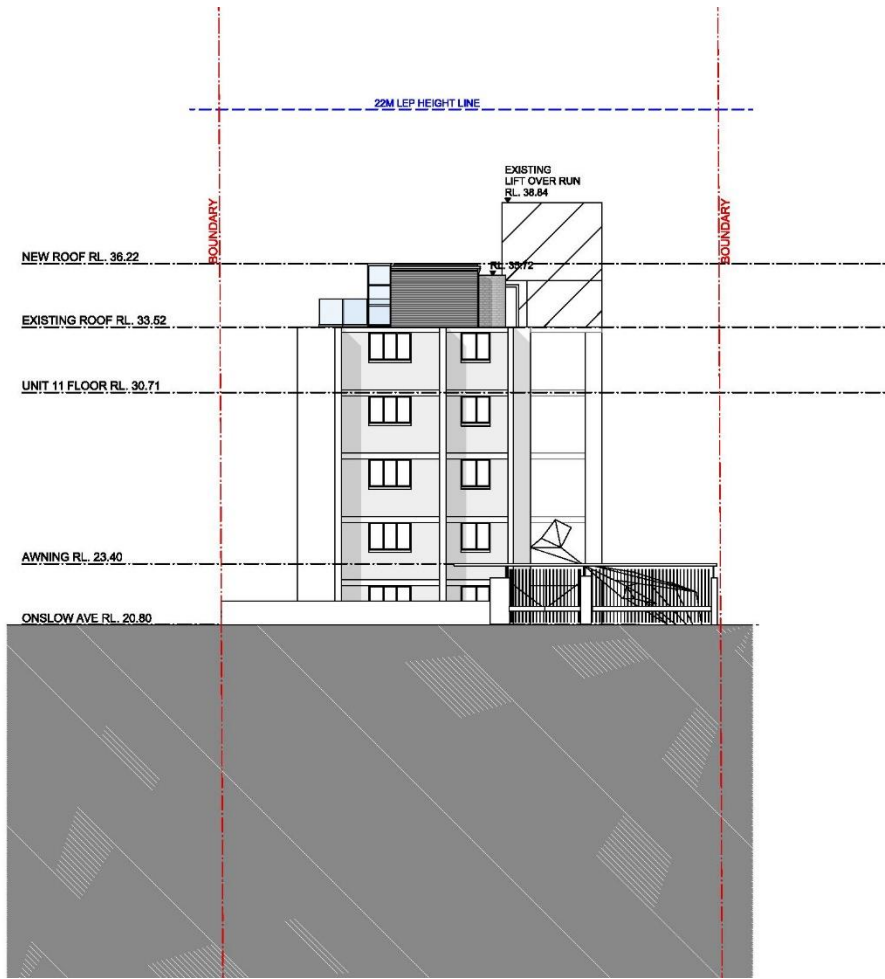


Figure 10: Proposed western elevation to Onslow Avenue

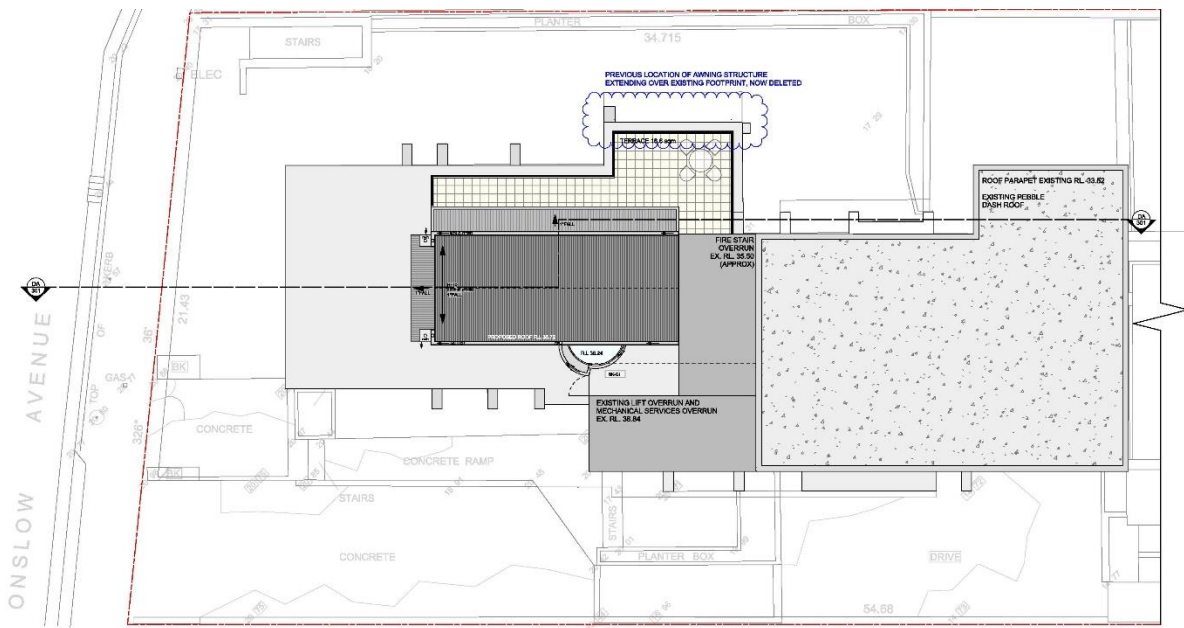


Figure 11: Proposed roof plan

History Relevant to the Development Application

14. The application was amended on two separate occasions to address a number of issues relating to materials, colours and finishes. The amended plans submitted on 15 January 2020 address these items.
15. In addition to the above amendments, additional information was requested throughout the course of the assessment, including:
 - (a) Owners consent:
 - (i) On 4 July 2019 strata owners consent, was sought.
 - (ii) On 6 September, following submissions received from other unit owners within the building, Council requested further clarification for owners showing the relevant strata minutes permitting lodgement of the DA.
 - (iii) Additional information was submitted on 6 September satisfactorily addressing this issue.
 - (b) Shadow diagrams:
 - (i) On 10 September 2019 the applicant hourly solar elevations were requested demonstrating the amount of direct sunlight to the northern facing windows of Darnley Hall at 12 Onslow Avenue.
 - (ii) The required solar elevations were submitted on 24 October 2019 and were satisfactory to complete the solar access assessment.
 - (c) View impact assessment
 - (i) The original application did not provide adequate information for a proper view impact analysis of the potential impacts from adjoining properties.
 - (ii) On 10 September 2019 a view impact assessment was requested that specifically shows the existing and proposed views from adjoining properties potentially impacted by the proposal.
 - (iii) On 26 September 2019 the applicant was requested to submit a 3D digital model of the existing building to determine which properties would be potentially impacted by the proposal.
 - (iv) On 8 November 2019 a 3D digital model was submitted by the applicant. The City's model makers advised that the model did not meet the City's requirements and could not be used to assess potentially view impacted properties.
 - (v) Additional requests for the submission of the 3D model were made on the 13 November, 13 December and 15 January. Given the ongoing delay, on 7 February Council requested the applicant withdraw the application and resubmit when the outstanding information was prepared.
 - (vi) At the time of writing the report the view impact assessment and 3D digital model had not been received.

Economic/Social/Environmental Impacts

16. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

- (a) Environmental Planning Instruments and DCPs.

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

17. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.

18. The Sydney Harbour Catchment Planning Principles must be considered in the carrying out of development within the catchment. The key relevant principles include:

- (a) protecting and improving hydrological, ecological and geomorphologic processes;
- (b) considering cumulative impacts of development within the catchment;
- (c) improving water quality of urban runoff and reducing the quantity and frequency of urban run-off; and
- (d) protecting and rehabilitating riparian corridors and remnant vegetation.

19. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. However, the site is not located in the Foreshores Waterways Area or adjacent to a waterway and therefore, with the exception of the objective of improved water quality, the objectives of the SREP are not applicable to the proposed development. The development is consistent with the controls contained with the deemed SEPP.

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

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. If recommended for approval, a condition would be included ensuring BASIX measures are implemented.

Sydney Local Environmental Plan 2012

22. The site is located within the R1 General Residential zone. The proposed use is defined as residential and is permissible

23. The relevant matters 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 22m is permitted. A maximum height of 20m is proposed. While the proposal complies with the numerical building height control, based on the information submitted it is unclear whether the proposal meets the objectives of the building height development control in relation to the sharing of views.
4.4 Floor Space Ratio	Yes	A maximum FSR of 4.5:1 is permitted. A FSR of 2.05:1 is proposed.
5.10 Heritage conservation	Yes	The subject site is located within a heritage conservation area. See discussion under the heading Issues.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	No	With the exception of Clause 6.21(4)(c) relating to the maintenance of view corridors, the proposed development satisfies the requirements of this provision. See discussion under the heading Issues.

Sydney Development Control Plan 2012

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

2. Locality Statements – The Bays

The subject site is located in The Bays. The proposed alterations and additions are in keeping with the unique character of the area and design principles in that it responds to the streetscape of the heritage conservation area and maintains important views to and from Elizabeth Bay House. However inadequate information is submitted to enable accurate assessment of whether the proposal maintains view corridors to Sydney Harbour and parks.

3. General Provisions	Compliance	Comment
3.6 Ecologically Sustainable Development	Yes	The proposal satisfies BASIX and environmental requirements.
3.9 Heritage	Yes	The existing building is a neutral building in a conservation area. See discussion under the heading Issues.
3.14 Waste	Yes	If the application were able to be supported, standard conditions would be recommended requiring the proposal comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

4. Development Types	Compliance	Comment
4.2 Residential flat, commercial and mixed use developments		
4.2.1 Building height 4.2.1.1 Height in storeys 4.2.1.2 Floor to ceiling heights	No	The site is subject to a six storey height control. The proposed building currently presents as five storeys to Onslow Avenue. The proposal retains this appearance as the additional storey is setback 4.4m from the existing building and approximately 10m from the Onslow Avenue property boundary.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
		<p>The proposal increases the building height in the middle of the building from six to seven storeys. While this is acceptable from a streetscape point of view, it is unclear whether this height in storeys non-compliance can be supported from a view sharing perspective.</p> <p>The additional storey proposes an internal floor to ceiling height of 2.4m, which does not comply with the minimum floor to ceiling height of 2.7m. If the application were able to be supported the proposal would be amended to raise the floor to ceiling height by a minimum of 300mm, increasing the overall building height to a minimum of 20.3m.</p> <p>See discussion under heading Issues.</p>
<p>4.2.3 Amenity</p> <p>4.2.3.1 Solar access</p> <p>4.2.3.7 Private open space</p> <p>4.2.3.8 Common open space</p>	Yes	<p>The proposal will not adversely overshadow adjoining properties.</p> <p>See discussion under heading Issues.</p> <p>The proposal complies with the private open space provision by providing a terrace area in excess of the 10sqm minimum requirement.</p> <p>The roof top is not currently accessible and is not formally utilised as common open space for the residential flat building.</p>

Building height and view impact assessment

25. The application proposes alterations and additions in the form of an additional storey to the existing building to extend the living space and outdoor area of Unit 11.

26. The allowable building height, as prescribed by Clause 4.3 of Sydney LEP 2012 is 22m. The proposal complies with this numerical requirement, with a maximum building height of 20m. As noted in the DCP compliance table above, the proposed floor to ceiling height needs to be increased by a minimum of 300mm to meet the minimum floor to ceiling height for the additional storey. This amendment would increase the overall height of the proposal to a minimum of 20.3m, which is still compliant with the maximum allowable building height.
27. In addition to compliance with the numerical building height control, the proposal must satisfy the objectives of the building height control, including objective 4.3(1)(c) *to promote the sharing of views*. The proposal must also satisfy the design excellence provisions including Clause 6.21(4)(c) *whether the development detrimentally impacts on view corridors*.
28. Assessment of view impact is undertaken based on the principals of view sharing established in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. The four step assessment is summarised in part below:
 - (a) The first step is the assessment of views to be affected. Water views are valued more highly than land views. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
 - (b) The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. The expectation to retain side views is often unrealistic.
 - (c) The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas.
 - (d) The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.
29. The site is located in Elizabeth Bay where many properties enjoy views to the water. Some of these views are partial views from living areas, while others are from bedrooms across side boundaries. Due to the topography of the surrounding land and the density of the area, the proposal has the potential to impact a large number of properties, to varying degrees. As such, a detailed view impact assessment is required to be undertaken for the proposal.
30. Based on information provided, a full and proper view sharing assessment against the planning principle established via the *Tenacity* case is unable to be undertaken. As a result, it is unclear whether the proposal meets the objectives of the building height development control in relation to the sharing of views and the design excellence provisions of the LEP in relation to potential detrimental impacts on view corridors.

31. The original application included an assessment of view sharing that did not provide adequate information to make a proper view impact assessment of the potential impacts from adjoining properties. The submitted assessment identified 11 properties that would be potentially impacted by the proposal. Section 3.1 acknowledges the limitations of the assessment, including that physical access to the properties was not made, and as a result, assessment material including floor plans and photographs were sourced from marketing material. The assessment notes that while effort was made to verify the source material, inaccuracies such as the distortion of perspectives in images may exist.
32. In addition to the abovementioned limitations relating to materials utilised, the assessment is limited with regard to properties that have been assessed. The submitted assessment acknowledges that due to available information on subject neighbours (or lack thereof) the assessment is limited to the properties identified within the report. As a result, a number of properties within adjoining buildings that may be impacted by the proposal have not been included within the assessment, as materials were not readily available.
33. On 10 September 2019, the applicant was requested to submit a view impact assessment showing the existing and proposed views from all adjoining properties potentially impacted by the proposal. On 26 September 2019, the applicant was also requested to submit a 3D digital model of the existing building to determine which properties would be potentially impacted by the proposal. Subsequent requests for the submission of the 3D digital model were made on 13 November, 13 December and 15 January.
34. The submission of the 3D model is essential for the assessment of the proposal. The model is required to verify the completeness of any submitted view impact assessment prepared by the applicant, or, in the absence of this, it can be used by Council to carry out an independent view impact assessment.
35. Following numerous requests for the information, Council requested that the applicant withdraw the application and resubmit all of the required information. At the time of writing, submission of a satisfactory view impact assessment and 3D digital model had not been submitted.
36. As a full and proper view impact assessment cannot be undertaken, the application cannot be supported as it fails to demonstrate compliance with the objectives of Sydney LEP 2012, including Clause 4.3(c) Height of buildings and Clause 6.21(4)(c) Design excellence in relation to view sharing and potential detrimental impacts on view corridors respectively.

Heritage and streetscape

37. The site is located within a Conservation Area and is therefore subject to the heritage provisions of this DCP. The subject building is defined as neutral and is within close proximity to a number of heritage listed items, including Elizabeth Bay House and Arthur McElhone Reserve.
38. The proposed addition is set back 4.4m from the front of the existing building and approximately 10m from the Onslow Avenue property boundary. This setback allows the proposal to retain the existing buildings five storey presentation to Onslow Avenue.

39. The proposal increases the building height in the middle of the building from six to seven storeys. This is acceptable from a streetscape point of view as the proposal will not be overly visible from Onslow Avenue or Billyard Avenue, and the increased height in this location is adjacent to the existing lift overrun (Figure 12).
40. As discussed above however, it is unclear whether this height in storeys non-compliance can be supported from view sharing or view corridor perspectives.

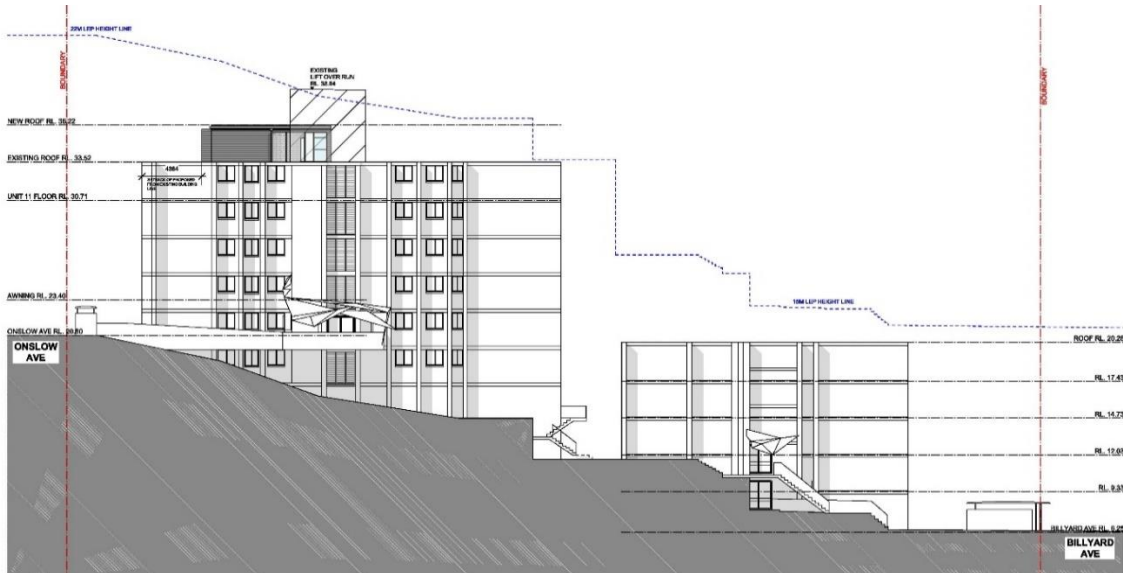


Figure 12: South elevation of existing building and proposed addition showing setback from Onslow Avenue and additional height in storey

41. Following a review of the original proposal by the City's Heritage Specialist and Urban Designer, a number of concerns were raised with regard to materiality. The originally proposed materials, which included marble cladding, tile cladding and zinc, were out of character with the existing building, which is primarily constructed of brick and render. The application also lacked detail regarding materials, colours and finishes.
42. The application was amended to simplify the proposed material palette to better align with the materials of the existing building and surrounding conservation area, as well as provide addition details on proposed colours and finishes.
43. The revised proposal is acceptable. The refinement of materials combined with the considerable setback of the addition from Onslow Avenue results in a building that is not inconsistent with the streetscape and will not detract from the heritage conservation area.

Solar access

44. The Sydney DCP 2012 requires that neighbouring developments achieve a minimum of 2 hours direct sunlight between 9am and 3pm on 21 June to at least 1sqm of living room windows and 50% of the required private open space area.

45. On request, the applicant submitted a shadow study that includes floor plans of adjoining units within Darnley Hall located immediately to the south. These floor plans identify the location of living rooms and private open space areas. The shadow study also includes elevational shadow diagrams indicating the extent of additional overshadowing on adjoining windows on the northern elevation of Darnley Hall as a result of the proposal.
46. The shadow study demonstrates that overshadowing to Darnley Hall will not result in unacceptable impacts and is acceptable as follows:
- (a) Living room windows and private open space areas are either orientated to the north east towards the harbour, or to the south west towards Onslow Avenue. Floor plans do not show these areas located on the northern elevation.
 - (b) Windows located along the northern elevation are to bedrooms, kitchens laundries and bathrooms.
 - (c) The elevation shadow study shows that three windows will be impacted by additional overshadowing in the afternoon for one hour between 12.30pm and 1:30pm.
 - (d) The overshadowing of these windows is acceptable as these windows are not to living rooms and are therefore not protected from overshadowing under the DCP.
 - (e) Further, these windows still receive a minimum of 2 hours of direct sunlight to a significant portion of the window between 9am and 3pm on the 21 June.



Figure 13: Windows located on northern elevation of Darnley Hall, viewed from the location of the proposed addition identifying the windows under shadow assessment.

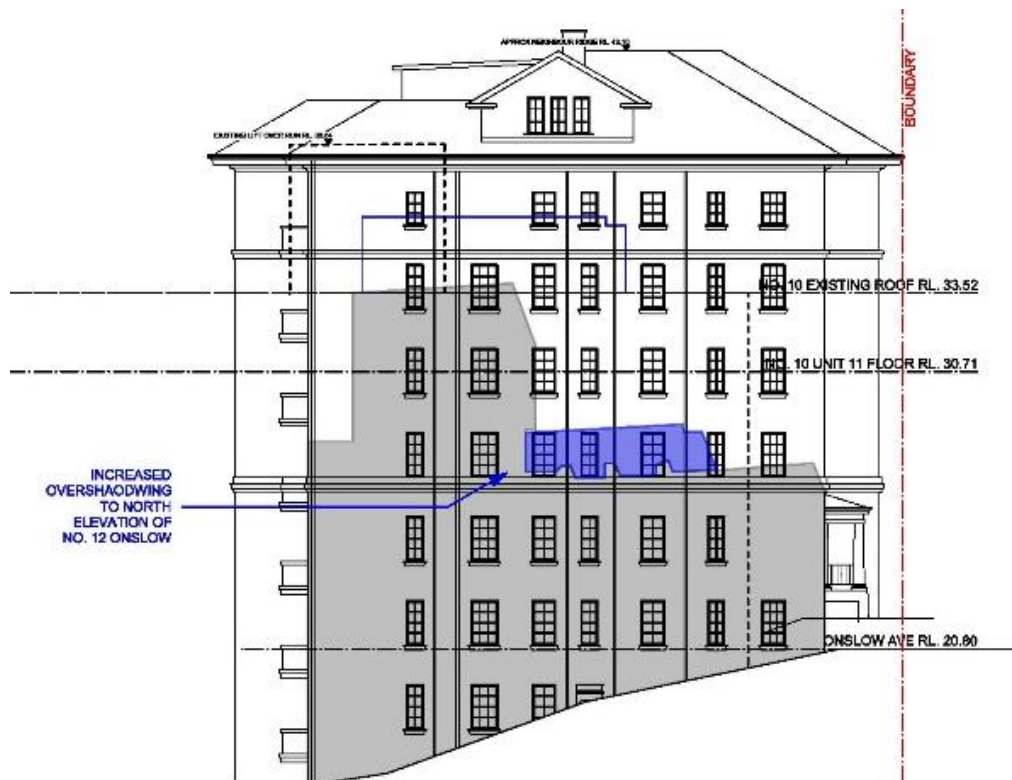


Figure 14: North elevation of Darnley Hall showing additional overshadowing at 1:00pm on 21 June

Other Impacts of the Development

47. The proposed development is capable of complying with the BCA.
48. Due to inadequate information provided in order to assess potential view impacts, it is unclear whether the proposal will have significant detrimental effects relating to environmental, social or economic impacts on the locality.

Suitability of the site for the Development

49. The proposal is of a nature in keeping with the overall function of the site. The premises are in a residential surrounding and amongst similar uses to that proposed. However due to the inadequate view impact information, it is unclear whether the proposal is suitable for the site. This is unsatisfactory.

Internal Referrals

50. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Surveyors and Landscape Architects.

External Referrals

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

51. In accordance with the Community Participation Plan 2019 the proposed development is required to be notified. The application was notified for a period of 14 days between 8 July 2019 and 23 July 2019. As a result of this notification a total of 317 properties were notified. There were 33 submissions received and the following issues raised:

- (a) The proposal would result in loss of important views and vistas from private properties and from Elizabeth Bay House.

Response - The extent of the loss of views and vistas cannot be fully assessed as the applicant has failed to provide an adequate view impact assessment or 3D digital model to assess view sharing. As such, the application is not supported.

- (b) The View Sharing Assessment and Statement of Environmental Effects do not adequately address the potential loss of views from private properties and omits properties that will be affected. The pictures included in the submitted View Sharing Assessment are inaccurate.

Response - Agreed. The submitted documentation is inadequate in order to conduct a full and thorough view impact assessment.

- (c) Properties are purchased on the basis that views will be maintained. It was understood by existing property owners and potential purchasers that current height restrictions were secure and could not be changed.

Response - The proposal complies with the numerical building height control outlined within Sydney LEP 2012. This control was established when the LEP was gazetted in 2012 following an extensive period of public consultation. As planning controls are subject to review and change as development objectives change over time, it is not possible to expect absolute certainty that existing building heights will remain unchanged. Notwithstanding, as the proposal has failed to demonstrate compliances with the objectives of the building height control and design excellence provisions of LEP for view sharing and detrimental impacts on view corridors, the application is not supported.

- (d) Loss of views would lead to a reduction in property values.

Response - The proposal is not supported due to inadequate information relating to view loss and view sharing. Notwithstanding, the assessment of potential reduction in property value as a result of the proposal is not a matter for consideration for this development application.

- (e) The proposal sets an unacceptable precedent for other buildings to build additional floors.

Response - The proposal is not supported due to inadequate information. Notwithstanding, any future development application that may be submitted for this building or another site in the surrounding area would be assessed against the relevant planning controls for the site and on the individual merits of the proposal.

- (f) The proposal is uncharacteristic of the historic heritage neighbourhood of Elizabeth Bay and will not make a positive contribution to the streetscape or when viewed from adjoining properties.

Response - The proposal was amended to address initial concerns raised by Council's Heritage Specialist and Urban Designer. The amended proposal results in a building that is not inconsistent with the streetscape.

- (g) The proposal does not respect the curtilage of Elizabeth Bay House, and will diminish the public appreciation of the history of the subdivision and estate. The proposal does not respect the heritage listed Meudon building located at 13 Onslow Avenue.

Response - The proposal has been reviewed by the City's Heritage Specialist, who raised no objection to the proposal in relation to impacts on nearby heritage items including Elizabeth Bay House and Meudon.

- (h) The proposed amount of glazing will result in unacceptable glare to nearby properties.

Response - The proposal features glazing primarily on the northern elevation. The amount of glazing is satisfactory and risk of glare can be mitigated by condition if the application were supported.

- (i) The proposal will block sunlight to adjoining properties. The shadow diagrams and supporting information is insufficient and inaccurate.

Response - Additional information was submitted to assess overshadowing. The potential overshadowing impacts of the proposal are assessed in detail above in the issue section of this report and are acceptable.

- (j) The proposal will affect privacy to adjoining and nearby properties.

Response - The proposal presents blank walls to the southern and western elevations and is separated from the adjoining property to the south by approximately 11m. The proposed terrace area is setback approximately 6.5m from the adjoining property to the north which is acceptable, as the adjoining property is only three storeys in height and does not contain any windows at the same level as the proposed addition.

- (k) The additional gross floor area is excessive and an overdevelopment.

Response - The floor space ratio of the proposal complies with the Sydney LEP 2012 control.

- (l) The proposal (with regard to view sharing and solar access) does not take into consideration future changes to the floor plan of adjoining properties.

Response - The assessment of future changes to the internal layouts of adjoining properties is not a matter for consideration under this development application.

- (m) Correct owners consent for the submission of the development application has not been provided.

Response - The applicant provided additional information that satisfies Council's owners consent requirements, including minutes of a meeting of the Owners Corporation at which the Owners Corporation resolved to grant owners consent to the making of the development application.

- (n) The Owner's Corporation of 10 Onslow Avenue have not provided approval for the owner of Unit 11 to build on top of the shared roof space or undertaken refurbishment of the Unit. A vote on a special resolution is required.

Response - This is a matter for the owner of Unit 11 and the Owners Corporation of the building to resolve.

- (o) The proposal reduces the rooftop common open space to less than 25% of the site and the owners corporation will not be able to develop that roof for other purposes for the benefit of all owners such as communal open space, green roof or solar panels.

Response - The rooftop is not currently utilised by the residents of the building in a formal manner and is not currently required to meet common open space requirements. The exclusive use of the rooftop by Unit 11, as proposed in the application is a matter to be resolved and negotiated by the owner of Unit 11 and the Body Corporate.

- (p) Concerns raised over the lack of capacity of the existing building to hold the proposed addition and green roof.

Response - The green roof has been deleted from the proposal. The applicant has submitted additional information from a structural engineer concluding that the existing building is capable of supporting loads from the additional storey.

- (q) Concern that external air conditioning units will be installed in inappropriate locations.

Response - If the application were to be supported, a condition would be recommended restricting the installation of air conditioning units without further development assessment.

- (r) Safety concerns as a result of the proposal, including direct access to the roof from the fire stairs, absence of guardrails on the roof and safety issues for residents from potential falling debris during construction.

Response - If the application were able to be supported, standard conditions would be recommended requiring compliances with the Building Code of Australia. Hoardings and temporary structures would also be erected during construction, as required.

- (s) Conditions should be imposed requiring dilapidation report be prepared for 10 Onslow Avenue and that the applicant be responsible for any rectification works caused during construction.

Response - If the application were able to be supported, standard conditions would be recommended requiring the preparation of dilapidation reports for adjoining properties.

- (t) The waste management plan is inadequate and will result in demolition and construction waste being stored within common property and disposed of in residential bins.

Response - If the application were able to be supported, standard conditions would be recommended requiring the proposal comply with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

- (u) Concern that approval of a major refurbishment of the building as proposed will mean that residents are no longer entitled to apply for parking permits.

Response - The proposal does not constitute a major refurbishment of the building. Notwithstanding, residential parking permits are issued in accordance with the City's Neighbourhood Parking Policy and are not restricted by planning controls.

- (v) The estimated cost of works is inadequate for a quality build using quality tradespeople. It is assumed it does not include the cost to purchase the exclusive use from the body corporate and does not include significant structural work required for the build.

Response - The cost of purchasing exclusive use of the rooftop is not an expense required to be included in the estimated cost of works. The estimated cost of works has been prepared by a registered architect and is acceptable.

- (w) Concerns over noise from use of the outdoor terrace.

Response - Noise from a single residential unit is not expected to create unreasonable impact on surrounding properties.

- (x) Concern that access to street parking and general infrastructure will be further limited due to additional residents.

Response - The proposal seeks the addition of a new living room and outdoor terrace to the existing Unit 11. The proposal will not result in the addition of new residents that will generate unacceptable pressure on existing parking and infrastructure.

- (y) Concern over construction impacts, including noise, dust and traffic.

Response - If the application were able to be supported, standard conditions would be recommended to manage noise, dust and traffic during construction.

- (z) The development application should be correctly registered as 10 Onslow Avenue, not 21C Billyard Avenue.

Response - The address of the subject site is 21C Billyard Avenue, not 10 Onslow Avenue. A site notice was placed on the Onslow Avenue frontage of the building during the exhibition of the application and the notification letter referred to the building at 10 Onslow Avenue.

- (aa) Criticism that some nearby residents were not formally notified.

Response - The proposal was notified to all nearby properties within a 25m radius of the site in accordance with the City's Community Participation Plan. A site notice was also placed on the Onslow Avenue and Billyard Avenue frontages of the site during the exhibition period.

- (bb) The notification period does not provide sufficient time to respond.

Response - The application was notified for 14 days in accordance with the Community Participation Plan. All submissions received during the assessment of application have been considered.

- (cc) Council's description of the proposal as 'minor alterations and additions' is misleading.

Response - The description on the notification letter and Council's website does not refer to the proposal as being minor.

- (dd) Support for the proposal as it does not exceed the lift shaft or have additional overshadowing impacts and will activate the roof with a green space.

Response - Noted however view loss and view corridor impacts remain uncertain despite repeated requests from Council for a view assessment and compliant 3D digital model.

Public Interest

52. The proposal is not in the public interest as it fails to address the relevant objectives of the building height development standard and the objectives of the design excellence clause in relation to view sharing and potential detrimental impacts on view corridors.

S7.11 Contribution

53. The development is not subject to a S7.11 development contribution as it is for development where a contribution has previously been paid, which is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution. A contribution is therefore not payable.

Relevant Legislation

54. Environmental Planning and Assessment Act 1979.

Conclusion

55. The application proposes alterations and additions to an existing residential flat building comprising an additional storey containing a new living space and outdoor terrace to Unit 11.
56. The application has been amended to address a number of issues identified by Council during assessment. These issues relate to owners consent, solar access, detailed design and materiality.
57. The applicant has not provided an adequate view impact assessment with the development application, nor has the applicant provided an adequate 3D digital model to allow the City to carry out a view impact and view corridor assessment.
58. As a full and proper view impact assessment cannot be undertaken the application is recommended for refusal as it fails to demonstrate compliance with the objectives of Sydney LEP 2012, including Clause 4.3(c) Height of buildings and Clause 6.21(4)(c) Design excellence in relation to view sharing and potential detrimental impacts on view corridors.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Natasha Ridler, Area Coordinator