

Item 8.**Development Application: 503-505 Elizabeth Street, Surry Hills****File No.:** D/2020/20**Summary****Date of Submission:** 13 January 2020

Amended plans submitted on 27 August 2020 and 30 September 2020.

Applicant: Wyong Depot Pty Ltd**Architect/Designer:** John Ferres**Owner:** Mr A J Tauszik**Cost of Works:** \$3,393,119.00

Zoning: The site is zoned B4 - Mixed Use. The proposed development is defined as mixed use, with ground floor commercial premises and residential accommodation above. The proposed use is permissible with consent in the zone.

Proposal Summary: The application seeks consent for demolition of the existing buildings and construction of a new 7 storey mixed use development comprising:

- excavation to create 1 basement level;
- ground floor commercial premises (50sqm);
- 8 residential apartments on levels 1-6; and
- communal open space in the form of a roof terrace.

The application is referred to the Local Planning Panel for determination as the proposal is subject to the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development.

The proposal also exceeds the 22m height of buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012. The application proposes a maximum height of 25.3m, which exceeds the development control by 15%.

A written request was provided with the application, seeking a variation to the height of buildings development standard in accordance with Clause 4.6 of the Sydney LEP 2012. However, the written request was not updated with the submission of amended plans which increased the height as a result of lift access provided to the rooftop. The Clause 4.6 variation request is not supported as the applicant has provided insufficient justification to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. It is also noted that the application has not demonstrated compliance with minimum internal floor to ceiling height requirements.

The application was notified and advertised for a period of 21 days between 16 January 2020 and 6 February 2020. Three submissions by way of objection were received. The objections raised the following concerns:

- Height and bulk; and
- Odours from waste storage entering internal light well.

Following a preliminary assessment of the application, including consideration by the Design Advisory Panel Residential Subcommittee, Council wrote to the applicant on 12 May 2020 requesting amended plans and additional information to be submitted.

Amended plans and additional information were submitted by the applicant on 27 August 2020 and 30 September 2020. The amended plans and additional information did not satisfactorily address all the issues raised by Council.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) State Environmental Planning Policy No. 55 - Remediation of Land
- (ii) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (iii) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)
- (iv) State Environmental Planning Policy (Building Sustainability: BASIX) 2004
- (v) Sydney Local Environmental Plan 2012
- (vi) Sydney Development Control Plan 2012

Attachments:

- A. Selected Drawings
- B. Clause 4.6 Variation Request - Height of Buildings

Recommendation

It is resolved that consent be refused for Development Application No. D/2020/20 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

- (A) Insufficient justification has been provided to support the variation to exceed the Clause 4.3 height of buildings standard in accordance with Clause 4.6 of Sydney LEP 2012.
- (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 is inconsistent with the requirements of Clause 5.10 of the Sydney LEP 2012 and Section 3.9 of the Sydney DCP 2012 relating to heritage conservation.
- (D) The proposal results in a poor level of amenity for future occupants and does not adequately satisfy the principles and provisions of SEPP 65 Design Quality of Residential Apartment Development and the Apartment Design Guideline.
- (E) The proposal fails to demonstrate design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 6 February 2020.
2. The site is legally identified as Lot 26, Section 4 in Deposited Plan 22 and is located at 503-505 Elizabeth Street, Surry Hills.
3. The site is rectangular, with an area of approximately 173.8sqm. It has a primary street frontage to Elizabeth Street to the east and a secondary street frontage to Little Buckingham Street to the west. The site is located south of the intersection of Elizabeth Street and Bedford Street.
4. The site contains a two-storey building across the entire site, containing three studio apartments on the ground floor and a three bedroom apartment on the first floor. The site originally contained a pair of two storey terraces fronting Elizabeth and a separate two storey building fronting Little Buckingham Street. The buildings have been significantly modified and the buildings have been joined, resulting in 100% site coverage.
5. Surrounding land uses are mixed use, being predominantly residential and commercial. Directly north is a row of three two storey terrace buildings comprising both residential and commercial uses. Immediately south is a 7- storey residential flat building at 507-515 Elizabeth Street. Further south are 7-8 storey contemporary buildings with a mix of commercial and residential uses.
6. The site is not a heritage item but is located within the Cleveland Garden Heritage Conservation Area (C62). It is identified as a neutral building within the conservation area and the three terrace buildings to the north are contributory buildings.
7. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area



Figure 2: Site viewed from Elizabeth Street



Figure 3: Site viewed from Elizabeth Street, showing the prominent features of the existing building including roof form and chimneys



Figure 4: Site and neighbouring contributing terraces to the north viewed from Elizabeth Street



Figure 5: Looking north along Elizabeth Street



Figure 6: Looking south along Elizabeth Street



Figure 7: Looking south along Little Buckingham Street

History Relevant to the Development Application

Amendments

8. Following a preliminary assessment of the proposed development by Council officers, including consideration by the Design Advisory Panel Residential Subcommittee (DAPRS), a request for additional information and amended plans was sent to the applicant on 12 May 2020.
9. The following issues were raised:
 - Site contamination - The Preliminary Site Investigation submitted with the application identified significant sources of potential contamination which the report advised requires further investigation. Therefore, a Detailed Environmental Site Investigation (DESI) was requested by Council.
 - The demolition of existing terraces within the heritage conservation area had not been sufficiently justified.
 - Non-compliance with height in metres and height in storeys controls was not supported. Council requested, as advised by DAPRS, that the height of the building be reduced to 6 storeys to comply with the height in storeys and height in metres controls. This would also allow space to provide lift access to the rooftop level.
 - Non-compliance with floor space ratio control not supported by a written request to vary the development standard.
 - Apartment layouts and amenity issues including failure to comply with Apartment Design Guide (ADG) controls for cross ventilation, accessibility issues and amenity issues relating to the internal light well.
 - Acoustic/ventilation issues due to location on Elizabeth Street not sufficiently addressed.
 - Sun shading should be provided to the western elevation.
 - Use of the roof terrace exclusively by one apartment was not supported. Communal open space should be provided at the roof top level, within the height limit. Lift access was also required to be extended to the rooftop to allow for equitable access.
 - The car stacker/general car parking arrangements are not supported by Council's Transport and Access unit.
 - Waste storage and collection arrangements are not supported.
 - Shadow diagrams did not sufficiently show the overall overshadowing impacts to and from the proposed development and hourly shadow diagrams were requested.
 - Issues raised by Council's Environmental Projects Officer including inconsistency between plans and NatHERS summary.

- Public Domain issues including hydrant booster door opening onto the public domain and a 1:20 ramp proposed to Little Buckingham Street entrance with no landing.
10. The applicant was advised that the above information must be addressed within 28 days, resulting in a due date of 8 June 2020, otherwise withdrawal of the application was recommended.
 11. Council officers held a meeting with the applicant on 26 May 2020 to discuss the outstanding issues.
 12. Following the meeting, Council wrote to the applicant on 28 May 2020 confirming that additional information and amended plans would need to be submitted to Council to address the fundamental issues raised. The applicant requested a 12-month abeyance to address the issues, however Council officers advised that whilst a 12 month abeyance could not be accommodated, an additional 3 weeks would be granted to provide all of the required information.
 13. No information was submitted to Council by the extended deadline of 30 June 2020.
 14. On 7 July 2020, Council wrote to the applicant advising that, given no additional information had been submitted, Council would not be in a position to support the proposal. A final opportunity to withdraw the application was offered to the applicant.
 15. On 10 July 2020, the applicant wrote to Council requesting another opportunity to address the outstanding issues. Council advised that given no information had been provided in the specified timeframe, Council would need to proceed with determining the application.
 16. On 24 July 2020, Council received a written commitment from the applicant to provide the requested information by 18 September 2020.
 17. On 27 August 2020, the applicant submitted a planning report, structural engineer's report and amended architectural plans. Council advised the applicant on 4 September that the amended plans did not sufficiently address the issues raised by Council. Council officers subsequently agreed to an extended timeframe for submission of amended plans/information to address all issues by 30 September 2020.
 18. On 30 September 2020, the applicant resubmitted amended architectural plans and provided an amended Acoustic Report and Detailed Environmental Site Investigation (DESI). The DESI reported data gaps and recommended that these gaps be closed through further investigation. The applicant submitted an amended DESI on 5 November 2020.
 19. The assessment contained in this report is based on the amended plans and additional information submitted up to 5 November 2020.

Proposal

20. The application, as amended, seeks consent for the demolition of existing buildings and construction of a 7-storey mixed use development consisting of:

(a) Basement Level:

- (i) storage rooms for residential apartments;
- (ii) storage for 4 bikes;
- (iii) plant rooms; and
- (iv) bulky waste storage.

(b) Ground Floor:

- (i) one commercial tenancy fronting Elizabeth Street (50sqm);
- (ii) residential lobby accessed from Elizabeth Street;
- (iii) commercial and residential waste storage; and
- (iv) parking for 2 motorbikes accessed from Little Buckingham Street.

(c) Level 1:

2 residential apartments (1 x studio and 1 x 1 bed).

(d) Levels 2-5:

1 residential apartment per floor (2 bed).

(e) Level 6:

2 residential apartments (2 x studio).

(f) Rooftop:

Communal open space to Elizabeth Street and Little Buckingham Street frontages corridor.

21. Plans of the proposed development are provided below.



Figure 8: Photomontage of the proposed development, viewed from Elizabeth Street

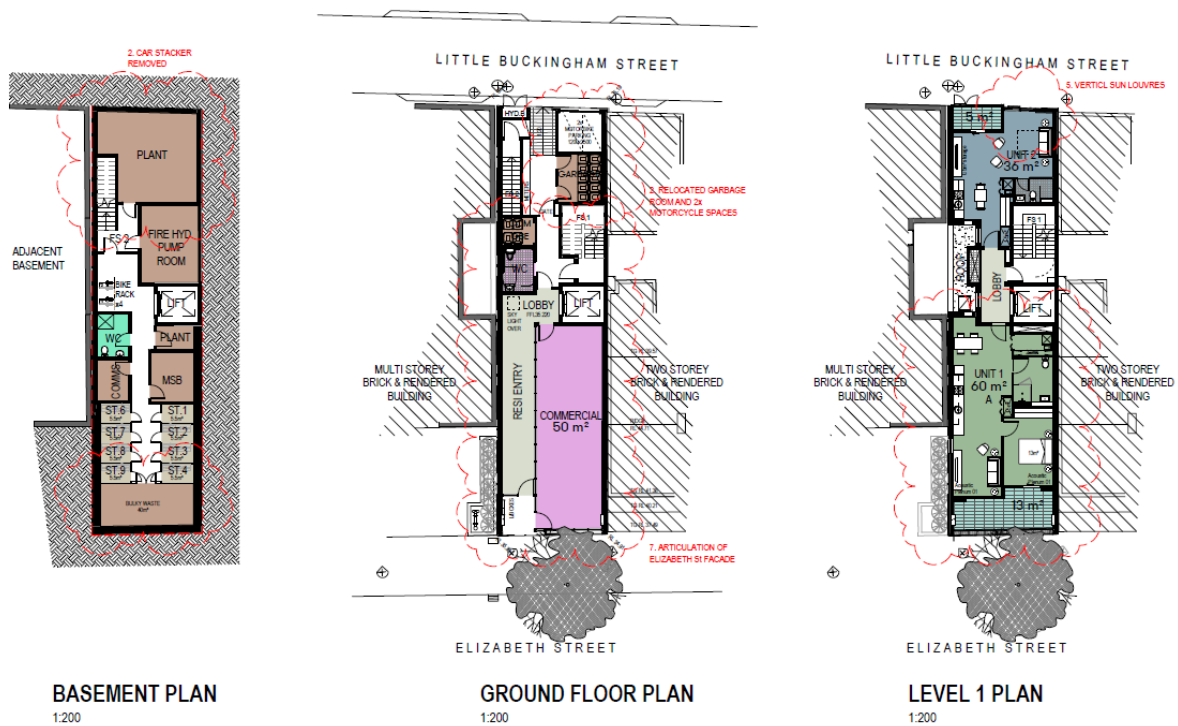


Figure 9: Basement, ground floor and first floor plans

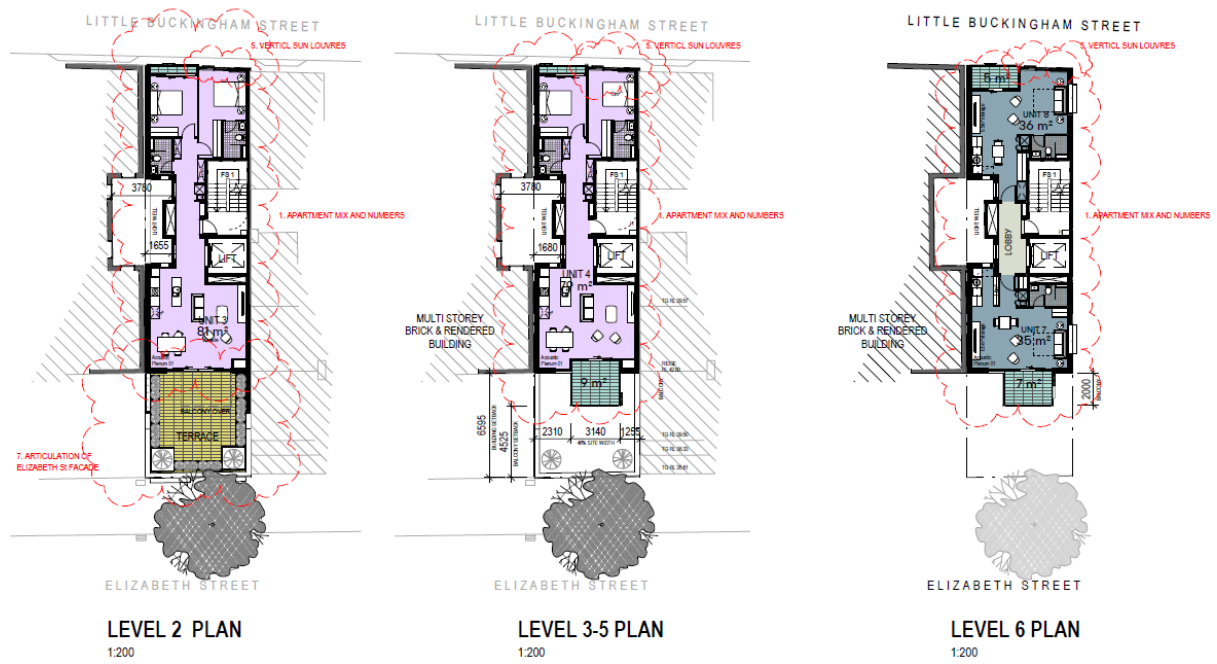


Figure 10: Levels 2-6 floor plans

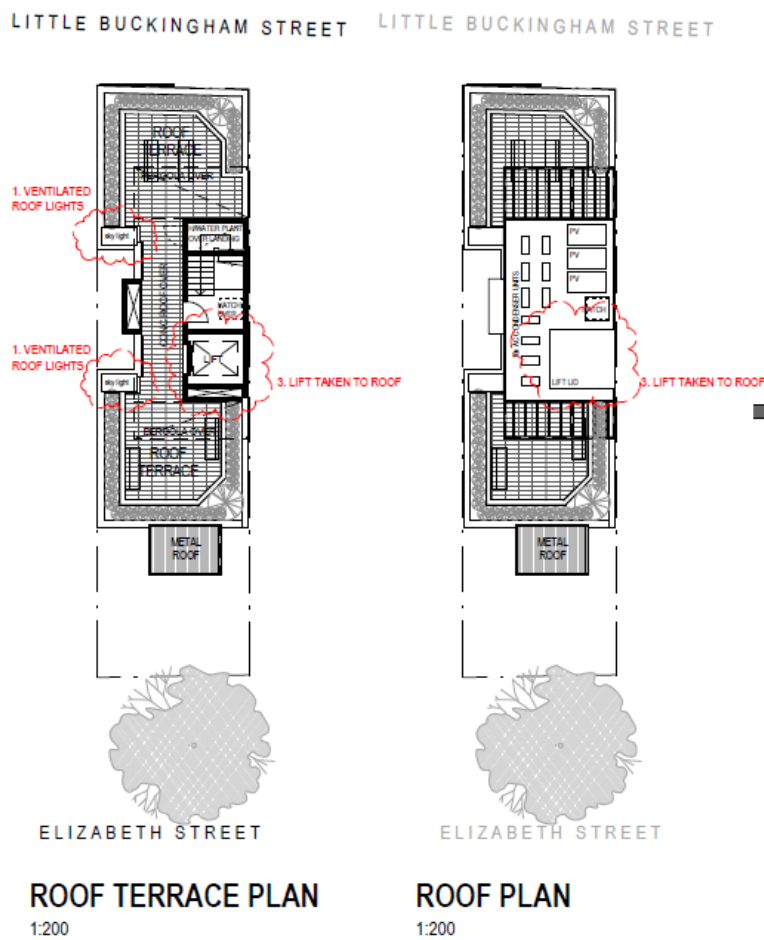


Figure 11: Roof terrace plan and roof plan

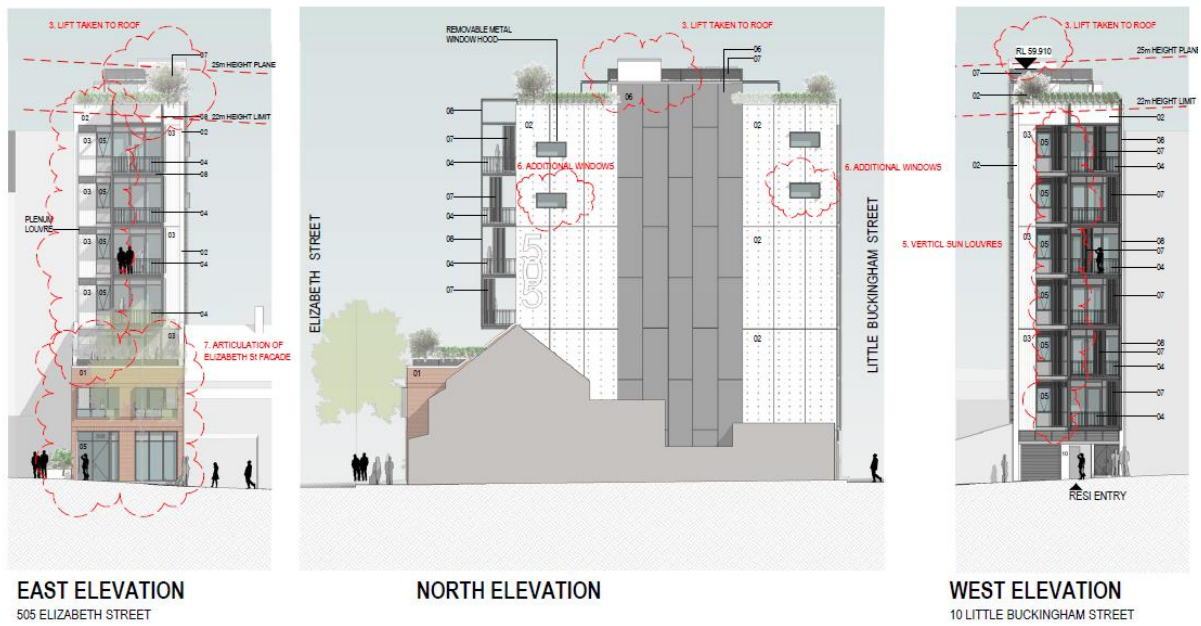


Figure 12: Elevations

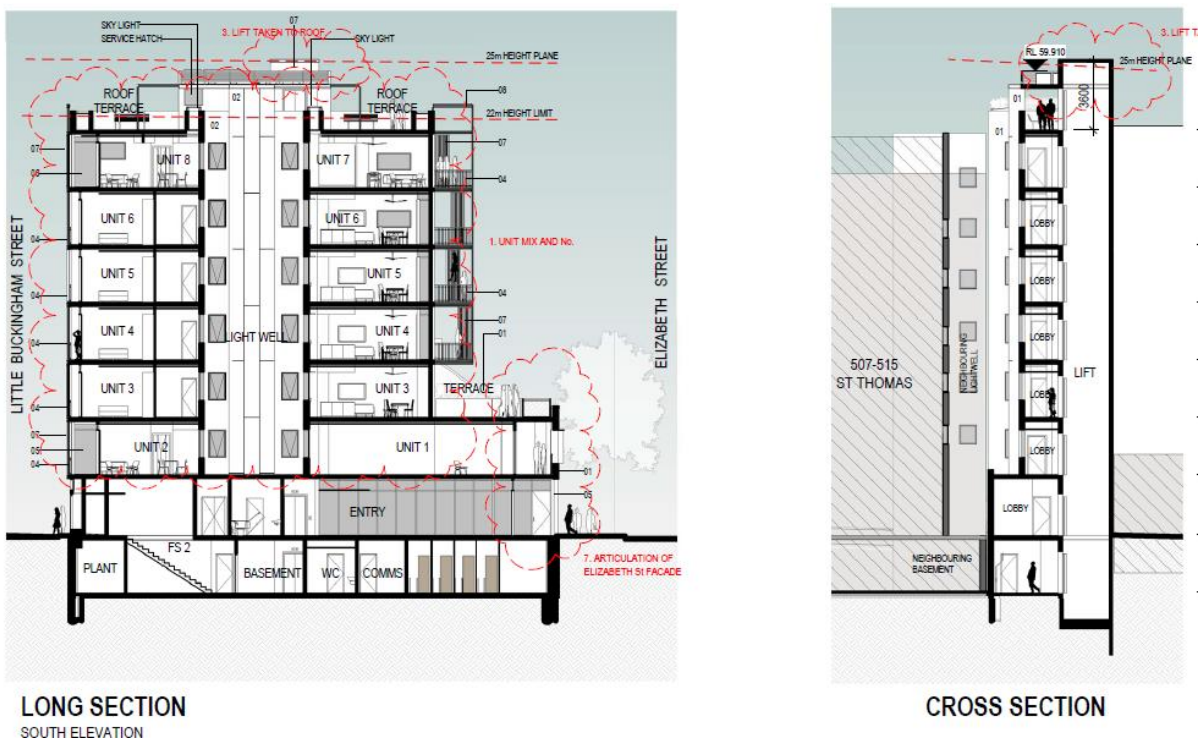


Figure 13: Sections

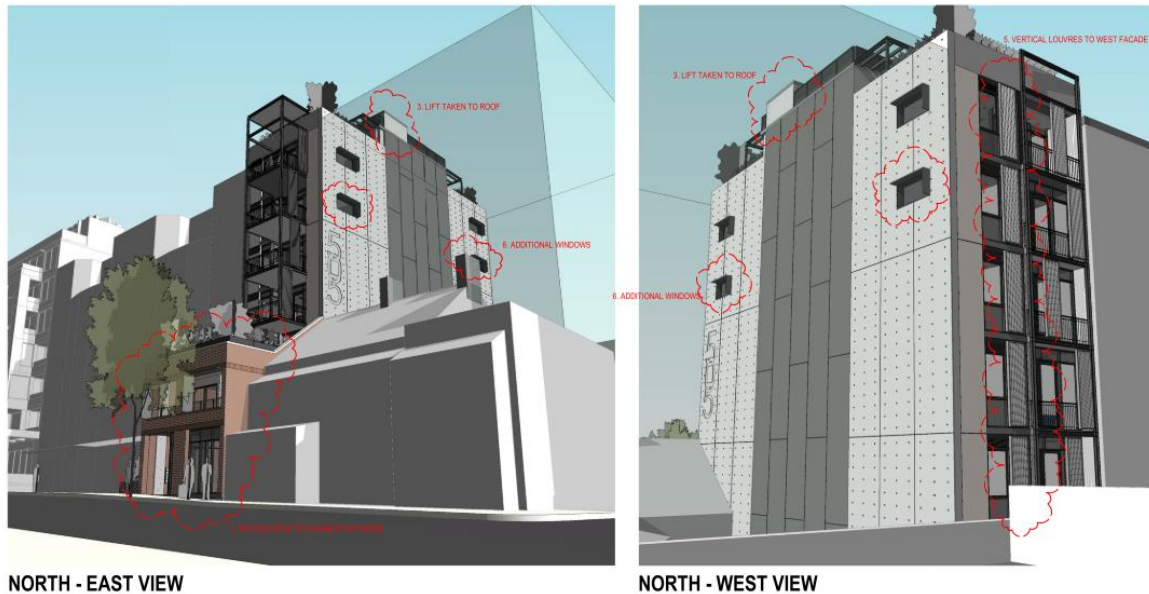


Figure 14: Street elevation

Economic/Social/Environmental Impacts

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

(a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy No 55 - Remediation of Land

23. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
24. A Preliminary Site Investigation (PSI) was submitted with the development application. The PSI identified significant sources of potential contamination, which the report found would require further investigation.
25. On 12 May 2020, Council requested that a DESI be submitted. The applicant submitted a DESI on 30 September 2020. The DESI reported data gaps and recommended that these gaps be closed through further investigation.
26. Council reviewed the submitted DESI and was not satisfied the site can be made suitable for the proposed use. An amended DESI was submitted to Council on 5 November 2020, almost 10 months after lodgement of the application.
27. The amended DESI satisfies the requirements of SEPP 55, demonstrating that the site can be made suitable for the purpose for which the development is proposed to be carried out.

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

28. SEPP 65 provides that in determining an application for a residential flat development of three or more floors and containing four or more apartments, that the consent authority take into consideration a number of matters relating to design quality, including 9 design quality principles, being:

(a) **Principle 1: Context and Neighbourhood Character**

The proposal is permissible in the B4 - Mixed Use zone. The proposed commercial and residential uses are consistent with the objectives of the zone and are appropriate within the current context. Whilst it is the case that there have been a number of recent mixed use developments (commercial on ground floor and apartments above) in the locality, it is considered that the proposed development does not appropriately respond to or contribute positively to its immediate context. In this regard, the proposal is not considered to adequately respond to and enhance the heritage qualities and identity of the site and its immediate context, including the adjacent terraces to the north.

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

The scale, bulk and height of the development is not considered appropriate to the existing or desired future character of this part of Elizabeth Street and surrounding buildings. The built form at the Elizabeth Street frontage is not considered to positively contribute to the character of the streetscape or the public domain. As mentioned above, the development does not adequately respond to and enhance the heritage qualities and identity of the site and its immediate context, including the adjacent terraces to the north.

(c) **Principle 3: Density**

The amended proposal results in a FSR of 3.5:1, which is consistent with the permitted FSR in accordance with the Sydney LEP 2012.

(d) **Principle 4: Sustainability**

An updated BASIX Certificate has not been submitted with the amended plans. It is also noted that the architectural plans are inconsistent with the NatHers modelling, which has not been addressed by the applicant.

(e) **Principle 5: Landscape**

The existing and proposed development results in a 100% site coverage, which is generally consistent with the prevailing character of development within the area. The proposal includes communal spaces on the rooftop area with planter beds indicated around the perimeter, which provide some opportunity for soft landscaping. A landscape plan was submitted with the original application, however this was not updated to reflect the amended architectural plans submitted on 30 September 2020.

(f) **Principle 6: Amenity**

Overall, it is considered that a poor level of amenity is achieved for future occupants. As outlined in the compliance table below, the application has not demonstrated compliance with ADG requirements for room dimensions and shapes, solar access and natural ventilation. In addition, the lift arrangement opening directly onto the residential apartments on levels 2-5 is considered unsatisfactory.

(g) **Principle 7: Safety**

The proposed internal layout raises safety and security concerns as the lifts are designed to open straight into apartments, without the provision of lobbies.

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

The proposal includes a mix of studio apartments and 2 bedroom apartments, which provides housing choice for different demographics, living needs and household budgets.

(i) **Principle 9: Aesthetics**

The proposed design is not considered to achieve good proportions and a balanced composition of elements.

29. The stated principles of the SEPP are replicated in large part within Council's planning controls.
30. The development does not comply with a number of the stated principles and provisions of the SEPP, as outlined below.

Apartment Design Guide

2F Building Separation	Compliance	Comment
No building separation is necessary where building types incorporate blank party walls.	Yes	No building separation required in this context.

3D Communal and Public Open Space	Compliance	Comment
Communal open space has a minimum area equal to 25% of the site.	No	<p>Communal open space on the roof top level is provided. This comprises two terrace areas measuring approximately 18sqm each (including planter boxes), which are connected by a covered corridor. Useable area (excluding planter boxes) measures 12sqm on the eastern terrace and 14sqm on the western terrace.</p> <p>Therefore, a total of 26sqm of useable communal open space is provided, which comprises 14.9% of the site area.</p>

3D Communal and Public Open Space	Compliance	Comment
		The proposal therefore does not comply with the 25% requirement for communal open space.
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of two (2) hours between 9am and 3pm on 21 June (midwinter).	Yes	The proposal appears to comply with the requirements for solar access to communal open space.

3E Deep Soil Zones	Compliance	Comment
Deep soil zones are to have a minimum area equivalent to 7% of the site.	No	Acceptable in this instance given the existing circumstances, size of the site and the context.

3F Visual Privacy	Compliance	Comment
Up to 12m (4 storeys): 6m between habitable rooms/ balconies and 3m between non-habitable rooms Up to 25m (5-8 storeys): 9m between habitable rooms/ balconies and 4.5m between non-habitable rooms.	Yes	No concerns are raised regarding visual privacy and separation requirements.

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.	Not demonstrated	The applicant states that 87.5% of apartments (7 out of 8) achieve compliant solar access. Solar diagrams in plan and elevation have not been submitted to demonstrate full compliance with minimum solar requirements for living rooms and private open spaces.

4B Natural Ventilation	Compliance	Comment
All habitable rooms are naturally ventilated.	Yes	Natural ventilation is provided to all habitable rooms.
Minimum 60% of apartments in the first nine (9) storeys of the building are naturally cross ventilated.	No	50% of apartments are naturally cross ventilated in accordance with the controls. See discussion under the 'issues' section regarding natural ventilation.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No	Apartments on levels 2-5 have a depth of up to 18.5m.

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	Partially complies	The section drawings are unclear as to the ceiling heights of habitable rooms, as only floor to floor dimensions are provided. When measured to scale, the ceiling heights appear to be approximately 2.6m.
Non-habitable rooms: 2.4m	Yes	Appears to comply.
If located in mixed use areas – 3.3m for ground and first floor to promote future flexibility of use.	No	The ground floor has a ceiling height of approximately 2.9m which does not comply with this requirement.

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 	Yes	The proposed apartments comply with the minimum size requirements.

4D Apartment Size and Layout	Compliance	Comment
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 appear to provide the minimum 10% glass area for all habitable rooms.
Habitable room depths are to be no more than 2.5 x the ceiling height.	No	Apartment 1 on level 1 has an open plan living/ kitchen, dining area with a depth of 10.8m, which exceeds the maximum depth of 8m.
8m maximum depth for open plan layouts.	No	
Minimum area for bedrooms (excluding wardrobes): <ul style="list-style-type: none"> • master bedroom: 10m² • all other bedrooms: 9m² Minimum dimension of any bedroom is 3m (excluding wardrobes).	Unclear	Bedroom dimensions are not shown on the plans. However, when measured to scale, bedrooms on levels 1-5 have minimum dimensions of approximately 2.9m. Master bedrooms (bedrooms with ensuites) in the 2-bedroom apartments on levels 2-5 have an area of 8.8sqm (excluding an entrance area with a width of 0.8m).
Living and living/dining rooms minimum widths: <ul style="list-style-type: none"> • Studio and one-bedroom: 3.6m • Two-bedroom or more: 4m 	Partial compliance	Apartment 1 on level 1 has a living room width of 2.9m, which does not comply. The dining room has a width of 3.5m. All other apartments comply with this requirement.
4m minimum width for cross over and cross through apartments.	Yes	Minimum widths are met for cross through apartments.

4E Private Open Space and Balconies	Compliance	Comment
Studio apartments are to have a minimum balcony area of 4m ² with a minimum depth of 1m. One bed apartments are to have a minimum balcony area of 8m ² with a minimum depth of 2m.	Partial compliance	The studio apartments each have a balcony with an area of at least 5sqm with a minimum depth of 1.3m, which complies. The one bedroom apartment has a balcony with an area of 13sqm, which complies.

4E Private Open Space and Balconies	Compliance	Comment
Two bed apartments are to have a minimum balcony area of 10m ² with a minimum depth of 2m.		The two bedroom apartments on levels 3-5 have balconies with an area of 9sqm, which does not meet the minimum requirement of 10sqm for two bedroom balconies.
Private open space for apartments on ground level, on a podium, or similar, must have a minimum area of 15m ² and a minimum depth of 3m.	Yes	Apartment 3 on level 2 has a podium terrace which complies with the minimum area requirements.

4F Common Circulation and Spaces	Compliance	Comment
The maximum number of apartments off a circulation core on a single level is eight (8).	Yes	A maximum of 2 apartments are provided on a single level.
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	Primary living room and bedroom windows do not open directly onto common circulation spaces.
Daylight and natural ventilation are provided to all common circulation spaces.	Partial compliance	Lobbies are only provided on levels 1 and 6. These lobbies have windows onto the internal lightwell. Lobbies are not provided to levels 2-5.

4G Storage	Compliance	Comment
<p>Minimum storage provision facilities:</p> <ul style="list-style-type: none"> • Studio: 4m³ • 1 bed: 6m³ • 2 bed: 8m³ 	Partial compliance	<p>The proposal includes the following storage facilities:</p> <p>Studio: 1.5m³ internal and 5.5m³ external = 7m³.</p> <p>1 bed: 1.5m³ internal and 5.5m³ external = 7m³.</p>

4G Storage	Compliance	Comment
<ul style="list-style-type: none"> 3 bed: 10m³ (Minimum 50% storage area located within unit)		2 bed: 3m ³ internal and 5.5m ³ external = 8.5m ³ . Whilst sufficient maximum storage is provided, insufficient internal storage is provided for all apartments (less than 50% is within the unit).

4J Noise and Pollution	Compliance	Comment
Have noise and pollution been adequately considered and addressed through careful siting and layout of buildings?	Unclear	Whilst the amended plans incorporate the provision of acoustic plenums to the Elizabeth Street facade to address noise and ventilation, the detailed design of these elements has not been developed.

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

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

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

34. A BASIX Certificate has been submitted with the development application. However, an updated BASIX Certificate was not submitted with the amended architectural plans.
35. An amended BASIX Certificate would need to be submitted prior to determination if the application were recommended for approval. Sydney Local Environmental Plan 2012

36. The site is located within the B4 Mixed Use zone. The proposed use is defined as mixed use, including commercial and residential uses, and is permissible.
37. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	No	<p>The proposed development does not comply with the maximum height of buildings control.</p> <p>A maximum height of 22m is permitted.</p> <p>The exact maximum height of the proposed building is unclear on the architectural plans, as RLs have not been provided to the top of the lift overrun. The maximum height of the building is estimated to be 25.3 metres, which equates to a variation of 15%.</p>
4.4 Floor Space Ratio	Yes	<p>A maximum FSR of 3.5:1 is permitted.</p> <p>A FSR of 3.5:1 is proposed.</p>
4.6 Exceptions to development standards	No	<p>The proposal seeks to vary the development standard prescribed under Clause 4.3.</p> <p>See discussion under the heading Issues.</p>
5.10 Heritage conservation	No	<p>The subject site is located within the Cleveland Gardens heritage conservation area (C62).</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 proposed development is not considered to be an appropriate, high quality replacement building within the heritage conservation area. The demolition of the existing terraces and prominent features and replacement with a 2 storey box form is an unsympathetic outcome, given the context of neighbouring contributing terraces along Elizabeth Street.</p> <p>The overall scale of the development is considered excessive and does not provide an appropriate height transition to the low scale terraces immediately north of the site.</p> <p>The shopfront at ground level also does not demonstrate high quality detailing and design in order to improve the quality and amenity of the public domain.</p> <p>The proposed development does not satisfy the requirements of this provision.</p> <p>Additionally, Clause 6.21(5) of the Sydney LEP 2012 states that development consent must not be granted to development in respect of a building that has, or will have, a height above ground level (existing) greater than 25 metres in this location, unless a competitive design process has been held.</p> <p>The amended proposal has a maximum height of approximately 25.3m and therefore triggers the requirement for a competitive design process. This requirement can be waived if it is considered unreasonable or unnecessary in the circumstances. In this instance it is considered that the proposal could have benefited from a competitive design process in order to achieve the objectives of Clause 6.21.</p>

Part 7 Local Provisions - General	Compliance	Comment
Division 1 Car parking ancillary to other development	Yes	2 car parking spaces are permitted on this site. No car parking spaces are proposed, however 2 motorbike parking spaces are proposed accessed via Little Buckingham Street. Whilst this is considered acceptable by Council's Transport and Access unit, it provides for a poor quality ground level presentation to Little Buckingham Street with an access to the residential apartments set between a roller door and a hydrant booster cupboard.
7.14 Acid Sulphate Soils	Yes	<p>The site is identified as containing class 5 Acid Sulphate Soil.</p> <p>The issue of contamination is discussed above, having regard to State Environmental Planning Policy No 55 - Remediation of Land.</p>

Sydney Development Control Plan 2012

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

2. Locality Statements – Prince Alfred Park East locality

The subject site is located in the Prince Alfred Park East locality. The proposed development is not considered to be in keeping with the unique character of the area and design principles. The proposed development does not sufficiently respond to and complement the adjacent contributory buildings within the heritage conservation area.

3. General Provisions	Compliance	Comment
3.1 Public Domain Elements	No	<p>The proposal includes poor interface with the public domain at ground level, particularly at the Little Buckingham Street frontage.</p> <p>On this frontage, a fire hydrant has doors that swing out onto the public domain. Additionally, a 1:20 ramp leads from the lobby to Little Buckingham Street with no landing at the top (at Little Buckingham Street). Both of these issues compromise the function of both the building and the public domain and are not acceptable.</p> <p>Council raised these issues with the applicant in its correspondence dated 12 May 2020. However, the applicant has not addressed these issues.</p>
3.5 Urban Ecology	Yes	<p>The proposed development does not involve the removal of any trees and will not adversely impact on the local urban ecology. If the application were recommended for approval, protection measures would be required to preserve the street tree on Elizabeth Street.</p>
3.6 Ecologically Sustainable Development	Partial compliance	<p>It is noted that the City's Environmental Projects Officer raised concern with regard to inconsistencies between the submitted architectural drawings and the NatHERS modelling. This was not subsequently addressed by the applicant in the submission of amended plans. The original BASIX Certificate was also not updated with the submission of amended plans.</p>
3.9 Heritage	No	<p>See discussion under the heading Issues.</p>
3.11 Transport and Parking	Partial compliance	<p>On-site bicycle parking for 4 bicycles is provided within the basement level. This is not considered to be an appropriate location for bicycle parking as it can only be accessed via the lift or fire stairs.</p>

3. General Provisions	Compliance	Comment
		The proposal also proposes 2 motorbike parking spaces accessed via Little Buckingham Street.
3.13 Social and Environmental Responsibilities	No	<p>Council's Urban Designer and Public Domain unit have raised the following CPTED concerns. It is considered that alternative design could provide an improved outcome for these issues:</p> <ul style="list-style-type: none"> • A recess is created behind the hydrant on the Little Buckingham Street façade, which creates potential for concealment or entrapment; • The inclusion of the driveway for 2 motorbike parking spaces occupies half the laneway frontage and removes opportunities for a safe and active laneway frontage. • No secure door is provided to the Little Buckingham Street entrance. Only a gate is provided, which is located 6.5m into the site.
3.14 Waste	Partial compliance	<p>The following issues are raised with regard to waste management:</p> <ul style="list-style-type: none"> • Separate bulky waste storage must be provided for residential and commercial waste, not shared as is proposed. • The location of the bulky waste storage in the basement level is not supported. Bulky waste storage should be in a separate dedicated space within the general waste storage area for ease of access. This should be within 10m of the collection point. The proposed bulky waste area is tucked away at the back of the basement level, which requires lift or stair access.

3. General Provisions	Compliance	Comment
		<ul style="list-style-type: none"> Plans showing path of travel for bins and collection point have not been provided.

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.1 Building height	No	<p>A maximum of 6 storeys is permitted. The proposed development is 7 storeys in height.</p> <p>See discussion regarding height, bulk and scale under the 'Issues' heading below.</p>
4.2.2 Building setbacks	Partial compliance	<p>The proposed building setbacks are generally consistent with surrounding development in this part of Elizabeth Street.</p> <p>However, it is noted that the protruding balconies to Elizabeth Street are inconsistent with the setback of the neighbouring property to the south.</p>
4.2.3 Amenity	No	<p>The proposed development will deliver a generally poor level of amenity for future occupants of the building.</p> <p>See discussions under the 'Issues' heading below.</p>

Issues

Design Advisory Panel Residential Subcommittee

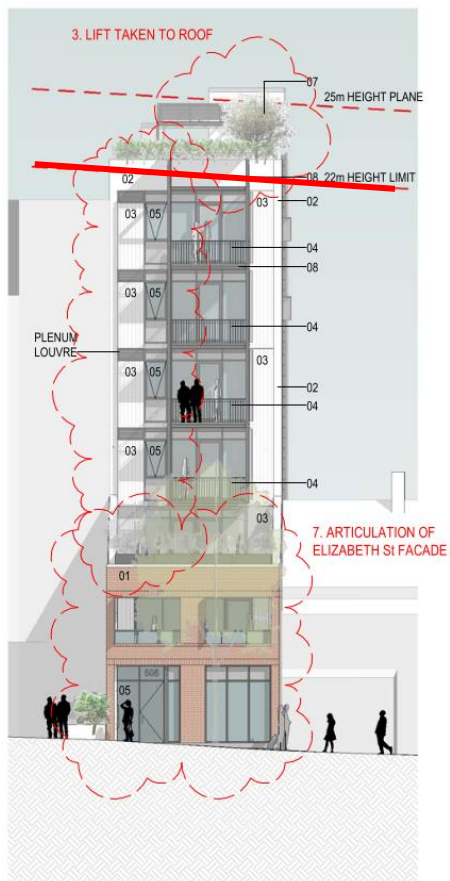
39. The application was considered by the Design Advisory Residential Subcommittee on 7 April 2020. The Panel was presented with the development application and recommended the following:

- (a) One storey should be removed to comply with the development controls and so that compliant floor to floor heights can be delivered on all floors. This would also allow lift access to service a communal roof terrace.

- (b) The existing terrace building is an important element in the Elizabeth Street streetscape and its important elements, including primary roof form with chimney stacks, should be preserved. The Panel considered that replacement with a two-storey element does not respect the prevailing form of neighbouring contributing terraces.
 - (c) The projecting balconies on the eastern elevation were considered to be overly prominent.
 - (d) Cross ventilation was a concern, as was acoustic issues with open windows to Elizabeth Street. Air plenums may be required and would need to be architecturally integrated.
 - (e) The ground floor plan should be reconfigured to retain the existing building fabric. This may preclude a basement or reduce it in size.
 - (f) The garbage storage areas should be removed from the residential entry and lift lobby. Movement of garbage bins through this entry is not acceptable. Deleting the car parking may assist with resolving this concern.
 - (g) The roof terrace should be allocated to communal open space and be provided with lift access.
40. The above issues were considered by Council and were included in Council's request for additional information dated 12 May 2020. The applicant submitted amended plans on 30 September 2020, which addressed some, but not all, of the above design issues. In particular, the Panel's recommendation that one storey be removed from the proposal was not implemented by the applicant.

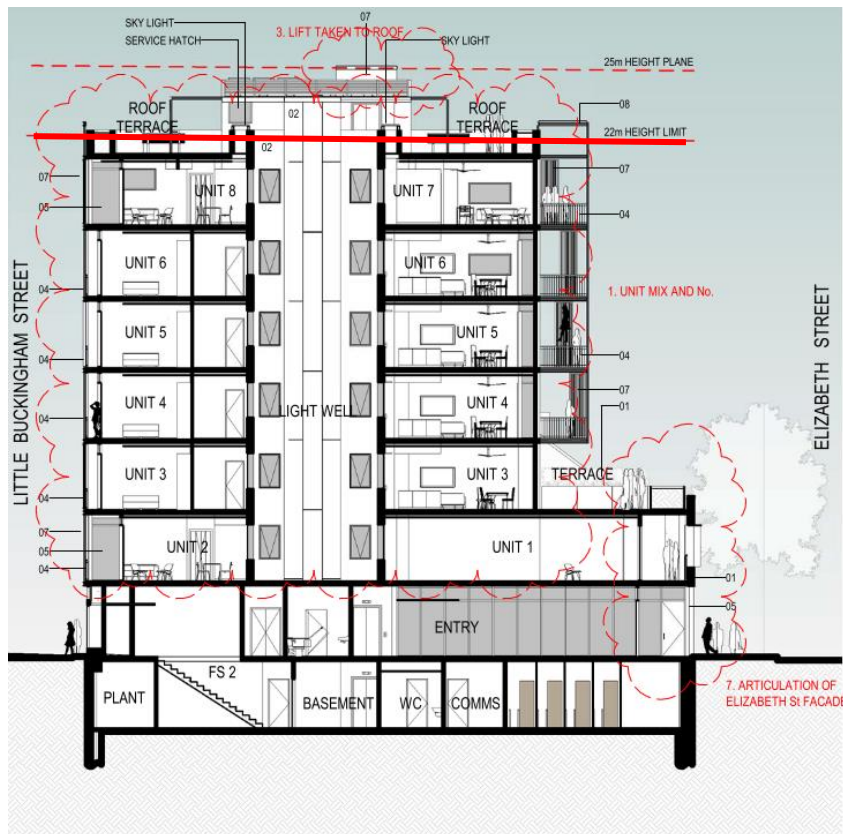
Clause 4.6 request to vary a development standard

41. The site is subject to a maximum height of buildings control of 22 metres. The proposed development (as amended) has a height of approximately 25.3 metres (0.4m higher than the building as originally submitted). The development exceeds the maximum height control by 15%.
42. The extent of non-compliance with the height limit is shown in the figures below.



EAST ELEVATION

Figure 16: Eastern elevation on Elizabeth Street, with the maximum 22m height of building development standard in red



LONG SECTION

SOUTH ELEVATION

Figure 17: Proposed long section, with the maximum 22m height of building development standard in red

43. The proposal as originally submitted had a maximum building height of 24.9 metres. The development application was lodged with a written request 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.
44. A copy of the applicant's written request is provided at Attachment B.
45. On 12 May 2020 the applicant was requested to reduce the height by one floor in order to comply with the height of buildings and the height in storeys controls. This was consistent with the recommendations of the Design Advisory Panel Residential Subcommittee.

46. The amended plans submitted to Council on 30 September 2020 did not reduce the height as requested and retained the 7 storey form. The amended proposal included an increase in height from 24.9m to 25.3m. The increase in height is a result of providing lift access to the rooftop terrace, which was previously only accessible via stairs. A revised Clause 4.6 request was not submitted with the amended plans to reflect the increase in height. Instead, the applicant provided a written statement via email to Council stating that they maintain that the original Clause 4.6 variation is well founded. The applicant's original 4.6 variation request is outlined below.

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

47. The applicant seeks to justify the contravention of the height development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The applicant has referred to *Wehbe v Pittwater Council [2007] NSWLEC 827*, whereby Preston CJ establishes the tests for determining whether compliance with a standard is unreasonable or unnecessary. A summary of the applicant's request and assessment is provided below.
 - (ii) The objectives of the height development standard under Clause 4.3 are achieved notwithstanding the non-compliance, thereby satisfying the first test under *Wehbe*. The objectives of Clause 4.3 are provided below:
 - (a) to ensure the height of development is appropriate to the condition of the site and its context,*
 - (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
 - (c) to promote the sharing of views,*
 - (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
 - (e) in respect of Green Square—*
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.*
 - (iii) With regard to (a), the applicant states that the condition of the existing building is poor. The Heritage Impact Statement (HIS) details that the Elizabeth Street facade has external joinery and a rendered finish in very poor condition, and the Little Buckingham Street facade also being poor.

The site is located towards the northern end of a block of relatively recently redeveloped contemporary buildings between Belvoir Street to the south and Bedford Street to the north. Immediately north of the site and south of Bedford Street are three original terrace houses. The proposal is in line with the development applications and modifications approved over the past 7 years in the area. Although a small part of the roof slab exceeds the height plane, the majority of the exceedance of height comes from the lift over run, plant and the pergola structure providing amenity to the rooftop terrace. The proposal sits easily within the context of the western side of Elizabeth Street when compared to all of the most recent developments.

- (iv) With regard to (b), the applicant submits that the existing development on Elizabeth Street are all within the heritage conservation area and the proposal is consistent with those buildings' over run of the height limit with plant and lift overruns. The site is not adjacent to any heritage item although it is across the road from the heritage item of the former WC Penfold & Co factory. The most obvious transition is to the three terrace buildings to the immediate north. The building retains the original narrow subdivision pattern which aids the transition in scale to the narrow terraces. The Heritage Impact Statement has considered the proposed height of the development as part of the evaluation against the recommended management guidelines for the Cleveland Gardens Conservation Area.

The interface between the contemporary multi storey development and low scale terraced housing will remain the same with the development. The interface of two storey terraces to multi storey development is characteristic of the area as found currently from the site to the building at 507-515 Elizabeth Street and in various places along Elizabeth Street north of Bedford Street.

- (v) With regard to objective (c), the applicant states that the building to the immediate south does not have any rooftop terrace which will be interrupted by the proposal. Some views can be obtained from the light well feature which will be blocked by the development, however this is an anticipated result from any development to the north of that building. They are likely to be services and bedroom windows with living spaces likely to be focused to the east and west street frontages.
- (vi) With regard to objectives (d) and (e), the site is not within either Central Sydney or Green Square.
- (vii) The applicant has also addressed the fourth test set out in *Wehbe*, that the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

- (viii) The applicant submits that the Council has consistently granted consent to development applications and modification applications which have departed from the height standard along this part of western side of Elizabeth Street. Every building (bar the development site and the three terraces to its north) in the block between Belvoir Street and Bedford Street exceeds the height limit. In the block between Bedford Street and Rutland Street, three of the four contemporary redevelopments have all breached the height limit. In these circumstances it would be unreasonable and unnecessary for the consent authority to not accept the clause 4.6 exception request, because previous actions of Council have clearly indicated that height exceedances have been consistently approved within the area
- (ix) In addition to the above tests, the applicant also submits that the particular circumstances of the case to support an increase in the height are:
 - i. The site is very narrow at 6.705 metres, and unlike the development at 537 Elizabeth Street which is also on a narrow site of 6.665-6.745 metres width, this site does not have the benefit of guaranteed side windows as it is midblock;
 - ii. The majority of the height exceedance is placed in the middle of the site which will limit any impact on the views which could be obtained from the terraces from Unit 7 at 517-527 Elizabeth Street. The placement of the higher plant and equipment centrally is consistent with the other buildings within the immediate area;
 - iii. Almost all of the height exceedance comes from the provision of services which require rooftop sunlight (the photovoltaic cells) or ventilation (air conditioning units). The pergola and associated landscaping features allow the rooftop to provide additional amenity to the occupant of Unit 11. The additional roof landscaping merely makes use of space which otherwise would be unutilised.
 - iv. The increased height is placed centrally where its impact on the Elizabeth Street and Little Buckingham Street streetscape is minimised. It will be visible from Bedford Street however the property has been designed to accommodate future redevelopment of the three terraces to the north (similar to development which has been approved elsewhere along this stretch of Elizabeth Street), at which point the plant would be shielded from view from Bedford Street.
- (x) Given the above, the applicant submits that strict compliance with the maximum height development standard is considered unreasonable and unnecessary because the objectives of the development standard are still achieved by the proposed development and there are specific circumstances peculiar to this building and site which support the increase in height which is proposed when considered against the objectives of the standard.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) No view is currently enjoyed by the surrounding developments or from the public domain will be unreasonably affected by the increased height;

- (ii) No privacy issues will arise from the increase in height;
- (iii) The visual impact on the streetscape from the increased height will be minimal given the setback of the increased height from both streets. Although it will be visible from Bedford Street in the interim period until future development of 497-501 Elizabeth Street is undertaken, it is considered the increase in height visible from Bedford Street will be a relatively temporary outcome;
- (iv) The view driving south along Elizabeth Street or walking in either direction is not expansive due to the narrow street and the street trees. The increased height will not present as anything uncharacteristic of the contemporary buildings in the vicinity;
- (v) The reduction in solar access to the light wells for 507-515 Elizabeth Street would arise irrespective of any exceedance of the height limit. That building was clearly designed, acknowledging the likely construction of a building to its north and the proposal has mirrored the light well to ensure reasonable light access to the existing windows
- (vi) 7 storey development is characteristic of this part of Elizabeth Street. In order to provide for 7 storey development, the plant and lift overruns will necessarily exceed the height limit – as demonstrated in other developments;
- (vii) The height exceedance allows for two studio apartments in addition to that which could otherwise be constructed with a compliant development. Those units are ones which will be able to be used by essential workers who work close to the city or are at nearby educational institutions.

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

48. 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)?

49. The applicant has attempted to establish that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case. The written request is based on the original height proposed (24.9m), prior to lift access being provided to the rooftop level. It does not take into account the increased height limit proposed by the amended plans (25.3m). Therefore, the exact circumstances of the case have not been correctly outlined and it has not been demonstrated that compliance is unreasonable or unnecessary, given the circumstances of the case have changed since the application was submitted.

50. When Council requested lift access be provided to the rooftop level, the applicant was advised that this would require deletion of the 7th storey to comply with the height control. This was not undertaken by the applicant and has not been sufficiently justified. It is noted that the applicant provided a written statement via email to Council stating that they maintain that the original Clause 4.6 variation is well founded. This is not considered to be sufficient.
51. With regard to objective (a) of Clause 4.3, the applicant refers to the poor condition of the existing building. Whilst it is acknowledged that the building is in a poor state, this is not considered relevant to the non-compliance with the height control nor the objectives of Clause 4.3.
52. The applicant states that the proposal sits easily within the context of the western side of Elizabeth Street when compared to the most recent developments. However, the proposal does not address those buildings that contribute to the conservation area directly north of the site.
53. The applicant states that retention of the original subdivision pattern aids the transition in scale to the narrow terraces to the north of the site. It is not clear how the subdivision pattern relates to the impact of the height non-compliance on the adjoining contributing terraces.
54. The written request also claims that the interface between the contemporary multi development and low scale terraced housing will remain the same with the development. However, the proposed building is higher than the existing building to the south, which will exacerbate the height transition to the low scale terraces. It is also noted that the existing building to the south of the site was approved and constructed long before the current LEP controls.
55. With regard to objective (c) of Clause 4.3, the applicant states that the building immediately south of the site does not have any rooftop terrace which will be interrupted by the proposal. This is considered irrelevant to the issue of the height non-compliance.
56. The applicant submits that the Council has consistently granted consent to development applications that depart from the height standard on this part of Elizabeth Street. The applicant refers to four contemporary redevelopments in this block. However, none of these are adjacent to contributing buildings, as is the case for the subject site.
57. When describing the specific circumstances of this case, the applicant relies on the narrow width of the site and the fact that it is midblock. This is not considered relevant to the height non-compliance.
58. The applicant refers to the non-compliance resulting from roof landscaping which "merely makes use of space which otherwise would be unutilised." However, the provision of communal open space is required by the ADG and Council controls and is not a voluntary provision.

59. The applicant also states that the development has been designed to accommodate future redevelopment of the three terraces to the north, meaning that the rooftop additions would not be visible in the future. This is entirely subject to consent being granted by Council. It is noted that the future building envelopes for these sites shown in the architectural plans is unlikely to be supported by Council due to the negative impact this would have on the contributing buildings and the heritage conservation area.
60. With regard to the first test outlined in *Wehbe*, council officers are not satisfied that the objectives of the height development standard are achieved notwithstanding the non-compliance. The proposal will have an adverse impact on the heritage conservation area as it does not provide an appropriate height transition from the multi storey building to the south of the site down to the 2 storey contributing terraces to the north of the site. It therefore does not satisfy objectives (a) and (b) of the height development standard.
61. With regard to the fourth test outlined in *Wehbe*, as to whether the development standard has been virtually abandoned or destroyed by the Council's own actions, it is acknowledged that existing development to the south along Elizabeth Street exceeds the height development standard. However, the subject site is unique in that it is on the northern end of this row of contemporary buildings and is adjoined on the northern side by a row of 2 storey contributing terraces. This creates the need to provide an appropriate height transition, which would be better achieved by complying with the height development standard.

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

62. The applicant has attempted to address that there are sufficient environmental planning grounds to justify contravening the standard.
63. The applicant's justifications imply that the part of the building that exceeds the height control is limited to the plant and lift overrun only. As noted above, the proposal has been amended since the original 4.6 request was written and the exceedance now also applies to lift access that has been provided to the rooftop. This has not been considered in the written request.
64. The applicant states that the visual impact of the height non-compliance will be minimal from the streetscape. However, when viewed from Elizabeth Street, the top parapet of the eastern facade exceeds the height limit. This part of the building is visible from the public domain. The applicant also relies upon future development of the contributing terraces as justification for the non-compliance, which is subject to Council approval and is not guaranteed.
65. The written statement refers to 7 storeys as being characteristic of Elizabeth Street and states that the non-compliance is required in order to provide a 7 storey development. However, there is no requirement for a 7 storey development on this site.
66. The written request states that the two studio apartments on the 7th storey will be able to be used by essential workers who work close to the city or at nearby educational institutions. No basis is provided for this assertion and there is no commitment by the applicant to allocate any apartments within the building as affordable housing. This is not considered relevant to the height non-compliance.

67. As previously discussed, the proposal does not provide an appropriate height transition to the adjacent contributing terraces and therefore will have an adverse impact on the heritage conservation area. It is also noted that the plans do not adequately demonstrate that minimal internal floor to ceiling height requirements as required by the ADG and Sydney DCP 2012. Compliance with these requirements may further increase the height of the building.
68. The application has therefore not provided sufficient environmental planning grounds to justify varying the height of buildings development standard and cannot be granted.

Is the development in the public interest?

69. With regard to Clause 4.6(4)(a)(ii), the public interest is conceived as being protected where a development is consistent with both the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. As previously discussed, the exceedance of the height of buildings standard does not accord with objectives (a) and (b) in this instance. Therefore, the development is not considered to be in the public interest.
70. For completeness, an assessment against the objectives of the B4 Mixed Use zone is provided below. The objectives of the zone are as follows:
- *To provide a mixture of compatible land uses.*
 - *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.*
 - *To ensure uses support the viability of centres.*
71. The height non-compliance does not raise any conflicts with the objectives of the B4 Mixed Use zone. However, neither is the development required to exceed the height limit in order to comply with the objectives of the zone.

Conclusion

72. For the reasons provided above the requested variation to the height of buildings 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 under Clause 4.6(4)(a)(ii) because it is inconsistent with the objectives of the height development standard.
73. Should the Local Planning Panel be of the opinion that the requirements of Clause 4.6 of the Sydney Local Environmental Plan 2012 have not been adequately satisfied then development consent must not be granted.

Heritage

74. The subject site is located within the Cleveland Gardens heritage conservation area (C62). It is identified as a neutral building within the conservation area (see below for objectives for neutral buildings). The terraces to the north of the site, at 497, 499 and 501-505A Elizabeth Street are all identified as contributing buildings. The contemporary buildings to the south, including 507-515, 517-527 and 529-531 are identified as detracting buildings.

75. Part 3.9.6 of the Sydney DCP 2012 provides objectives and provisions for heritage conservation areas. It states that "new development in heritage conservation areas must be designed to respect neighbouring buildings and the character of the area, particularly roofscapes and window proportions. Infill development should enhance and complement existing character but not replicate heritage buildings."
76. Provision 3.9.6(1) states that development within a heritage conservation is to respond sympathetically to the type, siting, form, height, bulk, roofscape, scale, materials and details of adjoining or nearby contributory buildings.
77. Part 3.9.8 of the Sydney DCP 2012 describes neutral buildings as buildings that do not contribute nor detract from the significant character of the heritage conservation area. Provision 3.9.8(1) of the DCP states that demolition of neutral buildings will only be considered where it can be demonstrated that:
- (a) Restoration of the building is not reasonable; and
 - (b) The replacement building will not compromise the heritage significance of the heritage conservation area.
78. Alterations and additions to a neutral building are to:
- (a) remove unsympathetic alterations and additions, including inappropriate building elements;
 - (b) respect the original building in terms of bulk, form, scale and height;
 - (c) minimise the removal of significant features and building elements; and
 - (d) use appropriate materials, finishes and colours that do not reduce the
 - (e) significance of the Heritage Conservation Area.
79. The proposal includes demolition of two terrace buildings fronting Elizabeth Street. Although identified as neutral the two storey pitched roof form and prominent chimney stacks of these terraces are highly visible from the public domain (see Figure 17 below). These elements of the buildings retain a strong role in the character of this part of the conservation area.
80. The Design Advisory Panel Residential Subcommittee's advice was that it considers the existing terrace building to be an important element in the Elizabeth Street streetscape and its scale, fabric and proportions should be incorporated into the proposal. It was recommended that the primary roof form with chimney stacks should be preserved and the building retained and adapted to return it to contributory status.
81. Council advised the applicant on 12 May 2020 that the proposed demolition and replacement building was not supported and it was requested that the significant elements of the existing building be incorporated into the proposal.



Figure 18: Roof form and chimney stacks on the existing building, viewed from Elizabeth Street

82. The applicant submitted a structural engineer's report on 27 August 2020 as justification for the demolition of the existing structures. The report identifies that the external walls of the building are in poor condition and that cracking and partial destabilisation of the chimney structure has occurred. The report concludes that to create a habitable structure, it would be necessary to install temporary propping to the roof, first floor and chimney structures, demolish the existing external walls, install new reinforced concrete footings and install new brick walls.
83. Given the above, the structural engineer's report identifies that the key elements of the building could be retained with significant repairs. Therefore, it has not been demonstrated that restoration of the building is not reasonable.
84. If demolition of the existing building on the basis that restoration of the building is not reasonable was to be supported, it would need to be demonstrated that the replacement building will not compromise the heritage significance of the conservation area.
85. The proposed built form is not supported as an appropriate replacement within the conservation area. For reasons outlined in the subheading below, the built form is not compatible with that currently on the subject site or the contributory low scale terraces immediately north of the subject site and an appropriate transition is not achieved. Given the above issues, the proposal has not demonstrated compliance with the objectives of Clause 5.10 of the Sydney LEP 2012 and Part 3.9 of the Sydney DCP 2012.

Height, scale and bulk

86. The site is subject to a 22m height of buildings control as per Clause 4.3 of the Sydney LEP 2012. The proposal has a maximum building height of approximately 25.3m (noting no RLs are provided on the plans for the lift overrun), resulting in a variation of 15%. The Clause 4.6 variation request to exceed this control provides insufficient justification for the non-compliance.
87. The site is also subject to a 6-storey height control pursuant to Section 4.2.1 of the Sydney DCP 2012. The proposed building presents as 7 storeys with a roof terrace and lift overrun and therefore exceeds this control.
88. Council raised the issue of height with the applicant in its request for additional information dated 12 May 2020. It was requested, in line with advice from the Design Advisory Panel Residential Subcommittee, that the building be reduced in height by one storey so as to allow compliance with the 22m LEP height control, the 6 storey DCP control, the minimum floor to ceiling height controls, allowing the existing Elizabeth Street building to be retained and floors to be aligned, and to allow lift access to a roof top open space.
89. The applicant responded with amended plans submitted on 30 September 2020 which increased the extent of the height non-compliance.
90. The proposed building is overbearing when compared to the 2 storey contributing terraces immediately north of the subject site. Whilst this is inevitable to some extent, given the height and floorspace controls, this could be ameliorated by complying with the height controls and providing a more appropriate set back to Elizabeth Street.
91. The building also exceeds the height of the building directly south of the site by approximately 3.2 metres (exact heights are unclear on the architectural plans) and therefore does not provide an appropriate height transition from the building to the south to the 2 storey terraces to the north. This is inconsistent with the objectives of the height of building development standard outlined in Clause 4.3 of the Sydney LEP 2012, which include ensuring the height of the development is appropriate to the condition of the site and its context and ensuring appropriate height transitions between new development and buildings in heritage conservation areas.
92. Additionally, the proposed protruding balconies are not integrated with the main form of the setback building and are overly prominent. The proposed setback from the street is 4.5m, whereas the rear alignment of the pitched roof form of the existing building is currently setback approximately 7.9m. The reduced setback and protruding balconies contributes negatively to the overall bulk of the development. Council officers raised this issue with the applicant in its letter dated 12 May 2020, requesting the applicant to consider the context and reduce visual bulk, overlooking, privacy and visual impacts relating to these balconies. No changes to the balconies were proposed in the amended plans submitted to Council.
93. The proposal represents an overdevelopment of the site and has not been designed to respect neighbouring buildings nor the heritage conservation area.
94. Overall, the non-compliance with the height and metres and height in storeys controls, as well as the proposed setbacks, has an overbearing impact on the adjacent contributory buildings and streetscape in general.

Solar access

95. Part 4.2.3.1 of the Sydney DCP 2012 requires development applications to include diagrams in plan and elevation that show solar access to proposed apartments and the shadow impact on neighbouring development at hourly intervals between 9am, 12noon and 3pm on 22 March and 21 June.
96. The applicant has submitted shadow diagrams in plan view at 9am, 12pm and 3pm on 21 June. Elevation diagrams have not been submitted and the plans do not distinguish between existing and proposed shadows.
97. The information provided does not adequately demonstrate whether the proposed apartments achieve the minimum of 2 hours of direct sunlight to at least 1sqm of living room windows and a minimum 50% of the required minimum area of private open space.
98. The shadow diagrams provided also do not sufficiently demonstrate whether the proposed development results in adverse additional shadowing impacts to neighbouring dwellings.
99. Given the above, insufficient information has been submitted to demonstrate compliance with Council's solar access controls.

Acoustic amenity

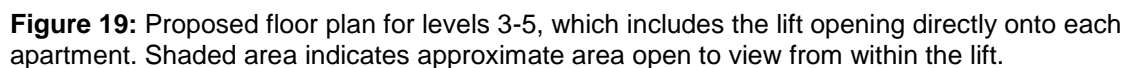
100. The Acoustic Report originally submitted with the application showed significant exceedances of the Sydney DCP noise criteria for both facades. The bedrooms would not achieve the minimum 45dBA Leq with windows open and living rooms will not achieve 50dA Leq with windows open.
101. On 12 May 2020, Council requested that the proposal be updated to incorporate noise mitigation measures throughout the building design. It was suggested that this could include minimising the size and number of openings towards noise sources, using sound absorptive materials on the facade, increasing the amount of solidity to the balconies to deflect noise, and as a last resort, the inclusion of attenuated plenums.
102. The amended plans submitted to Council on 30 September 2020 propose the use of attenuated plenums on the external wall of the eastern (Elizabeth Street) facade to address the acoustic issues. None of the passive acoustic design measures suggested have been adopted by the applicant and the design still presents a substantially open, permeable facade to Elizabeth Street.
103. An amended Acoustic Report submitted with the amended plans confirms that use of the attenuated plenums will enable achievement of the relevant noise criteria to the proposed apartments. The report demonstrates that compliant noise levels are achieved to Apartment 1, which is the worst affected apartment. Therefore all other apartments would be compliant.
104. Although the provision of acoustic plenums have been indicated on the plans they do not appear to have been subject of a detailed design. The Acoustic Report notes that the estimated noise levels are indicative only and are to be reviewed through detailed design. It is also noted that the detailed design of the plenums may impact on floor to ceiling height or floor space dependent on their design.

Natural cross ventilation

105. The Apartment Design Guide (ADG) requires at least 60% of apartments to be naturally cross ventilated. The applicant states that 6 out of 8 (75%) of apartments are naturally cross ventilated.
106. Apartments 3, 4, 5 and 6 on levels 2-5 are dual aspect apartments with openings on both the eastern and western elevations. These apartments have a maximum depth of 18.5m which slightly exceeds the maximum depth of 18m as outlined in Objective 4B-3 of the ADG. This exceedance is considered acceptable in this instance.
107. However, apartments 1 and 2 on level 1 and apartments 7 and 8 on level 6 are single aspect apartments that achieve poor cross ventilation. These apartments rely on the internal light well to achieve cross ventilation, which the ADG says is not suitable. As a result, only 4 out of 8 apartments (50%) achieve adequate natural cross ventilation.
108. Additionally, apartment 1 exceeds the maximum depth of open plan layouts of 8m, proposing an open plan area with a depth of 10.9m. It also does not comply with the minimum width for living areas (3.6m), proposing a width of 2.8m. This results in a long and narrow apartment with only a small window facing the internal lightwell providing ventilation to the kitchen/ dining area. This does not achieve sufficient cross ventilation, as the ADG requires inlet and outlet windows to have approximately the same area.
109. The proposal therefore does not meet the minimum requirement of 60% of apartments being naturally cross ventilated.

Internal common areas

110. Part 4.2.3.3 of the DCP provides provisions for internal common areas.
111. The proposal provides common lobbies to apartments on levels 1 and 6, however no lobbies are provided on levels 2-5. This results in lift access opening directly into 4 out of 8 apartments within the building.
112. The absence of lobbies on these levels raises privacy and safety/security concerns (see Figure 19 below). It allows for the potential of other residents having a direct line of sight from the lift when it opens at each of these levels into apartments.



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Communal open space

117. Communal open space on the roof top level is provided. This comprises two terrace areas measuring approximately 18sqm each (including planter boxes), which are connected by a covered corridor. Useable area (excluding planter boxes) measures 12sqm on the eastern terrace and 14sqm on the western terrace.
118. A total of 26sqm of useable communal open space is provided, which comprises 14.9% of the site area. The proposal does not comply with the 25% requirement for communal open space.
119. The plans originally submitted to Council proposed no communal open space and a rooftop level to be accessed exclusively by one apartment (without lift access). Amended plans were submitted on 30 September 2020, which show the rooftop as being communal open space and providing lift access.
120. The communal open space comprises two terrace areas measuring approximately 18sqm each (including planter boxes), which are connected by a covered corridor. Useable area (excluding planter boxes) measures 12sqm on the eastern terrace and 14sqm on the western terrace.
121. A total of 26sqm of useable communal open space is provided, which comprises 14.9% of the site area. The proposal therefore does not comply with the 25% ADG requirement for communal open space.
122. The roof terrace is designed to have a BBQ, picnic table and two chairs. Whilst this is sufficient for basic amenity, the applicant was advised on 12 May 2020 that further consideration should be made to ensure the roof top area has a high standard of finish and design. As an example, it was suggested that integrating the seating into the planter walls would create a more elegant solution than proprietary furniture.
123. No attempts were made by the applicant to revise the rooftop design to create a high quality communal open space. The poor design quality of the communal open space contributes overall to the failure of the building to exhibit design excellence.

Other Impacts of the Development

124. The proposed development is capable of complying with the BCA. It is Class 2.
125. It is considered that the proposal will have negative impacts relating to environmental, social or economic impacts on the locality and is not supported.

Suitability of the site for the Development

126. The proposed uses on the site are of a nature in keeping with the overall function of the site. The site is in a mixed use surrounding with residential and commercial uses similar to that proposed.
127. However, the proposed development is not supported as discussed under the 'issues' section of this report.

Internal Referrals

128. The application was discussed with Council's Heritage and Urban Design Specialists, Environmental Health, Public Domain, Surveyors, Transport and Access, Waste Management, Landscaping and Environmental Projects.
129. Various issues were raised by these internal units, which have been outlined throughout this report.

External Referrals

Notification, Advertising and Delegation

130. In accordance the Community Participation Plan 2019 the proposed development is required to be notified and advertised. As such the application was notified and advertised for a period of 21 days between 16 January 2020 and 6 February 2020. As a result of this notification a total of 401 properties were notified and there were 3 submissions received.

- (a) One submission queried whether there will be a dilapidation report undertaken prior to and post construction.

Response - If the application were supported, a dilapidation report would be required to be undertaken to adjoining properties.

- (b) Odours from the garbage room may enter an existing kitchen window at the adjoining property (507-513 Elizabeth Street) that faces onto the lightwell void.

Response - Residential waste storage has been relocated to the north western corner, away from the lightwell. However, the commercial waste storage remains adjoining the lightwell. Though odour spilling into the lightwell is unlikely, Council requested that the applicant clarify where the proposed point of discharge is for the garbage room ventilation. This was not clarified by the applicant.

- (c) A 7-storey development is too high for this area and creates a 'boxed in' effect.

Response - Council does not support the height and bulk of the proposed development, as outlined under the Issues section of this report.

- (d) Height of development would have negative impact on low density buildings to the north.

Response - The height transition to the neighbouring contributing terraces is not supported, as outlined in the Issues section of this report.

Public Interest

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

S7.11 Contribution

132. The development, if approved, would be 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.

Relevant Legislation

133. Environmental Planning and Assessment Act 1979.

Conclusion

134. The application seeks consent for demolition of the existing buildings and construction of a new 7 storey mixed use development comprising 1 basement level, ground floor commercial premises, 8 residential apartments on levels 1-6 and communal open space on the rooftop level.
135. The proposal exceeds the 22m height of buildings development standard pursuant to Clause 4.3 of the Sydney LEP 2012. The application proposes a maximum height of 25.3m, which exceeds the development control by 15%. A request to vary the development standard has not adequately addressed the provisions of Clause 4.6(3) and is not supported.
136. The application has not demonstrated that adequate amenity will be achieved for the proposed apartments.
137. The development is not considered to be an appropriate replacement building to justify full demolition of the existing building fronting Elizabeth Street.
138. The numerous non-compliances and issues raised by Council have not been adequately addressed by the applicant, which results in the development failing to achieve design excellence in accordance with Clause 6.21 of the Sydney LEP 2012.
139. For the reasons above, the development is not in the public interest and is recommended for refusal.

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